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12–3–03 Wednesday
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Federal Register

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Rules and Regulations

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Wednesday, December 3, 2003

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–NE–52–AD; Amendment 39–13381; AD 2003–24–12]

RIN 2120–AA64

Airworthiness Directives; Pratt & Whitney JT9D–3A, –7, –7A, –7F, –7H, –7AH, and –7J Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for Pratt & Whitney (PW) JT9D–3A, –7, –7A, –7F, –7H, –7AH, and –7J turbofan engines, with gearbox pressure tube, part number (P/N) 697896, and No. 4 bearing front pressure manifold, P/N 670663, installed. This AD requires a one-time visual inspection of the gearbox pressure tube and No. 4 bearing front pressure manifold and the attaching clamp assemblies for correct positioning and for wear and damage, and replacement if necessary. This AD is prompted by a report of a failed gearbox pressure tube that resulted in an engine fire. We are issuing this AD to prevent engine fires caused by failed gearbox pressure tubes or failed No. 4 bearing front pressure manifolds.

DATES: This AD becomes effective December 18, 2003.

We must receive any comments on this AD by February 2, 2004.

ADDRESSES: Use one of the following addresses to submit comments on this AD:

- By mail: The Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 2003–NE–52–AD, 12 New England Executive Park, Burlington, MA 01803–5299.
- By fax: (781) 238–7055.
- By e-mail: *9-ane-adcomment@faa.gov*.

You may examine the AD docket, by appointment, at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA.

FOR FURTHER INFORMATION CONTACT: Keith Lardie, Aerospace Engineer, Aircraft Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park; telephone (781) 238–7189; fax (781) 238–7199.

SUPPLEMENTARY INFORMATION: In June of 2003, we became aware that a PW JT9D–7 series turbofan engine gearbox pressure tube failed and caused an engine fire. Investigation revealed that several clamp assemblies that secure the No. 4 bearing front pressure manifold were broken, including some that were missing clamp rubber cushions. Without the clamp rubber cushions, the No. 4 bearing front pressure manifold moved freely due to engine vibration, causing the gearbox pressure tube to fracture, and caused an oil-fed engine fire. A similar failure was reported in 1996, but did not result in a fire.

FAA's Determination and Requirements of This AD

The unsafe condition described previously is likely to exist or develop on other PW JT9D–3A, –7, –7A, –7F, –7H, –7AH, and –7J turbofan engines of the same type design. We are issuing this AD to prevent an engine fire caused by a failed gearbox pressure tube. This AD requires a one-time visual inspection of the gearbox pressure tube, P/N 697896, the No. 4 bearing front pressure manifold, P/N 670663, and the attaching clamp assemblies, P/Ns ST1594–06, ST1594–08, and ST1594–10, for correct positioning, for wear and damage, and replacement if necessary.

FAA's Determination of the Effective Date

Since an unsafe condition exists that requires the immediate adoption of this AD, we have found that notice and opportunity for public comment before issuing this AD are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Changes to 14 CFR Part 39—Effect on the AD

On July 10, 2002, we issued a new version of 14 CFR part 39 (67 FR 47998, July 22, 2002), which governs our AD system. This regulation now includes material that relates to special flight permits, alternative methods of compliance, and altered products. This material previously was included in each individual AD. Since this material is included in 14 CFR part 39, we will not include it in future AD actions.

Comments Invited

This AD is a final rule that involves requirements affecting flight safety and was not preceded by notice and an opportunity for public comment; however, we invite you to submit any written relevant data, views, or arguments regarding this AD. Send your comments to an address listed under **ADDRESSES**. Include "AD Docket No. 2003–NE–52–AD" in the subject line of your comments. If you want us to acknowledge receipt of your mailed comments, send us a self-addressed, stamped postcard with the docket number written on it; we will date-stamp your postcard and mail it back to you. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify it. If a person contacts us verbally, and that contact relates to a substantive part of this AD, we will summarize the contact and place the summary in the docket. We will consider all comments received by the closing date and may amend the AD in light of those comments.

We are reviewing the writing style we currently use in regulatory documents. We are interested in your comments on whether the style of this document is clear, and your suggestions to improve the clarity of our communications with you. You can get more information about plain language at *http://www.faa.gov/language* and *http://www.plainlanguage.gov*.

Examining the AD Docket

You may examine the AD Docket (including any comments and service information), by appointment, between 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. *See* **ADDRESSES** for the location.

Regulatory Findings

We have determined that this AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that the regulation:

1. Is not a "significant regulatory action" under Executive Order 12866;

2. Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and

3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a summary of the costs to comply with this AD and placed it in the AD Docket. You may get a copy of this summary by sending a request to us at the address listed under **ADDRESSES.** Include "AD Docket No. 2003–NE–52–AD" in your request.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

■ Accordingly, under the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new airworthiness directive:

2003–24–12 **Pratt & Whitney:** Amendment 39–13381. Docket No. 2003–NE–52–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective December 18, 2003.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Pratt & Whitney (PW) JT9D–3A –7, –7A, –7F, –7H, –7AH, and –7J turbofan engines, with gearbox pressure tube, part number (P/N) 697896, and No. 4 bearing front pressure manifold, P/N 670663, installed. These engines are installed on, but not limited to, Boeing 747–1u0, –200B, –200C, and –200F airplanes.

Unsafe Condition

(d) This AD is prompted by a report of a failed gearbox pressure tube that resulted in an engine fire. We are issuing this AD to prevent engine fires caused by failed gearbox pressure tubes or failed No. 4 bearing front pressure manifolds.

Compliance

(e) You are responsible for having the actions required by this AD performed within 250 hours-in-service or at the next shop visit, whichever occurs first, after the effective date of this AD, unless the actions have already been done.

One-Time Visual Inspection of Clamp Assemblies

(f) Visually inspect the clamp assemblies, P/Ns ST1594–06, ST1594–08, and ST1594–10, that attach the gearbox pressure tube and the No. 4 bearing front pressure manifold to the engine. Replace clamp assemblies before further flight that are rejected by any of the following rejection criteria:

(1) Droop in the No. 4 bearing front pressure manifold.

(2) Cracks, wear, or distortion in clamp metal.

(3) Clamp cushions that are worn, compacted, cracked, coming apart in chunks, deteriorated, or missing. A reddish powder found around the clamp is an indication of deterioration.

One-Time Visual Inspection of Gearbox Pressure Tube and No. 4 Bearing Front Pressure Manifold

(g) Clean any debris and oil from the outer surface of the gearbox pressure tube and No. 4 bearing front pressure manifold and visually inspect the tube and manifold. Repair or replace the affected tube or manifold before further flight if it is rejected by any of the following rejection criteria:

(1) Nicks, chafing, scratches, and or pitting 0.003 inch or greater in depth.

(2) Dents within 0.25 inch of the ferrules or will not permit free passage of a ball having a diameter slightly greater than 80% of the tube or manifold tubing inner diameter.

(3) Corrosion that is unable to be removed by a light polishing.

(4) Tube or manifold is leaking oil.

Gearbox Pressure Tube, No. 4 Bearing Front Pressure Manifold, and Clamp Assembly Positioning

(h) If the gearbox pressure tube, No. 4 bearing front pressure manifold, or clamp assemblies are not properly positioned, then correctly position them before further flight, as shown in the following Figure 1 of this AD.

BILLING CODE 4910–13–P

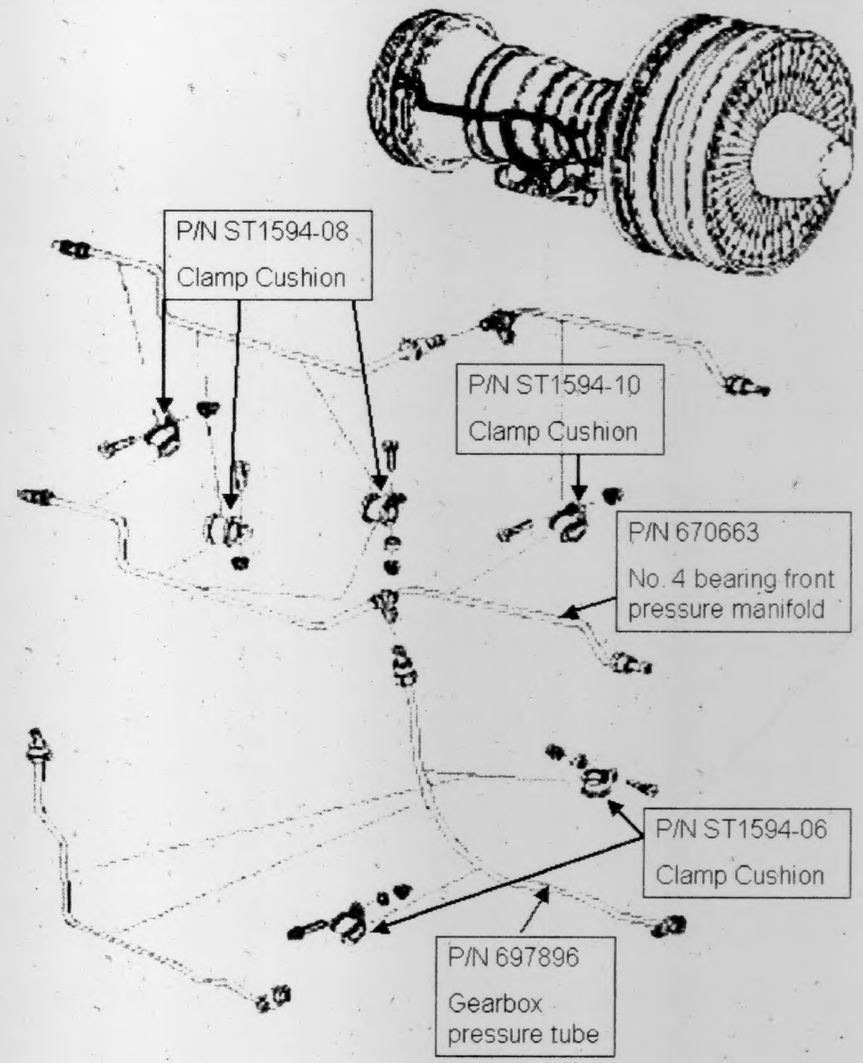


Figure 1

BILLING CODE 4910–13–C

(i) Information on general inspection of these parts can be found in the Boeing 747 Aircraft Maintenance Manual, section 72–00–00, and in PW Standard Practices Manual, P/N 585005.

Reporting Requirements

(j) Report within 30 calendar days of the inspection, the results that equal or exceed the reject criteria to: Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7189; fax (781)-238–7199. Reporting requirements have been approved by the Office of Management and Budget control number 2120–0056.

Alternative Methods of Compliance

(k) The Manager, Engine Certification Office, has the authority to approve alternative methods of compliance for this AD if requested using the procedures found in 14 CFR 39.19.

Material Incorporated by Reference

(l) None.

Related Information

(m) None.

Issued in Burlington, Massachusetts, on November 25, 2003.

Jay J. Pardee,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 03–30073 Filed 12–2–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–CE–03–AD; Amendment 39–13376; AD 2003–24–07]

RIN 2120–AA64

Airworthiness Directives; The New Piper Aircraft, Inc. Models PA–31, PA–31–300, PA–31–325, PA–31–350, PA–31P, PA–31T, PA–31T1, PA–31T2, PA–31T3, and PA–31P–350 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to all The New Piper Aircraft, Inc. (Piper) Models PA–31, PA–31–300, PA–31–325, PA–31–350, PA–31P, PA–31T, PA–31T1, PA–31T2, PA–31T3, and PA–31P–350 airplanes. This AD requires you to install an inspection hole (or use for inspection the tooling hole in the rudder bottom rib), conduct a detailed visual inspection of the rudder torque tube and associated ribs for corrosion, and, if corrosion is found, replace or repair the rib/rudder torque tube assembly. This AD is the result of reports of rudder tube corrosion. The actions specified by this AD are intended to detect and correct corrosion in the rudder torque tube assembly and rudder rib, which could result in failure of the rudder torque tube. This failure could lead to loss of rudder control.

DATES: This AD becomes effective on February 9, 2004.

As of February 9, 2004, the Director of the Federal Register approved the incorporation by reference of certain publications listed in the regulation.

ADDRESSES: You may get the service information referenced in this AD from The New Piper Aircraft, Inc., Customer Services, 2926 Piper Drive, Vero Beach, Florida 32960; telephone: (772) 567–4361; facsimile: (772) 978–6584.

You may view this information at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2003–CE–03–AD, 901 Locust, Room 506, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: William O. Herderich, Aerospace Engineer, FAA, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, Suite 450, Atlanta, Georgia 30349; telephone: (770) 703–6082; facsimile: (770) 703–6097.

SUPPLEMENTARY INFORMATION:

Discussion

What events have caused this AD? The FAA has received several reports of rudder tube and rib corrosion on Piper PA–31 Series airplanes. The area surrounding the rudder torque tube assembly and rudder rib does not have a means or access to inspect in this area and neither means nor exits for water to drain out.

What is the potential impact if FAA took no action? Corrosion in the rudder torque tube assembly and rudder rib could result in failure of the rudder torque tube. This failure could lead to loss of rudder control.

Has FAA taken any action to this point? We issued a proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to all Piper Models PA–31, PA–31–300, PA–31–325, PA–31–350, PA–31P, PA–31T, PA–31T1, PA–31T2, PA–31T3, and PA–31P–350 airplanes. This proposal was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on June 3, 2003 (68 FR 33030). The NPRM proposed to require you to install an inspection hole, conduct a detailed visual inspection of the rudder torque tube and associated ribs for corrosion, and, if corrosion is found, replace the rib/rudder torque tube assembly.

Comments

Was the public invited to comment? We provided the public the opportunity to participate in the development of this AD. The following presents the comments received on the proposal and FAA's response to each comment:

Comment Issue No. 1: Extend the Compliance Time

What is the commenter's concern? A commenter recommends extending the compliance time from 100 hours time-in-service (TIS) to 150 hours TIS. The commenter states that the extension is necessary due to a reported lack of parts and the difficulty in scheduling involved with AD compliance.

What is FAA's response to the concern? The FAA agrees that 150 hours TIS would be a more realistic compliance time.

We are changing the final rule AD action accordingly.

Comment Issue No. 2: Allow Option to Repair Parts

What is the commenter's concern? The commenter recommends the following: if you find "light corrosion" or "corrosion that could significantly weaken the rib/rudder torque tube assembly that is less than 50 percent of the thickness over an area less than two square inches' then you may clean up, repair, and coat the corroded area to prevent further damage and continue the part in service.

What is FAA's response to the concern? The FAA is currently unaware of any approved repair design for the rib/rudder torque tube assembly. However, FAA has no objection to operation of aircraft with parts that have been repaired or reworked per an FAA-approved repair design.

Therefore, we are changing the final rule AD action to provide the option of repairing with an FAA-approved design.

Comment Issue No. 3: Special Flight Permits Are Not Addressed in the NPRM

What is the commenter's concern? The commenter states that since special flight permits are not addressed in the NPRM, the current 14 CFR part 39 applies and that there is no restriction against issuing a special flight permit.

What is FAA's response to the concern? On July 10, 2002, the FAA published a new version of 14 CFR part 39 (67 FR 47997, July 22, 2002), which governs the FAA's AD system. This regulation now includes material that relates to special flight permits. This material previously was included in each individual AD. Since this material is included in 14 CFR part 39, we did not include it in this AD action.

We are not making any changes to the final rule AD action.

Comment Issue No. 4: Allow an Alternate Method of Inspection

What is the commenter's concern? The commenter suggests an alternative to installing an inspection hole in the rudder skin for the rudder torque tube assembly. This alternative method of inspection is to use the tooling hole in the rudder bottom rib since this is convenient and does not contribute to corrosion. Further, you could enlarge the tooling hole to ease use of inspection tools.

What is FAA's response to the concern? The FAA agrees that the proposed alternative use of the tooling hole (with optional enlargement) in the rudder bottom rib is an acceptable substitute to installing an access hole.

We are changing the final rule AD action accordingly.

Comment Issue No. 5: Allow Application of Corrosion Inhibitor

What is the commenter's concern? The commenter recommends allowing application of rust inhibitor compound.

What is FAA's response to the concern? The application of rust inhibitor compound to the contact surfaces is identified in Piper Service Bulletin No. 1105A, dated September 22, 2003. As a minor correction, we are also noting to protect bare metal per Section 8, FAA Advisory Circular (AC) 43.13–1B.

We are incorporating the referenced correction in the final rule AD action.

Conclusion

What is FAA's final determination on this issue? We have carefully reviewed the available data and determined that air safety and the public interest require adopting the AD as proposed except for the changes discussed above and minor editorial corrections. We have determined that these changes and minor corrections:

—Are consistent with the intent that was proposed in the NPRM for correcting the unsafe condition; and

—Do not add any additional burden upon the public than was already proposed in the NPRM.

Changes to 14 CFR Part 39—Effect on the AD

How does the revision to 14 CFR part 39 affect this AD? On July 10, 2002, the FAA published a new version of 14 CFR part 39 (67 FR 47997, July 22, 2002), which governs the FAA's AD system. This regulation now includes material that relates to altered products, special flight permits, and alternative methods of compliance. This material previously was included in each individual AD. Since this material is included in 14 CFR part 39, we will not include it in future AD actions.

Costs of Compliance

How many airplanes does this AD impact? We estimate that this AD affects 2,269 airplanes in the U.S. registry.

What is the cost impact of this AD on owners/operators of the affected airplanes?

We estimate the following costs to accomplish the installation of inspection and drain holes and inspection of torque tube and associated ribs for corrosion:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S operators
3 workhours × $60 per hour = $180	$10	$190	2,269 × $190 = $431,110

We estimate the following costs to accomplish any necessary corrosion repairs/replacements of the rib/torque tube assembly that would be required based on the results of this proposed inspection. We have no way of determining the number of airplanes that may need this repair/replacement:

Labor cost	Parts cost	Total cost per airplane
16 workhours × $60 per hour = $960	$800	$1,760

Regulatory Findings

Will this AD impact various entities? We have determined that this AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of Government.

Will this AD involve a significant rule or regulatory action? For the reasons discussed above, I certify that this AD:

1. Is not a "significant regulatory action" under Executive Order 12866;

2. Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and

3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a summary of the costs to comply with this AD and placed it in the AD Docket. You may get a copy of this summary by sending a request to us at the address listed under **ADDRESSES.** Include "2003–CE–03–AD" in your request.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

■ Accordingly, under the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. FAA amends § 39.13 by adding a new AD to read as follows:

2003–24–07 The New Piper Aircraft, Inc.: Amendment 39–13376; Docket No. 2003–CE–03–AD.

When Does This AD Become Effective?

(a) This AD becomes effective on February 9, 2004.

What Other ADs Are Affected by This Action?

(b) None.

What Airplanes Are Affected by This AD?

(c) This AD affects the following airplane models and serial numbers that are certificated in any category:

Model	Serial numbers
PA–31, PA–31–300, PA–31–325.	31–2 through 31–8312019
PA–31–350	31–5001 through 31–8553002
PA–31P	31P–1 through 31P–7730012
PA–31P–350	31P–8414001 through 31P–8414050
PA–31T	31T–7400001 through 31T–8120104
PA–31T1	31T–7804001 through 31T–1104017
PA–31T2	31T–8166001 through 31T–1166008
PA–31T3	31T–8275001 through 31T–5575001

What Is the Unsafe Condition Presented in This AD?

(d) This AD is the result of reports of rudder tube corrosion. The actions specified by this AD are intended to detect and correct corrosion in the rudder torque tube assembly and rudder rib, which could result in failure of the rudder torque tube. This failure could lead to loss of rudder control.

What Must I Do to Address This Problem?

(e) To address this problem, you must accomplish the following:

Actions	Compliance	Procedures
(1) Install an inspection hole in the rudder skin for the rudder torque tube assembly; OR instead of installing an inspection hole, use the tooling hole in the rudder bottom rib. You may enlarge the diameter of the tooling hole no more than 0.25 inches to facilitate inspection and corrosion treatment.	Within the next 150 hours time-in-service (TIS) after February 9, 2004 (the effective date of this AD), unless already accomplished.	Install an inspection hole per The New Piper Aircraft, Inc. Service Bulletin No. 1105A, dated September 22, 2003. Protect bare metal per Section 8, FAA Advisory Circular (AC) 43.13–1B.
(2) Visually inspect the rudder torque tube and associated ribs for corrosion.	Before further flight after the installation required in paragraph (e)(1) of this AD and thereafter at intervals not to exceed 12 calendar months.	Follow The New Piper Aircraft, Inc. Service Bulletin No. 1105A, September 22, 2003.
(3) If you find corrosion damage: ..... (i) Replace the rib/rudder torque assembly; OR (ii) Repair the damaged torque tube using an FAA-approved repair design.	Before further flight after any inspection required in paragraph (e)(2) of this AD where corrosion damage is found.	Follow The New Piper Aircraft, Inc. Service Bulletin No. 1105A, dated September 22, 2003. Repairs must address items in paragraph (f) of this AD and may be approved per FAA Order 8300.10 (Volume 2, Chapter 1), Airworthiness Inspector's Handbook.

(f) All repairs must address the following:

(1) Detect hidden corrosion damage:

(i) In the faying surface between the rudder ribs and torque tube assembly attachments.

(ii) Inside the bore of the torque tube.

(2) Establish procedures for removing corrosion or for corrosion prevention of repaired parts. Advisory Circular (AC) 43.13–1B Acceptable Methods, Techniques, and Practices-Aircraft Inspection and Repair, and AC 43–4A, Corrosion Control for Aircraft, provide resources for establishment of these procedures.

(3) For repairs involving material removal without reinforcement: Define a clear, accurate, and complete description of negligible damage limits. Note that acceptable amounts of material removal may be location-dependent. Higher-stressed areas will be less tolerant of material removal.

(4) For all repairs involving reinforcement: A clear, accurate, and complete description of the repair design must be established per 14 CFR part 21.31.

(5) Verify that all repairs follow Subpart C—Strength Requirements and Subpart D—Design and Construction of Civil Aviation Regulations (CAR) 3, dated May 15, 1956 (the original certification basis for the Piper PA–31 Series as shown in type certificate data sheets A8EA and A20SO).

May I Request an Alternative Method of Compliance?

(g) You may request a different method of compliance or a different compliance time for this AD by following the procedures in 14 CFR 39.13. Send your request to the Manager, Atlanta Aircraft Certification Office (ACO), FAA. For information on any already approved alternative methods of compliance, contact William O. Herderich, Aerospace Engineer, FAA, Atlanta ACO, One Crown Center, 1895 Phoenix Boulevard, Suite 450, Atlanta, Georgia 30349; telephone: (770) 703–6082; facsimile: (770) 703–6097.

Does This AD Incorporate Any Material by Reference?

(h) You must do the actions required by this AD following the instructions in The New Piper Aircraft, Inc. Service Bulletin No. 1105A, dated September 22, 2003. The Director of the Federal Register approved the incorporation by reference of this service bulletin per 5 U.S.C. 552(a) and 1 CFR part 51. You may get a copy from The New Piper Aircraft, Inc., Customer Services, 2926 Piper Drive, Vero Beach, Florida 32960; telephone: (772) 567–4361; facsimile: (772) 978–6584. You may review copies at FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Issued in Kansas City, Missouri, on November 24, 2003.

James E. Jackson,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–29871 Filed 12–2–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2003–16503; Airspace Docket No. 03–ACE–87]

Modification of Class E Airspace; Winterset, IA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This action modifies the Class E airspace area at Winterset, IA. A review of controlled airspace for Winterset-Madison County Airport, Winterset, IA, indicates it does not comply with the criteria for 700 feet Above Ground Level (AGL) airspace required for diverse departures as specified in FAA Order 7400.2E, Procedures for Handling Airspace Matters. The area is enlarged to conform to the criteria in FAA Order 7400.2E.

DATES: This direct final rule is effective on 0901 UTC, April 15, 2004. Comments for inclusion in the Rules Docket must be received on or before January 21, 2004.

ADDRESSES: Send comments on this rule to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2003–16503/Airspace Docket No. 03–ACE–87, at the beginning of your comments. You may also submit comments on the Internet at *http://dms.dot.gov*. You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays, the Docket Office (telephone 1–800–647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C, DOT Municipal Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (816) 329–2525.

SUPPLEMENTARY INFORMATION: This amendment to 14 CFR 71 modifies the Class E airspace area extending upward from 700 feet above the surface of the earth at Winterset, IA. An examination of controlled airspace for Winterset-Madison County Airport reveals it does not meet the criteria for 700 AGL airspace required for diverse departures as specified in FAA Order 7400.2E. The criteria in FAA Order 7400.2E for an aircraft to reach 1200 feet AGL is based on a standard climb gradient of 200 feet per mile plus the distance from the Airport Reference Point (ARP) to the end of the outermost runway. Any fractional part of a mile is converted to the next higher tenth of a mile. This amendment enlarges the radius of the controlled airspace area around Winterset-Madison County Airport and brings the legal description into compliance with FAA Order 7400.2E. This area will be depicted on appropriate aeronautical charts. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9L, dated September 2, 2003, and effective September 16, 2003, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and, therefore, is issuing it as a direct final rule. Previous actions of this nature have not been controversial and have not resulted in adverse comments or objections. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

Interested parties are invited to participate in this rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. FAA–2003–16503/Airspace Docket No. 03–ACE–87." The postcard will be date/time stamped and returned to the commenter.

Agency Findings

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

The FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments. For the reasons discussed in the preamble, I certify that this regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

■ Accordingly, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

■ 1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9L, dated September 2, 2003, and effective September 16, 2003, is amended as follows:

* * * * *

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ACE IA E5 Winterset, IA

Winterset-Madison County Airport, IA
(Lat. 41°21'46" N., long. 92°01'16" W.)

That airspace extending upward from 700 feet above the surface within a 6.3-mile radius of Winterset-Madison County Airport.

Issued in Kansas City, MO, on November 20, 2003.

David W. Hope,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 03–30013 Filed 12–2–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 11

[Docket No. RM04–1–000]

Update of the Federal Energy Regulatory Commission's Fees Schedule for Annual Charges for the Use of Government Lands

November 20, 2003.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Final rule; update of Federal land use fees.

SUMMARY: In accordance with the Commission's regulations, the Commission by its designee, the Executive Director, is updating its schedule of fees for the use of government lands. The yearly update is based on the most recent schedule of fees for the use of linear rights-of-way prepared by the United States Forest Service. Since the next fiscal year will cover the period from October 1, 2003 through September 30, 2004 the fees in this notice will become effective October 1, 2003. The fees will apply to fiscal year 2004 annual charges for the use of government lands.

The Commission has concluded, with the concurrence of the Administrator of the Office of Information and Regulatory Affairs of OMB that this rule is not a "major rule" as defined in section 251 of the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C 804(2).

EFFECTIVE DATE: October 1, 2003.

FOR FURTHER INFORMATION CONTACT: Fannie Kingsberry, Financial Services Division, Office of the Executive Director, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502–6108.

SUPPLEMENTARY INFORMATION: *Document Availability:* In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the Internet through FERC's Home Page (*http://www.ferc.gov*) and in FERC's Public Reference Room during normal business hours (8:30 a.m. to 5 p.m. Eastern time) at 888 First Street, NE., Room 2A, Washington, DC 20426.

From FERC's Home Page on the Internet, this information is available in the eLibrary (formerly FERRIS). The full text of this document is available on eLibrary in PDF and MSWord format for viewing, printing, and/or downloading. To access this document in eLibrary, type the docket number excluding the last three digits of this document in the docket number field.

User assistance is available for eLibrary and the FERC's Web site during normal business hours by contacting FERC Online Support by telephone at (866) 208–3676 (toll free) or for TTY, (202) 502–8659, or by e-mail at *FERCOnline Support@ ferc.gov*.

List of Subjects in 18 CFR Part 11

Electric power, Reporting and recordkeeping requirements.

Thomas R. Herlihy,

Executive Director, Office of the Executive Director.

■ Accordingly, the Commission, effective October 1, 2003, amends part 11 of Chapter I, Title 18 of the Code of Federal Regulations, as follows:

PART 11—[AMENDED]

■ 1. The authority citation for part 11 continues to read as follows:

Authority: 16 U.S.C. 791a–825r; 42 U.S.C. 7101–7352.

■ 2. In part 11, Appendix A is revised to read as follows.

APPENDIX A TO PART 11—FEE SCHEDULE FOR FY 2004

State/County	Rate per acre
Alabama: All Counties	$26.64
Arkansas: All Counties	19.99
Arizona:	
Apache	6.64
Cochise	
Gila	
Graham	
La Paz	
Mohave	
Navajo	
Pima	
Yavapai	
Yuma	
Coconino (North of Colorado R.)	
Coconino (South of Colorado R.)	26.64
Greenlee	
Maricopa	
Pinal	
Santa Cruz	
California:	
Imperial	13.32
Inyo	
Lassen	
Modoc	
Riverside	
San Bernardino	
Siskiyou	19.99
Alameda	33.30
Alpine	
Amador	
Butte	
Calaveras	
Colusa	
Contra Costa	
Del Norte	
El Dorado	
Fresno	
Glenn	
Humboldt	
Kern	33.30
Kings	
Lake	
Madera	
Mariposa	
Mendicino	
Merced	
Mono	
Napa	
Nevada	
Placer	
Plumas	
Sacramento	
San Benito	
San Joaquin	
Santa Clara	
Shasta	
Sierra	
Solano	
Sonoma	
Stanislaus	
Sutter	
Tehama	
Trinity	
Tulare	
Tuolumne	
Yolo	
Yuba	
Los Angeles	39.98
Marin	
Monterey	
Orange	
San Diego	
San Francisco	
San Luis Obispo	
San Mateo	
Santa Barbara	
Santa Cruz	
Ventura	
Colorado:	
Adams	6.64
Arapahoe	
Bent	
Cheyenne	
Crowley	
Elbert	
El Paso	
Huerfano	
Kiowa	
Kit Carson	
Lincoln	6.64
Logan	
Moffat	
Montezuma	
Morgan	
Pueblo	
Sedgewick	
Washington	
Weld	
Yuma	
Baca	13.32
Broomfield [1]	

APPENDIX A TO PART 11—FEE SCHEDULE FOR FY 2004—Continued

State/County	Rate per acre
Dolores	
Garfield	
Las Animas	
Mesa	
Montrose	
Otero	
Prowers	
Rio Blanco	
Routt	
San Miguel	
Alamosa	26.64
Archuleta	
Boulder	
Chaffee	
Clear Creek	
Conejos	
Costilla	
Custer	
Denver	
Delta	
Douglas	
Eagle	
Fremont	
Gilpin	
Grand	
Gunnison	
Hinsdale	
Jackson	
Jefferson	
Lake	
La Plata	
Larimer	
Mineral	
Ouray	
Park	
Pitkin	
Rio Grande	
Saguache	
San Juan	26.64
Summit	
Teller	
Connecticut: All Counties	6.64
Florida:	
Baker	39.98
Bay	
Bradford	
Calhoun	
Clay	
Columbia	
Dixie	
Duval	
Escambia	
Franklin	
Gadsden	
Gilchrist	
Gulf	
Hamilton	
Holmes	
Jackson	
Jefferson	
Lafayette	
Leon	
Liberty	
Madison	
Nassau	
Okaloosa	
Santa Rosa	
Suwannee	
Taylor	
Union	
Wakulla	
Walton	
Washington	
All Other Counties	66.59
Georgia:	
All Counties	39.98
Idaho:	
Cassia	6.64
Gooding	
Jerome	
Lincoln	
Minidoka	
Oneida	
Owyhee	
Power	
Twin Falls	
Ada	19.99
Adams	
Bannock	
Bear Lake	
Benewah	
Bingham	
Blaine	
Boise	
Bonner	
Bonneville	
Boundary	
Butte	
Camas	
Canyon	
Caribou	
Clark	
Clearwater	
Custer	
Elmore	
Franklin	
Fremont	
Gem	
Idaho	
Jefferson	
Kootenai	
Latah	
Lemhi	
Lewis	
Madison	
Nez Perce	
Payette	
Shoshone	
Teton	
Valley	
Washington	
Illinois: All Counties	19.99
Indiana: All Counties	33.30
Kansas:	
Morton	13.32
All Other Counties	6.64
Kentucky: All Counties	19.99
Louisiana: All Counties	39.98
Maine: All Counties	19.99
Michigan:	
Alger	19.99
Baraga	
Chippewa	
Delta	
Dickinson	
Gogebic	
Houghton	
Iron	
Keweenaw	
Luce	
Macking	
Marquette	
Menominee	
Ontonagon	
Schoolcraft	
All Other Counties	26.64
Minnesota: All Counties	19.99
Mississippi: All Counties	26.64
Missouri: All Counties	19.99
Montana	
Big Horn	6.64
Blaine	
Carter	
Cascade	
Chouteau	
Custer	
Daniels	
McCone	
Meagher	
Dawson	
Fallon	
Fergus	
Garfield	
Glacier	
Golden Valley	
Hill	
Judith Basin	
Liberty	
Musselshell	
Petroleum	
Phillips	
Pondera	
Powder River	
Prairie	
Richland	
Roosevelt	
Rosebud	
Sheridan	6.64
Teton	
Toole	
Treasure	
Valley	
Wheatland	
Wibaux	
Yellowstone	
Beaverhead	19.99
Broadwater	
Carbon	
Deer Lodge	
Flathead	
Gallatin	
Granite	
Jefferson	
Lake	
Lewis & Clark	
Lincoln	
Madison	
Mineral	
Missoula	
Park	
Powell	
Ravalli	
Sanders	
Silver Bow	
Stillwater	
Sweet Grass	
Nebraska: All counties	6.64
Nevada:	
Churchill	3.33
Clark	

APPENDIX A TO PART 11—FEE SCHEDULE FOR FY 2004—Continued

State/County	Rate per acre
Elko	
Esmeralda	
Eureka	
Humboldt	
Lander	
Lincoln	
Lyon	
Mineral	
Nye	
Pershing	
Washoe	
White Pine	
Carson City	33.30
Douglas	
Story	
New Hampshire: All counties	19.99
New Mexico:	
Chaves	6.64
Curry	
De Baca	
Dona Ana	
Eddy	
Grant	
Guadalupe	
Harding	
Hidalgo	
Lea	
Luna	
McKinley	
Otero	
Quay	
Roosevelt	
San Juan	
Socorro	
Torrence	
Rio Arriba	13.32
Sandoual	
Union	
Bernalillo	26.64
Catron	
Cibola	
Colfax	
Lincoln	
Los Alamos	
Mora	
San Miguel	
Santa Fe	
Sierra	
Taos	
Valencia	
New York: All counties	26.64
North Carolina: All counties	39.98
North Dakota: All counties	6.64
Ohio: All counties	26.64
Oklahoma:	
Beaver	13.32
Cimarron	
Roger Mills	
Texas	
Le Flore	19.99
McCurtain	
All other counties	6.64
Oregon:	
Harney	6.64
Lake	
Malheur	
Baker	13.32
Crook	
Deschutes	
Gilliam	
Grant	
Jefferson	
Klamath	
Morrow	
Sherman	
Umatilla	
Union	
Wallowa	
Wasco	
Wheeler	
Coos	19.99
Curry	
Douglas	
Jackson	
Josephine	
Benton	26.64
Clackamas	
Clatsop	
Columbia	
Hood River	
Lane	
Lincoln	
Linn	
Marion	
Multnomah	
Polk	
Tillamook	
Washington	
Yamhill	
Pennsylvania: All counties	26.64
Puerto Rico: All	39.98
South Carolina: All counties	39.98
South Dakota:	
Butte	19.99
Custer	
Fall River	
Mead	19.99
Pennington	
All other counties	6.64
Tennessee: All counties	26.64
Texas:	
Culberson	6.64
El Paso	
Hudspeth	
All other counties	39.98
Utah:	
Beaver	6.64
Box Elder	
Carbon	
Duchesne	
Emery	
Garfield	
Grand	
Iron	
Juab	
Kane	
Millard	
San Juan	
Tooele	
Uintah	
Wayne	
Washington	13.32
Cache	19.99
Daggett	
Davis	
Morgan	
Piute	
Rich	
Salt Lake	
Sanpete	
Sevier	
Summit	
Utah	
Wasatch	
Weber	
Vermont: All counties	26.64
Virginia: All counties	26.64
Washington:	
Adams	13.32
Asotin	
Benton	
Chelan	
Columbia	
Douglas	
Franklin	
Garfield	
Grant	
Kittitas	
Klickitat	
Lincoln	
Okanogan	
Spokane	
Walla Walla	
Whitman	
Yakima	
Ferry	19.99
Pend Oreille	
Stevens	
Clallam	26.64
Clark	
Cowlitz	
Grays Harbor	
Island	
Jefferson	
King	
Kitsap	
Lewis	
Mason	
Pacific	
Pierce	
San Juan	
Skagit	
Skamania	
Snohomish	
Thurston	
Wahkiakum	
Whatcom	
West Virginia: All counties	26.64
Wisconsin: All counties	19.99
Wyoming:	
Albany	6.64
Campbell	
Carbon	
Converse	
Goshen	
Hot Springs	
Johnson	
Laramie	
Lincoln	
Natrona	
Niobrara	
Platte	
Sheridan	
Sweetwater	
Fremont	
Sublette	
Uinta	
Washakie	
Big Horn	19.99
Crook	
Park	
Teton	
Weston	
All other zones	6.16

[1] **Note:** Broomfield County created November 2001 from parts of Adams, Boulder, Jefferson and Weld Counties.

[FR Doc. 03–29515 Filed 12–2–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1, 301, and 602

[TD 9096]

RIN 1545–BC53

Installment Payments

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Removal of final regulations.

SUMMARY: This document removes regulation §§ 1.6152–1 and 301.6152–1 relating to installment payments made pursuant to section 6152 of the Internal Revenue Code. These regulations are obsolete because section 6152 was repealed for tax years beginning after December 31, 1986. The removal of these regulations will not affect taxpayers.

DATES: The removal of these regulations is effective December 3, 2003.

FOR FURTHER INFORMATION CONTACT: Janice R. Feldman, (202) 622–4940 (not a toll-free number).

SUPPLEMENTARY INFORMATION

Background and Explanation of Provisions

This document removes one section from the Income Tax Regulations (26 CFR part 1) and one section from the Procedure and Administration Regulations (26 CFR part 301) relating to installment payments made pursuant to section 6152 of the Internal Revenue Code. Section 6152, prior to its repeal in 1986, generally permitted a decedent's estate to pay income taxes in four equal installments, with the fourth installment due on or before 9 months after the date prescribed for the payment of the tax. Section 6152 was repealed by section 1404(c)(1) of the Tax Reform Act of 1986, (Pub. L. 99–514, 100 Stat. 2714), applicable to taxable years beginning after December 31, 1986. The repeal of section 6152 has rendered §§ 1.6152–1 and 301.6152–1 obsolete.

Section 1.6152–1 was added by TD 6364, published in the **Federal Register** for November 26, 1960 (25 FR 12138). Section 1.6152–1 was amended by TD 6914 (32 FR 3819) and by TD 7953 (49 FR 19643). Section 1.6152–1, as amended, provides that corporations (relevant only with respect to provisions in section 6152 repealed in 1982) and estates of decedents may elect to pay income taxes in installments.

Section 301.6152–1 was added by TD 6498 (25 FR 10154) published in the **Federal Register** for October 25, 1960. Section 301.6152–1 provides that the regulations relating to the installment payments of income taxes are found at § 1.6152–1.

Effect on Other Documents

The final regulation § 1.6152–1 published in the **Federal Register** for May 9, 1984 (49 FR 19643) and the final regulation § 301.6152–1 published in the **Federal Register** for October 25, 1960 (25 FR 10154) are removed as of December 3, 2003.

Special Analyses

It has been determined that the removal of these regulations is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. Because this rule merely removes regulatory provisions made obsolete by statute, prior notice and comment and a delayed effective date are unnecessary and contrary to the public interest. 5 U.S.C. 553(b)(B) and (d). Because no notice of proposed rulemaking is required, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply.

Drafting Information

The principal author of the removals of these regulations is Janice R. Feldman of the Office of Associate Chief Counsel, Procedure and Administration (Administrative Provisions and Judicial Practice Division).

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 301

Employment taxes, Estate taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

26 CFR Part 602

Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

■ Accordingly, 26 CFR parts 1, 301, and 602 are amended as follows:

PART 1—INCOME TAXES

■ **Paragraph 1.** The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

§ 1.6152–1 [Removed]

■ **Par. 2.** Section 1.6152–1 is removed.

PART 301—PROCEDURE AND ADMINISTRATION

■ **Par. 3.** The authority citation for part 301 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

§ 301.6152–1 [Removed]

■ **Par. 4.** Section 301.6152–1 is removed.

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

■ **Par. 5.** The authority citation for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805 * * *

§ 602.101 [Amended]

■ **Par. 6.** In § 602.101, paragraph (b) is amended by removing the entry for 1.6152–1 from the table.

Approved: November 19, 2003.

Robert E. Wenzel,

Deputy Commissioner for Services and Enforcement.

Pamela F. Olson,

Assistant Secretary of the Treasury (Tax Policy).

[FR Doc. 03–29999 Filed 12–2–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 242

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 100

Subsistence Management Regulations for Public Lands in Alaska, Subpart D; Seasonal Adjustments—Units 9(D), 10 and 24

AGENCIES: Forest Service, USDA; Fish and Wildlife Service, Interior.

ACTION: Seasonal adjustments.

SUMMARY: This provides notice of the Federal Subsistence Board's management actions to provide for a subsistence harvest opportunity for caribou in Units 9(D) and 10 (Unimak Island) and to protect a declining moose population in Unit 24. These actions provide an exception to the Subsistence Management Regulations for Public Lands in Alaska, published in the **Federal Register** on June 27, 2003. Those regulations established seasons, harvest limits, methods, and means relating to the taking of wildlife for subsistence uses during the 2003 regulatory year.

DATES: The Unit 9(D) and 10 (Unimak Island) action is effective October 29, 2003, through March 31, 2004. The Unit 24 action is effective November 3, 2003, through December 31, 2003.

FOR FURTHER INFORMATION CONTACT: Thomas H. Boyd, Office of Subsistence Management, U.S. Fish and Wildlife Service, telephone (907) 786–3888. For questions specific to National Forest System lands, contact Steve Kessler, Subsistence Program Manager, USDA—Forest Service, Alaska Region, telephone (907) 786–3592.

SUPPLEMENTARY INFORMATION:

Background

Title VIII of the Alaska National Interest Lands Conservation Act (ANILCA) (16 U.S.C. 3111–3126) requires that the Secretary of the Interior and the Secretary of Agriculture (Secretaries) implement a joint program to grant a preference for subsistence uses of fish and wildlife resources on public lands in Alaska, unless the State of Alaska enacts and implements laws of general applicability that are consistent with ANILCA and that provide for the subsistence definition, preference, and participation specified in Sections 803, 804, and 805 of ANILCA. In December 1989, the Alaska Supreme Court ruled that the rural preference in the State subsistence statute violated the Alaska Constitution and, therefore, negated State compliance with ANILCA.

The Department of the Interior and the Department of Agriculture (Departments) assumed, on July 1, 1990, responsibility for implementation of Title VIII of ANILCA on public lands. The Departments administer Title VIII through regulations at Title 50, Part 100 and title 36, part 242 of the Code of Federal Regulations (CFR). Consistent with subparts A, B, and C of these regulations, as revised January 8, 1999, (64 FR 1276), the Departments established a Federal Subsistence Board to administer the Federal Subsistence Management Program. The Board's composition includes a Chair appointed by the Secretary of the Interior with concurrence of the Secretary of Agriculture; the Alaska Regional Director, U.S. Fish and Wildlife Service; the Alaska Regional Director, National Park Service; the Alaska State Director, Bureau of Land Management; the Alaska Regional Director, Bureau of Indian Affairs; and the Alaska Regional Forester, USDA Forest Service. Through the Board, these agencies participate in the development of regulations for Subparts A, B, and C, which establish the program structure and determine which Alaska residents are eligible to take specific species for subsistence uses, and the annual Subpart D regulations, which establish seasons, harvest limits, and methods and means for subsistence take of species in specific areas. Subpart D regulations for the 2003 hunting seasons, harvest limits, and methods and means were published on June 27, 2003, (68 FR 38464).

Because this rule relates to public lands managed by an agency or agencies in both the Departments of Agriculture and the Interior, identical closures and adjustments would apply to 36 CFR part 242 and 50 CFR part 100.

The Alaska Department of Fish and Game (ADF&G), under the direction of the Alaska Board of Game (BOG) and the Board of Fisheries (BOF), manages sport, commercial, personal use, and State subsistence harvest on all lands and waters throughout Alaska. However, on Federal lands and waters, the Federal Subsistence Board implements a subsistence priority for rural residents as provided by Title VIII of ANILCA. In providing this priority, the Federal Board may, when necessary, preempt State harvest regulations for fish or wildlife on Federal lands and waters.

These adjustments are necessary because of the need to provide additional subsistence opportunity for harvest of a rapidly expanding caribou population in Units 9(D) and 10 (Unimak Island) and to enhance productivity of a declining moose population in a portion of Unit 24. These actions are authorized and in accordance with 50 CFR 100.19(d–e) and 36 CFR 242.19(d–e).

Units 9(D) and 10 (Unimak Island)—Caribou

The caribou population has increased in both units and has reached and/or exceeded the upper level population objectives specified in the management plan. Increasing both the fall and winter harvest limits will provide additional harvest opportunities for subsistence users. Increasing the Federal subsistence harvest limits for caribou hunting on Federal public lands in Units 9(D) and 10 (Unimak Island) should help to stabilize the current population in line with the carrying capacity of the habitat for this herd. A previous Board action had modified the limits for the fall season. In this action the Federal Subsistence Board increased the harvest limit for caribou in Unit 9(D) from 1 to 2 and from 2 to 4 for Unit 10 (Unimak Island) for the November 15–March 31 caribou season.

Unit 24—Moose

Based on an analysis of results from trend surveys conducted in areas in Unit 24, ongoing population declines are somewhat uniform throughout the Koyukuk River drainage. Based on results from trend surveys conducted in portions of Unit 24 between 1985 and 1999, there have been significant declines in productivity and yearling bull recruitment.

These declines continue and have been documented through results from surveys conducted from 2000 through 2002. Results from limited 2003 surveys were similar, indicating that overall productivity has not increased. Current Federal regulations provide opportunity to harvest bull moose in the affected area August 1 through December 31. While increased cow harvest levels have provided additional opportunity and have served to stabilize moose populations in past years, prolonged harvest at the current levels will likely contribute to further declines in productivity and recruitment. As current management objectives prescribe more conservative yields than allowed for through current regulatory provisions, regulatory changes are needed to decrease the total cow harvest and to maintain productivity and recruitment. The Board had previously closed Unit 21(D) and Unit 24 outside of the Gates of the Arctic National Park to antlerless harvest during the fall season. This Board action shortens the antlerless moose season in Unit 24—that portion that includes the John River drainage within the Gates of the Arctic National Park. The existing season and harvest limit for the affected area is 1 moose during August 1 through December 31. This action prohibits the harvest of antlerless moose within the affected area November 3–December 31. ADF&G has executed an Emergency Order for a similar closure of the State antlerless moose season on private lands within the John and Alatna River drainages of Unit 24 consistent with the Management Plan, which calls for additional regulatory restrictions on antlerless moose harvest in response to the ongoing population declines.

The Board finds that additional public notice and comment requirements under the Administrative Procedure Act (APA) for these adjustments are impracticable, unnecessary, and contrary to the public interest. Lack of appropriate and immediate measures could seriously affect the continued viability of wildlife populations, adversely impact subsistence opportunities for rural Alaskans, and would generally fail to serve the overall public interest. Therefore, the Board finds good cause pursuant to 5 U.S.C. 553(b)(3)(B) to waive additional public notice and comment procedures prior to implementation of these actions and pursuant to 5 U.S.C. 553(d)(3) to make this rule effective as indicated in the **DATES** section.

Conformance With Statutory and Regulatory Authorities

National Environmental Policy Act Compliance

A Final Environmental Impact Statement (FEIS) was published on February 28, 1992, and a Record of Decision on Subsistence Management for Federal Public Lands in Alaska (ROD) was signed April 6, 1992. The final rule for Subsistence Management Regulations for Public Lands in Alaska, Subparts A, B, and C (57 FR 22940–22964, published May 29, 1992) implemented the Federal Subsistence Management Program and included a framework for an annual cycle for subsistence hunting and fishing regulations. A final rule that redefined the jurisdiction of the Federal Subsistence Management Program to include waters subject to the subsistence priority was published on January 8, 1999, (64 FR 1276.)

Compliance With Section 810 of ANILCA

The intent of all Federal subsistence regulations is to accord subsistence uses of fish and wildlife on public lands a priority over the taking of fish and wildlife on such lands for other purposes, unless restriction is necessary to conserve healthy fish and wildlife populations. A Section 810 analysis was completed as part of the FEIS process. The final Section 810 analysis determination appeared in the April 6, 1992, ROD which concluded that the Federal Subsistence Management Program, under Alternative IV with an annual process for setting hunting and fishing regulations, may have some local impacts on subsistence uses, but the program is not likely to significantly restrict subsistence uses.

Paperwork Reduction Act

The adjustment and emergency closures do not contain information collection requirements subject to Office of Management and Budget (OMB) approval under the Paperwork Reduction Act of 1995.

Other Requirements

The adjustments have been exempted from OMB review under Executive Order 12866.

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) requires preparation of flexibility analyses for rules that will have a significant effect on a substantial number of small entities, which include small businesses, organizations, or governmental jurisdictions. The exact number of businesses and the amount of trade that will result from this Federal land-related activity is unknown. The aggregate effect is an insignificant economic effect (both positive and negative) on a small number of small entities supporting subsistence activities, such as firearm, ammunition, and gasoline dealers. The number of small entities affected is unknown; but, the effects will be seasonally and geographically-limited in nature and will likely not be significant. The Departments certify that the adjustments will not have a significant economic effect on a substantial number of small entities within the meaning of the Regulatory Flexibility Act. Under the Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 801 *et seq.*), this rule is not a major rule. It does not have an effect on the economy of $100 million or more, will not cause a major increase in costs or prices for consumers, and does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

Title VIII of ANILCA requires the Secretaries to administer a subsistence preference on public lands. The scope of this program is limited by definition to certain public lands. Likewise, the adjustments have no potential takings of private property implications as defined by Executive Order 12630.

The Service has determined and certifies pursuant to the Unfunded Mandates Reform Act, 2 U.S.C. 1502 *et seq.*, that the adjustments will not impose a cost of $100 million or more in any given year on local or State governments or private entities. The implementation is by Federal agencies, and no cost is involved to any State or local entities or Tribal governments.

The Service has determined that the adjustments meet the applicable standards provided in Sections 3(a) and 3(b)(2) of Executive Order 12988, regarding civil justice reform.

In accordance with Executive Order 13132, the adjustments do not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. Title VIII of ANILCA precludes the State from exercising subsistence management authority over fish and wildlife resources on Federal lands.

In accordance with the President's memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments" (59 FR 22951), Executive Order 13175, and 512 DM 2, we have evaluated possible effects on Federally recognized Indian tribes and have determined that there are no effects. The Bureau of Indian Affairs is a participating agency in this rulemaking.

On May 18, 2001, the President issued Executive Order 13211 on regulations that significantly affect energy supply, distribution, or use. This Executive Order requires agencies to prepare Statements of Energy Effects when undertaking certain actions. As these actions are not expected to significantly affect energy supply, distribution, or use, they are not significant energy actions and no Statement of Energy Effects is required.

Drafting Information

William Knauer drafted this document under the guidance of Thomas H. Boyd, of the Office of Subsistence Management, Alaska Regional Office, U.S. Fish and Wildlife Service, Anchorage, Alaska. Taylor Brelsford, Alaska State Office, Bureau of Land Management; Greg Bos, Alaska Regional Office, U.S. Fish and Wildlife Service; Sandy Rabinowitch, Alaska Regional Office, National Park Service; Warren Eastland, Alaska Regional Office, Bureau of Indian Affairs; and Steve Kessler, USDA-Forest Service, provided additional guidance.

Authority: 16 U.S.C. 3, 472, 551, 668dd, 3101–3126; 18 U.S.C. 3551–3586; 43 U.S.C. 1733.

Dated: November 12, 2003.

Thomas H. Boyd,

Acting Chair, Federal Subsistence Board.

Dated: November 12, 2003.

Steve Kessler,

Subsistence Program Leader, USDA—Forest Service.

[FR Doc. 03–30068 Filed 12–2–03; 8:45 am]

BILLING CODE 3410–11–P; 4310–55–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[SIP No. UT–001–0048, UT–001–0049, FRL–7593–2]

Approval and Promulgation of Air Quality Implementation Plans; State of Utah; State Implementation Plan Corrections

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; technical correction.

SUMMARY: When EPA approved Utah State Implementation Plan (SIP) revisions regarding the numbering and format of the SIP on June 25, 2003, we inadvertently submitted incorrect material for incorporation by reference. EPA is correcting this error with this document.

EFFECTIVE DATE: This final rule is effective January 2, 2004.

FOR FURTHER INFORMATION CONTACT: Laurel Dygowski, EPA, Region 8, (303) 312–6144.

SUPPLEMENTARY INFORMATION:

Throughout this document, wherever "we" or "our" is used it means the EPA.

Section 553 of the Administrative Procedures Act, 5 U.S.C. 553(b)(B), provides that when an agency for good cause finds that notice and public procedures are impracticable, unnecessary or contrary to the public interest, the agency may issue a rule without providing notice and an opportunity for public comment. We have determined that there is good cause for making today's rule final without prior proposal and opportunity for comment because we are merely correcting incorrect text in a previous rulemaking. Thus notice and public procedures are unnecessary. We find that this constitutes good cause under 5 U.S.C. 553(b)(B).

I. Correction

Correction to Federal Register Document Published on June 25, 2003 (68 FR 37744)

On June 25, 2003, we published a final rule approving Utah SIP revisions pertaining to the numbering and format of the SIP (68 FR 37744). When we published this rule, we incorporated by reference changes to Section IX.C.7.h(3) for which the State inadvertently submitted incorrect material. The State has subsequently submitted the correct material for SIP Section IX.C.7.h(3). Therefore, we are correcting this incorporation by reference error by resubmitting the incorporation by reference material for 40 CFR 52.2320(c)(56)(i)(C) to the Air and Radiation Docket and Information Center and the Office of the Federal Register.

II. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and is therefore not subject to review by the Office of Management and Budget. This rule is not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866. Because the agency has made a "good cause" finding that this action is not subject to notice-and-comment requirements under the Administrative Procedure Act or any other statute as indicated in the **SUPPLEMENTARY INFORMATION** section above, it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), or to sections 202 and 205 of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4). In addition, this action does not significantly or uniquely affect small governments or impose a significant intergovernmental mandate, as described in sections 203 and 204 of UMRA. This rule also does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

This technical correction action does not involve technical standards; thus the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. The rule also does not involve special consideration of environmental justice related issues as required by Executive Order 12898 (59 FR 7629, February 16, 1994). In issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct, as required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996). EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1998) by examining the takings implications of the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" issued under the executive order. This rule does not impose an information collection burden under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). EPA's compliance with these statutes and Executive Orders for the underlying rules are discussed in the June 25, 2003 rule approving the revisions to the numbering and formatting of the Utah SIP.

The Congressional Review Act (5 U.S.C. 801 *et seq.*), as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Section 808 allows the issuing agency to make a rule effective sooner than otherwise provided by the CRA if the agency makes a good cause finding that notice and public procedure is impracticable, unnecessary or contrary to the public interest. This determination must be supported by a brief statement. 5 U.S.C. 808(2). As stated previously, EPA has made such a good cause finding, including the reasons therefore, and established an effective date of January 2, 2004. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. These corrections to the identification of plan for Utah is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: November 14, 2003.

Kerrigan G. Clough,

Acting Regional Administrator, Region 8.

[FR Doc. 03–30043 Filed 12–2–03; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 73 and 76

[MB Docket No. 02–230; FCC 03–273]

Digital Broadcast Content Protection

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this item, the Commission adopts final rules implementing an ATSC flag-based redistribution control system to protect digital broadcast television content from unauthorized redistribution and ensure the continued flow of high value digital content to consumers via over-the-air broadcasting. This action is taken pursuant to the Commission's ancillary authority and is intended to preserve the viability of over-the-air broadcasting and further the digital television transition.

DATES: Effective January 2, 2004, except for §§ 73.9002 and 73.9008 which contain information collection requirements that are not effective until approved by the Office of Management and Budget. The FCC will publish a document in the **Federal Register** announcing the effective date for those sections. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register, as of January 2, 2004.

FOR FURTHER INFORMATION CONTACT: Susan Mort, *susan.mort@fcc.gov*, (202) 418–1043. For additional information concerning the information collection(s) contained in this document, contact Leslie Smith, Federal Communications Commission, Room 1–A804, 445 12th Street, SW., Washington, DC 20554, or via the Internet at *Leslie.Smith@fcc.gov*, or at 202–418–0217.

SUPPLEMENTARY INFORMATION: This is a summary of the Federal Communications Commission's Report and Order and Further Notice of Proposed Rulemaking, FCC 03–273, adopted and released on November 4, 2003. The full text of this document is available for inspection and copying during normal business hours in the FCC Reference Center, 445 12th Street, SW., Washington, DC 20554. The complete text may be purchased from the Commission's copy contractor, Qualex International, 445 12th Street, SW., Room CY–B402, Washington, DC 20554. The full text may also be downloaded at: *http://www.fcc.gov*. Alternative formats are available to persons with disabilities by contacting Brian Millin at (202) 418–7426 or TTY (202) 418–7365 or at *Brian.Millin@fcc.gov*.

Paperwork Reduction Act

The Report and Order portion of this document contains either a new or modified information collection(s). The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the information collections contained in this Second Report and Order, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. Public and agency comments are due February 2, 2004.

In addition to filing comments with the Secretary, a copy of any PRA comments on the information collections contained herein should be submitted to Leslie Smith, Federal Communications Commission, Room 1–A804, 445 12th Street, SW., Washington, DC 20554, or via the Internet to *Leslie.Smith@fcc.gov*, and to Kim A. Johnson, OMB Desk Officer, Room 10236 NEOB, 725 17th Street, NW., Washington, DC 20503, or via the Internet to *Kim_A._Johnson@omb.eop.gov*.

Summary of the Report and Order

1. In the *Report and Order* portion of this *Report and Order and Further Notice of Proposed Rulemaking*, the Commission adopts final rules implementing an ATSC flag-based redistribution control system to protect digital broadcast television content from unauthorized redistribution. Absent this action, we conclude that the threat of widespread unauthorized redistribution of high value digital content will deter content providers from making such content available through broadcast outlets. The creation of a redistribution control system for digital broadcast content is therefore necessary to preserve the future viability of over-the-air broadcasting.

2. Under this system, broadcasters are not required to, but may use the ATSC flag for redistribution control purposes only. The final rules require that demodulators integrated within, or produced for use in, digital television reception devices, including PC and IT products, ("Demodulator Products") must recognize and give effect to the ATSC flag pursuant to certain compliance and robustness rules. MVPDs are permitted to perpetuate the flag in two ways on their systems: (1) By MVPD pass-through of the ATSC flag where the retransmission is unencrypted; or (2) where the retransmission is encrypted, by conveying the presence of the flag by some means that requires the consumer's reception equipment to protect the content as if the flag were present.

3. As an enforcement mechanism, the *Report and Order* adopts written commitment regimes whereby (1) manufacturers or importers of ATSC demodulators obtain from buyers of such products a written commitment that they will incorporate such demodulators into compliant and robust devices or sell or distribute to third parties that have also made such written commitment, and (2) manufacturers or importers of Peripheral TSP Products agree to abide by the Demodulator Products compliance and robustness rules. The *Report and Order* further establishes interim procedures by which proponents of a particular content protection or recording technology can certify to the Commission that such technology is appropriate for use in Demodulator Products.

4. *Paperwork Reduction Act:* This *Report and Order* contains either a new or modified information collection(s). The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public to comment on the information collection(s) contained in this *Report and Order* as required by the Paperwork Reduction Act of 1995, Public Law 104–13. Public and agency comments are due February 2, 2004.

5. *Final Regulatory Flexibility Analysis:* As required by the Regulatory Flexibility Act, the Commission has prepared a Final Regulatory Flexibility Analysis ("FRFA") relating to this *Report and Order*. The FRFA is set forth within.

6. *Ordering Clauses: It is ordered* that pursuant to the authority contained in Sections 1, 2, 4(i) and (j), 303, 307, 309(j), 336, 337, 396(k), 403, 601, 614(b) and 624a, of the Communications Act of 1934, 47 U.S.C 151, 152, 154(i) and (j), 303, 307, 309(j), 336, 337, 396(k), 403, 521, 534(b) and 544a, that the Commission's rules ARE HEREBY AMENDED as set forth herein, and shall become effective 30 days after publication in the **Federal Register** except that rule sections 73.9002 and 73.9008 that contain information collection requirements under the PRA is not effective until approved by OMB. The FCC will publish a document in the **Federal Register** announcing the effective date for those sections. The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of this *Report and Order*, including the Final Regulatory Flexibility Analysis, to the Chief

Counsel for Advocacy of the Small Business Administration.

Final Regulatory Flexibility Analysis

7. As required by the Regulatory Flexibility Act of 1980, as amended ("RFA") an Initial Regulatory Flexibility Analysis ("IRFA") was incorporated in the *Further Notice of Proposed Rulemaking* ("FNPRM"). The Commission sought written public comment on the proposals in the FNPRM, including comment on the IRFA. No comments were received on the IRFA. This present Final Regulatory Flexibility Analysis ("FRFA") conforms to the RFA.

8. *Need for, and Objectives of, the Report and Order.* The need for FCC regulation in this area derives from a forthcoming threat to over-the-air broadcast television in so far as high quality digital programming may be withheld from broadcast outlets by content owners fearful of the content's indiscriminate redistribution. The objective of the final rules, as set forth in the *Report and Order* portion of the *Report and Order and Further Notice of Proposed Rulemaking*, is to facilitate the DTV transition by creating a flag-based content protection system which will limit the indiscriminate redistribution of digital broadcast content and thereby protect the continued flow of high value content to consumers via over-the-air broadcasting.

9. *Summary of Significant Issues Raised by Public Comments in Response to the IRFA.* No comments were received in response to the IRFA.

10. *Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply.* The RFA directs the Commission to provide a description of and, where feasible, an estimate of the number of small entities that will be affected by the proposed rules. The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental entity. In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act. A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration ("SBA").

11. *Television Broadcasting.* The Small Business Administration defines a television broadcasting station that has no more than $12 million in annual receipts as a small business. Business concerns included in this industry are those "primarily engaged in broadcasting images together with sound." According to Commission staff review of the BIA Publications, Inc. Master Access Television Analyzer Database as of May 16, 2003, about 814 of the 1,220 commercial television stations in the United States have revenues of $12 million or less. We note, however, that, in assessing whether a business concern qualifies as small under the above definition, business (control) affiliations must be included. Our estimate, therefore, likely overstates the number of small entities that might be affected by our action, because the revenue figure on which it is based does not include or aggregate revenues from affiliated companies. There are also 2,127 low power television stations (LPTV). Given the nature of this service, we will presume that all LPTV licensees qualify as small entities under the SBA definition.

12. In addition, an element of the definition of "small business" is that the entity not be dominant in its field of operation. We are unable at this time to define or quantify the criteria that would establish whether a specific television station is dominant in its field of operation. Accordingly, the estimate of small businesses to which rules may apply do not exclude any television station from the definition of a small business on this basis and are therefore over-inclusive to that extent. Also as noted, an additional element of the definition of "small business" is that the entity must be independently owned and operated. We note that it is difficult at times to assess these criteria in the context of media entities and our estimates of small businesses to which they apply may be over-inclusive to this extent.

13. *Cable and Other Program Distribution.* The SBA has developed a small business size standard for cable and other program distribution services, which includes all such companies generating $12.5 million or less in revenue annually. This category includes, among others, cable operators, direct broadcast satellite ("DBS") services, home satellite dish ("HSD") services, multipoint distribution services ("MDS"), multichannel multipoint distribution service ("MMDS"), Instructional Television Fixed Service ("ITFS"), local multipoint distribution service ("LMDS"), satellite master antenna television ("SMATV") systems, and open video systems ("OVS"). According to the Census Bureau data, there are 1,311 total cable and other pay television service firms that operate throughout the year of which 1,180 have less than $10 million in revenue. We address below each service individually to provide a more precise estimate of small entities.

14. *Cable Operators.* The Commission has developed, with SBA's approval, our own definition of a small cable system operator for the purposes of rate regulation. Under the Commission's rules, a "small cable company" is one serving fewer than 400,000 subscribers nationwide. We last estimated that there were 1,439 cable operators that qualified as small cable companies. Since then, some of those companies may have grown to serve over 400,000 subscribers, and others may have been involved in transactions that caused them to be combined with other cable operators. Consequently, we estimate that there are fewer than 1,439 small entity cable system operators that may be affected by the decisions and rules adopted in this *Report and Order.*

15. The Communications Act, as amended, also contains a size standard for a small cable system operator, which is "a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1% of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed $250,000,000." The Commission has determined that there are 68,500,000 subscribers in the United States. Therefore, an operator serving fewer than 685,000 subscribers shall be deemed a small operator if its annual revenues, when combined with the total annual revenues of all of its affiliates, do not exceed $250 million in the aggregate. Based on available data, we find that the number of cable operators serving 685,000 subscribers or less totals approximately 1,450. Although it seems certain that some of these cable system operators are affiliated with entities whose gross annual revenues exceed $250,000,000, we are unable at this time to estimate with greater precision the number of cable system operators that would qualify as small cable operators under the definition in the Communications Act.

16. *Direct Broadcast Satellite ("DBS") Service.* Because DBS provides subscription services, DBS falls within the SBA-recognized definition of Cable and Other Program Distribution Services. This definition provides that a small entity is one with $12.5 million or less in annual receipts. There are four licensees of DBS services under part 100 of the Commission's rules. Three of those licensees are currently operational. Two of the licensees that are operational have annual revenues that may be in excess of the threshold for a small business. The Commission, however, does not collect annual revenue data for DBS and, therefore, is unable to ascertain the number of small DBS licensees that could be impacted by these proposed rules. DBS service requires a great investment of capital for operation, and we acknowledge, despite the absence of specific data on this point, that there are entrants in this field that may not yet have generated $12.5 million in annual receipts, and therefore may be categorized as a small business, if independently owned and operated.

17. *Home Satellite Dish ("HSD") Service.* Because HSD provides subscription services, HSD falls within the SBA-recognized definition of Cable and Other Program Distribution Services. This definition provides that a small entity is one with $12.5 million or less in annual receipts. The market for HSD service is difficult to quantify. Indeed, the service itself bears little resemblance to other MVPDs. HSD owners have access to more than 265 channels of programming placed on C–band satellites by programmers for receipt and distribution by MVPDs, of which 115 channels are scrambled and approximately 150 are unscrambled. HSD owners can watch unscrambled channels without paying a subscription fee. To receive scrambled channels, however, an HSD owner must purchase an integrated receiver-decoder from an equipment dealer and pay a subscription fee to an HSD programming package. Thus, HSD users include: (1) Viewers who subscribe to a packaged programming service, which affords them access to most of the same programming provided to subscribers of other MVPDs; (2) viewers who receive only non-subscription programming; and (3) viewers who receive satellite programming services illegally without subscribing. Because scrambled packages of programming are most specifically intended for retail consumers, these are the services most relevant to this discussion.

18. *Multipoint Distribution Service ("MDS"), Multichannel Multipoint Distribution Service ("MMDS") Instructional Television Fixed Service ("ITFS") and Local Multipoint Distribution Service ("LMDS").* MMDS systems, often referred to as "wireless cable," transmit video programming to subscribers using the microwave frequencies of the MDS and ITFS. LMDS is a fixed broadband point-to-multipoint microwave service that provides for two-way video telecommunications.

19. In connection with the 1996 MDS auction, the Commission defined small businesses as entities that had annual average gross revenues of less than $40 million in the previous three calendar years. This definition of a small entity in the context of MDS auctions has been approved by the SBA. The MDS auctions resulted in 67 successful bidders obtaining licensing opportunities for 493 Basic Trading Areas ("BTAs"). Of the 67 auction winners, 61 met the definition of a small business. MDS also includes licensees of stations authorized prior to the auction. As noted, the SBA has developed a definition of small entities for pay television services, which includes all such companies generating $12.5 million or less in annual receipts. This definition includes multipoint distribution services, and thus applies to MDS licensees and wireless cable operators that did not participate in the MDS auction. Information available to us indicates that there are approximately 850 of these licensees and operators that do not generate revenue in excess of $12.5 million annually. Therefore, for purposes of the IRFA, we find there are approximately 850 small MDS providers as defined by the SBA and the Commission's auction rules.

20. The SBA definition of small entities for Cable and Other Program Distribution Services, which includes such companies generating $12.5 million in annual receipts, seems reasonably applicable to ITFS. There are presently 2,032 ITFS licensees. All but 100 of these licenses are held by educational institutions. Educational institutions are included in the definition of a small business. However, we do not collect annual revenue data for ITFS licensees, and are not able to ascertain how many of the 100 non-educational licensees would be categorized as small under the SBA definition. Thus, we tentatively conclude that at least 1,932 licensees are small businesses.

21. Additionally, the auction of the 1,030 LMDS licenses began on February 18, 1998, and closed on March 25, 1998. The Commission defined "small entity" for LMDS licenses as an entity that has average gross revenues of less than $40 million in the three previous calendar years. An additional classification for "very small business" was added and is defined as an entity that, together with its affiliates, has average gross revenues of not more than $15 million for the preceding calendar years. These regulations defining "small entity" in the context of LMDS auctions have been approved by the SBA. There were 93 winning bidders that qualified as small entities in the LMDS auctions. A total of 93 small and very small business bidders won approximately 277 A Block licenses and 387 B Block licenses. On March 27, 1999, the Commission re-auctioned 161 licenses; there were 40 winning bidders. Based on this information, we conclude that the number of small LMDS licenses will include the 93 winning bidders in the first auction and the 40 winning bidders in the re-auction, for a total of 133 small entity LMDS providers as defined by the SBA and the Commission's auction rules.

22. In sum, there are approximately a total of 2,000 MDS/MMDS/LMDS stations currently licensed. Of the approximate total of 2,000 stations, we estimate that there are 1,595 MDS/MMDS/LMDS providers that are small businesses as deemed by the SBA and the Commission's auction rules.

23. *Satellite Master Antenna Television ("SMATV") Systems.* The SBA definition of small entities for Cable and Other Program Distribution Services includes SMATV services and, thus, small entities are defined as all such companies generating $12.5 million or less in annual receipts. Industry sources estimate that approximately 5,200 SMATV operators were providing service as of December 1995. Other estimates indicate that SMATV operators serve approximately 1.5 million residential subscribers as of July 2001. The best available estimates indicate that the largest SMATV operators serve between 15,000 and 55,000 subscribers each. Most SMATV operators serve approximately 3,000–4,000 customers. Because these operators are not rate regulated, they are not required to file financial data with the Commission. Furthermore, we are not aware of any privately published financial information regarding these operators. Based on the estimated number of operators and the estimated number of units served by the largest ten SMATVs, we believe that a substantial number of SMATV operators qualify as small entities

24. *Open Video Systems ("OVS").* Because OVS operators provide subscription services, OVS falls within the SBA-recognized definition of Cable and Other Program Distribution Services. This definition provides that a small entity is one with $12.5 million or less in annual receipts. The Commission has certified 25 OVS operators with some now providing service. Affiliates of Residential Communications Network, Inc. ("RCN") received approval to operate OVS systems in New York City, Boston, Washington, DC and other areas. RCN has sufficient revenues to assure us that they do not qualify as small business entities. Little financial information is available for the other entities authorized to provide OVS

that are not yet operational. Given that other entities have been authorized to provide OVS service but have not yet begun to generate revenues, we conclude that at least some of the OVS operators qualify as small entities.

25. *Electronics Equipment Manufacturers.* Rules adopted in this proceeding could apply to manufacturers of DTV receiving equipment and other types of consumer electronics equipment. The SBA has developed definitions of small entity for manufacturers of audio and video equipment as well as radio and television broadcasting and wireless communications equipment. These categories both include all such companies employing 750 or fewer employees. The Commission has not developed a definition of small entities applicable to manufacturers of electronic equipment used by consumers, as compared to industrial use by television licensees and related businesses. Therefore, we will utilize the SBA definitions applicable to manufacturers of audio and visual equipment and radio and television broadcasting and wireless communications equipment, since these are the two closest NAICS Codes applicable to the consumer electronics equipment manufacturing industry. However, these NAICS categories are broad and specific figures are not available as to how many of these establishments manufacture consumer equipment. According to the SBA's regulations, an audio and visual equipment manufacturer must have 750 or fewer employees in order to qualify as a small business concern. Census Bureau data indicates that there are 554 U.S. establishments that manufacture audio and visual equipment, and that 542 of these establishments have fewer than 500 employees and would be classified as small entities. The remaining 12 establishments have 500 or more employees; however, we are unable to determine how many of those have fewer than 750 employees and therefore, also qualify as small entities under the SBA definition. Under the SBA's regulations, a radio and television broadcasting and wireless communications equipment manufacturer must also have 750 or fewer employees in order to qualify as a small business concern. Census Bureau data indicates that there 1,215 U.S. establishments that manufacture radio and television broadcasting and wireless communications equipment, and that 1,150 of these establishments have fewer than 500 employees and would be classified as small entities. The remaining 65 establishments have 500 or more employees; however, we are unable to determine how many of those have fewer than 750 employees and therefore, also qualify as small entities under the SBA definition. We therefore conclude that there are no more than 542 small manufacturers of audio and visual electronics equipment and no more than 1,150 small manufacturers of radio and television broadcasting and wireless communications equipment for consumer/household use.

26. *Computer Manufacturers.* The Commission has not developed a definition of small entities applicable to computer manufacturers. Therefore, we will utilize the SBA definition of electronic computers manufacturing. According to SBA regulations, a computer manufacturer must have 1,000 or fewer employees in order to qualify as a small entity. Census Bureau data indicates that there are 563 firms that manufacture electronic computers and of those, 544 have fewer than 1,000 employees and qualify as small entities. The remaining 19 firms have 1,000 or more employees. We conclude that there are approximately 544 small computer manufacturers.

27. *Description of Projected Reporting, Recordkeeping and other Compliance Requirements.* On the transmission side, the final rules do not require the use of the ATSC flag by broadcasters, but instead permit the use of the flag at the broadcaster's discretion for redistribution control purposes.

28. With respect to the reception side of the equation, the final rules require that demodulators integrated within, or produced for use in, DTV reception devices, including PC and IT products, (*i.e.*, "Covered Demodulator Products"), must recognize and give effect to the ATSC flag pursuant to certain compliance and robustness rules. The compliance rules detail the appropriate manner in which Demodulator Products may output flag-marked content. As to robustness, the generalized "ordinary user" standard contained in the final rules should afford consumer electronics, and IT and PC manufacturers, flexibility in determining how to protect flag-marked content.

29. Administratively, the final rules adopt a written commitment regime whereby manufacturers or importers of demodulators obtain from buyers a written commitment that they will incorporate such demodulators into compliant and robust devices, or sell or distribute to third parties that have also made such written commitment. The *Report and Order* also adopts a written commitment regime to ensure that manufacturers or importers of "Peripheral TSP Products" that can be used in connection with demodulators will abide by the Demodulator Product compliance and robustness rules.

30. The *Report and Order* also establishes interim procedures by which proponents of a particular content protection or recording technology can certify to the Commission that such technology is appropriate for use in Demodulator Products. Upon review of a proponent's submission, the Commission will issue a public notice. If no objection is received within 20 days, the Commission will expeditiously determine whether the technology is approved for use in Demodulator Products. If substantive objections are received with respect to a particular technology, the Commission will undertake an expedited review of its merits. The interim procedures also provide for the revocation of insecure or compromised content protection and recording technologies.

31. Finally, the *Report and Order* permits MVPDs to perpetuate the flag in two ways on their systems: (1) By MVPD pass-through of the ATSC flag where the retransmission is unencrypted; or (2) where the retransmission is encrypted, by conveying the presence of the flag by some means that requires the consumer's reception equipment to protect the content as if the flag were present.

32. *Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered.* The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.

33. Because use of the ATSC flag is voluntary on the part of broadcasters, we do not believe that small broadcast stations will be significantly economically affected by the final rules. On the reception side, while all consumer electronics, information technology, and personal computer manufacturers will be required to integrate flag recognition capability into devices designed for television reception, we do not believe that small manufacturers will be adversely affected since the cost of integrating the necessary technology is *de minimis*. The written commitment regime should likewise have no significant effect on small manufacturers or importers as there is little cost involved in preparing and filing a written commitment. As to the interim procedures for approval of new content protection and recording technologies, we do not believe that small entities seeking approval will be significantly economically affected by the applicable procedures. Finally, we believe that the flexibility afforded MVPDs in how to effectuate the flag will mitigate any potential significant economic impact on smaller MVPDs.

34. *Federal Rules Which Duplicate, Overlap, or Conflict with the Commission's Proposals.* None.

35. *Report to Congress:* The Commission will send a copy of the *Report and Order and Further Notice of Proposed Rulemaking*, including this FRFA, in a report to be sent to Congress pursuant to the Congressional Review Act. In addition, the Commission will send a copy of the *Report and Order*, including this FRFA, to the Chief Counsel for Advocacy of the SBA. A copy of the *Report and Order* and FRFA (or summaries thereof) will also be published in the **Federal Register**.

List of Subjects

47 CFR Part 73

Incorporation by reference, Television.

47 CFR Part 76

Cable television, Television.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

■ For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR parts 73 and 76 as follows:

PART 73—RADIO BROADCAST SERVICES

■ 1. The authority for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

■ 2. Add subpart L to part 73 to read as follows:

Subpart L—Digital Broadcast Television Redistribution Control

Sec.

73.8000 Incorporation by reference.

§ 73.8000 Incorporation by reference.

(a) The materials listed in this section are incorporated by reference in this part. These incorporations by reference were approved by the Director of the **Federal Register** in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. These materials are incorporated as they exist on the date of the approval, and notice of any change in these materials will be published in the **Federal Register**. The materials are available for purchase at the corresponding addresses noted below, and all are available for inspection at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC, and at the Federal Communications Commission, 445 12th St., SW., Reference Information Center, Room CY–A257, Washington, DC 20554.

(b) The following materials are available for purchase from at least one of the following addresses: Global Engineering Documents, 15 Inverness Way East, Englewood, CO 80112 or at *http://www.global.ihs.com*; or American National Standards Institute, 25 West 43rd Street, 4th Floor, New York, NY 10036 or at *http://www.webstore.ansi.org/ansidocstore/default.asp*.

(1) ATSC A/52: "ATSC Standard Digital Audio Compression (AC–3)," 1995, IBR approved for § 73.682.

(2) ATSC Doc. A/53B, Revision B with Amendment 1: "ATSC Digital Television Standard," August 7, 2001, IBR approved for § 73.682, except for Section 5.1.2 ("Compression format constraints") of Annex A ("Video Systems Characteristics") and the phrase "*see* Table 3" in Section 5.1.1. Table 2 and Section 5.1.2 Table 4.

(3) ATSC A/65B: "ATSC Standard: Program and System Information Protocol for Terrestrial Broadcast and Cable (Revision B)," March 18, 2003, IBR approved for §§ 73.9000 and § 73.9001.

(4) International Standard ISO/IEC 13818–1:2000(E); "Information Technology "Generic Coding of Moving Pictures and Associated Audio Information: Systems," 2000, IBR approved for § 73.9000.

■ 3. Add subpart M to part 73 to read as follows:

Subpart M—Digital Broadcast Television Redistribution Control

Sec.

73.9000 Definitions.
73.9001 Redistribution control of digital television broadcasts.
73.9002 Sale or distribution of demodulators, covered demodulator products, and peripheral TSP products.
73.9003 Compliance requirements for covered demodulator products: Unscreened content.
73.9004 Compliance requirements for covered demodulator products: Marked content.
73.9005 Compliance requirements for covered demodulator products: Audio.
73.9006 Add-in covered demodulator products.
73.9007 Robustness requirements for covered demodulator products.
73.9008 Interim approval of authorized digital output protection technologies and authorized recording methods.
73.9009 Manufacture for exportation.

§ 73.9000 Definitions.

(a) *Authorized digital output protection technology* means a technology approved pursuant to the procedures in § 73.9008.

(b) *Authorized recording method* means a recording method approved pursuant to the procedures in § 73.9008.

(c) *Bona fide reseller* means a party regularly engaged, or about to become regularly engaged, in the lawful commercial enterprise of selling, reselling, manufacturing, or assembling demodulators, or products incorporating demodulators, in compliance with this subpart.

(d) *Broadcast flag* means the redistribution control descriptor (rc_descriptor()) described in ATSC A/65B: "Standard: Program and System Information Protocol for Terrestrial Broadcast and Cable (Revision B)," (incorporated by reference, *see* § 73.8000).

(e) *Computer product* means a product that is designed for or permits the end user to install a wide variety of commercially available software applications thereon, such as a personal computer, handheld "Personal Digital Assistant" and the like, and further includes a subsystem of such a product, such as a graphics card.

(f) *Covered demodulator product* means a product that is required under §§ 73.9002(a)(1) or 73.9002(b)(1) to comply with the demodulator compliance requirements, and to be manufactured in accordance with the demodulator robustness requirements.

(g) *Demodulator* means a component, or set of components, that is designed to perform the function of 8–VSB, 16–VSB, 64–QAM or 256–QAM demodulation and thereby produce a data stream for the purpose of digital television reception.

(h) *Demodulator compliance requirements* means the requirements set out in §§ 73.9003 through 73.9006.

(i) *Demodulator robustness requirements* means the requirements set out in § 73.9007.

(j) *Peripheral TSP product* means a product that is capable of accessing in usable form unscreened content or marked content passed to such product via a robust method where the manufacturer of such product has committed in writing in accordance with § 73.9002(c) that such product will comply with the demodulator compliance requirements and be manufactured in accordance with the demodulator robustness requirements.

(k) *EIT* means *Event information table* as defined in ATSC A/65B: ATSC Standard: Program and System Information Protocol for Terrestrial Broadcast and Cable (Revision B) (incorporated by reference, *see* § 73.8000).

(l) Marked content means, with respect to a Covered demodulator product, Unencrypted digital terrestrial broadcast content that such product has (1) received and demodulated and for which such product has inspected either the EIT or PMT and determined the broadcast flag to be present, or (2) where such product is a peripheral TSP product, received via a robust method and accessed in usable form, and for which such product either inspected the EIT or PMT and determined the broadcast flag to be present or determined through information robustly conveyed with such content that another covered demodulator product had previously so screened such content and determined the broadcast flag to be present; provided, however, that, with respect to a covered demodulator product, marked content shall not include content that has been passed from such product pursuant to §§ 73.9004(a)(1), 73.9004(a)(2), 73.9004(a)(3), 73.9004(a)(5), 73.9004(a)(6), or 73.9006(b).

(m) *PMT* means *program map table* as defined in International Standard ISO/IEC 13818–1:2000(E): "Information Technology—Generic Coding of Moving Pictures and Associated Audio Information: Systems" (incorporated by reference, see § 73.8000).

(n) *Robust method* means, with respect to the passing of unscreened content or marked content from one product to another, a content protection method that complies with § 73.9007.

(o) *Transitory image* means data that has been stored temporarily for the sole purpose of enabling a function not prohibited by this subpart but that (1) does not persist materially after such function has been performed and (2) is not stored in a way that permits copying or storing of such data for other purposes.

(p) *Unencrypted digital terrestrial broadcast content* means audiovisual content contained in the signal broadcast by a digital television station without encrypting or otherwise making the content available through a technical means of conditional access, and includes such content when retransmitted in unencrypted digital form.

(q) *Unscreened content* means, with respect to a covered demodulator product, unencrypted digital terrestrial broadcast content that such product either:

(1) Received and demodulated and for which such product has inspected neither the EIT nor the PMT for the broadcast flag; or

(2) Where such product is a peripheral TSP product, received via a robust method and accessed in usable form, and for which such product has inspected neither the EIT nor the PMT for the broadcast flag and has not determined through information robustly conveyed with such content another covered demodulator product had previously so screened such content and determined the broadcast flag to be present; provided, however, that, with respect to a covered demodulator product, unscreened content shall not include content that has been passed from such product pursuant to §§ 73.9003(a)(1), 73.9003(a)(2), 73.9003(a)(3), 73.9003(a)(4), 73.9003(a)(6), 73.9003(a)(7), or 73.9006(b).

(r) *User accessible bus* means a data bus that is designed for end user upgrades or access, such as an implementation of a smartcard interface, PCMCIA, Cardbus, or PCI that has standard sockets or otherwise readily facilitates end user access. A user accessible bus does not include memory buses, CPU buses, or similar portions of a device's internal architecture that do not permit access to content in a form usable by end users.

§ 73.9001 Redistribution control of digital television broadcasts.

Licensees of TV broadcast stations may utilize the redistribution control descriptor described in ATSC A/65B: "ATSC Standard: Program and System Information Protocol for Terrestrial Broadcast and Cable (Revision B)," (incorporated by reference, *see* § 73.8000) provided they do not transmit the optional additional redistribution control information.

§ 73.9002 Sale or distribution of demodulators, covered demodulator products, and peripheral TSP products.

(a) *Demodulators.* No party that manufactures or imports a demodulator shall sell or distribute in interstate commerce such Demodulator unless:

(1) At the time of such sale or distribution such demodulator is itself, or is incorporated into, a product that complies with the demodulator compliance requirements and was manufactured in accordance with the demodulator robustness requirements; or

(2) Such sale or distribution is to a party that has committed in writing pursuant to paragraph (d) of this section not to sell or distribute demodulators other than in accordance with paragraphs (a)(1) or (a)(2) of this section.

(b) *Covered demodulator products.* No party shall sell or distribute in interstate commerce a covered demodulator product that does not comply with the demodulator compliance requirements and demodulator robustness requirements. The requirements of this paragraph shall not apply to the sale or resale of a product that was manufactured prior to the effective date of this subpart or that initially was sold or distributed in compliance with this subpart.

(c) *Peripheral TSP products.* No party that manufactures or imports a peripheral TSP product shall sell or distribute such peripheral TSP product in interstate commerce unless, at the time of such sale or distribution, such peripheral TSP product complies with the demodulator compliance requirements and was manufactured in accordance with the demodulator robustness requirements. The requirements of this paragraph shall not apply to the sale or resale of a product that was manufactured prior to the effective date of this subpart or that was initially was sold or distributed in compliance with this subpart.

(d) *Written commitments.* (1) A written commitment to allow sale or distribution of demodulators under paragraph (a)(2) of this section, or for a peripheral TSP product, shall be submitted to the Federal Communications Commission, Chief, Media Bureau, Attn: Broadcast Flag Written Commitment, 445 12th Street, SW., Washington, DC 20554.

(2) The information to be provided by a party filing a written commitment to allow sale or distribution of demodulators under paragraph (a)(2) of this section shall include a statement that one of the following conditions is true:

(i) The party is a bona fide reseller;

(ii) The party is a licensed digital television broadcaster; or

(iii) The party is a multichannel video programming distributor, or other party engaged, or about to become engaged, in the lawful retransmission of unencrypted digital terrestrial broadcast content pursuant to § 76.1909 of this chapter.

(3) The information to be provided by a party filing a written commitment for a peripheral TSP product shall include statements that that the party is engaged, or about to become engaged, in the lawful commercial enterprise of manufacturing such peripheral TSP product, and that such product will comply with the demodulator compliance requirements and be manufactured in accordance with the demodulator robustness requirements.

(4) It shall be a violation of this subpart, enforceable by the Commission, for any person that has filed a written commitment pursuant to paragraph (d) of this section to:

(i) In the case such commitment to allow sale or distribution of demodulators under paragraph (a)(2) of this section, sell or distribute the demodulator other than in accordance with paragraphs (a)(1) or (a)(2) of this section; or

(ii) In the case of such commitment for a peripheral TSP product, sell or distribute the peripheral TSP product other than in compliance with paragraph (c) of this section.

(5) Written commitments filed pursuant to paragraph (d) of this section will be publicly available in accordance with §§ 0.441 through 0.470 of this chapter.

(e) The requirements of this section shall become applicable on July 1, 2005.

§ 73.9003 Compliance requirements for covered demodulator products: unscreened content.

(a) A covered demodulator product shall not pass, or direct to be passed, Unscreened Content to any output except:

(1) To an analog output;

(2) To an 8–VSB, 16–VSB, 64–QAM or 256–QAM modulated output, provided that the broadcast flag is retained in the both the EIT and PMT;

(3) To a digital output protected by an authorized digital output protection technology authorized for use with unscreened content, in accordance with any applicable obligations established as a part of its approval pursuant to § 73.9008;

(4) Where the stream containing such content has not been altered following demodulation and such covered demodulator product outputs, or directs to be output, such content to a peripheral TSP product solely within the home or other, similar local environment, using a robust method;

(5) Where such covered demodulator product outputs, or directs to be output, such content to another product and such covered demodulator product exercises sole control (such as by using a cryptographic protocol), in compliance with the demodulator robustness requirements, over the access to such content in usable form in such other product;

(6) Where such covered demodulator product outputs, or directs to be output, such content for the purpose of making a recording of such content pursuant to paragraph (b)(2) of this section, where such content is protected by the corresponding recording method; or

(7) Where such covered demodulator product is incorporated into a computer product and passes, or directs to be passed, such content to an unprotected output operating in a mode compatible with the digital visual interface (DVI) rev. 1.0 Specification as an image having the visual equivalent of no more than 350,000 pixels per frame (*e.g.* an image with resolution of 720 x 480 pixels for a 4:3 (nonsquare pixel) aspect ratio), and 30 frames per second. Such an image may be attained by reducing resolution, such as by discarding, dithering or averaging pixels to obtain the specified value, and can be displayed using video processing techniques such as line doubling or sharpening to improve the perceived quality of the image.

(b) A covered demodulator product shall not record or cause the recording of unscreened content in digital form unless such recording is made using one of the following methods:

(1) A method that effectively and uniquely associates such recording with a single covered demodulator product (using a cryptographic protocol or other effective means) so that such recording cannot be accessed in usable form by another product except where the content of such recording is passed to another product as permitted under this subpart; or

(2) An authorized recording method authorized for use with unscreened content in accordance with any applicable obligations established as a part of its approval pursuant to § 73.9008 (provided that for recordings made on removable media, only authorized recording methods expressly approved pursuant to § 73.9008 for use in connection with removable media may be used).

(c) Paragraph (b) of this section does not impose restrictions regarding the storage of unscreened content as a transitory image.

(d) The requirements of this section shall become applicable on July 1, 2005.

§ 73.9004 Compliance requirements for covered demodulator products: marked content.

(a) A covered demodulator product shall not pass, or direct to be passed, marked content to any output except:

(1) To an analog output;

(2) To an 8–VSB, 16–VSB, 64–QAM or 256–QAM modulated output, provided that the broadcast flag is retained in the both the EIT and PMT;

(3) To a digital output protected by an authorized digital output protection technology, in accordance with any applicable obligations established as a part of its approval pursuant to § 73.9008;

(4) Where such covered demodulator product outputs, or directs to be output, such content to another product and such covered demodulator product exercises sole control (such as by using a cryptographic protocol), in compliance with the demodulator robustness requirements, over the access to such content in usable form in such other product;

(5) Where such covered demodulator product outputs, or directs to be output, such content for the purpose of making a recording of such content pursuant to paragraph (b)(2) of this section, where such content is protected by the corresponding recording method; or

(6) Where such covered demodulator product is incorporated into a computer product and passes, or directs to be passed, such content to an unprotected output operating in a mode compatible with the digital visual interface (DVI) Rev. 1.0 Specification as an image having the visual equivalent of no more than 350,000 pixels per frame (*e.g.*, an image with resolution of 720 x 480 pixels for a 4:3 (nonsquare pixel) aspect ratio), and 30 frames per second. Such an image may be attained by reducing resolution, such as by discarding, dithering or averaging pixels to obtain the specified value, and can be displayed using video processing techniques such as line doubling or sharpening to improve the perceived quality of the image.

(b) A covered demodulator product shall not record or cause the recording of marked content in digital form unless such recording is made using one of the following methods:

(1) A method that effectively and uniquely associates such recording with a single covered demodulator product (using a cryptographic protocol or other effective means) so that such recording cannot be accessed in usable form by another product except where the content of such recording is passed to another product as permitted under this subpart or

(2) An authorized recording method in accordance with any applicable obligations established as a part of its approval pursuant to § 73.9008 (provided that for recordings made on removable media, only authorized recording methods expressly approved pursuant to § 73.9008 for use in connection with removable media may be used).

(c) Paragraph (b) of this section does not impose restrictions regarding the storage of marked content as a transitory image.

(d) The requirements of this section shall become applicable on July 1, 2005.

§ 73.9005 Compliance requirements for covered demodulator products: Audio.

Except as otherwise provided in §§ 73.9003(a) or 73.9004(a), covered demodulator products shall not output the audio portions of unscreened content or of marked content in digital form except in compressed audio format (such as AC3) or in linear PCM format in which the transmitted information is sampled at no more than 48 kHz and no more than 16 bits/sample. The requirements of this section shall become applicable on July 1, 2005.

§ 73.9006 Add-in covered demodulator products.

(a) Where a covered demodulator product passes unscreened content or marked content to another product, other than where such covered demodulator product passes, or directs such content to be passed to an output (*e.g.*, where a demodulator add-in card in a personal computer passes such content to an associated software application installed in the same computer), it shall pass such content:

(1) Using a robust method; or

(2) Protected by an authorized digital output protection technology authorized for such content in accordance with any applicable obligations established as a part of its approval pursuant to § 73.9008. Neither unscreened content nor marked content may be so passed in unencrypted, compressed form via a User Accessible Bus.

(b) The requirements of this section shall become applicable on July 1, 2005.

§ 73.9007 Robustness requirements for covered demodulator products.

The content protection requirements set forth in the demodulator compliance requirements shall be implemented in a reasonable method so that they cannot be defeated or circumvented merely by an ordinary user using generally-available tools or equipment. The requirements of this section shall become applicable on July 1, 2005.

Note to § 73.9007: Generally-available tools or equipment means tools or equipment that are widely available at a reasonable price, including but not limited to, screwdrivers, jumpers, clips and soldering irons. Generally-available tools or equipment also means specialized electronic tools or software tools that are widely available at a reasonable price, other than devices or technologies that are designed and made available for the specific purpose of bypassing or circumventing the protection technologies used to meet the requirements set forth in this subpart. Such specialized electronic tools or software tools includes, but is not limited to, EEPROM readers and writers, debuggers or decompilers.

§ 73.9008 Interim approval of authorized digital output protection technologies and authorized recording methods.

(a) *Certifications for digital output protection technologies and authorized recording methods.* The proponent of a specific digital output protection technology or recording method seeking approval for use in covered demodulator products shall certify to the Commission that such digital output protection technology or recording method is appropriate for use in covered demodulator products to give effect to the broadcast flag. Such certification shall include the following information:

(1) A general description of how the digital output protection technology or recording method works, including its scope of redistribution;

(2) A detailed analysis of the level of protection the digital output protection technology or recording method affords content;

(3) Information regarding whether content owners, broadcasters or equipment manufacturers have approved or licensed the digital output protection technology or recording method for use; and

(4) If the technology is to be offered publicly, a copy of its licensing terms, and fees, as well as evidence demonstrating that the technology will be licensed on a reasonable, non-discriminatory basis.

(5) If any of the information is proprietary in nature, the proponent may seek confidential treatment of the proprietary portion of their certification pursuant to § 0.459 of this chapter.

(b) *Initial certification window.* Following the effective date of this subpart, the Commission shall issue a public notice commencing an initial certification window for digital output protection technologies or recording methods. Within thirty (30) days after the date of this public notice, proponents of digital output protection technologies or recording methods may file certifications pursuant to paragraph (a) of this section. Following close of the initial certification window, the Commission shall issue a public notice identifying the certifications received and commencing an opposition window. Within twenty (20) days after the date of this public notice, oppositions may be filed with respect to a certification.

(1) If no objections are received in response to a proponent's certification within the twenty (20) day opposition window, the Commission shall expeditiously issue a determination indicating whether the underlying digital output protection technology or recording method is approved for use with covered demodulator products.

(2) If an objection is raised within the twenty (20) day opposition window alleging that a proponent's certification contains insufficient information to evaluate the appropriateness of the underlying digital output protection technology or recording method for use with covered demodulator products, the proponent may file a reply within 10 days after the close of the twenty (20) day opposition window. The Commission shall determine whether to dismiss the certification without prejudice or to undertake a full review of the certification's merits pursuant to paragraph (d) of this section.

(3) If an objection is raised within the twenty (20) day opposition window alleging that a proponent's digital output protection technology or recording method is inappropriate for use with covered demodulator products, the Commission shall undertake a full review of the associated certification's merits pursuant to paragraph (d) of this section. The proponent may file a reply within 10 days after the close of the twenty (20) day opposition window. In such cases, the Commission shall issue a determination indicating whether the underlying digital output protection technology or recording method is approved for use with covered demodulator products.

(c) *Effect of subsequent certifications.* Where a proponent of a digital output protection technology or recording method files a certification pursuant to paragraph (a) of this section subsequent to the initial certification window described in paragraph (b) of this section:

(1) If no objections are received in response to a proponent's certification within twenty (20) days after the date of public notice of the filing of such certification, the Commission shall expeditiously issue a determination indicating whether the underlying digital output protection technology or recording method is approved for use with covered demodulator products.

(2) If an objection is raised within twenty (20) days after the date of public notice of the filing of a proponent's certification alleging that such certification contains insufficient information to evaluate the appropriateness of the underlying digital output protection technology or recording method for use with covered demodulator products, the proponent may file a reply within 10 days after the close of the twenty (20) day opposition window. The Commission shall determine whether to dismiss the certification without prejudice or to undertake a full review of the certification's merits pursuant to paragraph (d) of this section.

(3) If an objection is raised within twenty (20) days after the date of public notice of the filing of a proponent's certification alleging that the underlying digital output protection technology or recording method is inappropriate for use with covered demodulator products, the proponent may file a reply within 10 days after the close of the twenty (20) day opposition window. The Commission shall undertake a full review of the certification's merits pursuant to paragraph (d) of this section. In such cases, the Commission shall issue a determination indicating whether the underlying digital output protection technology or recording method is approved for use with covered demodulator products.

(d) *Commission determinations.* Where the Commission undertakes a full review of the merits of a certification for a digital output protection technology or recording method, the Commission may consider, where applicable, the following factors:

(1) Technological factors including but not limited to the level of security, scope of redistribution, authentication, upgradability, renewability, interoperability, and the ability of the digital output protection technology to revoke compromised devices;

(2) The applicable licensing terms, including compliance and robustness rules, change provisions, approval procedures for downstream transmission and recording methods, and the relevant license fees;

(3) The extent to which the digital output protection technology or recording method accommodates consumers' use and enjoyment of unencrypted digital terrestrial broadcast content; and

(4) Any other relevant factors the Commission determines warrant consideration.

(e) *Revocation of approval.* (1) If the security of a content protection technology or recording method approved for use in covered demodulator products has been compromised, a person may seek revocation of such approval pursuant to § 76.7 of this chapter.

(2) Petitioners seeking revocation of a content protection technology or recording method's approval for use in covered demodulator products shall articulate in detail the extent to which the content protection or recording technology has been compromised and demonstrate why alternative measures are insufficient to address the breach in security.

§ 73.9009 Manufacture for exportation.

The requirements of this subpart do not apply to demodulators, covered demodulator products or peripheral TSP products manufactured in the United States solely for export.

PART 76—MULTICHANNEL VIDEO AND CABLE TELEVISION SERVICE

■ 4. The authority citation for part 76 continues to read as follows:

Authority 47 U.S.C. 151, 152, 153, 154, 301, 302, 303, 303a, 307, 308, 309, 312, 317, 325, 338, 339, 503, 521, 522, 531, 532, 533, 534, 535, 536, 537, 543, 544, 544a, 545, 548, 549, 552, 554, 556, 558, 560, 571, 572, and 573.

■ 5. Add new § 76.1909 to read as follows:

§ 76.1909 Redistribution control of unencrypted digital terrestrial broadcast content.

(a) For the purposes of this section, the terms unencrypted digital terrestrial broadcast content, EIT, PMT, broadcast flag, covered demodulator product, and marked content shall have the same meaning as set forth in § 73.9000 of this chapter.

(b) *Encrypted Retransmission.* Where a multichannel video programming distributor retransmits unencrypted digital terrestrial broadcast content in encrypted form, such distributor shall, upon demodulation of the 8–VSB, 16–VSB, 64–QAM or 256–QAM signal, inspect either the EIT or PMT for the broadcast flag, and if the broadcast flag is present:

(1) Securely and robustly convey that information to the consumer product used to decrypt the distributor's signal information, and

(2) Require that such consumer product, following such decryption, protect the content of such signal as if it were a covered demodulator product receiving marked content.

(c) *Unencrypted Retransmission.* Where a multichannel video programming distributor retransmits unencrypted digital terrestrial broadcast content in unencrypted form, such distributor shall, upon demodulation:

(1) Preserve the broadcast flag, if present, in both the EIT and PMT; and

(2) Use 8–VSB, 16–VSB, 64–QAM, or 256–QAM signal modulation for the retransmission.

(d) *Unmarked Content.* Where a multichannel video programming distributor retransmits unencrypted digital terrestrial broadcast content that is not marked with the broadcast flag, the multichannel video programming distributor shall not encode such content to restrict its redistribution.

[FR Doc. 03–30007 Filed 12–2–03; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 300

[Docket No. ; 031022265–3293–02; I.D. 092203E]

RIN 0648–AQ93

International Fisheries; Pacific Tuna Fisheries

AGENCY: National Marine Fisheries Service (NMFS), NationalOceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule; 2003 management measures for tuna purse seine fisheries in the Eastern Pacific Ocean.

SUMMARY: NMFS announces final 2003 management measures to prevent overfishing of eastern tropical Pacific Ocean (ETP) tuna stocks, consistent with recommendations by the Inter-American Tropical Tuna Commission (IATTC) that have been approved by the Department of State (DOS) under the Tuna Conventions Act. The purse seine fishery for tuna is prohibited in a portion of the Convention Area for the month of December, 2003. This action is taken to limit the impact of the purse seine fishery on bigeye tuna which are taken with yellowfin tuna in these waters and thus reduce the potential for overfishing.

DATES: The time and area closure is in effect from 0001 hours December 1, 2003, through 2400 hours December 31, 2003.

ADDRESSES: Copies of the regulatory impact review/regulatory analysis may

be obtained from the Southwest Regional Administrator, Southwest Region, NMFS, 501 W. Ocean Blvd., Long Beach, CA 90802–4213.

FOR FURTHER INFORMATION CONTACT: Svein Fougner, Sustainable Fisheries Division, Southwest Region, NMFS, 562–980–4040.

SUPPLEMENTARY INFORMATION:

Electronic Access

This **Federal Register** document is also accessible via the Internet at the Office of the **Federal Register**'s Web site at *http://www.access.gpo.gov/su-docs/aces/aces140.html*.

The United States is a member of the IATTC, which was established under the Convention for the Establishment of an Inter-American Tropical Tuna Commission signed in 1949. The IATTC was established to provide an international arrangement to ensure the effective international conservation and management of highly migratory species of fish in the Convention Area. The Convention Area is defined to include waters of the eastern tropical Pacific Ocean bounded by the coast of the Americas, the 40° N. and 40° S. parallels, and the 150° W. meridian.

Under the Tuna Conventions Act, NMFS publishes rules to carry out IATTC recommendations that have been approved by the Department of State (DOS). Under 50 CFR 300.29(b)(3), the Southwest Regional Administrator, NMFS, also issues direct notices to the owners or agents of all U.S. purse seine vessels that operate in the ETP of actions recommended by the IATTC and approved by the DOS.

At a meeting held on October 6–7, 2003, the IATTC agreed to a tuna fishery conservation and management measure for 2003. The IATTC agreed to recommend that purse seine fishing for tuna be prohibited in December 2003 in waters bounded by a line from the point where the 95° W. long. meridian intersects the west coast of the Americas, south to 10° S. lat., then W. to 120° W. long., then south to 5° S. lat., then east to 100° W. long., then north to 5° N. lat., then east to 85° W. long., and then north to the point of intersection with the west coast of the Americas. This approach should provide protection against overfishing of the stocks in a manner that is fair, equitable and readily enforceable. The DOS has approved this recommendation.

The recommended 2003 time/area closure is based on 2003 assessments of the condition of the tuna stocks in the ETP and historic catch and effort data for different portions of the eastern Pacific Ocean, as well as records relating to implementation of quotas and closures in prior years. The assessments indicate that the stocks are healthy. The closure is targeted to areas with high catches of bigeye tuna in the purse seine fishery and is believed by the IATTC scientific staff to be sufficient to reduce the risk of overfishing of that stock, especially when considered in combination with the measures recommended for 2004 and 2005 with respect to longline fishing. The 2004 measures, when implemented, will include a 6-week closure of all purse seine fisheries in the eastern Pacific Ocean beginning August 1, 2004, and limitation of longline fisheries to the bigeye tuna catch levels achieved in 2001. The IATTC will meet in June 2004 and review new tuna stock assessments and fishery information and will consider that new information in evaluating the need for management measures for 2005 and future years.

On October 10, 2003, the Acting Regional Administrator, Southwest Region, sent a notice to owners and agents of U.S. tuna purse seine fishing vessels of the actions that were recommended by the IATTC and have been approved by the DOS.

Comments and Responses

No comments were received during the comment period for the proposed rule (68 FR 63052, November 7, 2003), which ended November 19, 2003.

Classification

This action is authorized by the Tuna Conventions Act, 16 U.S.C. 951–961 and 971 *et seq.*

On December 8, 1999, NMFS prepared a biological opinion (BO) assessing the impacts of the fisheries as they would operate under the regulations (65 FR 47, January 3, 2000) implementing the International Dolphin Conservation Program Act (IDCPA). NMFS concluded that the fishing activities conducted under those regulations are not likely to jeopardize the continued existence of any endangered or threatened species under the jurisdiction of NMFS or result in the destruction or adverse modification of critical habitat. This final rule will not result in any changes in the fisheries such that there would be impacts beyond those considered in that BO. The IATTC has also taken action to reduce sea turtle injury and mortality from interactions in the purse seine fishery so impacts of the fisheries should be lower than in the past. Because this closure does not alter the scope of the fishery management regime analyzed in the IDCPA rule, or the scope of the impacts considered in that consultation, NMFS is relying on that analysis to conclude that this final rule will not likely jeopardize the continued existence of any endangered or threatened species under the jurisdiction of NMFS or result in the destruction or adverse modification of critical habitat. Therefore, NMFS has determined that additional consultation is not required for this action.

The eastern Pacific Ocean tuna purse seine fisheries occasionally interact with a variety of species of dolphin, and dolphin takes are authorized and managed under the IDCPA. These quotas do not affect the administration of that program, which is consistent with section 303(a)(2) of the Marine Mammal Protection Act (MMPA). Therefore, this rule is consistent with the MMPA.

This final rule has been determined to be not significant for the purposes of Executive Order 12866.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this rule would not have a significant economic impact on a substantial number of small entities. The factual basis for this certification was published in the proposed rule. No comments were received regarding the economic impacts of this action. As a result, no regulatory flexibility analysis was prepared.

The Assistant Administrator for Fisheries finds good cause pursuant to 5 U.S.C. 553(d)(3) to waive the 30–day delay in the effective date of this final rule as failure to implement the closure as recommended by the IATTC could reduce the ability of the United States to promote full and complete compliance with IATTC recommendations by all parties as well as non-parties to the IATTC. This would jeopardize the continued effectiveness of the IATTC measures to conserve and manage the stocks under its purview.

Authority: 16 U.S.C. 951–961 and 971 *et seq.*

Dated: November 28, 2003.

Rebecca Lent,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

[FR Doc. 03–30132 Filed 11–28–03; 4:36 pm]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 021122284–2323–02; I.D. 111703A]

Fisheries of the Northeastern United States; Summer Flounder, Scup, and Black Sea Bass Fisheries; Adjustments to the 2003 Scup and Black Sea Bass Total Allowable Landings (TAL)

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of Restoration to the 2003 Scup and Black Sea Bass TAL.

SUMMARY: NMFS restores 18,665 lb (8,466 kg) of unused research set-aside (RSA) to the 2003 scup TAL and 25,000 lb (11,340 kg) of unused RSA to the black sea bass TAL, and makes corresponding adjustments to the 2003 scup Winter II commercial quota, the 2003 scup recreational harvest limit, the 2003 black sea bass coastwide commercial quota, and the 2003 black sea bass recreational harvest limit. This action complies with Framework Adjustment 1 to the Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan (FMP), which implemented procedures for setting aside up to 3 percent of the annual TAL to fund research activities for summer flounder, scup, and black sea bass. Framework Adjustment 1 also specified that, if a research proposal is disapproved by NMFS or the NOAA Grants Office, the research set-aside for that proposal would be reallocated (i.e., added back) into the TAL. In October 2003, NMFS identified two RSA projects that had significant quantities of allocation remaining that were not going to be used. These remaining amounts are being returned to their respective quotas to provide fishermen the opportunity to harvest the available quota.

DATES: Effective November 28, 2003.

FOR FURTHER INFORMATION CONTACT: Jason Blackburn, Fishery Management Specialist, (978) 281–9326, fax (978) 281–9135, e-mail: *jason.blackburn@noaa.gov*

SUPPLEMENTARY INFORMATION:

Background

NMFS published a final rule in the **Federal Register** on August 10, 2001 (66 FR 42156), implementing Framework Adjustment 1 to the FMP. Framework Adjustment 1 implemented procedures for setting aside up to 3 percent of the annual TAL to fund research activities for summer flounder, scup, and black sea bass. Framework Adjustment 1 also specified that, if a proposal is disapproved by NMFS or the NOAA Grants Office, the research set-aside for that proposal would be reallocated (i.e., added back) into the TAL.

On January 2, 2003, NMFS published a final rule in the **Federal Register** (68 FR 60) announcing specifications for the 2003 summer flounder, scup, and black sea bass fisheries. An initial TAL of 16,500,000 lb (7,484,274 kg) was established for scup and an initial TAL of 6,800,000 lb (3,084,428 kg) was established for black sea bass. Three research projects utilizing the scup RSA quota and three research projects utilizing the black sea bass RSA quota were recommended for approval by a review committee. As a result, 66,650 lb (30,232 kg) of scup quota and 67,676 lb (30,697 kg) of black sea bass quota were set aside for these research projects. Therefore, TAL of 16,433,350 lb (7,454,042 kg) for scup and 6,732,324 (3,053,731 kg) for black sea bass were implemented for 2003 through the final rule. Under procedures in the FMP, the resulting scup overall TAL is allocated 78 percent to the commercial sector and 22 percent to the recreational sector, while the resulting black sea bass overall TAL is allocated 49 percent to the commercial sector and 51 percent to the recreational sector. This resulted in a scup 2003 commercial quota of 12,419,629 lb (5,633,449 kg), a scup 2003 recreational harvest limit of 4,013,721 lb (1,820,593 kg), a black sea bass 2003 commercial quota of 3,298,838 lb (1,496,328 kg), and a black sea bass 2003 recreational harvest limit of 3,433,485 lb (1,557,403 kg). Overages from 2002 were then deducted from the commercial quotas, and the 2003 adjusted quotas became 12,016,875 lb (5,450,763 kg) for scup and 3,002,034 lb (1,361,700 kg) for black sea bass.

NMFS further adjusted the scup and black sea bass commercial quotas on March 3, 2003 (68 FR 9905). This adjustment set the scup 2003 commercial quota (less the 2003 RSA) at 12,104,063 lb (5,490,311 kg), and the black sea bass 2003 commercial quota (less the 2003 RSA) at 3,012,295 lb (1,366,354 kg). The final rule implementing Amendment 13 to the FMP was published on March 4, 2003 (68 FR 10181). This amendment established an annual coastwide quota for black sea bass, which took the place of the quarterly system used previously. The black sea bass 2003 commercial quota remained unchanged.

In October 2003, NMFS identified two RSA projects that had significant quantities of allocation remaining when the projects were concluded. These remaining amounts are being returned to their respective quotas to provide fishermen the opportunity to harvest the available quota.One RSA project was allocated 20,000 lb (9,072 kg) of scup RSA, and had 18,665 lb (8,466 kg) remaining at the end of the project. This amount is being returned to the 2003 scup TAL. Another RSA project was allocated 25,000 lb (11,340 kg) of black sea bass RSA. This project was unable to be completed. The entire allocation is being returned to the 2003 black sea bass TAL.

This action restores 18,665 lb (8,466 kg) to the overall 2003 scup TAL. The resulting 2003 scup TAL is 16,452,015 lb (7,462,508 kg). Of the 18,665 lb (8,466 kg) being restored, 14,559 lb (6,604 kg) is added to the commercial quota and 4,106 lb (1,862 kg) is added to the recreational harvest limit. The resulting scup commercial quota is 12,118,622 (5,496,914 kg) and the recreational harvest limit is 4,017,827 lb (1,822,456 kg). This action also restores 25,000 lb (11,340 kg) to the overall 2003 black sea bass TAL. The resulting 2003 black sea bass TAL is 6,757,324 lb (3,065,071 kg). Of the 25,000 lb (11,340 kg) being restored, 12,250 lb (5,557 kg) is added to the commercial quota and 12,750 lb (5,783 kg) is added to the recreational harvest limit. The resulting black sea bass commercial quota is 3,024,545 lb (1,371,911 kg) and the recreational harvest limit is 3,446,235 lb (1,563,186 kg).

On November 3, 2003 (68 FR 62250), the scup 2003 Winter II period quota was revised to 3,852,739 lb (1,747,573 kg). Because the Winter I and Summer periods of the 2003 scup commercial fishing year have already closed, the entire portion of the additional commercial quota (14,559 lb (6,604 kg)) is being added to the Winter II period. The resulting adjusted 2003 scup commercial quota for the Winter II period is 3,867,298 lb (1,754,177 kg).

Although 4,106 lb (1,862 kg) of scup and 12,750 lb (5,783 kg) of black sea bass are being restored to their respective recreational harvest limits, this action does not alter the existing recreational management measures that have been established to ensure that the recreational harvest limit is not exceeded. For scup, a minimum fish size of 10 inches (25.4 cm), a 50–fish recreational possession limit, and an open season of January 1 through February 28, and July 1 through

November 30, will remain in effect. For black sea bass, a minimum fish size of 12 inches (30.5 cm), a 25–fish recreational possession limit, and an open season of January 1 through September 1, and September 16 through November 30, will remain in effect.

Classification

This action is required by 50 CFR part 648 and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: November 26, 2003.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 03–30131 Filed 11–28–03; 4:36 pm]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register

Vol. 68, No. 232

Wednesday, December 3, 2003

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–CE–47–AD]

RIN 2120–AA64

Airworthiness Directives; Goodrich Avionics Systems, Inc. TAWS8000 Terrain Awareness Warning System

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to supersede airworthiness directive (AD) 2003–13–08, which currently applies to all Goodrich Avionics Systems, Inc. (Goodrich) TAWS8000 terrain awareness warning systems (TAWS) that are installed on airplanes. AD 2003–13–08 currently requires you to inspect the TAWS installation and remove any TAWS where both the TAWS and any other device are connected to the same baro set potentiometer. AD 2003–13–08 also prohibits future installation of any TAWS8000 TAWS that incorporates hardware "Mod None", "Mod A", or "Mod B". This proposed AD is the result of omitting from AD 2003–13–08 a provision that prohibits reconfiguring an installed TAWS8000 TAWS after it passes the inspection unless it incorporates hardware "Mod C". This proposed AD would retain the actions of AD 2003–13–08 and would also prohibit future installation or reconfiguration of any TAWS8000 TAWS that does not incorporate hardware "Mod C". We are issuing this proposed AD to prevent the loading of the baro set potentiometer, which could result in an unacceptable altitude error. That condition could cause the pilot to make flight decisions that put the airplane in unsafe flight conditions.

DATES: We must receive any comments on this proposed AD by February 2, 2004.

ADDRESSES: Use one of the following to submit comments on this proposed AD:

- *By mail:* FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2003–CE–47AD, 901 Locust, Room 506, Kansas City, Missouri 64106.
- *By fax:* (816) 329–3771.
- *By e-mail: 9–ACE–7–Docket@faa.gov.* Comments sent electronically must contain "Docket No. 2003–CE–47–AD" in the subject line. If you send comments electronically as attached electronic files, the files must be formatted in Microsoft Word 97 for Windows or ASCII.

You may get the service information identified in this proposed AD from Goodrich Avionics Systems, Inc., 5353 52nd Street, SE, Grand Rapids, Michigan 49512–9704; telephone: (616) 949–6600; facsimile: (616) 977–6898. You may view the AD docket at FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2003–CE–47–AD, 901 Locust, Room 506, Kansas City, Missouri 64106. Office hours are 8 a.m. to 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Brenda S. Ocker, Aerospace Engineer, FAA, Chicago Aircraft Certification Office, 2300 East Devon Avenue, Des Plaines, Illinois 60018; telephone: (847) 294–7126; facsimile: (847) 294–7834.

SUPPLEMENTARY INFORMATION:

Comments Invited

How do I comment on this proposed AD? We invite you to submit any written relevant data, views, or arguments regarding this proposal. Send your comments to an address listed under **ADDRESSES.** Include "AD Docket No. 2003–CE–47–AD" in the subject line of your comments. If you want us to acknowledge receipt of your mailed comments, send us a self-addressed, stamped postcard with the docket number written on it. We will date-stamp your postcard and mail it back to you.

Are there any specific portions of this proposed AD I should pay attention to? We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. If you contact us through a nonwritten communication and that contact relates to a substantive part of this proposed AD, we will summarize the contact and place the summary in the docket. We will consider all comments received by the closing date and may amend this proposed AD in light of those comments and contacts.

Discussion

Has FAA taken any action to this point? Reports that the Goodrich TAWS8000 TAWS causes altitude errors in other instruments when both the TAWS and any other device are connected to the same baro set potentiometer caused us to issue AD 2003–13–08, Amendment 39–13208.

The unsafe condition was discovered during the installation of a TAWS8000 TAWS in a Cessna 500 series airplane. The TAWS8000 TAWS was connected to the baro set potentiometer output of a Honeywell (Sperry) BA–141 altimeter that was also connected to a Honeywell AZ–241 Air Data Computer. The altimeter showed that the aircraft was 60 feet higher than the actual altitude. This unsafe condition was confirmed with the laboratory test of a TAWS8000 TAWS installation.

What has happened since AD 2003–13–08 to initiate this proposed action? We omitted from AD 2003–13–08 a provision that prohibits reconfiguring an installed TAWS8000 TAWS after it passes the inspection unless it incorporates hardware "Mod C'.

Since we issued AD 2003–13–08, Goodrich Avionics System, Inc. has also developed a production improvement (Mod C) to eliminate the effect of loading on the baro set potentiometer. Goodrich has issued an alert service bulletin to implement this modification.

We received comments about the language in AD 2003–13–08. Owners/operators are restricted from installing any TAWS8000 TAWS (part number 805–18000–001 that incorporates hardware "Mod None", "Mod A", or "Mod B"). When the unit is modified to incorporate hardware "Mod C", the unit will still have "Mod None", "Mod A", or "Mod B" marked on it. The intent of the AD was to allow for hardware modifications other than "Mod None", "Mod A", or "Mod B" to be installed.

What are the consequences if the condition is not corrected? AD 2003–13–08, as currently written, could cause confusion as to how to incorporate the actions necessary in correcting the unsafe condition.

Is there service information that applies to this subject? Goodrich

Avionics Systems, Inc. has issued Service Memo SM #134, Revised July 9, 2003, and Alert Service Bulletin SB #A117, dated July 9, 2003.

What are the provisions of this service information? Goodrich Avionics Systems, Inc. Service Memo SM #134, Revised July 9, 2003, introduces the release of product improvement hardware "Mod C" and restates the following information from the original issue of Service Memo SM #134:

—The TAWS8000 should not be connected to a baro set potentiometer if that potentiometer is also connected to any other device; and

—In existing installations where both the TAWS and any other device are connected to the same baro set potentiometer, the TAWS8000 should be removed from the aircraft.

Goodrich Avionics Systems, Inc. Alert Service Bulletin SB #A117, dated July 9, 2003, specifies upgrading all TAWS8000 units to include hardware "Mod C".

FAA's Determination and Requirements of This Proposed AD

What has FAA decided? The FAA has reviewed all available information, including the service information referenced above; and determined that:

—The unsafe condition referenced in this document exists or could develop on type design airplanes equipped with a Goodrich TAWS8000 TAWS, P/N 805–18000–001 that does not incorporate hardware "Mod C";

—Any airplane with one of these TAWS8000 TAWS units, P/N 805–18000–001 should have the actions specified in the above service information incorporated; and

—AD action should be taken in order to correct this unsafe condition.

What would this proposed AD require? This proposed AD would supersede AD 2003–13–08 with a new AD that proposes to require you to inspect the TAWS installation and modify any TAWS where both the TAWS and any other device are connected to the same baro set potentiometer. This proposed AD would also prohibit future installation or reconfiguration of any TAWS8000 TAWS that does not incorporate hardware "Mod C".

How does the revision to 14 CFR part 39 affect this proposed AD? On July 10, 2002, we published a new version of 14 CFR part 39 (67 FR 47997, July 22, 2002), which governs FAA's AD system. This regulation now includes material that relates to altered products, special flight permits, and alternative methods of compliance. This material previously was included in each individual AD. Since this material is included in 14 CFR part 39, we will not include it in future AD actions.

Costs of Compliance

How many airplanes would this proposed AD impact? We estimate that this proposed AD affects 80 airplanes in the U.S. registry.

What would be the cost impact of this proposed AD on owners/operators of the affected airplanes? We estimate the following costs to accomplish this proposed inspection:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
1 workhour × $65 = $65	Not applicable	$65	65 × 80 = $5,200

We estimate the following costs to accomplish any necessary modifications that would be required based on the results of this proposed inspection. We have no way of determining the number of airplanes that may need the modification:

Labor cost	Parts cost	Total cost per airplane
2 workhours × $65 = $130 (1 workhour to remove and 1 workhour to replace).	All units will be modified at the Goodrich Avionics Systems facility under warranty.	$130

Regulatory Findings

Would this proposed AD impact various entities? We have determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

Would this proposed AD involve a significant rule or regulatory action? For the reasons discussed above, I certify that this proposed AD:

1. Is not a "significant regulatory action" under Executive Order 12866;

2. Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and

3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a summary of the costs to comply with this proposed AD and placed it in the AD Docket. You may get a copy of this summary by sending a request to us at the address listed under **ADDRESSES.** Include "AD Docket No. 2003–CE–47–AD" in your request.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. The FAA amends § 39.13 by removing Airworthiness Directive (AD) 2003–13–08, Amendment 39–13208 (68 FR 38586, June 30, 2003), and by adding a new AD to read as follows:

Goodrich Avionics Systems, Inc.: Docket No. 2003–CE–47–AD; Supersedes AD 2003–13–08, Amendment 39–13208.

When Is the Last Date I Can Submit Comments on This Proposed AD?

(a) We must receive comments on this proposed airworthiness directive (AD) by February 2, 2004.

What Other ADs Are Affected by This Action?

(b) This AD supersedes AD 2003–13–08, Amendment 39–13208.

What Airplanes Are Affected by This AD?

(c) This AD affects the following airplane models and serial numbers that:

(1) Are certificated in any category; and

(2) Incorporate any Goodrich TAWS8000 terrain awareness warning system (TAWS), part number (P/N) 805–18000–001, that incorporates hardware "Mod None", "Mod A", or "Mod B", and is installed in, but not limited to, the following airplanes. Airplanes that are not in this list and have the TAWS installed through field approval or other methods are still affected by this AD:

Company	Models
Cessna Aircraft Company	421, 500, 501, 525, 525A, 550, 551, 650, and S550.
DASSAULT AVIATION	Mystere-Falcon 20 series.
Gulfstream Aerospace LPN	1125 Westwind Astra.
Raytheon Aircraft Company	100, 200, 300, 400A, and F90.
Sabreliner Corporaiton	NA–265.
The New Piper Aircraft Inc.	PA–42–1000.

What Is the Unsafe Condition Presented in This AD?

(d) The actions specified by this AD are intended to prevent the loading of the baro set potentiometer, which could result in an unacceptable altitude error. This condition could cause the pilot to make flight decisions that put the airplane in unsafe flight conditions.

What Must I Do To Address This Problem?

(e) To address this problem, you must do the following:

Actions	Compliance	Procedures
(1) Inspect the TAWS8000 TAWS (part number 805–18000–001 that incorporates hardware "Mod None", "Mod A", or "Mod B") installation to determine if both the TAWS8000 TAWS and any other device are connected to the same baro set potentiometer.	Within the next 5 hours time-in-service (TIS) after July 21, 2003 (the effective date of AD 2003–13–08), unless already accomplished.	Follow Goodrich Avionics Systems, Inc. Service Memo SM #134, dated May 2, 2003, and the applicable installation manual.
(2) If both the TAWS8000 TAWS and any other device are connected to the same baro set potentiometer, remeve the TAWS8000 TAWS and cap and stow the connecting wires or replace the TAWS8000 TAWS unit with a unit that incorporates hardware "Mod C".	Before further flight after the inspection required in paragraph (d)(1) of this AD.	Follow Goodrich Avionics Systems, Inc. Service Memo SM #134, dated May 2, 2003, and the applicable installation manual.
(3) Do not install or reconfigure any TAWS8000 TAWS (part number 805–18000–001) that does not incorporate hardware "Mod C".	As of the effective date of this AD	Not Applicable.

May I Request an Alternative Method of Compliance?

(f) You may request a different method of compliance or a different compliance time for this AD by following the procedures in 14 CFR 39.13.

(1) Send your request to the Manager, Chicago Aircraft Certification Office (ACO), FAA. For information on any already approved alternative methods of compliance, contact Brenda S. Ocker, Aerospace Engineer, FAA, Chicago Aircraft Certification Office, 2300 East Devon Avenue, Des Plaines, Illinois 60018; telephone: (847) 294–7126; facsimile: (847) 294–7834.

(2) Alternative methods of compliance approved in accordance with AD 2003–13–08, which is superseded by this AD, are approved as alternative methods of compliance with this AD.

May I Get Copies of the Documents Referenced in This AD?

(g) You may get copies of the documents referenced in this AD from Goodrich Avionics Systems, Inc., 5353 52nd Street, SE, Grand Rapids, Michigan 49512–9704; telephone: (616) 949–6600; facsimile: (616) 977–6898. You may view these documents at FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri 64106.

Issued in Kansas City, Missouri, on November 25, 2003.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–30074 Filed 12–2–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–178–AD]

RIN 2120–AA64

Airworthiness Directives; Empresa Brasileira de Aeronautica S.A. (EMBRAER) Model EMB–135 and –145 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness directive (AD), which is applicable to all Model EMB–135 and –145 series airplanes. That AD currently requires repetitive inspections to detect discrepancies of both vertical-to-horizontal stabilizer bonding jumpers

and the connecting support structure, and corrective action if necessary. This action would require modification of the bonding jumpers, including the installation of a protective cover to the elevator control cables, which would terminate the requirements of the existing AD. The actions specified by the proposed AD are intended to prevent damaged or severed bonding jumpers, which, in the event of a lightning strike, could result in severed elevator control cables and consequent reduced elevator control capability and reduced controllability of the airplane. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by January 2, 2004.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–178–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: 9-anm-nprmcomment@faa.gov. Comments sent via fax or the Internet must contain "Docket No. 2002–NM–178–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 or 2000 or ASCII text.

The service information referenced in the proposed rule may be obtained from Empresa Brasileira de Aeronautica S.A. (EMBRAER), P.O. Box 343—CEP 12.225, Sao Jose dos Campos—SP, Brazil. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Todd Thompson, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–1175; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2002–NM–178–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–178–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

On August 13, 2001, the FAA issued AD 2001–17–04, amendment 39–12395 (66 FR 43678, August 21, 2001). That AD was superseded by AD 2002–08–21, amendment 12733 (67 FR 21572, May 1, 2002).

AD 2002–08–21 applies to all EMBRAER Model EMB–135 and –145 series airplanes. That AD requires repetitive inspections to detect discrepancies of both vertical-to-horizontal stabilizer bonding jumpers and the connecting support structure; and corrective action, if necessary. That action was prompted by issuance of mandatory continuing airworthiness information by the Departmento de Aviacao Civil (DAC), which is the airworthiness authority for Brazil. The requirements of AD 2002–08–21 are intended to prevent damaged or severed bonding jumpers, which, in the event of a lightning strike, could result in severed elevator control cables and consequent reduced elevator control capability and reduced controllability of the airplane.

Actions Since Issuance of Previous Rule

The preamble to AD 2002–08–21 explains that we consider those requirements "interim action" until we identify final action. We now have determined that further rulemaking is indeed necessary; this proposed AD follows from that determination.

Explanation of Relevant Service Information

AD 2002–08–21 cites the original issue of EMBRAER Service Bulletin 145–55–0028, dated April 10, 2002, as the appropriate source of service information for accomplishment of the repetitive inspections of paragraph (f) of AD 2002–08–21. Change 02 of the service bulletin, dated February 27, 2003, includes corrections of certain in-production effectivity and part number information, but doesn't change the procedures. The DAC classified this service bulletin as mandatory and issued Brazilian airworthiness directive 2001–06–03R2, dated June 24, 2002, to ensure the continued airworthiness of these airplanes in Brazil.

FAA's Conclusions

These airplane models are manufactured in Brazil and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DAC has kept us informed of the situation described above. We have examined the findings of the DAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would supersede AD 2002–08–21 to continue to require repetitive inspections to detect discrepancies of both vertical-to-horizontal stabilizer bonding jumpers and the connecting support structure; and corrective action if necessary. The proposed AD would also require modification of the bonding jumpers, including the installation of a protective cover to the elevator control cables, which would terminate the requirements of the existing AD. The proposed AD would remove the existing reporting requirement. The actions would be required to be accomplished in accordance with EMBRAER Service Bulletins 145–55–0025 and 145–55–0028, described previously.

Explanation of Changes Made to Existing AD

We have changed all references to a "detailed visual inspection" in the existing AD to "detailed inspection" in this proposed AD.

We have reviewed the figures we have used over the past several years to calculate AD costs to operators. To account for various inflationary costs in the airline industry, we find it necessary to increase the labor rate used in these calculations from $60 per work hour to $65 per work hour. The cost impact information, below, reflects this increase in the specified hourly labor rate.

Cost Impact

There are approximately 360 airplanes of U.S. registry that would be affected by this proposed AD.

The actions that are currently required by AD 2002–08–21 take approximately 2 work hours per airplane to accomplish, at an average labor rate of $65 per work hour. Based on these figures, the cost impact of the currently required actions on U.S. operators is estimated to be $46,800, or $130 per airplane, per inspection cycle.

The terminating action proposed in this AD action would take approximately 6 work hours per airplane, at an average labor rate of $65 per work hour. Required parts would cost approximately $206 per airplane. Based on these figures, the cost impact of the proposed requirements of this AD on U.S. operators is estimated to be $214,560, or $596 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the current or proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–12733 (67 FR 21572, May 1, 2002), and by adding a new airworthiness directive (AD), to read as follows:

Empresa Brasileira de Aeronautica S.A. (EMBRAER): Docket 2002–NM–178–AD. Supersedes AD 2002–08–21, Amendment 39–12733.

Applicability: All Model EMB–135 and –145 series airplanes; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent damaged or severed bonding jumpers, which, in the event of a lightning strike, could result in severed elevator control cables and consequent reduced elevator control capability and reduced controllability of the airplane, accomplish the following:

Restatement of Requirements of AD 2002–08–21

Inspection of the Bonding Jumpers

(a) For airplanes subject to the requirements of AD 2001–17–04, amendment 39–12395 (which was superseded by AD 2002–08–21, amendment 12733): Except as provided by paragraph (f) of this AD, within the next 100 flight hours after September 5, 2001 (the effective date of AD 2001–17–04), perform a detailed inspection to determine if the two bonding jumpers that connect the horizontal to the vertical stabilizers are properly installed, per EMBRAER Alert Service Bulletin 145–55–A025, dated June 5, 2001.

Note 1: For the purposes of this AD, a detailed inspection is defined as: "An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required."

Follow-On Action

(b) For airplanes subject to the requirements of paragraph (a) of this AD: If both bonding jumpers are installed properly, before further flight, determine if the jumpers are mechanically tensioned to a slack distance of 5 millimeters (mm) or less between the reference line and the jumper as specified in View E of EMBRAER Alert Service Bulletin 145–55–A025, dated June 5, 2001.

(1) If any slack distance is 5 mm or less, before further flight, replace the bonding jumper with a new jumper having part number (P/N) LN926416X165, per the alert service bulletin.

(2) If any slack distance is 6 mm or more, at the time specified in paragraph (d) of this AD, accomplish those actions specified in paragraph (d) of this AD.

Corrective Actions

(c) For airplanes subject to the requirements of paragraph (a) of this AD: If either bonding jumper is not installed properly (*e.g.*, misaligned, signs of previous elongation, or damage), before further flight, replace the bonding jumper with a new jumper having P/N LN926416X165, per EMBRAER Alert Service Bulletin 145–55–A025, dated June 5, 2001.

Inspection of the Connecting Supports

(d) For airplanes subject to the requirements of AD 2001–17–04: Within the next 100 flight hours after September 5, 2001, perform a detailed inspection to determine if the supports that connect the bonding jumpers to the horizontal stabilizers are deformed, cracked, or ruptured; per EMBRAER Alert Service Bulletin 145–55–A025, dated June 5, 2001.

(1) If no deformation is detected, no further action is required by this paragraph.

(2) If any connecting support having deformation of 30 degrees or less has any sign of a painting discrepancy, before further flight, repaint the support per the alert service bulletin. The support must remain in the position it was found, as specified in the alert service bulletin.

(3) If any connecting support is deformed above 30 degrees or any signs of cracking or ruptures are detected, before further flight, replace the connecting support with a new support per the alert service bulletin.

(e) For airplanes subject to the requirements of AD 2001–17–04: If the inspection required by paragraph (f) of this AD is performed before the inspections specified in paragraphs (a) and (d) of this AD, it is not necessary to perform the inspections specified in paragraphs (a) and (d) of this AD.

Repetitive Inspections

(f) For all airplanes: Except as required by paragraphs (h) and (i) of this AD, within 100 flight hours after May 16, 2002 (the effective date of AD 2002–08–21), perform a detailed inspection as specified in paragraphs (f)(1) and (f)(2) of this AD, per EMBRAER Alert Service Bulletin 145–55–A028, dated April 10, 2002; or Change 02, dated February 27, 2003. If any discrepancy is found during any inspection required by this paragraph: Before further flight, perform applicable corrective actions (including replacing any discrepant part with a new part and restoring the support painting) per the alert service bulletin. Repeat the inspection at intervals not to exceed 800 flight hours, except as provided by paragraphs (h) and (i) of this AD.

(1) Inspect both bonding jumpers of the vertical-to-horizontal stabilizer to detect discrepancies (including overstretching, fraying, or other damage; and misaligned or otherwise incorrectly installed bonding jumper terminals).

(2) Inspect the connecting support structure to detect deformation or signs of cracks or ruptures, and, before further flight, inspect the general conditions of the paint of any discrepant support.

(g) Inspections done before the effective date of this AD per EMBRAER Service Bulletin 145–55–A028, Change 01, dated June 7, 2002, are acceptable for compliance with the requirements of paragraph (f) of this AD.

Conditional Requirements for Immediate Inspection

(h) Notwithstanding the requirements of paragraph (f) of this AD: Before further flight following removal of any parts identified in paragraphs (h)(1), (h)(2), and (h)(3) of this AD, perform the inspection specified in paragraph (f) of this AD. The task numbers below are identified in EMBRAER Aircraft Maintenance Manuals AMM–145/1124 and AMM–145/1230.

(1) The horizontal stabilizer (as specified in EMBRAER Airplane Maintenance Manual (AMM) task number 55–10–00–000–801–A).

(2) The horizontal stabilizer actuator (as specified in AMM task number 27–40–02–000–801–A).

(3) The left-hand or right-hand seal fairings (as specified in AMM task number 55–36–00–020–002–A00).

(i) Before further flight following a lightning strike, perform a "Lightning Strike—Inspection Check" and applicable corrective actions, per AMM task number 05–50–01–06.

Note 2: Following accomplishment of an inspection per paragraph (h) or (i) of this AD, the repetitive interval of the next inspection may be extended to 800 flight hours after accomplishment of the inspection required by paragraph (h) or (i) of this AD, as applicable.

New Requirements of This AD

Terminating Action

(j) Within 800 flight hours after the effective date of this AD, modify the bonding jumpers, including installing a protective cover for the elevator control cables, in accordance with Part II of the Accomplishment Instructions of EMBRAER Service Bulletin 145–55–0028, Change 02, dated February 27, 2003. Accomplishment of this modification terminates the requirements of this AD.

(k) A modification done before the effective date of this AD per EMBRAER Service Bulletin 145–55–0028, Change 01, dated June 7, 2002, is acceptable for compliance with the requirements of paragraph (j) of this AD.

Alternative Methods of Compliance

(l) In accordance with 14 CFR 39.19, the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, is authorized to approve alternative methods of compliance for this AD.

Note 3: The subject of this AD is addressed in Brazilian airworthiness directive 2001–06–03R2, dated June 24, 2002.

Issued in Renton, Washington, on November 26, 2003.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–30116 Filed 12–2–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–NM–93–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 747–400 and 747–400D Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Boeing Model 747–400 and 747–400D series airplanes. This proposal would require a detailed inspection of the fire extinguishing system tube and clamp for correct installation or a repetitive pressure test of the fire extinguishing system tube for leakage, and corrective action, if necessary. This action is necessary to prevent a chafed hole in the fire extinguishing system tube of the aft cargo compartment, which could result in a lack of fire extinguishing agent and consequent uncontained fire in the aft cargo compartment. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by January 20, 2004.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2003–NM–93–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov*. Comments sent via fax or the Internet must contain "Docket No. 2003–NM–93–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 or 2000 or ASCII text.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Barbara Mudrovich, Aerospace Engineer, Cabin Safety & Environmental Systems Branch, ANM–150S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 917–6477; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 200–NM–93–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2003–NM–93–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The FAA has received a report of a chafed hole in the fire extinguishing system tube of the aft cargo compartment on a Boeing Model 747–400 series airplane. During production, the tube was installed incorrectly with the bend down and clamps upside down, which can cause the tube to chafe against a stiffener on the air conditioning duct located below the tube. If the discharge tube has a chafed hole, there may not be a sufficient amount of fire extinguishing agent to extinguish a fire in the aft cargo compartment. This condition, if not corrected, could result in an uncontained fire in the aft cargo compartment.

Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Service Bulletin 747–26A2270, Revision 1, dated January 16, 2003, which describes the following procedures:

- Performing a detailed inspection of the fire extinguishing system tube and clamps for correct installation, either using an inspection hole and boroscope or with the floor panel removed;
- Performing a repetitive pressure test of the fire extinguishing system tube for leakage; and
- Performing corrective actions, if necessary.

The corrective actions include the following procedures:

- Performing a detailed inspection of the fire extinguishing system tube for chafing/damage;
- Replacing the fire extinguishing system tube with a new tube;
- Repairing the fire extinguishing system tube; and
- Installing the new or repaired fire extinguishing system tube.

Accomplishment of the Part 1—Option 1 or 2 inspections or the Part 2 inspection and repair/replacement in the service bulletin constitutes terminating action for the repetitive pressure test. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require accomplishment of the actions specified in the service bulletin described previously.

Cost Impact

There are approximately 416 airplanes of the affected design in the worldwide fleet. The FAA estimates that 44 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 1 work hour per airplane to accomplish the proposed inspection or pressure test, and that the average labor rate is $65 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $2,860, or $65 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this proposed AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Boeing: Docket 2003–NM–93–AD.

Applicability: Model 747–400 and 747–400D series airplanes, as listed in Boeing Service Bulletin 747–26A2270, Revision 1, dated January 16, 2003; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent a chafed hole in the fire extinguishing system tube of the aft cargo compartment, which could result in a lack of

fire extinguishing agent and consequent uncontained fire in the aft cargo compartment, accomplish the following:

Service Bulletin References

(a) The term "service bulletin," as used in this AD, means the Accomplishment Instructions of Boeing Service Bulletin 747–26A2270, Revision 1, dated January 16, 2003.

Inspection/Pressure Test

(b) Within 6,500 flight hours or 18 months after the effective date of this AD, whichever occurs first, perform the detailed inspection specified in paragraph (b)(1) of this AD or the pressure test specified in paragraph (b)(2) of this AD.

Note 1: For the purposes of this AD, a detailed inspection is defined as: "An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required."

(1) Perform a detailed inspection of the fire extinguishing system tube and clamps for correct installation, either using an inspection hole and boroscope or with the floor panel removed, per the service bulletin.

(i) If the fire extinguishing system tube is installed correctly, no further action is required by this AD.

(ii) If the fire extinguishing system tube is installed incorrectly, prior to further flight, do the actions specified in paragraph (c) of this AD.

(2) Perform a pressure test of the fire extinguishing system tube to check for leakage of the fire extinguishing agent per the service bulletin.

(i) If leakage is not found, repeat the pressure test thereafter at intervals not to exceed 6,500 flight hours or 18 months, whichever occurs first, until the actions specified in paragraph (b)(1) or (c) of this AD have been done.

(ii) If any leakage is found, prior to further flight, do the actions specified in paragraph (c) of this AD.

Removal and Installation/Repair/Replace

(c) Remove the fire extinguishing system tube and do the actions in paragraph (c)(1) or (c)(2) of this AD, as applicable.

(1) If, during the detailed inspection specified in paragraph (b)(1) of this AD, the fire extinguishing system tube was found to be installed incorrectly: Prior to further flight, perform a detailed inspection of the fire extinguishing system tube for chafing/damage per the service bulletin.

(i) If no chafing/damage is found, prior to further flight, install the existing fire extinguishing system tube per Figure 3 of the service bulletin.

(ii) If any chafing/damage is found, prior to further flight, replace the fire extinguishing system tube with a new tube or repair the fire extinguishing system tube, per the service bulletin, and install the new or repaired tube per Figure 3 of the service bulletin.

(2) If, during the pressure test required by paragraph (b)(2) of this AD, leakage was found: Prior to further flight, replace the fire extinguishing system tube with a new tube or repair the fire extinguishing system tube, per the service bulletin, and install the new or repaired tube per Figure 3 of the service bulletin.

Terminating Action

(d) Accomplishment of the actions specified in paragraph (b)(1) or (c) of this AD constitutes terminating action for the requirements of this AD.

Actions Accomplished Per Previous Issue of Service Bulletin

(e) Inspections, repetitive tests and corrective actions accomplished before the effective date of this AD per Boeing Alert Service Bulletin 747–26A2270, dated May 8, 2002, are considered acceptable for compliance with the corresponding action specified in this AD.

Alternative Methods of Compliance

(f) In accordance with 14 CFR 39.19, the Manager, Seattle Aircraft Certification Office, FAA, is authorized to approve alternative methods of compliance for this AD.

Issued in Renton, Washington, on November 26, 2003.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–30115 Filed 12–2–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–NM–60–AD]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model DC–9–15, DC–9–31, and DC–9–32 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain McDonnell Douglas Model DC–9–15, DC–9–31, and DC–9–32 airplanes. This proposal would require repetitive visual and x-ray inspections to detect cracks of the upper and lower corners and upper center of the door cutout of the aft pressure bulkhead; corrective actions, if necessary; and follow-on actions. For certain airplanes, the proposal also would require modification of the ventral aft pressure bulkhead. This action is necessary to detect and correct fatigue cracks in the corners and upper center of the door cutout of the aft pressure bulkhead, which could result in rapid decompression of the fuselage and consequent reduced structural integrity of the airplane. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by January 20, 2004.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2003–NM–60–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov*. Comments sent via fax or the Internet must contain "Docket No. 2003–NM–60–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 or 2000 or ASCII text.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024). This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California.

FOR FURTHER INFORMATION CONTACT: Wahib Mina, Aerospace Engineer, Airframe Branch, ANM–120L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5324; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2003–NM–60–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2003–NM–60–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The FAA has received reports indicating that the repetitive x-ray inspections required by AD 85–01–02 R1, amendment 39–5241 (51 FR 6101, February 20, 1986), do not adequately detect fatigue cracks in all layers of a repaired or modified aft pressure bulkhead on certain Model DC–9 airplanes. Fatigue cracks in the corners and upper center of the door cutout of the aft pressure bulkhead, if not detected and corrected, could result in rapid decompression of the fuselage and consequent reduced structural integrity of the airplane.

Related Rulemaking

The FAA normally would issue an AD to supersede AD 85–01–02 R1 to continue to require the existing requirements, until the new proposed actions that address the identified unsafe condition are done. This involves restating the existing requirements of AD 85–01–02 R1 in the new AD. Because of the complexity of the requirements of AD 85–01–02 R1, we previously issued AD 2002–07–06 as a "stand—alone" AD that did not supersede AD 85–01–02 R1. We included a paragraph in AD 2002–07–06 that terminates the repetitive inspection requirements of AD 85–01–02 R1.

AD 2002–07–06, amendment 39–12700 (67 FR 16987, April 9, 2002), is applicable to certain McDonnell Douglas Model DC–9–10, –20, –30, –40, and –50 series airplanes, and C–9 airplanes. That AD requires repetitive visual and x-ray inspections to detect cracks of the upper and lower corners and upper center of the door cutout of the aft pressure bulkhead; corrective actions, if necessary; and follow-on actions. The actions specified by that AD are intended to detect and correct fatigue cracks in the corners and upper center of the door cutout of the aft pressure bulkhead which could result in rapid decompression of the fuselage and consequent reduced structural integrity of the airplane.

Other Related Rulemaking

The FAA also has previously issued AD 96–10–11, amendment 39–9618 (61 FR 24675, May 16, 1996), applicable to McDonnell Douglas Model DC–9 and DC–9–80 series airplanes, Model MD–88 airplanes, and C–9 (military) series airplanes. That AD requires certain inspections and structural modifications. Accomplishment of the modification (reference Boeing (McDonnell Douglas) Service Bulletin DC9–53–166) required by paragraph (d) or (e) of AD 96–10–11 (which references "DC–9/MD–80 Aging Aircraft Service Action Requirements Document" (SARD), McDonnell Douglas Report No. MDC K1572, Revision A, dated June 1, 1990, or Revision B, dated January 15, 1993, as the appropriate source of service information for accomplishing the modification) terminates the repetitive inspection requirements of paragraphs (b) and (c) of this proposed AD.

Explanation of Applicability

Since issuance of AD 2002–07–06, the FAA was advised that 13 Model DC–9–15, DC–9–31, and DC–9–32 airplanes (manufacturer's fuselage numbers 0030, 0094, 0220, 0221, 0863, 0900, 0901, 0913, 0914, 0918, 0923, 0926, and 0930) were excluded inadvertently from the effectivity of paragraph 1.A. of McDonnell Douglas Service Bulletin DC9–53–137, Revision 07, dated February 6, 2001, which was referenced in the applicability of that AD as the appropriate source of service information for determining the affected airplanes. Therefore, we have determined that the additional airplanes are also subject to the same unsafe condition addressed in AD 2002–07–06. This proposed AD follows from that determination.

Explanation of Relevant Service Information

The FAA has reviewed and approved McDonnell Douglas Service Bulletin DC9–53–137, Revision 09, dated January 30, 2003, which describes procedures that are essentially the same as those procedures included in McDonnell Douglas Service Bulletin DC9–53–137, Revision 07, dated February 6, 2001, as cited in AD 2002–07–06. This revision also adds 13 additional airplane fuselage numbers to the effectivity. The airplanes were inadvertently omitted from Revision 07 of the service bulletin. No more work is necessary on airplanes changed as shown in Revision 07 of the service bulletin.

The FAA also has reviewed and approved McDonnell Douglas DC–9 Service Bulletin 53–165, Revision 3, dated May 3, 1989, which describes procedures for modification of the ventral aft pressure bulkhead structure (including cutting and removing flange of the upper; cutting and removing the lower flange of formers and replacing it with a clip; installing pads at the outboard end clips of formers; and replacing clearance fit bolts at the upper corner doubler angles with interference fit Hi-Lok pins and monel rivets).

In addition, the FAA has reviewed and approved McDonnell Douglas DC–9 Service Bulletin 53–157, Revision 1, dated January 7, 1985, which describes, for certain airplanes, procedures for modification of the ventral aft pressure bulkhead (including encapsulating the head and nut of the attachments and applying a fillet seal of sealant around parts located on the forward and aft sides of the aft pressure bulkhead; and applying a soft film corrosion inhibiting compound to the forward and aft sides of the aft pressure bulkhead). For certain airplanes, these procedures must be done in conjunction with those in McDonnell Douglas DC–9 Service Bulletin 53–165.

Accomplishment of the actions specified in the service bulletins is intended to adequately address the identified unsafe condition.

Accomplishment of the actions specified in AD 2002–07–06 is acceptable for compliance with the requirements of this proposed AD.

FAA's Determination

The FAA finds that if, after the effective date of this AD, the airplane is operated without cabin pressurization and a placard that prohibits operation with cabin pressurization is installed in the cockpit in full view of the pilot, the inspections and modification specified in the service bulletins described previously are not necessary.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require accomplishment of the actions specified in the service bulletins described previously, except as discussed below.

Since this AD expands the applicability of AD 2002–07–06, the FAA has considered a number of factors in determining whether to issue a new AD or to supersede the "old" AD. The FAA has considered the entire fleet size that would be affected by superseding AD 2002–07–06 and the consequent workload associated with revising maintenance record entries. In light of this, the FAA has determined that a less burdensome approach is to issue a separate AD applicable only to the additional airplanes. This proposed AD would not supersede AD 2002–07–06 or AD 85–01–02 R1; airplanes listed in the applicability of AD 2002–07–06 and AD 85–01–02 R1 are required to continue to comply with the requirements of those ADs. This proposed AD is a separate AD action, and is applicable only to the McDonnell Douglas Model DC–9–15, DC–9–31, and DC–9–32 airplanes, manufacturer's fuselage numbers 0030, 0094, 0220, 0221, 0863, 0900, 0901, 0913, 0914, 0918, 0923, 0926, and 0930. Once the final rule has been issued and it becomes effective, we plan to rescind AD 85–01–02 R1.

Differences Between the Proposed AD and a Certain Referenced Service Bulletin

McDonnell Douglas DC–9 Service Bulletin 53–165, Revision 3, dated May 3, 1989; and McDonnell Douglas Service Bulletin DC9–53–137, Revision 09, dated January 30, 2003; recommend compliance times with only a "threshold" (*i.e.*, before the airplane accumulates 15,000 total landings, within 15,000 landings after the bulkhead modification, and at the earliest practical maintenance period feasible on airplanes that have accumulated more than 15,000 landings, respectively). These service bulletins do not provide a "grace period" for airplanes that have already reached (or will soon reach) the 15,000-landing threshold, which would result in some airplanes being in immediate non-compliance with the rule upon reaching the stated number of landings. Therefore, the compliance times specified in paragraphs (a), (d)(1), and (d)(2) of this proposed AD include a grace period of "within 4,000 landings after the effective date of this AD." The FAA finds such a grace period for completing the required actions to be warranted, in that it represents an appropriate interval of time allowable for affected airplanes to continue to operate without compromising safety.

Operators should note that, although the Accomplishment Instructions of McDonnell Douglas Service Bulletin DC9–53–137, Revision 09, dated January 30, 2003, describe procedures for reporting results of inspections, this proposed AD would not require those actions. The FAA does not need this information from operators.

Cost Impact

There are 13 airplanes of the affected design in the worldwide fleet. The FAA estimates that seven airplanes of U.S. registry would be affected by this proposed AD.

It would take approximately 5 work hours per airplane to accomplish the proposed inspections, at an average labor rate of $65 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $2,275 or $325 per airplane.

For certain airplanes, it would take approximately between 21 and 26 work hours per airplane depending on the airplane configuration to accomplish the proposed modification specified in McDonnell Douglas DC–9 Service Bulletin 53–165, Revision 3, dated May 3, 1989, at an average labor rate of $65 per work hour. Required parts would cost approximately between $3,470 and $11,831 per airplane, depending on the airplane configuration. Based on these figures, the cost impact of this proposed modification on U.S. operators is estimated to be between $4,835, or $13,521 per airplane.

For certain airplanes, it would take approximately 9 work hours per airplane to accomplish the proposed modification specified in McDonnell Douglas DC–9 Service Bulletin 53–157, Revision 1, dated January 7, 1985, at an average labor rate of $65 per work hour. Based on these figures, the cost impact of this proposed modification on U.S. operators is estimated to be $585 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this proposed AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

McDonnell Douglas: Docket 2003–NM–60–AD

Applicability: Model DC–9–15, DC–9–31, and DC–9–32 airplanes, manufacturer's fuselage numbers 0030, 0094, 0220, 0221, 0863, 0900, 0901, 0913, 0914, 0918, 0923, 0926, and 0930; certificated in any category; equipped with a floor level hinged (ventral) door of the aft pressure bulkhead; as listed in McDonnell Douglas Service Bulletin DC9–53–137, Revision 09, dated January 30, 2003; except for those airplanes on which the modification required by paragraph (d) or (e) of AD 96–10–11, amendment 39–9618, or paragraph K of AD 85–01–02 R1, amendment 39–5241, has been done.

Compliance: Required as indicated, unless accomplished previously.

To detect and correct fatigue cracks in the corners and upper center of the door cutout of the aft pressure bulkhead, which could result in rapid decompression of the fuselage and consequent reduced structural integrity of the airplane, accomplish the following:

Visual and X-Ray Inspection

(a) For airplanes on which the modification has not been accomplished per paragraph (i) of this AD: Except as provided by paragraph (j) of this AD, prior to the accumulation of 15,000 total landings, or within 4,000 landings after the effective date of this AD, whichever occurs later, do a visual inspection and an x-ray inspection to detect cracks of the upper and lower corners and upper center of the door cutout of the aft pressure bulkhead, per the Accomplishment Instructions of McDonnell Douglas Service Bulletin DC9–53–137, Revision 09, dated January 30, 2003.

No Crack Detected: Repetitive Inspections

(b) If no crack is detected during any inspection required by paragraph (a) of this AD, do the action specified in either paragraph (b)(1) or (b)(2) of this AD per the Accomplishment Instructions of McDonnell Douglas Service Bulletin DC9–53–137, Revision 09, dated January 30, 2003, as applicable.

(1) If interim prevention repairs have been performed per the service bulletin: AD 85–01–02 R1, or AD 96–10–11: Do a visual inspection and an eddy current inspection at the times specified in the service bulletin. Repeat the applicable repetitive inspections thereafter at intervals not to exceed the times specified in the service bulletin, until accomplishment of the action required by paragraph (d) or (i) of this AD.

(2) If interim preventive repairs have not been performed per the service bulletin, do either paragraph (b)(2)(i) or (b)(2)(ii) of this AD:

(i) Before further flight, install an interim preventive repair identified in Conditions I through XLIII inclusive, excluding Conditions XXI, XXXVII, and XXXVIII (not used at this time), per the service bulletin. At the times specified in the service bulletin, do a visual inspection and an eddy current inspection. At intervals not to exceed the times specified in the service bulletin, repeat the visual and eddy current inspections until accomplishment of the action specified in paragraph (d) or (i) of this AD; or

(ii) At intervals not to exceed the times specified in the service bulletin, repeat the visual inspection and x-ray inspection required by paragraph (a) of this AD, until accomplishment of the action specified in paragraph (d) or (i) of this AD.

Any Crack Detected: Corrective Actions and Repetitive Inspections

(c) If any crack is detected during any inspection required by paragraph (a) or (b) of this AD, do the actions specified in paragraphs (c)(1) and (c)(2) of this AD per the Accomplishment Instructions of McDonnell Douglas Service Bulletin DC9–53–137, Revision 09, dated January 30, 2003.

(1) Before further flight, do the applicable corrective actions (*i.e.*, modification of the bulkhead; trim forward facing flange; stop drill ends of cracks; install repair kit; replacement of cracked part with new parts; and install additional doublers) identified in Conditions I through XLIII inclusive, excluding Conditions XXI, XXXVII, and XXXVIII (not used at this time), of the Accomplishment Instructions of the service bulletin; and

(2) At the times specified in the Accomplishment Instructions of the service bulletin, do the applicable repetitive inspections, until accomplishment of the action specified in paragraph (d) or (i) of this AD.

Concurrent Requirements

(d) Except as provided by paragraph (j) of this AD, modify the ventral aft pressure bulkhead structure by accomplishing all actions specified in the Accomplishment Instructions of McDonnell Douglas DC–9 Service Bulletin 53–165, Revision 3, dated May 3, 1989, per the service bulletin; at the applicable time specified in paragraph (d)(1), (d)(2), or (d)(3) of this AD.

(1) For airplanes on which the bulkhead modification specified in McDonnell Douglas DC–9 Service Bulletin 53–139, dated September 26, 1980; or Revision 1, dated April 30, 1981, has been done, except as provided by paragraph (d)(3) of this AD: Modify within 15,000 landings after accomplishment of the bulkhead modification, or within 4,000 landings after the effective date of this AD, whichever occurs later. Accomplishment of this modification constitutes terminating action for the repetitive inspection requirements of paragraphs (b) and (c)(2) of this AD.

(2) For airplanes on which the production equivalent of the modification specified in paragraph (d)(1) of this AD has been done before delivery, except as provided by paragraph (d)(3) of this AD: Modify before the accumulation of 15,000 total landings, or within 4,000 landings after the effective date of this AD, whichever occurs later. Accomplishment of this modification constitutes terminating action for the repetitive inspection requirements of paragraphs (b) and (c)(2) of this AD.

(3) For airplanes listed in McDonnell Douglas DC–9 Service Bulletin 53–165, Revision 3, dated May 3, 1989, that are specified in paragraph (f) of this AD: Modify in conjunction with the requirements of paragraph (f) of this AD, or within 18 months after accomplishment of the requirements of paragraph (f) of this AD.

(e) Modification before the effective date of this AD per McDonnell Douglas DC–9 Service Bulletin 53–165, dated January 31, 1983; Revision 1, dated February 20, 1984; or Revision 2, dated August 29, 1986; is considered acceptable for compliance with the requirements of paragraph (d) of this AD.

Modification: Ventral Aft Pressure Bulkhead

(f) For Model DC–9–30 and –50 series airplanes, and C–9 airplanes, as listed in McDonnell Douglas DC–9 Service Bulletin 53–157, Revision 1, dated January 7, 1985: Except as provided by paragraph (j) of this AD, within 18 months after the effective date of this AD, modify the ventral aft pressure bulkhead per the service bulletin.

(g) Modification before the effective date of this AD per McDonnell Douglas DC–9 Service Bulletin 53–157, dated August 11, 1981, is considered acceptable for compliance with the requirements of paragraph (f) of this AD.

Compliance With AD 85–01–02 R1

(h) Accomplishment of the visual and x-ray inspections required by paragraph (a) of this AD constitutes terminating action for the repetitive inspection requirements of AD 85–01–02 R1.

Terminating Modification

(i) Accomplishment of the modification (reference McDonnell Douglas DC–9 Service Bulletin 53–166) required by paragraph (d) or (e) of AD 96–10–11 (which references "DC–9/MD–80 Aging Aircraft Service Action Requirements Document" (SARD), McDonnell Douglas Report No. MDC K1572, Revision A, dated June 1, 1990; or Revision B, dated January 15, 1993; as the appropriate source of service information for accomplishing the modification) terminates the repetitive inspection requirements of paragraphs (b) and (c) of this AD.

Exception to Inspections and Modifications

(j) As of the effective date of this AD, the inspections and modifications required by this AD do not need to be done during any period that the airplane is operated without cabin pressurization and a placard is installed in the cockpit in full view of the pilot that states the following:

"OPERATION WITH CABIN PRESSURIZATION IS PROHIBITED."

Actions Accomplished Per Previous Issue of Service Bulletin

(k) Inspections, corrective actions, and follow-on actions accomplished before the effective date of this AD per McDonnell Douglas Service Bulletin DC9–53–137, Revision 07, dated February 6, 2001; or McDonnell Douglas Service Bulletin DC9–53–137, Revision 08, dated November 22, 2002; are considered acceptable for compliance with the corresponding action specified in this AD.

Credit for AD 2002–07–06, Amendment 39–12700

(l) Accomplishment of the actions specified in AD 2002–07–06 is acceptable for compliance with the requirements of this AD.

Submission of Information to Manufacturer Not Required

(m) Although McDonnell Douglas Service Bulletin DC9–53–137, Revision 09, dated January 30, 2003, specifies to submit certain information to the manufacturer, this AD does not include such a requirement.

Alternative Methods of Compliance

(n)(1) In accordance with 14 CFR 39.19, the Manager, Los Angeles Aircraft Certification Office, FAA, is authorized to approve alternative methods of compliance for this AD.

(2) AMOCs approved previously in accordance with AD 85–01–02 R1, amendment 39–8978; or AD 96–10–11, amendment 39–9618; are approved as AMOCs for paragraph (a) or (c) of this AD, as appropriate.

(3) An AMOC that provides an acceptable level of safety may be used for any repair required by this AD, if it is approved by a Boeing Company Engineering Representative (DER) who has been authorized by the Manager, Los Angeles ACO, to make such findings.

Issued in Renton, Washington, on November 26, 2003.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–30114 Filed 12–2–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–301–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A319 and A320 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Supplemental notice of proposed rulemaking; reopening of comment period.

SUMMARY: This document revises an earlier proposed airworthiness directive (AD), applicable to certain Airbus Model A319 and A320 series airplanes. That proposed AD would have required an inspection of the clearance space between the fuel quantity indication (FQI) probes located in the center fuel tank and the adjacent structure, an inspection of the position of the support bracket for each probe, an inspection of the part number for each support bracket, and corrective action if necessary. This new action revises the proposed rule by expanding the applicability of the proposed AD. The actions specified by this new proposed AD are intended to prevent the loss of FQI of the center fuel tank, and electrical arcing between the FQI probes and the adjacent structure in the event that the airplane is struck by lightning. Such arcing could create a potential ignition source within the center fuel tank and an increased risk of a fuel tank explosion and fire. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by December 29, 2003.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–301–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov*. Comments sent via fax or the Internet must contain "Docket No. 2001–NM–301–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 or 2000 or ASCII text.

The service information referenced in the proposed rule may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Dan Rodina, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2125; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2001–NM–301–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–301–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to add an airworthiness directive (AD), applicable to certain Airbus Model A319 and A320 series airplanes, was published as a notice of proposed rulemaking (NPRM) in the **Federal Register** on January 3, 2003 (68 FR 317). That NPRM would have required an inspection of the clearance space between the fuel quantity indication (FQI) probes located in the center fuel tank and the adjacent structure; an inspection of the position of the support bracket for each probe; an inspection of the part number for each support bracket; and corrective action if necessary. That NPRM was prompted by issuance of mandatory continuing airworthiness information by a civil airworthiness authority. Incorrect installation of the support brackets for the FQI probes, if not corrected, could result in loss of FQI of the center fuel tank, and electrical arcing between the FQI probes and the adjacent structure in the event that the airplane is struck by lightning. Such arcing could create a potential ignition source within the center fuel tank and an increased risk of a fuel tank explosion and fire.

Actions Affecting Original NPRM

Since the issuance of Airbus Service Bulletin A320–28A1096, Revision 01, dated July 4, 2001, which was cited in the original NPRM as the appropriate source of service information for the proposed actions, Airbus has issued Service Bulletin A320–28A1096, Revision 03, dated August 27, 2002. Revision 03 of the service bulletin adds one airplane to the effectivity listing of the service bulletin and makes minor editorial changes. (Also after the issuance of Revision 01 of the service bulletin, Airbus issued Service Bulletin A320–28A1096, Revision 02, dated October 16, 2001, to add to the repair procedure instructions for applying interface sealant and to add a check of electrical bonding, and to make certain other nonsubstantive changes.)

Comments

The FAA has given due consideration to the comments received in response to the NPRM.

Support for the Proposal

One commenter supports the proposed AD, and one commenter states that it has no comment.

Request To Extend Compliance Time

One commenter requests that we extend the compliance time from 4,000 flight hours to 5,000 flight hours after the effective date of the AD. The commenter's rationale is that its C-check maintenance interval averages 4,863 flight hours.

We do not concur with the commenter's request. We note that the commenter operates 5 of the 24 U.S.-registered airplanes affected by this supplemental NPRM. In developing an appropriate compliance time for this AD, we considered the recommendation of the Direction Générale de l'Aviation Civile (DGAC) (which is the airworthiness authority for France), the degree of urgency associated with the subject unsafe condition, and the practical aspect of accomplishing the necessary actions within an interval that parallels normal scheduled maintenance for the majority of affected operators. In light of all of these factors, we have determined that a 4,000-flight-hour compliance time represents an appropriate interval of time for affected airplanes to continue to operate without compromising safety, while allowing the majority of affected operators to comply at a scheduled maintenance interval. We have made no change to this supplemental NPRM in this regard; however, under the provisions of paragraph (d) of this proposal, we may approve requests for adjustments of the compliance time if data are submitted to substantiate that such an adjustment would provide an acceptable level of safety.

Explanation of New Requirements of Supplemental NPRM

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of the actions specified in Airbus Service Bulletin A320–28A1096, Revision 03.

Conclusion

Since the changes described previously expand the scope of the originally proposed rule, the FAA has determined that it is necessary to reopen the comment period to provide additional opportunity for public comment.

Changes to 14 CFR Part 39/Effect on the Proposed AD

On July 10, 2002, the FAA issued a new version of 14 CFR part 39 (67 FR 47997, July 22, 2002), which governs the FAA's AD system. This regulation now includes material that relates to altered products, special flight permits, and alternative methods of compliance (AMOCs). Because we have now included this material in part 39, only the office authorized to approve AMOCs is identified in each individual AD. Therefore, in this supplemental NPRM, Note 1 and paragraph (d) of the original NPRM have been removed, and paragraph (c) of the original NPRM has been revised and is included as paragraph (d) of this supplemental NPRM.

Change to Labor Rate Estimate

We have reviewed the figures we have used over the past several years to calculate AD costs to operators. To account for various inflationary costs in the airline industry, we find it necessary to increase the labor rate used in these calculations from $60 per work hour to $65 per work hour. The cost impact information, below, reflects this increase in the specified hourly labor rate.

Cost Impact

There are approximately 25 airplanes of U.S. registry that would be affected by this proposed AD. It would take approximately 1 work hour per airplane to accomplish the proposed inspection, at an average labor rate of $65 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $1,625, or $65 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Airbus: Docket 2001–NM–301–AD.

Applicability: Model A319 and A320 series airplanes, as listed in Airbus Service Bulletin A320–28A1096, Revision 03, dated August 27, 2002; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent the loss of fuel quantity indication (FQI) of the center fuel tank, and to reduce the potential for an ignition source and possible explosion within the center fuel tank due to electrical arcing between the FQI probes and the adjacent structure in the event that the airplane is struck by lightning, accomplish the following:

Inspection

(a) Within 4,000 flight hours after the effective date of this AD, perform the actions specified in paragraphs (a)(1) and (a)(2) of this AD per the Accomplishment Instructions of Airbus Service Bulletin A320–28A1096, Revision 03, dated August 27, 2002. Although this service bulletin specifies to submit certain information to the manufacturer, this AD does not include such a requirement.

(1) Perform a one-time detailed inspection for proper clearance space between each FQI probe located in the center fuel tank and the adjacent structure; and a one-time detailed inspection of the position of the support bracket for each probe.

Note 1: For the purposes of this AD, a detailed inspection is defined as: "An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required."

(2) Inspect the support bracket for each probe to determine the part number of the support bracket.

Corrective Action

(b) During the inspections required by paragraph (a) of this AD, if the clearance between any FQI probe and the adjacent structure is determined to be less than 6.00 millimeters (0.236 inch), or if the position or part number of any probe support bracket is not correct, before further flight, remove and re-install the probe and its support bracket in the correct position, per Airbus Service Bulletin A320–28A1096, Revision 03, dated August 27, 2002.

Inspections Accomplished Per Previous Issue of Service Bulletin

(c) Inspections and corrective actions accomplished before the effective date of this AD per Airbus Service Bulletin A320–28A1096, dated March 23, 2001; Revision 01, dated July 4, 2001; or Revision 02, dated October 16, 2001; are considered acceptable for compliance with the corresponding action specified in this AD.

Alternative Methods of Compliance

(d) In accordance with 14 CFR 39.19, the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, is authorized to approve alternative methods of compliance for this AD.

Note 2: The subject of this AD is addressed in French airworthiness directive 2001–271(B), dated June 27, 2001.

Issued in Renton, Washington, on November 26, 2003.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–30113 Filed 12–2–03; 8:45 am]

BILLING CODE 4910–13–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 73 and 76

[MB Docket No. 02–230; FCC 03–273]

Digital Broadcast Content Protection

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: In this document, the Commission seeks comment on the mechanisms and standards by which new content protection and recording technologies can be approved for use with Covered Demodulator Products as part of an ATSC flag-based redistribution control system for digital broadcast content. The Further Notice of Proposed Rulemaking also seeks comment on: whether cable operators should be allowed to encrypt the digital basic tier so that they can give effect to the ATSC flag through their conditional access systems; and the interplay between an ATSC flag-based redistribution control system for digital broadcast content and the development of open source software applications, including software demodulators, for digital broadcast television. Potential Commission action in these areas is intended to protect digital broadcast television content from indiscriminate redistribution, thereby ensuring the continued flow of high value content to broadcast outlets and preserving the nation's broadcasting system.

DATES: Comments due January 14, 2004; reply comments are due February 13, 2004.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554. For further filing information, *see* **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Susan Mort, (202) 418–1043 or *Susan.Mort@fcc.gov*.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Further Notice of Proposed Rulemaking portion of the Commission's Report and Order and Further Notice of Proposed Rulemaking ("Further NPRM"), FCC 03–273, adopted and released November 4, 2003. The full text of the Commission's Further NPRM is available for inspection and copying during normal business hours in the FCC Reference Center (Room CY–A257) at its headquarters, 445 12th Street, SW., Washington, DC 20554, or may be purchased from the Commission's copy contractor, Qualex International, (202) 863–2893, Portals II, Room CY–B402, 445 12th St., SW., Washington, DC 20554, or may be reviewed via Internet at *http://www.fcc.gov/mb*.

Synopsis of the Further Notice of Proposed Rulemaking

1. Although we believe that our adoption of a flag-based redistribution control system for digital broadcast television will further the digital transition and ensure the continued flow of high value content to broadcast outlets, further comment is needed on several issues. As an initial matter, we seek comment on whether cable operators that retransmit DTV broadcasts may encrypt the digital basic tier in order to convey the presence of the ATSC flag through their conditional access system. Section 76.630 of the Commission's rules generally prohibits cable operators from "scrambl[ing] or encrypt[ing] signals carried on the basic service tier" without distinguishing between analog and digital service. NCTA has suggested that allowing cable operators to encrypt the digital basic tier and "virtually" convey the presence of the flag will facilitate the offering of future home networking services. We seek comment on whether cable operators should be allowed to encrypt in this manner.

2. In response to our Notice of Proposed Rulemaking, EFF questioned the impact of a flag-based regime on innovations in software demodulators and other DTV open source software applications. The Commission has actively promoted the development of software defined radio and other software demodulators as important innovations in the digital age. We seek further comment on the interplay between a flag redistribution control system and the development of open source software applications, including software demodulators, for digital broadcast television.

3. This Further Notice of Proposed Rulemaking also seeks comment on whether standards and procedures should be adopted for the approval of new content protection and recording technologies to be used with device outputs on Demodulator Products. If so, we seek comment on the various types of content protection technologies that should be considered as a part of this process, including but not limited to digital rights management, wireless and encryption-based technologies. We recognize that similar issues have been raised with respect to digital cable ready DTV receivers in the Second Further Notice of Proposed Rulemaking in the Commission's ongoing "Plug and Play" proceeding. We seek comment on whether a unified regime should be employed in both instances.

4. With respect to the particular standards and procedures to be employed, we seek comment on whether objective criteria should be used to evaluate new content protection and recording technologies and, if so, what specific criteria should be used. For example, in our recent Second Report and Order and Second Further Notice of Proposed Rulemaking relating to digital cable compatibility, Microsoft Corporation and Hewlett Packard Corporation submitted a detailed proposal suggesting functional requirements that could be used to evaluate digital rights management technologies for use with digital cable ready products. We seek comment on this proposal in the ATSC flag context, as well as on other proposals submitted in this proceeding relying on objective criteria, and any new proposals that commenters may submit to the Commission.

5. We also seek comment on the appropriate scope of redistribution that should be prevented. In general, we believe that a flag based system should prevent indiscriminate redistribution of digital broadcast content, however, we do not wish to foreclose use of the Internet to send digital broadcast content where robust security can adequately protect the content and the redistribution is tailored in nature. We see comment on the usefulness of defining a personal digital network environment ("PDNE") within which consumers could freely redistribute digital broadcast television content. If so, we seek comment on the various permutations of a PDNE that were proposed in the BPDG Final Report *and* whether any modifications are needed to maintain consumer's home viewing expectations. We also seek comment on possible new formulations of a PDNE.

6. We also seek comment on whether content owners are the appropriate entities to make initial approval determinations, or whether another entity should have decision-making authority. In particular, we seek comment on whether the Commission, a qualified third party, or an independent entity representing various industry and consumer interests should make approval and revocation determinations.

7. As to the issue of how approved content protection and recording technologies may be revoked should their security be compromised, we seek comment on the appropriate standard for revocation. Specifically, we seek comment on whether revocation is appropriate where a content protection or recording technology is perceived to be insecure, or whether the appropriate standard is where security has been compromised in a significant, widespread manner. Once a content protection or recording technology has been revoked, we seek comment on the appropriate mechanism by which revocation should be effectuated. For example, should revoked content protection or recording technologies be eliminated on a going-forward basis, while preserving their functionality for existing devices? We also seek comment on whether there are technological or other means of revoking content protection or recording technologies while preserving the functionality of consumer electronics devices.

8. *Authority.* This Further NPRM is issued pursuant to authority contained in sections 1, 2, 4(i) and (j), 303, 307, 309(j), 336, 337, 396(k), 403, 601, 614(b) and 624a of the Communications Act of 1934, as amended.

9. *Ex Parte Rules—Non-Restricted Proceeding.* This is a non-restricted notice and comment rulemaking proceeding. Ex parte presentations are permitted, except during the Sunshine Agenda period, provided that they are disclosed as provided in the Commission's rules. *See generally* 47 CFR 1.1202, 1.1203, and 1.1206(a).

10. *Accessibility Information.* Accessible formats of this Further NPRM (computer diskettes, large print, audio recording and Braille) are available to persons with disabilities by contacting Brian Millin, of the Consumer & Governmental Affairs Bureau, at (202) 418–7426, TTY (202) 418–7365, or at *Brian.Millin@fcc.gov*.

11. *Comment Information.* Pursuant to sections 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments on or before January 14, 2004, and reply comments on or before February 13, 2004. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. *See* Electronic Filing of Documents in Rulemaking Proceedings, 63 FR 24121 (1998).

12. Comments filed through the ECFS can be sent as an electronic file via the Internet to http://www.fcc.gov/e-file/ecfs.html. Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to *ecfs@fcc.gov*, and should include the following words in the body of the message, "get form <your e-mail address>." A sample form and directions will be sent in reply. Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appear in the caption of this proceeding, commenters must submit two additional copies for each additional docket or rulemaking number. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Natek, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW.,

Washington, DC 20554. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

13. *Regulatory Flexibility Act.* As required by the Regulatory Flexibility Act, the Commission has prepared an Initial Regulatory Flexibility Analysis ("IRFA") of the possible significant economic impact on a substantial number of small entities of the proposals addressed in this Further NPRM. The IRFA is set forth below. Written public comments are requested on the IRFA. These comments must be filed in accordance with the same filing deadlines for comments on the Further NPRM, and they should have a separate and distinct heading designating them as responses to the IRFA.

14. The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, shall send a copy of this Further NPRM, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

Initial Regulatory Flexibility Analysis

15. As required by the Regulatory Flexibility Act of 1980, as amended ("RFA") the Commission has prepared this present Initial Regulatory Flexibility Analysis ("IRFA") of the possible significant economic impact on a substantial number of small entities by the policies and rules proposed in the Further Notice of Proposed Rulemaking portion of this item. Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the Further Notice of Proposed Rulemaking portion of this item provided in paragraph 69 of the item. The Commission will send a copy of this entire Report and Order and Further Notice of Proposed Rulemaking ("Report and Order and Further NPRM"), including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration ("SBA"). In addition, the Further Notice of Proposed Rulemaking portion of this item and the IRFA (or summaries thereof) will be published in the **Federal Register**.

16. *Need for, and Objectives of, the Proposed Rules.* Content providers have suggested that they should have the ability to make determinations about which new content protection and recording technologies may be used in connection with demodulator products under an ATSC flag-based redistribution control system. Commenters have indicated that content providers should not be the sole arbiters of such decisions. However, the record currently before the Commission is insufficient on this matter. In order to ensure the connectivity and interoperability of Demodulator Products and peripheral devices, we are initiating the Further NPRM to seek comment on the process and criteria by which new content protection and recording technologies can be evaluated and approved for use in this context. The Further NPRM also seeks comment on whether cable operators should be allowed to encrypt the digital basic tier in order to be able to give effect to the ATSC flag through cable operators' conditional access system. The Further NPRM also seeks comment on the interplay between an ATSC flag system and open source software for DTV applications, such as software defined radio.

17. *Legal Basis.* The authority for this proposed rulemaking is contained in sections 1, 2, 4(i) and (j), 303, 307, 309(j), 336, 337, 396(k), 403, 601, 614(b) and 624a of the Communications Act of 1934, 47 U.S.C 151, 152, 154(i) and (j), 303, 307, 309(j), 336, 337, 396(k), 403, 521, 534(b) and 544a.

18. *Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply.* The RFA directs the Commission to provide a description of and, where feasible, an estimate of the number of small entities that will be affected by the proposed rules. The RFA generally defines the term "small entity" as encompassing the terms "small business," "small organization," and "small governmental entity." In addition, the term "small Business" has the same meaning as the term "small business concern" under the Small Business Act. A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration ("SBA").

19. *Television Broadcasting.* The Small Business Administration defines a television broadcasting station that has no more than $12 million in annual receipts as a small business. Business concerns included in this industry are those "primarily engaged in broadcasting images together with sound." According to Commission staff review of the BIA Publications, Inc. Master Access Television Analyzer Database as of May 16, 2003, about 814 of the 1,220 commercial television stations in the United States have revenues of $12 million or less. We note, however, that, in assessing whether a business concern qualifies as small under the above definition, business (control) affiliations must be included. Our estimate, therefore, likely overstates the number of small entities that might be affected by our action, because the revenue figure on which it is based does not include aggregate revenues from affiliated companies. There are also 2,127 low power television stations (LPTV). Given the nature of this service, we will presume that all LPTV licensees qualify as small entities under the SBA definition.

20. In addition, an element of the definition of "small business" is that the entity not be dominant in its field of operation. We are unable at this time to define or quantify the criteria that would establish whether a specific television station is dominant in its field of operation. Accordingly, the estimate of small businesses to which rules may apply do not exclude any television station from the definition of a small business on this basis and are therefore over-inclusive to that extent. Also as noted, an additional element of the definition of "small business" is that the entity must be independently owned and operated. We note that it is difficult at times to assess these criteria in the context of media entities and our estimates of small businesses to which they apply may be over-inclusive to this extent.

21. *Cable and Other Program Distribution.* The SBA has developed a small business size standard for cable and other program distribution services, which includes all such companies generating $12.5 million or less in revenue annually. This category includes, among others, cable operators, direct broadcast satellite ("DBS") services, home satellite dish ("HSD") services, multipoint distribution services ("MDS"), multichannel multipoint distribution service ("MMDS"), Instructional Television Fixed Service ("ITFS"), local multipoint distribution service ("LMDS"), satellite master antenna television ("SMATV") systems, and open video systems ("OVS"). According to the Census Bureau data, there are 1,311 total cable and other pay television service firms that operate throughout the year of which 1,180 have less than $10 million in revenue. We address below each service individually to provide a more precise estimate of small entities.

22. *Cable Operators.* The Commission has developed, with SBA's approval, our own definition of a small cable system operator for the purposes of rate regulation. Under the Commission's rules, a "small cable company" is one serving fewer than 400,000 subscribers nationwide. We last estimated that there were 1,439 cable operators that qualified as small cable companies. Since then, some of those companies may have grown to serve over 400,000 subscribers, and others may have been involved in transactions that caused them to be combined with other cable operators. Consequently, we estimate that there are fewer than 1,439 small entity cable system operators that may be affected by the decisions and rules proposed in this Further NPRM.

23. The Communications Act, as amended, also contains a size standard for a small cable system operator, which is "a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1% of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed $250,000,000." The Commission has determined that there are 68,500,000 subscribers in the United States. Therefore, an operator serving fewer than 685,000 subscribers shall be deemed a small operator if its annual revenues, when combined with the total annual revenues of all of its affiliates, do not exceed $250 million in the aggregate. Based on available data, we find that the number of cable operators serving 685,000 subscribers or less totals approximately 1,450. Although it seems certain that some of these cable system operators are affiliated with entities whose gross annual revenues exceed $250,000,000, we are unable at this time to estimate with greater precision the number of cable system operators that would qualify as small cable operators under the definition in the Communications Act.

24. *Direct Broadcast Satellite ("DBS") Service.* Because DBS provides subscription services, DBS falls within the SBA-recognized definition of Cable and Other Program Distribution Services. This definition provides that a small entity is one with $12.5 million or less in annual receipts. There are four licensees of DBS services under part 100 of the Commission's rules. Three of those licensees are currently operational. Two of the licensees that are operational have annual revenues that may be in excess of the threshold for a small business. The Commission, however, does not collect annual revenue data for DBS and, therefore, is unable to ascertain the number of small DBS licensees that could be impacted by these proposed rules. DBS service requires a great investment of capital for operation, and we acknowledge, despite the absence of specific data on this point, that there are entrants in this field that may not yet have generated $12.5 million in annual receipts, and therefore may be categorized as a small business, if independently owned and operated.

25. *Home Satellite Dish ("HSD") Service.* Because HSD provides subscription services, HSD falls within the SBA-recognized definition of Cable and Other Program Distribution Services. This definition provides that a small entity is one with $12.5 million or less in annual receipts. The market for HSD service is difficult to quantify. Indeed, the service itself bears little resemblance to other MVPDs. HSD owners have access to more than 265 channels of programming placed on C-band satellites by programmers for receipt and distribution by MVPDs, of which 115 channels are scrambled and approximately 150 are unscrambled. HSD owners can watch unscrambled channels without paying a subscription fee. To receive scrambled channels, however, an HSD owner must purchase an integrated receiver-decoder from an equipment dealer and pay a subscription fee to an HSD programming package. Thus, HSD users include: (1) Viewers who subscribe to a packaged programming service, which affords them access to most of the same programming provided to subscribers of other MVPDs; (2) viewers who receive only non-subscription programming; and (3) viewers who receive satellite programming services illegally without subscribing. Because scrambled packages of programming are most specifically intended for retail consumers, these are the services most relevant to this discussion.

26. *Multipoint Distribution Service ("MDS"), Multichannel Multipoint Distribution Service ("MMDS") Instructional Television Fixed Service ("ITFS") and Local Multipoint Distribution Service ("LMDS").* MMDS systems, often referred to as "wireless cable," transmit video programming to subscribers using the microwave frequencies of the MDS and ITFS. LMDS is a fixed broadband point-to-multipoint microwave service that provides for two-way video telecommunications.

27. In connection with the 1996 MDS auction, the Commission defined small businesses as entities that had annual average gross revenues of less than $40 million in the previous three calendar years. This definition of a small entity in the context of MDS auctions has been approved by the SBA. The MDS auctions resulted in 67 successful bidders obtaining licensing opportunities for 493 Basic Trading Areas ("BTAs"). Of the 67 auction winners, 61 met the definition of a small business. MDS also includes licensees of stations authorized prior to the auction. As noted, the SBA has developed a definition of small entities for pay television services, which includes all such companies generating $12.5 million or less in annual receipts. This definition includes multipoint distribution services, and thus applies to MDS licensees and wireless cable operators that did not participate in the MDS auction. Information available to us indicates that there are approximately 850 of these licensees and operators that do not generate revenue in excess of $12.5 million annually. Therefore, for purposes of the IRFA, we find there are approximately 850 small MDS providers as defined by the SBA and the Commission's auction rules.

28. The SBA definition of small entities for Cable and Other Program Distribution Services, which includes such companies generating $12.5 million in annual receipts, seems reasonably applicable to ITFS. There are presently 2,032 ITFS licensees. All but 100 of these licenses are held by educational institutions. Educational institutions are included in the definition of a small business. However, we do not collect annual revenue data for ITFS licensees, and are not able to ascertain how many of the 100 non-educational licensees would be categorized as small under the SBA definition. Thus, we tentatively conclude that at least 1,932 licensees are small businesses.

29. Additionally, the auction of the 1,030 LMDS licenses began on February 18, 1998, and closed on March 25, 1998. The Commission defined "small entity" for LMDS licenses as an entity that has average gross revenues of less than $40 million in the three previous calendar years. An additional classification for "very small business" was added and is defined as an entity that, together with its affiliates, has average gross revenues of not more than $15 million for the preceding calendar years. These regulations defining "small entity" in the context of LMDS auctions have been approved by the SBA. There were 93 winning bidders that qualified as small entities in the LMDS auctions. A total of 93 small and very small business bidders won approximately 277 A Block licenses and 387 B Block licenses. On March 27, 1999, the Commission re-auctioned 161 licenses; there were 40 winning bidders. Based on this information, we conclude that the number of small LMDS licenses will include the 93 winning bidders in the first auction and the 40 winning bidders in the re-auction, for a total of 133 small entity LMDS providers as defined by the SBA and the Commission's auction rules.

30. In sum, there are approximately a total of 2,000 MDS/MMDS/LMDS

stations currently licensed. Of the approximate total of 2,000 stations, we estimate that there are 1,595 MDS/MMDS/LMDS providers that are small businesses as deemed by the SBA and the Commission's auction rules.

31. *Satellite Master Antenna Television ("SMATV") Systems.* The SBA definition of small entities for Cable and Other Program Distribution Services includes SMATV services and, thus, small entities are defined as all such companies generating $12.5 million or less in annual receipts. Industry sources estimate that approximately 5,200 SMATV operators were providing service as of December 1995. Other estimates indicate that SMATV operators serve approximately 1.5 million residential subscribers as of July 2001. The best available estimates indicate that the largest SMATV operators serve between 15,000 and 55,000 subscribers each. Most SMATV operators serve approximately 3,000–4,000 customers. Because these operators are not rate regulated, they are not required to file financial data with the Commission. Furthermore, we are not aware of any privately published financial information regarding these operators. Based on the estimated number of operators and the estimated number of units served by the largest ten SMATVs, we believe that a substantial number of SMATV operators qualify as small entities.

32. *Open Video Systems ("OVS").* Because OVS operators provide subscription services, OVS falls within the SBA-recognized definition of Cable and Other Program Distribution Services. This definition provides that a small entity is one with $12.5 million or less in annual receipts. The Commission has certified 25 OVS operators with some now providing service. Affiliates of Residential Communications Network, Inc. ("RCN") received approval to operate OVS systems in New York City, Boston, Washington, D.C. and other areas. RCN has sufficient revenues to assure us that they do not qualify as small business entities. Little financial information is available for the other entities authorized to provide OVS that are not yet operational. Given that other entities have been authorized to provide OVS service but have not yet begun to generate revenues, we conclude that at least some of the OVS operators qualify as small entities.

33. *Electronics Equipment Manufacturers.* Rules adopted in this proceeding could apply to manufacturers of DTV receiving equipment and other types of consumer electronics equipment. The SBA has developed definitions of small entity for manufacturers of audio and video equipment as well as radio and television broadcasting and wireless communications equipment. These categories both include all such companies employing 750 or fewer employees. The Commission has not developed a definition of small entities applicable to manufacturers of electronic equipment used by consumers, as compared to industrial use by television licensees and related businesses. Therefore, we will utilize the SBA definitions applicable to manufacturers of audio and visual equipment and radio and television broadcasting and wireless communications equipment, since these are the two closest NAICS Codes applicable to the consumer electronics equipment manufacturing industry. However, these NAICS categories are broad and specific figures are not available as to how many of these establishments manufacture consumer equipment. According to the SBA's regulations, an audio and visual equipment manufacturer must have 750 or fewer employees in order to qualify as a small business concern. Census Bureau data indicates that there are 554 U.S. establishments that manufacture audio and visual equipment, and that 542 of these establishments have fewer than 500 employees and would be classified as small entities. The remaining 12 establishments have 500 or more employees; however, we are unable to determine how many of those have fewer than 750 employees and therefore, also qualify as small entities under the SBA definition. Under the SBA's regulations, a radio and television broadcasting and wireless communications equipment manufacturer must also have 750 or fewer employees in order to qualify as a small business concern. Census Bureau data indicates that there are 1,215 U.S. establishments that manufacture radio and television broadcasting and wireless communications equipment, and that 1,150 of these establishments have fewer than 500 employees and would be classified as small entities. The remaining 65 establishments have 500 or more employees; however, we are unable to determine how many of those have fewer than 750 employees and therefore, also qualify as small entities under the SBA definition. We therefore conclude that there are no more than 542 small manufacturers of audio and visual electronics equipment and no more than 1,150 small manufacturers of radio and television broadcasting and wireless communications equipment for consumer/household use.

34. *Computer Manufacturers.* The Commission has not developed a definition of small entities applicable to computer manufacturers. Therefore, we will utilize the SBA definition of electronic computers manufacturing. According to SBA regulations, a computer manufacturer must have 1,000 or fewer employees in order to qualify as a small entity. Census Bureau data indicates that there are 563 firms that manufacture electronic computers and of those, 544 have fewer than 1,000 employees and qualify as small entities. The remaining 19 firms have 1,000 or more employees. We conclude that there are approximately 544 small computer manufacturers.

35. *Description of Projected Reporting, Recordkeeping and other Compliance Requirements.* At this time, we do not expect that the proposed rules would impose any additional reporting or recordkeeping requirements. However, compliance with the rules, if they are adopted, may require consumer electronics manufacturers to seek approval for content protection technologies and recording methods to be used in conjunction with demodulator products. These requirements will have an impact on consumer electronics manufacturers, including small entities. We seek comment on the possible burden these requirements would place on small entities. Also, we seek comment on whether a special approach toward any possible compliance burdens on small entities might be appropriate. The proposed rules would also allow cable operators to encrypt the digital basic tier, however, we do not believe that this voluntary provision would have an impact on small entities.

36. *Steps Taken to Minimize Significant Impact on Small Entities, and Significant Alternatives Considered.* The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.

37. As indicated above, the Further NPRM seeks comment on whether the Commission should adopt rules establishing an approval mechanism for new content protection and recording technologies to be used with demodulator products. Consumer electronics manufacturers may be required to seek such approval prior to implementing content protection and recording technologies in demodulator products. We welcome comment on modifications of this proposal to lessen any potential impact on small entities, while still remaining consistent with our policy goals. The Further NPRM also seeks comment on whether cable operators should be allowed to encrypt the digital basic tier in order to be able to give effect to the ATSC flag through cable operators' conditional access system. While we do not believe that this rule change would have a potential impact on small entities because it would be voluntary in nature, we seek comment on whether a special approach toward any possible compliance burdens on small entities might be appropriate.

38. *Federal Rules Which Duplicate, Overlap, or Conflict with the Commission's Proposals.* None.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 03–30008 Filed 12–2–03; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 216

[Docket No. 031112277–3277–01; I.D. 080603B]

RIN 0648–AR70

Taking and Importing Marine Mammals; Taking Marine Mammals Incidental to Space Vehicle and Test Flight Activities from Vandenberg Air Force Base (VAFB), CA

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comment.

SUMMARY: NMFS has received a request from the 30th Space Wing, U.S. Air Force (USAF) for the authorization for the harassment of small numbers of pinnipeds incidental to space vehicle and test flight activities from Vandenberg Air Force Base, CA (VAFB) between January 1, 2004, and December 31, 2008. By this document, NMFS is proposing regulations that govern that take. In order to issue a take authorization, NMFS must determine that the total taking will have a negligible impact on the affected species and stocks of marine mammals and will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses. NMFS must also prescribe the means of effecting the least practicable adverse impact on such species or stock and their habitats. NMFS invites comment on the application and proposed regulations.

DATES: Comments must be postmarked no later than December 18, 2003. Comments will not be accepted if submitted via e-mail or the Internet.

ADDRESSES: Comments may be sent to and copy of the application may be obtained by writing to the Chief, Marine Mammal Conservation Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910–3226 or by telephoning the contact listed here (see **FOR FURTHER INFORMATION CONTACT**). The NMFS' Administrative Record for this action will be maintained at this address. Copies of documents are available at this address.

FOR FURTHER INFORMATION CONTACT: Kimberly Skrupky, National Marine Fisheries Service, 301–713–2322, ext 163.

SUPPLEMENTARY INFORMATION:

Background

Section 101(a)(5)(A) of the Marine Mammal Protection Act (16 U.S.C. 1361 *et seq.*) (MMPA) directs the Secretary of Commerce (Secretary) to allow, upon request, the incidental, but not intentional taking of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and regulations are issued.

Permission may be granted for periods of 5 years or less if the Secretary finds that the total taking will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses, and regulations are prescribed setting forth the permissible methods of taking, other means of effecting the least practicable adverse impact on the affected species or stocks and their habitats, and the requirements pertaining to the monitoring and reporting of such taking.

NMFS has defined "negligible impact" in 50 CFR 216.103 as "an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival." The MMPA defines "harassment" as:

> any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild [Level A harassment]; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering [Level B harassment].

Summary of Request

On September 2, 2003, NMFS received an application from the USAF requesting authorization under section 101(a)(5)(A) of the MMPA to harass small numbers of marine mammals incidental to space vehicle and test flight activities conducted by the USAF on Vandenberg. NMFS proposes regulations to govern these authorizations, to be effective from January 1, 2004, through December 31, 2008. These regulations, if implemented, would allow NMFS to issue annual Letters of Authorization (LOAs) to the USAF. The current regulations and LOA expire on December 31, 2003. A detailed description of the operations is contained in the USAF application (USAF, 2003) which is available upon request (*see* **ADDRESSES**).

Description of the Specified Activity

VAFB is the main west coast launch facility for placing commercial, government, and military satellites into polar orbit on expendable (i.e. not reusable) launch vehicles, and for testing and evaluation of intercontinental ballistic missiles (ICBM) and sub-orbital target and interceptor missiles. In addition to space vehicle and missile launches, there are security and search and rescue helicopter operations, as well as test and evaluation flights of fixed-wing air craft. The USAF expects to launch a total of 30 rockets and missiles from VAFB.

Currently five space launch vehicle programs use VAFB to launch satellites into polar orbit: Atlas IIAS, Delta II, Minotaur, Taurus, and Titan (II and IV). Two new programs, the Evolved Expendable Launch Vehicle (EELV) and Space X, are scheduled to make their inaugural launches at VAFB in 2004. The EELV will use a Boeing Delta IV vehicle and a Lockheed-Martin Atlas V. Eventually, these vehicles will replace

many of the other programs such as Atlas II and Titan, but initially there will be an overlap in the launches of each program. The Space X is a commercial program which will launch small payloads into low earth orbit. There is also a variety of small missiles, several types of interceptor and target vehicles, and fixed-wing aircrafts that are launched from VAFB.

Atlas IIAS

The Atlas IIAS is launched from Space Launch Complex (SLC) 3E on south VAFB, approximately 9.9 km (6.2 mi) from the Rocky Point harbor seal haul-out area and 11.1 km (6.9 mi) from the Spur Road haul-out site. The Atlas IIAS is a medium-sized (up to 48m, 157.5 ft, tall) launch vehicle with approximately 724,800 lbs of thrust. Two Atlas IIAS launch vehicles have been launched from SLC 3E (the Atlas IIAS AC–141 Terra launched on 18 December 1999 and the Atlas IIAS MLV–19 launched on 8 September 2001).

The received sound level at south VAFB from the Atlas IIAS launches was relatively quiet, due to the great amount of attenuation from the 9.9 km (6.2 mi) distance between the measurement site and SLC–3E. Measurements at the south VAFB haul-out site were similar to those measured at the north base Spur Road monitoring site, but slightly higher. The A-weighted sound exposure levels (ASEL), measured at the south haul-out site for the two launches, were 87.3 and 88.5 dB, the unweighted SELs were measured at 124.2 and 118.0 dB and the
C-weighted SEL were measured to be 113.6 and 112.1 dB. The launch noise reached a maximum fast sound level (Lmax) of 76.4 and 80.8 dB.

The launch noise measured at the north VAFB Spur Road acoustic monitoring site was slightly quieter than at the south VAFB monitoring locations, due to the greater distance between the site and the launch pad. The launch noise at this site was unsubstantial. The A-weighted SELs for both launches were measured to be 86.1 dB, and the Terra launch had an unweighted SEL of 117.2 dB, and a C-weighted SEL of 110.0 dB. The launch noise reached Lmax levels of 75.2 and 79.7 dB. A sonic boom was measured for the launch of the Atlas IIAS MLV–10 on SMI. The peak overpressure was 0.75 psf (125.1 dB) and the rise time was relatively slow at 2.6 milliseconds. This relatively slow rise time reduces the higher frequency content of the boom and tends to produce a sound more resembling distant thunder than the more familiar sharp crack of a distinct sonic boom.

Delta II

The Delta II is launched from SLC–2 on north VAFB, approximately 2.0 km (1.2 mi) from the Spur Road harbor seal haul-out site. The Delta II is a medium-sized launch vehicle approximately 38 m (124.7 ft) tall. The Delta II uses a Rocketdyne RS–27A main liquid propellant engine and additional solid rocket strap-on graphite epoxy motors (GEMs) during liftoff. A total of 3, 4 or 9 GEMs can be attached for added boost during liftoff. When 9 GEMs are used, 6 are ignited at liftoff and 3 are ignited once the rocket is airborne. When 3 or 4 GEMs are used, they are all ignited at liftoff. The number of GEMs attached to each vehicle will determine the amount of launch noise produced by the vehicle.

Six Delta II launches have been acoustically quantified near the Spur Road harbor seal haul-out site. The noise at the Spur Road site from the Delta II launches is relatively loud, primarily due to the close proximity of the launch pad. The Delta II is the second loudest of the launch vehicles at the Spur Road haul-out site with unweighted SEL measurements ranging from 126.5 to 128.8 dB and averaging of 127.4 dB (as measured by the digital audio tape [DAT] recorder). The C-weighted SEL ranged from 124.3 to 126.7 dB with an average of 125.4 dB (DAT). The A-weighted SEL measurements from both a sound level meter (SLM) and the DAT were similar and ranged from 111.8 to 118.2 dB and had an average of114.5 dB (DAT). The seal-weighted SELs were considerably reduced to range from 74.2 to 79.7 dB and averaged 76.9 dB. The Lmax values ranged from 104.2 to 112.5 and averaged 109.5 dB. Sonic booms have been measured on SMI from two Delta II launches, the Iridium MS–12 and EO–1. The Iridium MS–12 had two small sonic booms impact the Point Bennett area of SMI with peak overpressures of 0.47 and 0.64 psf and rise times of 18 and 91 ms. The Delta II EO–1 sonic boom had a peak overpressure of 0.4 psf and rise time of 41 microseconds (µs).

Minotaur

The Minotaur launch vehicle is launched from the California Spaceport on south VAFB, near SLC–6 and is approximately 2.3 km (1.4 mi) from the south VAFB pinniped haul-out sites. The Minotaur launch vehicle is made up of modified Minuteman II Stage I and Stage II segments mated with Pegasus upper stages. The Minotaur is a small vehicle, approximately 19.2 m (63.0 ft) tall with approximately 215,000 lbs of thrust. Although the Minotaur produces less thrust than other larger launch vehicles, due to its close proximity to the south VAFB haul-out sites, it is one of the loudest vehicles at this site. Two Minotaur launch vehicles have been launched from VAFB (26 January 2000 and 19 July 2000).

The launch noise measured near the south VAFB haul-out sites was moderately loud, primarily due to the close proximity to the launch pad. The unweighted SEL measurements varied by 3.5 dB between the two launches and were measured to be 119.4 and 122.9 dB. The C-weighted SELs varied less and were measured at 116.6 and 117.9 dB. From the DAT and SLM measurements, the
A-weighted SEL ranged from 104.9 to 107.0 dB. The launch noise reached an Lmax level of 101.7 and 103.4 dB.

Taurus

The Taurus space launch vehicle is launched from 576–E on north VAFB, approximately 0.5 km (0.3 mi) from the Spur Road harbor seal haul-out site. There have been 6 Taurus rockets launched from 576–E. The standard Taurus is a small launch vehicle, at approximately 24.7 m (81.0 ft) tall and is launched in two different configurations: Defense Advanced Research Projects Agency (DARPA) and standard, with different first stages providing 500 or 400 kilopounds of thrust, respectively.

The launch noise from 4 Taurus launches has been measured near the Spur Road haul-out site. The noise arriving at the Spur Road monitoring site, near the harbor seal haul-out, was substantial due to the close proximity of the launch pad. At 0.5 km to SLC–576, the Taurus is the loudest of the launch vehicles at the Spur Road haul-out site. The unweighted SEL measurements from all the measured Taurus vehicles ranged from 135.8 to 136.8 and averaged 136.4 dB. The C-weighted SEL measurements were slightly lower as expected, ranging from 133.8 to 134.8 dB and averaged 134.5 dB. The A-weighted SEL measurements ranged from 123.5 to 128.9 dB with an average of 126.6 dB (SLM). The harbor seal-weighted SELs ranged from 88.0 to 91.3 dB and averaged 90.2 dB. The Lmax values were measured to range from 118.3 to 122.9 dB and averaged 120.9 dB (SLM).

Titan II

The Titan II space launch vehicle is launched from SLC–4W, which is approximately 8.5 km (5.3 mi) north of the south VAFB pinniped haul-out sites.

The USAF has launched 6 Titan II space launch vehicles from SLC–4W during the study period. The Titan II space launch vehicle is a medium-sized liquid fueled rocket at 36.0 m (118.1 ft) tall. It has a small-to-medium weight lift capability; additional strap-on GEM solid rocket motors can be added to the first stage to increase the lift capability. All of the Titan II launch configurations were the same, launched without additional solid rocket motors attached and had a thrust of approximately 474,000 lbs.

The Titan II launch noise as measured near the south VAFB haul-out site, which is the closest haul-out to SLC–4W, is unsubstantial and ranks among the quieter vehicles. This is primarily due to its moderate thrust and the relatively long distance to the launch pad. The unweighted SEL measurements ranged from 116.3 to 120.3 dB and averaged 118.3 dB. The C-weighted SELs ranged from 109.6 to 115.0 dB and averaged 112.5 dB. The A-weighted SELs ranged from 83.5 to 95.7 dB and averaged 89.9 dB (DAT). The harbor seal-weighted SELs ranged from 38.2 to 54.5 dB and averaged 47.4 dB. The Lmax values were measured to range from 74.9 to 85.9 dB and averaged 80.1 dB.

Titan IV

The Titan IV space launch vehicle is launched from SLC–4E, which is approximately 8.5 km (5.3 mi) from the south VAFB pinniped haul-out site. The Titan IV series was developed as a complementary heavy-lift vehicle to the Space Shuttle and is by far the largest vehicle currently launched from VAFB. The Titan IV is approximately 44 m (144.5 ft) tall and has a liquid fuel core engine and two upgraded solid rocket motors (SRMU) that provide approximately 3,400,000 lbs of thrust. The Titan IV is moderately loud and is one of the louder vehicles at the south VAFB haul-out site, primarily due to its large amount of thrust. The launch noise measurements for the 4 Titan IV launches measured were all fairly consistent. The unweighted SELs ranged from 125.9 to 130.2 dB and averaged 127.8 dB. Similarly, the C-weighted measurements varied very little, with the C-weighted SELs ranging from 119.0 to 124.2 dB and averaging 121.5 dB. There was a greater difference with the A-weighted and harbor seal-weighted measurements with the A-weighted SELs ranging from 96.6 to 104.5 dB with an average of 101.5 dB (DAT). The harbor seal-weighted SELs ranged from 54.4 to 63.5 dB with an average of 60.3 dB. The Lmax values were determined to range from 88.2 to 100.6 dB and averaged 95.6 dB. Several sonic booms have been measured for the launches of the Titan IV. The peak overpressures from sonic booms produced by this vehicle range from 1.34 to 8.97 psf. These booms have been measured for 4 launches of the Titan IV and have impacted each coast of SMI.

Evolved Expendable Launch Vehicle (EELV)

The EELV is the Air Force's newest launch vehicle program and will use the Atlas V vehicle from Lockheed-Martin and the Delta IV space launch vehicle from the Boeing Company for launches from VAFB. The EELV program will become the main space launch program over the next several years, replacing many of the other launch vehicles at VAFB. The maximum number of forecasted EELV launches per year is 5, with a total of 68 launches projected through 2020 (U.S. Air Force 2000).

The Atlas V consists of both a medium (V400) and heavy (V500) lift vehicle with up to 5 solid rocket boosters. During the next 5 years, only the medium lift V400 series vehicle will be launched from VAFB. The V400 series will lift up to 7,640 kg (16,843 lbs) into geosynchronous transfer orbit or up to 12,500 kg (27,557.3 lbs) into low earth orbit. The Atlas V consists of a common booster core (3.8 m, 12.5 ft, in diameter and 32.5 m, 106.6 ft, high) powered by an RD180 engine that burns a liquid propellant fuel consisting of liquid oxygen and RP1 fuel (kerosene). The RD180 engine provides 840,000 lbs of thrust on liftoff, and up to three solid rocket boosters can be attached to the common booster core to provide extra lift. There is a Centaur upper stage (3.1 m, 10.2 ft, in diameter and 12.7 m, 41.7 ft, high) powered by a liquid oxygen and liquid hydrogen fuel. The payload fairing is up to 4.2 m (13.7 ft) making the complete Atlas V up to 58.3 m (191.3 ft) high.

The Atlas V will be launched from SLC–3 East, the site of the current Atlas II launch facility. SLC–3 East is approximately 9.9 km (6.2 mi) north of the main harbor seal haul-out site in the area of Rocky Point. Launches of the smaller Atlas IIAS (47.4 m, 51.8 ft, in length and 700,000 lbs of thrust) produced A-weighted sound exposure levels ranging from 87.3 to 88.5 dB at the south VAFB haul-out site. The predicted noise level at the closest haul-out site (10 km, 6.2 mi, from the launch pad of an Atlas V) would be slightly louder than the noise levels from the Atlas IIAS. The maximum sonic boom impacting the Channel Islands would be 7.2 pounds per square foot (psf). The size of the actual sonic boom will depend on meteorological conditions, which can vary by day and season and with the trajectory of the vehicle.

The Delta IV family of launch vehicles consists of 5 launch vehicleconfigurations utilizing a common booster core (CBC) first stage and 2 and 4 strap on GEMs. The Delta IV comes in four medium lift configurations and one heavy lift configuration consisting of multiple common booster cores. The Delta IV can carry payloads from 4,210 to 13,130 kg (9,281.3 to 28,946.2 lbs) into geosynchronous transfer orbit. The Delta IV will be launched from SLC–6, which is 2.8 km (1.7 mi) north of the main harbor seal haul-out site at South Rocky Point. The Delta IV will be the loudest vehicle at the south VAFB harbor seal haul-out site. The Delta IV is predicted to have a sonic boom offshore of up to 7.2 psf for the largest of the medium configurations and 8 to 9 psf for the heavy configuration. The size and location of the actual sonic boom will depend on meteorological conditions, which can vary by day and season and with the trajectory of the vehicle.

Space X

The Space X program will launch the Falcon space launch vehicle from SLC 3–West on south VAFB. The Falcon is a light space launch vehicle and will send small payloads of up to 500 kg (1102.3 lbs) into low earth orbit. The Falcon vehicle is 1.7 m (5.6 ft) in diameter and 20.7 m (67.9 ft) in height, making it approximately the size of a Peacekeeper missile. The Falcon is a two-stage liquid fuel vehicle. The first stage is reusable and uses a liquid oxygen and kerosene base fuel. The second stage is expendable and also uses a liquid oxygen and kerosene fuel.

Other Launch Activities

There are a variety of small missiles launched from VAFB, including Peacekeeper, Minuteman III, and several types of interceptor and target vehicles for the National Missile Defense Program. The missile launch facilities are spread throughout northern VAFB and are within 0.65 to 3.9 km (0.4 to 2.4 mi) of the recently occupied Lion's Head haul-out site and approximately 11 to 16.5 km (6.8 to 10.3 mi) north of the Spur Road and Purisma Point harbor seal haul-out sites.

The Peacekeeper missile is an Inter-Continental Ballistic Missile (ICBM) that was developed as part of the United States strategic deterrence force. The Peacekeeper is launched from various underground silos as part of a test and evaluation program. The Peacekeeper is composed of four rocket motors, 21.8 m

(71.5 ft) in length by 2.3 m (7.5 ft) in diameter, with the first stage thrust of 500,000 lbs. The Peacekeeper, unlike other silo launch missiles, is "cold launched," initially propelled out of the silo with pressurized gas. The first stage rocket motor is ignited once the vehicle is approximately 20 m (65.6 ft) above the ground. The Peacekeeper missile is being phased out and only a few launches remain.

The Minuteman III missile is an ICBM that was also developed as part of the United States strategic deterrence force. Similar to the Peacekeeper, the Minuteman III is launched from underground silos but is not cold launched. The Minuteman III is composed of three rocket motors and is 18.0 m (59.1 ft) in length by 1.7 m (5.6 ft) in diameter, with a first stage thrust of 202,600 lbs.

The Missile Defense Agency (MDA) is developing the Ground-based Midcourse Defense (GMD) element of the conceptual Ballistic Missile Defense System (BMDS). The BMDS concept is to defend against threat missiles in each phase or segment of the missile's flight. There are three segments of this conceptual system in various stages of technology development: Boost Phase Defense, Midcourse Defense, and Terminal Defense. Each segment of the BMDS is being developed to destroy an attacking missile in the corresponding boost, mid-course, or terminal phase of its flight. The GMD element is designed to protect the United States in the event of a limited ballistic missile attack by destroying the threat missile in the mid-course phase of its flight. During the mid-course phase, which occurs outside the earth's atmosphere for medium and long-range missiles, the missile is coasting in a ballistic trajectory.

A variety of small missiles under 13 m (42.7 ft) including the Hera, Lance, Patriot As A Target, ERINT, Black Brant, Terrier, SRTYPI II, Castor I, Storm, ARIES, and Hermes are also included in the application because of the new harbor seal pupping site that was established in 2002 at Lion's Head. Those missiles, in addition to missiles already included in previous NMFS authorizations for VAFB (Minuteman and Peacekeeper missiles and missiles from the Ground Based Interceptor programs), and the new generation of missiles from the MDA will be covered by these regulations and annual LOAs. Several types of missiles will be used for target and interceptor test and evaluation; some of these missiles are being used currently (Booster Verification Test) and the remainder will not be used until 2004 or later. All of the target and interceptor missiles are smaller than the Minuteman III or Peacekeeper missiles that are currently launched from VAFB. Many of the different missile types have interchangeable first or second stage motors; therefore, most of the missiles may have similar noise characteristics, depending on their configuration.

The Ground Based Interceptors (GBI) are approved for launchings at VAFB (12 May 2003, 68 FR 25347). The GBI Booster Verification and the uncanisterized Orbital Booster Vehicle will be flight tested from LF–21 and LF–23. The missiles would be comprised of a commercially available, solid propellant booster consisting of three stages and an exo-atmospheric kill vehicle emulator.

Aircraft Activities

VAFB is also a site for limited flight testing and evaluation of fixed-wing aircraft. Three approved routes are used that avoid the established pinniped haul-out sites. A variety of aircraft, including the B1 and B2 bombers, F–14, F–15, F–16, and F–22 fighters, and KC–135 tankers may use the test and evaluation routes.

Various fixed-wing aircraft (jet and propeller aircraft) use VAFB for a variety of purposes including delivery of space or missile vehicle components, launching of launch vehicles at high altitude, such as the Pegasus, and emergency landings. VAFB has approximately 120–fixed-wing flights per year and 10,000 take offs and landings (training operations), which occur mostly on north VAFB (U.S. Air Force 2003). All aircraft are required to remain outside of an established 1,000–ft (304.8 m) bubble around pinniped rookeries and haul-out sites, except when performing a life-or-death rescue mission, when responding to a security incident, or during an aircraft emergency.

The VAFB helicopter squadron uses a UH-IN helicopter and provides support for launch operations, security reconnaissance, aerial photography, training, transport, and search and rescue. VAFB has approximately 75 helicopter sorties per month (U.S. Air Force 2003). All helicopters are required to remain outside of the 1,000–ft (304.8 m) bubble around pinniped rookeries or haul-out sites, except when performing a life-or-death rescue mission, when responding to a security incident, or during an aircraft emergency.

Description of Habitat and Marine Mammals Affected by the Activity

VAFB is composed of 99,000 acres of land and approximately 65 km (39 mi) of coastline on the coast of Central California within Santa Barbara County. The northern Channel Islands are located 72 km (44.7 mi) south of VAFB and consist of San Miguel Island (SMI), Santa Cruz Island (SCI), and Santa Rosa Island (SRI). The northern Channel Islands are part of the Channel Islands National Park and the Channel Islands National Marine Sanctuary.

The most common marine mammal inhabiting VAFB is the Pacific harbor seal (*Phoca vitulina richardsi*). Harbor seals are local to the area, rarely traveling more than 50 km (31.1 mi) from their haul-out sites. They haul-out on small offshore rocks or reefs and sandy or cobblestone cove beaches. Although harbor seals can be found along much of the VAFB coastline, they congregate in the areas of Oil Well Canyon to South Rocky Point and near the boat harbor on south VAFB. The haul-out site on south VAFB has the largest population of harbor seals on VAFB, with up to 515 seals surveyed, and has been growing at an average annual rate of 12.7 percent since 1997 while the California population has remained stable. At least 700 harbor seals used SMI, 1,000 used SCI and 900 used SRI during the 2002 aerial counts (Lowry and Caretta 2003).

Less than 200 California sea lions (*Zalophus californianus*) are found seasonally on VAFB. Sea lions may sporadically haul-out to rest when in the area to forage or when transiting the area, but generally spend little time there. Sea lions may haul-out in the area of Rocky Point, Point Arguello, Point Pedernales, and Point Sal, just north of VAFB. In 2003, at least 142 sea lions and 5 pups were hauled out at Rocky Point. This was the first reported occurrence of sea lions being born at VAFB but may be a result of the El Nino conditions that existed at that time. SMI is one of the major California sea lion rookeries, along with San Nicolas Island, with about 23,000 pups born each year. Launches from VAFB will only affect SMI.

Approximately 150 northern elephant (*Mirounga angustirostris*) seals may be found seasonally on VAFB. Weaned elephant seal pups making their first foraging trips occasionally haul-out for 1 to 2 days at VAFB before continuing on their migration. In April 2003, approximately 88 juveniles and young adult females began to haul-out at South Rocky Point to molt. The nearest elephant seal haul-out point is at Point Conception, 25 km (15.5 mi) south of VAFB. Elephant seals primarily use SMI and SRI for breeding and hauling out to rest or molt. Up to 12,000 elephant seal pups are found on SMI and up to 1,500 on SRI (Lowry 2002).

There have been no reports of northern fur seals (*Callorhinus ursinus*) on VAFB. They are only found on the west end of SMI at Point Bennet and Castle Rock, just offshore of SMI. The SMI stock is approximately 4,000 fur seals (Forney et al. 2000d).

There have been no reports of Steller sea lions (*Eumetopias jubatus*) on VAFB. A single observation of a sub adult male Steller sea lion on SMI was made in the spring of 1998 prior to the breeding season (Thorson et al. 1999). Previously, the last observation of a Steller sea lion was made in the mid–1980's.

There have been no reports of Guadalupe fur seals (*Arctocephalus townsendi*) on VAFB. A few Guadalupe fur seals are seen each year at SMI, generally in the summer or fall.

Potential Effects of Rocket and Missile Launches and Associated Activities on Marine Mammals

The activities under these regulations create two types of noise: Continuous (but short-duration) noise, due mostly to combustion effects of aircraft and launch vehicles, and impulsive noise, due to sonic boom effects. Launch operations are the major source of noise on the marine environment from VAFB. The operation of launch vehicle engines produces significant sound levels. Generally, noise is generated from four sources during launches: (1) Combustion noise from launch vehicle chambers, (2) jet noise generated by the interaction of the exhaust jet and the atmosphere, (3) combustion noise from the post-burning of combustion products, and (4) sonic booms. Launch noise levels are highly dependent on the type of first-stage booster and the fuel used to propel the vehicle. Therefore, there is a great similarity in launch noise production within each class size of launch vehicles.

The noise generated by VAFB activities will result in the incidental harassment of pinnipeds, both behaviorally and in terms of physiological (auditory) impacts. The noise and visual disturbances from space launch vehicle and missile launches, and aircraft and helicopter operations may cause the animals to move towards the water or enter the water. The percentage of seals leaving the haul-out increases with noise level up to approximately 100 decibels (dB) A-weighted Sound Exposure Level, after which almost all seals leave, although recent data has shown that an increasing percentage of seals have remained on shore. Using time-lapse video photography, it was discovered that during four launch events, the seals that reacted to the launch noise but did not leave the haul-out were all adults. This suggests that they had experienced other launch disturbances and had habituated to it in that they reacted less strongly than other younger seals.

The louder the launch noise, the longer it took for seals to begin returning to the haul-out site and for the numbers to return to pre-launch levels. In two past Athena IKONOS launches with A-weighted sound exposure levels of 107.3 and 107.8 dB at the closest haul-out site, seals began to haul-out again approximately 16 to 55 minutes post-launch (Thorson et al. 1999a; 1999b). In contrast, noise levels from an Atlas launch and several Titan II launches had A-weighted sound exposure levels ranging from 86.7 to 95.7 dB at the closest haul-out and seals began to return to the haul-out site within 2 to 8 minutes post-launch (Thorson and Francine 1997; Thorson et al. 2000). Seals may begin to return to the haul-out site within 2 to 55 minutes of the launch disturbance and the haul-out site has usually returned to pre-launch levels within 45 minutes to 120 minutes.

The main concern on the northern Channel Islands is potential impacts from sonic booms created during launches of space vehicles from VAFB. Sonic booms are impulse noises, as opposed to continuous (but short-duration) noise such as that produced by aircraft and rocket launches. The initial shock wave during a sonic boom propagates along a path that grazes the earth's surface due to the angle of the vehicle and the refraction of the lower atmosphere. As the launch vehicle pitches over, the direction of propagation of the shock wave becomes more perpendicular to the earth's surface. These direct and grazing shock waves can intersect to create a narrowly focused sonic boom, about 1 mile of intense focus, followed by a larger region of multiple sonic booms. During the period of 1997 to 2002, there were no sonic booms above 2.0 psf recorded on the northern Channel Islands. Small sonic booms between 1 to 2 psf usually elicit a heads up response or slow movement toward and entering the water, particularly for pups.

From the research and monitoring conducted over the last 5 years, it has become clear that there is little difference between distinctive classes of rockets (ballistic launches and satellite launches). Therefore, to better represent the possible impacts to marine mammals, launch activities at VAFB have been divided into three geographic zones that comprise the main pinniped haul-out on VAFB. This is because the level of disturbance caused by launches is more closely associated with the geographical proximity of launch sites to haul-out sites.

Zone 1 is northern VAFB. The main haul-out site in this area is at Lion's Head and is regularly used by small numbers of harbor seals for resting and pupping. Although this is not a major haul-out site, it is an important site to consider during launches that occur during the harbor seal pupping season.

Zone 2 is in the central VAFB, running from Spur Road north to San Antonio Creek. This area has the two main harbor seal haul-out sites on north VAFB, Spur Road, and Purisima Point. Spur Road has up to 145 harbor seals but is not a pupping site. Purisima Point has up to 50 seals and up to 5 pups.

Zone 3 is in southern VAFB and covers from approximately the Boat Harbor to northern boundary of south VAFB. The main harbor seal haul-out site on VAFB is found in the area of the Boat Harbor to Rocky Point. Up to 500 harbor seals are found there during the molting season and up to 52 pups during the pupping season, March through June. California sea lions will haul-out on occasion on the Boat Dock jetty and seasonally at Rocky Point. Weaned northern elephant seal pups (only 1 to 2 seals) will haul-out occasionally for several days to rest in the area of Rocky Point during their first foraging trip to sea.

Sonic booms created by the larger space launch vehicles may impact marine mammals on the northern Channel Islands, particularly SMI. Based on previous monitoring of sonic booms created by space launch vehicles on SMI (Thorson *et al.* 1999a; 1999b), it is estimated that up to approximately 25 percent of the marine mammals may be disturbed on SMI. If conditions allow, under a scientific research permit issued under Section 104 of the MMPA, the hearing of harbor seals will be tested before and after each launch.

With respect to impacts on pinniped hearing, NMFS' proposed rule for the previous rulemaking indicated that VAFB launch and missile activities, including sonic booms, would have an impact on the hearing of pinnipeds (63 FR 39055; July 21, 1998). These impacts were limited to Temporary Threshold Shifts (TTS) lasting between minutes and hours, depending on exposure levels. Subsequent information on Auditory Brainstem Response (ABR) testing on harbor seals following Titan IV and Taurus launches indicates that no Permanent Threshold Shift (PTS) resulted from these launches. These results are consistent with NMFS'

previous conclusions in its prior rulemaking.

NMFS also notes here that stress from long-term cumulative sound exposures can result in physiological effects on reproduction, metabolism, and general health, or on the animals' resistance to disease. However, this is not likely to occur here, because of the infrequent nature and short duration of the noise, including the occasional sonic boom. Research shows that population levels at these haul-out sites have remained constant in recent years, giving support to this conclusion.

The USAF does not anticipate a significant impact on any of the species or stocks of marine mammals from launches from VAFB. For even the largest launch vehicles, such as Titan IV and Delta IV, the launch noises and sonic booms can be expected to cause a startle response and flight to water for those harbor seals, California sea lions and other pinnipeds that are hauled out on the coastline of VAFB and on the northern Channel Islands. The noise may cause TTS in hearing depending on exposure levels but no PTS is anticipated.

Numbers of Marine Mammals Expected to Be Taken by Harassment

It is estimated that up to approximately 25 percent of the marine mammals may be disturbed on SMI due to the rare occurrence of a sonic boom. Up to approximately 200 harbor seals of all age classes and sexes may be taken by level B harassment per launch on the northern Channel Islands, with an expected range of between zero and 200 harbor seals. Up to approximately 5,800 California sea lion pups and 2,500 juvenile and adult sea lions of either sex may be harassed at SMI per launch, with an expected range of between zero and 8,300 sea lions. Up to approximately 3,000 northern elephant seal pups and 10,000 northern elephant seals of all age classes and sexes may be taken, by level B harassment, per launch on the northern Channel Islands, with an expected range of between zero and 13,000 elephant seals. Up to approximately 300 northern fur seal pups and 1,100 juvenile and adult northern fur seals of both sexes may be taken, by level B harassment, per launch at SMI, with an expected range of between zero and 1,100 fur seals. One Steller sea lion of any age class or sex may be harassed during the period of the regulations. Up to two Guadalupe fur seals of any age class or sex may be harassed over the period of the proposed regulations. The numbers taken will depend on the type of rocket, location of the sonic boom, weather conditions that influence the size of the sonic boom, the time of day and time of year. For this reason, ranges are given for the harassment of marine mammals.

Effects of Rocket and Missile Launches and Associated Activities on Subsistence Needs

There are no subsistence uses for these pinniped species in California waters, and, thus, there are no anticipated effects on subsistence needs.

Marine Mammal Habitat at VAFB

Harbor seals, California sea lions, northern elephant seals, northern fur seals, Guadalupe fur seals, and Steller sea lions are known to inhabit VAFB and the surrounding islands. There will only be short-term disturbance effects to the behavior of the marine mammals and this will not affect their habitat.

Mitigation

To minimize impacts on pinnipeds on beach haul-out sites and to avoid any possible sensitizing or predisposing of pinnipeds to greater responsiveness towards the sights and sounds of a launch, the USAF has prepared the following mitigation measures.

All aircraft and helicopter flight paths must maintain a minimum distance of 1,000 ft (305 m) from recognized seal haul-outs and rookeries (e.g., Point Sal, Purisima Point, Rocky Point), except in emergencies or for real-time security incidents (e.g., search-and-rescue, fire-fighting) which may require approaching pinniped rookeries closer than 1,000 ft (305 m). For missile and rocket launches, unless constrained by other factors including, but not limited to, human safety, national security or launch trajectories, holders of Letters of Authorization must schedule launches to avoid, whenever possible, launches during the harbor seal pupping season of March through June. NMFS also proposes to expand the requirement so that VAFB must avoid, whenever possible, launches which are predicted to produce a sonic boom on the Northern Channel Islands during harbor seal, elephant seal, and California sea lion pupping seasons.

If post-launch surveys determine that an injurious or lethal take of a marine mammal has occurred, the launch procedure and the monitoring methods must be reviewed, in cooperation with NMFS, and appropriate changes must be made through modification to an LOA, prior to conducting the next launch of the same vehicle under that LOA.

Monitoring

As part of its application, VAFB provided a monitoring plan, similar to that in the current regulations (50 CFR 216.125), for assessing impacts to marine mammals from rocket and missile launches at VAFB. This monitoring plan is described, in detail, in their application (VAFB, 2003). The Air Force will conduct the following monitoring under the regulations.

The monitoring will be conducted by a NMFS-approved marine mammal biologist experienced in surveying large numbers of marine mammals. Monitoring at the haul-out site closest to the launch facility will commence at least 72 hours prior to the launch and continue until at least 48 hours after the launch.

Monitoring for Vandenberg Air Force Base

Biological monitoring at VAFB will be conducted for all launches during the harbor seal pupping season, 1 March to 30 June. Acoustic and biological monitoring will be conducted on new space and missile launch vehicles during at least the first launch, whether it occurs within the pupping season or not. The first three launches of the Delta IV will also be monitored. In addition, the hearing of harbor seals will be tested before and after each launch under a scientific research permit issued under Section 104 of the MMPA, which continues the hearing tests covered under a previous scientific research permit that expired in 2002.

Monitoring will include multiple surveys each day that record, when possible, the species, number of animals, general behavior, presence of pups, age class, gender, and reaction to launch noise, sonic booms or other natural or human-caused disturbances. Environmental conditions such as tide, wind speed, air temperature, and swell will also be recorded. Time-lapse photography or video will be used during daylight launches to document the behavior of mother-pup pairs during launch activities. For launches during the harbor seal pupping season (March through June), follow-up surveys will be made within two weeks of the launch to ensure that there were no adverse effects on any marine mammals. A report detailing the species, number of animals observed, behavior, reaction to the launch noise, time to return to the haul-out site, any adverse behavior and environmental conditions will be submitted to NMFS within 120 days of the launch.

Monitoring for the Northern Channel Islands

Monitoring will be conducted on the northern Channel Islands (San Miguel, Santa Cruz, and Santa Rosa Islands) whenever a sonic boom over 1.0 psf is predicted (using the most current sonic boom modeling programs) to impact one of the Islands. Monitoring will be conducted at the haul-out site closest to the predicted sonic boom impact area. Monitoring will be conducted by a NMFS-approved marine mammal biologist experienced in surveying large numbers of marine mammals. Monitoring will commence at least 72 hours prior to the launch and continue until at least 48 hours after the launch.

Monitoring will include multiple surveys each day that record the species, number of animals, general behavior, presence of pups, age class, gender, and reaction to launch noise, sonic booms or other natural or human-caused disturbances. Environmental conditions such as tide, wind speed, air temperature, and swell will also be recorded. Due to the large numbers of pinnipeds found on some beaches of SMI, smaller focal groups should be monitored in detail rather than the entire beach population. A general estimate of the entire beach population should be made once a day and their reaction to the launch noise noted. Photography or video will be used during daylight launches to document the behavior of mother-pup pairs or dependent pups during launch activities. During the pupping season of any species affected by a launch, follow-up surveys will be made within two weeks of the launch to ensure that there were no adverse effects on any marine mammals. A report detailing the species, number of animals observed, behavior, reaction to the launch noise, time to return to the haul-out site, any adverse behavior and environmental conditions will be submitted to NMFS within 120 days of the launch.

Reporting Requirements

A report containing the following information must be submitted to NMFS within 120 days after each launch: (1) Date(s) and time(s) of each launch, (2) date(s), location(s), and preliminary findings of any research activities related to monitoring the effects on launch noise and sonic booms on marine mammal populations, and (3) results of the monitoring programs, including but not necessarily limited to (a) numbers of pinnipeds present on the haul-out prior to commencement of the launch, (b) numbers of pinnipeds that may have been harassed as noted by the number of pinnipeds estimated to have entered the water as a result of launch noise, (c) the length of time(s) pinnipeds remained off the haul-out or rookery, (d) the numbers of pinniped adults or pups that may have been injured or killed as a result of the launch, and (4) any behavioral modifications by pinnipeds that likely were the result of launch noise or the sonic boom.

An annual report must be submitted no NMFS at the time of renewal of the LOA described in §216.127, that describes any incidental takings under an LOA not reported in the 120–day launch reports, such as the aircraft test program and helicopter operations and any assessments made of their impacts on hauled-out pinnipeds.

A final report must be submitted to NMFS no later than 180 days prior to expiration of these regulations. This report must summarize the findings made in all previous reports and assess both the impacts at each of the major rookeries and the cumulative impact on pinnipeds and any other marine mammals from Vandenberg activities.

Determinations

Based on the evidence provided in the application and this document, NMFS has preliminarily determined the requirements for authorizing the taking, by Level B harassment, of small numbers of marine mammals incidental to rocket and missile launch operations and aircraft overflights at VAFB have been satisfied. The total taking of marine mammals by Level B harassment from launch operations at VAFB over the period of these regulations will have no more than a negligible impact on affected marine mammal stocks. NMFS is assured that the space and missile test launch operations and aircraft overflights from VAFB off California will result, at worst, in temporary modifications in behavior by the affected pinnipeds and possible TTS in hearing of any pinnipeds that are in close proximity to a launch pad during launch. No take by injury and/or death is anticipated, and the potential for permanent hearing impairment is unlikely. NMFS has preliminarily determined that the requirements of section 101(a)(5)(A) of the MMPA have been met and the LOAs can be issued.

National Environmental Policy Act (NEPA)

The U.S. Air Force prepared an EA and issued a Finding of No Significant Impact in 1997, as part of its application for an incidental take authorization. NMFS is reviewing this EA and will prepare its own NEPA document before making a determination on the issuance of these regulations. A copy of the USAF 1997 EA for this activity is available upon request (see **ADDRESSES**).

Endangered Species Act (ESA)

Under section 7 of the ESA, NMFS has begun consultation on the proposed issuance of regulations under section 101(a)(5)(A) of the MMPA for this activity. Consultation will be concluded prior to promulgation of a final rule.

Coastal Zone Management Act Consistency

According to the USAF, it has received concurrence from the California Coastal Commission that the VAFB activities described in this document are consistent to the maximum extent practicable with the enforceable policies of the California Coastal Act.

Classification

This action has been determined to be not significant for purposes of Executive Order 12866.

The Chief Counsel for Regulation of the Department of Commerce has certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities since it would apply only to the 30th Space Wing, U.S. Air Force and would have no effect, directly or indirectly, on small businesses. It may affect a small number of contractors providing services on the base, some of which may be small businesses, but the number involved would not be substantial. Further, since the monitoring and reporting requirements are what would lead to the need for their services, the economic impact on them would be beneficial. Because of this certification, a regulatory flexibility analysis is not required and none has been prepared.

Information Solicited

NMFS requests interested persons to submit comments, information, and suggestions concerning the request and the structure and content of the regulations governing the taking. Because this document contains only a summary of the information provided in the documents available to the public (see **ADDRESSES**), commenters are requested to review these documents before submitting comments.

List of Subjects in 50 CFR Part 216

Exports, Fish, Imports, Indians, Labeling, Marine mammals, Penalties, Reporting and recordkeeping requirements, Seafood, Transportation.

Dated: November 21, 2003.

John Oliver,

Deputy Assistant Administrator for Operations, National Marine Fisheries Service.

For reasons set forth in the preamble, 50 CFR part 216 is proposed to be amended as follows:

PART 216—REGULATIONS GOVERNING THE TAKING AND IMPORTING OF MARINE MAMMALS

1. The authority citation for part 216 continues to read as follows:

Authority: 16 U.S.C. 1361 *et seq.*, unless otherwise noted.

2. In § 216.120, paragraph (a)(1) is revised to read as follows:

§ 216.120 Specified activity and specified geographical region.

(a) * * *

(1) Launching up to 30 space and missiles vehicles each year from Vandenberg Air Force Base, for a total of up to 150 missiles and rockets over the 5–year authorization period.

* * * * *

3. Section 216.121 is revised to read as follows:

§ 216.121 Effective dates.

Regulations in this subpart are effective from January 1, 2004, through December 31, 2008.

4. In 216.123, paragraph (c) and (d) are revised as follows:

§ 216.123 Prohibitions.

* * * * *

(c) No person in connection with the activities described in § 216.120 shall:

(1) Take any marine mammal not specified in § 216.120(b);

(2) Take any marine mammal specified in § 216.120(b) other than by incidental, unintentional harassment;

(3) Take a marine mammal specified in § 216.120(b) if such take results in more than a negligible impact on the species or stocks of such marine mammal; or

(d) Violate, or fail to comply with, the terms, conditions, and requirements of these regulations or a Letter of Authorization issued under § 216.106.

5. In § 216.124, paragraphs (a)(1)–(3) are revised to read as follows:

§ 216.124 Mitigation.

(a) * * *

(1) All aircraft and helicopter flight paths must maintain a minimum distance of 1,000 ft (305 m) from recognized seal haul-outs and rookeries (e.g., Point Sal, Purisima Point, Rocky Point), except in emergencies or for real-time security incidents (e.g., search-and-rescue, fire-fighting) which may require approaching pinniped rookeries closer than 1,000 ft (305 m).

(2) For missile and rocket launches, holders of Letters of Authorization must avoid, whenever possible, launches during the harbor seal pupping season of March through June, unless constrained by factors including, but not limited to, human safety, national security, or for space vehicle launch trajectory necessary to meet mission objectives.

(3) VAFB must avoid, whenever possible, launches which are predicted to produce a sonic boom on the Northern Channel Islands during harbor seal, elephant seal, and California sea lion pupping seasons, March through June.

* * * * *

6. In § 216.125, paragraphs (b) introductory text, (b)(2)–(b)(5) and (e) are revised and paragraphs (b)(6) and (b)(7) are added to read as follows:

§ 216.125 Requirements for monitoring and reporting.

* * * * *

(b) Holders of Letters of Authorization must designate qualified on-site individuals, approved in advance by the National Marine Fisheries Service, as specified in the Letter of Authorization, to:

* * * * *

(2) For launches during the harbor seal pupping season (March through June), conduct follow-up surveys within 2 weeks of the launch to ensure that there were no adverse effects on any marine mammals.

(3) Monitor haul-out sites on the Northern Channel Islands, if it is determined by modeling that a sonic boom of greater than 1 psf could occur in those areas (this determination will be made in consultation with the National Marine Fisheries Service).

(4) Investigate the potential for spontaneous abortion, disruption of effective female-neonate bonding, and other reproductive dysfunction,

(5) Supplement observations on Vandenberg and on the Northern Channel Islands with video-recording of mother-pup seal responses for daylight launches during the pupping season,

(6) Conduct acoustic measurements of those launch vehicles that have not had sound pressure level measurements made previously, and

(7) Include multiple surveys each day that record the species, number of animals, general behavior, presence of pups, age class, gender and reaction to launch noise, sonic booms or other natural or human caused disturbances, in addition to recording environmental conditions such as tide, wind speed, air temperature, and swell.

* * * * *

(e) An annual report must be submitted at the time of renewal of the LOA, described in § 216.127

* * * * *

7. Section 216.127 is revised to read as follows:

§ 216.127 Renewal of Letters of Authorization.

A Letter of Authorization issued under § 216.126 for the activity identified in § 216.120(a) will be renewed annually upon:

(a) Timely receipt of the reports required under § 216.125(d), if determined by the Assistant Administrator to be acceptable; and

(b) A determination that the mitigation measures required under § 216.124 and the Letter of Authorization have been undertaken.

8. Section 216.128 is revised to read as follows:

§ 216.128 Modifications of Letters of Authorization.

(a) In addition to complying with the provisions of § 216.106, except as provided in paragraph (b) of this section, no substantive modification, including withdrawal or suspension, to a Letter of Authorization subject to the provisions of this subpart shall be made until after notice and an opportunity for public comment.

(b) If the Assistant Administrator determines that an emergency exists that poses a significant risk to the well-being of the species or stocks of marine mammals specified in § 216.120 (b), a Letter of Authorization may be substantively modified without prior notice and opportunity for public comment. A notice will be published in the **Federal Register** subsequent to the action.

[FR Doc. 03–29828 Filed 12–2–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 600 and 697

[I.D. 110102A]

Atlantic Coastal Fisheries Cooperative Management Act Provisions; Atlantic Coast Weakfish Fishery; Exempted Fishing Permits (EFPs)

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of intent to issue EFPs to conduct experimental fishing; request for comments.

SUMMARY: NMFS announces that the Director, Office of Sustainable Fisheries, NMFS (Director) has received EFP applications from the State of North Carolina to continue work on the first year of a 2-year EFP issued in 2003. The State of North Carolina originally proposed conducting an experimental characterization study using flynets to fish for weakfish in a closed area of the exclusive economic zone (EEZ) south of Cape Hatteras, during 2003 and 2004. Study goals, however, were not met in that first year in 2003 due to poor weather conditions and insufficient availability of fish. Accordingly, the State of North Carolina has requested that they again be given 2 years to complete the study and that the study period be revised to cover the years 2004 and 2005.

DATES: Written comments on the applications must be received on or before December 18, 2003.

ADDRESSES: Send comments to John H. Dunnigan, Director, Office of Sustainable Fisheries (F/SF), NOAA Fisheries, 1315 East-West Highway, Silver Spring, MD 20910. The applications, related documents, including the draft EA, and copies of the regulations under which EFPs are issued may also be requested from this address.

FOR FURTHER INFORMATION CONTACT: Anne Lange 301–713–2334; FAX: 301–713- 0596.

SUPPLEMENTARY INFORMATION: The Director has made a preliminary determination that the EFP applications contain all the required information; that the activities to be authorized under the EFP would be consistent with the goals and objectives of the Atlantic weakfish fishery under the Atlantic Coastal Fisheries Cooperative Management Act (Atlantic Coastal Act); and that the applications warrant further consideration. This document requests public input in the form of written comments to NMFS relative to the issuance of EFPs to the State of North Carolina. If granted, these EFPs would authorize a flynet characterization study to be conducted by the North Carolina Division of Marine Fisheries (NCDMF) in a closed area south of Cape Hatteras. Two participating flynet vessels, each with its own EFP and observer aboard, would conduct up to a total of 18 trips per year over each of two seasons, from 15 January through 1 April, in 2004 and 2005, south of Cape Hatteras, for a maximum of 36 trips.

The NCDMF has presently applied for two EFPs in 2004 to conduct the first year of a 2-year characterization study in the closed area in the EEZ south of Cape Hatteras, North Carolina. The NCDMF previously applied, and was granted by NOAA Fisheries, two identical EFPs for 2003 to perform an identical study, but due to inclement weather and insufficient availability of fish, NCDMF was unable to conduct year one of their study in 2003. Hence, NCDMF is reapplying to again begin their study, but in 2004. The previous NCDMF application also sought, and was granted by NOAA Fisheries, a third EFP to test turtle excluder devices (TEDs) in the closed area. Unlike the work involved in the characterization study, NCDMF was able to conclude its testing of TEDs, and is presently analyzing the data gained. Accordingly NCDMF does not presently seek a third EFP, as it did last year, for TED testing.

NOAA Fisheries has authority to grant the requested EFPs under the Atlantic Coastal Fisheries Cooperative Management Act (Atlantic Coastal Act), 16 U.S.C. 5101 *et seq.*, and regulations at 50 CFR 697.22 concerning the conduct of activities that are otherwise prohibited by the regulations in this part. The prohibited activities for which NCDMF seeks exemption involve weakfish regulations at 50 CFR 697.7(a)(5) that prohibit any person from fishing with a flynet in the Exclusive Economic Zone (EEZ) off North Carolina in a closed area south of Cape Hatteras, as defined by this regulation. This area was closed to flynetters in order to reduce the harvest of the recovering weakfish stock, especially the harvest of juvenile weakfish known to congregate in the closed area. In addition, other prohibitions for which exemption is sought are at 50 CFR 697.7(a)(1) and (2), which prohibits fishing for, harvesting, possessing, or retaining weakfish less than 12 inches (30.5 cm), in the EEZ and at 50 CFR 697.7(a)(3), which prohibits fishing for weakfish coastwide in the EEZ with a minimum mesh size less than 3 1/4–inch (8.3 cm) square stretched mesh (as measured between the centers of opposite knots when stretched taut) or 3 3/4–inch (9.5 cm) diamond stretched mesh for trawls.

Previous Year's EFP

The present application by NCDMF for two EFPs to begin a characterization study is identical to the application for EFPs sought last year by NCDMF to perform this same study. Last year, on December 18, 2002, NMFS issued two EFPs to NCDMF to conduct a flynet characterization study, in cooperation with NMFS, with two flynet vessels using mesh at least as large as defined in the Atlantic States Marine Fisheries Commission's (Commission) Weakfish Fishery Management Plan Amendment 3 (Amendment 3), and at 50 CFR 697.7(a)(3), to collect information on the size and species composition of finfish caught in modified flynets in the closed area. Under last year's EFPs, the NCDMF was to assess the effects, including the species and size composition of the catch, of using larger mesh size nets in the North Carolina flynet fishery if it were to be allowed to resume operations south of Cape Hatteras. The mesh size used in the flynet fishery, prior to the 1997 closure of this area, was significantly smaller than is currently required. This information would have permitted NCDMF, the Commission, and NMFS to properly assess the potential impacts of reopening the closed area to flynets with larger minimum-mesh sizes after management goals have been met and the stock is declared to be restored. Additional terms of the study proposal related to sample design or address concerns raised by the Commission's Weakfish Fishery Management Board and its Technical Committee. The study was to terminate if any cumulative, monthly sample yields juvenile or undersized fish in excess of 10 percent of the total catch for that month. If an annual cap of 175,000 lbs (79,380 kg) on landings of weakfish taken south of Cape Hatteras is reached, the study would end for that year. Multiple tows made on a single trip were to be spatially separated by at least one (1) nautical mile to insure maximum geographic coverage and prevent directing effort on one specific school of fish. The entire contents of each tow on an individual trip were to be kept separate and processed separately at the dock. NMFS observers were to be required on each trip to monitor fishing activity and to record global positioning system coordinates for each tow, interactions with any threatened or endangered species, tow time, depth, water temperature, air temperature, date, and time. NMFS observers were to also record net dimensions and design specifications to document successful designs, if a net was found to effectively avoid catches of undersized fish. In order to determine the ability of these flynets to minimize bycatch of undersized fish, unculled catches were to be sorted by tow for species composition and weight by market category, and sub-samples would be

measured for length frequency. Regulatory discards, including sub-legal weakfish, and non-marketable species, were to be sorted, weighed and a sub-sample would be taken for length frequency. These fish were to be properly disposed of, and would not be sold. ESA and other protected species would have been handled as required by law; observers would have recorded and reported all discarded red drum and striped bass. The flynet characterization was to be terminated if takes (lethal or non-lethal) of loggerhead or Kemp's ridley sea turtles exceeded one half of the numbers (20 and 2) allowed in the Incidental Take Statement of the 1997 BO (that is, 10 or 1, in any one year). Further, analysis of the study data was to be coordinated by NCDMF and NMFS staff and the Commission was to be briefed through annual and final reports that would provide maps of the sample areas overlaid with the location of each tow, species encountered, total weights, numbers, and length frequency distributions of selected species. The final report was also to summarize the findings from each year and attempt to relate variability in catches and species composition with environmental variables. The report was also to summarize all interactions with sea turtles and include a discussion on the use of TEDs in the flynet fishery .

Newly Proposed EFP

Unfortunately, due to poor weather and insufficient availablity of fish, NCDMF was unable to complete its year one experiments in the 2-year study. Accordingly, NCDMF seeks to reapply for EFPs to conduct an identical two year characterization study under identical terms, this time for the 2004 and 2005 years. Specifically, the NCDMF proposes to complete the first year of the 2-year flynet characterization study using the same means and methods as described above for last year's EFP. The flynet characterization study would be conducted in a closed area south of Cape Hatteras by two participating flynet vessels, each with its own EFP and observer aboard, conducting up to a total of 18 trips per year over each of two seasons, from 15 January through 1 April, in 2004 and 2005, for a maximum of 36 trips.

The EFP would exempt up to three vessels from the requirements of the Atlantic weakfish regulations according to the provisions at 50 CFR 600.745 and 697.22, as follows: (1) prohibiting of the use of flynets in the closed area of the EEZ off North Carolina as defined at § 697.7(a)(5); and (2) fishing for, harvesting, possession or retention of any weakfish less than 12 inches (30.5 cm) in total length from the EEZ as specified at § 697.7(a)(1) and (2) for data collection purposes.

The environmental assessment prepared for the proposed flynet characterization study in 2003 found that no significant environmental impacts would result from the proposed action.

Dated: November 26, 2003.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 03–30136 Filed 12–2–03; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 031125290–3290–01; I.D. 111203D]

RIN 0648–AQ97

Fisheries Off West Coast States and in the Western Pacific; Coastal Pelagic Species Fisheries; Annual Specifications

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes a regulation to implement the annual harvest guideline for Pacific sardine in the U.S. exclusive economic zone off the Pacific coast for the fishing season January 1, 2004, through December 31, 2004. This harvest guideline has been calculated according to the regulations implementing the Coastal Pelagic Species (CPS) Fishery Management Plan (FMP) and establishes allowable harvest levels for Pacific sardine off the Pacific coast.

DATES: Comments must be received by December 17, 2003.

ADDRESSES: Send comments on the proposed rule to Rodney R. McInnis, Acting Administrator, Southwest Region, NMFS, 501-West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213. The report *Stock Assessment of Pacific Sardine with Management Recommendations for 2004* may be obtained at this same address. An environmental assessment/regulatory impact review/initial regulatory flexibility analysis (IRFA) for this proposed rule may be obtained at this same address.

FOR FURTHER INFORMATION CONTACT: Svein Fougner, Southwest Region, NMFS, 562–980–4040.

SUPPLEMENTARY INFORMATION: The FMP, which was implemented by publication of the final rule in the **Federal Register** on December 15, 1999 (64 FR 69888), divides management unit species into two categories: actively managed and monitored. Harvest guidelines for actively managed species (Pacific sardine and Pacific mackerel) are based on formulas applied to current biomass estimates. Biomass estimates are not calculated for species that are only monitored (jack mackerel, northern anchovy, and market squid).

At a public meeting each year, the biomass for each actively managed species is reviewed by the Pacific Fishery Management Council's (Council) Coastal Pelagic Species Management Team (Team). The biomass, harvest guideline, and status of the fisheries are then reviewed at a public meeting of the Council's CPS Advisory Subpanel (Subpanel). This information is also reviewed by the Council's Scientific and Statistical Committee

(SSC). The Council reviews reports from the Team, Subpanel, and SSC, and then, after providing time for public comment, makes its recommendation to NMFS. The annual harvest guideline and season structure are published by NMFS in the **Federal Register** as soon as practicable before the beginning of the appropriate fishing season. The Pacific sardine season begins on January 1 and ends on December 31 of each year.

The Team meeting took place at the Southwest Fisheries Science Center in La Jolla, CA on October 14, 2003. A public meeting between the Team and the Subpanel was held at the same location that afternoon. The Council reviewed the report at its November meeting in Del Mar, CA and heard comments from its advisory bodies and the public.

Public comments are requested on how the fishery might be conducted for the 2004 fishing season to achieve but not exceed the harvest guideline while minimizing impacts on the harvest of other CPS.

In view of the above, the following would be implemented for the January 1 through December 31, 2004, fishing season.

Based on a biomass estimate of 1,090,587 metric tons (mt)(in U.S. and Mexican waters), using the FMP formula, the harvest guideline for

Pacific sardine in U.S. waters for January 1, 2004, through December 31, 2004, is 122,747 mt. The biomass estimate is slightly higher than last year's biomass estimate; however, the difference between this year's biomass is not statistically significant from the biomass estimates of recent years. Therefore, the impacts of the fishery on the stock will be approximately the same as in the year prior. Similarly, the impacts of the fishery on other components of the environment will be similar to those in 2003.

Under the FMP, the harvest guideline is allocated one-third for Subarea A, which is north of 39° 00′ N. lat. (Pt. Arena, CA) to the Canadian border, and two-thirds for Subarea B, which is south of 39° 00′ N. lat. to the Mexican border. Under this proposed rule, the northern allocation for 2004 would be 40,916 mt; the southern allocation would be 81,831 mt. In 2003, the northern allocation was 36,969 mt and the southern allocation was 73,939 mt.

Normally, an incidental landing allowance of sardine in landings of other CPS is set at the beginning of the fishing season. The incidental allowance would become effective if the harvest guideline is reached and the fishery closed. A landing allowance of sardine up to 45 percent by weight of any landing of CPS is authorized by the FMP. An incidental allowance prevents waste of sardine caught while fishing for other species and protects fishermen from being cited for a violation when sardine occur in catches of other species, while controlling total sardine harvest by reducing the potential to target sardine while claiming to be fishing for other species. Sardine landed with other species also requires sorting at the processing plant, which adds to processing costs. Mixed species in the same load may damage smaller fish. The sardine population was estimated using a modified version of the integrated stock assessment model called Catch at Age Analysis of Sardine Two Area Model (CANSAR TAM). CANSAR-TAM is a forward-casting, age-structured analysis using fishery dependent and fishery independent data to obtain annual estimates of sardine abundance, year-class strength, and age-specific fishing mortality for 1983 through 2003. The CANSAR-TAM was modified to account for the expansion of the Pacific sardine stock northward to include waters off the northwest Pacific coast. Information on the fishery and the stock assessment are found in the report Stock Assessment of Pacific Sardine with Management Recommendations for 2004 (see **ADDRESSES**).

The formula in the FMP uses the following factors to determine the harvest guideline:

1. *The biomass of age one sardine and above.* For 2004, this estimate is 1,090,587 mt.

2. *The cutoff.* This is the biomass level below which no commercial fishery is allowed. The FMP established this level at 150,000 mt.

3. *The portion of the sardine biomass that is in U.S. waters.* For 2004, this estimate is 87 percent, based on the average of larval distribution obtained from scientific cruises and the distribution of the resource obtained from logbooks of fish-spotters.

4. *The harvest fraction.* This is the percentage of the biomass above 150,000 mt that may be harvested. The fraction used varies (5–15 percent) with current ocean temperatures. A higher fraction is used for warmer ocean temperatures, which favor the production of Pacific sardine, and a lower fraction is used for cooler temperatures. For 2004, the fraction was 15 percent based on three seasons of sea surface temperature at Scripps Pier, California.

As indicated above the harvest guideline for U.S. waters is allocated one-third (40,916 mt) to Subarea A, two-thirds (81,831 mt) to Subarea B.

Classification

These proposed specifications are issued under the authority of, and are in accordance with, the Magnuson-Stevens Fishery Conservation and Management Act, the FMP, and 50 CFR part 660, subpart I (the regulations implementing the FMP).

This proposed rule has been determined to be exempt for significant for purposes of Executive Order 12866.

NMFS prepared an IRFA that describes the economic impact this proposed rule, if adopted, would have on small entities. Specifically, NMFS is requesting that the public provide comments on the range of alternatives considered by NMFS and offer any additional alternatives that NMFS should consider for the Pacific sardine fishery. The IRFA is available from NMFS (see **ADDRESSES**). A summary of the IRFA follows:

A description of the action, why it is being considered, and the legal basis for this action are contained in the **SUMMARY** and in the **SUPPLEMENTARY INFORMATION** of this proposed rule. A harvest guideline is established by the FMP to limit harvests to levels that protect the resource while providing a source of revenue for the fishing industry and other benefits to society over the long term.

The harvest formula in the FMP is conservative and a significantly higher harvest than that allowed by the FMP could be realized without a detrimental effect on the resource, at least in the short term; this could provide substantial economic benefits to the fishing industry. However, there are both biological and economic reasons to restrain harvests. First, there is uncertainty about the effect of expanded harvests in the northern subarea; that fishery takes larger fish that may play an important role in maintenance of resource productivity. Research into the relationship of the northern and southern components is necessary before allowing higher harvests. Second, the harvest guideline derived by the current formula has provided sufficient resources in recent years to satisfy existing markets; therefore, there would not likely be a significant economic benefit from a higher harvest guideline. The best information available on the economics of the CPS fishery indicates that landings and revenue have increased steadily since recovery of the resource began and could increase in 2004 if additional markets were developed. However, landings in 2003 are projected to be similar to the landings in 2001 and 2002, suggesting that markets are saturated. Therefore, there would not likely be a significant increase in harvests even if more fish were made available. That is, there is little opportunity to increase revenue in 2004.

Implementing the 2003 harvest guideline and allocations (i.e., the no action alternative) would keep the fishery at 2003 levels. There would not be much difference between this alternative and the proposed action as the harvest guideline would be quite similar.

Implementing the new harvest guideline for 2004 without allocating to the different subareas would set up a derby fishery without regard to the allocation procedures in the FMP. The fisheries in Subarea A and in Subarea B could harvest without restriction. There would be a possibility that the fishery in the northern subarea would harvest sardine at a level that would result in either a shift of fishery benefits from south to north or an early closure of the coastwide fishery. There would be increased revenue in the north at the expense of the southern fishery. However, premature closure would also result in substantial idle purse seine capacity in the southern subarea, where the fishery has traditionally been more active in the fall and winter.

Setting a harvest guideline above that authorized by the FMP is conceivable if

the biomass and the harvest guideline were low and recruitment high. The harvest guideline is based on greater than age 1 plus sardine. If the biomass of sardine less than age 1 were known to be high, then some economic benefits would accrue to the fishing industry by allowing a harvest greater than that permitted by the formula in the FMP based on the premise that these fish are short-lived and should be harvested when available. If this situation occurred, economic benefits could be conferred on the fishing industry with the possibility of no negative biological impact. However, this approach faces two difficulties: (1) The higher the harvest is above that authorized by the FMP, the greater the potential for exacerbating a decline of the resource. The risk would be small at high biomass levels such as those of recent years, but as noted there is uncertainty, especially concerning the relationship between the northern and southern components of the stock. Further, there is no need for a higher harvest guideline at this time because, under the current approach, enough sardine has been available for harvest to satisfy existing market. (2) Such an approach (allowing higher harvests) would most likely be viewed favorably by industry if the biomass (and ensuing harvest guideline) were low and the fishery faced economic hardship from a lack of other fishing opportunities. In this situation, the potential for negative biological impacts is substantial. The uncertainty of the estimate of sardine less than age 1 is high. The estimates of biomass and/or recruitment could be high, but natural mortality is high, and how much biomass a zero age class will contribute to the biomass of the resource is uncertain. This increases the likelihood of negative biological impacts. In the final analysis, however, this alternative would have similar results as the proposed action. The proposed harvest guideline is at a level that allows maximum use by existing markets; therefore, there would not likely be significant benefits from a higher harvest guideline. If information on Pacific sardine became available that had not been previously considered indicating a risk of following the harvest formula in the FMP, a more conservative harvest guideline might be implemented to protect the resource. There is no such information at this time. The harvest formula in the FMP, however, sets a conservative harvest policy. Setting a harvest guideline lower than required by the FMP would not likely bestow significant biological benefits at current biomass levels.

In summary, there are no factors that would justify deviation from the harvest guideline formula and allocation approach of the FMP. The requirements of the FMP that specify a harvest guideline action based on scientific data and a formula in the FMP continue to be valid. Setting a harvest guideline less than the proposed harvest guideline could have significant economic impacts. A reasonable assumption is that the harvest guideline will be attained. At an ex-vessel price of $114/mt (2001–2002 average), this would yield revenue of $13.9 million. Every 10,000 mt reduction in landings would reduce revenue by $1.14 million. Setting a harvest guideline above the level derived could generate increased landings (though that is unlikely with current market conditions) but at an unacceptable level of risk of economic dislocation (if northern fisheries expanded too quickly) and ecological difficulties in the future (if the stock is less resilient than thought or the northern component of the stock is more important than is now known).

This proposed rule does not duplicate overlap, or conflict with other Federal rules. There are no reporting, recordkeeping, or other compliance requirements in the proposed rule.

Approximately 100 vessels participate in the CPS fishery off the U.S. West Coast. All of these vessels would be considered small businesses under the SBA standards. Therefore, there would be no economic impacts resulting from disproportionality between small and large vessels under the proposed action. A limited entry fishery occurs south of 39° N. Lat. A total of 65 vessels are permitted to participate in the limited entry fishery. An open access fishery exists north of 39° N. Lat. in which about 15 vessels participate. These are also small businesses. Vessels harvesting CPS for bait are also small businesses but are unregulated under the FMP.

Fisheries for Pacific sardine occur from Monterey, CA, south throughout the year and off Oregon and Washington in Summer. Since 2000, most of the CPS fleet has obtained an average of 30 percent of its total revenue from Pacific sardine. This has occurred during a period in which there has been an increase in demand for market squid, as well as new markets for sardine that developed since 2000. The average annual revenue from Pacific sardine has been $9.1 million (2002 dollars) during the last 3 years (2000 through 2002). This is the revenue the industry might expect on average given the amount of sardine available for harvest and market demand. As of October 14, 2003, 65,000 mt had been landed. Based on historical landings, landings may reach 90,000 mt, which is below the harvest guideline. Known factors that have influenced the landings in 2003 is an outbreak of domoic acid in California, which makes Pacific sardine unmarketable, and the availability of market squid in the summer, which provides higher revenue to the fishing industry than sardine. If the harvest guideline is reached during the 2004 fishing season, there will be an increase of $3.7 million in ex-vessel revenue above that of the 2003 fishing season. With a harvest guideline of 122,747 mt and an average ex-vessel price of $114.00 per ton, potential revenue could be $14.0 million. The harvest guideline for the 2003 fishing season was 110,908 mt; however, landings are expected to reach only 90,000 or 95,000 mt by December 31, 2003. Market demand has not supported increased harvests, for the reasons noted above. The proposed action will yield potentially higher revenue (about $3 million) from Pacific sardine than the current year if the full harvest guideline is taken and prices remain constant.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: November 26, 2003.

Rebecca Lent,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

[FR Doc. 03–30137 Filed 12–2–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[I.D. 112603A]

Pelagic Fisheries Managed Under the Fishery Management Plan, for the Pelagic Fisheries of the Western Pacific Region

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Supplemental Notice of Intent (NOI) to prepare a Supplemental Environmental Impact Statement (SEIS); Notice of compressed schedule under alternative procedures approved by the Council on Environmental Quality (CEQ).

SUMMARY: In an NOI published on October 17, 2003, the Western Pacific Fishery Management Council (Council) and NMFS announced their intent to prepare an SEIS in accordance with the National Environmental Policy Act of 1969 (NEPA) on the Federal management of pelagic fishery resources in the Western Pacific Region. The Council and NMFS supplement that NOI and now announce their intent to phase, upon completion of the public scoping period identified in the October 17, 2003 NOI, the SEIS and associated NEPA processes into two separate SEISs and two separate NEPA processes. The Council and NMFS also announce their intent to apply alternative procedures approved by the CEQ that will allow for expedited completion of one of the SEISs, specifically, on proposed management measures for the Hawaii-based longline fishery and it's potential impact on protected sea turtle populations. The remaining management issues identified in the public scoping process will be addressed in a separate SEIS made available for comment and review under normally applicable NEPA procedures. Notwithstanding these new intents, the public scoping process and schedule identified in the October 17, 2003, NOI, including the times and locations of public scoping meetings, remain in effect and apply to both NEPA processes identified above.

DATES: Written comments on the issues, priorities, range of alternatives, and impacts that should be discussed in either of the two SEISs must be received by December 15, 2003. See **SUPPLEMENTARY INFORMATION** for discussion on timing and dates associated with the alternative procedures. See the October 17, 2003 NOI for specific dates, times, and locations of the public scoping meetings.

ADDRESSES: Send written comments to Kitty Simonds, Executive Director, WPFMC, 1164 Bishop St. Suite 1400, Honolulu, HI 96813 or to Samuel Pooley, Acting Regional Administrator, NMFS, Pacific Islands Regional Office, 1601 Kapiolani Blvd., Suite 1110, Honolulu HI 96814. Comments may also be sent via facsimile (fax) to the Council at (808) 522–8228 or to the Pacific Islands Regional Office at (808) 973–2941. Comments must be received by December 15, 2003.

FOR FURTHER INFORMATION CONTACT: Kitty Simonds, Executive Director, WPFMC, (808) 522–8220 or Samuel Pooley, Acting Regional Administrator, NMFS, (808) 973–2937.

SUPPLEMENTARY INFORMATION: Under the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*), the United States has exclusive management authority over all living marine resources found within the Exclusive Economic Zone (EEZ). The management of these marine resources found within the EEZ with the exception of sea birds and some marine mammals, is vested in the Secretary of Commerce (Secretary). Eight Regional Fishery Management Councils prepare fishery management plans which are reviewed for approval and implementation by the Secretary. The Western Pacific Council has the responsibility to prepare fishery management plans for fishery resources in the EEZ of the Western Pacific Region.

The pelagic fisheries that occur in the EEZ and on the high seas of the Western Pacific Region have been managed under the Fishery Management Plan for the Pelagics Fisheries of the Western Pacific Region (FMP) and its amendments since 1986. Managed resources include both marketable (primarily billfish and tuna), and non-marketable (primarily sharks) species. Fisheries managed include pelagic longline, troll, handline, pole-and-line (bait boat), and charter boat fisheries. Management measures employed include gear restrictions, vessel size limitations, time and area closures, access limitations and other measures.

The largest fishery managed under the FMP is the Hawaii-based, limited-access pelagic longline fishery. Regulations imposed on this fishery in 2001 eliminated the "shallow set" component of this fishery that targeted swordfish. The remaining component of this fishery is a "deep set" tuna-targeting fishery. On August 31, 2003, the Memorandum Opinion issued in *Hawaii Longline Assoc.* v. *NMFS* (D. D.C., Civ No. 01–765), invalidated the June 12, 2002 (67 FR 40232) rules as well as the November 15, 2002, Biological Opinion for Pelagic Fisheries of the Western Pacific and the associated incidental take statement. On October 6, 2003, the Court stayed the August 31, 2003 Order, and reinstated the regulations and BiOp until April 1, 2004 (D.D.C. Civ No. 01–0765).

The October 17, 2003, NOI (68 FR. 59771) highlighted a number of issues concerning pelagic fisheries management in the Western Pacific Region. Particular issues mentioned included pelagic longline fisheries interactions with protected species, billfish-related issues, fish aggregation devices, and an emerging industrial-scale squid fishery. However, as a result of Court orders affecting management of the fishery, the Council and NMFS are considering management measures and regulations that must be in place by April 1, 2004.

Consequently, two SEISs, both supplementing the March 30, 2001 Final EIS on the Fishery Management Plan for Pelagic Fisheries of the Western Pacific Region, will be developed. The SEIS being developed under alternative procedures will address the Hawaii-based longline fishery and it's potential impact on endangered and threatened sea turtle populations. The other issues mentioned in the October 17, 2003, NOI, such as seabird interactions, billfish-related issues, fish aggregation devices, and industrial-scale squid fishing, will be addressed in a separate SEIS prepared in accord with standard NEPA procedures.

Without compressing the schedule, the agency is not able to comply with prescribed time periods required by NEPA. Specifically, based on a schedule accommodating all regulatory requirements, the agency is not able to provide the full public comment period of 45 days for a draft SEIS (40 CFR 1506.10(2)(d)), or the full review period for the final SEIS prior to the agency decision (40 CFR 1506.10(b)(1–2)).

Consequently, NMFS proposed alternative procedures to CEQ. As a matter of practice, the CEQ looks at three factors in the context of requests for alternative procedures for a SEIS(s): (a) Whether the agency can show that it faces extremely difficult timing considerations that it could not have reasonably foreseen; (b) whether considerations of reflected national policy concerns outweigh any burden to the public caused by a deviation from the normal process; and (c) whether the agency is committed to providing effective alternative means for insuring public and agency review. NMFS satisfied the CEQ's criteria for alternative procedures and on November 20, 2003, the CEQ approved NMFS's request. The alternative procedures include that the standard 45-day public comment period for the SEIS will be shortened to 30 days, and the standard 30-day review period between the final SEIS and the agency's Record of Decision may be reduced by as much as 26 days.

As part of the alternative procedures for public input, the Council and NMFS have coordinated several opportunities for public involvement in the NEPA process. Examples include public scoping meetings conducted throughout the Western Pacific Region from October 21, 2003 through December 4, 2003. In addition, opportunities for public involvement and comment have been solicited at several meetings, including the 119th Council meeting, 120th Council meeting, the 121st Council meeting, and at a series of public

meetings convened by the Council's Sea Turtle Conservation Special Advisory Committee.

The SEIS will analyze, among other things, additional alternatives that include an abolition or modification to the southern area closure; the restoration of the swordfish fishery at some reduced level; mitigation measures such as circle hooks and mackerel bait known to reduce interaction rates of sea turtles with longline gear; international conservation measures to increase sea turtle recruitment; and an analysis on the potential impact of such alternatives on the continued existence of endangered and threatened sea turtles.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: November 26, 2003.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 03–30135 Filed 12–2–03; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 031124287–3287–01; I.D. 111703C]

Fisheries of the Exclusive Economic Zone Off Alaska; Bering Sea and Aleutian Islands; Proposed 2004 Harvest Specifications for Groundfish

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed 2004 harvest specifications for groundfish; apportionment of Reserves; request for comments.

SUMMARY: NMFS proposes 2004 harvest specifications and prohibited species catch (PSC) allowances for the groundfish fishery of the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to establish harvest limits for groundfish during the 2004 fishing year and to accomplish the goals and objectives of the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP). The intended effect of this action is to conserve and manage the groundfish resources in the BSAI.

DATES: Comments must be received by January 2, 2004.

ADDRESSES: Comments may be sent to Sue Salveson, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region, National Marine Fisheries Service, P.O. Box 21668, Juneau, AK 99802–1668, Attn: Lori Durall, or delivered to room 401 of the Federal Building, 709 West 9th Street, Juneau, AK. Comments also may be sent via facsimile (fax) to 907–586–7557. Comments will not be accepted if submitted via e-mail or Internet.

Copies of the draft Environmental Assessment/Initial Regulatory Flexibility Analysis (EA/IRFA) prepared for this action are available from NMFS (*see* **ADDRESSES**) and comments must be received by January 2, 2004. Copies of the final 2002 Stock Assessment and Fishery Evaluation (SAFE) report, dated November 2002, are available from the North Pacific Fishery Management Council, West 4th Avenue, Suite 306, Anchorage, AK 99510–2252 (907–271–2809), or from its homepage at *http://www.fakr.noaa.gov/npfmc*.

FOR FURTHER INFORMATION CONTACT: Mary Furuness, 907–586–7228 or e-mail at *mary.furuness@noaa.gov*.

SUPPLEMENTARY INFORMATION:

Background for the 2004 Proposed Harvest Specifications

Groundfish fisheries in the BSAI are governed by Federal regulations at 50 CFR part 679 that implement the FMP. The Council prepared the FMP and NMFS approved it under the Magnuson-Stevens Fishery Conservation and Management Act. General regulations governing U.S. fisheries also appear at 50 CFR part 600.

The FMP and its implementing regulations require NMFS, after consultation with the Council, to specify annually the total allowable catch (TAC) for each target species and the "other species" category, the sum of which must be within the optimum yield range of 1.4 million to 2.0 million metric tons (mt) (*see* § 679.20(a)(1)(i)). Regulations at § 679.20(c)(1) further require NMFS to solicit public comment on proposed annual TACs and apportionments thereof, PSC allowances and prohibited species quota (PSQ) reserves established by § 679.21, seasonal allowances of pollock TAC, including pollock Community Development Quota (CDQ), and CDQ reserve amounts established by § 679.20(b)(1)(iii) and to publish proposed specifications in the **Federal Register**. The proposed specifications set forth in Tables 1 through 13 of this action satisfy these requirements. For 2004, the proposed sum of TACs is 1,998,443 mt.

Under § 679.20(c)(3), NMFS will publish the final annual specifications for 2004 after (1) considering comments received within the comment period (see DATES), (2) consulting with the Council, which will occur at its next meeting beginning the week of December 8, 2003, and (3) considering new information presented in the EA and the final 2003 SAFE reports prepared for the 2004 groundfish fisheries.

With some exceptions, regulations at § 679.20(c)(2)(ii) require that one-fourth of each proposed initial TAC (ITAC) amount and apportionment thereof, one-fourth of each CDQ reserve established under § 679.20(b)(1)(iii), and one-fourth of each proposed PSC allowance established under § 679.21, become available at 0001 hours, Alaska local time (A.l.t.), January 1, on an interim basis and remain in effect until superseded by the final specifications. Regulations at § 679.20(c)(2)(ii) (A) and (B) require that the proposed first seasonal allowance of non-CDQ and CDQ pollock, Pacific cod and Atka mackerel becomes available at 0001 hours, A.l.t., January 1 on an interim basis and remains in effect until superseded by the final specifications. Regulations at § 679.20(c)(2)(ii) do not provide for an interim specification for either the hook-and-line and pot gear sablefish CDQ reserve or for sablefish managed under the Individual Fishing Quota (IFQ) program. Interim TAC specifications and apportionments thereof for the 2004 fishing year will be published in a separate **Federal Register** notice.

Other Rules Affecting the 2004 Specifications

In October 2003, the Council discussed Aleutian Islands pollock fishery management, but made no recommendation to close or open the fishery in 2004. The Council set the proposed Aleutian Islands pollock TAC at 2003 amounts, which is for incidental catch only. The Council may consider apportionment of the TAC of several rockfish species in the Aleutian Islands subarea among the Eastern, Central, and Western Aleutian Districts and separating the shortraker and rougheye rockfish TAC.

Amendment 77 to the FMP, approved by the Secretary of Commerce on October 20, 2003, provides for apportioning the BSAI Pacific cod TAC among hook-and-line and pot gears sector. Table 4 lists the proposed 2004 allocations and seasonal apportionments of the Pacific cod ITAC based on regulations that would implement Amendment 77. For more information on Amendment 77, see the proposed rule at 68 FR 49416, August 18, 2003. A final rule implementing Amendment 77 was published on December 1, 2003 68 FR 67056 and will be effective by January 1, 2004.

Proposed Acceptable Biological Catch (ABC) and TAC Specifications

The proposed ABC levels are based on the best available biological and socioeconomic information, including projected biomass trends, information on assumed distribution of stock biomass, and revised technical methods used to calculate stock biomass. In general, the development of ABCs and overfishing levels (OFLs) involves sophisticated statistical analyses of fish populations and is based on a successive series of 6 levels, or tiers, of reliable information available to fishery scientists.

The best information currently available is set forth in Appendix A of the final SAFE report for the 2003 BSAI groundfish fisheries dated November 2002 (*see* **ADDRESSES**). Information on the status of stocks will be updated with the 2003 survey results and reconsidered by the Plan Team in November 2003 for the 2003 SAFE reports. The final harvest specifications will be based on the 2003 SAFE reports.

In October 2003, the Scientific and Statistical Committee (SSC), Advisory Panel (AP), and Council reviewed the Plan Team's preliminary recommendations to project 2003 biomass amounts, as identified in the 2002 SAFE, for the proposed 2004 ABC, OFL, and TAC amounts. The SSC concurred with the Plan Team's recommendations, which estimates the proposed ABCs and OFLs by using a projection of 2003 groundfish harvest with the November 2002 SAFE report model projections of 2003 ABCs for groundfish stocks managed at tiers 1–3. The Council adopted the OFL and ABC amounts recommended by the SSC (Table 1). The Council also adopted the AP's recommendation that the 2004 proposed TACs be set equal to the 2003 TACs, except for sablefish, Pacific ocean perch, and Atka mackerel. Recognizing anticipated changes in the ABCs for these species, the AP recommended and the Council adopted a decrease in the TACs for sablefish, Pacific ocean perch, and Atka mackerel. The Council adopted the AP's recommendation to use the 2003 PSC allowances for 2004. The Council will reconsider these amounts in December 2003, after the Plan Team incorporates new status of stocks information into a final SAFE report for the 2004 BSAI groundfish fishery. None of the Council's TAC recommendations for 2004 exceed the recommended ABC for any species category. Therefore, NMFS finds that the Council's recommendations for proposed 2004 OFLs, ABCs, and TACs are consistent with the best available information on the biological condition of the groundfish stocks.

Table 1 lists the proposed 2004 OFL, ABC, and TAC amounts for groundfish in the BSAI. The proposed apportionment of TAC amounts among fisheries and seasons is discussed below.

TABLE 1.—PROPOSED 2004 ACCEPTABLE BIOLOGICAL CATCH (ABC), TOTAL ALLOWABLE CATCH (TAC), INITIAL TAC (ITAC), CDQ RESERVE ALLOCATION, AND OVERFISHING LEVELS OF GROUNDFISH IN THE BERING SEA AND ALEUTIAN ISLANDS AREA (BSAI) [1]

[All amounts are in metric tons]

Species and area	Overfishing level	ABC	TAC	ITAC [2]	CDQ reserve [3]
Pollock: [4]					
Bering Sea (BS) [2]	2,636,000	2,127,700	1,491,760	1,342,584	149,176
Aleutian Islands (AI) [2]	52,600	39,400	1,000	1,000	
Bogoslof District	45,300	4,070	50	50	
Pacific cod: BSAI	359,000	245,000	207,500	176,375	15,563
Sablefish: [5]					
BS	3,818	2,658	2,658	1,131	265
AI	4,082	2,842	2,842	603	431
Atka mackerel:					
BSAI	104,100	61,600	59,111	50,244	4,433
Western AI		22,479	19,990	16,992	1,499
Central AI		28,708	28,708	24,402	2,153
Eastern AI/BS		10,413	10,413	8,851	781
Yellowfin sole: BSAI	130,000	109,600	83,750	71,188	6,281
Rock sole: BSAI	119,400	99,900	44,000	37,400	3,300
Greenland turbot:					
BSAI	16,755	6,900	4,000	3,400	300
BS		4,600	2,680	2,278	201
AI		2,300	1,320	1,122	99
Arrowtooth flounder: BSAI	175,800	142,200	12,000	10,200	900
Flathead sole: BSAI	74,100	61,100	20,000	17,000	1,500
Other flatfish: [6] BSAI	21,400	16,000	3,000	2,550	225
Alaska plaice: BSAI	166,300	138,200	10,000	8,500	750
Pacific ocean perch:					
BSAI	17,600	14,900	13,932	11,842	1,045
BS		2,378	1,410	1,199	106
Western AI		5,773	5,773	4,907	433
Central AI		3,296	3,296	2,802	247
Eastern AI		3,454	3,454	2,936	259
Northern rockfish:					
BSAI	9,468	7,101			
BS			121	103	9
AI			5,879	4,997	441
Shortraker/rougheye:					
BSAI	1,289	967			
BS			137	116	10

TABLE 1.—PROPOSED 2004 ACCEPTABLE BIOLOGICAL CATCH (ABC), TOTAL ALLOWABLE CATCH (TAC), INITIAL TAC (ITAC), CDQ RESERVE ALLOCATION, AND OVERFISHING LEVELS OF GROUNDFISH IN THE BERING SEA AND ALEUTIAN ISLANDS AREA (BSAI) [1]—Continued

[All amounts are in metric tons]

Species and area	Overfishing level	ABC	TAC	ITAC [2]	CDQ reserve [3]
AI			830	706	62
Other rockfish: [7]					
BS	1,280	960	960	816	72
AI	846	634	634	539	48
Squid: BSAI	2,620	1,970	1,970	1,675	
Other species: [8] BSAI	81,100	43,300	32,309	27,463	2,423
Total	4,002,858	3,127,003	1,998,443	1,770,482	187,225

[1] These amounts apply to the entire BSAI management area unless otherwise specified. With the exception of pollock, and for the purpose of these specifications, the Bering Sea (BS) subarea includes the Bogoslof District.

[2] Except for pollock and the portion of the sablefish TAC allocated to hook-and-line and pot gear, 15 percent of each TAC is put into a reserve. The ITAC for each species is the remainder of the TAC after the subtraction of these reserves. The Aleutian Islands (AI) subarea and the Bogoslof District are closed to directed fishing for pollock. The amounts specified are for incidental catch amounts only, and are not apportioned by season, sector or put into a reserve.

[3] Except for pollock and the hook-and-line or pot gear allocation of sablefish, one half of the amount of the TACs placed in reserve, or 7.5 percent of the TACs, is designated as a CDQ reserve for use by CDQ participants (see §§ 679.20(b)(1)(iii) and 679.31).

[4] The American Fisheries Act (AFA), § 679.20(a)(5)(i)(A)(*7*), requires that 10 percent of the annual pollock TAC be allocated as a directed fishing allowance for the CDQ sector. NMFS then subtracts 3.5 percent of the remainder as an incidental catch allowance for pollock, which is not apportioned by season or area. The remainder of the TAC is further allocated by sector as follows: inshore—50 percent; catcher/processor—40 percent; and motherships—10 percent.

[5] Regulations at § 679.20(b)(1) do not provide for the establishment of an ITAC for the hook-and-line and pot gear allocation for sablefish. The ITAC for sablefish reflected in Table 1 is for trawl gear only. Twenty percent of the sablefish TAC allocated to hook-and-line gear or pot gear is reserved for use by CDQ participants (see § 679.20(b)(1)(iii)).

[6] "Other flatfish" includes all flatfish species, except for Pacific halibut (a prohibited species), flathead sole, Greenland turbot, rock sole, yellowfin sole, arrowtooth flounder and Alaska plaice.

[7] "Other rockfish" includes all *Sebastes* and *Sebastolobus* species except for Pacific ocean perch, northern, shortraker, and rougheye rockfish.

[8] "Other species" includes sculpins, sharks, skates and octopus. Forage fish, as defined at § 679.2, are not included in the "other species" category.

Reserves and the Incidental Catch Allowance (ICA) for Pollock

Regulations at § 679.20(b)(1)(i) require that 15 percent of the TAC for each target species or species group, except for pollock and the hook-and-line and pot gear allocation of sablefish, be placed in a non-specified reserve. Regulations at § 679.20(b)(1)(iii) require that one half of each TAC amount placed in the non-specified reserve (7.5 percent), with the exception of squid, be allocated to the groundfish CDQ reserve and that 20 percent of the hook-and-line and pot gear allocation of sablefish be allocated to the fixed gear sablefish CDQ reserve. Regulations at § 679.20(a)(5)(i)(A) specify how the pollock TAC apportioned to the Bering Sea Subarea, after subtraction of the 10 percent CDQ reserve under § 679.31(a), will be allocated. With the exception of the hook-and-line and pot gear sablefish CDQ reserve, the CDQ reserves are not further apportioned by gear. Regulations at § 679.21(e)(1)(i) also require that 7.5 percent of each PSC limit, with the exception of herring, be withheld as a PSQ reserve for the CDQ fisheries. Regulations governing the management of the CDQ and PSQ reserves are set forth at §§ 679.30 and 679.31.

Under § 679.20(a)(5)(i)(A)(*1*), NMFS allocates a pollock ICA of 3.5 percent of the pollock TAC after subtraction of the 10 percent CDQ reserve. This allowance is based on an examination of the incidental catch of pollock in non-pollock target fisheries from 1998 through 2003. During this 6-year period, the incidental catch of pollock ranged from a low of 2 percent in 2003, to a high of 5 percent in 1999, with a 6-year average of 3 percent. Because these incidental percentages are contingent on the relative amounts of other groundfish TACs, NMFS will be better able to assess the ICA amount when the Council makes final ABC and TAC amount recommendations in December.

The remainder of the non-specified reserve is not designated by species or species group, and any amount of the reserve may be reapportioned to a target species or the "other species" category during the year, providing that such reapportionments do not result in overfishing, see § 679.20(b)(1)(ii).

Pollock Allocations Under the American Fisheries Act (AFA)

Regulations at § 679.20(a)(5)(i)(A)(*1*) require that 10 percent of the BSAI pollock TAC be allocated as a directed fishing allowance to the CDQ program. The remainder of the BSAI pollock TAC, after the subtraction of an allowance for the incidental catch of pollock by vessels, including CDQ vessels, harvesting other groundfish species, is allocated as follows: 50 percent to catcher vessels harvesting pollock for processing by the inshore component, 40 percent to catcher/processors and catcher vessels harvesting pollock for processing by catcher/processors in the offshore component, and 10 percent to catcher vessels harvesting pollock for processing by motherships in the offshore component. These proposed amounts are listed in Table 2.

The AFA also contains several specific requirements concerning pollock and pollock allocations under § 679.20(a)(5)(i)(A)(*4*). First, 8.5 percent of the pollock allocated to the offshore AFA catcher/processor sector will be available for harvest by AFA catcher vessels with offshore sector endorsements, unless the Regional Administrator receives a cooperative contract that provides for the distribution of harvest between catcher/processors and catcher vessels in a manner agreed to by all members. Second, AFA catcher/processors not listed in the AFA are limited to harvesting not more than 0.5 percent of the pollock allocated to the catcher/processor sector. Table 2 lists the proposed 2004 allocations of pollock TAC as prescribed by the AFA. Other provisions of the AFA, including inshore pollock cooperative allocations and listed catcher/processor and catcher vessel harvesting sideboard limits, are found in Tables 8 through 13.

Table 2 also lists seasonal apportionments of pollock and harvest limits within the Steller Sea Lion Conservation Area (SCA). The harvest within the SCA, as defined at § 679.22(a)(7)(vii), is limited to 28 percent of the annual directed fishing allowance (DFA) until April 1. The remaining 12 percent of the annual DFA allocated to the A season may be taken outside of the SCA before April 1 or inside the SCA after April 1. If the 28 percent of the annual DFA is not taken inside the SCA before April 1, the remainder is available to be taken inside the SCA after April 1. The A season pollock SCA harvest limit will be apportioned to each industry sector in proportion to each sector's allocated percentage of the DFA as set forth in the AFA. These proposed amounts, by sector, are listed in Table 2.

TABLE 2.—PROPOSED 2004 ALLOCATIONS OF THE POLLOCK TAC AND DIRECTED FISHING ALLOWANCE (DFA) TO THE INSHORE, CATCHER/PROCESSOR, MOTHERSHIP, AND CDQ COMPONENTS [1]

[All amounts are in metric tons]

Area and sector	2004 allocations	A season [1]		B season [1]
		A season DFA (40% of annual DFA)	SCA harvest limit [2]	B season DFA (60% of annual DFA)
Bering Sea subarea	1,491,760			
CDQ	149,176	59,670	41,769	89,506
ICA [1]	46,990			
AFA Inshore	647,797	259,119	181,383	388,678
AFA Catcher/Processors [4]	518,237	207,295	145,106	310,942
Catch by C/Ps	474,187	189,675		284,512
Catch by CVs [4]	44,050	17,620		26,430
Unlisted C/P Limit [5]	2,591	1,036		1,555
AFA Motherships	129,559	51,824	36,277	77,736
Excessive Harvesting Limit [6]	226,729			
Excessive Processing Limit [7]	388,678			
Total Bering Sea DFA	1,491,760	577,908	404,535	866,862
Aleutian Islands ICA [8]	1,000			
Bogoslof District ICA [8]	50			

[1] Under § 679.20(a)(5)(i)(A), after subtraction for the CDQ reserve—10 percent and the ICA—3.5 percent, the pollock TAC is allocated as a DFA as follows: inshore component—50 percent, catcher/processor component—40 percent, and mothership component—10 percent. The A season, January 20–June 10, is allocated 40 percent of the DFA and the B season, June 10–November 1 is allocated 60 percent of the DFA.

[2] No more than 28 percent of each sector's annual DFA may be taken from the SCA before April 1. The remaining 12 percent of the annual DFA allocated to the A season may be taken outside of SCA before April 1 or inside the SCA after April 1. If 28 percent of the annual DFA is not taken inside the SCA before April 1, the remainder is available to be taken inside the SCA after April 1.

[4] Under § 679.20(a)(5)(i)(A)(*4*), not less than 8.5 percent of the DFA allocated to listed catcher/processors (C/Ps) shall be available for harvest only by eligible catcher vessels (CVs) delivering to listed catcher/processors.

[5] Under § 679.20(a)(5)(i)(A)(*4*)(*iii*), the AFA unlisted catcher/processors are limited from exceeding a harvest amount of 0.5 percent of the DFA allocated to the AFA catcher/processors sector.

[6] Regulations at § 679.20(a)(5)(i)(A)(*6*) require that NMFS establish an excessive harvesting share limit equal to 17.5 percent of the sum of the pollock DFAs.

[7] Regulations at § 679.20(a)(5)(i)(A)(*7*) require that NMFS establish an excessive processing share limit equal to 30.0 percent of the sum of the pollock DFAs.

[8] The Aleutian Islands subarea and the Bogoslof District are closed by the proposed specifications to directed fishing for pollock. The amounts specified are for incidental catch amounts only, and are not apportioned by season or sector.

Allocation of the Atka Mackerel TAC

Under § 679.20(a)(8)(i), up to 2 percent of the Eastern Aleutian District and the Bering Sea subarea Atka mackerel ITAC may be allocated to the jig gear fleet. The amount of this allocation is determined annually by the Council based on several criteria, including the anticipated harvest capacity of the jig gear fleet. The Council recommended and NMFS proposes that 1 percent of the Atka mackerel ITAC in the Eastern Aleutian District and the Bering Sea subarea be allocated to the jig gear fleet in 2004. Based on an ITAC of 8,851 mt, the jig gear allocation is 89 mt.

Regulations implementing Steller sea lion protection measures at § 679.20(a)(8)(ii)(A) apportion the Atka mackerel ITAC into two equal seasonal allowances. After subtraction of the jig gear allocation, the first allowance is made available for directed fishing from January 1 to April 15 (A season), and the second seasonal allowance is made available from September 1 to November 1 (B season)(Table 3).

Under § 679.20(a)(8)(ii)(C)(*1*), the Regional Administrator will establish a harvest limit area (HLA) limit of no more than 60 percent of the seasonal TAC for the Western and Central Aleutian Districts. A lottery system is used for the HLA Atka mackerel directed fisheries to reduce the amount of daily catch in the HLA by about half and to disperse the fishery over two areas, *see* § 679.20(a)(8)(iii).

TABLE 3.—PROPOSED 2004 SEASONAL AND SPATIAL ALLOWANCES, GEAR SHARES, AND CDQ RESERVE OF THE BSAI ATKA MACKEREL TAC[1]

[All amounts are in metric tons]

Subarea and component	TAC	CDQ reserve	ITAC	Seasonal allowances[2]			
				A season[3]		B season[3]	
				Total	HLA limit[4]	Total	HLA limit[4]
Western Aleutian District	19,990	1,499	16,992	8,496	5,097	8,496	5,097
Central Aleutian District	28,708	2,153	24,402	12,201	7,321	12,201	7,321
Eastern AI/BS subarea[5]	10,413	781	8,851				
Jig (1%)[6]			89				
Other gear (99%)			8,763	4,381		4,381	
Total	59,111	4,433	50,244	25,078		25,078	

[1] Regulations at §§ 679.20(a)(8)(ii) and 679.22(a) establish temporal and spatial limitations for the Atka mackerel fishery.
[2] The seasonal allowances of Atka mackerel are 50 percent in the A season and 50 percent in the B season.
[3] The A season is January 1 to April 15 and the B season is September 1 to November 1.
[4] Harvest Limit Area (HLA) limit refers to the amount of each seasonal allowance that is available for fishing inside the HLA (see § 679.2). In 2004, 60 percent of each seasonal allowance is available for fishing inside the HLA in the Western and Central Aleutian Districts.
[5] Eastern Aleutian District and the Bering Sea subarea.
[6] Regulations at § 679.20(a)(8)(i) require that up to 2 percent of the Eastern Aleutian District and the Bering Sea subarea ITAC be allocated to the jig gear fleet. The proposed amount of this allocation is 1 percent. The jig gear allocation is not apportioned by season.

Allocation of the Pacific Cod TAC

Under § 679.20(a)(7)(i)(A), 2 percent of the Pacific cod ITAC is allocated to vessels using jig gear, 51 percent to vessels using hook-and-line or pot gear, and 47 percent to vessels using trawl gear. Under regulations at § 679.20(a)(7)(i)(B), the portion of the Pacific cod TAC allocated to trawl gear is further allocated 50 percent to catcher vessels and 50 percent to catcher/processors. Under regulations at § 679.20(a)(7)(i)(C)(1), a portion of the Pacific cod allocated to hook-and-line or pot gear is set aside as an ICA of Pacific cod in directed fisheries for groundfish using these gear types. Based on anticipated incidental catch in these fisheries, NMFS proposes an ICA of 500 mt. The remainder of Pacific cod is further allocated to vessels using hook-and-line or pot gear as the following DFAs: 80 percent to hook-and-line catcher/processors, 0.3 percent to hook-and-line catcher vessels, 18.3 percent to pot gear vessels, and 1.4 percent to catcher vessels under 60 feet (18.3 m) length overall (LOA) using hook-and-line or pot gear. The final rule implementing Amendment 77 will split the pot gear sector share of the DFA: 3.3 percent to pot catcher/processors and 15 percent to pot catcher vessels. A final rule implementing Amendment 77 was published on December 1, 2003 68 FR 67086 and will be effective by January 1, 2004.

Due to concerns about the potential impact of the Pacific cod fishery on Steller sea lions and their critical habitat, the Pacific cod fisheries are dispersed by the apportionment of the ITAC into seasonal allowances (*see* §§ 679.20(a)(7)(iii) and 679.23(e)(5)). For most non-trawl gear the first seasonal allowance, 60 percent of the ITAC, is made available for directed fishing from January 1 to June 10, and the second seasonal allowance, 40 percent of the ITAC, is made available from June 10 to December 31. The regulations implementing Amendment 77 will establish three seasonal allowances for jig gear: the first seasonal allowance, 40 percent of the ITAC, is January 1 to April 30; the second seasonal allowance, 20 percent of the ITAC, is April 1 to August 31; and the third seasonal allowance, 40 percent of the ITAC, is August 31 to December 31. Amendment 77 will also allow the reallocation of any projected unused portion of a seasonal allowance of Pacific cod for vessels using jig gear to catcher vessels less than 60 ft (18.3 m) LOA using hook-and-line or pot gear. No seasonal harvest constraints are imposed on the Pacific cod fishery prosecuted by catcher vessels less than 60 feet (18.3 m) LOA using hook-and-line or pot gear. For trawl gear, the first season is January 20 to April 1 and is allocated 60 percent of the ITAC; the second season, April 1 to June 10, and the third season, June 10 to November 1, are each allocated 20 percent of the ITAC. The trawl catcher vessel allocation is further allocated as 70 percent in the first season, 10 percent in the second season and 20 percent in the third season. The trawl catcher/processor allocation is allocated 50 percent in the first season, 30 percent in the second season, and 20 percent in the third season. Table 4 lists the proposed 2004 allocations and seasonal apportionments of the Pacific cod ITAC. NMFS and the Council propose that any unused portion of a seasonal Pacific cod allowance will become available at the beginning of the next seasonal allowance.

TABLE 4.—PROPOSED 2004 GEAR SHARES AND SEASONAL ALLOWANCES OF THE BSAI PACIFIC COD TAC

Gear sector	Percent	Share of sector gear total (mt)	Subtotal percentages for gear sectors	Share of gear sector total (mt)	Seasonal apportionment[1]	
					Date	Amount (mt)
Total hook-and-line and pot gear allocation of Pacific cod TAC.	51	89,951				
Incidental Catch Allowance				500		
Processor and Vessel sub-total		89,451				
Hook-and-line Catcher/Processors			80	71,561	Jan 1–Jun 10	42,937
					Jun 10–Dec 31	28,624
Hook-and-Line Catcher Vessels			0.3	268	Jan 1–Jun 10	161
					Jun 10–Dec 31	107
Pot Catcher/Processors			3.3	2,952	Jan 1–Jun 10	1,771
					Sept 1–Dec 31	1,181
Pot Catcher Vessels			15	13,418	Jan 1–Jun 10	8,051
					Sept 1–Dec 31	5,367
Catcher Vessels <60 feet LOA using Hook-and-line or Pot gear.			1.4	1,252		
Trawl Gear Total	47	82,896				
Trawl Catcher Vessel			50	41,448	Jan 20–Apr 1	29,014
					Apr 1–Jun 10	4,145
					Jun 10–Nov 1	8,290
Trawl Catcher/Processor			50	41,448	Jan 20–Apr 1	20,724
					Apr 1–Jun 10	12,434
					Jun 10–Nov 1	8,290
Jig	2	3,528			Jan 1–Apr 1	1,411
					Apr 1–Aug 31	706
					Aug 31–Dec 31	1,411
Total	100	176,375				

[1] For most non-trawl gear the first season is allocated 60 percent of the ITAC and the second season is allocated 40 percent of the ITAC. For jig gear, the first season and third seasons are each allocated 40 percent of the ITAC and the second season is allocated 20 percent of the ITAC. No seasonal harvest constraints are imposed for the Pacific cod fishery by catcher vessels less than 60 feet (18.3 m) LOA using hook-and-line or pot gear. For trawl gear, the first season is allocated 60 percent of the ITAC and the second and third seasons are each allocated 20 percent of the ITAC. The trawl catcher vessels' allocation is further allocated as 70 percent in the first season, 10 percent in the second season and 20 percent in the third season. The trawl catcher/processors' allocation is allocated 50 percent in the first season, 30 percent in the second season and 20 percent in the third season. Any unused portion of a seasonal Pacific cod allowance will be reapportioned to the next seasonal allowance.

Allocation of the Shortraker and Rougheye Rockfish TAC

Under § 679.20(a)(9), the ITAC of shortraker rockfish and rougheye rockfish specified for the Aleutian Islands subarea is allocated 30 percent to vessels using non-trawl gear and 70 percent to vessels using trawl gear. Based on a proposed 2004 ITAC of 706 mt, the trawl allocation is 494 mt and the non-trawl allocation is 212 mt.

Sablefish Gear Allocation

Regulations at § 679.20(a)(4)(iii) and (iv) require that sablefish TACs for the Bering Sea and Aleutian Islands subareas be allocated between trawl and hook-and-line or pot gear. Gear allocations of the TACs for the Bering Sea subarea are 50 percent for trawl gear and 50 percent for hook-and-line or pot gear and for the Aleutian Islands subarea are 25 percent for trawl gear and 75 percent for hook-and-line or pot gear. Regulations at § 679.20(b)(1)(iii)(B) require that 20 percent of the hook-and-line and pot gear allocation of sablefish be apportioned to the CDQ reserve. Additionally, regulations at § 679.20(b)(1)(iii)(A) require that 7.5 percent of the trawl gear allocation of sablefish (one half of the reserve) be apportioned to the CDQ reserve. Proposed 2004 gear allocations of the sablefish TAC and CDQ reserve amounts are specified in Table 5.

TABLE 5.—PROPOSED 2004 GEAR SHARES AND CDQ RESERVE OF BSAI SABLEFISH TACS

Subarea and gear	Percent of TAC	Share of TAC (mt)	ITAC (mt)[1]	CDQ reserve
Bering Sea:				
Trawl[2]	50	1,329	1,130	100
Hook-and-line/pot gear[3]	50	1,329	N/A	266
Total	100	2,658	1,130	365
Aleutian Islands:				
Trawl[2]	25	711	604	53
Hook-and-line/pot gear[3]	75	2,132	N/A	426
Total	100	2,842	604	480

[1] Except for the sablefish hook-and-line or pot gear allocation, 15 percent of TAC is apportioned to the reserve. The ITAC is the remainder of the TAC after the subtraction of these reserves.
[2] For the portion of the sablefish TAC allocated to vessels using trawl gear, one half of the reserve (7.5 percent of the specified TAC) is reserved for the CDQ program.
[3] For the portion of the sablefish TAC allocated to vessels using hook-and-line or pot gear, 20 percent of the allocated TAC is reserved for use by CDQ participants. Regulations in § 679.20(b)(1) do not provide for the establishment of an ITAC for sablefish allocated to hook-and-line or pot gear.

Allocation of Prohibited Species Catch Limits for Halibut, Crab, Salmon, and Herring

Due to the lack of new information concerning PSC limits and apportionments in October 2003, the Council recommended using the halibut, crab, and herring 2003 PSC amounts for the proposed 2004 amounts. The Council will reconsider these amounts in December 2003, based on recommendations by the Plan Team and the SSC. Regulations at § 679.21(e)(1)(vii) specify a scheduled reduction of chinook salmon PSC limits until the final limit is reached in 2004. For 2004, the proposed chinook salmon PSC limit for the pollock fishery is 29,000 fish. Regulations at § 679.21(e)(1)(i) allocate 7.5 percent or 2,175 chinook salmon as the proposed PSQ for the CDQ program and the remaining 26,825 chinook salmon to the non-CDQ fisheries.

PSC limits for halibut are set in regulations at § 679.21(e). For the BSAI trawl fisheries, the limit is 3,675 mt of Pacific halibut mortality and for non-trawl fisheries, the limit is 900 mt of mortality. PSC limits for crab and herring are specified annually based on abundance and spawning biomass.

The red king crab mature female abundance is estimated from the 2002 survey data to be 18.6 million king crab and the effective spawning biomass is estimated to be 37.7 million pounds (17,100 mt). Based on the criteria set out at § 679.21(e)(1)(ii), the proposed 2003 PSC limit of red king crab in Zone 1 for trawl gear is 97,000 animals as a result of the mature female abundance being above 8.4 million king crab, and the effective spawning biomass estimate being greater than 14.5 (6,577 mt), but less than 55 million pounds (24,948 mt).

Regulations at § 679.21(e)(3)(ii)(B) establish criteria under which NMFS must specify an annual red king crab bycatch limit for the Red King Crab Savings Subarea (RKCSS). The regulations limit the RKCSS red king crab bycatch limit to up to 35 percent of the trawl bycatch allowance specified for the rock sole/flathead sole/"other flatfish" fishery category. The limit must be based on the need to optimize the groundfish harvest relative to red king crab bycatch. The Council recommended, and NMFS approves, a proposed red king crab bycatch limit equal to 35 percent of the trawl bycatch allowance specified for the rock sole/flathead sole/ "other flatfish" fishery category within the RKCSS.

Based on 2002 survey data, the *Chionoecetes bairdi* crab abundance is estimated to be 464.9 million animals. Given the criteria set out at § 679.21(e)(1)(iii), the proposed 2004 *C. bairdi* crab PSC limit for trawl gear is 980,000 animals in Zone 1 and 2,970,000 animals in Zone 2 as a result of the *C. bairdi* crab abundance estimate of over 400 million animals.

Under § 679.21(e)(1)(iv), the PSC limit for *C. opilio* crab is based on total abundance as indicated by the NMFS annual bottom trawl survey. The *C. opilio* crab PSC limit is set at 0.1133 percent of the Bering Sea abundance index. Based on the 2002 survey estimate of 1.49 billion animals, the calculated limit is 1,169,000 animals. Because this limit is less than 4.5 million, under § 679.21(e)(1)(iv)(B), the proposed 2004 *C. opilio* crab PSC limit is 4,350,000 million animals.

Under § 679.21(e)(1)(vi), the proposed PSC limit of Pacific herring caught while conducting any trawl operation for groundfish in the BSAI is 1 percent of the annual eastern Bering Sea herring biomass. NMFS's best estimate of 2003 herring biomass is 152,574 mt. This amount was derived using 2002 survey data and an age-structured biomass projection model developed by the Alaska Department of Fish and Game (ADF&G). Therefore, the proposed herring PSC limit for 2004 is 1,526 mt.

Under § 679.21(e)(1)(i), 7.5 percent of each PSC limit specified for crab and halibut is reserved as a PSQ reserve for use by the groundfish CDQ program. Regulations at § 679.21(e)(3) require the apportionment of each trawl PSC limit into PSC bycatch allowances for seven specified fishery categories.

Regulations at § 679.21(e)(4)(ii) authorize the apportionment of the non-trawl halibut PSC limit among five fishery categories. The proposed fishery bycatch allowances for the trawl and non-trawl fisheries are listed in Table 6.

Regulations at § 679.21(e)(4)(ii) authorize exemption of specified non-trawl fisheries from the halibut PSC limit. As in past years, NMFS after consultation with the Council, is proposing to exempt pot gear, jig gear, and the sablefish IFQ hook-and-line gear fishery categories from halibut bycatch restrictions because these fisheries use selective gear types that take comparatively few halibut. In 2003, total groundfish catch for the pot gear fishery in the BSAI was approximately 17,929 mt with an associated halibut bycatch mortality of about 3 mt. The 2003 groundfish jig gear fishery harvested about 156 mt of groundfish. Most vessels in the jig gear fleet are less than 60 ft (18.3 m) LOA and are exempt from observer coverage requirements. As a result, observer data are not available on halibut bycatch in the jig gear fishery. However, a negligible amount of halibut bycatch mortality is assumed because of the selective nature of this gear type and the likelihood that halibut caught with jig gear have a high survival rate when released.

As in past years, the Council recommended that the sablefish IFQ fishery be exempt from halibut bycatch restrictions because of the halibut retention requirements of the sablefish and halibut IFQ program (subpart D of 50 CFR part 679). The IFQ program requires legal-sized halibut to be retained by vessels using hook-and-line gear if a halibut IFQ permit holder is aboard and is holding unused halibut IFQ. This provision results in reduced halibut discard in the sablefish fishery. In 1995, about 36 mt of halibut discard mortality was estimated for the sablefish IFQ fishery. A similar estimate for 1996 through 2003 has not been calculated, but NMFS has no information indicating that it would be significantly different.

Regulations at § 679.21(e)(5) authorize NMFS, after consultation with the Council, to establish seasonal apportionments of PSC allowances. In October 2003, the Council proposed no seasonal apportionments, except for the trawl bycatch allowance for halibut bycatch specified for the rockfish trawl fishery. The intent of this proposal was to reduce halibut bycatch during the first quarter when halibut bycatch is the highest. NMFS anticipates that the Council will recommend additional seasonal apportionments during its December 2003 meeting.

TABLE 6.—PROPOSED 2004 PROHIBITED SPECIES BYCATCH ALLOWANCES FOR THE BSAI TRAWL AND NON-TRAWL FISHERIES

Trawl fisheries	Prohibited species and zone					
	Halibut mortality (mt) BSAI	Herring (mt) BSAI	Red king crab (animals) Zone 1 [1]	*C. opilio* (animals) COBLZ [2]	*C. bairdi* (animals) Zone 1 [1]	*C. bairdi* (animals) Zone 2 [1]
Yellowfin sole	886	139	16,664	2,776,981	340,844	1,788,459
Rock sole/other flat/flathead sole [3]	779	20	59,782	969,130	365,320	596,154
Turbot/arrowtooth/sablefish [4]		9		40,238		
Rockfish: July 4–December 31	69	7		40,237		10,988
Pacific cod	1,434	20	13,079	124,736	183,112	324,176
Midwater trawl pollock		1,184				
Pollock/Atka mackerel/other [5]	232	146	200	72,428	17,224	27,473
Red King Crab Savings Subarea (non-pelagic trawl)			20,924			
Total Trawl PSC	3,400	1,526	89,725	4,023,750	906,500	2,747,250
Non-Trawl Fisheries:						
Pacific cod—Total	775					
Other non-trawl—Total	58					
Groundfish pot & jig	exempt					
Sablefish hook-and-line	exempt					
Total Non-Trawl	833					
PSQ Reserve [6]	342		7,275	326,250	73,500	222,750
Grand Total	4,575	1,526	97,000	4,350,000	980,000	2,970,000

[1] Refer to § 679.2 for definitions of areas.
[2] *C. opilio* Bycatch Limitation Zone. Boundaries are defined at 50 CFR part 679, Figure 13.
[3] "Other flatfish" for PSC monitoring includes all flatfish species, except for Pacific halibut (a prohibited species), greenland turbot, rock sole, yellowfin sole and arrowtooth flounder.
[4] Greenland turbot, arrowtooth flounder, and sablefish fishery category.
[5] Pollock other than pelagic trawl pollock, Atka mackerel, and "other species" fishery category.
[6] With the exception of herring, 7.5 percent of each PSC limit is allocated to the CDQ program as PSQ reserve. The PSQ reserve is not allocated by fishery, gear or season.

To monitor halibut bycatch mortality allowances and apportionments, the Administrator, Alaska Region, NMFS (Regional Administrator), will use observed halibut bycatch rates, assumed discard mortality rates (DMR), and estimates of groundfish catch to project when a fishery's halibut bycatch mortality allowance or seasonal apportionment is reached. The assumed DMRs are based on the best information available, including information contained in the annual SAFE report.

The Council recommended and NMFS proposes that the recommended halibut DMRs developed by staff of the International Pacific Halibut Commission (IPHC) for the 2003 BSAI groundfish fisheries be used for monitoring halibut bycatch allowances established for the 2004 groundfish fisheries (Table 7). Results from analysis of halibut release condition data for 2000 showed continued stability in halibut DMRs for many fisheries. Plots of annual DMRs against the 10-year mean indicated little change since 1990 for some fisheries, particularly the major trawl fisheries. DMRs were more variable for the smaller fisheries that typically take minor amounts of halibut bycatch. For 2003 for most groundfish fisheries, DMRs were used based on long-term mean for a 3-year period before revisions were proposed. Annual DMRs were used for the BSAI hook-and-line Pacific cod fishery and CDQ fisheries. The IPHC will analyze observer data annually and recommend changes to the DMRs where a fishery DMR shows large variation from the mean. For 2003, the BSAI hook-and-line Pacific cod fishery DMR did not change; but the CDQ fishery DMRs were adjusted. The justification for these proposed DMRs is discussed in Appendix A of the final SAFE report dated November 2002. The proposed DMRs listed in Table 7 are subject to change pending the results of an updated analysis on halibut DMRs in the groundfish fisheries that IPHC staff is scheduled to present to the Council at its December 2003 meeting.

TABLE 7.—PROPOSED 2004 ASSUMED PACIFIC HALIBUT DISCARD MORTALITY RATES FOR THE BSAI FISHERIES

Fishery	Pre-season assumed mortality (percent)
Hook-and-line gear fisheries:	
Greenland turbot	18
Other Species	12
Pacific cod	12
Rockfish	25
Sablefish	22
Trawl gear fisheries:	
Atka mackerel	75
Flathead sole	67
Greenland turbot	70
Nonpelagic pollock	76
Pelagic pollock	84
Other flatfish	71
Other species	67
Pacific cod	67
Rockfish	69
Rock sole	76
Sablefish	50
Yellowfin sole	81
Pot gear fisheries:	
Other species	8
Pacific cod	8

TABLE 7.—PROPOSED 2004 ASSUMED PACIFIC HALIBUT DISCARD MORTALITY RATES FOR THE BSAI FISHERIES—Continued

Fishery	Pre-season assumed mortality (percent)
CDQ trawl fisheries:	
Atka mackerel	80
Flathead sole	90
Nonpelagic pollock	90
Pelagic pollock	89
Rockfish	90
Yellowfin sole	83
CDQ hook-and-line fisheries:	
Greenland turbot	4
Pacific cod	11

TABLE 7.—PROPOSED 2004 ASSUMED PACIFIC HALIBUT DISCARD MORTALITY RATES FOR THE BSAI FISHERIES—Continued

Fishery	Pre-season assumed mortality (percent)
CDQ pot fisheries:	
Pacific cod	2
Sablefish	46

Bering Sea Subarea Inshore Pollock Allocations

Regulations at § 679.4 set forth procedures for AFA inshore catcher vessel pollock cooperatives to apply for and receive cooperative fishing permits and inshore pollock allocations. For 2003, NMFS received applications from seven inshore catcher vessel cooperatives. Applications for 2004 must be received by the Regional Administrator by December 1, 2003. Table 8 lists the proposed pollock allocations to the seven inshore catcher vessel pollock cooperatives based on 2003 cooperative allocations and the assumption that the cooperatives' membership will remain unchanged in 2004. Allocations for cooperatives and vessels not participating in cooperatives are not made for the AI subarea because the AI subarea has been closed to directed fishing for pollock. These allocations may be revised pending adjustments to cooperatives' membership prior to 2004.

TABLE 8.—PROPOSED 2004 BERING SEA SUBAREA INSHORE COOPERATIVE ALLOCATIONS

Cooperative name and member vessels	Sum of member vessel's official catch histories [1] (mt)	Percentage of inshore sector allocation	Annual co-op allocation (mt)
Akutan Catcher Vessel Association: ALDEBARAN, ARCTIC EXPLORER, ARCTURUS, BLUE FOX, CAPE KIWANDA, COLUMBIA, DOMINATOR, EXODUS, FLYING CLOUD, GOLDEN DAWN, GOLDEN PISCES, HAZEL LORRAINE, INTREPID EXPLORER, LESLIE LEE, LISA MELINDA, MAJESTY, MARCY J, MARGARET LYN, NORDIC EXPLORER, NORTHERN PATRIOT, NORTHWEST EXPLORER, PACIFIC RAM, PACIFIC VIKING, PEGASUS, PEGGY JO, PERSEVERANCE, PREDATOR, RAVEN, ROYAL AMERICAN, SEEKER, SOVEREIGNTY, TRAVELER, VIKING EXPLORER	245,527	28.085	181,932
Arctic Enterprise Association: BRISTOL EXPLORER, OCEAN EXPLORER, PACIFIC EXPLORER	36,807	4.210	27,273
Northern Victor Fleet Cooperative: ANITA J, COLLIER BROTHERS, COMMODORE, EXCALIBUR II, GOLDRUSH, HALF MOON BAY, MISS BERDIE, NORDIC FURY, PACIFIC FURY, POSEIDON, ROYAL ATLANTIC, SUNSET BAY, STORM PETREL	73,656	8.425	54,578
Peter Pan Fleet Cooperative: AMBER DAWN, AMERICAN BEAUTY, ELIZABETH F, MORNING STAR, OCEAN LEADER, OCEANIC, PROVIDIAN, TOPAZ, WALTER N	18,693	2.138	13,851
Unalaska Cooperative: ALASKA ROSE, BERING ROSE, DESTINATION, GREAT PACIFIC, MESSIAH, MORNING STAR, MS AMY, PROGRESS, SEA WOLF, VANGUARD, WESTERN DAWN	106,737	12.209	79,091
UniSea Fleet Cooperative: ALSEA, AMERICAN EAGLE, ARGOSY, AURIGA, AURORA, DEFENDER, GUN-MAR, NORDIC STAR, PACIFIC MONARCH, SEADAWN, STARFISH, STARLITE	201,566	23.056	149,357
Westward Fleet Cooperative: A.J., ALASKAN COMMAND, ALYESKA, ARCTIC WIND, CAITLIN ANN, CHELSEA K, DONA MARTITA, FIERCE ALLEGIANCE, HICKORY WIND, OCEAN HOPE 3, PACIFIC CHALLENGER, PACIFIC KNIGHT, PACIFIC PRINCE, STARWARD, VIKING, WESTWARD I	189,942	21.727	140,744
Open access AFA vessels	1,309	0.150	970
Total inshore allocation	874,238	100	647,797

[1] According to regulations at § 679.62(e)(1), the individual catch history for each vessel is equal to the vessel's best 2 of 3 years inshore pollock landings from 1995 through 1997 and includes landings to catcher/processors for vessels that made 500 or more mt of landings to catcher/processors from 1995 through 1997.

Under regulations at § 679.20(a)(5)(i)(A), NMFS subdivides the inshore allocation into allocations for cooperatives and vessels not fishing in a cooperative. In addition, under § 679.22(a)(7)(vii), NMFS establishes harvest limits inside the Steller sea lion conservation area (SCA) and provides a set-aside so that catcher vessels less than or equal to 99 ft (30.2 m) LOA have the opportunity to operate entirely within the SCA during the A season. Accordingly, Table 9 lists the proposed apportionment of the Bering Sea subarea inshore pollock allocation into allocations for vessels fishing in a cooperative and for vessels not participating in a cooperative and establishes a cooperative-sector SCA set-aside for AFA catcher vessels less than or equal to 99 ft (30.2 m) LOA. The SCA set-aside for catcher vessels less than or equal to 99 ft (30.2 m) LOA that are not participating in a cooperative will be established inseason based on actual participation levels and is not included in Table 9. These proposed allocations may be revised pending final review and approval of 2004 cooperative agreements.

TABLE 9.—PROPOSED 2004 BERING SEA SUBAREA POLLOCK ALLOCATIONS TO THE COOPERATIVE AND NON-COOPERATIVE SECTORS OF THE INSHORE POLLOCK FISHERY

[All amounts are in metric tons]

	A season TAC	A season inside SCA [1]	B season TAC
Cooperative sector:			
Vessels > 99 ft	n/a	155,616	n/a
Vessels ≤ 99 ft	n/a	25,495	n/a
Total	258,731	181,111	388,096
Open access sector	388	[2] 272	582
Total inshore	259,119	181,383	388,678

[1] The Steller sea lion conservation area established at § 679.22(a)(7)(vii).

[2] SCA limitations for vessels less than or equal to 99 ft LOA that are not participating in a cooperative will be established on an inseason basis in accordance with § 679.22(a)(7)(vii)(C)(*2*) which specifies that "the Regional Administrator will prohibit directed fishing for pollock by vessels catching pollock for processing by the inshore component greater than 99 ft (30.2 m) LOA before reaching the inshore SCA harvest limit during the A season to accommodate fishing by vessels less than or equal to 99 ft (30.2 m) inside the SCA for the duration of the inshore seasonal opening."

Listed AFA Catcher/Processor Sideboard Limits

Under regulations at § 679.64(a), the Regional Administrator will restrict the ability of listed AFA catcher/processors to engage in directed fishing for non-pollock groundfish species to protect participants in other groundfish fisheries from adverse effects resulting from the AFA and from fishery cooperatives in the directed pollock fishery. The catcher/processor sideboard limits for BSAI groundfish, other than Atka mackerel, Pacific cod and Pacific ocean perch, will be based on the 1995 through 1997 retained catch of such groundfish species by the 20 listed AFA catcher/processors listed in paragraphs (e)(1) through (e)(20) of section 208 of the AFA and the nine ineligible catcher/processors listed in section 209 of the AFA. Pacific cod catcher/processor sideboard limits will be based on 1997 retained catch only, and Pacific ocean perch in the Aleutian Islands subarea will be based on 1996 and 1997 retained catch only. The AFA catcher/processor sideboard limit for Atka mackerel is zero percent of the Bering Sea subarea and Eastern Aleutians District's annual TAC, 11.5 percent of the Central Aleutian District's annual TAC, and 20 percent of the Western Aleutian District's annual TAC. The proposed 2004 catcher/processor sideboard limits are set out in Table 10 below.

All non-pollock groundfish that is harvested by listed AFA catcher/processors, whether as targeted catch or incidental catch, will be deducted from the proposed sideboard limits in Table 10. However, non-pollock groundfish that is delivered to listed catcher/processors by catcher vessels will not be deducted from the proposed 2004 sideboard limits for the listed catcher/processors.

TABLE 10.—PROPOSED 2004 LISTED BSAI AMERICAN FISHERIES ACT CATCHER/PROCESSOR GROUNDFISH SIDEBOARD LIMITS

Target species/area	1995–1997 Retained catch (mt)	1995–1997 Available TAC (mt)	1995–1997 Ratio of Retained catch/Available TAC	Proposed 2004 ITAC available to trawl C/Ps (mt)	Proposed 2004 C/P sideboard limit (mt)
Pacific cod trawl: BSAI	12,424	51,450	0.241	45,105	10,870
Sablefish trawl:					
BS	[E]	1,736	0.005	1,130	6
AI	0	1,135	0.000	603	0
Atka mackerel:					
Western AI:					
A season [1]	n/a	n/a	0.200	8,496	1,699
HLA limit [2].					
B season	n/a	n/a	0.200	8,496	1,699
HLA limit.					
Central AI:					
A season [1]	n/a	n/a	0.115	12,201	1,403
HLA limit.					
B season	n/a	n/a	0.115	12,201	1,403
HLA limit.					
Yellowfin sole: BSAI	100,192	527,000	0.190	71,188	13,526
Rock sole: BSAI	6,317	202,107	0.031	37,400	1,159
Greenland turbot:					
BS	121	16,911	0.007	2,278	16
AI	23	6,839	0.003	1,122	3
Arrowtooth flounder: BSAI	76	36,873	0.002	10,200	20
Flathead sole: BSAI	1,925	87,975	0.022	17,000	374
Alaska plaice: BSAI	3,243		0.035	9,250	324
Other flatfish: BSAI	3,243	92,428	0.035	2,775	97

TABLE 10.—PROPOSED 2004 LISTED BSAI AMERICAN FISHERIES ACT CATCHER/PROCESSOR GROUNDFISH SIDEBOARD LIMITS—Continued

Target species/area	1995–1997			Proposed 2004 ITAC available to trawl C/Ps (mt)	Proposed 2004 C/P sideboard limit (mt)
	Retained catch (mt)	Available TAC (mt)	Ratio of Retained catch/Available TAC		
Pacific ocean perch:					
BS	12	5,760	0.002	1,199	2
Western AI	54	12,440	0.004	4,907	20
Central AI	3	6,195	0.000	2,802	0
Eastern AI	125	6,265	0.020	2,936	59
Northern rockfish:					
BS	8		0.008	112	1
AI	83	13,254	0.006	5,438	33
Shortraker/rougheye:					
BS	8		0.008	126	1
AI	42	2,827	0.015	538	8
Other rockfish:					
BS	18	1,026	0.018	888	16
AI	22	1,924	0.011	539	6
Squid: BSAI	73	3,670	0.020	1,675	34
Other species: BSAI	553	65,925	0.008	29,886	239

[1] The seasonal apportionment of Atka mackerel in the open access fishery is 50 percent in the A season and 50 percent in the B season. Listed AFA catcher/processors are limited to harvesting no more than zero in the Eastern Aleutian District and Bering Sea subarea, 20 percent of the available TAC in the Western Aleutian District, and 11.5 percent of the available TAC in the Central Aleutian District.

[2] Harvest Limit Area (HLA) limit refers to the amount of each seasonal allowance that is available for fishing inside the HLA (see §679.2). In 2004, 60 percent of each seasonal allowance is available for fishing inside the HLA in the Western and Central Aleutian Districts.

Regulations at §679.64(a) establish a formula for PSC sideboard limits for listed AFA catcher/processors. These amounts are equivalent to the percentage of PSC limits harvested in the non-pollock groundfish fisheries by the AFA catcher/processors listed in subsection 208(e) and section 209 of the AFA from 1995 through 1997. PSC amounts harvested by these catcher/processors in BSAI non-pollock groundfish fisheries from 1995 through 1997 are shown in Table 10. These data were used to calculate the PSC catch ratios for pollock catcher/processors shown in Table 10. The 2004 PSC limits available to trawl catcher/processors are multiplied by the ratios to determine the PSC sideboard limits for listed AFA catcher/processors in the 2004 non-pollock groundfish fisheries.

PSC that is caught by listed AFA catcher/processors participating in any non-pollock groundfish fishery listed in Table 11 would accrue against the proposed 2004 PSC limits for the listed catcher/processors. Regulations at §679.21(e)(3)(v) provide NMFS with the authority to close directed fishing for non-pollock groundfish for listed AFA catcher/processors once a proposed 2004 PSC limitation listed in Table 11 is reached.

Crab or halibut PSC that is caught by listed AFA catcher/processors while fishing for pollock will accrue against the bycatch allowances annually specified for either the midwater pollock or the pollock/Atka mackerel/other species fishery categories under regulations at §679.21(e).

TABLE 11.—PROPOSED 2004 BSAI AMERICAN FISHERIES ACT LISTED CATCHER/PROCESSOR PROHIBITED SPECIES SIDEBOARD LIMITS[1]

PSC species	1995–1997			Proposed 2004 PSC available to trawl vessels	Proposed 2004 C/P limit
	PSC catch	Total PSC	Ratio of PSC catch/total PSC		
Halibut mortality	955	11,325	0.084	3,400	286
Red king crab	3,098	473,750	0.007	89,725	628
C. opilio	2,323,731	15,139,178	0.153	4,023,750	615,634
C. bairdi:					
Zone 1	385,978	2,750,000	0.140	906,500	126,910
Zone 2	406,860	8,100,000	0.050	2,747,250	137,363

[1] Halibut amounts are in mt of halibut mortality. Crab amounts are in numbers of animals.

AFA Catcher Vessel Sideboard Limits

Regulations at §679.64(b) establish formulas for setting AFA catcher vessel groundfish and PSC sideboard limits for the BSAI. The catcher vessel sideboard limits for BSAI groundfish will be based on the 1995 through 1997 retained catch of such groundfish species by all AFA catcher vessels, except for Pacific cod which will be based on 1997 retained catch by non-exempt AFA catcher vessels only. The proposed 2004 AFA catcher vessel sideboard limits are shown in Tables 12 and 13.

All harvests of groundfish sideboard species made by non-exempt AFA catcher vessels, whether as targeted catch or incidental catch, will be deducted from the proposed sideboard limits listed in Table 12.

TABLE 12.—PROPOSED 2004 BSAI AMERICAN FISHERIES ACT CATCHER VESSEL SIDEBOARD LIMITS

Species and fishery by area/season/processor/gear	Ratio of 1995–1997 AFA CV catch to 1995–1997 TAC	Proposed 2004 initial TAC (mt)	Proposed 2004 catcher vessel sideboard limits (mt)
Pacific cod:			
BSAI:			
Jig gear	0.0000	3,528	0
Hook-and-line CV:			0
Jan 1–Jun 10	0.0006	161	0
Jun 10–Dec 31	0.0006	107	0
Pot gear:			0
Jan 1—Jun 10	0.0006	9,822	6
Sept 1–Dec 31	0.0006	6,548	4
CV <60 feet LOA using hook-and-line or pot gear	0.0006	1,252	1
Trawl gear catcher vessel:			0
Jan 20–Apr 1	0.8609	29,014	24,978
Apr 1–Jun 10	0.8609	4,145	3,193
Jun 10–Nov 1	0.8609	8,290	6,386
Sablefish:			
BS trawl gear	0.0906	1,131	102
AI trawl gear	0.0645	603	39
Atka mackerel:			
Eastern AI/BS:			0
Jig gear	0.0031	89	0
Other gear:			0
Jan 1–Apr 15	0.0032	4,381	14
Sept 1–Nov 1	0.0032	4,381	14
Central AI:			1
Jan–Apr 15	0.0001	12,201	1
HLA limit	0.0001	7,321	1
Sept 1–Nov 1	0.0001	12,201	1
HLA limit	0.0001	7,321	1
Western AI:			0
Jan–Apr 15	0	8,496	0
HLA limit	0.0000	5,097	0
Sept 1–Nov 1	0	8,496	0
HLA limit	0	5,097	0
Yellowfin sole: BSAI	0.0647	71,188	4,606
Rock sole: BSAI	0.0341	37,400	1,275
Greenland Turbot:			
BS	0.0645	2,278	147
AI	0.0205	1,122	23
Arrowtooth flounder: BSAI	0.0690	10,200	704
Alaska plaice: BSAI	0.0441	8,500	375
Other flatfish: BSAI	0.0441	2,550	112
Pacific ocean perch:			
BS	0.1000	1,199	120
Eastern AI	0.0077	2,936	23
Central AI	0.0025	2,802	7
Western AI	0.0000	4,907	0
Northern rockfish:			
BS	0.0280	103	3
AI	0.0089	4,997	44
Shortraker/Rougheye:			
BS	0.0048	116	1
AI	0.0035	706	2
Other rockfish:			
BS	0.0048	816	4
AI	0.0095	539	5
Squid: BSAI	0.3827	1,675	641
Other species: BSAI	0.0541	27,463	1,486
Flathead Sole: BS trawl gear	0.0505	17,000	859

Regulations at §679.64(b) establish a formula for PSC sideboard limits for AFA catcher vessels. The AFA catcher vessel PSC bycatch limits will be a portion of the PSC limit equal to the ratio of aggregate retained groundfish catch by AFA catcher vessels in each PSC target category from 1995 through 1997 relative to the retained catch of all

vessels in that fishery from 1995 through 1997. These proposed PSC sideboard limits are listed in Table 13.

Halibut and crab PSC that is caught by AFA catcher vessels participating in any non-pollock groundfish fishery listed in Table 13 will accrue against the proposed 2004 PSC limits for the AFA catcher vessels. Regulations at § 679.21(e)(3)(v) provide authority to close directed fishing for non-pollock groundfish for AFA catcher vessels once a proposed 2004 PSC limit listed in Table 13 is reached. PSC that is caught by AFA catcher vessels while fishing for pollock in the BSAI will accrue against either the midwater pollock or the pollock/Atka mackerel/other species fishery categories.

TABLE 13.—PROPOSED 2004 AMERICAN FISHERIES ACT CATCHER VESSEL PROHIBITED SPECIES CATCH SIDEBOARD LIMITS FOR THE BSAI [1]

PSC species and target fishery category [2]	Ratio of 1995–1997 AFA CV retained catch to total retained catch	Proposed 2004 PSC limit	Proposed 2004 AFA catcher vessel PSC sideboard limit
Halibut:			
Pacific cod trawl	0.6183	1,434	887
Pacific cod hook-and-line or pot	0.0022	775	2
Yellowfin sole	0.1144	886	101
Rock sole/flat. sole/other flatfish [5]	0.2841	779	221
Turbot/Arrowtooth/Sablefish	0.2327	0	
Rockfish	0.0245	69	2
Pollock/Atka mackerel/Other sp.	0.0227	232	5
Red King Crab, Zone 1 [4]:			
Pacific cod	0.6183	13,079	8,087
Yellowfin sole	0.1144	16,664	1,906
Rock sole/flat. sole/other flatfish [5]	0.2841	59,782	16,984
Pollock/Atka mackerel/Other sp.	0.0227	200	5
C. opilio, COBLZ [3]:			
Pacific cod	0.6183	124,736	77,124
Yellowfin sole	0.1144	2,776,981	317,687
Rock sole/flat. sole/other flatfish [5]	0.2841	969,130	275,330
Pollock/Atka mackerel/Other sp.	0.0227	72,428	1,644
Rockfish	0.0245	40,237	986
Turbot/Arrowtooth/Sablefish	0.2327	40,238	9,363
C. bairdi, Zone 1:			
Pacific cod	0.6183	183,112	113,218
Yellowfin sole	0.1144	340,844	38,993
Rock sole/flat. sole/other flatfish [5]	0.2841	365,320	103,787
Pollock/Atka mackerel/Other sp.	0.0227	17,224	391
C. bairdi, Zone 2:			
Pacific cod	0.6183	324,176	200,438
Yellowfin sole	0.1144	1,788,459	204,600
Rock sole/flat. sole/other flatfish [5]	0.2841	596,154	169,367
Pollock/Atka mackerel/Other sp.	0.0227	27,473	624
Rockfish	0.0245	10,988	269

[1] Halibut amounts are in mt of halibut mortality. Crab amounts are in numbers of animals.
[2] Target fishery categories are defined in regulation at § 679.21(e)(3)(iv).
[3] *C. opilio* Bycatch Limitation Zone. Boundaries are defined at Figure 13 of 50 CFR part 679.
[4] In October 2003, the Council recommended that red king crab bycatch for trawl fisheries within the RKCSS be limited to 35 percent of the total allocation to the rock sole/flathead sole/"other flatfish" fishery category (see § 679.21(e)(3)(ii)(B)).
[5] "Other flatfish" for PSC monitoring includes all flatfish species, except for Pacific halibut (a prohibited species), Greenland turbot, rock sole, yellowfin sole, arrowtooth flounder.

Classification

This action is authorized under 50 CFR 679.20 and is exempt from review under Executive Order 12866.

NMFS prepared an IRFA for this action in accordance with the provisions of the Regulatory Flexibility Act (RFA) of 1980, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 603(b)). A copy of this analysis is available from the Council (see **ADDRESSES**). This IRFA evaluates the effects of the proposed action on regulated small entities. The reasons for the action, a statement of the objectives of the action, and the legal basis for the proposed rule, are discussed earlier in the preamble.

The small entities affected by this action are those that commercially harvest groundfish under the BSAI FMP. Data in the IRFA indicates that about 220 catcher vessels, and about 40 catcher-processors, and six CDQ groups may be "small entities" under the terms of the RFA.

Using the sectoral first wholesale gross revenue changes as an index, the preferred alternative seems to have adverse impacts in the sablefish sectors in the BSAI. There do not appear to be other adverse impacts associated with the preferred alternative. The model suggests that there will be revenue reductions for rockfish, Atka mackerel, and other species. However, the projected revenue reductions for these species appear to be relatively small percentages of the prior year (2003) gross revenue estimates. Given the large confidence intervals believed to be associated with these estimates, these are thought to be minor impacts.

Harvest records indicate that in 2001, 87 vessels harvested sablefish in the BSAI in excess of the minimum harvest threshold adopted to select vessels for the analysis. Of these, 69 were small entities according to the $3.5 million in gross revenues criterion used by the SBA for catcher vessels. These small vessels harvested about 1,449 mt of sablefish in all their sablefish fisheries (some of this tonnage may have come from operations in the GOA). Another 71 vessels harvested amounts of sablefish below the minimum harvest threshold; these vessels only harvested a total of about 12 mt of sablefish. The 69 small vessels above the threshold averaged about $1.1 million in all their fisheries (groundfish, crab, scallops, salmon and herring) in Alaska, and about $229,000 from all their sablefish in Alaska. If the small entity revenue reduction is proportionate to the overall first wholesale "index" reduction in the area, and if the small entities catch all of their sablefish in the BSAI, the small entity revenue reduction would be about $19,000. This would be about 8.3 percent of their sablefish revenues, and about 1.7 percent of their overall revenues.

The CDQ program provides a mechanism to allow local communities to benefit from the BSAI fisheries. Sixty-five regional communities have banded together into six Community Development Quota (CDQ) groups. Regulations require the allocation of proportions of the annual species specifications to the CDQ groups. The CDQ groups may fish the allocations themselves, enter into joint ventures to fish them, or lease them out to fishing firms. These allocations generate large revenues for the CDQ groups. In 2001, the CDQ groups as a whole earned about $43 million in royalties from the program; in 2002, they earned about $46 million. Because the CDQ groups are non-profit organizations, they are treated as small entities for RFA purposes.

The sablefish first wholesale gross revenues from CDQ program allocations will decline by about 8% under the preferred alternative. This comparatively large percentage decline is associated with a relatively small decline in first wholesale value of about $137,000. This decline in first wholesale value would be associated with a smaller decline in CDQ program royalties. Even if royalties were equal to first wholesale revenues, which they are not, this decline would be a small fraction of a percent of total CDQ program royalties.

The preferred alternative was compared to the four other alternatives evaluated during the specifications process. These alternatives are defined by TACs set so as to generate different harvest rates (F values). Alternative 1 sets a TAC to generate the harvest rate associated with the maximum ABC for each species, Alternative 2 is the preferred alternative, Alternative 3 sets TACs to produce fishing rates that are half those of Alternative 1. Alternative 4 sets TACs to generate fishing rates equal to the most recent five year average rates, and Alternative 5 sets TACs equal to zero. Only Alternative 1 had a smaller adverse impact on small entities than the preferred alternative. However Alternative 1 would have increased sablefish harvests and would have failed to meet the objective of protecting the long run health of the sablefish stocks. Also, Alternative 1 would have authorized groundfish harvests in excess of the 2 million optimal yield cap for the BSAI.

The action does not impose new recordkeeping or reporting requirements on small entities. The analysis did not reveal any Federal rules that duplicate, overlap or conflict with the proposed action.

Authority: 16 U.S.C. 773 *et seq.* 16 U.S.C. 1801 *et seq.*, and 3631 *et seq.*

Dated: November 26, 2003.

Rebecca Lent,

Deputy Assistant Administrator for Regulatory Programs.

[FR Doc. 03–30134 Filed 12–2–03; 8:45 am]

BILLING CODE 3510–22–P

Notices

Federal Register
Vol. 68, No. 232
Wednesday, December 3, 2003

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

AGENCY FOR INTERNATIONAL DEVELOPMENT

Senior Executive Service: Membership of Performance Review Board

ACTION: Notice.

SUMMARY: The following persons are members of the Performance Review Board for 2003.

Members: Arnold J. Haiman, Chair, Drew W. Luten, SES Member, James E. Painter, SES Member, Jessalyn L. Pendarvis, SES Member, Adrienne R. Rish, SES Member.

FOR FURTHER INFORMATION CONTACT: Dan Stoll, 202–712–1076.

Dated: November 21, 2003.

Irma Marshall,

Human Resource Specialist.

[FR Doc. 03–29620 Filed 12–2–03; 8:45 am]

BILLING CODE 6116–01–P

DEPARTMENT OF AGRICULTURE

Foreign Agricultural Service

Trade Adjustment Assistance for Farmers

AGENCY: Foreign Agricultural Service, USDA.

ACTION: Notice.

SUMMARY: The Administrator, Foreign Agricultural Service (FAS), today accepted a petition filed by the Olive Growers Council (Council) of California, Visalia, California, for trade adjustment assistance. The petitioner represents producers of olives in California. The Council has requested a public hearing to review the merits of the petition, which will be held in Room 5066–S, South Agricultural Building, Washington, DC, on December 10, 2003, at 11 A.M. ET.

SUPPLEMENTARY INFORMATION: The petition maintains that during August 1, 2001, through July 31, 2002, increasing imports of olives in a saline solution contributed importantly to a decline in domestic producer prices by more than 20 percent. To support their contention, the Council submitted price data from the National Agricultural Statistics Service. Having accepted this petition, the Administrator has 40 days to determine whether or not producers represented by the Council are eligible for trade adjustment assistance. If the determination is positive, they will be eligible to apply to the Farm Service Agency for technical assistance at no cost and adjustment assistance payments.

FOR FURTHER INFORMATION CONTACT: Jean-Louis Pajot, Coordinator, Trade Adjustment Assistance for Farmers, FAS, USDA, (202) 720–2916, e-mail: *trade.adjustment@fas.usda.gov.*

Dated: November 14, 2003.

A. Ellen Terpstra,

Administrator, Foreign Agricultural Service.

[FR Doc. 03–29399 Filed 12–2–03; 8:45 am]

BILLING CODE 3410–10–M

DEPARTMENT OF COMMERCE

Economic Development Administration

Notice of Petitions by Producing Firms for Determination of Eligibility To Apply for Trade Adjustment Assistance

AGENCY: Economic Development Administration (EDA), Commerce.

ACTION: To give all interested parties an opportunity to comment.

Petitions have been accepted for filing on the dates indicated from the firms listed below.

LIST OF PETITION ACTION BY TRADE ADJUSTMENT ASSISTANCE FOR PERIOD OCTOBER 28, 2003—NOVEMBER 21, 2003

Firm name	Address	Date petition accepted	Product
Louis Baldinger & Sons, Inc	19–02 Steinway Street, Astoria, NY 11105.	11/03/03	Custom design lighting fixtures.
Atlas Industries, Inc	1750 E. State Street, Fremont, OH 43420.	11/07/03	Precision machined parts—crankshafts, manifolds, drive shafts, valve bridges, refrigeration and air conditioning plates and covers.
Reynolds & Reynolds Electronics, Inc	521 E. Fourth Street, Bethlehem, PA 18015.	11/04/04	Electronic emergency energy equipment for elevators.
Mullen Industries, Inc	425 St. Clair Industrial Dr., St. Clair, MO 63077.	11/14/03	Safety Valves and controls.
R & D Manufacturing, Inc	160 S.W. Freeman Ave., Hillsboro, OR 97123.	11/18/03	Threaded and non-threaded fasteners for hand tools, exercise equipment and belt loops.
Kelley Manufacturing, Inc	369 Route 519, Eighty Four, PA 15330	11/17/03	Molds for the glass industry.

The petitions were submitted pursuant to section 251 of the Trade Act of 1974 (19 U.S.C. 2341). Consequently, the United States Department of Commerce has initiated separate investigations to determine whether increased imports into the United States of articles like or directly competitive with those produced by each firm contributed importantly to total or partial separation of the firm's workers, or threat thereof, and to a decrease in sales or production of each petitioning firm. Any party having a substantial interest in the proceedings may request a public hearing on the matter. A request for a hearing must be received by Trade Adjustment Assistance, Room 7315, Economic Development Administration, U.S. Department of Commerce, Washington, DC 20230, no later than the close of business of the tenth calendar day following the publication of this notice.

The Catalog of Federal Domestic Assistance official program number and title of the program under which these petitions are submitted is 11.313, Trade Adjustment Assistance.

Dated: November 20, 2003.

Anthony J. Meyer,

Coordinator, Trade Adjustment and Technical Assistance.

[FR Doc. 03–30067 Filed 12–2–03; 8:45 am]

BILLING CODE 3510–24–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 61–2003]

Foreign-Trade Zone 77—Memphis, TN, Expansion of Manufacturing Authority—Subzone 77A, Sharp Manufacturing Company of America, (Consumer and Business Electronics) Shelby County, TN; Correction

The **Federal Register** notice (68 FR 65246–65247, 11/19/2003) describing the application by the City of Memphis, Tennessee, grantee of FTZ 77, requesting to expand the scope of manufacturing authority under zone procedures within Subzone 77A, at the Sharp Manufacturing Company of America facilities in Shelby County, Tennessee, is corrected as follows:

Paragraph 7 should read, "Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to February 4, 2004)."

Dated: November 26, 2003.

Pierre V. Duy,

Acting Executive Secretary.

[FR Doc. 03–30126 Filed 12–2–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Application for NATO International Competitive Bidding

ACTION: Pre-submission notice; request for comments.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before February 2, 2004.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Office of the Chief Information Officer, 202–482–0266, Room 6625, 14th and Constitution Avenue, NW., Washington DC 20230 or via the Internet at *dHynek@doc.gov.*

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Marna Dove, BIS ICB Liaison, Department of Commerce, BIS Office of the Chief Information Officer, Room 6622, 14th and Constitution Avenue, NW., Washington DC 20230.

SUPPLEMENTARY INFORMATION

I. Abstract

Opportunities to bid for contracts under the NATO Security Investment Program (NSIP) are only open to firms of member NATO countries. NSIP procedures for international competitive bidding (AC/4–D/2261) require that each NATO country certify that their respective firms are eligible to bid such contracts. This is done through the issuance of a "Declaration of Eligibility." The U.S. Department of Commerce, Bureau of Industry of Security is the executive agency responsible for certifying U.S. firms. ITA–4023P and BIS–4023P are the application forms used to collect information needed to ascertain the eligibility of a U.S. firm. BIS will review applications for completeness and accuracy and determine a company's eligibility based on its financial viability, technical capability, and security clearances with the Department of Defense.

II. Method of Collection

The U.S. Department of Commerce distributes Form ITA–4023P (and revised form BIS–4023P) to potential applicants upon request. The applicant completes the form and forwards it to the U.S. Department of Commerce/ Bureau of Industry and Security for processing.

III. Data

OMB Number: None.

Form Number: ITA–4023P, BIS–4023P.

Type of Review: Regular Submission.

Affected Public: Businesses and other for-profit institutions, small businesses or organizations.

Estimated Number of Respondents: 40.

Estimated Time Per Response: 1 hour.

Estimated Total Annual Burden Hours: 40 hours.

Estimated Total Cost: $1,000.

Estimated Total Annual Cost: No start-up costs or capital expenditures.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they will also become a matter of public record.

Dated: November 26, 2003.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 03–30049 Filed 12–2–03; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–428–817]

Certain Corrosion-Resistant Carbon Steel Flat Products and Cut-to-Length Carbon Steel Plate Products From Germany: Initiation of Countervailing Duty Changed Circumstances Reviews

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of initiation of countervailing duty changed circumstances reviews.

SUMMARY: In response to the October 22, 2003, request by International Steel Group, Inc. (purchaser of Bethlehem Steel Corporation) and United States Corporation, the domestic producers in these cases, the Department of

Commerce (the Department) is initiating changed circumstances countervailing duty reviews of the countervailing duty orders on certain corrosion-resistant carbon steel flat products and cut-to-length carbon steel plate products from Germany. The domestic producers have expressed no further interest in the relief provided by the countervailing duty orders. Interested parties are invited to comment on this notice of initiation.

EFFECTIVE DATE: December 3, 2003.

FOR FURTHER INFORMATION CONTACT: Robert Copyak, Office of AD/CVD Enforcement VI, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–2209.

SUPPLEMENTARY INFORMATION:

Background

On August 17, 1993, the Department published countervailing duty orders on certain corrosion-resistant carbon steel flat products and cut-to-length carbon steel plate products from Germany. *See Countervailing Duty Orders and Amendment to Final Affirmative Countervailing Duty Determinations: Certain Steel Products From Germany*, 58 FR 43756 (August 17, 1993). On October 22, 2003, International Steel Group, Inc. (purchaser of Bethlehem Steel Corporation) and United States Corporation, requested that the Department revoke the countervailing duty orders, effective April 1, 2004, based on their lack of further interest.

Scope of the Orders

The products covered by these reviews are certain corrosion-resistant carbon steel flat products and cut-to-length steel plate products from Germany.

(1) *Certain corrosion-resistant carbon steel flat products:* The scope of countervailing duty order of certain corrosion-resistant carbon steel flat products (corrosion-resistant) includes flat-rolled carbon steel products, of rectangular shape, either clad, plated, or coated with corrosion-resistant metals such as zinc, aluminum, or zinc-, aluminum-, nickel- or iron-based alloys, whether or not corrugated or painted, varnished or coated with plastics or other nonmetallic substances in addition to the metallic coating, in coils (whether or not in successively superimposed layers) and of a width of 0.5 inch or greater, or in straight lengths which, if of a thickness less than 4.75 millimeters, are of a width of 0.5 inch or greater and which measures at least 10 times the thickness or if of a thickness of 4.75 millimeters or more are of a width which exceeds 150 millimeters and measures at least twice the thickness, as currently classifiable in the Harmonized Tariff Schedule (HTS) under item numbers 7210.31.0000, 7210.39.0000, 7210.41.0000, 7210.49.0030, 7210.49.0090, 7210.60.0000, 7210.70.6030, 7210.70.6060, 7210.70.6090, 7210.90.1000, 7210.90.6000, 7210.90.9000, 7212.21.0000, 7212.29.0000, 7212.30.1030, 7212.30.1090, 7212.30.3000, 7212.30.5000, 7212.40.1000, 7212.40.5000, 7212.50.0000, 7212.60.0000, 7215.90.1000, 7215.90.5000, 7217.12.1000, 7217.13.1000, 7217.19.1000, 7217.19.5000, 7217.22.5000, 7217.23.5000, 7217.29.1000, 7217.29.5000, 7217.32.5000, 7217.33.5000, 7217.39.1000, and 7217.39.5000. Included in this scope are flat-rolled products of non-rectangular cross-section where such cross-section is achieved subsequent to the rolling process (*i.e.*, products which have been worked after rolling)—for example, products which have been beveled or rounded at the edges. Excluded from this scope are flat-rolled steel products either plated or coated with tin, lead, chromium, chromium oxides, both tin and lead (terne plate), or both chromium and chromium oxides (tin-free steel), whether or not painted, varnished or coated with plastics or other nonmetallic substances in addition to the metallic coating. Also excluded from this scope are clad products in straight lengths of 0.1875 inch or more in composite thickness and of a width which exceeds 150 millimeters and measures at least twice the thickness. Also excluded from this scope are certain clad stainless flat-rolled products, which are three-layered corrosion-resistant carbon steel flat-rolled products less than 4.75 millimeters in composite thickness that consist of a carbon steel flat-rolled product clad on both sides with stainless steel in a "20 percent–60 percent–20 percent" ratio. On September 22, 1999, the Department issued the final results of a changed circumstances review and revoked the order with respect to certain corrosion-resistant steel. *See Notice of Final Results of Changed Circumstances Antidumping Duty and Countervailing Duty Reviews and Revocation of Orders in Part: Certain Corrosion-Resistant Carbon Steel Flat Products From Germany*, 64 FR 51292 (September 22, 1999). The Department noted that the affirmative statement of no interest by petitioners, combined with the lack of comments from interested parties, is sufficient to warrant partial revocation. This partial revocation applies to certain corrosion-resistant deep-drawing carbon steel strip, roll-clad on both sides with aluminum (AlSi) foils in accordance with St3 LG as to EN 10139/10140. The merchandise's chemical composition encompasses a core material of U St 23 (continuous casting) in which carbon is less than 0.08 percent; manganese is less than 0.30 percent; phosphorous is less than 0.20 percent; sulfur is less than 0.015 percent; aluminum is less than 0.01 percent; and the cladding material is a minimum of 99 percent aluminum with silicon/copper/iron of less than 1 percent. The products are in strips with thicknesses of 0.07mm to 4.0mm (inclusive) and widths of 5mm to 800mm (inclusive). The thickness ratio of aluminum on either side of steel may range from 3 percent/94 percent/3 percent to 10 percent/80 percent/10 percent.

(2) *Certain cut-to-length carbon steel plate products:* The scope of countervailing duty order on certain cut-to-length carbon steel plate products (cut-to-length steel) includes hot-rolled carbon steel universal mill plates (*i.e.*, flat-rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 millimeters but not exceeding 1,250 millimeters and of a thickness of not less than 4 millimeters, not in coils and without patterns in relief), of rectangular shape, neither clad, plated nor coated with metal, whether or not painted, varnished, or coated with plastics or other nonmetallic substances; and certain hot-rolled carbon steel flat-rolled products in straight lengths, of rectangular shape, hot rolled, neither clad, plated, nor coated with metal, whether or not painted, varnished, or coated with plastics or other nonmetallic substances, 4.75 millimeters or more in thickness and of a width which exceeds 150 millimeters and measures at least twice the thickness, as currently classifiable in the Harmonized Tariff Schedule (HTS) under item numbers 7208.40.3030, 7208.40.3060, 7208.51.0030, 7208.51.0045, 7208.51.0060, 7208.52.0000, 7208.53.0000, 7208.90.0000, 7210.70.3000, 7210.90.9000, 7211.13.0000, 7211.14.0030, 7211.14.0045, 7211.90.0000, 7212.40.1000, 7212.40.5000, and 7212.50.0000. Included are flat-rolled products of non-rectangular cross-section where such cross-section is achieved subsequent to the rolling process (*i.e.*, products which have been worked after rolling) for example, products which have been beveled or rounded at the edges. Excluded is grade X–70 plate. On August 25, 1999, the Department issued the final results of a changed-circumstances review revoking the order in part, with respect to certain carbon cut-to-length steel plate with a maximum thickness of 80 mm in steel grades BS 7191, 355 EM and 355 EMZ, as amended by Sable Offshore Energy Project Specification XB MOO Y 15 0001, types 1 and 2. *See Certain Cut-to-Length Carbon Steel Plate from Finland, Germany, and United Kingdom: Final Results of Changed Circumstances Antidumping Duty and Countervailing Duty Reviews, and Revocation of Orders in Part*, 64 FR 46343 (August 25, 1999).

The HTS item numbers are provided for convenience and custom purposes. The written description remains dispositive.

Initiation of Changed Circumstances Reviews

Pursuant to section 751(d)(1) of the Tariff Act of 1930, as amended (the Act) the Department may revoke a countervailing duty order based on a review under section 751(b) of the Act (*i.e.*, a changed circumstances review). Section 751(b)(1) of the Act requires a changed circumstances review to be conducted upon receipt of a request containing information concerning changed circumstances sufficient to warrant a review. Section 351.222(g) of the Department's regulations provides that the Department will conduct a changed circumstances review under 19 CFR 351.216, and may revoke an order in whole or in part, if it determines that the producers accounting for substantially all of the production of the domestic like product have expressed a lack of interest in the order, in whole or in part. *See* section 782(h) of the Act and section 351.222g(1) of the Department's regulations. In the event that the Department concludes that expedited action is warranted, sections 351.221(c)(3)(ii) and 351.222(f)(2)(iv) of the regulations permit the Department to combine the notices of initiation and preliminary results.

The domestic producers state that they are producers of certain corrosion-resistant carbon steel flat products and cut-to-length carbon steel plate products but do not identify the percentages of production of the domestic like products they represent. At present, the Department has no information on the record that the other known domestic producers have no interest in maintaining the countervailing duty orders with respect to the subject merchandise imported from Germany. In particular, the Department does not have information on the record of these changed circumstances reviews indicating that the domestic producers requesting this review account for substantially all, or at least 85 percent, of the production of the domestic like products. *See Certain Tin Mill Products from Japan: Final Results of Changed Circumstances Review*, 66 FR 52109 (October 12, 2001); *see*, also, 19 CFR 351.208(c). Accordingly, we are not combining this initiation with a preliminary determination, pursuant to 19 CFR 351.221(c)(3)(ii). This notice of initiation will accord all interested party an opportunity to address this proposed revocation.

In accordance with sections 751(b) of the Act and 19 CFR 351.216, 351.221, and 351.222, based on an affirmative statement of no interest by the domestic parties in continuing the countervailing duty orders with respect to certain corrosion-resistant carbon steel flat products and cut-to-length carbon steel plate products from Germany, as described above, we are initiating these changed circumstances administrative reviews.

If, as a result of these reviews, we revoke the orders, we intend to instruct U.S. Customs and Border Protection (CBP) to end the suspension of liquidation of the subject merchandise on the effective date of the final notice of revocation, and to refund any estimated countervailing duties collected, for all unliquidated entries of such merchandise made on or after April 1, 2004. We will also instruct CBP to pay interest on such refunds in accordance with section 778 of the Act. The current requirement for a cash deposit of estimated countervailing duties on the subject merchandise will continue until publication of the final results of these changed circumstances reviews.

Public Comment

Interested parties are invited to comment on the initiation of these changed circumstances reviews. Parties who submit argument in this proceeding are requested to submit with the argument (1) a statement of the issue, and (2) a brief summary of the argument. All written comments may be submitted by interested parties not later than 14 days after the date of publication of this notice in accordance with 19 CFR 351.303, with the exception that only three (3) copies need to be served on the Department, and shall be served on all interested parties on the Department's service list in accordance with 19 CFR 351.303.

The Department will publish in the **Federal Register** a notice of preliminary results of changed circumstances reviews, in accordance with 19 CFR 351.221(c)(3), which will set forth the factual and legal conclusions upon which our preliminary results are based, and a description of any action proposed based on those results.

This notice is in accordance with section 751(b)(1) of the Act (19 U.S.C. 1675(b)), and 19 CFR 351.216, 351.221, and 351.222.

Dated: November 26, 2003.

James J. Jochum,

Assistant Secretary for Import Administration.

[FR Doc. 03–30125 Filed 12–2–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 112403C]

Endangered Species; Permit No. 1429

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Scientific research permit modification.

SUMMARY: Notice is hereby given that a request for modification of scientific research permit no. 1429 submitted by the National Marine Fisheries Service, Southeast Fisheries Science Center (SEFSC) has been granted.

ADDRESSES: The amendment and related documents are available for review upon written request or by appointment in the following office(s):

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301)713–2289, fax (301)713–0376;

Southeast Region, NMFS, 9721 Executive Center Drive North, St. Petersburg, FL 33702–2432; phone (727)570–5301; fax (727)570–5320.

FOR FURTHER INFORMATION CONTACT: Patrick Opay, (301)713–1401 or Ruth Johnson, (301)713–2289.

SUPPLEMENTARY INFORMATION: The requested amendment has been granted under the authority of the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*) and the provisions of 50 CFR 222.306 of the regulations governing the taking, importing, and exporting of endangered and threatened fish and wildlife (50 CFR 222–226).

The modification extends the expiration date of the Permit from December 31, 2003, to December 31, 2004, for takes of green (*Chelonia mydas*), loggerhead (*Caretta caretta*), olive ridley (*Lepidochelys olivacea*), leatherback (*Dermochelys coriacea*), hawksbill (*Eretmochelys imbricata*) and Kemp's ridley (*Lepidochelys kempii*) sea turtles. The permit allows the SEFSC to conduct sea turtle bycatch reduction research in the pelagic longline fishery of the western north Atlantic Ocean. The purpose of the research is to develop and test methods to reduce bycatch that occurs incidental to commercial, pelagic longline fishing.

Issuance of this amendment, as required by the ESA was based on a finding that such permit: (1) Was applied for in good faith; (2) will not operate to the disadvantage of the threatened and endangered species which are the subject of this permit; and (3) is consistent with the purposes and policies set forth in section 2 of the ESA.

Dated: November 26, 2003.

Stephen L. Leathery,

Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 03–30148 Filed 12–2–03; 8:45 am]

BILLING CODE 3515–22–S

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Business Practice Implementation Board; Notice of Advisory Committee Meeting

AGENCY: Department of Defense.

ACTION: Notice of advisory committee meeting.

SUMMARY: The Defense Business Practice Implementation Board (DBB) met on Thursday, November 20, 2003, at the Pentagon, Washington, DC from 0815 until 0940. The mission of the DBB is to advise the Senior Executive Council (SEC) and the Secretary of Defense on effective strategies for implementation of best business practices of interest to the Department of Defense. At this meeting, the Board's Human Resources (Minority Representation in Senior DoD Ranks) and Acquisition (Fuel Hedging) task groups deliberated on their preliminary findings related to tasks assigned earlier this year.

DATES: Thursday, November 20, 2003, 0815 to 0940 hrs.

ADDRESSES: Pentagon, Washington, DC.

FOR FURTHER INFORMATION CONTACT: The DBB may be contacted at: Defense Business Practice Implementation Board, 1100 Defense Pentagon, Room 2E314, Washington, DC 20301–1100, via E-mail at *DBB@osd.pentagon.mil*, or via phone at (703) 695–0499.

Dated: November 14, 2003.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 03–30033 Filed 12–2–03; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board

AGENCY: Department of Defense.

ACTION: Notice of advisory committee meeting.

SUMMARY: The Defense Science Board Task Force on Quarantining Guidance for the Severe Acute Respiratory Syndrome (SARS) Epidemic will meet in open session January 14, 2004, from 0930–1200 and from 1300–1500. The Task Force will meet at SAIC, 4001 N. Fairfax Drive, Suite 500, Arlington, VA. The Task Force will review the impact quarantining may have on DoD planning and operations by preventing the flow of personnel and material to areas of concern, eroding relationships with host countries, and impacting our forces through anxieties about family members.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition, Technology & Logistics on scientific and technical matters as they affect the perceived needs of the Department of Defense. At this meeting, the Defense Science Board Task Force will review and evaluate the Department's ability to provide information to integrate public health needs, on behalf of national security. Specifically, the Task Force will review: Existing doctrine and processes by which quarantine policy is generated; required cooperation with non-DoD agencies and non-US Government entities, including other countries; the capacity of local commanders to rapidly survey disease status, and establish need, ways and means for quarantine in relation to their assigned mission; methods, technologies and doctrine to allow safe transport of personnel through quarantined areas, and restriction of movement where needed; sample scenarios; coordination and allocation of DoD and non DoD resources to combat SARS; identification and tracking of individuals potentially exposed to SARS; and features of the SARS guidance which may be applicable to future infectious disease outbreaks.

FOR FURTHER INFORMATION CONTACT: CDR David Waugh, USN, Defense Science Board, 3140 Defense Pentagon, Room 3D865, Washington, DC 20301–3140, via e-mail at *david.waugh@osd.mil*, or via phone at (703) 695–4158.

SUPPLEMENTARY INFORMATION: Members of the public who wish to attend the meeting must contact CDR Waugh no later than January 5, 2004, for further information about admission as seating is limited. Additionally, those who wish to make oral comments or deliver written comments should also request to be scheduled, and submit a written text of the comments by January 5, 2004, to allow time for distribution to Task Force members prior to the meeting. Individual oral comments will be limited to five minutes, with the total oral comment period not exceeding 30 minutes.

Dated: November 21, 2003.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 03–30034 Filed 12–2–03; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–62–000]

CenterPoint Energy—Mississippi River Transmission Corporation; Notice of Penalty Revenue Credit Report

November 25, 2003.

Take notice that on November 20, 2003, CenterPoint Energy—Mississippi River Transmission Corporation (MRT) tendered for filing a refund report showing penalty revenues that will be refunded, with interest, to the Customers upon approval by the Commission.

MRT states that copies of its filing have been served upon all of its customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before the date as indicated below. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the e-Filing link.

Intervention and Protest Date: December 3, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. E3–00426 Filed 12–2–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP95–408–054]

Columbia Gas Transmission Corporation; Notice of Refund Report

November 25, 2003.

Take notice that on November 20, 2003, Columbia Gas Transmission Corporation (Columbia Gas) tendered for filing a report on the flow-back to customers of funds received from insurance carriers for environmental costs attributable to Columbia Gas' Docket No. RP95–408 settlement period.

Columbia Gas states that it allocated such recoveries among customers based on terms of the Docket No. RP95–408 Phase II Settlement which states that customer allocations shall be based on customers' actual contributions to Remediation Program collections for the most recent February 1–January 31 period.

Columbia Gas states further that it provided a copy of the report to all customers who received a share of the environmental insurance recoveries and all state commissions whose jurisdiction includes the location of any such recipient.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before the protest date as shown below. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the e-Filing link.

Protest Date: December 3, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. E3–00422 Filed 12–2–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP91–161–031]

Columbia Gas Transmission Corporation; Notice of Refund Report

November 25, 2003.

Take notice that on November 20, 2003, Columbia Gas Transmission Corporation (Columbia Gas) tendered for filing a report on the flow-back to customers of funds received from insurance carriers for environmental costs attributable to Columbia Gas' Docket No. RP91–161 settlement period.

Columbia Gas states that it allocated such recoveries among customers based on their fixed cost responsibility for services on the Columbia Gas system during the period December 1, 1991 through January 31, 1996, the period of the Docket No. RP91–161 settlement.

Columbia Gas states further that it provided a copy of the report to all customers who received a share of the environmental insurance recoveries and all state commissions whose jurisdiction includes the location of any such recipient.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before the protest date as shown below. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary link. Enter the docket number excluding the last three digits in the docket number field to access the document. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the e-Filing link.

Protest Date: December 3, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. E3–00428 Filed 12–02–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP91–160–031]

Columbia Gulf Transmission Company; Notice of Refund Report

November 25, 2003.

Take notice that on November 20, 2003, Columbia Gulf Transmission Company (Columbia Gulf) filed to report on the flow-back to customers of funds received from insurance carriers for environmental costs pursuant to Article I(A)(2)(d) of its Docket No. RP91–160 settlement.

Columbia Gulf states that it allocated such recoveries among customers based on their fixed cost responsibility for services rendered on the Columbia Gulf system during the period December 1, 1991 through October 31, 1994, the period of the Docket No. RP91–160 settlement.

Columbia Gulf states further that it provided a copy of the report to all customers who received a share of the environmental insurance recoveries and all state commissions whose jurisdiction

includes the location of any such recipient.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before the protest date as shown below. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary link. Enter the docket number excluding the last three digits in the docket number field to access the document. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the e-Filing link.

Protest Date: December 3, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. E3–00427 Filed 12–2–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–336–023]

El Paso Natural Gas Company; Notice of Compliance Filing

November 26, 2003.

Take notice that on November 20, 2003, El Paso Natural Gas Company (El Paso) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1A, the following tariff sheets with an effective date of December 1, 2003:

First Revised Sheet No. 113E
Third Revised Sheet No. 119
Third Revised Sheet No. 120
Original Sheet No. 121
Reserved Sheet Nos. 122–124
Eighth Revised Sheet No. 214

El Paso states that these tariff sheets implement the pro forma tariff provisions accepted by the Commission as part of El Paso's reserve capacity pool settlement at Docket No. RP00–336–021.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the e-Filing link.

Magalie R. Salas,

Secretary.

[FR Doc. E3–00434 Filed 12–2–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–66–000]

El Paso Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

November 26, 2003.

Take notice that on November 21, 2003, El Paso Natural Gas Company (El Paso) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1A, the tariff sheets listed in Appendix A to the filing, with an effective date of January 1, 2004.

El Paso states that these tariff sheets remove the risk sharing and revenue crediting provisions that are due to terminate as of the end of this year.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "eLibrary". Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Magalie R. Salas,

Secretary.

[FR Doc. E3–00436 Filed 12–2–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PR04–4–000]

Enogex Inc.; Notice of Petition for Rate Approval

November 25, 2003.

Take notice that on November 17, 2003, Enogex Inc. (Enogex) tendered for filing a revised fuel tracker for its Enogex System for Fuel Year 2004 as calculated under the terms of Enogex's filed fuel tracker. Enogex seeks an effective date of January 1, 2004.

Enogex states that it is serving notice of the filing and the revised fuel percentage on all current shippers.

Pursuant to section 284.123(b)(2)(ii), if the Commission does not act within 150 days of the date of this filing, the rates will be deemed to be fair and equitable and not in excess of an amount which interstate pipelines would be permitted to charge for similar transportation service. The Commission may, prior to the expiration of the 150 day period, extend the time for action or institute a proceeding to afford parties an opportunity for written comments and for the oral presentation of views, data, and arguments.

Any person desiring to participate in this rate proceeding must file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed with the Secretary of the Commission on or before the date as indicated below. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This petition for rate approval is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See*, 18 CFR 385.2001(1)(iii) and the instructions on the Commission's Web site under the e-Filing link.

Intervention and Protest Date: December 10, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. E3–00424 Filed 12–2–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–47–003]

Gulf South Pipeline Company, LP; Notice of Compliance Filing

November 26, 2003.

Take notice that on November 19, 2003, Gulf South Pipeline Company, LP (Gulf South) tendered for filing as part of its FERC Gas Tariff, Sixth Revised Volume No. 1, Substitute First Revised Sheet No. 2004, to become effective May 1, 2003.

On October 20, 2003 Gulf South filed tariff sheets to comply with the Commission's October 3, 2003, Order. Gulf South states that it has determined that section 13.12 was inadvertently deleted in its October 20, 2003, filing and is making this filing to correct this error.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the e-Filing link.

Magalie R. Salas,

Secretary.

[FR Doc. E3–00435 Filed 12–2–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–67–000]

NGO Transmission, Inc.; Notice of Tariff Filing

November 26, 2003.

Take notice that on November 21, 2003, NGO Transmission, Inc. (NGO Transmission) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the tariff sheets listed on Appendix A to the filing, with an effective date of November 22, 2003.

NGO Transmission states that the purpose of the filing is to comply with the Commission's Order issued on October 27, 2003, in Docket Nos. CP03–296–000 and CP03–298–000.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "eLibrary". Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502-8659. The Commission strongly encourages electronic filings. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Magalie R. Salas,

Secretary.

[FR Doc. E3–00437 Filed 12–2–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–398–004]

Northern Natural Gas Company; Notice of Compliance Filing

November 25, 2003.

Take notice that on November 21, 2003, Northern Natural Gas Company (Northern), tendered for filing in its FERC Gas Tariff, Fifth Revised Volume No. 1, the following tariff sheets, with an effective date of November 1, 2003:

Substitute Third Revised Sheet No. 125A
Substitute Seventh Revised Sheet No. 226
Fourth Revised Sheet No. 227
Third Revised Sheet No. 228
Original Sheet No. 228A
First Revised Sheet No. 229
Eighth Revised Sheet No. 252
Eighth Revised Sheet No. 267
Substitute Original Sheet No. 267A
Substitute Seventh Revised Sheet No. 268
Sixth Revised Sheet No. 269
Substitute Fourth Revised Sheet No. 285
Substitute First Revised Sheet No. 285A
Substitute Fifth Revised Sheet No. 297

Northern states that the filing is being made in compliance with the Commission's order issued on October 31, 2003 in this proceeding, related to tariff provisions with respect to the technical conference in Northern's on going rate case proceeding.

Northern further states that copies of the filing have been mailed to each of

its customers and interested State Commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the e-Filing link.

Magalie R. Salas,

Secretary.

[FR Doc. E3–00425 Filed 12–2–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP04–18–000]

Northern Natural Gas Company; Notice of Request Under Blanket Authorization

November 26, 2003.

Take notice that on November 21, 2003, Northern Natural Gas Company (Northern), 1111 South 103rd Street, Omaha, Nebraska 68124–1000, filed in Docket No. CP04–18–000, an application pursuant to §§ 157.205 and 157.208 of the Commission's Regulations under the Natural Gas Act (NGA) as amended, for authorization to reduce the maximum allowable operating pressure (MAOP) on its pipeline in Upton and Midland Counties, Texas, under Northern's blanket certificate issued in Docket No. CP82–401–000 pursuant to section 7 of the NGA, all as more fully set forth in the application, which is on file with the Commission and open to public inspection.

Northern proposes to reduce the MAOP of the 24-inch Plymouth to Spraberry pipeline in Texas to 550 psig from the currently authorized MAOP of 705 psig. Northern states that the pipeline has historically operated at 640 psig and has determined that the reduced psig would be sufficient to meet its contractual firm obligations. It is asserted that the reduction in MAOP would reduce the risk of a potential failure on the pipeline. Northern states that an inspection of the pipeline revealed indications of corrosion, and Northern determined that reducing the MAOP would be the best way to avoid problems in the future. Northern proposes to reduce the MAOP by adjusting regulators located at the abandoned Plymouth station and at the Spraberry station and asserts that no construction would be required.

Any questions concerning this application may be directed to Michael T. Loeffler, Director, Certificates and Community Relations, at (402) 398–7103, or Bret Fritch, Senior Regulatory Analyst, at (402) 398–7140.

This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov*, using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at FERC *OnlineSupport@ferc.gov* or call toll-free at (866) 206–3676, or, for TTY, contact (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages intervenors to file electronically.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Comment Date: January 12, 2004.

Magalie R. Salas,

Secretary.

[FR Doc. E3–00430 Filed 12–2–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP04–18–000]

Northern Natural Gas Company; Notice of Request Under Blanket Authorization

November 26, 2003.

Take notice that on November 21, 2003, Northern Natural Gas Company (Northern), 1111 South 103rd Street, Omaha, Nebraska 68124–1000, filed in Docket No. CP04–18–000, an application pursuant to Sections 157.205 and 157.208 of the Commission's Regulations under the Natural Gas Act (NGA) as amended, for authorization to reduce the maximum allowable operating pressure (MAOP) on its pipeline in Upton and Midland Counties, Texas, under Northern's blanket certificate issued in Docket No. CP82–401–000 pursuant to section 7 of the NGA, all as more fully set forth in the application, which is on file with the Commission and open to public inspection.

Northern proposes to reduce the MAOP of the 24-inch Plymouth to Spraberry pipeline in Texas to 550 psig from the currently authorized MAOP of 705 psig. Northern states that the pipeline has historically operated at 640 psig and has determined that the reduced psig would be sufficient to meet its contractual firm obligations. It is asserted that the reduction in MAOP would reduce the risk of a potential failure on the pipeline. Northern states that an inspection of the pipeline revealed indications of corrosion, and Northern determined that reducing the MAOP would be the best way to avoid problems in the future. Northern proposes to reduce the MAOP by adjusting regulators located at the abandoned Plymouth station and at the Spraberry station and asserts that no construction would be required.

Any questions concerning this application may be directed to Michael T. Loeffler, Director, Certificates and Community Relations, at (402) 398–7103, or Bret Fritch, Senior Regulatory Analyst, at (402) 398–7140.

This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://*

www.ferc.gov, using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at FERC *OnlineSupport@ferc.gov* or call toll-free at (866) 206–3676, or, for TTY, contact (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages intervenors to file electronically.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Comment Date: January 12, 2004.

Linda Mitry,

Acting Secretary.

[FR Doc. E3–00450 Filed 12–2–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. EL04–26–000; QF85–311–004; QF86–734–006]

Sithe Energies, Inc.; Acme POSDEF Partners, L.P.; LUZ Solar Partners III, Ltd.; Notice of Initiation of Proceeding

November 26, 2003.

Take notice that on November 20, 2003, the Commission issued an order in the above-referenced proceedings initiating a proceeding to determine whether Sithe Energies, Inc.'s ownership interests in two generation facilities affect their status as qualifying facilities under the Public Utility Regulatory Policies Act of 1978.

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov*, using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number filed to access the document. For assistance, call (202) 502–8222 or TTY, (202) 502–8659. Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Comment Date: December 5, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. E3–00431 Filed 12–2–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP93–109–020]

Southern Star Central Gas Pipeline, Inc.; Notice of Filing of Refund Report

November 26, 2003.

Take notice that on November 20, 2003, Southern Star Central Gas Pipeline, Inc. (Southern Star) tendered for filing pursuant to Article III, Paragraph D of the Stipulation and Agreement dated January 31, 2001, in Docket No. RP93–109–017, its refund report of environmental proceeds received from third-party insurers.

Article III states that Southern Star will allocate its pass-through of third-party environmental proceeds, if any, to Southern Star's customers based on firm reservation revenues during the 12 ending September 30.

Southern Star states that it is filing its report of third-party insurance proceeds received during the twelve months ended September 30, 2003. Southern Star states that due to the fact that it received no environmental proceeds during this twelve-month period, there will be no refunds made this year.

Southern Star states that a copy of its filing was served on all jurisdictional customers and interested state commissions, as well as all parties on the Commission's official service list for this docket.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before the protest date as shown below. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Protest Date: December 4, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. E3–00438 Filed 12–2–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC04–25–000, et al.]

MEP Pleasant Hill Operating, LLC, et al.; Electric Rate and Corporate Filings

November 25, 2003.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. MEP Pleasant Hill Operating, LLC; MEP Investments, LLC; Aquila Merchant Services, Inc.; Calpine Corporation; Calpine Energy Services, L.P.

[Docket No. EC04–25–000]

Take notice that on November 19, 2003, MEP Pleasant Hill Operating, LLC (MEP Operating), MEP Investments, LLC (MEP Investments), Aquila Merchant Services, Inc. (AMS), Calpine Corporation (Calpine), and Calpine Energy Services, L.P. (CES) (collectively the Applicants), filed with the Federal Energy Regulatory Commission (Commission) an application for approval pursuant to Section 203 of the Federal Power Act and Section 33 of the Commission's regulations for the Applicants' disposition of (1) MEP Investments' interest in MEP Pleasant Hill, LLC to Calpine or its affiliate, and (2) AMS's interests as seller under certain power sales agreements to CES.

Applicants state that the filing has been served on all state public utilities commission in affected states, specifically Missouri and Kansas.

Comment Date: December 10, 2003.

2. Midwest Independent Transmission System Operator, Inc.

[Docket No. EL03–38–002]

Take notice that on November 19, 2003, the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) submitted for filing amended and executed Service Agreements for Long-Term Firm Transmission Service between the Midwest ISO and (1) Cargill Power Markets, LLC (Cargill) and (2) Conectiv Energy Supply, Inc. (Conectiv), pursuant to the Commission's October 24, 2003 Letter Order issued in Docket No. EL03–38–001.

The Midwest ISO states that it has served a copy of its filing on each person whose name is listed on the official service list maintained by the Secretary in this proceeding. The Midwest ISO also states that it has electronically served a copy of this filing, with attachments, upon all Midwest ISO Members, Member representatives of Transmission Owners and Non-Transmission Owners, the Midwest ISO Advisory Committee participants, as well as all state commissions within the region. In addition, Midwest ISO states that the filing has been electronically posted on the Midwest ISO's Web site at *www.midwestiso.org* under the heading "Filings to FERC" for other interested parties in this matter. The Midwest ISO states that it will provide hard copies to any interested parties upon request.

Comment Date: December 10, 2003.

3. CPV Milford, LLC

[Docket No. EG04–20–000]

On November 24, 2003, CPV Milford, LLC (CPV Milford) filed an application with the Federal Energy Regulatory Commission (Commission) for determination of exempt wholesale generator status pursuant to Section 32 of the Public Utility Holding Company Act of 1935, as amended, and Part 365 of the Commission's regulations.

CPV Milford, a Delaware limited liability company, states that it will be engaged directly and exclusively in the business of operating all or part of one or more eligible facilities located in Milford, Connecticut. CPV Milford further states that the eligible facilities consist of an approximate 544 MW natural gas fired electric generation plant and related interconnection facilities and the output of the eligible facilities will be sold at wholesale.

Comment Date: December 12, 2003.

4. Quark Power L.L.C.

[Docket No. ER97–2374–014]

Take notice that on November 19, 2003, Quark Power L.L.C. (Quark) tendered for filing notification of a change in status reflecting a departure from the characteristics that the Commission relied upon in approving market-based pricing for Quark.

Comment Date: December 10, 2003.

5. Green Power Partners I LLC

[Docket No. ER04–153–001]

Take notice that on November 19, 2003, Green Power Partners I LLC (Green Power) submitted for filing with the Federal Energy Regulatory Commission an amendment to its November 3, 2003 filing requesting acceptance of a rate schedule pursuant to Section 205 of the Federal Power Act and Section 35.12 of the regulations of the Commission. Green Power requests that the rate schedule attached to the amended filing be designated as Green Power Rate Schedule FERC No. 3, and become effective on the date, if any, the Green Power's wind generation facility is no longer a qualifying facility.

Comment Date: December 10, 2003.

6. Xcel Energy Services Inc.

[Docket No. ER04–201–000]

Take notice that on November 19, 2003 Xcel Energy Services, Inc. (XES), on behalf of Public Service Company of Colorado (PSC), submitted for filing a Notice of Cancellation of a Master Power Purchase and Sale Agreement between Public Service Company of Colorado and the City of Glendale. XES requests that the cancellation become effective as of the date of this filing.

Comment Date: December 10, 2003.

7. Tucson Electric Power Company

[Docket No. ER04–204–000]

Take notice that on November 20, 2003, Tucson Electric Power Company (TEP) filed an Interconnection and Operating Agreement, as amended by Amendment No. 1 to Interconnection and Operating Agreement, between Springerville Unit 3 Holding LLC and TEP (collectively, Interconnection Agreement) under TEP's Open Access Transmission Tariff. TEP requests an effective date of October 21, 2003 for the Interconnection Agreement.

TEP states that it has served a copy of the filing on Springerville Unit 3 Holding LLC.

Comment Date: December 10, 2003.

8. Public Service Company of New Hampshire

[Docket No. ER04–205–000]

Take notice that on November 18, 2003, Public Service Company of New Hampshire (PSNH) tendered for filing Rate Schedule FERC No. 187, a Delivery Services and Interconnection Agreement with Vermont between PSNH and the New Hampshire Electric Cooperative, Inc. (NHEC). PSNH requests an effective date of January 1, 2004.

PSNH states that a copy of this filing was mailed to NHEC, the Office of Attorney General for the State of New Hampshire, the Executive Director of the New Hampshire Public Utilities Commission, and the Office of Consumer Advocate for the State of New Hampshire.

Comment Date: December 10, 2003.

9. Western Systems Power Pool, Inc.

[Docket No. ER04–206–000]

Take notice that on November 19, 2003, the Western Systems Power Pool, Inc. (WSPP) submitted changes to the WSPP Agreement intended to update or clarify certain provisions of the Agreement. The WSPP seeks an effective date of February 1, 2004 for these changes.

WSPP states that copies of the transmittal letter have been served on all state commissions within the United States. NSPP states that the filing has been posted on the WSPP homepage (*www.wspp.org*) thereby providing notice to all WSPP members.

Comment Date: December 10, 2003.

10. Entergy Services, Inc.

[Docket No. ER04–207–000]

Take notice that on November 19, 2003, Entergy Services, Inc., [Entergy] on behalf of the Entergy Operating Companies, tendered for filing proposed revisions to Section 11 of its Open Access Transmission Tariff (OATT). Entergy states that it specifically, as required by Entergy Services, Inc., 104 FERC ¶ 61,329 (2003), refiled Section 11.3.3, as well as related portions of Sections 11.1 and 11.3.5 of its OATT, in order to clarify when Entergy may require an existing transmission customer to increase previously provided financial assurances which have become insufficient with respect to their ability to protect Entergy against the risk of non-payment because of a transmission customer's increased purchases of transmission services. Entergy requests an effective date of November 20, 2003.

Comment Date: December 10, 2003.

11. Citigroup Energy Inc.

[Docket No. ER04–208–000]

On November 19, 2003, Citigroup Energy Inc. (CEI) petitioned the Commission for an order: (1) Accepting CEI's proposed FERC rate schedule for market-based rates; (2) granting waiver of certain requirements under Subparts B and C of Part 35 of the regulations; (3) granting the blanket approvals normally accorded sellers permitted to sell at market-based rates; and (4) granting waiver of the 60-day notice period.

Comment Date: December 10, 2003.

12. Old Dominion Electric Cooperative

[Docket No. ER04–209–000]

On November 19, 2003, Old Dominion Electric Cooperative (Old Dominion) filed an application under Section 205 of the Federal Power Act and Section 35.13 of the Commission's Rules and Regulations for approval of a change in the formula rate under its FERC Electric Tariff, Volume No. 1 (Tariff), and various administrative, non-substantive changes to the Tariff. Old Dominion requests an effective date of November 30, 2003.

Old Dominion states that the filing was served upon each of its member cooperatives and the public service commissions in the Commonwealth of Virginia and the states of Delaware and Maryland.

Comment Date: December 3, 2003.

13. WPS Canada Generation, Inc.

[Docket No. ER04–210–000]

Take notice that on November 19, 2003, WPS Canada Generation, Inc. (WPS Canada) filed Original Sheet 2 for its Rate Schedule FERC Nos. 2 and 3, which provide for the recovery of Reactive Supply and Voltage Control from Generation Sources Service. WPS Canada requests an effective date of January 19, 2004.

WPS Canada states that copies of the filing were served upon the Maine Public Service Company, the Northern Maine Independent System Administrator, Inc., and the official service list for Docket Nos. ER03–689–000, *et al.*

Comment Date: December 10, 2003.

Standard Paragraph

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov*, using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number filed to access the document. For assistance, call (202) 502–8222 or TTY, (202) 502–8659. Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Magalie R. Salas,

Secretary.

[FR Doc. E3–00420 Filed 12–2–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC04–26–000, et al.]

Milford Power Company, LLC, et al.; Electric Rate and Corporate Filings

November 26, 2003.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. Milford Power Company, LLC

[Docket No. EC04–26–000]

Take notice that on November 21, 2003, Milford Holdings LLC (MH LLC) and El Paso Milford Power I Company, LLC and El Paso Merchant Energy North America Company (El Paso Entities and collectively with MH LLC, Applicants) filed with the Federal Energy Regulatory Commission an application, pursuant to section 203 of the Federal Power Act, and part 33 of the Commission's regulations, seeking authorization for the transfer of ninety-five (95) percent of the membership interests of Milford Power Company, LLC owned by the El Paso Entities from the El Paso Entities to MH LLC. The applicants request expedited consideration of the application.

Comment Date: December 12, 2003.

2. Exelon Generation Company, LLC and Exelon Energy Company

[Docket No. EC04–27–000]

Take notice that on November 21, 2003, Exelon Generation Company, LLC and Exelon Energy Company (Applicants) filed with the Federal Energy Regulatory Commission an application, pursuant to Section 203 of the Federal Power Act for authorization to implement a corporate reorganization. Applicants state that Exelon Energy's ownership will be transferred from Exelon Enterprises Company, LLC to Exelon Generation Company, LLC. Applicants further state that the corporate reorganization will have no adverse effect on competition, rates or regulation. Applicants request expedited consideration of the application.

Comment Date: December 12, 2003.

3. Consolidated Edison Company of New York, Inc.

[Docket No. EC04–28–000]

Take notice that on November 24, 2003, Consolidated Edison Company of New York, Inc. filed an application, pursuant to section 203 of the Federal Power Act for authorization to purchase, acquire or take unsecured evidences of indebtedness of its affiliate Orange and Rockland Utilities, Inc., maturing not more than twelve months after their date of issue up to an amount not in excess of $150 million at any one time outstanding.

Comment Date: December 15, 2003.

4. California Power Exchange Corporation

[Docket No. EL04–28–000]

Take notice that on November 24, 2003, the California Power Exchange Corporation (CalPX) filed a Petition for

Declaratory Order. The petition requests Commission approval for CalPX to enter into a settlement between and among CalPX, Southern California Edison Company and San Diego Gas & Electric Company regarding a billing dispute and participant account summaries. CalPX filed a petition for waiver of the filing fee for the Petition for Declaratory Order.

Comment Date: December 15, 2003.

5. White River Electric Association, Inc.

[Docket No. ER02–2001–000]

Take notice that on July 30, 2003, White River Electric Association, Inc., filed a Request for Waiver of the Order No. 2001 requirement to file Electric Quarterly Reports.

Comment Date: December 16, 2003.

6. Covanta Union, Inc.

[Docket No. ER02–2001–000]

Take notice that on July 30, 2003, Covanta Union, Inc., filed a Request for Waiver of the Order No. 2001 requirement to file Electric Quarterly Reports.

Comment Date: December 16, 2003.

7. Sun River Electric Cooperative, Inc.

[Docket No. ER02–2001–000]

Take notice that on July 30, 2003, Sun River Electric Cooperative, Inc. filed a Request for Waiver of the Order No. 2001 requirement to file Electric Quarterly Reports.

Comment Date: December 16, 2003.

8. New York State Electric & Gas Corporation

[Docket No. ER03–587–006]

Take notice that New York State Electric & Gas Corporation (NYSEG) on November 20, 2003, tendered for filing, in compliance with the Commission's order issued April 29, 2003 in Docket No. ER03–587–000, FERC Rate Schedule 105, an agreement between NYSEG and Connecticut Light & Power Company.

Comment Date: December 11, 2003.

9. New York State Electric & Gas Corporation

[Docket No. ER03–587–007]

Take notice that New York State Electric & Gas Corporation (NYSEG) on November 20, 2003, tendered for filing in compliance with the Commission's order issued April 28, 2003 in Docket No. ER03–587–000, FERC Rate Schedule 27, an agreement between NYSEG and Massachusetts Electric Company.

Comment Date: December 11, 2003.

10. Xcel Energy Services Inc.

[Docket No. ER04–211–000]

Take notice that on November 20, 2003, Xcel Energy Services, Inc. (XES), on behalf of Southwestern Public Service Company (SPS), submitted for filing a Brokering Agreement for Excess Energy (Agreement) between Southwestern Public Service Company and Otter Tail Power Company. XES requests that the Agreement become effective October 16, 2003.

Comment Date: December 11, 2003.

11. United States Department of Energy and Bonneville Power Administration

[Docket No. NJ03–3–001]

Take notice that on November 20, 2003, Bonneville Power Administration filed a Compliance Filing and Motion for Clarification along with a revised Open Access Transmission Tariff regarding, and in accordance with, the Order Granting Petition for Declaratory Order, Subject to the Filing of Tariff Modifications, and Granting Exemption from Filing Fee, 105 FERC ¶ 61,077, issued in this proceeding on October 21, 2003.

Comment Date: December 11, 2003.

Standard Paragraph

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov*, using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number filed to access the document. For assistance, call (202) 502-8222 or TTY, (202) 502-8659. Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Linda Mitry,

Acting Secretary.

[FR Doc. E3–00440 Filed 12–2–03; 8:45 a.m.]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 696–013—Utah]

PacifiCorp; Notice of Availability of Environmental Assessment

November 26, 2003.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission) regulations, 18 CFR part 380 (Order No. 486, 52 FR 47897), the Office of Energy Projects has reviewed the application for surrender of the license for the American Fork Hydroelectric Project and has prepared an Environmental Assessment (EA) for the project. The project is located on American Fork Creek, near the City of American Fork, about three miles east of Highland, in Utah County, Utah. The project occupies about 28.8 acres of land within the Uinta National Forest, administered by the U.S. Forest Service (FS) and approximately 2,000 feet of the project's flowline passes through the Timpanogos Cave National Monument, administered by the U.S. Department of the Interior, National Park Service (NPS).

The EA contains the staff's analysis of the potential environmental impacts of the project and concludes that surrendering the project, with the appropriate environmental protective measures, would not constitute a major federal action that would significantly affect the quality of the human environment.

The EA is on file with the Commission and is available for public inspection. Copies of the EA are available for review in Public Reference, Room 2–A at the Commission's offices at 888 First Street, NE, Washington, DC. The EA may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the "eLibrary" link. For assistance, contact FERC On Line Support at *FERCOnlineSupport@ferc.gov* or call toll free at (866) 208–3676, or for TTY contact (202) 502–8659.

Any comments should be filed within 45 days from the date of this notice and should be addressed to Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Please reference Project No. 696–013 on all comments. Comments may be filed electronically via the Internet in lieu of paper. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "eFiling"link.

For further information, please contact Kenneth Hogan at (202) 502–8434.

Magalie R. Salas,

Secretary.

[FR Doc. E3–00433 Filed 12–2–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Comments, Motions To Intervene, Protests, Recommendations, and Terms and Conditions

November 25, 2003.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Conduit Exemption.

b. *Project No.:* 12477–000.

c. *Date filed:* October 20, 2003.

d. *Applicant:* Southern Nevada Water Authority (Authority).

e. *Name of Project:* Horizon Ridge Small Conduit Hydroelectric Project.

f. *Location:* The project would be located in the existing Horizon Ridge Rate-of-Flow Control (ROFC) station upstream of the Horizon Ridge Reservoir in southeastern Las Vegas, Clark County, Nevada. The Authority's water is diverted from the Colorado River at Lake Mead.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791a– 825r.

h. *Applicant Contact:* Mr. Rodney J. Clark, Southern Nevada Water Authority, 1900 East Flamingo Road, Suite 170, Las Vegas, NV 89119, (702) 862–3428.

i. *FERC Contact:* James Hunter, (202) 502–6086.

j. *Status of Environmental Analysis:* This application is ready for environmental analysis at this time, and the Commission is requesting comments, reply comments, recommendations, terms and conditions, and prescriptions.

k. *Deadline for filing responsive documents:* The Commission directs, pursuant to Section 4.34(b) of the Regulations (*see* Order No. 533 issued May 8, 1991, 56 FR 23108, May 20, 1991) that all comments, motions to intervene, protests, recommendations, terms and conditions, and prescriptions concerning the application be filed with the Commission by December 26, 2003. All reply comments must be filed with the Commission by January 12, 2004.

Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

l. *Description of Project:* The proposed project would consist of: (1) A generating unit with a rated capacity of 605 kilowatts replacing the pressure dissipating valve in one of three pipelines in the ROFC station, and (2) the other two pipelines in the station, to be used as bypass facilities. The average annual energy production would be 3.515 gigawatt hours. Power produced by the project would help offset the energy requirements of operating the Horizon Ridge pumping facilities.

m. This filing is available for review and reproduction at the Commission in the Public Reference Room, Room 2A, 888 First Street, NE., Washington, DC 20426. The filing may also be viewed on the web at *http://www.ferc.gov* using the "eLibrary" link. Enter the docket number excluding the last three digits (P–12477) in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov*. For TTY, call (202) 502–8659. A copy is also available for review and reproduction at the address in item h. above.

n. Development Application—Any qualified applicant desiring to file a competing application must submit to the Commission, on or before the specified deadline date for the particular application, a competing development application, or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing development application no later than 120 days after the specified deadline date for the particular application. Applications for preliminary permits will not be accepted in response to this notice.

o. Notice of Intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

p. Protests or Motions to Intervene—Anyone may submit a protest or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, and 385.214. In determining the appropriate action to take, the Commission will consider all protests filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any protests or motions to intervene must be received on or before the specified deadline date for the particular application.

q. All filings must (1) bear in all capital letters the title "PROTEST", "MOTION TO INTERVENE", "NOTICE OF INTENT TO FILE COMPETING APPLICATION," "COMPETING APPLICATION," "COMMENTS," "REPLY COMMENTS," "RECOMMENDATIONS," "TERMS AND CONDITIONS," or "PRESCRIPTIONS;" (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. Any of these documents must be filed by providing the original and the number of copies required by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Office of Energy Projects, Federal Energy Regulatory Commission, at the above address. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application. A copy of all other filings in reference to this application must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this

proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

Magalie R. Salas,

Secretary.

[FR Doc. E3–00423 Filed 12–2–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application for Amendment of License and Soliciting Comments, Motions To Intervene, and Protests

November 26, 2003.

Take notice that the following application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Recommendation Adoption for Winter Minimum Flows.

b. *Project No:* 405–059.

c. *Date Filed:* October 15, 2003.

d. *Applicant:* Susquehanna Electric Company.

e. *Name of Project:* Conowingo Hydro Station.

f. *Location:* On the Susquehanna River in Harford and Cecil counties in Maryland, and York and Lancaster counties in Pennsylvania.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.

h. *Applicant Contact:* Mr. Ron Smith, Conowingo Hydro Station, Susquehanna Electric Company, 2569 Shures Landing Road, Darlington, MD 21034–1503, 410–457–2516.

i. *FERC Contact:* Any questions on this notice should be addressed to Mr. John Novak at (202) 502–6076, or e-mail address: *John.Novak@ferc.gov.*

j. *Deadline for filing comments and or motions:* December 26, 2003.

k. *Description of Request:* The licensee proposes to provide a winter flow regime, during the period of December 1 through February 28, of 3500 cfs or natural river flow (whichever is lower) with cessation of flow permitted for up to six hours followed by continuous flows of 3500 cfs or inflow (whichever is lower) for a period equal to or greater than the period of no discharge. The licensee indicates a minimum winter flow has been implemented at the Conowingo Hydroelectric station since March 1994 based upon initial study results and discussion with the Maryland DNR, however the finalized report and recommendation were not previously filed with the Commission.

l. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, call 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov*, for TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item (h) above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Responsive Documents:* Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", OR "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

p. *Agency Comments:* Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

q. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov* under the "e-Filing" link.

Magalie R. Salas,

Secretary.

[FR Doc. E3–00432 Filed 12–2–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM04–2–000]

Rules Concerning Certification of an Electric Reliability Organization and the Establishment, Approval, and Enforcement of Electric Reliability Standards; Supplemental Notice of Conference

November 24, 2003.

As announced in the notice issued November 17, 2003 (as corrected November 18, 2003), the Federal Energy Regulatory Commission (Commission) will hold a conference on Monday, December 1, 2003, at Commission headquarters, 888 First Street, NE., Washington, DC, in the Commission Meeting Room (Room 2C), at 1:30 p.m. This supplemental Notice provides additional information regarding the conference.

Issues for Discussion

The conference will address the following topics related to ensuring the reliability of the nation's bulk power system:

1. *Interim Report: Causes of the August 14th Blackout in the United States and Canada* ("*Blackout Report*"), prepared by the U.S.–Canada Power System Outage Task Force.

2. Review of the current status of institutions and practices for ensuring the reliability of the bulk power system.

3. What, if anything, the Commission should do to promote a reliable bulk power system.

Format

Topics 1 and 2 will consist of presentations by Commission Staff as well as invited outside speakers. Conference attendees should prepare to address topic 3 during an "open microphone" session.

Remote (Internet) Listening and Viewing

While the November 17, 2003 Notice indicated that the opportunity for live remote listening and viewing of the conference over the Internet would be available for a fee, the opportunity for remote listening and viewing will not be available for the conference.

For additional information please contact Jonathan First, 202–502–8529 or by e-mail at *Jonathan.First@ferc.gov* or William Longenecker, 202–502–8570 or by e-mail at *William.Longenecker@ferc.gov.*

Magalie R. Salas,

Secretary.

[FR Doc. E3–00421 Filed 12–2–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER02–2014–006, ER03–1272–000, EL03–132–000, EL02–101–000]

CLECO Power LLC, Dalton Utilities, Entergy Services, Inc., Georgia Transmission Corporation, JEA, MEAG Power, Sam Rayburn G&T Electric Cooperative, Inc., South Carolina Public Service Authority, Southern Company Services, Inc., City of Tallahassee, Florida; Supplemental Notice of Technical Conference

November 25, 2003.

The November 7, 2003 Notice of Technical Conference in this proceeding indicated that a technical conference will be held on December 8–9, 2003 at 10 a.m. This conference will be held at the offices of the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Parties that will participate by phone should contact Mark Gratchen at (202) 502–6274 no later than Wednesday, December 3, 2003.

The agenda includes time for open discussion and the Commission wishes to hear from all parties. If any party wishes to make a formal presentation, please contact Mark Gratchen at (202) 502–6274 no later than Wednesday, December 3, 2003.

The conference will be transcribed. Transcripts will be available to view electronically under the above listed docket numbers seven days after the conference.

The agenda for the technical conference is set forth in the Attachment to this notice.

Magalie R. Salas,

Secretary.

Technical Conference Agenda

December 8, 2003

10 a.m.–12:30 p.m.—Discussion of Entergy's Generator Operator Limits (GOL) Procedure
- Opening Comments and Introduction
- Entergy presentation summarizing its November 3, 2003 Report on GOLs
- Questions and Discussion of November 3, 2003 GOL Report

This session will include a discussion of Entergy's GOL Report. Topics will be discussed in the following order:
- The Implementation Period
- Standard of Review
- Non-Discriminatory Application (including analytical framework, source data and results/conclusions)
- Availability of Transfer Capability
- Sufficiency of Transfer Capability (including analytical framework, source data and results/conclusions)
- Increased Availability of Transfer Capability (including analytical framework, source data and results/conclusions)
- Potential to Withhold Transfer Capability (including analytical framework, source data and results/conclusions).
- Intervenor Presentations
- Modifications to GOL Process and Summary of Parties' Positions

12:30 p.m.–1:30 p.m.—Lunch

1:30 p.m.–4 p.m.—Discussion of Entergy's Available Flowgate Capability (AFC) Proposal
- Entergy presentation: Overview and steps of AFC process; differences with GOL/ATC
- Questions and Discussion of Entergy's AFC Proposal. Topics will be discussed in the following order:
- Flowgate Criteria: Identification of specific criteria to be used and justification for them. Use of existing studies to identify the base set of flowgates. Specification of and justification for criteria to be used to add and delete monitored flowgates. (*See* Entergy's November 12, 2003 response (November response) to question no. 1 in the Division Director Letter issued in Docket No. ER03-1272-000 on October 22, 2003 (Division Director Letter).)
- Base case models and assumptions for AFC process and comparison to GOL process. (*See* November response to question no. 3 in the Division Director Letter.)
- Importance of Response Factors in AFC process and support for Threshold level chosen by Entergy. (*See* November response to question nos. 4, 5, and 6 in the Division Director Letter.)
- Transparency of process, implementation timetable and other issues. (*See* November response to question nos. 7, 8, and 9 in the Division Director Letter.)

December 9, 2003

10:00 p.m.–12:30 p.m.—Continuation of Discussion on AFCs, if needed; Discussion of Entergy's Weekly Procurement Process (WPP)
- Staff Summary of the Commission Order issued in ER04–35–000 and issues raised.
- Entergy's presentation on the WPP

I. Overview
II. Structure of WPP
III. Role of Independent Oversight
IV. WPP Products
V. Redispatch
VI. Interaction with GOLs/AFCs

12:30 p.m.–1:30 p.m.—Lunch

1:30 p.m.–3:45 p.m.—Questions and Discussion of Entergy's WPP
- Topics will be discussed in the following order; the questions are intended to facilitate discussion and are not limitations to the discussion:

1. Structure of the Weekly Procurement Process—What type of entity is appropriate for managing the WPP? Which entity will manage the WPP?
2. Role of Independent Procurement Monitor (IPM)—What are the roles, functions, and responsibilities of the IPM?
3. WPP Products including redispatch
4. Effect of WPP on GOLs/AFCs—What is the effect of the WPP on transfer capabilities?
5. Future Developments—How will AFC and WPP operate within the SeTrans RTO?

3:45 p.m.–4 p.m.—Closing Remarks

[FR Doc. E3–00429 Filed 12–2–03; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[OPPT–2002–0001; FRL–7336–8]

National Pollution Prevention and Toxics Advisory Committee; Notice of Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Under the Federal Advisory Committee Act (FACA), 5 U.S.C. App. 2 (Public Law 92–463), EPA gives notice of a 2–day meeting of the National Pollution Prevention and Toxics Advisory Committee (NPPTAC). The purpose of the NPPTAC is to provide advice and recommendations to EPA regarding the overall policy and operations of the programs of the Office of Pollution Prevention and Toxics (OPPT).

DATES: The meeting will be held on January 7, 2004, from 10 a.m. to 5:30 p.m., and January 8, 2004, from 8:30 a.m. to noon.

Registrations to attend the meeting, identified as NPPTAC January 2004 meeting, must be received on or before December 30, 2003. Registrations will also be accepted at the meeting.

Requests to provide oral comments at the meeting, identified as NPPTAC January 2004 meeting, must be received in writing on or before December 22, 2003.

Written comments, identified as NPPTAC January 2004 meeting, may be submitted at any time. Written comments received on or before December 22, 2003 will be forwarded to the NPPTAC members prior to or at the meeting.

ADDRESSES: The meeting will be held at the Four Points by Sheraton Hotel, 1201 K Street, NW., Washington, DC.

For address information concerning registration, the submission of written comments, and requests to present oral comments, refer to Unit I. of the **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: *For general information contact*: Barbara Cunningham, Director, Environmental Assistance Division (7408M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 554–1404; e-mail address: *TSCA-Hotline@epa.gov*.

For technical information contact: Mary Hanley, Office of Pollution Prevention and Toxics (7401M), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 564–9891; e-mail address: *npptac.oppt@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general, and may be of particular interest to those persons who have an interest in or may be required to manage pollution prevention and toxic chemical programs, individuals, groups concerned with environmental justice, children's health, or animal welfare, as they relate to OPPT's programs under the Toxic Substances Control Act (TSCA) and the Pollution Prevention Act (PPA). Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be interested in the activities of the NPPTAC. If you have any questions regarding the applicability of this action to a particular entity, consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

To register to attend the meeting: Pre-registration for the January 2004 NPPTAC meeting and requests for special accommodations may be made by visiting the NPPTAC web site at: *http://www.epa.gov/oppt/npptac/meetings.htm*. Registration will also be available at the meeting. Special accommodations may also be requested by calling (202) 564–9891 and leaving your name and telephone number.

To request an opportunity to provide oral comments: You must register first in order to request an opportunity to provide oral comments at the January 2004 NPPTAC meeting. To register visit the NPPTAC web site at: *http://www.epa.gov/oppt/npptac/meetings.htm*. If you have problems downloading the registration form, please e-mail us at *npptac.oppt@epa.gov* or leave a message at (202) 564–9891. Please indicate your name and telephone number.

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket*. EPA has established an official public docket for this action under docket identification (ID) number OPPT–2002–0001. The official public docket consists of the documents specifically related to the NPPTAC, any public comments received, and other information related to the NPPTAC. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at EPA's Docket Center, Rm. B102–Reading Room, EPA West, 1301 Constitution Ave., NW., Washington, DC. EPA's Docket Center is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. EPA's Docket Center Reading Room telephone number is (202) 566–1744 and the telephone number for the OPPT Docket, which is located in EPA Docket Center, is (202) 566–0280.

2. *Electronic access*. You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr/*.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/*, to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select "search," then key in the appropriate docket ID number.

C. How and to Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your comment.

To submit written comments to the docket: Identify the submission as OPPT–2002–0001 docket, NPPTAC January 2004 meeting.

Electronically: At *http://www.epa.gov/edocket/*, search for OPPT–2002–0001, and follow the directions to submit comments.

By mail: Environmental Protection Agency, EPA Docket Center (EPA/DC), OPPT–2002–0001, 7407T, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

II. Background

The proposed agenda for the NPPTAC meeting includes: The High Production Volume Challenge Program; Pollution Prevention, Risk Assessment; risk management; risk communication, and coordination with Tribes and other stakeholders. The meeting is open to the public.

III. How Can I Request to Participate in this Meeting?

You may register to attend the meeting by filling out the registration form according to the instructions listed under Unit I.A. Please note that registration will assist in planning adequate seating; however, members of the public can register the day of the meeting, therefore all seating will be available on a first come, first serve basis.

Requests to provide oral comments at the meeting must be submitted in writing on or before December 22, 2003, with a registration form. Please note that time for oral comments will be 2 to 5 minutes per speaker, depending on the number of requests received.

Please make sure to indicate in your registration if you require special accommodations. In order to provide special accommodations, the request should be received by December 22, 2003.

You may submit written comments to the docket listed under Unit I.B. Written comments can be submitted at any time. If written comments are submitted on or before December 22, 2003, they will be provided to the NPPTAC members prior to or at the meeting. If you provide written comments at the meeting, 35 copies will be needed. Do not submit any information that is considered CBI.

List of Subjects

Environmental protection, NPPTAC, Pollution prevention, Toxics, Toxic chemicals, Chemical health and safety.

Dated: November 21, 2003.

Charles M. Auer,

Director, Office of Pollution, Prevention, and Toxics

[FR Doc. 03–30048 Filed 12–2–03; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7592–9]

Chevron Chemical Company Superfund Site; Notice of Proposed Settlement

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed settlement.

SUMMARY: Under Section 122(h)(1) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), the Environmental Protection Agency (EPA) has entered into an Agreement for Recovery of Past and Future UAO Response & Oversight Costs (Agreement) at the Chevron Chemical Company Superfund Site (Site) located in Orange County, Orlando, Florida, with Chevron Environmental Management Company and Chevron Chemical Company, a division of Chevron U.S.A., Inc. EPA will consider public comments on the Agreement until January 2, 2004. EPA may withdraw from or modify the Agreement should such comments disclose facts or considerations which indicate the Agreement is inappropriate, improper, or inadequate. Copies of the Agreement are available from: Ms. Paula V. Batchelor, U.S. Environmental Protection Agency, Region 4, Superfund Enforcement & Information Management Branch, Waste Management Division, 61 Forsyth Street, SW., Atlanta, Georgia 30303, (404) 562–8887.

Written comment may be submitted to Greg Armstrong at the above address within 30 days of the date of publication.

Dated: November 17, 2003.

Rosalind H. Brown,

Chief, Superfund Enforcement & Information, Management Branch, Waste Management Division.

[FR Doc. 03–30045 Filed 12–2–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7592–6]

Proposed Administrative Cost Settlement Under Section 122(h)(1) of the Comprehensive Environmental Response, Compensation and Liability Act; In the Matter of Master Metals, Inc. Site, Detroit, MI

AGENCY: Environmental Protection Agency.

ACTION: Notice; request for public comment.

SUMMARY: In accordance with Section 122(i) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended ("CERCLA"), 42 U.S.C. 9622(i), notice is hereby given of a proposed administrative settlement for recovery of response costs concerning the Master Metals Superfund Site, including the Detroit Lead Deposition Screening Project ("the Site") in Detroit, Michigan, with six parties: NL Industries, Inc., Honeywell International Inc., Johnson Controls Battery Group, Inc., General Motors Corporation, Ford Motor Company and DaimlerChrysler ("the settling parties"). The settlement requires the settling parties to: (1) Implement the remedies selected in U.S. EPA's action memorandum dated February 5, 2003 and action memorandum dated July 16, 2003 for the Site; (2) pay response costs incurred at the Site between November 16, 2001 and the effective date of the settlement ("interim response costs"), except for the first $250,000 of these response costs; (3) pay future response costs, including costs of overseeing the work to be performed at the Site.

In exchange for the work to be performed and the payments, the United States covenants not to sue or take administrative action pursuant to Sections 106, 107 and 122 of CERCLA, 42 U.S.C. 9606, 9607 and 9622 for the work, interim response costs and future response costs. In addition, the settling parties are entitled to protection from contribution actions or claims as provided by Sections 113(f) and 122(h)(4) of CERCLA, 42 U.S.C. 9613(f) and 9622(h)(4), for the work, interim response costs and future response costs incurred at the Site.

For thirty (30) days after the date of publication of this notice, the Agency will receive written comments relating to the cost recovery provisions of the settlement. The Agency will consider all comments received and may modify or withdraw its consent to the settlement if comments received disclose facts or considerations which indicate that the settlement is inappropriate, improper, or inadequate. The Agency's response to any comments received will be available for public inspection at U.S. EPA's Region 5 Office at 77 West Jackson Boulevard, Chicago, Illinois, 60604, and at the Detroit Public Library, Detroit, MI.

DATES: Comments must be submitted on or before January 2, 2004.

ADDRESSES: The proposed settlement is available for public inspection at EPA's Record Center, 7th floor, 77 W. Jackson Blvd., Chicago, Illinois, 60604. A copy of the proposed settlement may be obtained from Janet Carlson, Associate Regional Counsel, U.S. EPA, Mail Code C–14J, 77 W. Jackson Blvd., Chicago, Illinois, 60604, telephone (312) 886–6059. Comments should reference the Master Metals, Inc. Superfund Site, Detroit, Michigan, and EPA Docket No. VW03C754, and should be addressed to Janet Carlson, Associate Regional Counsel, U.S. EPA, Mail Code C–14J, 77 W. Jackson Blvd., Chicago, Illinois, 60604.

FOR FURTHER INFORMATION CONTACT: Janet Carlson, Associate Regional Counsel, U.S. EPA, Mail Code C–14J, 77 W. Jackson Blvd., Chicago, Illinois, 60604, telephone (312) 886–6059.

Authority: The Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. 9601, et. seq.

Dated: August 19, 2003.

James N. Mayka,

Acting Director, Superfund Division.

[FR Doc. 03–30047 Filed 12–2–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7593–1]

Final Reissuance of a General NPDES Permit for Facilities Related to Oil and Gas Extraction on the North Slope of the Brooks Range, Alaska—Permit Number AKG–33–0000

AGENCY: Environmental Protection Agency.

ACTION: Final Notice of reissuance of a general permit.

SUMMARY: On April 10, 2002, the general permit (GP) regulating activities related to the extraction of oil and gas on the North Slope of the Brooks Range in the state of Alaska expired. On May 24, 2003, EPA proposed to reissue this GP. There was a 45 day comment period. During the comment period, EPA received 5 comment letters on the GP. A Response to Comments was prepared for the GP. The Response to Comments also addresses comments made on the Finding of No Significant Impact (FNSI) coverage under this GP for the new source facility, BP Exploration (Alaska), Inc.'s Badami. Upon submission of a new Notice of Intent (NOI), Badami will be reauthorized with the number AKG–33–0001. An NOI must be submitted before EPA will authorize coverage under this GP.

DATES: The GP will be effective January 2, 2004.

ADDRESSES: Copies of the GP and Response to Comments are available upon request. Written requests may be submitted to EPA, Region 10, 1200 Sixth Avenue OW–130, Seattle, WA 98101. Electronic requests may be mailed to: *washington.audrey@epa.gov.* or *godsey.cindi@epa.gov.*

FOR FURTHER INFORMATION CONTACT: Copies of the GP, Fact Sheet and Response to Comments are available upon request. Requests may be made to Audrey Washington at (206) 553–0523 or to Cindi Godsey at (907) 271–6561. Requests may also be electronically mailed to: *washington.audrey@epa.gov* or *godsey.cindi@epa.gov*

These documents may also be found on the EPA Region 10 Web site at *www.epa.gov/r10earth/* then click on Water Quality, Permits (under NPDES) and then on recently issued permits under EPA Region 10 Information.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

The Office of Management and Budget has exempted this action from the review requirements of Executive Order 12866 pursuant to Section 6 of that order.

The state of Alaska, Department of Environmental Conservation (ADEC), on November 19, 2003, has certified that the subject discharges comply with the applicable provisions of sections 208(e), 301, 302, 306 and 307 of the Clean Water Act.

The state of Alaska, Alaska Department of Natural Resources, Office of Project Management and Permitting (OPMP), has conducted a review for consistency with the Alaska Coastal Management Program (ACMP) and on July 22, 2003, agreed with EPA's determination that the general permit is consistent with the Alaska Coastal Management Program (ACMP).

Regulatory Flexibility Act

Under the Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.*, a Federal agency must prepare an initial regulatory flexibility analysis "for any proposed rule" for which the agency "is required by section 553 of the Administrative Procedure Act (APA), or any other law, to publish general notice of proposed rulemaking." The RFA exempts from this requirement any rule that the issuing agency certifies "will not, if promulgated, have a significant economic impact on a substantial number of small entities." EPA has concluded that NPDES general permits are permits, not rulemakings, under the APA and thus not subject to APA rulemaking requirements or the RFA. Notwithstanding that general permits are not subject to the RFA, EPA has determined that this GP, as issued, will not have a significant economic impact on a substantial number of small entities.

Dated: November 20, 2003.

Robert R. Robichaud,

Acting Associate Director, Office of Water, Region 10, Environmental Protection Agency.

[FR Doc. 03–30046 Filed 12–2–03; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection(s) Requirement Submitted to OMB for Emergency Review and Approval

November 24, 2003.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before January 2, 2004. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contacts listed below as soon as possible.

ADDRESSES: Direct all comments to Kim A. Johnson, Office of Management and Budget, Room 10236 NEOB, Washington, DC 20503, (202) 395–3562 or via Internet at *Kim_A._Johnson@omb.eop.gov*, and Les Smith, Federal Communications Commission, Room 1–A804, 445 12th Street, SW., Washington, DC 20554 or via Internet to *Leslie.Smith@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s) contact Les Smith at 202–418–0217 or via Internet at *Leslie.Smith@fcc.gov.*

SUPPLEMENTARY INFORMATION: The Commission has requested emergency OMB review of this collection with an approval by December 31, 2003.

OMB Control Number: 3060–XXXX.

Title: Digital Broadcast Content Protection, MB Docket No. 02–230.

Type of Review: New collection.

Form Number: N/A.

Respondents: Business or other for-profit entities.

Number of Respondents: 1,520.

Estimated Time per Response: 2 to 40 hours.

Frequency of Response: On occasion reporting requirements.

Total Annual Burden: 3,800 hours.

Total Annual Cost: None.

Needs and Uses: On November 4, 2003, the FCC released the Report and Order and Further Notice of Proposed Rulemaking ("Order"), *In the Matter of Digital Broadcast Content Protection*, MB Docket No. 02–230, FCC 03–273. The Order establishes a redistribution control content protection system for digital broadcast television in order to prevent the widespread indiscriminate redistribution of high value digital broadcast content and to assure the continued availability of such content to broadcast outlets. The Order adopts use of an ATSC flag, which can be imbedded in DTV content to signal to consumer electronics devices to protect such content from indiscriminate redistribution.

In order for this protection system to work, demodulators integrated within, or produced for use in, DTV reception devices, including PC and IT products, ("Covered Demodulator Products") must recognize and give effect to the ATSC flag pursuant to certain compliance and robustness rules. In particular, content that is marked with the ATSC flag must be handled in a protected fashion through the use of digital content protection and recording technologies. In order to ensure that digital content is being adequately protected, such technologies must be reviewed and approved for use. The Order establishes interim procedures by which proponents of digital content protection and recording technologies can certify to the Commission that such technologies are appropriate for use in Covered Demodulator Products, subject to public notice and comment.

To facilitate enforcement and compliance, the Order adopts a written commitment regime whereby manufacturers or importers of ATSC demodulators obtain from buyers of such products a written commitment that they will incorporate such demodulators into compliant and robust devices or sell or distribute to third parties that have also made such written commitment. The Order also adopts a written commitment regime to ensure that manufacturers or importers of Peripheral TSP Products (products where the demodulator and transport stream processor are physically separate) will abide by the Demodulator Products compliance and robustness rules.

The interim approval process for digital content protection and recording technologies and the written commitment regime are essential components of the Commission's redistribution control content protection system for digital broadcast television. These information collections ensure objectivity and transparency as a part of this process.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 03–30003 Filed12–2–03; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL MARITIME COMMISSION

Notice of Agreements Filed

The Commission hereby gives notice of the filing of the following agreements under the Shipping Act of 1984. Interested parties can review or obtain copies of agreements at the Washington, DC, offices of the Commission, 800 North Capitol Street, NW., Room 940. Interested parties may submit comments on an agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days of the date this notice appears in the **Federal Register**.

Agreement No.: 011679–005.

Title: ASF/SERC Agreement.

Parties:

China Shipping Container Lines, Co. Ltd.;
COSCO Container Lines Co., Ltd.;
Evergreen Marine Corp. (Taiwan) Ltd.;
Hanjin Shipping Co., Ltd.;
Hyundai Merchant Marine Co., Ltd.;
Kawasaki Kisen Kaisha, Ltd.;
Mitsui O.S.K. Lines Ltd.;
Nippon Yusen Kaisha;
Orient Overseas Container Line Ltd.; and
Yang Ming Marine Transport Corp.; and
Wan Hai Lines Ltd.

Synopsis: The amendment adds APL Co. PTE Ltd. and American President Lines, Ltd. (as a single party) and Sinotrans Container Lines Co., Ltd. as parties to the agreement.

Dated: November 28, 2003.

By Order of the Federal Maritime Commission.

Karen V. Gregory,

Acting Assistant Secretary.

[FR Doc. 03–30129 Filed 12–2–03; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission an application for license as a Non-Vessel Operating Common Carrier and Ocean Freight Forwarder—Ocean Transportation Intermediary pursuant to section 19 of the Shipping Act of 1984 as amended (46 U.S.C. app. 1718 and 46 CFR 515).

Persons knowing of any reason why the following applicants should not receive a license are requested to contact the Office of Transportation Intermediaries, Federal Maritime Commission, Washington, DC 20573.

Non-Vessel Operating Common Carrier Ocean Transportation Intermediary Applicants

MSL Global Logistics Inc., 160–19 Rockaway Blvd., Jamaica, NY 11434, Officers: Chester Tong, President (Qualifying Individual), Lily Tong, Vice President.

Neway Logistics, Inc., 5959 W. Century Blvd., #557, Los Angeles, CA 90045, Officers: Seung Y. Cha (Kevin Cha), President/CEO (Qualifying Individual), Sue Cha, Chairman.

Non-Vessel Operating Common Carrier and Ocean Freight Forwarder Transportation Intermediary Applicants

Dip Shipping Company, 3550 Grandlake Street, Apt. E–203, Kenner, LA 70065, Officer: Roberto Dip, President (Qualifying Individual).

Venture Logistics, 10820 NW. 30 Street, Miami, FL 33172, Officers: Anly Fernandez, Traffic Manager (Qualifying Individual), Otto Ortega, President/Director.

Dated: November 28, 2003.

Karen V. Gregory,

Acting Assistant Secretary.

[FR Doc. 03–30128 Filed 12–2–03; 8:45 am]

BILLING CODE 6730–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Meeting of the International Subcommittee of the Presidential Advisory Council on HIV/AIDS

AGENCY: Office of the Secretary.

ACTION: Notice.

SUMMARY: As stipulated by the Federal Advisory Committee Act, the Department of Health and Human Services (DHHS) is hereby giving notice that the International Subcommittee of the Presidential Advisory Council on HIV/AIDS (PACHA) will host a townhall meeting. This townhall meeting is open to the public. A description of PACHA's functions is included with this notice.

DATE AND TIME: Thursday, December 18, 2003, 1 p.m. to 5 p.m.

ADDRESS: National Press Club, 529 14th Street, NW., Main Ballroom, 13th Floor, Washington, DC 20045.

FOR FURTHER INFORMATION CONTACT: Josephine Bias Robinson, Acting

Executive Director, Presidential Advisory Council on HIV/AIDS, Department of Health and Human Services, 200 Independence Avenue, SW, Room 701H, Washington, DC 20201; (202) 690–5560. Information about PACHA and the draft townhall meeting agenda will be posted on the Council's Web site at *http://www.pacha.gov*. Directions to the National Press Club can be obtained through the Web site at *http://www.press.org* or by calling (202) 662–7500.

SUPPLEMENTARY INFORMATION: PACHA was established by Executive Order 12963, dated June 14, 1995, as amended by Executive Order 13009, dated June 14, 1996. The Council was established to provide advice, information, and recommendations to the Secretary regarding programs and policies intended to (a) promote effective prevention of HIV disease, (b) advance research on HIV and AIDS, and (c) promote quality services to persons living with HIV disease and AIDS. PACHA was established to serve solely as an advisory body to the Secretary of Health and Human Services. The Council is composed of not more than 35 members. Council membership is determined by the Secretary from individuals who are considered authorities with particular expertise in, or knowledge of, matters concerning HIV/AIDS.

The International Subcommittee is hosting this townhall meeting for the purpose of eliciting public comment on the implementation of the President's Emergency Plan for AIDS Relief. Individuals, agencies, and organizations with practical experience implementing health programs in the developing countries are asked to consider the following questions in preparing their oral or written comments: (1) What lessons can you provide/share regarding planning, implementation, and outcome measurement strategies that have worked best and what did not work and why?; (2) What are the vital aspects of effective partnerships and with whom?; and (3) How have you been able to effectively involve people living with HIV/AIDS in your work?

Public attendance at the townhall meeting is limited to space available and pre-registration is required. Any individual who wishes to participate should call the telephone number listed in the contact information to register. For purposes of planning and coordination, individuals are asked to designate an affiliation from the following categories: (1) Non-Governmental/Community-Based Organization (NGO/CBO); (2) Academic and/or Research Institution; (3) Faith-Based Organization; (4) Private Sector Sponsored Organization; or (5) Other. Individuals must provide a photo ID for entry into the meeting. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the designated contact person.

Members of the public will have the opportunity to provide comments at the townhall meeting. Pre-registration is required for public comment. Public comment will be limited to three (3) minutes per speaker. Any members of the public who wish to have printed material distributed to the International Subcommittee members should submit materials to the Acting Executive Director, PACHA, electronically at *info@phnip.com*, prior to close of business December 15, 2003. Printed text cannot exceed five (5) pages.

Dated: November 26, 2003.

Josephine Bias Robinson,

Executive Director (Acting), Presidential Advisory Council on HIV/AIDS.

[FR Doc. 03–30036 Filed 12–2–03; 8:45 am]

BILLING CODE 4150–28–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Federal Financial Participation in State Assistance Expenditures; Federal Matching Shares for Medicaid, the State Children's Health Insurance Program, and Aid to Needy Aged, Blind, or Disabled Persons for October 1, 2004 Through September 30, 2005

AGENCY: Office of the Secretary, DHHS.

ACTION: Notice.

SUMMARY: The Federal Medical Assistance Percentages and Enhanced Federal Medical Assistance Percentages for Fiscal Year 2005 have been calculated pursuant to the Social Security Act (the Act). These percentages will be effective from October 1, 2004 through September 30, 2005. This notice announces the calculated "Federal Medical Assistance Percentages" and "Enhanced Federal Medical Assistance Percentages" that we will use in determining the amount of Federal matching for State medical assistance (Medicaid) and State Children's Health Insurance Program (SCHIP) expenditures, and Temporary Assistance for Needy Families (TANF) Contingency Funds, the federal share of Child Support Enforcement collections, Child Care Mandatory and Matching Funds of the Child Care and Development Fund, Foster Care Title IV–E Maintenance payments, and Adoption Assistance payments. The table gives figures for each of the 50 States, the District of Columbia, Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands. Programs under title XIX of the Act exist in each jurisdiction; programs under titles I, X, and XIV operate only in Guam and the Virgin Islands; while a program under title XVI (Aid to the Aged, Blind, or Disabled) operates only in Puerto Rico. Programs under title XXI began operating in fiscal year 1998. The percentages in this notice apply to State expenditures for most medical services and medical insurance services, and assistance payments for certain social services. The statute provides separately for Federal matching of administrative costs.

Sections 1905(b) and 1101(a)(8)(B) of the Act require the Secretary of Health and Human Services to publish the Federal Medical Assistance Percentages each year. The Secretary is to figure the percentages, by formulas in sections 1905(b) and 1101(a)(8)(B), from the Department of Commerce's statistics of average income per person in each State and in the Nation as a whole. The percentages are within the upper and lower limits given in section 1905(b) of the Act. The percentages to be applied to the District of Columbia, Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Northern Mariana Islands are specified in statute, and thus are not based on the statutory formula that determines the percentages for the 50 states.

The "Federal Medical Assistance Percentages" are for Medicaid. Section 1905(b) of the Act specifies the formula for calculating Federal Medical Assistance Percentages as follows:

> "Federal medical assistance percentage" for any State shall be 100 per centum less the State percentage; and the State percentage shall be that percentage which bears the same ratio to 45 per centum as the square of the per capita income of such State bears to the square of the per capita income of the continental United States (including Alaska) and Hawaii; except that (1) the Federal medical assistance percentage shall in no case be less than 50 per centum or more than 83 per centum, (2) the Federal medical assistance percentage for Puerto Rico, the Virgin Islands, Guam, the Northern Mariana Islands, and American Samoa shall be 50 per centum.

A provision in the Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000 modified the formula to calculate the percentages to be applied to Alaska for purposes of titles XIX and XXI of the Act for fiscal years 2001 through 2005. For Alaska only, the formula requires dividing the state's three-year average per capita income by 1.05 instead of 1.0. In addition, section 4725 of the Balanced Budget Act of 1997 amended section 1905(b) to provide that the Federal Medical Assistance Percentage for the District of Columbia for purposes of titles XIX and XXI shall be 70 percent. For both Alaska and the District of Columbia, we note under the table of Federal Medical Assistance Percentages the rates that apply in certain other programs calculated using the formula otherwise applicable, and the rates that apply in certain other programs pursuant to section 1118 of the Social Security Act.

Section 2105(b) of the Act specifies the formula for calculating the Enhanced Federal Medical Assistance Percentages as follows:

> The "enhanced FMAP", for a State for a fiscal year, is equal to the Federal medical assistance percentage (as defined in the first sentence of section 1905(b)) for the State increased by a number of percentage points equal to 30 percent of the number of percentage points by which (1) such Federal medical assistance percentage for the State, is less than (2) 100 percent; but in no case shall the enhanced FMAP for a State exceed 85 percent.

The "Enhanced Federal Medical Assistance Percentages" are for use in the State Children's Health Insurance Program under Title XXI, and in the Medicaid program for certain children for expenditures for medical assistance described in sections 1905(u)(2) and 1905(u)(3) of the Act. There is no specific requirement to publish the Enhanced Federal Medical Assistance Percentages. We include them in this notice for the convenience of the States.

EFFECTIVE DATES: The percentages listed will be effective for each of the 4 quarter-year periods in the period beginning October 1, 2004 and ending September 30, 2005.

FOR FURTHER INFORMATION CONTACT: Adelle Simmons or Robert Stewart, Office of Health Policy, Office of the Assistant Secretary for Planning and Evaluation, Room 442E—Hubert H. Humphrey Building, 200 Independence Avenue, SW, Washington, DC 20201, (202) 690–6870.

(Catalog of Federal Domestic Assistance Program Nos. 93.558: TANF Contingency Funds; 93.563: Child Support Enforcement; 93–596: Child Care Mandatory and Matching Funds of the Child Care and Development Fund; 93.658: Foster Care Title IV–E; 93.659: Adoption Assistance; 93.769: Ticket-to-Work and Work Incentives Improvement Act (TWWIIA) Demonstrations to Maintain Independence and Employment; 93.778: Medical Assistance Program; 93.767: State Children's Health Insurance Program)

Dated: November 26, 2003.

Tommy G. Thompson,

Secretary of Health and Human Services.

FEDERAL MEDICAL ASSISTANCE PERCENTAGES AND ENHANCED FEDERAL MEDICAL ASSISTANCE PERCENTAGES, EFFECTIVE OCTOBER 1, 2004–SEPTEMBER 30, 2005

[Fiscal year 2005]

State	Federal medical assistance percentages	Enhanced Federal medical assistance percentages
Alabama	70.83	79.58
Alaska**	57.58	70.31
American Samoa*	50.00	65.00
Arizona	67.45	77.22
Arkansas	74.75	82.33
California	50.00	65.00
Colorado	50.00	65.00
Connecticut	50.00	65.00
Delaware	50.36	65.27
District of Columbia**	70.00	79.00
Florida	58.90	71.23
Georgia	60.44	72.31
Guam*	50.00	65.00
Hawaii	58.47	70.93
Idaho	70.62	79.43
Illinois	50.00	65.00
Indiana	62.78	73.95
Iowa	63.55	74.49
Kansas	61.01	72.71
Kentucky	69.60	78.72
Louisiana	71.04	79.73
Maine	64.89	75.42
Maryland	50.00	65.00
Massachusetts	50.00	65.00
Michigan	56.71	69.70
Minnesota	50.00	65.00
Mississippi	77.08	83.96
Missouri	61.15	72.81
Montana	71.90	80.33
Nebraska	59.64	71.75
Nevada	55.90	69.13
New Hampshire	50.00	65.00
New Jersey	50.00	65.00
New Mexico	74.30	82.01
New York	50.00	65.00
North Carolina	63.63	74.54
North Dakota	67.49	77.24

FEDERAL MEDICAL ASSISTANCE PERCENTAGES AND ENHANCED FEDERAL MEDICAL ASSISTANCE PERCENTAGES, EFFECTIVE OCTOBER 1, 2004–SEPTEMBER 30, 2005—Continued

[Fiscal year 2005]

State	Federal medical assistance percentages	Enhanced Federal medical assistance percentages
Northern Mariana Islands*	50.00	65.00
Ohio	59.68	71.78
Oklahoma	70.18	79.13
Oregon	61.12	72.78
Pennsylvania	53.84	67.69
Puerto Rico*	50.00	65.00
Rhode Island	55.38	68.77
South Carolina	69.89	78.92
South Dakota	66.03	76.22
Tennessee	64.81	75.37
Texas	60.87	72.61
Utah	72.14	80.50
Vermont	60.11	72.08
Virgin Islands*	50.00	65.00
Virginia	50.00	65.00
Washington	50.00	65.00
West Virginia	74.65	82.26
Wisconsin	58.32	70.82
Wyoming	57.90	70.53

*For purposes of section 1118 of the Social Security Act, the percentage used under titles I, X, XIV, and XVI will be 75 per centum.
**The values for Alaska and the District of Columbia in the table were set for the state plan under titles XIX and XXI and for capitation payments and DSH allotments under those titles. For other purposes, including programs remaining in Title IV of the Act, the percentage for Alaska is 53.23 and for D.C is 50.00.

[FR Doc. 03–30095 Filed 11–28–03; 12:19 pm]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2003N–0106]

Agency Information Collection Activities; Announcement of Office of Management and Budget Approval; Submission of Petitions: Food Additive, Color Additive (Including Labeling), and Generally Recognized as Safe Affirmation; and Electronic Submission Using FDA Forms 3503 and 3504

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled "Submission of Petitions: Food Additive, Color Additive (Including Labeling), and Generally Recognized as Safe Affirmation; and Electronic Submission Using FDA Forms 3503 and 3504" has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: Peggy Robbins, Office of Management Programs (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of July 28, 2003 (68 FR 44342), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under 44 U.S.C. 3507. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has now approved the information collection and has assigned OMB control number 0910–0016. The approval expires on November 30, 2006. A copy of the supporting statement for this information collection is available on the Internet at *http://www.fda.gov/ohrms/dockets.*

Dated: November 25, 2003.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 03–30029 Filed 12–2–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2003E–0261]

Determination of Regulatory Review Period for Purposes of Patent Extension; STRATTERA

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for STRATTERA and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Director of Patents and Trademarks, Department of Commerce, for the extension of a patent that claims that human drug product.

ADDRESSES: Submit written comments and petitions to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.fda.gov/dockets/ecomments.*

FOR FURTHER INFORMATION CONTACT: Claudia V. Grillo, Office of Regulatory Policy (HFD–013), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 240–453–6699.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Public Law 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Public Law 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Director of Patents and Trademarks may award (for example, half the testing phase must be subtracted, as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently approved for marketing the human drug product STRATTERA (atomoxetine hydrochloride). STRATTERA is indicated for the treatment of attention-deficit/hyperactivity disorder. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for STRATTERA (U.S. Patent No. 5,658,590,) from Eli Lilly & Co., and the Patent and Trademark Office requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated July 16, 2003, FDA advised the Patent and Trademark Office that this human drug product had undergone a regulatory review period and that the approval of STRATTERA represented the first permitted commercial marketing or use of the product. Thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for STRATTERA is 7,718 days. Of this time, 7,307 days occurred during the testing phase of the regulatory review period, while 411 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 355(i)) became effective*: October 11, 1981. FDA has verified the applicant's claim that the date the investigational new drug application became effective was on October 11, 1981.

2. *The date the application was initially submitted with respect to the human drug product under section 505(b) of the act*: October 12, 2001. FDA has verified the applicant's claim that the new drug application (NDA) for STRATTERA (NDA 21–411) was initially submitted on October 12, 2001.

3. *The date the application was approved*: November 26, 2002. FDA has verified the applicant's claim that NDA 21–411 was approved on November 26, 2002.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 685 days of patent term extension.

Anyone with knowledge that any of the dates as published is incorrect may submit to the Division of Dockets Management (see **ADDRESSES**) written comments and ask for a redetermination by February 2, 2004. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by June 1, 2004. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Division of Dockets Management. Three copies of any mailed information are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Dated: October 30, 2003.

Jane A. Axelrad,

Associate Director for Policy, Center for Drug Evaluation and Research.

[FR Doc. 03–30028 Filed 12–2–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[FDA 225–03–7000]

Memorandum of Understanding Between the Food and Drug Administration and Agricultural Marketing Service, United States Department of Agriculture

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is providing notice of a memorandum of understanding (MOU) between the Food and Drug Administration and Agricultural Marketing Service, United States Department of Agriculture. The purpose of the MOU is to ensure that sponsors of new antimicrobial animal drugs have access to an effective means for evaluating the effects of their drugs on current Food Safety and Inspection Service detection tests.

DATES: The agreement became effective January 23, 2003.

FOR FURTHER INFORMATION CONTACT: Valerie Reeves, Center for Veterinary Medicine (HFV–151), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–6973.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 20.108 (c), which states that all written agreements and MOUs between FDA and others shall be published in the **Federal Register**, the agency is publishing notice of this MOU.

Dated: November 21, 2003.

Jeffrey Shuren,

Assistant Commissioner for Policy.

BILLING CODE 4160–01–S

1

225-03-7000

MEMORANDUM OF UNDERSTANDING
Between the
Agricultural Marketing Service
United States Department of Agriculture
and the
Food and Drug Administration
United States Department of Health and Human Services

NAME OF PROJECT: Determination of the Reactivity of New Animal Drugs in Food Safety and Inspection Service (FSIS) Antimicrobial Detection Tests.

OBJECTIVE: The objective of this Memorandum of Understanding (MOU) is to ensure that sponsors of new antimicrobial animal drugs have access to an effective means for evaluating the effects of their drugs on current FSIS detection tests.

FSIS conducts screening and confirmation assays, based on microbial growth inhibition, to detect antimicrobial drug residues in animal tissue used for human food. These assays must be sufficiently reliable because they are important for ensuring food safety. However, new antimicrobial drugs have the potential to interfere with the current assays and FSIS's ability to correctly interpret the results. In addition to FSIS and CVM, manufacturers of antimicrobial animal drugs have an interest in avoiding such interference, particularly when interference causes a test to indicate a false positive. For these reasons, the U.S. Department of Health and Human Services, Food and Drug Administration (FDA) requests that sponsors evaluate the effect of the antimicrobial new animal drugs on the residue detection tests FSIS commonly uses. This information is used in creating strategies to assure the continued reliability of the tests used to monitor food safety.

In FDA's experience, companies that sponsor new animal drugs often do not have ready access to laboratories that can properly evaluate the effects of their drugs on current FSIS detection tests. The Science and Technology Programs of the U.S. Department of Agriculture, Agricultural Marketing Service (AMS), has the ability to perform the necessary evaluation on a fee for service basis. Therefore, FDA and AMS, through this MOU, are agreeing to make that service available to drug sponsors.

EFFECTIVE DATE: Date of final signature.

2

ORGANIZATION: For AMS, members of the Microbiology Laboratory, USDA, AMS, Eastern Laboratory will perform the analyses, and the Laboratory Director will supervise them. The laboratory analysis will be performed at:

USDA, AMS, Science & Technology
National Science Laboratory
801 Summit Crossing Place, Suite B
Gastonia, North Carolina 28054

AMS contact: Laboratory Director
Phone: 704-867-3873
FAX: 704-853-2800

The FDA office responsible for reviewing the human food safety aspects of new animal drugs is the Center for Veterinary Medicine, Office of New Animal Drug Evaluation, Division of Human Food Safety. This office is located at:

Center for Veterinary Medicine
Division of Human Food Safety (HFV-150)
7500 Standish Place
Rockville, MD 20855

FDA contact: Director, Division of Human Food Safety (HFV-150)
Office of New Animal Drug Evaluation
Center for Veterinary Medicine
Phone: (301) 827-5282
FAX: (301) 827-2298

RESPONSIBILITIES:

A. FDA agrees to:

1. Inform sponsors of new antimicrobial animal drugs that the AMS laboratory is capable of evaluating the effects of those drugs on the FSIS detection tests, and that AMS's role is limited to its evaluation of the effects of new antimicrobial drugs on FSIS detection tests.

2. Inform sponsors of AMS's requirement for:
   a. drug free tissues for control and fortification purposes;
   b. tissues that contain the incurred drug;
   c. sufficient chemically characterized drug standard of the same grade as that used in the manufacture of the drug article; and
   d. the following information about the drug product: chemical name, trade name, active ingredients, dosage form, dose(s) for use in the animal, manufacturing site, lot number or batch number if relevant, drug storage information, packaging information, storage stability and conditions affecting stability, and material safety data sheets.

3. Consider AMS's expertise in evaluating the effects of new antimicrobial animal drugs on FSIS detection tests.

4. If requested by the sponsor, review and comment on the tissues and drug levels proposed to be tested.

B. AMS agrees to:

1. Provide an analytical laboratory capable of performing the analysis specified in the FDA/FSIS protocol *"Determination of the Reactivity of New Animal Drugs in FSIS Antimicrobial Detection Tests"* and described in the *Microbiology Laboratory Guidebook (MLG) 3rd edition*, 1998, Chapter 33, Sections 33.26-33.27; 33.36-33.363; 33.55-33.57; and Chapter 34.

2. Conform its basic protocol outline for testing to the specifications in the FDA/FSIS protocol *"Determination of the Reactivity of New Animal Drugs in FSIS Antimicrobial Detection Tests."*

3. Send the final report of its analytical work to the drug's sponsor.

4. Include in its final report to the drug sponsor the following information:
   a. drug concentrations tested;
   b. buffers used for testing;
   c. tissues tested, specific controls, and fortified and incurred samples;
   d. tissue preparation or extraction procedure;
   e. screening tests used; and
   f. screening test and 7-plate bioassay results for buffer, fortified, and incurred samples, organized by tissue and screening test.

5. Communicate directly with sponsors in regard to the testing of the sponsors' drugs and refer other communications regarding the drug approval process to FDA.

C. It is mutually agreed that:

1. This MOU provides sponsors with one means of evaluating the effects of new antimicrobial animal drugs on the FSIS detection tests, and sponsors retain their discretion in providing this requested information.

2. FDA is not bound by any positions AMS may take as a result of its analysis of a new animal drug pursuant to this MOU. FDA will consider the information provided by AMS as specified in this MOU, but its decisions are independent.

3. Except as otherwise required by law, AMS is not bound by any positions FDA may take as a result of FDA's evaluation of a new animal drug.

4. FDA and AMS will continue to cooperate on improvement of testing protocols as necessary.

BASIS OF COOPERATION/FUNDING:

This MOU defines in general terms the basis on which the parties concerned will cooperate, and does not constitute a financial obligation to serve as a basis for expenditures. Each party will handle and expend its own funds.

Any and all expenditures from Federal funds in the Department of Agriculture made in conformity with the plans outlined in the MOU must be in accord with Department rules and regulations and in each instance based upon appropriate finance papers. Expenditures made by any other cooperator will be in accord with its rules and regulations.

The responsibilities assumed by the cooperating parties under this Memorandum of Understanding are contingent upon funds being available from which expenditures legally may be met.

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DURATION:

This agreement shall continue in force indefinitely. It may be amended or terminated by mutual consent of the parties in writing. It may be terminated by either party upon 30 days' notice in writing to the other party.

This agreement is hereby approved for the Agricultural Marketing Service.
On 1/23/03
(Date)

Kenneth C. Clayton
Associate Administrator
Agricultural Marketing Service

This agreement is hereby approved for the Food and Drug Administration.
On 1/13/03
(Date)

Stephen Sundlof, D.V.M., Ph.D.
Director
Center for Veterinary Medicine
Food and Drug Administration

[FR Doc. 03–30027 Filed 12–2–03; 8:45 am]
BILLING CODE 4160–01–C

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[FDA 225–02–8000]

Memorandum of Understanding Between the Food and Drug Administration and Johns Hopkins University

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is providing notice of a Memorandum of Understanding (MOU) between FDA and Johns Hopkins University. The purpose of the MOU is to develop collaboration in the areas of education, research, and outreach.

DATES: The agreement became effective April 30, 2002.

FOR FURTHER INFORMATION CONTACT: Peter Pitts, Office of External Relations, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–3330.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 20.108 (c), which states that all written agreements and MOUs between FDA and others shall be published in the **Federal Register**, the agency is publishing notice of this MOU.

Dated: November 24, 2003.

Jeffrey Shuren,

Assistant Commissioner for Policy.

BILLING CODE 4160–01–S

225-02-8000

MEMORANDUM OF UNDERSTANDING
Between the

UNITED STATES DEPARTMENT OF HEALTH AND HUMAN SERVICES
FOOD AND DRUG ADMINISTRATION
ROCKVILLE, MARYLAND

And

JOHNS HOPKINS UNIVERSITY
BALTIMORE, MARYLAND

This Memorandum of Understanding between the **U.S. Food and Drug Administration** and **Johns Hopkins University** is established to develop collaboration between the two parties in the areas of education, research, and outreach.

I. PURPOSE

The purpose of this **Memorandum of Understanding (MOU)** is to establish the framework for a collaborative partnership on mutually agreed activities in the scientific research and education.

II. OBJECTIVE

The objectives of this collaborative partnership resulting from this **MOU** include:

1. development of a collaborative working relationship between **U.S. Food and Drug Administration** and **Johns Hopkins University**,
2. provision of exchange of graduate and undergraduate students, faculty, and personnel, for the purposes of advanced training and outreach,
3. stimulation of cooperative activities, research, and information exchange in areas such as bioethics,
4. development of training programs for **U.S. Food and Drug Administration** and potentially other Government agencies and Industry in the broad areas of biotechnology and bioethics.

III. PROGRAM FOCUS

The **Memorandum of Understanding** is intended as a broad vehicle to promote programmatic interaction in the form of joint collaboration between **U.S. Food and Drug Administration** and **Johns Hopkins University** researchers, students, and personnel as well as joint development of relevant projects.

The collaboration may include the following:

Joint exchange programs. These exchanges would include internships, research opportunities, and shadowing opportunities for **Johns Hopkins University** undergraduate, post-baccalaureate and graduate students at the **U.S. Food and Drug Administration**. Faculty and senior staff from **U.S. Food and Drug Administration** and **Johns Hopkins University** and other partners will be encouraged to participate in the work of the sister institutions for mutual research and training interactions to possibly include short or long-term exchanges of staff (e.g. sabbaticals).

Joint research programs. Joint research programs will be formed by scientists from the respective institutions with mutual complementary interests in certain areas such as bioethics.

Joint training activities. Training activities arising from complementary interests will be developed by **Johns Hopkins University** and offered to **U.S. Food and Drug Administration,** industry, and others as identified needs arise.

Joint dissemination of information and outreach. The partners will disseminate information and enhance the visibility of the work of the collaboration through mutually agreed vehicles including training activities, meetings, and symposia.

IV. PARTICIPANTS

A wide range of faculty including representatives from the Schools of Arts and Sciences, Engineering, Medicine, Nursing, and Hygiene and Public Health and their respective departments would be potential participants from **Johns Hopkins University**. Senior Scientists from the Commissioners Office, Centers and Offices of **U.S. Food and Drug Administration** would be participants from the **U.S. Food and Drug Administration**. Other participants could include representatives from industry, field laboratories and others identified for joint training and outreach activities.

V. ORGANIZATION TO IMPLEMENT MOU

An organization will be formed to implement this **MOU** that will include representation from the **U.S. Food and Drug Administration's** Office of the Commissioner, **Johns Hopkins University** Provost's Office and other interested parties. The organization will operate under terms agreed to by the Parties.

VI. RESOURCE OBLIGATIONS

This **MOU** describes in general terms the basis upon which the Parties intend to cooperate in these activities. It does not create binding, enforceable obligations against any Party. All activities undertaken pursuant to the **MOU** are subject to the availability of personnel, resources, and appropriated funds.

VII. OTHER AGREEMENTS OR ARRANGEMENTS

This **MOU** does not affect or supercede any existing or future agreements or arrangements among the Parties and does not affect the ability of the Parties to enter into other agreements or arrangements related to this **MOU**.

VIII. NAMES AND ADDRESSES OF PARTICIPANT PARTIES

A. U.S. Food and Drug Administration
5600 Fishers Lane
Rockville, Maryland 20857

B. Johns Hopkins University
3400 North Charles Street
Baltimore, Maryland 21218

IX. LIASON OFFICERS

A. Liaison Office for FDA
The Office of the Commissioner

B. Liaison Office for Johns Hopkins
Office of the Vice Provost for Research

X. DURATION OF MOU

This **MOU** shall become effective upon the signature or all the Parties and will continue in effect for five (5) years. It may be extended by mutual written agreement of the Parties in writing. It may be modified by mutual consent or terminated by either Party upon a 30-day advance notice to the other Party.

XI. REGULATIONS

This **MOU** and all associated agreements will be subject to the applicable federal and state laws and regulations.

JOHNS HOPKINS UNIVERSITY

BY Wm R Brody

WILLIAM R. BRODY Ph.D.
PRESIDENT OF THE JOHNS HOPKINS UNIVERSITY

DATE

FOOD AND DRUG ADMINISTRATION

BY Lester M Crawford

LESTER M. CRAWFORD DVM, Ph.D.
DEPUTY COMMISSIONER FOOD AND DRUG ADMINISTRATION

DATE April 30, 2002

[FR Doc. 03–30026 Filed 12–2–03; 8:45 am]
BILLING CODE 4160–01–C

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Proposed Collection: Comment Request

In compliance with the requirement for opportunity for public comment on proposed data collection projects (section 3506(c)(2)(A) of Title 44, United States Code, as amended by the Paperwork Reduction Act of 1995, as amended, 44 U.S.C. Chapter 35), the Health Resources and Services Administration (HRSA) publishes periodic summaries of proposed projects being developed for submission to OMB under the Paperwork Reduction Act of 1995. To request more information on the proposed project or to obtain a copy of the data collection plans and draft instruments, call the HRSA Reports Clearance Officer on (301) 443–1129.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project: Data System for Organ Procurement and Transplantation Network (42 CFR Part 121, OMB No. 0915–0184): Extension

The operation of the Organ Procurement and Transplantation Network (OPTN) necessitates certain record keeping and reporting requirements in order to perform the functions related to organ transplantation under contract to HHS. This is a request for an extension of the current record keeping and reporting requirements associated with the OPTN. These data will be used by HRSA in monitoring the contracts for the OPTN and the Scientific Registry of Transplant Recipients (SRTR) and in carrying out other statutory responsibilities. Information is needed to match donor organs with recipients, to monitor compliance of member organizations with OPTN rules and requirements, and to ensure that all qualified entities are accepted for membership in the OPTN.

ESTIMATED ANNUAL REPORTING AND RECORD KEEPING BURDEN

Section and activity	Number of respondents	Responses per respondents	Total responses	Hours per response	Total burden hours
121.3(b)(2):					
OPTN membership and application requirements for OPOs, hospitals, and histocompatibility laboratories	30	1	30	40	1,200
121.3(b)(4):					
Appeal for OPTN membership	2	1	2	3	6
121.6(c) (Reporting):					
Submitting criteria for organ acceptance	900	1	900	0.5	450
121.6(c) (Disclosure):					
Sending criteria to OPOs	900	1	900	0.5	450
121.7(b)(4):					
Reasons for Refusal	900	38	34,200	0.5	17,100
121.7(e):					
Transplant to prevent organ wastage	278	1.5	417	0.5	209
121.9(b):					
Designated Transplant Program Requirements	10	1	10	5.0	50
121.9(d):					
Appeal for designation	2	1	2	6	12
Total	944		36,461		19,477

Send comments to Susan G. Queen, Ph.D., HRSA Reports Clearance Officer, Room 14–45, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated: November 24, 2003.

Tina M. Cheatham,

Acting Director, Division of Policy Review and Coordination.

[FR Doc. 03–30030 Filed 12–2–03; 8:45 am]
BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel, Review of Contract Proposal.

Date: December 16, 2003.

Time: 2 p.m. to 4 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Anne P. Clark, PhD, Chief, Review Branch, Division of Extramural Affairs, National Heart, Lung, and Blood Institute, National Institutes of Health, Rockledge II, Room 7214, 6701 Rockledge Drive, MSC 7924, Bethesda, MD 20892–7924, (301) 435–0270.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: November 26, 2003.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–30119 Filed 12–2–03; 8:45 am]
BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Analgesia.

Date: December 1, 2003.

Time: 4 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Daniel R. Kenshalo, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5176, MSC 7844, Bethesda, MD 20892, 301–435–1255.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Alkaline Phosphatase.

Date: December 2, 2003.

Time: 1 p.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Sherry L. Dupere, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5136, MSC 7843, Bethesda, MD 20892, 301–435–1021, *duperes@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Pain.
Date: December 2, 2003.
Time: 12 p.m. to 2 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Daniel R. Kenshalo, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5176, MSC 7844, Bethesda, MD 20892, 301–435–1255.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 SSS–C (03) Reviews in Child Psychopathology.
Date: December 4, 2003.
Time: 1 p.m. to 2 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).
Contact Person: Mary Sue Krause, MED, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3182, MSC 7848, Bethesda, MD 20892, 301–435–0902, *krausem@csr.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 SSS–5 03 M: Dermatology/Rheumatology.
Date: December 10, 2003.
Time: 1 p.m. to 3 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).
Contact Person: Jeffrey E. DeClue, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4114, MSC 7814, Bethesda, MD 20892, 301–594–6376.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, NeuroAIDS Member Conflicts.
Date: December 12, 2003.
Time: 11 a.m. to 1:30 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).
Contact Person: Eduardo A. Montalvo, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5212, MSC 7852, Bethesda, MD 20892, 301–435–1168, *montalve@csr.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Replicative Cellular Senescence.
Date: December 12, 2003.
Time: 3 p.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).
Contact Person: Sherry L. Dupere, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5136, MSC 7843, Bethesda, MD 20892, 301–435–1021, *duperes@csr.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, At Risk Youth.
Date: December 15, 2003.
Time: 1 p.m. to 2:30 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).
Contact Person: Deborah L. Young-Human, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4188, MSC 7808, Bethesda, MD 20892, (301) 451–8008, *younghyd@csr.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Receptor Structure and Function.
Date: December 15, 2003.
Time: 1 p.m. to 3 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).
Contact Person: Joanne T. Fujii, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5204, MSC 7850, Bethesda, MD 20892, (301) 435–1178, *fujiij@csr.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Galectin Biology.
Date: December 17, 2003.
Time: 3 p.m. to 4 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).
Contact Person: Sherry L. Dupere, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5136, MSC 7843, Bethesda, MD 20892, (301) 435–1021, *duperes@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 NNB (03) Methylphendate and Development.
Date: December 19, 2003.
Time: 11 a.m. to 1 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).
Contact Person: Richard Marcus, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5168, MSC 7844, Bethesda, MD 20892, 301–435–1245, *richard.marcus@nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93–837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: November 25, 2003.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–30117 Filed 12–2–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Clinical Neurophysiology, Neuroprosthetics, and Monitoring Devices.
Date: December 1, 2003.
Time: 2:30 p.m. to 4:30 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Rene Etcheberrigaray, MD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5196, MSC 7846, Bethesda, MD 20892, (301) 435–1246, *etcheber@csr.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Iron Transport.
Date: December 2, 2003.
Time: 2 p.m. to 3 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).
Contact Person: Timothy J Henry, PhD, Scientific Review Administrator, BM–1 Study Section, IDM IRG, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, RM 3212, MSC 7808, Bethesda, MD 20892, (301) 435–1147, *henryt@csr.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 CVS F (M): Cardiovascular Remodeling.
Date: December 3, 2003.
Time: 11 a.m. to 12 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Ai-Ping Zou, PhD, MD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4118, MSC 7814, Bethesda, MD 20892.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1–ALTX–4 (03) Special Emphasis Panel.
Date: December 8, 2003.
Time: 1 p.m. to 3 p.m.
Agenda: to review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Rass M. Shayiq, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2182, MSC 7818, Bethesda, MD 20892, 301–435–2359, *shaytiqr@csr.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Stress.
Date: December 8, 2003.
Time: 12 p.m. to 1 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Daniel R. Kenshalo, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5176, MSC 7844, Bethesda, MD 20892, 301–435–1255, *kenshalod@csr.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Redox Enzyme Interactions.
Date: December 10, 2003
Time: 2 p.m. to 3 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Timothy J. Henry, PhD, Scientific Review Administrator, BM–1 Study Section, IDM IRG, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, RM 3212, MSC 7808, Bethesda, MD 20892, (301) 435–1147, *henryt@csr.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Immune Response.
Date: December 11, 2003.
Time: 2 p.m. to 3 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Timothy J. Henry, PhD, Scientific Review Administrator, BM–1 Study Section, IDM IRG, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, RM 3212, MSC 7808, Bethesda, MD 20892, (301) 435–1147, *henryt@csr.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 NNB (02) (M) Viscerosensory Pathways to Brain.
Date: December 15, 2003.
Time: 2:30 p.m. to 4: p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Richard Marcus, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5168, MSC 7844, Bethesda, MD 20892, 301–435–1245, *richard.marcus@nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93–846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: November 26, 2003.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–30118 Filed 12–02–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

National Toxicology Program: Announcement of a Public Meeting To Receive Comment on the NTP Vision and Input to a Roadmap for Implementation of the Vision

Summary

The National Toxicology Program (NTP) announces a public meeting to provide all interested parties an opportunity to express their views about the NTP Vision, provide input to a roadmap for implementation of the NTP Vision and comment on the views expressed by others. The NTP Vision for the 21st Century is to move toxicology from a predominately observational science at the level of disease-specific models to a predominately predictive science focused upon a broad inclusion of target-specific, mechanism-based, biological observations. The stimulus for the NTP Vision is to develop a framework that will promote the further advancement of toxicology and refine its traditional role as a predominately observational science.

The meeting will be held on January 29, 2004, at the Lister Hill Center Auditorium (Building 38A), National Library of Medicine, National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland, 20892. The meeting will begin at 9 a.m. on January 29 and will conclude by 5 p.m. or sooner if the public comments and discussion end earlier. On-site registration will begin at 8:30 a.m. on January 29. Attendance at the meeting is limited only by the space available. Additional details about the meeting, including background information, agenda, written comments, registration and security information are provided below and are also available from the

NTP Web site (*http://ntp-server.niehs.nih.gov select* NTP Vision Public Meeting under What's New?).

Background

The National Toxicology Program (NTP) was established in 1978 to coordinate toxicological testing programs within the Department of Health and Human Services, develop and validate improved testing methods, develop approaches and generate data to strengthen scientific knowledge about potentially hazardous substances and communicate with stakeholders. In its 25 years of existence, NTP has become a world leader in providing scientific information that improves our nation's ability to evaluate potential human health effects from chemical and physical exposures. The NTP has maintained a number of complex, interrelated research and testing programs that provide unique and critical information needed by health regulatory and research agencies to protect public health.

The last decade of the 20th century and the turn of the 21st century have produced dramatic technological advances in molecular biology and computer science. The NTP is ready to evaluate its key activities and, in a focused and concerted effort, determine how best to incorporate these new scientific technologies into its research and testing strategies and broaden scientific knowledge on the linkage between mechanism and disease. The NTP Vision is to move toxicology from a predominately observational science at the level of disease-specific models to a predominately predictive science focused upon a broad inclusion of target-specific, mechanism-based, biological observations. Over the next year, the NTP intends to develop a roadmap for implementation of its vision that will strategically position the program at the forefront for providing scientific data and the interpretation of those data for public health decision-making. The NTP will seek input to this roadmap from numerous groups, including its federal partners, its advisory committees, and the public. Additional information about the NTP Vision is available on its Web site *(http://ntp-server.niehs.nih.gov select* NTP Vision Public Meeting under What's New?).

Agenda

A panel that includes NTP staff and representatives of the NTP Board of Scientific Counselors and the NTP Executive Committee will receive the public comments and participate in the discussion.

Tentative Agenda

NTP Vision Public Meeting

Lister Hill Center Auditorium, National Library of Medicine, National Institutes of Health, Bethesda, Maryland.

January 29, 2004

8:30 a.m. Registration.
9 a.m. Welcome and Introductions; Presentation of the NTP Vision; and Guidelines and procedures for oral comments and discussion.
10 a.m. Public comments (10 minutes per speaker, one speaker per organization).
5 p.m. Adjournment (The meeting may adjourn earlier if the public comments and discussion are finished.)

Public Comment Encouraged

The NTP invites all interested parties to present oral comments to the panel at the meeting. For planning purposes, individuals/groups wishing to give oral comment are asked to register early and provide appropriate contact information (name; affiliation; mailing address; phone; fax; e-mail; and sponsoring organization, if any). One time slot for an oral presentation will be allotted per organization. Speakers that register early for this meeting will be assigned time on a first-come, first-served basis. Registration to speak at this meeting will also be accepted on-site. It is anticipated that at least 10 minutes will be available for each presenter to address the panel. When oral comments are read from printed text, the NTP asks that the speaker provide 20 copies of the text at registration for distribution to the panel and to supplement the record of the meeting. Written statements can supplement or may expand on an oral presentation or can be submitted in lieu of an oral presentation.

The NTP also invites the submission of written comment. Written comments should be sent to the address provided below and include contact information (name, affiliation, mailing address, phone, fax, e-mail, and sponsoring organization, if any). Comments received by January 15, 2004, will be distributed to the panel, posted on the NTP Web site prior to the meeting, and made available at the public meeting.

Registration for Meeting

This meeting is open to the public and all interested parties are invited to attend. Persons needing special assistance in order to attend are asked to contact Ms. Nan Cushing (contact information below) at least seven business days prior to the meeting. For planning purposes, persons are asked to register on-line or, if this is not possible, contact Ms. Nan Cushing (NTP Liaison and Scientific Review Office, NIEHS, P.O. Box 12233 MD A3–01, 111 T.W. Alexander Drive, Room 3123, Research Triangle Park, NC 27709; phone: (919) 541–0530; FAX: (919) 541–0295; e-mail: *cushing1@niehs.nih.gov*).

Access to the electronic registration form is available from the NTP Web site (*http://ntp-server.niehs.nih.gov*, select NTP Vision Public Meeting under "What's New?"). Please complete the form and also indicate whether you want to request time for an oral presentation. On-site registration will also be available and will begin the morning of January 29 at 8:30 a.m.

Access to the NIH Campus

Any individual seeking access to the NIH campus to attend this meeting will need to be prepared to show two forms of identification—a government-issued photo ID (*e.g.*, Federal employee badge, driver's license, passport or green card, etc.) along with another type of identification, and, if asked, to provide pertinent information about this meeting (*e.g.*, a copy of the meeting announcement, title of the meeting, or meeting host). Additional information about access to the NIH campus and parking is available from the NTP Web site (*http://ntp-server.niehs.nih.gov*, select NTP Vision Public Meeting under "What's New?").

Dated: November 20, 2003.

Kenneth Olden,

Director, NTP.

[FR Doc. 03–30121 Filed 12–2–03; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

National Toxicology Program: Announcement of a Public Meeting To Discuss the Review Process and the Listing/Delisting Criteria Used for the Report on Carcinogens

Summary

The National Toxicology Program (NTP) announces a public meeting to receive public comment on the current process for reviewing nominations for listing in or delisting from the Report on Carcinogens (RoC) and on the current listing criteria used for evaluating the nominations. The purpose of this public meeting is to obtain input and provide all interested parties an opportunity to express their views about the review process for nominations to the RoC and/or the evaluation criteria and to comment on the views expressed by others.

The meeting will be held on January 27–28, 2004, at the Lister Hill Center Auditorium (Building 38A), National Library of Medicine, National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland, 20892. The meeting will begin at 9 am on January 27 and will conclude by noon on January 28 or sooner if the public comments and discussion end earlier. On-site registration will begin at 8:30 am on January 27. Attendance at the meeting is limited only by the space available. Additional details about the meeting, including background information, agenda, written comments, registration and security information are provided below and are also available from the NTP Web site (*http://ntp-server.niehs.nih.gov* select NTP/RoC Public Meeting under What's New?).

Background

The RoC is a public information document prepared by the NTP, pursuant to delegation from the Secretary of The Department of Health and Human Services (DHHS) as required by Section 301(b)(4) of the Public Health Service Act, as amended. The RoC provides a listing of those agents, substances or exposure circumstances which are either "known" or "reasonably anticipated" to cause cancer in humans, and to which a significant number of people in the United States are exposed. The 1st edition of the report (then known as the Annual Report on Carcinogens) was published in 1980. Similar criteria and review processes were used to consider/evaluate nominated substances for listing in the 1st through 7th editions; the 7th edition was published in 1994. In 1995, a panel whose membership included persons from academia, industry, labor, public/environmental organizations, state and local health departments and government met in public session(s) to examine the criteria. The panel recommended revisions to the listing criteria and the nomination review process for the RoC. The Secretary, DHHS approved the revised criteria on September 12, 1996 [61 FR 50499, September 26, 1996]. The revised criteria and review process were used to evaluate nominations to the 8th, 9th, and 10th editions of the RoC and are currently being used to evaluate nominations being considered for listing in or delisting from the 11th edition. A description of the proposed review process that will be used to evaluate nominations to future editions of the RoC and the listing/delisting criteria are provided below and can also be found on the NTP Web site (*http://ntp-server.niehs.nih.gov/NewHomeRoc/AboutRoC.html*).

Agenda

A panel that includes NTP staff and representatives of the NTP Board of Scientific Counselors RoC Subcommittee, the NTP Executive Committee Interagency Working Group for the RoC and the NIEHS/NTP RoC Review Committee will receive the public comments and participate in the discussion.

Tentative Agenda

NTP/RoC Public Meeting

Lister Hill Center Auditorium, National Library of Medicine, National Institutes of Health, Bethesda, Maryland.

January 27, 2004

8:30 a.m. Registration.
9 a.m. Welcome and Introductions; Overview of the history of the Report on Carcinogens, the proposed review process for nominations and the listing/delisting criteria; and Guidelines and procedures for oral comments and discussion.
10 a.m. Public comments (10 minutes per speaker, one speaker per organization).
5 p.m. Adjournment (The meeting may adjourn earlier if the public comments and discussion are finished.).

January 28, 2004

9 a.m. Continuation of public comments and discussion if not finished on January 27.
Noon Close of meeting (The meeting may close earlier if the public comments and discussion are finished.)

Public Comment Encouraged

The NTP welcomes continued and meaningful input from all stakeholders concerning the RoC review process and the evaluation criteria used to list/delist nominations. The NTP invites all interested parties to present oral comments to the panel at the meeting. For planning purposes, individuals/groups wishing to give oral comment are asked to register early and provide appropriate contact information (name; affiliation; mailing address; phone; fax; e-mail; and sponsoring organization, if any). One time slot for an oral presentation will be allotted per organization. Speakers that register early for this meeting will be assigned time on a first-come, first-served basis.

Registration to speak at this meeting will also be accepted on-site. It is anticipated that at least 10 minutes will be available for each presenter to address the panel. When oral comments are read from printed text, the NTP asks that the speaker provide 15 copies of the text at registration for distribution to the panel and to supplement the record of the meeting. Written statements can supplement or may expand on an oral presentation or can be submitted in lieu of an oral presentation.

The NTP also invites the submission of written comment. Written comments should be sent to the address provided below and include contact information (name, affiliation, mailing address, phone, fax, e-mail, and sponsoring organization, if any). Comments received by January 15, 2004, will be distributed to the panel, posted on the NTP RoC Web site prior to the meeting, and made available at the public meeting.

Registration for Meeting

This meeting is open to the public and all interested parties are invited to attend. Persons needing special assistance in order to attend are asked to contact Ms. Anna Lee Sabella (contact information below) at least seven business days prior to the meeting. For planning purposes, persons are asked to register on-line or, if this is not possible, contact Ms. Anna Lee Sabella (Report on Carcinogens Group, NIEHS, P.O. Box 12233 MD EC–14, 79 T.W. Alexander Drive, Room 3123, Research Triangle Park, NC 27709; phone: (919) 541–4982; FAX: (919) 541–0144; e-mail: *sabella@niehs.nih.gov*).

Access to the electronic registration form is available from the NTP Web site (*http://ntp-server.niehs.nih.gov*, select NTP/RoC Public Meeting under "What's New?"). Please complete the form and also indicate whether you want to request time for an oral presentation. On-site registration will also be available and will begin the morning of January 27 at 8:30 am.

Access to the NIH Campus

Any individual seeking access to the NIH campus to attend this meeting will need to be prepared to show two forms of identification (one must be a government-issued photo ID, *e.g.*, driver's license, passport, green card, etc.) and, if asked, to provide pertinent information about this meeting (*e.g.*, a copy of the meeting announcement, title of the meeting). Additional information about access to the NIH campus and parking is available from the NTP Web site (*http://ntp-server.niehs.nih.gov*,

select NTP/RoC Public Meeting under "What's New?").

Dated: November 20, 2003.

Kenneth Olden,

Director, NTP.

Report on Carcinogens

Proposed Listing/Delisting Procedures

Nominations for listing or delisting (removing) an agent, substance, mixture, or exposure circumstance in the RoC should be submitted to the NTP [1] (footnotes are defined). Nominations must contain a rationale for listing or delisting as either a "known human carcinogen" or a "reasonably anticipated human carcinogen." Appropriate background information and relevant data (*e.g.*, journal articles, NTP Technical Reports, IARC listings, exposure surveys, release inventories, etc.) that support the nomination should be provided or referenced when possible.

A nomination for listing or delisting in the RoC is evaluated initially by the NIEHS/NTP RoC nomination review committee, composed of scientists from the NIEHS/NTP staff, to determine if the information available for a nomination indicates the criteria for listing can be applied and warrants formal consideration by the NTP. This committee is provided with the information submitted with each nomination and any relevant supplemental materials identified by RoC staff. The committee reviews the information provided for each nomination and makes a recommendation for either continuing with the formal review for listing or delisting or not pursuing the nomination at this time. The rationale for dropping a nomination would be the lack of sufficient information for applying the listing criteria or, in the case of nominations for delisting, the absence of significant new information published since the original listing. The recommendations of this committee are submitted to the Director, NTP, for approval. Those nominations not accepted for review will be returned to the original nominator who is invited to resubmit the nomination with additional justification, which may include new data, exposure information, etc. The NTP Executive Committee [2] and the NTP Board of Scientific Counselors are informed of all nominations not accepted for review for listing or delisting in the RoC.

The NTP announces its intent to review and solicits public comments on all nominations accepted for review through announcements in the **Federal Register** and NTP publications. The NTP will initiate an independent search and review of the literature and prepare a background document for each nomination under consideration. The comments received in response to the public announcement are used to help identify issues that should be addressed in the background documents. The background documents are prepared with the assistance of an expert consultant(s) who have expertise and/or knowledge for the specific nomination. Background documents are prepared according to the following general format:

1. Introduction
   Information contained in this section includes chemical identification such as synonyms, trade names, CAS Registry numbers, molecular formula, molecular structure, etc. Also included are physical-chemical properties and identification of structural analogs or metabolites.
2. Human Exposure
   Information contained in this section can include use; production; analysis; environmental occurrence including environmental release, drinking water and food content and occurrence in consumer products; environmental fate in air, water, and soil; environmental and occupational exposures; biological indices of exposure; and regulations including occupational exposure limits and "other" standards and criteria.
3. Human Studies
   Information contained in this section can include traditional cancer epidemiology investigations including case control and cohort studies as well as data from clinical studies.
4. Experimental Carcinogenesis
   Information in this section can include experimental animal investigations of potential carcinogenesis including long term bioassays, experiments where the substance is administered in conjugation with known carcinogens or factors that modify carcinogenic effects, studies to investigate a defined precancerous lesion and experiments on the carcinogenicity of known metabolites and derivatives.
5. Genotoxicity
   Information in this section can include investigations of genetic and related effects including gene mutation and chromosomal damage.
6. Other Data Relevant to Evaluation of Carcinogenicity and its Mechanisms
   Information contained in this section can include metabolism, absorption, distribution and excretion of the substance, other toxic effects, and data derived from the study of tissues or cells from humans and/or experimental animals exposed to the substance in question, which can be useful for evaluating whether a relevant cancer mechanism is operating in people.

Data used in the preparation of Sections 3 through 6 of the background document must come from publicly available, peer-reviewed sources.

The final draft of the background document for each nomination will be reviewed by the NIEHS/NTP RoC Review Committee (RG1) that is composed of senior scientists from the NIEHS/NTP staff. The RG1 is asked to review the background document for content and determine if it is adequate for use in reviewing the nomination and applying the criteria for listing in the RoC. Upon determination of adequacy, the background document is considered the final document of record and is placed on the NTP RoC Web site. A notice is then published on the NTP list-server and the NTP Web site announcing the availability of the background document for a nomination. Notification of the availability of background documents by mail can also be requested by contacting the NTP.[3] The formal review of a nomination will not begin for at least 45 day after the announcement of the availability of the background document for that nomination. All comments received within this time period will be distributed to the RoC review committees and also become part of the public record.

Formal Review Steps

Nominations under consideration by the NTP for listing in or delisting from the RoC undergo a multi-step, scientific review process that includes several opportunities for public comment. The following text briefly describes that process.

NIEHS/NTP RoC Review Committee (RG1)

The RG1 conducts a formal review of nominations for listing in or delisting from the RoC. The RG1 reviews the background document for each nomination and all public comments received in response to the **Federal Register** announcement of the intent to review a nomination and any comments received on the background document. The RG1 conducts a scientific review of the nomination applying the criteria and provides comments and makes its recommendations to the Director, NTP for listing or delisting it in the RoC.

NTP Executive Committee's Interagency Working Group for the RoC (RG2)

The RG2, a federal government interagency scientific review group, also conducts a scientific review of nominations to the RoC. The RG2 assesses whether relevant information for a nomination is available and sufficient for listing in or delisting from the RoC. The RG2 reviews the original nomination and all public comments received in response to the **Federal Register** announcement of the intent to review a nomination and any comments received on the background document. Upon completion of its review, the RG2 provides comments and makes its recommendations to the Director, NTP for listing or delisting the nominations in the RoC.

Board of Scientific Counselors RoC Subcommittee (External Peer Review)

The third step in the review process is external scientific peer review of the nominations by a standing subcommittee of the NTP Board of Scientific Counselors ("the RoC Subcommittee"). The RoC Subcommittee serves as an independent peer review group that assesses whether the relevant information available for a nomination is sufficient for listing or delisting it in the RoC. The RoC Subcommittee reviews nominations in an open public meeting. Prior to this public review, a notice is published in the **Federal Register** and NTP publications announcing the public meeting, a reminder of the availability of the background documents and soliciting public comment on the nominations. The notice invites interested groups or individuals to submit written comments and/or address the RoC Subcommittee during the public review meeting. The RoC Subcommittee reviews the original nomination and all public comments received in response to the **Federal Register** notices including the announcement of the intent to review a nomination and the announcement of the public meeting, any comments received on the background documents, and comments received at the public meeting. Upon completion of its review, the RoC Subcommittee provides comments and makes its recommendations for listing or delisting the nominations in the RoC.

Final Public Comment

Upon completion of the reviews by RG1, RG2 and the RoC Subcommittee, the NTP publishes in the **Federal Register** and NTP publications the nominations and the review groups' recommendations for each (to list, to delist, or not to list in the RoC), and solicits final public comment and input on the nominations.

NTP Executive Committee

The recommendations of RG1, RG2 and the RoC Subcommittee and all public comments received in response to all **Federal Register** announcements and the background documents are presented to the NTP Executive Committee for review and comment. The NTP Executive Committee reviews the information on the nominations and provides the Director, NTP its recommendations for listing or delisting them in the RoC.

NTP Director

The NTP Director receives the independent recommendations for the nominations from RG1, RG2 and the NTP Board RoC Subcommittee, the recommendation of the NTP Executive Committee and all public comments received concerning the nominations. The NTP Director evaluates this input and any other relevant information on the nominations and develops recommendations to the Secretary, Department of Health and Human Services (DHHS) regarding whether to list, delist, or not list the nominations in the RoC.

Secretary, Department of Health and Human Services

The NTP prepares a final draft of the RoC based on the NTP Director's recommendations and submits it to the Secretary, DHHS for review and approval. Upon approval of the RoC, the Secretary submits it to the U.S. Congress as a final document. The submission of the RoC to Congress constitutes publication of the report and it becomes available to the public at that time.

The NTP publishes a notice of the publication and availability of the latest edition of the RoC, indicating all newly listed or delisted agents, substances, mixtures or exposure circumstances in the **Federal Register** and NTP publications.

Report on Carcinogens

Criteria for Listing

Agents, Substances, Mixtures or Exposure Circumstances

Known To Be Human Carcinogen:

There is sufficient evidence of carcinogenicity from studies in humans, which indicates a causal relationship between exposure to the agent, substance, or mixture, and human cancer.

Reasonably Anticipated To Be Human Carcinogen:

There is limited evidence of carcinogenicity from studies in humans, which indicates that causal interpretation is credible, but that alternative explanations, such as chance, bias, or confounding factors, could not adequately be excluded,

or

there is sufficient evidence of carcinogenicity from studies in experimental animals, which indicates there is an increased incidence of malignant and/or a combination of malignant and benign tumors (1) in multiple species or at multiple tissue sites, or (2) by multiple routes of exposure, or (3) to an unusual degree with regard to incidence, site, or type of tumor, or age at onset,

or

there is less than sufficient evidence of carcinogenicity in humans or laboratory animals; however, the agent, substance, or mixture belongs to a well-defined, structurally related class of substances whose members are listed in a previous Report on Carcinogens as either known to be a human carcinogen or reasonably anticipated to be a human carcinogen, or there is convincing relevant information that the agent acts through mechanisms indicating it would likely cause cancer in humans.

Conclusions regarding carcinogenicity in humans or experimental animals are based on scientific judgment, with consideration given to all relevant information. Relevant information includes, but is not limited to, dose response, route of exposure, chemical structure, metabolism, pharmacokinetics, sensitive sub-populations, genetic effects, or other data relating to mechanism of action or factors that may be unique to a given substance. For example, there may be substances for which there is evidence of carcinogenicity in laboratory animals, but there are compelling data indicating that the agent acts through mechanisms which do not operate in humans and would therefore not reasonably be anticipated to cause cancer in humans.

Clarification of Criteria

Some questions have arisen regarding information from studies involving humans and how this is applied to the listing of a substance determined to be a "known human carcinogen". The "known human carcinogen" category

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[1] SUS National Toxicology Program, Report on Carcinogens, P.O. Box 12233, 79 T.W. Alexander Drive, Bldg. 4401, Room 3118, MD EC–14, Research Triangle Park, NC 27709; *contact information:* Dr. C. W. Jameson, phone (919) 541–4096, fax: (191) 541–0144, e-mail: *jameson@niehs.nih.gov*

[2] Agencies represented on the NTP Executive Committee include: Agency for Toxic Substances and Disease Registry (ATSDR), Consumer Product Safety Commission (CPSC), Environmental Protection Agency (EPA), Food and Drug Administration (FDA), National Center for Environmental Health of the Centers for Disease Control and Prevention (NCEH/CDC), National Institute for Occupational Safety and Health/CDC (NIOSH/CDC), Occupational Safety and Health Administration (OSHA), National Cancer Institute of the National Institutes of Health (NCI/NIH), and National Institute of Environmental Health Sciences/NIH(NIEHS/NIH)

[3] Contact information provided in footnote 1.

requires evidence from studies of humans. This can include traditional cancer epidemiology studies, data from clinical studies, and/or data derived from the study of tissues from humans exposed to the substance in question and useful for evaluating whether a relevant cancer mechanism is operating in people.

There have also been some misunderstandings regarding the application of the final paragraph of the criteria which begins, "Conclusions regarding carcinogenicity in humans or experimental animals* * *" Since these criteria were first published on September 26, 1996 (61 FR 50499–50500), the paragraph has applied to both the "known to be human carcinogen" and the "reasonably anticipated to be human carcinogen" categories and will continue to apply (64 FR 19188, April 19, 1999).

[FR Doc. 03–30122 Filed 12–2–03; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

National Toxicology Program (NTP) Board of Scientific Counselors Technical Reports Review Subcommittee Meeting; Review of Draft NTP Technical Reports

Pursuant to Public Law 92–463, notice is hereby given of the next meeting of the NTP Board of Scientific Counselors Technical Reports Review Subcommittee ("the Subcommittee") on February 17–18, 2004, in the Rodbell Auditorium, Rall Building at the National Institute of Environmental Health Sciences, 111 T. W. Alexander Drive, Research Triangle Park, NC 27709. The meeting will begin at 8:30 a.m.

Agenda

The primary agenda topic is the peer review of seven draft NTP Technical Reports of rodent toxicology and carcinogenesis studies conducted by the NTP. This includes the re-review of the NTP Draft Technical Report on Anthraquinone (TR #494), which was originally reviewed in May 1999. The reports are listed in the table below in the tentative order of their review.

The agenda and roster of the Subcommittee members will be available prior to the meeting on the NTP homepage at *http://ntp-server.niehs.nih.gov/*(see What's New?) and upon request to the NTP Executive Secretary, Dr. Barbara S. Shane (P.O. Box 12233, 111 T.W. Alexander Dr., MD A3–01, Research Triangle Park, NC 27709, T: 919–541–4253; F: 919–541–0295; e-mail: *shane@niehs.nih.gov*). Following the meeting, summary minutes will be available on the NTP web site and in hard copy upon request to the Executive Secretary. Plans are underway for making this meeting available for viewing on the Internet at (*http://www.niehs.nih.gov/external/video.htm*).

The NTP Board of Scientific Counselors Technical Reports Review Subcommittee meeting is open to the public. Attendance at this meeting is limited only by the space available. For planning purposes, individuals who plan to attend are asked to register with the NTP Executive Secretary (see contact information above). Registration will also be available on-site at the meeting. Persons needing special assistance, such as sign language interpretation or other reasonable accommodation in order to attend, are asked to notify the NTP Executive Secretary at least seven business days in advance of the meeting (see contact information above).

Draft Reports Available for Public Review and Comment

Approximately seven weeks prior to the meeting, the draft reports will be available for public review, free of charge, through ehpOnline (*http://ehp.niehs.nih.gov/*). Printed copies of the Draft NTP Technical Reports can be obtained, as available, from Central Data Management (NIEHS, P.O. Box 12233, MD EC–03, Research Triangle Park, NC 27709, T: 919–541–3419, F: 919–541–3687, e-mail: *CDM@niehs.nih.gov*).

Comments on any of the Draft NTP Technical Reports are welcome. Time will be provided at the meeting for oral public comment on the reports. Persons requesting time for an oral presentation on a particular report are asked to notify the Executive Secretary (contact information given above) by January 30, 2004, and to provide their contact information (name, affiliation, mailing address, phone, fax, e-mail), and supporting organization (if any). Persons registering to make comments are asked to provide a written copy of their statement to the Executive Secretary on or before January 30, 2004, to enable review by the Subcommittee and NTP staff prior to the meeting. These statements can supplement or expand an oral presentation. Each speaker will be allotted at least 7 minutes and, if time permits, up 10 minutes for presentation of oral comments. Each organization is allowed one time slot per report being reviewed. Registration for making public comments will also be available on-site. If registering on-site to speak and reading comments from printed text, the speaker is asked to provide 25 copies of the statement for distribution to the Subcommittee and NTP staff, and to supplement the record.

Written comments without an oral presentation at the meeting are also welcome. Comments should include contact information for the submitter (name, affiliation, mailing address, phone, fax, and e-mail) and supporting organization (if any). Written comments should be received by the Executive Secretary on or before January 30, 2004, to enable distribution to the Subcommittee and NTP staff for their review and consideration prior to the meeting.

Request for Additional Information

The NTP would welcome receiving toxicology and carcinogenesis information from completed, ongoing or planned studies as well as current production data, human exposure information, and use patterns for any of the chemicals listed in this announcement. Please send this information to Central Data Management at the address given above and it will be forwarded to the appropriate NTP staff.

NTP Technical and Toxicity Report Series

The NTP conducts toxicology and carcinogenesis studies of agents of public health concern. Any scientist, organization, or member of the public may nominate a chemical for NTP testing. Details about the nomination process are available on the NTP Web site (*http://ntp-server.niehs.nih.gov/*, select How to Nominate Substances). The results of short-term rodent toxicology studies are published in the NTP Toxicity Report series. Longer-term studies, generally, rodent carcinogenicity studies, are published in the NTP Technical Report series. The NTP has a new technical report series for studies conducted in genetically modified models. Study abstracts for all reports are available at the NTP Web site under NTP Study Information. PDF files of completed reports are available free-of-charge from ehpOnline under Publications and hard copies of published reports can be obtained through subscription to ehpOnline (*http://ehp.niehs.nih.gov/* contact information: T: 919–653–2595 or 866–541–3841, e-mail: *ehponline@ehp.niehs.nih.gov*).

NTP Board of Scientific Counselors

The NTP Board of Scientific Counselors ("the Board") is a technical advisory body composed of scientists from the public and private sectors who provide primary scientific oversight and peer review to the NTP. Specifically, the Board advises the NTP on matters of scientific program content, both present and future, and conducts periodic review of the program for the purpose of determining and advising on the scientific merit of its activities and overall scientific quality.

The Technical Reports Review Subcommittee of the Board provides scientific peer review of the findings and conclusions of NTP Technical Reports. The Report on Carcinogens Subcommittee of the Board provides scientific peer review of nominations to the Report on Carcinogens, a Congressionally mandated listing of agents known or reasonably anticipated to be human carcinogens.

The Board's members are selected from recognized authorities knowledgeable in fields, such as toxicology, pharmacology, pathology, biochemistry, epidemiology, risk assessment, carcinogenesis, mutagenesis, molecular biology, behavioral toxicology, neurotoxicology, immunotoxicology, reproductive toxicology or teratology, and biostatistics. The NTP strives for equitable geographic distribution and for minority and female representation on the Board.

Dated: November 17, 2003.

Samuel H. Wilson,

Deputy Director, National Institute of Environmental Health Sciences.

NATIONAL TOXICOLOGY PROGRAM (NTP) TECHNICAL REPORTS TENTATIVELY SCHEDULED FOR REVIEW BY THE NTP BOARD OF SCIENTIFIC COUNSELORS TECHNICAL REPORTS REVIEW SUBCOMMITTEE ON FEBRUARY 17–18, 2004 AT THE NATIONAL INSTITUTE OF ENVIRONMENTAL HEALTH SCIENCES, RESEARCH TRIANGLE PARK, NC

Chemical/CAS No.	Report No.	Primary uses	Route and exposure levels	Review order
2,3,7,8-Tetrachlorodibenzo-*p*-dioxin (TCDD)/1746–01–6.	TR 521	By-product of combustion and smelting.	Two-year study by inclusion in the diet at 3–100 ng/kg to female Sprague Dawley rats.	1
3,3',4,4',5-Pentachlorobiphenyl (PCB 126)/57465–28–8.	TR 520	Insulating fluid	Two-year study by inclusion in the diet at 10–100 ng/kg to female Sprague Dawley rats.	2
2,3,4,7,8–Pentachlorodibenzofuran (PeCDF)/57117–31–4.	TR 525	By-product of incineration and combustion.	Two-year study by inclusion in the diet at 3–100 ng/kg to female Sprague Dawley rats.	3
Mixture of PCB 126, TCDD, and PeCDF	TR 526	By-products of combustion, smelting and incineration.	Two-year study by inclusion in the diet at concentrations based on their toxic equivalency factors to female Sprague Dawley rats.	4
Malachite Green/569–64–2 and Leucomalachite Green/129–73–7.	TR 527	Dye and antifungal agent for fish.	Two-year study of Malachite Green by inclusion in the diet to female rats (100–600 ppm) and to male and female mice (100–450 ppm). Two-year study of Leucomalachite Green by inclusion in the diet to male and female rats (91 to 543 ppm) and to female mice (100–450 ppm).	5
Anthraquinone/84–65–1*	TR 494	Intermediate in dye synthesis	Two-year study by inclusion in the diet to male and female rats (469–3,750 ppm) and to male and female mice (833–7,500 ppm).	6
1. 1,2,3-Trichloropropane/96–18–4 2. 2,2,3–Bis(bromomethyl)-1,3-propanediol/3296–90–0. 3. Nitromethane/75–52–5	TR 528	2. Paint and varnish Remover. 3. Flame retardant. 3. Fuel additive, synthesis intermediate and solvent.	Exposure by aquarium water to Medaka and Guppy	7

*The draft NTP Technical Report on Anthraquinone was previously peer reviewed by the Subcommittee in May 1999. Subsequent to that peer review, the anthraquinone tested was found to contain a 0.1% contaminant. As a result, additional mutagenicity and metabolism studies were conducted and the findings from those studies are included in the revised draft report. The Subcommittee will evaluate the results from the follow-up studies, use that information to re-examine the carcinogenicity findings from the 2-year studies and make a recommendation on the carcinogenicity of anthraquinone.

[FR Doc. 03–30123 Filed 12–2–03; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Availability of the Post-Delisting Monitoring Plan for the American Peregrine Falcon (*Falco peregrinus anatum*)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability.

SUMMARY: We, the U.S. Fish and Wildlife Service, announce the availability of the post-delisting monitoring plan for the American Peregrine Falcon (*Falco peregrinus anatum*). This plan is titled, "Monitoring Plan for the American Peregrine Falcon, A Species Recovered Under the Endangered Species Act" (Monitoring Plan). The American peregrine falcon was removed from the List of Endangered and Threatened Wildlife and Plants in August 1999 due to its recovery. The Endangered Species Act of 1973, as amended in 1988 (Act) (16 U.S.C. 1531 *et seq.*), requires that we implement a system, in cooperation with the States, to monitor effectively for at least 5 years, the status of all species that have recovered and no longer need the protection of the Act.

ADDRESSES: Copies of the Monitoring Plan are available by request from Michael Green, Migratory Birds and State Programs, U.S. Fish and Wildlife Service, 911 NE. 11th Ave, Portland, OR 97232. Requests may also be made via fax at 503–231–2019, or via telephone at 503–231–6164. This Monitoring Plan is also available on the World Wide Web at *http://migratorybirds.fws.gov* and *http://endangered.fws.gov/*.

FOR FURTHER INFORMATION CONTACT: Michael Green, Migratory Birds and State Programs, at the above address, at *michael_green@fws.gov*, or at 503–231–6164.

SUPPLEMENTARY INFORMATION:

Background

The American peregrine falcon occurs throughout much of North America, from the subarctic boreal forests of Alaska and Canada south to Mexico. American peregrine falcons nest from central Alaska, central Yukon Territory, and northern Alberta and Saskatchewan, east to the Maritime Provinces, and south (excluding coastal areas north of the Columbia River in Washington and British Columbia) throughout western Canada and the United States to Baja California, Sonora,

and the highlands of central Mexico. The American peregrine falcons that nest in subarctic areas generally winter in South America. Those that nest at lower latitudes exhibit variable migratory behavior; some do not migrate.

The American peregrine falcon declined precipitously in North America following World War II, a decline attributed largely to organochlorine pesticides, mainly DDT, applied in the United States, Canada, and Mexico. Because of the decline, the American peregrine falcon was listed as endangered on June 2, 1970, under the precursor of the Endangered Species Act (35 FR 16047). Recovery goals were substantially exceeded in some areas, and on August 25, 1999, the American peregrine falcon was removed from the List of Endangered and Threatened Wildlife and Plants (64 FR 46541). There are currently between 2,000 and 3,000 pairs breeding each year across the United States, Canada, and Mexico, and the population continues to increase.

Section 4(g)(1) of the Act requires that we monitor for not less than 5 years, in cooperation with States, the status of all species removed from the List of Endangered and Threatened Wildlife and Plants due to recovery. In keeping with that mandate, we have developed this Monitoring Plan to guide our ongoing monitoring efforts in cooperation with State resource agencies, recovery team members, independent scientists, biostatisticians, and other cooperators. A 30-day public comment period was opened on July 31, 2001 (66 FR 39523), and again on September 27, 2001 (66 FR 49395), and the Monitoring Plan received additional review by States, cooperators, and other private organizations and individuals in December 2002 and January 2003.

The Monitoring Plan is designed to monitor the status of the American peregrine falcon by detecting whether the number of occupied American peregrine falcon territories across the contiguous United States and Alaska is declining, and whether American peregrine falcons are experiencing a decrease in nesting success and productivity, which are indices of population health. The Monitoring Plan also includes a contaminant monitoring component. Data will be collected from a randomly selected subset of American peregrine falcon territories (494 across the nation) for five sampling periods, at three-year intervals starting in 2003 and ending in 2015. The 2003 monitoring effort is currently underway. We will publish a report on the results of the 2003 monitoring once the data are analyzed. This will be the first of our triennial reports. A Notice of Availability for the triennial and final reports will be published in the **Federal Register** and posted on the World Wide Web as outlined in the Monitoring Plan.

We will work cooperatively with the States, other agencies, and partners to collect this information. We will analyze the information after each monitoring effort and will propose adjustments to the sampling design, if necessary. The Monitoring Plan is designed to detect declines in the health of American peregrine falcon populations that might arise from a variety of threats including, but not limited to, environmental contaminants and diseases (such as West Nile Virus). If these data indicate that this species is experiencing significant decreases in territory occupancy, nest success, or productivity, we will initiate more intensive review or studies to determine the cause, or take action to re-list the American peregrine falcon under section 4 of the Act, if necessary.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection and recordkeeping requirements included in the Monitoring Plan have been approved by the Office of Management and Budget (OMB) under OMB control number 1018–0101, which expires March 31, 2005. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Authority

The authority for this action is the Endangered Species Act of 1973, as amended in 1988 (16 U.S.C. 1531 *et seq.*).

Dated: October 23, 2003.

Matt Hogan,

Acting Director, Fish and Wildlife Service.

[FR Doc. 03–30065 Filed 12–2–03; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID–080–1030–PH]

Notice of Public Meeting, Upper Columbia-Salmon Clearwater Resource Advisory Council Meeting; ID

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act (FLPMA) and the Federal Advisory Committee Act of 1972 (FACA), the U.S. Department of the Interior, Bureau of Land Management (BLM) Upper Columbia-Salmon Clearwater (UCSC) District Resource Advisory Council (RAC) will meet as indicated below.

DATES: January 8 and 9, 2004. The meeting will begin at 8 a.m. each day and end at approximately 3 p.m. on January 9th. The public comment period will be from 8 a.m. to 9 a.m. on January 9, 2004. The meeting will be held at the Grant Creek Inn, 5280 Grant Creek Road, Missoula, Montana, because Missoula is centrally located for Council members traveling from the northern and south-central parts of Idaho.

FOR FURTHER INFORMATION CONTACT: Stephanie Snook, RAC Coordinator, BLM UCSC District, 1808 N. Third Street, Coeur d'Alene, Idaho 83814 or telephone (208) 769–5004.

SUPPLEMENTARY INFORMATION: The 15-member Council advises the Secretary of the Interior, through the Bureau of Land Management, on a variety of planning and management issues associated with public land management in Idaho. The agenda items for the January 8 and 9, 2004, meeting include:

- RAC new member orientation;
- Rangeland Ecology training session;
- Development of an Annual Work Plan;
- Subgroup reports and follow-up on Off-Highway-Vehicles, the Wild Horse Program, and other natural resource issues.

All meetings are open to the public. The public may present written comments to the Council. Each formal Council meeting will also have time allocated for hearing public comments. Depending on the number of persons wishing to comment and time available, the time for individual oral comments may be limited. Individuals who plan to attend and need special assistance, such as sign language interpretation, tour transportation or other reasonable accommodations, should contact the BLM as provided above.

Dated: November 26, 2003.

Lewis M. Brown,

Acting District Manager.

[FR Doc. 03–30069 Filed 12–2–03; 8:45 am]

BILLING CODE 4310–GG–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–310–1820–AE]

Resource Advisory Council Meeting

AGENCY: Bureau of Land Management, Northeast California Resource Advisory Council, Susanville, California.

ACTION: Notice of meeting date and location change.

SUMMARY: Pursuant to the authorities in the Federal Advisory Committees Act (Public Law 92–463) and the Federal Land Policy and Management Act (Public Law 94–579), the U. S. Bureau of Land Management's Northeast California Resource Advisory Council will meet Thursday and Friday, Jan. 29 and 30, 2004, in the meeting room of the Cedarville Community Church, corner of Center and Bonner Streets in Cedarville, California. The meeting date and location are changed from an earlier announced date of Jan. 22 and 23, 2004 in the BLM Office, Cedarville.

SUPPLEMENTARY INFORMATION: The original meeting notice was published in the **Federal Register** on Nov. 20, 2003 (Volume 68, No. 224, Notices, page 65470). Agenda items remain unchanged from the original announcement, but the time for public comments has been moved to 11:15 a.m. on Friday, Jan. 30, 2004.

FOR FURTHER INFORMATION CONTACT: Tim Burke, BLM Alturas Field Manager, at (530) 233–4666, or Public Affairs Officer Joseph J. Fontana, (530) 252–5332.

Joseph J. Fontana,

Public Affairs Officer.

[FR Doc. 03–30070 Filed 12–2–03; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–912–04–1990–PP–241A–006F]

Sierra Front-Northwestern Great Basin Resource Advisory Council; Notice of Meeting Location and Time

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of meeting location and time for the Sierra Front-Northwestern Great Basin Resource Advisory Council (Nevada).

SUMMARY: In accordance with the Federal Land Policy and Management Act and the Federal Advisory Committee Act of 1972 (FACA), a meeting of the U.S. Department of the Interior, Bureau of Land Management (BLM) Sierra Front-Northwestern Great Basin Resource Advisory Council (RAC), Nevada, will be held as indicated below. Topics for discussion at the meeting will include, but are not limited to: Manager's reports of current field office activities; Pine Nut Mountain RMP Amendment DEIS; review of Carson City & Winnemucca Field Offices criteria and initial project proposals for Round 5 of the Southern Nevada Public Lands Management Act; review of Mojave-Southern RAC's proposed Wild Horse & Burro Management Standards & Guidelines and modification to meet the needs of the Northwest Great Basin; review of proposed 2004–2005 Wild Horse Herd Management Area gathers in the Northwest Great Basin; discussion on differences and inconsistencies in field office consultation procedures under Section 106 of the National Historic Preservation Act; discussion of a Pershing County Land Bill; resource management update on the Truckee, Carson & Walker River systems, including, weather-permitting, a field trip to McCarran Ranch, Mustang Ranch, 102 Ranch & other flood control/restoration projects along the Truckee River, east of Reno/Sparks, Nevada; and additional topics the council may raise during the meeting.

DATES: The RAC will meet on Thursday, January 22, 2004, from 9 a.m. to 5 p.m., and Friday, January 23, 2004, from 8 a.m. to 3:30 p.m., at the BLM-Nevada State Office, Great Basin A&B Conference Room, 1340 Financial Blvd., Reno, Nevada. All meetings and field trips are open to the public. A general public comment period, where the public may submit oral or written comments to the RAC, will be held at 4 p.m. on January 22, 2004.

A final detailed agenda, with any additions/corrections to agenda topics, field trip stops and meeting times, will be available on the internet no later than January 8, 2004, at *www.nv.blm.gov/rac;* hard copies can also be mailed or sent via FAX. Individuals who need special assistance such as sign language interpretation or other reasonable accommodations, or who wish a hard copy of the agenda, should contact Mark Struble, Carson City Field Office, 5665 Morgan Mill Road, Carson City, NV 89701, telephone (775) 885–6107, no later than January 12, 2004.

FOR FURTHER INFORMATION CONTACT: Mark Struble, Public Affairs Officer, BLM Carson City Field Office, 5665 Morgan Mill Road, Carson City, NV 89701. Telephone: (775) 885–6107. E-mail: *mstruble@nv.blm.gov.*

Dated: November 26, 2003.

Elayn Briggs,

Acting Field Office Manager, BLM-Carson City Field Office.

[FR Doc. 03–30071 Filed 12–2–03; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–500–0777–XM–241A]

Notice of Amendment of Meeting Date, Front Range Resource Advisory Council (Colorado)

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act (FLPMA) and the Federal Advisory Committee Act of 1972 (FACA), the U.S. Department of the Interior, Bureau of Land Management (BLM), Front Range Resource Advisory Council (RAC), will meet as indicated below.

DATES: The meeting will be held on January 14, 2004, at the Holy Cross Abbey Community Center, 2951 E. Highway 50, Canon City, Colorado beginning at 9:15 a.m. The public comment period will begin at approximately 9:30 a.m. and the meeting will adjourn at approximately 4 p.m.

SUPPLEMENTARY INFORMATION: The 15 member Council advises the Secretary of the Interior, through the Bureau of Land Management, on a variety of planning and management issues associated with public land management in the Front Range Center, Colorado. Planned agenda topics include Manager updates on current land management issues and a presentation on Colorado's Strategic Plan to Stop the Spread of Noxious Weeds and a discussion on the BLM Front Range Center Weed Program.

All meetings are open to the public. The public is encouraged to make oral comments to the Council at 9:30 a.m. or written statements may be submitted for the Councils consideration. Depending on the number of persons wishing to comment and time available, the time for individual oral comments may be limited. Summary minutes for the Council Meeting will be maintained in the Front Range Center Office and will be available for public inspection and reproduction during regular business hours within thirty (30) days following the meeting.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management (BLM),

Attn: Ken Smith, 3170 East Main Street, Canon City, Colorado 81212. Phone (719) 269–8500.

Dated: November 25, 2003.

Roy L. Masinton,

Front Range Center Manager.

[FR Doc. 03–30072 Filed 12–2–03; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–930–4210–05; N–75747]

Notice of Realty Action: Lease/conveyance for Recreation and Public Purposes

AGENCY: Bureau of Land Management, Interior.

ACTION: Recreation and Public Purpose Lease/conveyance correction.

SUMMARY: On October 27, 2003, a Notice of Realty Action was published in **Federal Register** Volume 68, No. 207, page 61231 for BLM serial number N–75747. The legal description for this notice inadvertently listed the Range as R.60E. It should have been listed as R.59E. Therefore, the correct legal description is as follows:

Mount Diablo Meridian

T. 20S., R. 59E.,
Sec. 12
W½NW¼NW¼NW¼,
SW¼NW¼NW¼,
W½SE¼NW¼NW¼,
W½NW¼SW¼NW¼.
Containing 25 acres, more or less.

All of the other information in the NORA was correct.

Dated: November 19, 2003.

Sharon DiPinta,

Acting Assistant Field Manager, Division of Lands, Las Vegas, NV.

[FR Doc. 03–30037 Filed 12–2–03; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–670–1232–FH]

Notice of Proposed Supplementary Rules on Public Land In California; Correction

AGENCY: Bureau of Land Management, California Desert District, California, Interior.

ACTION: Supplementary rules for payment of special recreation permit fees immediately upon arrival at the Imperial Sand Dunes Recreation Area; Correction.

SUMMARY: The Bureau of Land Management (BLM) published a document in the **Federal Register** of November 20, 2003, concerning proposed supplementary rules for the Imperial Sand Dunes Recreation Area. The notice contained incorrect information on comment procedures.

FOR FURTHER INFORMATION CONTACT: Neil Hamada, (760) 337–4451, as to the substance of the proposed supplementary rules, or Ted Hudson, (202) 452–5042, as to this correction.

Correction

In the **Federal Register** of November 20, 2003, in FR Doc. 03–28960, on page 65472, in the first column, remove the heading "Electronic Access and Filing Address" and the first paragraph following that heading (the first full paragraph in the first column).

Dated: November 24, 2003.

Michael H. Schwartz,

Group Manager, Regulatory Affairs.

[FR Doc. 03–30038 Filed 12–2–03; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA")

Pursuant to 28 CFR 50.7, notice is hereby given that on November 12, 2003, a proposed Consent Decree between the United States and Paul Sauget was lodged with the District Court for the Southern district of Illinois, in *U.S.* v. *Pharmacia Corporation, et al.* (Civil No. 99–63–GPM).

The United States' Second Amended Complaint in this action asserts that Paul Sauget is jointly and severally liable under Section 107(a)(2) of CERCLA, 42 U.S.C. 9607(a)(2), for response costs that have been or will be incurred by the United States due to the release or threatened release of hazardous substances from several landfills that were operated by Paul Sauget at the Sauget Area 1 Superfund Site located in Sauget and Cahokia, Illinois.

Under the proposed Consent Decree, Paul Sauget will (1) stipulate to a judgment of $9.2 million for past and future response costs; (2) pay to EPA $60,000 which represents his ability to pay the judgment entered against him; and (3) pursue in good faith and to final judgment or settlement, any cause of action that has been or may be asserted against any insurance carrier for indemnification of Paul Sauget's stipulated liability to the United States.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States* v. *Pharmacia Corporation,* et al., Civ. No. 99–63–GPM (DOJ Ref. No. 90–11–2–06089).

The proposed Consent Decree may be examined at the Office of the United States Attorney, Southern District of Illinois, Suite 300 Fairview Heights, Illinois, 62208; and at EPA Region 5, 77 W. Jackson Blvd., Chicago, Illinois 60604 (contact Thomas Martin, Esq. (312) 886–4273). During the public comment period, the proposed Consent Decree may also be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/open.html.* A copy of the proposed Consent Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please refer to *United States* v. *Pharmacia Corporation, et al.,* Civ. No. 99–63–GPM (DOJ Ref. No. 90–11–2–06089), and enclose a check in the amount of $4.50 (25 cents per page reproduction cost) payable to the U.S. Treasury.

William D. Brighton,

Assistant Chief, Environmental Enforcement Section, Environment & Natural Resources Division.

[FR Doc. 03–30133 Filed 12–2–03; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

November 20, 2003.

The Department of Labor (DOL) has submitted the following public information collection requests (ICRs) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). A copy of each individual ICR, with applicable supporting documentation, may be obtained by contacting the Department of Labor. To obtain documentation, contact Darrin King on (202) 693–4129 (this is not a toll-free number) or E-Mail: *king.darrin@dol.gov.*

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the Employment standards Administration (ESA), Office of Management and Budget, Room 10235, Washington, DC 20503 (202) 395–7316 (this is not a toll-free number), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Type of Review: Revision of a currently approved collection.

Agency: Employment Standards Administration.

Title: Claim for Medical Reimbursement Form.

OMB Number: 12156–0193.

Affected Public: Individuals or households; Business or other for-profit; and Not-for-profit institutions.

Frequency: As needed.

Type of Response: Reporting.

Number of Respondents: 33,727.

Number of Annual Responses: 134,908.

Estimated Time Per Response: 10 minutes.

Total Burden Hours: 22,394.

Total Annualized Capital/Startup Costs: $0.

Total Annual Costs (operating/maintaining systems or purchasing services): $163,239.

Description: The Office of Workers' Compensation Programs (OWCP) administers the Federal Employees' Compensation Act (FECA), 5 U.S.C. 8101, *et seq.,* the Black Lung Benefits Act (BLBA), 30 U.S.C. 901 *et seq.,* and the Energy Employees Occupational Illness Compensation Program Act of 2000 (EEOICPA), 42 U.S.C. 7384 *et seq.* These Acts provide, in addition to compensation for employment-related injuries and/or illnesses, medical benefits in the form of prescription drugs dispensed by pharmacies for

treatment of the compensable injury or illness. To determine whether bills submitted by pharmacies for medicinal drugs, equipment and supplies are appropriate, the FECA, BLBA, and EEOICPA programs require that the providers billing the government supply certain information. The majority of pharmacy bills submitted to OWCP are now submitted electronically using one of the industry-wide standard formats for the electronic transmissions of billing data through nationwide data clearinghouses devised by the National Council for Prescription Drug Programs (NCPDP). This recent development has led OWCP to drop Form 79–1A as the required paper billing format for this information collection. However, since some pharmacy bills are still submitted using paper-based billing formats, OWCP will continue to accept the paper-based bills as long as they contain the required data elements needed to process the bills. The NCPDP Standardized Pharmacy Billing Data Requirements are the electronic billing format used by pharmacies throughout the country to request payment for prescription drugs through data clearinghouses. They identify the provider, claimant, prescribing physician, drug by NDC (National Drug Code) number, prescription volume and charge. Similar data elements are required to process paper-based pharmacy bills.

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. 03–30077 Filed 12–2–03; 8:45 am]

BILLING CODE 4510–CH–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

November 24, 2003.

The Department of Labor (DOL) has submitted the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). A copy of this ICR, with applicable supporting documentation, may be obtained by contacting the Department of Labor. To obtain documentation, contact Darrin King on (202) 693–4129 (this is not a toll-free number) or E-Mail: *king.darrin@dol.gov.*

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the

Type of Review: Revision of a currently approved collection.

Agency: Employment Standards Administration.

Title: Pharmacy Billing Requirements.

OMB Number: 1215–0194.

Affected Public: Business or other for-profit; Not-for-profit institutions; and Individuals or households.

Frequency: On occasion.

Type of Response: Recordkeeping and Reporting.

Number of Respondents: 17,295.

Number of Annual Responses: 899,331.

Estimated Time Per Response: 5 minutes.

Total Burden Hours: 74,644.

Total Annualized Capital/Startup Costs: $0.

Total Annual Costs (operating/maintaining systems or purchasing services): $0.

Description: The Office of Workers' Compensation Programs (OWCP) administers the Federal Employees' Compensation Act (FECA), 5 U.S.C. 8101, *et seq.,* the Black Lung Benefits Act (BLBA), 30 U.S.C. 901 *et seq.,* and the Energy Employees Occupational Illness Compensation Program Act of 2000 (EEOICPA), 42 U.S.C. 7384 *et seq.* These Acts provide, in addition to compensation for employment-related injuries and/or illnesses, medical benefits in the form of prescription drugs dispensed by pharmacies for

Employment and Training Administration (ETA), Office of Management and Budget, Room 10235, Washington, DC 20503, (202) 395–7316 (this is not a toll-free number), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Agency: Employment and Training Administration.

Type of Review: Extension of a currently approved collection.

Title: Overpayment Detection and Recovery Activities.

OMB Number: 1205–0173

Affected Public: State, Local, or Tribal Government.

Type of Response: Reporting.

Frequency: Quarterly.

Number of Respondents: 53.

Annual Responses: 212.

Average Response Time: 14 hours.

Annual Burden Hours: 2,968.

Total Annual Costs (operating/maintaining systems or purchasing services): $0.

Description: The Form ETA–227 provides an accounting of the types and amounts of Unemployment Insurance (UI) overpayments and serves as a useful management tool for monitoring the overall integrity in the UI system.

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. 03–30078 Filed 12–2–03; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

November 25, 2003.

The Department of Labor (DOL) has submitted the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35). A copy of this ICR, with applicable supporting documentation, may be obtained by contacting the Department of Labor. To obtain documentation contact Darrin King at (202) 693–4129 (this is not a toll-free number) or E-MAIL *king.darrin@dol.gov*.

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the Employee Benefits Security Administration (EBSA), Office of Management and Budget, Room 10235, Washington, DC 20503, (202) 395–7316 (this is not a toll-free number), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Agency: Employee Benefits Security Administration.

Type of Review: Extension of a currently approved collection.

Title: Summary Plan Description Requirements under ERISA.

OMB Number: 1210–0039.

Affected Public: Business or other for-profit; Not-for-profit institutions; and Individuals or households.

Frequency: On occasion.

Type of Response: Third party disclosure.

Number of Respondents: 1,086,017.

Number of Annual Responses: 148,128,000.

Total Burden Hours: 1,349,254.

Total Annualized Capital/Startup Costs: $0.

Total Annual Costs (operating/maintaining systems or purchasing services): $427,874,341.

Description: Section 104(b)(1) of the Employee Retirement Income Security Act of 1974 (ERISA) requires that the administrator of an employee benefit plan furnish plan participants and certain beneficiaries with a Summary Plan Description (SPD) which describes, in language understandable to an average plan participant, the benefits and rights and obligations of participants in the plan. The information required to be contained in the SPD is set forth in section 102(b) of the statute and regulations at 29 CFR 2520.102–3. To the extent that there is a material modification in the term of the plan or a change in the required content of the SPD, section 104(b)(1) requires that the administrator furnish participants and beneficiaries with a summary of material modifications or summary of material reduction.

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. 03–30079 Filed 12–2–03; 8:45 am]

BILLING CODE 4510–29–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–53,299]

Cannon-ITT Industries, Santa Ana, CA; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on October 20, 2003 in response to a petition filed by a company official on behalf of workers at Cannon-ITT Industries, Santa Ana, California.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC this 24th day of October, 2003.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–30086 Filed 12–2–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–53,218]

Fishing Vessel (F/V) Cape Lookout, Kodiak, Alaska; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on August 11, 2003 in response to a petition filed by a company official on behalf of workers of F/V Cape Lookout, Kodiak, Alaska.

The investigation revealed that the subject firm did not separate or threaten to separate a significant number or proportion of workers as required by section 222 of the Trade Act of 1974. Significant number or proportion of the workers means that at least three workers in a firm with a workforce of fewer than 50 workers would have to be affected. Separations by the subject firm did not meet this threshold level; consequently the investigation has been terminated.

Signed at Washington, DC, this 23rd day of October 2003.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–30081 Filed 12–2–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–53,333]

Fishing Vessel (F/V) W W Northland, Haines, Alaska; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on October 24, 2003 in response to a petition filed by a company official on behalf of workers of F/V W W Northland, Haines, Alaska.

The investigation revealed that the subject firm did not separate or threaten to separate a significant number or proportion of workers as required by Section 222 of the Trade Act of 1974. Significant number or proportion of the workers means that at least three workers in a firm with a workforce of fewer than 50 workers would have to be affected. Separations by the subject firm did not meet this threshold level; consequently, the investigation has been terminated.

Signed at Washington, DC, this 24th day of October 2003.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–30088 Filed 12–2–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–53,086]

Harlyn Textile Mills, Inc., New York, New York; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on October 1, 2003 in response to a worker petition which was filed by a company official on behalf of workers at Harlyn Textile Mills, Inc., New York, New York (TA–W–53,086).

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC, this 13th day of November 2003.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–30080 Filed 12–2–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–53,237]

The Lane Company, Altavista, Virginia; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on October 14, 2003, in response to a worker petition filed on behalf of workers at The Lane Company, Altavista, Virginia.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC, this 27th day of October, 2003.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–30082 Filed 12–2–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–53,255]

Savane International Corporation, El Paso, Texas; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on October 15, 2003 in response to a petition filed by a state agency representative on behalf of workers at Savane International Corporation, El Paso, Texas. The facility shut down in June of 2002

The petition regarding the investigation has been deemed invalid. In order to establish a valid worker group, there must be at least three full-time workers employed at some point during the period under investigation. Workers of the group subject to this investigation did not meet this threshold level of employment. Consequently, the investigation has been terminated.

Signed at Washington, DC, this 24th day of October 2003.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–30084 Filed 12–2–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–53,320]

Standard Motor Company Argos Assemblies Plant Argos, Indiana; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on October 23, 2003 in response to a petition filed by workers at Standard Motor Company, Argos Assemblies Plant, Argos, Indiana.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC, this 13th day of November, 2003.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–30087 Filed 12–2–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–53,364]

Teleflex Automotive Group, Warren, Michigan; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on October 28, 2003 in response to a petition filed on behalf of workers at Teleflex Automotive Group, Warren, Michigan. The workers produced automotive cable assembly components.

All workers were separated from the subject firm more than one year before the date of the petition. Section 223 (b) of the Act specifies that no certification may apply to any worker whose last separation occurred more than one year before the date of the petition. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC, this 13th day of November 2003.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–30089 Filed 12–2–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–53,263]

Thomson, Inc., Indianapolis, IN; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on October 16, 2003 in response to a petition filed by International Brotherhood of Electrical Workers, Local 1048, on behalf of workers at Thomson, Inc., Indianapolis, Indiana.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC, this 24th day of October 2003.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–30085 Filed 12–2–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–53,242]

Wellington Leisure Products, Leesville Synthetic Fibers, Leesville, SC; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on October 14, 2003 in response to a petition filed by a company official on behalf of workers at Wellington Leisure Products, Leesville, South Carolina.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC, this 24th day of October, 2003.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–30083 Filed 12–2–03; 8:45 am]

BILLING CODE 4510–30–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 030–34629]

Gamma Knife Center of the Pacific Environmental Assessment and Final Finding of No Significant Impact; Exemption

The U.S. Nuclear Regulatory Commission is authorizing the Gamma Knife Center of the Pacific, License No. 53–11966–02, an exemption to 10 CFR 35.655, for 120 days to permit the licensee to continue the medical use of its gamma stereotactic radiosurgery unit beyond the interval specified in the regulation for full inspection and servicing.

Environmental Assessment

Identification of the Proposed Action

The Gamma Knife Center of the Pacific has a United States Nuclear Regulatory Commission (NRC) license (License No. 53–11966–02) that authorizes the medical use of a Leksell Gamma Stereotactic Radiosurgery unit. The licensee has requested, in a letter dated September 8, 2003, that the NRC grant a temporary exemption from the requirements of 10 CFR 35.655(a) in order to continue treating patients until the manufacturer's scheduled source replacement in February 2004. This regulation requires that all stereotactic radiosurgery units be fully inspected and serviced at source replacement or at intervals not to exceed 5 years whichever comes first.

The licensee had the Leksell Gamma Stereotactic Radiosurgery unit installed in October 1998 and treated the first patient December 1, 1998. The period of time between manufacturer's scheduled source exchange and the last full inspection service before treatment of the first patient exceeds the required 5 year interval. The licensee in e-mails dated September 11 through 18 clarifies that the manufacturer has indicated the semiannual service, which was last performed July 29, 2003 on the licensee's unit, includes all the tests that can be performed without disassembly of the unit. Such disassembly is not advised at any time other than source replacement because a new Leksell Gamma Stereotactic Radiosurgery unit can contain 6,000 curies of cobalt 60 and disassembly can create high radiation fields unless it is performed at source replacement.

Need for the Proposed Action

The exemption is needed so that Gamma Knife Center of the Pacific can continue to provide medical treatment to its patients. The exemption would allow the Gamma Knife Center of the Pacific to use the gamma stereotactic radiosurgery unit until the manufacturer can remove the sources and perform the full inspection and servicing during source replacement. This inspection and service can only be performed after source removal during source replacement. The exemption would permit continued use of the unit and provide needed timely patient therapeutic services without interruption. The source exchange and inspection service is scheduled for February 2004. The 120-day duration of the exemption allows for flexibility if there is a delay in the manufacturer's ability to ship the sources and perform the source exchange. NRC inspections since 1999 have not identified any violations or medical events associated with the use of the gamma stereotactic radiosurgery unit.

Environmental Impacts of the Proposed Action

The gamma stereotactic radiosurgery unit contains 201 cobalt 60 sealed sources and no material will be released into the environment. All the cobalt-60 is contained within the gamma stereotactic radiosurgery unit, as verified by periodic source leak tests performed by the licensee. The proposed action does not increase public radiation exposure. There will be no impact on the environment as a result of the proposed action.

Alternatives to the Proposed Action

As required by Section 102(2)(E) of NEPA (42 U.S.C. 4322(2)(E)), possible alternatives to the final action have been considered. Only the manufacturer can perform the source exchange and the licensee has already scheduled the source exchange at the manufacturer's earliest available time. The only alternative is to deny the exemption request and to require the licensee to put the sources in storage until the source exchange and full inspection service can be performed. This option would not produce a gain in protecting the human environment, and it would negatively impact the licensee's provision of medical care to its patients.

Alternative Use of Resources

No alternative use of resources was considered due to the reasons stated above.

Agencies and Persons Consulted

No other agencies or persons were contacted regarding this proposed action.

Identification of Source Used

Letter from the Gamma Knife Center of the Pacific, to U.S. Nuclear Regulatory Commission, Region IV, dated November September 8, 2003.

E-mails from Ronald Flick to Jackie Cook, NRC, dated September 11, 12, and 18, 2003.

Finding of No Significant Impact

Based on the above environmental assessment, the Commission has concluded that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the NRC has determined that a Finding of No Significant Impact is appropriate and preparation of an environmental impact statement is not warranted.

The licensee's letter and e-mails are available for inspection, and/or copying for a fee, in the Region IV Public Document Room, 611 Ryan Plaza Drive, Suite 400, Arlington Texas 76011. The documents are available electronically for public inspection from the Publically Available Records (PARS) component of NRC's Documents Access and Management System (ADAMS), accession number ML03300150. ADAMS is accessible from the NRC Web site at *http://www.nrc.gov/reading-rm/adams.html*.

Dated at Rockville, Maryland, this 26th day of November, 2003.

For the Nuclear Regulatory Commission.

Roberto J. Torres,

Section Chief, Material Safety and Inspection Branch, Division of Industrial and Medical Nuclear Safety, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 03–30091 Filed 12–2–03; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Sunshine Act Meeting

AGENCY: Nuclear Regulatory Commission.

DATE: Weeks of December 1, 8, 15, 22, 29, 2003, January 5, 2004.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and closed.

MATTERS TO BE CONSIDERED:

Week of December 1, 2003

There are no meetings scheduled for the week of December 1, 2003.

Week of December 8, 2003—Tentative

Tuesday, December 9, 2003

1:30 p.m.
Briefing on Equal Employment Opportunity Program. (Public Meeting) (Contact: Corenthis Kelley, 301–415–7380)

Wednesday, December 10, 2003

9:30 a.m.
Briefing on Strategic Workforce Planning and Human Capital Initiatives (Closed—Ex. 2)

Week of December 15, 2003—

Tuesday, December 16, 2003

9:30 a.m.
Discussion of Security Issues (Closed—Ex. 1)

Week of December 22, 2003—Tentative

There are no meetings scheduled for the Week of December 22, 2003.

Week of December 29, 2003—Tentative

There are no meetings scheduled for the Week of December 29, 2003.

Week of January 5, 2004—Tentative

There are no meetings scheduled for the week of January 5, 2004.

The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (recording)—(301) 415–1292.

CONTACT PERSON FOR MORE INFORMATION: R. Michelle Schroll, (301) 415–1662.

The NRC Commission Meeting Schedule can be found on the Internet at: *http://www.nrc.gov/what-we-do/policy-making/schedule.html*.

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 (301–415–1969). In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to *dkw@nrc.gov*.

Dated: November 26, 2003.

R. Michelle Schroll,

Information Management Specialist, Office of the Secretary.

[FR Doc. 03–30147 Filed 12–1–03; 9:58 am]

BILLING CODE 7590–01–M

SECURITIES AND EXCHANGE COMMISSION

Issuer Delisting; Notice of Application To Withdraw From Listing and Registration on the American Stock Exchange LLC (Big City Radio, Inc., Class A Common Stock, $.01 par value) File No. 1–13715

November 26, 2003.

Big City Radio, Inc., a Delaware corporation ("Issuer"), has filed an application with the Securities and Exchange Commission ("Commission"), pursuant to Section 12(d) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 12d2–2(d) thereunder,[2] to withdraw its Class A Common Stock, $.01 par value ("Security"), from listing and registration on the American Stock Exchange LLC ("Amex" or "Exchange").

The Issuer stated in its application that it has met the requirements of Amex Rule 18 by complying with all applicable laws in the State of Delaware, in which it is incorporated, and with the Amex's rules governing an issuer's voluntary withdrawal of a security from listing and registration.

The Board of Directors ("Board") of the Issuer approved a resolution on August 22, 2003 to withdraw the Issuer's Security from listing on the Amex. The Board states the following reasons factored into its decision to withdraw the Security from listing and registration on the Amex: (i) The Issuer has sold all of its operating assets; (ii) the board of directors of the Issuer has unanimously approved a plan to complete liquidation and dissolution for the Issuer; and (iii) the Issuer has

[1] 15 U.S.C. 78*l*(d).

[2] 17 CFR 240.12d2–2(d).

obtained stockholders approval of the plan by the written consent of the holders of a majority of the voting power of the Issuer's Security in accordance with the requirements of Delaware law and the Issuer's certificate of incorporation.

The Issuer's application relates solely to the withdrawal of the Securities from listing on the Amex and from registration under Section 12(b) of the Act [3] and shall not affect its obligation to be registered under Section 12(g) of the Act.[4]

Any interested person may, on or before December 19, 2003, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609, facts bearing upon whether the application has been made in accordance with the rules of the Amex and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

Jonathan G. Katz,

Secretary.

[FR Doc. 03–30052 Filed 12–2–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Issuer Delisting; Notice of Application of the Thai Capital Fund Inc. To Withdraw Its Common Stock, $.01 Par Value, From Listing and Registration on the Pacific Exchange, Inc. File No. 1–06062

November 26, 2003.

The Thai Capital Fund Inc., a Maryland corporation ("Issuer"), has filed an application with the Securities and Exchange Commission ("Commission"), pursuant to Section 12(d) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 12d2–2(d) thereunder,[2] to withdraw its common stock, $.01 par value, ("Security"), from listing and registration on the Pacific Exchange, Inc. ("PCX" or "Exchange").

[1] 15 U.S.C. 78*l*(b).
[2] 15 U.S.C. 78*l*(g).
[3] 17 CFR 200.30–3(a)(1).
[1] 15 U.S.C. 78*l*(d).
[2] 17 CFR 240.12d2–2(d).

The Board of Directors ("Board") of the Issuer adopted a resolution on October 22, 2003 to withdraw its Security from listing on the Exchange. The Board determined that it would be in the best interest of the Issuer and its shareholders to voluntarily withdraw from listing and registration on the PCX. The Board is currently seeking to list its Security on the American Stock Exchange LLC ("Amex"). The Board states that in its judgment, listing on the Amex will afford investors greater exposure on a larger exchange.

The Issuer stated in its application that it has complied with PCX Rule 5.4(b) that governs the removal of securities from listing and registration on the Exchange. The Issuer's application relates solely to the withdrawal of the Security from listing and registration on the PCX and from registration under Section 12(b)[3] of the Act and shall not affect its obligation to be registered under Section 12(g) of the Act.[4]

Any interested person may, on or before December 19, 2003, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609, facts bearing upon whether the application has been made in accordance with the rules of the PCX and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority. [5]

Jonathan G. Katz,

Secretary.

[FR Doc. 03–30053 Filed 12–2–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35–27770]

Filings Under the Public Utility Holding Company Act of 1935, as Amended ("Act")

November 26, 2003.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated under the Act. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendment(s) is/are available for public inspection through the Commission's Branch of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by December 22, 2003, to the Secretary, Securities and Exchange Commission, Washington, DC 20549–0609, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in the case of an attorney at law, by certificate) should be filed with the request. Any request for hearing should identify specifically the issues of facts or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After December 22, 2003, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

SCANA Corporation, et al. (70–9533)

SCANA Corporation ("SCANA"), a registered public-utility holding company under the Act, its three public-utility subsidiaries, South Carolina Electric & Gas Company ("SCE&G"), South Carolina Generating Company, Inc. ("GENCO") and Public Service Company of North Carolina, Incorporated ("PSNC") and its nonutility subsidiaries, South Carolina Fuel Company, Inc. ("SC Fuel"), South Carolina Pipeline Corporation ("SCPC"), SCG Pipeline, Inc., SCANA Energy Marketing, Inc. ("SCANA Marketing"), SCANA Energy Trading, LLC, SCANA Public Service Company, LLC, SCANA Communications, Inc., an exempt telecommunications company under section 34 of the Act, Servicecare, Inc. ("ServiceCare"), Primesouth, Inc., Palmark, Inc., SCANA Resources, Inc., SCANA Development Corporation, SCANA Petroleum Resources, Inc., SCANA Services, Inc. ("SCANA Services"), PSNC Blue Ridge Corporation, PSNC Cardinal Pipeline Company, LLC, and Clean Energy Enterprises Inc. (collectively "Applicants"), all located at 1426 Main Street, Columbia, South Carolina 29201, have filed a post-effective amendment to their application-declaration ("Application") under sections 12(b) and (c) of the Act and rules 45, 46 and 54.

[1] 15 U.S.C. 78*l*(b).
[4] 15 U.S.C. 78*l*(g).
[5] 17 CFR 200.30–3(a)(1).

SCANA and PSNC now seek authorization for PSNC to pay dividends out of capital or unearned surplus before taking into consideration any impairment of goodwill recognized as a result of the merger between the companies ("Merger"),[1] in addition to previous authorizations in prior financing orders ("Prior Orders"),[2] which permitted PSNC to pay dividends out of additional paid-in-capital to the amount of its aggregate retained earnings immediately prior to the Merger and out of earnings before the amortization of goodwill.

On February 9, 2000, in the Merger Order, the Commission authorized SCANA to acquire PSNC. SCANA registered as a holding company under the Act on February 11, 2000. SCANA now owns directly three public-utility companies, PSNC, SCE&G (which generates, transmits, distributes and sells electricity and purchases and sells natural gas in South Carolina) and GENCO (which owns and operates a 580 MW generating facility in Goose Creek, South Carolina and sells all of the power generated by the facility to SCE&G).

In the Prior Orders,[3] the Commission authorized SCANA, the three utility subsidiaries and the nonutility subsidiaries to engage, subject to certain limitations, in certain financing and related activities. Authorization for these financing related activities under the Prior Orders expired February 11, 2003.[4] PSNC's authorization, however, to pay dividends out of capital or unearned surplus was not subject to this expiration date.

PSNC was authorized to pay dividends out of the additional paid-in-capital account up to the amount of its aggregate retained earnings immediately prior to the Merger and out of earnings before the amortization of the goodwill arising from the Merger.[5] The authorization was granted to take into consideration (1) the application of the purchase method of accounting to the Merger that caused PSNC's retained earnings, from before the Merger, to be recharacterized as additional paid-in-capital and (2) the substantial level of goodwill resulting from the Merger, which was to be "pushed-down" to PSNC and reflected as additional paid-in-capital after the Merger (effectively leaving PSNC with no retained earnings, the traditional source of dividend payments, but a balance sheet showing a significant equity level).

In connection with the Merger, SCANA obtained Commission approval for PSNC to pay dividends (1) out of the additional paid-in-capital account up to the amount of its aggregate retained earnings immediately prior to the Merger and (2) out of earnings before the amortization of the goodwill arising from the Merger.[6]

In 2001, after the Merger in 2000, Statement of Financial Accounting Standard ("SFAS") 142 (Goodwill and Other Intangible Assets) was issued. SFAS 142 eliminated the previously permitted amortization of goodwill and provides for, at least, an annual assessment to determine whether goodwill amounts are impaired. If the annual analysis determines that goodwill (or other intangibles) is impaired, the company must take an impairment charge in that year. SCANA did such an analysis and, as of January 1, 2002, PSNC was required to take an impairment charge of $230 million against the value of its goodwill. For the years 2000 and 2001, PSNC amortized goodwill, as previously authorized.

Applicants now request that PSNC be authorized to pay dividends out of earnings before any deductions resulting from any impairment of either goodwill recognized as a result of the Merger. SCANA asserts that, based on anticipated earnings and dividend levels, as well as its estimated debt, PSNC will not have common equity below 30% over the next several years. Moreover, SCANA states that, through control of debt and dividend levels, PSNC's common equity can be maintained at a 30% level, at least (even if PSNC were to incur additional goodwill impairment charges). In no case will dividends be paid if the equity of PSNC, as a percentage of total capital, is below 30% on a consolidated basis.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–30054 Filed 12–2–03; 8:45 am]

BILLING CODE 8010–01–P

[1] By order dated February 9, 2000 (the "Merger Order"), the Commission authorized SCANA, a South Carolina corporation, to acquire all of the issued and outstanding common stock of PSNC. *See* Holding Co. Act Release No. 27133.

[2] *See* Holding Co. Act Release Nos. 27135 and 27137 (Feb. 14, 2000). In Holding Co. Act Release Nos. 27341 and 27476 (Jan. 31, and Dec. 19, 2001, respectively) the Commission issued supplemental orders increasing various financing limitations throughout the authorization period.

[3] *See* supra note 2.

[4] New financing authorization was granted in Holding Co. Act Release No. 27649 (Feb. 12, 2003) (the "Current Financing Order").

[5] The only intangible in the Merger was goodwill.

[6] *See* the Prior Orders, supra note 2.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48829; File No. SR–Amex–2003–95]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the American Stock Exchange LLC Relating to Fees for Amex Specialist and Registered Trader Transactions in ETFs

November 24, 2003.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4[2] thereunder, notice is hereby given that on November 13, 2003, the American Stock Exchange LLC ("Exchange" or "Amex") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Amex. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Amex proposes to modify transaction fees for specialist and registered trader transactions in portfolio depository receipts, index fund shares, and trust issued receipts (collectively referred to as "ETFs"). The text of the proposed rule change is available at Amex and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Amex included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Amex has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing to reduce transaction fees charged specialists and traders for ETFs. Under the proposed fee changes, specialist per share transaction

[1] 15 U.S.C. 78s(b)(1)
[2] 17 CFR 240.19b–4

fees for ETFs where Amex does not pay unreimbursed fees to a third party would be reduced from $0.0063 per share ($0.63 per hundred shares) to $0.0055 per share ($0.55 per hundred shares). Registered trader per share ETF transaction fees would be reduced from $0.0073 per share ($0.73 per hundred shares) to $0.0060 per share ($0.60 per hundred shares).

With respect to ETF fees where Amex pays unreimbursed fees to a third party, specialist per share ETF transaction fees would be reduced from $0.0070 per share ($0.70 per hundred shares) to $0.0059 per share ($0.59 per hundred shares). Registered trader per share ETF transaction fees would be reduced from $0.0076 per share ($0.76 per hundred shares) to $0.0062 per share ($0.62 per hundred shares).

Specialist per trade transaction fees would remain capped at $300 per trade and registered trader per trade maximum transaction fees would be reduced from $350 to $300. In addition, specialist ETF transaction charges would be capped at $700,000 per month per unit. The Exchange intends to implement the proposed fee changes as of December 1, 2003.

2. Basis

The Exchange believes the proposed rule change is consistent with Section 6(b) of the Act,[3] in general, and furthers the objectives of Section 6(b)(5) of the Act,[4] in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers, and other persons using its facilities.

B. Self-Regulatory Organization's Statement on Burden on Competition

Amex does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing proposed rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act[5] and subparagraph (f)(2) of Rule 19b–4[6] thereunder, because it establishes or changes a due, fee, or other charge.

At any time within 60 days of November 13, 2003, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.[7]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of Amex. All submissions should refer to File No. SR–Amex–2003–95 and should be submitted by December 24, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–30057 Filed 12–2–03; 8:45 am]

BILLING CODE 8010–01–P

[3] 15 U.S.C. 78f(b).

[4] 15 U.S.C. 78f(b)(5).

[5] 15 U.S.C. 78s(b)(3)(A)(ii).

[6] 17 CFR 240.19b–4(f)(2).

[7] See 15 U.S.C. 78s(b)(3)(C).

[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48819; File No. SR–NSCC–2003–01]

Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Withdrawal of a Proposed Rule Change Relating to New Rule 59, "Information Services for Investment Products"

November 21, 2003.

On January 17, 2003, National Securities Clearing Corporation ("NSCC") submitted to the Securities and Exchange Commission ("Commission") a proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] to allow NSCC to provide information services for investment products. The proposed rule change was published in the **Federal Register** on April 17, 2003.[2] One comment letter was received.[3] On June 27, 2003, NSCC withdrew the proposed rule change.[4]

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[5]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–30061 Filed 12–2–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48838; File No. SR–CBOE–2003–31]

Self-Regulatory Organizations; Order Granting Approval of Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval of Amendment No. 1 Thereto by the Chicago Board Options Exchange, Incorporated Relating to Audit Committee Requirements Applicable to Companies Listing Non-Option Securities

November 25, 2003.

I. Introduction

On July 11, 2003, the Chicago Board Options Exchange, Incorporated ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend certain non-option listing rules of the Exchange in response to the adoption of Rule 10A–3 under the Act.[3] The proposed rule change would require the audit committee of each issuer of non-option securities listed on the CBOE to comply, where applicable, with the standards for audit committees mandated by Section 10A(m) of the Act[4] and Rule 10A–3 thereunder. The Exchange also committed to adopt additional listing policies and requirements pertaining to issuer corporate governance.

The proposed rule change was published for comment in the **Federal Register** on October 2, 2003.[5] The Commission received no comments on the proposal. On November 17, 2003, the CBOE submitted an amendment to the proposed rule change.[6] This order approves the proposal, publishes notice of Amendment No. 1, and approves Amendment No.1 on an accelerated basis.[7]

[1] 15 U.S.C. 78s(b)(1).

[2] Securities Exchange Act Release No. 47662 (April 10, 2003), 68 FR 19047.

[3] Letter from Margaret A. Sheehan, Alston & Bird LLP, on behalf of CheckFree Corporation (May 9, 2003).

[4] Letter from Carol A. Jameson, Vice President and Senior Counsel, NSCC, to Jerry Carpenter, Assistant Director, Division of Market Regulation, Commission (June 26, 2003).

[5] 17 CFR 200.30–3(a)(12).

II. Discussion

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[8] Specifically, the Commission finds that the proposal relating to independent audit committees for listed companies is consistent with Section 6(b)(5) of the Act,[9] which requires, among other things, that the CBOE's rules be designed to prevent fraudulent and manipulative acts and practices, and, in general, to protect investors and the public interest. Moreover, the Commission believes that the CBOE's proposal to add the new requirements concerning audit committees is appropriate and consonant with Section 10A(m)[10] of the Act and Rule 10A–3 thereunder relating to audit committee standards for listed issuers. The Commission notes that the CBOE intends to file an additional rule proposal relating to other corporate governance listing standards.[11]

Furthermore, the Commission finds good cause, consistent with Section 19(b)(2) of the Act,[12] to approve Amendment No. 1 to the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. In Amendment No. 1, the CBOE expanded, with respect to investment companies, the scope of the proposed provision regarding complaint procedures. Rule 10A–3 requires audit committees to establish procedures for "the confidential, anonymous submission by employees of the listed issuer of concerns regarding questionable accounting or auditing matters."[13] The amended CBOE proposal would require that audit committees of investment companies also establish procedures for the confidential, anonymous submission of such concerns by employees of the investment adviser, administrator, principal underwriter, or any other provider of accounting related services for the investment company, as well as employees of the investment company. This revision responds to a recommendation by the Commission that self-regulatory organizations take into account, in adopting rules to comply with Rule 10A–3, the fact that most services are rendered to an investment company by employees of third parties, such as the investment adviser, rather than by employees of the investment company.[14] The Commission believes that it is appropriate to accelerate approval of this amendment, because it conforms the rule text to similar rules of the New York Stock Exchange, Inc. and the National Association of Securities Dealers, Inc. that were approved by the Commission,[15] and the amendment raises no new substantive issues.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment No. 1, including whether Amendment No. 1 is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filings will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–CBOE–2003–31 and should be submitted by December 24, 2003.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[16] that Amendment No. 1 is approved on an accelerated basis, and that the proposed rule change (File No. SR–CBOE–2003–31) be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[17]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–30056 Filed 12–2–03; 8:45 am]

BILLING CODE 8010–01–P

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 17 CFR 240.10A–3.

[4] 15 U.S.C. 78j–1(m).

[5] See Securities Exchange Act Release No. 48540 (September 25, 2003), 68 FR 56856 ("Notice").

[6] See letter from David Doherty, Attorney, Legal Division, CBOE, to Ira Brandriss, Special Counsel, Division of Market Regulation, Commission, dated November 14, 2003 ("Amendment No. 1"). In Amendment No. 1, with respect to investment companies, the CBOE expanded the scope of the requirement that audit committees establish procedures for the confidential, anonymous submission of concerns regarding questionable accounting or auditing matters.

[7] Rule 10A–3 requires each national securities exchange and national securities association to have rules that comply with its requirements approved by the Commission no later than December 1, 2003. By the Commission approving the proposed rule change, the Exchange can comply with this deadline.

[8] In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[9] 15 U.S.C. 78f(b)(5).

[10] 15 U.S.C. 78j–1(m).

[11] See Notice at note .

[12] 15 U.S.C. 78s(b)(2).

[13] 17 CFR 240.10A–3(b)(3)(ii).

[14] See Securities Act Release No. 8220, Securities Exchange Act Release No. 47654, and Investment Company Act Release No. 26001 (April 9, 2003), 68 FR 18788 (April 16, 2003) (release adopting Rule 10A–3).

[15] See Securities Exchange Act Release Nos. 48745 (November 4, 2003), 68 FR 64154 (November 12, 2003) (approval of, among other proposals, File Nos. SR–NYSE–2002–33 and SR–NASD–2002–141).

[16] 15 U.S.C. 78s(b)(2).

[17] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48848; File No. SR–FICC–2003–07]

Self-Regulatory Organization; Fixed Income Clearing Corporation; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Rebates to Members

November 26, 2003.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934

("Act"),[1] notice is hereby given that on August 5, 2003, Fixed Income Clearing Corporation ("FICC"),[2] filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which items have been prepared primarily by FICC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

I. Self-Regulatory Organization's Statement of the Terms of Substances of the Proposed Rule Change

The purpose of the proposed rule change is to allow FICC to modify how rebates are calculated and distributed under Section IX of the Government Securities Division ("GSD") fee structure.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, FICC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. FICC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.[3]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The GSD's rules currently provide for FICC's periodic disbursement of rebates of excess net income back to GSD members ("Rebate Policy").[4] At the time the Rebate Policy was established by GSCC, management and the board of directors determined that $30 million in shareholders' equity was sufficient to provide GSCC adequate risk protection and also to provide a monetary "cushion" for temporary losses and decreases in volumes. Pursuant to the Rebate Policy, shareholders' equity over and above the $30 million threshold would be rebated, pro rata, to members.

Subsequent to implementing the Rebate Policy, several events occurred which adversely impacted GSCC's, and later FICC's, ability to issue the rebates as planned. Due to the terrorist attacks on the World Trade Center on September 11, 2001, GSCC experienced a inordinate number of operational problems that resulted in increased interest payment obligations and liability issues. These matters were not fully resolved until the fourth quarter of 2002 and ultimately resulted in a reduction of GSCC's capital to $29.2 million, below the threshold provided for in GSCC's rules pertaining to the Rebate Policy. The events of 9/11 also made the need for dramatically improved business continuity planning of paramount importance. Industry consensus as to how to best achieve improvements in this area were being developed on an ongoing basis which makes it difficult for GSCC to anticipate future expenses. Finally, following the merger of GSCC and MBSCC to create FICC, the Fixed Income Operations and Planning Committee approved an increase in the amount of the GSD's shareholders' equity required before a rebate from the $30 million minimum to $35 million.

FICC is now in a position in this calendar year (2003) to distribute rebates to GSD members due to an adequate level of shareholder equity and higher-than-anticipated income levels at the GSD. In an effort to make the process of distributing these rebates as fair as possible to all GSD members and also to allow FICC sufficient flexibility to address adverse business and risk conditions, FICC is proposing to modify the GSD's Rebate Policy.

Going forward, when calculating rebate amounts, the GSD will take into account each member's payment of comparison, netting, and clearance fees paid to the GSD. While previously only comparison and netting fees were considered, FICC has reconsidered this formula and believes that the inclusion of clearance fees in the rebate calculation will result in a fairer distribution of rebates to all members. When rebates are calculated, GSD members who paid the highest gross amount in all of these fees combined will receive the largest rebates.[5] In addition, in order to adequately take into account unexpected expenses in a rapidly changing business environment and allow for flexibility in rebate calculation in instances of a member's consolidation or merger, FICC will alter the GSD's Rebate Policy to allow the GSD needed flexibility in determining when rebates should be distributed and the amount of each rebate allotted members. FICC believes that these changes will result in a Rebate Policy that is equitable to the GSD members while also allowing FICC to protect its members by maintaining sufficient shareholders' equity for business and risk management purposes.

FICC anticipates distributing rebates using the revised formula in August of 2003 (subject to Board consideration and approval). The August rebates will take into account fees paid by members from January 1 through June 30, 2003.

The proposed rule change is consistent with Section 17A(b)(3)(F) of the Act[6] and the rules and regulations thereunder because it will allow FICC to fulfill its mission of operating in a not-for-profit manner consistent with maintaining the integrity of FICC's capital base, financial structure, and risk management process.

(B) Self-Regulatory Organization's Statement on Burden on Competition

FICC does not believe that the proposed rule change will have an impact on or impose a burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments relating to the proposed rule change have not yet been solicited or received. FICC will notify the Commission of any written comments received by FICC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change will take effect upon filing pursuant to Section 19(b)(3)(A)(ii) of the Act[7] and Rule 19b–4(f)(2)[8] thereunder because the proposed rule constitutes a due, fee, or other charge. At any time within sixty days of the filing of such rule change, the Commission could have summarily abrogated such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Comments may also be submitted electronically at the following e-mail address: *rule-comments@sec.gov*. All comment letters should refer to File No. SR–FICC–2003–07. This file number should be included on the subject line if e-mail is used. To help us process and review comments more efficiently, comments should be sent in hardcopy or by e-mail but not by both methods. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of such filing also will be available for inspection and copying at the principal office of FICC and on FICC's Web site at *http://www.ficc.com/gov/gov.other.docs.jsp?NS-query=.com*. All submissions should refer to File No. SR–FICC–2003–07 and should be submitted by December 24, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–30051 Filed 12–2–03; 8:45 am]

BILLING CODE 8010–01–M

[1] 15 U.S.C. 78s(b)(1).

[2] The Government Security Clearing Corporation ("GSCC") and the MBS Clearing Corporation ("MBSCC") merged into the Fixed Income Clearing Corporation ("FICC") effective January 1, 2003. FICC operates through two divisions, the Government Securities Division (the "GSD," formerly GSCC) and the Mortgage-Backed Securities Division ("MBSD," formerly MBSCC). Each division has retained its own set of rules. This rule filing will address changes to the rules of GSD.

[3] The Commission has modified the text of the summaries prepared by FICC.

[4] GSCC established the Rebate Policy in 2001, Securities Exchange Act Release No. 44502 (July 2, 2001), 66 FR 36351 (July 11, 2001) (SR–GSCC–2001–05).

[5] Rebate amounts will be adjusted for miscellaneous charges as the rule currently provides today.

[6] 15 U.S.C. 77(q–1)(b)(3)(F).

[7] 15 U.S.C. 78s(b)(3)(A)(ii).

[8] 17 CFR 240.19b–4(f)(2)

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48840; File No. SR–ISE–2003–29]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by International Securities Exchange Inc., Relating to Requiring the Fingerprinting of Exchange Employees and Independent Contractors and Other Service Providers

November 25, 2003.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on November 18, 2003, the International Securities Exchange, Inc. ("ISE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the ISE. ISE filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act[3] and Rule 19b–4(f)(6) thereunder,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing to adopt a new rule pursuant to which it will obtain fingerprints from prospective and current employees, and independent contractors and other service providers, submit those fingerprints to the Attorney General of the United States or his or her designee for identification and processing, and receive criminal history record information from the Attorney General of the United States or his or her designee for evaluation and use in protecting the Exchange's facilities, records, systems, data and other information. The text of the rule amendment is available at the Office of the Secretary of the Exchange and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, ISE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The ISE has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to require the fingerprinting of prospective and current employees, and independent contractors and other service providers of the Exchange. The events of September 11, 2001, including the resulting temporary disruption in the securities markets, have led national exchanges and lawmakers alike to evaluate various security requirements, with the objective of enhancing investor protection, business continuity and workplace safety. To that end, the Commission has approved fingerprinting rules for the National Association of Securities Dealers, Inc. ("NASD") with respect to employees and independent contractors of The Nasdaq Stock Market, Inc. ("Nasdaq")[5] and for the New York Stock Exchange ("NYSE") with respect to prospective and current employees, temporary personnel, independent contractors and service providers of each of the Exchange and its principal subsidiaries.[6] ISE is proposing to adopt a rule establishing a fingerprint-based program that is substantially similar to the Nasdaq and NYSE programs.

The proposed rule is consistent with Section 17(f)(2) of Act[7] and Rule 17f–2 thereunder,[8] which require, subject to certain exemptions, a variety of securities industry personnel to be fingerprinted, including every member of a national securities exchange; brokers, dealers, transfer agents, and clearing agencies; and employees of such entities. Although Section 17(f)(2) does not require the Exchange or other self-regulatory organizations to fingerprint their own employees and non-employee service providers, it permits self-regulatory organizations designated by the SEC to have access to

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

[5] *See* Release No. 34–47240 (January 23, 2003), 68 FR 4810 (January 30, 2003) (SR–NASD–2002–113).

[6] *See* Release No. 34–48118 (July 1, 2003) 68 FR 41033 (July 9, 2003) (SR–NYSE–2003–18).

[7] 15 U.S.C. 78q(f)(2).

[8] 17 CFR 240.17f–2

"all criminal history record information."[9]

The proposed rule is also consistent with the laws of the State of New York, where ISE maintains its principal offices. In August 2002, New York State amended its general business law to require fingerprint-based background checks of employees of national securities exchanges who are regularly employed in New York State.[10] The New York law also requires fingerprint-based background checks of non-employees who provide services to the exchange if those individuals have "access to records * * * or other material or secure buildings or secure property, which place the security of such organization at risk." The proposed rule will facilitate the Exchange's compliance with New York State law by facilitating the Exchange's access to criminal history record information maintained by the Federal Bureau of Investigation ("FBI").

Moreover, fingerprint-based background checks will enhance the Exchange's ability to adequately screen employees and non-employee service providers to better determine whether there are unacceptable risks associated with granting such persons access to the Exchange's facilities, records, systems, data and other information. The proposed rule will permit the Exchange to receive arrest-based criminal history record information from the FBI, which includes conviction, sentencing, probation and parole information. Thus, the information obtained through fingerprint-based background checks will provide a more exhaustive and reliable profile of the criminal records of prospective employees and non-employee service providers, and thereby better facilitate risk assessment, than information provided directly by such persons.

As stated in the proposed rule change, the Exchange will comply with all applicable laws relating to the use and dissemination of criminal history record information obtained from the FBI.

2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement under Section 6(b)(5)[11] that an exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism for a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has not solicited, and does not anticipate soliciting, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has designated the foregoing rule change as effecting a change that: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) by its terms does not become operative for 30 days from the date of filing. In addition, the Exchange provided the Commission with written notice of its intent to file the proposed rule change at least five days prior to the filing date. Accordingly, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[12] and Rule 19b–4(f)(6) thereunder.[13] At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Exchange Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the ISE. All submissions should refer to File No. SR–ISE–2003–29 and should be submitted by December 24, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–30059 Filed 12–2–03; 8:45 am]

BILLING CODE 8010–01–P

[9] 15 U.S.C. 78q(f)(2).

[10] N.Y. Gen. Bus. Law 359–e (12–a) (McKinney 2003).

[11] 15 U.S.C. 78f(b)(5).

[12] 15 U.S.C. 78s(b)(3)(A).

[13] 17 CFR 240.19b–4(f)(6).

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48839; File No. SR–NQLX–2003–08]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by Nasdaq Liffe Markets, LLC to Amend Rule 419 To Make the Information Recording and Submission Requirements for Block Trades and Exchange for Physical Trades Consistent

November 25, 2003.

Pursuant to Section 19(b)(7) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–7 under the Act,[2] notice is hereby given that on November 10, 2003, NQLX, LLC ("NQLX") filed with the Securities and Exchange Commission ("Commission") the proposed rule change described in Items I, II, and III below, which Items have been prepared by NQLX. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons. On November 7, 2003, NQLX filed the proposed rule change with the Commodity Futures Trading Commission ("CFTC"), together with a written certification under Section 5c(c) of the Commodity Exchange Act[3] ("CEA") in which NQLX indicated that the effective date of the proposed rule change would be November 10, 2003.

[1] 15 U.S.C. 78s(b)(7).

[2] 17 CFR 240.19b–7.

[3] 7 U.S.C. 7a–2(c).

I. Self-Regulatory Organization's Description of the Proposed Rule Change

NQLX proposes to amend NQLX Rule 419 to make the information recording and submission requirements for Block Trades and Exchange for Physical Trades consistent. Previously, certain requirements applicable to Exchange for Physical Trades were not explicitly applicable to Block Trades.

The text of the proposed rule change appears below. New text is in *italic*. Deleted text is in [brackets].

* * * * *

Rule 419 Block Trades.* * *

(g) Information Recording, Submission, and Dissemination

(1) For *a* [each] Block Trade[,] *in addition to the requirements of Rules 408(b) and 408(c),* a Member or Person Associated with a Member must [ensure that information is recorded and retained] *record* on an Order Ticket [consistent with Rule 408(c)] *the identity of the individual arranging the Block Trade and time stamp the Order when negotiation begins.*

(2)—(7) No change

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

NQLX has prepared statements concerning the purpose of, and statutory basis for, the proposed rule change, burdens on competition, and comments received from members, participants, and others. The text of these statements may be examined at the places specified in Item IV below. These statements are set forth in Sections A, B, and C below.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

NQLX proposes revising specified provisions of NQLX Rule 419 so that the information recording and submission requirements for Block Trades and Exchange for Physical Trades are consistent. Previously, certain requirements applicable to Exchange for Physical Trades were not explicitly applicable to Block Trades. First, amended Rule 419(g) would require members to comply with the requirements of NQLX Rule 408(b), in addition to those of NQLX Rule 408(c), when recording and retaining information on an Order Ticket for a Block Trade. Second, amended NQLX Rule 419(g) would require members to record on an Order Ticket the identity of the individual arranging the Block Trade and to time stamp the Order when negotiations begin.

NQLX believes that the proposed rule change is consistent with the requirements, where applicable, under Section 6(h)(3)(J) of the Act[4] and the criteria, where applicable, under Section 2(a)(1)(D)(i)(IX) of the CEA,[5] as modified by joint orders of the Commission and the CFTC.[6]

2. Statutory Basis

NQLX files the proposed rule change pursuant to Section 19(b)(7) of the Act.[7] NQLX believes that the proposed rule change is consistent with the requirements of the Commodity Futures Modernization Act of 2000,[8] including the requirement that NQLX have audit trails necessary and appropriate to facilitate coordinated surveillance to detect, among other things, manipulation.[9] NQLX further believes that its proposed rule change complies with the requirements under Section 6(h)(3) of the Act[10] and the criteria under Section 2(a)(1)(D)(i) of the CEA,[11] as modified by joint orders of the Commission and the CFTC. In addition, NQLX believes that its proposed rule change is consistent with the provisions of Section 6 of the Act,[12] in general, and Section 6(b)(5) of the Act,[13] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

NQLX does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement of Comments on the Proposed Rule Change Received from Members, Participants, or Others

NQLX neither solicited nor received written comment on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change has become effective on November 10, 2003. Within 60 days of the date of effectiveness of the proposed rule change, the Commission, after consultation with the CFTC, may summarily abrogate the proposed rule change and require that the proposed rule change be refiled in accordance with the provisions of Section 19(b)(1) of the Act.[14]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change conflicts with the Act. Persons making written submissions should file nine copies of the submission with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Comments also may be submitted electronically to the following e-mail address: *rule-comments@sec.gov*. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of these filings will also be available for inspection and copying at the principal office of NQLX. Electronically submitted comments will be posted on the Commission's Internet Web site (*http://www.sec.gov*). All submissions should refer to File No. SR–NQLX–2003–08 and should be submitted by December 24, 2003.

[4] 15 U.S.C. 78f(h)(3)(J).

[5] 7 U.S.C. 2(a)(1)(D)(i)(IX).

[6] *See* Joint Order Granting the Modification of Listing Standards Requirements (Exchange-Traded Funds, Trust-Issued Receipts and shares of Closed-End Funds), Securities Exchange Act Release No 46090 (June 19, 2002), 67 FR 42760 (June 25, 2002) *and* Joint Order Granting the Modification of Listing Standards Requirements (American Depository Receipts), Securities Exchange Act Release No. 44725 (August 20, 2001), 67 FR 42760 (June 25, 2002).

[7] 15 U.S.C. 78s(b)(7).

[8] Pub. L. 106–554, 114 Stat. 2763 (2000).

[9] 15 U.S.C. 78f(h)(3)(J).

[10] 15 U.S.C. 78f(h)(3).

[11] 7 U.S.C. 2(a)(1)(D)(i).

[12] 15 U.S.C. 78f.

[13] 15 U.S.C. 78f(b)(5).

[14] 15 U.S.C. 78s(b)(1)

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[15]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–30064 Filed 12–2–03; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48846; File No. SR–NSCC–2003–21]

Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing of a Proposed Rule Change Relating to the New Separately Managed Accounts Service

November 26, 2003.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on October 16, 2003, the National Securities Clearing Corporation ("NSCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which items have been prepared primarily by NSCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change would add a new Rule 59 to NSCC's Rules to establish an information messaging system called the Separately Managed Accounts ("SMA") Service.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NSCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NSCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The SMA Service will provide a messaging hub for the communication of information among sponsors of separately managed accounts and the investment managers participating in their programs.[3] At year-end 2002, the managed account industry had approximately 2 million accounts with approximately $398 billion in assets under management. It is estimated to increase to 5.3 million accounts and $930 billion in assets under management by 2006.[4]

Currently, communication of information among sponsors and investment managers and other participants in the managed account industry is supported by a combination of methods such as multiple proprietary vendor and sponsor applications and platforms supplemented by faxes, emails, and telephone communication. It was the consensus of industry representatives through their participation in the MMI that this current operational infrastructure, which depends upon nonstandard and manual processing over multiple platforms, could not support the projected growth and even at the current levels has resulted in excessive processing costs, delays, and errors.

Accordingly, the MMI commissioned a study of the operational interfaces in the separately managed account industry. This study noted the lack of standardized protocols and processes and centralized connectivity as the major areas of operational concern, and concluded that these inefficiencies could be expected to result in errors with an adverse economic impact. The authors of the study recommended to the MMI that the industry look beyond its current technology and operations platforms to seek an industry-wide approach that would allow the SMA industry to achieve the type of standardized and centralized processing accomplished by the mutual fund industry over the last twenty years.[5]

In response to the operational issues facing the managed account industry and recognizing the benefits that NSCC's mutual fund services provide to the mutual fund industry, in early 2002 the MMI asked NSCC to explore whether NSCC could provide services with similar operational benefits to the separately managed accounts industry, with the view of increasing operational efficiency and decreasing operational risks inherent in the current processing structure. At the request of the MMI, NSCC was subsequently invited to work with the MMI's Technology/Operations Committee and to work with industry representatives to create business communications standards for sponsor firms and investment managers and to develop a message processing utility that would support the standards when published. The initial standards, addressing new account set up, account termination, and account deposits and withdrawals, were delivered to the industry in late 2002. These standardized data elements are available to all vendors, sponsors, and managers to use in programming their various applications.[6]

At the invitation of the MMI, NSCC initiated the SMA Service project development work to assess the feasibility of offering the SMA Service. A prototype of the SMA Service system was made available for industry testing and feedback in January 2003. On May 21, 2003, DTCC presented the proposed service to MMI's Board of Governors and the presentation was well received. On September 4, 2003, NSCC's Board of Directors approved the proposed rule change.

Pending approval of the Commission, the SMA Service will be available for use by members, fund members, and data services only members. As in the case with all NSCC products, NSCC will allow vendors to build interfaces to NSCC's SMA Service on behalf of NSCC members.

Messages transmitted through the SMA Service will consist of information such as account opening data (*e.g.* account profile notifications, verifications of funding amounts, and authorizations to trade) and account maintenance data (*e.g.*, funding deposit amount notifications, funding withdrawals, and account termination notifications). NSCC will not be responsible for the content of the messages transmitted through the SMA Service nor will NSCC assume any liability for the completeness or accuracy of the information transmitted.

The SMA Service will provide centralized platform for the communication of the basic account opening and maintenance data among sponsors and investment managers. Because the service does not involve money settlement or securities clearance or netting through the facilities of NSCC, it will be a nonguaranteed service of NSCC.[7]

Fees for the use of the SMA Service will be the subject of a separate rule filing.

Establishing the SMA Service at NSCC will facilitate the transmission of standardized information for separately managed accounts products on a centralized communications platform. Standardization and automation on these products can be expected to reduce processing errors and delays that are typically associated with manual processes or the use of multiple platforms and methods to transmit information. This fosters cooperation and coordination with persons engaged in the clearance and settlement of securities transactions and furthers the protections of investors and the public interest. The proposed rule change is therefore consistent with the provisions of the Act and the rules and regulations thereunder.

(B) Self-Regulatory Organization's Statement on Burden on Competition

NSCC does not believe the proposed rule change will have an impact on or impose a burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments relating to the proposed rule change have been solicited or received. NSCC will notify the Commission of any written comments received by NSCC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(a) By order approve the proposed rule change or

(b) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549–0609. Comments may also be submitted electronically at the following e-mail address: *rule-comments@sec.gov*. All comment letters should refer to File No. SR–NSCC–2003–21. This file number should be included on the subject line if e-mail is used. To help us process and review comments more efficiently, comments should be sent in hardcopy or by e-mail but not by both methods. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of NSCC and on NSCC's Web site at *http://www.nscc.com/legal/*. All submissions should refer to the File No. SR–NSCC–2003–21 and should be submitted by December 24, 2003.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–30050 Filed 12–2–03; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48835; File No. SR–CSE–2003–06]

Self-Regulatory Organizations; Order Granting Partial Approval of Proposed Rule Change and Amendment No. 2 Thereto and Notice of Filing and Order Granting Accelerated Approval of Amendment No. 1 Thereto by National Stock Exchange Relating to Audit Committee Requirements Applicable to Companies Listing Non-Option Securities

November 25, 2003.

I. Introduction

On September 12, 2003, the Cincinnati Stock Exchange, now known as National Stock Exchange ("Exchange"), filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend Article IV of its By-Laws pertaining to its listing standards, including the addition of requirements applicable to audit committees of listed companies.[3] The proposed rule change would require each issuer listed on the Exchange to have an audit committee that complies with the standards for audit committees mandated by Section 10A(m) of the Act[4] and Rule 10A–3 thereunder.[5] The proposed rule change also would specify composition and member qualification requirements for

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[15] 17 CFR 200.30–3(a)(75).

[1] 15 U.S.C. 78s(b)(1).

[2] The Commission has modified parts of these statements.

[3] Separately managed accounts are generally described as professionally managed individual investment portfolios offered to investors such as high net worth individuals. The investor's assets are managed in separate accounts by a sponsor or its custodian that typically contracts with multiple investment managers to provide a diversified investment strategy for the investor. The investor is generally charged an asset-based fee in lieu of commissions and other fee arrangements. Information about the separately managed account industry is available on the Web site of The Money Market Institute ("MMI") at *http://www.moneyinstitute.com*. The MMI is the national organization for the managed account industry, comprised mostly of portfolio management firms and sponsors of investment advisory and consulting services.

[4] The industry forecasts were developed by the Financial Research Corporation with the cooperation of the MMI through analysis of data provided by MMI members.

[5] "Operational Interfaces in the Separately Managed Account Industry," Deloitte & Touche, published by The Money Management Institute, August 2002. See also, "2010: A Managed Account Odyssey: Projections in the Future of the Managed Account Industry." Leonard A. Reinhart and Jay N. Whipple III © 2002 Lockwood Financial Services, Inc., also equating the current operational infrastructure of the managed account industry to that of the mutual fund industry prior to the implementation of NSCC's mutual fund services.

[6] The standardized data elements are available on the Web site of the MMI at *http://www.moneyinstitute.com* and NSCC at *http://nscc.com*.

[7] NSCC offers certain guaranteed services through its CNS system, in which NSCC as a central counterparty provides settlement related guarantees regarding certain trades cleared and netted at NSCC. NSCC also offers nonguaranteed services, such as NSCC's Mutual Fund and Insurance Processing Services, in which members do not receive the protections of an NSCC guarantee. Some of NSCC's nonguaranteed services entail settlement of funds through NSCC (*e.g.* NSCC's FundSERVE℠ service); other nonguaranteed services involve the communication of information only without settlement of transactions or funds through the facilities of NSCC (*e.g.*, NSCC's Profile service in NSCC's Mutual Fund Services). The SMA Service a nonguaranteed service limited to the communication of information only and does not involve settlement of securities transactions or funds through the facilities of NSCC.

[8] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4

[3] In the proposed rule change, the Exchange also proposed to amend Article IV, Section 2 of the Exchange's By-Laws pertaining to unlisted trading privileges. The Commission is not approving this amendment at this time.

[4] 15 U.S.C. 78j–1(m).

[5] 17 CFR 240.10A–3.

audit committees of listed issuers; include a requirement that audit committees have a written charter; and set forth other standards relating to audit committees and the contents of their charters. It would also set forth the operative dates for the new requirements. The proposed rule change also would make several other changes to Article IV of the By-Laws, as more fully described in the Notice.[6] The Exchange also committed to adopt additional listing policies and requirements pertaining to issuer corporate governance.

The proposed rule change was published for comment in the **Federal Register** on October 20, 2003.[7] The Commission received no comments on the proposal. On November 19, 2003, the Exchange submitted an amendment to the proposed rule change.[8] On November 21, 2003, the Exchange submitted a second amendment to the proposed rule change.[9] This order approves the proposed rule change and Amendment No. 2, other than the proposed amendment to Article IV, Section 2 of the By-Laws relating to unlisted trading privileges; publishes notice of Amendment No. 1; and approves Amendment No.1 on an accelerated basis.[10]

II. Discussion

After careful review, the Commission finds that the amended proposed rule change, except for the provision of the proposal relating to unlisted trading privileges, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[11] Specifically, the Commission finds that the proposal relating to independent audit committees for listed companies and the other proposed revisions to Article IV, Sections 1 and 3 of the Exchange's By-Laws are consistent with Section 6(b)(5) of the Act,[12] which requires, among other things, that the Exchange's rules be designed to prevent fraudulent and manipulative acts and practices, and, in general, to protect investors and the public interest.[13] Moreover, the Commission believes that the Exchange's proposal to add the new requirements concerning audit committees is appropriate and consonant with Section 10A(m) of the Act[14] and Rule 10A–3 thereunder relating to audit committee standards for listed issuers. The Commission notes that the Exchange intends to file an additional rule proposal relating to other corporate governance listing standards.[15]

Furthermore, the Commission finds good cause, consistent with Section 19(b)(2) of the Act,[16] to approve Amendment No. 1 to the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. In Amendment No. 1, the Exchange expanded, with respect to investment companies, the scope of the proposed provision regarding complaint procedures. Rule 10A–3 requires audit committees to establish procedures for "the confidential, anonymous submission by employees of the listed issuer of concerns regarding questionable accounting or auditing matters."[17] The amended Exchange proposal would require that audit committees of investment companies also establish procedures for the confidential, anonymous submission of such concerns by employees of the investment adviser, administrator, principal underwriter, or any other provider of accounting related services for the investment company, as well as employees of the investment company. This revision responds to a recommendation by the Commission that self-regulatory organizations take into account, in adopting rules to comply with Rule 10A–3, the fact that most services are rendered to an investment company by employees of third parties, such as the investment adviser, rather than by employees of the investment company.[18] In Amendment No. 1, the Exchange also made several technical revisions to the rule text. The Commission believes that it is appropriate to accelerate approval of this amendment, because it conforms the rule text to similar rules of the New York Stock Exchange, Inc. and the National Association of Securities Dealers, Inc. that were approved by the Commission,[19] and the amendment raises no new substantive issues.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment No. 1, including whether Amendment No. 1 is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filings will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–CSE–2003–06 and should be submitted by December 24, 2003.

[6] *See* Securities Exchange Act Release No. 48624 (October 10, 2003), 68 FR 59957 October 20, 2003 ("Notice").

[7] *Id.*

[8] *See* letter from Jennifer M. Lamie, Assistant General Counsel and Corporate Secretary, Exchange, to Nancy Sanow, Assistant Director, Division of Market Regulation ("Division"), Commission, dated November 18, 2003 ("Amendment No. 1"). In Amendment No. 1, the Exchange made minor, non-substantive changes to the text of the proposed rule and, with respect to investment companies, expanded the scope of the requirement that audit committees establish procedures for the confidential, anonymous submission of concerns regarding questionable accounting or auditing matters.

[9] *See* letter from Jennifer M. Lamie, Assistant General Counsel and Corporate Secretary, Exchange, to Nancy Sanow, Assistant Director, Division, Commission, dated November 20, 2003 ("Amendment No. 2"). In Amendment No. 2, the Exchange made minor, non-substantive changes to the text of the proposed rule by replacing references to "CSE" with "Exchange." This was a technical amendment and is not subject to notice and comment.

[10] Rule 10A–3 requires each national securities exchange and national securities association to have rules that comply with its requirements approved by the Commission no later than December 1, 2003. By the Commission approving the proposed rule change in part, the Exchange can comply with this deadline.

[11] In approving these portions of the proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[12] 15 U.S.C. 78f(b)(5).

[13] The Commission notes that it is not approving the proposed changes to Article IV, Section 2 of the Exchange's By-Laws pertaining to unlisted trading privileges. The Exchange intends to revise at a later date its proposal relating to unlisted trading privileges. Any such amendment would require an affirmative vote by the Exchange's membership. Telephone conversation between Jennifer M. Lamie, Assistant General Counsel and Corporate Secretary, Exchange, Nancy Sanow, Assistant Director, Division, Commission, and Ira L. Brandriss, Special Counsel, Division, Commission, on November 18, 2003.

[14] 15 U.S.C. 78j–1(m).

[15] *See* Notice at note .

[16] 15 U.S.C. 78s(b)(2).

[17] 17 CFR 240.10A–3(b)(3)(ii).

[18] *See* Securities Act Release No. 8220, Securities Exchange Act Release No. 47654, and Investment Company Act Release No. 26001 (April 9, 2003), 68 FR 18788 (April 16, 2003) (release adopting Rule 10A–3).

[19] *See* Securities Exchange Act Release Nos. 48745 (November 4, 2003), 68 FR 64154 (November 12, 2003) (approval of, among other proposals, File Nos. SR–NYSE–2002–33 and SR–NASD–2002–141).

IV. Conclusion

It Is Therefore Ordered, pursuant to Section 19(b)(2) of the Act[20], that Amendment No. 1 is approved on an accelerated basis, and that the portions of the proposed rule change and Amendment No. 2 (File No. SR–CSE–2003–06) relating to Sections 1 and 3 of Article IV of the Exchange's By-Laws be, and hereby are, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[21]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–30058 Filed 12–2–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48833; File No. SR–NYSE–2003–33]

Self-Regulatory Organizations; Notice of Filing of a Proposed Rule Change and Amendment No. 1 Thereto by the New York Stock Exchange, Inc. Relating to Exchange Fees for Closed-End Funds

November 25, 2003.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 20, 2003, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the NYSE. On November 24, 2003, the NYSE filed Amendment No. 1 to the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The New York Stock Exchange, Inc. (the "Exchange" or the "NYSE") proposes to amend Section 902.02 of the Listed Company Manual (the "Manual") to amend the continued listing fees applicable to closed-end funds. The text of the proposed rule change is set forth below. Proposed new language is in *italics;* proposed deletions are in [brackets].

* * * * *

Listed Company Manual

902.00 Listing Fees

* * * * *

902.02 Schedule of Current Listing Fees

* * * * *

C. Continuing Annual Fee

* * * * *

The continuing annual fees for closed end funds are as follows:

[Per Share Rates—	
1st and 2nd million shares	$1,650
Additional shares	830
Minimum Fees—	
Million Shares	
1+–10	$25,000
10+–50	35,000
50+–100	48,410
100+–200	64,580
200+	80,440]

[All issued shares are included in the continuing annual fee calculation for closed end funds, except those which have been subject to a continuing annual fee for a consecutive period of 15 years. After 15 years, such shares are excluded in the calculation of fees on the per share basis.] *Closed end funds will pay at a rate of $930 per million shares, subject to a minimum annual fee of $25,000.* Fund families with between [5] *3* and [15] *14* closed-end funds listed *will* receive a 5% discount off the calculated continuing annual fee for each fund listed, and those with [16 or] more *than 14* listed closed-end funds will receive a discount of [10] *15*%. No fund family shall pay aggregate continuing annual fees in excess of $1 million in any one year.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NYSE included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange has recently reduced the original listing fees applicable to closed-end funds,[4] and has capped at $75,000 the original listing fees applicable to two or more funds from the same fund family listing on the same date.[5]

The Exchange is now proposing to amend the continuing annual listing fees applicable to closed-end funds by establishing a new continuing fee structure with increased fund family discounts, and a new per million share base rate applicable to all closed-end funds.

In establishing a new base rate applicable to all closed-end funds, the Exchange will no longer apply the existing five-tiered continued listing fee structure and, instead, closed-end funds will pay at a rate of $930 per million shares, subject to a minimum annual fee of $25,000. To clarify the applicability of the $25,000 minimum, that amount would actually cover funds with up to 26,881,720 shares outstanding. It is only beyond that size that the multiplication of the per share rate ($930/million) by the shares outstanding would produce a fee in excess of the $25,000 minimum.

The Exchange also proposes to increase and expand the availability of the discounts applicable to fund families with multiple funds listed. As proposed, fund families with between 3 and 14 closed-end funds listed will receive a 5% discount off the calculated continuing annual fee for each fund listed, and those with more than 14 listed closed-end funds will receive a discount of 15%. Currently, fund families with between 5 and 15 closed-end funds listed receive a 5% discount off the calculated continuing annual fee for each fund listed, and those with 16 or more listed closed-end funds receive a discount of 10%.

In a previous filing revising listing fees generally,[6] the Exchange eliminated the fee policy under which shares subject to continuing annual fees for a period of 15 consecutive years became exempt from further fees. At the time, the Exchange noted that it was

[20] 15 U.S.C. 78s(b)(2).

[21] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Darla Stuckey, Corporate Secretary, NYSE, to Nancy J. Sanow, Assistant Director, Division of Market Regulation, Commission, dated November 24, 2003 ("Amendment No. 1").

[4] *See* Securities Exchange Act Release No. 48360 (August 18, 2003), 68 FR 51045 (August 25, 2003) (SR-NYSE–2003–22).

[5] *See* Securities Exchange Act Release No. 48685 (October 23, 2003), 68 FR 61710 (October 29, 2003) (SR–NYSE–2003–32).

[6] *See* Securities Exchange Act Release No. 47115 (December 31, 2002), 68 FR 1495 (January 10, 2003) (SR–NYSE–2002–62).

continuing the 15-year exemption policy for closed-end funds pending further study and revision of the fees charged to closed-end funds generally. Given the new fee structure implemented for closed-end funds under this proposal and the other filings referred to herein, the Exchange has concluded that it is now appropriate to eliminate the 15-year exemption policy for closed-end funds consistent with the amendments made with respect to listed operating companies in December 2002.

The impact of the proposed continuing annual fee changes in their entirety on an individual fund will vary depending on a fund's shares outstanding and other circumstances. First of all, the Exchange states that its rule has, and will continue to have, an overall fund family fee cap of $1 million per year. Of the 407 listed closed end funds, the Exchange states that 118 are in fund families covered by the $1 million fee cap. Of the remaining 289 funds, factoring in the net effect of the change to the new per share rate from the existing five-tiered formula, the elimination of the 15-year exemption policy, and the increases in the fund family discounts, the Exchange's analysis (based on the information it currently has on fund shares outstanding) is that 55 funds would experience an increase in continuing annual fees, 150 would experience a decrease, and 84 would experience no net change. Of those that can be expected to experience an increase, the Exchange expects that the average increase would be 15.6% and the median increase 8.2%. The Exchange expects that the maximum increase for any one fund would be 73% (in that case, $44,700). Of the 150 funds the Exchange expects to experience a decrease, the average decrease would be 25.4% and the median decrease would be 28.6%. The maximum decrease for any one fund would be 36% (in that case, $12,000). While some funds would experience an increase in continuing annual fees and others a decrease, the overall impact on the Exchange would be a net decrease in continuing annual fees of approximately $900,000.

2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement under Section 6(b)(4)[7] that an Exchange have rules that provide for the equitable allocation of reasonable dues, fees and other charges among its members and issuers and other persons using its facilities.

[7] 15 U.S.C. 78f(b)(4).

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the NYSE consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the amended proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE.

All submissions should refer to File No. SR–NYSE–2003–33 and should be submitted by December 24, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–30063 Filed 12–2–03; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48820; File No. SR–OCC–2002–23]

Self-Regulatory Organizations; the Options Clearing Corporation; Notice of Withdrawal of a Proposed Rule Change Relating to Physically-Settled Futures on Narrow-Based Stock Indexes

November 21, 2003.

On September 30, 2002, The Options Clearing Corporation ("OCC") submitted to the Securities and Exchange Commission ("Commission") a proposed rule change pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] that would allow OCC to provide clearance and settlement services for physically-settled futures on narrow-based stock indexes. The proposed rule change was published in the **Federal Register** on October 9, 2002.[2] No comment letters were received. On June 26, 2003, OCC withdrew the proposed rule change.[3]

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[4]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–30060 Filed 12–2–03; 8:45 am]

BILLING CODE 8010–01–P

[8] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] Securities Exchange Act Release No. 46593 (October 2, 2002), 68 FR 63006.

[3] Letter from Jean M. Cawley, First Vice President and Deputy General Counsel, OCC, to Jerry Carpenter, Assistant Director, Division of Market Regulation, Commission (June 26, 2003).

[4] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48836; File No. SR–Phlx–2003–51]

Self-Regulatory Organizations; Order Granting Approval of Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval of Amendment No. 1 Thereto by the Philadelphia Stock Exchange, Inc. Relating to Listing Standards Regarding Issuer's Audit Committees and Delisting Procedures

November 25, 2003.

I. Introduction

On July 14, 2003, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend Phlx Rule 849, Audit Committee/Conflicts of Interest, and Phlx Rule 811, Delisting Policies and Procedures.

The provisions in the proposed rule change mostly are intended to comply with the requirements mandated by Section 10A(m) of the Act[3] and Rule 10A–3 thereunder.[4] Additional changes in the proposal relate to audit committee charters, audit committee composition requirements, audit committee approval of related party transactions, and revisions to the Exchange's delisting rule. The Exchange also committed to adopt additional listing policies and requirements pertaining to issuer corporate governance.

The proposed rule change was published for comment in the **Federal Register** on October 16, 2003.[5] The Commission received no comments on the proposal. On November 20, 2003, the Phlx submitted an amendment to the proposed rule change.[6] This order approves the proposed rule change, publishes notice of Amendment No. 1, and approves Amendment No. 1 on an accelerated basis.[7]

II. Discussion

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[8] Specifically, the Commission finds that the proposal is consistent with Section 6(b)(5) of the Act,[9] which requires, among other things, that the Phlx's rules be designed to prevent fraudulent and manipulative acts and practices, and, in general, to protect investors and the public interest. Moreover, the Commission believes that the Exchange's proposal to add the new requirements concerning audit committees is appropriate and consonant with Section 10A(m) of the Act and Rule 10A–3 thereunder relating to audit committee standards for listed issuers. The Commission notes that the Phlx intends to file an additional rule proposal relating to other corporate governance listing standards.[10]

Furthermore, the Commission finds good cause, consistent with Section 19(b)(2) of the Act,[11] to approve Amendment No. 1 to the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. In Amendment No. 1, the Phlx expanded, with respect to investment companies, the scope of the proposed provision regarding complaint procedures. Rule 10A–3 requires audit committees to establish procedures for "the confidential, anonymous submission by employees of the listed issuer of concerns regarding questionable accounting or auditing matters."[12] The amended Phlx proposal would require that audit committees of investment companies also establish procedures for the confidential, anonymous submission of such concerns by employees of the investment adviser, administrator, principal underwriter, or any other provider of accounting related services for the investment company, as well as employees of the investment company. This revision responds to a recommendation by the Commission that self-regulatory organizations take into account, in adopting rules to comply with Rule 10A–3, the fact that most services are rendered to an investment company by employees of third parties, such as the investment adviser, rather than by employees of the investment company.[13] The Commission believes that it is appropriate to accelerate approval of this amendment, because it conforms the rule text to similar rules of the New York Stock Exchange, Inc. and the National Association of Securities Dealers, Inc. that were approved by the Commission,[14] and the amendment raises no new substantive issues.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment No. 1, including whether Amendment No. 1 is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filings will also be available for inspection and copying at the principal office of the Phlx. All submissions should refer to File No. SR–Phlx–2003–51 and should be submitted by December 24, 2003.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act[15], that Amendment No. 1 is approved on an accelerated basis, and that the proposed rule change (File No. SR–Phlx–2003–51) be, and it hereby is, approved.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78j–1(m).

[4] 17 CFR 240.10A–3.

[5] *See* Securities Exchange Act Release No. 48601 (October 8, 2003), 68 FR 59666 ("Notice").

[6] *See* letter from Carla Behnfeldt, Director, Legal Department New Product Development Group, Phlx, to Ira L. Brandriss, Special Counsel, Division of Market Regulation, Commission, dated November 19, 2003 ("Amendment No. 1"). In Amendment No. 1, with respect to investment companies, the Phlx expanded the scope of the requirement that audit committees establish procedures for the confidential, anonymous submission of concerns regarding questionable accounting or auditing matters.

[7] Rule 10A–3 requires each national securities exchange and national securities association to have rules that comply with its requirements approved by the Commission no later than December 1, 2003. By the Commission approving the proposed rule change, the Exchange can comply with this deadline.

[8] In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[9] 15 U.S.C. 78f(b)(5).

[10] *See* Notice at note .

[11] 15 U.S.C. 78s(b)(2).

[12] 17 CFR 240.10A–3(b)(3)(ii).

[13] *See* Securities Act Release No. 8220, Securities Exchange Act Release No. 47654, and Investment Company Act Release No. 26001 (April 9, 2003), 68 FR 18788 (April 16, 2003) (release adopting Rule 10A–3).

[14] *See* Securities Exchange Act Release Nos. 48745 (November 4, 2003), 68 FR 64154 (November 12, 2003) (approval of, among other proposals, File Nos. SR–NYSE–2002–33 and SR–NASD–2002–141).

[15] 15 U.S.C. 78s(b)(2).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[16]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–30055 Filed 12–2–03; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48847; File No. SR–Phlx–2003–73]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment Nos. 1 and 2 Thereto by the Philadelphia Stock Exchange, Inc. Relating to the Demutualization of the Philadelphia Stock Exchange, Inc.

November 26, 2003.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on November 17, 2003, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. On November 24, 2003, the Phlx submitted Amendment No. 1 to the proposed rule change.[3] On November 26, 2003, the Phlx submitted Amendment No. 2 to the proposed rule change.[4] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Phlx, pursuant to Section 19(b)(1) and Rule 19b–4 thereunder,[5] proposes to: (i) First amend Article FOURTH of its Certificate of Incorporation to eliminate the terms providing that it is "not for profit" and that "no dividend shall ever be paid by the Corporation" ("Plan of Conversion" and such amendment to the Certificate of Incorporation, the "Conversion Amendment"); and (ii) subsequently merge a newly created, wholly-owned shell subsidiary of the Phlx with and into the Phlx, with the Phlx surviving as a "demutualized"[6] Delaware stock corporation (the "Merger," and together with the Plan of Conversion, the "Plan of Demutualization") pursuant to an Agreement and Plan of Merger ("Merger Agreement").[7] In connection with the Plan of Demutualization, the Phlx will amend its Certificate of Incorporation ("Certificate of Incorporation"), By-laws ("By-laws") and Rules of the Board of Governors, Option Rules, ITS Rules and Options Floor Procedure Advices (collectively, the "Rules").[8] The Phlx will, upon completion of the Demutualization, issue pursuant to the Merger Agreement 100 shares of its Class A Common Stock to each equitable titleholder of an Exchange membership. As discussed more fully below, the Phlx will also issue one share of Series A–1 Preferred Stock, par value $0.01 ("Series A Preferred Stock") to the "Phlx Member Voting Trust" (the "Trust") in accordance with an Amended and Restated Trust Agreement ("Trust Agreement").

The proposed changes to the Certificate of Incorporation, the By-laws and the Rules, as well as the Trust Agreement and the Conversion Amendment are collectively referred to herein as the "Proposed Rule Change." The text of the amendments to the Certificate of Incorporation, By-laws and Rules is available at the Office of the Secretary, the Phlx, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Phlx included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements. The text of the proposed rule change is available at the Office of the Secretary, the Phlx, at the Commission, and on the Commission's website.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the Proposed Rule Change is to implement the Plan of Demutualization of the Phlx. In connection with such Plan of Demutualization, trading privileges will be separated from corporate ownership of the Phlx and will be made available exclusively through trading permits, as described in greater detail below. [9]

As a result of the Demutualization, the total of 50,500 shares of Class A Common Stock (100 shares per Seat) issued to existing equitable Seat holders will represent 100% of the common equity ownership in the Phlx outstanding immediately after the Demutualization, and all Members and holders of equity trading permits [10] who are affiliated with Member Organizations and are not suspended will be entitled to receive new Series A–1 Permits (described further below) to enable them to continue their activities on the Exchange without interruption. Similarly, Member Organizations will maintain their status upon their compliance with certain deposit and registration requirements, as described in greater detail below.

After the effective date of the Demutualization, the Exchange will continue to be a national securities exchange registered under Section 6 of the Act.[11] Except as will be necessary to implement the new permit structure to replace the existing structure of owning and leasing Seats as a basis for trading rights and Exchange memberships, the Exchange is not proposing any significant changes to its existing operational and trading structure in connection with the Demutualization. Also, the Demutualization will not affect the functions of the Exchange as a self-regulatory organization ("SRO") and will not affect the designation of the Exchange as "designated examining authority" ("DEA") for the Member Organizations for which the Exchange is the DEA today. In particular, the Exchange is not proposing to make any changes to the existing disciplinary system, fines or the related appellate process in connection with the Plan of Demutualization.[12]

The Exchange proposes to effect the Plan of Demutualization and the Proposed Rule Change for the following reasons: (i) The Phlx is facing significant financial challenges, and without the Demutualization the Phlx's viability in its current operating structure is questionable; (ii) without the Demutualization, the Phlx will be limited, to a large degree, to its current base of Members and Owners as a source of capital and revenue; (iii) the Demutualization of the Phlx will potentially facilitate the Exchange's ability to enter into relationships with strategic or financial partners who may be crucial for the Exchange's future development, capital formation and viability; (iv) the new permit structure may facilitate the introduction of new products on the Exchange and will potentially increase transaction volume and Exchange revenues; and (v) a demutualized Exchange will be better positioned to react to new opportunities and challenges.

In addition to those portions of the Proposed Rule Change which relate directly or indirectly to the Plan of Demutualization, described below under "Summary of Demutualization—Related Changes," the Exchange is also proposing certain other revisions to the By-laws and the Rules as part of the Proposed Rule Change, which are primarily related to the deletion of outdated or otherwise obsolete provisions in the By-laws and Rules, including changes required to conform the By-laws to requirements under the Act. These changes are summarized below under "Summary of Non-Demutualization-Related Changes."

i. Summary of Demutualization-Related Changes

The following summarizes the proposed material changes to the Certificate of Incorporation, the By-laws and the Rules (collectively, the "Governing Documents") of the Exchange in connection with the Plan of Demutualization:

A. Capital Structure of the Demutualized Phlx

Changes to the capital structure of the Phlx, as set forth in Article FOURTH of the proposed Certificate of Incorporation, generally reflect the proposed conversion of the Phlx from a non-stock Delaware corporation to a demutualized Delaware stock corporation. As discussed in greater detail below, the single share of the Series A Preferred Stock, issued to the Trust governed by the Trust Agreement, is designed to facilitate the exercise by Members and Member Organizations of their rights to fair representation in the selection and removal of On-Floor Governors of the Exchange and to facilitate the administration of the affairs of the Exchange in accordance with the Act. The voting arrangements implemented through the Trust Agreement and the Series A Preferred Stock are designed to give "members" (as defined in Section 3(a)(3)(A) of the Act)[13] a voice in the management of the Exchange after the Demutualization. These arrangements are necessary for two reasons: (i) Under Delaware law, only stockholders can elect the directors of a Delaware corporation; and (ii) after the Demutualization, Members and Member Organizations that were not Owners at the time of the Demutualization will not be stockholders of the Exchange.

Authorized and Issued Capital Stock

Pursuant to Article FOURTH of the proposed Certificate of Incorporation, after the Merger, the authorized capital stock of the Phlx will consist of:

- 50,500 shares of Class A Common Stock;
- 949,500 shares of Class B Common Stock, par value $0.01 per share ("Class B Common Stock," and together with the Class A Common Stock, the "common stock"); and
- 100,000 shares of preferred stock, par value $0.01 per share, one of which will be designated as "Series A Preferred Stock."

Upon consummation of the proposed Demutualization, the only capital stock outstanding will be the 50,500 shares of Class A Common Stock and the single share of Series A Preferred Stock. The Exchange proposes to authorize more shares of common stock (in the form of the Class B Common Stock) and preferred stock to allow for a more flexible approach to third-party investments and strategic relationships, which the Exchange believes will be critically important to its survival. Article FOURTH of the proposed Certificate of Incorporation will allow the Board of Governors to create and issue in the future additional classes or series of preferred stock without stockholder approval. In a separate undertaking, however, the Exchange has agreed to submit any such creation and issuance of additional classes or series of preferred stock to the Commission pursuant to Section 19(b) of the Act.[14] The issuance and the sale, transfer or other disposition of the Exchange's capital stock will be subject to certain voting and ownership limitations, described below.

Common Stock

Class A Common Stock and Class B Common Stock. Pursuant to Article FOURTH(b)(i) of the proposed Certificate of Incorporation, the Class A Common Stock and the Class B Common Stock will be identical in all respects and will have equal rights and privileges, except for the right to receive the Contingent Dividend (as defined below). Pursuant to Article FOURTH (b)(vi) of the proposed Certificate of Incorporation, each share of Class A Common Stock will automatically convert into one share of Class B Common Stock on the third anniversary of the closing of the Plan of Demutualization (the "Dividend Termination Date"). [15] Before the automatic conversion, the proposed Certificate of Incorporation will provide that the Exchange will have to notify the holders of the Class A Common Stock in accordance with certain specific requirements set forth in the Certificate of Incorporation.

Dividends (including the Contingent Dividend). Currently, the existing Certificate of Incorporation provides in Article FOURTH that the Phlx is "not for profit" and "no capital stock shall ever be issued and no dividend shall ever be paid" by the Phlx. After the

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[16] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Letter from Edith Hallihan, Deputy General Counsel, Phlx to Nancy Sanow, Assistant Director, Commission, Division of Market Regulation ("Division") dated November 21, 2003. ("Amendment No. 1"). In Amendment No. 1, the Phlx made technical conforming changes to the exhibits of the proposed rule change.

[4] *See* Letter from Edith Hallihan, Deputy General Counsel, Phlx to Nancy Sanow, Assistant Director, Commission, Division dated November 26, 2003. ("Amendment No. 2"). In Amendment No. 2, the Phlx amended the proposed rule change to reflect that on November 25, 2003, the members of the Phlx (as that term is defined in Section I–1(b) of the current By-laws of the Phlx, the "Members") approved the Plan of Conversion, the Merger, and all transactions to be effected in connection therewith. Also, on November 18, 2003, holders of equitable title ("Owners") to memberships in the Phlx (each such membership a "Seat") voted to approve the Plan of Demutualization as a whole.

[5] 17 CFR 240.19b–4

[6] This process is also referred to in this notice as the "Demutualization."

[7] Under the existing Certificate of Incorporation and By-laws and applicable law, the approval of the Owners is not required to effect the Plan of Demutualization.

[8] In certain limited cases, the proposed rule change also reflects the deletion of obsolete provisions and other necessary updates in the By-laws and the Phlx Rules that are not directly related to the Plan of Demutualization and are summarized in greater detail below.

[9] The Exchange, however, does plan to retain its existing Foreign Currency Option ("FCO") participations (as defined in Section 1–1(m) of the current By-laws). After the Demutualization, the ability to trade FCOs on the Phlx will also be available through a Series A–1 Permit, as set forth in proposed Rule 908(b).

[10] Pursuant to Rule 23 of the existing Phlx Rules, the Exchange has issued equity trading permits ("ETPs"), four of which are currently outstanding. As described in greater detail below, in the Demutualization, these ETPs will be eliminated in accordance with existing Rule 23 and pursuant to proposed Rule 971, and the rights and privileges of ETPs will be conferred on existing ETP holders by Permits, as described below.

[11] 15 U.S.C. 78f.

[12] Separately, the Exchange intends to file a proposed rule change to adopt fees applicable to Series A–1 Permits and to make conforming changes to its fee schedule as a result of the Demutualization. Accordingly, the Merger Agreement provides that the effectiveness of the Merger (and thus the Plan of Demutualization in general) will be, *inter alia*, conditioned upon such filing becoming effective or being approved by the Commission, as the case may be.

[13] 15 U.S.C. 78c(a)(3)(A).

[14] 15 U.S.C. 78s(b).

[15] The automatic conversion will be effected as a matter of administrative convenience to consolidate the common stock into a single class after the Contingent Dividend with respect to the Class A Common Stock is no longer potentially payable (*i.e.*, on the Dividend Termination Date). At the time of conversion, because the Contingent Dividend will no longer be potentially payable, the Class A Common Stock and the Class B Common Stock will have identical rights and privileges.

Demutualization, this restriction on paying dividends will be removed and pursuant to Article FOURTH (a)(i) and (b) of the proposed Certificate of Incorporation the Phlx's stockholders will have all dividend and other distribution rights of a stockholder in a Delaware stock corporation (except as may be limited by the rights any preferred stock may have, once issued).

Section 30–4 of the proposed By-laws, however, will prohibit the payment of dividends from any revenues the Phlx derives from regulatory fines, fees or penalties.[16] The Exchange will apply this limitation to its net income, prospectively only, commencing with the fiscal year in which the Merger occurs.[17] To determine the amount of the limitation, the Phlx will first calculate: (i) The amount of regulatory fines, fees and penalties that it has accrued for the fiscal year in which the Merger occurs and later time periods (collectively, "Regulatory Fee Amount"),[18] and (ii) the amount of regulatory costs and expenses [19] accrued for the same time period (collectively, "Regulatory Cost Amount"). The Exchange will determine the applicable restriction by determining the excess, if any, of the Regulatory Fee Amount over the Regulatory Cost Amount, and applying that to the amount of its net income for the fiscal year in which the Merger occurs and later periods. This restriction concerning the payment of dividends shall not prevent the Exchange from paying dividends from (i) capital, surplus or retained earnings of the Exchange which were (without regard to this restriction) available for the payment of dividends at the time of the Merger, or (ii) capital contributions or other capital items, in each case, no portion of which is attributable to Regulatory Fees.

Pursuant to Article FOURTH (b)(ii) of the proposed Certificate of Incorporation, the Class A Common Stock will carry with it the right to a contingent dividend (the "Contingent Dividend") payable in cash if a Liquidity Event occurs on or before the Dividend Termination Date. A "Liquidity Event" will be any investment of net cash proceeds in the Phlx's capital or that of one of its subsidiaries, either by means of a public offering or private placement of the common or preferred stock of the Phlx or the common stock or other securities of the subsidiary. The amount payable as the Contingent Dividend will depend, as follows, on the aggregate amount of net cash proceeds received by the Phlx and/or the subsidiary from all Liquidity Events occurring on or before the Dividend Termination Date:

- If the aggregate net cash proceeds will be at least $50 million but less than $100 million, the amount payable as a Contingent Dividend will be $7,500 for each 100 shares of Class A Common Stock ($3,787,500 in the aggregate).
- If the aggregate net cash proceeds will be at least $100 million but less than $150 million, the amount payable as a Contingent Dividend will be $17,500 for each 100 shares of Class A Common Stock then outstanding ($8,837,500 in the aggregate).
- If the aggregate net cash proceeds will be at least $150 million, the amount payable as a Contingent Dividend will be $29,700 for each 100 shares of Class A Common Stock then outstanding ($14,998,500 million in the aggregate).

If no Liquidity Event occurs on or before the Dividend Termination Date, the right to receive Contingent Dividends will terminate without further action on behalf of the Exchange and the Class A Common Stock will be automatically converted into Class B Common Stock, as indicated above.

Liquidation Rights and Preferences. Currently, Owners have the right to receive all distributions upon a liquidation of the Exchange, on the basis of their pro-rata interest in the Phlx, except as such right may be limited by certain rights of the holders of FCO participations.[20] After the proposed Demutualization, the Phlx common stock will have the right to receive all distributions upon a liquidation of the Phlx, subject to the rights of any preferred stock that may be issued in the future and by the rights of the holder of the Series A Preferred Stock, as described below.

Voting Rights/Election of Directors. Currently, for the most part, non-Member Owners do not have voting rights under the Exchange's existing Certificate of Incorporation, By-laws and Rules with respect to any matters relating to the Exchange, with certain very limited exceptions.[21] After the Demutualization, pursuant to Article FOURTH (b)(iii) of the proposed Certificate of Incorporation, the Phlx common stockholders will vote on all matters on which stockholders are entitled to vote except for the election and removal of the On-Floor Governors and, in the case of a contest for the position, the selection of the On-Floor Vice Chairman of the Exchange.

The holders of the Class A Common Stock and Class B Common Stock will vote together as a single class on all matters, except that: (i) Any amendment, alteration or repeal of any of the provisions of the proposed Certificate of Incorporation that adversely affects the rights, powers or privileges of the Class A Common Stock (but not of the Class B Common Stock) will require the affirmative vote of a majority of the shares of the Class A Common Stock then outstanding, voting separately as a class; and (ii) any amendment, alteration or repeal of any of the provisions of the proposed Certificate of Incorporation that adversely affects the rights, powers or privileges of the Class B Common Stock (but not of the Class A Common Stock) will require the affirmative vote of a majority of the shares of Class B Common Stock then outstanding, voting separately as a class.

In addition, pursuant to Section 22–1 of the proposed By-laws, the By-Laws may be amended by the affirmative vote of a majority of the entire Board of Governors, or by the affirmative vote of the holders of a majority of the shares of common stock then issued and outstanding, at any regular or special meeting of the Board of Governors or the stockholders (as the case may be). Unlike pursuant to Section 22–1 of the existing By-laws, after the Demutualization, Members (or Member Organizations) will have no right to vote in relation to By-law amendments or to propose By-law amendments. Such change is consistent with the Exchange's proposed post-Demutualization structure as a Delaware stock corporation in accordance with applicable Delaware law.

With respect to management equity awards post-Demutualization, Section 6–1 of the proposed By-laws provides that, the Exchange will not at any time adopt any stock incentive or option plan or arrangement, or any other equity based compensation plan or arrangement, for the benefit of its governors or officers that authorizes the issuance of stock, stock options or any other securities exercisable or exchangeable for or convertible into any equity interest in the Exchange representing more than 10% of the common stock outstanding at such time.

The proposed Article FOURTH (b)(iii)(A) provides also that each stockholder will be entitled to one vote for each share of common or preferred stock held of record on the books of the Phlx, subject to the applicable voting restrictions as described below.

Voting Limitations

In connection with the Demutualization, the Exchange proposes to include certain voting limitations as set forth in Article FOURTH(b)(iii)(B) of the proposed Certificate of Incorporation. The limitations will provide that, if any Person (as defined below) either alone or together with its Related Persons (as defined below), at any time owns of record or beneficially, whether directly or indirectly, more than 20% of the then outstanding shares of common stock (such shares of common stock in excess of such 20% limit being hereinafter referred to as "Excess Shares"), that Person and its Related Persons will not have any right to vote, or to give any consent or proxy with respect to, the Excess Shares, and the Excess Shares will be deemed not to be present for the purposes of determining whether a quorum is present at any meeting or vote of the stockholders of the Exchange. For purposes of the proposed Certificate of Incorporation, "Related Persons" means: (i) With respect to any Person, all "affiliates" and "associates" of such Person (as such terms are defined in Rule 12b–2 under the Act); [22] (ii) with respect to any natural person constituting a "member" (as such term is defined in the Act) of the Exchange, any broker or dealer with which such member is associated; and (iii) any two or more Persons that have any agreement, arrangement or understanding (whether or not in writing) to act together for the purpose of acquiring, holding, voting or disposing of shares of common stock. The term "Person" will be defined in the proposed Certificate of Incorporation to mean an individual, partnership (general or limited), joint-stock company, corporation, limited liability company, trust or unincorporated organization, and a government or agency or political subdivision thereof.

Notwithstanding the foregoing, a Person, either alone or together with its Related Persons, owning of record or beneficially, whether directly or indirectly, more than 20% of the then outstanding shares of common stock will be allowed to exercise voting rights, and give proxies and consents, with respect to those shares exceeding 20%, provided that: That Person (and its Related Persons owning any common stock) has delivered to the Board of Governors a notice in writing, not less than 45 days (or any shorter period to which the Board of Governors shall expressly consent) before the proposed exercise of its voting rights, of its intention to do so; and

- Before the intended exercise, the Board of Governors has adopted an amendment to the By-Laws adding a provision to expressly permit that Person's exercise of voting rights in excess of 20% and the amendment has been filed with the Commission as a proposed rule change under Section 19(b) of the Act [23] and has become effective.

The Board of Governors will not be permitted to adopt any amendment to the proposed By-laws described in the foregoing paragraph unless the Board of Governors has determined that: (x) The exercise of those voting rights by the Person in question and/or its Related Persons will not impair the Exchange's ability to discharge its responsibilities under the Act and the rules and regulations thereunder and is otherwise in the best interests of the Exchange and its stockholders; (y) the exercise of those voting rights by that Person and/or its Related Persons will not impair the Commission's ability to enforce the Act; and (z) that Person and/or its relevant Related Persons are not subject to any applicable statutory disqualification. In making those determinations, the Board of Governors may impose on the Person in question and its Related Persons such conditions and restrictions as it may in its sole discretion deem necessary, appropriate or desirable in furtherance of the objectives of the Act and the governance of the Exchange. Under the proposed Certificate of Incorporation, however, in no event will a Person who is a Member of the Exchange or a Person affiliated with a Member Organization be permitted to vote shares representing in excess of 20% of the outstanding common stock.

These voting limitations, together with the ownership and notification requirements described below, are intended to establish a system of supervision and control to effectively prevent acquisition of voting power of or assertion of control over the Exchange without the approval of both the Board of Governors and the Commission. In addition, the proposed change to the Certificate of Incorporation is designed to prevent any Member or Member Organization from dominating the Exchange.

Ownership Limitations and Notification Requirements

No Person, either alone or together with its Related Persons, will be allowed to own, of record or beneficially, directly or indirectly, more than 40% of the then outstanding shares of common stock of the Phlx and to the extent any Person (or its Related Persons) purports to own more than 40% of the then outstanding shares of common stock, that Person (and its Related Persons) will not be allowed to exercise any of the rights or privileges incident to the ownership of shares of common stock with respect to the shares exceeding the 40% limit, unless:

- That Person (as well as its Related Persons) has delivered to the Board of Governors a notice in writing, not less than 45 days (or such shorter period to which the Board of Governors expressly consents) before the acquisition of that ownership, of its intention to acquire the ownership; and
- Before the intended exercise, the Board of Governors has adopted an amendment to the By-Laws, adding a provision to expressly permit that Person's ownership in excess of 40% and the amendment has been filed with the Commission as a proposed rule

[16] For another example of such a restriction, see In the Matter of the Application of The International Securities Exchange LLC for Registration as a National Securities Exchange, Securities Exchange Act Release No. 42455 at Part III.A (February 24, 2000), 65 FR 11388; Securities Exchange Act Release No. 45803 (April 23, 2002), 67 FR 21306 (April 30, 2002) (Restructuring of the International Securities Exchange LLC ("ISE") from a limited liability company to a Delaware stockholder corporation and to "demutualize" by separating the equity interest in the ISE from members' trading rights).

[17] The rationales for applying this restriction prospectively are: (i) prior to the effectiveness of the Conversion Amendment, the Exchange's Certificate of Incorporation has provided that the Exchange is "not for profit" and has prohibited the payment of dividends altogether, and (ii) the Exchange has not compiled, and could not reasonably reconstruct, the information necessary for determining Regulatory Costs and Regulatory Fee Amounts (as defined herein) for prior periods.

[18] Regulatory fines and penalties will include such amounts imposed by the Business Conduct Committee and/or the Board, but not late charges or interest charged. Regulatory fees shall include the Exchange's fees relating to registered representative registration (currently, initial, renewal and transfer fees), as well as its off-floor trader (currently, initial and annual) and examinations fees.

[19] These amounts include costs reasonably related to the Exchange's regulatory function. Specifically, the Exchange intends to include the direct and allocated costs and expenses of the regulatory and enforcement groups as well as an allocation of the direct and allocated costs of technology, legal, compliance and other departments that support the regulatory and enforcement groups and work on regulatory projects. The Exchange's cost allocation methodology includes an employee's compensation and benefits-related costs and the overhead attributable to that employee, such as, for example, occupancy costs, office supplies, and administrative support and an allocation of management costs (again, adding, for example, the secretary's and managers' direct and allocated costs).

[20] *See* Article SEVENTEENTH(c) of the existing Certificate of Incorporation.

[21] In addition, existing contractual arrangements between Owners of Seats or Member Organizations on the one hand and non-Owner Members on the other hand, such as leases or A-B-C agreements, in all but one case contain a provision that may entitle the Seat Owner or the Member Organization, respectively, to direct the Member's vote with respect to the Plan of Demutualization.

[22] 17 CFR 240.12b-2.

[23] 15 U.S.C. 78s(b).

change under Section 19(b) of the Act,[24] which has become effective.

The Board of Governors will not be permitted to adopt any amendment to the proposed By-laws described in the foregoing paragraph unless the Board of Governors has determined that: (i) Such acquisition of such ownership by such Person in question and/or its Related Persons will not impair the Exchange's ability to discharge its responsibilities under the Act and the rules and regulations thereunder and is otherwise in the best interests of the Exchange and its stockholders; (ii) such acquisition of such ownership by such Person and its Related Persons will not impair the Commission's ability to enforce the Act; and (iii) that Person and its relevant Related Persons are not subject to any applicable statutory disqualification. In making those determinations, the Board of Governors may impose on the Person in question and its Related Persons such conditions and restrictions as it may in its sole discretion deem necessary, appropriate or desirable in furtherance of the objectives of the Act and the governance of the Exchange.

In addition, no Member, either alone or together with its Related Persons, will be allowed to own, of record or beneficially, directly or indirectly, more than 20% of the then outstanding shares of common stock of the Phlx. To the extent any Member (or its Related Persons) purports to so own more than 20% of the then outstanding shares of common stock, that Member (and its Related Persons) will not be allowed to exercise any of the rights or privileges incident to the ownership of shares of common stock with respect to the shares exceeding the 20% limit.

In making those determinations, as in the case of a By-Law amendment expressly permitting the exercise of voting rights exceeding the 20% limit, the Board will be allowed to impose such conditions and restrictions on that Person and its Related Persons as it may in its sole discretion deem necessary, appropriate or desirable in furtherance of the objectives of the Act and the governance of the Phlx.

Unless the conditions specified above are met, if any Person exceeds the 40% threshold, either alone or together with its Related Persons, the Phlx will have the right, but not the obligation, to purchase from that Person and its Related Persons the shares of common stock that exceed the 40% threshold for a price equal to the par value of the shares of common stock.

If any Member exceeds the 20% threshold, either alone or together with its Related Persons, the Phlx will have the right, but not the obligation, to purchase from that Member and its Related Persons the shares of common stock that exceed the 20% threshold for a price equal to the par value of the shares of common stock. Also, unlike ownership by non-Members in excess of 40%, the proposed Certificate of Incorporation does not contain a proviso allowing for Members to own shares in excess of 20% with appropriate notification and By-law amendment sanctioned by the Commission.

Pursuant to Article FOURTH(b)(iv) and (v) of the proposed Certificate of Incorporation, any Person, either alone or together with its Related Persons, that at any time owns (whether by acquisition or by a change in the number of shares outstanding) of record or beneficially, directly or indirectly, 5% or more of the then outstanding shares of common stock will be required, immediately upon so owning 5% or more of the then outstanding shares of common stock, to give the Board of Governors written notice of that ownership and will be required to update the notice promptly after any ownership change. However, an updated notice will not have to be provided to the Board of Governors in the event of an increase or decrease of less than 1% (of the then outstanding shares of common stock) in the ownership percentage so reported (for that purpose, the increase or decrease will be measured cumulatively from the amount shown on the immediately preceding report) unless such increase or decrease of less than 1% results in the Person's owning more than 20% or more than 40% of the shares of common stock then outstanding (at a time when the Person so owned less than those percentages) or results in the Person's owning less than 20% or less than 40% of the shares of common stock then outstanding (at a time when the Person so owned more than those percentages). These proposed notification requirements will allow the Exchange to fulfill its reporting obligations to the Commission and to better monitor the voting and ownership limitations in the proposed Certificate of Incorporation described above.

Transfer Restrictions. Pursuant to Section 29–1 of the proposed By-laws, no stockholder of the Exchange may sell, transfer (by operation of law or otherwise) or otherwise dispose of any shares of Class A Common Stock except in blocks of 100 shares per sale, transfer or disposition. This transfer restriction is intended to ensure that the number of holders of common stock of the Exchange will not exceed the threshold for having to register the Exchange with the Commission under Section 12 of the Act.[25] The Exchange believes that, at least for some period of time after the Demutualization, the obligation of being a public reporting company would be overly burdensome on the Exchange as compared to the advantages conferred by that status.

In addition, Article XXIX of the proposed By-laws contains other restrictions typical for a Delaware stock corporation to ensure compliance with the Securities Act of 1933, as amended (the "Securities Act"),[26] and to allow for efficient future marketing of the capital stock by an underwriter in connection with and after a potential initial public offering of shares of capital stock of the Exchange.[27] Accordingly, Section 29–2 of the proposed By-laws provides that after the Demutualization, no sale, transfer or other disposition of the capital stock of the Exchange may be effected except: (i) Pursuant to an effective registration statement under the Securities Act and in accordance with all applicable state securities laws; (ii) upon delivery to the Exchange of an opinion of counsel satisfactory to the Board that such sale, transfer or other disposition may be effected pursuant to a valid exemption from the registration requirements of the Securities Act and all applicable state securities laws; (iii) upon delivery to the Exchange of such certificates or other documentation as counsel to the Exchange shall deem necessary or appropriate in order to ensure that such sale, transfer or other disposition complies with the Securities Act and all applicable state securities laws; or (iv) pursuant to such procedures as the Chairman of the Board (or his designee) may adopt from time to time with respect to such transactions. In addition, no sale, transfer or other disposition of the capital stock of the Exchange may be effected by any holder of such stock until all amounts due and owing by such holder to the Exchange (whether any such amounts relate to such holder's status as a stockholder, Member, participant or Member (or participant) Organization of the Exchange or otherwise) shall have been paid in full.

In addition, Section 29–3 of the proposed By-laws provides that no stockholders may, if requested by the Exchange or any underwriter of equity securities of the Exchange, sell or otherwise transfer or dispose of any shares of capital stock of the Exchange held by such stockholder during the 180-day period following the effective date of a registration statement of the Exchange filed under the Securities Act in respect of that class of capital stock. If requested by the Exchange or any such underwriters, each stockholder will be required to execute an agreement to the foregoing effect. The Exchange may impose stop-transfer instructions with respect to the shares (or securities) subject to the foregoing restriction until the end of said 180-day period.

Series A Preferred Stock/Phlx Member Voting Trust

Designation and Issuance of Series A Preferred Stock to Phlx Member Voting Trust/Trust Agreement. Article FOURTH (b) of the proposed Certificate of Incorporation will designate one share of preferred stock as the "Series A Preferred Stock." The Series A Preferred Stock will have the sole power to (i) select the On-Floor Governors, and (ii) remove the On-Floor Governors in accordance with the procedures described below in connection with the removal of Governors.

As set forth in the Trust Agreement, at the effective time of the Merger, the Exchange will issue the share of Series A Preferred Stock to the Trust. Pursuant to Section 4.1 of the Trust Agreement, the Trustee of the Trust will have to vote the share of Series A Preferred Stock with respect to the designated nominees for election as On-Floor Governors, or the removal of On-Floor Governors, as the case may be, as directed by the vote of the Member Organization Representatives of Member Organizations entitled to vote, as described below.

The purpose of the Series A Preferred Stock is to establish a means by which the vote of the Member Organizations (in their capacities as such) can effectively elect and, subject to certain additional requirements described below, remove the five On-Floor Governors. Under Delaware law, the Governors of a stock corporation can be elected only by stockholders, and Member Organizations (in their capacities as such) will not be stockholders.

Dividend Rights. Because the Series A Preferred Stock will be issued only to enable the non-stockholder Member Organizations to vote indirectly for the On-Floor Governors, Article FOURTH (a)(i) of the proposed Certificate of Incorporation will provide that the Series A Preferred Stock will not have the right to receive any dividends.

Liquidation Preferences. Pursuant to Article FOURTH(a)(ii) of the proposed Certificate of Incorporation, upon liquidation of the Phlx the holder of the share of Series A Preferred Stock will be entitled to receive an amount equal to the par value of the share of Series A Preferred Stock (or $0.01) held by the holder after the payment of, or provision for, obligations of the Phlx and any preferential amounts payable to holders of any other class or series of outstanding shares of preferred stock.

Transferability. Article FOURTH(a)(iv) of the proposed Certificate of Incorporation will provide that the Series A Preferred Stock will not be transferable (whether by sale, pledge, operation of law or any other disposition) without the prior written consent of the Board. If the Board determines that it is in the best interests of the Exchange or its stockholders for any holder of the share of Series A Preferred Stock to sell the share to the Exchange or any other person, the holder will be required under Article FOURTH(a)(iii) of the proposed Certificate of Incorporation to effect the sale as directed by the Board.

B. Corporate Governance of the Demutualized Phlx

According to Article SIXTH of the proposed Certificate of Incorporation and Sections 4–1 and 4–4 of the proposed By-laws, the principal management of the Phlx after Demutualization will continue to rest with the Board and the Standing Committees of the Exchange.

To ensure compliance with the Act in the context of a demutualized Exchange, Article SIXTH of the proposed Certificate of Incorporation will provide that, in managing the business and affairs of the Phlx, the Governors will have to consider applicable requirements for registration as a national securities exchange under Section 6(b) of the Act,[28] including the requirements that (i) the rules of the Phlx be designed to protect investors and the public interest, and (ii) the Phlx be so organized and have the capacity to carry out the purposes of the Act and (except as otherwise provided in the Act or the rules and regulations thereunder) to enforce compliance by its Members and persons associated with its Members with the Act, the rules and regulations thereunder, and the rules of the Phlx.

Board of Governors—Composition; Eligibility

Article SIXTH of the proposed Certificate of Incorporation, together with Article IV of the proposed By-laws, will set forth the required number and composition of the Board. Pursuant to Section 4–1 of the proposed By-laws, the composition of the Board will be the same as before the Demutualization and, as set forth in Section 4–3(b) of the proposed By-laws, will consist initially of the same individuals in office at the time of the Demutualization. According to Article SIXTH (a) of the proposed Certificate of Incorporation, the Board will continue to have a total of 22 Governors and be composed as follows:

- The Chairman of the Board, who will be the individual then holding the office of Chief Executive Officer ("CEO");
- 11 Non-Industry Governors (of whom at least five will have to be public Governors); and
- 10 Industry Governors, of which five will have to be On-Floor Governors and five will have to be Off-Floor Governors).

The criteria set forth in the Exchange's current By-laws for eligibility of persons to serve as a Governor within each category of Governor will remain the same after Demutualization.

Board of Governors—Classification and Term Limits

According to Section 4–3(a) of the proposed By-laws, the Board will remain classified, with Governors serving staggered three-year terms. Governors (other than the Chairman) may serve for up to two consecutive three-year terms starting from the effective time of the Merger. In order to preserve continuity post-Demutualization, Section 4–3(b) of the proposed By-laws will provide that Governors who hold their positions at the effective time of the Merger will continue to hold those positions, in their respective classes, until their original terms expire and that the term limits will not take into consideration any service as Governor before the Demutualization but will only apply from and after the effective time of the Merger. The Exchange believes that this provision serves to ensure continuity in the governing body of the Exchange through such a significant corporate event as the Demutualization. The current Board of Governors has considered the Demutualization and the advantages and risks related to it, as well as the future strategy for the Exchange post-Demutualization, for a significant period of time.

[24] 15 U.S.C. 78s(b).

[25] 15 U.S.C. 78l.

[26] 15 U.S.C. 77.

[27] It should be noted that no such transaction is currently contemplated at the time of this proposed rule change.

[28] 15 U.S.C. 78s(b).

Nomination and Election of Governors

The nomination and election procedures of the Phlx will be revised to ensure continuing fair representation for Members and Member Organizations in the context of the demutualized Exchange, while at the same time adapting the Exchange to its proposed status as a demutualized business corporation with stockholders. Generally, the new nomination and election structure of the Exchange will be as follows:

- The Non-Industry Governors, Off-Floor Governors and the Chairman of the Board will continue to be nominated by the Nominating and Elections Committee and will be elected by the holders of the common stock at meetings of stockholders, as described below.
- Stockholders will be permitted to make independent nominations of Non-Industry and Off-Floor Governors upon written notice of the nominations not less than 90 nor more than 120 days before the first Monday in February of each year (or such other date as the Board may establish). These nominations will be subject to review by the Nominating and Elections Committee.

Member Organizations, as described below, will designate the On-Floor Governors in accordance with the following procedures:

- On-Floor Governors will be nominated by the Nominating and Elections Committee from recommendations made: (i) By members of the Nominating and Elections Committee; or (ii) by any Member, participant or Member Organization Representative.
- Independent nominations by Member Organization Representatives will be valid only if signed by Member Organization Representatives representing no less than 50 votes.
- Member Organizations, through their authorized Member Organization Representative, will vote for designated On-Floor Governors among nominees so selected at the annual meeting of Members and Member Organizations.
- Nominees for Governors receiving the highest numbers of votes for the category of Governor for which they were respectively nominated as candidates will be declared the "Designated Nominees" for those offices. In case of a tie, the Nominating and Elections Committee will make the selection as to who among the tying nominees shall be designated.
- On-Floor Governors will then be elected by the Trust owning the share of Series A Preferred Stock based on the "Designated Nominees" elected by the Member Organization Representatives as described above.

Governors—Vacancies and Removal

In accordance with Section 3–8 of the proposed By-laws, vacancies (including vacancies created by increases in the size of the Board of Governors) will continue to be filled by the Nominating and Elections Committee, upon approval by a majority of the Governors. With respect to the removal of Governors, Article SIXTH(b) of the proposed Certificate of Incorporation and Sections 3–3 and 4–4 of the proposed By-laws will provide that Governors may be removed only for cause or, under certain circumstances, upon recommendation by a majority of the Board of Governors. In addition, Governors may be removed only by a 66⅔% vote of the group that elected them (*i.e.*, the holders of common stock, in the case of the Non-Industry or Off-Floor Governors, or the shares of Series A Preferred Stock as instructed by a vote of the Member Organization Representatives, in the case of the On-Floor Governors).

An On-Floor Governor may be removed at any annual or special meeting. A special meeting for the removal of an On-Floor Governor may be called by the Chairman of the Board of Governors or the Board of Governors or, only in the case of a special meeting of Member Organization Representatives for the purpose of voting on the removal of an On-Floor Governor, by the Member Organization Representatives representing a majority of the then issued and outstanding permits. If such a meeting is proposed to be called by Member Organization Representatives, such Member Organization Representatives must provide the Chairman written notice prior to calling any such meeting stating in reasonable detail the basis for, and the facts and circumstances purported to warrant, such removal of the relevant On-Floor Governor.

Committees

No changes will be made in Board committee structure or composition as part of the Demutualization process, except as follows:

- Pursuant to Sections 10–6 and 10–17 of the proposed By-laws, respectively, at least half of the Admissions Committee and the Foreign Currency Options Committee, respectively, will have to be Members, participants or persons affiliated with Member Organizations or participant organizations;
- Pursuant to Sections 10–20 and 10–16 of the proposed By-laws, respectively, at least half of the Options Committee and the Floor Procedure Committee, respectively, will have to be Members or persons affiliated with Member Organizations;
- Pursuant to Section 10–6 of the proposed By-laws, the Business Conduct Committee will share jurisdiction over the revocation of permits and foreign currency options participations in connection with disciplinary matters with the Admission Committee; and
- Pursuant to Section 10–7(a) and (b) of the proposed By-laws, certain term limits applicable to members of the Allocations Committees will be eliminated.

The existing Governance Documents do not include any specification as to the composition of the Admissions Committee, Foreign Currency Options Committee, the Options Committee or the Floor Procedure Committee and, therefore, do not require the committees to include any Industry Governors. Accordingly, the Proposed Rule Change will ensure participation of Industry Governors in each of these committees, thereby allowing Industry Governors to influence decisions made in vital areas of day-to-day trading operations and membership matters. The elimination of term limits respecting the Allocations Committees is intended to achieve consistency with most other committees, which do not have such limits.

Management and Executive Officers

The management structure of the Exchange, including its executive officers, will remain unchanged in the Demutualization in accordance with Article V of the proposed By-laws. The CEO position will continue to be a full-time position to be appointed by the Board, and the holder of this position will act as its Chairman. The person acting as CEO at the time of the Demutualization will be the only nominee for the position of Chairman of the Board, and will be elected by the votes of the holders of the common stock. The existing requirement that the CEO may not be a partner of a Member (or participant) Organization, nor an employee, agent, consultant, officer, director or stockholder of a Member (or participant) Organization will be retained. The CEO will appoint the other officers of the Exchange.

Limitation of Liability and Indemnification

Articles FIFTEENTH and SIXTEENTH of the proposed Certificate of Incorporation and Section 4–18 of the proposed By-laws will include provisions substantially similar to the Article EIGHTEENTH of the existing Certificate of Incorporation, in accordance with Section 145 of the Delaware General Corporation Law. Such provisions eliminate the personal liability of Governors (and other persons mentioned below) for monetary damages for breach of fiduciary duty as a Governor, except for liability:

- For any breach of the Governor's duty of loyalty to the Phlx or its stockholders;
- For acts or omissions not in good faith or that involve intentional misconduct or a knowing violation of law;
- Under Section 174 of the Delaware General Corporation Law regarding unlawful dividends and stock purchases; or
- For any transaction from which the Governor obtained an improper personal benefit.

The proposed Certificate of Incorporation and By-laws will further permit the Phlx to indemnify to the fullest extent permitted under and in accordance with the laws of the State of Delaware any Governor (or director) or officer of the Phlx, and any person that is or was serving at the request of the Phlx as a Governor, committee member or in-house legal counsel, officer, director (or person in similar position), employee or agent of another corporation or of a partnership (general or limited), limited liability company, joint venture, trust or other enterprise or business entity, against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by the person in connection with any action, suit or proceeding if the person acted in good faith and in a manner the person reasonably believed to be in or not opposed to the best interests of the Phlx, and, with respect to any criminal action or proceeding, had no reasonable cause to believe the person's conduct was unlawful. The Phlx may also pay the expenses of indemnified persons incurred in defending a suit or proceeding in advance of the final disposition of the suit or proceeding. The proposed Certificate of Incorporation will also permit the Phlx to secure insurance on behalf of any officer, director, employee or other agent for any liability arising out of his or her actions in that capacity. The Exchange believes that these indemnification provisions are substantially similar to those generally employed by other Delaware stock corporations and the scope of the persons covered is intended to continue to attract and retain qualified personnel.

C. Permits and Trading Rights

Issuance of Permits and Application Process

Under the proposed Plan of Demutualization, access to the Exchange facilities and the right to trade will be conferred by the newly-issued permits rather than by ownership or leasing of Seats of the Exchange. As discussed above, trading of foreign currency options will continue to be allowed through the existing FCO participations, but, after Demutualization, will also be permitted through permits, as will be provided in proposed Rule 908(c)(i).

Proposed Rule 971 will provide that all ETPs and ETP use agreements will terminate with immediate effect as of the close of trading on the day the Merger becomes effective without any further action on the part of any party thereto. Similarly, proposed Rule 971 will also provide that all leases of Seats and all leases and A–B–C agreements with respect to such Seats, will terminate with immediate effect as of the close of trading on the day the Merger becomes effective without any further action on the part of any party thereto. All provisions in the Certificate of Incorporation, By-laws and Rules relating to the transfer or lease of a Seat or A–B–C agreement, and all defined terms related thereto (such as "Lessor" and "Lessee") will be amended as necessary to reflect that, after the Demutualization, these provisions and defined terms will only apply to FCO participations. These provisions will no longer be applicable to permits, because permits (including the Series A–1 Permits) will not constitute property that can be transferred by its holder (except within the same member Organization). Similarly, the provisions relating to ETPs, such as Rule 23, will be deleted.

To provide an orderly transition from Seats to permits, proposed Rule 972 will allow each Member (including, without limitation, each holder of an equity trading permit), inactive nominee and Member Organization holding that status immediately before the effective time of the Merger that, at that time, is not subject to any suspension of that status, to maintain that status. All Members and ETP holders who fulfill the requirements described in the previous sentence will receive Series A–1 Permits immediately upon the Demutualization.

Proposed Rule 972 will also provide that existing Member Organizations will maintain their status for a period of 15 days following the Merger. Each Member Organization, however, will have to provide to the Admissions Committee and the Exchange, as applicable, before the end of the 15-day period, the following:

- The security deposit or alternative compliance with proposed Rule 909 (the "security requirement") (as described below);
- The form to be filed by the Member Organization's qualifying permit holder; and
- The designation of the Member Organization's Member Organization Representative in the form prescribed by the Exchange.

If a Member Organization fails within that period to comply with the security requirement and/or to furnish the form to be filed by the Member Organization's qualifying Member, the Member Organization's status as such will immediately be suspended. If a Member Organization fails to designate a Member Organization Representative, the Member Organization may not exercise any voting rights with respect to any permits held by persons who are associated with the Member Organization.

Classes or Series of Trading Permits

Immediately after the Demutualization, pursuant to Section 12–1 of the proposed By-laws and proposed Rule 908, there will be only one series of permit, called the "Series A–1 Permit," which will confer upon its holder all the rights and privileges of a Member of the Exchange. An individual will be allowed to hold a Series A–1 Permit if he or she meets the qualification criteria that will be set forth in Article XII of the proposed By-laws and Rules 901 and 908 and/or may be imposed by the Admissions Committee (which criteria the Exchange intends will remain largely the same as they were before the Demutualization), including the requirements that a Member be an individual at least 21 years of age and be associated with a Member Organization.[29] Pursuant to Sections 12–1 and 12–4 of the proposed By-laws and proposed Rule 908(b), Series A–1 Permits will be limited or unlimited in number and may be issued from time to time by the Exchange, as determined by the Board in its sole discretion.

[29] Under Sections 12–2 and 12–4 of the proposed By-laws, Stock Clearing Corporation of Philadelphia ("SCCP"), as an eligible corporation, may hold a permit but will continue not to be subject to the qualification criteria applicable to persons seeking a permit. SCCP, a subsidiary of the Phlx, is a registered clearing agency.

After Demutualization, Section 12–1 of the proposed By-laws will empower the Board to:

- Authorize the issuance of an unlimited or restricted number of additional permits;
- Terminate or eliminate any class or series of permits; and
- Create additional classes or series of permits.

Any of these actions, however, will continue to be subject to Commission review and/or approval. In accordance with Section 12–3 of the proposed By-laws, no person will be allowed to hold more than one permit.

Pursuant to proposed Rule 971, separate equity trading permits currently issued and outstanding will be eliminated and be replaced by the Series A–1 Permits described above.

Qualifications

Initially, except to the extent provided in applicable product and/or activity criteria set forth in the proposed Rules, qualifications and other requirements for Members to conduct certain activities (*e.g.*, to act as a specialist or a floor broker), to trade certain products (*e.g.*, special capital requirements for specialists for certain equity securities, allocation of books and Registered Options Trader assignments) or to use specific facilities of the Exchange (*e.g.*, testing requirements for use of certain Exchange technology) will remain largely the same as they were before the Demutualization.

Member Organizations and Member Organization Representatives

As under the current structure, a Member will continue to be permitted to be associated with more than one Member Organization.[30] In accordance with proposed Rule 908(c)(ii), each holder of a permit will be obliged, however, to designate only a single eligible organization with which the Member is associated as the Member's "primary affiliation" for the purposes of voting, as will be provided in Article III of the proposed By-laws. A Member will be allowed to qualify as a Member Organization only the entity the Member has designated as his or her primary affiliation. Accordingly, every Member shall have one primarily-affiliated Member Organization and may have more than one associated Member Organization.

Unlike the current Phlx regime, after Demutualization, individual Members will not directly be accorded voting rights. Rather, in regard to the election and removal of On-Floor Governors, Member Organizations will be entitled to exercise voting rights in respect of the permits held by those Members who have designated the Member Organization as their primary affiliation. Specifically, pursuant to proposed Rule 921 and Section 12–8 of the proposed By-laws, each Member Organization will have to register with the Exchange and designate a single individual as its "Member Organization Representative." The concept of a Member Organization Representative is designed to facilitate the post-Demutualization voting process. Permit holders, or Members, themselves will not exercise any voting rights. Instead, voting rights associated with a permit will be exercised by the Member Organization with which the Member is primarily associated and, as noted above, will be exercised by the Member Organization's Member Organization Representative. The Member Organization Representative will be the only person who may exercise the voting rights in respect of the Member Organization in respect of matters on which Member Organizations may vote. Proposed Rule 921 will also provide that a Member Organization Representative will have to accept the designation by filling out a registration documentation required by the Exchange.

Pursuant to proposed Rules 921 and 972, with the exception of certain provisions in proposed Rule 921(c) retaining the existing concept of "inactive nominees" in order to alleviate hardships, failure to qualify a Member Organization Representative at any time will prevent a Member Organization from exercising any rights in connection with the Exchange, including the right to vote for designated On-Floor Governors as described below.

According to proposed Rule 924, Members[31] will be liable with respect to any fees, fines, dues, penalties or other amounts imposed by the Exchange in connection with such Member's permit or any activities conducted in connection with such permit, whether or not any such obligation was incurred on behalf of his account or on behalf of his Member Organization. In addition, proposed Rule 924 will provide that Member Organizations will be liable with respect to any fees, fines, dues, penalties or other amounts imposed by the Exchange in connection with such Member Organization and any Member associated with such Member Organization in connection with a permit or any activities conducted in connection with such permit by such member on behalf or for the account of such Member Organization. Under proposed Rule 924(b), similar to the rule in effect today, Member Organizations will have the ability to allocate responsibilities among themselves regarding Members associated with more than one Member Organization, provided that any such arrangements have been provided to the Exchange in the form required by it at least 30 days prior to their desired effectiveness.

Security Requirement

According to proposed Rule 909, each Member Organization will have to provide and maintain security to the Exchange (or alternative compliance) for the payment of any claims owed to the Exchange, to SCCP, and to Members and/or other Member Organizations. Currently, Section 14–5 of the By-laws provides that the Exchange (through the Admissions Committee) may dispose of any Seat upon written notice if amounts owed to the Exchange exceed a certain threshold amount and have been outstanding for at least one year, which possibility will be eliminated in connection with the elimination of Seats in the Demutualization. Accordingly, the Exchange proposes the security requirement to protect itself in the case of non-payment of certain amounts owed. The proposed security requirement will consist of:

(i) Excess net capital of at least the amount required by the Exchange, as will be published by the Exchange from time to time;[32]

(ii) an acceptable guaranty by a clearing Member Organization that is acceptable to the Exchange; or

(iii) a deposit with the Exchange in an amount not to exceed $50,000.

The amount of the security for a Member Organization will remain the same regardless of the number of permits issued to affiliates of the Member Organization. If a Member Organization's registration is terminated and no Members remain associated with the Member Organization, the Exchange will be permitted to apply the proceeds of any remaining security to the payment of any amounts owed by or on behalf of the Member Organization to, or claimed by, the Exchange, to SCCP, and to other Member Organizations, and any balance of the security thereafter remaining will be returned to the Member Organization or, in the case of a guaranty, the guaranty will be returned to the guarantor Member Organization.

The proposed By-laws will also provide in Section 12–9(b) that following the Demutualization, Members, Member Organizations and holders of FCO participations will have to pledge in writing to abide by the proposed Certificate of Incorporation, the proposed By-laws, the proposed Rules and any other rules and regulations of the Exchange.

Voting Rights

After the Demutualization, holders of permits will not have any voting rights. Member Organizations will have the right to:

- Designate the five On-Floor Governors for election to the Board in accordance with Section 3–12 of the proposed By-laws;
- Remove the On-Floor Governors in accordance with Sections 3–2(c) and 3–3 of the proposed By-laws (together with the right to designate the On-Floor Governors, the "Designation Rights"); and
- Designate the On-Floor Vice-Chair in a contested election as described below.

Each permit will carry one vote. As discussed above, the vote may be exercised only by the qualified Member Organization Representative of a Member Organization designated by a holder of a permit as its primary affiliation.

The Designation Rights will be exercised in accordance with the following procedure:

- Based on input from the membership or others, the Nominating and Elections Committee will propose a slate of qualified On-Floor Governors;
- In addition, the Member Organization Representatives, representing at least 50 permits, will be permitted to propose qualified alternative candidates;
- The Member Organization Representatives, at an annual meeting of Members and Member Organizations, will then elect the designated On-Floor Governors from among the Nominating and Elections Committee's slate and any qualified individuals nominated by Member Organization Representatives in accordance with the nomination procedures.

The winners of this election will then be eligible for designation as On-Floor Governors. In compliance with Delaware corporate law, the designated On-Floor Governors will be formally elected by the Trust that holds the single outstanding share of Series A Preferred Stock in accordance with Article FOURTH(a)(iii) of the proposed Certificate of Incorporation.

Contested Election of the On-Floor Vice Chairman

With respect to the election of the On-Floor Vice Chairman, Section 4–2 of proposed By-laws will provide that, if there is a contest for the position of On-Floor Vice Chairman of the Board, the On-Floor Vice Chairman of the Board may be selected from the On-Floor Governors by a vote of the Member Organization Representatives, as promptly as possible after the annual meeting of stockholders at a special meeting of Members and Member Organizations called for that purpose.

Voting Concentration Limits

In order to prevent any group of Members of Member Organizations from dominating elections of the Member Organization Representatives, the proposed By-laws will provide in Section 3–12(c) that if any Member Organization, directly or indirectly, possesses the right to vote more than 20% of the then outstanding permits, that Member Organization will not have any right to vote, or to give any consent or proxy with respect to, any permits exceeding the 20%, and the excess permits will not be considered present for the purposes of determining whether a quorum is present at any meeting or vote of the Members or Member Organizations, and will not be entitled to vote in determining the number of permits required for a quorum or to be voted for approval of or to give consent with respect to any matter presented to the Members or the Member Organizations.

Member and Member Organization Meetings and Actions

Pursuant to Section 3–2 of the proposed By-laws, annual meetings of Members and Member Organizations will be held on the second Monday in March of each year to designate nominees for On-Floor Governors. Except as described above with respect to a special meeting called for the purpose of removing an On-Floor Governor, special meetings of Members or the Member Organization Representatives may be called at any time only by the Chairman of the Board or by a majority of the Board.

At all meetings of Members and Member Organizations, each Member Organization Representative may cast his vote in person or by proxy, provided that no action will become effective unless there shall have been voted a majority of the number of permits outstanding at such time, not including any Excess Permits, as defined in Section 3–12(c) of the proposed By-laws. Each Member Organization Representative may cast the number of votes equal to the number of permits held by Members having designated the Member Organization Representative's Member Organization as its primary affiliation (subject to the voting restrictions described above).

Section 3–11 of the proposed By-laws will provide that notice of any meeting of Members and Member Organizations must be given to each Member Organization Representative entitled to vote at such meeting not less than 10 days nor more than 50 days before the date of the meeting.

Term and Termination of Permits

Pursuant to proposed Rule 908(e), the holder of a permit will be allowed to terminate the permit at any time upon written notice to the Exchange. The Exchange will be allowed to terminate any individual permit in accordance with the By-laws and Rules of the Exchange only upon:

- The non-payment of any dues, foreign currency options users' fees, fees, fines, penalties, other charges, and/or other monies due and owed the Exchange;
- The insolvency of a Member or Member Organization (or if the Business Conduct Committee has determined the Member or Member Organization to be financially unsafe to continue trading); or
- The Exchange's imposition of a disciplinary sanction.[33]

The terminating permit holder and each Member Organization with which the holder is associated will remain responsible for all obligations of the terminating Member, including, without limitation, all applicable dues, fees, charges, fines, penalties and other obligations arising from the holding or use of a permit before its termination.

Pursuant to proposed Rule 908(f), the Exchange will be able to terminate the entire series of Series A–1 Permits on no less than 60 days' notice to the permit holders. If, however, within six months after any such termination of the entire series of Series A–1 Permits, the Exchange issues any other class or series of permit with respect to any securities product previously covered by the Series A–1 Permit, any permit holder of a terminated Series A–1 Permit, who meets the applicable eligibility requirements with respect to such new class or series of permit, will be entitled to receive on terms no less favorable

[30] *See* Rule 793.

[31] This rule also applies to FCO participants and participant organizations with respect to FCO participations.

[32] In accordance with the By-laws and Rules, the Member Organization will be subject to monthly reporting obligations to evidence the maintenance of that excess net capital requirement.

[33] *See* Section 14–1 and Articles XVII and XVIII of the proposed By-laws.

than those applicable to other persons such new class or series of permit so long as such permit holder will trade with such new class or series of permit such product in the same capacity as he had done with a Series A–1 Permit before such termination (but only if he had continuously traded such product in such capacity for at least one year prior to such termination). In addition, such holder of the terminated Series A–1 Permit will be required to apply for such new permit within 30 days of the later to occur of (i) the termination of the series of Series A–1 Permits or (ii) the initial issuance of the new class or series of permit.

Transfer of Permits

Section 12–1(b) of the proposed By-laws, as well as proposed Rule 908(h) will also provide that, unless the Board resolves otherwise, no permit may be sold, transferred (by operation of law or otherwise), leased or otherwise encumbered by any person to whom such permit is issued by the Exchange. However, proposed Rule 908(h) provides that the existing concept of "inactive nominees" will be retained to alleviate certain administrative hardships for Member Organizations, such that a permit can be transferred to and from an inactive nominee.

Disciplinary Actions and Appeal Process

Enforcement of any disciplinary action and appeals against the same will be conducted in the same manner as before the Demutualization.

Fees, Dues and Charges

Currently, the Board of Phlx has the authority to set fees, dues and other charges [34] in its sole discretion, subject to the requirements under the Act, including filing requirements. Pursuant to lease agreements, Members who lease Seats from Owners are ordinarily required to make lease payments in respect of the lease.

After the Demutualization, the Board of the Phlx will continue to have the authority to set Member fees, dues and other charges in its sole discretion in accordance with Section 14–1 of the proposed By-laws. However, seat leases and lease payments (other than with respect to FCO participations) will no longer exist. All other Exchange charges in effect at the time of the Demutualization will continue to apply until changed.[35] Of course, all fees are subject to change, both before and after Demutualization, subject to approval by the Board and filing with the Commission.

In connection with the Demutualization, the Exchange proposes to make certain corresponding changes to the defined terms applicable to its By-laws and Rules. These changes, reflected in Section 1–1 of the existing and the proposed By-laws, as well as in Rules 1 through 21 of the existing Rules and 1 through 22 of the proposed Rules, are generally [36] designed to adapt such defined terms to the proposed post-Demutualization structure of the Exchange, as described herein.

ii. Summary of Non-Demutualization-Related Changes

Certain aspects of the Proposed Rule Change are not directly related to the Plan of Demutualization. These changes are principally of a clean-up nature, intended to delete obsolete provisions that relate mainly to membership, in the interest of clarity and to avoid confusion post-Demutualization.

Definition of Member Firm, Member Corporation and Member Organization

The Exchange proposes to harmonize the use of the defined terms Member Firm, Member Corporation and Member Organization throughout its By-laws and Rules by eliminating the separate defined terms "Member Firm" (Rule 3 of the existing Rules) and "Member Corporation" (Rule 4 of the existing Rules) and amending the defined term "Member Organization" (Rule 6 of the existing Rules and Rule 3 of the proposed Rules) to include any Member Firm and Member Corporation, as they were previously defined. Wherever such defined terms appear in either the By-laws or the Rules, the Exchange proposes to make the corresponding change to Member Organization. The Exchange believes that these changes eliminate certain definitional inconsistencies.

Convertible Memberships

The Exchange proposes to delete the parts of Article XII of the existing By-laws that relate to "convertible memberships" on the Exchange, together with any references to any classes of memberships that existed in connection with the Exchange's pre-1975 status as an unincorporated entity. No such convertible membership has been outstanding at any time and any transitional rules relating to the Exchange's previous unincorporated status are obviously no longer required.

Commissions

The Exchange proposes to delete Article XIX of the existing By-laws in its entirety, which relates to certain requirements for fixed rates of commissions for transactions effected on or by the use of the facilities of the Exchange. The Exchange believes these provisions do not comport with Section 6(e) of the Act.[37] To avoid confusion, they should, therefore, be deleted without replacement. The Exchange also proposes to delete the related Rule 248.

Market-Maker Membership

The Exchange proposes to delete Article XXIII of the existing By-laws, relating to Market-Maker Memberships, in its entirety. No such Market-Maker Membership has been issued since the 1970s and none is currently outstanding. Following the Demutualization, the Exchange is not initially proposing to create a specific permit for market-makers; any rights and privileges required to engage in market making on the Exchange will initially be granted through the proposed Series A–1 Permit. The Exchange also proposes to delete the related Rules 456–459. These deletions are intended to avoid confusion with respect to these unused membership-related provisions.

Exchange Options Trading

The Exchange proposes to delete Article XXVI of the existing By-laws, relating to Exchange options trading through a classification of membership named "Options Membership" in its entirety. No such Options Membership has at any time been issued and outstanding. Following the Demutualization, the Exchange is not initially proposing to create a specific permit to trade options on the Exchange; any rights and privileges required to engage in trading options on the Exchange will initially be granted through the proposed Series A–1 Permit. Accordingly, this deletion is also intended to avoid confusion.

References to the Exchange's Constitution

The Exchange proposes to delete references to the "Constitution of the Exchange" from the Rules 111, 201A and 960.2 as well as from the commentary to Rule 803. Where applicable, the references will be either deleted in their entirety or will be replaced by references to the Certificate of Incorporation. The Exchange has not had a constitution since its incorporation in 1972 and, since that time, has been governed exclusively by its Certificate of Incorporation and By-laws.

References to the Exchange's President

The Exchange proposes to delete references to the Exchange's "President" from the Rules and replace such references with "Chairman of the Board of Governors." The Exchange has not established the position of a President and has no immediate plans to establish such a position after the Demutualization.

Participation in Mandatory Decimalization Testing

The Exchange proposes to delete Rule 650 in its entirety which relates to the mandatory participation of Members in certain programs concerning the testing of the Exchange's system in connection with decimalization. Such tests have been performed, and, therefore, Rule 650 has become obsolete.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act [38] in general and, in particular, furthers the objectives of Sections 6(b)(2),[39] 6(b)(3),[40] 6(b)(5) [41] and 11(A)(a)(1) [42] of the Act. Specifically, after careful consideration, the Exchange believes that the proposed permit structure to be established in connection with the Plan of Demutualization should further general access for any registered broker or dealer or natural person associated with a registered broker or dealer to become a member of the Phlx in accordance with Section 6(b)(2) of the Act.[43] Under its current structure, Seats on the Exchange, to which the right to be a member of the Exchange is linked, are limited in number to 505.[44] Under Section 12–1 of the proposed By-laws, the Exchange will be entitled to issue a potentially unlimited number of permits [45] to qualified individuals. Consequently, the potential availability of a number of permits greater than 505 would allow more qualified brokers and dealers to become Phlx Members.

The Exchange further believes that the proposed provisions of the Certificate of Incorporation, the By-laws and the corresponding provisions of the Trust Agreement should assure the fair representation of its Members and Member Organizations in the selection of its Governors and the administration of its affairs by providing that the On-Floor Governors shall be elected by the Trust as a holder of the share of Series A Preferred Stock at the direction of the Member Organization Representatives who represent both the Member Organization that designated them, and, indirectly, the Member Organization's primarily affiliated Member(s). This election process, together with the composition of the Board and the various standing committees of the Board, should ensure fair representation by both upstairs Member Organizations and the Exchange floor in accordance with Section 6(b)(3) of the Act.[46] Article SIXTH of the proposed Certificate of Incorporation, together with Section 4–1 of the proposed By-laws, will continue to provide for five Governors of the Exchange to be "On-Floor" Governors, which will consist of:

- Two Governors who are industry Governors and are members [47] primarily engaged in business on the Exchange's equity floor;
- One Governor who is an industry Governor and is a Member primarily engaged in business as a specialist on the Exchange's equity options floor;
- One Governor who is an industry Governor and is a Member primarily engaged in business as a Registered Options Trader on the Exchange's equity options floor; and
- One Governor who is an industry Governor and is a Member primarily engaged in business on the Exchange's equity options floor as a floor broker.

There will also be five "Off-Floor" Governors who are industry Governors and are general partners, executive officers (vice president or above), or Members (or participants) associated with Member (or participant) Organizations which conduct a non-member or non-participant public customer business and shall individually not be primarily engaged in business activities on the Exchange Floor. These Off-Floor Governors will be elected by the owners of the common stock of the Exchange. In addition, pursuant to the proposed By-laws, at least half of the members [48] of the Admissions Committee and the Foreign Currency Options Committee will be required to be Members, participants or persons affiliated with Member Organizations or participant organizations, and at least half of the members of the Options Committee and the Floor Procedure Committee will be required to be Members or persons affiliated with Member Organizations, which should ensure Member participation and influence over core governance decisions of the Exchange in areas of importance to the Members and Member Organizations. The Exchange also believes that the proposal is consistent with Section 6(b)(5) of the Act,[49] in that the Exchange will continue to offer a marketplace for the trading of securities that is designed to promote just and equitable principles of trade, prevent fraudulent and manipulative acts and practices, remove impediments to and perfect the mechanism for a free and open market and a national market system, as well as to protect investors and the public interest.

In general, the Exchange believes that the Plan of Demutualization is consistent with the findings of Congress expressed in Section 11A of the Act [50] that, *inter alia*, the securities markets are an important national asset which must be preserved and strengthened and that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure economically efficient execution of securities transactions. Under its current mutual structure, the Exchange will be severely hindered in its ability to address the financial and competitive challenges it is facing today. To keep pace with technological and other market changes, develop new products, react swiftly to competitors while continuing to comply with its statutory requirements as a self-regulatory organization, the Exchange believes that it will depend on both internal and external sources of capital. The Plan of Demutualization removes obstacles to third-party investments by creating a

[34] According to the Exchange, the existing and proposed By-laws and Rules may refer to "dues, fees and other charges" to cover various types of monies owed to the Exchange, however, no substantive difference is intended.

[35] Separately, with the elimination of Seats and leases thereof, the Exchange intends to file a proposed rule change to adopt fees applicable to Series A–1 Permits and to make conforming changes to its fee schedule as a result of the Demutualization.

[36] See the discussion of the changes to the definitions of Member Organization, Member Firm and Member Corporation below.

[37] 15 U.S.C. 78f(e).

[38] 15 U.S.C. 78f(b).

[39] 15 U.S.C. 78f(b)(2).

[40] 15 U.S.C. 78f(b)(3).

[41] 15 U.S.C. 78f(b)(5).

[42] 15 U.S.C. 78kA(a)(1).

[43] 15 U.S.C. 78f(b)(2).

[44] One of the 505 Seats is held by SCCP pursuant to Section 12–3 of the existing By-laws and, therefore, is not otherwise available.

[45] Each series of permits issued by the Exchange may either be restricted or unlimited in number, as determined by the Exchange.

[46] 15 U.S.C. 78f(b)(3).

[47] Solely in connection with these composition requirements, "members" in each case includes general partners, executive officers (vice president and above) or Members associated with Member Organizations primarily engaged in the relevant business on the Exchange.

[48] Here, the term "member" is used merely to refer to persons serving on a committee.

[49] 15 U.S.C. 78f(b)(5).

[50] 15 U.S.C. 78k(A).

"currency" (common stock or preferred stock in a for-profit corporation) for the investments, subject to the control and approval of the Commission in the case of preferred stock and if certain ownership or voting thresholds are exceeded. On the other hand, the Plan of Demutualization and the new permit structure also facilitate the fair and reasoned assessment of Members and Member Organizations through a targeted permit fee structure and a potentially unlimited number of Permits.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change would impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

First, on September 29, 2003, a letter addressed to the Exchange's Board questioned the motives and necessity to demutualize.[51] Thereafter, on October 22, the same persons requested the "demutualization package" and criticized the scheduling of multiple (as opposed to a single) Member and Owner meetings.[52] The Exchange's response letter explained that the materials would be distributed by the next day and that multiple meetings were intended as a scheduling convenience to permit more Members and Owners to attend.[53] Lastly, although not a comment to the Exchange directly, a letter dated October 30, 2003, addressed to Members/Owners of the Phlx, was circulated, stating, among other things, that the Plan of Demutualization is not fair, did not involve Member or Owner input, and urges Members and Owners to vote against it.[54] It also criticizes the elimination of the ability of Members to propose By-law changes and states that the Plan rewards management with up to 10% of the outstanding stock. The Exchange determined to respond to the letter, explaining, among other things, that the reason for the elimination of the Members' right to petition changes to the By-laws is that Delaware law requires that stockholders amend the By-laws. Furthermore, the Exchange's response explains that the 10% limitation is a ceiling, and not a guarantee.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Phlx. All submissions should refer to file number SR-Phlx-2003–73 and should be submitted by December 24, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[55]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–30062 Filed 12–2–03; 8:45 am]

BILLING CODE 8010–01–P

[51] *See* letter from Joseph D. Carapico, Andrew W. Snyder and Richard B. Feinberg, Penn Mont Securities, to the Board, dated September 29, 2003.

[52] *See* letter from Joseph D. Carapico, Andrew W. Snyder and Richard B. Feinberg, Penn Mont Securities, to Murray L. Ross, Secretary, Phlx, dated October 22, 2003.

[53] *See* letter from Murray L. Ross, Secretary, Phlx, to Joseph D. Carapico, Andrew W. Snyder and Richard B. Feinberg, Penn Mont Securities, dated October 22, 2003.

[54] *See* letter from Richard B. Feinberg, dated October 30, 2003.

[55] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3558]

State of West Virginia; Amendment #1

In accordance with a notice received from the Department of Homeland Security—Federal Emergency Management Agency, effective November 22, 2003, the above numbered declaration is hereby amended to include Boone, Calhoun, Clay, Fayette, Gilmer, Greenbrier, Marion, McDowell, Mercer, Monongalia, Monroe, Raleigh, Summers, Webster, Wetzel and Wyoming Counties as disaster areas due to damages caused by severe storms, flooding and landslides occurring on November 11, 2003, and continuing.

In addition, applications for economic injury loans from small businesses located in the contiguous counties of Doddridge, Harrison, Lewis, Marshall, Pocahontas, Preston, Randolph, Ritchie, Taylor, Tyler, Upshur and Wirt in the State of West Virginia; Monroe County in the State of Ohio; Fayette and Greene Counties in the Commonwealth of Pennsylvania; and Alleghany, Bath, Bland, Buchanan, Craig, Giles and Tazewell Counties is the Commonwealth of Virginia may be filed until the specified date at the previously designated location. All other counties contiguous to the above named primary counties have been previously declared.

The number for economic injury for the Commonwealth of Pennsylvania is 9Y1900 and for the Commonwealth of Virginia is 9Y2000.

All other information remains the same, *i.e.*, the deadline for filing applications for physical damage is January 20, 2004, and for economic injury the deadline is August 23, 2004.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).

Dated: November 25, 2003.

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. 03–30098 Filed 12–2–03; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3559]

Commonwealth of Puerto Rico; Amendment #1

In accordance with a notice received from the Department of Homeland Security—Federal Emergency Management Agency, effective November 24, 2003, the above numbered declaration is hereby amended to include the municipalities of Arroyo, Canovanas, Fajardo, Loiza, Naguabo, Toa Baja and Yabucoa as disaster areas due to damages caused by severe storms, flooding, mudslides and landslides beginning on November 10, 2003 and continuing.

In addition, applications for economic injury loans from small businesses located in the contiguous municipalities of Bayamon, Carolina, Catano, Dorado, Humacao, Juncos and Toa Alta may be filed until the specified date at the previously designated location. All other municipalities contiguous to the above named primary municipalities have been previously declared.

All other information remains the same, *i.e.*, the deadline for filing applications for physical damage is January 20, 2004, and for economic injury the deadline is August 23, 2004.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: November 28, 2003.

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. 03–30097 Filed 12–2–03; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice: 4547]

Update on Current Universal Postal Union Issues

AGENCY: Department of State.

ACTION: Notice of briefing.

The Department of State will host a briefing on Thursday, December 18, 2003, to provide an update on current Universal Postal Union issues, including work leading up to and preparations for the UPU Congress to be held in Bucharest, Romania from September 15 to October 5, 2004.

The briefing will be held from 1 p.m. until approximately 4 p.m., on December 18, in Room 1207 of the Department of State, 2201 C Street, NW., Washington, DC. The briefing will be open to the public up to the capacity of the meeting room (40 persons).

The briefing will provide information on the results of the October 2003 session of the UPU Council of Administration and concurrent meetings of the UPU Postal Operations Council. Special attention will be paid to several major issues discussed at these meetings, including terminal dues, extra-territorial offices of exchange, and the status of proposals to create a UPU Consultative Committee whose membership is primarily from the private sector. Information will also be provided about publication of a study of the remail provisions of Article 43 of the UPU Convention and the status of United States preparations for the 2004 UPU Congress in Bucharest. The briefing will be chaired by Deputy Assistant Secretary Terry Miller of the Department of State. Entry to the Department of State building is controlled and will be facilitated by advance arrangements. In order to arrange admittance, persons desiring to attend the briefing should, no later than noon on December 17, 2001, notify the Office of Technical and Specialized Agencies, Bureau of International Organization Affairs, Department of State, preferably by fax, providing the name of the meeting and the individual's name, Social Security number, date of birth, professional affiliation, address and telephone number. The fax number to use is (202) 647–8902. Voice telephone is (202) 647–1044. This request applies to both government and non-government individuals.

All attendees must use the main entrance of the Department of State at 23rd Street between C and D Streets, NW. Please note that under current security restrictions, C Street is closed to vehicular traffic between 21st and 23rd Streets. Taxis may leave passengers at 21st and C Streets, 23rd and C Streets, or 22nd Street and Constitution Avenue. One of the following means of identification will be required for admittance: any U.S. driver's license with photo, a passport, or any U.S. Government agency identification card.

Questions concerning the briefing may be directed to Mr. Donald Booth at (202) 647–2752 or via email at *boothde@state.gov*.

Dated: November 21, 2003.

Donald Booth,

Director, Office of Technical and Specialized Agencies, Department of State.

[FR Doc. 03–30124 Filed 12–2–03; 8:45 am]

BILLING CODE 4710–19–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2003–16471]

Notice of Request To Renew Approval of an Information Collection: OMB Control No. 2126–0011 (Commercial Driver Licensing and Test Standards)

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice and request for comments.

SUMMARY: This notice announces that FMCSA intends to submit a request to the Office of Management and Budget (OMB) for renewed approval of the information collection described below. This information collection is needed to ensure that motor carriers and the States are complying with notification requirements for obtaining information about licensing, violations, convictions, and disqualifications within certain time periods as required by the Commercial Motor Vehicle Safety Act of 1986 (CMVSA), as amended. This notice is required by the Paperwork Reduction Act.

DATES: Your comments must be submitted by February 2, 2004.

ADDRESSES: Mail or hand deliver comments to the U.S. Department of Transportation, Dockets Management Facility, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590, or submit electronically at *http://dmses.dot.gov/submit*. Be sure to include the docket number appearing in the heading of this document on your comment. All comments received will be available for examination and copying at the above address from 9 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays. If you would like to be notified when your comment is received, you must include a self-addressed, stamped postcard or you may print the acknowledgment page that appears after submitting comments electronically.

FOR FURTHER INFORMATION CONTACT: Mr. Ronald Finn, (202) 366–0647, Office of Safety Programs, State Programs Division (MC–ESS), Federal Motor Carrier Safety Administration, 400 Seventh Street, SW., Washington, DC, 20590. Office hours are from 7:30 a.m. to 4 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Title: Commercial Driver Licensing and Test Standards.

OMB Number: 2126–0011.

Background: In 1986, Congress enacted the Commercial Motor Vehicle Safety Act (Public Law 99–570, Title XII, 100 Stat. 3207–170) among other things, to establish minimum standards for testing and licensing persons who want to operate a commercial motor vehicle (CMV) by weight or use category, and requiring drivers to have a single commercial driver's license (CDL) and driving history record.

Under 49 CFR 383.5, a CMV is defined as a motor vehicle or combination of motor vehicles which:

(a) Has a gross combination weight rating of 11,794 or more kilograms (kg) (26,001 or more pounds (lbs) inclusive of a towed unit with a gross vehicle weight rating (GVWR) of more than 4,536 kg (10,000 lbs)); (b) has a GVWR of 11,794 or more kg (26,001 or more lbs); (c) is designed to transport 16 or more passengers, including the driver; or (d) is of any size and is used to transport hazardous materials as hazardous materials are defined in 49 CFR 383.5.

The CMVSA requires a driver to notify both their employer and the licensing official in the driver's State of licensure of all violations of any State or local laws relating to traffic control (except parking violations). A person whose CDL is suspended, revoked, or canceled by a State, or who is disqualified from operating a CMV for any period, also must notify their employer of such actions. A person applying for employment as a CMV driver also must notify prospective employers of their employment history as a CMV driver for the previous ten years.

Pursuant to 49 U.S.C. 31309, the Secretary of Transportation (Secretary) must maintain an information clearinghouse and depository of information about the issuance of a license, and identification and disqualification of CMV operators, in conjunction with 49 U.S.C. 31106. The Secretary may consult with the States in carrying out this section. States must certify that they are in compliance with the CDL program. If a State does not substantially comply with these requirements, the FMCSA may penalize the State until compliance is achieved. The information required to be collected by the States will be used to determine whether the States are in substantial compliance with these requirements.

This request for renewed approval includes additional burdens for recordkeeping requirements under 49 CFR 384.231(d) concerning retention and updating of driver records on the Commercial Driver's License Information System (CDLIS). These requirements also include the maintenance of such driver records and driver identification data on the CDLIS as the FMCSA finds are necessary to implement and enforce the disqualifications called for in 49 U.S.C. 384.215 through 384.219, and 384.221 through 384.224.

Respondents: Motor carriers, CMV drivers and State governments.

Estimated Total Annual Burden: 1,080,345 hours. The information collection is comprised of four components:

(1) Notification of convictions: Estimated number of annual responses = 3,776,667 (11.3 million CDL drivers/3 = 3,776,667). It takes approximately 10 minutes to notify a motor carrier concerning convictions. Each driver averages approximately 1 conviction every 3 years. The notification requirement has an estimated annual burden of 627,778 burden hours (11.3 million CDL drivers/3 × 10/60 = 627,778 hours);

(2) Employment history: Estimated annual turnover rate = 14%. There are an estimated 1,582,000 annual responses to this requirement (11.3 million CDL drivers × .14 annual turnover rate = 1,582,000). It takes approximately 15 minutes to complete this requirement. The employment history requirement has an estimated annual burden of 395,500 hours (1,582,000 annual responses × 15 min./60 = 395,500 hours);

(3) State compliance and certification: There are 51 responses to this requirement (50 States and the District of Columbia) and it takes approximately 32 hours to complete each response. The compliance and certification requirement has an estimated annual burden of 1,632 hours (51 responses × 32 hours = 1,632 hours); and

(4) CDLIS Recordkeeping: Fifty (50) States and the District of Columbia are required to enter data into CDLIS about operators of CMVs and to perform record checks before issuing, renewing or upgrading a CDL or allowing a CDL transfer. We estimate that the average amount of time for each CDLIS inquiry is 2 minutes. The total burden hours is 55,435 for these combined activities: 12,160 hours for all States to create a new driver; 4,023 hours for all States to change the State of record; 19,759 hours for all States to change data and 19,493 hours to enter citizenship information.

Public Comments Invited: We invite you to comment on any aspect of this information collection, including, but not limited to: (1) Whether the collection of information is necessary for the proper performance of the functions of the FMCSA, including whether the information is practical and useful; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, usefulness, and clarity of the collected information; and (4) ways to minimize the collection burden without reducing the quality of the information collected.

Electronic Access and Filing: You may submit or retrieve comments online through the Docket Management System (DMS) at *http://dmses.dot.gov/submit.* Acceptable formats include: MS Word (versions 95 to 97), MS Word for Mac (versions 6 to 8), Rich Text File (RTF), American Standard Code Information Interchange (ASCII)(TXT), Portable Document Format (PDF), and WordPerfect (versions 7 to 8). The DMS is available 24 hours each day, 365 days each year. Electronic submission and retrieval help and guidelines are available under the help section of the web site.

You may also download an electronic copy of this document from the DOT Docket Management System on the Internet at *http://dms.dot.gov/search.htm.* Please include the docket number appearing in the heading of this document.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended; and 49 CFR 1.73.

Warren E. Hoemann,

Deputy Administrator.

[FR Doc. 03–30104 Filed 12–2–03; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA –2003–16405]

Notice of Request for Renewal of a Currently Approved Information Collection: Request for Revocation of Authority Granted

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice and request for comments.

SUMMARY: The FMCSA is seeking public comments about our intent to request the Office of Management and Budget's (OMB) approval to renew the currently approved information collection identified as "Request for Revocation of Authority Granted." This information collection notifies the FMCSA of a voluntary request by a motor carrier, freight forwarder, or property broker to amend or revoke its registration of authority granted. The Paperwork Reduction Act requires the publication of this notice.

DATES: Please submit comments by February 2, 2004.

ADDRESSES: Mail or hand deliver comments to the U.S. Department of Transportation, Dockets Management Facility, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590; telefax comments to (202) 493–2251; or submit electronically at *http://dmses.dot.gov/submit.* Be sure to include the docket number appearing in this notice's heading. All comments received may be examined and copied at the above address from 9 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard or you may print the acknowledgment page that appears after submitting comments electronically.

FOR FURTHER INFORMATION CONTACT: Ms. Marian Mills Lee, (202) 385–2423, Office of Enforcement and Compliance, Federal Motor Carrier Safety Administration, Department of Transportation, 400 Seventh St., SW., Washington, DC, 20590. Office hours are from 7:30 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Title: Request for Revocation of Authority Granted.

OMB Approval Number: 2126–0018.

Background: Title 49 of the United States Code (U.S.C.) authorizes the Secretary of Transportation (Secretary) to promulgate regulations governing the registration of for-hire motor carriers of regulated commodities (49 U.S.C. 13902), surface transportation freight forwarders (49 U.S.C. 13903), and property brokers (49 U.S.C. 13904). The FMCSA carries out this registration program under authority delegated by the Secretary. Under 49 U.S.C. 13905, each registration is effective from the date specified and remains in effect for such period as the Secretary determines appropriate by regulation. Section 13905(c) grants the Secretary the authority to amend or revoke a registration at the registrant's request. On complaint or on the Secretary's own initiative, the Secretary may also suspend, amend, or revoke any part of the registration of a motor carrier, broker, or freight forwarder for willful failure to comply with the regulations, an order of the Secretary, or a condition of its registration. Form OCE–46 is used by transportation entities to voluntarily apply for revocation of their registration authority in whole or in part. The form requests the registrant's docket number, name and address, and the reasons for the revocation request.

Respondents: Motor carriers, freight forwarders, and brokers.

Average Burden per Response: 15 minutes.

Estimated Total Annual Burden: 250 hours (1,000 motor carriers × 15 minutes/60 minutes).

Public Comments Invited: You are asked to comment on any aspect of this information collection, including: (1) The necessity and usefulness of the information collection for the FMCSA to meet its goal in reducing truck crashes; (2) the accuracy of the estimated burdens; (3) ways to enhance the quality, usefulness, and clarity of the collected information; and (4) ways to minimize the collection burden without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

Electronic Access and Filing: You may submit or retrieve comments online through the Docket Management System (DMS) at *http://dmses.dot.gov/submit.* Acceptable formats include: MS Word (versions 95 to 97), MS Word for Mac (versions 6 to 8), Rich Text File (RTF), American Standard Code Information Interchange (ASCII)(TXT), Portable Document Format (PDF), and WordPerfect (versions 7 to 8). The DMS is available 24 hours each day, 365 days each year. Electronic submission and retrieval help and guidelines are available under the help section of the DMS web site.

You may download an electronic copy of this document by using a computer, modem and suitable communications software from the Government Printing Office's Electronic Bulletin Board Service at (202) 512–1661. Internet users may reach the Office of the Federal Register's home page at *http://www.nara.gov/fedreg* and the Government Printing Office's web page at: *http://www.access.gpo.gov/nara.*

Authority: 49 U.S.C. 13902, 13903, 13904 and 13905; and 49 CFR 1.73.

Issued on: November 26, 2003.

Warren E. Hoemann,

Deputy Administrator.

[FR Doc. 03–30105 Filed 12–2–03; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petition for Waiver of Compliance

In accordance with part 211 of Title 49 Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) received a request for a waiver of compliance with certain requirements of its safety standards. The individual petition is described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested, and the petitioner's arguments in favor of relief.

American Short Line and Regional Railroad Association

[Waiver Petition Docket Number FRA–2003–16271]

American Short Line and Regional Railroad Association (ASLRRA), on behalf of their membership, seeks a waiver of compliance from the requirements of the *Locomotive Safety Standards,* 49 CFR part 229.23, which requires periodic inspection of all locomotives at intervals not to exceed ninety-two (92) days, and from the requirements 49 CFR 229.25, which identify items to be inspected during a periodic inspection. ALSRRA believes that the short line and regional railroads that it represents do not operate their locomotive in the same environment as the larger Class I railroads. They feel that Class I railroads operate twenty-four hours a day, seven days a week, with longer and heavier trains, over greater distances then short line and regional railroads. ALSRRA feels that the *Locomotive Safety Standards* periodic inspection and testing requirements should recognize this. If granted, the ALSRRA feels that its members should be allowed to perform the periodic, during required, annual inspections 49CFR 229.27.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (FRA–2003–16271) and must be submitted to the Docket Clerk, DOT Docket Management Facility, Room PL–401 (Plaza Level), 400 7th Street, SW., Washington, DC 20590. Communications received within 45 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's Web site at *http://dms.dot.gov.*

Anyone is able to search the electronic form of all comments received into any of our dockets by the

name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, *etc.*). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78). The Statement may also be found at *http://dms.dot.gov.*

Issued in Washington, DC on November 26, 2003.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. 03–30100 Filed 12–2–03; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petition for Waiver of Compliance

In accordance with part 211 of Title 49 Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) received a request for a waiver of compliance with certain requirements of its safety standards. The individual petition is described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested, and the petitioner's arguments in favor of relief.

Burlington Northern and Santa Fe Railroad Company

[Waiver Petition Docket Number FRA–2003–16440]

The Burlington Northern and Santa Fe Railroad Company (BNSF) seeks a waiver of compliance with the *Locomotive Safety Standards*, 49 CFR 229.23, 229.27 and 229.29, as they pertain to the requirement to maintain the locomotive repair record form FRA 6180.49A, commonly referred to as the Blue Card, in the cab of their locomotives. If granted, BNSF would maintain locomotive inspection information in a secure BNSF data base. The data base would be maintained as the required office copy of form FRA 6180.49A. A computer generated form, which contains all information currently contained on the required FRA 6180.49A, would be maintained on board the locomotive. In place of required signatures of persons performing inspections and tests, BNSF employees would be provided with a unique login identification number and a secure password to access the system and verify performance of inspections. In place of signatures, computer generated reports would block print the name of the employee performing a required inspection and block print the employee's supervisor who is certifying that all inspections have been made and all repairs were completed. Required filing of the previous inspection record will be maintained through the data base.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (FRA–2003–16440) and must be submitted to the Docket Clerk, DOT Docket Management Facility, Room PL–401 (Plaza Level), 400 7th Street, SW., Washington, DC 20590. Communications received within 45 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's Web site at *http://dms.dot.gov.*

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, *etc.*). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78). The Statement may also be found at *http://dms.dot.gov.*

Issued in Washington, DC on November 26, 2003.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. 03–30101 Filed 12–2–03; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petition for Waiver of Compliance

In accordance with part 211 of Title 49 Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) received a request for a waiver of compliance with certain requirements of its safety standards. The individual petition is described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested, and the petitioner's arguments in favor of relief.

Long Island Rail Road

[Waiver Petition Docket Number FRA–2003–16265]

Long Island Rail Road (LIRR) seeks a waiver of compliance with the *Locomotive Safety Standards*, 49 CFR part 229. Section 81(b), for their fleet of "M–7–EMU" passenger locomotives and Dual-Mode Locomotives (DM30) that requires that locomotives equipped with third-rail shoes shall have a device for insulating current collecting apparatus from the third-rail. LIRR is requesting that FRA extend a previously granted waiver, LI–80–15, covering M1 & M3 Electric Multiple Unit passenger cars to include newly acquired M7 cars and DM–30 locomotives. The request indicates that the LIRR continues to utilize the Electric Operating Instructions (CT290) for rail isolation and de-energizing, which was the basis for the granting of the original waiver.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (FRA–2003–16265) and must be submitted to the Docket Clerk, DOT Docket Management Facility, Room PL–401 (Plaza Level), 400 7th Street, SW., Washington, DC 20590. Communications received within 45 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's Web site at *http://dms.dot.gov.*

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, *etc.*). You may review DOT's Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78). The Statement may also be found at *http://dms.dot.gov.*

Issued in Washington, DC, on November 26, 2003.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. 03–30099 Filed 12–2–03; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petition for Waiver of Compliance

In accordance with Part 211 of Title 49 Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) received a request for a waiver of compliance with certain requirements of its safety standards. The individual petition is described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested, and the petitioner's arguments in favour of relief.

Union Pacific Railroad Company

[Docket Number FRA–2003–16442]

The Union Pacific Railroad Company (UP) seeks a waiver of compliance with the *Locomotive Safety Standards*, 49 CFR part 229.25(b), as it pertains to the requirement that "all electrical devices and viable insulation shall be inspected" at each periodic inspection. If the waiver is granted, UP, as an alternate method to removing sufficient number of covers from traction motors and generators to visually inspect such equipment, would monitor ground leakage current. UP feels that monitoring groung leakage is superior to visual inspection method.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (*e.g.*, Waiver Petition Docket Number FRA–2003–16442) and must be submitted to the Docket Clerk, DOT Central Docket Management Facility, Room Pl–401, Washington, DC 20590–0001. Communications received within 45 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's Web site at *http://dms.dot.gov.*

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78). The Statement may also be found at *http://dms.dot.gov.*

Issued in Washington, DC, on November 26, 2003.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. 03–30102 Filed 12–2–03; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Notice of Application for Approval of Discontinuance or Modification of a Railroad Signal System or Relief From the Requirements of Title 49 Code of Federal Regulations Part 236

Pursuant to Title 49 Code of Federal Regulations (CFR) part 235 and 49 U.S.C. 20502(a), the following railroad has petitioned the Federal Railroad Administration (FRA) seeking approval for the discontinuance or modification of the signal system or relief from the requirements of 49 CFR part 236 as detailed below.

Docket No. FRA–2003–16441

Applicant: Norfolk Southern Corporation, Mr. Brian L. Sykes, Chief Engineer, C&S Engineering, 99 Spring Street, SW., Atlanta, Georgia 30303.

Norfolk Southern Corporation seeks approval of the proposed discontinuance and removal of the automatic permissive block (APB) signal system, on all main, siding, and auxiliary tracks, between Naples, milepost W–14.7 and Tuxedo, milepost W–26.0, in North Carolina, and between Landrum, milepost W–45.0 and Inman, milepost W–56.1, in South Carolina, on the Piedmont Division, Asheville to Charleston District. The proposed changes include conversion of the method of operation to track warrant control in the area where the APB system is removed, and retention of the APB system between mileposts W–0.0 and W–14.7 and mileposts W–56.1 and W–65.1, on each end of the line segment.

The reason given for the proposed changes is that the line between Asheville, and Spartanburg is no longer needed as a through route. The Asheville to Tuxedo portion on the west end will be used for local service and CPL coal trains, while the Landrum to Spartanburg portion on the east end will be used for local service only.

Any interested party desiring to protest the granting of an application shall set forth specifically the grounds upon which the protest is made, and include a concise statement of the interest of the party in the proceeding. Additionally, one copy of the protest shall be furnished to the applicant at the address listed above.

All communications concerning this proceeding should be identified by the docket number and must be submitted to the Docket Clerk, DOT Central Docket Management Facility, Room PL–401 (Plaza Level), 400 7th Street, SW., Washington, DC 20590–0001. Communications received within 45 days of the date of this notice will be considered by the FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the internet at the docket facility's Web site at *http://dms.dot.gov.*

FRA wishes to inform all potential commenters that anyone is able to search the electronic form of all comments received into any of our

dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, *etc.*). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit *http://dms.dot.gov*.

FRA expects to be able to determine these matters without an oral hearing. However, if a specific request for an oral hearing is accompanied by a showing that the party is unable to adequately present his or her position by written statements, an application may be set for public hearing.

Issued in Washington, DC on November 26, 2003.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. 03–30103 Filed 12–2–03; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2003–16462; Notice 1]

General Motors Corporation, Receipt of Application for Decision of Inconsequential Noncompliance

General Motors Corporation (GM) has determined that certain model year 2003 and 2004 Saturn Ion Sedan and Coupe vehicles it produced and sold are not in full compliance with 49 CFR 571.118, Federal Motor Vehicle Safety Standard (FMVSS) No. 118, "Power-Operated Window, Partition, and Roof Panel Systems."

Pursuant to 49 U.S.C. 30118(d) and 30120(h), GM has petitioned for a determination that this noncompliance is inconsequential to motor vehicle safety and has filed an appropriate report pursuant to 49 CFR part 573, "Defect and Noncompliance Reports."

This notice of receipt of an application is published under 49 U.S.C. 30118 and 30120 and does not represent any agency decision or other exercise of judgment concerning the merits of the application.

GM has determined that all 2003 and 2004 Model Year Saturn Ion Sedan and Coupe vehicles built before September 5, 2003, and with a Vehicle Identification Number (VIN) less than 1G8AG52F24Z121302 and equipped with either power windows or a power sunroof do not conform to the requirements of S4(e) of FMVSS No. 118.

S4 provides that "power operated window, partition, or roof panel systems may be closed only in the following circumstances:"

(e) During the interval between the time the locking device which controls the activation of the vehicle's engine is turned off and the opening of either of a two-door vehicle's doors or, in the case of a vehicle with more than two doors, the opening of either of its front doors.

GM states that opening the passenger side door on these vehicles, following the ignition key being turned to "OFF," does not cancel the Retained Accessory Power (RAP) function, allowing the power-operated windows and roof panel to continue to operate for up to ten minutes or until the driver's door is opened. Opening the driver's door on these vehicles does cancel this RAP function. FMVSS 118, S4(e) requires that the RAP function be cancelled when either of the front doors is opened once the ignition key has been turned off.

GM believes that the noncompliance is inconsequential to motor vehicle safety, and that no corrective action is warranted. GM supports this assertion on the basis that NHTSA has acted on three petitions involving vehicles in which power windows or roofs could be operated after the front door was opened:

- In 1995, NHTSA granted a Volkswagen petition involving passenger cars. It agreed that the purpose of the requirement was still highly likely to be met because (1) if the operator exited by the driver's door, the system was disabled and (2) it was unlikely that the driver would exit by the passenger door because that would require passing over the console between the front seats. 60 FR 48197 (Sept. 18, 1995).
- In 1997, NHTSA denied a Ford petition involving Mercury and Nissan minivans. NHTSA distinguished these vehicles from the Volkswagen passenger cars because (1) there was no console or other impediment to the driver exiting the passenger door, (2) the higher floor pan to ceiling height made it easier for the driver to exit the passenger door, and (3) the minivans were promoted for family use. 62 FR 51500 (Oct. 1, 1997).
- In 1999, NHTSA granted a Mitsubishi petition involving passenger cars. NHTSA agreed that the Mitsubishi situation was comparable to the Volkswagen situation and unlike the Ford minivan situation. 64 FR 1650 (Jan. 11, 1999).

GM states that the Saturn situation is like those presented in the Volkswagen and Mitsubishi petitions. The power windows and roof remain operable only when the front passenger door is opened, a time when the operator presumably remains behind the wheel. The Saturn Ion Sedans and Coupes are equipped with bucket seats, a floor-mounted transmission selector lever, a center console, and a center-mounted parking brake lever. These components and the low roofline make it very difficult for a driver to exit from the passenger door.

GM has received no customer complaints or claims concerning this issue. Furthermore, the owner's manual cautions against leaving unattended children in the vehicle:

Caution: Leaving children in a vehicle with the ignition key is dangerous for many reasons. A child or others could be badly injured or even killed. They could operate power windows or other controls or even make the vehicle move. Don't leave keys in a vehicle with children.

The owner's manual also has a caution about the risk of injury or death from heat exposure if a child is left unattended in a closed vehicle. GM states that, based primarily on that concern, there has been a substantial public awareness effort during the past few years by NHTSA, safety organizations, and vehicle manufacturers to discourage adults from leaving children in vehicles at any time.

For these reasons, GM believes it is very unlikely that unsupervised children will be injured from operation of the power-operated windows and roof panel in these vehicles after the passenger door has been opened.

Interested persons are invited to submit written data, views, and arguments on the application described above. Comments must refer to the docket and notice number cited at the beginning of this notice and be submitted by any of the following methods: Mail: Docket Management Facility; U.S. Department of Transportation, Nassif Building, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590–0001. Hand Delivery: Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC. It is requested, but not required, that two copies of the comments be provided. The Docket Section is open on weekdays from 10 a.m. to 5 p.m. except Federal holidays. Comments may be submitted electronically by logging onto the Docket Management System Web site at *http://dms.dot.gov*. Click on "Help" to obtain instructions for filing the document electronically. Comments may be faxed to 1–202–493–2251, or may be submitted to the Federal eRulemaking Portal: Go to *http://www.regulations.gov*. Follow the online instructions for submitting comments.

The application, supporting materials, and all comments received before the close of business on the closing date indicated below will be considered. All comments and supporting materials received after the closing date will also be filed and considered to the extent possible. When the application is granted or denied, notice of the decision will be published in the **Federal Register** pursuant to the authority indicated below.

Comment closing date: January 2, 2004.

Authority: 49 U.S.C. 301118, 301120; delegations of authority at CFR 1.50 and 501.8.

Kenneth N. Weinstein,

Associate Administrator for Enforcement.

[FR Doc. 03–30108 Filed 12–2–03; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA 2003–16464; Notice 1]

The Goodyear Tire & Rubber Company, Receipt of Application for Decision of Inconsequential Noncompliance

The Goodyear Tire & Rubber Company (Goodyear) has determined that certain tires it manufactured from 1998 to 2003 do not comply with S6.5(f) of Federal Motor Vehicle Safety Standard (FMVSS) No. 119, "New pneumatic tires for vehicles other than passenger cars."

Pursuant to 49 U.S.C. 30118(d) and 30120(h), Goodyear has petitioned for a determination that this noncompliance is inconsequential to motor vehicle safety and has filed an appropriate report pursuant to 49 CFR part 573, "Defect and Noncompliance Reports."

This notice of receipt of an application is published under 49 U.S.C. 30118 and 30120 and does not represent any agency decision or other exercise of judgment concerning the merits of the application.

Goodyear produced 37,980 LT265/75R16 Wrangler RT/s LR–E tires during the period from February 1, 1998, to May 31, 2003, which do not comply with FMVSS No. 119, S6.5(f). These tires were marked with 3 plies in the sidewall while there were actually 2 plies in the sidewall.

S6.5(f) of FMVSS No. 119 requires that each tire shall be marked on each sidewall with "the actual number of plies." Goodyear states that this error occurred when these tires replaced the previous tire that had 3 plies in the sidewall. The new tire was changed to 2 plies but the mold drawing and specification were not revised to reflect this change.

Goodyear believes that this noncompliance is inconsequential to motor vehicle safety because the tires meet or exceed all applicable FMVSS performance standards, and all markings related to tire service (load capacity, corresponding inflation pressure, load range, *etc.*) are correct. The mislabeling noted above creates no unsafe condition.

Interested persons are invited to submit written views, arguments, and data on the application described above. Comments must refer to the docket and notice number cited at the beginning of this notice and be submitted by any of the following methods: Mail: Docket Management Facility; U.S. Department of Transportation, Nassif Building, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590–0001. Hand Delivery: Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC. It is requested, but not required, that two copies of the comments be provided. The Docket Section is open on weekdays from 10 a.m. to 5 p.m. except Federal holidays. Comments may be submitted electronically by logging onto the Docket Management System Web site at *http://dms.dot.gov*. Click on "Help" to obtain instructions for filing the document electronically. Comments may be faxed to 1–202–493–2251, or may be submitted to the Federal eRulemaking Portal: Go to *http://www.regulations.gov*. Follow the online instructions for submitting comments.

The application, supporting materials, and all comments received before the close of business on the closing date indicated below will be considered. All comments and supporting materials received after the closing date, will also be filed and considered to the extent possible. When the application is granted or denied, a notice of the decision will be published in the **Federal Register** pursuant to the authority indicated below.

Comment closing date: January 2, 2004.

Authority: 49 U.S.C. 301118, 301120; delegations of authority at CFR 1.50 and 501.8.

Kenneth N. Weinstein,

Associate Administrator for Enforcement.

[FR Doc. 03–30107 Filed 12–2–03; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2003–16463; Notice 1]

Hankook Tire America Corp., Receipt of Application for Decision of Inconsequential Noncompliance

Hankook Tire America Corp. (Hankook Tire) has determined that certain tires it produced in 2003 do not comply with S4.3(e) of 49 CFR 571.109, Federal Motor Vehicle Safety Standard (FMVSS) No. 109, New pneumatic tires.

Pursuant to 49 U.S.C. 30118(d) and 30120(h), Hankook Tire has petitioned for a determination that this noncompliance is inconsequential to motor vehicle safety and has filed an appropriate report pursuant to 49 CFR Part 573, "Defect and Noncompliance Reports."

This notice of receipt of an application is published under 49 U.S.C. 30118 and 30120 and does not represent any agency decision or other exercise of judgment concerning the merits of the application.

A total of approximately 3,049 tires are involved. These are 215/50R 17 91H 04PR H405 tires, which Hankook Tire produced during DOT weeks 16 through 21 and DOT weeks 24 and 25 of the year 2003. They have the nylon ply number mismarked on one side of the tire, specifically on the DOT serial side. The incorrect marking on the DOT serial side is "2 steel + 2 polyester + 2 nylon" and the correct marking on the opposite side is "2 steel + 2 polyester + 1 nylon." Paragraph S4.3 of FMVSS No. 109 requires "each tire shall have permanently molded into or onto both sidewalls * * * (e) Actual number of plies in the sidewall, and the actual number of plies in the tread area if different."

Hankook Tire believes that the noncompliance is inconsequential to motor vehicle safety, and that no corrective action is warranted. Hankook Tire states that first, the affected tires meet all requirements of 49 CFR 571.109 except for the markings pertaining to S4.3(e), and second, the markings on the side of the tire opposite the DOT serial side are correct.

Interested persons are invited to submit written data, views, and arguments on the application described above. Comments must refer to the docket and notice number cited at the beginning of this notice and be submitted by any of the following methods. Mail: Docket Management Facility; U.S. Department of Transportation, Nassif Building, Room

PL–401, 400 Seventh Street, SW., Washington, DC 20590–0001. Hand Delivery: Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC. It is requested, but not required, that two copies of the comments be provided. The Docket Section is open on weekdays from 10 a.m. to 5 p.m. except Federal holidays. Comments may be submitted electronically by logging onto the Docket Management System Web site at *http://dms.dot.gov*. Click on "Help" to obtain instructions for filing the document electronically. Comments may be faxed to 1–202–493–2251, or may be submitted to the Federal eRulemaking Portal: Go to *http://www.regulations.gov*. Follow the online instructions for submitting comments.

The application, supporting materials, and all comments received before the close of business on the closing date indicated below will be filed and will be considered. All comments and supporting materials received after the closing date will also be filed and will be considered to the extent possible. When the application is granted or denied, notice of the decision will be published in the **Federal Register** pursuant to the authority indicated below.

Comment closing date: January 2, 2004.

Authority: 49 U.S.C. 301118, 301120; delegations of authority at CFR 1.50 and 501.8.

Kenneth N. Weinstein,

Associate Administrator for Enforcement.

[FR Doc. 03–30106 Filed 12–2–03; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

November 25, 2003.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000, 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before January 2, 2004 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–0029.

Form Number: IRS Forms 941, 941–PR and 941–SS; and Schedule B (941 and 941–PR).

Type of Review: Extension.

Title: Forms 841, 941–PR and 941–SS: Employer's Quarterly Federal Tax Return; American Samoa, the Commonwealth of the Northern Mariana Islands; U.S. Virgin Islands; Schedule B (Forms 941 and 941–PR): Employer's Record of Federal Tax Liability.

Description: Form 941 is used by employers to report payments made to employees subject to income and social security/Medicare faxes and the amounts of these taxes. Form 941–PR is used by employers in Puerto Rico to report social security and Medicare taxes only. Form 941–SS is used by employers in the U.S. possessions to report social security and Medicare taxes only. Schedule B is used by employers to record their employment tax liability.

Respondents: Business or other for-profit, Individuals or households, Not-for-profit institutions, Federal Government, State, Local or Tribal Government.

Estimated Number of Respondents/ Recordkeeping: 5,798,054.

Estimated Burden Hours Respondent/ Recordkeeper:

Form 941

Recordkeeping—12 hr., 39 min.
Learning about the law or the form—40 min.
Preparing the form—1 hr., 49 min.
Copying, assembling, and sending the form to the IRS—16 min.

Form 941 TeleFile

Recordkeeping—5 hr., 30 min.
Learning about the law or the Tax Record—18 min.
Preparing the Tax Record—24 min.
TeleFile phone call—11 min.

Form 941–PR

Recordkeeping—7 hr., 53 min.
Learning about the law or the form—18 min.
Preparing the form—26 min.

Form 941–SS

Recordkeeping—8 hr., 7 min.
Learning about the law or the form—18 min.
Preparing the form—26 min.

Schedule B (Forms 941 and 941–PR)

Recordkeeping—2 hr., 37 min.
Learning about the law or the form—6 min.
Preparing the form—9 min.

Frequency of Response: Quarterly.

Estimated Total Reporting/ Recordkeeping Burden: 343,652,930 hours.

OMB Number: 1545–1449.

Regulation Project Number: IA–57–94 Final.

Type of Review: Extension.

Title: Cash Reporting by Court Clerks.

Description: Section 6050I(g) imposes a reporting requirement on criminal court clerks that receive more than $10,000 in cash as bail. The IRS will use the information to identify individuals with large cash incomes. Clerks must also furnish the information to the United States Attorney for the jurisdiction in which the individual charged with the crime resides and to each person posting the bond whose name appears on Form 8300.

Respondents: Federal Government, State, Local or Tribal Government.

Estimated Number of Respondents: 250.

Estimated Burden Hours Respondent: 30 minutes.

Frequency of Response: On occasion, annually.

Estimated Total Reporting Burden: 125 hours.

OMB Number: 1545–1271.

Regulation Project Number: REG–209035–86 Final and REG–208165–91 Final.

Type of Review: Extension.

Title: REG–209035–86 Final: Stock Transfer Rules; and REG–208165–91 Final: Certain Transfers of Stock or Securities by U.S. Persons to Foreign Corporations and Related Reporting Requirements.

Description: A U.S. person must generally file a gain recognition agreement with the IRS in order to defer gain on a section 367(a) transfer of stock to a foreign corporation, and must file a notice with the IRS if it realizes any income in a section 367(b) exchange. These requirements ensure compliance with the respective Code sections.

Respondents: Business or other for-profit.

Estimated Number of Respondents: 580.

Estimated Burden Hours Respondent: 4 hours, 7 minutes.

Frequency of Response: Annually.

Estimated Total Reporting Burden: 2,390 hours.

OMB Number: 1545–1691.

Regulation Project Number: REG–120882–97 Final.

Type of Review: Extension.

Title: Continuity of Interest.

Description: Taxpayers who entered into a binding agreement on or after January 28, 1998 (the effective date of § 1.368–1T), and before the effective date of the final regulations under § 1.368–1(e) may request a private letter ruling permitting them to apply § 1.368–1(e) to their transaction. A private letter ruling will not be issued unless the taxpayer establishes to the satisfaction of the IRD that there is not a significant risk of different parties to the transaction taking inconsistent positions, for U.S. tax purposes with respect to the applicability of § 1.368–1(e) to the transaction.

Respondents: Business or other for-profit.

Estimated Number of Respondents: 10.

Estimated Burden Hours Respondent: 150 hours.

Frequency of Response: Other (once).

Estimated Total Reporting Burden: 1,500 hours.

Clearance Officer: R. Joseph Durbala, (202) 622–3634, Internal Revenue Service, Room 6411, 1111 Constitution Avenue, NW, Washington, DC 20224.

OMB Reviewer: Joseph F. Lackey, Jr., (202) 395–7316, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Treasury PRA Clearance Officer.

[FR Doc. 03–30093 Filed 12–2–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

November 25, 2003.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000, 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before January 2, 2004 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–1160.

Regulation Project Number: CO–93–90 Final.

Type of Review: Extension.

Title: Corporations; Consolidated Returns—Special Rules Relating to Dispositions and Deconsolidations of Subsidiary Stock.

Description: These regulations prevent elimination of corporate-level tax because of the operation of the consolidated returns investment adjustment rules. Statements are required for dispositions of a subsidiary's stock for which losses are claimed, for basis reductions within 2 years of the stock's deconsolidation, and for elections by the common parent to retain the NOLs of a disposed subsidiary.

Respondents: Business or other for-profit.

Estimated Number of Respondents: 3,000.

Estimated Burden Hours Per Respondent: 2 hours.

Frequency of Response: Other (one-time).

Estimated Total Reporting Burden: 6,000 hours.

Clearance Officer: Glenn Kirkland, (202) 622–3428, Internal Revenue Service, Room 6411–03, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Joseph F. Lackey, Jr., (202) 395–7316, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

Mary A. Able,

Treasury PRA Clearance Officer.

[FR Doc. 03–30094 Filed 12–2–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 2439

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 2439, Notice to Shareholder of Undistributed Long-Term Capital Gains.

DATES: Written comments should be received on or before February 2, 2004 to be assured of consideration.

ADDRESSES: Direct all written comments to R. Joseph Durbala, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Carol Savage at Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224, or at (202) 622–3945, or through the Internet at *CAROL.A.SAVAGE@irs.gov*.

SUPPLEMENTARY INFORMATION:

Title: Notice to Shareholder of Undistributed Long-Term Capital Gains.

OMB Number: 1545–0145.

Form Number: Form 2439.

Abstract: Form 2439 is used by regulated investment companies (RICs) and real estate investment trusts (REITs) to report undistributed capital gains and the amount of tax paid on these gains designated under Internal Revenue Code section 852(b)(3)(D) or 857(b)(3)(D). The company, the trust, and the shareholder file copies of Form 2439 with the IRS. The IRS uses the information to verify that the shareholder has included the capital gains in income.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 8,363.

Estimated Time Per Respondent: 5 hours, 14 minutes.

Estimated Total Annual Burden Hours: 43,739.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on:

(a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: November 28, 2003.

Carol Savage,

Management and Program Analyst.

[FR Doc. 03–30127 Filed 12–2–03; 8:45 am]

BILLING CODE 4830–01–P

Corrections

Federal Register
Vol. 68, No. 232
Wednesday, December 3, 2003

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Intent to Prepare a Draft Environmental Impact Statement for a Proposed Mill Creek Watershed Plan Including Potential Flood Damage Reduction Measures and Ecosystem Restoration, Davidson County, TN

Correction

In notice document 03–29418 beginning on page 66082 in the issue of Tuesday, November 25, 2003, make the following correction:

On page 66082, in the third column, in the **DATES** section, in the fourth line, "January 1, 2004" should read "January 15, 2004."

[FR Doc. C3–29418 Filed 12–2–03; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

Correction

In notice document 03–29492 appearing on page 66466 in the issue of Wednesday, November 26, 2003, make the following corrections:

1. In the second column, under **Degradation and Transcriptional Inhibition of HIF-2alpha Protein by 17-AAG**, in the fourth paragraph, in the fifth line, "factor-2a" should read "factor-2α".

2. In the same column, under the same heading, in the same paragraph, the sixth line should read "(HIF–2α). HIF–2α is thought to play an".

3. In the same column, under the same heading, in the same paragraph, in the 13th line, "HIF–2a" should read "HIF–2α."

4. In the same column, under the same heading, in the same paragraph, in the 16th line, "HIF–2a" should read "HIF–2α."

5. In the same column, under the same heading, in the same paragraph, in the 22nd line, "HIF–2a" should read "HIF–2α."

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Department of Transportation

Research and Special Programs Administration

49 CFR Part 171

Hazardous Materials: Revisions to Incident Reporting Requirements and the Hazardous Materials Incident Report Form; Final Rule

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Part 171

[Docket No. RSPA–99–5013 (HM–229)]

RIN 2137–AD21

Hazardous Materials: Revisions to Incident Reporting Requirements and the Hazardous Materials Incident Report Form

AGENCY: Research and Special Programs Administration, DOT.

ACTION: Final rule.

SUMMARY: RSPA is revising the incident reporting requirements of the Hazardous Materials Regulations and the hazardous materials incident report form, DOT Form F 5800.1. The major changes adopted in this final rule include: Collecting more specific information on the incident reporting form; expanding reporting exceptions; expanding reporting requirements to persons other than carriers; reporting undeclared shipments of hazardous materials; and reporting non-release incidents involving cargo tanks. These revisions will assure an increase in the usefulness of data collected for risk analysis and management by government and industry and, where possible, provide relief from regulatory requirements.

DATES: *Effective Date:* This final rule is effective July 1, 2004.

Compliance Date: Only the revised DOT Form F 5800.1 (01–2004) specified in this final rule will be accepted for incidents occurring on, or after July 1, 2004. Filers must use the previous DOT Form F 5800.1 (Rev 6/89) form for all incidents up to, and including June 30, 2004.

FOR FURTHER INFORMATION CONTACT: T. Glenn Foster, (202) 366–8553, Office of Hazardous Materials Standards, Research and Special Programs Administration or Kevin Coburn, (202) 366–4555, Office of Hazardous Materials Planning & Analysis, Research and Special Programs Administration.

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I. Background

Quality data that supports causal, trend, and risk analysis is fundamental to an effective safety program. The importance of data to the hazardous materials transportation safety program was highlighted in both a Department-wide initiative (ONE DOT Flagship Initiative on Hazardous Materials Handling/Incidents; "HazMat Flagship") which began in 1999 and a Department-wide Hazardous Materials Program Evaluation (HMPE) completed in 2000. The HazMat Flagship Initiative identified a set of new and ongoing actions relating to hazardous materials transportation that have the greatest potential impact on safety and program operation and that benefit from a cooperative approach. The HMPE used a multi-modal team to conduct a Department-wide program evaluation to document and assess the effectiveness of the Department's hazardous materials transportation safety program. The team's final report can be found at: *http://hazmat.dot.gov/hmpe.htm.*

Both the HazMat Flagship initiative and the HMPE emphasized the need to obtain more accurate and complete data on incidents. The hazardous materials transportation safety program relies on DOT Form F 5800.1, Hazardous Materials Incident Report, to gather basic information on incidents that occur during transportation and that meet specified criteria in § 171.16 of the Hazardous Materials Regulations (HMR; 49 CFR Parts 171–180). The Research and Special Programs Administration (RSPA, we) last revised this form in 1989. In 2001, we received approximately 17,500 incident reports. RSPA uses the data and information reported by carriers to:

- Evaluate the effectiveness of the existing regulations;
- Determine the need for regulatory changes to cover changing transportation safety problems; and
- Identify major problem areas that should receive priority attention.

In addition, both government and industry use this information to chart trends, identify problems and training inadequacies, evaluate packagings, and assess ways to reduce releases.

Although the current incident report form provides useful information and is generally recognized as being fundamentally sound, there is room for improvement. We believe the opportunity exists to obtain better, more detailed information on events, such as more descriptive information to help determine root causes of events; to offer better linkages so that data can be coupled; and to better structure the report form to facilitate complete and accurate responses.

Our experience using data generated by the current form has identified certain deficiencies. Rulemakings such as Docket HM–225A, "Revision to Regulations Governing Transportation and Unloading of Liquefied Compressed Gases," and Docket HM–213B, "Safety Requirements for External Product Piping on Cargo Tanks Transporting Flammable Liquids," have demonstrated the difficulties involved with using DOT Form F 5800.1 data to determine precise failure modes and causes. These rulemakings also underscore the unreliability of reported incident cost information and the need to update this and other data as better information becomes available after initial submission of the form.

A study performed by the Argonne National Laboratory and the University of Illinois (National Risk Assessment for Selected Hazardous Materials Transportation) for RSPA used incident data as a basic input into the study, and recommended changes in a number of areas of incident data collection. Also, risk practitioners in government and industry offered suggestions for improved reporting of incident data in a white paper produced under the auspices of the Transportation Research Board.

The National Transportation Safety Board (NTSB) has issued several recommendations related to data collection and processing identified during the course of their investigations:

(1) NTSB Recommendation H–92–6 suggests establishment of a program to collect information necessary to identify patterns of cargo tank equipment failures, including the reporting of all accidents involving a DOT specification cargo tank, with or without a release of hazardous materials.

(2) NTSB recommendation R–89–52 suggests implementing regulations to ensure that there is formal feedback from carriers to shippers when an incident has occurred.

(3) NTSB recommendation H–99–58 asks RSPA to establish a specific time period for reporting incidents meeting criteria in § 171.15 (telephonic notification).

Undeclared hazardous materials shipments, particularly in the air mode, are a serious safety concern within the Department. This issue received significant attention in the HazMat Flagship, and was recognized by the HMPE as an important area where better understanding of the frequency and impact of such shipments is essential. Data obtained through reporting discoveries of such shipments, whether or not the material is released, can help in defining the extent of the problem and in developing programs to mitigate the risk involved. DOT Form F 5800.1 is an efficient way to collect this data. Such data, even though it represents only undeclared hazardous materials that are discovered rather than the full spectrum of undeclared hazardous material shipments, can play a significant role in monitoring trends and measuring the effects of efforts to reduce undeclared shipments.

We are cognizant of the burden often imposed by regulatory requirements. As we developed changes to the incident reporting requirements, we attempted to minimize any additional burden associated with the revised requirements. For instance, we are adding exceptions to reporting requirements for small releases of materials that pose the least hazard where sufficient data already exists to manage risk. Further, we have deleted certain data fields that ask for information that is obtainable from other sources, for example, land use at the incident site. In addition, we are allowing electronic submission of the form, such as through an internet-based form or through a bulk data transfer, in order to facilitate the process. An internet-based form will ask only the questions the reporter is required to complete, based on previous answers. Accepting the data through a bulk file transfer allows larger companies to configure reporting software for their particular operations, maintain the information electronically, and eliminate paper and postage.

As a result of a meeting between DOT and members of several trade associations concerning hazardous materials incident reporting, the Association of American Railroads (AAR) sponsored a workgroup with segments of the transportation community to discuss the DOT Form F 5800.1 and the reporting requirements of §§ 171.15 and 171.16. The workgroup meetings were held during the winter of 1997–98. Participants included representatives from all four transportation modes, RSPA, shippers, container manufacturers, and labor. The workgroup submitted recommendations to RSPA. We developed questions based on input from these meetings, the DOT modal agencies, other concerned individuals, and on our own initiative.

On March 23, 1999, we published an advance notice of proposed rulemaking (ANPRM; 64 *FR* 13943) that asked a series of questions regarding the need to change current reporting requirements or the incident report form. We received approximately 40 comments from industry associations, State and local governments, non-profit associations, and carriers. Based on these comments, we developed proposed regulatory language and published a notice of proposed rulemaking (NPRM; 66 FR 35155) on July 3, 2001. We identified ten general issues in the NPRM, which are reviewed in Section III of this document. RSPA received over 36 comments on the NPRM. RSPA's decisions on the proposals of the NPRM and review of these comments are discussed in Section III, below.

II. Current Requirements

Currently, § 171.15 requires carriers to immediately notify the National Response Center (NRC) after any incident that occurs during transportation in which, as a direct result of hazardous materials:

(1) A person is killed;

(2) A person receives injuries requiring his or her hospitalization;

(3) Estimated carrier or other property damage exceeds $50,000;

(4) An evacuation of the general public occurs lasting one or more hours;

(5) One or more major transportation arteries or facilities are closed or shut down for one hour or more;

(6) The operational flight pattern or routine of an aircraft is altered;

(7) Fire, breakage, spillage, or suspected contamination occurs involving shipments of radioactive material or infectious substances (etiologic agents);

(8) There has been a release of a marine pollutant in a quantity exceeding 450 L (119 gallons) for liquids or 400 kg (882 pounds) for solids; or

(9) A situation exists of such a nature (*e.g.*, a continuing danger to life exists at the scene of the incident) that, in the judgment of the carrier, it should be reported to the National Response Center even though it does not meet any other immediate notification criteria. Carriers may report any of these incidents involving aircraft to the Federal Aviation Administration (FAA) Security Field Office. In addition, certain incidents involving infectious substances must be reported to the Centers for Disease Control and Prevention (CDC).

Each carrier required to make a report under § 171.15 is also required to complete DOT Form F 5800.1 in accordance with § 171.16. Additionally, unless excepted, a carrier is required to submit DOT Form F 5800.1 for any incident occurring during transportation that results in an unintentional release of a hazardous material from its package or the discharge of any quantity of hazardous waste.

We use the data and information reported by carriers to:

(1) Evaluate the effectiveness of the existing regulations;

(2) Determine the need for regulatory changes to cover changing transportation safety problems; and

(3) Identify major problem areas that should receive priority attention. In addition, both government and industry use this information to chart trends, identify problems and training inadequacies, evaluate packagings, and assess ways to reduce releases.

In considering how to improve the incident report form, our primary objective was to ensure that useful information is collected in an efficient manner. We believe it is possible to improve the structure and format of the form to make it easier to understand and complete. To reduce the reporting burden on persons responsible for completing the incident report, we believe certain existing fields that ask for information that is obtainable from other sources can be deleted. We also believe it is appropriate to add information in certain areas where it can help determine future program direction and support measures of program effectiveness. For example, a good description of packaging performance, documenting both failures and successes, helps us define future requirements. In addition, undeclared hazardous materials is an area of significant safety concern to DOT, and the ability to identify the frequency and source of such shipments is an important factor in reducing their occurrence. A complete description of changes to the content of the form is provided in the following sections.

III. Summary of Issues, Comments and Changes

In the NPRM, RSPA proposed changes on the following ten issues. In this final rule, we discuss comments submitted to the docket, concerns raised by

commenters, and our decisions on each issue below:

(A) Electronic filing
(B) Revisions to the form
(C) One-call reporting
(D) Expansion of reporting requirements to persons other than carriers
(E) Exceptions to incident reporting
(F) Criteria for telephonic notification
(G) Updates to reports
(H) Reporting when no hazardous material is released during an incident
(I) Undeclared shipments of hazardous materials that do not result in a release
(J) Notifying shippers of incidents.

A. Electronic Filing

In the NPRM, we proposed to adopt a variety of electronic filing methods, including facsimile (fax), electronic mail (e-mail), and internet-based forms. Electronic filing of incident reports is consistent with the requirements of the Government Paperwork Elimination Act (GPEA), which generally mandates that, by October 2003, agencies accept electronic documents and electronic signatures for the transactions that they conduct with the public and regulated parties.

All commenters support an electronic filing option. Commenters state that fax, e-mail, and internet submissions should be available to facilitate reporting. However, some commenters also state that electronic filing should be optional rather than mandatory.

We agree that electronic filing of incident reports would reduce the reporting burden on industry and increase reporting flexibility. However, because of logistical obstacles, all means of electronic filing will not be immediately available. We are in the process of developing the capability to allow electronic submission of the form and bulk transfer, and will issue an advisory notification upon completion. Although initial systems available to receive electronic submissions are limited, they will be expanded in the future as new systems are implemented within the Department or as new technologies become available.

We will continue to accept filing of a paper form, but we will not require the reporter to submit duplicate copies of the form. In addition, we have revised language in the regulations concerning the retention of the report in order to facilitate electronic storage. We have removed the provision requiring approval from the Department of Transportation to retain copies at a location other than the reporter's principal place of business. Instead, we allow the reporter to store the report at a location other than the principal place of business if the report is available to the reporter's principal place of business 24 hours after a request by a representative of the Department. Often, electronic documents may be stored on a computer server that is not physically located at the person's place of business. Additionally, the storage location is not of paramount concern, provided the document can be produced in the specified time. This change allows more flexibility for storing electronic and physical copies of the reports.

B. Revisions to the Form

The proposed modifications to the data form were published in the **Federal Register** in a notice of proposed rulemaking (NPRM). These proposed modifications introduced new and revised data elements in the form. These revisions are intended to minimize burdens on the end user, while necessitating that the form be completed accurately.

As a result of these new requirements, as well as RSPA's intent to maximize the accuracy and completeness of the forms we receive, RSPA procured the services of the QED Group, LLC (QED) of Washington, DC to recruit both experienced and non-experienced users of the previous form to test the form proposed in the NPRM. QED convened a series of focus groups to provide RSPA with constructive feedback on the revised form.

The first focus group meeting took place on October 25, 2002, with a morning session attended by ten experienced filers and an afternoon session attended by four less experienced filers. Neither group indicated that major revisions to the layout of the draft form were necessary, However, we derived the following observations from this meeting:

- The form layout should be more compact than the version in the NPRM, but attention should still be paid to font size.
- The form should avoid the use of shaded regions, as these interfere with faxing.
- The form should explicitly identify the form and/or series number of the accompanying instructions, as well as URL information for instructions-available online.
- Any such online instructions should contain links to the sections of the CFR cited, and should also contain links to definitions.
- There were no major issues or concerns with the graphics or other visual cues.
- Infrequent filers were concerned that the conditions for form filing were not presented all in one place. They suggested a different grouping of instructions, something along the lines of a "Who—Why—When?" section. Infrequent filers preferred a format similar to a flowchart (perhaps on a separate instruction page or worksheet) to walk them through the incident characteristics and help them arrive at a filing decision.

Considerations of an electronic form were not a major element of the discussions in this session. The most significant finding regarding the design of the electronic form was that large companies would prefer direct data exchange to a piecemeal filing of form information via the Web. Small companies, however, welcomed the Web interface primarily because of the potential for live HTML links to instructions, definitions and supporting regulations.

The second focus group meeting took place on November 22, 2002, with a morning session attended by seven experienced filers and an afternoon session attended by six less experienced filers.[1] The full QED report can be found in the Docket. Some of the comments received from this group included:

- In general, participants reacted very positively to the new electronic form. Participants appreciated having direct access to the instructions for completing the form in an electronic version.
- Replace the numeric values and alpha codes with check-boxes.
- Change the wording for the entry of failure codes for packaging from "Enter up to 3 Codes" to "Enter up to 3 sets of Codes." They also suggested that a vertical line be drawn between each grouping of "What Failed How Failed Cause(s) of Failure."
- Air carriers indicated that for a hazardous material incident involving passenger baggage, there should be an ability to indicate the type of bag containing the item involved in the release, as well as any packaging within the bag.
- Language should be changed in Part 6 from "Describe the package failure" to something else since the report may not be in response to the failure of a package but due to some other hazardous material incident.
- Participants indicated that they would like the ability to save templates. These templates could be linked to a company- or location-specific password, and would store information such as reporting entity address, mode, and possibly even material information (for single-material handlers). Alternatively, some participants indicated that they would like to be able to host versions of these forms (with company-specific information already filled in) on their own intranets and post the reports to DOT databases from their own systems.
- Participants would like to enter the UN number of the hazardous material, and have a scripted lookup function enter everything else into the various fields from a table.
- Provide additional "skip patterns" and validation logic—for example, if the release is caused by a "puncture," the program should make "shell thickness" a required data field and not allow the form to be saved or submitted if it is incomplete. Participants also mentioned that they would like relevant previous responses to gray out everything not applicable after item 23, and that item 23 itself should be linked to the response to 1(b). Similarly on item 27, if there are no fatalities, the numbers could be greyed out and "tab" could skip to the next valid item.
- Add ability to upload supplementary documentation/pictures, etc. on the part 6 page using an interface not unlike that for adding attachments to Web-based mail.
- Part 7 might be better as a dropdown box, since filers will probably supply a response that can be autocoded this way. This might save DOT time in having to back-code responses that fall into regular patterns such as "enhanced training, accelerated repair schedule," *etc.*
- Participants stated that default values would be a good idea for the form. Having a default value for "unknown" might make it easier for DOT to identify missings/unknowns/not applicables, a frequent source of problems in data analysis from survey research.
- Measurement units entered throughout the form should be confined to a standard list and should exist in fields separate from the quantities field.

RSPA received numerous comments and questions on the proposed form layout. Several commenters mentioned the increase in the number of pages of the form. As we explained in the NPRM, the page numbers increased due to the addition of approximately 15 data fields to the basic incident information and the addition of more white space. The number of pages in the final version of the form actually only increased from 2 to 4 pages.

In considering how to organize and lay out the incident report form, our primary objective is to ensure that useful information is captured in an efficient manner. We are deleting certain existing fields that ask for information obtainable from other sources or that can be extrapolated from other fields. The questions "Is material a hazardous substance?," "Was the RQ met?," and the "Land Use and Community Type" fall into this category. Similarly, the "Highway Type" and "Number of Lanes at a Vehicle Accident/Derailment site" can be determined from other sources. In addition, the type of labeling or placarding fields offer limited benefit to safety improvements, and have not been included in the revised form.

Additional information in certain areas is needed to help determine future program direction and to support measures of program effectiveness. Separate fields for information on packing group, hazardous wastes, and toxic by inhalation materials would allow us to better identify the materials involved in incidents. Further, we believe the inclusion of cross-reference fields, such as the NRC report number and the shipper's and carrier's hazardous materials registration number, will help broaden the ties the incident data has with other Federal hazardous materials data.

We also believe gathering additional information on the types of persons who respond to incidents, the types of persons who are killed, injured or need to be evacuated, as well as how long evacuations or closures last, will contribute to incident risk analysis. The more detailed questions concerning air transport incidents and questions directed to specific types of packagings will allow for more focused review of where and how packages fail. Additionally, the ability to identify the frequency and source of undeclared hazardous materials shipments, an area of significant safety concern to DOT, is important to reduce their occurrence.

We are revising the packaging sections of the incident report form to eliminate duplicative and confusing formatting and to enable us to gather more specific packaging information. For example, we are replacing check boxes to identify damage to packagings with failure codes specific to each packaging type. The utilization of failure codes was one of the recommendations that came from the AAR workgroup discussed in Section I. The use of failure codes allows the preparer to select from a set of choices appropriate to the particular packaging type involved. Also, we believe use of terminology appropriate for the particular packaging type will help avoid confusion and ultimately make it easier for the preparer to complete the incident report. Although we have not adopted failure codes of the exact type and form recommended by AAR, we have revised the format of the codes on the form so that the first code element for "What Failed" corresponds to the specific point of failure followed by location codes. This allows for easy translation of the codes. The single AAR code corresponds to a specific sequence of codes to be entered on this form. Further, we recognize that the experience we gain with the early use of these failure codes may result in periodic changes as the set matures. The instructions invite suggestions for improvements to the failure codes.

The expansion will add about 15 data fields to the basic incident information. We believe the benefits to be gained by collecting more detailed information will require only minimal additional time to report these mostly short yes/no or fill-in-the-blank fields. In addition, we have provided space for recommendations or actions. The purpose of this section is not to assess blame or serve as a definitive statement relating to the root causes of an incident, but rather to gather ideas on preventing the recurrence of incidents. Such information can help identify common problems and may be used to support regulatory changes. Further, we have reformatted the incident report form to facilitate completion (*e.g.*, more white space and a more logical flow from item to item). While this reformatting has added two additional pages to the form, we believe that this design will improve accuracy and make the form easier to complete.

C. One-Call Reporting

In this final rule, we are adopting the proposal to eliminate the separate telephonic notification requirement to FAA for air shipments and to require all air carriers to report incidents subject to § 171.15(a) to the National Response Center (NRC). NRC would then make any subsequent notifications. NRC personnel are specifically trained on which notification requirements pertain to which entities, thus, this change should result in more accurate notification to parties with a need to know.

Only a few commenters addressed the one-call issue. In its comment, the California Highway Patrol (CHP) supported streamlining the calling process, but emphasized the need to alert state officials via 911. RSPA recognizes the difference between contacting emergency response officials and incident reporting to DOT. As the CHP states, "* * * it is the local emergency response agency(s) who

[1] Other scheduled attendees of both sessions experienced work-related emergencies or had other difficulties that prevented them from participating in the focus group.

handle the entire incident and nearly every instance bears the initial response burden and often the greatest opportunity to mitigate the adverse consequences." We reiterate that the one-call for reporting to the NRC is for incident reporting. In the case of any incident involving hazardous materials that requires immediate emergency response, the local authorities should be immediately notified. In addition, adoption of this requirement does not relieve a person from reporting discrepancies of hazardous material shipments transported by air. Discrepancies are those air shipments involving hazardous materials which are improperly described, certified, labeled, marked, or packaged, in a manner not ascertainable when accepted. Section 175.31 of the HMR requires, as soon as practical, a person to report by telephone to the nearest FAA Security Field Office a discrepancy relative to the shipment of a hazardous material following the shipment's acceptance for transportation aboard an aircraft.

The United Parcel Service (UPS) indicated its support for continuing reporting to the FAA Security Field Office in place of reporting to the NRC. UPS stated that "* * * direct notification to the FAA by the person in physical possession of the hazardous material will result in more accurate notification * * *" than notification to the NRC. UPS notes that "* * * nothing in the administrative record provides a reasoned discussion of why elimination of direct FAA notification would result in more accurate incident reporting." A Presidential review of Federal release prevention, mitigation, and response authorities, conducted under the requirements of section 112(r)(10) of the Clean Air Act, as amended in 1990, found that the current reporting system was complex and confusing. In 1993, the National Response Team (NRT), comprised of multiple federal agencies, submitted a Report to Congress entitled "A Review of Federal Authorities for Hazardous Materials Accident Safety." In this report the NRT recommended that streamlining the accident notification reporting requirements be further examined. The NRT found that the duplicative reporting requirements imposed by the various agencies was a burden.

The one-call reporting system is an attempt to streamline the process for federally mandated reporting of accidental discharges of hazardous materials. There are a variety of incident scenarios, that, under current Federal regulations, would require the reporting party to call multiple Federal agencies to notify them of an accidental release. Under the one-call system, the NRC receives all Federal telephonic notifications of hazardous materials incidents and then notifies all appropriate parties, ensuring that incident data is collected and maintained. Centralizing the collection of release notifications will result in improved data quality by ensuring that all release notification data is collected in a consistent and comprehensive manner.

D. Expansion of Reporting Requirements to Persons Other Than Carriers

Currently, the requirements for telephonic and written reporting of transportation incidents apply to carriers only. Operators of transportation facilities, such as marine terminals, who may not perform carrier functions are not required to report transportation incidents involving hazardous materials. Most commenters to the NPRM agree that the person in physical control of a hazardous material when an incident occurs during transportation should be responsible for reporting that incident. The Norfolk Southern Railway Company supports the proposal and notes "the person in control * * * would be the person most knowledgeable about the incident."

Many commenters note that a pending RSPA rulemaking that will define when a material is "in transportation in commerce" (Docket HM–223, NPRM published on January 27, 2001; 66 FR 59220) is an important factor in determining when and what entities would be required to report incidents. DuPont comments "* * * this issue cannot be resolved until the DOT publishes a final rulemaking on Docket HM–223 Applicability of the Hazardous Materials Regulations to Loading/Unloading and Storage." A commenter associated with the F 5800.1 Task Force supports "* * * the idea that the party having physical control of the material is the one who should be required to complete the report * * *" but notes the relationship of Docket HM–223. "If the final rule in HM–223 is promulgated as proposed, it would relieve parties, other than carriers from having to execute incident reports" notes the commenter. He continues "This would mean that consignors and consignees would not have to report incidents occurring during loading or unloading." The International Vessel Operators Hazardous Materials Association, Inc. (VOHMA) expands the concept further by questioning "* * * who will actually be required to report an incident that occurs during the course of activities that might not be considered to be 'in transportation' and in fact, [we] wonder if the responsibility might then fall back on the last carrier."

On October 30, 2003, we published a final rule under Docket HM–223 (68 FR 61906). Among other issues, the final rule clarifies the applicability of the HMR to specific functions and activities, including loading, unloading, and storage operations. Consistent with the Federal hazardous materials transportation law (49 U.S.C. 5101 *et seq.*), the final rule defines "transportation" to mean the movement of property and loading, unloading, or storage incidental to the movement. Transportation in commerce begins when a carrier takes physical possession of a hazardous material for the purpose of transporting it and continues until delivery of the package to its consignee or destination as evidenced by the shipping documentation under which the hazardous material is moving. The final rule defines "loading incidental to movement" to mean the loading by carrier personnel or in the presence of carrier personnel of packaged or containerized hazardous material onto a transport vehicle, aircraft, or vessel; for a bulk packaging, "loading incidental to movement" means the filling of the packaging with a hazardous material by carrier personnel or in the presence of carrier personnel. The final rule defines "unloading incidental to movement" to mean the removal of a packaged or containerized hazardous material from a transport vehicle, aircraft, or vessel or the emptying of a hazardous material from a bulk packaging after the hazardous material has been delivered to the consignee and prior to the delivering carrier's departure from the consignee facility or premises. Under the final rule, "storage incidental to movement" means storage by any person of a transport vehicle, freight container, or package containing a hazardous material between the time that a carrier takes physical possession of the hazardous material until the package containing the hazardous material is physically delivered to the destination indicated on a shipping document.

This final rule requires reporting of incidents under §§ 171.15 of 171.16 that occur during the time that the material is in transportation. Consistent with the definitions adopted in HM–223, incidents that occur during loading operations conducted by carrier personnel or in the presence of carrier personnel must be reported, as must incidents that occur during unloading operations conducted prior to a carrier's departure from the consignee's premises. Hazardous materials incidents that occur during loading operations conducted by a shipper prior to a carrier's arrival at its facility to pick up the hazardous material or during unloading operations conducted by consignee personnel after the hazardous material has been delivered and the carrier has departed the premises are not required to be reported under §§ 171.15 and 171.16. Note in this regard that the HM–223 final rule changes the applicability of the HMR to rail tank car unloading operations conducted by consignee personnel, which are currently subject to the provisions of § 174.67. Under HM–223, such rail tank car unloading operations are not transportation functions and, thus, are not subject to incident reporting requirements.

Other commenters opposed the requirement in total. In addition to Docket HM–223 concerns, the Fertilizer Institute (TFI) and The National Propane Gas Association (NPGA) "* * * contend that this change will increase the burden on industry." Additionally, they claim the "* * * change will decrease the efficiency of RSPA's data collection" because it is possible that more than one person will report the same incident. The Petroleum Marketers Association of America (PMMA) sees an increase in burden for industry and RSPA by "* * * requiring procedural changes, additional training, and time" for industry and the confusion caused by duplicative reporting will "* * * decrease the efficiency of RSPA's data collection efforts and will not benefit its risk assessment."

RSPA already receives duplicate reports and currently has a system for identifying duplicative reporting, thus the impact to RSPA should be minimal. In our Regulatory Evaluation, available in the HM–229 Docket (RSPA–99–5013–87), we discuss the additional cost to industry by adopting this proposal. We anticipate a minimal increase in the number of reports concerning incidents that occur during loading and unloading because these activities are already reported by carriers. Given the volume of handlings, however, we conservatively estimate a 2% increase in the number of reports concerning incidents that occur during loading and unloading.

RSPA also expects an increase in the number of reported incidents occurring in facilities where hazardous materials are stored incidental to transportation. An RSPA study conducted in 1998 estimates that many of the 800,000 daily shipments of hazardous materials involve consolidations, intermodal or intramodal transfers and in-transit storage, resulting in 1.2 million daily hazardous materials movements. We estimate that extending reporting requirements to in-transit storage facilities will increase the overall total number of reports by 10%.

The intent of this rule change is to collect spill information on incidents that occur while the hazardous material is in transportation. Since RSPA has jurisdiction over hazardous materials in transportation, excluding reporting on incidents that occur during in-transit storage creates an incomplete data set of hazardous materials incidents. In the past, RSPA has discovered such incidents only from sources such as press reports of the most serious incidents. The information will provide a more complete picture of incidents occurring throughout the transportation system.

In this final rule, we are requiring each person in physical control of a hazardous material while it is in transportation in commerce to report any incident that occurs while the material is in that person's possession. For example, an in-transit storage facility owner would have to report any event that meets the provisions of §§ 171.15 or 171.16 and that occurs during the time that a hazardous material is stored in transportation. Consistent with the definitions adopted in the HM–223 final rule, storage incidental to movement is storage by any person of a transport vehicle, freight container, or package containing a hazardous material between the time that a carrier takes physical possession of the hazardous material until the package containing the hazardous material is physically delivered to the destination indicated on a shipping document. Reports of incidents or releases that occur during incidental storage will provide more accurate and complete information regarding hazardous materials incidents.

In addition, we are revising § 171.21 to require the person responsible for reporting the incident, rather than the "carrier," to make available all records and information pertaining to the incident.

E. Exceptions to Incident Reporting

As proposed in the NPRM, an incident meeting all of the following criteria would not be required to be reported:

(1) The shipment has not been offered for transportation or transported by air;

(2) None of the criteria in § 171.15(a) apply;

(3) The material is not a hazardous waste;

(4) The material is properly classed as—

(i) ORM–D; or

(ii) A Packing Group III material in Class or Division 3, 4, 5, 6.1, 8, or 9;

(5) Each package has a capacity of less than 20 liters (5.2 gallons) for liquids or less than 30 kg (66 pounds) for solids;

(6) The total aggregate release is less than 20 liters (5.2 gallons) for liquids or less than 30 kgs (66 pounds) for solids; and

(7) The material does not meet the definition of an undeclared hazardous material in § 171.8.

In the NPRM, we proposed to except small spills of low hazard materials from the reporting requirements. We wanted to require that an aggregate spill of 20 liters (5.2 gallons) or over for liquids or 30 kg (66 pounds) or over for solids of otherwise excepted hazardous materials be reported. For example, if twelve 5-gallon containers of a flammable liquid hazardous material in PG III are spilled, no incident report would be required unless the aggregate amount released from the twelve containers of the hazardous material is at least 5.2 gallons or one of the conditions in § 171.15(a) is met. Based on reports received over the past five years, we expect that the proposed exceptions would result in a sizeable net reduction of the total number of incident reports filed each year.

Most commenters agreed with the proposed new exceptions and suggested that we include additional reporting exceptions. The Reusable Industrial Packaging Association (RIPA) suggested that non-bulk packagings and IBCs containing residues should not be reported if a spill of the residue occurs. Safety-Kleen requested that hazardous wastes be included in the reporting exceptions. RSPA does not agree with either commenter. Since this information is used to determine the effectiveness of packagings, excluding packagings larger than what was proposed, even if they only contain a residue of a hazardous material, leaves out incidents we wish to include in our data set. In addition, hazardous wastes are generally not included in most exceptions, even if the regulations for materials only meeting the definition of a hazardous waste and no other hazard class are relatively minimal.

Some commenters were against expanding the reporting exceptions or noted that we risk limiting the data we collect concerning spills. Chevron/Phillips warns "* * * the inclusion of many of the exceptions noted in HM229 [sic] may further reduce data that can be used to further risk management efforts." The International Brotherhood

of Teamsters "* * * fears that RSPA will be relinquishing its authority to collect information about hazardous materials releases that can, and often do, lead to workers being exposed to hazardous materials."

These expanded exceptions, as noted by several commenters, actually reduce some of the exceptions for paint and paint-related materials, and for limited quantities in Packing Group II. The Glidden Company calculates "* * * the significant increase in reporting will require * * * an additional 175 to 180 reports per year." BASF states "* * * this proposed change will significantly increase the burden on the paint manufacturing industry * * *" and DuPont adds that the change "* * * would escalate the cost with no corresponding increase in safety." Indeed, the exceptions presented in this final rule eliminate exceptions based on specific shipping names for paint and batteries. Instead, the exceptions in this final rule are based on the hazards the materials pose and quantities of those materials.

The original exceptions to spill reporting were implemented under Docket HM–36A (45 FR 73682) in 1980, before Packing Groups for materials were developed in Docket HM–181 (55 FR 57402 and 56 FR 66124). When Packing Groups were incorporated into the regulations, we did not revise § 171.16 to update the reporting exceptions in light of the Packing Group changes. In 1996, under a broad regulatory review, exceptions for limited quantities of Packing Group II and III materials were added under Docket HM–222B (61 FR 27166), but we did not conduct a thorough review of incident reporting, and the basis for reporting exceptions.

In reviewing the reporting requirements and the exceptions to reporting, we have determined that the data needs for releases of small amounts of low-hazard materials is low. We now have ample data from incidents over the past 20 years involving small releases of Packing Group III hazardous materials in small quantities to warrant a reporting exemption. However, we have determined that incidents involving Packing Group II materials warrant reporting, even in these smaller quantities. These materials pose a greater hazard than Packing Group III materials, so packaging failures and other incidents will continue to be required to be reported in order to monitor and improve regulations. Thus, we have adopted the proposed exceptions published in the NPRM.

In addition, we are clarifying that the incident report requirements do not apply to minimal amounts of hazardous materials escaping: (1) Due to disconnecting a loading or unloading line or from the operation of venting devices (for which venting is authorized); or (2) from the manual operation of seals in equipment such as pumps, compressors, and valves during the normal course of transportation if the release does not trigger any of the provisions for a telephonic notification described in § 171.15 of this subpart and does not result in property damage.

F. Criteria for Telephonic Notification

Under current § 171.15 requirements, one of the criteria that triggers the requirement for immediate notification is property damage that exceeds $50,000. RSPA proposed removing this requirement. There were not many comments on this point. The CHP supported the proposal because "quite often the true total costs associated with an incident will not be determined for a substantial period of time following an incident." We agree and are removing the monetary criterion.

We proposed to clarify the requirements for "immediate notification" by specifying that telephonic notification must be made as soon as practicable following the occurrence of an incident and in all instances within 12 hours after an event requiring notification. This revision also responds to NTSB recommendation H–99–58 to provide a specific time period to report an incident by telephone. NTSB recommended that a 2-hour time frame was preferable. Commenters note the difficulties in complying with a 2-hour response time. The Conference on Safe Transportation of Hazardous Articles, Inc. notes that "* * * immediate reporting requirements should focus on obtaining response services that are required to gain control of an incident."

RSPA understands contacting emergency response entities may be of primary concern immediately following an incident; however, notification of federal authorities through the NRC is also essential. The NTSB comments that railroads, under 49 CFR 840.3, are required to provide telephonic notification to NRC within 2 hours in the event of an accident resulting in a fatality, release of hazardous materials, or evacuation of the public, and within 4 hours after an accident resulting in damages exceeding certain limits. RSPA understands the circumstances involving remote highway incidents may be more difficult to address in the constrained time frame. We do not want to detract from the immediate emergency response efforts focused on amelioration of a spill, therefore we have clarified the requirements of "immediate" telephonic notification to be as soon as practical but no later than 12 hours after the occurrence of any incident.

G. Updates to Reports

In the NPRM, we proposed to require updates to the incident report form within one year under the following conditions:

(1) A death results from injury caused by a hazardous material;

(2) There was a misidentification of the hazardous material or package information on the incident report;

(3) Damage, loss or related cost that was not known when the initial report was filed becomes known; or

(4) Damage, loss, or related cost changes by $25,000 or more.

RSPA received several comments on updating reports. UPS commented that the requirement would be a "* * * substantial burden for any carrier such as UPS * * *" because it would have to monitor thousands of incidents per year to determine if any developments trigger an update. In addition, it noted that the requirement would "* * * require a submitter to constantly update an incident report for one-year [sic] following its submission." Farmland Industries, Inc. mentions that if RSPA removes "* * * cost as a requirement for telephonic reporting, consideration should be given to removing updated costs from an incident."

DuPont does not support the proposal to update the report, even though the actual number of updates would be small. It does not believe "* * * that a majority of the hazardous materials incidents reported would require updating because the quantities released are minimal." DuPont thinks the number of reports that would require updating are so minimal and "* * * question if the small percentage that would qualify warrant a regulatory requirement for updating the reports."

Other entities supported an updating requirement, with caveats. The Norfolk Southern Railway Company does not oppose the proposal, but feels the requirement to update based on a change of $25,000 in the costs of the incident would "* * * serve no real purpose" and would be burdensome to industry. Ashland, Inc. suggests that the costs requirement for updating the report be a $250,000 change and only if the cost changes by more than 10%. The F5800.1 Task Force also suggested including a 10% threshold.

We believe that substantive changes to the outcome of an incident should be updated to ensure the accuracy and quality of the data we collect. Updated information provides a more meaningful approach to causal, trend, or risk assessment analysis. We are adopting the proposal to require updated incident reports for up to one year after the date of an incident for the following: (1) Death resulting from injuries caused by a hazardous material; (2) corrections to the identification of the hazardous material or package information; and (3) certain updated damage costs as additional information becomes available. Cost information would be updated when: (1) costs not known at the time the report was filed became known; or (2) original damage/cost estimates were revised by more than $25,000 or 10% of the original estimate, whichever is greater. In some cases, certain costs (such as decontamination and cleanup) may not be known within 30 days of the incident's occurrence, and would not be included in the initial incident report. In other cases, some costs (such as property damage) may be significantly higher than the original estimate. We estimate that about 800 incidents reported each year would require an update.

CHP mentions that updating the report should be streamlined for more accurate reporting. It is possible that in the future, with the advent of electronic data management systems, performing an update to the form may not require the re-submission of the DOT Form F 5800.1 form. Until that time, we will retain the current requirements for submitting updates.

Under § 171.21, persons required to report an incident are required to cooperate with any further investigation of that incident. In particular, incidents that we categorize as significant may require further investigation, or reports that are incomplete may require a follow-up.

H. Reporting When No Hazardous Material Is Released During an Incident

In the NPRM, we proposed to require certain incidents involving bulk packagings that do not result in release of a hazardous material to be reported. We stated that such information could provide a broader base for risk management in more critical transportation situations and that additional information could be used to gauge the performance and integrity of certain packagings. This proposal was in response to NTSB recommendation H–92–6, which requested that DOT implement a program to collect information necessary to identify patterns of cargo tank equipment failure, including the reporting of all accidents involving a DOT specification cargo tank. This request stems from the February 4, 1992 special investigation report on cargo tank rollover protection (PB92–917002). NTSB examined seven highway accidents in which cargo tanks overturned and hazardous materials were released through damaged closures or fittings on top of the tanks; none of the cargo tank shells had been breached. Among its conclusions were the following:

* There is inadequate information about the forces that can be encountered in a rollover accident and the extent to which rollover protection devices for cargo tanks can reasonably be designed to withstand these forces because neither the RSPA, the FHWA [Federal Highway Administration, now Federal Motor Carrier Safety Administration, or FMCSA], nor the industry has provided engineering modeling or other analysis to determine the magnitude of forces acting upon a cargo tank under different accident conditions, and

* The FHWA [now FMCSA] and the RSPA accident data bases are not adequate to identify important trends of potential problems related to the design and construction of bulk liquid cargo tanks.

Subsequently, in its report, NTSB recommends that RSPA "implement, in cooperation with the FMCSA, a program to collect information necessary to identify patterns of cargo tank equipment failures, including the reporting of all accidents involving a Department of Transportation specification cargo tank." In an effort to minimize duplicative reporting of much of the same information, discussions with FMCSA and RSPA resulted in agreement that the F 5800.1 form would be suitable and appropriate to collect this type of information.

Most commenters oppose data collection for an incident that does not result in a release of hazardous materials. Commenters cite a number of reasons, the main ones being an increase in burden, an ambiguity in when a report was required, and the limited usefulness of the data collected under this proposal. The commenters made it clear that specific guidelines would be required to avoid what the National Tank Truck Carriers (NTTC) describe is a possible "compliance trap" due to varying definitions of "damage" from company to company and inspector to inspector. This point was raised numerous times. Utility Solid Waste Activities Group comments "* * * that a specific definition of 'damage' is needed to evaluate the impact of this proposal." PMMA adds "* * * the language of the proposed rule is vague." TFI and NPGA argue not only that the requirement "* * * is vague and fails to give regulated parties the requisite certainty to enable compliance" but also that the proposal "* * * does not accomplish the desired goals of NTSB Recommendation H–92–6." The last comment seems to contradict NTSB's opinion, as NTSB was one of only two commenters agreeing with the proposal. The other was the Nuclear Energy Institute.

RSPA believes there is a need to collect this information as recommended by NTSB. The potential burden on operators is offset by the safety information that will be provided. For example, such reporting can provide information concerning packaging integrity, particularly the circumstances under which a packaging is able to withstand a collision or accident without releasing its contents. The incident data base is expanded to include "near miss" or "close call" incidents which, because of the quantity and type of hazardous materials present, have the potential for significant consequences.

Additionally, collecting this information allows for examination of the circumstances (packaging, procedures, training) to determine if there may be ways to avoid the actual set of incidents that pose the greatest risk. This information also provides an indication of a packaging's ability to survive forces encountered in the transportation environment. Finally, this data would provide "success stories" and illustrations of a packagings robustness. The converse is also true. If most times that a packaging is in an accident and its damage results in a hazardous materials release, it may point to the inadequacy of the packaging requirements. Accurate data will prevent safety gaps as well as aid in determining how to allocate limited funds of the regulated community to provide the greatest safety benefits.

However, RSPA also agrees with some of the concerns of the commenters. For example, the ONEDO–Nalco Company argues that smaller bulk packagings, such as IBCs, are handled, loaded, and unloaded more frequently than larger containers so that minor damage "* * * is relatively common." TFI and NPGA noted that the NTSB recommendation focused only on cargo tanks, while RSPA's proposal expanded the concept to other bulk packagings. Therefore, in this final rule, RSPA is adopting the proposal only in regards to reporting damage to specification cargo tanks over a 1000-gallon capacity. In addition, we clarify what is reportable damage. Structural damage is damage considered

serious enough to bring into question the integrity of the cargo tank. A cargo tank that requires subsequent replacement or repair due to the damage sustained in the accident for other than cosmetic reasons falls into this category.

Lading retention system consists of the basic containment (*e.g.*, tank) and any associated appurtenances or equipment (*e.g.*, piping and valves) that, if seriously damaged, could result in the release of the contents of the cargo tank. Examples of when an incident report is required and when one is not required follow. If there is doubt, the incident should be reported.

Incident report required	No incident report required
Damage to an outlet valve that affects seating and requires replacement.	Handle broken or knocked off valve—but otherwise undamaged.
Serious damage that, if worse, could have resulted in the loss of the contents of the cargo tank. Damage to outlet lines that contain hazardous materials during transportation are in this category.	Serious damage that, even if worse, would not have resulted in the loss of the contents of the cargo tank. Damage to outlet lines that are normally not charged during transportation are in this category.
Cargo tank damage that requires professional inspection or recertification to ensure it is capable of meeting requirements..	Minor damage that obviously will not affect continuation of the cargo tank in service.
Cargo tank damage that requires immediate or subsequent repair because of questions about cargo tank integrity.	Cargo tank damage that requires repair for cosmetic reasons only.

RSPA may address this issue in a future rulemaking if it determines that data needs require additional information for other bulk packagings. For instance, it is our understanding that AAR maintains extensive accident data that could be correlated to damage and releases. Access to this data or reports based on the data may negate future need for its collection via DOT F 5800.1. We will explore options in this area with the rail industry. In addition, information on damage to certified cargo tanks of 1000 gallons or more capacity that do not result in a release will be analyzed over the next several years to determine its usefulness in practice and if further rulemaking is needed.

I. Undeclared Shipments of Hazardous Materials That Do Not Result in a Release

Reducing undeclared shipments of hazardous materials is a high priority of the Department. Undeclared shipments are apt to be in substandard packages and undermine hazard communication that is vital in an emergency. Undeclared shipments, particularly when offered for transportation or transported by air, pose a significant safety problem because of the potential for improper packing, handling, and failure to communicate the hazard. Emergency responders and transportation workers are unaware of the presence of undeclared hazardous materials. Certain hazardous materials that are forbidden for air transportation may make their way onto a passenger-carrying or cargo-only aircraft, and may inadvertently be handled in an unsafe manner by transportation workers. In a hazardous material release from an undeclared shipment, the crew does not know what the hazardous material is, or what response measures to take.

Commenters agreed that undeclared shipments posed a great danger, however, many commenters did not support this proposal. While VOHMA agrees that undeclared shipments are "* * * one of our most significant problems," it notes that carriers "* * * lack the resources to remove such seals, unpack the container to inspect the cargo within * * *" VOHMA also notes in its comments that "[t]he carrier should not be held responsible by the regulations for declaring dangerous cargoes * * *" Others supported the concern that this could put the carriers in a difficult position of being responsible to ensure that all shipments were prepared properly. Some commenters state that a reporting requirement specific to undeclared hazardous materials would expose their companies to undue liability and possible enforcement actions for accepting an undeclared shipment. Other commenters state that this requirement would place carriers in an enforcement role.

A number of commenters, including the Air Line Pilots Association, International (ALPA), CHP, and the NTSB support reporting undeclared shipments when discovered in transportation. ALPA states this problem is "* * * one of, if not the greatest potential risks to passengers, aircraft, and crew."

We believe that information on undeclared shipments should be collected and that the incident report form is the most accessible method for collecting such data. Requiring reports of undeclared hazardous materials discovered in transportation can help in several ways. For example, problem shippers can be identified, and outreach and enforcement can be used to reduce the chance of recurrence. In addition, reporting can also help define the extent of the problem, establish trends, and help gauge the effectiveness of efforts to reduce undeclared shipments. Such a requirement is consistent with the current emphasis by the Department on this area. Accordingly, RSPA is adopting, as proposed, the requirement to submit an incident report when an undeclared shipment of hazardous materials is discovered. This requirement applies to parties who are likely to discover undeclared shipments and who will benefit greatly from a reduction of such shipments, which is a goal of this rulemaking.

RSPA is sensitive to problems noted by commenters concerning the amount of information that is considered sufficient to give a person (other than the original offeror) actual or constructive knowledge of the presence of a hazardous material. In a separate proceeding (Docket No. RSPA–01–10380), RSPA is formulating additional guidance on the factors that enforcement agencies consider relevant to a determination whether a carrier knew or should have known that an "undeclared" shipment contained a hazardous material, based on comments submitted in writing and at a June 19, 2002 public meeting.

This rule does not change the "knowingly" standard for civil penalty liability in 49 U.S.C. 5123, nor does it create any increased duty to examine all packages for the presence of hazardous material or affect the responsibility of a carrier or other person to refuse to transport a package that it knows or should know contains a hazardous material. The requirement to report the discovery of an undeclared hazardous material is not intended to create a "compliance trap." Enforcement action is focused on the person who initially offered the undeclared hazardous material for shipment, not the person who subsequently received a shipment that was not properly marked, labeled, placarded, and described on shipping papers. In addition, there is no basis for

enforcement action against a person who accepted or handled an undeclared hazardous material when it had no reason to know of the presence of the hazardous material.

J. Notifying Shippers of Incidents

We proposed to require the person responsible for completing an incident report to provide a copy of the report to the shipper whose packages were the subject of the report. This proposal responded to NTSB Recommendation R–89–52, that recommends requiring carriers reporting hazardous materials incidents under the provisions of § 171.16 to notify shippers whose hazardous materials shipments are involved. NTSB is concerned that shippers are not receiving information about packages that are prone to failure during transportation.

Some commenters who supported the proposal cited the importance this information could provide for the shipper in identifying problem packagings or methods. The Glidden Company indicated notification would provide it "* * * with valuable information into possible reasons how and why packages are damaged in transport." This reasoning is echoed by BASF who stated that the notification would "* * * provide valuable information into possible reasons for package failure or damage during transport," and also by Utility Solid Waste Activities Group who expressed "* * * such notification could provide a strong safety incentive and would help prevent additional incidents where the offeror's packaging is at fault."

Many other commenters opposed the proposal for a number of different reasons. One commenter stated that the incident report may not be forwarded to the appropriate company or person within that company, essentially eliminating the opportunity for corrective action. The Air Transport Association (ATA) stated that if there is a shipper's name and address on the shipping paper, it may not be the location from which the material was originally shipped. In addition, as VOHMA noted, "Often, the carrier accepts the freight container from [a] forwarder listing that party as the shipper of record or consignor" thus, making the original shipper impossible to find by the reporter of the incident. NTTC observed that carriers may not know the identity of the true shipper of a given product due to the intervention of forwarders, brokers, and third party logistics providers.

Other commenters stated that the reports were an increased burden for the reporter and many reports may be of little or no interest to shippers. Safety-Kleen asserted that "* * * the majority of hazardous waste generators do not want to be notified when small amounts of material have leaked * * * this [proposal] places an unfair burden on the hazardous waste carriers."

We believe that some type of shipper notification is incorporated into most standard business practices to account for shipment tracking, product loss, or damage reporting by carriers and consignees, and may be replicated by the proposed notification. The comments of several shippers supported this view. For example, Norfolk Southern Railway Company stated it "* * * already voluntarily provides copies to its shippers * * *" and that "* * * reports are sent to the shippers at the same time they are submitted to RSPA." Chevron/Phillips noted that companies "* * * already support this activity and have detailed reporting requirements in contracts and service agreements."

We agree with NTSB and others that there are benefits to shippers being made aware of incidents involving their packages; however, for the reasons discussed above we believe it is not appropriate to impose the burden of notification on incident reporters. We believe that RSPA, along with FAA, FMCSA, Federal Railroad Administration (FRA) and the United States Coast Guard (USCG) can do a better job of ensuring appropriate corrective action by selective notification of shippers and others, as warranted by analysis of incidents, and by working towards making incident report information generally available on RSPA's website. Notification from DOT would carry more weight and prompt a more immediate response from shippers. Also, enhanced analysis of incidents, as enabled by this final rule, will allow us to better identify problems involving packagings, including those problems that may occur at different locations of a company, or among different companies.

How incident data can be analyzed was demonstrated in 2001, when the Intermodal Hazardous Materials Program (IHMP) office reviewed incident data for companies whose shipments were involved in a high proportion of incidents relative to other shippers. Incident data from January 1998 to October 2000 served as a basis of the review. The analysis of this data revealed that a large number of incidents reported by carriers during this 34-month period involved shipments from a small number (less than 40) companies. The IHMP Director sent letters to these companies, informing them of their incidents and detailing the results of the IHMP incident analysis. Each letter included information on the numbers of yearly incidents, reporting carriers, types of commodities and packages involved, locations where the shipments originated, reported incident casual factors, and reported monetary damages.

The IHMP letters generated significant positive feedback from shippers and heightened their awareness to potential internal problem areas. Several companies expressed appreciation to DOT for notifying them about these incidents. Some shippers stated that they were unaware of these incidents, others that they had received only partial notifications from their carriers, and others were surprised to discover that summary incident data was readily available on RSPA's Office of Hazardous Materials Safety website. Where appropriate, shippers took action to reduce the likelihood of reoccurrence of incidents.

RSPA believes that this type of review and contact by DOT better serves the affected parties. We anticipate conducting ongoing analyses to detect problems, and are working closely with the modal administrations to improve analysis and information sharing capabilities.

The modal administrations will have access to incident data and information and may conduct similar reviews if they elect to do so. RSPA has provided FAA's Office of Internal Security and Hazardous Materials an electronic summary of all hazardous materials incidents reported since 1993. As FAA special agents conduct hazmat shipper inspections and shipper outreach visits, they will individually review a summary of relevant incident histories with each shipper. FAA and RSPA will develop a system to electronically share information concerning incidents, discrepancies, inspections, enforcement, exemptions, and registrations. This will assist in the identification and analysis of problems and trends related to transportation of hazardous materials and will be used to notify shippers, or others, when problems become evident. Until this system is developed and implemented, FAA will provide copies of incidents related to the air mode to the relevant shippers.

As previously indicated, summaries of incident information are currently available to all shippers and carriers at our website. Increasing awareness of this option and increasing ease of data access are additional avenues we will explore to ensure shippers are aware of

incidents involving materials they have offered for transportation.

Miscellaneous Issues

Publishing Reports on the Internet

RSPA received several comments concerning the availability of completed incident report forms through the internet via RSPA's website. Several commenters voiced concern about this issue, mainly citing privacy concerns. Currently, any completed incident report is considered a public document and available through RSPA. Making these public documents available through the internet would meet initiatives in the government to facilitate information collection through electronic means. However, any information that is currently withheld under existing law would remain withheld if incident reports are made available through the internet. RSPA will be reviewing this issue in the future; however, no additional rulemaking action is necessary to make these documents electronically available.

New Definitions

We are adopting a new definition in § 171.8 for "unintentional release". We are revising the definition for "undeclared hazardous material shipment" for further clarification.

Hazardous Waste Manifest

We are removing the requirement in § 171.16 to attach a hazardous waste manifest to the incident report form when a release involves a hazardous waste. The revised incident report form requires the hazardous waste manifest number to be reported and provides a field for entering the number. Through this reference, we will be able to access the hazardous waste manifest, if needed, through the appropriate officials. In addition, we are removing the requirements for: (1) An estimate of the quantity of waste removed from the scene; (2) the name and address of the facility to which it was taken; and (3) the manner of disposition of any removed waste. This information is already available as a result of EPA's hazardous waste manifest regulations; thus, continued reporting of this information to RSPA is unnecessary. Removing these requirements eliminates reporting information that is obtainable through other sources. Therefore, RSPA has adopted these amendments as proposed.

Record Retention Location

This final rule requires that an incident report must be retained for two years at either the reporter's prineipal place of business or another record retention site provided the report is available at the reporter's principal place of business within 24 hours of request. We are adopting this amendment as proposed, which removes the requirement to seek an approval to store the report at a place other than the reporter's principal place of business. Adopting this proposal will provide flexibility in maintaining records without the need for an approval from DOT. In addition, this allows electronic versions to be retained, even though the server the document is located on is outside the principal place of business.

Incidents at Registered Cargo Tank Facilities

In the NPRM, we asked a series of questions concerning fatalities that may occur at registered cargo tank repair facilities during cargo tank inspection and repair operations. Such fatalities generally result because hazardous materials residue in the cargo tank is not removed before work is done on the tank. We did not propose any changes specific to this issue in the NPRM, but asked for comments to assist us in determining whether we should propose to collect information concerning such accidents in a future rulemaking. Most of the commenters that addressed this issue, including NTTC and the International Brotherhood of Teamsters, supported collecting data on these accidents. One commenter, Farmland Industries, suggested that RSPA does not have the authority to require reporting of incidents that are not related to the actual transportation of a hazardous material.

On December 29, 1970, Congress enacted the Occupational Safety and Health Act of 1970 (OSH Act) for the purpose of assuring safe and healthy workplaces. Under the OSH Act, every employer engaged in a business affecting commerce has a general duty to furnish each of its employees a workplace free from recognized hazards causing, or likely to cause, death or serious physical harm. In addition, employers are required to comply with all safety and health standards issued under the OSH Act that are applicable to working conditions involved in their businesses. In accordance with OSHA standards, cargo tank repair facilities must report accidents to OSHA or to a state agency responsible for occupational safety and health, if appropriate. OSHA data for the period 1985–1997 indicate that there were 17 fatalities during the period resulting from repair work performed on cargo tanks. The OHSA incident reports clearly conclude that the cause of these incidents was a failure to comply with existing OSHA and/or HMR requirements. Because OSHA already collects fairly detailed reports concerning accidents at cargo tank repair facilities, we do not believe that imposing an additional reporting requirement is necessary or appropriate.

State Notification

We were contacted by a state official who requested that we require incidents meeting the immediate notification criteria in § 171.15 to be reported to the State in which the incident occurred. We disagree. A State may require immediate, oral accident/incident reports for local emergency response purposes. Further, any State may request that NRC notify it of incidents occurring within the State.

IV. Summary and Conclusion

The following are the major changes to the current HMR reporting requirements and to DOT Form F 5800.1 that we are making in this final rule:

(1) Reporting of incidents involving a specification cargo tank with a capacity of 1,000 gallons or greater that receives structural damage that may adversely affect the cargo tanks's ability to retain lading even when no hazardous material in released.

(2) Reporting discoveries of undeclared hazardous material shipments.

(3) Updating incident reports when significant new information becomes available.

(4) Requiring the person in physical control of a hazardous material during transportation to report an incident.

(5) Excepting small releases of specified materials that pose the least hazard from reporting requirements.

(6) Restructuring the form to utilize failure codes to obtain information on packaging failures.

V. Regulatory Analyses and Notices

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

This final rule is not a significant regulatory action under Section 3(f) of Executive Order 12866 and, therefore, was not reviewed by the Office of Management and Budget. This rule is not a significant regulatory action under the Regulatory Policies and Procedures of the Department of Transportation (44 *FR* 11034). A regulatory evaluation that considers various regulatory alternatives is available for review in the public docket.

The costs of these regulations identified in the regulatory evaluation are attributed to: (1) Expansion of reporting requirements to persons other than a carrier in possession of a hazardous material during transportation; (2) implementation of a requirement to update incident reports under certain conditions; and (3) expansion of reporting requirements to incidents involving cargo tanks where no hazardous material is released. Reductions in the total costs associated with incident reporting requirements are attributed to implementation of an electronic filing option and expansion of current exceptions to the reporting requirements. The expected reductions in total costs generally offset the anticipated cost increases; thus, the requirements of the final rule should result in only minimal increased costs of compliance.

While it is difficult to estimate the net benefit resulting from this rulemaking, we believe that the revisions to the incident reporting requirements will greatly enhance our ability to develop strategies to reduce the risks associated with the transportation of hazardous materials. The non-quantifiable benefit of increased safety through reducing the incidence of undeclared shipments is expected to be far greater than the negligible cost increase to the regulated community.

B. Executive Order 13132

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13132 ("Federalism"). This final rule preempts state, local, and Indian tribe requirements, but does not propose any regulation with substantial direct effects on the states, the relationship between the national government and the states, or the distribution of power and responsibilities among the various levels of government. Therefore, the consultation and funding requirements of Executive Order 13132 do not apply.

The Federal hazardous materials transportation law, 49 U.S.C. 5101–5127, contains an express preemption provision (49 U.S.C. 5125(b)) that preempts state, local, and Indian tribe requirements on certain covered subjects. Covered subjects are:

(1) The designation, description, and classification of hazardous materials;

(2) The packing, repacking, handling, labeling, marking, and placarding of hazardous materials;

(3) The preparation, execution, and use of shipping documents related to hazardous materials and requirements related to the number, contents, and placement of those documents;

(4) The written notification, recording, and reporting of the unintentional release in transportation of hazardous material; or

(5) The design, manufacture, fabrication, marking, maintenance, recondition, repair, or testing of a package or container represented, marked, certified, or sold as qualified for use in transporting hazardous material.

This final rule addresses covered subject item number 4 above and preempts state, local, and Indian tribe requirements not meeting the "substantively the same" standard. This final rule is necessary to increase the usefulness of data collected for risk analysis and management by government and industry and, where possible, provide relief from regulatory requirements.

Federal hazardous materials transportation law provides at § 5125(b)(2) that, if we issue a regulation concerning any of the covered subjects, we must determine and publish in the **Federal Register** the effective date of Federal preemption. The preemption date of this rule is January 1, 2004.

C. Executive Order 13175

This final rule has been analyzed in accordance with the principles and criteria contained in Executive order 13175 ("Consultation and Coordination with Indian Tribal Governments"). This final rule does not have tribal implications, does not impose substantial direct compliance costs, and is not required by statute. Consequently, the funding and consultation requirements of Executive Order 13175 do not apply.

D. Executive Order 13272

This final rule has been developed in accordance with Executive Order 13272 ("Proper Consideration of Small Entities in Agency Rulemaking") and DOT's procedures and policies to promote compliance with the Regulatory Flexibility Act to ensure that potential impacts of draft rules on small entities are properly considered.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires an agency to review regulations to assess their impact on small entities unless the agency determines a rule is not expected to have a significant impact on a substantial number of small entities. Based on the assessment in the final regulatory evaluation, I hereby certify that, while the final rule applies to a substantial number of small entities, there will not be a significant economic impact on those small entities. A detailed Regulatory Evaluation is available in the Docket.

Potentially affected small entities. The revisions in this final rule will apply to persons in physical control of a hazardous material during transportation in commerce. Such persons primarily include motor carriers, air carriers, vessel operators, rail carriers, temporary storage facilities, and intermodal transfer facilities. Unless alternative definitions have been established by the agency in consultation with the Small Business Administration, the definition of "small business" has the same meaning as under the Small Business Act (15 CFR Parts 631–657c). Therefore, since no such special definition has been established, RSPA employs the thresholds (published in 13 CFR 121.201) of 1,500 employees for air carriers (NAICS Subgroup 481), 500 employees for rail carriers (NAICS Subgroup 482), 500 employees for vessel operators (NAICS Subgroup 483), $18.5 million in revenues for motor carriers (NAICS Subgroup 484), and $18.5 million in revenues for warehousing and storage companies (NAICS Subgroup 493). Of the approximately 116,000 entities to which the proposals in this final rule would apply (104,000 of which are motor carriers), we estimate that about 90 percent are small entities. Based on historical data, we estimate approximately 17,810 annual responses.

Potential cost impacts. The revision to expand reporting requirements to any person in physical possession of a hazardous material while it is being transported in commerce will primarily affect storage and in-transit storage facilities. We estimate there are approximately 6,500 warehousing and storage entities subject to this requirement which will incur the total increased compliance costs of about $84,000. We estimate that expanding the reporting requirements will increase the number of incident reports submitted each year by about 11.45 percent of the 17,810 total annual responses, or approximately 2,180 reports. Taken on a one-to-one report to entity ratio, we estimate a cost of approximately $39/year/company.

The revision to require updating of incident reports under certain conditions applies to all persons subject to the HMR incident reporting regulations. We estimate that this final rule will result in about 800 additional updates to reports each year for a total annual cost of $4,800. Taken on a one-to-one report to entity ratio, we estimate a cost of $6.00/year/company.

The revision to require reporting of certain incidents involving cargo tanks that do not result in a release of hazardous materials will apply to about 104,000 motor carriers. We estimate that this revision will result in about an increase of about 16 percent of the 17,810 total annual responses, or approximately 2,975 additional incident reports each year. On a one-to-one report/entity basis, motor carriers will incur increased compliance costs of approximately $114,240 or about $38/year/company.

The revision to require reporting of undeclared shipments of hazardous materials discovered during transportation will apply to all persons subject to the HMR incident reporting regulations. We estimate that this final rule will result in an increase of approximately 8 percent of the 17,810 incidents reports submitted each year, or approximately 1,500 reports. Taken on a one-to-one report/entity ratio, we estimate the corresponding increased compliance costs of $57,600 to be approximately $38/year/company.

Potential cost savings. The revision in the final rule that will permit electronic filing of incident reports and expand the current exceptions from incident reporting requirements will offset the increased compliance costs described above. The potential savings attributable to the revisions to the final rule total about $276,000. The additional potential costs attributable to the revisions to the final rule total about $275,712, for a net savings of approximately $300.

Consideration of alternate proposals for small businesses. The Regulatory Flexibility Act suggests that it may be possible to establish exceptions and differing compliance standards for small businesses and still meet the objectives of the applicable regulatory statutes. However, given the large numbers of small businesses, as defined for purposes of the Regulatory Flexibility Act, in hazardous materials transportation, we do not believe that it would be possible to establish such differing standards and still accomplish the objectives of federal hazardous materials transportation law. The information provided in hazardous materials incident reports serves as the basis for critical RSPA safety functions, including identification of safety problems, regulations development, training programs, outreach efforts, and enforcement strategies. The risks posed by a hazardous material offered for transportation or transported by a small entity are the same as the risks posed by the same hazardous material when offered for transportation or transported by a large entity. Thus, it is entirely reasonable and appropriate for the HMR incident reporting requirements to apply equally to any person who offers for transportation or transports hazardous materials in commerce.

Conclusion. Based on the above analysis, we certify that while the revisions in this final rule will affect a significant number of small businesses or other small entities, there will be no substantial economic impact on these small businesses.

F. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995, no person is required to respond to a collection of information unless it displays a valid Office of Management and Budget (OMB) control number. Section 1320.8(d), Title 5, Code of Federal Regulations requires that RSPA provide interested members of the public and affected agencies an opportunity to comment on information collection and recordkeeping requests. RSPA has a current information collection approval under OMB No. 2137–0039, Hazardous Materials Incident Reports.

The average number of incident reports RSPA received for the years 1997—2000 is about 17,300, and for the years 1995—2000 is about 16,000. Our regulatory evaluation for this final rule uses a base number of 17,000 annual incident reports.

As a result of this final rule, there was a modest increase in annual burden and costs. OMB approved this information collection as proposed under this rule on August 30, 2001. The following figures are based on receiving 17,000 incident reports per year and only include estimates for written incident reports:

Total Annual Respondents: 1,781.
Total Annual Responses: 17,810.
Total Annual Burden Hours: 23,746.
Total Annual Burden Cost: $569,904.

Requests for a copy of the information collection should be directed to Deborah Boothe or T. Glenn Foster, Office of Hazardous Materials Standards (DHM–10), Research and Special Programs Administration, Room 8102, 400 Seventh Street, SW, Washington, DC 20590–0001, Telephone (202) 366–8553.

G. Regulation Identifier Number (RIN)

A regulation identifier number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

H. Unfunded Mandates Reform Act

This final rule imposes no mandates and thus does not impose unfunded mandates under the Unfunded Mandates Reform Act of 1995. It would not result in costs of $100 million or more to either state, local, or tribal governments, in the aggregate, or to the private sector.

I. Environmental Assessment

The revisions in this final rule will increase the quality of data collected on hazardous materials spills, increasing our ability to evaluate potential packaging problems that result in releases to the environment. Thus, the revisions should produce a small net benefit to the environment by improving the data sources used in regulatory development. Therefore, we find that there are no significant environmental impacts associated with this final rule.

List of Subjects

49 CFR Part 171

Exports, Hazardous materials transportation, Hazardous waste, Imports, Reporting and record keeping requirements.

■ In consideration of the foregoing, we are amending 49 CFR part 171 as follows:

PART 171—GENERAL INFORMATION, REGULATIONS, AND DEFINITIONS

■ 1. The authority citation for part 171 continues to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

■ 2. In § 171.8 the following definitions are added in alphabetical order to read as follows:

§ 171.8 Definitions and abbreviations.

* * * * *

Undeclared hazardous material means a hazardous material that is (1) subject to any of the hazard communication requirements in subparts C (Shipping Papers), D (Marking), E (Labeling), and F (Placarding) of Part 172 of this subchapter, or an alternative marking requirement in Part 173 of this subchapter (such as §§ 173.4(a)(10) and 173.6(c)), and (2) offered for transportation in commerce without any clear indication of the presence of the hazardous material in or on at least one of the following: an accompanying shipping paper, the outer package, the transport vehicle or freight container, or another written statement by the person offering the hazardous material for transportation.

* * * * *

Unintentional release means the escape of a hazardous material from a package on an occasion not anticipated or planned. This includes releases resulting from collision, package failures, human error, criminal activity, negligence, improper packing, or unusual conditions such as the operation of pressure relief devices as a result of over-pressurization, overfill or fire exposure. It does not include releases, such as venting of packages, where allowed, and the operational discharge of contents from packages.

* * * * *

■ 3. Section 171.15 is revised to read as follows:

§ 171.15 Immediate notice of certain hazardous materials incidents.

(a) *General.* As soon as practical but no later than 12 hours after the occurrence of any incident described in paragraph (b) of this section, each person in physical possession of the hazardous material must provide notice by telephone to the National Response Center (NRC) on 800–424–8802 (toll free) or 202–267–2675 (toll call). Notice involving an infectious substance (etiologic agent) may be given to the Director, Centers for Disease Control and Prevention, U.S. Public Health Service, Atlanta, GA, 800–232–0124 (toll free), in place of notice to the NRC. Each notice must include the following information:

(1) Name of reporter;

(2) Name and address of person represented by reporter;

(3) Phone number where reporter can be contacted;

(4) Date, time, and location of incident;

(5) The extent of injury, if any;

(6) Class or division, proper shipping name, and quantity of hazardous materials involved, if such information is available; and

(7) Type of incident and nature of hazardous material involvement and whether a continuing danger to life exists at the scene.

(b) *Reportable incident.* A telephone report is required whenever any of the following occurs during the course of transportation in commerce (including loading, unloading, and temporary storage):

(1) As a direct result of a hazardous material—

(i) A person is killed;

(ii) A person receives an injury requiring admittance to a hospital;

(iii) The general public is evacuated for one hour or more;

(iv) A major transportation artery or facility is closed or shut down for one hour or more; or

(v) The operational flight pattern or routine of an aircraft is altered;

(2) Fire, breakage, spillage, or suspected radioactive contamination occurs involving a radioactive material (see also § 176.48 of this subchapter);

(3) Fire, breakage, spillage, or suspected contamination occurs involving an infectious substance other than a diagnostic specimen or regulated medical waste;

(4) A release of a marine pollutant occurs in a quantity exceeding 450 L (119 gallons) for a liquid or 400 kg (882 pounds) for a solid; or

(5) A situation exists of such a nature (*e.g.*, a continuing danger to life exists at the scene of the incident) that, in the judgment of the person in possession of the hazardous material, it should be reported to the NRC even though it does not meet the criteria of paragraph (b) (1), (2), (3) or (4) of this section.

(c) *Written report.* Each person making a report under this section must also make the report required by § 171.16 of this subpart.

Note to § 171.15: Under 40 CFR 302.6, EPA requires persons in charge of facilities (including transport vehicles, vessels, and aircraft) to report any release of a hazardous substance in a quantity equal to or greater than its reportable quantity, as soon as that person has knowledge of the release, to DOT's National Response Center at (toll free) 800–424–8802 or (toll) 202–267–2675.

■ 4. Section 171.16 is revised to read as follows:

§ 171.16 Detailed hazardous materials incident reports.

(a) *General.* Each person in physical possession of a hazardous material at the time that any of the following incidents occurs during transportation (including loading, unloading, and temporary storage) must submit a Hazardous Materials Incident Report on DOT Form F 5800.1 (01/2004) within 30 days of discovery of the incident:

(1) Any of the circumstances set forth in § 171.15(b);

(2) An unintentional release of a hazardous material or the discharge of any quantity of hazardous waste;

(3) A specification cargo tank with a capacity of 1,000 gallons or greater containing any hazardous material suffers structural damage to the lading retention system or damage that requires repair to a system intended to protect the lading retention system, even if there is no release of hazardous material; or

(4) An undeclared hazardous material is discovered.

(b) *Providing and retaining copies of the report.* Each person reporting under this section must—

(1) Submit a written Hazardous Materials Incident Report to the Information Systems Manager, DHM–63, Research and Special Programs Administration, Department of Transportation, Washington, DC 20590–0001. Submit an electronic Hazardous Material Incident Report to the Information System Manager, DHM–63, Research and Special Programs Administration, Department of Transportation, Washington, DC 20590–0001 at *http://hazmat.dot.gov;*

(2) For an incident involving transportation by aircraft, submit a written or electronic copy of the Hazardous Materials Incident Report to the FAA Security Field Office nearest the location of the incident; and

(3) Retain a written or electronic copy of the Hazardous Materials Incident Report for a period of two years at the reporting person's principal place of business. If the written or electronic Hazardous Materials Incident Report is maintained at other than the reporting person's principal place of business, the report must be made available at the reporting person's principal place of business within 24 hours of a request for the report by an authorized representative or special agent of the Department of Transportation.

(c) *Updating the incident report.* A Hazardous Materials Incident Report must be updated within one year of the date of occurrence of the incident whenever:

(1) A death results from injury caused by a hazardous material;

(2) There was a misidentification of the hazardous material or package information on a prior incident report;

(3) Damage, loss or related cost that was not known when the initial incident report was filed becomes known; or

(4) Damage, loss, or related cost changes by $25,000 or more, or 10% of the prior total estimate, whichever is greater.

(d) *Exceptions.* Unless a telephone report is required under the provisions of § 171.15 of this part, the requirements of paragraphs (a), (b), and (c) of this section do not apply to the following incidents:

(1) A release of a minimal amount of material from—

(i) A vent, for materials for which venting is authorized;

(ii) The routine operation of a seal, pump, compressor, or valve; or

(iii) Connection or disconnection of loading or unloading lines, provided

that the release does not result in property damage.

(2) An unintentional release of hazardous material when:

(i) The material is properly classed as—

(A) ORM–D; or

(B) a Packing Group III material in Class or Division 3, 4, 5, 6.1, 8, or 9;

(ii) Each package has a capacity of less than 20 liters (5.2 gallons) for liquids or less than 30 kg (66 pounds) for solids;

(iii) The total aggregate release is less than 20 liters (5.2 gallons) for liquids or less than 30 kg (66 pounds) for solids; and

(iv) The material is not—

(A) Offered for transportation or transported by aircraft,

(B) A hazardous waste, or

(C) An undeclared hazardous material.

(3) An undeclared hazardous material discovered in an air passenger's checked or carry-on baggage during the airport screening process. (For discrepancy reporting by carriers, see § 175.31 of this subchapter.)

■ 5. Section 171.21 is revised to read as follows:

§ 171.21 Assistance in investigations and special studies.

(a) A shipper, carrier, package owner, package manufacturer or certifier, repair facility, or person reporting an incident under the provisions of § 171.16 must:

(1) Make all records and information pertaining to the incident available to an authorized representative or special agent of the Department of Transportation upon request; and

(2) Give an authorized representative or special agent of the Department of Transportation reasonable assistance in the investigation of the incident.

(b) If an authorized representative or special agent of the Department of Transportation makes an inquiry of a person required to complete an incident report in connection with a study of incidents, the person shall:

(1) Respond to the inquiry within 30 days after its receipt or within such other time as the inquiry may specify; and

(2) Provide true and complete answers to any questions included in the inquiry.

Issued in Washington, DC on November 19, 2003 under the authority delegated in 49 CFR Part 1.

Samuel G. Bonasso,

Deputy Administrator, Research and Special Programs Administration.

Attachment 1—Hazardous Materials Incident Report

Note: This attachment will not appear in the Code of Federal Regulations.

BILLING CODE 4910–60–P

U.S. Department of Transportation
Research and Special Programs Administration

Hazardous Materials Incident Report

Form Approval OMB No. 2137-0039

According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is 2137-0039. The filling out of this information is mandatory and will take 96 minutes to complete.

INSTRUCTIONS: Submit this report to the Information Systems Manager, U.S. Department of Transportation, Research and Special Programs Administration, Office of Hazardous Materials Safety, DHM-63, Washington, D.C. 20590-0001. If space provided for any item is inadequate, use a seperate sheet of paper, identifying the entry number being completed. Copies of this form and instructions can be obtained from the Office of Hazardous Materials Website at http://hazmat.dot.gov. If you have any questions, you can contact the Hazardous Materials Information Center at 1-800-HMR-4922 (1-800-467-4922) or online at http://hazmat.dot.gov

PART I - REPORT TYPE

1. This is to report: ☐ A) A hazardous material incident ☐ B) An undeclared shipment with no release
☐ C) A specification cargo tank 1,000 gallons or greater containing any hazardous materials that (1) received structural damage to the lading retention system or damage that requires repair to a system intended to protect the lading retention system and (2) did not have a release

2. Indicate whether this is: ☐ An initial report ☐ A supplemental (follow-up) report ☐ Additional Pages

PART II - GENERAL INCIDENT INFORMATION

3. Date of Incident: _____ 4. Time of Incident (use 24-hour time): _____

5. Enter National Response Center Report Number (if applicable): _____

6. If you submitted a report to another Federal DOT agency, enter the agency and report number _____

7. Location of Incident: City: _____ County: _____ State: _____ ZIP Code (if known) _____
Street Address/Mile Marker/Yardname/Airport/Body of Water/River Mile _____

8. Mode of Transportation ☐ Air ☐ Highway ☐ Rail ☐ Water

9. Transportation Phase ☐ In Transit ☐ Loading ☐ Unloading ☐ In Transit Storage

10. Carrier/Reporter
Name _____
Street _____
City _____ State _____ ZIP Code _____
Federal DOT ID Number _____ Hazmat Registration Number _____

11. Shipper/Offeror
Name _____
Street _____
City _____ State _____ ZIP Code _____
Waybill/Shipping Paper _____ Hazmat Registration Number _____

12. Origin (if different from shipper address)
Street _____
City _____ State _____ ZIP Code _____

13. Destination
Street _____
City _____ State _____ ZIP Code _____

14. Proper Shipping Name of Hazardous Material: _____

15. Technical/Trade Name: _____

16. Hazardous Class/Division: _____ 17. Identification Number: _____ (E.g. UN2764, NA 2020) 18. Packing Group: _____ (if applicable) 19. Quantity Released _____ (Include Measurement Units)

20. Was the material shipped as a hazardous waste? ☐ Yes ☐ No If yes, provide the EPA Manifest Number: _____

21. Is this a Toxic by Inhalation (TIH) material? ☐ Yes ☐ No If yes, provide the Hazard Zone: _____

22. Was the material shipped under an Exemption, Approval, or Competent Authority Certificate? ☐ Yes ☐ No
If yes, provide the Exemption, Approval, or CA number: _____

23. Was this an undeclared hazardous materials shipment? ☐ Yes ☐ No

At this point, the answer to Part I, Question 1 above determines which Part to complete next
If you checked 1A or 1C, go to Part IV. If you checked 1B, and the mode of transportation is Air, go to Part V. If you checked 1B, and the mode of transportation is not Air, go to Part III

PART III - PACKAGING INFORMATION

24 Check Packaging Type (check only one - if more than one, list type of packaging, copy Part III, and complete for each type

☐ Non-bulk ☐ IBC ☐ Cargo tank Motor Vehicle (CTMV) ☐ Tank Car
☐ Cylinder ☐ RAM ☐ Portable Tank ☐ Other _____

25 See instructions and enter the appropriate failure codes found at the end of the instructions. Be sure to enter the codes from the list that corresponds to the particular packaging type checked above. Enter the number of codes as appropriate to describe the incident. Enter the most important failure point in line 1. If there are more than two failure points, provide in this format in part VI

1 What Failed ___ ___ ___ How Failed ___ ___ ___ Causes of Failure ___ ___ ___
2 What Failed ___ ___ ___ How Failed ___ ___ ___ Causes of Failure ___ ___ ___

26a Provide the packaging identification markings, if available

Identification Markings: _____

(Examples 1A1/Y1.4/150/92/USA/RB/93/RL, UN31H1/Y0493/USA/M9339/10800/1200, DOT - 105A - 100W (RAIL), DOT 406 (HIGHWAY), DOT 51, DOT 3-A)

26b. For Non-bulk, IBC, or non-specification packaging, if identification markings are incomplete or unavailable, see instructions and complete the following

Single Package or Outer Packaging:	Single Package or Inner Packaging (if any)
Packaging Type: _____	Packaging Type: _____
Material of Construction _____	Material of Construction _____

Head Type (Drums only) ☐ Removable ☐ Non - Removable

27 Describe the package capacity and the quantity

Single Package or Outer Packaging	Single Package or Inner Packaging (if any)
Package Capacity: _____	Package Capacity: _____
Amount in Package _____	Amount in Package: _____
Number in Shipment _____	Number in Shipment: _____
Number Failed _____	Number Failed _____

28 Provide packaging construction and test information, as appropriate

Manufacturer _____ Manufacture Date: _____
Serial Number _____ Last Test Date _____
Material of Construction _____ (if Tank Car, CTMV, Portable Tank, or Cylinder)
Design Pressure: _____ (if Tank Car, CTMV, Portable Tank)
Shell Thickness: _____ (if Tank Car, CTMV, Portable Tank)
Head Thickness: _____ (if Tank Car, CTMV)
Service Pressure: _____ (if Cylinder)

If valve or device failed

Type: _____ Manufacturer _____ Model _____

29. If the packaging is for Radioactive Materials, complete the following.

Packaging Category: ☐ Type A ☐ Type B ☐ Type C ☐ Excepted ☐ Industrial
Packaging Certification: ☐ Self Certified ☐ U.S. Certification Certification Number _____
Nuclide(s) Present: _____ Transport Index: _____
Activity _____ Critical Safety Index: _____

PART IV - CONSEQUENCES

30. Result of Incident (check all that apply): ☐ Spillage ☐ Fire ☐ Explosion ☐ Material Entered Waterway/Storm Sewer ☐ Vapor (Gas) Dispersion ☐ Environmental Damage ☐ No Release

31. Emergency Response : The following entities responded to the incident: (Check all that apply)

☐ Fire/EMS Report # _____ ☐ Police Report # _____ ☐ In-house cleanup ☐ Other Cleanup

32. Damages: Was the total damage cost more than $500? ☐ Yes ☐ No

If yes, enter the following information: If no, go to question 33.

Material Loss:	Carrier Damage:	Property Damage:	Response Cost	Remediation/Cleanup Cost
$_____	$_____	$_____	$_____	$_____

(See damage definitions in the instructions)

33a. Did the hazardous material cause or contribute to a human fatality? ☐ Yes ☐ No

If yes, enter the number of fatalities resulting from the hazardous material:

Fatalities: Employees _____ Responders _____ General Public _____

33b. Were there human fatalities that did not result from the hazardous material? ☐ Yes ☐ No If yes, how many? _____

34. Did the hazardous material cause or contribute to personal injury? ☐ Yes ☐ No

If yes, enter the number of injuries resulting from the hazardous material:

Hospitalized (Admitted Only): Employees _____ Responders _____ General Public _____

Non-Hospitalized: Employees _____ Responders _____ General Public _____

(e.g. On site first aid or Emergency Room observation and release)

35. Did the hazardous material cause or contribute to an evacuation? ☐ Yes ☐ No

If yes, provide the following information:

Total number of general public evacuated _____ Total number of employees evacuated _____ Total Evacuated _____

Duration of the evacuation _____ (hours)

36. Was a major transportation artery or facility closed? ☐ Yes ☐ No If yes, how many? _____ (hours)

37. Was the material involved in a crash or derailment? ☐ Yes ☐ No

If yes, provide the following information: Estimated speed (mph): _____ Weather conditions _____

Vehicle overturn? ☐ Yes ☐ No

Vehicle left roadway/track? ☐ Yes ☐ No

PART V - AIR INCIDENT INFORMATION (please refer to § 175.31 to report a discrepancy for air shipments)

38. Was the shipment on a passenger aircraft? ☐ Yes ☐ No

If yes, was it tendered as cargo, or as passenger baggage?

☐ Cargo ☐ Passenger baggage

39. Where did the incident occur (if unknown, check the appropriate box for the location where the incident was discovered)?

☐ Air carrier cargo facility ☐ Sort center ☐ Baggage area
☐ By surface to/from airport ☐ During flight ☐ During loading/unloading of aircraft

40. What phase(s) had the shipment already undergone prior to the incident? (Check all that apply)

☐ Shipment had not been transported ☐ Transported by air (first flight) ☐ Transport by air (subsequent flights)
☐ Initial transport by highway to cargo facility ☐ Transfer at sort center/cargo facility

PART VI - DESCRIPTION OF EVENTS & PACKAGE FAILURE
Descnbe the sequence of events that led to the incident and the actions taken at the time it was discovered. Describe the package failure, including the size and location of holes, cracks, etc. Photographs and diagrams should be submitted if needed for clarification. Estimate the duration of the release, if possible. Describe what was done to mitigate the effects of the release. Continue on additional sheets if necessary.

PART VII - RECOMMENDATIONS/ACTIONS TAKEN TO PREVENT RECURRENCE
Where you are able to do so, suggest or describe changes (such as additional training, use of better packaging, or improved operating procedures) to help prevent recurrence. Provide recommendations for improvement to hazardous materials transportation beyond the control of your individual company. Continue on additional sheets if necessary.

PART VIII- CONTACT INFORMATION	
Contact's Name (Type or Print): _____	Telephone Number: ( ) _____
Contact's Title: _____	Fax Number: ( ) _____
Business Name and Address: _____	Hazmat Registration Number (if not already provided): _____
E-mail Address: _____	Date: _____
Preparer is: ☐ Carrier ☐ Shipper ☐ Facility ☐ Other _____	

Form DOT F 5800.1 (01-2004) Page 4 Reproduction of this form is permitted

BILLING CODE 4910–60–C

General Overview for Completing the Hazardous Materials Incident Report—Department of Transportation Form F 5800.1

What Federal Regulation Requires Me To Submit the Report?

The Hazardous Materials Regulations (HMR; 49 CFR Parts 171–180) require that certain types of incidents be reported to the Research and Special Programs Administration (RSPA). Section 171.15 of the HMR requires an immediate telephonic report (within 12 hours) of certain types of hazardous materials incidents and a follow-up written report. Section 171.16 requires a written report for certain types of hazardous materials incidents within 30 days. Each type of report is explained below.

What Is the Purpose of the Report?

The information you are providing in this report is fundamental to hazardous material transportation risk analysis and risk management by government and industry. It allows us to better understand the causes and consequences of hazardous material transportation incidents. The data is used to identify trends and provide basic program performance measures. It helps to demonstrate the effectiveness of existing regulations and to identify areas where changes should be considered. It also assists all parties, including industry segments and individual companies, in understanding the types and frequencies of incidents, what can go wrong, and possible measures that would prevent their recurrence. Your accurate and complete description of incidents can make a significant contribution to continual safety improvement through better regulations, cooperative partnerships, and individual efforts.

Who Must Complete the Report?

Any person in possession of a hazardous material during transportation, including loading, unloading and storage incidental to transportation, must report to the Department of Transportation (DOT) if certain conditions are met. This means that when the conditions apply for completing the report, the entity having physical control of the shipment is responsible for filling out and filing Form DOT F 5800.1.

For example, if a shipper is carrying hazardous material, the consignee is unloading the material and there is an incident involving this material, the consignee is responsible for filling out and filing the form. However, if the consignee is unloading the hazardous material and causes a hazardous materials incident involving a consignment intended for someone else, the shipper is responsible for filling out and filing the form.

What Definitions Should I Know in Order To Complete the Report?

In order to accurately complete the report, you should be familiar with the following terms. A complete list of definitions is contained in § 171.8.

Bulk packaging—a packaging, other than a vessel or a barge, including a transport vehicle or freight container, in which hazardous materials are loaded with no intermediate form of containment and which has:

(1) A maximum capacity greater than 450 liters (119 gallons) as a receptacle for a liquid;

(2) A maximum net mass greater than 400 kilograms (822 pounds) and a maximum capacity greater than 450 liters (119 gallons) as a receptacle for a solid; or

(3) A water capacity greater than 454 kilograms (1000 pounds) as a receptacle for a gas as defined in § 173.115.

Cargo tank—a bulk packaging which is:

(1) A tank intended primarily for the carriage of liquids or gases and includes appurtenances, reinforcements, fittings, and closures;

(2) Is permanently attached to or forms a part of a motor vehicle, or is not permanently attached to a motor vehicle but which, by reason of its size, construction, or attachment to a motor vehicle, is loaded or unloaded without being removed from the motor vehicle; and

(3) Is not fabricated under a specification for cylinders, portable tanks, tank cars, or multi-unit tank car tanks.

Hazardous material—a substance or material that has been determined to be capable of posing an unreasonable risk to health, safety, and property when transported in commerce, and that has been so designated. The term includes hazardous substances, hazardous wastes, marine pollutants, elevated temperature materials, materials designated as hazardous under the provisions of § 172.101, the Hazardous Materials Table (HMT), and materials that meet the defining criteria for hazard classes and divisions in Part 173.

Hazardous substance—a material, including its mixtures and solutions, that—

(1) Is listed in Appendix A to § 172.101;

(2) Is in a quantity, in one package, which equals or exceeds the reportable quantity (RQ) listed in Appendix A to § 172.101; and

(3) When in a mixture or solution—

(i) For radionuclides, conforms to paragraph 7 of Appendix A to § 172.101.

(ii) For other than radionuclides, is in a concentration by weight which equals or exceeds the concentration corresponding to the RQ of the material, as shown in the following table:

RQ pounds (kilograms)	Concentration by weight	
	Percent	PPM
5000 (2270)	10	100,000
1000 (454)	2	20,000
100 (45.4)	0.2	2,000
10 (4.54)	0.02	200
1 (0.454)	0.002	20

The term hazardous substance does not include petroleum, including crude oil or any fraction thereof which is not otherwise specifically listed or designated as a hazardous substance in Appendix A to § 172.101, and the term does not include natural gas, natural gas liquids, liquefied natural gas, or synthetic gas useable for fuel (or mixtures of natural gas and such synthetic gas).

Hazardous waste—any material that is subject to the Hazardous Waste Manifest Requirements of the U.S. Environmental Protection Agency specified in 40 CFR Part 262.

Marine pollutant—a material that is listed in Appendix B to § 172.101 (also see § 171.4) and, when in a solution or mixture of one or more marine pollutants, is packaged in a concentration that equals or exceeds:

(1) Ten percent by weight of the solution or mixture for materials listed in Appendix B; or

(2) One percent by weight of the solution or mixture for materials that are identified as severe marine pollutants in Appendix B.

Undeclared hazardous material–a hazardous material that is:

(1) Subject to any of the hazard communication requirements in subparts C (Shipping Papers), D (Marking), E (Labeling), and F (Placarding) of Part 172 of this subchapter, or an alternative marking requirement in Part 173 of this subchapter (such as §§ 173.4(a)(10) and 173.6(c)); and

(2) Offered for transportation in commerce without any clear indication of the presence of the hazardous material in or on at least one of the following: an accompanying shipping paper, the outer package, the transport vehicle or freight container, or another written statement by the person offering the hazardous material for transportation.

Unintentional release—the escape of a hazardous material from a package on an occasion not anticipated or planned. This includes releases resulting from collision, package failures, human error, criminal activity, negligence, improper packing, or unusual conditions such as the operation of pressure relief devices as a result of over-pressurization, overfill, or fire exposure. It does not include releases, such as venting of packages, where allowed, and the operational discharge of contents from packages.

Additionally, for purposes of reporting on this form, the following definitions should be used:

Lading retention system—a lading retention system consists of those items or equipment that provide containment of hazardous materials at some point during transportation, including loading and unloading. The cargo tank shell, associated piping, and valves are an example of a lading retention system. Dents or damage to a tank requiring repair to an accident protection system guarding the tank are examples of incidents that must be reported. Paint chips and scratches to either the tank or the accident protection system are examples of incidents that do not require reporting.

Major Transportation Artery—a highway, main road or secondary road but not a side street or dirt road. In the case of rail, any rail line except a rail spur.

When Must I Submit a Written Report (DOT Form F 5800.1)?

Under § 171.16, you must submit a written report within 30 days after any of the following:

- An incident that was reported by telephonic notice under § 171.15;
- An unintentional release (see definitions) of a hazardous material during transportation including loading, unloading and temporary storage related to transportation;
- A hazardous waste is released;
- An undeclared shipment with no release is discovered; or
- A specification cargo tank 1,000 gallons or greater containing any hazardous materials that (1) received structural damage to the lading retention system or damage that requires repair to a system intended to protect the lading retention system, and (2) did not have a release.

To clarify the requirement for a report based on structural damage to a specification cargo tank, the table below illustrates some examples:

EXAMPLES TO CLARIFY WHEN TO REPORT STRUCTURAL DAMAGE TO A SPECIFICATION CARGO TANK

Incident report required	No incident report required
Damage to an outlet valve that affects seating and requires replacement.	Handle broken or knocked off valve—but otherwise undamaged.
Serious damage that, if worse, could have resulted in the loss of the contents of the cargo tank. Damage to outlet lines that contain hazardous materials during transportation is in this category.	Serious damage that, even if worse, would not have resulted in the loss of the contents of the cargo tank. Damage to outlet lines that are normally not charged during transportation is in this category
Cargo tank damage that requires professional inspection or recertification to ensure it is capable of meeting requirements.	Minor damage that obviously will not affect continuation of the cargo tank in service.
Cargo tank damage that requires immediate or subsequent repair because of questions about cargo tank integrity.	Cargo tank damage that requires repair for cosmetic reasons only.

When Is a Report Not Required?

You are not required to report a release of a hazardous material if ALL of the following apply:

- The shipment is not being offered for transportation or being transported by air;
- None of the criteria in § 171.15(a) applies;
- The material is not a hazardous waste;
- The material is properly classed as an ORM–D, or a Packing Group III material in Class or Division 3, 4, 5, 6.1, 8, or 9;
- Each package has a capacity of less than 20 liters (5.2 gallons) for liquids or less than 30 kg (66 pounds) for solids;
- The total aggregate release is less than 20 liters (5.2 gallons) for liquids or less than 30 kg (66 pounds) for solids;
- The material does not meet the definition of an undeclared hazardous material in § 171.8; AND
- The shipment is an undeclared material discovered in an air passenger's checked or carry-on baggage during the airport screening process.

Also, you are not required to report releases of minimal amounts of material (*i.e.*, a pint or less) released from the manual operation of seals of pumps, compressors, or valves, during the connecting or disconnecting of loading and unloading lines, or, for materials for which venting is authorized, from vents, provided these releases do not result in property damage or trigger any of the telephonic notifications requirements found in § 171.15.

When Must I Make a Telephonic Report?

Under § 171.15, you must provide telephone notice within 12 hours after the incident occurs when one of the following conditions occurs during the course of transportation and is a direct result of the hazardous material:

- A person is killed;
- A person receives an injury requiring admittance to a hospital;
- The general public is evacuated for one hour or more;
- One or more major transportation arteries or facilities are closed for one hour or more;
- The operational flight plan or routine of an aircraft is altered;
- Fire, breakage, spillage or suspected radioactive contamination occurs involving a radioactive material;
- Fire, breakage, spillage or suspected contamination occurs involving an infectious substance other than a diagnostic specimen or regulated medical waste;
- There is a release of a marine pollutant in a quantity exceeding 450 liters (119) gallons) for liquids or 400 kilograms (882 pounds) for solids; or ,
- A situation exists of such a nature that in the judgment of the person in possession of the hazardous material, it should be reported to DOT's National Response Center even though it does not meet the above criteria.

You may decide that the situation should be reported even though it does not meet any of the above criteria.

Make sure that you request the NRC report number when you make your telephonic report.

What Telephone Number Do I Call To Make an Immediate Notification of a Hazardous Materials Incident?

You must call 800–424–8802 (toll-free) or 202–267–2675 (toll-call) to make a telephonic incident report. This is the number to the National Response Center. This call must be made within 12 hours of the events that trigger this requirement. If the incident involves an infectious substance, you may notify the Director, Center for Disease Control and Prevention (CDC), U.S. Public Health Service, Atlanta, Georgia, toll-free at 800–232–0124. If a discrepancy of a shipment intended for air is discovered following its acceptance aboard aircraft, notify the nearest Federal Aviation Administration Civil Aviation Security Office as soon as practical.

How Long Do I Have To Submit the Written Report?

You must submit your written report within 30 days of discovery of the incident, § 171.16(a).

Am I Required To Update the Information in the Report?

Yes. You must use DOT Form F 5800.1 and check the "A supplemental (follow-up) report" box on question #2 to provide additional information after the initial report. You are required to provide updates for up to one year after the initial filing if more information is gained or new developments arise concerning the following, for example:

- A death results from injuries caused by a hazardous material;
- The person responsible for preparing the original report learns that there is a misidentification of hazardous material or package information;
- Damage or loss or related costs that were not known at the time the report was filed become known; or
- Revised estimates of damages, losses, and related costs result in a change of $25,000 or more, or 10% of the original cost estimates, whichever is greater, even if the original estimate was under $500.

How and Where Do I Submit My Completed Report?

- You can mail paper copies of the report to the Information Systems Manager, U.S. Department of Transportation, Research and Special Programs Administration, Office of Hazardous Materials Safety, DHM–63, Washington, DC 20590–0001; or
- You can submit the report on-line at *http://hazmat.dot.gov*.

How Long Must I Keep a Copy of the Report?

You must keep a copy of each report or an electronic image of the report for two years after the date you submit it to RSPA (§ 171.16(b)(3)).

Where Must I Keep a Copy of the Report?

The report must be accessible through your company's principal place(s) of business. You must be able to make the report available upon request to authorized representatives or a special agent of the Department within 24 hours of such a request (§ 171.16(b)(3)).

How Can I Get a Blank Copy of the Form F 5800.1?

There are a variety of sources for obtaining the Form F 5800.1. Please note that you are allowed to make unlimited photocopies of the form and distribute them.

- You may obtain limited copies of the form from the Information Systems Manager at the above address.
- You may download a copy of the form from our website at *http://hazmat.dot.gov/spills.htm*
- Our Fax on Demand service has copies of the instructions and the form. Call 1–800–467–4922 and choose the Fax on Demand option #2.

How Long Does It Take To Complete the Report?

RSPA anticipates that it will take you approximately 1.6 hours to complete this report. This estimate includes the time it will take you to review the instructions, search your existing data sources for information, gather the required data, and complete and review the report.

How Can I Comment on the Length of Time Needed To Complete the Report or on the Amount of Information Required in the Report?

You can send your comments on the report, and any suggestions you have for reducing the amount of time needed to complete the report, to the following address:

(2) Information Systems Manager, U.S. Department of Transportation, Research and Special Programs Administration, Office of Hazardous Materials Safety, DHM–63, Washington, DC 20590–0001.

Please verify that your information is accurate. Although the required information is generally available at the time of the incident, you may need to do some additional investigation in order to obtain all of the facts pertaining to deaths, injuries or damage amounts. If you submit complete and accurate information at the time you file the report, it will decrease the chance of your having to supply missing information to DOT at a later date. RSPA may follow up on incomplete forms.

Instructions for Form DOT F 5800.1:

Please print. Fill in all applicable blanks accurately to the best of your ability.

Part I: Report Type

(3) *This is to report:* Check the box that describes why you are filling out this form. This will normally be "A) A hazardous material incident." If you are reporting an undeclared shipment with no release, check the corresponding box, "B)." If you are reporting an incident involving a cargo tank motor vehicle containing a hazardous material that received structural damage to the lading retention system that may affect its ability to retain lading but does not release a hazardous material, check that appropriate box, "C)."

(2) *Indicate what type of report this is:* If this is an initial report, check the "initial report" box. If this is a follow-up to a previous report, check the "A supplemental (follow-up) report" box. If you are using additional pages, check the "Additional Pages" box.

Part II: General Incident Information

(3), (4) *Date & Time of Incident:* Enter the date and time the incident occurred. If you do not know the actual date and time, give the date and time you discovered the incident. Use 24-hour time for the incident time (*e.g.* "2400" for midnight, "1200" for noon, "0747" for 7:47 a.m., "2115" for 9:15 p.m.).

(5) *Enter National Response Center Report Number:* If this incident was reported to the National Response Center (NRC), fill in the report number NRC assigned to the incident.

(6) *If you submitted a report to another Federal DOT agency, enter the agency and report number:* If you were required to fill out a report for another Federal DOT agency such as the Federal Railroad Administration or the Federal Motor Carrier Safety Administration for this incident, please include the agency and report number. This will facilitate our combination of information.

(7) *Location of Incident:* Enter the geographic location of the incident (city, county, State, and zip code). If you do not know the actual location where the incident occurred, give the location where it was discovered. If the incident occurred at an airport or rail yard, include the name of the facility. If the incident occurred on a body of water, include the name and/or river mile. If you do not know the street address, or if the incident occurred on a highway, include a description such as "On I–70, mile marker 240."

(8) *Mode of Transportation:* Enter the code that corresponds to the mode of transportation in which the incident occurred or was discovered. If the incident occurred or was discovered in an in-transit storage area (*e.g.*, a terminal or warehouse), check the box that corresponds to the mode by which the package was last transported.

(9) *Transportation Phase:* Enter the code that describes where the incident occurred in the transportation system. In transit means the incident occurred or was first discovered while the package was in the process of being transported. In-transit storage is storage incidental to transportation, such as at a terminal waiting for the next leg of transportation.

(10) *Carrier/Reporter:* Provide the name, street address, Federal DOT number (if applicable), and hazmat registration number of the carrier or the entity who is reporting the incident (if other than a carrier). The entity in physical possession of the material when the incident occurred or was discovered must report the incident.

(11) *Shipper/Offeror:* Enter the information about the person or entity that originally offered for transportation the material or package involved in the incident.

(12) *Origin:* Enter the origin of the shipment if the address is different than the shipper/offeror information entered in item #11.

(13) *Destination:* Enter the final destination of the shipment involved in the incident.

(14) through (19):

Hazardous Material Description: Enter the proper shipping name, technical or trade name, hazard class or division, ID number, packing group, and amount of material released. All of this information, except the amount of material released, can be found on the shipping papers that accompany the shipment, § 172.202. When indicating the amount of material released, include units of measurements (examples: 115 gallons, 69 tons).

(20) Was the material shipped as a hazardous waste? Check the "Yes" box if the material meets the definition of a hazardous waste in § 171.8 (requires an EPA Uniform Hazardous Waste Manifest). Include the EPA Manifest number.

(21) Is this a Toxic by Inhalation (TIH) material? If the material involved in the incident meets the definition of a Toxic by Inhalation material in § 173.132, check the "Yes" box and enter the Hazard Zone in the space provided.

(22) Was the material shipped under an Exemption, Approval, or Competent Authority Certificate? If the shipment was shipped under an exemption, an approval, or a Competent Authority Certificate, check the "Yes" box and provide the appropriate assigned number.

(23) Was this an undeclared hazardous materials shipment? If this material was not indicated in any way to be a hazardous material even though it was required to be described as such on a shipping paper, or if the material would normally be excepted from the shipping paper requirements (such as a small quantity material) and does not have the required markings, it is considered an undeclared hazardous material shipment. Check the appropriate box.

Part III: Packaging Information

(24) *Packaging Type:* Check the box that corresponds to the type of packaging involved in the incident. If more than one packaging type was involved in an incident, reproduce Part III of the form and fill out this section for each of the packaging types. For example, if three different packaging types were involved in an incident, fill out a separate Part III for each packaging type. If the type of packaging is not represented, check the "Other" box and enter a brief

description such as "non-specification bulk bin."

(25) Enter the appropriate failure codes (found at the end of the instructions): Enter the codes that describe what failed on the packaging, how the packaging failed, and the cause(s) of the failure. Be sure to enter the codes from the list that corresponds to the particular packaging types checked above (#24). Enter the most important failure point in line 1. If there is a second failure point, enter in line 2. If there are more than two failure points, provide additional information in this format in Part VI. The following explains the content of each line: What Failed: You can enter up to 2 "What Failed" codes to describe the part of the packaging that fails and was the immediate cause of the release. Often, on a simple packaging, only one code will be required. On more complex packaging, additional entries will help identify where that failure occurred. The first entry should designate the specific point of failure, followed by entries that help identify where that failure occurred. For instance, a deteriorated gasket on a pipe flange on the liquid line would have failure code 121 for gasket entered first and failure code 118 for flange entered second.

How Failed: Enter the "Failure" code that describes how the corresponding part of the packaging failed. The primary way the packaging failed should be entered first. Cause(s) of Failure: Enter the "Cause of Failure" code that describes what caused the corresponding part of the packaging to fail in the way it did. The most probable or fundamental cause of failure should be entered first.

If none of the codes on the list fit exactly, use the closest matches and provide additional detail in Part VI. Also, if you believe a better set of codes would be more descriptive of what failed, how it failed, and the causes of failure, suggest them in Part VII.

(26a) *Provide the complete packaging - identification markings, if available:* Every specification packaging, UN or DOT, has a packaging identification printed or stamped on it or on a plate attached to the packaging. Examples are provided on the form.

(26b) *For Non-bulk, IBC, or non-specification packaging:* Only fill out 26b if the marking is incomplete, destroyed, or unknown. Fill in the Outer and Inner packaging type and material of construction information, as appropriate. If the packaging is Non-bulk or Intermediate Bulk Container (IBC), use the codes below to enter the number or letter that applies for either Non-bulk or IBC packaging. For non-bulk, IBC or non-specification packaging provide a description of the packaging in the space(s) provided.

NON-BULK PACKAGING IDENTIFICATION CODES

Outer Packaging		
Type	Material	Head type
1 = Drum 2 = Wooden Barrel 3 = Jerrican 4 = Box 5 = Bag 6 = Composite Packaging 7 = Pressure receptacle	A = Steel B = Aluminum C = Natural Wood D = Plywood F = Reconstituted Wood G = Fiberboard H = Plastic L = Textile M = Paper, multi-wall N = Metal other than steel or aluminum P = Glass, porcelain, or stoneware	1 = Non-removable 2 = Removable

Inner Packaging	
Type	Material
1 = Bottle 2 = Can 3 = Box 4 = Bag 5 = Cylinder	A = Metal (any type) B = Glass, porcelain, or stoneware C = Plastic D = Fiberboard or cardboard E = Wood (any type)

IBC Packaging Identification Codes

Material of Construction

1—Metal
2—Plastic
3—Composite
4—Fiberboard
5—Wooden
6—Flexible

(27) *Describe the package capacity and the quantity:* Enter the total capacity of the inner and outer package. Also enter the actual amount of hazardous material that was shipped in the package, the number of packages in the shipment, and the number of packages that failed. Please include the units of measurement (liter, gallons, pounds, cubic feet, etc.)

(28) Provide package construction and test information, as appropriate: In the case of Non-bulk packagings or IBCs enter the name of the packaging manufacturer or the symbol of the manufacturer only if complete identification markings were not provided in #26b. Enter the date of manufacture and the serial number, if applicable. Enter the last test date if the packaging requires periodic testing. Also include the design pressure, shell thickness, head thickness, and service pressure if the failed packagings are of the type indicated in parenthesis after each question. If the packaging contained a valve, or other device that failed and resulted in a hazardous material release, enter the valve or device type, manufacturer, and model number.

(29) If the package is for Radioactive Materials, complete the following: Complete this question only if a radioactive material was involved. Indicate the packaging category, the packaging certification, certification number, and which nuclides were present, the transportation index (TI), activity of the nuclides, and the criticality safety index.

Part IV: Consequences

(30) *Result of Incident:* Check all boxes that describe what occurred during the incident or as a result of the incident. For example, in a situation where a truckload of 55 gallon drums of corrosive liquids overturns resulting in a release that contaminates a nearby wetlands and stream the boxes "Spillage," "Material Entered Waterway/Storm Sewer," and "Environmental Damage" may apply.

(31) *Emergency Response:* Check all boxes that correspond with any emergency response and cleanup crews that participated in resolving the incident. If a fire crew, EMS, or police unit responded to the incident, include the report number.

(32) *Damages:* You are required to provide information on estimated damages if your damages exceed $500.00. This figure includes the cost of the material lost, property damage, vehicle damage, response costs, and clean-up costs. If you do not know these amounts at the time you complete the report, or the actual costs are revised by more than $25,000, you must submit a follow-up report after you determine the amounts. The following definitions explain each of the costs:

Material Loss: Enter the value of material released and unrecoverable. Base this entry on the amount of material released multiplied by the unit value (*e.g.*, price per gallon or price per pound) as listed on the shipper's invoice. If the invoice is not available, estimate the cost per unit using the shipper's basis.

Carrier Damage: Enter the total value of damage incurred by the carrier. Major components include costs to repair the damaged vehicle and costs resulting from damage to cargo. If the vehicle is declared "totaled," enter the insured value of the vehicle. This entry should not include damage to other property or to vehicles owned by other persons.

Property Damage: Enter the total value of costs resulting from damage to the property of others involved in the incident. These include: repair and replacement costs of other vehicles; repair and replacement costs to buildings and other fixed facilities; and restoration of open land beyond decontamination and cleanup.

Response Cost: Enter the total value of response costs. Response costs are those costs incurred immediately after the incident, and include local emergency response from police and fire departments and emergency response teams, as well as costs incurred by the responsible party. Response costs also include costs to contain the hazardous material released. Remediation/Cleanup Cost: Enter the total value of the cost to cleanup and remediate the site. Cleanup costs are those costs incurred to collect, transport, and ultimately dispose of all material collected during the response phase. Remediation costs are those costs incurred to restore the incident scene to its pre-incident state, and could include excavation, disposal and replacement of contaminated soil, pumping, treatment and re-injection of contaminated groundwater, or absorption and disposal of hazardous material released into surface water.

(33a) Did the hazardous material cause or contribute to a human fatality? If a person was fatally injured by contact with the hazardous material or its vapors or by a fire or explosion that resulted from the hazardous material, check the "Yes" box and enter the number of fatalities that resulted directly from the hazardous material.

(33b) Were there human fatalities that did not result from the hazardous material? If the fatalities were not caused directly by the hazardous material, check the "Yes" box and enter the number of fatalities. An example: if a passenger car collided with a cargo tank carrying gasoline and the automobile driver was killed due to the collision, then the fatality was not caused by the hazardous material released. If, however, the accident resulted in the release of gasoline from the cargo tank and a resulting fire killed the automobile driver, then the fatality was caused by the hazardous material.

(34) Did the hazardous material cause or contribute to a personal injury? If a person was injured by contact with the hazardous material or its vapors or by a fire or explosion that resulted from the hazardous material, check the "Yes" box and enter the number of persons injured by the hazardous material.

Hospitalized means admitted to a medical facility, not treated and released from a facility, such as a hospital emergency room, where the person was never admitted to the hospital proper. Non-hospitalized individuals are those who may have received attention from medical personnel on-site or at a facility (including hospital emergency room), but were not admitted to a medical facility. Indicate the number of injured employees, emergency responders (firefighters, police, medics, etc.) and members of the general public.

(35) Did the hazardous material cause or contribute to an evacuation? If the incident required the evacuation or removal of persons from a specific area because of possible or actual contact with the hazardous materials involved in the incident, check the "Yes" box. Separately specify the numbers of individuals from the general public evacuated and number of employees of the facility or workers in the area that were evacuated. Also provide the total number of individuals evacuated. Indicate the duration of the evacuation (in hours).

(36) Was a transportation artery or facility closed? If a road or transportation facility was closed due to the incident, check the "Yes" box and indicate the duration (in hours) here.

(37) Was the material involved in a crash or derailment? Check the "Yes" box if a hazardous material was involved in a crash or derailment. Provide the estimated speed and weather conditions at the time of the crash, such as rain, blowing snow, sleet, iced roadway, sun glare, fog, dry pavement, high winds, etc. Indicate if the vehicle overturned or left the roadway or track.

Part V: Air Incident Information

This section is for incidents with packagings transported or intended for transportation by aircraft. If your packaging was not transported or intended to be transported by air, skip this section.

(38) Was the shipment on a passenger aircraft? Indicate whether the shipment in question was on a commercial passenger aircraft. If so, indicate if the material was tendered (accepted for shipment) as cargo, or was located in a passenger's baggage, either in the cabin or baggage compartment.

(39) Where did the incident occur or where was the incident discovered? Indicate where in the course of transportation the incident occurred or was discovered.

(40) What phase(s) had the shipment already undergone prior to the incident? Check all boxes that describe the transportation phases the shipment went through before the incident occurred or was discovered.

Part VI: Description of Events and Packaging Failure

Please describe the events involved in the incident to provide us with a better understanding of the incident. Include information that has not been collected elsewhere on this form, and include special scenarios, outstanding circumstances, or other information that provides a complete picture of the incident. Describe the sequence of events that led to the incident, the package failure (if any) and actions taken at the time of discovery. Submit photographs and diagrams when necessary for clarification. You may continue on additional sheets if necessary.

Part VII: Recommendations/Actions Taken To Prevent Future Incidents

Recommendations may be preliminary in nature, may suggest actions by other parties, and may be subject to further investigation, refinement, acceptance, or rejection. Often, it may be beyond the ability of the preparer to offer recommendations, but where such recommendations can be made they have the potential of resulting in important improvements with safety benefits. For instance, such information can help companies identify common problems and alert the DOT to the need for additional measures such as outreach or broad training needs. This information can also help support regulatory changes.

Part VIII: Contact Information

Provide the name, title, telephone number, fax number, business name and address, hazmat registration number and email address of the contact person at your company who can answer questions about the information provided on this form. Make sure to check the box that describes the function of your firm: carrier, shipper, facility owner/operator, or other. If "Other" is checked, describe the function.

COMPLETE LISTING—ALL PACKAGING TYPES

Code	What failed	Code	How failed	Code	Cause(s) of failure
101	Air Inlet	301	Abraded	501	Abrasion
102	Auxiliary Valve	302	Bent	502	Broken Component or Device
103	Basic Material	303	Burst or Ruptured	503	Commodity Self-ignition
104	Body	304	Cracked	504	Commodity Polymerization
105	Bolts or Nuts	305	Crushed	505	Conveyer or Material Handling Equipment Mishap
106	Bottom Outlet Valve	306	Failed to Operate	506	Corrosion—Exterior

COMPLETE LISTING—ALL PACKAGING TYPES—Continued

Code	What failed	Code	How failed	Code	Cause(s) of failure
107	Check Valve	307	Gouged or Cut	507	Corrosion—Interior
108	Chime	308	Leaked	508	Defective Component or Device
109	Closure (*e.g.*, Cap, Top, or Plug)	309	Punctured	509	Derailment
110	Cover	310	Ripped or Torn	510	Deterioration or Aging
111	Cylinder Neck or Shoulder	311	Structural	511	Dropped
112	Cylinder Sidewall—Near Base	312	Torn Off or Damaged	512	Fire, Temperature, or Heat
113	Cylinder Sidewall—Other	313	Vented	513	Forklift Accident
114	Cylinder Valve			514	Freezing
115	Discharge Valve or Coupling			515	Human Error
116	Excess Flow Valve			516	Impact with Sharp or Protruding Object (*e.g.*, nails)
117	Fill Hole			517	Improper Preparation for Transportation
118	Flange			518	Inadequate Accident Damage Protection
119	Frangible Disc			519	Inadequate Blocking and Bracing
120	Fusible Pressure Relief Device or Element.			520	Inadequate Maintenance
121	Gasket			521	Inadequate Preparation for Transportation
122	Gauging Device			522	Inadequate Procedures
123	Heater Coil			523	Inadequate Training
124	High Level Sensor			524	Incompatible Product
125	Hose			525	Incorrectly Sized Component or Device
126	Hose Adaptor or Coupling			526	Loose Closure, Component, or Device
127	Inlet (Loading) Valve			527	Misaligned Material, Component, or Device
128	Inner Packaging			528	Missing Component or Device
129	Inner Receptacle			529	Overfilled
130	Lifting Feature			530	Over-pressurized
131	Lifting Lug			531	Rollover Accident
132	Liner			532	Stub Sill Separation from Tank (Tank Cars)
133	Liquid Line			533	Threads Worn or Cross Threaded
134	Liquid Valve			534	Too Much Weight on Package
135	Loading or Unloading Lines			535	Valve Open
136	Locking Bar			536	Vandalism
137	Manway or Dome Cover			537	Vehicular Crash or Accident Damage
138	Mounting Studs			538	Water Damage
139	O-Ring or Seals.				
140	Outer Frame.				
141	Piping or Fittings.				
142	Piping Shear Section.				
143	Pressure Relief Valve or Device—Non-Reclosing.				
144	Pressure Relief Valve or Device—Reclosing.				
145	Remote Control Device.				
146	Sample Line.				
147	Stub Sill (Tank Car).				
148	Sump.				
149	Tank Head.				
150	Tank Shell.				
151	Thermometer Well.				
152	Threaded Connection.				
153	Vacuum Relief Valve.				
154	Valve Body.				
155	Valve Seat.				
156	Valve Spring.				
157	Valve Stem.				
158	Vapor Valve.				
159	Vent.				
160	Washout.				
161	Weld or Seam.				

General non-bulk and IBCs		Cylinders	
Code	What failed	Code	What failed
103	Basic Material	111	Cylinder Neck or Shoulder
104	Body	112	Cylinder Sidewall—Near Base

General non-bulk and IBCs		Cylinders	
Code	What failed	Code	What failed
105	Bolts or Nuts	113	Cylinder Sidewall—Other
108	Chime	114	Cylinder Valve
109	Closure (*e.g.*, Cap, Top, or Plug)	119	Frangible Disc
110	Cover	120	Fusible Pressure Relief Device or Element
119	Frangible Disc	122	Gauging Device
120	Fusible Pressure Relief Device or Element	132	Liner
121	Gasket	143	Pressure Relief Valve or Device—Non-Reclosing
125	Hose	144	Pressure Relief Valve or Device—Reclosing
128	Inner Packaging	161	Weld or Seam
129	Inner Receptacle		
130	Lifting Feature	Code	How Failed
132	Liner	301	Abraded
140	Outer Frame	303	Burst or Ruptured
143	Pressure Relief Valve or Device—Non-Reclosing	304	Cracked
144	Pressure Relief Valve or Device—Reclosing	306	Failed to Operate
161	Weld or Seam	307	Gouged or Cut
		308	Leaked
Code	How Failed	309	Punctured
301	Abraded	313	Vented
302	Bent		
303	Burst or Ruptured	Code	Causes of Failure
304	Cracked	501	Abrasion
305	Crushed	502	Broken Component or Device
306	Failed to Operate	503	Commodity Self-ignition
307	Gouged or Cut	504	Commodity Polymerization
308	Leaked	505	Conveyer or Material Handling Equipment Mishap
309	Punctured	506	Corrosion—Exterior
310	Ripped or Torn	507	Corrosion—Interior
311	Structural	508	Defective Component or Device
312	Torn Off or Damaged	510	Deterioration or Aging
313	Vented	512	Fire, Temperature, or Heat
		513	Forklift Accident
Code	Cause(s) of Failure	514	Freezing
501	Abrasion	515	Human Error
503	Commodity Self-ignition	516	Impact with Sharp or Protruding Object (*e.g.*, nails)
504	Commodity Polymerization	517	Improper Preparation for Transportation
505	Conveyer or Material Handling Equipment Mishap	519	Inadequate Blocking and Bracing
506	Corrosion—Exterior	520	Inadequate Maintenance
507	Corrosion—Interior	521	Inadequate Preparation for Transportation
508	Defective Component or Device	522	Inadequate Procedures
510	Deterioration or Aging	523	Inadequate Training
511	Dropped	524	Incompatible Product
513	Forklift Accident	525	Incorrectly Sized Component or Device
514	Freezing	526	Loose Closure, Component, or Device
515	Human Error	527	Misaligned Material, Component, or Device
516	Impact with Sharp or Protruding Object (*e.g.*, nails)	528	Missing Component or Device
517	Improper Preparation for Transportation	529	Overfilled
521	Inadequate Preparation for Transportation	530	Over-pressurized
522	Inadequate Procedures	535	Valve Open
523	Inadequate Training	536	Vandalism
529	Overfilled	537	Vehicular Crash or Accident Damage
530	Overpressurized		
534	Too Much Weight on Package		
535	Valve Open		
536	Vandalism		
537	Vehicular Crash or Accident Damage		
538	Water Damage		

Portable tanks		Bulk tank vehicles—cargo tank motor vehicles (CTMV) and tank cars	
Code	What failed	Code	What failed
105	Bolts or Nuts	101	Air Inlet
106	Bottom Outlet Valve	105	Bolts or Nuts
107	Check Valve	106	Bottom Outlet Valve
108	Chime	107	Check Valve
109	Closure (*e.g.*, Cap, Top, or Plug)	110	Cover

Portable tanks		Bulk tank vehicles—cargo tank motor vehicles (CTMV) and tank cars	
Code	What failed	Code	What failed
110	Cover	115	Discharge Valve or Coupling
119	Frangible Disc	116	Excess Flow Valve
120	Fusible Pressure Relief Device or Element	117	Fill Hole
121	Gasket	118	Flange
122	Gauging Device	119	Frangible Disc
125	Hose	120	Fusible Pressure Relief Device or Element
127	Inlet (Loading) Valve	121	Gasket
131	Lifting Lug	122	Gauging Device
132	Liner	123	Heater Coil
135	Loading or Unloading Lines	124	High Level Sensor
137	Manway or Dome Cover	125	Hose
140	Outer Frame	126	Hose Adaptor or Coupling
141	Piping or Fittings	127	Inlet (Loading) Valve
143	Pressure Relief Valve or Device—Non-Reclosing	131	Lifting Lug
144	Pressure Relief Valve or Device—Reclosing	132	Liner
152	Threaded Connection	133	Liquid Line
153	Vacuum Relief Valve	134	Liquid Valve
161	Weld or Seam	135	Loading or Unloading Lines
		136	Locking Bar
Code	How Failed	137	Manway or Dome Cover
301	Abraded	138	Mounting Studs
302	Bent	139	O-Ring or Seals
303	Burst or Ruptured	141	Piping or Fittings
304	Cracked	142	Piping Shear Section
305	Crushed	143	Pressure Relief Valve or Device—Non-Reclosing
306	Failed to Operate	144	Pressure Relief Valve or Device—Reclosing
307	Gouged or Cut	145	Remote Control Device
308	Leaked	146	Sample Line
309	Punctured	147	Stub Sill (Tank Car)
310	Ripped or Torn	148	Sump
312	Torn Off or Damaged	149	Tank Head
313	Vented	150	Tank Shell
		151	Thermometer Well
Code	Cause(s) of Failure	152	Threaded Connection
501	Abrasion	153	Vacuum Relief Valve
502	Broken Component or Device	154	Valve Body
503	Commodity Self-ignition	155	Valve Seat
504	Commodity Polymerization	156	Valve Spring
505	Conveyer or Material Handling Equipment Mishap	157	Valve Stem
506	Corrosion—Exterior	158	Vapor Valve
507	Corrosion—Interior	159	Vent
508	Defective Component or Device	160	Washout
509	Derailment	161	Weld or Seam
510	Deterioration or Aging		
511	Dropped	Code	How Failed
512	Fire, Temperature, or Heat	301	Abraded
514	Freezing	302	Bent
515	Human Error	303	Burst or Ruptured
517	Improper Preparation for Transportation	304	Cracked
520	Inadequate Maintenance	305	Crushed
521	Inadequate Preparation for Transportation	306	Failed to Operate
522	Inadequate Procedures	307	Gouged or Cut
523	Inadequate Training	308	Leaked
524	Incompatible Product	309	Punctured
525	Incorrectly Sized Component or Device	310	Ripped or Torn
526	Loose Closure, Component, or Device	311	Structural
527	Misaligned Material, Component, or Device	312	Torn Off or Damaged
528	Missing Component or Device	313	Vented
529	Overfilled		
530	Overpressurized	Code	Cause(s) of Failure
531	Rollover Accident	501	Abrasion
536	Vandalism	502	Broken Component or Device
537	Vehicular Crash or Accident Damage	503	Commodity Self-ignition
		504	Commodity Polymerization
		505	Conveyer or Material Handling Equipment Mishap
		506	Corrosion—Exterior
		507	Corrosion—Interior
		508	Defective Component or Device
		509	Derailment
		510	Deterioration or Aging
		511	Dropped
		512	Fire, Temperature, or Heat

Portable tanks		Bulk tank vehicles—cargo tank motor vehicles (CTMV) and tank cars	
Code	What failed	Code	What failed
		515	Human Error
		517	Improper Preparation for Transportation
		518	Inadequate Accident Damage Protection
		519	Inadequate Blocking and Bracing
		520	Inadequate Maintenance
		521	Inadequate Preparation for Transportation
		522	Inadequate Procedures
		523	Inadequate Training
		524	Incompatible Product
		525	Incorrectly Sized Component or Device
		526	Loose Closure, Component, or Device
		527	Misaligned Material, Component, or Device
		528	Missing Component or Device
		529	Overfilled
		530	Overpressurized
		531	Rollover Accident
		532	Stub Sill Separation from Tank (Tank Cars)
		533	Threads Worn or Cross Threaded
		536	Vandalism
		537	Vehicular Crash or Accident Damage

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December 3, 2003

Part III

Department of the Interior

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 732
Revisions to the State Program Amendment Process; Proposed Rule

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 732

RIN 1029–AC06

Revisions to the State Program Amendment Process

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Proposed rule.

SUMMARY: We, the Office of Surface Mining Reclamation and Enforcement (OSM), propose to revise our regulations governing the processing of State program amendments submitted by a State for approval under the Surface Mining Control and Reclamation Act of 1977. When a State with an approved program fails to amend its program as directed, our existing regulations require us to begin proceedings to either enforce that part of the State program that should have been amended, or withdraw approval in whole or in part and implement a Federal program. This rule would provide us with the discretion to consider the entire performance of the State in effectively implementing its program before determining that proceedings leading to Federal enforcement are warranted.

DATES: *Written comments:* We will accept written comments on the proposed rule until 5 p.m., Eastern Time, on February 2, 2004.

Public hearings: Upon request, we will hold a public hearing on the proposed rule at a date, time, and location to be announced in the **Federal Register** before the hearing. We will accept requests for a public hearing until 5 p.m., Eastern Time, on December 24, 2003.

ADDRESSES: If you wish to comment, you may submit your comments on this proposed rule by any one of three methods. You may mail or hand carry comments to the Office of Surface Mining Reclamation and Enforcement, Administrative Record, Room 101, 1951 Constitution Avenue NW., Washington, DC 20240. You may also submit your comment via the Internet to OSM's Administrative Record at: *osmrules@osmre.gov*.

You may submit a request for a public hearing orally or in writing to the person specified under **FOR FURTHER INFORMATION CONTACT**. We will announce the address, date, and time for any public hearing before the hearing. Any disabled individual who requires special accommodation to attend a public hearing should also contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

FOR FURTHER INFORMATION CONTACT: Andy DeVito, Office of Surface Mining Reclamation and Enforcement, U.S. Department of the Interior, 1951 Constitution Avenue NW., MS–210–SIB, Washington, DC 20240; Telephone: (202) 208–2701. E-mail: *adevito@osmre.gov*.

SUPPLEMENTARY INFORMATION:

I. Why Are We Revising Our Regulations?
II. How Do I Submit Comments on the Proposed Rule?
III. What are the Procedural Matters and Required Determinations for this Rule?

I. Why Are We Revising Our Regulations?

We propose to revise our regulations governing the processing of State program amendments submitted by a State for approval under the Surface Mining Control and Reclamation Act of 1977 (SMCRA) in order to provide OSM with more discretion in resolving issues affecting approved State programs and the State program amendment process.

What Is an Approved State Program?

In SMCRA, section 503 of Title V grants each State in which there are or may be surface coal mining operations conducted on non-Federal lands the right to assume exclusive jurisdiction over the regulation of surface coal mining and reclamation operations. To do so, the State must submit to the Secretary of the Interior for approval, a State program that demonstrates that the State has the capability of carrying out the provisions of SMCRA. Since its enactment in 1977, 24 States have chosen to exercise such responsibility and have programs approved by us. The implementing regulations at 30 CFR part 732 provide the criteria and procedures for decisions to approve or disapprove submissions of State programs.

What Is a State Program Amendment?

Although not expressly provided for in SMCRA, OSM also, by regulation at 30 CFR 732.17, provides criteria and processes for amending State programs in anticipation of a need to modify or update them as conditions or national rules change. Occasionally, for various reasons such as legislative changes to the provisions of SMCRA or litigation resulting in adverse court decisions, we revise our regulations. As a result, all 24 States with approved programs may be required to amend their approved State programs in order to be "no less effective" than the OSM regulatory program. Also, States may decide to amend their programs on their own initiative.

If we determine that a State program amendment is required, we notify the State regulatory authority of the need to amend its approved program. Within 60 days after notification, the State must submit (1) a proposed written amendment, or (2) a description of an amendment to be proposed that meets the requirements of SMCRA and OSM's implementing regulations, and a timetable for enactment that is consistent with established administrative or legislative procedures in the State. If the State regulatory authority does not submit the proposed amendment or a description and timetable within 60 days from the receipt of the notice, or does not subsequently comply with the submitted timetable, or if the amendment is not approved, then pursuant to 30 CFR 732.17(f)(2), the Director of OSM (Director) must begin proceedings under 30 CFR part 733.

What Is a 733 Proceeding?

Under 30 CFR part 733, which is based on sections 504(b)–(d) and 521(b) of SMCRA, if the Director has reason to believe that a State is not effectively implementing, administering, maintaining, or enforcing any part of its approved State program, then the Director must promptly notify the State regulatory authority in writing. The notification must provide sufficient information to allow the State to determine what portions of the program the Director believes are not being effectively implemented, administered, maintained, or enforced; provide the reasons for such belief; and specify the time period for the State to accomplish any necessary remedial actions. If, after certain hearing procedures, the Director finds that (1) the State has failed to implement, administer, maintain, or effectively enforce all or part of its approved State program, and (2) that the State has not demonstrated its capability and intent to administer the State program, then the Director must take one of the following actions. The Director must either (1) initiate direct Federal enforcement of all or part of the State program; or (2) recommend to the Secretary of the Interior that he or she withdraw approval of the State program, in whole or in part, and establish a Federal program for the State.

What Are the Consequences of a 733 Action?

The substitution of Federal enforcement under 30 CFR 733.12 for all or part of an approved State program results in substantial disruption to the State, the Federal government, and the coal industry. OSM has initiated a 733 action nine times in its history. We initiated action under part 733 in Oklahoma (1981, 1983, and 1993), Kansas (1983), Tennessee (1983), Montana (1993), Utah (1995), West Virginia (2001), and Missouri (2003). In Montana, Utah, Kansas, West Virginia, and the Oklahoma actions in 1981 and 1993, the issues were resolved without Federal takeover of any part of the State program. In three cases, OSM did take over partial enforcement of a State program—Oklahoma (1984), Tennessee (1984), and Missouri (2003). In Oklahoma, the State took action to address the deficiencies, and full authority was later returned to the State. In Tennessee, the State chose instead to terminate its approved program and repealed the Tennessee Coal Surface Mining Act and its implementing regulations. OSM promulgated a Federal program for that State in 1984. After implementing the Federal program, we were required under section 504(d) of SMCRA to review all the permits issued by the State of Tennessee under the standards of the new Federal program. The substitution of Federal enforcement in Tennessee resulted in delays in processing and issuing new coal permits in the State. While the Tennessee situation was an extreme example, disruption always occurs when there is a substitution of Federal enforcement for all or part of an approved State program.

The most recent 733 action in Missouri is still unresolved. On July 21, 2003, the Governor of Missouri notified us that the State of Missouri is experiencing difficult budget and revenue shortfalls. As a result of the situation, the Governor requested assistance with permit reviews, inspection activities, and general oversight of the active coal mining operations in the State. The Governor indicated that he was hopeful his request would be temporary and that he would continue to work with the legislature in an attempt to assure adequate funding for all responsibilities.

On August 4, 2003, we notified the Governor that we were obligated, in accordance with 30 CFR 733.12(e), to substitute Federal enforcement for those portions of the Missouri program that were not fully funded and staffed. We cited problems with the State's implementation of the Missouri program in several areas including inspection, enforcement, permitting, and bonding activities. As a result of substituting Federal enforcement, we became responsible for, among other things, approximately 40 permitting actions, 24 inspectable units, and an unsuitability petition filed on October 20, 2003. For more details on the Missouri 733 action, *see* 68 FR 50944, August 22, 2003.

Why Are We Revising Our Regulations?

As previously mentioned, our regulations at 30 CFR 732.17(f)(2) require us to begin proceedings against a State under 30 CFR part 733 when the State fails to submit and obtain approval of a required program amendment within the time allowed. While there may be circumstances in which the substance of a required State program amendment is such that the State's failure or inability to submit it to OSM and obtain approval warrants action under part 733, in most instances this is not the case. There are far more amendments being processed than originally anticipated when the State program provisions were enacted in 1977, and they typically involve a single issue and/or pertain to minor program revisions. Usually, the substance of the required State program amendment is such that the State's failure or inability to submit it to OSM and obtain approval does not jeopardize the overall effectiveness of the approved State program.

For example, in 1999, we required the State of Iowa to submit certain program amendments pertaining to revegetation success standards by May 25, 2000. *See* 64 FR 66385; November 26, 1999. The State submitted the required amendment on August 17, 2001—fifteen months after it was due—and we approved it on December 27, 2001. *See* 66 FR 66743; December 27, 2001. The delay in submitting the program amendment did not jeopardize the overall effectiveness of the approved State program and it did not result in harm to the environment. Iowa had not produced a single ton of coal during the three years prior to receiving our notice of the required amendment. Nevertheless, even in such situations, our existing regulations automatically require us to begin proceedings under part 733—proceedings that are costly and disruptive to both OSM and the affected State, and sometimes completely unnecessary. Because of limited staff and resources, and due to the need to direct our efforts to higher priorities, Iowa was able to complete the amendment process before we could initiate proceedings under part 733.

What Revisions Are We Making?

This proposed rule would provide discretion to the Director by allowing consideration of the State's overall effectiveness in implementing, administering, maintaining, or enforcing its approved program before determining that proceedings under part 733 are warranted because of a delinquent State program amendment. This is the standard currently found in 30 CFR 733.12(b) which applies in most situations. However, the provisions in 30 CFR 732.17(f)(2) by-pass those in 30 CFR 733.12(b) by automatically assuming that the failure to submit or obtain approval of a State program amendment is an indication that the State is *not* effectively implementing, administering, maintaining, or enforcing its approved program. A State's failure to submit an amendment and obtain approval by OSM may be the result of other factors such as the failure of the State legislature to enact required legislation, reluctance to submit an amendment "no less effective" than an OSM regulation that is currently being litigated, or timely submission of an amendment that the State thought was "no less effective" than the Secretary's regulations, but OSM found to be deficient.

We believe that, in situations where the State has not submitted and obtained approval of a required amendment, a less disruptive and more effective way to obtain the required amendment is to work with the State at the staff level to discuss problems and resolve issues rather than automatically begin formal proceedings under part 733. To automatically begin proceedings under part 733, as currently required by 30 CFR 732.17(f)(2), damages the working relationship we have with a State that has voluntarily agreed to work in partnership with OSM to implement and administer the provisions of Title V of SMCRA. For these reasons, we are proposing the following revisions.

30 CFR 732.17(f)(2)

Under the existing regulation in 30 CFR 732.17(f)(2), the Director is required to begin proceedings to either enforce that part of the State program affected or withdraw approval, in whole or in part, and implement a Federal program under the following situations. The Director is required to begin proceedings if the State regulatory authority does not (1) submit a proposed amendment or a description of an amendment and the timetable for enactment within 60 days from the receipt of the notice from OSM, or (2) does not subsequently comply with the submitted timetable, or if the amendment is not approved by OSM.

We propose to revise this requirement by inserting the words "if the Director finds that such action is warranted because the State is not effectively implementing, administering,

maintaining or enforcing its approved State program." This language is taken in part from 30 CFR 733.12(b) and will provide the discretion necessary to consider the State's overall performance rather than automatically require proceedings under part 733. Our regulations at 30 CFR 733.12(e) provide the standards for substitution of Federal enforcement. The standards are a determination by the Director that: (1) The State has failed to effectively implement, administer, maintain or enforce all or part of its approved State program; and (2) the State has not demonstrated its capability and intent to administer its approved State program.

30 CFR 732.17(h)(1)

Paragraph (h)(1) currently requires that we publish in the **Federal Register** a notice of receipt of a State program amendment within 10 days after receiving it from the State. We propose increasing the time period from 10 days to 30 days because we have found it difficult to meet the 10-day time period. When the regulations were originally written, State program amendments were received and processed at OSM's headquarters office in Washington, DC. The approval of State program amendments has since been decentralized and receipt and approval now takes place in our three regional offices. They in turn transmit the amendments to the OSM headquarters office in Washington, DC for final clearance. After they are cleared for publication, they are sent to the Office of the Federal Register which usually publishes them on the third day after receipt. This can no longer be done in 10 days and so we propose increasing the time from 10 to 30 days.

30 CFR 732.17(h)(2)(v)

Paragraph (h)(2)(v) currently requires that we publish a schedule for review and action on a State program amendment. Experience has shown that schedules usually change because of extensions of the comment period and delays in obtaining comments from other government agencies. Because these schedules are variable and unreliable, we propose removing the requirement that we publish a schedule for review and action on a State program amendment.

30 CFR 732.17(h)(8)

Paragraph (h)(8) currently allows the State regulatory authority 30 days to resubmit a revised amendment for consideration if its original submission is not approved. Experience has shown that the 30 days is insufficient for the State to accomplish the submission. We propose to increase the time frame from 30 days to either 60 days or a time frame consistent with the established administrative or legislative procedures in the State, whichever is later. This will provide the State with a more realistic time frame within which to act.

30 CFR 732.17(h)(9)

Paragraph (h)(9) would be shortened and simplified by cross referencing the processing provisions in paragraph (h) rather than specifying the same procedures in paragraph (h)(9).

30 CFR 732.17(h)(12)

Paragraph (h)(12) currently requires that within 10 days after approving or not approving a State program amendment, the decision must be published in the **Federal Register**. We propose increasing the time period from 10 days to 30 days for the same reasons as discussed for the revisions of paragraph (h)(1) above.

30 CFR 732.17(h)(13)

We propose to revise paragraph (h)(13) by deleting the cross reference to the schedule in paragraph (h)(2)(v) because, as previously discussed, we propose to delete that paragraph. We also propose to revise the time frame for our final decision on a State program amendment by increasing the time allowed from six months to seven months to allow for the increase in time from 10 to 30 days to publish documents in the **Federal Register**.

II. How Do I Submit Comments on the Proposed Rule?

Written Comments: If you submit written comments on the proposed rule during the 60-day comment period, they should be specific, should be confined to issues pertinent to the notice, and should explain the reason for any recommended change(s). Where practicable, you should submit three copies of your comments. We will not give consideration to anonymous comments. Although every effort will be made to consider all other comments submitted, OSM cannot assure that comments sent to an address other than those listed above (*see* **ADDRESSES**) will be included in the Administrative Record and available for our review.

Availability of Comments: Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours at the OSM Administrative Record Room (see **ADDRESSES**). Individual respondents may request that we withhold their home address from the rulemaking record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the rulemaking record a respondent's identity, to the extent allowed by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

Public hearings: We will hold a public hearing on the proposed rule upon request only. The time, date, and address for any hearing will be announced in the **Federal Register** at least 7 days prior to the hearing.

Any person interested in participating in a hearing should inform Andy DeVito (*see* **FOR FURTHER INFORMATION CONTACT**), either orally or in writing by 5 p.m., Eastern time, on December 24, 2003. If no one has contacted Mr. DeVito to express an interest in participating in a hearing by that date, a hearing will not be held. If only one person expresses an interest, a public meeting rather than a hearing may be held, with the results included in the Administrative Record.

The public hearing will continue on the specified date until all persons scheduled to speak have been heard. If you are in the audience and have not been scheduled to speak and wish to do so, you will be allowed to speak after those who have been scheduled. We will end the hearing after all persons scheduled to speak and persons present in the audience who wish to speak have been heard. To assist the transcriber and ensure an accurate record, we request that, if possible, each person who testifies at a public hearing provide us with a written copy of his or her testimony.

III. What Are the Procedural Matters and Required Determinations for This Proposed Rule?

Executive Order 12866—Regulatory Planning and Review

This document is not a significant rule and is not subject to review by the Office of Management and Budget under Executive Order 12866.

a. This rule will not have an effect of $100 million or more on the economy. It will not adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities. The revisions to the provisions governing the processing of State program amendments and the time frames for their publication will not have an adverse economic impact on States. It may in fact reduce administrative expenses for the States by allowing for the informal resolution of issues at staff level rather than requiring a part 733 action.

b. This rule will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency.

c. This rule does not alter the budgetary effects of entitlements, grants, user fees, or loan programs or the rights or obligations of their recipients.

d. This rule does not raise novel legal or policy issues.

Regulatory Flexibility Act

The Department of the Interior certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). As previously stated, the revision to the provisions governing the processing of State program amendments and the time frames for their publication will not have an adverse economic impact. Further, the rule produces no adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States enterprises to compete with foreign-based enterprises in domestic or export markets.

Small Business Regulatory Enforcement Fairness Act

For the reasons previously stated, this rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule:

a. Does not have an annual effect on the economy of $100 million or more.

b. Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions.

c. Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises for the reasons stated above.

Unfunded Mandates

This rule does not impose an unfunded mandate on State, local, or Tribal governments or the private sector of more than $100 million per year. The rule does not have a significant or unique effect on State, Tribal, or local governments or the private sector. A statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*) is not required.

Executive Order 12630—Takings

In accordance with Executive Order 12630, the rule does not have significant takings implications. The revisions being proposed are procedural in nature and do not affect private property.

Executive Order 12988—Civil Justice Reform

In accordance with Executive Order 12988, the Office of the Solicitor has determined that this rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order.

Executive Order 13132—Federalism

In accordance with Executive Order 13132, the rule does not have significant Federalism implications to warrant the preparation of a Federalism Assessment for the reasons discussed above.

Executive Order 13175—Consultation and Coordination With Indian Tribal Governments

In accordance with Executive Order 13175, we have evaluated the potential effects of this rule on Federally-recognized Indian tribes and have determined that the proposed revisions pertaining to actions under part 733 would not have substantial direct effects on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes.

Executive Order 13211—Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

This rule is not considered a significant energy action under Executive Order 13211. The revisions to the provisions governing the processing of State program amendments and the time frames for their publication will not have a significant effect on the supply, distribution, or use of energy.

Paperwork Reduction Act

This rule does not require an information collection from 10 or more parties, and a submission under the Paperwork Reduction Act to the Office of Management and Budget is not required.

National Environmental Policy Act

OSM has reviewed this rule and determined that it is categorically excluded from the National Environmental Policy Act process in accordance with the Departmental Manual 516 DM 2, Appendix 1.10.

How Will This Rule Affect State and Indian Programs?

Following publication of a final rule, we will evaluate the State and Indian programs approved under section 503 of SMCRA to determine any changes in those programs that may be necessary. When we determine that a particular State program provision should be amended, the particular State will be notified in accordance with the provisions of 30 CFR 732.17. On the basis of the proposed rule, we have made a preliminary determination that no program revisions will be required.

Clarity of This Regulation

Executive Order 12866 requires each agency to write regulations that are easy to understand. We invite your comments on how to make this proposed rule easier to understand, including answers to questions such as the following: (1) Are the requirements in the proposed rule clearly stated? (2) Does the proposed rule contain technical language or jargon that interferes with its clarity? (3) Does the format of the proposed rule (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity? (4) Would the rule be easier to understand if it were divided into more (but shorter) sections (a "section" appears in bold type and is preceded by the symbol "§ " and a numbered heading; for example, § 732.17)? (5) Is the description of the proposed rule in the **SUPPLEMENTARY INFORMATION** section of this preamble helpful in understanding the proposed rule? (6) What else could we do to make the proposed rule easier to understand? Send a copy of any comments that concern how we could make this proposed rule easier to understand to: Office of Regulatory Affairs, Department of the Interior, Room 7229, 1849 C Street NW., Washington, DC 20240. You may also e-mail the comments to this address: *Exsec@ios.doi.gov.*

List of Subjects in 30 CFR Part 732

Intergovernmental relations, Reporting and recordkeeping requirements, Surface mining, Underground mining.

Dated: November 19, 2003.

Rebecca W. Watson,

Assistant Secretary, Land and Minerals Management.

Accordingly, we propose revising 30 CFR part 732 as set forth below.

PART 732—PROCEDURES AND CRITERIA FOR APPROVAL OR DISAPPROVAL OF STATE PROGRAM AMENDMENTS

1. The authority citation for part 732 is revised to read as follows:

Authority: 30 U.S.C. 1201 *et seq.* and 16 U.S.C. 470 *et seq.*

2. Section 732.17 is amended by revising paragraphs (f)(2), (h)(1), (h)(8), (h)(9), (h)(12), and (h)(13); and removing paragraph (h)(2)(v) to read as follows:

§ 732.17 State program amendments.

* * * * *

(f) * * *

(2) If the State regulatory authority does not submit the information required by paragraph (f)(1), or does not subsequently comply with the submitted timetable, or if the amendment or submission under paragraph (h)(8) is not approved under this section, then the Director must begin proceedings under 30 CFR part 733 if the Director has reason to believe that such action is warranted because the State is not effectively implementing, administering, maintaining or enforcing its approved State program.

* * * * *

(h) * * *

(1) Within 30 days after receipt of a State program amendment from a State regulatory authority, the Director will publish a notice of receipt of the amendment in the **Federal Register**.

* * * * *

(8) If the Director does not approve the amendment request, the State regulatory authority will have 60 days after publication of the Director's decision or a time frame consistent with the established administrative or legislative procedures in the State, whichever is later, to submit a revised amendment request for consideration by the Director. If no submission is made, then the Director must follow the procedures specified in paragraph (f)(2) of this section.

(9) The Director will approve or not approve revised amendment submissions in accordance with the provisions under paragraph (h) of this section.

* * * * *

(12) All decisions approving or not approving program amendments must be published in the **Federal Register** and be effective upon publication unless the notice specifies a different effective date. The decision approving or not approving program amendments will be published in the **Federal Register** within 30 days after the date of the Director's decision.

(13) Final action on all amendment requests must be completed within seven months after receipt of the proposed amendments from the State.

[FR Doc. 03–29756 Filed 12–2–03; 8:45 am]

BILLING CODE 4310–05–P

Federal Register

Wednesday,
December 3, 2003

Part IV

Department of Education

Privacy Act of 1974; System of Records; Notice

DEPARTMENT OF EDUCATION

Privacy Act of 1974; System of Records

AGENCY: Office of Intergovernmental and Interagency Affairs, Department of Education.

ACTION: Notice of an altered system of records.

SUMMARY: In accordance with the Privacy Act of 1974, as amended (Privacy Act), the Department of Education (Department) publishes this notice of an altered system of records entitled "Presidential Scholars Program Files and PSAonline Application System (18–06–03)," last published in the **Federal Register** on December 27, 1999 (64 FR 72392–72393). The system contains information about the current and former candidates and finalists in the Presidential Scholars recognition program, including the name, Social Security number, address, phone number, and other biographical information provided by the student, such as SAT/ACT scores, school transcripts, and essays. A new component, the "PSAonline" application system, which will be made available to the public in 2004, replicates exactly the content of the existing paper-based application system, but allows applicants and school staff to submit applications electronically through links on the Department's Web site. The paper-based option for submitting applications remains available.

DATES: The Department seeks comments on the altered system of records described in this notice, in accordance with the requirements of the Privacy Act. We must receive your comments on or before January 2, 2004.

The Department filed a report describing the revisions to the system of records covered by this notice with the Chair of the Committee on Governmental Affairs of the United States Senate, the Chair of the Committee on Government Reform of the United States House of Representatives, and the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB) on November 26, 2003. The changes made in this notice will become effective on the later of— (1) the expiration of the 40-day period for OMB review on January 5, 2004, or (2) January 2, 2004, unless the system of records requires changes as a result of public comment or OMB review. The Department will publish any changes resulting from public comment or OMB review.

ADDRESSES: Address all comments about this altered system of records to Melissa Apostolides, Office of Intergovernmental and Interagency Affairs, 400 Maryland Avenue, SW., room 5E229, Washington, DC 20202–3521. Telephone: 202–205–0512. If you prefer to send your comments through the Internet, use the following address: *comments@ed.gov*.

You must include the term "U.S. PSP" in the subject line of the electronic message.

During and after the comment period, you may inspect all public comments about this notice in room 5E229, 400 Maryland Avenue, SW., Washington, DC, between the hours of 8 a.m. and 4:30 p.m., eastern time, Monday through Friday of each week except Federal holidays.

Assistance to Individuals With Disabilities in Reviewing the Rulemaking Record

On request, we will supply an appropriate aid, such as a reader or print magnifier, to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for this notice. If you want to schedule an appointment for this type of aid, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

FOR FURTHER INFORMATION CONTACT: Melissa Apostolides. Telephone: (202) 205–0512. If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph.

SUPPLEMENTARY INFORMATION:

Introduction

The Privacy Act (5 U.S.C. 552a) requires the Department to publish in the **Federal Register** this notice of an altered system of records maintained by the Department. The Department's regulations implementing the Privacy Act are contained in the Code of Federal Regulations (CFR) in 34 CFR part 5b.

The Privacy Act applies to information about an individual that contains individually identifiable information that is retrieved by a unique identifier associated with each individual, such as a name or Social Security number. The information about each individual is called a "record" and the system, whether manual or computer-based, is called a "system of records." The Privacy Act requires each agency to publish notices of systems of records in the **Federal Register** and to prepare reports for OMB whenever the agency publishes a new system of records or makes a significant change to an established system of records. Each agency is also required to send copies to the Chair of the Senate Committee on Governmental Affairs and the Chair of the House Committee on Government Reform. These reports are intended to permit an evaluation of the probable or potential effect of the proposal on the privacy or other rights of individuals.

Electronic Access to This Document

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister*.

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498, or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html*.

Dated: November 26, 2003.

Laurie M. Rich,

Assistant Secretary for Intergovernmental and Interagency Affairs.

For the reasons discussed in the preamble, the Assistant Secretary for the Office of Intergovernmental and Interagency Affairs of the U.S. Department of Education publishes a notice of an altered system of records to read as follows:

18–06–03

SYSTEM NAME:

Presidential Scholars Program Files and PSAonline Application System.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATIONS:

U.S. Presidential Scholars Program, Community Services, Partnerships and Recognition Programs Team, Office of Intergovernmental and Interagency Affairs, U.S. Department of Education, 400 Maryland Avenue, SW., Washington, DC 20202–3521.

American College Testing, Inc., Recognition Program Services, 301 ACT Drive, Iowa City, Iowa 52243–4030.

General Dynamics, Information Technology Service Division, 3040 Williams Drive, Suite 200, Fairfax, Virginia, 22031.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

This system contains records on individuals who are participants in the U.S. Presidential Scholars Program (the program).

CATEGORIES OF RECORDS IN THE SYSTEM:

This system consists of information about program candidates, including name, date of birth, Social Security number, address, e-mail address, high school, biographical information provided by the students such as work experience and awards received, SAT and ACT scores, school transcripts, and essays, as well as name and contact information for the teacher the candidate is nominating for the Department's Teacher Recognition Award. The system will also include the unique user identification and password issued to system users by the Department of Education (Department) in its invitation package (application to the program is by invitation only.)

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Executive Order 11155 (1964), as amended by Executive Order 12158 (1979).

PURPOSE(S):

The information in this system will be used to— (1) Determine the eligibility of candidates and review their applications in order to determine program semifinalists and finalists on an annual basis; (2) develop and implement the program's annual recognition component; and (3) carry out the authorizing Executive Order 11155, as amended by Executive Order 12158 (1979).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The Department may disclose information contained in a record in this system of records under the routine uses listed in this system without the consent of the individual if the disclosure is compatible with the purposes for which the record was collected. The Department may make disclosures on a case-by-case basis or, if the Department has complied with the computer matching requirements of the Computer Matching and Privacy Protection Act of 1988, under a computer matching agreement.

(1) *Disclosure for Use by Other Law Enforcement Agencies.* The Department may disclose information to any Federal, State, local, tribal, or foreign agency or other public authority responsible for enforcing, investigating, or prosecuting violations of administrative, civil, or criminal law or regulations if that information is relevant to any enforcement, regulatory, investigative, or prosecutorial responsibility within the receiving entity's jurisdiction.

(2) *Enforcement Disclosure.* In the event that information in this system of records indicates, either on its face or in connection with other information, a violation or potential violation of any applicable statute, regulations, or order of a competent authority, the Department may disclose the relevant records to the appropriate agency, whether foreign, Federal, State, tribal, or local, charged with the responsibility of investigating or prosecuting that violation or charged with enforcing or implementing the statute, Executive order, rule, regulations, or order issued pursuant thereto.

(3) *Litigation and Alternative Dispute Resolution (ADR) Disclosures.*

(a) *Introduction.* In the event that one of the parties described in paragraphs (a)(i) through (v) is involved in litigation or ADR, or has an interest in litigation or ADR, the Department may disclose certain records to the parties described in paragraphs (b), (c), and (d) of this routine use under the conditions specified in those paragraphs:

(i) The Department of Education, or any component of the Department; or

(ii) Any Department employee in his or her official capacity; or

(iii) Any Department employee in his or her individual capacity if the Department of Justice (DOJ) has agreed or been requested to provide or arrange for representation for the employee;

(iv) Any Department employee in his or her individual capacity if the agency has agreed to represent the employee; or

(v) The United States if the Department determines that the litigation is likely to affect the Department or any of its components.

(b) *Disclosure to the DOJ.* If the Department determines that disclosure of certain records to the DOJ is relevant and necessary to litigation or ADR, the Department may disclose those records as a routine use to the DOJ.

(c) *Adjudicative Disclosures.* If the Department determines that disclosure of certain records to an adjudicative body before which the Department is authorized to appear or to an individual or entity designated by the Department or otherwise empowered to resolve or mediate disputes is relevant and necessary to litigation or ADR, the Department may disclose those records as a routine use to the adjudicative body, individual, or entity.

(d) *Parties, Counsels, Representatives, and Witnesses.* If the Department determines that disclosure of certain records to a party, counsel, representative, or witness is relevant and necessary to litigation or ADR, the Department may disclose those records as a routine use to the party, counsel, representative, or witness.

(4) *Employment, Benefit, and Contracting Disclosure.*

(a) *For Decisions by the Department.* The Department may disclose a record to a Federal, State, local, tribal, or foreign agency maintaining civil, criminal, or other relevant enforcement or other pertinent records or to another public authority or professional organization, if necessary, to obtain information relevant to a decision concerning the hiring or retention of an employee or other personnel action, the issuance of a security clearance, the letting of a contract, or the issuance of a license, grant, or other benefit.

(b) *For Decisions by Other Public Agencies and Professional Organizations.* The Department may disclose a record to a Federal, State, local, tribal, or foreign agency or other public authority or professional organization in connection with the hiring or retention of an employee or other personnel action, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license, grant, or other benefit to the extent that the record is relevant and necessary to the receiving entity's decision on the matter.

(5) *Employee Grievance, Complaint, or Conduct Disclosure.* The Department may disclose a record in this system of records to another agency of the Federal Government if the record is relevant to one of the following proceedings regarding a present or former employee of the Department: complaint, grievance, discipline, or competence determination proceedings. The disclosure may be made only during the course of the proceeding.

(6) *Freedom of Information Act (FOIA) Advice Disclosure.* The Department may disclose records to the DOJ and the OMB if the Department concludes that disclosure is desirable or necessary in determining whether particular records are required to be disclosed under the FOIA.

(7) *Disclosure to the DOJ.* The Department may disclose records to the DOJ to the extent necessary for

obtaining DOJ advice on any matter relevant to an audit, inspection, or other inquiry related to the program covered by this system.

(8) *Contract Disclosure.* If the Department contracts with an entity for the purposes of performing any function that requires disclosure of records in this system to employees of the contractor, the Department may disclose the records to those employees. Before entering into such a contract, the Department shall require the contractor to maintain Privacy Act safeguards as required under 5 U.S.C. 552a(m) with respect to the records in the system.

(9) *Congressional Member Disclosure.* The Department may disclose information to a Member of Congress from the record of an individual in response to an inquiry from the Member made at the written request of that individual. The Member's right to the information is no greater than the right of the individual who requested it.

(10) *Routine Programmatic Purposes.* The Department may disclose records from this system of records in order to promote the selection and recognition of students and the visibility of the program. In order to honor participants and finalists (Scholars) pursuant to programmatic requirements, disclosures of records from this system will be made to the following entities for the purposes specified:

(a) *Disclosures to the Review Committee and the Commission on Presidential Scholars.* The program will provide copies of each candidate's complete application package to members of the program's review committee for selection of semifinalists and complete copies of each semifinalist's application package to the Commission on Presidential Scholars (Commission) for selection of the Scholars and for in-state recognition ceremonies held for semifinalists and Scholars.

(b) *Disclosures to the General Public Announcing the Program's Candidates, Semifinalists, and Scholars.* The program will provide the name, State, town, and school name of each candidate, semifinalist, and Scholar on the Presidential Scholars Program section of the Department's Web site.

(c) *Disclosures to the General Public of the Annual Presidential Scholars Yearbook.* For recognition purposes as well as informational and, on rare occasions, research requests, the program will provide copies of the Presidential Scholars Yearbook, which includes student photos, names, school, city, State, college of choice, and student-written essays, to Scholars, families, teachers, Commissioners, sponsors, potential candidates, researchers, and other interested parties. Due to limited numbers, copies are provided first to program participants and, if additional copies remain, in response to other inquiries.

(d) *Disclosures to Contractors for Production of Program Recognition Materials and the Presidential Scholars Yearbook.* The program will provide records to contractors for the printing of certificates, the engraving of Scholar medallions, and the printing of the Presidential Scholars Yearbook. The Executive order states that Scholars are to receive medallions, and occasionally the Administration wishes to provide certificates signed by the President.

(e) *Disclosures to Contractors and College-age Interns to Arrange Scholar Accommodations, Transportation, and Other Services.* The program may provide records to area vendors in preparation for the program's "National Recognition Week," held annually in Washington, DC, each June. During that week, Scholars travel to the Nation's Capital at the program's expense to participate in educational and celebratory activities. At the same time, former Scholars return to the program as "Advisors" to assist with the program during National Recognition Week.These Advisors also receive information relevant to the Scholars assigned to them.

(f) *Disclosures to National, State, and Local Media To Publicize the Scholars and Respond to Press Inquiries About Them.* Records are provided to national, State, and local media for the purpose of publicizing the Scholars and responding to press inquiries.

(g) *Disclosures to the White House and Federal Agencies for Briefings, Speechwriting, or To Obtain Security Clearances.* Records are provided to the White House and Federal agencies for the purpose of speechwriting and briefings for officials addressing the Scholars and guests at recognition events or for security clearances at events attended by Government officials or in buildings with limited access.

(h) *Disclosures to National, State, and Locally Elected Officials and Their Staff To Notify Them of Candidates, Semifinalists, and Scholars in their States or Districts and To Assist With Other Activities To Recognize These Individuals.* Records are provided for the purpose of notifying elected officials of candidates, semifinalists, and Scholars in their States or districts and to assist with preparing congratulatory letters, certificates, and other honors or scheduling events or office visits in Washington, DC, or at home.

(i) *Disclosures to State and Local Education Officials To Notify Them of Candidates, Semifinalists, and Scholars in Their States, Districts, or Schools.* Records are provided to Chief State School Officers, Superintendents of school districts, principals, and guidance counselors for the purpose of notifying them of the candidates, semifinalists, and Scholars in their States, districts, or schools.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Not applicable to this system of records.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

The records are maintained in hard copy filed in lockable standard filing cabinets; on access-controlled personal computers; and in the Network Operations Center at the General Dynamics host site.

RETRIEVABILITY:

The data are retrieved by name, Social Security number, State, high school, and year of selection. Various reports on multiple candidates, semifinalists, and Scholars can also be run.

SAFEGUARDS:

All physical access to the Department site and the sites of Department contractors where this system of records is maintained is controlled and monitored by security personnel who check each individual entering the building for his or her employee or visitor badge.

The computer systems employed by the Department and its contractors offer a high degree of security against tampering and circumvention. These security systems limit data access to Department and contract personnel on a "need to know" basis and control individual users' ability to access and alter records within the system. All users of these systems are given a unique user ID, and interactions by individual users with the system are recorded.

In accordance with the Privacy Act, all candidates or their legal guardians, if they are minors, must read a privacy advisory statement. Candidates or their legal guardians also must provide a signature affirming their candidacy and authorizing the release of specific information in relation to the program. PSAonline will use assigned electronic identifications and passwords for these authorizations. Applicants or their legal guardians will sign the program's release form electronically. The program will issue unique user identifications and passwords to all system users (candidates, legal guardians, school staff, and principals) in their invitation packets. Users will access the system by entering their assigned user identifications and passwords, and the system will validate the user and his or her role (candidate, legal guardian, administrator) against the database. If invalid information is entered, an error message will be displayed, and access will be denied. Users may edit their passwords after they have logged in using the federally assigned user identifications and passwords. Access to various parts of the system and the application is restricted based on user role and level of authorization.

RETENTION AND DISPOSAL:

Files are retained for four years in order to verify yearbook and alumni publications and to choose current Scholars as future Advisors to the Commission. In accordance with the Department of Education's Records Disposition Schedules (ED/RDS, Part 5, Item 6), both paper and electronic files are destroyed in four-year blocks when the most recent record is four years old.

SYSTEM MANAGER AND ADDRESS:

Executive Director, U.S. Presidential Scholars Program, Community Services, Partnerships and Recognition Programs Team, Office of Intergovernmental and Interagency Affairs, U.S. Department of Education, 400 Maryland Avenue, SW., Washington, DC 20202–3521.

NOTIFICATION PROCEDURE:

If you wish to determine if you have a record in this system, provide the system manager with your name, date of birth, and Social Security number. Your request must meet the regulatory requirements of 34 CFR 5b.5, including proof of identity.

RECORD ACCESS PROCEDURE:

If you wish to gain access to your record in this system, provide the system manager with your name, date of birth, and Social Security number. Your request must meet the regulatory requirements of 34 CFR 5b.5, including proof of identity.

CONTESTING RECORD PROCEDURE:

If you wish to contest the content of a record, contact the system manager. Your request must meet the regulatory requirements of 34 CFR 5b.7, including proof of identity.

RECORD SOURCE CATEGORIES:

Information is obtained from American College Testing and the College Board/Educational Testing Service, individual candidates, their legal guardians if they are minors, and school officials (principals, teachers, and guidance counselors) in public and private secondary institutions attended by the candidates.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE PRIVACY ACT:

None.

[FR Doc. 03–30031 Filed 12–2–03; 8:45 am]
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S. 1590/P.L. 108–141
To redesignate the facility of the United States Postal Service, located at 315 Empire Boulevard in Crown Heights, Brooklyn, New York, as the "James E. Davis Post Office Building". (Dec. 1, 2003; 117 Stat. 1874)
S. 254/P.L. 108–142
Kaloko-Honokohau National Historical Park Addition Act of

2003 (Dec. 2, 2003; 117 Stat. 1875)

S. 867/P.L. 108–143
To designate the facility of the United States Postal Service located at 710 Wicks Lane in Billings, Montana, as the "Ronald Reagan Post Office Building". (Dec. 2, 2003; 117 Stat. 1877)

S. 1718/P.L. 108–144
To designate the facility of the United States Postal Service located at 3710 West 73rd Terrace in Prairie Village, Kansas, as the "Senator James B. Pearson Post Office". (Dec. 2, 2003; 117 Stat. 1878)

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Energy and Water Development Appropriations Act, 2004 (Dec. 1, 2003; 117 Stat. 1827)

S. 1066/P.L. 108–138
To correct a technical error from Unit T-07 of the John H. Chafee Coastal Barrier Resources System. (Dec. 1, 2003; 117 Stat. 1869)

S.J. Res. 18/P.L. 108–139
Commending the Inspectors General for their efforts to prevent and detect waste, fraud, abuse, and mismanagement, and to promote economy, efficiency, and effectiveness in the Federal Government during the past 25 years. (Dec. 1, 2003; 117 Stat. 1870)

S.J. Res. 22/P.L. 108–140
Recognizing the Agricultural Research Service of the Department of Agriculture for 50 years of outstanding service to the Nation through agricultural research. (Dec. 1, 2003; 117 Stat. 1872)

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Title 3—

The President

Proclamation 7740 of December 1, 2003

World AIDS Day, 2003

By the President of the United States of America

A Proclamation

The HIV/AIDS pandemic presents one of the greatest medical and social challenges of our time. On World AIDS Day, members of the global community come together to demonstrate our shared commitment to turning the tide against the spread of HIV/AIDS, bringing hope and healing to those who are suffering, and finding a cure.

Over the last two decades, AIDS has claimed the lives of more than 20 million people. Three million have died in the last year alone. Today, more than 40 million people are living with HIV, including nearly 30 million in Africa. Behind these staggering numbers are the names and faces of orphaned and suffering children, devastated communities, and a continent in crisis.

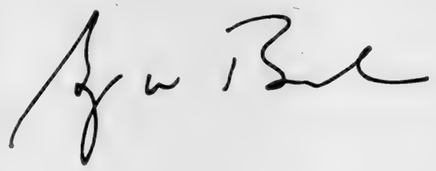
In my State of the Union Message to the Congress in January of this year, I announced an "Emergency Plan for AIDS Relief." with a goal of helping millions around the world affected by HIV/AIDS, particularly those in the most afflicted nations in Africa and the Caribbean. In May, the Congress responded by passing the "United States Leadership Against HIV/AIDS, Tuberculosis, and Malaria Act of 2003," which I signed into law. A life-saving initiative, the Act commits $15 billion over the next 5 years to prevent 7 million new HIV infections, treat at least 2 million people with life-extending drugs, provide care for at least 10 million people affected by AIDS, continue bilateral programs in over 73 countries, and increase support for the Global Fund to Fight AIDS, Tuberculosis, and Malaria. This work of mercy will help overcome fear, stigma, and discrimination and create a cycle of hope and promise that will benefit millions.

Here at home, we will spend more than $15 billion this year to combat AIDS in America. This money will support research activities, care and treatment services, and prevention programs, including the wide availability of rapid HIV testing.

Fighting HIV/AIDS is not only a great challenge but also a moral imperative for those who believe in the value and dignity of every human life. This World AIDS Day, the United States remains committed to taking action, showing compassion, and bringing hope to those affected by HIV/AIDS around the world.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim December 1, 2003, as World AIDS Day. I urge the Governors of the States and the Commonwealth of Puerto Rico, officials of the other territories subject to the jurisdiction of the United States, and the American people to join me in reaffirming our commitment to combating HIV/AIDS. I encourage all Americans to participate in appropriate commemorative programs and ceremonies in houses of worship, workplaces, and other community centers to remember those who have lost their lives to this deadly disease and to comfort and support those living with and affected by HIV/AIDS.

IN WITNESS WHEREOF, I have hereunto set my hand this first day of December, in the year of our Lord two thousand three, and of the Independence of the United States of America the two hundred and twenty-eighth.



[FR Doc. 03–30305
Filed 12–3–03; 8:45 am]
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Rules and Regulations

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

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FEDERAL HOUSING FINANCE BOARD

12 CFR Part 905

[No. 2003–09]

RIN 3069–AB25

Amendments to the Description of Organization and Functions Regulation; Correction

AGENCY: Federal Housing Finance Board.

ACTION: Final rule; correction.

SUMMARY: The Federal Housing Finance Board (Finance Board) is correcting a final rule that appeared in the **Federal Register** of June 27, 2003. That document revised the Finance Board's Description of Organization and Functions regulation to reflect agency reorganizations that already have taken effect. The document was published with an inadvertent error, which referenced § 905.15 as being revised rather than removed. This document corrects that error.

DATES: The rule was effective June 27, 2003.

FOR FURTHER INFORMATION CONTACT: Mary H. Gottlieb, Paralegal Specialist, Office of General Counsel, by telephone at 202/408–2826, by electronic mail at *gottliebm@fhfb.gov*, or by regular mail at the Federal Housing Finance Board, 1777 F Street, NW., Washington, DC 20006.

SUPPLEMENTARY INFORMATION: In FR Doc. 03–16317, appearing in the **Federal Register** of Friday, June 27, 2003 (68 FR 38169), the following correction is made:

■ On page 38170, in the first column, amendatory instruction No. 6 is corrected to read as follows:

Subpart B—[Corrected]

■ 6. Amend Subpart B of part 905 by revising §§ 905.10 through 905.14, and removing §§ 905.15 through 905.19 to read as follows:

Dated: November 17, 2003.

By the Federal Housing Finance Board.

Arnold Intrater,

General Counsel.

[FR Doc. 03–30180 Filed 12–3–03; 8:45 am]

BILLING CODE 6725–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–CE–28–AD; Amendment 39–13382; AD 2003–24–13]

RIN 2120–AA64

Airworthiness Directives; Cessna Aircraft Company Models 172R, 172S, 182S, 182T, T182T, 206H, and T206H Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA adopts a new airworthiness directive (AD) for certain Cessna Aircraft Company (Cessna) Models 172R, 172S, 182S, 182T, T182T, 206H, and T206H airplanes that are equipped with a Honeywell KAP 140 autopilot computer system installed on the center instrument control panel near the throttle. This AD requires you to install an update to the operating software of the KAP 140 autopilot computer system, change the unit's part number, and change the software modification identification tag. This AD is the result of reports of inadvertent and undetected engagement of the autopilot system. We are issuing this AD to prevent unintentionally engaging the KAP 140 autopilot computer system, which could cause the pilot to take inappropriate actions.

DATES: This AD becomes effective on January 20, 2004.

As of January 20, 2004, the Director of the Federal Register approved the incorporation by reference of certain publications listed in the regulation.

ADDRESSES: You may get the service information identified in this AD from Cessna Aircraft Company, Product Support, P.O. Box 7706, Wichita, Kansas 67277; telephone: (316) 517–5800; facsimile: (316) 942–9006 and Honeywell, Business, Regional, and General Aviation, 23500 W. 105th Street, Olathe, Kansas 66061.

You may view the AD docket at FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2003–CE–28–AD, 901 Locust, Room 506, Kansas City, Missouri 64106. Office hours are 8 a.m. to 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Dan Withers, Aerospace Engineer, Wichita Aircraft Certification Office (ACO), FAA, 1801 Airport Road, Mid-Continent Airport, Wichita, Kansas 67209; telephone: (316) 946–4196; facsimile: (316) 946–4407.

SUPPLEMENTARY INFORMATION:

Discussion

What events have caused this AD? We have received reports of an unsafe condition on certain Cessna Models 172R, 172S, 182S, 182T, T182T, 206H, and T206H airplanes that are equipped with a Honeywell KAP 140 autopilot computer system.

The KAP 140 autopilot computer system is located on the lower portion of the center instrument control panel near the throttle on these Cessna airplanes. Because of this location on the instrument control panel of the affected Cessna airplanes, the Autopilot Engage (AP) button could unintentionally be depressed when the pilot pushes the throttle knob forward. The pilot could also unintentionally engage the autopilot system by inadvertently bumping the Heading (HDG) button, Altitude (ALT) mode-select button, or Autopilot Engage (AP) button on the KAP 140 computer. Unless intentionally engaged, the pilot does not know that the autopilot system is engaged.

The Honeywell KAP 140 autopilot computer system is also installed in the New Piper, Inc. Model PA–28–181 airplanes. This AD does not affect these airplanes because of the location of the equipment. The equipment is installed on the center instrument panel near the throttle on the affected airplanes, but is installed in the upper half of the instrument control panel on the Piper airplanes. The unsafe condition only exists on the Cessna airplanes.

Honeywell has updated the operating software for the KAP 140 autopilot computer system, which will now only allow the AP button on the instrument

control panel to engage the autopilot system. This update also adds two voice messages if auto trim operation is detected, lengthens the amount of time that the autopilot button must be depressed in order for it to engage, and changes how the flight control display shows that the AP has been engaged.

What is the potential impact if FAA took no action? If not corrected, inadvertent and undetected engagement of the autopilot system could cause the pilot to take inappropriate actions.

Has FAA taken any action to this point? We issued a proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to certain Cessna Models 172R, 172S, 182S, 182T, T182T, 206H, and T206H airplanes that are equipped with a Honeywell KAP 140 autopilot computer system installed on the center instrument control panel near the throttle. This proposal was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on July 29, 2003 (68 FR 44497). The NPRM proposed to require you to:

—Install an update to the autopilot computer system operating software;
—Change the unit part number;
—Place an M tag on the unit serial number tag; and
—Change the unit's software modification tag.

Comments

Was the public invited to comment? We provided the public the opportunity to participate in the development of this AD. The following presents the comments received on the proposal and FAA's response to each comment:

Comment Issue: AD Action Is Not Necessary

What is the commenter's concern? Three commenters state that they do not think AD action is necessary to address the proposed unsafe condition; however, one commenter agrees with the change to the KC 140 autopilot computer system operating software.

The other commenters state that appropriate pilot recognition and response could easily resolve the problem. One commenter states that an attentive pilot would know if the autopilot has been unintentionally engaged. The commenter gives examples of circumstances that should alert the pilot that the autopilot has been engaged:

—There is significant resistance in the controls;
—The mode of operation (*i.e.*, ROL, HDG, etc.) is immediately displayed on the face of the autopilot; and
—The pitch trim wheel never moves on its own; therefore, if the autopilot is engaged and the pilot is trying to make a change in pitch manually, the autopilot will resist this change and the pitch trim wheel will move.

The commenter states that because there are multiple indications that the KAP 140 autopilot is engaged, the proposed AD is not necessary.

We infer that the commenters want us to withdraw the NPRM.

What is FAA's response to the concern? We do not agree with that we should withdraw the NPRM. We agree that the autopilot computer system operating software should be updated. The changes to the KC 140 autopilot computer system operating software required by this AD will greatly limit the ability of the pilot to unintentionally engage the autopilot. The changes will also provide additional indications to the pilot that the autopilot has been engaged.

Because we continue to receive reports of related accidents involving pilots with experience ranging from novice to certified flight instructors, it is an indication that it is not obvious to all pilots that the autopilot is engaged. We do not agree that we could resolve the problem through appropriate pilot recognition and response.

We are not changing the final rule AD based on these comments.

Conclusion

What is FAA's final determination on this issue? We have carefully reviewed the available data and determined that air safety and the public interest require adopting the AD as proposed except for the changes discussed above and minor editorial corrections. We have determined that these changes and minor corrections:

—Are consistent with the intent that was proposed in the NPRM for correcting the unsafe condition; and
—Do not add any additional burden upon the public than was already proposed in the NPRM.

Changes to 14 CFR Part 39—Effect on the AD

How does the revision to 14 CFR part 39 affect this AD? On July 10, 2002, the FAA published a new version of 14 CFR part 39 (67 FR 47997, July 22, 2002), which governs the FAA's AD system. This regulation now includes material that relates to altered products, special flight permits, and alternative methods of compliance. This material previously was included in each individual AD. Since this material is included in 14 CFR part 39, we will not include it in future AD actions.

Costs of Compliance

How many airplanes does this AD impact? We estimate that this AD affects 3,681 airplanes in the U.S. registry.

What is the cost impact of this AD on owners/operators of the affected airplanes? We estimate the following costs to accomplish the modification:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
7 workhours × $65 per hour = $455	Not applicable	$455	7 workhours × $65 per hour = $455

Not all Cessna Models 172R, 172S, 182S, 182T, T182T, 206H, and T206H airplanes on the U.S. registry have a KAP 140 autopilot computer system installed.

Honeywell will provide warranty credit for labor and parts to the extent noted under WARRANTY INFORMATION in Honeywell Service Bulletin No: KC 140–M1, dated August 2002.

Regulatory Findings

Will this AD impact various entities? We have determined that this AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

Will this AD involve a significant rule or regulatory action? For the reasons discussed above, I certify that this AD:

1. Is not a "significant regulatory action" under Executive Order 12866;
2. Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and
3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a summary of the costs to comply with this AD and placed it in the AD Docket. You may get a copy of this summary by sending a request to us at the address listed under **ADDRESSES.** Include "AD Docket No. 2003–CE–28–AD" in your request.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

■ Accordingly, under the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. FAA amends § 39.13 by adding a new AD to read as follows:

2003–24–13 Cessna Aircraft Company: Amendment 39–13382; Docket No. 2003–CE–28–AD.

When Does This AD Become Effective?

(a) This AD becomes effective on January 20, 2004.

What Other ADs Are Affected by This Action?

(b) None.

What Airplanes Are Affected by This AD?

(c) This AD affects the following airplane models and serial numbers that are:

(1) equipped with a KAP 140 autopilot computer system, part number (P/N) 065–00176–2602, P/N 065–00176–5402, or P/N 065–00176–7702; and

(2) certificated in any category:

Model	Serial Nos.
172R	17280001 through 17281073, 17281075 through 17281127, and 17281130.
172S	172S8001 through 172S9195, 172S9197, 172S9198, and 172S9200 through 172S9203.
182S	18280001 through 18280944.
182T	18280945 through 18281064, 18281067 through 18281145, 18281147 through 18281163, 18281165 through 18281167, and 18281172.
T182T	T18208001 through T18208109, and T18208111 through T18208177.
206H	20608001 through 20608183, 20608185, 20608187, and 20608188.
T206H	T20608001 through T20608039, T20608041 through T20608367, T20608269 through T20608379, T20608381, T20608382, and T20608385.

What Is the Unsafe Condition Presented in This AD?

(d) This AD is the result of reports of inadvertent and undetected engagement of the autopilot system. The actions specified in this AD are intended to prevent unintentionally engaging the KAP 140 autopilot computer system, which could cause the pilot to take inappropriate actions.

What Must I Do To Address This Problem?

(e) To address this problem, you must do the following:

Actions	Compliance	Procedures
(1) Install and update the KC 140 autopilot computer system operating software.	Within the next 100 hours time-in-service (TIS) after January 20, 2004 (the effective date of this AD), unless already done.	Follow Honeywell Service Bulletin No: KC 140–M1, dated August 2002, as specified in Cessna Service Bulletin SB02–22–01, dated November 25, 2002.
(2) Do the following: (i) Change the unit part number by attaching flavor sticker, part number (P/N) 057–02203–0003, on the unit's serial tag; (ii) Attach an M decal, P/N 057–02984–0501, in front of the unit serial number (this indicates that the unit's P/N has been changed); and (iii) Attach a software mod tag, P/N 057–05287–0301, in place of the old tag to indicate the software change to SW MOD 03/01.	Prior to further flight after installing the update to the KC 140 autopilot computer system operating software, unless already done.	Follow Honeywell Service Bulletin No: KC 140–M1, dated August 2002, as specified in Cessna Service Bulletin SB02–22–01, dated November 25, 2002.
(3) Only install KC 140 autopilot computer systems, P/Ns 065–00176–2602, 065–00176–5402, and 065–00176–7702, that have been modified as specified in paragraphs (d)(1) and (d)(2) of this AD).	As of January 20, 2004 (the effective date of this AD.	Not applicable.

(f) You may request a revised flight manual supplement from Cessna or Honeywell at the address specified in paragraph (h) of this AD.

May I Request an Alternative Method of Compliance?

(g) You may request a different method of compliance or a different compliance time for this AD by following the procedures in 14 CFR 39.13. Send your request to the Manager, Wichita Aircraft Certification Office (ACO), FAA. For information on any already approved alternative methods of compliance, contact Dan Withers, Aerospace Engineer, Wichita Aircraft Certification Office, FAA, 1801 Airport Road, Wichita, Kansas 67209; telephone: (316) 946–4196; facsimile: (316) 946–4107.

Does This AD Incorporate Any Material by Reference?

(h) You must do the actions required by this AD per Honeywell Service Bulletin No: KC 140–M1, dated August 2002, as specified in Cessna Service Bulletin SB02–22–01, dated November 25, 2002. The Director of the Federal Register approved the incorporation by reference of this service bulletin in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You may get a copy from Cessna Aircraft Company, Product Support, P.O. Box 7706, Wichita, Kansas 67277; telephone: (316) 517–5800; facsimile: (316) 942–9006 and Honeywell, Business, Regional, and General Aviation, 23500 W. 105th Street, Olathe, Kansas 66061. You may review

copies at FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Issued in Kansas City, Missouri, on November 25, 2003.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–30075 Filed 12–3–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–NM–68–AD; Amendment 39–13380; AD 2003–24–11]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model MD–11 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to certain McDonnell Douglas Model MD–11 airplanes, that currently requires repetitive general visual inspections of the power feeder cables, terminal strip, fuseholder, and fuses of the galley load control unit (GLCU) within the No. 3 bay electrical power center (EPC) to detect damage; and corrective actions, if necessary. For certain airplanes, this amendment requires replacement of the electrical wiring of the galley in the EPC. For certain other airplanes, this amendment requires an inspection to detect damage of the electrical wiring of the galley in the EPC; corrective actions if necessary; modification of the wiring support; and removal of spare fuses; as applicable. These new actions terminate the repetitive inspection requirements. This amendment also limits the applicability of the existing AD. This amendment is prompted by the FAA's determination that additional rulemaking is necessary. The actions specified by this AD are intended to prevent chafing damage to the wire assembly, and consequent arcing and smoke and fire in the EPC, and to prevent damage to the wire assembly terminal lugs and overheating of the power feeder cables on the No. 3 and No. 4 GLCU, which could result in smoke and fire in the center accessory compartment. This action is intended to address the identified unsafe condition.

DATES: Effective January 8, 2004.

The incorporation by reference of a certain publication, as listed in the regulations is approved by the Director of the Federal Register as of January 8, 2004.

The incorporation by reference of certain other publications, as listed in the regulations, was approved previously by the Director of the Federal Register as of January 4, 2000 (64 FR 71001, December 20, 1999).

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024). This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Brett Portwood, Aerospace Engineer, Systems and Equipment Branch, ANM–130L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5350; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding AD 2002–17–06, amendment 39–12872 (67 FR 55716, August 30, 2002), which is applicable to certain McDonnell Douglas Model MD–11 airplanes, was published in the **Federal Register** on August 27, 2003 (68 FR 51523). The action proposed to continue to require repetitive general visual inspections of the power feeder cables, terminal strip, fuseholder, and fuses of the galley load control unit (GLCU) within the No. 3 bay electrical power center (EPC) to detect damage; and corrective actions, if necessary. For certain airplanes, that action proposed to require replacement of the electrical wiring of the galley in the EPC. For certain other airplanes, that action proposed to require an inspection to detect damage of the electrical wiring of the galley in the EPC; corrective actions if necessary; modification of the wiring support; and removal of spare fuses; as applicable. Those new actions would terminate the repetitive inspection requirements. That action also proposed to limit the applicability of the existing AD.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public.

Conclusion

The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

There are approximately 112 airplanes of the affected design in the worldwide fleet. The FAA estimates that 32 airplanes of U.S. registry will be affected by this AD.

The inspection that is currently required by AD 2002–17–06 and retained in this AD takes approximately 1 work hour per airplane to accomplish, at an average labor rate of $65 per work hour. Based on these figures, the cost impact of the currently required inspection on U.S. operators is estimated to be $2,080, or $65 per airplane, per inspection cycle.

Table 1 of this AD shows the estimated cost impact of the new actions for airplanes affected by this AD. The average labor rate is $65 per work hour. Table 1 is as follows:

TABLE 1.—COST ESTIMATE

Task	For group 1 airplanes			For group 2 airplanes		
	Work hours	Required parts	Cost per airplane	Work hours	Required parts	Cost per airplane
Replacement	18	$15,276	$16,446	19	$17,261	$18,496
Task	**For group 3 airplanes**			**For group 4 airplanes**		
	Work hours	Required parts	Cost per airplane	Work hours	Required parts	Cost per airplane
Inspection	1	None	$65	1	None	$65
Modification	2	$190	$320	1	$9	$74

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions. The manufacturer may cover the cost of replacement parts associated with this AD, subject to warranty conditions. Manufacturer warranty remedies may also be available for labor costs associated with this AD. As a result, the cost attributable to this AD may be less than stated above.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

■ Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. Section 39.13 is amended by removing amendment 39–12872 (67 FR 55716, August 30, 2002), and by adding a new airworthiness directive (AD), amendment 39–13380, to read as follows:

2003–24–11 McDonnell Douglas: Amendment 39–13380. Docket 2003–NM–68–AD. Supersedes AD 2002–17–06, Amendment 39–12872.

Applicability: Model MD–11 airplanes, as listed in Boeing Service Bulletin MD11–24–184, Revision 02, dated January 7, 2003; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent chafing damage to the wire assembly, and consequent arcing and smoke and fire in the electrical power center (EPC), and to prevent damage to the wire assembly terminal lugs and overheating of the power feeder cables on the No. 3 and No. 4 galley load control unit (GLCU), which could result in smoke and fire in the center accessory compartment; accomplish the following:

Certain Requirements of AD 2002–17–06, Amendment 39–12872

Initial Inspection

(a) Do a general visual inspection of the power feeder cables, terminal strip, fuseholder, and fuses of the GLCU within the No. 3 bay EPC to detect damage (*i.e.*, discoloration of affected parts or loose attachments), per McDonnell Douglas Alert Service Bulletin MD11–24A160, dated August 30, 1999; or Revision 01, dated November 11, 1999; at the applicable time specified in paragraph (a)(1) or (a)(2) of this AD.

(1) For airplanes on which the replacement required by paragraph (c) of AD 2002–14–05, amendment 39–12805, has been done: Inspect within 60 days after September 18, 2002 (the effective date AD 2002–17–06, amendment 39–12872).

(2) For airplanes on which the replacement required by paragraph (c) of AD 2002–14–05 has not been done: Inspect within 600 flight hours from the last inspection required by AD 2002–14–05, or within 60 days after September 16, 2002, whichever occurs later.

Note: For the purposes of this AD, a general visual inspection is defined as: "A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made from within touching distance unless otherwise specified. A mirror may be necessary to enhance visual access to all exposed surfaces in the inspection area. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or droplight and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked."

No Damage Detected: Repetitive Inspections

(b) If no damage is detected during any inspection required by paragraph (a) of this AD, repeat the general visual inspection every 600 flight hours.

Damage Detected: Replacement and Repetitive Inspections

(c) If any damage is detected during any inspection required by paragraph (a) of this AD, before further flight, replace the power feeder cables, fuseholder, and/or fuses, as applicable, with new parts, per McDonnell Douglas Alert Service Bulletin MD11–24A160, dated August 30, 1999; or Revision 01, dated November 11, 1999. Repeat the general visual inspection every 600 flight hours.

New Requirements of This AD

Group 1 and Group 2 Airplanes: Replacement of Electrical Wiring

(d) For Group 1 and Group 2 airplanes identified in Boeing Service Bulletin MD11–24–184, Revision 02, dated January 7, 2003: Within 12 months after the effective date of this AD, replace the electrical wiring of the galley in the EPC in bays 1, 2, and 3, per the service bulletin. Accomplishment of the replacement terminates the requirements of paragraphs (a) through (c) of this AD.

Group 3 and Group 4 Airplanes: Inspection for Damage, Modification of Wiring Support, Removal of Fuses, and Corrective Action; as Applicable

(e) For Group 3 and Group 4 airplanes identified in Boeing Service Bulletin MD11–24–184, Revision 02, dated January 7, 2003: Within 12 months after the effective date of this AD, do the actions specified in paragraphs (e)(1), (e)(2), and (e)(3) of this AD per the service bulletin. Accomplishment of the applicable actions in those paragraphs terminates the requirements of paragraphs (a) through (c) of this AD.

(1) Do a general visual inspection to detect damage of the electrical wiring of the galley in the EPC in bays 1, 2, and 3. If any damage is detected, before further flight, repair or replace damaged wiring with new or serviceable wiring per the service bulletin.

(2) Modify wiring support in bay 1.

(3) Remove spare fuses and modify wiring support in bays 2 and 3.

Alternative Methods of Compliance

(f)(1) In accordance with 14 CFR 39.19, the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, is authorized to approve alternative methods of compliance for this AD.

(2) Alternative methods of compliance, approved previously per AD 2002–17–06, amendment 39–12872, are approved as alternative methods of compliance with paragraphs (a) through (c) of this AD.

Incorporation by Reference

(g) The actions shall be done in accordance with McDonnell Douglas Alert Service Bulletin MD11–24A160, dated August 30, 1999; or McDonnell Douglas Alert Service Bulletin MD11–24A160, Revision 01, dated November 11, 1999; and Boeing Service Bulletin MD11–24–184, Revision 02, dated January 7, 2003; as applicable.

(1) The incorporation by reference of Boeing Service Bulletin MD11–24–184, Revision 02, dated January 7, 2003, is approved by the Director of the Federal Register, in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

(2) The incorporation by reference of McDonnell Douglas Alert Service Bulletin MD11–24A160, dated August 30, 1999; and McDonnell Douglas Alert Service Bulletin MD11–24A160, Revision 01, dated November 11, 1999; was approved previously by the Director of the Federal Register as of January 4, 2000 (64 FR 71001, December 20, 1999).

(3) Copies may be obtained from Boeing Commercial Airplane Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024). Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Date

(h) This amendment becomes effective on January 8, 2004.

Issued in Renton, Washington, on November 26, 2003.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–30112 Filed 12–3–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–150–AD; Amendment 39–13383; AD 2003–24–14]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model DC–9–81 (MD–81), DC–9–82 (MD–82), DC–9–83 (MD–83), DC–9–87 (MD–87), and MD–88 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all McDonnell Douglas Model DC–9–81 (MD–81), DC–9–82 (MD–82), DC–9–83 (MD–83), DC–9–87 (MD–87), and MD–88 airplanes. This action requires one-time inspections to detect discrepancies of electrical wiring installations in various areas of the airplane, and corrective action if necessary. The actions specified by this AD are intended to prevent smoke and fire in various areas of the airplane due to heat damage and/or electrical arcing of improperly installed wiring. This action is intended to address the identified unsafe condition.

DATES: Effective January 8, 2004.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of January 8, 2004.

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024). This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Elvin K. Wheeler, Aerospace Engineer, Systems and Equipment Branch, ANM–130L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5344; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain McDonnell Douglas Model DC–9–81 (MD–81), DC–9–82 (MD–82), DC–9–83 (MD–83), DC–9–87 (MD–87), and MD–88 airplanes was published as a supplemental notice of proposed rulemaking (NPRM) in the **Federal Register** on July 24, 2003 (68 FR 43690). That action proposed to require one-time inspections to detect discrepancies of electrical wiring installations in various areas of the airplane, and corrective action if necessary.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Shorten Compliance Time

One commenter requests that the proposed six-year compliance time for performing a detailed inspection to detect discrepancies of exposed electrical wiring installations be shortened to between six months and one year. This commenter suggests that the proposed compliance time may be too long to fly safely with a potential unsafe condition for passengers and for people living under the flight paths. The commenter also suggests that airplane operators will likely delay necessary repairs until the final part of the proposed compliance time.

The FAA does not agree with the need for a shorter compliance time. In developing the proposed compliance time, we found that the six-year compliance time accommodates operators' schedules while still maintaining an adequate level of safety.

We also considered that if discrepancies are found during the proposed inspections, corrective action must be taken before further flight. In consideration of these factors, we determined that the compliance time, as proposed, represents an appropriate interval. Operators are always permitted to accomplish the requirements of an AD at a time earlier than the specified compliance time. If additional data are presented that would justify a shorter compliance time, we may consider further rulemaking on this issue.

Revise Costs Based on Operator Experience

One commenter, on behalf of an airline operator, noted that the cost estimate of 46 work hours per airplane presented in the supplemental NPRM is too low and does not take into account operator experience in accomplishing the required detailed inspections. According to one commenter's experience, 92 work hours per airplane better represents the amount of time needed to complete the detailed inspections required by the proposed AD.

We infer that the commenter is requesting that the Cost Impact section of the supplemental NPRM be revised. We partially agree with the commenter's rationale. We agree that the specified work hours may not always accurately reflect the amount of time necessary to complete the required work for every airplane or for every operator. We also recognize that material and labor costs to fix any discrepancy cannot be accurately estimated for each airplane. However, as explained in the Cost Impact section of the supplemental NPRM, the economic analysis of the AD is limited to the cost of actions that would actually be required by the AD. The economic analysis does not consider the costs of conditional actions, such as repairing discrepancies found during a required inspection. Such conditional actions would be required to be accomplished—regardless of AD direction—to correct an unsafe condition identified in an airplane and to ensure operation of that airplane in an airworthy condition, as required by the Federal Aviation Regulations. No change to this AD is necessary regarding this issue.

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

There are approximately 1,191 airplanes of the affected design in the worldwide fleet. Estimates of the costs of the required actions are provided in the following table:

Service bulletin	Work hours per airplane	Labor rate/hour	Cost per airplane	U.S. airplanes	U.S. fleet cost
MD80–24–176	8	$65	$520	732	$380,640
MD80–24–177	5	65	325	732	237,900
MD80–24–178	8	65	520	732	380,640
MD80–24–179	8	65	520	732	380,640
MD80–24–180	8	65	520	732	380,640
MD80–24–181	6	65	390	732	285,480
MD80–24–182	3	65	195	732	142,740

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions. Manufacturer warranty remedies may be available for labor costs associated with this AD. As a result, the costs attributable to the AD may be less than stated above.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

■ Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. Section 39.13 is amended by adding the following new airworthiness directive:

2003–24–14 McDonnell Douglas: Amendment 39–13383. Docket 2000–NM–150–AD.

Applicability: All Model DC–9–81 (MD–81), DC–9–82 (MD–82), DC–9–83 (MD–83), DC–9–87 (MD–87), and MD–88 airplanes; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

Note 1: The FAA recommends that the actions required by this AD be accomplished after replacing the metallized polyethyleneteraphthalate (MPET) insulation blankets, as required by AD 2000–11–02, amendment 39–11750.

To prevent smoke and fire in various areas of the airplane due to heat damage and/or electrical arcing of improperly installed wiring, accomplish the following:

Inspection

(a) Within 6 years after the effective date of this AD: Perform a detailed inspection to detect discrepancies of exposed electrical wiring installations as specified in Table 1 of this AD. Specific discrepancies are listed in paragraph 3.B.3. of each service bulletin. Prior to further flight thereafter, perform corrective actions in accordance with the service bulletin, as applicable.

TABLE 1.—INSPECTION REQUIREMENTS

Inspect the electrical wiring installations in the—	In accordance with the following Boeing Service Bulletin—
(1) Flight compartment and forward drop ceiling	MD80–24–176, Revision 02, Excluding Appendix, dated January 21, 2003.
(2) Electrical/electronic compartment	MD80–24–177, Revision 02, Excluding Appendix, dated January 21, 2003.
(3) Forward passenger compartment from stations Y = 218.000 to Y = 846.000.	MD80–24–178, Revision 02, Excluding Appendix, dated January 21, 2003.
(4) Aft passenger compartment from stations Y = 846.000 to Y = 1338.000.	MD80–24–179, Revision 02, Excluding Appendix, dated January 21, 2003.
(5) Forward and mid cargo compartments from stations Y = 218.000 to Y = 811.000.	MD80–24–180, Revision 02, Excluding Appendix, dated January 21, 2003.
(6) Aft cargo compartment from stations Y = 1033.000 to Y = 1338.000	MD80–24–181, Revision 02, Excluding Appendix, dated January 21, 2003.
(7) Forward accessory compartment from stations Y = 41.000 to Y = 70.000.	MD80–24–182, Revision 02, Excluding Appendix, dated January 21, 2003.

Note 2: For the purposes of this AD, a detailed inspection is defined as: "An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required."

(b) Although the service bulletins identified in Table 1 of this AD specify that operators provide a report of inspection findings, this AD does not require such information.

(c) An inspection done before the effective date of this AD is acceptable for compliance with the inspection requirements of this AD, if accomplished in accordance with the corresponding service bulletin identified in Table 1 of this AD, the original version, dated July 14, 2000, or July 14, 2000; or Revision 01, dated June 12, 2001.

Alternative Methods of Compliance

(d) In accordance with 14 CFR 39.19, the Manager, Los Angeles Aircraft Certification Office, FAA, is authorized to approve alternative methods of compliance for this AD.

Incorporation by Reference

(e) Unless otherwise specified in this AD, the actions shall be done in accordance with the Boeing Service Bulletins in Table 2 of this AD, as applicable:

TABLE 2.—BOEING SERVICE BULLETINS

Service bulletin	Revision level	Date
MD80–24–176, Excluding Appendix	02	January 21, 2003.
MD80–24–177, Excluding Appendix	02	January 21, 2003.
MD80–24–178, Excluding Appendix	02	January 21, 2003.
MD80–24–179, Excluding Appendix	02	January 21, 2003.
MD80–24–180, Excluding Appendix	02	January 21, 2003.
MD80–24–181, Excluding Appendix	02	January 21, 2003.
MD80–24–182, Excluding Appendix	02	January 21, 2003.

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024). Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Date

(f) This amendment becomes effective on January 8, 2004.

Issued in Renton, Washington, on November 26, 2003.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–30111 Filed 12–3–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–NM–70–AD; Amendment 39–13378; AD 2003–24–09]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model MD–11 and –11F Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to certain McDonnell Douglas Model MD–11 series airplanes, that currently requires performing a general visual inspection to detect chafing or damage of the parallel power feeder cables of the number 2 integrated drive generator (IDG); repairing any chafed cable and damaged structure; and repositioning the parallel power feeder cables of the number 2 IDG. This amendment revises the applicability of the existing AD by adding certain airplanes and removing certain other airplanes. The actions specified by this AD are intended to prevent chafing and arcing of the parallel feeder cables of the number 2 IDG, which could result in smoke and/or fire in the right aft galley area. This action is intended to address the identified unsafe condition.

DATES: Effective January 8, 2004.

The incorporation by reference of Boeing Alert Service Bulletin MD11–24A157, Revision 01, dated March 11, 2003, as listed in the regulations, is approved by the Director of the Federal Register as of January 8, 2004.

The incorporation by reference of McDonnell Douglas Alert Service Bulletin MD11–24A157, dated August 10, 2000, as listed in the regulations, was approved previously by the Director of the Federal Register as of September 26, 2001 (66 FR 44043, August 22, 2001).

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024). This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Brett Portwood, Aerospace Engineer, Systems and Equipment Branch, ANM–130L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5350; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding AD 2001–17–08, amendment 39–12399 (66 FR 44043, August 22, 2001), which is applicable to certain McDonnell Douglas Model MD–11 series airplanes, was published in the **Federal Register** on August 15, 2003 (68 FR 48835). The action proposed to continue to require performing a general visual inspection to detect chafing or damage of the parallel power feeder cables of the number 2 integrated drive generator (IDG); repairing any chafed cable and damaged structure; and repositioning the parallel power feeder cables of the number 2 IDG. That action also proposed to revise the applicability of the existing AD by adding certain airplanes and removing certain other airplanes.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the single comment received.

The commenter supports the proposed rule.

Conclusion

The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

There are approximately 85 airplanes of the affected design in the worldwide fleet. The FAA estimates that 15 airplanes of U.S. registry will be affected by this AD.

For Group 1 airplanes listed in Boeing Alert Service Bulletin MD11–24A157, Revision 01, dated March 11, 2003: The actions that are currently required by AD 2001–17–08 take approximately 4 work hours per airplane to accomplish, at an average labor rate of $65 per work hour. Based on these figures, the cost impact of the currently required actions on these U.S. operators is estimated to be $260 per airplane.

For Group 2 airplanes listed in Boeing Alert Service Bulletin MD11–24A157, Revision 01, dated March 11, 2003: The new actions that are required by this AD will take approximately 5 work hours per airplane to accomplish, at an average labor rate of $65 per work hour. Required parts will cost approximately $673 per airplane. Based on these figures, the cost impact of the requirements of this AD on these U.S. operators is estimated to be $998 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions. The manufacturer may cover the cost of replacement parts associated with this AD, subject to warranty conditions. Manufacturer warranty remedies may also be available for labor costs associated with this AD. As a result, the costs attributable to the AD may be less than stated above.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

■ Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. Section 39.13 is amended by removing amendment 39–12399 (66 FR 44043, August 22, 2001), and by adding a new airworthiness directive (AD),

amendment 39–13378, to read as follows:

2003–24–09 McDonnell Douglas: Amendment 39–13378. Docket 2003–NM–70–AD. Supersedes AD 2001–17–08, Amendment 39–12399.

Applicability: Model MD–11 and –11F airplanes, as listed in Boeing Alert Service Bulletin MD11–24A157, Revision 01, dated March 11, 2003; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent chafing and arcing of the parallel feeder cables of the number 2 integrated drive generator (IDG), which could result in smoke and/or fire in the right aft galley area, accomplish the following:

TABLE 1.—COMPLIANCE TIME/SERVICE BULLETIN

Airplanes—	Compliance time—	Service bulletin—
(1) For Group 1 airplanes listed in Boeing Alert Service Bulletin MD11–24A157, Revision 01, dated March 11, 2003.	Within 6 months after September 26, 2001 (the effective date of AD 2001–17–08, amendment 39–12399).	McDonnell Douglas Alert Service Bulletin MD11–24A157, dated August 10, 2000.
(2) For Group 2 airplanes listed in Boeing Alert Service Bulletin MD11–24A157, Revision 01, dated March 11, 2003.	Within 6 months after the effective date of this AD.	Boeing Alert Service Bulletin MD11–24A157, Revision 01, dated March 11, 2003.

Inspection

(a) Do a general visual inspection to detect chafing or damage of the parallel power feeder cables of the number 2 IDG at the applicable time and per the applicable service bulletin specified in Table 1 of this AD. Table 1 is as follows:

Note 1: For the purposes of this AD, a general visual inspection is defined as "A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or droplight, and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked."

Condition 1 (No Chafing and No Structure Damage)

(3) If no chafing and damage is detected, before further flight, reposition the parallel power feeder cables of the number 2 IDG, per the applicable service bulletin.

Condition 2 (Chafing or Structure Damage)

(4) If any chafing or damage is detected, before further flight, repair the chafed cable and damaged structure, as applicable, and reposition the parallel power feeder cables of the number 2 IDG, per the applicable service bulletin.

Alternative Methods of Compliance

(b)(1) In accordance with 14 CFR 39.19, the Manager, Los Angeles Aircraft Certification Office, FAA, is authorized to approve alternative methods of compliance for this AD.

(2) Alternative methods of compliance, approved previously per AD 2001–17–08, amendment 39–12399, are approved as alternative methods of compliance with the requirements of this AD.

Incorporation by Reference

(c) The actions shall be done in accordance with McDonnell Douglas Alert Service Bulletin MD11–24A157, dated August 10, 2000; or Boeing Alert Service Bulletin MD11–24A157, Revision 01, dated March 11, 2003; as applicable.

(1) The incorporation by reference of Boeing Alert Service Bulletin MD11–24A157, Revision 01, dated March 11, 2003, is approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

(2) The incorporation by reference of McDonnell Douglas Alert Service Bulletin MD11–24A157, dated August 10, 2000, was approved previously by the Director of the Federal Register as of September 26, 2001 (66 FR 44043, August 22, 2001).

(3) Copies may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024). Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Date

(d) This amendment becomes effective on January 8, 2004.

Issued in Renton, Washington, on November 26, 2003.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–30110 Filed 12–3–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–207–AD; Amendment 39–13379; AD 2003–24–10]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model DC–10–10, DC–10–10F, DC–10–15, DC–10–30, DC–10–30F, DC–10–30F (KC10A and KDC–10), DC–10–40, DC–10–40F, MD–10–10F, MD–10–30F, MD–11, and MD–11F Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain McDonnell Douglas Model DC–10–10, DC–10–10F, DC–10–15, DC–10–30, DC–10–30F, DC–10–30F (KC10A and KDC–10), DC–10–40, DC–10–40F, MD–10–10F, MD–10–30F, MD–11, and MD–11F airplanes, that requires a one-time inspection to determine the thickness of the walls of the rudder pedal arm assembly for the captain's and first officer's rudder pedals, and follow-on actions. This action is necessary to prevent failure of the rudder pedal arm assembly, which, under certain conditions, could result in reduced controllability of the airplane. This action is intended to address the identified unsafe condition.

DATES: Effective January 8, 2004.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of January 8, 2004.

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024). This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Ron Atmur, Aerospace Engineer, Airframe Branch, ANM–120L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5224; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain McDonnell Douglas Model DC–10–10, DC–10–10F, DC–10–15, DC–10–30, DC–10–30F, DC–10–30F (KC10A and KDC–10), DC–10–40, DC–10–40F, MD–10–10F, MD–10–30F, MD–11, and MD–11F airplanes was published in the **Federal Register** on September 4, 2002 (67 FR 56503). That action proposed to require a one-time inspection to determine the thickness of the walls of the rudder pedal arm assembly for the captain's and first officer's rudder pedals, and follow-on actions.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

No Objection to the Proposed AD

Two commenters have no objection to the technical content or compliance time of the proposed AD.

Request To Use High Frequency Eddy Current Inspection

Certain commenters request that the proposed AD be revised to allow the use of a high frequency eddy current inspection, developed by Boeing, as an optional alternative to the dye penetrant inspection in paragraphs (a)(1) and (b) of the proposed AD. The commenters contend that the eddy current inspection is more convenient, less labor intensive, and yields better results.

We do not agree with the request to allow the eddy current inspection as an optional alternative to the dye penetrant inspection in paragraphs (a)(1) and (b) of the AD. While we have determined that the eddy current inspection would allow operators to have flexibility in the inspection techniques without compromising safety, Boeing has not provided a copy of this inspection to the FAA for approval. However, under the provisions of paragraph (f) of the final rule, we may consider requests for approval of an alternative method of compliance if sufficient data are submitted to substantiate that such an eddy current inspection would provide an acceptable level of safety. No change to the final rule is necessary in this regard.

Request To Extend the Inspection Interval

Certain commenters request an extension of the repetitive inspection interval in paragraph (b)(1) of the proposed AD from 5,200 flight hours to 6,300 flight hours. The commenters contend that 6,300 flight hours would better suit their maintenance schedules.

We do not agree with the request to extend the repetitive inspection interval in paragraph (b)(1) of the AD to 6,300 flight hours. We have reviewed previous occurrences, considered the likelihood and severity of the unsafe condition, and determined that the proposed inspection threshold and repetitive intervals are appropriate. No change to the final rule is necessary in this regard.

Request To Allow Use of Certain Parts

Certain commenters request that the proposed AD be revised to allow parts that are in operators' stock that meet the thickness requirements of paragraph (b) of the proposed AD to be installed and inspected in accordance with paragraph (b)(1) or (b)(2), as applicable. These commenters point out that the proposed AD allows parts that meet these requirements to be inspected indefinitely. Therefore, it would be an unnecessary cost to purge an operator's stock or not be able to replace cracked or unacceptable parts with these parts.

The FAA agrees with the request. We have revised paragraph (e) of the AD so that the crack-free parts with the dimensions defined in paragraph (b) of the AD are acceptable for continued service provided that the repetitive inspections required by paragraph (b) of the AD are accomplished.

Editorial Changes

In reviewing these comments, we noted that, while the service bulletin and the "Differences" section of the proposed AD both correctly state the proposed repetitive inspection interval in terms of flight hours, the proposed AD text erroneously states the interval in terms of flight cycles. We have corrected this error in the final rule. Since both the service bulletin and the preamble of the proposed AD used the correct term, and we did not indicate an intention to deviate from the service bulletin in this regard, we consider that the public has had a reasonable opportunity to comment on the compliance times for this AD.

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Changes to 14 CFR Part 39/Effect on the AD

On July 10, 2002, the FAA issued a new version of 14 CFR part 39 (67 FR 47997, July 22, 2002), which governs the FAA's airworthiness directives system. The regulation now includes material that relates to altered products, special flight permits, and alternative methods of compliance. However, for clarity and consistency in this final rule, we have retained the language of the NPRM regarding that material.

Change to Labor Rate Estimate

We have reviewed the figures we have used over the past several years to calculate AD costs to operators. To account for various inflationary costs in the airline industry, we find it necessary to increase the labor rate used in these calculations from $60 per work hour to $65 per work hour. The cost impact information, below, reflects this increase in the specified hourly labor rate.

Cost Impact

There are approximately 594 airplanes of the affected design in the worldwide fleet. We estimate that 366 airplanes of U.S. registry will be affected by this AD, that it will take approximately 4 work hours per airplane to accomplish the inspection to determine wall thickness, and that the average labor rate is $65 per work hour. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $95,160, or $260 per airplane.

Should an operator be required to accomplish the follow-on inspection to detect cracking, the inspection will take approximately 1 work hour per airplane, at an average labor rate of $65 per work hour. Based on these figures, the cost impact of this inspection will be approximately $65 per airplane, per inspection cycle.

Should an operator be required to accomplish the replacement of a rudder pedal arm assembly, the replacement will take approximately 4 work hours per assembly, per airplane, at an average labor rate of $65 per work hour. Parts will cost approximately $2,943 per assembly. Based on these figures, the cost impact of this replacement will be approximately $3,203 per rudder pedal arm assembly, per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of

the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

For Model MD–11 and –11F airplanes within the period under the warranty agreement, we have been advised that the manufacturer has committed previously to its customers that it will bear the cost of replacement parts. We have also been advised that manufacturer warranty remedies may be available for labor costs associated with accomplishing the actions that would be required by this AD. Therefore, the future economic cost impact of this AD may be less than the cost impact figure indicated above.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

■ Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. Section 39.13 is amended by adding the following new airworthiness directive:

2003–24–10 McDonnell Douglas: Amendment 39–13379. Docket 2001–NM–207–AD.

Applicability: Model DC–10–10, DC–10–10F, DC–10–15, DC–10–30, DC–10–30F, DC–10–30F (KC10A and KDC–10), DC–10–40, DC–10–40F, MD–10–10F, and MD–10–30F airplanes; as listed in Boeing Alert Service Bulletin DC10–27A233, Revision 01, dated June 6, 2002; and Model MD–11 and MD–11F airplanes; as listed in Boeing Alert Service Bulletin MD11–27A080, Revision 01, June 6, 2002; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (f) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the rudder pedal arm assembly, which, under certain conditions, could result in reduced controllability of the airplane, accomplish the following:

One-Time Ultrasonic Inspection

(a) Within 6 months after the effective date of this AD, perform a one-time ultrasonic inspection to determine the thickness of the walls of the rudder pedal arm assembly for both the captain's and first officer's rudder pedals, per the Accomplishment Instructions of Boeing Alert Service Bulletin DC10–27A233, Revision 01, dated June 6, 2002 (for Model DC–10–10, DC–10–10F, DC–10–15, DC–10–30, DC–10–30F, DC–10–30F (KC10A and KDC–10), DC–10–40, DC–10–40F, MD–10–10F, and MD–10–30F airplanes); or Boeing Alert Service Bulletin MD11–27A080, Revision 01, June 6, 2002 (for MD–11 and MD–11F airplanes); as applicable.

(1) If the wall thickness is within the design specifications or operational limits specified in the Accomplishment Instructions and Figure 1 of the applicable service bulletin: Before further flight, perform a dye penetrant inspection for cracking of the clevis of the rudder pedal arm assembly, per the Accomplishment Instructions of the service bulletin. If no cracking is found, do paragraph (b) or (c) of this AD, as applicable.

(2) If the wall thickness is outside the limits specified in the applicable service bulletin: Do paragraph (d) of this AD.

Condition 1: Wall Thickness Within Design Specifications; No Cracking

(b) During the inspections required by paragraphs (a) and (a)(1) of this AD, if the wall thickness of the rudder pedal assembly is within the design specifications as specified in the Accomplishment Instructions and Figure 1 of the applicable service bulletin, and no cracking of the clevis is found: Repeat the dye penetrant inspection specified in paragraph (a)(1) of this AD to find cracking of the clevis of the rudder pedal assembly at the applicable intervals specified in paragraph (b)(1) or (b)(2) of this AD; per the Accomplishment Instructions of Boeing Alert Service Bulletin DC10–27A233, Revision 01, dated June 6, 2002 (for Model DC–10–10, DC–10–10F, DC–10–15, DC–10–30, DC–10–30F, DC–10–30F (KC10A and KDC–10), DC–10–40, DC–10–40F, MD–10–10F, and MD–10–30F airplanes); or Boeing Alert Service Bulletin MD11–27A080, Revision 01, June 6, 2002 (for MD–11 and MD–11F airplanes); as applicable. Replacement of the rudder pedal arm assembly with a new, improved assembly per the Accomplishment Instructions of the applicable service bulletin terminates the repetitive inspections.

(1) For Model DC–10–10, DC–10–10F, DC–10–15, DC–10–30, DC–10–30F, DC–10–30F (KC10A and KDC–10), DC–10–40, DC–10–40F, MD–10–10F, and MD–10–30F airplanes: Repeat the inspection every 5,200 flight hours until the rudder pedal arm assembly is replaced with a new, improved assembly per the Accomplishment Instructions of the applicable service bulletin.

(2) For MD–11 and MD–11F airplanes: Repeat the inspection every 4,200 flight hours until the rudder pedal arm assembly is replaced with a new, improved assembly per the Accomplishment Instructions of the applicable service bulletin.

Condition 2: Wall Thickness Within Operational Limits; No Cracking

(c) During the inspections required by paragraphs (a) and (a)(1) of this AD, if the wall thickness of the rudder pedal arm assembly is within the operational limits specified in the Accomplishment Instructions and Figure 1 of the applicable service bulletin, and no cracking of the clevis is found: Do paragraphs (c)(1) and (c)(2) of this AD per the Accomplishment Instructions of Boeing Alert Service Bulletin DC10–27A233, Revision 01, dated June 6, 2002 (for Model DC–10–10, DC–10–10F, DC–10–15, DC–10–30, DC–10–30F, DC–10–30F (KC10A and KDC–10), DC–10–40, DC–10–40F, MD–10–10F, and MD–10–30F airplanes); or Boeing Alert Service Bulletin MD11–27A080, Revision 01, June 6, 2002 (for MD–11 and MD–11F airplanes); as applicable.

(1) Condition 2, Phase 1: Before further flight, change the part number of the rudder pedal arm assembly to identify the assembly as a "temporary operation" part.

(2) Condition 2, Phase 2: At the applicable time specified in paragraph (c)(2)(i) or (c)(2)(ii) of this AD, replace the "temporary operation" rudder pedal arm assembly with a new, improved rudder pedal arm assembly.

(i) For Model DC–10–10, DC–10–10F, DC–10–15, DC–10–30, DC–10–30F, DC–10–30F (KC10A and KDC–10), DC–10–40, DC–10–40F, MD–10–10F, and MD–10–30F airplanes: Replace within 5,200 flight hours after the inspection in paragraph (a)(1) of this AD.

(ii) For MD–11 and MD–11F airplanes: Replace within 4,200 flight hours after the inspection in paragraph (a)(1) of this AD.

Conditions 3 and 4: Wall Thickness Not Within Limits; Clevis Cracked or Broken

(d) During the inspection per paragraph (a) of this AD, if the wall thickness of the rudder pedal arm assembly is not within the design specifications or the acceptable operational limits specified in the applicable service bulletin; or during any inspection per paragraph (a)(1) or (b) of this AD, if the clevis of the rudder pedal assembly is cracked or broken: Before further flight, replace the rudder pedal assembly with a new, improved rudder pedal assembly per Condition 3 or 4, as applicable, of the Accomplishment Instructions of Boeing Alert Service Bulletin DC10–27A233, Revision 01, dated June 6, 2002 (for Model DC–10–10, DC–10–10F, DC–10–15, DC–10–30, DC–10–30F, DC–10–30F (KC10A and KDC–10), DC–10–40, DC–10–40F, MD–10–10F, MD–10–30F airplanes); or Boeing Alert Service Bulletin MD11–27A080, Revision 01, June 6, 2002 (for MD–11 and MD–11F airplanes); as applicable. Such replacement terminates any repetitive inspections required by this AD.

Parts Installation

(e) As of the effective date of this AD, no person shall install a rudder pedal arm assembly having part number ABH7239–1 or ABH7239–2 on any airplane unless the parts meet the dimensional and crack-free requirements of paragraph (b) of this AD and the repetitive inspections required by that paragraph are accomplished.

Alternative Methods of Compliance

(f) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

Special Flight Permits

(g) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(h) The actions shall be done in accordance with Boeing Alert Service Bulletin DC10–27A233, Revision 01, dated June 6, 2002; or Boeing Alert Service Bulletin MD11–27A080, Revision 01, June 6, 2002; as applicable. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024). Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Date

(i) This amendment becomes effective on January 8, 2004.

Issued in Renton, Washington, on November 26, 2003.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–30109 Filed 12–3–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 934

[ND–044–FOR, Amendment No. XXXIII]

North Dakota Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Final rule; approval of amendment.

SUMMARY: We are approving a proposed amendment to the North Dakota regulatory program (the "North Dakota program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). North Dakota proposed revisions to and additions of rules about valid existing rights, the process for determining whether or not a mine operator has valid existing rights, lands prohibited from mining, changes in the format of permit applications, general requirements for mining plans, land descriptions for partial bond release requests, filing requirements for copies of reports required by the State Health Department, sediment control measures, and removal of sedimentation ponds. North Dakota intended to revise its program to be consistent with the corresponding Federal regulations and SMCRA, provide additional safeguards, clarify ambiguities, and improve operational efficiency.

EFFECTIVE DATE: December 4, 2003.

FOR FURTHER INFORMATION CONTACT: Guy Padgett, Telephone: 307/261–6550; Internet address: *GPadgett@osmre.gov.*

SUPPLEMENTARY INFORMATION:

I. Background on the North Dakota Program
II. Submission of the Proposed Amendment
III. Office of Surface Mining Reclamation and Enforcement's (OSM) Findings
IV. Summary and Disposition of Comments
V. OSM's Decision
VI. Procedural Determinations

I. Background on the North Dakota Program

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its State program includes, among other things, "a State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of this Act"; and rules and regulations consistent with regulations issued by the Secretary pursuant to this Act." See 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the North Dakota program on December 15, 1980. You can find background information on the North Dakota program, including the Secretary's findings, the disposition of comments, and conditions of approval in the December 15, 1980, **Federal Register** (45 FR 82214). You can also find later actions concerning North Dakota's program and program amendments at 30 CFR 934.15, 934.16, and 934.30.

II. Submission of the Proposed Amendment

By letter dated February 10, 2003, North Dakota sent us an amendment to its program (Amendment number XXXIII, Administrative Record No. ND–HH–01 under SMCRA (30 U.S.C. 1201 *et seq.*). North Dakota sent the amendment in response to an April 2, 2001, letter (Administrative Record No. ND–HH–02) that we sent to North Dakota in accordance with 30 CFR 732.17(c), and to include changes made at its own initiative.

The provisions of the North Dakota Administrative Code (NDAC) that North Dakota proposed to revise or add are:

(1) NDAC 69–05.2–01–02(120), Definition of Valid Existing Rights; (2) NDAC 69–05.2–04–01.1 through 01.7, Processing Requests for Valid Existing Rights and Exceptions from Areas Prohibited from Mining; (3) NDAC 69–05.2–05–01, Copies and format of permit applications; (4) NDAC 69–05.2–

09–01, General Requirements for Mining Plans; (5) NDAC 69–05.2–12–12, Bond release requirements; (6) NDAC 69–05.2–16–04, Sediment control measures under the general water management requirements; (7) NDAC 69–05.2–16–05, Water discharge reports; and (8) NDAC 69–05.2–16–09, Removal of water management structures.

We announced receipt of the proposed amendment in the June 3, 2003, **Federal Register** (68 FR 33035). In the same document, we opened the public comment period and provided an opportunity for a public hearing or meeting on the amendment's adequacy (Administrative Record No. ND–HH–08). We did not hold a public hearing or meeting because no one requested one. The public comment period ended on July 3, 2003. We did not receive any comments.

III. OSM's Findings

Following are the findings we made concerning the amendment under SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17. We are approving the amendment.

A. Revisions to North Dakota's Rules or Statutes That Have the Same Meaning as the Corresponding Provisions of the Federal Regulations and/or SMCRA

1. NDAC 69–05.2–01–02(120), Definition of Valid Existing Rights.(30 CFR 761.5)

2. NDAC 69–05.2–04–01.1 through 01.7, Processing Requests for Valid Existing Rights and Exceptions from Areas Prohibited from Mining.

a. NDAC 69–05.2–04–01.1, Areas Unsuitable for Mining—Areas where surface coal mining operations are prohibited or limited (30 CFR 761.11).

b. NDAC 69–05.2–04–01.2, Areas Unsuitable for Mining—Exception for existing operations from areas where mining is prohibited (30 CFR 761.12).

c. NDAC 69–05.2–04–01.3, Areas Unsuitable for mining—Procedures for relocating or closing a public road or waiving the buffer zone for a public road (30 CFR 761.14).

d. NDAC 69–05.2–04–01.4, Areas Unsuitable for Mining—Procedures for waiving the prohibition on mining within the buffer zone around an occupied dwelling (30 CFR 761.15).

e. NDAC 69–05.2–04–01.5, Areas Unsuitable for mining—Submission of requests for valid existing rights determinations (30 CFR 761.16).

f. NDAC 69–05.2–04–01.6, Areas Unsuitable for mining—Processing requests for valid existing rights determinations (30 CFR 761.16(c)–(g).

g. NDAC 69–05.2–04–01.7, Areas Unsuitable for mining—Commission obligations at time of permit application review (30 CFR 761.17).

Because these proposed rules contain language that is the same or similar to the corresponding Federal regulations, we find that they are no less effective than the corresponding Federal regulations.

B. Revisions to North Dakota's Rules That Are Not the Same as the Corresponding Provisions of the Federal Regulations

1. NDAC 69–05.2–05–01, Copies and Format of Permit Applications

This revision of North Dakota's rules would allow permit applications to be filed in an electronic format approved by the North Dakota Public Service Commission. In addition, it would require that the applicant send a complete copy of the permit application to the Bureau of Land Management (BLM) when Federal lands are located in the permit area.

The Federal regulations at 30 CFR 777.11(a)(3) state that an application shall "be filed in the format required by the regulatory authority." Therefore the State's revision concerning electronic filing is allowed and is no less effective than the Federal rules. There is no Federal counterpart to the North Dakota requirement that a copy of the application be sent to BLM and OSM when Federal lands are located in the permit area; it is therefore no less effective than the Federal rules.

2. NDAC 69–05.2–16–04, Sediment Control Measures Under the General Water Management Requirements

Under this proposed change, sediment ponds remain the primary structure for treating runoff from disturbed areas. However, the proposal allows the use of sediment ponds or "other sediment control measures" to control runoff from disturbed areas. The term, "other sediment control measures," is defined as the use of the best technology currently available to meet applicable effluent limitations and, to the extent possible, minimize erosion and prevent additional contributions of sediment to streamflow or to runoff outside the permit area. The term includes a number of different methods such as sumps, check dams, berms, silt fences, bale dikes, sediment filters, riprap, mulches, and other measures to reduce runoff, trap sediment or treat runoff water. The use of "other sediment control measures" is limited to small disturbed areas or reclaimed areas that have been properly stabilized against erosion and must be approved by the State Department of Health.

These changes are consistent with the new rules recently adopted by the U.S. Environmental Protection Agency (EPA) that allow the installation of best management practices as the standard for treating runoff from reclaimed lands in the western United States (January 23, 2002, at 67 FR 3370). Therefore they are no less effective than the Federal regulations at 30 CFR 816.42.

3. NDAC 69–05.2–16–05(1)(b)(3), Water Discharge Reports

Currently, copies of the North Dakota pollutant discharge elimination system (NDPDES) report must be submitted to the North Dakota Public Service Commission on the schedule required by the NDPDES permit. The rule states that reports have to be filed on a quarterly basis. However, the proposed revised rule would require mining companies to submit the report on the same schedule as required by the State Health Department. The State Health Department has modified some NDPDES permits for some mines to require reports on a semiannual basis. EPA gives this authority to State Health Departments. Other surface water monitoring reports must be submitted quarterly. Based on this, the proposed State rule is no less effective than the Federal regulations.

The Federal regulations at 30 CFR 816.41(e)(2) state that "The reporting requirements of this paragraph do not exempt the operator from meeting any National Pollutant Discharge Elimination System reporting requirements."

The proposed revision in the State rules are no less effective than the Federal regulations.

4. NDAC 69–05.2–16–09, Removal of Water Management Structures

The proposed revision concerns requirements for the removal of ponds and other sediment control structures. Added language requires "other sediment control structures" to remain in place for at least two years following the last seeding in the reclaimed watershed. This change is connected to the proposed change (at NDAC 69–05.2–04) to allow the substitution of other sediment control structures for sedimentation ponds once a reclaimed tract is topsoiled and stabilized against erosion. As in the Federal rule (30 CFR 816.46(b)(5)), these structures cannot be removed unless approved by the regulatory authority. The proposed State rule is no less effective than the Federal regulations.

C. Revisions to North Dakota's Rules That Have No Federal Counterpart

1. NDAC 69–05.2–12–12, Bond Release Requirements

This revision to North Dakota's rules specifies that when lands are proposed to undergo partial bond release, the release application must be accompanied by either a legal description of the area or by a map that clearly depicts and identifies the lands to be released. Allowing a map in place of a legal description will encourage the submission of more partial bond release applications. There is no Federal counterpart to the State's proposal. According to 30 CFR 730.11(b) of the Federal regulations, in these cases, the State rule shall not be construed to be inconsistent with (SMCRA). Therefore it is no less effective than the Federal regulations.

2. NDAC 69–05.2–09–01, Permit Applications—Operation Plans—General Requirements

This North Dakota provision requires that if coal removal areas are proposed within 500 feet of any farm building, the applicant must provide documentation showing compliance with the State's surface owners protection act (North Dakota Century Code 38–18–07). There is no Federal counterpart to this North Dakota provision. According to 30 CFR 730.11(b) of the Federal regulations, in these cases, the State rule shall not be construed to be inconsistent with (SMCRA). Therefore it is no less effective than the Federal regulations.

IV. Summary and Disposition of Comments

Public Comments

We asked for public comments on the amendment in the June 3, 2003, **Federal Register** (68 FR 33035), but received none (Administrative Record ND-HH–08).

Federal Agency Comments

Under 30 CFR 732.17(h)(11)(i) and section 503(b) of SMCRA, we requested comments on the amendment from various Federal agencies with an actual or potential interest in the North Dakota program (Administrative Record No. ND-HH–04).

On March 3, 2003, the State Conservationist with the Natural Resources Conservation Service (NRCS), replied that NRCS had no comments (Administrative Record No. ND–HH–06).

Environmental Protection Agency (EPA) Concurrence and Comments

Under 30 CFR 732.17(h)(11)(i) and (ii), we are required to get concurrence from EPA for those provisions of the program amendment that relate to air or water quality standards issued under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*).

On February 21, 2003, we asked for agreement on the amendment (Administrative Record No. ND–HH–04). On March 31, 2003, the Director of the Ecosystems Protection Program with the EPA sent us the following comment: "We believe the proposed program amendments to be consistent with 40 CFR Part 434 and, therefore, have no concerns." (Administrative Record No. ND–HH–07)

State Historic Preservation Officer (SHPO) and the Advisory Council on Historic Preservation (ACHP)

Under 30 CFR 732.17(h)(4), we are required to request comments from the SHPO and ACHP on amendments that may have an effect on historic properties. On February 21, 2003, we requested comments on North Dakota's amendment (Administrative Record No. ND-HH–04), but neither responded to our request. North Dakota's SHPO responded on March 5, 2003, that "We have reviewed (the amendment) and have no comments." (Administrative Record No. ND-HH–05).

V. OSM's Decision

Based on the above findings, we approve North Dakota's February 10, 2003, amendment, as follows: (1) NDAC 69–05.2–10–02 (120), Definition of Valid Existing Rights; (2) NDAC 69–05.2–04–01.1 through 01.7, Processing requests for valid existing rights and exceptions from areas prohibited from mining; (3) NDAC 69–05.2–05–01, Copies and format of permit applications; (4) NDAC 69–05.2–09–01, Permit applications—Operation plans—General requirements; (5) NDAC 69–05.2–12–12, Bond release requirement; (6) NDAC 69–05.2–16–04, Sediment control measures under the general water management requirements; (7) NDAC 69–05.2–16–05(1)(b)(3), Water discharge reports; (8) NDAC 69–05.2–16–09, Removal of water management structures.

We approve the rules as proposed by North Dakota with the provision that they be fully promulgated in identical form to the rules submitted to and reviewed by OSM and the public.

To implement this decision, we are amending the Federal regulations at 30 CFR Part 934, which codify decisions concerning the North Dakota program. We find that good cause exists under 5 U.S.C. 553(d)(3) to make this final rule effective immediately. Section 503(a) of SMCRA requires that the State's program demonstrates that the State has the capability of carrying out the provisions of the Act and meeting its purposes. Making this regulation effective immediately will expedite that process. SMCRA requires consistency of State and Federal standards.

VI. Procedural Determinations

Executive Order 12630—Takings

This rule does not have takings implications. This determination is based on the analysis performed for the counterpart Federal regulation.

Executive Order 12866—Regulatory Planning and Review

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

Executive Order 12988—Civil Justice Reform

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments because each program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

Executive Order 13132—Federalism

This rule does not have federalism implications. SMCRA delineates the roles of the Federal and State governments with regard to the regulation of surface coal mining and reclamation operations. One of the purposes of SMCRA is to "establish a nationwide program to protect society and the environment from the adverse effects of surface coal mining operations." Section 503(a)(1) of SMCRA requires that State laws regulating surface coal mining and

reclamation operations be "in accordance with" the requirements of SMCRA, and section 503(a)(7) requires that State programs contain rules and regulations "consistent with" regulations issued by the Secretary pursuant to SMCRA.

Executive Order 13175—Consultation and Coordination With Indian Tribal Governments

In accordance with Executive Order 13175, we have evaluated the potential effects of this rule on Federally-recognized Indian Tribes and have determined that the rule does not have substantial direct effects on one or more Indian Tribes, on the relationship between the Federal government and Indian Tribes, or on the distribution of power and responsibilities between the Federal government and Indian Tribes. The rule does not involve or affect Indian Tribes in any way.

Executive Order 13211—Regulations That Significantly Affect The Supply, Distribution, or Use of Energy

On May 18, 2001, the President issued Executive Order 13211 which requires agencies to prepare a Statement of Energy Effects for a rule that is (1) considered significant under Executive Order 12866, and (2) likely to have a significant adverse effect on the supply, distribution, or use of energy. Because this rule is exempt from review under Executive Order 12866 and is not expected to have a significant adverse effect on the supply, distribution, or use of energy, a Statement of Energy Effects is not required.

National Environmental Policy Act

This rule does not require an environmental impact statement because section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal, which is the subject of this rule, is largely based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule: a. does not have an annual effect on the economy of $100 million; b. will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and c. does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

This determination is based upon the fact that the State submittal which is the subject of this rule is largely based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation was not considered a major rule.

Unfunded Mandates

This rule will not impose an unfunded mandate on State, local, or tribal governments or the private sector of $100 million or more in any given year. This determination is based upon the fact that the State submittal, which is the subject of this rule, is largely based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation did not impose an unfunded mandate.

List of Subjects in 30 CFR Part 934

Intergovernmental relations, Surface mining, Underground mining.

Dated: October 29, 2003.

Allen D. Klein,

Regional Director, Western Regional Coordinating Center.

■ For the reasons set out in the preamble, 30 CFR part 934 is amended as set forth below:

PART 934—NORTH DAKOTA

■ 1. The authority citation for part 934 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

■ 2. Section 934.15 is amended in the table by adding a new entry in chronological order by "date of final publication" to read as follows:

§ 934.15 Approval of North Dakota regulatory program amendments.

* * * * *

Original amendment submission date	Date of final publication	Citation/description
Feb. 10, 2003	Dec. 4, 2003	NDAC 69–05.2–01–02(120) NDAC 69–05.2–04–01.1 through 01.7 NDAC 69–05.2–05–01 NDAC 69–05.2–09–01 NDAC 69–05.2–12–12 NDAC 69–05.2–16–04 NDAC 69–05.2–16–05(1)(b)(3) NDAC 69–05.2–16–09

[FR Doc. 03–30153 Filed 12–3–03; 8:45 am]

BILLING CODE 4310–05–P

DEPARTMENT OF COMMERCE

United States Patent and Trademark Office

37 CFR Part 1

RIN 0651–AB61

[Docket No.: 2003–P–021]

January 2004 Revision of Patent Cooperation Treaty Application Procedure

AGENCY: United States Patent and Trademark Office, Commerce.

ACTION: Final rule and correction to final rule.

SUMMARY: The United States Patent and Trademark Office (Office) published a final rule in the **Federal Register** of October 20, 2003, revising the rules of practice in patent cases to conform them to certain amendments made to the Regulations under the Patent Cooperation Treaty (PCT) that will take effect on January 1, 2004. This document corrects three errors in that final rule, and also corrects an additional error in the rules of practice in patent cases relating to PCT procedure.

EFFECTIVE DATE: January 1, 2004.

FOR FURTHER INFORMATION CONTACT: Richard R. Cole, Legal Examiner, Office of PCT Legal Administration (OPCTLA) directly by telephone at (703) 305–6639, or by facsimile at (703) 308–6459.

SUPPLEMENTARY INFORMATION: During the September–October 2002 meeting of the Governing Bodies of the World Intellectual Property Organization (WIPO), the PCT Assembly adopted various amendments to the Regulations under the PCT that enter into force on January 1, 2004. The Office published a final rule in the **Federal Register** of October 20, 2003 (68 FR 59881), entitled "January 2004 Revision of Patent Cooperation Treaty Application Procedure," revising the rules of practice in patent cases in title 37 of the Code of Federal Regulations (CFR) to conform them to the amendments to the PCT Regulations that will take effect on January 1, 2004. This document corrects errors to §§ 1.14, 1.421, and 1.431 in that final rule. This document also corrects an additional error in § 1.14 relating to PCT procedure.

Discussion of Specific Rules

Section 1.14: Section 1.14(g)(1)(ii) is corrected to change "International Search Authority" to "International Searching Authority". Section 1.14(g)(5) is amended to change "paragraphs (a)(1)(i) through (a)(1)(vi) and (i)(3) of this section" to "paragraphs (a)(1)(i) through (a)(1)(vi) and (g)(3) of this section" for consistency with the changes to § 1.14 in the rule making *Changes to Implement Electronic Maintenance of Official Patent Application Records*, 68 FR 38611 (June 30, 2003), 1272 *Off. Gaz. Pat. Office* 197 (July 29, 2003) (final rule).

Section 1.421: Section 1.421(a)(2) is amended to correct "a fee amount equivalent to that required by § 1.445(a)(5)" to "a fee amount equivalent to that required by § 1.445(a)(4)" for consistency with § 1.445 as amended in the final rule being corrected by this document.

Section 1.431: Section 1.431(c)(2) is corrected to change "the 25% of the international filing fee" to "fifty percent of the international filing fee" for consistency with the change to PCT Rule 16*bis*.2(b) that was adopted during the September–October 2003 meeting of the WIPO Governing Bodies and that enters into force on January 1, 2004.

■ In rule FR Doc. 03–26338, published on October 20, 2003, make the following corrections and 37 CFR part 1 is amended as follows:

§ 1.14 [Corrected]

■ 1. On page 59886, in the third column, § 1.14, paragraph (g)(1)(ii), line 8, correct "International Search Authority" to read "International Searching Authority".

§ 1.431 [Corrected]

■ 2. On page 59887, in the third column, § 1.431, paragraph (c)(2), line 2, correct "the 25%" to read "fifty percent".

PART 1—RULES OF PRACTICE IN PATENT CASES

■ 3. The authority citation for 37 CFR part 1 continues to read as follows:

Authority: 35 U.S.C. 2(b)(2).

■ 4. Section 1.14 is amended by revising paragraph (g)(5) to read as follows:

§ 1.14 Patent applications preserved in confidence.

* * * * *

(g) * * *

(5) Access to international application files under paragraphs (a)(1)(i) through (a)(1)(vi) and (g)(3) of this section will not be permitted with respect to the Examination Copy in accordance with PCT Article 38.

* * * * *

■ 5. Section 1.421 is amended by revising paragraph (a)(2) to read as follows:

§ 1.421 Applicant for international application.

(a) * * *

(2) Has no residence or nationality indicated, applicant will be so notified and, if the international application includes a fee amount equivalent to that required by § 1.445(a)(4), the international application will be forwarded for processing to the International Bureau acting as a Receiving Office (see also § 1.412(c)(6)).

* * * * *

Dated: November 24, 2003.

James E. Rogan,

Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office.

[FR Doc. 03–30150 Filed 12–3–03; 8:45 am]

BILLING CODE 3510–16–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 291–0424a; FRL–7590–7]

Revisions to the California State Implementation Plan, Ventura County Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve revisions to the Ventura County Air Pollution Control District (VCAPCD) portion of the California State Implementation Plan (SIP). These revisions concern volatile organic compound (VOC) emissions from adhesives and sealants. We are approving a local rule that regulates these emission sources under the Clean Air Act as amended in 1990 (CAA or the Act).

DATES: This rule is effective on February 2, 2004, without further notice, unless EPA receives adverse comments by January 5, 2004. If we receive such comment, we will publish a timely withdrawal in the **Federal Register** to notify the public that this rule will not take effect.

ADDRESSES: Send comments to Andy Steckel, Rulemaking Office Chief (AIR–4), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901, or e-mail to *steckel.andrew@epa.gov*, or submit comments at *http://www.regulations.gov*.

You can inspect copies of the submitted SIP revisions, EPA's technical support document (TSD), and public comments at our Region IX office during normal business hours by appointment. You may also see copies of the

submitted SIP revisions by appointment at the following locations:

Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, Room B–102, 1301 Constitution Avenue, NW., (Mail Code 6102T), Washington, DC 20460.

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 1001 "I" Street, Sacramento, CA 95814.

Ventura County Air Pollution Control District, 669 County Square Drive, 2nd Floor, Ventura, CA 93003.

A copy of the rule may also be available via the Internet at *http://www.arb.ca.gov/drdb/drdbltxt.htm*. Please be advised that this is not an EPA Web site and may not contain the same version of the rule that was submitted to EPA.

FOR FURTHER INFORMATION CONTACT: Yvonne Fong, EPA Region IX, (415) 947–4117, *fong.yvonnew@epa.gov*.

SUPPLEMENTARY INFORMATION: Throughout this document, "we," "us" and "our" refer to EPA.

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I. The State's Submittal

A. What Rule Did the State Submit?

Table 1 lists the rule we are approving with the dates that it was adopted by the local air agency and submitted by the California Air Resources Board (CARB).

TABLE 1.—SUBMITTED RULE

Local agency	Rule No.	Rule title	Adopted	Submitted
VCAPCD	74.20	Adhesives and sealants	09/09/03	09/19/03

On October 15, 2003, a submittal of VCAPCD Rule 74.20 was found to meet the completeness criteria in 40 CFR part 51, appendix V, which must be met before formal EPA review.

B. Are There Other Versions of This Rule?

We approved a version of VCAPCD Rule 74.20 into the SIP on April 26, 2002 (67 FR 20645). The VCAPCD adopted revisions to the SIP-approved version of Rule 74.20 on September 9, 2003 and CARB submitted them to us on September 19, 2003.

C. What Is the Purpose of the Rule Revisions?

VOCs help produce ground-level ozone and smog, which harm human health and the environment. Section 110(a) of the CAA requires states to submit regulations that control VOC emissions. This rule limits emissions of VOCs resulting from the application of adhesives and sealants.

This rule was also submitted to correct deficiencies we cited in an April 26, 2002 (67 FR 20645) final rulemaking for a previous version of this rule and to stay the potential imposition of section 179 sanctions associated with that final rulemaking. The TSD has more information about this rule.

II. EPA's Evaluation and Action

A. How Is EPA Evaluating the Rule?

Generally, SIP rules must be enforceable (see section 110(a) of the Act), must require Reasonably Available Control Technology (RACT) for major sources in nonattainment areas (see section 182(a)(2)(A)), and must not relax existing requirements (see sections 110(l) and 193). VCAPCD regulates an ozone nonattainment area (see 40 CFR part 81), so VCAPCD Rule 74.20 must fulfill RACT.

Guidance and policy documents that we used to help evaluate specific enforceability and RACT requirements consistently include the following:

1. Portions of the proposed post-1987 ozone and carbon monoxide policy that concern RACT, 52 FR 45044, November 24, 1987.
2. "Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations," EPA, May 25, 1988 (the Bluebook).
3. "Guidance Document for Correcting Common VOC & Other Rule Deficiencies," EPA Region 9, August 21, 2001 (the Little Bluebook).
4. "Determination of Reasonably Available Control Technology and Best Available Retrofit Control Technology for Adhesives and Sealants," CARB, December 1998.

We also evaluated this rule to determine whether it corrects the deficiencies cited in our April 26, 2002 (67 FR 20645) final rulemaking on a previous versions of this rule. Our limited disapproval of this earlier version noted that two provisions of VCAPCD Rule 74.20 conflicted with section 110 and part D of the Act. Rule 74.20 contained VOC content limits that did not meet RACT as well as an inappropriate test method. The TSD has more information on our evaluation.

B. Does the Rule Meet the Evaluation Criteria?

We believe this rule is consistent with the relevant policy and guidance regarding enforceability, RACT, and SIP relaxations. We also conclude that the problematic provisions which were found in an earlier version of this rule and which was the basis for our April 26, 2002 final limited disapproval have been corrected. The TSD has more information on our evaluation.

C. Public Comment and Final Action

As authorized in section 110(k)(3) of the Act, EPA is fully approving the submitted rule because we believe it fulfills all relevant requirements. We do not think anyone will object to this approval, so we are finalizing it without proposing it in advance. However, in the Proposed Rules section of this **Federal Register**, we are simultaneously proposing approval of the same submitted rules. If we receive adverse comments by January 5, 2004, we will publish a timely withdrawal in the **Federal Register** to notify the public that the direct final approval will not take effect and we will address the comments in a subsequent final action based on the proposal. If we do not receive timely adverse comments, the direct final approval will be effective without further notice on February 2, 2004. This will incorporate this rule into the federally enforceable SIP and will terminate all CAA section 179 and 110(c) sanction and FIP implications associated with our limited disapproval action on a previous version of this rule.

III. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by February 2, 2004. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: November 7, 2003.

Keith Takata,

Acting Regional Administrator, Region IX.

■ Part 52, Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

■ 1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart F—California

■ 2. Section 52.220 is amended by adding paragraph (c)(318) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(318) Amended regulation for the following APCD was submitted on September 19, 2003, by the Governor's designee.

(i) Incorporation by reference.

(A) Ventura County Air Pollution Control District.

(*1*) Rule 74.20, adopted on September 9, 2003.

* * * * *

[FR Doc. 03–30169 Filed 12–3–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 291–0424; FRL–7590–6]

Interim Final Determination To Stay Sanctions, Ventura County Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Interim final rule.

SUMMARY: EPA is making an interim final determination to stay imposition of sanctions based on a proposed approval of revisions to the Ventura County Air Pollution Control District (VCAPCD) portion of the California State Implementation Plan (SIP) published elsewhere in today's **Federal Register**. The revisions concern VCAPCD Rule 74.20.

DATES: This interim final determination is effective on December 4, 2003. However, comments will be accepted until January 5, 2004.

ADDRESSES: Send comments to Andy Steckel, Rulemaking Office Chief (AIR–4), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105 or e-mail to *steckel.andrew@epa.gov*, or submit comments at *http://www.regulations.gov*.

You can inspect copies of the submitted rule revisions, EPA's technical support document (TSD), and public comments at our Region IX office during normal business hours by appointment. You may also see copies of the submitted rule revisions by appointment at the following locations:

Rulemaking Office (AIR–4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 1001 "I" Street, Sacramento, CA 95814.

Ventura County Air Pollution Control District, 669 County Square Drive, 2nd Floor, Ventura, CA 93003.

A copy of the rule may also be available via the Internet at *http://www.arb.ca.gov/drdb/drdbltxt.htm*. Please be advised that this is not an EPA Web site and may not contain the same version of the rule that was submitted to EPA.

FOR FURTHER INFORMATION CONTACT: Yvonne Fong, EPA Region IX, (415) 947–4117, *fong.yvonnew@epa.gov*.

SUPPLEMENTARY INFORMATION: Throughout this document, "we," "us" and "our" refer to EPA.

I. Background

On April 26, 2002 (67 FR 20645), we published a limited approval and limited disapproval of VCAPCD Rule 74.20. Table 1 lists the rule addressed by our prior limited approval and disapproval with the dates that it was adopted by the local air agency and submitted by the California Air Resources Board (CARB).

TABLE 1.—RULE PREVIOUSLY ACTED ON BY US

Local agency	Rule No.	Rule title	Adopted	Submitted
VCAPCD	74.20	Adhesives and Sealants	01/14/97	03/03/97

We based our limited disapproval action on certain deficiencies in the submittal. This disapproval action started a sanctions clock for imposition of offset sanctions 18 months after May 28, 2002 and highway sanctions 6 months later, pursuant to section 179 of the Clean Air Act (CAA) and our regulations at 40 CFR 52.31.

VCAPCD adopted revisions to Rule 74.20 to correct the deficiencies identified in our limited disapproval action. Table 2 lists the rule that was submitted to correct the deficiencies noted in the previous version with the dates that it was adopted by the local air agency and submitted by the California Air Resources Board (CARB).

TABLE 2.—SUBMITTED RULE

Local agency	Rule No.	Rule title	Adopted	Submitted
VCAPCD	74.20	Adhesives and Sealants	09/09/03	09/19/03

In the Proposed Rules section of today's **Federal Register**, we have proposed approval of this submittal because we believe it corrects the deficiencies identified in our April 26, 2002 disapproval action. Based on today's proposed approval, we are taking this final rulemaking action, effective on publication, to stay imposition of sanctions that would be triggered by our April 26, 2002 limited disapproval.

EPA is providing the public with an opportunity to comment on this stay of sanctions. If comments are submitted that change our assessment described in this final determination and the proposed full approval of revised VCAPCD Rule 74.20, we intend to take subsequent final action to reimpose sanctions pursuant to 40 CFR 51.31(d). If no comments are submitted that change our assessment, then all sanctions and sanction clocks will be permanently terminated on the effective date of a final rule approval.

II. EPA Action

We are making an interim final determination to stay CAA section 179 sanctions associated with VCAPCD Rule 74.20 based on our concurrent proposal to approve the State's SIP revision as correcting deficiencies that initiated sanctions.

Because EPA has preliminarily determined that the State has corrected the deficiencies identified in EPA's limited disapproval action, relief from sanctions should be provided as quickly as possible. Therefore, EPA is invoking the good cause exception under the Administrative Procedure Act (APA) in not providing an opportunity for comment before this action takes effect (5 U.S.C. 553(b)(3)). However, by this action EPA is providing the public with a chance to comment on EPA's determination after the effective date, and EPA will consider any comments received in determining whether to reverse such action.

EPA believes that notice-and-comment rulemaking before the effective date of this action is impracticable and contrary to the public interest. EPA has reviewed the State's submittal and, through its proposed action, is indicating that it is more likely than not that the State has corrected the deficiencies that started the sanctions clocks. Therefore, it is not in the public interest to initially impose sanctions or to keep applied sanctions in place when the State has most likely done all it can to correct the deficiencies that triggered the sanctions clocks. Moreover, it would be impracticable to go through notice-and-comment rulemaking on a finding that the State has corrected the deficiencies prior to the rulemaking approving the State's submittal. Therefore, EPA believes that it is necessary to use the interim final rulemaking process to stay sanctions while EPA completes its rulemaking process on the approvability of the State's submittal. Moreover, with respect to the effective date of this action, EPA is invoking the good cause exception to the 30-day notice requirement of the APA because the purpose of this notice is to relieve a restriction (5 U.S.C. 553(d)(1)).

III. Statutory and Executive Order Reviews

This action stays federal sanctions and imposes no additional requirements.

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget.

This action is not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001) because it is not a significant regulatory action.

The administrator certifies that this action will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

This rule does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4).

This rule does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

This action does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999).

This rule is not subject to Executive Order 13045, "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

The requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272) do not apply to this rule because it imposes no standards.

This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report to Congress and the Comptroller General. However, section 808 provides that any rule for which the issuing agency for good cause finds that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest, shall take effect at such time as the agency promulgating the rule determines. 5 U.S.C. 808(2). EPA has made such a good cause finding, including the reasons therefor, and established an effective date of December 4, 2003. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by February 2, 2004. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purpose of judicial review nor does it extend the time within which petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental regulations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: November 7, 2003.

Keith Takata,

Acting Regional Administrator, Region IX.

[FR Doc. 03–30168 Filed 12–3–03; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

49 CFR Part 1152

[STB Ex Parte No. 537 (Sub–No. 1)]

Public Participation in Railroad Abandonment Proceedings

AGENCY: Surface Transportation Board.

ACTION: Final rule.

SUMMARY: The Surface Transportation Board (Board) is amending its regulations concerning the service of a notice of intent to abandon or discontinue rail service by removing an obsolete reference to a labor organization and making technical changes.

EFFECTIVE DATE: This rule is effective January 3, 2004.

FOR FURTHER INFORMATION CONTACT: John Sado, (202) 565–1661 (Federal Information Relay Service for the hearing impaired: 1–800–877–8339).

SUPPLEMENTARY INFORMATION: On September 2, 2003 at 68 FR 52168, the Board published a notice of proposed rulemaking (NPR) in this proceeding seeking comments on the Board's proposed removal of an obsolete reference and technical changes.[1] As noted in the NPR, the regulations at 49 CFR 1152.20(a)(2) provide that applicants seeking to abandon or discontinue rail service must serve their notices of intent on certain interested parties, including, under section 1152.20(a)(2)(xi), "[t]he headquarters of the Railroad Labor Executives' Association" (RLEA). Because it was the Board's understanding that RLEA no longer existed, it was proposed that section 1152.20(a)(2)(xi) be removed. The NPR noted that the regulations still provide labor interests with notice of proposed abandonments or discontinuances, because current section 1152.20(a)(2)(xiii) requires service on "[t]he headquarters of all duly certified labor organizations that represent employees on the affected rail line."[2]

The NPR also indicated that paragraph 1152.20(a)(2)(xiii) contains language that should be moved for clarity: "For the purposes of this subsection 'directly affected states' are those in which any part of the line sought to be abandoned is located." This language would be more appropriate in section 1152.20(a)(2)(ii), and the Board proposed to move the substance of that language there. Finally, NPR proposed to redesignate sections 1152.20(a)(2)(xii) and (xiii) as sections 1152.20(a)(2)(xi) and (xii), respectively.

No comments were filed in response to the NPR. Accordingly, the obsolete reference will be removed and the technical changes will be made.

The Board certifies that the proposed rule will not have a significant impact on a substantial number of small entities. This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

List of Subjects in 49 CFR Part 1152

Administrative practice and procedure, Railroads, Reporting and recordkeeping requirements, and Uniform System of Accounts.

Decided: November 24, 2003.

By the Board, Chairman Nober.

Vernon A. Williams,

Secretary.

■ For the reasons set forth in the preamble, the Surface Transportation Board amends part 1152, of title 49, chapter X, of the Code of Federal Regulations as follows:

[1] Comment was also sought on the certification that the proposed rule would not have a significant impact on a substantial number of small entities.

[2] Similar language for giving notice to labor representatives is found at sections 1121.4(h), 1150.32(e), 1150.35(c)(3), 1150.42(e), 1150.45(c)(3) and 1151.2(a)(6) concerning acquisition or operation of rail lines or feeder line applications.

PART 1152—ABANDONMENT AND DISCONTINUANCE OF RAIL LINES AND RAIL TRANSPORTATION UNDER 49 U.S.C. 10903

■ 1. The authority citation for part 1152 continues to read as follows:

Authority: 11 U.S.C. 1170; 16 U.S.C. 1247(d) and 1248; 45 U.S.C. 744; and 49 U.S.C. 701 note (1995) (section 204 of the ICC Termination Act of 1995), 721(a), 10502, 10903–10905, and 11161.

■ 2. § 1152.20 is amended by removing paragraph (a)(2)(xi) and redesignating paragraphs (a)(2)(xii) and (xiii) as paragraphs 1152.20(a)(2)(xi) and (xii), respectively.

■ 3. Revise § 1152.20(a)(2)(ii) and newly redesignated § 1152.20(a)(2)(xii) to read as follows:

§ 1152.20 Notice of intent to abandon or discontinue service.

(a) * * *

(2) * * *

(ii) The Governor (by certified mail) of each state directly affected by the abandonment or discontinuance. (For the purposes of this section "states directly affected" are those in which any part of the line sought to be abandoned is located).

* * * * *

(xii) The headquarters of all duly certified labor organizations that represent employees on the affected rail line.

* * * * *

[FR Doc. 03–29810 Filed 12–3–03; 8:45 am]

BILLING CODE 4915–00–P

Proposed Rules

Federal Register
Vol. 68, No. 233
Thursday, December 4, 2003

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

NUCLEAR REGULATORY COMMISSION

10 CFR Part 50

[Docket No. PRM–50–74]

Nuclear Energy Institute; Denial of Petition for Rulemaking

AGENCY: Nuclear Regulatory Commission.

ACTION: Petition for rulemaking: denial.

SUMMARY: The Nuclear Regulatory Commission (NRC) is denying a petition for rulemaking (PRM–50–74) submitted by the Nuclear Energy Institute (NEI or petitioner). The petitioner requested that the NRC amend its regulations regarding emergency core cooling systems to allow licensees the optional use of the 1994 American Nuclear Society (ANS) decay heat standard and to allow the use of any future NRC-approved revisions of the standard without additional rulemaking. The NRC is denying the petition primarily because an option to use best-estimate evaluation models is already available to its licensees, which would allow additional operational flexibility. Also, the requested rulemaking would reduce conservatism in an individual portion of NRC regulations without consideration of other potential overall non-conservatism within that portion of the regulations.

ADDRESSES: Publicly available documents related to this petition for rulemaking may be viewed electronically on the public computers located at the NRC's Public Document Room (PDR), O1 F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland. Documents may be copied by the PDR reproduction contractor for a fee.

These documents are also available electronically at NRC's Electronic Reading Room on the Internet at *http://www.nrc.gov/reading-rm/adams.html*. From this site, the public can gain entry into the NRC's Agencywide Document Access and Management System (ADAMS), which provides text and image files of NRC's public documents. For further information contact the PDR reference staff at 1–(800) 387–4209 or (301) 415–4737 or by e-mail to *pdr@nrc.gov*.

Selected documents, including comments, may be viewed and downloaded electronically via the NRC rulemaking web site at *http://ruleforum.llnl.gov*.

FOR FURTHER INFORMATION CONTACT: Peter C. Wen, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–2832, e-mail *pxw@nrc.gov*.

SUPPLEMENTARY INFORMATION:

Background

Section 50.46 specifies the performance criteria against which the emergency core cooling system (ECCS) must be evaluated. The criteria include the maximum peak cladding temperature, the maximum cladding oxidation thickness, the maximum total hydrogen generation, and requirements to assure a coolable core geometry and abundant long-term cooling. This regulation also states that the calculated ECCS cooling performance following postulated loss-of-coolant accidents (LOCAs) must be calculated in accordance with either a realistic (also called best-estimate) evaluation model that accounts for uncertainty or an evaluation model that conforms with the required conservative features of Appendix K evaluation models. The use of the 1971 ANS standard on decay heat calculation is one of the features required in the Appendix K ECCS evaluation models.

The Petition

On September 6, 2001, the Nuclear Energy Institute (NEI) submitted a petition for rulemaking (PRM), designated PRM–50–74. NEI proposed a rulemaking to amend Appendix K to 10 CFR part 50 to allow licensees the optional use of the 1994 ANS decay heat standard and to allow the use of any future NRC-approved revisions of the standard without additional rulemaking.

In PRM–50–74, the petitioner stated that the 1994 ANS decay heat standard incorporates more precise results and uses a statistical approach to address uncertainty. The petitioner proposed a rulemaking to amend Appendix K to 10 CFR part 50 to allow licensees the optional use of this most current consensus decay heat standard. The petitioner indicated that the amendment would (1) allow licensees to gain operating margin for ECCS equipment based on the more realistic decay heat assumptions in the 1994 ANS standard; (2) result in more effective utilization of resources in operating and maintaining the ECCS equipment; and (3) result in the potential for higher extended power uprates.

Public Comments on the Petition

The notice of receipt of the petition and request for public comment was published in the **Federal Register** (FR) on October 11, 2001 (66 FR 51884). The public comment period ended on December 26, 2001. Five letters of public comment were received in response to PRM–50–74. Four letters from industry (the Progress Energy Company, the Tennessee Valley Authority, Strategic Teaming and Resource Sharing, and the Nuclear Management Company) were in favor of the proposal, and one letter from an individual (Mr. Bob Leyse) was opposed. Mr. Leyse stated that "the entire body of ECCS evaluation models should be reviewed by the NRC rather than a piecemeal approach of selecting only those aspects that may be unduly restrictive."

Reasons for Denial

The NRC is denying PRM–50–74 primarily because § 50.46 already includes provisions for the use of best-estimate evaluation models by NRC licensees. In addition, the request would reduce conservatism in an individual portion of NRC regulations without consideration of other potential overall non-conservatism within that portion of the regulations.

The provisions of § 50.46 allow licensees use of "best-estimate" evaluation models to perform analysis of ECCS cooling performance during LOCAs. This approach provides licensees with a more accurate determination of their plants' response to a LOCA, while allowing additional operational flexibility. The best-estimate evaluation represents improved and modern techniques in analyzing LOCA behavior. Thus, the NRC prefers the use of best-estimate models, rather than the piecemeal approach to updating the Appendix K evaluation models.

A concomitant factor that influenced the NRC's position is the NRC's awareness of a number of phenomena that are known to contribute non-conservatism to the Appendix K evaluation models. These phenomena include boiling in the downcomer annulus during reflood, downcomer entrainment and inventory reduction due to steam bypass, and fuel relocation following cladding swelling during the temperature transient. The NRC believes that if changes are made in the decay heat standard, then changes would also have to be considered in other models to ensure that an appropriate level of overall conservatism is retained in the ECCS evaluation model package.

In addition, the NRC has evaluated the advantages and disadvantages of the rulemaking requested by the petitioner with respect to the four NRC Strategic Performance Goals as follows:

1. *Maintaining Safety:* The NRC believes that the requested rulemaking would not make a significant contribution to maintaining safety because the overall conservatism provided by the Appendix K evaluation models may not be appropriately accounted for if the conservatism of using the 1971 ANS decay heat standard is individually removed.

2. *Enhancing Public Confidence:* The proposed rulemaking would not enhance public confidence without an overall assessment of ECCS evaluation model conservatism. The NRC believes that if changes are made in the decay heat standard, then changes would also have to be considered in other models to ensure that an appropriate level of overall conservatism is retained in the ECCS evaluation model package.

3. *Improving Efficiency and Effectiveness:* The NRC staff believes that it would not be efficient and effective to modify the Appendix K evaluation model using a piecemeal approach when the "best-estimate" evaluation model is already available for licensees use.

4. *Reducing Unnecessary Regulatory Burden:* The NRC agrees that the proposed rule would reduce licensees' regulatory burden. However, the NRC does not agree that the associated burden is "unnecessary" in the absence of a demonstration that overall conservatism retained in the Appendix K evaluation models would remain adequate. For reasons cited in this document, the NRC denies the petition.

Dated at Rockville, Maryland, this 26th day of November, 2003.

For the Nuclear Regulatory Commission.

J. Samuel Walker,

Acting Secretary of the Commission.

[FR Doc. 03–30148 Filed 12–3–03; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–327–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 737–600, 737–700, 737–700C, 737–800, and 737–900 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Model 737–600, 737–700, 737–700C, 737–800, and 737–900 series airplanes. This proposal would require measuring the electrical resistance of the support bracket for the fire extinguisher bottle located in the left main landing gear wheel well to ensure that it does not exceed the maximum allowed resistance; and corrective actions, if necessary. This action is necessary to prevent high electrical resistance in the squib firing circuit, which could result in insufficient electrical current to fire the fire extinguisher bottle squib and discharge the fire extinguishing agent, which could lead to an uncontrolled engine fire. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by January 20, 2004.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–327–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov*. Comments sent via fax or the Internet must contain "Docket No. 2002–NM–327–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 or 2000 or ASCII text.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Doug Pegors, Aerospace Engineer; Propulsion Branch, ANM–140S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington; telephone (425) 917–6504; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2002–NM–327–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–327–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The FAA has received a report indicating that, during a routine inspection in production at Boeing, the electrical resistance of the ground studs installed on the support bracket for the fire extinguisher bottles in the left main wheel well of certain Boeing Model 737 series airplanes was found to exceed the maximum allowed level. During manufacture, the anodize coating was not removed properly from the holes in the support bracket into which the ground studs are inserted, thereby increasing the electrical resistance between the studs and the bracket. Therefore, the electrical resistance between the bracket and the grounding studs may exceed the maximum allowed resistance. This condition, if not corrected, could result in insufficient electrical current to fire the fire extinguisher bottle squib and discharge the fire extinguishing agent, which could lead to an uncontrolled engine fire.

Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Alert Service Bulletin 737–26A1118, dated October 17, 2002, which describes procedures for:

- Measuring the electrical resistance of the dual ground studs to ensure that the electrical resistance is no greater than 0.5 milliohms;
- Measuring the bond resistance from the top terminal lug of each ground stud to the adjacent structure; and
- Corrective actions, if necessary.

The corrective actions include replacing the affected ground stud with a new ground stud; reworking the ground stud; and relocating the support bracket hole; as applicable. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require accomplishment of the actions specified in the service bulletin described previously, except as discussed below.

Difference Between Proposed Rule and Service Bulletin

Because the service bulletin does not specify a corrective action to take if the bond resistance measurement found in Figure 4 of the service bulletin is greater than 1.0 milliohms, this proposed AD would require operators to rework per a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA.

Cost Impact

There are approximately 133 airplanes of the affected design in the worldwide fleet. The FAA estimates that 28 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 2 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $65 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $3,640, or $130 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this proposed AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Boeing: Docket 2002–NM–327–AD.

Applicability: Model 737–600, 737–700, 737–700C, 737–800, and 737–900 series airplanes, as listed in Boeing Alert Service Bulletin 737–26A1118, dated October 17, 2002; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent high electrical resistance in the squib firing circuit, which could result in insufficient electrical current to fire the fire extinguisher bottle squib and discharge the fire extinguishing agent, which could lead to an uncontrolled engine fire, accomplish the following:

Inspection, Rework, Replacement, Relocation and Installation

(a) Except as provided by paragraph (b) of this AD: Within 90 days after the effective date of this AD, measure the electrical resistance of the dual ground studs of the support brackets for the fire extinguisher bottle located in the left main landing gear wheel well (including the applicable corrective actions) by accomplishing all actions specified in the Accomplishment Instructions of Boeing Alert Service Bulletin 737–26A1118, dated October 17, 2002. Do the actions per the service bulletin. Any applicable corrective action must be accomplished prior to further flight.

Additional Rework

(b) If, when accomplishing the bond resistance measurement described in Figure 4 of the Boeing Alert Service Bulletin 737–26A1118, dated October 17, 2002, the resistance is found to be greater than 1.0 milliohms (0.001 ohms): Before further flight, rework per a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA.

Alternative Methods of Compliance

(c) In accordance with 14 CFR 39.19, the Manager, Seattle Aircraft Certification Office,

FAA, is authorized to approve alternative methods of compliance (AMOCs) for this AD.

Issued in Renton, Washington, on November 28, 2003.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–30192 Filed 12–3–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–183–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A319 and A320 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness directive (AD), applicable to all Airbus Model A320 series airplanes, that currently requires repetitive ultrasonic inspections to detect fatigue cracking in the wing/fuselage joint cruciform fittings, and corrective actions if necessary. This action would require repetitive ultrasonic inspections for fatigue cracking in the wing/fuselage joint cruciform fittings at a reduced inspection threshold and repetitive interval. This action also would add airplanes to the applicability of the existing AD. The actions specified by the proposed AD are intended to detect and correct fatigue cracks on the wing/fuselage joint cruciform fittings, which could result in reduced structural integrity of the wing/fuselage. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by January 5, 2004.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–183–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov*. Comments sent via fax or the Internet must contain "Docket No. 2002–NM–183–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word or 2000 or ASCII text.

The service information referenced in the proposed rule may be obtained from Airbus, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Dan Rodina, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2125; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2002–NM–183–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–183–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

On February 13, 1998, the FAA issued AD 98–04–49, amendment 39–10360 (63 FR 9934, February 27, 1998), applicable to all Airbus Model A320 series airplanes. That AD requires repetitive ultrasonic inspections to detect fatigue cracking in the wing/fuselage joint cruciform fittings, and corrective actions if necessary. That action was prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The requirements of that AD are intended to detect and correct fatigue cracks on the wing/fuselage joint cruciform fittings, which could result in reduced structural integrity of the wing/fuselage.

Actions Since Issuance of Previous Rule

The inspection threshold and repetitive intervals specified in AD 98–04–49 were based on full-scale fatigue tests. Since the issuance of that AD, the airplane manufacturer has surveyed the Model A320 series airplane fleet and found that parameters such as the weight of fuel at landing and the mean flight duration are higher than those defined for the analysis of fatigue-related tasks. Thus, the manufacturer has adjusted the reference fatigue mission. This adjustment has resulted in a reduction in the threshold and repetitive inspection intervals required by the existing AD. In addition, it has been determined that Model A319 series airplanes should also be subject to these same inspections at the reduced threshold and interval.

Explanation of Relevant Service Information

Airbus has issued Service Bulletin A320–57–1051, Revision 04, dated November 27, 2001. (The existing AD refers to Revision 01 of that service bulletin, dated March 21, 1996, as the acceptable source of service information for the actions required by that AD.) Revision 04 of the service bulletin describes procedures for repetitive ultrasonic inspections for cracking around fastener "a" on the rear section of the cruciform fitting at rib 1 on both wings. This inspection is similar to that described in Revision 01 of the service bulletin. If a suspected crack is found, the service bulletin specifies to remove the fastener and perform a rotative probe inspection of the fastener hole. If no crack is found, the service bulletin specifies to install a new fastener of the same diameter as the one that was removed. If a crack is found that measures 2.5 mm or less, the service bulletin specifies to drill the hole to remove the crack, and perform a second rotative probe inspection of the drilled hole to detect any crack. If the crack has been removed, the service bulletin specifies to install bushings and a new bolt. If a crack is found that is more than 2.5 mm, or if the second rotative probe inspection reveals that the crack is still present, the service bulletin specifies to contact the manufacturer for repair instructions. The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, classified this service bulletin as mandatory and issued French airworthiness directive 2002–340(B), dated June 26, 2002, to ensure the continued airworthiness of these airplanes in France.

FAA's Conclusions

These airplane models are manufactured in France and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would supersede AD 98–04–49 to require repetitive ultrasonic inspections to detect fatigue cracking in the wing/fuselage joint cruciform fittings, and corrective actions if necessary. This action would require repetitive inspections on additional airplanes not included in the applicability of the existing AD. The actions would be required to be accomplished in accordance with the service bulletin described previously, except as discussed below.

Differences Between Proposed AD and Service Bulletin

Although the service bulletin specifies that operators may contact the manufacturer for disposition of certain repair conditions, this proposal would require operators to repair those conditions per a method approved by either the FAA or the DGAC (or its delegated agent). In light of the type of repair that would be required to address the unsafe condition, and consistent with existing bilateral airworthiness agreements, we have determined that, for this proposed AD, a repair approved by either the FAA or the DGAC would be acceptable for compliance with this proposed AD.

Operators also should note that, although the Accomplishment Instructions of the referenced service bulletin describe procedures for reporting inspection results to Airbus, this proposed AD would not require that action.

Cost Impact

The actions that are currently required by AD 98–04–49 are applicable to 132 airplanes of U.S. registry and take approximately 2 work hours per airplane to accomplish (not including time for gaining access and closing up), at an average labor rate of $65 per work hour. Based on these figures, the cost impact of the currently required actions on U.S. operators is estimated to be $17,160, or $130 per airplane.

This new proposed AD would affect approximately 475 airplanes of U.S. registry. The new actions that are proposed in this AD action would take approximately 2 work hours per airplane to accomplish, at an average labor rate of $65 per work hour. Based on these figures, the cost impact of the proposed requirements of this AD on U.S. operators is estimated to be $61,750, or $130 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the current or proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–10360 (63 FR 9934, February 27, 1998), and by adding a new airworthiness directive (AD), to read as follows:

Airbus: Docket 2002–NM–183–AD. Supersedes AD 98–04–49, Amendment 39–10360.

Applicability: All Model A319 and A320 series airplanes, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To detect and correct fatigue cracks on the wing/fuselage joint cruciform fittings, which could result in reduced structural integrity of the wing/fuselage, accomplish the following:

Requirements of AD 98–04–49

Ultrasonic Inspection (Model A320 Series Airplanes)

(a) For Model A320 series airplanes: Prior to the accumulation of 28,000 total landings, or within 60 days after April 3, 1998 (the

effective date of AD 98–04–49, amendment 39–10360), whichever occurs later, perform an ultrasonic inspection to detect fatigue cracking in the wing/fuselage joint cruciform fittings, in accordance with Airbus Service Bulletin A320–57–1051, Revision 01, dated March 21, 1996.

(1) If no cracking is detected, repeat the inspection thereafter at intervals not to exceed 20,000 landings, until paragraph (c) of this AD is accomplished.

(2) If any crack is detected, prior to further flight, repair it in accordance with the service bulletin. Thereafter, repeat the inspection at the times specified in paragraph (a)(2)(i) or (a)(2)(ii) of this AD, as applicable.

(i) If the crack that was detected and repaired was greater than 2.5 mm: Repeat the inspection prior to the accumulation of 32,000 landings since accomplishment of the repair; and thereafter at intervals not to exceed 32,000 landings.

(ii) If the crack that was detected and repaired was less than or equal to 2.5 mm: Repeat the inspection prior to the accumulation of 28,000 landings since accomplishment of the repair; and thereafter at intervals not to exceed 20,000 landings.

New Requirements of This AD

Ultrasonic Inspection (Model A319 Series Airplanes)

(b) For Model A319 series airplanes: Perform an ultrasonic inspection to detect fatigue cracking in the wing/fuselage joint cruciform fittings, in accordance with Airbus Service Bulletin A320–57–1051, Revision 04, dated November 27, 2001. Do the initial inspection at the later of the times specified in paragraphs (b)(1) and (b)(2) of this AD. Repeat the inspection thereafter at intervals not to exceed the applicable interval specified in paragraph 1.E.(2) of the service bulletin.

(1) Prior to the accumulation of 20,000 total flight cycles or 42,000 total flight hours, whichever is first.

(2) Prior to the accumulation of 28,000 total flight cycles or within 3,500 flight cycles after the effective date of this AD, whichever is first.

Ultrasonic Inspection (Model A320 Series Airplanes)

(c) For Model A320 series airplanes: Perform an ultrasonic inspection to detect fatigue cracking in the wing/fuselage joint cruciform fittings, in accordance with Airbus Service Bulletin A320–57–1051, Revision 04, dated November 27, 2001, at the later of the times specified in paragraphs (c)(1) and (c)(2) of this AD, except as required by paragraph (f) of this AD. Accomplishment of the inspection required by this paragraph terminates the repetitive inspections required by paragraph (a) of this AD. Except as required by paragraph (e) of this AD, repeat the ultrasonic inspection at intervals not to exceed the applicable interval specified in paragraph 1.E.(2) of the service bulletin.

(1) Prior to the accumulation of 20,000 total flight cycles or 42,000 total flight hours, whichever is first.

(2) Prior to the accumulation of 28,000 total flight cycles or within 3,500 flight cycles after the effective date of this AD, whichever is first.

Cracking: Corrective Action and Repeat Inspections

(d) If any crack is found during any inspection required by paragraph (b) or (c) of this AD: Before further flight, do all applicable actions in paragraphs B.(1)(b), C.(1), D., and E. (including removing the fastener, performing a rotative probe inspection to confirm the crack or determine the size of the crack, and accomplishing applicable corrective actions) of the Accomplishment Instructions of Airbus Service Bulletin A320–57–1051, Revision 04, dated November 27, 2001, except as provided by paragraph (e) of this AD.

(e) If any crack is found during any inspection required by this AD, and the service bulletin recommends contacting Airbus for appropriate action: Before further flight, repair and perform repetitive inspections per a method and at a repetitive inspection interval approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate; or the Direction Générale de l'Aviation Civile (DGAC) (or its delegated agent).

Model A320 Series Airplanes Repaired Previously

(f) For Model A320 series airplanes on which a crack measuring more than 2.5 mm was repaired prior to the effective date of this AD per Airbus Service Bulletin A320–57–1051, Revision 01, dated March 21, 1996: Perform repetitive inspections per a method and at an interval approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate; or the Direction Générale de l'Aviation Civile (DGAC) (or its delegated agent).

Reporting of Inspection Results Not Required

(g) Where the Accomplishment Instructions of Airbus Service Bulletin A320–57–1051, Revision 04, dated November 27, 2001, describe procedures for reporting inspection results to Airbus, this AD does not require such reporting.

Alternative Methods of Compliance

(h) In accordance with 14 CFR 39.19, the Manager, International Branch, ANM–116, is authorized to approve alternative methods of compliance for this AD.

Note 1: The subject of this AD is addressed in French airworthiness directive 2002–340(B), dated June 26, 2002.

Issued in Renton, Washington, on November 28, 2003.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–30191 Filed 12–3–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–233–AD]

RIN 2120–AA64

Airworthiness Directives; Dassault Model Falcon 2000 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Dassault Model Falcon 2000 series airplanes. This proposal would require modification of the forward ribs of the left and right engine pylons to plug holes left open during production. This action is necessary to prevent fuel leakage into a "hot" section of the engine, and consequent propagation of an uncontained engine fire. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by January 5, 2004.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–233–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov*. Comments sent via fax or the Internet must contain "Docket No. 2002–NM–233–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 or 2000 or ASCII text.

The service information referenced in the proposed rule may be obtained from Dassault Falcon Jet, P.O. Box 2000, South Hackensack, New Jersey 07606. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Tom Rodriguez, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–1137; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2002–NM–233–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–233–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, notified the FAA that an unsafe condition may exist on certain Dassault Model Falcon 2000 series airplanes. The DGAC advises that during production two 4-millimeter holes in the forward ribs of the left and right engine pylons were not plugged, reducing their capability to operate as firewalls. If there is heavy fuel leakage at the fuselage-nacelle connections, fuel could drain through the holes into "hot" zones of the engines. This condition, if not corrected, could result in propagation of an uncontained engine fire.

Explanation of Relevant Service Information

Dassault has issued Service Bulletin F2000–248, dated August 12, 2002, which describes procedures for modifying the forward ribs of the left and right engine pylons by plugging the two holes in each pylon. The modification procedures include using rivets installed with an interlay of sealing compound to plug the holes. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition. The DGAC classified this service bulletin as mandatory and issued French airworthiness directive 2002–413(B), dated August 7, 2002, to ensure the continued airworthiness of these airplanes in France.

FAA's Conclusions

This airplane model is manufactured in France and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of the actions specified in the service bulletin described previously, except as discussed below.

Difference Between the Proposed Rule and the Service Bulletin

Although the Accomplishment Instructions of the service bulletin specify to submit information to the manufacturer, this proposed AD would not include such a requirement.

Cost Impact

The FAA estimates that 119 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 1 work hour per airplane to accomplish the proposed actions, and that the average labor rate is $65 per work hour. The cost of required parts would be minimal. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $7,735, or $65 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part

39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Dassault Aviation: Docket 2002–NM–233–AD.

Applicability: Model Falcon 2000 series airplanes on which Dassault Modification M2111 has not been installed, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent fuel leakage into a "hot" section of the engine, and consequent propagation of an uncontained engine fire, accomplish the following:

Modification of the Engine Pylons

(a) Within 7 months after the effective date of this AD, modify the forward ribs of the left and right engine pylons by plugging the two 4-millimeter holes in each rib in accordance with the Accomplishment Instructions of Dassault Service Bulletin F2000–248, dated August 12, 2002. Although the service bulletin specifies to submit certain information to the manufacturer, this AD does not include such a requirement.

Alternative Methods of Compliance

(b) In accordance with 14 CFR 39.19, the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, is authorized to approve alternative methods of compliance for this AD.

Note 1: The subject of this AD is addressed in French airworthiness directive 2002–413(B), dated August 7, 2002.

Issued in Renton, Washington, on November 28, 2003.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–30190 Filed 12–3–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF COMMERCE

Patent and Trademark Office

37 CFR Part 1

[Docket No.: 2003–P–029]

RIN 0651–AB71

Revision of Patent Term Extension and Patent Term Adjustment Provisions Related to Decisions by the Board of Patent Appeals and Interferences

AGENCY: United States Patent and Trademark Office, Commerce.

ACTION: Notice of proposed rule making.

SUMMARY: The patent term extension provisions of the Uruguay Round Agreements Act (URAA) and the patent term adjustment provisions of the American Inventors Protection Act of 1999 (AIPA) each provide for the possibility of patent term extension or adjustment if the issuance of the patent was delayed due to review by the Board of Patent Appeals and Interferences (BPAI) or by a Federal court and the patent was issued pursuant to or under a decision in the review reversing an adverse determination of patentability. The United States Patent and Trademark Office (Office) is proposing to revise the rules of practice in patent cases to indicate that under certain circumstances a remand by the Board of Patent Appeals and Interferences shall be considered a decision in the review reversing an adverse determination of patentability for purposes of patent term extension or patent term adjustment.

DATES: *Comment deadline date:* To be ensured of consideration, written comments must be received on or before January 5, 2004. No public hearing will be held.

ADDRESSES: Comments should be sent by electronic mail message over the Internet addressed to *AB71.Comments@uspto.gov*. Comments may also be submitted by mail addressed to: Box Comments—Patents, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313–1450, or by facsimile to (703) 746–3261, marked to the attention of Kery A. Fries. Although comments may be submitted by mail or facsimile, the Office prefers to receive comments via the Internet. If comments are submitted by mail, the Office prefers that the comments be submitted on a DOS formatted 3½ inch disk accompanied by a paper copy.

The comments will be available for public inspection at the Office of the Commissioner for Patents, located in Crystal Park 2, Suite 910, 2121 Crystal Drive, Arlington, Virginia, and will be available through anonymous file transfer protocol (ftp) via the Internet (address: *http://www.uspto.gov*). Since comments will be made available for public inspection, information that is not desired to be made public, such as an address or phone number, should not be included in the comments.

FOR FURTHER INFORMATION CONTACT: Kery A. Fries, Legal Advisor, Office of Patent Legal Administration, by telephone at (703) 305–1383, by mail addressed to: Box Comments—Patents, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313–1450, or by facsimile to (703) 746–3240, marked to the attention of Kery A. Fries.

SUPPLEMENTARY INFORMATION: Section 532(a) of the URAA (Pub. L. 103–465, 108 Stat. 4809 (1994)) amended 35 U.S.C. 154 to provide that the term of a patent ends on the date that is twenty years from the filing date of the application, or the earliest filing date for which a benefit is claimed under 35 U.S.C. 120, 121, or 365(c). Public Law 103–465 also contained provisions, codified at 35 U.S.C. 154(b), for patent term extension due to certain examination delays. The Office implemented the patent term extension provisions of the URAA in a final rule published in April of 1995. *See Changes to Implement 20-Year Patent Term and Provisional Applications*, 60 FR 20195 (Apr. 25, 1995), 1174 *Off. Gaz. Pat. Office* 15 (May 2, 1995) (final rule).

The AIPA further amended 35 U.S.C. 154(b) to include additional bases for patent term extension (termed "patent term adjustment" in the AIPA). Original utility and plant patents issuing from applications filed on or after May 29, 2000, may be eligible for patent term adjustment if issuance of the patent is delayed due to one or more of the enumerated administrative delays listed in 35 U.S.C. 154(b)(1). The Office implemented the patent term adjustment provisions of the AIPA in a final rule published in September of 2000. *See Changes to Implement Patent Term Adjustment Under Twenty-Year Patent Term*, 65 FR 56365 (Sept. 18, 2000), 1239 *Off. Gaz. Pat. Office* 14 (Oct. 3, 2000) (final rule). The patent term adjustment provisions of the AIPA apply to original (*i.e.*, non-reissue) utility and plant applications filed on or after May 29, 2000. *See Changes to Implement Patent Term Adjustment Under Twenty-Year Patent Term*, 65 FR at 56367, 1239 *Off. Gaz. Pat. Office* at 14–15. The patent term extension provisions of the URAA (for delays due to secrecy order, interference or successful appellate review) continued to apply to utility and plant applications

filed on or after June 7, 1995, and before May 29, 2000. *See id.*

The Office is proposing to amend the rules of practice in patent cases to indicate that certain remands by the BPAI shall be considered "a decision in the review reversing an adverse determination of patentability" for patent term adjustment and patent term extension purposes. Specifically, if an application is remanded by a panel of the BPAI, and a notice of allowance under § 1.311 is mailed without further review by the BPAI, without further amendment of the application, and without other action by the applicant, the remand shall (if the proposed change is adopted) be considered a decision reversing an adverse determination of patentability for patent term adjustment and patent term extension purposes. The phrase "remanded by a panel" of the BPAI means that the application was remanded by a panel comprised of members of the BPAI as defined in 35 U.S.C. 6. The phrase "remanded by a panel" of the BPAI does not pertain to applications containing a remand or order returning an appeal to the examiner issued by a BPAI administrator. *See Revised Docketing Procedures for Appeals Arriving at the Board of Patent Appeals and Interferences*, 1260 *Off. Gaz. Pat. Office* 18 (July 2, 2002).

The Office initially took the position that a remand by a BPAI panel was not a "decision" within the meaning of 35 U.S.C. 154(b)(1)(A)(iii), much less "a decision reversing an adverse determination of patentability" as that phrase is used in 35 U.S.C. 154(b)(1)(C)(iii). *See Changes to Implement Patent Term Adjustment Under Twenty-Year Patent Term*, 65 FR at 56369, 1239 *Off. Gaz. Pat. Office* at 16. The Office has subsequently determined that there are a number of BPAI panel remands that convey the weakness in the examiner's adverse patentability determination in a manner tantamount to a decision reversing the adverse patentability determination. Such a BPAI panel remand generally results in the examiner *sua sponte* deciding to withdraw the rejections and allow the application without any intervening action by the applicant, rather than responding to the issues raised in the remand and returning the application to the BPAI for decisions reversing the adverse patentability determinations. The change being proposed in this notice addresses the situation in which an examiner responds to a remand by a BPAI panel by *sua sponte* withdrawing all the rejections and allowing the application, rather than responding to the issues raised in the remand and returning the application to the BPAI for a decision on the appeal. In this situation, the BPAI panel remand shall (if the proposed change is adopted) be considered "a decision in the review reversing an adverse determination of patentability" for patent term extension and patent term adjustment purposes. If, however, the application is allowed as a result of a further amendment, or after any other action by the applicant (*e.g.*, the filing of a paper containing argument, an affidavit or declaration, or an information disclosure statement), without being returned to the BPAI for further review, then such remand shall not be considered "a decision in the review reversing an adverse determination of patentability" for patent term extension and patent term adjustment purposes.

If the patent issues after a remand that is considered "a decision in the review reversing an adverse determination of patentability," the BPAI panel remand is the "final decision in favor of the applicant" for purposes of a patent term extension or adjustment calculation under § 1.701(c)(3) or § 1.703(e) (as applicable). The period of extension or adjustment calculated under § 1.701(c)(3) or § 1.703(e) (as applicable) would equal the number of days in the period beginning on the date on which a notice of appeal to the BPAI was filed under 35 U.S.C. 134 and § 1.191 and ending on the mailing date of the BPAI panel remand.

Discussion of Specific Rules

Section 1.701: Section 1.701(a)(3) is proposed to be amended by adding the following sentence: If an application is remanded by a panel of the Board of Patent Appeals and Interferences, and a notice of allowance under § 1.311 is mailed without further review by the Board of Patent Appeals and Interferences, without further amendment of the application, and without other action by the applicant, the remand shall be considered a decision reversing an adverse determination of patentability as that phrase is used in 35 U.S.C. 154(b)(2) as amended by section 532(a) of the Uruguay Round Agreements Act, Public Law 103–465, 108 Stat. 4809, 4983–85 (1994). Section 1.701(a)(3) is also proposed to be amended to change "decision reversing an adverse determination of patentability" to "decision in the review reversing an adverse determination of patentability" for consistency with 35 U.S.C. 154(b)(2) as amended by section 532(a) of the URAA.

Section 1.702: Section 1.702(e) is proposed to be amended by adding the following sentence: If an application is remanded by a panel of the Board of Patent Appeals and Interferences, and a notice of allowance under § 1.311 is mailed without further review by the Board of Patent Appeals and Interferences, without further amendment of the application, and without other action by the applicant, the remand shall be considered a decision by the Board of Patent Appeals and Interferences as that phrase is used in 35 U.S.C. 154(b)(1)(A)(iii) and a decision in the review reversing an adverse determination of patentability as that phrase is used in 35 U.S.C. 154(b)(1)(C)(iii). Section 1.702(e) is also proposed to be amended to change "decision reversing an adverse determination of patentability" to "decision in the review reversing an adverse determination of patentability" for consistency with 35 U.S.C. 154(b)(1)(C)(iii).

Rule Making Considerations

Regulatory Flexibility Act: The Deputy General Counsel for General Law, United States Patent and Trademark Office, has certified to the Chief Counsel for Advocacy, Small Business Administration, that the changes proposed in this notice (if adopted) would not have a significant impact on a substantial number of small entities (Regulatory Flexibility Act, 5 U.S.C. 605(b)). The provisions of the Regulatory Flexibility Act relating to the preparation of a flexibility analysis are not applicable to this rule making because the changes proposed in this notice will not have a significant economic impact on a substantial number of small entities. The changes proposed in this notice would (if adopted) only change the manner in which the Office makes its patent term adjustment determination in applications that have been allowed under certain circumstances following a remand by the BPAI. The changes proposed in this notice would impose no additional fees or requirements on patent applicants.

Executive Order 13132: This rule making does not contain policies with federalism implications sufficient to warrant preparation of a Federalism Assessment under Executive Order 13132 (Aug. 4, 1999).

Executive Order 12866: This rule making has been determined to be not significant for purposes of Executive Order 12866 (Sept. 30, 1993).

Paperwork Reduction Act: This notice involves information collection requirements which are subject to

review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). The collection of information involved in this notice has been reviewed and previously approved by OMB under OMB control number 0651–0020. The United States Patent and Trademark Office is not resubmitting an information collection package to OMB for its review and approval because the changes in this notice do not affect the information collection requirements associated with the information collection under OMB control number 0651–0020.

The title, description and respondent description of this information collection is shown below with an estimate of the annual reporting burdens. Included in the estimate is the time for reviewing instructions, gathering and maintaining the data needed, and completing and reviewing the collection of information. The changes in this notice merely set forth the circumstances under which the Office will consider a remand by the Board of Patent Appeals and Interferences to be a decision in the review reversing an adverse determination of patentability for purposes of patent term extension and patent term adjustment.

OMB Number: 0651–0020.

Title: Patent Term Extension.

Form Numbers: None.

Type of Review: Approved through October of 2004.

Affected Public: Individuals or Households, Business or Other For-Profit Institutions, Not-for-Profit Institutions, Farms, Federal Government and State, Local and Tribal Governments.

Estimated Number of Respondents: 26,858.

Estimated Time Per Response: Between 1 and 25 hours.

Estimated Total Annual Burden Hours: 30,903 hours.

Needs and Uses: The information supplied to the United States Patent and Trademark Office by an applicant requesting reconsideration of a patent term adjustment determination under 35 U.S.C. 154(b) (§ 1.702 *et seq.*) is used by the United States Patent and Trademark Office to determine whether its determination of patent term adjustment under 35 U.S.C. 154(b) is correct, and whether the applicant is entitled to reinstatement of reduced patent term adjustment. The information supplied to the United States Patent and Trademark Office by an applicant seeking a patent term extension under 35 U.S.C. 156 (§ 1.710 *et seq.*) is used by the United States Patent and Trademark Office, the Department of Health and Human Services, and the Department of Agriculture to determine the eligibility of a patent for extension and to determine the period of any such extension. The applicant can apply for patent term and interim extensions, petition the Office to review final eligibility decisions, withdraw patent term applications, and declare his or her eligibility to apply for a patent term extension.

Comments are invited on: (1) Whether the collection of information is necessary for proper performance of the functions of the agency; (2) the accuracy of the agency's estimate of the burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information to respondents.

Interested persons are requested to send comments regarding these information collections, including suggestions for reducing this burden, to Robert J. Spar, Director, Office of Patent Legal Administration, Commissioner for Patents, PO Box 1450, Alexandria, VA 22313–1450, or to the Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street, NW., Washington, DC 20503, Attention: Desk Officer for the United States Patent and Trademark Office.

Notwithstanding any other provision of law, no person is required to respond to nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a currently valid OMB control number.

List of Subjects in 37 CFR Part 1

Administrative practice and procedure, Courts, Freedom of Information, Inventions and patents, Reporting and record keeping requirements, Small Businesses.

For the reasons set forth in the preamble, 37 CFR Part 1 is proposed to be amended as follows:

PART 1—RULES OF PRACTICE IN PATENT CASES

1. The authority citation for 37 CFR Part 1 continues to read as follows:

Authority: 35 U.S.C. 2(b)(2).

2. Section 1.701 is amended by revising paragraph (a)(3) to read as follows:

§ 1.701 Extension of patent term due to examination delay under the Uruguay Round Agreements Act (original applications, other than designs, filed on or after June 8, 1995, and before May 29, 2000).

(a) * * *

(3) Appellate review by the Board of Patent Appeals and Interferences or by a Federal court under 35 U.S.C. 141 or 145, if the patent was issued pursuant to a decision in the review reversing an adverse determination of patentability and if the patent is not subject to a terminal disclaimer due to the issuance of another patent claiming subject matter that is not patentably distinct from that under appellate review. If an application is remanded by a panel of the Board of Patent Appeals and Interferences, and a notice of allowance under § 1.311 is mailed without further review by the Board of Patent Appeals and Interferences, without further amendment of the application, and without other action by the applicant, the remand shall be considered a decision in the review reversing an adverse determination of patentability as that phrase is used in 35 U.S.C. 154(b)(2) as amended by section 532(a) of the Uruguay Round Agreements Act, Public Law 103–465, 108 Stat. 4809, 4983–85 (1994).

* * * * *

3. Section 1.702 is amended by revising paragraph (e) to read as follows:

§ 1.702 Grounds for adjustment of patent term due to examination delay under the Patent Term Guarantee Act of 1999 (original applications, other than designs, filed on or after May 29, 2000).

* * * * *

(e) *Delays caused by successful appellate review.* Subject to the provisions of 35 U.S.C. 154(b) and this subpart, the term of an original patent shall be adjusted if the issuance of the patent was delayed due to review by the Board of Patent Appeals and Interferences under 35 U.S.C. 134 or by a Federal court under 35 U.S.C. 141 or 145, if the patent was issued under a decision in the review reversing an adverse determination of patentability. If an application is remanded by a panel of the Board of Patent Appeals and Interferences, and a notice of allowance under § 1.311 is mailed without further review by the Board of Patent Appeals and Interferences, without further amendment of the application, and without other action by the applicant, the remand shall be considered a decision by the Board of Patent Appeals and Interferences as that phrase is used in 35 U.S.C. 154(b)(1)(A)(iii) and a decision in the review reversing an adverse determination of patentability as that phrase is used in 35 U.S.C. 154(b)(1)(C)(iii).

* * * * *

Dated: November 24, 2003.

Jon W. Dudas,

Deputy Under Secretary of Commerce for Intellectual Property and Deputy Director of the United States Patent and Trademark Office.

[FR Doc. 03–30151 Filed 12–3–03; 8:45 am]

BILLING CODE 3510–16–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 291–0424b; FRL–7590–5]

Revisions to the California State Implementation Plan, Ventura County Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve revisions to the Ventura County Air Pollution Control District (VCAPCD) portion of the California State Implementation Plan (SIP). These revisions concern volatile organic compound (VOC) emissions from adhesives and sealants. We are proposing to approve a local rule to regulate these emission sources under the Clean Air Act as amended in 1990 (CAA or the Act).

DATES: Any comments on this proposal must arrive by January 5, 2004.

ADDRESSES: Send comments to Andy Steckel, Rulemaking Office Chief (AIR–4), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901 or e-mail to *steckel.andrew@epa.gov*, or submit comments at *http://www.regulations.gov*.

You can inspect copies of the submitted SIP revisions, EPA's technical support document (TSD), and public comments at our Region IX office during normal business hours by appointment. You may also see copies of the submitted SIP revisions by appointment at the following locations:

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 1001 "I" Street, Sacramento, CA 95814.

Ventura County Air Pollution Control District, 669 County Square Drive, 2nd Floor, Ventura, CA 93003.

A copy of the rule may also be available via the Internet at *http://www.arb.ca.gov/drdb/drdbltxt.htm*. Please be advised that this is not an EPA Web site and may not contain the same version of the rule that was submitted to EPA.

FOR FURTHER INFORMATION CONTACT: Yvonne Fong, EPA Region IX, (415) 947–4117, *fong.yvonnew@epa.gov*.

SUPPLEMENTARY INFORMATION: This proposal addresses the following local rule: VCAPCD 74.20. In the Rules and Regulations section of this **Federal Register**, we are approving this local rule in a direct final action without prior proposal because we believe these SIP revisions are not controversial. If we receive adverse comments, however, we will publish a timely withdrawal of the direct final rule and address the comments in subsequent action based on this proposed rule.

We do not plan to open a second comment period, so anyone interested in commenting should do so at this time. If we do not receive adverse comments, no further activity is planned. For further information, please see the direct final action.

Dated: November 7, 2003.

Keith Takata,

Acting Regional Administrator, Region IX.

[FR Doc. 03–30167 Filed 12–3–03; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 171, 173, 174, 176, and 177

[Docket No. RSPA–03–16370 (HM–233)]

RIN 2137–AD84

Hazardous Materials; Incorporation of Exemptions Into Regulations

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: RSPA proposes to amend the Hazardous Materials Regulations to incorporate into the regulations the provisions of certain widely used exemptions which have established a history of safety and which may be converted into regulations for general use. We are also making minor revisions to the requirements for use of packagings authorized under exemptions. The proposed changes would provide wider access to the benefits of the provisions granted in these exemptions and eliminate the need for the current exemption holders to reapply for renewal of the exemption, thus reducing paperwork burdens and facilitating commerce while maintaining an acceptable level of safety.

DATES: Comments must be received by February 6, 2004.

ADDRESSES: You may submit comments [identified by DOT DMS Docket Number RSPA–03–16370 (HM–233)] by any of the following methods:

- Web Site: *http://dms.dot.gov*. Follow the instructions for submitting comments on the DOT electronic docket site.
- Fax: 202–493–2251.
- Mail: Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, PL–401, Washington, DC 20590–0001.
- Hand Delivery: Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- Federal eRulemaking Portal: Go to *http://www.regulations.gov*. Follow the online instructions for submitting comments.

Instructions: All submissions must include the agency name and docket number or Regulatory Identification Number (RIN) for this rulemaking. For detailed instructions on submitting comments and additional information on the rulemaking process, see the Public Participation heading of the Supplementary Information section of this document. Note that all comments received will be posted, without change, to *http://dms.dot.gov* including any personal information provided. Please see the Privacy Act heading under Regulatory Analyses and Notices.

Docket: For access to the docket to read background documents and comments received, go to *http://dms.dot.gov* at any time or to Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Gigi Corbin, Office of Hazardous Materials Standards, (202) 366–8553 or Diane LaValle, Office of Hazardous Materials Exemptions and Approvals, (202) 366–4535, Research and Special Programs Administration, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590–0001.

SUPPLEMENTARY INFORMATION:

I. Background

The Research and Special Programs Administration (RSPA) (hereafter, "we" or "us") is proposing amendments to the Hazardous Materials Regulations

(HMR; 49 CFR parts 171–180) to incorporate a number of changes based on existing exemptions. This rulemaking is part of an ongoing effort to identify commonly used exemptions that have an established history of safety and may be converted into regulations. Adoption of these exemptions as rules of general applicability will provide wider access to benefits of the provisions granted in these exemptions. Additionally, these proposed changes will eliminate the need for the current holders to reapply for extension of the exemptions every two years and for us to process these renewal requests. In addition, we are proposing minor revisions to the requirements for use of packagings authorized under exemptions. We have identified the following subjects as suitable for incorporation into this notice of proposed rulemaking:

Salvage cylinders: The use of non-DOT specification salvage cylinders for the overpacking and transportation in commerce of damaged or leaking cylinders of certain pressurized and non-pressurized hazardous materials has been authorized under various exemptions for several years. The exemptions affected are DOT–E 9507, 9781, 9991, 10022, 10110, 10151, 10323, 10372, 10504, 10519, 10789,10987, 11257, 11459, 12676, 12698, 12790, and 12898. This proposal and also responds to a petition for rulemaking (P–1168) submitted by the Chlorine Institute, Inc.

Meter provers: A mechanical displacement meter prover is a mechanical device, permanently mounted on a truck or trailer, consisting of a piping system that is used to calibrate the accuracy and performance of meters that measure the quantity of product being pumped or transferred at facilities such as drilling locations, refineries, tank farms and loading racks. Exemptions provide relief from both bulk and non-bulk specification packaging requirements for mechanical displacement meter provers that are either truck or trailer mounted. The hazardous materials provided for are in Class 3 and Division 2.1. The exemptions affected are DOT–E 8278, 9004, 9048, 9162, 9287, 9305, 9352, 10228, 10596, 10765, 12047, and 12808.

Segregation: Exemptions provide relief from the segregation requirements in § 177.848 which prohibit storage, loading, and transportation of (1) cyanides, cyanide mixtures or solutions with acids; and (2) Division 4.2 materials with Class 8 liquids, on the same transport vehicle. The exemptions affected are DOT–E 9723, 9769, 10441, 10933, 11153, and 11294.

II. Public Participation

Comments should identify the docket number (RSPA–03–16370) and, if sent by mail, comments are to be submitted in duplicate. Persons wishing to receive confirmation of receipt of their comments must include a self-addressed stamped postcard. Internet users may access all comments received by the Department of Transportation at *http://dms.dot.gov*.

The following is a section-by-section summary of the proposed changes.

Section-by-Section Review

Part 171

Section 171.7

We are proposing to incorporate by reference Chapters II, III, IV, V and VI of the American Society of Mechanical Engineers (ASME) "Pipeline Transportation Systems for Liquid Hydrocarbons and other Liquids," ASME B31.4–1998 Edition. See the § 173.3 preamble discussion.

Part 173

Section 173.3

We are proposing to authorize the use of salvage cylinders for overpacking a damaged or leaking cylinder containing materials other than Class 1 or 7 or acetylene. Salvage cylinders must be designed, constructed and marked in accordance with Section VIII, Division I of the ASME Code. Salvage cylinders are limited to a maximum capacity of 450 L (119 gallons), and must be limited in pressure and volume so that they do not exceed the maximum allowable working pressure if the damaged cylinder contained within totally discharges. We have authorized the use of salvage cylinders under exemptions for several years with a safe and satisfactory transportation experience. Materials in Classes 1 and 7 and acetylene are not authorized under the terms of these exemptions; therefore, we have no transportation experience and are not including them in the proposal. Salvage cylinders must be retested in accordance with the Compressed Gas Association's (CGA) Pamphlet C–6; however, because a salvage cylinder is not a DOT specification cylinder, the requirement for a Requalification Identification Number (RIN) does not apply.

Section 173.5a

We are proposing to editorially revise the requirements in § 173.5a and redesignate the current requirements as paragraph (a). We are also proposing to add a new paragraph (b) to include provisions for the transportation of mechanical displacement meter provers. We have authorized the transportation of mechanical displacement meter provers under exemptions for several years with a safe and satisfactory transportation experience. We are proposing to except mechanical displacement meter provers from the specification packaging requirements when: (1) They have a capacity not over 1,000 gallons; (2) they are permanently mounted on a truck chassis or a trailer; and (3) they contain only the residue of a Class 3 or Division 2.1 material. A mechanical displacement meter prover must be designed and constructed in accordance with certain provisions specified in the ASME Standard B31.4, and is subject to periodic visual inspection and hydrostatic retesting.

Section 173.12

Currently, § 173.12 authorizes the transportation of lab packs for disposal and recovery by highway only. However, under certain exemptions lab packs have been authorized to be transported by rail and cargo vessel. Lab packs are combination packagings used for the transportation of waste materials in Class or Division 3, 4.1, 4.2, 4.3, 5.1, 6.1, 8 or 9. Lab packs are excepted from the specification packaging requirements for combination packagings if packaged in accordance with § 173.12(b). We are proposing to amend paragraph (b) to allow lab packs to also be transported for disposal and recovery by rail and cargo vessel.

We are proposing to add a new paragraph (e) in § 173.12 to authorize the transportation of waste cyanides and waste cyanide mixtures or solutions with acids under certain conditions. Currently, the HMR prohibit the loading, storage and transportation of cyanides and cyanide mixtures or solutions on the same transport vehicle with acids, if a mixture of the materials would generate hydrogen cyanide (see § 177.848(c)). Transportation of these materials on the same transport vehicle has been authorized under the terms of numerous exemptions with certain packaging and segregation requirements with a satisfactory and safe transportation experience. The exemptions affected are DOT–E 9723, 9769, 10441, and 10933.

We are also proposing to authorize the transportation of waste Division 4.2 materials with Class 8 liquids under certain conditions. Storage, loading and transportation of Division 4.2 materials with Class 8 liquids on the same transport vehicle or storage facility is currently prohibited by the HMR. However, we have authorized the transportation of these materials on the same transport vehicle under the exemption program under certain conditions with a safe and satisfactory transportation experience. The exemptions affected are DOT–E 11153 and 11294.

Section 173.13

Section 173.13 excepts Class or Division 3, 4.1, 4.2, 4.3, 5.1, 6.1, 8 or 9 materials from labeling and placarding requirements of the HMR if the material is packaged in accordance with the provisions of this section. The current exception applies to hazardous materials being transported by motor vehicle, rail car, or cargo aircraft. For transportation by cargo aircraft, the hazardous material must also be permitted to be transported on cargo aircraft in column (9B) of the Hazardous Materials Table (HMT). Section 173.13 restricts the net quantity per inner packaging to 1 L (0.3 gallon) for liquids and 2.85 kg (6.25 lbs.) for solids and requires triple packaging which exceeds the packaging standard currently authorized. For many years, we have also authorized transportation by passenger aircraft with certain limitations with a safe and satisfactory transportation experience. The affected exemptions are DOT E–7891, 8249, 9168, 10672, 10962, 10977, 11248, 12177, 12230, and 12401. Therefore, we are proposing to expand the exception to include transportation by passenger aircraft with certain limitations for materials that are permitted to be transported on passenger aircraft in Column (9A) of the HMT. The proposed exception provides the same level of safety as was previously provided under the exemption program.

Section 173.22a

We are proposing to revise paragraph (b) of § 173.22a by removing the requirement that a copy of each exemption that authorizes use of a packaging must be maintained at each facility where the package is being used in connection with the transportation of a hazardous material. Currently, the "Special Provisions" section of each exemption states where the exemption must be maintained, if we believe it is necessary. We believe that such a requirement should be handled on a case-by-case basis and see no need for an across-the-board requirement in the HMR. This proposal also responds to a petition for rulemaking (P–1293) submitted by W.W. Grainger, Inc. We are also proposing to revise paragraph (c) of § 173.22a to clarify that a "current" copy of an exemption must be provided to the carrier by each person offering hazardous materials under the terms of an exemption when the exemption contains requirements that apply to the carrier. Additionally, we are proposing to add the website address where a copy of an exemption can be obtained.

Part 174

Section 174.81

We are proposing to revise paragraph (c) by adding a cross-reference to § 173.12(e) for cyanides, cyanide mixtures or solutions as well as Division 4.2 materials. See § 173.12 preamble discussion. We are also proposing to editorially revise paragraph (d) for clarity.

Part 176

Section 176.83

We are proposing to add a new paragraph (a)(11) to reference a segregation exception in § 173.12(e) for lab packs containing cyanides and cyanide mixtures or solutions transported with acids, and for Division 4.2 materials in lab packs transported with Class 8 liquids. See § 173.12 preamble discussion.

Section 176.84

We are proposing to add a Note to paragraph (b), Code "52" cross-referencing § 173.12(e) for cyanides and cyanide mixtures or solutions in lab packs. See § 173.12 preamble discussion.

Part 177

Section 177.848

We are proposing to revise paragraph (c) by adding a cross-reference to § 173.12(e) for cyanides, cyanide mixtures or solutions as well as Division 4.2 materials. See § 173.12 preamble discussion. We are also proposing to editorially revise paragraph (d) for clarity.

III. Regulatory Analyses and Notices

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

This proposed rule is not considered a significant regulatory action under section 3(f) and was not reviewed by the Office of Management and Budget (OMB). The proposed rule is not considered a significant rule under the Regulatory Policies and Procedures order issued by the Department of Transportation [44 FR 11034]. The costs and benefits of this proposed rule are considered to be so minimal as to not warrant preparation of a regulatory impact analysis or a regulatory evaluation. The provisions of this proposed rule provide a relaxation of the regulations and, as such, would impose little or no additional costs to affected industry.

B. Executive Order 13132

This proposed rule was analyzed in accordance with the principles and criteria contained in Executive Order 13132 ("Federalism"). This proposed rule would preempt state, local and Indian tribe requirements but does not propose any regulation that has substantial direct effects on the states, the relationship between the national government and the states, or the distribution of power and responsibilities among the various levels of government. Therefore, the consultation and funding requirements of Executive Order 13132 do not apply.

Federal hazardous material transportation law, 49 U.S.C. 5101–5127, contains an express preemption provision (49 U.S.C. 5125(b)) preempting state, local, and Indian tribe requirements on certain covered subjects. Covered subjects are:

(1) The designation, description, and classification of hazardous materials;

(2) The packing, repacking, handling, labeling, marking, and placarding of hazardous materials;

(3) The preparation, execution, and use of shipping documents related to hazardous materials and requirements related to the number, contents, and placement of those documents;

(4) The written notification, recording, and reporting of the unintentional release in transportation of hazardous; or

(5) The design, manufacture, fabrication, marking, maintenance, reconditioning, repair, or testing of a packaging or container represented, marked, certified, or sold as qualified for use in transporting hazardous material.

This proposed rule concerns classification, packaging, marking, labeling, and handling of hazardous materials, among other covered subjects. If adopted as final, this rule would preempt any state, local, or Indian tribe requirements concerning these subjects unless the non-Federal requirements are "substantively the same" (see 49 CFR 107.202(d)) as the Federal requirements.

Federal hazardous materials transportation law provides at 49 U.S.C. 5125(b)(2) that if RSPA issues a regulation concerning any of the covered subjects, RSPA must determine and publish in the **Federal Register** the effective date of Federal preemption. The effective date may not be earlier than the 90th day following the date of issuance of the final rule and not later than two years after the date of issuance.

RSPA proposes the effective date of federal preemption be 90 days from publication of a final rule in this matter in the **Federal Register**.

C. Executive Order 13175

This proposed rule was analyzed in accordance with the principles and criteria contained in Executive Order 13175 ("Consultation and Coordination with Indian Tribal Governments"). Because this proposed rule does not have tribal implications, does not impose substantial direct compliance costs on Indian tribal governments, and does not preempt tribal law, the funding and consultation requirements of Executive Order 13175 do not apply, and a tribal summary impact statement is not required.

D. Regulatory Flexibility Act, Executive Order 13272, and DOT Procedures and Policies

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires an agency to review regulations to assess their impact on small entities. An agency must conduct a regulatory flexibility analysis unless it determines and certifies that a rule is not expected to have a significant impact on a substantial number of small entities. This proposed rule incorporates into the Hazardous Materials Regulations certain widely used exemptions. It would relax certain requirements, while maintaining safety. It would result in modest cost savings and would not impose significant impacts on any of the entities, small or otherwise, potentially affected by the rule. Therefore, I certify this rule will not have a significant economic impact on a substantial number of small entities.

This proposed rule has been developed in accordance with Executive Order 13272 ("Proper Consideration of Small Entities in Agency Rulemaking") and DOT's procedures and policies to promote compliance with the Regulatory Flexibility Act to ensure that potential impacts of draft rules on small entities are properly considered.

E. Paperwork Reduction Act

RSPA has current information collection approvals under: OMB No. 2137–0051, "Rulemaking, Exemption, and Preemption Requirements" with 4,219 burden hours and an expiration date of May 31, 2006; and OMB No. 2137–0022, "Testing, Inspection, and Marking of Cylinders", with 168,431 burden hours and an expiration date of September 30, 2005. We do not anticipate any significant change in burden of these current information collections as a result of this proposed rulemaking.

Section 1320.8(d), Title 5, Code of Federal Regulations requires that RSPA provide interested members of the public and affected agencies an opportunity to comment on information collection and recordkeeping requests. This notice identifies a new information collection request under OMB No. 2137–xxxx, "Inspection and Testing of Meter Provers" as proposed under this rule requiring annual visual inspections and 5-year pressure tests for meter provers. RSPA will submit this new information collection request to the Office of Management and Budget (OMB) for approval based on the requirements in this proposed rule. If these proposed requirements are adopted in a final rule with any revisions, RSPA will resubmit any revised information collection and recordkeeping requirements to the Office of Management and Budget for re-approval. We estimate that this proposed new information collection burden will be as follows: OMB No. 2137–xxxx, "Inspection and Testing of Meter Provers":

Annual Number of Respondents: 50.
Annual Responses: 250.
Annual Burden Hours: 175.
Annual Burden Cost: $9,500.00.

RSPA specifically requests comments on the information collection and recordkeeping burden associated with developing, implementing, and maintaining these requirements for approval under this proposed rule.

Address written comments to the Dockets Unit as identified in the **ADDRESSES** section of this rulemaking. We must receive your comments prior to the close of the comment period identified in the **DATES** section of this rulemaking. Under the Paperwork Reduction Act of 1995, no person is required to respond to an information collection unless it displays a valid OMB control number.

Please direct your requests for a copy of this proposed new information collection to Deborah Boothe or T. Glenn Foster, Office of Hazardous Materials Standards (DHM–10), Research and Special Programs Administration, Room 8430, 400 Seventh Street, SW., Washington, DC 20590–0001, Telephone (202) 366–8553.

F. Regulation Identifier Number (RIN)

A regulation identifier number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

G. Unfunded Mandates Reform Act

This proposed rule does not impose unfunded mandates under the Unfunded Mandates Reform Act of 1995. It does not result in costs of $100 million or more to either state, local or tribal governments, in the aggregate, or to the private sector, and is the least burdensome alternative that achieves the objective of the rule.

H. Environmental Assessment

The National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321–4347), requires Federal agencies to consider the consequences of major Federal actions and prepare a detailed statement on actions significantly affecting the quality of the human environment. We developed an assessment to determine the effects of these proposed revisions on the environment and whether a more comprehensive environmental impact statement may be required. We have tentatively concluded that there are no significant environmental impacts associated with this proposed rule. Interested parties, however, are invited to review the Environmental Assessment available in the docket and to comment on what environmental impact, if any, the proposed regulatory changes would have.

I. Privacy Act

Anyone is able to search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the document (or signing the document, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477) or you may visit *http://dms.dot.gov*.

List of Subjects

49 CFR Part 171

Exports, Hazardous materials transportation, Hazardous waste, Imports, Incorporation by reference, Reporting and recordkeeping requirements.

49 CFR Part 173

Hazardous materials transportation, Packaging and containers, Radioactive materials, Reporting and recordkeeping requirements, Uranium.

49 CFR Part 174

Hazardous materials transportation, Radioactive materials, Railroad safety.

49 CFR Part 176

Hazardous materials transportation, Maritime carriers, Radioactive materials, Reporting and recordkeeping requirements.

49 CFR Part 177

Hazardous materials transportation, Motor carriers, Radioactive materials, Reporting and recordkeeping requirements.

In consideration of the foregoing, 49 CFR Chapter I is proposed to be amended as follows:

PART 171—GENERAL INFORMATION, REGULATIONS, AND DEFINITIONS

1. The authority citation for part 171 continues to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

2. In § 171.7, in the paragraph (a)(3) table, under the entry "American Society of Mechanical Engineers", a new entry is added in appropriate alphabetical order.

The new entry reads as follows:

§ 171.7 Reference material.

(a) * * *

(3) *Table of material incorporated by reference.* * * *

Source and name of material	49 CFR reference
. . . . .	
American Society of Mechanical Engineers,	
Pipeline Transportation Systems for Liquid Hydrocarbons and other Liquids, Chapters II, III, IV, V and VI, ASME B31.4–1998 Edition	173.3
. . . . .	

PART 173—SHIPPERS—GENERAL REQUIREMENTS FOR SHIPMENTS AND PACKAGINGS

3. The authority citation for part 173 continues to read as follows:

Authority: 49 U.S.C. 5101–5127; 44701; 49 CFR 1.45, 1.53.

4. In § 173.3, paragraph (d) is redesignated as paragraph (e) and a new paragraph (d) is added to read as follows:

§ 173.3 Packaging and exceptions.

* * * * *

(d) *Salvage cylinders.* Cylinders of hazardous materials that are damaged or leaking may be overpacked in a non-specification full opening hinged head or fully removable head steel salvage cylinder under the following conditions:

(1) Only a cylinder containing a Division 2.1, 2.2, 2.3, 3, 6.1, or a Class 8 material may be overpacked in a salvage cylinder. A cylinder containing acetylene may not be overpacked in a salvage cylinder.

(2) Each salvage cylinder must be designed, constructed and marked in accordance with Section VIII, Division I of the ASME Code (IBR, see § 171.7 of this subchapter) with a minimum design margin of 4 to 1. Salvage cylinders may not be equipped with a pressure relief device. Salvage cylinders must have provisions for securely positioning the damaged cylinder contained therein.

(3) The maximum water capacity for a salvage cylinder may not exceed 450 L (119 gallons).

(4) Contents must be limited in pressure and volume so that if totally discharged into the salvage cylinder, the pressure in the salvage cylinder will not exceed the MAWP at:

(i) 21 °C (70 °F) for non-liquefied gases, or

(ii) 55 °C (131 °F) for liquefied gases.

(5) Each salvage cylinder must be cleaned and purged after each use.

(6) Each salvage cylinder must be plainly marked with:

(i) The proper shipping name of the hazardous material contained inside the packaging;

(ii) The name and address of the consignee or consignor;

(iii) The words "SALVAGE CYLINDER" in letters at least 50 mm (2.0 inches) high in a permanent manner; and

(iv) The name and address or registered symbol of the manufacturer in a permanent manner.

(7) Each salvage cylinder must be labeled for the hazardous material contained inside the packaging.

(8) The shipper must prepare shipping papers in accordance with subpart C of part 172 of this subchapter.

(9) The overpack requirements of § 173.25 of this part do not apply to salvage cylinders used in accordance with this section.

(10) Transportation is authorized by motor vehicle only.

(11) At least once every 2 years, each cylinder must be visually inspected (internally and externally) in accordance with CGA Pamphlet C–6 (IBR, see § 171.7 of this subchapter) and pressure tested. A minimum test pressure of at least 1½ times MAWP must be maintained for at least 30 seconds. The cylinder must be examined under test pressure and removed from service if a leak or a defect is found.

(12) The retest and inspection must be performed by a person familiar with salvage cylinders and trained and experienced in the use of the inspection and testing equipment.

(13) Each salvage cylinder that is requalified in accordance with paragraph (d)(11) of this section must be durably and legibly marked on the sidewall with the word "Tested" followed by the requalification date (month/year), *e.g.*, "Tested 9/04." The marking must be in letters and numbers at least 12 mm (0.5 inches) high.

(14) *Record retention.* The owner of each salvage cylinder or his authorized agent shall retain a record of the most recent visual inspection and pressure test until the salvage cylinder is requalified. The records must be made available to a DOT representative upon request.

(15) In addition to the training requirements of §§ 172.700 through 172.704 of this subchapter, a person who loads, unloads or transports a salvage cylinder must be trained in handling, loading and unloading the salvage cylinder.

* * * * *

5. Section 173.5a is revised to read as follows:

§ 173.5a Oilfield service vehicles and mechanical displacement meter provers.

(a) *Oilfield service vehicles.* Notwithstanding § 173.29 of this subchapter, a cargo tank motor vehicle used in oilfield servicing operations is not subject to the specification requirements of this subchapter provided—

(1) The cargo tank and equipment contains only residual amounts (*i.e.*, it is emptied so far as practicable) of a flammable liquid alone or in combination with water,

(2) No flame producing device is operated during transportation, and

(3) The proper shipping name is preceded by "RESIDUE: LAST CONTAINED * * * " on the shipping paper for each movement on a public highway.

(b) *Mechanical displacement meter provers.* (1) For purposes of this section, a mechanical displacement meter prover is a mechanical device, permanently mounted on a truck chassis or trailer and transported by motor vehicle, consisting of a pipe assembly that is used to calibrate the accuracy and performance of meters that measure the quantity of a product being pumped or transferred at facilities such as drilling

locations, refineries, tank farms and loading racks.

(2) A mechanical displacement meter prover is excepted from the specification packaging requirements in part 178 of this subchapter provided it—

(i) Contains only the residue of a Class 3 or Division 2.1 material. For liquids, the meter prover must be drained to the maximum extent practicable and may not exceed 10% of its capacity; for gases, the meter prover must not exceed 25% of the marked pressure rating;

(ii) Has a water capacity of 3.785 L (1,000 gallons) or less;

(iii) Is designed and constructed in accordance with Chapters II, III, IV, V and VI of the ASME Standard B31.4 (IBR, see § 171.7 of this subchapter);

(iv) Is marked with the maximum service pressure determined from the pipe component with the lowest pressure rating; and

(v) Is equipped with rear-end protection as prescribed in § 178.337–10(d) or § 178.345–8(d) of this subchapter and with 49 CFR 393.86 of the Federal Motor Carrier Safety Regulations.

(3) The description on the shipping paper for a meter prover containing the residue of a hazardous material must include the phrase "RESIDUE: LAST CONTAINED * * *" before the basic description.

(4) A meter prover must be visually inspected once a year; and pressure tested once every 5 years at not less than 75% of design pressure.

(5) Each meter prover successfully completing the test and inspection must be marked in accordance with § 180.415(b) of this subchapter. The marking must be on the side of a tank or the largest piping component in letters 50 mm (2.0 inches) high on a contrasting background.

(6) The owner must retain a record of the most recent visual inspection and pressure test until the meter prover is requalified. The test or inspection report must include the following:

(i) Serial number or other meter prover identifier;

(ii) Type of test or inspection performed;

(iii) Test date (month/year);

(iv) Location of defects found, if any, and method used to repair each defect;

(v) Name and address of person performing the test or inspection;

(vi) Disposition statement, such as "Meter Prover returned to service" or "Meter Prover removed from service".

(7) Prior to any repair work, the meter prover must be emptied of any hazardous material. Meter provers containing flammable lading must be purged.

6. In § 173.12, paragraph (b)(1), the first sentence is revised and a new paragraph (e) is added to read as follows:

§ 173.12 Exceptions for shipment of waste materials.

* * * * *

(b) * * *

(1) Waste materials classed as Class or Division 3, 4.1, 4.2, 4.3, 5.1, 6.1, 8, or 9 are excepted from the specification packaging requirements of this subchapter for combinations packagings if packaged in accordance with this paragraph and transported for disposal or recovery by highway, rail or cargo vessel only. * * *

* * * * *

(e) *Exceptions from segregation requirements.* (1) The provisions of §§ 174.81(c), 176.84(b) and 177.848(c) of this subchapter do not apply to waste cyanides or waste cyanide mixtures or solutions stored, loaded, or transported with acids in accordance with the following:

(i) The waste cyanides or waste cyanide mixtures or solutions must be packaged in lab packs in accordance with paragraph (b) of this section;

(ii) The Class 8 acids must be packaged in lab packs in accordance with paragraph (b) of this section or in authorized single packagings not exceeding 208 L (55 gallons) capacity;

(iii) Waste cyanides or waste cyanide mixtures may not exceed 1 kg (2.2 pounds) per inner receptacle and may not exceed 10 kg (22 pounds) per outer packaging; waste cyanide solutions may not exceed 1 L (0.3 gallon) per inner receptacle and may not exceed 10 L (3.0 gallons) per outer packaging.

(iv) The waste cyanides or waste cyanide mixtures or solutions must be—

(A) Separated from the acids by a minimum horizontal distance of 1.2 m (4 feet); and

(B) Secured on pallets not less than 100 mm (4 inches) high.

(2) The provisions of §§ 174.81(d), 176.83(b) and 177.848(d) of this subchapter do not apply to waste Division 4.2 materials stored, loaded or transported with Class 8 liquids in accordance with the following:

(i) The waste Division 4.2 materials are packaged in lab packs in accordance with paragraph (b) of this section;

(ii) The Class 8 liquids are packaged in lab packs in accordance with paragraph (b) of this section or in authorized single packagings not exceeding 208 L (55 gallons) capacity;

(iii) The waste Division 4.2 materials may not exceed 1 kg (2.2 pounds) per inner receptacle and may not exceed 10 kg (22 pounds) per outer packaging;

(iv) The waste Division 4.2 materials must be separated from the Class 8 liquids by a minimum horizontal distance of 1.2 m (4 feet);

(v) The waste Division 4.2 materials and the Class 8 liquids are secured on pallets of not less than 100 mm (4 inches) in height.

* * * * *

7. In § 173.13, paragraph (b) is revised to read as follows:

§ 173.13 Exceptions for Class 3, Divisions 4.1, 4.2, 4.3, 5.1, 6.1, and Classes 8 and 9 materials.

* * * * *

(b) A hazardous material conforming to the requirements of this section may be transported by motor vehicle, rail car, or passenger vessel. In addition, packages prepared in accordance with this section may be transported by aircraft under the following conditions:

(1) *Cargo-only aircraft.* Only hazardous materials permitted to be transported aboard either a passenger or cargo-only aircraft by column (9A) or (9B) of the Hazardous Materials Table in § 172.101 of this subchapter are authorized aboard cargo-only aircraft.

(2) *Passenger carrying aircraft.* Only hazardous materials permitted to be transported aboard a passenger aircraft by column (9A) of the Hazardous Materials Table in § 172.101 of this subchapter are authorized aboard passenger aircraft. The completed package, assembled as for transportation, must be successfully tested in accordance with part 178 of this subchapter at the Packing Group I level. A hazardous material which meets the definition of a Division 5.1 (oxidizer) at the Packing Group I level in accordance with § 173.127(b)(1)(i) of this subchapter may not be transported aboard a passenger aircraft.

(3) Packages offered for transportation aboard either passenger or cargo-only aircraft must meet the requirements for transportation by aircraft specified in § 173.27 of this subchapter.

* * * * *

§ 173.22a [Amended]

8. Amend § 173.22a:

a. In paragraph (c), by adding the word "current" between the words "the" and "exemption" the last time it appears.

b. In paragraph (b), by removing the second sentence; and revising the last sentence to read as follows:

§ 173.22a Use of packagings authorized under exemptions.

* * * * *

(b) * * * Copies of exemptions may be obtained by accessing the Hazardous Materials Safety Web site at *http://hazmat.dot.gov/exemptions_index.htm* or by writing to the Associate Administrator for Hazardous Materials Safety, U.S. Department of Transportation, Washington, DC 20590–0001, Attention: Records Center.

* * * * *

PART 174—CARRIAGE BY RAIL

9. The authority citation for part 174 continues to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

10. In § 174.81, paragraphs (c) and (d) are revised to read as follows:

§ 174.81 Segregation of hazardous materials.

* * * * *

(c) Except as provided in § 173.12(e) of this subchapter, cyanides, cyanide mixtures or solutions and Division 4.2 materials may not be stored, loaded and transported with acids.

(d) Except as otherwise provided in this subchapter, hazardous materials must be stored, loaded or transported in accordance with the following table and other provisions of this section:

* * * * *

PART 176—CARRIAGE BY VESSEL

11. The authority citation for part 176 continues to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

12. In § 176.83, new paragraph (a)(11) is added to read as follows:

§ 176.83 Segregation.

(a) * * *

(11) Certain exceptions from segregation for waste cyanides or waste cyanide mixtures or solutions transported with acids and waste Division 4.2 materials transported with Class 8 liquids are set forth in § 173.12(e) of this subchapter.

13. In § 176.84, in the paragraph (b) Table, following Code "52", a footnote is added to read as follows:

§ 176.84 Other requirements for stowage and segregation for cargo vessels and passenger vessels.

* * * * *

(b) * * *

Code	Provisions
. . . . .	
52	Stow "separated from" acids.[1]
. . . . .	

[1] For waste cyanides or waste cyanide mixtures or solutions, refer to § 173.12(e) of this subchapter.

PART 177—CARRIAGE BY PUBLIC HIGHWAY

14. The authority citation for part 177 continues to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

15. In § 177.848, paragraphs (c) and (d) are revised to read as follows:

§ 177.848 Segregation of hazardous materials.

* * * * *

(c) Except as provided in § 173.12(e) of this subchapter, cyanides, cyanide mixtures or solutions and Division 4.2 materials may not be stored, loaded and transported with acids.

(d) Except as otherwise provided in this subchapter, hazardous materials must be stored, loaded or transported in accordance with the following table and other provisions of this section:

* * * * *

Issued in Washington, DC on November 24, 2003 under authority delegated in 49 CFR part 106.

Robert A. McGuire,

Administrator for Hazardous Materials Safety.

[FR Doc. 03–29852 Filed 12–3–03; 8:45 am]

BILLING CODE 4910–60–P

Notices

Federal Register
Vol. 68, No. 233
Thursday, December 4, 2003

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

December 1, 2003

The Department of Agriculture has submitted the following information collection requirement (s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *Pamela_Beverly_OIRA_Submission @OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–8681.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Farm Service Agency

Title: 7 CFR 1941, Operating Loan Policies, Procedures and Authorizations.

OMB Control Number: 0560–0162.

Summary of Collection: The Consolidated Farm and Rural Development Act (7 U.S.C. 1922) (CONACT) authorizes the Secretary of Agriculture and the Farm Service Agency (FSA) to make and insure loans to farmers and ranchers and to administer the provisions of the CONACT applicable to the Farm Loan Program. The information is required to ensure that the agency provides assistance to applicants who have reasonable prospects of repaying the government and meet statutory eligibility requirements. This assistance enables family farm operators to use their land, labor, and other resources to improve their living and financial conditions so that they can eventually obtain credit elsewhere.

Need and Use of the Information: The information is needed for FSA loan approval officials to evaluate an applicant's eligibility, and to determine if the operation is economically feasible and the security offered in support of the loan is adequate. FSA relies on current information to carry out the business of the program as intended and to protect the government's interest. A variety of forms will be used to collect the information. If the information were not collected, or collected less frequently, the Agency would be: (1) Unable to make an accurate eligibility and financial feasibility determination on respondents' request for new loans as required by the CONACT; and (2) unable to meet the congressionally mandated mission of loan programs.

Description of Respondents: Farms; Business or other for-profit; Federal government; Individuals or households.

Number of Respondents: 26,146.

Frequency of Responses: Reporting: Other.

Total Burden Hours: 7,019.

Food and Nutrition Service

Title: National School Lunch Program Sample Frame Development.

OMB Control Number: 0584–NEW.

Summary of Collection: The Food and Nutrition Service (FNS), U.S. Department of Agriculture (USDA) conducts periodic evaluation of the school meal programs to provide updated information on program operations, meal characteristic, and students' diets as well as costs and revenues of school meals. The Economic Research Service has contracted with the team of Abt Associates Inc. and Mathematica Policy Research Inc., to design an integrated study of USDA school meal program and to assess the cost and feasibility of such a study. The integrated study will collect data on five domains: (1) Policies and practices of schools and School Food Authorities (SFAs) that affect school meal programs; (2) characteristics of meals as offered and served; (3) costs and revenues of providing schools meals; (4) student participation, satisfaction, and related attitudes toward the school lunch and breakfast programs; and (5) students' dietary intakes and other student/family characteristics that may influenced program participation. The integrated study would have a multi-level design featuring cross-sectional data and nationally representative samples of SFAs, schools, and students.

Need and Use of the Information: The National School Lunch Program Sample Frame Development is designed to provide a nationally representative sample frame of Public SFAs that are participating in the National School Lunch Program and/or School Breakfast Program. The information collected from the sample frame will include: current enrollment by school level, number of students approved for free and reduced-price meals, poverty rates, the type of school meal programs offered, type of menu-planning system in use, type of food production system used, whether the school district uses a food service management company to manage the food service operation, and the start and ending date of the school year. The information will be used to provide federal, state, and local policy makers as well as program administrators with much needed information on how the school meal programs have changed, since the implementation of the School Meal Initiative.

Description of Respondents: Not-for-profit institutions; Individual or households; State, Local or Tribal Government.

Number of Respondents: 2,079.

Frequency of Responses: Reporting: Other (One-time only).

Total Burden Hours: 3,119.

Forest Service

Title: Visitor Permit and Visitor Registration Card.

OMB Control Number: 0596–0019.

Summary of Collection: The Organic Administration Act (30 stat. 11), the Wilderness Act (78 stat. 890), the Wild and Scenic River Act (82 stat. 906) and Executive Order 11644, all authorize the Forest Service (FS) to manage the forests to benefit both land and people. Every year millions of people visit the National Forest System. As FS heads into the next millennium, their challenge is to meet the increasing demand for higher quality recreation experiences while safeguarding the health of the land. One way FS will care for the land and serve people is to determine where people are going when they visit the national forest, and give them information, which provides for a safe and enjoyable visit, and at the same time protects the resource. The Visitors Permit and Visitor Registration Card are tools that will help meet this objective. At the majority of locations visited, a permit for use is required. The FS uses the Visitor's Permit (Form 2300–30) and the Visitor Registration Card (Form 2300–32) to permit and monitor use in these areas.

Need and Use of the Information: The visitor permit provides FS with information about the visitor's name, address, area to be visited, date of visit, length of stay, method of travel, number of people, and number of pack and saddle stock. The permit and registration card allows managers to identify areas, which are being heavily used and is also used to locate forest visitors if they do not return from their trip as planned. If the information were not collected from visitors it could cause overuse and site deterioration in some environmentally sensitive areas.

Description of Respondents: Individuals or households; Business or other for-profit; Not-for profit institutions.

Number of Respondents: 368,000.

Frequency of Responses: Reporting: Other (per visit).

Total Burden Hours: 18,400.

Forest Service

Title: Economic, Social, and Cultural Aspects of Livestock Ranching on the Santa Fe and Carson National Forests.

OMB Control Number: 0596–NEW.

Summary of Collection: Management of federal lands is hampered in many cases because land managing agencies lack sufficient information to understand and monitor socio-cultural values and changing attitude toward land and resource use. The lack of up-to-date information impedes efforts of the Forest Service (FS) to work with livestock ranchers who graze their cattle under permit on FS managed land (permittees). Cultural differences and historic problems over land use contribute to disagreements and misunderstanding between the permittees and federal land managers. Information on the economic, social, and cultural contributions of livestock ownership to federal permittees is of interest to land managers, policy makers, social scientists, the general public, and the permittees themselves. FS will use a questionnaire to collect information from livestock permittees from the Santa Fe and Carson National Forest.

Need and use of the Information: FS will collect data on economic, social, and cultural contributions of livestock ownership will help FS personnel manage the land more effectively and work more cooperatively with the permittees by increasing understanding of the local culture and the role of livestock ownership in that culture. If the data is not collected, grazing allotment plans and forest plan revisions will not be based on the most current and appropriate socio-cultural and economic information.

Description of Respondents: Individuals or households; Farms; Business or other for-profit.

Number of Respondents: 600.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 900.

Rural Business Cooperative Service

Title: 7 CFR 4284–F, Rural Cooperative Development Grant.

OMB Control Number: 0570–0006.

Summary of Collection: The Rural Cooperative Development Grants (RCDG) program is administered through the State Rural Development Offices on behalf of the Rural Business Cooperative Service (RBS). The primary objective of the program is to improve the economic condition of rural areas through cooperative development. Grant funds are awarded on a competitive basis using a scoring system that gives preference to applications that demonstrate a proven track record. The applicants, who are non-profit corporations or institutions of higher education, will provide information using various forms and supporting documentation.

Need and Use of the Information: RBS will use the information collected to evaluate the applicant's ability to carry out the purposes of the program. If this information were not collected, RBS would have no basis on which to evaluate the relative merit of each application.

Description of Respondents: Individuals or households; Not for profit institutions; State, Local or Tribal Government.

Number of Respondents: 75.

Frequency of Responses: Recordkeeping; Reporting: On occasion.

Total Burden Hours: 2,675.

National Agricultural Statistics Service

Title: Agricultural Resource Management, Chemical Use, and Post-Harvest Chemical Use Surveys.

OMB Control Number: 0535–0218.

Summary of Collection: The primary objectives of the National Agricultural Statistics Service (NASS) are to provide the public with timely and reliable agricultural production and economic statistics, as well as environmental and specialty agricultural related statistics. Three surveys—the Agricultural Resource Management Study, the Fruit and Vegetable Chemical Use Surveys, and the Post-harvest Chemical Use Survey—are critical to NASS' ability to fulfill thee objectives and to build the Congressionally mandated database on agricultural chemical use and related farm practices. NASS uses a variety of survey instruments to collect the information in conjunction with these studies.

Need and Use of the Information: The Agricultural Resource Management Study provides a robust database of information to address varied needs of policy makers. There are many uses for the information from this study including an evaluation of the safety of the Nation's food supply; input to the farm sector portion of the gross domestic product; and to provide a barometer on the financial condition of farm businesses. Data from the Fruit and Vegetable Chemical Use Surveys is used to assess the environmental and economic implications of various program and policies and the impact on agricultural producers and consumers.

The results of the Post-harvest Chemical Use Survey are used by the Environmental Protection Agency to develop Food Quality Protection Act risk assessments. Other organizations use this data to make sound regulatory decisions.

Description of Respondents: Farms

Number of Respondents: 80,650.

Frequency of Responses: Reporting: Annually.

Total Burden Hours: 57,209.

Rural Utility Service

Title: 7 CFR 1792, Subpart C—Seismic Safety of New Building Construction.
OMB Control Number: 0572–0099.
Summary of Collection: Seismic hazards present a serious threat to people and their surroundings. These hazards exist in most of the United States, not just on the West Coast. Unlike hurricanes, times and location of earthquakes cannot be predicted; most earthquakes strike without warning and, if of substantial strength, strike with great destructive forces. To reduce risks to life and property from earthquakes, Congress enacted the Earthquake Hazards Reduction Act of 1977 (Pub. L. 95–124, 42 U.S.C. 7702 *et seq.*) and directed the establishment and maintenance of an effective earthquake reduction program. As a result, the National Earthquake Hazards Reduction Program (NEHRP) was established. The objectives of the NEHRP include the development of technologically and economically feasible design and construction methods to make both new and existing structures earthquake resistant, and the development and promotion of model building codes. 7 CFR part 1792, subpart C, identifies acceptable seismic standards which must be employed in new building construction funded by loans, grants, or guarantees made by the Rural Utility Service (RUS) or the Rural Telephone Bank (RTB) or through lien accommodations or subordinations approved by RUS or RTB.
Need and Use of the Information: Borrowers and grant recipients must provide to RUS a written acknowledgment from a registered architect or engineer responsible for the design of each applicable building stating that the seismic provisions to 7 CFR part 1792, subpart C will be used in the design of the building. RUS will sue this information to: (1) Clarify and inform the applicable borrowers and grant recipients about seismic safety requirements; (2) improve the effectiveness of all RUS programs; and (3) reduce the risk to life and property through the use of approved building codes aimed at providing seismic safety.
Description of Respondents: Not-for-profit institutions; Business or other for-profit.
Number of Respondents: 1,000
Frequency of Responses: Reporting: On occasion.
Total Burden Hours: 750.

Agricultural Marketing Service

Title: Federal Seed Act Program.
OMB Control Number: 0581–0026.
Summary of Collection: The Federal Seed Act (FSA) (7 U.S.C. 1551–1611) regulates agricultural and vegetable seeds in interstate commerce. Agricultural and vegetable seeds shipped in interstate commerce are required to be labeled with certain quality information such as the name of the seed, the purity, the germination, and the noxious-weed seeds of the state into which the seed is shipped. State seed regulatory agencies refer to the Agricultural Marketing Service (AMS) complaints that involve seed found to be mislabeled and to have moved in interstate commerce. AMS investigates the alleged violations and if the violation is substantiated, takes regulatory action ranging from letters of warning to monetary penalties.
Need and Use of the Information: AMS will collect information from records of each lot of seed and make them available for inspection by agents of the Secretary. The information collected consists of records pertaining to interstate shipments of seed that have been alleged to be in violation of the FSA. The shipper's records pertaining to a complaint are examined by FSA program specialists and are used to determine if a violation of the FSA occurred. The records are used to determine the precautions taken by the shipper to assure that the seed was accurately labeled. If this information were not collected, it would be impossible to examine pertinent records to resolve complaints of violations.
Description of Respondents: Business or other for-profit; State, Local or Tribal Government; Farms.
Number of Respondents: 2,679.
Frequency of Responses: Recordkeeping; Reporting: On occasion.
Total Burden Hours: 36,602.

Food and Nutrition Service

Title: Form FNS–388, State Issuance and Participation Estimates.
OMB Control Number: 0584–0081.
Summary of Collection: Section 18(b) of the Food Stamp Act of 1977, as amended, requires that "In any fiscal year, the Secretary shall limit the value of those allotments issued (under the Food Stamp Program) to an amount not in excess of the appropriation for such fiscal year.;" Timely State monthly issuance estimates are necessary for the Food and Nutrition Service (FNS) to ensure that it remains within the appropriation and will have a direct effect upon the manner in which allotments would be reduced when necessary. FNS uses the FNS–388 report to obtain monthly Statewide estimated or actual issuance and participation data for the current and previous months, and the actual participation data for the second preceding month.
Need and Use of the Information: The FNS–388 report provides the necessary data for an early warning system to enable the Department to fulfill the requirements of section 18(b) of the Food Stamp Act. In addition, the data is used to (1) validate the Annual Food Stamp Household characteristic Survey; (2) to compile a Statistical Summary Report which is used for special studies and in response to Congressional and other inquiries; and (3) to compare against the coupon issuance points' FNS–250 (which reports issuances from inventory) and reconciliation points' FNS–46 issuance data (which reports issuances for coupons, electronic benefit transfers, and cash-out) for indications of accountability problems.
Description of Respondents: State, Local or Tribal Government.
Number of Respondents: 53.
Frequency of Responses: Recordkeeping; Reporting: Monthly.
Total Burden Hours: 4,542.

Food and Nutrition Service

Title: Food Stamp Program Identification Cards.
OMB Control Number: 0584–0124.
Summary of Collection: Section 11(e)(15) of the Food Stamp Act of 1977 requires that State agencies issue photographic identification cards to recipients in certain project areas, if the Secretary and the Department's Inspector General find it useful and cost effective to protect the integrity of the Food Stamp Program (FSP). The ID cards are required by the Food and Nutrition Service (FNS) to reduce the number of unauthorized food stamp issuances.
Need and Use of the Information: Photo IDs are used by issuance agents to identify households for monthly issuance; by retailers to identify households when benefits are redeemed; and by households to provide as proof when picking up monthly allotments. The use of the photo ID cards and the requirement to show it to obtain benefits is crucial to the agency's ability to protect the integrity of the Food Stamp Program.
Description of Respondents: State, Local or Tribal Government; Individuals or households.
Number of Respondents: 44,134.
Frequency of Responses: Recordkeeping; Reporting: On occasion.
Total burden Hours: 1,471.

National Agricultural Statistics Service

Title: Equine Survey.
OMB Control Number: 0535–0227.
Summary of Collection: The primary objective of the National Agricultural Statistics Service (NASS) is to prepare and issue current official State and national estimates of crop and livestock production, disposition, and prices. Services such as statistical consultation, data collection, summary tabulation, and analysis are performed for other Federal and State agencies on a reimbursable basis as the need arises. In the past, equine surveys have been conducted in twelve States where equine is a significant portion of their agriculture. The results are used to provide an assessment of the equine industry's contribution to the State's economy in terms of infrastructure and value.
Need and Use of the Information: NASS will collect information on equine inventories by: category, revenue, activity, purpose and equine related expenditures. In addition, these surveys will provide NASS with names and addresses of equine operations that can be used for the Census of Agriculture enumeration and for the NASS program that seeks to cover 99 percent of U.S. agricultural cash receipts.
Description of Respondents: Farms.
Number of Respondents: 73,475.
Frequency of Responses: Reporting: one-time.
Total Burden Hours: 26,363.

Rural Utilities Service

Title: Public Television Digital Transition Grant Program.
OMB Control Number: 0572–0134.
Summary of Collection: As part of the nation's evolution to digital television, the Federal communications commission has ordered all television broadcasters to initiate the broadcast of a digital television signal by May 1, 2003, and to cease analog television broadcasts on December 31, 2006. About half of the nation's public television stations did not meet the deadline to initiate digital broadcasting and received extensions. The Rural Utilities Service (RUS) will develop and issue requirements for the grant program to finance the conversion of television services from analog to digital broadcasting for public television stations serving rural areas.
Need and Use of the Information: Applicants will submit grant applications to RUS for review. The information will consist of the following: Standard Form (SF) 424, "Application for Federal Assistance", executive summary, evidence of eligibility and compliance with other Federal statutes and any other supporting documentation. RUS will use the information to score and rank applications for funding. Scoring will consist of three categories: rurality, per capita income, and special disadvantaging factors facing the station's transition plans. If this information were not collected, there would be no basis for awarding grant funding.
Description of Respondents: Not-for-profit institutions; State, Local or Tribal Government.
Number of Respondents: 50.
Frequency of Responses: Reporting: On occasion.
Total Burden Hours: 1,168.

Ruth Brown,
Departmental Information Collection Clearance Officer.
[FR Doc. 03–30155 Filed 12–3–03; 8:45 am]
BILLING CODE 3410–01–M

DEPARTMENT OF AGRICULTURE

Foreign Agricultural Service

Trade Adjustment Assistance for Farmers

AGENCY: Foreign Agricultural Service, USDA.

ACTION: Notice.

The Administrator, Foreign Agricultural Service (FAS), today accepted a petition filed by a group of freshwater crawfish producers in Louisiana for trade adjustment assistance. The Administrator will determine within 40 days whether or not imports of crawfish contributed importantly to a decline in domestic producer prices of more than 20 percent during the marketing year period beginning January 2002 through December 2002. If the determination is positive, all crawfish producers in Louisiana will be eligible to apply to the Farm Service Agency for technical assistance at no cost and for adjustment assistance payments.

FOR FURTHER INFORMATION CONTACT: Jean-Louis Pajot, Coordinator, Trade Adjustment Assistance for Farmers, FAS, USDA, (202) 720–2916, e-mail: *trade.adjustment@fas.usda.gov.*

Dated: November 21, 2003.

A. Ellen Terpstra,
Administrator, Foreign Agricultural Service.
[FR Doc. 03–30184 Filed 12–3–03; 8:45 am]
BILLING CODE 3410–10–M

DEPARTMENT OF AGRICULTURE

Foreign Agricultural Service

Trade Adjustment Assistance for Farmers

AGENCY: Foreign Agricultural Service, USDA.

ACTION: Notice.

The Administrator, Foreign Agricultural Service (FAS), today accepted a petition filed by Organized Seafood Association of Alabama, Bayou La Batre, Alabama, for trade adjustment assistance. The association represents shrimpers and shrimp farmers in Alabama. The Administrator will determine within 40 days whether or not imports of shrimp and prawns contributed importantly to a decline in domestic producer prices of 20 percent or more during the marketing year period beginning January 2002 through December 2002. If the determination is positive, all shrimp producers in Alabama will be eligible to apply to the Farm Service Agency for technical assistance at no cost and for adjustment assistance payments.

FOR FURTHER INFORMATION CONTACT: Jean-Louis Pajot, Coordinator, Trade Adjustment Assistance for Farmers, FAS, USDA, (202) 720–2916, e-mail: *trade.adjustment@fas.usda.gov.*

Dated: November 17, 2003.

Kenneth J. Roberts,
Administrator, Foreign Agricultural Service.
[FR Doc. 03–30182 Filed 12–3–03; 8:45 am]
BILLING CODE 3410–10–M

DEPARTMENT OF AGRICULTURE

Foreign Agricultural Service

Trade Adjustment Assistance for Farmers

AGENCY: Foreign Agricultural Service, USDA.

ACTION: Notice.

The Administrator, Foreign Agricultural Service (FAS), today accepted a petition filed by the US Rice Producers Association, Houston, Texas, for trade adjustment assistance. The Administrator will determine within 40 days whether or not imports of rice contributed importantly to a decline in domestic producer prices of more than 20 percent during the marketing period beginning August 2002 and ending July 2003. If the determination is positive, all producers represented by the group will be eligible to apply to the Farm Service Agency for technical assistance at no

cost and adjustment assistance payments.

FOR FURTHER INFORMATION CONTACT: Jean-Louis Pajot, Coordinator, Trade Adjustment Assistance for Farmers, FAS, USDA, (202) 720–2916, e-mail: *trade.adjustment@fas.usda.gov*.

Dated: November 17, 2003.

Kenneth J. Roberts,

Acting Administrator, Foreign Agricultural Service.

[FR Doc. 03–30183 Filed 12–03–03; 8:45 am]

BILLING CODE 3410–10–M

DEPARTMENT OF AGRICULTURE

Foreign Agricultural Service

Trade Adjustment Assistance for Farmers

AGENCY: Foreign Agricultural Service, USDA.

ACTION: Notice.

The Administrator, Foreign Agricultural Service (FAS), today accepted a petition filed by the United Fisheries Co-Op. Inc., Biloxi, Mississippi, for trade adjustment assistance. The group represents Mississippi shrimpers. The Administrator will determine within 40 days whether or not imports of shrimp contributed importantly to a decline in domestic producer prices of more than 20 percent during the marketing year period beginning January 2002 through December 2002. If the determination is positive, all shrimp producers in Mississippi will be eligible to apply to the Farm Service Agency for technical assistance at no cost and for adjustment assistance payments.

FOR FURTHER INFORMATION CONTACT: Jean-Louis Pajot, Coordinator, Trade Adjustment Assistance for Farmers, FAS, USDA, (202) 720–2916, e-mail: *trade.adjustment@fas.usda.gov*.

Dated: November 21, 2003.

A. Ellen Terpstra,

Administrator, Foreign Agricultural Service.

[FR Doc. 03–30185 Filed 12–3–03; 8:45 am]

BILLING CODE 3410–10–M

DEPARTMENT OF AGRICULTURE

Forest Service

Eastern Arizona Counties Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Eastern Arizona Counties Resources Advisory Committee will meet in Show Low, Arizona. The purpose of the meeting is to evaluate project proposals for possible funding in accordance with Public Law 106–393 (the Secure Rural Schools and Community Self-Determination Act).

DATES: The meeting will be held January 23, 2004, starting at 12:30 p.m.

ADDRESSES: The meeting will be held in the conference room at the Holiday Inn Express, 151 West Deuce of Clubs, Show Low, Arizona 85901. Send written comments to Robert Dyson, Eastern Arizona Counties Resource Advisory Committee, c/o Forest Service, USDA, P.O. Box 640, Springerville, Arizona 85938 or electronically to *rdyson@fs.fed.us*.

FOR FURTHER INFORMATION CONTACT: Robert Dyson, Public Affairs Officer, Apache-Sitgreaves National Forests, (928) 333–4301.

SUPPLEMENTARY INFORMATION: The meeting is open to the public. Committee discussion is limited to Forest Service staff, project proponents, and Committee members. However, persons who wish to bring Public Law 106–393 related matters to the attention of the Committee may file written statements with the Committee staff before or after the meeting. Public input sessions will be provided and individuals who made written requests by January 1, 2004, will have the opportunity to address the Committee at those sessions.

Dated: November 26, 2003.

Elaine J. Zieroth,

Forest Supervisor, Apache-Sitgreaves National Forests.

[FR Doc. 03–30179 Filed 12–3–03; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Lower Kissimmee River Watershed, Okeechobee and Highlands Counties, FL

AGENCY: Natural Resources Conservation Service, USDA.

ACTION: Notice of a finding of no significant impact.

SUMMARY: Pursuant to section 102(c) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Regulations (40 CFR part 1500); and the Natural Resources Conservation Service Regulations (7 CFR part 650); the Natural Resources Conservation Service, U.S. Department of Agriculture, gives notice than an Environmental Impact Statement is not being prepared for the Lower Kissimmee River Watershed, Okeechobee and Highlands counties, Florida.

FOR FURTHER INFORMATION CONTACT: T. Niles Glasgow, State Conservationist, Natural Resources Conservation Service, P.O. Box 141510, Gainesville, FL, 32614, (352) 338–9500.

SUPPLEMENTARY INFORMATION: The Environmental Assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Niles Glasgow, State Conservationist, has determined that the preparation and review of an Environmental Impact Statement is not needed for this project.

Proposed is the implementation of conservation practices on cow/calf farms and dairies in order to reduce phosphorus loads in the watershed and assist in achieving the Total Maximum Daily Load (TMDL) for Lake Okeechobee.

The Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various Federal, State, and local agencies and other interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the Environmental Assessment are on file and may be reviewed by contacting Jessica Bertine, Agricultural Economist, Gainesville, FL, (352) 338–9513.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register**.

T. Niles Glasgow,

State Conservationist.

[FR Doc. 03–30143 Filed 12–3–03; 8:45 am]

BILLING CODE 3410–16–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–863]

Notice of Preliminary Results of Antidumping Duty New Shipper Review: Honey From the People's Republic of China

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of preliminary results of antidumping duty new shipper review.

SUMMARY: In response to a request from Shanghai Xiuwei International Trading Co., Ltd. ("Shanghai Xiuwei") and Sichuan-Dujiangyan Dubao Bee Industrial Co., Ltd. ("Sichuan Dubao"), the Department of Commerce ("the Department") is conducting a new shipper review of the antidumping duty order on honey from the People's Republic of China. The period of review covers the period February 10, 2001 through November 30, 2002. The preliminarily results are listed below in the section titled "Preliminary Results of Review." Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: December 4, 2003.

FOR FURTHER INFORMATION CONTACT: Brandon Farlander at (202) 482–0182 or Dena Aliadinov at (202) 482–3362; Antidumping and Countervailing Duty Enforcement Group III, Office Eight, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

The Department published in the **Federal Register** an antidumping duty order on honey from the People's Republic of China ("PRC") on December 10, 2001. *See Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order; Honey from the People's Republic of China*, 66 FR 63670 (December 10, 2001). On December 31, 2002, the Department received properly filed requests from Shanghai Xiuwei and Sichuan Dubao for new shipper reviews under the antidumping duty order on honey from the PRC, in accordance with section 751(a)(2)(B) of the Act and § 351.214(c) of the Department's regulations. Shanghai Xiuwei identified itself as an exporter of processed honey produced by its supplier, Henan Oriental Bee Products Co., Ltd. ("Henan Oriental"). Sichuan Dubao identified itself as the producer of the processed honey that it exports.

Under the new shipper provisions, an exporter or an exporter that is also a producer of the subject merchandise, in requesting a new shipper review, must certify to the following: (i) It did not export the merchandise to the United States during the period of investigation (POI); and (ii) it is not affiliated with any exporter or producer who exported the subject merchandise during that period. In addition, if the exporter is not the producer, then the person that produced or supplied the subject merchandise must also submit these same certifications. Moreover, in an antidumping proceeding involving imports from a non-market economy country, the new shipper must also certify that its (and its producers') export activities are not controlled by the central government. If these provisions are met, the Department will conduct a new shipper review to establish an individual weighted-average dumping margin for such new shipper, if the Department has not previously established such a margin for the exporter or producer. (*See* generally § 351.214(b)(2) of the Department's regulations.)

The regulations further require that the person making the request include in its request documentation establishing: (i) The date on which the merchandise was first entered, or withdrawn from warehouse, for consumption, or, if it cannot establish the date of first entry, the date on which it first shipped the merchandise for export to the United States; (ii) the volume of that and subsequent shipments; and (iii) the date of the first sale to an unaffiliated customer in the United States. *See* § 351.214(b)(2)(iv).

Shanghai Xiuwei's and Sichuan Dubao's requests were accompanied by information and certifications establishing that neither they nor their suppliers exported the subject merchandise to the United States during the POI, and that they were not affiliated with any company which exported subject merchandise to the United States during the POI. Shanghai Xiuwei and Sichuan Dubao provided information and certifications that demonstrated the date on which they first shipped and entered honey for consumption in the United States, the volume of that shipment, and the date of the first sale to the unaffiliated customer in the United States. Additionally, Shanghai Xiuwei and Sichuan Dubao certified that neither their nor their suppliers' export activities are controlled by the central government.

Because the Department determined that Shanghai Xiuwei's and Sichuan Dubao's requests met the requirements of § 351.214 of its regulations, on February 5, 2003, the Department published its initiation of this new shipper review for the period February 10, 2001 through November 30, 2002. *See Honey from the People's Republic of China: Initiation of New Shipper Antidumping Duty Reviews* (68 FR 5868; February 5, 2003). Accordingly, the Department is now conducting this new shipper review in accordance with section 751(a)(2)(B) of the Act and § 351.214 of its regulations.

On February 20, 2003, we issued the Department's antidumping duty questionnaire to Shanghai Xiuwei and Sichuan Dubao. Shanghai Xiuwei and Sichuan Dubao submitted their Section A questionnaire responses on March 20, 2003 and March 28, 2003, respectively. On April 3, 2003, Shanghai Xiuwei submitted its Section C and D questionnaire responses. Also on April 3, 2003, petitioners submitted comments on Shanghai Xiuwei's Section A response. On April 4, 2003, Sichuan Dubao submitted its Section C and D questionnaire responses. On April 15, 2003 petitioners submitted comments on Sichuan Dubao's Section A, C, and D questionnaire responses. On April 18, 2003, petitioners submitted comments on Shanghai Xiuwei's Section C and D questionnaire responses.

On May 1, 2003, petitioners requested that the Department align the period of review for this new shipper review with the antidumping duty review. On May 2, 2003 (for Shanghai Xiuwei) and May 13, 2003 (for Sichuan Dubao), we issued the first supplemental questionnaire covering Shanghai Xiuwei's and Sichuan Dubao's Section A, C, and D questionnaire responses. We received Shanghai Xiuwei's first supplemental questionnaire response on May 15, 2003, and received Sichuan Dubao's first supplemental questionnaire response on June 3, 2003. On May 30, petitioners submitted comments on Shanghai Xiuwei's first supplemental questionnaire response. On June 13, petitioners submitted comments on Sichuan Dubao's first supplemental questionnaire response. We issued the second supplemental questionnaires to Shanghai Xiuwei and Sichuan Dubao, covering their first supplemental responses, on June 27, 2003 and June 26, 2003, respectively. We received Shanghai Xiuwei's second supplemental questionnaire response on July 12, 2003, and received Sichuan Dubao's second supplemental questionnaire response on July 10, 2003.

On June 10, 2003, the Department provided the parties with an opportunity to submit publicly available information regarding surrogate country selection and factors of production surrogate values for consideration in the preliminary results of this review. On June 24, 2003, petitioners submitted comments on the surrogate country selection. On July 7, 2003, petitioners submitted information on factors of production surrogate values for consideration. On July 11, 2003, petitioners submitted a declaration

executed by a market researcher that gathered information regarding the Indian honey industry. We did not receive any comments or information from Shanghai Xiuwei or Sichuan Dubao.

On June 13, 2003, the Department issued supplemental questionnaires to Shanghai Xiuwei and Sichuan Dubao to forward to their importers ("importer questionnaire"). We received responses to the importer questionnaires from Shanghai Xiuwei's importer and one of Sichuan Dubao's importers on June 30, 2003. Petitioners submitted comments on the importer questionnaire responses on July 10, 2003 (for Sichuan Dubao) and July 30, 2003 (for Shanghai Xiuwei).

On July 21, 2003, the Department extended the preliminary results of this new shipper review 300 days until November 26, 2003. *See Honey from the People's Republic of China: Extension of Time Limits for Preliminary Results of New Shipper Antidumping Duty Review*, 68 FR 43086 (July 21, 2003). Petitioners submitted comments for consideration in the Department's verification of Shanghai Xiuwei's and Sichuan Dubao's questionnaire responses on July 22, 2003 and July 28, 2003, respectively.

Scope of the Antidumping Duty Order

The products covered by this review are natural honey, artificial honey containing more than 50 percent natural honey by weight, preparations of natural honey containing more than 50 percent natural honey by weight, and flavored honey. The subject merchandise includes all grades and colors of honey whether in liquid, creamed, comb, cut comb, or chunk form, and whether packaged for retail or in bulk form. The merchandise subject to this review is currently classifiable under subheadings 0409.00.00, 1702.90.90, and 2106.90.99 of the Harmonized Tariff Schedule of the United States ("HTSUS"). Although the HTSUS subheadings are provided for convenience and U.S. Customs Service (renamed the U.S. Customs and Border Protection) ("CBP") purposes, the Department's written description of the merchandise under order is dispositive.

Verification

As provided in section 782(i)(3) of the Act and § 351.307 of the Department's regulations, we conducted verification of the questionnaire responses of Shanghai Xiuwei (August 4 through 7, 2003) and Sichuan Dubao (August 4 through 6, 2003 and August 8, 2003). We used standard verification procedures, including on-site inspection of the production facilities of Henan Oriental (Shanghai Xiuwei's supplier of processed honey) and Sichuan Dubao, the sales office of Shanghai Xiuwei in Shanghai and the sales office of Sichuan Dubao in Dujiangyan, and the examination of relevant sales and financial records. Our verification results are outlined in the New Shipper Review of Honey from the People's Republic of China (PRC) (A–570–863): Verification of U.S. Sale for respondent Shanghai Xiuwei International Trading Co., Ltd. (Shanghai Xiuwei) and Factors of Production Information Submitted by Henan Oriental Bee Products Co., Ltd. (Henan Oriental), dated September 30, 2003 ("Shanghai Xiuwei Verification Report"); and the New Shipper Review of Honey from the People's Republic of China (PRC) (A–570–863): Verification of U.S. Sales and Factors of Production Information Submitted by Sichuan-Dujiangyan Dubao Bee Industrial Co., Ltd. (Sichuan Dubao), dated September 23, 2003 ("Sichuan Dubao Verification Report"). Public versions of these reports are on file in the Central Records Unit ("CRU") located in room B–099 of the Main Commerce Building.

New Shipper Status

Based on questionnaire responses submitted by Shanghai Xiuwei and Sichuan Dubao, and our verification thereof, we preliminarily determine that Shanghai Xiuwei and Sichuan Dubao have met the requirements to qualify as new shippers during the POR. We have determined that Shanghai Xiuwei and Sichuan Dubao made their first sale and/or shipment of subject merchandise to the United States during the POR, and that neither was affiliated with any exporter or producer that previously shipped to the United States. We also determined that Henan Oriental did not export subject merchandise during the POI, nor was it affiliated with any other exporter or producer that did so.

In submissions dated April 3, 2003 (for Shanghai Xiuwei) and July 10, 2003 (for Sichuan Dubao), petitioners allege that Shanghai Xiuwei's and Sichuan Dubao's sales to the United States during the POR do not reflect *bona fide* commercial transactions. For Shanghai Xiuwei, petitioners raise issues regarding Shanghai Xiuwei's customer and the shipment destination, and allege that the sales price was too high. For Sichuan Dubao, petitioners raise issues regarding Sichuan Dubao's customers, the sales prices, and whether the sales transactions between Sichuan Dubao and the importers were arm's-length transactions. As an initial matter, the Department examined the average unit values ("AUVs") and quantities of imports into the United States of comparable merchandise from the PRC during the POR. We note that in comparison to shipments from other PRC honey exporters/producers, the quantities of Shanghai Xiuwei's and Sichuan Dubao's shipments are among the highest and the prices are about average.

For Shanghai Xiuwei, the Department was unable to complete its analysis of all factors relevant to the *bona fides* of Shanghai Xiuwei's new shipper sale. The Department is concerned about the fact that Shanghai Xiuwei and its U.S. customer, who acted as importer of record, were created in a short period of time and that the sales was consummated close to the dates both entities were formed. The Department is requesting comments on this timing issue and will carefully examine these facts for the final results.

For Sichuan Dubao, the Department was unable to complete its analysis of all factors relevant to the *bona fides* of its second sale. The Department is experiencing difficulties contacting the importer of record, who has not responded to the Department's importer questionnaire. For a full review of our research and the efforts the Department has made to locate this importer, *see* the *Memorandum from Brandon Farlander and Dena Aliadinov to the File*, dated November 26, 2003. The Department is requesting comments on this issue and we will carefully examine this second sale for the final results.

In summary, for purposes of these preliminary results of review, we are treating Shanghai Xiuwei's and Sichuan Dubao's sales of honey to the United States as *bona fide* transactions. However, as noted above, the Department intends to continue to carefully examine this issue for the final results of this review.

Separate Rates

In proceedings involving NME countries, the Department begins with a presumption that all companies within the country are subject to government control and, thus, should be assigned a single antidumping duty rate unless an exporter can affirmatively demonstrate an absence of government control, both in law (*de jure*) and in fact (*de facto*), with respect to its export activities. In this review, Shanghai Xiuwei and Sichuan Dubao both requested a separate company-specific rate.

To establish whether a company is sufficiently independent in its export activities from government control to be entitled to a separate, company-specific rate, the Department analyzes the exporting entity in an NME country under the test established in the *Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China*, 56 FR 20588, 20589 (May 6, 1991) (*Sparklers*), and amplified by the *Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China*, 59 FR 22585, 22586–22587 (May 2, 1994) (*Silicon Carbide*).

Shanghai Xiuwei and Sichuan Dubao provided separate-rate information in their responses to our original and supplemental questionnaires. Accordingly, we performed a separate-rates analysis to determine whether this exporter and producer/exporter are independent from government control (*see Notice of Final Determination of Sales at Less Than Fair Value: Bicycles From the People's Republic of China*, 61 FR 56570 (April 30, 1996)).

De Jure Control

The Department considers the following *de jure* criteria in determining whether an individual company may be granted a separate rate: (1) An absence of restrictive stipulations associated with an individual exporter's business and export licenses; (2) any legislative enactments decentralizing control of companies; and (3) any other formal measures by the government decentralizing control of companies. *See Sparklers*, 56 FR 20588, 20589.

Shanghai Xiuwei and Sichuan Dubao have placed on the record a number of documents to demonstrate absence of *de jure* control, including the "Foreign Trade Law of the People's Republic of China" (May 12, 1994) and the "Administrative Regulations of the People's Republic of China Governing the Registration of Legal Corporations" (June 3, 1998). The Department has analyzed such PRC laws and found that they establish an absence of *de jure* control. *See, e.g., Preliminary Results of New Shipper Review: Certain Preserved Mushrooms From the People's Republic of China*, 66 FR 30695, 30696 (June 7, 2001). At verification, we found that Shanghai Xiuwei's and Sichuan Dubao's business licenses and "Certificate of Approval—For Enterprises with Foreign Trade Rights in the People's Republic of China" were granted in accordance with these laws. Moreover, the results of verification support the information provided regarding these PRC laws. *See* Shanghai Xiuwei Verification Report at 9–10 and Sichuan Dubao Verification Report at 10–11. Therefore, we preliminarily determine that there is an absence of *de jure* control over Shanghai Xiuwei's and Sichuan Dubao's export activities.

De Facto Control

Typically, the Department considers four factors in evaluating whether a respondent is subject to *de facto* governmental control of its export functions: (1) Whether the export prices are set by, or subject to, the approval of a governmental authority; (2) whether the respondent has authority to negotiate and sign contracts, and other agreements; (3) whether the respondent has autonomy from the government in making decisions regarding the selection of its management; and (4) whether the respondent retains the proceeds of its export sales and makes independent decisions regarding disposition of profits or financing of losses. *See Silicon Carbide* at 22587.

As stated in previous cases, there is some evidence that certain enactments of the PRC central government have not been implemented uniformly among different sectors and/or jurisdictions in the PRC. *See Silicon Carbide* at 22586–22587. Therefore, the Department has determined that an analysis of *de facto* control is critical in determining whether respondents are, in fact, subject to a degree of governmental control which would preclude the Department from assigning separate rates.

Shanghai Xiuwei and Sichuan Dubao have both asserted the following: (1) They are privately-owned companies; (2) there is no government participation in their setting of export prices; (3) their chief executive officers and authorized employees have the authority to bind sales contracts; (4) they do not have to notify any government authorities of their management selection; (5) there are no restrictions on the use of their export revenue; and (6) they are responsible for financing their own losses. Shanghai Xiuwei's and Sichuan Dubao's questionnaire responses do not suggest that pricing is coordinated among exporters. Furthermore, our analysis of the responses during verification reveal no other information indicating the existence of government control. *See* Shanghai Xiuwei Verification Report at 10–11 and Sichuan Dubao Verification Report at 11–13. Consequently, because evidence on the record indicates an absence of government control, both in law and in fact, over Shanghai Xiuwei's and Sichuan Dubao's export activities, we preliminarily determine that Shanghai Xiuwei and Sichuan Dubao have both met the criteria for the application of a separate rate.

Normal Value Comparisons

To determine whether the respondent's sale of the subject merchandise to the United States was made at a price below normal value, we compared their United States price to normal value, as described in the "United States Price" and "Normal Value" sections of this notice.

United States Price

For both Shanghai Xiuwei and Sichuan Dubao, we based the United States price on export price ("EP") in accordance with section 772(a) of the Act, because the first sale to an unaffiliated purchaser was made prior to importation, and constructed export price ("CEP") was not otherwise warranted by the facts on the record. We calculated EP based on the packed price from the exporter to the first unaffiliated customer in the United States. For Sichuan Dubao, we deducted foreign inland freight from the starting price (gross unit price), in accordance with section 772(c) of the Act. For Shanghai Xiuwei, we deducted foreign inland freight and brokerage and handling expenses incurred in the PRC from the starting price.

Normal Value

Section 773(c)(1) of the Act provides that the Department shall determine normal value ("NV") using a factors-of-production methodology if (1) the merchandise is exported from an NME country, and (2) available information does not permit the calculation of NV using home-market prices, third-country prices, or constructed value under section 773(a) of the Act.

In every case conducted by the Department involving the PRC, the PRC has been treated as an NME country. Pursuant to section 771(18)(C)(i) of the Act, any determination that a foreign country is an NME country shall remain in effect until revoked by the administering authority. Shanghai Xiuwei and Sichuan Dubao did not contest such treatment in this review. Accordingly, we have applied surrogate values to the factors of production to determine NV. *See* the Factor Valuation Memorandum for the Preliminary Results of the Antidumping Duty New Shipper Review of Honey from the People's Republic of China, dated November 26, 2003 ("Factor Valuation Memo"). A public version of this memorandum is on file in the CRU located in room B–099 of the Main Commerce Building.

We calculated NV based on factors of production in accordance with section 773(c)(4) of the Act and § 351.408(c) of our regulations. Consistent with the original investigation of this order, we determine that India (1) is comparable to the PRC in level of economic

development, and (2) is a significant producer of comparable merchandise. Accordingly, we valued the factors of production using publicly available information from India.

In selecting the surrogate values, we considered the quality, specificity, and contemporaneity of the data, in accordance with our practice. Where appropriate, we adjusted Indian import prices by adding foreign inland freight expenses to make them delivered prices. When we used Indian import values to value inputs sourced domestically by PRC suppliers, we added to Indian surrogate values a surrogate freight cost calculated using the shorter of the reported distance from the domestic supplier to the factory or the distance from the nearest port of export to the factory. This adjustment is in accordance with the Court of Appeals for the Federal Circuit's decision in *Sigma Corp.* v. *United States*, 117 F. 3d 1401 (Fed. Cir. 1997). When we used non-import surrogate values for factors sourced domestically by PRC suppliers, we based freight for inputs on the actual distance from the input supplier to the site at which the input was used. When we relied on Indian import values to value inputs, in accordance with the Department's practice, we excluded imports from both NMEs and countries deemed to have generally available export subsidies (*i.e.*, Indonesia, Korea, and Thailand) from our surrogate value calculations. For those surrogate values not contemporaneous with the POR, we adjusted for inflation using the wholesale price indices for India, as published in the International Monetary Fund's publication, *International Financial Statistics*.

We valued the factors of production as follows:

To value raw honey, we continue to use the average of the highest and lowest price for one kilogram ("kg.") of raw honey stated in an article published in *The Tribune of India* on March 1, 2000, entitled, "Apiculture, a major foreign exchange earner." (later republished in *The Agricultural Tribune* on May 1, 2000). Consistent with the methodology established in the previous proceedings, to account for raw honey price increases in India, we have inflated the average raw honey price from the March 2000, *Tribune of India* article (*i.e.*, Rs. 35 per kg.) to December 2001 by dividing the Indian WPI for December 2001 by the Indian WPI for March 2000. To account for increases in Indian raw honey prices from December 2001 through May 2002 in excess of inflation, we averaged raw honey purchase prices from the Tiwana and Jallowal Bee Farms submitted by petitioners in Exhibit 1 of its July 7, 2003 response to calculate a total average raw honey price for each month from December 2001 through May 2002. Next, we calculated monthly price increases on a percentage-basis, and then applied these price increases (percentage) to our adjusted raw honey price from the March 2000, *Tribune of India* article. Then, we calculated a simple average of these adjusted monthly raw honey prices to derive our raw honey surrogate value for the period we had raw honey purchase pricing data (*i.e.*, December 1, 2001–May 31, 2002). In order to make this value fully-contemporaneous to the POR, we further adjusted the raw honey surrogate value for inflation during the period of June 2002 through November 2002 by the Indian WPI for May 2002. Finally, we converted the raw honey value from a per kg.-basis to a per metric ton- ("MT") basis. *See* Attachments 2, 3, and 15 of the Factor Valuation Memo for further details. *See also Notice of Final Results of Antidumping Duty New Shipper Review: Honey from the People's Republic of China*, 68 FR 62053 (October 31, 2003) ("Wuhan NSR Final Results") and *Notice of Final Determination of Sales at Less Than Fair Value; Honey From the People's Republic of China*, 66 FR 50608 (October 4, 2001). However, the Department intends to examine this issue further for the final results of this review. The Department therefore invites interested parties to submit comments on this issue for purposes of the final results.

To value beeswax, a raw honey by-product, we used the average per kilogram import value of beeswax into India for the POR.

To value coal, we relied upon contemporaneous Indian import values of "steam coal" under the Indian Customs' heading of "27011902" obtained from the World Trade Atlas, which notes that its data was obtained from the Ministry of Commerce of India. We also adjusted the surrogate value for coal to include freight costs incurred between the supplier and the factory. To value electricity, we used the 2000 total average price per kilowatt hour ("KWH"), adjusted for inflation, for "Electricity for Industry" as reported in the International Energy Agency's publication, *Energy Prices and Taxes, Second Quarter*, 2002. To value water, we used the water tariff rate, as reported on the Municipal Corporation of Greater Mumbai's Web site. *See http://www.mcgm.gov.in/Stat%20&%20Fig/Revnue.htm* and Attachment X of the Factor Valuation Memo for source documents.

To value packing materials (*i.e.*, paint and steel drums), we relied upon contemporaneous Indian import data under the Indian Customs' heading "3209," and a price quote from an Indian steel drum manufacturer, respectively. We adjusted the surrogate value for steel drums to reflect inflation. We also adjusted the surrogate values of packing materials to include freight costs incurred between the supplier and the factory.

To value factory overhead, selling, general, and administrative expenses ("SG&A"), and profit, we relied upon publicly-available information in the 2001–2002 annual report of the Mahabaleshwar Honey Producers Cooperative Society, Ltd. ("MHPC"), a producer of the subject merchandise in India. We applied these rates to the calculated cost of manufacture and cost of production using the same methodology established in Wuhan NSR Final Results.

For labor, we used the PRC regression-based wage rate at Import Administration's home page, Import Library, Expected Wages of Selected NME Countries, revised in September 2002, and corrected in February 2003. Because of the variability of wage rates in countries with similar per capita gross domestic products, § 351.408(c)(3) of the Department's regulations requires the use of a regression-based wage rate. The source of these wage rate data on the Import Administration's web site is the *Year Book of Labour Statistics 2001*, International Labour Office (Geneva: 2001), Chapter 5B: Wages in Manufacturing.

To value truck freight, we used an average truck freight cost based on Indian market truck freight rates on a per metric ton basis published in the *Iron and Steel Newsletter*, April 2002.

For details on factor of production valuation calculations, *see* the Factor Valuation Memo, dated November 26, 2003.

Currency Conversion

We made currency conversions pursuant to § 351.415 of the Department's regulations at the rates certified by the Federal Reserve Bank.

Preliminary Results of Review

We preliminarily determine that the following antidumping duty margins exist:

Manufacturer and exporter	POR	Margin (percent)
Shanghai Xiuwei International Trading Co., Ltd	02/10/01–11/30/02	0
Sichuan-Dujiangyan Dubao Bee Industrial Co., Ltd	02/10/01–11/30/02	8.47

For details on the calculation of the antidumping duty margins, see the Analysis of Data Submitted by Shanghai Xiuwei International Trading Co., Ltd. ("Shanghai Xiuwei") in the Preliminary Results of New Shipper Review of the Antidumping Duty Order on Honey from the People's Republic of China ("Shanghai Xiuwei Analysis Memo"), dated November 26, 2003; and the Analysis of Data Submitted by Sichuan-Dujiangyan Dubao Bee Industrial Co., Ltd. ("Sichuan Dubao") in the Preliminary Results of New Shipper Review of the Antidumping Duty Order on Honey from the People's Republic of China ("Sichuan Dubao Analysis Memo"), dated November 26, 2003. Public versions of these memoranda are on file in the CRU.

Assessment Rates

Pursuant to § 351.212(b), the Department calculates an assessment rate for each importer of the subject merchandise. Upon issuance of the final results of this new shipper review, if any importer-specific assessment rates calculated in the final results are above *de minimis* (*i.e.*, at or above 0.5 percent), the Department will issue appraisement instructions directly to CBP to assess antidumping duties on appropriate entries by applying the assessment rate to the entered value of the merchandise. For assessment purposes, we calculated importer-specific assessment rates for the subject merchandise by aggregating the dumping duties due for all U.S. sales to each importer and dividing the amount by the total entered value of the sales to that importer. If these preliminary results are adopted in our final results of review, we will direct CBP to assess the resulting rate against the entered customs value for the subject merchandise on each of Shanghai Xiuwei's and Sichuan Dubao's importer's/customer's entries during the POR.

Cash-Deposit Requirements

Shanghai Xiuwei and Sichuan Dubao may continue to post a bond or other security in lieu of cash deposits for certain entries of subject merchandise exported by Shanghai Xiuwei or Sichuan Dubao. As Sichuan Dubao has certified that it both produced and exported the subject merchandise, Sichuan Dubao's bonding option is limited only to such merchandise for which it is both the producer and exporter. For Shanghai Xiuwei, which has identified Henan Oriental as the producer of subject merchandise for the sale under review, Shanghai Xiuwei's bonding option is limited only to entries of subject merchandise from Shanghai Xiuwei that were produced by Henan Oriental. Bonding will no longer be permitted to fulfill security requirements for Shanghai Xiuwei's and Sichuan Dubao's shipments after publication of the final results of this new shipper review. The following cash-deposit rates will be effective upon publication of the final results of this new shipper review for all shipments of honey from the PRC entered, or withdrawn from warehouse, for consumption on or after publication date, as provided for by section 751(a)(2)(C) of the Act: (1) For subject merchandise produced and exported by Sichuan Dubao, or produced by Henan Oriental and exported by Shanghai Xiuwei, the cash-deposit rate will be that established in the final results of this review; (2) for all other subject merchandise exported by Shanghai Xiuwei or Sichuan Dubao, the cash-deposit rate will be the PRC country-wide rate, which is 183.80 percent; (3) for all other PRC exporters which have not been found to be entitled to a separate rate, the cash-deposit rate will be the PRC country-wide rate; and (4) for all non-PRC exporters of subject merchandise, the cash-deposit rate will be the rate applicable to the PRC exporter that supplied that exporter. These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

Schedule for Final Results of Review

The Department will disclose calculations performed in connection with the preliminary results of this review within five days of the date of publication of this notice in accordance with § 351.224(b). Any interested party may request a hearing within 30 days of publication of this notice in accordance with § 351.310(c) of the Department's regulations. Any hearing would normally be held 37 days after the publication of this notice, or the first workday thereafter, at the U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Individuals who wish to request a hearing must submit a written request within 30 days of the publication of this notice in the **Federal Register** to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 1870, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Requests for a public hearing should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) to the extent practicable, an identification of the arguments to be raised at the hearing.

Unless otherwise notified by the Department, interested parties may submit case briefs within 30 days of the date of publication of this notice in accordance with § 351.309(c)(ii) of the Department's regulations. As part of the case brief, parties are encouraged to provide a summary of the arguments not to exceed five pages and a table of statutes, regulations, and cases cited. Rebuttal briefs, which must be limited to issues raised in the case briefs, must be filed within five days after the case brief is filed. If a hearing is held, an interested party may make an affirmative presentation only on arguments included in that party's case brief and may make a rebuttal presentation only on arguments included in that party's rebuttal brief. Parties should confirm by telephone the time, date, and place of the hearing within 48 hours before the scheduled time. The Department will issue the final results of this new shipper review, which will include the results of its analysis of issues raised in the briefs, within 90 days from the date of the preliminary results, unless the time limit is extended.

Notification to Importers

This notice also serves as a preliminary reminder to importers of their responsibility under § 351.402(f) of the Department's regulations to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during these review periods. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This new shipper review and this notice are published in accordance with

sections 751(a)(2)(B) and 777(i)(1) of the Act.

Dated: November 25, 2003.

James J. Jochum,

Assistant Secretary for Import Administration.

[FR Doc. 03–30178 Filed 12–3–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 112103A]

Proposed Information Collection; Comment Request; Northeast Region Permit Family of Forms

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Department of Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before February 2, 2004.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Brian Hooker, National Marine Fisheries Service, One Blackburn Drive, Gloucester, MA 01930, (978) 281–9220.

SUPPLEMENTARY INFORMATION:

I. Abstract

Any individual or organization participating in federally-controlled fisheries is required to obtain permits. The purpose and use of permits is to: (1) Register fishermen, fishing vessels, fish dealers, and processors; (2) List the characteristics of fishing vessels and/or dealer/processor operations; (3) Exercise influence over compliance (*e.g.*, withhold issuance pending collection of unpaid penalties); (4) Provide a mailing list for the dissemination of important information to the industry; (5) Register participants to be considered for limited entry; and (6) Provide a universe for data collection samples. Identification of the participants, their gear types, vessels, and expected activity levels is an effective tool in the enforcement of fishery regulations. This information is needed to measure the consequences of management controls as well. The participants in certain fisheries may also be required to notify NMFS before fishing trips for the purpose of observer placement and to make other reports on fishing activities.

II. Method of Collection

Initial permit applications are made by a signed paper form. After initial permit issuance, a pre-printed permit renewal form is generated via computer, using current permit information. This form is then sent to the permit holder for updating. If no changes to the pre-printed form are required, the applicant simply needs to sign the form and return it with any other information (*e.g.*, current state registration or U.S. Coast Guard document) required for permit renewal.

Automated reporting by means of a vessel monitoring system (VMS) is required for all vessels issued a full-time or part-time limited access sea scallop permit, or scallop vessels fishing under the small dredge program. All remaining limited access Northeast (NE) multispecies, monkfish, red crab, and scallop vessels are required to report via a days-at-sea (DAS) call-in system. Vessel owners issued a limited access NE multispecies, monkfish, occasional scallop, or combination permit may voluntarily elect to use the VMS in place of the DAS call-in system. This reporting is required in order to monitor: (1) Usage of DAS allocations; (2) Compliance with vessel layover requirements; (3) Compliance with days out of the fishery requirements; (4) Compliance with closed area regulations; and (5) Compliance with exempted fishery regulations.

III. Data

OMB Number: 0648–0202.

Form Number: None.

Type of Review: Regular submission.

Affected Public: Business and other for-profit organizations; individuals or households; and State, Local, or Tribal Government.

Estimated Number of Respondents: 42,334.

Estimated Time Per Response: An initial vessel permit application requires an estimated 45 minutes to complete and preprinted vessel permit renewal forms require an estimated 30 minutes per response. Initial dealer permit applications take an estimated 15 minutes to complete and preprinted dealer permit renewal forms require an estimated 5 minutes to complete. The initial and renewal vessel operator permit applications are estimated to take an average of 1 hour to complete due to the color photograph submission requirement. Limited access vessel upgrade or replacement applications take approximately 3 hours to complete. Applications for retention of limited access permit history require an estimated 30 minutes.

Limited access NE multispecies, combination, occasional scallop, and monkfish vessels must notify NMFS via the call-in system of the start date and end date for each fishing trip. The estimated time per response is 2 minutes. It is estimated to take NE multispecies and monkfish vessels approximately 3 minutes to declare of blocks of time out of the gillnet fishery. The burden of vessel monitoring for full-time and part-time limited access scallop vessels or authorized NE multispecies, combination, and occasional scallop vessels is estimated to be 1 hour for installation of a VMS unit, 5 minutes for verification of installation of the VMS unit, and 30 seconds per poll for automated polling of vessel position. Vessels required to have a fully functional VMS unit at all times may request to turn off the VMS (power-down exemption) at approximately 30 minutes per request. Requests for observer coverage are estimated to require 2 minutes per request.

Limited access vessels fishing under DAS requirements that have assisted in U.S. Coast Guard search and rescue operations or assisted in towing a disabled vessel may apply for Good Samaritan DAS credits at a burden of 30 minutes per application. Owners or operators of vessels seeking a Letter of Authorization (LOA) to participate in any of the exemption programs must request an LOA from the Administrator, Northeast Region, NMFS (Regional Administrator). The estimated time required to request an LOA is 5 minutes. Vessels fishing in the North Atlantic Fisheries Organization (NAFO) Regulatory Area that wish to be exempt from NE multispecies regulations while transiting the EEZ with NE multispecies on board, or landing NE multispecies in U.S. ports, must request an LOA (5 minutes) in addition to possessing a valid High Seas Fishing Compliance permit under 50 CFR part 300. An LOA (5 minutes) is also required for permitted vessels intending to transfer selected species from one vessel to another, as follows: *Loligo* and butterfish moratorium permit, or *Illex* moratorium permit, and vessels issued a mackerel or squid/butterfish incidental catch permit that intend to transfer *Loligo*, *Illex*, or butterfish; vessels issued a NE multispecies or scallop permit that intend to transfer species other than regulated species; and NE multispecies vessels intending to transfer up to 500 lb (227 kg) of combined small-mesh NE multispecies per trip for use as bait.

Owners of charter/party vessels intending to fish in the Nantucket Lightship Closure Area must request an LOA from the Regional Administrator, with an estimated time of 5 minutes per request. Vessels fishing under Charter/Party regulations in Gulf of Maine (GOM) closed areas must obtain a Charter/Party Exemption Certificate for GOM Closed Areas, at an estimated 2 minutes per request.

Limited access sea scallop vessels wishing to participate in either the state waters DAS exemption program or the state waters gear exemption program must notify the Regional Administrator by VMS or call-in notification. Participants in the sea scallop state waters exemption programs using VMS notification must notify the Regional Administrator prior to the first trip in the exemption program and prior to the first planned trip in the EEZ, at an estimated 2 minutes per response. Participants in these exemption programs using the call-in system must notify the Regional Administrator at least 7 days prior to fishing under the exemption, at an estimated 2 minutes per call. If participants using the call-in system wish to withdraw from either state waters exemption program prior to the end of the 7-day designated exemption period requirement, they must also call the Regional Administrator to notify of early withdrawal, at an estimated 2 minutes per call.

Surfclam and ocean quahog vessel owners or operators are required to call the NMFS Office of Law Enforcement (OLE) nearest to the point of offloading prior to the departure of the vessel from the dock. It requires approximately 2 minutes for a vessel owner or operator to notify OLE of the vessel's departure from the dock to fish for surf clams or ocean quahogs in the EEZ.

In the American lobster fishery, initial lobster area designations are estimated to take 5 minutes, requests for additional tags is estimated to take 2 minutes, and notification of lost tags is estimated to take 3 minutes.

In the NE multispecies fishery, a request for change in permit category designation requires approximately 2 minutes, and a request for transit to another port by a vessel required to remain in the GOM cod trip limit takes 2 minutes.

In the gillnet fisheries for NE multispecies and monkfish, the burden estimate for calling out of the fishery is 3 minutes. Gillnet category designation, including initial requests for gillnet tags, requires approximately 10 minutes. Requests for additional tags require an estimated 2 minutes. Notification of lost tags and requests for replacement tag numbers also require an estimated 2 minutes. It will take approximately 1 minute to attach each gillnet tag.

Requests for state quota transfers in the bluefish and summer flounder fisheries are estimated to require 1 hour.

Estimated Total Annual Burden Hours: 20,212.

Estimated Total Annual Cost to Public: $1,348,473.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: November 19, 2003.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 03–30176 Filed 12–3–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 112603B]

Magnuson-Stevens Act Provisions; General Provisions for Domestic Fisheries; Application for Exempted Fishing Permits (EFPs)

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce.

ACTION: Notification of a proposal for EFPs to conduct experimental fishing; request for comments.

SUMMARY: The Assistant Regional Administrator for Sustainable Fisheries, Northeast Region, NMFS (Assistant Regional Administrator) has made a preliminary determination that the subject EFP application contains all the required information and warrants further consideration. The Assistant Regional Administrator has also made a preliminary determination that the activities authorized under the EFP would be consistent with the goals and objectives of the Northeast (NE) Multispecies Fishery Management Plan (FMP). However, further review and consultation may be necessary before a final determination is made to issue the EFP. Therefore, NMFS announces that the Assistant Regional Administrator proposes to recommend that an EFP be issued that would allow up to 60 commercial fishing vessels to conduct fishing operations that are otherwise restricted by the regulations governing the fisheries of the Northeastern United States. The EFP would allow for exemptions from the FMP as follows: The Georges Bank (GB) seasonal closure area; the Days-at-Sea (DAS) notification requirements; the effort-control program (DAS); and minimum fish size restrictions for the temporary retention of undersized fish for data collection purposes.

Regulations under the Magnuson-Stevens Fishery Conservation and Management Act require publication of this notification to provide interested parties the opportunity to comment on applications for proposed EFPs.

DATES: Comments on this document must be received on or before December 19, 2003.

ADDRESSES: Written comments should be sent to Patricia A. Kurkul, Regional Administrator, NMFS, Northeast Regional Office, 1 Blackburn Drive, Gloucester, MA 01930. Mark the outside of the envelope "Comments on Cod Tagging Study." Comments may also be sent via facsimile (fax) to (978) 281–9135.

FOR FURTHER INFORMATION CONTACT: Brian Hooker, Fishery Management Specialist, phone (978) 281–9220.

SUPPLEMENTARY INFORMATION: The Cape Cod Commercial Hook Fishermen's Association submitted an application for an EFP to NMFS on November 13, 2003. The application was complete as received. The experimental fishing application requests authorization to

allow the catch, tag, and release of Atlantic cod using rod and reel only. The primary goal of the study is to provide high quality scientific data on the current distribution and movement patterns of Atlantic cod on GB. In the long term, it is hoped that the improved understanding of the cod stock that may result from this study would enable better and more effective management of the cod fishery.

The study proposes to catch, tag, and release 30,000 individual cod during 300 dedicated tagging trips, using up to 60 commercial fishing vessels. The participating vessels would catch cod using rod and reel, with treble hooks eliminated from the jigs, temporarily hold caught cod live in tanks aboard the vessel while processing and tagging the fish, and return the fish alive to the sea. Any other species caught would be released as soon as practicable. During the study, no fish of any species would be landed or retained for commercial sale. Cod would be tagged on dedicated tagging trips in four main areas: The Cape Cod/Chatham area; the Great South Channel area; the Nantucket Shoals area; and the Coxes Ledge area. The study would likely have minimal impacts to the target species in the area due to the use of rod and reel as the catch method and efforts to minimize trauma and release all specimens alive. Tagging program staff would be on board the vessel for training purposes and to observe 20 percent of the dedicated trips to assist with tagging operations.

The research study would occur between December 1, 2003, and June 15, 2004, in the area defined by straight lines connecting the points 42°00′ N. lat. 70°00′ W. long., the northern border of the Nantucket Lightship Closed Area at 70°00′ W. long., the northern border of the Nantucket Lightship Closed Area at 69°00′ W. long., the western border of Closed Area I at 69°00′ W. long., 42°00′ N. lat. at Loran C 13700, and then back to 42°00′ N. lat. 70°00′ W. long. This area excludes the NE multispecies year-round closed areas but includes the GB Seasonal Closure Area (May 1–May 31). The rationale for needing to access this seasonal closure area is to capture and tag fish from aggregating schools of spawning cod prior to their post-spawning migration.

Therefore, the EFP would allow for exemptions from the FMP as follows: the Georges Bank (GB) seasonal closure area specified at 50 CFR 648.81(n); the DAS notification requirements specified at § 648.10; the effort-control program (DAS) as specified at § 648.82(a); and minimum fish size restrictions specified at § 648.83(a) for the temporary retention of undersized fish for data collection purposes.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: November 28, 2003.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 03–30177 Filed 12–3–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF DEFENSE

Department of the Army

Performance Review Board Membership for the Chief of Staff of the Army

AGENCY: Department of the Army, DoD.

ACTION: Notice.

SUMMARY: Notice is given of the names of members of a Performance Review Board for the Department of the Army.

EFFECTIVE DATE: November 26, 2003.

FOR FURTHER INFORMATION CONTACT: Marilyn Ervin, U.S. Army Senior Executive Service Office, Assistant Secretary of the Army, Manpower & Reserve Affairs, 111 Army Pentagon, Washington, DC 20310–0111.

SUPPLEMENTARY INFORMATION: Section 4314(c)(1) through (5) of Title 5, U.S.C., requires each agency to establish, in accordance with regulations, one or more Senior Executive Service performance review boards. The boards shall review and evaluate the initial appraisal of senior executives' performance by supervisors and make recommendations to the appointing authority or rating official relative to the performance of these executives.

The members of the Performance Review Board for the U.S. Army, Chief of Staff of the Army, are:

1. MG Lawrence R. Adair, Assistant Deputy Chief of Staff, G–1.
2. MG Dorian T. Anderson, Commanding General, United States Army Human Resources Command.
3. BG Harry B. Axson, Jr., Deputy Director for Operations, J–3, U.S. Central Command.
4. Mr. Brian Barr, Technical Director, U.S. Army Test and Evaluation Command.
5. Ms. Jean M. Bennett, Director, Resources and Infrastructure, Office of the Deputy Chief of Staff, G–2.
6. Mr. Vernon M. Bettencourt, Jr., Technical Advisor to the Deputy Chief of Staff, G–3, Office of the Deputy Chief of Staff, G–3.
7. MG Robert W. Chesnut, Assistant Deputy Chief of Staff, G3 (Mobilization), Office of the Chief, Army Reserves.
8. MG Peter W. Chiarelli, Commanding General, 1st Cavalry Division.
9. LTG Claude V. Christianson, Deputy Chief of Staff, G–4.
10. Dr. Craig E. College, Deputy Assistant Secretary of the Army (Infrastructure Analysis), Office of the Assistant Secretary of the Army (Installations and Environment).
11. Mr. William F. Crain, Technical Director, U.S. Army Center for Army Analysis.
12. BG Bruce Davis Deputy Director, Operations, Readiness, and Mobilization, National Guard Bureau.
13. MG B. Sue Dueitt, Director, Personnel Transformation.
14. Mr. Terrance M. Ford Assistant Deputy Chief of Staff, G–2
15. MG James J. Grazioplene, Director, Force Development Office of the Deputy of the Deputy Chief of Staff, G–8.
16. LTG Benjamin S. Griffin, Deputy Chief of Staff, G–8.
17. BG Dennis E. Hardy, Commanding General, 24th Infantry Division (Mechanized) and Fort Riley.
18. MG David H. Huntoon, Jr., Commandant, U.S. Army War College.
19. BG Kenneth W. Hunzeker, Vice Director for Force Structure, Resources and Assessment, J–8, The Joint Staff.
20. BG Jerome Johnson, Director of Plans, Operations and Readiness, Office of the G–4.
21. LTG John M. Le Moyne, Deputy Chief of Staff, G–1.
22. Mr. Mark R. Lewis, Director of Plans, Resources, and Operations, Office of the Deputy Chief of Staff, G–1.
23. Ms. Maureen T. Lischke, Program Executive Officer for Information Systems and Chief Information Officer, National Guard Bureau.
24. MG James J. Lovelace, Jr., Director of the Army Staff.
25. Mr. Wendell Lunceford, Director, Army Model and Simulation Office, Office of the Deputy Chief of Staff, G–3.
26. LTG Charles S. Mahan, Jr., Deputy Chief of Staff, G–4.
27. BG Jesus A. Mangual, Director of Force Projection and Distribution, Office of the Deputy Chief of Staff, G–4.
28. Mr. John W. Matthews, Director, Army Declassification Activity, Office of the Deputy Chief of Staff, G–1.
29. MG David F. Melcher, Director, Program Analysis and Evaluation, Office of the Deputy Chief of Staff, G–8
30. Mr. William P. Neal, Associate Director, Force Projection and Distribution, Office of the Deputy Chief of Staff, G–4.
31. Mr. Mark J. O'Konski, Director of Research and Development, Directorate of Research and Development, U.S. Army Corps of Engineers.
32. MG Elbert N. Perkins, Commanding General, U.S. Army Japan and 9th Theater Support Command.
33. BG Steven P. Schook, Chief of Staff, KFOR (Main), Film City, Camp Bondsteel.
34. Mr. David L. Snyder, Assistant G1 for Civilian Personnel Policy, Office of the Deputy Chief of Staff, G–1.
35. Mr. John C. Speedy, III, Deputy Director for Army International Affairs, Office of the Deputy Chief of Staff, G–3.
36. Mr. James J. Streilein, Director, Army Evaluation Center, U.S. Army Test and Evaluation Command.
37. Ms. Elizabeth B. Throckmorton, Director, Civilian Personnel Management, Office of the Deputy Chief of Staff, G–1.
38. MG James D. Thurman, Director of Training, Office of the Deputy Chief of Staff, G–3.
39. Mr. Donald C. Tison, Assistant Deputy Chief of Staff for Programs, Office of the Deputy Chief of Staff, G–8.
40. Mr. Edgar B. Vandiver, III, Director, U.S. Army Center for Army Analysis.
41. BG Lloyd T. Waterman, Director of Sustainment, Office of the Deputy Chief of Staff, G–4.
42. MG David P. Wherley, Jr., Commander, DC National Guard.
43. Mr. Daniel F. Wiener, II, Chief Information Officer, Chief Army Reserve.

Luz D. Ortiz,

Army Federal Register Liaison Officer.

[FR Doc. 03–30157 Filed 12–3–03; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Intent To Prepare a Draft Environmental Impact Statement for the Water Conservation Area 3 Decompartmentalization and Sheet Flow Enhancement Project, Part 1

AGENCY: Department of the Army, U.S. Army Corps of Engineers, DoD.

ACTION: Notice of intent.

SUMMARY: The Jacksonville District, U.S. Army Corps of Engineers (Corps), intends to prepare an integrated Project Implementation Report (PIR) and Environmental Impact Statement (EIS) for the Water Conservation Area 3 (WCA–3) Decompartmentalization and Sheet Flow Enhancement Project Part 1 (Decomp Project). The project is a cooperative effort between the Corps and the south Florida Water Management District (SFWMD), which is also a cooperating agency for this Draft EIS (DEIS). WCA–3 (made up of WCA 3A and WCA 3B) is located immediately north of Everglades National park (ENP) in Broward and Miami-Dade Counties. Among the environmentally detrimental effects resulting from the construction of the Central and Southern Florida Project (C&SF), of which WCA 3 is a part, are the compartmentalization and constriction of historically broad wetlands, altered hydroperiods, reduction of wildlife, and degradation of water quality. The Decomp Project will investigate alternatives to reduce barriers to sheet flow such as canals and levees to the extent practicable. The goal is to restore historical sheet flow distributions, depth patterns, hydroperiods, and hydrologic connectivity in the various landscapes within WCA–3 and in Northeast Shark River Slough within ENP, thereby creating a sustainable environment suitable for the recovery and long-term survival of native flora and fauna in concert with related projects.

FOR FURTHER INFORMATION CONTACT: U.S. Army Corps of Engineers, Planning Division, Environmental Branch, P.O. Box 4970, Jacksonville, FL, 32232–0019; Attn: Ms. Janet Cushing or by telephone, at 904–232–2259 or e-mail: *janet.a.cushing@usace.army.mil.*

SUPPLEMENTARY INFORMATION:

a. *Authorization:* Section 601 of the Water Resources Development Act of 2000 (Pub. L. 106–541) authorized the implementation of the Decomp Project.

b. *Study Area:* The study area is the WCA–3 and the northeast section of Everglades National Park, in Broward and Miami-Dade Counties.

c. *Project Scope:* The scope is to investigate alternatives to reduce barriers to sheet flow through modifications to the canals and levees in WCA–3, and modifications to the section of Tamiami Trail south of WCA–3B. Also, seepage control features may be constructed, as needed, along L–30 to prevent project-induced increased flood damages downstream. The evaluation of alternatives and selection of a recommended plan will be documented in the PIR and EIS.

d. *Preliminary Alternatives:* The conceptual design features of the project presented in the 1999 C&SF Comprehensive Review Study include backfilling all or portions of the Miami Canal between S–8 and the east coast protective levee (L–33); increasing the conveyance capacity of four sections of the North New River Conveyance System to compensate for conveyance lost from the Miami Canal: (1) Along L–38 canal from S–7 to S–34; (2) across Interstate 75; (3) on L–37 canal from I–75 to C–11; and (4) on L–33 canal from C–9 to C–6; constructing additional structures to pass flow from WCA–3A to WCA–3B through the L–67A Levee; degrading all or portions of the L–29 Levee from S–333 east to S–334 and filling in all or portions of the L–29 borrow canal; raising and bridging all or portions of the Tamiami Trail from S–333 east to S–334; and constructing seepage control features along L–30. Alternative plans to be developed and evaluated may include a combination of these features to greater or lesser degrees, such as leaving canals in place, partial canal filling, strategic placement of fill plugs, the creation of tree islands from levee material, and exploring other possibilities that can meet the goals and objectives of the project.

e. *Issues:* The EIS will address the following issues: The relation between this project and related projects including Modified Water Deliveries to ENP and other Comprehensive Everglades Restoration Plan projects; impacts to recreational fishing and hunting; impacts to aquatic and wetland habitats; water flows; hazardous and toxic waste; water quality; flood protection; aesthetics; fish and wildlife resources, including protected species; tree island habitat, cultural resources; socioeconomic issues; water supply; and other impacts identified through Scoping, public involvement and interagency coordination.

f. *Scoping:* A Scoping letter and public workshops will be used to invite comments on alternatives and issues from Federal, State, and local agencies, affected Indian tribes, and other interested private organizations and individuals.

g. *DEIS Preparation:* The integrated draft PIR, including a DEIS, is currently scheduled for publication in the second quarter of 2007.

Dated: November 13, 2003.

James C. Duck,

Chief, Planning Division.

[FR Doc. 03–30158 Filed 12–3–03; 8:45 am]

BILLING CODE 3710–AJ–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–12–001]

Florida Gas Transmission Company; Notice of Compliance Filing

November 28, 2003.

Take notice that on November 25, 2003, Florida Gas Transmission Company ("FGT") tendered for filing to become part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheets effective November 1, 2003:

Substitute Third Revised Sheet No. 14
Substitute First Revised Sheet No. 22H
Substitute Fourth Revised Sheet No. 59

FGT states that on October 1, 2003, FGT filed in Docket No. RP04–12–000 a Section 4 Rate Case including revised tariff sheets with a proposed effective date of November 1, 2003. Such tariff sheets included a proposal to provide for partial reservation charge credits, based on the return on equity and related income tax components, in all situations where FGT is unable to fulfill its firm obligations. FGT states that by order dated October 31, 2003 (Order), the Commission, among other things, determined that partial reservation credits were appropriate only in force majeure situations and directed FGT to file within 30 days thereof revised tariff sheets to be effective November 1, 2003.

FGT states that pursuant to the Order, the tariff sheets attached hereto contain revisions that provide for partial reservation charge credits only in force majeure situations.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with § 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with § 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Linda Mitry,

Acting Secretary.

[FR Doc. E3–00455 Filed 12–3–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–23–002]

Gas Transmission Northwest Corporation; Notice of Tariff Filing

November 28, 2003.

Take notice that on November 25, 2003, Gas Transmission Northwest Corporation (GTN) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1–A, Substitute First Revised Sheet No. 23 to correct a rate reference on First Revised Sheet No. 23. GTN requests that the Commission accept the above-referenced tariff sheet to be effective on October 6, 2003.

GTN further states that a copy of this filing has been served on GTN's jurisdictional customers and interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with § 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with § 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "eLibrary". Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the e-Filing link.

Linda Mitry,

Acting Secretary.

[FR Doc. E3–00456 Filed 12–3–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–23–003]

Gas Transmission Northwest Corporation; Notice of Tariff Filing

November 28, 2003.

Take notice that on November 25, 2003, Gas Transmission Northwest Corporation (GTN) tendered for filing various tariff sheets to incorporate into Third Revised Volume No. 1–A, sheets that have recently been approved by the Commission in GTN's superseded FERC Gas Tariff, Second Revised Volume No. 1–A.

GTN states that it recently replaced Second Revised Volume No. 1–A with Third Revised Volume No. 1–A in order to reflect a corporate name change. GTN requests that the Commission accept the above-referenced tariff sheets to be effective on November 1, 2003.

GTN further states that a copy of this filing has been served on GTN's jurisdictional customers and interested state regulatory agencies.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with § 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with § 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary (FERRIS) link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the e-Filing link.

Linda Mitry,

Acting Secretary.

[FR Doc. E3–00457 Filed 12–3–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–329–005]

Great Lakes Gas Transmission Limited Partnership; Notice of Compliance Filing

November 28, 2003.

Take notice that on November 24, 2003, Great Lakes Gas Transmission Limited Partnership (Great Lakes) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets, proposed to be effective June 1, 2003:

Second Substitute Eighth Revised Sheet No. 10
Third Substitute Fourth Revised Sheet No. 39A
1st Rev Sixth Revised Sheet No. 42
Substitute Eighth Revised Sheet No. 42A
Second Substitute Third Revised Sheet No. 50A
Substitute Second Revised Sheet No. 50Q

Great Lakes states that these tariff sheets are being filed in compliance with the Commission's October 27, 2003 Order on Compliance Filing relative to Order Nos. 637, 587–G, and 587–L in Docket No. RP00–329–004 (October 27 Order), wherein the Commission accepted Great Lakes' proposed revisions, with some modifications. Great Lakes was directed to file revised tariff sheets within thirty (30) days of the October 27 Order consistent with the modifications set forth in that Order. Great Lakes states that the tariff sheets included in this compliance tariff filing reflect those required modifications.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with § 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with § 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the e-Filing link.

Linda Mitry,

Acting Secretary.

[FR Doc. E3–00453 Filed 12–3–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–68–000]

Kern River Gas Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

November 28, 2003.

Take notice that on November 25, 2003, Kern River Gas Transmission Company (Kern River) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the tariff sheets listed on Appendix A of the filing, to be effective January 1, 2004.

Kern River states that the purpose of this filing is (1) to adjust Kern River's daily reservation/demand rates, authorized overrun rates, and interruptible rates to reflect a slight reduction in those rates because calendar year 2004 has 366 days, and current rates are based on 365 days; (2) to delete the monthly rates stated in Kern River's tariff; (3) to change monthly rate references and formulas to daily rate references and formulas, where applicable, and to make other miscellaneous, rate-related changes.

Kern River states that it has served a copy of this filing upon its customers and interested state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with § 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with § 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "eLibrary". Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Linda Mitry,

Acting Secretary.

[FR Doc. E3–00458 Filed 12–3–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–70–000]

Transcontinental Gas Pipe Line Corporation; Notice of Tariff Filing

November 28, 2003.

Take notice that on November 24, 2003, Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, Third Revised Sheet No. 60A, Eleventh Revised Sheet No. 60B and Tenth Revised Sheet No. 60C proposed to be effective January 1, 2004.

Transco states that the purpose of the instant filing is to calculate the firm transportation service load factors on the actual volumes transported during the 12-month period October 2002 through September 2003 in accordance with GRI's 1993 settlement and to make the appropriate changes to its list of small customers and high and low load factor large customers included in its tariff.

Transco states that copies of the filing are being mailed to affected customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with § 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance

with § 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "eLibrary". Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Linda Mitry,

Acting Secretary.

[FR Doc. E3–00451 Filed 12–3–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–132–007]

Viking Gas Transmission Company; Notice of Compliance Filing

November 28, 2003.

Take notice that on November 24, 2003, Viking Gas Transmission Company (Viking) tendered for filing to become part of Viking's FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets to become effective January 1, 2004:

Sixth Revised Sheet No. 5
Fourth Revised Sheet No. 5E
Fourth Revised Sheet No. 5A
Fourth Revised Sheet No. 5B
Fourth Revised Sheet No. 5F
Fourth Revised Sheet No. 5C
Fourth Revised Sheet No. 5D
Fourth Revised Sheet No. 5G
Sixth Revised Sheet No. 5H
Second Revised Sheet No. 5I

Viking proposes to place the Stage 2 Rates into effect in accordance with the terms and conditions of Viking's Stipulation and Agreement.

Viking states that copies of this filing have been sent to all of Viking's contracted shippers and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with § 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with § 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the e-Filing link.

Linda Mitry,

Acting Secretary.

[FR Doc. E3–00454 Filed 12–3–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP02–90–001]

AES Ocean Express, L.L.C.; Notice of Availability of the Final Environmental Impact Statement for the Proposed AES Ocean Express Pipeline Project

November 28, 2003.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) has prepared a Final Environmental Impact Statement (FEIS) on the natural gas pipeline facilities proposed by AES Ocean Express, L.L.C. (Ocean Express) in the above-referenced docket.

The FEIS was prepared to satisfy the requirements of the National Environmental Policy Act. The staff concludes that approval of the proposed project with the appropriate mitigating measures as recommended, would have limited adverse environmental impact. The FEIS also evaluates alternatives to the proposal, including system alternatives; major route alternatives; and route variations.

The FEIS addresses the potential environmental effects of the construction and operation of the following facilities:

- About 54.5-miles of 24-inch-diameter of new natural gas pipeline extending from a point on the Exclusive Economic Zone ("EEZ") boundary between the United States and the Bahamas to delivery points in Broward County, Florida;
- Two new meter stations, and related facilities;
- One below ground valve;
- One aboveground main pipeline shutoff valve; and
- One pig launching/receiving station.

The purpose of the proposed facilities would be to transport about 842,000 dekatherms/day (Dth/d) of natural gas on an annual basis to new markets in southeastern Florida. The primary market is for natural gas-fueled electric generation plants that are needed to meet the forecasted substantial increases in consumption in Florida.

The FEIS has been placed in the public files of the FERC and is available for public inspection at: Federal Energy Regulatory Commission, Public Reference and Files Maintenance Branch, 888 First Street, NE., Room 2A, Washington, DC 20426, (202) 502–8371.

Copies of the FEIS have been mailed to Federal, state and local agencies, public interest groups, individuals who have requested the FEIS, newspapers, and parties to this proceeding.

Additional information about the project is available from the Commission's Office of External Affairs, at 1–866–208–FERC or on the FERC Internet Web site (*www.ferc.gov*) using the eLibrary link. Click on the eLibrary link, click on "General Search" and enter the docket number excluding the last three digits in the Docket Number field. Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY (202) 502–8659. The eLibrary link on the FERC Internet Web site also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

Linda Mitry,

Acting Secretary.

[FR Doc. E3–00459 Filed 12–3–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2009–018; North Carolina/Virginia]

Virginia Electric Power Company; Notice of Availability of Environmental Assessment

November 28, 2003.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission) regulations, 18 CFR Part 380 (Order No. 486, 52 FR 47897), the Office of Energy Projects has reviewed the application for license for the Roanoke Rapids and Gaston Hydroelectric Project, located on the Roanoke River in Brunswick and Mecklenburg Counties, Virginia, and Halifax, Northampton and Warren Counties, North Carolina. The project occupies approximately 252 acres of federal land that is administered by the U.S. Army Corps of Engineers.

Commission staff has prepared an Environmental Assessment (EA) for the project. The EA contains the staff's analysis of the potential environmental impacts of the project and concludes that licensing the project, with appropriate environmental protective measures, would not constitute a major federal action that would significantly affect the quality of the human environment.

A copy of the EA is available for review at the Commission's Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov*, using the "eLibrary" link. Enter the docket number, excluding the last three digits in the docket number field, to access the document. For assistance, contact FERC Online Support at *FERCOnLineSupport@ferc.gov* or call toll free at 1–866–208–3676, for TTY, contact 202–502–8659. Register online at *http://www.ferc.gov/esubscribenow.htm* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

Any comments (an original and 8 copies) should be filed within 30 days from the date of this notice and should be addressed to Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments may be filed electronically via the Internet in lieu of paper [*see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-filing" link. For further information, contact Allan E. Creamer at (202) 502–8365 or *allan.creamer@ferc.gov*.

Linda Mitry,

Acting Secretary.

[FR Doc. E3–00452 Filed 12–3–03; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[OECA–2003–0025; FRL–7593–8]

Agency Information Collection Activities; Submission for OMB Review and Approval; Comment Request; NSPS for Commercial and Industrial Solid Waste Incineration Units (40 CFR Part 60, Subpart CCCC), EPA ICR Number 1926.03, OMB Control Number 2060–0450

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. This ICR is scheduled to expire on January 31, 2004. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. This ICR describes the nature of the information collection and its estimated burden and cost.

DATES: Additional comments may be submitted on or before January 5, 2004.

ADDRESSES: Submit your comments, referencing docket ID number OECA–2003–0025, to (1) EPA online using EDOCKET (our preferred method), by email to *docket.oeca@epa.gov*, or by mail to: EPA Docket Center, Environmental Protection Agency, Enforcement and Compliance Docket and Information Center, Mail Code 2201T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, and (2) OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Learia Williams, Compliance Assessment and Media Programs Division, Mail Code 2223A, Office of Compliance, Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; telephone number: (202) 564–4113; fax number: (202) 564–0050; e-mail address: *williams.learia@epa.gov*.

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On May 19, 2003 (68 FR 27059), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA has addressed the comments received.

EPA has established a public docket for this ICR under Docket ID No. OECA–2003–0025, which is available for public viewing at the Enforcement and Compliance Docket and Information Center in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Avenue, NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Enforcement and Compliance Docket and Information Center is (202) 566–1514. An electronic version of the public docket is available through EPA Dockets (EDOCKET) at *http://www.epa.gov/edocket*. Use EDOCKET to submit or view public comments, access the index listing of the contents of the public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the docket ID number identified above.

Any comments related to this ICR should be submitted to EPA and OMB within 30 days of this notice. EPA's policy is that public comment, whether submitted electronically or in paper, will be made available for public viewing in EDOCKET as EPA receives them and without change, unless the comment contains copyrighted material, Confidential Business Information (CBI), or other information whose public disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EDOCKET. The entire printed comment, including the copyrighted material, will be available in the public docket. Although identified as an item in the official docket, information claimed as CBI, or whose disclosure is otherwise restricted by statute, is not included in the official public docket, and will not be available for public viewing in EDOCKET. For further information about the electronic docket, see EPA's **Federal Register** notice describing the electronic docket at 67 FR 38102 (May

31, 2002), or go to *www.epa.gov/edocket*.

Title: NSPS for Commercial and Industrial Solid Waste Incineration Units (40 CFR Part 60, Subpart CCCC).

Abstract: The New Source Performance Standards (NSPS) for Commercial and Industrial Solid Waste Incineration Units (CISWI) (40 CFR part 60, subpart CCCC), was proposed on December 1, 2000, and promulgated on March 27, 2001. The standards require initial performance tests for 10 pollutants, annual performance testing for particulate matter (PM), hydrogen chloride (HCl), opacity continuous operating parameter monitoring, annual operator training and annual reporting (deviation reports are required if any of the emission limitations or operating limits are exceeded).

This standard applies to owners or operators of new stationary sources, that is, incineration units that meet either of the two criteria: (1) Sources for which construction begins after the NSPS is proposed which is November 30, 1999, or (2) sources that are reconstructed or modified on or after June 1, 2001. The standard applies to combustion devices that combust commercial and industrial waste. Commercial and industrial waste is a solid waste combusted in an enclosed device using controlled flame combustion without energy recovery, which is a distinct operating unit of any commercial or industrial facility, including field-erected, modular, and custom-built incineration units operating with starved or excess air, or solid waste combusted in an air curtain incinerator without energy recovery.

Owners or operators subject to the provisions of this part will perform annual performance testing on an ongoing basis, ensuring that the air pollution control device is operating properly and its performance has not deteriorated. To minimize the burden of the annual performance testing, the rule only required those respondent tests for PM, HCl, and opacity. Annual performance testing is not required for dioxins/furans, cadmium (Cd), carbon monoxide (CO), lead (Pb), mercury (Hg), nitrogen oxides (NO_X), and sulfur dioxide (SO_2). This significantly reduces the testing costs while still providing the EPA with sufficient data to adequately assess compliance. The rule allows respondents to skip two annual tests for a pollutant if all performance tests over the previous three years show compliance with the emission limit. The owner or operator must establish maximum or minimum values for each operating parameter during the initial performance tests for PM, dioxins/furans, opacity, HCl, Cd, Pb, Hg, CO, NO_X and SO_2.

Owners or operators subject to this provision must perform the following activities: Conduct performance tests, monitor operating parameters, prepare siting analysis, prepare waste management plan, operator training and qualifications, one-time and periodic reports, and the maintenance of records. Reports are submitted annually and semiannually. With the exception of requiring records to be maintained for more than three years, none of the guidelines in CFR 1320.5 are being exceeded. In 40 CFR subpart A, "General Provisions for National Emission Standards for Hazardous Air Pollutants for Source Categories," and under section 129 of the Act, CISWI facilities are subject to similar MACT-based regulations, requiring all records to be maintained at the source for a period of five years. In addition, Title V permit programs also require records to be retained for five years.

The proposed standards include annual operator training requirements for incinerator unit operators (rule requires at least one qualified operator or supervisor per facility). The annual training requirements include annual refresher training to maintain operator qualification and an annual review of site-specific documentation. The way in which an incinerator is operated has a significant impact on the emissions from that incinerator. The annual operator training is essential to ensure that the incinerator is being operated properly.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9 and are identified on the form and/or instrument, if applicable.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 325 hours per response. Burdens means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Commercial and industrial solid waste incineration units.

Estimated Number of Respondents: 30.

Frequency of Response: Initial, annual, and semiannual.

Estimated Total Annual Hour Burden: 16,899.

Estimated Total Annual Cost: $1,343,000, includes $13,000 annualized capital/startup costs, $5,000 annual O&M costs, and $1,325,000 labor costs.

Changes in the Estimates: There is an increase of 5,690 hours in the total estimated burden currently identified in the OMB Inventory of Approved ICR Burdens. Approximately six new CISWI units are constructed each year. Therefore, the average number of respondents has increased to 30 in this ICR. In addition, a revised hourly labor rate from the United States Department of Labor, resulted in an increase over the three-year period from the previous ICR.

Dated: November 24, 2003.

Doreen Sterling,

Acting Director, Collection Strategies Division.

[FR Doc. 03–30161 Filed 12–3–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OAR–2003–0176; FRL–7593–7]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; Registration of Fuels and Fuel Additives: Requirements for Manufacturers, EPA ICR Number 0309.11, OMB Control Number 2060–0150

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. This ICR is scheduled to expire on January 31, 2004. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. This ICR describes the nature of the information collection and its estimated burden and cost.

DATES: Additional comments may be submitted on or before January 5, 2004.

ADDRESSES: Submit your comments, referencing docket ID number OAR–2003–0176, to (1) EPA online using EDOCKET (our preferred method), by e-mail to *a-and-r-Docket@epa.gov*, or by mail to: EPA Docket Center, Environmental Protection Agency, Air and Radiation Docket and Information Center, Mail Code 6102T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, and (2) OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: James W. Caldwell, Office of Transportation and Air Quality, Mail Code 6406J, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 564–9303; fax number: (202) 565–2085; e-mail address: *caldwell.jim@epa.gov*.

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On August 7, 2003 (68 FR 47058), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments.

EPA has established a public docket for this ICR under Docket ID No. OAR–2003–0176, which is available for public viewing at the Air and Radiation Docket and Information Center in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Air and Radiation Docket and Information Center is (202) 566–1742. An electronic version of the public docket is available through EPA Dockets (EDOCKET) at *http://www.epa.gov/edocket*. Use EDOCKET to submit or view public comments, access the index listing of the contents of the public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the docket ID number identified above.

Any comments related to this ICR should be submitted to EPA and OMB within 30 days of this notice. EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EDOCKET as EPA receives them and without change, unless the comment contains copyrighted material, confidential business information (CBI), or other information whose public disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EDOCKET. The entire printed comment, including the copyrighted material, will be available in the public docket. Although identified as an item in the official docket, information claimed as CBI, or whose disclosure is otherwise restricted by statute, is not included in the official public docket, and will not be available for public viewing in EDOCKET. For further information about the electronic docket, *see* EPA's **Federal Register** notice describing the electronic docket at 67 FR 38102 (May 31, 2002), or go to *www.epa.gov/edocket*.

Title: Registration of Fuels and Fuel Additives: Requirements for Manufacturers.

Abstract: In accordance with the regulations at 40 CFR part 79, subparts A, B, C, and D, Registration of Fuels and Fuel Additives, manufacturers (including importers) of gasoline or diesel fuel for use in motor vehicles, and manufacturers (including importers) of additives for such gasoline or diesel fuel, are required to have these products registered by the EPA prior to their introduction into commerce. Registration involves providing a chemical description of the fuel or additive, certain technical and marketing information, and any health-effects information in possession of the manufacturer. The development of heath-effects data, as required by 40 CFR part 79, subpart F, is covered by a separate information collection. Manufacturers are also required to submit periodic reports (annually for additives, quarterly and annually for fuels) on production volume and related information. The information is used to identify products whose evaporative or combustion emissions may pose an unreasonable risk to public health, thus meriting further investigation and potential regulation. The information is also used to ensure that gasoline additives comply with EPA requirements for protecting catalytic converters and other automotive emission controls. The data have been used to construct a comprehensive data base on fuel and additive composition. The Mine Safety and Health Administration of the Department of Labor restricts the use of diesel additives in underground coal mines to those registered by EPA. Most of the information is confidential since it deals with the proprietary formulations of fuels and additives.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9 and are identified on the form and/or instrument, if applicable.

Burden Statement: The annual reporting and recordkeeping burden for this collection of information is estimated to average two hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Manufacturers and importers of gasoline and diesel fuel for use in motor vehicles, and manufacturers and importers of additives for those fuels.

Estimated Number of Respondents: 820.

Frequency of Response: On occasion, quarterly, annually.

Estimated Total Annual Hour Burden: 14,810.

Estimated Total Annual Cost: $1 million (rounded), includes $0 annualized capital/startup costs, $29,280 annualized O&M costs and $977,460 labor costs.

Changes in Estimates: There is a decrease of 3,690 hours in the total estimated burden currently identified in the OMB inventory of Approved ICR Burdens. This decrease is due to a decrease in the number of registered fuels.

Dated: November 25, 2003.

Doreen Sterling,

Acting Director, Collection Strategies Division.

[FR Doc. 03–30162 Filed 12–3–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7593–6]

Proposed Agreement Pursuant to Section 122(h)(1) of the Comprehensive Environmental Response, Compensation, and Liability Act for the Marina Cliffs/Northwestern Barrel Site

AGENCY: Environmental Protection Agency ("EPA").

ACTION: Notice; request for public comment on proposed CERCLA section 122(h)(1) agreement with Towne Realty, Inc. for the Marina Cliffs/Northwestern Barrel Superfund Site.

SUMMARY: In accordance with section 122(i)(1) of the comprehensive Environmental Response, Compensation and Liability Act of 1984, as amended ("CERCLA"), notification is hereby given of a proposed administrative agreement concerning the Marina Cliffs/Northwestern Barrel hazardous waste site in South Milwaukee, Wisconsin (the "Site"). EPA proposes to enter into this agreement under the authority of section 122(h) and 107 of CERCLA. The proposed agreement has been executed by Towne Realty, Inc. (the "Settling Party").

Under the proposed agreement, the Settling Party will pay $850,000 in two installments to the trust fund established to pay for response costs to be incurred by other potentially responsible parties ("PRPs") under cleanup orders issued by EPA at the Site. EPA and these PRPs have incurred and will incur response costs mitigating an imminent and substantial endangerment to human health or the environment present or threatened by hazardous substances present at the Site.

For thirty days following the date of publication of this notice, the Environmental Protection Agency will receive comments relating to this proposed agreement. EPA will consider all comments received an may decide not to enter this proposed agreement if comments disclose facts or considerations which indicate that the proposed agreement is inappropriate, improper or inadequate.

DATES: Comments on the proposed agreement must be received by EPA on or before January 5, 2004.

ADDRESSES: Comments should be addressed to the Docket Clerk, U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604–3590, and should refer to: In the Matter of Marina Cliffs/Northwestern Barrel Site, Chicago, Illinois, U.S. EPA Docket No. V–W–03C–758.

FOR FURTHER INFORMATION CONTACT: Thomas J. Krueger, U.S. Environmental Protection Agency, Office of Regional Counsel, C–14[J, 77 West Jackson Boulevard, Chicago, Illinois 60604–3590, (312) 886–0562.

A copy of the proposed administrative settlement agreement may be obtained in person or by mail from the EPA's Region 5 Office of Regional Counsel, 77 West Jackson Boulevard, Chicago, Illinois 60604–3590. Additional background information relating to the settlement is available for review at the EPA's Region 5 Office of Regional Counsel.

Authority: The Comprehensive Environmental Response, Compensation, and Liability Act, as amended, 42 U.S.C. 9601–9675.

William E. Muno,

Director, Superfund Division, Region 5.

[FR Doc. 03–30160 Filed 12–3–03; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7594–5]

Proposed CERCLA Administrative Agreement for the Recovery of Past Response Costs Incurred at the Weld County Waste Disposal Site Near Ft. Lupton, in Weld County, CO

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice and request for public comment.

SUMMARY: In accordance with the requirements of section 122(i) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended ("CERCLA"), 42 U.S.C. 9622(i), notice is hereby given of a proposed administrative settlement under section 122(h)(1) of CERCLA, 42 U.S.C. 9622(h)(1), concerning the Weld County Waste Disposal site located at 4982 Weld County Road 35, approximately 4½ miles east of Ft. Lupton, in Weld County, Colorado. This settlement, embodied in a CERCLA section 122(h) Agreement for Recovery of Past Response Costs ("Agreement"), is designed to resolve each Settling Party's liability at the Site for past work and past response costs through covenants under sections 106 and 107 of CERCLA, 42 U.S.C. 9606 and 9607. The proposed Agreement requires the Settling Parties listed in the **SUPPLEMENTARY INFORMATION** section below to pay an aggregate total of $2,710,542.59.

Opportunity for Comment: For thirty (30) days following the date of publication of this notice, the Agency will consider all comments received, and may modify or withdraw its consent to the settlement if comments received disclose facts or considerations which indicate that either settlement is inappropriate, improper, or inadequate. The Agency's response to any comments received will be available for public inspection at the EPA Superfund Record Center, 999 18th Street, 5th Floor, in Denver, Colorado.

DATES: Comments must be submitted on or before January 5, 2004.

ADDRESSES: The proposed settlement and additional background information relating to the settlement are available for public inspection at the EPA Superfund Records Center, 999 18th Street, 5th Floor, in Denver, Colorado. Comments and requests for a copy of the proposed Agreement should be addressed to Carol Pokorny (8ENF–RC), Technical Enforcement Program, U.S. Environmental Protection Agency, 999 18th Street, Suite 300, Denver, Colorado 80202–2466, and should reference the Weld County Waste Disposal Site, in Weld County, Colorado and the EPA docket number, CERCLA–8–2003–0012.

FOR FURTHER INFORMATION CONTACT: Carol Pokorny, Enforcement Specialist (8ENF–RC), Technical Enforcement Program, U.S. Environmental Protection Agency, 999 18th Street, Suite 300, Denver, Colorado 80202–2466, (303) 312–6970.

SUPPLEMENTARY INFORMATION: Regarding the proposed administrative settlement under section 122(h)(1) of CERCLA, 42 U.S.C. 9622(h)(1): In accordance with section 122(i) of CERCLA, 42 U.S.C. 9622(i), notice is hereby given that the terms of the Agreement have been agreed to by the following settling parties, for the following amounts (where the name of one party is followed by one or more names grouped under it, the main name listed is the name that appears on the settlement signature page or is the name of the party that is assuming liability under the settlement):

AGREEMENT FOR RECOVERY OF PAST RESPONSE COSTS; EPA DOCKET NO. CERCLA–8–2003–0012

Settling parties	Settlement amount
Adolph Coors Company and Coors Brewing Company	$278,096.78
Alsco, Inc. (f/k/a Steiner Corporation), settling on behalf of American Industrial	0.00
Arapahoe Chemical, Inc. (n/k/a Roche Colorado Corp)	1,939,739.44
Ball Metal Container	27,078.61
Borg Warner Corporation (Morse Chain Division)	0.00
Burlington Northern and Santa Fe Railway Company, settling on behalf of the Colorado and Southern Railroad Company	6,076.75
Claude A. Akridge d/b/a University Hills Conoco and Claude A. Akridge, Inc	640.91
COBE Laboratories, Inc. (n/k/a Gambro, Inc.)	0.00
ConocoPhillips Company, settling on behalf of Asamera Oil (U.S.), Inc	97,768.22
TOSCO Corporation	73,423.12
Cooper Industries, settling on behalf of Gardner-Denver Corp	13,591.18
CoorsTek, Inc., settling on behalf of Coors Porcelain Company, Inc., Coors Ceramics Company, CoorsTek, Inc	200.00
Continental Airlines, Inc., settling on behalf of Frontier Airlines	12,272.84
Envirosource, Inc., Successor to National Molasses Company	6,805.97
General Iron Works	0.00
Graphic Packaging Corporation	225.00
Hazen Research, Inc	17,353.00
International Business Machines (IBM)	58,929.70
Johns Manville Corporation	0.00
Kwal Paints Inc., J&H Shapiro, Inc., Helen Shapiro, Helen Ruth Shapiro Trust, Jack S. Shapiro Marital Trust, Jack S. Shapiro Family Trust, Joliet Associates, LPA, Kwalabuy Inc./,Kwal-Howells, Inc., and Professional Paint, Inc	14,664.26
Lakewood, City of/South Lakewood Sanitation	11,847.70
Marathon Oil Company.	4,174.53
National Cash Register (NCR)	4,876.23
Power Motive (PM)	18,128.63
Regional Transportation District (RTD)	292.71
Ryder Truck Rental, Inc	0.00
Safeway, Inc	14,488.09
Samsonite	1,473.37
SASHCO, Inc	0.00
Shattuck Chemical Co (S.W.), Inc	24,766.04
Stonehouse Signs, Inc	9.18
United Technologies Corporation, on behalf of Sundstrand Aviation Unit	79,472.09
Tomahawk Watkins (n/k/a Alpine Diesel)	0.00
U.S Geological Survey	1,222.50
Weaver Electric Company	2,925.74
Total	$2,710,542.59

By the terms of the proposed Agreement, the Settling Parties will pay a combined total of $2,710,542.59 to the Hazardous Substance Superfund. This payment represents approximately 53% of the $5,086,748,001.01 in past response costs incurred through September 30, 2002. The Settling Parties manifested 1,461,777.75 gallons of hazardous substances to the Site. This amount represents approximately 94% of the 1,552,849.32 gallons of hazardous substances manifested to the Site by all generators. The amount that each individual PRP will pay, as shown above, was based upon the number of gallons of hazardous substances manifested to the Site. To be eligible for the settlement, each generator must have submitted a response to EPA's Request for Information.

Dated: November 25, 2003.

Carol Rushin,

Assistant Regional Administrator, Office of Enforcement, Compliance, and Environmental Justice, Region VIII.

[FR Doc. 03–30170 Filed 12–3–03; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL ELECTION COMMISSION

Sunshine Act Notices

PREVIOUSLY ANNOUNCED DATE AND TIME: Tuesday, December 2, 2003, 10 a.m. meeting closed to the public. This Meeting was cancelled.

PREVIOUSLY ANNOUNCED DATE AND TIME: Thursday, December 4, 2003, 10 a.m. meeting open to the public.

The following item was added to the agenda: Final Rules and Explanation and Justification to Travel on Behalf of Candidates and Political Committees.

The following item was withdrawn: Draft Advisory Opinion 2003–31, Senator Mark Dayton by counsel, Marc E. Elias.

PREVIOUSLY ANNOUNCED DATE AND TIME: Tuesday, December 16, 2003, 10 a.m. meeting closed to the public. This Meeting has been rescheduled for Monday, December 15, 2003, at 10 a.m.

DATE AND TIME: Tuesday, December 9, 2003, at 10 a.m.

PLACE: 999 E Street, NW., Washington, DC.

STATUS: This Meeting will be closed to the public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. 437g.

Audits conducted pursuant to 2 U.S.C. 437g, § 437(b), and title 26, U.S.C.

Matters concerning participation in civil actions or proceedings or arbitration.

Internal personnel rules and procedures or matters affecting a particular employee.

DATE AND TIME: Thursday, December 11, 2003, at 10 a.m.

PLACE: 999 E Street, NW., Washington, DC (Ninth Floor).

STATUS: This Meeting will be open to the public.

ITEMS TO BE DISCUSSED:

Correction and Approval of Minutes.

Enforcement Disclosure Initiatives.

Demonstration of Enforcement Query System.

Policy Statement on Making Closed MURs Public.

Eligibility Report-John R. Edwards/Edwards for President.

Draft Advisory Opinion 2003–31: Senator Mark Dayton by counsel, Marc E. Elias and Brian T. Svoboda.

Draft Advisory Opinion 2003–32: Ms. Inez Tenenbaum by counsel, Marc E. Elias.

Draft Advisory Opinion 2003–33: Anheuser-Busch Companies, Inc., by counsel, Kenneth A. Gross and Ki P. Hong.

Draft Advisory Opinion 2003–35: Gephardt for President, Inc. by Steven G. Murphy, Campaign Manager.

Routine Administrative Matters.

FOR FURTHER INFORMATION CONTACT: Mr. Ron Harris, Press Officer, Telephone: (202) 694–1220.

Mary W. Dove,

Secretary of the Commission.

[FR Doc. 03–30299 Filed 12–2–03; 2:21 pm]

BILLING CODE 6715–01–M

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than December 18, 2003.

A. Federal Reserve Bank of Atlanta (Sue Costello, Vice President) 1000 Peachtree Street, N.E., Atlanta, Georgia 30309–4470:

1. Lawrence Wayne Maxwell, Anita Kay Maxwell, and Lawrence Todd Maxwell, all of Lakeland, Florida; to collectively acquire up to 19.9 percent of the voting shares of CenterState Banks of Florida, Inc., and thereby indirectly acquire CenterState Bank of Florida, both in Winter Haven, Florida.

B. Federal Reserve Bank of Chicago (Patrick Wilder, Managing Examiner) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. JP Family Limited Partnership, Catherine J. Gonzalez, as trustee of the Catherine J. Gonzalez Declaration of Trust, Jane J. Presney, as trustee of the Jane J. Presney Declaration of Trust, Paul E. Presney, Sr., as trustee of the Paul E. Presney, Sr. Declaration of Trust; all of Springfield, Illinois, and Paul E. Presney, II, Rochester, Illinois, to retain control of 34.79 percent of the voting shares of Will Bancorp, Inc., and thereby retain control of Williamsville State Bank and Trust, both of Williamsville, Illinois.

Board of Governors of the Federal Reserve System, November 28, 2003.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 03–30144 Filed 12–3–03; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 29, 2003.

A. Federal Reserve Bank of Atlanta (Sue Costello, Vice President) 1000 Peachtree Street, N.E., Atlanta, Georgia 30309–4470:

1. Signature Financial Holdings, Inc., St. Petersburg, Florida; to become a bank holding company by acquiring 100 percent of the outstanding shares of Signature Bank, St. Petersburg, Florida.

Board of Governors of the Federal Reserve System, November 28, 2003.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 03–30145 Filed 12–3–03; 8:45 am]

BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Sociocultural and Community Risk and Protective Factors for Child Maltreatment and Youth Violence

Announcement Type: New.

Funding Opportunity Number: 04056.

Catalog of Federal Domestic Assistance Number: 93.136.

Key Dates: Letter of Intent Deadline: January 5, 2004.

Application Deadline: February 17, 2004.

I. Funding Opportunity Description

Authority: This program is authorized under section 301(a) [42 U.S.C. 241(a)] of the Public Health Service Act and section 391(a) [42 U.S.C. 280b(a)] of the Public Service Health Act, as amended.

Purpose: The purpose of this program is to inform violence prevention efforts by testing the extent to which potentially modifiable sociocultural and community risk and protective factors are associated with child maltreatment and early risk factors for youth violence. This program addresses the "Healthy People 2010" focus area of Injury and Violence Prevention.

Measurable outcomes of the program will be in alignment with the following performance goal for the National Center for Injury Prevention and Control (NCIPC): Conduct a targeted program of research to reduce injury-related death and disability.

Research Objectives: Numerous researchers have stressed the importance of the influence of external environments on family functioning and risk for child maltreatment and subsequent youth violence, as well as the need for research based in an ecological-developmental framework in which risk and protective factors transact across multiple individual and sociocultural contexts (*See* Attachment 1, References 1–4 as published on the CDC Web site). However, to date, the majority of research on risk and protective factors for child maltreatment has focused on identifying individual characteristics of the child (*e.g.*, temperament, cognitive and physical disability) and caregivers (*e.g.*, alcohol/drug use, depression, history of childhood victimization) with fewer studies focusing on the larger community and sociocultural factors that influence these characteristics. In addition, although research has identified a number of early behavioral and family risk factors for youth violence (*e.g.*, early antisocial or aggressive behavior, poor parent-child relations and parenting practices) few studies have examined how these factors are influenced by sociocultural and community factors (*See* Attachment 1 Reference 5 as published on the CDC Web site).

The purpose of this program is to empirically demonstrate the predictive utility of potentially modifiable sociocultural and community characteristics to predict child maltreatment and early risk factors for youth violence. Previous research has described the importance of larger community and sociocultural factors such as access to social capital, community social organization, economic and family resources, residential instability, and community and family violence (*See* Attachment 1 References 6–8 under VIII. Other Information). However, limited information exists about the mechanisms through which these and other potentially modifiable risk and protective factors might have an impact on child maltreatment and the factors that place children on a developmental trajectory toward violence during later childhood, adolescence, and young adulthood. Modifiable factors include those that can be changed directly as well as those whose path to violence can be altered to reduce risk. By improving our understanding of how potentially modifiable community and sociocultural factors are associated with child maltreatment and early risk factors for youth violence the results from this research will inform the development of violence prevention strategies.

Protocols may include data from a variety of sources such as existing or new self-report data, observational data, or archival data. The proposed design and analysis plan should include an assessment of multiple levels of influence (*e.g.*, peer, family, neighborhood, school, and/or community; cf., Coulton *et al.*, 1999; Sampson *et al.*, 2002) with emphasis on the effects of the broader community and sociocultural contexts on these levels of influence.

Protocols should be designed to assess (1) the potentially modifiable sociocultural and community factors that are hypothesized to influence risk for child maltreatment and early risk factors for youth violence; (2) multiple indicators of child maltreatment (*e.g.*, neglect, physical, and/or sexual abuse) and early risk factors for youth violence (*e.g.*, early antisocial or aggressive behavior, poor parent-child relations); and (3) potential mechanisms through which larger community and sociocultural factors may influence risk at the individual and family levels.

In addition to the measurable outcomes with respect to performance goal, measurable outcomes of the program will be in alignment with the following research agenda items for the National Center for Injury Prevention and Control (NCIPC):

A. Identify modifiable sociocultural and community factors that influence youth violence.

B. Examine the development of child maltreatment perpetration (at the community level) to identify at-risk populations, modifiable risk and protective factors, and optimal times and settings for intervention. (*See* Attachment 1 Reference 9 as published on the CDC Web site.)

Activities: Awardee activities for this program are as follows:

a. Develop and finalize the research design and methodology, data collection measures and analyses, and disseminate the study results through publications and presentations.

b. Develop a research protocol for Institutional Review Board (IRB) review by all cooperating institutions participating in the research project.

c. Obtain approval of the study protocol by the recipient's local IRB.

d. Form and maintain a community advisory committee to provide guidance on the development of research protocol and the interpretation and dissemination of the study results. Members should include representatives and practitioners from agencies and organizations that engage in related research or service provision, and representatives of the communities ‹ targeted in the research.

e. Finalize and implement a research protocol focusing on identifying modifiable sociocultural and community-level characteristics that are hypothesized to predict child maltreatment and early risk factors for youth violence.

f. Finalize, pilot test, revise, and implement data collection instruments.

g. Analyze data and interpret findings focusing on sociocultural and community characteristics that predict child maltreatment and early risk factors for youth violence.

h. Conduct one reverse site visit to meet with CDC staff in Atlanta on an annual basis.

i. Complete all required reports as specified under "Reporting Requirements".

In a cooperative agreement, CDC staff is substantially involved in the program activities, above and beyond routine grant monitoring.

CDC Activities for this program are as follows:

a. Provide scientific and programmatic consultation. CDC will collaborate with project staff on research design and methodology, and analysis and dissemination of the study results in publications and presentations.

b. Assist in the development of a research protocol for IRB review by all cooperating institutions participating in the research project. The CDC IRB will review and approve the protocol initially and on at least an annual basis until the research project is finished.

c. Provide technical assistance on the selection and evaluation of the data collection instruments.

d. Facilitate an annual meeting between awardee and CDC to coordinate planned efforts and review progress.

II. Award Information

Type of Award: Cooperative Agreement. CDC involvement in this program is listed in the Activities Section above.

Fiscal Year Funds: 2004.

Approximate Total Funding: $500,000.

Approximate Number of Awards: One.

Approximate Average Award: $500,000.

Floor of Award Range: None.

Ceiling of Award Range: $500,000.

Anticipated Award Date: August 2, 2004.

Budget Period Length: 12 months.

Project Period Length: Four years.

Throughout the project period, CDC's commitment to continuation of awards will be conditioned on the availability of funds, evidence of satisfactory progress by the recipient (as documented in required reports), and the determination that continued funding is in the best interest of the Federal Government.

III. Eligibility Information

1. Eligible applicants: Applications may be submitted by public and nonprofit private and for profit organizations and by governments and their agencies, such as:

- Public nonprofit organizations.
- Private nonprofit organizations.
- For profit organizations.
- Small, minority, women-owned businesses.
- Universities.
- Colleges.
- Research institutions.
- Hospitals.
- Community-based organizations.
- Faith-based organizations.
- Federally recognized Indian tribal governments.

- Indian tribes.
- Indian tribal organizations.
- State and local governments or their Bona Fide Agents (this includes the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, the Commonwealth of the Northern Marianna Islands, American Samoa, Guam, the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau).
- Political subdivisions of States (in consultation with States).

A Bona Fide Agent is an agency/organization identified by the state as eligible to submit an application under the state eligibility in lieu of a state application. If you are applying as a bona fide agent of a state or local government, you must provide a letter from the state or local government as documentation of your status. Place this documentation behind the first page of your application form.

Foreign institutions are not eligible to apply.

2. Cost Sharing or Matching: Matching funds are not required for this program.

3. Other Eligibility Requirements: If your application is incomplete or non-responsive to the requirements listed below, it will not be entered into the review process. You will be notified that your application did not meet submission requirements. The following applicant requirements are:

- A principal investigator who has conducted research, published the findings in peer-reviewed journals, and has specific authority and responsibility given by their research institution to carry out the proposed project.
- Demonstrated experience on the applicant's project team in conducting, evaluating, and publishing violence prevention research in peer-reviewed journals.
- Effective and well-defined working relationships within the performing organization and with outside entities, which will ensure implementation of the proposed activities.
- The overall match between the applicant's proposed research objectives and the program priorities as described under the heading, "Research Objectives".
- The requested funding amount should not be greater than the ceiling of the award range.
- Principal investigators (PI's) are encouraged to submit only one proposal in response to this program announcement. With few exceptions (e.g., research issues needing immediate public health attention), only one application per PI will be funded under this announcement.

Note: Title 2 of the United States Code section 1611 states that an organization described in section 501(c)(4) of the Internal Revenue Code that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant, or loan.

IV. Application and Submission Information

1. Address to Request Application Package: To apply for this funding opportunity, use application form PHS 398 (OMB number 0925–0001 rev. 5/2001). Forms and instructions are available in an interactive format on the CDC web site, at the following Internet address: *www.cdc.gov/od/pgo/forminfo.htm.*

Forms and instructions are also available in an interactive format on the National Institutes of Health (NIH) web site at the following Internet address: *http://grants.nih.gov/grants/funding/phs398/phs398.html.*

If you do not have access to the Internet, or if you have difficulty accessing the forms on-line, you may contact the CDC Procurement and Grants Office Technical Information Management Section (PGO–TIM) staff at: 770–488–2700. Application forms can be mailed to you. For further assistance with the PHS 398 application form, contact GrantsInfo, telephone (301) 435–0714, E-mail: *GrantsInfo@nih.gov.*

2. Content and Form of Application Submission: Letter of Intent (LOI): CDC requests that you send a LOI if you intend to apply for this program. Although the LOI is not required, not binding, and does not enter into the review of your subsequent application, your LOI will be used to gauge the level of interest in this program, and to allow CDC to plan the application review. Your LOI must be written in the following format:

- Maximum number of pages: Two
- Single spaced
- Font size: 12-point unreduced
- Paper size: 8.5 by 11 inches
- Page margin size: One inch
- Printed only on one side of page
- Written in English, avoid jargon

Your LOI must contain the following information:

- Descriptive title of the proposed research.
- Name, address, E-mail address, and telephone number of the Principal Investigator.
- Names of other key personnel.
- Participating institutions.
- Number and title of this Program Announcement (PA).

Application: Follow the PHS 398 application instructions for content and formatting of your application. For further assistance with the PHS 398 application form, contact GrantsInfo, Telephone (301) 435–0714, E-mail: *GrantsInfo@nih.gov.*

See Attachment 2 of this announcement as it is posted on the CDC web site for guidance on how to complete Form 398 for this Program Announcement. The Program Announcement Title and number must appear in the application.

You must include a research plan with your application. The research plan should be no more than 25 pages (8.5″ x 11″ in size), single-spaced, printed on one side only, with one-inch margins on all sides, and unreduced 12-point font.

Your application will be evaluated on the criteria listed under Section V. Application Review Information, so it is important to follow them, as well as the Research Objectives and the Administrative and National Policy Requirements (AR's), in laying out your research plan. Your research plan should address activities to be conducted over the entire project period.

The research plan should consist of the following information:

1. *Research Plan.* Provide a brief one-page description of proposed activities and project outcomes.

2. *Goals and Objectives.* Describe the goals and objectives the proposed research is designed to achieve in the short and long term. Specific research questions and hypotheses should also be included. In addition, the proposal should include an outline of a four-year plan with timeline.

3. *Program Participants.* Describe the study population for the proposed research and how participants will be selected (*i.e.*, sampling strategy). In addition, the research plan should provide evidence that the recipient (or a collaborating partner) has access to the study population, and that the participation by the study population will be adequate to test hypotheses.

4. *Methods.* Describe the proposed study design; methodology, and analysis plan to test the proposed hypotheses.

5. *Project Management.* Provide evidence of the expertise, capacity, and existing staff necessary to successfully conduct the research. Each existing or proposed position for the project should be described by job title, function, general duties, level of effort and allocation of time. Management operation principles, structure, and organization should also be noted.

6. *Collaboration.* Describe plans to convene a community advisory committee that will guide the development of research protocols and inform the interpretation and dissemination of the study results. Members should include representatives and practitioners from agencies and organizations that engage in related research or service provision, and representatives of the communities targeted in the proposed research. Include letters of support from collaborating partners in the project that document specific contributions, past collaborations, products, services, and other activities that will be provided by and to the applicant through the proposed collaboration.

7. *Project Budget.* Provide a detailed budget for each activity undertaken, with accompanying justification of all operating expenses that is consistent with the stated objectives and planned activities of the project. The budget should include at least one trip per year to CDC for program related meetings. This program announcement does not use the modular budget format.

You are required to have a Dun and Bradstreet Data Universal Numbering System (DUNS) number to apply for a grant or cooperative agreement from the Federal government. Your DUNS number must be entered in item 11 of the face page of the PHS 398 application form. The DUNS number is a nine-digit identification number, which uniquely identifies business entities. Obtaining a DUNS number is easy and there is no charge. To obtain a DUNS number, access *www.dunandbradstreet.com* or call 1–866–705–5711. For more information, see the CDC Web site at: *http://www.cdc.gov/od/pgo/funding/pubcommt.htm*

3. Submission Dates and Times: LOI Deadline Date: January 5, 2004. Application Deadline Date: February 17, 2004.

Explanation of Deadlines: Applications must be received in the CDC Procurement and Grants Office by 4 p.m. Eastern Time on the deadline date. If you send your application by the United States Postal Service or commercial delivery service, you must ensure that the carrier will be able to guarantee delivery of the application by the closing date and time. If CDC receives your application after closing due to: (1) Carrier error, when the carrier accepted the package with a guarantee for delivery by the closing date and time, or (2) significant weather delays or natural disasters, you will be given the opportunity to submit documentation of the carriers guarantee. If the documentation verifies a carrier problem, CDC will consider the application as having been received by the deadline.

This announcement is the definitive guide on application submission address and deadline. It supersedes information provided in the application instructions. If your application does not meet the deadline above, it will not be eligible for review, and will be discarded. You will be notified that you did not meet the submission requirements.

CDC will not notify you upon receipt of your application. If you have a question about the receipt of your application, first contact your courier. If you still have a question, contact the PGO–TIM staff at: 770–488–2700. Before calling, please wait two to three days after the application deadline. This will allow time for applications to be processed and logged.

4. *Intergovernmental Review of Applications:* Executive Order 12372 does not apply to this program.

5. *Funding Restrictions:* Restrictions, which must be taken into account while writing your budget, are as follows: None.

If you are requesting indirect costs in your budget, you must include a copy of your indirect cost rate agreement. If your indirect cost rate is a provisional rate, the agreement must be less than 12 months of age.

6. *Other Submission Requirements:* LOI Submission Address: Submit your LOI by express mail, delivery service, fax, or e-mail to: Robin Forbes, CDC, NCIPC, 4770 Buford Hwy, Mailstop K–62, Atlanta, GA 30341, Phone: 770–488–4037, E-mail: *CIPERT@cdc.gov.*

Application Submission Address: Submit the original and five copies of your application by mail or express delivery service to: Technical Information Management-PA# 04056, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341.

Applications may not be submitted electronically at this time.

V. Application Review Information

1. Criteria: You are required to provide measures of effectiveness that will demonstrate the accomplishment of the various identified objectives of the cooperative agreement. Measures of effectiveness must relate to the performance goals stated in the "Purpose" section of this announcement. Measures must be objective and quantitative, and must measure the intended outcome. These measures of effectiveness must be submitted with the application and will be an element of evaluation.

The goals of CDC-supported research are to advance the understanding of biological systems, improve the control and prevention of disease, and enhance health. In the written comments, reviewers will be asked to evaluate the application in order to judge the likelihood that the proposed research will have a substantial impact on the pursuit of these goals. The scientific review group will address and consider each of the following criteria in assigning the application's overall score, weighting them as appropriate for each application.

The application does not need to be strong in all categories to be judged likely to have major scientific impact and thus deserve a high priority score. For example, an investigator may propose to carry out important work that by its nature is not innovative, but is essential to move a field forward.

The criteria are as follows:

Significance: Does this study address an important problem? If the aims of the application are achieved, how will scientific knowledge be advanced? What will be the effect of these studies on the concepts or methods that drive this field?

Approach: Are the conceptual framework, design, methods, and analyses adequately developed, scientifically rigorous, well integrated, and appropriate to the aims of the project? Does the applicant acknowledge potential problem areas and consider alternative tactics?

Innovation: Does the project employ novel concepts, approaches or methods? Are the aims original and innovative? Does the project challenge existing paradigms or develop new methodologies or technologies?

Investigator: Is the investigator appropriately trained and well suited to carry out this work? Is the work proposed appropriate to the experience level of the principal investigator and other researchers (if any)?

Environment: Does the scientific environment in which the work will be done contribute to the probability of success? Does the proposed research take advantage of unique features of the scientific environment or employ useful collaborative arrangements? Is there evidence of institutional support?

Additional Review Criteria: In addition to the above criteria, the following items will be considered.

Protection of Human Subjects from Research Risks: Does the application adequately address the requirements of Title 45 CFR Part 46 for the protection of human subjects? This will not be scored; however, an application can be disapproved if the research risks are sufficiently serious and protection against risks is so inadequate as to make the entire application unacceptable.

Inclusion of Women and Minorities in Research: Does the application adequately address the CDC Policy requirements regarding the inclusion of women, ethnic, and racial groups in the proposed research? This includes: (1) The proposed plan for the inclusion of both sexes and racial and ethnic minority populations for appropriate representation; (2) The proposed justification when representation is limited or absent; (3) A statement as to whether the design of the study is adequate to measure differences when warranted; and (4) A statement as to whether the plans for recruitment and outreach for study participants include the process of establishing partnerships with community(ies) and recognition of mutual benefits.

Inclusion of Children as Participants in Research Involving Human Subjects: The NIH maintains a policy that children (*i.e.*, individuals under the age of 21) must be included in all human subjects research, conducted or supported by the NIH, unless there are scientific and ethical reasons not to include them. This policy applies to all initial (Type 1) applications submitted for receipt dates after October 1, 1998.

All investigators proposing research involving human subjects should read the "NIH Policy and Guidelines" on the inclusion of children as participants in research involving human subjects that is available at: *http://grants.nih.gov/grants/funding/children/children.htm.*

Budget: The reasonableness of the proposed budget and the requested period of support in relation to the proposed research.

2. Review and Selection Process: Applications will be reviewed for completeness by the Procurement and Grants Office (PGO) and for responsiveness of other eligibility requirements by NCIPC. Incomplete applications and applications that are non-responsive will not advance through the review process. You will be notified that you did not meet submission requirements.

Applications that are complete and responsive to the announcement will be subjected to a preliminary evaluation (streamline review) by a peer review committee, the Initial Review Group (IRG), convened by NCIPC, to determine if the application is of sufficient technical and scientific merit to warrant further review by the IRG. CDC will withdraw from further consideration applications judged to be noncompetitive and promptly notify the principal investigator or program director and the official signing for the applicant organization. Those applications judged to be competitive will be further evaluated by a dual review process.

1. The primary review will be a peer review conducted by the IRG. All applications will be reviewed for scientific merit in accordance with the review criteria listed above. Applications will be assigned a priority score based on the National Institutes of Health (NIH) scoring system of 100–500 points.

2. The secondary review will be conducted by the Science and Program Review Subcommittee (SPRS) of NCIPC's Advisory Committee for Injury Prevention and Control (ACIPC). The ACIPC Federal agency experts will be invited to attend the secondary review, and will receive modified briefing books (*i.e.*, abstracts, strengths and weaknesses from summary statements, and project officer's briefing materials). ACIPC Federal agency experts will be encouraged to participate in deliberations when applications address overlapping areas of research interest, so that unwarranted duplication in federally funded research can be avoided and special subject area expertise can be shared. The NCIPC Division Associate Directors for Science (ADS) or their designees will attend the secondary review in a similar capacity as the ACIPC Federal agency experts to assure that research priorities of the announcement are understood and to provide background regarding current research activities. Only SPRS members will vote on funding recommendations, and their recommendations will be carried to the entire ACIPC for voting by the ACIPC members in closed session. If any further review is needed by the ACIPC, regarding the recommendations of the SPRS, the factors considered will be the same as those considered by the SPRS.

The committee's responsibility is to develop funding recommendations for the NCIPC Director based on the results of the primary review, the relevance and balance of proposed research relative to the NCIPC programs and priorities, and to assure that unwarranted duplication of federally funded research does not occur. The secondary review committee has the latitude to recommend to the NCIPC Director, to reach over better-ranked proposals in order to assure maximal impact and balance of proposed research. The factors to be considered will include:

a. The results of the primary review including the application's priority score as the primary factor in the selection process.

b. The relevance and balance of proposed research relative to the NCIPC programs and priorities.

c. The significance of the proposed activities in relation to the priorities and objectives stated in Healthy People 2010, Reducing the Burden of Injury (Bonnie, RJ, Fulco, CE, and CT Liverman. Reducing the Burden of Injury. Institute of Medicine. National Academy Press: 1999) and the CDC Injury Research Agenda (National Center for Injury Prevention and Control. CDC Injury Research Agenda. Atlanta (GA): Centers for Disease Control and Prevention; 2002).

All awards will be determined by the Director of the NCIPC based on priority scores assigned to applications by the IRG, recommendations by the secondary review committee, *e.g.*, NCIPC's Advisory Committee for Injury Prevention and Control (ACIPC), consultation with NCIPC-senior staff, and the availability of funds.

VI. Award Administration Information

1. Award Notices: Successful applicants will receive a Notice of Grant Award (NGA) from the CDC Procurement and Grants Office. The NGA shall be the only binding, authorizing document between the recipient and CDC. The NGA will be signed by an authorized Grants Management Officer, and mailed to the recipient fiscal officer identified in the application.

2. Administrative and National Policy Requirements: 45 CFR Part 74 and 92.

For more information on the Code of Federal Regulations, see the National Archives and Records Administration at the following Internet address: *http://www.access.gpo.gov/nara/cfr/cfr-table-search.html*

The following additional requirements apply to this project:

- AR–1 Human Subjects Requirements.
- AR–2 Requirements for Inclusion of Women and Racial and Ethnic Minorities in Research.
- AR–7 Executive Order 12372.
- AR–8 Public Health System Reporting Requirements.
- AR–9 Paperwork Reduction Act Requirements.
- AR–10 Smoke-Free Workplace Requirements.
- AR–11 Healthy People 2010.
- AR–12 Lobbying Restrictions.
- AR–13 Prohibition on Use of CDC Funds for Certain Gun Control Activities.
- AR–14 Accounting System Requirements.
- AR–15 Proof of Non-Profit Status.
- AR–21 Small, Minority, and Women-Owned Business.
- AR–22 Research Integrity.
- AR–23 States and Faith-Based Organizations.
- AR–24 Health Insurance Portability and Accountability Act Requirements.
- AR–25 Release and Sharing of Data.

Starting with the December 1, 2003 receipt date, all NCIPC funded investigators seeking more than $500,000 in total costs in a single year are expected to include a plan describing how the final research data will be shared/released or explain why data sharing is not possible. Details on data sharing/release, including the timeliness and name of the project data steward, should be included in a brief paragraph immediately following the Research Plan Section of the PHS 398 form. References to data sharing/release may also be appropriate in other sections of the application (*e.g.* background and significance, human subjects requirements, etc.) The content of the data sharing/release plan will vary, depending on the data being collected and how the investigator is planning to share the data. The data sharing/release plan will not count towards the application page limit and will not factor into the determination scientific merit or priority scores. Investigators should seek guidance from their institutions, on issues related to institutional policies, local IRB rules, as well as local, state and Federal laws and regulations, including the Privacy Rule.

Further detail on the requirements for addressing data sharing in applications for NCIPC funding may be obtained by contacting NCIPC program staff or visiting the NCIPC internet Web site: at *http://www.cdc.gov/ncipc/osp/sharing_policy.htm.* Additional information on these requirements can be found on the CDC Web site at the following Internet address: *http://www.cdc.gov/od/pgo/funding/ARs.htm.*

3. Reporting: You must provide CDC with an original, plus two copies of the following reports:

1. Interim progress report, (PHS 2590, OMB Number 0925–0001, rev. 5/2001) no less than 90 days before the end of the budget period. The progress report will serve as your non-competing continuation application, and must contain the following elements:

a. Current Budget Period Activities Objectives.

b. Current Budget Period Financial Progress.

c. New Budget Period Program Proposed Activity Objectives.

d. Detailed Line-Item Budget and Justification.

e. Additional Requested Information.

2. Financial status report, no more than 90 days after the end of the budget period.

3. Final financial and performance reports, no more than 90 days after the end of the project period.

VII. Agency Contacts

For general questions about this announcement, contact: Technical Information Management Section, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341, Telephone: 770–488–2700.

For scientific/research program technical assistance, contact: Cindi Melanson, Project Officer, National Center for Injury Prevention and Control, 4470 Buford Highway, NE MS K–60, Atlanta, GA 30342, Telephone: 770–488–1530, E-mail: *CMelanson@cdc.gov.*

For questions about peer review, contact: Gwen Cattledge, Scientific Review Administrator, Centers for Disease Control and Prevention, National Center for Injury Prevention and Control, 4470 Buford Highway, NE Mailstop K–02, Atlanta, GA 30342, Telephone: 770–488–1430, E-mail: *GXC8@cdc.gov.*

For budget assistance, contact: Nancy Pillar, Grants Management (or Contract) Specialist, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341, Telephone: 770–488–2721, E-mail: *NPillar@cdc.gov.*

Dated: November 28, 2003.

Edward Schultz,

Acting Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 03–30146 Filed 12–3–03; 8:45 am]

BILLING CODE 4163–18–U

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, U.S. Department of Homeland Security.

ACTION: Notice and request for comments.

SUMMARY: The Federal Emergency Management Agency, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed continuing information collections. In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506(c)(2)(A)), this notice seeks comments concerning the continuing collection of information, which is necessary for assessment and improvement of the delivery of disaster assistance. The forms serve as survey tools used to evaluate customer perceptions of effectiveness, timeliness and satisfaction with initial, continuing and final delivery of disaster-related assistance.

SUPPLEMENTARY INFORMATION: This collection is in accordance with Executive Order 12862 that requires all Federal agencies to survey customers to determine the kind and quality of services they want and their level of satisfaction with existing services. The Government Performance and Results Act (GPRA) requires agencies to set missions and goals and measure performance against them. FEMA will fulfill these requirements by collecting customer service and program information through surveys of the Recovery (RE) Division's external customers.

Collection of Information

Title: Federal Emergency Management Agency (FEMA) Public Assistance Program Evaluation and Customer Satisfaction Surveys and Individual Assistance Customer Satisfaction Surveys.

Type of Information Collection: Extension.

OMB Number: 1660–0036.

Form Numbers: Public Assistance Program Evaluation and Customer Satisfaction Survey, Registration Intake Survey, Helpline Survey, End of Disaster Survey, Housing Inspection Services Survey. (**Note:** There are no form numbers.)

Abstract: Federal agencies are required to survey their customers to determine the kind and quality of services customers want and their level of satisfaction with existing services. FEMA Managers use the survey results to measure program performance against standards for performance and customer service; measure achievement of GPRA objectives; and generally gauge and make improvements to disaster services that increase customer satisfaction and program effectiveness.

Affected Public: Individuals and households, businesses or other for-profit companies, not-for-profit institutions, farms, Federal Government, and State, Local or Tribal Governments.

Estimated Total Annual Burden Hours: 12, 210.

FEMA survey forms	Number of respondents	Frequency of response	Hours per response	Annual burden hours (rounded)
Public Assistance Survey—Mail	30	50	.30	450
Registration Intake Survey—Phone	100	40	.25	1,000
Helpline Survey—Phone	100	40	.25	1,000
End of Disaster Survey-Phone	100	40	.25	1,000
Inspection Services Survey—Mail	750	40	.25	7,500
SubTotal				10,950
Focus Groups				
Public Assistance	20	4	6	480
Individual Assistance for all 4 Survey Types	10	24	3.25	780
SubTotal				1,260
Grand Total				12,210

Estimated Cost: $1,503,080.

Comments: Written comments are solicited to (a) evaluate whether the proposed data collection is necessary for the proper performance of the agency, including whether the information shall have practical utility; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) enhance the quality, utility, and clarity of the information to be collected; and (d) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses. Comments should be received within 60 days of the date of this notice.

ADDRESSES: Interested persons should submit written comments to Muriel B. Anderson, Chief, Records Management Branch, Information Resources Management Division, Information Technology Services Directorate, Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security, 500 C Street, SW., Room 316, Washington, DC 20472.

FOR FURTHER INFORMATION CONTACT: Contact Maggie Billing, Program Analyst, Texas National Processing Service Center, Recovery Division, Response and Recovery Directorate, Federal Emergency Management Agency, Department of Homeland Security at 940–891–8709 or *maggie.billing@dhs.gov* for additional information. You may contact Ms. Anderson for copies of the proposed collection of information at facsimile number (202) 646–3347 or e-mail address: *Information.Collections@fema.gov*.

Dated: November 24, 2003.

Edward W. Kernan,

Division Director, Information Resources Management Division, Information Technology Services Directorate.

[FR Doc. 03–30172 Filed 12–3–03; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice and request for comments.

SUMMARY: The Federal Emergency Management Agency has submitted the following proposed information collection to the Office of Management and Budget for review and clearance in accordance with the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507).

Title: Pre-Disaster Mitigation Grant Program (PDM) E-Grants.

Type of Information Collection: Extension of a currently approved collection.

OMB Number: 1660–0071.

Abstract: This collection is necessary to provide Federal grant assistance to State, local governments, and federally recognized Indian tribal governments, to develop mitigation plans in accordance with section 322 of the Disaster Mitigation Act of 2000, to implement pre-disaster mitigation projects that primarily reduces the risks of natural hazards on life and property, but may include hazards caused by non-natural forces, and to provide information and technical assistance to cost-effective mitigation activities. FEMA will make the Pre-Disaster Mitigation grant application available on-line to States and local governments through a web-based e-Grants application process. The e-Grants system is being developed to meet the intent of the e-Governnment initiative. This initiative requires that all government agencies both streamline grant applications processes and provide for the means to electronically create, review, and submit a grant application via the Internet.

Affected Public: State, local or tribal government.

Number of Respondents: 1176.

Estimated Time per Respondent:

GRANT APPLICATION AND REPORTING FORMS

Type of collection forms	Number of respondents (A)	Number of reponses/respondent (B)	Hours per response and record keeping	Annual burden hours (A*B*C)
SF–424 (Application face sheet)	56	2	45 minutes	84.0

GRANT APPLICATION AND REPORTING FORMS—Continued

Type of collection forms	Number of respondents (A)	Number of reponses/respondent (B)	Hours per response and record keeping	Annual burden hours (A*B*C)
Budget Information—Construction Program, FEMA Form 20–15[1].	56	1	17.2 hours	963.2
FEMA Form 20–20 Budget—Non-Construction[1]	56	2	9.7 hours	1086.4
FEMA Form 20–16, 20–16A, 20–16B, 20–16C (Summary of assurances & certifications).	56	2	1.7 hours	190.4
SF–LLL (lobbying disclosure)	56	2	10 minutes	18.7
FEMA Form 20–10—Financial Status Report, Quarterly Progress Report.	56	8	1 hour	448.0
FEMA Form 76–10A Obligating Document For Award/Amendment.	56	2	1.2 hours	134.40
FEMA Form 20–17 Outlay Report and Request for Reimbursement.	56	20	17.2 hours	19264.0
FEMA Form 20–18 Report of Government Property	56	2	4.2 hours	235.2
FEMA 20–19—Report of Unobligated Balance (or substitute)	56	2	5 minutes	9.3
Annual Audit & Audit Trail Requirements	56	1	30 hours	28.0
Subtotal for OMB-Approved Standard (SF) and FEMA forms.				22013.4

PRE-DISASTER MITIGATION GRANT PROGRAM—GRANT SUPPLEMENTAL INFORMATION

Type of collection forms	Number of respondents (A)	Number of reponses/respondent (B)	Hours per response and record keeping	Annual burden hours (A*B*C)
Benefit-Cost Determination	56	20	5 hours	5600.0
Environmental Review	56	20	7.5 hours	8400.0
Program/Project Narrative (including PDM Supplemental Questions.	56	20	12 hours	13440.0
Total Burden for PDM				50,887

Estimated Total Annual Burden Hours: 50,887 hours.

Frequency of Response: On occasion.

Comments: Interested persons are invited to submit within 30 days of the date of this notice written comments on the proposed information collection to the FEMA Desk Officer at the Office of Management and Budget at e-mail address *David_Rostker@omb.eop.gov*.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be made to Muriel B. Anderson, Chief, Records Management Branch, Information Resources Management Division, Information Technology Services Directorate, Federal Emergency Management Agency at e-mail address *InformationCollections@fema.gov*.

Dated: November 13, 2003.

Edward W. Kernan,

Division Director, Information Resources Management Division, Information Technology Services Directorate.

[FR Doc. 03–30173 Filed 12–3–03; 8:45 am]

BILLING CODE 9110–13–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4815–N–97]

Notice of Submission of Proposed Information Collection to OMB: Public Housing, Contracting With Resident-Owned Business

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

This request is for renewal of approval to require eligible resident-owned businesses to submit application information to Housing Agencies (HAs) to be approved for noncompetitive contracting for work to be performed on public housing sites with an alternative to HUD's otherwise-required competitive procurement procedures.

DATES: *Comments Due Date:* January 5, 2004.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and OMB approval number (2577–0161) and should be sent to: Lauren Wittenberg, OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503; Fax number (202) 395–6974; e-mail *Lauren_Wittenberg@omb.eop.gov*.

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, AYO, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; e-mail *Wayne_Eddins@HUD.gov*; telephone (202) 708–2374. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Eddins or on HUD's Web site at *http://www5.hud.gov:63001/po/i/icbts/collectionsearch.cfm*.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as

described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. chapter 35). The notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the name and telephone number of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

This notice also lists the following information:

Title of Proposal: Public Housing, Contracting with RESIDENT-Owned Business.

OMB Approval Number: 2577–0161.

Form Numbers: None.

Description of the Need for the Information and Its Proposed Use: Eligible resident-owned businesses must submit application information to Housing Agencies (HAs) to be approved for noncompetitive contracting for work to be performed on public housing sites with an alternative to HUD's otherwise-required competitive procurement procedures.

Respondents: Business or other for-profit, not-for-profit institutions, State, local or tribal government.

Frequency of Submission: On occasion, quarterly.

Reporting Burden: Number of respondents—40; average annual responses per respondent—2.8; total annual responses—115; average burden per response—16 hrs.

Total Estimated Burden Hours: 1,870.

Status: Extension of a currently approved collection.

Authority: Sec. 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: November 26, 2003.

Wayne Eddins,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 03–30140 Filed 12–3–03; 8:45 am]

BILLING CODE 4210–72–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4815–N–98]

Notice of Submission of Proposed Information Collection to OMB: Application and Re-certification for Approval of Nonprofit Organizations in FHA Activities

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

This information collection is an application and/or re-certification criteria for nonprofit organizations seeking approval to participate as FHA insured mortgagors or provide downs payment assistance to home buyers, which can be achieved by secondary financing. This information collection also provides standardized information and procedures to ensure equal treatment of applicants throughout the nation and gives HUD sufficient information to ascertain an organization's management and fiscal abilities.

DATES: *Comments Due Date:* January 5, 2003.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and OMB approval number (2502–0540) and should be sent to: Lauren Wittenberg, OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503; Fax number (202) 395–6974; e-mail *Lauren_Wittenberg@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, AYO, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; e-mail *Wayne_Eddins@HUD.gov;* telephone (202) 708–2374. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Eddins or on HUD's Web site at *http://www5.hud.gov:63001/po/i/icbts/collectionsearch.cfm.*

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. chapter 35). The notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the name and telephone number of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

This notice also lists the following information:

Title of Proposal: Application and Re-certification Packages for Approval of Nonprofit Organizations in FHA Activities.

OMB Approval Number: 2502–0540.

Form Numbers: None.

Description of the Need for the Information and its Proposed Use: This information collection is and application and/or re-certification criteria for nonprofit organizations seeking approval to participate as FHA insured mortgagors or provide downs payment assistance to home buyers, which can be achieved by secondary financing. This information collection also provides standardized information and procedures to ensure equal treatment of applicants throughout the nation and gives HUD sufficient information to ascertain an organization's management and fiscal abilities.

Respondents: Individuals or household, business or other for-profit, not-for-profit institutions, Federal government, State, local or tribal government.

Frequency of Submission: Annually.

Reporting Burden: Number of respondents 700; average annual responses per respondent 4.85; total annual responses 3,400; average burden per response 6.82 hrs.

Total Estimated Burden Hours: 23,200.

Status: Extension or a currently approved collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: November 28, 2003.

Wayne Eddins,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 03–30141 Filed 12–3–03; 8:45 am]

BILLING CODE 4210–72–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4815–N–99]

Notice of Submission of Proposed Information Collection to OMB: Resident Opportunities and Self-Sufficiency (ROSS) Grant Program

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

Applicants for ROSS grant funds submit applications for the following grant categories: Resident Service Delivery Models-Family, Resident Service Delivery Models-Elderly/Persons with Disabilities, Homeownership Supportive Services, and Neighborhood Networks, and for one additional funding category: Family Self-Sufficiency for Public Housing. Applicants describe the activities they will undertake; provide a work plan with a timeline for their activities; indicate their expected outputs and outcomes; provide a budget; and indicate, in the case of nonprofit applicants, which resident groups support their application (per Congressional statute).

DATES: *Comments Due Date:* January 5, 2004.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and OMB approval number (2577–0229) and should be sent to: Lauren Wittenberg, OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503; Fax number (202) 395–6974; e-mail *Lauren_Wittenberg@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, AYO, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; e-mail *Wayne_Eddins@HUD.gov;* telephone (202) 708–2374. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Eddins or on HUD's Web site at *http://www5.hud.gov:63001/po/i/icbts/collectionsearch.cfm.*

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. chapter 35). The notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the name and telephone number of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

This notice also lists the following information:

Title of Proposal: Resident Opportunities and Self-Sufficiency (ROSS) Grant Program.

OMB Approval Number: 2577–0229.

Form Numbers: HUD–52751, HUD–52752, HUD–52753, HUD–52754, HUD–52755, HUD–52756, HUD–52757, HUD–52758, HUD–52759, HUD–52760, HUD–52761, HUD–52762, HUD–52763, HUD–52764, HUD–52765, HUD–52766, HUD–52767, HUD–52768.

Description of the Need for the Information and its Proposed Use: Applicants for ROSS grant funds submit applications for the following grant categories: Resident Service Delivery Models-Family, Resident Service Delivery Models-Elderly/Persons with Disabilities, Homeownership Supportive Services, and Neighborhood Networks, and for one additional funding category: Family Self-Sufficiency for Public Housing. Applicants describe the activities they will undertake; provide a work plan with a timeline for their activities; indicate their expected outputs and outcomes; provide a budget; and indicate, in the case of nonprofit applicants, which resident groups support their application (per Congressional statute).

Respondents: Not-for-profit institutions, State, local or tribal government.

Frequency of Submission: On occasion.

	Number of respondents	Annual responses	×	Hours per response	=	Burden hours
Reporting Burden	850	850		254		215,900

Total Estimated Burden Hours: 215,900.

Status: Revision of a currently approved collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: November 28, 2003.

Wayne Eddins,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 03–30142 Filed 12–3–03; 8:45 am]

BILLING CODE 4210–72–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Final Comprehensive Conservation Plan for Buenos Aires National Wildlife Refuge, Sasabe, AZ

AGENCY: Fish and Wildlife Service, Department of the Interior.

ACTION: Notice of availability.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces that the Final Comprehensive Conservation Plan (CCP) is available for the Buenos Aires National Wildlife Refuge (Refuge). Prepared pursuant to the National Wildlife Refuge System Administration Act of 1966, as amended by the National Wildlife Refuge System Improvement Act of 1997 (16 U.S.C. 668dd *et seq.*), and the National Environmental Policy Act of 1969, this CCP describes how the Service intends to manage this Refuge over the next 15 years.

ADDRESSES: Copies of the CCP are available on compact disk or in hard copy, and can be obtained by writing: U.S. Fish and Wildlife Service, Attn: Yvette Truitt-Ortiz, Division of Planning, P.O. Box 1306, Albuquerque, New Mexico, 87103.

FOR FURTHER INFORMATION CONTACT: Wayne A. Shiffett, Refuge Manager, Buenos Aires National Wildlife Refuge, P.O. Box 109, Sasabe, Arizona 85633; phone 520–823–4251; or Yvette Truitt-Ortiz, Natural Resource Planner, U.S. Fish and Wildlife Service, Division of Planning, P.O. Box 1306, Albuquerque, New Mexico, 87103; phone 505–248–6452; e-mail: *Yvette_TruittOrtiz@fws.gov*.

SUPPLEMENTARY INFORMATION: A CCP is required by the National Wildlife Refuge System Administration Act of 1966, as amended by the National Wildlife Refuge System Improvement Act of 1997 (16 U.S.C. 668dd *et seq.*). The purpose in developing CCPs is to provide refuge managers with a 15-year strategy for achieving refuge purposes and contributing toward the mission of the National Wildlife Refuge System, consistent with sound principles of fish and wildlife science, conservation, legal mandates, and Service policies. In addition to outlining broad management direction on conserving wildlife and their habitats, the CCPs identify wildlife-dependent recreational opportunities available to the public, including opportunities for hunting, fishing, wildlife observation and photography, and environmental education and interpretation. These CCPs will be reviewed and updated at least every 15 years in accordance with the National Wildlife Refuge System Administration Act of 1966, as amended by the National Wildlife Refuge System Improvement Act of 1997 (16 U.S.C. 668dd *et seq.*), and the National Environmental Policy Act of 1969.

Dated: November 21, 2003.

Geoffrey L. Haskett,

Acting Regional Director, Fish and Wildlife Service, Albuquerque, New Mexico.

[FR Doc. 03–30211 Filed 12–3–03; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–660–04–1150–JP]

Restrictions on Use of Public Lands; California

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of closure.

SUMMARY: This notice closes to casual use certain public lands managed by the Bureau of Land Management (BLM) in the Santa Rosa and San Jacinto Mountains National Monument, in order to prevent hikers and other visitors from accessing ridges that overlook bighorn sheep breeding pens on the property of the Bighorn Institute.

EFFECTIVE DATE: December 4, 2003.

ADDRESSES: Send inquiries or suggestions to the Santa Rosa and San Jacinto Mountains National Monument, Palm Springs Field Office, Bureau of Land Management, 690 W. Garnet, PO Box 581260, North Palm Springs, CA 92258–1260.

FOR FURTHER INFORMATION CONTACT: Danella George, Santa Rosa and San Jacinto Mountains National Monument Manager, (760) 251–4800.

SUPPLEMENTARY INFORMATION:

I. Background

On February 13, 2003, the U.S. Fish and Wildlife Service issued a Biological Opinion (FWS–ERIV–3354.1), in accordance with section 7 of the Endangered Species Act of 1973, as amended, addressing effects on the endangered Peninsular Ranges bighorn sheep (*Ovis canadensis*) from a proposed joint trails and recreation use plan prepared by the City of Palm Desert and the Bureau of Land Management (the joint plan). As part of the proposed action, and consistent with the Biological Opinion, the City of Palm Desert (City) and the Bureau of Land Management (BLM) agreed to close portions of City and BLM-managed public lands to recreation and casual use to prevent hikers from accessing ridges that overlook bighorn sheep breeding pens on the property of the Bighorn Institute.

The population of bighorn sheep in the United States' Peninsular Ranges was listed as an endangered species on March 18, 1998. The Recovery Plan for Bighorn Sheep in the Peninsular Ranges, California, was issued on October 25, 2000. On October 25, 2000, the Santa Rosa and San Jacinto Mountains National Monument was established by an Act of Congress that was signed into law by President Clinton (Pub. L. 106–351). BLM completed the California Desert Conservation Area Plan Amendment for the Coachella Valley (Coachella Valley Plan) on December 27, 2002. The Coachella Valley Plan covered portions of the Santa Rosa and San Jacinto Mountain National Monument and addresses recovery of the bighorn sheep.

Because bighorn sheep evolved with canine predators, they are particularly sensitive to the presence of dogs. This has created a conflict between bighorn sheep conservation management and recreational use of public lands. In 2000, BLM issued a temporary closure of public lands prohibiting dogs in designated critical bighorn sheep habitat, except in a few designated areas. Recreational hiking with dogs had been a popular use on City owned lands and public lands south of the Santa Rosa and San Jacinto Mountains National Monument Visitor Center on Highway 74. This situation caused a conflict with the Bighorn Institute, a captive bighorn sheep breeding facility located north of the Visitor Center. The director of the Bighorn Institute expressed concern over the nearness of dogs south of the Visitor Center and requested that they be moved to a different location. BLM and the City proposed to construct a loop trail south of the Visitor Center that would be off-limits to dogs, and to construct an additional trail, open to hikers with dogs, on the west side of Highway 74 that would connect the City's Homme-Adams Park with the Cahuilla Hills Park. Dogs would be allowed on the Homme-Adams Park Trail and Cahuilla Hills Park Trail. Under agreements with the Bighorn Institute and the City, BLM proposed to discourage hiking access by reclaiming an unauthorized road and enforce a closure along the saddle immediately south of the BLM property line that leads to an overlook on BLM lands above the Bighorn Institute's sheep pens. The proposed action for trail realignments, new trail construction, and blocking access to the ridge overlooking the Bighorn Institute was analyzed under an environmental assessment (*Homme-Adams and Visitor Center Trail Loops, EA–660–03–08*). The BLM initiated consultation with the U.S. Fish and Wildlife Service (Service) on the effects of the proposed project on the endangered Peninsular Ranges bighorn sheep, in accordance with section 7 of the Endangered Species Act of 1973, as amended (ESA), on December 30, 2002. The Service issued a Biological Opinion based on the BLM and City environmental assessments, information in Service files, and on information and agreements obtained in meetings, telephone conversations, and e-mails prior to and during the consultation period. Under the Terms and Conditions of the Biological Opinion, and to meet the requirement of section 9 of the ESA, the BLM must take reasonable and prudent measures to minimize the impact of incidental take

by minimizing the adverse effects of human disturbance to wild and captive bighorn sheep, through the proposed actions referenced in EA–660–03–08. These actions include BLM and City commitments: (1) To block human access to the old "Shirley" road on their lands through a combination of signage, fencing and physical barriers, including deconstructing and recontouring the road sufficient to discourage access and reinforce the closure along the saddle immediately south of the BLM property line that leads to an overlook on BLM lands of the Bighorn Institute's sheep pens, and (2) to employ a progressive management strategy to prevent hiking off the designated trail system and towards or overlooking captive sheep in the Bighorn Institute pens, including signage, stricter enforcement and penalties when legally feasible, physical barriers and fencing at strategic locations. The BLM issued a Decision Record to implement the proposed action, including the Terms and Conditions of the Biological Opinion, on March 7, 2003. The City issued an ordinance (Ordinance No. 1034) and a resolution (Resolution No. 03–12), approving construction of a new trail and closing portions of City lands between the National Monument Visitor Center and the ridge overlooking the Bighorn Institute, on January 23, 2003 (mitigation measures B–5 and B–6).

II. Closure

In compliance with 43 CFR 8364.1(c), notice is hereby given that BLM is closing portions of public lands in the Santa Rosa and San Jacinto Mountains National Monument. The public lands hereby closed are those lands within the north ½ of the north ½ of Section 7, Township 6 South, Range 6 East, San Bernardino Meridian (SBM). These restrictions will be in effect year-round from December 4, 2003 until rescinded by the authorized officer. The order to close these lands is needed to protect the resources of the public lands and to minimize conflicts among various uses of the public lands.

BLM finds good cause to publish this closure notice effective the date of publication and without providing for public comment due to the immediate need to protect the Peninsular Range bighorn sheep from the stress that is likely to be caused by recreational use of land overlooking their captive breeding pens. A 30-day public comment on the subject of this action began on December 30, 2002, through publication of an environmental assessment (*Homme-Adams and Visitor Center Trail Loops*, EA–660–03–08). A Biological Opinion issued by the U.S. Fish and Wildlife Service on February 13, 2003 (FWS-ERIV–3354.1) supported BLM's proposed action as a reasonable and prudent measure to minimize the adverse effects of human disturbance to wild and captive bighorn sheep. All public comments received were considered prior to BLM's issuance of its Decision Record (DR) on March 7, 2003. BLM provided the public notification of this DR and the procedures for appeals through a news release issued March 11, 2003. No appeals were filed. Furthermore, the public was fully involved in the development of the joint plan. Also, the regulations on Closures and Restrictions at 43 CFR 8364.1 do not require publication of a request for comments.

The BLM lands covered by this closure order cannot be accessed except by crossing closed City lands. In compliance with the proposed action described in *Homme-Adams and Visitor Center Trail Loops*, EA–660–03–08, the Biological Opinion (FWS-ERIV–3354.1) dated February 13, 2003, and the City of Palm Desert ordinance, BLM hereby closes the described public lands to recreational and casual use. Any person who fails to comply with this order may be subject to the penalties provided in CFR 8360.0–7.

III. Exceptions

The following are exempt from this order: (1) fire, emergency, or law enforcement personnel when engaged in emergency or patrol activities; and (2) persons or uses expressly authorized by BLM.

Dated: October 30, 2003.

Linda Hansen,

California Desert District Manager.

[FR Doc. 03–30156 Filed 12–3–03; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

National Park Service

30-Day Federal Register Notice of Submission of Network to Freedom Application Package to Office of Management and Budget; Opportunity for Public Comment

AGENCY: Department of the Interior, National Park Service, National Underground Railroad Network to Freedom Program.

ACTION: Notice and request for comments.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. 3507) and 5 CFR part 1320, Reporting and Recordkeeping Requirements, the National Park Service (NPS) invites comments on a submitted request to the Office of Management and Budget (OMB) to approve an extension of a currently approved information collection clearance (OMB 1024–0232). Comments are invited on (1) the need for the information including whether the information has practical utility; (2) the accuracy of this reporting burden estimate; (3) ways to enhance the quality, utility, and clarity of the information to be collected on respondents, including the use of automated collection techniques or other forms of information technology. This program will measure performance in meeting goals as required by the 1995 Government Performance and Results Act.

Public Law 105–203 authorizes the NPS to develop and administer the National Underground Railroad Network to Freedom (Network), a nationwide collection of governmental and nongovernmental sites, facilities, and programs associated with the historic Underground Railroad movement. The NPS has developed the application process through which associated elements can be included in the Network. The information collected will: (a) Verify associations to the Underground Railroad, (b) Measure minimum levels of standards for inclusion in the Network, and (c) Identify general needs for technical assistance.

The purpose of the proposed ICR is to evaluate sites, facilities, and programs that are applying for inclusion in the National Underground Railroad Network to Freedom. The information will be used by the NPS to determine if candidates seeking inclusion in the Network meet the minimum criteria. There were no public comments received as a result of publishing in the **Federal Register** a 60-day notice of intention to request clearance of information collection for this survey.

DATES: Public Comments on the proposed ICR will be accepted on or before January 5, 2004, to be assured of consideration. The Office of Management and Budget (OMB) has up to 60 days to approve or disapprove the information collection but may respond after 30 days. Therefore to ensure maximum consideration, OMB should receive comments 30 days from the date of publication in the **Federal Register**.

ADDRESSES: You may submit comments directly to Ms. Ruth Solomon, Desk Officer for the Department of the Interior (OMB 0124–0232), Office of Information and Regulatory Affairs, OMB, by fax at 202–395–6566 or by

electronic mail at *oira_docket@omb.eop.gov*. Mail or hand carry a copy of your comments to Dianne Miller, National Coordinator, National Underground Railroad Network to Freedom Program, National Park Service, Midwest Regional Office, 1709 Jackson Street, Omaha, Nebraska, 68102. If you wish to send a copy of your comments by electronic mail, you may send them to *diane_miller@nps.gov*. All comments will become a matter of public record.

FOR FURTHER INFORMATION OR A COPY OF THE STUDY PACKAGE SUBMITTED FOR OMB REVIEW, CONTACT: Diane Miller, 402–221–3749 or James Hill, 402–221–3413 at National Park Service, 1709 Jackson Street, Omaha, Nebraska 68102.

SUPPLEMENTARY INFORMATION:

Title: NPS National Underground Railroad Network to Freedom Application.

Bureau Form Number: n/a.

OMB Number: 1024–0232.

Expiration Date: 11/30/2003.

Type of request: Extension of a currently approved information collection.

Description of need: The NPS has identified guidelines and criteria for associated elements to qualify for the Network. The application form documents sites, programs, and facilities and demonstrates that they meet the criteria established for inclusion. The documentation will be incorporated into a database that will be available to the general public for information purposes. The proposed information to be collected regarding these sites, facilities, and programs is not available from existing records, sources, or observations.

Automated data collection: Respondents must verify associations and characteristics through descriptive texts that are the result of historical research. Evaluations are based on subjective analysis of the information provided, which often includes copies of rare documents and photographs. Much of the information is submitted in electronic format, but at the present time, there is capacity to gather all of the required information electronically.

Description of respondents: The affected publics are state, tribal, and local governments, federal agencies, businesses, non-profit organizations, and individuals throughout the United States. Nominations to the Network are voluntary.

Estimated average number of respondents: 80.

Estimated average number of responses: 80.

Estimated average burden hours per response: 15.

Estimated frequency of response: Once per respondent.

Estimated annual reporting burden: 1200 hours.

Dated: October 24, 2003.

Leonard E. Stowe,

Acting, NPS Information Collection Clearance Officer, Washington Administrative Program Center.

[FR Doc. 03–30149 Filed 12–3–03; 8:45 am]

BILLING CODE 4310–70–M

POSTAL SERVICE

Board of Governors;

Sunshine Act Meeting

Dates and Times: Monday, December 8, 2003, at 1 p.m.; Tuesday, December 9, 2003, at 8:30 a.m.

Place: Washington, DC, at U.S. Postal Service Headquarters, 475 L'Enfant Plaza, SW., in the Benjamin Franklin Room.

Status: December 8–1:00 p.m. (Closed); December 9–8:30 a.m. (Open).

Matters to be Considered:

Monday, December 8—1 p.m. (Closed)

1. Audit and Finance Committee Report and Review of Year-End Financial Statements.
2. Financial Update.
3. Strategic Planning.
4. Personnel Matters and Compensation Issues.

Tuesday, December 9—8:30 a.m. (Open)

1. Minutes of the Previous Meeting, November 3–4, 2003.
2. Remarks of the Postmaster General and CEO.
3. Committee Reports.
4. Fiscal Year 2003 Audited Financial Statements.
5. Postal Service Fiscal Year 2003 Annual Report.
6. Final Fiscal Year 2005 Appropriation Request.
7. Tentative Agenda for the January 5–6, 2004, meeting in Washington, DC.

FOR FURTHER INFORMATION CONTACT: William T. Johnstone, Secretary of the Board, U.S. Postal Service, 475 L'Enfant Plaza SW., Washington, DC. 20260–1000. Telephone (202) 268–4800.

William T. Johnstone,

Secretary.

[FR Doc. 03–30210 Filed 12–1–03; 4:40 pm]

BILLING CODE 7710–12–M

SECURITIES AND EXCHANGE COMMISSION

[File No. 22–28712]

Application and Opportunity for Hearing: Hard Rock Hotel, Inc.

November 26, 2003.

The Securities and Exchange Commission gives notice that Hard Rock Hotel, Inc. has filed an application under section 304(d) of the Trust Indenture Act of 1939. Hard Rock Hotel asks the Commission to exempt from the certificate or opinion delivery requirements of section 314(d) of the 1939 Act certain provisions of an indenture dated May 30, 2003, as supplemental by indentures dated November 20, 2003, and November 24, 2003, between Hard Rock Hotel and U.S. Bank National Association, as trustee. The indenture relates to 8⅞% Second Lien Notes due 2013.

Section 304(d) of the 1939 Act, in part, authorizes the Commission to exempt conditionally or unconditionally any indenture from one or more provisions of the 1939 Act. The Commission may provide an exemption under section 304(d) if it finds that the exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the 1939 Act.

Section 314(d) requires the obligor to furnish to the indenture trustee certificates or opinions of fair value from an engineer, appraiser or other expert upon any release of collateral from the lien of the indenture. The engineer, appraiser or other expert must opine that the proposed release will not impair the security under the indenture in contravention of the provisions of the indenture. The application requests an exemption from section 314(d) for specified of collateral that are made in Hard Rock Hotel's ordinary course of business.

In its application, Hard Rock Hotel alleges that:

1. The indenture permits Hard Rock Hotel to dispose of collateral in the ordinary course of its business;
2. Hard Rock Hotel will deliver to the trustee annual financial statements audited by certified independent accountants; and
3. Hard Rock Hotel will deliver to the trustee a semi-annual certificate stating that all dispositions of collateral during the relevant six-month period occurred in Hard Rock Hotel's ordinary course of business and that all of the proceeds were used as permitted by the indenture.

Any interested persons should look to the application for a more detailed statement of the asserted matters of fact and law. The application is on file in the Commission's Public Reference Section, File Number 222–28712, 450 Fifth Street, NW., Washington, DC 20549.

The Commission also gives notice that any interested persons may request, in writing, that a hearing be held on this matter. Interested persons must submit those requests to the Commission no later than December 31, 2003. Interested persons must include the following in their request for a hearing on this matter:

- The nature of that person's interest;
- The reasons for the request; and
- The issues of law or fact raised by the application that the interested person desires to refute or request a hearing on.

The interested person should address this request for a hearing to: Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. At any time after December 31, 2003, the Commission may issue an order granting the application, unless the Commission orders a hearing.

For the Commission, by the Division of Corporation Finance, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–30154 Filed 12–3–03; 8:45 am]

BILLING CODE 8010–01–P

DEPARTMENT OF STATE

[Public Notice 4550]

Bureau of Political-Military Affairs; 60-Day Notice of Proposed Information Collection: Form DS–4048, Projected Sales of Major Weapons in Support of Section 25(a)(1) of the Arms Export Control Act; OMB No. 1405–XXXX

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: The Department of State is seeking Office of Management and Budget (OMB) approval for the information collection described below. The purpose of this notice is to allow 60 days for public comment in the Federal Register preceding submission to OMB. This process is conducted in accordance with the Paperwork Reduction Act of 1995.

The following summarizes the information collection proposal submitted to OMB:

Type of Request: Existing collection in use without an OMB control number.

Originating Office: Bureau of Political-Military Affairs, Directorate of Defense Trade Controls, PM/DDTC.

Title of Information Collection: Projected Sales of Major Weapons in Support of Section 25(a)(1) of the Arms Export Control Act.

Frequency: Once a year.

Form Number: DS–4048.

Respondents: Business organizations.

Estimated Number of Respondents: 20.

Average Hours Per Response: 3 hours.

Total Estimated Burden: 60 hours.

(Total Estimated Burden based on number of reports received per year.)

Public comments are being solicited to permit the agency to:

- Evaluate whether the proposed information collection is necessary for the proper performance of the functions of the agency including whether the information will have practical utility.
- Evaluate the accuracy of the agency's estimate of the burden of the collection, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including through the use of automated collection techniques or other forms of technology.

FOR FURTHER INFORMATION: Contact Copies of the proposed information collection and supporting documents may be obtained from Michael T. Dixon, Director, Office of Defense Trade Controls Management, Directorate of Defense Trade Controls, Bureau of Political-Military Affairs, SA–1, Room H1200, 2401 E Street, NW., Washington, DC 20522–0112 (202) 663–2700.

Dated: November 14, 2003.

Gregory M. Suchan,

Deputy Assistant Secretary for Defense Trade Controls, Bureau of Political-Military Affairs, Department of State.

[FR Doc. 03–30186 Filed 12–3–03; 8:45 am]

BILLING CODE 4710–25–P

DEPARTMENT OF STATE

[Public Notice: 4548]

Office of Visa Services; 60-Day Notice of Proposed Information Collection: Forms DS–2053, DS–3024, DS–3025 and DS–3026; Medical Examination for Immigrant or Refugee Applicant; OMB Control #1405–0113

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: The Department of State is seeking Office of Management and Budget (OMB) approval for the information collection described below. The purpose of this notice is to allow 60 days for public comment in the **Federal Register** preceding submission to OMB. This process is conducted in accordance with the Paperwork Reduction Act of 1995.

The following summarizes the information collection proposal to be submitted to OMB:

Type of Request: Extension of currently approved collection.

Originating Office: Bureau of Consular Affairs, Department of State (CA/VO).

Title of Information Collection: Medical Examination for Immigrant or Refugee Applicant.

Frequency: Once per respondent.

Form Numbers: DS–2053, DS–3024, DS–3025 and DS–3026.

Respondents: Immigrant visa and refugee applicants.

Estimated Number of Respondents: 630,000 per year.

Average Hours Per Response: 1.75 hours.

Total Estimated Burden: 1,102,500 hours per year.

Public comments are being solicited to permit the agency to:

- Evaluate whether the proposed information collection is necessary for the proper performance of the functions of the agency.
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including through the use of automated collection techniques or other forms of technology.

FOR FURTHER INFORMATIONCONTACT: Public comments, or requests for additional information regarding the collection listed in this notice should be directed to Brendan Mullarkey of the Office of Visa Services, U.S. Department of State, 2401 E St. NW., RM L–703, Washington, DC 20520, who may be reached at 202–663–1166.

Dated: November 25, 2003.

Catherine Barry,

Acting Deputy Assistant Secretary of State for Visa Services, Bureau of Consular Affairs, Department of State.

[FR Doc. 03–30187 Filed 12–3–03; 8:45 am]

BILLING CODE 4710–06–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: Town Boone, Watauga County, NC

AGENCY: Federal Highway Administration (FHWA). DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an Environmental Impact Statement will be prepared for a proposed highway project within Watauga County, North Carolina.

FOR FURTHER INFORMATION CONTACT: Ms. Emily O. Lawton, Operations Engineer, Federal Highway Administration, 310 New Bern Avenue, Suite 410, Raleigh, North Carolina 27601, Telephone (919) 856–4350.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the North Carolina Department of Transportation (NCDOT), will prepare an Environmental Impact Statement (EIS) for the proposed improvement of US 421 to multi-lanes from NC 105 Bypass to east of SR 1514 (Bamboo Road) in Watauga County (approximately 5.3 miles). The proposed action is to upgrade this section of US 421 to a high speed, multi-lane facility. US 421, the primary east-west corridor in the north-western part of the state, connects the North Carolina coastal region (Wilmington) to the western part of the state and, ultimately, to Tennessee. This proposed project is a portion of the projects proposed for US 421 in the NCDOT's 2004–2010 Transportation Improvement Program (TIP).

Alternatives under consideration include: (1) "no-build", (2) widening the existing facility, and (3) multiple bypass alternatives for a four-lane divided facility control of access.

Letters describing the proposed action and soliciting comments have been sent to appropriate Federal, State and local agencies. A Citizens Informational Workshop and meetings with local officials and neighborhood groups will be held in the study area. Public hearings will also be held. Information on the time and place of the public hearings will be provided in the local news media and project newsletters. The draft EIS will be available for public and agency review and comment at the time of the hearing. No formal scoping meeting is planned at this time.

To ensure the full range of issues related to the proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments and questions concerning the proposed action should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program).

Emily O. Lawton,

Operations Engineer, Raleigh, North Carolina.

[FR Doc. 03–30181 Filed 12–3–03; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 2758

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 2578, Application for Extension of Time To File Certain Excise, Income, and Other Returns.

DATES: Written comments should be received on or before February 2, 2004 to be assured of consideration.

ADDRESSES: Direct all written comments to R. Joseph Durbala, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Carol Savage at Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224, or at (202) 622–3945, or through the Internet at *CAROL.A.SAVAGE@irs.gov*.

SUPPLEMENTARY INFORMATION:

Title: Application for Extension of Time To File Certain Excise, Income, Information, and Other Returns.

OMB Number: 1545–0148.

Form Number: 2758.

Abstract: Internal Revenue Code section 6081 allows a reasonable extension of time for filing any return, declaration, statement, or other document. Form 2758 is used by fiduciaries, trustees, and certain other organizations to request an extension of time to file their returns. The information is used to determine whether the extension should be granted.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations and not-for-profit institutions.

Estimated Number of Respondents: 70,371.

Estimated Time Per Respondent: 5 hours, 21 minutes.

Estimated Total Annual Burden Hours: 375,923.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: November 28, 2003.

R. Joseph Durbala,

IRS Reports Clearance Officer.

[FR Doc. 03–30188 Filed 12–3–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Area 1 Taxpayer Advocacy Panel (Including the States of New York, Connecticut, Massachusetts, Rhode Island, New Hampshire, Vermont and Maine)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Area 1 Taxpayer Advocacy Panel will be conducted (via teleconference). The Taxpayer Advocacy Panel is soliciting public comments, ideas and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Tuesday, December 23, 2003.

FOR FURTHER INFORMATION CONTACT: Marisa Knispel at 1–888–912–1227 (toll-free), or 718–488–3557 (non toll-free).

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Area 1 Taxpayer Advocacy Panel will be held Tuesday, December 23, 2003 from 11 a.m. to 12 p.m. e.t. via a telephone conference call. Individual comments will be limited to 5 minutes. If you would like to have the TAP consider a written statement, please call 1–888–912–1227 or 718–488–3557, or write Marisa Knispel, TAP Office, 10 MetroTech Center, 625 Fulton Street, Brooklyn, NY 11201. Due to limited conference lines, notification of intent to participate in the telephone conference call meeting must be made with Marisa Knispel.

The agenda will include various IRS issues.

Dated: December 1, 2003.

Tersheia Carter,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. 03–30189 Filed 12–3–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS

Advisory Committee on Homeless Veterans, Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under Public Law 92–463 (Federal Advisory Committee Act) that a meeting of the Advisory Committee on Homeless Veterans will be held from Monday, December 15, 2003, through Tuesday, December 16, 2003, at the Marriott San Diego Hotel, Carlsbad Room, 333 West Harbor Drive, San Diego, CA 98101. On December 15, the meeting will convene at 1 p.m. and end at 4 p.m. and on December 16 the meeting will convene at 8 a.m. and end at 4 p.m. The meeting is open to the public.

The purpose of the Committee is to advise the Secretary of Veterans Affairs with an on-going assessment of the effectiveness of the policies, organizational structures, and services of the Department in assisting homeless veterans. The Committee shall assemble and review information relating to the needs of homeless veterans and provide on-going advice on the most appropriate means of providing assistance to homeless veterans. The Committee will make recommendations to the Secretary regarding such activities.

On December 15, the Committee will hear from key VA leaders from the San Diego area in regards to issues and developments affecting veterans' health and benefits. On December 16, the committee will receive updates on veterans' health, employment, dental care, multi-family housing, community participation and technical assistance efforts to assist homeless veterans.

Those wishing to attend the meeting should contact Mr. Pete Dougherty, Department of Veterans Affairs, at (202) 273–5764. No time will be allocated for receiving oral presentations during the public meeting. However, the Committee will accept written comments from interested parties on issues affecting homeless veterans. Such comments should be referred to the Committee at the following address: Advisory Committee on Homeless Veterans, Homeless Veterans Programs Office (075D), U.S. Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420.

Dated: November 21, 2003.

By Direction of the Secretary:

E. Phillip Riggin,

Committee Management Officer.

[FR Doc. 03–30139 Filed 12–3–03; 8:45 am]

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Federal Register

Thursday,
December 4, 2003

Part II

Department of Homeland Security

48 CFR Chapter 30
Department of Homeland Security
Acquisition Regulation; Interim Rule

DEPARTMENT OF HOMELAND SECURITY

48 CFR Chapter 30

[Docket Number USCG–2003–16571]

RIN 1601–AA16

Department of Homeland Security Acquisition Regulation

AGENCY: Office of the Chief Procurement Officer, Department of Homeland Security.

ACTION: Interim rule with request for comments.

SUMMARY: The Department of Homeland Security (DHS) is issuing an interim rule to establish the Department of Homeland Security Acquisition Regulation (HSAR). The HSAR is intended as regulatory guidance. The HSAR reflects recent changes to the Federal Acquisition Regulation (FAR) and it establishes and encourages participation in the DHS Mentor-Proege Program.

DATES: This rule is effective on December 4, 2003. Comments must reach the Department of Homeland Security, Office of the Chief Procurement Officer, Acquisition Policy on or before January 5, 2004, to be considered in the formation of the final rule. Comments on collection of information sent to the Office of Management and Budget (OMB) must reach OMB on or before January 5, 2004.

ADDRESSES: Please submit written comments by one of the following means:

(1) Electronically to *acquisition@dhs.gov*.

(2) By mail to the Department of Homeland Security, Office of the Chief Procurement Officer, Acquisition Policy and Oversight, ATTN: Kathy Strouss, 245 Murray Drive, Bldg. 410 (RDS), Washington, DC 20528.

You must also mail comments on collection of information to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street NW., Washington, DC 20503, ATTN: Desk Officer, DHS.

FOR FURTHER INFORMATION CONTACT: Kathy Strouss, Department of Homeland Security, Office of the Chief Procurement Officer, Acquisition Policy, at (202) 205–0141.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. Your comments will be considered for the final rule we plan to issue to replace this interim rule. If you choose to comment on this rule, please include your name and address, indicate the specific heading of this document to which each comment applies, and give the reason for each comment. Comments should be organized by HSAR Part, and address the specific section (*e.g.* (HSAR) 48 CFR 3006.302–7) that is being commented on. You may submit your comments and material by mail or electronic means to the address under **ADDRESSES.** Please submit your comments and material by only one means. If you submit them by mail, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached the Department of Homeland Security, Office of Chief Procurement Officer, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this rule in view of them.

Background and Purpose

DHS is issuing the Homeland Security Acquisition Regulation (HSAR) to establish a uniform departmentwide acquisition policy and regulation. The HSAR uses plain language for clarity and understanding; does not contain internal operating procedures that do not have a significant effect beyond DHS; and establishes the DHS Mentor-Protege Program.

The Department formed a HSAR Work Group that included both acquisition and legal staff from both the Department and its organizational elements. The team's approach was to develop and issue a regulation that delegates authority, where appropriate, to the lowest levels, is concise, and is simple for contractor's, offerors, and DHS contracting personnel to use.

Discussion of Interim Rule

The parts that contain no coverage and have been reserved are parts 3007, 3008, 3010, 3012, 3014, 3018, 3020, 3021, 3025, 3026, 3029, 3034, 3038, 3039, 3040, 3041, 3043, 3044, 3048, 3049, 3050, and 3051.

Part 3001, Federal Acquisition System, sets forth basic policies and general information about the Department of Homeland Security Regulation system including purpose, guiding principles, applicability, issuance, arrangement, numbering, dissemination, publication and codification, deviations, career development, contracting authority, and policy regarding determinations, waivers, exceptions, approvals and reviews.

Part 3002, Definitions and Abbreviations of Words and Terms, provides definitions and abbreviations for commonly used terms.

Part 3003, Improper Business Practices and Personal Conflicts of Interest, lists the authorities for Standards of Conduct and defines the Federal Acquisition Regulation (FAR) term "authorized official of an agency." The Part also contains procedures for reporting suspected violations of the Gratuities clause, and reports of suspected antitrust violations, Contingent Fees and subtcontractor kickbacks.

Part 3004, Administrative Matters, prescribes an Approval of Contract clause, and a Security Requirements for Unclassified Information Technology Resources clause. The Part also establishes when quick close out procedures can be used, as well as the applicable forms to be used in contract close out.

Part 3005, Publicizing Contract Actions, includes a requirement that releases of information to the general public will follow Freedom of Information Act (FOIA) rules, and a United States Coast Guard (USCG) exemption for publicizing contract actions for personal medical services contracting.

Part 3006, Competition Requirements, includes policies and procedures for establishing or maintaining alternative sources; circumstances permitting other than full and open competition, public interest; and Competition Advocates requirements, duties and responsibilities. The Part also includes a USCG exemption from competition requirements for personal medical services contracting.

Part 3009, Contractor Qualifications, sets forth policy on responsible prospective contractors; debarment, suspension and ineligibility; and a solicitation provision for organizational and consultant conflicts of interest.

Part 3011, Describing Agency Needs, includes a policy on selecting and developing requirements documents; solicitation and contract clauses for using and maintaining requirements documents; liquidated damages; and priorities and allocations.

Part 3013, Simplified Acquisition Procedures, includes a solicitation provision, and contract and purchase order clauses for the USCG bar coding requirement. It also includes the implementation of DHS special streamlined acquisition authorities.

Part 3015, Contracting By Negotiation, prescribes a Key Personnel or Facilities clause that will be used when selection for award is substantially based on offeror's possession of special capabilities. A policy on handling proposals and information, payment of profit or fee, and unsolicited proposals is also included in this Part.

Part 3016, Types of Contracts, includes a policy on fixed price, incentive, indefinite-delivery contracts, and a settlement of letter contract clause.

Part 3017, Special Contracting Methods, includes guidance on use of options, leader company contracting, energy savings performance contracts, and USCG clauses for fixed price contracts for vessel repair, alteration or conversion.

Part 3019, Small Business Programs, sets forth general policies for the small business and small business subcontracting program. This Part prescribes that a provision and clause be placed in all respective solicitations and contracts requiring a subcontracting plan. Also, two clauses are prescribed for DHS' Mentor-Protégé Program, which assists qualified small businesses in receiving developmental assistance from DHS prime contractors in order to increase the base of small businesses eligible to perform DHS contracts and subcontracts.

Part 3022, Application of Labor Laws to Government Acquisitions, sets forth DHS' policy on the admittance of union representatives to DHS installations. Prescriptions for HSAR 3052.222–70, Strikes or Picketing Affecting Timely Completion of the Contract Work, and HSAR 3052.222–71, Strikes or Picketing Affecting Access to a DHS Facility, are included. Guidance on withholding from or suspension of contract payments is also included. This part sets forth the USCG policy, provision and clause for local hires in all solicitations and contracts for construction or services with regard to a State's unemployment rate.

Part 3023, Environment, Energy and Water Efficiency, Renewable Energy Technologies, Occupational Safety, and Drug-Free Workplace, includes a provision and clause for removal or disposal of hazardous substances. It also includes drug-free workplace applicability guidance and sets forth approval authorities for a determination to suspend payments, terminate contracts or debar and suspend as it relates to this part. This Part also includes a requirement for Accident and Fire reporting when work will be performed on government-owned or leased property.

Part 3024, Protection of Privacy and Freedom of Information, specifies where DHS policies and procedures for implementing the Privacy Act of 1974 and the FOIA are found.

Part 3027, Patents, Data, and Copyrights, provides general guidance on patents, adjustment of royalties and use of patented technology under the North American Free Trade Agreements Act; patent rights clauses; and approval and justification requirements for administration of licensing background patent rights to third parties. Also, it includes guidance on use of an appropriate rights in data clause.

Part 3028, Bonds and Insurance, includes a requirement for the contracting officer to furnish surety information, and it includes policy on execution and administration of bonds. There is a requirement for the USCG to insert a provision or clause on Notification of Miller Act Payment Bond Protection. There are also USCG clauses for the insurance requirements for contracts for lease of aircraft. An insurance provision or clause requirement is found in this part.

Part 3030, Cost Accounting Standards Administration, provides that the Head of the Contracting Activity (HCA) is authorized to waive application of Cost Accounting Standards to individual commercial item, firm-fixed priced contracts.

Part 3031, Contract Cost Principles and Procedures, includes policy for pre-contract costs.

Part 3032, Contract Financing, provides guidance on contract financing for simplified acquisitions and specifies that the Chief Procurement Officer (CPO) is the DHS remedy coordination official. It also contains the Payment by Electronic Funds Transfer—Central Contractor Registration (CCR) requirement for all solicitations and contracts.

Part 3033, Protests, Disputes, and Appeals includes the designation of Department of Transportation Board of Contract Appeals as the DHS BCA.

Part 3035, Research and Development Contracting, includes policy on cost sharing and recoupment.

Part 3036, Construction and Architect and Engineering Contracts, includes a policy on performance reports and a contract clause for special precautions for work at operating airports.

Part 3037, Service Contracting, includes guidance on contract personnel access application, and conditional access to sensitive but unclassified information. The Part also provides policy for personal services contracts.

Part 3042, Contract Administration and Audit Services, includes prescriptions for clauses for dissemination of contract information; contracting officer's technical representative, and a requirement to use the Contractor Performance System for evaluating contractor performance.

Part 3045, Government Property, sets for reporting and auditing requirements, and a provision for a contract clause.

Part 3046, Quality Assurance, includes definitions relative to warranties; criteria for use of warranties; and terms and conditions. The Part also includes additional requirements for the USCG.

Part 3047, Transportation, sets forth the provisions for the transportation clauses for use, when applicable.

Part 3052, Solicitation Provisions and Contract Clauses, provides the text of the provisions and clauses. It also includes the text for the USCG specific provisions and clauses.

Part 3053, Forms, includes five forms that require completion by contractors or contract employees. The forms will be available and linked to the DHS website after they are approved by OMB, and upon publication of the final rule.

The Matrix lists the provisions and clauses, and illustrates whether a provision or clause is required or to be used when applicable.

Regulatory Assessment

This interim rule is not subject to review by the Office of Management and Budget (OMB) under Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13132, Federalism, and is not a major rule under 5 U.S.C. 804. It therefore does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under Executive Order 12866. It is not significant under the regulatory policies and procedures of the Department of Homeland Security.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this interim rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. This interim rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act. An Initial Regulatory

Flexibility Analysis has not been performed.

The Mentor-Protégé Program does apply to large business and small business firms that receive a form of incentive for assuming the role of mentor to small businesses, other small disadvantaged businesses, qualified HUBZone small businesses, small businesses owned and controlled by service disabled veterans, and small women-owned businesses. It is expected that the protégé entities would directly benefit from the forms of mentoring provided for in this rule. The interim regulation provides consistency with the FAR.

Collection of Information

This interim rule contains information collection requirements subject to the Paperwork Reduction Act (44 U.S.C. 3501–3520) that are being submitted to OMB for approval. As defined in 5 CFR 1320.3(c), "collection of information" comprises reporting, recordkeeping, monitoring, posting, labeling, and other, similar actions. DHS is awaiting approval from OMB for the five (5) forms that are referenced in the HSAR, and that can be found in Part 3053. DHS is also awaiting approval and the assignment of numbers for contract, solicitations and protests.

This information will be shown in HSAR Section 3001.106 and Part 3053, and will be published separately. This information is required by the Office of the Chief Procurement Officer in order to solicit, negotiate, award, and administer contracts in accordance with the Federal Acquisition Regulation, other regulations and statutes; in order to evaluate offers, ensure appropriate contract cost controls, and minimize conditions conducive to fraud, waste, and abuse; and in order to collect appropriate information from prospective contractors when protests are filed.

Additionally, the collections of information in this rule in part 3053 are for DHS Forms 0700–01 through 0700–05. These forms will be used when applicable for the following purposes: Cumulative Claim and Reconciliation Statement; Contractor's Assignment of Refunds, Rebates, Credits, and Other Amounts; Contractor's Release; Contractor Report of Government Property; and Employee Claim for Wage Restitution.

As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), we have submitted a copy of this interim rule to the Office of Management and Budget (OMB) for its review of the collection of information. Due to the circumstances surrounding this temporary rule, we asked for "emergency processing" of our request.

We ask for public comment on the collection of information to help us determine how useful the information is; whether it can help us perform our functions better; whether it is readily available elsewhere; how accurate our estimate of the burden of collection is; how valid our methods for determining burden are; how we can improve the quality, usefulness, and clarity of the information; and how we can minimize the burden of collection.

If you submit comments on the collection of information, submit them both to OMB and to DHS at the address indicated under **ADDRESSES**, by the date under **DATES**.

You need not respond to a collection of information unless it displays a currently valid control number from OMB.

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. This rule is not subject to the requirements of Executive Order 13132. DHS has determined that this proposed rule does not contain federalism implications and would not preempt State laws.

Determination To Issue an Interim Rule

A determination has been made under the authority of the Secretary of Homeland Security that urgent and compelling reasons exist to publish an interim rule prior to affording the public an opportunity to comment. This interim rule implements Sections 833 and 835 of the Homeland Security Act (Public Law 107–296), signed on November 25, 2002. The act provides authorities to be used in contracting for supplies and services required to accomplish the DHS mission of preventing and reducing terrorist attacks as well as minimizing damage and assisting in recovery from terrorist attacks for the Department and its organizational elements (OEs). Comments received in response to this interim rule will be considered in the formation of the final rule.

Under 5 U.S.C. 553(b)(B), the Department of Homeland Security (DHS) finds that good cause exists for not publishing a general notice of proposed rulemaking (NPRM). DHS consists of agencies and other operating elements of Government that pre-existed the formation of DHS. Prior to DHS's formation, those agencies used supplemental acquisition regulations as a foundation for the conduct of their procurement and acquisition functions. For example, the Coast Guard utilized the Department of Transportation (DOT) Acquisition Regulations found at 48 CFR Chapter 12. The Coast Guard can no longer rely on the DOT regulations since they no longer are a part of DOT. Similarly, organizations that used the Department of Treasury's or Department of Justice's acquisition supplements can no longer rely on those regulations.

DHS finds that due to an urgent need for seamless continued acquisition and contracting operations of the previous agencies and organizations that now comprise DHS, it is impracticable to afford the public an opportunity to comment prior to issuing this interim rule. Currently, there are no Department-level acquisition regulations governing DHS's vital contracting business. Consequently, a delay in issuing this regulation would be contrary to the public interest. This regulation realigns contracting authority within the Department and provides uniform regulatory guidance for the acquisition of supplies and services required to accomplish DHS's mission of preventing and reducing terrorist attacks as well as minimizing damage and assisting in recovery from terrorist attacks.

Under 5 U.S.C. 553(d)(3), DHS also finds that for the same reasons discussed above respecting 5 U.S.C. 553(b)(B), good cause exists for making this rule effective in less than 30 days after publication in the **Federal Register**.

List of Subjects in 48 CFR Parts 3001 Through 3053

Government procurement.

Dated: November 21, 2003.

Gregory D. Rothwell,

Chief Procurement Officer.

■ For the reasons discussed in the preamble, the Department of Homeland Security is adding chapter 30 of title 48 in the CFR to read as follows:

CHAPTER 30—DEPARTMENT OF HOMELAND SECURITY, HOMELAND SECURITY ACQUISITION REGULATION (HSAR)

SUBCHAPTER A—GENERAL

PART 3001—FEDERAL ACQUISITION REGULATIONS SYSTEM
PART 3002—DEFINITIONS OF WORDS AND TERMS
PART 3003—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST
PART 3004—ADMINISTRATIVE MATTERS
SUBCHAPTER B—ACQUISITION PLANNING
PART 3005—PUBLICIZING CONTRACT ACTIONS
PART 3006—COMPETITION REQUIREMENTS
PART 3007—ACQUISITION PLANNING—[RESERVED]
PART 3008—REQUIRED SOURCES OF SUPPLIES AND SERVICES—[RESERVED]
PART 3009—CONTRACTOR QUALIFICATIONS
PART 3010—MARKET RESEARCH—[RESERVED]
PART 3011—DESCRIBING AGENCY NEEDS
PART 3012—ACQUISITION OF COMMERCIAL ITEMS—[RESERVED]
SUBCHAPTER C—CONTRACT METHODS AND CONTRACT TYPES
PART 3013—SIMPLIFIED ACQUISITION PROCEDURES
PART 3014—SEALED BIDDING—[RESERVED]
PART 3015—CONTRACTING BY NEGOTIATION
PART 3016—TYPES OF CONTRACTS
PART 3017—SPECIAL CONTRACTING METHODS
PART 3018—[RESERVED]
SUBCHAPTER D—SOCIOECONOMIC PROGRAMS
PART 3019—SMALL BUSINESS PROGRAMS
PART 3020—[RESERVED]
PART 3021—[RESERVED]
PART 3022—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS
PART 3023—ENVIRONMENT, CONSERVATION, OCCUPATIONAL SAFETY, AND DRUG-FREE WORKPLACE
PART 3024—PROTECTION OF PRIVACY AND FREEDOM OF INFORMATION
PART 3025—FOREIGN ACQUISITION—[RESERVED]
PART 3026—OTHER SOCIOECONOMIC PROGRAMS—[RESERVED]
PART 3027—PATENTS, DATA AND COPYRIGHTS
PART 3028—BONDS AND INSURANCE
SUBCHAPTER E—GENERAL CONTRACTING REQUIREMENTS
PART 3029—TAXES—[RESERVED]
PART 3030—COST ACCOUNTING STANDARDS ADMINISTRATION
PART 3031—CONTRACT COST PRINCIPLES AND PROCEDURES
PART 3032—CONTRACT FINANCING
PART 3033—PROTESTS, DISPUTES, AND APPEALS
PART 3034—MAJOR SYSTEM ACQUISITION—[RESERVED]
SUBCHAPTER F—SPECIAL CATEGORIES OF CONTRACTING
PART 3035—RESEARCH AND DEVELOPMENT CONTRACTING
PART 3036—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS
PART 3037—SERVICE CONTRACTING
PART 3038—FEDERAL SUPPLY SCHEDULE CONTRACTING—[RESERVED]
PART 3039—ACQUISITION OF INFORMATION TECHNOLOGY—[RESERVED]
PART 3040—[RESERVED]
PART 3041—ACQUISITION OF UTILITY SERVICES—[RESERVED]
SUBCHAPTER G—CONTRACT MANAGEMENT
PART 3042—CONTRACT ADMINISTRATION AND AUDIT SERVICES
PART 3043—CONTRACT MODIFICATIONS—[RESERVED]
PART 3044—SUBCONTRACTING POLICIES AND PROCEDURES—[RESERVED]
PART 3045—GOVERNMENT PROPERTY
PART 3046—QUALITY ASSURANCE
PART 3047—TRANSPORTATION
PART 3048—VALUE ENGINEERING—[RESERVED]
PART 3049—TERMINATION OF CONTRACTS—[RESERVED]
PART 3050—EXTRAORDINARY CONTRACTUAL ACTIONS—[RESERVED]
PART 3051—USE OF GOVERNMENT SOURCES BY CONTRACTORS—[RESERVED]
SUBCHAPTER H—CLAUSES AND FORMS
PART 3052—SOLICITATION PROVISIONS AND CONTRACT CLAUSES
PART 3053—FORMS

■ 1. The authority citation for parts 3001 through 3053 reads as follows:

Authority: 41 U.S.C. 418b (a) and (b).

■ 2. The text of parts 3001 through 3053 reads as follows:

PART 3001—FEDERAL ACQUISITION REGULATIONS SYSTEM

Subpart 3001.1—Purpose, Authority, Issuance

Sec.
3001.101 Purpose.
3001.102 Statement of Guiding Principles for the Federal Acquisition System.
3001.104 Applicability.
3001.105 Issuance.
3001.105–1 Publication and code arrangement.
3001.105–2 Arrangement of regulations.
3001.105–3 Copies.
3001.106 OMB Approval under the Paperwork Reduction Act.

Subpart 3001.3—Agency Acquisition Regulations

3001.301 Policy.
3001.301–70 Amendment of HSAR.
3001.301–71 Effective date.
3001.301–72 HSAC or HSAR Notice numbering.
3001.303 Publication and codification.
3001.304 Agency control and compliance procedures.

Subpart 3001.4—Deviations from the FAR

3001.403 Individual deviations.
3001.404 Class deviations.

Subpart 3001.6—Career Development, Contracting Authority, and Responsibilities

3001.601 General.
3001.602 Contracting Officers.
3001.602–3 Ratification of unauthorized commitments.
3001.603 Selection, appointment, and termination of appointment.
3001.603–1 General.

Subpart 3001.7—Determinations and Findings

3001.704 Content.

Subpart 3001.70—Other Determinations, Waivers, Exceptions, Approvals, Reviews, and Submittals.

3001.7000 Coordination and approval.
3001.7001 Content.

Subpart 3001.1—Purpose, Authority, Issuance

3001.101 Purpose.

The Department of Homeland Security Acquisition Regulation (HSAR) establishes uniform acquisition policies and procedures, which implement and supplement the Federal Acquisition Regulation (FAR).

3001.102 Statement of Guiding Principles for the Federal Acquisition System.

(d) The FAR and this supplement are to be interpreted permissively, if consistent with statutory and regulatory requirements, policy, and sound professional judgment.

3001.104 Applicability.

(a) The following order of precedence applies to resolve any acquisition regulation or procedural inconsistency found within HSAR or the Homeland Security Acquisition Manual (HSAM):
(1) Statute;
(2) FAR or other applicable regulation or Executive Order;
(3) HSAR;
(4) Department of Homeland Security (DHS) Directives; and
(5) HSAM.
(b) The Transportation Security Administration (TSA) exception to this regulation is authorized by the Aviation and Transportation Security Act of 2001 (Section 101(a) of Public Law 107–71). However, see (HSAR) 48 CFR 3033.211, regarding Board of Contract Appeals (BCA).
(c) For nonappropriated fund contracts, the FAR and HSAR will be followed to the maximum extent feasible excluding provisions determined by counsel not to apply to Nonappropriated Fund institutions (NAFIs). Contracting terms may provide for mutual agreement as to the Board of Contract Appeals jurisdiction but this policy will not confer court jurisdiction concerning NAFIs that does not otherwise exist.

3001.105 Issuance.

3001.105–1 Publication and code arrangement.

(a) The HSAR is published in:
(1) The **Federal Register** and
(2) Cumulated form in the Code of Federal Regulations (CFR).

3001.105–2 Arrangement of regulations.

(a) General. The HSAR, which encompasses both Department-wide and

organizational element-unique guidance, conforms to the arrangement and numbering system prescribed by (FAR) 48 CFR 1.105–2. Guidance that is unique to an organization with Head of the Contracting Activity (HCA) authority contains the organization's acronym directly preceding the cite. The following acronyms apply:

Bureau of Customs and Border Protection (CBP)
Bureau of Immigration and Customs Enforcement (ICE)
DHS Office of Procurement Operations (OPO)
Federal Emergency and Management Agency (FEMA) (Includes all elements of the Emergency Preparedness and Response Directorate)
Federal Law Enforcement Training Center (FLETC)
Transportation Security Administration (TSA)
U.S. Coast Guard (USCG)
U.S. Secret Service (Secret Service)

3001.105–3 Copies.

The HSAR is available in the **Federal Register** and electronically, at *http://www.dhs.gov/dhspublic/*.

3001.106 OMB Approval under the Paperwork Reduction Act.

(a) The Office of Management and Budget (OMB) has assigned the following control numbers that must appear on the upper right-hand corner of the face page of each solicitation, contract, modification, and order:

OMB Control No. 1600–002 (Contract related forms)
OMB Control No. 1600–005 (Offeror submissions)
OMB Control No. 1600–003 (Contractor submissions)
OMB Control No. 1600–004 (Protests)

(b) OMB regulations and OMB's approval and assignment of control numbers are conditioned upon not requiring more than three copies (including the original) of any document of information. OMB has granted a waiver to permit the Department to require up to eight copies of proposal packages, including proprietary data, for solicitations, provided that contractors who submit only an original and two copies will not be placed at a disadvantage.

Subpart 3001.3—Agency Acquisition Regulations

3001.301 Policy.

(a)(1) The HSAR is issued for Departmental guidance according to the policy cited in (FAR) 48 CFR 1.301. The HSAR establishes uniform Homeland Security policies and procedures for all acquisition activities within the Department of the Homeland Security, except the TSA. OE supplemental acquisition regulations to be inserted in the HSAR as a HSAR supplement regulation must be reviewed and approved by the Chief Procurement Officer (CPO) before the CPO submits the proposed coverage for publication in the **Federal Register** according to (FAR) 48 CFR 1.501.

(2)(i) The CPO is authorized to issue internal agency guidance at any organizational level. Department-wide procedures are contained in the HSAM. The HCA may implement internal procedures or supplement the FAR, HSAR, or HSAM as provided in HSAM 3001.3. The HCA may issue procedures or delegate this authority to any organizational level deemed appropriate. OE procedures may be more restrictive or require higher approval levels than those permitted by the HSAM, unless otherwise specified.

(ii) Individuals granted authority in the HSAR may delegate that authority, unless the FAR or HSAR specifically state that the authority is not delegable.

(b) The Under Secretary of Management established procedures through Management Directive (MD) 0490.1, entitled *Federal Register Notice and Rules*, to ensure that agency acquisition regulations are published for comment in the **Federal Register** in conformance with FAR procedures at (FAR) 48 CFR subpart 1.5.

3001.301–70 Amendment of HSAR.

(a) Request for changes to the regulation may be recommended by DHS personnel, other Government agencies, or the public. Change requests are to be submitted in the following format to the Department of Homeland Security, Attn: Office of the Under Secretary of Management, Chief Procurement Officer, Washington, DC 20598.

(1) *Problem:* Succinctly state the problem(s) created by current HSAR requirements or processes and describe the factual or legal reasons for requesting a regulatory change.

(2) *Recommendation:* Identify the recommended change by using the current language and lining through the words to be deleted and inserting proposed language in brackets. If the change is extensive, deleted language may be displayed by forming a box with diagonal lines connecting the corners.

(3) *Discussion:* Explain why the change is necessary and how the change will solve the problem. Address any cost or administrative impact on Government activities, offerors, and contractors. Provide any other helpful information and documents such as statutes, legal decisions, regulations, reports, etc.

(4) *Point of Contact:* Provide a point of contact for answering questions regarding the recommendation, along with a telephone number, e-mail or other method of reaching the contact.

(b) The HSAR is maintained by the CPO through the HSAR/HSAM change process (*i.e.*, input from various OEs including representatives specifically designated to formulate Departmental acquisition policies and procedures).

(1) Homeland Security Acquisition Circular (HSAC). HSAC (*see* (HSAR) 48 Chapter 3001.301–72) will be used to amend (HSAR) 48 Chapter 30.

(2) HSAR Notices will be issued (with a specified expiration date) when interim guidance is necessary under any of the following circumstances:

(i) To promulgate, as rapidly as possible, selected material in a general or narrative manner, in advance of a HSAC issuance;

(ii) To disseminate other acquisition related information; or

(iii) To issue guidance that is expected to be effective for a period of 1 year or less.

3001.301–71 Effective date.

Unless otherwise stated, the following applies—

(a) Statements in HSACs or HSAR Notices that the content is "upon a specified date," or that changes in the document are "to be used upon receipt," mean that any new or revised provisions, clauses, procedures, or forms must be included in solicitations or contracts issued thereafter; and

(b) Unless expressly directed by statute or regulation, if solicitations have been issued prior to the HSAC or HSAR notice receipt or publication, the new information (*e.g.*, forms and clauses) need not be included if the Chief of the Contracting Office (COCO) determines, in writing, that including the new information would not be in the best interests of the Government.

3001.301–72 HSAC or HSAR Notice numbering.

HSACs and HSAR Notices will be numbered consecutively on a fiscal year basis beginning with number "01" prefixed by the last two digits of the fiscal year (*e.g.*, HSAR Notices 03–01 and 03–02 indicate the first two HSAR Notices issued in fiscal year 2003).

3001.303 Publication and codification.

(a) The HSAR is issued as chapter 30 of Title 48 of the CFR.

(1) The FAR numbering illustrations at (FAR) 48 CFR 1.105–2 apply to the HSAR.

(2) Coverage within HSAR 48 CFR chapter 30 is identified by the prefix "30" followed by the complete FAR cite which may extend downward to the subparagraph level (*e.g.*, (HSAR) 48 CFR 3001.101).

(3) Coverage in HSAR Chapter 30 that supplements the FAR will use part, subpart, section and subsection numbers ending in "70" through "89". A series of numbers beginning with "70" is used for provisions and clauses (*e.g.*, (HSAR) 48 CFR 3001.301–70).

(4) Coverage in HSAR 48 CFR chapter 30, other than that identified with a "70" or higher number, which implements the FAR uses the identical number sequence and caption of the FAR segment being implemented which may extend downward to the subparagraph level. Subparagraph numbers/letters may not be shown as sequential, but may be shown by the specific paragraph/subparagraph implemented from the FAR (*e.g.*, (HSAR) 48 CFR 3003.301 contains subparagraphs (a) and (b) because only these subparagraphs, correlating to FAR, are being supplemented by (HSAR) 48 CFR chapter 30).

(5) Organizational Element-unique guidance. Supplementary material for which there is no counterpart in the FAR or HSAR shall be identified using chapter, part, subpart, section, or subsection numbers of "90" and up (*e.g.*, the U.S. Coast Guard's acronym is "USCG"; an USCG-unique clause pertaining to "Inspection and/or Acceptance" would be designated "USCG 3052.246–90").

(6) References and citations. Cross references to the FAR in the HSAR will be cited by "FAR" followed by the FAR numbered cite, and cross reference to the HSAM in the HSAR will be cited by "HSAM" followed by the HSAM numbered cite.

(7) Department/agency and OE supplements must parallel the FAR and HSAR numbering, except department/agency supplemental numbering uses subsection numbering of 90 and up, instead of 70 and up.

TABLE 1–1.—HSAR NUMBERING

FAR	Is implemented as	Is supplemented as
19	3019	3019.70
19.5	3019.5	3019.570
19.501	3019.501	3019.501–70
19.501–1	3019.501–1	3019.501–170

3001.304 Agency control and compliance procedures.

(a) The HSAR is under the direct oversight and control of the Homeland Security, Office of the Chief Procurement Officer (OCPO), which is responsible for evaluation, review, and issuance of all Department-wide acquisition regulations and guidance. Each HCA may supplement the HSAR with OE guidance. Supplementation should be kept to a minimum. OEs proposing to issue regulatory supplements or use solicitation or contract clauses on a repetitive basis must obtain legal review by the OE's legal counsel and forward supplements to the CPO for concurrence prior to publication in the **Federal Register**.

(c) The CPO is responsible for evaluating all regulatory coverage in agency acquisition regulations to determine if the substance could apply to other agencies and to make recommendation for inclusion in the FAR.

Subpart 3001.4—Deviations from the FAR and HSAR

3001.403 Individual deviations.

Unless precluded by law, executive order, or other regulation, the HCA is authorized to approve individual deviation (except with respect to (FAR) 48 CFR 30.201–3, 30.201–4; the requirements of the Cost Accounting Standards board rules and regulations at 48 CFR chapter 99 (FAR appendix); and part 50). Submit requests per (HSAR) 48 CFR 3001.7000(a), including complete documentation of the justification for the deviation (*See* HSAM 3001.403).

3001.404 Class deviations.

(a) Unless precluded by law, executive order, or other regulation, the CPO is authorized to approve class deviations (except (FAR) 48 CFR 30.201–3, 30.201–4; the requirements of the Cost Accounting Standards board rules and regulations at 48 CFR Chapter 99 (FAR Appendix); and Part 50). Submit requests per (HSAR) 48 CFR 3001.7000(a), including complete documentation of the justification for the deviation, and the number and type of contract actions affected. Include a copy of the approved deviation in each contract file. The CPO will transmit a copy of each approved deviation to the FAR Secretariat.

Subpart 3001.6—Career Development, Contracting Authority, and Responsibilities

3001.601 General.

DHS Delegation Number 0200.1, Delegation to the Directorate of Management, delegates authority from the Secretary to the Under Secretary of Management to manage the acquisition function. DHS Delegation 0700, Delegation to the Chief Procurement Officer for Acquisition and Financial Assistance Management, delegates this authority from the Under Secretary of Management to the Chief Procurement Officer.

3001.602 Contracting officers.

3001.602–3 Ratification of unauthorized commitments.

Department of Homeland Security (DHS) policy requires that acquisitions be made only by Government officials having authority to enter into such acquisitions. Acquisitions made by other than authorized personnel are contrary to Departmental policy and may be considered matters of serious misconduct on the part of an employee making an unauthorized commitment, and may result in disciplinary action being taken against an employee who makes an unauthorized commitment.

3001.603 Selection, appointment, and termination of appointment.

3001.603–1 General.

Under DHS Delegations, the Heads of the Contracting Activity (HCA), with authority to redelegate no lower than the COCO, are authorized to select and appoint contracting officers and terminate their appointment.

Subpart 3001.7—Determinations and Findings

3001.704 Content.

The following format shall be used for all determinations and findings (D&Fs), unless otherwise specified in the FAR or the HSAR. The contracting officer is responsible for preparing D&Fs, and

requirements and technical personnel are responsible for the accuracy and adequacy of the supporting factual information, which shall be furnished to the contracting officer.

Insert specific information indicated in brackets.

Determination and Findings

Under [*insert citation for appropriate statutory and/or regulatory basis for D&F*], the Department of Homeland Security, [*insert contracting activity*], is granted authority to [*insert nature and/or description of the action being approved*].

Findings

[*Findings that detail the particular circumstances, facts, or reasoning essential to support the determination.*]

Determination

[*A determination, based on the findings, that the proposed action is justified under the applicable statute or regulation.*]

[*Expiration date of the D&F, if required.*]

[*Signature of authorized official*]

Name and Title

[month, day, and year]

Date

Subpart 3001.70—Other Determinations, Waivers, Exceptions, Approvals, Reviews, and Submittals

3001.7000 Coordination and approval.

Documents requiring CPO approval. Requests shall be prepared in writing by the contracting officer and submitted through the HCA to the CPO for approval.

3001.7001 Content.

The general format at (HSAR) 48 CFR 3001.704 shall be used to provide a justification to support the requested determination, waiver, exception or approval.

PART 3002—DEFINITIONS OF WORDS AND TERMS

Subpart 3002.1—Definitions

Sec.

3002.101 Definitions.

Subpart 3002.2—Abbreviations

3002.270 Abbreviations.

Subpart 3002.1—Definitions

3002.101 Definitions.

Chief Information Officer (CIO) means the Director of the Office of the CIO.

Chief of the Contracting Office (COCO) means the individual(s) responsible for managing the contracting office(s) within an organizational element (OE).

Chief Procurement Officer (CPO) means the Senior Procurement Executive (SPE).

Contracting activity includes all the contracting offices within an OE and is the same as the term "procuring activity."

Contracting officer means an individual authorized by virtue of position or by appointment to perform the functions assigned by the Federal Acquisition Regulation and the Homeland Security Acquisition Regulation.

Head of Contracting Activity (HCA) means the individual responsible for direct management of the entire acquisition function within an organizational element.

Head of the Agency means the Secretary of the Department of Homeland Security, or, by delegation, the Under Secretary of Management. "Legal counsel" means the Department of Homeland Security Office of General Counsel or OE office providing legal services to the contracting organization.

Legal review means review by legal counsel.

Major system means an acquisition as defined in Management Directive Number 1400, Investment Review Process.

Micro-purchase threshold means $2,500 (see (HSAR) 48 CFR 3013–70), except it means—

(1) $2,000 for construction subject to the Davis-Bacon Act; and

(2) $7,500 for acquisitions of supplies or services, except for construction subject to the Davis-Bacon, if the Secretary determines in writing that the mission of the Department (described in Pub. L. 107–296, Sec. 101) would be seriously impaired without the use of such authorities, Act (Pub. L. 107–296, section 833).

Organizational Element (OE) means the following entities for purposes of this chapter:

(1) Bureau of Customs and Border Protection (CBP);

(2) Bureau of Immigration and Customs Enforcement (ICE);

(3) DHS Office of Procurement Operations (OPO);

(4) Federal Emergency Management Agency (FEMA) (Includes all elements of the Emergency Preparedness and Response Directorate);

(5) Federal Law Enforcement Training Center (FLETC);

(6) Transportation Security Administration (TSA); (TSA is exempt from the HSAR and HSAM according to the "Aviation and Transportation Security Act of 2001");

(7) U.S. Coast Guard (USCG); and

(8) U.S. Secret Service (Secret Service).

Senior Procurement Executive (SPE) for the Department of Homeland Security is the Chief Procurement Officer (CPO).

Simplified acquisition threshold means $100,000 (see (HSAR) 48 CFR 3013–70), except that for acquisitions of supplies or services that, if the Secretary determines in writing that the mission of the Department (described in Pub. L. 107–296, section 101) would be seriously impaired without the use of such authorities from November 25, 2002 to December 30, 2007 (Pub. L. 107–296, section 833(c)), the term means—

(1) $200,000 for any contract to be awarded and performed, or purchase to be made, inside the United States; and

(2) $300,000 for any contract to be awarded and performed, or purchase to be made, outside the United States.

Subpart 3002.2—Abbreviations

3002.270 Abbreviations.

CFO Chief Financial Officer
CIO Chief Information Officer
COCO Chief of the Contracting Office
COR Contracting Officers Representative
COTR Contracting Officer's Technical Representative
CPO Chief Procurement Officer
D&F Determination and Findings
DOTBCA Department of Transportation Board of Contract Appeals
FOIA Freedom of Information Act
HCA Head of Contracting Activity
J & A Justification and Approval for Other than Full and Open Competition
KO Contracting officer
MD Management Directive
OCPO Office of the Chief Procurement Officer
OE Organizational Element
OIG Office of the Inspector General
OSDBU Office of Small and Disadvantaged Business Utilization
PCR SBA's Procurement Center Representative
RFP Request for Proposal
SBA Small Business Administration
SBS Small Business Specialist
SPE Senior Procurement Executive

PART 3003—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

Subpart 3003.1—Safeguards

Sec.

3003.101 Standards of conduct.

3003.101–3 Agency regulations.

Subpart 3003.2—Contractor Gratuities to Government Personnel

3003.203 Reporting suspected violations of the Gratuities clause.

3003.204 Treatment of violations.

Subpart 3003.3—Reports Of Suspected Antitrust Violations

3003.301 General.

Subpart 3003.4—Contingent Fees

3003.405 Misrepresentations or violations of the Covenant Against Contingent Fees.

Subpart 3003.5—Other Improper Business Practices

3003.502 Subcontractor kickbacks.

3003.502–2 Subcontractor kickbacks.

Subpart 3003.9—Whistleblower Protections for Contractor Employees

3003.901 Definitions.

Subpart 3003.1—Safeguards

3003.101 Standards of conduct.

3003.101–3 Agency regulations.

(a) Government-wide and Department of Homeland Security regulations governing the conduct and responsibilities of employees are contained in 5 CFR parts 2635 and 3101, and MD 0480, Ethics/Standards of Conduct.

Subpart 3003.2—Contractor Gratuities to Government Personnel

3003.203 Reporting suspected violations of the Gratuities clause.

(a) Suspected violations of the Gratuities clause shall be reported to the contracting officer responsible for the acquisition (or the COCO if the contracting officer is suspected of the violation). The contracting officer (or the COCO) shall obtain from the person reporting the violation, and any witnesses to the violation, the following information:

(1) The date, time, and place of the suspected violation;

(2) The name and title (if known) of the individual(s) involved in the violation; and

(3) The details of the violation (*e.g.*, the gratuity offered or intended) to obtain a contract or favorable treatment under a contract.

(4) The person reporting the violation and witnesses (if any) shall be requested to sign and date the information certifying that the information furnished is true and correct.

(b) The contracting officer shall submit the report to the COCO (unless the alleged violation was directly reported to the COCO) and the Head of the Contracting Activity (HCA) for further action. The COCO and HCA will determine, with the advice of OE legal counsel, whether the case warrants submission to the OIG, or other investigatory organization.

3003.204 Treatment of violations.

(a) The HCA is the individual to determine whether a Gratuities clause violation has occurred. If the HCA has been personally and substantially involved in the specific procurement, the advice of Government legal counsel should be sought to determine whether an alternate decision maker should be designated.

(b) The COCO shall ensure that the hearing procedures required by (FAR) 48 CFR 3.204(b) are afforded to the contractor. Government legal counsel shall be consulted regarding the appropriateness of the hearing procedures that are established.

(c) If the HCA determines that the alleged gratuities violation occurred during the "conduct of an agency procurement" the COCO shall consult with Government legal counsel regarding the approach for appropriate processing of either the Procurement Integrity Act violation or the Gratuities violation.

Subpart 3003.3—Reports Of Suspected Antitrust Violations

3003.301 General.

(b) The procedures at (HSAR) 48 CFR 3003.203 shall be followed for suspected antitrust violations, except reports of suspected antitrust violations shall be coordinated with legal counsel for referral to the Department of Justice, if deemed appropriate.

Subpart 3003.4—Contingent Fees

3003.405 Misrepresentations or violations of the Covenant Against Contingent Fees.

(a) The procedures at (HSAR) 48 CFR 3003.203 shall be followed for misrepresentation or violations of the covenant against contingent fees.

(b)(4) The procedures at (HSAR) 48 CFR 3003.203 shall be followed for misrepresentation or violations of the covenant against contingent fees, except reports of misrepresentation or violations of the covenant against contingent fees shall be coordinated with legal counsel for referral to the Department of Justice, if deemed appropriate.

Subpart 3003.5—Other Improper Business Practices

3003.502 Subcontractor kickbacks.

3003.502–2 Subcontractor kickbacks.

(g) The DHS OIG shall receive the prime contractor or subcontractors written report.

Subpart 3003.9—Whistleblower Protections for Contractor Employees

3003.901 Definitions.

Authorized official of an agency means the Department of Homeland Security's CPO.

PART 3004—ADMINISTRATIVE MATTERS

Subpart 3004.1—Contract Execution

Sec.

3004.103 Contract clause.

Subpart 3004.4—Contract Clause

3004.470–4 Contract clause.

Subpart 3004.8—Government Contract Files

3004.804 Closeout of contract files.

3004.804–1 Closeout by the office administering the contract.

3004.804–5 Procedures for closing out contract files.

3004.804–570 Supporting closeout documents.

Subpart 3004.1—Contract Execution

3004.103 Contract clause.

Insert the clause at (FAR) 48 CFR 52.204–1, Approval of Contract, in each solicitation where approval to award the resulting contract is required above the contracting officer level.

Subpart 3004.4—Contract Clause

3004.470–4 Contract clause.

The contracting officer shall insert a clause substantially the same as the clause at (HSAR) 48 CFR 3052.204–70, Security Requirements for Unclassified Information Technology Resources, in solicitations and contracts which require submission of an IT Security Plan.

Subpart 3004.8—Government Contract Files

3004.804 Closeout of contract files.

3004.804–1 Closeout by the office administering the contract.

(b) The quick closeout procedures under (FAR) 48 CFR 42.708 may be used for the settlement of indirect costs under contracts when the estimated amount (excluding any fixed fee) of the contract is $3 million or less if determined appropriate by the contracting officer.

3004.804–5 Procedures for closing out contract files.

3004.804–570 Supporting closeout documents.

(a) When applicable and prior to contract closure, the contracting officer shall obtain the listed DHS and Department of Defense (DOD) forms from the contractor for closeout.

(1) DHS Form 0700–03, Contractor's Release (*e.g.*, see (FAR) 48 CFR 52.216–7);

(2) DHS Form 0700–02, Contractor's Assignment of Refunds, Rebates, Credits and Other Amounts (*e.g.*, see (FAR) 48 CFR 52.216–7);

(3) DHS Form 0700–01, Cumulative Claim and Reconciliation Statement (*e.g.*, see (FAR) 48 CFR 4.804–5(a)(13); and

(4) DD Form 882, Report of Inventions and Subcontracts (*e.g.*, see (FAR) 48 CFR 52.227–14).

(b) The forms listed in this section (see (HSAR) 48 CFR part 3053) are used primarily for the closeout of cost-reimbursement, time-and-materials, and labor-hour contracts. The forms may also be used for closeout of other contract types to protect the Government's interest.

PART 3005—PUBLICIZING CONTRACT ACTIONS

Subpart 3005.4—Release of Information

Sec.
3005.402 General public.

Subpart 3005.90—Publicizing Contract Actions for Personal Services Contracting

3005.9000 Applicability (USCG).

Subpart 3005.4—Release of Information

3005.402 General public.

Requests for other specific records information shall be processed according to the DHS Freedom of Information Act rules and regulations (HSAR) 48 CFR 3024.203.

Subpart 3005.90—Publicizing Contract Actions for Personal Services Contracting.

3005.9000 Applicability (USCG).

Contracts awarded by the U.S. Coast Guard using the procedures in (HSAR) 48 CFR 3037.104–91 are expressly authorized under section 1091 of Title 10 U.S.C. as amended by Public Law 107–296, for the Coast Guard and are exempt from the requirements of (FAR) 48 CFR part 5.

PART 3006—COMPETITION REQUIREMENTS

Subpart 3006.2—Full and Open Competition After Exclusion of Sources

Sec.
3006.202 Establishing or maintaining alternative sources.

Subpart 3006.3—Other Than Full and Open Competition

3006.302 Circumstances permitting other than full and open competition.
3006.302–7 Public interest.

Subpart 3006.5—Competition Advocates

3006.501 Requirement.
3006.502 Duties and responsibilities.

Subpart 3006.90—Competition Requirements for Personal Services Contracting

3006.9000 Applicability (USCG).

Subpart 3006.2—Full and Open Competition After Exclusion of Sources

3006.202 Establishing or maintaining alternative sources.

(b)(1) The HCA is delegated authority to approve a D&F in support of a contract action award under the authority of (FAR) 48 CFR 6.202(a). Submit D&F in the format per (HSAR) 48 CFR 3001.704.

Subpart 3006.3—Other Than Full and Open Competition

3006.302 Circumstances permitting other than full and open competition.

3006.302–7 Public interest.

(c)(1)(ii) Requests shall be prepared in writing by the contracting officer, using the format found in (HSAR) 48 CFR 3001.704, and submitted through the HCA to the CPO for review and transmittal to the Secretary for approval.

Subpart 3006.5—Competition Advocates

3006.501 Requirement.

The DHS Senior Competition Advocate (SCA) is located in the Office of the Chief Procurement Officer (OCPO).

3006.502 Duties and responsibilities.

(a) OE competition advocates will submit an annual report to the Departmental Advocate for Competition.

Subpart 3006.90—Competition Requirements For Personal Services Contracting

3006.9000 Applicability (USCG).

Contracts awarded by the U.S. Coast Guard using the procedures in (HSAR) 48 CFR 3037.104–91 are expressly authorized under Section 1091 of Title 10 U.S.C. as amended, for the Coast Guard and are exempt from the competition requirements of (FAR) 48 CFR part 6.

PART 3007—ACQUISITION PLANNING [RESERVED]

PART 3008—REQUIRED SOURCES OF SUPPLIES AND SERVICES [RESERVED]

PART 3009—CONTRACTOR QUALIFICATIONS

Subpart 3009.1—Responsible Prospective Contractors

Sec.
3009.104–70 Prohibition on contracts with corporate expatriates.
3009.104–71 General.
3009.104–72 Definitions.
3009.104–73 Special rules.
3009.104–74 Waiver.
3009.104–75 Clause.

Subpart 3009.4—Debarment, Suspension, and Ineligibility

3009.470 Reserve Officer Training Corps and military recruiting on campus.
3009.470–1 Definition.
3009.470–2 Policy.
3009.470–3 Procedures.
3009.470–4 Contract clause.

Subpart 3009.5—Organizational and Consultant Conflicts of Interest

3009.507 Solicitation provisions.

Subpart 3009.1—Responsible Prospective Contractors

3009.104–70 Prohibition on contracts with corporate expatriates.

3009.104–71 General.

DHS may not enter into any contract with a foreign incorporated entity, which is treated as an inverted domestic corporation under subsection (b) of section 835 of the Homeland Security Act, Pub. L. 107–296.

3009.104–72 Definitions.

As used in this subpart—

Expanded Affiliated Group means an affiliated group as defined in section 1504(a) of the Internal Revenue Code of 1986 (without regard to section 1504(b) of such Code), except that section 1504 of such Code shall be applied by substituting 'more than 50 percent' for 'at least 80 percent' each place it appears.

Foreign Incorporated Entity means any entity which is, or but for subsection (b) of section 835 of the Homeland Security Act, Pub. L. 107–296, would be, treated as a foreign corporation for purposes of the Internal Revenue Code of 1986.

Inverted Domestic Corporation. A foreign incorporated entity shall be treated as an inverted domestic corporation if, pursuant to a plan (or a series of related transactions)—

(1) The entity completes after the date of enactment of this Act, the direct or indirect acquisition of substantially all of the properties held directly or indirectly by a domestic corporation or substantially all of the properties constituting a trade or business of a domestic partnership;

(2) After the acquisition at least 80 percent of the stock (by vote or value) of the entity is held—

(i) In the case of an acquisition with respect to a domestic corporation, by former shareholders of the domestic corporation by reason of holding stock in the domestic corporation; or

(ii) In the case of an acquisition with respect to a domestic partnership, by former partners of the domestic partnership by reason of holding a capital or profits interest in the domestic partnership; and

(3) The expanded affiliated group which after the acquisition includes the entity does not have substantial business activities in the foreign country in which or under the law of which the entity is created or organized when compared to the total business activities of such expanded affiliated group.

Person, domestic, and foreign have the meanings given such terms by paragraphs (1), (4), and (5) of section 7701(a) of the Internal Revenue Code of 1986, respectively.

3009.104–73 Special rules.

The following special rules shall apply when determining whether a foreign incorporated entity should be treated as an inverted domestic corporation.

(a) *Certain stock disregarded.* For the purpose of treating a foreign incorporated entity as an inverted domestic corporation these shall not be taken into account in determining ownership:

(1) Stock held by members of the expanded affiliated group which includes the foreign incorporated entity; or

(2) Stock of such entity which is sold in a public offering related to the acquisition described in subsection (b)(1) of section 835 of the Homeland Security Act (the Act), Pub. L. 107–296.

(b) *Plan deemed in certain cases.* If a foreign incorporated entity acquires directly or indirectly substantially all of the properties of a domestic corporation or partnership during the 4-year period beginning on the date which is after the date of enactment of this Act and which is 2 years before the ownership requirements of subsection (b)(2) of the Act are met, such actions shall be treated as pursuant to a plan.

(c) *Certain transfers disregarded.* The transfer of properties or liabilities (including by contribution or distribution) shall be disregarded if such transfers are part of a plan a principal purpose of which is to avoid the purposes of this section.

(d) *Special rule for related partnerships.* For purposes of applying subsection (b) to the acquisition of a domestic partnership, except as provided in regulations, all domestic partnerships which are under common control (within the meaning of section 482 of the Internal Revenue Code of 1986) shall be treated as a partnership.

(e) *Treatment of certain rights.* (1) Certain rights shall be treated as stocks to the extent necessary to reflect the present value of all equitable interests incident to the transaction, as follows:

(i) Warrants;

(ii) Options;

(iii) Contracts to acquire stock;

(iv) Convertible debt instruments;

(v) Others similar interests.

(2) Rights labeled as stocks shall not be treated as stocks whenever it is deemed appropriate to do so to reflect the present value of the transaction or to disregard transactions whose recognition would defeat the purpose of section 835 of the Act.

3009.104–74 Waiver.

(a) The Secretary shall waive subsection (a) of section 835 of Pub. L. 107–296 with respect to any specific contract if the Secretary determines that the waiver is required in the interest of homeland security, or to prevent the loss of any jobs in the United States or prevent the Government from incurring any additional costs that otherwise would not occur.

(b) Contractors shall submit waiver requests to the CPO. If a waiver is granted, a copy of the approved waiver shall be attached with the bid or proposal.

3009.104–75 Clause.

Insert the provision (HSAR) 48 CFR 3052.209–70, Prohibition on Contracts with Corporate Expatriates, in all solicitations and contracts.

Subpart 3009.4—Debarment, Suspension, and Ineligibility

3009.470 Reserve Officer Training Corps and military recruiting on campus.

3009.470–1 Definition.

Institution of higher education as used in this section, means an institution that meets the requirements of 20 U.S.C. 1001 and includes all subelements of such an institution.

3009.470–2 Policy.

(a) Except as provided in paragraph (b) of this subsection, 10 U.S.C. 983 prohibits the Department of Homeland Security from providing funds by contract or grant to an institution of higher education if the Secretary of Defense determines that the institution has a policy or practice that prohibits or in effect prevents—

(1) The Secretary of a military department from maintaining, establishing, or operating a unit of the Senior Reserve Officer Training Corps (ROTC) at that institution;

(2) A student at that institution from enrolling in a unit of the Senior ROTC at another institution of higher education;

(3) The Secretary of a military department or the Secretary of Homeland Security from gaining entry to campuses, or access to students on campuses, for purposes of military recruiting; or

(4) Military recruiters from accessing certain information pertaining to students enrolled at that institution.

(b) The prohibition in paragraph (a) of this subsection does not apply to an institution of higher education if the Secretary of Defense determines that—

(1) The institution (and each subelement of that institution) has ceased the policy or practice described in paragraph (a) of this subsection; or

(2) The institution involved has a long-standing policy of pacifism based on historical religious affiliation.

3009.470–3 Procedures.

Whenever the Secretary of Defense determines that an institution of higher education (including any subelement of such institution) is ineligible and the provisions of 10 U.S.C. 983 apply:

(a) The Secretary of Defense will list the institution on the List of Parties Excluded from Federal Procurement and Nonprocurement Programs published by the General Services Administration (also see (FAR) 48 CFR 9.404 and 32 CFR part 216); and

(b) The Department of Homeland Security—

(1) Shall not solicit offers from, award contracts to, or consent to subcontracts with the institution;

(2) Shall make no further payments under existing contracts with the institution; and

(3) Shall terminate existing contracts with the institution.

3009.470–4 Contract clause.

Insert the clause at (HSAR) 48 CFR 3052.3009–71, Reserve Officer Training Corps and Military Recruiting on Campus, in all solicitations and

contracts with institutions of higher education.

Subpart 3009.5—Organizational and Consultant Conflicts of Interest

3009.507 Solicitation provisions.

The contracting officer may insert the provision at (HSAR) 48 CFR 3052.209–72, "Disclosure of Conflicts of Interest" in all solicitations for negotiated acquisitions, and when simplified acquisitions procedures in (FAR) 48 CFR Part 13, are not used. The contracting officer shall ensure the conditions enumerated in (FAR) 48 CFR 9.507–2 warrant inclusion.

PART 3010—MARKET RESEARCH [RESERVED]

PART 3011—DESCRIBING AGENCY NEEDS

Subpart 3011.1—Selecting and Developing Requirements Documents

Sec.
3011.103 Market acceptance.

Subpart 3011.2—Using and Maintaining Requirements

3011.204–70 Solicitation provisions and contract clauses.
3011.204–90 Solicitation provisions and contract clause (USCG).

Subpart 3011.5—Liquidated Damages

3011.501 Policy.

Subpart 3011.6—Priorities and Allocations

3011.602 General.

Subpart 3011.1—Selecting and Developing Requirements Documents

3011.103 Market acceptance.

(a) Contracting officers may act on behalf of the head of the agency in this subpart only. Contracting officers may, under appropriate circumstances, require offerors to make the required demonstrations.

Subpart 3011.2—Using and Maintaining Requirements Documents

3011.204–70 Solicitation provisions and contract clauses.

The contracting officer shall insert the clause at (HSAR) 48 CFR 3052.211–70, Index for Specifications, when an index or table of contents may be furnished with the specification.

3011.204–90 Solicitation provision and contract clause (USCG).

(a) For U.S. Coast Guard contracts, the contracting officer shall insert the USCG clause at (HSAR) 48 CFR 3052.211–90, Bar Coding Requirement, (also see (HSAR) 48 CFR 3013.302–70) when the bar coding of supplies is necessary.

(b) See (HSAR) 48 CFR 3013.302–590 for a provision which is required when the USCG clause at HSAR 3052.211–90, Bar Coding Requirement, is used with simplified acquisition procedures.

Subpart 3011.5—Liquidated Damages

3011.501 Policy.

(d) The HCA may reduce or waive the amount of liquidated damages assessed under a contract, if the Commissioner, Financial Management Service, or designee approves.

Subpart 3011.6—Priorities and Allocations

3011.602 General.

(c) The following DHS OEs may assign priority ratings on contracts and orders placed with contractors to acquire products, materials, and services under the Defense Priorities and Allocations System (DPAS) regulations (15 CFR part 700):

(1) The U.S. Coast Guard in support of certified national defense related programs; and

(2) The Federal Emergency Management Agency in support of emergency preparedness activities.

PART 3012—ACQUISITION OF COMMERCIAL ITEMS [RESERVED]

PART 3013—SIMPLIFIED ACQUSITION PROCEDURES

Subpart 3013.1—Procedures

Sec.
3013.106 Soliciting competition, evaluation of quotations or offers, award and documentation.
3013.106–190 Soliciting competition (USCG).

Subpart 3013.3—Simplified Acquisition Methods

3013.302 Purchase orders.
3013.302–590 Clauses (USCG).

Subpart 3013.70—Special Streamlined Acquisition Authority

3013.7000 General.
3013.7001 Delegations.
3013.7002 Reporting requirements.
3013.7003 Micro-purchase authority.
3013.7004 Simplified acquisition authority.
3013.7005 Test program for certain commercial items.

Subpart 3013.1—Procedures

3013.106 Soliciting competition, evaluation of quotations or offers, award and documentation.

3013.106–190 Soliciting competition (USCG).

For the U.S. Coast Guard, the contracting officer shall insert the USCG provision at (HSAR) 48 CFR 3052.213–90, Evaluation Factor for Coast Guard Performance of Bar Coding Requirement, in requests for quotations when the USCG clause at (HSAR) 48 CFR 3052.211–90, Bar Coding Requirement, is used with simplified acquisition procedures.

Subpart 3013.3—Simplified Acquisition Methods

3013.302 Purchase orders.

3013.302–590 Clauses (USCG).

For the U.S. Coast Guard, the contracting officer shall insert the USCG clause at (HSAR) 48 CFR 3052.211–90, Bar Coding Requirement, in requests for quotations and purchase orders issued by the Inventory Control Points when bar coding of supplies is necessary.

Subpart 3013.70—Special Streamlined Acquisition Authority

3013.7000 General.

(a) The Secretary may use special streamlined acquisition authority set forth in Public Law 107–296, section 833, with respect to any procurement made during the period beginning on November 25, 2002 and ending September 30, 2007 where if the Secretary determines in writing the mission of the Department (described in Pub. L. 107–296, section 101) would be seriously impaired without the use of such authorities.

(b) The Secretary may deem any item or service to be a commercial item for the purpose of federal procurement laws for procurements described in (HSAR) 48 CFR 3013.7005.

3013.7001 Delegations.

The Secretary may delegate this authority to an officer of the Department who is appointed by the President with the advice and consent of the Senate. Delegations of this authority are discussed in HSAM 3013.

3013.7002 Reporting requirements.

(a) The Secretary shall submit to the Committee on Government Reform of the House of Representatives and the Committee on Governmental Affairs of the Senate—

(1) Notification of such determination; and

(2) The justification for such determination.

(b) This report shall be submitted no later than seven days after the date of any determination. Reporting requirements and procedures are discussed in HSAM 3013.

3013.7003 Micro-purchase authority.

(a) When the streamlined acquisition authority is exercised, the micro-purchase threshold is raised to $7,500.

(b) The authority in this section may be exercised only by individuals designated by the Secretary. The number of employees shall be—

(1) Fewer than the number of employees of the Department that are authorized to make purchases without obtaining competitive quotations.

(2) Sufficient to ensure the geographic dispersal of the availability of the use of the procurement authority under such paragraph at locations reasonably considered to be potential terrorist targets; and

(3) Sufficiently limited to allow for careful monitoring of employees designated under each paragraph.

(c) Procurements made under this authority shall be subject to review by a designated supervisor on not less than a monthly basis. The supervisor responsible for the review shall be responsible for no more than seven employees making procurements under this authority.

3013.7004 Simplified acquisition authority.

When the streamlined acquisition authority is exercised, the simplified acquisition threshold shall be:

(a) $200,000 in the case of a contract to be awarded and performed, or purchase to be made, within the United States; and

(b) $300,000 in the case of a contract to be awarded and performed, or purchase to be made, outside of the United States.

3013.7005 Test program for certain commercial items.

When the streamlined authority is exercised, the $5,000,000 limitation provided in (FAR) 48 CFR subpart 13.5 is increased to $7,500,000.

PART 3014—SEALED BIDDING [RESERVED]

PART 3015—CONTRACTING BY NEGOTIATION

Subpart 3015.2—Solicitation and Receipt of Proposals andInformation

Sec.
3015.204–3 Contract clauses.
3015.207–70 Handling proposals and information.

Subpart 3015.4—Contract Pricing

3015.404–470 Payment of profit or fee.

Subpart 3015.6—Unsolicited Proposals

3015.602 Policy.
3015.603 General.
3015.604 Agency points of contact.
3015.606 Agency procedures.
3015.606–1 Receipt and initial review.
3015.606–2 Evaluation.

Subpart 3015.2—Solicitation and Receipt of Proposals and Information

3015.204–3 Contract clauses.

The contracting officer shall insert clause (HSAR) 48 CFR 3052.215–70, Key Personnel or Facilities, in solicitations and contracts when the selection for award is substantially based on the offeror's possession of special capabilities regarding personnel or facilities.

3015.207–70 Handling proposals and information.

(b) Proposals and information may be released outside the Government for evaluation and similar purposes if qualified personnel are not available to thoroughly evaluate or analyze proposals or information. The contracting officer shall document the file in such cases.

Subpart 3015.4—Contract Pricing

3015.404–470 Payment of profit or fee.

The contracting officer shall not pay profit or fee on undefinitized contracts or undefinitized contract modifications. Any profit or fee earned shall be paid after the contract or modification is definitized.

Subpart 3015.6—Unsolicited Proposals

3015.602 Policy.

The Department of Homeland Security (DHS) encourages new and innovative proposals and ideas that will sustain or enhance the DHS mission, which is stipulated in the Homeland Security Act of 2002, Pub. L. 107–296.

3015.603 General.

(a) Costs associated with the time and effort to prepare a proposal are solely the responsibility of and assumed by the offeror that is submitting the proposal.

3015.604 Agency points of contact.

(a) The DHS does not have a central clearinghouse for distributing information or assistance regarding unsolicited proposals. Each HCA is responsible for disseminating the information required at (FAR) 48 CFR 15.604(a). General information concerning DHS's scope of responsibilities and functions is available at *http://www.dhs.gov/dhspublic/*.

3015.606 Agency procedures.

(a) The agency authority to establish procedures for receiving, reviewing and evaluating, and timely disposing of unsolicited proposals, consistent with the requirements of (FAR) 48 CFR 15.6 and this subpart, is delegated to each HCA.

(b) The agency authority to establish points of contact (see (FAR) 48 CFR 15.604) to coordinate the receipt and handling of unsolicited proposals is delegated to each HCA. Contracting offices are designated as the receiving point for unsolicited proposals. Persons within DHS (*e.g.*, technical personnel) who receive proposals shall forward them to their cognizant contracting office.

3015.606–1 Receipt and initial review.

(a) The agency contact point shall make an initial review determination within seven calendar days after receiving a proposal.

(b) If the proposal meets the requirements at (FAR) 48 CFR 15.606–1(a), the agency contact point shall acknowledge receipt within three calendar days after making the initial review determination and advise the offeror of the general timeframe for completing the evaluation.

(c) If the proposal does not meet the requirements of (FAR) 48 CFR 15.606–1(a), the agency contact point shall return the proposal within three calendar days after making the determination. The offeror shall be informed, in writing, of the reasons for returning the proposal.

3015.606–2 Evaluation.

(a) Comprehensive evaluations should be completed within sixty calendar days after making the initial review determination. If additional time is needed, then the agency contact point shall advise the offeror accordingly and provide a new evaluation completion date. The evaluating office shall neither reproduce nor disseminate the proposal to other offices without the consent of the contracting office from which the proposal was received for evaluation. If the evaluating office requires additional information from the offeror, the evaluator shall convey this request to the responsible contracting office. The evaluator shall not directly contact the proposal originator.

(b) If the evaluators recommend accepting the proposal, the responsible contracting officer shall ensure compliance with all of the requirements of (FAR) 48 CFR 15.607.

PART 3016—TYPES OF CONTRACTS

Subpart 3016.2—Fixed-Price Contracts

Sec.
3016.203 Fixed-price contracts with economic price adjustment.
3016.203–4 Contract clauses.
3016.203–470 Solicitation provision.

Subpart 3016.4—Incentive Contracts

3016.406 Contract clauses.

Subpart 3016.5—Indefinite-Delivery Contracts

3016.505 Ordering.

Subpart 3016.6—Time-and-Materials, Labor-Hour, and Letter Contracts

3016.603 Letter contracts.
3016.603–4 Contract clauses.

Subpart 3016.2—Fixed-Price Contracts

3016.203 Fixed price contracts with economic price adjustments.

3016.203–4 Contract clauses.

(d)(2) Any clause using this method shall be prepared and approved by the contracting officer.

3016.203–470 Solicitation provision.

The contracting officer shall insert a provision substantially the same as (HSAR) 48 CFR 3052.216–70, Evaluation of Offers Subject to an Economic Price Adjustment Clause, in solicitations containing an economic price adjustment clause.

Subpart 3016.4—Incentive Contracts

3016.406 Contract clauses.

(e)(1)(i) The contracting officer shall insert a clause substantially the same as (HSAR) 48 CFR 3052.216–71, Determination of Award Fee, in solicitations and contracts that includes an award fee.

(ii) The contracting officer shall insert a clause substantially the same as (HSAR) 48 CFR 3052.216–72, Performance Evaluation Plan, in all solicitations and contracts that includes an award fee.

(iii) The contracting officer shall insert a clause substantially the same as (HSAR) 48 CFR 3052.216–73, Distribution of Award Fee, in all solicitations and contracts that includes an award fee.

Subpart 3016.5—Indefinite-Delivery Contracts

3016.505 Ordering.

(b)(5) The OE Competition Advocate is designated as the OE Task and Delivery Order Ombudsman, unless otherwise provided in OE procedures.

(i) If any corrective action is needed after reviewing complaints from contractors on task and delivery order contracts, the OE Ombudsman shall provide a written determination of such action to the contracting officer.

(ii) Issues that cannot be resolved within the OE, shall be forwarded to the DHS Task and Delivery Order Ombudsman for review and resolution.

Subpart 3016.6—Time-and-Materials, Labor-Hour, and Letter Contracts

3016.603 Letter contracts.

3016.603–4 Contract clauses.

The contracting officer shall insert a clause substantially the same as (HSAR) 48 CFR 3052.216–74, Settlement of Letter Contract, in all definitized letter contracts.

PART 3017—SPECIAL CONTRACTING METHODS

Subpart 3017.2—Options

Sec.
3017.202 Use of options.

Subpart 3017.4—Leader Company Contracting

3017.402 Limitations.

Subpart 3017.70—Energy Savings Performance Contracts

3017.7000 Policy.

Subpart 3017.90—Fixed Price Contracts for Vessel Repair, Alteration or Conversion

3017.9000 Clauses (USCG).

Subpart 3017.2—Options.

3017.202 Use of options.

(a) Contracting officers shall not use unpriced options.

Subpart 3017.4—Leader Company Contracting

3017.402 Limitations.

(a)(4) Submit requests per (HSAR) 48 CFR 3001.7000(a).

Subpart 3017.70—Energy Savings Performance Contracts

3017.7000 Policy.

DHS and its OEs may enter into Energy Savings Performance Contracts under 42 U.S.C. 8287, as amended subject to the requirements of 10 CFR part 436. Proposed contracts under this section shall be coordinated with the CPO.

Subpart 3017.90—Fixed Price Contracts for Vessel Repair, Alteration or Conversion

3017.9000 Clauses (USCG).

For the U.S. Coast Guard, the following clauses are to be used in specific solicitations and contracts:

(a) The clauses in (HSAR) 48 CFR 3052.217–90 through (HSAR) 48 CFR 3052.217–93 and (HSAR) 48 CFR 3052.217–95 through (HSAR) 48 CFR 3052.217–99 shall be included and clause (HSAR) 48 CFR 3052.217–94 may be included in sealed bid fixed-price solicitations and contracts for vessel repair, alteration, or conversion which are to be performed within the United States, its possessions, or Puerto Rico. The contracting officer may, in whole or in part (such as after incidents), increase the dollar amounts in the clause at (HSAR) 48 CFR 3052.217–95(b)(6) and (c)(1) consistent with contract size, inflation, and other circumstances.

(b) Unless inappropriate, the clauses in (HSAR) 48 CFR 3052.217–90 through (HSAR) 48 CFR 3052.217–93 and (HSAR) 48 CFR 3052.217–95 through (HSAR) 48 CFR 3052.217–99 should be included and (HSAR) 48 CFR 3052.217–94 may be included in negotiated solicitations and contracts to be performed outside the United States. The contracting officer may, in whole or in part (such as after incidents), increase the dollar amounts in the clause at (HSAR) 48 CFR 3052.217–95(b)(6) and (c)(1) consistent with contract size, inflation, and other circumstances.

(c) The clause at (HSAR) 48 CFR 3052.217–100, Guarantee, shall be used where general guarantee provisions are deemed desirable by the contracting officer.

(1) When inspection and acceptance tests will afford full protection to the Government in ascertaining conformance to specifications and the absence of defects and deficiencies, no guarantee clause for that purpose shall be included in the contract.

(2) The customary guarantee period, to be inserted in the first sentence of the clause at (HSAR) 48 CFR 3052.217–100, Guarantee, is 60 days. However, in certain instances, the contracting officer may desire to include a clause in a contract for a guarantee period of more than 60 days. In such instances:

(i) Where, after full inquiry, it has been determined that such longer guarantee period will not involve increased costs, a longer guarantee period may be substituted by the contracting officer for the usual 60 days; or

(ii) Where the full inquiry discloses that such longer guarantee period will involve, or is reasonably expected to involve, increased costs, such facts and the reasons for the need for such longer period shall be set forth in letter form to the COCO, requesting approval for use of guarantee period in excess of 60 days. Upon approval, the longer period may be inserted by the contracting officer in the first sentence of the clause at (HSAR) 48 CFR 3052.217–100, Guarantee.

PART 3018—[RESERVED]

PART 3019—SMALL BUSINESS PROGRAMS

Subpart 3019.2—Policies

Sec.
3019.201 General policy.

Subpart 3019.7—The Small Business Subcontracting Program

3019.705 Responsibilities of the contracting officer under the subcontracting assistance program.
3019.705–1 General support for the program.
3019.708 Contract clauses.
3019.708–70 DHS solicitation and contract clauses.

Subpart 3019.2—Policies

3019.201 General policy.

(d) The Director, Office of Small and Disadvantaged Business Utilization is responsible for the implementation and execution of the small and small disadvantaged business programs required by the Small Business Act.

Subpart 3019.7—The Small Business Subcontracting Program

3019.705 Responsibilities for the contracting officer under the subcontracting program.

3019.705–1 General support for the program.

Contracting officers will consider making the submission of a subcontracting plan part of the evaluation criteria. Contracting officers may also consider an offerors past performance in previous subcontracting plan goals and efforts to achieve those goals.

3019.708 Contract clauses.

3019.708–70 DHS solicitation and contract clauses.

(a) The contracting officer shall insert the clause at (HSAR) 48 CFR 3052.219–70, Small Business and Small Disadvantaged Business Subcontracting Reporting, in solicitations and contracts containing the clause at (FAR) 48 CFR 52.219–9.

(b) The contracting officer shall insert the clause at (HSAR) 48 CFR 3052.219–71, DHS Mentor-Protégé Program in all solicitations that anticipate the need for a subcontracting plan.

(c) The contracting officer shall insert the clause at (HSAR) 48 CFR 3052.219–72, Evaluation of Prime Contractor Participation in the Mentor-Protégé Program, in all solicitations containing (HSAR) 48 CFR 3052.219–71, Mentor-Protégé Program and (FAR) 48 CFR 52.219–9 Small Business Subcontracting Plan.

PART 3020—[RESERVED]

PART 3021—[RESERVED]

PART 3022—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

Subpart 3022.1—Basic Labor Policies

Sec.
3022.101 Labor relations.
3022.101–70 Admittance of union representatives to DHS installations.
3022.101–71 Contract clauses.

Subpart 3022.4—Labor Standards for Contracts Involving Construction

3022.406 Administration and enforcement.
3022.406–9 Withholding from or suspension of contract payments.

Subpart 3022.90— Local Hire (USCG)

3022.9000 Policy (USCG).
3022.9001 Contract clause (USCG).

Subpart 3022.1—Basic Labor Policies

3022.101 Labor relations.

3022.101–70 Admittance of union representatives to DHS installations.

(a) It is the policy of DHS to admit labor union representatives of contractor employees to DHS installations to visit work sites and transact labor union business with contractors, their employees, or union stewards pursuant to existing union collective bargaining agreements. Their presence shall not interfere with the contractor's work progress under a DHS contract nor violate safety or security regulations that may be applicable to persons visiting the installation. Union representatives will not be permitted to conduct meetings, collect union dues, or make speeches concerning union matters while visiting a work site.

(b) Whenever a union representative is denied entry to a work site, the person denying entry shall make a written report to the DHS labor coordinator and OE labor advisor, if any, within two working days after the request for entry is denied. The report shall include the reason(s) for the denial, the name of the representative denied entry, the union affiliation and number, and the name and title of the person that denied the entry.

3022.101–71 Contract clauses.

(a) The contracting officer, may, when applicable, insert the clause at (HSAR) 48 CFR 3052.222–70, Strikes or Picketing Affecting Timely Completion of the Contract Work, in solicitations and contracts.

(b) The contracting officer may, when applicable, insert the clause at (HSAR) 48 CFR 3052.222–71. Strikes or Picketing Affecting Access to a DHS Facility, in solicitations and contracts.

Subpart 3022.4—Labor Standards for Contracts Involving Construction

3022.406 Administration and enforcement.

3022.406–9 Withholding from or suspension of contract payments.

(c) Disposition of contract payments withheld or suspended.

(1) Forwarding wage underpayments to the Comptroller General. The contracting officer shall ensure that a completed DHS Form 0700–04, Employee Claim for Wage Restitution, is obtained from each employee claiming restitution under the contract. The Comptroller General (Claims Division) shall receive this form with a completed SF 1093, Schedule of Withholding Under the Davis-Bacon Act and/or the Contract Work Hours and Safety Standards Act, before payment can be made to the employee.

Subpart 3022.90—Local Hire (USCG)

3022.9000 Policy (USCG).

As required by 14 U.S.C. 666, the U.S. Coast Guard shall include a provision for local hire in each contract for construction or services to be performed in whole or in part in a State that has an unemployment rate in excess of the national average rate of unemployment as determined by the Secretary of Labor.

3022.9001 Contract clause (USCG).

For the U.S. Coast Guard, the contracting officer shall insert the USCG clause at (HSAR) 48 CFR 3052.222–90, Local Hire Provision, in all solicitations and contracts as stated in (HSAR) 48 CFR 3022.9000.

PART 3023—ENVIRONMENT, ENERGY AND WATER EFFICIENCY, RENEWABLE ENERGY TECHNOLOGIES, OCCUPATIONAL SAFETY, AND DRUG-FREE WORKPLACE

Subpart 3023.3—Hazardous Material Identification and Material Safety Data

Sec.
3023.303 Contract clause.

Subpart 3023.5—Drug-Free Workplace

3023.501 Applicability.

3023.506 Suspension of payments, termination of contract, and debarment and suspension actions.

Subpart 3023.10—Federal Compliance with Right-to-Know Laws and Pollution Prevention Requirements

3023.1002 Applicability.

Subpart 3023.90—Safety Requirements for USCG Contracts

3023.9000 Contract Clause (USCG).

Subpart 3023.3—Hazardous Material Identification and Material Safety Data

3023.303 Contract clause.

Subpart 3023.5—Drug-Free Workplace

3023.501 Applicability.

3023.506 Suspension of payments, termination of contract, and debarment and suspension actions.

Subpart 3023.10—Federal Compliance With Right-to-Know Laws and Pollution Requirements

3023.1002 Applicability.

Subpart 3023.90—Safety Requirements for USCG Contracts

3023.9000 Contract clause (USCG).

PART 3024—PROTECTION OF PRIVACY AND FREEDOM OF INFORMATION

Subpart 3024.1—Protection of Individual Privacy

3024.102–70 General.

Subpart 3024.2—Freedom of Information Act

3024.203 Policy.

Subpart 3024.1—Protection of Individual Privacy

3024.102–70 General.

Procedures for implementing the Privacy Act of 1974 are contained in Departmental regulations under 6 CFR part 5, subpart B, Privacy Act.

Subpart 3024.2—Freedom of Information Act

3024.203 Policy.

(a) The Department's implementation of the Freedom of Information Act is codified in regulations 6 CFR part 5, subpart B, FOIA. Information request concerning awards beyond those routinely handled by contracting officers (*e.g.*, identification of successful offerors, public announcements, debriefings, surety notices under HSAR 3028.106–6) shall be submitted to the FOIA Office of the Organizational Element making the award. The FOIA office for the DHS Office of Operations only, is Departmental Disclosure Officer (DDO), DHS, Washington, DC 20528 or *foia@dhs.gov*.

(b) *See* (FAR) 48 CFR 15.207(b) on safeguarding proposals.

PART 3025—FOREIGN ACQUISITION—[RESERVED]

PART 3026—OTHER SOCIOECONOMIC PROGRAMS—[RESERVED]

PART 3027—PATENTS, DATA, AND COPYRIGHTS

Subpart 3027.2—Patents

Sec.
3027.205 Adjustment of royalties.
3027.208 Use of patented technology under the North American Free Trade Agreement.

Subpart 3027.3—Patent Rights Under Government Contracts

3027.304–1 General.
3027.304–5 Appeals.
3027.305–4 Administration of Patent Rights Clause.
3027.306 Licensing background patent rights to third parties.

Subpart 3027.4—Rights in Data and Copyrights

3027.404 Basic Rights in Data clause.
3027.409 Solicitation provisions and contract clauses.

Subpart 3027.2—Patents

3027.205 Adjustment of royalties.

(a) Reports shall be made to OE legal counsel. Contracting Officers shall coordinate actions with the COCO and HCA.

3027.208 Use of patented technology under the North American Free Trade Agreements.

(f) Contracting officers shall ensure compliance.

Subpart 3027.3—Patent Rights under Government Contracts

3027.304–1 General.

Interim and final invention reports and notification of all subcontracts for experimental, developmental, or research work (FAR) 48 CFR 27.304–1(e)(2)(ii) may be submitted on DD Form 882, Report of Inventions and Subcontracts.

3027.304–5 Appeals.

(a) Contracting officers are authorized to take the specified actions.

(b) Appeals shall be made to the CPO.

3027.305 Administration of Patent Rights Clauses.

3027.305–4 Conveyance of invention rights acquired by the Government.

The contracting officer shall ensure that solicitations and contracts which include a patent rights clause include a means for the contractor to report inventions made in the course of contract performance and at contract completion. This requirement may be fulfilled by requiring the contractor to submit a DD Form 882, Report of Inventions and Subcontract.

3027.306 Licensing background patent rights to third parties.

(b) The CPO shall make the required determinations and notifications under this subpart.

Subpart 3027.4—Rights in Data and Copyrights

3027.404 Basic rights in data clause.

(f)(1)(iii) The DHS will use Alternate IV of the (FAR) 48 CFR clause 52.227–14 in all contracts containing the basic clause, unless the HCA approves an exclusion. Approval at a level above the contracting officer is required for the contract to exclude items or categories of data from Alternative IV.

3027.409 Solicitation provisions and contract clauses.

Alternate IV of the (FAR) 48 CFR clause 52.227–14 shall be included in solicitations and contracts containing the basic clause unless the HCA approves an exclusion. Additional non-conflicting alternates may be used:

PART 3028—BONDS AND INSURANCE

Subpart 3028.1—Bonds and Other Financial Protections

Sec.
3028.106 Administration.
3028.106–6 Furnishing information.
3028.106–70 Execution and administration of bonds.
3028.106–490 Contract clause (USCG).

Subpart 3028.3—Insurance

3028.306 Insurance under fixed-price contracts.
3028.306–90 Contracts for lease of aircraft (USCG).
3028.307 Insurance under cost-reimbursement contracts.
3028.307–1 Group insurance plans.
3028.310 Contract clause for work on a Government installation.
3028.310–70 Contract clause.
3028.311 Solicitation provision and contract clause on liability insurance under cost-reimbursement contracts.
3028.311–1 Contract clause.

Subpart 3028.1—Bonds and Other Financial Protections

3028.106 Administration.

3028.106–6 Furnishing information.

(b) The contracting officer shall, upon request, furnish the name and address of the prime contractor's surety or sureties to employees, suppliers, and subcontractors having a contractual or employment relationship with prime contractors, subcontractors or suppliers. When furnishing surety information, the inquirer may also be informed that:

(1) Persons believing that they have legal remedies under the Miller Act are cautioned to consult their own legal advisor regarding the proper steps to take to obtain remedies.

(2) On construction contracts exceeding $2,000, if the contracting officer is informed (through routine compliance checking, a complaint, or a request for information) that a laborer, mechanic, apprentice, trainee, watchman, or guard employed by the contractor or subcontractor at any tier may have been paid wages less than those required by the applicable labor standards provisions of the contract, the contracting officer shall promptly initiate an investigation in accordance with (FAR) 48 CFR Subpart 22.4, irrespective of the employee's rights under the Miller Act. When an employee's request for information is involved, the contracting officer shall inform the inquirer that such investigation will be made. Such investigation is required pursuant to the provisions of the Davis-Bacon Act, Contract Work Hours and Safety Standards Act, and Copeland (Anti-Kickback) Act for assuring proper payment to such employees.

(c) When furnishing a copy of a payment bond and contract in accordance with (FAR) 48 CFR 28.106–6(c), the requirement for a copy of the contract may be satisfied by furnishing a machine-duplicate copy of the contractor's first pages which show the contract number and date, the contractor's name and signature, the contracting officer's signature, and the description of the contract work. The contracting officer furnishing the copies shall place the statement "Certified to be a true and correct copy" followed by a signature, title and name of the OE. The fee for furnishing the requested certified copies shall be determined according to the DHS Freedom of Information Act regulation, 6 CFR part 5, subpart B, FOIA.

3028.106–70 Execution and administration of bonds.

(a) The contracting officer shall notify the surety within 30 days, of the contractor's failure to perform in accordance with the terms of the contract.

(b) When a partnership is a principal on a bond, the names of all the members of the firm shall be listed in the bond following the name of the firm, and the phrase "a partnership composed of." If a principal is a corporation, the state of incorporation shall also appear on the bond.

(c) Performance or payment bond(s) other than an annual bond shall not predate the contract to which it pertains.

(d) Bonds may be filed with the original contract to which they apply, or all bonds can be separately maintained and reviewed quarterly for validity. If separately maintained, each contract file shall cross-reference the applicable bonds.

3028.106–490 Contract clause (USCG).

For the U.S. Coast Guard, the contracting officer shall insert the USCG clause at (HSAR) 48 CFR 3052.228–90. Notification of Miller Act Payment Bond Protection, in solicitation and contracts, and shall require its first-tier subcontractors to insert the clause in all of their subcontracts, when payment bonds are required.

Subpart 3028.3—Insurance

3028.306 Insurance under fixed-price contracts.

3028.306–90 Contracts for lease of aircraft (USCG).

(a) For the U.S. Coast Guard, the contracting officer shall insert the clauses at (HSAR) 48 CFR 3052.228–91 through 3052.228–93, unless otherwise indicated by the specific instructions for their use, in any contract for the lease of aircraft (including aircraft used in out-service flight training).

(b) For the U.S. Coast Guard, the contracting officer shall insert the clause at (HSAR) 48 CFR 3052.228–91, Loss of or Damage to Leased Aircraft, in any contract for the lease of aircraft, except in the following circumstances:

(1) When the hourly rental rate does not exceed $250 and the total rental cost for any single transaction is not in excess of $2,500;

(2) When the cost of hull insurance does not exceed 10 percent of the contract rate; or

(3) When the lessor's insurer does not grant a credit for uninsured hours, thereby preventing the lessor from granting the same to the Government.

(c) For the U.S. Coast Guard, the contracting officer shall insert the clause at (HSAR) 48 CFR 3052.228–92, Fair Market Value of Aircraft, when fair market value of the aircraft can be determined.

(d) 49 U.S.C. 44112, as amended, provides that no lessor of an aircraft under a *bona fide* lease of 30 days or more shall be liable by reason of his interest as lessor or title-holder of the aircraft for any injury to or death of persons, or damage to or loss of property, unless such aircraft is in the actual possession or control of such person at the time of such injury, death, damage or loss. On short-term or intermittent-use leases, however, the owner may be liable for damage caused by operation of the aircraft. It is usual for the aircraft owner to retain insurance covering this liability during the term of such lease. Such insurance can, often for little or no increase in premium, be made to cover the Government's exposure to liability as well. In order to take advantage of this coverage, the Risks and Indemnities clause at (HSAR) 48 CFR 3052.228–93 prescribed in paragraph (d)(1) of this section shall be used.

(1) For the U.S. Coast Guard, the contracting officer shall insert the clause at (HSAR) 48 CFR 3052.228–93, Risk and Indemnities, in any contract for out-service flight training or for the lease of aircraft when the Government will have exclusive use of the aircraft for a period of less than thirty days.

(2) For the U.S. Coast Guard, any contract for out-service flight training shall include a clause in the contract schedule stating substantially that the contractor's personnel shall at all times during the course of the training be in command of the aircraft and that at no time shall other personnel be permitted to take command of the aircraft.

3028.307 Insurance under cost-reimbursement contracts.

3028.307–1 Group insurance plans.

Plans shall be submitted to the contracting officer, who must obtain the advice of legal counsel.

3028.310 Contract clause for work on a Government installation.

3028.310–70 Contract clause.

Insert a clause substantially similar to (HSAR) 48 CFR 3052.228–70, "Insurance," in all solicitations and contracts that contain the clause at (FAR) 47 CFR 52.228–5.

3028.311 Solicitation provision and contract clause on liability insurance under cost-reimbursement contracts.

3028.311–1 Contract clause.

Insert a clause substantially similar to (HSAR) 48 CFR 3052.228–70, "Insurance," in all solicitations and contracts that contain the clause at (FAR) 48 CFR 52.228–7, unless waived by an official one level above the contracting officer.

PART 3029—TAXES—[RESERVED]

PART 3030—COST ACCOUNTING STANDARDS ADMINISTRATION

Subpart 3030.2—CAS Program Requirements

Sec.
3030.201 Contract requirements.
3030.201–5 Waiver.

Subpart 3030.2—CAS Program Requirements

3030.201 Contract requirements.

3030.201–5 Waiver.

(b)(1) The CPO is authorized to waive the application of the Cost Accounting Standards to individual firm fixed-price contracts for the acquisition of commercial items. This authority may not be redelegated.

(2) Submit waiver requests per (HSAR) 48 CFR 3001.7000(a), for review and transmittal by the CPO to the Cost Accounting Standard Board.

PART 3031—CONTRACT COST PRINCIPLES AND PROCEDURES

Subpart 3031.2—Contracts with Commercial Organizations

Sec.
3031.205 Selected costs.
3031.205–32 Precontract costs.

Subpart 3031.2—Contracts with Commercial Organizations

3031.205 Selected costs.

3031.205–32 Precontract costs.

(a) The decision to incur precontract costs is that of the contractor. DHS employees may not can authorize, demand, or require a contractor to incur precontract costs. The contracting officer must advise the prospective contractor that any costs incurred before contract award are incurred at the contractor's sole risk and that if negotiations fail to result in a binding contract, payment of these costs will not be made by the Government. See (HSAR) 48 CFR 3032.205–32(b) regarding exception due to reconciliation of costs.

(b) When the contracting officer determines that incurring precontract costs was necessary to meet the proposed contract delivery schedule of a cost-reimbursement contract, the clause at (HSAR) 48 CFR 3052.231–70, Precontract Costs, may be inserted in the resultant contract.

PART 3032—CONTRACT FINANCING

Subpart 3032.000—Scope of Part

Sec.
3032.003 Simplified acquisition procedures financing.
3032.006 Reduction or suspension of contract payments upon finding of fraud.
3032.006–2 Definition.
3032.006–3 Responsibilities.

Subpart 3032.11—Electronic Funds Transfer

3032.1110 Solicitation provision and contract clauses.

Subpart 3032.000—Scope of Part

3032.003 Simplified acquisition procedures financing.

Contract financing may be permitted for purchases made under the authority of (FAR) 48 CFR Part 13. This authority is delegated to COCO and may not be redelegated.

3032.006 Reduction or suspension of contract payments upon finding of fraud.

3032.006–2 Definition.

The CPO is the DHS remedy coordination official (RCO).

3032.006–3 Responsibilities.

(a) The CPO is authorized to establish specific procedures.

(b) Reports shall be made through the HCA to the CPO.

Subpart 3032.11—Electronic Funds Transfer

3032.1110 Solicitation provision and contract clauses.

(a)(1) Contracting officer shall insert FAR 48 CFR 52.232–33, Payment by Electronic Funds Transfer—Central Contractor Registration, in all proposed solicitations and contracts.

PART 3033—PROTESTS, DISPUTES, AND APPEALS

Subpart 3033.2—Disputes and Appeals

Sec.
3033.201 Definitions.
3033.211 Contracting officer's decision.
3033.214 Alternative disputes resolution (ADR).

Subpart 3033.2—Disputes and Appeals

3033.201 Definitions.

Agency Board of Contract Appeals means the Department of Transportation Board of Contract Appeals (DOTBCA).

3033.211 Contracting officer's decision.

For DHS contracts, the Board of Contract Appeals (BCA) noted in (FAR) 48 CFR 33.211 is the Department of Transportation Board of Contract Appeals (DOTBCA) (S–20), 400 7th Street, S.W., Washington, DC, 20590. The DOTBCA Rules of Procedure are contained in 48 CFR Chapter 63, Part 6301. TSA shall use the DOTBCA for only Contract Disputes Act (CDA) requirements.

3033.214 Alternative dispute resolution (ADR).

(c) The Administrative Dispute Resolution Act (ADRA) of 1996, as amended, 5 U.S.C. 571, *et seq.*, authorizes and encourages agencies to use mediation, conciliation, arbitration, and other techniques for the prompt and informal resolution of disputes, and for other purposes. The DOTBCA ADR procedures are contained in 48 CFR chapter 63, section 6302.30, ADR Methods (Rule 30), and will be distributed to the parties, if ADR procedures are used. These procedures may be obtained from the DOTBCA upon request. ADR procedures may be used when—

(1) There is mutual consent by the parties to participate in the ADR process (with consent being obtained either before or after an issue in controversy has arisen);

(2) Prior to the submission of a claim; and

(3) In resolution of a formal claim.

PART 3034—MAJOR SYSTEM ACQUISITION [RESERVED]

PART 3035—RESEARCH AND DEVELOPMENT CONTRACTING

Subpart 3035.000—Scope of Part

Sec.
3035.003 Policy.

Subpart 3035.000—Scope of Part

3035.003 Policy.

(b) Cost sharing shall be determined on a case by case basis. OEs may establish procedures for cost sharing.

(c) Recoupment shall be determined on a case-by-case basis. Recoupment not otherwise required by law should be structured to address factors such as recovering the Department's fair share of its investment in nonrecurring costs related to the items acquired. Advice of legal counsel shall be obtained prior to establishing cost sharing policies and recoupment mechanisms under (FAR) 48 CFR 35.003(b) and (c).

PART 3036—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

Subpart 3036.2—Special Aspects of Contracting for Construction

Sec.
3036.201 Evaluation of contractor performance.

Subpart 3036.5—Contract Clauses

3036–570 Special precautions for work at operating airports.

Subpart 3036.2—Special Aspects of Contracting for Construction

3036.201 Evaluation of contractor performance.

(a)(2) Performance reports shall be prepared and entered into the Contractor Performance System (CPS) on an annual basis for contracts exceeding one year, or as otherwise required by (FAR) 48 CFR 36.201. Access to reports is through the CPS or the government-wide system, Past Performance Information Retrieval System (PPIRS).

Subpart 3036.5—Contract Clauses

3036.570 Special precautions for work at operating airports.

Where any acquisition will require work at an operating airport, insert the clause at (HSAR) 48 CFR 3052.236–70, Special Precautions for Work at Operating Airports, in solicitations and contracts.

PART 3037—SERVICE CONTRACTING

Subpart 3037.1—Service Contracts—General

Sec.
3037.103 Contracting officer responsibility.
3037.103–70 Contractor personnel access application.
3037.103–71 Conditional access to sensitive but unclassified information.
3037.104 Personal services contracts.
3037.104–70 Personal services contracts.
3037.104–90 Personal services contracts (USCG).
3037.104–91 Personal services with individuals under the authority of 10 U.S.C. 1091 (USCG).
3037.110–70 Solicitation provisions and contract clauses.

Subpart 3037.1—Service Contracts—General

3037.103 Contracting officer responsibility.

3037.103–70 Contractor personnel access application.

Contractor personnel who will require recurring access to DHS facilities as part of contract performances shall complete HSIF Form 3237, Contractor Personnel Access Application, before starting work under the contract. The completed form shall be submitted to the appropriate DHS office as designated in the contract. Contractor personnel may be required to complete additional forms, as necessary.

3037.103–71 Conditional access to sensitive but unclassified information.

Contractor personnel who will require access to sensitive but unclassified information as part of contract performances shall complete HSIF Form 4024, Sensitive Information Non-Disclosure Agreement, before starting work under the contract. The completed form shall be submitted to the appropriate DHS office as designated in the contract. Additional requirements are established in clause (HSAR) 48 CFR 3052.237–71, Information Technology Systems Access for Contractors.

3037.104 Personal services contracts.

3037.104–70 Personal services contracts.

(b)(i) Authorization to acquire the personal services of experts and consultants is included in Public Law 107–296, sections 832(1) and (2). This section includes authority to use personal service contracts without regard to the pay limitation of 5 U.S.C. 3109 when the services are necessary due to an urgent homeland security need.

(A) Prepare each D&F in accordance with (FAR) 48 CFR 1.7 and include a determination that—

(1) The duties are of a temporary or intermittent nature and not to exceed one year;

(2) DHS personnel with necessary skills are not available;

(3) Excepted appointment cannot be obtained;

(4) A nonpersonal services contract is not practicable;

(5) Statutory authority, Public Law 107–297, section 832(1) or section 832(2) and other legislation, apply;

(6) If the pay limitation of 5 U.S.C. 3109 is exceeded, the D&F supports the rationale; and

(7) Any other determination required by statues has been made.

(B)(1) Except as provided in paragraph (b)(i)(B)(2) of this subsection, the COCO shall approve the D&F required by paragraph (b)(i)(A).

(2) The HCA shall approve the D&F for personal service contracts for experts and consultant services that are acquired without regard to the pay limitation of 5 U.S.C. 3109. This determination shall include a finding that the services are necessary due to urgent homeland security needs.

(i) The contract may provide for the same per diem and travel expenses authorized for a Government employee, including actual transportation and per diem in lieu of subsistence for travel between home or place of business and official duty station and only for travel outside the local area in support of the statement of work.

(ii) Coordinate benefits, taxes, personnel ceilings, and maintenance of records with the appropriate office(s).

3037.104–90 Personal services contracts (USCG).

(a) The U.S. Coast Guard HCA may enter into medical personal services contracts according to 10 U.S.C. 1091.

(b) The authority of 10 U.S.C. 1091(a)(2) expires December 31, 2003.

3037.104–91 Personal services contracts with individuals under the authority of 10 U.S.C. 1091 (USCG).

(a) Health care personal services contracts awarded to individuals shall be selected through procedures established in this section. Selections made using the procedures in this section are exempt by statute from (HSAR) 48 CFR part 3006 competition requirements (see (HSAR) 48 CFR 3006.9000 (USCG)) and from (FAR) 48 CFR Part 6 competition requirements.

(b) The contracting officer shall provide adequate advance notice of contracting opportunities to individuals residing in the area of the facility. The notice should include the qualification criteria against which individuals

responding shall be evaluated. Contracting officers shall solicit offerors through the most effective means of seeking competition, such as a local publication, which serves the area of the facility. Acquisitions of health care services using personal services contracts are exempt from posting and synopsis requirements of (FAR) 48 CFR Part 5.

(c) The contracting officer shall provide the qualifications of individuals responding to the notice to the representative(s) responsible for evaluation and ranking according to the evaluation procedures. Individuals shall be considered solely on the professional qualifications established for the particular health care services being acquired and the Government's estimate of reasonable rates, fees, or costs. The representative(s) responsible for the evaluation and ranking shall provide the contracting officer with rationale for the ranking of the individuals consistent with the required qualifications.

(d) Upon receipt of the ranked listing of offerors, the contracting officer shall either:

(1) Enter into negotiations with the highest ranked offeror. If a mutually satisfactory contract cannot be negotiated, the contracting officer shall terminate negotiations with the highest ranked offeror and enter into negotiations with the next highest, or;

(2) Enter into negotiations with all qualified offerors and select on the basis of qualifications and rates, fees, or other costs.

(e) In the event only one individual responds to an advertised requirement, the contracting officer is authorized to negotiate the contract award. In this case, the individual must still meet the minimum qualifications of the requirement and the contracting officer must be able to make a determination that the price is fair and reasonable.

(f) If a fair and reasonable price cannot be obtained from a qualified individual, the requirement should be canceled and acquired using procedures other than those set forth in this section.

(g) The total amount paid to an individual in any year for health care services under a personal services contract shall not exceed the paycap in COMDTINST M4200.19 (series), Coast Guard Acquisition Procedures.

(h) The contract may provide for the same per diem and travel expenses authorized for a Government employee, including actual transportation and per diem in lieu of subsistence for travel between home or place of business and official duty station and only for travel outside the local area in support of the statement of work.

(i) Coordinate benefits, taxes and maintenance of records with the appropriate office(s).

(j) The contracting officer shall insure that contract funds are sufficient to cover all contingency items that may be cited in the statement of work for health care services.

3037.110–70 Solicitation provisions and contract clauses.

(a) Contracting officers shall insert the clause at (HSAR) 48 CFR 3052.237–70, Qualifications of Contractor Employees, in all solicitations and contracts for services, which require contract employees to have recurring access to Government facilities, sensitive information, including proprietary data or resources. This may include Information Technology (IT) requirements for design, development, or operation and maintenance of sensitive application in non-DHS or DHS facilities.

(b) In addition to the (HSAR) clause 48 CFR 3052.237–70, the contracting officer shall also include the contract clauses, (HSAR) clause 48 CFR 3052.237–71, "Information Systems Access for Contractors" and (HSAR) clause 48 CFR 3052.237–72, "Contractor Personnel Screening for Unclassified Information Technology".

(c) The contracting officer shall also include (HSAR) clause 48 CFR 3052.204–70, "Information Technology Security Plan" in solicitations and contracts when the prescription at paragraph (a) above applies.

PART 3038—FEDERAL SUPPLY SCHEDULE CONTRACTING—[RESERVED]

PART 3039—ACQUISITION OF INFORMATION TECHNOLOGY—[RESERVED]

PART 3040—[RESERVED]

PART 3041—ACQUISITION OF UTILITY SERVICES—[RESERVED]

PART 3042—CONTRACT ADMINISTRATION AND AUDIT SERVICES

Subpart 3042.2—Contract Administration Services

Sec.
3042.202 Assignment of contract administration.
3042.202–70 Contract clauses.

Subpart 3042.15—Contractor Performance Information

3042.1502 Policy.

Subpart 3042.70—Contracting Officer's Technical Representative

3042.7000 Contract clause.

Subpart 3042.2—Contract Administration Services

3042.202 Assignment of contract administration.

3042.202–70 Contract clauses.

(a) The contracting officer may use the clause at (HSAR) 48 CFR 3052.242–70, Dissemination of Information—Educational Institutions, in lieu of the clause at (HSAR) 48 CFR 3052.242–71, Dissemination of Contract Information, in DHS research contracts with educational institutions, except contracts that require the release or coordination of information.

(b) The contracting officer may insert the clause at (HSAR) 48 CFR 3052.242–71, Dissemination of Contract Information, in all DHS contracts except contracts that require the release or coordination of information.

Subpart 3042.15—Contractor Performance Information

3042.1502 Policy.

(a) OEs shall use the Contractor Performance System (CPS) for evaluating contractor performance in accordance with (FAR) 48 CFR 42.1502 and part 1503.

Subpart 3042.70—Contracting Officer's Technical Representative

3042.7000 Contract clause.

The contracting officer shall insert the clause at (HSAR) 48 CFR 3052.242–72, Contracting Officer's Technical Representative, in solicitations and contracts when it is intended that a representative will be assigned to the contract to perform functions of a technical nature.

PART 3043—CONTRACT MODIFICATIONS—[RESERVED]

PART 3044—SUBCONTRACTING POLICIES AND PROCEDURES—[RESERVED]

PART 3045—GOVERNMENT PROPERTY

Subpart 3045.5—Management of Government Property in the Possession of Contractors

Sec.
3045.505 Records and reports of Government property.
3045.505–14 Reports of Government property.
3045.505–70 Solicitation provisions and contract clauses.
3045.508 Physical inventories.
3045.508–2 Reporting results of inventories.
3045.508–3 Quantitative and monetary control.
3045.511 Audit of property control system.

Subpart 3045.5—Management of Government Property in the Possession of Contractors

3045.505 Records and reports of Government property.

3045.505–14 Reports of Government property.

(a) When Government property is furnished to or acquired by the contractor to perform the contract, the contract shall require the contractor to submit annual reports (see (FAR) 48 CFR 45.505–14) to the contracting officer not later than September 15 of each year. The contractor's report shall be submitted on DHS Form 0700–05, Contractor Report of Government Property.

3045.505–70 Solicitation provisions and contract clauses.

Contracting officers shall insert the clause at (HSAR) 48 CFR 3052.245–70 in solicitations and contracts when the contract will require Government provided or contractor acquired property.

3045.508 Physical inventories.

3045.508–2 Reporting results of inventories.

The inventory report shall also include the following:

(a) Name and title of the individual(s) that performed the physical inventory;

(b) An itemized, categorized listing of all property capitalized:

(1) Land and rights therein;

(2) Other real property;

(3) Plant equipment;

(4) Special test equipment; and

(5) Special tooling;

(c) An itemized listing of the property lost, damaged, destroyed, or stolen, the circumstances surrounding each incident, and the resolution of the incident; and

(d) Any discrepancies between the physical inventory and the contractor's record of Government property.

3045.508–3 Quantitative and monetary control.

Contracting officers shall require the contractor to provide the quantity and unit cost of each item of Government property reported under (HSAR) 48 CFR 3045.508–2(b) and (c).

3045.511 Audit of property control system.

(a) The property administrator (or other Government official authorized by the contracting officer) shall audit the contractor's property control system whenever there are indications that the contractor's property control system may be deficient. Examples of deficiencies are:

(1) Failure of the contractor to acknowledge receipt of GFP;

(2) Failure of the contractor to submit the annual property reports required by (HSAR) 48 CFR 3045.505–14;

(3) Failure of the contractor to reconcile its physical inventory with its property control record; or

(4) Failure of the contractor to submit a Government property listing when requested by the property administrator.

(b) When it is determined that the contractor's property control system is deficient, the property administrator, in coordination with the contracting officer, shall discuss the deficiencies with the contractor. If the contractor does not take action to correct the deficiencies, the contracting officer shall provide the contractor with a written notice of the deficiencies and the date all deficiencies shall be corrected.

PART 3046—QUALITY ASSURANCE

Subpart 3046.7—Warranties

Sec.
3046.702 General.
3046.702–70 Additional definitions.
3046.703 Criteria for use of warranties.
3046.705 Limitations.
3046.706 Warranty terms and conditions.
3046.790 Additional USCG definitions (USCG).
3046.791 Use of warranties in major systems acquisitions by the USCG (USCG).
3046.791–1 Policy (USCG).
3046.791–2 Tailoring warranty terms and conditions. (USCG).
3046.791–3 Warranties on Government-furnished property (USCG).
3046.792 Cost benefit analysis (USCG).
3046.793 Waiver and notification procedures (USCG).

Subpart 3046.7—Warranties

3046.702 General.

3046.702–70 Additional definitions.

At no additional cost to the Government, means without an increase in price for firm-fixed-price contracts, without an increase in target or ceiling price for fixed price incentive contracts (see (FAR) 48 CFR 46.707), or without an increase in estimated cost or fee for cost-reimbursement contracts.

Defect means any condition or characteristic in any supplies or services furnished by the contractor under the contract that is not in compliance with the requirements of the contract.

Design and manufacturing requirements means structural and engineering plans and manufacturing particulars, including precise measurements, tolerances, materials and finished product tests for the major system being produced.

Major system means a system or major subsystem used directly by the Department of Homeland Security (DHS) to carry out its mission(s), as defined by HSAM Chapter 1234, Major Acquisition Policies and Procedures (for dollar threshold applicable to U.S. Coast Guard, See Coast Guard guidance at (HSAR) 48 CFR 3046.701–90). The term does not include:

(1) Related support equipment, such as ground-handling equipment, training devices and accessories thereto, unless a cost effective warranty for the system would require inclusion of such items; or

(2) Commercial items sold in substantial quantities to the general public as described in (FAR) 48 CFR part 2.

Performance requirements means the operating capabilities, maintenance, and reliability characteristics of a system that are determined to be necessary for it to fulfill the requirement for which the system is designed.

3046.703 Criteria for use of warranties.

(a) *Major Systems.* The use of warranties in the procurement of major systems by the USCG is mandatory, unless waived (see USCG guidance at (HSAR) 48 CFR 3046.792). Other OEs may use the procedures in USCG guidance in this part as a guideline for major systems acquisitions.

3046.705 Limitations.

(a) The following restrictions are applicable to DHS contracts:

(1) The USCG is required to include a warranty in cost reimbursement contracts for the production of major systems acquisitions.

(2) Any warranty on major system acquisitions shall not apply in the case of any system or component thereof which has been furnished by the Government to a contractor except as indicated in the USCG guidance at (HSAR) 48 CFR 3046.791–3.

(3) Any warranty obtained shall specifically exclude coverage of damage in time of war or national emergency.

3046.706 Warranty terms and conditions.

(a) The contracting officer, in developing the warranty terms and conditions, shall consider the following, and, where appropriate and cost beneficial, shall:

(1) Identify the affected line item(s) and the applicable specification(s);

(2) Require that the line item's design and manufacture will conform to:

(i) An identified revision of a top-level drawing; and/or

(ii) An identified specification or revision thereof;

(3) Require that the system conform to the specified Government performance requirements;

(4) Require that all systems and components delivered under the contract will be free from defects in materials and workmanship;

(5) State that in the event of failure due to nonconformance with specification and/or defects in material and workmanship, the contractor will bear the cost of all work necessary to achieve the specified performance requirements, including repair and/or replacement of all parts;

(6) Require the timely replacement/repair of warranted items and specify lead times for replacement/repair where possible;

(7) Identify the specific paragraphs containing Government performance requirements which must be met;

(8) Ensure that any performance requirements identified as goals or objectives in excess of specification requirements are excluded from the warranty provision;

(9) Define what constitutes the start of the warranty period (*e.g.*, delivery, acceptance, in-service date), the ending of the warranty (*e.g.*, passing a test or demonstration, or operation without failure for a specified time period), and circumstances requiring an extension of warranty duration (*e.g.*, extending the warranty period as a result of mass defect correction during warranty period);

(10) Identify what transportation costs will be paid by the contractor in conjunction with warranty coverage;

(11) Identify any conditions which will not be covered by the warranty, other than the exclusion of combat damage; and

(12) Identify any limitation on the total dollar amount of the contractor's warranty exposure, or agreement to share costs after a certain dollar threshold to avoid unnecessary warranty returns.

(b) Any contract that contains a warranty clause shall contain warranty implementation procedures, including warranty notification content and procedures, and identify the individuals responsible for implementation of warranty provisions. The contract may also permit the contractor's participation in investigation of system failures, providing that the contractor is reimbursed at established rates for fault isolation work, and that the Government receives credit for any payments where equipment failure is covered by warranty provisions.

3046.790 Additional USCG definitions (USCG).

For the USCG, in accordance with Public Law 99–190, the dollar threshold as it pertains to the inclusion of a warranty in major systems acquisitions is $10 million.

3046.791 Use of warranties in major systems acquisitions by the USCG (USCG).

This subpart provides the policy for the USCG to use in obtaining warranties from contractors when contracting for the acquisition of a major system.

3046.791–1 Policy (USCG).

The USCG shall include a warranty in all contracts for major systems acquisitions. When drafting warranty provisions/clauses for major systems acquisitions, the contracting officer shall ensure that the items listed at (HSAR) 48 CFR 3046.706 have been considered. The warranty shall also meet the following requirements:

(a) For systems or components which are commercially available, such warranty as is normally provided by the manufacturer or supplier shall be obtained in accordance with (FAR) 48 CFR 46.703(d) and (FAR) 48 CFR 46.710(b)(2).

(b) For systems or components provided in accordance with either design and manufacturing or performance requirements as specified in the contract or any modification to that contract, a warranty of compliance with the stated requirements shall be obtained.

(c) The warranty provided under paragraph (b) of this section shall provide that in the event the major system or any component thereof fails to meet the terms of the warranty provided, the contracting officer may:

(1) Require the contractor to promptly take such corrective action as the contracting officer determines to be necessary at no additional cost to the Government, including repairing or replacing all parts necessary to achieve the requirements set forth in the contract;

(2) Require the contractor to pay costs reasonably incurred by the United States in taking necessary corrective action; or

(3) Equitably reduce the contract price.

(d) Any warranty shall specifically exclude coverage of combat damage.

3046.791–2 Tailoring warranty terms and conditions (USCG).

(a) As the objectives and circumstances vary considerably among major systems acquisition programs, contracting officers shall appropriately tailor the warranty on a case-by-case basis, including remedies, exclusions, limitations and durations, provided the tailoring is consistent with the specific requirements of this subpart and (FAR) 48 CFR 46.706.

(b) Contracting officers of major systems acquisitions may exclude from the terms of the warranty certain defects for specified supplies (exclusions) and may limit the contractor's liability under the terms of the warranty (limitations), as appropriate, if necessary to derive a cost-effective warranty in light of the technical risk, contractor financial risk, or other program uncertainties.

(c) Contracting officers are encouraged to structure a broader and more comprehensive warranty where such is advantageous. Likewise, the contracting officer may narrow the scope of a warranty when appropriate (*e.g.*, where it would be inequitable to require a warranty of all performance requirements because a contractor had not designed the system).

(d) Contracting officers shall not include in a warranty clause any terms that require the contractor to incur liability for loss, damage, or injury to third parties.

3046.791–3 Warranties on Government-furnished property (USCG).

A contractor for a major systems acquisition shall not be required to provide the warranties specified in (HSAR) 48 CFR 3046.790–1 on any property furnished to that contractor by the Government except for:

(a) Defects in installation; and

(b) Installation or modification in such a manner that invalidates a warranty provided by the manufacturer of the property.

3046.792 Cost benefit analysis (USCG).

If a specific warranty is considered not to be cost beneficial by the contracting officer, a waiver request shall be initiated in accordance with guidance at (HSAR) 48 CFR 3046.793.

3046.793 Waiver and notification procedures (USCG).

(a) The Secretary of Homeland Security, without delegation, may waive the requirement for a warranty for USCG major system acquisitions when the waiver is in the interest of national defense or if the warranty obtained would not be cost beneficial. A waiver may be granted provided that the Committees on Appropriations of the Senate and the House of Representatives, the Committee on Commerce, Science and Transportation of the Senate, and the Committee on Merchant Marine and Fisheries of the House of Representatives are notified, in writing, of the Secretary's intention to waive the warranty requirements and the reasons supporting such a determination prior to granting the waiver. The request for Secretarial waiver shall include, as a minimum:

(1) A brief description of the major system and its stage of production (*e.g.*, the number of units delivered and anticipated to be delivered during the life of the program);

(2) The specific waiver requested, the duration of the waiver if it is to involve more than one contract, and the rationale for the waiver; and

(3) All documentation supporting the request for waiver, such as a cost-benefit analysis.

(b) The waiver request shall be forwarded to the Secretary, via the CPO. The USCG shall maintain a written record of each waiver granted and the Congressional notification and report made, together with supporting documentation.

PART 3047—TRANSPORTATION

Subpart 3047.3—Transportation in Supply Contracts

Sec.

3047.305 Solicitation provisions, contract clauses, and transportation factors.
3047.305–70 Solicitation provision.

Subpart 3047.3—Transportation in Supply Contracts

3047.305 Solicitation provisions, contract clauses, and transportation factors.

3047.305–70 Solicitation provisions.

The contracting officer shall insert the following provisions in solicitations, as applicable:

(a) (HSAR) 48 CFR 3052.247–70, F.o.b. Origin Information, with Alternates I or II, as applicable, shall be inserted in accordance with (FAR) 48 CFR 47.305–3(b);

(b) (HSAR) 48 CFR 3052.247–71, F.o.b. Origin Only, shall be inserted in accordance with (FAR) 48 CFR 47.305–3(e); and

(c) (HSAR) 48 CFR 3052.247–72, F.o.b. Destination Only, shall be inserted in accordance with (FAR) 48 CFR 47.305–4(b).

PART 3048—VALUE ENGINEERING—[RESERVED]

PART 3049—TERMINATION OF CONTRACTS—[RESERVED]

PART 3050—EXTRAORDINARY CONTRACTUAL ACTIONS—[RESERVED]

PART 3051—USE OF GOVERNMENT SOURCES BY CONTRACTORS—[RESERVED]

PART 3052—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

Subpart 3052.1—Instructions for Using Provisions and Clauses

Sec.

3052.101 Using part 3052.

Subpart 3052.2—Texts of Provisions and Clauses

3052.204–70 Security requirements for unclassified information technology resources.
3052.209–70 Prohibition on contracts with corporate expatriates.
3052.209–71 Reserve Officer Training Corps and military recruiting on campus.
3052.209–72 Disclosure of conflicts of interest.
3052.211–70 Index for specifications.
3052.211–90 Bar coding requirement (USCG).
3052.213–90 Evaluation factor for Coast Guard performance of bar coding requirement (USCG).
3052.215–70 Key personnel or facilities.
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3052.217–94 Lay days (USCG).
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3052.219–70 Small business subcontracting program reporting.
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3052.219–72 Evaluation of prime contractor participation in the DHS mentor-protégé program.
3052.222–70 Strikes or picketing affecting timely completion of the contract work.
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3052.223–70 Removal or disposal of hazardous substances—applicable licenses and permits.
3052.223–90 Accident and fire reporting (USCG).
3052.228–70 Insurance.
3052.228–90 Notification of Miller Act payment bond protection (USCG).
3052.228–91 Loss of or damage to leased aircraft (USCG).
3052.228–92 Fair Market value of aircraft (USCG).
3052.228–93 Risk and indemnities (USCG).
3052.231–70 Precontract costs.
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3052.237–70 Qualifications of contractor employees.
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3052.237–72 Contractor personnel screening for unclassified information technology access.
3052.242.70 Dissemination of information—educational institutions.
3052.242–71 Dissemination of contract information.
3052.242–72 Contracting officer's technical representative.
3052.245–70 Government property reports.
3052.247–70 F.o.b. origin information.
3052.247–71 F.o.b. origin only.
3052.247–72 F.o.b. destination only.

Subpart 3052.1—Instructions for Using Provisions and Clauses

3052.101 Using part 3052.

(b) Numbering.

(2)(i) Provisions or clauses that supplement the FAR.

(A) Agency-prescribed provisions and clauses permitted by HSAR and used on a standard basis (*i.e.*, normally used in two or more solicitations or contracts regardless of contract type) shall be prescribed and contained in the HSAR. OEs desiring to use a provision or a clause on a standard basis shall submit a request containing a copy of the clause(s), justification for its use, and evidence of legal counsel review to the CPO in accordance with (HSAR) 48 CFR 3001.304 for possible inclusion in the HSAR.

(B) Provisions and clauses used on a one-time basis (*i.e.*, non-standard provisions and clauses) may be approved by the contracting officer, unless a higher level is designated by the OE. This authority is subject to:

(1) Evidence of legal counsel review in the contract file;

(2) Inserting these clauses in the appropriate sections of the uniform contract format; and

(3) Ensuring the provisions and clauses do not deviate from the requirements of the FAR and HSAR.

Subpart 3052.2—Text of Provisions and Clauses

3052.204–70 Security requirements for unclassified information—technology resources.

As prescribed in (HSAR) 48 CFR 3004.470–4 Contract clauses, and (HSAR) 48 CFR 3037.110–70 (a) and (b), insert a clause substantially the same as follows:

Security Requirements for Unclassified Information Technology Resources (Dec. 2003)

(a) The Contractor shall be responsible for Information Technology (IT) security for all systems connected to a DHS network or operated by the Contractor for DHS, regardless of location. This clause applies to all or any part of the contract that includes information technology resources or services for which the Contractor must have physical or electronic access to sensitive information contained in DHS unclassified systems that directly support the agency's mission. The security requirements include, but are not limited to, how the Department of Homeland Security's sensitive information is to be handled and protected at the Contractor's site, (including any information stored, processed, or transmitted using the Contractor's computer systems), the background investigation and/or clearances required, and the facility security required. This requirement includes information technology, hardware, software, and the management, operation, maintenance, programming, and system administration of computer systems, networks, and telecommunications systems. Examples of tasks that require security provisions include—

(1) Acquisition, transmission or analysis of data owned by DHS with significant replacement cost should the contractor's copy be corrupted; and

(2) Access to DHS networks or computers at a level beyond that granted the general public, (e.g. such as bypassing a firewall).

(b) At the expiration of the contract, the contractor shall return all sensitive DHS information and IT resources provided to the contractor during the contract, and a certification that all DHS information has been purged from any contractor-owned system used to process DHS information. Organizational elements shall conduct reviews to ensure that the security requirements in the contract are implemented and enforced.

(c) The Contractor shall provide, implement, and maintain an IT Security Plan. This plan shall describe the processes and procedures that will be followed to ensure appropriate security of IT resources that are developed, processed, or used under this contract. The plan shall describe those parts of the contract to which this clause applies. The Contractor's IT Security Plan shall be compliant with Federal laws that include, but are not limited to, the Computer Security Act of 1987 (40 U.S.C. 1441 *et seq.*), and the Government Information Security Reform Act of 2000, and the Federal Information Security Management Act of 2002. The plan shall meet IT security requirements in accordance with Federal policies and procedures that include, but are not limited to OMB Circular A–130, Management of Federal Information Resources, Appendix III, and Security of Federal Automated Information Resources;

(d) Within ___ days after contract award, the contractor shall submit for approval an IT Security Plan. This plan shall be consistent with and further detail the approach contained in the offeror's proposal or quote that resulted in the award of this contract and in compliance with the requirements stated in this clause. The plan, as approved by the Contracting Officer, shall be incorporated into the contract as a compliance document.

(e) Within 6 months after contract award, the contractor shall submit written proof of IT Security accreditation to DHS for approval by the DHS Contracting Officer. Accreditation will be according to the criteria of the Homeland Security Information Technology Security program Publication, DHS MD 4300.Pub., Volume I, Policy Guide, Part A, Sensitive Systems, which is available from the Contracting Officer upon request. This accreditation will include a final security plan, risk assessment, security test and evaluation, and disaster recovery plan/continuity of operations plan. This accreditation, when accepted by the Contracting Officer, shall be incorporated into the contract as a compliance document, and shall include a final security plan, a risk assessment, security test and evaluation, and disaster recovery/continuity of operations plan. The contractor shall comply with the approved accreditation documentation.

(End of clause)

3052.209–70 Prohibition on contracts with corporate expatriates.

As prescribed at (HSAR) 48 CFR 3009.104–75, insert the following clause:

Prohibition on Contracts With Corporate Expatriates (Dec. 2003)

(a) Prohibitions.

Section 835 of Public Law 107–296, prohibits the Department of Homeland Security from entering into any contract with a foreign incorporated entity after November 25, 2002, which is treated as an inverted domestic corporation as defined in this clause.

The Secretary shall waive the prohibition with respect to any specific contract if the Secretary determines that the waiver is required in the interest of homeland security, or to prevent the loss of any jobs in the United States or prevent the Government from incurring any additional costs that otherwise would not occur.

(b) Definitions. As used in this clause:

Expanded Affiliated Group means an affiliated group as defined in section 1504(a) of the Internal Revenue Code of 1986 (without regard to section 1504(b) of such Code), except that section 1504 of such Code shall be applied by substituting 'more than 50 percent' for 'at least 80 percent' each place it appears.

Foreign Incorporated Entity means any entity which is, or but for subsection (b) of section 835 of the Homeland Security Act, Public Law 107–296, would be, treated as a foreign corporation for purposes of the Internal Revenue Code of 1986.

Inverted Domestic Corporation. A foreign incorporated entity shall be treated as an inverted domestic corporation if, pursuant to a plan (or a series of related transactions)—

(1) The entity completes after November 25, 2002, the direct or indirect acquisition of substantially all of the properties held directly or indirectly by a domestic corporation or substantially all of the properties constituting a trade or business of a domestic partnership;

(2) After the acquisition at least 80 percent of the stock (by vote or value) of the entity is held—

(i) In the case of an acquisition with respect to a domestic corporation, by former shareholders of the domestic corporation by reason of holding stock in the domestic corporation; or

(ii) In the case of an acquisition with respect to a domestic partnership, by former partners of the domestic partnership by reason of holding a capital or profits interest in the domestic partnership; and

(3) The expanded affiliated group which after the acquisition includes the entity does not have substantial business activities in the foreign country in which or under the law of which the entity is created or organized when compared to the total business activities of such expanded affiliated group.

Person, domestic, and foreign have the meanings given such terms by paragraphs (1), (4), and (5) of section 7701(a) of the Internal Revenue Code of 1986, respectively.

(c) Special rules. The following definitions and special rules shall apply when determining whether a foreign incorporated entity should be treated as an inverted domestic corporation.

(1) *Certain stock disregarded.* For the purpose of treating a foreign incorporated entity as an inverted domestic corporation these shall not be taken into account in determining ownership:

(i) stock held by members of the expanded affiliated group which includes the foreign incorporated entity; or

(ii) stock of such entity which is sold in a public offering related to the acquisition described in subsection (b)(1) of Section 835 of the Homeland Security Act, Public Law 107–296.

(2) *Plan deemed in certain cases.* If a foreign incorporated entity acquires directly or indirectly substantially all of the properties of a domestic corporation or partnership during the 4-year period beginning on the date which is after the date of enactment of this Act and which is 2 years before the ownership requirements of subsection (b)(2) are met, such actions shall be treated as pursuant to a plan.

(3) *Certain transfers disregarded.* The transfer of properties or liabilities (including by contribution or distribution) shall be disregarded if such transfers are part of a plan a principal purpose of which is to avoid the purposes of this section.

(d) *Special rule for related partnerships.* For purposes of applying section 835(b) of Public Law 107–296 to the acquisition of a domestic partnership, except as provided in regulations, all domestic partnerships which are under common control (within the meaning of section 482 of the Internal Revenue Code of 1986) shall be treated as a partnership.

(e) Treatment of Certain Rights.

(1) Certain rights shall be treated as stocks to the extent necessary to reflect the present value of all equitable interests incident to the transaction, as follows:

(i) Warrants;

(ii) Options;

(iii) Contracts to acquire stock;

(iv) Convertible debt instruments;

(v) Others similar interests.

(2) Rights labeled as stocks shall not be treated as stocks whenever it is deemed appropriate to do so to reflect the present value of the transaction or to disregard transactions whose recognition would defeat the purpose of section 835.

(f) *Disclosure.* By signing and submitting its offer, an offeror under this solicitation represents that it not a foreign incorporated entity that should be treated as an inverted domestic corporation pursuant to the criteria of Section 835 of the Homeland Security Act, Public Law 107–296 of November 25, 2002.

(g) If a waiver has been granted, a copy of the approved waiver shall be attached to the bid or proposal.

(End of provision)

3052.209–71 Reserve Officer Training Corps and military recruiting on campus.

As prescribed in (HSAR) 48 CFR 3009.470–4, use the following clause:

Reserve Officer Training Corps and Military Recruiting on Campus (Dec 2003)

(a) Definitions. *Institution of higher education,* as used in this clause, means an institution that meets the requirements of 20 U.S.C. 1001 and includes all subelements of such an institution.

(b) Limitation on contract award. Except as provided in paragraph (c) of this clause, an institution of higher education is ineligible for contract award if the Secretary of Defense determines that the institution has a policy or practice (regardless of when implemented) that prohibits or in effect prevents—

(1) The Secretary of a military department from maintaining, establishing, or operating a unit of the Senior Reserve Officer Training Corps (ROTC) (in accordance with 10 U.S.C. 654 and other applicable Federal laws) at that institution;

(2) A student at that institution from enrolling in a unit of the Senior ROTC at another institution of higher education;

(3) The Secretary of a military department or the Secretary of Homeland Security from gaining entry to campuses, or access to students (who are 17 years of age or older) on campuses, for purposes of military recruiting; or

(4) Military recruiters from accessing, for purposes of military recruiting, the following information pertaining to students (who are 17 years of age or older) enrolled at that institution:

(i) Name.

(ii) Address.

(iii) Telephone number.

(iv) Date and place of birth.

(v) Educational level.

(vi) Academic major.

(vii) Degrees received.

(viii) Most recent educational institution enrollment.

(c) Exception. The limitation in paragraph (b) of this clause does not apply to an institution of higher education if the Secretary of Defense determines that—

(1) The institution has ceased the policy or practice described in paragraph (b) of this clause; or

(2) The institution has a long-standing policy of pacifism based on historical religious affiliation.

(d) Agreement. The Contractor represents that it does not now have, and agrees that during performance of this contract it will not adopt, any policy or practice described in paragraph (b) of this clause, unless the Secretary of Defense has granted an exception in accordance with paragraph (c)(2) of this clause.

(e) Notwithstanding any other clause of this contract, if the Secretary of Defense determines that the Contractor misrepresented its policies and practices at the time of contract award or has violated the agreement in paragraph (d) of this clause—

(1) The Contractor will be ineligible for further payments under this and any other contracts with the Department of Homeland Security; and

(2) The Government will terminate this contract for default for the Contractor's material failure to comply with the terms and conditions of award.

(End of clause)

3052.209–72 Disclosure of conflicts of interest.

As prescribed in (HSAR) 48 CFR 3009.507, insert the following provision:

Disclosure of Conflicts of Interest (Dec 2003)

The Department of Homeland Security (DHS) will award contracts only to those offerors whose objectivity is not impaired by conflicting interests. Based on this policy—

(a) The offeror shall provide a statement in its proposal which describes in a concise manner all past, present or planned organizational, financial, contractual or other interest(s) with an organization whose interests may be substantially affected by Departmental activities, and which is related to the work under this solicitation. The interest(s) described shall include those of the proposer, its affiliates, proposed consultants, proposed subcontractors for more than 20% of the work and key personnel of the offeror and any subcontractor accounting for more than 20% of the contract. Past interest shall be limited to within one year of the date of the offeror's technical proposal. Key personnel, for purposes of this clause, shall include any person owning more than 20% interest in the company, and the company's corporate officers, its senior managers and any employees responsible for making a decision or taking an action on this contract where the decision or action can have an economic or other impact on the interests of a regulated or affected organization.

(b) The offeror shall describe in detail why it believes, in light of the interest(s) identified in (a) above, that performance of the proposed contract can be accomplished in an impartial and objective manner.

(c) In the absence of any relevant interest identified in (a) above, the offeror shall submit in its proposal a statement certifying that to its best knowledge and belief no affiliation exists relevant to possible conflicts of interest. The offeror must obtain the same information from potential subcontractors prior to award of a subcontract.

(d) The Contracting Officer will review the statement submitted and may require additional relevant information from the offeror. All such information, and any other relevant information known to DHS, will be used to determine whether an award to the offeror may create a conflict of interest. If any such conflict of interest is found to exist, the Contracting Officer may (1) disqualify the offeror, or (2) determine that it is otherwise in the best interest of the United States to contract with the offeror and include appropriate provisions to mitigate or avoid such conflict in the contract awarded.

(e) The refusal to provide the disclosure or representation, or any additional information required, may result in disqualification of the offeror for award. If nondisclosure or misrepresentation is discovered after award, the resulting contract may be terminated. If, after award, the Contractor discovers a conflict of interest with respect to the contract awarded as a result of this solicitation, which could not reasonably have been known prior to award, an immediate and full disclosure shall be made in writing to the Contracting Officer. The disclosure shall include a full description of the conflict, a description of the action the contractor has taken, or proposes to take, to avoid or mitigate such conflict. The Contracting Officer may, however, terminate the contract for convenience if he or she deems that termination is in the best interest of the Government.

(End of clause)

3052.211–70 Index for specifications.

As prescribed in (HSAR) 48 CFR 3011.204–70 insert the following clause:

Index for Specifications (Dec 2003)

If an index or table of contents is furnished in connection with specifications, it is understood that such index or table of contents is for convenience only. Its accuracy and completeness is not guaranteed, and it is not to be considered as part of the specifications. In case of discrepancy between the index or table of contents and the specifications, the specifications shall govern.

(End of clause)

3052.211–90 Bar coding requirement (USCG).

As prescribed in USCG guidance at (HSAR) 48 CFR 3011.204–90(a) and 3013.302–590, insert the following clause:

Bar Coding Requirements (Dec 2003)

Item markings shall include bar coding in accordance with MIL–STD–1189 as clarified below:

(a) The stock number shall be bar coded with no prefixes, dashes, spaces, or suffixes encoded. The contract number, the delivery order, or call order number, when used, shall be bar coded with no spaces or dashes encoded.

(b) Prefixes and suffixes to the stock number may be included in the OCR–A in-the-clear markings, but not in the bar code.

(c) Preferred Bar Code Density (characters per inch as defined in MIL–STD–1189) is "standard," but densities from "standard" to "low" are acceptable.

(d) OCR–A characters do not have to be machine-readable.

(e) Bar coding shall be machine-readable.

(f) Unless otherwise specified herein, minimum bar code height shall be 0.25 inch (6.4 mm) or 15 percent of the bar code length, whichever is greater.

(g) The preferred position of the OCR–A characters is below the bar codes, but the OCR–A characters may be above the bar codes.

(h) On outer containers contractors shall either:

(1) Encode the stock numbers and contract number in one line of bar code with the stock number appearing first; or

(2) Encode the item stock number and contract number on two labels, with the top label containing the stock number and the lower label containing the contract number.

(i) On unit and intermediate containers, the item stock number in bar code with OCR–A below may be on the same label as the other data (identification markings) required by MIL–STD–129H. However, the bar code stock number shall appear on the top line with OCR–A characters on the second line; the OCR–A characters may include the stock number prefix and suffix, or alternatively, the complete stock number including any prefix and suffix, shall be repeated as part of the identification markings.

(j) Exclusions from bar code markings are:

(1) Multi-packs/consolidation containers (containers with two or more different stock numbers within).

(2) Reusable shipping containers used for multiple/ different stock number applications.

(3) Items consigned to a prime contractor's plant for installation in production.

(End of clause)

3052.213–90 Evaluation factor for Coast Guard performance of bar coding requirement (USCG).

As prescribed in USCG guidance at (HSAR) 48 CFR 3013.106–190, insert the following provision:

Evaluation Factor for Coast Guard Performance of Bar Coding Requirement (Dec 2003)

If a small business cannot provide the bar coding requirement, as indicated elsewhere in the schedule, the contracting officer will apply the following formula to the quoted amounts:

(a) Unit price quoted by small business $ __

(b) Add unit cost to the USCG to provide bar coding $

(c) Adjusted unit price (add lines a. and b.) $

The line (c) amount will become the amount the contracting officer considered when determining the lowest quoted amount.

(End of provision)

3052.215–70 Key personnel or facilities.

As prescribed in (HSAR) 48 CFR 3015.204–3, insert the following clause:

Key Personnel or Facilities. (Dec 2003)

(a) The personnel or facilities specified below are considered essential to the work being performed under this contract and may, with the consent of the contracting parties, be changed from time to time during the course of the contract by adding or deleting personnel or facilities, as appropriate.

(b) Before removing or replacing any of the specified individuals or facilities, the Contractor shall notify the Contracting Officer, in writing, before the change becomes effective. The Contractor shall submit sufficient information to support the proposed action and to enable the Contracting Officer to evaluate the potential impact of the change on this contract. The Contractor shall not remove or replace personnel or facilities until the Contracting Officer approves the change.

The Key Personnel or Facilities under this Contract:

(*specify key personnel or facilities*)

(End of clause)

3052.216–70 Evaluation of offers subject to an economic price adjustment clause.

As prescribed in (HSAR) 48 CFR 3016.203–470, insert a provision substantially the same as the following:

Evaluation of Offers Subject to an Economic Price Adjustment Clause (Dec 2003)

Offers shall be evaluated without adding an amount for an economic price adjustment. Offers will be rejected which: (1) Increase the stipulated ceiling; (2) limit the downward adjustment; or (3) delete the economic price adjustment clause. If the offer stipulates a ceiling lower than that included in the solicitation, the lower ceiling will be incorporated into any resulting contract.

(End of provision)

3052.216–71 Determination of award fee.

As prescribed in (HSAR) 48 CFR 3016.406(e)(1)(i), insert a clause substantially the same as the following:

Determination of Award Fee (Dec 2003)

(a) The Government shall evaluate contractor performance at the end of each specified evaluation period(s) to determine the amount of award. The contractor agrees that the amount of award and the award fee methodology are unilateral decisions to be made at the sole discretion of the Government.

(b) Contractor performance shall be evaluated according to a Performance Evaluation Plan. The contractor shall be periodically informed of the quality of its performance and areas in which improvements are expected.

(c) The contractor shall be promptly advised, in writing, of the determination and reasons why the award fee was or was not earned. The contractor may submit a performance self-evaluation for each evaluation period. The amount of award is at the sole discretion of the Government but any self-evaluation received within (*insert number*) days after the end of the current evaluation period will be given such consideration, as may be deemed appropriate by the Government.

(d) The Government may specify that a fee not earned during a given evaluation period may be accumulated and be available for allocation to one or more subsequent periods. In that event, the distribution of award fee shall be adjusted to reflect such allocations.

(End of clause)

3052.216–72 Performance evaluation plan.

As prescribed in (HSAR) 48 CFR 3016.406(e)(i)(ii), insert a clause substantially the same as the following:

Performance Evaluation Plan (Dec 2003)

(a) A Performance Evaluation Plan shall be unilaterally established by the Government based on the criteria stated in the contract and used for the determination of award fee. This plan shall include the criteria used to evaluate each area and the percentage of award fee (if any) available for each area. A copy of the plan shall be provided to the contractor (*insert number*) calendar days prior to the start of the first evaluation period.

(b) The criteria contained within the Performance Evaluation Plan may relate to: (1) Technical (including schedule) requirements if appropriate; (2) Management; and (3) Cost.

(c) The Performance Evaluation Plan may, consistent with the contract, be revised unilaterally by the Government at any time during the period of performance. Notification of such changes shall be provided to the contractor (*insert number*) calendar days prior to the start of the evaluation period to which the change will apply.

(End of clause)

3052.216–73 Distribution of award fee.

As prescribed in (HSAR) 48 CFR 3016.406(e)(1)(iii), insert a clause substantially the same as the following:

Distribution of Award Fee (Dec 2003)

(a) The total amount of award fee available under this contract is assigned according to the following evaluation periods and amounts:

Evaluation Period:
Available Award Fee:
(*insert appropriate information*)

(b) Payment of the base fee and award fee shall be made, provided that after payment of 85 percent of the base fee and potential award fee, the Government may withhold further payment of the base fee and award fee until a reserve is set aside in an amount that the Government considers necessary to protect its interest. This reserve shall not exceed 15 percent of the total base fee and potential award fee or $100,000, whichever is less.

(c) In the event of contract termination, either in whole or in part, the amount of award fee available shall represent a pro rata distribution associated with evaluation period activities or events as determined by the Government.

(d) The Government will promptly make payment of any award fee upon the submission by the contractor to the contracting officer's authorized representative, of a public voucher or invoice in the amount of the total fee earned for the period evaluated. Payment may be made without using a contract modification.

(End of clause)

3052.216–74 Settlement of letter contract.

As prescribed in (HSAR) 48 CFR 3016.603–4, insert a clause substantially the same as the following:

Settlement of Letter Contract (Dec 2003)

(a) This contract constitutes the definitive contract contemplated by letter contract (*insert number*) issued on (*insert effective date*). It supersedes the letter contract and its modification numbered (*insert number(s)*). To the extent there are inconsistencies between the definitive contract and the letter contract, the former governs.

(b) The cost(s) and fee(s), or price(s), established in this definitive contract represents full and complete settlement of letter contract (*insert number*) and modification numbered (*insert number(s)*). Payment of the fee agreed upon or profit withheld pending definitization of the letter contract, may start immediately at the rate and times stated within this contract.

(End of clause)

3052.217–90 Delivery and Shifting of Vessel (USCG).

As prescribed in the USCG guidance at (HSAR) 48 CFR 3017.9000(a) and (b), insert the following clause:

Delivery and Shifting of Vessel (Dec 2003)

The Government shall deliver the vessel to the Contractor at his place of business. Upon completion of the work, the Government shall accept delivery of the vessel at the Contractor's place of business. The Contractor shall provide, at no additional charge, upon 24 hours' advance notice, a tug or tugs and docking pilot, acceptable to the Contracting Officer, to assist in handling the vessel between (to and from) the Contractor's plant and the nearest point in a waterway regularly navigated by vessels of equal or greater draft and length. While the vessel is in the hands of the Contractor, any necessary towage, cartage, or other transportation between ship and shop or elsewhere, which may be incident to the work herein specified, shall be furnished by the Contractor without additional charge to the Government.

(End of clause)

3052.217–91 Performance (USCG).

As prescribed in USCG guidance at (HSAR) 48 CFR 3017.9000(a) and (b), insert the following clause:

Performance (Dec 2003)

(a) Upon the award of the contract, the Contractor shall promptly start the work specified and shall diligently prosecute the work to completion. The Contractor shall not start work until the contract has been awarded except in the case of emergency work ordered by the Contracting Officer in writing.

(b) The Government shall deliver the vessel described in the contract at the time and location specified in the contract. Upon completion of the work, the Government shall accept delivery of the vessel at the time and location specified in the contract.

(c) The Contractor shall without charge,—

(1) Make available to personnel of the vessel while in dry dock or on a marine railway, sanitary lavatory and similar facilities at the plant acceptable to the Contracting Officer;

(2) Supply and maintain suitable brows and gangways from the pier, dry dock, or marine railway to the vessel;

(3) Treat salvage, scrap or other ship's material of the Government resulting from performance of the work as items of Government-furnished property, in accordance with the Government Property (Fixed Price Contracts) clause;

(4) Perform, or pay the cost of, any repair, reconditioning or replacement made necessary as the result of the use by the Contractor of any of the vessel's machinery, equipment or fittings, including, but not limited to, winches, pumps, rigging, or pipe lines; and

(5) Furnish suitable offices, office equipment and telephones at or near the site of the work for the Government's use.

(d) The contract will state whether dock and sea trials are required to determine whether or not the Contractor has satisfactorily performed the work.

(1) If dock and sea trials are required, the vessel shall be under the control of the vessel's commander and crew.

(2) The Contractor shall not conduct dock and sea trials not specified in the contract without advance approval of the Contracting Officer. Dock and sea trials not specified in the contract shall be at the Contractor's expense and risk.

(3) The Contractor shall provide and install all fittings and appliances necessary for dock and sea trials. The Contractor shall be responsible for care, installation, and removal of instruments and apparatus furnished by the Government for use in the trials.

(End of clause)

3052.217–92 Inspection and manner of doing work (USCG).

As prescribed in USCG guidance at (HSAR) 48 CFR 3017.9000(a) and (b), insert the following clause:

Inspection and Manner of Doing Work (Dec 2003)

(a) The Contractor shall perform work in accordance with the contract, any drawings and specifications made a part of the job order, and any change or modification issued under the Changes clause.

(b)(1) Except as provided in paragraph (b)(2) of this clause, and unless otherwise specifically provided in the contract, all operational practices of the Contractor and all workmanship, material, equipment, and articles used in the performance of work under this contract shall be in accordance with the best commercial marine practices and the rules and requirements of all appropriate regulatory bodies including, but not limited to the American Bureau of Shipping, the U.S. Coast Guard, and the Institute of Electrical and Electronic Engineers, in effect at the time of Contractor's submission of offer, and shall be intended and approved for marine use.

(2) When Navy specifications are specified in the contract, the Contractor shall follow Navy standards of material and workmanship.

(c) The Government may inspect and test all material and workmanship at any time during the Contractor's performance of the work.

(1) If, prior to delivery, the Government finds any material or workmanship is defective or not in accordance with the contract, in addition to its rights under the Guarantee clause, the Government may reject the defective or nonconforming material or workmanship and require the Contractor to correct or replace it at the Contractor's expense.

(2) If the Contractor fails to proceed promptly with the replacement or correction of the material or workmanship, the Government may replace or correct the defective or nonconforming material or workmanship and charge the Contractor the excess costs incurred.

(3) As specified in the contract, the Contractor shall provide and maintain an inspection system acceptable to the Government.

(4) The Contractor shall maintain complete records of all inspection work and shall make them available to the Government during performance of the contract and for 90 days after the completion of all work required.

(d) The Contractor shall not permit any welder to work on a vessel unless the welder is, at the time of the work, qualified to the standards established by the U.S. Coast Guard, American Bureau of Shipping, or Department of the Navy for the type of welding being performed. Qualifications of a welder shall be as specified in the contract.

(e) The Contractor shall—

(1) Exercise reasonable care to protect the vessel from fire;

(2) Maintain a reasonable system of inspection over activities taking place in the vicinity of the vessel's magazines, fuel oil tanks, or storerooms containing flammable materials.

(3) Maintain a reasonable number of hose lines ready for immediate use on the vessel at all times while the vessel is berthed alongside the Contractor's pier or in dry dock or on a marine railway;

(4) Unless otherwise provided in the contract, provide sufficient security patrols to reasonably maintain a fire watch for

protection of the vessel when it is in the Contractor's custody;

(5) To the extent necessary, clean, wash, and steam out or otherwise make safe, all tanks under alteration or repair.

(6) Furnish the Contracting Officer a "gas-free" or "safe-for-hotwork" certificate before any hot work is done on a tank;

(7) Treat the contents of any tank as Government property in accordance with the Government Property (Fixed-Price Contracts) clause; and

(8) Dispose of the contents of any tank only at the direction, or with the concurrence, of the Contracting Officer.

(9) Be responsible for the proper closing of all openings to the vessel's underwater structure upon which work has been performed. The contractor additionally must advise the COTR of the status of all valves closures and openings for which the contractor's workers were responsible.

(f) Except as otherwise provided in the contract, when the vessel is in the custody of the Contractor or in dry dock or on a marine railway and the temperature is expected to go as low as 35 Fahrenheit, the Contractor shall take all necessary steps to—

(1) Keep all hose pipe lines, fixtures, traps, tanks, and other receptacles on the vessel from freezing; and

(2) Protect the stern tube and propeller hubs from frost damage.

(g) The Contractor shall, whenever practicable—

(1) Perform the required work in a manner that will not interfere with the berthing and messing of Government personnel attached to the vessel; and

(2) Provide Government personnel attached to the vessel access to the vessel at all times.

(h) Government personnel attached to the vessel shall not interfere with the Contractor's work or workers.

(i)(1) The Government does not guarantee the correctness of the dimensions, sizes, and shapes set forth in any contract, sketches, drawings, plans, or specifications prepared or furnished by the Government, unless the contract requires that the Contractor perform the work prior to any opportunity to inspect.

(2) Except as stated in paragraph (i)(1) of this clause, and other than those parts furnished by the Government, and the Contractor shall be responsible for the correctness of the dimensions, sizes, and shapes of parts furnished under this agreement.

(j) The Contractor shall at all times keep the site of the work on the vessel free from accumulation of waste material or rubbish caused by its employees or the work. At the completion of the work, unless the contract specifies otherwise, the Contractor shall remove all rubbish from the site of the work and leave the immediate vicinity of the work area "broom clean."

(End of clause)

3052.217–93 Subcontracts (USCG).

As prescribed in USCG guidance at (HSAR) 48 CFR 3017.9000(a) and (b), insert the following clause:

Subcontracts (Dec 2003)

(a) Nothing contained in the contract shall be construed as creating any contractual relationship between any subcontractor and the Government. The divisions or sections of the specifications are not intended to control the Contractor in dividing the work among subcontractors or to limit the work performed by any trade.

(b) The Contractor shall be responsible to the Government for acts and omissions of its own employees, and of subcontractors and their employees. The Contractor shall also be responsible for the coordination of the work of the trades, subcontractors, and material men.

(c) The Contractor shall, without additional expense to the Government, employ specialty subcontractors where required by the specifications.

(d) The Government or its representatives will not undertake to settle any differences between the Contractor and its subcontractors, or between subcontractors.

(End of clause)

3052.217–94 Lay days (USCG).

As prescribed in USCG guidance at (HSAR) 48 CFR 3017.9000(a) and (b), insert the following clause:

Lay Days (Dec 2003)

(a) Lay day time will be paid by the Government at the Contractor's stipulated bid price for this item of the contract when the vessel remains on the dry dock or marine railway as a result of any change that involves work in addition to that required under the basic contract.

(b) No lay day time shall be paid until all items of the basic contract for which a price was established by the Contractor and for which docking of the vessel was required have been satisfactorily completed and accepted.

(c) Days of hauling out and floating, whatever the hour, shall not be paid as lay day time, and days when no work is performed by the Contractor shall not be paid as lay day time.

(d) Payment of lay day time shall constitute complete compensation for all costs, direct and indirect, to reimburse the Contractor for use of dry dock or marine railway.

(End of clause)

3052.217–95 Liability and insurance (USCG).

As prescribed in USCG guidance at (HSAR) 48 CFR 3017.9000(a) and (b), insert the following clause:

Liability and Insurance (Dec 2003)

(a) The Contractor shall exercise its best efforts to prevent accidents, injury, or damage to all employees, persons, and property, in and about the work, and to the vessel or part of the vessel upon which work is done.

(b) Loss or damage to the vessel, materials, or equipment. (1) Unless otherwise directed or approved in writing by the Contracting Officer, the Contractor shall not carry insurance against any form of loss or damage to the vessel(s) or to the materials or equipment to which the Government has title or which have been furnished by the Government for installation by the Contractor. The Government assumes the risks of loss of and damage to that property.

(2) The Government does not assume any risk with respect to loss or damage compensated for by insurance or otherwise or resulting from risks with respect to which the Contractor has failed to maintain insurance, if available, as required or approved by the Contracting Officer.

(3) The Government does not assume risk of and will not pay for any costs of the following:

(i) Inspection, repair, replacement, or renewal of any defects in the vessel(s) or material and equipment due to—

(A) Defective workmanship performed by the Contractor or its subcontractors;

(B) Defective materials or equipment furnished by the Contractor or its subcontractors; or

(C) Workmanship, materials, or equipment which do not conform to the requirements of the contract, whether or not the defect is latent or whether or not the nonconformance is the result of negligence.

(ii) Loss, damage, liability, or expense caused by, resulting from, or incurred as a consequence of any delay or disruption, willful misconduct or lack of good faith by the Contractor or any of its representatives that have supervision or direction of—

(A) All or substantially all of the Contractor's business; or

(B) All or substantially all of the Contractor's operation at any one plant.

(4) As to any risk that is assumed by the Government, the Government shall be subrogated to any claim, demand or cause of action against third parties that exists in favor of the Contractor. If required by the Contracting Officer, the Contractor shall execute a formal assignment or transfer of the claim, demand, or cause of action.

(5) No party other than the Contractor shall have any right to proceed directly against the Government or join the Government as a codefendant in any action.

(6) Notwithstanding the foregoing, the Contractor shall bear the first $5,000 of loss or damage from each occurrence or incident, the risk of which the Government would have assumed under the provision of this paragraph (b).

(c) *Indemnification.* The Contractor indemnifies the Government and the vessel and its owners against all claims, demands, or causes of action to which the Government, the vessel or its owner(s) might be subject as a result of damage or injury (including death) to the property or person of anyone other than the Government or its employees, or the vessel or its owner, arising in whole or in part from the negligence or other wrongful act of the Contractor, or its agents or employees, or any subcontractor, or its agents or employees.

(1) The Contractor's obligation to indemnify under this paragraph shall not exceed the sum of $300,000 as a consequence of any single occurrence with respect to any one vessel.

(2) The indemnity includes, without limitation, suits, actions, claims, costs, or demands of any kind, resulting from death, personal injury, or property damage occurring during the period of performance of work on the vessel or within 90 days after redelivery of the vessel. For any claim, etc., made after 90 days, the rights of the parties shall be as determined by other provisions of this contract and by law. The indemnity does apply to death occurring after 90 days where the injury was received during the period covered by the indemnity.

(d) *Insurance.* (1) The Contractor shall, at its own expense, obtain and maintain the following insurance—

(i) Casualty, accident, and liability insurance, as approved by the Contracting Officer, insuring the performance of its obligations under paragraph (c) of this clause.

(ii) Workers Compensation Insurance (or its equivalent) covering the employees engaged on the work.

(2) The Contractor shall ensure that all subcontractors engaged on the work obtain and maintain the insurance required in paragraph (d)(1) of this clause.

(3) Upon request of the Contracting Officer, the Contractor shall provide evidence of the insurance required by paragraph (d) of this clause.

(e) The Contractor shall not make any allowance in the contract price for the inclusion of any premium expense or charge for any reserve made on account of self-insurance for coverage against any risk assumed by the Government under this clause.

(f) The Contractor shall give the Contracting Officer written notice as soon as practicable after the occurrence of a loss or damage for which the Government has assumed the risk.

(1) The notice shall contain full details of the loss or damage.

(2) If a claim or suit is later filed against the Contractor as a result of the event, the Contractor shall immediately deliver to the Government every demand, notice, summons, or other process received by the Contractor or its employees or representatives.

(3) The Contractor shall cooperate with the Government and, upon request, shall assist in effecting settlements, securing and giving evidence, obtaining the attendance of witnesses, and in the conduct of suits. The Government shall reimburse the Contractor for expenses incurred in this effort, other than the cost of maintaining the Contractor's usual organization.

(4) The Contractor shall not, except at its own expense, voluntarily make any payments, assume any obligation, or incur any expense other than what would be imperative for the protection of the vessel(s) at the time of the event.

(g) In the event of loss of or damage to any vessel(s), material, or equipment which may result in a claim against the Government under the insurance provisions of this contract, the Contractor shall promptly notify the Contracting Officer of the loss or damage. The Contracting Officer may, without prejudice to any right of the Government, either—

(1) Order the Contractor to proceed with replacement or repair, in which event the Contractor shall effect the replacement or repair;

(i) The Contractor shall submit to the Contracting Officer a request for reimbursement of the cost of the replacement or repair together with whatever supporting documentation the Contracting Officer may reasonably require, and shall identify the request as being submitted under the Insurance clause of this contract.

(ii) If the Government determines that the risk of the loss or damage is within the scope of the risks assumed by the Government under this clause, the Government will reimburse the Contractor for the reasonable allowable cost of the replacement or repair, plus a reasonable profit (if the work or replacement or repair was performed by the Contractor) less the deductible amount specified in paragraph (b) of this clause.

(iii) Payments by the Government to the Contractor under this clause are outside the scope of and shall not affect the pricing structure of the contract, and are additional to the compensation otherwise payable to the Contractor under this contract; or

(2) Decide that the loss or damage shall not be replaced or repaired and in that event, the Contracting Officer shall—

(i) Modify the contract appropriately, consistent with the reduced requirements reflected by the unreplaced or unrepaired loss or damage; or

(ii) Terminate the repair of any part or all of the vessel(s) under the Termination for Convenience of the Government clause of this contract.

(End of clause)

3052.217–96 Title (USCG).

As prescribed in USCG guidance at (HSAR) 48 CFR 3017.9000(a) and (b), insert the following clause:

Title (Dec 2003)

(a) Unless otherwise provided, title to all materials and equipment to be incorporated in a vessel in the performance of this contract shall vest in the Government upon delivery at the location specified for the performance of the work.

(b) Upon completion of the contract, or with the approval of the Contracting Officer during performance of the contract, all Contractor-furnished materials and equipment not incorporated in, or placed on, any vessel, shall become the property of the Contractor, unless the Government has reimbursed the Contractor for the cost of the materials and equipments.

(c) The vessel, its equipment, movable stores, cargo, or other ship's materials shall not be considered Government-furnished property.

(End of clause)

3052.217–97 Discharge of liens (USCG).

As prescribed in USCG guidance at (HSAR) 48 CFR 3017.9000(a) and (b), insert the following clause:

Discharge of Liens (Dec 2003)

(a) The Contractor shall immediately discharge or cause to be discharged, any lien or right *in rem* of any kind, other than in favor of the Government, that exists or arises in connection with work done or materials furnished under this contract.

(b) If any such lien or right *in rem* is not immediately discharged, the Government, at the expense of the Contractor, may discharge, or cause to be discharged, the lien or right.

(End of clause)

3052.217–98 Delays (USCG).

As prescribed in USCG guidance at (HSAR) 48 CFR 3017.9000(a) and (b), insert the following clause:

Delays (Dec. 2003)

When during the performance of this contract the Contractor is required to delay work on a vessel temporarily, due to orders or actions of the Government respecting stoppage of work to permit shifting the vessel, stoppage of hot work to permit bunkering, stoppage of work due to embarking or debarking passengers and loading or discharging cargo, and the Contractor is not given sufficient advance notice or is otherwise unable to avoid incurring additional costs on account thereof, an equitable adjustment shall be made in the price of the contract pursuant to the "Changes" clause.

(End of clause)

3052.217–99 Department of Labor safety and health regulations for ship repairing (USCG).

As prescribed in USCG guidance at (HSAR) 48 CFR 3017.9000(a) and (b), insert the following clause:

Department of Labor Safety and Health Regulations for Ship Repair (Dec. 2003)

Nothing contained in this contract shall relieve the Contractor of any obligations it may have to comply with—

(a) The Occupational Safety and Health Act of 1970 (29 U.S.C. 651, *et seq.*);

(b) The Safety and Health Regulations for Ship Repairing (29 CFR part 1915); or

(c) Any other applicable Federal, State, and local laws, codes, ordinances, and regulations.

(End of clause)

3052.217–100 Guarantee (USCG).

As prescribed in USCG guidance at (HSAR) 48 CFR 3017.9000(c), insert the following clause:

Guarantee (Dec. 2003)

(a) In the event any work performed or materials furnished by the contractor prove defective or deficient within 60 days from the date of redelivery of the vessel(s), the Contractor, as directed by the Contracting Officer and at its own expense, shall correct and repair the deficiency to the satisfaction of the Contracting Officer.

(b) If the Contractor or any subcontractor has a guarantee for work performed or materials furnished that exceeds the 60 day period, the Government shall be entitled to rely upon the longer guarantee until its expiration.

(c) With respect to any individual work item identified as incomplete at the time of redelivery of the vessel(s), the guarantee period shall run from the date the item is completed.

(d) If practicable, the Government shall give the Contractor an opportunity to correct the deficiency.

(1) If the Contracting Officer determines it is not practicable or is otherwise not

advisable to return the vessel(s) to the Contractor, or the Contractor fails to proceed with the repairs promptly, the Contracting Officer may direct that the repairs be performed elsewhere, at the Contractor's expense.

(2) If correction and repairs are performed by other than the Contractor, the Contracting Officer may discharge the Contractor's liability by making an equitable deduction in the price of the contract.

(e) The Contractor's liability shall extend for an additional 90-day guarantee period on those defects or deficiencies that the Contractor corrected.

(f) At the option of the Contracting officer, defects and deficiencies may be left uncorrected. In that event, the Contractor and Contracting Officer shall negotiate an equitable reduction in the contract price. Failure to agree upon an equitable reduction shall constitute a dispute under the Disputes clause of this contract.

(End of clause)

3052.219–70 Small Business subcontracting program reporting.

As prescribed in (HSAR) 48 CFR 3019.708–70(a), insert the following clause:

The Small Business Subcontracting Program Reporting (Dec. 2003)

(a) The Contractor shall submit the Summary Subcontract Report (Standard Form 295 (SF–295)) to the Department of Homeland Security, Office of Small and Disadvantaged Business Utilization, Washington, DC, 20528.

(b) The Contractor shall include this clause in all subcontracts that include the clause at (FAR) 48 CFR 52.219–9.

(End of Clause)

3052.219–71 DHS mentor-protégé program.

As prescribed in (HSAR) 48 CFR 3019.708–70(b), insert the following clause:

DHS Mentor-Protégé Program (Dec. 2003)

(a) Large businesses are encouraged to participate in the DHS Mentor-Protégé program for the purpose of providing developmental assistance to eligible small business protégé entities to enhance their capabilities and increase their participation in DHS contracts.

(b) The program consists of:

(1) Mentor firms, which are large prime contractors capable of providing developmental assistance;

(2) Protégé firms, which are small businesses, veteran-owned small businesses, service-disabled veteran-owned small businesses, HUBZone small businesses, small disadvantaged businesses, and women-owned small business concerns; and

(3) Mentor-Protégé agreements, approved by the DHS OSDBU.

(c) Mentor participation in the program means providing business developmental assistance to aid Protégés in developing the requisite expertise to effectively compete for and successfully perform DHS contracts and subcontracts.

(d) Large business prime contractors, serving as mentors in the DHS mentor-protégé program, are eligible for a post-award incentive for subcontracting plan credit by recognizing costs incurred by a mentor firm in providing assistance to a protégé firm and using this credit for purposes of determining whether the mentor firm attains a subcontracting plan participation goal applicable to the mentor firm under a DHS contract. The amount of credit given to a mentor firm for these protégé developmental assistance costs shall be calculated on a dollar for dollar basis and reported via the SF–295; for example, the mentor/large business prime contractor reports a $10,000 subcontract to the protégé/small business subcontractor and $5,000 of developmental assistance to the protégé/small business subcontractor as $15,000 ($10,000 traditional subcontract plus $5,000 in developmental assistance for a total of $15,000).

(e) Contractors interested in participating in the program are encouraged to contact the DHS OSDBU for more information.

(End of clause)

3052.219–72 Evaluation of prime contractor participation in the DHS mentor-protégé program.

As prescribed in (HSAR) 48 CFR 3019.708–70(c), insert the following clause:

Evaluation of Prime Contractor Participation in the DHS Mentor-Protégé Program (Dec 2003)

This solicitation contains a source selection factor or subfactor regarding participation in the DHS Mentor-Protégé Program. In order to receive credit under the source selection factor or subfactor, the offeror shall provide a signed letter of mentor-protégé agreement approval from the DHS OSDBU.

(End of clause)

3052.222–70 Strikes or picketing affecting timely completion of the contract work.

As prescribed in (HSAR) 48 CFR 3022.101–71(a), insert the following clause:

Strikes or Picketing Affecting Timely Completion of the Contract Work (Dec 2003)

Notwithstanding any other provision hereof, the Contractor is responsible for delays arising out of labor disputes, including but not limited to strikes, if such strikes are reasonably avoidable. A delay caused by a strike or by picketing which constitutes an unfair labor practice is not excusable unless the Contractor takes all reasonable and appropriate action to end such a strike or picketing, such as the filing of a charge with the National Labor Relations Board, the use of other available Government procedures, and the use of private boards or organizations for the settlement of disputes.

(End of clause)

3052.222–71 Strikes or picketing affecting access to a DHS facility.

As prescribed in (HSAR) 48 CFR 3022.101–71(b), insert the following clause:

Strikes or Picketing Affecting Access to a DHS Facility (Dec 2003)

If the Contracting Officer notifies the Contractor in writing that a strike or picketing: (a) is directed at the Contractor or subcontractor or any employee of either; and (b) impedes or threatens to impede access by any person to a DHS facility where the site of the work is located, the Contractor shall take all appropriate action to end such strike or picketing, including, if necessary, the filing of a charge of unfair labor practice with the National Labor Relations Board or the use of other available judicial or administrative remedies.

(End of clause)

3052.222–90 Local hire (USCG).

As prescribed in USCG guidance at (HSAR) 48 CFR 3022.9001, insert the following clause:

Local Hire (Dec 2003)

(a) When performing a contract in a State with an unemployment rate in excess of the national average determined by the Secretary of Labor, the Contractor shall employ individuals who are local residents and who, in the case of any craft or trade, possess or would be able to acquire promptly, the necessary skills.

(b) Local resident defined. As used in this section, "local resident" means a resident of, or an individual who commutes daily to a State described in subsection (a).

(c) The Secretary of Homeland Security may waive the requirements of this subsection in the interest of national security or economic efficiency.

(End of clause)

3052.223–70 Removal or disposal of hazardous substances—applicable licenses and permits.

As prescribed in (HSAR) 48 CFR 3023.303, insert the following clause:

Removal or Disposal of Hazardous Substances—Applicable Licenses and Permits (Dec 2003)

The Contractor certifies that it has ____ does not have ____ all licenses and permits required by Federal, State, and local laws to perform hazardous substance(s) removal or disposal services. If the Contractor does not currently possess these documents, it shall obtain all requisite licenses and permits within ____ days after date of award. The Contractor shall provide evidence of said documents to the Contracting Officer or designated Government representative prior to commencement of work under the contract.

(End of clause)

3052.223–90 Accident and fire reporting (USCG).

As prescribed in USCG guidance at (HSAR) 48 CFR 3023.9000(a), insert the following clause:

Accident and Fire Reporting (Dec 2003)

(a) The Contractor shall report to the Contracting Officer any accident or fire occurring at the site of the work that causes:

(1) A fatality or the loss of at least one lost workday on the part of any employee of the Contractor or subcontractor at any tier;

(2) Damage of $1,000 or more to Federal real or personal property; either real or personal;

(3) Damage of $1,000 or more to Contractor or subcontractor owned or leased motor vehicles or mobile equipment; or

(4) Damage for which a contract time extension may be requested.

(b) Accident and fire reports required by paragraph (a) above shall be accomplished by the following means:

(1) Accidents or fires resulting in a death, hospitalization of five or more persons, or destruction of Federal real or personal property, the total value of which is estimated at $100,000 or more, shall be reported immediately by telephone to the Contracting Officer or his/her authorized representative and shall be confirmed by telegram, facsimile or e-mail transmission within 24 hours to the Contracting Officer. Such telegram or facsimile transmission shall state all known facts as to extent of injury and damage and as to cause of the accident or fire.

(2) Other accident and fire reports required by paragraph (a) above may be reported by the Contractor using a state, private insurance carrier, or Contractor accident report form which provides for the statement of:

(i) The extent of injury; and

(ii) The damage and cause of the accident or fire.

Such report shall be mailed or otherwise delivered to the Contracting Officer within 48 hours of the occurrence of the accident or fire.

(c) The Contractor shall assure compliance by subcontractors at all tiers with the requirements of this clause.

(End of clause)

3052.228–70 Insurance.

As prescribed in (HSAR) 48 CFR 3028.310–70 and 3028.311–1, insert a clause substantially the same as follows. The contracting officer may specify additional kinds (*e.g.*, aircraft public and passenger liability, vessel liability) or increased amounts of insurance.

Insurance (Dec 2003)

In accordance with the clause entitled "Insurance—Work on a Government Installation" [*or Insurance—Liability to Third Persons*] in Section I, insurance of the following kinds and minimum amounts shall be provided and maintained during the period of performance of this contract:

(a) Worker's compensation and employer's liability. The contractor shall, as a minimum, meet the requirements specified at (FAR) 48 CFR 28.307–2(a).

(b) General liability. The contractor shall, as a minimum, meet the requirements specified at (FAR) 48 CFR 28.307–2(b).

(c) Automobile liability. The contractor shall, as a minimum, meet the requirements specified at (FAR) 48 CFR 28.307–2(c).

(End of clause)

3052.228–90 Notification of Miller Act payment bond protection (USCG).

As prescribed in USCG guidance at (HSAR) 48 CFR 3028.106–490, insert the following clause:

Notification of Miller Act Payment Bond Protection (Dec 2003)

This notice clause shall be inserted by first tier subcontractors in all their subcontracts and shall contain information pertaining to the surety that provided the payment bond under the prime contract.

(a) The prime contract is subject to the Miller Act (40 U.S.C. 270), under which the prime contractor has obtained a payment bond. This payment bond may provide certain unpaid employees, suppliers, and subcontractors a right to sue the bonding surety under the Miller Act for amounts owned for work performed and materials delivery under the prime contract.

(b) Persons believing that they have legal remedies under the Miller Act should consult their legal advisor regarding the proper steps to take to obtain these remedies. This notice clause does not provide any party any rights against the Federal Government, or create any relationship, contractual or otherwise, between the Federal Government and any private party.

(c) The surety which has provided the payment bond under the prime contract is:

(Name)

(Street Address)

(City, State, Zip Code)

(Contact & Tel. No.)

(End of clause)

3052.228–91 Loss of or damage to leased aircraft (USCG).

As prescribed in USCG guidance at (HSAR) 48 CFR 3028.306–90(a) and (b), insert the following clause:

Loss of or Damage to Leased Aircraft (Dec 2003)

(a) The Government assumes all risk of loss of, or damage (except normal wear and tear) to, the leased aircraft during the term of this lease while the aircraft is in the possession of the Government.

(b) In the event of damage to the aircraft, the Government, at its option, shall make the necessary repairs with its own facilities or by contract, or pay the Contractor the reasonable cost of repair of the aircraft.

(c) In the event the aircraft is lost or damaged beyond repair, the Government shall pay the Contractor a sum equal to the fair market value of the aircraft at the time of such loss or damage, which value may be specifically agreed to in clause 3052.228–92, "Fair Market Value of Aircraft," less the salvage value of the aircraft. However, the Government may retain the damaged aircraft or dispose of it as it wishes. In that event, the Contractor will be paid the fair market value of the aircraft as stated in the clause.

(d) The Contractor agrees that the contract price does not include any cost attributable to hull insurance or to any reserve fund it has established to protect its interest in the aircraft. If, in the event of loss or damage to the leased aircraft, the Contractor receives compensation for such loss or damage in any form from any source, the amount of such compensation shall be:

(1) Credited to the Government in determining the amount of the Government's liability; or

(2) For an increment of value of the aircraft beyond the value for which the Government is responsible.

(e) In the event of loss of or damage to the aircraft, the Government shall be subrogated to all rights of recovery by the Contractor against third parties for such loss or damage and the Contractor shall promptly assign such rights in writing to the Government.

(End of clause)

3052.228–92 Fair market value of aircraft (USCG).

As prescribed in USCG guidance at (HSAR) 48 CFR 3028.306–90(a) and (c), insert the following clause:

Fair Market Value of Aircraft (Dec 2003)

For purposes of the clause entitled "Loss of or Damage to Leased Aircraft," the fair market value of the aircraft to be used in the performance of this contract shall be the lesser of the two values set out in paragraphs (a) and (b) below:

(a) $; or

(b) If the contractor has insured the same aircraft against loss or destruction in connection with other operations, the amount of such insurance coverage on the date of the loss or damage for which the Government may be responsible under this contract.

(End of clause)

3052.228–93 Risk and indemnities (USCG).

As prescribed in USCG guidance at (HSAR) 48 CFR 3028.306–90(a) and (d), insert the following clause:

Risk and Indemnities (Dec 2003)

The Contractor hereby agrees to indemnify and hold harmless the Government, its officers and employees from and against all claims, demands, damages, liabilities, losses, suits and judgments (including all costs and expenses incident thereto) which may be suffered by, accrue against, be charged to or recoverable from the Government, its officers and employees by reason of injury to or death of any person other than officers, agents, or employees of the Government or by reason of damage to property of others of whatsoever kind (other than the property of the Government, its officers, agents or employees) arising out of the operation of the aircraft. In the event the Contractor holds or obtains insurance in support of this covenant, evidence of insurance shall be delivered to the Contracting Officer.

(End of clause)

3052.231–70 Precontract costs.

As prescribed in (HSAR) 48 CFR 3031.205–32, insert the following clause:

Precontract Costs (Dec 2003)

The Contractor shall be entitled to reimbursement for pre-contract costs incurred on or after in an amount not to exceed $ that, if incurred after this contract had been entered into, would have been reimbursable under this contract.

(End of clause)

3052.236–70 Special precautions for work at operating airports.

As prescribed in (HSAR) 48 CFR 3036.570, insert the following clause:

Special Precautions for Work at Operating Airports (Dec 2003)

(a) When work is to be performed at an operating airport, the Contractor must arrange its work schedule so as not to interfere with flight operations. Such operations will take precedence over construction convenience. Any operations of the Contractor which would otherwise interfere with or endanger the operations of aircraft shall be performed only at times and in the manner directed by the Contracting Officer. The Government will make every effort to reduce the disruption of the Contractor's operation.

(b) Unless otherwise specified by local regulations, all areas in which construction operations are underway shall be marked by yellow flags during daylight hours and by red lights at other times. The red lights along the edge of the construction areas within the existing aprons shall be the electric type of not less than 100 watts intensity placed and supported as required. All other construction markings on roads and adjacent parking lots may be either electric or battery type lights. These lights and flags shall be placed so as to outline the construction areas and the distance between any two flags or lights shall not be greater than 25 feet. The Contractor shall provide adequate watch to maintain the lights in working condition at all times other than daylight hours. The hour of beginning and the hour of ending of daylight will be determined by the Contracting Officer.

(c) All equipment and material in the construction areas or when moved outside the construction area shall be marked with airport safety flags during the day and when directed by the Contracting Officer, with red obstruction lights at nights. All equipment operating on the apron, taxiway, runway, and intermediate areas after darkness hours shall have clearance lights in conformance with instructions from the Contracting Officer. No construction equipment shall operate within 50 feet of aircraft undergoing fuel operations. Open flames are not allowed on the ramp except at times authorized by the Contracting Officer.

(d) Trucks and other motorized equipment entering the airport or construction area shall do so only over routes determined by the Contracting Officer. Use of runways, aprons, taxiways, or parking areas as truck or equipment routes will not be permitted unless specifically authorized for such use. Flag personnel shall be furnished by the Contractor at points on apron and taxiway for safe guidance of its equipment over these areas to assure right of way to aircraft. Areas and routes used during the contract must be returned to their original condition by the Contractor. Airport management shall establish the maximum speed allowed at the airport. Vehicles shall be operated so as to be under safe control at all times, weather and traffic conditions considered. Vehicles must be equipped with head and taillights during the hours of darkness.

(End of clause)

3052.237–70 Qualifications of contractor employees.

As prescribed in (HSAR) 48 CFR 3037.110–70(a), insert the following clause:

Qualifications of Contractor Employees (Dec 2003)

(a) "Sensitive Information" is any information or proprietary data which if subject to unauthorized access, modification, loss, or misuse could adversely affect the national interest, the conduct of Federal programs, or the privacy to which individuals are entitled under 5 U.S.C. 552a (The Privacy Act), but that has not been specifically authorized under criteria established by an Executive Order or an Act of Congress to be kept classified in the interest of national defense or foreign policy.

(b) Work under this contract may involve access to sensitive information. Therefore, the Contractor shall not disclose, orally or in writing, any sensitive information to any person unless authorized in writing by the Contracting Officer. For those contractor employees authorized access to sensitive information, the contractor shall ensure that these persons receive training concerning the protection and disclosure of sensitive information both during and after contract performance.

(c) Contractor employees working on this contract must complete such forms, as may be necessary for security or other reasons, including the conduct of background investigations to determine suitability. Completed forms shall be submitted as directed by the Contracting Officer. Upon the Contracting Officer's request, the Contractor's employees shall be fingerprinted, or subject to other investigations as required.

(d) The Contracting Officer may require dismissal from work those employees deemed incompetent, careless, insubordinate, or otherwise objectionable, or whose continued employment is deemed contrary to the public interest or inconsistent with the best interest of national security.

(e) Each employee of the Contractor shall be a citizen of the United States of America, or an alien who has been lawfully admitted for permanent residence as evidenced by an Alien Registration Receipt Card Form I–151. An alien authorized to work shall present evidence from the Bureau of Citizenship and Immigration Services that employment will not affect his or her immigration status.

(f) The Contractor shall include the substance of this clause in all subcontracts at any tier where the subcontractor may have access to Government facilities, sensitive information, or resources.

(End of clause)

3052.237–71 Information technology systems access for contractors.

As prescribed in (HSAR) 48 CFR 3037.110–70(a) and (b), insert a clause substantially as follows. The contracting officer may specify additional IT security requirements unique to an OE.

Information Technology Systems Access for Contractors (Dec 2003)

(a) No contractor personnel shall start work under this contract that involves actual or potential access to sensitive information until (1) approved for access, (2) they have received a security briefing, or current refresher, about Information Technology (IT) security, from the appropriate Organizational Element (OE) Information Systems Security Officer (ISSO); and (3) have signed a non-disclosure agreement form. This user security agreement is provided as an Attachment to this solicitation. By signing the user security agreement, the individual will be acknowledging their responsibility to properly use and safeguard all DHS OE information technology resources and information related thereto. The Contracting Officer Technical Representative (COTR) for this contract shall arrange the aforementioned security briefing. The ISSO is responsible for retaining the non-disclosure documents signed and submitted by the contractor employees as well evidence of security training.

(b) The contractor shall have access only to those areas of DHS OE information technology resources explicitly stated in this contract or approved by the COTR in writing as necessary for performance of the work under this contract. Information technology assets includes computer equipment, networking equipment, telecommunications equipment, cabling, network drives, computer drives, network software, computer software, software programs, intranet sites, and Internet sites. Any attempts by contractor personnel to gain access to any information technology resources not expressly authorized by the statement of work, other terms and conditions in this contract, or as approved in writing by the COTR, is strictly prohibited. In the event of violation of this provision, DHS will take appropriate actions with regard to the contract.

(c) Contractor access to DHS networks from a remote location is a temporary privilege for mutual convenience while the contractor performs business for the DHS OE. It is not a right, a guarantee of access, a condition of the contract, nor is it Government Furnished Equipment (GFE).

(d) Contractor access will be terminated for unauthorized use. The contractor agrees to hold and save DHS harmless from any unauthorized use and agrees not to request additional time or money under the contract for any delays resulting from unauthorized use or access.

(End of clause)

3052.237–72 Contractor personnel screening for unclassified information technology access.

As prescribed in 3037.110–70(a) and (b), insert a clause substantially as follows:

Contractor Personnel Screening for Unclassified Information Technology Access (Dec 2003)

(a) Contractor personnel requiring privileged access or limited risk assessment level. Guidance for selecting the appropriate level of screening is based on the risk of adverse impact to DHS missions, as indicated in FIPS PUB 199, Standards for Security Categorization of Federal Information and Information Systems (Initial Public Draft).

(b) The Contractor shall afford DHS, including the Office of Inspector General, access to the Contractor's and subcontractors' facilities, installations, operations, documentation, databases and personnel used in performance of the contract. Access shall be provided to the extent required to carry out a program of IT inspection, investigation and audit to safeguard against threats and hazards to the integrity, availability and confidentiality of DHS data or to the function of computer systems operated on behalf of DHS, and to preserve evidence of computer crime.

(c) The Contractor shall incorporate the substance of this clause in all subcontracts that meet the conditions in paragraph (a) of this clause.

(End of clause)

3052.242–70 Dissemination of information—educational institutions.

As prescribed in (HSAR) 48 CFR 3042.203–70(a), insert the following clause:

Dissemination of Information—Educational Institutions (Dec 2003)

(a) The Department of Homeland Security (DHS) desires widespread dissemination of the results of funded non-sensitive research. The Contractor, therefore, may publish (subject to the provisions of the "Data Rights" and "Patent Rights" clauses of the contract) research results in professional journals, books, trade publications, or other appropriate media (a thesis or collection of theses should not be used to distribute results because dissemination will not be sufficiently widespread). All costs of publication pursuant to this clause shall be borne by the Contractor and shall not be charged to the Government under this or any other Federal contract.

(b) Any copy of material published under this clause shall contain acknowledgment of DHS's sponsorship of the research effort and a disclaimer stating that the published material represents the position of the author(s) and not necessarily that of DHS. Articles for publication or papers to be presented to professional societies do not require the authorization of the Contracting Officer prior to release. However, a printed or electronic copy of each article shall be transmitted to the Contracting Officer at least two weeks prior to release or publication.

(c) Press releases concerning the results or conclusions from the research under this contract shall not be made or otherwise distributed to the public without prior written approval of the Contracting Officer.

(d) Publication under the terms of this clause does not release the Contractor from the obligation of preparing and submitting to the Contracting Officer a final report containing the findings and results of research, as set forth in the schedule of the contract.

(End of clause)

3052.242–71 Dissemination of contract information.

As prescribed in (HSAR) 48 CFR 3042.203–70(b), insert the following clause:

Dissemination of Contract Information (Dec. 2003)

The Contractor shall not publish, permit to be published, or distribute for public consumption, any information, oral or written, concerning the results or conclusions made pursuant to the performance of this contract, without the prior written consent of the Contracting Officer. An electronic or printed copy of any material proposed to be published or distributed shall be submitted to the Contracting Officer.

(End of clause)

3052.242–72 Contracting officer's technical representative.

As prescribed in (HSAR) 48 CFR 3042.7000, insert the following clause:

Contracting Officer's Technical Representative (Dec. 2003)

(a) The Contracting Officer may designate Government personnel to act as the Contracting Officer's Technical Representative (COTR) to perform functions under the contract such as review or inspection and acceptance of supplies, services, including construction, and other functions of a technical nature. The Contracting Officer will provide a written notice of such designation to the Contractor within five working days after contract award or for construction, not less than five working days prior to giving the contractor the notice to proceed. The designation letter will set forth the authorities and limitations of the COTR under the contract.

(b) The Contracting Officer cannot authorize the COTR or any other representative to sign documents, such as contracts, contract modifications, etc., that require the signature of the Contracting Officer.

(End of clause)

3052.245–70 Government property reports.

As prescribed in (HSAR) 48 CFR 3045.505–70, insert the following clause:

Government Property Reports (Dec. 2003)

(a) The Contractor shall prepare an annual report of Government property in its possession and the possession of its subcontractors.

(b) The report shall be submitted to the Contracting Officer not later than September 15 of each calendar year on Form DHS F 4220.43, Contractor Report of Government Property.

(End of clause)

3052.247–70 F.o.b. origin information.

As prescribed in (HSAR) 48 CFR 3047.305–70(a), insert the following provision:

F.O.B. Origin Information (Dec. 2003)

The offeror shall furnish information with the offer:

(a) Location of the offeror's actual shipping point(s) (street address, city, state, and zip code) from which supplies will be delivered to the Government;

(b) Whether the offered shipping point has a private railroad siding, and the name of the rail carrier serving it;

(c) When the offered shipping point does not have a private siding, the names and addresses of the nearest public rail siding and of the carrier serving it; and

(d) The quantity of supplies to be shipped from each shipping point.

(End of provision)

Alternate I (Dec. 2003)

If delivery is "f.o.b. origin, contractor's facility," and the designated facility is not covered by the line-haul transportation rate, add the following paragraph to the basic provision:

(e) The charges required to deliver the shipment to the point where the line-haul rate is applicable.

Alternate II (Dec. 2003)

When delivery is "f.o.b. origin, freight allowed," add the following paragraph to the basic provision:

(e) The basis on which transportation charges will be allowed, including the origin and destination from and to which transportation charges will be allowed.

3052.247–71 F.o.b. origin only.

As prescribed in (HSAR) 48 CFR 3047.305–70(b), insert the following provision:

F.O.B. Origin Only (Dec. 2003)

Offers are invited on the basis of f.o.b. origin only. Offers submitted on any other basis will be rejected as nonresponsive.

(End of provision)

3052.247–72 F.o.b. destination only.

As prescribed in (HSAR) 48 CFR 3047.305–70(c), insert the following provision:

F.O.B. Destination Only (Dec. 2003)

Offers are invited on the basis of f.o.b. destination only. Offers submitted on any other basis will be rejected as nonresponsive.

PART 3053—FORMS

Subpart 3053.1—General

Sec.
3053.101 Requirements for use of forms.
3053.103 Exceptions.

Subpart 3053.2—Prescription of Forms

3053.204–70 Administrative matters.

3053.222–70 Application of labor laws to Government acquisitions.
3053.227–70 Conveyance of invention rights acquired by the Government.
3053.245–70 Contractor report of government property.

Subpart 3053.3—Illustrations of Forms

3053.303 Agency forms.

Subpart 3053.1—General

3053.101 Requirements for use of forms.

Unless excepted, forms prescribed in (FAR) 48 CFR part 53 and (HSAR) 48 CFR part 3053 are required for use by all OEs.

3053.103 Exceptions.

Requests for exceptions to forms contained in (FAR) 48 CFR part 53 and to DHS forms in (HSAR) 48 CFR part 3053 shall be submitted, as prescribed in (FAR) 48 CFR 53.103, to the CPO.

Subpart 3053.2—Prescription of Forms

3053.204–70 Administrative matters.

The following forms are prescribed for use in the closeout of applicable contracts, as specified in (HSAR) 48 CFR 3004.804–570:

(a) DHS Form 0700–01, Cumulative Claim and Reconciliation Statement. (See (HSAR) 48 CFR 3004.804–570(a)(1).)

(b) DHS Form 0700–02, Contractor's Assignment of Refunds, Rebates, Credits and Other Amounts. (See (HSAR) 48 CFR 3004.570(a)(2).)

(c) DHS Form 0700–03, Contractor Release. (See (HSAR) 48 CFR 3004.804–570(a)(3).)

3053.222–70 Application of labor laws to Government acquisitions.

The following form is prescribed for use in connection with the application of labor laws, as specified in (HSAR) 48 CFR 3022.406–9: DHS Form 0070–04, Employee's Claim for Wage Restitution.

3053.227–70 Conveyance of invention rights acquired by the Government.

The following form is prescribed for including a means for contractors to report inventions made in the course of contract performance, as specified in (HSAR) 48 CFR 3027.305–4: DD Form 882, Report of Inventions and Subcontracts.

3053.245–70 Report of Government property.

The following form is prescribed for use by contractors to report Government property, as specified in (HSAR) 48 CFR 3045.505–14: DHS Form 0070–05, Contractor's Report of Government Property.

Subpart 3053.3—Illustrations of Forms

3053.303 Agency forms.

This section illustrates agency-specified forms. To access these forms go to: *http://www.dhs.gov/dhspublic/display?theme=37*.

Form name	Form No.
Cumulative Claim and Reconciliation Statement	DHS Form 0070–01
Contractor's Assignment of Refunds, Rebates, Credits and Other Amounts	DHS Form 0070–02
Contractor Release	DHS Form 0070–03
Employee's Claim for Wage Restitution	DHS Form 0070–04
Contractor's Report of Government Property	DHS Form 0070–05
Report of Inventions and Subcontract	DD 882

Appendix—HSAR Matrix

Note: This appendix will not appear in the Code of Federal Regulations.

BILLING CODE 4410–10–P

HSAR MATRIX

Key:

P or C = Provision or Clause
IBR = Is Incorporation By Reference authorized?
UCF = Uniform Contract Format Section, when applicable

R = Required
A = Required-When-Applicable
O = Optional

Principle type of contract:
FP SUP = Fixed-Price Supply
CR SUP = Cost-Reimbursement Supply
FP R&D = Fixed-Price Research & Development
CR R&D = Cost-Reimbursement Research & Development
FP SVC = Fixed-Price Service
CR SVC = Cost Reimbursement Service
FP CON = Fixed-Price Construction
CR CON = Cost Reimbursement Construction
T&M LH = Time & Material/Labor Hours
LMV = Leasing of Motor Vehicles

Contract Purpose
COM SVC = Communication Services
DDR = Dismantling, Demolition, or Removal of Improvements
A-E = Architect-Engineering
FAC = Facilities
IND DEL = Indefinite Delivery
TRN = Transportation
SA = Simplified Acquisition
UTL SVC = Utility Services

Provision or Clause	Prescribed in	P or C	IBR	UCF	Principle Type and/or Purpose of Contract: FP SUP	CR SUP	FP R&D	CR R&D	FP SVC	CR SVC	FP CON	CR CON	T&M LH	LMV	COM SVC	DDR	A&E	FAC	IND DEL	TRN	SA	UTL SVC
3052.204-70 Security Requirements for Unclassified Information Technology Resources.	3004.470-4 & 3037.110-70 (a) & (b)	C	NO	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
3052.209-70 Prohibition on Contracts with Corporate Expatriates	3009.104-75	C	NO	I	R	E	R	E	R	R	R	R	R	R	R	R	R	R	R	R	R	R
3052.209-71 Reserve Officer Training Corps and Military Recruiting on Campus. (USCG)	3009.470-4	P	YES	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
3052.209-72 Disclosure of Conflicts of Interest.	3009.507	P	YES	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
3052.211-70 Index for Specifications	30011.204-70	C	YES	I	A	A	A	A			A	A				A					A	
3052.211-90 Bar Coding Requirement. (USCG)	USCG 3011.204-90(a) 3013.302-590	C	YES	I	A	A													A			
3052.213-90 Evaluation Factor for Coast Guard Performance of Bar Coding Requirement. (USCG)	3013.106-190	P	YES	M	A		A		A											A		
3052.215-70 Key Personnel or Facilities.	3015.204-3	C	YES	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
3052.216-70 Evaluation of Offers Subject to an Economic Price Adjustment Clause.	3016.203-470	P	YES	M	A		A		A		A		A									
3052.216-71 Determination of Award Fee	3016.406(e)(1)(i)	C	YES	I	A	A		A		A		A										
3052.216-72 Performance Evaluation Plan	3016.406(e)(1)(ii)	C	YES	I	A	A		A		A		A										
3052.216-73 Distribution of Award Fee	3016.406(e)(1)(iii)	C	YES	I	A	A		A		A		A										
3052.216-74 Settlement of Letter Contract	3016.603-4	C	YES	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
3052.217-90 Delivery and Shifting of Vessel (USCG)	3017.9000 (a) & (b)	C	YES	I	A	A																

HSAR MATRIX

Provision or Clause	Prescribed In	P or C	IBR	UCF	Principle Type and/or Purpose of Contract																		
					FP SUP	CR SUP	FP R&D	CR R&D	FP SVC	CR SVC	FP CON	CR CON	T&M L&H	LMV	COM SVC	DDR	A&E	FAC	IND DEL	TRN	SA	UTL SVC
3052.217-91 Performance. (USCG)	USCG 3017.9000 (a) & (b)	C	YES	I					A													
3052.217-92 Inspection and Manner of Doing Work. (USCG)	USCG 3017.9000 (a) & (b)	C	YES	I					A													
3052.217-93 Subcontracts. (USCG)	USCG 3017.9000 (a) & (b)	C	YES	I					A													
3052.217-94 Lay Days. (USCG)	USCG 3017.9000 (a) & (b)	C	YES	I					A													
3052.217-95 Liability and Insurance. (USCG)	USCG 3017.9000 (a) & (b)	C	YES	I					A													
3052.217-96 Title. (USCG)	USCG 3017.9000 (a) & (b)	C	YES	I					A													
3052.217-97 Discharge of Liens. (USCG)	USCG 3017.9000 (a) & (b)	C	YES	I					A													
3052.217-98 Delays. (USCG)	USCG 3017.9000 (a) & (b)	C	YES	I					A													
3052.217-99 Department of Labor Safety and Health Regulations for Ship Repair. (USCG)	USCG 3017.9000 (a) & (b)	C	YES	I					A													
3052.217-100 Guarantee. (USCG)	USCG 3017.9000 (c)	C	YES	I					A													
3052.219-70 Small Business Program Subcontracting Reporting.	3019.219-70(a)	C	YES	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A		A
3052.219-71 DHS Mentor-Protege Program.	3019.708-70(b)	C	YES		A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A		A
3052.219-72 Evaluation of Prime Contractor Participation in the Mentor-Protégé Program.	3019-708-70 (c)	P	YES	M	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A		A
3052.222-70 Strikes or Picketing Affecting Timely Completion of the Contract Work.	3022.101-71(a)	C	YES	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
3052.222-71 Strikes or Picketing Affecting Access to a DHS Facility.	3022.101-71(b)	C	YES	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
3052.222-90 Local Hire.(USCG)	3022.9001	C	YES	I					A	A	A	A			A		A		A			A
3052.223-70 Removal or Disposal of Hazardous Substance- Applicable Licenses and Permits.	3023.303	C	YES	I					A	A	A	A	A			A		A			A	
3052.223-90 Accident and Fire Reporting. (USCG)	USCG 3023.9000(a)	C	YES	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A

HSAR MATRIX

Provision or Clause	Prescribed In	P or C	IBR	UCF	Principle Type and/or Purpose of Contract																		
					FP SUP	CR SUP	FP R&D	CR R&D	FP SVC	CR SVC	FP CON	CR CON	T&M L&H	LMV	COM SVC	DDR	A&E	FAC	IND DEL	TRN	SA	UTL SVC
3052.228-70 Insurance.	3028.310-70 3028.311-1	C	YES	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
3052.228-90 Notification of Miller Act Payment Bond Protection. (USCG)	USCG 3028.106-490	C	YES	I							A	A										
3052.228-91 Loss of or Damage to Leased Aircraft. (USCG)	USCG 3028.306-90(a) & (b)	C	YES	I					A	A			A								A	
3052.228-92 Fair Market Value of Aircraft. (USCG)	USCG 3028.306-90 (a) & (c)	C	YES	I					A	A			A								A	
3052.228-93 Risk and Indemnities. (USCG)	USCG 3028.306-90 (a) & (d)	C	YES	I					A	A			A								A	
3052.231-70 Precontract Costs	3031.205-32	C	YES	I		A		A		A		A										
3052.236-70 Special Provisions for Work at Operating Airports	3036.570	C	YES	I							A	A	A			A	A	A			A	A
3052.237-70 Qualifications of Employees.	3037.110-70(a)	C	YES	I					A	A					A							A
3052.237-71 Information Technology Systems Access for Contractors.	3037.110-70 (a) & (b)	C	NO	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
3052.237-72 Contractor Personnel Screening for Unclassified Information Technology.	3037.110-70 (a) & (b)	C	NO	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
3052.242.70 Dissemination of Information-Educational Institutions.	3042.203-70(a)	C	YES	I			A	A														
3052.242-71 Dissemination of Contract Information.	3042.203-70(b)	C	YES	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A		A
3052.242-72 Contracting Officer's Technical Representative.	3042.7000	C	YES	I	A	A	A	A	A	A	A	A	A		A	A	A	A	A	A		
3052.245.70 Government Property Reports	3045.505-70	C	YES	I	A	A	A	A	A	A	A	A	A		A	A	A	A	A	A		
3052.247-70 F.O.B. Origin Information.	3047.247-70(a)	P	YES	L	A									A					A		A	
3052.247-71 F.O.B. Origin Only	3047.247-70(b)	P	YES	L	A									A					A		A	
3052.247-72 F.O.B. Destination Only.	3047.247-70(c)	P	YES	L	A									A					A		A	

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Federal Register

Thursday,
December 4, 2003

Part III

Department of the Treasury

Community Development Financial Institutions Fund

CDFI Fund Native American Initiative; Notice of Funds Availability (NOFA) Inviting Applications for the Native American CDFI Assistance Program; Notices

DEPARTMENT OF THE TREASURY

Community Development Financial Institutions Fund

CDFI Fund Native American Initiative

AGENCY: Community Development Financial Institutions Fund, Department of the Treasury.

ACTION: Preamble for the CDFI Fund's Native American Initiative, which includes: The Native American CDFI Assistance (NACA) Program; the Native American Technical Assistance (NATA) Component (part of the Technical Assistance Component) of the CDFI Program; and the Native American CDFI Development (NACD) Program.

SUMMARY:

I. Legislative Background

The Community Development Banking and Financial Institutions Act of 1994 (12 U.S.C. 4701 *et seq.*) (the "Act") authorizes the Community Development Financial Institutions Fund (the "Fund") of the U.S. Department of the Treasury to promote economic revitalization and community development through investment in and assistance to Fund-certified community development financial institutions ("CDFIs") through the CDFI Program. The Consolidated Appropriations Resolution, 2003 (Pub. L. 108–7) authorizes the Fund to provide financial assistance ("FA") and technical assistance ("TA") to benefit Native American, Alaska Native and Native Hawaiian communities (hereafter referred to as "Native American Communities"), with such benefit being provided primarily through qualified community development lender organizations with experience and expertise in community development banking and lending in Indian country, Native American organizations, Tribes and tribal organizations and other suitable providers.

II. The CDFI Fund's Overall Strategic Objectives

Credit and investment capital are essential ingredients for developing affordable housing, starting or expanding businesses, meeting unmet market needs, and stimulating economic growth. Access to financial services is critical to helping bring more Americans into the economic mainstream. The Fund's programs are designed to address the unique capitalization and/or technical capacity needs of CDFIs and other community development entities so that they may better meet the needs of their particular target markets through loans, investments, financial services and other related activities. This strategy builds strong institutions that make loans and investments and provide financial services in markets (including economically distressed investment areas and disadvantaged targeted populations) whose needs for loans, investments, and financial services have not been fully met by traditional financial institutions.

III. The CDFI Fund's Native American Initiative

Pursuant to the Act, in 2001, the Fund completed and published the Native American Lending Study ("the Study"), which identifies significant barriers to lending and investment in Native American Communities throughout the country and strategies for overcoming those barriers. One of the barriers identified by the Study is the fact that there are few CDFIs and other financial institutions that serve Native American Communities. Since CDFIs are important tools for developing self-sustaining economies in many underserved communities, the Fund seeks to assist Native American Communities to create CDFIs as well as to strengthen CDFIs already serving those communities.

The Fund seeks to accomplish these goals through its Native American Initiative. The primary objective of the Native American Initiative is to increase the market coverage and capacity of Native American CDFIs throughout the country. While the Fund also is undertaking other activities, such as its comprehensive training program, to further strengthen Native American CDFIs, the Native American Initiative principally comprises three facets:

(1) *Native American CDFI Assistance (NACA) Program:* Through the NACA Program, the Fund provides (i) FA and/or TA awards to Native American CDFIs and entities that can be certified as Native American CDFIs at time of award; and (ii) TA awards to entities that propose to become Native American CDFIs within two years and "Sponsoring Entities" (*e.g.*, Native American organizations, Tribes, Tribal organizations) that propose to create separate legal entities that will become Native American CDFIs within two years. A NOFA covering two annual funding rounds for the NACA Program is published in this issue of the **Federal Register**, subject to funding availability and Fiscal Year 2004 and Fiscal Year 2005 appropriations. Interested parties may obtain additional and detailed information on the NACA Program, including application materials, through the Fund's website at *www.cdfifund.gov*. Summary information on the NACA Program is provided in the chart, below.

(2) *Native American Technical Assistance (NATA) Component (part of the Technical Assistance Component of the CDFI Program):* Through the NATA Component, the Fund provides capacity-building TA grants to Native American CDFIs, entities that can be certified as Native American CDFIs at time of award, and entities that propose to become Native American CDFIs within two years. The FY 2003 and 2004 NOFA for the NATA Component/Technical Assistance Component was published in the February 4, 2003 issue of the **Federal Register** (68 FR 5735). The Fund is accepting applications on a rolling basis (subject to funding availability) through May 31, 2004. Interested parties may obtain additional and detailed information on the NATA Component, including application materials, through the Fund's website at *www.cdfifund.gov*. Summary information on the NATA Component is provided in the chart, below.

(3) *Native American Community Development (NACD) Program:* Through the NACD Program, the Fund provides TA grants to Sponsoring Entities to facilitate the creation of separate legal entities that will become Native American CDFIs within two years. The FY 2003 and 2004 NOFA for the NACD Program was published in the February 4, 2003 issue of the **Federal Register** (68 FR 5731). The Fund is accepting applications on a rolling basis (subject to funding availability) through May 31, 2004. Interested parties may obtain additional and detailed information on the NACD Program, including application materials, through the Fund's website at *www.cdfifund.gov*. Summary information on the NACD Program is provided in the chart, below.

Component or program	Purpose; types and amounts of assistance available	Eligible applicants	Application deadlines
Native American CDFI Assistance Program.	FA awards (grants, loans, equity investments, secondary capital accounts, deposits, credit union shares) to support financing needs, and/or TA grants to build capacity to serve target markets, including operating grants; up to $500,000 per award. Eligible Uses of TA Funds: technology acquisition, training, consulting services, staff salary for certain purposes, and operating funds.	FA/TA awards. *Type 1:* certified Native American CDFIs or certifiable Native American CDFIs (i.e., entities that can be certified as Native American CDFIs at time of award). TA awards only. *Type 2:* emerging Native American CDFIs (*i.e.*, entities that propose to become Native American CDFIs withing two years of receiving the award); and. *Type 3:* Sponsoring Entities (*e.g.*, Native American organizations, Tribes and Tribal organizations) that propose to create an entity that will become a Native American CDFI within two years of receiving the award. Ineligible Applicants: Firms that provide training or TA in community developments finance (such organizations are eligible to apply through NACD).	Applications will be accepted and evaluated in two rounds: Round 1: application deadline is March 15, 2004; Round 2: application deadline is January 30, 2005 (subject to FY 2004 funding availability).
NATA Component	TA grants to build capacity to serve target markets; up to $100,000 per award. Eligible Uses of TA Funds: technology acquisition, training, consulting services, staff salary for certain purposes. Ineligible Uses of TA Funds: operating funds.	Certified Native American CDFIs, certifiable Native American CDFIs (*i.e.*, entities that can be certified as Native American CDFIs at time of award), emerging Native American CDFIs (*i.e.*, entities that propose to become Native American CDFIs within two years of receiving the award). Ineligible Applicants: Sponsoring Entities (as described under NACD below), and entities that the Fund has previously selected to receive over $250,000 in TA or FA (in aggregate).	Applications will be accepted and elevated on a first-come, first reviewed basis, beginning February 4, 2003 through May 31, 2003 (subject to FY 2004 funding availability).
NACD Program	TA grants to build capacity to create Native American CDFIs; up to $100,000 per award. The applying entity must use the TA award to assist in the establishment of a separately incorporated, new Native American CDFI. Eligible Uses of TA Funds: technology acquisition, training, consulting services, staff salary for certain purposes. Ineligible Use of TA Funds: operating funds.	Sponsoring Entities that will not themselves become Native American CDFIs but instead plan to create separate Native American CDFIs. Such entities include (a) *Category I:* Tribes, Tribal entities and nonprofit organizations that primarily serve Native American, Alaska Native and/or Native Hawaiian populations; and (b) *Category II:* firms that provide training or TA in community development finance or that specialize in economic development in Native American, Alaska Native and/or Native Hawaiian communities, and other suitable providers, including CDC, certified CDFIs, or organizations with experience and expertise in banking and lending in Native American, Alaska Native and/or Native Hawaiian communities. Ineligible Applicants: certified Native American CDFIs, certifiable Native American CDFIs (*i.e.*, entities that can be certified as Native American CDFIs at time of award, emerging Native American CDFIs (*i.e.*, entities that propose to become Native American CDFIs within two years of receiving the award).	

In addition to the Native American Initiative, described above, the Fund administers the New Markets Tax Credit ("NMTC") Program, the Financial Assistance Component and the Technical Assistance Component of the CDFI Program, and the Bank Enterprise Award Program. Interested parties are encouraged to learn more about these programs, and how to apply, through the Fund's website at *www.cdfifund.gov*.

A Native American CDFI may apply for a FA award through either the FA Component or the NACA Program. While an applicant may receive only one FA award through either the FA Component or the NACA Program, an applicant, its subsidiaries or affiliates may apply for and receive: (i) A tax credit allocation through the NMTC Program; (ii) a TA award through the CDFI Program; (iii) an award through the NACD Program; or (iv) an award through the BEA Program, subject to certain restrictions described in the BEA Program regulations.

Catalog of Federal Domestic Assistance: 21.020

Authority: 12 U.S.C. 4703, 4703 note, 4704, 4706, 4707, 4717; 12 CFR part 1805, Pub. L. 107–73, Pub. L. 108–7.

Dated: November 21, 2003.

Tony T. Brown,

Director, Community Development Financial Institutions Fund.

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DEPARTMENT OF THE TREASURY

Community Development Financial Institutions Fund

Notice of Funds Availability (NOFA) Inviting Applications for the Native American CDFI Assistance Program

AGENCY: Community Development Financial Institutions Fund, Department of the Treasury.

ACTION: Notice of funds availability ("NOFA") inviting applications for the Native American CDFI Assistance ("NACA") Program.

SUMMARY: This NOFA is issued in connection with two annual funding rounds of the NACA Program, one using FY 2003 and FY 2004 appropriated funds ("Round One") and one using FY 2004 and FY 2005 appropriated funds ("Round Two"), if appropriated funds are available. Through the NACA Program and subject to appropriation of funding for the purposes enumerated in this NOFA, the Community Development Financial Institutions Fund (the "Fund") will provide Financial Assistance ("FA") awards and/or Technical Assistance ("TA") grants to community development financial institutions ("CDFIs") that primarily serve Native American, Alaska Native and/or Native Hawaiian communities (hereafter referred to as "Native American CDFIs," serving "Native American Communities"). The NACA Program will also provide TA grants to entities proposing to become Native American CDFIs within a specified time frame and "Sponsoring Entities" (*e.g.*, Native American organizations, Tribes and Tribal organizations that propose to create entities that will become Native American CDFIs).

The Fund expects to award approximately $5 million for Round One awards, and approximately $3 million for Round Two awards. Interested parties should be aware that electing to defer the submission of a NACA Program application in Round Two, rather than in Round One, entails some risk since Round Two funds have not yet been appropriated. If neither FY 2004 funds nor FY 2005 funds are appropriated for the purposes set forth in this NOFA, there will not be a Round Two. The Fund reserves the right to award in excess of said amounts under this NOFA provided that appropriated funds are available and the Fund deems it appropriate. The Fund reserves the right to re-allocate funds from the amounts that are anticipated to be available under this NOFA to other Native American programs administered by the Fund, particularly if the Fund determines that the number of awards made under this NOFA is fewer than projected.

Under this NOFA, an applicant may apply for a FA award, a TA grant, or a combination of the two (within certain limits, described below). The Fund expects that it will award up to $150,000 per awardee receiving only TA and up to $500,000 per awardee receiving only FA or a combination of FA and TA. The Fund, in its sole discretion, reserves the right to award amounts in excess of the anticipated maximum award amount if the Fund deems it appropriate; or to provide a TA grant for uses other than, or in an amount greater or less than that which is requested by an applicant, including to applicants requesting only FA. The Fund reserves the right to fund, in whole or in part, any, all, or none of the applications submitted in response to this NOFA.

A certified Native American CDFI may apply for FA through either the FA Component or the NACA Program. While an applicant may receive only one FA award through either the FA Component or the NACA Program, an applicant, its subsidiaries or affiliates may apply for and receive: (a) A tax credit allocation through the NMTC Program; (b) a TA award through the CDFI Program; (c) an award through the Bank Enterprise Award Program (subject to certain limitations); and/or (d) an award through the NACD Program. Terms not defined in this NOFA are as defined in the interim regulations for the CDFI Program, found at 12 CFR part 1805.

DATES: The Fund will make available the Round One NACA Program funding application on its website at *http://www.cdfifund.gov* in early January, 2004. At that time, interested parties may download the application form from the Fund's website or request application packages by contacting the Fund, as described below.

Round One applicants may submit applications after February 1, 2004. Round One applications must be received in the specific Bureau of the Public Debt (BPD) office designated below not later than 5:00 p.m. ET on March 15, 2004.

Subject to the availability of appropriated funds, Round Two applicants may submit applications after December 1, 2004. Round Two applications must be received in the BPD office designated below not later than 5:00 p.m. ET on February 1, 2005.

Late applications received in the specific BPD office designated below will be rejected and returned to the sender.

Applications sent by facsimile or e-mail will not be accepted; however, an electronic application may be made available for this NOFA at a later date. If so, its availability and related guidance will be announced on the Fund's website (*www.cdfifund.gov*).

Applicants must submit one original and two (2) copies of their complete application. Applicants seeking CDFI certification with the funding application must submit one additional original and one additional copy of Section III (the CDFI certification section) of the application. Each copy should be placed in a three-ring binder, without staples or other forms of binding and each section should be separated by tabs. Each original should not be placed in a binder nor include tabs. To facilitate processing, please clearly identify originals and copies of applications as "Funding" and "Certification" applications.

ADDRESSES: Applications must be sent to: CDFI Fund Grants Management and Compliance Manager, Bureau of Public Debt, 200 Third Street, Room 210, Parkersburg, WV 26101. The telephone number to be used in conjunction with overnight mailings to this address is (304) 480–5450. Applications will not be accepted at the Fund's offices in Washington, DC. Applications received in the Fund's offices will be rejected and returned to the sender.

FOR FURTHER INFORMATION CONTACT: If you wish to request an application package or if you have any questions about the programmatic requirements for this program, please contact the Fund by e-mail at *cdfihelp@cdfi.treas.gov;* by telephone at (202) 622–6355; by facsimile at (202) 622–7754; or by mail to CDFI Fund, 601 13th Street, NW., Suite 200 South, Washington, DC 20005.

If you have questions regarding application submission procedures, contact the Fund's Grants Management and Compliance Manager by e-mail at gmc@cdfi.treas.gov; by telephone at (202) 622–8662; by facsimile at (202) 622–6453; or by mail to CDFI Fund, 601 13th Street, NW., Suite 200 South, Washington, DC 20005.

These are not toll free numbers. Allow at least one to two weeks from the date the Fund receives a request for receipt of the application package. Applications and other information regarding the Fund and its programs may be downloaded from the Fund's website at *www.cdfifund.gov*.

SUPPLEMENTARY INFORMATION:

I. Eligibility

At the time an entity submits its application under this NOFA, it must be a duly organized and validly existing legal entity under the laws of the jurisdiction, including tribal jurisdiction, as applicable, in which it is incorporated or otherwise established. The following sets forth additional details and certain additional dates that relate to the submission of applications under this NOFA:

Eligible Applicants; CDFI Certification: Eligible applicants for the NACA Program consist of three types of entities:

Type 1: Certified and Certifiable Native American CDFIs

Certified Native American CDFIs: Native American CDFIs: Any certified CDFI that primarily serves a Native American Community and whose CDFI certification expires after July 31, 2004 (for Round One applicants) or after July 31, 2005 (for Round Two applicants); or

Certifiable Native American CDFIs: Any entity that primarily serves a Native American Community and that submits a complete CDFI certification application, received by the Fund prior to or simultaneous with its NACA funding application, demonstrating, in the judgment of the Fund, that it is certifiable as a CDFI by the date of award.

Any Type 1 applicant whose CDFI certification will expire before July 31, 2004 (for Round One applicants) or before July 31, 2005 (for Round Two applicants) or that is not yet certified as of the date of submission of a NACA Program application must deliver a CDFI certification application (obtained through the Fund's website at *www.cdfifund.gov*) in advance of the funding application due date for the NACA Program round to which the applicant is applying, or the applicant must deliver a CDFI certification application as part of the NACA Program application.

Type 2: Emerging Native American CDFIs

Any entity that primarily serves a Native American Community and demonstrates in its NACA Program application, in the judgment of the Fund, that it is certifiable as a CDFI by the following dates: a Round One applicant must deliver a complete CDFI certification application by October 1, 2006, evidencing that the applicant can be certified as a CDFI, and must be certified as a CDFI by December 31, 2006; a Round Two applicant must deliver a complete certification application by October 1, 2007, evidencing that the applicant can be certified as a CDFI, and must be certified as a CDFI by December 31, 2007.

Type 3: Sponsoring Entities

Any entity that proposes to create a separate legal entity that will become a Native American CDFI and demonstrates in its NACA Program application, in the judgment of the Fund, that it is certifiable as a CDFI by the following dates: a Round One applicant must deliver a complete CDFI certification application by October 1, 2007, evidencing that the applicant can be certified as a CDFI, and must be certified as a CDFI by December 31, 2007; a Round Two applicant must deliver a complete certification application by October 1, 2008, evidencing that the applicant can be certified as a CDFI, and must be certified as a CDFI by December 31, 2008. For purposes of this NOFA, Sponsoring Entities include: (a) Tribes, tribal entities, Alaska Native Villages, Village Corporations, Regional Corporations, Non-Profit Regional Corporations/Associations, or Inter-Tribal or Inter-Village organizations; (b) organizations whose primary mission is to serve a Native American Community including but not limited to: Urban Indian Centers, Tribally-Controlled Community Colleges, community development corporations (CDCs), training or educational organizations, or Chambers of Commerce, that serve primarily a Native American Community.

Prior Awardees: Applicants must be aware that success in a prior round of the CDFI Program, including the NACTA and NATA Components, or the NACD Program is not indicative of success under this NOFA. Prior awardees are eligible to apply under this NOFA, except as follows:

The Fund is generally prohibited from obligating more than $5 million in assistance, in the aggregate, to any one organization and its Subsidiaries and Affiliates during any three-year period (further guidance on the calculation of the $5 million cap is available on the Fund's website at *www.cdfifund.gov*);

The Fund will not consider an application submitted by an applicant that is a prior Fund awardee under any Fund program or component of the CDFI Program if the applicant has been barred from applying to the Fund through the applicable funding round, has outstanding reports due to the Fund as of the due date of the application, or is considered to be in default of its assistance agreement. Awardees whose assistance agreements terminate in default status will only be considered to be in default of their assistance agreements for one year from the date the final compliance status is determined; and

The Fund reserves the right to reject an application without consideration that has been submitted by an applicant that is a prior Fund awardee under any Fund program or component of the CDFI Program that has a balance of $5,000 or more in undisbursed funds, under said previous award, as of the applicable application deadline of this NOFA.

Accordingly, applicants that are prior Fund awardees are advised to: (a) submit all required reports by the deadlines specified in the assistance or award agreements governing said prior awards and to comply with all requirements found therein, and (b) contact the Grants Management and Compliance Manager to ensure that actions are underway for the disbursement of any outstanding balance of $5,000 or more for said prior award. All outstanding reports or compliance questions should be

directed to the Grants Management and Compliance Manager by e-mail at *gmc@cdfi.treas.gov;* by telephone at (202) 622–8662; by facsimile at (202) 622–6453; or by mail to CDFI Fund, 601 13th Street, NW., Suite 200 South, Washington, DC 20005.

Designation of Targeted Population: For purposes of this NOFA, the Fund will use the following definitions for Native American, set forth in the Office of Management and Budget (OMB) Notice, Revisions to the Standards for the Classification of Federal Data on Race and Ethnicity (October 30, 1997): (a) American Indian, Native American or Alaska Native: a person having origins in any of the original peoples of North and South America (including Central America) and who maintains tribal affiliation or community attachment; and (b) Native Hawaiian: a person having origins in any of the original peoples of Hawaii.

II. Types of Assistance

Through this NACA Program NOFA, the Fund offers two types of awards: FA and TA. A Type 1 (Certified and Certifiable Native American CDFIs) applicant may submit an application under this NOFA for an FA and/or a TA award. A Type 2 (Emerging Native American CDFIs) or a Type 3 (Sponsoring Entities) applicant may submit an application for a TA grant only. In no event will the Fund disburse FA to an awardee until the awardee is certified as a CDFI.

Financial Assistance: FA may be provided by the Fund in the form of an equity investment (including, in the case of certain insured credit unions, secondary capital accounts), a grant, loan, deposit, credit union shares, or any combination thereof. The Fund reserves the right, in its sole discretion, to provide FA in an amount, form and/or for uses other than that which is requested by an applicant.

Technical Assistance: A TA award is provided in the form of a grant for the purpose of enhancing the capacity of the entity to serve its target market. The Fund reserves the right, in its sole discretion, to provide TA in an amount and/or for uses other than that which is requested by an applicant. Eligible TA grant uses are limited to the following:

Grants to Purchase Technology and/or Services, which will enhance the capacity of the Native American CDFI or proposed Native American CDFI to serve its target market, including the following: (a) Acquiring consulting services; (b) paying staff salary for the limited purposes of completing tasks and/or fulfilling functions that are otherwise eligible TA uses under this NOFA; (c) acquiring/enhancing technology items; and (d) acquiring training for staff, management, or board members. Grants to purchase technology and/or services are capped at $50,000 per application. The Fund will not consider requests for grants to purchase technology and/or services under this NOFA for expenses that, in the determination of the Fund, are deemed to be ongoing operating expenses rather than non-recurring expenses (other than as provided below). The Fund will consider requests for TA to pay staff salary, other than as provided below for Operating Grants, only when the applicant demonstrates and represents to the satisfaction of the Fund that: (i) The staff salary relates directly to building the applicant's capacity to serve its target market; or (ii) the proposed staff time to be paid for by the TA grant will be used for a non-recurring activity that will build the applicant's capacity to achieve its objectives as set forth in its Application; (iii) the proposed capacity-building activity would otherwise be contracted to a consultant or not be undertaken; and (iv) the staff person assigned to the proposed task has the competence to successfully complete the activity.

Grants to Cover Operating Expenses, to cover recurring expenses including staff salary, rent, utilities and other key operating expenses, that will enhance the capacity of the entity to serve its target market. Grants to cover operating expenses are capped at $100,000 per application. An applicant applying for a grant to cover operating expenses, including staff salary, may not also request TA for staff salary (described above). Type 1 (Certified and Certifiable Native American CDFIs) and Type 2 (Emerging Native American CDFIs) applicants are eligible for grants to cover operating expenses only if they began incurring operating expenses less than five years prior to the date of application.

Further guidance on the limited uses of TA grants for staff salary expenditures is available on the Fund's website at *www.cdfifund.gov.*

III. Application

An applicant under this NOFA must submit all materials described in the application. An application must include a valid and current Employer Identification Number, issued by the Internal Revenue Service, or the application will be rejected as incomplete and returned to the sender.

IV. Matching Funds

Applicants requesting FA under this NOFA must obtain matching funds from sources other than the Federal government on the basis of not less than one dollar for each dollar of FA provided by the Fund. Matching funds are not required for TA grants. Matching funds must be at least comparable in form and value to the FA provided by the Fund (for example, if an applicant seeks an FA grant from the Fund, the applicant must obtain matching funds through grant(s) from non-Federal sources that are at least equal to the amount provided by the Fund).

For Round One applicants, 25 percent of the matching funds must be in-hand or firmly committed on or after January 1, 2002, and before the date of application, in order to be considered by the Fund. Any applicant seeking an FA award that does not meet these matching funds requirements will not be considered for an FA award. The Fund reserves the right to recapture and reprogram any Round One award if the awardee fails to have the remaining matching funds firmly committed by May 15, 2005 (with documentation of such received by the Fund not later than May 31, 2005), or to grant an extension of said matching funds deadline, if the Fund deems it appropriate.

For Round Two applicants, 25 percent of the matching funds must be in-hand or firmly committed on or after January 1, 2003 and before the date of application, in order to be considered by the Fund. Any applicant seeking an FA award that does not meet these matching funds requirements will not be considered for an FA award. The Fund reserves the right to recapture and reprogram any Round Two award if the awardee fails to have the remaining matching funds firmly committed by May 15, 2006 (with documentation of such received by the Fund not later than May 31, 2006), or to grant an extension of said matching funds deadline, if the Fund deems it appropriate.

For purposes of this NOFA, "in-hand" means that the applicant has actually received the matching funds and has documentation (such as a copy of a check) to evidence such receipt; "firmly committed" means that the applicant has entered into or received a legally binding commitment from the matching funds source that the matching funds have been committed to be disbursed to the applicant and the applicant has documentation (such as a copy of a loan agreement, promissory note or grant agreement) to evidence such firm commitment.

Funds used by an applicant as matching funds for a prior Fund award or under another Federal grant or award program cannot be used to satisfy the matching funds requirement. If an applicant seeks to use as matching fund monies received from an organization that was a prior Fund awardee, the Fund will deem such funds to be Federal funds, unless the funding entity establishes to the reasonable satisfaction of the Fund, that such funds do not originate from other Fund or Federal sources, in part or in whole.

V. Evaluation

The Fund will determine whether an application is complete and the applicant meets the eligibility requirements set forth above. Any application that is incomplete or any applicant that does not meet the eligibility requirements will be rejected.

Following these determinations, the Fund will conduct the substantive review of each application in accordance with the criteria and procedures described in this NOFA and the application. The Fund will evaluate each application on a 100-point scale, comprising the four criteria categories set forth below, and assign numeric scores. Applicants whose applications are assigned 50 points or more in the aggregate, will receive additional consideration for an award under the NACA Program. The Fund does not anticipate making an award to an applicant whose score in any of the four criteria categories falls significantly short of the total points allowable in that category, defined here as less than 40 percent of the total points allowable.

Market Analysis/Program Design and Implementation. For FA-Only or FA/TA: A review of the applicant's (a) understanding of its market context, its current and prospective customers, the extent of economic distress within the designated Investment Area(s) and/or the extent of need within the designated Targeted Population(s), the extent of need for Equity Investments, loans, Development Services, and Financial Services within the designated Target Market, and the extent of demand within the Target Market for the applicant's current or proposed products and services, and (b) product design and implementation plan, including an assessment of its products and services, marketing and outreach efforts, and delivery strategy. For TA-Only: A review of the applicant's understanding of its market context (including a description of the nature of economic distress in the Target Market), its current and prospective customers, the extent of need for the Native American CDFI, the level of support for a CDFI in the Target Market, and the appropriateness of the proposed products, services, and delivery strategy to meet the needs in the market. To the extent the applicant lacks one of the elements, the Fund will assess its plan to address the deficiencies including requesting TA. (Maximum 25 points);

Management. For FA-Only or FA/TA Applicants: A review of the applicant's current and proposed management team, governing board, and key staff, its policies and procedures for financial management, and its track record in underwriting and portfolio management, if applicable, and ability to achieve the objectives set forth in its application (including use of TA, as appropriate). For TA-Only Applicants: to the extent the applicant lacks one of the elements, the Fund will assess its plan to address the deficiencies including requesting TA. (Maximum 25 points);

Financial Health and Resources. For FA-Only or FA/TA Applicants: A review of the applicant's financial track record and financial projections and the strength and likelihood of obtaining resources to sustain projected levels of financing and operations, and a clear indication that the CDFI will not be fiscally dependent on the Fund. For TA-Only Applicants: to the extent the applicant lacks one of the elements, the Fund will assess its plan to address the deficiencies including requesting TA. (FA-Only and FA/TA applicants: maximum 20 points; TA-Only applicants: maximum 10 points); and

Community Development Performance/Effective Use of Award. For FA-Only or FA/TA Applicants: A review of the applicant's projected level of activity within the Target Market (in terms of Development Services, Financial Services, and financial products); the extent to which the proposed activities are expected to promote homeownership, affordable housing development, economic development, provision of affordable financial services, and other community development objectives; the extent to which the applicant needs the Fund's financial and/or technical assistance to achieve the objectives set forth in its application; and the likelihood that the Fund's assistance will enhance the applicant's capacity to effectively serve its Target Market and achieve community development impact. If requesting TA, the applicant should describe how improving the organization would translate to community development impact within its Target Market. For TA-Only Applicants: A review of the description of how improving the organization would translate to community development impact within its Target Market; the extent to which the applicant needs the Fund's technical assistance to achieve the objectives set forth in its application and the likelihood that the Fund's assistance will enhance the applicant's capacity to effectively serve its Target Market and achieve community development impact. To the extent the applicant lacks one of the elements, the Fund will assess its plan to address the deficiencies including requesting TA. Prior Awardees (under CDFI or NACD Programs), must show how activities, new market served, and/or additional activities are over and above those previously funded by the Fund. (FA-Only and FA/TA applicants: maximum 30 points; TA-Only applicants: maximum 40 points).

Technical Assistance Proposal: Any applicant seeking a TA grant, either alone or in conjunction with a request for a FA award, must complete a Technical Assistance Proposal (TAP) as part of its application. The TAP consists of a summary of the organizational improvements needed to achieve the objectives of its application, a budget, and a description of the requested goods and/or services comprising the TA award request. The budget and accompanying narrative will be evaluated for the eligibility and appropriateness of proposed uses of the TA award (described above). The TAP is not scored.

Fund reviewers will evaluate and score each application and make recommendations for funding. As part of the substantive review process, applicants may receive a telephone interview or an on-site visit by Fund reviewers for the purpose of obtaining, clarifying, or confirming information. During the review process, the applicant may be required to submit additional information about its application in order to assist the Fund in its final evaluation process. Such requests must be responded to within the time parameters set by the Fund.

In the case of an applicant that has previously received funding from the Fund under the CDFI Program, including the Native American CDFI Technical Assistance (NACTA) Component, or the NACD Program, the Fund will consider, as appropriate: (a) the applicant's level of success and extent of compliance in meeting its performance goals, financial soundness covenants (if applicable) and other requirements contained in the assistance or award agreement(s) with the Fund (including timeliness of reporting); (b) the benefits that will be created with new Fund assistance over and above benefits created by previous Fund assistance; and (c) the extent and

effectiveness to which the applicant has used previous assistance from the Fund.

The Fund will make a final funding determination based on the applicant's file, reviewer score and recommendation, and the amount of funds available. In the case of regulated CDFIs and applicants proposing to create a regulated institution, the Fund will also take into consideration the views of the appropriate Federal Regulatory agencies. If the applicant's CAMEL rating is a "4" or "5" or the regulator otherwise indicates safety and soundness concerns, the Fund, in its sole discretion, will not make an award. The Fund's award decisions are final.

Each applicant will be informed of the Fund's award decision either through a Notice of Award if selected for an award (see Notice of Award section, below) or a declination letter, if not selected for an award, which may be for reasons of application incompleteness, ineligibility or substantive issues. Any applicant that is not selected for an award due to application incompleteness or ineligibility, and that believes that such decision was made in error, may appeal said decision by notifying the Fund's Grants Management and Compliance (GMC) Manager in writing or by e-mail (if by e-mail, send to *appeals@cdfi.treas.gov*, with the subject line stating "Eligibility Appeal" and the award control number assigned by the Fund to the particular award). Such appeals must be received by the Fund within five business days of the date of the declination letter.

All applicants that are not selected for awards based on substantive issues, will be given the opportunity to request feedback on the strengths and weaknesses of their applications. This feedback will be provided in a format and within a timeframe to be determined by the Fund, based on available resources.

The Fund reserves the right to change these evaluation procedures if the Fund deems it appropriate; if said procedural changes materially affect the Fund's award decisions, the Fund will provide information regarding the procedural changes through the Fund's website.

VI. Notice of Award

The Fund will signify its selection of an applicant as an awardee by delivering a signed Notice of Award to the applicant. The Notice of Award will contain the general terms and conditions underlying the Fund's provision of assistance including, but not limited to, the requirement that an awardee and the Fund enter into an Assistance Agreement. The applicant shall execute the Notice of Award and return it to the Fund. By executing a Notice of Award, the awardee agrees that, if prior to entering into an Assistance Agreement with the Fund, information comes to the attention of the Fund that either adversely affects the awardee's eligibility for an award, or adversely affects the Fund's evaluation of the awardee's application, or indicates fraud or mismanagement on the part of the awardee, the Fund may, in its discretion and without advance notice to the awardee, terminate the Notice of Award or take such other actions as it deems appropriate. Moreover, by executing a Notice of Award, an awardee agrees that, if prior to entering into an Assistance Agreement with the Fund, the Fund determines that the awardee or its Affiliates are not in compliance with the terms of any previous Assistance Agreement or award agreement entered into with the Fund, the Fund may, in its discretion and without advance notice to the awardee, either terminate the Notice of Award or take such other actions as it deems appropriate. The Fund reserves the right, in its sole discretion, to rescind its award if the awardee fails to return the Notice of Award, signed by the authorized representative of the awardee, along with any other requested documentation, within the deadline set by the Fund.

VII. Assistance Agreement

Each applicant that is selected to receive an award under this NOFA must enter into an Assistance Agreement with the Fund. The Assistance Agreement will set forth certain required terms and conditions of the award, which may include, but not be limited to, (a) the amount of the award; (b) the approved uses of the award; (c) the approved Target Market to which the award must be targeted; (d) performance goals and measures; and (e) reporting requirements for all awardees. Assistance Agreements under this NOFA will have two-year terms. The Fund reserves the right, in its sole discretion, to rescind its award if the awardee fails to return the Assistance Agreement, signed by the authorized representative of the awardee, along with any other requested documentation, within the deadline set by the Fund.

In addition to entering into an Assistance Agreement, each awardee that receives an award either (a) in the form of a loan, equity investment, credit union shares/deposits, or secondary capital, in any amount, or (b) a FA grant in an amount greater than $500,000, must furnish to the Fund an opinion from its legal counsel, the content of which will be specified in the Assistance Agreement, to include, among other matters, an opinion that the awardee: (i) Is duly formed and in good standing in the jurisdiction in which it was formed and/or operates; (ii) has the authority to enter into the Assistance Agreement and undertake the activities that are specified therein; and (iii) has no pending or threatened litigation that would materially affect its ability to enter into and carry out the activities specified in the Assistance Agreement.

VIII. Reporting and Monitoring

The Fund will collect information, on at least an annual basis, from all NACA awardees, including: (a) Annual reports related to, among other matters, awardee compliance with the performance goals and measures and financial soundness covenants and CAMEL ratings (as applicable) as set forth in the Assistance Agreement; (b) audited financial statements; (c) annual surveys; and (d) such other information as the Fund may require, including loan level data. The Fund reserves the right, in its sole discretion, to modify these reporting requirements if it determines it to be appropriate and necessary; however, such reporting requirements will be modified only after due notice to the awardee.

The Fund reserves the right, in accordance with applicable Federal law and if authorized, to charge award reservation and/or compliance monitoring fees to all entities receiving CDFI Program awards. Prior to imposing any such fee, the Fund will publish additional information concerning the nature and amount of the fee.

IX. Information Sessions

In connection with this NOFA, the Fund may conduct Information Sessions to disseminate information to organizations contemplating applying to, and other organizations interested in learning about, the NACA Program as well as the NATA Component and the NACD Program. For further information on the Fund's Information Sessions, dates and locations, or to register online to attend an Information Session, please visit the Fund's website at *www.cdfifund.gov*. If you do not have Internet access, you may register by calling the Fund at (202) 622–8401.

Catalog of Federal Domestic Assistance: 21.020

Authority: 12 U.S.C. 4703, 4703 note, 4704, 4706, 4707, 4717; 12 CFR part 1805, Pub. L. 108–7.

Dated: November 25, 2003.

Tony T. Brown,

Director, Community Development Financial Institutions Fund.

[FR Doc. 03–30175 Filed 12–3–03; 8:45 am]

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Federal Register

Thursday,
December 4, 2003

Part IV

Environmental Protection Agency

40 CFR Parts 302 and 355

Reportable Quantity Adjustments for Carbamates and Carbamate-Related Hazardous Waste Streams; Reportable Quantity Adjustment for Inorganic Chemical Manufacturing Processes Waste (K178); Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 302 and 355

[SW H–FRL–7594–4]

RIN 2050–AE12

Reportable Quantity Adjustments for Carbamates and Carbamate-Related Hazardous Waste Streams; Reportable Quantity Adjustment for Inorganic Chemical Manufacturing Processes Waste (K178)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The U.S. Environmental Protection Agency (EPA or "the Agency") is proposing reportable quantity (RQ) adjustments for 28 individual carbamates and five carbamate-related hazardous waste streams listed as hazardous wastes under the Resource Conservation and Recovery Act, and as hazardous substances with one-pound statutory RQs under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). In addition, EPA is proposing to adjust the one-pound statutory RQ of another hazardous waste stream, K178, which is unrelated to the carbamates addressed in this rule.

EPA thoroughly evaluated the intrinsic properties of these substances to assess the possibility of harm from the release of each substance into the environment and to determine the appropriate levels that require release notification. The proposed RQ adjustments will relieve the regulated community and emergency response personnel from the burden of making and receiving reports of releases that are unlikely to pose a threat to public health or welfare or the environment.

DATES: To make sure we consider your comments on this proposed rule, they must be postmarked on or before February 2, 2004. Comments postmarked after this date will be marked "late" and may not be considered.

ADDRESSES: Comments submitted by regular U.S. Postal Service mail should be sent to: Docket Coordinator, Superfund Docket Office, Mail Code 5202T, U.S. Environmental Protection Agency Headquarters, Ariel Rios Building, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. Comments may also be submitted electronically, in person, or by special delivery. To ensure proper receipt by EPA, it is imperative that you identify the appropriate docket control number in the subject line on the first page of your comment. These docket control numbers, as well as detailed instructions on how to submit your comments, are provided in the section entitled "How and to Whom Do I Submit Comments?" in the supplemental information portion of this preamble.

FOR FURTHER INFORMATION CONTACT: For general information, contact the RCRA, Superfund, and EPCRA Hotline at 800/424–9346 or TDD 800/553–7672 (hearing impaired). In the Washington, DC metropolitan area, call 703/412–9810 or TDD 703/412–3323 (hearing impaired). For information on specific aspects of the rule, contact Lynn Beasley of the Office of Emergency and Remedial Response (5204G), U.S. Environmental Protection Agency, Ariel Rios Building, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. Ms. Beasley's e-mail address is *beasley.lynn@epa.gov*, and her telephone number is 703/603–9086.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Potentially Regulated Entities

Type of entity	Examples of affected entities
Industry	Manufacturers, handlers, transporters, and other users of carbamates. These substances are often used as insecticides, fungicides, herbicides, accelerators in the vulcanization of rubber, or as chemical intermediates in the manufacture of drugs, pesticides, or resins. In addition, entities that may release K178 waste streams will also be affected.
State, Local, or Tribal Governments	State Emergency Response Commissions, and Local Emergency Planning Committees.
Federal Government	National Response Center, and any Federal agency that may release these carbamates and waste streams.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that EPA is now aware could potentially be regulated by this action. Other types of entities not listed in the table could also be regulated. To determine whether your facility, company, business, or organization is regulated by this action, you should carefully examine the proposed changes to 40 CFR parts 302 and 355. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

B. How Can I Get Copies of Support Documents for This Rule?

1. *Docket.* EPA has established an official public docket for the Carbamates and Carbamate-Related Hazardous Waste Streams (Docket ID No. SFUND–2002–0010) and an official public docket for the Inorganic Chemical Manufacturing Processes Waste (K178) (Docket ID No. SFUND–2002–0011). The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Superfund Docket in the EPA Docket Center, (EPA/DC) EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Superfund Docket is (202) 566–0270. You may copy a maximum of 100 pages from any regulatory docket at no cost. Additional copies cost $0.15 per page. The Docket Office will mail copies of materials to you if you are located outside the Washington, DC metropolitan area.

2. *Electronic Access.* You may access this **Federal Register** document electronically through the EPA Internet under the **Federal Register** listings at *http://www.epa.gov/fedrgstr/*.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the appropriate docket identification number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the Docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

For additional information about EPA's electronic public docket, visit EPA Dockets online or see 67 FR 38102, May 31, 2002.

C. How and to Whom Do I Submit Comments?

You may submit comments electronically, by mail, by facsimile, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket identification number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments. However, late comments may be considered if time permits.

1. *Electronically.* If you submit an electronic comment as prescribed below, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets.* Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket*, and follow the online instructions for submitting comments. Once in the system, select "search," and then key in Docket ID No. SFUND–2002–0010 for the Carbamates and Carbamate-Related Hazardous Waste Streams or Docket ID No. SFUND–2002–0011 for the Inorganic Chemical Manufacturing Processes Waste (K178). The system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail.* Comments may be sent by electronic mail (e-mail) to *superfund.docket@epa.gov*, Attention Docket ID No. SFUND–2002–0010 for Carbamates and Carbamate-Related Hazardous Waste Streams or Docket ID No. SFUND–2002–0011 for Inorganic Chemical Manufacturing Processes Waste (K178). In contrast to EPA's electronic public docket, EPA's e-mail system is not an "anonymous access" system. If you send an e-mail comment directly to the Docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM.* You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Unit I.C.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By Mail.* Send an original and two copies of your comments to: Superfund Docket, Environmental Protection Agency, Mailcode: [5202T], 1200 Pennsylvania Ave., NW., Washington, DC, 20460, Attention Docket ID No. SFUND–2002–0010 for Carbamates and Carbamate-Related Hazardous Waste Streams or Docket ID No. SFUND–2002–0011 for Inorganic Chemical Manufacturing Processes Waste (K178).

3. *By Hand Delivery or Courier.* Deliver your comments to: Public Reading Room, Room B102, EPA West Building, 1301 Constitution Avenue, NW., Washington, DC, Attention Docket ID No. SFUND–2002–0010 for Carbamates and Carbamate-Related Hazardous Waste Streams or Docket ID No. SFUND–2002–0011 for Inorganic Chemical Manufacturing Processes Waste (K178). Such deliveries are only accepted during the Docket's normal hours of operation as identified in Unit I.B.1.

4. *By Facsimile.* Fax your comments to: (202) 566–0272, Attention Docket ID. No. SFUND–2002–0010 for Carbamates and Carbamate-Related Hazardous Waste Streams or Docket ID No. SFUND–2002–0011 for Inorganic Chemical Manufacturing Processes Waste (K178).

D. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at your estimate.

5. Provide specific examples to illustrate your concerns.

6. Offer alternatives.

7. Make sure to submit your comments by the comment period deadline identified.

8. To ensure proper receipt by EPA, identify the appropriate docket identification number in the subject line on the first page of your response. It would also be helpful if you provided the name, date, and **Federal Register** citation related to your comments.

II. Outline of Today's Preamble

A. Overview
1. Statutory Authority
2. Does this proposed rule apply to me?
3. What types of releases are exempt from these reporting requirements?
B. Background
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2. What methodology is EPA using to adjust the RQs of the individual carbamates?
3. What RQs are proposed for the individual carbamates?
4. How is EPA adjusting the RQs for the carbamate-related waste streams?
5. What RQs are proposed for these carbamate-related waste streams?
6. What conforming changes are being made to Table 302.4 and its Appendix A?
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8. What RQ is proposed for the K178 waste stream?
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1. Executive Order 12866: Regulatory Planning and Review
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4. Unfunded Mandates Reform Act
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6. Executive Order 13175: Consultation and Coordination with Indian Tribal Governments
7. Executive Order 13045: Protection of Children from Environmental Risks and Safety Risks
8. Executive Order 13211: Actions that Significantly Affect Energy Supply, Distribution or Use
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III. Preamble for Reportable Quantity Adjustments for Carbamates and Carbamate-Related Hazardous Waste Streams; Reportable Quantity Adjustment for Inorganic Chemical Manufacturing Processes Waste (K178)

A. Overview

1. Statutory Authority

The Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), 42 U.S.C. 9601 *et seq.*, as amended by the Superfund Amendments and Reauthorization Act of 1986, gives the Federal government broad authority to respond to releases or threats of releases of hazardous substances from vessels and facilities. The term "hazardous substance" is defined in section 101(14) of CERCLA by referencing various Federal environmental statutes. For example, the term includes "any hazardous waste having the characteristics identified under or listed pursuant to section 3001 of the Solid Waste Disposal Act * * *," also known as the Resource Conservation and Recovery Act (RCRA).

Section 102(b) of CERCLA establishes reportable quantities (RQs) of one pound ("statutory RQs") for releases of most CERCLA hazardous substances. Under section 102(a) of CERCLA, the Administrator of EPA has the authority to adjust these RQs by regulation ("adjusted RQs").

Under CERCLA section 103(a), the person in charge of a vessel or facility from which a CERCLA hazardous substance has been released in a quantity that equals or exceeds its RQ must immediately notify the National Response Center (NRC) of the release. A release is reportable if an RQ or more is released within a 24-hour period (see 40 CFR 302.6). This reporting requirement serves as a trigger for informing the government of a release so that Federal personnel can evaluate the need for a Federal removal or remedial action and undertake any necessary action in a timely fashion.

In addition to the reporting requirements under CERCLA section 103, section 304 of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA), 42 U.S.C. 11001 *et seq.*, requires owners or operators of certain facilities to report releases of extremely hazardous substances (EHSs) and CERCLA hazardous substances to State and local authorities (see 40 CFR 355.40). After the release of a hazardous substance in a quantity equal to or greater than its RQ, facility owners or operators must immediately notify the community emergency coordinator for each local emergency planning committee for any area likely to be affected by the release, and the State emergency response commission of any State likely to be affected by the release.

2. Does This Proposed Rule Apply to Me?

The person in charge of a vessel or facility from which a CERCLA hazardous substance is released in a quantity that equals or exceeds its RQ must notify appropriate authorities who can evaluate whether a government response is needed. Therefore, this proposed rule may affect the following entities: (1) Persons in charge of vessels or facilities that may release CERCLA hazardous substances (as identified in this proposal) and owners or operators of facilities that may release EHSs or CERCLA hazardous substances (as identified in this proposal) into the environment; and (2) entities that plan for or respond to such releases.

3. What Types of Releases Are Exempt From the Reporting Requirements?

In determining whether you must report the release of a carbamate that equals or exceeds its RQ, it should be noted that section 103(e) of CERCLA exempts from the notification provisions of CERCLA section 103(a): "* * * the application of a pesticide product registered under the Federal Insecticide, Fungicide, and Rodenticide Act or * * * the handling and storage of such a pesticide product by an agricultural producer." The legislative history of CERCLA suggests that Congress intended this exemption to apply to the application of a pesticide generally in accordance with the pesticide's purpose.

In addition, if a release of a CERCLA hazardous substance meets the criteria under CERCLA section 103(e) for an exemption from reporting to the NRC, the same release is also exempt from reporting to State and local authorities under EPCRA section 304. In the context of today's proposed rule, EPA believes that the CERCLA section 103(e) reporting exemption provides a potential source of reporting relief under both CERCLA and EPCRA for certain releases of carbamate pesticides.

As EPA previously noted in an April 4, 1985 final rule (50 FR 13464), we do not consider the spill of a pesticide to be an application of the pesticide, nor do we consider a pesticide spill to be in accordance with the pesticide's purpose. Consequently, spills of a carbamate pesticide that equal or exceed an RQ must be reported to the NRC under CERCLA section 103 and to the appropriate State and local authorities under EPCRA section 304.

B. Background

In today's notice of proposed rulemaking (NPRM), EPA is proposing to adjust the statutory one-pound RQs for 28 individual carbamates and five carbamate-related waste streams. Today's rulemaking includes proposed RQ adjustments not only for individual carbamates, but also for thiocarbamates, dithiocarbamates, carbamoyl oximes, and several other individual substances that are closely related to carbamate production and/or waste generation. For purposes of simplicity, however, the preamble to today's proposed rule refers to all 28 individual substances for which RQ adjustments are being proposed as "carbamates," and to the five waste streams as "carbamate-related" waste streams. In addition, EPA is proposing to adjust the one-pound statutory RQ of another hazardous waste stream, K178, which is unrelated to the carbamates addressed in this rule (see Section III.C.8 of today's preamble for information regarding K178). A summary of the developments leading up to today's proposed rulemaking as it relates to the carbamate-related substances is provided below.

On November 8, 1984, Congress amended RCRA by enacting the Hazardous and Solid Waste Amendments of 1984 (HSWA), 42 U.S.C. 6901 *et seq.* In one provision of HSWA—a newly added RCRA section 3001(e)(2)—Congress directed EPA to determine whether several wastes, including wastes generated from the production of carbamates, should be listed as RCRA hazardous wastes. Carbamates are widely used as active ingredients in pesticides, herbicides, insecticides, and fungicides, and in the production of synthetic rubber. Before Congress enacted HSWA in 1984, EPA already had regulated several carbamate substances under RCRA, CERCLA, and other statutes.

Based on our evaluation of the carbamate production wastes, we published on March 1, 1994 (59 FR 9808), a proposal to list 80 carbamate-related substances as RCRA hazardous wastes and as CERCLA hazardous substances. These 80 substances included: (1) 70 individual carbamates; (2) six carbamate-related waste streams; and (3) four categories of carbamate substances. Subsequently, on February 9, 1995 (60 FR 7824), we finalized the listing of 64 of these 80 substances as RCRA hazardous wastes and CERCLA hazardous substances, deferring action on 12 individual substances and the four categories of carbamate substances included in the proposed rule. Thus, EPA listed a total of 58 individual carbamates and six carbamate-related hazardous waste streams as RCRA hazardous wastes and CERCLA hazardous substances in the February 9, 1995 final rule. We published corrections to minor errors in these listings in the **Federal Register** on April 17, 1995 (60 FR 19165) and May 12, 1995 (60 FR 25619). We also modified our interpretation of the rule as it affected listings for K156 and K157 hazardous wastes on August 14, 1995 (60 FR 41817).

On November 1, 1996, the Court of Appeals (D.C. Circuit) ruled that EPA failed to follow proper rulemaking procedures in making some of the carbamate listing determinations in the February 9, 1995 rule. *Dithiocarbamate Task Force* v. *EPA*, 98 F.3d 1394 (D.C.Cir. 1996). As a result, the court vacated the RCRA hazardous waste and CERCLA hazardous substance listings for 24 of the 58 individual carbamates and one of the six carbamate-related waste streams (K160) included in that rule. In addition, the court vacated three other carbamate-related waste streams (K156, K157, and K158) only to the extent that they applied to the chemical 3-iodo-2-propynyl n-butylcarbamate. Under the court decision, the vacated carbamate listings are to be treated as though they had never been in effect.

To clarify the legal status of the vacated listings for the regulated community and the public, EPA, in a June 17, 1997 final rule (62 FR 32974), amended the lists of RCRA hazardous wastes and CERCLA hazardous substances (in 40 CFR parts 261 and 302 respectively) to remove the entries for the 24 individual carbamates and one carbamate-related waste stream (K160) that were vacated by the court, as well as revised the entries for K156, K157, and K158 to indicate that they do not apply to 3-iodo-2-propynyl n-butylcarbamate.

It is important to note, however, that the court's ruling did not change the February 9, 1995 listing of the 34 remaining individual carbamates as RCRA hazardous wastes; those listings remain in effect. Independent of the February 9, 1995 rule, EPA already has added six of these 34 individual carbamates to the CERCLA list of hazardous substances in Table 302.4 of 40 CFR 302.4, and developed adjusted RQs for these substances because of their listing under the Clean Air Act or Clean Water Act.[1] The six substances and their Chemical Abstracts Service Registry Numbers (CASRNs) are: carbaryl (CASRN 63–25–2); carbofuran (CASRN 1563–66–2); mercaptodimethur (CASRN 2032–65–7); mexacarbate (CASRN 315–18–4); propoxur (CASRN 114–26–1); and triethylamine (CASRN 121–44–8).[2] Thus, we are not proposing any RQ adjustments for these six substances today.

Upon the effective date of the February 9, 1995 final rule, the 28 remaining individual carbamates and the five carbamate-related hazardous waste streams became hazardous substances under CERCLA section 101(14)(C) and received one-pound statutory RQs. We are proposing today to adjust the statutory one-pound RQs for these 28 substances and five waste streams based on criteria that relate to the possibility of harm from the release of each hazardous substance into the environment. EPA will revise the List of Hazardous Substances and Reportable Quantities (Table 302.4 of 40 CFR 302.4) to reflect these proposed changes and other, conforming proposed changes, if they are finalized. However, until such time as we finalize the adjusted RQs proposed in today's rule, the statutory RQ of one pound remains in effect for these substances.

Finally, eleven of the individual substances with proposed RQ adjustments in today's rule are also EPCRA section 302 EHSs. For the names of these 11 substances, see the proposed revisions to appendices A and B of 40 CFR part 355, included at the end of today's rule. In an August 30, 1989 rule (54 FR 35988), we proposed to adjust the RQs for all the EPCRA EHSs.[3] We finalized adjustments to the RQs for all the EHSs, except the 11 included in today's rule (61 FR 20473, May 7, 1996). We are reproposing adjusted RQs for these 11 substances today, for reporting under both CERCLA and EPCRA.

C. Summary of Today's Action

1. What Is the Scope of Today's Rule?

In today's rule, we are proposing to adjust the one-pound statutory RQs for 28 individual carbamates (one of which is adjusted to a final RQ of one-pound) and five carbamate-related waste streams. In addition, EPA is proposing to adjust the one-pound statutory RQ of another hazardous waste stream, K178, which is unrelated to the carbamates

[1] We adjusted the RQs for five of these six substances in an April 4, 1985 final rule (50 FR 13456), and adjusted the RQ for the other substance, propoxur, in a June 12, 1995 final rule (60 FR 30926).

[2] Although not a carbamate, triethylamine is used during the production of carbamates.

[3] We used the data from this August 30, 1989 proposed rulemaking, as well as more recent data, to support the RQ adjustments proposed for these 11 substances in today's rule.

addressed in this rule (see section III.C.8 of today's preamble for information regarding K178). We based these adjustments on specific scientific and technical criteria that relate to the possibility of harm from the release of a CERCLA hazardous substance in certain amounts. RQs are based, in part, on a determination of possible or potential harm, but they are not a determination that releases of a particular amount of a hazardous substance necessarily will harm the public health, welfare, or the environment. The quantity released is just one factor that the Federal government considers when it assesses the need to respond to such a release. Other factors include, but are not limited to, the location of the release, its proximity to drinking water supplies or other valuable resources, and the likelihood of exposure or injury to nearby populations. The RQ adjustments that EPA is proposing today would enable us to focus our resources on those releases that are most likely to pose potential threats to public health, welfare, or the environment. These RQ adjustments also would relieve the regulated community and emergency response personnel from the burden of making and receiving reports of releases that are unlikely to pose such threats.

2. What Methodology Is EPA Using To Adjust the RQs of the Individual Carbamates?

EPA has wide discretion in adjusting the statutory RQs for hazardous substances under CERCLA. Administrative feasibility and practicality are important considerations. Our methodology for adjusting the RQ of an individual hazardous substance begins with an evaluation of its intrinsic physical, chemical, and toxicological properties. These intrinsic properties—called "primary criteria"—are aquatic toxicity, mammalian toxicity (oral, dermal, and inhalation), ignitability, reactivity, chronic toxicity, and potential carcinogenicity.[4]

Generally, for each intrinsic property, EPA ranks hazardous substances on a five-tier scale, associating a specific range of values on each scale with an RQ value of 1, 10, 100, 1,000, or 5,000 pounds. Each hazardous substance may receive several tentative RQ values based on the primary criteria. The lowest of the tentative RQs becomes the "primary criteria RQ" for that substance.

When we find sufficient data in the scientific literature on the chronic toxicity and/or potential carcinogenicity (two of the six primary criteria) of a substance, we generally evaluate and summarize these data in a chemical-specific profile. Following an extensive review of available scientific literature on the 28 individual carbamates addressed in today's proposed rule, we found that chronic toxicity profiles are warranted for nine of these 28 carbamates, and that potential carcinogenicity profiles are warranted for six of the 28 carbamates. EPA has placed these 15 draft chemical-specific profiles in the docket for this proposed rulemaking.[5] Proposed RQs for several of the substances included in today's rule are based, at least in part, on the conclusions drawn in these profiles.

We are soliciting comments on these drafts. We will consider data that you submit, including any additional toxicity or carcinogenicity data that may be available on these substances or the other carbamates included in today's proposed rule. If the data are applicable, we will incorporate them into the draft profiles prior to their completion.

After assigning the primary criteria RQs, we further evaluate the substances for their susceptibility to certain degradative processes. These natural degradative processes, which we use as "secondary RQ adjustment criteria," are biodegradation, hydrolysis, and photolysis (BHP). If a hazardous substance, when released into the environment, degrades relatively rapidly to a less hazardous form by one or more of the BHP processes, we generally increase its RQ (as determined by the primary RQ adjustment criteria) by one level.[6] Conversely, if a hazardous substance degrades to a more hazardous product after its release, we assign an RQ equal to the RQ for the more hazardous substance, which may be one or more levels lower than the RQ for the original substance.

Three carbamates—bendiocarb, benomyl, and thiophanate-methyl—have BHP data that are a sufficient basis for adjusting the primary criteria RQs for these substances. Although several other carbamates (*e.g.*, propham) have BHP data that suggest rapid degradation, the evidence for most of these substances is not conclusive. Therefore, no adjustment to the RQs for these other carbamates was proposed on the basis of BHP.[7] EPA is requesting that commenters submit additional degradation data (*e.g.*, data on BOD_5 values and on half lives), if available, on these 28 individual substances.[8]

EPA could not locate acceptable data on any of the primary or secondary criteria for three of the 28 individual carbamates in today's proposed rule (see Table 1). In the past, when adjusting the statutory RQs of such data-poor hazardous substances, we have used data from chemically similar, surrogate substances.[9] Therefore, to adjust the statutory RQs of the three data-poor carbamates in today's rule, we conducted an analysis of other carbamates to identify potential surrogate substances (*i.e.*, carbamates with primary criteria data that are chemically similar, based primarily on structural analogy, to the data-poor substances).

Table 1 lists the chemically similar carbamates EPA used as proposed surrogates, and the proposed RQs we assigned to each data-poor substance based on its chemically similar

[4] For further information on assigning adjusted RQs to hazardous substances under the primary criteria, see the Technical Background Document to Support Rulemaking Pursuant to CERCLA Section 102, Volume 2, August 1986 (for chronic toxicity), Volume 3, July 1989 (for potential carcinogenicity), and Volume 1, March 1985 (for the four other primary criteria), available for inspection at the Superfund Docket in the EPA Docket Center, (EPA/DC) EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC.

[5] You may inspect the preliminary draft Reportable Quantity documents and potential carcinogenicity evaluations at the Superfund Docket in the EPA Docket Center, (EPA/DC) EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC.

[6] We do not raise an RQ level based on BHP if the primary criteria RQ is already at its highest possible level (100 pounds for potential carcinogens and 5,000 pounds for all other types of hazardous substances). The secondary adjustment criteria of BHP are not applied to radionuclides.

[7] To review a summary of the BHP data on the 28 carbamates included in today's rule, see Exhibit 4–3 of the Technical Background Document to Support Rulemaking Pursuant to CERCLA section 102, Volume 8, available for inspection at the Superfund Docket in the EPA Docket Center, (EPA/DC) EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC.

[8] One or more of the following criteria must be met for a hazardous substance to qualify for further RQ adjustment based on BHP: (1) *Biodegradation:* the substance must have a five-day biochemical oxygen demand (BOD_5) that equals or exceeds 50 percent of the theoretical oxygen demand as calculated based on stoichiometric oxidation; and (2) *Hydrolysis/Photolysis:* the half-life of the substance in the environment must be five days or less. For further information on the methodology for applying BHP, see the Technical Background Document to Support Rulemaking Pursuant to CERCLA section 102, Volume 1, March 1985, available for inspection at the Superfund Docket in the EPA Docket Center, (EPA/DC) EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC.

[9] For further information on, and examples of, EPA's use of surrogate data to adjust RQs of hazardous substances, see section 2 of the Technical Background Document to Support Rulemaking Pursuant to CERCLA section 102, Volume 8, available for inspection at the Superfund Docket in the EPA Docket Center, (EPA/DC) EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC.

surrogate.[10] We are requesting primary and secondary criteria data on these three data-poor substances. We also are soliciting comments from readers on our choice of surrogate substances used to adjust the RQs for these three carbamates.

TABLE 1.—PROPOSED RQS FOR THE DATA-POOR CARBAMATES

Data-poor carbamate	Proposed surrogate	Proposed RQ (pounds)
Bendiocarb phenol	Bendiocarb	1000
Carbofuran phenol	Carbofuran	10
Manganese dimethyldithiocarbamate	Ziram	10

Please note that in Table 2, below, we are assigning different RQs for the data-poor carbamate/surrogate pair of Bendiocarb phenol (data-poor carbamate) and Bendiocarb (its proposed surrogate) in shown in Table 1, above. In Table 2, EPA is applying the secondary criteria of BHP to adjust the RQ for bendiocarb to 100 pounds. However, due to structural differences between the two substances, we believe that it would be inappropriate to apply the BHP data for bendiocarb to bendiocarb phenol; hence, EPA is proposing a 1000-pound RQ for bendiocarb phenol (see Tables 1 and 2).

3. What RQs Are Proposed for the Individual Carbamates?

Table 2 lists the chemical names, CASRNs, and proposed RQs for the 28 individual carbamates included in today's proposed rule. The proposed RQs for 27 of the 28 individual carbamates would be raised from their one-pound statutory levels, while one of the 28 individual carbamates—Dimetilan—would be adjusted to its proposed, final RQ of one pound.

TABLE 2.—PROPOSED RQS FOR 28 INDIVIDUAL CARBAMATES

Chemical name	CASRN	Proposed RQ (pounds)
A2213	30558–43–1	5000
Aldicarb sulfone	1646–88–4	100
Barban	101–27–9	10
Bendiocarb	22781–23–3	100
Bendiocarb phenol	22961–82–6	1000
Benomyl	17804–35–2	10
Carbendazim	10605–21–7	10
Carbofuran phenol	1563–38–8	10
Carbosulfan	55285–14–8	1000
m-Cumenyl methylcarbamate	64–00–6	10
Diethylene glycol, dicarbamate	5952–26–1	5000
Dimetilan	644–64–4	1
Formetanate hydrochloride	23422–53–9	100
Formparanate	17702–57–7	100
Isolan	119–38–0	100
Manganese dimethyldithiocarbamate	15339–36–3	10
Metolcarb	1129–41–5	1000
Oxamyl	23135–22–0	100
Physostigmine salicylate	57–64–7	100
Physostigmine	57–47–6	100
Promecarb	2631–37–0	1000
Propham	122–42–9	1000
Prosulfocarb	52888–80–9	5000
Thiodicarb	59669–26–0	100
Thiophanate-methyl	23564–05–8	10
Tirpate	26419–73–8	100
Triallate	2303–17–5	100
Ziram	137–30–4	10

4. How is EPA Adjusting the RQs for the Carbamate-Related Waste Streams?

In addition to the 28 individual carbamate hazardous substances, we also are proposing to adjust the RQs of the five carbamate-related RCRA hazardous waste streams (K156, K157, K158, K159, and K161). The standard methodology used to adjust the RQs for RCRA hazardous waste streams differs from the methodology applied to individual hazardous substances. Our procedure for assigning RQs to RCRA waste streams is based on an analysis of the hazardous constituents of the waste

[10] These three data-poor carbamates also are included in the list of 28 individual carbamates that appears in Table 2. For further information on the three data-poor carbamates and the chemically-similar, surrogate substances that EPA has identified, see section 3 of the Technical Background Document to Support Rulemaking Pursuant to CERCLA section 102, Volume 8, available for inspection at the Superfund Docket in the EPA Docket Center, (EPA/DC) EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC.

streams. Specifically, EPA identifies the constituents of each RCRA hazardous waste stream in 40 CFR part 261, appendix VII. We determine the RQ for each constituent within the waste stream and establish the lowest RQ value of these constituents as the adjusted RQ for the waste stream. We also apply this same methodology to adjust the RQ for K178 (see section III.C.8 for more information).

5. What RQs Are Proposed for These Carbamate-Related Waste Streams?

In the February 9, 1995 final rule, the five carbamate-related waste streams were assigned the statutory one-pound RQ required by CERCLA section 102(b). In today's rule, using the standard methodology for adjusting RQs for RCRA waste streams, EPA is proposing a one-pound adjusted RQ for waste stream K161 and 10-pound adjusted RQs for the remaining four carbamate-related waste streams (K156, K157, K158, and K159) based on the constituent(s) with the lowest RQ within each of the waste streams. Table 3 lists the constituents and constituent RQs of each of the five carbamate-related hazardous waste streams.

TABLE 3.—CONSTITUENTS OF FIVE CARBAMATE-RELATED WASTE STREAMS

Carbamate Waste Stream Constituents	RQ (pounds)
K156	10
benomyl	10
carbaryl	100
carbendazim	10
carbofuran	10
carbosulfan	1000
formaldehyde	100
methylene chloride	1000
triethylamine	5000
K157	10
carbon tetrachloride	10
formaldehyde	100
methyl chloride	100
methylene chloride	1000
pyridine	1000
triethylamine	5000
K158	10
benomyl	10
carbendazim	10
carbofuran	10
carbosulfan	1000
chloroform	10
methylene chloride	1000
K159	10
benzene	10
butylate	100
EPTC	1000
molinate	10
pebulate	100
vernolate	100
K161	1
antimony	5000
arsenic	1
metam sodium	10
ziram	10

6. What Conforming Changes Are Being Made to Table 302.4 and Its Appendix A?

EPA is proposing to modify the entries in Table 302.4 for the carbamates added by the February 9, 1995 final rule to the list of CERCLA hazardous substances. Specifically, we are proposing in today's rule to change the entries for the chemical names of the carbamates in the "Hazardous Substance" column in Table 302.4 to reflect more accurately the chemical names for these substances as they appear in the RCRA tables of hazardous wastes at 40 CFR 261.33(e) and (f).

For example, the February 9, 1995 final rule generally lists two names for each individual carbamate in Table 302.4—a chemical name and, in parentheses, a synonym. Thus, the February 9, 1995 final rule added one entry for each carbamate to the CERCLA list of hazardous substances. The same final rule alphabetically lists these two names as separate entries in the RCRA tables of hazardous wastes in 40 CFR 261.33.

Because each of the 28 individual carbamates included in today's rule has at least two separate entries in the RCRA tables of hazardous wastes, we are proposing to make the CERCLA table of hazardous substances consistent by listing the two (or more) synonymous names as separate entries in Table 302.4. Thus, amendatory instruction 3, which immediately precedes Table 302.4 in today's proposed rule, accounts for the addition of the chemical names and synonyms as separate entries in Table 302.4, and amendatory instruction 2 accounts for the removal of the previously listed names for these substances. We believe that proposing these changes to Table 302.4 is a positive step toward ensuring that chemical lists under RCRA and CERCLA are more consistent and that carbamate synonyms are easier to find in the table.

In addition, we are proposing conforming changes to entries in appendix A to Table 302.4 for the 28 carbamates added to the list of CERCLA hazardous substances by the February 9, 1995 final rule.

7. What Changes Are Being Made to 40 CFR Part 355?

Appendices A and B of 40 CFR part 355, which list EHSs and their threshold planning quantities (TPQs) under EPCRA, also list the RQs for EHSs. Eleven of the individual carbamates for which EPA is proposing adjusted RQs are EHSs, as well as CERCLA hazardous substances. EPA today is proposing to revise appendices A and B of 40 CFR part 355 to include these adjusted RQs. For the names of these 11 substances, see the proposed revisions to appendices A and B included at the end of today's proposed rule.

8. What RQ Is Proposed for the K178 Waste Stream? [11]

As noted in section III.C.4 of the preamble, the Agency's standard methodology for adjusting the RQs for RCRA waste streams is based on an analysis of the hazardous constituents of each waste, as identified in 40 CFR part 261, appendix VII. We determine an RQ for each constituent and establish the lowest RQ value of these constituents as the adjusted RQ for the waste stream. When there are hazardous constituents identified for a waste stream that are not individual CERCLA hazardous substances, EPA develops an RQ for these constituents in order to assign an appropriate RQ to the waste stream (see 48 FR 23565, May 25, 1983). In other words, we derive the RQ for an RCRA waste stream based on the lowest RQ of all of the hazardous constituents identified for that waste in appendix VII of 40 CFR part 261, regardless of whether the constituents are CERCLA hazardous substances.

On September 14, 2000, EPA published a proposed rule to list three waste streams from inorganic chemical manufacturing processes as RCRA hazardous wastes in 40 CFR 261.32 and as CERCLA hazardous substances in 40 CFR 302.4 (65 FR 55684). In that rule, we proposed to adjust the one-pound statutory RQ for two of the three waste streams, K176 and K177. For the third waste stream, K178 (nonwastewaters from the production of titanium dioxide by the chloride-ilmenite process), EPA identified two hazardous constituents. The two hazardous constituents identified in the proposed rule were: thallium, which is a CERCLA hazardous substance with a 1,000-pound RQ; and manganese, which does not appear on the CERCLA hazardous substance list in 40 CFR 302.4 and, therefore, has not been assigned an RQ. Because EPA had not yet developed an RQ for manganese at that time, we did not propose to adjust the RQ for K178 in the September 14, 2000 proposed rule.

[11] HSWA also directed EPA to determine whether wastes from the Inorganic Chemical Industry should be listed as RCRA hazardous wastes.

Numerous commenters to the proposed rule objected to using manganese as a basis for listing K178 wastes, citing potential adverse impacts to many industries. Although EPA continues to believe that manganese poses significant issues that ultimately should be resolved, the court-ordered schedule for the hazardous waste listings provided no flexibility to address those issues fully before finalizing the listings. For that reason, in the final rule, EPA deferred final action on adding manganese to appendix VII of 40 CFR part 261 as a basis for listing K178 wastes (66 FR 58258; November 20, 2001). The final hazardous waste listing for K178 is based solely on thallium. As a result, we are proposing an RQ of 1,000 pounds for the K178 waste stream, based on the constituent RQ for thallium, the sole hazardous constituent identified for the waste stream.

As stated in the section of the preamble entitled "How and to Whom Do I Submit Comments?," it is important to identify docket control number SFUND–2002–0011 in the subject line on the first page of your correspondence if you are submitting comments on the proposed 1,000-pound RQ for K178.

D. Statutory and Regulatory Reviews

1. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735), the Agency must determine whether this regulatory action is "significant" and therefore subject to formal review by the Office of Management and Budget (OMB) and to the requirements of the Executive Order, which include assessing the costs and benefits anticipated as a result of the proposed regulatory action. The Order defines "significant regulatory action" as one that is likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

It has been determined that this proposed rule is not a "significant regulatory action" under the terms of Executive Order 12866 and is therefore not subject to OMB review. EPA performed an economic analysis, which shows that this proposed rule will result in an annual cost savings of approximately $90,640 to the regulated community and to Federal, State, and local governments, and does not result in any of the other effects that define a significant regulatory action. In this proposed rule, EPA would raise the RQs for 27 of the 28 individual substances and five of the six waste streams (including K178) from their current statutory one-pound levels. The remaining individual carbamate substance and carbamate-related waste stream will remain subject to an RQ of one pound.

We have estimated that these adjustments from the statutory one-pound RQs will reduce by approximately 176 the number of reportable releases for these hazardous substances each year (see the economic analysis mentioned above). The estimated $90,640 cost savings reflects only those effects of the RQ adjustments that are readily quantifiable in dollars and are associated with the release notification requirements under CERCLA section 103 and EPCRA section 304, including the associated activities of recordkeeping and notification processing.

A detailed presentation of EPA's methodology, data sources, and computations applied for estimating the number of affected entities (industrial facilities) and economic impacts attributable to today's proposal is provided in the "Economic Impact Analysis" to this proposal.

2. Paperwork Reduction Act

The information collection requirements in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* Information Collection Request (ICR) documents have been prepared by EPA (ICR Nos. 1049.09 and 1395.04). A copy of these ICRs may be obtained from Susan Ambry by mail at Collection Strategies Division; U.S. Environmental Protection Agency (2822), 1200 Pennsylvania Avenue, NW., Washington, DC 20460, or by calling (202) 566–1676, and by e-mail at *ambry.susan@epamail.epa.gov*. A copy also may be downloaded off the Internet at *http://www.epa.gov/icr*.

EPA proposes the following conditions for reporting and recordkeeping: mandatory reporting requirements (CERCLA section 103(a) and EPCRA section 304) serve as triggers for informing the government of a release so that Federal, State, or local personnel can evaluate the need for removal or remedial actions, and undertake any necessary action in a timely fashion.

We estimate that the public reporting burden for collecting information required under CERCLA section 103 averages 4.1 labor hours (*i.e.*, combined managerial, technical, and clerical hours) per response; the reporting burden under EPCRA section 304 averages approximately 5 labor hours per response. This estimate includes the time required to: make a determination whether a release requires a report to the NRC, the State, and local agencies; make the call(s); maintain a log of any calls made to government organizations; and make a follow-up written notification (if required under EPCRA section 304). The average burden estimates of 4.1 and 5 hours are provided only for the purpose of calculating the labor costs associated with the entire release reporting and recordkeeping process under CERCLA and EPCRA. Thus, these burden estimates should not be misinterpreted as reflecting the amount of time an individual has before he or she must call the NRC. Rather, CERCLA and EPCRA require that persons in charge of vessels or facilities immediately notify the NRC, the State, and local agencies of releases that equal or exceed an RQ.

Because we are proposing to raise the RQs for all but two of the substances included in today's rule, we expect the net reporting and recordkeeping burden associated with reporting releases of these substances under CERCLA section 103 to decrease. As noted in the economic impact analysis supporting today's proposed rule (and in Section III.D.2 of this preamble), we estimate that the annual reporting and recordkeeping burdens associated with reports to the NRC will be reduced by approximately 720 hours, and to SERCs and LEPCs by 880 hours.

An Agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

3. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act of

1996 (SBREFA), 5 U.S.C. 601 *et. seq.*, generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's rule on small entities, small entity is defined as: (1) A small business that has fewer than 1000 or 100 employees per firm depending upon the SIC code the firm primarily is classified; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's proposed rule on small entities, I hereby certify that this proposal will not have a significant economic impact on a substantial number of small entities. In determining whether a rule has a significant economic impact on a substantial number of small entities, the impact of concern is any significant adverse economic impact on small entities, since the primary purpose of the regulatory flexibility analyses is to identify and address regulatory alternatives "which minimize any significant economic impact of the proposed rule on small entities" (5 U.S.C. 603 and 604). Thus, an agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, or otherwise has a positive economic effect on small entities subject to the rule. For more information regarding the economic impact of this proposed rule, please refer to the economic background document to this proposal.

We have therefore concluded that today's proposed rule will relieve regulatory burden for small entities. We continue to be interested in the potential impacts of the proposed rule on small entities and welcome comments on issues related to such impacts.

4. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal Agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA must prepare a written analysis, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted.

Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials to have meaningful and timely input in the development of regulatory proposals, and informing, educating, and advising small governments on compliance with the regulatory requirements.

EPA has determined that this rule does not include a Federal mandate that may result in expenditures of $100 million or more for State, local, or tribal governments, in the aggregate, or the private sector in any one year. This is because this proposed rule imposes no enforceable duty on any State, local, or tribal governments. EPA also has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments. In addition, as discussed above, the private sector is not expected to incur costs exceeding $100 million. Therefore, today's proposed rule is not subject to the requirements of sections 202 and 205 of UMRA.

5. Executive Order 13132: Federalism

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

This proposal does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This rule directly affects manufacturers, handlers, transporters, and other users of carbamates; in addition, entities that may release K178 waste streams will also be affected. There are no State and local government bodies that incur direct compliance costs by this rulemaking. State and local government implementation expenditures are expected to be less than $500,000 in any one year. Thus, the requirements of section 6 of the Executive Order do not apply to this proposal.

In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and State and local governments, EPA specifically solicits comment on this proposed rule from State and local officials.

6. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." This proposed rule does not have tribal implications, as specified in Executive Order 13175. Today's rule does not significantly or uniquely affect the communities of Indian tribal governments, nor would it impose substantial direct compliance costs on them. Thus, Executive Order 13175 does not apply to this rule.

7. Executive Order 13045: Protection of Children From Environmental Risks and Safety Risks

The Executive Order 13045, entitled "Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997) applies to any rule that EPA determines (1) is "economically significant" as defined under Executive Order 12866, and (2) the environmental health or safety risk addressed by the rule has a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children; and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This proposal is not subject to the Executive Order because it is not economically significant as defined in Executive Order 12866, and because the Agency does not have reason to believe the environmental health or safety risks addressed by this proposed rule present a disproportionate risk to children.

8. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution or Use

This proposed rule is not a "significant energy action" as defined in Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355 (May 22, 2001)) because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. This proposed rule reduces regulatory burden. It thus should not adversely affect energy supply, distribution, or use.

9. National Technology Transfer and Advancement Act of 1995

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTAA"), Public Law 104–113, section 12 (d) (15 U.S.C. 272 *note*) directs EPA to use voluntary consensus standards in its regulatory activities, unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs us to provide Congress, through OMB, explanations when we decide not to use available and applicable voluntary consensus standards.

The proposed rule does not involve technical standards. Therefore, EPA is not considering the use of any voluntary consensus standards.

List of Subjects

40 CFR Part 302

Environmental protection, Air pollution control, Chemicals, Hazardous substances, Hazardous wastes, Intergovernmental relations, Natural resources, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

40 CFR Part 355

Air pollution control, Chemicals, Hazardous substances, Intergovernmental relations, Natural resources, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Dated: November 25, 2003.

Michael O. Leavitt,

Administrator.

For the reasons set out in the preamble, it is proposed to amend title 40, chapter I of the Code of Federal Regulations as follows:

PART 302—DESIGNATION, REPORTABLE QUANTITIES, AND NOTIFICATION

1. The authority citation for part 302 continues to read as follows:

Authority: 42 U.S.C. 9602, 9603, 9604; 33 U.S.C. 1321 and 1361.

2. Table 302.4 in § 302.4 is amended by removing the entries for "1,3-Benzodioxol-4-ol, 2,2-dimethyl-, (Bendiocarb phenol)", "1,3-Benzodioxol-4-ol, 2,2-dimethyl-, methyl carbamate (Bendiocarb)", "7-Benzofuranol, 2,3-dihydro-2,2-dimethyl-(Carbofuran phenol)", "Benzoic acid, 2-hydroxy-, compd. with (3aS-cis)-1,2,3,3a,8,8a-hexahydro-1,3a,8-trimethylpyrrolo[2,3b]indol-5-yl methylcarbamate ester (1:1) (Physostigmine salicylate)", "Carbamic acid, 1H-benzimidazol-2-yl, methyl ester (Carbendazim)", "Carbamic acid, [1-[(butylamino)carbonyl]-1H-benzimidazol-2-yl, methyl ester (Benomyl)", "Carbamic acid, (3-chlorophenyl)-, 4-chloro-2-butynyl ester (Barban)", "Carbamic acid, [(dibutylamino)thio]methyl-, 2,3-dihydro-2,2-dimethyl-7benzofuranyl ester (Carbosulfan)", "Carbamic acid, dimethyl-,1[(dimethylamino)carbonyl]-5-methyl-1H-pyrazol-3-yl ester (Dimetilan)", "Carbamic acid, dimethyl-, 3-methyl-1-(1methylethyl)-1H-pyrazol-5-yl ester (Isolan)", "Carbamic acid, methyl-, 3-methylphenyl ester (Metolcarb)", "Carbamic acid, [1,2 phenylenebis(iminocarbonothioyl)]bis-, dimethyl ester (Thiophanate-methyl)", "Carbamic acid, phenyl-, 1-methylethyl ester (Propham)", "Carbamothioic acid, bis(1-methylethyl)-, S-(2,3,3-trichloro-2-propenyl) ester (Triallate)", "Carbamothioic acid, dipropyl-, S-(phenylmethyl) ester (Prosulfocarb)", "1,3-Dithiolane-2-carboxaldehyde, 2,4-dimethyl-, O-[(methylamino)carbonyl]oxime (Tirpate)", "Ethanimidothioci acid, 2-(dimethylamino-N-hydroxy-2-oxo-, methyl ester (A2213)", "Ethanimidothoic acid, 2-(dimethylamino)-N-[[(methylamino)carbonyl]oxy]-2-oxo-, methyl ester (Oxamyl)", "Ethanimidothioic acid, N,N'-[thiobis[(methylimino) carbonyloxy]]bis-, dimethyl ester (Thiodicarb)", "Ethanol, 2,2'oxybis-, dicarbamate (Diethylene glycol, dicarbamate)", "Manganese, bis(dimethylcarbamodithioato-S,S')-(Manganese dimethyldithiocarbamate)", "Methanimidamide, N,N-dimethyl-N'-[3-[[(methylamino)carbonyl]oxy]phenyl]-, monohydrochloride (Formetanate hydrochloride)", "Methanimidamide, N,N-dimethyl-N'-[2-methyl-4-[[(methylamino)carbonyl]oxy]phenyl]-(Formparanate)", "Phenol, 3-(l-methylethyl)-, methyl carbamate (m-Cumenyl methylcarbamate)", "Phenol, 3-methyl-5-(l-methylethyl)-, methyl carbamate (Promecarb)", "Propanal, 2-methyl-2-(methylsulfonyl)-, O-[(methylamino)carbonyl] oxime (Aldicarb sulfone)", "Pyrrolo[2,3-b]indol-5-ol, 1,2,3,3a,8,8a-hexahydro-1,3a,8-trimethyl-, methylcarbamate (ester), (3aS-cis)-(Physostigmine)", "Zinc, bis(dimethylcarbamodithioato-S,S')-(Ziram)", "K156", "K157", "K158", "K159", "K161", and "K178", and adding the following new entries in alphabetical order to read as follows (applicable footnotes have been republished without change):

§ 302.4 Designation of hazardous substances.

* * * * *

TABLE 302.4.—LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES

[Note: All Comments/Notes Are Located at the End of This Table]

Hazardous substance	CASRN	Statutory code†	RCRA waste number	Final RQ pounds (Kg)
A2213	30558431	4	U394	5000 (2270)
Aldicarb sulfone	1646884	4	P203	100 (45.4)
Barban	101279	4	U280	10 (4.54)
Bendiocarb	22781233	4	U278	100 (45.4)
Bendiocarb phenol	22961826	4	U364	1000 (454)
Benomyl	17804352	4	U271	10 (4.54)
1,3-Benzodioxol-4-ol, 2,2-dimethyl-	22961826	4	U364	1000 (454)
1,3-Benzodioxol-4-ol, 2,2-dimethyl-, methyl carbamate	22781233	4	U278	100 (45.4)
7-Benzofuranol, 2,3-dihydro-2,2-dimethyl-	1563388	4	U367	10 (4.54)
Benzoic acid, 2-hydroxy-, compd. with (3aS–cis)-1,2,3,3a,8,8a-hexahydro-1,3a,8-trimethylpyrrolo[2,3-b]indol-5-yl methylcarbamate ester (1:1)	57647	4	P188	100 (45.4)
Carbamic acid, 1H-benzimidazol-2-yl, methyl ester	10605217	4	U372	10 (4.54)
Carbamic acid, [1-[(butylamino)carbonyl]-1H–benzimidazol-2-yl]-, methyl ester	17804352	4	U271	10 (4.54)
Carbamic acid, (3-chlorophenyl)-, 4-chloro-2–butynyl ester	101279	4	U280	10 (4.54)
Carbamic acid, [(dibutylamino)-thio]methyl-,2,3-dihydro-2,2-dimethyl-7-benzofuranyl ester	55285148	4	P189	1000 (454)
Carbamic acid, dimethyl-,1-[(dimethyl-amino)carbonyl]-5-methyl-1H- pyrazol-3-yl ester	644644	4	P191	1 (0.454)
Carbamic acid, dimethyl-, 3-methyl-1-(1-methylethyl)-1H-pyrazol-5-yl ester	119380	4	P192	100 (45.4)
Carbamic acid, methyl-, 3-methylphenyl ester	1129415	4	P190	1000 (454)
Carbamic acid, [1,2-phenylenebis(iminocarbonothioyl)]bis-, dimethyl ester	23564058	4	U409	10 (4.54)
Carbamic acid, phenyl-, 1-methylethyl ester	122429	4	U373	1000 (454)
Carbamothioic acid, bis(1-methylethyl)-, S-(2,3,3-trichloro-2-propenyl) ester	2303175	4	U389	100 (45.4)
Carbamothioic acid, dipropyl-, S-(phenylmethyl) ester	52888809	4	U387	5000 (2270)
Carbendazim	10605217	4	U372	10 (4.54)
Carbofuran phenol	1563388	4	U367	10 (4.54)
Carbosulfan	55285148	4	P189	1000 (454)
m-Cumenyl methylcarbamate	64006	4	P202	10 (4.54)
Diethylene glycol, dicarbamate	5952261	4	U395	5000 (2270)
Dimetilan	644644	4	P191	1 (0.454)
1,3-Dithiolane-2-carboxaldehyde, 2,4-dimethyl-, O-[(methylamino)-carbonyl]oxime	26419738	4	P185	100 (45.4)
Ethanimidothioic acid, 2-(dimethylamino)-N-hydroxy-2-oxo-, methyl ester	30558431	4	U394	5000 (2270)
Ethanimidothioic acid, 2-(dimethylamino)-N-[[(methylamino)carbonyl]oxy]-2-oxo-, methyl ester	23135220	4	P194	100 (45.4)
Ethanimidothioic acid, N,N′-[thiobis[(methylimino)carbonyloxy]]bis-, dimethyl ester	59669260	4	U410	100 (45.4)
Ethanol, 2,2′-oxybis-, dicarbamate	5952261	4	U395	5000 (2270)
Formetanate hydrochloride	23422539	4	P198	100 (45.4)
Formparanate	17702577	4	P197	100 (45.4)
Isolan	119380	4	P192	100 (45.4)
3-Isopropylphenyl N-methylcarbamate	64006	4	P202	10 (4.54)
Manganese, bis(dimethylcarbamodithioato-S,S′)-	15339363	4	P196	10 (4.54)
Manganese dimethyldithiocarbamate	15339363	4	P196	10 (4.54)
Methanimidamide, N,N-dimethyl-N′-[3-[[(methylamino)-carbonyl]oxy]phenyl]-, monohydrochloride	23422539	4	P198	100 (45.4)
Methanimidamide, N,N-dimethyl-N′-[2-methyl-4-[[(methylamino)carbonyl]oxy]phenyl]-	17702577	4	P197	100 (45.4)

TABLE 302.4.—LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES—Continued

[Note: All Comments/Notes Are Located at the End of This Table]

Hazardous substance	CASRN	Statutory code†	RCRA waste number	Final RQ pounds (Kg)
Metolcarb	1129415	4	P190	1000 (454)
Oxamyl	23135220	4	P194	100 (45.4)
Phenol, 3-(1-methylethyl)-, methyl carbamate	64006	4	P202	10 (4.54)
Phenol, 3-methyl-5-(1-methylethyl)-, methyl carbamate	2631370	4	P201	1000 (454)
Physostigmine	57476	4	P204	100 (45.4)
Physostigmine salicylate	57647	4	P188	100 (45.4)
Promecarb	2631370	4	P201	1000 (454)
Propanal, 2-methyl-2-(methyl-sulfonyl)-, O–[(methylamino)carbonyl] oxime	1646884	4	P203	100 (45.4)
Propham	122429	4	U373	1000 (454)
Prosulfocarb	52888809	4	U387	5000 (2270)
Pyrrolo[2,3-b]indol-5-ol, 1,2,3,3a,8,8a-hexahydro-1,3a,8-trimethyl-, methylcarbamate (ester), (3aS-cis)-	57476	4	P204	100 (45.4)
Thiodicarb	59669260	4	U410	100 (45.4)
Thiophanate-methyl	23564058	4	U409	10 (4.54)
Tirpate	26419738	4	P185	100 (45.4)
Triallate	2303175	4	U389	100 (45.4)
Zinc, bis(dimethylcarbamodithioato-S,S′)-	137304	4	P205	10 (4.54)
Ziram	137304	4	P205	10 (4.54)
K156		4	K156	10 (4.54)
Organic waste (including heavy ends, still bottoms, light ends, spent solvents, filtrates, and decantates) from the production of carbamates and carbamoyl oximes. (This listing does not apply to wastes generated from the manufacture of 3-iodo-2-propynyl n-butylcarbamate.)				
K157		4	K157	10 (4.54)
Wastewaters (including scrubber waters, condenser waters, washwaters, and separation waters) from the production of carbamates and carbamoyl oximes. (This listing does not apply to wastes generated from the manufacture of 3-iodo-2-propynyl n-butylcarbamate.)				
K158		4	K158	10 (4.54)
Bag house dusts and filter/separation solids from the production of carbamates and carbamoyl oximes. (This listing does not apply to wastes generated from the manufacture of 3- iodo-2-propynyl n- butylcarbamate.)				
K159		4	K159	10 (4.54)
Organics from the treatment of thiocarbamate wastes.				
K161		4	K161	1 (0.454)
Purification solids (including filtration, evaporation, and centrifugation solids), bag-house dust and floor sweepings from the production of dithiocarbamate acids and their salts. (This listing does not include K125 or K126.)				
K178		4	K178	1000 (454)
Nonwastewaters from the production of titanium dioxide by the chloride-ilmenite process. [This listing does not apply to chloride process waste solids from titanium tetrachloride production exempt under section 261.4(b)(7).].				

† Indicates the statutory source as defined by 1, 2, 3, and 4 below.

4- Indicates that the statutory source for designation of this hazardous substance under CERCLA is RCRA section 3001.
1* Indicates that the 1-pound RQ is a CERCLA statutory RQ.

3. Appendix A to § 302.4 is amended by revising the following entries, to read as follows:

APPENDIX A TO § 302.4—SEQUENTIAL CAS REGISTRY NUMBER LIST OF CERCLA HAZARDOUS SUBSTANCES

CASRN	Hazardous substance
57476	Physostigmine. Pyrrolo[2,3-b]indol-5-ol, 1,2,3,3a,8,8a-hexahydro-1,3a,8-trimethyl-, methylcarbamate (ester), (3aS-cis)-.
57647	Benzoic acid, 2-hydroxy-, compd. with (3aS-cis)-1,2,3,3a,8,8a-hexahydro-1,3a,8-trimethylpyrrolo[2,3-b]indol-5-yl methylcarbamate ester (1:1). Physostigmine salicylate.
64006	m-Cumenyl methylcarbamate. 3-Isopropylphenyl N-methylcarbamate. Phenol, 3-(1-methylethyl)-, methyl carbamate.
101279	Barban. Carbamic acid, (3-chlorophenyl)-, 4-chloro-2-butynyl ester.
119380	Carbamic acid, dimethyl-, 3-methyl-1-(1-methylethyl)-1H-pyrazol-5-yl ester. Isolan.
122429	Carbamic acid, phenyl-, 1-methylethyl ester. Propham.
137304	Zinc, bis(dimethylcarbamodithioato-S,S')-. Ziram.
644644	Carbamic acid, dimethyl-,1-[(dimethyl-amino)carbonyl]-5-methyl-1H-pyrazol-3-yl ester. Dimetilan.
1129415	Carbamic acid, methyl-, 3-methylphenyl ester. Metolcarb.
1563388	7-Benzofuranol, 2,3-dihydro-2,2-dimethyl-. Carbofuran phenol.
1646884	Aldicarb sulfone. Propanal, 2-methyl-2-(methyl-sulfonyl)-, O-[(methylamino)carbonyl] oxime.
2303175	Carbamothioic acid, bis(1-methylethyl)-, S-(2,3,3-trichloro-2-propenyl) ester. Triallate.
2631370	Phenol, 3-methyl-5-(1-methylethyl)-, methyl carbamate. Promecarb.
5952261	Ethanol, 2,2'-oxybis-, dicarbamate. Diethylene glycol, dicarbamate.
10605217	Carbamic acid, 1H-benzimidazol-2-yl, methyl ester. Carbendazim.
15339363	Manganese, bis(dimethylcarbamodithioato-S,S')-. Manganese dimethyldithiocarbamate.
17702577	Formparanate. Methanimidamide, N,N-dimethyl-N'-[2-methyl-4-[[(methylamino)carbonyl]oxy]phenyl]-.
17804352	Benomyl. Carbamic acid, [1-[(butylamino)carbonyl]-1H-benzimidazol-2-yl]-, methyl ester.
22781233	Bendiocarb. 1,3-Benzodioxol-4-ol, 2,2-dimethyl-, methyl carbamate.
22961826	Bendiocarb phenol. 1,3-Benzodioxol-4-ol, 2,2-dimethyl-.
23135220	Ethanimidothioic acid, 2-(dimethylamino)-N- [[(methylamino)carbonyl]oxy]-2-oxo-, methyl ester. Oxamyl.
23422539	Methanimidamide, N,N-dimethyl-N'-[3-[[(methylamino)-carbonyl]oxy]phenyl]-, monohydrochloride. Formetanate hydrochloride.
23564058	Carbamic acid, [1,2-phenylenebis(iminocarbonothioyl)]bis-, dimethyl ester. Thiophanate-methyl.
26419738	1,3-Dithiolane-2-carboxaldehyde, 2,4-dimethyl-, O-[(methylamino)-carbonyl]oxime. Tirpate.

APPENDIX A TO § 302.4—SEQUENTIAL CAS REGISTRY NUMBER LIST OF CERCLA HAZARDOUS SUBSTANCES—Continued

CASRN	Hazardous substance
30558431	Ethanimidothioic acid, 2-(dimethylamino)-N-hydroxy-2-oxo-, methyl ester. A2213.
52888809	Carbamothioic acid, dipropyl-, S-(phenylmethyl) ester. Prosulfocarb.
55285148	Carbamic acid, [(dibutylamino)-thio]methyl-, 2,3-dihydro-2,2-dimethyl-7-benzofuranyl ester. Carbosulfan.
59669260	Ethanimidothioic acid, N,N'-[thiobis[(methylimino)carbonyloxy]]bis-, dimethyl ester. Thiodicarb.

PART 355—EMERGENCY PLANNING AND NOTIFICATION

Authority: 42 U.S.C. 11002, 11004, and 11048.

1. The authority citation for part 355 continues to read as follows:

2. Appendices A and B in part 355 are amended by revising the following entries, to read as follows (footnotes "*" and "h" have been republished without change):

APPENDIX A TO PART 355—THE LIST OF EXTREMELY HAZARDOUS SUBSTANCES AND THEIR THRESHOLD PLANNING QUANTITIES

[Alphabetical Order]

CAS No.	Chemical name	Notes	Reportable quantity* (pounds)	Threshold planning quantity (pounds)
26419–73–8	Carbamic Acid, Methyl-, O-(((2,4–Dimethyl-1, 3-Dithiolan-2-yl)Methylene)Amino)-.		100	100/10,000
644–64–4	Dimetilan		1	500/10,000
23422–53–9	Formetanate Hydrochloride	(h)	100	500/10,000
17702–57–7	Formparanate		100	100/10,000
119–38–0	Isopropylmethyl-pyrazolyl Dimethylcarbamate		100	500
1129–41–5	Metolcarb		1,000	100/10,000
23135–22–0	Oxamyl		100	100/10,000
64–00–6	Phenol, 3-(1–Methylethyl)-, Methylcarbamate		10	500/10,000
57–47–6	Physostigmine		100	100/10,000
57–64–7	Physostigmine, Salicylate (1:1)		100	100/10,000
2631–37–0	Promecarb	(h)	1,000	500/10,000

*Only the statutory or final RQ is shown. For more information, see 40 CFR Table 302.4.

Notes:

hRevised TPQ based on new or re-evaluated toxicity data.

APPENDIX B TO PART 355—THE LIST OF EXTREMELY HAZARDOUS SUBSTANCES AND THEIR THRESHOLD PLANNING QUANTITIES

[CAS Number Order]

CAS No.	Chemical name	Notes	Reportable quantity* (pounds)	Threshold planning quantity (pounds)**
57–47–6	Physostigmine		100	100/10,000
57–64–7	Physostigmine, Salicylate (1:1)		100	100/10,000
64–00–6	Phenol, 3-(1-Methylethyl)-, Methylcarbamate		10	500/10,000
119–38–0	Isopropylmethyl-pyrazolyl Dimethylcarbamate		100	500
644–64–4	Dimetilan		1	500/10,000
1129–41–5	Metolcarb		1,000	100/10,000
2631–37–0	Promecarb	(b)	1,000	500/10,000
17702–57–7	Formparanate		100	100/10,000
23135–22–0	Oxamyl		100	100/10,000
23422–53–9	Formetanate Hydrochloride	(b)	100	500/10,000
26419–73–8	Carbamic Acid, Methyl-, O-(((2,4-Dimethyl-1, 3- Dithiolan-2- yl)Methylene)Amino)-		100	100/10,000

*Only the statutory or final RQ is shown. For more information, see 40 CFR Table 302.4.

bRevised TPQ based on new or re-evaluated toxicity data.

[FR Doc. 03–30166 Filed 12–3–03; 8:45 am]

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Federal Register

Thursday,
December 4, 2003

Part V

Environmental Protection Agency

40 CFR Part 61

National Emission Standard for Benzene Waste Operations; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 61

[OAR–2003–0147; FRL–7594–3]

RIN 2060–AJ87

National Emission Standard for Benzene Waste Operations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; amendments.

SUMMARY: On November 12, 2002, the EPA issued amendments to the national emission standard for benzene waste operations as a direct final rule, along with a parallel proposal to be used as a basis for final action in the event we received any adverse comments. Because an adverse comment was received on provisions related to control devices, we withdrew the corresponding parts of the direct final rule on February 6, 2003. This action promulgates the provisions that were withdrawn based on the proposed rule published on November 12, 2002. This action also amends the rule to correct a cross-reference citation.

EFFECTIVE DATE: December 4, 2003.

ADDRESSES: The official public docket is available for public viewing at the EPA Docket Center, EPA West, Room B–102, 1301 Constitution Ave., NW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Mr. Robert B. Lucas, Waste and Chemical Process Group (C504–05), Emission Standards Division, Office of Air Quality Planning and Standards, U.S. EPA, Research Triangle Park, NC 27711, telephone number (919) 541–0884, facsimile number (919) 541–5600, electronic mail (e-mail) address, *lucas.bob@epa.gov*.

SUPPLEMENTARY INFORMATION

Regulated Entities. Categories and entities potentially regulated by this action include:

Category	NAIC[1]	Examples of regulated entities
Industry	32512–325182 32411 331111 22121 562211 324110	Chemical manufacturing plants, petroleum refineries, coke by-product recovery plants, and commercial hazardous waste treatment, storage, and disposal facilities that manage waste generated by these industries.
Federal government		Not affected.
State/local/tribal government		Not affected.

[1] North American Industry Classification System

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by the final rule amendments. To determine whether your facility is regulated by the final rule amendments, you should examine the applicability criteria in 40 CFR 61.340 of the national emission standard for benzene waste operations. If you have any questions concerning applicability and rule determinations, contact the technical contact person in the preceding **FOR FURTHER INFORMATION CONTACT** section.

Docket. The EPA has established an official public docket for this action including both Docket ID No. OAR–2003–0147 and Docket ID No. A–2001–23. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. All items may not be listed under both docket numbers, so interested parties should inspect both docket numbers to ensure that they have received all materials relevant to the final rule amendments. Although a part of the official docket, the public docket does not include Confidential Business Information or other information whose disclosure is restricted by statute. The official public docket is available for public viewing at the EPA Docket Center (Air Docket), EPA West, Room B–102, 1301 Constitution Ave., NW., Washington DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Air Docket is (202) 566–1742.

Electronic Docket Access. You may access the final rule amendments electronically through the EPA Internet under the **Federal Register** listings at *http://www.epa.gov/fedrgstr/*.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket* to view public comments, access the index listing the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the appropriate docket identification number. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the EPA Docket Center.

Worldwide Web (WWW). In addition to being available in the docket, an electronic copy of today's final rule amendments will also be available on the WWW through the Technology Transfer Network (TTN). Following the Administrator's signature, a copy of the final rule amendments will be posted on the TTN's policy and guidance page for newly proposed or promulgated rules at *http://www.epa.gov/ttn/oarpg*. The TTN provides information and technology exchange in various areas of air pollution control. If more information regarding the TTN is needed, call the TTN HELP line at (919) 541–5384.

Judicial Review. Under section 307(b)(1) of the Clean Air Act (CAA), judicial review of the final rule amendments is available only by filing a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit by February 2, 2004. Under section 307(d)(7)(B) of the CAA, only an objection to the final rule amendments that was raised with reasonable specificity during the period for public comment can be raised during judicial review. Moreover, under section 307(b)(2) of the CAA, the requirements established by the final rule amendments may not be challenged separately in any civil or criminal proceedings brought by the EPA to enforce these requirements.

Outline. The information in this preamble is organized as follows:

I. Background
II. Response to Comment on Amendments to the National Emission Standard for Benzene Waste Operations
III. Editorial Correction to the Amendments
IV. Statutory and Executive Order Reviews
A. Executive Order 12866: Regulatory Planning and Review
B. Paperwork Reduction Act
C. Regulatory Flexibility Analysis
D. Unfunded Mandates Reform Act
E. Executive Order 13132: Federalism
F. Executive Order 13175: Consultation and Coordination with Indian Tribal Governments
G. Executive Order 13045: Protection of Children from Environmental Health and Safety Risks
H. Executive Order 13211: Actions that Significantly Affect Energy Supply, Distribution, or Use
I. National Technology Transfer Advancement Act
J. Congressional Review Act

I. Background

On March 7, 1990, we issued the national emission standard for benzene waste operations (40 CFR part 61, subpart FF). Subpart FF applies to equipment and processes at certain chemical manufacturing plants, coke by-product recovery plants, petroleum refineries, and facilities that treat, store, or dispose of waste generated by those facilities.

On November 12, 2002, we issued a direct final rule (67 FR 68528) and a parallel proposed rule (67 FR 68546) to amend the national emission standard for benzene waste operations. We stated in the preamble to the direct final rule and parallel proposal that if we received adverse comments by December 12, 2002 (or February 18, 2003, if a public hearing was requested), on one or more distinct provisions of the direct final rule, we would publish a timely notice in the **Federal Register** specifying which provisions will become effective and which provisions will be withdrawn due to adverse comment.

We subsequently received an adverse comment from one commenter on the provisions related to control devices in a new compliance option for tanks equipped with an enclosure.

Accordingly, we withdrew 40 CFR 61.343(e) introductory text and withdrew and reserved paragraph (e)(2) in § 61.343 (68 FR 6082, February 6, 2003). The remaining provisions, for which we did not receive any adverse comments, became effective on February 10, 2002. After full and careful consideration of the comment, we are promulgating the amendments previously withdrawn based on the parallel proposal published on November 12, 2002.

II. Response to Comment on Amendments to the National Emission Standard for Benzene Waste Operations

The direct final rule published on November 12, 2002, included amendments to 40 CFR 61.343 of the benzene waste final rule that add a new compliance option for tanks located inside a permanent total enclosure. The new compliance option was adopted from similar standards established under the Resource Conservation and Recovery Act (RCRA) for hazardous waste treatment, storage, and disposal facilities (40 CFR parts 264 and 265, subparts CC). This change was first requested as an alternative emission limitation by a company subject to both the benzene waste final rule and the RCRA subparts CC rules. Under 40 CFR 264.1082(c)(5) and 265.1083(c)(5) of the RCRA rules, tanks are specifically exempted from the standards provided that, among other conditions, the tank is located inside an enclosure, and the enclosure is vented to a control device designed and operated in accordance with the requirements in the benzene waste national emission standard.

Prior to development of the direct final rule amendments and parallel proposal, we reviewed the information submitted by the company and determined that their control system (a tank located inside a permanent total enclosure with emissions vented through a closed vent system to an enclosed combustion device) provided a level of control of benzene equivalent to that required by the national emission standard for benzene waste operations. Based on this equivalency determination, we issued direct final rule amendments to the national emission standard by adding a new compliance option that allowed tanks to be located inside a permanent total enclosure that routes organic vapors to an "enclosed combustion control device." This is the most common type of control device used for tanks located inside a total enclosure.

The commenter objected to provisions that restricted applicable emission controls for the compliance option (*i.e.* the controls on the emissions from the tank in the enclosure) to an "enclosed combustion control device." He correctly pointed out that the national emission standard allows a wide range of control devices to be used to comply with the requirements. In fact, a "control device" is defined in 40 CFR 61.341 of the rule to mean an enclosed combustion device (vapor incinerator, boiler, or process heater); a vapor recovery system (carbon canister or condenser); or flare.

The commenter also stated that the amendments were inconsistent with the spirit of 40 CFR 264.1082(c)(5) and 265.1083(c)(5) of the RCRA rules, in that they would lead to situations where the RCRA rules would continue to apply but were not, in fact, intended to be applicable any longer. The anomalous situation put forward by the commenter would be where a tank is located inside an enclosure, and the enclosure is vented to a vapor recovery system designed and operated in accordance with the requirements in the benzene waste national emission standard. The commenter stated that their tanks meet all the requirements for the exemption from the RCRA rules. In this case, however, the control device applied to the emissions from the permanent total enclosure is not an enclosed combustion control device. Consequently, the facility would not qualify for the RCRA exemption, an unintended outcome.

It was not our intention to restrict the new compliance option for tanks to enclosed combustion control devices. Any of the control devices allowed under the benzene waste national emission standard can be used under the new compliance option provided it meets the control device performance standards in 40 CFR 61.349 of subpart FF. The benzene waste national emission standard also contains procedures and requirements for requesting approval of a control device other than an enclosed combustion system, vapor recovery system, or flare.

We agree with the issue raised by the commenter and are issuing final amendments to the new compliance option, based on the parallel proposal, that refer simply to the use of a "control device." This change allows a tank meeting all of the conditions for exemption under 40 CFR 264.1082(c)(5) and 265.1083(c)(5) of the RCRA rules to comply with the new compliance option using a "control device" as defined in 40 CFR 61.341 of the benzene waste national emission standard (meaning an enclosed combustion device, vapor recovery system, or flare). This change is effective immediately. No risk, environmental, energy, cost, or economic impacts are associated with this action.

III. Editorial Correction to the Amendments

Since publication of the direct final rule amendments and parallel proposal, we identified one cross-reference error. As proposed, paragraph (a)(3)(iii) of 40 CFR 61.345 allowed the use of safety devices on any container, enclosure, closed-vent system, or control device used to comply with the requirements of "paragraph (e)(1) of this section," which does not exist. We have corrected this citation in today's final rule amendments by referencing the control requirements in 40 CFR 61.345(a)(3)(i).

IV. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the EPA must determine whether the regulatory action is "significant" and, therefore, subject to review by the Office of Management and Budget (OMB) and the requirements of the Executive Order. The Executive Order defines a "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

It has been determined that the final rule amendments are not a "significant regulatory action" under the terms of Executive Order 12866 and are, therefore, not subject to OMB review.

B. Paperwork Reduction Act

This action does not impose any new information collection burden because the only facility with a total enclosure is already conducting annual verifications and keeping the prescribed records. However, the OMB has previously approved the information collection requirements in the existing national emission standard (40 CFR part 61, subpart FF) under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* and has assigned OMB control number 2060–0183.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purpose of collecting, validating, and verifying information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9.

C. Regulatory Flexibility Analysis

The EPA has determined that it is not necessary to prepare a regulatory flexibility analysis in connection with the final rule amendments. For the purposes of assessing the impact of today's final rule amendments on small entities, small entity is defined as: (1) A small business according to the Small Business Administration (SBA) size standards by NAICS code ranging from 500 to 1,500 employees; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's final rule amendments on small entities, EPA has concluded that this action will not impose a significant economic impact on a substantial number of small entities. In determining whether a rule has a significant economic impact on a substantial number of small entities, the impact of concern is any significant adverse economic impact on small entities, since the primary purpose of the regulatory flexibility analysis is to identify and address regulatory alternatives "which minimize any significant economic impact of the proposed rule on small entities." (*See* 5 U.S.C. 603 and 604.) Thus, an agency may conclude that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, or otherwise has a positive economic impact on all of the small entities subject to the rule. These final rule amendments will not create any new costs for affected firms. In fact, the final rule amendments will relieve the regulatory burden for all facilities, large or small, by broadening the types of control devices that can be used to meet the requirements in RCRA rules for exemption from standards for tanks. This will decrease compliance costs for a few facilities subject to both the RCRA and CAA rules. We have, therefore, concluded that today's final rule amendments will relieve regulatory burden for all small entities that are subject to both the RCRA and CAA standards for tanks located inside a permanent total enclosure.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, the EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures by State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any 1 year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires the EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least-burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows the EPA to adopt an alternative other than the least-costly, most cost-effective, or least-burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before the EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

Today's final rule amendments contain no Federal mandate (under the regulatory provisions of the UMRA) for State, local, or tribal governments. The EPA has determined that the final rule amendments do not contain a Federal mandate that may result in expenditures for State, local, or tribal governments, in the aggregate, or to the private sector of $100 million or more in any 1 year. No costs are attributable to the amendments. Thus, the final rule amendments are not subject to the requirements of sections 202 and 205 of the UMRA. The EPA has also determined that the final rule amendments contain no regulatory requirements that might significantly or uniquely affect small governments. Thus, the final rule amendments are not subject to the requirements of section 203 of the UMRA.

E. Executive Order 13132: Federalism

Executive Order 13132 (64 FR 43255, August 10, 1999) requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

These final rule amendments do not have federalism implications. They will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. None of the affected facilities are owned or operated by State governments. Thus, Executive Order 13132 does not apply to the final rule amendments.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Executive Order 13175 (65 FR 67249, November 6, 2000) requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." These final rule amendments do not have tribal implications, as specified in Executive Order 13175. They will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes. No tribal governments own facilities subject to the benzene waste national emission standard. Thus, Executive Order 13175 does not apply to the final rule amendments.

G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks

Executive Order 13045 (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be "economically significant," as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the EPA must evaluate the environmental health or safety effects of the planned rule on children and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the EPA.

The EPA interprets Executive Order 13045 as applying only to regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Executive Order has the potential to influence the regulation. The national emission standard for benzene waste operations is based on protection of the public health with an ample margin of safety. However, the amendments to the benzene waste national emission standard have no effect on the level of emissions from benzene waste operations or associated risk and are not subject to Executive Order 13045.

H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

The final rule amendments are not subject to Executive Order 13211 (66 FR 28355, May 22, 2001) because they are not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113; 15 U.S.C. 272 note), directs EPA to use voluntary consensus standards in their regulatory and procurement activities unless to do so would be inconsistent with applicable law or otherwise impracticable. Voluntary consensus standards are technical standards (*e.g.*, material specifications, test methods, sampling and analytical procedures, business practices, *etc.*) developed or adopted by one or more voluntary consensus bodies. The NTTAA directs EPA to provide Congress, through annual reports to OMB, with explanations when EPA does not use available and applicable VCS.

This action does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

J. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA has submitted a report containing the final rule amendments and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the final rule amendments in today's **Federal Register**. The final rule amendments are not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 61

Environmental protection, Air pollution control, Hazardous substances, Reporting and recordkeeping requirements.

Dated: November 25, 2003.

Michael O. Leavitt,

Administrator.

■ For the reasons stated in the preamble, title 40, chapter I, part 61 of the Code of Federal Regulations is amended as follows:

PART 61—[AMENDED]

■ 1. The authority citation for part 61 continues to read as follows:

Authority: 42 U.S.C. 7401, *et seq.*

Subpart FF—[AMENDED]

■ 2. Section 61.343 is amended by:
■ a. Revising paragraph (a)(2);
■ b. Adding paragraph (e) introductory text; and
■ c. Adding paragraph (e)(2).

The revisions and additions read as follows:

§ 61.343 Standards: Tanks.

(a) * * *

(2) The owner or operator must install, operate, and maintain an enclosure and closed-vent system that routes all organic vapors vented from the tank, located inside the enclosure, to a control device in accordance with the requirements specified in paragraph (e) of this section.

* * * * *

(e) Each owner or operator who controls air pollutant emissions by using an enclosure vented through a closed-vent system to a control device must meet the requirements specified in paragraphs (e)(1) through (4) of this section.

(1) * * *

(2) The enclosure must be vented through a closed-vent system to a control device that is designed and operated in accordance with the standards for control devices specified in § 61.349.

* * * * *

■ 3. Section 61.345 is amended by revising paragraph (a)(3)(iii) to read as follows:

§ 61.345 Standards: Containers.

(a) * * *

(3) * * *

(iii) Safety devices, as defined in this subpart, may be installed and operated as necessary on any container, enclosure, closed-vent system, or control device used to comply with the requirements of paragraph (a)(3)(i) of this section.

* * * * *

[FR Doc. 03–30163 Filed 12–3–03; 8:45 am]

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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 354

[Docket No. 03–098–1]

Commuted Traveltime Periods: Overtime Services Relating to Imports and Exports

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the regulations concerning overtime services provided by employees of Plant Protection and Quarantine by adding commuted traveltime allowances for travel between Hilo, HI, and five new locations in Hawaii. Commuted traveltime allowances are the periods of time required for Plant Protection and Quarantine employees to travel from their dispatch points and return there from the places where they perform Sunday, holiday, or other overtime duty. The Government charges a fee for certain overtime services provided by Plant Protection and Quarantine employees and, under certain circumstances, the fee may include the cost of commuted traveltime. This action is necessary to inform the public of commuted traveltime for these locations.

EFFECTIVE DATE: December 5, 2003.

FOR FURTHER INFORMATION CONTACT: Mr. Michael Caporaletti, Program Analyst, PPQ, APHIS, 4700 River Road Unit 120, Riverdale, MD 20737–1238; (301) 734–5781.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 7 CFR, chapter III, and 9 CFR, chapter I, subchapter D, require inspection, laboratory testing, certification, or quarantine of certain plants, plant products, animals, animal products, or other commodities intended for importation into, or exportation from, the United States.

When these services must be provided by an employee of Plant Protection and Quarantine (PPQ) on a Sunday or holiday, or at any other time outside the PPQ employee's regular duty hours, the Government charges a fee for the services in accordance with 7 CFR part 354. Under circumstances described in § 354.1(a)(2), this fee may include the cost of commuted traveltime. Section 354.2 contains administrative instructions prescribing commuted traveltime allowances, which reflect, as nearly as practicable, the periods of time required for PPQ employees to travel from their dispatch points and return there from the places where they perform Sunday, holiday, or other overtime duty.

We are amending § 354.2 of the regulations by adding commuted traveltime allowances for travel between Hilo, HI, and five new locations in Hawaii. The amendments are set forth in the rule portion of this document. This action is necessary to inform the public of the commuted traveltime between the dispatch and service locations.

Effective Date

The commuted traveltime allowances appropriate for employees performing services at ports of entry, and the features of the reimbursement plan for recovering the cost of furnishing port of entry services, depend upon facts within the knowledge of the Department of Agriculture. It does not appear that public participation in this rulemaking proceeding would make additional relevant information available to the Department.

Accordingly, pursuant to the administrative procedure provisions in 5 U.S.C. 553, we find upon good cause that prior notice and other public procedure with respect to this rule are impracticable and unnecessary; we also find good cause for making this rule effective less than 30 days after publication of this document in the **Federal Register**.

Executive Order 12866 and Regulatory Flexibility Act

This final rule has been reviewed under Executive Order 12866. For this action, the Office of Management and Budget has waived its review under Executive Order 12866.

The number of requests for overtime services of a PPQ employee at the locations affected by this rule represents an insignificant portion of the total number of requests for these services in the United States.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12988

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is intended to have preemptive effect with respect to any State or local laws, regulations, or policies that conflict with its provisions or that would otherwise impede its full implementation. This rule is not intended to have retroactive effect. There are no administrative procedures that must be exhausted prior to any judicial challenge to the provisions of this rule or the application of its provisions.

Paperwork Reduction Act

This rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 7 CFR Part 354

Exports, Government employees, Imports, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Travel and transportation expenses.

■ Accordingly, we are amending 7 CFR part 354 as follows:

PART 354—OVERTIME SERVICES RELATING TO IMPORTS AND EXPORTS; AND USER FEES

■ 1. The authority citation for part 354 continues to read as follows:

Authority: 7 U.S.C. 8301–8317; 21 U.S.C. 136 and 136a; 49 U.S.C. 80503; 7 CFR 2.22, 2.80, and 371.3.

■ 2. Section 354.2 is amended by adding in the table, in alphabetical order, under Hawaii, the following entries to read as follows:

§ 354.2 Administrative instructions prescribing commuted traveltime.

* * * * *

COMMUTED TRAVELTIME ALLOWANCES

[In hours]

Location covered	Served from—	Metropolitan area	
		Within	Outside
Hawaii:			
Hakalau	Hilo		2
Kurtistown	Hilo		2
Mt. View	Hilo		2
Pepeekeo	Hilo		2
Umauma	Hilo		2

Done in Washington, DC, this 2nd day of December 2003.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 03–30230 Filed 12–4–03; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

7 CFR parts 1412 and 1421

RIN 0560–AG71 and 0560–AG72

Direct and Counter Cyclical Program; Marketing Assistance Loans and Loan Deficiency Payments for Peanuts, Pulse Crops, Wheat, Feed Grains, Soybeans and Other Oilseeds; Correction

AGENCIES: Commodity Credit Corporation, USDA.

ACTION: Final rule (correcting amendments).

SUMMARY: This document also corrects the regulations published by the Commodity Credit Corporation (CCC) entitled "Direct and Counter Cyclical Program" and "Marketing Assistance Loans and Loan Deficiency Payments." Corrections are necessary for provisions that conflict with statute or other program requirements and are intended to ensure that Agency regulations are properly written and implemented. These changes will apply retroactively to actions taken under the subject regulations since their effective date.

DATES: The revisions to part 1412 are effective as of October 16, 2002; the revisions to part 1421 are effective as of October 8, 2002.

FOR FURTHER INFORMATION CONTACT: Sharon Biastock at 720–6336; or Kimberly Graham, at 202–720–9154.

SUPPLEMENTARY INFORMATION:

Discussion of Corrections

(1) *Interstate transfer of peanut acreage.* This document also corrects 7 CFR part 1412, published in the **Federal Register** on October 21, 2002, 67 FR 64751, by authority of the Farm Security and Rural Investment Act of 2002 ("2002 Act"). Part 1412 is entitled "Direct and Counter-Cyclical Program and Peanut Quota Buyout Program," and provides for direct and counter-cyclical payments for the crop years 2002 through 2007 for a number of crops to provide income support to producers of eligible commodities. The error is in the introductory language in section 1412.703(b) of part 1412, which states, "Notwithstanding paragraph (a) of this section, the average acreage determined under § 1412.701 for a farm may be assigned to a farm in a contiguous county only if either of the following apply:" This correction substitutes the word "state" for "county" in that sentence, as the provisions are directed to special allowance for interstate transfers for peanuts as reflected elsewhere and in the authorizing statute.

(2) *Penalties for erroneous certification.* This document corrects the regulations for CCC Marketing Assistance Loans and Loan Deficiency Payments for Peanuts, Pulse Crops, Wheat, Feed Grains, Soybeans and Other Oilseeds at 7 CFR Part 1421. The current provisions of Part 1421 were published in the **Federal Register** on Friday, October 11, 2002 (67 FR 63511). Marketing assistance loans and loan deficiency payments are authorized by title I of the 2002 Act.

This document corrects sections 1421.109 of 7 CFR part 1421 relating to a producer's violation of a loan agreement, and the resulting administrative remedies. Specifically, § 1421.109(e) is corrected so that the amount due for a violation of this provision is based only on the quantity of the commodity "removed or disposed of" and not the "quantity incorrectly certified or the loan quantity removed or disposed." As to the reference to "quantity incorrectly certified" there can never be less than a full loan repayment as is clear from the circumstances and other provisions in the regulations. Accordingly, this section is corrected by removing that reference. Also, a clarifying comma is added after the word "interest" in § 1421.109(e)(1)(i).

Section 1421.109 is also corrected in paragraph (g) so that, "The county committee may waive the liquidated damages if it determines that the violation was inadvertent, accidental, or unintentional." instead of "* * * and unintentional." The word "or" was used here instead of "and" to comport fully with the original and continuing intent of this provision.

These changes are to clarify and correct regulations, and delaying their publication to request public comment is contrary to the public interest. Further, section 1601 of the 2002 Act exempts these changes from notice and comment rulemaking. So that they may apply equally with existing regulations,

these changes are effective as of the original filing of the rules implementing the 2002 Act.

List of Subjects

7 CFR Part 1412

Direct and counter-cyclical payments, Grains, Peanuts, Oilseeds, Reporting and record keeping requirements.

7 CFR Part 1421

Agricultural commodities, Feed grains, Grains, Loan programs—agriculture, Oilseeds, Price support programs.

■ Accordingly, 7 CFR chapter XIV is corrected as follows:

PART 1412—DIRECT AND COUNTER-CYCLICAL PROGRAM AND PEANUT QUOTA BUYOUT PROGRAM

■ 1. The authority citation for part 1412 continues to read as follows:

Authority: 7 U.S.C. 7911–7918, 7951–7956; 15 U.S.C. 714b and 714c.

Subpart G—Establishment and Assignment of Peanut Base Acres and Yields for a Farm

■ 2. Revise § 1412.703(b) to read as follows:

§ 1412.703 Assignment of average peanut yields and average peanut acreages to farms.

* * * * *

(b) Notwithstanding paragraph (a) of this section, the average acreage determined under § 1412.701 for a farm may be assigned to a farm in a contiguous state only if either of the following apply:

(1) The historic peanut producer making the assignment produced peanuts in that State during at least one of the 1998 through 2001 crop years; or

(2) As of March 31, 2003, the historic peanut producer is a producer on a farm in that State.

* * * * *

PART 1421—GRAINS AND SIMILARLY HANDLED COMMODITIES—MARKETING ASSISTANCE LOANS AND LOAN DEFICIENCY PAYMENTS FOR THE 2002 THROUGH 2007 CROP YEARS

■ 3. The authority citation for part 1421 continues to read as follows:

Authority: 7 U.S.C. 7231–7237 and 7931 *et seq.*; 15 U.S.C. 714b, 714c.

Subpart B—Marketing Assistance Loans

■ 4. In § 1421.109, paragraphs (e)(1) and (g) are corrected to read as follows:

§ 1421.109 Personal liability of the producer.

* * * * *

(e) For violations and the liquidated damages under paragraph (d)(1) of this section, the county committee shall:

(1) Require repayment of the marketing assistance loan quantity removed or disposed of at the lesser of:

(i) The applicable loan principal, and charges, plus interest, or:

(ii) The announced alternative repayment rate in effect on date the violation occurred, plus 15 percent of the loan rate, or as otherwise determined by the Deputy Administrator, and

* * * * *

(g) The county committee may waive imposing liquidated damages if it determines that the violation was inadvertent, accidental, or unintentional.

* * * * *

Signed in Washington, DC, on November 26, 2003.

James R. Little,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. 03–30198 Filed 12–4–03; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF COMMERCE

Bureau of Economic Analysis

15 CFR Part 806

[Docket No. 030818205–3281–02]

RIN 0691–AA48

Direct Investment Surveys: BE–15, Annual Survey of Foreign Direct Investment in the United States

AGENCY: Bureau of Economic Analysis, Commerce.

ACTION: Final rule.

SUMMARY: This final rule amends regulations that set forth reporting requirements for the BE–15, Annual Survey of Foreign Direct Investment in the United States. The annual survey is comprised of four forms—the BE–15(LF) long form, the BE–15(SF) short form, the BE–15(EZ) form, which is a new form, and the BE–15 Supplement C–Claim for Exemption From Filing a BE–15(LF), BE–15(SF), or BE–15(EZ). The annual survey is a sample survey that collects data on the financial structure and operations of nonbank U.S. affiliates of foreign companies needed to update similar data for the universe of U.S. affiliates collected once every 5 years in the BE–12 benchmark survey. The data are used to derive annual estimates of the operations of U.S. affiliates of foreign companies, including their balance sheets; income statements; property, plant, and equipment; external financing; employment and employee compensation; merchandise trade; sales of goods and services; taxes; and research and development activity. The data are needed to measure the size and economic significance of foreign direct investment in the United States, to measure changes in such investment, and to assess its impact on the U.S. economy.

DATES: This final rule will be effective January 5, 2004.

FOR FURTHER INFORMATION CONTACT: Obie G. Whichard, Chief, International Investment Division (BE–50), Bureau of Economic Analysis, U.S. Department of Commerce, Washington, DC 20230; phone (202) 606–9890.

SUPPLEMENTARY INFORMATION: On August 29, 2003, the Bureau of Economic Analysis (BEA) published in the **Federal Register** (68 FR 51942) a notice of proposed rulemaking setting forth revised reporting requirements for the BE–15, Annual Survey of Foreign Direct Investment in the United States. No comments on the proposed rule were received. Thus, the provisions in the proposed rule are adopted without change.

Description of Revisions

The BE–15, Annual Survey of Foreign Direct Investment in the United States, is mandatory and is conducted annually by the Bureau of Economic Analysis (BEA), U.S. Department of Commerce, under the International Investment and Trade in Services Survey Act (22 U.S.C. 3101–3108)—hereinafter, "the Act." BEA will send the survey to potential respondents in March of each year; responses will be due by May 31.

BEA will introduce a sampling procedure to help reduce respondent burden for some U.S. businesses. The procedure utilizes the new BE–15(EZ) form; this form provides a few basic indicators for non-sample firms that can be used as a basis for estimating data that they otherwise would have to report on the lengthier BE–15(LF) and BE–15(SF) forms. To bring the annual survey into conformity with the Benchmark Survey of Foreign Direct Investment in the United States–2002, the following changes are being made to the Code of Federal Regulations: (1) Direct that only nonbank majority-owned U.S. affiliates of foreign companies report on the BE–15(LF) long form (minority-owned affiliates will report on the BE–15(SF) short form, or

the BE–15(EZ) form, regardless of size); (2) raise the exemption level on the BE–15(LF) long form from $100 million to $125 million (reporting on a given form is required if the affiliate's assets, sales, or net income (or loss) exceed the exemption level); and (3) exempt nonbank subsidiaries or units of U.S. bank or bank holding company affiliates from reporting.

In addition, the following changes are being made to the forms: (1) Add questions to the BE–15 (LF) long form to collect detail on premiums earned and claims paid for U.S. affiliates operating in the insurance industry, and to collect detail on finished goods purchased for resale for U.S. affiliates operating in the wholesale and retail trade industries; (2) in conjunction with increasing the exemption level for reporting on the BE–15(LF) long form, add four items to the short form that will serve to improve estimates of gross product for majority-owned U.S. affiliates—certain realized and unrealized gains and losses, U.S. income taxes, interest received, and interest paid; (3) in conjunction with requiring all minority-owned U.S. affiliates to file on the short form, revise the State Schedule to collect additional detail, by State, for minority-owned U.S. affiliates with activities in more than five States; and (4) to reduce overall respondent burden, drop several questions that BEA feels are no longer of significant analytical interest to the data users.

Survey Background

The Bureau of Economic Analysis (BEA), U.S. Department of Commerce, will conduct the survey under the International Investment and Trade in Services Survey Act (22 U.S.C. 3101–3108), hereinafter, "the Act." Section 4(a) of the Act provides that with respect to foreign direct investment in the United States, the President shall, to the extent he deems necessary and feasible, conduct a regular data collection program to secure current information on international capital flows and other information related to international investment and trade in services, including (but not limited to) such information as may be necessary for computing and analyzing the United States balance of payments, the employment and taxes of United States parents and affiliates, and the international investment and trade in services position of the United States.

In Section 3 of Executive Order 11961, the President delegated authority granted under the Act as concerns direct investment to the Secretary of Commerce, who has redelegated it to BEA.

The annual survey is a sample survey that collects data on the financial structure and operations of nonbank U.S. affiliates of foreign companies needed to update similar data for the universe of U.S. affiliates collected once every 5 years in the BE–12 benchmark survey. The data are used to derive annual estimates of the operations of U.S. affiliates of foreign companies, including their balance sheets; income statements; property, plant, and equipment; external financing; employment and employee compensation; merchandise trade; sales of goods and services; taxes; and research and development activity. The data are needed to measure the size and economic significance of foreign direct investment in the United States, to measure changes in such investment, and to assess its impact on the U.S. economy. Such data are generally found in enterprise-level accounting records of respondent companies. The data are disaggregated by industry of U.S. affiliate, by country and industry of foreign parent or ultimate beneficial owner, and, for selected items, by State.

Executive Order 13132

This final rule does not contain policies with Federalism implications, as that term is defined in E.O. 13132.

Executive Order 12866

This final rule has been determined to be not significant for purposes of E.O. 12866.

Paperwork Reduction Act

Notwithstanding any other provisions of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act (PRA) unless that collection displays a currently valid Office of Management and Budget (OMB) Control Number. This final rule covers a collection of information subject to the provisions of the PRA. The OMB has approved this collection and assigned to it OMB Control Number 0608–0034. The collection will display this control number.

The survey is expected to result in the filing of reports from approximately 4,950 U.S. affiliates. The respondent burden for this collection of information is expected to vary from 20 minutes for the smallest and least complex company reporting on the BE–15 Supplement C form to 550 hours for the largest and most complex company reporting on the BE–15(LF) long form, with an average burden of 21.8 hours per response (down from 32 hours for the previous annual survey), including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Total respondent burden for the previous (2001) annual survey was estimated at 128,000 hours. Total respondent burden for this survey is estimated to be 107,900 hours (4,950 responses times 21.8 hours average burden). The decrease of 20,100 hours in the estimated total respondent burden is largely attributable to the changes to the reporting requirements.

Regulatory Flexibility Act

The Chief Counsel for Regulation, Department of Commerce, has certified to the Chief Counsel for Advocacy, Small Business Administration, under the provisions of the Regulatory Flexibility Act (5 U.S.C. 605(b)), that the proposed rule would not have a significant economic impact on a substantial number of small entities as that term is defined in the Regulatory Flexibility Act. The factual basis for the certification was published with the proposed rule. No comments were received regarding the economic impact of the rule. As a result, no final regulatory flexibility analysis was prepared.

List of Subjects in 15 CFR Part 806

International transactions, Economic statistics, Foreign investment in the United States, Penalties, Reporting and record keeping requirements.

Dated: November 24, 2003.

J. Steven Landefeld,

Director, Bureau of Economic Analysis.

■ For reasons set forth in the preamble, BEA amends 15 CFR part 806 as follows:

PART 806—DIRECT INVESTMENT SURVEYS

■ 1. The authority citation for 15 CFR Part 806 continues to read as follows:

Authority: 5 U.S.C. 301; 22 U.S.C. 3101–3108; and E.O. 11961 (3 CFR, 1977 Comp., p. 86), as amended by E.O. 12013 (3 CFR, 1977 Comp., p. 147), E.O. 12318 (3 CFR, 1981 Comp., p. 173), and E.O. 12518 (3 CFR, 1985 Comp., p. 348).

■ 2. Section 806.15(i) is revised to read as follows:

§ 806.15 Foreign direct investment in the United States.

* * * * *

(i) *Annual report form.* BE–15–Annual Survey of Foreign Direct Investment in the United States: One report is required for each consolidated U.S. affiliate, except a U.S. banking affiliate or U.S. bank holding company affiliate (including all of the subsidiaries and units of the bank holding company), exceeding an exemption level of $30 million. A long form, BE–15(LF), must be filed by each nonbank majority-owned U.S. affiliate (a "majority-owned" U.S. affiliate is one in which the combined direct and indirect ownership interests of all foreign parents of the U.S. affiliate exceed 50 percent) for which at least one of the three items-total assets, sales or gross operating revenues excluding sales taxes, or net income after provision for U.S. income taxes-exceeds $125 million (positive or negative), unless the nonbank majority-owned U.S. affiliate is selected to file a BE–15(EZ) form. A short form, BE–15(SF), must be filed by each nonbank majority-owned U.S. affiliate for which at least one of the three items-total assets, sales or gross operating revenues excluding sales taxes, or net income after provision for U.S. income taxes-exceeds $30 million but no one item exceeds $125 million (positive or negative), and by each nonbank minority-owned U.S. affiliate (a "minority-owned" U.S. affiliate is one in which the combined direct and indirect ownership interest of all foreign parents of the U.S. affiliate is 50 percent or less) for which at least one of the three items-total assets, sales or gross operating revenues excluding sales taxes, or net income after provision for U.S. income taxes-exceeds $30 million (positive or negative), unless the nonbank U.S. affiliate is selected to file a BE–15(EZ) form. A BE–15(EZ) form must be filed by each nonbank U.S. affiliate that is selected to file this form in lieu of filing the BE–15(LF) or BE–15(SF). A BE–15 Supplement C (Exemption Claim) must be filed by each nonbank U.S. affiliate to claim exemption from filing a BE–15(LF), BE–15(SF), or BE–15(EZ). Following an initial filing, the BE–15 Supplement C is not required annually from those nonbank U.S. affiliates that meet the stated exemption criteria from year to year.

* * * * *

[FR Doc. 03–29996 Filed 12–4–03; 8:45 am]

BILLING CODE 3510–06–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Part 170

RIN 1076–AE50

Partial Distribution of Fiscal Year 2004 Indian Reservation Roads Funds

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Final rule.

SUMMARY: We are issuing a rule requiring that we immediately distribute $25 million of fiscal year 2004 Indian Reservation Roads (IRR) funds to projects on or near Indian reservations using the relative need formula. This partial distribution reflects the funds the Federal Highway Administration has allocated to the Department of the Interior and is based on funding appropriated by a continuing resolution and the Surface Transportation Extension Act of 2003 in effect until February 29, 2004. We are using the Federal-Highway Administration (FHWA) Price Trends report for the relative need formula distribution process, with appropriate modifications to address non-reporting States. This distribution will allow an immediate allocation of funds based on an existing formula, final allocations will be dependent on a final authorization of highway trust funds and a fiscal year 2004 appropriations.

EFFECTIVE DATE: December 10, 2003. Section 170.4b expires September 30, 2004.

FOR FURTHER INFORMATION CONTACT: LeRoy Gishi, Chief, Division of Transportation, Tribal Services, Bureau of Indian Affairs; 1849 C Street, NW., MS–4058–MIB, Washington, DC 20240. Mr. Gishi may also be reached at (202) 208–4359 (phone) or (202) 208–4696 (fax).

SUPPLEMENTARY INFORMATION:

Background

Where Can I Find General Background Information on the Indian Reservation Roads (IRR) Program, the Relative Need Formula, the Federal Highway Administration (FHWA) Price Trends Report, and the Transportation Equity Act for the 21st Century (TEA–21) Negotiated Rulemaking Process?

The background information on the IRR program, the relative need formula, the FHWA Price Trends Report, and the TEA–21 Negotiated Rulemaking process is detailed in the **Federal Register** notice dated February 15, 2000 (65 FR 7431).

Why Are You Publishing This Rule?

We are publishing this rule to distribute $25 million of fiscal year 2004 IRR Program funds. This rule sets no precedent for the final rule to be published as required by Section 1115 of TEA–21.

Where Can I Find Information on the Distribution of Fiscal Year 2003 IRR Program Funds?

You can find this information in the **Federal Register** notice dated June 5, 2003 (68 FR 33625).

How Will the Secretary Distribute $25 Million of Fiscal Year 2004 IRR Program Funds?

Upon publication of this rule, the Secretary will distribute only $25 million of fiscal year 2004 IRR program funds based on the current relative need formula used in fiscal years 2000, 2001, 2002 and in the first distribution in fiscal year 2003. We are using the latest indices from the FHWA Price Trends Report with appropriate modifications for non-reporting States in the relative need formula distribution process.

Regulatory Planning and Review (Executive Order 12866)

Under the criteria in Executive Order 12866, this rule is not a significant regulatory action because it will not have an annual effect of more than $100 million on the economy. The total amount currently available for distribution of fiscal year 2004 IRR program funds is approximately $145 million and we are distributing only $25 million under this rule. Congress has authorized these funds and FHWA has already allocated them to BIA. The cost to the government of distributing the IRR program funds, especially under the relative need formula with which the tribal governments and tribal organizations and the BIA are already familiar, is negligible. The distribution of fiscal year 2004 IRR program funds does not require tribal governments and tribal organizations to expend any of their own funds. This rule is consistent with the policies and practices that currently guide our distribution of IRR program funds. This rule continues to adopt the relative need formula that we have used since 1993, adjusting the FHWA Price Trends Report indices for states that do not have current data reports. This rule will not create a serious inconsistency or otherwise interfere with an action taken or planned by another Federal agency. The FHWA has transferred the IRR program funds to us and fully expects the BIA to distribute the funds according to a funding formula approved by the

Secretary. This rule does not alter the budgetary effects on any tribes from any previous or any future distribution of IRR program funds and does not alter entitlement, grants, user fees, or loan programs or the rights or obligations of their recipients. This rule does not raise novel legal or policy issues. It is based on the relative need formula in use since 1993. We are changing determination of relative need only by appropriately modifying the FHWA Price Trend Report indices for states that did not report data for the FHWA Price Trends Report, just as we did for the partial distributions for fiscal years 2000, 2001, 2002 and 2003 IRR Program funds. Approximately 350 road and bridge construction projects are at various phases that depend on this fiscal year's IRR program funds. Leaving these ongoing projects unfunded will create undue hardship on tribes and tribal members. Lack of funding would also pose safety threats by leaving partially constructed road and bridge projects to jeopardize the health and safety of the traveling public. Thus, the benefits of this rule far outweigh the costs. This rule is consistent with the policies and practices that currently guide our distribution of IRR Program funds.

Regulatory Flexibility Act

A Regulatory Flexibility analysis under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) is not required for this rule because it applies only to tribal governments, not State and local governments.

Small Business Regulatory Enforcement Fairness Act (SBREFA)

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act, because it does not have an annual effect on the economy of $100 million or more. We are distributing only $25 million under this rule. Congress has authorized these funds and FHWA has already allocated them to BIA. The cost to the government of distributing the IRR Program funds, especially under the relative need formula with which tribal governments, tribal organizations, and the BIA are already familiar, is negligible. The distribution of the IRR Program funds does not require tribal governments and tribal organizations to expend any of their own funds. This rule will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. Actions under this rule will distribute Federal funds to projects for transportation planning, road and bridge construction, and road improvements. This rule does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign based enterprises. In fact, actions under this rule will provide a beneficial effect on employment through funding for construction jobs.

Unfunded Mandates Reform Act

Under the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*), this rule will not significantly or uniquely affect small governments, or the private sector. A Small Government Agency Plan is not required. This rule will not produce a federal mandate that may result in an expenditure by State, local, or tribal governments of $100 million or greater in any year. The effect of this rule is to immediately provide $25 million of fiscal year 2004 IRR Program funds for ongoing IRR activities and construction projects.

Takings Implications (Executive Order 12630)

With respect to Executive Order 12630, the rule does not have significant takings implications since it involves no transfer of title to any property. A takings implication assessment is not required.

Federalism (Executive Order 13132)

With respect to Executive Order 13132, the rule does not have significant Federalism implications to warrant the preparation of a Federalism Assessment. This rule should not affect the relationship between state governments and the Federal government because this rule concerns administration of a fund dedicated to IRR projects on or near Indian reservations that has no effect on Federal funding of state roads. Therefore, the rule has no Federalism effects within the meaning of Executive Order 13132.

Civil Justice Reform (Executive Order 12988)

This rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of Executive Order 12988. This rule contains no drafting errors or ambiguity and is clearly written to minimize litigation, provide clear standards, simplify procedures, and reduce burden. This rule does not preempt any statute. Under The Transportation Equity Act for the 21st Century negotiated rulemaking, we have published a proposed rule and funding formula which is currently being finalized. A final funding formula for fiscal year 2004 will be published in 2004. The rule is not retroactive with respect to any funding from any previous fiscal year (or prospective to funding from any future fiscal year), but applies only to $25 million of fiscal year 2004 IRR Program funding.

Paperwork Reduction Act

The Paperwork Reduction Act does not apply because this rule does not impose record keeping or information collection requirements or the collection of information from offerors, contractors, or members of the public that require the approval of the Office of Management and Budget under 44 U.S.C. 501 *et seq.* We already have all of the necessary information to implement this rule.

National Environmental Policy Act

This rule is categorically excluded from the preparation of an environmental assessment or an environmental impact statement under the National Environmental Policy Act of 1969, 42 U.S.C. 4321 *et seq.*, because its environmental effects are too broad, speculative, or conjectural to lend themselves to meaningful analysis and the road projects funded as a result of this rule will be subject later to the National Environmental Policy Act process, either collectively or case-by-case. Further, no extraordinary circumstances exist to require preparation of an environmental assessment or environmental impact statement.

Consultation and Coordination With Indian Tribal Governments (Executive Order 13175)

Pursuant to Executive Order 13175 of November 6, 2000, "Consultation and Coordination with Indian Tribal Governments," we have consulted with tribal representatives throughout the negotiated rulemaking process. We have evaluated any potential effects on federally recognized Indian tribes and have determined that there are no potential adverse effects and have determined that this rule preserves the integrity and consistency of the relative need formula process we have used since 1993 to distribute IRR Program funds. We are making a change from previous years (which we also made for fiscal years 2000, 2001, 2002 and 2003 IRR Program funds (see **Federal Register** notices at 65 FR 37697, 66 FR 17073, 67 FR 44355 and 68 FR 33625) to modify the FHWA Price Trends Report indices for non-reporting states which do not have current price trends data reports. The yearly FHWA Report is used as part of the process to determine the cost-to-improve portion of the relative need formula. Consultation with tribal governments and tribal organizations is ongoing as part of the TEA–21 negotiated rulemaking process.

List of Subjects in 25 CFR Part 170

Highways and Roads, Indians-lands.

■ In order to distribute part of fiscal year 2004 IRR Program funds immediately we are amending part 170 in chapter I of title 25 of the Code of Federal Regulations as follows.

PART 170—ROADS OF THE BUREAU OF INDIAN AFFAIRS

■ 1. The authority citation for part 170 continues to read as follows:

Authority: 36 Stat. 861; 78 Stat. 241, 253, 257; 45 Stat. 750 (25 U.S.C. 47; 42 U.S.C. 2000e(b), 2000e–2(i); 23 U.S.C. 101(a), 202, 204), unless otherwise noted.

■ 2. Revise § 170.4b to read as follows:

§ 170.4b What formula will BIA use to distribute $25 million of fiscal year 2004 Indian Reservation Roads Program funds?

On December 10, 2003, we will distribute $25 million of fiscal year 2004 IRR Program funds authorized under the Surface Transportation Extension Act of 2003, Pub. L. 108–88. We will distribute the funds to Indian Reservation Roads projects on or near Indian reservations using the relative need formula established and approved in January 1993. The formula has been modified to account for non-reporting States by inserting the latest data reported for those states for use in the relative need formula process.

Dated: November 25, 2003.

Aurene Martin,

Principal Deputy Assistant Secretary—Indian Affairs.

[FR Doc. 03–30208 Filed 12–4–03; 8:45 am]

BILLING CODE 4310–LY–P

DEPARTMENT OF THE TREASURY

Office of the Secretary

31 CFR Parts 1 and 323

Privacy Act of 1974; Implementation

AGENCY: Bureau of the Public Debt, Treasury.

ACTION: Final rule.

SUMMARY: In accordance with the requirements of the Privacy Act of 1974, as amended, the Department of the Treasury exempts a Bureau of the Public Debt system of records entitled "Treasury/BPD.009—U.S. Treasury Securities Fraud Information System" from certain provisions of the Privacy Act.

EFFECTIVE DATE: December 5, 2003.

FOR FURTHER INFORMATION CONTACT: For information about Public Debt's anti-money laundering and fraud suppression program, contact the Fraud Inquiry Line at 304–480–8555. The phone line is administered by the Office of the Chief Counsel, Bureau of the Public Debt. For information about this document, contact the Office of the Chief Counsel, Bureau of the Public Debt, at 304–480–8692 or by e-mail at *chcounsel@bpd.treas.gov*. Copies of this rule can be downloaded from the public Web site at *http://www.publicdebt.treas.gov*.

SUPPLEMENTARY INFORMATION: The Department of the Treasury published a system notice for "Treasury/BPD.009–U.S. Treasury Securities Fraud Information System" in its entirety at 68 FR 34486–34489 (June 9, 2003). We did not receive any comments on the notice. The system of records became effective July 21, 2003.

We issued a proposed rule exempting the system of records from certain provisions of the Privacy Act of 1974, as amended, at 68 FR 36955–36957 (June 20, 2003). Under 5 U.S.C. 552a(k)(2), the head of an agency may promulgate rules to exempt any system of records within the agency from certain provisions of the Privacy Act of 1974, as amended, if the system is investigatory material compiled for law enforcement purposes. The system of records contains investigatory material compiled for law enforcement purposes.

The provisions of the Privacy Act from which exemption is claimed pursuant to 5 U.S.C. 552a(k)(2) are: 5 U.S.C. 552a(c)(3) (Accounting of certain disclosures available to the individual), (d)(1)–(4) (Access to records), (e)(1) (Maintenance of information to accomplish purposes authorized by statute or executive order only), (e)(4)(G) (Publication of procedures for notification), (e)(4)(H) (Publication of procedures for access and contest), (e)(4)(I) (Publication of sources of records), and (f) (Rules for notification, access and contest) to the extent that information in the system is subject to exemption pursuant to 5 U.S.C. 552a(k)(2) as material compiled for law enforcement purposes.

In an unrelated change, the proposed rule clarified the privacy interests afforded to close survivors of a deceased securities holder. Public Debt protected the privacy interests of securities holders by regulation long before the passage of the Privacy Act of 1974. We proposed to amend part 323 to comport with exemption 6 of the Freedom of Information Act which permits us to withhold all information about individuals in "personnel and medical files and similar files" when the disclosure of such information "would constitute a clearly unwarranted invasion of personal privacy." Although the right to privacy of a deceased securities holder extinguishes upon death, the exemption will protect the deceased person's family-related privacy interests in certain cases.

The proposed rule requested that public comments be sent to the Disclosure Officer, Administrative Resource Center, Bureau of the Public Debt, no later than July 21, 2003. We did not receive comments on the proposed rule. Accordingly, the Department of the Treasury is hereby giving notice that the system of records entitled "Treasury/BPD.009–U.S. Treasury Securities Fraud Information System.", is exempt from certain provisions of the Privacy Act.

As required by Executive Order 12866, it has been determined that this final rule is not a "significant regulatory action," and therefore, does not require a Regulatory Impact Analysis.

The regulation will not have a substantial direct effect on the States, on the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

Pursuant to the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601–612, the Department of the Treasury and Public Debt certify that these regulations will not significantly affect a substantial number of small entities. The final rule imposes no duties or obligations on small entities.

In accordance with the provisions of the Paperwork Reduction Act of 1995, the Department of the Treasury and Public Debt have determined that this final rule would not impose new record keeping, application, reporting, or other types of information collection requirements.

List of Subjects

31 CFR Part 1

Privacy.

31 CFR Part 323

Freedom of Information Act, Privacy.

■ Accordingly, for the reasons stated in the preamble, 31 CFR part 1, is amended as follows:

■ 1. The authority citation for part 1 continues to read as follows:

Authority: 5 U.S.C. 301 and 31 U.S.C. 321. Subpart A also issued under 5 U.S.C. 552, as amended. Subpart C also issued under 5 U.S.C. 552a.

PART 1—[AMENDED]

Subpart C—Privacy Act

■ 2. In Subpart C, §1.36, paragraph (g)(1)(x) is amended by adding the following new table below the heading BUREAU OF THE PUBLIC DEBT:

Number	System name
BPD.009	U.S. Treasury Securities Fraud Information System.

PART 323—[AMENDED]

■ 3. The authority citation for part 323 continues to read as follows:

Authority: 80 Stat. 379; sec. 3., 60 Stat. 238, as amended; 5 U.S.C. 301, 552.

■ 4. Revise § 323.2(b) to read as follows:

§ 323.2 Rules Governing Availability of Information.

* * * * *

(b) *Limitations on the availability of records relating to securities.* Records relating to the purchase, ownership of, and transactions in Treasury securities or other securities handled by the Bureau of the Public Debt for government agencies or wholly or partially Government-owned corporations will ordinarily be disclosed only to the owners of such securities, their executors, administrators or other legal representatives or to their survivors or to investigative and certain other agencies of the Federal and State governments, to trustees in bankruptcy, receivers of insolvents' estates or where a proper order has been entered requesting disclosure of information to Federal and State courts. These records are confidential because they relate to private financial affairs of the owners under this Part. In addition, the information falls within the category of "personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy" under the Freedom of Information Act (FOIA), 5 U.S.C. 552(b)(6). FOIA Exemption (b)(6) protects the privacy of living persons who own securities as well as the close survivors of deceased owners. Privacy interests, in the sense of the right to control, use, or disclose information about oneself, cease at death. However, the exemption protects the deceased person's family-related privacy interests that survive death where disclosure would cause embarrassment, pain, grief, or disrupt the peace of mind, of the surviving family. The Bureau of the Public Debt will determine, under FOIA exemption (b)(6), whether disclosure of the records is in the public interest by balancing the surviving family members' privacy interest against the public's right to know the information.

Dated: November 18, 2003.

Teresa Mullett Ressel,

Assistant Secretary for Management and Chief Financial Officer.

[FR Doc. 03–30241 Filed 12–4–03; 8:45 am]

BILLING CODE 4810–39–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[CGD07–03–151]

RIN 1625–AA08

Special Local Regulations; 2003 Holiday Boat Parade of the Palm Beaches, Riviera Beach, FL

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: Temporary special local regulations are being established for the 2003 Holiday Boat Parade in Riviera Beach, Florida. The event will be held on December 6, 2003, on the waters of the Intracoastal Waterway staging in the Lake Worth turning basin southeast of Peanut Island, and proceeding north from Lake Worth South Section Marker 1 and to Jonathan's Landing Marina, Lake Worth Creek Marker 19. These regulations exclude non-participant vessels from the regulated area, which includes the staging area and the parade route, and are needed to provide for the safety of life on navigable waters during the event.

DATES: These regulations are effective from 6 p.m. until 9 p.m. on December 6, 2003.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of [CGD07–03–151] and are available for inspection or copying at Coast Guard Group Miami, 100 MacArthur Causeway, Miami Beach, Florida, 33139 between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: BMC Vaughn, Coast Guard Group Miami, Florida at (305) 535–4317.

SUPPLEMENTARY INFORMATION:

Good Cause

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM. Publishing an NPRM would be unnecessary and contrary to public safety interests. These regulations are needed to minimize danger to the public resulting from numerous spectator and participant craft in close proximity to each other around the staging area and parade route. The event will be held on Saturday December 6, 2003. There is not sufficient time to allow for a notice and comment period, prior to the event. For the safety concerns noted, it is in the public interest to have these regulations in effect during the event. In addition, advance notifications will be made via marine information broadcasts.

For the same reasons, the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**.

Background and Purpose

The 2003 Holiday Boat Parade of the Palm Beaches is a nighttime parade of approximately 60 pleasure boats decorated with holiday lights. These boats range in length from 15 feet to 50 feet. It is anticipated that approximately 200 spectator craft will view the parade. The parade will form in a staging area located within the Lake Worth turning basin on the southeast side of Peanut Island and encompassing all waters within the turning basin west of a line connecting Marker 12 on the north side of the turning basin and Marker 13 on the south side of the turning basin. The parade will then commence and proceed north from Lake Worth South Section Marker 1 on the Intracoastal Waterway (ICW) to Jonathan's Landing Marina at Lake Worth Creek Marker 19, where the parade will disperse. The regulated area includes the staging area and the parade route.

Discussion of Rule

The special local regulations for this event prohibit non-participant vessels from entering the regulated area, which includes the staging area and the parade route.

The staging area encompasses all waters within the Lake Worth turning basin on the southeast side of Peanut Island west of a line connecting Lake Worth Inlet Marker 12 on the north side of the turning basin and Marker 13 on the south side of the turning basin. No anchoring is permitted in the staging area.

The parade route encompasses the Intracoastal Waterway from Lake Worth South Section Marker 1 to Lake Worth Creek Marker 19. During transit of the parade, these regulations prohibit non-participating vessels from approaching within 500 feet ahead of the lead parade vessel, 500 feet astern of the last participating vessel, or within 50 feet on either side of the outboard parade vessels in the regulated area, unless authorized by the Coast Guard patrol commander.

Regulatory Evaluation

This proposal is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Homeland Security (DHS). This regulation will have a minimal impact on non-participant and non-spectator vessels due to the normally low volume of vessel traffic on the ICW during this time this rule is effective. Moreover, this rule is effective for only 3 hours, it regulates only the waters immediately surrounding the parade vessels, and moves with the parade vessels and should therefore have a minimal impact on non-participant and non-spectator vessels.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule may affect the following entities, some of which may be small entities: The owners or operators of vessels intending to transit or anchor in a portion of the regulated area from 6 p.m. to 9 p.m. on December 6, 2003. This rule will not have a significant economic impact on a substantial number of small entities for the following reasons. This rule is for a highly publicized event and will be in effect for only three hours late in the day when vessel traffic is minimal. Any traffic that needs to pass through the regulated area will be allowed to pass with the permission of the Coast Guard patrol commander once the parade participants have moved further along the parade route.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offer to assist small entities in understanding the rule so that they can better evaluate its effects on them and participate in the rulemaking process. Small businesses may contact the person listed under **FOR FURTHER INFORMATION CONTACT** for assistance in understanding and participating in this rulemaking. Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This rule calls for no new collection of information requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in the preamble.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or safety that may disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that Order, because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

We have analyzed this rule under Commandant Instruction M16475.1D, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph 34(h), of the Instruction, from further environmental documentation. Under figure 2–1,

paragraph (34)(h), of the Instruction, an "Environmental Analysis Check List" and a "Categorical Exclusion Determination" are not required for this rule.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

■ For the reasons set out in the preamble, the Coast Guard amends 33 CFR part 100 as follows:

PART 100—[MARINE EVENTS]

■ 1. The authority citation for Part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 100.35T–07–151 to read as follows:

§ 100.35T–07–151 2003 Holiday Boat Parade of the Palm Beaches, Riviera Beach, FL

(a) *Regulated areas.* (1) The regulated staging area encompasses all waters within the Lake Worth Inlet, Port of Palm Beach, turning basin, west of a line connecting Marker 12 on the north side of the turning basin and Marker 13 on the south side of the turning basin.

(2) The regulated parade area encompasses all waters of the Intracoastal Waterway from Lake Worth South Section Marker 1 behind Peanut Island north to Lake Worth Creek Marker 19 at Jonathan's Landing Marina.

(b) *Coast Guard patrol commander.* The Coast Guard patrol commander is a commissioned, warrant, or petty officer of the Coast Guard who has been designated by Commander, Coast Guard Group Miami, Florida.

(c) *Special local regulations. (1) Staging areas.* Entry or anchoring in the staging area by non-participating vessels is prohibited, unless authorized by the Coast Guard patrol commander.

(2) *Parade route.* During the transit of parade vessels, non-participating vessels are prohibited from approaching within 500 feet ahead of the lead parade vessel, 500 feet astern of the last participating vessel in the parade, or within 50 feet either side of the outboard parade vessels, unless authorized by the Coast Guard patrol commander.

(d) *Effective period:* This section is effective from 6 p.m. until 9 p.m. on December 6, 2003.

Dated: November 25, 2003.

Harvey E. Johnson, Jr.,

Rear Admiral, U.S. Coast Guard, Commander, Seventh Coast Guard District.

[FR Doc. 03–30278 Filed 12–4–03; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[COTP San Diego 03–032]

RIN 1625–AA00

Security Zone: Coronado Bay Bridge, San Diego, CA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing temporary security zones encompassing navigable waters 25 yards around all piers, abutments, fenders and pilings of the Coronado Bay Bridge. These temporary security zones are needed for national security reasons to protect the public and ports from potential subversive actions. Persons and vessels are prohibited from entering into, transiting through, loitering, or anchoring within these security zones unless authorized by the Captain of the Port, or his designated representative.

DATES: This rule is effective from November 7, 2003, until May 1, 2004.

ADDRESSES: Documents indicated in this preamble as being available in the docket, are part of docket [COTP San Diego 03–032] and are available for inspection or copying at Marine Safety Office San Diego, 2716 North Harbor Drive, San Diego, CA 92101–1064 between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Petty Officer Austin Murai, USCG, c/o U.S. Coast Guard Captain of the Port, telephone (619) 683–6495

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B) the Coast Guard finds that good cause exists for not publishing an NPRM. Also, for the same reasons, under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. The threat of maritime attacks is real as evidenced by the October 2002 attack of a tank vessel off the coast of Yemen and the continuing threat to U.S. assets as described in the President's finding in Executive Order 13273 of August 21, 2002 (67 FR 56215, September 3, 2002) that the security of the U.S. is endangered by the September, 11, 2001 attacks and that such disturbances continue to endanger the international relations of the United States. See also Continuation of the National Emergency with Respect to Certain Terrorist Attacks, (67 FR 58317, September 13, 2002); Continuation of the National Emergency With Respect To Persons Who Commit, Threaten To Commit, Or Support Terrorism, (67 FR 59447, September 20, 2002).

As a result, a heightened level of security has been established around the Coronado Bridge. Maintaining the structural integrity of the Coronado Bridge, which spans San Diego Bay, is very important to the local economy and military units within the San Diego Area. The measures contemplated by this rule are intended to prevent future terrorist attacks against individuals on or near the Coronado Bridge. Any delay in the effective date of this TFR is impractical and contrary to the public interest.

Background and Purpose

Since the September 11, 2001 terrorist attacks on the World Trade Center in New York, the Pentagon in Arlington, Virginia and Flight 93, the Federal Bureau of Investigation (FBI) has issued several warnings concerning the potential for additional terrorist attacks within the United States. In addition, the ongoing hostilities in Afghanistan and the war with Iraq have made it prudent to U.S. ports to be on higher state of alert because the Al-Qaeda organization and other similar organizations have declared an ongoing intention to conduct armed attacks on U.S. interests worldwide. In its effort to thwart terrorist activity, the Coast Guard has increased safety and security measures on U.S. ports and waterways. As part of the Diplomatic Security and Antiterrorism Act of 1986 (Pub. L. 99–399), Congress amended section 7 of the Ports and Waterways Safety Act (PWSA), 33 U.S.C. 1226, to allow the Coast Guard to take actions, including the establishment of security and safety zones, to prevent or respond to acts of terrorism against individuals, vessels, or public or commercial structures.

In this particular rulemaking, to address the aforementioned security concerns, and to take steps to prevent the catastrophic impact that a terrorist attack against the Coronado Bridge would have on the public interest, the Coast Guard is establishing security zones around the Coronado Bridge. These security zones help the Coast Guard to prevent vessels or persons from engaging in terrorist actions against these bridges. Due to these heightened security concerns, and the catastrophic impact a terrorist attack on this bridge would have on the public, the transportation system and surrounding areas and communities, security zones are prudent for these structures.

Discussion of Rule

In this temporary rule, the Coast Guard is establishing fixed security zones encompassing, from the surface to the sea floor, navigable waters 25 yards around all piers, abutments, fenders and pilings of the Coronado Bridge, San Diego Bay, California. Entry into these security zones is prohibited unless doing so is necessary for safe navigation or to conduct official business such as scheduled maintenance or retrofit operations. Vessels and people may be allowed to enter an established security zone on a case-by-case basis with authorization from the Captain of the Port.

Vessels or persons violating this section will be subject to the penalties set forth in 33 U.S.C. 1232. Pursuant to 33 U.S.C. 1232, any violation of the security zone described herein is punishable by civil penalties, criminal penalties (including imprisonment up to 6 years), and in rem liability against the offending vessel. Any person who violates this section using a dangerous weapon or who engages in conduct that causes bodily injury or fear of imminent bodily injury to any officer authorized to enforce this regulation, also faces imprisonment up to 12 years.

Coast Guard personnel will enforce this regulation and the Captain of the Port may be assisted by other Federal, State, or local agencies in the patrol and enforcement of the regulation. This regulation is proposed under the authority of 33 U.S.C. 1226 in addition to the authority contained in 33 U.S.C. 1231.

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Homeland Security (DHS).

Although this regulation restricts access to portions of the navigable waterways around the bridge, the effect of this regulation will not be significant because: (i) The zones will encompass only a small portion of the waterway; (ii) Vessels will be able to pass safely around the zones; and (iii) Vessels may be allowed to enter these zones on a case-by-case basis with permission of the Captain of the Port, or his designated representative.

The sizes of the zones are the minimum necessary to provide adequate protection for the bridges, vessels operating in the vicinity, adjoining areas and the public. The entities most likely to be affected are commercial vessels transiting the main ship channel en route the southern San Diego Bay and Chula Vista ports and pleasure craft engaged in recreational activities and sightseeing.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule will affect the following entities, some of which may be small entities: the owners or operators of commercial vessels transiting the main ship channel en route the southern San Diego Bay and Chula Vista ports and pleasure craft engaged in recreational activities and sightseeing. The security zones will not have a significant economic impact on a substantial number of small entities for several reasons: small vessel traffic can pass safely around the security zones and vessels engaged in recreational activities, sightseeing and commercial fishing have ample space outside of the security zones to engage in these activities. Small entities and the maritime public will be advised of these security zones via public notice to mariners.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process. If the rule will affect your small business, organization, or government jurisdiction and you have questions concerning its provisions or options for compliance, please contact Lieutenant Commander Rick Sorrell, USCG, c/o U.S. Coast Guard Captain of the Port, telephone (619) 683–6495 for assistance in understanding this rule.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule will not result in such expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not

an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

We have analyzed this rule under Commandant Instruction M16475.ID, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA)(42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction, from further environmental documentation because we are establishing a security zone.

A final "Environmental Analysis Check List" and a final "Categorical Exclusion Determination" will be available in the docket where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR Part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701; 50 U.S.C. 191, 195; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add new § 165.T11–030 to read as follows:

§ 165.T11–030 Security Zone: Coronado Bay Bridge, San Diego, CA.

(a) *Location.* All navigable waters, extending from the surface to the sea floor, 25 yards around all piers, abutments, fenders and pilings of the Coronado Bay Bridge spanning San Diego Bay. This security zone will not restrict the main navigational channel and vessels will not be restricted from transiting through the channel.

(b) *Effective period.* This section is effective from November 7, 2003, until May 1, 2004. If the Coast Guard terminates enforcement of this security zone prior to the scheduled termination time, the Captain of the Port will cease enforcement of this safety zone and will announce that fact via Broadcast Notice to Mariners.

(c) *Regulations.* In accordance with the general regulations in § 165.33 of this part, entry into, transit through, loitering, or anchoring within this security zone by all persons and vessels is prohibited, unless authorized by the Captain of the Port, or his designated representative. Mariners are advised that the security zones will not restrict the main navigational channel and transit through the channel is not prohibited. Mariners requesting permission to transit through the security zone may request authorization to do so from Captain of the Port or his designated representative. The Coast Guard can be contacted on San Diego Bay via VHF-FM channel 16.

(d) *Authority.* In addition to 33 U.S.C. 1231, the authority for this section includes 33 U.S.C. 1226.

Dated: November 4, 2003.

Stephen P. Metruck,

Commander, U.S. Coast Guard, Captain of the Port, San Diego.

[FR Doc. 03–30277 Filed 12–4–03; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[DE072–1042a; FRL–7593–5]

Approval and Promulgation of Air Quality Implementation Plans; Delaware; MOBILE6-Based Motor Vehicle Emission Budgets for the Delaware Portion of the Philadelphia-Wilmington-Trenton 1-Hour Ozone Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve a revision to the Delaware State Implementation Plan (SIP). Specifically, EPA is approving amendments to the 2005 highway (on road) motor vehicle emission inventory for the Delaware portion of the Philadelphia-Wilmington-Trenton area's (the Philadelphia area) 1-hour ozone attainment plan as a revision to the Delaware SIP. This revision also serves to amend the 2005 motor vehicle emission budgets (MVEBs) used for determining transportation conformity under the Clean Air Act. The revised MVEBs were developed using MOBILE6, the most recent version of EPA's mobile source emission factor model. Revision of the MVEBs was a requirement of EPA's prior approval of Delaware's 1-hour ozone attainment demonstration plan for the Philadelphia severe ozone nonattainment area. The intended effect of this direct final approval action is to approve a SIP revision that will assist Delaware in attaining and demonstrating conformity with the 1-hour ozone standard. This action is being taken by EPA in accordance with the requirements of the Clean Air Act.

DATES: This rule is effective on February 3, 2004 without further notice, unless EPA receives adverse written comment by January 5, 2004. If EPA receives such comments, it will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Comments may be submitted either by mail or electronically. Written comments should be mailed to Robert Kramer, Chief, Energy, Radiation and Indoor Environment Branch, Mailcode 3AP23, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Electronic comments should be sent either to *kramer.robert@epa.gov* or to *http://www.regulations.gov*, which is an alternative method for submitting electronic comments to EPA. To submit comments, please follow the detailed instructions described in Part III of the **SUPPLEMENTARY INFORMATION** section. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; and at the Delaware Department of Natural Resources and Environmental Control, 156 South State Street, Dover, Delaware 19901.

FOR FURTHER INFORMATION CONTACT: Larry Budney, (215) 814–2184, or by e-mail at *budney.larry@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

A. Delaware's SIP-Approved Attainment Demonstration and Mobile Budget

On October 29, 2001 (66 FR 54598), EPA approved Delaware's 1-hour ozone attainment demonstration plan for the Philadelphia area. As part of that final rule, EPA required that Delaware revise the plan to recalculate the 2005 attainment year motor vehicle emission budgets (MVEBs) for the Delaware portion of the Philadelphia area (Kent and New Castle Counties). The 2005 MVEBs were to be updated using MOBILE6, the most recent version of MOBILE, EPA's mobile emission factor model. On September 2, 2003, Delaware formally submitted a revision to its attainment demonstration plan for the Philadelphia area, consisting of updated MOBILE6-based MVEBs for the Delaware portion of the Philadelphia area.

B. Background on the MOBILE Emission Factor Model and Related EPA Policy

MOBILE is an EPA emission factor model for estimating pollution from on-road motor vehicles. The MOBILE model calculates emissions of volatile organic compounds (VOCs), nitrogen oxides (NO_X) and carbon monoxide (CO) from passenger cars, motorcycles, buses, and light-duty and heavy-duty trucks. The model accounts for the emission impacts of factors such as changes in vehicle emission standards, changes in vehicle populations and activity, and variation in local conditions such as temperature, humidity, fuel quality, and air quality programs. The MOBILE model, first developed in 1978, has been updated several times to reflect changes to motor vehicles and fuel composition, to incorporate better understanding of vehicle emissions, and to reflect new emissions programs. The MOBILE model is used to calculate current and future inventories of motor vehicle emissions at the national and local level. These inventories are used to make decisions about air pollution policy and programs at the local, state and national level. Mobile source emission inventories based on MOBILE are used to meet the Federal Clean Air Act's requirements for SIPs and transportation conformity. EPA announced the release of the MOBILE6 version of the MOBILE model on January 29, 2002 (67 FR 4254) as a replacement for a MOBILE5 version of the model. In November of 1999, EPA issued two memoranda [1] to articulate its policy regarding states that incorporated MOBILE5-based interim Tier 2 standard [2] benefits into their attainment demonstration plans and those plans' associated MVEBs. EPA has implemented this policy in all ozone nonattainment areas where a state assumed Federal Tier 2 benefits in its attainment demonstration plans according to EPA's April 2000 MOBILE5 guidance, "MOBILE5 Information Sheet #8: Tier 2 Benefits Using MOBILE5." States whose approved attainment demonstrations or maintenance plans include interim MOBILE5-based estimates of the Tier 2 standards were required to update and resubmit the MVEBs of those plans after the final release of MOBILE6. EPA's October 29, 2001 (66 FR 54598) approval of Delaware's 1-hour ozone attainment demonstration plan for the Philadelphia area was based upon interim mobile emission budgets, with projected reductions from Tier 2 motor vehicle standards estimated using the MOBILE5 model. EPA's October 29, 2001 approval of Delaware's 1-hour ozone attainment demonstration for the Philadelphia area required a MOBILE6-based motor vehicle emission budget SIP revision.

[1] Memoranda, "Guidance on Motor Vehicle Emissions Budgets in 1-Hour Ozone Attainment Demonstrations," issued November 3, 1999, and "1-Hour Ozone Attainment Demonstrations and Tier2/Sulfur Rulemaking," issued November 8, 1999. Copies of these memoranda can be found on EPA's Web site at *http://www.epa.gov/otaq/transp/traqconf.htm*.

[2] The final rule on Tier 2 Motor Vehicle Emissions Standards and Gasoline Sulfur Control Requirements ("Tier 2 standards") for passenger cars, light trucks, and larger passenger vehicles was published on February 10, 2000 (65 FR 6698).

II. Summary of Delaware's SIP Revision and EPA's Review

A. MOBILE6-Based Highway Mobile Source Emission Inventories

On September 2, 2003, the Delaware Department of Natural Resources and Environmental Control (DNREC) submitted an SIP revision to its approved attainment plan for the Philadelphia area. The revision consists of updated inventories of emissions calculated using the MOBILE6 emission factor model of the ozone precursors VOC and NO_X from highway mobile sources operating in the Delaware portion (Kent and New Castle Counties) of the Philadelphia area. These inventories were generated for summertime periods in 1990, and for 2005, the year the Philadelphia area is to attain the 1-hour ozone standard. The MOBILE6-based highway emission inventory projections for VOCs and NO_X for 2005 also serve as the attainment plan's MVEBs for transportation conformity planning.

The SIP revision is intended to demonstrate that the updated MOBILE6-based projections of motor vehicle emissions continue to support the demonstration of attainment of the 1-hour ozone NAAQS for the Philadelphia area by 2005. Table 1 is presented to compare Delaware's revised MOBILE6-based motor vehicle emissions inventories with the previously approved MOBILE5-based inventories, by pollutant, expressed in units of tons per summer day (tpd). The MOBILE6-based inventories were developed using the latest available planning assumptions, including 2002 data from Delaware's Department of Transportation for vehicle registration, vehicle miles traveled (VMT) and speeds.

TABLE 1.—COMPARISON OF THE MOBILE5 AND MOBILE6-BASED HIGHWAY MOBILE EMISSIONS FOR THE DELAWARE PORTION OF THE PHILADELPHIA-WILMINGTON-TRENTON 1-HOUR OZONE ATTAINMENT PLAN

	Kent County		New Castle County		Two-county totals	
	VOC	NO_X	VOC	NO_X	VOC	NO_X
MOBILE6-Based Estimates (tpd)						
1990 Base Year	11.84	9.24	42.16	31.03	54.00	40.27
2005 Attainment Year	5.14	8.42	15.08	21.28	20.22	29.70
Percent Reduction	56.6	8.9	64.2	31.4	62.6	26.2
MOBILE5-Based Estimates (tpd)						
1990 Base Year	12.89	10.62	34.07	27.04	46.96	37.66
2005 Attainment Year	4.84	7.90	14.76	22.92	19.60	30.83
Percent Reduction	62.5	25.6	56.7	15.2	58.3	18.1

EPA's articulated its policy regarding the use of MOBILE6 modeling for purposes of SIP development in guidance documents entitled "Policy Guidance on the Use of MOBILE6 for SIP Development and Transportation Conformity" [3] and "Clarification of Policy Guidance for MOBILE6 in Mid-course Review Areas." [4]

Delaware's September 2, 2003 SIP revision submittal includes an explanation of the differences between the MOBILE5 and MOBILE6-based inventories. The submittal also provides a comparison of the relative reduction, by percentage, between the 1990 and 2005 inventories generated using the two different versions of the model to ensure that the approved Philadelphia area 1-hour ozone attainment demonstration will continue to demonstrate attainment by 2005. The methodology for this relative reduction comparison consists of comparing the revised MOBILE6 baseline and attainment case inventories, by pollutant, with the previously approved MOBILE5 inventory totals for the Delaware portion of Philadelphia area to determine if attainment can still be predicted by this attainment date. Delaware then compared these relative reduction percentages for the MOBILE5 versus MOBILE6 inventories for 1990 and 2005. As indicated in Table 1, the State's relative reduction comparison for the two-county Delaware portion of the Philadelphia area shows that the reductions in NO_X and VOC emissions, on a percentage basis, are greater in the revised MOBILE 6-based inventories than in the previously approved MOBILE5-based inventories. It should be noted that because the latest available planning assumptions (*e.g.*, 2002 data for vehicle registration, vehicle miles traveled (VMT) and speeds) were also used in the revised MOBILE6-based modeling, this relative reduction comparison is not a strict comparison of the differences resulting solely from the use of the MOBILE6 versus MOBILE5 version of the MOBILE model.

EPA's relevant policy guidance also requires Delaware to consider whether growth and control strategy assumptions for other sources (*i.e.*, point, area, and non-road mobile sources) were still accurate at the time of the revised MOBILE6-based MVEBs were developed for submittal as a SIP revision to the Philadelphia area attainment plan. Delaware's September 2, 2003 SIP submittal indicates that the overall emissions of VOC and/or NO_X in the 1996 and 1999 periodic emissions inventories are below the rate-of-progress emission targets for those two milestone years, and concludes that the assumptions for growth and control strategies continue to be valid for the Delaware portion of the Philadelphia area. EPA finds that Delaware's September 2, 2003 SIP revision satisfies the conditions outlined in EPA's MOBILE6 policy guidance, and demonstrates that the new levels of motor vehicle emissions calculated using MOBILE6 continue to support achievement of the projected attainment of the 1-hour ozone standard by the attainment date of 2005 for the Delaware portion of the Philadelphia area.

B. MOBILE6-Based Motor Vehicle Emission Budgets (MVEBs)

As previously stated, the on-road components of VOC and NO_X emissions of the 2005 attainment plan emission inventories are the 2005 MVEBs for the Philadelphia area. Those MVEBs for the Delaware portion of the Philadelphia area are summarized in Table 2. As indicated in Delaware's September 2, 2003 submittal, these budgets were developed using the latest planning assumptions, including 2002 vehicle registration, speed and vehicle miles traveled (VMT) data. Because Delaware's September 2, 2003 submittal satisfies the conditions outlined in EPA's MOBILE6 policy guidance and demonstrates that the new levels of motor vehicle emissions calculated using MOBILE6 continue to support achievement of the projected attainment of the 1-hour ozone standard, EPA is approving these MVEBs.

TABLE 2.—MOBILE6-BASED MOTOR VEHICLE EMISSION BUDGETS (MVEBS) FOR THE DELAWARE PORTION OF THE 1-HOUR ATTAINMENT DEMONSTRATION PLAN FOR THE PHILADELPHIA-WILMINGTON-TRENTON AREA

2005 Attainment year	Kent County		New Castle County	
	VOC	NO_X	VOC	NO_X
Emission Budgets (tpd)	5.14	8.42	15.08	21.28

[3] Memorandum, "Policy Guidance on the Use of MOBILE6 for SIP Development and Transportation Conformity," issued January 18, 2002. A copy of this memorandum can be found on EPA's Web site at *http://www.epa.gov/otaq/transp/traqconf.htm*.

[4] Memorandum, "Clarification of Policy Guidance for MOBILE6 SIPs in Mid-course Review Areas," issued February 12, 2003. A copy of this memorandum can be found on EPA's Web site at *http://www.epa.gov/otaq/transp/traqconf.htm*.

III. Final Action

EPA is approving Delaware's September 2, 2003 SIP revision submittal which updates the 1990 and 2005 highway mobile VOC and NO_X emissions inventories and the 2005 MVEBs of the Philadelphia area attainment plan to reflect the use of MOBILE6. This SIP revision fulfills the requirement of EPA's October 29, 2001 (66 FR 54598) approval of Delaware's 1-hour attainment demonstration plan for the Philadelphia area that the 2005 highway mobile emissions inventory and, therefore, the 2005 MVEBs of the plan be updated after the release of MOBILE6. EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comment. However, in the "Proposed Rules" section of today's **Federal Register**, EPA is also publishing a separate document that will serve as the proposal to approve this SIP revision if adverse comments are filed. This rule will be effective on February 3, 2004 without further notice unless EPA receives adverse comment by January 5, 2004. If EPA receives adverse comment, EPA will publish a timely withdrawal of this action in the **Federal Register** informing the public that the rule will not take effect. EPA will address public comments in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

You may submit comments either electronically or by mail. To ensure proper receipt by EPA, identify the appropriate rulemaking identification number (DE072–1042) in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments.

1. *Electronically.* If you submit an electronic comment as prescribed below, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD–ROM you submit, and in any cover letter accompanying the disk or CD–ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *E-mail.* Comments may be sent by electronic mail (e-mail) to: *kramer.robert@epa.gov*, attention DE072–1042. EPA's e-mail system is not an "anonymous access" system. If you send an e-mail comment directly without going through Regulations.gov, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket.

ii. *Regulations.gov.* Your use of Regulation.gov is an alternative method of submitting electronic comments to EPA. Go directly to *http://www.regulations.gov*, then select "Environmental Protection Agency" at the top of the page and use the "go" button. The list of current EPA actions available for comment will be listed. Please follow the online instructions for submitting comments. The system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

iii. *Disk or CD–ROM.* You may submit comments on a disk or CD–ROM that you mail to the mailing address identified in the **ADDRESSES** section of this document. These electronic submissions will be accepted in WordPerfect, Word or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By Mail.* Written comments should be addressed to the EPA Regional office listed in the **ADDRESSES** section of this document. For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing at the EPA Regional Office, as EPA receives them and without change, unless the comment contains copyrighted material, confidential business information (CBI), or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in the official public rulemaking file. The entire printed comment, including the copyrighted material, will be available at the Regional Office for public inspection.

Submittal of CBI Comments

Do not submit information that you consider to be CBI electronically to EPA. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD–ROM, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the official public regional rulemaking file. If you submit the copy that does not contain CBI on disk or CD–ROM, mark the outside of the disk or CD–ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public file and available for public inspection without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

Considerations When Preparing Comments to EPA

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at your estimate.
5. Provide specific examples to illustrate your concerns.
6. Offer alternatives.
7. Make sure to submit your comments by the comment period deadline identified.
8. To ensure proper receipt by EPA, identify the appropriate regional file/rulemaking identification number in the subject line on the first page of your

response. It would also be helpful if you provided the name, date, and Federal Register citation related to your comments.

IV. Statutory and Executive Order Reviews

A. General Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves state law as meeting federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have federalism implications because it does not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant. In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

B. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

C. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by February 3, 2004. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action.

This action approving Delaware's updates to the 1990 and 2005 highway mobile VOC and NO_X emissions inventories and the 2005 MVEBs of its 1-hour ozone attainment demonstration plan for the Philadelphia area to reflect the use of MOBILE6 may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: November 20, 2003.

Thomas Voltaggio,

Acting Regional Administrator, Region III.

■ 40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

■ 1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart I—Delaware

■ 2. Section 52.426 is amended by:
■ a. Removing and reserving paragraph (c)(2);
■ b. Revising paragraph (d);
■ c. Adding paragraph (e).

The revision and addition read as follows:

§ 52.426 Control strategy plans for attainment and rate-of-progress: ozone.

* * * * *

(c) * * *

(2) [Reserved]

* * * * * *

(d) EPA is approving the following mobile budgets, explicitly quantified as sub-budgets for each of Kent and New Castle Counties, of the Post 1996 ROP Plans and the 1–Hour Ozone Attainment Demonstration Plan:

TRANSPORTATION CONFORMITY EMISSION BUDGETS FOR THE DELAWARE PORTION OF THE PHILADELPHIA AREA

Type of control strategy SIP	Year	Kent County		New Castle County		Effective date of adequacy determination or SIP approval
		VOC	NO_X	VOC	NO_X	
Post-1996 ROP Plan	1999	7.55	11.17	22.49	29.41	April 29, 1999, (64 FR 31217, published June 10, 1999).
Post-1996 ROP Plan	2002	6.30	9.81	18.44	27.29	June 23, 2000, (65 FR 36440, published June 8, 2000).

TRANSPORTATION CONFORMITY EMISSION BUDGETS FOR THE DELAWARE PORTION OF THE PHILADELPHIA AREA—Continued

Type of control strategy SIP	Year	Kent County		New Castle County		Effective date of adequacy determination or SIP approval
		VOC	NO_X	VOC	NO_X	
Post-1996 ROP Plan	2005	4.84	7.90	14.76	22.92	May 2, 2001, (66 FR 19769, published April 17, 2001).
Attainment Demonstration	2005	5.14	8.42	15.08	21.28	SIP approval on December 5, 2003; Effective on February 3, 2004.

(1)(2) [Reserved]

(e) EPA approves Delaware's revised 2005 VOC and NO_X motor vehicle emission budgets for the 1-hour ozone attainment plan for the Delaware portion of the Philadelphia-Wilmington-Trenton severe ozone nonattainment area as a SIP revision. The revisions were submitted by the Delaware Department of Natural Resources and Environmental Control on September 2, 2003. Submittal of these revised MOBILE6-based motor vehicle emissions budgets was a requirement of EPA's approval of the attainment demonstration under paragraph (c) of this section.

[FR Doc. 03–30041 Filed 12–4–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[OAR–2002–0045, FRL–7594–8]

RIN 2060–AK53

National Emission Standards for Hazardous Air Pollutants for Chemical Recovery Combustion Sources at Kraft, Soda, Sulfite, and Stand-Alone Semichemical Pulp Mills

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; technical corrections.

SUMMARY: On July 18, 2003, the EPA promulgated amendments to the national emission standards for hazardous air pollutants (NESHAP) for chemical recovery combustion sources at kraft, soda, sulfite, and stand-alone semichemical pulp mills. The technical corrections in this action restore provisions which were inadvertently deleted by the July 18, 2003, amendments and restore a provision which was inadvertently omitted from the January 12, 2001, final rule.

EFFECTIVE DATE: December 5, 2003.

ADDRESSES: Docket numbers OAR–2002–0045 and A–94–67, containing supporting information used in the development of this notice, are available for public viewing at the EPA Docket Center (Air Docket), EPA West, Room B–102, 1301 Constitution Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Jeff Telander, Minerals and Inorganic Chemicals Group, Emission Standards Division (C504–05), Office of Air Quality Planning and Standards, U.S. EPA, Research Triangle Park, NC 27711, telephone number (919) 541–5427, facsimile number (919) 541–5600, electronic mail address *telander.jeff@epa.gov*.

SUPPLEMENTARY INFORMATION: *Docket.* The EPA has established an official public docket for this action including both Docket ID No. OAR–2002–0045 and Docket ID No. A–94–67. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. All items may not be listed under both docket numbers, so interested parties should inspect both docket numbers to ensure that they have received all materials relevant to the final rule. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is available for public viewing at the Air Docket in the EPA Docket Center, EPA West, Room B–102, 1301 Constitution Avenue, NW., Washington, DC 20460. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Air Docket is (202) 566–1742.

Electronic Access. You may access this **Federal Register** document electronically through the EPA Internet under the **Federal Register** listings at *http://www.epa.gov/fedrgstr/*. You may also access a copy of the final rule incorporating the provisions of this **Federal Register** notice through the Technology Transfer Network (TTN) at *http://www.epa.gov/ttn/atw/pulp/pulppg.html*.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov.edocket/* to view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified above. Once in the system, select search, then key in the appropriate docket identification number.

Background: On February 18, 2003, we published a direct final rule (68 FR 7706) and parallel proposal (68 FR 7735) amending the NESHAP for chemical recovery combustion sources at kraft, soda, sulfite, and stand-alone semichemical pulp mills (40 CFR part 63, subpart MM). The amendments clarified and consolidated the monitoring and testing requirements and added a site-specific alternative standard for one pulp mill. The consolidation of the monitoring and testing requirements resulted in significant text shifts within and between the monitoring and testing sections of the final rule.

On July 18, 2003 (68 FR 42603), we published amendments to the final rule that deleted portions of subpart MM added by the direct final rule (68 FR 7706), the provisions of which were the subject of adverse comment. The amendments also made two technical corrections to inadvertent errors in rule language. The EPA indicated in that notice that if we took further action, we would do so by acting on the pending proposed rule (68 FR 7735) and would not submit that proposal to another round of public comment.

However, the amendments inadvertently failed to restore some of the underlying rule language from the original rule. We are restoring those provisions here. The technical

corrections in this action restore the following provisions inadvertently deleted by the July 18, 2003, amendments:

- Reference in § 63.864(d) to the procedures in §§ 63.6(h) and 63.8 for installing, calibrating, maintaining, and operating a continuous opacity monitoring system;
- Requirement in § 63.864(e)(10) to determine and record the pressure drop across the scrubber and the scrubbing liquid flow rate at least once every successive 15-minute period;
- Requirement in § 63.864(e)(11) to determine and record the operating temperature of the regenerative thermal oxidizer at least once every successive 15-minute period; and,
- "Eq. 1" label for the equation in § 63.865(a)(1).

The technical corrections in this action also restore the particulate matter (PM) emission limit in English units in § 63.862(b)(1) for new kraft and soda recovery furnaces, which was inadvertently omitted from the January 12, 2001, final rule. This addition to the rule text does not alter the standard. It merely expresses it in English units, to go along with the metric units already in the rule.

The EPA is issuing today's technical corrections in final form because we are acting on the pending proposal on which there has been notice and opportunity for public comment. In addition, we gave actual notice of this action to the commenters to that proposed rule, alerted them to the possibility of this action, and considered their comments.

Section 553(d) of 5 U.S.C. allows an agency, upon a finding of good cause, to make a rule effective immediately. Because today's technical corrections restore regulatory language which was inadvertently deleted by previous amendments, do not add any requirements necessitating additional time for compliance, and otherwise do not substantively change the requirements of the final rule, we find good cause to make the technical corrections effective immediately.

Statutory and Executive Order Review

Under Executive Order 12866 (58 FR 51736, October 4, 1993), this action is not a "significant regulatory action" and is, therefore, not subject to review by the Office of Management and Budget. Because EPA has made a "good cause" finding that this action is not subject to notice and comment requirements under the Administrative Procedure Act or any other statute, it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), or to sections 202 and 205 of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). In addition, this action does not significantly or uniquely affect small governments or impose a significant intergovernmental mandate, as described in sections 203 and 204 of the UMRA. This action also does not significantly or uniquely affect the communities of tribal governments, as specified by Executive Order 13084 (63 FR 27655, May 10, 1998). This action will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997) because it is not economically significant.

Section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) of 1995 (Public Law 104–113; 15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory and procurement activities unless to do so would be inconsistent with applicable law or otherwise impractical. The EPA is not proposing/adopting any voluntary consensus standards in this action.

This action does not involve special consideration of environmental justice related issues as required by Executive Order 12898 (59 FR 7629, February 16, 1994). In issuing these technical corrections, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct, as required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996). The EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of these technical corrections in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" issued under the executive order. These technical corrections do not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act (5 U.S.C. 801 *et seq.*), as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that, before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Section 808 allows the issuing agency to make a rule effective sooner than otherwise provided by the Congressional Review Act if the agency makes a good cause finding that notice and public procedure is impracticable, unnecessary, or contrary to the public interest. This determination must be supported by a brief statement (5 U.S.C. 808(2)). As stated previously, EPA has made such a good cause finding, including the reasons therefor, and established an effective date of December 5, 2003. The EPA will submit a report containing the rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 63

Environmental protection, Administrative practice and procedure, Air pollution control, Hazardous substances, Reporting and recordkeeping requirements.

Dated: November 10, 2003.

Robert Brenner,

Acting Assistant Administrator for Air and Radiation.

■ For the reasons set out in the preamble, title 40, chapter I, part 63 of the Code of Federal Regulations is amended as follows:

PART 63—[AMENDED]

■ 1. The authority citation for part 63 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart MM—National Emission Standards for Hazardous Air Pollutants for Chemical Recovery Combustion Sources at Kraft, Soda, Sulfite, and Stand-Alone Semichemical Pulp Mills

■ 2. Section 63.862 is amended by revising paragraph (b)(1) to read as follows:

§ 63.862 Standards.

* * * * *

(b) *Standards for HAP metals: new sources.* (1) The owner or operator of any new kraft or soda recovery furnace must ensure that the concentration of PM in the exhaust gases discharged to the atmosphere is less than or equal to 0.034 g/dscm (0.015 gr/dscf) corrected to 8 percent oxygen.

* * * * *

■ 3. Section 63.864 is amended by:

■ a. Revising paragraph (d) introductory paragraph;
■ b. Revising paragraph (e)(10)introductory text; and
■ c. Revising paragraph (e)(11).

The revisions read as follows:

§ 63.864 Monitoring requirements.

* * * * *

(d) *Continuous opacity monitoring system (COMS).* The owner or operator of each affected kraft or soda recovery furnace or lime kiln equipped with an ESP must install, calibrate, maintain, and operate a COMS according to the provisions in §§ 63.6(h) and 63.8 and paragraphs (d)(1) through (4) of this section.

* * * * *

(e) * * *

(10) The owner or operator of each affected kraft or soda recovery furnace, kraft or soda lime kiln, sulfite combustion unit, or kraft or soda smelt dissolving tank equipped with a wet scrubber must install, calibrate, maintain, and operate a CPMS that can be used to determine and record the pressure drop across the scrubber and the scrubbing liquid flow rate at least once every successive 15-minute period using the procedures in § 63.8(c), as well as the procedures in paragraphs (e)(10)(i) and (ii) of this section:

* * * * *

(11) The owner or operator of each affected semichemical combustion unit equipped with an RTO must install, calibrate, maintain, and operate a CPMS that can be used to determine and record the operating temperature of the RTO at least once every successive 15-minute period using the procedures in § 63.8(c). The monitor must compute and record the operating temperature at the point of incineration of effluent gases that are emitted using a temperature monitor accurate to within ±1 percent of the temperature being measured.

* * * * *

■ 4. Section 63.865 is amended by revising paragraph (a)(1) to read as follows:

§ 63.865 Performance test requirements and test methods.

* * * * *

(a) * * *

(1) Determine the overall PM emission limit for the chemical recovery system at the mill using Equation 1 of this section as follows:

$$EL_{PM} = \frac{\left[\left(C_{ref,RF}\right)\left(Q_{RFtot}\right)+\left(C_{ref,LK}\right)\left(Q_{LKtot}\right)\right](F1)}{\left(BLS_{tot}\right)} + ER1_{ref,SDT} \qquad \text{(Eq. 1)}$$

Where:

EL_{PM} = overall PM emission limit for all existing process units in the chemical recovery system at the kraft or soda pulp mill, kg/Mg (lb/ton) of black liquor solids fired.

$C_{ref,RF}$ = reference concentration of 0.10 g/dscm (0.044 gr/dscf) corrected to 8 percent oxygen for existing kraft or soda recovery furnaces.

Q_{RFtot} = sum of the average volumetric gas flow rates measured during the performance test and corrected to 8 percent oxygen for all existing recovery furnaces in the chemical recovery system at the kraft or soda pulp mill, dry standard cubic meters per minute (dscm/min) (dry standard cubic feet per minute (dscf/min)).

$C_{ref,LK}$ = reference concentration of 0.15 g/dscm (0.064 gr/dscf) corrected to 10 percent oxygen for existing kraft or soda lime kilns.

Q_{LKtot} = sum of the average volumetric gas flow rates measured during the performance test and corrected to 10 percent oxygen for all existing lime kilns in the chemical recovery system at the kraft or soda pulp mill, dscm/min (dscf/min).

F1 = conversion factor, 1.44 minutes·kilogram/day·gram (min·kg/d-g) (0.206 minutes·pound/day·grain (min·b/d-gr)).

BLS_{tot} = sum of the average black liquor solids firing rates of all existing recovery furnaces in the chemical recovery system at the kraft or soda pulp mill measured during the performance test, megagrams per day (Mg/d) (tons per day (ton/d)) of black liquor solids fired.

$ER1_{ref,SDT}$ = reference emission rate of 0.10 kg/Mg (0.20 lb/ton) of black liquor solids fired for existing kraft or soda smelt dissolving tanks.

* * * * *

[FR Doc. 03–30265 Filed 12–4–03; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Parts 412, 413, 476, and 484

[CMS–3055–F]

RIN 0938–AK68

Medicare Program; Photocopying Reimbursement Methodology

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Final rule.

SUMMARY: This final rule increases the rate of reimbursement for expenses incurred by prospective payment system (PPS) hospitals for photocopying medical records requested by Quality Improvement Organizations (QIOs), formerly known as Utilization and Quality Control Peer Review Organizations (PROs). We are increasing the rate from 7 cents per page to 12 cents per page to reflect inflationary changes in the labor and supply cost components of the formula.

This final rule also provides for the periodic review and adjustment of the per-page reimbursement rate to account for inflation and changes in technology. The methodology for calculating the per-page reimbursement rate will remain unchanged.

We are also providing for the payment of the expenses of furnishing photocopies to QIOs, to other providers subject to a PPS (for example, skilled nursing facilities and home health agencies), in accordance with the rules established for reimbursing PPS hospitals for these expenses.

EFFECTIVE DATE: These regulations are effective on January 5, 2004.

FOR FURTHER INFORMATION CONTACT: Les Caplan, (410) 786–7223.

SUPPLEMENTARY INFORMATION:

I. Background

Section 1866(a)(1)(F) of the Social Security Act (the Act) requires a hospital, as a condition of Medicare participation, to enter into an agreement with a quality improvement organization (QIO), for the peer review of Medicare services provided by the hospital. (**Note:** QIOs were formerly known as peer review organizations (PROs). We published a final rule with comment period on May 24, 2002 (67 FR 36539), changing the name to QIOs.) Our regulations at 42 CFR 476.78 provide that health care facilities that

submit Medicare claims must cooperate in the conduct of QIO reviews, including providing the QIO with information necessary to its determinations. This often includes providing the QIO with photocopies of patients' medical records.

We published a final rule on October 20, 1992, in the **Federal Register** (57 FR 47779), following notice-and-comment rulemaking, which established a formula for calculating the rate of reimbursement for these photocopy costs incurred by hospitals. Using this formula, we set the rate at 7 cents per page. The regulation requires us to determine a fixed payment amount per page by adding per-page labor costs and per-page supply costs. The regulation also provides for Medicare payment for the costs of first class postage for mailing records to QIOs. As discussed in detail in the October 20, 1992, final rule (57 FR 47779), the payment established by § 476.78 represents an additional payment to hospitals under the prospective payment system (PPS) for photocopy costs. Payment for the equipment and overhead costs associated with furnishing the QIO with required documentation is made under other Medicare payment provisions for capital-related costs and inpatient operating costs.

The formula for calculating the per-page reimbursement rate for photocopies is set forth at § 476.78(c), which provides:

Photocopying reimbursement methodology for prospective payment system hospitals. Hospitals subject to the prospective payment system are paid for the photocopying costs that are directly attributable to the hospitals' responsibility to the QIOs to provide photocopies of requested hospital records. The payment is in addition to payment already provided for these costs under other provisions of the Social Security Act and is based on a fixed amount per page as determined by CMS as follows:

(1) *Step one.* CMS adds the annual salary of a photocopy machine operator and the costs of fringe benefits as determined in accordance with the principles set forth in OMB circular A–76.

(2) *Step two.* CMS divides the amount determined in paragraph (c)(1) of this section by the number of pages that can be reasonably expected to be made annually by the photocopy machine operator to establish the labor cost per page.

(3) CMS adds to the per-page labor cost determined in paragraph (c)(2) of this section the per-page costs of supplies.

Using this formula we established the per-page rate of 7 cents in the October 20, 1992, final rule. The validity of this rule and its reimbursement methodology were challenged in a certified class action by Medicare—participating hospitals, in the U.S. Court of Appeals for the Ninth Circuit. *Queen of Angels/Hollywood Presbyterian Medical Center* v. *Shalala*, 65 F.3d 1472, 1476 (9th Cir. 1995). The Court of Appeals upheld the validity of our photocopy reimbursement methodology and sustained the lawfulness of the 7 cents per page rate established in the rule.

Due to increases in labor and supply costs, we are increasing the reimbursement rate from 7 cents per page to 12 cents per page in accordance with the established court-approved methodology set forth in § 476.78(c).

Current Photocopy Reimbursement Rate

Under the current regulation, we apply a uniform per-page rate on a nationwide basis to all PPS hospitals that have QIO agreements. We base the calculation on labor and supply costs. The calculation in the current rule, as discussed in the preamble to the October 20, 1992, rule, is based on the following:

- An operator will copy approximately 364,320 pages annually.
- The salary level of an operator is equivalent to a GS–5 experienced midlevel secretary ($17,686) plus 27.9 percent fringe benefits ($4,934) for a total salary of $22,620.
- Paper costs are 0.5 cents per page ($25 per case of paper with 5,000 sheets in a case).
- Toner and developer costs are 0.5 cents per page.

The total cost per page is 7 cents.

II. Provisions of the Proposed Regulations

On November 22, 2002, we published a proposed rule (67 FR 70358) in which we proposed to increase the rate of QIO-related photocopy reimbursement from 7 cents to 12 cents per page. We calculated this rate by updating the salary, fringe benefits, and supply figures used in the October 20, 1992, final rule. In accordance with the methodology at § 476.78(c), we considered the following factors in calculating the proposed rate: (1) The labor costs associated with photocopying and (2) the costs of supplies.

A. Labor Costs

Labor costs were calculated consistent with the methodology at § 476.78(c), first, by adding the annual salary of a photocopy machine operator with the costs of fringe benefits, and second, by dividing that sum by the number of pages that can reasonably be expected to be made in a year.

B. Annual Salary of a Photocopy Machine Operator

In the October 20, 1992, rule, we adopted the salary level for an experienced (GS–5) midlevel secretary in the Federal government as representative of that of a photocopy machine operator. Use of this figure approximated or exceeded the actual salary information for individuals performing these tasks that had been submitted by various commenters. Furthermore, we determined that use of this salary level yielded payments that were more than adequate to ensure a sufficient skill level. The annual salary of $17,686 used in the October 20, 1992, rule was derived from the U.S. Office of Personnel Management's 1992 General Schedule.

In this final rule, we will continue to deem the salary of a Federal GS–5 midlevel secretary as representative of a photocopy operator's salary; however, we will update the figure to take into account increases in the payment rate of a midlevel secretary. Thus, as discussed in the proposed rule, we are using the GS–5 annual salary of $28,727 derived from the U.S. Office of Personnel Management's 2002 General Schedule to calculate the revised rate.

C. Fringe Benefits

In the October 20, 1992, final rule, we ascribed the fringe benefits of an employee to be 27.9 percent of the employee's salary, which was the standard percentage dictated by the cost principles set forth in the Office of Management and Budget (OMB) Circular A–76. While there may be other yardsticks to measure this component of costs, we find this to be a reasonable resource since the thrust of this OMB circular is to help the government compare potentially incurred costs to determine whether the costs can be more economically incurred internally or through contract with a commercial source. Therefore, we continue to use OMB Circular A–76 to calculate the annual fringe benefit cost. Accordingly, fringe benefits were calculated in the November 22, 2002, proposed rule based on 29.7 percent of the GS–5 salary as outlined in the OMB Circular A–76 Transmittal Memorandum 19—FY 2000 estimate. Thus, the annual fringe benefit cost is $8,532 ($28,727 * 29.7 percent).

D. Number of Pages Copied Annually

In this final rule, we are using 364,320 pages per year in the calculation of the annual labor cost. In the October 20, 1992, rule, we determined that 364,320 was the number of pages that could reasonably be expected to be copied in a year. Earlier, in the proposed rule "Changes to Peer Review Organizations Regulations", published on March 16, 1988, at 53 FR 8654, we had proposed the use of 748,000 pages per year in the calculation of the annual labor cost. This initial figure was determined based on copying documents at a rate of six pages per minute for each hour in an 8 hour day, 5 days a week, 52 weeks per year. The estimate was based on hand feeding of documents into the photocopying machine for duplication, although we recognized that there are many photocopying tasks that may be accomplished through automatic feeds. Automatic feeds greatly increase the number of pages that can be generated by a machine on an hourly basis, and as a result, greatly decrease the cost of photocopying per page.

In response to comments received on the March 16, 1988, proposed rule (53 FR 8654), we revised the 748,000 figure in the October 20, 1992, final rule to account for time spent by the photocopy machine operator in search and retrieval tasks, and time away from work on annual vacation, sick, and holiday leave. This resulted in a reduction from 748,000 to 364,320 in our estimate of the number of pages that may be reasonably expected to be made annually, and a corresponding increase in the per-page labor rate.

We are unaware of any significant changes in technology since the October 20, 1992, final rule (57 FR 47779) that would lead to either a significant decrease or increase in the annual number of pages that may be copied. Nor are we aware of any changes that would significantly increase or decrease the time allocated to search and retrieval tasks. Therefore, we continue to use the 364,320 figure to calculate the per-page labor cost.

E. Calculation of Per-Page Labor Costs

To determine the per-page labor cost, the total of salary ($28,727) and fringe benefits ($8,532) costs, which amount to $37,259, was divided by 364,320 pages, the number of copies made in a year, resulting in an annual labor cost per page of 10 cents ($37,259/364,320 pages).

F. Supply Costs

In the proposed rule, we proposed a total supply cost of 2.3 cents per page. This is based on a per-page paper cost of 0.5 cents and a developer and toner cartridge cost of 1.8 cents per page. The paper costs were calculated based on $23 per case of paper with 5,000 sheets in a case. This equates to 0.5 cents per page ($23/5,000).

In this rule, we used an objective methodology to calculate the per-page cost for toner and developer that can also be used in future updates. We calculated these costs using estimates of the costs for toner cartridges and developer drums contained in the General Services Administration (GSA) supply catalogue, and on the basis of a photocopy machine producing 364,320 pages annually.

G. Payment Rate Per Page

Consistent with § 476.78(c)(3), the payment rate per page is the total of the per-page labor cost and the per-page supply cost, which is equivalent to 12 cents. The established calculation methodology actually results in a cost of 12.3 cents per page, however, consistent with our policy and generally accepted mathematics principles, we chose to round down to 12 cents. We believe this decision is both reasonable and supportable, based on the fact that the higher amount substantially exceeds all published OMB inflation indexes, including the Consumer Price Index (CPI)-Wage index (photocopying expense is largely comprised of labor costs).

H. Future Updates to Rate of Photocopy Reimbursement

In addition to updating the rate of reimbursement for photocopies, we are also amending the existing regulation to permit the rate to be adjusted without undergoing notice-and-comment rulemaking each time it needs to be adjusted to reflect inflationary or technology changes.

We intend to review and adjust the rate periodically in accordance with the same factors considered in establishing the rate in the October 20, 1992, final rule and the updated rate in this final rule. This review will include an examination of the labor and supply components of the formula, and we will update the rate as necessary to account for significant inflationary changes to these components.

Absent some compelling reason, in future updates, we will continue to deem the salary and fringe benefits of a Federal government GS–5 midlevel secretary as representative of the salary and fringe benefits of a photocopy machine operator and use those values to calculate the reimbursement rate. Also, absent some compelling reason or major technological change that would lead to a significant increase or decrease in the number of pages that can be made annually, we will not change the number of pages used in calculating the rate.

I. Reimbursement to Other PPS Providers of the Cost of Photocopying

We will provide for the payment of the expenses of furnishing photocopies to QIOs, to other providers subject to a PPS (for example, skilled nursing facilities (SNFs) and home health agencies (HHAs)), in accordance with the rules established at § 476.78 for reimbursing PPS hospitals for these expenses.

Current regulations do not address reimbursement for providers other than hospitals for costs of photocopying medical records in cooperation with QIO review activities because in the past QIO review of providers other than hospitals was relatively insignificant. To the extent that this review activity took place, it was minimal, and the related costs were included on the provider's cost report. SNFs, HHAs, and other providers have recently converted from the cost-based reimbursement system to a PPS. Because QIO review of these providers has been minimal or nonexistent, costs related to this activity are not adequately reflected in the base PPS rate. Therefore, we believe it is appropriate to provide for a means of paying for these costs when they occur. To accomplish this change, we will replace the more narrow term "hospitals" with "providers," in § 476.78(b)(2) and (c), to include other providers subject to a PPS.

Additionally, we will revise the payment provisions for SNFs and HHAs by adding a paragraph at § 413.355 and § 484.265, that authorizes reimbursement for the costs of photocopying and mailing medical records required for QIO review, to SNFs and HHAs.

We will amend § 476.78(d) to provide that, as with other disputes regarding Medicare payment to providers, disputes concerning payments for costs related to QIO review under § 476.78 and the other payment provisions of the Medicare statute and regulations must be presented in accordance with the administrative and judicial review requirements of section 1878 of the Act and subpart R of 42 CFR part 405.

III. Analysis of and Responses to Public Comments

We received three timely items of correspondence in response to the proposed rule published on November 22, 2002. A summary of the major issues

raised in those comments and our responses follow:

Comment: One QIO commented that the November 22, 2002, proposed rule would increase pass-through photocopy costs well beyond the amount budgeted in their seventh round Medicare contract. This increase could cause the QIO to exceed the total cost of its contract.

Response: Increased photocopying costs are included in the seventh round scope of work funding level. However, these costs are a true pass-through; that is, CMS is responsible for paying providers, and CMS uses its QIO contractors as the vehicle to pay them. Although CMS does not anticipate increasing the total cost of each QIO contract immediately upon publication of this rule, any time a QIO believes it will exceed the total cost of its contract, the QIO should immediately notify CMS (see "Limitation of Cost" clause in the seventh round contract). If the excess costs are the result of increased photocopying reimbursement, CMS will exercise one of the four options CMS always uses in similar cases—we will either request that money be added to the contract, reduce work, ask the QIO to move funds between cost centers or line items, or some combination of these options. In no case will CMS expect the QIO to absorb any excess pass-through with existing contract funds without a corresponding reduction or shifting in level of effort.

Comment: One hospital commented that the method for calculating labor costs described in section II.A of the preamble of the November 22, 2002, proposed rule only provides for the cost of a photocopy machine operator, while in actual practice a significant portion of records reproduction time should be attributed to record retrieval, review, and re-filing by a records technician. The hospital further stated its pay scale for a records technician ranges from $8.30 to $11.22 per hour.

Response: We agree with this comment. However, in section II.D of the preamble of the November 22, 2002, proposed rule, we explained how we calculated the estimated number of pages copied annually. As discussed in detail at 57 FR 47780, this estimate was adjusted before publication of the current regulation to take into account the appropriate amount of labor time required to perform all of the steps that are performed in addition to the actual photocopying, such as logging in the request, retrieving the record, refiling the record, and mailing copies. Thus, the term "photocopy machine operator" can reasonably be interpreted to include records technicians or anyone else directly involved in the hands-on process. Further, section II.B of the preamble of the November 22, 2002, proposed rule explains that we used an updated representative annual salary of $28,727, or an hourly rate of $13.81, which exceeds this provider's salary range for a records technician. Therefore, we have not increased the per-page reimbursement rate based on this comment.

Comment: Another commenter questioned the raw data we applied to the approved methodology for calculating the per-page cost of photocopying medical records. Although this commenter strongly supported the three primary objectives of the rule (to increase reimbursement, extend provisions of the rule to all PPS providers, and allow for periodic adjustment of rates without notice and comment rulemaking), the commenter contended the rate should be significantly higher than the proposed 12 cents per page.

In particular, this organization stated the proposed labor rate is insufficient to retain qualified personnel in the private sector, fringe benefit rates are too low, the number of pages copied annually is too high due to recent Health Insurance Portability and Accountability Act of 1996 (HIPAA) requirements, and the cost of supplies is too low as a result of comparing GSA bulk purchase costs to actual costs available to private sector companies. The commenter believes we used the October 20, 1992, regulation as a starting point for current calculations and that regulation was based on artificially low cost assumptions.

The commenter supports extending the proposed reimbursement methodology to non-hospital PPS providers and also supported the periodic review provisions. However, the commenter asked us to amend the rate review section to require such a review at no more than 5-year intervals.

Response: In this rule, we used recent cost data to calculate the proposed per-page photocopy costs and did not simply build on 1992 data. However, we believe that the data used in both this rule and the 1992 rule is reasonable and accurately reflects the costs associated with this responsibility. Further, we believe the proposed representative salary and fringe benefit rates of $28,727 and 29.7 percent, respectively, are reasonable and sufficient to attract and retain qualified personnel. The fringe benefit (F/B) rate, in particular, is very close to the mean F/B rate of the numerous contractors we reviewed before publication of the November 22, 2002, proposed rule, to validate the A–76 Transmittal Memorandum. Although the 29.7 percent F/B rate is based on the 2000 OMB guidance, we have applied it to a higher base figure and see no reason to adjust it further. The $28,727 salary estimate represents a mid-level GS–5 secretary salary in 2002, which we believe is a fair and accurate comparison to the skill level necessary to process medical record photocopying requests.

The estimated number of pages has remained constant since the October 20, 1992, regulation was published. Although the commenter may be correct that HIPAA privacy requirements will modestly reduce the maximum number of pages an operator or technician can copy per year, it is still too soon to calculate the exact effect of that legislation. Further, we believe that increases in the speed and simplicity of reproduction hardware over the last 10 years may offset any decreases in volume resulting from HIPAA.

The comment that the cost of supplies to non-governmental organizations exceeds the GSA catalogue price may be valid. However, the GSA price provides a solid benchmark that does not vary widely by vendor or product quality. Further, our proposed overall reimbursement rate per page amounts to a 7 percent annual increase over the 10 years since publication of the previous rule. This is approximately twice the inflation index rate and adequately compensates for any modest differences between the government and private-sector costs of supplies.

We believe the suggestion to include a maximum 5-year interval between review periods has some merit but may be unnecessary. By eliminating the need for notice and comment rulemaking, it becomes unlikely that any future rate adjustment will take longer than 5 years and potentially could be more frequent.

IV. Provisions of the Final Regulations

This final rule incorporates the provisions of the proposed rule with only one minor change. We have deleted the proposed revision of § 476.78(b)(4), thus leaving that section unchanged from the existing text. The proposed amendment, replacing "hospital" with "provider," had an unintended consequence of appearing to extend the requirement to provide QIOs with discharge notices from hospitals to other inpatient providers. That is neither the purpose nor the intent of this final rule.

V. Collection of Information Requirements

Under the Paperwork Reduction Act (PRA) of 1995, agencies are required to provide 60-day notice in the **Federal Register** and solicit public comment before a collection of information requirement is submitted to the Office of Management and Budget (OMB) for review and approval. In order to fairly evaluate whether an information collection should be approved, section 3506(c)(2)(A) of the PRA of 1995 requires that we solicit comment on the following issues:

- Whether the information collection is necessary and useful to carry out the proper functions of the agency;
- The accuracy of the agency's estimate of the information collection burden;
- The quality, utility, and clarity of the information to be collected; and
- Recommendations to minimize the information collection burden on the affected public, including automated collection techniques.

Section 476.78 of this regulation contains information collection requirements. In summary, § 476.78 requires providers to submit information to the QIO during the conduct of a QIO review. Because this information is collected during the conduct of an audit, investigation, and/or an administrative action, we believe these collection requirements are not subject to the PRA as stipulated under 5 CFR 1320.4.

VI. Regulatory Impact

We have examined the impacts of this rule as required by Executive Order 12866 (September 1993, Regulatory Planning and Review), the Regulatory Flexibility Act (RFA) (September 16, 1980, Pub. L. 96–354), section 1102(b) of the Social Security Act, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), and Executive Order 13132.

Executive Order 12866 (as amended by Executive Order 13258, which merely reassigns responsibility of duties) directs agencies to assess all costs and benefits of available regulatory alternatives and when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis (RIA) must be prepared for rules that constitute significant regulatory action, including rules that have an economic effect of $100 million or more annually. This final rule is not a major rule in terms of the aggregate costs involved.

The 53 separate QIO contracts are awarded on a staggered 3-year basis. Current sixth scope of work contracts provide photocopy reimbursement costs of 7 cents per page. The total dollars budgeted were $8.6 million per year and the 3-year costs were $25.9 million. We estimate by the time this final regulation is published, 19 QIOs will have completed their sixth round contracts, and the other 34 will have less than 153 months (combined) out of a total of 636 months (for all 53 QIOs) remaining in the final year of their sixth round contracts. This translates to 24 percent of the final sixth round year. As such, we project this regulation will increase the costs in the last (that is, current) year of the sixth scope of work by $1.5 million above the previous budgeted level of $8.6 million, to a total of $10.1 million. However, in future years—based on the full 12 months and all 53 QIOs under contract—the increase will be nearly $6.2 million annually.

Thus, we have determined that this final rule is not a major rule with economically significant effects because it will not result in increases in total expenditures of $100 million or more per year.

The RFA requires agencies to analyze options for regulatory relief of small businesses. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and small governmental jurisdictions. Most hospitals and most other providers and suppliers are small entities, either by nonprofit status or by having revenues of $6 million to $29 million or less annually (see 65 FR 69432). Individuals and States are not included in the definition of a small entity.

We generally prepare a regulatory flexibility analysis that is consistent with the RFA unless we certify that a rule will not have a significant impact on a substantial number of small entities. We have not prepared an analysis for the RFA because we have determined, and certify, that this final rule will have no significant economic impact on small entities. The regulation will not impose any economic or operational regulatory burdens on small entities. The regulation will only assist providers in performing the tasks required under the QIO program sixth scope of work, by increasing the reimbursement for providing copies of documents to the QIOs.

Section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 100 beds. We have not prepared an analysis for section 1102(b) of the Act because we have determined that this final regulation will not have a significant impact on the operations of small rural hospitals for the reasons stated above in our discussion of the RFA.

Section 202 of the Unfunded Mandates Reform Act of 1995 also requires that agencies prepare an assessment of anticipated costs and benefits before issuing any rule that may result in an expenditure in any 1 year by State, local, or tribal governments, in the aggregate, or by the private sector, of $110 million or more. We have determined that this final rule will not result in such an expenditure. Rather, the final rule will benefit providers by increasing the photocopy reimbursement rate.

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a rule that imposes substantial direct compliance costs on State and local governments, preempts State law, or otherwise has Federalism implications. We have reviewed this final rule under the threshold criteria of Executive Order 13132 and have determined that it will not have a substantial direct effect on the rights, roles, and responsibilities of States or local governments.

In accordance with the provisions of Executive Order 12866, this regulation was reviewed by the Office of Management and Budget.

List of Subjects

42 CFR Part 412

Administrative practice and procedure, Health facilities, Medicare, Puerto Rico, Reporting and recordkeeping requirements.

42 CFR Part 413

Health facilities, Kidney diseases, Medicare, Puerto Rico, Reporting and recordkeeping requirements.

42 CFR Part 476

Grant programs-health, Health care, Health facilities, Health professions, Quality Improvement Organizations (QIO), Reporting and record keeping requirements.

42 CFR Part 484

Health facilities, Health professions, Medicare, Reporting and recordkeeping requirements.

■ For the reasons set forth in the preamble, the Centers for Medicare & Medicaid Services is amending 42 CFR chapter IV as follows:

PART 412—PROSPECTIVE PAYMENT SYSTEMS FOR INPATIENT HOSPITAL SERVICES

Subpart H—Payment to Hospitals Under the Prospective Payment Systems

■ 1. The authority citation for part 412 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

■ 2. In § 412.115, revise paragraph (c) to read as follows:

§ 412.115 Additional payments.

* * * * *

(c) *QIO photocopy and mailing costs.* An additional payment is made to a hospital in accordance with § 476.78 of this chapter for the costs of photocopying and mailing medical records requested by a QIO.

PART 413—PRINCIPLES OF REASONABLE COST REIMBURSEMENT; PAYMENT FOR END-STAGE RENAL DISEASE SERVICES; PROSPECTIVELY DETERMINED PAYMENT RATES FOR SKILLED NURSING FACILITIES

Subpart J—Prospective Payment for Skilled Nursing Facilities

■ 1. The authority citation for part 413 continues to read as follows:

Authority: Secs. 1102, 1812(d), 1814(b), 1815, 1833(a), (i), and (n), 1871, 1881, 1883, and 1886 of the Social Security Act (42 U.S.C. 1302, 1395d(d), 1395f(b), 1395l(a), (i), and (n), 1395hh, 1395rr, 1395tt, and 1395ww).

■ 2. Add a new § 413.355 to read as follows:

§ 413.355 Additional payment: QIO photocopy and mailing costs.

An additional payment is made to a skilled nursing facility in accordance with § 476.78 of this chapter for the costs of photocopying and mailing medical records requested by a QIO.

PART 476—UTILIZATION AND QUALITY CONTROL REVIEW

Subpart C—Review Responsibilities of Quality Improvement Organizations (QIOs)

General Provisions

■ 1. The authority citation for part 476 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

■ 2. In § 476.78, revise the introductory text to paragraph (b); revise paragraphs (b)(2), and the introductory text to paragraph (c); add new paragraph (c)(4); and revise paragraph (d) to read as follows:

§ 476.78 Responsibilities of health care providers.

* * * * *

(b) *Cooperation with QIOs.* Health care providers that submit Medicare claims must cooperate in the assumption and conduct of QIO review. Providers must—

* * * * *

(2) Provide patient care data and other pertinent data to the QIO at the time the QIO is collecting review information that is required for the QIO to make its determinations. The provider must photocopy and deliver to the QIO all required information within 30 days of a request. QIOs pay providers paid under the prospective payment system for the costs of photocopying records requested by the QIO in accordance with the payment rate determined under the methodology described in paragraph (c) of this section and for first class postage for mailing the records to the QIO. When the QIO does postadmission, preprocedure review, the facility must provide the necessary information before the procedure is performed, unless it must be performed on an emergency basis.

* * * * *

(c) *Photocopying reimbursement methodology for prospective payment system providers.* Providers subject to the prospective payment system are paid for the photocopying costs that are directly attributable to the providers' responsibility to the QIOs to provide photocopies of requested provider records. The payment is in addition to payment already provided for these costs under other provisions of the Social Security Act and is based on a fixed amount per page as determined by CMS as follows:

* * * * *

(4) CMS will periodically review the photocopy reimbursement rate to ensure that it still accurately reflects provider costs. CMS will publish any changes to the rate in a **Federal Register** notice.

(d) *Appeals.* Reimbursement for the costs of photocopying and mailing records for QIO review is an additional payment to providers under the prospective payment system, as specified in § 412.115, § 413.355, and § 484.265 of this chapter. Thus, appeals concerning these costs are subject to the review process specified in part 405, subpart R of this chapter.

PART 484—HOME HEALTH SERVICES

Subpart E—Prospective Payment System for Home Health Agencies

■ 1. The authority citation for part 484 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395(hh) unless otherwise indicated.

■ 2. Add a new § 484.265 to read as follows:

§ 484.265 Additional payment.

QIO photocopy and mailing costs. An additional payment is made to a home health agency in accordance with § 476.78 of this chapter for the costs of photocopying and mailing medical records requested by a QIO.

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: May 23, 2003.

Thomas A. Scully,

Administrator, Center for Medicare & Medicaid Services.

Approved: August 28, 2003.

Tommy G. Thompson,

Secretary.

[FR Doc. 03–30096 Filed 11–28–03; 11:32 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Part 414

[CMS–1232–FC]

RIN 0938–AM44

Medicare Program; Coverage and Payment of Ambulance Services; Inflation Update for CY 2004

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Final rule with comment period.

SUMMARY: This final rule provides the sunset date for the interim bonus payment for rural ambulance mileage of 18 through 50 miles as required by the Medicare, Medicaid and State Child Health Insurance Program Benefits Improvement and Protection Act of 2000 (BIPA) and provides notice of the annual Ambulance Inflation Factor (AIF) for ambulance services for calendar year (CY) 2004. The statute requires that this inflation factor be applied in determining the fee schedule amounts and payment limits for ambulance services.

DATES: *Effective date:* These revisions are effective on January 1, 2004. The ambulance inflation factor for 2004 applies to ambulance services furnished during the period January 1, 2004, through December 31, 2004.

Comment date: Comments will be considered if we receive them at the appropriate address, as provided below, no later than 5 p.m. on January 29, 2004.

ADDRESSES: Mail written comments (one original and three copies) to the following address: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–1232–FC, P.O. Box 8013, Baltimore, MD 21244–8013.

If you prefer, you may deliver your written comments (one original and three copies) to one of the following addresses: Hubert H. Humphrey Building, Room 443–G, 200 Independence Avenue, SW., Washington, DC 20201, or Centers for Medicare & Medicaid Services, Room C5–14–03, 7500 Security Boulevard, Baltimore, MD 21244–8013.

Comments mailed to those addresses designated for courier delivery may be delayed and could be considered late. Because of staffing and resource limitations, we cannot accept comments by facsimile (FAX) transmission. Please refer to file code CMS–1232–FC on each comment. Comments received timely will be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of this document, in Room C5–12–08 of the Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, Maryland, Monday through Friday of each week from 8:30 a.m. to 4 p.m. Please call (410) 786–7197 to make an appointment to view comments.

FOR FURTHER INFORMATION CONTACT: Anne E. Tayloe, (410) 786–4546.

SUPPLEMENTARY INFORMATION:

I. Background

A. Legislative and Regulatory History

Under section 1861(s)(7) of the Social Security Act (the Act), Medicare Part B (Supplementary Medical Insurance) covers and pays for ambulance services, to the extent prescribed in regulations, when the use of other methods of transportation would be contraindicated. The House Ways and Means Committee and Senate Finance Committee Reports that accompanied the 1965 legislation creating the Social Security Act suggest that the Congress intended that (1) the ambulance benefit cover transportation services only if other means of transportation are contraindicated by the beneficiary's medical condition, and (2) only ambulance service to local facilities be covered unless necessary services are not available locally, in which case, transportation to the nearest facility furnishing those services is covered (H.R. Rep. No. 213, 89th Cong., 1st Sess. 37 and S. Rep. No. 404, 89th Cong., 1st Sess., Pt I, 43 (1965)). The reports indicate that transportation may also be provided from one hospital to another, to the beneficiary's home, or to an extended care facility.

Our regulations relating to ambulance services are located at 42 CFR part 410, subpart B and 42 CFR part 414, subpart H. Section 410.10(i) lists ambulance services as one of the covered medical and other health services under Medicare Part B. Ambulance services are subject to basic conditions and limitations set forth at § 410.12 and to specific conditions and limitations included at § 410.40. Part 414, subpart H describes how payment is made for ambulance services covered by Medicare.

The Medicare program pays for ambulance services for Medicare beneficiaries when other means of transportation are contraindicated. Ambulance services are divided into different levels of services based on the medically necessary treatment provided during transport as well as into ground (including water) and air ambulance services. These services include the levels of service listed below.

For ground:

- Basic Life Support (BLS)
- Advanced Life Support, Level 1 (ALS1)
- Advanced Life Support, Level 2 (ALS2)
- Specialty Care Transport (SCT)
- Paramedic ALS Intercept (PI)

For air:

- Fixed Wing Air Ambulance (FW)
- Rotary Wing Air Ambulance (RW)

Historically, payment levels for ambulance services depended, in part, upon the entity that furnished the services. Prior to implementation of the ambulance fee schedule on April 1, 2002, providers (hospitals, including critical access hospitals, skilled nursing facilities, and home health agencies) were paid on a retrospective reasonable cost basis. Suppliers, which are entities that are independent of any provider, were paid on a reasonable charge basis.

On February 27, 2002, a final rule was published in the **Federal Register** (67 FR 9100) that established a fee schedule for the payment of ambulance services under the Medicare program, effective for services furnished on or after April 1, 2002. This rule implemented section 1834(l) of the Act. The fee schedule described in the final rule replaced the retrospective reasonable cost payment system for providers and the reasonable charge system for suppliers of ambulance services. In addition, that final rule implemented that statutory requirement that ambulance suppliers accept Medicare assignment; codified the establishment of new Health Care Common Procedure Coding System (HCPCS) codes to be reported on claims for ambulance services; established increased payment under the fee schedule for ambulance services furnished in rural areas based on the location of the beneficiary at the time the beneficiary is placed on board the ambulance; and revised the certification requirements for coverage of nonemergency ambulance services. The final rule also provided for a 5-year transition period during which program payment for Medicare covered ambulance services would be based upon a blended rate comprised of a fee schedule portion and a reasonable cost (providers) or reasonable charge (suppliers) portion. We are now in the second year of that transition over to full payment based solely on the fee schedule amount.

B. Transitional Assistance for Rural Mileage 18 through 50—Section 221 of the Medicare, Medicaid and SCHIP Benefits Improvement and Protection Act of 2000 (BIPA)

Section 221 of BIPA provided that, for services furnished during the period July 1, 2001 through December 31, 2003, a bonus payment, not less than one-half of the bonus paid under the ambulance fee schedule for rural mileage 1 through 17 miles, would be paid for rural mileage 18 through 50. This provision was implemented by § 414.610(c) with the ambulance fee schedule.

The statute provided for this bonus payment only for the interim period specified. We inadvertently omitted from the regulation the time period during which this benefit is payable. Therefore, we are revising § 414.610(c) to reflect that this bonus payment applies only for services furnished during the statutory period. This revision to the regulation is a technical correction to conform the regulation to the statute. Therefore, we believe that notice and comment are unnecessary, and we are waiving proposed rulemaking.

C. Ambulance Inflation Factor (AIF) for CY 2004

Section 1834(l)(3)(B) of the Act provides the basis for updating payment amounts for ambulance services. Our regulations at § 414.620(f) provide that the ambulance fee schedule must be updated by the AIF annually, based on the percentage increase in the consumer price index (CPI) for all urban consumers (U.S. city average) for the 12-month period ending with June of the previous year (§ 414.610(f)). The regulations also provide that notice of the AIF be published in the **Federal Register** without opportunity for prior notice and comment. We will follow applicable rulemaking procedures in publishing revisions to the fee schedule for ambulance services that result from any factors other than the inflation factor. In this preamble, we set forth the ambulance inflation factor applicable for services furnished in CY 2004.

II. Provisions of the Final Rule

A. Transitional Assistance for Rural Mileage 18 Through 50

Section 414.610(c)(5) is amended to clarify that this benefit is no longer payable for services furnished after December 31, 2003.

B. Ambulance Inflation Factor for 2004

Section 1834(l)(3)(B) of the Act, specified in § 414.620(f), provides for an update in payments for CY 2004 that is equal to the percentage increase in the CPI for all urban consumers (CPI–U), for the 12-month period ending with June of the previous year (that is, June 2003). For CY 2004, that percentage is 2.1 percent.

During the transition period (described in § 414.615, Transition to the ambulance fee schedule), the AIF is applied to both the fee schedule portion of the blended payment amount and to the reasonable charge/cost portion of the blended payment amount separately for each ambulance provider/supplier. Then, these two amounts are added together to determine the total payment amount for each provider/supplier.

III. Technical Corrections

We are also making the following technical corrections to § 414.605, Definitions.

- In the definition of "*Advanced life support (ALS) intervention,*" we are clarifying that an ALS intervention must be furnished by ALS personnel.
- A comma was inadvertently omitted in the definition of "*Advanced life support, Level 2 (ALS2).*" That comma is now inserted after the phrase "or by continuous infusion" and before the phrase "excluding crystalloid. * * *"
- There was an inadvertent misuse of the term "supplier" in the definition of the term "*emergency response.*" The correct term is "entity." Providers, as well as suppliers, may furnish an emergency response. We did not intend to exclude providers from receiving payment for this service.
- In the definition of "*Rural area*", we are clarifying that only New England County Metropolitan Areas (NECMAs) (and not MSAs) apply in New England. (NECMAs exist only in New England. All other areas have MSAs.) Also, the term "NECMA" was inadvertently omitted from the discussion of the Goldsmith modification. The phrase "or NECMA" is now inserted after the term "MSA" and before the phrase "that is identified as rural by the Goldsmith modification." This clarifies that a Goldsmith modification can apply to a NECMA as well as an MSA.
- Section 414.610(c)(3) is revised to conform the first two sentences to reflect the fact that the process for determining payment for mileage is the same for ground and air miles.

IV. Waiver of Proposed Rulemaking

We ordinarily publish a proposed rule in the **Federal Register** and provide a period for public comment before we publish a final rule. We can waive this procedure, however, if we find good cause that notice and comment procedure is impracticable, unnecessary, or contrary to the public interest and we incorporate a statement of this finding and its reasons in the rule issued. We find it unnecessary to undertake notice and comment rulemaking in this instance because the statute specifies the method of computation of annual updates, and we have no discretion in this matter. Further, this rule does not change substantive policy, but merely applies the statutorily-specified update method. Therefore, under 5 U.S.C. 553(b)(B), for good cause, we waive notice and comment procedures.

We also find it unnecessary to undertake notice and comment rulemaking as to the technical changes because they merely provide technical corrections to the regulations and do not make any substantive changes to the regulations. Therefore, for good cause, we waive notice and comment procedures.

V. Collection of Information Requirements

This document does not impose information collection and recordkeeping requirements. Consequently, it need not be reviewed by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1995.

VI. Regulatory Impact Statement

We have examined the impacts of this rule as required by Executive Order 12866 (September 1993, Regulatory Planning and Review), the Regulatory Flexibility Act (RFA) (September 16, 1980, Pub. L. 96–354), section 1102(b) of the Social Security Act, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), and Executive Order 13132.

Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects ($100 million or more in any 1 year). This final rule is not considered a major rule because it has an effect on the Medicare program of less than $100 million in any 1 year. Application of an AIF of 2.1 percent will result in an additional total program expenditure of approximately $65 million.

The RFA requires agencies to analyze options for regulatory relief of small businesses. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and government agencies. Most hospitals and most other providers and suppliers are small entities, either by nonprofit status or by having revenues of $6 million to $29 million in any 1 year. For purposes of the RFA, all ambulance providers/suppliers are considered to be small entities. Individuals and States are not included in the definition of a small entity.

HHS considers that a substantial number of entities are affected if the rule impacts more than 5 percent of the total number of small entities as it does in this rule. Although this rule impacts every ambulance provider and supplier because all ambulance payment rates are increased by the 2.1 percent ambulance inflation factor, we do not believe that this has a significant impact. We estimate the combined impact of this rule would be an approximate 2 percent increase in Medicare revenues, which, therefore, would be a somewhat less than 2 percent increase in total revenues (that is, Medicare plus non-Medicare revenues). This estimated impact does not meet the threshold established by HHS to be considered a significant impact. Nonetheless, we have prepared the analysis below to describe the impact of this rule.

In addition, section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 100 beds. This rule applies to small rural hospitals that furnish at least one Medicare covered ambulance service to at least one Medicare beneficiary.

Section 202 of the Unfunded Mandates Reform Act of 1995 also requires that agencies assess anticipated costs and benefits before issuing any rule that may result in expenditure in any 1 year by State, local, or tribal governments, in the aggregate, or by the private sector, of $110 million. This final rule does not result in an expenditure in any 1 year by State, local, or tribal governments of $110 million.

Executive Order 13132 establishes certain requirements that an agency must meet when it publishes a proposed rule (and subsequent final rule) that imposes substantial direct requirement costs on State and local governments, preempts State law, or otherwise has Federalism implications. This rule will not have a substantial effect on State or local governments.

This final rule sunsets the rural mileage bonus for rural mileage 18 through 50 as required by statute, provides an update for inflation as mandated by statute, and changes the term "supplier" to the term "entity" in the definition of an emergency service. Elimination of the bonus payment for rural mileage 18 through 50 will result in a savings to the program of $6 million in CY 2004. Therefore, this is not a major rule.

We estimate that the total program expenditure for CY 2004 for ambulance services covered by the Medicare program is approximately $3 billion. Application of an AIF of 2.1 percent will result in an additional total program expenditure of approximately $65 million.

Our clarification that an ALS intervention must be furnished by ALS personnel will have negligible impact because generally ALS services are required to be furnished by ALS personnel.

The insertion of the comma that had been inadvertently omitted in the definition of "Advanced life support, Level 2 (ALS2)" will have no impact since it conforms the regulation to the existing implementing instructions.

Changing the term "supplier" to the term "entity" in the definition of "emergency services" is not a material change because it simply conforms the regulation to actual practice as the program is currently administered.

Our clarification in the definition of "Rural area" that NECMAs apply in New England and our addition of NECMA to the discussion of the Goldsmith Modification have a negligible impact because of the very few ambulance suppliers affected. Also, the statute requires that this policy be followed in updating rates by using the most recent Goldsmith modifications.

Our clarification for loaded mileage has no impact because it conforms the regulation to actual practice as the program is correctly administered.

In accordance with the provisions of Executive Order 12866, this regulation was reviewed by the Office of Management and Budget.

List of Subjects in 42 CFR Part 414

Administrative practice and procedure, Health facilities, Health professions, Kidney diseases, Medicare, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, the Centers for Medicare & Medicaid Services is amending 42 CFR chapter IV as follows:

PART 414—PAYMENT FOR PART B MEDICAL AND OTHER HEALTH SERVICES

■ 1. The authority citation for part 414 continues to read as follows:

Authority: Secs. 1102, 1871, and 1881(b)(1) of the Social Security Act (42 U.S.C. 1302, 1395hh, and 1395rr(b)(1)).

Subpart H—Fee Schedule for Ambulance Services

§ 414.605 [Amended]

■ 2. In § 414.605, the following changes are made:

■ A. The definition of "*Advanced life support (ALS) intervention*" is revised by removing the phrase "beyond the scope of authority of an emergency medical technician-basic (EMT-Basic)" and adding in its place the phrase "required to be furnished by ALS personnel."

■ B. A comma is inserted in the definition of "*Advanced Life Support, Level 2 (ALS2)*" after the phrase "or by continuous infusion" and before the phrase "excluding crystalloid. * * *"

■ C. The term "supplier" in the definition of "Emergency response" is removed and the term "entity" is added in its place.

■ D. The definition of "Rural area" is revised to read as follows:

§ 414.605 Definitions.

* * * * *

Rural area means an area located outside a Metropolitan Statistical Area (MSA), or, in New England, a New England County Metropolitan Area (NECMA), or an area within an MSA or NECMA that is identified as rural by the Goldsmith modification.

* * * * *

■ 3. Section 414.610 is amended by revising paragraphs (c)(3) and (c)(5) to read as follows:

§ 414.610 Basis of payment.

* * * * *

(c) * * *

* * * * *

(3) Loaded mileage. Payment is based on loaded miles. Payment for air mileage is based on loaded miles flown as expressed in statute miles. There are three mileage payment rates: a rate for FW services, a rate for RW services, and a rate for all levels of ground transportation.

* * * * *

(5) Rural adjustment factor (RAF). For ground ambulance services where the point of pickup is in a rural area, the mileage rate is increased by 50 percent for each of the first 17 miles and, for services furnished before January 1, 2004, by 25 percent for miles 18 through 50. The standard mileage rate applies to every mile over 50 miles and, for services furnished after December 31, 2003, to every mile over 17 miles. For air ambulance services where the point of pickup is in a rural area, the total payment is increased by 50 percent; that is, the rural adjustment factor applies to the sum of the base rate and the mileage rate.

* * * * *

(Catalog of Federal Domestic Assistance Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: September 2, 2003.

Thomas A. Scully,

Administrator, Centers for Medicare & Medicaid Services.

Approved: October 27, 2003.

Tommy G. Thompson,

Secretary.

[FR Doc. 03–30152 Filed 12–1–03; 12:43 pm]

BILLING CODE 4120–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 03–3555; MB Docket No. 03–24; RM–10636]

Radio Broadcasting Services; Apopka, Homosassa Springs, Maitland, FL

AGENCY: Federal Communications Commission

ACTION: Final rule.

SUMMARY: The Audio Division, at the request of Cox Radio, Inc., licensee of FM Station WPYO, Channel 237A, Apopka, Florida, deletes Apopka, Florida, Channel 237A, from the FM Table of Allotments, allots Channel 237C3 at Maitland, Florida, as the community's first local FM service, and modifies the license of FM Station WPYO to specify operation on Channel 237C3 at Maitland. Channel 237C3 can be allotted to Maitland, Florida, in compliance with the Commission's minimum distance separation requirements with a site restriction of 14.7 km (9.2 miles) east of Maitland. The coordinates for Channel 237C3 at Maitland, Florida, are 28–39–38 North Latitude and 81–13–02 West Longitude.

DATES: Effective January 5, 2004.

FOR FURTHER INFORMATION CONTACT: Deborah Dupont, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order*, MB Docket No. 03–24, adopted November 12, 2003, and released November 14, 2003. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. The complete text of this decision may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, (202) 863–2893, facsimile (202) 863–2898, or via e-mail *qualexint@aol.com*.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

■ Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—RADIO BROADCAST SERVICES

■ 1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

■ 2. Section 73.202(b), the Table of FM Allotments under Florida, is amended by removing Apopka, Channel 237A, and by adding Maitland, Channel 237C3.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 03–30195 Filed 12–4–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 03–3650; MB Docket No. 02–243; RM–10533; RM–10712*]

Radio Broadcasting Services; Marathon and Mertzon, TX

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In response to a *Notice of Proposed Rule Making*, 67 FR 57779 (September 12, 2001), this *Report and Order* allots Channel 278C to Marathon, Texas, and provides Marathon with its first local aural transmission service. This document also allots Channel 278C2 to Mertzon, Texas and provides that community with its second local aural transmission service. The coordinates for Channel 278C at Marathon, Texas, are 30–21–56 North Latitude and 103–17–40 West Longitude. This allotment has a site restriction of 18.4 kilometers (11.5 miles) north of Marathon, Texas. The coordinates for Channel 278C2 at Mertzon, Texas, are 31–10–09 North Latitude and 100–51–41 West Longitude, with a site restriction of 10.8 kilometers (6.7 miles) southwest of Mertzon, Texas.

DATES: Effective January 8, 2004.

FOR FURTHER INFORMATION CONTACT: R. Barthen Gorman, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MB Docket No. 02–243, adopted November 14, 2003, and released November 17, 2003. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center at Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. The document may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 202 863–2893, facsimile 202 863–2898, or via e-mail *qualexint@aol.com*.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

■ Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—RADIO BROADCAST SERVICES

■ 1. The authority citation for part 73 reads as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

■ 2. Section 73.202(b), the Table of FM Allotments under Texas, is amended by adding Marathon, Channel 278C, and Channel 278C2 at Mertzon.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 03–30194 Filed 12–4–03; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 031126297–3297–01; I.D. 111703D]

Fisheries of the Exclusive Economic Zone Off Alaska; Gulf of Alaska; Interim 2004 Harvest Specifications for Groundfish

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Interim final rule.

SUMMARY: NMFS issues interim 2004 total allowable catch (TAC) amounts for each category of groundfish, American Fisheries Act (AFA) sideboard amounts, and prohibited species catch (PSC) amounts for the groundfish fisheries of the Gulf of Alaska (GOA). The intended effect is to conserve and manage the groundfish resources in the GOA.

DATES: The interim harvest specifications are effective from 0001 hrs, Alaska local time (A.l.t.), January 1, 2004, until the effective date of the final 2004 harvest specifications for GOA groundfish, which will be published in the **Federal Register**.

ADDRESSES: Copies of the Environmental Assessment/Initial Regulatory Flexibility Analysis (EA/IFRA) prepared for this action, the final 2002 Stock Assessment and Fishery Evaluation (SAFE) report, dated November 2002, and the final 2003 SAFE report, dated November 2003, is available from the North Pacific Fishery Management Council, 605 West 4th Avenue, Suite 306, Anchorage, AK 99501–2252, telephone (907) 271–2809 or from its homepage at *http://www.fakr.noaa.gov/npfmc*.

FOR FURTHER INFORMATION CONTACT: Thomas Pearson, (907) 481–1780 or *tom.pearson@noaa.gov*.

SUPPLEMENTARY INFORMATION:

Background

Federal regulations at 50 CFR part 679 implementing the Fishery Management Plan (FMP) for Groundfish of the GOA govern the groundfish fisheries in the GOA. The North Pacific Fishery Management Council (Council) prepared the FMP, and NMFS approved it under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). General regulations that also pertain to the U.S. fisheries appear at subpart H of 50 CFR part 600.

The Council met in October 2003 to review scientific information concerning groundfish stocks including the 2002 SAFE report and the EA (see **ADDRESSES**) and recommended proposed 2004 specifications. The Council recommended and NMFS proposed a total acceptable biological catch (ABC) of 409,690 mt and a TAC of 227,797 mt for the 2004 fishing year. The proposed TAC amounts for each species were based on the best available biological and socioeconomic information.

Under § 679.20(c)(1)(ii), NMFS published in the **Federal Register** proposed harvest specifications for groundfish in the GOA for the 2004 fishing year published elsewhere in this issue. That document contains a detailed discussion of the proposed 2004 TACs, groundfish reserves, apportionments of TAC, ABC amounts, overfishing levels (OFLs), PSC amounts and apportionments, of the GOA groundfish fishery.

This action provides interim harvest specifications and apportionments thereof for the 2004 fishing year that will become available on January 1, 2004, and remain in effect until superseded by the final 2004 harvest specifications. Background information concerning the 2004 groundfish harvest specification process, on which this interim action is based, is provided in the above mentioned proposed specification document.

Establishment of Interim TACs

Regulations at § 679.20(c)(2)(i) require that one-fourth of each proposed TAC and apportionment thereof (not including the reserves and the first seasonal allowance of pollock and Pacific cod) and one-fourth of the halibut PSC amounts become effective at 0001 hours, A.l.t., January 1, on an interim basis and remain in effect until superseded by the final harvest specifications. As stated in the proposed specifications publication published elsewhere in this issue, no harvest of groundfish is authorized before the effective date of this action implementing the interim specifications.

Regulations at § 679.20(a)(6)(i) and (ii) allocate 100 percent of the pollock TAC to vessels catching pollock for processing by the inshore component, 90 percent of the Pacific cod TAC to vessels catching Pacific cod for processing by the inshore component and 10 percent to vessels catching Pacific cod for processing by the offshore component.

The reserves for the GOA are 20 percent of the TAC amounts for pollock, Pacific cod, flatfish species, and the "other species" category (§ 679.20(b)(2)). The GOA groundfish TAC amounts have been utilized fully since 1987, and NMFS expects this trend to continue in 2004. Therefore, NMFS has proposed reapportioning all the reserves to the TAC. The interim TAC amounts contained in Table 1 reflect the reapportionment of reserves to the TAC.

Interim 2004 GOA Groundfish Harvest Specifications and Apportionments

Table 1 provides interim TAC amounts, the first seasonal allowance of pollock in the combined Western and Central Regulatory Areas, the first seasonal allowance of Pacific cod in the Western and Central Regulatory Areas, interim TAC allocations of Pacific cod to the inshore and offshore components, and interim sablefish TAC apportionments to hook-and-line and trawl gear. These interim TAC amounts and apportionments become effective at 0001 hours, A.l.t., January 1, 2004.

TABLE 1.—INTERIM 2004 TAC AMOUNTS OF GROUNDFISH FOR THE COMBINED WESTERN/CENTRAL (W/C), WESTERN (W), CENTRAL (C), AND EASTERN (E) REGULATORY AREAS AND IN THE WEST YAKUTAT (WYK), SOUTHEAST OUTSIDE (SEO), AND GULFWIDE (GW) DISTRICTS OF THE GULF OF ALASKA (GOA) [1,2]

[The first seasonal allowances of pollock in the Combined W/C Regulatory Areas, the first seasonal allowances of Pacific cod. Interim sablefish TAC apportionments to hook-and-line (H/L) and trawl (TRW) gear. Interim TAC amounts have been rounded to nearest metric tons]

Species	Area	Interim TAC	Total
Pollock [3,4]	W (610)	2,894	
	C (620)	6,535	
	C (630)	2,274	
Subtotal	W/C		11,703
	WYK (640)	270	
	SEO (650)	1,615	
Total			13,588
Pacific cod [5]	Inshore W	7,553	
	Offshore W	839	
	Inshore C	10,916	
	Offshore C	1,213	
	Inshore E	587	
	Offshore E	65	
Total			21,173
Flatfish, Deep-water [6]	W	45	
	C	555	

TABLE 1.—INTERIM 2004 TAC AMOUNTS OF GROUNDFISH FOR THE COMBINED WESTERN/CENTRAL (W/C), WESTERN (W), CENTRAL (C), AND EASTERN (E) REGULATORY AREAS AND IN THE WEST YAKUTAT (WYK), SOUTHEAST OUTSIDE (SEO), AND GULFWIDE (GW) DISTRICTS OF THE GULF OF ALASKA (GOA) [1,2]—Continued

[The first seasonal allowances of pollock in the Combined W/C Regulatory Areas, the first seasonal allowances of Pacific cod. Interim sablefish TAC apportionments to hook-and-line (H/L) and trawl (TRW) gear. Interim TAC amounts have been rounded to nearest metric tons]

Species	Area	Interim TAC	Total
	WYK	332	
	SEO	288	
Total			1,220
Rex sole	W	320	
	C	1,385	
	WYK	400	
	SEO	262	
Total			2,367
Flathead sole	W	500	
	C	1,250	
	WYK	659	
	SEO	284	
Total			2,693
Flatfish, Shallow-water [7]	W	1,125	
	C	3,250	
	WYK	290	
	SEO	740	
Total			5,405
Arrowtooth flounder	W	2,000	
	C	6,250	
	WYK	625	
	SEO	625	
Total			9,500
Sablefish [8,9,10]	H/L W	N/A (394)	
	TRW W	98	
	H/L C	N/A (986)	
	TRW C	247	
	TRW WYak	56	
	H/L WYak	N/A (388)	
	H/L SEO	N/A (682)	
Total			2,851
Pacific ocean perch [11]	W	675	
	C	2,127	
	WYK	203	
	SEO	410	
Total			3,415
Shortraker/rougheye [12]	W	55	
	C	210	
	E	140	
Total			405
Rockfish, northern [13]	W	197	
	C	1,028	
	E	N/A	
Total			1,225
Rockfish, other [14,15]	W	22	
	C	138	
	WYK	38	
	SEO	50	
Total			248
Rockfish, pelagic shelf [16]	W	128	
	C	870	
	WYK	160	
	SEO	215	
Total			1,373
Rockfish, demersal shelf SEO [17]	SEO	98	
Thornyhead rockfish	W	90	
	C	210	

TABLE 1.—INTERIM 2004 TAC AMOUNTS OF GROUNDFISH FOR THE COMBINED WESTERN/CENTRAL (W/C), WESTERN (W), CENTRAL (C), AND EASTERN (E) REGULATORY AREAS AND IN THE WEST YAKUTAT (WYK), SOUTHEAST OUTSIDE (SEO), AND GULFWIDE (GW) DISTRICTS OF THE GULF OF ALASKA (GOA) [1,2]—Continued

[The first seasonal allowances of pollock in the Combined W/C Regulatory Areas, the first seasonal allowances of Pacific cod. Interim sablefish TAC apportionments to hook-and-line (H/L) and trawl (TRW) gear. Interim TAC amounts have been rounded to nearest metric tons]

Species	Area	Interim TAC	Total
	E	200	
Total			500
Atka mackerel	GW	150	
Other species [18]	GW	2,712	
GOA Total Interim TAC			68,921

[1] Reserves have been reapportioned back to each species TAC and are reflected in the interim TAC amounts (*see* § 679.20(a)(2)).

[2] *See* § 679.2 for definitions of regulatory area and statistical area. *See* Figure 3b to part 679 for a description of regulatory districts

[3] The first seasonal allowance of pollock TAC in the W/C combined area is set at 25% of the annual TAC for the area which is 11,703 mt. Within the W/C area pollock is apportioned between Statistical Areas 610, 620, and 630 based on adjusted estimate of the relative distribution of pollock biomass in the area which is approximately 25% in Area 610 (2,894 mt), 56% in Area 620 (6,535 mt), and 19% in Area 630 (2,274 mt). In the Eastern Regulatory Area, pollock is not divided into less than annual allowances, and one-fourth of the TAC is available on an interim basis.

[4] The pollock TAC in all regulatory areas will be allocated 100 percent to vessels catching groundfish for processing by the inshore component after subtraction of amounts that are determined by the Regional Administrator, NMFS, to be necessary to support the bycatch needs of the offshore component in directed fisheries for other groundfish species. At this time, these bycatch amounts are unknown and will be determined during the fishing year (*see* § 679.20(a)(6)(i)).

[5] The Pacific cod TAC in all regulatory areas is allocated 90 percent to vessels catching groundfish for processing by the inshore component and 10 percent to vessels catching groundfish for processing by the offshore component (*see* § 679.20(a)(6)(ii)). The first seasonal apportionment of Pacific cod in the GOA is 60% of the annual TAC.

[6] "Deep-water flatfish" means Dover sole, Greenland turbot and deepsea sole.

[7] "Shallow-water flatfish" means flatfish not including "deep-water flatfish", flathead sole, rex sole, or arrowtooth flounder.

[8] Sablefish TAC amounts for each of the regulatory areas and districts are assigned to hook-and-line and trawl gear. In the Central and Western Regulatory Areas, 80 percent of the TAC is allocated to hook-and-line gear and 20 percent to trawl gear. In the Eastern Regulatory Area, 95 percent of the TAC is assigned to hook-and-line gear. Five percent is allocated to trawl gear and may only be used as bycatch to support directed fisheries for other target species (*see* § 679.20(a)(4)).

[9] The sablefish hook-and-line (H/L) gear fishery is managed under the Individual Fishing Quota (IFQ) program and is subject to regulations contained in subpart D of 50 CFR part 679. Annual IFQ amounts are based on the final TAC amount specified for the sablefish H/L gear fishery as contained in the final specifications for groundfish. Under § 679.7(f)(3)(ii), retention of sablefish caught with H/L gear is prohibited unless the harvest is authorized under a valid IFQ permit and IFQ card. In 2004, IFQ permits and IFQ cards will not be valid before the effective date of the 2004 final specifications. Thus, fishing for sablefish with H/L gear will not be authorized under these interim specifications. Nonetheless, interim amounts are shown in parentheses to reflect assignments of one-fourth of the proposed TAC amounts among gear categories and regulatory areas in accordance with § 679.20(c)(2)(i). See § 679.40 for guidance on the annual allocation of IFQ.

[10] Sablefish caught in the GOA with gear other than hook-and-line or trawl gear must be treated as a prohibited species and may not be retained.

[11] "Pacific ocean perch" means *Sebastes alutus*.

[12] "Shortraker/rougheye rockfish" means *Sebastes borealis* (shortraker) and *S. aleutianus* (rougheye).

[13] "Northern rockfish" means *Sebastes polyspinis*.

[14] "Other rockfish" in the Western and Central Regulatory Areas and in the West Yakutat District means slope rockfish and demersal shelf rockfish. The category "other rockfish" in the Southeast Outside District means slope rockfish.

[15] "Slope rockfish" means *Sebastes aurora* (aurora), *S. melanostomus* (blackgill), *S. paucispinis* (bocaccio), *S. goodei* (chilipepper), *S. crameri* (darkblotch), *S. elongatus* (greenstriped), *S. variegateu* (harlequin), *S. wilsoni* (pygmy), *S. proriger* (redstripe), *S. zacentrus* (sharpchin), *S. jordani* (shortbelly), *S. brevispinis* (silvergrey), *S. diploproa* (splitnose), *S. saxicola* (stripetail), *S. miniatus* (vermilion), *S. babcocki* (redbanded), and *S. reedi* (yellowmouth).

[16] "Pelagic shelf rockfish" includes *Sebastes ciliatus* (dusky), *S. entomelas* (widow), and *S. flavidus* (yellowtail).

[17] "Demersal shelf rockfish" means *Sebastes pinniger* (canary), *S. nebulosus* (china), *S. caurinus* (copper), *S. maliger* (quillback), *S. helvomaculatus* (rosethorn), *S. nigrocinctus* (tiger), and *S. ruberrimus* (yelloweye).

[18] "Other species" includes sculpins, sharks, skates, squid, and octopus. The TAC for "other species" equals 5 percent of the TAC amounts of target species.

Interim 2004 Halibut PSC Mortality Limits

Under § 679.21(d), annual Pacific halibut PSC mortality limits are established for trawl and hook-and-line gear and may be established for pot gear. The Council recommended and NMFS proposed to reestablish the 2003 halibut mortality limits for 2004 because no new information was available. Consistent with 2003, the Council recommended and NMFS proposed exemptions for pot gear, jig gear and the sablefish hook-and-line fishery from halibut PSC limits for 2004. The fishery specific interim PSC allowances for halibut are in effect at 0001 hours, A.l.t., January 1, 2004, and remain in effect until superseded by the final 2004 harvest specifications. The interim halibut PSC limits are: (1) 500 mt to trawl gear, (2) 72.5 mt to hook-and-line gear for fisheries other than demersal shelf rockfish, and (3) 2.5 mt to hook-and-line gear for the demersal shelf rockfish fishery in the Southeast Outside District.

Regulations at § 679.21(d)(3)(iii) authorize apportionments of the trawl halibut PSC limit as bycatch allowances to a deep-water species complex, comprised of rex sole, sablefish, rockfish, deep-water flatfish, and arrowtooth flounder; and a shallow-water species complex, comprised of pollock, Pacific cod, shallow-water flatfish, flathead sole, Atka mackerel, and "other species." The interim 2004 apportionment for the shallow-water species complex is 409 mt and for the deep-water species complex is 91 mt.

Interim 2004 Non-Exempt AFA Catcher Vessel Groundfish Harvest and PSC Limitations

The AFA regulations implemented groundfish harvesting and processing limitations, also called sideboards, on AFA catcher/processors and catcher vessels in the GOA. These limitations are considered necessary for fishermen and processors who have received an exclusive harvesting and processing

privilege under the AFA to protect the interests of fishermen and processors who do not have such privileges. In the GOA, AFA catcher/processors are prohibited from fishing for any species of fish (§ 679.7(k)(1)(ii)) and from processing any groundfish harvested in Statistical Area 630 of the GOA (§ 679.7(k)(1)(iv)). The Council recommended and NMFS proposed that certain AFA catcher vessels in the GOA be exempt from groundfish harvest limitations. Regulations at § 679.64(b)(2)(ii) exempt AFA catcher vessels in the GOA less than 125 ft (38.1 m) length overall (LOA) whose annual Bering Sea and Aleutian Islands management area pollock landings totaled less than 5,100 mt and that made 40 or more GOA groundfish landings from 1995 through 1997.

For non-exempt AFA catcher vessels in the GOA, harvest limitations are based on their traditional harvest levels of TAC in groundfish fisheries covered by the GOA FMP. Regulations at § 679.64(b)(3)(iii) establish the groundfish harvest limits in the GOA based on the retained catch of non-exempt AFA catcher vessels of each sideboard species from 1995 through 1997, divided by the sum of the TACs for that species over the same period. These amounts are listed in Table 2. All harvests of sideboard species made by non-exempt AFA catcher vessels, whether as targeted catch or bycatch, will be deducted from the sideboard limits in Table 2.

TABLE 2.—INTERIM 2004 GOA NON-EXEMPT AMERICAN FISHERIES ACT CATCHER VESSEL (CV) GROUNDFISH HARVEST SIDEBOARD LIMITATIONS

Species	Apportionments and allocations by area/season/processor/gear	Ratio of 1995–1997 non-exempt AFA CV catch to 1995–1997 TAC	2004 interim TAC (mt)	2004 Non-Exempt AFA catcher vessel sideboard (mt)
Pollock	Shumagin (610)	0.6112	2,894	1,769
	Chirikof (620)	0.1427	933	6,535
	Kodiak (630)	0.2438	554	2,274
	WYK (640)	0.3499	270	94
	SEO (650)	0.3499	1,615	565
Pacific cod	W inshore	0.1423	7,553	1,075
	W offshore	0.1026	839	86
	C inshore	0.0722	10,916	788
	C offshore	0.0721	1,213	87
	E inshore	0.0079	587	5
	E offshore	0.0078	65	1
Flatfish deep-water	W	0.0000	45	0
	C	0.0670	555	37
	E	0.0171	620	11
Rex sole	W	0.0010	320	0
	C	0.0402	1,385	56
	E	0.0153	662	10
Flathead sole	W	0.0036	500	2
	C	0.0261	1,250	33
	E	0.0048	943	5
Flatfish shallow-water	W	0.0156	1,125	18
	C	0.0598	3,250	194
	E	0.0126	1,030	13
Arrowtooth flounder	W	0.0021	2,000	4
	C	0.0309	6,250	193
	E	0.0020	1,250	3
Sablefish	W trawl gear	0.0000	98	0
	C trawl gear	0.0720	247	18
	E trawl gear	0.0488	56	3
Pacific ocean perch	W	0.0623	675	42
	C	0.0866	2,127	184
	E	0.0466	613	29
Shortraker/Rougheye	W	0.0000	55	0
	C	0.0237	210	5
	E	0.0124	140	2
Other rockfish	W	0.0034	23	0
	C	0.2065	138	28
	E	0.0000	88	0
Northern rockfish	W	0.0003	197	0
	C	0.0336	1,028	35
Pelagic shelf rockfish	W	0.0001	128	0
	C	0.0000	870	0
	E	0.0067	375	3
Thornyhead rockfish	W	0.0308	90	3
	C	0.0308	210	6
	E	0.0308	200	6
Demersal shelf rockfish	SEO	0.0020	98	0
Atka mackerel	Gulfwide	0.0309	150	5
Other species	Gulfwide	0.0090	2,712	24

In accordance with regulations at § 679.64(b)(4), PSC bycatch limits for non-exempt AFA catcher vessels in the GOA are based on the ratio of aggregate retained groundfish catch by non-exempt AFA catcher vessels in each PSC target category from 1995 through 1997, relative to the retained catch of all vessels in that fishery from 1995 through 1997. These amounts are shown in Table 3.

TABLE 3.—INTERIM 2004 NON-EXEMPT AMERICAN FISHERIES ACT CATCHER VESSEL PROHIBITED SPECIES CATCH (PSC) LIMITS FOR THE GOA

PSC species	Target fishery	Ratio of 1995–1997 non-exempt AFA CV retained catch to total retained catch	2004 interim PSC limit (mt)	2004 non-exempt AFA catcher vessel PSC limit (mt)
Halibut (mortality in mt)	shallow water targets	0.340	409	139
	deep water targets	0.070	91	6

Directed Fishing Closures

In accordance with § 679.20(d)(1)(i), if the Regional Administrator determines that any allocation or apportionment of a target species or "other species" category apportioned to a fishery or, with respect to pollock and Pacific cod, to an inshore or offshore component allocation, will be reached, the Regional Administrator may establish a directed fishing allowance for that species or species group. If the Regional Administrator establishes a directed fishing allowance, and that allowance is or will be reached before the end of the fishing year, NMFS will prohibit directed fishing for that species or species group in the specified GOA regulatory area or district (§ 679.20(d)(1)(iii)).

The Regional Administrator has determined that the TAC amounts in Table 4 are necessary as incidental catch to support other anticipated groundfish fisheries for the 2004 fishing year.

TABLE 4.—INCIDENTAL CATCH NEEDED TO SUPPORT OTHER DIRECTED FISHERIES IN THE GOA IN 2004.

[Amounts are in metric tons]

Target	Regulatory area	Gear/component	Amount
Atka Mackerel	entire GOA	all	150
Thornyhead Rockfish	entire GOA	all	500
Shortraker Rougheye Rockfish	entire GOA	all	405
Other Rockfish	entire GOA	all	248
Sablefish	entire GOA	trawl	401
Pollock	entire GOA	all/offshore	0

In accordance with § 679.20(d)(1)(i), the Regional Administrator establishes the directed fishing allowances for the above species or species groups as zero. Therefore, in accordance with § 679.20(d)(1)(iii), NMFS immediately is prohibiting directed fishing for those species, areas, gear types, and components listed in Table 4. These closures will remain in effect until superseded by the final 2004 harvest specifications.

Regulations at § 679.64(b)(5) provide for management of AFA catcher vessel groundfish harvest limits and PSC bycatch limits using directed fishing closures and PSC closures according to procedures set out at §§ 679.20(d)(1)(iv), 679.21(d)(8) and 679.21(e)(3)(v). The Regional Administrator has determined that in addition to the closures listed above, many of the non-exempt AFA catcher vessel sideboard amounts listed in Table 2 are necessary as incidental catch to support other anticipated groundfish fisheries for the 2004 fishing year. In accordance with § 679.20(d)(1)(iv) the Regional Administrator establishes these amounts as directed fishing allowances. The Regional Administrator finds that many of these directed fishing allowances will be reached before the end of the year. Therefore, in accordance with § 679.20(d)(1)(iii), NMFS is prohibiting directed fishing by non-exempt AFA catcher vessels in the GOA for the species and specified areas in Table 5. These closures will remain in effect until superseded by the final 2004 harvest specifications.

TABLE 5.—2004 NON-EXEMPT AMERICAN FISHERIES ACT CATCHER VESSEL SIDEBOARD DIRECTED FISHING CLOSURES IN THE GOA

Species	Regulatory area district	Gear
Pacific cod	Eastern GOA	all
Deep-water flatfish	Western and Eastern GOA	all
Rex sole	Western and Eastern GOA	all
Flathead sole	Eastern GOA	all
Shallow-water flatfish	Eastern GOA	all
Arrowtooth flounder	Eastern GOA	all
Pacific ocean perch	Western GOA	all
Northern rockfish	Western GOA	all
Pelagic shelf rockfish	entire GOA	all
Demersal shelf rockfish	SEO District	all

TABLE 5.—2004 NON-EXEMPT AMERICAN FISHERIES ACT CATCHER VESSEL SIDEBOARD DIRECTED FISHING CLOSURES IN THE GOA—Continued

Species	Regulatory area district	Gear
Other species	entire GOA	all

Classification

This action is authorized under 50 CFR 679.20 and is exempt from review under Executive Order 12866.

Because this action is a final action by NMFS, analyses required under the Magnuson-Stevens Act must be completed and considered by the agency before promulgation of the interim harvest specifications.

Regulations at 50 CFR 679.20(c)(2) require NMFS to specify harvest specifications to be effective January 1 and to remain in effect until superceded by the final specifications. Without interim specifications in effect on January 1, the groundfish fisheries would not be able to open, resulting in disruption within the fishing industry. NMFS cannot publish interim specifications until proposed specifications are completed, because the interim specifications are derived from the proposed specifications, as required by regulations at 50 CFR 679.20(c)(2).

The proposed specifications are based on the preliminary recommendations of the Plan Team, which were reviewed by the Scientific and Statistical Committee, Advisory Panel, and Council in October, 2003 in projecting 2003 biomass amounts, as identified in the 2002 SAFE Report, for the proposed 2004 ABC, overfishing levels, and TAC amounts. The Plan Team recommendations incorporate the most current data available from a number of sources, including current-year industry catch levels, and current-year trawl and hydro-acoustic surveys. These data are not available in time for Council review prior to the October Council meeting, as the surveys are conducted during the summer months, and industry catch levels reflect current year activity. These up-dated data sources represent the best available scientific information. These data provide the basis for the proposed and interim specifications.

The proposed specifications, as required by regulations at 50 CFR 679.20(c)(1)(i)(A), must be published as soon as practicable after consultation with the Council, which occurs at the Council's October meeting. This requirement, along with the requirement of national standard 2 of the Magnuson-Stevens Act to use the best scientific information available, prevents NMFS from publishing the proposed specifications early enough to provide sufficient time to have a public comment period for the interim specifications, which are derived from the proposed specifications, and to have the interim specifications effective on January 1.

As stated above, disruption of the fishing industry, and consequent impacts to fishing communities and the public, would occur if the interim specifications were not effective January 1. Additionally, the public is provided an opportunity to comment on the proposed specifications, from which the interim specifications are derived. For these reasons, good cause exists under 5 U.S.C. 553(b)(B) to waive prior notice and opportunity for public comment on this action as such procedures would be impracticable and contrary to the public interest.

Likewise, the AA finds good cause to waive the 30-day delay in effectiveness date of the interim specifications. Regulations at 50 CFR 679.20(c)(2) requires NMFS to establish interim harvest specifications to be effective on January 1 and to remain in effect until superseded by the publication of final harvest specifications by the Office of the Federal Register. NMFS interprets regulations at § 679.20(c)(2) as requiring the filing of interim specifications with the Office of the Federal Register before any harvest of groundfish is authorized. The interim specifications are based on the proposed 2004 specifications.

The interim specifications rely on data used to propose the 2004 specifications, and those data are not available until the after summer surveys are conducted (see above). Without interim specifications in effect on January 1, the groundfish fisheries would not be able to open on that date, resulting in disruption of the fishing industry. These reasons constitute good cause pursuant to 5 U.S.C. 553(d)(3) to waive the 30-day delay in effectiveness date.

Because these interim specifications are not required to be issued with prior notice and opportunity for public comment pursuant to 5 U.S.C. 553, or any other law, the analytical requirements of the Regulatory Flexibility Act do not apply. Consequently, no regulatory flexibility analysis has been prepared for this action.

Authority: 16 U.S.C. 773 *et seq.*, 1801 *et seq.*, and 3631 *et seq.*.

Dated: December 1, 2003.

William T. Hogarth.

Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 03–30282 Filed 12–4–03; 8:45 am]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 68, No. 234
Friday, December 5, 2003

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–NM–139–AD]

RIN 2120–AA64

Airworthiness Directives; Bombardier Model CL–215–1A10 and CL–215–6B11 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness directive (AD), applicable to certain Bombardier Model CL–215–1A10 and CL–215–6B11 series airplanes, that currently requires repetitive inspections to detect cracking of main landing gear (MLG) axles that have been reworked by chromium plating, and replacement of cracked axles with serviceable axles. This action would add a dimensional check and follow-on corrective actions, mandate terminating action for certain airplanes, and add three airplanes to the applicability in the existing AD. The actions specified by the proposed AD are intended to prevent cracking of the inner bearing surface of the MLG axles, which could result in failure of an axle, subsequent separation of the wheel from the airplane, and consequent reduced controllability of the airplane during takeoff or landing. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by January 5, 2004.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2003–NM–139–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov*. Comments sent via fax or the Internet must contain "Docket No. 2003–NM–139–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 or 2000 or ASCII text.

The service information referenced in the proposed rule may be obtained from Bombardier, Inc., Canadair, Aerospace Group, P.O. Box 6087, Station Centre-ville, Montreal, Quebec H3C 3G9, Canada. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York.

FOR FURTHER INFORMATION CONTACT: David Lawson, Aerospace Engineer, Airframe and Propulsion Branch, ANE–171, FAA, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York 11581; telephone (516) 256–4227; fax (516) 568–2716.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2003–NM–139–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2003–NM–139–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

On October 16, 1995, the FAA issued AD 95–22–04, amendment 39–9411 (60 FR 54421, October 24, 1995), applicable to certain Canadair Model CL–215–1A10 and CL–215–6B11 series airplanes, to require inspections to detect cracking of main landing gear (MLG) axles that have been reworked by chromium plating, and replacement of cracked axles with serviceable axles. That action was prompted by reports of fatigue cracking found on several MLG wheel axes that had been chromium-plated during rework. The requirements of that AD are intended to prevent such cracking, which can result in failure of the axle, separation of the wheel from the aircraft, and consequent reduced controllability of the airplane during takeoff or landing.

Actions Since Issuance of Previous AD

Since the issuance of AD 95–22–04, Transport Canada Civil Aviation (TCCA), which is the airworthiness authority for Canada, issued Canadian airworthiness directive CF–1993–08R3, dated March 30, 2000; applicable to certain Bombardier Model CL–215–1A10 and CL–215–6B11 series airplanes. The Canadian airworthiness directive was issued to require eventual

replacement of the MLG axles following an evaluation of the service history that showed the maximum number of allowable landings that could be accumulated on the MLG axles before replacement is necessary.

Explanation of Relevant Service Information

Bombardier has issued Service Bulletin 215–A462, Revision 3, dated January 17, 2000 (Canadair Alert Service Bulletin 215–A462, dated June 2, 1993, was referenced for accomplishment of the actions specified in the existing AD). Revision 3 contains the same inspection procedures as those in the original issue of the service bulletin, but a new dimensional check is added to determine whether the MLG axle has been reworked outside the dimensions specified in the Overhaul Manual. If the axle has been reworked outside those dimensions, has unknown rework dimensions, or has an unknown service life, repetitive ultrasonic inspections (as specified in the existing AD) are recommended until the MLG axle is replaced with a serviceable axle. Revision 3 also recommends replacement of the MLG axles after accumulation of the maximum number of allowable landings on the axles. The replacement eliminates the need for the repetitive inspections. TCCA classified this service bulletin as mandatory and issued Canadian airworthiness directive CF–1993–08R3, dated March 30, 2000, to ensure the continued airworthiness of these airplanes in Canada.

FAA's Conclusions

This airplane model is manufactured in Canada and is type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, TCCA has kept the FAA informed of the situation described above. We have examined the findings of TCCA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed AD

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would supersede AD 95–22–04 to continue to require repetitive inspections to detect cracking of MLG axles that have been reworked by chromium plating, and replacement of cracked axles with serviceable axles. The proposed AD would add a dimensional check and follow-on corrective actions, mandate terminating action for certain airplanes, add three airplanes to the applicability in the existing AD, and remove the reporting requirement. The actions would be required to be accomplished in accordance with the service bulletin described previously, except as discussed below.

Difference Between Service Bulletin and Proposed AD

The service bulletin referenced in this proposed AD specifies to submit certain inspection findings to the manufacturer; however, this proposed AD does not include such a requirement.

Revised Labor Rate

After the existing AD was issued, we reviewed the figures we use to calculate the labor rate to do the required actions. To account for various inflationary costs in the airline industry, we find it appropriate to increase the labor rate used in these calculations from $60 per work hour to $65 per work hour. The economic impact information, below, has been revised to reflect this increase in the specified hourly labor rate.

Cost Impact

There are approximately 3 airplanes of U.S. registry that would be affected by this proposed AD.

The inspections that are currently required by AD 95–22–04 take about 2 work hours per airplane to accomplish, at an average labor rate of $65 per work hour. Based on these figures, the cost impact of the currently required inspections on U.S. operators is estimated to be $390, or $130 per airplane, per inspection cycle.

The dimensional check and ultrasonic inspection proposed in this AD action would take about 2 work hours per airplane to accomplish, at an average labor rate of $65 per work hour. Based on these figures, the cost impact of these checks and inspections on U.S. operators is estimated to be $390, or $130 per airplane, per inspection cycle.

The replacement proposed in this AD action, if done, would take about 8 work hours per airplane to accomplish, at an average labor rate of $65 per work hour. Required parts would cost approximately $13,000 per assembly (two per airplane). Based on these figures, the cost impact of the replacement proposed by this AD on U.S. operators is estimated to be $26,520 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the current or proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–9411 (60 FR 54421, October 24, 1995), and by adding a new airworthiness directive (AD), to read as follows:

Bombardier, Inc. (Formerly Canadair): Docket 2003–NM–139–AD. Supersedes AD 95–22–04, Amendment 39–9411.

Applicability: Model CL–215–1A10 (piston) and CL–215–6B11 (turboprop) series airplanes, having serial numbers 1001 through 1125 inclusive, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent cracking in the inner bearing surface of the main landing gear (MLG) axles, which could result in failure of an axle, subsequent separation of the wheel from the airplane, and consequent reduced controllability of the airplane during takeoff or landing, accomplish the following:

Restatement of Certain Requirements of AD 95–22–04

Repetitive Inspections/Corrective Action

(a) Within 60 days after November 8, 1995 (the effective date of AD 95–22–04, amendment 39–9411), perform either an eddy current inspection or a chemical inspection of the inner bearing surface area of the left and right MLG axles to determine if they have been reworked using chromium plating, in accordance with Bombardier Service Bulletin 215–A462, dated June 2, 1993, or Revision 3, dated January 17, 2000. If the inner bearing surface of the MLG axle has not been reworked using chromium plating, no further action is required by this paragraph for that axle only.

(b) If the inner bearing surface of the MLG axle has been reworked using chromium plating, prior to further flight, perform an ultrasonic inspection to detect cracking in the axle, in accordance with Bombardier Service Bulletin 215–A462, dated June 2, 1993, or Revision 3, dated January 17, 2000.

(1) If no crack is detected during this inspection, repeat the ultrasonic inspection at intervals not to exceed 150 landings.

(2) If any crack is detected during this inspection, prior to further flight, remove the cracked axle and replace it with a serviceable axle that does not have an inner bearing surface that has been reworked using chromium plating, in accordance with the service bulletin.

New Requirements of This AD

Dimensional Check/Follow-on Corrective Actions

(c) Within 150 landings after the effective date of this AD: Do a dimensional check by measuring the diameter of the left and right MLG axles to determine if they have been reworked outside the dimensions specified in Canadair CL–215 Overhaul Manual PSP 298, or if the axle has unknown rework dimensions or the service life of that axle cannot be determined, in accordance with Bombardier Service Bulletin 215–A462, Revision 3, dated January 17, 2000.

(1) If any axle has been reworked outside the specified dimensions, or has unknown rework dimensions, or if the service life of that axle cannot be determined: Prior to further flight, do an ultrasonic inspection to detect cracking of the axle, in accordance with the service bulletin, and replace the axle with a serviceable axle before the accumulation of 1,050 total landings, in accordance with the service bulletin. Such replacement ends the repetitive inspections for that axle only.

(i) If no cracking is detected during the inspection required by paragraph (c)(1) of this AD, repeat the inspection at intervals not to exceed 150 landings, and replace with a serviceable axle before the accumulation of 1,050 total landings.

(ii) If any cracking is detected during the inspection required by paragraph (c)(1) of this AD, prior to further flight, replace the axle with a serviceable axle per the service bulletin.

(2) If the service life of the axle is known, and the axle has not been reworked outside the specified dimensions, no further action is required by this AD for that axle only.

Actions Done Per Previous Issues of Service Bulletin

(d) Inspections and replacements done before the effective date of this AD in accordance with Canadair Alert Service Bulletin 215–A462, dated June 2, 1993; or Bombardier Service Bulletin 215–A462, Revision 1, dated August 26, 1996; or Revision 2, dated March 3, 1999; are considered acceptable for compliance with the applicable actions specified in this AD.

Alternative Methods of Compliance

(e) In accordance with 14 CFR 39.19, the Manager, New York Aircraft Certification Office, FAA, is authorized to approve alternative methods of compliance for this AD.

Note 1: The subject of this AD is addressed in Canadian airworthiness directive CF–1993–08R3, dated March 30, 2000.

Issued in Renton, Washington, on November 28, 2003.

Kevin Mullin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–30221 Filed 12–4–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–198–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 767–200, –300, and –300F Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Boeing Model 767–200, –300, and –300F series airplanes. This proposal would require performing, for both main landing gear (MLG), gap measurements of the upper and lower joint gaps; an ultrasonic inspection of the outer cylinder of the MLG for cracks between the downlock fitting attach lugs; and follow-on and corrective actions if necessary. This action is necessary to detect and correct cracks in the outer cylinder of the MLG, which could result in collapsed MLG and consequent reduced controllability of the airplane during takeoff and landing. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by January 20, 2004.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–198–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov*. Comments sent via fax or the Internet must contain "Docket No. 2002–NM–198–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 or 2000 or ASCII text.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Suzanne Masterson, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 917–6441; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications

received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2002–NM–198–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–198–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The FAA has received a report indicating that a crack was found on the outer cylinder of the main landing gear (MLG) at the attach lugs for the drag strut downlock fitting on a Model 767–300 series airplane. The cause of the crack was due to heat damage from the upper bearing rubbing on the cylinder. Excessive torque on the downlock fitting attachment fasteners during production of Model 767–300 series airplanes produced local deflection of the outer cylinder, causing contact or interference with the upper bearing. This condition, if not corrected, could result in cracks in the outer cylinder of the MLG, which could result in collapsed MLG and consequent reduced controllability of the airplane during takeoff and landing.

Similar Models

The subject area on certain Boeing Model 767–200 and –300F series airplanes is almost identical to that on the affected Boeing Model 767–300 series airplanes. Therefore, all of these models may be subject to the same unsafe condition.

Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Service Bulletin 767–32A0196, Revision 2, dated May 15, 2003, which describes procedures, for both MLG, for performing gap measurements of the upper and lower joint gaps (includes measuring and recording upper and lower joint gaps twice); an ultrasonic inspection of the outer cylinder of the MLG for cracks between the downlock fitting attach lugs; and follow-on and corrective actions if necessary. The follow-on action includes restoring the MLG (includes installing shims as applicable, electrical bracket, and cotter pins; and marking the MLG). The corrective actions include overhauling the outer cylinder of the MLG; replacing the outer cylinder of the MLG with an interchangeable outer cylinder, and contacting the manufacturer if there is any crack in the outer cylinder that cannot be removed within the repair limits. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require accomplishment of the actions specified in the service bulletin described previously, except as discussed below.

Difference Between Proposed Rule and Service Bulletin

Operaters should note that, although the service bulletin specifies that the manufacturer may be contacted for disposition of certain repair conditions, this proposal would require the repair to be accomplished per a method approved by the FAA, or per data meeting the type certification basis of the airplane approved by a Boeing Company Designated Engineering Representative who has been authorized by the FAA to make such findings.

Cost Impact

There are approximately 833 airplanes of the affected design in the worldwide fleet. The FAA estimates that 353 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 16 work hours per airplane to accomplish the proposed gap measurement and inspection, and that the average labor rate is $65 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $367,120, or $1,040 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this proposed AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions. Manufacturer warranty remedies may be available for labor costs associated with this proposed AD. As a result, the costs attributable to the proposed AD may be less than stated above.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Boeing: Docket 2002–NM–198–AD.

Applicability: Model 767–200, –300, and –300F series airplanes, line numbers 1 through 883 inclusive; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To detect and correct cracks in the outer cylinder of the main landing gear (MLG), which could result in collapsed MLG and consequent reduced controllability of the airplane during takeoff and landing, accomplish the following:

Service Bulletin References

(a) The term "service bulletin," as used in this AD, means the Accomplishment Instructions of Boeing Service Bulletin 767–32A0196, Revision 2, dated May 15, 2003.

Inspection and Corrective Actions

(b) Within 18 months after the effective date of this AD, for both MLG, do a gap measurement of the upper and lower joint gaps (includes measuring and recording upper and lower joint gaps twice); and an ultrasonic inspection of the outer cylinder of the main landing gear for cracks between the downlock fitting attach lugs, per Part 1 of the service bulletin.

(c) If no crack is found during the inspection required by paragraph (b) of this AD, before further flight, do the restoration (includes installing shims as applicable, electrical bracket, and cotter pins; and marking the main landing gear) per the service bulletin.

(d) If any crack is found during the inspection required by paragraph (b) of this AD: Before further flight, overhaul the outer cylinder of the MLG or replace the outer cylinder of the MLG with an interchangeable outer cylinder per Part 2 of the service bulletin, except as provided by paragraph (e) of this AD.

(e) If any crack is found in the outer cylinder that cannot be removed within the repair limits specified in the service bulletin, during the overhaul specified in paragraph (d) of this AD, and the service bulletin specifies to contact Boeing for appropriate action: Before further flight, repair per a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA; or per data meeting the type certification basis of the airplane approved by a Boeing Company Designated Engineering Representative who has been authorized by the Manager, Seattle ACO, to make such findings. For a repair method to be approved, the approval must specifically reference this AD.

Note 1: When the outer cylinder is re-installed, attach the downlock fittings onto the outer cylinder as specified in the applicable Boeing Component Maintenance Manual (CMM), document number 161T1000, Section 32–11–19, temporary revision (TR) 32–61, dated March 26, 2002 or Section 32–11–19 pages 712 through 716 dated July 01, 2002, or dated July 01, 2003; or CMM 32–11–20, TR 32–62, dated March 26, 2002, or Section 32–11–20 pages 718 through 722 dated July 01, 2002, or dated July 01, 2003.

Actions Accomplished Per Previous Issue of Service Bulletin

(f) Accomplishment of the applicable actions before the effective date of this AD per Boeing Service Bulletin 767–32A0196, dated August 1, 2002; or, Revision 1, dated September 26, 2002; are considered acceptable for compliance with the corresponding action specified in this AD.

Parts Installation

(g) As of the effective date of this AD, no person may install a MLG on any airplane, unless the outer cylinder of the MLG has been inspected and follow-on and corrective actions have been accomplished per Boeing Service Bulletin 767–32A0196, Revision 2, dated May 15, 2003.

Alternative Methods of Compliance

(h) In accordance with 14 CFR 39.19, the Manager, Seattle Aircraft Certification Office, FAA, is authorized to approve alternative methods of compliance for this AD.

Issued in Renton, Washington, on November 28, 2003.

Kevin Mullin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–30220 Filed 12–4–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–174–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 737–300, –400, and –500 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness directive (AD), applicable to certain Boeing Model 737 series airplanes. That AD currently requires a one-time general visual inspection of the seat locks and seat tracks of the flightcrew seats to ensure that the seats lock in position and to verify that lock nuts and bolts of adequate length are installed on the rear track lock bracket, and corrective action, if necessary. This action would revise the applicability of the existing AD by adding airplanes. The actions specified by the proposed AD are intended to prevent uncommanded movement of the flightcrew seats during acceleration and take-off of the airplane, which could result in reduced controllability of the airplane. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by January 20, 2004.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–174–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov*. Comments sent via fax or the Internet must contain "Docket No. 2002–NM–174–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 or 2000 or ASCII text.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Shannon Lennon, Aerospace Engineer, Cabin Safety and Environmental Systems Branch, ANM–150S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington; telephone (425) 917–6435; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall

identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2002–NM–174–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–174–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

On May 18, 2000, the FAA issued AD 2000–10–21, amendment 39–11745 (65 FR 34063, May 26, 2000), applicable to certain Boeing Model 737 airplanes, to require a one-time general visual inspection of the seat locks and seat tracks of the flightcrew seats to ensure that the seats lock in position and to verify that lock nuts and bolts of adequate length are installed on the rear track lock bracket, and corrective action, if necessary. That action was prompted by reports indicating instances of the pilot seat sliding to the aft-most position during acceleration and take-off on certain Boeing Model 737 series airplanes. The requirements of that AD are intended to prevent uncommanded movement of the flightcrew seats during acceleration and take-off of the airplane, which could result in reduced controllability of the airplane.

Actions Since Issuance of Previous Rule

Since the issuance of that AD, the airplane manufacturer has informed the FAA that additional airplanes may be equipped with IPECO flightcrew seats that are subject to the identified unsafe condition. Those seats may have been installed on airplanes out of operators' stock or from an airplane not yet modified per AD 2000–10–21, amendment 39–11745.

Explanation of Relevant Service Information

We have reviewed and approved Boeing Alert Service Bulletin 737–25A1363, Revision 1, dated March 28, 2002, which revises the effectivity of the initial release (which was referenced as the appropriate source of service information for the actions required by AD 2000–10–21) of the service bulletin by adding additional airplanes. The procedures for a one-time general visual inspection and corrective actions if necessary specified in Revision 1 are essentially identical to those described in the initial release of the service bulletin. No more work is necessary on airplanes changed per the initial release of this service bulletin. Accomplishment of the actions specified in the alert service bulletin is intended to adequately address the identified unsafe condition.

Boeing Alert Service Bulletin 737–25A1363, Revision 1, dated March 28, 2002, refers to IPECO Service Bulletin A001–25–47, dated January 13, 1992, as an additional source of service information for accomplishment of the inspection of the seat locks and seat tracks of the flightcrew seats and corrective action, if necessary.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would supersede AD 2000–10–21 to continue to require a one-time general visual inspection of the seat locks and seat tracks of the flightcrew seats to ensure that the seats lock in position and to verify that lock nuts and bolts of adequate length are installed on the rear track lock bracket, and corrective action, if necessary. The proposed AD would also revise the applicability of the existing AD by adding airplanes. The actions would be required to be accomplished in accordance with the Boeing alert service bulletin described previously, except as discussed below.

Difference Between Service Bulletin and Proposed AD

Operators should note that, although the Boeing alert service bulletin does not recommend a compliance time for accomplishment of the described actions, the FAA has determined that a 90-day compliance time would address the identified unsafe condition in a timely manner. In developing an appropriate compliance time for this proposed AD, we considered the degree of urgency associated with addressing the subject unsafe condition, the average utilization of the affected fleet, and the time necessary to perform the actions. In light of all of these factors, we find a 90-day compliance time for completion of the actions to be warranted, in that it represents an appropriate interval of time allowable for affected airplanes to continue to operate without compromising safety.

Explanation of Change Made to Existing Requirements

For clarification, we have revised the definition of a "general visual inspection" in this proposed AD.

Cost Impact

There are approximately 1,385 airplanes of the affected design in the worldwide fleet. The FAA estimates that 282 airplanes of U.S. registry would be affected by this proposed AD.

For Group 1 airplanes listed in Boeing Alert Service Bulletin 737–25A1363, Revision 1: The actions that are currently required by AD 2000–10–21 take approximately 3 work hours per airplane to accomplish, at an average labor rate of $65 per work hour. Based on these figures, the cost impact of the currently required actions on U.S. operators is estimated to be $195 per airplane.

For Group 2 airplanes listed in Boeing Alert Service Bulletin 737–25A1363, Revision 1: The new actions that are proposed in this AD action would take approximately 3 work hours per airplane to accomplish, at an average labor rate of $65 per work hour. Based on these figures, the cost impact of the proposed requirements of this AD on U.S. operators is estimated to be $195 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the current or proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–11745 (65 FR 34063, May 26, 2000), and by adding a new airworthiness directive (AD), to read as follows:

Boeing: Docket 2002–NM–174–AD. Supersedes AD 2000–10–21, Amendment 39–11745.

Applicability: Model 737–300, –400, and –500 series airplanes equipped with IPECO flightcrew seats, as listed in Boeing Alert Service Bulletin 737–25A1363, Revision 1, dated March 28, 2002; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent uncommanded movement of the flightcrew seats during acceleration and take-off of the airplane, which could result in reduced controllability of the airplane, accomplish the following:

One-Time Inspection

(a) Perform a one-time general visual inspection of the seat locks and seat tracks of the flightcrew seats to ensure that the seats lock in position and to verify that lock nuts and bolts of adequate length are installed on the rear track lock bracket, at the applicable time and per the Work Instructions of the applicable service bulletin specified in Table 1 of this AD. Table 1 follows:

TABLE 1.—COMPLIANCE TIME/SERVICE BULLETIN

Airplanes—	Compliance Time—	Service Bulletin—
For Group 1 airplanes listed in Boeing Alert Service Bulletin 737–25A1363, Revision 1, dated March 28, 2002.	Within 90 days after September 26, 2001 (the effective date AD 2000–10–21, amendment 39–11745).	Boeing Alert Service Bulletin 737–25A1363, dated November 5, 1998.
For Group 2 airplanes listed in Boeing Alert Service Bulletin 737–25A1363, Revision 1, dated March 28, 2002.	Within 90 days after the effective date of this AD.	Boeing Alert Services Bulletin 737–25A1363, Revision 1, dated March 28, 2002.

Note 1: For the purposes of this AD, a general visual inspection is defined as: "A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made from within touching distance unless otherwise specified. A mirror may be necessary to enhance visual access to all exposed surfaces in the inspection area. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or droplight and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked."

Corrective Action

(1) If the seat lock pin fully engages in all lock positions of the seat track, and the rear track lock bracket is correctly installed: No further action is required by this AD.

(2) If the seat lock pin does not fully engage in all positions of the seat track, and lock nuts and bolts of adequate length are not installed on the rear track lock bracket: Prior to further flight, install lock nuts and bolts of adequate length on the track lock bracket and verify proper seat movement and seat lock operation, in accordance with the applicable service bulletin.

Note 2: Boeing Alert Service Bulletin 737–25A1363, Revision 1, dated March 28, 2002, refers to IPECO Service Bulletin A001–25–47, dated January 13, 1992, as an additional source of service information for accomplishment of the actions required by paragraph (a) of this AD.

Actions Accomplished Per Previous Issue of Service Bulletin

(b) For Group 2 airplanes: Inspections and corrective actions accomplished before the effective date of this AD per Boeing Alert Service Bulletin 737–25A1363, dated November 5, 1998, are considered acceptable for compliance with the corresponding actions specified in this AD.

Alternative Methods of Compliance

(c)(1) In accordance with 14 CFR 39.19, the Manager, Seattle Aircraft Certification Office (ACO), FAA, is authorized to approve alternative methods of compliance (AMOCs) for this AD.

(2) Alternative methods of compliance, approved previously per AD 2000–10–21, amendment 39–11745, are approved as alternative methods of compliance with the requirements of this AD.

Issued in Renton, Washington, on November 28, 2003.

Kevin Mullin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–30219 Filed 12–4–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–215–AD]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model DC–9–81 (MD–81), DC–9–82 (MD–82), DC–9–83 (MD–83), DC–9–87 (MD–87), and Model MD–88 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain McDonnell Douglas Model DC–9–81 (MD–81), DC–9–82 (MD–82), DC–9–83 (MD–83), DC–9–87 (MD–87), and Model MD–88 airplanes. This proposal would require replacement of certain freeze protection ribbon heaters in the lavatory water supply system, and flushing, cleaning, and sterilizing the potable water system; disconnecting, coiling, and stowing the wiring of the freeze protection ribbon heater; or removal of freeze protection heaters. This action is necessary to prevent failure of freeze protection ribbon heaters, which could result in the charring, scorching, smoking, and shorting out of freeze protection ribbon heaters in the lavatory water supply system. This condition, if not corrected, could also result in electrical arcing of freeze protection ribbon heaters, leading to fire and damage to water lines and components under the lavatory sink. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by January 20, 2004.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–215–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov*. Comments sent via fax or the Internet must contain "Docket No. 2002-NM–215-AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 or 2000 or ASCII text.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1-L5A (D800–0024). This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California.

FOR FURTHER INFORMATION CONTACT: Cheyenne Del Carmen, Aerospace Engineer, Systems and Equipment Branch, ANM–130L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5338; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2002-NM–215-AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–215-AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The FAA has received reports of charring, scorching, smoking, and shorting out of freeze protection ribbon heaters in the lavatory water supply system of certain McDonnell Douglas Model DC–9–81 (MD–81), DC–9–82 (MD–82), DC–9–83 (MD–83), DC–9–87 (MD–87), and MD–88 airplanes. We also received reports of burning and scorching to water lines and components under the lavatory sink. Investigation revealed that the freeze protection ribbon heaters were failing. This condition, if not corrected, could result in electrical arcing of freeze protection ribbon heaters, leading to fire and damage to water lines and components under the lavatory sink.

Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Alert Service Bulletin MD80–25A381, dated August 5, 2002. This service bulletin describes procedures for replacing the existing freeze protection ribbon heater in the lavatory water supply system with a new, reidentified heater hose assembly, and flushing, cleaning, and sterilizing the potable water system; disconnecting, coiling, and stowing the wiring of the freeze protection ribbon heater in the lavatory water supply system; or removing the freeze protection ribbon heater from the lavatory water supply system. Accomplishment of the actions specified in the Boeing service bulletin is intended to adequately address the identified unsafe condition.

Boeing Alert Service Bulletin MD80–25A381 refers to Jamco Corporation Service Bulletin MD080–25–829, dated February 14, 2002, as an additional source of service information for instructions on replacing the existing freeze protection ribbon heater with a new, reidentified heater hose assembly for Model DC–9–81 (MD–81), DC–9–82 (MD–82), DC–9–83 (MD–83), DC–9–87 (MD–87), and MD–88 airplanes.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require accomplishment of the actions specified in the Boeing service bulletin described previously.

Cost Impact

There are approximately 1,180 airplanes of the affected design in the worldwide fleet. The FAA estimates that 724 airplanes of U.S. registry would be affected by this proposed AD, and that each airplane has approximately 3 lavatories, and that the average 1 labor rate is $65 per work hour. Table 1 shows the estimated cost impact, based upon the action taken, for airplanes affected by this proposed AD.

TABLE 1.—COST IMPACT

Action	Work hours per lavatory	Parts cost per lavatory	Cost per lavatory	Total cost
Replace the existing freeze protection ribbon heater with a new, reidentified heater hose assemply; and flush, clean, and sterilize the potable water system; or.	6	$2,344 to $3,208 (Depending on lavoratory module configuration).	$2,734 to $3,598 (Depending on lavoratory module configuration).	$5,938,248 to $7,814,856 (Depending on lavatory module configuration) or $8,202 to $10,794 per airplane.
Disconnect, coil, and stow the wiring of the freeze protection ribbon heater; or.	2	$0	$130	$282,360 or $390 per airplane.
Remove the freeze protection ribbon heater	3	$0	$195	$423,540 or $585 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this proposed AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

McDonnell Douglas: Docket 2002–NM–215–AD.

Applicability: Model DC–9–81 (MD–81), DC–9–82 (MD–82), DC–9–83 (MD–83), DC–9–87 (MD–87), and MD–88 airplanes, as listed in Boeing Alert Service Bulletin MD80–25A381, dated August 5, 2002; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of freeze protection ribbon heaters, which could result in the charring, scorching, smoking, and shorting out of freeze protection ribbon heaters in the lavatory water supply system and could also result in electrical arcing of freeze protection ribbon heaters, leading to fire and damage to water lines and components under the lavatory sink; accomplish the following:

Corrective Actions

(a) Within 18 months of the effective date of this AD, do the actions specified in paragraph (a)(1), (a)(2), or (a)(3) of this AD per the Accomplishment Instructions of Boeing Alert Service Bulletin MD80–25A381, dated August 5, 2002.

(1) Replace the existing freeze protection ribbon heafer in the lavatory water supply system with a new, reidentified heater hose assembly. Flush, clean, and sterilize the potable water system; or

(2) Disconnect, coil, and stow the wiring of the freeze protection ribbon heater in the lavatory water supply system; or

(3) Remove the freeze protection ribbon heater from the lavatory water supply system.

Note 1: Boeing Alert Service Bulletin MD80–25A381 refers to Jamco Corporation Service Bulletin MD080–25–829, dated February 14, 2002, as an additional source of service information for instructions on replacing the existing freeze protection ribbon heater with a new, reidentified heater hose assembly for Model DC–9–81 (MD–81), DC–9–82 (MD–82), DC–9–83 (MD–83), DC–9–87 (MD–87), and Model MD–88 airplanes.

Alternative Methods of Compliance

(b) In accordance with 14 CFR 39.19, the Manager, Los Angeles Aircraft Certification Office, FAA, is authorized to approve alternative methods of compliance for this AD.

Issued in Renton, Washington, on November 28, 2003.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–30218 Filed 12–4–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–226–AD]

RIN 2120–AA64

Airworthiness Directives; Dornier Model 328–100 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Dornier Model 328–100 series airplanes. This proposal would require a one-time inspection of certain engine control cables to determine the batch number on the end fitting, and replacement of affected cables with new cables. This action is necessary to prevent failure of defective engine control cables, which could result in loss of the engine controls, and consequent reduced controllability of the airplane. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by January 5, 2004.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–226–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov*. Comments sent via fax or the Internet must contain "Docket No. 2002–NM–226–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 or 2000 or ASCII text.

The service information referenced in the proposed rule may be obtained from AvCraft Aerospace GmbH, P.O. Box 1103, D–82230 Wessling, Germany. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Dan Rodina, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2125; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2002–NM–226–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–226–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Luftfahrt-Bundesamt (LBA), which is the airworthiness authority for Germany, notified the FAA that an unsafe condition may exist on certain Dornier Model 328–100 series airplanes. The LBA advises that, during testing, the manufacturer of the engine control cables, SARMA, found evidence of cracking on the end fittings of two specific batches of parts, due to a manufacturing problem. Such cracking, if not corrected, could result in failure of the engine control cables, subsequent loss of the engine controls, and consequent reduced controllability of the airplane.

Explanation of Relevant Service Information

Dornier has issued Service Bulletin SB–328–76–409, Revision 1, dated May 17, 2002, which describes procedures for inspecting engine control cables having part number 001A761A1130–016 to determine the manufacturing batch number, and replacing affected engine control cables with new cables. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition. The LBA classified this service bulletin as mandatory and issued German airworthiness directive 2002–252, dated September 5, 2002, to ensure the continued airworthiness of these airplanes in Germany.

FAA's Conclusions

This airplane model is manufactured in Germany and is type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the LBA has kept the FAA informed of the situation described above. The FAA has examined the findings of the LBA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed AD

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of the actions specified in the service bulletin described previously, except as discussed below.

Differences Between the Service Bulletin and Proposed AD

Although the service bulletin specifies to send any engine control cable removed from the airplane to the parts manufacturer, this proposed AD does not require that action.

Clarification of Compliance Time

Operators should note that the service bulletin recommends doing the inspection at the "next scheduled maintenance event," and replacing any affected engine control cable at "the next scheduled C-check (4,000 FH)." The German airworthiness directive recommends replacing any affected engine control cable "not later than the next scheduled C-check." Because "C-check" schedules vary among operators, this proposed AD would require accomplishment of the inspection within 4,000 flight hours after the effective date of the AD, and replacement of any affected cable before further flight. We find that compliance within 4,000 flight hours after the effective date of this AD is appropriate for affected airplanes to continue to operate without compromising safety.

Cost Impact

We estimate that 53 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately one work hour per airplane to accomplish the proposed actions, at an average labor rate of $65 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $3,445, or $65 per airplane.

Replacement of an engine control cable, if required, would take approximately 8 work hours, at an average labor rate of $65 per work hour. Parts would be provided at no cost to operators. Based on these figures, the cost impact of the proposed replacement of the engine control cables is $520 per cable.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Fairchild Dornier GMBH (Formerly Dornier Luftfahrt GmbH): Docket 2002–NM–226–AD.

Applicability: Model 328–100 series airplanes, as listed in Dornier Service Bulletin SB–328–76–409, Revision 1, dated May 17, 2002; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of defective engine control cables, which could result in loss of the engine controls, and consequent reduced controllability of the airplane, accomplish the following:

Identification of Manufacturing Batch Number

(a) Within 4,000 flight hours after the effective date of this AD, do a detailed inspection of the engine control cables for cables that have part number (P/N) 001A761A1130–016, engraved with manufacturing batch number (MBN) 1000125850 or 1000144210 installed. Inspect in accordance with the Accomplishment Instructions of Dornier Service Bulletin SB–328–76–409, Revision 1, dated May 17, 2002.

Note 1: For the purposes of this AD, a detailed inspection is defined as: "An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required."

(1) If no engine control cable has a P/N and an MBN specified in paragraph (a) of this AD, no further action is required by this paragraph.

(2) If any engine control cable having the P/N or an MBN specified in paragraph (a) of this AD is found, before further flight, replace the cable in accordance with the Accomplishment Instructions of the service bulletin. Although the service bulletin specifies to send any engine control cable that has been removed from the airplane to the part manufacturer, this AD does not require that action.

Parts Installation

(b) As of the effective date of this AD, no person may install an engine control cable having P/N 001A761A1130–016, engraved with MBN 1000125850 or 1000144210, on any airplane.

Alternative Methods of Compliance

(c) In accordance with 14 CFR 39.19, the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, is authorized to approve alternative methods of compliance for this AD.

Note 2: The subject of this AD is addressed in German airworthiness directive 2002–252, dated September 5, 2002.

Issued in Renton, Washington, on November 28, 2003.

Kevin Mullin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–30225 Filed 12–4–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–333–AD]

RIN 2120–AA64

Airworthiness Directives; Fokker Model F.28 Mark 1000, 2000, 3000, and 4000 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to

certain Fokker Model F.28 Mark 1000, 2000, 3000, and 4000 series airplanes. This proposal would require repetitive general visual inspections, lubrication, and tests of the release mechanism for the service/emergency door; and corrective actions if necessary. This proposal also provides an optional terminating action for the repetitive inspections and lubrication. This action is necessary to prevent failure of the release mechanism on the service/emergency door, which could result in the inability to open the service/emergency door during an emergency evacuation. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by January 5, 2004.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–333–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov*. Comments sent via fax or the Internet must contain "Docket No. 2001–NM–333–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 or 2000 or ASCII text.

The service information referenced in the proposed rule may be obtained from Fokker Services B.V., P.O. Box 231, 2150 AE Nieuw-Vennep, the Netherlands. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Tom Rodriguez, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–1137; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (e.g., reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2001–NM–333–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–333–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Civil Aviation Authority—The Netherlands (CAA–NL), which is the airworthiness authority for the Netherlands, notified the FAA that an unsafe condition may exist on certain Fokker Model F.28 Mark 1000, 2000, 3000, and 4000 series airplanes. The CAA–NL advises that it has received reports that, during evacuation training, the service/emergency door release mechanism was unable to release the door rollers, which resulted in the inability to open the service/emergency door. Investigation revealed that the release mechanism did not operate properly due to lack of lubrication on the door rollers. Service experience has shown that the reliability of the release mechanism can degrade if it is not regularly maintained (inspected, lubricated, and tested). Improperly maintained service/emergency door release mechanisms, if not corrected, could result in the inability to open the service/emergency door during an emergency evacuation.

Explanation of Relevant Service Information

Fokker Services B.V. has issued Fokker Service Bulletin F28/52–118, dated June 25, 2001, which describes procedures for repetitive inspections, lubrication, and tests of the release mechanism for the service/emergency door; and corrective actions if necessary. These procedures include inspection and lubrication of the four roller assemblies, actuating mechanism (including measurement of the torque of the torsion spring), and Bowden cables; adjustment of the Bowden cables; and measurement of the operating force for the emergency release button. The corrective actions include rework/repair or replacement of damaged or corroded parts with new parts of the same type.

Fokker Service B.V. has also issued Fokker Service Bulletin F28/52–89, dated October 31, 1983, which describes procedures for replacing the service/emergency door by removing the Bowden cable-operated door and installing a push-pull rod-operated door. Accomplishment of this service bulletin eliminates the need for the repetitive inspections and lubrication. For certain airplanes, Fokker Service Bulletin F28/52–89 recommends prior or concurrent accomplishment of Part VII of Fokker Service Bulletin F28/52–55, Revision 1, dated February 28, 1977. Part VII describes procedures for modification of the roller assemblies in the service/emergency door by installing a second pull-up mechanism.

Accomplishment of the actions specified in Service Bulletin F28/52–118, dated June 25, 2001, is intended to adequately address the identified unsafe condition. The CAA–NL classified Fokker Service Bulletin F28/52–118 as mandatory and issued Dutch airworthiness directive 2001–094, dated July 31, 2001, to ensure the continued airworthiness of these airplanes in the Netherlands.

FAA's Conclusions

This airplane model is manufactured in the Netherlands and is type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the CAA–NL has kept the FAA informed of the situation described above. The FAA has examined the findings of the CAA–NL, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed rule would require accomplishment of the actions specified in Fokker Service Bulletin F28/52–118, dated June 25, 2001, described previously, except as discussed below.

Differences Between Dutch Airworthiness Directive, Service Bulletin, and Proposed Rule

Fokker Service Bulletin F28/52–118 and the Dutch airworthiness directive specify that if any discrepancy or corroded part is found during any inspection, the applicable corrective action must be accomplished within 1,500 flight hours or 18 months after finding the discrepancy or corroded part, whichever occurs first. We have determined that, because of the safety implications of a potentially inoperative emergency door, this proposed rule would require accomplishment of the applicable corrective action before further flight. This difference has been coordinated with the CAA–NL.

Also, where the service bulletin and the Dutch airworthiness directive specify inspections of various parts of the release mechanism for the service/emergency door, this proposed rule identifies these as general visual inspections. A note has been added to the proposed rule to define that type of inspection.

Cost Impact

The FAA estimates that 6 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 15 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $65 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $5,850, or $975 per inspection cycle.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Fokker Services B.V.: Docket 2001–NM–333–AD.

Applicability: Model F.28 Mark 1000, 2000, 3000, and 4000 series airplanes as listed in the effectivity of Fokker Service Bulletin F28/52–118, dated June 25, 2001; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the release mechanism on the service/emergency door, which could result in the inability to open the service/emergency door during an emergency evacuation, accomplish the following:

Inspection, Lubrication, Testing, and Corrective Actions

(a) Within 12 months after the effective date of this AD: Do a general visual inspection (including measurement of the torque for the actuating mechanism torsion spring), lubricate, and test to verify proper operation of the emergency releases mechanism of the service/emergency door by accomplishing all of the actions specified in paragraphs A. through R. of the Accomplishment Instructions of Fokker Service Bulletin F28/52–118, dated June 25, 2001.

Note 1: For the purposes of this AD, a general visual inspection is defined as: "A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made from within touching distance unless otherwise specified. A mirror may be necessary to enhance visual access to all exposed surfaces in the inspection area. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or droplight and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked."

(1) If no discrepant or corroded part is found during the inspection required by paragraph (a) of this AD: Repeat the actions specified in paragraph (a) of this AD thereafter at intervals not to exceed 1,500 flight hours or 18 months, whichever occurs first.

(2) If any discrepancy (including a torque value which exceeds the limits specified in the applicable service bulletin, improperly installed part, or damaged part) is found, or if a corroded part is found, during any inspection required by paragraph (a) of this AD: Before further flight, do the applicable corrective action in accordance with the Accomplishment Instructions of the service bulletin. Repeat the actions specified in paragraph (a) of this AD thereafter at intervals not to exceed 1,500 flight hours or 18 months, whichever occurs first.

Optional Terminating Action and Concurrent Service Bulletin

(b) Replacement of the Bowden cable-operated service/emergency door with a push-pull rod-operated service/emergency door, in accordance with Fokker Service Bulletin F28/52–89, dated October 31, 1983, constitutes terminating action for the repetitive inspections and lubrication required by paragraph (a) of this AD.

(c) For airplanes with serial numbers 11003 to 11051 inclusive, 11991, and 11992: Prior to or concurrent with paragraph (b) of this AD, accomplish the modification specified in part VII of Fokker Service Bulletin F28/52–55, Revision 1, dated February 28, 1977.

Alternative Methods of Compliance

(d) In accordance with 14 CFR 39.19, the Manager, International Branch, ANM–116,

FAA, is authorized to approve alternative methods of compliance for this AD.

Note 2: The subject of this AD is addressed in Dutch airworthiness directive 2001–094, dated July 31, 2001.

Issued in Renton, Washington, on November 28, 2003.

Kevin Mullin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–30224 Filed 12–4–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–284–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A330 and A340–200 and –300 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Airbus Model A330 and A340–200 and –300 series airplanes. This proposal would require repetitive inspections for proper installation of the parachute pins located in the escape slides/rafts at the door 3 Type I emergency exits on the left and right sides of the airplane; a one-time inspection of the associated electrical harnesses for the escape slides/rafts for proper routing and installation; and corrective actions if necessary. This proposal also would require adjustment of the speed lacing for the soft covers of the escape slides/rafts, which would terminate the repetitive inspections. This action is necessary to prevent failure of the escape slides/rafts to deploy correctly at door 3 Type I emergency exits, which could result in the escape slides/rafts being unusable during an emergency evacuation, and consequent injury to passengers or crew members. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by January 5, 2004.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–284–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov*. Comments sent via fax or the Internet must contain "Docket No. 2001–NM284–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 or 2000 or ASCII text.

The service information referenced in the proposed rule may be obtained from Airbus, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Tim Backman, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2797; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2001–NM–284–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–284–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Direction Generale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, notified the FAA that an unsafe condition may exist on certain Airbus Model A330 and A340–200 and –300 series airplanes. The DGAC advises that, during a scheduled maintenance operation, an escape slide/raft at a door 3 Type I emergency exit did not deploy. Further investigation revealed that the parachute pin was not correctly installed and had rotated from its normal position and dropped through the first section of lacing on the soft cover of the escape slide/raft, which prevented the soft cover from opening the escape slide/raft. During another inspection it was discovered that the electrical harness associated with the escape slide/raft was not correctly installed and was not properly routed. Incorrect installation and/or routing of the electrical harness could prevent slide/raft detachment from the door after inflation. These conditions, if not corrected, could result in failure of the escape slides/rafts to deploy correctly at door 3 Type I emergency exits, on the left and right sides of the airplane, which could result in the escape slides/rafts being unusable during an emergency evacuation, and consequent injury to passengers or crew members.

Explanation of Relevant Service Information

Airbus has issued All Operator Telexes (AOT) A330–25A3154 (for Model A330 series airplanes) and A340–25A4172 (for Model A340–200 and –300 series airplanes), both dated July 26, 2001. These AOTs describe procedures for repetitive inspections for proper installation of the parachute pins located in the escape slides/rafts at the door 3 Type I emergency exits, on the left and right sides of the airplane, a one-time detailed inspection for proper installation and routing of the associated electrical harnesses; and corrective actions if necessary. Corrective actions for the parachute pins include adjustment of the speed lacing for the soft cover of the escape slides/rafts to prevent the parachute pins from moving from their original position. This action eliminates the need for the repetitive inspections of the parachute pins. Corrective actions for the electrical harnesses include relocating the quick-disconnect connectors. Accomplishment of the actions specified in the AOTs is intended to adequately address the identified unsafe condition. The DGAC classified these AOTs as mandatory and issued French airworthiness directives 2001–359(B) R3, dated October 30, 2002, and 2001–360(B) R1, dated February 6, 2002, to ensure the continued airworthiness of these airplanes in France.

Both AOTs reference Goodrich Aircraft Evacuation Systems Alert Service Bulletin 7A1509–25A324, dated July 16, 2001, as an additional source of service information for adjusting the speed lacing.

FAA's Conclusions

These airplane models are manufactured in France and are type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of the actions specified in the applicable Airbus AOT described previously, except as discussed below.

Difference Between Proposed Rule and Referenced AOTs

Operators should note that, although the referenced AOTs describe procedures for reporting inspection results to Airbus, this proposed AD would not require those actions. The FAA does not need this information from operators.

Cost Impact

The FAA estimates that 14 Model A330 series airplanes of U.S. registry would be affected by this proposed AD, and that it would take approximately 1 work hour per airplane to accomplish the proposed inspections at the average labor rate of $65 per work hour. Based on these figures, the cost impact of the proposed inspections on U.S. operators is estimated to be $910, or $65 per airplane.

It would take approximately 3 work hours per airplane to adjust the speed lacing for the escape slide/raft soft cover at an average labor rate of $65 per work hour. Based on these figures, the cost impact of the proposed adjustment of the speed lacing for the escape slide/raft soft cover on U.S. operators is estimated to be $2,730, or $195 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Currently, there are no Model A340 series airplanes on the U.S. Register. However, should an affected airplane be imported and placed on the U.S. Register in the future, it would require 1 work hour per airplane to accomplish the proposed inspections and 3 work hours per airplane to accomplish the proposed adjustment of the speed lacing for the escape slide/raft soft cover, at an average labor rate of $65 per work hour. Based on these figures, the cost impact of the proposed AD for Model A340 operators would be $260 per airplane.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Airbus: Docket 2001–NM–284–AD.

Applicability: Model A330 and A340–200 and –300 series airplanes equipped with an escape slide/raft having any part number (P/N) 7A1509–101 through 7A1509–117 inclusive, and any serial number AD001 through AD0855 inclusive, at door 3 Type I emergency exits; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the escape slides/rafts to deploy correctly at door 3 Type I emergency exits, which could result in the escape slides/rafts being unusable during an emergency evacuation, and consequent injury to passengers or crew members, accomplish the following:

Inspections

(a) Within 550 flight hours after the effective date of this AD: Do a detailed inspection of the escape slides/rafts located at door 3 Type I emergency exits, on the left and right sides of the airplane, for correct installation of the parachute pins, and a one-time detailed inspection of the associated electrical harnesses for correct installation of the quick-disconnect connector, in accordance with paragraphs 4.1 and 4.2 of Airbus All Operator Telex (AOT) A330–25A3154 (for Model A330 series airplanes) or A340–25A4172 (for Model A340–200 and –300 series airplanes), dated July 26, 2001; as

applicable. If any parachute pin or quick disconnect connector is incorrectly installed, before further flight, do the corrective actions per the applicable AOT. Repeat the inspections of the parachute pins thereafter at intervals not to exceed 1,000 flight hours until accomplishment of paragraph (b) of this AD.

Note 1: For the purposes of this AD, a detailed inspection is defined as: "An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required."

Note 2: Repetitive inspections of the electrical harnesses are not required.

Terminating Action for Repetitive Inspections

(b) Within 18 months after the effective date of this AD: Adjust the speed lacing for the soft covers of the escape slides/rafts located at door 3 Type I emergency exits, in accordance with paragraph 4.3 of Airbus AOT A330–25A3154 (for Model A330 series airplanes) or A340–25A4172 (for Model A340–200 and –300 series airplanes), both dated July 26, 2001; as applicable. This adjustment terminates the repetitive inspections of the parachute pins required by paragraph (a) of this AD.

Note 3: The AOTs reference Goodrich Aircraft Evacuation Systems Alert Service Bulletin 7A1509–25A324, dated July 16, 2001, as an additional source of service information for adjusting the speed lacing.

Parts Installation

(c) As of the effective date of this AD, no person may install on any airplane an escape slide/raft having any P/N 7A1509–101 through 7A1509–117 inclusive unless the parachute pin has been inspected and the speed lacing has been adjusted in accordance with paragraphs (a) and (b) of this AD.

Alternative Methods of Compliance

(d) In accordance with 14 CFR 39.19, the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, is authorized to approve alternative methods of compliance for this AD.

Note 4: The subject of this AD is addressed in French airworthiness directives 2001–359(B) R3, dated October 30, 2002, and 2001–360(B) R1, dated February 6, 2002.

Issued in Renton, Washington, on November 28, 2003.

Kevin Mullin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–30223 Filed 12–4–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–272–AD]

RIN 2120–AA64

Airworthiness Directives; BAE Systems (Operations) Limited Model BAe 146–100A and –200A Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to all BAE Systems (Operations) Limited Model BAe 146–100A and –200A series airplanes. This proposal would require an inspection to determine the part number of the inner links of the side stays for the main landing gear (MLG), and replacement of the inner links with new parts, if necessary. This action is necessary to prevent the failure of the MLG, which could result in damage to the airplane structure or injury to airplane occupants. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by January 5, 2004.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–272–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: 9–anm–nprmcomment@faa.gov. Comments sent via fax or the Internet must contain "Docket No. 2001–NM–272–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 or 2000 or ASCII text.

The service information referenced in the proposed rule may be obtained from British Aerospace Regional Aircraft American Support, 13850 Mclearen Road, Herndon, Virginia 20171. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Todd Thompson, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–1175; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2001–NM–272–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–272–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Civil Aviation Authority (CAA), which is the airworthiness authority for the United Kingdom, notified the FAA that an unsafe condition may exist on all BAE Systems (Operations) Limited Model BAe 146–100A and –200A series airplanes. The CAA advises that the safe life for the inner links of the main landing gear (MLG) side stays is listed incorrectly in the Airworthiness Limitations section of the Aircraft Maintenance Manual (AMM) at Issue 73. The safe life is listed incorrectly in the AMM as 60,000 total landings, rather than the actual safe life of either 57,500 total landings for BAe 146–100A series airplanes, or 37,400 total landings for BAe 146–200A series airplanes. Inner links with certain part numbers could be subject to failure if allowed to remain in service past the actual safe life for the part. This condition, if not corrected, could result in the failure of the MLG and subsequent damage to the airplane structure or injury to airplane occupants.

Explanation of Relevant Service Information

BAE Systems (Operations) Limited has issued Service Bulletin ISB.32–166, dated May 28, 2001, which describes procedures for an inspection to determine the part number of the side stay inner links for the MLG, and replacement of the side stay inner links with new parts, if necessary. The CAA classified this service bulletin as mandatory and issued British airworthiness directive 005–05–2001 in order to assure the continued airworthiness of this airplane in the United Kingdom.

The BAE Systems (Operations) Limited service bulletin references Messier-Dowty Service Bulletin 146–32–153, dated May 29, 2001, as an additional source of service information for accomplishment of the inspection and replacement, if necessary.

FAA's Conclusions

These airplane models are manufactured in the United Kingdom and are type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the CAA has kept the FAA informed of the situation described above. The FAA has examined the findings of the CAA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of the actions specified in the service bulletin described previously, except as discussed below.

Differences Between Proposed Rule and Referenced Service Bulletins

Although Messier-Dowty Service Bulletin 146–32–153, and BAE Systems (Operations) Limited Service Bulletin ISB.32–166, specify to submit certain information to each manufacturer, this proposed AD does not include such requirements.

Although Messier-Dowty Service Bulletin 146–32–153 specifies that operators may contact the manufacturer for information on the safe remaining life of side stays used at different operating weights, this proposed AD would require operators to determine the safe remaining life per a method approved by either the FAA or the CAA (or its delegated agent). In light of the type of action that would be required to address the unsafe condition, and consistent with existing bilateral airworthiness agreements, we have determined that, for this proposed AD, an appropriate action approved by either the FAA or the CAA would be acceptable for compliance with this proposed AD.

Cost Impact

The FAA estimates that 15 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 1 work hour per airplane to accomplish the proposed inspection, and that the average labor rate is $65 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $975, or $65 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

BAE Systems (Operations) Limited (Formerly British Aerospace Regional Aircraft): Docket 2001–NM–272–AD.

Applicability: All Model BAe 146–100A and –200A series airplanes; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent the failure of the main landing gear (MLG), which could result in damage to the airplane structure or injury to airplane occupants, accomplish the following:

Inspection To Determine Part Number

(a) Within 50 landings or 31 days after the effective date of this AD, whichever occurs first: Inspect the inner link of the side stays

of the main landing gear (MLG) to determine the part number, per the Accomplishment Instructions of BAE Systems (Operations) Limited Service Bulletin ISB.32–166, dated May 28, 2001. Although this service bulletin specifies to submit certain information to the manufacturer, this AD does not include such a requirement.

Note 1: BAE Systems (Operations) Limited Service Bulletin ISB.32–166, dated May 28, 2001, references Messier-Dowty Service Bulletin 146–32–153, dated May 29, 2001, as an additional source of service information for accomplishment of the inspection and replacement required by this AD. Although the Messier-Dowty service bulletin specifies to submit certain information to the manufacturer, this AD does not include such a requirement.

Replacement at New Reduced Safe Life

(b) Replace any side stay which, during the inspection required by paragraph (a) of this AD, is found to have part number 200884319, 200884320, 200884331, 200884332, 200884342, or 200884343. Replace the side stay with a new side stay having the same part number, at the applicable compliance time specified in paragraph 1.D. "Compliance" of BAE Systems (Operations) Limited Service Bulletin ISB.32–166, dated May 28, 2001, as measured from the effective date of this AD.

Safe Remaining Life

(c) If any side stay having part number 200884319, 200884320, 200884331, 200884332, 200884342, or 200884343 has been used at different operating weights, and the service bulletin recommends contacting Messier-Dowty for appropriate action based on the safe remaining life of the side stay: contact the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate; or the Civil Aviation Authority (CAA), which is the airworthiness authority for the United Kingdom, (or its delegated agent); for appropriate action.

Alternative Methods of Compliance

(d) In accordance with 14 CFR 39.19, the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, is authorized to approve alternative methods of compliance for this AD.

Note 2: The subject of this AD is addressed in British airworthiness directive 005–05–2001.

Issued in Renton, Washington, on November 28, 2003.

Kevin Mullin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–30222 Filed 12–4–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–CE–45–AD]

RIN 2120–AA64

Airworthiness Directives; Pilatus Aircraft Ltd. Models PC–7, PC–12, and PC–12/45 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to supersede Airworthiness Directive (AD) 2002–01–09, which applies to all Pilatus Aircraft Ltd. (Pilatus) Models PC–7, PC–12, and PC–12/45 airplanes that incorporate a certain engine-driven pump. AD 2002–01–09 currently requires you to inspect the joints between the engine-driven pump housing, the relief valve housing, and the relief valve cover for signs of fuel leakage and extruding gasket material; replace any engine-driven pump with any of the above problems; and ensure that the relief valve attachment screws are adequately torqued and re-torque as necessary. This proposed AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Switzerland. This proposed AD would retain the actions from AD 2002–01–09, would add certain engine-driven pumps to the applicability, and would require eventual replacement of the pump with an improved design pump to assure that the unsafe condition does not recur. We are issuing this proposed AD to detect and correct gasket material extruding from the engine-driven pump housing and detect and correct relief valve attachment screws with inadequate torque. These conditions could lead to fuel leakage and result in a fire in the engine compartment.

DATES: We must receive any comments on this proposed AD by January 6, 2004.

ADDRESSES: Use one of the following to submit comments on this proposed AD:

- *By mail:* FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2003–CE–45–AD, 901 Locust, Room 506, Kansas City, Missouri 64106.
- *By fax:* (816) 329–3771.
- *By e-mail: 9-ACE-7-Docket@faa.gov.* Comments sent electronically must contain "Docket No. 2003–CE–45–AD" in the subject line. If you send comments electronically as attached electronic files, the files must be formatted in Microsoft Word 97 for Windows or ASCII.

You may get the service information identified in this proposed AD from Pilatus Aircraft Ltd., Customer Liaison Manager, CH–6371 Stans, Switzerland; telephone: +41 41 619 63 19; facsimile: +41 41 619 6224; or from Pilatus Business Aircraft Ltd., Product Support Department, 11755 Airport Way, Broomfield, Colorado 80021; telephone: (303) 465–9099; facsimile: (303) 465–6040.

You may view the AD docket at FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2003–CE–45–AD, 901 Locust, Room 506, Kansas City, Missouri 64106. Office hours are 8 a.m. to 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Doug Rudolph, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4059; facsimile: (816) 329–4090.

SUPPLEMENTARY INFORMATION:

Comments Invited

How Do I Comment on This Proposed AD?

We invite you to submit any written relevant data, views, or arguments regarding this proposal. Send your comments to an address listed under **ADDRESSES**. Include "AD Docket No. 2003–CE–45–AD" in the subject line of your comments. If you want us to acknowledge receipt of your mailed comments, send us a self-addressed, stamped postcard with the docket number written on it. We will date-stamp your postcard and mail it back to you.

Are There Any Specific Portions of This Proposed AD I Should Pay Attention to?

We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. If you contact us through a nonwritten communication and that contact relates to a substantive part of this proposed AD, we will summarize the contact and place the summary in the docket. We will consider all comments received by the closing date and may amend this proposed AD in light of those comments and contacts.

Discussion

Has FAA Taken Any Action to This Point?

Reports of fuel leaking from certain engine-driven pumps on Pilatus Models PC–7, PC–12, and PC–12/45 airplanes caused FAA to issue AD 2002–01–09, Amendment 39–12600 (67 FR 2323, January 17, 2002). AD 2002–01–09 currently requires the following on all Pilatus Models PC–7, PC–12, and PC–12/45 airplanes:

—Inspecting the joints between the engine-driven pump housing, the relief valve housing, and the relief valve cover for signs of fuel leakage and extruding gasket material;
—Replacing any engine-driven pump with signs of fuel leakage or extruding gasket material; and
—Ensuring that the relief valve attachment screws are adequately torqued and re-torquing as necessary.

What Has Happened Since AD 2002–01–09 To Initiate This Proposed Action?

The Federal Office for Civil Aviation (FOCA), which is the airworthiness authority for Switzerland, recently notified FAA of the need to change AD 2002–01–09. The CAA reports that problems are occurring on other engine-driven pumps that could be installed on the affected airplanes, and that the affected airplanes should have a certain engine-driven pump installed to ensure this unsafe condition does not reoccur.

What Are the Consequences if the Condition Is Not Corrected?

Gasket material extruding from the engine-driven pump housing and relief valve attachment screws with inadequate torque, if not detected and corrected, could lead to fuel leakage and result in a fire in the engine compartment.

Is There Service Information That Applies to This Subject?

Pilatus has issued the following service information:

—Pilatus PC–7 Service Bulletin No. 28–007, Revision No. 1, dated October 1, 2002, which includes procedures for changing the diaphragm and valve housing assembly of the engine-driven pump, Lear Romec part number (P/N) RG9570M1 (Pilatus P/N 968.84.51.105) or Lear Romec P/N RG9570M (Pilatus P/N 968.84.51.103). This service bulletin also specifies incorporating Crane Lear Romec Service Bulletin SB9570–73–002 or Crane Lear Romec Service Bulletin RG9570–73–006;
—Pilatus PC–12 Service Bulletin No. 28–010, dated September 16, 2002, which includes procedures for changing the diaphragm and valve housing assembly of the engine-driven pump, Lear-Romec P/N RG9570R1 (Pilatus P/N 968.84.51.106). This service bulletin also specifies incorporating Crane Lear Romec Service Bulletin SB9570–73–002; and
—Pilatus PC–7 Service Bulletin No. 28–008, Revision 1, dated September 24, 2002, which specifies procedures for inspecting the engine-driven pump, Lear Romec P/N RG9570M (Pilatus P/N 968.84.51.103) for signs of fuel leakage or extruding gasket material and correcting relief valve torque on the screws.

Does the Service Information From AD 2002–01–09 Still Apply?

Yes. Pilatus PC–7 Service Bulletin No. 28–006 and Pilatus PC–12 Service Bulletin No. 28–009, both dated August 10, 2001, are still valid and provide information on the inspection and replacement of the engine-driven pumps, Romec P/N RG9570M1 (Pilatus P/N 968.84.51.105) and Lear Romec P/N RG9570R1 (Pilatus P/N 968.84.51.106).

What Action Did the FOCA Take?

The FOCA classified these service bulletins as mandatory and issued FOCA AD HB 2003–392, dated September 15, 2003; and FOCA AD HB 2003–251, dated June16, 2003, to ensure the continued airworthiness of these airplanes in Switzerland.

Did the FOCA Inform the United States Per the Bilateral Airworthiness Agreement?

These Pilatus Models PC–7, PC–12, and PC–12/45 airplanes are manufactured in Switzerland and are type-certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement.

Under this bilateral airworthiness agreement, the FOCA has kept us informed of the situation described above.

FAA's Determination and Requirements of This Proposed AD

What Has FAA decided?

We have examined the FOCA's findings, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since the unsafe condition described previously is likely to exist or develop on other Pilatus Models PC–7, PC–12, and PC–12/45 airplanes of the same type design that are registered in the United States, we are proposing AD action to detect and correct gasket material extruding from the engine-driven pump housing and detect and correct relief valve attachment screws with inadequate torque. These conditions could lead to fuel leakage and result in a fire in the engine compartment.

What Would This Proposed AD Require?

This proposed AD would supersede AD 2002–01–09 with a new AD that would:

—Retain the actions from AD 2002–01–09;
—Add certain engine-driven pumps to the applicability; and
—Require eventual replacement of the pump with an improved design pump to assure that the unsafe condition does not reoccur.

How Does the Revision to 14 CFR Part 39 Affect This Proposed AD?

On July 10, 2002, we published a new version of 14 CFR part 39 (67 FR 47997, July 22, 2002), which governs FAA's AD system. This regulation now includes material that relates to altered products, special flight permits, and alternative methods of compliance. This material previously was included in each individual AD. Since this material is included in 14 CFR part 39, we will not include it in future AD actions.

Costs of Compliance

How Many Airplanes Would This Proposed AD Impact?

We estimate that this proposed AD affects 278 airplanes in the U.S. registry.

What Would Be the Cost Impact of This Proposed AD on Owners/Operators of the Affected Airplanes?

We estimate the following costs to accomplish the proposed inspections and re-torque:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
2 workhours × $65 per hour = $130	Not Applicable	$130	$130 × 278 = $36,140.

We estimate the following costs to accomplish any necessary replacements that would be required based on the results of the inspection. We have no way of determining the number of airplanes that may need such replacement:

Labor cost	Parts cost	Total cost per airplane
1 workhour × $65 per hour = $65	$3,900 per new pump	$3,965 per airplane.

What Is the Difference Between the Cost Impact of This Proposed AD and the Cost Impact of AD 2002–01–09?

The only difference between this proposed AD and AD 2002–01–09 is the addition of affected engine-driven pumps. The number of airplanes that could have an affected pump installed and the costs associated with inspection and replacement are the same.

Compliance Time of This Proposed AD

What Would Be the Compliance Time of the Proposed Inspection?

The compliance time of the inspections that would be required by this proposed AD is "within 20 hours time-in-service (TIS) after the effective date of this AD or within the next 30 days after the effective date of this AD, whichever occurs first."

Why Is the Compliance Time of the Proposed Inspection Presented in Both Hours TIS and Calendar Time?

The deterioration and potential extrusion of the gasket occurs over time and is not a condition of repetitive airplane operation. However, the relief valve attachment screws becoming inadequately torqued occurs as a result of airplane operation if the compression set of the gasket and diaphragm after thermal cycling causes the gasket of the engine-driven pump to extrude between the relief valve housing and the engine-driven pump housing.

Therefore, to ensure that the unsafe condition defined in this document is detected and corrected in a timely manner, we are stating the compliance in both calendar time and hours TIS.

Regulatory Findings

Would This Proposed AD Impact Various Entities?

We have determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

Would This Proposed AD Involve a Significant Rule or Regulatory Action?

For the reasons discussed above, I certify that this proposed AD:

1. Is not a "significant regulatory action" under Executive Order 12866;

2. Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and

3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a summary of the costs to comply with this proposed AD and placed it in the AD Docket. You may get a copy of this summary by sending a request to us at the address listed under **ADDRESSES.** Include "AD Docket No.2003–CE–45–AD" in your request.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. The FAA amends § 39.13 by removing Airworthiness Directive (AD) 2002–01–09, Amendment 39–12600 (67 FR 2323, January 17, 2002), and by adding a new AD to read as follows:

Pilatus Aircraft Ltd.: Docket No. 2003–CE–45–AD.

When Is the Last Date I Can Submit Comments on This Proposed AD?

(a) We must receive comments on this proposed airworthiness directive (AD) by January 6, 2004.

What Other ADs Are Affected By This Action?

(b) This AD supersedes AD 2002–01–09, Amendment 39–12600.

What Airplanes Are Affected by This AD?

(c) This AD affects the following airplane models and serial numbers that are certificated in any category:

Model	Serial Nos.
(1) PC–7	All manufacturer serial numbers (MSN) equipped with either a Lear Romec part number (P/N) RG9570M (Pilatus P/N 968.84.51.103) engine-driven pump or a Lear Romec P/N RG9570M1 (Pilatus P/N 968.84.51.105) engine-driven pump.
(2) PC–12 and PC–12/45	All MSN equipped with a Lear Romec P/N RG9570R1 (Pilatus P/N 968.84.51.106) engine-driven pump.

Note: Pilatus installed these engine-driven pumps on MSN 101 through MSN 406 and MSN 408 through 419 of the Models PC–12 and PC–12/45 airplanes and MSN 101 through MSN 618 of the Model PC–7 airplanes. These engine-driven pumps could be installed through field approval on any MSN of the Models PC–7, PC–12, and PC–12/45 airplanes.

What Is the Unsafe Condition Presented in This AD?

(d) The actions specified in this AD are intended to detect and correct gasket material extruding from the engine-driven pump housing and detect and correct relief valve attachment screws with inadequate torque. These conditions could lead to fuel leakage and result in a fire in the engine compartment.

What Must I Do To Address This Problem?

(e) To address this problem, you must do the following:

(1) *Inspection:* Inspect the joints between the engine-driven pump housing, the relief valve housing, and the relief valve cover for signs of fuel leakage and extruding gasket material as follows:

Engine-driven pump P/N	Compliance	Procedures
(i) Lear Romec P/N RG9570M1 (Pilatus P/N 968.84.51.105) or Lear Romec P/N RG9570R1 (Pilatus P/N 968.84.51.106).	Within the next 20 hours time-in-service (TIS) after February 28, 2002 (the effective date of AD 2002–01–09) or within the next 30 days after February 28, 2002 (the effective date of AD 2002–01–09), whichever occurs first, unless already done.	Follow Pilatus PC–7 Service Bulletin No. 28–006 or Pilatus PC–12 Service Bulletin No. 28–009, both dated August 10, 2001, as applicable.
(ii) Lear Romec P/N RG9570M (Pilatus P/N 968.84.51.103).	Within 20 hours TIS after the effective date of this AD or within 30 days after the effective date of this AD, whichever occurs first, unless already done.	Follow Pilatus PC–7 Service Bulletin No. 28–008, Revision 1, dated September 24, 2003.

(2) *Replacement/Modification:* Replace the engine-driven pump with one of the following prior to further flight after the inspection in paragraph (e)(1) of this AD if you find signs of fuel leakage or extruding gasket material or within 6 months after the effective date of this AD if you do not find signs of fuel leakage or extruding gasket material, whichever occurs first, unless already done:

Models	Pump replacement P/N	Procedures
(i) PC–7	Lear Romec P/N RG9570M1/M (Pilatus P/N 968.84.51.107).	Pilatus PC–7 Service Bulletin No. 28–007, Revision No. 1, dated October 1, 2002.
(ii) PC–12 and PC–12/45	Lear Romec P/N RG9570R1/M (Pilatus P/N 968.84.51.108).	Pilatus PC–12 Service Bulletin No. 28–010, dated September 16, 2002.

(3) *Relief Valve Attachment Screw Torque:* Prior to further flight after the inspection (if you find no fuel leakage or extruding gasket material) and replacement required by this AD, ensure that the relief valve attachment screws are adequately torqued and re-torque as necessary using the following:

(i) *For Pilatus Model PC–7 Airplanes:* Pilatus PC–7 Service Bulletin No. 28–006, dated August 10, 2001, or Pilatus PC–7 Service Bulletin No. 28–008, Revision 1, dated September 24, 2002.

(ii) *For Pilatus Models PC–12 and PC–12/45 Airplanes:* Pilatus PC–12 Service Bulletin No. 28–009, both dated August 10, 2001.

(4) *Spares:* As of the effective date of this AD, only install an engine-driven pump that is of a part number referenced in paragraphs (e)(2)(i) and (e)(2)(ii) of this AD. Prior to further flight after installation, do the relief valve attachment screw torque check as required by paragraph (e)(3) of this AD.

(5) *Unless Already Done Credit:* This AD retains actions from AD 2002–01–09.

(i) You may take inspection credit if you have one of the engine-driven pumps installed affected by AD 2002–01–09 and the specific actions are already done.

(ii) The actions of this AD do not apply if you have one of the engine-driven pumps installed that is referenced in paragraphs (e)(2)(i) and (e)(2)(ii) of this AD.

May I Request an Alternative Method of Compliance?

(f) You may request a different method of compliance or a different compliance time for this AD by following the procedures in 14 CFR 39.13. Send your request to the Manager, Standards Office, Small Airplane Directorate, FAA. For information on any already approved alternative methods of compliance, contact Doug Rudolph, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4059; facsimile: (816) 329–4090.

May I Get Copies of the Documents Referenced in This AD?

(g) You may get copies of the documents referenced in this AD from Pilatus Aircraft Ltd., Customer Liaison Manager, CH–6371 Stans, Switzerland; telephone: +41 41 619 63 19; facsimile: +41 41 619 6224; or from Pilatus Business Aircraft Ltd., Product Support Department, 11755 Airport Way, Broomfield, Colorado 80021; telephone: (303) 465–9099; facsimile: (303) 465–6040. You may view these documents at FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri 64106.

Is There Other Information That Relates to This Subject?

(h) FOCA (Switzerland) AD HB 2003–392, dated September 15, 2003; and FOCA (Switzerland) AD HB 2003–251, dated June 16, 2003, also address the subject of this AD.

Issued in Kansas City, Missouri, on November 26, 2003.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–30256 Filed 12–4–03; 8:45 am]

BILLING CODE 4910–13–P

NATIONAL CRIME PREVENTION AND PRIVACY COMPACT COUNCIL

28 CFR Part 901

[NCPPC 105]

Proposed Amendments to the Fingerprint Submission Requirements Rule

AGENCY: National Crime Prevention and Privacy Compact Council.

ACTION: Proposed amendments to the rule, request for comments.

SUMMARY: The Compact Council, established pursuant to the National Crime Prevention and Privacy Compact (Compact), is amending its Fingerprint Submission Requirements Rule which interprets the Compact's fingerprint-submission requirements as they relate to the use of the Interstate Identification Index (III) System for noncriminal justice record checks during an emergency situation when the health and safety of a specified group may be endangered. In addition, pursuant to the rule, the Compact Council approved an amended proposal from a State requesting the delayed submission of fingerprints when conducting criminal history records checks in connection with the temporary placement of children with temporary custodians during exigent circumstances.

DATES: Written comments must be submitted on or before January 5, 2004.

ADDRESSES: Send all written comments concerning the proposed amendments to the Compact Council Office, 1000 Custer Hollow Road, Module C3, Clarksburg, WV 26306; Attention: Todd C. Commodore. Comments may also be submitted by fax at (304) 625–5388 or by electronic mail at *tcommodo@leo.gov*. To ensure proper handling, please reference "Amended Fingerprint Submission Requirements" on your correspondence.

FOR FURTHER INFORMATION CONTACT: Lt. Col. Jeffrey D. Harmon, Compact Council Chairman, Maine State Police, 36 Hospital Street, Augusta, Maine

04333–0042, telephone number (207) 624–7060.

SUPPLEMENTARY INFORMATION: The National Crime Prevention and Privacy Compact (Compact), 42 U.S.C. 14616, establishes uniform standards and processes for the interstate and Federal-State exchange of criminal history records for noncriminal justice purposes. The Compact eliminates barriers to the sharing of criminal history record information among the compact parties for noncriminal justice purposes. Article VI of the Compact provides for a Compact Council that has the authority to promulgate rules and procedures governing the use of the III System for noncriminal justice purposes.

The Compact requires that subject's fingerprints or other approved forms of positive identification "shall be submitted with all requests for criminal history record checks for noncriminal justice purposes." *See* 42 U.S.C. 14616, Article V(a). The Compact Council recognizes the extreme reliability of fingerprint-based identifications and believes that the above quoted provision requires that, whenever feasible, fingerprints should be submitted contemporaneously with search requests. In promulgating the Fingerprint Submission Requirements Rule (28 CFR Part 901), however, the Council acknowledged that there are exigent circumstances in which time is a critical factor in decision making and in which the immediate fingerprinting of the subject is not feasible. In such emergency circumstances, the Council interpreted the Compact to permit preliminary name searches of the III System for noncriminal justice purposes, provided that fingerprints are obtained and submitted within a time frame specified by the Council. This procedure allows access to criminal history record information in a timely manner in exigent circumstances with follow-up positive identification assured by fingerprint submissions.

Part 901 authorizes state criminal history record repositories and the FBI, upon approval by the Compact Council, to grant access to the III System in emergency situations on a delayed fingerprint submission basis, predicated upon a statute approved by the U.S. Attorney General pursuant to Public Law 92–544 and Article III (c) of the Compact. Access authorized by part 901 must adhere to both the Criminal Justice Information Services Security Policy and applicable state security policies.

Subsequent to the publication of Part 901, states that were authorized to conduct the name-based checks articulated varying interpretations of the fingerprint submission time frame. In order to eliminate these disparate interpretations, the Compact Council is amending the rule to define the term "time frame" by adding a sentence at the end of Subsection 901.3(b).

Section 901.3 is also amended by adding paragraph (d) to clarify that part 901 is also applicable to Federal agencies authorized to access criminal history records pursuant to Federal statute or Executive Order for noncriminal justice purposes. The original rule identified only state agencies, and per the Compact's definition of "state", an amendment to the rule is necessary. *See* 42 U.S.C. 14616, Article I(22).

Recently, the FBI CJIS Division expanded its Audit Unit programs to include reviews of noncriminal justice agencies with direct access to the III System for emergency placement of children. Though the Background section of the original **Federal Register** publication establishing part 901 included verbiage addressing audits and sanctions, no such language was included in the Rule. The Compact Council has now approved the addition of language in the rule addressing audits and sanctions in order to reduce the potential for misinterpretation. Section 901.4 identifies the State Compact Officer or, in nonparty states, the Chief Administrator of the Criminal History Record Repository, as the responsible party to ensure that audits are conducted of approved state agencies, and the responsible Federal Service Coordinator will ensure that similar audits are conducted of authorized Federal agencies. The audits will verify adherence to the provisions of part 901 and the FBI Criminal Justice Information Services Security Policy. Section 901.4 also includes the details of records an authorized agency must maintain related to this III access under part 901 and requires that mechanisms to calculate the specified time frame for fingerprint submissions be included in the audit and compliance reviews.

Sanctions for noncompliance as related to the audit methodology spelled out in section 901.4 are addressed in section 901.5. This section states that the Compact Council, or the FBI in consultation with the Compact Council, may impose sanctions according to rules, procedures, or standards established by the Council. Approved access to criminal history record information systems is subject to cancellation for violation of the National Crime Prevention and Privacy Compact Act or for failure to comply with part 901 or the FBI Criminal Justice Information Services Security Policy. The state's Compact Officer, the Chief Administrator of the Criminal History Record Repository in a nonparty state, or the Federal Service Coordinator may take similar actions, as applicable, against a State or Federal agency for failure to comply with applicable security policies.

Administrative Procedures and Executive Orders

Administrative Procedures Act

This rule is published by the Compact Council as authorized by the National Crime Prevention and Privacy Compact (Compact), an interstate/Federal compact which was approved and enacted into law by Congress pursuant to Pub. L. 105–251. The Compact Council is composed of 15 members (with 11 state and local governmental representatives), and is authorized by the Compact to promulgate rules and procedures for the effective and proper use of the Interstate Identification Index (III) System for noncriminal justice purposes. The Compact specifically provides that the Council shall prescribe rules and procedures for the effective and proper use of the III System for noncriminal justice purposes, and mandates that such rules, procedures, or standards established by the Council shall be published in the **Federal Register**. *See* 42 U.S.C. 14616, Articles II(4), VI(a)(1), and VI(e). This publication complies with those requirements.

Executive Order 12866

The Compact Council is not an executive department or independent regulatory agency as defined in 44 U.S.C. 3502; accordingly, Executive Order 12866 is not applicable.

Executive Order 13132

The Compact Council is not an executive department or independent regulatory agency as defined in 44 U.S.C. 3502; accordingly, Executive Order 13132 is not applicable. Nonetheless, this rule fully complies with the intent that the national government should be deferential to the States when taking action that affects the policymaking discretion of the States.

Executive Order 12988

The Compact Council is not an executive agency or independent establishment as defined in 5 U.S.C. 105; accordingly, Executive Order 12988 is not applicable.

Unfunded Mandates Reform Act

Approximately 75 percent of the Compact Council members are representatives of state and local governments; accordingly, rules prescribed by the Compact Council are not Federal mandates. Accordingly, no actions are deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

The Small Business Regulatory Enforcement Fairness Act (Title 5, U.S.C. 801–804) is not applicable to the Council's rule because the Compact Council is not a "Federal agency" as defined by 5 U.S.C. 804(1). Likewise, the reporting requirement of the Congressional Review Act (Subtitle E of the Small Business Regulatory Enforcement Fairness Act) does not apply. *See* 5 U.S.C. 804.

List of Subjects in 28 CFR Part 901

Crime, Health, Privacy, Safety.

Accordingly, the Compact Council proposes to amend part 901 as follows:

PART 901—FINGERPRINT SUBMISSION REQUIREMENTS

1. The authority citation for part 901 continues to read as follows;

Authority: 42 U.S.C. 14616.

2. Amend § 901.3 as follows;

a. By redesignationg paragraph (c) as paragraph (d);

b. By designating the text following paragraph (b) as new paragraph (c) and adding a sentence to the end of the paragraph;

c. By adding a new paragraph (e).

The added text reads as follows:

§ 901.3 Approval of delayed fingerprint submission request.

* * * * *

(c) * * * For the purposes of this rule, "time frame" means the number of days that elapse between the date on which the name search was conducted and the date on which the state repository either positively identifies the fingerprint subject or forwards the fingerprints to the FBI or the date a Federal agency forwards the fingerprints to the FBI.

* * * * *

(e) Part 901 is also applicable to any federal agency authorized to access criminal history records pursuant to Federal statute or Executive Order for noncriminal justice purposes.

3. Amend part 901 by adding §§ 901.4 and 901.5 to read as follows:

§ 901.4 Audits.

(a) Audits of authorized State agencies that access the III System shall be conducted by the State's Compact Officer or, in absence of a Compact Officer, the chief administrator for the criminal history record repository. The responsible Federal service coordinator shall ensure that similar audits are conducted of authorized Federal agencies. Such audits shall be conducted to verify adherence to the provisions of part 901 and the FBI's Criminal Justice Information Services (CJIS) Security Policy.

(b) Authorized agencies shall cause to be collected an appropriate record of each instance of III System access through a manual or electronic log. The log shall be maintained for a minimum one-year period to facilitate the audits and compliance reviews. Such records shall be maintained in accordance with the CJIS Security Policy. (For information on this security policy, contact your State Control Terminal Officer or Federal Service Coordinator.)

(c) The audit and compliance reviews must include mechanisms to determine whether fingerprints were submitted within the time frame specified by the Compact Council.

(d) In addition to the audits as stated above, the FBI CJIS Audit staff shall also conduct routine systematic compliance reviews of State repositories, Federal agencies, and as necessary other authorized III System user agencies.

§ 901.5 Sanction for noncompliance.

The Compact Council, or the FBI in consultation with the Compact Council, may impose sanctions in accordance with rules, procedures, or standards as established by the Council. The approval for access to criminal history record information systems for noncriminal justice purposes is subject to cancellation or discontinuance for violation of the National Crime Prevention and Privacy Compact Act, failure to comply with the provisions of part 901, or failure to comply with the FBI Criminal Justice Information Services Security Policy (*See* § 901.4(b)). The State's Compact Officer, the chief administrator of the criminal history record repository or the Federal Service Coordinator may take similar actions, as applicable, against a State or Federal agency for failure to comply with applicable security policies.

Dated: November 5, 2003.

Jeffrey D. Harmon,

Compact Council Chairman.

[FR Doc. 03–29567 Filed 12–4–03; 8:45 am]

BILLING CODE 4410–02–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[DE072 1042b; FRL–7593–4]

Approval and Promulgation of Air Quality Implementation Plans; Delaware; MOBILE6-based Motor Vehicle Emission Budgets for the Delaware Portion of the Philadelphia-Wilmington-Trenton Ozone Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve a revision to the Delaware State Implementation Plan (SIP). Specifically, EPA is proposing approving amendments to the 2005 highway (on road) motor vehicle emission inventory for the Delaware portion of the Philadelphia-Wilmington-Trenton area's (the Philadelphia area) 1-hour ozone attainment plan as a revision to the Delaware SIP. This revision also serves to amend the 2005 motor vehicle emission budgets (MVEBs) used for determining transportation conformity under the Clean Air Act. The revised MVEBs were developed using MOBILE6, the most recent version of EPA's mobile source emission factor model. Revision of the MVEBs was a requirement of EPA's prior approval of Delaware's 1-hour ozone attainment demonstration plan for the Philadelphia severe ozone nonattainment area. In the final rules section of this **Federal Register**, EPA is approving Delaware's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this action, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time.

DATES: Comments must be received in writing by January 5, 2004.

ADDRESSES: Comments may be submitted either by mail or electronically. Written comments should be mailed to Robert Kramer, Chief, Energy, Radiation and Indoor Environment Branch, Mailcode 3AP23,

U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Electronic comments should be sent either to *kramer.robert@epa.gov* or to *http://www.regulations.gov*, which is an alternative method for submitting electronic comments to EPA. To submit comments, please follow the detailed instructions described in the **SUPPLEMENTARY INFORMATION** section. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; and at the Delaware Department of Natural Resources and Environmental Control, 156 South State Street, Dover, Delaware 19901.

FOR FURTHER INFORMATION CONTACT: Larry Budney, (215) 814–2184, or by e-mail at *budney.larry@epa.gov*.

SUPPLEMENTARY INFORMATION: For further information, please see the information provided in the direct final action, with the same title, that is located in the "Rules and Regulations" section of this **Federal Register** publication. You may submit comments either electronically or by mail. To ensure proper receipt by EPA, identify the appropriate rulemaking identification number DE072–1042 in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments.

1. Electronically. If you submit an electronic comment as prescribed below, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. E-mail. Comments may be sent by electronic mail (e-mail) to *kramer.robert@epa.gov*, attention DE072–1042. EPA's e-mail system is not an "anonymous access" system. If you send an e-mail comment directly without going through Regulations.gov, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket.

ii. Regulations.gov. Your use of Regulation.gov is an alternative method of submitting electronic comments to EPA. Go directly to *http://www.regulations.gov*, then select "Environmental Protection Agency" at the top of the page and use the "go" button. The list of current EPA actions available for comment will be listed. Please follow the online instructions for submitting comments. The system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

iii. Disk or CD ROM. You may submit comments on a disk or CD ROM that you mail to the mailing address identified in the **ADDRESSES** section of this document. These electronic submissions will be accepted in WordPerfect, Word or ASCII file format. Avoid the use of special characters and any form of encryption.

2. By Mail. Written comments should be addressed to the EPA Regional office listed in the **ADDRESSES** section of this document.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing at the EPA Regional Office, as EPA receives them and without change, unless the comment contains copyrighted material, confidential business information (CBI), or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in the official public rulemaking file. The entire printed comment, including the copyrighted material, will be available at the Regional Office for public inspection.

Submittal of CBI Comments

Do not submit information that you consider to be CBI electronically to EPA. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the official public regional rulemaking file. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public file and available for public inspection without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

Considerations When Preparing Comments to EPA

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at your estimate.

5. Provide specific examples to illustrate your concerns.

6. Offer alternatives.

7. Make sure to submit your comments by the comment period deadline identified.

8. To ensure proper receipt by EPA, identify the appropriate regional file/rulemaking identification number in the subject line on the first page of your response. It would also be helpful if you provided the name, date, and **Federal Register** citation related to your comments.

Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

Dated: November 20, 2003.

Thomas Voltaggio,

Acting Regional Administrator, Region III.

[FR Doc. 03–30042 Filed 12–4–03; 8:45 am]

BILLING CODE 6560–50–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1809, 1837, and 1852

RIN 2700–AC60

Contractor Access to Confidential Information

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: This rule proposes to amend the NASA Federal Acquisition Regulation (FAR) Supplement (NFS) to provide guidance on how NASA will acquire services to support management activities and administrative functions, when performing those services requires the contractor to have access to confidential information submitted by other contractors. NASA's increased use of contractors to support management activities and administrative functions, coupled with implementing Agency-wide electronic information systems, requires establishing consistent procedures for protecting confidential information from unauthorized use or disclosure.

DATES: Comments should be submitted on or before February 3, 2004 to be considered in the formulation of a final rule.

ADDRESSES: Interested parties should submit written comments to David Forbes, NASA Headquarters, Office of Procurement, Contract Management Division (Code HK), Washington, DC 20546. Comments may also be submitted by e-mail to: *David.P.Forbes@nasa.gov*.

FOR FURTHER INFORMATION CONTACT: David Forbes, (202) 358–2051, e-mail: *David.P.Forbes@nasa.gov*.

SUPPLEMENTARY INFORMATION:

A. Background

In accomplishing its mission, NASA expends about eighty-five percent of its appropriations through contracts. As part of the process of awarding and performing contracts, offerors and contractors must provide information, some of which they claim to have developed at private expense and that may embody trade secrets or constitute commercial or financial and confidential information ("confidential information"). Confidential information includes technical, financial, proprietary, commercial, privileged, or otherwise sensitive business information. As a result, NASA receives and retains a substantial amount of confidential information, contained in paper files and electronic administrative systems.

Generally, the information in question is not in the public domain and may be subject to the Trade Secrets Act, the Procurement Integrity Act (FAR 3.104), and other laws and regulations relating to ethics, organizational conflicts of interest, and corruption in the Federal procurement process. To the extent that an exception to the Freedom of Information Act applies, government agencies may also generate confidential information, including pre-negotiation analyses and positions and pre-decisional advice on a variety of subjects. NASA has long recognized a responsibility to protect this type of information from unauthorized use and disclosure. To this end, NASA has traditionally allowed only civil servants to have access to confidential information in the Government's possession. Practical realities, coupled with new policy initiatives compel NASA to reconsider its approach to managing contractor-related information.

The practical pressure to reconsider NASA's approach has emerged from years of "downsizing" the civil service workforce. Simply put, NASA no longer has enough employees to manage and safeguard all of the information in question. Of necessity, NASA is increasing its use of service contractors to assist in performing many administrative, financial, and technical functions that had been performed previously by government employees only. The types of services NASA will be procuring run the gamut from routine clerical support such as data entry and invoice processing, to more complex in-plant reviews, contract closeout processing, system administration, and safety and quality assurance activities. Service contractors may soon be supporting most of these activities and functions throughout the Agency. NASA must, therefore, find new, more streamlined ways to receive from offerors and contractors confidential information that may be entitled to protection and to disclose it to third party service providers, without compromising the information received.

As NASA releases more confidential information provided by offerors or contractors to other contractors, the risk increases that unauthorized uses and disclosures will occur. One aspect of this increased risk is the potential that organizational conflicts of interest may arise when the Agency discloses one contractor's confidential information to another contractor. FAR Subpart 9.5 prescribes general rules for managing organizational conflicts of interest and gives four specific examples of situations that may give rise to problems. One of those examples deals directly with NASA's current dilemma, that is, providing one contractor access to other contractors' confidential information. Specifically, when one contractor gains access to other companies' "proprietary" information, FAR 9.505–4 directs the service provider to enter into agreement(s) with the other companies to protect their information from unauthorized use or disclosure and to refrain from using the information for any purpose other than that for which it was furnished. Additionally, FAR 9.505–4 requires the contracting officer to obtain copies of these third party agreements and ensure that they are properly executed.

In the past, NASA contracts rarely required access to another contractor's proprietary or other forms of confidential information, making this FAR procedure quite manageable. The current environment, however, raises the question whether use of FAR 9.505–4 continues to be workable for NASA. For example, in providing contract closeout services, the contractor and its employees may have access to hundreds of contract files, each of which should document all pre and post award activities for a particular contract. Typically, the contracts to be closed out will include multiple subcontractors. Many subcontractors will also have lower-tier subcontracts. To ensure that all of these companies have properly executed "non-disclosure agreements" among themselves could result in a huge number of interrelated agreements. Moreover, the contract closeout function is but one example of the types of services that may require one NASA contractor to have access to another contractor's confidential information before performance can proceed. Without obtaining even more support services, NASA cannot be responsible for managing this potentially enormous universe of interrelated non-disclosure agreements.

In today's environment, NASA must rely heavily on private sector service contractors for support in performing essential management activities and administrative functions. For contracts requiring this type of support, the Assistant Administrator for Procurement has determined that it is not in the NASA's interest to follow the

general rule stated in FAR 9.505–4(b) and, in accordance with FAR 9.503, has waived its application. Rather than demand an unworkable mass of interrelated third party non-disclosure agreements, NASA will implement the policy and procedures described in the proposed 1837.203–70 to manage the risks associated with one contractor having access to another contractor's confidential information and to assure those that submit this type of information that NASA will protect it from unauthorized use or disclosure.

As one element of this new approach, 1837.203–70(d)(1) requires that contractors receiving access to confidential information must have developed a comprehensive organizational conflicts of interest avoidance plan. Recognizing that developing this plan may take considerable time and effort, proposals need only summarize the offeror's analysis of the potential organizational conflicts of interest that may arise from having access to another contractor's confidential information, or to Government-generated information that is subject to an exception to the Freedom of Information Act. Each offeror's analysis, together with the other elements of each proposal, will be considered in selecting a contractor for award. After award, the contractor must develop and submit to the contracting officer for review and approval a comprehensive organizational conflict of interest avoidance plan that identifies all potential problems and proposes specific methods to control, mitigate, or eliminate any organizational or ethical concerns noted. This plan must also commit the contractor to take all corrective actions necessary to address any failures to protect confidential information from unauthorized use or disclosure. Once the contracting officer approves this plan, he/she will incorporate the document into the resulting contract.

NASA proposes two clauses to implement the above policies in solicitations and contracts. The first clause at 1852.237–72, Access to Confidential Information, would go into service contracts that involve access to information in the Government's possession that is necessary to support NASA's management activities and administrative functions. This clause would delineate the service contractor's responsibilities to limit to the purposes specified in the contract its use of any of this information that is confidential, to safeguard the information from unauthorized outside disclosure, and to train employees and obtain their written commitments to handle the information in an authorized manner, only.

The second clause at 1852.237–73, Release of Confidential Information, would go in all solicitations and contracts to notify offerors and contractors that NASA may release their confidential information to other contractors supporting NASA's management activities and administrative functions. Recognizing that this announcement may cause concerns for these offerors and contractors, the clause recites the protections embodied in the receiving, support service contract through the new clause at 1852.237–72. Essentially, the clause at 1852.237–73 announces NASA's intent to release companies' confidential information to support service contractors. But, in announcing this intent, the clause also promises that the support contractors will implement specific and enumerated safeguards and procedures to protect the information.

B. Regulatory Flexibility Act

NASA certifies that this proposed rule will not have a significant economic impact on a substantial number of small business entities within the meaning of the Regulatory Flexibility Act (5 U.S.C. 601, *et. seq.*), because the proposed new, streamlined approach of having each service contractor implement specific safeguards and procedures should offer the same or better protection for confidential information belonging to small business entities than does the current system of third party agreements, envisioned by FAR 9.505–4. This proposed rule should ease the burden on small business entities by not requiring them to enter multiple, interrelated third party agreements with the numerous service contractors that support NASA's management activities and administrative functions.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the proposed changes to the NFS do not impose any recordkeeping or information collection requirements, or collections of information from offerors, contractors, or members of the public that require the approval of the Office of Management and Budget under 44 USC 3501, *et. seq.*

List of Subjects in 48 CFR Parts 1809, 1837, and 1852

Government Procurement.

Tom Luedtke,

Assistant Administrator for Procurement.

Accordingly, 48 CFR parts 1809, 1837, and 1852 are proposed to be amended as follows:

1. The authority citation for 48 CFR parts 1809, 1837, and 1852 continues to read as follows:

Authority: 42 U.S.C. 2473(c)(1).

PART 1809—CONTRACTOR QUALIFICATIONS

2. Add section 1809.505–4 to read as follows:

1809.505–4 Obtaining access to confidential information.

(b) In accordance with FAR 9.503, the Assistant Administrator for Procurement has determined that it would not be in the Government's interests for NASA to comply strictly with FAR 9.505-4(b) when acquiring services to support management activities and administrative functions. The Assistant Administrator for Procurement has, therefore, waived the requirement that before gaining access to other companies' proprietary or confidential (see 1837.203–70) information contractors must enter specific agreements with each of those other companies to protect their information from unauthorized use or disclosure. Accordingly, NASA will not require contractors and subcontractors and their employees in procurements that support management activities and administrative functions to enter into separate, interrelated third party agreements to protect confidential information from unauthorized use or disclosure. As an alternative to numerous, separate third party agreements, 1837.203–70 prescribes detailed policy and procedures to protect contractors from unauthorized use or disclosure of its confidential information. Nothing in this section waives the requirements of FAR 37.204 and 1837.204.

PART 1837—SERVICE CONTRACTING

3. Add sections 1837.203–70, 1837.203–71, and 1837.203–72 to read as follows:

1837.203–70 Providing contractors access to confidential information.

(a)(1) As used in this subpart, "confidential information" refers to information that the contractor has developed at private expense or that the Government has generated that qualifies for an exception to the Freedom of Information Act, which is not currently in the public domain, may embody trade secrets or commercial or financial information, and may be confidential or privileged.

(2) As used in this subpart, "requiring organization" refers to the NASA organizational element or activity that requires specified services to be provided.

(3) As used in this subpart, "receiving entity" refers to the service-providing contractor that receives confidential information from NASA to provide services to the requiring organization.

(b) To support management activities and administrative functions, NASA relies on the services of numerous contractors. Contractors providing these services may require access to confidential information in the Government's possession, which may be entitled to protection from unauthorized use or disclosure. NASA shall require any service contractor that receives access to confidential information to take the steps contained in the clause at 1852.237–72, Access to Confidential Information, to protect it from unauthorized use or disclosure.

(c) The requiring organization is responsible for identifying when a requirement will require access to confidential information and making the determination that providing access is necessary for accomplishing the Agency's mission. The requiring organization is responsible for reviewing any contractor requests for access to information to determine whether the access is necessary and whether the information requested is considered confidential as defined in paragraph (a) of this section.

(d)(1) Solicitations for services that require contractor access to confidential information shall require each offeror (potential receiving entity) to submit with its proposal a preliminary analysis of possible organizational conflicts of interest that might flow from the award of a contract. After selection, the new service contractor must submit for approval a comprehensive organizational conflict of interest avoidance plan, based on the preliminary analysis. This plan should thoroughly analyze all organizational conflicts of interest that might arise because the service contractor has access to other companies' confidential information. This analysis should propose specific methods to control, mitigate, or eliminate all problems identified. The contracting officer shall incorporate the approved plan into the resulting contract, as a compliance document.

(2) If the contractor will be operating an information technology system for NASA that contains confidential information, the operating contract shall include the clause at 1852.204–76, Security Requirements for Unclassified Information Technology Resources, which requires the implementation of an Information Technology Security Plan to protect information processed, stored, or transmitted from unauthorized access, alteration, disclosure, or use.

1837.203–71 Release of contractors' confidential information.

(a) By submitting offers or performing contracts, offerors and contractors agree that NASA may provide non-NASA employees access to their confidential information, subject to the safeguards and protections delineated in the clause at 1852.237–72, Access to Confidential Information.

(b) As required by the clause at 1852.237–73, Release of Confidential Information, or another contract clause or solicitation provision, contractors must identify confidential information submitted as part of a proposal or in performance of a contract. The contracting officer shall evaluate the contractor's claim to have submitted "confidential information" in deciding whether NASA and its service contractors must expend time and resources to protect and safeguard the information in accordance with the clause at 1852.237–72.

1837.203–72 NASA contract clauses.

(a) The contracting officer shall insert the clause at 1852.237–72, Access to Confidential Information, in all solicitations and contracts for services that require access to confidential information belonging to other companies or generated by the Government.

(b) The contracting officer shall insert the clause at 1852.237–73, Release of Confidential Information, in all solicitations, contracts, and basic ordering agreements .

PART 1852—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

4. Add sections 1852.237–72 and 1852.237–73 to read as follows:

1852.237–72 Access to Confidential Information.

As prescribed in 1837.203–72(a), insert the following clause:

ACCESS TO CONFIDENTIAL INFORMATION (XX/XX)

(a) As used in this clause, "confidential information" refers to information that a contractor has developed at private expense, or that the Government has generated that qualifies for an exception to the Freedom of Information Act, which is not currently in the public domain, and may embody trade secrets or commercial or financial information, and may be confidential or privileged.

(b) To assist NASA in accomplishing management activities and administrative functions, the Contractor shall provide the services specified elsewhere in this contract. Performing these services may require access to confidential information that other companies have furnished to the Government in the course of providing supplies or services, or that the Government has generated.

(c) In performing this contract, the Contractor agrees to—

(1) Utilize any confidential information coming into its possession only for the purposes of performing the services specified in this contract, and never to improve its own competitive position in another procurement.

(2) Safeguard confidential information coming into its possession from unauthorized use and disclosure.

(3) Allow access to confidential information only to those employees that need it to perform services under this contract.

(4) Preclude access and disclosure of confidential information to persons and entities outside of the Contractor's organization.

(5) Train employees who may require access to confidential information about their obligations to utilize it only to perform the services specified in this contract and to safeguard it from unauthorized use and disclosure.

(6) Obtain an express, binding written agreement from each employee who receives access to confidential information to protect it from unauthorized use or disclosure and to utilize it only for the purposes of performing this contract.

(7) Establish a monitoring process to ensure that employees comply with all reasonable security procedures, report any breaches to the Contracting Officer, and implement any necessary corrective actions.

(d) The Contractor will comply with all procedures and obligations specified in its Organizational Conflict of Interest Avoidance Plan, which the Contracting Officer has approved and incorporated into this contract.

(e) The nature of the work on this contract may subject the Contractor and its employees a variety of laws and regulations relating to ethics, conflicts of interest, corruption, and other criminal or civil matters relating to the award and administration of government contracts. Recognizing that this contract establishes a high standard of accountability and trust, the Government will carefully review the Contractor's performance in relation to the mandates and restrictions found in these laws and regulations.

(f) The Contractor shall include the substance of this clause, including this

paragraph (f), suitably modified to reflect the relationship of the parties, in all subcontracts that may involve access to confidential information.

(End of clause)

1852.237–73 Release of Confidential Information.

As prescribed in 1837.203–72(b), insert the following clause:

RELEASE OF CONFIDENTIAL INFORMATION (XX/XX)

(a) As used in this clause, "confidential information" refers to information, not currently in the public domain, that the Contractor has developed at private expense, may embody trade secrets or commercial or financial information, and that may be confidential or privileged.

(b) In accomplishing management activities and administrative functions, NASA relies heavily on the services of various contractors. To perform these services, contractors, as well as their subcontractors and their individual employees, may need access to confidential information submitted by the Contractor under this contract.

(c)(1) The Contractor shall mark or otherwise identify any confidential information submitted in support of this proposal or in performing this contract. The Contracting Officer will evaluate the Contractor's claim to have submitted "confidential information," as defined above, in deciding whether NASA and its service contractors must protect and safeguard the information in accordance with the clause at 1852.237–72, Access to Confidential Information. Unless the Contracting Officer decides to challenge the Contractor's "confidential information" marking, NASA and its service contractors and their employees shall apply all of the conditions and safeguards listed in the clause at 1852.237–72.

(2) For information already in NASA's possession, the Contracting Officer shall attempt to identify the owner and afford that entity a reasonable opportunity to assert confidentiality in accordance with the principles and criteria delineated in the FAR. For purposes of asserting confidentiality, the parties may agree to use the procedures delineated in the clause at FAR 52.227–14 as a guide.

(d) Any entity that receives access to confidential information needed to assist NASA in accomplishing management activities and administrative functions must be operating under a contract that contains the clause at 1852.237–72, Access to Confidential Information. This clause obligates the receiving entity to do the following:

(1) Comply with all procedures and obligations specified in its contract, including the Organizational Conflict of Interest Avoidance Plan, which the Contracting Officer has approved and incorporated into its contract.

(2) Utilize any confidential information coming into its possession only for the purposes of performing the services specified in its contract.

(3) Safeguard confidential information coming into its possession from unauthorized use and disclosure.

(4) Allow access to confidential information only to those employees that need it to perform services under its contract.

(5) Preclude access and disclosure of confidential information to persons and entities outside of the contractor's organization.

(6) Train employees who may require access to confidential information about their obligations to utilize it only to perform the services specified in its contract and to safeguard it from unauthorized use and disclosure.

(7) Obtain an express, binding written agreement from each employee who receives access to confidential information to protect it from unauthorized use or disclosure and to utilize it only for the purposes of performing the contract.

(8) Establish a monitoring process to ensure that employees comply with all reasonable security procedures, report any breaches to the Contracting Officer, and implement any necessary corrective actions.

(e) When the receiving entity will have primary operational responsibility for an information technology system for NASA that contains confidential information, the entity's contract shall include the clause at 1852.204–76, Security Requirements for Unclassified Information Technology Resources. The Security Requirements clause requires the receiving entity to implement an Information Technology Security Plan to protect information processed, stored, or transmitted from unauthorized access, alteration, disclosure, or use. Receiving entity personnel requiring privileged access or limited privileged access to these information technology systems are subject to screening using the standard National Agency Check (NAC) forms appropriate to the level of risk for all. The Contracting Officer may allow the receiving entity to conduct its own screening, provided this entity employs substantially equivalent screening procedures.

(f) This clause does not affect NASA's responsibilities under the Freedom of Information Act.

(g) The Contractor shall insert this clause, including this paragraph (g), suitably modified to reflect the relationship of the parties, in all subcontracts that may require the furnishing of confidential information.

(End of clause)

[FR Doc. 03–29930 Filed 12–4–03; 8:45 am]

BILLING CODE 7510–01–U

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 031125288–3288–01; I.D. 110303A]

RIN 0648–AR35

Fisheries Off West Coast States and in the Western Pacific; Pacific Coast Groundfish Fishery; Amendment 16–2

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS issues this proposed rule to implement Amendment 16–2 to the Pacific Coast Groundfish Fishery Management Plan (FMP). Amendment 16–2 amends the FMP to include overfished species rebuilding plans for lingcod, canary rockfish, darkblotched rockfish, and Pacific ocean perch (POP) within the FMP. Amendment 16–2 is intended to address the requirements of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) to protect and rebuild overfished species managed under a Federal FMP. Amendment 16–2 is also intended to partially respond to a Court order, in which NMFS was ordered to provide Pacific Coast groundfish rebuilding plans as FMPs, FMP amendments, or regulations, per the Magnuson-Stevens Act.

DATES: Comments must be submitted in writing by January 5, 2004.

ADDRESSES: Comments on Amendment 16–2 or supporting documents should be sent to D. Robert Lohn, Administrator, Northwest Region, NMFS, Sand Point Way NE., BIN C15700, Seattle, WA 98115–0070. Attn: Becky Renko.

Copies of Amendment 16–2 and its associated environmental impact statement/regulatory impact analysis/initial regulatory flexibility analysis (EIS/RIR/IRFA) are available from Donald McIsaac, Executive Director, Pacific Fishery Management Council, 7700 NE Ambassador Place, Portland, OR 97220, phone: 503–820–2280.

FOR FURTHER INFORMATION CONTACT: Becky Renko (Northwest Region, NMFS), phone: 206–526–6150; fax: 206–526–6736 and; e-mail: becky.renko@noaa.gov.

SUPPLEMENTARY INFORMATION:

Electronic Access

This **Federal Register** document is also accessible via the internet at the website of the Office of the **Federal Register**'s website at: *http://www.gpoaccess.gov/fr/index.html*.

Amendment 16–2 revises the FMP to include overfished species rebuilding plans for lingcod, canary rockfish, darkblotched rockfish, and POP and adds specific rebuilding parameters to the Code of Federal Regulations (CFR) at 50 CFR 660.370, for each overfished species. This rulemaking is necessary to implement the rebuilding plans specified by Amendment 16–2.

Amendment 16–2 address the requirements of the Magnuson-Stevens Act) to protect and rebuild overfished species managed under a Federal FMP. Amendment 16–2 is also intended to partially respond to a Court order in *Natural Resources Defense Council, Inc. v. Evans*, 168 F. Supp. 2d 1149 (N.D. Cal 2001,), in which NOAA Fisheries was ordered to provide Pacific Coast groundfish rebuilding plans as FMPs, FMP amendments, or regulations, per the Magnuson-Stevens Act. A Notice of Availability for Amendment 16–2 was published on November 7, 2003 (68 FR 63053).

This proposed rule is based on recommendations of the Council, under the authority of the Pacific Coast Groundfish FMP and the Magnuson-Stevens Act. Background information and the Council's recommendations are summarized below. Further detail appears in the EIS/RIR/IRFA prepared by Council staff for Amendment 16–2.

Background

In the fall of 2000, NMFS had approved the first three rebuilding plans for lingcod, boccacio, and POP (September 5, 2000, 65 FR 53646). Subsequently, requirements for developing overfished species rebuilding plans were addressed in Amendment 12 to the FMP, which were submitted for public review (September 8, 2000, 65 FR 54475) and approved by NMFS on December 7, 2000.

During NMFS's review of Amendment 12, the agency considered whether the three previously approved rebuilding plans met the requirements of Amendment 12 and concluded that the plans did not. As a result, NMFS instructed the Council to re-submit the rebuilding plans for lingcod, boccacio, and POP. The final rule to implement Amendment 12 describes NMFS's revocation of the lingcod, boccacio, and POP rebuilding plans (December 29, 2000, 65 FR 82947). In the absence of final rebuilding plans approved by NMFS, the groundfish fishery has continued to operate under interm rebuilding measures for these species.

While NMFS and the Council were developing rebuilding plans that were consistent with the requirements of Amendment 12, NMFS notified the Council that canary rockfish and cowcod were overfished and that Council must submit rebuilding plans for these species (On January 4, 2000 65 FR 221). On January 11, 2001 (66 FR 2338), NMFS notified the Council that darkblotched and widow rockfish were overfished and that Council must submit rebuilding plans for these species.

On August 20, 2001, a Federal magistrate ruled in *National Resources Defense Council, Inc. v. Evans* (N.D. Cal. 2001) that rebuilding plans under the FMP must be in the form of a plan amendment or proposed regulations as specified by the Magnuson-Stevens Act, 16 U.S.C. 1854 (e)(3). In accordance with the Court ruling, the magistrate issued an order setting aside those portions of Amendment 12 dealing with rebuilding plans (Amendment 12 provided a framework for rebuilding plans that were not themselves plan amendments or proposed regulations). As a result of the magistrate's decision, the Council was required to amend the FMP to make rebuilding plans consistent with the Magnuson-Stevens Act.

On January 11, 2002 (67 FR 1555), NMFS notified the Council that yelloweye rockfish was overfished and that the Council must submit a rebuilding plan. On April 15, 2002 (67 FR 18117), NMFS notified the Council that Pacific whiting was overfished and that the Council must submit a rebuilding plan.

Amendment 16–1 was prepared in part to respond to the court order. Amendment 16 1 establishes a process for and standards by which the Council will specify rebuilding plans for groundfish stocks that are declared overfished. Amendment 16–1 also amends the FMP to require that Pacific Coast groundfish overfished species rebuilding plans be added into the FMP via FMP amendment, and implemented through Federal regulations. Amendment 16 1 is intended to ensure that overfished species rebuilding plans meet the requirements of the Magnuson-Stevens Act, in particular National Standard 1 on overfishing and section 304(e), which addresses rebuilding of overfished fisheries. NMFS approved Amendment 16–1 on November 14, 2003. A proposed rule to codify provisions of Amendment 16–1 was published in the **Federal Register** on September 5, 2003 (68 FR 52732).

For each approved overfished species rebuilding plan, the following parameters will be specified in the FMP: estimates of unfished biomass (B_0) and target biomass (B_{MSY}), the year the stock would be rebuilt in the absence of fishing (T_{MIN}), the year the stock would be rebuilt if the maximum time period permissible under National Standard Guidelines were applied (T_{MAX}) and the target year in which the stock would be rebuilt under the adopted rebuilding plan (T_{Target}). Other relevant information listed in Amendment 16–1 will also be included in the FMP, including the probability of the stock attaining B_{MSY} by T_{MAX} (P_{MAX}). These estimated rebuilding parameters will serve as management benchmarks in the FMP and the FMP will not be amended if the values for these parameters change after new stock assessments are completed, as is likely to happen.

As required by the standards established by Amendment 16–1, the rebuilding plans being adopted under Amendment 16–2 for lingcod, canary rockfish, darkblotched rockfish, and POP include B_0, B_{MSY}, T_{MIN}, T_{MAX}, and T_{Target} for each species. If adopted, Amendment 16–2 would add these parameters to section 4.5.4. of the FMP. Other relevant information on each of these overfished stocks, such as stock distribution, fishery interaction, and the rebuilding strategy would also be added to section 4.5.4 of the FMP if the rebuilding plans proposed under Amendment 16–2 are adopted.

Amendment 16–1 specified two rebuilding parameters that are to be codified in Federal regulations for individual species rebuilding plans. This proposed rule adds these rebuilding parameters to the Code of Federal Regulations (CFR) at 50 CFR 660.370. These parameters are the target year for rebuilding and the harvest control rule that is to be used during the rebuilding period. The target rebuilding year is the year in which there is a 50 percent likelihood that the stock will have been rebuilt with a given mortality rate. The harvest control rule expresses a given fishing mortality rate that is to be used over the course of rebuilding. These parameters would be used to establish the annual optimum yields (OYs). Conservation and management goals defined in the FMP require the Council and NMFS to manage to the appropriate harvest levels for a species or species groups, including those harvest levels established for rebuilding overfished species.

If, after a new stock assessment, the Council and NMFS conclude that either

or both of the parameters defined in regulation should be revised, the revision will be implemented through the Federal rulemaking process, and the updated values codified in the Federal regulation. Generally, the target year should only be changed in unusual circumstances. Two such unusual circumstances include (1) if, it is determined, based on new information, that the existing target year is later that the maximum rebuilding time (T_{MAX}), (2) or if the harvest control rule calculated from the new information is estimated to result in such a low OY as to cause substantial socio-economic impacts. Any change to a harvest control rule must be fully supported by a corresponding analysis and updated through the Federal rulemaking process which would include opportunity for public notice and comment.

An approved rebuilding plan will be implemented through setting OYs and establishing management measures necessary to maintain the fishing mortality within the OYs to achieve objectives related to rebuilding requirements.

At the Council's June 2003 meeting, rebuilding plans for lingcod, canary rockfish, darkblotched rockfish, and POP were adopted and include the parameters listed below. When making the recommendation to implement these rebuilding plans, the Council sought to balance the rebuilding risks to each stock with the short and long-term socio-economic costs borne by groundfish buyers, commercial harvesters, and recreational operators as a result of constraining the fisheries to reduce total mortality of these overfished species.

Amendment 16–2 will be followed by Amendment 16–3. A notice of intent to prepare an Environmental Impact Statement (EIS) was published on September 12, 2003 (68 FR 53712) for Amendment 16–3. If approved, Amendment 16–3 will contain rebuilding plans for bocaccio, cowcod, widow rockfish and yelloweye rockfish. The Council is scheduled to take final action on the Amendment 16–3 rebuilding plans at its April 2004 meeting. A Draft EIS is scheduled for publication in June 2004.

Lingcod

Lingcod are irregularly distributed coastwide in hard bottom areas and around rocky reefs and are encountered in a variety of commercial and recreational fisheries. Lingcod is also an important recreational species coastwide. North of 40°10′ N. lat., limited entry trawl and limited entry fixed gear vessels have historically landed a substantial portion of the lingcod landings in that area. The open access sector, which is comprised of many types of fixed gear and uses a variety of strategies, has also accounted for a substantial portion of the lingcod mortality.

Date declared overfished: March 3, 1999.

Status of the stock when declared overfished: In 1999 the biomass was believed to be at 10 percent of its unfished biomass level. A coastwide assessment was conducted in 2000 and confirmed that the stock was overfished coastwide.

B_0: 22,882 mt north and 20,971 mt south

B_{MSY}: 9,153 mt north and 8,389 south

T_{MIN}: 2007

T_{MAX}: 2009

P_{MAX}: 60 percent

T_{TARGET}: 2009

Harvest control rule: F=0.00531 north and F=0.061 south

Rebuilding strategy at the time of rebuilding plan adoption: Management measures intended to limit bycatch of lingcod include the use of Rockfish Conservation Areas (RCAs) to restrict fishing in areas where overfished species are most likely to occur, and the use of cumulative trip limits. Small trip limits are allowed in the trawl fishery to accommodate true incidental catch. Lingcod landings by the limited entry fixed gear and open access fisheries are severely limited during the summer months and have been prohibited during the winter months. Lingcod are vulnerable to these gears during the winter nesting period, but have a high rate of survival when released alive. In addition to recreational bag limits, similar season restrictions have been used in the California and Washington recreational fisheries during the winter months.

Canary rockfish

Canary rockfish prefer rocky areas on the continental shelf (shelf) and are encountered in a wide variety of commercial and recreational fisheries. Limited entry vessels targeting flatfish and arrowtooth flounder have accounted for a large portion of the landed catch north of 40°10′ N. lat. Smaller amounts are taken during the primary whiting season and DTS (Dover sole-thornyhead-sablefish complex) trawl fishery, as well as by fixed gear vessels targeting groundfish on the shelf. Recreational vessels, mainly off the coast of northern California, account for most of the recreational catch of canary rockfish.

Date declared overfished: January 4, 2000 (65 FR 221)

Status of the stock when declared overfished: 22 percent of its unfished biomass level north of Cape Blanco and 8 percent of its unfished biomass level south of Cape Blanco.

B_0: 31,550 mt

B_{MSY}: 12,620 mt

T_{MIN}: 2057

T_{MAX}: 2076

P_{MAX}: 60 percent

T_{TARGET}: 2074

Harvest control rule: F=0.022

Rebuilding strategy at the time of rebuilding plan adoption: Management measures intended to limit bycatch of canary rockfish include the use of RCAs and cumulative trip limits. Bottom trawling is prohibited in the trawl RCA, which covers depths where canary rockfish have been most frequently caught. Cumulative limits are structured to discourage targeting while allowing very low levels of incidental take to be landed. In addition, differential trip limits have been used for large and small footrope trawl gear. By allowing greater limits for large footrope gear and prohibiting its use in nearshore areas, there is an incentive for vessels to fish in deeper waters, beyond the range of canary rockfish.

Recreational fisheries are managed through bag limits, size limits and seasons. As necessary, seasons can be shortened and bag limits reduced to stay within the OY.

Darkblotched rockfish

Darkblotched rockfish occurs on the outer shelf and continental slope (slope), mainly north of Point Reyes (38° N. lat.). Because of their deeper distribution, they are caught exclusively by commercial vessels. Most landings have been made by bottom trawl vessels targeting flatfish on the shelf, and rockfish and the DTS species on the slope.

Date declared overfished: January 11, 2001 (66 FR 2338)

Status of the stock when declared overfished: following a 2000 stock assessment the coastwide stock was believed to be at 22 percent of its unfished biomass level.

B_0: 29,044 mt

B_{MSY}: 11,618 mt

T_{MIN}: 2014

T_{MAX}: 2047

P_{MAX}: 80 percent

T_{TARGET}: 2030

Harvest control rule: F=0.027

Rebuilding strategy at the time of rebuilding plan adoption: Management measures intended to limit bycatch of darkblotched rockfish include the use of RCAs and cumulative trip limits. The boundaries of the RCAs vary by season and fishing sector and may be modified in response to new information about

geographical and seasonal distribution of bycatch. The seaward boundary of the trawl RCA was set at a depth that was likely to keep fishing effort in deeper waters and away from areas where the bycatch of darkblotched rockfish was highest. During the winter months, modifications to the line allow for the harvest of flatfish while minimizing the impacts on darkblotched rockfish.

Cumulative limits for the minor slope rockfish species (the complex that darkblotched rockfish is managed under) north of 40°10′ N. lat. and splitnose rockfish were lowered to reduce the potential take of darkblotched rockfish. As needed, trip limits for other co-occurring species may be adjusted to reduce darkblotched rockfish bycatch.

POP

POP tend to occur in similar depths as darkblotched rockfish, although they have a more northern geographic distribution. POP are caught in similar fisheries as darkblotched rockfish north of 40°10′ N. lat. Limited entry trawl vessels targeting flatfish, including petrale sole and arrowtooth flounder, account for more than 90 percent of all POP landings. POP are not an important component of the recreational fisheries.

Date declared overfished: March 3, 1999

Status of the stock when declared overfished: following a 1998 stock assessment of POP in the Vancouver and Columbia area, the stock was believed to be at 13 percent of unfished biomass level.

B_0: 60,212 units of spawning output

B_{MSY}: 24,084 units of spawning output

T_{MIN}: 2012

T_{MAX}: 2042

P_{MAX}: 70 percent

T_{TARGET}: 2027

Harvest control rule: F=0.0082

Rebuilding strategy at the time of rebuilding plan adoption: Management measures intended to limit the bycatch of POP include the use of RCAs to restrict fishing in areas where overfished species are found and cumulative trip limits. Because POP co-occur with darkblotched rockfish, measures to reduce the incidental catch of darkblotched rockfish benefit POP. These measures include seaward trawl RCA boundaries that are established to keep fishing effort in deeper water where POP are less abundant, and cumulative limits for POP and minor slope rockfish that are intended to discourage targeting while allowing low levels of incidental catch to be landed. As needed, trip limits for other co-occurring species may be adjusted to reduce darkblotched rockfish bycatch.

Classification

At this time, NMFS has not determined whether Amendment 16–2, which this proposed rule would implement, is consistent with the national standards of the Magnuson-Stevens Act and other applicable laws. NMFS, in making that determination, will take into account the data, views, and comments received during the comment period.

The Council prepared a draft Environmental Impact Statement (EIS) that discusses the effects on the environment as a result of this action. A notice of availability was published on September 19, 2003 (68 FR 54900). A copy of the EIS is available from the Council office. (see **ADDRESSES**)

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

The Council has prepared an IRFA, as required by section 603 of the Regulatory Flexibility Act. The IRFA describes the economic impact this proposed rule, if adopted, would have on small entities. A copy of the full analysis is available from the Council office (see **ADDRESSES**). A summary of the analysis follows.

The purpose of this proposed action is to implement rebuilding plans for four overfished species, lingcod, canary rockfish, darkblotched rockfish and POP. This action is necessary to meet the Magnuson-Seven Act requirements for overfished stocks which are defined in the National Standard Guidelines (50 CFR 600.310). National Standard 1 requires that remedial action be taken by preparing an FMP, FMP amendment or proposed regulation to end overfishing if it is occurring, rebuild overfished stocks to the maximum sustainable yield (MSY) level within an appropriate time frame, and to prevent stocks from becoming overfished if they are approaching an overfished threshold. The objective of this proposed rule is to implement rebuilding parameters that will result in lingcod, canary rockfish, darkblotched rockfish and POP stocks returning to their MSY biomass levels.

There are no recordkeeping, reporting, or other compliance issues forthcoming from this proposed rule. This proposed rule does not duplicate, overlap, or conflict with other Federal rules.

The EIS/RIR/IRFA for this rule defines six alternative actions that were considered for each of the four overfished species. The alternatives present a range of rebuilding strategies in terms of rebuilding probabilities for each species. The no action alternative would be based on the "40–10 harvest policy", which is the default rebuilding policy for setting OYs. Under the 40–10 harvest policy, stocks with biomass levels below B40% have OYs set in relation to the biomass level. At B40%, an OY may be set equal to the ABC. However, if a stock's spawning biomass declines below B40%, the OY is scaled downward until at 10 percent (B10%) the harvest OY is set at zero unless modified for a species-specific rebuilding plan. In comparison to the other alternatives, (except the maximum conservation alternative) the 40–10 policy can result in lower OYs in the short term, when a stock is at a low biomass level, but allow greater harvests when a stock is at higher biomass levels. For further information on the 40–10 policy see the preamble for the annual specifications and management measures published on January 8, 1999 (64 FR 1316) or Section 5.3 of the FMP. The 40–10 policy alternative could require short-term reductions in OYs for stocks at lower biomass levels than would be required under the other alternatives, except the maximum conservation alternative. Such reductions could result in reduced profits, income, and employment in a wide range of groundfish fisheries over a longer period of time than would occur with the other alternatives.

The maximum conservation alternative, based on a harvest mortality rate of zero, would be in place for each stock until the individual stock was rebuilt, resulting in the target rebuilding period for each stock being equal to TMIN. Each stock could be expected to rebuild fastest under this alternative, but at considerable socioeconomic cost. Because canary and darkblotched rockfish are caught in a wide range of other fisheries, a zero harvest mortality rate would likely result in the closure of other fisheries. The rebuilding of these stocks, even in the absence of fishing, is likely to result in many current participants in the commercial recreational fisheries as well as supporting businesses going out of business.

The maximum harvest alternative for each overfished species was based on a 50 percent probability of rebuilding the stocks to their MSY biomass levels by T_{MAX}. This alternative would delay rebuilding for the longest period of time with the intent of keeping harvests at the highest allowable levels for the duration of rebuilding. As a result, this alternative would have the least socioeconomic impact, in the short-term. Delaying the rebuilding period under the maximum harvest alternative

can also be expressed as the level of risk to the overfished stocks. Further delay in rebuilding could have a greater socioeconomic impact than the other alternatives, if currently healthy stocks were overfished.

Intermediate alternatives were defined for each overfished species and were based on 60-,70–and 80–percent probabilities of rebuilding the stocks to their MSY biomass by T_{MAX}. The socio-economic impacts of the intermediate values fall within the range of the other alternatives that were fully analyzed in EIS analysis. Quantifying the differences between these alternatives is difficult given the lack of detailed socio-economic data.

The mixed stock exception alternative would allow higher harvests of canary rockfish and could be combined with any of alternatives (except the no action alternative). Since the demands of rebuilding canary rockfish will affect a range of fisheries, (because it constrains stocks), relaxing this constraint under any of the alternatives would allow a higher harvest level in some fisheries. However, fisheries with little or no canary rockfish bycatch, but with bycatch of other overfished species, would not necessarily benefit. This alternative was not considered for POP or lingcod, since they do not constrain stocks in fisheries where they are targeted or incidentally caught.

The last set of alternatives considered were the Council's preferred alternatives for each species and are as follows: lingcod - 60 percent probability of rebuilding the stock to its MSY biomass by T_{max} with a T_{TARGET} of 2009 and a harvest rate of 0.0531 in the North and 0.0610 in the south; canary rockfish - 60 percent probability of rebuilding the stock to its MSY biomass by T_{MAX} with a T_{TARGET} of 2074 and a harvest rate of 0.0220, darkblotched rockfish - 80–percent probability of rebuilding the stock to its MSY biomass by T_{MAX} with a T_{TARGET} of 2030 and a harvest rate of 0.027, and POP - 70–percent probability of rebuilding the stock to its MSY biomass by T_{MAX} with a T_{TARGET} of 2027 and a harvest rate of 0.0082. The Council's preferred alternatives, were taken from the range of intermediate alternatives for each species.

A fish-harvesting business is considered a "small" business by the Small Business Administration (SBA) if it has annual receipts not in excess of $3.5 million. The economic impacts of implementing these rebuilding plans will be shared among the participants. Approximately 1,560 vessels participate in the West Coast groundfish fisheries. Of those, about 410 vessels are registered to limited entry permits issued for either trawl, longline, or pot gear. About 1,150 vessels land groundfish against open access limits while either directly targeting groundfish or taking groundfish incidentally in fisheries directed at non-groundfish species. All but 10–20 of those vessels are considered small businesses by the SBA. Of the 450 groundfish buyers that regularly purchase groundfish, 38 buyers purchased groundfish product in excess of $1,000,000 in 2002. In the 2001 recreational fisheries, there were 106 Washington charter vessels engaged in salt water fishing outside of Puget Sound, 232 charter vessels active on the Oregon coast and 415 charter vessels active on the California coast. NMFS does not know the proportion of recreational charter vessel operations that would be considered large businesses, but the agency believes that the majority of these businesses would be considered "small" businesses by the SBA. This proposed rule is not expected to yield disproportionate economic impacts between those small and large entities.

Implementation of specific rebuilding plans may entail substantial economic impacts on some groundfish buyers, commercial harvesters, and recreational operators. The Council preferred rebuilding alternatives specify annual OY levels for the overfished species that are sufficient to mitigate some of the adverse economic impacts on these entities, while not compromising the statutory requirement for timely rebuilding. NMFS welcomes comments on this issue (see **ADDRESSES**) and will notify the public of its final determination as to whether the action will result in a significant impact on a substantial number of small entities and will advise the SBA in the final rule for this action.

This action was developed after meaningful consultation and collaboration with tribal representatives on the Council who have agreed with the provisions that apply to tribal vessels and is, therefore, compliant with Executive Order 13175 (Consultation and coordination with Indian tribal governments).

List of Subjects in 50 CFR Part 660

Administrative practice and procedure, American Samoa, Fisheries, Fishing, Guam, Hawaiian Natives, Indians, Northern Mariana Islands, Reporting and recordkeeping requirements.

Dated: December 2, 2003.

William T. Hogarth,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 660 is proposed to be amended as follows:

PART 660—FISHERIES OFF WEST COAST STATES AND IN THE WESTERN PACIFIC

1. The authority citation for part 660 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. Section 660.370, "Overfished species rebuilding plans" is added to read as follows:

§ 660.370 Overfished species rebuilding plans.

(a) *Canary rockfish.* The target date for rebuilding the canary rockfish stock to B_{MSY} is 2074. The harvest control rule to be used to rebuild the canary rockfish stock is an annual harvest rate of F=0.022.

(b) *Darkblotched rockfish.* The target year for rebuilding the darkblotched rockfish stock to B_{MSY} is 2030. The harvest control rule to be used to rebuild the darkblotched rockfish stock is an annual harvest rate of F=0.027.

(c) *Lingcod.* The target year for rebuilding the lingcod stock to B_{MSY} is 2009. The harvest control rule to be used to rebuild the lingcod stock is an annual harvest rate of F=0.0531 in the area north of 40°10 N. lat. and F=0.061 for the area south of 40°10 N. lat.

(d) *Pacific ocean perch (POP).* The target year for rebuilding the POP stock to B_{MSY} is 2027. The harvest control rule to be used to rebuild the POP stock is an annual harvest rate of F=0.0082.

[FR Doc. 03–30284 Filed 12–4–03; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 031125292–3292–01; I.D. 111703E]

Fisheries of the Exclusive Economic Zone Off Alaska; Gulf of Alaska; Proposed 2004 Harvest Specifications for Groundfish

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed 2004 harvest specifications for groundfish; request for comments.

SUMMARY: NMFS proposes 2004 harvest specifications for groundfish, reserves and apportionment thereof, Pacific halibut prohibited species catch (PSC) limits, for the groundfish fishery of the Gulf of Alaska (GOA). This action is necessary to establish harvest limits for groundfish during the 2004 fishing year. The intended effect of this action is to conserve and manage the groundfish resources in the GOA in accordance with the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

DATES: Comments must be received by January 5, 2004.

ADDRESSES: Comments must be sent to Sue Salveson, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802, Attn: Lori Durall, or delivered to room 401 of the Federal Building, 709 West 9th Street, Juneau, AK. Comments also may be sent via facsimile (fax) to 907–586–7557. Comments will not be accepted if submitted via e-mail or Internet.

Copies of the final 2002 Stock Assessment and Fishery Evaluation (SAFE) reports, dated November 2002, are available from the North Pacific Fishery Management Council, West 4th Avenue, Suite 306, Anchorage, AK, 99510 or from its home page at *http://www.fakr.noaa.gov/npfmc*. Copies of the draft Environmental Assessment/Initial Regulatory Flexibility Analysis (EA/IRFA) prepared for this action are available from NMFS (see **ADDRESSES**) and comments must be received by January 5, 2004.

FOR FURTHER INFORMATION CONTACT: Tom Pearson, Sustainable Fisheries Division, Alaska Region, 907–481–1780 or e-mail at *tom.pearson@noaa.gov*.

SUPPLEMENTARY INFORMATION:

Background

NMFS manages the groundfish fisheries in the exclusive economic zone off Alaska under the Fishery Management Plan (FMP) for Groundfish of the GOA. The North Pacific Fishery Management Council (Council) prepared the FMP under the authority of the Magnuson-Stevens Act, 16 U.S.C. 1801, *et seq.* Regulations governing U.S. fisheries and implementing the FMP appear at 50 CFR parts 600 and 679.

The FMP and implementing regulations require NMFS, after consultation with the Council, to specify annually the total allowable catch (TAC) for each target species and for the "other species" category, the sum of which must be within the optimum yield (OY) range of 116,000 to 800,000 metric tons (mt) (§ 679.20(a)(1)(ii)). Regulations at § 679.20(c)(1) further require NMFS to publish annually, and solicit public comment on, proposed annual TACs, halibut PSC amounts, and seasonal allowances of pollock, and inshore/offshore Pacific cod. The proposed specifications set forth in Tables 1 through 9 of this document satisfy these requirements. For 2004, the sum of the proposed TAC amounts is 277,797 mt. Under § 679.20(c)(3), NMFS will publish the final specifications for 2004 after (1) considering comments received within the comment period (see **DATES**), (2) consulting with the Council at its December 2003 meeting, and (3) considering new information presented in the EA and the final 2003 SAFE reports prepared for the 2004 fisheries.

Regulations at § 679.20(c)(2)(i) provide that one-fourth of each proposed TAC and apportionment thereof (not including the reserves and the first seasonal allowances of pollock and Pacific cod), one-fourth of the proposed halibut PSC amounts, and the proposed first seasonal allowances of pollock and Pacific cod will become effective 0001 hours, Alaska local time (A.l.t.) January 1, 2004, on an interim basis and remain in effect until superseded by the final harvest specifications, which will be published in the **Federal Register**. Without interim specifications in effect on January 1, the groundfish fisheries would not be able to open on that date, which would result in disruption to the fishing industry. The interim harvest specifications will be published by NMFS in the **Federal Register** prior to January 1, 2004.

Proposed Acceptable Biological Catch (ABC) and TAC Specifications

The proposed ABC and TAC for each species or species group are based on the best available biological and socioeconomic information, including projected biomass trends, information on assumed distribution of stock biomass, and revised methods used to calculate stock biomass. The Council, its Advisory Panel (AP), and its Scientific and Statistical Committee (SSC) reviewed current biological and harvest information about the condition of groundfish stocks in the GOA in October 2003. Most of this information was initially compiled by the Council's GOA Plan Team (Plan Team) and is presented in the final 2002 SAFE report for the GOA groundfish fisheries, dated November 2002. The Plan Team annually produces such a document as the first step in the process of specifying TACs. The SAFE report contains a review of the latest scientific analyses and estimates of each species' biomass and other biological parameters, as well as summaries of the available information on the GOA ecosystem and the economic condition of the groundfish fisheries off Alaska. From these data and analyses, the Plan Team estimates an ABC for each species category. The 2002 SAFE report will be updated to include new information collected during 2003. Revised stock assessments will be made available by the Plan Team in November 2003 and will be included in the final 2003 SAFE report, which will be available in December 2003.

Based on the recommendations from the SSC for overfishing levels (OFLs) and from the SSC and AP for ABCs, the Council recommended the OFLs and ABCs for stocks in tiers 3 and above, except for pollock, be based on biomass projections as set forth in the 2002 SAFE report and estimates of groundfish harvests through the 2003 fishing year. The Council recommended that OFL and ABC levels for those stocks in tiers 4 and below, for which projections cannot be made, remain unchanged from 2003 levels (Table 1).

The SSC adopted the OFL and ABC recommendations from the Plan Team for all groundfish species. In the 2002 SAFE report, the ABC projection for 2004 is 65,400 mt for the combined Western, Central, and West Yakutat (W/C/WYK) GOA stock of pollock. The Plan Team did not endorse the ABC projection because the NMFS 2003 winter Shelikof survey estimates indicate that the biomass level is lower than projected and because it represents a substantial increase from the 2003 ABC. The Plan Team recommended that the 2003 ABC of 47,890 mt for the W/C/WYK pollock stock be rolled over in the proposed specifications given the apparent pessimistic survey results from the NMFS winter survey in the GOA. The SSC concurred with the pollock assessment recommendation that OFL and ABC levels be unchanged from 2003 levels until a formal stock assessment can be completed.

As in 2003, the SSC's, AP's and Council's recommendation for the method of apportioning the sablefish ABC among management areas includes commercial fishery and survey data. NMFS stock assessment scientists believe that the use of unbiased commercial fishery data reflecting catch-per-unit effort provides a desirable input for stock distribution assessments. The use of commercial

fishery data is evaluated annually to assure that unbiased information is included in stock distribution models. The Council's recommendation for sablefish area apportionments also takes into account the prohibition on the use of trawl gear in the Southeast Outside (SEO) District of the Eastern GOA and makes available 5 percent of the combined Eastern GOA ABCs to trawl gear for use as incidental catch in other directed groundfish fisheries in the West Yakutat District.

The AP and Council recommended that the ABC for Pacific cod in the GOA be apportioned among regulatory areas based on the three most recent NMFS summer trawl surveys. As in previous years, the Plan Team, SSC, and Council recommended that total removals of Pacific cod from the GOA not exceed ABC recommendations. Accordingly, the Council recommended that the TACs be adjusted downward from the ABCs by amounts equal to the 2004 guideline harvest levels (GHL) established for Pacific cod by the State of Alaska (State) for the state managed fisheries in the GOA. The effect of the State's GHL on the Pacific cod TAC is discussed in greater detail below. For 2004, NMFS proposes to establish an A season directed fishing allowance (DFA) for the Pacific cod fisheries in the GOA based on the management area TACs less the recent average A season incidental catch of Pacific cod in each management area before June 10 (*see* § 679.20(d)(1)). The DFA and incidental catch before June 10 will be managed such that harvest in the A season will be no more than 60 percent of the annual TAC. Incidental catch taken after June 10 will continue to be taken from the B season TAC. NMFS believes that this action would better reflect the intention behind management measures analyzed in the 2001 Steller Sea Lion Protection Measures Supplemental Environmental Impact Statement to achieve temporal dispersion of the Pacific cod fisheries. NMFS believes that this action would reduce the likelihood of harvest exceeding 60 percent of the annual TAC in the A season (January 1 through June 10). The Council will continue to explore and analyze management alternatives for the Pacific cod fisheries through its Steller Sea Lion Mitigation Committee and in the development of its Gulf Rationalization Plan.

For 2004, the Councils recommended and NMFS proposed the ABCs listed in Table 1. These amounts reflect harvest amounts that are less than the specified overfishing amounts. The sum of 2004 ABCs for all assessed groundfish is 409,690 mt, which is lower than the 2003 ABC total of 416,600 mt.

Specification and Apportionment of TAC Amounts

The Council adopted the AP's proposals for the 2004 GOA TAC amounts. The Council recommended TACs that are equal to ABCs for pollock, deep-water flatfish, rex sole, sablefish, shortraker and rougheye rockfish, northern rockfish, pelagic shelf rockfish, thornyhead rockfish, demersal shelf rockfish, and Atka mackerel. The Council-recommended TACs that are less than the ABCs for Pacific cod, flathead sole, shallow-water flatfish, arrowtooth flounder, Pacific ocean perch, and other rockfish.

The apportionment of annual pollock TAC among the Western and Central Regulatory Areas of the GOA reflects the seasonal biomass distribution and is discussed in greater detail below. The annual pollock TAC in the Western and Central Regulatory Areas of the GOA is divided into four equal seasonal apportionments. Twenty-five percent of the annual TAC in the Western and Central Regulatory Areas of the GOA is apportioned to each of the A season (January 20 through February 25), the B season (March 10 through May 31), the C season (August 25 through September 15), and the D season (October 1 through November 1) in Statistical Areas 610, 620, and 630 of the GOA (see § 679.23(d)(2)(i) through (iv) and § 679.20(a)(5)(iii)(B)).

The 2004 Pacific cod TAC is affected by the state's developing fishery for Pacific cod in state waters in the Central and Western GOA, as well as in Prince William Sound (PWS). The SSC, AP, and Council recommended that the sum of all state and Federal water Pacific cod removals should not exceed the ABC. Accordingly, the Council recommended that Pacific cod TAC be reduced from ABC levels to account for State GHLs in each regulatory area of the GOA so that the TAC for (1) the Eastern GOA be lower than the ABC by 290 mt, (2) the Central GOA be lower than the ABC by 6,038 mt, and (3) the Western GOA be lower than the ABC by 4,662 mt. These amounts reflect the sum of State's 2004 GHLs in these areas, which are 10 percent, 23 percent, and 25 percent of the Eastern, Central, and Western GOA ABCs, respectively.

NMFS is also establishing seasonal apportionments of the annual Pacific cod TAC in the Western and Central Regulatory Areas at 60 percent of the annual TAC to the A season for hook-and-line, pot or jig gear from January 1 through June 10 and for trawl gear from January 20 through June 10; and at 40 percent of the annual TAC to the B season for hook-and-line, pot or jig gear from September 1 through December 31 and for trawl gear from September 1 through November 1 (*see* §§ 679.23(d)(3) and 679.20(a)(11)). These seasonal apportionments of the annual Pacific cod TAC are discussed in greater detail below.

The FMP specifies that the TAC for the "other species" category is calculated as 5 percent of the combined TAC amounts for target species. The 2004 GOA-wide "other species" TAC is 10,847 mt, which is 5 percent of the sum of the combined TAC amounts (216,950 mt) for the assessed target species. The sum of the TACs for all GOA groundfish is 227,797 mt, which is within the OY range specified by the FMP. The sum of the 2004 TACs is lower than the 2003 TAC sum of 236,440 mt. NMFS finds that the Council's recommendations for proposed OFL, ABC, and TAC amounts are consistent with the biological condition of groundfish stocks as adjusted for other biological and socioeconomic considerations, including maintaining the total TAC within the required OY range of 116,000 to 800,000 mt. The proposed 2004 ABCs, TACs, and OFLs are shown in Table 1.

In October 2003, the Council took final action on Amendment 63 to the GOA FMP. This action, if approved, would remove skates from the "other species" assemblage in the GOA and establish OFL and ABC levels for skates on an annual basis. The EA/RIR/IRFA for Amendment 63 is included in the EA/IRFA for the annual specifications and is available from NMFS (*see* ADDRESSES). The EA for Amendment 63 examines a range of alternatives for the management of skates in the GOA. The alternatives range from a single gulfwide OFL, ABC, and TAC for all skate species in the GOA to multiple OFLs, ABCs, and TACs by management area (the Western, Central, and Eastern GOA) and by skate species targeted in directed fisheries (big skate, longnose skate, and all other skate species). At its October meeting, the Council did not recommend specific amounts for the 2004 OFL, ABC, and TAC levels for skates in the GOA pending an updated skate assessment using the most recent data collected in 2003. The updated skate assessment will be included in the final 2003 SAFE report, which will not be available for the Council's consideration until December 2003. At that time, the Council will make final recommendations for skate OFL, ABC, and TAC amounts in the GOA for the 2004 fishing year. These will be

reflected in the final harvest specifications for the 2004 fishing year.

TABLE 1.—PROPOSED 2004 ABCS, TACS, AND OVERFISHING LEVELS OF GROUNDFISH FOR THE WESTERN/CENTRAL/WEST YAKUTAT (W/C/WYK), WESTERN (W), CENTRAL (C), EASTERN (E) REGULATORY AREAS, AND IN THE WEST YAKUTAT (WYK), SOUTHEAST OUTSIDE (SEO), AND GULF-WIDE (GW) DISTRICTS OF THE GULF OF ALASKA

[Values are rounded to the nearest metric ton]

Species/Area [1]	ABC	TAC	Overfishing
Pollock:[2]			
Shumagin (610)	16,788	16,788	
Chirikof (620)	19,685	19,685	
Kodiak (630)	10,339	10,339	
WYK (640)	1,078	1,078	
Subtotal: W/C/WYK	47,890	47,890	90,900
SEO (650)	6,460	6,460	8,610
Total	54,350	54,350	99,510
Pacific cod:[3]			
W	18,649	13,987	
C	26,254	20,215	
E	2,897	2,607	
Total	47,800	36,809	63,700
Flatfish [4] (deep-water):			
W	180	180	
C	2,220	2,220	
WYK	1,330	1,330	
SEO	1,150	1,150	
Total	4,880	4,880	6,430
Rex sole:			
W	1,280	1,280	
C	5,540	5,540	
WYK	1,600	1,600	
SEO	1,050	1,050	
Total	9,470	9,470	12,320
Flathead sole:			
W	14,916	2,000	
C	18,914	5,000	
WYK	2,634	2,634	
SEO	1,136	1,136	
Total	37,600	10,770	46,600
Flatfish [5] (shallow-water):			
W	23,480	4,500	
C	21,740	13,000	
WYK	1,160	1,160	
SEO	2,960	2,960	
Total	49,340	21,620	61,810
Arrowtooth flounder:			
W	18,670	8,000	
C	117,320	25,000	
WYK	18,877	2,500	
SEO	6,133	2,500	
Total	161,000	38,000	188,300
Sablefish [6]			
W	1,968	1,968	
C	4,931	4,931	
WYK	1,776	1,776	
SEO	2,726	2,726	
Subtotal E	4,502	4,502	
Total	11,400	11,400	16,500
Pacific [7] ocean perch:			
W	2,728	2,700	
C	8,597	8,510	
WYK	818	810	
SEO	1,657	1,640	

TABLE 1.—PROPOSED 2004 ABCS, TACS, AND OVERFISHING LEVELS OF GROUNDFISH FOR THE WESTERN/CENTRAL/WEST YAKUTAT (W/C/WYK), WESTERN (W), CENTRAL (C), EASTERN (E) REGULATORY AREAS, AND IN THE WEST YAKUTAT (WYK), SOUTHEAST OUTSIDE (SEO), AND GULF-WIDE (GW) DISTRICTS OF THE GULF OF ALASKA—Continued

[Values are rounded to the nearest metric ton]

Species/Area [1]	ABC	TAC	Overfishing
Subtotal E			
Total	13,800	13,660	16,400
Short raker/rougheye: [8]			
W	220	220	
C	840	840	
E	560	560	
Total	1,620	1,620	2,340
Other rockfish [9,10]			
W	90	90	
C	550	550	
WYK	270	150	
SEO	4,140	200	
Total	5,050	990	6,610
Northern rockfish [10,12,15]			
W	789	789	
C	4,111	4,111	
E	N/A	N/A	
Total	4,900	4,900	5,800
Pelagic shelf rockfish: [13]			
W	510	510	
C	3,480	3,480	
WYK	640	640	
SEO	860	860	
Total	5,490	5,490	8,220
Thornyhead rockfish:			
W	360	360	
C	840	840	
E	800	800	
Total	2,000	2,000	3,050
Demersal self rockfish: [11] SEO	390	390	540
Atka mackerel: GW	600	600	6,200
Other [14] species:	GW	N/A	10,847
Total [16]	409,690	227,797	544,330

[1] Regulatory areas and districts are defined at § 679.2.

[2] Pollock is apportioned in the Western/Central Regulatory areas among three statistical areas. During the A season, the apportionment is based on an adjusted estimate of the relative distribution of pollock biomass at 25 percent, 56 percent, and 19 percent in Statistical Areas 610, 620, and 630, respectively. During the B season, the apportionment is based on the relative distribution of pollock biomass at 25 percent, 66 percent, and 9 percent in Statistical Areas 610, 620, and 630, respectively. During the C and D seasons, the apportionment is based on the relative distribution of pollock biomass at 47 percent, 23 percent, and 30 percent in Statistical Areas 610, 620, and 630, respectively. These seasonal apportionments are shown in Table 3. In the West Yakutat and Southeast Outside Districts of the Eastern Regulatory Area, pollock is not divided into seasonal allowances.

[3] The annual Pacific cod TAC is apportioned 60 percent to an A season and 40 percent to a B season in the Western and Central Regulatory Areas of the GOA. Pacific cod is allocated 90 percent for processing by the inshore component and 10 percent for processing by the offshore component. Seasonal apportionments and component allocations of TAC are shown in Table 4.

[4] "Deep water flatfish" means Dover sole, Greenland turbot, and deepsea sole.

[5] "Shallow water flatfish" means flatfish not including "deep water flatfish," flathead sole, rex sole, or arrowtooth flounder.

[6] Sablefish is allocated to trawl and hook-and-line gears (Table 2).

[7] "Pacific ocean perch" means *Sebastes alutus*.

[8] "Shortraker/rougheye rockfish" means *Sebastes borealis* (shortraker) and *S. aleutianus* (rougheye).

[9] "Other rockfish" in the Western and Central Regulatory Areas and in the West Yakutat District means slope rockfish and demersal shelf rockfish. The category "other rockfish" in the Southeast Outside District means Slope rockfish.

[10] "Slope rockfish" means *Sebastes aurora* (aurora), *S. melanostomus* (blackgill), *S. paucispinis* (bocaccio), *S. goodei* (chilipepper), *S. crameri* (darkblotch), *S. elongatus* (greenstriped), *S. variegatus* (harlequin), *S. wilsoni* (pygmy), *S. babcocki* (redbanded), *S. proriger* (redstripe), *S. zacentrus* (sharpchin), *S. jordani* (shortbelly), *S. brevispinis* (silvergrey), *S. diploproa* (splitnose), *S. saxicola* (stripetail), *S. miniatus* (vermilion), and *S. reedi* (yellowmouth). In the Eastern GOA only, "slope rockfish" also includes northern rockfish, *S. polyspinous*.

[11] "Demersal shelf rockfish" means *Sebastes pinniger* (canary), *S. nebulosus* (china), *S. caurinus* (copper), *S. maliger* (quillback), *S. helvomaculatus* (rosethorn), *S. nigrocinctus* (tiger), and *S. ruberrimus* (yelloweye).

[12] "Northern rockfish" means *Sebastes polyspinis*.

[13] "Pelagic shelf rockfish" means *Sebastes ciliatus* (dusky), *S. entomelas* (widow), and *S. flavidus* (yellowtail).

[14] "Other species" means sculpins, sharks, skates, squid, and octopus. The TAC for "other species" equals 5 percent of the TACs of assessed target species.

[15] N/A means not applicable.

[16] The total ABC and OFL is the sum of the ABCs and OFLs for assessed target species.

Proposed Apportionment of Reserves

Regulations implementing the FMP require 20 percent of each TAC for pollock, Pacific cod, flatfish, and the "other species" category be set aside in reserves for possible apportionment at a later date (*see* § 679.20(b)(2)). In 2003, NMFS reapportioned all of the reserves in the final harvest specifications. Between 1997 and 2000, NMFS retained the Pacific cod reserve to provide for a management buffer to account for excessive fishing effort and incomplete or late catch reporting. NMFS believes this is no longer necessary as estimates of catch and incidental catch needs in other directed fisheries have improved in recent years. For 2004, NMFS proposes apportionment of all of the reserve for pollock, Pacific cod, flatfish, and "other species". Specifications of TAC shown in Table 1 reflect apportionment of reserve amounts for these species and species groups.

Proposed Allocations of the Sablefish TAC Amounts to Vessels Using Hook-and-Line and Trawl Gear

Under § 679.20(a)(4)(i) and (ii), sablefish TACs for each of the regulatory areas and districts are allocated to hook-and-line and trawl gear. In the Western and Central Regulatory Areas, 80 percent of each TAC is allocated to hook-and-line gear and 20 percent of each TAC is allocated to trawl gear. In the Eastern Regulatory Area, 95 percent of the TAC is allocated to hook-and-line gear and 5 percent is allocated to trawl gear. The trawl gear allocation in the Eastern Regulatory Area may only be used to support incidental catch of sablefish in directed fisheries for other target species. In recognition of the trawl ban in the SEO District of the Eastern Regulatory Area, the Council recommended that 5 percent of the combined Eastern GOA sablefish be allocated to trawl gear in the WYK District and the remainder to vessels using hook-and-line gear. In the SEO District, 100 percent of the sablefish TAC is allocated to vessels using hook-and-line gear. This recommendation results in an allocation of 225 mt to trawl gear and 1,551 mt to hook-and-line gear in the WYK District and 2,726 mt to hook-and-line gear in the SEO District. Table 2 shows the allocations of the proposed 2004 sablefish TACs between hook-and-line gear and trawl gear.

TABLE 2.—PROPOSED 2004 SABLEFISH TAC SPECIFICATIONS IN THE GULF OF ALASKA AND ALLOCATIONS THEREOF TO HOOK-AND-LINE AND TRAWL GEAR

[Values are rounded to the nearest metric ton]

Area/District	TAC	Hook-and-line allocation	Trawl allocation
Western	1,968	1,574	394
Central	4,931	3,945	986
West Yakutat	1,776	1,551	225
Southeast Outside	2,726	2,726	0
Total	11,400	9,796	1,605

Proposed Apportionments of Pollock TAC Among Seasons and Regulatory Areas, and Allocations for Processing by Inshore and Offshore Components

In the GOA, pollock is apportioned by season and area, and is further allocated for processing by inshore and offshore components. Under regulations at § 679.20(a)(5)(iii)(B), the annual pollock TAC specified for the Western and Central Regulatory Areas of the GOA is apportioned into four equal seasonal allowances of 25 percent. As established by § 679.23(d)(2)(i) through (iv), the A, B, C, and D season allowances are available from January 20 through February 25, March 10 through May 31, August 25 through September 15, and October 1 through November 1, respectively.

Pollock TACs in the Western and Central Regulatory Areas of the GOA in the A and B seasons are apportioned among statistical areas 610, 620, and 630 in proportion to the distribution of pollock biomass as determined by a composite of NMFS winter surveys and in the C and D seasons in proportion to the distribution of pollock biomass as determined by the four most recent NMFS summer surveys. As in 2003, the Council recommended that during the A season, the winter and summer distribution of pollock be averaged in the Central Regulatory Area to better reflect the distribution of pollock and the performance of the fishery in the area during the A season. Within any fishing year, the underage or overage of a seasonal apportionment may be added to or subtracted from subsequent seasonal apportionments in a manner to be determined by the Regional Administrator, Alaska Region, NMFS, provided that the sum of the revised seasonal allowances does not exceed 30 percent of the annual TAC apportionment for the Central and Western Regulatory Areas in the GOA (§ 679.20(a)(5)(iii)(B)). For 2004, 30 percent of the proposed annual TAC for the Central and Western Regulatory Areas is 14,044 mt. The WYK and SEO District pollock TACs of 1,078 mt and 6,460 mt, respectively, are not allocated seasonally.

Regulations at § 679.20(a)(6)(i) require that 100 percent of the pollock TAC in all regulatory areas and all seasonal allowances thereof be allocated to vessels catching pollock for processing by the inshore component after subtraction of amounts that are projected by the Regional Administrator to be caught by, or delivered to, the offshore component incidental to directed fishing for other groundfish species. The amount of pollock available for harvest by vessels harvesting pollock for processing by the offshore component is that amount actually taken as incidental catch during directed fishing for groundfish species other than pollock, up to the maximum retainable amounts allowed under regulations at § 679.20(e) and (f). At this time, these incidental catch amounts are unknown and will be determined during the fishing year.

The proposed seasonal biomass distribution of pollock in the Western and Central GOA, area apportionments, and seasonal allowances for the A, B, C, and D seasons are summarized in Table 3.

TABLE 3.—PROPOSED DISTRIBUTION OF POLLOCK IN THE CENTRAL AND WESTERN REGULATORY AREAS OF THE GULF OF ALASKA; SEASONAL BIOMASS DISTRIBUTION, AREA APPORTIONMENTS; AND SEASONAL ALLOWANCES OF ANNUAL TAC IN 2004

[Values are rounded to the nearest metric ton]

Season	Shumagin (Area 610) (biomass distribution)	Chirikof (Area 620) (biomass distribution)	Kodiak (Area 630) (biomass distribution)	Total (biomass distribution)
A	2,894 (25%)	6,535 (56%)	2,274 (19%)	11,703 (100%)
B	2,894 (25%)	7,778 (66%)	1,031 (9%)	11,703 (100%)
C	5,500 (47%)	2,686 (23%)	3,517 (30%)	11,703 (100%)
D	5,500 (47%)	2,686 (23%)	3,517 (30%)	11,703 (100%)
Annual Total	16,788	19,685	10,339	46,812

Proposed Seasonal Apportionments of Pacific Cod TAC and Allocations for Processing of Pacific Cod TAC Between Inshore and Offshore Components

Pacific cod fishing is divided into two seasons in the Western and Central Regulatory Areas of the GOA. For hook-and-line, pot and jig gear, the A season is January 1 through June 10, and the B season is September 1 through December 31. For trawl gear, the A season is January 20 through June 10, and the B season is September 1 through November 1. (§ 679.23(d)(3)). After subtraction of incidental catch, 60 percent and 40 percent of the annual TAC will be available for harvest during the A and B seasons, respectively, and will be apportioned between the inshore and offshore processing components as provided in § 679.20(a)(6)(ii). Between the A and the B seasons, directed fishing for Pacific cod is closed and fishermen participating in other directed fisheries may retain Pacific cod up to the maximum retainable amounts allowed under regulations at § 679.20(e) and (f). For purposes of clarification, NMFS points out that the dates for the A season and the B season Pacific cod fisheries differ from those of the A, B, C, and D seasons for the pollock fisheries. In accordance with § 679.20(a)(11)(ii), any overage or underage of Pacific cod harvest from the A season may be subtracted from or added to the subsequent B season.

Regulations at § 679.20(a)(6)(ii) require that the TAC apportionment of Pacific cod in all regulatory areas be allocated to vessels catching Pacific cod for processing by the inshore and offshore components. Ninety percent of the Pacific cod TAC in each regulatory area is allocated to vessels catching Pacific cod for processing by the inshore component. The remaining 10 percent of the TAC is allocated to vessels catching Pacific cod for processing by the offshore component. These seasonal apportionments and allocations of the proposed 2004 Pacific cod TAC are shown in Table 4.

TABLE 4.—PROPOSED 2004 SEASONAL APPORTIONMENTS AND ALLOCATION OF PACIFIC COD TAC AMOUNTS IN THE GULF OF ALASKA; ALLOCATIONS FOR PROCESSING BY THE INSHORE AND OFFSHORE COMPONENTS

[Values are rounded to the nearest metric ton]

Season	Regulatory area	TAC	Component allocation	
			Inshore (90%)	Offshore (10%)
A Season (60%)	Western	13,987	12,588	1,399
B Season (40%)		8,392	7,553	839
		5,595	5,035	560
A Season (60%)	Central	20,215	18,193	2,022
B Season (40%)		12,129	10,916	1,213
		8,086	7,277	809
	Eastern	2,607	2,346	261
Total		36,809	33,127	3,682

"Other Species" TAC

The FMP specifies that the amount for the "other species" category is calculated as 5 percent of the combined TAC amounts for target species. The GOA-wide "other species" TAC is calculated as 10,847 mt, which is 5 percent of the sum of combined TAC amounts for the target species. As discussed above, if Amendment 63 is approved, skates would be removed from the "other species" assemblage and the Council would recommend final OFL, ABC, and TAC amounts for skates and an adjusted TAC for the "other species" category for the 2004 fishing year in the final 2004 harvest specifications for groundfish in the GOA.

Proposed Pacific Halibut PSC Mortality Limits

Under § 679.21(d), annual Pacific halibut PSC limits are established and apportioned to trawl and hook-and-line gear and may be established for pot gear. In October 2003, the Council recommended to maintain the 2003 halibut PSC limits of 2,000 mt for the trawl fisheries and 300 mt for the hook-and-line fisheries, with 10 mt of the hook-and-line limit allocated to the demersal shelf rockfish (DSR) fishery in the Southeast Outside District and the remainder to the remaining hook-and-line fisheries. NMFS concurs with this recommendation. The DSR fishery is defined at § 679.21(d)(4)(iii)(A) and historically has been apportioned this amount in recognition of its small scale harvests. Although observer data are not available to verify actual bycatch amounts because most vessels in the DSR fishery are less than 60 ft (18.3 m) length overall (LOA) and are exempt from observer coverage, halibut bycatch in the DSR fishery is assumed to be low because of the short gear soak times and duration of the DSR fishery. Also, the DSR fishery occurs in the winter when less overlap occurs in the distribution of DSR and halibut. If Amendment 63, which removes skates from the "other species" assemblage is approved, the Council, at its December 2003 meeting, may recommend a separate halibut PSC allowance for hook-and-line gear in the skates fishery for 2004.

Regulations at § 679.21(d)(4) authorize exemption of specified nontrawl fisheries from the halibut PSC limit. The Council recommended that pot gear, jig gear, and the hook-and-line sablefish fishery be exempted from the nontrawl halibut limit for 2004. The Council recommended these exemptions because the low halibut bycatch mortality experienced in the pot gear fisheries (4 mt in 2001, 2 mt in 2002, and 14 mt in 2003), and because of the 1995 implementation of the sablefish and halibut Individual Fishing Quota (IFQ) program that requires legal-sized halibut to be retained by vessels using hook-and-line gear if a halibut IFQ permit holder is aboard and is holding unused halibut IFQ. This provision results in reduced halibut discard in the sablefish fishery. Halibut mortality for the jig gear fleet cannot be estimated because these vessels do not carry observers. However, halibut mortality is assumed to be very low given the small amount of groundfish harvested by this gear type (336 mt in 2001, 277 mt in 2002, and 294 mt in 2003) and the assumed high survival rate of any halibut that are incidentally taken by jig gear and released. Because of these reasons, NMFS concurs with the Council's recommendations.

Under § 679.21(d)(5), NMFS seasonally apportions the halibut PSC limits based on recommendations from the Council. The FMP and regulations require that the following information be considered by the Council and NMFS in seasonally apportioning halibut PSC limits: (1) Seasonal distribution of halibut, (2) seasonal distribution of target groundfish species relative to halibut distribution, (3) expected halibut bycatch needs on a seasonal basis relative to changes in halibut biomass and expected catch of target groundfish species, (4) expected bycatch rates on a seasonal basis, (5) expected changes in directed groundfish fishing seasons, (6) expected actual start of fishing effort, and (7) economic effects of establishing seasonal halibut allocations on segments of the target groundfish industry.

The final rule establishing the final 2003 groundfish and PSC specifications (68 FR 9924, March 3, 2003) summarizes Council and NMFS findings with respect to each of the FMP considerations set forth above. At this time, the Council's and NMFS' findings are unchanged from those set forth in 2003. Proposed Pacific halibut PSC limits, and apportionments thereof, are presented in Table 5. Regulations at § 679.21(d)(5)(iii) and (iv) specify that any overages or shortfalls in a seasonal apportionment of a PSC limit will be deducted from or added to the next respective seasonal apportionment within the 2004 fishing year.

TABLE 5.—PROPOSED 2004 PACIFIC HALIBUT PSC LIMITS, ALLOWANCES, AND APPORTIONMENTS

[The Pacific halibut PSC limit for hook-and-line gear is allocated to the demersal shelf rockfish (DSR) fishery and fisheries other than DSR. The hook-and-line sablefish fishery is exempt from halibut PSC limits. (Values are in metric tons)]

Trawl gear		Hook-and-line gear			
		Other than DSR		DSR	
Dates	Amount	Dates	Amount	Dates	Amount
January 20–April 1	550 (27.5%)	January 1–June 10	250 (86%)	January–December 31	10 (100%)
April 1–July 4	400 (20%)	June 10–September 1	5 (2%)		
July 4–September 1	600 (30%)	September 1 –December 31	35 (12%)		
September 1–October 1	150 (7.5%)				
October 1–December 31	300 (15%)				
Total	2,000 (100%)		290 (100%)		10 (100%)

Regulations at § 679.21(d)(3)(ii) authorize apportionments of the trawl halibut PSC limit to be further apportioned to trawl fishery categories, based on each category's proportional share of the anticipated halibut bycatch mortality during a fishing year and the need to optimize the amount of total groundfish harvest under the halibut PSC limit. The fishery categories for the trawl halibut PSC limits are: deep-water species complex, comprised of sablefish, rockfish, deep-water flatfish, rex sole and arrowtooth flounder; and shallow-water species complex, comprised of pollock, Pacific cod, shallow-water flatfish, flathead sole, Atka mackerel, and "other species" (§ 679.21(d)(3)(iii)). The proposed apportionment for these two fishery complexes is presented in Table 6.

TABLE 6.—PROPOSED 2004 APPORTIONMENT OF PACIFIC HALIBUT PSC TRAWL LIMITS BETWEEN THE TRAWL GEAR DEEP-WATER SPECIES COMPLEX AND THE SHALLOW-WATER SPECIES COMPLEX

[Values are in metric tons]

Season	Shallow-water	Deep-water	Total
January 20–April 1	450	100	550
April 1–July 4	100	300	400
July 4–September 1	200	400	600
September 1–October 1	150	(1)	150
Subtotal:			
January 20–October 1	900	800	1,700
October 1–December 31			300
Total			2,000

[1] No apportionment between shallow-water and deep-water fishery complexes during the 5th season (October 1–December 31).

Based on public comment and information contained in the final 2003 SAFE report, which will be available in December 2003, the Council may recommend, or NMFS may make, some changes in the seasonal, gear-type, and fishing-complex apportionments of halibut PSC limits for the final 2004 harvest specifications. NMFS will consider the following types of information in setting final halibut PSC limits.

(A) Estimated Halibut Bycatch in Prior Years

The best available information on estimated halibut bycatch is data collected by observers during 2003. The calculated halibut bycatch mortality by trawl, hook-and-line, and pot gear through October 11, 2003, is 1,915 mt, 294 mt, and 14 mt, respectively, for a total halibut mortality of 2,223 mt.

Halibut bycatch restrictions seasonally constrained trawl and hook-and-line gear fisheries during the 2003 fishing year. Trawling was closed during the second season for the shallow-water complex on June 19 (68 FR 37094, June 23, 2003), during the fourth season for the shallow-water complex on September 12 (68 FR 54395, September 17, 2003), during the second season for the deep-water fishery complex on May 16 (68 FR 27479, May 20, 2003), and during the fifth season for all trawling on October 15 (68 FR 59889, October 20, 2003). The use of hook-and-line gear for groundfish other than DSR and sablefish closed during the second season on August 1 (68 FR 46502, August 6, 2003) and for the remainder of the year on September 28 (68 FR 56788, October 2, 2003).

The amount of the groundfish TACs that vessels using trawl gear might have harvested if halibut catch limitations had not restricted the season in 2003 is unknown.

(B) Expected Changes in Groundfish Stocks

Proposed 2004 ABCs for arrowtooth flounder and Pacific ocean perch are higher than those established for 2003. Proposed 2004 ABCs are lower for Pacific cod, flathead sole, sablefish, and northern rockfish than those established for 2003. Proposed 2004 ABC levels for the remaining target species are unchanged from 2003. More information on these changes is included in the final SAFE report (November 2002) and in the Council and SSC October 2003 meeting minutes.

(C) Expected Changes in Groundfish Catch

The total of the proposed 2004 TACs for the GOA is 227,797 mt, a decrease of 3.7 percent from the 2003 TAC total of 236,440 mt. Those fisheries for which the 2004 TACs are lower than in 2003 are Pacific cod (decreased to 36,809 mt from 40,540 mt), flathead sole (decreased to 10,770 mt from 11,150 mt), sablefish (decreased to 11,400 mt from 14,890 mt), northern rockfish (decreased to 4,900 mt from 5,530 mt), and "other species" (decreased to 10,847 mt from 11,260 mt). There are no species for which the proposed 2004 TACs are higher than in 2003.

(D) Current Estimates of Halibut Biomass and Stock Condition

The International Pacific Halibut Commission (IPHC) conducted the most recent halibut stock assessment in December 2002. The halibut resource is considered to be healthy, with total catch near record levels. The current exploitable halibut biomass for 2003 is estimated to be 263,086 mt. This is similar to the estimate of 273,950 mt in 2002.

The exploitable biomass of the Pacific halibut stock apparently peaked at 326,520 mt in 1988. According to the IPHC, the long-term average reproductive biomass for the Pacific halibut resource was estimated at 118,000 mt. Long-term average yield was estimated at 26,980 mt, round weight. The species is fully utilized. Recent average catches (1994–96) were 33,580 mt for the U.S. and 6,410 mt for Canada, for a combined total of 39,990 mt for the entire Pacific halibut resource. This catch was 48 percent higher than long-term potential yield, which reflects the good condition of the Pacific halibut resource. In January 2003, the IPHC recommended commercial catch limits totaling 36,812 mt (round weight) for Alaska in 2003, the same as in 2002. Through December 31, 2002, commercial hook-and-line harvests of halibut in Alaska total 37,219 mt (round weight).

At its January 2003 meeting, IPHC staff reported on the assessment of the halibut stock in 2002. There were some significant technological changes in the assessment as a result of changes in the underlying data being analyzed and the persistence of smaller sizes at age in the central portion of the halibut range. Analyses were conducted for the 2002 assessment to ensure that the stock is not being overharvested. However, the IPHC staff intends to resolve these technical issues with the assessment in 2003. In addition, IPHC staff are investigating a new harvest policy that may result in greater stability in the yield from the fishery and insulate the process of setting catch limits from technological changes in the assessment. This harvest policy will also be reviewed by the IPHC. The resolution of technical issues of the assessment may indicate a larger estimate of biomass in the central region of the stock distribution, but application of the proposed harvest policy might dictate slightly lower yields. Because these two processes may be somewhat counterbalancing, IPHC staff intend to complete their investigations before recommending any changes to the present catch limits or the harvest policy. While the trajectory of the halibut stock biomass is downward, the biomass is still above the long-term average level and is expected to remain above this level for the next several years.

Additional information on the Pacific halibut stock assessment and the proposed harvest policy may be found in the IPHC's 2002 Pacific halibut stock assessment (December 2002), available from the IPHC on its Web site at *http://www.iphc.washington.edu/hal.com*. IPHC will consider the 2003 Pacific halibut stock assessment for 2004 at its January 2004 annual meeting when it sets the 2004 commercial halibut fishery quotas.

(E) Other Factors

The allowable commercial catch of halibut will be adjusted to account for the overall halibut PSC mortality limit established for groundfish fisheries. The 2004 groundfish fisheries are expected to use the entire proposed halibut PSC limit of 2,300 mt. The allowable directed commercial catch is determined by accounting for the recreational and subsistence catch, waste, and bycatch mortality and then providing the remainder to the directed fishery. Groundfish fishing is not expected to adversely affect the halibut stocks.

Methods available for reducing halibut bycatch include:

(1) Reducing halibut bycatch rates through the Vessel Incentive Program (described below); (2) publication of individual vessel bycatch rates on the NMFS Alaska Region home page at *www.fakr.noaa.gov;* (3) modifications to gear; (4) changes in groundfish fishing seasons; (5) individual transferable quota programs; and (6) time/area closures.

Reductions in groundfish TAC amounts provide no incentive for fishermen to reduce bycatch rates. Costs that would be imposed on fishermen as a result of reducing TAC amounts depend on the species and amounts of groundfish foregone.

Trawl vessels carrying observers for purposes of complying with observer coverage requirements (§ 679.50) are subject to the Vessel Incentive Program. This program encourages trawl fishermen to avoid high halibut bycatch rates while conducting groundfish fisheries by specifying bycatch rate standards for various target fisheries.

Current regulations (*see* § 679.2 Authorized fishing gear, number 12) specify requirements for biodegradable panels and tunnel openings for groundfish pots to reduce halibut bycatch. As a result, low bycatch and mortality rates of halibut in pot fisheries have justified exempting pot gear from PSC limits.

The regulations also define pelagic trawl gear in a manner intended to reduce bycatch of halibut by displacing fishing effort off the bottom of the sea floor when certain halibut bycatch levels are reached during the fishing year. The definition provides standards for physical conformation (§ 679.2, see Authorized fishing gear number (11)) and performance of the trawl gear in terms of crab bycatch (§ 679.7(a)(14)). Furthermore, all hook-and-line vessel operators are required to employ careful release measures when handling halibut bycatch (§ 679.7(a)(13)). These measures are intended to reduce handling mortality, thereby lowering overall halibut bycatch mortality in the groundfish fisheries, and to increase the amount of groundfish harvested under the available halibut mortality bycatch limits.

NMFS and the Council will review the methods available for reducing halibut bycatch listed here to determine their effectiveness, and will initiate changes, as necessary, in response to this review or to public testimony and comment.

Halibut Discard Mortality Rates

The Council recommended that the recommended halibut discard mortality rates (DMRs) developed by the staff of the IPHC for the 2003 GOA groundfish fisheries be used to monitor halibut bycatch mortality limits established for the 2004 GOA groundfish fisheries. NMFS concurs with this recommendation. The IPHC recommended use of long-term average DMRs for the 2001–2003 groundfish fisheries. The IPHC also recommended a provision that DMRs could be revised should analysis indicate that a fishery's annual DMR diverges substantially (up or down) from the long-term average. Most of the IPHC's assumed DMRs were based on an average of mortality rates determined from NMFS observer data collected between 1990 and 1999. DMRs were lacking for some fisheries, so rates from the most recent years were used. For the "other species" fishery, where insufficient mortality data are available, the mortality rate of halibut caught in trawl, hook-and-line, and pot gear Pacific cod fisheries were recommended as a default rate. The DMRs proposed for 2004 are unchanged from those used in 2003 in the GOA. The proposed DMRs for hook-and-line targeted fisheries range from 8 to 24 percent. The proposed DMRs for trawl targeted fisheries range from 58 to 72 percent. The proposed DMRs for all pot targeted fisheries is 14 percent. The proposed 2004 DMRs are listed in Table 7. The justification for these proposed DMRs is discussed in Appendix A of the final SAFE report dated November 2002.

TABLE 7.—PROPOSED 2004 PACIFIC HALIBUT DISCARD MORTALITY RATES FOR VESSELS FISHING IN THE GULF OF ALASKA

[Listed values are percent of halibut bycatch assumed to be dead]

Gear/Target	Mortality rate
Hook-and-line:	
Pacific cod	14
Rockfish	8
Other species	14
Sablefish	24
Trawl:	
Pelagic pollock	72
Rockfish	69
Shallow-water flatfish	69
Pacific cod	61
Deep-water flatfish	60
Flathead sole	58
Rex sole	61
Non pelagic pollock	61
Arrowtooth flounder	62
Atka mackerel	70
Sablefish	66
Other species	61
Pot:	
Pacific cod	14
Other species	14

Non-exempt American Fisheries Act (AFA) Catcher Vessel Groundfish Harvest and PSC Limitations

One of the provisions implemented by AFA regulations was to place groundfish harvesting and processing limitations, also called sideboards, on AFA catcher/processors and catcher vessels in the GOA. These limitations are considered necessary for fishermen and processors who have received exclusive harvesting and processing privileges under the AFA to protect the interests of fishermen and processors who have not directly benefitted from the AFA. Under the AFA regulations, AFA catcher/processors (§ 679.4 (l)(2)(i)) are prohibited from fishing for any species of fish (§ 679.7(k)(1)(ii)) and from processing any groundfish harvested in Statistical Area 630 of the GOA (§ 679.7(k)(1)(iv)). The Council recommended that certain AFA catcher vessels in the GOA be exempt from groundfish harvest limitations. Exempted AFA catcher vessels in the GOA are those less than 125 ft (38.1 m) LOA whose annual Bering Sea and

Aleutian Islands management area (BSAI) pollock landings totaled less than 5,100 mt and that made 40 or more GOA groundfish landings from 1995 through 1997 (§ 679.64(b)(2)(ii)).

For non-exempt AFA catcher vessels in the GOA, harvest limitations are based on their traditional harvest levels of TAC in groundfish fisheries covered by the GOA FMP. The amounts of the groundfish harvest limits in the GOA are based on the retained catch of non-exempt AFA catcher vessels of each sideboard species from 1995 through 1997 divided by the TAC for that species over the same period (§ 679.64(b)(3)(iii)). These amounts are listed in Table 8. All harvests of sideboard species made by non-exempt AFA catcher vessels, whether as targeted catch or bycatch, will be deducted from the sideboard limits in Table 8.

TABLE 8.—PROPOSED 2004 GOA NON-EXEMPT AMERICAN FISHERIES ACT CATCHER VESSEL (CV) GROUNDFISH HARVEST SIDEBOARD LIMITATIONS

[Values are in metric tons]

Species/apportionments and allocations by area-season-processor-gear	Ratio of 1995–1997 non-exempt AFA CV catch to 1995–1997 TAC	2004 TAC	2004 non-exempt AFA catcher vessel sideboard
Pollock:			
A Season (W/C areas only) January 20–February 25:			
Shumagin (610)	0.6112	2,894	1,769
Chirikof (620)	0.1427	6,535	933
Kodiak (630)	0.2438	2,274	554
B Season (W/C areas only) March 10–June 1:			
Shumagin (610)	0.6112	2,894	1,769
Chirikof (620)	0.1427	7,778	1,110
Kodiak (630)	0.2438	1,031	251
C Season (W/C areas only) August 25–September 15:			
Shumagin (610)	0.6112	5,500	3,362
Chirikof (620)	0.1427	2,686	383
Kodiak (630)	0.2438	3,517	857
D Season (W/C areas only) October 1–November 1:			
Shumagin (610)	0.6112	5,550	3,362
Chirikof (620)	0.1427	2,686	383
Kodiak (630)	0.2438	3,517	857
Annual:			
WYK (640)	0.3499	1,078	377
SEO (650)	0.3499	6,460	2,260
Pacific cod:			
A Season [1], January 1–June 10:			
W inshore	0.1423	7,553	1,075
W offshore	0.1026	839	86
C inshore	0.0722	10,916	788
C offshore	0.0721	1,213	87
B Season [2], September 1–December 31:			
W inshore	0.1423	5,035	716
W offshore	0.1026	560	57
C inshore	0.0722	7,277	525
C offshore	0.0721	809	58
Annual:			
E inshore	0.0079	2,346	19
E offshore	0.0078	261	2
Flatfish deep-water:			
W	0.0000	180	0
C	0.0670	2,220	149
E	0.0171	2,480	42
Rex sole:			
W	0.0010	1,280	1
C	0.0402	5,540	223
E	0.0153	2,650	41
Flathead sole :			
W	0.0036	2,000	7
C	0.0261	5,000	131
E	0.0048	3,770	18
Flatfish shallow-water:			
W	0.0156	4,500	70
C	0.0598	13,000	777
E	0.0126	4,120	52
Arrowtooth flounder:			
W	0.0021	8,000	17
C	0.0309	25,000	773
E	0.0020	5,000	10

TABLE 8.—PROPOSED 2004 GOA NON-EXEMPT AMERICAN FISHERIES ACT CATCHER VESSEL (CV) GROUNDFISH HARVEST SIDEBOARD LIMITATIONS—Continued

[Values are in metric tons]

Species/apportionments and allocations by area-season-processor-gear	Ratio of 1995–1997 non-exempt AFA CV catch to 1995–1997 TAC	2004 TAC	2004 non-exempt AFA catcher vessel sideboard
Sablefish:			
W trawl gear	0.0000	394	0
C trawl gear	0.0720	986	71
E trawl gear	0.0488	225	11
Pacific ocean perch:			
W	0.0623	2,700	168
C	0.0866	8,510	737
E	0.0466	2,450	114
Shortraker/Rougheye			
W	0.0000	220	0
C	0.0237	840	20
E	0.0124	560	7
Other rockfish:			
W	0.0034	90	0
C	0.2065	550	114
E	0.0000	350	0
Northern rockfish:			
W	0.0003	789	0
C	0.0336	4,111	150
Pelagic shelf rockfish:			
W	0.0001	510	0
C	0.0000	3,480	0
E	0.0067	1,500	10
Thornyhead rockfish:			
W	0.0308	360	11
C	0.0308	840	26
E	0.0308	800	25
Demersal shelf rockfish: SEO	0.0020	390	1
Atka mackerel: Gulfwide	0.0309	600	19
Other species: Gulfwide	0.0090	10,847	98

[1] The Pacific cod A season for trawl gear does not open until January 20.
[2] The Pacific cod B season for trawl gear closes November 1.

PSC bycatch limits for non-exempt AFA catcher vessels in the GOA are based on the ratio of aggregate retained groundfish catch by non-exempt AFA catcher vessels in each PSC target category from 1995 through 1997 relative to the retained catch of all vessels in that fishery from 1995 through 1997 (§ 679.64(b)(4)). These amounts are shown in Table 9

TABLE 9.—PROPOSED 2004 NON-EXEMPT AMERICAN FISHERIES ACT CATCHER VESSEL PROHIBITED SPECIES CATCH (PSC) LIMITS FOR THE GOA

[Values are in metric tons]

PSC species/Season	Target fishery	Ratio of 1995–1997 non-exempt AFA CV retained catch to total retained catch	2004 PSC limit	2004 non-exempt AFA catcher vessel PSC limit
Halibut (mortality in mt):				
Trawl 1st Seasonal Allowance	Shallow water targets	0.340	450	153
January 20–April 1	Deep water targets	0.070	100	7
Trawl 2nd Seasonal Allowance	Shallow water targets	0.340	100	34
April 1–July 4	Deep water targets	0.070	300	21
Trawl 3rd Seasonal Allowance	Shallow water targets	0.340	200	68
July 4–September 1	Deep water targets	0.070	400	38
Trawl 4th Seasonal Allowance	Shallow water targets	0.340	150	51
September 1–October 1	Deep water targets	0.070	0	0
Trawl 5th Seasonal Allowance	All targets	0.205	300	61
October 1–December 31	do	0.205	300	61

Classification

This action is authorized under 50 CFR 679.20 and is exempt from review under Executive Order 12866.

NMFS prepared an IRFA for this action in accordance with the provisions of the Regulatory Flexibility Act (RFA) of 1980, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. Section 603(b)). A copy of this analysis is available from the Council (*see* **ADDRESSES**). This IRFA evaluates the effects of the proposed action on regulated small entities. The reasons for the action, a statement of the objectives of the action, and the legal basis for the proposed rule, are discussed earlier in the preamble.

The small entities affected by this action are those that commercially harvest groundfish under the GOA FMP. Data in the IRFA indicates that 1,115 catcher vessels and 21 catcher-processors may be "small entities" under the terms of the RFA.

Using the sectoral first wholesale gross revenue changes as an index the preferred alternative seems to have adverse impacts in the GOA sablefish and Pacific cod sectors. There do not appear to be other adverse impacts associated with the preferred alternative. The model suggests that there will be revenue reductions for flathead sole, rockfish, and other species. However, as reported in the IRFA, the projected revenue reductions for these species appear to be relatively small percentages of the prior year (2003) gross revenue estimates. Given the large confidence intervals believed to be associated with these estimates, these are thought to be minor impacts.

Harvest records indicate that 498 vessels harvested sablefish in the GOA in excess of the minimum harvest threshold adopted to select vessels for the analysis. Of these, 482 were small entities, with revenues under the $3.5 million gross revenues threshold used by the Small Business Administration (SBA) for catcher vessels. These small vessels harvested about 12,395 mt of sablefish in all their sablefish fisheries (some of this tonnage may have come from operations in the BSAI). Another 56 vessels harvested amounts of sablefish below the minimum harvest threshold; these vessels only harvested a total of about 10 mt of sablefish. The 482 small vessels above the threshold averaged about $439,000 in all their fisheries (groundfish, crab, scallops, salmon and herring) in Alaska, and about $121,000 from all their sablefish in Alaska. If the small entity revenue reduction is proportionate to the overall first wholesale "index" reduction in the area, and if the small entities catch all of their sablefish in the GOA, the small entity revenue reduction would be about $28,000. This would be about 23.4 percent of their sablefish revenues, and about 6.5 percent of their overall revenues.

Harvest records indicate that 578 vessels harvested Pacific cod in the GOA in excess of the minimum harvest criterion adopted to select vessels for the analysis. Of these, 562 were small entities according to the $3.5 million in gross revenues criteria used by the SBA for catcher vessels. These small vessels harvested about 51,000 mt of Pacific cod in all their Pacific cod fisheries (some of these revenues may have come from operations in the BSAI). Another 263 vessels harvested amounts of Pacific cod below the minimum harvest threshold; these vessels only harvested a total of about 40 mt of Pacific cod. The 562 vessels above the threshold averaged about $331,000 in all their fisheries (groundfish, crab, scallops, salmon and herring) in Alaska, and about $98,000 from all their Pacific cod in Alaska. If the small entity revenue reduction is proportionate to the overall first wholesale "index" reduction in the area, and if the small entities catch all of their Pacific cod in the GOA, the small entity revenue reduction would be about $9,000. This would be about 9.2 percent of their Pacific cod revenues, and about 2.7 percent of their overall revenues.

The preferred alternative was compared to the four other alternatives evaluated during the specifications process. These alternatives are defined by TACs set so as to generate different harvest rates (F values). Alternative 1 sets TAC to generate the harvest rate associated with the maximum ABC for each species. Alternative 2 is the preferred alternative. Alternative 3 sets TACs to generate fishing rates that are half those of Alternative 1. Alternative 4 sets TACs to generate fishing rates equal to the most recent five year average rates, and Alternative 5 sets TACs equal to zero. Only Alternative 1 had a smaller adverse impact on small entities than the preferred alternative. However, Alternative 1 would have increased sablefish and Pacific cod harvests and would have failed to meet the objective of protecting the long run health of these stocks.

The action does not impose new recordkeeping or reporting requirements on small entities. The analysis did not reveal any Federal rules that duplicate, overlap or conflict with the proposed action.

Authority: 16 U.S.C. 773 *et seq.* 16 U.S.C 1801 *et seq.*, and 3631 *et seq.*

Dated: December 1, 2003.

William T. Hogarth,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 03–30283 Filed 12–4–03; 8:45 am]

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Notices

Federal Register
Vol. 68, No. 234
Friday, December 5, 2003

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 03–107–1]

Notice of Request for Extension of Approval of an Information Collection

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Extension of approval of an information collection; comment request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's intention to request an extension of approval of an information collection in support of regulations that provide for the payment of compensation to owners of commercial stone fruit orchards and fruit tree nurseries whose trees or nursery stock were destroyed to eradicate plum pox.

DATES: We will consider all comments that we receive on or before February 3, 2004.

ADDRESSES: You may submit comments by postal mail/commercial delivery or by e-mail. If you use postal mail/commercial delivery, please send four copies of your comment (an original and three copies) to: Docket No. 03–107–1, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 03–107–1. If you use e-mail, address your comment to *regulations@aphis.usda.gov*. Your comment must be contained in the body of your message; do not send attached files. Please include your name and address in your message and "Docket No. 03–107–1" on the subject line.

You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS dockets, are available on the Internet at *http://www.aphis.usda.gov/ppd/rad/webrepor.html*.

FOR FURTHER INFORMATION CONTACT: For information regarding the plum pox regulations, contact Mr. Stephen Poe, Operations Officer, Pest Detection and Management Programs, PPQ, APHIS, 4700 River Road Unit 134, Riverdale, MD 20737–1231; (301) 734–8899. For copies of more detailed information on the information collection, contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 734–7477.

SUPPLEMENTARY INFORMATION:

Title: Plum Pox Compensation.

OMB Number: 0579–0159.

Type of Request: Extension of approval of an information collection.

Abstract: The Plant Protection Act (7 U.S.C. 7701–7772) authorizes the Secretary of Agriculture, either independently or in cooperation with the States, to carry out operations or measures to detect, eradicate, suppress, control, prevent, or retard the spread of plant pests, such as plum pox, that are new to or not widely distributed within the United States.

Plum pox is an extremely serious viral disease of plants that can affect many *Prunus* (stone fruit) species, including plum, peach, apricot, almond, nectarine, and sweet and tart cherry. A number of wild and ornamental *Prunus* species may also be susceptible to this disease. Infection eventually results in severely reduced fruit production, and the fruit that is produced is often misshapen and blemished. Plum pox virus is transmitted locally by a variety of aphid species, as well as by budding and grafting with infected plant material, and spreads over longer distances through movement of infected budwood, nursery stock, and other plant parts.

There are no known effective methods for treating trees or other plant material infected with plum pox, nor are there any known effective prophylactic treatments to prevent the disease from occurring in trees exposed to the disease due to their proximity to infected trees or other plant material. Without effective treatments, the only option for preventing the spread of the disease is the destruction of infected and exposed trees and other plant material.

The regulations in "Subpart—Plum Pox" (7 CFR 301.74–301.74–5) quarantine areas of the United States where plum pox has been detected, restrict the interstate movement of host material from quarantined areas, and provide for compensation to owners of commercial stone fruit orchards and fruit tree nurseries whose trees or nursery stock were destroyed to eradicate plum pox.

Section 310.74–5 requires applicants for the payment of compensation to complete a form.

We are asking the Office of Management and Budget (OMB) to approve our use of this information collection activity for an additional 3 years.

The purpose of this notice is to solicit comments from the public (as well as affected agencies) concerning our information collection. These comments will help us:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the information collection, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the information collection on those who are to respond, through use, as appropriate, of automated, electronic, mechanical, and other collection technologies, e.g., permitting electronic submission of responses.

Estimate of burden: The public reporting burden for this collection of information is estimated to average 0.16666 hours per response.

Respondents: Eligible owners of stone fruit orchards and fruit tree nurseries in Pennsylvania.

Estimated annual number of respondents: 6.

Estimated annual number of responses per respondent: 1.

Estimated annual number of responses: 6.

Estimated total annual burden on respondents: 1 hour. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Done in Washington, DC, this 1st day of December 2003.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 03–30231 Filed 12–4–03; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 03–108–1]

Notice of Request for Extension of Approval of an Information Collection

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Extension of approval of an information collection; comment request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's intention to request an extension of approval of an information collection in support of regulations for the importation of unshu oranges from Kyushu Island and Honshu Island, Japan, into the United States.

DATES: We will consider all comments that we receive on or before February 3, 2004.

ADDRESSES: You may submit comments by postal mail/commercial delivery or by e-mail. If you use postal mail/commercial delivery, please send four copies of your comment (an original and three copies) to: Docket No. 03–108–1, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 03–108–1. If you use e-mail, address your comment to *regulations@aphis.usda.gov*. Your comment must be contained in the body of your message; do not send attached files. Please include your name and address in your message and "Docket No. 03–108–1" on the subject line.

You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS dockets, are available on the Internet at *http://www.aphis.usda.gov/ppd/rad/webrepor.html*.

FOR FURTHER INFORMATION CONTACT: For information regarding regulations for the importation of unshu oranges from Kyushu Island and Honshu Island, Japan, contact Mr. Alan S. Green, Assistant Director, Quarantine Policy, Analysis and Support, PPQ, APHIS, 4700 River Road Unit 60, Riverdale, MD 20737–1236; (301) 734–8311. For copies of more detailed information on the information collection, contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 734–7477.

SUPPLEMENTARY INFORMATION:

Title: Importation of Unshu Oranges.

OMB Number: 0579–0173.

Type of Request: Extension of approval of an information collection.

Abstract: The Plant Protection Act (7 U.S.C. 7701–7772) authorizes the Secretary of Agriculture to regulate the importation of plants, plant products, and other articles into the United States to prevent the introduction of plant pests and noxious weeds.

The regulations in "Subpart-Citrus Fruit" (7 CFR 319.28) allow the importation of unshu oranges from Kyushu Island and Honshu Island, Japan, into the United States under certain conditions. Among other things, the individual boxes in which the oranges are shipped must be stamped or printed with a statement specifying the States into which the oranges may be imported and from which they are prohibited removal under a Federal plant quarantine. The unshu oranges must also be accompanied by a certificate from the Japanese plant protection service certifying that the fruit is apparently free of citrus canker.

We are asking the Office of Management and Budget (OMB) to approve our use of these information collection activities for an additional 3 years.

The purpose of this notice is to solicit comments from the public (as well as affected agencies) concerning our information collection. These comments will help us:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the information collection, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the information collection on those who are to respond, through use, as appropriate, of automated, electronic, mechanical, and other collection technologies, *e.g.*, permitting electronic submission of responses.

Estimate of burden: The public reporting burden for this collection of information is estimated to average 1.0 hour per response.

Respondents: Full-time, salaried plant health officials of Japan's plant protection service and growers of unshu oranges.

Estimated annual number of respondents: 10.

Estimated annual number of responses per respondent: 1.

Estimated annual number of responses: 10.

Estimated total annual burden on respondents: 10 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Done in Washington, DC, this 1st day of December 2003.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 03–30232 Filed 12–4–03; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 03–090–1]

Notice of Request for Extension of Approval of an Information Collection

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Extension of approval of an information collection; comment request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's intention to request an extension of approval of an information collection in support of regulations intended to prevent the interstate spread of fruit flies from Hawaii.

DATES: We will consider all comments that we receive on or before February 3, 2004.

ADDRESSES: You may submit comments by postal mail/commercial delivery or by e-mail. If you use postal mail/commercial delivery, please send four copies of your comment (an original and three copies) to: Docket No. 03–090–1, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 03–090–1. If you use e-mail, address your comment to *regulations@aphis.usda.gov*. Your comment must be contained in the body of your message; do not send attached files. Please include your name and address in your message and "Docket No. 03–090–1" on the subject line.

You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue, SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS dockets, are available on the Internet at *http://www.aphis.usda.gov/ppd/rad/webrepor.html*.

FOR FURTHER INFORMATION CONTACT: For information regarding regulations to prevent the interstate spread of fruit flies from Hawaii, contact Mr. Alan S. Green, Assistant Director, Quarantine Policy, Analysis and Support, PPQ, APHIS, 4700 River Road Unit 60, Riverdale, MD 20737–1236; (301) 734–8311. For copies of more detailed information on the information collection, contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 734–7477.

SUPPLEMENTARY INFORMATION:

Title: Fruit from Hawaii.

OMB Number: 0579–0123.

Type of Request: Extension of approval of an information collection.

Abstract: In accordance with the Plant Protection Act (7 U.S.C. 7701–7772), the Animal and Plant Health Inspection Service regulates the interstate movement of fruits and vegetables from Hawaii to prevent the interstate spread of fruit flies, including the Mediterranean fruit fly, the melon fly, and the Oriental fruit fly, pests that occur in Hawaii and can cause millions of dollars in damage to U.S. agriculture. The regulations are contained in Subpart—Hawaiian Fruit and Vegetables (7 CFR 318.13 through 318.13–17).

Among other things, the regulations allow the movement of atemoya, longan, rambutan, sapodilla, papaya, carambola, litchi, and other fruits from Hawaii if the fruit is irradiated, either before the interstate movement or at certain locations on the mainland United States.

The provisions of the regulations regarding irradiation require a number of information collection activities, including the use of certificates, limited permits, compliance agreements, requests for treatment facility approval, requests for certification and recertification of testing equipment, and recordkeeping systems.

We are asking the Office of Management and Budget (OMB) to approve our use of these information collection activities for an additional 3 years.

The purpose of this notice is to solicit comments from the public (as well as affected agencies) concerning our information collection. These comments will help us:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the information collection, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the information collection on those who are to respond, through use, as appropriate, of automated, electronic, mechanical, and other collection technologies, *e.g.*, permitting electronic submission of responses.

Estimate of burden: The public reporting burden for this collection of information is estimated to average 0.1190 hours per response.

Respondents: Fruit producers, shippers, irradiation facility personnel, and State plant regulatory officials.

Estimated annual number of respondents: 300.

Estimated annual number of responses per respondent: 9.15333.

Estimated annual number of responses: 2,746.

Estimated total annual burden on respondents: 327 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Done in Washington, DC, this 1st day of December, 2003.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 03–30233 Filed 12–4–03; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 03–095–1]

Notice of Request for Extension of Approval of an Information Collection

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Extension of approval of an information collection; comment request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's intention to request an extension of approval of an information collection in support of regulations for importation of seed and screenings.

DATES: We will consider all comments that we receive on or before February 3, 2004.

ADDRESSES: You may submit comments by postal mail/commercial delivery or by e-mail. If you use postal mail/

commercial delivery, please send four copies of your comment (an original and three copies) to: Docket No. 03–095–1, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 03–095–1. If you use e-mail, address your comment to *regulations@aphis.usda.gov*. Your comment must be contained in the body of your message; do not send attached files. Please include your name and address in your message and "Docket No. 03–095–1" on the subject line.

You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue, SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS dockets, are available on the Internet at *http://www.aphis.usda.gov/ppd/rad/webrepor.html*.

FOR FURTHER INFORMATION CONTACT: For information regarding regulations for importation of seed and screenings, contact Ms. Polly Lehtonen, Botanist, Biological and Technical Services, PPQ, APHIS, 4700 River Road Unit 133, Riverdale, MD 20737–1236; (301) 734–4394. For copies of more detailed information on the information collection, contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 734–7477.

SUPPLEMENTARY INFORMATION:

Title: Imported Seed and Screenings.

OMB Number: 0579–0124.

Type of Request: Extension of approval of an information collection.

Abstract: Under the authority of the Federal Seed Act (FSA) of 1939, as amended (7 U.S.C. 1551 *et seq.*), the U.S. Department of Agriculture (USDA) regulates the importation and interstate movement of certain agricultural and vegetable seeds and screenings. Title III of the FSA, "Foreign Commerce," requires shipments of imported agricultural and vegetable seeds to be labeled correctly and to be tested for the presence of the seeds of certain noxious weeds as a condition of entry into the United States. The Animal and Plant Health Inspection Service's regulations implementing the provisions of title III of the FSA are found in 7 CFR part 361.

The regulations require the use of a number of information collection activities, including declaration of importation, container labeling, notification of seed location, a seed return request, seed analysis certificates, seed identity maintenance, and associated recordkeeping.

We are asking OMB to approve our use of these information collection activities for an additional 3 years.

The purpose of this notice is to solicit comments from the public (as well as affected agencies) concerning our information collection. These comments will help us:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the information collection, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the information collection on those who are to respond, through use, as appropriate, of automated, electronic, mechanical, and other collection technologies, *e.g.*, permitting electronic submission of responses.

Estimate of burden: The public reporting burden for this collection of information is estimated to average 0.37816 hours per response.

Respondents: Importers of seed and screenings, seed cleaning/processing facility personnel, officials of the Canadian Food Inspection Agency (CFIA), and private seed laboratories accredited by CFIA.

Estimated annual number of respondents: 1,200.

Estimated annual number of responses per respondent: 25.

Estimated annual number of responses: 30,000.

Estimated total annual burden on respondents: 11,345 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Done in Washington, DC, this 2nd day of December, 2003.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 03–30234 Filed 12–4–03; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 03–096–1]

Notice of Request for Extension of Approval of an Information Collection

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Extension of approval of an information collection; comment request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's intention to request an extension of approval of an information collection in support of regulations under which eligible owners may receive payments to replace trees removed because of citrus canker.

DATES: We will consider all comments that we receive on or before February 3, 2004.

ADDRESSES: You may submit comments by postal mail/commercial delivery or by e-mail. If you use postal mail/commercial delivery, please send four copies of your comment (an original and three copies) to: Docket No. 03–096–1, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 03–096–1. If you use e-mail, address your comment to *regulations@aphis.usda.gov*. Your comment must be contained in the body of your message; do not send attached files. Please include your name and address in your message and "Docket No. 03–096–1" on the subject line.

You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue, SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS dockets, are available on the Internet at *http://www.aphis.usda.gov/ppd/rad/webrepor.html*.

FOR FURTHER INFORMATION CONTACT: For information regarding the citrus canker regulations, contact Mr. Stephen Poe, Operations Officer, Pest Detection and Management Programs, PPQ, APHIS, 4700 River Road Unit 134, Riverdale, MD 20737–1231; (301) 734–8899. For copies of more detailed information on the information collection, contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 734–7477.

SUPPLEMENTARY INFORMATION:

Title: Citrus Canker; Commercial Citrus Tree Replacement Program.

OMB Number: 0579–0163.

Type of Request: Extension of approval of an information collection.

Abstract: The Plant Protection Act (7 U.S.C. 7701–7772) authorizes the Secretary of Agriculture, either independently or in cooperation with States, to carry out operations or measures to detect, eradicate, suppress, control, prevent, or retard the spread of plant pests, such as citrus canker, that are new to or not widely distributed within the United States.

Citrus canker is a plant disease that affects plant and plant parts, including fresh fruit of citrus and citrus relatives (*Family Rutaceae*). Citrus canker can cause defoliation and other serious damage to the leaves and twigs of susceptible plants. It can also cause lesions on the fruit of infected plants that render the fruit unmarketable and cause infected fruit to drop from the trees before reaching maturity. The aggressive A (*Asiatic*) strain of citrus canker can infect susceptible plants rapidly and lead to extensive economic losses in commercial citrus-producing areas.

Regulations to prevent the interstate spread of citrus canker are contained in 7 CFR 301.75 through 301.75–16. Under § 301.75–15, owners of commercial citrus groves in Florida who have had citrus trees destroyed because of citrus canker may be eligible to receive funds to replace the trees. Owners must complete a form to apply for the funds.

We are asking OMB to approve our use of this information collection activity for an additional 3 years.

The purpose of this notice is to solicit comments from the public (as well as affected agencies) concerning our information collection. These comments will help us:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the information collection, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the information collection on those who are to respond, through use, as appropriate, of automated, electronic, mechanical, and other collection technologies, *e.g.*, permitting electronic submission of responses.

Estimate of burden: The public reporting burden for this collection of information is estimated to average 0.35 hours per response.

Respondents: Eligible commercial citrus growers in Florida.

Estimated annual number of respondents: 20.

Estimated annual number of responses per respondent: 1.

Estimated annual number of responses: 20.

Estimated total annual burden on respondents: 7 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Done in Washington, DC, this 1st day of December, 2003.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 03–30235 Filed 12–4–03; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 03–097–1]

Notice of Request for Extension of Approval of an Information Collection

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Extension of approval of an information collection; comment request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's intention to request an extension of approval of an information collection in support of regulations for the importation of artificially dwarfed plants.

DATES: We will consider all comments that we receive on or before February 3, 2004.

ADDRESSES: You may submit comments by postal mail/commercial delivery or by e-mail. If you use postal mail/commercial delivery, please send four copies of your comment (an original and three copies) to: Docket No. 03–097–1, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 03–097–1. If you use e-mail, address your comment to *regulations@aphis.usda.gov*. Your comment must be contained in the body of your message; do not send attached files. Please include your name and address in your message and "Docket No. 03–097–1" on the subject line.

You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue, SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS dockets, are available on the Internet at *http://www.aphis.usda.gov/ppd/rad/webrepor.html*.

FOR FURTHER INFORMATION CONTACT: For information regarding regulations for the importation of artificially dwarfed plants, contact Mr. Alan S. Green, Assistant Director, Quarantine Policy, Analysis and Support, PPQ, APHIS, 4700 River Road Unit 60, Riverdale, MD 20737–1236; (301) 734–8311. For copies of more detailed information on the information collection, contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 734–7477.

SUPPLEMENTARY INFORMATION:

Title: Importation of Artificially Dwarfed Plants.

OMB Number: 0579–0176.

Type of Request: Extension of approval of an information collection.

Abstract: The Plant Protection Act (7 U.S.C. 7701–7772) authorizes the Secretary of Agriculture to prohibit or restrict the importation, entry, or interstate movement of plants, plant products, and other articles to prevent the introduction of plant pests into the United States or their dissemination within the United States.

The regulations contained in "Subpart—Nursery Stock, Plants, Roots, Bulbs, Seeds, and Other Plant Products" (7 CFR 319.37 through 319.37–14) prohibit or restrict the importation of

living plants, plant parts, and seeds for propagation.

Among other things, the regulations require artificially dwarfed plants imported into the United States to be accompanied by a phytosanitary certificate issued by the government of the country of origin. This certificate must contain declarations that certain conditions were met in the country of origin to protect against the infestation of the plants by longhorned beetles and other plant pests.

We are asking OMB to approve our use of these information collection activities for an additional 3 years.

The purpose of this notice is to solicit comments from the public (as well as affected agencies) concerning our information collection. These comments will help us:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the information collection, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the information collection on those who are to respond, through use, as appropriate, of automated, electronic, mechanical, and other collection technologies, e.g., permitting electronic submission of responses.

Estimate of burden: The public reporting burden for this collection of information is estimated to average 0.25 hours per response.

Respondents: Plant health officials of exporting countries.

Estimated annual number of respondents: 20.

Estimated annual number of responses per respondent: 5.

Estimated annual number of responses: 100.

Estimated total annual burden on respondents: 25 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Done in Washington, DC, this 1st day of December, 2003.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 03–30236 Filed 12–4–03; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 03–111–1]

Double-Crested Cormorant Management in the United States; Record of Decision

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: This notice advises the public of the Animal and Plant Health Inspection Service's record of decision for the Double-Crested Cormorant Management in the United States final environmental impact statement.

ADDRESSES: Copies of the record of decision and the final environmental impact statement on which the record of decision is based are available for public inspection at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

The record of decision may be viewed on the Wildlife Services Web site at *http://www.aphis.usda.gov/ws/pubs.html*. The final environmental impact statement may also be viewed on the Internet at *http://migratorybirds.fws.gov/issues/cormorant/cormorant.html*.

Copies of the record of decision and the final environmental impact statement may be obtained from the person listed under **FOR FURTHER INFORMATION CONTACT.**

FOR FURTHER INFORMATION CONTACT: Mr. David S. Reinhold, Environmental Coordinator, Operational Support Staff, WS, APHIS, 4700 River Road Unit 87, Riverdale, MD 20737–1235; (301) 734–7921.

SUPPLEMENTARY INFORMATION: This notice advises the public that the Animal and Plant Health Inspection Service (APHIS) has prepared a record of decision based on the Double-Crested Cormorant Management in the United States final environmental impact statement (EIS) prepared by the U.S. Fish and Wildlife Service (USFWS). APHIS was a cooperating agency in the preparation of the EIS. The USFWS published the notice of availability for the final EIS in the **Federal Register** on August 11, 2003 (68 FR 47603) and published its Record of Decision on October 8, 2003 (68 FR 58022). APHIS has independently reviewed the EIS and has concluded its comments and suggestions have been satisfied. APHIS has now prepared a record of decision on the adopted EIS and is making it available to the public. This record of decision has been prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*), (2) regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508), (3) USDA regulations implementing NEPA (7 CFR part 1), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372).

Done in Washington, DC, this 2nd day of December 2003.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 03–30229 Filed 12–4–03; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 03–112–1]

Vaccination of Wild Bison; Availability of an Environmental Assessment and Finding of No Significant Impact

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of availability and request for comments.

SUMMARY: We are advising the public that an environmental assessment and finding of no significant impact have been prepared by the Animal and Plant Health Inspection Service relative to subcutaneous vaccination of wild, free-ranging bison in the Greater Yellowstone Area with Strain RB51 vaccine to help prevent the spread of brucellosis. The environmental assessment documents our review and analysis of environmental impacts associated with the vaccination and provides a basis for our conclusion that vaccination of the bison will not have a significant impact on the quality of the human environment. We are making the environmental assessment and finding of no significant impact available to the public for review and comment.

DATES: We will consider all comments that we receive on or before January 5, 2004.

ADDRESSES: You may submit comments by postal mail/commercial delivery or by e-mail. If you use postal mail/commercial delivery, please send four copies of your comment (an original and three copies) to: Docket No. 03–112–1, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 03–112–1. If you use e-mail, address your comment to *regulations@aphis.usda.gov*. Your comment must be contained in the body of your message; do not send attached files. Please include your name and address in your message and "Docket No. 03–112–1" on the subject line.

To obtain copies of the environmental assessment and finding of no significant impact, contact the National Center for Animal Health Programs, Veterinary Services, APHIS, 4700 River Road Unit 43, Riverdale, MD 20737–1231; (301) 734–4923. The documents are also available on the Internet at *http://www.aphis.usda.gov/ppd/es/vsdocs.html*.

You may also read the environmental assessment and finding of no significant impact, and any comments we receive on those documents, in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS dockets, are available on the Internet at *http://www.aphis.usda.gov/ppd/rad/webrepor.html*.

FOR FURTHER INFORMATION CONTACT: Dr. Arnold Gertonson, Yellowstone Brucellosis Coordinator, National Center for Animal Health Programs, VS, APHIS, Building B MSC 3E13, 2150 Centre Avenue, Fort Collins, CO 80526–8117; (970) 494–7363.

SUPPLEMENTARY INFORMATION:

Background

Brucellosis is a contagious disease caused by *Brucella* bacteria. It can infect cattle, bison, elk, other animals, and humans. In cattle, bison, and elk, the specific disease organism is *Brucella abortus*. In infected cattle and bison, the disease organism localizes in lymph nodes, reproductive organs, and/or the udder, causing abortion in females and systemic effects in both males and females. Brucellosis is transmitted through contaminated and untreated milk and milk products and through direct contact with an infected aborted fetus or calf, afterbirth, or other reproductive tract discharges.

Brucellosis is considered one of the most serious diseases of livestock. While its hallmark symptom is abortion, brucellosis can also result in decreased milk production, weight loss in animals, infertility, and lameness. The Animal and Plant Health Inspection Service (APHIS) has worked for years to eliminate this disease from the United States.

The only known reservoir of *Brucella abortus* in the United States occurs in wild, free-ranging populations of bison and elk in the Greater Yellowstone Area (GYA), which comprises areas of Idaho, Montana, and Wyoming. The significance of wildlife in the GYA as a reservoir of brucellosis and potential source of infection for cattle in the GYA has been widely recognized. Additionally, free-ranging bison herds in the GYA are a natural resource of great importance.

To address the issue of brucellosis in the GYA, the U.S. Department of the Interior's National Park Service, the State of Montana, and their cooperators (including the U.S. Department of Agriculture) developed an Interagency Bison Management Plan for the bison herd in Yellowstone National Park (YNP). One of the disease management requirements of the plan is for eligible bison to be vaccinated against brucellosis.

The Montana Department of Livestock (MDOL) has requested APHIS's assistance with the vaccination against brucellosis of wild, free-ranging bison calves and non-pregnant yearlings that leave YNP and migrate onto State, private, or other Federal lands. The MDOL anticipates starting bison vaccination as early as this winter, using Strain RB51 vaccine, when bison begin to leave YNP in search of vegetation.

APHIS has completed an environmental assessment (EA) that examines the potential environmental effects of APHIS's involvement in the vaccination described above. Our review and analysis are documented in detail in an EA entitled "Subcutaneous Vaccination of Wild, Free-Ranging Bison in the Greater Yellowstone Area; Environmental Assessment (November 2003)." Based on that EA, APHIS has determined that subcutaneous vaccination of wild, free-ranging bison of the GYA with Strain RB51 vaccine will not significantly impact human health or the environment. That determination is set forth in a document titled "Finding of No Significant Impact for Subcutaneous Vaccination of Wild, Free-Ranging Bison in the Greater Yellowstone Area; Environmental Assessment (November 2003)."

We are making the EA and finding of no significant impact (FONSI) available to the public for review and comment. (Instructions for obtaining copies of the EA and FONSI are included under the heading **ADDRESSES** at the beginning of this notice.) We will consider all comments on the EA and FONSI that we receive on or before the date listed under the heading **DATES** at the beginning of this notice. Following the close of the comment period, we will publish a notice in the **Federal Register** in which we will discuss any issues raised by commenters.

The EA and FONSI have been prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*), (2) regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508), (3) USDA regulations implementing NEPA (7 CFR part 1), and

(4) APHIS' NEPA Implementing Procedures (7 CFR part 372).

Done in Washington, DC, this 2nd day of December, 2003.

Kevin Shea,

Acting Administrator, Animal and Plant health Inspection Service.

[FR Doc. 03–30237 Filed 12–4–03; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Forest Service

South Fork Wildfire Salvage Project, Boise National Forest, ID

AGENCY: Forest Service, USDA.

ACTION: Notice of Intent to Prepare Environmental Impact Statement.

SUMMARY: The Cascade Ranger District of the Boise National Forest will prepare an environmental impact statement (EIS) for a resource management project in the South Fork Salmon River. The entire project area is located within watersheds that drain directly into the South Fork Salmon River or its tributaries, downstream of Warm Lake. The project area is located 25 miles northeast of Cascade, Idaho, and about 120 miles north of Boise, Idaho.

The agency invites written comments and suggestions on the scope of the analysis. The agency also hereby gives notices of the environmental analysis and decision-making process that will occur on the proposal so interested and affected people are aware of how they may participate and contribute to the final decision. At this time no public meetings to discuss the project are planned.

Proposed Action: The primary objective of the project is to capture the value of fire-killed and imminently dead timber not needed to maintain or improve post-fire ecological function in the short (3–15 years) and long term (15+ years). To further the achievement of Forest Plan goals, road maintenance and decommissioning activities have been integrated with the salvage proposal to support identified aquatic and watershed restoration activities. Revenue generated from the salvage operation would be used to accomplish all or some of these road-related activities.

The Proposed Action would harvest fire-killed and imminently dead trees from a total of 2,536 acres in the 6,822-acre project area. Only those trees not needed to maintain or improve post-fire ecological function in the short (3–15 years) and long term (15+ years) would be harvested. An estimated 5.0 MMBF of timber would be available for harvest using ground-based (780 acres) and helicopter (1,756 acres) yarding systems. The Proposed Action would employ the salvage prescription only.

No new road construction or reconstruction, as defined in the Revised Forest Plan, would occur. An estimated 0.1 mile of road 401, 0.9 mile of road 467, and 0.4 mile of road 488 would be restored through maintenance activities to their approved road management objectives to improve fish habitat and hydrologic conditions, and reduce sedimentation. Specifically, three additional culverts and one hardened drive-through dip would be installed and two existing culverts replaced on road 401; eight additional culverts installed and 0.5 mile of the surface graveled on road 467, and; 0.4 mile of the surface graveled on road 488.

An estimated 0.3 mile of existing roads (401C, 487, and 467A), currently closed year-round to motorized traffic, would be decommissioned to prevent unauthorized use. These three roads (401C, 487, and 467A) and their associated arterial roads (487A, 487B, 487B1, 487D, 467A1, and 467A2) would be removed from the transportation system. Decommissioning of this 0.3 mile would effectively prevent unauthorized access on roughly 10 miles of road.

Preliminary Issues: Preliminary concerns with the Proposed Action include potential impacts on: (1) Fish habitat and water quality; (2) inventoried roadless areas; (3) visual quality of the area, and; (4) the suitable Wild and Scenic River corridor.

Possible Alternatives To The Proposed Action: One alternative to the Proposed Action that has been discussed thus far is a no action alternative. Other alternatives will likely be developed as issues are identified and information received.

Decisions To Be Made: The Boise National Forest Supervisor will decide the following. What amount, type, and distribution of dead and imminently dead trees within the wildfire area should be retained to improve or maintain post-fire ecological conditions? If dead and imminently dead trees within the wildfire area are found not to be needed to improve or maintain ecosystem functions, how should they be harvested while still protecting post-fire ecological conditions? Should existing classified roads within the project area receive maintenance activities to improve fish habitat and hydrologic conditions and reduce sedimentation, and if so, where within the project area? Should portions of roads currently closed year-round to motorized traffic be decommissioned to prevent unauthorized use, and if so, which roads? What design features and/or mitigation measures should be applied to proposed activities to help ensure the activities do not retard attainment of post-fire ecological recovery in the short and long term?

DATES: Substantive comments concerning the proposed project and analysis are encouraged and should be postmarked or received within 30 days following publication of this announcement in the **Federal Register**.

ADDRESSES: Substantive comments should be addressed to the Cascade Ranger District, ATTN: Keith Dimmett, P.O. Box 696, Cascade, ID 83611 or sent electronically to *comments-intermtn-boise-cascade@fs.fed.us*. Electronic comments must be submitted in plain text or another format compatible with Microsoft Word. Substantive comments are those within the scope of, are specific to, and have a direct relationship to the proposed action and include supporting reasons that the Responsible Official should consider in reaching a decision. Comments received in response to this request will be available for public inspection and will be released in their entirety if requested pursuant to the Freedom of Information Act.

FOR FURTHER INFORMATION CONTACT: Further information can be obtained from Keith Dimmett at the address mentioned above or by calling 208–382–7400.

Schedule: Draft Environmental Impact Statement (DEIS), February 2004. Final Environmental Impact Statement (FEIS), May 2004.

SUPPLEMENTARY INFORMATION: Roughly half of the project area has been inventoried as roadless, including portions of both the Reeves Creek and Caton Lake Inventoried Roadless Areas. None of the activities associated with the Proposed Action would occur within any inventoried roadless area. With the exception of trees already felled within the powerline corridor, harvest would not occur within streamside riparian conservation areas (RCAs).

The entire project area lies within Management Area 19 (Warm Lake), discussed on pages III–316 through III–331 in the Revised Boise National Land and Resource Management Plan. Several management prescription categories apply within this management area, however only Management Prescription Categories 2.1, 3.2, and 4.2 occur within the project area.

The comment period on the DEIS will be 45 days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register**.

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of the DEIS must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the DEIS stage but are not raised until after completion of the FEIS may be waived or dismissed by the courts. *City of Angoon* v. *Hodel*, 803 F. 2d 1016, 1002 (9th Cir., 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the DEIS 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the FEIS.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the DEIS should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

Responsible Official: Richard A. Smith, Forest Supervisor, Boise National Forest, 1249 South Vinnell Way, Suite 200, Boise, ID 83709.

Dated: November 26, 2003.

Richard A. Smith,

Forest Supervisor.

[FR Doc. 03–30066 Filed 12–4–03; 8:45 am]

BILLING CODE 3410–11–M

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Additions and Deletions

AGENCY: Committee for Purchase from People Who Are Blind or Severely Disabled.

ACTION: Proposed additions to and deletions from Procurement List.

SUMMARY: The Committee is proposing to add to the Procurement List services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and to delete products previously furnished by such agencies.

Comments Must Be Received on or Before: January 4, 2004.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia, 22202–3259.

FOR FURTHER INFORMATION CONTACT: Sheryl D. Kennerly, (703) 603–7740.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C 47(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the proposed actions.

Additions

If the Committee approves the proposed additions, the entities of the Federal Government identified in this notice for each product or service will be required to procure the services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. If approved, the action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the services to the Government.
2. If approved, the action will result in authorizing small entities to furnish the services to the Government.
3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the services proposed for addition to the Procurement List. Comments on this certification are invited.

Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

End of Certification

The following services are proposed for addition to Procurement List for production by the nonprofit agencies listed:

Services

Service Type/Location: Document Destruction, At the following Locations and for the Nonprofit Agencies Indicated: Camarillo Office, IRS (Including the Criminal Investigation Division), 751 Daily Drive, Camarillo, California.
NPA: Goodwill Industries of Southern California, Los Angeles, CA, El Centro Office, IRS, 1699 W. Main Street, El Centro, California.
NPA: Landmark Services, Inc., Santa Ana, California, El Monte Office, IRS (Including the Criminal Investigation Division), 9350 E. Flair Drive, El Monte, California.
NPA: Goodwill Industries of Southern California, Los Angeles, California, El Segundo Office, IRS (Including the Criminal Investigation Division), 222 N. Sepulveda Blvd., El Segundo, California.
NPA: Goodwill Industries of Southern California, Los Angeles, California, Glendale Office, IRS (Including the Criminal Investigation Division), 225 W. Broadway, Glendale, California.
NPA: Goodwill Industries of Southern California, Los Angeles, California, Laguna Niguel Office, IRS (Including the Criminal Investigation Division), 24000 Avila Road, Laguna Niguel, California.
NPA: Landmark Services, Inc., Santa Ana, California, Long Beach Office, IRS (Including the Criminal Investigation Division), 501 W. Ocean Blvd., Long Beach, California.
NPA: Landmark Services, Inc., Santa Ana, California, Los Angeles Office, IRS (Including the Criminal Investigation Division), 300 N. Los Angeles Street, Los Angeles, California.
NPA: Goodwill Industries of Southern California, Los Angeles, California, Norwalk Office, IRS, 12440 E. Imperial Highway, Norwalk, California.
NPA: Goodwill Industries of Southern California, Los Angeles, California, Palm Springs Office, IRS, 980 E. Tahquitz Canyon Way, Palm Springs, California.
NPA: Goodwill Industries of Southern California, Los Angeles, California, San Bernardino Office, IRS (Including the Criminal nvestigation Division), 290 N. "D" Street, San Bernardino, California.
NPA: Goodwill Industries of Southern California, Los Angeles, California, San Diego Office, IRS (Including the Criminal Investigation Division), 880 Front Street, and 701 "B" Street, San Diego, California.
NPA: Landmark Services, Inc., Santa Ana, California, San Marcos Office, IRS, 1 Civic Center Drive, San Marcos, California.
NPA: Landmark Services, Inc., Santa Ana, California, Santa Ana Office, IRS (Including the Criminal Investigation Division), 34 Civic Center Plaza, Santa Ana, California.
NPA: Landmark Services, Inc., Santa Ana, California, Van Nuys Office, IRS (Including the Criminal Investigation Division), 6230 Van Nuys Blvd., Van Nuys, California.
NPA: Goodwill Industries of Southern California, Los Angeles, California, Woodland Hills Office, IRS, 6340 Variel Ave, Woodlands Hills, California.
NPA: Goodwill Industries of Southern California, Los Angeles, California.
Contract Activity: IRS-Western Area Procurement Branch-APFW, San Francisco, California.
Service Type/Location: Mailing Services, Theodore Levin U.S. Courthouse, U.S. District Court, Eastern District of Michigan, Detroit, Michigan.
NPA: Jewish Vocational Service and Community Workshop, Southfield, Michigan.
Contract Activity: U.S. District Court, Detroit, Michigan.

Deletions

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. If approved, the action may result in additional reporting, recordkeeping or other compliance requirements for small entities.
2. If approved, the action may result in authorizing small entities to furnish the products to the Government.
3. There are no known regulatory alternatives which would accomplish

the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the products proposed for deletion from the Procurement List.

End of Certification

The following products are proposed for deletion from the Procurement List:

Products

Product/NSN: Detergent, General Purpose, 7930–01–055–6121.
NPA: Lighthouse for the Blind, St. Louis, Missouri.
Contract Activity: GSA, Southwest Supply Center, Fort Worth, Texas.
Product/NSN: Holder, Desk Memorandum, 7520–00–139–3802, 7520–00–290–6445.
NPA: Dallas Lighthouse for the Blind, Inc., Dallas, Texas.
Contract Activity: Office Supplies & Paper Products Acquisition Center, New York, New York.
Product/NSN: Sponge, Cellulose, 7920–00–559–8462.
NPA: Mississippi Industries for the Blind, Jackson, Mississippi.
Contract Activity: GSA, Southwest Supply Center, Fort Worth, Texas.
Product/NSN: Strap Set, Webbing, 5342–00–922–2480.
NPA: Huntsville Rehabilitation Foundation, Huntsville, Alabama.
Contract Activity: Defense Supply Center Richmond, Richmond, Virginia.

Sheryl D. Kennerly,

Director, Information Management.

[FR Doc. 03–30288 Filed 12–4–03; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Additions and Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to and deletions from Procurement List.

SUMMARY: This action adds to the Procurement List products and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and deletes from the Procurement List products previously furnished by such agencies.

EFFECTIVE DATE: January 4, 2004.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202–3259.

FOR FURTHER INFORMATION CONTACT: Sheryl D. Kennerly, (703) 603–7740.

SUPPLEMENTARY INFORMATION:

Additions

On August 29, October 3, and October 10, 2003, the Committee for Purchase From People Who Are Blind or Severely Disabled published notice (68 FR 51962, 57403, and 58651) of proposed additions to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the products and services and impact of the additions on the current or most recent contractors, the Committee has determined that the products and services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the products and services to the Government.

2. The action will result in authorizing small entities to furnish the products and services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the products and services proposed for addition to the Procurement List.

End of Certification

Accordingly, the following products and services are added to the Procurement List:

Products

Product/NSN: Fluorescent Highlighter M.R. 1776
Product/NSN: Permanent Marker M.R. 1780
NPA: Dallas Lighthouse for the Blind, Inc., Dallas, Texas
Contract Activity: Defense Commissary Agency, Fort Lee, Virginia
Product/NSN: Polyethylene Waste Disposable Asbestos Bag
8105–LL–S04–7842
8105–LL–S04–7843
8105–LL–S05–0018
NPA: Open Door Center, Valley City, North Dakota
Contract Activity: Fleet and Industrial Supply Center, Bremerton, Washington
Product/NSN: Safety-Walk, Tapes & Treads
7220–00–NIB–0022, 710 Black Coarse Tape
7220–00–NIB–0031, 710 Black Coarse Tape
7220–00–NIB–0032, 610 Black General Purpose
7220–00–NIB–0046, 630 Yellow General Purpose
7220–00–NIB–0053, 510 Black Conformable
7220–00–NIB–0054, 510 Black Conformable
7220–00–NIB–0061, 530 Yellow Conformable
7220–00–NIB–0065, 310 Black Medium Resilient
7220–00–NIB–0075, 370 Gray Medium Resilient
7220–00–NIB–0136, 710 Black Coarse Tape
7220–00–NIB–0137, 610 Black General Purpose
7220–00–NIB–0138, 620 Clear General Purpose
7220–00–NIB–0139, 630 Yellow General Purpose
7220–00–NIB–0140, 660 Brown General Purpose
7220–00–NIB–0141, 510 Black Conformable
7220–00–NIB–0142, 520 Yellow Conformable
7220–00–NIB–0143, 310 Black Medium Resilient
7220–00–NIB–0144, 370 Gray Medium Resilient
NPA: Louisiana Association for the Blind, Shreveport, Louisiana
Contract Activity: Office Supplies & Paper Products Acquisition Center, New York, New York
Product/NSN: Telephone Cards
M.R. 987 (200 Minutes)
M.R. 988 (300 Minutes)
M.R. 993 (400 Minutes)
NPA: Winston-Salem Industries for the Blind, Winston-Salem, North Carolina
Contract Activity: Defense Commissary Agency (DeCA), Ft. Lee, Virginia

Services

Service Type/Location: Administrative Services, Federal Protective Service, Southern Field Operation Branch, Los Angeles, California
NPA: Pacific Coast Community Services, Truckee, California
Contract Activity: GSA/PBS, Region 9 PMS, San Francisco, California
Service Type/Location: Custodial Services, U.S. Courthouse (Federal Building), Charlottesville, Virginia
NPA: WorkSource Enterprises, Charlottesville, Virginia
Contract Activity: GSA, Public Buildings Service, Region 3 (3PMT), Philadelphia, Pennsylvania
Service Type/Location: Custodial Services U.S. Mint, West Point, New York
NPA: New Dynamics Corporation, Middletown, New York
Contract Activity: Department of the Treasury, Washington, DC

Deletions

On October 10, 2003, the Committee for Purchase From People Who Are Blind or Severely Disabled published notice (68 F.R. 58651/58652) of proposed deletions to the Procurement List. After consideration of the relevant matter presented, the Committee has determined that the products listed below are no longer suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action may result in additional reporting, recordkeeping or other compliance requirements for small entities.

2. The action may result in authorizing small entities to furnish the products to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the products deleted from the Procurement List.

End of Certification

Accordingly, the following products are deleted from the Procurement List:

Products

Product/NSN: Computer Accessories
7045–01–483–7451
7045–01–483–7844
NPA: Wiscraft Inc.—Wisconsin Enterprises for the Blind, Milwaukee, Wisconsin
Contract Activity: Office Supplies & Paper Products Acquisition Center, New York, New York
Product/NSN: Dropcloth, Heavy Duty
8340–00–NIB–0010
NPA: East Texas Lighthouse for the Blind, Tyler, Texas
Contract Activity: GSA, Southwest Supply Center, Fort Worth, Texas
Product/NSN: Fixture, Lighting Industrial
6210–00–688–4929
NPA: The Chicago Lighthouse for People who are Blind or Visually Impaired, Chicago, Illinois
Contract Activity: GSA, Southwest Supply Center, Fort Worth, Texas
Product/NSN: Pad, Scouring
7920–01–383–7928
NPA: Beacon Lighthouse, Inc., Wichita Falls, Texas
Contract Activity: GSA, Southwest Supply Center, Fort Worth, Texas
Product/NSN: Tape, Electronic Data
7045–01–438–7086
NPA: North Central Sight Services, Inc., Williamsport, Pennsylvania
Contract Activity: Defense Supply Center Philadelphia, Philadelphia, Pennsylvania
Product/NSN: Tape, Electronic Data Processing
7045–01–123–0367
NPA: North Central Sight Services, Inc., Williamsport, Pennsylvania
Contract Activity: Defense Supply Center Columbus, Columbus, Ohio
Product/NSN: Towel, Paper
8540–01–494–0910
NPA: The Lighthouse for the Blind in New Orleans, New Orleans, Louisiana
Contract Activity: Office Supplies & Paper Products Acquisition Center, New York, New York

Sheryl D. Kennerly,

Director, Information Management.

[FR Doc. 03–30289 Filed 12–4–03; 8:45 am]

BILLING CODE 6353–01–P

BROADCASTING BOARD OF GOVERNORS

Sunshine Act Meeting

DATE AND TIME: December 10, 2003; 1 p.m.–4:30 p.m.

PLACE: Broadcasting Board of Governors, 330 Independence Avenue, SW, Washington, DC 20237.

CLOSED MEETING: The members of the Broadcasting Board of Governors (BBG) will meet in closed session to review and discuss a number of issues relating to U.S. Government-funded non-military international broadcasting. They will address internal procedural, budgetary, and personnel issues, as well as sensitive foreign policy issues relating to potential options in the U.S. international broadcasting field. This meeting is closed because if open it likely would either disclose matters that would be properly classified to be kept secret in the interest of foreign policy under the appropriate executive order (5 U.S.C. 552b. (c)(1)) or would disclose information the premature disclosure of which would be likely to significantly frustrate implementation of a proposed agency action. (5 U.S.C. 552. (c)(9)(B)) In addition, part of the discussion will relate solely to the internal personnel and organizational issues of the BBG or the International Broadcasting Bureau. (5 U.S.C. 552b (c)(2) and (6))

FOR FURTHER INFORMATION CONTACT: Persons interested in obtaining more information should contact either Brenda Hardnett or Carol Booker at (202) 401–3736.

Dated: December 2, 2003.

Carol Booker,

Legal Counsel.

[FR Doc. 03–30339 Filed 12–3–03; 10:14 am]

BILLING CODE 8230–01–M

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provision of the Paperwork Reduction Act of 1995, Public Law 104–13.

Bureau: International Trade Administration,

Title: U.S. Government Trade Event Information Request.

Agency Form Number: ITA–4136P.

OMB Number: 0625–0238.

Type of Request: Regular Submission.

Burden: 50 hours.

Number of Respondents: 50.

Avg. Hours Per Response: 1 hour.

Needs and Uses: The International Trade Administration's Advocacy Center marshals federal resources to assist U.S. firms competing for foreign government procurements worldwide. The Advocacy Center is under the umbrella of the Trade Promotion Coordinating Committee (TPCC), which is chaired by the Secretary of Commerce and includes 19 federal agencies involved in export promotion. The mission of the Advocacy Center is to promote U.S. exports and create U.S. jobs and coordinate U.S. Government (USG) advocacy among the TPCC. The purpose of the questionnaire is to collect the necessary information to make an evaluation as to whether a firm qualifies for senior-level USG support, in the form of attendance at an event including witnessing a commercial agreement signing. The event could be a company sponsored activity or a foreign or USG sponsored event to highlight a commercial trade success for more than one firm. Without this information we will be unable to determine if a U.S. firm is eligible for USG support for the firm's role in the event.

Affected Public: Businesses or other for-profit.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain a benefit; voluntary.

OMB Desk Officer: David Roster, (202) 395–7340.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, Room 6625, 14th Street and Constitution Ave., NW., Washington, DC 20230. E-mail: *dHynek@doc.gov.*

Written comments and recommendations for the proposed information collection should be sent to

David Roster, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20503 within 30 days of the publication of this notice in the **Federal Register**.

Dated: December 1, 2003.

Madeleine Clayton,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 03–30238 Filed 12–4–03; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

[I.D. 120203A]

Submission for OMB Review; Comment Request

The Department of Commerce has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the emergency provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Scup Gear Restricted Area (GRA) Access Program Authorization.

Form Number(s): None.

OMB Approval Number: 0648–0469.

Type of Request: Emergency submission.

Burden Hours: 887.

Number of Respondents: 72.

Average Hours Per Response: 2 minutes for a telephone call to request a GRA authorization; 2 minutes for a notification call at least 5 days prior to a trip; 2 minutes for a transmission for declaring into a GRA when the vessel leaves port; 15 seconds per automated position report from a vessel monitoring system; and 10 minutes for a daily manual vessel monitoring system report of discards (including null reports).

Needs and Uses: This collection of information involves a number of requirements needed to manage the Scup GRA Access Program. The information will be used for enforcement of regulations and for future analysis of the fishery.

Affected Public: Business or other for-profit organizations, and individuals or households.

Frequency: On occasion, daily, hourly.

Respondent's Obligation: Required to obtain or retain a benefit.

OMB Desk Officer: David Rostker, (202) 395–3897.

SUPPLEMENTARY INFORMATION: Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within December 19, 2003 to David Rostker, OMB Desk Officer, FAX number (202) 395–7285, or *David__Rostker@omb.eop.gov*.

Dated: November 26, 2003.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 03–30285 Filed 12–4–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

[I.D. 120203B]

Submission for OMB Review; Comment Request

The Department of Commerce has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Human Dimensions of Marine Resource Management.

Form Number(s): None.

OMB Approval Number: None.

Type of Request: Regular submission.

Burden Hours: 3,000.

Number of Respondents: 4,800.

Average Hours Per Response: 0.625.

Needs and Uses: This request is for a generic clearance for social science research related to the human dimensions of the utilization of living marine resources. This process has been initiated in order to expedite the approval process for future specific data collections.

Affected Public: Individuals or households; business or other for-profit organizations; not-for-profit institutions; Federal government; and State, Local, or Tribal Government.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, FAX number 202-395-7285, or *David__Rostker@omb.eop.gov*.

Dated: November 26, 2003.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 03–30286 Filed 12–4–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

Census Bureau

Construction Progress Reporting Surveys (CPRS)

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before February 3, 2004.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dhynek@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Michael Davis, U.S. Census Bureau, Room 2125, FOB 4, Washington, DC 20233–6900, (301) 763–1605 (or via the Internet at *michael.davis@census.gov*).

SUPPLEMENTARY INFORMATION:

I. Abstract

The Census Bureau plans to request a revision of a currently approved collection for forms C–700, Private Construction Projects; C–700(R), Multifamily Residential Projects; and C–700(SL), State and Local Government Projects. These forms are used to conduct the Construction Progress Reporting Surveys (CPRS) to collect information on the dollar value of construction put in place by private companies, individuals, private multifamily residential buildings, and state and local governments. Due to the significant growth in construction activity during the past few years and in order to facilitate the publication of construction spending data in more detail by new types of construction, we plan to increase the number of respondents/projects.

The Census Bureau is the preeminent collector and provider of timely, relevant and quality data about the people and economy of the United States. Economic data are the Census Bureau's primary program commitment during nondecennial census years. The Form C–700, Private Construction Projects collects construction put in place data for nonresidential projects owned by private companies or individuals. The Form C–700(R), Multifamily Residential Projects collects construction put in place data for private multifamily residential buildings. Form C–700(SL), State and Local Government Projects, collects construction put in place data for state and local government projects.

The Census Bureau uses the information from these surveys to publish the value of construction put in place series. Published estimates are used by a variety of private business and trade associations to estimate the demand for building materials and to schedule production, distribution, and sales efforts. They also provide various governmental agencies with a tool to evaluate economic policy and to measure progress towards established goals. For example, Bureau of Economic Analysis staff use data to develop the construction components of gross private domestic investment in the gross domestic product. The Federal Reserve Board and the Department of Treasury use the value in place data to predict the gross domestic product, which is presented to the Board of Governors and has an impact on monetary policy.

II. Method of Collection

An independent systematic sample of projects is selected each month according to predetermined sampling rates. Once a project is selected it remains in the sample until completion of the project. Preprinted forms are mailed monthly to respondents to fill in current month data and any revisions to previous months. Some respondents are later called by a Census interviewer and report the data over the phone. Having the information available from a database at the time of the interview greatly helps reduce the time respondents spend on the phone. Interviews are scheduled at the convenience of the respondent, further reducing their burden.

III. Data

OMB Number: 0607–0153.

Form Number: C–700, C–700(R), C–700(SL).

Type of Review: Regular submission.

Affected Public: Individuals, businesses or other for profit, non profit institutions, small businesses or organizations, and State or local governments.

Estimated Number of Respondents: C–700 = 8,500, C–700(R) = 2,500, C–700(SL) = 8,500, Total = 19,500.

Estimated Time Per Response: 15 minutes per month.

Estimated Totgl Annual Burden Hours: C–700 = 25,500, C–700(R) = 7,500, C–700(SL) = 25,500, Total = 58,500.

Estimated Total Annual Cost: 3.5 million.

Respondent's Obligation: Voluntary.

Legal Authority: Title 13, United States Code, Section 182.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: December 1, 2003.

Madeleine Clayton,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 03–30240 Filed 12–4–03; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Short Supply Regulations, Unprocessed Western Red Cedar

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before February 3, 2004.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Office of the Chief Information Officer, 202–482–0266, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Marna Dove, BIS ICB Liaison, Department of Commerce, BIS Office of the Chief Information Officer, Room 6622, 14th and Constitution Avenue, NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

I. Abstract

The information is collected as supporting documentation for license applications to export western red cedar logs to enforce the Export Administration Act's prohibition against the export of such logs from state or Federal lands.

II. Method of Collection

Written submission.

III. Data

OMB Number: 0694–0025.

Form Number: BXA–748P.

Type of Review: Regular submission for extension of a currently approved collection.

Affected Public: Individuals, businesses or other for-profit and not-for-profit institutions.

Estimated Number of Respondents: 35.

Estimated Time Per Response: 30 to 105 minutes per response.

Estimated Total Annual Burden Hours: 36.

Estimated Total Annual Cost: No start-up capital expenditures.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the

agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they will also become a matter of public record.

Dated: December 1, 2002.

Madeleine Clayton,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 03–30239 Filed 12–4–03; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–848]

Notice of Final Rescission of Antidumping Duty New Shipper Review: Freshwater Crawfish Tail Meat from the People's Republic of China

AGENCY: Import Administration, International Trade Administration, U.S. Department of Commerce.

SUMMARY: On September 5, 2003, the Department published a preliminary intent to rescind the new shipper review of Zhoushan Huading Seafood Co., Ltd. (Zhoushan Huading) under the antidumping duty order on freshwater crawfish tail meat from the People's Republic of China (68 FR 52745). The review covers one sale of the subject merchandise entered into the United States during the period September 1, 2001 through August 31, 2002.

Based on our analysis of the record, including factual information obtained since the preliminary notice of intent to rescind, the Department has determined that Zhoushan Huading's new shipper sale is not *bona fide* and, as a result, we are rescinding this new shipper review. *See* "Rescission of New Shipper Review" section below.

EFFECTIVE DATE: December 5, 2003.

FOR FURTHER INFORMATION CONTACT: Douglas Kirby or Thomas Gilgunn, Office of AD/CVD Enforcement VII, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington D.C. 20230; telephone: (202) 482–3782 or (202) 482–4236, respectively.

SUPPLEMENTARY INFORMATION:

Background

We published the preliminary notice of intent to rescind this new shipper review on September 5, 2003. *See Freshwater Crawfish Tail Meat From the People's Republic of China: Preliminary Notice of Intent to Rescind New Shipper Administrative Review*, 68 FR 52745 (*Preliminary Notice*). In the *Preliminary Notice*, the Department found that the sale made by Zhoushan Huading in this new shipper review was not *bona fide* based on the following: 1) the price and quantity for Zhoushan Huading's sale of crawfish tail meat were atypical vis-a-vis other exports from the PRC of the subject merchandise into the United States during the period of review; 2) there were conflicting accounts as to who purchased the crawfish tail meat and who paid Zhoushan Huading for the shipment; 3) there remained uncertainty in regard to the commercial reasonableness of the sale; 4) there were inconsistencies in the terms of sale; and, 5) the Department was unable to establish that the importing parties were actual commercial entities. *See also Memorandum to Barbara E. Tillman, Acting Deputy Assistant Secretary for Import Administration, Group III: Freshwater Crawfish Tail Meat from the People's Republic of China: Analysis of Zhoushan Huading's New Shipper Transaction*, dated August 28, 2003 (*Zhoushan Huading Memo*). A public version of this memorandum is on file in the Central Records Unit, room B–099 of the main Commerce Building.

On September 2, 2003, the Department issued a fourth supplemental questionnaire to Zhoushan Huading, and on September 3, 2003, issued supplemental questionnaires to both the reported buyer and the importer of record in order to clarify the terms of sale and payment documentation for the new shipper sale under review. On September 12, 2003, Zhoushan Huading, the reported buyer, and the importer of record submitted their responses to the Department's supplemental questionnaires. Their responses are discussed in the "Analysis of the *Bona Fides* of the New Shipper Sale" section below.

Comments

On October 6, 2003, petitioners[1] submitted comments. On October 14, 2003, Zhoushan Huading submitted rebuttal comments. The parties raised only one issue in their briefs: "Whether The New Shipper Review of Zhoushan Huading Should Be Rescinded for Lack of a *Bona Fide* Sale." All arguments raised in the case and rebuttal briefs filed by parties to this new shipper review are addressed in the *Issues and Decision Memorandum for the Final Rescission of the New Shipper Review of Freshwater Crawfish Tail Meat from the People's Republic of China for Zhoushan Huading Seafood Co., Ltd.*, dated November 25, 2003 (*Decision Memo*), which is hereby adopted by this notice. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendation in this public memorandum, which is on file in the Central Records Unit, room B–099 of the main Commerce Building. In addition, a complete version of the *Decision Memo* can be accessed directly on the internet at *http://ia.ita.doc.gov*. The paper copy and electronic version of the *Decision Memo* are identical in content.

Scope of the Antidumping Duty Order

The product covered by this order is freshwater crawfish tail meat, in all its forms (whether washed or with fat on, whether purged or unpurged), grades, and sizes; whether frozen, fresh, or chilled; and regardless of how it is packed, preserved, or prepared. Excluded from the scope of the order are live crawfish and other whole crawfish, whether boiled, frozen, fresh, or chilled. Also excluded are saltwater crawfish of any type, and parts thereof. Freshwater crawfish tail meat is currently classifiable in the Harmonized Tariff Schedule of the United States (HTS) under item numbers 1605.40.10.10 and 1605.40.10.90, which are the new HTS numbers for prepared foodstuffs, indicating peeled crawfish tail meat and other, as introduced by U.S. Customs and Border Protection (CBP) in 2000, and HTS items 0306.19.00.10 and 0306.29.00, which are reserved for fish and crustaceans in general. The HTS subheadings are provided for convenience and CBP purposes only. The written description of the scope of this order is dispositive.

Analysis of the *Bona Fides* of the New Shipper Sale

The Department has not acquired nor received any additional information that would alter our preliminary determination that the extremely high price and the unusually low quantity of Zhoushan Huading's new shipper sale were not consistent with other imports of freshwater crawfish tail meat entered into the U.S. during the period of review. *See Preliminary Notice; see also Zhoushan Huading Memo.*

Furthermore, since the publication of the *Preliminary Notice*, the Department solicited additional information through the issuance of supplemental questionnaires to all three parties that were involved in this new shipper sale. The Department's goal in seeking additional information was to address the issues identified in the *Preliminary Notice*, particularly, who paid whom, and to seek clarification of the terms of sale for the shipment of subject merchandise under review. All parties responded to the supplemental questionnaires issued.

In regard to payment information, both Zhoushan Huading and the reported buyer, in their questionnaire responses, provided documents demonstrating a wire transfer from the reported buyer to Zhoushan Huading. Both responses also provide a copy of a cashier's check as evidence of payment by the importer of record to the reported buyer. This documentation overcomes the uncertainty regarding who paid whom for the merchandise, and establishes that Zhoushan Huading was paid in the manner, and by the party, identified in the questionnaire responses. However, this documentation also provides evidence that the sale was commercially unreasonable, due to the fact that the dollar amounts on the cashier's check and the wire transfer documentation are identical. Therefore, since the amounts paid by the reported buyer and the importer of record are identical, the record indicates that the reported buyer sold Zhoushan Huading's shipment of subject merchandise to the importer of record at a loss, *i.e.*, by selling the subject merchandise for the exact same dollar amount as they purchased it for, the reported buyer must have absorbed all of the administrative and selling costs associated with executing both transactions (the purchase and the sale).

Moreover, prior to the publication of the *Preliminary Notice*, as part of our analysis of whether the sale was commercially reasonable, we issued supplemental questionnaires that asked the reported buyer and the importer of record to provide information on the commercial structure of their business, and their business relationship to each other. The Department also attempted to gather information from the importer of record in regard to the identity of its customers and supporting sales documentation. The Department also asked Zhoushan Huading for this information. None of the requested information was provided by Zhoushan Huading, the reported buyer, or the importer of record.

In addition, Zhoushan Huading, in its September 12, 2003 supplemental questionnaire response, stated which party was responsible for all inland freight, brokerage and handling, and international freight expenses related to the new shipper sale under review. However, the bill of lading provided by Zhoushan Huading in its January 6, 2003, questionnaire response contradicts the terms of sale as reported by Zhoushan Huading, and indicates that these costs may have been borne by a party other than the one Zhoushan Huading indicated. As such, without reliable information establishing the terms of sale, including which party was responsible for which costs, it is not possible for the Department to determine that Zhoushan Huading's sale is a commercially reasonable transaction. Some of the information concerning the party responsible for movement expenses is business proprietary. This information is discussed more fully in a *Memorandum to the File: Crawfish Tail Meat from the People's Republic of China: Analysis of Zhoushan Huading's Reported Terms of Sale;* dated November 25, 2003.

Having reviewed the totality of circumstances surrounding this sale, we conclude that Zhoushan Huading's new shipper sale was commercially unreasonable and therefore not *bona fide* for the following reasons: 1) the price was extremely high and the quantity was unusually low vis-a-vis other imports from the PRC of the subject merchandise into the United States during the period of review; 2) the merchandise was apparently resold by the reported buyer at a loss; and, 3) Zhoushan Huading provided contradictory information and documentation regarding the terms of sale and movement expenses.

Rescission of New Shipper Review

Because we find the new shipper sale not *bona fide*, and because this was the only sale made during the new shipper review period, there is no *bona fide* sale to review. As such, we are rescinding this new shipper review. Accordingly, the PRC-wide antidumping duty margin of 223.01 percent still applies for shipments of freshwater crawfish tail meat produced and/or exported by Zhoushan Huading for the period September 1, 2001 through August 31, 2002 and beyond. The Department will issue cash deposit and assessment instructions directly to CBP.

Cash Deposits

Bonding will no longer be permitted to fulfill security requirements for shipments from Zhoushan Huading of freshwater crawfish tail meat from the PRC entered, or withdrawn from warehouse, for consumption in the United States on or after the publication of this notice in the **Federal Register**. Effective upon publication of these final results for this new shipper review, we will instruct CBP to continue the suspension of liquidation of entries of freshwater crawfish tail meat that is produced and/or exported by Zhoushan Huading, and entered on or after the date of publication of these final results. For entries of freshwater crawfish tail meat that are produced and/or exported by Zhoushan Huading, cash deposits will be required at the PRC-wide rate in effect on the date of entry. The PRC-wide rate currently in effect is 223.01 percent. There are no changes to the rates applicable to any other company under this order.

Assessment of Antidumping Duties

The Department shall determine, and CBP shall assess, antidumping duties on all appropriate entries. Since we are rescinding this new shipper review, the PRC-wide rate of 223.01 percent applies to all exports of freshwater crawfish tail meat produced and/or exported by Zhoushan Huading. The Department will issue appropriate assessment instructions directly to CBP within 15 days of publication of this notice of rescission of antidumping duty new shipper review.

Notification to Interested Parties

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and subsequent assessment of double antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with section 351.305(a)(3) of the Department's regulations. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply

[1] The Crawfish Processors Alliance, its members (together with the Louisiana Department of Agriculture and Forestry and Bob Odom, Commissioner), and several individual crawfish producers; collectively called the Domestic Parties.

with the regulations and the terms of an APO is a sanctionable violation.

This new shipper review and notice are in accordance with sections 751(a)(2)(B) and 777(i)(1) of the Act.

Dated: November 25, 2003.

James J. Jochum,

Assistant Secretary Import Administration.

[FR Doc. 03–30263 Filed 12–4–03; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–847]

Persulfates from the People's Republic of China: Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Final Results of Antidumping Duty Administrative Review.

SUMMARY: On July 31, 2003, the Department of Commerce published the preliminary results of the 2001–2002 administrative review of the antidumping duty order on persulfates from the People's Republic of China. This review covers one manufacturer/exporter of the subject merchandise to the United States. The merchandise covered by this order are persulfates, including ammonium, potassium, and sodium persulfates. The period of review is July 1, 2001, through June 30, 2002.

Based on our analysis of the comments received, we have made certain changes in the margin calculations. *See* the section entitled "Changes Since the Preliminary Results" listed below. The final weighted-average dumping margin is listed below in the section entitled "Final Results of the Review."

EFFECTIVE DATE: December 5, 2003.

FOR FURTHER INFORMATION CONTACT: Mike Strollo or Greg Kalbaugh, AD/CVD Enforcement, Group I, Office 2, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–0629 and (202) 482–3693, respectively.

SUPPLEMENTARY INFORMATION:

Background

On July 31, 2003, the Department published the preliminary results of the 2001–2002 administrative review of the antidumping duty order on persulfates from the People's Republic of China (PRC). *See Persulfates from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review, and Partial Rescission of Administrative Review*, 68 FR 44921 (July 31, 2003) (*Preliminary Results*). This review covers one exporter, Shanghai Ai Jian Import & Export Corporation (Ai Jian).

We invited interested parties to comment on the preliminary results of review. The Department has conducted this administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act).

Scope of Review

The products covered by this review are persulfates, including ammonium, potassium, and sodium persulfates. The chemical formula for these persulfates are, respectively, $(NH_4)_2S_2O_8$, $K_2S_2O_8$, and $Na_2S_2O_8$. Ammonium and potassium persulfates are currently classifiable under subheading 2833.40.60 of the Harmonized Tariff Schedule of the United States (HTSUS). Sodium persulfate is classifiable under HTSUS subheading 2833.40.20. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this review is dispositive.

Separate Rates

Ai Jian has requested a separate, company-specific antidumping duty rate. In our preliminary results, we found that Ai Jian had met the criteria for the application of a separate antidumping duty rate. See Preliminary Results, 68 FR at 44921. We have not received any other information since the preliminary results which would warrant reconsideration of our separate rates determination with respect to this company. We therefore determine that Ai Jian should be assigned an individual dumping margin in this administrative review.

Analysis of Comments Received

All issues raised in the case briefs by parties to this administrative review are addressed in the "Issues and Decision Memorandum" (Decision Memo) from Jeffrey May, Deputy Assistant Secretary, Group I, to James Jochum, Assistant Secretary for Import Administration, dated November 28, 2003, which is adopted by this notice. A list of the issues which parties have raised and to which we have responded, all of which are in the Decision Memo, is attached to this notice as an Appendix. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in this public memorandum, which is on file in the Central Records Unit in Room B-099 of the main Commerce Building.

In addition, a complete version of the Decision Memo can be accessed directly on the Web at *http://ia.ita.doc.gov*. The paper copy and electronic version of the Decision Memo are identical in content.

Changes Since the Preliminary Results

For purposes of the final results, we have made certain changes in the margin calculation for Ai Jian. For a discussion of these changes, see the "Margin Calculations" section of the Decision Memo.

- We removed a figure which was inadvertently included in the denominators of both the selling, general and administrative expense, and profit ratio calculations. See Comment 1 of the Decision Memo.
- We eliminated the purity adjustment applied to one of the inputs used by Ai Jian in the production of persulfates because Ai Jian failed to provide adequate support for that adjustment. See Comment 5 of the Decision Memo.

Final Results of the Review

We determine that the following percentage weighted-average margin exists for the period July 1, 2001 through June 30, 2002:

Manufacturer/exporter	Margin
Shanghai Ai Jian Import & Export Corporation	0.00 percent

Assessment Rates

The Department will determine, and Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries. For assessment purposes, we do not have the information to calculate entered value because Ai Jian is not the importer of record for the subject merchandise. Accordingly, we have calculated customer-specific duty assessment rates for the merchandise in question by aggregating the dumping margins calculated for all U.S. sales to each customer and dividing this amount by the total quantity of those sales. To determine whether the duty assessment rates were *de minimis*, in accordance with the requirement set forth in 19 CFR 351.106(c)(2), we calculated customer-specific *ad valorem* ratios based on export prices. We will direct CBP to assess the resulting assessment rates uniformly on all entries of that particular customer made during the period of review. Pursuant to 19 CFR 351.106(c)(2), we will instruct CBP to liquidate without regard to antidumping duties any entries for which the assessment rate is *de minimis*. The Department will issue appropriate assessment instructions directly to CBP within 15 days of publication of these final results of review.

Cash Deposit Requirements

The following deposit requirements will be effective upon publication of this notice of final results of this antidumping duty administrative review for all shipments of persulfates from the PRC entered, or withdrawn from warehouse, for consumption on or after the date of publication, as provided by section 751(a)(1) of the Act: (1) for Ai Jian, the cash deposit rate will be zero; (2) for previously reviewed or investigated companies not listed above that have separate rates, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) the cash deposit rate for all other PRC exporters will be 119.02 percent, the PRC-wide rate established in the less than fair value investigation; and (4) the cash deposit rate for non-PRC exporters of subject merchandise from the PRC will be the rate applicable to the PRC supplier of that exporter.

These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

This notice serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

We are issuing and publishing this determination and notice in accordance with sections section 751(a)(1) and 777(i) of the Act.

Dated: November 28, 2003.

James Jochum,

Assistant Secretary for Import Administration.

Appendix Issues in Decision Memo

Comment 1: Production Process of the Proposed Surrogate Producer and Whether National Peroxide Limited is a More Appropriate Surrogate Producer
Comment 2: Experience of Other Chemical Producers As Compared to that of the Proposed Surrogate Producer
Comment 3: Whether the Proposed Surrogate's Receipt of Government Subsidies Distorts Its SG&A Ratio
Comment 4: Reported Scope of the Proposed Surrogate's Business
Comment 5: Whether to Apply a Specificity Ratio to one of Ai Jian's Factor Input Usage

[FR Doc. 03–30259 Filed 12–4–03; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–847]

Persulfates from the People's Republic of China: Notice of Final Results of Changed Circumstances Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: December 5, 2003.

FOR FURTHER INFORMATION CONTACT: Mike Strollo or Patrick Connolly at (202) 482–0629 or (202) 482–1779, respectively, Office of AD/CVD Enforcement, Office 2, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

SUMMARY: On October 10, 2003, the Department published a notice of preliminary results of changed circumstances review and preliminarily found that the factors of production of Degussa-AJ (Shanghai) Initiators Co., Ltd. (Degussa-AJ) had not changed substantially since Degussa AG's investment in Shanghai Ai Jian Reagent Works (AJ Works). Therefore, the Department determined at the preliminary results that it will consider in any relevant future revocation inquiry any administrative reviews in which Shanghai Ai Jian Import and Export Corporation (Ai Jian) procured its products exported to the United States from AJ Works. On October 14, 2003, the petitioner, FMC Corporation (FMC), submitted a case brief. After considering these comments, we continue to find that Degussa-AJ's factors of production have not changed substantially since Degussa AG's investment in AJ Works. As a result, the Department will consider in any future revocation inquiry any administrative reviews in which Ai Jian procured its products exported to the United States from AJ Works.

SUPPLEMENTARY INFORMATION:

Background

On October 10, 2003, the Department published in the **Federal Register** a notice of preliminary results of changed circumstances review for persulfates from the People's Republic of China (PRC). *See Persulfates from the People's Republic of China: Notice of Preliminary Results of Changed Circumstances Review*, 68 FR 58658 (Oct. 10, 2003). We gave interested parties 14 days to comment on our preliminary results. On October 24, 2003, FMC submitted a case brief. We received no other comments from interested parties on the Department's preliminary results.

Scope of Review

The products covered by this review are persulfates, including ammonium, potassium, and sodium persulfates. The chemical formula for these persulfates are, respectively, $(NH_4)_2S_2O_8$, $K_2S_2O_8$, and $Na_2S_2O_8$. Potassium persulfates are currently classifiable under subheading 2833.40.10 of the *Harmonized Tariff Schedule of the United States* (HTSUS). Sodium persulfates are classifiable under HTSUS subheading 2833.40.20. Ammonium and other persulfates are classifiable under HTSUS subheadings 2833.40.50 and 2833.40.60. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this review is dispositive.

Analysis of Comments Received

All issues raised in the case briefs by parties to this changed circumstances review are addressed in the "Issues and Decision Memorandum" (Decision Memo) from Jeffrey May, Deputy Assistant Secretary, Group I, to James Jochum, Assistant Secretary for Import Administration, dated November 28, 2003, which is adopted by this notice. A list of the issues which parties have raised and to which we have responded, all of which are in the Decision Memo, is attached to this notice as an Appendix. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in this public memorandum, which is on file in the Central Records Unit in Room B–099 of the main Commerce Building.

In addition, a complete version of the Decision Memo can be accessed directly on the Web at *http://ia.ita.doc.gov*. The paper copy and electronic version of the Decision Memo are identical in content.

Final Results

After our analysis of the comments received, we determine that Degussa-AJ's factors of production have not changed substantially since Degussa AG's investment in AJ Works. As a result, the Department will consider in any relevant future revocation inquiry any administrative reviews in which Ai Jian procured its products exported to the United States from AJ Works.

This notice is published in accordance with sections 751(b)(1) and (d) and 777(i) of the Act, and with 19 CFR 351.221(c)(3).

Dated: November 28, 2003.

James J. Jochum,

Assistant Secretary for Import Administration.

Appendix—Issues in Decision Memo

Comment 1: Whether the Department Must Make a Successor-in-Interest Determination in this Changed Circumstances Review

Comment 2: Whether Ai Jian May Use Reviews In Which it Sourced its Merchandise from AJ Works to Support a Revocation Request

Comment 3: Whether Ai Jian is Subject to a Combination Antidumping Duty Rate Based on the Exporter-Producer Combination of Ai Jian and AJ Works

[FR Doc. 03–30260 Filed 12–4–03; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–489–813]

Notice of Initiation of Antidumping Investigation: Certain Processed Hazelnuts from Turkey

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: December 5, 2003.

FOR FURTHER INFORMATION CONTACT: John Drury at (202) 482–0195, Michael Ferrier at (202) 482–1394, or Abdelali Elouaradia at (202) 482–1374, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

The Petition

On October 21, 2003, the Department of Commerce ("Department") received an antidumping duty petition ("Petition") filed in proper form by Westnut LLC, Northwest Hazelnut Company, Hazelnut Growers of Oregon, Willamette Filbert Growers, Evergreen Orchards, and Evonuk Orchards ("Petitioners"). Petitioners are domestic producers of certain processed hazelnuts ("hazelnuts"). On October 28, 2003, and October 29, 2003 inclusive, Petitioners submitted information to supplement the Petition ("First Petition Amendment"). Additionally, on October 30, 2003, counsel for the Petitioners met with Department officials, at which time Department officials notified Petitioners that the Petition to date was insufficient. *See Memorandum to the File from John Drury, Case Analyst: Ex-parte meeting with Counsel for Petitioners*, dated October 31, 2003. On November 4, 2003, Petitioners submitted further information to supplement the Petition ("Second Petition Amendment"). On November 24, 2003, Petitioners submitted additional information to supplement their Petition at the request of the Department ("Third Petition Amendment"). On November 10, 2003, and November 26, 2003, the Istanbul Hazelnut and Hazelnut Products Exporters Union and the Black Sea Hazelnut and Hazelnut Products Exporters Union filed comments regarding industry support. On November 28, 2003, Petitioners filed additional comments regarding industry support. In accordance with section 732(b) of the Tariff Act of 1930, as amended ("the Act"), Petitioners allege imports of certain processed hazelnuts from Turkey are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Act, and that such imports are materially injuring, or threatening material injury to, the U.S. industry.

The Department finds that Petitioners filed their Petition on behalf of the domestic industry because they are interested parties as defined in section 771(9)(C) of the Act, and they have demonstrated sufficient industry support with respect to the investigation they are presently seeking. *See Determination of Industry Support for the Petition* section below.

Scope of the Investigation

The scope of this investigation covers certain processed hazelnuts, including kernels, and kernels that have been roasted, blanched, sliced, diced, chopped, or in the following other forms: paste, meal, flour, croquant, and butter. In-shell hazelnuts are excluded from the scope of the order.

The merchandise subject to this investigation is classified in the Harmonized Tariff Schedule of the United States ("HTSUS") at subheadings 0802.22 and 2008.19.2000. The tariff classifications are provided for convenience and Customs purposes; however, the written description of the scope of these investigations is dispositive.

As discussed in the preamble to the Department's regulations, we are setting aside a period for parties to raise issues regarding the scope of the investigation. *See Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296, 27323 (May 19, 1997). The Department encourages all interested parties to submit such comments within 20 days of publication of this notice. Comments should be addressed to Import Administration's Central Records Unit, Room 1870, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230. This period of scope consultations is intended to provide the Department with ample opportunity to consider all comments and consult with parties prior to the issuance of the preliminary determination.

Determination of Industry Support for the Petition

Section 732(b)(1) of the Act requires that a petition be filed on behalf of the domestic industry. Section 732(c)(4)(A) of the Act provides that the Department's industry support determination, which is to be made before the initiation of the investigation, be based on whether a minimum percentage of the relevant industry supports the petition. A petition meets this requirement if the domestic producers or workers who support the petition account for: (i) at least 25 percent of the total production of the domestic like product; and (ii) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition. Moreover, section 732(c)(4)(D) of the Act provides that, if the petition does not establish support of domestic producers or workers accounting for more than 50 percent of the total production of the domestic like product, the Department shall: (i) poll the industry or rely on other information in order to determine if there is support for the petition, as required by subparagraph (A), or (ii) determine industry support using a statistically valid sampling method.

Section 771(4)(A) of the Act defines the "industry" as the producers of a domestic like product. Thus, to determine whether a petition has the requisite industry support, the statute directs the Department to look to producers and workers who produce the domestic like product. The International Trade Commission ("ITC"), which is responsible for determining whether "the domestic industry" has been injured, must also determine what constitutes a domestic like product in order to define the industry. While both the Department and the ITC must apply the same statutory definition regarding the domestic like product (section 771(10) of the Act), they do so for different purposes and pursuant to a separate and distinct authority. In addition, the Department's determination is subject to limitations of time and information. Although this may result in different definitions of the like product, such differences do not render the decision of either agency contrary to law. *See USEC, Inc. v. United States*, 132 F. Supp. 2d 1, 8 (Ct. Int'l Trade 2001), citing *Algoma Steel Corp. Ltd. v. United States*, 688 F. Supp. 639, 642–44 (Ct. Int'l Trade 1988).

Section 771(10) of the Act defines the domestic like product as "a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this title." Thus, the reference point from which the domestic like product analysis begins is "the article subject to an investigation," *i.e.*, the class or kind of merchandise to be investigated, which normally will be the scope as defined in the Petition.

Moreover, the Petitioners do not offer a definition of domestic like product distinct from the scope of the investigation. The Petition covers certain processed hazelnuts as defined in the Scope of the Investigation section, above, and it constitutes a single class or kind of merchandise. The Department has no basis on the record to find the Petitioners' definition of the domestic like product to be inaccurate. The Department, therefore, has adopted the domestic like product definition set forth in the Petition. *See Antidumping Duty Investigation Initiation Checklist* ("*Initiation Checklist*").

Based on the Petition data, the share of total estimated U.S. production of the domestic like product from October 2002 to September 2003 represented by Petitioners and the supporting domestic producers equal over 25 percent of total domestic production but less than 50 percent of production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the Petition. *See Memorandum to the File from Richard O. Weible, Office Director, Group III, Office 8: Antidumping Duty Petition on Certain Processed Hazelnuts from Turkey: Extension of Deadline for Determining Industry Support*, dated November 10, 2003. Petitioners did not meet the 50 percent threshold with their Third Petition Amendment for industry support because there are other hazelnut processors in the United States who are not subject to the U.S. Department of Agriculture's federal marketing order for hazelnuts and source some or all of their supply of hazelnuts from imports. Therefore, in accordance with Section 732(c)(4)(D), we polled the industry. On November 12, 2003, the Department sent a letter to possible hazelnut processors requesting U.S. production data for the period October 2002 to September 2003. This letter is on file in the Central Records Unit in room B-099 of the main Department of Commerce building and on the Import Administration website. For a detailed summary of the Department's efforts to identify relevant companies, See Memorandum to the File regarding Procedures Used to Determine Industry Support, dated December 1, 2003. Additionally, the Department published a notice in the **Federal Register** extending the twenty-day initiation and requesting production information from hazelnut processors in the United States (*See Notice of Request for Information and Extension of time for Initiation: Antidumping Duty Petition on Certain Processed Hazelnuts from Turkey*, (68 FR 64589) November 14, 2003.) The Department has relied upon the responses to this letter and follow-up phone calls to clarify certain responses to determine industry support. For the analysis of the data, *See Initiation Checklist*. Our analysis of the data indicates that the domestic producers of processed hazelnuts who support the Petition account for more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the Petition. *See Initiation Checklist*.

Therefore, we find that the industry support requirements of section 732(c)(4)(A) of the Act have been met.

Period of Investigation

The anticipated period of investigation ("POI") will be October 1, 2002 through September 30, 2003.

Export Price and Constructed Value

The following are descriptions of the allegations of sales at less than fair value upon which the Department based its decision to initiate this investigation. The source or sources of data for the deductions and adjustments relating to U.S. and foreign market prices and cost of production ("COP") and constructed value ("CV") have been accorded treatment as business proprietary information. Petitioner's sources and methodology are discussed in greater detail in the business proprietary version of the Petition and in our Initiation Checklist. Should the need arise to use any of this information as facts available under section 776 of the Act in our preliminary or final determinations, we may re-examine this information and revise the margin calculations, if appropriate.

Export Price

In calculating the U.S. price, the Petitioner relied upon actual sales during the POI of Turkish processed hazelnuts to the United States. Petitioners provided sales invoices as support for their U.S. starting price. To calculate a net price, Petitioners deducted the Turkish export tax on processed hazelnuts and movement expenses, which include ocean freight, marine insurance, and brokerage. Petitioners calculated the export tax and the movement expenses from publically, available data.

Constructed Value

Petitioners attempted to locate home market and third country prices of processed hazelnuts and outlined their efforts in the Third Petition Amendment. Petitioners were unable to locate home market prices that occurred within the POI or prices of subject merchandise (*i.e.*, shelled hazelnuts). Petitioners located prices of Turkish processed hazelnuts to Germany and provided information demonstrating reasonable grounds to believe or suspect that sales of processed hazelnuts in the German third county market were made at prices below the fully absorbed cost of production (COP), within the meaning of section 773(b) of the Act, and requested that the Department initiate a country-wide sales-below-cost investigation. *See Memorandum to the File from Steve Williams, Import Analyst, Office of Policy: Telephone call with Pete Koenig regarding antidumping duty petition of Certain Processed Hazelnuts from Turkey*, dated December 01, 2003. Therefore, pursuant to sections 773(a)(4), 773(b) and 773(e) of the Act, the Petitioners based normal value for sales in Turkey on CV. The Petitioners calculated CV using the cost of manufacturing, depreciation, selling, general and administrative expenses, and interest expense figures. Consistent with section 773(e)(2) of the Act, the Petitioners included in CV an amount for profit. For profit, the Petitioners relied upon amounts reported in a publicly available document.

Pursuant to section 773(b)(3) of the Act, COP consists of cost of manufacturing, selling, general and administrative expenses, and packing. The Petitioners calculated COM based on publicly available information and their own production experience, adjusted for known differences between costs incurred to produce processed hazelnuts in the United States and Turkey using publicly available data. To calculate SG&A and interest expense, the Petitioners were unable to obtain the financial statements of a Turkish hazelnut processor and therefore relied upon publicly available information for marketing and financing costs and their experience during the POI for general and administrative costs. Based upon a comparison of the price of the foreign like product in the third-country market, Germany, to the calculated COP of the product, we find reasonable grounds to believe or suspect that sales of the foreign like product were made below the COP, within the meaning of section 773(b)(2)(A)(i) of the Act. Accordingly, the Department is initiating a country-wide cost investigation relating to third-country sales to Germany. We note, however, that if we determine that the home market (*i.e.*, Turkey) is viable, our initiation of a country-wide cost investigation with respect to sales to Germany will be rendered moot.

Based upon the comparison of CV to EP, the Petitioners' calculated estimated dumping margin is 31.80 percent (*See Initiation Checklist*).

Fair Value Comparisons

Based on the data provided by Petitioners, there is reason to believe imports of certain processed hazelnuts from Turkey are being, or are likely to be, sold at less than fair value.

Allegations and Evidence of Material Injury and Causation

Petitioners allege that the U.S. industry producing the domestic like product is being materially injured, or threatened with material injury, by reason of the individual and cumulated imports of the subject merchandise sold at less than NV.

Petitioners contend that the industry's injured condition is evident in examining reduced production, shipments and net income, decreased employment, declining kernel prices, and lost sales and revenue. *See Petition* at pages 23–31. Petitioners assert its share of the market has declined from 2000 to 2002. *See Petition* at page 26. For a full discussion of the allegations and evidence of material injury, *See Initiation Checklist* at Attachment II.

Initiation of Antidumping Investigation

Based on our examination of the Petition covering certain processed hazelnuts, we find it meets the requirements of section 732 of the Act. Therefore, we are initiating an antidumping duty investigation to determine whether imports of certain processed hazelnuts from Turkey are being, or are likely to be, sold in the United States at less than normal value. Unless this deadline is extended pursuant to section 733(b)(1)(A) of the Act, we will make our preliminary determinations no later than 140 days after the date of this initiation, or April 19, 2004.

Distribution of Copies of the Petition

In accordance with section 732(b)(3)(A) of the Act, a copy of the public version of the Petition has been provided to representatives of the government of Turkey.

International Trade Commission Notification

The ITC will preliminarily determine on December 10, 2003, whether there is reasonable indication that imports of certain processed hazelnuts from Turkey are causing, or threatening, material injury to a U.S. industry. A negative ITC determination will result in the investigation being terminated; otherwise, this investigation will proceed according to statutory and regulatory time limits.

This notice is issued and published pursuant to section 777(i) of the Act.

Date: December 1, 2003.

James J. Jochum,

Assistant Secretary for Import Administration.

[FR Doc. 03–30261 Filed 12–4–03; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[C-475–819]

Certain Pasta from Italy: Notice of Rescission of Countervailing Duty New Shipper Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Rescission of Countervailing Duty New Shipper Review.

SUMMARY: On March 5, 2003, the Department of Commerce published in the **Federal Register** (68 FR 10446) a notice announcing the initiation of a new shipper review of the countervailing duty order on certain pasta from Italy, covering the time period January 1, 2002 through December 31, 2002. On March 24, 2003, the Department published a corrected notice of initiation in the **Federal Register** (68 FR 14198). We are now rescinding this new shipper review.

EFFECTIVE DATE: December 5, 2003.

FOR FURTHER INFORMATION CONTACT: Daniel J. Alexy or John Brinkmann, AD/CVD Enforcement, Group I, Office 1, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone (202) 482–1540 or 482–4126, respectively.

SUPPLEMENTARY INFORMATION:

Background

On December 17, 2002, the Department of Commerce (the "Department") received a request from Pastificio Carmine Russo S.p.A. ("Pastificio Russo"), made pursuant to section 751(a)(2)(B) of the Tariff Act of 1930, as amended (the "Act") and 19 CFR §351.214(b), to conduct a new shipper review of the countervailing duty order on certain pasta from Italy, which was issued on July 24, 1996 (61 FR 38544). On February 24, 2003, the Department received submissions from Pastificio Russo containing additional information.

In accordance with section 751(a)(2)(B) of the Act and 19 CFR §351.214, on February 27, 2003, the Department initiated a countervailing duty new shipper review for certain pasta from Italy, covering calendar year 2002. *See Certain Pasta from Italy: Notice of Initiation of Countervailing Duty New Shipper Review*, 68 FR 10446 (March 5, 2003). Corrections to the initiation notice were published in the **Federal Register** on March 24, 2003 (*See* 68 FR 14198). On August 29, 2003, the Department extended the time limit for the publication of the preliminary results in the new shipper review. *See Certain Pasta From Italy: Notice of Extension of Time Limit for Countervailing Duty New Shipper Review*, 68 FR 51965 (August 29, 2003).

On August 22, 2003, the Department, after receiving a timely request from Pastificio Russo pursuant to 19 CFR §351.213(b)(2), initiated an administrative review covering calendar year 2002 for that company. *See Notice of Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part*, 68 FR 50750 (August 22, 2003). Accordingly, parallel reviews covering the same period of review were initiated under 19 CFR §351.214 (new shipper review) and 19 CFR §351.213 (administrative review).

Rescission of New Shipper Review

Section 351.214(j)(1) of the Department's regulations authorizes the Department to rescind a new shipper review where: (1) the producer or exporter's merchandise is also being covered by an administrative review under section 351.213, and; (2) the Department consults with the exporter or producer.

As noted, concurrent reviews of Pasificio Russo were initiated by the Department. The Department also consulted with Pastificio Russo concerning the rescission of the new shipper review. The Department typically does not conduct parallel reviews covering the same period of review, and in this case, the Department preferred proceeding under the administrative review. *See* Memorandum to File from Senior Office Director Susan Kuhbach, dated November 5, 2003, "Ex Parte Conversation with counsel for Pastificio Carmine Russo, S.p.A.," which is on file in the Central Records Unit in room B-099 of the main Department building. Accordingly, we are rescinding the new shipper review and proceeding with the administrative review.

Notification

The Department will notify U.S. Customs and Border Protection (Customs) that bonding is no longer permitted to fulfill security requirements for shipments from Pastificio Russo entered, or withdrawn from warehouse, for consumption in the United States on or after the publication of this rescission notice in the **Federal Register**, and that a cash deposit of 3.85 percent *ad valorem* should be collected for any entries exported by Pastificio Russo.

We are publishing this notice of rescission in accordance with 19 CFR §351.214(f)(3).

Dated: December 1, 2003.

Jeffrey May,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 03–30262 Filed 12–4–03; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

NOAA Research Draft Report; Request for Public Comment

ACTION: Notice of availability and request for public comment.

SUMMARY: The Office of Oceanic and Atmospheric Research (OAR), will post the NOAA Research Draft Report for public comment on December 15, 2003. The complete draft document will be posted on the National Oceanic and Atmospheric Administration (NOAA), Science Advisory Board (SAB) Web site at *http://www.sab.noaa.gov/reports/review-draft.pdf*. The panel is seeking public comment from all interested parties. This draft is being issued for comment only and is not intended for interim use. The Review Team will review the public comments received on the draft document. Suggested changes will be incorporated, where appropriate, in the final draft report.

The 2003 House and Senate Appropriations Subcommittee Reports have language pertaining to the Office of Oceanic and Atmospheric Research. The report accompanying the House Commerce, Justice State (CJS) Appropriations Subcommittee mark states: "In recognition of current resource limitations the Committee is forced to operate within, the Committee directs NOAA to review the continued requirements for twelve separate laboratories, six of which are located in Boulder, Colorado. The Committee directs NOAA to submit a laboratory consolidation plan to the Committee by March 15, 2004." The Senate report language states: "NOAA is directed to report to the Committee on Appropriations on the costs and benefits of breaking OAR up into its constituent parts and distributing those parts as desirable to the other line offices. The report should specifically address how the newly configured research sector will directly assist line offices in developing timely solutions to problems confronting NOAA now and in the next 5 years."

In response to the Congressional report language NOAA appointed an "Ad Hoc Review Team" (here called the NOAA Research Review Team), under the auspices of the Science Advisory Board (SAB) consisting of five members. The Review team will be disbanded once the review is completed and a final report issued. This panel is tasked with: (1) Conducting a review of OAR for the purpose of improving the effectiveness and efficiency of its research enterprise, (2) establishing if OAR is adequately linked to NOAA's service organizations (*i.e.*, National Weather Service (NWS), National Environmental Satellite Data, and Information Service (NESDIS), National Marine Fisheries Service (NMFS), and the National Ocean Service (NOS)), (3) assessing if the research programs are relevant to the needs of these organizations. The team's recommendations will assist NOAA in responding to the language in the 2004 House and Senate CJS appropriation reports.

The NOAA Research Review Team will present its findings to the Science Advisory Board in two (2) reports. The draft of the first report will be posted on the Science Advisory Board Web site at: *http://www.sab.noaa.gov/reports/review-draft.pdf*, on December 15, 2003, for public comment. Public comments may be submitted from December 15, 2003, to January 14, 2004.

NOAA welcomes all comments on the content of the report. We also ask that you comment on any inconsistencies within the report, and omissions of important topics or issues. For any shortcoming that you note in the draft, please propose specific remedies.

Please follow these instructions for preparing and submitting your review. Using the format guidance described below will facilitate the processing of reviewer comments and assure that your comments are appropriately considered. Please provide background information about yourself on the first page of your comments: your name(s), organization(s), area(s) of expertise, mailing address(es), telephone and fax numbers, email address(es). Overview comments on the section should follow your background information and should be numbered. Comments that are specific to particular pages, paragraphs or lines of the section should follow your overview comments and should identify the page numbers to which they apply. Please number all your pages (on the upper right hand of each page), and have your identifying information at the top of each page.

DATES: Comments on this draft document must be submitted by January 14, 2004.

ADDRESSES: The NOAA Research Review Team Report will be available on the SAB Web site at *http://www.sab.noaa.gov/reports/review-draft.pdf* on December 15, 2003.

All comments should be sent electronically to *research.review@noaa.gov*, or to NOAA Research, Science Advisory Board, c/o Ms. M. Whitcomb, Silver Spring Metro

Center, Bldg. 3, Room 11558, 1315 East-West Highway, Silver Spring, Maryland 20910.

FOR FURTHER INFORMATION CONTACT: Ms. M. Whitcomb, Silver Spring Metro Center, Bldg. 3, Room 11558, 1315 East-West Highway, Silver Spring, Maryland 20910 (phone 301–713–2454 x 173), during normal business hours of 8 a.m. to 5 p.m. eastern time, Monday through Friday, or visit the SAB Web site at: *http://www.sab.noaa.gov/reports/review_draft.pdf.*

SUPPLEMENTARY INFORMATION: None.

Louisa Koch,

Deputy Assistant Administrator, Office of Oceanic and Atmospheric Research.

[FR Doc. 03–29888 Filed 12–4–03; 8:45 am]

BILLING CODE 3510–KD–U

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Reinstatement With Change of a Previously Approved Collection for Which Approval Has Expired; Comment Request

AGENCY: Corporation for National and Community Service.

ACTION: Notice.

SUMMARY: The Corporation for National and Community Service (hereinafter the "Corporation"), as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) (44 U.S.C. 3506(c)(2)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirement on respondents can be properly assessed. This form is available in alternate formats. Individuals who use a telecommunications device for the deaf (TTY/TDD) may call (202) 606–5256 between the hours of 9 a.m. and 4:30 p.m. eastern time, Monday through Friday.

Currently, the Corporation is soliciting comments concerning the proposed revision of its National Senior Service Corps Project Progress Report (OMB Control Number 3045–0033). The previously approved Progress Report expired on August 31, 2003. However, on November 21, 2003, OMB approved a six month emergency extension and assigned a new expiration date of May 31, 2004.

This reinstatement with changes reflects the Corporation's intent to modify selected sections of the collection instrument to reflect changes in data considered "ore reporting" information to meet a variety of needs, including:

- Removing data elements no longer required after January 2004;
- Adding new data elements as needed to ensure information collection captures appropriate data for the Corporation's required performance measurement and other reporting.

DATES: Written comments must be submitted to the office listed in the **ADDRESSES** section by February 3, 2004.

ADDRESSES: You may submit comments, identified by the title of the information collection activity, by any of the following methods:

(1) By mail sent to: Corporation for National and Community Service, National Senior Service Corps; Attention Ms. Angela Roberts, Senior Program Officer; Room 9305, 1201 New York Avenue, NW., Washington, DC 20525.

(2) By hand delivery or by courier to the Corporation's mailroom at Room 6010 at the mail address given in paragraph (1) above, between 9 a.m. and 4 p.m. Monday through Friday, except Federal holidays.

(3) By fax to: (202) 565–2743, Attention Ms. Angela Roberts, Senior Program Officer.

(4) Electronically through the Corporation's e-mail address system: *aroberts@cns.gov.*

FOR FURTHER INFORMATION CONTACT: Angela Roberts, (202) 606–5000, ext. 111.

SUPPLEMENTARY INFORMATION:

Comment Request

The Corporation is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Corporation, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

Background

The Progress Report (PPR) was designed to assure that National Service Corps (NSSC) grantees address and fulfill legislated program purposes, meet agency program management and grant requirements, and assess progress toward work plan objectives agreed upon in the granting of the award.

Current Action

The Corporation seeks to reinstate the previously used PPR to: (a) Enhance data elements collected via this information collection tool; (b) migrate the paper version of the form to the Corporation's electronic grants management system, eGrants; and (c) establish reporting periods consistent with the Corporation's integrated grants management and reporting policies.

The Corporation anticipates making available to all NSSC grantees an OMB approved revised PPR by April of 2004.

The revised PPR will be used by NSSC grantees to report progress toward accomplishing work plan goals and objectives, reporting actual outcomes related to self-nominated performance measures meeting challenges encountered, describing significant activities, and requesting technical assistance. Submission requirements are proposed to be revised as follows:

- Established multi-year NSSC grantees will submit the complete report semi-annually within 30 days of the end of their annual budget cycle.
- New projects in their first year, new components of statewide projects, demonstrations, and projects experiencing problems or with substantial project revisions may, upon review and recommendations of project managers, submit the PPR quarterly.

Type of Review: Reinstatement With Change of a Previously Approved Collection for Which Approval Has Expired.

Agency: Corporation for National and Community Service.

Title: National Senior Services Corps Project Progress Report.

OMB Number: 3045–0033.

Agency Number: CNCS Form 1020.

Affected Public: Sponsors of National Senior Service Corps grants.

Total Respondents: 1,350.

Frequency: Semi-annual. It is estimated that 1,350 will respond semi-annually and 50 quarterly.

Average Time Per Response: 8.7 hours.

Estimated Total Burden Hours: 11,000 hours.

Total Burden Cost (capital/startup): None.

Total Burden Cost (operating/maintenance): $2,000.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: December 1, 2003.

Tess Scannell,

Director, National Senior Service Corps.

[FR Doc. 03–30228 Filed 12–4–03; 8:45 am]

BILLING CODE 6050–$$–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6646–1]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–7167 or *http://www.epa.gov/compliance/nepa/.*

Weekly receipt of Environmental Impact Statements

Filed November 24, 2003, through November 28, 2003

Pursuant to 40 CFR 1506.9.

EIS No. 030542, Final EIS, HHS, MD, Integrated Research Facility (IRF) at Fort Detrick construction and operation, adjacent to existing U.S. Army Medical Research Institute of Infectious Diseases Facilities, City of Frederick, Frederick County, MD, Due: January 5, 2004, Contact: Ronald Wilson (301) 496–5037.

EIS No. 030543, Final Supplement, BLM, NV, Millennium Expansion Project, new facilities construction and existed gold mining operations expansion, plan-of-operations approval, Winnemucca, Humboldt County, NV, Due: January 5, 2004, Contact: Jeff Johnson (775) 623–1500.

EIS No. 030544, Draft EIS, AFS, AZ, Bar T Bar Anderson Springs allotment management plans, to authorize permitted livestock grazing for a 10-year period, Coconino National Forest, Mogollon Rim and Mormon Lake Ranger Districts, Coconino County, AZ, Due: January 20, 2004, Contact: Jerry Gonzales (928) 354–2216.

EIS No. 030545, Final EIS, FRC, FL, Ocean Express Pipeline Project, construction, operation and maintenance of an interstate natural gas pipeline extending from the Exclusive Economic Zone (EEZ) boundary between the United States and the Bahamas, (Docket No. CP02–090–001–1) plan of operations approval, NPDES and U.S. Army COE section 10 and possible 404 permits, Broward County, FL, Due: January 5, 2004, Contact: Thomas Russo (866) 208–3372.

Dated: December 2, 2003.

Joseph C. Montgomery,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 03–30273 Filed 12–4–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6646–2]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 564–7167. An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in the **Federal Register** dated April 4, 2003 (68 FR 16511).

Draft EISs

ERP No. D–AFS–F65044–MI Rating EC1, Baltimore Vegetative Management Project, implementation, Ottawa National Forest, Ontonagon Ranger District, Ontonagon County, MI.

Summary: EPA expressed environmental concerns with potential impacts to riparian areas and to the complexity of forest structure from fragmentation, management of early successional species and the control of invasives. The final EIS should address impacts from dispersed recreation to soil and water resources. EPA offered several suggested modifications the preferred alternative.

ERP No. D–AFS–J65391–WY Rating EC1, Blackhall-McAnulty Analysis Area, proposal to reduce the spread of Dwarf Mistletoe and Mountain Pine Beetle in Lodgepole Pine stands, Brush Creek/Hayden Ranger District, Medicine Bow-Routt National Forests and Thunder Basin National Grassland, Carbon County, WY.

Summary: EPA expressed environmental concerns with potential impacts to aquatic systems and resources, terrestrial habitat and soils.

ERP No. D–AFS–L65434–WA Rating EC1, Crupina Integrated Weed Management Project, control and eradication of Crupina, implementation, Okanogan and Wenatchee National Forests, Chelan Ranger District, Chelan County, WA.

Summary: EPA has environmental concerns and recommends that the FEIS provide an improved discussion and definition of suitable habitat for Crupina vulgaris, disclosure of Lake Chelan's potential role as a vector, and improve the document's cartographic information.

ERP No. D–BLM–K08027–NV Rating EC2, Tracy to Silver Lake Transmission Line Project, construction, operation and maintenance of a 120kV transmission line from Tracy Power Plant to new substations in the Spanish Spring Valley and Stead Areas, right-of-way application, Washoe County, NV.

Summary: EPA expressed environmental concerns with potential impacts to water quality, especially wetlands and aquatic resources, and air quality. The final EIS should adequate assess all jurisdictional waters, discuss minimization of impacts and mitigation if needed, as well as conformity and cumulative impacts to air quality.

ERP No. D–FHW–F40416–00 Rating EC2, US 24 Transportation Improvements Project, I–469 in New Haven, Indiana to OH–15 in Defiance, OH, funding, NPDES permit and U.S. Army COE section 404 permit, Westernmost and Allen Counties, IN and Paulding and Defiance Counties, OH.

Summary: EPA has environmental concerns with the proposed project related to wetlands impacts and the need for more information on wetlands mitigation, and the impacts of runoff from roadways.

ERP No. D–IBR–K65259–CA Rating EC2, Pajaro Valley Water Management Agency (PVWMA) Revised Basin Management Plan Project, connection of PVWMA pipeline to the Santa Clara conduit of the Central Valley Project (CVP), Santa Cruz, Monterey and San Berito Counties, CA.

Summary: EPA expressed environmental concerns regarding the potential cumulative impacts to water quality and supply associated with this project and related projects in Pajaro Valley. EPA requested additional information related to water quality impacts, alternatives analysis, water conservation commitments, and environmental justice impacts.

Final EISs

ERP No. F–AFS–L65428–ID. Twin Creek Timber Sale Project, proposal to

cut and remove Lodgepole Pine sawtimber and road construction/reconstruction, Montpelier Ranger District, Caribou National Forest, U.S. Army Corps of Engineers permit, Bear Lake County, ID.

Summary: No formal comment letter was sent to the preparing agency.

ERP No. F–BLM–J65374–WY, Snake River Resource Management Plan, BLM-administrated public land and resources allocation and management, Snake River, Jackson Hole, Teton County, WY.

Summary: EPA supports BLM's decision to select the preferred alternative to transfer ownership of BLM-administered lands to other agencies. While this alternative has potential for minimal impacts to the environment, it contains uncertainties regarding the impacts to riparian areas and achieving management goals under future land-transfer agreements.

ERP No. F–BLM–K65241–CA, Headwaters Forest Reserve, Implementation Resource Management Plan, long-term management plan and planning framework, located in the northwestern Coast Ranges near Humboldt Bay in Humboldt County, CA.

Summary: EPA expressed no objection to the proposed project.

ERP No. F–COE–E39061–MS, Royal D'Iberville Hotel and Casino Development Project, construction and operation, U.S. Army COE section 10 and 404 and NPDES permits issuance, City of D'Iberville on the Back Bay, Mississippi Gulf Coast, Harrison County, MS.

Summary: EPA has no significant environmental concerns regarding construction of this casino hotel complex if the mitigation is performed as noted.

ERP No. F–COE–G35022–TX, Gulf Intracoastal Waterway in the Laguna Madre, maintenance dredging from the JFK Causeway to the Old Queen Isabella Causeway, Nueces, Kleberg, Kenedy, Willacy and Cameron County, TX.

Summary: No formal comment letter was sent to the preparing agency.

ERP No. F–FAA–C51022–NJ, Atlantic City International Airport, air service improvements, economic development and efficiency and safety enhancements, airport layout plan approval, Atlantic County, NJ.

Summary: EPA has no concerns with the implementation of the proposed project.

ERP No. F–NRS–G36165–OK, Cavalry Creek Watershed supplemental plan for Floodwater Retarding Structure No. 6, Washita River Basin, Washita County, OK.

Summary: No formal comment letter was sent to the preparing agency.

Dated: December 2, 2003.

Joseph C. Montgomery,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 03–30274 Filed 12–4–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7594–7]

Notice of Public Meeting of the National Environmental Education Advisory Council

Notice is hereby given that the National Environmental Education Advisory Council established under section 9 of the National Environmental Education Act of 1990 (the Act), will hold a public meeting on January 22 and 23, 2004. The meeting will take place 1200 Pennsylvania Ave., NW., Washington, DC from 9 a.m. to 5 p.m. on Thursday, January 22 and Friday, January 23. The purpose of this meeting is to provide the Council with an opportunity to advise EPA's Office of Public Affairs (OPA) and the Office of Environmental Education (OEE) on its implementation of the Act. Members of the public are invited to attend and to submit written comments to EPA following the meeting.

For additional information regarding the Council's upcoming meeting, please contact Ginger Potter, Office of Environmental Education (1704A), Office of Public Affairs, U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460 or call (202) 564–0453.

Dated: December 3, 2003.

Ginger Potter,

Designated Federal Official, National Environmental Education Advisory Council.

[FR Doc. 03–30268 Filed 12–4–03; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7595–2]

Peer-Review Workshop on Time-Dependent Models and Technical Guidance Document Developed for Benchmark Dose Analysis of Neurobehavioral Toxicity Screening Data

AGENCY: Environmental Protection Agency.

ACTION: Notice of a peer-review workshop and public meeting.

SUMMARY: The U.S. Environmental Protection Agency (EPA) announces an expert peer-review workshop to review two time-dependent dose-response models and draft guidance for the application of these models to the assessment of data generated under EPA neurotoxicity screening test guidelines (63 FR 26926, May 14, 1998). Oak Ridge Institute for Science and Education (ORISE), an EPA contractor, will organize, convene, and conduct the peer-review workshop.

The workshop will focus on application of the new statistical and dose-response methods represented by these models to neurotoxicity data, but applications of these methods to other toxicological data will also be discussed. The Splus® model programs and draft guidance document to be reviewed were developed for the EPA's National Center for Environmental Assessment (NCEA) and National Health and Environmental Effects Laboratory (NHEERL) by the University of South Florida. They are both available for download from the workshop's registration Web site, *http://www.orau.gov/modelreview.*

Though the primary purpose of the workshop is to receive comments and suggestions from the peer-review panel members, members of the public are invited to attend the workshop as observers and will be allowed to present brief verbal and/or written comments at the end of the workshop. NCEA and NHEERL will consider comments received at the workshop in preparing the software and a revised guidance document for later release to the public.

DATES: The peer-review workshop will be held on Monday December 15, 2003 from 8:30 a.m. to 5 p.m.

ADDRESSES: The peer-review workshop will be held in Classroom C–112 of the U.S. Environmental Protection Agency, 109 T.W. Alexander Drive, Research Triangle Park, North Carolina 27709. Logistics and registration for the workshop are being arranged by ORISE, P.O. Box 117, Oak Ridge, TN 37831–0117. To attend the workshop, register by December 10, 2003, by going to the Web site at *http://www.orau.gov/modelreview.* Space is limited, and reservations will be accepted on a first-come, first-serve basis.

FOR FURTHER INFORMATION CONTACT: The EPA's contractor, Leslie Shaphard of ORISE, should be contacted at telephone: (865) 241–5784 or e-mail: *ShapardL@orau.gov* for details pertaining to the workshop, registration, and logistics. For technical information contact: Jeff Gift, U.S. EPA, NCEA–RTP, B243–01, Research Triangle Park, NC 27711; telephone: 919–541–4828; facsimile: 919–541–0245; or e-mail: *gift.jeff@epa.gov.*

SUPPLEMENTARY INFORMATION: The U.S. Environmental Protection Agency has supported the use of the benchmark dose (BMD) approach over the NOAEL/LOAEL approach for deriving reference doses for use in the risk assessment process. The software that is currently available at the EPA BMDS Web site (*http://www.epa.gov/ncea/bmds.htm*) does not allow for the modeling of data that are longitudinal in nature (*e.g.*, sequential measurements of effects). With this in mind, the EPA has supported the development of this time-dependent modeling software and guidance for a particular application, the derivation of benchmark dose (BMD) and its lower confidence limit (BMDL) for data generated from the battery of neurotoxicity screening tests under guidance developed by EPA NHEERL.

Copies of the draft technical guidance document and the software will be available to the public at the registration Web site. Interested parties are invited to assist the EPA in further developing and refining this document at this peer-review workshop.

Dated: December 1, 2003.

Peter W. Preuss,

Director, National Center for Environmental Assessment.

[FR Doc. 03–30269 Filed 12–4–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2003–0291; FRL–7331–1]

Notice of Receipt of Requests to Voluntarily Cancel Certain Pesticide Registrations for Products Containing Tributyltin Methacrylate, and to Amend Certain Pesticide Registrations Containing Bis(tributyltin) Oxide to Terminate a Use

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In accordance with section 6(f)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended, EPA is issuing a notice of receipt of requests by registrants to voluntarily cancel certain pesticide registrations and to amend certain pesticide registrations to terminate a use. Atofina Chemicals, Inc. and Crompton Corporation have requested that the registrations for all their tributyltin products registered for use in formulating antifouling paints or which are themselves antifouling paints be canceled, or if the products are registered for use in formulating other pesticides in addition to antifouling paints, that those registrations be amended to terminate the antifoulant use. Both registrants have requested that the voluntary cancellations and use terminations become effective as of November 30, 2003. Both companies have requested that they be permitted to sell affected products without change to the labels until that date and no later; no separate existing stocks provisions are necessary since the Agency intends to allow them to sell the affected products only until the effective date as requested. Both companies have waived the 180–day comment period typically allowed after a request for voluntary cancellation, and both companies have stated that their requests are irrevocable.

DATES: Unless the Agency receives substantive comments within the 30–day comment period that would merit further review of the requests, the Agency intends to issue orders granting these requests to cancel certain products, and to amend to terminate certain uses. Comments, identified by docket ID number OPP–2003–0291, must be received on or before January 5, 2004.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Please follow the detailed instructions for each method as provided in Unit I.C. of the **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Jill Bloom, Special Review and Reregistration Division (7508C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–8019; e-mail address: *bloom.jill@epamail.epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. Although this action may be of particular interest to persons who produce or use pesticides, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the information in this notice, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number OPP–2003–0291. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr/.*

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select "search," then key in the appropriate docket ID number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket.

Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

C. How and to Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit I.D. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically.* If you submit an electronic comment as prescribed in this unit, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets.* Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket/*, and follow the online instructions for submitting comments. Once in the system, select "search," and then key in docket ID number OPP–2003–0291. The system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail.* Comments may be sent by e-mail to *opp-docket@epa.gov*, Attention: Docket ID Number OPP–2003–0291. In contrast to EPA's electronic public docket, EPA's e-mail system is not an "anonymous access" system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM.* You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Unit I.C.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By mail.* Send your comments to: Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001, Attention: Docket ID Number OPP–2003–0291.

3. *By hand delivery or courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, Attention: Docket ID Number OPP–2003–0291. Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit I.B.1.

D. How Should I Submit CBI to the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Offer alternative ways to improve the registration activity.

7. Make sure to submit your comments by the deadline in this notice.

8. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. What Action is the Agency Taking?

This notice announces receipt by the Agency of requests from Atofina to cancel its EPA Registration Numbers shown below. Atofina submitted a letter dated September 10, 2003 to the Agency requesting the voluntary cancellation of their registrations for these products containing tributyltin methacrylate. The letter was received by the Agency on September 12, 2003. The affected registrations are listed in Table 1 of this unit:

TABLE 1.—REQUESTS FOR CANCELLATION

Registration Number	Product Name	Chemical Name
5204–63	Biomet 300 Antifouling Agent	Tributyltin methacrylate
5204–65	Biomet 302 Antifouling Agent	Tributyltin methacrylate
5204–67	Biomet 304 Antifouling Agent	Tributyltin methacrylate
5204–80	Biomet 303/60 Antifouling Agent	Tributyltin methacrylate
5204–81	Biomet 304/60 Antifouling Agent	Tributyltin methacrylate
5204–83	Polyflo 4024	Tributyltin methacrylate
5204–87	Biomet 305	Tributyltin methacrylate
5204–88	Biomet 309	Tributyltin methacrylate
5204–90	Biomet 300/60 Antifouling Agent	Tributyltin methacrylate

This notice also announces receipt by the Agency of requests from Atofina and Crompton to amend their EPA Registration Numbers 5204–1 and 8898–17, respectively, to terminate their use for formulation of antifouling paints. Atofina and Crompton submitted letters dated September 10, 2003 and September 29, 2003 (as subsequently clarified and corrected by Crompton's letter dated October 29, 2003), respectively, to the Agency requesting the amendment of registrations to terminate this use for these products containing bis(tributyltin) oxide. The letter from Atofina was received by the Agency on September 12, 2003; the letters from Crompton were received by the Agency on September 30, 2003 and October 29, 2003, respectively. The affected registrations are listed in Table 2 of this unit:

TABLE 2.—REQUESTS FOR AMENDMENT TO TERMINATE USES

Registration Number	Product Name	Chemical Name
5204–1	Biomet TBTO	Bis(tributyltin) oxide
8898–17	Eurotin TBTO	Bis(tributyltin) oxide

Under section 6(f)(1)(A) of FIFRA, registrants may request, at any time, that their pesticide registrations be canceled or amended to terminate one or more pesticide uses. Section 6(f)(1)(B) of FIFRA requires that before acting on a request for voluntary cancellation, EPA must provide a 30–day public comment period on the request for voluntary cancellation or use termination. In addition, section 6(f)(1)(C) of FIFRA requires that EPA provide a 180–day comment period on a request for voluntary cancellation or use termination of any minor agricultural use before granting the request, unless (1) the registrants request a waiver of the comment period, or (2) the Administrator determines that continued use of the pesticide would pose an unreasonable adverse effect on the environment. The registrants have requested that EPA waive the 180–day comment period. EPA will provide a 30–day comment period on the proposed requests. EPA anticipates granting the cancellation requests and requests for termination of uses shortly after the end of the 30–day comment period for this notice unless the Agency receives substantive comments within the comment period that would merit further review of the request.

Unless substantive comments are submitted which merit further review, the Agency intends to issue orders canceling the subject registrations and granting the amendments affecting the use terminations associated with the requests. Users of these pesticides or anyone else desiring the retention of a registration or particular use should contact the appropriate registrant and the person listed under **FOR FURTHER INFORMATION CONTACT** before the lapse of this 30–day period.

Table 3 of this unit includes the name and address of record for the registrants of the products in Table 1 and 2 of this unit:

TABLE 3.—REGISTRANTS REQUESTING VOLUNTARY CANCELLATION AND/OR AMENDMENT TO TERMINATE USES

EPA Company Number	Company Name and Address
5204	Atofina Chemicals, Inc., 2000 Market Street, Philadelphia, PA 19103–3222
8898	Crompton Corporation, 1 American Way, Greenwich, CT 06831

III. What is the Agency's Authority for Taking this Action?

Section 6(f)(1) of FIFRA provides that a registrant of a pesticide product may at any time request that any of its pesticide registrations be canceled or amended to terminate one or more pesticide uses. FIFRA further provides that, before acting on the request, EPA must publish a notice of receipt of any such request in the **Federal Register**. Thereafter, the Administrator may approve such a request.

IV. Provisions for Disposition of Existing Stocks

The effective date of cancellation will be the date of the cancellation order. The orders effecting requested cancellations generally permit a registrant to sell or distribute existing stocks for one year after the date the cancellation request was received. This policy is in accordance with the Agency's statement of policy as prescribed in the **Federal Register** of June 26, 1991 (56 FR 29362) (FRL–3846–4). Exceptions to this general rule will be made if a product poses a risk concern, or is in noncompliance with reregistration requirements, or is subject to a Data Call-In. In all cases, product-specific disposition dates will be given in the cancellation orders.

In this case, Atofina requested in its letter dated September 10, 2003 that the Agency allow it to sell existing stocks of its affected products for which Atofina requested voluntary cancellation until November 30, 2003, which is the same date that Atofina requested the cancellations to be effective. In their letters dated September 10, 2003 and September 29, 2003 (as subsequently clarified and corrected by Crompton's letter dated October 29, 2003) respectively, Atofina and Crompton also requested that the Agency allow them to sell stocks of their affected products for which they have requested amendment to terminate uses, bearing labels allowing the use which is the subject of the use termination request, until that same date, November 30, 2003. The Agency anticipates granting these requests shortly after the end of the 30-day comment period for this notice unless the Agency receives substantive comments within the comment period that would merit further review of the request. The cancellation and use termination orders which effect the requests of these two registrants for their TBT antifoulant and antifouling paint registrations will effectively serve as the existing stocks orders for the affected registrations.

Existing stocks are those stocks of registered pesticide products which are currently in the United States and which have been packaged, labeled, and released for shipment prior to the effective date of the cancellation action. In this instance, and consistent with their own requests, Atofina and Crompton will not be permitted existing stocks provisions for any sale, distribution, or use of affected products after the effective date of the cancellations and use terminations. Unless the provisions of an earlier order apply, existing stocks already in the hands of dealers or users can be distributed, sold, or used legally until they are exhausted, provided that such further sale and use comply with EPA-approved label and labeling of the affected product. Exception to these general rules will be made in specific cases when more stringent restrictions on sale, distribution, or use of the products or their ingredients have already been imposed, as in a Special Review action, or where the Agency has identified significant potential risk concerns associated with a particular chemical. The Agency does not anticipate any such exception to these general rules in this case.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: November 21, 2003.

Betty Shackleford,

Acting Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. 03–30165 Filed 12–4–03; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2003–0248; FRL–7318–6]

Notice of Availability of the Preliminary Risk Assessment for Creosote Reregistration Eligibility Decision

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability.

SUMMARY: This notice announces the availability of documents that were developed as part of EPA's six-phase public participation reregistration process for creosote. This chemical, a "heavy duty wood preservative," was first registered in the United States in 1948 as a coal tar creosote active ingredient. Presently, 16 products are registered for use as industrial wood preservatives for above and below ground wood protection treatments, as well as treating wood in marine environments. Creosote wood preservatives are used primarily in the pressure treatment of railroad ties/crossties (about 70% of all creosote use) and utility poles/cross-arms (about 15–20% of all creosote use). Assorted creosote-treated lumber products (e.g., timbers, poles, posts and ground-line support structures) account for the remaining uses of this wood preservative. This notice starts the 60-day public comment period for the preliminary risk assessment for creosote. EPA will review all comments received and address them accordingly. The Agency will then announce and conduct a public technical briefing on the revised risk assessment to provide an opportunity for the public to learn more about the data, information, and methods used to develop the revised risk assessment. The revised assessment will then be made available to the public, and the public will be invited to submit risk management ideas and/or proposals. By allowing access and opportunity for comments on the preliminary risk assessment, the Agency is seeking to strengthen stakeholder involvement and help ensure its decisions under the Food Quality Protection Act are transparent, and based on the best available information.

DATES: Comments, identified by docket ID number OPP–2003–0248, must be received on or before February 3, 2004.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I. of the **SUPPLEMENTARY INFORMATION**. To ensure proper receipt by EPA, it is imperative that you identify docket ID number OPP–2003–0248 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: *By mail*: Bonaventure Akinlosotu, Antimicrobials Division (7510C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460.

Office location for commercial courier delivery, telephone number and e-mail address: Rm. 308, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703) 605–0653; e-mail: *akinlosotu.bonaventure@epa.gov*.

SUPPLEMENTARY INFORMATION: This announcement consists of two parts. The first part contains general information. The second part provides information on what actions the Agency intends to take.

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. You may be potentially affected by this action if you manufacture, sell, distribute, or use creosote. Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket*. EPA has established an official public docket for this action under docket identification (ID) number OPP–2003–0248. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access*. You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr/*.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select "search," then key in the appropriate docket ID number.

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C. How and to Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit I.D. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically*. If you submit an electronic comment as prescribed in this unit, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

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system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail.* Comments may be sent by e-mail to*opp-docket@epa.gov*, Attention: Docket ID Number OPP–2003–0248. In contrast to EPA's electronic public docket, EPA's e-mail system is not an "anonymous access" system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM.* You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Unit I.C.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By mail.* Send your comments to: Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001, Attention: Docket ID Number OPP–2003–0248.

3. *By hand delivery or courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, Attention: Docket ID Number OPP–2003–0248. Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit I.B.1.

D. How Should I Submit CBI to the Agency?

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E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Make sure to submit your comments by the deadline in this notice.

7. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. What Action is the Agency Taking?

EPA is making available preliminary, risk assessments that have been developed as part of EPA's process for making reregistration eligibility decisions for creosote. The Agency is providing the opportunity, through this notice, for interested parties to provide written comments and input to the Agency on the preliminary risk assessments for the chemical specified in this notice. Such comments and input could address, for example, the availability of additional data to further refine the risk assessments, or could address the Agency's risk assessment methodologies and assumptions as applied to this specific chemical. Comments should be limited to issues raised within the preliminary risk assessments and associated documents. EPA will provide other opportunities for public comment on other science issues associated with creosote. Failure to comment on any issues as part of this opportunity will in no way prejudice or limit a commenter's opportunity to participate fully in later notice and comment processes. All comments should be submitted by February 3, 2004.

List of Subjects

Environmental protection, Chemicals, Creosote, Pesticides and pests.

Dated: November 25, 2003.

Jack E. Housenger,

Acting Director, Antimicrobials Division, Office of Pesticide Programs.

[FR Doc. 03–30270 Filed 12–4–03; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2003–0276; FRL–7334–6]

Pyridalyl; Notice of Filing a Pesticide Petition to Establish a Tolerance for a Certain Pesticide Chemical in or on Food

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of a pesticide petition proposing the establishment of regulations for residues of a certain pesticide chemical in or on various food commodities.

DATES: Comments, identified by docket (ID) number OPP–2003–0276, must be received on or before January 5, 2004.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Susan Stanton, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–5218; e-mail address: *stanton.susan@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS 111)
- Animal production (NAICS 112)
- Food manufacturing (NAICS 311)
- Pesticide manufacturing (NAICS 32532)

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under docket ID number OPP–2003–0276. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although, a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

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II. What Action is the Agency Taking?

EPA has received a pesticide petition as follows proposing the establishment and/or amendment of regulations for residues of a certain pesticide chemical in or on various food commodities under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that this petition contains data or information regarding the elements set forth in FFDCA section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: November 20, 2003.

Susan Lewis,

Acting Director, Registration Division, Office of Pesticide Programs.

Summary of Petition

The petitioner's summary of the pesticide petition is printed below as required by FFDCA section 408(d)(3). The summary of the petition was prepared by the Valent U.S.A. Corporation and represents the view of the petitioner. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

Valent U.S.A. Corporation

PP 2F6459, and PP 2E6592

EPA has received pesticide petitions (PP 2F6459, and PP 2E6592) from Valent U.S.A. Corporation, 1600 Riviera Ave., Suite 200, Walnut Creek, CA 94596–8025, and IR-4, 681 U.S. Highway #1 South, North Brunswick, NJ, 08902–3390, proposing, pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(d), to amend 40 CFR part 180 by establishing tolerances for residues of the insecticide chemical pyridalyl, pyridine,2-[3-[2,6-dichloro-4-[(3,3-dichloro-2-propenyl)oxy]phenoxy]propoxy]-5-(trifluoromethyl), in or on the raw agricultural commodities: Cottonseed at 0.4 parts per million (ppm); vegetable, fruiting, group 8, at 1.1 ppm; vegetable, leafy, except Brassica, group 4, at 20.0 ppm; Brassica, head and stem, subgroup 5A, at 5.0 ppm; Brassica, leafy greens, subgroup 5B, at 30.0 ppm; turnip greens at 30 ppm; meat at 0.04 ppm; meat by-products at 0.05 ppm; animal fat at 1.0 ppm; and whole milk at 0.1 ppm and to establish tolerances for residues of the insecticide chemical pyridalyl, pyridine,2-[3-[2,6-dichloro-4-[(3,3-dichloro-2-propenyl)oxy]phenoxy]propoxy]-5-(trifluoromethyl) plus the metabolite S-1812-DP, 3,5-dichloro-4-[3-(5-trifluoromethyl-2-pyridyloxy)]propoxy phenol, in or on the raw agricultural commodity cotton gin by-products at 23.0 ppm. EPA has determined that the petitions contain data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petitions. Additional data may be needed before EPA rules on the petition.

A. Residue Chemistry

1. *Plant metabolism.* The metabolism of pyridalyl in plants is well understood, having been investigated in cabbage, tomato, and cotton. The major residue in all crops is pyridalyl. A minor metabolic pathway in plants involves cleavage of the dichloropropenyl group to the phenol, S-1812-DP, which can be conjugated. Other minor metabolic pathways in cotton are oxidation of the dichloropropenyl group to the acid, S-1812-PhCH2COOH, and hydrolysis to give the pyridone, HTFP, which can be further hydroxylated to 3-hydroxy-5-trifluoromethylpyridone (HPDO).

2. *Analytical method.* Based on the metabolism of pyridalyl in plant and animals and the toxicology of the parent and metabolite, quantification of the parent pyridalyl and the metabolite S-1812-DP are sufficient to determine toxic residues. Practical analytical

methods for detecting and measuring levels of pyridalyl and its metabolite S-1812-DP have been developed and validated in all appropriate agricultural commodities and respective processing fractions. These analytical methods are suitable for monitoring of food with residues at the levels proposed for the tolerances. Methods have also, been developed and validated for determining pyridalyl and S-1812-DP in animal matrices. The limit of quantitation (LOQ) of pyridalyl in the crop methods are 0.02 ppm in cottonseed, 0.1 ppm in cotton gin trash, and 0.02 ppm in vegetables. The LOQs of pyridalyl in the animal methods are 0.01 ppm in milk, 0.02 ppm in tissues, liver and kidney, and 0.10 ppm in fat.

3. *Magnitude of residues.* Magnitude of residues were conducted in fruiting vegetables tomato and peppers (bell and non-bell), leafy vegetables (head and leaf lettuce, celery, and spinach), head and stem brassica vegetables (broccoli and cabbage), mustard greens, and cotton. Trials were conducted in all of the major use area for each of the crops as specified in the OPPTS Harmonized Guidelines OPPTS 860.1500 with applications at the maximum use rate for each crop. As a result of the field trials, the following tolerances for the residues of pyridalyl are proposed for each of the crop groups, crops or matrices: Cottonseed at 0.4 ppm; turnip greens at 30 ppm; vegetables, leafy, except Brassica, group 4 at 20.0 ppm; brassica, head and stem, subgroup 5A at 5.0 ppm; Brassica, leafy greens, subgroup 5B at 30 ppm; and vegetables, fruiting, group 8 at 1.1 ppm. Tolerances for the residues of pyridalyl plus the metabolite S-1812-DP are proposed for cotton gin by-products at 23.0 ppm. Processing studies were conducted with tomato and cottonseed. No tolerances are proposed for cottonseed and tomato processing commodities since no concentration factor was observed. Tolerances for residues of pyridalyl are also proposed for milk at 0.1 ppm; meat at 0.04 ppm; animal fat at 1.0 ppm; and meat by-products at 0.05 ppm.

B. Toxicological Profile

A full battery of toxicology testing including studies of acute, subchronic, chronic, oncogenicity, developmental, reproductive and genotoxicity effects is available for pyridalyl. The acute toxicity of pyridalyl is low by all routes. Subchronic and chronic studies exhibit no observed adverse effect level (NOAEL) values from a low of 3.4 milligrams/kilogram/day (mg/kg/day) (male rat combined toxicity/oncogenicity study) to 1,000 mg/kg/day (28–day dermal toxicity study). Pyridalyl is not oncogenic and the weight-of-evidence indicates it is not genotoxic. There are no developmental concerns or reproductive effects.

The lowest acute NOAEL of 50 mg/kg/day is derived from both the maternal and reproductive toxicity endpoint of the rabbit developmental toxicity study.

The lowest chronic NOAEL of 40 ppm (2.8 mg/kg/day in males) is taken from the premating growth period in the 2–generation reproduction study.

1. *Acute toxicity.* The acute toxicity of pyridalyl technical is low by all routes. Pyridalyl was not toxic when administered in limit tests orally, dermally and via inhalation to rats. It is not a skin irritant and is only a mild eye irritant. Pyridalyl was positive in skin sensitization tests. Pyridalyl and its formulated products will be placed into Toxicity Category III.

2. *Genotoxicty.* The genotoxic potential of pyridalyl was studied *in vitro* in bacteria (ames test), in mammalian cells hypoxanthine-guanine phosphoribosyl transferase (HGPRT) and mouse lymphoma L5178Y TK+/−), in the chromosome aberration assay, and *in vivo* in the unscheduled DNA synthesis (UDS) test and the mouse micronucleus test. The test systems assayed did not show any evidence of pyridalyl genotoxicity except the *in vitro* mammalian cytogenetics (chromosome aberration) assay. The weight of the evidence indicates that pyridalyl does not raise significant genotoxicity concerns.

3. *Reproductive and developmental toxicity.* Developmental effects of pyridalyl were studied in rats and rabbits and multigenerational effects on reproduction were studied in rats.

i. *Rat developmental.* In a developmental toxicity study conducted with rats, the maternal NOAEL was 10 mg/kg/day based on the non-acute effects of reduced body weight gain and food consumption. There were no developmental effects, and the developmental NOAEL is 250 mg/kg/day, the highest dose tested (HDT).

ii. *Rabbit developmental.* In a rabbit developmental toxicity study, the acute effects of maternal toxicity and decreased fetal weight was observed at 150 mg/kg/day. The maternal and developmental NOAEL is 50 mg/kg/day.

iii. *Reproduction.* In a rat reproduction study, there were no adverse effects of pyridalyl on reproductive parameters in the absence of parental toxicity. The reproductive, parental and offspring toxicity NOAEL is 40 ppm.

4. *Subchronic toxicity.* Subchronic toxicity studies have been conducted with pyridalyl in the rat, mouse, and dog.

i. *Rats.* Pyridalyl technical was tested in rats in a 3–month feeding study. Effects included decreased body weight gain, altered blood biochemistry, increased relative liver weight and histopathological changes in the liver, ovary, adrenal and lung. The NOAEL is 100 ppm (5.56 mg/kg/day in males and 6.45 mg/kg/day in females).

ii. *Mice.* A 13–week feeding study in mice was conducted. Effects included decreased body weight gain, hematological and blood biochemical effects,increased liver weight, decreased kidney and ovary weights and histopathological changes in liver, kidney, ovary and adrenal. The NOAEL is 70 ppm in males (8.169 mg/kg/day) and 700 ppm in females (86.78 mg/kg/day).

iii. *Dogs.* A 13–week oral (capsule) toxicity study was conducted in dogs. Effects included decreased body weight gain, clinical signs indicative of respiratory distress, hematological and blood biochemistry effects, increased liver, lung and kidney weights and histopathological alterations of the lung, kidney, adrenal and liver. The NOAEL was 10 mg/kg/day.

iv. *Dermal rat.* A 28–day dermal toxicity study in rats with pyridalyl did not produce any signs of dermal or systemic toxicity at 1,000 mg/kg/day, the highest dose tested (HDT).

5. *Chronic toxicity.* Pyridalyl has been tested in chronic studies with dogs, rats and mice.

i. *Rats.* In a 104–week combined chronic/oncogenicity study in rats, effects included decreased body weight gain, increased frequency of rearing (high dose females only), hematological alterations and histopathological alterations of the spleen. No oncogenicity was found. The NOAEL for this study is 100 ppm (3.4 mg/kg/day in males and 4.1 mg/kg/day in females).

ii. *Mice.* Pyridalyl was administered in the diet to mice for 78–weeks. Effects included decreased body weight gain and food consumption/efficiency, and increased liver and kidney weights. The NOAEL of the study was 50 ppm (5.04 mg/kg/day in males and 4.78 mg/kg/day in females)

iii. *Dogs.* Pyridalyl was administered for 12–months by capsule to dogs. There were alterations in blood biochemistry (alkaline phosphatase and alanine aminotransaminase) and increased liver weights. The NOAEL of the study was 20 mg/kg/day.

iv. *Carcinogenicity.* Pyridalyl did not produce carcinogenicity in chronic studies with rats or mice. Valent anticipates that the oncogenicity

classification of pyridalyl will be "E" (no evidence of carcinogenicity for humans).

6. *Animal metabolism.* Rats metabolize and rapidly eliminate ^{14}C S-1812. Most of the administered dose was eliminated within 48 hours mainly in the feces. There were no apparent sex-related differences in either the rate of elimination of ^{14}C S-1812 or in the metabolite distribution. There was no apparent enzymatic induction as the metabolic pattern was unchanged by multiple (14–day) administrations of ^{14}C S-1812 at 5 mg/kg/day.

7. *Metabolite toxicology.* Two metabolites of pyridalyl, 2-hydroxy-5-trifluoromethylpyridine (HTFP) and HPDO that occur in extremely low levels in plants and animals, were also tested for genetic toxicity. Each metabolite was tested in an *in vitro* bacterial (Ames test) and mammalian HGPRT assay mutagenesis assay as well as in an *in vitro* chromosome aberration test. Both metabolites were positive in the bacterial assay, but were negative in the mammalian mutagenesis assay. One metabolite, HPDO, was positive in the chromosome aberration test. The biological significance of this finding is uncertain given that only low levels of these compounds are detectible in plants or animals and that pyridalyl does not appear to be carcinogenic at high and chronic doses.

8. *Endocrine disruption.* Data from the rat reproduction and subchronic studies indicated that pyridalyl may effect lipid metabolism and, consequently, hormone levels. These *in vivo* results suggested that S-1812 may have a modulating activity on steroid biosynthesis at doses generally exceeding MTD.

To further understand these finding, two additional, non-guideline, mechanistic studies were conducted. A detailed analysis of the effect of S-1812 on serum steroid hormone levels was performed in rats exposed for 4 weeks to dose levels equivalent to those used in the rat reproduction study. And an *in vitro* study was conducted in rat primary Leydig cell and ovary cell cultures to investigate the effects of S-1812 on the production of hormones and on the activity of enzymes that catalyze sex steroid hormone biosynthesis. These studies support the conclusion that S-1812 is not an endocrine disruptor in *in vivo* mammalian systems. Although, very weak inhibition of a single steroid biosynthesis pathway was observed in the *in vitro* study, effects possibly related to this conversion in mammalian systems were observed only at dose levels that greatly exceeded the maximum tolerated dose.

C. Aggregate Exposure

1. *Dietary exposure.* Acute and chronic dietary analyses were conducted to estimate exposure to potential pyridalyl residues in or on the following crops and crop groups: Cottonseed, turnip greens, vegetables, leafy, except Brassica, group 4, Brassica, group 5 and vegetables, fruiting, group 8. using the Cumulative and Aggregate Risk Evaluation System (CARES) Version 1.3. Exposure estimates to water were made based upon modeling First Index Screening Tool Reservoir (FIRST model).

i. *Food*—a. *Acute.* The acute dietary exposure estimate of pyridalyl residues in food at the 99.9th percentile was calculated to be 43% of the acute Reference Dose (aRfD) with a margin of exposure of 235. The population subgroup with the highest exposure was non-nursing infants. The aRfD was defined as the NOAEL from a developmental toxicity study in rabbits and includes an uncertainty factor of 100 (NOAEL = 50 mg/kg body weight (bwt)/day, aRfD = 0.5 mg/kg/day).

b. *Chronic.* The chronic dietary exposure estimate of pyridalyl residues in food at the 100th percentile was calculated to be 1.4% of the chronic Reference Dose (cRfD) with a margin of exposure of 732. The population subgroup with the highest exposure was children 1–2 years old. The cRfD was defined as the NOAEL from the 2–generation reproduction study in rats including an uncertainty factor of 100 (NOAEL = 2.8 mg/kg bwt/day, cRfD = 0.028 mg/kg/day).

These values are based on proposed tolerance level residues adjusted for percentages of the crop treated. No adjustments were made for common washing, cooking or preparation practices and as such are very conservative values.

ii. *Drinking water.* Since pyridalyl is applied outdoors to growing agricultural crops, the potential exists for the parent or its metabolites to reach groundwater or surface water that may be used for drinking water. Screening Concentration in Groundwater (SCIGROW) simulation predicted zero S-1812 concentration in ground water indicating that S-1812 will not leach. This result is expected due the very high Koc value of pyridalyl. For the surface water FIRST (version 1.0) simulation produced peak day concentration (acute) of 0.15 parts per billion (ppb). The peak FIRST concentration was used for both the acute and chronic exposure assessment. Based on these modeled drinking water concentrations, the worst-case acute/chronic dietary exposure from drinking water is estimated to be negligible (0.02% of the aRfD, and 0.003% of the cRfD for children).

2. *Non-dietary exposure.* Pyridalyl is proposed only for agricultural uses and no homeowner or turf uses. Thus, no non-dietary risk assessment is necessary.

D. Cumulative Effects

Section 408(b)(2)(D)(v) requires that the Agency must consider "available information" concerning the cumulative effects of a particular pesticide's residues and "other substances that have a common mechanism of toxicity." Available information in this context include not only toxicity, chemistry, and exposure data, but also scientific policies and methodologies for understanding common mechanism of toxicity and conducting cumulative risk assessments. For most pesticides, although, the Agency has some information in its files that may turn out to be helpful in eventually determining whether a pesticide shares a common mechanism of toxicity with any other substances, EPA does not at this time have methodologies to resolve the complex scientific issues concerning common mechanism of toxicity in a meaningful way for most registered pesticides.

E. Safety Determination

1. *U.S. population.* Using the conservative assumption described above, based on the completeness and reliability of the toxicity data, it is concluded that aggregate exposure to the proposed uses of pyridalyl will utilize at most 43% of the acute RfD and 2% of the chronic RfD for the U.S. population and is likely to be much less, as more realistic data and models are developed. The Agency has no cause for concern if total acute residue contribution is less than 100% of the aRfD, because the RfD represents the level at or below which daily aggregate exposure over a lifetime will not pose appreciable risk to human health. Therefore, there is a reasonable certainty that no harm will occur to the U.S. population from aggregate exposure to residues of pyridalyl under the proposed use patterns.

2. *Infants and children.* The toxicological data base for evaluating prenatal and postnatal toxicity for pyridalyl is complete with respect to current data requirements. There are no special prenatal and postnatal toxicity concerns for infants and children, based on the results of the rat and rabbit developmental toxicity studies or the 2–generation reproductive toxicity study in rats. Using the conservative assumption described above, based on the completeness and reliability of the toxicity data, it is concluded that, aggregate exposure to the proposed uses of pyridalyl will utilize at most 43% of the aRfD for non-nursing infants (the most highly exposed subgroup) and 2% of the cRfD for children 1–2 (the most highly exposed subgroup). The drinking water contribution to dietary exposure is insignificant. Therefore, there is a reasonable certainty that no harm will occur to infants and children from aggregate exposure to residues of pyridalyl.

F. International Tolerances

There are currently no international tolerances for pyridalyl.

[FR Doc. 03–30164 Filed 12–4–03; 8:45 am]
BILLING CODE 6560–50–S

EXPORT-IMPORT BANK

[Public Notice 58]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Export Import Bank of the United States.

ACTION: Notice and request for comments.

SUMMARY: The Export-Import Bank, as a part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to comment on the proposed information collection, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments should be received on or before February 3, 2004 to be assured of consideration.

ADDRESSES: Direct all comments and requests for additional information to Mr. Wayne Gardella, Director Operations, Export-Import Bank of the U.S., 811 Vermont Avenue, NW., Washington, DC 20571, (202) 565–3787.

SUPPLEMENTARY INFORMATION:

Titles and Form Numbers

Application for Quotation-Export Credit Insurance, Commercial Bank Insureds, EIB 92–34;

Beneficiary Certificate and Agreement, EIB 92–37;

Application for a Financial Institution Buyer Credit Policy, EIB 92–41;

Application for Export Credit Insurance Financing or Operating Lease Coverage, EIB 92–45;

Short-Term Multi-Buyer Export Credit Insurance Policy Application, EIB 92–50;

Exporter's Application for Short-Term Single-Buyer Policy, EIB 92–64;

Broker Registration Form, EIB 92–79.

OMB Number: 3048–0009.

Type of Review: Revision and extension of expiration date.

Need and Use: The information requested enables the applicant to provide Ex-Im Bank with the information necessary to obtain legislatively required assurance of repayment and fulfills other statutory requirements. The forms encompass a variety of export credit insurance policies.

Affected Public: They affect all entities involved in the export of U.S. goods and services including exporters, banks, insurance brokers and non-profit or state and local governments acting as facilitators.

Estimated Annual Respondents: 1,762.

Estimated Time per Respondent: 1 hour.

Estimated Annual Burden: 1,762.

Frequency of Reporting or Use: Applications submitted one time, renewals annually.

Dated: November 22, 2003.

Solomon Bush,

Agency Clearance Officer.

BILLING CODE 6690–01–M

OMB#3048-0009
Expiry Date 10/31/03

EXPORT-IMPORT BANK OF THE UNITED STATES
APPLICATION FOR QUOTATION-EXPORT CREDIT INSURANCE
COMMERCIAL BANK INSUREDS
LETTER OF CREDIT (ELC), BANK DEDUCTIBLE (EBD) or
FINANCIAL INSTITUTION SUPPLIER CREDIT (EBS, EBM) POLICIES
THIS DOCUMENT WILL BE A MATERIAL BASIS OF THE INSURANCE IF QUOTATION IS MADE AND ACCEPTED.

1. Applicant Bank:_____ Contact:_____

Address, include 9 digit Zip Code :_____

E-mail_____Fax_____Phone_____

Tax ID #: _____ DUNS #: _____ Congressional District:_____

2. If you wish us to consider adding subsidiaries, branches or affiliates as Additional Named Insureds under your policy, provide full legal name and address below and answer questions 5. A. (2) or B. (2) for each Additional Named Insured.

Name	Address
_____	_____
_____	_____

3. Name of Brokerage (if any, if none insert "*none*") : _____

Name of Contact: _____Broker #: _____

E-Mail_____Fax_____Phone_____

4. Please provide the following information unless you have submitted this information within the past 6 months for Policy No:____

A. (1)Rating:_____ Agency:_____ Date:_____, **or**

(2) a. Annual report, including audited financial statements, on your bank for the past two fiscal years.
b. The most recent available 10K and 10Q reports on your bank.
c. Recent (within six months) credit agency report on your bank (otherwise, please attach a check for $35.00).

B. If you are a foreign bank registered to do business in the U.S., in which state(s) are you licensed to conduct business? How are your operations in this country best described? Does your bank operate as a branch or subsidiary? To what extent are credit decisions made by your bank autonomous of headquarters?

C. Has your bank or have the individual(s) who will be administering or placing business under this policy ever dealt with Ex-Im Bank before? □ Yes □ No If yes, describe the programs the bank or the individual(s) are familiar with, and the time period during which these contacts took place._____

D. Is there any other information that will be of assistance in evaluating your request for a bank policy? □ Attached

5. A. **For Letter of Credit Policies** (add pages if necessary):

(1) a. How are the international banking activities in your bank organized functionally?_____
(2) a. Who are the key individuals involved? _____
b. Have the individuals involved attended an Ex-Im Bank orientation seminar or an Ex-Im Bank training session? ?
□Yes □ No

c. Please provide their resumes. (See resume form attached)
You must provide notification within 10 days if the individual(s) responsible for administering the policy change.
(3) a. How long have you been confirming international letters of credit ? _____
b. From what Countries _____

(4) Does your bank have any special expertise in particular types of transactions, regions of the world or any other areas?
_____

(5) Maximum value of insured letters of credit expected to be outstanding during the policy period $_____

B. **For Financial Institution Supplier Credit** or **Bank Deductible Policies** (add pages if necessary):
(1) Describe how you develop customers for domestic or export receivable financing or factoring.

_____

(2) a. Please identify the individual(s) and administrative area which will be responsible for administering your policy.

_____

b. Have the individuals involved attended an Ex-Im Bank orientation seminar or an Ex-Im Bank training session? □ Yes □ No
c. What experience do the individual(s) identified in 5.B.(2)a. have with Ex-Im Bank insurance _____or private sector export credit insurance?_____
d. Please provide their resumes. (See resume form attached)
You must provide notification within 10 days if the individual(s) responsible for administering the policy change.

(3) How many years, and to what dollar amount, have you financed or factored receivables?

	# of years	most recent calendar year amount
Domestic Receivables:	_____	$_____
Foreign Receivables:	_____	$_____

(4) Describe the credit procedures used in deciding to finance an exporter's receivables.

Exporter Analysis:

_____

Buyer Analysis:

_____

(5) a. Maximum value of financed receivables expected to be outstanding during the policy period: $_____
b. For **Financial Institution Suppler Credit Policies** Do you desire (check one) a Documentary Policy □
a Non-Documentary Policy □
or both □
c. After what number of days would you stop financing the exporter's receivables from an overdue buyer? _____
d. How often are financed export receivables monitored? _____
e. Please provide a specimen copy of your lending agreement with exporters for receivable financing or factoring. □ Attached

6. The Applicant (it) **CERTIFIES and ACKNOWLEDGES to the Ex-Im Bank** (the Bank) that:

A. 1) it is a financial institution doing business in the United States, or a jurisdiction thereunder, in accordance with applicable Federal or State banking laws and regulations **OR**

2) it has received a **written** statement of exception from the Bank and **attached** it to this certification, permitting participation in the transaction despite an inability to make this certification.

B. Neither it, nor its Principals, have within the past 3 years been:

1) debarred, suspended, declared ineligible from participating in, or voluntarily excluded from participation in, a Transaction;
2) formally proposed for debarment, with a final determination still pending;
3) indicted, convicted or had a civil judgment rendered against us for any of the offenses listed in the Regulations;
4) delinquent on any amounts due and owing to the U.S. Government or its agencies or instrumentalities as of the date of execution of this certification; or
5) the undersigned has received a written statement of exception from Ex-Im Bank attached to this certification, permitting participation in this Transaction despite an inability to make certifications 1) through 4) in this paragraph.

C. It has not and will not knowingly enter into any agreements in connection with the goods and/or services covered by this policy with any individual or entity that has been debarred, suspended, declared ineligible from participating in, or voluntarily excluded from participation in a Transaction. All capitalized terms not defined herein shall have the meanings set forth in the **Government Wide Non-Procurement Suspension and Debarment Regulations - Common Rule** (Regulations).

D. It will complete and submit **Form-LLL** (the Anti-Lobbying Declaration/Disclosure forms available at http://www.exim.gov/pub/pdf/95-10apd.pdf), Disclosure Form to Report Lobbying if, to the best of our knowledge and belief, **any funds have been paid or will be paid** to any person in connection with this application for influencing or attempting to influence:

(1) an officer or employee of any U.S. Government agency, or
(2) a Member of Congress or a Member's employee, or
(3) an officer or employee of Congress. *This does not apply to commissions paid by the Bank to insurance brokers.*

E. It has not, and will not, engage in any activity in connection with this transaction that is a violation of 1) the **Foreign Corrupt Practices Act of 1977**, 15 U.S.C. 78dd-1, et seq. (which provides for civil and criminal penalties against individuals who directly or indirectly make or facilitate corrupt payments to foreign officials to obtain or keep business), 2) the **Arms Export Control Act**, 22 U.S.C. 2751 et seq., 3) the **International Emergency Economic Powers Act**, 50 U.S.C. 1701 et seq., or 4) the **Export Administration Act of 1979**, 50 U.S.C. 2401 et seq.; nor has it been found by a court of the United States to be in violation of any of these statutes within the preceding 12 months, and to the best of its knowledge, the performance by the parties to this transaction of their respective obligations does not violate any other applicable law.

F. The representations made and the facts stated in this application and its attachments **are true, to the best of its knowledge and belief, and it has not misrepresented or omitted any material facts**. It further understands that these certifications are subject to the penalties for fraud against the U.S. Government (18 USC 1001, et. seq.)

Signature	Print Name and Title	Month/Day/Year\
_____	_____	____/___/____

Send, or ask your insurance broker or city/state participant to review and send, this application to x-Im Bank, 811 Vermont Avenue, NW, Washington, D.C. 20571 or an Ex-Im Regional Office.
The Ex-Im Bank website is http://www.exim.gov

Please complete: The applicant was informed about Ex-Im by: □ An Ex-Im Regional Office: □ An Ex-Im City/State Partner: □ A U.S. Export Assistance Center: □ A Broker: □ A Bank:
□ A Local Development Authority: □ Other (specify):

Notices

The applicant is hereby notified that information requested by this application is done so under authority of the **Export-Import Bank Act of 1945**, as amended (12 USC 635 et. seq.); provision of this information is mandatory and failure to provide the requested information may result in Ex-Im Bank being unable to determine eligibility for support. The information provided will be reviewed to determine the participants' ability to perform and pay under the transaction referenced in this application. Ex-Im Bank may not require the information and applicants are not required to provide information requested in this application unless a currently valid OMB control number is displayed on this form (see upper right of each

page).

Public Burden Statement: Reporting for this collection of information is estimated to average 1 hour per response, including reviewing instructions, searching data sources, gathering information, completing, and reviewing the application. Send comments regarding the burden estimate, including suggestions for reducing it, to Office of Management and Budget, Paperwork Reduction Project OMB# 3048-0009, Washington, D.C. 20503.

The information provided will be held confidential subject to the **Freedom of Information Act** (5 USC 552) the **Privacy Act of 1974** (5 USC 552a), and the **Right to Financial Privacy Act of 1978** (12 USC 3401), except as otherwise required by law. Note that the Right to Financial Privacy Act of 1978 provides that Ex-Im Bank may transfer financial records included in an application for an insurance policy, or concerning a previously approved insurance policy, to another Government authority as necessary to process, service or foreclose on an insurance policy, or collect on a defaulted insurance policy.

END

Attachment to Bank Policy Application
To be filled out for each individual named.
RESUME FORM

Name: _____

Title or
Position: _____

Number of years with your organization: _____

Full description of job functions including administering the policy:
_____
_____
_____
_____

Administrative
experience: _____

Export-related experience including any previous experience with Ex-Im Bank: _____

Educational
background: _____

EIB92-34 (09/03)

OMB#3048-0009
Expiry Date
10/31/03

Ex-Im Bank Logo

EXPORT-IMPORT BANK OF THE UNITED STATES

BENEFICIARY CERTIFICATE AND AGREEMENT

For Use With
Bank Letter of Credit Export Credit Insurance Policy or
Financial Institution Buyer Credit Export Credit Insurance Policy or
Medium Term Export Credit Insurance Policy

NOTE: This form is to be used only if the beneficiary of the letter of credit, the recipient of a funding under a direct buyer credit loan or the recipient of payment under a reimbursement loan or a payment under a supplier credit is not also the U.S. Exporter. In that situation the exporter must complete those parts of the Exporter Certificate EIB94-07 required in its instructions and the beneficiary must complete this entire certificate.

Name and Address of Policyholder:

_____

_____

Policy No._____

(to be completed by the policyholder, also see No.4.e)

Name and Address of Beneficiary:

_____

_____

_____

Beneficiary's Dun & Bradstreet Number _____

Taxpayer ID No.:_____ Congressional District:_____

Indicate (not required) if owned by a ☐ woman, or an ☐ ethnic minority, describe____

Upon representation that the Export-Import Bank of the United States ("Ex-Im Bank") has issued to the policyholder identified above an export credit insurance policy, and in consideration of either (check one):

☐ a) the payment, acceptance or negotiation of an irrevocable letter of credit in our favor; or,

☐ b) the financing of an export,

We, the Beneficiary, hereby certify to the policyholder and to Ex-Im Bank as follows:

1. The policyholder has either (check one):

☐ a) informed us of an irrevocable letter of credit with Identification No._____ and we have presented, or shall present, documents which are in compliance with the terms and conditions of such irrevocable letter of credit; or,

☐ b) to our belief, established an obligation of the foreign buyer named below to make repayment of funds on a specified term in support of an export, for which we have received payment.

2. The above referenced irrevocable letter of credit **or** the buyer's obligation to pay the policyholder is in support of an export transaction described as follows:

a) Name and address of buyer_____

b) Description and quantity of product(s)/service(s)_____

c) The product(s) are: ☐ New, ☐ Used. If used, attach Used Equipment Questionnaire form EBD-M-25.

d) Place of Shipment_____ e) Date of Shipment_____

f) Contract Price to Buyer:

(i)	Products/Service	$_____
ii)	Less discounts or similar allowances	$_____
iii)	Plus total insurance, freight or other delivery charges included in the transaction	$_____
	Subtotal:	$_____
iv)	Less cash payment	$_____

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(minimum 15% required for MT)

(v) Total final net delivered financed portion $_____

3. To the best of our knowledge and belief, the products described above were **shipped from the United States**, in accordance with paragraph 2 above.

4. With respect to products
a) which could be used for **military** purposes,
b) which could be components of a product or equipment which could be used for military purposes,
c) which could be used to manufacture products or equipment which could be used for military purposes,
d) listed on the United States **Munitions List** (part 121 of Title 22 of the Code of Federal Regulations), or
e) purchased by or for use by security, military or defense organizations, ☐ we ____ have or ☐ the policyholder ____
Initial Initial
has received the written approval of the Ex-Im Bank for such sale prior to shipment of the products **and attached it** to this certificate. Submit a Defense Product Questionnaire EIB92-61 in order to obtain such approval.

5. The products do not consist of technology, fuel, equipment, materials or goods and services to be used in the construction, alteration, operation or maintenance of **nuclear** power, enrichment, reprocessing, research or heavy water production facilities.

6. To the best of our knowledge and belief the products are **for use only in countries** in accordance with Ex-Im Bank's Country Limitation Schedule in effect on the date of shipment. See Ex-Im Bank's Internet Website <www.exim.gov> Country and Fee Information.

7. Neither we, nor our Principals, have within the past 3 years been:
1) debarred, suspended, declared ineligible from participating in, or voluntarily excluded from participation in, a Transaction;
2) formally proposed for debarment, with a final determination still pending;
3) indicted, convicted or had a civil judgment rendered against us for any of the offenses listed in the Regulations;
4) delinquent on any amounts due and owing to the U.S. Government or its agencies or instrumentalities as of the date of execution of this certification; or
5) the undersigned has received a written statement of exception from Ex-Im Bank attached to this certification, permitting participation in this Transaction despite an inability to make certifications 1) through 4) in this paragraph.

8. We have not and will not knowingly enter into any agreements in connection with the goods and/or services covered by this policy with any individual or entity that has been debarred, suspended, declared ineligible from participating in, or voluntarily excluded from participation in a Transaction. All capitalized terms not defined herein shall have the meanings set forth in the **Government Wide Non-Procurement Suspension and Debarment Regulations - Common Rule** (Regulations).

9. We will complete and submit **Form-LLL** (the Anti-Lobbying Declaration/Disclosure forms available at http://www.exim.gov/pub/pdf/95-0apd.pdf), Disclosure Form to Report Lobbying if, to the best of our knowledge and belief, **any funds have been paid or will be paid** to any person in connection with this application for influencing or attempting to influence:
(1) an officer or employee of any U.S. Government agency, or
(2) a Member of Congress or a Member's employee, or
(3) an officer or employee of Congress. *This does not apply to commissions paid by the Bank to insurance brokers.*

10. We have not, and will not, engage in any activity in connection with this transaction that is a violation of 1) the **Foreign Corrupt Practices Act of 1977**, 15 U.S.C. 78dd-1, et seq. (which provides for civil and criminal penalties against individuals who directly or indirectly make or facilitate corrupt payments to foreign officials to obtain or keep business), 2) the **Arms Export Control Act**, 22 U.S.C. 2751 et seq., 3) the **International Emergency Economic Powers Act**, 50 U.S.C. 1701 et seq., or 4) the **Export Administration Act of 1979**, 50 U.S.C. 2401 et seq.; nor has it been found by a court of the United States to be in violation of any of these statutes within the preceding 12 months, and to the best of its knowledge, the performance by the parties to this transaction of their respective obligations does not violate any other applicable law.

11. The representations made and the facts stated by us in these certifications and its attachments **are true, to the best of our knowledge and belief, and we have not misrepresented or omitted any material facts**. We further understand that these certifications are subject to the penalties for fraud against the U.S. Government (18 USC 1001).

By:_____ Signature:_____
Print Name (Authorized Representative of the Beneficiary)

Title:_____ Date:_____

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If the beneficiary can not make any or all of the required certifications as they are presented here, Ex-Im Bank must be contacted to request written permission to delete or alter the certification, without which the insurance policy may not be valid.

Notices

The applicant is hereby notified that information requested by this application is done so under authority of the **Export-Import Bank Act of 1945**, as amended (12 USC 635 et. seq.); provision of this information is mandatory and failure to provide the requested information may result in Ex-Im Bank being unable to determine eligibility for support. The information provided will be reviewed to determine the participants' ability to perform and pay under the transaction referenced in this application. Ex-Im Bank may not require the information and applicants are not required to provide information requested in this application unless a currently valid OMB control number is displayed on this form (see upper right of each page).

Public Burden Statement: Reporting for this collection of information is estimated to average 1 hour per response, including reviewing instructions, searching data sources, gathering information, completing, and reviewing the application. Send comments regarding the burden estimate, including suggestions for reducing it, to Office of Management and Budget, Paperwork Reduction Project OMB# 3048-0009, Washington, D.C. 20503.

The information provided will be held confidential subject to the **Freedom of Information Act** (5 USC 552) the **Privacy Act of 1974** (5 USC 552a), and the **Right to Financial Privacy Act of 1978** (12 USC 3401), except as otherwise required by law. Note that the Right to Financial Privacy Act of 1978 provides that Ex-Im Bank may transfer financial records included in an application for an insurance policy, or concerning a previously approved insurance policy, to another Government authority as necessary to process, service or foreclose on an insurance policy, or collect on a defaulted insurance policy.

OMB # 3048-0009
Expiry Date 10/31/03

Ex-Im Bank Logo

EXPORT-IMPORT BANK OF THE UNITED STATES
APPLICATION for a FINANCIAL INSTITUTION BUYER CREDIT POLICY

(Please Print or Type) APP. NO. _____ (Ex-Im Bank Use Only)

INSURANCE BROKER: If none, insert "*none*." Broker #:
Name of Brokerage: Phone #:
Contact Person: Fax #: E-Mail:

1. APPLICANT: (Ex-Im use only: Insured #:)
Applicant Name: Phone#:
Contact person: Fax #:
Position Title: E-Mail:
Street Address:
City: State: Zip Code:

Please attach the following information unless you submitted this information within the past 6 months for Policy No. _____

a. Taxpayer ID #: Duns #: Congressional District: **AND**

b. Market Rating: Rating Agency: Date: , **OR**

c. (1) ☐ Your most recent published annual report, or audited financial statements.
(2) ☐ Your most recent available 10k and 10Q reports.
(3) ☐ A credit agency report dated within 6 months. If unavailable, attach check for $35.00 to cover Ex-Im Bank's cost in ordering report.
(4) ☐ How long have you been lending internationally?
(5) ☐ To what countries do you actively lend?
(6) ☐ How is your foreign loan portfolio broken down between government ____% and private ____% sector buyers?
(7) ☐ How often do you visit your overseas buyers?
(8) ☐ Attach the manes, titles, and the international lending backgrounds of the individuals responsible for administering Ex-Im policies.

2. TRANSACTION:

a. This insurance application is for, check one, a credit extended by you based on:
your relationship with the Buyer or Guarantor , a ☐ Buyer Credit, **or**, your relationship with the exporter, a ☐ Supplier Credit.

b. This application is for ☐Comprehensive (Commercial and Political Cover) or ☐Political Only Cover.

c. This application is for a ☐Single Financing or a ☐Revolving Line.

d. Credit limit requested $_____

e. Payment terms requested_____

f. Ex-Im Bank requires a written debt obligation, i.e., promissory note or draft. If none, check here ☐and provide a full description of documentation which constitutes the buyer's debt obligation._____

g. Indicate whether ☐ negotiating or ☐ financing mandate received.

3. BUYER: The "buyer" is the entity which agrees to repay the credit (loan). Refer to Ex-Im Bank's Short Term Credit Standards (EIB99-09) for Buyers to determine the likelihood of approval:

a. This buyer is☐ Sovereign, ☐ Non-Sovereign Public Sector, or ☐ Private Sector. (Ex-Im use only. File #:)
Buyer Name: Duns #:
Contact person: Phone #: Fax #:
Position Title: E-Mail:
Street Address: City:
State/Province: Postal Code: Country:

The following information on the buyer is necessary unless the credit is based on a guarantor, if so check here ☐ and complete for the guarantor

b. For **all applications** provide in an attachment:
(1) ☐A summary of credit facilities (insured and uninsured) extended by the ☐ applicant or the ☐ exporter (for Supplier Credits) to this buyer/guarantor specifying the high credit, whether secured or unsecured, and tenor(s) with details on past dues (if applicable), or ☐ None.

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(2) For ☐ **non-sovereign public** or ☐ **private** buyers/guarantors on which comprehensive cover is requested, provide the following:
(a) Market Rating:_____ Rating Agency:_____ Date:_____, **OR**
(b) ☐ A bank reference not older than 6 months from date of application **and**
(i) ☐ 2 Ex-Im Bank Trade Reference forms (EIB99-14) dated within 6 months of the application **and**
(ii) ☐ For a credit limit up to $1 million, the last 2 fiscal year end audited or signed unaudited financial statements with notes.
☐ For a credit limit over $1 million, provide 3 fiscal year end audited statements with notes and the most recent interim statements with notes if the last fiscal year end is more than 9 months prior to application.
(3) ☐ The applicant's credit memorandum on the buyer/guarantor.
(4) Have you visited the buyer/guarantor? ☐ No ☐ Yes, if yes give date: _____ and attach a copy of your call report.

4. GUARANTOR: The "guarantor" is the entity which agrees to repay the credit if the borrower does not. Complete the information below and provide the information in 3.b. if the credit is based on the guarantor. (Ex-Im use only: File #:_____)

This guarantor is ☐ Sovereign, ☐ Non-Sovereign Public Sector, or ☐ Private Sector.

Guarantor Name:_____ Duns#:_____
Contact person:_____ Phone #:_____ Fax #:_____
Position Title:_____ E-Mail:_____
Street Address:_____ City:_____
State/Province:_____ Postal Code:_____ Country:_____

5. For **SUPPLIER CREDITS** only:
NOTE: You are **not** required to fill out this section for **Buyer Credits** but, if any information is known, please complete in a, b and c.

a. EXPORTER:
The "exporter" is the entity which contracts with the buyer for the sale of the U.S. items and services. (Ex-Im use only: File #:_____)

Exporter Name:_____ Phone #:_____
Contact person:_____ Fax #:_____
Position Title:_____ E-Mail:_____
Street Address:_____ City:_____
State:_____ Zip Code:_____
Taxpayer ID #:_____ Duns #:_____ Congressional District:_____
Fiscal year ended (mo. & yr.):_____ Gross sales revenue in last fiscal year: $_____ # of employees:_____
Standard Industrial Code of business:_____ Indicate (Not Required) if owned by a ☐ Woman or ☐ Ethnic Minority, describe:_____

If "Documentary" cover is desired, check here ☐and attach the following unless the exporter submitted it within the past 6 months for Policy No._____. Refer to Ex-Im Bank's Short Term Credit Standards (EIB99-09) Exporter Standards for an Enhanced Assignment to determine the likelihood of approval of documentary cover if the exporter, using the US Small Business Administration guidelines, is a small business.
(1) ☐ A bank reference on the exporter dated within 6 months of the application **and**
(2) ☐ 2 trade references on the exporter dated within 6 months of the application **and**
(3) The last 2 fiscal year financial statements of the exporter as follows:

Claim Payment Limit (Credit Limit x %of cover)	Minimum Requirement
☐ $500,000 or less	signed by an authorized officer of the exporter
☐$500,001 - $999,999	reviewed by a CPA with notes attached
☐$1,000,000 or more	audited by a CPA with opinion and notes attached

NOTE: The net worth, including subordinated shareholder debt, of the exporter must be at least 20% of the Claim Payment Limit.

b. SUPPLIER: The "supplier" is the U.S. entity which produces the items and/or performs the services to be exported.
Check if the supplier is also the ☐ exporter or complete the following: (Ex-Im use only: File #:_____)

Supplier Name:_____ Phone #:_____
Contact person:_____ Fax #:_____
Position Title:_____ E-Mail:_____
Street Address:_____ City:_____
State:_____ Zip Code:_____
Taxpayer ID #:_____ Duns #:_____ Congressional District:_____
Fiscal year ended (mo. & yr.):_____ Gross sales revenue in last fiscal year: $_____ # of employees:_____
Standard Industrial Code of business:_____ Indicate (Not Required) if owned by a Woman or Ethnic Minority, describe:_____

c. PRODUCTS: All applicants should note that there are specific United States content requirements for all transactions and that exporters are required to complete an Exporter's Certificate form EIB-94-07 for "Documentary" cover.
(1) Products: ☐New ☐Used (If used, complete and attach Used Equipment Questionnaire, EIB-92-63)
(2) Description of products*:_____

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(3) Are products listed on the United States Munitions List (part 121 of Title 22 of the Code of Federal Regulations)? ☐ Yes ☐ No
(4) Is each product produced or manufactured in the United States? ☐ Yes ☐ No
(5) Is at least one half of the value, exclusive of price mark-up, exclusively of US origin? ☐ Yes ☐ No
(6) Will any value be added to the products after export from the United States? ☐ Yes ☐ No
If yes please attach an explanation; the transaction may not be eligible for coverage.

* The Borrower, Guarantor, Buyer and End User must be foreign entities in countries for which Ex-Im is able to provide support, see Ex-Im's Country Limitation Schedule (CLS) at www.exim.gov . There may not be trade measures against them under Section 201 of the Trade Act of 1974, see http://dockets.usitc.gov/eol/public/ click on 201. There may not be trade sanctions in force against them For a list of products and countries with Anti-Dumping or Countervailing Duty sanctions see http://205.197.120.60/oinv/sunset.nsf/AllDocID/96DAF5A6C0C5290985256A0A004DEE7D.

6. PARTICIPANTS: Describe any direct or indirect ownership or family relationship between any of the participants in this transaction. If none, insert *"none"*._____
☐ the applicant **and** for supplier credits: ☐ the exporter, or
for buyer credits: ☐ the buyer and ☐ the guarantor (if any).

7. The Applicant (it) **CERTIFIES and ACKNOWLEDGES to the Ex-Im Bank** (the Bank) that:
A. 1) it is a financial institution doing business in the United States, or a jurisdiction thereunder, in accordance with applicable Federal or State banking laws and regulations **OR**
2) it has received a **written** statement of exception from the Bank and **attached** it to this certification, permitting participation in the transaction despite an inability to make this certification.

B. Neither it, nor its Principals, have within the past 3 years been:
1) debarred, suspended, declared ineligible from participating in, or voluntarily excluded from participation in, a Transaction;
2) formally proposed for debarment, with a final determination still pending;
3) indicted, convicted or had a civil judgment rendered against us for any of the offenses listed in the Regulations;
4) delinquent on any amounts due and owing to the U.S. Government or its agencies or instrumentalities as of the date of execution of this certification; or
5) the undersigned has received a written statement of exception from Ex-Im Bank attached to this certification, permitting participation in this Transaction despite an inability to make certifications 1) through 4) in this paragraph.

C. It has not and will not knowingly enter into any agreements in connection with the goods and/or services covered by this policy with any individual or entity that has been debarred, suspended, declared ineligible from participating in, or voluntarily excluded from participation in a Transaction. All capitalized terms not defined herein shall have the meanings set forth in the **Government Wide Non-Procurement Suspension and Debarment Regulations - Common Rule** (Regulations).

D. It will complete and submit **Form-LLL** (the Anti-Lobbying Declaration/Disclosure forms available at http://www.exim.gov/pub/pdf/95-10apd.pdf), Disclosure Form to Report Lobbying if, to the best of its knowledge and belief, **any funds have been paid or will be paid** to any person in connection with this application for influencing or attempting to influence:
(1) an officer or employee of any U.S. Government agency, or
(2) a Member of Congress or a Member's employee, or
(3) an officer or employee of Congress. *This does not apply to commissions paid by the Bank to insurance brokers.*

E. It has not, and will not, engage in any activity in connection with this transaction that is a violation of 1) the **Foreign Corrupt Practices Act of 1977**, 15 U.S.C. 78dd-1, et seq. (which provides for civil and criminal penalties against individuals who directly or indirectly make or facilitate corrupt payments to foreign officials to obtain or keep business), 2) the **Arms Export Control Act**, 22 U.S.C. 2751 et seq., 3) the **International Emergency Economic Powers Act**, 50 U.S.C. 1701 et seq., or 4) the **Export Administration Act of 1979**, 50 U.S.C. 2401 et seq.; nor has it been found by a court of the United States to be in violation of any of these statutes within the preceding 12 months, and to the best of its knowledge, the performance by the parties to this transaction of their respective obligations does not violate any other applicable law.

F. The representations made and the facts stated in this application and its attachments **are true, to the best of its knowledge and belief, and it has not misrepresented or omitted any material facts**. It further understands that these certifications are subject to the penalties for fraud against the U.S. Government (18 USC 1001, et. seq.)

_____ _____ ____/____/____
Signature Print Name and Title Date

Note: Please respond to all items and sign application. Applications not completely filled out or not submitted with required financial and

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credit information will be withdrawn.

Send, or ask your insurance broker or city/state participant to review and send, this application to:
Ex-Im Bank, 811 Vermont Avenue, NW, Washington, D.C. 20571 or an Ex-Im Regional Office.
The Ex-Im Bank website is <http://www.exim.gov>

Please complete: The applicant was informed about Ex-Im by:

☐ An Ex-Im City/State Partner:_____
☐ Broker:_____
☐ A Local Development Authority:_____
☐ An Ex-Im Regional Office:_____
☐ A U.S. Export Assistance Center:_____
☐ A Bank:_____
☐ Other (specify):_____

Notices

The applicant is hereby notified that information requested by this application is done so under authority of the **Export-Import Bank Act of 1945**, as amended (12 USC 635 et. seq.); provision of this information is mandatory and failure to provide the requested information may result in Ex-Im Bank being unable to determine eligibility for support. The information provided will be reviewed to determine the participants' ability to perform and pay under the transaction referenced in this application. Ex-Im Bank may not require the information and applicants are not required to provide information requested in this application unless a currently valid OMB control number is displayed on this form (see upper right of each page).

Public Burden Statement: Reporting for this collection of information is estimated to average 1 hour per response, including reviewing instructions, searching data sources, gathering information, completing, and reviewing the application. Send comments regarding the burden estimate, including suggestions for reducing it, to Office of Management and Budget, Paperwork Reduction Project OMB# 3048-0009, Washington, D.C. 20503.

The information provided will be held confidential subject to the **Freedom of Information Act** (5 USC 552) the **Privacy Act of 1974** (5 USC 552a), and the **Right to Financial Privacy Act of 1978** (12 USC 3401), except as otherwise required by law. Note that the Right to Financial Privacy Act of 1978 provides that Ex-Im Bank may transfer financial records included in an application for an insurance policy, or concerning a previously approved insurance policy, to another Government authority as necessary to process, service or foreclose on an insurance policy, or collect on a defaulted insurance policy.

END

Ex-Im Bank Logo

EXPORT-IMPORT BANK OF THE UNITED STATES
Financing or Operating Lease Coverage
Explanation of Application Form for Export Credit Insurance

THIS EXPLANATION IS GIVEN ONLY FOR THE PURPOSE OF ASSISTING YOU IN REVIEWING THE APPLICATION FORM. THE COMPLETE TERMS AND CONDITIONS OF COVERAGE ARE SET FORTH IN THE POLICY ITSELF. PLEASE NOTE THAT ALL UNDERLINED WORDS IN THIS EXPLANATION AND THE APPLICATION FORM ARE DEFINED IN THE POLICY.

INTRODUCTION - Two Types of Coverage: Operating and Financing Leases

The Export-Import Bank of the United States (Ex-Im Bank) has created two credit insurance policies for the leasing industry, one entitled Operating Lease Policy, and the other Financing Lease Policy. Each provides a unique system of coverage which is described below. It is important to know that the terms operating lease and financing lease are used herein as descriptive titles for the purposes of the policies only. Definitions of an operating lease, true lease, financing or full payout lease vary depending upon whether one is speaking in the context of accounting, taxes, commercial law, or international trade. These definitions do not affect your choice between the two Ex-Im Bank policies. The choice between the Operating Lease Policy or Financing Lease Policy depends upon the characteristic of the transaction. The Finance Lease Policy must be used if the transaction is essentially a conditional sale and the intent of the lessor is to transfer title at the end of the lease period. Usually there is no or little residual value. The Operating Lease Policy must be used if the transaction is not essentially a sale, but involves the rental concept (i.e, the lessor does not intend to transfer title to the lessee at the end of the lease period). Usually there is a significant residual value. All transactions which have residual value greater than or equal to 25% of the full value of the leased products must use the Operating Lease Policy.

The separation between the two types of coverage is due in part to the necessities of compliance with certain international agreements pertinent to medium-term sales. For those purposes, the financing lease is viewed as a medium-term sale and therefore an advance payment from the lessee to the lessor is required. An operating lease, however, which embodies the expectation of repossession of a leased product, which product may or may not have retained its expected market value, can be viewed by Ex-Im Bank as a rental and thereby can be underwritten by Ex-Im Bank without the imposition of an advance payment requirement.

Coverage is made available for leased products of United States origin as defined by the current underwriting guidelines. Used products may be covered. Refer to Ex-Im Bank's Fact Sheet on Used Equipment Guidelines EIB92-63. Lessors may be located in the United States, the country where the lessee is located, or a third country. Coverage is available for products which have been previously exported from the United States, however, products which have been exported as a sale or financing lease must be returned to the United States for at least one year to be eligible for coverage. Products which have been exported under an operating lease must also be returned to the United States but there is no minimum repatriation period required.

STRUCTURE OF EX-IM BANK'S FINANCING LEASE POLICY

Similar to the structure of a medium-term sale transaction, there is a requirement of a 15% advance payment from the lessee to the lessor (applicant/insured) on or before the delivery of the leased products. The advance payment may be financed. You can only insure the remaining 85% of the lease transaction.

Should the lessee default, coverage is provided for the insured percentage of each lease payment as it falls due until the end of the lease term. Coverage is usually provided at 100%. At the time of claim payment, the insured is obligated to transfer to Ex-Im Bank all remaining obligations of the lease, as well as title to the leased products. The coverage of lease payments as they become due remains effective regardless of failed repossession efforts for any reason or Ex-Im Bank's own

subsequent repossession of a leased product which has lost its market value.

STRUCTURE OF EX-IM BANK'S OPERATING LEASE POLICY

Coverage for Stream of Payments During Repossession Efforts - This policy divides coverage into two distinct parts, the first being for the stream of payments which fall due during a limited repossession efforts period after default of the lessee. Although the length of the repossession efforts period will be underwritten on a case-by-case basis, it will generally extend to cover those periodic and approved non-periodic payments which fall due during a maximum period of five months after the default. The intention of this first coverage is to maintain the insured's stream of payments while he takes action to repossess the leased products. Coverage for the stream of payments is usually provided at 100% for sovereign lessees and 90% for all others.

Coverage for Governmental Prevention of Repossession - If the insured has elected to purchase this coverage and is unable to effect repossession during the repossession efforts period, he may then claim under Risk 5 coverage, but only if repossession is prevented by the type of government action specifically described under Risk 5 of the Operating Lease Policy. Generally, those risks are referred to as expropriation or confiscation. Coverage will be limited to the actions of the governments of those countries which the insurer agrees to specify in the declarations. A failure of the insured to effect repossession for reasons other than those specified in Risk 5 is not covered. Note that the valuation of coverage under Risk 5 is the fair market value of the leased products at the time of claim submission. The coverage percentage under Risk 5 is 100%.

POLICY ISSUANCE

Both the Operating Lease Policy and Financing Lease Policy are of the single transaction type, meaning that a separate policy is issued for each separate lease you insure with Ex-Im Bank. Upon the review and approval of your application, Ex-Im Bank will issue a commitment notice for 90 days, reflecting the coverage parameters, including the credit limits and premium due, for your lease transaction. The policy is issued once you pay the applicable premium which is due prior to the expiration of the commitment notice.

The Operating Lease Policy offers "limits" type coverage:

> Under Risks 1, 2, 3, 4 on the stream of payments, you may purchase an amount of insurance up to the credit limit which Ex-Im Bank has approved, or less, if you deem it appropriate. Ex-Im Bank's maximum claim payment for these risks would be the insured percentage of the loss up to the lesser of the actual amount of the limited number of periodic and non-periodic payments specified in the policy declarations or the coverage credit limit you have purchased.
>
> In a similar manner, for Risk 5, you may purchase an amount of insurance up to the credit limit which Ex-Im Bank approves, or less if you desire, to cover the value of the leased products should their repossession after a default be prevented by one of the forms of governmental intervention set forth in the policy. Under Risk 5, the claim payment would be the insured percentage of the fair market value at the time of claim, but limited by the credit limit of coverage you have purchased.
>
> Note that prior to the time of policy issuance you must make the final decision on your credit limits, taking into consideration whatever factors you choose, including the possibilities that a default and prevention of repossession may occur very early during the life of the lease.

Under the Financing Lease Policy, Ex-Im Bank's maximum claim payment for Risks 1, 2, 3, 4 would be the insured

percentage of the amount of the insured's loss on approved non-periodic payments and on the principal and covered interest of each actual periodic payment as set forth on the schedule in the policy declarations.

FURTHER POINTS OF CLARIFICATION

- Ex-Im Bank coverage under both the Operating and Financing Lease Policies is available for both the rental portion of the lease, which is referred to as periodic payments, and also other non-rental type payments, referred to as approved non-periodic payments. Periodic payments must be due from the lessee to the insured under the lease at equal time periods, but the amounts of such payments may be unequal.

- The concept of a non-periodic payment is intended to include those payments which are obligations of the lessee under the lease, but for which payment is due upon the occurrence of certain specified contingencies other than the passage of equal periods of time. Such obligations might include service or maintenance payments payable by the lessee to the insured lessor. If such non-periodic payments are payable to a third party, however, they can be insured only if the lease contains an obligation of the lessee to reimburse the insured if such payments are not made to the third party by the lessee when due and are instead made by the insured. Your application for coverage of such non-periodic payments will be underwritten by Ex-Im Bank, and a credit limit will be entered for each approved non-periodic payment.

- Both policies require that the lease documentation set forth certain obligations. Before Ex-Im Bank can realistically underwrite a transaction, it is usually necessary to review at least a draft of the lease documentation prepared for the transaction you wish to insure. That draft should be as complete as possible when submitted.

POLICY RISK TYPES

Risks 1, 2, 3 - political risks of non-payment
(currency inconvertibility, cancellation of export or import licenses, war, insurrection, requisition or expropriation)

Risk 4 - commercial risk of non-payment
(protracted default, insolvency)

Risk 5 - governmental prevention of repossession of leased products (expropriation, confiscation - applicable to Operating Lease Policy only)

Information about Ex-Im programs, the materials and forms mentioned in these Instructions and the Application, names of Credit Reporting and Rating Agencies may be obtained:
- from Ex-Im's Website <http://www.exim.gov> ,
- by calling an Ex-Im Regional Office: Midwest: Chicago (312) 353-8081, Northeast: New York (212) 809-2650, Southeast: Miami (305) 526-7436, Southwest: Houston (281) 721-0465, MidAtlantic: Washington, DC (202) 565-3902, West: Los Angeles (562) 980-4580, Orange County (949) 660-1688ext150, San Francisco (415) 705-2285,
- by calling the Ex-Im Business Development Division 1-800-565-EXIM (3946), or
- at 811 Vermont Avenue, NW, Washington, D.C. 20571

A **non-binding insurance premium quote** can be determined using the Website's Exposure Fee Calculator.

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EXPORT-IMPORT BANK OF THE UNITED STATES
APPLICATION FOR EXPORT CREDIT INSURANCE
FINANCING OR OPERATING LEASE COVERAGE

Date:_____
App. No.:_____
(Ex-Im Bank Use Only)

(Please Print or Type)

1. Applicant Name and Address, use 9 digit zip code	2. Broker Name and Number
Attn.: Telephone No.: Fax No.: E-Mail:	(If none, state "None") Brokerage: Broker No.: Attn.: Tel No.: Fax No.: E-Mail:

3. Lessee Name and full Address (If mailing address is a P.0. Box, also provide street address) File No.:_____ (Ex-Im Bank Use Only)

4. Guarantor Name and Address (If none, state "None") File No.:_____ (Ex-Im Bank Use Only)

(Please complete Parts I, II, III, IV and V for prompt processing of your request.)

PART I – INFORMATION ABOUT THE APPLICANT

5. Please attach the following information

Your most recent published annual report or financial statements (balance sheet and income statement) signed by company officers. If on file, please indicate. ☐

Recent (within 12 months) credit agency report on applicant. If unavailable, please attach check for $35.00 to cover the Export-Import Bank of the United States' (Ex-Im Bank's) cost in ordering a report. If you have submitted this report or $35.00 to Ex-Im Bank during the past 12 months, please indicate and the requirement will be waived. ☐

6. Nature of business (e.g., manufacturer, independent leasing company, leasing subsidiary of a bank, etc.):

7. Years engaged in: a) Leasing within your country_____ b) Leasing outside your country _____

8. a) Total leases and sales during the current and past two years:_____ _____ _____

Within your country $_____ $_____ $_____

Outside your country $_____ $_____ $_____

b) Total Employees:_____ c) Standard Industrial Classification (SIC) Code (if known):_____

d) Tax ID #:_____ e) DUNS #: _____ f) Congressional District:_____

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7) Indicate (Not Required) if owned by a ☐ woman, or an ☐ ethnic minority, describe_____

9. What are your principal foreign markets?

10. Principal products leased (including identification of major suppliers if other than applicant):

PART II - INFORMATION ABOUT THE TRANSACTION

11. Check one: ___ Firm Lease ___ Negotiating Lease ___ Responding to Invitation to Bid

12. Total value, term and schedules of payments under the lease:

(Attach a copy of the final lease if available, or a draft copy setting forth at least those provisions required by the policy.)

13. Leased products ___New ___ Used (If used, attach Used Equipment Questionnaire.)

a. Specify quantity, serial no., model no., year of manufacture, fair market value per unit and how derived, and a description of what the product does.

b. Is there an active market for this particular product model number in the U.S. today, or is this product somewhat obsolete in the U.S. but still in demand overseas?

c. Manufacturer or vendor if other than applicant:_____

d. Is each leased product produced or manufactured in the United States to the extent that at least 85% of the value, exclusive of price mark-up, has been added by labor or material exclusively of U.S. origin? ___Yes ___No

e. Original purchase value $_____

f. Estimated value of leased products at the end of lease term $_____

g. Who will own the leased products at end of lease term?_____

_____

h. Is title of ownership on each of the leased products unencumbered? ___Yes ___No If no, please attach an explanation.

i. Does the lease give you the right to repossess the leased products in the event of default? ___Yes ___ No
Identify the reference in the lease regarding repossession.

j. Are products listed on the United States Munitions List? (part 121 of Title 22 of the Code of Federal Regulations)
☐ Yes ☐ No

See the U.S. Dept. of Commerce Website at <http://www.ita.doc.gov/import_admin/records/status> for a list of products and countries with Anti-Dumping or Countervailing Duty sanctions or call Ex-Im's Country Risk Analysis Division at (202) 565-3730.

14. Is the lessee going to be the user of the leased products or are the leased products expected to be released or sold to another entity? ____ Yes ____ No, if no, identify the entity and its location: _____

15. Have you ever had to repossess products sold to or leased into the lessee's country? ___Yes ___ No

a. If yes, were you successful in your repossession? ___Yes ___ No

b. If you have repossessed products in the lessee's country, where did you resell or release them?

16. What procedures or measures (i.e., conforming with local documentation requirements and standard government

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regulations) have you undertaken to assure:

a. that you maintain good title to the leased products in the country of the lessee in this transaction?

b. that you will be able to repossess and re-export the leased products?

17. Does the lease establish an unconditional obligation of the lessee to make non-cancelable:

a. periodic payments? ___Yes ___No

b. non-periodic payments? ___Yes ___No

18. Shipment of leased products will begin on or before_____(Date).

19. Other insurance:

a. Ex-Im Bank requires that you be loss payee for transit insurance for the actual cash value of the leased products at the time of shipment. Has transit insurance been obtained or is it being obtained? ___Yes ___No

(i) For what actual cash value? _____

(ii) With which carrier? _____

(iii) Effective dates: from _____ to _____

b. Ex-Im Bank requires that casualty insurance on the actual cash value of the leased products be maintained at all times. Has casualty insurance naming you as loss payee been obtained or is it being obtained? ___Yes ___No

(i) At what time periods will you require a certification of casualty insurance from the lessee?

PART III - POLICY SELECTION INFORMATION (Refer to "Explanation of Application" form)

☐ Financing Lease Policy (Answer only questions 20 and 21)

☐ Operating Lease Policy (Answer only questions 22, 23 and 24)

FOR FINANCING LEASE POLICY

20. a. Contract price of the leased products $_____

Advance payment (minimum 15%) $_____

Credit Limit for Principal amount of periodic payments $_____

b. Repayment terms for periodic payments
___Monthly ___Quarterly ___Semi-Annually in_____ installments beginning_____
(number)

c. Attach as "Exhibit A" a schedule of periodic payments breaking out the principal amounts and interest for each periodic payment.

d. Do you wish to insure any non-periodic payments? ___Yes ___No

If yes, please specify the credit limit requested and provide a description (including reference to the lease provision) of what each payment is for.

21. Against the actions of the government of which countries do you wish insurance under Risks 2 and 3?

FOR OPERATING LEASE POLICY

22. Repossession

At what point after default do you contemplate beginning repossession on this transaction and how much time do you estimate will be required for a successful repossession?

23. What is the length of the repossession efforts period you wish to insure?

24. a. Requested credit limit for periodic payments coming due during the requested repossession efforts period

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$_____

b. Attach as "Exhibit A" the schedule of periodic payments

25. Do you wish to insure any non-periodic payments? ___Yes ___No
If yes, please specify the credit limit requested and provide a description (including reference to the lease provision) of what each payment is for.

26. Do you desire coverage for the risk of prevention of repossession ("Risk 5") of the leased products? ___Yes ___No
Credit Limit of fair market value you wish to insure under Risk 5: $_____
(Risk 5 premium rates will be applied to this amount only.)

27. Against the actions of the government of which countries do you wish insurance under Risks 2, 3, and 5?

PART IV - INFORMATION ABOUT THE LESSEE

28. Please attach the following information:

Credit reports on the lessee, and guarantor (if any) not older than one year from date of application.
Please provide one report from one of the sources listed in Column A and one from Column B.

Column A	Column B
__ U.S. Commercial Bank	__ Domestic Credit Agency
__ Foreign Commercial Bank	__ Foreign Credit Agency

Minimum two years signed financial statements (preferably audited and in English) on the lessee, and guarantor (if any). Three years financial statements may be required by Ex-Im Bank on certain requests. Your internal credit analysis can be submitted with this application.

29. a. Summary of credit experience during the last three years with this lessee including uninsured experience. (Please include any additional information you may consider appropriate.)

Total Leases and Sales each year	$_____	$_____	$_____
Highest Amount Owing during the Period	$_____	$_____	$_____
Payment (Lease) Terms	_____	_____	_____

b. Describe lessee's payment history (check one):
__ No prior experience __ Prompt/Discount __ 1-30 days slow
__ 30 - 60 days slow __ More than 60 days slow

c. Amount now owing $_____ as of_____ _____(Date).

d. Amount now past due (indicate maturity dates and explanation):

30. Describe any direct or indirect ownership interest or family relationship which exists between the applicant and the lessee or guarantor. If none, state "None." _____

31. U.S. trade references (names/addresses/phone numbers/contacts). Submit copies of current reports if available

32. Lessee's principal commercial banks (names and addresses):

Please answer all questions and sign the application. Applications not completely filled out or not submitted with at least the following information may be withdrawn:

- Copy of lessee's application (or substitute) to lessor for the lease transaction
- At least a draft copy of the lease agreement prepared for the transaction you wish to insure
- Financial statements on the applicant, lessee, and the guarantor (if any).
- Credit reports on the applicant, lessee, and the guarantor (if any)
- "Exhibit A" (schedule of periodic payments you wish to insure).

PART V - The Applicant (it) CERTIFIES and ACKNOWLEDGES to the Ex-Im Bank (the Bank) that:
A. it is **(check one)**:

1) ☐a corporation organized and **existing under the laws of the United States**, or a jurisdiction thereunder, or

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2) ☐ an individual or partnership **resident in** the United States; **or**

3) ☐ a foreign corporation, partnership or individual **registered to do business in** the United States, **OR**

4) ☐ it has received a **written** of exception from the Bank and **attached** it to this certification, permitting participation in the transaction despite an inability to make statement certifications 1, 2 or 3.

B. The applicant certifies that, to the best of its knowledge and belief, the products and services to be exported in the transaction described in this application are principally for use as indicated below. If, however, the applicant has knowledge or reason to believe that the products will be re-exported from the original lessee's country, please complete item (2):

1) ☐ By the lessee in the country specified above.

2) ☐ If not, name country **where** products will be principally used: _____ and **by whom**: _____.

C. Neither it, nor its Principals, have within the past 3 years been:

1) debarred, suspended, declared ineligible from participating in, or voluntarily excluded from participation in, a Transaction;
2) formally proposed for debarment, with a final determination still pending;
3) indicted, convicted or had a civil judgment rendered against us for any of the offenses listed in the Regulations;
4) delinquent on any amounts due and owing to the U.S. Government or its agencies or instrumentalities as of the date of execution of this certification; or
5) the undersigned has received a written statement of exception from Ex-Im Bank attached to this certification, permitting participation in this Transaction despite an inability to make certifications 1) through 4) in this paragraph.

D. It has not and will not knowingly enter into any agreements in connection with the goods and/or services covered by this policy with any individual or entity that has been debarred, suspended, declared ineligible from participating in, or voluntarily excluded from participation in a Transaction. All capitalized terms not defined herein shall have the meanings set forth in the **Government Wide Non-Procurement Suspension and Debarment Regulations - Common Rule** (Regulations).

E. It will complete and submit **Form-LLL (**the Anti-Lobbying Declaration/Disclosure forms available at http://www.exim.gov/pub/pdf/95-10apd.pdf), Disclosure Form to Report Lobbying if, to the best of our knowledge and belief, **any funds have been paid or will be paid** to any person in connection with this application for influencing or attempting to influence:

(1) an officer or employee of any U.S. Government agency, or
(2) a Member of Congress or a Member's employee, or
(3) an officer or employee of Congress. *This does not apply to commissions paid by the Bank to insurance brokers.*

F. It has not, and will not, engage in any activity in connection with this transaction that is a violation of 1) the **Foreign Corrupt Practices Act of 1977**, 15 U.S.C. 78dd-1, et seq. (which provides for civil and criminal penalties against individuals who directly or indirectly make or facilitate corrupt payments to foreign officials to obtain or keep business), 2) the **Arms Export Control Act**, 22 U.S.C. 2751 et seq., 3) the **International Emergency Economic Powers Act**, 50 U.S.C. 1701 et seq., or 4) the **Export Administration Act of 1979**, 50 U.S.C. 2401 et seq.; nor has it been found by a court of the United States to be in violation of any of these statutes within the preceding 12 months, and to the best of its knowledge, the performance by the parties to this transaction of their respective obligations does not violate any other applicable law.

G. The representations made and the facts stated in this application and its attachments **are true, to the best of its knowledge and belief, and it has not misrepresented or omitted any material facts**. It further understands that these certifications are subject to the penalties for fraud against the U.S. Government (18 USC 1001, et. seq.)

_____ _____ _____/_____/_____
Signature Print Name and Title Month/Day/Year

Send, or ask your insurance broker or city/state participant to review and send, this application to Ex-Im Bank, 811 Vermont Avenue, NW, Washington, D.C. 20571 or an Ex-Im Regional Office. The Ex-Im Bank website is <http://www.exim.gov> See "Instructions" Page 3 for whom to contact with questions.

Please complete: The applicant was informed about Ex-Im by:

☐ An Ex-Im Regional Office: _____
☐ An Ex-Im City/State Partner: _____
☐ A U.S. Export Assistance Center: _____
☐ A Broker: _____
☐ A Bank: _____
☐ A Local Development Authority: _____
☐ Other (specify): _____

Notices

The applicant is hereby notified that information requested by this application is done so under authority of the **Export-Import Bank Act of 1945**, as amended (12 USC 635 et. seq.); provision of this information is mandatory and failure to provide the requested information may result in Ex-Im

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Bank being unable to determine eligibility for support. The information provided will be reviewed to determine the participants' ability to perform and pay under the transaction referenced in this application. Ex-Im Bank may not require the information and applicants are not required to provide information requested in this application unless a currently valid OMB control number is displayed on this form (see upper right of each page).

Public Burden Statement: Reporting for this collection of information is estimated to average 1 hour per response, including reviewing instructions, searching data sources, gathering information, completing, and reviewing the application. Send comments regarding the burden estimate, including suggestions for reducing it, to Office of Management and Budget, Paperwork Reduction Project OMB# 3048-0009, Washington, D.C. 20503

The information provided will be held confidential subject to the **Freedom of Information Act** (5 USC 552) the **Privacy Act of 1974** (5 USC 552a), and the **Right to Financial Privacy Act of 1978** (12 USC 3401), except as otherwise required by law. Note that the Right to Financial Privacy Act of 1978 provides that Ex-Im Bank may transfer financial records included in an application for an insurance policy, or concerning a previously approved insurance policy, to another Government authority as necessary to process, service or foreclose on an insurance policy, or collect on a defaulted insurance policy.

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Ex-Im Bank Logo

EXPORT IMPORT BANK OF THE UNITED STATES
SHORT-TERM MULTI-BUYER EXPORT CREDIT INSURANCE POLICY APPLICATION

Applicant: _____ **dba:** _____
Address: _____
Phone: _____ Fax: _____ E-Mail: _____ Website: _____
Contact: _____ Title: _____ E-Mail: _____ Phone: _____

Indicate (Not Required) if owned by a 9 Woman or 9 Ethnic Minority, describe: _____
Bank credit line (if any) with: _____ Broker: _____

1. Have you ever applied for a U.S. Small Business Administration or Ex-Im Bank program? ☐Yes or ☐ No
If so, please name the agency, program, outcome and status: _____
If you wish to insure sales made by your affiliates, please see Question 17 (Additional Named Insureds) prior to continuing.

2. Primary reason for application: ☐ risk mitigation ☐ financing ☐ extend more competitive terms

3. Policy Aggregate Limit Requested: $_____ (maximum export credit receivables outstanding at any one time)

4. Product and/or services to be exported & NAICS (if known): _____

5. Do you sell Capital Goods to foreign manufacturers or producers? (if yes, please explain) _____

6. Are the products* to be covered under the policy:
- Manufactured or reconditioned in the U.S.? ☐Yes ☐No
- Minimum 50% U.S. content, less markup? ☐Yes ☐No **OR**
- Environmentally Beneficial? ☐Yes ☐No
- Used to support Nuclear Energy? ☐No ☐Yes
- Sold to Military entities or Security Forces? ☐No ☐Yes
- Shipped from the U.S.? ☐Yes ☐No
more than 50% value of refurbishing in the U.S.? ☐Yes ☐No
- Supporting Renewable Energy? ☐Yes ☐No
- On the U.S. Munitions List? ☐No ☐Yes
(part 121 of title 22 of the Code of Federal Regulations)

* The Borrower, Guarantor, Buyer and End User must be foreign entities in countries for which Ex-Im is able to provide support, see Ex-Im's Country Limitation Schedule (CLS) at www.exim.gov . There may not be trade measures or sanctions against them under Section 201 of the Trade Act of 1974, see http://dockets.usitc.gov/eol/public/ . For a list of products and countries with Anti-Dumping or Countervailing Duty sanctions see http://205.197.120.60/oinv/sunset.nsf/AllDocID/96DAF5A6C0C5290985256A0A004DEE7D.

7. # of years exporting: _____ # of years exporting on terms other than cash in advance (CIA) or confirmed L/C (CILC):_____

8. Total export sales for the prior 3 years: Year: ____ $ _____ Year: ____ $ _____ Year: ____ $ _____
Total export *credit* sales (exclude CIA, CILC) for the prior 3 years: $ _____ $ _____ $ _____

9. Buyer Types: ___% Manufacturers ___% Wholesalers ___%Traders ___% Retailers ___%Service Providers
___% End-users ___%Service Providers ___%Financial Institutions ___%Government Agencies

10. Export Credit Portfolio - attach additional pages if necessary.

	PREVIOUS YEAR			PROJECTIONS FOR NEXT YEAR		
Country	# Buyers	Sales	Terms	# Buyers	Sales	Terms
EXAMPLE: Mexico	10	$2,500,000	50% CILC 50% 60 day OA	12	$3,000,000	100% 60 day OA

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Expires 10/31/03

11. Please list your 5 largest export buyers:

Buyer Name	Address	Country	Last 12 Months Sales & Terms	High Credit	Projected Terms	Credit Limit Needed
			$	$		$
			$	$		$
			$	$		$
			$	$		$
			$	$		$

12. Name(s) of export credit decision maker(s): Title(s): Years of Credit Experience Years of Foreign Credit Exp.
_____ _____ _____ _____
_____ _____ _____ _____

13. At what point do you stop shipping to a past due account? _____ days past due

14. Total export receivables outstanding: $_____ at ___/___/___ (date should be within 60 days of the application)

$_____	$_____	$_____	$_____	$_____
Current	1-60 days past due	61-90 days past due	91-180 days past due	181+ days past due

For each buyer over 60 days past due, attach an explanation including: name of buyer, country, amount past due, due date, reason for past due and collection efforts made.

15. Export credit losses per year or rescheduled debts during each of last three years - attach additional pages if necessary.

YEAR	AMOUNT (US$)	EXPLANATION OF LOSS OR RESCHEDULING (SPECIFY REASON, COUNTRY, AND BUYER)
	$	
	$	
	$	

16. **Please submit the following as Attachments:**
- Credit Report on your company dated within 6 months of the application or attach a check for $35 payable to Ex-Im Bank.
- Your financial statements for the two most recent completed fiscal years (with notes if available).
- Resume(s) on each credit decision maker identified in question 12.
- Descriptive product brochures (if available).

17. **Special Coverages Required:** If "none" check ☐ N/A

☐ **Add Additional Named Insureds (ANI's).** Credit decisions of each affiliate listed must be centralized with the Applicant and each affiliate must invoice export credit sales in their own name (or tradestyle); if either is not applicable, please attach an explanation. Questions 3-15 should include export sales of prospective ANI's.

Are the products of each affiliate the same as the applicant's products listed in question 4 of this application? ☐Yes ☐No

Affiliate Company/Trade style	Street Address/City / State / Country	NAICS/SIC Code	Relationship to Applicant

☐ **Services (Please attach a copy of your sample services contract)** Services must be: performed by U.S. based personnel or those temporarily domiciled overseas, and billed (invoiced) separately from any product sales.
☐ **Enhanced Assignment** of small business insurance policy proceeds. This is exporter performance risk protection that may be offered to lenders willing to finance Ex-Im Bank insured receivables. **Applicant Please Attach:**
- Written bank reference describing your relationship to date and size of existing credit line.
- 2 written trade references from principal commercial suppliers.
- For applications with policy limits over $500,000, financial statements must be audited or CPA reviewed with notes.

☐ **Other** (please specify): _____

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Ex-Im Bank Logo

EXPORT IMPORT BANK OF THE UNITED STATES
SHORT-TERM MULTI-BUYER EXPORT CREDIT INSURANCE POLICY APPLICATION

Applicant: _____ **dba:** _____
Address: _____
Phone: _____ Fax: _____ E-Mail: _____ Website: _____
Contact: _____ Title: _____ E-Mail: _____ Phone: _____

Indicate (Not Required) if owned by a 9 Woman or 9 Ethnic Minority, describe: _____
Bank credit line (if any) with: _____ Broker: _____

1. Have you ever applied for a U.S. Small Business Administration or Ex-Im Bank program? ☐Yes or ☐No
If so, please name the agency, program, outcome and status: _____
If you wish to insure sales made by your affiliates, please see Question 17 (Additional Named Insureds) prior to continuing.

2. Primary reason for application: ☐ risk mitigation ☐ financing ☐ extend more competitive terms

3. Policy Aggregate Limit Requested: $_____ (maximum export credit receivables outstanding at any one time)

4. Product and or services to be exported & NAICS (if known): _____

5. Do you sell Capital Goods to foreign manufacturers or producers? (if yes, please explain) _____

6. Are the products* to be covered under the policy:
- Manufactured or reconditioned in the U.S.? ☐Yes ☐No
- Minimum 50% U.S. content, less markup? ☐Yes ☐No **OR**
- Environmentally Beneficial? ☐Yes ☐No
- Used to support Nuclear Energy? ☐No ☐Yes
- Sold to Military entities or Security Forces? ☐No ☐Yes
- Shipped from the U.S.? ☐Yes ☐No
more than 50% value of refurbishing in the U.S.? ☐Yes ☐No
- Supporting Renewable Energy? ☐Yes ☐No
- On the U.S. Munitions List? ☐No ☐Yes
(part 121 of title 22 of the Code of Federal Regulations)

* The Borrower, Guarantor, Buyer and End User must be foreign entities in countries for which Ex-Im is able to provide support, see Ex-Im's Country Limitation Schedule (CLS) at www.exim.gov . There may not be trade measures or sanctions against them under Section 201 of the Trade Act of 1974. See http://dockets.usitc.gov/eol/public . For a list of products and countries with Anti-Dumping or Countervailing Duty sanctions see http://205.197.120.60/oinv/sunset.nsf/AllDocID/96DAF5A6C0C5290985256A0A004DEE7D.

7. # of years exporting: ___ ___ # of years exporting on terms other than cash in advance (CIA) or confirmed L/C (CILC): _____

	Year: ____	Year: ____	Year: ____
8. Total export sales for the prior 3 years:	$ _____	$ _____	$ _____
Total export *credit* sales (exclude CIA, CILC) for the prior 3 years:	$ _____	$ _____	$ _____

9. Buyer Types: ___% Manufacturers ___% Wholesalers ___% Traders ___% Retailers ___% Service Providers
___% End-users ___% Service Providers ___% Financial Institutions ___% Government Agencies

10. Export Credit Portfolio - attach additional pages if necessary.

	PREVIOUS YEAR			PROJECTIONS FOR NEXT YEAR		
Country	# Buyers	Sales	Terms	# Buyers	Sales	Terms
EXAMPLE	10	$2,500,000	50% CILC	12	$3,000,000	100% 60 day OA
Mexico			50% 60 day OA			

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11. Please list your 5 largest export buyers:

Buyer Name	Address	Country	Last 12 Months Sales & Terms	High Credit	Projected Terms	Credit Limit Needed
			$	$		$
			$	$		$
			$	$		$
			$	$		$
			$	$		$

12. Name(s) of export credit decision maker(s): Title(s): Years of Credit Experience Years of Foreign Credit Exp

13. At what point do you stop shipping to a past due account? ___ days past due

14. Total export receivables outstanding: $_____ at (date should be within 60 days of the application)

$	$	$	$	$
Current	1-60 days past due	61-90 days past due	91-180 days past due	181+ days past due

For each buyer over 60 days past due, attach an explanation including: name of buyer, country, amount past due, due date, reason for past due and collection efforts made.

15. Export credit losses per year or rescheduled debts during each of last three years - attach additional pages if necessary.

YEAR	AMOUNT (US$)	EXPLANATION OF LOSS OR RESCHEDULING (SPECIFY REASON, COUNTRY, AND BUYER)
	$	
	$	
	$	

16. **Please submit the following as Attachments:**
- Credit Report on your company dated within 6 months of the application or attach a check for $35 payable to Ex-Im Bank
- Your financial statements for the two most recent completed fiscal years (with notes if available).
- Resume(s) on each credit decision maker identified in question 12.
- Descriptive product brochures (if available)

17. **Special Coverages Required:** If "none" check ☐ N/A

☐ **Add Additional Named Insureds (ANI's).** Credit decisions of each affiliate listed must be centralized with the Applicant - and each affiliate must invoice export credit sales in their own name (or tradestyle); if either is not applicable, please attach an explanation. Questions 3-15 should include export sales of prospective ANI's

Are the products of each affiliate the same as the applicant's products listed in question 4 of this application? ☐Yes ☐No

Affiliate Company/Trade style	Street Address/City / State / Country	NAICS/SIC Code	Relationship to Applicant

☐ **Services (Please attach a copy of your sample services contract)** Services must be: performed by U.S. based personnel or those temporarily domiciled overseas, and billed (invoiced) separately from any product sales.

☐ **Enhanced Assignment** of small business insurance policy proceeds. This is exporter performance risk protection that may be offered to lenders willing to finance Ex-Im Bank insured receivables. **Applicant Please Attach:**
- Written bank reference describing your relationship to date and size of existing credit line
- 2 written trade references from principal commercial suppliers.
- For applications with policy limits over $500,000, financial statements must be audited or CPA reviewed with notes

☐ **Other** (please specify): _____

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The Applicant (it) CERTIFIES and ACKNOWLEDGES to the Export-Import Bank of the United States (the Bank) that:

a) it is either organized, or registered to do **business, in the United States**.

b) it and each additional named insured applicant **has not entered into any contract of insurance** or indemnity in respect of any case of loss covered by the Export Credit Insurance Policy or Loss chargeable to a deductible under such Policy, and the applicant will not enter into any such contract of insurance or indemnity without the Bank's consent in writing.

c) neither it nor any of its principals is currently, nor has been within the preceding three years:
- debarred, suspended or declared ineligible from participating in any Covered Transaction or
- formally proposed for debarment, with a final determination still pending;
- voluntarily excluded from participation in a Covered Transaction; or
- indicted, convicted or had a civil judgment rendered against it

for any of the offenses listed in the Regulations governing Debarment and Suspension as defined in the Government Wide Nonprocurement Debarment and Suspension Regulations; Common Rule 53 Fed. Reg. 19204 (1988). It further certifies that it has not nor will it knowingly enter into any agreement in connection with this Policy with any individual or entity that has been subject to any of the above.

d) it is not delinquent on any amount due and owing to the U.S. Government, its agencies, or instrumentalities as of the date of this application.

e) it shall complete and submit standard form-LLL, "Disclosure Form to Report Lobbying" to the Bank (31 USC 1352), if any funds have been paid or will be paid to any person for influencing or attempting to influence i) an officer or employee of any agency, ii) a Member of Congress or a Member's employee, or iii) an officer or employee of Congress in connection with this Policy. This does not apply to insurance broker commissions paid by the Bank.

f) it has not, and will not, engage in any activity in connection with this Policy that is a violation of the **Foreign Corrupt Practices Act of 1977** (15 USC Sec. 78dd-1, et seq.) which provides for civil and criminal penalties against individuals who directly or indirectly make or facilitate corrupt payments to foreign officials to obtain or keep business. To the best of its knowledge, the performance by the parties of their respective obligations covered or to be covered under this Policy does not and will not violate any applicable law.

g) transfer of financial records included in this application to private parties or another U.S. Government authority will not be authorized except as permitted under the **Right of Financial Privacy Act of 1978** (12 USC 3401).

h) the information is being requested under the authority of the **Export-Import Bank Act of 1945** (12 USC 635 et. seq.); disclosure of this information is mandatory **and failure to provide the requested information may** result in the Bank being unable to determine eligibility for the Policy. The information collected will be analyzed to determine the ability of the participants to perform and pay under the Policy. The Bank may not require the information, and applicants are not required to respond, unless a currently valid OMB control number is displayed on this form. The information collected will be held confidential subject to the **Freedom of Information Act** (5 USC 552) and the **Privacy Act of 1974** (5 USC 552a), except as required to be disclosed pursuant to applicable law. The **public burden** reporting for this collection of information is estimated to average 1 hour per response, including time for reviewing instructions, searching existing data sources, gathering the data needed, and completing and reviewing the collection of information. Send **comments** regarding the burden estimate or any other aspect of the collection of information, including suggestions for reducing this burden, to Office of Management and Budget, Paperwork Reduction Project OMB# 3048-0009, Washington, D.C. 20503.

i) the representations made and the facts stated in the application for said Policy are true, to the best of it's knowledge and belief, and it has not misrepresented or omitted any material facts relevant to said representations. It agrees that this application shall form a part of the Policy, if issued, and the truth of the representations and facts, and performance of every undertaking in this application shall be a condition precedent to any coverage under such Policy. It further understands that this certification is subject to the penalties for fraud against The U.S. Government (18 USC 1001).

_____ _____
(Signature) (Print Name and Title) (Date)

SMALL BUSINESS POLICIES APPLICANT CERTIFICATION

"We are an entity which **together with our affiliates** had **average annual export credit sales** during our preceding two fiscal years not exceeding **$5,000,000**, excluding sales made on terms of confirmed irrevocable letters of credit (CILC) or cash in advance (CIA)."

_____
(Signature)

Send, or ask your insurance broker or city/state participant to review and send this application to the Ex-Im Bank Regional Office nearest you. Please refer to Ex-Im Bank's website at http://www.exim.gov for Regional Office addresses.

Ex-Im Bank reserves the right to request additional information upon review of the application. Please refer to Ex-Im Bank's Short Term Credit Standards (EIB 99-09) to determine the likelihood of approval of a policy.

OMB #3048-0009
Expiry Date 10/31/03

Ex-Im Bank Logo

EXPORT-IMPORT BANK OF THE UNITED STATES
EXPORTER'S APPLICATION FOR SHORT-TERM SINGLE-BUYER POLICY App No.:_____
(Please Print or Type) (Ex-Im Bank Use Only)

1. Applicant	2. Broker (If none, state "None")
Name:	Brokerage: Broker Number:
Address:	Attn.: Tel No.:
Attn.: Tel No.:	Fax No.: E-Mail:
Fax No.: E-Mail:	

3. Qualification for Coverage. Will the applicant: a) Have title to the products at the time they are shipped? ☐ Yes ☐ No
b) Be directly invoicing the Buyer? ☐ Yes ☐ No
(If you answered no to either you may not be eligible for coverage. Consult your broker, City/State Program participant or Ex-Im)

4. Buyer Name and (full) Address (no Post Office Box nos.) File No.:_____
(Issuing Bank for Letter of Credit transactions) (Ex-Im Bank Use Only)

5. Guarantor Name and Address (If none, state "None") File No.:_____
(Ex-Im Bank Use Only)

PART I - INFORMATION ABOUT THE APPLICANT Refer to Ex-Im Bank's Short Term Credit Standards (EIB99-09)Exporter for New Policyholder to determine the likelihood of approval

6. If you have submitted this information within the past twelve months provide the policy no._____; otherwise attach the following:
a) Your SIC Code (if known)_____ b) Total Employees_____ c) Total Sales_____
d) Tax ID #: _____ e) DUNS #: _____ f) Congressional District:_____
g) Indicate (Not Required) if owned by a ☐ Woman, or an ☐Ethnic Minority, describe_____
h) ☐ Credit agency report dated within 6 months of the application. If unavailable, please attach check for $35.00 to assist in covering Ex-Im Bank's cost in ordering a report.

	Year ____	____
i) Total export sales	$_____	$_____
j) Total export sales (excluding cash in advance and confirmed irrevocable letter of credit transactions) during your last 2 fiscal years:	$_____	$_____

k) Years exporting on credit terms:_____
l) ☐ Attach the collection procedures your company follows in the event your foreign customers become past due.

7. What is your primary reason for applying for this policy? ☐Risk mitigation ☐To obtain financing ☐Other attach explanation.

8. Have you applied for, or received the benefit of, a U.S. Small Business Administration or Ex-Im Bank program such as a Working Capital Loan Guarantee or Insurance Policy approval? (Enhanced Assignments are not available to exporters benefitting from an Ex-Im Bank or US Small Business Administration Working Capital Loan Guarantee) ☐ No ☐Yes (describe agency, program outcome and status):_____.

9. If requesting an "Enhanced Assignment" check here and attach the following (refer to Ex-Im Bank's Short Term Credit Standards EIB99-09 Exporters for Enhanced Assignments to determine the likelihood of approval):
☐ A bank reference dated within 6 months of the application.
☐ 2 trade references dated within 6 months of the application.
☐ Financial statements as follows:

Limit of Liability	Minimum Requirement
$500,000 or less	signed by an authorized officer for the applicant
$500,001 - $999,999	reviewed by a CPA with notes attached
$1,000,000 or more	audited by a CPA with opinion and notes attached.

PART II - INFORMATION ABOUT THE TRANSACTION

OMB #3048-0009
Expiry Date 10/31/03

10. Check one: ☐Firm Order ☐Negotiating Sale ☐Responding to Invitation to Bid
11. a) Products ☐New ☐Used (If used, attach Used Equipment Questionnaire)
b) Name and Description of Products*:_____.
c) Is each product produced or manufactured in the United States? ☐Yes ☐No If no explain:_____.
d) Has at least one-half of the value, exclusive of price mark-up, been added by labor or material exclusively of United States origin? ☐Yes ☐No If no, explain: _____.
e) Will any value be added to the product after export from the U.S.? ☐No ☐Yes If yes, explain: _____
f) Are products listed on the United States Munitions List? (Part 121, Title 22, Code of Federal Regulations) ☐Yes ☐No
g) Has this transaction been considered by any other export credit insurer? ☐ No ☐Yes If yes, attach an explanation.

* Note: The Borrower, Guarantor, Buyer and End User must be foreign entities in countries for which Ex-Im is able to provide support, see Ex-Im's Country Limitation Schedule (CLS) at www.exim,.gov . There may not be trade measures against them under Section 201 of the Trade Act of 1974, see http://dockets.usitc.gov/eol/public/ click on 201. There may not be trade sanctions in force against them. For a list of products and countries with Anti-Dumping or Countervailing Duty sanctions see http://205.197.120.60/oinv/sunset.nsf/AllDocID/96DAF5A6C0C5290985256A0A004DEE7D.

12. **SUPPLIER.** The "supplier" is the U.S. entity which produces the items and/or performs the services to be exported.
Check if the supplier is also the exporter or complete the following: (Ex-Im use only: File #:_____)

Supplier Name:_____ Phone #:_____
Contact person:_____ Fax #:_____
Position Title:_____ E-Mail:_____
Street Address:_____ City:_____
State:_____ Zip Code:_____
Taxpayer ID #:_____ Duns #:_____ Congressional District:_____
Fiscal year ended (mo. & yr.):_____ Gross sales revenue in last fiscal year: $_____ # of employees:_____
Standard Industrial Code of business:_____ Indicate (Not Required) if owned by a ☐ Woman or ☐ Ethnic Minority, describe:_____

13. a) **Payment terms** requested_____
b) Debt instrument (if any)_____
c) Expected frequency of shipments: ☐Single shipment ☐Multiple shipments under one sales contract.
d) If single shipment, the expected date of shipment_____, or
if multiple shipments, the period required to make shipments from_____ to _____
e) Total shipment volume to be insured $_____
f) If multiple shipments, the expected highest amount outstanding during shipment period $_____
g) Other security/guarantees available. If none, state "None". _____.
14. Coverage type required: ☐Commercial/Political ☐Political Only
15. Pre-shipment Coverage (complete only if coverage is requested) **NOTE:** Additional premium will be charged for this cover.
a) Has contract of sale been executed? ☐Yes ☐No Date or estimated date:_____
b) Estimated period between date of contract and final shipment date of products:_____
c) Attach schedule of any progress payments made or to be made by buyer during pre-shipment period or ☐None.
d) What risk is of primary concern to you during the pre-shipment period?_____

PART III - INFORMATION ABOUT THE BUYER Refer to Ex-Im Bank's Short Term Credit Standards (EIB99-09) Buyers: for Financial Institutions, letter of credit transactions, for Financial Institutions non-letter of credit transactions, and for Non-Financial Institution Buyers to determine the likelihood of approval. Attach the following information:

16. a) Market Rating: _____ Rating Agency: _____ Date: _____ **OR**
b) ☐ A credit report on the buyer, and guarantor (if any) not older than 6 months from date of application **and**
☐ 2 (1 if the credit limit is $100,000 or less) Trade Reference forms (EIB99-14) dated within 6 mos of the application **and**
☐ If the credit limit is $300,001 or more, audited or unaudited signed financial statements with notes on the buyer, and guarantor (if any) for the last: 2 fiscal years if the credit limit is $300,001 to $1million, or
3 **audited** fiscal years if the credit limit is $1,000,001 or more.
(Credit and financial information should be on the issuing bank if terms are letter of credit)
17. When did you last visit the buyer?_____
18. a) Summary of credit experience (insured and uninsured) with this buyer during current year and past 2 years:

Total Sales Each Year	$_____	$_____
Highest Amount Outstanding During Period	$_____	$_____
Payment Terms	_____	_____

b) Describe buyer's payment history (check one)
☐ No prior experience ☐Prompt/Discount ☐1-30days slow ☐31-60days slow ☐More than 60 days slow
c) Amount now owing $_____ as of_____ (Date).
d) Amount now past due (indicate maturity dates and explanation)._____
e) If past dues are due to foreign exchange problems, does applicant have evidence of local currency deposits on all payments due? ☐Yes ☐No Not applicable.
19. Describe any direct or indirect ownership interest or family relationship which exists between the applicant and the buyer or guarantor. If none, state "None."_____.

21. **PART IV The Applicant** (it) **CERTIFIES and ACKNOWLEDGES to the Ex-Im Bank** (the Bank) that:

a) it is (**check one**): (1) ☐ a corporation organized and **existing under the laws of the United States**, or a jurisdiction thereunder, or
(2) ☐ an individual or partnership **resident in** the United States; **or**
(3) ☐ a foreign corporation, partnership or individual **registered to do business in** the United States, **OR**
(4) ☐ it has received a **written** statement of exception from the Bank and **attached** it to this certification, permitting participation in the transaction despite an inability to make certifications 1, 2 or 3.

b) to the best of its knowledge and belief, the products and services to be exported in the transaction described in this application are principally **for use as indicated below**. When a sale is made to entities such as distributors primarily for resale, the principal user is considered to be the original purchaser (the distributor), and item (1) should be checked. If, however, it has knowledge or reason to believe that the products will be re-exported from the original buyer's country, please complete item (2): (1) ☐ By the buyer in the country specified above. (2) ☐ If not, name the country (ies) **where** products will be principally used: _____ **by whom**: _____

c) Neither it, nor its Principals, have within the past 3 years been:
1) debarred, suspended, declared ineligible from participating in, or voluntarily excluded from participation in, a Transaction;
2) formally proposed for debarment, with a final determination still pending;
3) indicted, convicted or had a civil judgment rendered against us for any of the offenses listed in the Regulations;
4) delinquent on any amounts due and owing to the U.S. Government or its agencies or instrumentalities as of the date of execution of this certification; or
5) the undersigned has received a written statement of exception from Ex-Im Bank attached to this certification, permitting participation in this Transaction despite an inability to make certifications 1) through 4) in this paragraph.

d) It has not and will not knowingly enter into any agreements in connection with the goods and/or services covered by this policy with any individual or entity that has been debarred, suspended, declared ineligible from participating in, or voluntarily excluded from participation in a Transaction. All capitalized terms not defined herein shall have the meanings set forth in the **Government Wide Non-Procurement Suspension and Debarment Regulations - Common Rule** (Regulations).

e) It will complete and submit **Form-LLL** (the Anti-Lobbying Declaration/Disclosure forms available at http://www.exim.gov/pub/pdf/95-10apd.pdf), Disclosure Form to Report Lobbying if, to the best of our knowledge and belief, **any funds have been paid or will be paid** to any person in connection with this application for influencing or attempting to influence:
(1) an officer or employee of any U.S. Government agency, or
(2) a Member of Congress or a Member's employee, or
(3) an officer or employee of Congress. *This does not apply to commissions paid by the Bank to insurance brokers*

f) It has not, and will not, engage in any activity in connection with this transaction that is a violation of 1) the **Foreign Corrupt Practices Act of 1977**, 15 U.S.C. 78dd-1, et seq. (which provides for civil and criminal penalties against individuals who directly or indirectly make or facilitate corrupt payments to foreign officials to obtain or keep business), 2) the **Arms Export Control Act**, 22 U.S.C. 2751 et seq., 3) the **International Emergency Economic Powers Act**, 50 U.S.C. 1701 et seq., or 4) the **Export Administration Act of 1979**, 50 U.S.C. 2401 et seq.; nor has it been found by a court of the United States to be in violation of any of these statutes within the preceding 12 months, and to the best of its knowledge, the performance by the parties to this transaction of their respective obligations does not violate any other applicable law.

g) The representations made and the facts stated in this application and its attachments **are true, to the best of its knowledge and belief, and it has not misrepresented or omitted any material facts**. It further understands that these certifications are subject to the penalties for fraud against the U.S. Government (18 USC 1001, et. seq.)

_____ _____ _____
(Signature) (Print Name and Title) Date

Send, or ask your insurance broker or city/state participant to review and send, this application to Ex-Im Bank, 811 Vermont Avenue, NW, Washington, D.C. 20571 or an Ex-Im Regional Office.

OMB #3048-0009
Expiry Date 10/31/03

The Ex-Im Bank website is <http://www.exim.gov>

Please complete: The applicant was informed about Ex-Im by:

☐An Ex-Im Regional Office:_____
☐An Ex-Im City/State Partner:_____
☐A U.S. Export Assistance Center:_____
☐A Broker:_____
☐A Bank:_____
☐A Local Development Authority:_____
☐Other (specify):_____

Notices

The applicant is hereby notified that information requested by this application is done so under authority of the **Export-Import Bank Act of 1945**, as amended (12 USC 635 et. seq.); provision of this information is mandatory and failure to provide the requested information may result in Ex-Im Bank being unable to determine eligibility for support. The information provided will be reviewed to determine the participants' ability to perform and pay under the transaction referenced in this application. Ex-Im Bank may not require the information and applicants are not required to provide information requested in this application unless a currently valid OMB control number is displayed on this form (see upper right of each page).

Public Burden Statement: Reporting for this collection of information is estimated to average 1 hour per response, including reviewing instructions, searching data sources, gathering information, completing, and reviewing the application. Send comments regarding the burden estimate, including suggestions for reducing it, to Office of Management and Budget, Paperwork Reduction Project OMB# 3048-0009, Washington, D.C. 20503.

The information provided will be held confidential subject to the **Freedom of Information Act** (5 USC 552) the **Privacy Act of 1974** (5 USC 552a), and the **Right to Financial Privacy Act of 1978** (12 USC 3401), except as otherwise required by law. Note that the Right to Financial Privacy Act of 1978 provides that Ex-Im Bank may transfer financial records included in an application for an insurance policy, or concerning a previously approved insurance policy, to another Government authority as necessary to process, service or foreclose on an insurance policy, or collect on a defaulted insurance policy.

OMB #3048-0009 Expiry Date 5/31/02

EXPORT-IMPORT BANK OF THE UNITED STATES (EX-IM BANK)
BROKER REGISTRATION FORM

Insurance brokers and agents are eligible for commission payments under Ex-Im Bank export credit insurance policies if the broker or agent is registered with Ex-Im Bank and is appointed as broker-of-record by the policyholder either by designation on an insurance policy application or by separate letter.

Name of Brokerage_____
Contact:_____ Title:_____
Address:_____ PO BOX:_____
City:_____ State:_____ Zip:_____
Phone: (____)_____ Fax: (____)_____ E-Mail:_____

Tax ID #:_____ DUNS #:_____ No. of Employees:_____
Indicate (Not Required) if owned by a woman or an ethnic minority, describe _____
Other lines of brokered Insurance:_____
Do you have other offices you wish to register (to be eligible for commissions)? □ No □Yes

If "Yes", please list firm's name, address, telephone number, fax number and contact person on a separate sheet.
A list of registered insurance brokers is available on the Ex-Im Bank Internet Website and unbrokered applicants are referred to the list. Please indicate here if you **DO NOT** wish your name released.

1. A Registration Fee of **$75.00** is required
2. You are required to review, understand and **sign** the attached "Standards of Service".
3. Attach a copy of a current, valid insurance brokerage **license** indicating issuance and/or expiry date(s).
4. Forward the attached "Authorization for Automated Deposits" form.

The Broker (it) **CERTIFIES and ACKNOWLEDGES to the Ex-Im Bank** (the Bank) that:

1. a) neither it nor its principals has been within the past 3 years:
   1) debarred, suspended or declared ineligible from participating in or voluntarily excluded from participation in a Covered Transaction or
   2) formally proposed for debarment, with a final determination still pending;
   3) indicted, convicted or had a civil judgement rendered against them for any of the offenses listed in the **Government Wide Nonprocurement Debarment and Suspension Regulations; Common Rule** which defines Covered Transaction.
   4) It certifies that it is **not delinquent** on any amounts due and owing to the U.S. Government, its agencies or instrumentalities as of the date of this application. **OR**
   b) It has received a **written** statement of exception from the Bank and **attached** it to this certification, permitting participation in the transaction despite an inability to make certifications 1 through 4.
   It further certifies that it has not and will not knowingly enter into any agreements in connection with the transaction with any individual or entity that has been subject to 1, 2 or 3 above.

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2. it will complete and submit **Form-LLL**, Disclosure Form to Report Lobbying if, to the best of its knowledge and belief, **any funds have been paid or will be paid** to any person in connection with this application for influencing or attempting to influence:
a) an officer or employee of any U.S. Government agency, or
b) a Member of Congress or a Member's employee, or
c) an officer or employee of Congress.
3. corrupt payments made in connection with Bank supported transactions may be a violation of the **Foreign Corrupt Practices Act of 1977** (15 USC 78dd-1, et. seq.) which provides for civil and iminal penalties against individuals who directly or indirectly make or facilitate corrupt payments to foreign officials to obtain or keep business.
4. a) the information being requested is done so under authority of the **Export-Import Bank Act of 1945** (12 USC 635 et.seq.);
b) providing the information is mandatory. **Failure to do so** may result in the Bank being unable to determine eligibility for the Insurance Program. The information provided will be reviewed to determine if the broker meets the Bank's legislative requirements under the program
c) the Bank may not require the information and applicants are not required to respond unless a currently valid OMB control number is displayed on this form (see upper right of each page);
d) the information provided will be held confidential subject to the **Freedom of Information Act** (5 USC 552) and the **Privacy Act of 1974** (5 USC 552a), except as required to be disclosed under applicable laws;
e) the Bank shall have a right to transfer to another U.S. Government authority any financial records included in this certification or other correspondence as necessary to process, service, foreclose or collect on an insured debt.
No other transfer of records to private parties or another U.S. Government authority will be authorized except as permitted under the **Right of Financial Privacy Act of 1978** (12 USC 3401).
f) the **public burden** reporting for this collection of information is estimated to average ½ hour per response, including reviewing instructions, searching data sources, gathering information, completing, and reviewing the application. Send **comments** regarding the burden estimate, including suggestions for reducing it, to Office of Management and Budget, Paperwork Reduction Project, Washington, D.C. 20503.
5. the representations made and the facts stated by it in these certifications and its attachments **are true, to the best of its knowledge and belief, and it has not misrepresented or omitted any material facts**. It further understands that these certifications are subject to the penalties for fraud against the U.S. Government (18 USC 1001).

Signature: _____ Print Name: _____

Title: _____ Date: _____

Send this application to Attn: Business Development , Ex-Im Bank,
811 Vermont Avenue, NW, Washington, D.C. 20571 or an Ex-Im Regional Office.
The Ex-Im Bank website is http://www.exim.gov

OMB #3048-0009 Expiry Date 5/31/02

INSURANCE BROKERS
STANDARDS OF SERVICE

1. To act in a professional, reasonable, prudent and forthright manner in all dealings with your client and Ex-Im Bank.
2. To make certain that your clients understand that you are neither an Official Representative.
3. To stay knowledgeable about not only Ex-Im Bank export credit insurance but alternatives, including other Ex-Im Bank programs, other U.S. government programs, and private sector products as well. in order to provide the best options to your clients.
4. To educate your clients about Ex-Im Bank's Insurance Program and policies, its' benefits and proper usage.
5. To serve as your clients' primary contact for any questions concerning the policies and the servicing of a policy.
6. To review all applications and issuances of policies, actions under policies, renewals of policies and credit limits, and claims, for timeliness, completeness, accuracy and reasonableness.
7. To review correspondence from Ex-Im Bank with your clients, including quotes and credit limits, to assist them in understanding the coverage and their responsibilities.
8. To assist your clients to comply with the Agreements of the Insured including shipment reports, premium payment and reports of overdue accounts, and to advise Ex-Im Bank of any potential claims.
9. To report policy cancellations and submit a premium reconciliation to Ex-Im Bank.

I have read the above standards, agree that they are reasonable, and will comply with these standards.

I understand and agree that substantial failure by me to comply with these standards could result in withdrawal from the list of registered insurance brokers published by Ex-Im Bank and cancellation of eligibility for commission payments under Ex-Im Bank export credit insurance policies.

_____ _____ _____
Name of Brokerage Signature of Broker Date

_____
Print Name

OMB #3048-0009 Expiry Date 5/31/02

EXPORT-IMPORT BANK OF THE UNITED STATES
AUTHORIZATION FOR AUTOMATED DEPOSITS
(ACH CREDITS)

I hereby authorize the Export-Import Bank of the United States hereinafter called Ex-Im Bank, to initiate credit entries to my **[ ] CHECKING [ ] SAVINGS account** ***(check one)*** indicated below and the depository named below, hereinafter called DEPOSITORY, to credit the same to such account.

DEPOSITORY NAME _____

BRANCH _____

CITY _____ STATE _____ ZIP _____

TRANSIT/ABA NUMBER: ☐☐☐☐-☐☐☐☐-☐

ACCOUNT NUMBER: _____

This authority is to remain in full force and effect until Ex-Im Bank has received written notification from me of its termination in such time and in such manner as to afford Ex-Im Bank a reasonable opportunity to act on it.

BROKER NAME _____
(please print)

BROKER NO. _____

SIGNATURE _____ DATE _____

PLEASE ATTACH A VOIDED CHECK FOR THE ACCOUNT NAMED ABOVE

FOR EX-IM BANK USE ONLY

DATE RECEIVED

PROCESSED BY

Return to: Export-Import Bank of the United States
Director - Broker Relations
811 Vermont Avenue, N.W.
Washington, DC 20571

OMB #3048-0009 Expiry Date 5/31/02

EXPORT-IMPORT BANK OF THE UNITED STATES (EX-IM BANK)
BROKER COMMISSION SCHEDULE
FOR EXPORT CREDIT INSURANCE POLICIES

Effective: October 1, 1994

BROKER ELIGIBILITY

Insurance brokers and agents are eligible for commission payments under Ex-Im Bank export credit insurance policies if the broker or agent is **registered** with Ex-Im Bank and is **appointed** as broker-of-record by the policyholder. The policyholder reserves the right to appoint, delete or change the broker of record at any time. Brokers of record are entitled to any commissions due on premiums paid prior to a change in the broker of record.

COMMISSION RATES

Commission rates paid by Ex-Im Bank are based on the type of policyholder to which the policy is issued, as shown in the chart below:

Type of Policyholder Commission Rate
(percentage of premium)
Financial Institutions 8%
Exporters
Small Business **30%***
Multi-Buyer Policyholders **12%**
Single-Buyer Policyholders **10%**
Administrators
Umbrella Policy **30%***
Trade Association Policy **10%**
Lessors
(whether a financial institution or an exporter)
Operating Lease Policy **20%**
Financing Lease Policy **10%**

*At Ex-Im Bank's discretion, this percentage will increase to 40% for those brokers who meet certain criteria regarding support of small business.

COMMISSION PAYMENTS

- The full amount of all premiums are due at the appropriate lockbox on or before the date specified in the policy. Insurance brokers should not remit premiums "net" of commission.
- Commission payments will be made monthly.
- No commission payments will be made on advance premium.

BROKER CHANGES ON EXISTING POLICIES

Ex-Im Bank policyholders may appoint or change their insurance broker at any time. Insurance brokers appointed after a policy is issued will be recognized on the first day of the next month after the receipt of the policyholder's written notice appointing an insurance broker of record. Acknowledgment by Ex-Im Bank of a policyholder's appointed insurance broker is made by means of a policy endorsement. Insurance brokers acknowledged by Ex-Im Bank are eligible for commissions with respect to transactions occurring after the effective date of the endorsement.

WHO TO CONTACT: For additional information, please contact a Regional Office or:
EXPORT-IMPORT BANK OF THE U.S., INSURANCE DIVISION
811 VERMONT AVENUE, N.W., WASHINGTON, D.C. 20571
TEL NO (202) 565-3630 or 1-800-565-EXIM FAX NO. (202) 565-3675 INTERNET http://www.exim.gov
Regional Offices: MID ATLANTIC (212) 809-2650 MIDWEST (312) 353-8081
NORTHEAST (212) 809-2650 SOUTHEAST (305) 526-7436
SOUTHWEST (281) 721-0465 WEST: Long Beach (562) 980-4580

[FR Doc. 03–30199 Filed 12–4–03; 8:45 am]
BILLING CODE 6690–01–C

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 11:40 a.m. on Tuesday, December 2, 2003, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider matters relating to the Corporation's supervisory, resolution, and corporate activities.

In calling the meeting, the Board determined, on motion of Vice Chairman John M. Reich, seconded by Director James E. Gilleran (Director, Office of Thrift Supervision), concurred by Director John D. Hawke, Jr. (Comptroller of the Currency), and Chairman Donald E. Powell, that Corporation business required its consideration of the matters on less than seven days' notice to the public; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

The meeting was held in the Board Room of the FDIC Building located at 550–17th Street, NW., Washington, DC.

Dated: December 2, 2003.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. E3–00460 Filed 12–3–01; 8:45 am]
BILLING CODE 6714–01–P

FEDERAL RESERVE SYSTEM

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Board of Governors of the Federal Reserve System

SUMMARY: In accordance with the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the Board of Governors of the Federal Reserve System (Board), the Federal Deposit Insurance Corporation (FDIC), and the Office of the Comptroller of the Currency (OCC) (the "agencies") may not conduct or sponsor, and the respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. The Federal Financial Institutions Examination Council (FFIEC), of which the agencies are members, has approved the agencies' publication for public comment of proposed revisions to the Report of Assets and Liabilities of U.S. Branches and Agencies of Foreign Banks (FFIEC 002). The Board is publishing the proposed revisions on behalf of the agencies. At the end of the comment period, the comments and recommendations received will be analyzed to determine the extent to which the FFIEC should modify the proposed revisions prior to giving its final approval. The Board will then submit the revisions to OMB for review and approval.

DATES: Comments must be submitted on or before February 3, 2004.

ADDRESSES: Interested parties are invited to submit written comments to the agency listed below. All comments, which should refer to the OMB control number, will be shared among the agencies.

Written comments, which should refer to the "Report of Assets and Liabilities of U.S. Branches and Agencies of Foreign Banks, 7100–dquo; should be addressed to Ms. Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th and C Streets, NW, Washington, DC 20551. Due to temporary disruptions in the Board's mail service, commenters are encouraged to submit comments by electronic mail to *regs.comments@federalreserve.gov*, or fax them to the Office of the Secretary at (202) 452–3819 or (202) 452–3102. Comments addressed to Ms. Johnson may also be delivered to the Board's mailroom between 8:45 a.m. and 5:15 p.m. weekdays, and to the security control room outside those hours. Both the mailroom and the security control room are accessible from the Eccles building courtyard entrance on 20th Street between Constitution Avenue and C Street, NW. Comments may be inspected in room M–P–500 between 9 a.m. and 5 p.m. on weekdays pursuant to sections 261.12 and 261.14 of the Board's Rules Regarding Availability of Information, 12 CFR 261.12 and 261.14.

FOR FURTHER INFORMATION CONTACT: A draft copy of the proposed FFIEC 002 reporting form may be obtained at the FFIEC's web site (www.ffiec.gov). A copy of the proposed revisions to the collection of information may also be requested from Cindy Ayouch, Board Clearance Officer, (202) 452–3829, Division of Research and Statistics, Board of Governors of the Federal Reserve System, 20th and C Streets, NW, Washington, DC 20551. Telecommunications Device for the Deaf (TDD) users may call (202) 263–4869.

Proposal to revise the following currently approved collection of information:

Report Title: Report of Assets and Liabilities of U.S. Branches and Agencies of Foreign Banks.

Form Number: FFIEC 002.

OMB Number: 7100–0032.

Frequency of Response: Quarterly.

Affected Public: U.S. branches and agencies of foreign banks.

Estimated Number of Respondents: 295.

Estimated Total Annual Responses: 1,180.

Estimated Time per Response: 22.75 burden hours.

Estimated Total Annual Burden: 26,845 burden hours.

General Description of Report: This information collection is mandatory: 12 U.S.C. 3105(b)(2), 1817(a)(1) and (3), and 3102(b). Except for select sensitive items, this information collection is not given confidential treatment (5 U.S.C. 552(b)(8)). Small businesses (that is, small U.S. branches and agencies of foreign banks) are affected.

Abstract: On a quarterly basis, all U.S. branches and agencies of foreign banks (U.S. branches) are required to file detailed schedules of assets and liabilities in the form of a condition report and a variety of supporting schedules. This information is used to fulfill the supervisory and regulatory requirements of the International Banking Act of 1978. The data are also used to augment the bank credit, loan, and deposit information needed for monetary policy and other public policy purposes. The Federal Reserve System collects and processes this report on behalf of all three agencies.

Current Actions: The agencies propose to implement a small number of revisions to the existing reporting requirements of the Report of Assets and Liabilities of U.S. Branches and Agencies of Foreign Banks (FFIEC 002). The proposed revisions would help to achieve consistency with the Reports of Condition and Income (Call Report) (forms FFIEC 031 and 041) filed by insured commercial banks and FDIC–supervised savings banks.

The proposed revisions to the FFIEC 002 that would take effect as of the March 31, 2004, reporting date include:

Schedule L—Derivatives and Off–Balance–Sheet Items

Modifying Line Item 12, "Gross fair values of derivative contracts," by removing the following requirement: "The following items should be completed by those branches or agencies with total assets of $100 million or more." The exemption from reporting the fair values of derivative contracts for branches and agencies with less than dollar;100 million in assets originated when derivatives were considered off–balance sheet items and predates FASB Statement No. 133, Accounting for Derivative Instruments and Hedging Activities (FAS 133), which took effect in 2001. FAS 133 require all derivatives to be measured at fair value and reported on the balance sheet as assets or liabilities. Because branches and agencies with less than dollar;100 million in assets that have derivatives now have to regularly determine their fair value for reporting purposes, they have the information necessary to disclose the fair value of their derivatives in Schedule L. Accordingly, the agencies are proposing to eliminate this disclosure exemption. The fair value data on derivatives will complement the data that branches and agencies with less than $100 million in assets currently report on the notional amount of their derivative contracts.

Schedule M—Due from/Due to Related Institutions in the U.S. and in Foreign Countries (CONFIDENTIAL)

1. Modifying Line Item 12, "Gross fair values of derivative contracts," by removing the following requirement: "The following items should be completed by those branches or agencies with total assets of $100 million or more." The rationale for the proposed change is similar to the justification above for the comparable change to Schedule L.

2. Adding Memoranda items 1.a, "Gross positive fair value," and 1.b, "Gross negative fair value" to Memorandum item 1, "Notional amount of all credit derivatives on which the reporting branch or agency is the guarantor." The new items would provide a better measure of credit and market risk for credit derivatives entered into with related depository institutions, particularly for branches and agencies with large positions in such credit derivatives.

3. Adding Memoranda items 2.a, "Gross positive fair value," and 2.b, "Gross negative fair value" to Memorandum item 2, "Notional amount of all credit derivatives on which the reporting branch or agency is the beneficiary." The rationale for the proposed change is the same as the justification above for adding items to Memorandum item 1.

Request for Comment: Comments submitted in response to this Notice will be shared among the agencies and will be summarized or included in the Board's request for OMB approval. All comments will become a matter of public record. Written comments should address the accuracy of the burden estimates and ways to minimize burden as well as other relevant aspects of the information collection requests. Comments are invited on:

(a) Whether the proposed collection of information is necessary for the proper performance of the agencies' functions, including whether the information has practical utility;

(b) The accuracy of the agencies' estimate of the burden of the information collection, including the validity of the methodology and assumptions used;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected;

(d) Ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

(e) Estimates of capital or start up costs and costs of operation, maintenance, and purchase of services to provide information.

Board of Governors of the Federal Reserve System, December 1, 2003.

Jennifer J. Johnson

Secretary of the Board.

[FR Doc. 03–30212 Filed 12–4–03; 8:45 am]
BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Board of Governors of the Federal Reserve System

SUMMARY: On June 15, 1984, the Office of Management and Budget (OMB) delegated to the Board of Governors of the Federal Reserve System (Board) its approval authority under the Paperwork Reduction Act, as per 5 CFR 1320.16, to approve of and assign OMB control numbers to collection of information requests and requirements conducted or sponsored by the Board under conditions set forth in 5 CFR 1320 Appendix A.1. Board–approved collections of information are incorporated into the official OMB inventory of currently approved collections of information. Copies of the OMB 83–I's and supporting statements and approved collection of information instruments are placed into OMB's public docket files. The Federal Reserve may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

Request for comment on information collection proposals

The following information collections, which are being handled under this delegated authority, have received initial Board approval and are hereby published for comment. At the end of the comment period, the proposed information collections, along with an analysis of comments and recommendations received, will be submitted to the Board for final approval under OMB delegated authority. Comments are invited on the following:

a. whether the proposed collection of information is necessary for the proper performance of the Federal Reserve's functions; including whether the information has practical utility;

b. the accuracy of the Federal Reserve's estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used;

c. ways to enhance the quality, utility, and clarity of the information to be collected; and

d. ways to minimize the burden of information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Comments must be submitted on or before February 3, 2004.

ADDRESSES: Comments may be mailed to Ms. Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, N.W., Washington, DC 20551. However, because paper mail in the Washington area and at the Board of Governors is subject to delay, please consider submitting your comments by e–mail to *regs.comments@federalreserve.gov*, or faxing them to the Office of the Secretary at 202–452–3819 or 202–452–3102. Members of the public may inspect comments in Room MP–500 between 9:00 a.m. and 5:00 p.m. on weekdays pursuant to 261.12, except as provided in 261.14, of the Board's Rules Regarding Availability of Information, 12 CFR 261.12 and 261.14.

A copy of the comments may also be submitted to the OMB desk officer for the Board: Joseph Lackey, Office of

Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: A copy of the proposed form and instructions, the Paperwork Reduction Act Submission (OMB 83–I), supporting statement, and other documents that will be placed into OMB's public docket files once approved may be requested from the agency clearance officer, whose name appears below.

Cindy Ayouch, Federal Reserve Board Clearance Officer (202–452–3829), Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551. Telecommunications Device for the Deaf (TDD) users may contact (202–263–4869), Board of Governors of the Federal Reserve System, Washington, DC 20551.

Proposal to approve under OMB delegated authority the extension for three years, with revision, of the following reports:

1. Report title: Weekly Report of Assets and Liabilities for Large Banks and Weekly Report of Selected Assets
Agency form numbers: FR 2416 and FR 2644
OMB control number: 7100–0075
Frequency: Weekly
Reporters: U.S.–chartered commercial banks
Annual reporting hours: FR 2416: 18,850 hours; FR 2644: 73.216 hours
Estimated average hours per response: FR 2416: 7.25 hours; FR 2644: 1.28 hours
Number of respondents: FR 2416: 50; FR 2644: 1,100
General description of reports: These information collections are voluntary (12 U.S.C. §§ 225(a) and 248(a)(2)). Individual respondent data are regarded as confidential under the Freedom of Information Act (5 U.S.C. § 552(b)(4)).
Abstract: The FR 2416, FR 2644, and the Weekly Report of Assets and Liabilities for Large U.S. Branches and Agencies of Foreign Banks (FR 2069; OMB No. 7100–0030) are referred to collectively as the bank credit reports. The FR 2416 is a detailed balance sheet that covers domestic offices of large U.S.–chartered commercial banks. The FR 2644 collects less–detailed information on investments, loans, total assets, and several memoranda items, covering domestic offices of small U.S.–chartered commercial banks. The bank credit reports are collected as of each Wednesday.

These three voluntary reports are mainstays of the Federal Reserve's reporting system from which data for analysis of current banking developments are derived. The FR 2416 is used on a stand–alone basis as the "large domestic bank series." The FR 2644 collects sample data, which are used to estimate universe levels using data from the quarterly commercial bank Consolidated Reports of Condition and Income (FFIEC 031 and 041; OMB No. 7100–0036) (Call Report). Data from the bank credit reports, together with data from other sources, are used for constructing weekly estimates of bank credit, of sources and uses of bank funds, and of a balance sheet for the banking system as a whole.

The Federal Reserve publishes the data in aggregate form in the weekly H.8 statistical release, Assets and Liabilities of Commercial Banks in the United States, which is followed closely by other government agencies, the banking industry, the financial press, and other users. This release provides a balance sheet for the banking industry as a whole and data disaggregated by its large domestic, small domestic, and foreign–related components.

Current actions: The Federal Reserve proposes to make the following modifications to the FR 2416: 1) split other assets into two items, 2) split other liabilities into two items, and 3) combine three memoranda items breaking out U.S. Treasury securities. The Federal Reserve proposes to make the following modifications to the FR 2644: 1) split other loans secured by real estate into two items, 2) add an item for net due from own foreign offices, and 3) add an item for net due to own foreign offices. The respondent burden estimates are currently under review. The proposed revisions would be implemented as of June 2004.

2. Report title: Weekly Report of Assets and Liabilities for Large U.S. Branches and Agencies of Foreign Banks
Agency form number: FR 2069
OMB control number: 7100–0030
Frequency: Weekly
Reporters: U.S. branches and agencies of foreign banks
Annual reporting hours: 19,692 hours
Estimated average hours per response: 5.41 hours
Number of respondents: 70
General description of report: This information collection is voluntary (12 U.S.C. §§ 248(a)(2) and 3105(a)(2)). Individual respondent data are regarded as confidential under the Freedom of Information Act (5 U.S.C. § 552(b)(4)).
Abstract: The FR 2069 is a detailed balance sheet that covers large U.S. branches and agencies of foreign banks. This report, along with the FR 2416 and FR 2644, is collected as of each Wednesday.

These three voluntary reports are mainstays of the Federal Reserve's reporting system from which data for analysis of current banking developments are derived. The FR2069 collects sample data, which are used to estimate universe levels using data from the quarterly Report of Assets and Liabilities of U.S. Branches and Agencies of Foreign Banks (FFIEC 002; OMB No. 7100–0032) (Call Report). Data from the bank credit reports, together with data from other sources, are used for constructing weekly estimates of bank credit, of sources and uses of bank funds, and of a balance sheet for the banking system as a whole.

The Federal Reserve publishes the data in aggregate form in the weekly H.8 statistical release, Assets and Liabilities of Commercial Banks in the United States, which is followed closely by other government agencies, the banking industry, the financial press, and other users. This release provides a balance sheet for the banking industry as a whole and data disaggregated by its large domestic, small domestic, and foreign–related components.

Current actions: The Federal Reserve proposes to make the following modifications to the FR 2069: 1) combine items for federal funds purchased with banks and other borrowed money owed to banks and 2) combine items for federal funds purchased with others and other borrowed money owed to others. The respondent burden estimates are currently under review. The proposed revisions would be implemented as of June 2004.

3. Report title: Annual Report of Bank Holding Companies
Agency form number: FR Y–6
OMB control number: 7100–0124
Frequency: Annual
Reporters: top–tier domestic Bank Holding Companies (BHCs)
Annual reporting hours: 21,913 hours
Estimated average hours per response: 4.25 hours
Number of respondents: 5,156
General description of report: This information collection is mandatory Section 5(c)(1)(A) of the BHC Act (12 U.S.C. § 1844(c)(1)(A)); Section 8(a) of the International Banking Act (12 U.S.C. § 3106(a)); Sections 11(a)(1), 25 and 25A of the Federal Reserve Act (12 U.S.C. §§ 248(a)(1), 602, and 611a); Section 211.13(c) of Regulation K (12 CFR 211.13(c)); and Section 225.5(b) of Regulation Y (12 CFR 225.5(b)). Individual respondent data are not considered as confidential. However, a company may request confidential treatment pursuant to sections (b)(4) and (b)(6) of the Freedom of Information Act (5 U.S.C. §§ 522(b)(4) and (b)(6)).

Abstract: The FR Y–6 is an annual report filed by all BHCs containing financial data, an organization chart, and information about shareholders. The Federal Reserve uses the data to monitor holding company operations and determine holding company compliance with the provisions of the BHC Act and Regulation Y (12 CFR 225).

Current actions: The Federal Reserve proposes to revise the FR Y–\6 by requiring that only top–tier BHCs file the FR Y–6 report, eliminating Report Item 1(a) that requires a BHC to submit a copy of its Securities and Exchange Commission form 10–K, adding three minor items to the cover page, and clarifying several areas in the instructions. The proposed FR Y–6 revisions would be effective with fiscal years beginning after December 31, 2003.

4. Report titles: Report of Changes in Organizational Structure and Report of Changes in FBO Organizational Structure
Agency form numbers: FR Y–10 and FR Y–10F
OMB control number: 7100–0297
Frequency: Event generated
Reporters: FR Y–10: Top–tier domestic BHCs; financial holding companies (FHCs), and unaffiliated state member banks; FR Y–10F: foreign banking organizations (FBOs) and FHCs
Annual reporting hours: FR Y–10: 9,792 hours; FR Y–10F: 1,635 hours
Estimated average hours per response: FR Y–10: 1 hour; FR Y–10F: 1 hour
Number of respondents: FR Y–10: 2,448; FR Y–10F: 327
General description of reports: These information collections are mandatory Sections 4(k) and 5(c)(1)(A) of the BHC Act (12 U.S.C. §§ 1843(k), 1844(c)(1)(A)); Section 8(a) of the International Banking Act (12 U.S.C. § 3106(a)); Sections 11(a)(1), 25(7) and 25A of the Federal Reserve Act (12 U.S.C. §§ 248(a)(1), 602, and 611a); Section 211.13(c) of Regulation K (12 CFR 211.13(c)); and Sections 225.5(b) and 225.87 of Regulation Y (12 CFR 225.5(b) and 225.87). Individual respondent data are not considered as confidential. However, a company may request confidential treatment pursuant to sections (b)(4) and (b)(6) of the Freedom of Information Act (5 U.S.C. §§ 522(b)(4) and (b)(6)).
Abstract: The FR Y–10 is an event–generated report filed by top–tier domestic BHCs, including FHCs, and state member banks unaffiliated with a BHC or FHC, to capture changes in their regulated investments and activities. The Federal Reserve uses the data to monitor structure information on subsidiaries and regulated investments of these entities engaged in both banking and nonbanking activities.

The FR Y–10F is an event–generated report filed by FBOs, including FHCs, to capture changes in their regulated investments and activities. The Federal Reserve uses the data to ensure compliance with U.S. banking laws and regulations and to determine the risk profile of the FBO structure.

Current actions: The Federal Reserve proposes to revise the FR Y–10 and FR Y–10F forms and instructions in an effort to reduce respondent burden. The proposed revisions to the reporting forms consist primarily of reorganizing line items into separate schedules for banking and nonbanking investments. In addition, the Federal Reserve proposes to replace the Federal Reserve System activity codes with the North American Industrial Classification System codes and to reorganize and clarify the instructions. The Federal Reserve is considering the usefulness of a conversion table for converting the Federal Reserve Activity Codes to NAICS codes. The proposed revisions to the FR Y–10 and FR Y–10F would be implemented as of May 31, 2004.

Board of Governors of the Federal Reserve System, December 1, 2003.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 03–30213 Filed 12–4–03; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 29, 2003.

A. Federal Reserve Bank of Boston (Richard Walker, Community Affairs Officer) 600 Atlantic Avenue, Boston, Massachusetts 02106-2204:

1. Ponkapoag Bancorp. MHC, and Massapoag Bancorp, Inc., both of Canton, Massachusetts; to become bank holding companies by acquiring 100 percent of the voting shares of The Canton Institution for Saving, The Bank of Canton, Canton, Massachusetts.

B. Federal Reserve Bank of Richmond (A. Linwood Gill, III, Vice President) 701 East Byrd Street, Richmond, Virginia 23261-4528:

1. Southern Community Financial Corporation, Winston-Salem, North Carolina; to acquire The Community Bank, Pilot Mountain, North Carolina. Comments on this application must be received by December 19, 2003.

Board of Governors of the Federal Reserve System, December 1, 2003.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 03–30215 Filed 12–4–03; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely

related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 19, 2003.

A. Federal Reserve Bank of Kansas City (James Hunter, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. Exchange Company, Gibbon, Nebraska; to acquire 100 percent of the voting shares of Ace Sales, Inc., Deshler, Nebraska, and thereby engage in lending activities, pursuant to Section 225.28(b)(1) of Regulation Y.

Board of Governors of the Federal Reserve System, December 1, 2003.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 03-30214 Filed 12-4-03; 8:45 am]

BILLING CODE 6210-01-S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day-04-10]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer on (404) 498-1210.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Send comments to Anne O'Connor, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS-D24, Atlanta, GA 30333. Written comments should be received within 60 days of this notice.

Proposed Project: Jail STD Prevalence Monitoring System, OMB No. 0920-0499—Revision—National Center for HIV, STD's and Tuberculosis (NCHSTP), Centers for Disease Control and Prevention (CDC).

CDC is requesting from Office of Management and Budget (OMB) a 3-year approval for the standardized record layout for the Jail STD Prevalence Monitoring System. The Jail STD Prevalence Monitoring System consists of test data compiled for persons entering corrections facilities. The standard data elements were created in response to the need to systematically assess morbidity in persons entering corrections facilities, who are at high risk for STDs or sexually transmitted diseases and who often do not seek medical care in mainstream medical settings. Use of these standard data elements will improve surveillance of STDs by allowing for systematic assessment of a high risk population, taking advantage of already computerized data.

States that compile data from corrections facilities are encouraged to participate in the system. In most places, STD test results for persons in corrections facilities are computerized by the laboratory or by the health department. The burden of compiling data in the standardized format involves running a computer program to convert the data to the specified format. This involves an initial investment of time by a programmer but afterwards involves only running the program once a quarter (average of 3 hours per quarter). Therefore, the respondent burden is approximately 12 hours per year.

If a respondent does not have computerized test results for persons in corrections facilities, and must enter the data, the burden of data-entry is approximately 1.5 minute per record. On an average a respondent will enter approximately 1250 records per quarter, which will result in a total burden of 1875 minutes or 31 hours per quarter.

During the next 3 years, CDC expects approximately 20 project areas per year to participate. Approximately 15 will have already computerized data for a burden of 180 hours (15x12hrs) per year and five respondents will have to enter data into a computerized database which will result in a burden of 620 additional hours (5x124 hrs) per year. The total estimated annualized burden is 880 hours per year.

Respondents	No. of respondents (STD project areas)	No. of responses/respondent (datasets/yr approx 5000 total records)	Average burden/response (in hours)	Total burden (in hours)
State/local health departments with computerized data	15	4	3	180
State/local health departments without computerized data	5	4	31	620
Total				880

Dated: November 25, 2003.

Laura Yerdon Martin,

Acting Director, Executive Secretariat, Centers for Disease Control and Prevention.

[FR Doc. 03-30257 Filed 12-4-03; 8:45 am]

BILLING CODE 4163-18-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention (CDC)

National Center on Birth Defects and Developmental Disabilities

Name: Scientific Workshop on Impact of Maternal Thyroid Disease on the Developing Fetus: Implications for Diagnosis, Treatment, and Screening.

Times and Dates: 8 a.m.–7:30 p.m., January 12, 2004. 8 a.m.–4 p.m., January 13, 2004.

Place: Renaissance Atlanta Hotel Downtown, 590 West Peachtree Street, NW., Atlanta, Georgia 30308-3586, Telephone (404) 881-6000.

Status: Open to the public, limited only by the space available.

Purpose: The purpose of the workshop is to summarize the body of scientific evidence, describe the gaps in knowledge, provide direction for future research, and offer guidance for appropriate public health action if warranted.

Matters To Be Discussed: The agenda will include an overview of the prevalence of thyroid dysfunction in reproductive-age women and factors associated with abnormal function, outcomes related to thyroid dysfunction during pregnancy, detection and treatment of thyroid dysfunction, and considerations for public health practice.

Agenda items may be subject to change as priority dictates.

FOR FURTHER INFORMATION CONTACT: Micah H. Milton, Health Scientist, National Center on Birth Defects and Developmental Disabilities, CDC, 1600 Clifton Road, NE., m/s E-87, Atlanta, Georgia 30333. Telephone 404/498-3082.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities for both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: December 1, 2003.

Joseph E. Salter,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 03-30216 Filed 12-4-03; 8:45 am]

BILLING CODE 4163-18-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare and Medicaid Services

[Document Identifier: CMS-R-53; CMS-10102]

Agency Information Collection Activities: Proposed Collection; Comment Request

Agency: Centers for Medicare and Medicaid Services, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare and Medicaid Services (CMS) (formerly known as the Health Care Financing Administration (HCFA)), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

1. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Imposition of Cost Sharing Charges Under Medicaid and Supporting Regulations contained in 42 CFR 447.53; *Form No.:* CMS-R-53 (OMB# 0938-0429); *Use:* The information collection requirements contained in 42 CFR 447.53 require the States to include in their Medicaid State Plan their cost sharing provisions for the medically and categorically needy. The State Plan is the method in which States inform staff of State policies, standards, procedures and instructions; *Frequency:* Occasionally; *Affected Public:* State, local or tribal government; *Number of Respondents:* 54; *Total Annual Responses:* 20; *Total Annual Hours:* 2,700.

2. *Type of Information Collection Request:* New collection; *Title of Information Collection:* National Implementation of Hospital CAHPS (HCAHPS); *Form No.:* CMS-10102 (OMB# 0938-NEW); *Use:* The HCAHPS survey instrument, developed under the CAHPS umbrella, is a reliable and valid instrument that any organization can use (at no cost) to obtain patient data about hospital experiences. This tool will be adopted by the Quality Initiative: A Public Resource on Hospital Performance. Though the main purposes of this survey are consumer choice and hospital accountability, we intend and expect that the collection and reporting of these data will stimulate quality improvements. A standardized hospital survey from the patient's perspective will generate both universal measures and comparative data for consumers who need to select a hospital, and a new incentive for hospitals to further improve quality of care and accountability. This standardized instrument will allow consumers to make "apples to apples" comparisons among hospitals, allow hospitals and hospital chains to self compare, and provide state oversight officials with useful data; *Frequency:* Annually; *Affected Public:* Individuals or households; *Number of Respondents:* 2,212,000; *Total Annual Responses:* 2,212,000; *Total Annual Hours:* 368,367.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS's Web site address at *http://cms.hhs.gov/regulations/pra/default.asp*, or E-mail your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@hcfa.gov*, or call the Reports Clearance Office on (410) 786-1326. Written comments and recommendations for the proposed information collections must be mailed within 60 days of this notice directly to the CMS Paperwork Clearance Officer designated at the following address: CMS, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development and Issuances, Attention: Melissa Musotto, Room C5-14-03, 7500 Security Boulevard, Baltimore, Maryland 21244-1850.

Dated: November 26, 2003.

Julie Brown,

Acting, Reports Clearance Officer, Office of Strategic Operations and Strategic Affairs, Division of Regulations Development and Issuances.

[FR Doc. 03–30200 Filed 12–4–03; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute (NHLBI): Opportunity for Cooperative Research and Development Agreements (CRADAs) To Develop Novel Mechanical and Biological Treatments in Interventional Cardiovascular Medicine Using X-Ray Fluoroscopy and/or Real-Time Magnetic Resonance Imaging

ACTION: Notice.

SUMMARY: The National Heart, Lung, and Blood Institute (NHLBI) of the National Institutes of Health (NIH) announces the opportunity for Cooperative Research and Development Agreements (CRADAs) to develop novel mechanical and biological treatments in interventional cardiovascular medicine using x-ray fluoroscopy and real-time magnetic resonance imaging. The NHLBI seeks potential Collaborators wishing to provide expertise in (1) novel biological treatments for cardiovascular disease, including agents to facilitate mobilization of bone-marrow-derived stem and progenitor cells, (2) novel agents for therapeutic angiogenesis for myocardial or peripheral artery applications, (3) novel immune-modulating agents to treat to prevent manifestations of atherosclerosis, coronary artery occlusion, or myocardial ischemia/infarction, (4) novel mechanisms of drug, gene, or cell delivery to the myocardium or skeletal muscle to treat manifestations of coronary or peripheral artery atherosclerosis, and (5) intravascular devices for real-time magnetic resonance imaging-guided treatments including but not limited to angioplasty balloons, recanalization systems, percutaneous cardiac valves, stents, endografts, and bypass grafts.

The NHLBI seeks capability statements from parties interested in entering into a potential CRADA to manufacture, prototype, and test the above-specified agents or devices leading to early clinical testing and development. The availability of private sector support may increase the feasibility of particular aspects of the final design, but the primary criterion for selecting potential collaborators is the scientific merit of proposals for developing a plan to identify novel putative therapeutic agents and devices.

The NHLBI can provide extensive preclinical and clinical support in the development of Collaborator deliverables, including animal experiments, advanced x-ray fluoroscopic and magnetic resonance imaging laboratories, and investigations conducted in the Warren G. Magnuson Clinical Center at the Bethesda campus of the National Institutes of Health.

The control of clinical trials shall reside entirely with the Institute and the scientific participants of the trial. In the event that any adverse effects are encountered which, for legal or ethical reasons, may require communication with the U.S. Food and Drug Administration, the relevant collaborating institutions will be notified. Neither the conduct of the trial nor the results should be represented as an NHLBI endorsement of the agent, drug, or device under study.

DATES: Only written CRADA capability statements received by the NHLBI within 21 days of publication of this notice will be considered during the initial design phase. Confidential information must be clearly labeled. Potential collaborators may be invited to meet with the Selection Committee at the Collaborators' expense to provide additional information. The Institute may issue an additional notice of CRADA opportunity during the design phase if circumstances change or if the design alters substantially.

For Additonal Information and Questions: Capability statements should be submitted to Ms. Peg Koelble, Office of Technology Transfer and Development, National Heart, Lung, and Blood Institute, National Institutes of Health, 6705 Rockledge Drive, Suite 6018, Bethesda, MD 20892–7992; Tel: 301–594–4095; Fax: 301–594–3080; email: *koelblep@nhlbi.nih.gov*.

Capability Statements: A Selection Committee will use the information provided in the "Collaborator Capability Statements" received in response to this announcement to help in its deliberations. It is the intention of the NHLBI that all qualified Collaborators have the opportunity to provide information to the Selection Committee through their capability statements. The Capability Statement should not exceed 10 pages and should address the following selection criteria:

1. The statement should provide specific details of the method to be used in the development of novel candidate biological treatments, delivery systems, or real-time MRI-guided mechanical treatments for cardiovascular disease.

2. The statement should include a detailed plan demonstrating the ability to provide sufficient capacity in drug, gene, or stem cell development and manufacturing or in mechanical device prototyping, testing, development, and manufacturing.

3. The statement may include outline measures of interest to the Collaborator. The specifics of the proposed outcome measures and the proposed support should include but not be limited to: expertise in the proposed field, specific personnel allocation to the proposed collaboration, specific internal or external funding commitment to support the advancement of scientific research, services, facilities, equipment, or other resources that would contribute to the conduct of the commerical development.

4. The statement must address willingness promptly to publish research results and ability to be bound by PHS intellectual property policies (*see* CRADA: *http://ott.od.nih.gov/newpages/crada.pdf*).

Dated: November 26, 2003.

Carl Roth,

Associate Director for Scientific Program Operation, National Heart, Lung, and Blood Institute.

[FR Doc. 03–30206 Filed 12–4–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Notice.

SUMMARY: The inventions listed below are owned by an agency of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

ADDRESSES: Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to the indicated licensing contact at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: (301) 496–7057; fax: (301) 402–0220. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

Methods of Preparing Lymphocytes That Express Interleukin-2 and Their Use in the Treatment of Cancer

Ke Liu and Steven Rosenberg (NCI).

PCT Application No. PCT/US02/33243 filed 15 Oct 2002 (DHHS Reference No. E–297–2002/0–PCT–01).

Licensing Contact: Jeffrey Walenta; 301/435–4633; *walentaj@mail.nih.gov*.

Adoptive immunotherapy strategies are highly dependent upon a sustained immune response to a tumor specific antigen. An effective adoptive strategy should ideally recruit and integrate into the existing components of a cancer patient's inherent immune system. However, most cancer patient's immune systems are unable to sustain the expansion of introduced tumor specific T-cells and hence cannot sustain a tumor specific response. Interleukin 2 (IL–2) is a natural cytokine that will promote the growth and expansion of introduced tumor specific T cells. Unfortunately, supplementing a patient's immune system with the systemic introduction of IL–2 has severe toxicity effects at a dose sufficient to promote T-cell growth, limiting the effectiveness of many adoptive strategies.

This invention relates to methods of preparing autologous T-lymphocytes and tumor-infiltrating lymphocytes that express IL–2. This method comprises the following steps: obtaining peripheral blood mononuclear cells (PBMC) or tumor infiltrating lymphocytes (TIL) from a patient immunized with an antigen of cancer; stimulating the PBMC's or TIL with the antigen of the cancer *in vitro*; transducing the PBMC's or TIL with a retroviral vector encoding IL–2; and reintroducing these autologous T-lymphocytes back into the patient. This method overcomes the potential toxicity issues from systemic IL–2 delivery and creates self-sufficient T-cells for an effective adoptive immunotherapy response.

Catalytic Domains of β(1,4)-galactosyltransferase I Having Altered Donor and Acceptor Specificities, Domains That Promote In Vitro Protein Folding, and Methods for Their Use

Pradman Qasba (NCI), Boopathy Ramakrishnan (NCI), Elizabeth Boeggeman (NCI).

U.S. Provisional Application No. 60/439,298 filed 10 Jan 2003 (DHHS Reference No. E–230–2002/0–US–01); U.S. Provisional Application No. 60/450,250 filed 23 Feb 2003 (DHHS Reference No. E–230–2002/1–US–01).

Licensing Contact: Peter Soukas; 301/435–4646; *soukasp@mail.nih.gov*.

β(1,4)-galactosyltransferase I catalyzes the transfer of galactose from the donor, UDP-galactose, to an acceptor, N-acetylglucosamine, to form a galactose-β(1,4)-N-acetylglucosamine bond. This reaction allows galactose to be linked to an N-acetylglucosamine that may itself be linked to a variety of other molecules. The reaction can be used to make many types of molecules having great biological significance. For example, galactose-β(1,4)-N-acetylglucosamine linkages are very important for cellular recognition and binding events as well as cellular interactions with pathogens, such as viruses. Therefore, methods to synthesize these types of bonds have many applications in research and medicine to develop pharmaceutical agents and improved vaccines that can be used to treat disease.

The present invention is based on the surprising discovery that the enzymatic activity of β(1,4)-galactosyltransferase can be altered such that the enzyme can make chemical bonds that are very difficult to make by other methods. These alterations involve mutating the enzyme such that the mutated enzyme can transfer many different types of sugars from sugar nucleotide donors to many different types of acceptors. Therefore, the mutated β(1,4)-galactosyltransferases of the invention can be used to synthesize a variety of products that, until now, have been very difficult and expensive to produce.

The invention also provides amino acid segments that promote the proper folding of a galactosyltransferase catalytic domain. The amino acid segments may be used to properly fold the galactosyltransferase catalytic domains of the invention and thereby increase their activity. The amino acid segments may also be used to increase the activity of galactosyltransferases that are produced recombinantly. Accordingly, use of the amino acid segments according to the invention allows for production of β(1,4)-galactosyltransferases having increased enzymatic activity relative to β(1,4)-galactosyltransferases produced in the absence of the amino acid segments.

Some of the many uses for this invention are the following: synthesis of polysaccharide antigens for conjugate vaccines, glycosylation of monoclonal antibodies, and as research tools.

Targeting of the Hepatitis A Cellular Receptor To Treat Renal Cancer

Gerardo Kaplan (FDA).

U.S. Provisional Patent Application No. 60/442,286 filed 24 Jan 24 2003 (DHHS Reference No. E–227–2002/0-US–01).

Licensing Contact: Brenda Hefti; (301) 435–4632; *heftib@mail.nih.gov*.

Tumor markers—receptors on the cell surface that are expressed preferentially in tumor cells—are extremely useful in the diagnosis and treatment of cancers. The inventors have discovered that hHAVcr-1 is such a tumor marker because it is overexpressed in renal cell carcinomas, and its degree of overexpression is correlated to the stage of the tumor. In addition, overexpression of this receptor appears to affect differentiation.

The inventors have also demonstrated that they can target this receptor specifically in vitro, using monoclonal antibodies tagged with toxins and hepatitis A virus vectors. This discovery might be useful as a tumor marker or for gene-based therapeutics. Antibodies against the receptor encoded by hHAVcr-1 might be useful in an antibody-based therapeutic for the treatment of renal cancer.

Novel 2–Alkoxy Estradiols and Derivatives Thereof

Ravi Varma (NCI).

U.S. Patent Application No. 09/041,212 filed on 12 Mar 1998, which issued as U.S. Patent 6,136,992 on 24 October 2000 (DHHS Reference No. E–188–1998/1–US–01); U.S. Provisional Application No. 60/040,540 filed 13 Mar 1997 (DHHS Reference No. E–188–1998/0–US–01).

Licensing Contact: George Pipia; 301/435–5560; *pipiag@mail.nih.gov*.

The present invention is directed to novel 2-alkoxy estradiols and derivatives of 2-alkoxy estradiols having anticancer activity as claimed in the U.S. Patent 6,136,992. The invention is also directed to methods of preparing these novel compounds. These compounds have improved activity against a wide variety of tumor cell lines, including lung, colon, central nervous system, melanoma, ovarian, renal, prostate and breast cancers, compared with 2-methoxy estradiols. It is expected that these compounds will be very useful in the treatment of a wide variety of cancers. In addition, the present compounds have a low affinity for the estrogen receptor and are, therefore, expected to have fewer side effects than estradiols.

Dated: November 25, 2003.

Steven M. Ferguson,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 03–30207 Filed 12–4–03; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Disease; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, November 25, 2003, 9 a.m. to November 25, 2003, 11 a.m. National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD, 20892 which was published in the Federal Register on October 31, 2003, 68 FR 62902.

The meeting will be held on December 18, 2003 from 3 p.m. until 5 p.m. The meeting is closed to the public.

Dated: November 28, 2003.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–30202 Filed 12–4–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal property.

Name of Committee: National Institute of Diabetes and Digestive Kidney Diseases Special Emphasis Panel, Chronic Kidney Disease.

Date: December 12, 2003.

Time: 3 p.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Lakshmanan Sankaran, PhD, Scientific Review Administrator, Review Branch, DEA, NIDDK, National Institutes of Health, Room 754, 6707 Democracy Boulevard, Bethesda, MD 20892, (301) 594–7799, *ls38z@nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hermatology Research, National Institutes of Health, HHS)

Dated: November 28, 2003.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–30203 Filed 12–4–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel.

Date: December 10, 2003.

Time: 10:30 a.m. to 1:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: David I. Sommers, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6144, MSC 9606, Bethesda, MD 20892–9606, 301–443–7861, *dsommers@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: November 28, 2003.

Anna P. Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–30204 Filed 12–4–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the National Advisory Board on Medical Rehabilitation Research.

The meeting will be open to the public with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

Name of Committee: National Advisory Board on Medical Rehabilitation Research.

Date: December 8–9, 2003.

Time: December 8, 2003, 8:30 a.m. to 5 p.m.

Agenda: NICHD Director's Report presentation, Regional Research Networks, and an update on the Rehabilitation Medicine Scientist Training Program.

Place: Holiday Inn—Silver Spring, 8777 Georgia Avenue, Silver Spring, MD 20910.

Time: December 9, 2003, 8:30 a.m. to 12 p.m.

Agenda: Other business dealing with the NABMRR Board.

Place: Holiday Inn—Silver Spring, 8777 Georgia Avenue, Silver Spring, MD 20910.

Contact Person: Ralph M. Nitkin, PhD, Director, BSCD, National Center for Medical Rehabilitation Research, National Institute of Child Health and Human Development, NIH, 6100 Building, Room 2A03, Bethesda, MD 20892, (301) 402–4206.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

In the interest of security, NIH has instituted stringent procedures for entrance into the building by non-government employees. Persons without a government I.D. will need to show a photo I.D. and sign-in at the security desk upon entering the building.

Information is also available on the Institute's/Center's Home page: *http://www.nichd.nih.gov/about/ncmrr.htm,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: November 28, 2003.

Anna P. Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–30205 Filed 12–4–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Center for Scientific Review Special Emphasis Panel, December 18, 2003, 1 p.m. to December 18, 2003, 3 p.m., National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 which was published in the **Federal Register** on November 26, 2003, 68 FR 66471–66472.

The meeting will be held on December 19, 2003, from 5 p.m. to 7 p.m. The location remains the same. The meeting is closed to the public.

Dated: November 28, 2003.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–30201 Filed 12–4–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Current List of Laboratories Which Meet Minimum Standards To Engage in Urine Drug Testing for Federal Agencies

AGENCY: Substance Abuse and Mental Health Services Administration, HHS.

ACTION: Notice.

SUMMARY: The Department of Health and Human Services (HHS) notifies Federal agencies of the laboratories currently certified to meet the standards of subpart C of the Mandatory Guidelines for Federal Workplace Drug Testing Programs (Mandatory Guidelines) published in the **Federal Register** on April 11, 1988 (53 FR 11970), and revised in the **Federal Register** on June 9, 1994 (59 FR 29908) and on September 30, 1997 (62 FR 51118). A notice listing all currently certified laboratories is published in the **Federal Register** during the first week of each month. If any laboratory's certification is suspended or revoked, the laboratory will be omitted from subsequent lists until such time as it is restored to full certification under the Mandatory Guidelines.

If any laboratory has withdrawn from HHS' National Laboratory Certification Program (NLCP) during the past month, it will be listed at the end, and will be omitted from the monthly listing thereafter.

This notice is also available on the Internet at *http://workplace.samhsa.gov* and *http://www.drugfreeworkplace.gov.*

FOR FURTHER INFORMATION CONTACT: Mrs. Giselle Hersh or Dr. Walter Vogl, Division of Workplace Programs, 5600 Fishers Lane, Rockwall 2, Room 815, Rockville, Maryland 20857; 301–443–6014 (voice), 301–443–3031 (fax).

SUPPLEMENTARY INFORMATION: The Mandatory Guidelines were developed in accordance with Executive Order 12564 and section 503 of Public Law 100–71. Subpart C of the Guidelines, "Certification of Laboratories Engaged in Urine Drug Testing for Federal Agencies," sets strict standards that laboratories must meet in order to conduct urine drug testing for Federal agencies. To become certified, an applicant laboratory must undergo three rounds of performance testing plus an on-site inspection.

To maintain that certification, a laboratory must participate in a quarterly performance testing program plus periodic, on-site inspections.

Laboratories which claim to be in the applicant stage of certification are not to be considered as meeting the minimum requirements expressed in the HHS Mandatory Guidelines. A laboratory must have its letter of certification from HHS/SAMHSA (formerly: HHS/NIDA) which attests that it has met minimum standards.

In accordance with Subpart C of the Mandatory Guidelines, the following laboratories meet the minimum standards set forth in the Mandatory Guidelines:

ACL Laboratories, 8901 W. Lincoln Ave., West Allis, WI 53227, 414–328–7840/800–877–7016, (Formerly: Bayshore Clinical Laboratory)

ACM Medical Laboratory, Inc., 160 Elmgrove Park, Rochester, NY 14624, 585–429–2264

Advanced Toxicology Network, 3560 Air Center Cove, Suite 101, Memphis, TN 38118, 901–794–5770/888–290–1150

Aegis Analytical Laboratories, Inc., 345 Hill Ave., Nashville, TN 37210, 615–255–2400,

Alliance Laboratory Services, 3200 Burnet Ave., Cincinnati, OH 45229, 513–585–6870, (Formerly: Jewish Hospital of Cincinnati, Inc.)

Baptist Medical Center-Toxicology Laboratory, 9601 I–630, Exit 7, Little Rock, AR 72205–7299, 501–202–2783, (Formerly: Forensic Toxicology Laboratory Baptist Medical Center)

Clinical Reference Lab, 8433 Quivira Rd., Lenexa, KS 66215–2802, 800–445–6917

Diagnostic Services Inc., dba DSI, 12700 Westlinks Dr., Fort Myers, FL 33913, 239–561–8200/800–735–5416

DrugProof, Division of Dynacare/ Laboratory of Pathology, LLC 1229 Madison St., Suite 500, Nordstrom Medical Tower, Seattle, WA 98104, 206–386–2661/800–898–0180, (Formerly: Laboratory of Pathology of Seattle, Inc., DrugProof, Division of Laboratory of Pathology of Seattle, Inc.)

DrugScan, Inc., P.O. Box 2969, 1119 Mearns Rd., Warminster, PA 18974, 215–674–9310

Dynacare Kasper Medical Laboratories,* 10150–102 St., Suite 200, Edmonton, Alberta, Canada T5J 5E2, 780–451–3702/800–661–9876

ElSohly Laboratories, Inc., 5 Industrial Park Dr., Oxford, MS 38655, 662–236–2609

Express Analytical Labs, 3405 7th Ave., Suite 106, Marion, IA 52302, 319–377–0500

Gamma-Dynacare Medical Laboratories,* A Division of the Gamma-Dynacare Laboratory Partnership, 245 Pall Mall St., London, ON, Canada N6A 1P4, 519–679–1630

General Medical Laboratories, 36 South Brooks St., Madison, WI 53715, 608–267–6225

Kroll Laboratory Specialists, Inc., 1111 Newton St., Gretna, LA 70053, 504–361–8989/800–433–3823, (Formerly: Laboratory Specialists, Inc.)

LabOne, Inc., 10101 Renner Blvd., Lenexa, KS 66219, 913–888–3927/800–873–8845, (Formerly: Center for Laboratory Services, a Division of LabOne, Inc.)

Laboratory Corporation of America Holdings, 7207 N. Gessner Rd., Houston, TX 77040, 713–856–8288/800–800–2387

Laboratory Corporation of America Holdings, 69 First Ave., Raritan, NJ 08869, 908–526–2400/800–437–4986, (Formerly: Roche Biomedical Laboratories, Inc.)

Laboratory Corporation of America Holdings, 1904 Alexander Dr., Research Triangle Park, NC 27709, 919–572–6900/800–833–3984, (Formerly: LabCorp Occupational Testing Services, Inc., CompuChem Laboratories, Inc.; CompuChem Laboratories, Inc., A Subsidiary of Roche Biomedical Laboratory; Roche CompuChem Laboratories, Inc., A Member of the Roche Group)

Laboratory Corporation of America Holdings, 10788 Roselle St., San Diego, CA 92121, 800–882–7272, (Formerly: Poisonlab, Inc.)

Laboratory Corporation of America Holdings, 1120 Stateline Rd. West, Southaven, MS 38671, 866–827–8042/800–233–6339, (Formerly: LabCorp Occupational Testing Services, Inc.; MedExpress/National Laboratory Center)

Marshfield Laboratories, Forensic Toxicology Laboratory, 1000 North Oak Ave., Marshfield, WI 54449, 715–389–3734/800–331–3734

MAXXAM Analytics Inc.,* 5540 McAdam Rd., Mississauga, ON, Canada L4Z 1P1, 905–890–2555, (Formerly: NOVAMANN (Ontario) Inc.)

MedTox Laboratories, Inc., 402 W. County Rd. D, St. Paul, MN 55112, 651–636–7466/800–832–3244

MetroLab-Legacy Laboratory Services, 1225 NE 2nd Ave., Portland, OR 97232, 503–413–5295/800–950–5295

Minneapolis Veterans Affairs Medical Center, Forensic Toxicology Laboratory, 1 Veterans Dr., Minneapolis, MN 55417, 612–725–2088

National Toxicology Laboratories, Inc., 1100 California Ave., Bakersfield, CA 93304, 661–322–4250/800–350–3515

Northwest Drug Testing, a division of NWT Inc., 1141 E. 3900 S., Salt Lake City, UT 84124, 801–293–2300/800–322–3361, (Formerly: NWT Drug Testing, NorthWest Toxicology, Inc.)

One Source Toxicology Laboratory, Inc., 1705 Center St., Deer Park, TX 77536, 713–920–2559, (Formerly: University of Texas Medical Branch, Clinical Chemistry Division; UTMB Pathology-Toxicology Laboratory)

Oregon Medical Laboratories, P.O. Box 972, 722 East 11th Ave., Eugene, OR 97440–0972, 541–687–2134

Pacific Toxicology Laboratories, 9348 DeSoto Ave., Chatsworth, CA 91311, 800–328–6942, (Formerly: Centinela Hospital Airport Toxicology Laboratory)

Pathology Associates Medical Laboratories, 110 West Cliff Dr., Spokane, WA 99204, 509–755–8991/800–541–7891, x8991

PharmChem Laboratories, Inc. 4600 N. Beach, Haltom City, TX 76137, 817–605–5300, (Formerly: PharmChem Laboratories, Inc., Texas Division; Harris Medical Laboratory)

Physicians Reference Laboratory, 7800 West 110th St., Overland Park, KS 66210, 913–339–0372/800–821–3627

Quest Diagnostics Incorporated, 3175 Presidential Dr., Atlanta, GA 30340, 770–452–1590/800–729–6432, (Formerly: SmithKline Beecham Clinical Laboratories; SmithKline Bio-Science Laboratories)

Quest Diagnostics Incorporated, 4770 Regent Blvd., Irving, TX 75063, 800–824–6152, (Moved from the Dallas location on 03/31/01; Formerly: SmithKline Beecham Clinical Laboratories; SmithKline Bio-Science Laboratories)

Quest Diagnostics Incorporated, 4230 South Burnham Ave., Suite 250, Las Vegas, NV 89119–5412, 702–733–7866/800–433–2750, (Formerly: Associated Pathologists Laboratories, Inc.)

Quest Diagnostics Incorporated, 400 Egypt Rd., Norristown, PA 19403, 610–631–4600/877–642–2216, (Formerly: SmithKline Beecham Clinical Laboratories; SmithKline Bio-Science Laboratories)

Quest Diagnostics Incorporated, 506 E. State Pkwy., Schaumburg, IL 60173, 800–669–6995/847–885–2010, (Formerly: SmithKline Beecham Clinical Laboratories; International Toxicology Laboratories)

Quest Diagnostics Incorporated, 7600 Tyrone Ave., Van Nuys, CA 91405, 818–989–2520/800–877–2520, (Formerly: SmithKline Beecham Clinical Laboratories)

Scientific Testing Laboratories, Inc., 450 Southlake Blvd., Richmond, VA 23236, 804–378–9130

Sciteck Clinical Laboratories, Inc., 317 Rutledge Rd., Fletcher, NC 28732, 828–650–0409

S.E.D. Medical Laboratories, 5601 Office Blvd., Albuquerque, NM 87109, 505–727–6300/800–999–5227

South Bend Medical Foundation, Inc., 530 N. Lafayette Blvd., South Bend, IN 46601, 574–234–4176 x276

Southwest Laboratories, 2727 W. Baseline Rd., Tempe, AZ 85283, 602–438–8507/800–279–0027

Sparrow Health System, Toxicology Testing Center, St. Lawrence Campus, 1210 W. Saginaw, Lansing, MI 48915, 517–377–0520, (Formerly: St. Lawrence Hospital & Healthcare System)

St. Anthony Hospital Toxicology Laboratory, 1000 N. Lee St., Oklahoma City, OK 73101, 405–272–7052

Sure-Test Laboratories, Inc., 2900 Broad Ave., Memphis, TN 38112, 901–474–6026

Toxicology & Drug Monitoring Laboratory, University of Missouri Hospital & Clinics, 301 Business Loop 70 West, Suite 208, Columbia, MO 65203, 573–882–1273

Toxicology Testing Service, Inc., 5426 N.W. 79th Ave., Miami, FL 33166, 305–593–2260

US Army Forensic Toxicology Drug Testing Laboratory, 2490 Wilson St., Fort George G. Meade, MD 20755–5235, 301–677–7085

Anna Marsh,

Acting Executive Officer, SAMHSA.

[FR Doc. 03–30217 Filed 12–4–03; 8:45 am]

BILLING CODE 4160–20–P

* The Standards Council of Canada (SCC) voted to end its Laboratory Accreditation Program for Substance Abuse (LAPSA) effective May 12, 1998. Laboratories certified through that program were accredited to conduct forensic urine drug testing as required by U.S. Department of Transportation (DOT) regulations. As of that date, the certification of those accredited Canadian laboratories will continue under DOT authority. The responsibility for conducting quarterly performance testing plus periodic on-site inspections of those LAPSA-accredited laboratories was transferred to the U.S. HHS, with the HHS' NLCP contractor continuing to have an active role in the performance testing and laboratory inspection processes. Other Canadian laboratories wishing to be considered for the NLCP may apply directly to the NLCP contractor just as U.S. laboratories do.

Upon finding a Canadian laboratory to be qualified, HHS will recommend that DOT certify the laboratory (**Federal Register**, July 16, 1996) as meeting the minimum standards of the Mandatory Guidelines published in the **Federal Register** on June 9, 1994 (59 FR 29908) and on September 30, 1997 (62 FR 51118). After receiving DOT certification, the laboratory will be included in the monthly list of HHS certified laboratories and participate in the NLCP certification maintenance program.

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

Sunshine Act Notice

TIME AND DATE: 10 a.m. (EST), December 15, 2003.

PLACE: 4th Floor, Conference Room, 1250 H Street, NW., Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Approval of the minutes of the November 17, 2003, Board member meeting.
2. Thrift Savings Plan activity report by the Executive Director.

FOR FURTHER INFORMATION CONTACT: Thomas J. Trabucco, Director, Office of External Affairs, (202) 942–1640.

Dated: December 3, 2003.

Elizabeth S. Woodruff,

Secretary to the Board, Federal Retirement Thrift Investment Board.

[FR Doc. 03–30406 Filed 12–3–03; 3:19 pm]

BILLING CODE 6760–01–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice and request for comments.

SUMMARY: The Federal Emergency Management Agency has submitted the following proposed information collection to the Office of Management and Budget for review and clearance in accordance with the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507).

Title: Request for Loan Information Verification.

Type of Information Collection: Revision of a currently approved collection.

OMB Number: 1660–0012.

Abstract: The Individuals and Households Program (IHP) uses mobile homes, travel trailers, and other forms of prefabricated housing to provide temporary housing assistance to victims of federally declared disasters. Victims who express interest in purchasing a mobile home at an adjusted sales price must complete FEMA Form 90–68. The form is used by FEMA to obtain information from lenders. The information is required to determine a fair and equitable sales price of a mobile home to disaster victims.

Affected Public: Individuals or households, and Business or other for-profit, Not-for-profit institutions.

Number of Respondents: 125 Applicants and 250 lenders.

Estimated Time per Respondent: 5 minutes for Applicants and 5 minutes for lenders.

Estimated Total Annual Burden Hours: 42 hours.

Frequency of Response: On Occasion.

Comments: Interested persons are invited to submit written comments on the proposed information collection to e-mail address *ahunt@omb.eop.gov* or facsimile number (202) 395–7285 within 30 days of the date of this notice.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be made to Muriel B. Anderson, Chief, Records Management Branch, Information Resources Management Division, Information Technology Services Directorate, Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security, 500 C Street, SW., Room 316, Washington, DC 20472, facsimile number (202) 646–3347, or e-mail address *InformationCollections@fema.gov.*

Dated: November 28, 2003.

Muriel B. Anderson,

Acting Division Director, Information Resources Management Division, Information Technology Services Directorate.

[FR Doc. 03–30290 Filed 12–4–03; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice and request for comments.

SUMMARY: The Federal Emergency Management Agency has submitted the following proposed information collection to the Office of Management and Budget for review and clearance in accordance with the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507).

Title: Residential Basement Floodproofing Certificate.

Type of Information Collection: Extension of a currently approved collection.

OMB Number: 1660–0033.

Abstract: FEMA Form 81–78 is only used in communities that have been granted an exception by FEMA to allow the construction of flood proof residential basements in Special Flood Hazard Areas (SFHAs). Homeowners must have a registered professional engineer or architect complete FEMA Form 81–78 for development or inspection of structural design basements and certify that the basement design and methods of construction are in accordance with floodplain management ordinances. In any case homeowners are responsible for the fees involved with these services. Homeowners also provide FEMA Form 81–78 to their insurance agent to receive discounted flood insurance under the National Flood Insurance Program (NFIP).

Affected Public: Individuals or households.

Number of Respondents: 50.

Estimated Time Per Respondent: 3.25 hrs.

Estimated Total Annual Burden: 163 hrs.

Frequency of Response: On Occasions.

Comments: Interested persons are invited to submit written comments on the proposed information collection to e-mail address *ahunt@omb.eop.gov* or facsimile number (202) 395–7285 within 30 days of the date of this notice.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be made to Muriel B. Anderson, Chief, Records Management Branch, Information Resources Management Division, Information Technology Services Directorate, Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security 500 C Street, SW., Room 316, Washington, DC 20472. Facsimile number (202) 646–3347, or email address *InformationCollections@fema.gov.*

Dated: November 28, 2003.

Muriel B. Anderson,

Acting Division Director, Information Resources Management Division, Information Technology Services Directorate.

[FR Doc. 03–30291 Filed 12–4–03; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice and request for comments.

SUMMARY: The Federal Emergency Management Agency has submitted the following proposed information collection to the Office of Management and Budget for review and clearance in accordance with the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507).

Title: Flood Mitigation Assistance (eGrants) and Grant Supplemental Information.

Type of Information Collection: Revision of a currently approved collection.

OMB Number: 1660–0072.

Abstract: Information sought with this submission will comprise Phase I of the electronic, web-based application for Flood Mitigation Assistance (FMA) program grants through FEMA's eGrants system. The eGrants system is being developed to meet the intent of the eGovernment initiative, authorized by Public Law 106–107 passed on November 20, 1999. This initiative requires that all government agencies both streamline grant application process and provide for the means to electronically create, review, and submit a grant application via the Internet.

The FMA eGrants application will not replace the FMA grants program paper-based collection currently under OMB control number 1660–0025. It is provided as an alternative method for grantees and subgrantees to use.

The FMA eGrants application includes the information necessary for FEMA to assess the financial needs of the applicants as well as the projected benefits to be obtained from the use of the grant funds. FEMA will also use the information to determine eligibility and whether the proposed use of such funds meets the requirements and intent of the NFIRA. FEMA will use the information to evaluate applications and make award decisions, monitor ongoing performance and manage the flow of Federal funds, and to appropriately closeout the grant award when all work is completed.

Affected Public: State, local and Tribal governments.

Number of Respondents: 280—56 States and Territories × 4 subgrants per State = 224 + 56 States to review, coordinate and forward FMA grant applications to FEMA for approval.

Estimated Time per Respondent: 14.6 hrs.

Estimated Total Annual Burden Hours: 4,088.

Frequency of Response: On occasion.

Comments: Interested persons are invited to submit written comments within 30 days of this notice on the proposed information collection to the FEMA Desk Officer at the Office of Management and Budget at e-mail address *David_Rostker@omb.oep.gov.*

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be made to Muriel B. Anderson, Chief, Records Management Branch, Information Resources Management Division, Information Technology Services Directorate, Federal Emergency Management Agency at facsimile number (202) 646–3347 or e-mail address *InformationCollections@fema.gov.*

Dated: November 13, 2003.

Edward W. Kernan,

Division Director, Information Resources Management Division, Information Technology Services Directorate.

[FR Doc. 03–30292 Filed 12–4–03; 8:45 am]

BILLING CODE 9110–13–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1501–DR]

Puerto Rico; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the Commonwealth of Puerto Rico (FEMA–1501–DR), dated November 21, 2003, and related determinations.

EFFECTIVE DATE: November 21, 2003.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated November 21, 2003, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act), as follows:

I have determined that the damage in certain areas of the Commonwealth of Puerto Rico, resulting from severe storms, flooding, mudslides, and landslides on November 10, 2003, and continuing, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act). I, therefore, declare that such a major disaster exists in the Commonwealth of Puerto Rico.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance in the designated areas, Hazard Mitigation throughout the Commonwealth, and any other forms of assistance under the Stafford Act you may deem appropriate. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Hazard Mitigation and the Other Needs Assistance under Section 408 of the Stafford Act will be limited to 75 percent of the total eligible costs. If Public Assistance is later warranted, Federal funds provided under that program will also be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Under Secretary for Emergency Preparedness and Response, Department of Homeland Security, under Executive Order 12148, as amended, Justo Hernandez, of FEMA is appointed to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the Commonwealth of Puerto Rico to have been affected adversely by this declared major disaster:

The municipalities of Guánica, Guayama, Juana Diaz, Maunabo, Patillas, Rio Grande, Salinas, Santa Isabel, and Yauco for Individual Assistance.

All municipalities within the Commonwealth of Puerto Rico are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individual and Household Housing; 97.049, Individual and Household Disaster Housing Operations; 97.050 Individual and Household Program-Other Needs, 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.

[FR Doc. 03–30297 Filed 12–4–03; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1501–DR]

Puerto Rico; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the Commonwealth of Puerto Rico (FEMA–1501–DR), dated November 21, 2003, and related determinations.

EFFECTIVE DATE: November 24, 2003.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the Commonwealth of Puerto Rico is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of November 21, 2003:

The municipalities of Arroyo, Canóvanas, Fajardo, Loiza, Naguabo, Toa Baja, and Yabucoa for Individual Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individual and Household Housing; 97.049, Individual and Household Disaster Housing Operations; 97.050 Individual and Household Program-Other Needs, 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.

[FR Doc. 03–30298 Filed 12–4–03; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1499–DR]

Washington; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Washington (FEMA–1499–DR), dated November 7, 2003, and related determinations.

EFFECTIVE DATE: November 20, 2003.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Washington is hereby amended to include the Public Assistance program for the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of November 7, 2003:

Clallam, Grays Harbor, Jefferson, Mason, Skagit, Snohomish, and Whatcom Counties for Public Assistance (already designated for Individual Assistance.)

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individual and Household Housing; 97.049, Individual and Household Disaster Housing Operations; 97.050 Individual and Household Program—Other Needs, 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.

[FR Doc. 03–30293 Filed 12–4–03; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1500–DR]

West Virginia; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of West Virginia (FEMA–1500–DR), dated November 21, 2003, and related determinations.

EFFECTIVE DATE: November 21, 2003.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated November 21, 2003, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act), as follows:

I have determined that the damage in certain areas of the State of West Virginia, resulting from severe storms, flooding, and landslides on November 11, 2003, and continuing is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act). I, therefore, declare that such a major disaster exists in the State of West Virginia.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance in the designated areas, Hazard Mitigation throughout the State, and any other forms of assistance under the Stafford Act you may deem appropriate. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Hazard Mitigation and the Other Needs Assistance under Section 408 of the Stafford Act will be

limited to 75 percent of the total eligible costs. If Public Assistance is later requested and warranted, Federal funds provided under that program will also be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Under Secretary for Emergency Preparedness and Response, Department of Homeland Security, under Executive Order 12148, as amended, Michael Bolch, of FEMA is appointed to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of West Virginia to have been affected adversely by this declared major disaster:

Cabell, Kanawha, Lincoln, Nicholas, Putnam, and Wayne Counties for Individual Assistance.

All counties within the State of West Virginia are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individual and Household Housing; 97.049, Individual and Household Disaster Housing Operations; 97.050 Individual and Household Program-Other Needs, 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.

[FR Doc. 03–30294 Filed 12–4–03; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1500–DR]

West Virginia; Amendment No.1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of West Virginia (FEMA–1500-DR), dated November 21, 2003, and related determinations.

EFFECTIVE DATE: November 22, 2003.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of West Virginia is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of November 21, 2003:

Boone, Calhoun, Clay, Fayette, Gilmer, Greenbrier, Marion, McDowell, Mercer, Monongalia, Monroe, Raleigh, Summers, Webster, Wetzel, and Wyoming Counties for Individual Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individual and Household Housing; 97.049, Individual and Household Disaster Housing Operations; 97.050 Individual and Household Program-Other Needs, 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.

[FR Doc. 03–30295 Filed 12–4–03; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1500–DR]

West Virginia; Amendment No. 2 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of West Virginia (FEMA–1500–DR), dated November 21, 2003, and related determinations.

EFFECTIVE DATE: November 25, 2003.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of West Virginia is hereby amended to include the Public Assistance program for the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of November 21, 2003:

Boone, Clay, Kanawha, Lincoln, and Wayne Counties for Public Assistance (already designated for Individual Assistance.)

Logan County for Public Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individual and Household Housing; 97.049, Individual and Household Disaster Housing Operations; 97.050 Individual and Household Program-Other Needs, 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.

[FR Doc. 03–30296 Filed 12–4–03; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Transportation Security Administration

Maritime Vulnerability Self-Assessment Tool

AGENCY: Transportation Security Administration (TSA), Department of Homeland Security (DHS).

ACTION: Notice of availability of TSA's maritime vulnerability self-assessment tool.

SUMMARY: TSA announces the availability of the TSA Maritime Self-Assessment Risk Module (TMSARM), developed to support the United States Coast Guard's (USCG) regulatory efforts promulgated pursuant to the Maritime Transportation Security Act (MTSA) of 2002. MTSA regulations mandate that any facility or vessel that might be involved in a transportation security incident conduct a vulnerability assessment and submit a security plan to the USCG by December 31, 2003. The USCG final rules implementing portions of the maritime security initiatives mandated by MTSA, including the vulnerability assessment and security plan requirements. The USCG final rules provide a list of tools that may be used to conduct vulnerability self-assessments. This list includes TMSARM, a no-cost, web-based, flexible vulnerability assessment tool designed by TSA specifically to meet the requirements of MTSA.

FOR FURTHER INFORMATION CONTACT: For additional information or questions, contact Nick Lakis, Office of Maritime and Land Security, Transportation Security Administration Headquarters, West Building, Floor 9, TSA–8, 601 South 12th Street, Arlington, VA 22202–4220; e-mail: *nick.lakis@dhs.gov*. For issues regarding the DHS/TSA's vulnerability self-assessment tool, contact Lynne Wolstenholme, Office of Threat Assessment and Risk Management, Transportation Security Administration Headquarters, West Tower, Floor 9, TSA–3, 601 South 12th Street, Arlington, VA 22202–4220; e-mail: *tsarisk@dhs.gov*.

SUPPLEMENTARY INFORMATION:

Background

On October 22, 2003, the USCG published in the **Federal Register** (68 FR 60447) a series of final rules, codified in the new Subchapter H of Title 33 of the Code of Federal Regulations (CFR), which adopted, with changes, the series of temporary interim rules published July 1, 2003 (68 FR 39240). This series of rules addresses security assessments and plans, as well as other security standards, measures, and provisions that are mandated by the Maritime Transportation Security Act (MTSA) of 2002 (Pub. L. 107–295, 116 Stat. 2064, Nov. 25, 2002). One of these MTSA requirements is that any facility or vessel that might be involved in a transportation security incident (TSI) conduct a vulnerability assessment and submit a security plan to the USCG by December 31, 2003. The MTSA defines a TSI as "a security incident that results in a significant loss of life, environmental damage, transportation system disruption, or economic disruption in a particular area."

TSA, in coordination with other Federal agencies, academia, and industry, developed a vulnerability self-assessment tool, the TSA Maritime Self-Assessment Risk Module (TMSARM), specifically to meet the security assessment requirements mandated by MTSA. This TSA tool is briefly discussed in the preamble of the USCG final rules. The tool supports three basic functions: (1) Capturing a current snapshot of the user's security system baseline; (2) providing users with a vulnerability assessment tool; and (3) assisting users in their development of a comprehensive security plan. TMSARM is available to Company Security Officers (CSO), Vessel Security Officers (VSO), and Facility Security Officers (FSO). This outstanding service is specific to TMSARM and is available to TMSARM users at no cost. The tool is easily accessible on TSA's website at *http://www.tsa.gov/public/interapp/editorial/editorial_0826.xml*, and the user determines all ratings. Any information entered into the tool will not become accessible to the Federal government unless and until the party entering the data formally submits this information to the TSA.

Elements of the Self-Assessment Tool

Although the USCG provides examples of security assessment tools in 33 CFR 101.510, the list is not intended to be exhaustive. The USCG does not require owners or operators to conduct security assessments using a specific tool, provided that the assessments meet the requirements of its regulations. TMSARM is merely one means of satisfying the USCG requirements.

In general, TMSARM focuses on preventing and mitigating a base array of threat scenarios developed for the various categories of vessels and facilities that comprise the maritime transportation sector and are covered by the USCG rules. Users rate their vessel/facility in terms of target attractiveness and several consequence categories that broadly describe health and well-being, economic consequence, and symbolic value. Users will first list the vessel/facility's baseline security countermeasures that apply for each of the threat scenarios and then rate the effectiveness of the countermeasures in detecting and preventing terrorist's actions against each of the provided threat scenarios. The countermeasures are divided into broad countermeasure groupings that represent different security layers that may be implemented against the various threat scenarios. Descriptive guidance for the effectiveness rating is provided for each of the countermeasure categories. The performance-based effectiveness ratings range from very high to very low, and describe the vessel/facility's ability to thwart the threat.

TSA has also developed guidance documents for the security countermeasure categories. These documents guide users on how to populate the sections of their security plans with the security information developed through use of both the TMSARM security checklist and the TMSARM vulnerability assessment tool. Additionally, the guidance documents identify specific security vulnerabilities from the USCG regulations and map them to the appropriate TMSARM security countermeasure effectiveness descriptions within the tool. Once vulnerabilities are identified, very specific guidance on how to fill out form USCG Form CG–6025 (Vulnerability and Security Measures Summary) is provided.

After the tool is applied across each of the provided threat scenarios to determine baseline countermeasures, users can re-apply the tool to assess the impact of adding new countermeasures or enhancing existing countermeasures. Additional or enhanced countermeasures are included in the security plan along with estimated resource requirements and a timeframe for implementation. Upon completion, users receive a report that summarizes their inputs. This report can be included in the security plan that is required to be submitted to the USCG. Users' input to the tool becomes part of a vulnerability assessment, which constitutes Sensitive Security Information (SSI) under TSA regulations at 49 CFR part 1520. SSI may be released only to persons with a need to know, except with the written permission of the TSA Administrator. Unauthorized release of SSI may result in civil penalties or other action.

Issued in Arlington, Virginia, on December 1, 2003.

James M. Loy,

Administrator.

[FR Doc. 03–30281 Filed 12–4–03; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4809–N–49]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

FOR FURTHER INFORMATION CONTACT: Mark Johnston, room 7266, Department of Housing and Urban Development,

451 Seventh Street SW., Washington, DC 20410; telephone (202) 708–1234; TTY number for the hearing- and speech-impaired (202) 708–2565 (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with 24 CFR part 581 and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing this Notice to identify Federal buildings and other real property that HUD has reviewed for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property. This Notice is also published in order to comply with the December 12, 1988 Court Order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88–2503–OG (D.D.C.).

Properties reviewed are listed in this Notice according to the following categories: Suitable/available, suitable/unavailable, suitable/to be excess, and unsuitable. The properties listed in the three-suitable categories have been reviewed by the landholding agencies, and each agency has transmitted to HUD: (1) Its intention to make the property available for use to assist the homeless, (2) its intention to declare the property excess to the agency's needs, or (3) a statement of the reasons that the property cannot be declared excess or made available for use as facilities to assist the homeless.

Properties listed as suitable/available will be available exclusively for homeless use for a period of 60 days from the date of this Notice. Where property is described as for "off-site use only" recipients of the property will be required to relocate the building to their own site at their own expense. Homeless assistance providers interested in any such property should send a written expression of interest to HHS, addressed to Shirley Kramer, Division of Property Management, Program Support Center, HHS, room 5B–41, 5600 Fishers Lane, Rockville, MD 20857; (301) 443–2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit their written expressions of interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 24 CFR part 581.

For properties listed as suitable/to be excess, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law, subject to screening for other Federal use. At the appropriate time, HUD will publish the property in a Notice showing it as either suitable/available or suitable/unavailable.

For properties listed as suitable/unavailable, the landholding agency has decided that the property cannot be declared excess or made available for use to assist the homeless, and the property will not be available.

Properties listed as unsuitable will not be made available for any other purpose for 20 days from the date of this Notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call the toll-free information line at 1–800–927–7588 for detailed instructions or write a letter to Mark Johnston at the address listed at the beginning of this Notice. Included in the request for review should be the property address (including zip code), the date of publication in the **Federal Register**, the landholding agency, and the property number.

For more information regarding particular properties identified in this Notice (*i.e.*, acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: **AIR FORCE:** Mr. Albert F. Lowas, Jr., Air Force Real Property Agency, 1700 North Moore St., Suite 2300, Arlington, VA 22209–2802; (703) 696–5501; **COE:** Ms. Shirley Middleswarth, Army Corps of Engineers, Civil Division, Directorate of Real Estate, 441 G Street, NW., Washington, DC 20314–1000; (202) 761–7425; **ENERGY:** Mr. Tom Knox, Department of Energy, Office of Engineering & Construction Management, CR–80, Washington, DC 20585; (202) 586–8715; **GSA:** Mr. Brian K. Polly, Assistant Commissioner, General Services Administration, Office of Property Disposal, 18th and F Streets, NW., Washington, DC 20405; (202) 501–0052; **INTERIOR:** Ms. Linda Tribby, Acquisition & Property Management, Department of the Interior, 1849 C Street, NW., MS5512, Washington, DC 20240; (202) 219–0728; **NAVY:** Mr. Charles C. Cocks, Director, Department of the Navy, Real Estate Policy Division, Naval Facilities Engineering Command, Washington Navy Yard, 1322 Patterson Ave., SE., Suite 1000, Washington, DC 20374–5065; (202) 685–9200; **VA:** Ms. Amelia E. McLellan, Director, Real Property Service (183C), Department of Veterans Affairs, 810 Vermont Avenue, NW., Room 419, Washington, DC 20420; (202) 565–5398; (These are not toll-free numbers).

Dated: November 25, 2003.

John D. Garrity,

Director, Office of Special Needs Assistance Programs.

Title V, Federal Surplus Property Program Federal Register Report for 12/5/2003

Suitable/Available Properties

Buildings (by State)

California

Bldg. 4607
Yosemite Natl Park
Mariposa Co: CA 95389–
Landholding Agency: Interior
Property Number: 61200340010
Status: Unutilized
Comment: 66 sq. ft. storage facility, mountainous terrain, off-site use only

Hawaii

Bldg. 255
Navy Marine Golf Course
Pearl Harbor Co: HI 96860–
Landholding Agency: Navy
Property Number: 77200340042
Status: Excess
Comment: 1946 sq. ft., possible asbestos/lead paint, most recent use—guest quarters, off-site use only

Iowa

23 Buildings
Former Naval Housing
Waverly Co: Bremer IA 50677–
Landholding Agency: GSA
Property Number: 54200340006
Comment: 2 to 3 bedroom homes, 864 to 1760 sq. ft., presence of asbestos/lead paint
GSA Number: 7–I–IA–0463–5

New York

Bldg. 240
Rome Lab
Rome Co: Oneida NY 13441–
Landholding Agency: Air Force
Property Number: 18200340023
Status: Unutilized
Comment: 39108 sq. ft., presence of asbestos, most recent use—Electronic Research Lab

Bldg. 247
Rome Lab
Rome Co: Oneida NY 13441–
Landholding Agency: Air Force
Property Number: 18200340024
Status: Unutilized
Comment: 13199 sq. ft., presence of asbestos, most recent use—Electronic Research Lab

Bldg. 248
Rome Lab
Rome Co: Oneida NY 13441–
Landholding Agency: Air Force
Property Number: 18200340025
Status: Unutilized
Comment: 4000 sq. ft., presence of asbestos, most recent use—Electronic Research Lab

Bldg. 302
Rome Lab
Rome Co: Oneida NY 13441–
Landholding Agency: Air Force
Property Number: 18200340026
Status: Unutilized
Comment: 10288 sq. ft., presence of asbestos, most recent use—communications facility

Tennessee

Tract 01–202
Stones River Natl
Battlefield
Murfreesboro Co: Rutherford TN 37129–
Landholding Agency: Interior
Property Number: 61200340008
Status: Excess
Comment: 1796 sq. ft. residence, off-site use only

Texas

Tract 104–47
San Antonio Mission
San Antonio Co: Bexar TX 78223–
Landholding Agency: Interior
Property Number: 61200340012
Status: Unutilized
Comment: 136 sq. ft., Historical District, off-site use only

Virginia

SSA Trust Fund Bldg.
2301 Park Ave.
Lynchburg Co: VA 24501–
Landholding Agency: GSA
Property Number: 54200340010
Status: Excess
Comment: 3400 sq. ft., most recent use—Office
GSA Number: 4–G–VA–0734

West Virginia

Quarters 77, 78, 79
Hartzog Drive
Harpers Ferry Co: Jefferson WV 25425–
Landholding Agency: Interior
Property Number: 61200340013
Status: Excess
Comment: 1797 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—housing, off-site use only

Land (by State)

Michigan

IOM Site
Chesterfield Road
Chesterfield Co: Macomb MI
Landholding Agency: GSA
Property Number: 54200340008
Status: Excess
Comment: approx. 17.4 acres w/concrete block bldg. in poor condition, most recent use—radio antenna field, narrow right-of-way
GSA Number: 1–D–MI–0603F

Suitable/Unavailable Properties

Buildings (by State)

Colorado

Klein Water Treatment Plant
Rocky Mountain Arsenal
Denver Co: Adams CO 80022–
Landholding Agency: GSA
Property Number: 54200340012
Status: Surplus
Comment: water treatment plant
GSA Number: 7–D–CO–0442–3

Unsuitable Properties

Buildings (by State)

Alaska

Bldg. 4314
Elmendorf AFB
Elmendorf AFB Co: AK 99506–
Landholding Agency: Air Force
Property Number: 18200340001
Status: Unutilized
Reason: Extensive deterioration

Bldg. 6527
Elmendorf AFB
Elmendorf AFB Co: AK 99506–
Landholding Agency: Air Force
Property Number: 18200340002
Status: Unutilized
Reason: Extensive deterioration

Bldg. 7541
Elmendorf AFB
Elmendorf AFB Co: AK 99506–
Landholding Agency: Air Force
Property Number: 18200340003
Status: Unutilized
Reason: Extensive deterioration

Bldg. 8111
Elmendorf AFB
Elmendorf AFB Co: AK 99506–
Landholding Agency: Air Force
Property Number: 18200340004
Status: Unutilized
Reason: Extensive deterioration

Bldg. 9489
Elmendorf AFB
Elmendorf AFB Co: AK 99506–
Landholding Agency: Air Force
Property Number: 18200340005
Status: Unutilized
Reason: Extensive deterioration

Bldg. 10547
Elmendorf AFB
Elmendorf AFB Co: AK 99506–
Landholding Agency: Air Force
Property Number: 18200340006
Status: Unutilized
Reason: Extensive deterioration

California

Bldg. 5057
Edwards AFB
Los Angeles Co: CA 93523–
Landholding Agency: Air Force
Property Number: 18200340007
Status: Excess
Reason: Extensive deterioration

Bldg. 6909
Edwards AFB
Los Angeles Co: CA 93523–
Landholding Agency: Air Force
Property Number: 18200340008
Status: Unutilized
Reason: Secured Area

28 Bldgs. /Area C
Edwards AFB
Los Angeles Co: CA 93523–
Landholding Agency: Air Force
Property Number: 18200340009
Status: Unutilized
Reason: Secured Area

Mobile Home/T00706
Yosemite Natl Park
5001 Trailer Court
El Portal Co: Mariposa CA 95318–
Landholding Agency: Interior
Property Number: 61200340009
Status: Unutilized
Reason: Extensive deterioration

133/215 Conlon
Golden Gate Natl Rec Area
Mill Valley Co: Marin CA 94941–
Landholding Agency: Interior
Property Number: 61200340011
Status: Unutilized
Reason: Extensive deterioration

Colorado

Bldg. 106
Peterson AFB
Colorado Springs Co: El Paso CO 80914–8090
Landholding Agency: Air Force
Property Number: 18200340010
Status: Underutilized
Reasons: Within 2000 ft. of flammable or explosive material; Within airport runway clear zone; Secured Area.

Bldg. 107
Peterson AFB
Colorado Spring Co: El Paso CO 80914–8090
Landholding Agency: Air Force
Property Number: 18200340011
Status: Underutilized
Reasons: Within 2000 ft. of flammable or explosive material; Within airport runway clear zone; Secured Area.

Bldg. 108
Peterson AFB
Colorado Spring Co: El Paso CO 80914–8090
Landholding Agency: Air Force
Property Number: 18200340012
Status: Underutilized
Reasons: Within 2000 ft. of flammable or explosive material; Within airport runway clear zone; Secured Area.

Hawaii

Bldgs. 743, 1002, 6100
Johnston Atoll Airfield
Honolulu Co: HI
Landholding Agency: Air Force
Property Number: 18200340013
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material; Within airport runway clear zone; Extensive deterioration

Bldg. 23
Naval Station
Ford Island Co: Honolulu HI 96818–
Landholding Agency: Navy
Property Number: 77200340041
Status: Excess
Reason: Extensive deterioration

Bldgs. 730, 766
Pearl City Peninsula
Pearl City Co: HI 96819–
Landholding Agency: Navy
Property Number: 77200340043
Status: Unutilized
Reason: Extensive deterioration

Illinois

Wings N & P
Bldg. 202
Argonne National Laboratory
Argonne Co: DuPage IL 60439–
Landholding Agency: Energy
Property Number: 41200340020
Status: Excess
Reason: Extensive deterioration

Kansas

6 Bldgs.

Cottonwood Point/Hillsboro Cove
Marion Co: Coffey KS 66861–
Landholding Agency: COE
Property Number: 31200340001
Status: Excess
Reason: Extensive deterioration
20 Bldgs.
Riverside
Burlington Co: Coffey KS 66839–8911
Landholding Agency: COE
Property Number: 31200340002
Status: Excess
Reason: Extensive deterioration
2 Bldgs.
Canning Creek/Richey Cove
Council Grove Co: Morris KS 66846–9322
Landholding Agency: COE
Property Number: 31200340003
Status: Excess
Reason: Extensive deterioration
6 Bldgs.
Santa Fe Trail/Outlet Channel
Council Grove Co: Morris KS 66846–
Landholding Agency: COE
Property Number: 31200340004
Status: Excess
Reason: Extensive deterioration
Residence
Melvern Lake Project
Melvern Co: Osage KS 66510–
Landholding Agency: COE
Property Number: 31200340005
Status: Excess
Reason: Extensive deterioration
2 Bldgs.
Management Park
Vassar Co: KS 66543–
Landholding Agency: COE
Property Number: 31200340006
Status: Excess
Reason: Extensive deterioration
Bldg.
Hickory Campground
Lawrence Co: KS 66049–
Landholding Agency: COE
Property Number: 31200340007
Status: Excess
Reason: Extensive deterioration
Bldg.
Rockhaven Park Area
Lawrence Co: KS 66049–
Landholding Agency: COE
Property Number: 31200340008
Status: Excess
Reason: Extensive deterioration
Bldg.
Overlook Park Area
Lawrence Co: KS 66049–
Landholding Agency: COE
Property Number: 31200340009
Status: Excess
Reason: Extensive deterioration
Bldg.
Walnut Campground
Lawrence Co: KS 66049–
Landholding Agency: COE
Property Number: 31200340010
Status: Excess
Reason: Extensive deterioration
Bldg.
Cedar Ridge Campground
Lawrence Co: KS 66049–
Landholding Agency: COE
Property Number: 31200340011
Status: Excess
Reason: Extensive deterioration
Bldg.
Woodridge Park Area
Lawrence Co: KS 66049–
Landholding Agency: COE
Property Number: 31200340012
Status: Excess
Reason: Extensive deterioration

Missouri

Bldg. 3
VA Medical Center
Jefferson Barracks Division
St. Louis Co: MO 63125–
Landholding Agency: VA
Property Number: 972003400013
Status: Underutilized
Reason: Secured Area
Bldg. 4
VA Medical Center
Jefferson Barracks Division
St. Louis Co: MO 63125–
Landholding Agency: VA
Property Number: 97200340002
Status: Underutilized
Reason: Secured Area
Bldg. 27
VA Medical Center
Jefferson Barracks Division
St. Louis Co: MO 63125–
Landholding Agency: VA
Property Number: 97200340003
Status: Underutilized
Reason: Secured Area
Bldg. 28
VA Medical Center
Jefferson Barracks Division
St. Louis Co: MO 63125–
Landholding Agency: VA
Property Number: 97200340004
Status: Underutilized
Reason: Secured Area
Bldg. 29
VA Medical Center
Jefferson Barracks Division
St. Louis Co: MO 63125–
Landholding Agency: VA
Property Number: 97200340005
Status: Underutilized
Reason: Secured Area
Bldg. 50
VA Medical Center
Jefferson Barracks Division
St. Louis Co: MO 63125–
Landholding Agency: VA
Property Number: 97200340006
Status: Underutilized
Reason: Secured Area

New Mexico

Bldg. 615
Kirtland AFB
Kirtland AFB Co: Bernalillo NM 87117–5663
Landholding Agency: Air Force
Property Number: 18200340014
Status: Unutilized
Reasons: Secured Area Extensive deterioration
Bldg. 736
Kirtland AFB
Kirtland AFB Co: Bernalillo NM 87117–5663
Landholding Agency: Air Force
Property Number: 18200340015
Status: Unutilized
Reason: Secured Area
Bldg. 1013
Kirtland AFB
Kirtland AFB Co: Bernalillo NM 87117–5663
Landholding Agency: Air Force
Property Number: 18200340016
Status: Unutilized
Reason: Secured Area
Bldg. 20419
Kirtland AFB
Kirtland AFB Co: Bernalillo NM 87117–5663
Landholding Agency: Air Force
Property Number: 18200340017
Status: Unutilized
Reason: Secured Area
Bldgs. 29014, 29016, 29017
Kirtland AFB
Kirtland AFB Co: Bernalillo NM 87117–5663
Landholding Agency: Air Force
Property Number: 18200340018
Status: Unutilized
Reasons: Secured Area Extensive deterioration
Bldg. 30102
Kirtland AFB
Kirtland AFB Co: Bernalillo NM 87117–5663
Landholding Agency: Air Force
Property Number: 18200340019
Status: Unutilized
Reason: Secured Area
Bldgs. 37532, 37534
Kirtland AFB
Kirtland AFB Co: Bernalillo NM 87117–5663
Landholding Agency: Air Force
Property Number: 18200340020
Status: Unutilized
Reasons: Secured Area Extensive deterioration
Bldg. 57005
Kirtland AFB
Kirtland AFB Co: Bernalillo NM 87117–5663
Landholding Agency: Air Force
Property Number: 18200340021
Status: Unutilized
Reasons: Secured Area Extensive deterioration
Bldgs. 57006, 57013
Kirtland AFB
Kirtland AFB Co: Bernalillo NM 87117–5663
Landholding Agency: Air Force
Property Number: 18200340022
Status: Unutilized
Reasons: Secured Area Extensive deterioration

Ohio

Army Reserve Center
Plymouth Road
Jamestown Co: Greene OH 45335–
Landholding Agency: GSA
Property Number: 54200340009
Status: Surplus
Reason: Extensive deterioration
GSA Number: 4–G–VA–0734

Oklahoma

2 Bldgs.
Outlet Channel/Walker Creek
Waurika Co: OK 73573–0029
Landholding Agency: COE
Property Number: 31200340013
Status: Excess
Reason: Extensive deterioration
2 Bldgs.
Damsite South
Stigler Co: OK 74462–9440
Landholding Agency: COE
Property Number: 31200340014
Status: Excess
Reason: Extensive deterioration
19 Bldgs.
Kaw Lake
Ponca City Co: OK 74601–9962
Landholding Agency: COE
Property Number: 31200340015
Status: Excess
Reason: Extensive deterioration
30 Bldgs.
Keystone Lake
Sand Springs Co: OK 74063–9338
Landholding Agency: COE
Property Number: 31200340016
Status: Excess
Reason: Extensive deterioration
13 Bldgs.
Oologah Lake
Oologah Co: OK 74053–0700
Landholding Agency: COE
Property Number: 31200340017
Status: Excess
Reason: Extensive deterioration
14 Bldgs.
Pine Creek Lake
Valliant Co: OK 74764–9801
Landholding Agency: COE
Property Number: 31200340018
Status: Excess
Reason: Extensive deterioration
6 Bldgs.
Sardis Lake
Clayton Co: OK 74536–9729
Landholding Agency: COE
Property Number: 31200340019
Status: Excess
Reason: Extensive deterioration
24 Bldgs.
Skiatook Lake
Skiatook Co: OK 74070–9803
Landholding Agency: COE
Property Number: 31200340020
Status: Excess
Reason: Extensive deterioration
40 Bldgs.
Eufaula Lake
Stigler Co: OK 74462–5135
Landholding Agency: COE
Property Number: 31200340021
Status: Excess
Reason: Extensive deterioration
2 Bldgs.
Holiday Cove
Stigler Co: OK 74462–5135
Landholding Agency: COE
Property Number: 31200340022
Status: Excess
Reason: Extensive deterioration
18 Bldgs.
Fort Gibson
Ft. Gibson Co: Wagoner OK 74434–0370
Landholding Agency: COE
Property Number: 31200340023
Status: Excess
Reason: Extensive deterioration
2 Bldgs.
Fort Supply
Ft. Supply Co: Woodward OK 73841–0248
Landholding Agency: COE
Property Number: 31200340024
Status: Excess
Reason: Extensive deterioration
Game Bird House
Fort Supply Lake
Ft. Supply Co: Woodward OK 73841–0248
Landholding Agency: COE
Property Number: 31200340025
Status: Excess
Reason: Extensive deterioration
11 Bldgs.
Hugo Lake
Sawyer Co: OK 74756–0099
Landholding Agency: COE
Property Number: 31200340026
Status: Excess
Reason: Extensive deterioration
5 Bldgs.
Birch Cove/Twin Cove
Skiatook Co: OK 74070–9803
Landholding Agency: COE
Property Number: 31200340027
Status: Excess
Reason: Extensive deterioration
2 Bldgs.
Fairview Group Camp
Canton Co: OK 73724–0069
Landholding Agency: COE
Property Number: 31200340028
Status: Excess
Reason: Extensive deterioration
2 Bldgs.
Chouteau & D Bluff
Gore Co: Wagoner OK 74935–9404
Landholding Agency: COE
Property Number: 31200340029
Status: Excess
Reason: Extensive deterioration
2 Bldgs.
Newt Graham L&D
Gore Co: OK 74935–9404
Landholding Agency: COE
Property Number: 31200340030
Status: Excess
Reason: Extensive deterioration
6 Bldgs.
Damsite/Fisherman's Landing
Sallisaw Co: OK 74955–9445
Landholding Agency: COE
Property Number: 31200340031
Status: Excess
Reason: Extensive deterioration
10 Bldgs.
Webbers Falls Lake
Gore Co: OK 74435–5541
Landholding Agency: COE
Property Number: 31200340032
Status: Excess
Reason: Extensive deterioration
14 Bldgs.
Copan Lake
Copan Co: OK 74022–9762
Landholding Agency: COE
Property Number: 31200340033
Status: Excess
Reason: Extensive deterioration

South Carolina

Bldg.
Fishing Creek/Deer Run
Clarks Hill Co: SC 29821–0010
Landholding Agency: COE
Property Number: 31200340034
Status: Excess
Reason: Extensive deterioration

Texas

58 Bldgs.
Texoma Lake
Denison Co: TX 75020–6425
Landholding Agency: COE
Property Number: 31200340035
Status: Excess
Reason: Extensive deterioration

Virginia

Wharf 2
Naval Station
St. Juliens Creek Annex
Chesapeake Co: VA
Landholding Agency: Navy
Property Number: 77200340044
Status: Unutilized
Reason: Extensive deterioration
Bldg. M2
Naval Station
St. Juliens Creek Annex
Chesapeake Co: VA
Landholding Agency: Navy
Property Number: 77200340045
Status: Excess
Reason: Extensive deterioration
Bldg. 13
Naval Station
St. Juliens Creek Annex
Chesapeake Co: VA
Landholding Agency: Navy
Property Number: 77200340046
Status: Excess
Reason: Extensive deterioration
Bldg. 20
Naval Station
St. Juliens Creek Annex
Chesapeake Co: VA
Landholding Agency: Navy
Property Number: 77200340047
Status: Excess
Reason: Extensive deterioration
Bldg. 64
Naval Station
St. Juliens Creek Annex
Chesapeake Co: VA
Landholding Agency: Navy
Property Number: 77200340048
Status: Excess
Reason: Extensive deterioration
Bldgs. 65, 66, 67
Naval Station
St. Juliens Creek Annex
Chesapeake Co: VA
Landholding Agency: Navy
Property Number: 77200340049
Status: Excess
Reason: Extensive deterioration
Bldg. 86
Naval Station
St. Juliens Creek Annex
Chesapeake Co: VA
Landholding Agency: Navy
Property Number: 77200340050
Status: Excess
Reason: Extensive deterioration
Bldgs. 255, 275
Naval Station
St. Juliens Creek Annex
Chesapeake Co: VA
Landholding Agency: Navy
Property Number: 77200340051
Status: Excess
Reason: Extensive deterioration

Washington

Bldg. 2633
Naval Air Station
Oak Harbor Co: Island WA 98278–
Landholding Agency: Navy
Property Number: 77200340052
Status: Excess
Reason: Extensive deterioration

West Virginia

Radio Transmitter Rcv Site
Greenbrier Street
Charleston Co: WV 25311–
Landholding Agency: GSA
Property Number: 54200340011
Status: Excess
Reason: Within 2,000 ft. of flammable or explosive material
GSA Number: 4–U–WV–0547

Land (by State)

Kentucky

Ferry Access Site
Route 130
Uniontown Co: KY 42461–
Landholding Agency: GSA
Property Number: 54200340007
Status: Excess
Reason: Floodway
GSA Number: 4–D–KY–0612

Montana

Sewage Lagoons/40 acres
VA Center
Ft. Harrison Co: MT 59639–
Landholding Agency: VA
Property Number: 97200340007
Status: Excess
Reason: Floodway

[FR Doc. 03–29872 Filed 12–4–03; 8:45 am]

BILLING CODE 42–29–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Availability of a Draft Revised Recovery Plan for the Chittenango Ovate Amber Snail for Review and Comment

AGENCY: Fish and Wildlife Service, Department of the Interior.

ACTION: Notice of availability.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces availability for public review of a draft revised recovery plan for the Chittenango ovate amber snail (*Novisuccinea chittenangoensis*). This species is federally listed as threatened under the Endangered Species Act of 1973, as amended (Act) (16 U.S.C. 1531 *et seq.*). The Service solicits review and comment from the public on this draft plan.

DATES: Comments on the draft recovery plan received on or before January 5, 2004, will be considered by the Service.

ADDRESSES: Persons wishing to review the draft recovery plan may obtain a copy through the following means:

1. Through a written request to the Field Supervisor, U.S. Fish and Wildlife Service, New York Field Office, 3817 Luker Road, Cortland, New York 13045.
2. By telephone: 607–753–9334 or fax 607–753–9699.
3. By e-mail to *Robyn_Niver@fws.gov*.
4. By accessing the Field Office Web site: *http://nyfo.fws.gov*.

Copies of the draft recovery plan may also be viewed at two public libraries: Moon Library, State University of New York College of Environmental Science and Forestry, 1 Forestry Drive, Syracuse, New York 13210 (Telephone: 315–470–6726).

Sullivan Free Library, 519 McDonald Street (Back side of Genesee Street), Chittenango, New York 13037 (Telephone: 615–687–6331).

FOR FURTHER INFORMATION CONTACT: Ms. Robyn Niver, U.S. Fish and Wildlife Service, New York Field Office, 3817 Luker Road, Cortland, New York 13045.

SUPPLEMENTARY INFORMATION:

Background

Restoring an endangered or threatened animal or plant to the point where it is again a secure, self-sustaining member of its ecosystem is a primary goal of the Service's endangered species program. To help guide the recovery effort, the Service is working to prepare recovery plans for most of the federally listed species native to the United States. Recovery plans describe actions necessary for the conservation of the species, establish criteria which, when met, would result in a determination that the species no longer needs the protection of the Act, and provide estimates of the time and cost for implementing the needed recovery measures.

The Act requires recovery plans for listed species unless such a plan would not promote the conservation of a particular species. Section 4(f) of the Act, as amended in 1988, requires that public notice and opportunity for public review and comment be provided during recovery plan development. The Service will consider all information received during a public comment period when preparing each new or revised recovery plan for approval. The Service and other Federal agencies will also take these comments into consideration in the course of implementing approved recovery plans.

The Chittenango ovate amber snail (*Novisuccinea chittenangoensis*) was listed as a threatened species in July 1978, and the initial recovery plan for the species was completed in March 1983. Since its discovery in 1905, only one extant *N. chittenangoensis* colony has been verified, from a site within the Chittenango Falls State Park in Madison County, New York. The Chittenango ovate amber snail was listed due to its rarity and population decline. Since listing, habitat protection and captive propagation measures have been implemented, but the species' status has become exceedingly precarious. The primary threats to the snail are its small population size and limited distribution as well as an undefined negative interaction with an introduced snail, *Succinea* sp. B. Additionally, potential threats persist from habitat changes and inadvertent human disturbance.

The Chittenango ovate amber snail is a terrestrial species that requires the cool, mild-temperature, moist conditions provided by the waterfalls and mist in its environment. Its habitat lies within a ravine at the base of a 167-foot waterfall, and the ledges where it is found comprise an early successional sere that is periodically rejuvenated to a bare substrate by floodwaters. The species requires a substrate rich in calcium carbonate and appears to prefer green vegetation such as the various mosses, liverworts, and other low herbaceous vegetation found within the spray zone adjacent to the falls. Clean water may be necessary to maintain essential habitat, although water quality may have only an indirect effect on the snail.

The recovery goal for the Chittenango ovate amber snail is to achieve long-term viability of the species in the wild, thereby allowing it to be taken off the Federal List of Endangered and Threatened Wildlife. The first phase of recovery for *N. chittenangoensis* will involve stabilizing the extant population at Chittenango Falls. To accomplish this, a habitat management/protection plan for Chittenango Falls is needed, along with research into the species' biological requirements and genetic status as well as possible means of controlling the competing *Succinea* sp. B and abating any additional threats to the snail and its habitat. Given the grave uncertainty about the in situ survival prospects of this snail, captive propagation is also viewed as essential for the species' stabilization.

Once the *N. chittenangoensis* population at Chittenango Falls is stabilized or increased, the second recovery phase for the species will involve establishing additional Chittenango ovate amber snail subpopulations at the Falls. In conjunction with long-term abatement of threats to the species, this should safeguard the species from extinction caused by highly localized events. Long-term maintenance of *ex situ* populations will also help ensure the species' survival.

Public Information Solicited

The Service solicits public comments on the recovery plan described. All comments received by the date specified will be considered prior to approval of the plan. Written comments and materials regarding the plan should be addressed to the Field Supervisor (see **ADDRESSES** section). Comments and materials received will be available, by appointment, for public inspection during normal business hours at the above address.

Authority: The authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: November 7, 2003.

Richard O. Bennett,

Acting Regional Director, Region 5, Fish and Wildlife Service, Department of the Interior.

[FR Doc. 03–30254 Filed 12–4–03; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Geological Survey

Request for Public Comments on Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

A request extending the collection of information has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed collection of information and related forms may be obtained by contacting the USGS Clearance Officer at the phone number listed below. OMB has up to 60 days to approve or disapprove the information collection but may respond after 30 days; therefore, public comments should be submitted to OMB within 30 days in order to assure their maximum consideration. Address your comments and suggestions on the information collection requirement by either fax (202) 395–6566 or e-mail (*oira_docket@omb.eop.gov*) to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for the Department of the Interior (OMB Control Number 1028–0060). Send copies of your comments and suggestions to the USGS Clearance Officer, U.S. Geological Survey, 807 National Center, Reston, VA 20192.

As required by OMB regulations at CFR 1320.8(d)(1), the U.S. Geological Survey solicits specific public comments regarding the proposed information collection as to:

1. Whether the collection of information is necessary for the proper performance of the functions of the USGS, including whether the information will have practical utility;
2. The accuracy of the USGS estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;
3. The utility, quality, and clarity of the information to be collected; and,
4. How to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated electronic, mechanical, or other forms of information technology.

Title: Mine, Development, and Mineral Exploration Supplement.

Current OMB approval number: 1028–0060.

Abstract: Respondents supply the U.S. Geological Survey with domestic production, exploration, and mine development data on nonfuel mineral commodities. This information will be published as an Annual Report for use by Government agencies, industry, and the general public.

Bureau form number: 9–4000–A.

Frequency: Annual.

Description of respondents: Nonfuel Mineral Producers and Exploration Operations.

Annual Responses: 754.

Annual burden hours: 566.

Bureau clearance officer: John E. Cordyack, Jr., (703) 648–7313.

John H. DeYoung, Jr.,

Chief Scientist, Minerals Information Team.

[FR Doc. 03–30196 Filed 12–4–03; 8:45 am]

BILLING CODE 4310–Y7–M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Rate Adjustments for Indian Irrigation Facilities

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of rate adjustments.

SUMMARY: The Bureau of Indian Affairs (BIA) owns or has an interest in irrigation facilities located on various Indian reservations throughout the United States. The BIA establishes irrigation assessment rates to recover its costs to administer, operate, maintain, and rehabilitate certain of those facilities. We are notifying you that we have adjusted the irrigation assessment rates at several of our irrigation facilities where we are required to recover our full costs of operation and maintenance.

EFFECTIVE DATE: The irrigation assessment rates shown in the tables were effective on January 1, 2003.

FOR FURTHER INFORMATION CONTACT: For details about a particular BIA irrigation facility, please use the tables in the **SUPPLEMENTARY INFORMATION** section to contact the regional or agency office where the facility is located.

SUPPLEMENTARY INFORMATION: A Notice of Proposed Rate Adjustment was published in the **Federal Register** on January 9, 2003 (68 FR 1191), to adjust the irrigation rates at several BIA irrigation facilities. The public and interested parties were provided an opportunity to submit written comments during the 60-day period subsequent to January 9, 2003.

Did the BIA Receive any Comments on the Proposed Irrigation Assessment Rate Adjustments?

Written comments were received for: (a) Fort Belknap Irrigation Project, Montana; (b) Wapato Irrigation Project, Washington; and (c) Wind River Irrigation Project, Wyoming.

What Issues Were of Concern by the Commentators?

The commentors were concerned with one or more of the following three issues: (1) Consultation with stakeholders; (2) how funds collected from stakeholders are expended on operation and maintenance; and (3) the impact of an assessment rate increase on the local agricultural economy.

How Does BIA Respond to the Concern of Consultation with Stakeholders?

Consultations between stakeholders and any of the BIA irrigation facilities are ongoing through local meetings held periodically at different locations convenient to the stakeholders of the individual irrigation facilities. At these consultation meetings, any issue of concern by a stakeholder can be brought up and discussed such as water operations, facility maintenance, and financial management. Stakeholders also can contact BIA representatives at the specific facility serving them using the tables in the **SUPPLEMENTARY INFORMATION** section to discuss issues of concern.

How Does BIA Respond to the Concern of How Funds Are Expended for Operation and Maintenance?

The BIA's records for expenditures on all of its irrigation facilities are public records and available for review by stakeholders or interested parties. These records can be reviewed during normal business hours at the individual agency offices. To review these records, stakeholders and interested parties are directed to contact the BIA representative at the specific facility serving them using the tables in the **SUPPLEMENTARY INFORMATION** section.

How Does BIA Respond to the Concern of an Irrigation Assessment Rate Increase and its Impact on the Local Agricultural Economy?

All of the BIA's irrigation projects are important economic contributors to the local communities they serve, contributing millions in crop value annually. Historically, BIA tempered irrigation rate increases to demonstrate sensitivity to the economic impact on water users. This has resulted in a rate deficiency at most of the irrigation projects.

Over the past several years the BIA's irrigation program has been the subject of several Office of Inspector General (OIG) audits. In the most recent audit, No. 96–I–641, March 1996, the OIG concluded, "Operation and maintenance revenues were insufficient to maintain the projects, and some projects had deteriorated to the extent that their continued capability to deliver water was in doubt. This occurred because operation and maintenance rates were not based on the full cost of delivering water, including the costs of systematically rehabilitating and replacing project facilities and equipment, and because project personnel did not seek regular rate increases to cover the full cost of operation." This audit recommendation is still outstanding.

A previous OIG audit, No. 88–42, February 1988, reached the same conclusion. A separate audit performed on the Wapato Irrigation Project, No. 95–I–1402, September 1995, reinforced the general findings of the OIG on the BIA's irrigation program. This pointed out a lack of response by the BIA to the original findings of the OIG in addressing this critical issue over an extended period of time. The BIA must systematically review and evaluate irrigation assessment rates and adjust them when necessary to reflect the full costs to properly operate, and perform all appropriate maintenance on, the irrigation facility infrastructure for safe and reliable operation. If this review and evaluation is not accomplished, a rate deficiency can eventually accumulate. Overcoming rate deficiencies can result in the BIA having to raise irrigation assessment rates in larger increments and over shorter time frames than would have been otherwise necessary.

Does the BIA Have Any Proposed Rate Adjustments That Were Not Put Into Effect?

The proposed rate adjustment for the 2003 irrigation season at the Wind River Irrigation Project from $12.00 to $13.00 was not put into effect. After further consultation with the stakeholders, the BIA agreed to delay the proposed rate adjustment until the 2004 irrigation season. For the 2004 irrigation season a rate adjustment from $12.00 to $14.00 is proposed to make up the lost revenue for the 2003 irrigation season. The proposed rate adjustment is in a separate notice.

Where Can I Get Information on the Regulatory and Legal Citations in This Notice?

You can contact the individuals listed in the contact tables below or you can use the Internet site for the Government Printing Office at *http://www.gpo.gov.*

What Authorizes Us To Issue This Notice?

Our authority to issue this document is vested in the Secretary of the Interior by 5 U.S.C. 301 and the Act of August 14, 1914 (38 Stat. 583; 25 U.S.C. 385). The Secretary has in turn delegated this authority to the Assistant Secretary—Indian Affairs under part 209, chapter 8.1A, of the Department of the Interior's Departmental Manual.

Does This Notice Affect Me?

This notice affects you if you own or lease land within the assessable acreage of one of our irrigation facilities, or you have a carriage agreement with one of our irrigation facilities.

Who Can I Contact for Further Information?

The following tables list the regional and agency contacts for the irrigation facilities where the BIA recovers its costs for local administration, operation, maintenance, and rehabilitation.

Northwest Region Contacts

Stanley Speaks, Regional Director Bureau of Indian Affairs, Northwest Regional Office 911 N.E. 11th Avenue Portland, Oregon 97232–4169 Telephone (503) 231–6702	
Name:	Contacts:
Flathead Irrigation Project	Ernest T. Moran, Superintendent,Flathead Agency Irrigation Division,PO Box 40,Pablo, Montana 59855–5555,Telephone: (406) 675–2700.
Fort Hall Irrigation Project	Eric J. LaPointe, Superintendent,Fort Hall Agency,PO Box 220,Fort Hall, Idaho 83203–0220,Telephone: (208) 238–2301.
Wapato Irrigation Project	Pierce Harrison, Project Administrator,Wapato Irrigation Project,PO Box 220,Wapato, WA 98951–0220,Telephone: (509) 877–3155.

Rocky Mountain Region Contacts

Keith Beartusk, Regional Director Bureau of Indian Affairs, Rock Mountain Regional Office 316 North 26th Street Billings, Montana 59101. Telephone: (406) 247–7943	
Name:	Contacts:
Blackfeet Irrigation Project	Ross Denny, Superintendent,Cliff Hall, Irrigation Manager,Box 880,Browning, MT 59417,Telephones: (406) 338–7544, Superintendent;(406) 338–7519, Irrigation.
Crow Irrigation Project	Gordon Jackson, Superintendent,Dan Lowe, Irrigation Manager, PO Box 69,Crow Agency, MT 59022,Telephones: (406) 638–2672, Superintendent;(406) 638–2863, Irrigation.
Fort Belknap Irrigation Project	Cleo Hamilton, Superintendent.Dan Spencer, Irrigation Manager,R.R.1, Box 980.Harlem, MT 59526,Telephones: (406) 353–2901 Superintendent;(406) 353–2905, Irrigation.
Fort Peck Irrigation Project	Spike Bighorn, Superintendent,PO Box 637,Poplar, MT 59255,Rhonda Knutsen, Irrigation Manager, 602 6th Avenue North,Wolf Point, MT 59201, Telephones: (406) 768–5312, Superintendent;(406) 653–1752, Irrigation.
Wind River Irrigation Project	Steven Pollock, (Acting) Superintendent,Hilare Peck, Irrigation Manager,PO Box 158,Fort Washakie, WY 82514,Telephones: (307) 332–7810, Superintendent;(307) 332–2596, Irrigation.

Southwest Region Contacts

Rob Baracker, Regional Director Bureau of Indian Affairs, Southwest Regional Office 615 First Street, NW Albuquerque, New Mexico 87102 Telephone (505) 346–7587	
Name:	Contacts:
Pine River Irrigation Project	Michael Stancampiano, Superintendent, Kenneth Caveney, Irrigation Engineer, PO Box 315, Ignacio, CO 81137–0315, Telephones: (970) 563–4511, Superintendent; (970) 563–1017, Irrigation.

Western Region Contacts

Wayne Nordwall, Regional Director Bureau of Indian Affairs, Western Regional Office PO Box 10 Phoenix, Arizona 85001 Telephone (602) 379–6600	
Name:	Contacts:
Colorado River Irrigation Project	Allen Anspach, Superintendent, R.R. 1, Box 9–C, Parker, AZ 85344, Telephone: (928) 669–7111.
Duck Valley Irrigation Project	Paul Young, Superintendent, 1555 Shoshone Circle, Elko, Nevada 89801, Telephone: (775) 738–0569, Superintendent.
Fort Yuma Irrigation Project	William Pyott, Land Operations Officer, P.O. Box 11000, Yuma, Arizona, Telephone: (520) 782–1202.
San Carlos Irrigation Project Joint Works	Carl Christensen, Irrigation Manager, 13805 N. Arizona Boulevard, Coolidge, AZ 85228, Telephone: (520) 723–6216.
San Carlos Irrigation Project Indian Works	Joe Revak, Pima Agency, Land Operations, Box 8, Sacaton, AZ 85247, Telephone: (520) 562–3372.
Uintah Irrigation Project	Lynn Hansen, Irrigation Manager, PO Box 130, Fort Duchesne, UT 84026, Telephone: (435) 722–4341.
Walker River Irrigation Project	Robert Hunter, Superintendent, 1677 Hot Springs Road, Carson City, Nevada 89706, Telephone: (775) 887–3500.

What Will BIA Charge for the 2003 Irrigation Seasons?

The rate tables below show how we billed each of our irrigation facilities for the 2003 irrigation season as indicated. An asterisk immediately following the name of the facilities notes the irrigation facilities where rates were adjusted.

NORTHWEST REGION RATE TABLE

Name	Rate category	2003 season rate
Flathead Irrigation Project (See Note #1 below)	Basic per acre	$19.95
Fort Hall Irrigation Project*	Basic per acre	22.00
Fort Hall Irrigation Project—Minor Units	Basic per acre	14.00
Fort Hall Irrigation Project—Michaud*	Basic per acre	30.00
	Pressure per acre	43.50
Wapato Irrigation Project—Ahtanum Unit*	Billing Charge Per Tract	5.00
	Farm unit/land tracts up to one acre (minimum charge)	13.00
	Farm unit/land tracts over one acre—per acre	13.00
Wapato Irrigation Project—Toppenish/Simcoe Units*	Billing Charge Per Tract	5.00
	Farm unit/land tracts up to one acre (minimum charge)	13.00
	Farm unit/land tract over one acre—per acre	13.00
Wapato Irrigation Project—Wapato/Satus Unit*	Billing Charge Per Tract	5.00
	Farm unit/land tracts up to one acre (minimum charge)	51.00
	"A" farm unit/land tracts over one acre—per acre	51.00
	Additional Works farm unit/land tracts over one acre—per acre	56.00
	"B" farm unit/land tracts over one acre—per acre	61.00

NORTHWEST REGION RATE TABLE—Continued

Name	Rate category	2003 season rate
	Water Rental Agreement Lands—per acre	62.00

Note #1.—The Flathead Irrigation Project assessment rate for the 2004 season was proposed in 68 FR 1191–1196 at $21.45 per acre. This rate is considered implemented for the 2004 season and will be published in the Federal Register notice for the 2004 irrigation season.

ROCKY MOUNTAIN REGION RATE TABLE

Name	Rate category	2003 season rate
Blackfeet Irrigation Project	Basic per acre	$13.00
Crow Irrigation Project	Basic per acre	16.00
Fort Belknap Irrigation Project	Indian per acre	7.00
	Non-Indian per acre	14.00
Fort Peck Irrigation Project	Basic per acre	14.00
Wind River Irrigation Project	Basic per acre	12.00

WESTERN REGION RATE TABLE

Project name	Rate category	2003 season rate
Colorado River Irrigation Project	Basic per acre up to 5.75 acre-feet	$47.00
	Excess Water per acre foot over 5.75 acre-feet	17.00
Duck Valley Irrigation Project	Basic per acre	5.30
Fort Yuma Irrigation Project (See Note #2 below)	Basic per acre up to 5.0 acre-feet	60.00
	Excess Water per acre-foot over 5.0 acre-feet	10.50
San Carlos Irrigation Project (Joint Works)	Basic per acre	20.00
San Carlos Irrigation Project (Indian Works)	Basic per acre	56.00
Uintah Irrigation Project*	Basic per acre	11.00
Walker River Irrigation Project	Indian per acre	7.32
	non-Indian per acre	15.29

Note #2.—The Fort Yuma Irrigation Project is owned and operated by the Bureau of Reclamation (Reclamation). The irrigation rate assessed for operation and maintenance are established by Reclamation and are provided for informational purposes only. The BIA only collects the irrigation assessments on behalf of Reclamation.

SOUTHWEST REGION RATE TABLE

Name	Rate category	2003 season rate
Pine River Irrigation Project	Minimum Charge per tract	$25.00
	Basic per acre	8.50

Consultation and Coordination With Tribal Governments (Executive Order 13175)

The BIA irrigation facilities are vital components of the local agriculture economy of the reservations on which they are located. To fulfill its responsibilities to the tribes, tribal organizations, water user organizations, and the individual water users, the BIA communicates, coordinates, and consults on a continuing basis with these entities on issues of water delivery, water availability, costs of administration, operation, maintenance, and rehabilitation. This is accomplished at the individual irrigation facilities by agency and regional representatives, as appropriate, in accordance with local protocol and procedures. This notice is one component of the BIA's overall coordination and consultation process to provide notice and request comments from these entities on adjusting irrigation assessment rates.

Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use (Executive Order 13211)

The rate adjustments will have no adverse effects on energy supply, distribution, or use (including a shortfall in supply, price increases, and increased use of foreign supplies) should the proposed rate adjustments be implemented. This is a notice for rate adjustments at BIA owned and operated irrigation facilities, except for the Fort Yuma Irrigation Project. The Fort Yuma Irrigation Project is owned and operated by the Bureau of Reclamation with a portion serving the Fort Yuma Reservation.

Regulatory Planning and Review (Executive Order 12866)

These rate adjustments are not a significant regulatory action and do not need to be reviewed by the Office of Management and Budget under Executive Order 12866.

Regulatory Flexibility Act

This rate making is not a rule for the purposes of the Regulatory Flexibility Act because it is "a rule of particular applicability relating to rates." 5 U.S.C. 601(2).

Unfunded Mandates Act of 1995

These rate adjustments impose no unfunded mandates on any governmental or private entity and are in compliance with the provisions of the Unfunded Mandates Act of 1995.

Takings Implications (Executive Order 12630)

The Department has determined that these rate adjustments do not have significant "takings" implications. The rate adjustments do not deprive the public, state, or local governments of rights or property.

Federalism (Executive Order 13132)

The Department has determined that these rate adjustments do not have significant Federalism effects because they pertain solely to Federal-tribal relations and will not interfere with the roles, rights, and responsibilities of states.

Civil Justice Reform (Executive Order 12988)

In accordance with Executive Order 12988, the Office of the Solicitor has determined that this rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order.

Paperwork Reduction Act of 1995

These rate adjustments do not affect the collections of information which have been approved by the Office of Information and Regulatory Affairs, Office of Management and Budget, under the Paperwork Reduction Act of 1995. The OMB Control Number is 1076–0141 and expires April 30, 2006.

National Environmental Policy Act

The Department has determined that these rate adjustments do not constitute a major Federal action significantly affecting the quality of the human environment and that no detailed statement is required under the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370(d)).

Dated: November 21, 2003.

Aurene M. Martin,

Principal Deputy Assistant Secretary—Indian Affairs.

[FR Doc. 03–30253 Filed 12–4–03; 8:45 am]

BILLING CODE 4310–W7–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Lytton Rancheria of California Ordinance Governing the Sale, Consumption, and Possession of Alcoholic Beverages

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: This notice publishes the Lytton Rancheria of California Liquor Ordinance. The ordinance regulates and controls the distribution, sale, consumption, possession, inspection, licensing, enforcement and legal compliance associated with the introduction of alcohol at the Casino San Pablo premises, Contra Costa County, California.

EFFECTIVE DATE: This Ordinance is effective on December 5, 2003.

FOR FURTHER INFORMATION CONTACT: Duane T. Bird Bear, Office of Tribal Services, Bureau of Indian Affairs, 1951 Constitution Avenue, NW., MS–320–SIB, Washington, DC 20240, Telephone: (202) 513–7641.

SUPPLEMENTARY INFORMATION: Pursuant to the Act of August 15, 1953, Public Law 83–277, 67 Stat. 586, 18 U.S.C. 1161, as interpreted by the Supreme Court in *Rice* v. *Rehner*, 463 U.S. 713 (1983), the Secretary of the Interior shall certify and publish in the **Federal Register** notice of adopted liquor ordinances for the purpose of regulating liquor transactions in Indian Country. The Tribal Council of the Lytton Rancheria of California, also known as the Lytton Band of Pomo Indians, adopted a Tribal Liquor Ordinance on April 10, 2001. The purpose of this ordinance is to govern the distribution, sale, consumption, possession, inspection, licensing, enforcement and legal compliance associated with the introduction of alcohol on the Casino San Pablo premises in the County of Contra Costa, California.

This notice is published in accordance with the authority delegated by the Secretary of the Interior to the Principal Deputy Assistant Secretary—Indian Affairs. Amendments to the ordinance are subject to the approval of the Assistant Secretary for Indian Affairs and shall be published in the **Federal Register** before the amendments become effective.

I certify that the Tribal Liquor Ordinance was duly adopted by the Tribal Council of the Lytton Band of Pomo Indians on April 10, 2001.

Dated: November 21, 2003.

Aurene M. Martin,

Principal Deputy Assistant Secretary—Indian Affairs.

The Lytton Rancheria of California Liquor Ordinance reads as follows:

Resolution of the Lytton Rancheria (Lytton Band of Pomo Indians)

Adopting an Ordinance Governing the Sale, Consumption, and Possession of Alcoholic Beverages at Lytton's Casino San Pablo

Whereas: The Lytton Band of Pomo Indians ("the Tribe") plans to own and operate the Casino San Pablo and to offer Class II and Class III gaming there pursuant to federal and tribal law, a tribal-state compact, and its Municipal Services Agreement with the City of San Pablo; and

Whereas: The Tribe has determined that it is in its best interest for the sale of alcoholic beverages at Casino San Pablo to continue pursuant to state, federal, and tribal law after the Tribe becomes the owner and operator of Casino San Pablo;

It is therefore resolved that the Tribe hereby adopts the following Ordinance, to become effective as set forth therein:

Lytton Rancheria (Lytton Band of Pomo Indians) Contra Costa County, California

Sale, Possession, and Consumption of Alcoholic Beverages

The Tribal Council (hereinafter "Council") of the Lytton Rancheria (hereinafter "Tribe"), also known as the Lytton Band of Pomo Indians, hereby enacts this Ordinance to govern the sale and consumption of alcoholic beverages on Rancheria lands in Contra Costa County, California.

Preamble

A. Title 18, United States Code, Section 1161, provides Indian tribes with authority to enact ordinances governing the consumption and sale of alcoholic beverages on their Reservations, provided such ordinance is certified by the Secretary of the Interior and published in the **Federal Register** and such activities are in conformity with state law.

B. Pursuant to Article III of the Tribe's Constitution, the Tribal Council is the governing body of the Tribe. Pursuant to Article XIII of the Constitution, the Tribal Council is empowered to promulgate and enforce tribal laws exercising the Tribe's regulatory authority for the protection of public health and safety (Section 13.1 (f)) and administering all lands and assets and managing all economic affairs, planning and enterprises of the Tribe (Section 13.1(e); and to regulate the conduct of all persons who enter the jurisdiction of the Tribe (Section 13.1(i)).

C. Pursuant to Article I of the Tribe's Constitution, the territorial jurisdiction of the Tribe includes all lands held in

trust by the United States for and possessed or occupied by the Tribe or its members.

D. Pursuant to Section 819 of the Omnibus Indian Advancement Act of 2000 ("the Act"), the United States is to become the owner in trust for Tribe of that certain Contra Costa County, California property ("the Property") described in the Act, which is commonly known as Casino San Pablo. Immediately upon acceptance by the United States of the Property in trust of the Tribe, the Tribe will become the owner and operator of Casino San Pablo (the "Facility") pursuant to the Indian Gaming Regulatory Act. The Facility will be an integral and indispensable part of the Tribe's economy, providing income to the Tribe and training and employment to its members. The Tribal Council has determined that it is in the Tribe's best interest to offer alcoholic beverages for sale and consumption in the Facility.

E. Pursuant to its Ordinance Restricting Gaming Activities And Areas At Lytton's Casino San Pablo To Persons Of The Age Of Twenty-One Years Old And Older, the Tribe has restricted gaming activities in the Facility to persons over the age of twenty-one years old.

F. It is the purpose of this Ordinance to set out the terms and conditions under which the sale and consumption of said alcoholic beverages may take place.

General Terms

1. The sale of alcoholic beverages within the Facility, for on-Premises consumption only, is hereby authorized.

2. No alcoholic beverages may be sold at any location on the Rancheria other than inside the Facility.

3. The sale of said alcoholic beverages authorized by this Ordinance shall be in conformity with all applicable laws of the State of California, and the sale of said beverages shall be subject to state sales tax, federal excise tax and any fees required by the Federal Bureau of Alcohol, Tobacco and Firearms. This includes but is not limited to the following examples:

a. No person under the age of 21 years shall consume, acquire or have in his or her possession at the Premises any alcoholic beverage.

b. No person shall sell alcohol to any person under the age of 21 at the Premises.

c. No person shall sell alcohol to a person apparently under the influence of liquor at the Premises.

4. Where there may be a question of a person's right to purchase liquor by reason of his or her age, such person shall be required to present any one of the following types of identification which shows his or her correct age and bears his or her signature and photograph: (1) Driver's license or identification card issued by any state Department of Motor Vehicles; (2) United States Active Duty Military card; (3) passport.

5. All liquor sales within the Premises shall be on a cash only basis and no credit shall be extended to any person, organization or entity, except that this provision does not prevent the use of major credit cards.

Posting

6. This Ordinance shall be conspicuously posted within the Premises at all times it is open to the public.

Enforcement

7. This Ordinance may be enforced by the Tribal Council and by any additional tribal government agencies to which the Tribal Council may from time to time by resolution delegate such enforcement powers. Enforcement sanctions may include, but are not limited to, the assessment of monetary fines not to exceed $500 and revocation of authorization to sell alcohol at the Facility. Prior to any enforcement action, any alleged violator of this Ordinance shall be provided with at least three (3) days notice in writing of an opportunity to be heard during a hearing at which due process is provided. The decision of the Tribal Council or other agency with delegated authority after such hearing shall be final.

Severability

8. If any provision or application of this Ordinance is determined by the Tribal Council or other agency with delegated authority to be invalid, such adjudication shall not be held to render ineffectual the remaining portions of this Ordinance or to render such provisions inapplicable to other circumstances.

Amendment

9. This Ordinance may only be amended by a majority vote of the Tribal Council and such amendment shall be subject to the provisions of Title 18, United States Code, Section 1161.

Sovereign Immunity

10. Nothing in this Ordinance in any way limits, alters, restricts or waives the Tribe's sovereign immunity from unconsented suit, claim, or action.

Effective Date

11. This Ordinance shall not be effective until: (1) It is certified by the Secretary of the Interior and published in the **Federal Register**, and (2) the Property is accepted by the United States in trust for the Tribe. Its effective date shall be the date of the happening of the later of those actions.

Certification

The foregoing Resolution was adopted by a vote of 7 for, and -0- against and -0- abstentions, at a duly called meeting of the Tribal Council of the Lytton Rancheria (aka the Lytton Band of Pomo Indians) at which a quorum was present, on this 10th day of April, 2001.

Margie Mejia,
Tribal Chair.
Danny O'Campo,
Tribal Secretary.

[FR Doc. 03–30243 Filed 12–4–03; 8:45 am]
BILLING CODE 4310–4J–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–020–1990–EX]

Notice of Availability of Final Supplemental Environmental Impact Statement; Glamis Marigold Mining Company/Marigold Mine Millennium Expansion Project, Humboldt Co., NV

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability.

SUMMARY: Pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969, notice is given that the Winnemucca Field Office of the Bureau of Land Management (BLM) has prepared, by third party contractor, a Final Supplemental Environmental Impact Statement (SEIS) on the Glamis Marigold Mining Company/Marigold Mine Millennium Expansion Project, located in Humboldt County, Nevada.

EFFECTIVE DATES: The period of availability for public review of the Final SEIS ends 30 days after publication of this notice in the **Federal Register** by the Environmental Protection Agency. At that time, public comments will be reviewed and considered in the decision making process. The Record of Decision will reflect any changes made to the Draft SEIS.

ADDRESSES: A copy of the Final SEIS can be obtained from: Bureau of Land Management, Winnemucca Field Office, 5100 East Winnemucca Blvd., Winnemucca, Nevada 89445.

FOR FURTHER INFORMATION CONTACT: Jeffrey D. Johnson, Project Manager, at the above Winnemucca Field Office address or telephone (775) 623–1500.

SUPPLEMENTARY INFORMATION: The Final SEIS analyzes the direct, indirect and cumulative impacts related to expansion of existing mine facilities (pits, overburden dumps & heap leach pads) and development of the Millennium Projects. Development includes construction of five new pits, overburden disposal areas, two additional heap leach facilities, drainage diversions, haul and exploration roads and ancillary facilities. Alternatives analyzed include: (1) Moving the Trout Creek Diversion toward the west, farther from the Red Rock Pit, (2) increasing backfilling along the west high wall of the Red Rock Pit, and (3) taking no action. The agency-preferred alternative is alternative number 2; increasing backfilling along the west high wall of the Red Rock Pit. The Final SEIS contains in its entirety the analysis originally presented in the Draft SEIS (issued April 5, 2003) with all text changes presented in bold type. In addition, letters received during the Draft SEIS comment period and the agency's responses to the comments have been incorporated into the Final SEIS.

Dated: June 30, 2003.

Terry Reed,
Field Manager.

Editor's Note: This document was received at the Office of the Federal Register on December 1, 2003.

[FR Doc. 03–30193 Filed 12–4–03; 8:45 am]
BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT–070–04–1010–PH]

Notice of Public Meeting, Western Montana Resource Advisory Council Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act (FLPMA) and the Federal Advisory Committee Act of 1972 (FACA), the U.S. Department of the Interior, Bureau of Land Management (BLM), Western Montana Resource Advisory Council will meet as indicated below.

DATES: A meeting will be held February 19, 2004 at the BLM Missoula Field Office, 3255 Fort Missoula Road, Missoula, Montana beginning at 9 a.m. The public comment period will begin at 11:30 a.m. and the meeting will adjourn at approximately 3:00 p.m.

SUPPLEMENTARY INFORMATION: The 15-member Council advises the Secretary of the Interior, through the Bureau of Land Management, on a variety of planning and management issues associated with public land management in western Montana. At the February 19 meeting, possible topics we plan to discuss include: updates on the Dillon, Butte and Limestone Hills planning processes, election of chair and vice-chair, weeds, possible pilot projects, an update on Land and Water Conservation Fund (LWCF) projects, outyear budget planning and initiatives, and an update on the proposed changes to the grazing regulations.

All meetings are open to the public. The public may present written comments to the Council. Each formal Council meeting will also have time allocated for hearing public comments. Depending on the number of persons wishing to comment and time available, the time for individual oral comments may be limited. Individuals who plan to attend and need special assistance, such as sign language interpretation, or other reasonable accommodations, should contact the BLM as provided below.

FOR FURTHER INFORMATION CONTACT: Marilyn Krause, Resource Advisory Council Coordinator, at the Butte Field Office, 106 North Parkmont, Butte, Montana 59701, telephone 406–533–7617 or Nancy Anderson, Field Manager, Missoula Field Office, telephone 406–329–3914.

Dated: November 24, 2003.

Nancy T. Anderson,
Field Manager.

[FR Doc. 03–30255 Filed 12–4–03; 8:45 am]
BILLING CODE 4310–$$–P

DEPARTMENT OF THE INTERIOR

National Park Service

Information Collection; Request for Extension

AGENCY: National Park Service.

ACTION: Notice of request for extension of a currently approved information collection.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the National Park Service (NPS) is announcing its intention to request an extension of a currently approved collection of information (OMB# 1024–0231) for 36 CFR part 51, § 51.47 regarding the appeal of a preferred offeror determination, §§ 51.54 and 51.55 regarding NPS approval of the construction of capital improvements by concessioners, and section 51.98 concerning recordkeeping requirements with which concessioners must comply.

The information is being collected to meet the requirements of section 403(7) and (8) of the NPS Concessions Management Improvement Act of 1998 (the Act), concerning the granting of a preferential right to renew a concession contract, section 405 of the Act regarding the construction of capital improvements by concessioners, and section 414 of the Act regarding recodkeeping requirements of concessioners. The information will be used by the agency in considering appeals concerning preferred offeror determinations, agency review and approval of construction projects and determinations with regard to the leasehold surrender interest value of such projects, and when necessary, agency review of a concessioner's books and records related to its activities under a concession contract.

DATES: Comments on this notice must be received no later than February 3, 2004.

Additional Information or Comments: Contact Cynthia Orlando, Concession Program Manager, National Park Service, 1849 C Street, NW., (2410), Washington, DC 20240, or 202/513–7144.

SUPPLEMENTARY INFORMATION:

Title: Concession Contract—36 CFR 51.

OMB Control Number: 1024–0231.

Expiration Date of Approval: November 30, 2003.

Type of Request: Extension of a currently approved information collection.

Abstract: The Office of Management and Budget (OMB) regulations as 5 CFR 1320, which implement provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13), require that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities (*see* 5 CFR 1320.8(d)). This notice identifies information collection activities that NPS will submit to OMB for approval. The OMB control number for this collection of information is 1024–0231, and is identified in 36 CFR Section 51.104.

NPS has identified burden estimates based on its experience with concession contracts and on information previously supplied by concessioners or offerors in response to concession prospectuses. NPS will request a 3-year term of

approval for this information collection activity.

Bureau Form Number: None.

Frequency of Collection: Once.

Description of Respondents: NPS concessioners, and, in the case of appeals of preferred offeror determinations, offerors in response to concession prospectuses.

Total Annual Responses: 758.

Total Annual Burden Hours: 3,276.

Send comments on (1) the need for the collection of information for the performance of the functions of the agency; (2) the accuracy of the agency's burden estimates; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) ways to minimize the information collection burden on respondents, such as use of automated means of collection of the information. Please refer to OMB control number 1024–0231 in all correspondence. All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record. Copies of the information collection can be obtained from Cynthia L. Orlando, Concession Program Manager, National Park Service, Department of the Interior, 1849 C Street, NW., (2410), Washington, DC 20240.

Dated: October 30, 2003.

Leonard E. Stowe,

Acting NPS Information Collection Clearance Officer, Washington Administrative Program Center.

[FR Doc. 03–29987 Filed 12–4–03; 8:45 am]

BILLING CODE 4312–53–M

DEPARTMENT OF THE INTERIOR

National Park Service

60-Day Notice of Intention To Request Clearance of Collection of Information; Opportunity for Public Comment

AGENCY: Department of the Interior, National Park Service.

ACTION: Notice and request for comments.

SUMMARY: NPS requests comments on extending and modifying two existing NPS information collection instruments that are processed by the existing, Internet-based Research Permit and Reporting System. One information collection instrument, the Application for a Scientific Research and Collecting Permit, is used by applicants to apply to parks for scientific research and collecting permits for natural or social science activities that require permits. The other instrument, the Investigator's Annual Report, is used by permittees to submit their required annual progress reports. NPS will use the information you submit in response to this notice to assist its decision-making regarding whether or not to request extension of, and to make modifications to, the two collections of information administered through the existing Research Permit and Reporting System. Once NPS develops and adopts any modifications that may be appropriate, NPS currently expects to submit a request for an extension of the existing, but slightly modified, collection of information package to OMB with a request that OMB approve the package and assign an OMB clearance number to the two collection of information forms that are part of this system.

	Estimated numbers of	
	Responses	Burden hours
Research Permit and Reporting System	6,000	4,875

Under provisions of the Paperwork Reduction Act of 1995 and 5 CFR Part 1320, Reporting and Record Keeping Requirements, the National Park Service is soliciting comments on the need for gathering the information in the two collections of information being considered for modification and extension. The NPS also is asking for comments on the practical utility of the information being gathered; the validity and accuracy of the reporting burden hour estimate; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden to respondents, including use of automated information collection techniques or other forms of information technology.

You may obtain copies of the existing application form, annual reporting form, and related guidance and explanatory material from the NPS Research Permit and Reporting System Web site at: *http://science.nature.nps.gov/research*. You also may obtain copies of the documents and additional information from the source identified below.

If you wish to comment, you may submit your comments by any one of several methods. Although you may mail comments to the postal address given here, due to delays caused by processing of mail you may wish to use a different method. You may send your comments by facsimile to the fax number given below. You may instead comment via the Internet to the e-mail address given here (Please submit e-mail comments as an attached ASCII or MSWord file and avoid the use of special characters and any form of encryption. Please also include "Attn: NPS Research Permit and Reporting System" and your name and return address in your e-mail message. If you would like, but do not receive, a confirmation from the system that we have received your e-mail message, contact us directly at the phone number given here). Finally, you may hand-deliver comments to the address given below.

Our practice is to make comments, including respondent names and addresses (business or home, whatever we receive), available for public review during regular business hours. Individual respondents may request that we withhold their home address from the record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety. We will not consider anonymous comments.

DATES: Public comments will be accepted on or before 60 days from the date this notice is published in the **Federal Register**.

Send Comments To: Dr. John G. Dennis. By mail: Natural Resources (3127 MIB), National Park Service, 1849 C Street, NW., Washington, DC 20240. By hand delivery: Natural Resources (11th floor), National Park Service, 1201 Eye Street, NW., Washington, DC 20005. By fax: 202–371–2131. By e-mail: *researchcoll@nps.gov*.

FOR FURTHER INFORMATION CONTACT: Dr. John G. Dennis. Voice: 202–513–7174 Fax: 202–371–2131; E-mail: *researchcoll@nps.gov*.

SUPPLEMENTARY INFORMATION:

Title: National Park Service Research Permit and Reporting System.

Bureau Form Number: Application for a Scientific Research and Collecting Permit: 10–741; Investigator's Annual Report: 10–226.

OMB Number: 1024–0236.

Expiration Date: 4/30/2004.

Type of Request: Revision of a previously approved collection.

Description of Need: The currently approved information collection responds to the statutory requirement that NPS preserve park resources and regulate the use of units of the National Park System. The information currently collected identifies: (1) Names and business contact information for people who seek a permit to conduct natural or social science research and collecting activities in individual units of the National Park System, (2) what activities they wish to conduct, (3) where they wish to conduct the activities, (4) whether or not they wish to collect specimens as part of the activities they propose to conduct, and (5) for applicants who have received a permit, annual summaries of the actual results of their permitted activities. NPS uses the collected information for managing the use and preservation of park resources and for reporting the status of permitted research and collecting activities. NPS is considering proposing to change both the Application for a Scientific Research and Collecting Permit and the Investigator's Annual Report to improve their usability by respondents and to improve the focus of the information NPS collects to address specific needs that use of the two forms over the last three years has revealed. Examples of such needs associated with managing the permit include additional information about the project scope and status, such as expected total time span of the project, specific identification of project personnel who will be working in the park, status of processing collected specimens, planned schedules for the field work phases of the project, and expected end date for the project.

More specifically, NPS is considering proposing changes to the Application to improve the use of the Application for both scientific research and collecting and scientific education activities. NPS is considering proposing changes to the Application to improve the clarity of information provided to, and obtained from, respondents who request use of a non-NPS repository regarding the duty the respondents have for securing acceptance by the proposed non-NPS repository of becoming the curator for collections authorized in the permit. NPS is considering proposing changes to the Application to better understand the schedule of field work activities. NPS is considering proposing changes to the Investigator's Annual Report to reduce the complexity of the form by assigning responsibility to NPS, not the respondent, for determining the appropriate activity code for each permitted project.

Automated Data Collection: The information collection and status reporting system for which the renewal of two components of a single collection of information package is being proposed in this notice currently is available to applicants, permittees, and the public through the NPS Research Permit and Reporting System Web site (*http://science.nature.nps.gov/research*). In addition to considering the modification of the two information collection forms, NPS is developing modification to the Internet site to increase the effectiveness and efficiency of this automation system to facilitate the permit application and progress reporting process.

Description of Respondents: Representatives of academic and other research institutions, Federal, state, or local agencies, research businesses; other scientific parties seeking an NPS research and collecting permit; permittees who submit the annual report of accomplishment that is one of the permit conditions.

Estimated Average Number of Respondents: 3,000 per year.

Estimated Average Number of Responses: 6,000 per year. For each permit cycle, each respondent will respond usually once to prepare and submit the application for a permit and respondents who are successful in being awarded a permit will respond a second time to submit the Investigator's Annual Report. Given the most applicants are successful in being awarded a permit and that permit renewal usually occurs annually, the number of responses will approach a total that is two times the number of respondents.

Estimated Average Burden Hours Per Two-Part Response: 1,625 hours per year total for responding to both parts of the collection information.

Frequency of Response: 2 times per respondent per year—once to submit the application and once to submit the Investigator's Annual Report.

Estimated Annual Reporting Burden: 4,875 hours.

Dated: November 12, 2003.

Leonard E. Stowe,

Acting National Park Service Information Collection Clearance Officer.

[FR Doc. 03–29988 Filed 12–4–03; 8:45 am]

BILLING CODE 43210–70–M

DEPARTMENT OF THE INTERIOR

National Park Service

60-Day Notice of Intent To Renew Request for Clearance of Information Collection, Backcountry Use Permit, Opportunity for Public Comment

AGENCY: National Park Service, Interior.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. 3507) the National Park Service (NPS) invites public comment on a request for renewal of the information collection requirements of NPS Standard Form 10–4–4, Backcountry Use Permit. The permit was initially authorized under OMB Control No. 1024–0022. The Backcountry Use Permit is the primary form used to provide access into NPS backcountry areas including those areas that require a reservation to enter or where use limits are imposed in accordance with other NPS regulations. Such permitting enhances hazard warnings, search and rescue efforts and resource protection.

DATES: Public comments will be accepted until February 3, 2004

ADDRESSES: Send comments to Lee Dickinson, National Park Service, 1849 C Street NW., (org. code 2460), Washington, DC 20240 or e-mail at *Lee_Dickinson@nps.gov*. All responses to this notice will be summarized and included in the request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. Copies of this form may be obtained from the Internet at *http://www.nps.gov/policy/DOrders/BUP.pdf* or by contacting Lee Dickinson.

FOR FURTHER INFORMATION CONTACT: Lee Dickinson, National Park Service, 1849 C Street NW., (org. code 2460)., Washington, DC 20240 by telephone at 202–513–7092 or by e-mail at *Lee_Dickinson@nps.gov*

SUPPLEMENTARY INFORMATION: In 1976, the NPS initiated a backcountry registration system in accordance with the regulations found at 36 CFR 1.5, 1.6 and 2.10. The objective of the backcountry use permit system is to provide campers access to backcountry areas of national parks with continuing opportunities for solitude, while enhancing resource protection and providing a means of disseminating public safety messages regarding backcountry travel.

NPS backcountry program managers, by designating access routes and overnight camping locations, can redistribute campers in response to user impact, high fire danger, flood or wind hazard, bear activity or other situations that may temporarily close a portion of the backcountry. The NPS may also use the permit system as a means of ensuring that each backcountry user receives up-to-date information on backcountry sanitation procedures, food storage, wildlife activity, trail conditions and weather projections so that concerns for visitor safety are met.

The Backcountry Use Permit is an extension of the NPS statutory authority responsibility to protect the park areas it administers and to manage the public use thereof (16 U.S.C. 1 and 3). NPS regulations codified in 36 CFR Parts 1 through 7, 12 and 13, are designed to implement statutory mandates that provide for resource protection and public enjoyment.

Estimated annual number of respondents: 295,339.

Estimated annual number of responses: 295,339.

Estimated average burden hours per response: 5 minutes.

Estimated frequency of response: the collection information must be provided each time a visitor or group wants to enter into the park's backcountry overnight. Frequency of response will depend on number of visits to parks annually.

Estimated annual resorting burden: 24,612 hours per year.

The NPS especially invites public comments as to:

a. Whether the collection of information is necessary for the proper performance of the functions of the Service, and whether the information will have practical utility.

b. The accuracy of the Service's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used:

c. the quality, utility, and clarity of the information to be collected; and

d. How to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical or other forms of information technology.

Dated: November 7, 2003.

Leonard E. Stowe,

Acting, Information Collection Clearance Officer, National Park Service.

[FR Doc. 03–29389 Filed 12–4–03; 8:45 am]

BILLING CODE 4310–70–M

INTERNATIONAL TRADE COMMISSION

[USITC SE–03–040]

Sunshine Act Meeting

AGENCY: International Trade Commission.

TIME AND DATE: December 10, 2003 at 2 p.m.

PLACE: Room 101, 500 E Street SW., Washington, DC 20436, Telephone: (202) 205–2000.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda for future meetings: none.
2. Minutes.
3. Ratification List.
4. Inv. No. 731–TA–1057 (Preliminary)(Certain Processed Hazelnuts from Turkey)—briefing and vote. (The Commission is currently scheduled to transmit its determination to the Secretary of Commerce on or before December 11, 2003; Commissioners' opinions are currently scheduled to be transmitted to the Secretary of Commerce on or before December 18, 2003.)
5. Outstanding action jackets: none.

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

Issued: December 3, 2003.

By order of the Commission:

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 03–30350 Filed 12–3–03; 11:24 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Federal Bureau of Investigation

[Docket No. FBI 109; RIN 1100–AA14]

Implementation of Section 104 of the Communications Assistance for Law Enforcement Act

AGENCY: Federal Bureau of Investigation, (FBI), Justice.

ACTION: Final notice of capacity: supplement for the purpose of responding to remand.

SUMMARY: By this notice, the FBI is responding to a court decision to remand for further explanation two issues from the final notice of capacity. The final notice of capacity was published on March 12, 1998, at 63 FR 12218, pursuant to the requirements of the Communications Assistance for Law Enforcement Act ("CALEA"), 47 U.S.C. 1001, *et seq.* Because the court did not vacate the final notice of capacity, we are providing further explanation as to the two remanded issues and are not republishing the final notice of capacity. Telecommunications carriers should note that the provisions of 47 U.S.C. 1003(d) do not apply to today's notice and should not file a "carrier statement" in response thereto. Comments on this notice may be submitted in accordance with the instructions below.

DATES: Written comments must be received at CALEA Implementation Unit, 14800 Conference Center Drive, Chantilly, VA 20153 on or before February 3, 2004.

FOR FURTHER INFORMATION CONTACT: Contact the CALEA Implementation Unit, Federal Bureau of Investigation (FBI) at (703) 814–4700, or at CALEA Implementation Unit, 14800 Conference Center Drive, Chantilly, VA 20153.

I. Background

Congress enacted CALEA in 1994 to require telecommunications carriers to ensure that their networks have the capability to enable local police, Federal officers and all other law enforcement agencies to conduct lawfully authorized electronic surveillance. Electronic surveillance is an indispensable tool used in investigating serious crimes, including terrorism, drug trafficking, and kidnaping. Congress has long recognized the importance of this investigative technique, and has authorized and governed its use through several laws, including Title III of the Omnibus Crime Control and Safe Streets Act of 1968, 18 U.S.C. 2510 *et seq.* ("Title III"), the Electronic Communications Privacy Act of 1986, 18 U.S.C. 2701 *et seq.* ("ECPA"), and the Pen Registers and Trap and Trace Devices provisions, 18 U.S.C. 3121 *et seq.*, as those laws were recently modified by the USA PATRIOT Act, Public Law 107–56, 115 Stat. 272, recently.

Under these laws, the government can obtain authority to intercept various forms of transmitted communications, including but not limited to, telephone conversations, pager messages, electronic mail, and computer data transmissions. Communications interceptions, commonly referred to as "wiretaps," are strictly regulated by Title III. With few and limited exceptions, wiretaps are prohibited without prior court authorization. The threshold level of proof to obtain such authorization includes a determination that probable cause exists to believe that the communications to be intercepted will constitute evidence of a crime.

The government can also obtain authority from a court to use a "pen register" or "trap and trace device." This requires a lower amount of proof than that required under Title III. Pen registers and traps and traces may not be used to intercept communications; rather, they are used to acquire "call identifying information." This information includes the dialing and signaling associated with a communication. *See* 47 U.S.C. 1001(2) (definition of "call identifying information"). Telephone numbers and the routing information in a packet header are both examples of call identifying information. Pen registers are devices or processes for acquiring outgoing dialing, routing, addressing and signaling information, and traps and traces are used to record such information as it is incoming. 18 U.S.C. 3127(3), (4).

The electronic surveillance laws cited above delineate the government's lawful authority to intercept communications and acquire call-identifying information. CALEA, by contrast, is intended to preserve the government's technical ability to engage in electronic surveillance as allowed by law. It does so by requiring "telecommunications carriers" to design or modify their systems to ensure the government's ability to intercept communications and acquire call-identifying information, pursuant to lawful authorization. *See generally* 47 U.S.C. 1002.

In addition, CALEA contains "capacity requirements." *See generally id* § 1003. The capacity provisions generally require carriers to be capable of supporting a certain number of communications interceptions, pen registers, and traps and traces at the same time. These provisions also require the Attorney General to issue a notice of the maximum and actual capacity requirements setting forth the "maximum" and "actual" number of communications interceptions, pen registers, and traps and traces that all government agencies may, in the future, conduct and use at the same time. The FBI Director is the authorized delegate of the Attorney General with respect to the implementation of CALEA, and therefore has issued such notices of capacity on the Attorney General's behalf.[1]

A. Notices of Capacity

In 1995, the FBI published an initial notice of capacity which expressed capacity requirements in terms of a "percentage of engineered capacity." 60 FR 53643 (Oct. 16, 1995). After receiving comments from the public we revised that methodology and published a second notice of capacity. 62 FR 1902 (Jan. 14, 1997). After an additional round of comments, we published the final notice of capacity (referred to herein as the "final notice") on March 12, 1998. 63 FR at 12218–12310. At all times, we sought and incorporated the comments of the telecommunications industry, which assisted us in understanding the challenges facing the industry and others in applying the capacity requirements. The FBI acted on behalf of all Federal, State and local law enforcement agencies nationwide in establishing these capacity requirements.

The capacity requirements contained in the final notice were based on data obtained through a survey of Federal and State court clerks, law enforcement agencies, and telecommunications carriers. These entities were requested to provide records of any past surveillance activity conducted between January 1, 1993, and March 1, 1995. After gathering and organizing this data, we formed "baseline" numbers of surveillances for each region in the country.[2] The final notice identified capacity requirements for telecommunications carriers offering local exchange services (referred to as "wireline") and wireless carriers providing certain commercial mobile radio services, specifically cellular service and personal communications service (PCS).[3]

Counties[4] were used as the geographic region in identifying capacity requirements for wireline carriers. With respect to wireless services, the Federal Communications Commission (FCC) utilizes 306 Metropolitan Statistical Areas (MSA) and 428 Rural Statistical Areas (RSA) for cellular licensing purposes; and 51 Major Trading Areas (MTA) and 493 Basic Trading Areas (BTA) for PCS licensing. Each of these geographic regions was used in identifying capacity requirements for cellular and PCS services respectively. For purposes of this publicaiton, we will collectively refer to all of these types of wireless service areas as "market service areas."

The baseline numbers were derived from analysis of the number of surveillances that were ongoing on particular days during the survey period.[5] The final notice describes in detail how the baselines were calculated. *See* 63 FR 12224–26. As the final notice describes, we chose to count multiple surveillances ongoing on the same day as occurring "simultaneously" for the purpose of determining capacity requirements. For example, if the survey data had indicated that on January 2, 1993, in a particular market service area, Title III surveillance had been established on two cellular telephones, and a pen register had been installed on a third, then these would have been counted as three simultaneous surveillances. Having formed baselines, we thereafter generated the capacity requirements by multiplying the baseline by a growth factor. The FBI chose in the final notice to publish capacity requirements in the form of a single "actual" and "maximum" number for each region, rather than as separate numbers for the different types of surveillance (communications interceptions and pen registers/traps and traces).

B. Court Decision

On January 18, 2002, the District of Columbia Circuit ruled on a number of challenges to the final notice. *See USTA v. FBI*, 276 F.3d 620 (D.C. 2002). While the Court's decision largely upheld the final notice, it vacated one issue and remanded two others to the FBI. The Court vacated the statement in the final notice (63 FR 12219) that "law enforcement considers 5 business days from a telecommunications carrier's receipt of a court order to be a reasonable time within which to permit an incremental expansion up to the maximum capacity." *USTA*, 276 F.3d at 627. The Court also required the FBI to provide further explanation of: (1) our decision to count any two historical surveillances occurring on the same day as simultaneous and, (2) our decision to set forth only one "actual" and one "maximum" capacity requirement number per region, rather than separate requirements for each type of surveillance.

The Court's concern with both of these issues centered on the explanations contained in the final notice. The Court did not vacate these portions of the final notice, but directed the district court to remand them to the FBI for a more adequate explanation.

II. Response to the Remand

This publication responds to the Court's remand by addressing both issues as follows. First, we provide additional explanation, not previously before the Court, for our interpretation of the term "simultaneously." Second, we are supplying carriers with supplemental guidance with regard to the previously-published numerical capacity requirements by providing a method of breaking those numbers down between communications

[1] *See* 28 CFR 0.85(o).

[2] We use the term "surveillances" herein, to refer to multiple instances of any type of surveillance, whether communications interceptions, pen registers, and/or traps and traces.

[3] *See* 63 FR 12220. In the final notice of capacity, PCS was considered a service operating in the licensed portion of the 2 GHz band of the electromagnetic spectrum, from 1850 MHz to 1990 MHz. *Id.*

[4] The term "counties" includes boroughs and parishes as well as the District of Columbia and independent cities. U.S. territories (*i.e.*, American Samoa, Guam, Mariana Islands, Puerto Rico, and the U.S. Virgin Islands) were considered as single entities.

[5] A single surveillance is an interception, pen register or trap and trace established with respect to a single subscriber line. Thus, a single court order might authorize multiple "surveillances" as that term is used herein. *See* 63 FR 12224.

interceptions and acquisitions of call-identifying information.[6] This additional guidance should further assist carriers in their efforts to comply with CALEA's capacity requirements, while at the same time it will address the concerns raised by the remand. Following the end of the comment period, the FBI will review any such comments it receives and publish a finalized notice in the **Federal Register**.

A. Meaning of "Simultaneously"

The first issue we address herein is the interpretation of the term "simultaneously." The Court of Appeals noted that the final notice "treated interceptions as 'simultaneous' if they occurred on same day, even though they may each only take moments and do not overlap in the least." *USTA*, 276 F.3d at 626. We understand the Court's concern to be that communications, such as telephone calls for example, could be short in duration, and interceptions of two or more of them on the same day might "not overlap" if they occurred at different times. The Court directed us to provide further explanation for our determination of capacity requirements based not on a number of overlapping communications interceptions, but on a number of surveillances ongoing on the same day.[7]

In response to the Court's direction, the FBI provides the following further explanation of its capacity methodology. First, the FBI examined the statutory language of CALEA. This examination suggested that 47 U.S.C. 1003 permits using same day data. The statute only requires that the government provide estimates of interceptions, pen registers, and trap and traces that law enforcement "may conduct and use simultaneously." 47 U.S.C. 1003(a)(1)(A), (B). The word "may" indicates that capacity requirements should represent a number of interceptions that might take place. Second, the FBI examined how other courts have interpreted the word simultaneously. These cases suggested that the word simultaneous can be interpreted more broadly than coterminous, giving the FBI additional latitude to use the data available. Third, the FBI offers an explanation of how technology impacts capacity requirements. This explanation shows how using the number of same day ongoing surveillances provides a technology neutral approach allowing carriers to use their expertise to efficiently design their systems. For example, some technical intercept solutions require dedicated hardware for the duration of a court order regardless of whether the target is actually communicating, while an alternative technical intercept solution requires carriers' resources only when communications occur. Finally, we explain how the capacity requirements are based on data and expressed in terms within the FBI's and other law enforcement agencies' expertise. The FBI's particular expertise includes knowledge of the historical patterns of criminal activity within our jurisdiction, and of the investigative resources historically needed to detect and prevent such activity. Our expertise also includes an understanding of the frequency with which we have had to rely on electronic surveillance as a tool, and of the implications of limitations on its use in the future.

1. Statutory Language

As set forth above, CALEA requires the government to estimate the number of interceptions, pen registers, and trap and trace devices, that law enforcement authorities "may conduct and use *simultaneously*." 47 U.S.C. 1003(a)(1)(A), (B) (emphasis added). These terms, including the word "simultaneously," are not defined in CALEA.

First, we believe that CALEA's language supports the FBI's approach to the capacity requirements, even when viewing the term "simultaneously" as referring only to precisely coterminous actions. This is because Congress directed us to estimate the number of interceptions, pen registers, and traps and traces that law enforcement agencies "*may* conduct and use simultaneously." (emphasis added). The term "may" indicates that capacity requirements should represent a number of interceptions that might take place, which is precisely what the FBI approach accomplishes. For example, in our experience, criminal suspects may, like anyone else, make and receive phone calls at any time of the day or night. Thus when two or more telephones are under lawful surveillance on the same day, calls may occur at any time and thus "may" result in communications interceptions at the same exact time. Our establishment of capacity requirements based on a number surveillances on the same day is therefore a reasonable basis on which to predict the number of precisely coterminous interceptions that law enforcement agencies "may" conduct.

Second, in common usage, the word "simultaneously" could encompass events that are not precisely coterminous but happen on the same day or around the same time. This understanding has been applied in court opinions as well. *See, e.g., Mendes-Silva* v. *United States*, 980 F.2d 1482, 1486 (D.C. Cir. 1993) ("simultaneous administration" of drug defined by party as administration on "the same day"), *cert. denied*, 479 U.S. 923 (1986); *San Luis Obispo Mothers for Peace* v. *NRC*, 789 F.2d 26, 40 n.11 (D.C. Cir. 1986) ("simultaneous occurrence" of earthquake and nuclear accident defined as occurrence of the two events within "48 hours"). Courts also refer to actions, such as the filing of motions, as "simultaneous" if they occur on the same day. *See generally, Spenkelink* v. *Wainwright*, 442 U.S. 1301, 1303 (1979) (per Rehnquist, J., in chambers) ("[t]he District Court simultaneously entered a second order"); *Dillard* v. *Industrial Comm'n of Virginia*, 416 U.S. 783, 792 (1974) (insurance company "[s]imultaneously" applied for a regulatory hearing and discontinued payments to insured); *City of Orrville* v. *FERC*, 147 F.3d 979, 984 (D.C. Cir. 1998) (on "same day" that one party requested a rehearing another party "simultaneously moved to intervene"). The FBI's treatment of interceptions occurring on the same day as simultaneous, is therefore, a permissible interpretation of this statutory term.

We further note that the statute directs us to give notice of a number of simultaneous surveillances of all types, not just interceptions. In pertinent part, it states that the Attorney General should "provide * * * notice of the * * * number of communications interceptions, pen registers, and trap and trace devices * * * that the Attorney General estimates that government agencies authorized to conduct electronic surveillance may *conduct and use simultaneously*." 47 U.S.C. 1003(a)(1)(A) (emphasis added). This provision plainly contemplates, among other things, the "use" of a pen register or trap and trace device, simultaneously with the "conduct" of one or more interceptions. Although, as the Court observed, two communications interceptions might not overlap if they occur at different times of the day, the same cannot be said for either the simultaneous "use" of two or more pen registers or trap and devices, or the simultaneous use of such device(s) with the conduct of an interception. Since a pen register or trap and trace device may be said to be in "use" for so long as it is installed on a line, and not just when it is actually obtaining information, then its "use" would continue throughout each day over the time period that it is installed. The device's use would then occur "simultaneously" with the conduct of any communication interceptions on the same day, irrespective of the time. It would also be simultaneous with the use of any other pen register or trap and trace devices on the same day. Our approach to the capacity requirements is consistent with this reading of the statutory language, since we counted the numbers of ongoing surveillances of all types on a single day in determining the baselines. For all of the reasons discussed above, we opine that it is appropriate to determine and express the capacity requirements in terms of a number of surveillances ongoing on the same day.

2. Law Enforcement Needs and Capacity Requirements

The FBI's approach to the capacity requirements is based on the premises: (A) that carriers will need to use certain resources to assist with each lawful surveillance, and (B) that more resources might be needed for each additional surveillance initiated while others are ongoing. As the Court is aware, we sought, to determine a number of surveillances that might be ongoing on the same day within particular geographic regions. Having notice of this number, we believed, carriers (as well as law enforcement agencies) would be able to anticipate and plan for the amount of resources they might need to use in order to facilitate the specified number of surveillances. Ultimately, therefore, our approach was intended to ensure the important goals that carriers will have the appropriate notice and will make the appropriate level of resources available in order to meet law enforcement's surveillance needs.

We now seek to provide the Court with further explanation of our approach. First, determining the capacity requirements as a number of ongoing surveillances is an approach that is "neutral" as to the system design chosen by the carrier to meet the requirements. By contrast, determining and expressing the requirements in terms of a number of overlapping communications interceptions would assume the carrier's system only utilizes additional resources when the communications interceptions overlap. In fact, some carriers' systems require additional dedicated resources for each additional ongoing surveillance, notwithstanding whether communications interceptions overlap.

Second, our approach allows the industry the flexibility to use its expertise to design different systems and allows law enforcement agencies to benefit from such expertise. Under the FBI's approach, a carrier is not precluded from designing and implementing different systems for meeting the requirements, including systems that do not require dedicated resources for each additional surveillance. If the number of overlapping communications were relevant to a carrier's chosen design, the telecommunications industry may rely on its special, if not unique, expertise in determining the extent to which that might occur.

(a) The Final Notice Determined Capacity Requirements in a System-Neutral Manner

Determining capacity requirements in a system-neutral manner is necessary because CALEA did not authorize the FBI to require any specific system design. *See* 47 U.S.C. 1002(b)(1). In addition, we know that carriers in fact use designs that differ in their capabilities to accommodate multiple surveillances at the same time. To accommodate these realities, we sought to give carriers notice of a number of surveillances that may be conducted at the same time, because they may need to use more resources to support each additional surveillance while others are ongoing. This is in fact the case in systems that are designed to use specific resources for the entire time that a surveillance is ongoing, even when no communication is actually being intercepted.

For example, some telecommunications switches are designed to send lawfully intercepted communications and call-identifying information to a law enforcement agency over a high-capacity connection referred to as a "T1." These systems are designed such that a T1 connection must be dedicated to the surveillance for the entire time that the surveillance is in effect. The number of T1 connections that can be supported at one time by a telecommunications switch is limited. Hence, such a carrier would likely need to be able to support multiple T1 connections in order to facilitate multiple surveillances on the same switch on the same day.

CALEA's legislative history indicates that Congress may have contemplated a similar example when enacting CALEA's capacity provisions in the first instance. At the time of CALEA's enactment, Congress was made aware by the FBI of a number of cases where lawfully authorized surveillance had been impeded due to insufficient "cellular port capacity." *See* H.R. Rep. No. 103–827, 103rd Cong., 2nd Sess., at 15 (1994). At this time, cellular telephone surveillance was conducted by accessing a subject's communications at the telecommunications switch through one of a limited number of access ports used for maintenance. Hence, each interception required the use of another access port, and the number of interceptions that could be active at the same time was limited by the number of available ports.

In both of the above examples, the ability of the carrier's system to accommodate multiple surveillances at the same time is limited. Importantly, this ability is limited by the number of surveillances ongoing at the same time, not by the number of overlapping communications actually being intercepted at the same time. If we were to adopt an alternative approach by determining capacity requirements based on a number of overlapping communications interceptions, then the capacity requirements based thereon would not provide carriers with systems similar to the examples above with notice of the number of surveillances they could be required to accommodate at the same time. Such carriers might then underestimate the resources necessary to support those surveillances. In order to ensure that all carriers will have the information they need in order to meet law enforcement's needs, the capacity requirements should therefore be based on a number of ongoing surveillances.

We are aware, however, that some carriers' systems function differently. For example, some telecommunications switches are capable of sending intercepted communications and call-identifying information over an ordinary phone line, by "dialing-out" such information each time a communication occurs. In these systems, the switch resources are released after the intercepted communications are transmitted and become available for other uses. The carriers' ability to facilitate multiple surveillances in these cases might to some degree be affected by the number of overlapping communications interceptions. Nevertheless, we cannot base the capacity requirements on an assumption that all carriers' systems have this or similar abilities, because, in fact, many do not.

[6] For the purposes of this publication, we will use the term "pen register/trap and trace" to refer to the acquisition of call-identifying information, whether incoming, outgoing or both.

[7] The Court referred only to overlapping communications interceptions, and not to pen registers/traps and traces, in its discussion of "simultaneously." As set forth below, however, the statute also refers to the simultaneous use of pen register or trap and trace devices, as well as the simultaneous use of such a device along with the conduct of one or more communications interceptions. For purposes of this publication, we will first address the Court's cited concerns with regard to non-overlapping communications interceptions.

Nothing in our approach to the capacity requirements would preclude a carrier from meeting them by using a "dialing-out" capability or any other system design. Having notice of the number of surveillances that law enforcement agencies may conduct at any given time, carriers and their manufacturers and suppliers could engineer methods of facilitating that number of surveillances without reliance on additional resources being dedicated for each additional surveillance maintained. If it were relevant to the system design, members of the telecommunications industry, as discussed below, have special expertise in determining the frequency with which communications (and the interceptions thereof) might overlap.

Applying our preceding explanation, we believe that determining capacity requirements based on a number of same-day surveillances is the most appropriate method for ensuring that carriers will be able to meet law enforcement's surveillance needs.

(b) The Final Notice Allows for Different System Designs and Allows Law Enforcement To Benefit From Industry Expertise

Another benefit not previously presented to the Court is that the capacity requirements stated in the final notice allow carriers to design a system that can meet the requirements through different methods. Stating capacity requirements in terms of a number of simultaneous surveillances thus allows law enforcement agencies to benefit from the special expertise of the telecommunications industry. With notice of the number of simultaneous surveillances that they should be able to facilitate, carriers can use their own expertise to decide how to design a system to facilitate that number of surveillances.

CALEA recognizes that carriers, manufacturers and suppliers are naturally in a position to assess the capabilities of their own systems, and to design and implement technical changes to their systems to meet different demands. The structure of CALEA reflects a recognition that members of the telecommunications industry possess expertise in engineering technical requirements necessary to facilitate lawful surveillance. For example, CALEA allows carriers to design systems that follow an industry-adopted set of technical standards that meet CALEA's requirements. See 47 U.S.C. 1006(c); *see also USTA* v. *FCC*, 227 F.3d 450, 460 (referencing CALEA's "unique structure" in delegating the establishment of technical standards to both the telecommunications industry and the FCC).

In order for law enforcement agencies to obtain the benefit of industry expertise, it is most appropriate that the capacity requirements be determined and expressed in terms of a certain number of ongoing surveillances. The industry is then left free to design an appropriate system to meet these requirements. As discussed below, such designs might involve the dedication of certain resources for the duration of each surveillance, or might rely on shared resources that are invoked only when a communication is actually being intercepted and then released when the communication is over, or some combination of both. The capacity requirements set forth in the Final Notice, as discussed above, are "system neutral" in that they do not assume any particular system design.

Carriers, along with their manufacturers and suppliers, possess special expertise in assessing their subscribers's potential use of their telecommunications systems. Carriers routinely in the ordinary course of their business engage in "traffic engineering" to determine the "busy hour," when the frequency and/or duration of their subscribers" telecommunications activity is highest. In order to guarantee a certain level of service to their subscribers, carriers are necessarily well informed of the level of burden that subscribers are likely to place on the telecommunications system at any given time. Without such knowledge they would not be able to provide the level of service that their subscribers expect. For example, wireline telephone carriers routinely estimate the number of their subscribers who are likely to pick up their telephones at the same time in order to place a call. The same types of assessments are routinely made by carriers with regard to the design and implementation of new "features" that the carrier offers to subscribers, such as call-waiting or conference calling. The carrier's telecommunications system is designed in such a way as to be able to satisfy the subscribers' demands as closely as possible. Such assessments are particularly within the scope of the industry's particular expertise.

Carriers and other industry members are therefore specially, if not uniquely, qualified to assess the burdens that a certain number of surveillances could place on their telecommunications systems. In one sense, the carrier's design of a system to meet CALEA's requirements is analogous to the design of any other "feature" that may be associated with a subscriber's service. Carriers and other members of the telecommunications industry are specially qualified to assess the frequency and duration of the communications made by a subscriber under surveillance, and the extent to which a given number of surveillances might involve communications that overlap, in the event that such an assessment is relevant to the particular system design chosen by the carrier. Indeed, a carrier's routine assessment of its subscribers' use of the telecommunications system will necessarily include an assessment of such use by those subscribers who happen to be under lawful surveillance. For example, in a wireline carrier's system, if an assessment of the frequency and duration of the phone calls made or received by subscribers under surveillance is relevant to the carrier's design of a system to meet the capacity requirements, then the carrier can use its expertise to make that determination. Law enforcement agencies, in turn, will benefit from the industry's expertise in this regard.

3. The Capacity Requirements Are Based on Data and Expressed in Terms Within the FBI's and Other Law Enforcement Agencies's Expertise

The FBI chose the aforementioned approach towards determining capacity requirements because the data and the terms in which we stated the capacity requirements were within our expertise, the area of law enforcement. The data we acquired through our survey, as discussed above, included information regarding the number of surveillances ongoing at certain times within a given geographic area. Our particular expertise allowed us to analyze and derive conclusions from this data regarding the number of surveillances likely to be sought by law enforcement agencies in particular geographic regions at the same time. These data did not include information from which we could determine the number of overlapping communications interceptions. In addition, as outlined below, stating the capacity requirements in such terms would have had little meaning or usefulness to other law enforcement agencies. We offer the following explanation to illustrate why it was reasonable for the capacity requirements to be based on, and expressed in terms of, a number of ongoing surveillances.

The FBI's particular expertise includes knowledge of the historical patterns of criminal activity within our jurisdiction, and of the investigative resources historically needed to detect and prevent such activity. Our expertise also includes an understanding of the frequency with which we have had to rely on electronic surveillance as a tool, and of the implications of limitations on its use in the future. Indeed, we are necessarily familiar with the frequency with which we have sought to conduct communications interceptions, in part through our compliance with the requirements of Federal law regarding reports to the Administrative Office of the Courts. *See* 18 U.S.C. 2519. Therefore, we believe it was reasonable that our survey focus on determining the frequency with which all law enforcement agencies nationwide have relied upon electronic surveillance in their investigations.

As already stated, the data acquired through our survey cannot be used to determine the frequency of overlapping communications interceptions. Such data did not include any information regarding the hours, minutes and times of day that particular communications interceptions occurred. Rather, the survey data reflects the days over which surveillances were ongoing.

The FBI now offers this further explanation to justify why our reliance on data reflecting numbers of ongoing surveillances was reasonable. First and foremost, an analysis thereof was within the FBI's expertise in assessing the level of investigative resources needed to combat crime. Conversely, a survey and analysis focused on the number of overlapping communications interceptions would not be within our traditional expertise. Such an exercise would be more akin to the "traffic engineering" studies traditionally engaged in by the telecommunications industry. For example, it would require us to make determinations about the extent to which individuals will make or receive phone calls at the same time. As discussed above, if that assessment were relevant to the system design chosen by a carrier, then the carrier is in the most appropriate position to make it.

Second, the capacity requirements set forth in the final notice, in addition to satisfying the requirement for notice to carriers, will serve as guidance to law enforcement agencies in understanding potential technical limitations on the use of electronic surveillance. Agencies can readily comprehend, and if necessary, plan for, being able to conduct only a certain limited number of surveillances at a given time. On the other hand, stating the capacity requirements in terms of a number of overlapping communications interceptions would have little or no meaning to law enforcement agencies.

We further note that initiating a new study to determine the frequency of overlapping communications interceptions would consume a large amount of time and resources, would be problematic, and, for all of the reasons discussed herein, would ultimately not be beneficial to our goal of ensuring that law enforcement's needs are met. Such a study would require us to gather and analyze numerous evidence files in an attempt to determine the exact times at which communications were intercepted and whether or not they overlapped. Because most surveillances are conducted by agencies other than the FBI, most of these files would need to be obtained from third parties, such as other law enforcement agencies or the courts. Given the number of surveillances determined from our survey, this could involve hundreds of files. Moreover, it is also doubtful that such data could even be used to derive a "typical" frequency of overlap among interceptions on which we could reliably base the capacity requirements. First, not every communication that might be intercepted through an ongoing surveillance actually is intercepted, such that it is recorded and entered into evidence files. In particular, some communications made over the facilities subject to the surveillance are not recorded because they are not pertinent to the investigation. *See* 18 U.S.C. 2518(5) (this is often referred to as the "minimization" requirement under Title III). An incomplete picture of the potential for overlap might therefore be presented through a review of evidence files. Second, the probability for overlap when conducting surveillances in different types of cases could vary greatly. In our experience, some surveillances, such as those in bookmaking or drug dealing cases, may involve many communications interceptions over a relatively short period of time. In other cases, such as kidnaping, only a few communications may be actually intercepted.

Finally, as described above, we believe that estimating the number of overlapping intercepted communications would not be ultimately beneficial to effectively estimating law enforcement's capacity requirements. In particular, as we discuss above, we believe that capacity requirements are most appropriately based on a number of surveillances being conducted on the same day, not on a number of overlapping interceptions.

B. Breakdown of Capacity Requirements by Type of Surveillance

The second issue we address in this publication is the breakdown of capacity requirements by type of surveillance. The statute, as discussed above, directs us to provide "notice of *the* actual *number* of communications interceptions, pen registers, and trap and trace devices." 47 U.S.C. 1003(a)(1) (emphasis added). The FBI decided, therefore, in the final notice to provide an "actual" and a "maximum" number representing a total number of surveillances, for each county and market service area. The Court questioned our explanation of the basis for this decision, noting that the FBI's numbers "drew no distinction between different types of interceptions (*e.g.*, communications content versus mere pen registers)." *USTA*, 276 F.3d at 626. According to the Court, different types of surveillance may "impose different demands" on the carrier's ability to meet the capacity requirements. *Id.* at 627. The Court further noted, as we stated in the final notice, that more delivery channels may be needed in order to facilitate a communications interception as opposed to the operation of a pen register and/or a trap and trace device. *Id.* The Court therefore remanded this issue to us for a more adequate explanation.

The FBI has considered this issue and continues to find that it is appropriate, given the statutory requirements, to state the capacity requirements for each geographic region as a single actual and single maximum number. Moreover, our approach was consistent with the methodology we used to determine the capacity requirements, which, as described above, focused on the highest number of surveillances of any type that were ongoing on a single day or days during the survey period.

Nevertheless, we find that we can further address the court's concerns and at the same time benefit law enforcement agencies and telecommunications carriers, by providing additional guidance on the application of the capacity requirements. We set forth our analysis of the issue and our finding that the method described below achieves this goal by limiting the number of simultaneous communications interceptions that are required to be accommodated in the counties and market service areas with the highest capacity requirements. By so limiting the number of communications interceptions, we are now giving the carriers providing service in these regions guidance that allows them to

draw a distinction between different types of surveillances in meeting the capacity requirements.

1. National Average Ratio Is Not an Appropriate Basis

As we stated in the final notice, the ratio of interceptions to pen registers/traps and traces according to the national average, is not an appropriate basis on which to determine capacity requirements. 63 FR 12235–36. This is because our survey determined that the historical experience of each county and market service area varies greatly. In some regions, all or nearly all historical surveillances consisted of communications interceptions, while in others, all of the surveillances were pen registers or traps and traces. *Id.* The national average ratio of communications interceptions to pen registers/traps and traces is not therefore representative of any specific geographic region.

2. Conclusions From Historical Survey Information

Because a national average ratio would not be appropriate to use, we decided to examine the breakdown between different types of surveillance at the county and market service area level. Using the FBI's original survey data, we examined the percentage of communications interceptions that were included within the historical experience of each county and market service area.[8] Some general conclusions were able to be drawn from this examination, as described below.

We first examined the data for geographic regions with low historical experience figures, and correspondingly low capacity requirements. Within this group, the portion of total historical experience that consisted of communications interceptions varied widely. For example, for counties with a total historical experience of 10 or less, the percentage amount of communications interceptions from total historical experience ranged from zero to 100. The same variance (zero to 100) was found for wireless services licensed by MSA/RSA, MTA and BTA, but only in market service areas with a total historical experience of 5 or less.[9]

Continuing with this comparison process for regions with successively higher total historical experience amounts, we found that the percentage of communications interceptions tended to decrease as the total historical experience increased. For the county with the highest historical experience, we found that 25 percent of the total experience were communications interceptions. For the market services area with the highest historical experience, 50 percent of the total historical experience consisted of communications interceptions.

3. Establishment of Percentage Groups

Based on the overall relationships described above, we determined that a breakdown of the capacity requirements by surveillance type could be achieved by placing limits on the extent to which the number of surveillances reflected in the capacity requirements could include communications interceptions. The tendency in our data, as described above, was for a decreasing proportion of communications interceptions as the total number of surveillances increased. We concluded therefore that a set of percentages that decrease as historical experience increases, could be used to limit the number of communications interceptions as a proportion of the total capacity requirement.

We therefore established decreasing percentages, and assigned groups of particular geographic regions to those percentages (hereinafter "percentage groups") with respect to all counties and market service areas described in the final notice. For counties, the FBI has established four percentage groups: 100, 75, 50, and 25 percent. For each of the three different types of wireless geographic regions (*i.e.*, MSA/RSA, MTA, and BTA) the FBI has established three percentage groups: 100, 75, and 50 percent.

As explained further below, the applicable percentage indicates the highest proportion of capacity requirements (actual and maximum capacity requirements) that could consist of communications interceptions. Regions with low historical experience, and correspondingly low capacity requirements, fall within the 100 percent group. A carrier operating within such a region must be able to accommodate the number of surveillances indicated by the capacity requirement such that all (100 percent) of the surveillances are communications interceptions, or all are pen registers/traps and traces, or some combination of both types of surveillance equal to the capacity requirement. This is consistent with our findings regarding the variability of the types of surveillances within the historical experience of regions with low levels of such experience.

At the other end of the range, regions with high historical experience levels fall within the 25 percent group for counties, or the 50 percent group for market service areas. Carriers operating within these regions must still be able to accommodate the total number of surveillances indicated by their capacity requirement, but the proportion of that number that could be communications interceptions is limited by the applicable percentage. The determination of the percentage groups and the application of the percentage is described in further detail below.

4. Determination of Percentage Groups Applicable to Geographic Regions

Carriers can determine the applicable percentage group by looking at the "historical experience" number associated with their capacity requirements as published in the final notice.

We assigned particular regions to the percentage groups based on their total historical experience. We first examined the historical data to locate the region with the highest number of historical surveillances wherein 100 percent of them were communications interceptions. This number was 10 for capacity requirements determined by county and 5 for capacity requirements determined by market service area. This number became the upper limit of the 100 percent group, and all counties with a historical experience of 10 or less, and market service areas with a historical experience of 5 or less, were then deemed within the 100 percent group.

The process was continued by examining the historical data for all those counties not already falling within the 100 percent group, in order to determine the appropriate upper limit for the 75 percent group. We examined the data for the remaining regions for the highest number of surveillances wherein 75 percent of the total consisted of communications interceptions. This number was 44 for counties and 10 for market service areas. Again, the process was continued with those geographic regions not already deemed to be within the 100 or 75 percent groups. That is, we examined the data regarding the remaining regions to determine the region with the highest number of historical surveillances wherein 50 percent of the total consisted of communications interceptions. This number was 100 for counties. For wireless market service areas, this number was 106, which was also the highest historical experience figure. Hence, all remaining market service areas, those with historical experience figures between 11 and 106 (inclusive), were assigned to the 50 percent group. For wireline services, the remaining counties with a historical experience of 101 or more, were determined to be within the 25 percent group.

Thus, the percentage group applicable to a particular county or market service area can be determined according to its total historical experience, as summarized below.

a. Counties

Counties with a total historical experience between 0 and 10 (inclusive), are in the 100 percent group; between 11 and 44 (inclusive), are in the 75 percent group; between 45 and 100 (inclusive) are in the 50 percent group; and greater than 100, are in the 25 percent group. The following chart summarizes these determinations:

Historical experience	Percentage group
0–10	100
11–44	75
45–100	50
101 or more	25

b. Market Service Areas

The following describes the percentage groups for wireless carriers regardless of the type of geographic region (MSA/RSA, MTA, and BTA). Market service areas with a total historical experience between zero and five (inclusive) are in the 100 percent group; between six and ten (inclusive) are in the 75 percent group; and greater than ten, are in the 50 percent group. The following chart summarizes these determinations:

Historical experience	Percentage group
0–5	100
6–10	75
11 or more	50

5. Application of Percentage to Actual and Maximum Capacity Requirements

Carriers can use the applicable percentage to determine the number of simultaneous communications interceptions that they should be capable of accommodating within their total capacity requirements.

As described above, the actual and maximum capacity requirements specify a total number of surveillances. The applicable percentage is then multiplied by the capacity requirement to determine the highest number of simultaneous surveillances that could be in the form of communications interceptions. If the calculation results in a fraction, then the number of communications interceptions should be rounded up.

The percentage does not change the total number of surveillances specified in the actual and maximum capacity requirements, and does not change the total number of surveillances that carriers must be able to accommodate simultaneously in order to meet the capacity requirements. In cases where the carrier's capacity requirements fall within the 75 percent group, or lower, the percentage will clearly limit the number of simultaneous communications interceptions that a carrier is required to be capable of accommodating. Thus, a carrier must at all times be able to accommodate a number of surveillances equal to its capacity requirement, and the total number of surveillances may be all pen registers/traps and traces or a combination of these and communications interceptions. However, the number of communications interceptions will not exceed the limit, if any, indicated by the applicable percentage. The examples below will illustrate this.

Example 1

Montgomery County, Maryland has a historical experience of 66, an actual capacity requirement of 84, and a maximum capacity requirement of 110. The historical experience of 66 places it within the 50 percent group. Multiplying the percentage by the capacity requirements indicates that the actual capacity requirement is limited to 42 communications interceptions and the maximum capacity requirement is limited to 55 communications interceptions. A carrier providing service in this county is required to be capable of accommodating an actual capacity of 84 pen registers/traps and traces, or any combined number of surveillances equal to 84 where the number of communications interceptions is equal to 42 or less. For example, the carrier must be capable of accommodating 42 simultaneous communications interceptions and 42 simultaneous pen registers/traps and traces. For a further example, the carrier must be capable of accommodating 10 simultaneous communications interceptions and 74 simultaneous pen registers/traps and traces. The same form of analysis applies to the maximum capacity requirements.

Example 2

Metropolitan Statistical Area / Rural Statistical Area (MSA/RSA) 234, Athens, Georgia, has a historical experience of 7, an actual capacity requirement of 12, and a maximum capacity requirement of 20. The historical experience of 7 places it within the 75 percent group. Multiplying the percentage by the capacity requirements indicates that the actual capacity requirement is limited to 9 communications interceptions and the maximum capacity requirement is limited to 15 communications interceptions. A carrier providing service in this MSA/RSA is required to be capable of accommodating an actual capacity of 12 pen registers/traps and traces, or any combined number of both types of surveillances equal to 12, where the number of communications interceptions is equal to 9 or less. For example, the carrier must be capable of accommodating 9 simultaneous communications interceptions and 3 simultaneous pen registers/traps and traces. For a further example, the carrier must be capable of accommodating 2 simultaneous communications interceptions and 10 simultaneous pen registers/traps and traces. The same form of analysis applies to the maximum capacity requirements.

Example 3

Harris County, Texas has a historical experience of 294, an actual capacity requirement of 371, and a maximum capacity requirement of 484. The historical experience of 294 places it within the 25 percent group. Twenty-five percent of 371 is 92.75, which is rounded up to 93. The actual capacity requirement is limited to 93 communications interceptions and the maximum capacity requirement is limited to 121 communications interceptions. A carrier providing service in this county is required to be capable of accommodating an actual capacity of 371 pen registers/traps and traces, or any combined number of both types of surveillances equal to 371 where the number of communications interceptions is equal to 93 or less. For example, the carrier must be capable of accommodating 93 simultaneous communications interceptions and 278 simultaneous pen registers/traps and traces. For a further example, the carrier must be capable of accommodating 10 simultaneous communications interceptions and 361 simultaneous pen registers/traps and traces. The same form of analysis applies to the maximum capacity requirements.

[8] A "historical experience" figure, representing the baseline number of simultaneous surveillances is published for each county and market service area in the appendices to the final notice.

[9] We used the historical interception activity of cellular carriers to develop projections of future capacity requirements for PCS carriers. *See* 63 FR 12226.

III. Applicable Administrative Procedures and Executive Orders

A. Initial Regulatory Flexibility Analysis

The Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* requires the preparation of an initial regulatory flexibility analysis whenever an agency is required by law "to publish general notice of proposed rulemaking for any proposed rule." 5 U.S.C. 603(a). This publication provides our response to the remand instructions of the Court of Appeals, by providing further explanation and guidance regarding the final notice of capacity issued pursuant to CALEA, 47 U.S.C. 1003. We are not republishing the final notice of capacity, and are therefore not changing the final regulatory flexibility analysis provided with the final notice. Rather, this publication pertains only to the two discrete issues remanded by the Court, those being our interpretation of the term "simultaneously" and our decision to present only one "actual" and one "maximum" capacity requirement per geographic region. Our initial regulatory flexibility analysis is therefore limited to those issues.

The reason for this publication is to respond to the Court's remand instructions. Our objective in issuing it, is to provide further explanation for our interpretation of the term "simultaneously" and to provide additional guidance on the application of the capacity requirements with respect to different types of surveillance (interceptions versus pen registers/traps and traces).

The Regulatory Flexibility Act requires a description of, and if feasible, an estimate of the number of small entities to which a proposed rule will apply. 5 U.S.C. 603(b)(3). A "small entity" in the wired or wireless telecommunications business includes an entity that is independently owned and operated, not dominant in its field of operation, and has fewer than 1,500 employees. 5 U.S.C. 601(6)(1); 15 U.S.C. 632; 13 CFR 121.201. The Bureau of the Census issued the 1997 Economic Census on October 20, 2000. The Economic Census profiles the U.S. economy every 5 years, from the national to the local level. The 2002 Economic Census is currently being conducted, and thus the 1997 data represents the most current information. The 1997 Economic Census reports that there were 2,797 wired telecommunications communications (NAICS code 513310) firms, of which all but 24 had fewer than 1,000 employees. *See* 1997 Economic Census, Establishment and Firm Size, Publication EC97S51S–SZ. It further reports that there were 1,238 cellular and other wireless telecommunications (NAICS code 513322) firms, of which all but 12 had fewer than 1,000 employees. Firms engaged as telecommunications resellers (NAICS code 513330) numbered 1,417, of which all but 2 had fewer than 1,000 employees. We are unaware of any source of further information from which we could determine the number of firms that are independently owned and operated and not dominant in their field of operation.

This publication imposes no reporting or record-keeping requirements. The final notice imposed certain compliance requirements, the application of which is further guided and clarified by the statements herein. We are not republishing the final notice, nor changing the existing numerical capacity requirements stated therein. We are also providing further guidance as to the application of the capacity requirements in regions with the highest requirements, by setting a maximum number of communications interceptions that is lower than the total capacity requirement. The economic impact of compliance with the capacity requirements for small entities that operate in regions affected by this guidance, therefore, might be lowered if the entity employed a system that could benefit from a requirement for fewer simultaneous communications interceptions. In all other cases the economic impact created by the final notice will remain unchanged by this publication. We therefore find that there will be no significant economic impact on small businesses as a result of this publication. The FBI is unaware of any rules which would overlap, duplicate or conflict with this publication or the statements therein.

B. Executive Order 12866: Regulatory Planning and Review

This publication has been drafted and reviewed in accordance with Executive Order 12866. The FBI does not find that it constitutes a "significant regulatory action" in accordance with that Order. In particular, we had already determined that the final notice of capacity did not meet the criterion for a "significant regulatory action" and that it would not result in an annual impact on the economy in excess of $100,000,000, nor would economically impact State, local or tribal governments. 63 FR 12220. This publicaton does not significantly alter the economic analysis contained in the final notice, except that compliance costs may be reduced in some cases.

In this publication, we are neither republishing the final notice, nor changing the existing numerical capacity requirements stated therein. We are providing further guidance as to the application of the capacity requirements in regions with the highest requirements, by setting a maximum number of communications interceptions that is lower than the total capacity requirement. The economic impact of compliance with the capacity requirements for entities that operate in regions affected by this guidance, therefore, might be lowered if the entity employed a system that could benefit from a requirement for fewer simultaneous communications interceptions. In all other cases the economic impact created by the final notice, remains unchanged by this publication. Although not required by Executive Order 12866, this publication has been submitted for review by the Office of Management and Budget.

C. Executive Order 13132: Federalism

This publication will not have a substantial direct effect of the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 13132, it is determined that this publication does not have any federalism implications that warrant preparation of a federalism impact statement.

D. Executive Order 12988: Civil Justice Reform

This publication meets the applicable standards set forth in sections 3(a) and 3(b) of Executive Order 12988, Civil Justice Reform.

E. Unfunded Mandates Reform Act of 1995

We determined in the final notice of capacity that it would not result in the expenditure by State, local or tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more in any one year, and it will not significantly or uniquely affect small governments. This publication only provides further explanation and guidance with regard to two matters contained in the final notice of capacity and would neither alter the analysis contained in the final notice, nor would result in any increase in any expenditures. Therefore, no actions deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1532(a).

F. Small Business Regulatory Enforcement Fairness Act of 1996

This publication is not a major rule as defined by the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 804. We determined in the final notice of capacity that it would not have an annual effect on the economy of $100,000,000 or more; would not cause a major increase in costs or prices; and would not result in a significant adverse effect on competition, employment, investment or productivity, and innovation, or on the ability of the United States-based companies to compete with foreign-based companies in domestic and export markets. This publication only provides further explanation and guidance with regard to two matters contained in the final notice of capacity and would neither alter the analysis contained in the final notice, nor would result in any increase in expenditures. Some reductions in expenditures by small businesses are possible in certain cases.

G. Paperwork Reduction Act

This Supplement contains no information collection or record-keeping requirements under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

Dated: November 4, 2003.

Valerie E. Caproni,

General Counsel, Federal Bureau of Investigation.

[FR Doc. 03–30258 Filed 12–4–03; 8:45 am]

BILLING CODE 4410–02–P

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

November 26, 2003.

The Department of Labor (DOL) has submitted the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). A copy of this ICR, with applicable supporting documentation, may be obtained by contacting the Department of Labor. To obtain documentation, contact Darrin King on 202–693–4129 (this is not a toll-free number) or E-Mail: *reeves.vanessa2@dol.gov.*

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the Employment and Training Administration (ETA), Office of Management and Budget, Room 10235, Washington, DC 20503 (202–395–7316 / this is not a toll-free number), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Agency: Employment and Training Administration.

Type of Review: Revision of a currently approved collection.

Title: Workforce Investment Act: National Emergency Grant (NEG) Assistance-Application and Reporting Procedures.

OMB Number: 1205–0439.

Affected Public: State, local, or tribal government.

Type of Response: Reporting.

Frequency: On occasion and quarterly.

Number of Respondents: 150.

Information collection	Estimated number of respondents	Frequency	Estimated annual responses	Average response time (hours)	Estimated annual burden hours
SF–434 (OMB No. 0348–0043)	150	1 time	150	0.75	113
Narrative Summary	150	1 time	150	1	150
TAA Certification Report	50	1 time	50	0.5	25
ETA–9103	150	1 time	150	1.5	225
ETA–9105	75	1 time	75	0.5	38
ETA–9106	150	1 time	150	1	150
ETA–9107	100	1 time	100	0.25	25
ETA–9104	150	Quarterly	600	0.5	300
Grant Modifications	140	1 time	140	0.5	70
Total			1,565		1,096

Total Annualized Capital/Startup Costs: $0.

Total Annual Costs (operating/maintaining systems or purchasing services): $0.

Description: The Department of Labor/Employment and Training Administration announces policies and application and reporting procedures for states and local entities to enable them to access funds for National Emergency Grant (NEG) programs. NEGs are discretionary grants intended to complement the resources and service capacity at the State and local area levels by providing supplemental funding for workforce development and employment services and other adjustment assistance for dislocated workers and other eligible individuals as defined in sections 101, 134 and 173 of the Workforce Investment Act; sections 113, 114 and 203 of the Trade Act of 2002; and 20 CFR 671.140.

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. 03–30248 Filed 12–4–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

Workforce Security Programs: Training and Employment Guidance Letter Interpreting Federal Law

The Employment and Training Administration interprets federal law requirements pertaining to unemployment compensation (UC) and public employment services (ES). These interpretations are issued in Training and Guidance Letters (TEGLs) to the State Workforce Agencies. The TEGL described below is published in the **Federal Register** in order to inform the public.

TEGL 18–01, Change 1

TEGL 18–01, Change 1, using a Q & A format, answers additional questions related to the appropriate uses of the Reed Act distribution made on March 13, 2002.

Dated: December 1, 2003.

Emily Stover DeRocco,

Assistant Secretary of Labor.

Employment and Training Administration Advisory System, U.S. Department of Labor, Washington, DC 20210

CLASSIFICATION: Reed Act
CORRESPONDENCE SYMBOL: DL
DATE: March 19, 2003

Training and Employment Guidance Letter No. 18–01 Change 1

To: All State Workforce Liaisons, Allstate Workforce Agencies, Allstate Worker Adjustment Liaisons, Allone-Stop Center System Leads

From: Emily Stover DeRocco, Assistant Secretary

Subject: Reed Act—Questions and Answers

1. *Purpose.* To answer questions related to the use of Reed Act funds that have arisen since the issuance of Training and Employment Guidance Letter (TEGL) 18–01.

2. *References.* Section 209 of the Temporary Extended Unemployment Compensation Act of 2002 (TEUCA), which is Title II of the Job Creation and Worker Assistance Act of 2002, P.L. No. 107–147, signed by the President on March 9, 2002; Title IX of the Social Security Act (SSA); the Federal Unemployment Tax Act (FUTA); the Wagner-Peyser Act; TEGL 18–01 (67 FR 34730 (May 15, 2002)); TEGL 24–01; and Unemployment Insurance Program Letter (UIPL) 39–97 (62 FR 63960 (December 3, 1997)), UIPL 39–97, Change 1 (January 16, 2002) and UIPL 20–02 (April 4, 2002).

3. *Background.* TEGL 18–01 described the permissible uses of the $8 billion Reed Act distribution that was made to the states' accounts in the Unemployment Trust Fund on March 13, 2002. In general, this distribution is available for the payment of unemployment compensation (UC) and the administration of state UC laws and public employment offices.

RESCISSIONS: None
EXPIRATION DATE: Continuing

Since the issuance of TEGL 18–01, the Department has received questions concerning permissible uses of Reed Act funds. In addition, the Department has reviewed state legislative proposals appropriating the Reed Act funds, some of which raised issues of consistency with federal law. The following Questions and Answers address these matters.

4. *Action.* State administrators should distribute this advisory to appropriate staff. States must adhere to the requirements of Federal law that are contained in this advisory.

5. *Inquiries.* Questions should be addressed to your Regional Office.

6. *Attachment.*

Reed Act Distributions Under the Temporary Extended Unemployment Compensation Act of 2002—Questions and Answers

Attachment—Reed Act Distributions Under the Temporary Extended Unemployment Compensation Act of 2002—Questions and Answers

1. *Question:* Since my state's legislature meets in session only for short periods each year, my state's law delegates certain legislative functions, including certain appropriation functions, to the Governor. May the Governor "appropriate" Reed Act funds under this delegation?

Answer: No. Question and Answer 9 in Attachment I to TEGL 18–01 explains that Section 903(c)(2), SSA, provides that a state may use Reed Act funds for administrative purposes only "pursuant to a specific appropriation made by the legislative body of the State." (Emphasis added.) That section of the SSA goes on to provide that a withdrawal may be made for the payment of administrative expenses "if and only if" the appropriation law meets certain requirements. Among these requirements is that "the purposes and the amounts" must be "specified in the law making the appropriation." Senate Report No. 1621 elaborated on the appropriation requirement. It states that a state may use Reed Act funds for administrative expenses only "through a special appropriation act of its legislature" and that such use of Reed Act funds is "subject to rigid control by the state legislature (which control is specified in the bill in detail)." (Emphasis added. 1954 U.S.C.C.A.N. 2909, 2910, 2914.)

2. *Question:* May Reed Act funds be used for administrative expenses incurred before the date of enactment of the state appropriations?

Answer: No. Under Section 903(c)(2)(C), SSA, a state's Reed Act appropriation law must provide that "the expenses are incurred after" the date of the enactment of the appropriation.

3. *Question:* May my state use Reed Act funds to deliver employment services outside its One-Stop system?

Answer: In general, no. Reed Act funds may be used for expenses incurred by a state "for the administration of its unemployment compensation law and public employment offices." As noted in TEGL 18–01, "administration of * * * public employment offices" means "any function fundable under the Wagner-Peyser Act." Section 7(e), Wagner-Peyser, provides that "all job search, placement, recruitment, labor employment statistics, and other labor exchange services authorized under subsection (a) shall be provided, consistent with the other requirements of this Act, as part of the one-stop delivery system established by the state."

Section 7(b)(2), Wagner-Peyser, does authorize provisions of services outside the One-Stop. However, these services may be provided only to "groups with special needs, carried out pursuant to joint agreements between the employment service and the appropriate local workforce investment board and chief elected official or officials or other public agencies or private nonprofit organization." (Emphasis added.) Thus, for Reed Act purposes, moneys may be expended outside the one-stop system on these groups with special needs only if there is an agreement with the state's ES agency.

Note that the state's share of the $100 million Reed Act distributions made in each of fiscal years 2000 through 2002 may be used only for UC administration. (See Question and Answer 20 in Attachment I to TEGL 18–01.)

4. *Question:* May my state legislature appropriate Reed Act funds to an agency other than the state agency (or agencies) administering the UC program and the employment service (ES) program?

Answer: No. While nothing prohibits the UC or ES agencies from providing Reed Act funds to other agencies to perform permissible Reed Act activities (*e.g.*, information technology services supporting the UC and ES agencies), the appropriation must be made to the UC and/or ES agency.

The intent behind the Reed Act was to allow states to supplement their federal UC and ES grants. (See, for example, H. Rep. 21 (1954 U.S.C.C.A.N. 2909–2911); H. Rep. 251, 107th Cong. 1st Sess. 58–59.) Therefore, just as the state agency administering the state's UC law receives the federal UC administrative grant, the same agency is to receive Reed Act funds for administering the UC law. Similarly, just as the state agency administering the state's ES program receives the Wagner-Peyser grant, the same agency is to receive Reed Act funds for administering its public employment offices.

Appropriating Reed Act funds only to the state UC and/or ES agencies, which have expertise in determining what are permissible UI and Wagner-Peyser Act functions, helps assure that Reed Act funds are used only for permissible purposes. This in turn will help avoid federal questions regarding use.

If the state legislature appropriated Reed Act funds to an agency other than the state agency administering the state UC or ES programs prior to the effective date of this TEGL, the Department will not raise any issues with respect to the appropriation to such other agency. However, the state UC and/or ES agencies, as appropriate, should work with such other state agency to assure that Reed Act funds are used consistently with federal law requirements.

5. *Question:* May Reed Act funds be used to pay travel expenses incurred by trainees?

Answer. Only to the same extent Wagner-Peyser Act funds may be used for this purpose. Generally, Wagner-Peyser Act funds may not pay for transportation costs, but there are two exceptions:

- Section (7)(b)(2) of the Wagner-Peyser Act discusses "services for groups with special needs, carried out pursuant to joint agreements between the employment service and the appropriate workforce investment board and chief elected official or officials or other public agencies or private nonprofits organization." Costs of transporting members of such groups may be funded from Reed Act funds.
- Section 7(b)(3), Wagner-Peyser, identifies "the extra costs of exemplary models for delivering" Wagner-Peyser services as an allowable use of Wagner-Peyser funds. If transportation were part of an exemplary service delivery model for such services, it may be funded from Reed Act.

In both cases, transportation costs would be allowable only if the transportation involves transporting customers to enable them to access and receive employment services funded under the Wagner-Peyser Act or the Reed Act.

[FR Doc. 03–30249 Filed 12–4–03; 8:45 am]
BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment Standards Administration; Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR Part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR Part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date on notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department.

Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., Room S–3014, Washington, DC 20210.

Modification to General Wage Determination Decisions

The number of the decisions listed to the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume and State. Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

Rhode Island
RI030001 (Jun. 13, 2003)

Volume II

Pennsylvania
PA030001 (Jun. 13, 2003)
PA030002 (Jun. 13, 2003)
PA030003 (Jun. 13, 2003)
PA030004 (Jun. 13, 2003)
PA030005 (Jun. 13, 2003)
PA030006 (Jun. 13, 2003)
PA030007 (Jun. 13, 2003)
PA030008 (Jun. 13, 2003)
PA030009 (Jun. 13, 2003)
PA0300010 (Jun. 13, 2003)
PA0300013 (Jun. 13, 2003)
PA0300014 (Jun. 13, 2003)
PA0300016 (Jun. 13, 2003)
PA0300018 (Jun. 13, 2003)
PA0300019 (Jun. 13, 2003)
PA0300021 (Jun. 13, 2003)
PA0300023 (Jun. 13, 2003)
PA0300024 (Jun. 13, 2003)
PA0300025 (Jun. 13, 2003)
PA0300026 (Jun. 13, 2003)
PA0300030 (Jun. 13, 2003)
PA0300031 (Jun. 13, 2003)
PA0300032 (Jun. 13, 2003)
PA0300033 (Jun. 13, 2003)
PA0300040 (Jun. 13, 2003)
PA0300042 (Jun. 13, 2003)
PA0300052 (Jun. 13, 2003)
PA0300059 (Jun. 13, 2003)
PA0300060 (Jun. 13, 2003)
PA0300061 (Jun. 13, 2003)
PA0300065 (Jun. 13, 2003)
West Virginia
WV030001 (Jun. 13, 2003)
WV030002 (Jun. 13, 2003)
WV030003 (Jun. 13, 2003)
WV030006 (Jun. 13, 2003)
WV030010 (Jun. 13, 2003)

Volume III

Kentucky
KY030003 (Jun. 13, 2003)
KY030025 (Jun. 13, 2003)
KY030027 (Jun. 13, 2003)
KY030029 (Jun. 13, 2003)
KY030035 (Jun. 13, 2003)
Mississippi
MS030003 (Jun. 13, 2003)
MS030050 (Jun. 13, 2003)
MS030055 (Jun. 13, 2003)
MS030056 (Jun. 13, 2003)

Volume IV

None

Volume V

Louisiana
LA030053 (Jun. 13, 2003)

Volume VI

Colorado
CO030001 (Jun. 13, 2003)
CO030002 (Jun. 13, 2003)
CO030003 (Jun. 13, 2003)
CO030004 (Jun. 13, 2003)

CO030005 (Jun. 13, 2003)
CO030006 (Jun. 13, 2003)
CO030007 (Jun. 13, 2003)
CO030009 (Jun. 13, 2003)
CO030011 (Jun. 13, 2003)
CO030012 (Jun. 13, 2003)
CO030016 (Jun. 13, 2003)

Volume VII

Nevada
NV030002 (Jun. 13, 2003)
NV030009 (Jun. 13, 2003)

General Wage Determination Publication

General wage determination issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage determinations Issued Under the Davis-Bacon And Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country.

General wage determinations issued under the Davis-Bacon and related Acts are available electronically at no cost on the Government Printing Office site at *http://www.access.gpo.gov/davisbacon.* They are also available electronically by subscription to the Davis-Bacon Online Service (*http://davisbacon.fedworld.gov*) of the National Technical Information Service (NTIS) of the U.S. Department of Commerce at 1–800–363–2068. This subscription offers value-added features such as electronic delivery of modified wage decisions directly to the user's desktop, the ability to access prior wage decisions issued during the year, extensive Help desk Support, etc.

Hard-copy subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 512–1800.

When ordering hard-copy subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the six separate Volumes, arranged by State. Subscriptions include an annual edition (issued in January or February) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC, this 26th day of November, 2003.

John Frank,

Acting Chief, Branch of Construction Wage Determinations

[FR Doc. 03–29098 Filed 12–4–03; 8:45 am]

BILLING CODE 4510–27–M

NATIONAL SCIENCE FOUNDATION

Notice of Permit Applications Received Under the Antarctic Conservation Act of 1978 (Public Law 95–541)

AGENCY: National Science Foundation.

ACTION: Notice of permit applications received under the Antarctic Conservation Act of 1978, Public Law 95–541.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permit applications received to conduct activities regulated under the Antarctic Conservation Act of 1978. NSF has published regulations under the Antarctic Conservation Act at title 45 part 670 of the Code of Federal Regulations. This is the required notice of permit applications received.

DATES: Interested parties are invited to submit written data, comments, or views with respect to this permit application by January 5, 2003. This application may be inspected by interested parties at the Permit Office, address below.

ADDRESSES: Comments should be addressed to Permit Office, Room 755, Office of Polar Programs, National Science Foundation, 4201 Wilson Boulevard, Arlington, Virginia 22230.

FOR FURTHER INFORMATION CONTACT: Nadene G. Kennedy at the above address or (703) 292–7405.

SUPPLEMENTARY INFORMATION: The National Science Foundation, as directed by the Antarctic Conservation Act of 1978 (Pub. L. 95–541), as amended by the Antarctic Science, Tourism and Conservation Act of 1996, has developed regulations for the establishment of a permit system for various activities in Antarctica and designation of certain animals and certain geographic areas a requiring special protection. The regulations establish such a permit system to designate Antarctic Specially Protected Areas.

The applications received are as follows:

1. Applicant

Robert A. Blanchette, Department of Plant Pathology; 1991 Upper Buford Circle; 495 Borlaug Hall, University of Minnesota, St. Paul, MN 55108–6030.

Activity for Which Permit is Requested

Take and Enter Antarctic Specially Protected Areas. The applicant proposes enter the historic huts in the Ross Sea Region (Cape Evans—ASPA #154, Cape Royds—ASPA #156, and Discovery Hut—ASPA #157) to collect samples of deterioration in and around the huts, evaluate damage from historic chemical and fuel spills, assess microbial populations at the sites and set up environmental monitoring of humidity and temperature within the huts. This work is being done in cooperation with the conservators from the New Zealand Antarctic Heritage Trust and researchers from the University of Waikato, New Zealand.

Location

Cape Evans Historic Site (ASPA #154), Cape Royds (ASPA #156), and Discovery Hut, Ross Island (ASPA #157):

Dates

January 1, 2004 to December 31, 2007.

Nadene G. Kennedy,

Permit Officer, Office of Polar Programs.

[FR Doc. 03–30197 Filed 12–4–03; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

National Science Board; Committee on Education and Human Resources

Date and Time: December 4, 2003, 12 noon–1 p.m., Open Session.

Place: The National Science Foundation, Stafford One Building, 4201 Wilson Boulevard, Room 220, Arlington, VA 22230.

Status: This meeting will be open to the public.

Matters To Be Considered:

Thursday December 4, 2003

Open Session 12 noon to 1 p.m.

Approval of the Board's response to Section 22 of the NSF Authorization Act, December, 2002.

FOR FURTHER INFORMATION CONTACT: Cathy Hines, Operations Officer, NSB, (703) 292–7000, *http://www.nsf.gov/nsb.*

Cathy Hines,

Operations Officer.

[FR Doc. 03–30328 Filed 12–2–03; 4:22 pm]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

National Science Board and Its Subdivisions

Federal Register Citation of Previous Announcement: Volume 68, Number 220, **Federal Register**, pages 64661–64662, November 14, 2003.

Previously Announced Date and Time: Wednesday, November 19, 2003.

Additional Concurrent Session

Open

National Science Board, Ad Hoc Task Group on Long-Lived Data Collections, (2:30–3:30 p.m.), Room 1295.

Place: The National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, *http://www.nsf.gov/nsb.*

FOR FURTHER INFORMATION CONTACT: National Science Board Office (703) 202–7000.

Status: Open.

Changes in the Meeting: A one-hour open meeting was added to the agenda after the schedule was published on the Web and in the **Federal Register.** Public announcement of this additional session was made on the NSF Web site ahead of the meeting; no earlier notice was possible. The following topic was discussed.

Discussion: Possible Workshop on Users of Long-Lived Data Collections.

Michael P. Crosby,

Executive Officer, NSB.

[FR Doc. 03–30329 Filed 12–2–03; 4:22 pm]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–348 and 50–364]

Southern Nuclear Operating Company, Joseph M. Farley Nuclear Plant; Notice of Intent to Prepare an Environmental Impact Statement and Conduct Scoping Process

Southern Nuclear Operating Company (SNC) has submitted an application for renewal of Facility Operating Licenses, NPF–2 and NPF–8 for an additional 20 years of operation at the Joseph M. Farley Nuclear Plant, Units 1 and 2. The Farley Nuclear Plant (FNP) is located in Houston County, Alabama about 16.5 miles east of the City of Dothan, Alabama. The operating licenses for Farley Nuclear Plant, Units 1 and 2, expire on June 25, 2017, and March 31, 2021, respectively. The application for renewal was received on September 15, 2003, pursuant to 10 CFR part 54. A notice of receipt and availability of the application, which included the environmental report (ER), was published in the **Federal Register** on October 6, 2003, (68 FR 57715). A notice of acceptance for docketing of the application for renewal of the facility operating license was published in the **Federal Register** on October 30, 2003, (68 FR 68135). A notice of an opportunity for a hearing regarding the application was published in the **Federal Register** on November 5, 2003, (68 FR 62640). The purpose of this notice is to inform the public that the U.S. Nuclear Regulatory Commission (NRC) will be preparing an environmental impact statement (EIS) in support of the review of the license renewal application and to provide the public an opportunity to participate in the environmental scoping process, as defined in 10 CFR 51.29. In addition, as outlined in 36 CFR 800.8, "Coordination with the National Environmental Policy Act," the NRC plans to coordinate compliance with section 106 of the National Historic Preservation Act in meeting the requirements of the National Environmental Policy Act (NEPA).

In accordance with 10 CFR 51.53(c) and 10 CFR 54.23, SNC submitted the ER as part of the application. The ER was prepared pursuant to 10 CFR part 51 and is available for public inspection at the NRC Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, or from the Publicly Available Records component of NRC's Agencywide Documents Access and Management System (ADAMS). ADAMS is accessible at *http://www.nrc.gov/reading-rm/adams.html,* which provides access through the NRC's Electronic Reading Room link. Persons who do not have access to ADAMS, or who encounter problems in accessing the documents located in ADAMS, should contact the NRC's PDR Reference staff at 1–800–397–4209, or 301–415–4737, or by e-mail to *pdr@nrc.gov.* The application may also be viewed on the Internet at *http://www.nrc.gov/reactors/operating/licensing/renewal/applications/farley.html.* In addition, the Houston Love Memorial Library, 212 West Burdeshaw Street, Dothan, Alabama and the Lucy Maddox Memorial Library, 11880 Columbia Street, Blakely, Georgia have agreed to make the ER available for public inspection.

This notice advises the public that the NRC intends to gather the information necessary to prepare a plant-specific supplement to the Commission's "Generic Environmental Impact Statement (GEIS) for License Renewal of Nuclear Plants," (NUREG–1437) in support of the review of the application for renewal of the FNP operating licenses for an additional 20 years. Possible alternatives to the proposed action (license renewal) include no action and reasonable alternative energy sources. The NRC is required by 10 CFR 51.95 to prepare a supplement to the GEIS in connection with the renewal of an operating license. This notice is being published in accordance with the National Environmental Policy Act (NEPA) and the NRC's regulations found in 10 CFR part 51.

The NRC will first conduct a scoping process for the supplement to the GEIS and, as soon as practicable thereafter, will prepare a draft supplement to the GEIS for public comment. Participation in the scoping process by members of the public and local, State, Tribal, and Federal government agencies is encouraged. The scoping process for the supplement to the GEIS will be used to accomplish the following:

a. Define the proposed action which is to be the subject of the supplement to the GEIS.

b. Determine the scope of the supplement to the GEIS and identify the significant issues to be analyzed in depth.

c. Identify and eliminate from detailed study those issues that are peripheral or that are not significant.

d. Identify any environmental assessments and other EISs that are being or will be prepared that are related to, but are not part of the scope of the supplement to the GEIS being considered.

e. Identify other environmental review and consultation requirements related to the proposed action.

f. Indicate the relationship between the timing of the preparation of the environmental analyses and the Commission's tentative planning and decision-making schedule.

g. Identify any cooperating agencies and, as appropriate, allocate assignments for preparation and schedules for completing the supplement to the GEIS to the NRC and any cooperating agencies.

h. Describe how the supplement to the GEIS will be prepared, and include any contractor assistance to be used.

The NRC invites the following entities to participate in the scoping:

a. The applicant, Southern Nuclear Operating Company.

b. Any Federal agency that has jurisdiction by law or special expertise with respect to any environmental impact involved, or that is authorized to develop and enforce relevant environmental standards.

c. Affected State and local government agencies, including those authorized to develop and enforce relevant environmental standards.

d. Any affected Indian tribe.

e. Any person who requests or has requested an opportunity to participate in the scoping process.

f. Any person who intends to petition for leave to intervene.

In accordance with 10 CFR 51.26, the scoping process for an EIS may include

a public scoping meeting to help identify significant issues related to a proposed activity and to determine the scope of issues to be addressed in an EIS. The NRC has decided to hold public meetings for the FNP license renewal supplement to the GEIS. The scoping meetings will be held at the Quality Inn, 3053 Ross Clark Circle, Dothan, Alabama, on Thursday, January 8, 2004. There will be two sessions to accommodate interested parties. The first session will convene at 1:30 p.m. and will continue until 4:30 p.m., as necessary. The second session will convene at 7 p.m. with a repeat of the overview portions of the meeting and will continue until 10 p.m., as necessary. Both meetings will be transcribed and will include: (1) An overview by the NRC staff of the NEPA environmental review process, the proposed scope of the supplement to the GEIS, and the proposed review schedule; and (2) the opportunity for interested government agencies, organizations, and individuals to submit comments or suggestions on the environmental issues or the proposed scope of the supplement to the GEIS. Additionally, the NRC staff will host informal discussions one hour before the start of each session at the Quality Inn. No formal comments on the proposed scope of the supplement to the GEIS will be accepted during the informal discussions. To be considered, comments must be provided either at the transcribed public meetings or in writing, as discussed below. Persons may register to attend or present oral comments at the meetings on the scope of the NEPA review by contacting Mr. Cushing, by telephone at 1–800–368–5642, extension 1424, or by Internet to the NRC at *FarleyEIS@nrc.gov* no later than January 2, 2004. Members of the public may also register to speak at the meeting within 15 minutes of the start of each session. Individual oral comments may be limited by the time available, depending on the number of persons who register. Members of the public who have not registered may also have an opportunity to speak, if time permits. Public comments will be considered in the scoping process for the supplement to the GEIS. Mr. Cushing will need to be contacted no later than December 17, 2003, if special equipment or accommodations are needed to attend or present information at the public meeting, so that the NRC staff can determine whether the request can be accommodated.

Members of the public may send written comments on the environmental scope of the FNP license renewal review to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, Mailstop T–6D59, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Comments may also be delivered to the NRC, Room T–6D59, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. during Federal workdays. To be considered in the scoping process, written comments should be postmarked by February 6, 2004. Electronic comments may be sent by the Internet to the NRC at *FarleyEIS@nrc.gov* and should be sent no later than February 6, 2004, to be considered in the scoping process. Comments will be available electronically and accessible through ADAMS at *http://www.nrc.gov/reading-rm/adams.html*.

Participation in the scoping process for the supplement to the GEIS does not entitle participants to become parties to the proceeding to which the supplement to the GEIS relates. Notice of opportunity for a hearing regarding the renewal application was the subject of the aforementioned **Federal Register** notice (68 FR 62640). Matters related to participation in any hearing are outside the scope of matters to be discussed at this public meeting.

At the conclusion of the scoping process, the NRC will prepare a concise summary of the determination and conclusions reached, including the significant issues identified, and will send a copy of the summary to each participant in the scoping process. The summary will also be available for inspection in ADAMS at *http://www.nrc.gov/reading-rm/adams.html*. The staff will then prepare and issue for comment the draft supplement to the GEIS, which will be the subject of separate notices and separate public meetings. Copies will be available for public inspection at the above-mentioned addresses, and one copy per request will be provided free of charge. After receipt and consideration of the comments, the NRC will prepare a final supplement to the GEIS, which will also be available for public inspection.

Information about the proposed action, the supplement to the GEIS, and the scoping process may be obtained from Mr. Cushing at the aforementioned telephone number or e-mail address.

Dated at Rockville, Maryland, this 26th day of November, 2003.

For the Nuclear Regulatory Commission.

Pao-Tsin Kuo,

Program Director, License Renewal and Environmental Impacts Program, Division of Regulatory Improvement Programs, Office of Nuclear Reactor Regulation.

[FR Doc. 03–30247 Filed 12–4–03; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94–409, that the Securities and Exchange Commission will hold the following meeting during the week of December 8, 2003:

A closed meeting will be held on Tuesday, December 9, 2003 at 2 p.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the Closed Meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c) (5), (7), 9(B) and (10) and 17 CFR 200.402(a) (5), (7), (9)(ii) and (10), permit consideration of the scheduled matters at the Closed Meeting.

Commissioner Atkins, as duty officer, voted to consider the items listed for the closed meeting in closed session.

The subject matter of the Closed Meeting scheduled for Tuesday, December 9, 2003 will be:

Formal orders of investigation;
Institution and settlement of administrative proceedings of an enforcement nature;
Institution and settlement of injunctive actions;
Litigation matters; and
Adjudicatory matters.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

The Office of the Secretary at (202) 942–7070.

Dated: December 2, 2003.

Jonathan G. Katz,

Secretary.

[FR Doc. 03–30325 Filed 12–2–03; 4:18 pm]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48855; File No. SR–BSE–2003–07]

Self-Regulatory Organizations; Order Granting Approval of Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval of Amendment No. 1 Thereto by the Boston Stock Exchange, Inc. To Amend Its Listed Securities Requirements Relating to the Mandatory Establishment of Independent Audit Committees for All Listed Issuers

December 1, 2003.

I. Introduction

On July 16, 2003, the Boston Stock Exchange, Inc. ("BSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to add new requirements concerning audit committees to its Listed Securities Requirements in Section 10 of Chapter XXVII of the Rules of the Board of Governors of the BSE ("BSE Rules"). The proposed rule change would require each issuer listed on the BSE to establish an independent audit committee and to comply with other specified standards relating to audit committees, as mandated by section 10A(m) of the Act[3] and Rule 10A–3 thereunder.[4] The proposed rule change also includes certification, enforcement, and other compliance requirements, as well as a provision that sets forth the operative dates for the new requirements. The Exchange also committed to adopt additional listing policies and requirements pertaining to issuer corporate governance.

The proposed rule change was published for comment in the **Federal Register** on October 28, 2003.[5] The Commission received no comments on the proposal. On November 19, 2003, the BSE submitted an amendment to the proposed rule change.[6] This order approves the proposal, publishes notice of Amendment No. 1, and approves Amendment No. 1 on an accelerated basis.[7]

II. Discussion

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[8] Specifically, the Commission finds that the proposal relating to independent audit committees for listed companies is consistent with section 6(b)(5) of the Act,[9] which requires, among other things, that the BSE's rules be designed to prevent fraudulent and manipulative acts and practices, and, in general, to protect investors and the public interest. Moreover, the Commission believes that the BSE's proposal to add the new requirements concerning audit committees is appropriate and consonant with section 10A(m) of the Act[10] and Rule 10A–3 thereunder relating to audit committee standards for listed issuers. The Commission notes that the BSE intends to file an additional rule proposal relating to other corporate governance listing standards.[11]

Furthermore, the Commission finds good cause, consistent with section 19(b)(2) of the Act,[12] to approve Amendment No. 1 to the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. In Amendment No. 1, the BSE expanded, with respect to investment companies, the scope of the proposed provision regarding complaint procedures. Rule 10A–3 requires audit committees to establish procedures for "the confidential, anonymous submission by employees of the listed issuer of concerns regarding questionable accounting or auditing matters."[13] The amended BSE proposal would require that audit committees of investment companies also establish procedures for the confidential, anonymous submission of such concerns by employees of the investment adviser, administrator, principal underwriter, or any other provider of accounting related services for the investment company, as well as employees of the investment company. This revision responds to a recommendation by the Commission that self-regulatory organizations take into account, in adopting rules to comply with Rule 10A–3, the fact that most services are rendered to an investment company by employees of third parties, such as the investment adviser, rather than by employees of the investment company.[14] In Amendment No. 1, the Exchange also made several technical revisions to the rule text. The Commission believes that it is appropriate to accelerate approval of this amendment, because it conforms the rule text to similar rules of the New York Stock Exchange, Inc. and the National Association of Securities Dealers, Inc. that were approved by the Commission,[15] and the amendment raises no new substantive issues.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment No. 1, including whether Amendment No. 1 is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filings will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–BSE–2003–07 and should be submitted by December 26, 2003.

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78j–1(m).

[4] 17 CFR 240.10A–3.

[5] See Securities Exchange Act Release No. 48668 (October 21, 2003), 68 FR 61494 ("Notice").

[6] See letter from John Boese, Vice President, Legal and Compliance, BSE, to Nancy Sanow, Assistant Director, Division of Market Regulation, Commission, dated November 18, 2003 ("Amendment No. 1"). In Amendment No. 1, the BSE made minor, non-substantive changes to the text of the proposed rule and, with respect to investment companies, expanded the scope of the requirement that audit committees establish procedures for the confidential, anonymous submission of concerns regarding questionable accounting or auditing matters.

[7] Rule 10A–3 requires each national securities exchange and national securities association to have rules that comply with its requirements approved by the Commission no later than December 1, 2003. By the Commission approving the proposed rule change, the Exchange can comply with this deadline.

[8] In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[9] 15 U.S.C. 78f(b)(5).

[10] 15 U.S.C. 78j–1(m).

[11] See Notice at note .

[12] 15 U.S.C. 78s(b)(2).

[13] 17 CFR 240.10A–3(b)(3)(ii).

[14] See Securities Act Release No. 8220, Securities Exchange Act Release No. 47654, and Investment Company Act Release No. 26001 (April 9, 2003), 68 FR 18788 (April 16, 2003) (release adopting Rule 10A–3).

[15] See Securities Exchange Act Release Nos 48745 (November 4, 2003), 68 FR 64154 (November 12, 2003) (approval of, among other proposals, File Nos. SR–NYSE–2002–33 and SR–NASD–2002–141).

IV. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[16] that Amendment No. 1 is approved on an accelerated basis, and that the proposed rule change (File No. SR–BSE–2003–07) be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[17]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–30252 Filed 12–4–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48858; File No. SR–CBOE–2003–07]

Self-Regulatory Organizations; Order Approving Proposed Rule Change and Amendment No. 1 by the Chicago Board Options Exchange, Inc., Relating to the Trading of Ratio Orders

December 1, 2003.

I. Introduction

On February 24, 2003, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to allow ratio orders to be executed through the CBOE. The CBOE filed Amendment No. 1 to the proposal on October 8, 2003.[3]

The proposed rule change and Amendment No. 1 were published for comment in the **Federal Register** on October 28, 2003.[4] The Commission received no comments regarding the proposal. This order approves the proposed rule change, as amended.

II. Description of the Proposal

The CBOE proposes to amend CBOE Rule 6.53, "Certain Types of Orders Defined," to allow ratio orders with certain permissible ratio limits, as defined below, to be executed through the CBOE. In addition, the CBOE proposes to revise paragraph (e) of CBOE Rule 6.45, "Priority of Bids and Offers—Allocation of Trades," to include these types of permissible ratio orders in CBOE Rule 6.45(e), thereby providing such ratio orders with the exception to the priority rules that CBOE Rule 6.45(e) provides currently for spread, straddle, and combination orders.[5] The CBOE believes that because ratio orders are slight variations on the types of complex orders currently permitted on the CBOE, it is appropriate to treat ratio orders like spread, straddle, and combination orders for purposes of CBOE Rule 6.45(e).

CBOE Rule 6.53 lists and defines several types of orders that are executed through the CBOE including, among others, three types of complex orders: spread orders, combination orders, and straddle orders. The CBOE proposes to add certain ratio orders within permissible established limits to the list of orders included in CBOE Rule 6.53. CBOE Rule 6.53(n) would define a ratio order as either a spread, straddle, or combination order in which the stated number of option contracts to buy (sell) is not equal to the stated number of option contracts to sell (buy), provided that the number of contracts differs by a permissible ratio. Under CBOE Rule 6.53(n), a permissible ratio would be any ratio that is equal to or greater than one-to-three (.333) or less than or equal to three-to-one (3.0). For example, a one-to-two (.5) ratio, a two-to-three (.667) ratio, or a two-to-one (2.0) ratio is permissible, whereas a one-to-four (.25) ratio or a four-to-one (4.0) ratio is not.

III. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange[6] and, in particular, with the requirements of section 6(b)(5) of the Act,[7] which requires, among other things, that the rules of a national securities exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and to protect investors and the public interest.

The proposal will allow certain ratio orders to be executed through the CBOE. As described above, a ratio order is a spread, straddle, or combination order in which the stated number of option contracts to buy (sell) is not equal to the stated number of option contracts to sell (buy), provided that the number of contracts differs by a permissible ratio.[8] The Commission believes that ratio orders within certain permissible ratios may provide market participants with greater flexibility and precision in effectuating trading and hedging strategies. In addition, the Commission believes that including such ratio orders in the exception to the priority rules provided in CBOE Rule 6.45(e) will facilitate the execution of ratio orders. In this regard, the Commission believes that the procedures governing the execution of complex orders, such as ratio orders, serve to reduce the risk of incomplete or inadequate executions while increasing efficiency and competitive pricing by requiring price improvement before the order can receive priority over other orders.[9] The Commission also notes that the rules of other options exchanges treat certain ratio orders like other complex orders for purposes of their priority rules.[10]

The CBOE's rule also provides specific examples of permissible ratio orders. Specifically, the rule provides that a permissible ratio is any ratio that is equal to or greater than one-to-three and less than or equal to three-to-one. For example, as indicated in the rule, a one-to-two ratio, a two-to-three ratio, or a two-to-one ratio is permissible, whereas a one-to-four ratio or a four-to-one ratio is not. This should help to provide guidance to CBOE members of the permissible ratios allowed under CBOE rules for such ratio orders.

The Commission believes that permitting ratio orders to have ratios equal to or greater than one-to-three or less than or equal to three-to-one will help market participants to tailor their positions more precisely to implement their trading and hedging strategies. Because of concerns that a higher ratio could provide market participants with a means to enter a ratio order that was designed primarily to gain priority over orders on the limit order book or in the trading crowd, rather than to effectuate a bona fide trading or hedging strategy, the Commission would need to examine closely any proposal to provide a higher ratio for ratio orders and would be concerned about whether such a proposal would be consistent with investor protection and the public interest under the Act.[11]

IV. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[12] that the proposed rule change (SR–CBOE–2003–07), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–30250 Filed 12–4–03; 8:45 am]

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[16] 15 U.S.C. 78s(b)(2).

[17] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from James M. Flynn, Attorney II, Legal Division, CBOE, to Yvonne Fraticelli, Division of Market Regulation, Commission, dated October 6, 2003 ("Amendment No. 1"). Amendment No. 1 revises the proposal to provide that the permissible ratio for a ratio order is any ratio that is equal to or greater than one-to-three (.333) and less than or equal to three-to-one (3.0).

[4] *See* Securities Exchange Act Release No. 48672 (October 21, 2003), 68 FR 61499.

[5] CBOE Rule 6.45(e), "Complex Order Priority Exception," currently states that: "A member holding a spread, straddle, or combination order (or a stock-option order as defined in Rule 1.1(ii)(b)) and bidding (offering) on a net debit or credit basis (in a multiple of the minimum increment) may execute the order with another member without giving priority to equivalent bids (offers) in the trading crowd or in the book provided at least one leg of the order betters the corresponding bid (offer) in the book. Stock-option orders, as defined in Rule 1.1(ii)(a), have priority over bids (offers) of the trading crowd but not over bids (offers) of public customers in the limit order book."

[6] In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[7] 15 U.S.C. 78f(b)(5).

[8] Under the proposal, a permissible ratio is any ratio that is equal to or greater than one-to-three (.333) or less than or equal to three-to-one (3.0).

[9] *See, e.g.*, CBOE Rule 6.45(e). *See also* Securities Exchange Act Release No. 44955 (October 18, 2001), 66 FR 53819 (October 24, 2001) (order approving File No. SR–ISE–2001–18).

[10] *See, e.g.*, ISE rule 722(b)(2), "Complex Order Priority," and PHLX Rule 1033(g), "Ratio Spread Type Priority."

[11] In this regard, the Commission notes that one exchange stated that a proposed three-to-one cap on the ratio for foreign currency option orders "would prevent a trader seeking priority over an order on the book or in the crowd from restating an order as a ratio order. For example, such a cap would prevent a trader from recasting an order to buy 100 calls and sell one out-of-the-money put." *See* Securities Exchange Act Release No. 25503 (March 23, 1988), 53 FR 10323 (March 30, 1988) (order approving File No. SR–PHLX–87–33).

[12] 15 U.S.C. 78s(b)(2).

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[(Release No. 34–48854; File No. SR–NASD–2003–135)]

Self-Regulatory Organizations; Order Approving Proposed Rule Change and Amendment No. 1 Thereto by the National Association of Securities Dealers, Inc. To Aggregate Odd-Lot Amounts for Display in SuperMontage Under Certain Circumstances

November 28, 2003.

On August 28, 2003, the National Association of Securities Dealers, Inc. ("NASD"), through its subsidiary, The Nasdaq Stock Market, Inc. ("Nasdaq") submitted to the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to aggregate odd-lot share amounts inside the inside spread for display purposes via the SIZE MMID. On October 20, 2003, Nasdaq filed Amendment No. 1 to the proposed rule change.[3] The **Federal Register** published the proposed rule change, as amended, for comment on October 28, 2003.[4] The Commission received no comments on the proposal.

The Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association[5] and, in particular, the requirements of section 15A of the Act[6] and the rules and regulations thereunder. The Commission notes that the proposed rule change, as amended, permits Nasdaq to aggregate odd-lots for display purposes that better the Nasdaq inside market and that combined equal or are larger than one round lot, thus increasing transparency and providing investors with greater price information. Therefore, the Commission finds the proposed rule change is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest, consistent with section 15A(b)(6) of the Act.[7] As proposed by Nasdaq, the proposed rule change will be effective on December 8, 2003.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[8] that the proposed rule change, as amended, (SR–NASD–2003–135) be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–30251 Filed 12–4–03; 8:45 am]

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Mary M. Dunbar, Vice President and Deputy General Counsel, Nasdaq, to Katherine A. England, Assistant Director, Division of Market Regulation, Commission, dated October 17, 2003 ("Amendment No. 1"). Amendment No. 1 replaced and superseded the original proposed rule change in its entirety.

[4] *See* Securities Exchange Act Release No. 48671 (October 21, 2003), 68 FR 61531.

[5] In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[6] 15 U.S.C. 78*o*–3.

[7] 15 U.S.C. 78*o*–3(b)(6).

[8] 15 U.S.C. 78s(b)(2).

[9] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

Region IX Regulatory Fairness Board; Public Federal Regulatory Enforcement Fairness Roundtable

The Small Business Administration Region IX Regulatory Fairness Board and the SBA Office of the National Ombudsman will hold a Public Roundtable on Thursday, December 4, 2003 at 1 p.m. at the SETA Headquarters, Board Room, 925 Del Paso Boulevard, Sacramento, CA 95815, to provide small business owners and representatives of trade associations with an opportunity to share information concerning the federal regulatory enforcement and compliance environment.

Anyone wishing to attend or to make a presentation must contact Robert Stitt in writing or by fax, in order to be put on the agenda. Robert Stitt, SBA Sacramento District Office, 650 Capital Mall, Suite 7–500, Sacramento, CA 95814, phone (916) 930–3722, fax (916) 930–3736 or (202) 481–5298, e-mail: *Robert.Stitt@sba.gov*.

For more information, see our Web site at *http://www.sba.gov/ombudsman*.

Dated: December 1, 2003.

Peter Sorum,

National Ombudsman (Acting).

[FR Doc. 03–30209 Filed 12–4–03; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice 4549]

60-Day Notice of Proposed Information Collection: DS–2028 Overseas Schools—Grant Status Report; OMB Control Number 1405–0033

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: The Department of State is seeking Office of Management and Budget (OMB) approval for the information collection described below. The purpose of this notice is to allow 60 days for public comment in the **Federal Register** preceding submission to OMB. This process is conducted in accordance

[11] 17 CFR 200 30–3(a)(12).

with the Paperwork Reduction Act of 1995.

The following summarizes the information collection proposal to be submitted to OMB:

Type of Request: An extension of a currently approved collection.

Originating Office: A/OPR/OS.

Title of Information Collection: Overseas Schools "Grant Status Report.

Frequency: Annually.

Form Number: DS–2028.

Respondents: Overseas school grantees.

Estimated Number of Respondents: 185.

Average Hours Per Response: 15 minutes.

Total Estimated Burden: 46.25.

Public comments are being solicited to permit the agency to:

• Evaluate whether the proposed information collection is necessary for the proper performance of the functions of the agency.

• Evaluate the accuracy of the agency's estimate of the burden of the proposed collection, including the validity of the methodology and assumptions used.

• Enhance the quality, utility, and clarity of the information to be collected.

• Minimize the reporting burden on those who are to respond, including through the use of automated collection techniques or other forms of technology.

FOR FURTHER INFORMATION CONTACT: Public comments, or requests for additional information, regarding the collection listed in this notice should be directed to Keith D. Miller, Department of State, Office of Overseas Schools, Room H328 SA–1, Washington, DC 20522–0132 who may be reached on 202–261–8200.

Dated: December 1, 2003.

Peggy M. Philbin,

Executive Difector, Bureau of Ädministration, Department of State.

[FR Doc. 03–30275 Filed 12–4–03; 8:45 am]

BILLING CODE 4710–24–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2003–16356]

Extension of Comment Period on Whether Nonconforming 2002 and 2003 Ferrari 575 Passenger Cars Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Extension of comment period.

SUMMARY: This document announces the extension of the comment period on a petition for NHTSA to decide that 2002 and 2003 Ferrari 575 passenger cars that were not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States.

DATES: The closing date for comments on the petition is December 12, 2003.

ADDRESSES: Comments are to be submitted to: Docket Management, Room PL–401, 400 Seventh Street SW., Washington, DC 20590. Docket hours are from 9 am to 5 pm. Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the document (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–787) or you may visit *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Coleman Sachs, Office of Vehicle Safety Compliance, NHTSA (202) 366–3151.

SUPPLEMENTARY INFORMATION: On October 28, 2003, NHTSA published a notice (at 68 FR 61549) that it had received a petition to decide that nonconforming 2002 and 2003 Ferrari 575 passenger cars are eligible for importation into the United States. The notice solicited public comments on the petition and stated that the closing date for comments is November 28, 2003.

This is to notify the public that NHTSA is extending the comment period until December 12, 2003. This extension is based on a request from Ferrari North America, Inc. (FNA), the U.S. representative of the vehicle's manufacturer, Ferrari, SpA. In requesting the extension, FNA that "the employee of Ferrari SpA who has, among other duties, principal responsibility for technical analysis of importation eligibility petitions has been traveling on company business and therefore has not yet provided FNA with the information needed by FNA to prepare comments in the proceeding." FNA contended that the requested 2-week extension of the comment period "will not prejudice the parties or unduly delay the proceeding."

NHTSA has granted FNA's request. All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Authority: 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: December 2, 2003.

Kenneth N. Weinstein,

Associate Administrator for Enforcement.

[FR Doc. 03–30279 Filed 12–4–03; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34424]

Canadian National Railway Company and Grand Trunk Corporation—Control—Duluth, Missabe and Iron Range Railway Company, Bessemer and Lake Erie Railroad Company, and The Pittsburgh & Conneaut Dock Company

AGENCY: Surface Transportation Board, DOT.

ACTION: Decision No. 2 in STB Finance Docket No. 34424; Notice of Acceptance of Primary Application and Related Filings; Issuance of Procedural Schedule.[1]

SUMMARY: The Surface Transportation Board (Board) is accepting for consideration the primary application and related filings filed November 5, 2003, by Canadian National Railway Company (CNR, a rail carrier that controls several rail carrier subsidiaries) and Grand Trunk Corporation (GTC, a noncarrier holding company through which CNR controls its U.S. rail carrier subsidiaries). CNR and GTC are referred to collectively as CN or as applicants. The primary application seeks Board approval and authorization under 49 U.S.C. 11321–26 for the acquisition by CN of control of three U.S. railroads: Duluth, Missabe and Iron Range Railway Company (DMIR), Bessemer and Lake Erie Railroad Company (B&LE), and the Pittsburgh & Conneaut Dock Company (P&C Dock). Because DMIR, B&LE, and P&C Dock are now controlled by Great Lakes Transportation LLC (GLT), the primary application is referred to as the "CN/GLT Application," the transaction proposed in the primary application is referred to as the "CN/GLT Transaction" or the Transaction, and DMIR, B&LE, and P&C Dock are referred to collectively as the "GLT Railroads." The related filings seek related trackage rights contingent upon approval of the primary application. The Board finds that the transaction proposed in the primary application is a "minor transaction" under 49 CFR 1180.2(c).

The Board has considered CN's petition suggesting a 146-day procedural schedule, also filed November 5, 2003. The Board is adopting a 156-day procedural schedule patterned upon the 156-day procedural schedule that was adopted earlier this year in the "KCS/Tex Mex" proceeding.[2] The 156-day procedural schedule adopted by the Board is essentially the same as the 146-day procedural schedule suggested by CN, except that the Board's schedule adds five days to the "evidentiary proceeding" stage and another five days to the "final decision" stage. The 156-day procedural schedule will allow the Board to issue a decision 45 days after the close of the record and 24 days prior to the statutory deadline, assuming that no unanticipated environmental review is required.

DATES: The effective date of this decision is December 5, 2003. Comments on CN's Environmental Appendix (submitted November 5, 2003, and supplemented November 10, 2003) are due by December 10, 2003. CN must submit its Safety Integration Plan (SIP) by December 15, 2003. Any person who wishes to participate in this proceeding as a party of record (POR) must file, no later than December 19, 2003, a notice of intent to participate. Comments on CN's SIP must be filed by January 22, 2004. All comments, protests, requests for conditions, and any other evidence and argument in opposition to the primary application and/or either or both of the related filings, including filings by the U.S. Department of Justice (DOJ) and the U.S. Department of Transportation (DOT), must be filed by January 26, 2004. Responses to comments, protests, requests for conditions, and other opposition, responses to comments of DOJ and DOT, and rebuttal in support of the primary application and/or either or both of the related filings must be filed by February 24, 2004. A public hearing/oral argument will be held the week of March 1, 2004 (the precise date and the location will be announced later). For further information respecting dates, *see* Appendix A (Procedural Schedule).

ADDRESSES: Send an original and 20 copies of all pleadings (except for environmental submissions, as discussed below) referring to STB Finance Docket No. 34424 to: Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001.[3] In addition, one copy of all documents in this proceeding must be sent to each of the following: (1) Secretary of the United States Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590; (2) Attorney General of the United States, c/o Assistant Attorney General, Antitrust Division, Room 3645, Department of Justice, Washington, DC 20530; and (3) Paul A. Cunningham, Esq., Harkins Cunningham LLP, 801 Pennsylvania Avenue, NW., Suite 600, Washington, DC 20004–2664.

In addition to submitting an original and 20 copies of all paper documents filed with the Board, parties must also submit, on 3.5-inch IBM-compatible floppy diskettes (disks) or compact discs (CDs), copies of all textual materials, electronic workpapers, data bases, and spreadsheets used to develop quantitative evidence. Textual materials must be in, or compatible with, WordPerfect 10.0. Electronic spreadsheets must be in, or compatible with, Lotus 1–2–3 Release 9 or Microsoft Excel 2002. A copy of each disk or CD submitted to the Board should be provided to any other party upon request. Further details are discussed below.

Comments (an original and 10 copies) on the Environmental Appendix and SIP should be submitted in writing to: Attn: Phillis Johnson-Ball, STB Finance Docket No. 34424, Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001.

FOR FURTHER INFORMATION CONTACT: Julia M. Farr, (202) 565–1655. (Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339.)

SUPPLEMENTARY INFORMATION: The CN/GLT Transaction proposed in the primary application contemplates the acquisition, by CN, of control of four carriers—the three GLT Railroads (DMIR, B&LE, and P&C Dock) and an affiliated water carrier (Great Lakes Fleet, Inc., referred to as GLF)—which now operate an integrated iron ore delivery chain that extends from ore mines in Minnesota to steel plants in Pennsylvania. The three GLT Railroads (DMIR, B&LE, and P&C Dock) and the affiliated GLT water carrier (GLF) are referred to collectively as the "GLT Carriers." The proposed acquisition, by CN, of control of DMIR, B&LE, and P&C Dock is subject to the jurisdiction of the Board; the related acquisition, by CN, of control of GLF is not subject to the jurisdiction of the Board. *See* 49 U.S.C. 11323 (the Board's "control jurisdiction" extends only to transactions involving rail carriers). The related acquisition, by CN, of control of GLF is, however, subject to review by the U.S. Maritime Administration and the Coast Guard, and is also subject to review under the Hart-Scott-Rodino Antitrust Improvements Act of 1976.

Canadian National. As of September 30, 2003, CN's rail network, which crosses North America from east to west and from north to south, serving major ports on three coasts, consisting of 17,539 route miles in 15 American states and eight Canadian provinces. CN's principal routes run: (1) Between Vancouver and Prince Rupert, BC, in the west, and Halifax, NS, in the east, serving every major metropolitan area in Canada; (2) between Chicago, IL, and Buffalo, NY, serving three major metropolitan areas (Chicago, IL, Detroit, MI, and Buffalo, NY) in the U.S.; (3) between Winnipeg, MB, and Chicago, IL; (4) between Chicago and the Gulf of Mexico, reaching every major metropolitan area on the Mississippi River (including St. Louis, MO, Memphis, TN, and New Orleans, LA); and (5) between Nebraska/Iowa and Chicago, extending from Sioux City and Council Bluffs, IA, in the west, to Chicago in the east. CN's U.S. operations are conducted by CNR and, through CNR's GTC subsidiary, by 10 U.S. railroads that are part of the CN system: Duluth, Winnipeg and Pacific

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[1] This decision covers: the railroad control application filed in STB Finance Docket No. 34424, *Canadian National Railway Company and Grand Trunk Corporation—Control—Duluth, Missabe and Iron Range Railway Company, Bessemer and Lake Erie Railroad Company, and The Pittsburgh & Conneaut Dock Company;* the trackage rights exemption notice filed in STB Finance Docket No. 34424 (Sub-No. 1), *Duluth, Winnipeg and Pacific Railway Company—Trackage Rights—Duluth, Missabe and Iron Range Railway Company;* and the trackage rights exemption notice filed in STB Finance Docket No. 34424 (Sub-No. 2), *Duluth, Missabe and Iron Range Railway Company—Trackage Rights—Duluth, Winnipeg and Pacific Railway Company.* The railroad control application filed in STB Finance Docket No. 34424 is referred to as the "primary application." The trackage rights exemption notices filed in STB Finance Docket No. 34424 (Sub-Nos. 1 and 2) are referred to collectively as the "related filings."

[2] *See Kansas City Southern—Control—The Kansas City Southern Railway Company, Gateway Eastern Railway Company, and The Texas Mexican Railway Company,* STB Finance Docket No. 34342, Decision No. 2 (STB served June 9, 2003, and published at 68 FR 35474 on June 13, 2003).

[3] For a document to be considered a formal filing, the Board must receive an original and 20 copies of the document, which must show that it has been properly served upon all Parties of Record. Documents transmitted by facsimile (Fax) will not be considered formal filings and are not encouraged because they would result in unnecessarily burdensome, duplicative processing. In addition, each formal filing must be accompanied by an electronic submission per the Board's requirements as discussed in detail in this decision.

Railway Company (DWP), Grand Trunk Western Railroad Incorporated (GTW), St. Clair Tunnel Company (SCTC), Illinois Central Railroad Company (IC), Chicago, Central & Pacific Railroad Company (CCP), Cedar River Railroad Company (CRRC), Waterloo Railway Company (WRC), Wisconsin Central Ltd. (WCL), Sault Ste. Marie Bridge Company (SSMB), and Wisconsin Chicago Link Ltd. (WCLL).

In 1999, CN acquired IC to position itself to better serve north-south "NAFTA" traffic by extending its system from Chicago to the Gulf Coast. As a result of the 1999 CN/IC transaction and CN's 1998 marketing alliance with The Kansas City Southern Railway Company (KCS), CN is today part of a NAFTA rail network offering shippers access to TFM, S.A. de C.V. (TFM), Mexico's largest rail system. In 2001, CN acquired WCL and its affiliates, thus providing CN with a connection between Chicago and the CN lines west of the Great Lakes. This connection is completely under CN ownership, with the exception of the 17-mile segment between Nopeming Junction, MN, and South Itasca, WI, over which CN's DWP subsidiary operates by means of trackage rights granted by DMIR.

The GLT Carriers. DMIR, a Class II railroad that owns 212 miles of rail line in Minnesota and Wisconsin, carries primarily: (1) Taconite pellets (a form of processed iron ore) from taconite plants in the Mesabi Range (a) to DMIR-owned docks on Lake Superior at Duluth, MN, and Two Harbors, MN (for loading onto vessels for movement to steel plants), and (b) to interchange points with other railroads; and (2) limestone from the dock at Duluth to Mesabi Range taconite plants. DMIR's Missabe Main Line runs 74 miles in a generally north-south direction between Mountain Iron, MN, and Duluth, MN. Its Iron Range Main Line runs 74 miles in a generally east-west direction between Iron Junction, MN (where the Missabe Main Line and the Iron Range Main Line intersect) and Two Harbors, MN. DMIR also operates 64 miles of branch lines. Among these branch lines are the Shaw Cut Off/Superior Branch, which runs 16 miles eastward from Emmert, MN, to Keenan, MN, where it meets the Missabe Main Line; the Taconite District, which runs 4.5 miles to the west of Calumet, MN (the Taconite District is not contiguous with any other DMIR line); and the Interstate Branch/Spirit Lake Branch, which runs from Adolph, MN (on the Missabe Main Line), 23 miles in a generally southward and eastward direction through Nopeming Junction, MN, to South Itasca, WI (near Superior, WI), where DMIR's property ends. DMIR's lines between Virginia, MN (in the north), and Duluth, MN, and South Itasca, WI (in the south), are generally parallel to CN's lines between Virginia and South Itasca, and, for the southernmost 17 miles of that corridor (*i.e.*, the 17-mile segment from Nopeming Junction, MN, to South Itasca, WI), CN and DMIR operate over the same track, pursuant to trackage rights granted by DMIR to CN's DWP subsidiary. DMIR itself operates via trackage rights over 10 miles of CN track between Shelton, MN, and Minorca Junction, MN, and over 19 miles of track of the Burlington Northern and Santa Fe Railway Company (BNSF) between Calumet, MN, and Emmert, MN (the Calumet-Emmert trackage rights enable DMIR to access its Taconite District).

B&LE, a Class II railroad operating between North Bessemer, PA (near Pittsburgh, PA), and the port at Conneaut, OH (on Lake Erie), carries principally coal, iron ore, and limestone. B&LE's main line runs between North Bessemer and Albion, PA, and its two northernmost branch lines run between Albion, PA, on the one hand, and, on the other hand, Conneaut, OH, and Wallace Junction, PA.

P&C Dock, a Class III railroad, does not own or operate any rail routes, but performs switching operations and ship-to-rail and rail-to-ship bulk transfer operations for B&LE at three docks at Conneaut, OH.

GLF is a water carrier (not a rail carrier) that owns a fleet of vessels that carry ore and other bulk commodities on the Great Lakes.

DMIR, B&LE, P&C Dock, and GLF are wholly owned subsidiaries of DMIR Holdings Corp. (DMIR Holdings), B&LE Holdings Corp. (B&LE Holdings), P&CD Holdings Corp. (P&CD Holdings), and GLF Holdings Corp. (GLF Holdings), respectively. DMIR Holdings, B&LE Holdings, P&CD Holdings, and GLF Holdings are noncarriers, and each is a wholly owned subsidiary of Great Lakes Transportation LLC (GLT). GLT is owned by Great Lakes Transportation Holdings, L.P., which is an affiliate of The Blackstone Group.

The CN/GLT Transaction. GTC and GLT have entered into a Stock Purchase Agreement (the CN/GLT Agreement), dated October 19, 2003, that provides that, subject to a number of conditions, GTC will purchase from GLT all of the issued and outstanding shares of DMIR Holdings, B&LE Holdings, P&CD Holdings, and GLF Holdings for an overall purchase price of $380 million, subject to certain adjustments provided for in the CN/GLT Agreement. CN advises that, if the CN/GLT Transaction is approved, it intends to pay the purchase price in cash on the closing date under the CN/GLT Agreement (CN expects to meet the cash requirements for consummation of the Transaction by borrowing under its existing revolving credit facility, combined with long-term debt), and it intends to consummate control of the GLT Railroads as soon as possible after a final order of the Board approving the primary application and authorizing the Transaction has become effective. CN further advises that, because it plans few operational changes in connection with the CN/GLT Transaction, it expects to fully implement that Transaction shortly after consummation of CN control of the GLT Railroads. CN adds that, although it does not anticipate any increases in total traffic and revenue handled by CN and the GLT Railroads as a result of the CN/GLT Transaction, it does anticipate that the Transaction would lead to more efficient operations and permit efficiency-related cost reductions. CN advises that it has no present plans to merge DMIR Holdings, B&LE Holdings, or P&CD Holdings into any other entity, in the CN system, or to merge any of the GLT Railroads with any of CN's other subsidiaries.

Related Filings. DWP and DMIR operate two separate rail lines that run between Shelton Junction, MN (near Virginia, MN), and Nopeming junction, MN (near Superior, WI). The related filings, which were made pursuant to 49 CFR 1180.2(d)(7), involve reciprocal grants of trackage rights that would allow each of DWP and DMIR to operate its trains, locomotives, cars, and equipment, with its own crews, over the other's essentially parallel line between Shelton Junction and Nopeming Junction. In STB Finance Docket No. 34424 (Sub-No. 1), DWP has filed a notice of exemption relating to trackage rights to be granted to DWP over DMIR's lines between Shelton Junction (Mileage B 2.71 on DMIR's Virginia Branch) and Nopeming Junction (Mileage R 5.77 on DMIR's Spirit Lake Branch), a distance of approximately 64 miles. In STB Finance Docket No. 34424 (Sub-No. 2), DMIR has filed a notice of exemption relating to trackage rights to be granted to DMIR over DWP's lines between Shelton Junction (MP 70.7 on DWP's Rainy Subdivision) and Nopeming Junction (MP 10.7 on DWP's Rainy Subdivision), a distance of approximately 60 miles. The reciprocal trackage rights provided for in the notices of exemption filed in STB Finance Docket No. 34424 (Sub-Nos. 1 and 2) are intended to be effective upon

acquisition by CN of control of DMIR, and, therefore, are contingent upon approval of the primary application.

CN/GLT Common Control: Purposes Served. CN contends that its acquisition of control of the GLT Railroads would serve three primary purposes.

First, acquisition of control of DMIR would give CN full ownership of the route over which all CN traffic between Winnipeg and Chicago now moves. CN notes that, at present, it must operate by means of trackage rights granted by DMIR over the 17-mile segment between Nopeming Junction and South Itasca.

Second, CN contends that acquisition of control of DMIR would increase CN's operational flexibility by allowing CN to institute "directional running" on the two parallel Shelton Junction-Nopeming Junction lines, which would reduce transit time and increase service reliability over CN's entire Winnipeg-Chicago corridor. CN adds that, because DMIR's Shelton Junction-Nopeming Junction line has newer ties and newer and heavier rail than DWP's Shelton Junction-Nopeming Junction line, the transfer to the DMIR line of some traffic that now uses the DWP line would allow CN to avoid the capital expenditures that would otherwise be required for centralized traffic control (CTC) and extensions of sidings on the DWP line.

Third, CN contends that acquisition of control of the four GLT Carriers (DMIR, B&LE, P&C Dock, and GLF), which provide an important supply line for the North American steel industry, would enable CN to develop closer and more extensive relationships with companies in and serving that industry.

CN/GLT Common Control: Public Interest Considerations. CN contends that the CN/GLT Transaction would benefit the public interest by connecting two transportation systems that do not compete with each other but, rather, complement each other. The CN/GLT Transaction, CN argues, would strengthen the GLT Railroads by making them part of the rail system operated by CN, a successful rail carrier that would have the commitment and ability to make long-term investments in plant, equipment, and systems as they become needed. CN contends that the CN/GLT Transaction would enable CN to lower its maintenance costs and to improve transit times and reliability for shippers by using the parallel DWP and DMIR lines between Shelton Junction and Nopeming Junction for freight moving between western Canada and Chicago. And, CN adds, the CN/GLT Transaction would eliminate the need for interchange between CN and DMIR, thus permitting some single-line rail operations to and from shippers on CN and on DMIR, which should result in reduced handling and shortened car transit times.

CN contends that, in view of the limited scope of the CN/GLT Transaction, the record of CN and its constituent railroads over the past decade in successfully implementing rail consolidations, the good operating condition of both systems, and the absence of any need for a sweeping "Day One" change in systems, the CN/GLT Transaction would present a low risk of implementation-related service difficulties.

CN contends that the CN/GLT Transaction would have no anticompetitive effects.

(1) *Horizontal Effects.* CN contends that the CN/GLT Transaction would not have adverse "horizontal" effects on competition. CN explains that, except for Virginia, MN, and Duluth, MN/Superior, WI, which each receive rail service from three or more rail carriers, the CN and GLT lines serve no common metropolitan areas or cities. CN further explains that there would be no 2-to-1 shippers (*i.e.*, there is no shipper now capable of receiving rail service from more than one independent railroad who would be reduced to having only one independent railroad available to it), and that, although there would arguably be one 3-to-2 shipper (*i.e.*, a shipper now capable of receiving rail service from three independent railroads that, as a result of the Transaction, would only have two independent railroads available), that shipper (Koppers, Inc., at Ambridge, MN) would not be adversely affected by the nominal reduction in horizontal competition.[4]

(2) *Vertical Effects.* CN contends that the CN/GLT Transaction would not have adverse "vertical" effects on competition. CN explains that there would be no harm to shippers from a reduction in source or geographic competition, because CN and the GLT Railroads do not serve competing origins or destinations. CN further explains that, although vertical effects might conceivably arise when a railroad with market power in one geographic market merges with a connecting railroad and, as a result of the merger, extends its market power to the connecting railroad's territory, closing gateways and thus foreclosing other connecting railroads from participating in movements to or from the first railroad's service area, vertical effects of this nature are unlikely as a matter of economic theory. CN adds that, in any event, applicants would not engage in such foreclosure by closing efficient gateways; rather, applicants would keep all existing active gateways affected by the CN/GLT Transaction open on commercially reasonable terms, and applicants would waive any defenses they might otherwise have as a result of the CN/GLT Transaction, under the Board's general policy that it does not separately regulate bottleneck rates, in circumstances where a shipper prior to the CN/GLT Transaction would have been entitled to regulation of a bottleneck rate under the Board's "contract exception" to the general rule.

Special Case: Eveleth Mines, LLC, d/b/a EVTAC Mining. CN advises: that, until May 2003, Eveleth Mines, LLC, d/b/a EVTAC Mining (EVTAC), operated a facility at Fairlane, MN (11 miles south of Virginia, MN), that processed raw iron ore into taconite pellets; that, although only DMIR was physically capable of carrying iron ore to, or processed taconite pellets from, the loading and unloading tracks at EVTAC's Fairlane facility, both CN and DMIR were capable of carrying general freight (*i.e.*, commodities other than iron ore and taconite) to and from other tracks at that facility; and that, therefore, if EVTAC had not closed the Fairlane facility in May 2003, that facility would have been regarded, as respects the CN/GLT Transaction, as a "1-to-1" facility for iron ore and taconite and a "2-to-1" facility for general freight. CN also advises, however, that it might be argued that CN could have built in to the Fairlane facility to handle its iron ore and taconite freight, or that EVTAC could have built out to CN to obtain competitive service from CN as respects EVTAC's iron ore and taconite movements. CN further advises: That, if the EVTAC facility should reopen and require rail service, CN would be prepared to offer competitive access to another railroad for general freight, so as to restore two-railroad competition for that traffic; that, to this end, CN intends, should EVTAC reopen, to grant trackage rights access to EVTAC to another railroad, or, if traffic volumes are too low to justify trackage rights operations, to provide haulage service or switching at a rate that would not disadvantage the other railroad; and that, to replicate any build-in or build-out opportunity that now exists as respects iron ore and taconite traffic, CN would also be prepared to provide another railroad access to the build-in or build-out point via trackage rights over the DWP line. CN adds that, although it would expect to negotiate the terms of such access (either as respects general freight or as

[4] *See* CN–2 at 53. *See also* CN–2 at 68 & n.3.

respects access to the build-in/build-out point) through voluntary agreement with a competing railroad, it is, of course, possible that the parties might be unable to agree on such terms. CN therefore contends that, if the Board approves the primary application, the Board should retain jurisdiction over the CN/GLT Transaction for a reasonable period for the purpose of reopening this proceeding if the EVTAC facility should resume operations and require rail service, if necessary to prescribe terms of access for a second rail carrier to handle general freight (*i.e.*, commodities other than iron ore and taconite) to and/or from the EVTAC facility, or to prescribe terms of access to a build-in or build-out point on the existing DWP line that would permit a second rail carrier to handle iron ore and taconite to/from that facility. CN adds that, because its trackage rights agreement with DMIR prohibits CN from transporting iron ore (including taconite pellets) over the DMIR line between Nopeming Junction and South Itasca, CN should not be required to permit use of that DMIR line for transportation of iron ore, except on commercial terms. CN also adds that, because CN does not have access to an ore dock of its own in the Duluth/Superior area, the railroad receiving trackage rights to a build-in/build-out point should not be one that presently owns such a dock.

Labor Protection. CN projects that the CN/GLT Transaction would result in the elimination of 122 positions and the transfer of 18 positions. CN also projects that the reciprocal grants of Shelton Junction-Nopeming Junction trackage rights provided for in the related filings would have no adverse effect on train and engine service employees. CN notes, however, that, whereas these projections represent CN's best estimate, based on information presently available, of the changes necessary to effect the public transportation benefits and the efficiencies of the CN/GLT Transaction, additional changes might be required as circumstances change, opportunities open elsewhere on the CN system, traffic and shipping patterns evolve, and CN acquires experience in operating the rumbined system. CN acknowledges that the applicable level of labor protection for the CN/GLT Transaction would be that set forth in *New York Dock Ry.—Control—Brooklyn Eastern Dist.*, 360 I.C.C. 60, 84–90 (1979), *aff'd sub nom. New York Dock Ry.* v. *United States*, 609 F.2d 83 (2d Cir. 1979), and that the applicable level of labor protection for the Shelton Junction-Nopeming Junction trackage rights would be that set forth in *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605, 610–15 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653, 664 (1980), *aff'd sub nom. Railway Labor Exec. Ass'n* v. *United States*, 675 F.2d 1248 (D.C. Cir. 1982). CN adds that management employees whose positions would be eliminated as a result of the Transaction, and who would not be offered a job opportunity elsewhere in the CN system, would be offered severance packages, and that, if relocation to another job is offered, CN would also offer to relocate the management employee in accordance with the then-current CN management relocation plan.

Primary Application and Related Filings Accepted

The Board agrees with CN that the CN/GLT Transaction proposed in the primary application would be a "minor transaction" under 49 CFR 1180.2(c), and the Board is accepting the primary application for consideration because it is in substantial compliance with the applicable regulations governing minor transactions. *See* 49 U.S.C. 11321–26; 49 CFR part 1180. The Board is also accepting for consideration the two related filings, which are also in compliance with the applicable regulations. The Board reserves the right to require the filing of supplemental information from CN or any other party or individual, if necessary to complete the record in this matter.

Public Inspection

The primary application and the related filings are available for inspection in the Docket File Reading Room (Room 755) at the offices of the Surface Transportation Board, 1925 K Street, NW., in Washington, DC. In addition, they may be obtained from CN's representative (Mr. Cunningham) at the address indicated above.

Procedural Schedule

CN contends that, in view of the asserted public benefits of the CN/GLT Transaction, the asserted lack of competitive harm, and the asserted absence of complicating environmental factors or related applications, a shorter procedural schedule than the 180-day maximum procedural schedule allowed by statute would be appropriate. CN has therefore proposed a 146-day procedural schedule that provides for issuance of a decision by the Board on March 30, 2004.

The Board is adopting a 156-day procedural schedule patterned upon the 156-day procedural schedule that was adopted earlier this year in the "KCS/Tex Mex" proceeding. The Board's 156-day procedural schedule, although 10 days longer than the schedule suggested by CN, still provides for less total time than the 180-day procedural schedule (30 days + 105 days + 45 days) established by the deadlines set forth at 49 U.S.C. 11325(a), (d)(2). Comments on CN's Environmental Appendix (submitted November 5, 2003, and supplemented November 10, 2003) are due by December 10, 2003. CN must submit its Safety Integration Plan (SIP) by December 15, 2003. Any person who wishes to participate in this proceeding as a party of record (POR) must file, no later than December 19, 2003, a notice of intent to participate. Comments on CN's SIP must be filed by January 22, 2004. All comments, protests, requests for conditions, and any other evidence and argument in opposition to the primary application and/or either or both of the related filings, including filings by the U.S. Department of Justice (DOJ) and the U.S. Department of Transportation (DOT), must be filed by January 26, 2004. As in past proceedings, DOT will be allowed to file, on the reply due date (here, February 24, 2004), its comments in response to the comments of other parties, and CN will be allowed to late-file (as quickly as possible) a reply to DOT's responsive comments. Responses to comments, protests, requests for conditions, and other opposition, responses to comments of DOJ and DOT, and rebuttal in support of the primary application and/or either or both of the related filings must be filed by February 24, 2004. A public hearing/oral argument will be held the week of March 1, 2004 (the precise date and the location will be announced later). The Board's decision will be issued on April 9, 2004 (the 156th day after the date on which the primary application and the related filings were filed, and the 45th day after the close of the record). If, however, it is determined that an Environmental Impact Statement or Environmental Assessment is required, the procedural schedule will be adjusted as necessary.

Notice of Intent To Participate

Any person who wishes to participate in this proceeding as a POR must file with the Board, no later than December 19, 2003, an original and 20 copies of a notice of intent to participate, accompanied by a certificate of service indicating that the notice has been properly served on the Secretary of the United States Department of Transportation, the Attorney General of the United States, and CN's representative (Mr. Cunningham). In addition, as previously noted, parties must submit one electronic copy of each document filed with the Board. Further details respecting such electronic submissions are provided below.

The Board will serve, as soon as practicable, a notice containing the official service list (the service list notice). Each POR will be required to serve upon all other PORs, within 10 days of the service date of the service list notice, copies of all filings previously submitted by that party (to the extent such filings have not previously been served upon such other parties). Each POR also will be required to file with the Board, within 10 days of the service date of the service list notice, an original plus 10 copies of a certificate of service, along with an electronic copy, indicating that the service required by the preceding sentence has been accomplished. Every filing made by a POR after the service date of the service list notice must have its own certificate of service indicating that all PORs on the service list have been served with a copy of the filing. Members of the United States Congress (MOCs) and Governors (GOVs) are not parties of record, and therefore, need not be served with copies of filings, unless any such Member or Governor has requested to be, and is designated as, a POR.

The Board will serve copies of its decisions, orders, and notices only on those persons who are designated on the official service list as either POR, MOC, or GOV. All other interested persons are encouraged to make advance arrangements with the Board's copy contractor, ASAP Document Solutions,[5] to receive copies of Board decisions, orders, and notices served in this proceeding. ASAP Document Solutions will handle the collection of charges and the mailing and/or faxing of decisions, orders, and notices to persons who request this service.

An interested person does not need to be on the service list to obtain a copy of the primary application or any other filing made in this proceeding. The Board's Railroad Consolidation Procedures provide: "Any document filed with the Board (including applications, pleadings, *etc.*) shall be promptly furnished to interested persons on request, unless subject to a protective order." 49 CFR 1180.4(a)(3). The primary application and other filings in this proceeding will also be available on the Board's Web site at *www.stb.dot.gov* under "Filings." Furthermore, ASAP Document Solutions will provide, for a charge, copies of the primary application or any other filing made in this proceeding, except to the extent any such filing is subject to the protective order previously entered in this proceeding.

[5] The mailing address is: ASAP Document Solutions, Suite 405, 1925 K Street, NW., Washington, DC 20006. The telephone number is: (202) 293–7878. The e-mail address is: *asapdoc.@verizon.net*.

Comments, Protests, Requests for Conditions, and Other Opposition Evidence and Argument, Including Filings by DOJ and DOT

All comments, protests, requests for conditions, and any other evidence and argument in opposition to the primary application and/or either or both of the related filings, including filings by DOJ and DOT, must be filed by January 26, 2004.

Parties (including DOJ and DOT) filing such comments, *etc.*, must submit an original and 20 copies thereof. Each such submission: must be filed with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001; must refer to STB Finance Docket No. 34424; and must be clearly labeled with an identification acronym and number (*e.g.*, the primary application was labeled "CN–2"), *see* 49 CFR 1180.4(a)(2). In addition, as previously noted, parties must submit one electronic copy of each document filed with the Board. Further details respecting such electronic submissions are provided below.

Comments, *etc.*, must be concurrently served by first class mail on the U.S. Attorney General and the Secretary of the United States Department of Transportation, CN's representative, and all other PORs, and should include the docket number and title of the proceeding, and the name, address, and telephone number of the commenting party and its representative upon whom service shall be made.

Because the CN/GLT Transaction proposed in the primary application has been determined to be a minor transaction, no responsive applications will be permitted. See 49 CFR 1180.4(d)(1).

Protesting parties are advised that, if they seek either the denial of the primary application or the imposition of conditions upon any approval thereof, on the theory that approval (or approval without imposition of conditions) would harm competition and/or their ability to provide essential services, they must present substantial evidence in support of their positions. *See Lamoille Valley R.R. Co.* v. *ICC*, 711 F.2d 295 (D.C. Cir. 1983).

Responses to Comments, Protests, Requests for Conditions, and Other Opposition, Including DOJ and DOT; Rebuttal in Support of Primary Application

Responses to comments, protests, requests for conditions, and other opposition submissions, responses to comments of DOJ and DOT, and rebuttal in support of the primary application and/or either or both of the related filings must be filed by February 24, 2004.

Environmental Matters

Under the regulations of the President's Council on Environmental Quality implementing the National Environmental Policy Act of 1969 (NEPA) and under the Board's environmental regulations as well, actions are separated into three classes that prescribe the level of documentation required in the NEPA process. Actions that may significantly affect the environment generally require the Board to prepare an Environmental Impact Statement (EIS). 40 CFR 1501.4(a)(1); 49 CFR 1105.4(f), 1105.6(a). Actions that may or may not have a significant environmental impact ordinarily require the Board to prepare a more limited Environmental Assessment (EA) (an EA is a document containing environmental analysis sufficient for the Board to determine whether it should prepare an EIS or may make a finding that the transaction will have no significant environmental impact). 40 CFR 1501.4(c); 49 CFR 1105.4(d), 1105.6(b). Actions that ordinarily have insignificant environmental effects may normally be categorically excluded from NEPA review, without a case-by-case review. 40 CFR 1500.4(p), 1501.4(a)(2), 1508.4; 49 CFR 1105.6(c). And, even when the Board's presumptive tonnage thresholds for environmental analysis are met, the Board may reclassify a particular transaction or modify the requirement that an EIS or EA be prepared, if the railroad applicant demonstrates that the proposed transaction has no potential for significant environmental effects. 49 CFR 1105.6(d).

Prior to filing the CN/GLT Application with the Board on November 5, 2003, CN discussed the CN/GLT Transaction with the Board's Section of Environmental Analysis (SEA) and explained that, in its view, the CN/GLT Transaction would have no significant environmental impacts, and that, therefore, preparation by the Board of an EIS or EA is not required to discharge the Board's obligations under NEPA. Pursuant to CN's discussions

with SEA, CN prepared an Environmental Appendix that describes what CN regards as the reasonably foreseeable impacts of the CN/GLT Transaction, and that explains why CN believes that there is no need to prepare either an EIS or an EA. CN argues, in essence: that the only reasonably foreseeable Transaction-related operational change involves coordinated use of the DWP/DMIR lines in the 64-mile Shelton-Junction-Nopeming Junction corridor (which, CN advises, lies in a relatively sparsely populated area of northeastern Minnesota); that, if foreseeable increases in tonnage on the DMIR line are compared to traffic volumes now moving on the DMIR line, the Board's presumptive tonnage thresholds for environmental analysis would be exceeded on a total of 61.5 miles of the DMIR line; but that, if foreseeable increases in tonnage on the DMIR line are compared to the traffic volumes generated before the recent closing of EVTAC's Fairlane facility, the Board's presumptive tonnage thresholds would not be exceeded at all, except on the 6.0-mile segment running through the rural territory between Adolph and Nopeming Junction. CN contends, in essence, that whether potential traffic shifts are measured against a base that includes or excludes EVTAC traffic, the reality of the situation is that the environmental consequences of the CN/GLT Transaction would be insignificant and thus do not warrant environmental review beyond that entailed in the preparation and review of CN's Environmental Appendix.

CN offers the following points in support of this contention: (1) The Transaction should have no impact on land use, biological resources, or natural resources because there would be no construction or abandonment of rail lines, and no construction or operational changes in connection with rail yards or intermodal facilities; (2) there are no plans to dispose of or alter any properties that are 50 years old or older; (3) the only operational change contemplated by CN is the coordination of operations on the parallel DWP and DMIR lines between Shelton Junction and Nopeming Junction; (4) any traffic increases resulting from such coordination would reflect shifts of existing traffic, not new traffic or diversions from trucks or other railroads; (5) the DMIR line between Shelton Junction and Nopeming Junction runs through a lightly populated area; (6) the estimated increase in rail traffic on that line would be below the applicable tonnage threshold on nearly the entire length of that line, if the increase were measured against pre-May 2003 traffic volumes; (7) the potential environmental impacts from increased traffic on DMIR's Shelton Junction-Nopeming Junction line would be minimal (because there would be no increase in energy consumption, air quality would be unchanged or better, noise impacts would be insignificant, roadway at-grade crossings would remain safe, there would be little impact on rail safety, the quantities of hazardous materials shifted to the DMIR line would be modest, directional running should allow rail traffic to move more smoothly, and there would be no high and adverse impacts on any "environmental justice" populations); and (8) even the potential environmental impacts from increased traffic on the Adolph-Nopeming Junction segment of DMIR's Shelton Junction-Nopeming Junction line should be insignificant (CN claims that only 66 structures of any kind lie within 1,000 feet of the Adolph-Nopeming Junction right-of-way).

To facilitate public review of all aspects of the Environmental Appendix, and to provide an opportunity for comments to SEA on the CN/GLT Transaction, and, in particular, on CN's conclusion that the Transaction would have no significant environmental impacts, CN mailed copies of the Environmental Appendix to appropriate local, state, and federal environmental agencies and other interested parties, and placed notices in major newspapers delivered to potentially affected communities. December 10, 2003, is the date by which interested parties may submit comments on the Environmental Appendix directly to SEA.

CN has advised that, pursuant to the joint regulations adopted by the Board and the Federal Railroad Administration (FRA) to ensure adequate and coordinated consideration of safety integration issues by both the Board and FRA, *see* 49 CFR Parts 244 and 1106, CN will submit a Safety Integration Plan (SIP) to the Board and FRA by December 15, 2003. CN has further advised that it will distribute the SIP to appropriate government agencies and other interested parties, and will place notices in major newspapers delivered to potentially affected communities, to announce the availability of the SIP. Interested parties will have until January 22, 2004, to submit comments on the SIP to SEA. In accordance with past practice, the Board will include in any decision approving the CN/GLT Transaction a condition requiring CN to comply with the SIP. *See* 49 CFR 1106.4(b)(4).

Based on its consideration of all timely comments on the Environmental Appendix and the SIP and its own independent review of all available environmental information, SEA will recommend to the Board whether there is a need for formal environmental review of the CN/GLT Transaction, and the Board will then determine whether formal environmental review is required and, if so, whether an EIS or an EA should be prepared. If an EIS or an EA is required to meet the Board's obligations under NEPA, the procedural schedule set forth in this decision will be adjusted accordingly.

Public Hearing/Oral Argument

To afford interested parties an opportunity to address the Board respecting any issues arising out of the CN/GLT Transaction, a public hearing/oral argument will be held the week of March 1, 2004. The precise date and the location will be announced later.

Discovery

Discovery may begin immediately. The parties are encouraged to resolve all discovery matters expeditiously and amicably.

Electronic Submissions: In General

As already mentioned, in addition to submitting an original and 20 paper copies of each document filed with the Board, parties must submit, on 3.5-inch IBM-compatible floppy diskettes (disks) or on compact discs (CDs), copies of all textual materials, electronic workpapers, data bases, and spreadsheets used to develop quantitative evidence. Parties unable to comply with the electronic submission requirement can seek a waiver from the Board. Textual materials must be in, or compatible with, WordPerfect 10.0. Electronic spreadsheets must be in, or compatible with, Lotus 1–2–3 Release 9 or Microsoft Excel 2002. Each disk or CD should be clearly labeled with the identification acronym and number of the corresponding paper document, *see* 49 CFR 1180.4(a)(2), and a copy of such disk or CD should be provided to any other party upon request. Also, each disk or CD should be clearly labeled as containing confidential or redacted materials. The data contained on the disks and CDs submitted to the Board will be subject to the protective order granted in Decision No. 1 (served October 29, 2003), and will be for the exclusive use of Board employees reviewing substantive and/or procedural matters in this proceeding. The flexibility provided by computer data will facilitate timely review by the Board and its staff. The electronic submission requirements set forth in this decision supersede, for the purposes of this proceeding, the otherwise applicable electronic submission requirements set forth in the Board's regulations. *See* 49 CFR 1104.3(b).

Electronic Submissions: Workpapers, Data Bases, and Spreadsheets

In the past, the Board has encountered problems with the "links" in spreadsheets functioning properly when the spreadsheets are installed on desktop computers or network servers. To avoid such problems, parties submitting electronic workpapers, data bases, and/or spreadsheets should use naming and linking conventions that will permit the spreadsheets to operate on the Board's computers.[6] Electronic data bases should be compatible with the Microsoft Open Database Connectivity (ODBC) standard.[7] The Board currently uses Microsoft Access 2000, and data bases submitted should be either in this format or another ODBC-compatible format. Otherwise, submitters should explain why it is not possible to submit the data base in this format and seek a determination as to whether it is feasible for the Board to accept the data base in another format.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. The primary application in STB Finance Docket No. 34424 and the related filings in STB Finance Docket No. 34424 (Sub-Nos. 1 and 2) are accepted for consideration.

2. The parties to this proceeding must comply with the Procedural Schedule adopted by the Board in this proceeding as shown in Appendix A.

3. The parties to this proceeding must comply with the procedural requirements described in this decision.

4. This decision is effective on December 5, 2003.

Decided: November 25, 2003.

[6] The Board will not specify a particular naming and linking convention. It is incumbent upon the submitter to use generic naming and linking conventions that will permit the spreadsheets to operate on desktop computers or from a network server. Questions concerning naming and linking matters and/or compatibility with the Board's computers can be addressed to William H. Washburn, Office of Economics, Environmental Analysis, and Administration, at (202) 565–1550.

[7] ODBC is a Windows technology that allows a database software package, such as Microsoft Access, to import data from a database created using a different software package. All databases must be supported with adequate documentation on data attributes, SQL queries, programmed reports, *etc.*

By the Board, Chairman Nober.

Vernon A. Williams,

Secretary.

Appendix A: Procedural Schedule

November 5, 2003—Primary application, related filings, Environmental Appendix, and petition for establishment of procedural schedule filed.
November 10, 2003—Supplemented Environmental Appendix submitted.
December 5, 2003—Board notice of acceptance of primary application and related filings published in the **Federal Register**.
December 10, 2003—Comments on the Environmental Appendix due.
December 15, 2003—Safety Integration Plan (SIP) due.
December 19, 2003—Notices of intent to participate due.
January 22, 2004—Comments on the SIP due.
January 26, 2004—All comments, protests, requests for conditions, and any other evidence and argument in opposition to the primary application and/or either or both of the related filings, including filings of the U.S. Department of Justice (DOJ) and the U.S. Department of Transportation (DOT), due.
February 24, 2004—Responses to comments, protests, requests for conditions, and other opposition due. Responses to comments of DOJ and DOT due. Rebuttal in support of the primary application and/or either or both of the related filings due.
Week of March 1, 2004—A public hearing/oral argument will be held the week of March 1, 2004 (the precise date and the location will be announced later).
April 9, 2004—Date of service of final decision (if no unanticipated environmental review is required).

[FR Doc. 03–30090 Filed 12–4–03; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

November 27, 2003.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Pub. L. 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000, 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

Dates: Written comments should be received on or before January 5, 2004 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–0043.
Form Number: IRS Form 972.
Type of Review: Extension.
Title: Consent of Shareholder to Include Specific Amount in Gross Income.
Description: Form 972 is filed by shareholders of corporations to elect to include an amount in gross income as a dividend. The IRS uses Form 972 as a check to see if an amended return is filed to include the amount income and to determine if the corporation claimed the correct amount.
Respondents: Individuals or households, business or other for-profit.
Estimated Number of Respondents/Recordkeeping: 400.
Estimated Burden Hours Respondent/Recordkeeper:
Recordkeeping—13 min.
Learning about the law or the form—4 min.
Preparing the form—16 min.
Copying, assembling, and sending the form to the IRS—20 min.
Frequency of Response: On occasion.
Estimated Total Reporting/Recordkeeping Burden: 368 hours.

OMB Number: 1545–0138.
Form Number: IRS Form 2063.
Type of Review: Revision.
Title: U.S. Departing Alien Income Tax Statement.
Description: Form 2063 is used by a departing resident alien against whom a termination assessment has not been made, or a departing nonresident alien who has no taxable income from United States sources, to certify that they have satisfied all U.S. income tax obligations. The data is used by the IRS to certify that departing aliens have complied with U.S. income tax laws.
Respondents: Individuals or households.
Estimated Number of Respondents/Recordkeepers: 20,540.
Estimated Burden Hours Respondent/Recordkeeper:
Recordkeeping—6 min.
Learning about the law or the form—3 min.
Preparing the form—26 min.
Copying, assembling, and sending the form to the IRS—13 min.
Frequency of Response: On occasion.
Estimated Total Reporting/Recordkeeping Burden: 17,049 hours.

Clearance Officer: R. Joseph Durbala, (202) 622–3634, Internal Revenue Service, Room 6411, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Joseph F. Lackey, Jr., (202) 395–7316, Office of Management and Budget, Room 10235, New

Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Treasury PRA Clearance Officer.

[FR Doc. 03–30242 Filed 12–4–03; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF VETERANS AFFAIRS

Capital Asset Realignment for Enhanced Services (CARES) Commission; Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under Public Law 92–463 (Federal Advisory Committee Act) that the Capital Asset Realignment for Enhanced Services (CARES) Commission will hold a meeting on December 18, 2003, at the Hotel Washington, Pennsylvania Avenue at 15th Street, NW., Washington, DC 20004. The meeting will begin at 10 a.m. and will end at 4 p.m. and is open to the public.

The purpose of the Commission is to conduct an external assessment of VA's capital asset needs and to assure that stakeholder and beneficiary concerns are fully addressed. The Commission is reviewing and reaching decisions on recommendations in the Draft National CARES Plan. The Commission also takes into consideration recommendations submitted by veterans service organizations, individual veterans, Congress, medical and nursing school affiliates, VA employees, local governments, community groups and others. Following its assessment, the Commission will make specific recommendations to the Secretary of Veterans Affairs on the realignment and allocation of VA capital assets to meet the demand for, and to enhance, veterans health care services over the next 20 years.

At the December 18 meeting, the Commission will conclude its review of the information received from nationwide site visits, public hearings, and various requests for data as well as information discussed in its regular public meetings. The Commission will engage in final deliberations regarding the Draft National CARES Plan and its impact in the various markets, and make decisions regarding its report to the Secretary.

No time will be allocated at these meetings for receiving oral presentations from the public. Any member of the public wishing additional information should contact Mr. Richard E. Larson, Executive Director, CARES Commission, at (202) 501–2000.

Dated: November 28, 2003.

By Direction of the Secretary.

E. Philip Riggin,

Committee Management Officer.

[FR Doc. 03–30227 Filed 12–4–03; 8:45 am]

BILLING CODE 8320–01–M

DEPARTMENT OF VETERANS AFFAIRS

Enhanced-Use Lease Development of Property at the Department of Veterans Affairs Medical Center, Dayton, OH

AGENCY: Department of Veterans Affairs.

ACTION: Notice of intent to designate.

SUMMARY: The Secretary of the Department of Veterans Affairs (VA) intends to designate Building 401 (23,600 square feet), with an abutting playground (11,500 square feet) at the Department of Veterans Affairs Medical Center, Dayton, Ohio, for an enhanced-use lease. The Department intends to enter into a 35-year lease of real property with a selected lessee/developer who would be responsible for all costs and risks associated with the design, development, renovation, expansion, operation, maintenance, and provision of services at an existing non-profit child care center.

FOR FURTHER INFORMATION CONTACT: Vanessa Chambers, Capital Asset Management and Planning Service (182C), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 565–6554.

SUPPLEMENTARY INFORMATION: 38 U.S.C. 8161, *et seq.* specifically provides that the Secretary may enter into an enhanced-use lease if he determines that at least part of the use of the property under the lease will be to provide appropriate space for an activity contributing to the mission of the Department; the lease will not be inconsistent with and will not adversely affect the mission of the Department; and the lease will enhance the property or result in improved services to veterans. This project meets these requirements.

Approved: November 26, 2003.

Anthony J. Principi,

Secretary of Veterans Affairs.

[FR Doc. 03–30226 Filed 12–4–03; 8:45 am]

BILLING CODE 8320–01–P

Federal Register

Friday,
December 5, 2003

Part II

Department of Homeland Security

Bureau of Customs and Border Protection

19 CFR Parts 4, 103, et al.

Required Advance Electronic Presentation of Cargo Information; Final Rule

DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

19 CFR Parts 4, 103, 113, 122, 123, 178 and 192

[CBP Dec. 03–32]

RIN 1651–AA49

Required Advance Electronic Presentation of Cargo Information

AGENCY: Customs and Border Protection, Homeland Security.

ACTION: Final rule.

SUMMARY: This document amends the Customs Regulations to provide that the Bureau of Customs and Border Protection (CBP) must receive, by way of a CBP-approved electronic data interchange system, information pertaining to cargo before the cargo is either brought into or sent from the United States by any mode of commercial transportation (sea, air, rail or truck). The cargo information required is that which is reasonably necessary to enable high-risk shipments to be identified for purposes of ensuring cargo safety and security and preventing smuggling pursuant to the laws enforced and administered by CBP. These regulations are specifically intended to effectuate the provisions of section 343(a) of the Trade Act of 2002, as amended by the Maritime Transportation Security Act of 2002.

DATES: Effective Date: This rule is effective January 5, 2004.

Compliance Dates: The various compliance dates for these regulations are set forth, as applicable, in §§ 4.7(b)(5), 122.48a(e), 123.91(e), 123.92(e), and 192.14(e).

FOR FURTHER INFORMATION CONTACT:
Legal matters: Glen E. Vereb, Office of Regulations and Rulings, 202–572–8724;
Trade compliance issues:
Inbound vessel cargo: Kimberly Nott, Field Operations, 202–927–0042;
Inbound air cargo: David M. King, Field Operations, 202–927–1133;
Inbound truck cargo: Enrique Tamayo, Field Operations, 202–927–3112;
Inbound rail cargo: Juan Cancio-Bello, Field Operations, 202–927–3459;
Outbound cargo, all modes: Robert Rawls, Field Operations, 202–927–5301.

SUPPLEMENTARY INFORMATION:

Background

Section 343(a) of the Trade Act of 2002 (Pub. L. 107–210, 116 Stat. 933, enacted on August 6, 2002), as amended by section 108 of the Maritime Transportation Security Act of 2002 (Pub. L. 107–295, 116 Stat. 2064, enacted on November 25, 2002), required that the Secretary endeavor to promulgate final regulations not later than October 1, 2003, providing for the mandatory collection of electronic cargo information by the Customs Service (now the Bureau of Customs and Border Protection (CBP)), either prior to the arrival of the cargo in the United States or its departure from the United States by any mode of commercial transportation (sea, air, rail or truck). Under section 343(a), as amended (codified at 19 U.S.C. 2071 note), the information required must consist of that information about the cargo which is determined to be reasonably necessary to enable CBP to identify high-risk shipments so as to ensure cargo safety and security and prevent smuggling pursuant to the laws that are enforced and administered by CBP.

Proposed Rulemaking

Consequently, in accordance with the parameters set forth in section 343(a), as amended, a document was published in the **Federal Register** (68 FR 43574) on July 23, 2003, proposing to amend the Customs Regulations in order to require the advance electronic transmission of information pertaining to cargo prior to its being brought into, or sent from, the United States by sea, air, rail or truck.

In part, section 343(a), as amended, required that a broad range of parties likely to be affected by the regulations be consulted and their comments be taken into consideration in developing these regulations. For this reason, separate public meetings were held in January 2003 to address specific issues, and to obtain public input, related to the advance electronic presentation of information, respectively, for sea, air, rail or truck cargo. The CBP also received numerous public comments via e-mail. In addition, extensive meetings were held with workgroups of the subcommittee on advance cargo information requirements of the Treasury Advisory Committee on the Commercial Operations of the U.S. Customs Service (COAC). For a detailed discussion of the development of the proposed rule, and the evaluation of the comments received as the result of the consultation process, see 68 FR 43574–43592.

Discussion of Comments

A total of 128 commenters responded in timely manner to the July 23, 2003, notice of proposed rulemaking. What follows is a review of, and CBP's response to, the issues and questions that were presented by these commenters concerning the proposed regulations. The CBP also received comments pertaining to the preliminary regulatory impact analysis which was published as an appendix to the proposed rule. Those comments, and the corresponding CBP response, have been addressed separately immediately following this section under the heading, "Comments on Economic Analysis". In addition, a summary of the findings contained in the regulatory impact analysis for this rule can be found in the "REGULATORY ANALYSES" section of this document. For more detailed information, the complete regulatory impact analysis is available on the following Web site, *http://www.cbp.gov*

General; Issues Affecting Multiple Modes; Issuance of Separate House Bills of Lading

Comment: The requirement that a separate house bill of lading be issued for each shipper/consignee relationship imposed significant costs upon commerce. Carriers would now have to issue multiple bills of lading for each container of consolidated cargo, and they would charge a fee for each additional bill of lading, where the consolidated goods were tendered for shipment by a single freight forwarder and were destined to a single consignee in the United States. It was stated that CBP should modify AMS (the Automated Manifest System) so that it could receive vendor information for consolidated shipments without requiring the entry of entirely separate bills of lading.

CBP Response: The CBP reasonably needs detailed shipper information on the house bill of lading because this information is critical for targeting purposes under section 343(a)(2) of the Trade Act of 2002, as amended (19 U.S.C. 2071 note, section (a)(2)). Thus, where a freight forwarder or other consolidator receives goods from several foreign vendors (shippers) for consolidation and shipment to a single consignee in the United States, listing the freight forwarder or other consolidator, instead of the foreign vendor, as the shipper on the house bill of lading would be at odds with the intent of section 343(a). It is, of course, a business decision as to whether a forwarder or consolidator would choose to charge for any additional bill(s) of lading issued.

However, at the present time, the AMS system generally lacks the capability to process data for multiple shippers/consignees from a single house bill of lading. The AMS systems were built with a one-to-one relationship—one shipper to one consignee. To alter this would require a complete redesign of the system for all modes of transportation. In addition, it would also force the entire bill of lading to be placed on hold rather than one specific shipment. This is not a programming process that CBP can undertake at this time and, more specifically, detailed communication with the trade community would be required.

Confidentiality

Comment: Proposed § 103.31a should be revised to indicate that advance cargo information which contained classified or sensitive unclassified information would be released only in accordance with applicable regulations, statutes, and orders. Also, it was believed that the vessel cargo declaration information required to be reported in advance could be different from the manifest information envisioned in 19 U.S.C. 1431.

CBP Response: Section 103.31a, as proposed pursuant to section 343(a)(3)(G), as amended (19 U.S.C. 2071 note, section (a)(3)(G)), exempts from disclosure advance cargo data for all inbound and outbound air, rail, or truck cargo unless the owner of the information expressly agrees in writing to its release. In addition, as far as vessel cargo data collected under 19 U.S.C. 1431 is concerned, section 1431 already adequately addresses the conditions under which such information may not be disclosed, including where the information is authorized to be kept secret in the interest of national defense, as provided in 5 U.S.C. 552(b)(1); or where disclosure of the information would pose a threat of personal injury or property damage (see 19 U.S.C. 1431(c)(2)(A) & (B)).

Comment: One commenter discussed the matter of public disclosure of outbound cargo information which would be required to be submitted to CBP electronically. It was stated that since cargo information on outbound ocean shipments would rely upon Automated Export System (AES) submissions and not upon vessel cargo manifests, such information should not be subject to the public disclosure provisions of 19 U.S.C. 1431. Another commenter, however, fully supported the release of cargo data from outward vessel cargo manifests pursuant to the disclosure provisions of section 1431.

CBP Response: The underlying cargo manifest statute in question, 19 U.S.C. 1431, applies to both inbound and outbound cargoes. Although manifests are actually comprised of numerous documents, including the Shipper's Export Declaration (SED), the SED document itself is exempt from public disclosure pursuant to 13 U.S.C. 301(g) unless the Secretary of Commerce determines that such exemption would be contrary to the national interest.

Also appearing in existing Customs Regulations (19 CFR 103.31) is a provision making available for copying and publication certain information and data appearing on outward manifests. The scope of that information is described and limited in § 103.31. As in the case of inward vessel cargo manifest information, § 103.31 also provides that certain parties may file certifications with CBP to request confidentiality for outward vessel cargo manifest information (19 CFR 103.31(d)(2)).

Automated Manifest System (AMS)

Comment: The CBP did not provide an updated response to the question of what carriers should do when the Automated Manifest System (AMS) was not functioning.

CBP Response: The CBP currently has procedures in place for the processing of cargo when automated systems have experienced a level of failure. The CBP offices routinely accept voluntary submissions of paper documents during this time from trade members looking for immediate release. The CBP's automated systems are designed to queue transmissions sent from the trade during downtime, and the system automatically begins to issue status and release messages when service is restored.

For the purposes of the 24-Hour rule, the trade has been instructed to present paper manifests to CBP in either the appropriate Container Security Initiative (CSI) port of departure, or at the Domestic port of arrival in order to allow for advance targeting. The CBP anticipates instructing the trade the same for the purposes of section 343(a) of the Trade Act of 2002. It will admittedly be difficult and not all submissions will be made promptly. The CBP will then use informed, considered judgement in the issuance of penalties, the mitigation of penalties and other possible action against particular shipments.

If downtime is identified as severe and anticipated to last a significant period, the trade is notified and instructed to present papers entries, in-bond transportation documents and other release paperwork to the CBP offices. Carriers are instructed to present paper manifests for their arriving conveyances. As CBP manually processes the release and other paperwork, determining risk and satisfaction of all requirements to the best of the inspector's ability, copies of those documents are presented to the carriers to gain release of the cargo, or to demonstrate authorization for it to move in-bond or within the port.

When the automated system resumes service, CBP policy is to enter the information about paper processing into the system to generate corresponding electronic release messages and to also ensure that historical records are updated, and the clocks for duties, taxes and fees are correctly started.

Over the last years, the Automated Commercial System (ACS) has been very reliable in its processing and suffered very little unscheduled downtime. The CBP has made downtime requirements available on its Web site for the enforcement of the 24-Hour rule and will also do the same for the purposes of section 343(a) of the Trade Act of 2002.

Comment: For ABI (Automated Broker Interface) filers (importer or brokers) that transmitted advance air or truck cargo data, it was asked whether their ABI Filer Codes would qualify as their unique identification code, or whether CBP would require that they obtain another code, such as an IATA (International Air Transport Association) code or a SCAC code (Standard Carrier Alpha Code).

CBP Response: The ABI filer that transmits advance cargo data would be identified by its 3-digit ABI Filer Code. However, in the air environment, since the Air Automated Manifest System (Air AMS) requires a 7-character code to identify parties transmitting house air waybill level information, ABI filers electing to transmit such advance cargo data will be assigned codes in the format "BCBPXXX", where, in place of the "XXX", the ABI filer would insert its own unique 3-digit ABI filer code.

Comment: Under the 24-hour rule for incoming vessel cargo, Non Vessel Operating Common Carriers (NVOCCs) had to apply for approval to become a Vessel AMS filer. The question was raised, in the context of other modes of inbound transportation (air and truck), as to whether an ABI filer of information would have to go through the same approval process, including some form of application and qualification testing, before being allowed to file advance cargo data with CBP for incoming shipments.

CBP Response: ABI transmission capabilities are available to all entry filers who handle truck entries and that have been authorized to participate in ABI under the procedures prescribed in part 143, subpart A, Customs Regulations (19 CFR part 143, subpart

A). In this context, it is the carrier's responsibility to ensure that the ABI transmitter of cargo data (broker or importer) receives the appropriate corresponding transportation information via fax or other means.

However, each new participant in the Air Automated Manifest System (Air AMS) will be required to undergo certification testing prior to full participation. Certification/authorization to participate in ABI will not, by itself, be sufficient to satisfy this requirement. The CBP will provide updated lists of approved Air AMS participants.

Comment: Under the 24-hour rule, where an NVOCC filed the advance vessel cargo data, the NVOCC then had to perform other duties otherwise undertaken by the incoming ocean carrier for the arriving cargo, such as handling the arrival of the cargo, obtaining permits for its transfer, and coordinating any in-bond movements. However, as to incoming air cargo, provided that accurate links existed between the house and master bills of lading, the issue arose as to whether the incoming air carrier would be responsible for all of the documentary transactions related to the arrival and movement of the air freight once it had landed at the port of arrival.

CBP Response: With consolidated shipments, given that an air carrier would transmit information for the incoming cargo at the master air waybill level, the carrier would be responsible for handling those transactions related to the arrival and movement of such cargo following its landing at the port of arrival. Coincident with this, any other eligible party transmitting (house bill) information for the incoming cargo would need to associate the house bill number with the master air waybill pertaining to such cargo (see § 122.48a(d)(3)(i) in this final rule).

Furthermore, CBP is currently working on additional programming changes to the Vessel Automated Manifest System (Vessel AMS) which would allow the incoming ocean carrier, after the cargo is landed at the port of arrival, to handle the movement of the cargo, and its clearance, etc., on the master bill of lading.

Comment: It was remarked that all CBP automated systems in place had to be able to accommodate the required manifest reporting sufficiently for legitimate trade to continue to flow smoothly.

CBP Response: The requirement that cargo information be electronically presented in advance allows CBP to effectively target any cargo that may need to be held for further examination prior to the arrival of the vessel or other conveyance, which thereby enables legitimate cargo to move smoothly through the chain of commerce.

C–TPAT Exemption

Comment: It was proposed that "low-risk" companies and those who were engaged in supply-chain security programs, such as the Customs-Trade Partnership Against Terrorism (C–TPAT), should be given a preference that would let such parties file their cargo declarations after, rather than prior to, the arrival of the cargo, or be subject to various relaxed restrictions in cargo information reporting. It was also suggested that CBP allow C–TPAT participants to use "Buyers Consolidation" (where multiple shippers/consignees were listed on a single bill of lading, instead of each shipper/consignee having to be included on a separate bill of lading). Otherwise, CBP was asked to explain what benefits accrued to C–TPAT members.

CBP Response: The CBP will not allow exemption from, or alteration of, the requirement that C–TPAT partners submit cargo information in advance of arrival under these regulations, which includes the requirement that each shipper/consignee relationship be documented by a separate house bill of lading; and, moreover, CBP believes that compliance with these regulations complements supply chain security and efficiency procedures being implemented by C–TPAT partners.

Furthermore, it is again emphasized that C–TPAT membership will continue to be viewed in a positive light for targeting purposes. It is more likely that shipments made by C–TPAT members will be readily and expeditiously cleared, and not be delayed for greater CBP scrutiny. Other related perquisites of C–TPAT partnership may include essential security benefits for suppliers, employees, and customers, such as a reduction in the number and extent of border inspections, an opportunity for self-policing rather than Customs verifications, and eligibility for account-based processes.

Account-based processing is only offered to importers at this time. Account-based processing provides advantages to importers such as web-based views into their importing history with CBP, the important elements of their bond sufficiency records, and the future ability to make periodic payments of the their duty statements. Each transaction is still reviewed as part of the manifest processing; while there may be a reduced number of trade compliance examinations, no account is exempt from enforcement or security screening.

Comment: It was asked whether CBP would take into consideration low-risk status and participation in programs, such as C–TPAT, when minor reporting discrepancies occurred.

CBP Response: While participants in programs such as C–TPAT will not be exempt from electronically filing their cargo information in advance, as noted above, such participation will also be taken into account in connection with the occurrence of minor discrepancies in the advance reporting of cargo data.

Exemption; U.S. Department of Defense (DoD)

Comment: Concern was expressed about the movement of military cargo on U.S. Department of Defense (DoD)-chartered aircraft, vessels, or trucks where DoD had exclusive use and control of the conveyance. The revised advance reporting time standards could adversely affect transit time for DoD cargo in the commercial transportation system. Exemptions were requested from advance cargo information reporting for DoD-chartered vessels, aircraft, and trucks.

CBP Response: In the proposed rule, CBP agreed that an exemption from the requirement of entry would be extended to certain DoD-chartered vessels or aircraft (see 68 FR at 43577 and 43579, respectively). To accomplish this, §§ 4.5 and 122.41, Customs Regulations (19 CFR 4.5 and 122.41), are amended in this final rule document to exempt from entry requirements (but not from clearance requirements) any vessel or aircraft that is chartered by and exclusively carrying cargo, the property of the U.S. Department of Defense (DoD), where the DoD-chartered vessel or aircraft is manned entirely by the civilian crew of the vessel or air carrier under contract to DoD. Any vessel or aircraft exempt from entry would, of course, also be exempt from advance cargo information filing under this final rule.

However, concerning trucks chartered by DoD, CBP has at least provisionally concluded that, balancing the potential risks posed against the costs at issue, an exemption from advance filing is not needed in this case. The advance filing time frame is sufficiently abbreviated that it should not have a negative effect on the transit time for military cargo moving in the commercial transportation chain (*e.g.*, a mere 30 minutes advance notice in the case of Free And Secure Trade (FAST) trade participants) (see the discussion for incoming truck cargo, *infra*).

Other Government Agencies; Single Portal for Collecting Data

Comment: It was advocated that CBP and the U.S. Food and Drug Administration (FDA) should harmonize the data elements and time frames for advance information that both agencies would now require. A single integrated computer system should be developed for the submission of advance information.

CBP Response: The CBP is working diligently with the FDA towards integrated filing and risk management mechanisms. In fact, an agreement was reached in May 2003 between CBP and FDA to modify CBP's Automated Commercial System (ACS) to enable importers, in most cases, to use this system to satisfy the advance informational requirements of the Public Health Security and Bioterrorism Preparedness and Response Act of 2002 (Public Law 107–188) (the Bioterrorism Act) and implementing regulations. In the **Federal Register** of October 10, 2003 (68 FR 58974), FDA, in conjunction with CBP, issued an interim final rule requiring prior notice of food imported into the United States, beginning on December 12, 2003. The interim final rule requires that the prior notice be submitted to FDA electronically via either the CBP's Automated Broker Interface (ABI)/ACS Interface or the FDA's Prior Notice System Interface. The interim final rule on prior notice of imported food shipments is available at *http://www.cfsan.fda.gov/~lrd/fr03o10b.html*. The CBP is also making modifications to ACS to allow ACS to be used to satisfy the prior notice requirements of the Bioterrorism Act.

The CBP's Automated Commercial Environment (ACE) is intended to operate as a single window for the submission of import information to the Government, once it is developed and implemented as part of the International Trade Data System (ITDS). Nevertheless, in light of the urgent need, in particular, to implement both section 343(a), as amended, and the Bioterrorism Act, the Government cannot delay such implementation until a fully-interfaced, multi-agency electronic data interchange system is in place, either within ACS or ACE.

The Automated Commercial Environment (ACE)

By way of additional perspective on the Automated Commercial Environment (ACE), CBP Modernization began in 2001, with the ACE focusing on import and export cargo operations. The ACE, as just noted, along with other entities will ultimately form one system providing a "single screen" for the international business community to interact with CBP and other government agencies on import/export requirements. The ACE will power an expedited release process for carriers and shippers that have prefiled, been pre-approved, and have been subject to enforcement prescreening and targeting. An integrated risk management and targeting system will implement all types of enforcement and selectivity screening for commercial shipments. The ACE will provide both CBP and the business community with the tools and technology to ensure secure supply-chain management. The program will include tools that will provide for: advanced manifesting system for all modes of transportation; tracking of intermodal shipment movements and cargo moving in-bound; enhanced conveyance and transit cargo tracking for shipments from origin to destination. Finally, when exports are processed in ACE, CBP will have a complete end-to-end record of cross-border processing and international supply chain information.

To date, ACE has provided the infrastructure to support the establishment of 41 Importer Accounts. These accounts have access to a quick view of their importing and compliance history as well as the functionality to print numerous reports. This functionality also provides for interaction between the Accounts and CBP in the form of an Action Plan and a Significant Activity Log. Both the Trade Community and CBP now have access to an electronic automated Harmonized Tariff Schedule. Near term functionality for ACE will include the establishment of 1100 Accounts to include brokers, importers and truck carriers. The establishment of these accounts will allow the account holders to pay duties and fees on a Monthly Periodic Statement (April 2004) and provide for the capability of truck carriers to file an advanced electronic Truck Manifest (October 2004), which will support the legislative requirements of the Trade Act of 2002.

Time Period for Implementing Advance Cargo Data Reporting

Comment: Consideration should be given to making the advance reporting provisions operational on a region-by-region "roll out." There should also be a liberal "grace period" permitted prior to enforcement of the new regulations so that both Government and the trade would have sufficient time to adjust to the new security requirements without disorganization or disruption.

CBP Response: It is stressed that the differing effective dates of these regulations may be further delayed for the several modes, both inbound and outbound, as already provided variously in §§ 122.48a(e) (for inbound air cargo), 123.91(e) (for inbound rail cargo), 123.92(e) (for inbound truck cargo), and 192.14(e) (for outbound cargo, all modes). Only as to incoming vessel cargo is there a firm effective date of March 4, 2004, by which time all participating advance cargo data filers must be operational on the Vessel Automated Manifest System (Vessel AMS).

However, no matter when the various regulations in this final rule go into effect, CBP will adopt a phased-in enforcement process for these Trade Act Regulations similar to that which was utilized when the 24-Hour Rule was implemented. Depending on the circumstances, CBP may take an "informed compliance" approach during a short period following the effective date of the rule. In appropriate circumstances, this approach would consist of performing audits of the carriers' and NVOCCs' (Non Vessel Operating Common Carriers') submissions and advising their owners or operators of problem areas that could have been subject to enforcement action.

Following an initial 2-month period after issuance of the 24-Hour rule, CBP created an enforcement approach that focused first on egregious violations. The CBP experienced an enormous decrease in the instances of such problem submissions immediately before, and after, expiration of the initial period when the "informed compliance" approach was implemented.

Therefore, in implementing these Trade Act Regulations, CBP has demonstrated experience in implementing a phased-in enforcement strategy and expects to develop similar plans with respect to these new advance cargo reporting requirements.

Furthermore, as with the 24-hour rule, CBP intends to continue to work with the trade to achieve compliance with the requirements of these regulations. However, CBP does not believe that a region-by-region implementation of the regulations would be either advantageous or advisable under the circumstances.

Comment: Two commenters wanted a uniform advance notification enforcement date for all modes to include both outbound and inbound shipments.

CBP Response: The implementation dates for all modes will vary, due to the readiness and availability of the

automated systems that support each mode and the degree to which the necessary technology is available to particular modes of transportation. This fully comports with the mandate of section 343(a)(3)(D) and (E), as amended.

Bond Issues

Comment: A question was presented as to whether electronic filers of advance cargo data through the Automated Manifest System (AMS) would need to possess an international carrier bond.

CBP Response: Other than Automated Broker Interface (ABI) filers in the air environment (consisting of importers and brokers) (see § 122.48a(c)(2) in this final rule), electronic filers through AMS (whether Vessel, Air or Rail AMS) must possess an international carrier bond under 19 CFR 113.64. By contrast, an ABI filer of advance cargo data, that is an importer, would need to possess an amended basic importation and entry bond, as described in § 113.62(j)(2) in this final rule, and an ABI broker who files advance cargo data would be obligated under 19 U.S.C. 1641 and 19 CFR part 111 to do so in the manner and in the time period prescribed in § 122.48a in this final rule.

Comment: A Customs bond could be written as a single transaction bond or as a continuous bond. It was recommended that CBP provide in the regulations that any bond needed for reporting cargo information prior to arrival be a continuous bond.

CBP Response: The CBP does not agree with the commenter. The commenter suggests that the rule be amended to state that all bonds required in support of presentation of advanced manifest information must be continuous bonds. Continuous bonds are bonds taken out by principals that are in effect for a period of time (usually 1 year, with automatic renewal unless terminated) and insure all relevant transactions occurring in that period of time. In contrast, single transaction bonds are bonds that are taken out one at a time and are presented to insure only a single transaction or arrival. The rule only requires that a bond be posted. It does not matter whether that bond is continuous or single transaction and there is no need to provide for a bond type restriction.

Liability Concerns

Comment: Where the party presenting information to CBP had acquired this information from another, and the information was determined to be false, clarification was requested as to how this would play a role in the penalty/liquidated damage process.

CBP Response: Mindful of the requirements of section 343(a)(3)(B), as amended (19 U.S.C. 2071 note, section (a)(3)(B)), CBP will take the facts and circumstances of any such situation into account in determining whether a penalty/liquidated damages claim should be initiated and whether and/or to what extent such a claim should be mitigated. The CBP intends to issue mitigation guidelines in this matter.

Submission of Cargo Data in Advance of Arrival or Departure

Comment: Having to present cargo information in advance for both exports and imports would add severely to port congestion in the U.S., and thus raise the costs and burdens of both types of trade.

CBP Response: The CBP disagrees. The receipt of advance electronic information will reduce port congestion because CBP can make enforcement decisions before conveyances arrive in the United States. This has been true in the vessel environment for some time, and has been improved upon under the 24-hour rule because CBP can perform examinations overseas via the Container Security Initiative (CSI). Furthermore, CBP will use in implementing this final rule a phased-in compliance program, similar to that described above for the 24-Hour Rule, in order to make sure that technical violations do not unnecessarily disrupt the flow of goods across the U.S. border. Therefore, there is no compelling reason to conclude that congestion at U.S. ports will result.

Comment: Further explanation was sought as to the basis for the differences among the time-frame reporting requirements for inbound and outbound shipments in all modes of transportation.

CBP Response: Generally speaking, and as further discussed for each individual mode, *infra*, in determining the timing for transmittal of advance cargo data, CBP, as directed by the statute, took into account the differences existing among the different modes of transportation, both inbound and outbound, including differences in commercial practices, operational characteristics, and the technological capacity to collect and transmit information electronically; and, as the law also directed for each mode, CBP undertook to balance the likely impact on the flow of commerce with the impact on cargo safety and security.

Miscellaneous Issues

Comment: Concern was expressed about information security requirements associated with advance notifications for shipments of radioactive material.

CBP Response: Advance cargo information is transmitted to and received by CBP on a secure and encrypted data line. As for cargo arriving by vessel, manifest information for such cargo is not available for public disclosure until after the vessel has arrived; and, as previously indicated, in accordance with 19 U.S.C. 1431(c)(2)(A) & (B), such information may be exempted from disclosure in the interest of national defense pursuant to 5 U.S.C. 552(b)(1), or where the disclosure would pose a threat of personal injury or property damage.

Comment: In the future, CBP should allow the electronic submission of comments.

CBP Response: Requiring written comments in response to a notice of proposed rulemaking is a matter of agency policy that is beyond the scope of this particular rulemaking. However, it is observed that comments via e-mail were invited and accepted regarding the development of the proposed rulemaking in this case (68 FR at 43575).

Comment: A format for Frequently Asked Questions (FAQs) should be established for each mode of transportation on the CBP Web site, which should be regularly updated with new or revised questions.

CBP Response: CBP intends to post FAQs for each mode of transportation on the CBP Web site (*http://www.cbp.gov*), which will be updated as necessary.

Comment: One commenter offered to provide, at no cost to the Government, cargo inspections at the point of origin and then transmit the results of the inspections by way of a CBP-approved electronic data interchange system. The commenter requested only that CBP accept such inspected shipments as "low risk" and thus eligible for expedited clearance upon arrival.

CBP Response: In effect, CBP believes that the same results would be achievable by joining the C–TPAT program (The Customs-Trade Partnership Against Terrorism). As already explained, participation in C–TPAT is considered as a positive factor in targeting shipments to determine whether cargo needs to be held at the port of arrival for examination or receipt of further information.

Comment: Additional instruction was sought as to what terms would satisfy the requirement for a precise description for incoming cargo (§ 4.7a(c)(4)(vii); and proposed §§ 122.48a(d)(1)(ix) and (d)(2)(iii), 123.91(d)(5), and 123.92(d)(9)). In particular, for automotive producers, it was stated that obtaining a complete and correct list of the Harmonized Tariff Schedule (HTS) numbers for all exports of automotive parts and components could be a daunting task. One shipment could contain many types of original equipment manufacturer (OEM) or replacement parts; it was instead urged that CBP accept a generic cargo description such as "New Autoparts" regardless of the mode of transportation involved.

CBP Response: CBP will issue an Acceptable and Non-Acceptable cargo description list as was done with the 24-Hour Rule for incoming vessel cargo. This list will be the same for all modes of transportation.

Generally speaking, CBP has defined a precise cargo description as a description precise enough for CBP to be able to identify the shapes, physical characteristics, and likely packaging of the manifested cargo so that CBP can discern any anomalies in the cargo when a container is run through imaging equipment. Also, the description must be precise enough to identify any goods which may emit radiation.

The requirement that a carrier/filer use cargo descriptions that would not be considered vague should not be overly burdensome. The CBP has undertaken continuous efforts prior to and since the promulgation of the 24-hour Advance Manifest Rule in the sea environment to educate all filers on cargo descriptions that would be considered vague as well as on issues raised by trade representatives. The cargo descriptions that are considered vague have been posted on the CBP Web site (Frequently Asked Questions) since March 2003. The descriptions were not designed to force carriers/filers to achieve entry level descriptions. In most cases, the descriptions require only one or two further qualification descriptors.

Comment: Participation in such an electronic data interchange as the Automated Manifest System (AMS) should be covered by regulations pursuant to the Administrative Procedure Act that provide uniform requirements for enrollment and acceptance into these electronic filing programs, and that govern the suspension, revocation or modification of participation in these programs.

CBP Response: Participation in the electronic systems described in this rulemaking was formerly voluntary as part of the National Customs Automation Program (NCAP) described in 19 U.S.C. 1411(a). As part of the Trade Act of 2002, Congress amended section 1411 to permit CBP to mandate use of the electronic systems of NCAP. To effectuate the requirement in section 343 of the Trade Act of 2002 for the electronic transmission of section 343 cargo information in compliance with Congress's timetable, CBP is mandating use of several of these existing NCAP electronic systems.

The criteria for establishing connection with these systems were set forth in the notices of the tests of these systems (*e.g.*, for the Vessel Automated Manifest System (Vessel AMS) program, see 61 FR 47782 (September 10, 1996), and 67 FR 77318 (December 17, 2002)); the eligibility criteria for these programs also appear on the CBP Web site: *http://www.cbp.gov/xp/cgov/import/operations_support/automated_systems/ams/*.

Because electronic filing is now mandatory, CBP will not prohibit or restrict use of the required systems by filers as it might under a voluntary test program. The CBP does reserve the right to take necessary technical steps to deny connections in the event of electronic attacks (*e.g.*, denial of service attacks), but otherwise access will be available. Therefore, no procedures regarding suspension or revocation of access to these systems are required. Instead, CBP will ensure compliance with mandatory electronic filing requirements through monitoring by account managers, penalty assessments or claims for liquidated damages, as appropriate to the circumstances.

Vessel Cargo Destined to the United States

Submission Time Frames

Comment: Seven commenters advocated that the pre-arrival and post-loading data submissions acceptable for the other modes should also be acceptable for maritime cargo. There should be no significant differences in risk between air and maritime cargoes. The 24-hour pre-loading requirement could disrupt "Just In Time" (JIT) delivery systems.

CBP Response: As explained in the 24-hour rule (67 FR at 66319) and as reiterated in the proposed rule in this case (68 FR at 43577), the 24-hour pre-lading requirement for vessel cargo, especially containerized vessel cargo, is tied inextricably to the Container Security Initiative (CSI), a core element of which is to pre-screen vessel cargo containers at the foreign port of departure before they are loaded onto the vessel for shipment to the United States. To enable such pre-screening to be done fully and successfully, it is essential that the related cargo data be transmitted to CBP at least 24 hours prior to lading the cargo aboard the vessel.

In relation to JIT deliveries, CBP requires the electronic transmission of cargo declaration information 24 hours in advance; CBP is not requiring that the cargo be ready for inspection or that the cargo be at the dock. However, CBP recognizes the 24-hour pre-lading reporting may occasion some changes in the practice of sometimes adding last minute loads to vessels, but only if such loads were not manifested 24 hours prior to their lading.

Exemption From Advance Filing

Bulk/Break Bulk Cargo

Comment: It was requested that consideration be given to exempting bulk cargoes from the requirement of electronically having to submit cargo declarations.

CBP Response: CBP has given bulk, and some break-bulk shipments, exemptions from the requirement to file 24-hours prior to loading, but these entities will still be required to file their cargo declarations electronically.

Comment: Section 4.7(b)(2), Customs Regulations (19 CFR 4.7(b)(2)), implied, erroneously, that only vessels exclusively carrying bulk or break bulk cargo could be exempted from having to report such cargo 24 hours prior to loading the cargo aboard the vessel in the foreign port.

CBP Response: The CBP agrees. Section 4.7(b)(2) will be revised to make it clear, in agreement with § 4.7(b)(4), that for vessels that carry both non-exempt cargo and exempt bulk/break bulk cargo, only the non-exempt cargo must be reported on the electronic cargo declaration 24 hours prior to loading such cargo in a foreign port.

Data Elements

Precise Cargo Description; 6-Digit HTS Number

Comment: Section 4.7a(c)(4)(vii) stated that either a precise cargo description or the 6-digit Harmonized Tariff Schedule (HTS) number for the cargo had to be provided. However, the Vessel AMS system in fact required a narrative cargo description and (if desired) an HTSUS 6-digit number for the cargo, or the transmitted bill of lading would be rejected.

CBP Response: Currently, AMS does require text in the description field of the electronic transmission, or AMS will reject the transmission, even though a 6-digit HTSUS number is also provided in the appropriate field of the transmission. The CBP intends shortly to effect programming changes to allow for either a precise cargo description or

the 6-digit HTSUS number; but until such time as these programming changes are adopted, AMS participants which provide the HTSUS number will also have to enter a cargo description in the description field of the electronic transmission. However, as an alternative to providing a precise cargo description in the description field of the transmission, the applicable 6-digit HTSUS number may instead be included in the description field to satisfy the current programming requirement that some text appear in this field.

Comment: In light of the recent final rule regarding corporate compliance activity (CBP Dec. 03–15, 68 FR 47455; August 11, 2003), the question arose as to whether the submission by the electronic filer of the 6-digit HTSUS number via AMS would fall within the purview of "Customs business" under 19 CFR part 111.

CBP Response: "Customs business" does not involve the mere electronic transmission of data received for transmission to CBP (19 CFR 111.1). Moreover, the 6-digit HTSUS number is intended exclusively for ensuring cargo safety and security, and not for determining merchandise entry or for any other commercial admissibility or enforcement purposes which fall within the scope of Customs business. An 8-digit HTSUS number is needed and is used for merchandise entry purposes.

The "corporate compliance activity" rule dealt with the conduct of "Customs Business" as established by statute (19 U.S.C. 1641). The activities covered under that rule all relate to the entry of merchandise, not its manifesting. Reporting commodity identification by use of 6-digit HTSUS numbers, rather than the more specific 8- or 10-digit designations, was included because there is international agreement and uniformity at the 6-digit level. Use of HTSUS designations is merely offered by CBP as an option to be used in place of a precise narrative description of cargo content.

Definition of Shipper; Consignee

Comment: A number of questions were raised with respect to the provision in proposed § 4.7a(c)(4)(viii) that, for consolidated shipments, the shipper listed on the house bill of lading be the owner and exporter of the goods from the foreign country. In sum, it was basically asserted that this would be inconsistent with the commercial practice of the transportation trade which essentially identified the shipper as the party with whom the carrier had a contractual relationship, and that it was improper for the U.S. Government to unilaterally change this practice. It was also said to be at odds with the prevailing requirement that the foreign vendor or manufacturer be listed as the shipper on a house bill.

CBP Response: In light of the above comments, CBP has closely reviewed what shipper information must be listed on a house bill of lading for a consolidated shipment. Cargo information collected under this rule is not intended for commercial purposes, but rather for purposes of ensuring cargo safety and security as part of an antiterrorism national security initiative (see 19 U.S.C. 2071 note, section (a)(3)(F)). Otherwise stated, it is essential that CBP receive house level information on the identity of the shipper that will enable an accurate national-security risk assessment concerning the related cargo. To this specific end, CBP will thus accept as the shipper on a house bill of lading the identity of the foreign vendor, supplier, manufacturer, or other similar party. Also, the shipper's address must be a foreign address. By contrast, CBP will not accept the carrier, NVOCC, freight forwarder or consolidator as valid house level information on the identity of the shipper.

Accordingly, proposed § 4.7a(c)(4)(viii), as well as proposed §§ 122.48a(d)(1)(x), 122.48a(d)(2)(vi), 123.91(d)(6) and 123.92(d)(11), are thus revised in this final rule.

Comment: Greater guidance was requested as to what would be acceptable in the Notify Party field of the electronic transmission (proposed § 4.7a(c)(4)(ix)). It was thought that if there was any other commercial party listed in the bill of lading, such party would be included in the Notify Party field; otherwise, this field would be left blank.

CBP Response: The CBP requires that if the cargo has not yet been sold or is shipped "to order", and there is no consignee information, then the Notify Party field must include the identity of a responsible party in the United States. Such a responsible party could include any other commercial party that is listed in the bill of lading for delivery or contact purposes.

Date and Time of Departure of Vessel From Foreign Port

Comment: With respect to proposed § 4.7a(c)(4)(xv) and (xvi), it was asserted that the information concerning the date and time that the vessel departed for the United States as reflected in the vessel log could not be provided 24 hours prior to foreign lading of the cargo aboard the vessel.

Also, a question arose concerning whether these data elements referred to the date and time of departure from the foreign port of loading with respect to which the 24-hour declaration was made, or the date and time of departure from the last foreign port before sailing to the United States.

CBP Response: The date and time of departure should capture the date and time that the vessel departs from the foreign port of loading with respect to which the 24-hour cargo declaration is made (see § 4.7(b)(2) in this final rule). However, CBP will not require the information as to the date and time of vessel departure to be transmitted 24 hours prior to the lading of the cargo at the foreign port. Instead, the time frame for reporting these two data elements will be either: (1) No later than 24 hours after departure from the foreign port of lading, for those vessels that will arrive in the United States more than 24 hours after sailing from that foreign port; or (2) no later than the time of presentation of a permit to unlade (Customs Form (CF) 3171, or electronic equivalent), for those vessels that will arrive less than 24 hours after sailing from the foreign port of lading. Proposed § 4.7a(c)(4)(xv) and (xvi) are revised in this final rule to include these additional provisions.

Also, the transmission of these date and time data elements may be handled as an amendment to the vessel header, which will eliminate the need for each bill of lading to be amended.

Vessel AMS Issues

Importer Participation in Vessel AMS

Comment: It was stated that the party most likely to have the information needed for targeting was the U.S. importer, while the incoming carrier would only be able to provide information which was received from the charterer of the vessel.

CBP Response: CBP finds that allowing importers to participate in advance electronic filing through Vessel AMS would at this time be neither advisable nor practicable, given the current design and functionality of the Vessel AMS system and the lack of consensus in the trade community as to whether importers should furnish sea cargo data to CBP.

Comment: A shipper should be allowed to file advance cargo data through AMS.

CBP Response: Again, given the prevailing operation of the Vessel AMS, CBP finds that allowing freight forwarders who are not NVOCCs, and other parties identified as "consolidators," even though they may be NVOCCs (see 68 FR at 43577) to participate in the Vessel AMS electronic data interchange system would at this time be neither advisable nor practicable.

Comment: It was stated that the Shipper field in Vessel AMS could not accommodate more than 3 or 4 lines of information. This could prove inadequate in the case of consolidated shipments where there could be multiple shippers.

CBP Response: This inability of the Shipper field in Vessel AMS to capture multiple shipper data is academic inasmuch as CBP requires that for each shipper/consignee relationship a separate bill of lading be issued. This mandate for a separate house bill of lading for each shipper/consignee relationship constitutes a critical component for automated targeting purposes in identifying high-risk shipments.

Comment: With respect to proposed § 4.7(b)(5), which provided that carriers, and participating NVOCCs, would need to become automated at all ports of entry where their cargo would initially arrive, it was asked whether it would be the Vessel AMS computer mainframe's problem to forward the carrier's transmission to the appropriate Customs port of entry.

CBP Response: Ocean carriers and NVOCCs currently operational on Vessel AMS, although not at all ports of entry, will now be required to become operational at all such ports. Any carrier or NVOCC that hereafter becomes automated on Vessel AMS will thereby be automated at all ports. Since the automation of electronic filers through Vessel AMS will per se encompass all ports of entry, proposed § 4.7(b)(5) is revised in this final rule by removing the phrase, "where their cargo will initially arrive". However, carriers must indicate in their respective electronic transmissions each port of arrival where their incoming cargo will be discharged.

Comment: Non Vessel Operating Common Carriers (NVOCCs) should be required to electronically present advance cargo information directly to CBP.

CBP Response: The CBP disagrees. As discussed in the proposed rule (68 FR at 43576–43577), certain segments of the trade in fact urged that advance cargo information filing by NVOCCs be eliminated due to operational problems with Vessel AMS, that resulted when NVOCCs, as opposed to the incoming carriers, filed cargo data directly with CBP. Nevertheless, in consideration of the competitive relationships that exist in the international freight forwarding field, CBP continues to believe that NVOCCs who wish to do so may become automated on Vessel AMS, but that they should not be compelled to do so.

Comment: It was observed that a large number of NVOCCs operational on Vessel AMS seemed to opt out of the system at various ports, for apparently no authorized reason. Vessel carriers were said to be unable to audit or police this.

CBP Response: Those NVOCCs who choose to become automated on Vessel AMS must be automated in all ports. While NVOCCs do have the ability to decertify in AMS, they would then be required to submit detailed information to carriers for transmission to CBP for all ports of discharge. If a question should arise as to whether or not an NVOCC is automated, the vessel carrier may contact its CBP client representative for verification.

Comment: It was asked whether there was a maximum reporting window for transmitting cargo data in advance through Vessel AMS.

CBP Response: Vessel AMS has the capacity to retain electronic transmission information up to a maximum of nine months prior to the cargo's Estimated Date of Arrival (EDA).

Confidentiality

Comment: It was unclear whether the shipper specific information would be publicly disclosed, and whether such information from both master and house bills of lading would be involved. It was remarked that disclosing this information would defeat the purpose of direct filing by NVOCCs.

CBP Response: Information collected pursuant to 19 U.S.C. 1431, including information from both master and house bills, is available for public disclosure in accordance with section 1431(c). However, under the authority of section 1431(c)(1)(A), information relating to the identity of a foreign shipper to an importer or consignee in the United States will not be disclosed if a claim for confidential treatment for such information is made by using the procedure prescribed in 19 CFR 103.31(d)(1).

Implementation Period for Rule

Comment: It was thought that 90 days was too short a period from the date of publication of the final rule within which a non-automated carrier would need to develop software and programming in Vessel AMS. A period of 120 days was requested.

CBP Response: The CBP believes that 90 days is an adequate and reasonable time frame within which to permit a non-automated vessel carrier to become automated on Vessel AMS. The CBP will continue to work with the trade to achieve compliance with these advance cargo reporting provisions.

In selecting 90 days following publication as an implementation period for mandatory vessel AMS participation, CBP sought to strike a proper balance between the needs of the affected public in adjusting to the new requirements, and meeting the needs of the United States in implementing anti-terrorism measures without undue delay. Ninety days strikes that balance.

Procedure for Amending Cargo Declarations

Comment: The proposed rule did not mention the procedures for amending electronic cargo declarations following their transmission. This would also apply for goods that were sold while in transit.

CBP Response: Complete and accurate information would need to be presented to CBP for cargo to be laden aboard the vessel no later than 24 hours prior to lading the cargo aboard the vessel at the foreign port. As for any changes in the cargo information already transmitted, the procedures for amending the cargo declaration including discrepancy reporting regarding vessels as well as all other modes will be the subject of a separate rulemaking. Prior to the promulgation of new rules concerning discrepancy reporting, the procedures for phased-in compliance as explained above will be employed to address changes that must be made to the transmitted cargo declaration. It should be recognized that each time a bill of lading is amended, it may be subject to increased targeting and at risk for examination.

Enforcement

Comment: Procedures should be outlined for cargo that arrived without pre-notification or with incomplete information.

CBP Response: In all modes of transportation discussed in this rulemaking, the carrier must notify CBP immediately upon arrival or as soon as it realizes that it did not submit the proper information. The carrier should then present or transmit the cargo declaration information. Upon arrival in the U.S. port, the cargo declaration will be placed on hold until CBP has had the opportunity to review the documentation, and conduct any necessary examinations. Appropriate penalties may also be issued. If CBP determines that this has become a common occurrence for a carrier, this could eventually lead to denial of a permit to unlade. Additionally, CBP will notify the United States Coast

Guard of a vessel with unmanifested cargo that is scheduled to arrive. If the arriving cargo is food, CBP and FDA are working closely together to ensure they coordinate policies and procedures for dealing with movement of the cargo.

Miscellaneous Matters

Comment: The view was expressed that the ocean carrier would be reluctant to accept an NVOCC's shipment due to liability concerns, and/or would react, to protect itself from CBP enforcement, by imposing extraordinary and erroneous evidentiary or indemnity obligations on the NVOCC.

CBP Response: The CBP is currently programming Vessel AMS to accept additional bill of lading types that will allow NVOCCs to submit commodity information to CBP that will protect proprietary information from the carrier, and that will enable the vessel carrier to submit master bills of lading to CBP pertaining to the transportation information for the cargo.

Comment: In proposed § 4.7(b)(1), it was stated that the original and one copy of the manifest must be ready for production on demand. It was asserted that the only original manifest carried on board the vessel upon arrival would be the dangerous goods manifest.

CBP Response: Under § 4.7(b)(1), there is no requirement that the original vessel cargo declaration be carried aboard the vessel in those cases where the cargo declaration has already been filed in advance electronically. The CBP decided not to enforce the paper cargo declaration (Customs Form (CF) 1302) rule for formal entrance if a carrier or NVOCC has successfully automated. However, where the cargo declaration has been filed in advance electronically, and a paper copy is not aboard the vessel, the carrier will be afforded a reasonable time within which to generate a paper cargo declaration, should a paper copy be requested by CBP. The CBP will periodically assess this policy to ensure that it is not having an adverse effect on operations.

Comment: The proposed rules, especially those related to ocean imports, did not address the status of shippers' associations as shippers and transportation intermediaries and apparently did not give them the right to file the required manifest information directly to CBP.

CBP Response: The CBP has determined that shippers associations are not licensed or registered with the Federal Maritime Commission (FMC). Moreover, such associations cannot be construed to be carriers of cargo in the same sense as ocean carriers or NVOCCS. Therefore, shippers associations will not be permitted to participate in Vessel AMS.

Air Cargo Destined to the United States

Time Frame Requirements for Transmitting Advance Cargo Data

Comment: Several commenters requested that the time frames in proposed § 122.48a(b) in which the electronic cargo information was transmitted be reduced and that exceptions for certain points of origin be included.

CBP Response: The CBP recognizes the business practices of the air cargo industry and the necessity of adequate time to properly analyze the electronic cargo information and to deploy inspectional resources when required. These issues were carefully considered when establishing the time frames specified in these regulations.

Specifically, CBP weighed the question of an appropriate time frame for air from many angles. To better gauge industry requirements, CBP conducted public meetings (one for each modality), and set up an email address to facilitate the submission of comments by carriers, importers, exporters, freight forwarders, customs brokers, other U.S. Government agencies, foreign governments, as well as local, national and international trade organizations, and private citizens, etc. It should be noted that this elective comment period was in addition to the formal comment period required for the Notice of Proposed Rule Making. The CBP also met intensively with the Treasury Advisory Committee on the Commercial Operations of the U.S. Customs Service (COAC), which resulted in additional unified recommendations for each modality. The CBP assessed internal operational considerations such as the speed at which the various electronic data interchanges are able to process information, the time required for CBP personnel to review the output and determine the appropriate action, and the time needed to deploy personnel to respond.

Comment: Further explanation was requested on whether the time frames for flights from nearby foreign areas in proposed § 122.48a(b)(1) included such flights to the territories of the United States, such as Guam and Puerto Rico.

CBP Response: The time frame for nearby flights would include such flights to Puerto Rico because it is part of the Customs territory of the United States. However, flights to Guam are not included in the advance cargo reporting requirements, as Guam is not part of the Customs territory. The CBP finds that a distinction in the time frames for advance filing based upon geographical considerations, as opposed to the duration of the flight, is more administratively feasible.

Air Freight Forwarder Issues

Comment: It was asked whether CBP would permit foreign indirect air carriers (non-U.S.-based freight forwarders that issue their house bills of lading for air freight shipments) to qualify as one of the authorized filers of information through the Air Automated Manifest System (Air AMS).

CBP Response: Other than the incoming air carrier, parties eligible to transmit inbound electronic air cargo information are enumerated in § 122.48a(c)(1) in this final rule. Any foreign indirect air carrier that is not one of the parties specified in § 122.48a(c)(1) would have to fully disclose and present the required data for the inbound air cargo to the incoming air carrier or other eligible electronic filer, as applicable, which would then present such data to CBP.

Comment: It was advocated that CBP require freight forwarders, Customs brokers and consolidators to participate in Air AMS.

CBP Response: The CBP disagrees. Such parties may elect to provide the data directly to CBP if they are one of the parties specified in § 122.48a(c)(1), or they may provide the data to the incoming air carrier which will transmit such data directly to CBP.

Comment: Two commenters wanted to know whether it was CBP's intention that freight forwarders filing advance cargo data obtain two bonds—an international carrier bond and a custodial bond.

CBP Response: A freight forwarder filing advance air cargo data would be required to have an international carrier's bond under § 122.48a(c)(2). In addition, if the freight forwarder or any other eligible party were responsible for supplying in-bond information and for transporting cargo in-bond under the provisions of part 18 of the Customs Regulations (19 CFR part 18), such party would also need a Customs custodial bond.

The international carrier bond is required of carriers arriving from foreign locations. That bond exists to guarantee performance with regard to (among other things) conveyance arrival, entry and clearance, cargo manifesting and disposition, and passenger and crew control. The conditions of the international carrier bond appear at 19 CFR 113.64. A custodial bond is required of any party that transports merchandise domestically, either between ports of entry or within a single port of entry, before that merchandise has been entered for consumption with duties paid thereon and its admissibility into the commerce determined. The custodial bond conditions appear at 19 CFR 113.63. The custodian of the merchandise guarantees compliance with all regulations governing the receipt, carriage, safekeeping and disposition of merchandise transported or held.

Diversion/Fuel Stop Issues

Comment: It was asked whether the rule allowed for aircraft to stop for fueling at a U.S. location prior to arriving at its final destination. Four commenters requested that fuel stops be exempt from reporting requirements from the U.S. port of arrival to the port of destination.

CBP Response: Section 122.48a does not prohibit an aircraft from including a fuel stop in its itinerary; however, that stop may be the port of arrival in the United States for purposes of § 122.48a(b). Fuel stops will not be excluded from the advance reporting requirement because it is vital to security to target at the first port of arrival and, if necessary, to examine cargo at that location.

Comment: If an aircraft were diverted for reasons such as weather or equipment problems, it was requested that this not be considered part of the manifest reporting requirement if passengers and cargo were not to be discharged there.

CBP Response: The CBP understands that aircraft may be diverted due to weather and/or equipment problems. When this situation occurs, the airline must notify CBP at the designated first port of arrival (the diverted port) as soon as it realizes it is not going to initially reach the original port of arrival. The carrier would then need to re-transmit the electronic cargo information with corrections to reflect the new (diverted) arrival port.

Air AMS Testing/Problems

Comment: Outstanding operational programming issues should be completed prior to the implementation of the final rule.

CBP Response: The CBP is diligently working on an outstanding list of operational issues and will continue to correct these issues. Under § 122.48a(e)(2), the implementation date for advance air cargo reporting may be delayed if necessary modifications to the CBP-approved electronic data interchange system are not yet in place.

Comment: Qualified air freight forwarders electing to participate in advance electronic cargo reporting should be tested on the approved data interchange system prior to the implementation of the final rule.

CBP Response: Appropriate testing will be given to all parties who develop Air AMS communications with CBP. Those parties who elect to use a service provider will be tested via the service provider.

Comment: Programming should be provided between the Automated Broker Interface (ABI) and the Air AMS system so that data information could be shared (alternate filers could be brokers and forwarders).

CBP Response: Cargo selectivity information provided through ABI is distinct from the electronic cargo information required through Air AMS under § 122.48a. The data elements to satisfy compliance with this regulation must be provided through Air AMS; Air AMS is accessible to ABI filers.

Comment: The Air AMS system should be changed to preclude an inward air carrier from refusing to authorize (nominate) another eligible party as an agent who had elected to transmit consolidated cargo data directly to CBP; and the system should be programmed to notify such other party of its authorization (nomination) by the inward carrier.

CBP Response: The Air AMS system will independently accept information from each of the parties that supply data to satisfy the advance cargo reporting requirements of § 122.48a. In other words, the inward carrier will no longer need to authorize or nominate another eligible party in order to enable that party to supply house air waybill information to CBP. The identification of another eligible filer in the agent ("AGT") line will be merely for the purpose of notifying CBP that this party will transmit the house air waybill information, which may be effected either prior to or after the carrier's transmission of the master air waybill record to CBP.

Comment: The Air AMS system should be changed to allow for the transmission of a notification that air cargo data had been received or that the air cargo manifest had been accepted with the date and time specified. This feature was said to be currently available in Vessel AMS.

CBP Response: The Air AMS transmits a Freight Error Report message if an air waybill record does not pass certain data acceptance edits. In addition, the Air AMS also provides a Freight Status Query feature that allows an Air AMS participant to query the status of an air waybill record. This feature is available to the Air AMS participant that transmitted the original message and to Air AMS participants that have been properly nominated by the carrier that transmits the master air waybill data.

Comment: One commenter was of the opinion that airlines did not want to be obligated to input house air waybill information on behalf of an air freight forwarder.

CBP Response: Under § 122.48a, unless another qualified party elects to participate in the Air AMS system, the relevant house air waybill information must be furnished to the incoming air carrier for presentation to CBP.

Comment: It was asked how a carrier would provide any required cargo data if the records were in the possession of a third party that was not one of the parties identified in proposed § 122.48a(c)(1).

CBP Response: Under § 122.48a(c)(4), any third party entity in possession of required data for inbound air cargo must fully disclose and present such data to the carrier for presentation to CBP.

In-Bond Issues

Comment: Participants in Air AMS should be permitted to create subsequent in-bond transactions to close out air manifests at both the master air waybill and house air waybill levels.

CBP Response: This is included in the regulation (see § 122.48a(a)(1) in this final rule). In-bond information may of course be included at both the master and house air waybill levels (see § 122.48a(d)(1)(xvi) and (d)(2)(viii) in this final rule).

Comment: It was thought that Air AMS could not handle in-bonds for one consolidated express shipment.

CBP Response: The Air AMS system is capable of processing in-bond information for all house air waybills under a consolidated master air waybill.

Comment: The Air AMS programming should be altered to allow for more than one in-bond warehouse per location.

CBP Response: Cargo covered by each master air waybill may be transferred to any warehouse location with a unique FIRMS (Facilities Information and Resources Management System) code within the limits of a port of entry.

Comment: The scope and timing of the carrier's transmission of any in-bond information should be clarified. Specifically, it was asked whether it would be necessary to allow transmission of this information after arrival of the cargo in the United States, and whether such information would be used for the movement of the subject cargo from the first port of arrival to the master bill destination location.

CBP Response: The data elements specified in § 122.48a(d)(1), including

any in-bond information in § 122.48a(d)(1)(xvi), if applicable, will be analyzed by CBP for the purposes of identifying high-risk cargo. Such data elements must be supplied within the respective advance time frames prescribed in § 122.48a(b).

Comment: In-bond information (from a party other than the incoming carrier) might not be known by origin or prior to its arrival in the United States. It was asked whether information related to the subsequent in-bond movement of the cargo could thereafter be transmitted to CBP prior to the in-bond movement being authorized.

CBP Response: The CBP recognizes that the in-bond destination for cargo covered by house air waybills may not be known prior to the arrival of the aircraft in the United States. If such information is provided outside of the required time frame prescribed in § 122.48a(b), it will be treated as a change to the original information.

Comment: It was asked whether CAFES (Customs Automated Forms Entry System) was compatible with Air AMS for use on in-bonds.

CBP Response: CAFES is not yet compatible with Air AMS for merchandise arriving via air.

Truck/Air Issues

Comment: The use of Air AMS should be allowed for goods transiting the border by truck in lieu of a truck manifest. It was advocated that Customs brokers at the border should be required to transmit data through Air AMS for cargo that originated as an air shipment and arrived in a contiguous foreign country, notwithstanding that the cargo would be crossing the border into the United States by truck.

CBP Response: The Air AMS system is the electronic cargo reporting data interchange for merchandise arriving via an aircraft. Merchandise arriving via another mode of transportation, including by truck, must be reported in the manner specified for such mode. Thus, if the merchandise crosses the U.S. border on a truck, such merchandise is not considered to be an air shipment, notwithstanding that such cargo may have arrived in the contiguous foreign country by air. As such, in the event that merchandise, which was previously reported to arrive via an aircraft, should change its mode of transportation prior to arrival in the United States, the previously transmitted information must be cancelled and then reported in the manner appropriate to the actual mode of transportation employed in bringing the merchandise into the United States.

Shipments by U.S. Postal Service; Letters and Documents Otherwise Shipped

Comment: A number of commenters believed that the advance cargo reporting rules should be applied to shipments through the United States Postal Service (USPS).

CBP Response: Paragraph K of section 343(a)(3) of the Trade Act of 2002 (19 U.S.C. 2071 note, section (a)(3)(K)), compels consultation with the Postmaster General in considering what type of electronic cargo information requirements should be imposed upon carriers of mail shipments through the USPS. The CBP still has this issue under consideration. Should a determination be made to extend the advance electronic cargo information mandate to USPS shipments, such postal shipments would be the subject of a separate rulemaking procedure. Current procedures regarding the processing of shipments for the USPS will remain in effect.

Comment: Shipments of letters and documents, including the material described in General Note 19(c), Harmonized Tariff Schedule of the United States (HTSUS), that were transported by air otherwise than through the USPS, should also be exempted from full advance cargo reporting requirements.

CBP Response: The CBP has decided to make the requirements for advance cargo information for letters and documents the subject of a separate publication in the **Federal Register**. Proposed § 122.48a(d)(3) concerning advance cargo information requirements for letters and documents is thus removed from this final rule.

Liability Issues

Comment: Should the shipper provide inaccurate information in the description, shipper or consignee fields, it was urged that the incoming carrier or other electronic filer presenting such information to CBP not be held liable.

CBP Response: Whether or not liability would be imposed on a carrier in such circumstances would be governed by section 343(a)(3)(B), as amended, and § 122.48a(c)(5) in this final rule. Section 122.48a(c)(5) provides that CBP will take into consideration how, in accord with ordinary commercial practices, the presenting party acquired the information submitted and whether and how that party is able to verify such information. Where the information is not reasonably verifiable, the party will be permitted to present such information based upon a reasonable belief as to its accuracy.

Comment: Three commenters wanted to know whether the carrier would be liable for the submission of house air waybill information where another party that elected to furnish this information to CBP did not do so.

CBP Response: The carrier will indicate in the master air waybill record if another party will be transmitting the house air waybill data. If such other party fails to comply with the advance cargo reporting provisions, this party, and not the incoming carrier, will be held liable.

Comment: One commenter inquired as to who would be responsible for submitting advance cargo data in the case of a chartered aircraft.

CBP Response: In the case of a time or voyage charter, the aircraft owner/operator is the party required to transmit the information. In the case of a bareboat charter, where the charterer in effect becomes the owner of the aircraft (the owner *pro hac vice*), the bareboat charterer would be responsible for reporting the cargo information to CBP.

Comment: A question was presented as to what kind of penalty would be imposed on airlines that failed to meet the advance time frame submission.

CBP Response: An incoming air carrier failing to meet the advance reporting time frame may be liable under 19 U.S.C. 1584 as well as under other pertinent penalty provisions (see § 122.161, Customs Regulations; 19 CFR 122.161). Should another party electing to file advance cargo information fail to do so, such party may be liable for liquidated damages pursuant to its Customs bond.

Comment: It was asked who would be responsible for transmitting cargo data to CBP where a number of freight forwarders co-loaded cargo.

CBP Response: Either the incoming carrier or one of the parties qualified to do so under § 122.48a(c)(1) will be responsible for supplying the information for all house air waybills under a single consolidated master air waybill.

Data Elements

Comment: A couple of commenters took exception to the requirement that the flight number for the incoming aircraft be reported 4 hours prior to arrival. The flight number could change. Also, it was unclear how the indirect air carrier would know the exact flight number.

CBP Response: Only the incoming carrier is responsible for the transmission of the flight number. The carrier should be aware of its flight

number at the time of its required transmission.

Comment: It was stated that the proposed data elements designated as conditional ("C") were not currently captured and would require significant modifications to the freight reservations, reporting and tracking systems and that this would be at significant cost to the carrier.

CBP Response: These data elements are essential to effective cargo targeting. It is also observed that these data elements have previously been received from other air carriers through Air AMS.

Comment: Three commenters inquired as to whether the carrier would still have to provide house air waybill numbers, pieces, weight and description on its paper air cargo manifest.

CBP Response: Under proposed § 122.48(a), except as otherwise provided, a paper air cargo manifest need not be filed for any aircraft required to enter under § 122.41. In addition, proposed § 122.48(a) is further changed in this final rule to eliminate the requirement that a cargo manifest be retained aboard any aircraft required to enter under § 122.41; however, a copy of the air cargo manifest (Customs Form (CF) 7509) must otherwise be made available to CBP upon demand.

Comment: It was asked how a company would obtain a unique identifier (which would be transmitted by the carrier to indicate its separate transmission of a portion of the required data elements).

CBP Response: A Container Freight Station (CFS) and an Express Consignment Carrier Facility (ECCF) would be identified by its FIRMS (Facilities Information and Resources Management System) code. An air carrier would be identified by its IATA (International Air Transport Association) code. All other parties would be assigned a unique identifier by the Client Representative Branch of CBP's Office of Information and Technology (OIT) upon commencement of certification testing in Air AMS.

Comment: More information was requested as to the description that would be required on the master air waybill in the case of shipments of dangerous goods. It was noted that IATA requirements did not permit a characterization of "consolidation" to be indicated as a description on the master bill.

CBP Response: For the purposes of satisfying § 122.48a only, a cargo description of "consolidation" is sufficient at the master air waybill level. However, carriers may elect to provide additional information in the description field at the master bill level if they choose to do so.

Comment: Two commenters believed that current Air AMS programming did not allow for alpha-numeric characters of house air waybill numbers to be transmitted as printed on the paper house air waybill. They inquired as to how this would be handled.

CBP Response: Each party providing electronic cargo information must support alphanumeric characters for house air waybill records when alpha characters appear on the printed house air waybill. The CBP recognizes that some current Air AMS participants will need to undergo programming changes in order to support this feature.

Comment: One commenter noted that, quite often, the Importer of Record and the "deliver to" party (the ultimate consignee) were not the same party. The commenter wanted to know whether there would be a problem if the consignee were located somewhere other than the arrival and/or destination port.

CBP Response: The consignee need not be located at the arrival or destination port. Paragraphs (d)(1)(xi) and (d)(2)(vii) of proposed § 122.48a are revised in this final rule to so indicate.

Comment: One commenter urged that CBP allow disclaimers such as "said to contain" or "shipper's load and count".

CBP Response: The characterization, "Said to contain", is not an acceptable cargo description. The approved use of "shipper's load and count" is outlined in § 4.7a(c)(3)(ii), Customs Regulations (19 CFR 4.7a(c)(3)(ii)).

Comment: Three commenters did not agree with the requirement that the smallest external packaging unit be stated; a simple pallet count should be allowed.

CBP Response: The CBP disagrees. Such reporting is essential to ensure that no additional packages have been introduced into palletized cargo.

Comment: It was requested that the Automated Broker Interface (ABI) be made mandatory for all forwarders and brokers to transmit house data to CBP for air shipments.

CBP Response: The ABI is not the system by which electronic cargo information is to be collected under the provisions of § 122.48a.

Definitions

Comment: Under proposed § 122.48a(b)(1), one commenter wanted to know what was meant by the time of departure for the United States; and in proposed § 122.48a(b)(2), it was asked whether the time of arrival in the United States would be the scheduled or the actual time of arrival.

CBP Response: As expressly stated in § 122.48a(b)(1), the electronic cargo information must be received no later than the time of departure of the aircraft from foreign, which is the time that the wheels are up on the aircraft and it is en route directly to the United States (the trigger time is the time of departure of the aircraft for the United States). Proposed § 122.48a(b)(1) is thus further clarified in this final rule. And in § 122.48a(b)(2), the electronic cargo information must be received 4 hours prior to the actual arrival of the aircraft in the United States.

Comment: One commenter stated that gray areas still persisted as to the cargo covered by the regulation, and asked, in this respect, whether company material or aircraft parts for use by the airline would need to be reported.

CBP Response: As specified in the background discussion of the proposed rule (see 68 FR at 43580), merchandise brought in by an air carrier for its own use would be subject to the same advance cargo information filing requirements that would apply to other incoming cargo.

Comment: With reference to proposed § 122.48a(d)(1)(xii), the identity of the party who issued the "consolidation identifier" was requested.

CBP Response: The consolidation identifier is transmitted by the incoming air carrier to designate an air waybill record as a "master" air waybill.

Comment: In proposed § 122.48a(d)(1)(xvii), one commenter wanted to know what a "local transfer facility" was.

CBP Response: A local transfer facility is merely a Container Freight Station as identified by its FIRMS code or the warehouse of another air carrier as identified by its carrier code. Proposed § 122.48a(d)(1)(xvii) is revised in this final rule to include this additional explanatory material.

Air AMS Issues

Comment: It was asserted that mandatory participation in the Air Automated Manifest System (Air AMS) could not be required due to the fact that it was a voluntary program.

CBP Response: Section 343(a)(1) of the Trade Act of 2002, as amended (19 U.S.C. 2071 note, section (a)(1)), gives CBP the authority to require the advance reporting of cargo information through an electronic data interchange system; and Air AMS is such a system. Moreover, Air AMS was developed as a component of the National Customs Automation Program (NCAP) (19 U.S.C. 1411(a)); and, in section 338 of the Trade Act of 2002, Congress amended 19 U.S.C. 1411(b) to permit CBP to

require the electronic submission of information that CBP is obliged to collect.

Comment: One commenter asked when the Air AMS specifications and testing protocol would be made available to the trade.

CBP Response: The CBP will post the Air AMS specifications and testing protocols on its Web site as soon as possible. Such specifications and testing protocols will set forth the programming and operational details of the system.

Comment: Since a filer could be a party with a Container Freight Station (CFS) location or a Facilities and Information Resources Management System (FIRMS) code, two commenters inquired as to whether this implied that the advance cargo transmission would have to be made from a particular U.S. location.

CBP Response: The electronic cargo information may be sent from any location, provided that the electronic filer is one of the parties specified in § 122.48a(c)(1).

Comment: It was declared that carriers currently participating in Air AMS did not have uniform system requirements or uniform procedures at all ports of entry. The CBP should compel uniformity in system requirements and procedures at all ports.

CBP Response: The promulgation and implementation of these regulations and the enforcement of their provisions will increase uniformity of carrier participation in Air AMS. For instance, currently, there are several methods to process cargo information and they vary at each location. This is due to the lack of authority for CBP to require automation of cargo information. This regulation will provide that authority and therefore increase uniformity. The CBP believes that all cargo declarations will be processed the same at each location. However, variations may exist in the execution of the entry not in the manifest. Each port is a little different and therefore some variations will exist but not to the extent that is occurring on a daily basis.

Implementation of Advance Air Cargo Data Filing Requirements

Comment: Seven commenters wanted more time to obtain access to relevant Air AMS software and communications equipment in order to make their computer interface with the system operational. The CBP was requested to accommodate the interface schedules of the carriers in this regard. Three other commenters wanted a general delayed effective date of 180 days from the date the final rule was published. One commenter recommended that the rule be delayed until all ports were operational on the system and all necessary training had been completed. Another commenter believed that CBP was not properly staffed or trained in Air AMS to support its nationwide implementation. A further commenter suggested that CBP implement a phased-in approach, by carrier, origin and destination, and that a "web portal" be installed for use by carriers and other authorized filers unable to interface with the Air AMS system.

CBP Response: Section 343(a), as amended, was enacted on August 6, 2002, and clearly required that cargo data would need to be filed electronically. To this end, in the public meeting that was held for incoming air cargo on January 14, 2003, CBP stated that the accepted electronic interface would be the Air AMS system. Therefore, air carriers have had over one year to conduct proper research as to what type of software and computer interface options are available and what each has to offer. As such, CBP will only delay the general effective date of § 122.48a until March 4, 2004 for the specific reasons described in § 122.48a(e)(2).

Additionally, CBP has already identified all airports that require training in Air AMS and whether those air carriers that call on those airports are automated. By making use of this list and working with the air carriers concerned, CBP will coordinate with carriers that are ready to go online in airports that are not yet automated in order to ensure that the inspectors are properly trained, and that the air carrier has proper points of contact at that airport. However, CBP has determined that a web portal feature is not feasible at this time.

Furthermore, it is vital that the training for inspectors coincide as closely as possible with air carriers becoming automated in a port. If CBP trains the inspectors and there are no automated air carriers for several months, the training is not useful because the inspectors will not be utilizing their new skills. Therefore, the training must occur within a few weeks of an air carrier notifying CBP that it is going to become automated in a specific port.

Toward this end, CBP is striving to improve the Air AMS training that is available to the field inspectors. Currently, there are four Air AMS training classes that are held at the Federal Law Enforcement Training Center (FLETC) each year. In addition, CBP is developing a computer-based training course that will be required for each inspector at all airport locations.

System Irregularities; Paper Manifest Requirement

Comment: One commenter requested specific details regarding the technical support for any problems that might be experienced during data transmissions.

CBP Response: Requests for resolution of ordinary cargo transmission problems should be coordinated with CBP personnel at each port. In addition, each Air AMS participant has been/will be assigned a CBP client representative who is available to assist with more technical guidance.

Comment: Three commenters no longer wanted to keep a paper air cargo manifest on board the aircraft since CBP was mandating electronic cargo information. In addition, the requirement for keeping a paper General Declaration on board should be deleted since all the information was sent in advance of arrival through the Advance Passenger Information System (APIS).

CBP Response: As already noted, a paper air cargo manifest (Customs Form (CF) 7509) will no longer be required to be kept aboard the aircraft, but must otherwise be available for production upon demand. Proposed § 122.48(a) is changed in this final rule to reflect this. However, the General Declaration (CF 7507) will still be required as it contains data elements not otherwise collected through APIS or Air AMS.

Comment: Five commenters asked how an air carrier would comply with the advance cargo notification requirements without keeping a record of every single house air waybill in addition to the archived copy of each master air waybill.

CBP Response: Section 122.48a does not require the incoming air carrier to transmit or maintain records for house air waybill data when such data is transmitted by another electronic filer.

Comment: Seven commenters recommended that a CBP office be established at all airports to respond to various irregularities.

CBP Response: Each airport concerned will have a designated point of contact to address and resolve matters involving Air AMS.

In-Transit Issues

Comment: Four commenters suggested that in-transit cargo that remained on board the aircraft should be excluded from the proposed rule.

CBP Response: The CBP disagrees. Such cargo could pose a cargo safety or security risk to the same extent as other cargo that arrives in the United States.

Comment: It was believed that the proposed regulations did not clearly address whether air cargo that merely transited, and would not be discharged in, the United States was subject to compliance with the advance reporting time frames.

CBP Response: In accordance with § 122.48a(a)(1), cargo that transits the United States, whether or not it is unladen from the aircraft, is subject to the advance reporting requirements of the regulation. Technical requirements to report such information electronically will be specified in the Air AMS technical manual.

Comment: One commenter was concerned about who would be required to report required cargo data for in-transit cargo.

CBP Response: Such information must be provided either by the incoming air carrier or one of the other specified parties in § 122.48a(c)(1).

Hand-Carried Baggage

Comment: Five commenters advocated that hand-carried merchandise should be subject to the advance cargo reporting provisions.

CBP Response: Hand-carried merchandise is covered by the requirements for passenger baggage and is not considered cargo subject to advance reporting under § 122.48a.

Landing Rights

Comment: Five commenters suggested that CBP specify in proposed § 122.14(d) that denial of landing rights would occur only if a known security threat aboard a particular aircraft posed a higher threat to safety and security than an emergency diversion to alternative airports that could also refuse landing rights. Four other commenters believed that CBP should not deny landing rights or permission to unlade cargo based upon inaccurate information received from other parties.

CBP Response: The provision to deny landing rights is generally intended for those air carriers that fail, repeatedly and egregiously, to furnish timely and accurate cargo information in advance. In such a situation, CBP would have the authority to deny landing rights for that air carrier in the future. Assuredly, this provision would not be executed without careful deliberation and dialogue with the air carrier as to its lack of compliance.

In addition, pursuant to section 343(a)(3)(B), as amended, and § 122.48a(c)(5), as already noted, if the carrier electronically transmitting cargo information has received any of this information from another party, CBP, in deciding issues of liability, will take into account how, in accordance with ordinary commercial practices, the carrier acquired the transmitted information and whether the carrier was reasonably able to verify the information. Depending upon these circumstances, CBP reserves the authority to deny landing rights or permission to unlade if an air carrier fails to fulfill its responsibilities under these regulations.

Corrections to Cargo Information

Comment: Five commenters wanted clarification as to the procedure for making any changes to the cargo information already transmitted for a flight.

CBP Response: Complete and accurate information would need to be presented to CBP for cargo laden aboard the aircraft no later than the applicable time specified in § 122.48a(b). As for any changes in the cargo information already transmitted for a flight, the procedures for amending the cargo declaration including discrepancy reporting will be the subject of a separate rulemaking.

Comment: Two commenters inquired about who would be responsible in the case of a data discrepancy between a master air waybill and a house air waybill.

CBP Response: The party that transmits the information would be responsible for its correction. Communication between the air carrier and any other electronic filer for the incoming cargo should be maintained in order to avoid such discrepancies.

Comment: It was asked whether an electronic transmission to correct inaccurate data could be initiated from the port of destination when the initial electronic transmission occurred at the point of departure for the United States.

CBP Response: Any party supplying information will be able to correct such information, regardless of the station from which its transmission electronically originated.

Cargo Transfer

Comment: A question arose as to whether the deconsolidator's Facilities and Information Resources Management System (FIRMS) code or the carrier's identifier would be needed for incoming cargo that would be handled through a local transfer facility; and whether such information could be transmitted after arrival of the cargo.

CBP Response: A FIRMS code is the necessary data element for cargo that would be transferred to a deconsolidator or a Container Freight Station (CFS) within the limits of the port. Should the cargo be intended for transfer to another carrier's station within the port, the code of that carrier is required. Proposed § 122.48a(d)(1)(xvii), as already mentioned, is revised in this final rule to include this additional explanation. This information must be transmitted in advance of arrival together with the other required data in § 122.48a(d)(1) and (d)(2).

Split Shipments

Comment: Because shipments that were split by the incoming carrier would affect the transmission for that cargo by another electronic filer, the rules for the handling of split shipments in Air AMS should be further clarified.

CBP Response: When the incoming air carrier elects to split a master air waybill into multiple arrivals, the carrier will be required to transmit to CBP a number of additional data elements for each house air waybill covered by the master air waybill record. Specifically, the carrier will be required to transmit the house air waybill number, certain transportation and arrival information, the manifested and boarded quantities, and the manifested and boarded weights. As such, the informational requirements for split shipments described in proposed § 122.48a(d)(1)(xiii) are revised and included in this final rule as a new § 122.48a(d)(3) (proposed § 122.48a(d)(3) dealing with the summary manifesting of letters and documents, as previously noted, is deleted from this final rule and will be the subject of a separate **Federal Register** publication). Also, further technical specifications regarding the issue of split shipments will be provided in the Air AMS technical guidelines.

Changes in Business Practices

Comment: One commenter stated that it was an undue hardship to force companies onto Air AMS if another system were going to supersede it later on, and that companies would be forced to undergo the expense of conforming to new computer programming.

CBP Response: The CBP will rely, at least initially, upon the Air AMS, with appropriate future modifications, as the principal vehicle to achieve the goal of advance cargo data filing under section 343(a), as amended, in order that these regulations may be implemented at the earliest practicable time, as an urgent and critical national security imperative. However, it is assured that any new system developed within the framework of the Automated Commercial Environment (ACE) will be compatible with these implementing regulations. For this reason, the

regulations refer generically to a CBP-approved electronic data interchange system (rather than to Air AMS, specifically).

Comment: Companies would need to shift current workload that was done at destination ports to the ports of departure, and those ports were not properly staffed to handle the workload.

CBP Response: The CBP is fully aware that some changes in business practices may be necessary. For example, it has been a common practice for the industry to input cargo information while the aircraft is in-transit to its destination. This practice will need to change to require the information in a timely manner so as to meet the time frames identified by this final rule. The CBP has attempted to balance the concerns of the trade by affording a delayed effective date in the implementation of the advance air cargo reporting regulations as provided in § 122.48a(e), while, at the same time, recognizing the compelling national security need to move as deliberately as possible to protect cross-border commerce from the threat posed to cargo safety and security by international terrorism.

Comment: It was observed that for shipments with multiple intermediate foreign stops before final departure for the United States, freight forwarders needed the ability to transmit data elements to CBP at the time of departure from the departure station/location.

CBP Response: Those parties authorized to transmit house air waybill level information, as specified in § 122.48a(c)(1), will be able to do so prior to the transmission of the master air waybill information by the incoming air carrier.

General/Miscellaneous Issues

Comment: When an incoming air carrier has transmitted data to CBP for incoming cargo, one commenter inquired whether that carrier's ground handling agent, or other party, holding the goods following their arrival would also need to be automated in order to have access to the electronic freight status notifications concerning the cargo.

CBP Response: Participants in Air AMS, including the incoming air carrier, must be able to honor all electronic freight status notifications transmitted by CBP. Whether the carrier elects to employ a ground handling agent or not, the carrier is responsible for maintaining control of the cargo pending CBP disposition.

Comment: A question was raised as to how the carrier was to be advised that the house air waybill information had been transmitted to CBP.

CBP Response: The CBP does not anticipate transmitting a message to the carrier when the house air waybills are transmitted by another party. However, the failure to transmit house air waybill information for consolidated shipments, as prescribed in § 122.48a(d)(2), would preclude the release or transfer of any cargo covered by the consolidation. Thus, communication between the incoming carrier and any other electronic filer of house air waybill information, if applicable, would be essential.

In this latter connection, the Air Automated Manifest System (AAMS) has a feature known as the Freight Status Query (FSQ) message. The party that transmitted the message or another AAMS participant that has been authorized by the message originator may query the status of an air waybill record in AAMS. This feature may be invoked on a transactional basis to provide the AAMS participant with confirmation that an air waybill is on file along with details about the record.

However, to provide an automatic confirmation receipt message for every air waybill transmission would create substantial programming costs for CBP and AAMS participants. It would also substantially increase data storage and communications costs. The FSQ message provides the same information but need only be invoked on a case-by-case basis.

Comment: An issue was raised as to whether a party that was both an Automated Broker Interface (ABI) filer as well as a Container Freight Station/Deconsolidator and in possession of an international carrier bond could transmit cargo data at ports where the consolidation cargo remained under the custody of the air carrier.

CBP Response: A party authorized to transmit electronic cargo information, as provided in § 122.48a(c)(1) and (d)(2), will be able to do, even if the cargo remains in the custody of the incoming carrier.

Comment: One commenter wanted to know if there would be any amendment of requirements pertaining to international carrier bonds.

CBP Response: The changes to the international carrier bond requirements are set forth in § 113.64(a) and (c) in this final rule.

Comment: Additional explanation was sought concerning what procedures an air carrier would need to follow if cargo were targeted for inspection by CBP.

CBP Response: If it is found that a physical inspection of the cargo is necessary, CBP will electronically notify the carrier or other cargo custodian and make arrangements for its examination. In so doing, CBP would work with the carrier to ascertain an appropriate location to examine the potentially high-risk cargo.

Comment: Air cargo that would arrive in the United States on a permit to proceed from the port of arrival should be allowed to move to the port of unlading notwithstanding that a hold was placed on the air waybill covering the cargo due to insufficient data.

CBP Response: If CBP determines that a physical inspection is necessary or if additional information is required, the cargo will be held at the port of first arrival pending resolution of the matter.

Comment: Concern was expressed that CBP ABI/AMS client representatives would not be able to sufficiently handle the additional workload under the new regulations. It was suggested that a study be done to measure the current level of service to the trade and that such a study should be shared with the trade.

CBP Response: The CBP does not believe that a study of client representative workload is necessary to the implementation of this rule. In the unlikely event that such a contingency should arise, § 122.48a(e)(2), as previously observed, does provide that the effective date of the rule may be further delayed if more time is needed to complete the certification testing of new participants.

Rail Cargo Destined to the United States

Time Frame

Comment: Four commenters mentioned that cargo manifest information transmitted to CBP through the Rail Automated Manifest System (Rail AMS) could be made available two hours prior to arrival. However, information on the train sheet, sometimes called a consist (consisting of data such as the train's identification, locomotives' and cars' numbers and initials and the train's schedule) was not part of the advance cargo manifest data. This information would only be available when the final trans-border train was assembled, and in many cases, would only be available for transmission one hour prior to arrival at the border. One other commenter also advocated that the time period be reduced to one hour prior to arrival consistent with incoming truck traffic.

CBP Response: The CBP remains of the opinion that the 2-hour period for presenting rail cargo data prior to arrival effectively balances the impact on rail cargo safety and security with the likely impact on the flow of rail commerce into the United States. As such, this time frame represents the minimum period during which CBP is confident that essential targeting can still be accomplished, without a concomitant undue disruption to rail business practices.

In addition, without proper consist information (which identifies the incoming train, and gives its locomotives' and cars' numbers and initials and the train's schedule), CBP would not have the complete information essential for targeting on the incoming cargo in connection with the particular train on which the cargo would arrive. The availability of information on both the cargo and the arriving conveyance as provided in the rail consist is vital in order to enable CBP to do its targeting effectively in the time required.

Required Data; Carrier Responsibility

Comment: Four commenters wanted it made clear that a railroad was required to provide the scheduled date and time of arrival to the best of its knowledge, and that a railroad should not be penalized or held responsible should that date and time prove inaccurate within some reasonable time frame.

CBP Response: The railroad carrier must provide the scheduled date and time of arrival to the best of its information, knowledge and belief at the time that this information is filed. However, carriers will be held responsible for failure to keep CBP informed of any changes in this information as it becomes available.

Comment: Rail carriers should not be held responsible for the accuracy of information supplied by others. The CBP should change the language in proposed § 123.91(c)(2) to state that where the rail carrier electronically presenting the cargo information received any of this information from another party, the rail carrier would not be held responsible for the inaccuracy of any information supplied by that other party.

CBP Response: The CBP disagrees. Section 123.91(c)(2) repeats, and CBP is bound by, the statutory standard against which the potential liability of a rail carrier would effectively be gauged in presenting inaccurate cargo data to CBP that had been acquired from another party.

Comment: It was important that Rail AMS be able to manage multiple shipment data. The CBP would need to coordinate implementation of this aspect of the process with all elements of the supply chain and with U.S. trading partners.

Specifically, the requirement that the rail carrier supply information from the house bill of lading was problematic. In most cases, railroads would only have the capability of receiving one bill of lading and that bill would generally be a master bill of lading. Also, if the railroad had a container holding several consolidated shipments with individual house bills associated with each shipment, even if the railroad had the capability of receiving the individual house bills, information from such bills could not be transmitted to CBP inasmuch as Rail AMS could only handle the transmission of one bill of lading in association with the cargo manifest data for that one shipment.

CBP Response: The CBP is currently reviewing Rail AMS programming requirements to release the edit that only allows one bill of lading per shipment, which will enable house bills of lading to be utilized in the rail environment. In addition to possible programming changes, CBP is reviewing the prospect of authorizing other parties to transmit information via Rail AMS. This would further facilitate the submission of the house bill of lading information that is required on all shipments.

Should CBP decide to allow another electronic filer to voluntarily present house bill information for a shipment through Rail AMS, a test program notice to this effect would first be published in the **Federal Register** pursuant to § 101.9(b) and (b)(1), Customs Regulations (19 CFR 101.9(b) and (b)(1)), inviting public comments on any aspect of the proposed test and informing interested members of the public of the basis for selecting participants, the eligibility criteria for participation in the test, and the effect of such participation on the responsibilities of incoming rail carriers for the transmission of required advance cargo data to CBP.

Comment: Proposed § 123.91(d)(4) stated that carriers would have to supply the numbers and quantities of the cargo laden, as contained in the carrier's bill of lading, either master or house, as applicable, which meant the quantity of the lowest external packaging unit. This information was contained in the house bill, not the master bill. For a container shipment, the railroads would only know the quantity expressed on the master bill, which might not be at the level of the lowest external packaging unit.

Similarly, proposed § 123.91(d)(6) and (d)(7) would require that the railroad carrier provide the complete name and address for the shipper and consignee respectively. Again, however, the master bill of lading possessed by the rail carrier could contain only the name of a freight forwarder instead of the actual shipper and consignee; if so, the rail carrier would not know the identity of the actual shipper and consignee.

CBP Response: House bill of lading information is required under this regulation; therefore, as already discussed, CBP is reviewing programming changes to Rail AMS that would enable the system to accept such information. Hence, when Rail AMS is programmed to capture house bill of lading information, and when the rail industry has been given additional time to make essential adjustments to its own programming for the transmission of such house bill data through Rail AMS, all the referenced data elements would, at such time, need to be presented to CBP, which would include information for the shipper and consignee, including the full name and address of each, as well as the numbers and quantities (of the lowest external packaging unit) of the cargo laden aboard the train. To this end, CBP will take these programming matters into account in establishing the effective date(s) for implementing the incoming rail cargo data regulation (see § 123.91(e) in this final rule).

Comment: One commenter suggested that it might be difficult or impossible for the rail carrier to obtain the necessary cargo information when the rail cargo had initially arrived in Canada or Mexico by vessel or air carrier from another foreign country. In such a case, unless the ocean or air carrier had first required the complete disclosure of all information at the port of loading in the other foreign country, and thereafter passed this information along to the rail carrier, there would be no way that the required information would be available to the railroad.

CBP Response: For cargo that is transferred in Canada or Mexico to a rail carrier for shipment to the United States, whether such cargo originated in Canada or Mexico or was first brought there by a vessel or air carrier from another foreign country, the rail carrier, as explained above, will be required to provide the requisite data elements for such cargo to CBP.

Line Release

Comment: The CBP should retain Line Release not only for the present as stated in the proposed rule, but for the long term, as it was declared to be critical for cross-border rail traffic.

CBP Response: The CBP fully recognizes the importance of Line Release for Rail AMS. In fact, CBP has recently made Line Release available, for rail shipments only, to ports that ordinarily would not have access to it.

as part of CBP's Rail AMS port automation efforts.

Automated Line Release in rail is what is known as the Border Release Advanced Screening and Selectivity program (BRASS) in the Truck environment. The difference is that the information is all electronic and supplied in advance of arrival.

Implementation Date(s) for Rule

Comment: Further guidance was sought as to the implementation date(s) for the proposed regulation.

CBP Response: Quite plainly, under § 123.91(e), rail carriers must commence the advance electronic transmission of required cargo information 90 days from the date that CBP publishes a notice in the **Federal Register** informing affected carriers that the data interchange system is in place and operational at the port of entry where the train would first arrive in the United States. As such, before the rule can become operational at any port, including any port(s) where Rail AMS is now operational, the initial publication of a **Federal Register** notice naming such port(s) would be a mandatory prerequisite. At present, there are 35 CBP ports that have rail crossings, 8 of which are not rail AMS. The CBP will require all ports that handle rail cargo to become automated.

Exemption for Cargo Transiting Contiguous Foreign Country

Comment: The proposed rule (§ 123.91(b)) would expressly exempt from advance electronic information filing requirements domestic cargo transported by train from one port to another in the United States by way of a foreign country. However, the proposed rule did not deal with whether such an exception applied when the shipment partly involved transportation by sea or air.

CBP Response: Only a land-based conveyance, such as rail or truck, would be involved with carrying goods on a continuous movement from one port to another in the United States by way of a contiguous foreign country, whether Canada or Mexico. This is the specific situation addressed in § 123.91(b); such a situation would simply not arise in the vessel or air mode. Proposed §§ 123.91(b) and 123.92(b)(1) (for trucks) are revised in this final rule to explicitly reference Canada and Mexico in this respect.

Truck Cargo Destined to the United States

Implementation Issues

Comment: As was done in the 24-hour rule, one commenter wanted a grace period between the implementation date of the final rule and its enforcement date (no penalties assessed for non-fraudulent violations).

CBP Response: Similar to that which was done in the context of the 24-hour rule (67 FR 66318), as previously detailed, *supra*, CBP will follow a phased-in enforcement/compliance program, after § 123.92 becomes effective at a specific port of arrival. As such, during the phased-in period, CBP would not customarily initiate enforcement actions such as assessing penalties for non-fraudulent violations of § 123.92. And, under § 123.92(e), the effective date for advance data filing for incoming truck cargo is itself initially delayed until 90 days from the date that CBP publishes a notice in the **Federal Register** informing affected carriers at the given port that the approved data interchange is operational there and that carriers must commence the filing of the required data.

Comment: Two commenters sought to delay the implementation of proposed § 123.92 until carriers, brokers, and importers had direct communication links electronically with CBP.

CBP Response: The CBP disagrees. The advance notification requirement is largely intended to collect advance cargo information via two outstanding methods—the Automated Broker Interface (ABI), or the fully electronic version of the Free And Secure Trade (FAST) System. Delaying the implementation of § 123.92 until all parties related to the reporting of the data for incoming cargo are fully electronically interfaced with CBP, such as through FAST, or the Automated Commercial Environment (ACE), once it is deployed, would be incompatible with the expeditious implementation of section 343(a), as amended, as a national security necessity.

Comment: It was suggested that CBP implement separate rules for emergency importations.

CBP Response: Emergency situations will be handled on a case-by-case basis, depending on the facts, in CBP's enforcement discretion.

Comment: It was recommended that an education enforcement contingency plan be devised to avoid possible chaotic situations at the border under the new rules.

CBP Response: Outreach and marketing efforts are currently being undertaken to reach out to both foreign and domestic trade participants to avoid such situations at the border.

Time Frame for Advance Filing

Comment: One commenter sought further explanation as to the actual start time for advance notification requirements, *i.e.*, at the time of transmission, or at the time CBP received the transmission.

CBP Response: As expressly set forth in § 123.92(a), CBP must receive the cargo data no later than 30 minutes or 1 hour prior to the carrier's arrival at a United States port of entry, or such lesser time as authorized, based upon the CBP-approved system employed in presenting the information. Also, this point was directly addressed in the background of the proposed rule (see 68 FR at 43586).

Comment: Twelve commenters recommended an abbreviated advance notification time line of 30 minutes for standard shipments and 15 minutes for Free And Secure Trade (FAST) shipments, specifically for trucks loaded within a designated border zone, to support the "Just-in-Time" (JIT) shipping industry.

CBP Response: This identical comment was broached in the proposed rule (68 FR at 43586; *Summary of Principal Comments*, item "1."). At that time, CBP concluded, and continues to firmly believe, that the 30-minute or 1-hour advance time frame, in relation to the particular automated system used, is the minimum period needed to perform a targeting analysis for cargo selectivity, and, if found warranted, to arrange for an inspection or examination of the cargo following its arrival. The effect on JIT inventory practices, given these relatively brief reporting periods, should be essentially nugatory.

Against this backdrop, it is submitted that BRASS (the Border Release Advanced Screening and Selectivity program) and CAFES (the Customs Automated Forms Entry System), where the filing period would be less, will only be employed exclusively as interim, transitional systems in the truck environment prior to the development and deployment of fully electronic replacements for these systems in the new truck manifest module scheduled for delivery under the Automated Commercial Environment (ACE); the employment of BRASS and CAFES under the circumstances is thus due in large measure to the conspicuous lack of electronic information systems prevalent in the trucking industry, especially along the Southern Border.

Comment: Six commenters asked that CBP implement the 15-minute advance electronic notification period currently used under the FAST voluntary test program.

CBP Response: The FAST program is designed to enhance security and safety in processing commercial importations along the Northern and Southern borders, while also enhancing the economic prosperity of the U.S., Canada, and Mexico by aligning, to the maximum extent possible, their customs commercial programs. While the program will still, of course, function in this capacity, nevertheless, with reference to its relationship with section 343(a), as amended, FAST will also be used for purposes of ensuring cargo safety and security and preventing smuggling. As such, and for the reasons set forth above, CBP finds it advisable to extend the overall time frame for FAST transactions to a full 30 minutes prior to arrival as an additional security measure under the program.

Thus, shipments eligible for FAST must be reported at least 30 minutes before the arrival of the conveyance at the first port of entry. FAST shipments may be reported through one of two release mechanisms: Through the all-electronic transmission of conveyance, driver and shipment information, formerly known as the National Customs Automation Program (NCAP) prototype; or through the use of the Pre-Arrival Processing System (PAPS) version of cargo selectivity. All other truck shipments still not allowed release via BRASS, must utilize PAPS and submit the data one hour before arrival of the truck. For an additional extensive review of the FAST, PAPS, BRASS, and CAFES systems, see the proposed rule at 68 FR 43586–43587.

Comment: Seven commenters requested that CBP initiate an electronic confirmation/receipt system, that would notify the broker/carrier that information was received, thus starting the 30-minute/1-hour clock.

CBP Response: The CBP already has a system in place that notifies the ABI transmitter that the data was received. This information is only available to the ABI transmitter. At this time, any notification to the carrier of successful data transmission must come via the ABI filer. Additionally, it should be pointed out that this program has already been successfully used without the need for direct electronic confirmation from CBP.

Data Systems To Be Used; In-Bond Reporting

Free And Secure Trade System (FAST)

Comment: Four commenters wanted to know when FAST, which was only available at a limited number of Northern Border ports, would be extended to other ports, including those along the Southern Border. Four other commenters wanted the FAST program defined in the regulations as a method of acceptable cargo release.

CBP Response: A general notice published in the **Federal Register** (68 FR 55405) on September 25, 2003, announced the expansion of, and the eligibility requirements for, FAST along the Southern Border. The Southern and Northern border implementation schedule for FAST is also available on the CBP Web site (*http://www.cbp.gov*). This general notice also clearly defines FAST and its requirements.

Comment: Four commenters advocated that less-than-truckload (LTL) carriers be allowed to participate in FAST.

CBP Response: The current eligibility criteria for participation in the FAST program is set forth in the general notice that was published in the **Federal Register** (68 FR 55405) on September 25, 2003 (see 68 FR at 55406).

Pre-Arrival Processing System (PAPS)

Comment: It was suggested that CBP utilize the pre-file system, as was being done along the Southern Border.

CBP Response: The CBP contemplates mandating the implementation of the Pre-Arrival Processing System (PAPS) for all land border sites. The PAPS system, which uses the Automated Broker Interface (ABI), provides CBP with advance arrival information and includes carrier and importer information that is not included in the Southern Border Pre-file system. The PAPS system will basically also mesh with the advance truck manifest module when it is developed in ACE, while the Pre-file system would not.

Comment: The CBP should not deny the entry of PAPS shipments for failure to meet the required advance notification time. This could occur where Commercial Vehicle Processing Centers (CVPC) were not present.

CBP Response: In instances where CVPCs are not present, it is still the responsibility of the carrier or the importer/broker, as applicable, to ensure that the ABI transmitter receives the appropriate entry information via fax or by other means.

Should cargo information not be received within the allotted time frame, CBP may pursue any of the following options: (1) Denying a permit to unlade; (2) Delaying the release of the cargo until security screening is complete; and/or (3) Assessing a penalty/liquidated damages.

Comment: Three commenters sought the continued use of bar code labels until transponders were available.

CBP Response: The CBP will continue to support the use of bar codes to identify PAPS shipments, as an acceptable method for processing the entry and release of cargo.

Comment: Four commenters questioned what software would be called for and what cost and training investment would be needed. Four other commenters wanted the proposed rule to deal with alternative methods of advance electronic presentation of cargo for those parties without access to an approved data interchange.

CBP Response: All current ABI transmitters in the truck mode have access to the ABI transmission module, which requires no new additional modifications or software changes. New individual filers may have to make some changes to their existing software, either through in-house programming or via their software vendors. However, the ABI capabilities to be utilized have been available within ABI for many years. It is the carrier's, shipper's or other trade partner's responsibility to ensure that the ABI transmitter receives the appropriate entry information via fax or by other means.

A party seeking to file cargo information with CBP electronically, who does not have an approved data interchange, may employ either the services of an automated Customs broker, or a service provider or an ABI service bureau for this purpose (see § 143.1(a) and (c), Customs Regulations; 19 CFR 143.1(a) and (c)).

Border Release Advanced Screening And Selectivity (BRASS)

Comment: Two commenters desired that CBP expand system capabilities to include advance manifest procedures for BRASS and in-bond shipments and include instructions for a Monthly Manifest.

CBP Response: The BRASS system, which is largely paper-based, will be employed, on an interim basis, for reporting data for incoming cargo. However, additional requirements may be implemented for BRASS to ensure that BRASS transactions achieve the basic objectives of cargo safety and security pursuant to section 343(a), as amended.

As additional interim measures, CBP will continue to employ CAFES or ABI in-bond reporting systems where available. The CBP also intends to continue support for what is known as Monthly Manifest (which applies to automotive products), until the periodic summary reporting that Monthly Manifest supports is available electronically. The Monthly Manifest program, and instructions for this program, however, fall outside the scope of this document.

Comment: Five commenters sought additional explanation concerning the use of BRASS as a cargo reporting system under proposed § 123.92.

CBP Response: As a strictly interim, transitional procedure, CBP intends to allow the continuation of BRASS for trucks, but anticipates instituting some additional measures that would otherwise modify BRASS to enhance the security of BRASS transactions. To this end, CBP will take those measures deemed necessary to safeguard the integrity of the BRASS program, which could include program requirements such as FAST Driver registration and participation in the Customs-Trade Partnership Against Terrorism (C–TPAT). However, with the incorporation of a fully electronic version of BRASS planned in the new truck manifest module in ACE, CBP does not propose making any changes to the method in which the current paper-based BRASS operates.

Comment: One commenter advocated that CBP restrict the use of BRASS to C–TPAT approved importers.

CBP Response: The CBP will consider adding this type of security enhancement to the BRASS system. However, for the present, CBP will use C–TPAT membership in targeting incoming cargo for examination, including cargo that is subject to reporting through the BRASS system.

In-Bond Systems; Bar Codes

Comment: Five commenters desired further guidance under the proposed rule concerning in-bond entries for immediate transportation to another port of entry, and the use of the 2–D bar code label under in-bond provisions.

CBP Response: As explained in the proposed rule (68 FR at 43587), CBP will continue to employ CAFES or ABI in-bond reporting systems where available. The CAFES system handles in-bond shipments utilizing 2–D bar codes that are printed on the Customs Form (CF) 7512 in-bond entry document. Because the use of bar codes is required for CAFES, BRASS, PAPS, and other functions, CBP will continue to support the use of such bar codes in accordance with these systems.

Required Data Elements

Comment: Two commenters pointed out that proposed § 123.92(c)(2) allowed for dual party presentation of the required data, but did not indicate which data elements were required from the carrier, importer or broker.

CBP Response: Where there is dual-party presentation of the data elements listed for incoming cargo in § 123.92(d), the parties to the transaction should decide which data elements each will submit. It is, of course, presumed that if an importer or its broker elected to file advance cargo information with CBP, such data would typically encompass any required commodity and other related information that it possessed with respect to the cargo, as such information would likely be better known to the importer or its broker; and, for the same reason, the carrier would present the required data pertaining to the carriage of the cargo (see 68 FR at 43587). However, CBP will not parse the data elements in § 123.92(d), and rigidly mandate their respective assignment between the carrier and importer or broker.

Comment: In proposed § 123.92(d)(2), one commenter desired the elimination of the Standard Carrier Alpha (SCAC) code, because carriers along the U.S.-Mexican border did not have SCAC codes.

CBP Response: The CBP disagrees. The ability to identify the carrier is critical to target and assess the risk posed by shipments crossing the border. In this regard, the SCAC code is a unique four-letter code used to identify transportation companies; this unique carrier identifier supports the electronic data interchange for all motor carriers. A carrier may obtain a SCAC code by contacting the National Motor Freight Traffic Association, Inc., 2200 Mill Rd., Alexandria, VA 22314–4654.

Comment: One commenter mentioned that the proposed rule did not deal with a possible variation between the scheduled date of arrival and the actual date of arrival, and whether a difference in these times would result in a breach of the importer's entry bond.

CBP Response: In § 123.92(d)(6), the specific information required is the scheduled date and time of the carrier's arrival at the first port of entry in the United States. However, should there be a delay in the carrier's arrival following its data transmission, this may raise targeting concerns and prompt further inquiry/inspection. In any event, notwithstanding the scheduled arrival of the truck, the presentation of the required cargo data is related to the carrier's actual time of arrival in § 123.92(a).

Comment: Four commenters wanted the data elements for inbound truck cargo aligned with those data elements that would be required under the Automated Commercial Environment (ACE) once it is developed.

CBP Response: As the ACE is under development and its precise features have not as yet been determined, this comment falls outside the scope of this document.

Exemptions

Comment: The proposed rule should exempt informal entries from advance data reporting.

CBP Response: Section 123.92(b)(2) does exempt informal entries from the advance cargo information notification provisions.

Comment: All radioactive materials entering the United States should be subject to prior notification, even if the shipment only transited a contiguous foreign country while en route from one port to another in the United States.

CBP Response: Upon arrival in the United States, all shipments, including those merely in-transit through a contiguous foreign country, will be scanned for radiation in primary truck lanes, and in-transit manifests, if applicable, must be tendered at that time.

Examination/Inspection; Penalties/ Liquidated Damages; Refusal of Admission

Comment: One commenter suggested processing trucks away from the border, prior to reaching the bridge, especially for Detroit and Buffalo.

CBP Response: The concept of examining and processing trucks prior to their entry into the United States is currently being explored with Canada. It is a complex and sensitive issue involving matters of national sovereignty and the authority to enforce laws outside the United States.

Comment: One commenter inquired as to whether it would be acceptable for a carrier to arrive physically and wait in a holding area while the driver/carrier coordinated with the broker to ensure that proper advance information had been provided.

CBP Response: Because secondary examination areas are limited in space, CBP will not allow the shipment to be staged at a designated waiting area in the port of arrival either while the entry documentation is being processed or while the carrier consults with a broker to determine if the information has been presented in the manner prescribed.

Comment: Thirteen commenters expressed alarm over the prospect that the admission of cargo to the United States could be refused if the advance notice was not received.

CBP Response: Once implemented at a port, the advance cargo reporting provisions would be obligatory for all required cargo. For any inward carrier for which advance electronic commodity and transportation information was not presented to CBP, as otherwise required in the regulations, the transporting carrier, depending on the specific circumstances involved, could be refused permission to unlade until all security screening and necessary examination was initiated and concluded, in addition to being subject to applicable statutory penalties. In the alternative, the carrier could be refused admission to the United States depending, once again, upon the particular circumstances involved.

Type of Carrier; Carriage of Instruments of International Traffic

Comment: Two commenters sought the creation of procedures for the movement of instruments of international traffic, including the movement of empty containers aboard trucks.

CBP Response: With the exception of FAST, CBP will not require any advance notification if the shipment consists solely of empty articles (pallets, tanks, cores, containers, and the like) that have been designated as instruments of international traffic (IITs). However, if the IITs are commingled with other commercial cargo, CBP will, of course, require the requisite arrival notification for such commercial cargo via the authorized CBP-approved electronic data interchange system; and any empty IITs carried aboard the conveyance must be identified as such and listed on the carrier's paper manifest.

Comment: Three commenters questioned whether there was a distinction between an inward truck carrier as opposed to a drayage carrier. Also, they wanted to know whether there would be any differences in treatment between carriers on the Northern and Southern Borders.

CBP Response: The CBP defines a drayage carrier as one that only moves cargo locally (such as a cartman who only moves cargo within the limits of a port), as opposed to an incoming truck carrier which is understood to be engaged in the international movement of cargo coming from Canada or Mexico. Also, as previously assured, until the development of the truck manifest module in ACE, CBP will employ existing data systems on both the Northern and Southern Borders to receive and evaluate cargo information for incoming truck shipments.

Cargo Departing From the United States; All Modes

Time Frames for Transmitting Required Data for Outbound Cargo

Comment: One commenter wanted to know whether there could be a pre-departure report for cargo that did not have an export license.

CBP Response: There may be pre-departure reporting for shipments without an export license. General export reporting requirements may be found in the Bureau of Census Regulations (15 CFR 30.1–30.2).

Comment: The proposed twenty-four hour advance notification for outgoing vessel cargo in proposed § 192.14(b)(1)(i) would considerably add to transit time, with adverse impact especially upon perishable goods.

CBP Response: Since the responsibility rests with the USPPI, and not the ocean carrier, to provide the advance data to CBP, there should be no undue burden placed upon the carrier. The Option 4 post-departure filing program will remain and will be available to exporters of perishables that meet requirements for volume, low-risk commodity, and compliance with export regulations.

Comment: The phrase, "no later than 24 hours prior to the departure of the vessel", in proposed § 192.14(b)(1)(i), should be further explained.

CBP Response: For greater clarity, this phrase in § 192.14(b)(1)(i) is changed to read: "no later than 24 hours prior to departure from the U.S. port where the vessel cargo is to be laden".

Comment: In proposed § 192.14(b)(1)(ii), one commenter suggested a longer time frame for submitting air cargo data, while two commenters wanted the proposed 2-hour advance time frame reduced.

CBP Response: The CBP finds that the 2-hour advance time frame in § 192.14(b)(1)(ii) is necessary for CBP targeting purposes, and should not unduly disrupt the flow of outbound air commerce. The CBP will continue to work with the express consignment industry to explore interim use of the External Transaction Number (XTN) by those companies that are able to provide CBP access to existing automated export manifest systems with targeting capabilities.

However, for further clarification, § 192.14(b)(1)(ii) is amended in this final rule to state that for air cargo, including cargo being transported by Air Express Couriers, the USPPI or its authorized agent must transmit and verify system acceptance of export air cargo information no later than 2 hours prior to the scheduled departure time of the aircraft from the last U.S. port.

Comment: Two commenters recommended that information be submitted prior to the export shipment being delivered to the outgoing carrier, but no less that 2 hours prior to departure of the flight for foreign. The concern was expressed that an air carrier would be penalized for shipments which were tendered for movement before the electronic information filing through the Automated Export System (AES) had been completed.

CBP Response: The USPPI or its authorized agent must have the Internal Transaction Number (ITN) available to provide to the carrier when the cargo is tendered for export. The ITN verifies that the cargo data filing has already been completed. Carriers are only responsible for collecting the proof of electronic filing (ITN) for annotation on the carrier's outward manifest, waybill, or other export documentation covering the cargo to be shipped.

Comment: Three commenters proposed that data be submitted for outbound Shippers Export Declaration (SED) shipments at the time of departure for air cargo and upon arrival at the border for truck cargo.

CBP Response: This would not be permissible. The CBP simply cannot perform its necessary targeting and selectivity responsibilities if the information is received at the time of departure or arrival at the border.

Comment: It was stated that the 4-hour notification for rail as initially proposed by CBP would directly impact operations and result in delayed shipments. On this ground, it was recommended that the time frame for reporting outbound rail cargo be consistent with the 2-hour pre-arrival time frame for incoming rail cargo.

Also, it was stated that U.S. Principal Parties in Interest (USPPIs) who would be obligated to transmit the required cargo information at least 4 hours prior to the engine being attached to the train generally had little knowledge of rail operations. Therefore, it was urged that a mechanism should be put in place whereby a problem container could be held at a Canadian port until reporting issues were resolved.

CBP Response: The CBP will adopt the recommendation for outbound rail that was put forth by COAC (the Treasury Advisory Committee on the Commercial Operations of the U.S. Customs Service). Thus, export cargo information must be transmitted no later than two hours prior to the arrival of the train at the border, thereby creating symmetry with the advance time frame for inbound rail cargo coming from Canada or Mexico.

The CBP observes that this two-hour time frame is established as a minimum guideline. All parties involved in export transactions are encouraged to file export cargo information as far in advance as is practicable to reduce the need for CBP to delay the export of cargo because of the need for screening, examinations, and the resolution of incomplete or incorrect records. It

should be recognized that CBP will continue to exercise its authority to remove a container from an outbound train at the time of border crossing. Further, in the event that a shipment crosses into Canada without proper reporting and is determined to be high-risk after CBP has utilized all targeting tools and information at its disposal, CBP will work with the carrier to have the container redelivered to the port of export.

Exemptions From Pre-Departure Reporting

Comment: One commenter sought information about the export exemption list; and whether there was any reason to standardize the format of the citation which the USPPI furnished to the outbound carrier. Exemptions for low value shipments and shipments to Canada should remain the same.

CBP Response: The Bureau of Census already publishes export reporting exemptions in its regulations (see 15 CFR 30.50–30.58). Exemptions for low value shipments and shipments to Canada do remain the same. Also, the citation format is already standardized and available to the trade in Census Foreign Trade Statistics Regulations (FTSR) Letter 168, Amendment 2, a copy of which may be obtained from the Bureau of Census. Additionally, it is understood that information required to be submitted under Bureau of Census regulations for exports made through the U.S. Postal Service (USPS) will not be subject to being reported within the advance filing time frames of § 192.14(b) in this final rule.

Comment: Two commenters inquired about the reporting status of shipments to U.S. territories and Puerto Rico.

CBP Response: The reporting requirements for shipments to U.S. territories and to Puerto Rico also remain unchanged. Such requirements are outlined in the Bureau of Census Regulations (see 15 CFR 30.1).

Internal Transaction Number (ITN)/ External Transaction Number (XTN)

Comment: One commenter—The U.S. Department of Defense—wanted to be excepted from the requirement to obtain an Internal Transaction Number (ITN) for export shipments, preferring instead to continue using the External Transaction Number for this purpose. This was said to be necessary to achieve an interface between DoD shipper systems and the AES.

CBP Response: The CBP will review the ITN requirement for non-licensed DoD shipments. However, it is emphasized that for those DoD shipments which are subject to the Department of State's International Traffic in Arms Regulations (ITAR), the requirement of an ITN, to be reported within the advance time frames stipulated by State, will be mandatory. Proposed § 192.14(b)(2) is amended in this final rule to add a specific cross reference to State's ITAR Regulations (22 CFR parts 120–130) that contain the advance notification provisions for exports of items on the U.S. Munitions List.

Comment: Specifications of the format and electronic transmission requirements for the ITN should be provided, especially for airlines.

CBP Response: Many carriers already annotate the XTN/ITN, Option 4 statement, or other exemption on the manifest. Carriers should refer to FTSR Letter 168, Amendment 2, for the proper formats. This FTSR Letter may be obtained from the Bureau of Census.

Comment: Since carriers could not accept cargo from the shipper/exporter until an electronic filing number or exemption code had been annotated on the export documentation at the time of freight acceptance, it would then follow that freight acceptance times would have to be restricted to 2 hours out from the flight.

CBP Response: Carriers should currently not be accepting cargo without a paper SED, XTN/ITN, Option 4 or reporting exemption statement (15 CFR 30.50–30.58). Hence, the carrier's responsibility under these regulations should not perceptibly change from the proper procedure it should be following at present. It is actually the USPPI or its agent who will have to plan ahead and accomplish transmission and acceptance of the data earlier, so that the ITN will be available when the cargo is tendered to the exporting carrier.

Comment: The ITN requirement should be revised to allow export shipments to proceed once the USPPI/ Agent has received the ITN/AES confirmation message; and the same policy should apply for export shipments that qualified for exemptions to the pre-departure electronic filing requirements.

CBP Response: If the USPPI/Agent is already waiting for the ITN message to be returned, the step of noting it on the export documents would be a fairly minor exercise. Also, export exemptions follow a standard format and are listed in 15 CFR 30.50–30.58 and FTSR Letter 168, Amendment 2, *supra*. The ITN is provided via a return message from AES. Carriers are required to obtain, and, therefore, USPPIs or their agents must provide to the carrier, an AES proof of filing citation, low-risk exporter citation (currently the Option 4 citation), or an exemption statement under current Census Bureau regulations. This procedure will remain the same under section 343(a) of the Trade Act of 2002, as amended.

Comment: It was not at all clear how a driver, who was out picking up freight on various shippers' loading docks, would have access to the ITN.

CBP Response: The USPPI/Agent should have the ITN already annotated on the export documentation that would be presented to the driver. All the driver would have to do is simply verify that the shipping documents include an ITN, Option 4, or other exemption statement.

Comment: Two commenters were of the opinion that the performance of AES in the past in timely returning ITN confirmation numbers had led to the trade's preference for the XTN numbers.

CBP Response: The AES development team is required to set performance standards for system performance. One of the 2003 performance measures requires system "through-put" (the time it takes for data to reach the AES, be processed and put back out for return to the filer) to be routinely less than 1 minute.

Comment: One commenter asked whether there would be any merit in adding the time that the ITN was obtained by the USPPI, so that the carrier would know when the 24 hours had expired (in the case of outbound vessel cargo).

CBP Response: The current ITN format is sufficient. It is the responsibility of the USPPI or its agent to make sure the advance filing window is met.

Comment: The AESDirect system could only return the ITN via email, which would not be timely enough for express business. Three commenters believed that since the AES redesign was not scheduled for completion until mid-2004, and AESDirect sent the ITN via email, the ITN should not be required. One commenter requested that the XTN be used instead.

CBP Response: The CBP wants to especially emphasize that the annotation of the ITN number on any export documentation will not be mandated or enforced until the implementation of the redesign of the AES Commodity Module, which, as noted, is not anticipated to be completed until mid-2004. The redesign of the AES Commodity Module will make the ITN stable when records are updated.

The CBP, after consulting with the Bureau of Census, has informally estimated that its AESDirect system returns the ITN via email within 5–15 minutes. While this response period may have some impact on business practices, it should prove to be a return time that is, on balance, reasonably prompt and commercially acceptable. The preference for the XTN number is understandable, but since the XTN is generated by the USPPI or its agent and may be annotated on the export documentation without the shipment data having been transmitted to AES, this number is, and has repeatedly been, subject to abuse, which will make its continued use, as a general proposition, wholly unacceptable.

Comment: Under the proposed regulations, the exporter could present either the ITN number, the Option 4 filing number, or an exemption statement. It was asked whether this would also comply with the statute concerning the documentation of outbound waterborne cargo (19 U.S.C. 1431a). The CBP should clarify that under Option 4 filing and for exporters that were otherwise exempt from pre-departure filing, there would also be no requirement to provide separate shipping documents to the vessel carrier under 19 U.S.C. 1431a.

CBP Response: Issues relating to section 343(b) of the Trade Act of 2002, as amended (codified at 19 U.S.C.1431a), fall outside the scope of this rulemaking. As made clear in the proposed rule (68 FR at 43592), section 343(b), requiring proper documentation for all cargo to be exported by vessel, will be the subject of a separate publication in the **Federal Register.** To the extent legally and operationally permissible, however, the administrative implementation of the requirements of section 343(b) will be synchronized and dovetailed with these regulations under section 343(a).

Comment: One commenter asked how the carrier would know whether the AES filer was the USPPI or its agent.

CBP Response: All the carriers need to do is ensure that the proper AES proof of filing citation (including the ITN), the low-risk exporter citation, or an exemption statement is on the shipping documents that they receive with the cargo. The carrier is not required to check the validity of the ITN or the identity of the party presenting it.

Option 4 Filing (Post Departure)

Comment: The CBP and Census should grandfather existing Option 4 holders into the "new" Option 4 to be jointly constructed by the two agencies.

CBP Response: The CBP cannot guarantee that current Option 4 USPPIs will retain the privilege under program requirements that have yet to be finalized. The current Option 4 was conceived prior to September 11, 2001, and it is the goal of the Bureau of Census and CBP to ensure cargo safety and seaport security while at the same time fostering the continued smooth flow of commerce. The new Option 4 will emphasize volume, repetitive low-risk commodities and compliance.

Comment: The CBP should take into account those exporters who repeatedly shipped the same low-risk commodities to related parties.

CBP Response: The CBP does take such exporters into consideration. Current Option 4 is intended for repetitive exports of low-risk commodities by compliant USPPIs. The CBP will explore with the Bureau of Census the possibility of using related parties as a requirement or factor to determine Option 4 eligibility.

Comment: Two commenters sought assurance that any revisions to Option 4 filing would not reduce the ability for legitimate, low-risk exporters (such as exporters of agricultural commodities) to qualify for such filing if they were otherwise in compliance, even though they did not meet minimum export volume requirements. Another commenter wanted the program expanded to additional companies that faced new lead time requirements.

CBP Response: The CBP and the Bureau of Census are in the early phase of redesigning the program. While export volume will be a significant factor, there may be an appeals procedure wherein a compliant low-volume exporter can demonstrate a legitimate need for Option 4 filing under the redesigned system.

Comment: Two commenters strongly urged the continuation of Option 4 filing for C–TPAT (The Customs-Trade Partnership Against Terrorism) members with low-risk commodity exports. Also, it was thought that such exemptions (as Option 4) and programs for exports should match those provided for imports.

CBP Response: Current Option 4 filing is available to compliant exporters of low-risk commodities, regardless of C–TPAT status. The CBP does not anticipate that this will change.

Automated Export System (AES)/ Technical Issues

Comment: Under the planned redesign of AES to be developed by mid-2004, air carriers would be able to send transportation data directly to CBP. Two commenters sought guidance on how the CBP electronic data interchange would be interfaced with the airlines' systems.

CBP Response: The system enhancement projected for completion in mid-2004 is the AES Commodity Redesign which will improve the ability of the AES to process automated Shipper's Export Declaration (SED) information. These enhancements will not enable AES to accept electronic manifest information directly from air, rail, or truck carriers, nor will the new regulations require the exporting carriers to submit such manifest data via the AES. The vessel manifest module in AES will remain optional.

Comment: Three commenters questioned how CBP would notify the carrier of high-risk cargo that was targeted for inspection/examination. It was recommended that a predetermined time should be set following which a carrier could confidently assume that no further hold status would be issued for the cargo.

CBP Response: The AES commodity module is not capable of sending electronic hold messages to carriers, so the current methods of communication by fax and/or phone will need to continue. The CBP cannot set a time frame after which a carrier could assume no further holds. Given the current design and functionality of the system, commodity records are transmitted to AES on a transaction-by-transaction basis rather than as part of a manifest, where the end of the transmission is marked. Thus, not knowing which AES commodity transaction is the last for a particular conveyance makes it impossible for CBP to provide an absolute, finite time after which no further holds will occur.

Comment: The proposed outbound cargo reporting provisions should be changed so that motor carriers would not have to transmit specific data elements to AES.

CBP Response: Carriers are not responsible for transmitting the information required by section 343(a) of the Trade Act of 2002, as amended. Section 192.14(c)(4), as proposed and as appearing in this final rule, details carrier responsibility which, as already explained, is largely limited to collecting AES proof of filing citations (ITN), Option 4 exemptions, and regular reporting exemptions (see 15 CFR 30.50–30.58). Likewise, the transmission of all automated SED commodity data (which already includes data relating to the transportation of the cargo) by the USPPI/Agent is covered in § 192.14(c)(1) and (c)(2) in this final rule.

Comment: Two commenters were of the view that the data elements for the estimated date of exportation and the port of exportation (proposed § 192.14(c)(2)(v) and (c)(2)(vi)) would cause potential difficulty for the motor

industry which did not operate on strict routes and schedules.

CBP Response: The 6 transportation data elements in § 192.14(c)(2), including the estimated date of exportation and the port of exportation, are data elements that are at present mandatory for AES participants under current 15 CFR 30.63. The trade should already be reporting them. To be consistent with 15 CFR 30.63, the term, "mode of transportation", where appearing in proposed § 192.14(c)(2)(i), is changed in this final rule to "method of transportation."

Comment: The USPPI should provide only the intended port of exportation because the actual port of exportation might not be known to the USPPI.

CBP Response: The USPPI or its authorized agent must report the port of exportation as known when the USPPI or its agent tenders the cargo to the outbound carrier. Should the carrier export the cargo from a different port, and the carrier so informs the USPPI or agent, the port of exportation must be corrected by the filer in AES. Proposed § 192.14(c)(2)(vi) is revised in this final rule to clarify this issue.

Comment: One commenter wanted a more specific estimate of the expected completion and implementation date for the AES commodity module and whether it was on target for completion.

CBP Response: The target date for the redesign of the AES commodity module remains mid-2004.

Comment: The automated systems in place should be able to accommodate the required manifest reporting sufficiently for legitimate trade to continue to flow smoothly. Also, there should be a generous and realistic grace period.

CBP Response: The CBP supports the use of AES systems that are already heavily in use and widely available to USPPIs; and with Internet connections, new users can be brought into the system fairly easily and inexpensively. Moreover, outbound implementation of these regulations is contingent upon the completion of the AES Commodity Redesign and implementation by the Bureau of Census of mandatory AES for all export shipments which currently require a Shipper's Export Declaration (SED) (see § 192.14(e) in this final rule).

Comments on Economic Analysis

General

Comment: Several commenters stated that the proposed rule is a significant regulatory action. It was contended that CBP did not completely appreciate the magnitude of the impact of the proposed requirements. Importers, exporters, brokers, carriers, forwarders, consolidators and many others will be required to modify their business practices. Before implementation and enforcement begins, it is strongly believed that further economic impact analysis is warranted.

Several commenters stated that the preliminary economic analysis understated the true impact on the affected enterprises. In addition, some questioned that the preliminary analysis conclusion only addressed the impact on small entities, making it insufficient to make a proper determination of impact on the U.S. economy as a whole. Others expressed their belief that the real effect of the proposed rule would be far greater than the $100 million threshold, making the proposal a significant regulatory action.

It was said to be hard to believe that the transportation and trade industry would not have a similar cost increase [to the $4–$6 USPS estimate]. This increased cost exceeded the $100 million impact threshold. Already industry was seeing increases in transportation and operational costs associated with new security measures. The economic analysis presented seriously underestimated the true cost to industry.

It was believed that CBP failed to recognize the majority of other carriers [non-express], mostly non AMS, and other smaller carriers where the cost impact would be greater; these carriers would incur significant costs to redesign their systems. Moreover, the costs to consolidators, indirect air carriers, shippers and brokers were not factored in at all.

It was also asserted that the impact study had been too limited to support the conclusion that the cost was acceptable.

Finally, it was contended that the proposed rule stated that the effect of the rule on the economy would be slight to negligible. Yet, the study did not define negligible. The proposed rules would increase the cost of transportation for all goods imported into the U.S. other than by USPS. A significant portion, and perhaps all of these increased costs would be reflected in the increased costs of imported goods.

CBP Response: After further analysis of the proposed rule, CBP agrees that the rule is a significant regulatory action under Executive Order 12866, and that the cost of the rule will exceed $100 million. Accordingly, CBP has conducted a regulatory impact analysis (RIA) of the rule, which is available at the following Web site, *http://www.cbp.gov*.

The CBP's economic analysis for the final rule has estimated the cost to all affected sectors unless it was determined that the costs would be insignificant or that the costs would be passed to a different sector (*e.g.*, from brokers to importers).

Air

Comment: New automation systems and interfaces should be developed to gather the additional data elements required, at considerable costs. Additional labor costs will be incurred for systems administration, data entry, and subsequent carrier activities as a result of any targeted shipments.

It is estimated that the express industry will incur development and implementation costs in excess of $25 million. Additional labor costs for delivery of the data and subsequent required actions for targeted shipments for the express industry will exceed $15 million annually.

There are issues of additional handling for late shipments that must be held for the next day, lost revenues for transit shipments that will no longer be shipped on U.S. carriers, additional inventory to be carried by importers as defense against supply outages or factory shutdowns; labor reductions, and similar related actions.

CBP Response: The CBP's economic analysis for the final rule has estimated the cost of service degradation caused by delays using a logistics cost calculator for a range of delay times. The analysis always includes estimates for additional programming. The CBP has no basis on which to estimate the percentage of cargo (by weight or value) currently being transshipped through the U.S. that might be diverted through non-U.S. airports. The CBP recognizes that targeted shipments may require additional steps for air carriers, but has no basis for estimating the number of shipments that will be targeted or the degree to which the targeting will result in additional costs. For inbound shipments, the targeted shipment will be examined on arrival, which should impose a limited burden on the air carrier.

Comment: Many carriers are evaluating options for AAMS. The costs indicated by CBP for transmission fees are low compared to average costs by AAMS vendors. In addition, the cost of purchasing software is above any amounts identified by CBP.

CBP Response: The costs used in the final economic analysis are based on estimates provided by vendors. These costs vary by vendor and by the complexity of the software and its integration into the user's system. The analysis assumes that larger carriers will develop their own software integration packages and that existing users of AMS will modify their internal systems to provide the more detailed cargo information. Only carriers that enter fewer than 500 air bills per month incur minimum costs.

Comment: Labor costs do not appear to include employee benefits, which would increase the labor rate by 30%.

CBP Response: Labor rates used in the final economic analysis are loaded with fringe benefits and overhead.

Comment: The "wheels up" requirement will result in a significant increase in staffing to meet deadlines. Air carriers will see a shift from air to truck. The rule will result in a revenue loss of premium services.

CBP Response: The final economic analysis estimates the costs of delays for a range of times. These costs include personnel costs. Although it is possible that some short-haul shipments will shift to truck, most shipments from Canada and northern Mexico destined for locations beyond the immediate border will probably still be shipped by air because of the considerable time-savings. Shipments from other parts of Latin America north of the equator and the Caribbean are likely to continue being sent by air.

Comment: Significant costs will be associated with changes in operating schedules. A high percentage of express volume is provided late in the day, close to cut-off time. New requirements which force an earlier cut-off time would be a binding constraint.

CBP Response: The final economic analysis estimates costs for both delays and service degradation resulting from the new requirements.

Comment: Further skewing the results is the fact that no costs are included for training personnel, restructuring operational systems to allow time to receive and submit information, or handling rejected shipments. The proposed scheme would directly negatively impact the key elements of the air cargo business—speed and reliability—and would severely jeopardize the needs of the global shipping community. These costs are not captured in the study.

CBP Response: The final economic analysis estimates costs for both delays and service degradation. Rule familiarization costs were estimated based on U.S. wage rates for all modes, but represent a very small part of total costs.

Comment: Business will be lost in the transit sector. Shipments transiting the U.S. would be diverted to competitors that do not transit the U.S. The costs of compliance will have an asymmetric impact, placing us at a competitive disadvantage.

CBP Response: The CBP has no basis on which to estimate the percentage of cargo (by weight or value) currently being transshipped through the U.S. that might be diverted through non-U.S. airports.

Comment: "Just in time" (JIT) shippers will also be affected by an earlier cut-off time. Earlier shipping or delayed arrival of shipments create higher costs for seller and buyer. Shippers close to the border may switch shipping modes; warehousing costs may increase; inventory and associated carrying costs will rise.

The statement in the proposed rule that JIT considerations are eliminated is simply not true. The CBP has failed to acknowledge the carrier requirements for handling and manifest preparation. Current post-departure manifesting allows manifesting on a different later schedule than sorting and loading. To complete a manifest at wheels up, the carrier will be forced to cut off receipt of shipments several hours earlier, especially for shorter flights, delaying shipments by a day or diverting them to another mode.

Removing even one or two hours available shipping time could remove 20–30% of volume for a specific market. Air carriers (express and conventional) carry time-sensitive parts and supplies every day. The CBP's claim of no impact to JIT fails to acknowledge operational realities of transportation handling requirements, at least for air shipments.

The proposal will require earlier deadlines for shippers. Shippers of perishable commodities such as flowers, produce, and fish will increase their losses from damaged and spoiled product. The cost-benefit analysis overlooks this fact.

CBP Response: The CBP's economic analysis for the final rule has estimated the cost of delays and service degradation caused by delays using a logistics cost calculator for a range of delay times and cargo mix (perishables, non perishables).

Comment: There is an additional cost for educating customers about the requirements of the rule.

CBP Response: The cost of educating shippers is not possible to estimate. The majority of shipments by value or weight are likely from companies that ship on a regular basis. They will incur one-time costs to understand the new requirements. There will always be new shippers entering the system who will need to learn what is needed.

Comment: The estimate of 2.41 million air waybills per month for express carriers is grossly understated. Some carriers use summary manifesting, under which multiple consignments of letters or documents are manifested as one record. One entry may cover hundreds of individual consignments. It is important that each waybill be counted, rather than entries, as the individual shipment record will require screening. The CBP is urged to review these numbers, and validate their accuracy. Understatement will severely affect the calculated capacity and system performance of the Automated Targeting System (ATS).

The number of express air bills counted may only be those requiring formal entry, which represent about 15 to 25 percent of the total shipment count. The real annual number of express bills is closer to 25 million rather than 3.27 million. The economic analysis for USPS resulted in a cost of $4–$6 per package.

The number of other air cargo waybills were likely master air bills; no accounting was made for house bills. One may reasonably increase master bills by a factor of 10 for a total air bill count, closer to 8 million instead of 800,000. That leaves about 7 million new transactions to be entered into the automated system for regular air cargo shipments. For the express group, their volume of air bills may be a very narrow slice of what will now be required.

The question is presented as to how CBP reconciles its claim that there is virtually no cost to carriers when CBP estimates an annual cost to USPS of at least $120 million. While automation does exist in the carrier community, the staggering increase in the number of transactions that will require reporting has a significant cost. Most of the forwarder and airline expense associated with air AMS will be new expense. Using the USPS estimate, the required reporting of potentially 32 million transactions in AMS meets the $100 million threshold.

The assumption that USPS will not absorb these costs or pass them directly to users implies that USPS may have a competitively advantaged position.

CBP Response: The final economic analysis includes cost estimates for entering new information into Air AMS using a range of scenarios to reflect variations in the number of additional bills that will be entered. These cost estimates may be overstated because they are based on U.S. and Canadian wages; many shipments will be arriving from countries where wages are much lower.

Comment: The assumption that all large express carriers have AAMS capability at present and need only flip

a switch to immediately begin transmitting the required data is patently incorrect and ignores a multitude of operational realities of physical shipment handling, sorting, loading, weight and balance calculations, and coordinating with manifesting. Manifest preparation entails multiple automated systems that are not currently interfaced with AAMS. The simple hard fact is that large express carriers are heavily impacted through significant operational changes, earlier cut-off times, and development of new software.

CBP Response: The final economic analysis estimates costs for operational changes and earlier cut-off times. Because the two major express carriers do not use AMS for express consignments, but allow CBP to access their proprietary systems for data, CBP is uncertain that they will incur new costs for automated systems. Nonetheless, the final economic analysis includes costs for 4,000 hours of programming per AMS carrier to cover any new interfaces that are needed.

Comment: Numerous carriers arriving in the U.S. have limited or no electronic messaging capabilities in their origin locations. It would be beneficial for CBP to reevaluate the economic impact created by implementing the proposed rule. If carriers cannot currently comply or will require significant investment in systems and manpower to comply in the time allotted, IT shipping will be in jeopardy.

CBP Response: The final economic analysis estimates costs for acquiring or developing the software needed to file electronically.

Comment: Not all affected parties were considered during the analysis. Foreign flag carriers and shippers were not part of the analysis. This rule has worldwide implications. A similar regulation has been proposed in Canada and is likely to appear in other countries. The rule will significantly impact the global trade community.

CBP Response: Executive Order 12866 requires a focus on the U.S. economy, thus enumerating all possible impacts to global trade may be beyond the scope of the analysis. To the extent that foreign entities, however, participate in the U.S. economy and impacts to foreign entities affect the U.S. economy, the Executive Order does apply to foreign entities. To that end, the accompanying regulatory impact analysis to this final rule does estimate the impact on foreign entities, although in many cases it is difficult to separate the impact on foreign entities from the overall estimate. On the other hand, the Regulatory Flexibility Act does not apply to small foreign entities.

Comment: Forwarder and air carriers are obliged to have a huge investment to develop or modify their Electronic Data Interchange (EDI) system; they will also have a large operating cost day to day. They are afraid they will not be able to bear this huge cost.

CBP Response: The RIA estimates costs for implementing AMS. These costs are likely to vary considerably based on the level of imports being handled by a carrier or forwarder. The CBP notes that forwarders are not required to file information; they have the option to provide the information to the carrier.

Comment: The requirement for hard copy filing in the event of EDI failure is time-consuming and very costly.

CBP Response: The CBP assumes that carriers can easily e-mail or fax a hard copy to their agents at the destination airport should this be necessary.

Truck

Comment: One commenter stated that the economic analysis is inadequate and unscientific. They assert that the proposed rule is a significant regulatory action. They assert that the combined annual impact of the air and truck rules on their company would be $695,000.

CBP Response: These comments are very general. Without knowing how the impact on their company was estimated, CBP cannot comment on the estimate. The CBP agrees that the rule is a significant action.

Comment: Several commenters stated that the "economic assumptions" used by CBP did not include additional labor and equipment needed to do the "same quantity of work in a shorter time."

CBP Response: These comments are not specific enough to permit direct response. The commenters do not offer any support for the assertion that time available to do required work has been reduced.

Comment: Some commenters refer to inaccuracies in the economic analysis, but do not specify them. They recommend that CBP conduct a comprehensive economic analysis.

CBP Response: The CBP has completed an economic analysis of the rule.

Comment: One commenter asserts that the rule will have a significant impact because many small truckers do not have the technology to use PAPS. The commenter also states that fewer than ten percent of Mexican trucking firms have automated systems in place.

CBP Response: The CBP agrees that the rule will have a significant economic impact. In order to use Selectivity PAPS, a trucking firm will have to obtain a SCAC number and bar-code strips. These costs are included in the RIA prepared by CBP. While many Mexican carriers may not have automated systems, U.S. customs brokers now make electronic pre-filings based on information supplied by Mexican brokers. This is true for all shipments except those coming through under BRASS. The RIA includes the cost to U.S. brokers for preparing the pre-entry filing for shipments now using BRASS.

Comment: The CBP is planning, in due course, full implementation of ACE. Therefore, the costs of adapting to ACE should be treated as costs of the rule.

CBP Response: The CBP's plans for implementation of ACE are not driven by the Trade Act and would be implemented whether or not the rule is implemented. Therefore, the costs of adaptation to ACE may not be attributed properly to the rule. Costs of adapting to Selectivity PAPS are included in the RIA.

Vessel

Comment: It is incumbent on CBP to provide a more meaningful and realistic analysis of the impact of the rules on small businesses before it promulgates a final rule and commences mandatory implementation and enforcement.

CBP Response: The Regulatory Flexibility Act, which establishes the "significant impact to a substantial number of small entities" test, applies to small U.S. businesses. The CBP's Regulatory Impact Analysis (RIA) for the final rule has estimated the impact of the rule on small businesses.

Comment: There is no analysis of the effects that the proposed rule will have on NVOCCs, air forwarders, and surface forwarders. In most, if not all instances, NVOCCs and other forwarders will be required to make substantial investments in software, employ additional personnel and enter into contractual arrangements with data service centers.

The regulatory flexibility analysis (RFA) should be broadened to consider both the dollar costs on forwarders and any operational consequences of the proposed rules.

CBP Response: The CBP estimates that 650 Non-Vessel Operating Common Carriers (NVOCC) are already automated. The CBP believes that the proposed requirements will not have a significant impact on a substantial number of NVOCCs. Those that choose not to automate, can instead use the services of an authorized service provider, a qualified port authority, or provide the shipment information to the carrier. Therefore, in the final economic analysis, CBP has not estimated the costs of the proposed rule on NVOCCs.

Comment: Although a large percentage of manifests presently submitted to Customs are submitted electronically, this does not mean that a large percentage of the organizations presently submitting manifests are presently doing so via AMS or are capable of doing so.

One company stated that it submits approximately 100 single page manifests for vessels that import over 5 million tons of bulk commodities in a year. Due to this insignificant number of manifests, which cover a large amount of cargo, the company stated that it is not equipped to submit cargo manifests electronically and to do so would represent a substantial financial penalty.

At the present time pre-arrival manifests are submitted by fax at basically no cost even though they are sent to several branches of the Federal government. An investigation into obtaining a "provider" via whom manifests could be submitted electronically had indicated a set up cost of $1,000 and a monthly minimum for one SCAC code of $200.

Therefore, strong disagreement was noted with the initial analysis that the proposed rule would not have a significant economic impact upon a substantial number of small entities.

CBP Response: Virtually all shipping companies that are owned by U.S. citizens or are U.S. flagged are currently filing manifests electronically. The CBP has been able to identify only 24 shipping companies that carry cargo into U.S. ports from the Caribbean that do not use AMS. The CBP does not believe that any of these companies are U.S. owned nor are any of the ships U.S. flag. Consequently, the proposed rule on vessels is not expected to have any economic impact on U.S. companies.

Comment: It is estimated that 25 million bills of lading are issued annually for container cargo from Japan to the United States. Shipping companies are charged a $25 fee for transforming and inputting a shipper's cargo data to the AMS. This means that the cost of trade between Japan and the United States will increase $625 million per year through the introduction of the 24-hour rule. Contrary to the CBP's claim that much of the trade already uses electronic transmission systems and therefore would not incur significant compliance costs, this fact indicates that substantial costs would be imposed on the trade when the requirements of advance electronic cargo information are implemented.

CBP Response: The CBP believes that virtually all shipping companies that are owned by U.S. citizens or are U.S. flagged are currently filing manifests electronically. Further, even if none of the non-U.S. trade participants were automated, the estimated annual cost of trade of $625 million would represent less than one percent of a total value of U.S. imports from Japan (this calculation is based on the 2001 import values; Source: Bureau of Transportation Statistics).

Summary of Significant Changes

As referenced in the Discussion of Comments, supra, this final rule document makes three significant changes from the proposed rule. These changes consist of: (1) Removing the provision concerning advance cargo data for air shipments listed as letters and documents and making it the subject of a separate **Federal Register** publication (proposed § 122.48a(d)(3) as such is removed from this final rule); (2) requiring certain additional data elements from the incoming air carrier in the case of split shipments (a new § 122.48a(d)(3) is thus added in this final rule); and (3) decreasing the rail outbound time frame from "4 hours prior to the attachment of the locomotive before going foreign" to "2 hours prior to arrival at the border" (§ 192.14(b)(1)(iv)).

Adoption of Proposal

In view of the foregoing, and following careful consideration of the comments received and further review of the matter, CBP has concluded that the proposed regulations with the modifications discussed above should be adopted as a final rule.

Additional Changes

For greater editorial accuracy, the reference in proposed § 113.64(a) and (c) to "§ 122.48a(c)(2)" is changed in this final rule to "§ 122.48a(c)(1)(ii)–(c)(1)(iv)". Also, proposed § 122.48a(a)(2) is revised in this final rule to distinguish between Diplomatic Pouches and Diplomatic Cargo, the latter of which is subject to the full advance cargo data reporting requirements of § 122.48a. In addition, proposed § 123.8 is amended consistent with § 122.38(g) in this final rule. Lastly, proposed §§ 123.91(a) and 123.92(a) are changed to make clear that cargo data must be received within the relevant time frame before the subject cargo reaches the first port of arrival in the United States.

Transportation Security Administration—Cargo Security Programs

It is also stressed that these final regulations to implement section 343(a), as amended, may, in the foreseeable future, be subject to modification as necessary to accommodate a cargo security program that may be developed by the Transportation Security Administration (TSA) in accordance with the Aviation and Transportation Security Act (Pub. L. 107–71, 115 Stat. 597; November 19, 2001 (49 U.S.C. 114(d), (f)(10); 44901(a), (f)).

Regulatory Analyses

Executive Order 12866

Under Executive Order 12866 (58 FR 51735, October 4, 1993), CBP must determine whether a regulatory action is "significant" and, therefore, subject to OMB review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local, or tribal government or communities.

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency.

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof.

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

The CBP has determined that the rule will have an annual effect on the economy of more than $100 million and is, therefore, an economically significant regulatory action. Accordingly, it has prepared a regulatory impact analysis for the rule, which is available on the CBP Web site, *http://www.cbp.gov*.

Costs

The analysis examined each of the modes and identified changes that are likely to impose new costs on U.S. carriers. Because virtually all vessels and railroads are already filing electronically, costs were estimated for these sectors to be insignificant. Exports to Canada by truck are generally exempted from regulation. For exports by air, shippers complete the shipper's export declaration prior to presenting the shipment to a carrier; therefore, the

new time requirements for filing will be met.

Truck

The analysis estimated costs and cost savings for inbound trucks from Canada, and inbound and outbound trucks to Mexico. Although the rule will impose costs on trucks that are not currently filing electronically, the analysis estimates that these costs are offset by the savings that will result from faster movement across the border. Overall, the analysis estimates that the rule will impose new costs of $91 million on trucking, which will be offset by savings of $142 million.

Air

The analysis indicates that the rule will impose substantial costs on the 39 U.S. air carriers currently certificated for foreign operations as well as more than 100 foreign carriers that fly cargo into the U.S. These costs arise from three factors: the need to implement electronic filing systems and improve existing systems; delays and service degradation that will result from the requirement to file information at wheels up from airports north of the equator in the western hemisphere; and the requirement to file detailed information on all cargo including documents. Because passenger-carrying carriers cannot easily delay operations to complete cargo information, the analysis assumed that these carriers would limit cargo and reduce revenues rather than delay flights. Comments on the proposed rule cited other changes that could result from the rule and impose costs: diversion of air cargo to trucks, diversion of in-transit cargo to other carriers who do not fly through the U.S., and targeting of shipments, delaying unloading of the aircraft. Because CBP has no basis for estimating the degree to which diversion or targeting may occur, the analysis did not quantify costs for these impacts. The analysis examined four options for air:

(1) The proposed rule, which required information on all cargo including documents;

(2) An option that required information on all cargo except documents that weigh less than one pound (16 ounces);

(3) An option that required information on all cargo except documents; and,

(4) An option originally recommended by the Treasury Advisory Committee on the Commercial Operations of the U.S. Customs Service (COAC), but modified by CBP, that would require no detailed information on documents and filing an hour before arrival for flights into the U.S. from airports north of the equator in the western hemisphere.

The options allow an examination of the impact of varying requirements on cargo and filing times. The CBP has elected option three above because the proposal to cover advance electronic cargo information on letters and documents will be the subject of a separate **Federal Register** publication. However, the RIA for this final rule document will cover the other publication as well. As noted, the RIA is available on the CBP Web site, *http://www.cbp.gov*.

Because of the considerable uncertainty that exists about the impacts on delays and service degradation as well as about the number of air bills that will need to be filed under the rule, the analysis examined each of these impacts across a range of scenarios from low impacts (*e.g.*, 30 minute delays, 10 percent loss of revenues, twice as many air bills) to high impacts (2 hour delays, 40 percent loss of revenue, 8 times as many air bills). The analysis indicated that the total annualized cost to the air carriers could range from $345 million for the low impact COAC option to $4.7 billion for the high impact proposed rule option. Table 1 presents the costs for the four options, annualized over five years (7 percent discount rate).

TABLE 1.—ANNUALIZED TOTAL COST TO AIR CARRIERS [MILLIONS]

	Low	Medium	High
All Documents	$2,914	$3,652	$4,736
Large Documents	930	2,177	3,770
No Documents	422	1,160	2,244
COAC Option	345	994	1,889

As can be seen from Table 1, the degree to which detailed information is required for documents drives the cost of the rule. Overall, the requirement for filing house bill rather than master bill information electronically imposes the greatest cost. The costs of delays and service degradation, although significant to a few carriers, are limited because only about 25 percent of inbound air cargo on U.S. carriers and 10 percent of inbound cargo on foreign carriers is Canada, the Caribbean, and Latin America north of the equator.

Benefits

Examination of the benefits was largely qualitative because the most significant benefits are essentially unquantifiable. The most important benefit of the rule will be the improvement in national security, an issue that is difficult to measure in monetary terms. However, there are some additional benefits expected that were quantified. Most of the incremental quantifiable benefits are expected from changes taking place at the northern border crossings for inbound truck traffic. The rule is expected to streamline the process for checking inbound trucks at Canadian border crossings, leading to benefits from time savings due to reduced congestion that are in addition to the time savings realized by trucks that change their border-crossing procedures under the rules. The analysis estimated the value of the time savings at $18 million. Additionally, reduced congestion would lead to less truck idling (or moving at very slow speeds) and consequent reductions in air pollution and fuel costs. The fuel savings were estimated at $4 million. Because of the lack of data on how congestion reductions for commercial traffic can affect non-commercial traffic at the border (*e.g.*, cars), the analysis did not quantify this benefit. Finally, trucks leaving the country through the Mexican border are expected to provide some qualitative benefits through improvements in data collection.

Summary

Combining the costs, cost savings, and monetized benefits, the analysis estimates that the rules produce net savings to the trucking sector of $78 million, and net costs to U.S. air carriers of $345 million to $4.7 billion.

Regulatory Flexibility Act

Under the Regulatory Flexibility Act of 1980, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 601 *et seq.*), Federal agencies must evaluate the impact of rules on small entities and consider less burdensome alternatives. As discussed in the previous section, CBP has conducted a cost benefit analysis on this rule. As part of that analysis, CBP evaluated the impact on small entities. The CBP has determined that this rule could have a significant economic impact on a substantial number of small air carriers. Companies in the other modes are unlikely to incur substantial costs to comply and may benefit from the rule.

For air, the lowest cost option would impose costs in excess of one percent of operating revenues for 7 of the 19 small carriers. The high cost options would impose significant costs on 12 of the 19 small carriers; four of the carriers could have costs in excess of 10 percent of their operating revenues. Seven of the 19 carriers operated at a loss in 2002.

Despite the uncertainty that exists in estimating costs, it is, therefore, likely that the rule would create a significant economic impact on small air carriers. Because most of these costs are driven by the cost of electronic data entry, which is mandated by statute, mitigating the impacts is difficult. Many of the small entities may address this issue by having the shipper or consolidator submit the information to CBP.

A copy of the small business analysis for this rule, which is chapter 6 of the regulatory impact analysis, is available on the CBP Web site, *http://www.cbp.gov*.

Paperwork Reduction Act

The collection of information in this final rule document was submitted for review and has been approved by the Office of Management and Budget (OMB) in accordance with the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) under OMB control number 1651–0001 (Transportation Manifest (Cargo Declaration)). An agency may not conduct, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number assigned by OMB.

The collection of information in this document is contained in §§ 4.7a(c)(4), 122.48a, 123.91, 123.92, and 192.14. Under these sections, the information would be required and used to determine the safety and security conditions under which cargo to be brought into or sent from the United States was maintained prior to its arrival or departure. The likely respondents and/or recordkeepers are air, truck, rail and vessel carriers, Non Vessel Operating Common Carriers (NVOCCs), freight forwarders, deconsolidators, express consignment facilities, importers, exporters, and Customs brokers. The estimated average annual burden associated with this information collection is 52.3 hours per respondent or recordkeeper.

Comments on the accuracy of this burden estimate and suggestions for reducing this burden should be sent to the Regulations Branch, Office of Regulations and Rulings, Bureau of Customs and Border Protection, 1300 Pennsylvania Avenue, NW., Washington, DC 20229.

Part 178, Customs Regulations (19 CFR part 178), containing the list of approved information collections, is revised as appropriate to reflect the approved information collections covered by this final rule.

Executive Order 12988

This regulation meets the applicable standards set forth in Sections 3(a) and 3(b)(2) of Executive Order 12988 Civil Justice Reform.

Executive Order 13132

This rulemaking does not preempt or modify any provision of state law; nor does it impose enforcement responsibilities on any state; nor does it diminish the power of any state to enforce its own laws. Accordingly, this rulemaking does not have federalism implications warranting the application of Executive Order 13132.

Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA; 2 U.S.C. 1501 *et seq.*) requires cost-benefit and other analyses before any rulemaking if the rule would include a "Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted annually for inflation) in any 1 year". The current inflation-adjusted statutory threshold is $113 million.

This rule will not have a significant effect on state, local or tribal governments within the scope of the UMRA. However, CBP has determined that this final rule is significant under UMRA because it anticipates that the rule will result in an aggregate expenditure by the private sector of $113,000,000 or more in any one year.

Consequently, CBP has conducted the required economic impact analyses as noted in the above section, "EXECUTIVE ORDER 12866". The other requirements under UMRA include assessing the rule's effects on:

- Future costs
- Particular regions, communities, or industrial sectors
- National productivity
- Economic growth
- Full employment
- Job creation
- Exports

The regulatory impact analysis, discussed in the "EXECUTIVE ORDER 12866" section, covered many of these issues in greater detail. To summarize, the regulations will impose costs into the future; most costs are presented in the impact analysis on an annual basis. The regulations will impact many different regions, communities, and sectors; but with the exception of air carriers the impact will be disbursed and will not be concentrated geographically. In addition, these regulatory impacts, although large in absolute terms, generally do not rise to the level where they could cause any sort of macro effects on productivity, growth, employment, or jobs.

With regard to the impacts on trade, although most of the information required for advance manifest notification and SED (Shippers Export Declaration) notification is already supplied to CBP, this new notice requirement may cause a reduction of imports of certain products into the U.S. and exports out of the U.S. Some entities may choose to stop exporting products from the U.S. (or importing products to the U.S.) if the additional costs of complying increase the price of the products to the point where they cannot compete with lower-priced products produced within domestic markets. On the other hand, there are products for which substitutes are not available. In these cases, and in cases where demand for the product greatly exceeds domestic supply, importers may pay an increased price for the product. The CBP believes, however, that the "per shipment" cost of these requirements is quite small and therefore this rulemaking will not have a significant impact on the relative competitiveness of foreign versus domestically produced products either within or outside of the U.S.

When a rule would result in expenditures greater than $113 million, UMRA requires outreach to the regulated community and discussion of proposals. The CBP conducted extensive discussions with the regulated community prior to the development of the rule. In January 2003 CBP held separate meetings with each of the transportation modes to solicit information and comments. The CBP also accepted comments from members of the regulated community as it developed its proposed rule and held numerous meetings with the COAC committees, which submitted recommendations. Finally, CBP received more than 100 comments on the proposed rule, which were considered in the development of the final rule.

For a more detailed analysis, please refer to the regulatory impact analysis prepared for this rule, which is available on the CBP Web site, *http://www.cbp.gov*.

CBP Issuance of Rule Under DHS Authority; 19 CFR 0.2(a)

When the Trade Act of 2002 was enacted (Pub. L. 107–210; August 6, 2002), the Customs Service existed as part of the Department of the Treasury. Thereafter, the Homeland Security Act of 2002 was enacted (Public Law 107–296; November 25, 2002), which created

the Department of Homeland Security (DHS). Section 403 of the Homeland Security Act (the Act) transferred to the newly created Department the functions, personnel, assets, and liabilities of the Customs Service, including the functions of the Secretary of the Treasury relating thereto. Customs, later renamed as CBP, thereby became a component of DHS. Furthermore, the Department of the Treasury recently issued an order (Treasury Order 100–16, dated May 15, 2003) delegating to DHS certain Customs revenue functions that were otherwise retained by the Treasury Department under sections 412 and 415 of the Act. In accordance with the Homeland Security Act and this transfer and delegation of functions, certain matters, such as this rule which is designed to ensure cargo safety and security rather than revenue assessment, now fall solely within the jurisdiction of DHS. Therefore, this regulation is being issued by CBP under the authority of DHS in accordance with 19 CFR 0.2(a) (see CBP Dec. 03–24, 68 FR 51868, August 28, 2003).

Coordination of Final Rule With Congress

Pursuant to section 343(a)(3)(L) (19 U.S.C. 2071 note, section (a)(3)(L)), the required report regarding this final rule document has been timely made to the committees on finance and commerce, science, and transportation of the Senate and the committees on ways and means and transportation and infrastructure of the House of Representatives.

List of Subjects

19 CFR Part 4

Administrative practice and procedure, Arrival, Cargo vessels, Common carriers, Customs duties and inspection, Declarations, Entry, Exports, Foreign commerce and trade statistics, Freight, Imports, Inspection, Maritime carriers, Merchandise, Penalties, Reporting and recordkeeping requirements, Shipping, Vessels.

19 CFR Part 103

Administrative practice and procedure, Computer technology, Confidential business information, Electronic filing, Freedom of information, Reporting and recordkeeping requirements.

19 CFR Part 113

Air carriers, Bonds, Common carriers, Customs duties and inspection, Exports, Foreign commerce and trade statistics, Freight, Imports, Reporting and recordkeeping requirements, Vessels.

19 CFR Part 122

Administrative practice and procedure, Advance notice of arrival, Advance notice requirements, Air cargo, Air cargo manifest, Air carriers, Aircraft, Air transportation, Commercial aircraft, Customs duties and inspection, Entry procedure, Foreign commerce and trade statistics, Freight, Imports, Penalties, Reporting and recordkeeping requirements, Security measures.

19 CFR Part 123

Administrative practice and procedure, Aircraft, Canada, Common carriers, Customs duties and inspection, Entry of merchandise, Freight, Imports, International traffic, Mexico, Motor carriers, Railroads, Reporting and recordkeeping requirements, Vehicles, Vessels.

19 CFR Part 178

Administrative practice and procedure, Collections of information, Exports, Imports, Paperwork requirements, Reporting and recordkeeping requirements.

19 CFR Part 192

Administrative practice and procedure, Aircraft, Customs duties and inspection, Exports, Foreign trade statistics, Law enforcement, Motor vehicles, Reporting and recordkeeping procedures, Vehicles, Vessels.

Amendments to the Regulations

■ Parts 4, 103, 113, 122, 123, 178, and 192, Customs Regulations (19 CFR parts 4, 103, 113, 122, 123, 178, and 192), are amended as set forth below.

PART 4—VESSELS IN FOREIGN AND DOMESTIC TRADES

■ 1. The general authority citation for part 4 is revised, and the relevant specific authority citations continue, to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1431, 1433, 1434, 1624, 2071 note; 46 U.S.C. App. 3, 91;

* * * * *

Section 4.5 also issued under 19 U.S.C. 1441;

Section 4.7 also issued under 19 U.S.C. 1581(a); 46 U.S.C. App. 883a, 883b;

* * * * *

Section 4.61 also issued under 46 U.S.C. App. 883;

* * * * *

■ 2. Amend § 4.5(a) by:

■ a. Removing the references to the numerical terms "(1)" and "(2)" appearing in the first sentence; and

■ b. Adding two new sentences after the first sentence to read as follows:

§ 4.5 Government vessels.

(a) * * * In addition, any vessel chartered by, and transporting only cargo that is the property of, the U.S. Department of Defense (DoD) will be treated as a Government vessel for the purpose of being exempt from entry, where the DoD-chartered vessel is manned entirely by the civilian crew of the vessel carrier under contract to DoD. Notwithstanding § 4.60(b)(3) of this part, such DoD-chartered vessel is not exempt from vessel clearance requirements. * * *

* * * * * *

■ 3. Amend § 4.7 by:

■ a. Revising the first sentence of paragraph (b)(1);

■ b. Revising paragraph (b)(2);

■ c. Removing the words, "if automated", where appearing in paragraph (b)(3)(i);

■ d. Adding a new paragraph (b)(3)(iii); and

■ e. Adding a new paragraph (b)(5).

The revisions and additions read as follows:

§ 4.7 Inward foreign manifest; production on demand; contents and form; advance filing of cargo declaration.

* * * * * *

(b)(1) With the exception of any Cargo Declaration that has been filed in advance as prescribed in paragraph (b)(2) of this section, the original and one copy of the manifest must be ready for production on demand. * * *

(2) Subject to the effective date provided in paragraph (b)(5) of this section, and with the exception of any bulk or authorized break bulk cargo as prescribed in paragraph (b)(4) of this section, Customs and Border Protection (CBP) must receive from the incoming carrier, for any vessel covered under paragraph (a) of this section, the CBP-approved electronic equivalent of the vessel's Cargo Declaration (Customs Form 1302), 24 hours before the cargo is laden aboard the vessel at the foreign port (see § 4.30(n)(1)). The current approved system for presenting electronic cargo declaration information to CBP is the Vessel Automated Manifest System (AMS).

(3)(i) * * *

(iii) Where the party electronically presenting to CBP the cargo information required in § 4.7a(c)(4) receives any of this information from another party, CBP will take into consideration how, in accordance with ordinary commercial practices, the presenting party acquired such information, and whether and how the presenting party is able to verify this information. Where the presenting party is not reasonably able to verify such information, CBP will permit the party to electronically present the information on the basis of what the party reasonably believes to be true.

* * * * *

(5) Within 90 days of December 5, 2003, all ocean carriers, and NVOCCs electing to participate, must be automated on the Vessel AMS system at all ports of entry in the United States.

* * * * *

■ 4. Amend § 4.7a by:

■ a. Revising paragraphs (c)(4)(viii) and (c)(4)(ix);

■ b. Removing the word "and" after paragraph (c)(4)(xiii);

■ c. Removing the period after paragraph (c)(4)(xiv), and adding, in its place, a semicolon; and

■ d. Adding new paragraphs (c)(4)(xv) and (c)(4)(xvi).

■ Revised paragraphs (c)(4)(viii) and (c)(4)(ix) and new paragraphs (c)(4)(xv) and (c)(4)(xvi) read as follows:

§ 4.7a Inward manifest; information required; alternative forms.

* * * * *

(c) *Cargo Declaration.* * * *

(4) * * *

(viii) The shipper's complete name and address, or identification number, from all bills of lading. (At the master bill level, for consolidated shipments, the identity of the Non Vessel Operating Common Carrier (NVOCC), freight forwarder, container station or other carrier is sufficient; for non-consolidated shipments, and for each house bill in a consolidated shipment, the identity of the foreign vendor, supplier, manufacturer, or other similar party is acceptable (and the address of the foreign vendor, etc., must be a foreign address); by contrast, the identity of the carrier, NVOCC, freight forwarder or consolidator is not acceptable; the identification number will be a unique number assigned by CBP upon the implementation of the Automated Commercial Environment);

(ix) The complete name and address of the consignee, or identification number, from all bills of lading. (For consolidated shipments, at the master bill level, the NVOCC, freight forwarder, container station or other carrier may be listed as the consignee. For non-consolidated shipments, and for each house bill in a consolidated shipment, the consignee is the party to whom the cargo will be delivered in the United States, with the exception of "FROB" (foreign cargo remaining on board). However, in the case of cargo shipped "to order of [a named party]," the carrier must report this named "to order" party as the consignee; and, if there is any other commercial party listed in the bill of lading for delivery or contact purposes, the carrier must also report this other commercial party's identity and contact information (address) in the "Notify Party" field of the advance electronic data transmission to CBP, to the extent that the CBP-approved electronic data interchange system is capable of receiving this data. The identification number will be a unique number assigned by CBP upon implementation of the Automated Commercial Environment);

* * * * *

(xv) Date of departure from foreign, as reflected in the vessel log (this element relates to the departure of the vessel from the foreign port with respect to which the advance cargo declaration is filed (see § 4.7(b)(2)); the time frame for reporting this data element will be either:

(A) No later than 24 hours after departure from the foreign port of lading, for those vessels that will arrive in the United States more than 24 hours after sailing from that foreign port; or

(B) No later than the presentation of the permit to unlade (Customs Form (CF) 3171, or electronic equivalent), for those vessels that will arrive less than 24 hours after sailing from the foreign port of lading); and

(xvi) Time of departure from foreign, as reflected in the vessel log (see § 4.7a(c)(4)(xv) for the applicable foreign port and the time frame within which this data element must be reported to CBP).

* * * * *

■ 5. Amend § 4.61 by adding a new paragraph (c)(24) to read as follows:

§ 4.61 Requirements for clearance.

* * * * *

(c) *Verification of compliance.*

* * * * *

(24) Electronic receipt of required vessel cargo information (see § 192.14(c) of this chapter).

* * * * *

PART 103—AVAILABILITY OF INFORMATION

■ 1. The general authority citation for part 103 continues, and a specific authority citation is added for § 103.31a in appropriate numerical order, to read as follows:

Authority: 5 U.S.C. 301, 552, 552a; 19 U.S.C. 66, 1624; 31 U.S.C. 9701;

* * * * *

Section 103.31a also issued under 19 U.S.C. 2071 note;

* * * * *

■ 2. Amend subpart C of part 103 by adding a new § 103.31a to read as follows:

§ 103.31a Advance electronic information for air, truck, and rail cargo.

Advance cargo information that is electronically presented to Customs and Border Protection (CBP) for inbound or outbound air, rail, or truck cargo in accordance with § 122.48a, 123.91, 123.92, or 192.14 of this chapter, is per se exempt from disclosure under § 103.12(d), unless CBP receives a specific request for such records pursuant to § 103.5, and the owner of the information expressly agrees in writing to its release.

PART 113—CUSTOMS BONDS

■ 1. The authority citation for part 113 continues to read as follows:

Authority: 19 U.S.C. 66, 1623, 1624.

■ 2. Amend § 113.62 by:

■ a. Revising the heading of paragraph (j), and redesignating its current text as paragraph (j)(1);

■ b. Adding a new paragraph (j)(2); and

■ c. Amending paragraph (l)(1) by adding the citation, "(j)(2),", after the citation, "(i),".

The revision and addition to paragraph (j) read as follows:

§ 113.62 Basic importation and entry bond conditions.

* * * * *

(j) *Agreement to comply with electronic entry and/or advance cargo information filing requirements.*

(1) * * *

(2) If the principal elects to provide advance inward air or truck cargo information to Customs and Border Protection (CBP) electronically, the principal agrees to provide such cargo information to CBP in the manner and in the time period required, respectively, under § 122.48a or 123.92 of this chapter. If the principal defaults with regard to these obligations, the principal and surety (jointly and severally) agree to pay liquidated damages of $5,000 for each regulation violated.

* * * * *

■ 3. Amend § 113.64 by revising the first sentence of paragraph (a); and by revising paragraph (c) to read as follows:

§ 113.64 International carrier bond conditions.

(a) *Agreement to Pay Penalties, Duties, Taxes, and Other Charges.* If any vessel, vehicle, or aircraft, or any master, owner, or person in charge of a vessel, vehicle or aircraft, slot charterer, or any non-vessel operating common

carrier as defined in § 4.7(b)(3)(ii) of this chapter or other party as specified in § 122.48a(c)(1)(ii)–(c)(1)(iv) of this chapter, incurs a penalty, duty, tax or other charge provided by law or regulation, the obligors (principal and surety, jointly and severally) agree to pay the sum upon demand by Customs and Border Protection (CBP). * * *

* * * * *

(c) *Non-vessel operating common carrier (NVOCC); other party.* If a slot charterer, non-vessel operating common carrier (NVOCC) as defined in § 4.7(b)(3)(ii) of this chapter, or other party specified in § 122.48a(c)(1)(ii)–(c)(1)(iv) of this chapter, elects to provide advance cargo information to CBP electronically, the NVOCC or other party, as a principal under this bond, in addition to compliance with the other provisions of this bond, also agrees to provide such cargo information to CBP in the manner and in the time period required under those respective sections. If the NVOCC or other party, as principal, defaults with regard to these obligations, the principal and surety (jointly and severally) agree to pay liquidated damages of $5,000 for each regulation violated.

* * * * *

PART 122—AIR COMMERCE REGULATIONS

■ 1. The general authority citation for part 122 is revised to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 58b, 66, 1431, 1433, 1436, 1448, 1459, 1590, 1594, 1623, 1624, 1644, 1644a, 2071 note.

* * * * *

■ 2. Amend § 122.12 by revising the heading of paragraph (c) and adding a sentence at the end of paragraph (c) to read as follows:

§ 122.12 Operation of international airports.

* * * * *

(c) *FAA rules; denial of permission to land.* * * * In addition, except in the case of an emergency or forced landing (see § 122.35), permission to land at an international airport may be denied if advance electronic information for incoming foreign cargo aboard the aircraft has not been received as provided in § 122.48a.

* * * * *

■ 3. Amend § 122.14 by:

■ a. Redesignating paragraphs (d)(4) and (d)(5) as paragraphs (d)(5) and (d)(6), respectively;

■ b. Adding a new paragraph (d)(4); and

■ c. Revising newly redesignated paragraph (d)(5).

The addition and revision read as follows:

§ 122.14 Landing rights airport.

* * * * *

(d) *Denial or withdrawal of landing rights.* * * *

(4) Advance cargo information has not been received as provided in § 122.48a;

(5) Other reasonable grounds exist to believe that Federal rules and regulations pertaining to safety, including cargo safety and security, and Customs, or other inspectional activities have not been followed; or

* * * * *

■ 4. Amend § 122.33 by:

■ a. Revising paragraph (a), introductory text; and

■ b. Revising paragraph (a)(1).

The revisions read as follows:

§ 122.33 Place of first landing.

(a) The first landing of an aircraft entering the United States from a foreign area will be:

(1) At a designated international airport (see § 122.13), provided that permission to land has not been denied pursuant to § 122.12(c);

* * * * *

■ 5. Amend § 122.38 by:

■ a. Adding a sentence at the end of paragraph (c); and

■ b. Adding a new paragraph (g).

The additions read as follows:

§ 122.38 Permit and special license to unlade and lade.

* * * * *

(c) *Term permit or special license.* * * * In addition, a term permit or special license to unlade or lade already issued will not be applicable to any inbound or outbound flight, with respect to which Customs and Border Protection (CBP) has not received the advance electronic cargo information required, respectively, under § 122.48a or 192.14(b)(1)(ii) of this chapter (see paragraph (g) of this section).

* * * * *

(g) *Advance receipt of electronic cargo information.* The CBP will not issue a permit to unlade or lade cargo upon arrival or departure of an aircraft, and a term permit or special license already issued will not be applicable to any inbound or outbound flight, with respect to which CBP has not received the advance electronic cargo information required, respectively, under § 122.48a or 192.14 of this chapter. In cases in which CBP does not receive complete cargo information in the time and manner and in the electronic format required by § 122.48a or 192.14 of this chapter, as applicable, CBP may delay issuance of a permit or special license to unlade or lade cargo, and a term permit or special license to unlade or lade already issued may not apply, until all required information is received. The CBP may also decline to issue a permit or special license to unlade or lade, and a term permit or special license already issued may not apply, with respect to the specific cargo for which advance information is not timely received electronically, as specified in § 122.48a or 192.14(b)(1)(ii) of this chapter.

■ 6. Amend § 122.41 by:

■ a. Revising its introductory text;

■ b. Removing the word "and" following paragraph (a), and redesignating paragraph (b) as paragraph (c); and

■ c. Adding a new paragraph (b).

The revision and addition read as follows:

§ 122.41 Aircraft required to enter.

All aircraft coming into the United States from a foreign area must make entry under this subpart except:

* * * * *

(b) Aircraft chartered by, and transporting only cargo that is the property of, the U.S. Department of Defense (DoD), where the DoD-chartered aircraft is manned entirely by the civilian crew of the air carrier under contract to DoD; and

* * * * *

■ 7. Amend § 122.48 by revising paragraph (a) to read as follows:

§ 122.48 Air cargo manifest.

(a) *When required.* Except as provided in paragraphs (d) and (e) of this section, an air cargo manifest need not be filed or retained aboard the aircraft for any aircraft required to enter under § 122.41. However, an air cargo manifest for all cargo on board must otherwise be available for production upon demand. The general declaration must be filed as provided in § 122.43.

* * * * *

■ 8. Amend subpart E of part 122 by adding a new § 122.48a to read as follows:

§ 122.48a Electronic information for air cargo required in advance of arrival.

(a) *General requirement.* Pursuant to section 343(a), Trade Act of 2002, as amended (19 U.S.C. 2071 note), and subject to paragraph (e) of this section, for any inbound aircraft required to enter under § 122.41, that will have commercial cargo aboard, Customs and Border Protection (CBP) must electronically receive from the inbound air carrier and, if applicable, an approved party as specified in

paragraph (c)(1) of this section, certain information concerning the incoming cargo, as enumerated, respectively, in paragraphs (d)(1) and (d)(2) of this section. The CBP must receive such information no later than the time frame prescribed in paragraph (b) of this section. The advance electronic transmission of the required cargo information to CBP must be effected through a CBP-approved electronic data interchange system.

(1) *Cargo remaining aboard aircraft; cargo to be entered under bond.* Air cargo arriving from and departing for a foreign country on the same through flight and cargo that is unladen from the arriving aircraft and entered, in bond, for exportation, or for transportation and exportation (see subpart J of this part), are subject to the advance electronic information filing requirement under paragraph (a) of this section.

(2) *Diplomatic Pouches and Diplomatic Cargo.* When goods comprising a diplomatic or consular bag (including cargo shipments, containers, and the like identified as Diplomatic Pouch) that belong to the United States or to a foreign government are shipped under an air waybill, such cargo is subject to the advance reporting requirements, but the description of the shipment as Diplomatic Pouch will be sufficient detail for description. Shipments identified as Diplomatic Cargo, such as office supplies or unaccompanied household goods, are subject to the advance reporting requirements of paragraph (a) of this section.

(b) *Time frame for presenting data.* (1) *Nearby foreign areas.* In the case of aircraft under paragraph (a) of this section that depart for the United States from any foreign port or place in North America, including locations in Mexico, Central America, South America (from north of the Equator only), the Caribbean, and Bermuda, CBP must receive the required cargo information no later than the time of the departure of the aircraft for the United States (the trigger time is no later than the time that wheels are up on the aircraft, and the aircraft is en route directly to the United States).

(2) *Other foreign areas.* In the case of aircraft under paragraph (a) of this section that depart for the United States from any foreign area other than that specified in paragraph (b)(1) of this section, CBP must receive the required cargo information no later than 4 hours prior to the arrival of the aircraft in the United States.

(c) *Party electing to file advance electronic cargo data.* (1) *Other filer.* In addition to incoming air carriers for whom participation is mandatory, one of the following parties meeting the qualifications of paragraph (c)(2) of this section, may elect to transmit to CBP the electronic data for incoming cargo that is listed in paragraph (d)(2) of this section:

(i) An Automated Broker Interface (ABI) filer (importer or its Customs broker) as identified by its ABI filer code;

(ii) A Container Freight Station/deconsolidator as identified by its FIRMS (Facilities Information and Resources Management System) code;

(iii) An Express Consignment Carrier Facility as identified by its FIRMS code; or,

(iv) An air carrier as identified by its carrier IATA (International Air Transport Association) code, that arranged to have the incoming air carrier transport the cargo to the United States.

(2) *Eligibility.* To be qualified to file cargo information electronically, a party identified in paragraph (c)(1) of this section must establish the communication protocol required by CBP for properly presenting cargo information through the approved data interchange system. Also, other than a broker or an importer (see § 113.62(j)(2) of this chapter), the party must possess a Customs international carrier bond containing all the necessary provisions of § 113.64 of this chapter.

(3) *Nonparticipation by other party.* If another party as specified in paragraph (c)(1) of this section does not participate in advance electronic cargo information filing, the party that arranges for and/or delivers the cargo shipment to the incoming carrier must fully disclose and present to the carrier the cargo information listed in paragraph (d)(2) of this section; and the incoming carrier, on behalf of the party, must present this information electronically to CBP under paragraph (a) of this section.

(4) *Required information in possession of third party.* Any other entity in possession of required cargo data that is not the incoming air carrier or a party described in paragraph (c)(1) of this section must fully disclose and present the required data for the inbound air cargo to either the air carrier or other electronic filer, as applicable, which must present such data to CBP.

(5) *Party receiving information believed to be accurate.* Where the party electronically presenting the cargo information required in paragraph (d) of this section receives any of this information from another party, CBP will take into consideration how, in accordance with ordinary commercial practices, the presenting party acquired such information, and whether and how the presenting party is able to verify this information. Where the presenting party is not reasonably able to verify such information, CBP will permit the party to electronically present the information on the basis of what that party reasonably believes to be true.

(d) *Non-consolidated/consolidated shipments.* For non-consolidated shipments, the incoming air carrier must transmit to CBP all of the information for the air waybill record, as enumerated in paragraph (d)(1) of this section. For consolidated shipments: the incoming air carrier must transmit to CBP the information listed in paragraph (d)(1) of this section that is applicable to the master air waybill; and the air carrier must transmit cargo information for all associated house air waybills as enumerated in paragraph (d)(2) of this section, unless another party as described in paragraph (c)(1) of this section electronically transmits this information directly to CBP.

(1) *Cargo information from air carrier.* The incoming air carrier must present to CBP the following data elements for inbound air cargo (an "M" next to any listed data element indicates that the data element is mandatory in all cases; a "C" next to the listed data element indicates that the data element is conditional and must be transmitted to CBP only if the particular information pertains to the inbound cargo):

(i) Air waybill number (M) (The air waybill number is the International Air Transport Association (IATA) standard 11-digit number);

(ii) Trip/flight number (M);

(iii) Carrier/ICAO (International Civil Aviation Organization) code (M) (The approved electronic data interchange system supports both 3- and 2-character ICAO codes, provided that the final digit of the 2-character code is not a numeric value);

(iv) Airport of arrival (M) (The 3-alpha character ICAO code corresponding to the first airport of arrival in the Customs territory of the United States (for example, Chicago O'Hare = ORD; Los Angeles International Airport = LAX));

(v) Airport of origin (M) (The 3-alpha character ICAO code corresponding to the airport from which a shipment began its transportation by air to the United States (for example, if a shipment began its transportation from Hong Kong (HKG), and it transits through Narita, Japan (NRT), en route to the United States, the airport of origin is HKG, not NRT));

(vi) Scheduled date of arrival (M);

(vii) Total quantity based on the smallest external packing unit (M) (for

example, 2 pallets containing 50 pieces each would be considered as 100, not 2);

(viii) Total weight (M) (may be expressed in either pounds or kilograms);

(ix) Precise cargo description (M) (for consolidated shipments, the word "Consolidation" is a sufficient description for the master air waybill record; for non-consolidated shipments, a precise cargo description or the 6-digit Harmonized Tariff Schedule (HTS) number must be provided (generic descriptions, specifically those such as "FAK" ("freight of all kinds"), "general cargo", and "STC" ("said to contain") are not acceptable));

(x) Shipper name and address (M) (for consolidated shipments, the identity of the consolidator, express consignment or other carrier, is sufficient for the master air waybill record; for non-consolidated shipments, the name of the foreign vendor, supplier, manufacturer, or other similar party is acceptable (and the address of the foreign vendor, etc., must be a foreign address); by contrast, the identity of a carrier, freight forwarder or consolidator is not acceptable);

(xi) Consignee name and address (M) (for consolidated shipments, the identity of the container station, express consignment or other carrier is sufficient for the master air waybill record; for non-consolidated shipments, the name and address of the party to whom the cargo will be delivered is required, with the exception of "FROB" (Foreign Cargo Remaining On Board); this party need not be located at the arrival or destination port);

(xii) Consolidation identifier (C);

(xiii) Split shipment indicator (C) (see paragraph (d)(3) of this section for the specific data elements that must be presented to CBP in the case of a split shipment);

(xiv) Permit to proceed information (C) (this element includes the permit-to-proceed destination airport (the 3-alpha character ICAO code corresponding to the permit-to-proceed destination airport); and the scheduled date of arrival at the permit-to-proceed destination airport);

(xv) Identifier of other party which is to submit additional air waybill information (C);

(xvi) In-bond information (C) (this data element includes the destination airport; the international/domestic identifier (the in-bond type indicator); the in-bond control number, if there is one (C); and the onward carrier identifier, if applicable (C)); and

(xvii) Local transfer facility (C) (this facility is a Container Freight Station as identified by its FIRMS code, or the warehouse of another air carrier as identified by its carrier code).

(2) *Cargo information from carrier or other filer.* The incoming air carrier must present the following additional information to CBP for the incoming cargo, unless another party as specified in paragraph (c)(1) of this section elects to present this information directly to CBP. Information for all house air waybills under a single master air waybill consolidation must be presented electronically to CBP by the same party. (An "M" next to any listed data element indicates that the data element is mandatory in all cases; a "C" next to any listed data element indicates that the data element is conditional and must be transmitted to CBP only if the particular information pertains to the inbound cargo):

(i) The master air waybill number and the associated house air waybill number (M) (the house air waybill number may be up to 12 alphanumeric characters (each alphanumeric character that is indicated on the paper house air waybill document must be included in the electronic transmission; alpha characters may not be eliminated));

(ii) Foreign airport of origin (M) (The 3-alpha character ICAO code corresponding to the airport from which a shipment began its transportation by air to the United States (for example, if a shipment began its transportation from Hong Kong (HKG), and it transits through Narita, Japan (NRT), en route to the United States, the airport of origin is HKG, not NRT));

(iii) Cargo description (M) (a precise description of the cargo or the 6-digit Harmonized Tariff Schedule (HTS) number must be provided);

(iv) Total quantity based on the smallest external packing unit (M) (for example, 2 pallets containing 50 pieces each would be considered as 100, not 2);

(v) Total weight of cargo (M) (may be expressed in either pounds or kilograms);

(vi) Shipper name and address (M) (the name of the foreign vendor, supplier, manufacturer, or other similar party is acceptable (and the address of the foreign vendor, etc., must be a foreign address); by contrast, the identity of a carrier, freight forwarder or consolidator is not acceptable);

(vii) Consignee name and address (M) (the name and address of the party to whom the cargo will be delivered in the United States, with the exception of "FROB" (Foreign Cargo Remaining On Board); this party need not be located at the arrival or destination port); and

(viii) In-bond information (C) (this data element includes the destination airport; the international/domestic identifier (the in-bond type indicator); the in-bond control number, if there is one (C); and the onward carrier identifier, if applicable (C)).

(3) *Additional cargo information from air carrier; split shipment.* When the incoming air carrier elects to transport cargo covered under a single consolidated air waybill on more than one aircraft as a split shipment (see § 141.57 of this chapter), the carrier must report the following additional information for each house air waybill covered under the consolidation (An "M" next to any listed data element indicates that the data element is mandatory in all cases; a "C" next to any listed data element indicates that the data element is conditional and must be transmitted to CBP only if the particular information pertains to the inbound cargo):

(i) The master and house air waybill number (M) (The master air waybill number is the IATA standard 11-digit number; the house air waybill number may be up to 12 alphanumeric characters (each alphanumeric number that is indicated on the paper house air waybill must be included in the electronic transmission; alpha characters may not be eliminated));

(ii) The trip/flight number (M);

(iii) The carrier/ICAO code (M) (The approved electronic data interchange system supports both 3- and 2-character ICAO codes, provided that the final digit of the 2-character code is not a numeric value);

(iv) The airport of arrival (M) (The 3-alpha character ICAO code corresponding to the first airport of arrival in the Customs territory of the United States (for example, Chicago O'Hare = ORD; Los Angeles International Airport = LAX));

(v) The airport of origin (M) (The 3-alpha character ICAO code corresponding to the airport from which a shipment began its transportation by air to the United States (for example, if a shipment began its transportation from Hong Kong (HKG), and it transits through Narita, Japan (NRT), en route to the United States, the airport of origin is HKG, not NRT));

(vi) Scheduled date of arrival (M);

(vii) The total quantity of the cargo covered by the house air waybill based on the smallest external packing unit (M) (For example, 2 pallets containing 50 pieces each would be considered as 100, not 2);

(viii) The total weight of the cargo covered by the house air waybill (M) (May be expressed in either pounds or kilograms);

(ix) Description (M) (This description should mirror the precise level of cargo description information that is furnished to the incoming carrier by the other electronic filer, if applicable (see paragraph (c)(1) of this section));

(x) Permit-to-proceed information (C) (This element includes the permit-to-proceed destination airport (the 3-alpha character ICAO code corresponding to the permit-to-proceed destination airport); and the scheduled date of arrival at the permit-to-proceed destination airport);

(xi) Boarded quantity (C) (The quantity of the cargo covered by the house air waybill (see paragraph (d)(3)(vii) of this section) that is included in the incoming portion of the split shipment); and

(xii) Boarded weight (C) (The weight of the cargo covered by the house air waybill (see paragraph (d)(3)(viii) of this section) that is included in the incoming portion of the split shipment).

(e) *Compliance date of this section.* (1) *General.* Subject to paragraph (e)(2) of this section, all affected air carriers, and other parties as specified in paragraph (c)(1) of this section that elect to participate in advance automated cargo information filing, must comply with the requirements of this section on and after March 4, 2004.

(2) *Delay in compliance date of section.* The CBP may delay the general compliance date set forth in paragraph (e)(1) of this section in the event that any necessary modifications to the approved electronic data interchange system are not yet in place. Also, CBP may delay the general compliance date of this section at a given port until CBP has afforded any necessary training to CBP personnel at that port. In addition, CBP may delay implementation if further time is required to complete certification testing of new participants. Any such delay would be the subject of an announcement in the **Federal Register.**

■ 9. Amend subpart G of part 122 by adding a new § 122.66 to read as follows:

§ 122.66 Clearance or permission to depart denied.

If advance electronic air cargo information is not received as provided in § 192.14 of this chapter, Customs and Border Protection may deny clearance or permission for the aircraft to depart from the United States.

PART 123—CUSTOMS RELATIONS WITH CANADA AND MEXICO

■ 1. The general authority citation for part 123 is revised, and the relevant specific sectional authority citation continue, to read as follows:

Authority: 19 U.S.C. 66, 1202 (General Note 23, Harmonized Tariff Schedule of the United States (HTSUS)), 1431, 1433, 1436, 1448, 1624, 2071 note.

* * * * *

Section 123.8 also issued under 19 U.S.C. 1450–1454, 1459;

* * * * *

■ 2. Amend § 123.8 by:

■ a. Adding two sentences after the second sentence in paragraph (a); and

■ b. Adding a sentence at the end of paragraph (d).

The additions read as follows:

§ 123.8 Permit or special license to unlade or lade a vessel or vehicle.

(a) *Permission to unlade or lade.* * * * Permission to unlade or lade a truck will be denied for any cargo with respect to which advance electronic information has not been received as provided in § 123.92 or 192.14 of this chapter, as applicable. In cases in which CBP does not receive complete cargo information in the time and manner and in the electronic format required by § 123.92 or 192.14 of this chapter, as applicable, CBP may delay issuance of a permit or special license to unlade or lade a truck. * * *

* * * * *

(d) *Term permit or special license.* * * * A term permit or special license to unlade or lade a truck already issued will not be applicable as to any cargo with respect to which advance electronic information has not been received as provided in § 123.92 or 192.14 of this chapter, as applicable.

■ 3. Amend part 123 by adding a new subpart J to read as follows:

Subpart J—Advance Information for Cargo Arriving by Rail or Truck

Sec.

123.91 Electronic information for rail cargo required in advance of arrival.
123.92 Electronic information for truck cargo required in advance of arrival.

Subpart J—Advance Information for Cargo Arriving by Rail or Truck

§ 123.91 Electronic information for rail cargo required in advance of arrival.

(a) *General requirement.* Pursuant to section 343(a), Trade Act of 2002, as amended (19 U.S.C. 2071 note), and subject to paragraph (e) of this section, for any train requiring a train sheet under § 123.6, that will have commercial cargo aboard, Customs and Border Protection (CBP) must electronically receive from the rail carrier certain information concerning the incoming cargo, as enumerated in paragraph (d) of this section, no later than 2 hours prior to the cargo reaching the first port of arrival in the United States. Specifically, to effect the advance electronic transmission of the required rail cargo information to CBP, the rail carrier must use a CBP-approved electronic data interchange system.

(1) *Through cargo in transit to a foreign country.* Cargo arriving by train for transportation in transit across the United States from one foreign country to another; and cargo arriving by train for transportation through the United States from point to point in the same foreign country are subject to the advance electronic information filing requirement for incoming cargo under paragraph (a) of this section.

(2) *Cargo under bond.* Cargo that is to be unladed from the arriving train and entered, in bond, for exportation, or for transportation and exportation, in another vehicle or conveyance is also subject to the advance electronic information filing requirement under paragraph (a) of this section.

(b) *Exception; cargo in transit from point to point in the United States.* Domestic cargo transported by train to one port from another in the United States by way of Canada or Mexico is not subject to the advance electronic information filing requirement for incoming cargo under paragraph (a) of this section.

(c) *Incoming rail carrier.* (1) *Receipt of data; acceptance of cargo.* As a pre-requisite to accepting the cargo, the carrier must receive, from the foreign shipper and owner of the cargo or from a freight forwarder, as applicable, any necessary cargo shipment information, as listed in paragraph (d) of this section, for electronic transmission to CBP.

(2) *Accuracy of information received by rail carrier.* Where the rail carrier electronically presenting the cargo information required in paragraph (d) of this section receives any of this information from another party, CBP will take into consideration how, in accordance with ordinary commercial practices, the rail carrier acquired such information, and whether and how the carrier is able to verify this information. Where the rail carrier is not reasonably able to verify such information, CBP will permit the carrier to electronically present the information on the basis of what the carrier reasonably believes to be true.

(d) *Cargo information required.* The rail carrier must electronically transmit to CBP the following information for all required incoming cargo that will arrive in the United States by train:

(1) The rail carrier identification SCAC code (the unique Standard Carrier Alpha Code assigned for each carrier by the National Motor Freight Traffic

Association; see § 4.7a(c)(2)(iii) of this chapter);

(2) The carrier-assigned conveyance name, equipment number and trip number;

(3) The scheduled date and time of arrival of the train at the first port of entry in the United States;

(4) The numbers and quantities of the cargo laden aboard the train as contained in the carrier's bill of lading, either master or house, as applicable (this means the quantity of the lowest external packaging unit; containers and pallets do not constitute acceptable information; for example, a container holding 10 pallets with 200 cartons should be described as 200 cartons);

(5) A precise cargo description (or the Harmonized Tariff Schedule (HTS) number(s) to the 6-digit level under which the cargo is classified if that information is received from the shipper) and weight of the cargo; or, for a sealed container, the shipper's declared description and weight of the cargo (generic descriptions, specifically those such as "FAK" ("freight of all kinds"), "general cargo," and "STC" ("said to contain") are not acceptable);

(6) The shipper's complete name and address, or identification number, from the bill(s) of lading (for each house bill in a consolidated shipment, the identity of the foreign vendor, supplier, manufacturer, or other similar party is acceptable (and the address of the foreign vendor, etc., must be a foreign address); by contrast, the identity of the carrier, freight forwarder, consolidator, or broker, is not acceptable; the identification number will be a unique number to be assigned by CBP upon the implementation of the Automated Commercial Environment);

(7) The complete name and address of the consignee, or identification number, from the bill(s) of lading (The consignee is the party to whom the cargo will be delivered in the United States. However, in the case of cargo shipped "to order of [a named party]," the carrier must identify this named "to order" party as the consignee; and, if there is any other commercial party listed in the bill of lading for delivery or contact purposes, the carrier must also report this other commercial party's identity and contact information (address) in the "Notify Party" field of the advance electronic data transmission to CBP, to the extent that the CBP-approved electronic data interchange system is capable of receiving this data. The identification number will be a unique number assigned by CBP upon implementation of the Automated Commercial Environment);

(8) The place where the rail carrier takes possession of the cargo shipment;

(9) Internationally recognized hazardous material code when such materials are being shipped by rail;

(10) Container numbers (for containerized shipments) or the rail car numbers; and

(11) The seal numbers for all seals affixed to containers and/or rail cars to the extent that CBP's data system can accept this information (for example, if a container has more than two seals, and only two seal numbers can be accepted through the system per container, the carrier's electronic presentation of two of these seal numbers for the container would be considered as constituting full compliance with this data element).

(e) *Date for compliance with this section.* Rail carriers must commence the advance electronic transmission to CBP of the required cargo information, 90 days from the date that CBP publishes notice in the **Federal Register** informing affected carriers that the approved electronic data interchange system is in place and operational at the port of entry where the train will first arrive in the United States.

§ 123.92 Electronic information for truck cargo required in advance of arrival.

(a) *General requirement.* Pursuant to section 343(a) of the Trade Act of 2002, as amended (19 U.S.C. 2071 note), and subject to paragraph (e) of this section, for any truck required to report its arrival under § 123.1(b), that will have commercial cargo aboard, Customs and Border Protection (CBP) must electronically receive from the party described in paragraph (c) of this section certain information concerning the cargo, as enumerated in paragraph (d) of this section. The CBP must receive such cargo information by means of a CBP-approved electronic data interchange system no later than either 30 minutes or 1 hour prior to the carrier's reaching the first port of arrival in the United States, or such lesser time as authorized, based upon the CBP-approved system employed to present the information.

(1) *Through cargo in transit to a foreign country.* Cargo arriving by truck in transit through the United States from one foreign country to another (§ 123.31(a)); and cargo arriving by truck for transportation through the United States from one point to another in the same foreign country (§ 123.31(b); § 123.42) are subject to the advance electronic information filing requirement in paragraph (a) of this section.

(2) *Cargo entered under bond.* Cargo that is to be unladed from the arriving truck and entered, in bond, for exportation, or for transportation and exportation, in another vehicle or conveyance are also subject to the advance electronic information filing requirement in paragraph (a) of this section.

(b) *Exceptions from advance reporting requirements.*

(1) *Cargo in transit from point to point in the United States.* Domestic cargo transported by truck and arriving at one port from another in the United States after transiting Canada or Mexico (§ 123.21; § 123.41) is exempt from the advance electronic filing requirement for incoming cargo under paragraph (a) of this section.

(2) *Certain informal entries.* The following merchandise is exempt from the advance cargo information reporting requirements under paragraph (a) of this section, to the extent that such merchandise qualifies for informal entry pursuant to part 143, subpart C, of this chapter:

(i) Merchandise which may be informally entered on Customs Form (CF) 368 or 368A (cash collection or receipt);

(ii) Merchandise unconditionally or conditionally free, not exceeding $2,000 in value, eligible for entry on CF 7523; and

(iii) Products of the United States being returned, for which entry is prescribed on CF 3311.

(c) *Carrier; and importer or broker.* (1) *Single party presentation.* Except as provided in paragraph (c)(2) of this section, the incoming truck carrier must present all required information to CBP in the time and manner prescribed in paragraph (a) of this section.

(2) *Dual party presentation.* The United States importer, or its Customs broker, may elect to present to CBP a portion of the required information that it possesses in relation to the cargo. Where the broker, or the importer (see § 113.62(j)(2) of this chapter), elects to submit such data, the carrier is responsible for presenting to CBP the remainder of the information specified in paragraph (d) of this section.

(3) *Party receiving information believed to be accurate.* Where the party electronically presenting the cargo information required in paragraph (d) of this section receives any of this information from another party, CBP will take into consideration how, in accordance with ordinary commercial practices, the presenting party acquired such information, and whether and how the presenting party is able to verify this information. Where the presenting party is not reasonably able to verify such information, CBP will permit the party to electronically present the information on the basis of what the party reasonably believes to be true.

(d) *Cargo information required.* The following commodity and transportation information, as applicable, must be electronically transmitted to and received by CBP for all required incoming cargo arriving in the United States by truck, to the extent that the particular CBP-approved electronic data interchange system employed can accept this information:

(1) Conveyance number, and (if applicable) equipment number (the number of the conveyance is its Vehicle Identification Number (VIN) or its license plate number and state of issuance; the equipment number, if applicable, refers to the identification number of any trailing equipment or container attached to the power unit);

(2) Carrier identification (this is the truck carrier identification SCAC code (the unique Standard Carrier Alpha Code) assigned for each carrier by the National Motor Freight Traffic Association; see § 4.7a(c)(2)(iii) of this chapter);

(3) Trip number and, if applicable, the transportation reference number for each shipment (the transportation reference number is the freight bill number, or Pro Number, if such a number has been generated by the carrier);

(4) Container number(s) (for any containerized shipment) (if different from the equipment number), and the seal numbers for all seals affixed to the equipment or container(s);

(5) The foreign location where the truck carrier takes possession of the cargo destined for the United States;

(6) The scheduled date and time of arrival of the truck at the first port of entry in the United States;

(7) The numbers and quantities for the cargo laden aboard the truck as contained in the bill(s) of lading (this means the quantity of the lowest external packaging unit; containers and pallets do not constitute acceptable information; for example, a container holding 10 pallets with 200 cartons should be described as 200 cartons);

(8) The weight of the cargo, or, for a sealed container, the shipper's declared weight of the cargo;

(9) A precise description of the cargo or the Harmonized Tariff Schedule (HTS) numbers to the 6-digit level under which the cargo will be classified (generic descriptions, specifically those such as FAK ("freight of all kinds"), "general cargo," and "STC" ("said to contain") are not acceptable);

(10) Internationally recognized hazardous material code when such cargo is being shipped by truck;

(11) The shipper's complete name and address, or identification number, from the bill(s) of lading (for each house bill in a consolidated shipment, the identity of the foreign vendor, supplier, manufacturer, or other similar party is acceptable (and the address of the foreign vendor, etc., must be a foreign address); by contrast, the identity of the carrier, freight forwarder, consolidator, or broker, is not acceptable; the identification number will be a unique number to be assigned by CBP upon the implementation of the Automated Commercial Environment); and

(12) The complete name and address of the consignee, or identification number, from the bill(s) of lading (the consignee is the party to whom the cargo will be delivered in the United States, with the exception of "FROB" (Foreign Cargo Remaining On Board); the identification number will be a unique number assigned by CBP upon implementation of the Automated Commercial Environment).

(e) *Date for compliance with this section.* The incoming truck carrier and, if electing to do so, the United States importer, or its Customs broker, must present the necessary cargo data to CBP at the particular port of entry where the truck will arrive in the United States on and after 90 days from the date that CBP has published a notice in the **Federal Register** informing affected carriers that:

(1) The approved data interchange is in place and fully operational at that port; and

(2) The carrier must commence the presentation of the required cargo information through the approved system.

PART 178—APPROVAL OF INFORMATION COLLECTION REQUIREMENTS

■ 1. The authority citation for part 178 continues to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 1624; 44 U.S.C. 3501 *et seq.*

■ 2. Section 178.2 is amended as follows:

■ a. In the listing for § 4.7a(c)(4), by removing the number "1515–0001" under the heading "OMB Control No.", and adding, in its place, the number "1651–0001"; and

■ b. By adding new listings for §§ 122.48a, 123.91, 123.92 and 192.14 in appropriate numerical sequence according to the section number under the columns indicated.

The listings for §§ 4.7a(c)(4), 122.48a, 123.91, 123.92, and 192.14 read as follows:

§ 178.2 Listing of OMB control numbers.

19 CFR section	Description	OMB Control No.
* * * * * * *		
§ 4.7a(c)(4)	Transportation manifest (cargo declaration)	1651–0001
* * * * * * *		
§ 122.48a	Transportation manifest (cargo declaration)	1651–0001
* * * * * * *		
§ 123.91	Transportation manifest (cargo declaration)	1651–0001
* * * * * * *		
§ 123.92	Transportation manifest (cargo declaration)	1651–0001
* * * * * * *		
§ 192.14	Transportation manifest (cargo declaration)	1651–0001

PART 192—EXPORT CONTROL

■ 1. The authority citation for part 192 is revised to read as follows:

Authority: 19 U.S.C. 66, 1624, 1646c. Subpart A also issued under 19 U.S.C. 1627a, 1646a, 1646b; subpart B also issued under 13 U.S.C. 303; 19 U.S.C. 2071 note; 46 U.S.C. 91.

■ 2. Amend subpart B of part 192 by adding a new § 192.14 to read as follows:

§ 192.14 Electronic information for outward cargo required in advance of departure.

(a) *General requirement.* Pursuant to section 343(a), Trade Act of 2002, as amended (19 U.S.C. 2071 note), and subject to paragraph (e) of this section, for any commercial cargo that is to be transported out of the United States by vessel, aircraft, rail, or truck, unless exempted under paragraph (d) of this section, the United States Principal Party in Interest (USPPI), or its authorized agent, must electronically transmit for receipt by Customs and Border Protection (CBP), no later than the time period specified in paragraph (b) of this section, certain cargo information, as enumerated in paragraph (c) of this section. Specifically, to effect the advance electronic transmission of the required cargo information to CBP, the USPPI or its authorized agent must use a CBP-approved electronic data interchange system (currently, the Automated Export System (AES)).

(b) *Presentation of data.* (1) *Time for presenting data.* USPPIs or their authorized agents must electronically transmit and verify system acceptance of required cargo information for outbound cargo no later than the time period specified as follows (see paragraph (b)(3) of this section):

(i) For vessel cargo, the USPPI or its authorized agent must transmit and verify system acceptance of export vessel cargo information no later than 24 hours prior to departure from the U.S. port where the vessel cargo is to be laden;

(ii) For air cargo, including cargo being transported by Air Express Couriers, the USPPI or its authorized agent must transmit and verify system acceptance of export air cargo information no later than 2 hours prior to the scheduled departure time of the aircraft from the last U.S. port;

(iii) For truck cargo, including cargo departing by Express Consignment Courier, the USPPI or its authorized agent must transmit and verify system acceptance of export truck cargo information no later than 1-hour prior to the arrival of the truck at the border; and

(iv) For rail cargo, the USPPI or its authorized agent must transmit and verify system acceptance of export rail cargo information no later than two hours prior to the arrival of the train at the border.

(2) *Applicability of time frames.* The time periods in paragraph (b)(1) of this section for reporting required export cargo information to CBP for outward vessel, air, truck, or rail cargo only apply to shipments without an export license, that require full pre-departure reporting of shipment data, in order to comply with the advance cargo information filing requirements under section 343(a), as amended. Paragraph (e) of this section details dates for compliance with the time frames provided in paragraph (b)(1) of this section. Requirements placed on exports controlled by other Government agencies will remain in force unless changed by the agency having the regulatory authority to do so. The CBP will also continue to require 72-hour advance notice for used vehicle exports pursuant to § 192.2(c)(1) and (c)(2)(i) of this part. USPPIs or their authorized agents should refer to the relevant titles of the Code of Federal Regulations (CFR) for pre-filing requirements of other Government agencies. In particular, for the advance reporting requirements for exports of U.S. Munitions List items, see the U.S. Department of State's International Traffic in Arms Regulations (ITAR) (22 CFR parts 120 through 130).

(3) *System verification of data acceptance.* Once the USPPI or its authorized agent has transmitted the data required under paragraphs (c)(1) and (c)(2) of this section, and the CBP-approved electronic system has received and accepted this data, the system will generate and transmit to the USPPI or its authorized agent (whichever is the filer in AES) a confirmation number (this number is known as the Internal Transaction Number (ITN)), which verifies that the data has been accepted as transmitted for the outgoing shipment.

(c) *Information required.* (1) *Currently collected commodity data.* The export cargo information to be collected from USPPIs or their authorized agents for outbound cargo is already contained in the Bureau of Census electronic Shipper's Export Declaration (SED) that the USPPI or its authorized agent currently presents to CBP through the approved electronic system. The AES Commodity Module already captures the requisite export data, so no new data elements for export cargo are required under this section. The export cargo data elements that are required to be reported electronically through the approved system are also found in § 30.63 of the Bureau of Census Regulations (15 CFR 30.63).

(2) *Transportation data.* Reporting of the following transportation information is currently mandatory for AES participants under 15 CFR 30.63 for the vessel, air, truck, and rail modes (see also paragraph (c)(3) of this section):

(i) Method of transportation (the method of transportation is defined as that by which the goods are exported or shipped (vessel, air, rail, or truck));

(ii) Carrier identification (for vessel, rail and truck shipments, the unique carrier identifier is the 4-character Standard Carrier Alpha Code (SCAC); for aircraft, the carrier identifier is the 2- or 3-character International Air Transport Association (IATA) code);

(iii) Conveyance name (the conveyance name is the name of the carrier: for sea carriers, this is the name of the vessel; for others, the carrier name);

(iv) Country of ultimate destination (this is the country as known to the USPPI or its authorized agent at the time of exportation, where the cargo is to be consumed or further processed or manufactured; this country would be identified by the 2-character International Standards Organization (ISO) code for the country of ultimate destination);

(v) Estimated date of exportation (the USPPI or its authorized agent must report the date the cargo is scheduled to leave the United States for all modes of transportation; if the actual date is not known, the USPPI or its authorized agent must report the best estimate as to the time of departure); and

(vi) Port of exportation (the port where the outbound cargo departs from the United States is designated by its unique code, as set forth in Annex C, Harmonized Tariff Schedule of the United States (HTSUS); the USPPI or its authorized agent must report the port of exportation as known when the USPPI or its agent tenders the cargo to the outbound carrier; should the carrier export the cargo from a different port and the carrier so informs the USPPI or agent, the port of exportation must be corrected by the filer in AES.).

(3) *Proof of electronic filing; exemption from filing.* The USPPI, or its authorized agent, must furnish to the outbound carrier a proof of electronic filing citation (the ITN), low-risk exporter citation (currently, the Option 4 filing citation), or exemption statement, for annotation on the carrier's outward manifest, waybill, or other export documentation covering the cargo to be shipped. The proof of electronic filing citation, low-risk exporter citation, or exemption statement, will conform to the approved data formats found in the Bureau of Census Foreign Trade Statistics Regulations (FTSR) (15 CFR part 30) and FTSR Letter 168, Amendment 2 (this Letter may be obtained from the Census Bureau).

(4) *Carrier responsibility.* (i) *Loading of cargo.* The carrier may not load cargo without first receiving from the USPPI or its authorized agent either the related electronic filing citation as prescribed under paragraph (c)(3) of this section, or an appropriate exemption statement for the cargo as specified in paragraph (d) of this section.

(ii) *High-risk cargo.* For cargo that CBP has identified as potentially high-risk, the carrier, after being duly notified by CBP, will be responsible for delivering the cargo for inspection/examination. If the cargo identified as high risk has already departed, CBP may demand that the export carrier redeliver the cargo in accordance with the terms of its international carrier bond (see § 113.64(g)(2) of this chapter).

(5) *USPPI receipt of information believed to be accurate.* Where the USPPI or its authorized agent electronically presenting the cargo information required in paragraphs (c)(1) and (c)(2) of this section receives any of this information from another party, CBP will take into consideration how, in accordance with ordinary commercial practices, the USPPI or its authorized agent acquired this information, and whether and how the USPPI or authorized agent is able to verify this information. Where the USPPI or authorized agent is not reasonably able to verify any information received, CBP will permit this party to electronically present the information on the basis of what it reasonably believes to be true.

(d) *Exemptions from reporting; Census exemptions applicable.* The USPPI or authorized agent must furnish to the outbound carrier an appropriate exemption state-ment (low-risk exporter or other exemption) for any export shipment laden that is not subject to pre-departure electronic information filing under this section. The exemption statement will conform to the proper format approved by the Bureau of Census. Any exemptions from reporting requirements for export cargo are enumerated in §§ 30.50 through 30.58 of the Bureau of Census Regulations (15 CFR 30.50 through 30.58). These exemptions are equally applicable under this section.

(e) *Date for compliance.* The requirements of this section, including the pre-departure time frames for reporting export cargo information for required shipments, and the requirement of the ITN, will be implemented concurrent with the completion of the redesign of the AES commodity module and the effective date of mandatory filing regulations that will be issued by the Department of Commerce pursuant to the Security Assistance Act (Pub. L. 107–228). This date will be announced in the **Federal Register**.

Robert C. Bonner,

Commissioner, Customs and Border Protection.

Approved: November 17, 2003.

Tom Ridge,

Secretary, Department of Homeland Security.

[FR Doc. 03–29798 Filed 12–4–03; 8:45 am]

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Federal Register

Friday,
December 5, 2003

Part III

Department of the Interior

Bureau of Indian Affairs

Indian Entities Recognized and Eligible To Receive Services From the United States Bureau of Indian Affairs; Notice

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Indian Entities Recognized and Eligible To Receive Services From the United States Bureau of Indian Affairs

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: Notice is hereby given of the current list of 562 tribal entities recognized and eligible for funding and services from the Bureau of Indian Affairs by virtue of their status as Indian tribes. This notice is published pursuant to section 104 of the Act of November 2, 1994 (Pub. L. 103–454; 108 Stat. 4791, 4792).

FOR FURTHER INFORMATION CONTACT: Daisy West, Bureau of Indian Affairs, Division of Tribal Government Services, MS–320–MIB, 1849 C Street, NW., Washington, DC 20240. Telephone number: (202) 513–7641.

SUPPLEMENTARY INFORMATION: This notice is published in exercise of authority delegated to the Assistant Secretary—Indian Affairs under 25 U.S.C. 2 and 9 and 209 DM 8.

Published below is a list of federally acknowledged tribes in the contiguous 48 states and in Alaska. The list is updated from the notice published on July 12, 2002 (67 FR 46328).

Several tribes have made changes to their tribal name. To aid in identifying tribal name changes, the tribe's former name is included with the new tribal name. We will continue to list the tribe's former name for several years before dropping the former name from the list. We have also made several corrections. To aid in identifying corrections, the tribe's previously listed name is included with the tribal name.

The listed entities are acknowledged to have the immunities and privileges available to other federally acknowledged Indian tribes by virtue of their government-to-government relationship with the United States as well as the responsibilities, powers, limitations and obligations of such tribes. We have continued the practice of listing the Alaska Native entities separately solely for the purpose of facilitating identification of them and reference to them given the large number of complex Native names.

Dated: November 21, 2003.

Aurene M. Martin,

Principal Deputy Assistant Secretary—Indian Affairs.

Indian Tribal Entities Within the Contiguous 48 States Recognized and Eligible To Receive Services From the United States Bureau of Indian Affairs

Absentee-Shawnee Tribe of Indians of Oklahoma
Agua Caliente Band of Cahuilla Indians of the Agua Caliente Indian Reservation, California
Ak Chin Indian Community of the Maricopa (Ak Chin) Indian Reservation, Arizona
Alabama-Coushatta Tribes of Texas
Alabama-Quassarte Tribal Town, Oklahoma
Alturas Indian Rancheria, California
Apache Tribe of Oklahoma
Arapahoe Tribe of the Wind River Reservation, Wyoming
Aroostook Band of Micmac Indians of Maine
Assiniboine and Sioux Tribes of the Fort Peck Indian Reservation, Montana
Augustine Band of Cahuilla Mission Indians of the Augustine Reservation, California
Bad River Band of the Lake Superior Tribe of Chippewa Indians of the Bad River Reservation, Wisconsin
Bay Mills Indian Community, Michigan
Bear River Band of the Rohnerville Rancheria, California
Berry Creek Rancheria of Maidu Indians of California
Big Lagoon Rancheria, California
Big Pine Band of Owens Valley Paiute Shoshone Indians of the Big Pine Reservation, California
Big Sandy Rancheria of Mono Indians of California
Big Valley Band of Pomo Indians of the Big Valley Rancheria, California
Blackfeet Tribe of the Blackfeet Indian Reservation of Montana
Blue Lake Rancheria, California
Bridgeport Paiute Indian Colony of California
Buena Vista Rancheria of Me-Wuk Indians of California
Burns Paiute Tribe of the Burns Paiute Indian Colony of Oregon
Cabazon Band of Mission Indians, California (previously listed as the Cabazon Band of Cahuilla Mission Indians of the Cabazon Reservation)
Cachil DeHe Band of Wintun Indians of the Colusa Indian Community of the Colusa Rancheria, California
Caddo Nation of Oklahoma (formerly the Caddo Indian Tribe of Oklahoma)
Cahuilla Band of Mission Indians of the Cahuilla Reservation, California
Cahto Indian Tribe of the Laytonville Rancheria, California
California Valley Miwok Tribe, California (formerly the Sheep Ranch Rancheria of Me-Wuk Indians of California)
Campo Band of Diegueno Mission Indians of the Campo Indian Reservation, California
Capitan Grande Band of Diegueno Mission Indians of California:
Barona Group of Capitan Grande Band of Mission Indians of the Barona Reservation, California
Viejas (Baron Long) Group of Capitan Grande Band of Mission Indians of the Viejas Reservation, California
Catawba Indian Nation (aka Catawba Tribe of South Carolina)
Cayuga Nation of New York
Cedarville Rancheria, California
Chemehuevi Indian Tribe of the Chemehuevi Reservation, California
Cher-Ae Heights Indian Community of the Trinidad Rancheria, California
Cherokee Nation, Oklahoma
Cheyenne-Arapaho Tribes of Oklahoma
Cheyenne River Sioux Tribe of the Cheyenne River Reservation, South Dakota
Chickasaw Nation, Oklahoma
Chicken Ranch Rancheria of Me-Wuk Indians of California
Chippewa-Cree Indians of the Rocky Boy's Reservation, Montana
Chitimacha Tribe of Louisiana
Choctaw Nation of Oklahoma
Citizen Potawatomi Nation, Oklahoma
Cloverdale Rancheria of Pomo Indians of California
Cocopah Tribe of Arizona
Coeur D'Alene Tribe of the Coeur D'Alene Reservation, Idaho
Cold Springs Rancheria of Mono Indians of California
Colorado River Indian Tribes of the Colorado River Indian Reservation, Arizona and California
Comanche Nation, Oklahoma (formerly the Comanche Indian Tribe)
Confederated Salish & Kootenai Tribes of the Flathead Reservation, Montana
Confederated Tribes of the Chehalis Reservation, Washington
Confederated Tribes of the Colville Reservation, Washington
Confederated Tribes of the Coos, Lower Umpqua and Siuslaw Indians of Oregon
Confederated Tribes of the Goshute Reservation, Nevada and Utah
Confederated Tribes of the Grand Ronde Community of Oregon
Confederated Tribes of the Siletz Reservation, Oregon
Confederated Tribes of the Umatilla Reservation, Oregon
Confederated Tribes of the Warm Springs Reservation of Oregon
Confederated Tribes and Bands of the Yakama Nation, Washington (formerly the Confederated Tribes and Bands of the Yakama Indian Nation of the Yakama Reservation)
Coquille Tribe of Oregon
Cortina Indian Rancheria of Wintun Indians of California
Coushatta Tribe of Louisiana
Cow Creek Band of Umpqua Indians of Oregon
Cowlitz Indian Tribe, Washington
Coyote Valley Band of Pomo Indians of California
Crow Tribe of Montana
Crow Creek Sioux Tribe of the Crow Creek Reservation, South Dakota
Death Valley Timbi-Sha Shoshone Band of California
Delaware Nation, Oklahoma (formerly the Delaware Tribe of Western Oklahoma)
Delaware Tribe of Indians, Oklahoma
Dry Creek Rancheria of Pomo Indians of California
Duckwater Shoshone Tribe of the Duckwater Reservation, Nevada
Eastern Band of Cherokee Indians of North Carolina
Eastern Shawnee Tribe of Oklahoma
Elem Indian Colony of Pomo Indians of the Sulphur Bank Rancheria, California
Elk Valley Rancheria, California
Ely Shoshone Tribe of Nevada
Enterprise Rancheria of Maidu Indians of California
Ewiiaapaayp Band of Kumeyaay Indians, California (formerly the Cuyapaipe Community of Diegueno Mission Indians of the Cuyapaipe Reservation)
Federated Indians of Graton Rancheria, California (formerly the Graton Rancheria)
Flandreau Santee Sioux Tribe of South Dakota
Forest County Potawatomi Community, Wisconsin
Fort Belknap Indian Community of the Fort Belknap Reservation of Montana
Fort Bidwell Indian Community of the Fort Bidwell Reservation of California
Fort Independence Indian Community of Paiute Indians of the Fort Independence Reservation, California
Fort McDermitt Paiute and Shoshone Tribes of the Fort McDermitt Indian Reservation, Nevada and Oregon
Fort McDowell Yavapai Nation, Arizona (formerly the Fort McDowell Mohave-Apache Community of the Fort McDowell Indian Reservation)
Fort Mojave Indian Tribe of Arizona, California & Nevada
Fort Sill Apache Tribe of Oklahoma
Gila River Indian Community of the Gila River Indian Reservation, Arizona
Grand Traverse Band of Ottawa and Chippewa Indians, Michigan
Greenville Rancheria of Maidu Indians of California
Grindstone Indian Rancheria of Wintun-Wailaki Indians of California
Guidiville Rancheria of California
Hannahville Indian Community, Michigan
Havasupai Tribe of the Havasupai Reservation, Arizona
Ho-Chunk Nation of Wisconsin (formerly the Wisconsin Winnebago Tribe)
Hoh Indian Tribe of the Hoh Indian Reservation, Washington
Hoopa Valley Tribe, California
Hopi Tribe of Arizona
Hopland Band of Pomo Indians of the Hopland Rancheria, California
Houlton Band of Maliseet Indians of Maine
Hualapai Indian Tribe of the Hualapai Indian Reservation, Arizona
Huron Potawatomi, Inc., Michigan
Inaja Band of Diegueno Mission Indians of the Inaja and Cosmit Reservation, California
Ione Band of Miwok Indians of California
Iowa Tribe of Kansas and Nebraska
Iowa Tribe of Oklahoma
Jackson Rancheria of Me-Wuk Indians of California
Jamestown S'Klallam Tribe of Washington
Jamul Indian Village of California
Jena Band of Choctaw Indians, Louisiana
Jicarilla Apache Nation, New Mexico (formerly the Jicarilla Apache Tribe of the Jicarilla Apache Indian Reservation)
Kaibab Band of Paiute Indians of the Kaibab Indian Reservation, Arizona
Kalispel Indian Community of the Kalispel Reservation, Washington
Karuk Tribe of California
Kashia Band of Pomo Indians of the Stewarts Point Rancheria, California
Kaw Nation, Oklahoma
Keweenaw Bay Indian Community, Michigan
Kialegee Tribal Town, Oklahoma
Kickapoo Tribe of Indians of the Kickapoo Reservation in Kansas
Kickapoo Tribe of Oklahoma
Kickapoo Traditional Tribe of Texas
Kiowa Indian Tribe of Oklahoma
Klamath Indian Tribe of Oregon
Kootenai Tribe of Idaho
La Jolla Band of Luiseno Mission Indians of the La Jolla Reservation, California
La Posta Band of Diegueno Mission Indians of the La Posta Indian Reservation, California
Lac Courte Oreilles Band of Lake Superior Chippewa Indians of Wisconsin
Lac du Flambeau Band of Lake Superior Chippewa Indians of the Lac du Flambeau Reservation of Wisconsin
Lac Vieux Desert Band of Lake Superior Chippewa Indians, Michigan
Las Vegas Tribe of Paiute Indians of the Las Vegas Indian Colony, Nevada
Little River Band of Ottawa Indians, Michigan
Little Traverse Bay Bands of Odawa Indians, Michigan
Lower Lake Rancheria, California
Los Coyotes Band of Cahuilla & Cupeno Indians of the Los Coyotes Reservation, California (formerly the Los Coyotes Band of Cahuilla Mission Indians of the Los Coyotes Reservation)
Lovelock Paiute Tribe of the Lovelock Indian Colony, Nevada
Lower Brule Sioux Tribe of the Lower Brule Reservation, South Dakota
Lower Elwha Tribal Community of the Lower Elwha Reservation, Washington
Lower Sioux Indian Community in the State of Minnesota
Lummi Tribe of the Lummi Reservation, Washington
Lytton Rancheria of California
Makah Indian Tribe of the Makah Indian Reservation, Washington
Manchester Band of Pomo Indians of the Manchester-Point Arena Rancheria, California
Manzanita Band of Diegueno Mission Indians of the Manzanita Reservation, California
Mashantucket Pequot Tribe of Connecticut
Match-e-be-nash-she-wish Band of Pottawatomi Indians of Michigan
Mechoopda Indian Tribe of Chico Rancheria, California
Menominee Indian Tribe of Wisconsin
Mesa Grande Band of Diegueno Mission Indians of the Mesa Grande Reservation, California
Mescalero Apache Tribe of the Mescalero Reservation, New Mexico
Miami Tribe of Oklahoma
Miccosukee Tribe of Indians of Florida
Middletown Rancheria of Pomo Indians of California
Minnesota Chippewa Tribe, Minnesota (Six component reservations: Bois Forte Band (Nett Lake); Fond du Lac Band; Grand Portage Band; Leech Lake Band; Mille Lacs Band; White Earth Band)
Mississippi Band of Choctaw Indians, Mississippi
Moapa Band of Paiute Indians of the Moapa River Indian Reservation, Nevada
Modoc Tribe of Oklahoma
Mohegan Indian Tribe of Connecticut
Mooretown Rancheria of Maidu Indians of California
Morongo Band of Cahuilla Mission Indians of the Morongo Reservation, California

Muckleshoot Indian Tribe of the Muckleshoot Reservation, Washington
Muscogee (Creek) Nation, Oklahoma
Narragansett Indian Tribe of Rhode Island
Navajo Nation, Arizona, New Mexico & Utah
Nez Perce Tribe of Idaho
Nisqually Indian Tribe of the Nisqually Reservation, Washington
Nooksack Indian Tribe of Washington
Northern Cheyenne Tribe of the Northern Cheyenne Indian Reservation, Montana
Northfork Rancheria of Mono Indians of California
Northwestern Band of Shoshoni Nation of Utah (Washakie)
Oglala Sioux Tribe of the Pine Ridge Reservation, South Dakota
Omaha Tribe of Nebraska
Oneida Nation of New York
Oneida Tribe of Indians of Wisconsin
Onondaga Nation of New York
Osage Tribe, Oklahoma
Ottawa Tribe of Oklahoma
Otoe-Missouria Tribe of Indians, Oklahoma
Paiute Indian Tribe of Utah (Cedar City Band of Paiutes, Kanosh Band of Paiutes, Koosharem Band of Paiutes, Indian Peaks Band of Paiutes, and Shivwits Band of Paiutes)
Paiute-Shoshone Indians of the Bishop Community of the Bishop Colony, California
Paiute-Shoshone Tribe of the Fallon Reservation and Colony, Nevada
Paiute-Shoshone Indians of the Lone Pine Community of the Lone Pine Reservation, California
Pala Band of Luiseno Mission Indians of the Pala Reservation, California
Pascua Yaqui Tribe of Arizona
Paskenta Band of Nomlaki Indians of California
Passamaquoddy Tribe of Maine
Pauma Band of Luiseno Mission Indians of the Pauma & Yuima Reservation, California
Pawnee Nation of Oklahoma
Pechanga Band of Luiseno Mission Indians of the Pechanga Reservation, California
Penobscot Tribe of Maine
Peoria Tribe of Indians of Oklahoma
Picayune Rancheria of Chukchansi Indians of California
Pinoleville Rancheria of Pomo Indians of California
Pit River Tribe, California (includes XL Ranch, Big Bend, Likely, Lookout, Montgomery Creek and Roaring Creek Rancherias)
Poarch Band of Creek Indians of Alabama
Pokagon Band of Potawatomi Indians, Michigan and Indiana
Ponca Tribe of Indians of Oklahoma
Ponca Tribe of Nebraska
Port Gamble Indian Community of the Port Gamble Reservation, Washington
Potter Valley Rancheria of Pomo Indians of California
Prairie Band of Potawatomi Nation, Kansas (formerly the Prairie Band of Potawatomi Indians)
Prairie Island Indian Community in the State of Minnesota
Pueblo of Acoma, New Mexico
Pueblo of Cochiti, New Mexico
Pueblo of Jemez, New Mexico
Pueblo of Isleta, New Mexico
Pueblo of Laguna, New Mexico
Pueblo of Nambe, New Mexico
Pueblo of Picuris, New Mexico
Pueblo of Pojoaque, New Mexico
Pueblo of San Felipe, New Mexico
Pueblo of San Juan, New Mexico
Pueblo of San Ildefonso, New Mexico
Pueblo of Sandia, New Mexico
Pueblo of Santa Ana, New Mexico
Pueblo of Santa Clara, New Mexico
Pueblo of Santo Domingo, New Mexico
Pueblo of Taos, New Mexico
Pueblo of Tesuque, New Mexico
Pueblo of Zia, New Mexico
Puyallup Tribe of the Puyallup Reservation, Washington
Pyramid Lake Paiute Tribe of the Pyramid Lake Reservation, Nevada
Quapaw Tribe of Indians, Oklahoma
Quartz Valley Indian Community of the Quartz Valley Reservation of California
Quechan Tribe of the Fort Yuma Indian Reservation, California & Arizona
Quileute Tribe of the Quileute Reservation, Washington
Quinault Tribe of the Quinault Reservation, Washington
Ramona Band or Village of Cahuilla Mission Indians of California
Red Cliff Band of Lake Superior Chippewa Indians of Wisconsin
Red Lake Band of Chippewa Indians, Minnesota
Redding Rancheria, California
Redwood Valley Rancheria of Pomo Indians of California
Reno-Sparks Indian Colony, Nevada
Resighini Rancheria, California (formerly the Coast Indian Community of Yurok Indians of the Resighini Rancheria)
Rincon Band of Luiseno Mission Indians of the Rincon Reservation, California
Robinson Rancheria of Pomo Indians of California
Rosebud Sioux Tribe of the Rosebud Indian Reservation, South Dakota
Round Valley Indian Tribes of the Round Valley Reservation, California (formerly the Covelo Indian Community)
Rumsey Indian Rancheria of Wintun Indians of California
Sac & Fox Tribe of the Mississippi in Iowa
Sac & Fox Nation of Missouri in Kansas and Nebraska
Sac & Fox Nation, Oklahoma
Saginaw Chippewa Indian Tribe of Michigan
St. Croix Chippewa Indians of Wisconsin
St. Regis Band of Mohawk Indians of New York
Salt River Pima-Maricopa Indian Community of the Salt River Reservation, Arizona
Samish Indian Tribe, Washington
San Carlos Apache Tribe of the San Carlos Reservation, Arizona
San Juan Southern Paiute Tribe of Arizona
San Manual Band of Serrano Mission Indians of the San Manual Reservation, California
San Pasqual Band of Diegueno Mission Indians of California
Santa Rosa Indian Community of the Santa Rosa Rancheria, California
Santa Rosa Band of Cahuilla Mission Indians of the Santa Rosa Reservation, California
Santa Ynez Band of Chumash Mission Indians of the Santa Ynez Reservation, California
Santa Ysabel Band of Diegueno Mission Indians of the Santa Ysabel Reservation, California
Santee Sioux Nation, Nebraska (formerly the Santee Sioux Tribe of the Santee Reservation of Nebraska)
Sauk-Suiattle Indian Tribe of Washington
Sault Ste. Marie Tribe of Chippewa Indians of Michigan
Scotts Valley Band of Pomo Indians of California
Seminole Nation of Oklahoma
Seminole Tribe of Florida, Dania, Big Cypress, Brighton, Hollywood & Tampa Reservations
Seneca Nation of New York
Seneca-Cayuga Tribe of Oklahoma
Shakopee Mdewakanton Sioux Community of Minnesota
Shawnee Tribe, Oklahoma
Sherwood Valley Rancheria of Pomo Indians of California
Shingle Springs Band of Miwok Indians, Shingle Springs Rancheria (Verona Tract), California
Shoalwater Bay Tribe of the Shoalwater Bay Indian Reservation, Washington
Shoshone Tribe of the Wind River Reservation, Wyoming
Shoshone-Bannock Tribes of the Fort Hall Reservation of Idaho
Shoshone-Paiute Tribes of the Duck Valley Reservation, Nevada
Sisseton-Wahpeton Oyate of the Lake Traverse Reservation, South Dakota (formerly the Sisseton-Wahpeton Sioux Tribe of the Lake Traverse Reservation)
Skokomish Indian Tribe of the Skokomish Reservation, Washington
Skull Valley Band of Goshute Indians of Utah
Smith River Rancheria, California
Snoqualmie Tribe, Washington
Soboba Band of Luiseno Indians, California (formerly the Soboba Band of Luiseno Mission Indians of the Soboba Reservation)
Sokaogon Chippewa Community, Wisconsin
Southern Ute Indian Tribe of the Southern Ute Reservation, Colorado
Spirit Lake Tribe, North Dakota
Spokane Tribe of the Spokane Reservation, Washington
Squaxin Island Tribe of the Squaxin Island Reservation, Washington
Standing Rock Sioux Tribe of North & South Dakota
Stockbridge Munsee Community, Wisconsin
Stillaguamish Tribe of Washington
Summit Lake Paiute Tribe of Nevada
Suquamish Indian Tribe of the Port Madison Reservation, Washington
Susanville Indian Rancheria, California
Swinomish Indians of the Swinomish Reservation, Washington
Sycuan Band of Diegueno Mission Indians of California
Table Bluff Reservation—Wivot Tribe, California
Table Mountain Rancheria of California
Te-Moak Tribe of Western Shoshone Indians of Nevada (Four constituent bands: Battle Mountain Band; Elko Band; South Fork Band and Wells Band)
Thlopthlocco Tribal Town, Oklahoma
Three Affiliated Tribes of the Fort Berthold Reservation, North Dakota
Tohono O'odham Nation of Arizona
Tonawanda Band of Seneca Indians of New York
Tonkawa Tribe of Indians of Oklahoma
Tonto Apache Tribe of Arizona
Torres-Martinez Band of Cahuilla Mission Indians of California
Tule River Indian Tribe of the Tule River Reservation, California
Tulalip Tribes of the Tulalip Reservation, Washington
Tunica-Biloxi Indian Tribe of Louisiana
Tuolumne Band of Me-Wuk Indians of the Tuolumne Rancheria of California
Turtle Mountain Band of Chippewa Indians of North Dakota
Tuscarora Nation of New York
Twenty-Nine Palms Band of Mission Indians of California
United Auburn Indian Community of the Auburn Rancheria of California
United Keetoowah Band of Cherokee Indians in Oklahoma
Upper Lake Band of Pomo Indians of Upper Lake Rancheria of California
Upper Sioux Community, Minnesota
Upper Skagit Indian Tribe of Washington
Ute Indian Tribe of the Uintah & Ouray Reservation, Utah
Ute Mountain Tribe of the Ute Mountain Reservation, Colorado, New Mexico & Utah
Utu Utu Gwaitu Paiute Tribe of the Benton Paiute Reservation, California
Walker River Paiute Tribe of the Walker River Reservation, Nevada
Wampanoag Tribe of Gay Head (Aquinnah) of Massachusetts
Washoe Tribe of Nevada & California (Carson Colony, Dresslerville Colony, Woodfords Community, Stewart Community, & Washoe Ranches)
White Mountain Apache Tribe of the Fort Apache Reservation, Arizona
Wichita and Affiliated Tribes (Wichita, Keechi, Waco & Tawakonie), Oklahoma
Winnebago Tribe of Nebraska
Winnemucca Indian Colony of Nevada
Wyandotte Nation, Oklahoma (formerly the Wyandotte Tribe of Oklahoma)
Yankton Sioux Tribe of South Dakota
Yavapai-Apache Nation of the Camp Verde Indian Reservation, Arizona
Yavapai-Prescott Tribe of the Yavapai Reservation, Arizona
Yerington Paiute Tribe of the Yerington Colony & Campbell Ranch, Nevada
Yomba Shoshone Tribe of the Yomba Reservation, Nevada
Ysleta Del Sur Pueblo of Texas
Yurok Tribe of the Yurok Reservation, California
Zuni Tribe of the Zuni Reservation, New Mexico

Native Entities Within the State of Alaska Recognized and Eligible To Receive Services From the United States Bureau of Indian Affairs

Native Village of Afognak (formerly the Village of Afognak)
Agdaagux Tribe of King Cove
Native Village of Akhiok
Akiachak Native Community
Akiak Native Community
Native Village of Akutan
Village of Alakanuk
Alatna Village
Native Village of Aleknagik
Algaaciq Native Village (St. Mary's)
Allakaket Village
Native Village of Ambler
Village of Anaktuvuk Pass
Yupiit of Andreafski
Angoon Community Association
Village of Aniak
Anvik Village
Arctic Village (See Native Village of Venetie Tribal Government)
Asa'carsarmiut Tribe (formerly the Native Village of Mountain Village)
Native Village of Atka
Village of Atmautluak
Atqasuk Village (Atkasook)
Native Village of Barrow Inupiat Traditional Government
Beaver Village
Native Village of Belkofski
Village of Bill Moore's Slough
Birch Creek Tribe
Native Village of Brevig Mission
Native Village of Buckland
Native Village of Cantwell
Native Village of Chanega (aka Chenega)
Chalkyitsik Village
Cheesh-Na Tribe (formerly the Native Village of Chistochina)
Village of Chefornak
Chevak Native Village
Chickaloon Native Village
Native Village of Chignik
Native Village of Chignik Lagoon
Chignik Lake Village
Chilkat Indian Village (Klukwan)
Chilkoot Indian Association (Haines)
Chinik Eskimo Community (Golovin)
Native Village of Chitina
Native Village of Chuathbaluk (Russian Mission, Kuskokwim)
Chuloonawick Native Village
Circle Native Community
Village of Clarks Point
Native Village of Council
Craig Community Association
Village of Crooked Creek
Curyung Tribal Council (formerly the Native Village of Dillingham)
Native Village of Deering
Native Village of Diomede (aka Inalik)
Village of Dot Lake
Douglas Indian Association
Native Village of Eagle
Native Village of Eek
Egegik Village
Eklutna Native Village
Native Village of Ekuk
Ekwok Village
Native Village of Elim
Emmonak Village
Evansville Village (aka Bettles Field)
Native Village of Eyak (Cordova)
Native Village of False Pass
Native Village of Fort Yukon
Native Village of Gakona
Galena Village (aka Louden Village)
Native Village of Gambell
Native Village of Georgetown
Native Village of Goodnews Bay
Organized Village of Grayling (aka Holikachuk)
Gulkana Village
Native Village of Hamilton
Healy Lake Village
Holy Cross Village
Hoonah Indian Association
Native Village of Hooper Bay
Hughes Village
Huslia Village
Hydaburg Cooperative Association
Igiugig Village
Village of Iliamna

Inupiat Community of the Arctic Slope
Iqurmuit Traditional Council (formerly the Native Village of Russian Mission)
Ivanoff Bay Village
Kaguyak Village
Organized Village of Kake
Kaktovik Village (aka Barter Island)
Village of Kalskag
Village of Kaltag
Native Village of Kanatak
Native Village of Karluk
Organized Village of Kasaan
Native Village of Kasigluk
Kenaitze Indian Tribe
Ketchikan Indian Corporation
Native Village of Kiana
King Island Native Community
King Salmon Tribe
Native Village of Kipnuk
Native Village of Kivalina
Klawock Cooperative Association
Native Village of Kluti Kaah (aka Copper Center)
Knik Tribe
Native Village of Kobuk
Kokhanok Village
Native Village of Kongiganak
Village of Kotlik
Native Village of Kotzebue
Native Village of Koyuk
Koyukuk Native Village
Organized Village of Kwethluk
Native Village of Kwigillingok
Native Village of Kwinhagak (aka Quinhagak)
Native Village of Larsen Bay
Levelock Village
Lesnoi Village (aka Woody Island)
Lime Village
Village of Lower Kalskag
Manley Hot Springs Village
Manokotak Village
Native Village of Marshall (aka Fortuna Ledge)
Native Village of Mary's Igloo
McGrath Native Village
Native Village of Mekoryuk
Mentasta Traditional Council
Metlakatla Indian Community, Annette Island Reserve
Native Village of Minto
Naknek Native Village
Native Village of Nanwalek (aka English Bay)
Native Village of Napaimute
Native Village of Napakiak
Native Village of Napaskiak
Native Village of Nelson Lagoon
Nenana Native Association
New Koliganek Village Council (formerly the Koliganek Village)
New Stuyahok Village
Newhalen Village
Newtok Village
Native Village of Nightmute
Nikolai Village
Native Village of Nikolski
Ninilchik Village
Native Village of Noatak
Nome Eskimo Community
Nondalton Village
Noorvik Native Community
Northway Village
Native Village of Nuiqsut (aka Nooiksut)
Nulato Village
Nunakauyarmiut Tribe (formerly the Native Village of Toksook Bay)
Native Village of Nunapitchuk
Village of Ohogamiut
Village of Old Harbor
Orutsararmuit Native Village (aka Bethel)
Oscarville Traditional Village
Native Village of Ouzinkie
Native Village of Paimiut
Pauloff Harbor Village
Pedro Bay Village
Native Village of Perryville
Petersburg Indian Association
Native Village of Pilot Point
Pilot Station Traditional Village
Native Village of Pitka's Point
Platinum Traditional Village
Native Village of Point Hope
Native Village of Point Lay
Native Village of Port Graham
Native Village of Port Heiden
Native Village of Port Lions
Portage Creek Village (aka Ohgsenakale)
Pribilof Islands Aleut Communities of St. Paul & St. George Islands
Qagan Tayagungin Tribe of Sand Point Village
Qawalangin Tribe of Unalaska
Rampart Village
Village of Red Devil
Native Village of Ruby
Saint George Island (See Pribilof Islands Aleut Communities of St. Paul & St. George Islands)
Native Village of Saint Michael
Saint Paul Island (See Pribilof Islands Aleut Communities of St. Paul & St. George Islands)
Village of Salamatoff
Native Village of Savoonga
Organized Village of Saxman
Native Village of Scammon Bay
Native Village of Selawik
Seldovia Village Tribe
Shageluk Native Village
Native Village of Shaktoolik
Native Village of Sheldon's Point
Native Village of Shishmaref
Shoonaq' Tribe of Kodiak
Native Village of Shungnak
Sitka Tribe of Alaska
Skagway Village
Village of Sleetmute
Village of Solomon
South Naknek Village
Stebbins Community Association
Native Village of Stevens
Village of Stony River
Takotna Village
Native Village of Tanacross
Native Village of Tanana
Native Village of Tatitlek
Native Village of Tazlina
Telida Village
Native Village of Teller
Native Village of Tetlin
Central Council of the Tlingit & Haida Indian Tribes
Traditional Village of Togiak
Tuluksak Native Community
Native Village of Tuntutuliak
Native Village of Tununak
Twin Hills Village
Native Village of Tyonek
Ugashik Village
Umkumiute Native Village
Native Village of Unalakleet
Native Village of Unga
Village of Venetie (See Native Village of Venetie Tribal Government)
Native Village of Venetie Tribal Government (Arctic Village and Village of Venetie)
Village of Wainwright
Native Village of Wales
Native Village of White Mountain
Wrangell Cooperative Association
Yakutat Tlingit Tribe

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Federal Register

Friday,
December 5, 2003

Part IV

Securities and Exchange Commission

17 CFR Parts 200, 201, and 240
Proposed Amendments to the Rules of Practice and Related Provisions; Proposed Rule

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 200, 201, and 240

[Release No. 34–48832; File No. S7–25–03]

RIN 3235–AI

Proposed Amendments to the Rules of Practice and Related Provisions

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule.

SUMMARY: The Securities and Exchange Commission ("Commission") is proposing for public comment amendments to its Rules of Practice and related provisions in light of the Sarbanes-Oxley Act of 2002. The Sarbanes-Oxley Act, among other things, authorizes the Commission to review disciplinary actions of the Public Company Accounting Oversight Board ("Board") and to create "Fair Funds" in Commission administrative proceedings. The Commission is also proposing for public comment amendments to other provisions of the Rules of Practice ("Rules") as a result of its experience with those rules and to correct certain citations. The proposed amendments are intended to enhance the transparency and facilitate parties' understanding of the applicability of the review process to Board proceedings, and to make practice under the rules easier and more efficient.

DATES: Comments must be submitted on or before January 5, 2004.

ADDRESSES: To help us process and review your comments efficiently, comments should be sent by hard copy or e-mail, but not by both methods.

Comments sent by hard copy should be submitted in triplicate to Jonathan G. Katz, Secretary, U.S. Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Alternatively, comments may be submitted electronically to the following e-mail address: *rule-comments@sec.gov.* All comment letters should refer to File No. S7–25–03. This file number should be included on the subject line if e-mail is used. All comment letters received will be available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549. Electronically submitted comment letters will be posted on the Commission's Internet Web site (*http://www.sec.gov*).[1]

[1] The Commission does not edit personal identifying information, such as names or electronic mail addresses, from electronic submissions. Interested persons submitting comments should submit only information that they wish to make publicly available.

FOR FURTHER INFORMATION CONTACT: Diane V. White, Office of the General Counsel, (202) 942–0950, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549–0208.

SUPPLEMENTARY INFORMATION: The Commission proposes to amend its Rules of Practice and related provisions. The amendments are being proposed in accordance with the provisions of the Sarbanes-Oxley Act of 2002 [2] and as a result of the Commission's experience with its existing rules. Additional amendments correct typographical errors and change certain citations to conform to the amended rules.[3]

I. Discussion

A. Proposed Amendments as a Result of the Sarbanes-Oxley Act

Section 107(c) of the Sarbanes-Oxley Act [4] authorizes the Commission to review disciplinary actions imposed by the Board and actions that result in the disapproval of registration of a public accounting firm.[5] Sections 105(d) and 107(c) of the Sarbanes-Oxley Act require the Board to give the Commission notice if it disapproves the registration of a public accounting firm or if it disciplines a registered public accounting firm or a person associated with a registered public accounting firm.

In creating its framework for Commission review of Board actions, section 107(c) of the Sarbanes-Oxley Act specifies that sections 19(d)(2) and 19(e)(1) of the Securities Exchange Act of 1934,[6] which govern Commission review of self-regulatory organization disciplinary proceedings, shall govern Commission review of final disciplinary sanctions imposed by the Board "as fully as if the Board were a self-regulatory organization and the Commission were the appropriate regulatory agency for such organization for purposes of those sections 19(d)(2) and 19(e)(1) * * *" The effect of this statutory provision is to make Board actions subject to Commission review under those Exchange Act provisions on the same basis as actions by existing self-regulatory organizations, and to make relevant rules under those provisions applicable to that review. Thus, the administrative structure currently used by the Commission in reviewing self-regulatory disciplinary organization proceedings, including relevant provisions of the Rules, is applicable to persons seeking review of Board actions.

The Commission nonetheless has determined to propose amendments to certain of its rules in order to enhance the transparency and facilitate parties' understanding of the applicability of the review process to Board proceedings. Certain of those changes to its Rules will include specific references to Commission review of Board actions and, for example, identify the process by which the Board will provide notice to the Commission of its actions. The Commission asks for comment as to whether adjustments to the existing rules, in addition to those the Commission proposes, are warranted in order to permit the Commission more effectively to exercise its statutory review authority with respect to Board proceedings.

1. Disapproval of Registration

Proposed Rule 19d–4(a) would add definitions. Proposed Rule 19d–4(b) would require the Board to file with the Commission and serve on the public accounting firm a notice of disapproval of registration within 30 days of the Board's action.[7] The notice would include the firm's name and last known address (as reflected in the Board's records) the basis for the Board's disapproval, a copy of the Board's written notice of disapproval, and such other information as the Board deems relevant.

2. Review of Disciplinary Sanctions

Proposed Rule 19d–4(c) would require the Board to file and serve a notice of any disciplinary sanction, other than a disapproval of registration, within 30 days of the Board's action.[8] The notice would provide the name and last address (as reflected in the Board's records) of the associated person or registered public accounting firm

[2] 15 U.S.C. 7201 *et seq.*

[3] Any necessary delegations will be adopted when the rules become final.

[4] 15 U.S.C. 7217(c).

[5] Under section 102(c) of the Sarbanes-Oxley Act, 15 U.S.C. 7212(c), the Board's written notice of disapproval of a complete application for registration as a registered public accounting firm is treated as a "disciplinary sanction" for purposes of sections 105(d) and 107(c) of that act, 15 U.S.C. 7215(d), 7217(c).

[6] 15 U.S.C. 78s(d)(2), 78s(e)(1).

[7] The thirty-day period for filing is consistent with the thirty days provided in section 19(d)(2) of the Exchange Act for the filing of an application for review by a person aggrieved by certain actions taken by a self-regulatory organization. The Commission requests comment as to whether this period is appropriate in the context of review of actions by the Board, or whether a longer or shorter period would be preferable.

[8] Comment is requested as to whether the thirty-day period is appropriate in this context, or whether a longer or shorter period would be preferable.

disciplined and a description of the acts or omissions upon which the sanction is based. The notice would also specify the sanction imposed, give the effective date of the sanction, and include a statement of the reasons for the sanction or a copy of the Board's statement justifying the sanction, as well as such other information as the Board deems relevant.

Proposed Rule 440(a) would permit any person aggrieved by a final disciplinary sanction (including disapproval of a completed application for registration of a public accounting firm) imposed by the Board to file an application for review with the Commission. Proposed Rule 440(b) would require that any application be filed within 30 days after the Board's notice under proposed Rule 19d–4 is received by the aggrieved person.[9] The application would identify the determination complained of and would contain a brief statement of the alleged errors in the determination. The application would be accompanied by a notice of appearance by counsel, if any, filed in accordance with Rule 102(d). Under proposed Rule 440(d), the Board would have fourteen days after receipt of the application to certify the record to the Commission and serve one copy of the record index on each party.

3. Stay of Board Action

In accordance with section 105(e)(1) of the Sarbanes-Oxley Act, [10] proposed Rule 440(c) would provide that filing of an application for review acts as a stay of the Board's action unless the Commission otherwise orders. Proposed Rule 401(e)(1) would permit any person aggrieved by the automatic stay to ask the Commission to lift the stay. The Commission may, in any event, lift the stay on its own motion. The Commission requests comment as to whether other persons should be permitted to request that the stay be lifted.

4. Summary Action; Expedition

As permitted under section 105(e)(1) of the Sarbanes-Oxley Act, proposed Rule 401(e)(2) would provide that the Commission may act summarily, without notice and opportunity for hearing. The Commission may also expedite consideration of a motion to lift a stay of Board action to the extent expedition is consistent with the Commission's other responsibilities. If the consideration of a motion to lift is expedited, proposed Rule 401(e)(3) would provide that persons opposing the lifting of the stay may file an opposition within two days of service of the motion to lift unless the Commission orders a different period. [11]

5. Review on Motion of the Commission

Proposed Rule 441(a) would permit the Commission to review a Board disciplinary sanction on its own motion. The Commission proposes that it would determine whether to take review of a Board disciplinary sanction within 40 days after the Board files its notice of the action. [12] Proposed Rule 441(b) permits the Commission to give notice to the parties that it wishes to raise any material matter, whether or not the parties previously raised that matter. The Commission may provide an opportunity for supplemental briefing if the Commission believes that such briefing would significantly aid its decisional process.

6. Amendments to Existing Rules

The Commission is also proposing amendments to the following Rules of Practice with respect to the review proceedings created by the Sarbanes-Oxley Act:

- The definition of "proceeding" in Rule 101(a)(9) (Definitions) would be amended to include review of Board disciplinary sanctions under proposed Rule 440.
- The Commission would amend Rule 202(a) (Specification of procedures by parties in certain proceedings) and Rule 210 (Parties, limited participants and amici curiae), which permits intervention and leave to participate on a limited basis, to exclude review of Board disciplinary sanctions under proposed Rule 440. These Rules currently do not apply to Commission enforcement or disciplinary proceedings or review of determinations by self-regulatory organizations. The Commission asks for comment as to whether proposed Rules 440 and 441 would provide sufficient procedures for review of Board disciplinary sanctions, or whether intervention or limited participation would be appropriate in Commission review of Board disciplinary sanctions.
- Rule 450(a)(2) (Briefs filed with the Commission) would be amended to provide for briefs to be filed in the Commission's review of final disciplinary sanctions imposed by the Board. Under the proposed Rule, the Commission would issue a briefing schedule order within 21 days (or such longer time as provided by the Commission) following its receipt of the Board's index of the record of the Board's determination.
- The Commission would define the contents of the record before it in its review of Board action to include the record certified to the Commission by the Board, any application for review, and any submissions made to the Commission, by adding Rule 460(a)(3) (Record before the Commission).

The Commission would also revise its *ex parte* rule, 17 CFR 200.111 (Prohibitions; application, definitions), to provide that, in proceedings to review Board action, the prohibitions against *ex parte* communications would commence when a copy of the application for review of the Board's action is served on the Secretary to the Commission.

B. Fair Funds and Disgorgement

Section 308(a) of the Sarbanes-Oxley Act [13] provides that, in a Commission administrative proceeding where the Commission or a hearing officer enters an order requiring disgorgement from a respondent for a violation of the securities laws, or the respondent agrees in settlement to payment of such disgorgement, any civil penalty also ordered against that respondent may be added to the disgorgement funds to create a "Fair Fund" to be disbursed by the Commission for the benefit of the victims of such violation. Section 308(b) of the Sarbanes-Oxley Act [14] authorizes the Commission to accept gifts or bequests to the United States of real and personal property for deposit in a Fair Fund.

Administration of, and distribution to investors under, Fair Funds and disgorgement plans, occurs after the conclusion of the principal action against a respondent. The functions involved are administrative, and are not subject to provisions such as Rule 120 of the Rules of Practice, the *ex parte* communication rule in subpart D of the Rules of Practice. Recognizing this, the Commission proposes to remove from subpart D of the Rules of Practice Rules 610 through 620, which relate to the

[9] Comment is requested as to whether the thirty-day period is appropriate in this context, or whether a longer or shorter period would be preferable.

[10] 15 U.S.C. 7215(c)(1).

[11] The two-day period is modeled after current Rule 401(d)(3), which permits persons opposing a motion to the Commission for a stay to file a statement in opposition within two days of service of the motion. Comment is requested as to whether this period is appropriate, or whether a longer or shorter period would be preferable.

[12] Rule 421(a) permits the Commission to order review of certain determinations by self-regulatory organization within 40 days after notice thereof is filed with the Commission. The Commission requests comment as to whether this period is appropriate, or whether a longer or shorter period would be preferable.

[13] 15 U.S.C. 7246(a).

[14] 15 U.S.C. 7246(b).

development, submission, approval, and administration of orders of disgorgement, and to the right to challenge orders of disgorgement, and to include them in a new subpart F.

Proposed Rule 1100 would state that the Commission is authorized to create a Fair Fund in any administrative proceeding in which a final order is entered against a respondent requiring disgorgement and payment of a civil money penalty. The Commission may also create a Fair Fund if it approves a settlement of an administrative proceeding that provides for a respondent's payment of disgorgement and a civil money penalty. The proposed Rule would also explain that the Commission may add to the Fair Fund any property received in accordance with section 308(b) of the Sarbanes-Oxley Act.[15]

Certain requirements for Fair Funds would suggest that the Commission's Rules should make some distinctions between Fair Funds and disgorgement funds. For example, Fair Funds must be disbursed to the investors harmed by the securities law violations at issue. The purpose of disgorgement is to require a wrong-doer to pay back the ill-gotten gains that the wrong-doer obtained by virtue of his or her violation. Thus, the Commission can order a wrong-doer to disgorge ill-gotten gains whether or not investors suffered any damages as a result of the violation.[16] Where there are no identifiable victims of a violation, the Commission proposes to permit that the disgorgement and civil money penalty amounts be paid to the United States Treasury. The Commission asks for comment on this proposal.

In other respects, the Commission believes that the requirements for Fair Funds and disgorgement funds should be similar. In some cases, the Commission may conclude that it is in the public interest to impose a civil money penalty and order disgorgement even though the relative value of the ill-gotten gains and the number of potential claimants would result in high administrative costs and *de minimis* distributions to individual investors. Under such circumstances, the Commission would continue its practice of ordering that the disgorgement and civil penalty amount be paid directly to the United States Treasury.

Current Rule 611(b) provides that the Commission may authorize payment of disgorgement funds to any court registry or court-appointed receiver in any case that alleges the same or similar facts against the respondent. The Commission proposes to continue this authority with respect to disgorgement funds and Fair Funds in proposed Rule 1102(a).

The proposed Rules would permit either the Commission or the hearing officer, as appropriate, to oversee the administration of both disgorgement funds and Fair Funds.

Proposed Rule 1101(a) would continue the practice under current Rule 610 of allowing the Commission or the hearing officer at any time to order a party to submit a plan for the administration of either a Fair Fund or a disgorgement fund. Unless ordered otherwise, the Division of Enforcement would be required to submit such a plan within 60 days after the respondent has tendered the funds or other assets pursuant to the Commission's order to pay disgorgement and, if applicable, a civil money penalty.

Proposed Rule 1101(b) would extend the requirements of current Rule 611(a) to require that both Fair Fund or disgorgement fund plans provide for: receiving and holding additional funds, including funds received under section 308(b) of the Sarbanes-Oxley Act; identifying categories of persons who are potentially eligible to receive funds; providing notice to potentially eligible persons of the fund's existence and their potential eligibility; handling claims; termination of the fund and disposition of any remaining assets; administration of the fund; and such other provisions as the Commission or hearing officer deem appropriate.

As discussed above, proposed Rule 1102(b) would continue to permit the Commission or the hearing officer to order that funds be paid directly to the United States Treasury if the cost of administering the fund and the relative value of the disgorgement fund, together with any civil money penalty, and the number of potential claimants would not justify distribution of the funds.

Proposed Rule 1103 would amend and renumber current Rule 612 to require that notice of either a proposed disgorgement plan or a proposed Fair Fund plan be published in the *SEC News Digest*, the *SEC Docket*, and such other publications as the Commission or the hearing officer directs. The notice would specify how to obtain copies of the proposed plan and inform those desiring to comment to submit their written views to the Commission. The Commission also proposes posting notice of a proposed plan on its website. The Commission seeks comment as to how website posting can be done most effectively.

Proposed Rule 1104 would replace and renumber current Rule 613 to provide that, at any time after 30 days following publication of the notice of a proposed disgorgement plan or a proposed Fair Fund plan, the Commission or the hearing officer may approve, modify, or disapprove the proposed plan. The Commission or the hearing officer may order publication of a substantially modified plan prior to adoption.

Proposed Rule 1105 would replace and amend current Rule 614 to provide for administration of Fair Funds, as well as disgorgement funds. The proposed Rule would continue to permit the Commission or hearing officer to appoint any person, including a Commission employee, as fund administrator. Either the Commission or the hearing officer would be able to remove an administrator.

An administrator who is not a Commission employee must post a bond in an amount approved by the Commission. An administrator who is not a Commission employee may receive a fee for reasonable services, subject to approval by the Commission or the hearing officer. Commission employees may not receive such fees. Fees and expenses from fund administration would be paid first from interest and then, if the interest were insufficient, from corpus. The administrator would give periodic accountings, as ordered, and submit a final accounting prior to his or her discharge and cancellation of any bond.

Current Rule 614(a) would be renumbered Rule 1105(b). The Rule currently provides that a respondent may be required or permitted to administer a plan of disgorgement, subject to terms the Commission or the hearing officer deems appropriate. At this time, the Commission does not propose to extend this provision to Fair Funds although it invites comment on this issue. A Fair Fund would include a civil penalty and might include funds conveyed to the United States pursuant to section 308(b) of the Sarbanes-Oxley Act.

Proposed Rule 1106 would renumber Rule 620 to make clear that no person would be granted the right to intervene or appear in a proceeding to challenge an order of disgorgement, an order creating a Fair Fund, an order approving, modifying, or disapproving a disgorgement plan or a Fair Fund plan, or any determination relating to a plan based solely upon the person's eligibility or potential eligibility to participate in a fund or based on a private right of action. Under the proposed Rule, as is the case under the existing disgorgement Rule, such person's participation would be limited to submitting comments in accordance with proposed Rule 1103.

[15] Section 308(b) of the Sarbanes-Oxley Act provides that the Commission may accept, hold, and utilize gifts of property for a Fair Fund. Gifts of property received pursuant to this section may be deposited only in a Fair Fund.

[16] *See e.g., SEC v. First City Financial Corp.*, 890 F. 2d 1215, 1230 (D.C. Cir. 1989) (defendant who violated Exchange Act section 13 required to disgorge although harm was to the market as a whole, not to particular persons).

C. Other Proposed Amendments

In 1995, the Commission substantially amended its Rules of Practice. After several years of experience with these Rules, the Commission believes that certain changes to the Rules would make practice under those Rules easier and more efficient. The Commission invites comments with respect to these proposed modifications.

1. The existing Rules do not make explicit the Commission's authority to order a variation from the rules governing proceedings before it. The Commission is proposing to include in Rule 100 a new paragraph (c) that would specify that the Commission may by order direct, in a particular proceeding, that an alternative procedure shall apply or that compliance with an otherwise applicable rule is unnecessary, upon its determination that to do so would serve the interests of justice and not result in prejudice to any party to the proceeding.

2. Under section 11A of the Exchange Act and the rules thereunder, the Commission is authorized to adjudicate certain disputes involving registered securities information processors, national market system plans, or transaction reporting plans.[17] In addition to the inclusion of review of Board disciplinary sanctions discussed above, the Commission proposes to amend Rule 101(a)(9) to expand the definition of "proceedings" to make clear that the Rules of Practice are applicable to such adjudications.[18]

3. The Commission currently requires counsel to file a motion to withdraw as counsel. Many agencies instead permit counsel to file a notice of withdrawal, which does not require agency action but informs the agency and parties of counsel's withdrawal. The Commission believes that a notice would preserve the intended benefits of the existing requirement by providing timely notice to both the Commission and the parties of the withdrawal. It would also eliminate the need for the Commission or the hearing officer to rule on a motion for withdrawal.

The proposed amendment of Rule 102(d)(4) would require any person seeking to withdraw his or her appearance in a representative capacity to file a notice of withdrawal with the Commission or the hearing officer, stating the name, address, and telephone number of the withdrawing representative; the name, address, and telephone number of the person for whom the appearance was made; and the effective date of the withdrawal. If the person seeking to withdraw knows the name, address, and telephone number of the new representative, or knows that the person for whom the appearance was made intends to represent him- or herself, that information would also have to be included in the notice. The amended Rule would require that notice be served on the parties in accordance with Rule 150, and that the notice be filed at least five days before the proposed effective date of the withdrawal.

4. The Commission is considering a proposed amendment that would specifically recognize the authority of hearing officers to correct manifest errors of fact in initial decisions. The Commission has found that some appeals to it could be streamlined if certain issues were addressed first to the hearing officer. The proposed amendment would add to the enumeration of powers of hearing officers in Rule 111 the authority to consider and rule upon a motion to correct a manifest error of fact, provided that such a motion is filed within ten days of the initial decision.

5. Currently, Rule 141(a)(3) requires the Secretary to "place in the record of the proceeding a certificate of service" of orders instituting proceedings. The proposed amendment of the Rule would delete this requirement, substituting a requirement that the Secretary "maintain a record of service on parties." The amendment would allow the Secretary to maintain computerized rather than hard copy records of service.

6. Current Rule 141(a)(3) also requires that, if service is effected by mail, the certificate "shall be accompanied by a confirmation of receipt or of attempted delivery," which is also to be maintained in the record of the proceeding. The proposed amendment of Rule 141(a)(3) would delete the requirement that such documents be retained in the record of the proceeding, allowing the Secretary to retain all the confirmation or records of attempted delivery in a single file. The Commission believes that this form of recordkeeping will permit easier retrieval of these documents.

7. Current Rule 141(b) provides for the service of written orders or decisions by the Commission or a hearing officer, other than an order instituting proceedings, to be served by any method of service authorized under Rule 141(a) or Rule 150(c). The proposed amendment of Rule 150(c) discussed below would, among other things, eliminate the requirement that parties seeking to serve each other by facsimile transmission agree to do so in writing. The Commission proposes to retain the requirement of a written agreement as a precondition to service of orders and decisions by facsimile. The proposed amendment of Rule 141(b) would replace the reference to Rule 150(c) with a reference to Rules 150(c)(1)–(3).

8. Consistent with Rule 5(b)(2)(D) of the Federal Rules of Civil Procedure, existing Rule 150(c)(4), which governs service of documents on parties by facsimile transmission, requires parties who choose to serve each other by facsimile to agree to do so in a signed writing. The existing Rule also requires that receipt of each document served by facsimile be confirmed by a manually signed receipt. The proposed amendment would delete both of these requirements. It would, however, allow a party to decline to receive service by facsimile. Such a declination would have to be made in writing and served in accordance with Rule 150. The proposed Rule would also require that facsimile transmissions be made at a time that results in their receipt during the Commission's business hours as defined in Rule 104.

The Commission's experience shows that in many instances parties are serving one another by facsimile but are not entering into the agreements or confirming by manually signed receipt. Under the new Rule, parties who choose service by facsimile would be required to provide the Commission and the parties with notice of the facsimile machine telephone number to be used and the hours of facsimile machine operation.

[17] *See* Exchange Act section 11A(b)(5) (requiring Commission to review prohibitions or limitations of access to services offered by registered securities information processors); Exchange Act Rule 11Aa3–2(e) (giving Commission discretion to entertain appeals from actions under national market system plans); Exchange Act Rule 11Aa3–1(f) (giving Commission discretion to entertain appeals in connection with implementation or operation of transaction reporting plans).

[18] Because the current Rules of Practice do not specify a particular procedure for proceedings under Exchange Act section 11A, the Commission has been required to specify by order the procedural rules that are to be employed in section 11A review proceedings. *See, e.g., The Cincinnati Stock Exchange*, Exchange Act Rel. No. 43316 (Sept. 21, 2000), 73 SEC Docket 1006 (Order Accepting Jurisdiction, Establishing Procedures, and Ordering Briefs).

Proposed Rule 101(a)(12) would also define the term "Board" to refer to the Public Company Accounting Oversight Board.

The Commission solicits views about what might constitute sufficient evidence of completion of facsimile service. *See* current Rule 150(d). The Commission also seeks comment as to whether parties making service by facsimile, or the Commission serving orders and decisions by facsimile, should be required to transmit a non-facsimile original contemporaneously with service by facsimile. The current Rule allows parties to specify in the written agreement providing for service by facsimile whether a non-facsimile document is to be provided.

9. Rule 151 currently does not permit filing of documents with the Commission by facsimile transmission. The proposed amendment would allow such filing. The proposed amendment makes clear, however, that one who seeks to file by facsimile assumes the risk that the transmission will not be completed in a timely or legible fashion. As proposed, Rule 151 would require that parties filing by facsimile should be required to transmit a non-facsimile original contemporaneously. At present, the Commission receives a hard copy of filings to satisfy Rule 153(a), which requires that filings be signed by at least one counsel of record, or if a party is acting as his or her own counsel, by the party. The Commission requests comments as to how the signature requirement should be implemented if filings are by facsimile and if no hard copy original is required to be filed.

In addition, the Commission requests comments as to whether filing by e-mail should be permitted. If such filing is permitted, the Commission requests comments as to whether the requirements applicable to filing by facsimile transmission would also be appropriate in that context.

Current Rule 151 requires that papers required to be served on a party shall be filed with the Commission "at the time of service or promptly thereafter." To conform with other Rules, the proposed amendment would require filing with the Commission "contemporaneously" with service on a party.

10. Rule 152(a)(2) currently allows the use of either 10-point or 12-point type in papers filed in Commission proceedings. To enhance the legibility of filings, the proposed amendment would require the use of 12-point or larger type.

11. Current Rule 154 limits a brief in support of or in opposition to a motion to 10 pages, exclusive of pages containing any table of contents, table of authorities, and/or addendum. The Commission has received filings by parties who attempt to circumvent this page limitation by filing 10-page briefs and extremely lengthy motions. The proposed amendment seeks to establish a combined page limit of 15 pages for the motion and brief.

12. Current Rule 151 provides that persons must file papers with the Commission within the time limit for filing. Rule 160 gives an additional three days for service by mail. Questions have been raised about whether a person receives three additional days to respond if service is made by mail when the Commission's or hearing officer's order specifies a date certain for filing a response. The proposed amendment to Rule 160 would make clear that the person does not receive additional time. If a party requires a short extension, the Commission believes that the party could request that extension under Rule 161.

13. Rule 201 currently provides for the consolidation of proceedings. The proposed amendment would permit the Commission also to order any proceeding severed with respect to some or all of the parties. The proposed amendment would provide that motions to sever must be addressed to the Commission and represent that a settlement offer has been submitted to the Secretary for Commission consideration, or otherwise show good cause. The Commission asks for comment as to whether the law judges should have the power to sever parties from a proceeding.

14. Current Rule 230(a)(1)(vi) requires the Division of Enforcement to make available for inspection and copying by any party any final examination or inspection reports prepared by the Office of Compliance Inspections and Examinations, the Division of Market Regulation, or the Division of Investment Management that have been obtained by the Division of Enforcement prior to the institution of the proceedings, in connection with the investigation leading to the Division of Enforcement's recommendation to institute proceedings. The proposed amendment would state that such reports must be produced only if the Division intends either to introduce them into evidence, or to use them to refresh the recollection of any witness.

Examined parties receive notice of examination findings in the examination process, and do not require notice through the Rules of Practice. Therefore, in order to protect the confidentiality of examination reports, the proposed amendment would limit production of examination and inspection reports to circumstances where the Division intends to introduce the report into evidence, either in reliance on the report to prove its case, or to refresh the recollection of any witness.

The proposed amendment would not alter the requirement that the Division produce documents that contain material exculpatory evidence as required by *Brady* v. *Maryland*.[19]

Current Rule 230(c) permits the hearing officer to require the Division of Enforcement to submit for review a list of withheld documents. The proposed amendment would provide that when similar documents are withheld, those documents may be identified by category instead of individual document. Under the proposed amendment, the hearing officer would retain discretion to determine when an identification by category is insufficient. The proposed amendment would also correct typographical errors in the cross-reference to paragraphs pursuant to which documents may be withheld.

15. Current Rule 231(a), relating to production of witness statements, refers to "any statement * * * that would be required to be produced by the Jencks Act, 18 U.S.C. 3500." There has been some question as to what constitutes a "statement" under this provision. The proposed change would make clear that the Commission will rely on the definition of "statement" contained in the Jencks Act [20] in applying this Rule.

16. Current Rule 232(e)(1) allows only the person to whom a subpoena is directed or a person who is an owner, creator, or the subject of the documents to be produced pursuant to a subpoena, to oppose the subpoena. The proposed amendment would add that any party may also oppose a subpoena.

Subpoenas directed at third party witnesses can be overly broad. Some recipients of such subpoenas may lack the sophistication or resources to dispute the scope of the subpoenas, and it would be unfair to require them to make filings in opposition. The proposed amendment would allow the Division of Enforcement, or any other party, to present arguments about whether subpoenas to any witnesses are unreasonable, oppressive, or unduly burdensome.

17. Current Rule 235(a) provides that a hearing officer may grant a motion to introduce a prior sworn statement of a witness who is out of the United States, unless it appears that the absence of the witness was procured by the party offering the prior sworn statement. Current Rule 233, however, which sets forth the basis for ordering a deposition, does not permit the taking of a deposition when it is anticipated that a witness will be absent from the United States. Since depositions can be used only to preserve testimony of a witness who is unlikely to attend the hearing, the proposed revision of Rule 233 would allow the taking of a deposition of a witness currently within the United States who is expected to be outside the United States so long as the deposition will serve the interests of justice and it appears that the party requesting the deposition did not procure the witness's absence.

[19] 373 U.S. 83, 87 (1963).

[20] 18 U.S.C. 3500(e).

18. Rule 350(b) currently requires the Secretary to retain documents that are marked for identification but not offered into evidence. There does not seem to be any reason to keep documents that the party did not seek to introduce, and the proposed amendment would delete that requirement. The Secretary would continue to retain documents offered into evidence but excluded from the record so that, in the event of an objection, the Commission could consider any arguments that the documents should be admitted.

19. Proposed Rule 351(a) deletes a reference to a practice abandoned several years ago whereby the interested division took custody of the exhibits after a hearing and was responsible for having them sent to the Secretary. Currently the court reporter takes custody of exhibits.

20. Current Rule 360(d)(1) provides that an initial decision of a hearing officer becomes the final decision of the Commission unless a party or aggrieved person entitled to review files a petition for review, or the Commission orders review on its own initiative. Current Rule 360(e) further provides that, if an initial decision becomes the final decision of the Commission as to a party, the Commission shall issue an order that the decision has become final as to that party. The interplay of these Rules appears to have engendered confusion as to when a decision is final and enforceable. The proposed amendments would renumber paragraph 360(d)(2) as (d)(1) and combine paragraphs (d)(1) and (e) as (d)(2), clarifying that a decision becomes final upon the issuance of a finality order by the Commission.

21. Current Rule 400 provides for the Commission to grant interlocutory review only in "extraordinary circumstances." The proposed amendment would instruct the parties that petitions for interlocutory review are "disfavored," making clear that such petitions rarely would be granted. The proposed amendment would recognize, however, that the Commission retains discretion to undertake such review on its own motion at any time.

22. A proposed amendment to Rules 400 and 430 would provide that certain matters are subject to interlocutory review under Rule 400, not Rule 430. Rule 430 permits review of matters delegated to the staff. Under 17 CFR 200.30–9 and 30–10, certain functions are delegated to the administrative law judges and the chief administrative law judge. As the Rules are currently drafted, such determinations arguably might be reviewable under Rule 430 although the determination would not merit interlocutory review under Rule 400. The amendment would make clear that Rule 400 is the sole route for interlocutory review of determinations by a hearing officer.

23. Current Rule 401(d)(1) provides that any person aggrieved by an action by a self-regulatory organization for which the Commission is the appropriate review agency, for which action review may be sought pursuant to Rule 420, may seek a stay of that action. The proposed amendment would clarify that a stay can be sought only at the time an application for review is filed or thereafter. Filing an application for review brings the action before the Commission. Since the proposed amendment of Rule 420(c) reduces the content requirements for an application for review, the requirement that an application be filed when or before a stay is sought would not impose a significant delay.

24. The Commission requests comment on the proposed amendment of Rule 410(b), which would permit an opposing party to file a cross-petition for review within ten days from the filing of a petition for review, making it unnecessary for parties to file protective defensive petitions for review.

Another proposed amendment would delete Rule 410(d), thus abolishing the opposition to the petition for review. The Commission requests comment on the proposal to abolish the petition for review. In the Commission's experience, the utility of such oppositions has been quite limited, given that the Commission has long had a policy of granting petitions for review, believing that there is a benefit to Commission review when a party takes exception to a decision. Moreover, the Commission believes that a motion for summary affirmance would permit the Commission to dispose of matters suited to more abbreviated review.

25. The proposed amendment of Rule 411(e) would provide a 21-day time limit for filing a motion for summary affirmance. The proposed amendment would also set forth standards both for granting and for denying summary affirmance. Summary affirmance would be granted if the Commission finds that no issue raised in the initial decision warrants consideration by the Commission of further oral or written argument. Summary affirmance would be denied upon a reasonable showing that a prejudicial error was committed in the conduct of the proceeding or that the decision embodies an exercise of discretion or decision of law or policy that is important and that the Commission should review.

26. Section 19(d) of the Exchange Act requires a person who appeals from self-regulatory organization disciplinary action to do so within 30 days "or within such longer period as" the Commission "may determine." The proposed amendment to Rule 420(b) would make clear that an appeal from self-regulatory organization action must be filed within 30 days, absent a showing of extraordinary circumstances, and will not be extended by the Commission under Rule 161. This standard is consistent with prior Commission precedent.[21]

Current Rule 420 contains language that might suggest that the applicant's address be used to serve only the record index. The proposed amendment would provide that the applicant identify where he or she may be served for all purposes.

27. Rule 450(c), which sets limits on the page length of briefs, would be amended to limit instead the number of words in briefs. The proposed word limits—14,000 for principal briefs and 7,000 for any reply brief—are based on Rule 32 of the Federal Rules of Appellate Procedure. The proposed amendment would also state that motions to file oversized briefs are disfavored. In exceptional cases, however, where more pages may be needed to address the issues—for example, where the Division of Enforcement must address arguments by multiple respondents—the Commission may, upon motion, allow longer filings.

Except when a principal brief does not exceed 30 pages in length, or a reply brief does not exceed 15 pages in length, the proposed amendment would require the attorney filing the brief (or an unrepresented party) to certify that the brief complies with the length limitation and to state the number of words in the brief. The proposed amendment would permit the party certifying the length of the brief to rely on the word count of the word processing system used to prepare the brief.

[21] *See, e.g., Lance E. Van Alstyne*, 53 S.E.C. 1093, 1099 (1998) (Commission will not authorize late filing of appeals by self-regulatory organizations absent extraordinary circumstances).

The Commission has received briefs which sought to incorporate by reference briefs filed before the hearing officer in the proceeding on appeal. Such incorporation by reference, if allowed, would erode the page-limit requirements of Rule 450(c). The proposed amendment provides that pleadings incorporated by reference will be included in determining the word count of briefs. The amendment is intended to promote adherence to the length limitations of Rule 450(c) and to encourage parties to exercise judgment in selecting the arguments that best advance their positions rather than simply repeating previously formulated contentions.

28. The current Rules make no provision for the use of visual aids at oral argument. The proposed amendment of Rule 451(b) would prohibit the use of visual aids unless copies are provided to the Commission and all parties at least five business days before the argument is to be held.[22] The Commission requests comment as to whether five business days provides sufficient time for the parties to prepare adequate responses to proposed visual aids.

29. Current Rule 360(a)(2) directs the hearing officer to issue an initial decision within the time period specified in the order instituting proceedings. To address the hearing officer's inability to comply with this directive where a proceeding is stayed by order of the hearing officer or the Commission under Rule 210(c)(3) because a criminal investigation or prosecution is pending, the proposed amendment of Rule 360(a)(2) would specify that, if a proceeding is stayed under the authority of Rule 210(c)(3), the specified time period for issuance of the initial decision, as well as any other time limits established in orders issued by the hearing officer under Rule 360(a)(2), will be automatically tolled during the period in which the stay is in effect.

30. Rule 360(d)(2) provides that the initial decision shall not become final as to a party or person if a timely petition for review is filed by that party or person. The proposed amendment would add the timely filing, by a party or an aggrieved person entitled to review, of a motion to correct an initial decision to the hearing officer as an event that prevents the initial decision from becoming the final decision of the Commission as to that party or person until the hearing officer has decided the motion. The proposed amendment would also make conforming changes to Rule 360(b), which specifies that an initial decision shall include a statement reflecting the provisions of Rule 360(d).

A proposed amendment of Rule 410(b) would provide that the time to file a petition for review is stayed until 21 days after resolution of any motion to correct an initial decision filed before the hearing officer so that, while a motion to correct is pending, a party need not file a petition for review to preserve its appeal rights.

Current Rule 470 specifies a 15-page limit for a motion for reconsideration, rather than the ten pages permitted for other motions. There does not seem to be any reason for treating motions for reconsideration differently from other motions. The amendment proposes to limit the party seeking reconsideration to the same number of pages and the same format used for other motions under the Rules of Practice. The Commission requests comment as to whether motions for reconsideration should be subject to different requirements from other motions, and if so, what differences would be appropriate.

31. The proposed amendment of Rule 601 would codify existing practice for payment of disgorgement, interest, and penalties. The proposal standardizes the language currently used by hearing officers in initial decisions and the Commission in its orders, as follows:

> (c) *Method of making payment.* Payment shall be made by United States postal money order, wire transfer, certified check, bank cashier's check, or bank money order made payable to the Securities and Exchange Commission. The payment shall be mailed or delivered to the Office of Financial Management of the Commission. Payment shall be accompanied by a letter that identifies the name and number of the case and the name of the respondent making payment. A copy of the letter and the instrument of payment shall be sent to counsel for the Division of Enforcement.

II. Request for Public Comments

We request and encourage any interested person to submit comments regarding: (1) The proposed changes that are the subject of this release, (2) additional or different changes, or (3) other matters that may have an effect on the proposals contained in this release.

III. Administrative Procedure Act, Regulatory Flexibility Act, and Paperwork Reduction Act

The Commission finds, in accordance with section 533(b)(3)(A) of the Administrative Procedure Act,[23] that this revision relates solely to agency organization, procedure, or practice. It is therefore not subject to the provisions of the Administrative Procedure Act requiring notice, opportunity for public comment, and publication. The Regulatory Flexibility Act[24] therefore does not apply. Similarly, because these rules relate to "agency organization, procedure or practice that does not substantially affect the rights or obligations of non-agency parties," the Commission is not soliciting comment for purposes of the Small Business Regulatory Enforcement Fairness Act.[25] Nonetheless, the Commission has determined that it would be useful to publish these proposed rules for notice and comment, before adoption.[26]

These rules do not contain any collection of information requirements as defined by the Paperwork Reduction Act of 1995, as amended.[27]

IV. Costs and Benefits of the Proposed Rules and Amendments

The Sarbanes-Oxley Act of 2002 authorizes the Commission to review disciplinary actions by the Public Company Accounting Oversight Board as well as actions resulting in disapproval of registration of public accounting firms. In response, the Commission proposes to revise certain of its rules in order to enhance the transparency and facilitate parties' understanding of the applicability of the review process to Board proceedings. The Sarbanes-Oxley Act also provides that where the Commission or a hearing officer in a Commission administrative proceeding enters an order requiring disgorgement and a civil money penalty, the Commission may create a "Fair Fund" combining the disgorgement and the civil money penalty to be disbursed for the benefit of the victims of the securities law violations at issue in the proceeding. In response, the Commission proposes regulatory provisions for the submission and administration of Fair Fund plans and disgorgement plans. The Commission also proposes to take this opportunity to amend other provisions of the rules.

Taken as a whole, the Commission's Rules of Practice ("Rules") create governmental review and remedial processes. That is, they are procedural and administrative in nature. The benefits to the parties are the familiar benefits of due process: notice, opportunity to be heard, efficiency and fairness. The cost of these processes, on the other hand, falls largely on the oversight bodies.

For purposes of cost/benefit analysis, the processes created by the regulatory provisions proposed in this release, given their procedural nature, might best be viewed as a whole. Nonetheless, to the extent possible, specific benefits and costs that can be more narrowly associated with separate provisions are identified below. However, because there are so many provisions, and because the costs tend to be primarily governmental, we do not provide separate sections for our respective cost and benefit analyses. Rather, we simply identify each provision proposed and discuss any benefits and costs that may be associated with it beyond the more general points summarized above.

Proposed Rule 19d–4(b) requires the Board to file with the Commission and serve on the public accounting firm a notice of disapproval of registration within 30 days of the Board's action. Proposed Rule 19d–4(c) imposes on the Board a similar filing and service requirement for notices of any disciplinary sanction other than a disapproval of registration. Timely notice is a fundamental aspect of due process. It benefits those who receive notice by allowing them to plan and take action in light of the Board's findings. Timely filing with the Commission lets the Commission know of the conclusion of Board proceedings so that it can exert oversight over the quality and fairness of those proceedings, which benefits parties to the proceedings as well as the general public. These rules would impose a small administrative cost on the Board.

Proposed Rules 440 and 441 provide for Commission review of Board actions. Proposed Rule 440 allows review upon application of a person aggrieved by a final Board disciplinary sanction, including disapproval of a completed application for registration of a public accounting firm, and proposed Rule 441 permits Commission review of Board disciplinary sanctions upon the Commission's own motion. The Rules pertain to the review mechanism required by the Sarbanes-Oxley Act, informing those upon whom Board sanctions are imposed of the option of Commission review and instructing them about procedures involved in initiating the review process.

Commission review of Board findings benefits parties to Board proceedings (and, to a lesser extent, the general public) by protecting against arbitrary, capricious, or otherwise unlawful treatment. Review also allows the Commission to exercise a check on, and protect the public interest in, the quality and consistency of Board findings.

Parties involved in review proceedings will incur legal and other costs. Review upon application by a person aggrieved, under proposed Rule 440, is optional. Thus, a party would only incur these costs if it expected a net benefit from the review process. In the case of review upon the Commission's own motion under proposed Rule 441, however, the parties involved might otherwise have chosen to avoid incurring the costs.

In accordance with section 105(e)(1) of the Sarbanes-Oxley Act, proposed Rule 440(c) provides that filing an application for review with the Commission acts as a stay of the Board's action unless the Commission orders otherwise. Proposed Rule 401(e) allows (1) persons aggrieved by such an automatic stay to ask the Commission to lift the stay; (2) the Commission to lift such a stay summarily, without notice and opportunity for a hearing; and (3) persons opposing the lifting of such a stay to file an opposition.

Rule 440(c) benefits the party upon whom Board sanctions have been imposed by allowing that party an opportunity to be heard in the review process before the Board's sanctions take effect. The automatic stay imposes a cost upon third parties who would benefit if the sanctions went into place immediately.

Allowing a person aggrieved by the automatic stay to ask to have the stay lifted benefits the aggrieved person by offering the option of a possible earlier termination of the stay. Those availing themselves of this option will incur legal and other costs, though since the procedure is optional, they will presumably do so only if they conclude that doing so yields an expected net benefit. Similarly, allowing opposition to a motion to lift allows those opposing the motion an opportunity to be heard. Although opposing a motion could involve legal and other expenses, since opposition is optional, parties would only incur those costs if they expected a net benefit from opposing.

Allowing the Commission to lift a stay summarily could benefit persons aggrieved by the stay by providing prompt and inexpensive relief. At the same time, those who might oppose the lifting of the stay would be denied notice and an opportunity to be heard in connection with the lifting of the stay.

Section 308(a) of the Sarbanes-Oxley Act provides that, in a Commission administrative proceeding where the Commission or a hearing officer enters an order requiring disgorgement and a civil money penalty, the Commission may create a "Fair Fund" by including the civil penalty with the disgorgement amount. The Commission is required to disburse money from a Fair Fund for the benefit of the victims of the securities law violations at issue in the proceeding.

Proposed Rule 1101 would authorize the Commission to create a Fair Fund in any administrative proceeding in which a final order is entered imposing disgorgement and a civil money penalty, and would permit the Commission to add to the Fair Fund any property received in accordance with section 308(b) of the Sarbanes-Oxley Act. The Commission would also be allowed to create a Fair Fund if it approves a settlement of an administrative proceeding that provides for payment of disgorgement and a civil money penalty. Where the relative value of the ill-gotten gains and the number of potential claimants would result in high administrative costs and *de minimis* distributions to investors, the proposed rules would allow the Commission not to create a Fair Fund, and the disgorgement and civil penalty amounts would be paid directly to the United States Treasury.

Creating and administering Fair Funds benefits victims of securities law violations, who would be more likely to be made whole. Allowing monies that would otherwise go into a Fair Fund to be paid to the Treasury where investors would receive only *de minimis* distributions would prevent those monies from being consumed by administrative costs, though at a cost to victims who might otherwise have received a minimal payment from a Fair Fund.

The proposed amendment of Rule 102(d)(4) would allow a person seeking to withdraw his or her appearance before the Commission in a representative capacity to file a notice of withdrawal rather than the motion to withdraw that is currently required. Filing a notice would preserve the benefits of the existing requirement by giving the Commission and the parties timely notice of withdrawal. Preparing and filing a notice may be less expensive than preparing and filing a motion. Additionally, the proposed amendment would increase efficiency by eliminating the need for the Commission or a hearing officer to rule on a motion for withdrawal.

The proposed amendment of Rule 150(c)(4) would eliminate the requirements that parties who choose to serve each other by facsimile transmission (1) agree to do so in a

[22] A further proposed amendment would conform the language of Rule 451(b) to reflect Commission practice not to issue the order setting oral argument in a Commission administrative proceeding until the date for argument is set.

[23] 5 U.S.C. 553(b)(3)(A).

[24] 5 U.S.C. 601 *et seq.*

[25] 5 U.S.C. 804(3)(C).

[26] *See* 5 U.S.C. 603.

[27] 44 U.S.C. 3501 *et seq.*

signed writing, and (2) confirm receipt of each document by a manually signed receipt. Eliminating these requirements would result in lower costs to the serving parties. However, eliminating the requirement of a signed receipt could make it more difficult to prove that a transmission was received.

The proposed amendment of Rule 151 would allow parties to file documents with the Commission by facsimile transmission. This amendment provides parties an additional option for transmitting documents to the Commission. Facsimile filing would allow the Commission to receive, and be able to address, documents in as timely a fashion as possible. Costs of transmission by facsimile are likely to be lower than overnight or courier fees. The proposal would not impose any new costs, since the existing methods for filing with the Commission remain available.

The proposed amendment to Rule 154 establishes a combined page limit of 15 pages for a motion and a brief in support of the motion. The 15-page limit would also apply to a brief in opposition to a motion and to any reply brief. The proposed amendment to Rule 450(c) provides that pleadings incorporated by reference will be included in determining the page count of briefs.

Reducing page limits may result in lower legal costs to the parties. Limiting the number of pages submitted also keeps proceedings efficient.

The proposed amendment of Rule 233 would allow the taking of a deposition of a witness then within the United States, who is expected to be outside the United States at the time of an administrative hearing, so long as the deposition will serve the interests of justice and it appears that the party requesting the deposition did not procure the witness's absence. The proposal serves the interests of justice by making available a statement that otherwise might not have been made part of the record. If use of such a deposition results in the absence from a hearing of a witness who otherwise would have appeared, there would be a loss in that the hearing officer would have no opportunity to assess demeanor. However, since the Rule allows a deposition only where it appears that the party requesting the deposition did not procure the witness's absence, such a series of events should rarely occur.

The remaining proposals variously clarify existing practice, relate to internal agency management, increase the efficiency of proceedings, or promote due process.

The Commission requests data to quantify the costs and the value of the benefits identified. The Commission also seeks estimates and views regarding these costs and benefits for particular types of market participants, as well as any other costs or benefits that may result from the adoption of the proposed rules.

V. Effect on Efficiency, Competition and Capital Formation

Section 2(b) of the Securities Act of 1933,[28] section 3(f) of the Exchange Act,[29] section 2(c) of the Investment Company Act of 1940,[30] and section 202(c) of the Investment Advisers Act of 1940[31] require us, when engaging in rulemaking that requires us to consider or determine whether an act is necessary or appropriate in the public interest, to consider whether the action will promote efficiency, competition, and capital formation. Section 23(a)(2) of the Exchange Act [32] prohibits us from adopting any rule that would impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act. The proposed rules are intended to enhance the transparency and facilitate parties' understanding of the applicability of the Commission review process to Board proceedings. The proposed rules and amendments also include regulatory provisions for the submission and administration of Fair Funds plans and disgorgement plans, and the proposed amendments are intended to clarify existing practice and increase the efficiency of Commission enforcement and self-regulatory organization disciplinary review proceedings. The proposed rules and amendments would apply to all persons involved in administrative proceedings before the Commission and therefore the Commission does not expect the proposed rules and amendments to have an anti-competitive effect. To the extent the proposed rules and amendments would foster making whole victims of securities laws violations and would increase the transparency of the Commission's administrative practice and the efficiency of the Commission's proceedings, there might be an increase in investor confidence in market fairness and efficiency. However, the magnitude of the effect of the proposed amendments in this regard is difficult to quantify. We request comment on the possible effects of our rule proposals on efficiency, competition, and capital formation. Commenters are requested to provide empirical data and other factual support for their views if possible.

[28] 15 U.S.C. 77b(b).
[29] 15 U.S.C. 78c(f).
[30] 15 U.S.C. 80a–2(c).
[31] 15 U.S.C. 80b–2(c).
[32] 15 U.S.C. 78w(a)(2).

VI. Statutory Basis and Text of Proposed Amendments

These amendments to the Rules of Practice and related provisions are being adopted pursuant to statutory authority granted to the Commission, including section 3 of the Sarbanes-Oxley Act, 15 U.S.C. 7202; section 19 of the Securities Act, 15 U.S.C. 77s; sections 19 and 23 of the Securities Exchange Act, 15 U.S.C. 78s and 78w; section 20 of the Public Utility Holding Company Act, 15 U.S.C. 79t; section 319 of the Trust Indenture Act, 15 U.S.C. 77sss; sections 38 and 40 of the Investment Company Act, 15 U.S.C. 80a-37 and 80a-39; and section 211 of the Investment Advisers Act, 15 U.S.C. 80b-11.

List of Subjects

17 CFR Parts 200 and 201

Administrative practice and procedure.

17 CFR Part 240

Reporting and Recordkeeping Requirements; Securities.

Text of the Amendment

For the reasons set out in the preamble, Title 17, Chapter II of the Code of Federal Regulations is proposed to be amended as follows:

PART 200—ORGANIZATION; CONDUCT AND ETHICS; AND INFORMATION AND REQUESTS

1. The general authority citation for part 200, subpart A is revised to read as follows:

Subpart A—Organization and Program Management

Authority: 15 U.S.C. 77s, 77sss, 78d–1, 78d–2, 78w, 78*ll*(d), 78mmm, 79t, 80a–37, 80b–11, and 7202, unless otherwise noted.

* * * * *

2. In § 200.21, paragraph (b), remove the words "Rule 2(e) of the Commission's Rules of Practice (§ 201.2(e) of this chapter)" and, in their place, add the words "Rule 102(e) of the Commission's Rules of Practice (§ 201.102(e) of this chapter)".

Subpart B—Disposition of Commission Business

3. The authority citation for subpart B continues to read as follows:

Authority: 5 U.S.C. 552b; 15 U.S.C. 78d–1 and 78w.

4. In § 200.43, paragraph (c)(3), remove the words "Rule 26 of the Commission's rules of practice, 17 CFR 201.26" and, in their place, add the words "Rules 430 and 431 of the Commission's Rules of Practice, §§ 201.430 and 201.431 of this chapter".

5. The authority citation for part 200, subpart F, is revised to read as follows:

Subpart F—Code of Behavior Governing Ex Parte Communications Between Persons Outside the Commission and Decisional Employees

Authority: 15 U.S.C. 77s, 77sss, 78w, 79t, 80a–37, 80b–11, and 7202; and 5 U.S.C. 557.

6. Section 200.111 is amended by:

a. Redesignating paragraph (c)(1)(iii) as paragraph (c)(1)(iv); and

b. Adding new paragraph (c)(1)(iii).

The addition reads as follows:

§ 200.111 Prohibitions; application; definitions.

* * * * *

(c) *Period during which prohibitions apply.* (1) * * *

(iii) That, in proceedings under Title I of the Sarbanes-Oxley Act of 2002, 15 U.S.C. 7211–7219, these prohibitions shall commence at the time that a copy of an application for review has been filed with the Commission and served on the Public Company Accounting Oversight Board; and

* * * * *

PART 201—RULES OF PRACTICE

Subpart D—Rules of Practice

7. The authority citation for part 201, subpart D, is revised to read as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77h–1, 77j, 77s, 77sss, 77ttt, 77u, 78c(b), 78d–1, 78d–2, 78*l*, 78m, 78n, 78*o*(d), 78*o*–3, 78s, 78u–2, 78u–3, 78v, 78w, 79c, 79s, 79t, 79z–5a, 80a–8, 80a–9, 80a–37, 80a–38, 80a–39, 80a–40, 80a–41, 80a–44, 80b–3, 80b–9, 80b–11, 80b–12, 7202, 7215, and 7217.

8. Section 201.100 is amended by adding paragraph (c) to read as follows:

§ 201.100 Scope of the rules of practice.

* * * * *

(c) The Commission, upon its determination that to do so would serve the interests of justice and not result in prejudice to the parties to the proceeding, may by order direct, in a particular proceeding, that an alternative procedure shall apply or that compliance with an otherwise applicable rule is unnecessary.

9. Section 201.101 is amended by:

a. Revising paragraph (a)(9); and

b. Adding paragraph (a)(12).

The revision and addition read as follows:

§ 201.101 Definitions.

(a) * * *

(9) *Proceeding* means any agency process initiated:

(i) By an order instituting proceedings; or

(ii) By the filing, pursuant to § 201.410, of a petition for review of an initial decision by a hearing officer; or

(iii) By the filing, pursuant to § 201.420, of an application for review of a self-regulatory organization determination; or

(iv) By the filing, pursuant to § 201.430, of a notice of intention to file a petition for review of a determination made pursuant to delegated authority; or

(v) By the filing, pursuant to § 201.440, of an application for review of a determination by the Public Company Accounting Oversight Board; or

(vi) By the filing, pursuant to § 240.11Aa3–1(f) of this chapter, of an application for review of an action or failure to act in connection with the implementation or operation of any effective transaction reporting plan; or

(vii) By the filing, pursuant to § 240.11Aa3–2(e) of this chapter, of an application for review of an action taken or failure to act in connection with the implementation or operation of any effective national market system plan.

* * * * *

(12) *Board* means the Public Company Accounting Oversight Board.

* * * * *

10. Section 201.102 is amended by revising paragraph (d)(4) to read as follows:

§ 201.102 Appearance and practice before the Commission.

* * * * *

(d) *Designation of address for service; notice of appearance; power of attorney; withdrawal.* * * *

(4) *Withdrawal.* Any person seeking to withdraw his or her appearance in a representative capacity shall file a notice of withdrawal with the Commission or the hearing officer. The notice shall state the name, address, and telephone number of the withdrawing representative; the name, address, and telephone number of the person for whom the appearance was made; and the effective date of the withdrawal. If the person seeking to withdraw knows the name, address, and telephone number of the new representative, or knows that the person for whom the appearance was made intends to represent him- or herself, that information shall be included in the notice. The notice must be served on the parties in accordance with § 201.150. The notice shall be filed at least five days before the proposed effective date of the withdrawal.

* * * * *

11. Section 201.111 is amended by revising paragraph (h) to read as follows:

§ 201.111 Hearing officer: Authority.

* * * * *

(h) Subject to any limitations set forth elsewhere in these Rules of Practice, considering and ruling upon all procedural and other motions, including a motion to correct a manifest error of fact in the initial decision, provided that such a motion to correct is filed within ten days of the initial decision;

* * * * *

12. Section 201.141 is amended by:

a. Revising the section heading; and

b. Revising paragraphs (a)(3) and (b) to read as follows:

The revisions read as follows;

§ 201.141 Orders and decisions: Service of orders instituting proceedings and other orders and decisions.

(a) *Service of an order instituting proceedings.*

* * * * *

(3) *Record of service.* The Secretary shall maintain a record of service on parties, identifying the party given notice, the method of service, the date of service, the address to which service was made, and the person who made service. If service is made in person, the certificate of service shall state, if available, the name of the individual to whom the order was given. If service is made by U.S. Postal Service certified or Express Mail, the Secretary shall maintain the confirmation of receipt or of attempted delivery. If service is made to an agent authorized by appointment to receive service, the certificate of service shall be accompanied by evidence of the appointment.

* * * * *

(b) *Service of orders or decisions other than an order instituting proceedings.* Written orders or decisions issued by the Commission or by a hearing officer shall be served promptly on each party pursuant to any method of service authorized under paragraph (a) of this section or § 201.150(c)(1)–(3). Such orders or decisions may also be served by facsimile transmission if the party to be served has agreed to accept such service in a writing, signed by the party, and has provided the Commission with information concerning the facsimile machine telephone number and hours of

facsimile machine operation. Service of orders or decisions by the Commission, including those entered pursuant to delegated authority, shall be made by the Secretary or, as authorized by the Secretary, by a member of an interested division. Service of orders or decisions issued by a hearing officer shall be made by the Secretary or the hearing officer.

13. Section 201.150 is amended by revising paragraph (c)(4) to read as follows:

§ 201.150 Service of papers by parties.

* * * * *

(c) *How made.* * * *

(4) Transmitting the papers by facsimile transmission where the following conditions are met:

(i) The persons so serving each other have provided the Commission and the parties with notice of the facsimile machine telephone number to be used and the hours of facsimile machine operation;

(ii) The transmission is made at such a time that it is received during the Commission's business hours as defined in § 201.104; and

(iii) The sender of the transmission has not been served in accordance with § 201.150 with a written notice from the recipient of the transmission declining service by facsimile transmission.

* * * * *

14. Section 201.151 is amended by revising paragraph (a) to read as follows:

§ 201.151 Filing of papers with the Commission: Procedure.

(a) *When to file.* All papers required to be served by a party upon any person shall be filed contemporaneously with the Commission. Papers required to be filed with the Commission must be received within the time limit, if any, for such filing. Filing with the Commission may be made by facsimile transmission if the party also contemporaneously transmits to the Commission a non-facsimile original with a manual signature. However, any person filing with the Commission by facsimile transmission will be responsible for assuring that the Commission receives a complete and legible filing within the time limit set for such filing.

* * * * *

15. Section 201.152 is amended by revising paragraph (a)(2) to read as follows:

§ 201.152 Filing of papers: Form.

(a) *Specifications.* * * *

(2) Be typewritten or printed in 12-point or larger typeface or otherwise reproduced by a process that produces permanent and plainly legible copies;

* * * * *

16. Section 201.154 is amended by revising paragraph (c) to read as follows:

§ 201.154 Motions.

* * * * *

(c) *Length limitation.* A motion, together with the brief in support of the motion; the brief in opposition to the motion; or any reply brief, shall not exceed 15 pages, exclusive of pages containing any table of contents or table of authorities. The page limit shall not apply to any addendum that consists solely of copies of applicable cases, pertinent legislative provisions, or relevant exhibits. Requests for leave to file motions and briefs in excess of 15 pages are disfavored.

17. Section 201.160 is amended by revising paragraph (b) to read as follows:

§ 201.160 Time computation.

* * * * *

(b) *Additional time for service by mail.* If service is made by mail, three days shall be added to the prescribed period for response unless an order of the Commission or the hearing officer specifies a date certain for filing. In the event that an order of the Commission or the hearing officer specifies a date certain for filing, no time shall be added for service by mail.

18. Section 201.201 is amended by:

a. Revising the section heading;

b. Designating the current text as paragraph (a) and adding a paragraph heading; and

c. Adding paragraph (b).

The revision and additions read as follows:

§ 201.201 Consolidation and severance of proceedings.

(a) *Consolidation.** * *

(b) *Severance.* By order of the Commission, any proceeding may be severed with respect to some or all parties. Any motion to sever must be made solely to the Commission and must include a representation that a settlement offer is pending before the Commission or otherwise show good cause.

19. Section 201.202 is amended by revising the introductory text of paragraph (a) to read as follows:

§ 201.202 Specification of procedures by parties in certain proceedings.

(a) *Motion to specify procedures.* In any proceeding other than an enforcement or disciplinary proceeding, a proceeding to review a determination by a self-regulatory organization pursuant to §§ 201.420 and 201.421, or a proceeding to review a determination of the Board pursuant to §§ 201.440 and 201.441, a party may, at any time up to 20 days prior to the start of a hearing, make a motion to specify the procedures necessary or appropriate for the proceeding with particular reference to:

* * * * *

20. Section 201.210 is amended by revising paragraph (a)(1) and the introductory text to paragraphs (b)(1) and (c) to read as follows:

§ 201.210 Parties, limited participants and amici curiae.

(a) *Parties in an enforcement or disciplinary proceeding, a proceeding to review a self-regulatory organization determination, or a proceeding to review a Board determination—*

(1) *Generally.* No person shall be granted leave to become a party or a non-party participant on a limited basis in an enforcement or disciplinary proceeding, a proceeding to review a determination by a self-regulatory organization pursuant to §§ 201.420 and 201.421, or a proceeding to review a determination by the Board pursuant to §§ 201.440 and 201.441, except as authorized by paragraph (c) of this section.

* * * * *

(b) *Intervention as a party.*—(1) *Generally.* In any proceeding, other than an enforcement proceeding, a disciplinary proceeding, a proceeding to review a self-regulatory determination, or a proceeding to review a Board determination, any person may seek leave to intervene as a party by filing a motion setting forth the person's interest in the proceeding:

* * * * *

(c) *Leave to participate on a limited basis.* In any proceeding, other than an enforcement proceeding, a disciplinary proceeding, a proceeding to review a self-regulatory determination, or a proceeding to review a Board determination, any person may seek leave to participate on a limited basis as a non-party participant as to any matter affecting the person's interests:

* * * * *

21. Section 201.230 is amended by revising paragraphs (a)(1)(vi) and (c) to read as follows:

§ 201.230 Enforcement and disciplinary proceedings: Availability of documents for inspection and copying.

* * * * *

(a) *Documents to be available for inspection and copying.* (1) * * *

(vi) Any final examination or inspection reports prepared by the Office of Compliance Inspections and Examinations, the Division of Market Regulation, or the Division of Investment Management, if the Division of Enforcement intends either to introduce any such report into evidence or to use any such report to refresh the recollection of any witness.

* * * * *

(c) *Withheld document list.* The hearing officer may require the Division of Enforcement to submit for review a list of documents or categories of documents withheld pursuant to paragraphs (b)(1)(i) through (b)(1)(iv) of this section or to submit any document withheld, and may determine whether any such document should be made available for inspection and copying. When similar documents are withheld pursuant to paragraphs (b)(1)(i) through (b)(1)(iv) of this section, those documents may be identified by category instead of by individual document. The hearing officer retains discretion to determine when an identification by category is insufficient.

* * * * *

22. Section 201.231 is amended by revising paragraph (a) to read as follows:

§ 201.231 Enforcement and disciplinary proceedings: Production of witness statements.

(a) *Availability.* Any respondent in an enforcement or disciplinary proceeding may move that the Division of Enforcement produce for inspection and copying any statement of any person called or to be called as a witness by the Division of Enforcement that pertains, or is expected to pertain, to his or her direct testimony and that would be required to be produced pursuant to the Jencks Act, 18 U.S.C. 3500. For purposes of this section, *statement* shall have the meaning set forth in 18 U.S.C. 3500(e). Such production shall be made at a time and place fixed by the hearing officer and shall be made available to any party, provided, however, that the production shall be made under conditions intended to preserve the items to be inspected or copied.

* * * * *

23. Section 201.232 is amended by revising paragraph (e)(1) to read as follows:

201.232 Subpoenas.

* * * * *

(e) *Application to quash or modify.* (1) Any person to whom a subpoena is directed, or who is an owner, creator or the subject of the documents that are to be produced pursuant to a subpoena, or any party may, prior to the time specified therein for compliance, but in no event more than 15 days after the date of service of such subpoena, request that the subpoena be quashed or modified. Such request shall be made by application filed with the Secretary and served on all parties pursuant to § 201.150. The party on whose behalf the subpoena was issued may, within five days of service of the application, file an opposition to the application. If a hearing officer has been assigned to the proceeding, the application to quash shall be directed to that hearing officer for consideration, even if the subpoena was issued by another person.

* * * * *

24. Section 201.233 is amended by revising paragraph (b) to read as follows:

§ 201.233 Deposition upon oral examination.

* * * * *

(b) *Required finding when ordering a deposition.* In the discretion of the Commission or the hearing officer, an order for a deposition may be issued upon a finding that the prospective witness will likely give testimony material to the proceeding; that it is likely the prospective witness, who is then within the United States, will be unable to attend or testify at the hearing because of age, sickness, infirmity, imprisonment, other disability, or absence from the United States, unless it appears that the absence of the witness was procured by the party requesting the deposition; and that the taking of a deposition will serve the interests of justice.

* * * * *

25. Section 201.350 is amended by revising paragraph (b) to read as follows:

§ 201.350 Record in proceedings before hearing officer; retention of documents; copies.

* * * * *

(b) *Retention of documents not admitted.* Any document offered into evidence but excluded shall not be considered a part of the record. The Secretary shall retain any such document until the later of the date upon which a Commission order ending the proceeding becomes final, or the conclusion of any judicial review of the Commission's order.

* * * * *

26. Section 201.351 is amended by revising paragraph (a) to read as follows:

§ 201.351 Transmittal of documents to Secretary; record index; certification.

(a) *Transmittal from hearing officer to Secretary of partial record index.* The hearing officer may, at any time, transmit to the Secretary motions, exhibits or any other original documents filed with or accepted into evidence by the hearing officer, together with a list of such documents.

* * * * *

27. Section 201.360 is amended by:

a. Adding a sentence at the end of paragraph (a)(2);

b. Revising paragraphs (b)(1), (b)(2) and (d); and

c. Removing paragraph (e).

The addition and revisions read as follows:

§ 201.360 Initial decision of hearing officer.

(a)(1) * * *

(2) *Time period for filing initial decision.* * * * If a stay is granted pursuant to § 201.210(c)(3), the time period specified in the order instituting proceedings in which the hearing officer's initial decision must be filed with the Secretary, as well as any other time limits established in orders issued by the hearing officer in the proceeding, shall be automatically tolled during the period while the stay is in effect.

(b) *Content.* * * *

(1) The Commission will enter an order of finality as to each party unless a party or an aggrieved person entitled to review timely files a petition for review of the initial decision or a motion to correct a manifest error of fact in the initial decision with the hearing officer, or the Commission determines on its own initiative to review the initial decision; and

(2) If a party or an aggrieved person entitled to review timely files a petition for review or a motion to correct a manifest error of fact in the initial decision with the hearing officer, or if the Commission takes action to review as to a party or an aggrieved person entitled to review, the initial decision shall not become final as to that party or person.

* * * * *

(d) *Finality.* (1) If a party or an aggrieved person entitled to review timely files a petition for review or a motion to correct a manifest error of fact in the initial decision, or if the Commission on its own initiative orders review of a decision with respect to a party or a person aggrieved who would be entitled to review, the initial decision shall not become final as to that party or person.

(2) If a party or aggrieved person entitled to review fails to file timely a petition for review or a motion to correct a manifest error of fact in the initial decision, and if the Commission does not order review of a decision on its own initiative, the Commission will issue an order that the decision has become final as to that party. The decision becomes final upon issuance of

the order. The order of finality shall state the date on which sanctions, if any, take effect. Notice of the order shall be published in the *SEC News Digest* and the *SEC Docket*, and on the SEC Web site.

28. Section 201.400 is amended by revising paragraph (a) to read as follows:

§ 201.400 Interlocutory review.

(a) *Availability.* The Commission may, at any time, on its own motion, direct that any matter be submitted to it for review. Petitions by parties for interlocutory review are disfavored, and the Commission ordinarily will grant a petition to review a hearing officer ruling prior to its consideration of an initial decision only in extraordinary circumstances. The Commission may decline to consider a ruling certified by a hearing officer pursuant to paragraph (c) of this section or the petition of a party who has been denied certification if it determines that interlocutory review is not warranted or appropriate under the circumstances. This section is the exclusive remedy for review of a hearing officer's ruling prior to Commission consideration of the entire proceeding and is the sole mechanism for appeal of actions delegated pursuant to 17 CFR 200.30–9 and 200.30–10.

* * * * *

29. Section 201.401 is amended by:

a. Revising the section heading and paragraph (d)(1); and

b. Adding paragraph (e).

The revisions and addition read as follows:

§ 201.401 Consideration of stays.

* * * * *

(d) *Stay of an action by a self-regulatory organization.*

(1) *Availability.* A motion for a stay of an action by a self-regulatory organization for which the Commission is the appropriate regulatory agency, for which action review may be sought pursuant to § 201.420, may be made by any person aggrieved thereby at the time an application for review is filed in accordance with § 201.420 or thereafter.

* * * * *

(e) *Lifting of stay of action by the Public Company Accounting Oversight Board:* (1) *Availability.* Any person aggrieved by the stay of action by the Board entered in accordance with 15 U.S.C. 7215(e) for which review has been sought pursuant to § 201.440 or which the Commission has taken up on its motion pursuant to § 201.441 may make a motion to lift the stay. The Commission may, at any time, on its own motion determine whether to lift the automatic stay.

(2) *Summary action.* The Commission may lift a stay summarily, without notice and opportunity for hearing.

(3) *Expedited consideration.* The Commission may expedite consideration of a motion to lift a stay of Board action, consistent with the Commission's other responsibilities. Where consideration is expedited, persons opposing the lifting of the stay may file a statement in opposition within two days of service of the motion requesting lifting of the stay unless the Commission, by written order, shall specify a different period.

30. Section 201.410 is amended by:

a. Revising paragraph (b); and

b. Removing and reserving paragraph (d)

The revision reads as follows:

§ 201.410 Appeal of initial decisions by hearing officers.

* * * * *

(b) *Procedure.* The petition for review of an initial decision shall be filed with the Commission within such time after service of the initial decision as prescribed by the hearing officer pursuant to § 201.360(b) unless a party has filed a motion to correct an initial decision with the hearing officer. If such correction has been sought, a party shall have 21 days from the date of the hearing officer's order resolving the motion for to correct to file a petition for review. The petition shall set forth the specific findings and conclusions of the initial decision as to which exception is taken, together with supporting reasons for each exception. Supporting reasons may be stated in summary form. Any exception to an initial decision not stated in the petition for review, or in a previously filed proposed finding made pursuant to § 201.340 may, at the discretion of the Commission, be deemed to have been waived by the petitioner. In the event a petition for review is filed, any other party to the proceeding may file a cross-petition for review within the original time allowed for seeking review or within ten days from the date that the petition for review was filed, whichever is later.

* * * * *

31. Section 201.411 is amended by revising paragraph (e) as follows:

§ 201.411 Commission consideration of decisions by hearing officers.

* * * * *

(e) *Summary affirmance.* (1) At any time within 21 days after the filing of a petition for review pursuant to § 201.410(b), any party may file a motion in accordance with § 201.154 asking that the Commission summarily affirm an initial decision. Any party may file an opposition and reply to such motion in accordance with § 201.154. Pending determination of the motion for summary affirmance, the Commission, in its discretion, may delay issuance of a briefing schedule order pursuant to § 201.450.

(2) Upon consideration of the motion and any opposition or upon its own initiative, the Commission may summarily affirm an initial decision. The Commission may grant summary affirmance if it finds that no issue raised in the initial decision warrants consideration by the Commission of further oral or written argument. The Commission will decline to grant summary affirmance upon a reasonable showing that a prejudicial error was committed in the conduct of the proceeding or that the decision embodies an exercise of discretion or decision of law or policy that is important and that the Commission should review.

* * * * *

32. Section 201.420 is amended by:

a. Revising paragraph (b);

b. Redesignating paragraphs (c) and (d) as paragraphs (d) and (e); and

c. Adding new paragraph (c).

The revision and addition read as follows:

§ 201.420 Appeal of determinations by self-regulatory organizations.

* * * * *

(b) *Procedure.* As required by section 19(d)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(d)(1), an applicant must file an application for review with the Commission within 30 days after the notice of the determination is filed with the Commission and received by the aggrieved person applying for review. The Commission will not extend this 30-day period, absent a showing of extraordinary circumstances. This section is the exclusive remedy for seeking an extension of the 30-day period.

(c) *Application.* The application shall be filed with the Commission pursuant to § 201.151. The applicant shall serve the application on the self-regulatory organization. The application shall identify the determination complained of and set forth in summary form a brief statement of the alleged errors in the determination and supporting reasons therefor. The application shall state an address where the applicant can be served. The application should not exceed two pages in length. The application shall be accompanied by the notice of appearance required by § 201.102(d).

* * * * *

33. Section 201.430 is amended by revising paragraph (a) to read as follows:

§ 201.430 Appeal of actions made pursuant to delegated authority.

(a) *Scope of rule.* Any person aggrieved by an action made by authority delegated in §§ 200.30–1 through 200.30–8 or §§ 200.30–11 through 200.30–18 of this chapter may seek review of the action pursuant to paragraph (b) of this section.

* * * * *

34. Sections 201.440 and 201.441 are added to read as follows:

§ 201.440 Appeal of determinations by the Public Company Accounting Oversight Board.

(a) *Application for review; when available.* Any person who is aggrieved by a determination of the Board with respect to any final disciplinary sanction, including disapproval of a completed application for registration of a public accounting firm, may file an application for review.

(b) *Procedure.* An aggrieved person may file an application for review with the Commission pursuant to § 201.151 within 30 days after the notice filed by the Board of its determination with the Commission pursuant to § 240.19d–4 of this chapter is received by the aggrieved person applying for review. The applicant shall serve the application on the Board at the same time. The application shall identify the determination complained of, set forth in summary form a brief statement of alleged errors in the determination and supporting reasons therefor, and state an address where the applicant can be served. The notice of appearance required by § 201.102(d) shall accompany the application.

(c) *Stay of determination.* Filing an application for review with the Commission pursuant to paragraph (b) of this section operates as a stay of the Board's determination unless the Commission otherwise orders either pursuant to a motion filed in accordance with § 201.401(e) or upon its own motion.

(d) *Certification of the record; service of the index.* Within fourteen days after receipt of an application for review, the Board shall certify and file with the Commission one copy of the record upon which it took the complained-of action. The Board shall file with the Commission three copies of an index of such record, and shall serve one copy of the index on each party.

§ 201.441 Commission consideration of Board determinations.

(a) *Commission review other than pursuant to an application for review.* The Commission may, on its own initiative, order review of any final disciplinary sanction, including disapproval of a completed application for registration of a public accounting firm, imposed by the Board that could be the subject to an application for review pursuant to § 201.440(a) within 40 days after the Board filed notice thereof pursuant to § 240.19d–4 of this chapter.

(b) *Supplemental briefing.* The Commission may at any time prior to the issuance of its decision raise or consider any matter that it deems material, whether or not raised by the parties. The Commission will give notice to the parties and an opportunity for supplemental briefing with respect to issues not briefed by the parties where the Commission believes that such briefing could significantly aid the decisional process.

35. Section 201.450 is amended by:

a. Redesignating paragraphs (a)(2)(iii) and (a)(2)(iv) as paragraphs (a)(2)(iv) and (a)(2)(v);

b. Adding new paragraph (a)(2)(iii);

c. Revising paragraph (c); and

d. Adding paragraph (d).

The additions and revision read as follows:

§ 201.450 Briefs filed with the Commission.

(a) *Briefing schedule order.* * * *

(2) * * *

(iii) Receipt by the Commission of an index to the record of a determination by the Board filed pursuant to § 201.440(d);

* * * * *

(c) *Length limitation.* Except with leave of the Commission, opening and opposition briefs shall not exceed 14,000 words and reply briefs shall not exceed 7,000 words, exclusive of pages containing the table of contents, table of authorities, and any addendum that consists solely of copies of applicable cases, pertinent legislative provisions, or rules and exhibits. The number of words shall include pleadings incorporated by reference. Motions to file briefs in excess of these limitations are disfavored.

(d) *Certificate of compliance.* An opening or opposition brief that does not exceed 30 pages in length, exclusive of pages containing the table of contents, table of authorities, and any addendum that consists solely of copies of applicable cases, pertinent legislative provisions, or rules and exhibits, but inclusive of pleadings incorporated by reference, is presumptively considered to contain no more than 14,000 words. A reply brief that does not exceed 15 pages in length, exclusive of pages containing the table of contents, table of authorities, and any addendum that consists solely of copies of applicable cases, pertinent legislative provisions, or rules and exhibits, but inclusive of pleadings incorporated by reference, is presumptively considered to contain no more than 7,000 words. Any brief that exceeds these page limits must include a certificate by the attorney, or an unrepresented party, stating that the brief complies with the length limitation set forth in § 201.450(c) and stating the number of words in the brief. The person preparing the certificate may rely on the word count of the word-processing system used to prepare the brief.

36. Section 201.451 is amended by revising paragraph (b) to read as follows:

§ 201.451 Oral argument before the Commission.

* * * * *

(b) *Procedure.* Requests for oral argument shall be made by separate motion accompanying the initial brief on the merits. The Commission shall issue an order as to whether oral argument is to be heard, and if so, the time and place therefor. If oral argument is granted, the time fixed for oral argument shall be changed only by written order of the Commission, for good cause shown. The order shall state at whose request the change is made and the reasons for any such changes. No visual aids may be used at oral argument unless copies have been provided to the Commission and all parties at least five business days before the argument is to be held.

* * * * *

37. Section 201.460 is amended by adding paragraph (a)(3) to read as follows:

§ 201.460 Record before the Commission.

* * * * *

(a) *Contents of the record.* * * *

(3) In a proceeding for final decision before the Commission reviewing a determination of the Board, the record shall consist of:

(i) The record certified pursuant to § 201.440(d) by the Board;

(ii) Any application for review; and

(iii) Any submissions, moving papers and briefs filed on appeal or review.

* * * * *

38. Section 201.470 is amended by revising paragraph (b) to read as follows:

§ 201.470 Reconsideration.

* * * * *

(b) *Procedure.* A motion for reconsideration shall be filed within 10 days after service of the order complained of, or within such time as

the Commission may prescribe upon motion for extension of time filed by the person seeking reconsideration, if the motion is made within the foregoing 10-day period. The motion for reconsideration shall briefly and specifically state the matters of record alleged to have been erroneously decided, the grounds relied upon, and the relief sought. A motion for reconsideration shall conform to the requirements, including page length, provided in § 201.154. No response to a motion for reconsideration shall be filed unless requested by the Commission. Any response so requested shall comply with § 201.154.

39. Section 201.601 is amended by adding paragraph (c) to read as follows:

§ 201.601 Prompt payment of disgorgement, interest and penalties.

* * * * *

(c) *Method of making payment.* Payment shall be made by United States postal money order, wire transfer, certified check, bank cashier's check, or bank money order made payable to the Securities and Exchange Commission. The payment shall be mailed or delivered to the Office of Financial Management of the Commission. Payment shall be accompanied by a letter that identifies the name and number of the case and the name of the respondent making payment. A copy of the letter and the instrument of payment shall be sent to counsel for the Division of Enforcement.

40. Sections 201.610 through 201.614 and § 201.620 are removed and reserved.

41. Sections 201.1100 through 201.1106, Subpart F—Fair Fund and Disgorgement Plans—are added to read as follows:

Subpart F—Fair Fund and Disgorgement Plans

Sec.

201.1100 Creation of Fair Fund.
201.1101 Submission of plan of distribution; contents of plan.
201.1102 Provisions for payment.
201.1103 Notice of proposed plan and opportunity for comment by non-parties.
201.1104 Order approving, modifying, or disapproving proposed plan.
201.1105 Administration of plan.
201.1106 Right to challenge.

Authority: 15 U.S.C. 77h–1, 77s, 77u, 78c(b), 78d–1, 78d–2, 78u–2, 78u–3, 78v, 78w, 80a–9, 80a–37, 80a–39, 80a–40, 80b–3, 80b–11, 80b–12, and 7246.

§ 201.1100 Creation of Fair Fund.

In any agency process initiated by an order instituting proceedings in which the Commission issues an order requiring the payment of disgorgement by a respondent and also assessing a civil money penalty against that respondent, the Commission may order that the amount of the disgorgement and of the civil money penalty, together with any funds received by the Commission pursuant to 15 U.S.C. 7246(b), be used to create a fund for the benefit of investors who were harmed by the violation.

§ 201.1101 Submission of plan of distribution; contents of plan.

(a) *Submission.* The Commission or the hearing officer may, at any time, order any party to submit a plan for the administration and distribution of funds in a Fair Fund or disgorgement funds. Unless ordered otherwise, the Division of Enforcement shall submit a proposed plan no later than 60 days after the respondent has turned over the funds or other assets pursuant to the Commission's order imposing disgorgement and, if applicable, a civil money penalty and any appeals of the Commission's order have been waived or completed, or appeal is no longer available.

(b) *Contents of plan.* Unless otherwise ordered, a plan for the administration of a Fair Fund or a disgorgement fund shall include the following elements:

(1) Procedures for the receipt of additional funds, including the specification of any account where funds will be held, the instruments in which the funds may be invested; and, in the case of a Fair Fund, the receipt of any funds pursuant to 15 U.S.C. 7246(b), if applicable;

(2) Specification of categories of persons potentially eligible to receive proceeds from the fund;

(3) Procedures for providing notice to such persons of the existence of the fund and their potential eligibility to receive proceeds of the fund;

(4) Procedures for making and approving claims, procedures for handling disputed claims, and a cut-off date for the making of claims;

(5) A proposed date for the termination of the fund, including provision for the disposition of any funds not otherwise distributed;

(6) Procedures for the administration of the fund, including selection, compensation, and, as necessary, indemnification of a fund administrator to oversee the fund, process claims, prepare accountings, file tax returns, and, subject to the approval of the Commission, make distributions from the fund to investors who were harmed by the violation; and

(7) Such other provisions as the Commission or the hearing officer may require.

§ 201.1102 Provisions for payment.

(a) *Payment to registry of the court or court-appointed receiver.* Subject to such conditions as the Commission or the hearing officer shall deem appropriate, a plan for the administration of a Fair Fund or a disgorgement fund may provide for payment of funds into a court registry or to a court-appointed receiver in any case pending in federal or state court against a respondent or any other person based upon a complaint alleging violations arising from the same or substantially similar facts as those alleged in the Commission's order instituting proceedings.

(b) *Payment to the United States Treasury under certain circumstances.* When, in the opinion of the Commission or the hearing officer, the cost of administering a plan of disgorgement relative to the value of the available disgorgement funds and the number of potential claimants would not justify distribution of the disgorgement funds to injured investors, the plan may provide that the disgorgement funds and any civil penalty shall be paid directly to the general fund of the United States Treasury.

§ 201.1103 Notice of proposed plan and opportunity for comment by non-parties.

Notice of a proposed plan of disgorgement or a proposed Fair Fund plan shall be published in the *SEC News Digest* and the *SEC* Docket, on the SEC website, and in such other publications as the Commission or the hearing officer may require. The notice shall specify how copies of the proposed plan may be obtained and shall state that persons desiring to comment on the proposed plan may submit their views, in writing, to the Commission.

§ 201.1104 Order approving, modifying, or disapproving proposed plan.

At any time after 30 days following publication of notice of a proposed plan of disgorgement or of a proposed Fair Fund plan, the Commission shall, by order, approve, approve with modifications, or disapprove the proposed plan. In the discretion of the Commission, a proposed plan that is substantially modified prior to adoption may be republished for an additional comment period pursuant to § 201.1103. The order approving or disapproving the plan should be entered within 30 days after the end of the final period allowed for comments on the proposed plan unless the Commission or the hearing officer, by written order, allows a longer period for good cause shown.

§ 201.1105 Administration of plan.

(a) *Appointment and removal of administrator.* The Commission or the hearing officer shall have discretion to appoint any person, including a Commission employee, as administrator of a plan of disgorgement or a Fair Fund plan and to delegate to that person responsibility for administering the plan. An administrator may be removed at any time by order of the Commission or hearing officer.

(b) *Assistance by respondent.* A respondent may be required or permitted to administer or assist in administering a plan of disgorgement subject to such terms and conditions as the Commission or hearing officer deem appropriate to ensure the proper distribution of the funds.

(c) *Administrator to post bond.* If the administrator is not a Commission employee, the administrator shall be required to obtain a bond in the manner prescribed in 11 U.S.C. 322, in an amount to be approved by the Commission. The cost of the bond may be paid for as a cost of administration. The Commission may waive posting of a bond for good cause shown.

(d) *Administrator's fees.* If the administrator is a Commission employee, no fee shall be paid to the administrator for his or her services. If the administrator is not a Commission employee, the administrator may file an application for fees for completed services, and upon approval by the Commission or a hearing officer, may be paid a reasonable fee for those services. Any objections thereto shall be filed within 21 days of service of the application on the parties.

(e) *Source of funds.* Unless otherwise ordered, fees and other expenses of administering the plan shall be paid first from the interest earned on the funds, and if the interest is not sufficient, then from the corpus.

(f) *Accountings.* During the first 10 days of each calendar quarter, or as otherwise directed by the Commission or the hearing officer, the administrator shall file an accounting of all monies earned or received and all monies spent in connection with the administration of the plan of disgorgement. A final accounting shall be submitted for approval of the Commission or hearing officer prior to discharge of the administrator and cancellation of the administrator's bond, if any.

(g) *Amendment.* A plan may be amended upon motion by any party or by the plan administrator or upon the Commission's or the hearing officer's own motion.

§ 201.1106 Right to challenge.

Other than in connection with the opportunity to submit comments as provided in § 201.1103, no person shall be granted leave to intervene or to participate or otherwise to appear in any agency proceeding or otherwise to challenge an order of disgorgement or of creation of a Fair Fund; or an order approving, approving with modifications, or disapproving a plan of disgorgement or a Fair Fund plan; or any determination relating to a plan based solely upon that person's eligibility or potential eligibility to participate in a fund or based upon any private right of action such person may have against any person who is also a respondent in the proceeding.

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

42. The authority citation for part 240 continues to read as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z–2, 77z–3, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78e, 78f, 78g, 78i, 78j, 78j–1, 78k, 78k–1, 78*l*, 78m, 78n, 78o, 78p, 78q, 78s, 78u–5, 78w, 78x, 78*ll*, 78mm, 79q, 79t, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4, 80b–11, and 7201 *et seq.*; and 18 U.S.C. 1350, unless otherwise noted.

* * * * *

43. Section 240.19d–4 is added to read as follows:

§ 240.19d–4 Notice by the Public Company Accounting Oversight Board of disapproval of registration or of disciplinary action.

(a) *Definitions.*

(1) *Board* means the Public Company Accounting Oversight Board.

(2) *Public accounting firm* shall have the meaning set forth in 15 U.S.C. 7201(a)(11).

(3) *Registered public accounting firm* shall have the meaning set forth in 15 U.S.C. 7201(a)(12).

(4) *Associated person* shall mean a person associated with a registered public accounting firm as defined in 15 U.S.C. 7201(a)(9).

(b)(1) *Notice of disapproval of registration.* If the Board disapproves a completed application for registration by a public accounting firm, the Board shall file a notice of its disapproval with the Commission within 30 days and serve a copy on the public accounting firm.

(2) *Contents of the notice.* The notice required by paragraph (b)(1) of this section shall provide the following information:

(i) The name of the public accounting firm and the public accounting firm's last known address as reflected in the Board's records;

(ii) The basis for the Board's disapproval, and a copy of the Board's written notice of disapproval; and

(iii) Such other information as the Board may deem relevant.

(c)(1) *Notice of disciplinary action.* If the Board imposes any final disciplinary sanction on any registered public accounting firm or any associated person of a registered public accounting firm under 15 U.S.C. 7215(b)(3) or 7215(c), the Board shall file a notice of the disciplinary sanction with the Commission within 30 days and serve a copy on the person sanctioned.

(2) *Contents of the notice.* The notice required by paragraph (c)(1) of this section shall provide the following information:

(i) The name of the registered public accounting firm or the associated person, together with the firm's or the person's last known address as reflected in the Board's records;

(ii) A description of the acts or practices, or omissions to act, upon which the sanction is based;

(iii) A statement of the sanction imposed, the reasons therefor, or a copy of the Board's statement justifying the sanction, and the effective date of such sanction; and

(iv) Such other information as the Board may deem relevant.

By the Commission.

Dated: November 23, 2003.

Margaret H. McFarland,

Deputy Secretary.

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Part V

Department of Energy

10 CFR Part 300
General Guidelines for Voluntary Greenhouse Gas Reporting; Proposed Rule

DEPARTMENT OF ENERGY

10 CFR Part 300

RIN 1901–AB11

General Guidelines for Voluntary Greenhouse Gas Reporting

AGENCY: Office of Policy and International Affairs, U.S. Department of Energy.

ACTION: Proposed rule and opportunity for public comment; proposed revised guidelines.

SUMMARY: Section 1605(b) of the Energy Policy Act of 1992 (EPACT), 42 U.S.C. 13385(b), directed the Department of Energy (DOE or Department) to issue guidelines establishing a voluntary greenhouse gas reporting program. The guidelines issued by the Department in 1994 to establish the Voluntary Reporting of Greenhouse Gases Program were intentionally flexible to encourage the broadest possible participation. On February 14, 2002, the President directed DOE, together with other involved Federal agencies, to recommend reforms to enhance this voluntary reporting program. The purposes of the proposed revised Guidelines are to establish revised procedures and reporting requirements for filing voluntary reports, and encourage corporations, government agencies, non-profit organizations, households and other private and public entities to submit annual reports of their total entity-wide greenhouse gas emissions, net emission reductions, and carbon sequestration activities that are complete, reliable and consistent. Public comments on these proposed revised Guidelines are solicited and a public workshop has been scheduled to encourage an open exchange of views on this subject.

DATES: Interested persons should submit written e-mail or written comments by February 3, 2004 to the addresses given below. You may present oral views and data at a public workshop that will be held at the Washington Plaza Hotel, 10 Thomas Circle, NW., Massachusetts Avenue at 14th Street, Washington, DC 20005, on January 12, 2004, from 8 a.m. to 5 p.m.

ADDRESSES: Send e-mail comments to: *1605bgeneralguidelines.comments@hq.doe.gov*. Alternatively, written comments may be sent to: Mark Friedrichs, PI–40; Office of Policy and International Affairs; U.S. Department of Energy; Room 1E190, 1000 Independence Ave., SW., Washington, DC 20585. DOE will hold a public workshop at the following address: Washington Plaza Hotel, 10 Thomas Circle, NW., Massachusetts Avenue at 14th Street, Washington, DC 20005. You may review comments received by DOE, the workshop transcript, and any other related material at the following Web site: *http://www.pi.energy.gov/enhancingGHGregistry/proposedguidelines/generalguidelines.html*. If you lack access to the Internet, you may access this Web site by visiting the DOE Freedom of Information Reading Room, 1000 Independence Avenue, SW., Washington, DC. See Section III of the **SUPPLEMENTARY INFORMATION** section of this notice for more information about public participation in this proceeding.

FOR FURTHER INFORMATION CONTACT: Mark Friedrichs, PI–40, Office of Policy and International Affairs, U.S. Department of Energy, 1000 Independence Ave., SW., Washington, DC 20585, or email: *1605bgeneralguidelines.comments@hq.doe.gov* [Please indicate if your e-mail is a request for information, rather than a public comment.]

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I. Introduction

A. Background

Section 1605(b) of the Energy Policy Act of 1992 (EPACT) directed the Department of Energy, with the Energy Information Administration (EIA), to establish a voluntary reporting program and database on emissions of greenhouse gases, reductions of these gases, and carbon sequestration activities (42 U.S.C. 13385(b)). Section 1605(b) required that DOE's Guidelines provide for the "accurate" and "voluntary" reporting of information on: (1) Greenhouse gas emission levels for a baseline period (1987–1990) and thereafter, annually; (2) greenhouse gas emission reductions and carbon sequestration, regardless of the specific method used to achieve them; (3) greenhouse gas emission reductions achieved because of voluntary efforts, plant closings, or state or federal requirements; and (4) the aggregate calculation of greenhouse gas emissions by each reporting entity (42 U.S.C. 13385(b)(1)(A)–(D)). Section 1605(b) contemplates a program whereby voluntary efforts to reduce greenhouse gas emissions can be recorded, with the specific purpose that this record can be used "by the reporting entity to demonstrate achieved reductions of greenhouse gases" (42 U.S.C. 13385(b)(4)).

In 1994, after notice and public comment, DOE issued General Guidelines and sector-specific guidelines that established the Voluntary Reporting of Greenhouse Gases Program for recording voluntarily submitted data and information on greenhouse gas emissions and the results of actions to reduce, avoid or sequester greenhouse gas emissions. The 1994 General Guidelines are appended to today's proposal to provide information with regard to reports that were filed under those Guidelines (The General Guidelines and supporting documents may be accessed at *http://www.eia.doe.gov/oiaf/1605/guidelines.html*). The Guidelines were intentionally flexible to encourage the broadest possible participation. They permit participants to decide which greenhouse gases to report, and allow for a range of reporting options, including reporting of total emissions or emissions reductions or reporting of just a single activity undertaken to reduce part of their emissions. From its establishment in 1995 through the 2001 reporting year, 365 entities, including utilities, manufacturers, coal mines, landfill operators and others, have reported their greenhouse gas emissions and/or their emission reductions to EIA.

On February 14, 2002, the President announced a series of programs and initiatives to address the issue of global climate change, including a greenhouse gas intensity reduction goal, energy technology research programs, targeted tax incentives to advance the development and adoption of new technologies, voluntary programs to promote actions to reduce greenhouse gases, and international initiatives. In addition, the President directed the Secretary of Energy, in consultation with the Secretary of Commerce, the Secretary of Agriculture, and the Administrator of the Environmental Protection Agency, to propose improvements to the current Voluntary Reporting of Greenhouse Gases Program required under section 1605(b) of EPACT. These improvements are to enhance measurement accuracy, reliability, and verifiability, working with and taking into account emerging domestic and international approaches.

On May 6, 2002, DOE published a Notice of Inquiry soliciting public comments on how best to improve the Voluntary Greenhouse Gas Reporting Program (67 FR 30370). Written comments were received from electric utilities, representatives of energy, manufacturing and agricultural sectors, Federal and State legislators, State agencies, waste management companies, and environmental and other non-profit research and advocacy organizations.

On July 8, 2002, after considering public comments, the Secretaries of Energy, Commerce and Agriculture, and the Administrator of the Environmental Protection Agency provided the President with ten recommendations on improvements to the Voluntary Greenhouse Gas Reporting Program. The four agencies also outlined a public process for developing specific revisions to the program Guidelines. Following are the ten recommendations for improving the greenhouse gas reporting program:

- Develop fair, objective and practical methods for reporting baselines, reporting boundaries, calculating real results, and awarding transferable credits for actions that lead to real reductions.
- Standardize widely accepted, transparent accounting methods.
- Support independent verification of registry reports.
- Encourage reporters to report greenhouse gas intensity (emissions per unit of output) as well as emissions or emissions reductions.
- Encourage corporate or entity-wide reporting.
- Provide credits for actions to remove carbon dioxide from the atmosphere as well as actions to reduce emissions.
- Develop a process for evaluating the extent to which past reductions may qualify for credits.
- Assure the voluntary reporting program is an effective tool for reaching the 18 percent goal.
- Factor in international strategies as well as State-level efforts; and
- Minimize transaction costs for reporters and administrative costs for the Government, where possible, without compromising the foregoing recommendations.

DOE held public workshops in Washington, D.C., Chicago, San Francisco and Houston during November and December of 2002 to receive oral views and information from interested persons. In addition, the U.S. Department of Agriculture sponsored two meetings in January 2003 to solicit input on the accounting rules and guidelines for reporting greenhouse gas emissions in the forestry and agriculture sectors. These workshops and meetings explored in greater depth many of the issues raised in the Notice of Inquiry and addressed in the written comments. The public comment covered a broad range of issues and views diverged widely on some key issues. Generally, there was substantial support for revising the current General Guidelines to enhance their utility and to accomplish the President's climate change goals.

DOE today is proposing revised General Guidelines, and subsequently will propose Technical Guidelines, that when effective will modify and replace the guidelines for the Voluntary Reporting of Greenhouse Gases issued by DOE in October 1994. The proposed revised General Guidelines would continue to provide procedures for entities to report their greenhouse gas emissions inventories and a wide range of actions they have taken to reduce, avoid or sequester greenhouse gas emissions. In addition, the proposal would enable entities that meet criteria established by DOE to register such reductions in a database maintained by the Energy Information Administration (EIA). The criteria established by DOE will ensure that units of registered reductions will be comparable with regard to the standards of accuracy, reliability and verifiability. Registered reductions will be recorded in a publicly accessible database.

The Secretary of Energy has approved issuance of this notice.

B. Process for Finalizing and Implementing Guidelines

After full consideration of the public comments received, DOE will develop and issue final revised General Guidelines. In parallel, DOE intends to propose Technical Guidelines that will, when finalized, specify the methods and factors to be used in measuring and estimating greenhouse gas emissions, emission reductions, and carbon sequestration. Concurrently with development of the General and Technical Guidelines, DOE's Energy Information Administration will, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), solicit public comment on the reporting elements to be contained in the reporting forms to be used under the revised program Guidelines. With respect to the existing 1994 General Guidelines, DOE intends to publish a **Federal Register** notice of termination on the same day that DOE publishes the notice of final rulemaking setting forth the revised guidelines under section 1605(b) of EPACT. Both the notice of termination and the notice of final rulemaking will contain an effective date, which will be the beginning of a future reporting period.

II. Discussion of Proposal and Requests for Comments

The following section describes the proposed revised General Guidelines, summarizes the rationale for the key elements of the proposal and solicits public comments on a wide range of specific issues.

A. Overview

The proposed revisions to the General Guidelines are designed to enhance the measurement accuracy, reliability and verifiability of information reported

under the 1605(b) program and to contribute to the President's climate change goals. The proposed revised Guidelines will continue to provide considerable flexibility to entities that wish to report emissions or emission reductions in the future, as they have in the past. In addition, the revised Guidelines will provide a means for entities that are able to meet additional requirements to register emission reductions achieved after 2002. This registry will provide special recognition to such emission reductions.

To register emission reductions, reporting entities with substantial emissions (average annual emissions of over 10,000 tons of carbon dioxide (CO_2) equivalent) will need to provide an inventory of their total emissions and calculate the net reductions associated with entity-wide efforts to reduce emissions or sequester carbon. Entities with average annual emissions of less than 10,000 tons of CO_2 equivalent (small emitters) would be eligible, under certain conditions, to register emission reductions associated with specific activities even without completing an entity-wide inventory or reduction assessment.

The proposed revised Guidelines would enable and encourage entities to report (but not register) emission reductions achieved prior to 2003. The revised Guidelines would also permit entities to report (but not necessarily register) emission reductions associated with specific actions or with specific parts of the entity, even if these reports were not accompanied by entity-wide emissions and reductions reports.

The chief executive officer of the company or institution, an agency head, head of household or other responsible official would be required to certify that the reporting entity accurately followed the revised Guidelines for determining emissions, emission reductions and sequestration. Entities would be encouraged to obtain independent verification of the accuracy of their reports, and their compliance with DOE Guidelines.

For convenience, the basic elements of the proposed revised guidelines are graphically represented in Figure 1. DOE solicits public comments on this approach and any suggestions of alternative means of achieving the objectives outlined above.

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All Reports.

FIGURE 1
VOLUNTARY REPORTING OF GREENHOUSE GASES
REPORTING AND REGISTERING EMISSIONS AND EMISSIONS REDUCTIONS

All voluntary reporting entities provide:

1. Baseline Entity Statement (ES) fully documenting operational boundaries on the basis of: **§ 300.5**
   - Legal structure, managerial structure, and financial structure; **§ 300.4(a)(1)**
   - Examines ownership and control of leased and partially owned facilities; **§ 300.5(a)(6)**
   - Confers with other entities to ensure no double-counting; and **§ 300.5(a)(6)**
   - Statement of changes to the entity statement for each reporting year. **§ 300.5(c)**
2. Certification statement indicating: **§ 300.10**
   - Report is accurate and complete on the basis of the ES and consistent with all prior year reports;
   - All information reported follows the calculation methods described in the revised General and Technical Guidelines;
   - Verifiable records will be kept for a minimum of 3 years; and
   - Report was/was not independently verified.

All reports must describe emissions, sequestration, and reductions using the calculation methods described in the revised General and Technical Guidelines.

All emissions reductions and removals must have occurred after December 31, 1990. **§ 300.9(a)**

↓

EIA accepts the report (**reported reductions**).

Registration

↓

To register reductions, entities must demonstrate that the emissions reductions and removals occurred after December 31, 2002. **§ 300.7(b)**

Large emitters (average annual emissions of more than 10,000 tons CO_2 equivalent) must provide:

- Entity-wide Emissions Inventories of:
  - Direct emissions; **§ 300.6(b)**
  - Indirect emissions associated with purchased energy; **§ 300.6(c)**
  - Sequestration; **§ 300.6(d)**
  - Describe de minimis emissions excluded from emission & sequestration inventories; **§ 300.6(e)**
- Calculate net entity-wide reductions on the basis of all changes in an entity's emissions, avoided emissions and sequestration, plus any emission offsets. **§ 300.7**

Small emitters (average annual emissions of less than 10,000 tons CO_2 equivalent) must provide:

- A complete assessment of annual emissions and sequestration associated with the type of activity(ies) being reported;
- Determine the associated reductions; and
- Certify that the reductions reported were not caused by actions likely to cause increases in emissions elsewhere within the entity. **§ 300.7(b)**

↓

EIA accepts the report and registers the eligible emission reductions (**registered reductions**).

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B. Defining Reporting Entities

Under the proposed revised Guidelines, the first step in the reporting process is the definition of the corporation, institution, household or other entity that will be submitting reports. At a minimum, entities would have to be legally distinct businesses, institutions, organizations or households, although reporters would be encouraged to define themselves at the highest meaningful level of aggregation. The legal basis for determining whether an entity (or its subparts) is distinct could be derived from any Federal, state or local law (or regulation) governing the entity, including regulations applicable to corporations, partnerships, cooperatives, government agencies, non-profit organizations, households, or other entities. This approach would permit a legally-distinct company, plant or activity to define itself as an entity, even if it is partially-or wholly-owned by another company. In such cases, any registered reductions would accrue only to the reporting entity, rather than the parent company.

Given the flexibility inherent in this definition, some companies and institutions could be all or part of a reporting entity at any one of several different levels. For example, an individual electric power generating plant might be owned by a partnership of several different companies or individuals. One of these partners might be an electric utility that owns and operates several other electric generating plants, and a transmission and distribution system. And this utility might, in turn, be owned by a regional holding company that also owns other utilities, as well as other non-electric generating companies. In this case, the reporting entity could be defined as the electric generating plant, the utility or the holding company. The program encourages reporting entities to report at the highest level of meaningful financial and operational control, which in this case is likely to be either the utility or the holding company. DOE solicits comment on whether the proposed guidelines are likely to cause entities to establish boundaries that reflect a higher level of corporate or institutional aggregation, as is desired. DOE also solicits recommendations on what additional provisions might preserve flexibility in the establishment of boundaries while also preventing or further discouraging the shifting of emissions to non-reporting parts of the entity in order to create the appearance of net emission reductions. Finally, DOE solicits comment on the desirability of more prescriptive approaches to the definition of entities, such as a requirement that entity definitions correspond to those used for Federal tax purposes.

The Guidelines would require that the name chosen to represent the entity generally correspond to the activity covered by the report. For example, a large multi-product manufacturer should not use its corporate name to report the emissions and emission reductions of just one of its many subsidiaries. However, there may be instances when some, but not all subsidiaries of a large corporation may want to report as a single entity. One reason to report as a single entity might be that certain subsidiaries have a common business activity, while others do not. However, another reason might be that some subsidiaries could demonstrate emission reductions, while others could not. DOE solicits comments on how the Guidelines might provide the flexibility needed by entities with special circumstances, while discouraging abuses of this flexibility that could produce misleading impressions of entity performance.

Another question concerns the possible role of trade associations and other third parties as consolidators of entity-specific reports into an aggregate report to DOE. While associations may report information collectively for their memberships under the current guidelines, this may have implications for the accuracy and reliability—and transparency—of reports submitted under the revised guidelines. Should trade associations and other third parties be required to submit some or all of the entity-specific data that might be required by the revised Guidelines? Should the CEOs, other senior officials, or heads of entities be required to certify the accuracy of their companies' reports when submitted to or through trade associations? Should trade associations and other third parties be able to "register emission reductions" or only file reports for the record?

C. Defining Entity Boundaries

To report on an entity-wide basis and to register emissions reductions, reporting entities would have to provide an "entity statement" that meaningfully defines the operations and facilities (such as office buildings or vehicle fleets) covered by their entity-wide reports, and the greenhouse gas sources and sinks encompassed by these operations and facilities. Such operations would include those wholly owned and operated by the entity, and might include those operations that are partially-owned, leased or operated by the entity. Entities would be required to coordinate with other entities that shared ownership of particular operations to ensure that no double counting occurred. Entities would also have to ensure that each annual report consistently used the boundaries identified in prior year reports, unless an explicit description of any changes made and their effects on emissions accompanied the report. In cases where an entity undergoes a significant structural change, it may have to establish a new base year for all or part of its operations, or, in the case of acquisitions, recalculate its original baseline based on the prior year emissions of the acquired plant.

D. Emission Sources and Sinks Covered

Reports would be able to cover any greenhouse gas or sink that is consistent with the definitions established in the General Guidelines. An entity-wide inventory would need to cover all significant (determined by share of total emissions or absolute quantity of emissions), anthropogenic greenhouse gas emission sources within the entity's defined boundaries. Entity-wide reports must also cover all significant emission sinks. Entity-wide reports must encompass, at minimum, all six greenhouse gases specified in the Guidelines, whether emitted directly by the entity's operations and facilities, or indirectly in the generation of purchased electricity, steam or hot (or chilled) water used by the entity. Indirect emissions other than those specifically cited in the Guidelines may be reported separately, but reductions associated with such other indirect emissions may not be registered. Entities also may separately report, but not register, emissions and emission reductions associated with other gases (*e.g.* chlorofluorocarbons, black soot) that may have significant, quantifiable climate forcing effects, provided that DOE's Technical Guidelines specify the methods for measuring and reporting their emissions. DOE is soliciting comment on criteria for identifying such gases and on procedures for developing the necessary Technical Guidelines. All DOE proposals to permit the reporting of additional gases will be made available for public comment before being put into effect. DOE solicits comment on this approach and on a possible alternative that would permit participating entities to report (but not register) the emissions and emission reductions associated with other gases, even if DOE's Technical Guidelines did not specifically cover such other gases.

E. Entity-Wide Reporting of Emissions Inventories

To be eligible to register emission reductions, entities with substantial emissions (an annual average in excess of 10,000 tons of CO_2 equivalent) would need to report annual entity-wide inventories of their emissions and sequestration. Such inventories would provide a basis for assessing the significance of reported emission reductions relative to the entity's total emissions.

F. Entity-Wide Emission Reductions

To register emissions reductions, entities with average annual emissions over 10,000 tons of CO_2 equivalent would be required to demonstrate, to the maximum extent practicable, that the reported reductions represent an actual net decrease in entity-wide emissions, as calculated using one or more of the methods allowed by the General and Technical Guidelines. Some entities, such as electricity generators, would be expected to calculate net emission reductions for their entire entity (using one or more of the methods described below and in the Technical Guidelines). Others, such as multi-product manufacturers, may not be able to determine the net emission reductions achieved by all elements of their entity using the methods allowed by the Guidelines. These types of reporters could report the net emission reductions for as much of their entity as was practicable, in addition to reporting their entity-wide emission inventories.

Example: A multi-product manufacturer has instituted company-wide efforts to reduce emissions, but because its U.S. output is growing rapidly, its absolute U.S emissions have not declined. By using different calculation methods (intensity for many facilities and absolute emissions for others, as well as some project-specific calculations) it can quantify the emission reductions associated with 90% of its total emissions. It would report its total emissions and quantified emission reductions to DOE, and explain that it is not practicable to quantify the emission reductions associated with the remaining 10% of its operations because there are no year-to-year measures of output for these operations (because they involved the production of totally new products). In this case, the entity could register its reported emission reductions, but the data submitted in its report would clearly indicate that these reductions were based on an assessment of just 90 percent of the entity's emissions.

Net emission reductions achieved by third parties (offsets) could be included in an entity's report and be registered as long as the third party or other entity involved observed all of the rules that would have applied had it chosen to report its net emission reductions directly, and the entities involved have agreed that the reporting entity can register the emission reductions identified (*see* section II.O.5 below for additional discussion on the treatment of offsets).

The proposed Guidelines indicate that the owner of the facility, land or vehicle that generated the emission reductions or sequestration is the entity presumed to have the right to report and register any emission reductions or sequestration. For example, the owner of a wind turbine that sells its power to the grid is presumed to have the right to register such resulting emission reductions, even though this wind-generated electricity might be purchased at a premium by a local utility and, ultimately, resold at a premium rate to a local manufacturer. This presumption can be altered, however, if there is a written agreement between the entities involved to transfer this right.

G. Guidelines for Small Emitters

Entities with average annual emissions of less than 10,000 tons of CO_2 equivalent, such as many farms and forest operations, small businesses and individuals, could report and register emission reductions that have occurred during and after 2003 without submitting the results of an entity-wide emissions inventory or an entity-wide assessment of the annual changes in their emissions, avoided emissions and sequestration. Entities reporting under this provision would be required to determine the total annual emissions and sequestration associated with the type of activities on which they choose to report, the net emission changes associated with these specific activities, and to certify that the changes reported were not caused by actions likely to cause increases in emissions elsewhere within the entity's operations. Small emitters would be required to use the same methods for calculating emission reductions available to other reporters. DOE's Technical Guidelines will provide a list of the types of activities about which small emitters might report. It is expected that households and many small businesses, farms, and forest operations would be exempt from the requirement to submit entity-wide inventories. The use of a multi-year average rate of emissions is intended to enable certain small entities that have periodic spikes in their annual emissions (for example, a land owner that periodically harvests trees) to qualify for this exemption. Comments are specifically solicited on (1) whether 10,000 tons of CO_2-equivalent emissions would be the appropriate threshold quantity to achieve this objective, and (2) the appropriate period of time over which small entities should be permitted to average their annual emission rates. DOE is also soliciting comments on whether these special rules for small emitters are appropriate and how to ensure that reductions reported by small emitters are not a result of shifting emissions to non-reporting parts of the entity.

H. Emission Reduction Calculations

All reported and registered emission reductions would have to be calculated using one of the methods identified below, together with the procedures to be set forth in DOE's Technical Guidelines. The proposed revised General Guidelines recommend the use of emission intensity indicators as the basis for determining emission reductions, but would permit the use of several other methods to calculate emission reductions and sequestration as long as the method used excludes reductions caused by reductions in output. Regardless of the method used, a reporting entity would have to certify that none of the reported emission reductions were: Double counted by the reporting entity (or, to its knowledge, by any other reporting entity); or were the result of shifts in operations or activity from one part of the entity to another part of the entity, or to outside the boundaries of the entity. Entities would be required to report each emission reduction and sequestration calculation by type, indicate the types of actions taken that resulted in the reported emission reduction, and explain the selection of each indicator of output used. Comments are invited on the appropriateness of each of the methods described below and on the definitions provided in the proposed Guidelines. Additional guidance on each of these methods will be provided in the Technical Guidelines, including lists of possible output indicators, calculation methods for determining reductions associated with agricultural, forestry and geologic sequestration, methods and emission factors for calculating avoided emissions, and project-based methods, among others.

1. *Reductions in emissions intensity,* as long as the reporting entity demonstrates that the intensity metrics used are based on measured (or estimated) emissions and measured indicators of output that accurately represent the physical (or, in some cases, economic) output associated with the covered emissions, and that acquisitions, divestures or changes in products have not contributed significantly to the reductions.

2. *Absolute reductions in emissions,* as long as the entity demonstrates that these measured reductions were not caused by declines in its U.S. output.

3. *Increased carbon storage* (for actions within entity boundaries), as long as the entity demonstrates the sequestration measured or estimated represents a net increase in the quantity stored by the entity and has not been re-released to the atmosphere (ongoing, annual reports would be required).

4. *Avoided emissions* (for actions within entity boundaries that reduce emissions outside entity boundaries) that reflect the indirect emission reductions achieved as a result of a measured increase in the net sales of energy generated by low-or no-emission technologies.

5. *Project emission reductions* (for actions taken to reduce direct or indirect emissions within entity boundaries), as long as they exclude any reductions that might have resulted from reduced output or from shifting emissions to operations not included in the reported projects, and are derived from measured performance data or by using estimation methods consistent with DOE Technical Guidelines. In the context of entity-wide reports, this last calculation method is intended only for use when none of the other methods is practicable.

I. Recordkeeping, Report Certification, and Verification

Reporters under the existing program must certify the accuracy of their reports, but are not required to maintain records. Under the proposed revised Guidelines, the chief executive officer, agency head, head of household or person responsible for the reporting entity's compliance with environmental regulations would certify that reports are complete, accurate and consistent with DOE guidelines, and that sufficient records will be maintained for at least three years to enable independent verification. Reporting entities are strongly encouraged to obtain independent verification of their reports. The proposed Guidelines describe what would constitute such verification, including a description of the types of firms or institutions that might be qualified to independently verify the entity's reports, and the elements of an entity's records and reports that should be verified.

The proposed General Guidelines would require reports to EIA that are sufficiently detailed to enable EIA to review and confirm the final emission reduction calculations for each method and output measure utilized, and to review and confirm the rates of conversion used for each category of greenhouse gas covered and for electricity-related use or emissions avoidance, by region. EIA's review of the data submitted would be intended to assure consistency with the requirements specified in the General and Technical Guidelines. This level of reporting would indicate the basic components of each entity's emission inventory and of its entity-wide emission reductions. Entities would be required to maintain more detailed records, sufficient to permit an independent verification. The proposed levels of data reporting and recordkeeping represent a middle ground between the views of stakeholders who favor summary data and those stakeholders who prefer more detailed data that would be the basis for independent verification.

The proposal limits the recordkeeping requirement to three years. Of course, reporting entities may keep their records for a longer period of time if they deem it in their interest to do so.

The proposed Guidelines would require that the chief executive officer or other senior official of the reporting entity certify the accuracy, consistency and completeness of all reports. In addition, the Guidelines would encourage, but not require, independent verification of all reports. The proposed Guidelines would provide only general guidance on what DOE considers the necessary qualifications of verifiers and the information that they must verify. This guidance is intended to provide some assurance that such verifiers are independent and appropriately qualified, while still giving entities considerable flexibility in the selection of the type of firm most appropriate to perform such an independent verification. DOE invites comments on whether the general guidance provided is sufficient to achieve this objective.

While some stakeholders believe that independent verification should be required of all reports, many felt that independent verification is only necessary if entities seek to sell their registered emission reductions and, in such cases, private markets are likely to specify the type of independent verification required. While DOE received many comments that questioned the credibility of many of the emission reductions reported under the existing program, most of these concerns related to the methodology used to calculate the reported reductions, rather than the validity of the data used or reported. While DOE believes that requiring a senior officer to certify reports will provide adequate assurance that the data reported are reliable, the proposed Guidelines would strongly encourage reporters to obtain independent verification. DOE solicits public comment on this approach and on whether further consideration should be given to requiring independent verification of emission reductions prior to registration.

J. Starting To Report

Under the proposed revised Guidelines, entities would be permitted to begin reporting their prior-year emissions and emission reductions at any time. In general, the first full year for which an emissions inventory is available would be considered the entity's base year, although DOE would encourage entities to determine their base year by calculating the average emissions or emissions intensity during a base period of up to four years in length. This flexibility would permit a reporter to select the base year or base period most representative of actual operations. It may also, however, allow a reporter to select the most advantageous base year or base period (*i.e.*, a period that would enable the reporter to register the greatest amount of reductions). DOE solicits comments on whether this flexibility is appropriate and, if not, what steps might be taken to limit this flexibility. To focus the program on current and future efforts to reduce greenhouse gas emissions, entities would be permitted to register only those emission reductions calculated using a base year no earlier than 2002 (or base period of up to four sequential years ending no earlier than 2002). However, entities may still report emission inventories and reductions for previous years, as long as any prior year emission reductions are calculated using a base year no earlier than 1990 (or a base period no earlier than 1987–1990). To be accepted as entity-wide reports under the revised Guidelines, emission reductions already reported to the 1605(b) registry must be recast to fully comply with the revised Guidelines.

K. Report Acceptance

Upon receipt, EIA would review all reports to ensure consistency with the revised Guidelines. If EIA determines the report follows the General and Technical Guidelines, and EIA's Reporting Form Instructions, the report would be classified as either an entity-wide report or otherwise, and accepted.

L. Registration of Emission Reductions

Accepted entity-wide reports and reports from small emitters would then be further reviewed to determine if reductions were eligible to be registered. Entity-wide reports and reports from small entities that have used the methods identified in the General and Technical Guidelines, as well as EIA's Reporting Form Instructions, to demonstrate they have achieved emission reductions after 2002 and have met all other applicable requirements would have the identified reductions registered in the 1605(b) database under the name of reporting entity and the year the reduction was achieved.

Registering only reductions that are achieved after 2002 would focus the program on those reductions most likely to contribute to the achievement of the President's goal for reducing U.S. emissions intensity by 18% between 2002 and 2012. In addition, because all of the data required to register reductions would be relatively recent, it would help ensure that all entities have an equal opportunity to register emission reductions under the new program. Nevertheless, the revised Guidelines would continue to permit entities to *report* emission reductions back to 1991, the earliest year permitted by the authorizing statute, and reports that comply with the Guidelines would be made publicly available by EIA. DOE solicits public comments on this approach and any suggestions of alternative means of achieving the objectives outlined above.

M. Sustaining Entity Reports of Emissions and Emission Reductions

To register emission reductions in any future year, an entity would be required to submit ongoing annual reports that document the net, cumulative emission reductions achieved relative to the entity's base year (or base period). Only additions to cumulative emission reductions (relative to the chosen base year or base period) would be recognized in future years. This requirement would reduce the quantity of emission reductions eligible for registration in future years if the reporting entity experiences a net increase in output-adjusted emissions after beginning to report. This approach would preserve the recognition given to all previously registered emission reductions, even if an entity experienced net emission increases in the future or stopped reporting. DOE solicits comments on this approach and possible alternatives, including those that might permit or require DOE to delete previously registered emission reductions if an entity did not continue to submit annual reports. Ongoing, annual reporting would be required to maintain recognition for registered emission reductions resulting from sequestration.

N. EIA Database and Summary Reports.

The EIA Administrator would establish a public database including all data that meets the definitional, measurement, calculation and certification requirements of the revised Guidelines. The database would provide summary information on each reporting entity's greenhouse gas emissions and its registered emission reductions, by year, according to the categories described above. The database would also provide access to all accepted reports.

O. Cross-Cutting and Other Important Issues

This section discusses various issues that affect more than one provision of the proposed revised Guidelines or were not highlighted in any of the preceding sections. DOE is seeking public comment on all of these issues, and certain specific questions are posed.

1. Entity-Wide v. Sub-Entity or Project-Only Reporting

The proposed Guidelines would highlight the net contribution of reporting entities to reducing greenhouse gas emissions, rather than sub-entity reductions resulting from actions taken in only some parts (rather than the whole) of the entity. This reflects the Administration's interest in fostering broad efforts by corporations, institutions and other entities to reduce their total emissions. Over time, individual companies and other entities often take many actions that either increase or decrease their emissions of greenhouse gases. It is the net effect of all of these actions on an entity's emissions that is the most important indicator of an entity's contribution to the President's goal of reducing U.S. emissions intensity. Under the revised Guidelines, most reporters would be able to register emission reductions only if they could demonstrate they had achieved a net reduction in their total emissions, relative to their physical or economic output. Small emitters, such as households, and some farms, forest operations, and small businesses, would be permitted to register the reductions achieved in just one area of activity, such as building operations or forestry, rather than accounting for all of their emissions, so long as they certify that these reductions are not a product of shifting emissions to non-reporting parts of the entity. In addition, the proposed Guidelines would continue to provide a mechanism for large emitters to report, but not register, the reductions resulting from individual actions or projects affecting a part of the entity's emissions, even if they could not demonstrate that they had achieved a net reduction in their total emissions, relative to their physical or economic output. DOE solicits comments on this approach and on possible alternatives to this approach, including circumstances under which project-based or sub-entity reductions might be registered in the absence of net entity wide reductions.

2. Treatment of Certain Small Emissions

The proposed Guidelines would permit reporters to exclude certain emissions that are comparatively small, as well as all non-anthropogenic emissions. Specifically, an entity could exclude emissions from multiple sources (and multiple gases) as long as the total emissions excluded did not exceed 3% of its total emission inventory or 10,000 tons of CO_2 equivalent, whichever was smaller. This exclusion is intended to enable entities to exclude small, and possibly widely dispersed, emissions that are likely to be especially costly to monitor and report, but which would have little effect on the total emissions or emission reductions reported. However, this approach has some potential drawbacks. For example, very large emitters, such as large power generators or large energy intensive industries applying this standard would have to account for a very high percentage of their total emissions (in some cases over 99.9%). Accounting for such a high percentage of total emissions could be burdensome and would have little effect on the totals reported. Several possible alternatives exist. One option might be to provide for uniform percentage exclusion, such as permitting all entities to exclude up to 3 percent of their emissions. This could lead some large utilities or industries to exclude large quantities of emissions that would be relatively easy to include in their reports. Another possible alternative is the addition of a minimum percentage exclusion, such as 1 percent. Still another alternative might be to permit firms to exclude up to 3 percent or 10,000 tons of CO_2 equivalent, whichever is greater. DOE solicits comments on the approach proposed, as well as various alternatives approaches.

3. Excluding the Effects of Changes in Output on Emissions

The proposed Guidelines would strongly encourage the use of emissions intensity indicators as the basis for calculating emission reductions and would require that any method used to calculate emission reductions ensure that reductions caused by declines in the reporting entity's output be excluded. This would require entities to develop useful physical (and/or possibly economic) indicators of the output associated with the emissions being assessed. For power generators

supplying electricity to the grid, the preferred measure of output is clear: kilowatt hours. Certain large manufacturers also have well-established measures of output that have already been widely used for many years, such as tons of cement. But many product manufacturers may have some difficulty identifying useful output indicators especially if they desire to develop indicators that represent the output associated with a large a number of different processes and products. Broad physical units, such a pounds of product (sometimes used by chemical manufacturers), often encompass a wide range of different products, and a similarly wide range of production processes and product values. As a result, some important shifts between processes or product types may not be captured by such a broad indicator. As an alternative, some entities might consider the use of economic indicators, although analysis of some entity-level economic indicators suggests that they may be significantly affected by changes in market conditions and may serve as poor indicators of production-related changes by individual entities. DOE intends to identify in the Technical Guidelines various output indicators and provide guidance on the selection of appropriate indicators. DOE may specify the use of particular indicators for certain types of economic activity, but is likely to give most reporters the flexibility to adopt the best indicators for their particular circumstances. Given the potential deficiencies of some output indicators, DOE invites public comment on what information entities should be required to provide to justify the selection of their output indicators and what criteria DOE should use to determine whether a particular output measure is acceptable.

A related issue concerns entities that base their emission reductions on changes in their "absolute" emissions. The proposed Guidelines would require such entities to demonstrate that any reported reductions were not associated with declines in the output associated with those emissions. Because entities should only use this approach if they could not develop an output indicator that would enable them to track their emissions intensity, they may have difficulty demonstrating that their output had not declined. Again, DOE is interested in receiving comments on what output measures or other information such entities should be required to provide to demonstrate that their output has not declined and what criteria DOE might use to determine whether the information provided was sufficient.

4. Emissions and Reductions Associated With Electricity Generation and Use

Several key provisions of the Guidelines deal with how entities are to report emissions and emission reductions associated with electricity generation and use. Approximately 32 percent of total U.S. emissions of greenhouse gases are released in the generation of electricity. As there are substantial opportunities to reduce the emissions associated with both the generation and use of electricity, it is important that the program cover both electricity generators and consumers. In doing so, however, it is also important to ensure: (1) That electricity-related emissions and emission reductions are not double counted; (2) that the conversion factors used to translate kilowatt hours into emissions are accurate indicators of the actual emissions associated with the generation of the electricity; and (3) that recognition for reductions is given to those entities primarily responsible for those reductions. Both these proposed General Guidelines and the Technical Guidelines, to be proposed subsequently, will attempt to achieve these objectives.

To avoid double counting, the proposed General Guidelines would require users to distinguish between the "indirect" emissions associated with electricity purchases (as well as purchased steam, and chilled/hot water) and their direct emissions. This will enable entity-level emission inventories to include such indirect emissions, while permitting DOE to exclude such emissions from compilations of multiple reports, if desired. In the Technical Guidelines, DOE will specify the factors to be used to convert purchased electricity use to greenhouse gas emissions. For the purposes of emission inventories, DOE is likely to specify a factor based on the average emissions per kilowatt hour for the region in which the electricity was consumed. However, for the purpose of calculating emission reductions associated with reduced electricity demand, DOE may specify an alternative factor, such as one based on the emissions associated with regional electricity supplies at the margin (largely excluding electricity generated by hydro, nuclear power plants and some coal, which tend to be fully utilized, regardless of changes in regional demand for power). These factors might change annually and could be required to be used by all consumers of purchased electric power, unless the reporter could demonstrate special circumstances.

There may be two methods for determining emission reductions associated with the generation of electricity. One method might be used to calculate reductions in the emissions intensity of existing power production (*e.g.*, through fuel switching or increased efficiency) and the other might be used to calculate the indirect reductions (or avoided emissions) that result from increasing the electric power generation from non-emitting or low-emitting sources. DOE is seeking to provide recognition to existing power generators that reduce their emissions intensity, while also establishing a level playing field among producers of new or additional power supplies, and end-users of electricity that reduce their demand.

DOE intends to provide, through its Technical Guidelines, clear direction on how to calculate emission reductions associated with the generation and purchase of electricity. While the specific methodologies and factors to be used have yet to be defined, DOE is soliciting suggested approaches that would achieve the objectives identified, as well as specific recommendations on how to develop the conversion factors described and how to most appropriately distinguish between existing and new power production and emissions.

5. Reporting and Registering Changes in Terrestrial Carbon Stocks

The proposed guidelines would require entity-wide emission inventories to include emissions and sequestration associated with terrestrial carbon stocks. Changes in the amount of carbon stored in sinks within the entity's boundaries over the inventory year would determine the quantities of such emissions and sequestration included in inventories. Entities that meet all of the relevant requirements in the general and technical guidelines may also register year-to-year increases in carbon stocks as "registered reductions." Ongoing reporting will be required to ensure that any future changes in these stocks are fully reflected in the entity's emission inventories and registered emission reductions. The Department seeks comments on this provision as well as alternatives. For example, one alternative approach would calculate registered reductions as the change in carbon stocks during an inventory year relative to the change in stocks during a base year or period.

6. Recognizing Emission Offsets

As proposed, the General Guidelines would permit entities to report and register emission reductions achieved by others, as long as the entity that achieved the reductions observed all of the requirements applicable to reporters and the entities involved indicated that they had an agreement stipulating who would report the emission reductions. These provisions are designed to enable and encourage large emitters to support efforts to reduce emissions outside the boundaries of their entities. DOE believes this may be especially desirable when the opportunities for reducing emissions within an entity's boundaries are comparatively limited or costly. However, these provisions raise a number of issues upon which DOE is seeking public comment.

Most of these issues concern the information that must be submitted by a reporting entity about the emission reductions achieved by a non-reporting entity. For example, must the reporting entity provide all of the information that the non-reporting entity would have been required to submit directly, including an Entity Statement, an emissions inventory (unless exempted), and an entity-wide assessment of emission reductions (unless exempted)? Must the chief executive officer or other senior manager of the non-reporting entity certify to the accuracy of all of the information reported by the reporting entity? Could a non-reporting entity enter into agreements permitting some of its emission reductions to be registered by one entity and the remainder by one or more other entities? Must the reporting entity demonstrate that it helped finance or manage the achievement of the emission reductions achieved by some other entity? One approach that might avoid many of these potential issues would be to require direct reporting by all entities that generate emission reductions. This approach would ensure that complete reports, submitted directly by the entity that owned the facilities or land that produced the emission reductions, would be available for all registered emission reductions. But requiring direct reports by all entities might discourage emission reductions by entities that are unwilling to report directly and might discourage support for such offset projects by large emitters, such as utilities. DOE solicits comments on the approach proposed and on possible alternatives.

7. International Emission Reductions

The proposed revised Guidelines do not address either the reporting of non-U.S. emissions and emission reductions or the registration of non-U.S. emissions reductions. DOE is soliciting public comments on whether non-U.S. emissions and emission reductions should continue to be eligible for reporting under the revised program, recognizing that the current guidelines provide for reporting of international activities.[1] DOE is also soliciting public comments on whether non-U.S. emissions and emission reductions should qualify for registration and, if so, what procedures and requirements should be established for registration of such emissions and emission reductions.

Many factors are relevant to how non-U.S. emissions and emission reductions should be treated under the program with respect to both reporting and registration. Since 1994, many entities have reported on overseas activities; many companies likely to participate in the revised program have substantial business operations both inside and outside the United States. At the same time, reporting and registration of non-U.S. emissions and emission reductions raise certain issues that do not arise in the context of the reporting and registration of U.S. emissions and emission reductions. (For example, certifying the accuracy of data may be more complicated.)

In addition to requesting comment on the overall issue of whether to include international activities, DOE specifically requests comment on the following questions: How would the concept of "entity-wide" reporting be extended to include non-U.S. activities? Should an entity wishing to report non-U.S. emission reductions achieved in its own non-U.S. operations be required to inventory and report on all non-U.S. emissions and to assess changes in its emissions worldwide? Or should such entity only be required to report on its non-U.S. operations in specific countries? What requirements should third-party non-U.S. offsets be required to meet? To be eligible for registration, should reports of non-U.S. emissions reductions require independent verification? What would be the implications, including for participation in the 1605(b) program, if non-U.S. activities were excluded from reporting and/or registration?

[1] Since the current Guideline became effective in 1994, DOE has interpreted the Congressional intent underlying the statute to allow for the reporting of international activities.

8. Relationship of Proposed Guidelines to Climate VISION, Climate Leaders and Other Voluntary Programs To Reduce Greenhouse Gas Emissions

DOE, the Environmental Protection Agency and other Federal agencies have established programs to encourage companies, trade associations and other non-government organizations to take voluntary actions to reduce, sequester, or avoid greenhouse gas emissions. For example, industry participants in DOE's "Climate VISION" program, a Presidential initiative launched in February 2003, and EPA's Climate Leaders program have made voluntary commitments to reduce GHG emissions or emissions intensity by a specified amount, and to monitor and report on their progress.

The Administration intends to use the 1605(b) program to document, where possible, the progress of participants in these voluntary Federal programs. This is consistent with the President's desire that the 1605(b) registry be a "tool that goes hand-in-hand with voluntary business challenges * * * by providing a standardized, credible vehicle for reporting and recognizing progress." However, additional reporting may be required for other specific voluntary Federal programs in order to provide distinct benefits to program participants.

DOE is soliciting comment on the merits of using the 1605(b) program for documenting progress of participants in voluntary Federal programs towards meeting their emissions reduction goals.

III. Opportunity for Public Comment

A. Written Comments

You should submit written comments by February 3, 2004. Because we continue to experience occasional mail delays due to extra processing required for delivery of mail to Federal agencies, we encourage you to submit comments electronically by e-mail at *1605bgeneralguidelines.comments@hq.doe.gov*. We will consider comments received after the comment deadline only to the extent practicable. Comments should be submitted to the e-mail or street addresses given in the **ADDRESSES** section of this notice. Written comments should be identified on the documents themselves and on the outside of the envelope, or in the e-mail message, with the designation [insert name of rulemaking and docket number]. All comments received and transcripts of any public workshop held will be available for public inspection at the following Web site: *http://www.pi.energy.gov/*

enhancingghgregistry/proposedGuidelines/comments. Persons without access to the Internet can obtain such access to this Web site by visiting the DOE Freedom of Information Reading Room, Room 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–3142, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

If you submit information that you believe to be exempt by law from public disclosure, you should submit one complete hardcopy and two hardcopies from which the information claimed to be exempt by law from public disclosure has been deleted. DOE is responsible for the final determination with regard to disclosure or non-disclosure of the information and for treating it accordingly under the DOE Freedom of Information Act regulations at 10 CFR 1004.11.

B. Participation in Public Workshop

You will find the time and place of the public workshop at the beginning of this notice. We invite any person who has an interest in today's notice, or who is a representative of a group or class of persons that has an interest in these issues, to participate in the workshop. Because space may be limited, persons wishing to participate in the workshop should inform DOE by identifying the person or persons likely to attend, an e-mail or phone number for follow-up contacts, and providing a brief description of the specific issues of particular interest. This information may be provided electronically at the following Web site: *http://www.pi.energy.gov/enhancingGHGregistry/proposedguidelines/generalguidelines.html* or may be provided in writing to the person listed in the beginning of this notice.

DOE will designate a DOE official to preside at the workshop, and may also use a professional facilitator to facilitate discussion. The workshop will not be conducted under formal rules governing judicial or evidentiary-type proceedings, but DOE reserves the right to establish procedures governing the conduct of the workshop. The workshop will be organized so as to encourage the open discussion of specific issues by the range of stakeholders and government representatives present. Prior to the workshop a draft agenda, identifying specific issues for discussion, will be made available at the following Web site: *http://www.pi.energy.gov/enhancingGHGregistry/proposedguidelines/generalguidelines.html*. There will also be opportunities during the workshop for the identification and discussion of issues not specifically identified on the agenda. The presiding official will announce any further procedural rules, or modification of the above procedures, needed for the proper conduct of the workshop. Statements for the record of the workshop will be accepted at the workshop.

DOE will make the entire record of the rulemaking, including the workshop transcript, available for inspection at the following Web site: *http://www.pi.energy.gov/enhancingGHGregistry/proposedguidelines/generalguidelines.html*. In addition, any person may purchase a copy of the transcript from the transcribing reporter.

IV. Regulatory Review and Procedural Requirements

A. Review Under Executive Order 12866

Today's action has been determined to be "a significant regulatory action" under Executive Order 12866, "Regulatory Planning and Review" (58 FR 51735, October 4, 1993). Accordingly, this action was subject to review under that Executive Order by the Office of Information and Regulatory Affairs of the Office of Management and Budget (OMB).

B. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires preparation of an initial regulatory flexibility analysis for any rule that by law must be proposed for public comment, unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. As required by Executive Order 13272, "Proper Consideration of Small Entities in Agency Rulemaking" (67 FR 53461, August 16, 2002), DOE published procedures and policies to ensure that the potential impacts of its draft rules on small entities are properly considered during the rulemaking process (68 FR 7990, February 19, 2003), and has made them available on the Office of General Counsel's Web site: *http://www.gc.doe.gov*. DOE has reviewed today's proposed Guidelines under the provisions of the Regulatory Flexibility Act and the procedures and policies published on February 19, 2003. Although section 1605(b)(1) of EPACT mandates a public comment opportunity before Guidelines can be issued, the proposed guideline provisions are policy statements and procedural rules. They are not substantive regulatory requirements that would have an economic impact on small entities. On the basis of the foregoing, DOE certifies that the proposed Guidelines, if promulgated, would not have a significant economic impact on a substantial number of small entities. Accordingly, DOE has not prepared a regulatory flexibility analysis for this rulemaking.

C. Review Under the Paperwork Reduction Act

The Energy Information Administration previously obtained Paperwork Reduction Act clearance by the Office of Management and Budget (OMB) for forms used in the current Voluntary Reporting of Greenhouse Gases program (OMB Control No. 1905–0194). EIA will prepare new forms and associated instructions to implement the revised guidelines for the program, and it will publish a separate notice in the **Federal Register** requesting public comment on the proposed collection of information in accordance with 44 U.S.C. 3506(c)(2)(A). After considering the public comments, EIA will submit the new forms, instructions, and related guidelines to OMB for approval pursuant to 44 U.S.C. 3507(a)(1).

D. Review Under the National Environmental Policy Act

DOE has concluded that this proposed rule falls into a class of actions that would not individually or cumulatively have a significant impact on the human environment, as determined by DOE's regulations implementing the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*). This action deals with the procedures and policies for entities that wish to voluntarily report their greenhouse gas emissions and their reduction and sequestration of such emissions to the Energy Information Administration. Because the proposed Guidelines relate to agency procedures and impose no substantive requirement on those entities wishing to report, the proposed Guidelines are covered under the Categorical Exclusion in paragraph A6 to subpart D, 10 CFR part 1021. Accordingly, neither an environmental assessment nor an environmental impact statement is required.

E. Review Under Executive Order 13132

Executive Order 13132, "Federalism" (64 FR 43255, August 4, 1999) imposes certain requirements on agencies formulating and implementing policies or regulations that preempt State law or that have federalism implications. Agencies are required to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and carefully assess the necessity for such actions. The Executive Order also requires agencies to have an accountable process to ensure meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications. On March 14, 2000, DOE published a statement of policy describing the intergovernmental consultation process it will follow in the development of such regulations (65 FR 13735). DOE has examined today's proposed action and has determined that it does not preempt State law and does not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. No further action is required by Executive Order 13132.

F. Review Under the Treasury and General Government Appropriations Act, 2001

The Treasury and General Government Appropriations Act, 2001 (44 U.S.C. 3516, note) provides for agencies to review most disseminations of information to the public under guidelines established by each agency pursuant to general guidelines issued by OMB. OMB's guidelines were published at 67 FR 8452 (February 22, 2002), and DOE's guidelines were published at 67 FR 62446 (October 7, 2002). DOE has reviewed today's notice under the OMB and DOE guidelines and has concluded that it is consistent with applicable policies in those guidelines.

G. Review Under Executive Order 12988

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, "Civil Justice Reform" (61 FR 4729, February 7, 1996), imposes on Federal agencies the general duty to adhere to the following requirements: (1) Eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; and (3) provide a clear legal standard for affected conduct rather than a general standard and promote simplification and burden reduction. Section 3(b) of Executive Order 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) Clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in section 3(a) and section 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, this proposed rule meets the relevant standards of Executive Order 12988.

H. Review Under the Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires each Federal agency to assess the effects of a Federal regulatory action on state, local, and tribal governments, and the private sector. The Department has determined that today's regulatory action does not impose a Federal mandate on state, local or tribal governments or on the private sector.

I. Review Under the Treasury and General Government Appropriations Act, 1999

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. 105–277) requires Federal agencies to issue a Family Policymaking Assessment for any rule that may affect family well-being. These proposed guidelines would not have any impact on the autonomy or integrity of the family as an institution. Accordingly, DOE has concluded that it is not necessary to prepare a Family Policymaking Assessment.

J. Review Under Executive Order 13211

Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001) requires Federal agencies to prepare and submit to the OMB, a Statement of Energy Effects for any proposed significant energy action. A "significant energy action" is defined as any action by an agency that promulgated or is expected to lead to promulgation of a final rule, and that: (1) Is a significant regulatory action under Executive Order 12866, or any successor order; and (2) is likely to have a significant adverse effect on the supply, distribution, or use of energy, or (3) is designated by the Administrator of OIRA as a significant energy action. For any proposed significant energy action, the agency must give a detailed statement of any adverse effects on energy supply, distribution, or use should the proposal be implemented, and of reasonable alternatives to the action and their expected benefits on energy supply, distribution, and use. Today's regulatory action would not have a significant adverse effect on the supply, distribution, or use of energy and is therefore not a significant energy action. Accordingly, DOE has not prepared a Statement of Energy Effects.

List of Subjects in 10 CFR Part 300

Administrative practice and procedure, Energy, Gases, Reporting and recordkeeping requirements.

Issued in Washington, DC on November 20, 2003.

Robert G. Card,

Under Secretary for Energy, Science and Environment.

For the reasons set forth in the preamble, DOE proposes to amend Chapter II of Title 10 of the Code of Federal Regulations by adding a new Subchapter B consisting of part 300 to read as follows.

SUBCHAPTER B—CLIMATE CHANGE

PART 300—VOLUNTARY GREENHOUSE GAS REPORTING PROGRAM: GENERAL GUIDELINES

Sec.

300.1 General.
300.2 Definitions.
300.3 Guidance for defining the reporting entity.
300.4 Selecting operational boundaries for reporting.
300.5 Submission of an entity statement.
300.6 Emissions inventories.
300.7 Net entity-wide emission reductions.
300.8 Calculating emission reductions.
300.9 Reporting and recordkeeping requirements.
300.10 Certification of reports.
300.11 Independent verification.
300.12 Acceptance of reports and registration of entity emission reductions.
Appendix A to Part 300—Voluntary Reporting of Greenhouse Gases Under 1605(b) of the Energy Policy Act of 1992: General Guidelines (October 1994).

Authority: 42 U.S.C. 7101, *et seq.*, and 42 U.S.C. 13385(b).

§ 300.1 General.

(a) *Purpose.* These Guidelines govern the Voluntary Reporting of Greenhouse Gases Program authorized by section 1605(b) of the Energy Policy Act of 1992 (42 U.S.C. 13385(b)). The purposes of the Guidelines are to establish the procedures and requirements for filing voluntary reports, and encourage corporations, government agencies, non-profit organizations, households and other private and public entities to submit annual reports of their net

greenhouse gas emissions, emission reductions, and sequestration activities that are complete, reliable and consistent. Over time, it is anticipated that these reports will provide a reliable record of the contributions reporting entities have made to reducing their greenhouse gas emissions.

(b) *Registration and reporting options.* An entity may choose to register or report emissions and emission reductions as follows.

(1) *Registration.* An entity may have entity-wide emissions and emissions reductions registered by conforming to the requirements of this part, including the registration standards set forth in §§ 300.6 and 300.7 of this part.

(2) *Reporting.* If an entity does not choose to report emissions in a manner that conforms to the registration requirements set forth in §§ 300.6 and 300.7 of this part, then the entity may choose to report on any emissions or any emissions reductions by complying with the requirements of this part other than §§ 300.6 and 300.7.

(c) *Forms.* Annual reports of greenhouse gas emissions, emission reductions, and sequestration must be made on forms or software that are available from the Energy Information Administration of the Department of Energy (EIA).

(d) *Status of reports under previous General Guidelines.* EIA will continue to maintain in its Voluntary Reporting of Greenhouse Gases database all reports received pursuant to DOE's October 1994 General Guidelines. For the convenience of the readers, those Guidelines are included as Appendix A to this part 300.

§ 300.2 Definitions.

This section provides definitions for commonly used terms in the Guidelines.

Avoided emissions means the emissions displaced by increases in the generation and sale of electricity, steam, hot water or chilled water produced from energy sources that emit fewer greenhouse gases per unit than other competing sources of these forms of distributed energy.

Carbon stocks are the quantity of carbon stored in biological and physical systems including: Trees, plants and other terrestrial biosphere sinks, soils, oceans, sedimentary and geological sinks, and the atmosphere. [This term is to be further defined in DOE's Technical Guidelines.]

De minimis emissions means emissions from one or more sources and of one or more gases that when summed are less than 3 percent of the total annual CO_2 equivalent emissions of a reporting entity or less than 10,000 metric tons of CO_2 equivalent, whichever is smaller.

DOE or Department means the U.S. Department of Energy and, as appropriate in context, includes the Energy Information Administration.

Direct emissions means greenhouse gas emissions resulting from stationary or mobile sources within the organizational boundary of an entity, including but not limited to emissions resulting from combustion of fossil fuels, process emissions, and fugitive emissions.

Emissions means direct and specified indirect emissions of greenhouse gases from any anthropogenic (human induced) source.

Emissions intensity means emissions per unit of output—usually the quantity of physical output, but sometimes a non-physical indicator of an entity's output activity.

Fugitive emissions means releases to the atmosphere of greenhouse gases from the processing, transmission, and/or transportation of fossil fuels or other materials, such as HFC leaks from refrigeration, SF6 from electrical power distributors, and methane from solid waste landfills, among others, that are not emitted via a pipe(s) or stack(s).

Greenhouse gases means:
(1) *Carbon dioxide:* CO_2
(2) *Methane:* CH_4
(3) *Nitrous oxide:* N_2O
(4) *Hydrofluorocarbons:* HFCs
(5) *Perfluorocarbons:* PFCs
(6) *Sulfur Hexafluoride:* SF_6
(7) Other gases or particles that have been demonstrated to have significant, quantifiable climate forcing effects when released to the atmosphere in significant quantities.

Indirect emissions means greenhouse gas emissions from stationary or mobile sources outside the organizational boundary of an entity, including but not limited to the generation of electricity, steam and hot/chilled water, that are the result of an entity's energy use or other activities.

Natural emissions means emissions that are naturally occurring and produced independent of human actions, including biogenic (produced by biological processes), geologic and potentially other non-anthropogenic sources.

Net emissions or net entity-wide emissions means the total net annual contribution of the greenhouse gases specifically identified in section 300.6(f) to the atmosphere by an entity: total, entity-wide emissions, both direct and indirect, minus entity-wide sequestration.

Net emission reductions or net entity-wide emission reductions means the sum of all annual changes in emissions, carbon stocks and avoided emissions of the greenhouse gases specifically identified in section 300.6(f), determined in conformance with §§ 300.7 and 300.8 of these Guidelines.

Offsets means an emission reduction that meets the requirements of these guidelines, but is achieved by a party other than the entity that reports or registers the reduction.

Sequestration means the removal of atmospheric carbon dioxide, either through biologic processes or physical processes, including capture, long-term separation, isolation, or removal of greenhouse gases from the atmosphere, such as through cropping practices, forest and forest products management or injection into an underground reservoir.

Sink means an identifiable discrete physical process, occurring at a particular location, set of locations or area, by which carbon dioxide or some other greenhouse gas is sequestered.

Source means an identifiable discrete physical process, occurring at a particular location, set of locations, or area, by which a greenhouse gas is emitted.

Sub-entity means a component of any entity, such as a discrete business line, facility, plant, vehicle fleet, or energy using system, which has associated with it emissions of greenhouse gases that: can be distinguished from the emissions of all other components of the same entity; and, when summed with the emissions of all other sub-entities, equal the entity's total emissions.

§ 300.3 Guidance for defining the reporting entity.

A reporting entity must be composed of one or more legally distinct businesses, institutions, organizations or households, although reporters are strongly encouraged to define themselves at the highest level of aggregation appropriate. The legal basis for determining whether a reporting entity or its components are distinct can be derived from any Federal, State or local law or regulation governing the entity, including regulations applicable to corporations, partnerships, cooperatives, government agencies, non-profit organizations, households, or other entities. This legal basis must be described in the entity statement required by § 300.5 of these Guidelines.

§ 300.4 Selecting operational boundaries for reporting.

(a) An entity must determine, document, and maintain its operational boundary for accounting and reporting purposes. Because of the large number of different operational structures, reporting entities are given some flexibility to set their operational boundaries in a manner that best suits their circumstances. However, all reports submitted should adhere to the following:

(1) To the extent feasible, reporting entities should establish operational boundaries in a manner that is consistent with the entity's existing legal, managerial and financial structure; and

(2) The reporting entity should establish operational boundaries that will result in accurate and comprehensive reports of its greenhouse gas emissions and sequestration.

(b) In general, a reporting entity should select operational boundaries so as to encompass all emissions and sequestration associated with facilities and vehicles that are wholly owned and operated by the named and defined entity. Emissions from facilities or vehicles that are partially owned or leased, or not directly controlled or managed by the entity, may be included at the entity's discretion, provided that the entity has taken reasonable steps to assure that doing so does not result in the double counting of emissions, sequestration or emission reductions.

§ 300.5 Submission of an entity statement.

(a) *Initial entity statement requirements.* When an entity first reports under these Guidelines, the reporting entity must provide the following information in its entity statement:

(1) The name to be used to identify the reporting entity. This should be the name commonly used to represent most of the activities being reported, as long as it is not also used to refer to substantial activities not covered by the entity's reports.

(2) The names of any parent or holding companies the activities of which will *not* be covered comprehensively by the entity's reports;

(3) The names of any large subsidiaries or organizational units that *will* be covered comprehensively by the entity's reports;

(4) A description of the entity and its primary economic activities, such as electricity generation, product manufacturing, service provider, freight transport, or household operation;

(5) A description of the types of operations, facilities, processes, vehicles and other emission sources or sinks covered in the entity's inventories;

(6) The names of the entities that share the ownership or operational control of significant facilities or sources included in the reporting entity's report, and certify that, to the best of the preparer's knowledge, the direct greenhouse gas emissions and sequestrations in the entity's report are not included in the 1605(b) report of any of those other entities for the same calendar year;

(7) Identification of the first year for which the entity will report emissions and the base year or base period from which emission reductions will be calculated.

(b) *Reasons for changing the scope of entity reports.* From time to time, entities may choose to change the scope of activities included within the entity's reports or the level at which the entity wishes to report. An entity may also choose to change its operational boundaries, its base year (or base period) or, since many entities are dynamic by nature, other elements of its Entity Statement or reporting methods. For example, companies buy and sell business units, and equity share arrangements evolve. The dynamic nature of economic activity may pose a challenge for the objective of a comprehensive and accurate documentation of greenhouse gas emissions and sequestrations from year to year. In general, DOE encourages changes in the scope of reporting that expand the coverage of an entity's report and discourages changes that reduce the coverage of such reports unless they are caused by divestitures or plant closures. Any such changes should be reported in amendments to the Entity Statement and major changes may warrant or require changes in the reporting entity's base year or base period. The Technical Guidelines under this part provide more specific guidance on how such changes should be reflected in entity reports and emission reduction calculations.

(c) *Documenting changes in amended entity statements.* A reporter's Entity Statement in subsequent reports should focus primarily on changes since the previous report. Specifically, the subsequent Entity Statement should report the following information:

(1) Significant changes in the entity's organizational (geographic or operational) boundaries. In particular, the entity statement should document:

(i) The acquisition or divestiture of discrete business units, subsidiaries, facilities, and plants;

(ii) The closure or opening of significant facilities;

(iii) The transfer of economic activity to or from specific operations outside the U.S.;

(iv) Significant changes in land holdings (applies to entities reporting on greenhouse gas emissions or sequestration related to land use, land use change, or forestry);

(v) Whether the entity is reporting at a higher level of aggregation than it did in the previous report, and if so, a listing of the subsidiary entities that are now aggregated under a revised conglomerated entity; and

(vi) Changes in its activities or operations (*e.g.*, changes in output, contractual arrangements, equipment and processes, outsourcing or insourcing of significant activities) that are likely to have a significant effect on emissions, together with an explanation of how it believes the changes in economic activity influenced its reported emissions or sequestrations.

(2) If very substantial changes have occurred, then the reporting entity is required to submit a new Entity Statement that provides a complete and current overview of the entity's operations, facilities and emission sources.

§ 300.6 Emissions inventories.

(a) *General.* The objective of the entity-wide reporting standard is to provide a comprehensive inventory of an entity's total net greenhouse gas emissions, including all six greenhouse gases listed in paragraph (f) of this section and all emissions and sequestration associated with changes in terrestrial carbon stocks. The reporting entity should report all of the covered greenhouse gas emissions from within the entity, using the methods specified in the Technical Guidelines (to be issued subsequently). Entity-wide reports are a prerequisite for the registration of emission reductions by entities with average annual emissions of more that 10,000 tons of CO_2 equivalent. Entities that have average annual emissions of less than 10,000 tons of CO_2 equivalent are eligible to register emission reductions associated with specific activities without also reporting an inventory of the total emissions.

(b) *Direct emissions inventories.* (1) Direct greenhouse gas emissions that must be reported are those emissions resulting from stationary or mobile sources within the organizational boundaries of an entity, including but not limited to emissions resulting from combustion of fossil fuels, process emissions, and fugitive emissions. Process emissions should be reported (*e.g.*, PFC emissions from aluminum production) along with fugitive emissions (*e.g.*, leakage of greenhouse gases from equipment).

(2) Entities should separately report emissions of greenhouses gases from combustion of biomass fuels or biomass-

based fuels (*e.g.*, wood waste, landfill gas, ethanol from corn, charcoal). The Technical Guidelines (to be issued subsequently) will specify the applicable list of biomass fuels or biomass-based fuels.

(c) *Inventories of indirect emissions associated with purchased energy.* (1) To provide a clear incentive for the users of electricity and other forms of purchased energy to reduce demand, the consumption of purchased electricity, steam, and hot or chilled water must be included in a reporting entity's inventory as indirect emissions. To avoid double counting among entities, the reporting entity must report all indirect emissions (as defined in § 300.2) separately from its direct emissions. Reporting entities should use the methods for quantifying indirect emissions specified in the Technical Guidelines.

(2) Reporting entities may also choose to report other forms of indirect emissions, such as emissions associated with employee commuting, materials consumed or products produced, although emission reductions associated with such other indirect emissions are not eligible for registration. All such reports of other forms of indirect emissions must be clearly distinguished from reports of indirect emissions associated with purchased energy. The Technical Guidelines also address the reporting of these other types of indirect emissions.

(d) *Entity-level inventories of changes in terrestrial carbon stocks.* Annual changes in terrestrial carbon stocks should be comprehensively assessed and reported across the entity and the net emissions resulting from such changes included in the entity's inventory of its net emissions. In other words, activities that lead to the release of carbon to the atmosphere must be reported along with activities that sequester carbon. This is necessary to provide an accurate entity-wide estimate of net greenhouse gas emissions. Entities should use the methods for estimating changes in terrestrial carbon stocks specified in the Technical Guidelines.

(e) *Treatment of de minimis emissions and sequestration.* Although the goal of the entity-wide reporting Guidelines is to provide an accurate and comprehensive estimate of total entity-wide emissions, there may be small emissions from certain sources that are unreasonably costly or difficult to quantify. A reporting entity may exclude particular sources of emissions or sequestration if the total quantities excluded represent less than 3 percent of the total annual CO_2 equivalent emissions of the entity or less than 10,000 metric tons of CO_2 equivalent, whichever is less. The entity must identify the types of emissions excluded and provide a short justification as to why an estimate was not included in the entity's report.

(f) *Covered gases.* (1) Entity-wide emissions inventories must include all emissions of the following greenhouse gases:

(i) CO_2
(ii) CH_4
(iii) N_2O
(iv) HFCs
(v) PFCs
(vi) SF6

(2) Entities may also choose to report other greenhouse gases, as defined in section 300.2, but such gases are to be reported separately and any emission reductions associated with such other gases are not eligible for registration.

(g) *Units for reporting.* Emissions and sequestration should be reported in terms of the mass (not volume) of each gas, using metric units (*e.g.*, metric tons of methane). Entity-wide and sub-entity summations of emissions and reductions from multiple sources shall be converted into carbon dioxide equivalent units using the global warming potentials for each gas. Entities should specify the units used (*e.g.*, kilograms, or metric tons). Where necessary, reporting entities must use the standard conversion factors specified in the Technical Guidelines to convert existing data into the common units required in the entity-level report. Consumption of purchased electricity must be reported by region (from a list to be provided by DOE in the Technical Guidelines). Consumption of purchased steam or chilled/hot water must be reported according to the type of system and fuel used to generate it (from a list provided by DOE in the Technical Guidelines). Purchased energy will be converted to carbon dioxide equivalents using conversion factors in the Technical Guidelines.

§ 300.7 Net entity-wide emission reductions.

(a) *Assessing entity-wide emission reductions.* (1) Entity-wide reports are a prerequisite for the registration of emission reductions by entities with average annual emissions of more that 10,000 tons of CO2 equivalent. Net annual entity-wide emission reductions must be based, to the maximum extent practicable, on a full assessment and sum total of all changes in an entity's emissions, avoided emissions and sequestration relative to the entity's established base year (or base period), plus any emission offsets. All changes in emissions, avoided emissions, and sequestration must be determined using methods that are consistent with the guidelines described in § 300.8 of this part, and in compliance with all other relevant DOE guidelines.

(2) If it is not practicable to assess the changes in net emissions resulting from certain entity activities using at least one of the methods described in § 300.8 of this part, the reporting entity may exclude them from its estimate of net entity-wide emission reductions. The reporting entity must describe the sources excluded for this reason from the entity's assessment of its net emission reductions, the reasons why it was not practicable to assess the changes that had occurred, and the approximate quantity of emissions or sequestration not assessed.

(3) A reporting entity should also exclude from the entity-wide assessment of changes in emissions, avoided emissions and sequestration any emissions or sequestration that have been excluded from the entity's inventory.

(b) *Assessing the emission reductions of entities with small emissions.* Entities with average annual emissions of less than 10,000 tons of CO2-equivalent emissions are not required to inventory their total emissions or assess all changes in their emissions, avoided emissions and sequestration in order to register their reductions. They may register the emission reductions that have occurred since 2002 and that are associated with certain activities, as long as they perform a complete assessment of the annual emissions and sequestration associated with all of the activities of the same type, determine the changes in the emissions, avoided emissions or sequestration associated with these activities, and certify that the reductions reported were not caused by actions likely to cause increases in emissions elsewhere within the entity's operations. For example, a farmer may report emission reductions associated with tree plantings on a single wood lot, but must assess and report the net sequestration resulting from the farmer's management of all woodlots within the entity's boundaries.

(c) *Net emission reductions achieved by third parties (offsets).* Net emission reductions achieved by third parties may be included in an entity-wide assessment of emission reductions as long as:

(1) The emission reductions reported were calculated using the same method(s) that would have been applicable if the third party that achieved the emission reduction had chosen to report it directly to DOE.

(2) All of the reporting entities or other parties involved certify to DOE that they have agreed that the reporting entity should be recognized as the entity responsible for the reduction.

(d) *Adjusting for year-to-year increases in net emissions.* Net annual emission reductions are calculated normally relative to an entity's base year (or base period). However, if the entity has experienced a net increase (relative to the base year) in emissions for one or more intervening years, these increases must be subtracted from net emission reductions reported in future years.

§ 300.8 Calculating emission reductions.

(a) *Establishing base year (or base period) emissions.* In general, base year or base period emissions are those that occurred over the full year (or average annual emissions over the full multi-year period) immediately preceding the first year of calculated emission reductions. Base year or base period emissions may represent the whole entity, or specific sub-entities, but must be defined so as to correspond to the scope of the chosen emission reduction calculation. To ensure that the summation of entity annual reports accurately represents net, multi-year emission reductions, a specific base year or base period may be used to determine emission reductions in a given future year only if the entity has submitted qualified reports for each intervening year.

(b) *Calculation methods.* Entities must calculate any change in emissions, avoided emissions or sequestration using one or more of the methods described in this section. All changes must be calculated relative to a base year or base period established by the entity, unless the change results from an offset (*see* subsection 300.7(c)). In general, entities are encouraged to use changes in net emissions intensity as the primary basis for calculating changes in net, entity-wide emissions.

(1) *Changes in emissions intensity.* A reporting entity may use reductions in the rate of emissions per unit of output (emissions intensity) as a basis for determining emission reductions as long as the reporting entity demonstrates in its report that the measure(s) of output used in the emissions intensity metric is a reasonable indicator of the physical output or economic value produced by the activity associated with these emissions, and that acquisitions, divestures or changes in products have not contributed significantly to changes in emissions intensity.

(2) *Changes in absolute emissions.* A reporting entity may use changes in the absolute (actual) emissions (direct or indirect) as a basis for determining net emission reductions, as long as the entity demonstrates in its report that any reductions derived from such changes were not achieved as a result of reductions in U.S. output, or major shifts in the types of products or services produced.

(3) *Changes in carbon storage (for actions within entity boundaries).* A reporting entity may use changes in carbon storage as a basis for determining net emission reductions as long as the reporting entity uses estimation and measurement methods that comply with DOE Technical Guidelines, and has included an assessment of the net changes in all sinks included in its inventory.

(4) *Changes in avoided emissions (for actions within entity boundaries).* A reporting entity may use changes in the avoided emissions associated with the sale of electricity, steam, hot water or chilled water generated from non-emitting or low-emitting sources as a basis for determining net emission reductions as long as:

(i) the measurement and calculation methods used comply with DOE Technical Guidelines, and

(ii) the reporting entity certifies that any increased sales were not attributable to the acquisition of a generating facility that had been previously operated, unless the entity utilized base year generation values derived from records of the facility's operation prior to its acquisition.

(5) *Project-based emission reductions (for actions within entity boundaries).* Emission reductions may be determined based on an estimate of the effects on emissions of a specific action, as long as the reporting entity demonstrates that the estimate is based on analysis that:

(i) Uses output, utilization and other factors that are consistent, to the maximum extent practicable, with the action's actual performance in the year for which reductions are being reported;

(ii) Excludes any emission reductions that might have resulted from reduced output or were caused by actions likely to be associated with increases in emissions elsewhere within the entity's operations; and

(iii) Uses methods that are in compliance with DOE Technical Guidelines. Entity-wide reporters should use this project-based approach only if it is not possible to measure accurately emission changes by using one of the methods identified in paragraphs (a)(1) through (a)(4) of this section.

(c) *Summary description of actions taken to reduce emissions.* Each reported emission reduction must be accompanied by an identification of the types of actions that were the likely cause of the reductions achieved.

(d) *Emission reductions associated with plant closings, voluntary actions and government requirements.* Each report of emission reductions shall indicate whether the reported emission reductions were the result, in whole or in part, of plant closings, voluntary actions, or government requirements.

(1) If emission reductions were associated, in whole or part, with plant closings, the report should include an explanation of how such emission reductions did not result from a decline in the U.S. output of the reporting entity.

(2) If the reductions were associated, in whole or part, with government requirements, the report should identify the government requirement involved and describe the type of effect these requirements had on the reported emission reductions.

(e) *Determining the entity responsible for emission reductions.* The entity presumed to be responsible for emission reduction, avoided emission or sequestered carbon is the legal owner of the facility, land or vehicle which generated the affected emissions, generated the energy that was sold so as to avoid other emissions, or was the place where the sequestration action occurred. If ownership is shared, reporting of the associated emission reductions should be determined by agreement between the entities involved in order to avoid double-counting, and this agreement must be reflected in the entity statements filed and in any report of emission reductions. DOE will presume that an entity is not responsible for any emission reductions associated with a facility, property or vehicle excluded from its entity statement.

§ 300.9 Reporting and recordkeeping requirements.

(a) *Starting to report under the revised Guidelines.* (1) Entities may report emissions and sequestration on an annual basis beginning in any year, but no earlier than the base period of 1987–1990 specified in the Energy Policy Act of 1992. To be recognized under these revised Guidelines, all reports must conform to the measurement methods established by the Technical Guidelines. This requirement applies to entities that report to the revised Voluntary Reporting of Greenhouse Gases Program registry for the first time as well as those entities that have previously submitted emissions reports pursuant to section 1605 (b) of the Energy Policy Act of 1992.

(2) Entities may submit initial reports or corrected reports for previous calendar years at any time. For example, an entity may choose to begin reporting in 2005 and may choose, at that time, to submit reports on prior year emissions back to 2002. Also, if a change in the emissions calculation method is made for 2005, an entity may submit revised estimates for its previous reporting years to ensure that a consistent method is used across the whole time-series. Entities may also submit revised reports to reflect agreements with other entities regarding the appropriate entity to designate as the entity responsible for certain registered emission reductions.

(b) *Continuing to report.* Reporting entities are strongly encouraged to report emissions on an annual basis, starting from the first year they submit a report under these revised Guidelines. Annual entity reporting is necessary to ensure that calculated reductions have been sustained over time. If a reporting entity chooses not to submit a report in any given year, the next report made should include reports for intervening years, or the reporting entity must establish a new base year from which to calculate all future emission reductions. Entities that wish to sustain recognition for previously registered emission reductions resulting from sequestration must continue to report annually.

(c) *Definition and deadline for annual reports.* Entities should report emissions on an annual basis, from January 1 to December 31, although DOE may grant exceptions to these dates. To be included in the earliest possible DOE annual report of greenhouse gas emissions reported under section 1605(b), entity reports must be submitted to DOE no later than July 1 for emissions during the previous calendar year.

(d) *Recordkeeping.* Entities must maintain adequate records for at least three years to enable independent verification of all information reported. Such records must include:

(1) A full description of the process and methods used to gather emissions data;

(2) A full description of the process and methods used to calculate emission reductions;

(3) The primary data upon which the data included in the any report to DOE was based; and

(4) A full description of any internal quality control or other verification measures taken to ensure that the data reported was in compliance with all relevant DOE Guidelines and other measurement protocols.

§ 300.10 Certification of reports.

(a) The chief executive officer, agency or household head, or person responsible for the reporting entity's compliance with environmental regulations must, for each report of such entity, certify that:

(1) The information provided to DOE is complete and accurate, in accordance with DOE's revised Guidelines, and is consistent with all prior year reports submitted by that entity (unless otherwise indicated); and

(2) Adequate records will be maintained for at least 3 years to enable independent verification of the information reported.

(b) If the report has been independently verified in accordance with DOE's Guidelines, the certification of the report by the entity reporting should so indicate.

§ 300.11 Independent verification.

(a) Reporting entities are encouraged to have their annual reports verified by independent and qualified auditors.

(1) "Independent", as used in this paragraph (a), means that the verifiers must not be owned in whole or part by the reporting entity, nor should they provide any ongoing operational or support services to the entity, except services consistent with independent financial accounting or independent certification of compliance with government or private standards.

(2) "Qualified", as used in this paragraph (a), means that verifiers must be certified by independent and nationally-recognized certification programs for the types of professionals needed to determine compliance with DOE's reporting Guidelines, such as the American Institute of Certified Public Accountants, the American National Standards Institute and Registrar Accreditation Board's (ANSI–RAB's) National Accreditation Program, or the Board of Environmental, Health, and Safety Auditor Certification (BEAC).

(b) The independent verifier must provide a written description of the relevant qualifications and professional certifications of the persons that performed the independent verification and must certify that:

(1) The information provided to DOE is complete and accurate, in accordance with DOE's revised Guidelines, and is consistent with all prior year reports submitted by that entity (unless otherwise indicated); and

(2) Adequate records have been maintained by the reporter to enable further independent verification in the future.

§ 300.12 Acceptance of reports and registration of entity emission reductions.

(a) *Acceptance of reports.* Upon receipt, DOE will review all reports to ensure they are consistent with the revised Guidelines. If DOE determines the report follows the definitional, measurement, calculation and certification Guidelines, the report will be accepted.

(b) *Registration of emission reductions.* DOE will review accepted reports to determine any eligible emission reductions that were calculated using the reporting entities' base year emissions (no earlier than 2002) or the average annual emissions of its base period (a period of up to four sequential years ending no earlier than 2002), and to ensure that the reports meet other relevant DOE requirements. DOE will also review its records to verify that the entity has submitted accepted annual reports for each year between the establishment of its base year or base period and the year covered by the current report. DOE will notify entities that the reductions that meet these requirements have been registered.

(c) *EIA database and summary reports.* The Administrator of the Energy Information Administration will establish a publicly accessible database composed of all reports that meet the definitional, measurement, calculation and certification requirements of these Guidelines. A portion of the database will provide summary information on the emissions and registered emission reductions of each reporting entity.

Appendix A to Part 300—Voluntary Reporting of Greenhouse Gases Under Section 1605(b) of the Energy Policy Act of 1992: General Guidelines (October 1994)

Voluntary Reporting and You

This program was designed to help you measure and record the actions you take to reduce greenhouse gas emissions or to increase carbon storage in soil or plants. The voluntary reporting program provides an opportunity for you to gain recognition for the good effects of your actions—recognition from your customers, your shareholders, public officials, and the Federal government. Reporting the results of your actions adds to the public groundswell of efforts to deal with the threat of climate change. Reporting can show that you are part of various initiatives under the President's Climate Change Action Plan. Your reports can also record a baseline from which to measure your future actions. Finally, your reports, along with others, can contribute to the growing body of information on cost-effective actions for controlling greenhouse gases.

We've designed this simple, flexible program to encourage you to accurately record your achievements. The program allows you to define activities you choose to report and to determine how you will estimate the effects of those activities on greenhouse gas emissions and carbon sequestration.

We recognize that you must balance your efforts to ensure the accuracy of reported data with your goals of keeping costs reasonable in generating the reports.

We are optimistic that the response to this program will show that voluntary programs can do the job. We have been impressed by the level of commitment to the President's initiatives on climate change. This reporting program provides opportunities to report your achievements and to track your progress as you use your ingenuity and creativity in responding to the challenge of climate change.

General Guidelines

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GG–2 Why Report Under This Voluntary Reporting Program?
GG–3 May I Report and What Should I Report?
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2. Rural-Urban Office Managers, Inc. (energy efficiency in buildings)
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4. Black Forest Cake, Inc. (long-term project reporting)

General Guidelines

Because of concerns with the growing threat of global climate change from increasing emissions of greenhouse gases, Congress authorized a voluntary program for the public to report achievements in reducing those gases. This document offers guidance on recording historic and current greenhouse gas emissions, emissions reductions, and carbon sequestration. Under the Energy Policy Act (EPAct) of 1992 Section 1605(b) program, reporters will have the opportunity to highlight specific achievements.

If you have taken actions to lessen the greenhouse gas effect, either by decreasing greenhouse gas emissions or by sequestering carbon, the Department of Energy (DOE) encourages you to report your achievements under this program. The program has two related, but distinct parts. First, the program offers you an opportunity to report your annual emissions of greenhouse gases. Second, the program records your specific projects to reduce greenhouse gas emissions and increase carbon sequestration. Although participants in the program are strongly encouraged to submit reports on both, reports on either annual emissions or emissions reductions and carbon sequestration projects will be accepted.

These guidelines and the supporting technical documents outline the rationale for the program and approaches to analyzing emissions and emissions reduction projects. Your annual emissions and emissions reductions achievements will be reported on forms that are available through the Energy Information Administration (EIA) of the Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585.

GG–1 How Are These Guidelines and Supporting Documents Organized?

In these pages, you will find answers to your questions about who may report, what is involved in reporting, and how to develop a credible project analysis to help you accurately report your achievements. The General Guidelines (GG) illustrate the process for analyzing projects using three hypothetical examples (an industrial cogeneration project, an energy efficiency program, and new electricity generating capacity).

You will also find guidance on such issues as joint reporting (if two or more persons or organizations are responsible for achievements), third-party reporting (through a trade association, for example), international projects, confidentiality, certification, and other elements of the reporting process.

For more specific guidance, you may consult one or more of the supporting documents that discuss sector-specific issues and analytic approaches. The supporting documents, organized in two volumes, contain limited examples of project analysis for the relevant sectors. Supporting documents have been developed as follows:

- Volume I
  - —Electricity Supply Sector (Part 1)
  - —Residential and Commercial Buildings Sector (Part 2)
  - —Industrial Sector (Part 3)
- Volume II
  - —Transportation Sector (Part 4)
  - —Forestry Sector (Part 5)
  - —Agricultural Sector (Part 6)

Each volume includes appendixes that provide conversion tables and default emissions factors (for various fuels and for electricity on a state-by-state basis). You can use these tables and factors for almost any report you submit. The final appendix in each volume presents a list of greenhouse gases for which the Intergovernmental Panel on Climate Change has developed Global Warming Potentials (an index of the relative effects on climate of different gases).

GG–2 Why Report Under This Voluntary Reporting Program?

If you are undertaking activities to reduce greenhouse gas emissions or to sequester carbon, reporting under this program can be valuable to you and to others. It can be valuable to you because it provides a way to present information about your greenhouse gas-related activities to your customers or constituents who are concerned about the issue of global climate change. It can be valuable to others, including the Federal government (to recognize your achievements under various initiatives), decisionmakers and legislative bodies (to inform the public debate on future greenhouse gas policies), and other individuals or organizations (to learn from each other).

You may wish to report under this program for at least three reasons:

- To Record Emissions and Achievements. You may wish to formally record, in a national database, your greenhouse gas emissions and the results of your activities that reduce or avoid these emissions. Reporting may be part of your participation in programs that recognize your contributions to achieving greenhouse gas emissions goals. These programs include national initiatives such as the Climate Change Action Plan and programs such as Climate Challenge, ClimateWise, and Motor Challenge. However, reporting under this voluntary reporting program is not limited to participants in these programs; you may wish to record the emissions reductions benefits from activities pursued independently of formal recognition programs.

- To Inform the Public Debate. You may wish to provide data which will contribute to more informed public debate on national policy on greenhouse gas reductions. Although a database built upon voluntary reports cannot provide a complete picture of national or sectoral emissions, it could provide credible information on emissions reductions and carbon sequestration projects to evaluate their potential for broader application.
- To Participate in Educational Exchanges. Data reported under the voluntary reporting program may provide useful information to others seeking ways to reduce their own emissions. New, innovative, and more economical means of reducing or avoiding emis-sions may be more widely deployed as better information becomes available.

GG–3 May I Report and What Should I Report?

You may report under this program if you initiate, control, or in some other way participate in activities that (1) contribute to greenhouse gas emissions, (2) result in reducing greenhouse gas emissions, or (3) sequester carbon. The activities may be part of your regular operations, pilot studies, prototype projects, or demonstration projects. They may take place in your community, in your workplace, at a location controlled by a third party, or at a foreign location. You must be a legal U.S. entity, that is, any U.S. citizen or resident alien; any company, organization, or group incorporated under or recognized by U.S. law; or any U.S. Federal, state, or local government entity.

DOE encourages you to submit as comprehensive a report as you can. Elements of a comprehensive report include information about both your emissions levels and your emissions reduction projects. Emissions information could include data on the entire organization and all its greenhouse gas activities, including historic baseline emissions data for 1987 through 1990, and annual emissions for subsequent years. Comprehensive information about emissions reduction projects could include both emissions reductions and carbon sequestration projects, emissions factors used to determine reductions, assumptions about the project, and data sources. The extent to which you provide information for each of these elements is determined by your assessment of what is necessary for others to clearly understand your project and its effects. Users of the database will be able to gauge the comprehensiveness of your report relative to these elements.

You may report both *direct* and *indirect* emissions. As the name implies, direct emissions result directly from fuel combustion or other processes that release greenhouse gases on-site.

You produce emissions indirectly when your activities cause emissions to be generated elsewhere. For example, a manufacturer would report as direct emissions the carbon dioxide emitted from the stack of its assembly plant. The same manufacturer could report indirect emissions from the electricity used to light that assembly plant, since the electricity use causes emissions to be generated by an electric utility.

GG–4 What Is Involved in Reporting Emissions?

Section 1605(b) addresses the reporting of annual emissions as well as emissions reductions and carbon sequestration. You are strongly encouraged, but are not required, to report your greenhouse gas emissions (1) for the baseline period of 1987 to 1990 and (2) for subsequent calendar years on an annual basis. You may wish to report this data for all or as much of your organization as possible, particularly if it would be important to the users of your reports.

GG–4.1 Gases and Sources

These guidelines initially provide for reporting four types of greenhouse gases: carbon dioxide, methane, nitrous oxide, and halogenated substances. These are listed below, along with the major activities associated with emissions of these gases. For each gas listed in your emissions report, you should indicate your total emissions; for example, if you report two gases, carbon dioxide and methane, you should report total emissions numbers for both gases.

Greenhouse gases	Related activities
Carbon dioxide (CO_2)	Fossil energy combustion, electricity generation and use, industrial processes, forestry and agriculture.
Methane (CH_4)	Landfill operation, coal mining, oil and gas systems, stationary combustion, animal production.
Nitrous oxide (N_2O)	Stationary combustion, adipic acid production, forestry and agriculture.
Halogenated substances (for example, CFCs, HCFCs, PFCs).	Chemical manufacture, use in industrial processes.

The guidelines and supporting documents do not generally discuss other radiatively enhancing gases. However, after the second reporting cycle (that is, after the 1996 cycle), you will be able to report other radiatively enhancing gases, including nitrogen oxides (NO_x), nonmethane volatile organic compounds (NMVOCs), and carbon monoxide (CO). In some cases, the supporting documents contain data such as emissions factors for some of these gases. However, in general, you will have to determine how to evaluate your emissions of these gases. Your report must meet the minimum reporting requirements of the program, as described in Section GG–6.

GG–4.2 Use of Existing Information

Many organizations keep accurate data on projects that involve energy efficiency, fuel switching, conservation, pollution prevention, waste minimization, and/or carbon sequestration. If you keep related data for other purposes, reporting greenhouse gas emissions effects under this program will be especially simple and straightforward.

Many potential reporters under EPAct 1605(b) already gather and report emissions information. If you already report similar information (for example, to comply with the Clean Air Act Amendments or under another air quality program) or can easily derive it (for example, from data you submit to regulatory agencies, from smokestack monitoring technologies, or fuel use data kept for internal purposes), you are encouraged to use such information to the extent practical in reporting emissions and emissions reductions under this program. However, you must report the information in a manner that is consistent with these General Guidelines.

GG–4.3 Scope of Emissions Reporting

You should report on the most comprehensive basis possible to broaden the usefulness of your emissions reports. However, you may define the scope of your emissions reports. In most cases, the needs of your potential audience will dictate the boundaries you draw. If you are able to report emissions for your entire organization, you should consider providing a comprehensive accounting so that your audience can gain a clear understanding of your overall activities. However, reporting total emissions for a single plant or establishment may be more consistent with other elements of your report and may be based on more precise or more readily available data.

Reporting emissions for your entire organization will show the most complete picture of your activities. Entity-level emissions reports can also provide all the data you need to submit reports on emissions reductions at the entity level or can increase the credibility of reports of emissions reductions at an individual project level.

You do not need to report total organization emissions in order to report individual emissions reductions and carbon sequestration projects. In fact, some reporters may not be able to report their organization's or unit's total emissions, because information needed for the baseline years may not be available, or because it is not feasible to estimate their organization's or unit's total emissions even for the current year. Remember, however, that most users of the database will find your reported estimates of emissions reductions more credible if they are accompanied by records of your organization's total emissions for the baseline years 1987 to 1990 and subsequent years.

GG–5 How Should I Analyze Projects I Wish To Report?

Accurate and credible reporting under this program requires sound project analysis. Rigid rules do not exist for such an analysis, and you may define the emissions reductions and carbon sequestration projects that you report. Your project may consist of all emission-producing activities for your organization; several activities, perhaps as parts of an energy efficiency program; or only one activity, undertaken for its projected cost savings (such as a relighting project) or as a pilot project (for example, an experimental industrial process change). Given the broad range of possible types of projects, it is impossible to establish guidance that provides specific rules and appropriate methods for every type of project. The appropriate procedure for project analysis depends on how clearly you can identify the effects of the project, how credibly you can define a basis for comparing greenhouse gas emissions or carbon sequestration with and without the project, and how well you can measure or estimate the effects of your project.

While the guidelines provide you with as much flexibility as possible, every report must—

- Establish the reference case to use as a basis for comparison with the project;
- Identify the project's effects; and
- Estimate emissions for the reference case and the project.

Figure GG–1 depicts the overall process of project analysis. Each of these steps is discussed below and in more detail for each sector in the supporting documents. Note that these three elements depend on each other. For example, your choice of a reference case will depend upon both the scope of your project's effects and the data you use to measure or estimate emissions.

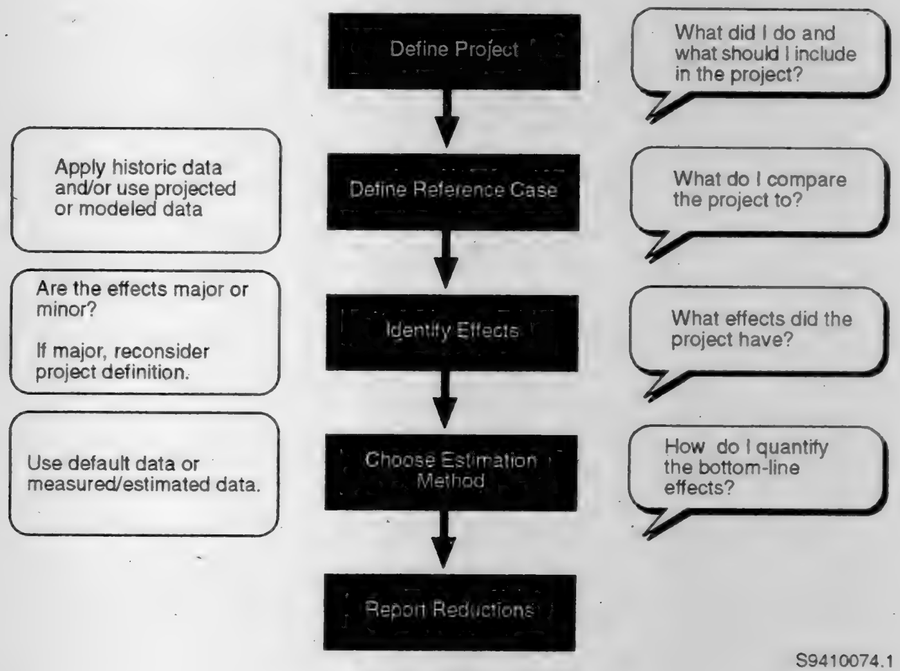


Figure GG-1. Careful Project Analysis Requires that You Consider Several Interrelated Elements.

In determining the extent of your analysis and reporting effort, you need to match your effort to your purpose for reporting. If you wish to establish a clear record of emissions and emissions reductions, you should perform extensive analysis and provide for retention of sufficient records to support your report. In any case, you will need to certify the accuracy of the information provided in your report.

These considerations and others in the project analysis process are illustrated in these General Guidelines with three hypothetical case studies: An industrial cogeneration project, an energy-efficiency project in a large office building complex, and the purchase of new solar-powered electricity generating equipment. The case studies are intended to be illustrative and by no means address all of the information that may be reported. A basic description of the facts involved in each case follows. These cases will be more fully developed as the discussion of the steps in project analysis proceeds.

These cases are intended to illustrate the range of detail and expense that might be entailed in developing reports of emissions and emissions reductions. The first case involves no emissions reporting and very simple emissions reductions analysis. The second case involves reporting emissions levels for recent years only and moderately detailed emissions reductions analysis. The third example illustrates the most comprehensive report, including emissions reporting for the baseline years 1987–1990 and detailed project analysis. Note that in each case the level of effort and detail reflected in the analysis and report is determined by the reporter's expected audience.

Case 1: Rarotonga Coconut Cream, Inc.—Project Description and Emissions Reporting

Note: This example illustrates only one approach to analyzing a project; your analysis, methods, and calculations will vary depending on your particular circumstances, the geographic location of the project, and other factors.

provides specific rules and appropriate methods for every type of project. The appropriate procedure for project analysis depends on how clearly you can identify the effects of the project, how credibly you can define a basis for comparing greenhouse gas emissions or carbon sequestration with and without the project, and how well you can measure or estimate the effects of your project.

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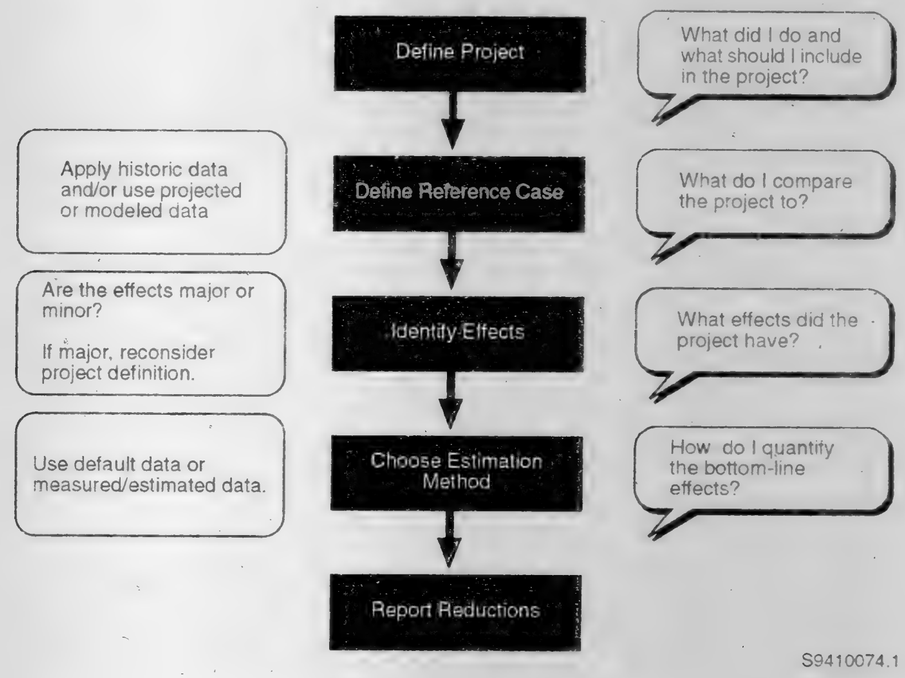


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Case 1: Rarotonga Coconut Cream, Inc. — Project Description and Emissions Reporting.

Note: This example illustrates only one approach to analyzing a project. Your analysis, methods, and calculations will vary depending on your particular circumstances, the geographic location of the project, and other factors.

Rarotonga Coconut Cream, Inc. (RCCI) is a small food processing plant in Hawaii. In the past, RCCI purchased its electricity from the local electric utility and produced processing steam from a residual oil-fired boiler. While RCCI's production and energy use have been stable for the past seven years, its energy bills have been growing because of increased electricity rates and oil delivery charges to the company's remote location. Company managers anticipate continued increases in electricity costs as the distribution lines have to be replaced and upgraded over the next five years.

RCCI realized it could cut its energy costs significantly if it installed a cogeneration system to produce its process steam and electricity in a single cogeneration plant fueled by distillate fuel oil. Although the distillate is a higher grade fuel than that currently used, its increased cost is more than offset by the economies realized from the combination of the higher efficiency cogeneration unit and the installation of increased storage capacity, allowing the firm to accept larger, less frequent deliveries. Furthermore, distillate is a cleaner burning fuel oil than residual with lower carbon dioxide emissions per equivalent energy input along with enhanced handling properties. Addition of a backup generator would allow the company to disconnect from the utility transmission and distribution system.

One of RCCI's customers, a grocery wholesaler who was visiting the Rarotonga plant, commented that her company was participating in a Federally sponsored energy-efficiency program and reporting the company's contribution to greenhouse gas emissions reductions through the EPAct Section 1605(b) voluntary reporting program. While RCCI was undertaking its cogeneration project primarily for financial reasons, it was also aware that the project had some beneficial environmental effects, including the reduction of carbon dioxide emissions associated with switching fossil fuel use and electricity production. RCCI decided that, in the interest of sharing its experience with the cogeneration project, the company would report the results to the DOE program.

The first decision RCCI had to make was whether to report its annual emissions of greenhouse gases. As a small business whose primary purpose for participation in the voluntary reporting program was to publicize its experience with using a cogeneration system in a remote location, RCCI was interested in containing its costs of reporting as much as possible. A full entity-wide emissions report would need to account for direct emissions from its oil burner, agricultural operations, and transportation fleet, and indirect emissions from its electricity use. Estimation of emissions from these sources back to 1987 could be costly and time-consuming. RCCI managers decided instead to focus their limited resources solely on an evaluation of emissions reductions associated with their cogeneration project.

Case 2: Rural-Urban Office Managers, Inc.—Project Description and Emissions Reporting

Note: This example illustrates only one approach to analyzing a project; your analysis, methods, and calculations will vary depending on your particular circumstances, the geographic location of the project, and other factors.

In the late 1970s, Rural Office Managers built a complex of offices just outside the city of Metropolis. By the mid-1990s, the city had expanded, and the offices, originally designed for low-density occupation, were now experiencing higher density occupation.

In response to the change in its physical surroundings, the company reincorporated as Rural-Urban Office Managers, Inc. (RUOMI). Company officials also realized they needed to update their facilities, particularly their heating, ventilating, and air conditioning (HVAC) system and their lighting system to accommodate the change in use. Coincidentally, the energy planner for Metropolis contacted RUOMI to explain that the city had enrolled in a new state initiative called Energy Efficient Cities (EEC) that challenges cities to reduce commercial-sector energy consumption by five percent. RUOMI agreed to participate in EEC.

While the emphasis of the EEC program was on reducing energy use, participants were also encouraged to report the indirect effect that their energy conservation activities had on greenhouse gas emissions, that is, the reduction in greenhouse gas emissions at the generating plant resulting from reduced electricity use at RUOMI's offices. When RUOMI managers explored the DOE voluntary greenhouse gas reporting program, they discovered guidance on how to measure both energy savings and associated greenhouse gas emissions. Therefore, as their contractor designed the HVAC and lighting project, RUOMI made sure that the contractor collected all the data RUOMI needed to submit a report.

RUOMI had not preserved a complete set of its energy bills from the late 1980s. Although this information could have been recovered from the Metropolis energy utility, RUOMI managers decided not to attempt to report the company's historic baseline, entity-wide emis-sions because the generating mix for Metropolis' electricity supply had changed dramatically since the end of the last decade. However, using the data provided in the DOE guidelines and supporting documents, they were able to derive the direct emissions from natural gas combustion and the indirect emissions associated with electricity use, for the two calendar years just prior to the commencement of their project. RUOMI reported emissions for those two years and for each year thereafter.

Case 3: Illinois-Ohio Unlimited—Project Description and Emissions Reporting

Note: This example illustrates only one approach to analyzing a project; your analysis, methods, and calculations will vary depending on your particular circumstances, the geographic location of the project, and other factors.

Illinois-Ohio Unlimited (IOU) is an investor-owned utility operating and serving customers in three midwestern states. During a recent integrated resources planning (IRP) effort, it recognized an emerging inability to meet a rising midday peak-load demand, even after pursuing an aggressive peak-shaving, demand-side management program. The IRP identified two alternative responses: purchase additional power from the Indiana Plains Project (IPP), an independent power producer that had excess capacity in its natural gas combined cycle units, or install a large array of photovoltaic cells (PVCs) in southern Illinois and Indiana. PVC electricity production was expected to closely match peak-load demands. While the price of PVCs had decreased dramatically as a result of successful Federal and private research, the second option was still more expensive than the first. However, the public utility commissions (PUCs) in all three of the states in which IOU reported encouraged the utility to install the PVCs. The PUCs reasoned that soon PVCs would be economically competitive and this was IOU's opportunity to gain experience with the technology.

Both IOU and its PUCs were concerned, however, that the utility might be inadvertently penalized if subsequent Federal regulations should mandate reductions of emissions of greenhouse gases but not recognize IOU's early reduction effort. IOU decided to report the PVC projects through DOE's voluntary greenhouse gas reporting program. Because IOU knew that use of its information in connection with the requirements of future policy debates would demand complete and accurate information, it kept careful records, and in each case followed the most rigorous requirements of the voluntary reporting guidelines.

As part of its reporting process, IOU reported its entity-wide greenhouse gas emissions for each of the four baseline years, 1987 to 1990, and for every subsequent calendar year. These reports included estimates of emissions from generating processes, IOU fleet vehicle emissions, and office and building operations.

GG–5.1 What Should the Project Be Compared To?

A crucial consideration in evaluating your project's accomplishments is how well you can establish a reference case—that is, an emissions level against which to measure the effects of your project. Note that, once you construct your reference case for a project, that reference case should remain constant for the life of the project. If you revise your reference case, you will need to revise any previous project reports to reflect the revised reference case.

A reference case is often referred to as the "but for" scenario, as in, "but for this project, emissions would have been * * * ." Two possible ways to finish this sentence are: (1) "* * * the same as a previous year" (the basic, or historic, reference case) or (2) "* * * different from any previous year" (the modified reference case, which is adjusted from historic or projected data or based on established standards). Each of these cases is discussed below.

Under this program you may choose between these two approaches. To fulfill your purposes for reporting, you will want your reference case to be clear and understandable. Depending on the nature of and circumstances associated with your operations, a basic reference case (using historic emissions) may provide a suitable benchmark against which to compare project emissions. In other cases, you may determine that a modified reference case is more appropriate. Even if you choose to use a modified reference case, you still may wish to provide your historic emissions data to enable users of the EPAct 1605(b) database to evaluate the reported emissions reductions efforts with respect to a historic baseline.

Basic. The basic reference case uses only historical data. Emissions from the project or sequestration levels may be compared with the corresponding emissions or sequestration level for some previous year(s), for example, (1) the 1987 to 1990 period, the period that EPAct Section 1605(b)(1)(A) describes as the baseline years for purposes of reporting emissions; (2) the year(s) just prior to commencement of the emissions reductions project; or (3) some intervening year(s) more representative of normal operations. The reference case may be defined as the average annual emissions during some multiyear period or the highest or lowest annual emissions during that time. Alternatively, you could choose a single reporting year (for example, 1990) as the reference case year.

Modified. The modified reference case recognizes that even in the absence of your project, your future emissions levels may differ from past levels. The emissions or sequestration levels in the reference case may differ from historical levels because of gradual, predictable changes or because of abrupt changes. Gradual changes in emissions might occur because of growth or decline in industrial output, slowly changing technologies, or natural processes, such as natural regeneration of clear-cut forests. In the case of expanding output or operations, you might extrapolate the reference case from past trends and external data to determine what emissions would have been in the year in which the project's effects are being measured. This process may involve using models and adjusting for growth over time. You could estimate the reference case emissions using historic or current-year data and adjusting for future growth by multiplying the historic emissions rate (emissions per unit of production) by the units produced in the reporting year.

A modified reference case based on a hypothetical, abrupt, external change presents a greater challenge for the reporter. For example, a reference case for a forest preservation project might be built on the assertion, "The forest would have been cut if we had not taken actions to preserve it." If you use this type of reference case, you should take extra care to document the facts underlying the case and to build a sound explanation about why this is the appropriate reference case to use in developing your analysis.

Reference cases for projects involving new operations or added capacity may lie between the two extremes of abrupt changes and gradual changes. For these activities, you will also need to exercise care in constructing a credible modified reference case. Use of industry standards or alternatives actually considered in the planning stages will build credibility. For example, if in the construction of a new building you exceed existing building standards for energy efficiency, you could justifiably assert that the reference case for that project is a building that just meets the standards.

Case 1: Rarotonga Coconut Cream, Inc.—Reference Case

RCCI decided to use a basic reference case. Managers reasoned that, in the absence of the shift to the distillate oil-fired cogeneration system, they would have continued using the residual oil-fired boiler and purchased electricity. Because its production levels had been constant over the past seven years, RCCI felt no need to modify the historic levels of energy use to reflect expected future trends. Instead, it decided to use an average of its emissions for 1989 and 1990, the earliest two years for which it had energy use records. Consistent with the RCCI project description, the reference case only incorporated the plant's electrical, processing, and steam production systems.

Case 2: Rural-Urban Office Management, Inc.—Reference Case

RUOMI chose to use a basic reference case, averaging its emissions for the years 1993 to 1995. There were several reasons for this decision. Because the use patterns and demands of RUOMI's tenants had changed dramatically from 1980 to 1990, the years 1987 to 1990 (or an average of these years), would not have been an appropriate indicator of expected emissions in the late 1990s. However, by 1992, RUOMI had established many long-term contracts with its tenants. Energy-use patterns had stabilized, and there was no reason to expect significant shifts in the foreseeable future. The company chose to average the years 1993 to 1995 because the first three months of 1994 included unusually cold weather and were not indicative of general energy demands. While its emissions reductions would have appeared larger if RUOMI had used only 1994 as a reference case, company officials were informed by the Metropolis energy planner that the reports could lose credibility if they only compared their project's energy use and emissions levels to a worst-year reference case.

Case 3: Illinois-Ohio, Unlimited—Reference Case

IOU's project was clearly driven by increased demands for its product. This immediately suggested that past emissions levels would not be a good model of what would have been, but for the project. Therefore, the utility chose to use a modified reference case to reflect the growth in peaking demand it was experiencing. However, IOU also recognized that it was operating in an environment where a company's current emissions are often compared to some historic level. Therefore, IOU decided to report both historic 1987 to 1990 emissions levels, and the modified reference case reflecting its changing customer demands.

GG–5.2 What Effects Did the Project Have?

The second major step in project analysis is identifying effects of the project. Your report should address all the effects that you can identify—not just the obvious, intended effects, but also less noticeable, unintended effects. Effects you should consider include activity shifting (moving processes within your organization), outsourcing (purchasing commodities or services you formerly produced), life cycle emissions shifting (upstream and downstream changes in processes or materials used), and market effects (offsets to achievements caused by residual demand).

Example: An electricity conservation project reduces electricity use at an industrial site and associated carbon dioxide emissions at the utility. However, the utility's emissions of other greenhouse gases, such as methane and nitrous oxide, will be reduced as well. In addition, conserving electricity may lead to other effects within the utility's transmission and distribution system. All of these effects should be identified (and quantified, where possible).

Example: Closing an industrial plant will likely reduce on-site emissions. However, if another plant is opened or expanded to meet market demand for the former plant's products, the increase in emissions from the new plant would at least partially offset the decrease in emissions resulting from the closing. To place the overall effects of the closing in context, emissions associated with the replacement production capacity should be identified and quantified to the extent possible.

Example: Shifting an activity to another part of your organization or substituting your production of a commodity with its purchase from others may appear to reduce your emissions. Manufacturing a component at a subsidiary's plant, or the purchase of power by a utility for distribution to customers, however, are some examples in which net emissions may not have changed. The emissions associated with the shifted or substitute production activity should be taken into account, regardless of where it occurs.

Example: Manufacturers can switch from steel to aluminum and claim reductions because working with aluminum results in fewer emissions. However, the production of the aluminum itself creates emissions different from those associated with the production of the steel. Both the on-site changes and the upstream changes should be considered when you analyze whether you have emissions reductions to report under this voluntary reporting program.

Example: Extending the rotation length or completely precluding harvesting at a given forest location increases the carbon storage services at that site. However, the added sequestration may be largely offset if another site is harvested earlier than it otherwise would have been to meet the market demand for timber that was not met by timber from the first site.

Effects you can identify should be reported. These would include any on-site effects resulting from changes in both fuel combustion and electricity use. Off-site effects may be more problematic. In some situations, you may have relationships with customers or suppliers that allow you to both identify and estimate effects that occur outside your organization. If you have or can get such information, you should report it

Effects you can identify but have no data for should be so noted in your report.

Although quantifying all effects of a project can be difficult, keep in mind that the credibility of your report will depend to some extent on your ability to identify effects. If your targeted audiences can easily identify effects that you have ignored in your analysis, the credibility of the entire report may be in question.

Case 1: Rarotonga Coconut Cream, Inc.—Project Effects

It was easy to identify the obvious effects of the cogeneration project: the reduction of direct emissions as a result of switching from residual oil to distillate as the primary on-site fuel and the reduction of indirect emissions associated with reduced production of electricity by the electric utility. However, after giving the matter some additional thought, RCCI realized that other effects were associated with the project as well. For example, the number of fuel delivery vehicle trips was reduced by half with the switch from residual oil to distillate and the increased storage capacity. Line losses and the indirect emissions associated with the very long distribution of low voltage electricity were deemed to be negligible and beyond RCCI's ability to calculate.

RCCI listed each of the effects it could identify, but decided not to attempt to quantify any but the first two effects.

Project effects	Contribution to reduction	Significance
Reduce emissions associated with utility electricity production	+	Large.
Reduce CO_2 emissions associated with on-site fossil fuel burning (switching from residual to distillate)	+	Medium
Reduce transportation-related services	+	Small-Medium.
Decrease indirect emissions associated with line losses	+	Negligible.

Case 2: Rural-Urban Office Management, Inc.—Project Effects

RUOMI contracted with Environmental Security Consulting Organization (ESCO), a local energy service company, to evaluate the costs and benefits of several alternative technologies. After careful evaluation of the use patterns and tenant needs in RUOMI's office complex, ESCO provided a list of two dozen potential energy efficiency improvements and the energy savings and costs associated with each. They explained to RUOMI's management, however, that simply summing across all technologies would not provide an accurate assessment of expected energy savings. Many of the equipment changes would interact with each other, some having negative effects on energy savings, others having synergistic effects. Further, the type and extent of the interactions would depend upon actual use patterns as well as seasonal variations and weather patterns. Following ESCO's recommendation, RUOMI contracted for 14 of the items on the list.

Because of the complex nature of the energy changes expected from the modifications, ESCO recommended that the resulting effects of the activities be analyzed as one integrated project. This avoided the difficulty of having to sort out the impact of each equipment change. It also made any evaluation for the DOE voluntary reporting program simpler. Since RUOMI was analyzing the projects at the entity level, emissions reductions could be calculated directly from its emissions report. Therefore, separate identification of each project's effects was unnecessary.

Case 3: Illinois-Ohio Unlimited—Project Effects

Identifying all of the effects of IOU's project and reference cases was not a simple exercise. IOU recognized that it needed to consider the effects that its project had (1) on its own operations and emissions, (2) on the emissions of IPP, (3) possibly on the operations of the larger regional power pool, and (4) on the supplier of the PVCs. It was not sure it could accurately estimate all of these effects without incurring unreasonable analysis costs, but it at least wanted to identify them in planning the analysis that would lead to its completed report.

Project effects	Contribution to reduction	Significance
IPP emissions that would have gone up because of additional power purchases are reduced	+	Large.
PVC manufacturer emissions do go up	-	Small.
Power pool emissions might change	?	Unknown.
IOU emissions do go down	+	Small.

GG–5.3 How Do I Estimate Project Accomplishments?

The final major step in project analysis is estimating emissions levels for both the reference case and project case to determine emissions reductions. The guidelines and supporting documents provide you with a wide range of options for obtaining data and defining the methods for estimating your project's effect on greenhouse gas emissions and carbon sequestration.

First, the guidelines and supporting documents recognize three categories of data.

Physical data. This is information that describes the activities involved in your project. For example, how many exit lights were replaced? What was the power requirement of the old and the new lights? How many hectares of trees were planted? What species of trees? How many trees per hectare?

Default data. This is information provided by the supporting documents to assist you in evaluating the emissions or sequestration effects of your project. Using default data increases your ease of reporting (in some cases, allowing you to report when you might not otherwise have enough data). However, using default data may decrease precision and, because the defaults may be conservative, your emissions reductions may appear lower than they actually are. There are two categories of default data:

Emissions factors. These are factors that allow you to convert information about a change in energy use to an estimated change in greenhouse gas emissions. Some emissions factors are rather precise. For example, the change in direct emissions of carbon dioxide from a reduction in methane combustion is essentially constant, regardless of when or where the change took place. Other emissions factors, and particularly those for indirect emissions, are less precise. For example, the supporting documents provide emissions factors for electricity on a state-by-state basis. However, the effect that a change in electricity consumption has on emissions will vary by location within the state, the time of day, and the season that a change occurs.

Stipulated factors. These are factors that allow you to convert physical data about your project into estimates of changes in energy use, greenhouse gas emissions or carbon sequestration. The guidelines provide this information for a few types of projects where the scope and nature of the project can be clearly defined and where the effects on emissions can be predicted with relative certainty. For example, the supporting document for the forestry sector provides stipulated factors for converting physical data about tree planting into estimates of carbon sequestration. The supporting document for the residential and commercial buildings sector provides stipulated factors for converting information about certain energy-efficiency projects into estimates of fuel savings. These estimates can be combined with default emissions factors to estimate reductions in greenhouse gas emissions.

Reporter-generated data. This is information that you provide which is used to estimate the effects of your project. There are two categories of reporter-generated data:

Measured data. These are data, collected directly from the project or a control group, that you use to estimate your project's accomplishments.

Engineering data. These are data that you derive from various sources, such as engineering manuals, manufacturer's equipment specifications, surveys, academic literature, professional judgment, and computer models.

Based on these three categories of data, the guidelines and supporting documents recognize two categories of projects: Standard projects, which rely on physical and default data, and reporter-designed projects, which use measured or engineering data that you develop (as well as appropriate default data). You will need to report the category(ies) of data and projects that you choose to use.

Standard projects. These are projects for which the guidelines and supporting documents provide the procedures and information to estimate the emissions reductions or carbon sequestration. Reports of these projects rely entirely on physical and default data (*see* Figure GG–2).

Not all projects can be described in standard project reports. The supporting documents for each sector delineate, where possible, projects for which emissions factors and stipulated factors are provided, and for which standard project reports can be submitted. You should recognize that default values are often conservative; that is, if you use them, you are likely to underreport your emissions reductions or carbon sequestration. However, if you do not directly measure and monitor or your organization does not have expertise in estimation methods, the default values will allow you to calculate the effects of your activities.

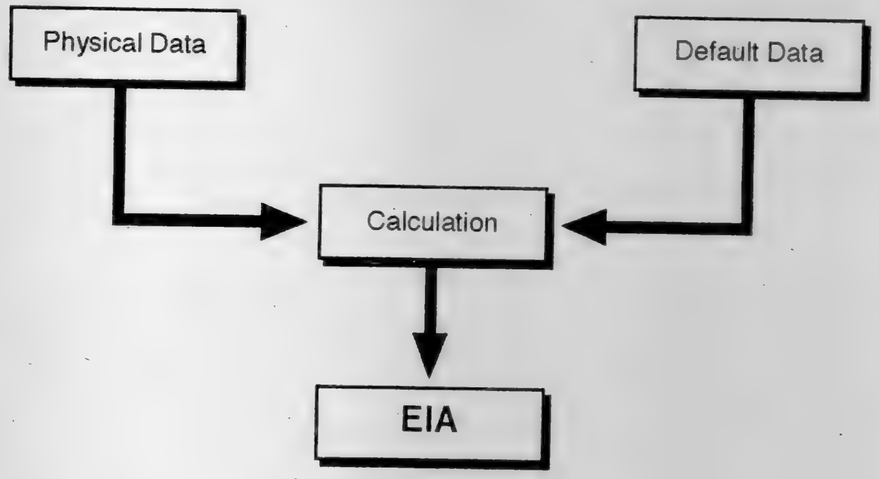


Figure GG-2. Standard Projects Utilize Physical and Default Data.

Reporter-designed projects. These projects use physical and reporter-generated data, possibly in combination with default data, to estimate their accomplishments (see Figure GG–3). For this type of project, you should be able to indicate the source of all data, and in the case of data you generate, how it was measured or derived. For reporter-designed projects, the supporting documents for each sector provide principles and guidance.

Estimation of the emissions effects of many reporter-designed projects will require that you not only gather measured or estimated data, but that you also manipulate this information to derive the emissions levels of your project and reference case. The data manipulation could involve relatively simple calculations or extremely complex modeling. You should be able to identify the nature of the calculations and/or the type/name of the model you have used. In some instances, it may not be possible to estimate emissions for both the project and the reference case. In these cases, identified in the supporting documents for each sector, you may need to measure the emissions reductions directly.

Finally, the emissions reductions or carbon sequestration of your project is simply the difference between your project emissions/sequestration and your reference case emissions/sequestration.

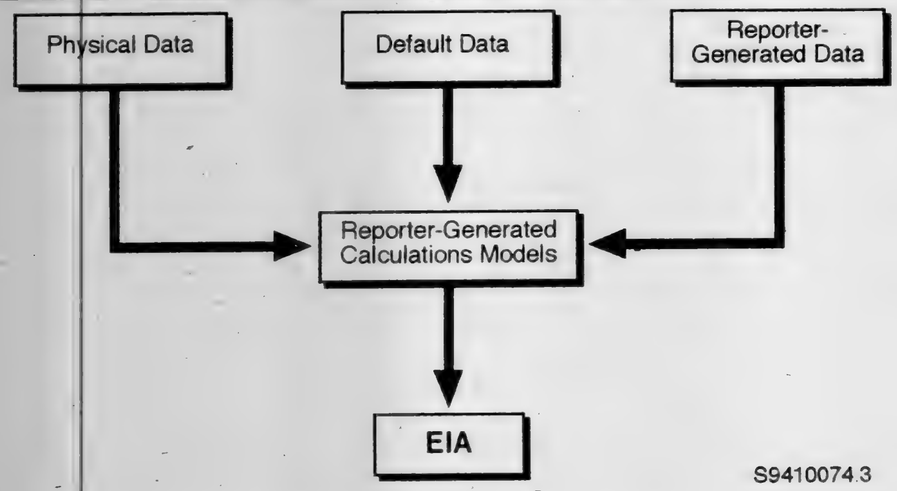


Figure GG-3. Reporter-Designed Projects Utilize Your Own Measured or Engineering Data Along with Physical and Default Data.

Case 1: Rarotonga Coconut Cream, Inc.—Estimation Methods

RCCI limited its quantitative analysis to the obvious effects: estimation of the annual emissions reductions associated with its project was simple. First, it estimated the annual emissions associated with the project. This was simply its annual distillate oil consumption multiplied by the default emissions factor for distillate oil supplied by the guidelines' supporting documents. Second, for the reference case, RCCI multiplied its reference case annual electricity use by the default electricity emissions factor for its state, multiplied its reference case annual residual oil use by the default residual oil emissions factor, and summed the two to arrive at total emissions for the reference case. Its total reported emissions reductions were the difference between the reference case emissions and the project case emissions.

RCCI was pleased that it was able to do its entire analysis based on data it had readily at hand, that is, its fuel and electricity use records from before and after the project, and the default emissions factors provided by the guidelines.

Case 2: Rural-Urban Office Managers, Inc.—Estimation Methods

ESCO, the contractor for RUOMI, had primary responsibility for preparing the voluntary report for the DOE program. ESCO knew that because of the complexity of the project it could not derive estimates using default data provided in the Guidelines' supporting documents. The project managers turned to the supporting document for the residential and commercial buildings sector to identify the recommended methods for gathering data for their type of project. They found that the recommended methods included approaches very similar to ones they had previously used to measure energy savings in complex projects. After a full year of measuring and monitoring, they summarized the energy-use data, and performed calculations to derive the difference between the project energy use and the reference case energy use.

Applying the natural gas and electricity emissions factors supplied as default data, they converted the estimated energy reductions to estimated emissions reductions.

Case 3: Illinois Ohio Unlimited: Estimation Method

IOU recognized two distinct parts to its emissions reductions estimation process. First, it needed to evaluate the direct electricity system emissions for both its reference case and project case. Second, it wanted to estimate the emissions associated with manufacturing the PVCs. Tackling this latter point first, IOU contacted a prospective PVC supplier for any information on emissions associated with the PVC manufacturing process. The supplier, it turned out, had commissioned a report that estimated not only the direct carbon dioxide emissions associated with the manufacture of PVCs, but also the emissions associated with the supply of raw materials—steel, aluminum, chemicals, and electricity—that were used in PVC fabrication. Had this information not been available, IOU would have had to decide whether or carry out this study itself or not quantify this effect at all, possibly affecting the credibility of its project report.

IOU then turned to the electricity system emissions effects of its project. The project reduced emissions that would have occurred had IOU purchased its electricity from IPP. Additional production from IPP for daytime peaking would have been generated by a natural gas combined cycle unit. IOU developed a single conversion factor for the emissions per kWh that would have occurred for electricity from IPP's system. This meant that as the peak daytime demand grew over time, IOU would be able to estimate that portion of the emissions for the reference case that was attributable to IPP, that is, how much higher IPP emissions would have been had IOU relied on purchased power.

The new PVC system was designed to meet the growth in demand over the next decade. But because the PVCs would be generating at full capacity immediately, they would actually displace some of IOU's current daytime generating capacity. The marginal unit in IOU's generation equipment was an oil-fired turbine generator. IOU developed a conversion factor for the emissions per kWh that would have occurred from that unit, if its production had not been partially displaced by the solar power system.

In summary, the IOU emissions reductions estimation consisted of three major components. First, at the start of the project there was an initial emission of carbon associated with the production of the PVC units. This effect was reflected only in the first annual report. While some of these emissions had actually taken place as many as two years earlier, IOU believed it was sufficiently realistic to account them all to the first reporting year. Second, the project emissions also showed a sudden drop in emissions for the oil-fired plant due to displacement of daytime oil-fired generation by the PVCs, whose entire capacity was not initially required to meet midday peak demand. However, as expected, the emissions from the oil-fired plant climbed each year as daytime peak demand grew and increasingly the PVC capacity was used to meet that demand. This increase was reflected in IOU's annual reports. Third, under the reference case, IOU reported constant emissions from its own oil-fired plant and annually increasing emissions from IPP's natural gas combined cycle plant. The emissions reduction each year was calculated by subtracting the project emissions from the reference case emissions.

GG–5.4 What if Two or More Organizations Wish To Report the Same Project?

You may report activities undertaken in association with others. If you do so, you must identify other potential reporters of the same activity so that the program can account for multiple reports of the same activities. You may wish to make arrangements for reporting with others involved in your project.

Joint activities generally fall into one of two categories. The first category includes one-time transactions that are large enough to require negotiation before the exchange takes place and generally involve a written contract, such as demand-side management (DSM) programs. The second category comprises transactions that take place repeatedly between manufacturers and consumers where negotiated contracts are generally not involved, such as individual purchases of household appliances.

Three Examples of Joint Activities

Demand-side management programs: When an electric utility undertakes a DSM program, three parties are involved in reducing carbon dioxide emissions: (1) Manufacturers of the energy-efficient equipment, such as improved lighting, refrigeration, and other energy-consuming goods; (2) consumers of electricity (households, commercial operations, and industrial firms); and (3) the utility itself. All three parties may wish to report the reductions in emissions.

High-efficiency automobiles: EPAct section 1605(b) also suggests that the manufacture of high-efficiency automobile fleets be reportable under this program. On the one hand, the purchaser of a high-efficiency car makes the ultimate decision to reduce emissions related to personal transportation. On the other hand, the automobile manufacturers who shifted their fleet composition are enabling the automobile owners to obtain more efficient automobiles.

Tree-planting agreements: Some utilities have entered into agreements with landowners to plant trees. The utilities provide funding for establishing the trees; in return the landowners agree to leave the new trees in place for a specified number of years. Both landowners and utilities have played essential roles in carbon sequestration.

Where contracts are involved, you may make arrangements to assign the ability to report resulting emissions reductions before they are reported under this program. You are not required to do this sorting out before you report, but, depending upon how you believe this information will be used, you may wish to resolve any questions before reporting.

You may also wish to mutually decide reporting capabilities for purchases. If you can most easily aggregate many small reports, for example, as a manufacturer of high-efficiency automobiles or efficient appliances, you may wish to include, as part of the purchase transaction, an agreement with the consumer that you will report the energy-efficiency information, unless consumers notify you that they wish to do so.

However, for some technologies, consumers are in a better position to estimate actual accomplishments. For example, new automobile owners can better estimate annual vehicle miles traveled and, hence, the fuel and emissions savings associated with the purchase of a high-efficiency car. You need to consider the trade-off between the ease of reporting and accuracy of estimating the emissions reductions when deciding who will report the reduction—the manufacturer, the automobile owner, or both. If parties report separately, each should identify the other as potential reporters of the same information.

GG–5.5 May I Report Through My Trade Association or Other Third Parties?

You may wish to explore reporting through another party—for example, through a trade association, civic association, or fraternal organization. Each of the supporting documents discusses third-party reporting as it may apply to particular sectors.

Third-party reporting may be appropriate for a number of reasons. Organizations may be able to provide technical or administrative assistance to you in reporting. Multiple reports may be aggregated to provide a quantity of emissions and reductions which each individual reporter would not choose to report. Furthermore, confidentiality of some data reported may be enhanced by third party reporting.

Third-party reporting may not be appropriate for your purpose in reporting. For example, it does not provide the transparent link to you that is necessary for creating a formal public record of your emissions and achievements for any purpose.

GG–5.6 What Else Will I Be Asked To Report?

As part of your report, you will be asked to choose one of three descriptors of the project(s) whose effects you are reporting. This identification will be limited to those provided in the language in EPAct 1605(b): (1) Voluntary reductions, (2) plant or facility closing, and (3) state or Federal requirements.

Projects may be undertaken for other purposes, for more than one purpose, or may have greenhouse gas impacts that were not the reason for implementing the project. You may wish to, but will not be required to, report more detailed information on why you undertook the project.

GG–5.7 May I Report International Projects?

Considerable interest has been generated regarding the potential for cooperation among parties in different countries. For example, there may be opportunities for U.S. parties to reduce greenhouse gas emissions and increase carbon sequestration outside the United States, perhaps at lower cost than possible through domestic activities.

Under this program, you may report the relevant results of your activities outside the United States, under the same process applicable to similar domestic activities. Note that you may have special difficulty in analyzing international activities: determining an appropriate reference case, defining project boundaries, selecting appropriate measurement or estimation methods, and obtaining credible data. Special attention should be given to all the identifiable effects of your international activities.

Under the United Nations Framework Convention on Climate Change, nations that are parties to the Convention will determine how cooperative efforts between member nations and their respective citizens ("joint implementation") will be counted toward meeting each country's commitments under that treaty. The President's Climate Change Action Plan, announced in October 1993, includes a pilot program called the United States Initiative on Joint Implementation (USIJI) designed to help establish an empirical basis for considering approaches to joint implementation. The USIJI program has developed evaluation criteria and will develop emissions measurement and verification methods for international projects accepted into the pilot program.

If you are reporting the results of any international project to this program, you will also indicate whether it has been accepted under the USIJI or under the Convention as an accountable joint implementation project. Reporting the results of an international activity under the EPAct 1605(b) program alone does not bring it under the umbrella of formal joint implementation.

GG–5.8 May I Report Prospective Emissions Reductions?

Many projects that reduce greenhouse gas emissions or sequester carbon achieve their results over several years, or even decades. For some of these projects, the accomplishments are evaluated by means of computer modeling or engineering estimates, rather than by direct measurement and monitoring of greenhouse gas emissions and flows. In those cases, the estimation process is generally carried out before the project begins.

If you have analyzed your project using a method that estimates effects prospectively, you may choose in the first reporting year to report the expected annual emissions reductions or carbon sequestration for future years. However, that information will be maintained separately from the EPAct 1605(b) database.

To have your project accomplishments recorded in the EPAct 1605(b) database, you must certify each year that the project continues to perform as expected. As you certify each year's accomplishments, EIA will transfer the data from the database of prospective accomplishments to the EPAct 1605(b) database.

You may also modify your estimates of past accomplishments at any time for any of several reasons. For example, if events following the commencement of the project are different than expected, you may wish to modify your model to more closely reflect actual events. Alternatively, you may simply find modeling or engineering estimation methods that you believe to be more accurate than those you initially employed. You may even decide to carry out field measurements where you had not initially anticipated doing so. Whatever your reason, you can modify the existing estimates to reflect your more accurate estimates of both your past accomplishments recorded in the EPAct 1605(b) database and your expected accomplishments recorded in the database of prospective accomplishments. However, you should provide clear documentation of how you derived the revised estimate.

GG–5.9 How Far Back May I Report Projects?

A primary purpose of the program is to record emissions reductions, not to track when projects were initiated. Therefore, you may report new or ongoing projects that have achieved reductions beginning January 1, 1991. However, for any project, you must establish a credible reference case and retain that reference case for all your reports of that project. If you use historic data to construct your reference case, you should not use data earlier than 1987. If you change your reference case, you must amend any previous reports for that project to account for the amended reference case.

Example: You initiated a project in 1991 that reduced emissions from their 1990 levels. This project is reportable.

Example: You initiated a project earlier than 1987 that has decreased emissions every year relative to each previous year. You may establish either a basic or modified reference case based on what emissions would have been without the project (using only data from 1987 on), then report the emissions reductions from the project for 1991 and subsequent years.

Example: You initiated a project earlier than 1987 that reduced emissions to a level that stabilized during (or before) the baseline years 1987–1990. This project would not be reportable, since the reductions were achieved prior to the period covered by the EPAct 1605(b) reporting program.

Example: You have an ongoing DSM program to encourage replacement of appliances or equipment. You would not be able to report achievements before 1991, but any appliances replaced in 1991 or after that year are new reductions and could be reported.

Example: You have been installing windmills every year for 10 years. In order to report emissions reductions for 1991, you would need to demonstrate that the 1991 windmill displaced emissions-producing generation. If the windmill replaced another, the project would not be reportable.

These are relatively straightforward examples when you construct historic reference cases. Your analysis becomes more complex when you wish to construct modified reference cases. In general, you should not use data from years before 1987 except as additional support for your assertion of what modified levels would have been after 1987.

GG–5.10 Must I Take Into Account the Different Effects of Different Greenhouse Gases?

Your reports on emissions and emission reductions will include data on greenhouse gases in tons of each gas emitted; you will not be required to calculate the various effects of different gases on climate for this voluntary reporting program. However, you may wish to perform these calculations for your own purposes. For example, you may wish to evaluate the costs of competing proposed projects in terms of the beneficial effects on climate; in order to do so, you may wish to look at these effects using a common index, such as the equivalent effect in tons of carbon dioxide. You may wish to talk about such equivalencies with various stakeholders or for public relations purposes.

The Intergovernmental Panel on Climate Change has developed an index that compares the impact that each gas has on global warming relative to the effect that carbon dioxide has. Information about this index, called the Global Warming Potential (GWP), is presented in Appendix E, along with GWPs for the types of gases covered by this reporting program. If you wish to use the index, remember that it does not take into account some complexities of atmospheric chemistry and that the underlying science is evolving.

GG–5.11 Is It Necessary To Report Emissions Reductions and Carbon Sequestration Every Year?

This is a voluntary reporting program. You are under no legal obligation to continue reporting. However, you should recognize that the usefulness of your initial reports may be affected by your participation in the program in subsequent years.

If you report emissions reductions for a period of time, and then fail to report thereafter, the user of the database is likely to assume that your project is no longer reducing emissions relative to the reference case. However, this does not negate the value of the reductions accomplished while the project was in place.

Reporting carbon sequestration projects raises a different type of problem. If you report carbon capture for a number of years and then cease reporting, a database user is apt to assume that the carbon that had been captured has been released back to the atmosphere. This not only limits recognition of any accomplishments that may have occurred following cessation of your reports, but largely negates the value of accomplishments already reported.

You or your firm may find that, following successfully reporting to the voluntary reporting program for several years, you miss one or more years of reporting. If you choose to resume reporting, your initial report should contain information not only for the most recent reporting year, but also, if possible, for all of the intervening years during which you did not report. This will ensure that the EPAct 1605(b) database reflects a continuous record of your activities, thereby increasing the credibility of all your reports.

GG–5.12 May I Amend My Previous Years' Reports?

If you have submitted reports under this program but afterwards develop better data (for example through field measurements or utility-specific emissions factors), or better estimation methods (for example, your organization's adoption of standard analytic procedures), you may amend your previous reports. You may also need to amend reports because you have amended your reference case for a particular project. Your amended reports should clearly state your reasons for amendment and the bottom-line difference that results from the amendment. The following case study discusses an instance in which a reporter chose to amend previous reports.

Case 4: Black Forest Cake, Inc.—Long-Term Project Reporting

Note: This example illustrates only one approach to analyzing a project; your analysis, methods, and calculations will vary depending on your particular circumstances, the geographic location of the project, and other factors.

Black Forest Cake, Inc. (BFCI) was a family-owned business that was experiencing extremely rapid growth in demand for its products, which included baked goods produced at 13 sites in five states, catering services at 10 shops in seven states, and equipment rentals at 15 stores in three states. It operated from a total of 23 sites spread across nine states.

The family members and many of their staff were environmentally conscious. While they were delighted with the increased demand for their products, they were concerned to see their energy consumption rising, particularly their natural gas consumption for baking ovens and space heating, and their gasoline use in delivery vehicles. They knew that increased energy use signaled increased greenhouse gas emissions.

Therefore, BFCI decided to voluntarily offset some of the increase in emissions by undertaking a tree-planting (carbon sequestration) project on farmland they owned. They were not interested in receiving official recognition for their effort. They were motivated purely by their interest in environmental protection and a desire to project an image of BFCI as a "good global citizen." They did, however, want to be sure that their project actually reduced net carbon dioxide emissions, not just appear to do so. Therefore, BFCI decided that its project should at least meet the minimum reporting standards used by DOE in the EPAct 1605(b) voluntary greenhouse gas reporting program.

In its first report following the establishment of the tree stand, BFCI reported that it had planted the trees and reported information consistent with the guidance provided in the forestry sector supporting document. It also reported that it expected the forest to capture carbon at a rate consistent with the stipulated factors provided by the guidelines' supporting document for forestry. Each year thereafter BFCI confirmed in its report that the project appeared to continue to perform as expected.

After eight years of relying on the default stipulated factors, BFCI became engaged in a dialogue with a local environmental group. One consequence of the discussions was that BFCI agreed to measure the standing carbon on its project site in the tenth year to determine whether the project had met the expectations established for the first decade by the stipulated factors. The field measurements, including statistical sampling of both soils and biomass, revealed that the project had actually exceeded expectations by 20 percent. This was attributed to the fact that the original soils were particularly rich in phosphorous and nitrogen.

BFCI amended its previous reports to reflect this new information based on field measurements. The amended reports increased the reported carbon dioxide flows to the forestland by 20 percent in each of the first ten years. BFCI also amended the projected annual carbon capture rates for the second decade to reflect the higher-than-expected performance. BFCI thus transformed its project from a standard project to a reporter-defined project.

GG–6 What Are the Minimum Reporting Requirements?

DOE has not established a minimum size for a reporting entity or for the reported emissions, emissions reduction, or sequestered carbon. For some purposes of reporting, such as the exchange of information on pilot projects, a minimum size requirement would limit participation. Similarly, you are not required to complete a full and comprehensive report as defined earlier. However, you must report a minimum set of information.

Whatever the scope of your report, you are required to certify the accuracy of the data you have provided. You must also meet minimum information requirements:

- If you are reporting greenhouse gas emissions, you must clearly identify the facilities that are covered by your report and, for each greenhouse gas covered by your report, clearly identify the gas, the amount of the emissions (expressed in metric tons of that gas per year), and the year of the emissions.
- If you are reporting emissions reductions or carbon sequestration projects, you must be able to describe your project and provide sufficient physical data to allow users of the database to form a clear understanding of the nature and scope of your project, including the cause of the change in emissions or carbon sequestration. You must also identify the location of the project, the reference case for the project, and the effects of the project.
- Whether you are reporting on a standard project or a reporter-designed project, you must be able to identify the sources of your data, the level of change of emissions or carbon sequestration per year, and the year in which the change took place.
- If you are submitting a reporter-designed project report involving direct monitoring and measuring or engineering estimations, you must also identify the techniques used to gather the data and make the estimates.

GG–7 Can My Data Be Kept Confidential?

The provisions of section 1605(b)(3) stipulate that "Trade secret and commercial information that is privileged or confidential shall be protected as provided under Section 552(b)(4) of Title 5, United States Code." In general, information submitted to the Federal government must be made available to the public. This section prohibits release of certain trade secret and commercial or financial information.

You will enhance both the credibility and usefulness of information you report by making it available for public release. More accurate data will increase the value of emissions reductions estimates in terms of public recognition, and widely available information will help diffuse knowledge about cost-effective emissions reductions opportunities. Thus, you should try to avoid labeling reported information as confidential wherever possible.

While a reporter may believe that some of the data voluntarily submitted under this program is entitled to protection under the exclusion, this protection is neither automatic nor complete. You should be aware that, under DOE regulations (10 CFR 1004.11), DOE will evaluate each claim of confidentiality and determine whether or not to disclose the data to the public. Also, data may be released to another Federal agency under certain circumstances regardless of any claim of confidentiality.

GG–8 What Certification Is Required?

If you report under this program, you will be required to certify through your signature the accuracy of all the information reported. Therefore, the person who signs the report must be authorized to act as a representative of the reporting entity for these purposes. No independent certification is required, and the Federal government does not plan to certify your reports. However, you may wish to indicate if your data have been verified by a third party.

GG–9 What Should I Do Next?

These general guidelines present an overall picture of the reporting process for the voluntary reporting program. You will find more detailed guidance in the sectoral supporting documents for electricity supply, residential and commercial buildings, industry, transportation, forestry, and agriculture. You may have reportable projects in several sectors; you may report them separately or capture and report the total effects on an entity-wide report. If you need the supporting documents, contact United States Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585.

Reporting forms are available at the following address: United States Department of Energy, Energy Information Administration, 1000 Independence Avenue, SW., Washington, DC 20585.

DOE encourages you to report your achievements in reducing greenhouse gas emissions and sequestering carbon under this program. Global climate change is increasingly being recognized as a threat that individuals and organizations can take action against. If you are among those taking action, reporting your projects may lead to recognition for you, motivation for others, and synergistic learning for the global community.

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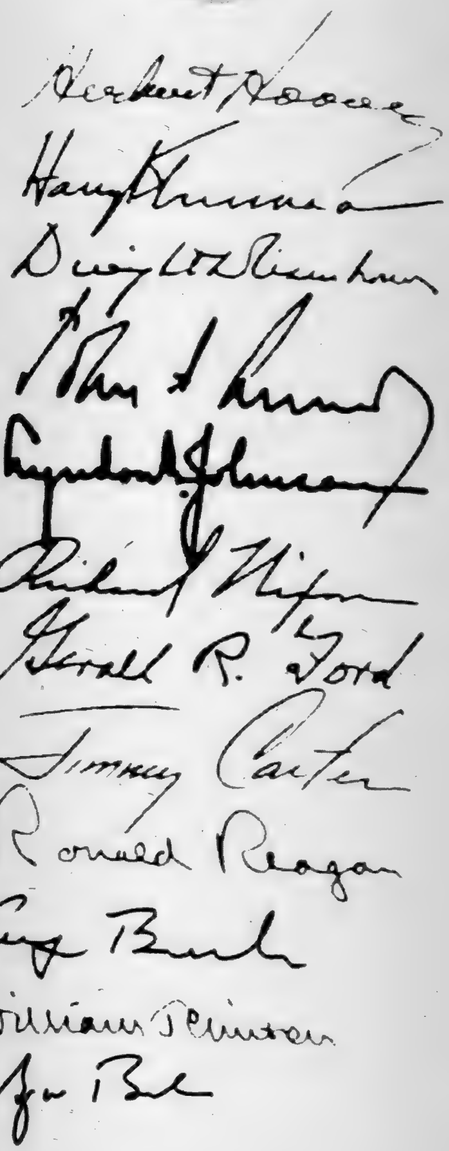
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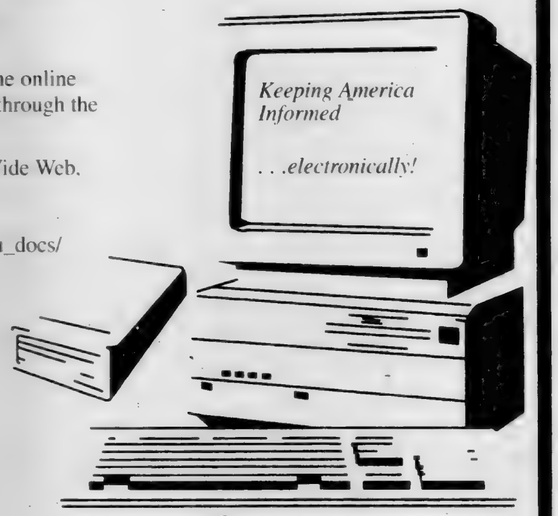
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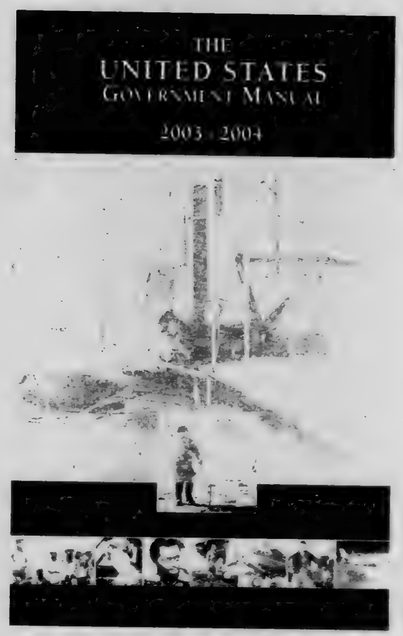
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Of significant historical interest is Appendix B, which lists the agencies and functions of the Federal Government abolished, transferred, or renamed subsequent to March 4, 1933.

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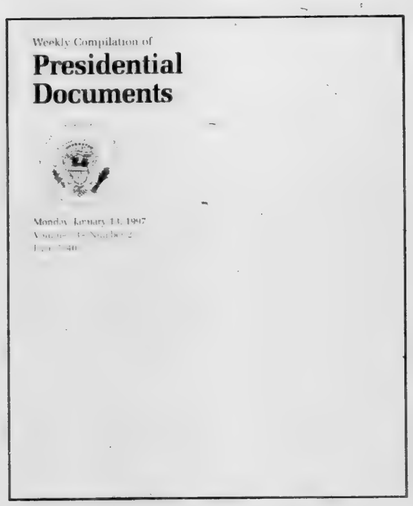
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The President

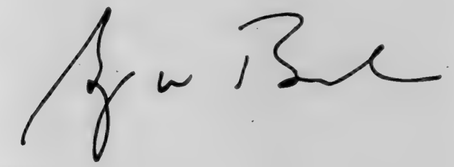
Executive Order 13319 of December 3, 2003

Amendment to Executive Order 13183, Establishment of the President's Task Force on Puerto Rico's Status

By the authority vested in me as President by the Constitution and the laws of the United States of America, it is hereby ordered that Executive Order 13183 of December 23, 2000, as amended, is further amended as follows:

(1) Section 2 is amended by deleting the second and third sentences, and inserting in lieu thereof the following: "It shall be composed of designees of each member of the President's Cabinet and the Deputy Assistant to the President and Director for Intergovernmental Affairs. The Task Force shall be co-chaired by the Attorney General's designee and the Deputy Assistant to the President and Director for Intergovernmental Affairs."

(2) By deleting section 4, and inserting in lieu thereof the following: "**Sec. 4.** *Report.* The Task Force shall report on its actions to the President as needed, but no less frequently than once every 2 years, on progress made in the determination of Puerto Rico's ultimate status."



THE WHITE HOUSE,
December 3, 2003.

[FR Doc. 03–30513
Filed 12–5–03; 8:45 am]
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Rules and Regulations

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DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 66

[USCG–2000–7466]

RIN 1625–AA55 [Formerly 2115–AF98]

Allowing Alternatives to Incandescent Lights, and Establishing Standards for New Lights, in Private Aids to Navigation

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard removes the requirement to use only tungsten-incandescent-light sources for private aids to navigation (PATONs) and establishes more-specific performance standards for all lights in PATONs. These measures enable private industry and owners of PATONs to take advantage of recent changes in lighting technology—specifically allow owners of PATONs to use lanterns based on the technology of light-emitting diodes (LEDs), which may reduce the consumption of power and simplify the maintenance of PATONs. The more-specific performance standards will make the rules for PATONs equivalent to those for Federal aids to navigation.

DATES: This final rule is effective March 8, 2004.

ADDRESSES: Comments and material received from the public, as well as documents mentioned in this preamble as being available in the docket, are part of docket USCG–2000–7466 and are available for inspection or copying at the Docket Management Facility, U.S. Department of Transportation, room PL–401, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet at *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call Dan Andrusiak, Office of Aids to Navigation, at Coast Guard Headquarters, telephone 202–267–0327. If you have questions on viewing the docket, call Andrea M. Jenkins, Program Manager, Docket Operations, Department of Transportation, telephone 202–366–0271.

SUPPLEMENTARY INFORMATION:

Regulatory History

On October 4, 2000, the Coast Guard published a direct final rule (DFR) [65 FR 59124] under the same docket number as the one borne by this final rule: USCG–2000–7466. We published that rule as a DFR because we expected that the public would readily embrace it; however, we received an adverse comment. Because of this, we withdrew the DFR [66 FR 8 (January 2, 2001)] so our engineers could analyze and respond to the comment. Not only did they follow the commenter's advice to make performance standards for LEDs more specific; they also recommended to the Marine Safety Council (now the Marine Safety and Security Council), our policy-setting body, the standardizing of all rules related to lights used as private aids to navigation (PATONs).

On June 24, 2002, we published a notice of proposed rulemaking entitled Allowing Alternative Source to Incandescent Light in Private Aids to Navigation in the **Federal Register** (67 FR 42512). We received three letters commenting on the proposed rule. No public hearing was requested and none was held.

Background

The Marine Safety Council, as it then was, recommended this rulemaking to provide owners of PATONs with more options for selecting equipment. This rule may reduce lifecycle cost, reduce the consumption of power, and simplify the maintenance of PATONs by allowing the use of lighting technologies other than those based on tungsten-incandescent light sources.

Discussion of Comments and Changes

We received three comments on this rule as proposed. The first commenter stated support for allowing alternatives to incandescent lights in private aids to navigation, but opined that the rule was deficient since it would not require the owners of such lights to maintain them.

Our response: We agree that maintenance requirements are essential, but we disagree that PATON owners do not have a requirement to maintain them. Existing 33 CFR 66.01–20 requires that all classes of private aids to navigation be maintained in proper operating condition and § 66.01–45 makes it clear that only those authorized to maintain PATONs may do so.

To assist owners in maintaining PATONs, we have required manufacturers to provide each purchaser a data sheet that accompanies the PATON equipment at the time of sale with the following information: the recommended service life of the optic, light source, and batteries. They must also indicate a replacement interval to ensure that the equipment meets the minimum requirements in case of degradation of the light or lens.

The commenter also stated that replacement bulbs, particularly tungsten-filament ones, are very expensive and that because of this some owners might replace the specialty-type base of the original light with an Edison-screw-type base and use household bulbs.

Our response: This final rule requires each owner, under "application procedure," to document his or her aid's make, model, advertised intensity, and lamp source. The Coast Guard will maintain this information in a database that will help Coast Guard inspectors verify that the proper equipment is installed.

The second commenter pointed out that, in addition to applying to private aids to navigation in 33 CFR part 66, the standards also apply to lights used on artificial islands and fixed structures regulated under 33 CFR part 67 by the requirements of 33 CFR 67.01–1(b). The commenter urged the Coast Guard to establish a luminous-intensity standard in eventual 33 CFR 66.01–11(a)(3) for any light required to have a nominal range of 5 nautical miles.

Our response: We agree that all requirements under 33 CFR part 67 regarding the light signals supersede the requirements under 33 CFR part 66. However, to be consistent with the operational ranges, we are adding requirements for a 5-nautical-mile light

signal to part 66. We are also changing the intensity requirements to reflect minimum intensity, subject to change due to local-environmental conditions, at the discretion of the District Commander.

The same commenter urged the Coast Guard to remove "90 percent visibility" standards from 33 CFR 67.20–5, 67.25–5(a), and 67.30–5(a), and rely on the provisions of 33 CFR 67.01–1(b) to invoke the luminous-intensity standard of eventual 33 CFR 66.01–11(a)(3).

Our response: Part 66 generally pertains to voluntary PATONs. Part 67 refers to PATONs required by statute or regulation for facilities that could pose a danger to navigation. This being so, we believe that a more stringent requirement is necessary. In addition, District Commanders generally require greater than the minimum intensities for PATON lights because of local environmental conditions; therefore, the standard of 90-percent visibility is a legitimate requirement for 33 CFR part 67.

The same commenter stated that the preamble to the proposed rule (67 FR 42513, 2nd column, 6th paragraph) implied that existing lights would not have to meet these new standards; however, rather than refer to existing lights, the proposed regulatory text for 33 CFR 66.01–12 referred to a "new application" for a private aid. This leaves uncertainty (and attendant liability) regarding applicability of 33 CFR 66.01–11 to those existing lights under 33 CFR parts both 66 and 67 that may be subject to the "new application." For example, the existing regulations require the filing of an application for lights that are relocated (such as the obstruction lights on mobile offshore drilling units), or are subject to transfer of ownership in accordance with 33 CFR 66.01–55. The commenter urged the Coast Guard to clearly state that lights already in service can remain in service as long as they continue to meet the standards for luminosity and effective intensity in effect at the time they are placed in service.

Our response: If an owner must file a new application as a result of modifying, replacing, or installing a new light, his or her PATON must comply with the new standards. Changes in ownership or relocation of a moveable structure such as a mobile offshore drilling unit, while requiring a new application, would not require replacement of existing lighting equipment unless the environmental conditions of the new location demanded it.

The commenter stated that new 33 CFR 66.01–14(a)(4), which would require a manufacturer to provide a label indicating the date a light is placed in service, does not make sense.

Our response: We agree. After careful consideration, we modified the requirement so that the label indicates only the model and serial number of the lantern. The District Commander will maintain that information, details of the application, and the manufacturer's recommended replacement interval in a database accessible to Coast Guard inspectors.

The third commenter stated that 33 CFR 66.01–11 of the NPRM designates only three types of lights: 1-candela lights, 2-candela lights, and 10-candela lights. Lights of much higher candlepower are required for PATONs to attain the desired detection range.

Our response: We agree. We have changed the intensity requirements to reflect the minimum intensities required for given ranges. The District Commander will determine actual required intensity after considering local conditions including background lighting and visibility.

The commenter recommended deleting any references to "nominal range" and any correlating of intensity to such range.

We agree. We changed the term "nominal range" to "range."

The commenter suggested that, to make the rules for PATONs equivalent to those for Federal aids to navigation, we should require at least 50% of the effective intensity within ±4° of the horizontal plane for LED lights in alignment with current USCG in-house requirements for LED buoy lanterns (Specification G–SEC498A)—if not for all LED lights, then at least for LED lights greater than 10 candela.

Our response: We disagree. Federal aids to navigation currently have an approximate vertical divergence of ±2° to 50% of effective intensity. This vertical divergence is adequate for PATONs. There is no need to impose stricter requirements on the public.

The commenter suggested that under 33 CFR 66.01–11(a) (1) we should add the words "* * * except range and sector lights".

We agree. This final rule changes the requirements of §§ 66.01–11(a)(1) and 66.01–11(a)(2) to exclude directional lights.

The commenter stated that under 66.01–11(a)(2), given the limited vertical divergence of some LEDs, there may be no light emitted beyond the minimum angle of ±2°. There should be least 50% of effective intensity within an angle of ±2° of the horizontal plane and 10% to ±4° of the horizontal plane required for all beacons. There should be 50% of effective intensity within an angle of ±4° of the horizontal plane for all buoy lights, and all LED lights over 10 candela.

We disagree. Federal aids to navigation currently have an approximate vertical divergence of ±2° to 50% of effective intensity. We feel that this is an adequate vertical divergence for PATONs and that stricter requirements on the public are unnecessary. In response to the commenter's request for vertical divergence of ±4° at 10% of peak intensity, we feel that specifying the divergence at 50% of peak intensity is adequate; no additional breakdowns for divergence are necessary.

The commenter stated that under 33 CFR 66.01–11(a)(3), in keeping with the purpose stated in the proposed rule to "make the rules for PATONs equivalent to those for Federal aids to navigation", we should require a minimum effective intensity for PATONs. This minimum should correspond to the existing Federal minimum of 9 candelas.

We disagree. We will not establish a minimum intensity of 9 candela, because this might nullify PATONs in the range of 1 to 2 nautical miles. Requiring lights that produce a minimum intensity of 9 candelas may require owners of PATONs to unnecessarily purchase hardware that exceeds the requirements for their site. This would create an unnecessary burden for these owners.

The commenter stated that, under 33 CFR 66.01–11(a)(6), there is a relationship among the initial intensity of a new light, the minimum intensity required by the proposed and existing regulations (33 CFR parts 67 and 149), and the recommended interval for replacement when a light's intensity degrades to a value below the minimal required intensity. The recommended service life of the light sources, or lens, will depend on the initial candela of a new light and the level of degradation the candela could suffer before it fell below the minimal required intensity.

Our response: A lantern must meet the minimum requirements of 33 CFR part 66 throughout its service life. The manufacturer must determine a recommended replacement interval based on degradation of the lens or light source.

The commenter stated that, under 33 CFR 66.01–1(a)(7), a 10-day-reserve battery capacity is seldom sufficient for proper operation of a solar power supply designed to operate year-round without a low-voltage disconnect. We should require the use of lanterns with a minimum recharge capacity that exceeds the current consumption of each LED during the month of least insolation at the site of the lantern.

Our response: Our major solar-powered lighthouses operate with an autonomy of 10 days, so we feel this reserve capacity is adequate for lanterns as well. A low-voltage disconnect helps preserve the battery if the lantern is housed in a sealed, self-contained power system. This rule requires the reconnect voltage to be high enough to prevent the light from short-cycling daily. We agree that power production for the site should exceed the load during the worst average month of insolation and are adding that requirement to § 66.01–11(a)(7).

Under 33 CFR 66.01–11(a)(7), the commenter recommended that we should require bird spikes (or some other bird-avoidance-apparatus) on all lights to prevent degrading the performance of both lenses and solar panels due to soiling by birds.

We disagree. Bird spikes should not be a requirement. Each manufacturer can determine whether its design encourages roosting of birds that could affect performance of the PATON and incorporate necessary means to discourage them, if necessary.

After careful consideration, we modified the requirement under 33 CFR 66.01–14 for the label to include only the model and serial number of the lantern. The District Commander will maintain that information, details of the application, and the manufacturer's recommended replacement interval in a database accessible by Coast Guard inspectors.

Regulatory Evaluation

This final rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget (OMB) has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Homeland Security (DHS).

We expect the economic impact of this rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary.

Cost of Rule

This final rule will impose minimal costs on manufacturers of PATONs. Costs will stem from the requirement that each PATON powered by an LED must bear information about the replacement interval of the light source. This information will be unique for many of the units sold each year, requiring manufacturers to calculate replacement intervals for about six models of PATONs so powered. Each model will have several possible replacement intervals depending on consumers' specifications. There is no market today for such PATONs, so it is impossible to know how many unique replacement intervals will be published. The cost estimate is thus based on an approximation, assuming that each manufacturer will calculate about ten different replacement intervals for an average of six different such PATONs in the first year. The range of costs for the ten international manufacturers of such PATONs could be as much as $16,500 for a total of 300 hours in the first year. The costs in following years are uncertain, because new manufacturers are likely to enter the market once this rule is enacted and significantly increase the number of such PATONs produced each year.

Manufacturers must also print model numbers and serial numbers labels on all PATONs. However, it is already industry practice to print this information on PATONs, so manufacturers are currently in compliance with Coast Guard requirements for labels. Therefore, we expect that these requirements will add no costs to the manufacture of either PATONs or labels.

Benefits of Rule

This final rule allows owners of PATONs to choose from not only tungsten bulbs, which are currently permitted, but also the new technology of LEDs. These consume less power and have a longer lifespan than the sources currently permitted. Purchasers of PATONs powered by LEDs are likely to reduce their electricity costs and spend less time maintaining their PATONs. Existing rules do not allow manufacturers to sell LEDs for use in PATONs.

Small Entities

Under the Regulatory Flexibility Act [5 U.S.C. 601–612], we have considered whether this final rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard conducted a survey of industry, and discovered that there are now two domestic manufacturers of tungsten-incandescent-lighting sources used for aids to navigation. Only one of them qualifies as small according to the standards of the Small Business Administration. This rule, however, allows the small company to continue selling tungsten-incandescent PATONs. Barring unforeseen changes in the market for PATONs, we do not expect that the legalization of PATONs powered by LEDs will have any significant impact on the sale of cheaper, and more widely available, tungsten-incandescent PATONs.

Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 [Public Law 104–121], we offered to assist small entities in understanding this final rule so that they could better evaluate its effects on them and participate in the rulemaking.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This final rule calls for a new collection of information under the Paperwork Reduction Act of 1995 [44 U.S.C. 3501–3520]. There is no current market for PATONs powered by LEDs, so there is no determination of how many distinct models of such PATONS will be produced with unique replacement intervals. In the year proceeding promulgation of this rule, three domestic manufacturers of such PATONs are likely to produce about six models of such PATONs. Each model will have about ten unique replacement intervals based on various combinations of light-source characteristics. On these assumptions, the annual paperwork burden will be around 90 hours. At $55 (the hourly rate for a non-Federal employee doing this work), the cost should be around $4950 in the year proceeding promulgation.

As required by 44 U.S.C. 3507(d), we submitted a copy of this rule to OMB for its review of the collection of information. OMB has approved the

collection. The part numbers are 33 CFR parts 66 and 67; the corresponding approval number from OMB is Control Number 1625–0011, which expires on July 31, 2005.

You need not respond to a collection of information unless it displays a currently valid OMB control number.

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this final rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 [2 U.S.C. 1531–1538] requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this final rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This final rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This final rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this final rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This final rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this final rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that Order, because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

We have considered the environmental impact of this final rule and concluded that preparation of an Environmental Impact Statement or Environmental Assessment is not necessary. This rule has been thoroughly reviewed by the Coast Guard, and the undersigned has determined it to be categorically excluded, under Categorical Exclusion 34(e), from further environmental documentation. This determination accords with Section 2.B.2 and Figure 2–1 of NEPA implementing procedures, COMDTINST M16475.1D.

List of Subjects in 33 CFR Part 66

Navigation (water).

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 66 as follows:

PART 66—PRIVATE AIDS TO NAVIGATION

■ 1. Revise the citation of authority for part 66 to read as follows:

Authority: 14 U.S.C. 83, 84, 85; 43 U.S.C. 1333; Department of Homeland Security Delegation No. 0170.1.

■ 2. In § 66.01–5, revise the introductory text and paragraphs (a) and (f) to read as follows:

§ 66.01–5 Application procedure.

To establish and maintain, discontinue, change, or transfer ownership of a private aid to navigation, you must apply to the Commander of the Coast Guard District in which the aid is or will be located. You can find application form CG–2554 at *http://www.uscgboating.org/safety/aton/aids.htm* or you can request a paper copy by calling the Boating Safety Information line at (800) 368–5674. You must complete all parts of the form applicable to the aid concerned, and must forward the application to the District Commander. You must include the following information:

(a) The proposed position of the aid to navigation by two or more horizontal angles, bearings and distance from charted landmarks, or the latitude and longitude as determined by GPS or differential GPS. Attach a section of chart or sketch showing the proposed position.

* * * * *

(f) For lights: The color, characteristic, range, effective intensity, height above water, and description of illuminating apparatus. Attach a copy of the manufacturer's data sheet to the application.

* * * * *

■ 3. Revise § 66.01–10 to read as follows:

§ 66.01–10 Characteristics.

The characteristics of a private aid to navigation must conform to those prescribed by the United States Aids to Navigation System set forth in subpart B of part 62 of this subchapter.

■ 4. Add § 66.01–11 to read as follows:

§ 66.01–11 Lights.

(a) Except for range and sector lights, each light approved as a private aid to navigation must:

(1) Have at least the effective intensity required by this subpart omnidirectionally in the horizontal plane, except at the seams of its lens-mold.

(2) Have at least 50% of the effective intensity required by this subpart within ±2° of the horizontal plane.

(3) Have a minimum effective intensity of at least 1 candela for a range of 1 nautical mile, 3 candelas for one of 2 nautical miles, 10 candelas for one of 3 nautical miles, and 54 candelas for one of 5 nautical miles. The District Commander may change the requirements for minimum intensity to account for local environmental conditions. For a flashing light this intensity is determined by the following formula:

$Ie=G/(0.2+t_2-t_1)$

Where:

Ie = Effective intensity
G = The integral of the instantaneous intensity of the flashed light with respect to time
t_1 = Time in seconds at the beginning of the flash
t_2 = Time in seconds at the end of the flash
t_2-t_1 is greater than or equal to 0.2 seconds.

(4) Unless the light is a prefocused lantern, have a means of verifying that the source of the light is at the focal point of the lens.

(5) Emit a color within the angle of 50% effective intensity with color coordinates lying within the boundaries defined by the corner coordinates in Table 66.01–11(5) of this part when plotted on the Standard Observer Diagram of the International Commission on Illumination (CIE).

TABLE 66.01–11(5)—COORDINATES OF CHROMATICITY

Color	Coordinates of chromaticity	
	x axis	y axis
White	0.500	0.382
	0.440	0.382
	0.285	0.264
	0.285	0.332
	0.453	0.440
	0.500	0.440
Green	0.305	0.689
	0.321	0.494
	0.228	0.351
	0.028	0.385
Red	0.735	0.265
	0.721	0.259
	0.645	0.335
	0.665	0.335
Yellow	0.618	0.382
	0.612	0.382
	0.555	0.435
	0.560	0.440

(6) Have a recommended interval for replacement of the source of light that ensures that the lantern meets the minimal required intensity stated in paragraph (a)(3) of this section in case of degradation of either the source of light or the lens.

(7) Have autonomy of at least 10 days if the light has a self-contained power system. Power production for the prospective position should exceed the load during the worst average month of insolation. The literature concerning the light must clearly state the operating limits and service intervals. Low-voltage disconnects used to protect the battery must operate so as to prevent sporadic operation at night.

(b) The manufacturer of each light approved as a private aid to navigation must certify compliance by means of an indelible plate or label affixed to the aid that meets the requirements of § 66.01–14.

■ 5. Add § 66.01–12 to read as follows:

§ 66.01–12 May I continue to use the private aid to navigation I am currently using?

If, after March 8, 2004, you modify, replace, or install any light that requires a new application as described in § 66.01–5, you must comply with the rules in this part.

■ 6. Add § 66.01–13 to read as follows:

§ 66.01–13 When must my newly manufactured equipment comply with these rules?

After March 8, 2004, equipment manufactured for use as a private aid to navigation must comply with the rules in this part.

■ 7. Add § 66.01–14 to read as follows:

§ 66.01–14 Label affixed by manufacturer.

(a) Each light, intended or used as a private aid to navigation authorized by this part, must bear a legible, indelible label (or labels) affixed by the manufacturer and containing the following information:

(1) Name of the manufacturer.
(2) Model number.
(3) Serial number.
(4) Words to this effect: "This equipment complies with requirements of the U.S. Coast Guard in 33 CFR part 66."

(b) This label must last the service life of the equipment.

(c) The manufacturer must provide the purchaser a data sheet containing the following information:

(1) Recommended service life based on the degradation of either the source of light or the lamp.
(2) Range in nautical miles.
(3) Effective intensity in candela.
(4) Size of lamp (incandescent only).
(5) Interval, in days or years, for replacement of dry-cell or rechargeable battery.

Dated: November 18, 2003.

David S. Belz,

Rear Admiral, Coast Guard, Assistant Commandant for Operations.

[FR Doc. 03–29650 Filed 12–5–03; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[CGD07–03–152]

RIN 1625–AA08

Special Local Regulations; 2003 Boca Raton Holiday Boat Parade, Riviera Beach, FL

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: Temporary special local regulations are being established for the 2003 Boca Raton Holiday Boat Parade, Riviera Beach, Florida. The event will be held on December 20, 2003, on the waters of the Intracoastal Waterway between the C–15 canal, just North of Bella Marra, and the Hillsboro Boulevard bridge spanning the Intracoastal Waterway. These regulations exclude non-participant vessels from the regulated area, which includes the parade route, staging area, and viewing area. These regulations are needed to provide for the safety of life on navigable waters during the event.

DATES: This rule is effective from 6 p.m. until 9 p.m. on December 20, 2003.

ADDRESSES: Documents indicated in this preamble as being available in the docket, are part of docket (CGD07–03–152) and are available for inspection or copying at Coast Guard Group Miami, 100 MacArthur Causeway, Miami Beach, Florida, 33139 between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: BMC Vaughn, Coast Guard Group Miami, Florida at (305) 535–4317.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM. Publishing an NPRM would be contrary to public safety interests and unnecessary. These regulations are needed to minimize danger to the public resulting from numerous spectator and participant craft in close proximity to each other around the staging, parade and viewing areas of an event that will occur in a relatively short period of time. Moreover, the regulation will be in effect for only 3 hours. For the same reasons, under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**.

Background and Purpose

The 2003 Boca Raton Holiday Boat Parade is a nighttime parade of approximately 60 pleasure boats that range in length from 15 feet to 100 feet decorated with holiday lights. It is anticipated that approximately 50 spectator craft will view the parade. The parade will form in a staging area on the Intracoastal Waterway at the C–15 Canal, just North of Bella Marra at

approximately 26°25′ N, then proceed south on the Intracoastal Waterway (ICW) to Hillsboro Boulevard Bridge at approximately 26°19′ N, where the parade will disband. The regulated area includes the staging area in the vicinity of the C–15 canal, and the parade route.

Discussion of Rule

The special local regulations for this event prohibit non-participant vessels from entering the regulated area, which includes the staging area for the parade, in the vicinity of the mouth of the C–15 canal, and the parade route south along the Intracoastal Waterway to the Hillsboro Boulevard Bridge. During transit of the parade, these regulations prohibit non-participating vessels from approaching within 500 feet ahead of the lead parade vessel, 500 feet astern of the last participating vessel, or within 50 feet on either side of the outboard parade vessels in the regulated area, unless authorized by the Coast Guard patrol commander.

The staging area and parade route encompass the Intracoastal Waterway from the C–15 Canal south to the Hillsboro Boulevard Bridge. No anchoring is permitted in the staging area.

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Homeland Security (DHS). This rule will be in effect for only 3 hours on the date of the parade.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule may affect the following entities, some of which may be small entities: the owners or operators of vessels intending to transit or anchor in a portion of the regulated area from 6 p.m. to 9 p.m. on December 20, 2003. This rule will not have a significant economic impact on a substantial number of small entities for the following reasons. This rule will be in effect for only 3 hours late in the day when vessel traffic is low. Any traffic that needs to pass through the regulated area will be allowed to pass with the permission of the Coast Guard patrol commander once the parade participants have moved further along the parade route.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we offer to assist small entities in understanding the rule so that they can better evaluate its effects on them and participate in the rulemaking process. Small businesses may contact the person listed under **FOR FURTHER INFORMATION CONTACT** for assistance in understanding and participating in this rulemaking. Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This rule calls for no new collection of information requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandate Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that Order, because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

We have analyzed this rule under Commandant Instruction M16475.1D, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph 34(h), of the Instruction, from further environmental documentation. Under figure 2–1, paragraph (34)(h), of the Instruction, an "Environmental Analysis Check List" and a "Categorical Exclusion Determination" are not required for this rule.

List of Subjects in 33 CFR Part 100

Marine Safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

■ For the reasons set out in the preamble, the Coast Guard amends 33 CFR part 100 as follows:

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

■ 1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 100.35T–07–152 to read as follows:

§ 100.35T–07–152 2003 Boca Raton Holiday Boat Parade, Riviera Beach, FL.

(a) *Regulated area.* The regulated area encompasses the staging area and parade route for the 2003 Boca Raton Holiday Boat Parade, which includes all waters of the Intracoastal Waterway from the C–15 Canal south to the Hillsboro Boulevard Bridge.

(b) *Coast Guard Patrol Commander.* The Coast Guard Patrol Commander is a commissioned, warrant, or petty officer of the Coast Guard who has been designated patrol commander for the event by Commander, Coast Guard Group Miami, Florida.

(c) *Special Local Regulations.* (1) *Staging area.* Entry or anchoring in the staging area, in the vicinity of the mouth of the C–15 canal where it intersects the Intracoastal Waterway, by non-participating vessels is prohibited, unless authorized by the patrol commander.

(2) *Parade route.* During the transit of parade vessels, non-participating vessels are prohibited from approaching within 500 feet ahead of the lead parade vessel, 500 feet astern of the last participating vessel in the parade, or within 50 feet either side of the outboard parade vessels, unless authorized by the patrol commander.

(c) *Effective period:* This section becomes effective at 6 p.m. and terminates at 9 p.m. on December 20, 2003.

Dated: November 24, 2003.

Harvey E. Johnson, Jr.,

Rear Admiral, U.S. Coast Guard, Commander, Seventh Coast Guard District.

[FR Doc. 03–30376 Filed 12–5–03; 8:45 am]

BILLING CODE 4910–15–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 2, 74, 78 and 101

[ET Docket No. 95–18, ET Docket No. 00–258, IB Docket No. 01–185; FCC 03–280]

Allocation of Spectrum at 2 GHz for Use by the Mobile-Satellite Service

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document modifies the rules that new 2 GHz Mobile-Satellite Service (MSS) licensees are to follow when relocating incumbent Broadcast Auxiliary Service (BAS) licensees in the 1990–2025 MHz band and Fixed Service (FS) microwave licensees in the 2180–2200 MHz band. These actions are taken in light of our recent decision to reallocate 30 megahertz of 2 GHz MSS spectrum to new Fixed and Mobile services as part of our Advanced Wireless Services (AWS) proceeding, and to allow MSS licensees to provide an Ancillary Terrestrial Component (ATC) in conjunction with their MSS networks. We have also considered a number of outstanding petitions for reconsideration filed in response to our initial decision to reallocate these bands to MSS. Together, these decisions will resolve outstanding issues relating to the introduction of MSS at 2 GHz and the consequential relocation of BAS and FS licensees in these bands, which in turn will set the stage for the introduction of a variety of new and highly anticipated advanced services into these bands.

DATES: Effective January 7, 2004.

FOR FURTHER INFORMATION CONTACT: Jamison Prime, Office of Engineering and Technology, (202) 418–7474.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Third Report and Order and Memorandum Opinion and Order*, ET Docket No. 95–18, ET Docket No. 00–258, and IB Docket No. 01–185, FCC 03–280, adopted November 5, 2003, and released November 10, 2003. The full text of this Commission decision is available on the Commission's Internet site at *http://www.fcc.gov*. It is available for inspection and copying during normal business hours in the FCC Reference Information Center, Room CY–A257, 445 12th Street, SW., Washington, DC, and also may be purchased from the Commission's duplication contractor, Qualex International, 445 12th Street, SW., Room, CY–B402, Washington, DC 20554; (202) 863–2893; fax (202) 863–2898; e-mail *qualexint@aol.com*.

Summary of the Third Report and Order and Third Memorandum Opinion and Order

1. In the Third Report and Order and Third Memorandum Opinion and Order the Commission retains in substantial part the BAS and FS relocation procedures that new MSS entrants in the 2 GHz band will follow and that were originally adopted in the Commission's *MSS Second Report and Order*, 65 FR 48174, August 7, 2000. The modifications we make herein respond to comments filed in response to the *Further Notice of Proposed Rulemaking*, 66 FR 47518, September 13, 2001, in the AWS proceeding and the Notice of Proposed Rulemaking, 66 FR 47621, September 13, 2001, in the MSS–ATC proceeding. In both of those actions, the Commission sought comment on how the introduction of new services into the 2 GHz MSS band would affect the existing BAS and FS relocation procedures. We also address petitions for reconsideration filed in response to the *MSS Second Report and Order*. Specifically, we make the following decisions herein:

For relocation of BAS in the 1990–2025 MHz band by new MSS entrants, we:

- Require the relocation of BAS incumbents in all television markets to the final (Phase II) plan at 2025–2110 MHz. This will eliminate the necessity of relocating BAS licensees to an interim (Phase I) channel plan as part of the previously adopted two-phase approach to relocation.
- Retain the requirement that all BAS operations in markets 1–30 must be relocated prior to the initiation of new MSS in the band.
- Amend the rules to specify that the time period for calculating a one-year mandatory BAS negotiation period for markets 1–30 and the ten-year sunset period commence upon publication of this Report and Order in the **Federal Register**.
- Require the relocation of all fixed BAS stations on channels 1 and 2 nationwide prior to the initiation of new MSS in the band.
- Decline to require the reimbursement of relocation expenses for BAS facilities for which initial

applications were filed at the Commission after adoption of the *MSS Second Report and Order*.

- Modify our final (Phase II) BAS channel plan to provide for seven channels of 12 megahertz each, and a 500 kilohertz data return link (DRL) band at both ends of the seven channels.
- Permit BAS licensees to operate indefinitely on their existing 17-megahertz wide channels in the 2025–2110 MHz band on a secondary basis, if they so choose.
- Clarify that an assignment or transfer of control does not disqualify a BAS incumbent from relocation eligibility.

For FS microwave relocation by MSS/ATC licensees in the 2180–2200 MHz band, we:

- Clarify that TIA TSB 10–F, or its successor, is an appropriate interference standard that may be used for determining interference from MSS ATC stations to incumbent FS operations in the 2 GHz band.
- Clarify that FS incumbents relocated through the negotiation process are eligible for reimbursement for relocation to leased facilities or alternative media, but decline to extend reimbursement eligibility to FS incumbents that voluntarily self-relocate.
- Decline to establish separate "rolling" negotiation periods for each FS incumbent as they are approached by MSS licensees for relocation negotiation.
- Amend the rules to specify that the time period for calculating the mandatory FS negotiation periods and the ten-year sunset period commence upon publication of the *Report and Order* in the **Federal Register**.
- Clarify that an assignment or transfer of control does not disqualify a FS incumbent from relocation eligibility.
- Decline to require MSS licensees to relocate FS incumbents from which the MSS operation would only receive, but not cause, interference prior to the ten-year sunset date.

2. The Third Report and Order and Third Memorandum Opinion and Order also address BAS and FS relocation issues as they pertain to 2 GHz MSS licensees as part of an overall effort to promote the rapid introduction of MSS into the 2 GHz bands. As such, we combine a Report and Order addressing the relevant comments that discuss BAS and Fixed Service relocation issues in two proceedings, ET Docket 00–258 and IB Docket No. 01–185, with a Memorandum Opinion and Order addressing petitions that seek reconsideration or clarification of relocation decisions made in the MSS Second Report and Order. The issues we consider generally relate to relocation timing, reimbursement eligibility, negotiation commencement, and technical/interference matters. Our decisions are designed to account for the actions the Commission has taken in the subsequent proceedings, described above, regarding the reallocation of a portion of the MSS band and the introduction of ATC services by MSS licensees.

3. As an initial matter, we are not altering the fundamental workings of the relocation process that was adopted in the *MSS Second Report and Order*. For example, throughout the AWS proceeding, commenters representing incumbent licensees' interests have urged us to maintain the general relocation principles of the Emerging Technologies proceeding even if we expand the nature and scope of services in the band. We agree.

4. In order to provide for MSS entry into the band in accordance with construction milestones, MSS licensees generally will have to relocate BAS and FS incumbents. We note that, due to the reallocation of the 1990–2000 MHz and 2020–2025 MHz bands in the AWS proceeding, non-MSS licensees that may begin service later will benefit from the band clearing paid for by MSS licensees. For this reason, we will provide an equitable mechanism by which MSS licensees can recover some of the relocation costs incurred from other licensees who will benefit from the band clearing in the 1990–2000 MHz and 2020–2025 MHz segments of the 1990–2025 MHz band. Thus, licensees benefiting from MSS licensees' efforts to clear incumbent BAS from the 1990–2025 MHz band will be expected to share the costs of this relocation.

5. However, because the nature and scope of new Fixed and Mobile service licensees that will operate in the 1990–2000 MHz and 2020–2025 MHz bands has not yet been determined, we do not set forth herein a comprehensive set of procedures that new Fixed and Mobile service providers (including AWS entrants) in these bands must follow to relocate incumbent BAS licensees and/or to reimburse MSS licensees that will have incurred relocation costs. We will instead consider such matters in a separate, future proceeding. This is because the decisions we make with respect to these bands may affect the manner by which we apply the general cost-sharing principles embodied in the Emerging Technologies procedures. For example, it is not clear how we would apply our traditional cost-sharing principles were we to use portion of the bands to provide relocation spectrum for Nextel's operations in the 800 MHz band or for MDS licensees in the 2150–2160/62 MHz band, to relocate federal government operations, or to provide interference separation between new AWS licensees and existing users in adjacent spectrum bands. We expect, however, that licensees that ultimately benefit from spectrum cleared by MSS shall bear the cost of reimbursing MSS licensees for the accrual of that benefit.

6. Some petitioners also note the complexity that introducing different services with potentially different geographic licensing schemes will have on cost-sharing in the band. For example, PCIA has suggested, inter alia, that we authorize a third-party clearinghouse to administer relocation matters. We likewise defer consideration of this issue because we have not yet adopted service rules for the Fixed and Mobile allocation in the band and, therefore, do not know the characteristics of new licensees that will share the 2 GHz band with the existing MSS licensees. We will be able to make more meaningful decisions with respect to these and other cost-sharing procedures at a future time.

7. Finally, since the actions taken herein include the relocation of existing services and the addition of new services within the subject frequency bands, there may be some impact on international coordination arrangements currently in effect. Therefore, operation in the border areas may be constrained pending the completion of consultations with foreign administrations, as necessary, and until existing agreements are revised and new agreements are developed, as appropriate.

Report and Order—BAS

8. We believe that the core interests that the Commission considered when it crafted the *MSS Second Report and Order* remain valid. The band will still host MSS licensees, and the unique, integrated nature of BAS has not changed. What has changed is that, in light of the decisions the Commission made in the AWS proceeding, we can expect additional new licensees to occupy the 1990–2025 MHz band.

9. Of the 15 megahertz of spectrum that we have reallocated from MSS in the 1990–2025 MHz band to support new Fixed and Mobile services, two thirds occupies the lower end (1990–2000 MHz) of the band and one third is situated at the upper end (2020–2025 MHz). The twenty megahertz of spectrum that remains for the four MSS licensees is situated in the 2000–2020 MHz portion of the band. Phase I of the transition was crafted so that BAS

licensees would cease use of the frequencies occupied by the existing BAS channel 1 (1990–2008 MHz) in order to allow MSS entry into the band, but could continue to use channel 2 until there were a significant number of MSS entrants so as to require use of the 2008–2025 MHz band. Now, however, more than half of the Phase I spectrum will be used for new Fixed and Mobile applications, such as AWS. Because each MSS licensee will be eligible to choose a five megahertz Selected Assignment in the revised MSS allocation, only one MSS licensee will be able to operate in the portion of the band that contains spectrum that will be available under Phase I of the relocation plan. In the best case—one in which the first MSS entrant selects the lowest portion of the band—the entry of the second MSS licensee will trigger Phase II of the relocation plan. If the first MSS licensee instead were to choose an assignment at 2005 MHz, 2010 MHz or 2015 MHz, its entry would immediately trigger Phase II.

10. We conclude that the practical effect of these changed circumstances is that new MSS licensees will begin using Phase II spectrum (2008–2025 MHz) sooner than was anticipated in the *MSS Second Report and Order*. Under the revised MSS allocation, no more than one MSS licensee may operate in the Phase I spectrum. The second MSS licensee seeking to begin operations (assuming the first chooses 2000–2005 MHz as its Selected Assignment) would initiate the Phase II relocation process. In order to meet the milestone requirements for MSS licensees—which require, for example, that non-GSO MSS licensees construct and launch the first two satellites in their system by January 17, 2005—MSS licensees will need to act quickly to deploy their systems and it is therefore highly likely that BAS relocation to the Phase I channels would not be complete when Phase II starts.

11. The initiation of the Phase I relocation and quick transition to Phase II would undercut one rationale for a two-phase transition—that the potential to leave substantial amounts of spectrum unused for a long period of time would result in inefficient use of valuable 2 GHz spectrum. In addition, a two-phase transition was an appropriate means of spreading out overall MSS relocation costs when it appeared that MSS licensees would begin operations within the Phase I spectrum and would not need Phase II spectrum until much later—after their systems had grown and matured. Under that scenario, a multi-phase approach would reduce initial costs to MSS entrants because a smaller number of BAS licensees (those in markets 1–100) would need to be relocated during Phase I, and because it is more likely that existing BAS equipment could be retuned (versus replaced) in order to operate in 14.5–15 megahertz-wide channels (versus the final 12.5 megahertz-wide channels). This plan also would have minimized the initial costs incurred by the Phase I MSS licensees. At that time, MSS system proponents were "at widely differing points in the process of preparing to begin service." Now, due to impending milestones, the difference in time between an "early" MSS entrant and a "later" MSS entrant will necessarily be small.

12. Were we to retain the two-phase relocation approach, MSS licensees would be responsible for the costs of relocating some BAS licensees to the Phase I channel plan, plus the costs of relocating all BAS licensees to the Phase II channel plan soon after. This situation would negate any cost-spreading benefits that were envisioned by a two-phase approach, and might even increase overall relocation costs over a relatively short term. If Phase II of the transition is initiated during the time in which Phase I relocations are taking place, BAS operations may be on three different band plans, and some BAS licensees would face the disruption and down time associated with being twice relocated in a short period of time.

13. The *MSS Second Report and Order* also adopted a two-phase relocation plan because of the "significant likelihood" that little or no new equipment that would operate in the Phase II channels would be manufactured in time for MSS to begin service. Much of the new equipment was anticipated to be purchased during Phase II of the transition, at which time the Commission predicted that digital BAS equipment would "benefit from more time for design development, becoming higher capacity, smaller, less expensive, and less power-intensive." Such developments have taken place. BAS manufacturers now offer extensive lines of digital equipment that are designed to operate in a variety of channel widths, including the narrow channels associated with Phase II. Moreover, digital equipment has been available for a sufficient time, in such quantity, and such cost that broadcast stations buying new equipment have begun purchasing digital ENG equipment. At the time the Commission developed its relocation plan, digital equipment for one BAS link was estimated to cost $93,000. Recent filings in the docket reflect lower cost projections. SBE now estimates relocation costs for a BAS link to be between $20,000 and $25,000 (for a receive site) and between $40,000 and $55,000 (for a typical ENG vehicle). ICO has derived similar cost estimates, based on its separate informal discussions with manufactures of 2 GHz capable digital BAS equipment. A survey of the broadcast industry conducted by the Ad Hoc 2 GHz Reallocation Committee in September 2003 estimated the total population of 2 GHz transmitters and receivers in use at television stations in the United States and projected an overall cost of $397 million to convert 2 GHz ENG services to digital operation and as much as $115 million to convert 2 GHz fixed links to digital operation. We note that the BAS relocation cost estimates based on the Ad Hoc Survey compare favorably to overall 2 GHz MSS relocation costs of up to $3 billion that had been estimated when the MSS allocation was initially proposed and support our overall conclusion that BAS equipment that can operate in the Phase II frequencies is now both readily available and available at a cost that is less than that which was anticipated at the time the relocation plan was adopted.

14. Collectively, all of these factors make the Phase I relocation plan no longer practical. We will initiate Phase II of the transition by way of this *Report and Order*. Our decision to initiate Phase II immediately is consistent with suggestions made by several commenters, including SBE. As a practical matter, because the rapid introduction of Phase II that would likely occur were we to retain the existing rules would eviscerate the benefits associated with Phase I of the transition, this decision simplifies what would otherwise become a complex relocation procedure with minimal attendant benefits. For the reasons described above, we can no longer conclude maintaining the existing two-phase relocation procedures strikes the appropriate balance that is "not unreasonably burdensome upon MSS, while also fair to the incumbents." Given the subsequent developments in the 1990–2025 MHz band, our decision to initiate Phase II more effectively meets this goal.

15. The initiation of Phase II will allow us to supersede the remaining mandatory negotiation period for Phase I, which was due to end on November 13, 2003. Because the rules we adopt herein may not take effect before November 13, we will, effective immediately, extend the stay of the Phase I mandatory negotiation period that was adopted in the *Third Suspension Order* until such time that the rules become effective.

16. We will also retain the existing market-segmented approach whereby MSS licensees relocate BAS facilities in markets 1–30 before they begin operations, markets 31–100 within three years after MSS begins operations, and markets 101 and above within five years after MSS begins operations. Those parties that asked us to require that all BAS markets be relocated at once base their arguments, in large part, on the difficulties that will be faced by BAS licensees operating on different channel plans. The Commission previously considered these arguments in the *MSS Second Report and Order*, and ultimately concluded that a market-segmented approach was best suited to balance the needs of the current and future users of the band. notwithstanding the added challenges to BAS operations. Nevertheless, we also recognize that by initiating Phase II, BAS licensees in markets 31–100 will have to operate on five, as opposed to six, channels for up to three years. This situation would occur under our current rules if Phase II is initiated before Phase I is complete. Although licensees will benefit by being certain that they will be relocated to a final band plan in a set time period and in a single step, we also recognize that operation of five channels will create short-term burdens for some BAS licensees.

17. There are several factors can serve to mitigate any difficulties that may occur in coordinating BAS use in nearby markets that operate on different channel plans during the short duration of the transition. Although the final channel plan calls for the operation of seven channels in a smaller amount of spectrum, the bands of three of the new channels will be fully within the bands of three of the existing BAS channels, as is illustrated in Table 1 on page 10 of this *3rd R&O and 3 MO&O*. In addition, at least some new BAS equipment is expected to be designed so that it can readily be programmed to operate on both new and old BAS channels. We also note that use of BAS channels 8 and 9 is unaffected by the transition. Our decision to initiate Phase II relocation procedures will, in some ways, actually serve to reduce the difficulties associated with BAS licensees operating on different channel plans in different markets at the same time. Because there are now only two channel plans for the BAS band, licensees will not have to account for the possibility of concurrent BAS use of three separate channel plans.

18. MSS licensees—for whom cost deferral continues to be a concern—will continue to occupy former BAS frequencies. We see no reason to change our decision to require relocation on a market-segmented basis because other types of new licensees will also occupy the band. As SBE notes, it is unclear whether MSS or new terrestrial licensees will be the first to deploy service. Because MSS licensees have significant up-front costs and cannot engage in a gradual buildout because of the large geographic reach of an MSS signal, a MSS licensee that is the first entrant in the band will still be required to pay substantial up-front BAS relocation costs and seek pro-rata reimbursement from subsequent licensees, without the benefit of having had a revenue stream as it builds out its system. A market-differentiated approach allows for important cost-spreading benefits, particularly because the cost deferrals that were anticipated with a delay between Phase I and Phase II are no longer available. For example, although the Ad Hoc Survey shows that the greatest projected relocation costs will occur in markets 1–30, these costs are approximately 40 percent of the estimated cost to relocate all markets. Those commenters that assert that the market-segmented approach is unnecessary incorrectly assume that non-MSS licensees will be the first to initiate service in the 1990–2025 MHz band and, as a result, do not account for the unique needs of MSS licensees. In addition, the introduction of ATC does not alter our conclusion: because MSS licensees are obligated to begin satellite service before offering terrestrial services, our decision to permit ATC operations will not reduce up-front costs or provide an earlier revenue stream to defray such costs.

19. Finally, we find that the other factors that led to the adoption of a market-segmented approach are still valid. Because new equipment is readily available, one concern that drove the original two-phase relocation plan—that additional time would be needed for equipment manufactures to develop and build equipment that operated in the Phase II channels—is no longer at issue. Nevertheless, we recognize that it will still take time to retune or replace existing BAS equipment. For example, SBE estimates that it takes one month to transition one electronic news gathering transmit and receive system at an average television station. To require the relocation of all BAS facilities before MSS or other new licensees begin service in the band would result in intolerable delays in a process that has already been marked by longer-than-anticipated entry of new services into the band. Such a course would severely undermine the ability of MSS licensees to secure entry into the band. Accordingly, our decision to retain a market-segmented approach allows us to maintain a relocation plan that is not overly burdensome to MSS entrants but that is still fair to incumbents in the band.

20. The elimination of Phase I requires the slight modification of several procedures. First, the restriction on the use of the 2023–2025 MHz band until all BAS incumbents have been relocated to the final band plan is no longer appropriate. This restriction was designed to allow BAS licensees to use channel 2 under a channel plan that we will no longer be using. Moreover, we have subsequently reallocated the 2023–2025 MHz band to fixed and mobile services. Next, we re-establish the mandatory negotiation period between new licensees and BAS licensees in the top 30 markets. As discussed previously, this negotiation period was scheduled to end on November 13, 2002, for Phase I, under the terms of the *Third Suspension Order*. Now that we have resolved the issues that prompted us to suspend expiration of the mandatory negotiation period, we anticipate that MSS licensees will move quickly to resume the negotiation process to relocate BAS incumbents in the 1990–2025 MHz band. As such, we establish a new mandatory negotiation period between MSS licensees and BAS incumbents in markets 1–30 (and for all fixed BAS facilities regardless of market, as described in the Memorandum Opinion and Order, *infra*) that ends one year from publication of this Report and Order in the **Federal Register**. This time period is appropriate to maintain the balance of equities between MSS licensees and BAS incumbents given the amount of time that has already passed since adoption of the *MSS Second Report and Order*, and the upcoming MSS milestone requirements. We also modify our rules to make explicit that a one-year mandatory negotiation period for BAS markets 31 and above starts when the first MSS licensee begins operations. Finally, we specify that the relocation procedures will apply to the BAS markets as they existed upon adoption of the *MSS Second Report and Order*—June 27, 2000. Because these rules are based on a ranking of DMAs, and because DMAs and their rank are subject to modification, it is important for us to specify a fixed point in time in order to prevent potential confusion or frustrate negotiations between parties.

21. Under our existing rules, BAS licensees in markets 31 and above would have had to stop using BAS channel 2 after the Phase II negotiations began but before MSS operations actually commenced in the 2008–2025 MHz band. Because BAS incumbents have not had the benefits of relocation under Phase I, we find this requirement is overly burdensome and we will ease our rules to allow all BAS licensees to use channels 1 and 2 (*i.e.* the 1990–2025 MHz band) while new licensees are negotiating with BAS licensees in the top 30 markets. BAS operations on the 1990–2025 MHz band in these markets must instead end once the first MSS licensee begins service.

22. We decline to consider more comprehensive modifications to our relocation procedures. We reject the Joint Commenters' suggestion that we explore such revisions as part of a Notice of Proposed Rulemaking as unnecessarily burdensome and time consuming. The modified version of the existing plan we are adopting serves the goals of our relocation policy and also accounts for the special circumstances involved in the transition of BAS and introduction of satellite services into the band.

Memorandum Opinion and Order—BAS

23. *Sunset Date.* In its Petition for Partial Reconsideration, NAB/MSTV requests that the sunset date after which new MSS licensees are not required to relocate BAS operations be eliminated, or at a minimum, revised to take effect ten years after the start of Phase II negotiations. We continue to believe that a sunset date is a vital component of the Emerging Technologies relocation principles. As stated in the MSS Second Report and Order, a sunset date provides a measure of certainty for new technology licensees, while giving incumbents time to prepare for the eventuality of moving to another frequency band. We recognize that the unresolved issues relating to MSS deployment have resulted in limited negotiation between BAS and MSS licensees to date. Now that we have addressed allocation matters for the 2 GHz MSS band, we find that revising a sunset date is appropriate. Further, our decision to initiate the Phase II negotiation period by way of this Report and Order is similar to our earlier decision to begin the Phase I negotiation period after publication of the MSS Second Report and Order in the **Federal Register**, which also began the original sunset date. In both cases, the beginning of the negotiation period marks a starting point for active negotiations between incumbents and new licensees. Accordingly, we are revising the sunset date as follows: a new licensee's obligation to relocate an incumbent BAS operator in the 1990–2025 MHz band will end ten years after the publication of this Report and Order in the **Federal Register**.

24. *Special Considerations for Fixed Facilities.* Under the two-phase relocation policy, BAS licensees would first cease operations on the 1990–2008 MHz band once MSS operations begin and, during Phase II, would stop using the 2008–2025 MHz band. In their Petition for Reconsideration of the *MSS Second Report and Order*, the Broadcast Filers ask that we expand mandatory relocation to those BAS facilities operating on channel 1 (1990–2008 MHz) in markets 31 and above that cannot be retuned and refiltered to accommodate the Phase I channelization. SBE, in a substantially similar request, asks that we require the relocation of all non-frequency agile links in both BAS channels 1 and 2 (1990–2025 MHz) outside the top 30 markets. This situation has the potential to disrupt some BAS operations and uniquely burden a limited class of licensees in a manner not considered in the *MSS Second Report and Order*. While the Commission found in the *MSS Second Report and Order* that the number of BAS channels could be reduced during the transition, it discussed the aggregate need for seven channels in a particular market and not the unique needs of incumbent licensees in the 1990–2025 MHz band with facilities that cannot operate on the remaining available channels. Many BAS facilities that potentially could have been retuned to operate in the interim Phase I channels will likely need to be replaced with spectrally efficient digital equipment in order to operate in the narrow Phase II channels. The elimination of BAS operations in the 1990–2025 MHz band can be expected to have a significant effect on fixed BAS facilities, such as intercity relays and studio-to-transmitter links. By contrast, mobile BAS facilities are generally licensed from band edge to band edge (*i.e.* authorized to operate in any one of the BAS channels) and should not suffer such harm. Accordingly, we will expand our relocation procedures to require fixed facilities operating on the 1990–2025 MHz band in markets 31 and above that are licensed on a primary basis to be relocated on the same schedule as other BAS facilities in the top 30 markets. If a suitable replacement channel cannot be found within a BAS market for a BAS channel 1 or 2 facility and the parties are unable to agree to an alternative relocation plan as part of the mandatory negotiation process, then the MSS licensee will not be obligated to replace that facility until such time that it is obligated to relocate all BAS facilities in that market. In this situation, the incumbent BAS licensee will still be required to cease use of the 1990–2025 MHz band once the first new licensee begins operations. The relocation of fixed stations on channels 1 and 2 in markets 31 and above will follow the same procedures that we established for the relocation of facilities in BAS markets 1–30, including a mandatory negotiation period that ends one year from publication of this Report and Order in the **Federal Register**.

25. *Subsequently Licensed BAS Stations.* In the *MSS Second Report and Order*, the Commission decided that those BAS facilities where the receipt date of the initial application was prior to June 27, 2000, the adoption date of the *MSS Second Report and Order*, could continue to operate on a primary basis until relocated or the sunset date. Initial applications filed after that date have been licensed on a secondary basis and, therefore, are not eligible for relocation. We find that the relocation eligibility cut-off date remains appropriate and, therefore, are denying petitions for reconsideration. None of the subsequent decisions to allow new services in the band or pleadings filed in response to the *MSS Second Report and Order* affects the fundamental decision to provide for an 85 megahertz BAS allocation. Holders of BAS licenses issued after the *MSS Second Report and Order* have known that the Commission proposed to reduce the 2 GHz BAS band to the 85 megahertz allocation in the 2025–2110 MHz band and have an opportunity to consider any additional expenses that may be associated with phased relocation as well as the development, availability, and Commission approval of digital equipment that can be used in the band.

26. *Phase II BAS Channel Plan.* SBE asks us to modify the channel plan that was adopted in the *MSS Second Report and Order* in order to provide consistent channel spacing. The use of seven 12 megahertz-wide channels will also allow for two 500 kilohertz-wide data return link ("DRL") bands—one at each end of the re-farmed 2025–2110 MHz BAS band. These DRL bands would be available for narrowband downstream control channels to TVPU transmitters (such as an ENG truck) for applications such as transmitter power control. We find merit in this proposal. As SBE notes, a prime benefit of this plan is that manufacturers will be able to design for uniform bandwidth ratios. Moreover, by providing for two 500 kilohertz-wide DRL bands, we can promote efficient use of the band by BAS licensees.

Replacement of the current Phase II channel plan with the revised band plan could reduce MSS and other licensees' overall costs to relocate BAS. We revise our Phase II channel plan to specify seven 12 megahertz-wide channels and two 500 kilohertz-wide DRL bands. We will continue to permit split channel operation by BAS licensees operating on the Phase II channel plan. Although we did not prohibit such operation, and did not intend to suggest such a prohibition, we find it beneficial to clarify this issue. We also believe that BAS licensees should have the ability to continue to operate on channels 3–7 under the "old" channel plan, if they so elect. We will not prohibit BAS licensees from continuing to use the existing channel plan, so long as they restrict their use to the 2025–2110 MHz band when they are no longer permitted to use the 1990–2025 MHz band segment. Because the continued use of the existing channel plan could disrupt BAS licensees that have relocated to the Phase II channel plan and lead to the difficulties in coordination that SBE describes, we will permit continued use of the "old" channel plan only if all BAS licensees in a market will agree to such operation. Moreover, BAS licensees in such markets must operate on a secondary basis to other BAS licensees using the Phase II channel plan and must be prepared for the potential disruption associated with secondary operation, such as the interference likely to be caused by a BAS licensee operating on the Phase II channels that enters the market to cover a sporting event or breaking news story.

27. *Additional Issues.* Because the BAS relocation is segmented by market, BAS licensees in one market could be operating on a different channel plan than BAS licensees in adjacent markets for part of the relocation period. Several parties have asked for clarification of the procedures by which BAS operations will be protected from harmful interference during and after the transition. SBE describes situations in which large market BAS facilities cause interference in adjacent smaller markets even while operating within the bounds of the larger market, and predicts that BAS licensees operating in the smaller market may need to reconfigure their systems in order to eliminate or avoid interference. To the extent that such interference is similar to interference that small market stations have previously received from their large market neighbors, we expect the parties to use the same coordination procedures that they have previously employed to resolve these issues. Moreover, the Commission previously considered comments by SBE and NAB/MSTV regarding the complexities associated with the operation of BAS equipment on different channels in different markets, and found a simultaneous cut-over to be impractical. While these mitigation options may not be available in all cases, we find the cooperative procedures of BAS entities will minimize any negative effects. We also clarify that an assignment or transfer of control will not disqualify an incumbent in the 2 GHz BAS band from relocation eligibility so long as the facility is not rendered more expensive to relocate as a result.

Report and Order—FS

28. *ATC Inteference to FS.* We affirm that TIA TSB 10–F, or its successor standard, is an appropriate standard for purposes of triggering relocation obligations by new terrestrial (ATC or AWS) entrants in the 2 GHz band. Due to the technical similarity of MSS terrestrial operations to PCS which operates in nearby bands and for which TSB 10–F is well-suited, we conclude that the criteria specified in TSB 10–F should be equally suitable to determine where sharing would be possible between FS and MSS terrestrial operations in the 2180–2200 MHz band.

29. Furthermore, consistent with the approach we adopted for MSS satellite operations in the *MSS Second Report and Order*, where an initial MSS licensee of terrestrial ATC operations relocates both links of a paired FS microwave link, any subsequent licensee(s) that benefit from the relocation will be required to participate in the reimbursement of the initial licensee. We decline, however, to adopt API's suggestion that we require the initial MSS licensee of ATC to relocate both paired FS links and, instead, leave that decision to be resolved in the first instance through the relocation negotiation process. As a practical matter, we again note that when one path of a paired FS link is relocated, it is often necessary due to technical considerations to relocate both path links. Consequently, even without a mandatory requirement, we believe that both links will, in practice, be relocated in most instances. In particular, since the FS transmit/receive electronics, antenna and tower are often highly integrated, it would likely be more expensive and complex to relocate just one link due to the additional retuning and retrofitting—above and beyond that normally involved with paired links—that would be required to ensure seamless operation with the legacy link under the comparable facility requirement. The general result is that there should be a clear financial and technical incentive for MSS/ATC licensees to relocate both paired links as at the same time.

30. On the other hand, there can be individual situations where it is both economically and technically feasible within reason to relocate just one of the paired links. To the extent such a situation occurs, we do not believe that MSS/ATC licensees should be *per se* deprived of this option by regulation. In any event, FS licensees are ensured of comparable facilities under the relocation rules and they have a year under these rules to determine if a satisfactory result has been achieved. Therefore, we continue to believe that leaving the decision of whether to relocate both paired links to the negotiation process is the better and more flexible approach.

31. *Self-relocation to leased facilities or alternative media.* As an initial matter, we affirm that FS incumbents that are relocated through the negotiation process are eligible for reimbursement for relocation to leased facilities or alternative media. This is consistent with the approach we have previously taken in the *Emerging Technologies* and *Microwave Cost-Sharing* proceedings. We decline, however, to extend reimbursement eligibility or automatic reimbursement credits as requested by Blooston to FS incumbents that voluntarily self-relocate to leased facilities or alternative media. In addition to the reasons discussed in the MO&O section with regard to Joint Petitioners' and SBC's related requests, we find that a reimbursement scheme for voluntary self-relocation was not envisioned by the MSS/FS relocation plan and would likely require a clearinghouse to administer reimbursement claims. We believe that initiating a plan for reimbursing those who voluntarily relocate is not warranted and that a further rulemaking at this stage to consider such a plan would only serve to delay MSS entry in the 2 GHz band.

32. *Negotiation periods:* In response to the *AWS Further Notice*, API and the Association of Public-Safety Communications-Officials-International (APCO) urge that we clarify that each FS incumbent approached by an MSS licensee for relocation negotiations would receive the benefit of a full two year (or three year for Public Safety) negotiation period. We decline to establish such "rolling" negotiation periods during which each FS incumbent would be allowed a full two or three year mandatory negotiation period that would be triggered when notified by an MSS licensee of its desire to negotiate. Such a scheme would result in a large number of unrelated mandatory negotiation periods that would tend to further delay the overall relocation process in the band. We believe that such discontinuity would be likely to create considerable confusion and lack of finality as compared with a single uniform negotiation period for all FS incumbents.

Memorandum Opinion and Order—FS

33. *Ten-year sunset period.* We do not believe it would be in the public interest to delay further the start of the mandatory negotiation period for a further uncertain period of time (*i.e.*, until whenever the first MSS licensee seeks to negotiate relocation of an FS incumbent). Therefore, we are specifying that the date of publication of this Report and Order and Memorandum Opinion and Order in the **Federal Register** will be the starting date of the mandatory negotiation period between MSS licensees and FS incumbents, as well as the starting date of the related ten-year sunset period for relocation of FS licensees by MSS licensees in the 2180–2200 MHz band. Similarly, we believe that the duration of the mandatory negotiation period should be modified—from two years for non-public safety and three years for public safety—to one year and two years, respectively. Given the amount of time that has already passed since adoption of the MSS Second Report and Order and the upcoming MSS milestone requirements, we believe that this modification is appropriate to maintain the balance of equities between MSS licensees and FS incumbents.

34. We decline to adopt the Joint Petitioner's request that MSS licensees be required to notify FS incumbents of their intention to relocate incumbents within 90 days of the start of the mandatory negotiation period. Under the relocation plan adopted in *MSS Second Report and Order*, we have placed substantial relocation burdens on MSS licensees with respect to FS—in addition to BAS—incumbents in the 2 GHz band. In order to help balance these substantial burdens, we believe that MSS licensees should be afforded maximum flexibility in choosing the timing of negotiations during the mandatory negotiation period. At the same time, we find that the negotiation starting date that we have adopted herein will provide sufficient notice for all FS incumbents to factor such relocation into their business plans. Therefore, we affirm that MSS licensees may elect to notify FS incumbents of their desire to enter into relocation negotiations at any time during the mandatory negotiation period and will not be required to provide anticipatory notice prior to doing so. Taken together, we believe that these actions balance the public interests in providing the opportunity for early entry of new MSS operations while maintaining the integrity of incumbent FS services in the 2 GHz band.

35. *Assignment or transfer of control.* We agree with the Joint Petitioners' analysis that our policy on assignment or transfer of control of incumbent FS licensees needs to be clarified. Therefore, consistent with our finding in the 18 GHz Relocation Proceeding, we clarify that an assignment or transfer of control will not disqualify an FS incumbent in the 2180–2200 MHz band from relocation eligibility so long as the facility is not rendered, as a result, more expensive to relocate. On the other hand, FS stations newly authorized after the date of publication of the *MSS Second Report and Order* (*i.e.*, September 6, 2000) will not be eligible for relocation. In addition, FS stations making changes that are otherwise classified as major modifications under § 1.929(a) will not be eligible for relocation.

36. *Interference to MSS Operations.* Joint Petitioners and Enron urge that MSS licensees be obligated to relocate incumbents prior to the ten-year sunset whenever the MSS licensee would receive interference from incumbent FS operations in addition to whenever interference is caused to FS incumbents. Enron further asserts that the current provisions ignore half of the interference picture prior to the sunset and would allow MSS licensees to engage in "cherry picking" where they commence operations in order to minimize initial relocation expenses during their start-up phase. Petitioners correctly observe that, prior to the ten-year sunset for FS relocation in the 2 GHz band, we require MSS licensees to relocate FS incumbent licensees after coordination and a determination according to TIA TSB–86 that interference would be caused to an FS incumbent. Subsequent to the sunset, FS microwave licensees will be required to relocate at their own expense within six months of presentation of a written demand by a MSS licensee that determines it "will receive harmful interference according to TIA TSB–86, or that has received actual harmful interference from the FS licensee."

37. We decline to require MSS licensees to relocate FS incumbents from which they receive—but do not cause—interference prior to the end of the sunset period. As a practical matter, we believe that MSS licensees will act in their own best interests to maximize the marketability of their service when dealing with any interference that might be received from FS incumbents. In that regard, nothing in the *MSS Second Report and Order* or our finding herein prohibits an MSS licensee from making an individual business decision to resolve instances of interference received from an FS incumbent prior to the sunset date through a voluntary arrangement with the FS licensee. Such an arrangement could include terms for relocating the incumbent FS operation. Consequently, rather than making such relocation mandatory, we believe that it is better for each MSS licensee to make its own business case decision whether to relocate FS incumbents from which it may receive interference in light of the quality of service the MSS licensee seeks to provide.

38. Furthermore, as the Commission stated in the *MSS Second Report and Order* with regard to balancing the relocation burdens on each service, MSS licensees in the 2 GHz band will face unusually high costs in gaining early access to spectrum because of the nationwide nature of their service. Requiring MSS licensees to relocate only those FS incumbents to which interference is caused prior to the sunset period is but one step the Commission has taken to minimize the relocation expense for MSS licensees and, thereby, provide their early access to the 2 GHz band. Indeed, the Commission found in the *MSS Second Report and Order* that many of the adopted measures will work hardships upon the incumbents in order to minimize relocation costs to MSS licensees. At the same time, requiring MSS licensees to relocate FS incumbents who are caused interference by MSS operations prior to the sunset will ensure the integrity and continuity of the services provided to the public by incumbent FS licensees during the ten-year sunset period. Furthermore, the sunset date for FS relocation serves the public interest by providing certainty to the relocation process, prevents MSS licensees from being obliged to pay relocation expenses indefinitely, and provides incumbents with ample time to either negotiate relocation or plan for relocation themselves. Therefore, we affirm that MSS licensees are not required to relocate FS incumbents from which they receive, but do not cause, interference prior to the sunset date. After the sunset date, FS incumbents will be required to relocate at their own expense upon demand by a MSS licensee that determines it will receive

harmful interference according to TIA TSB–86 (or TSB–10F in the case of ATC operations by MSS licensees), or that has received actual harmful interference from the FS licensee. We do not find these provisions to be inconsistent as suggested by petitioners. Instead, we find that they are complementary toward achieving our underlying goal of crafting a relocation process that strikes a fair balance for all parties.

39. *Voluntary self-relocation.* Joint petitioners and SBC request that we clarify that incumbents in the 2110–2150 MHz or 2165–2200 MHz bands that voluntarily self-relocate may participate in 2 GHz band relocation cost sharing in similar fashion to the relocation plan we adopted for Personal Communications Services (PCS) in a separate proceeding. ICO responds that such an approach is inappropriate in this proceeding because, unlike the situation in the PCS cost-sharing proceeding cited by Joint Petitioners, MSS may not identify their selected 2 GHz frequencies until they have placed their first satellite in its intended orbit.

40. We decline to extend cost-sharing eligibility to self-relocating FS incumbents. Under the plan adopted in the *MSS Second Report and Order*, relocation of incumbent FS microwave links need occur only if there is harmful interference. We find that allowing self-relocating FS incumbents to share in relocation costs would circumvent our intention of limiting relocation to those FS incumbents receiving interference which cannot be resolved through the coordination process and a TSB–86 (or TSB 10–F for terrestrial ATC to FS) interference determination. Furthermore, we find that requiring relocation under those circumstances would inordinately increase the relocation cost burden on MSS licensees.

Final Regulatory Flexibility Analysis

41. As required by the Regulatory Flexibility Act of 1980, as amended (RFA),[1] an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in each of the following documents: the *Further Notice of Proposed Rulemaking* component of the *First Report and Order and Further Notice of Proposed Rulemaking*,[2] and the *Third Notice of Proposed Rulemaking* component of the *Memorandum Opinion and Order and Third Notice of Proposed Rulemaking and Order*[3] in ET Docket No 95–18, the *Notice of Proposed Rulemaking*[4] in IB Docket No. 01–185, and the *Further Notice of Proposed Rulemaking component of the Memorandum Opinion and Order and Further Notice of Proposed Rulemaking*[5] in ET Docket No. 00–258. The Commission sought written public comments on the proposals in the *Further Notice of Proposed Rulemaking*, the *Third Notice of Proposed Rulemaking, the Notice of Proposed Rulemaking and the Further Notice of Proposed Rulemaking*, including comment on each IRFA. This present Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.[6]

A. Need for, and Objectives of, the Third R&O and Third MO&O

42. The goal of the *Third Report and Order and Third Memorandum Opinion and Order* is twofold. First, in the *Third Report and Order*, we modify the rules that new 2 GHz Mobile-Satellite Service (MSS) licensees are to follow when relocating incumbent Broadcast Auxiliary Service (BAS) licensees that currently operate within the 1990–2025 MHz band and when relocating Fixed Service (FS) microwave licensees that currently operate within the 2180–2200 MHz band. For the 1990–2025 MHz band, we immediately initiate Phase II of a planned two-phase relocation plan. In conjunction with the beginning of Phase II, we restart negotiation periods between MSS licensees and BAS incumbents to run for the publication of the *Third Report and Order and Third Memorandum Opinion and Order* in the **Federal Register**. These actions are necessary because the *Third Report and Order*[7] in ET Docket No. 00–285 reallocated the 1990–2025 MHz band to allow for both MSS licensees and new fixed and mobile service licensees to occupy the band. The allocation of a portion of the 1990–2025 MHz band to new fixed and mobile services means that MSS licensees will no longer be the only parties involved in the relocation of BAS incumbents that currently occupy the band. MSS licensees will operate in a reduced amount of spectrum from 2000–2020 MHz, and will now need to relocate BAS incumbents from spectrum that was designated as part of Phase II of the BAS relocation plan. Accordingly, incumbent BAS licensees must be relocated of this Phase II spectrum much more quickly that was anticipated when MSS was to occupy the entire 1990–2025 MHz band. It is also necessary to reset the negotiation periods to recognize the initiation of Phase II, the entry of new licensees into the band, and the lack of negotiation that was expected to have taken place between MSS and BAS licensees by this time. For the 2180–2200 MHz band, we affirm that the TIA TSB 10–F interference standard may be used for determining interference from MSS ATC stations to incumbent FS operations in the 2 GHz band. This modification was necessary because the *Order*[8] in IB Docket No. 01–185 allowed MSS licensees to incorporate Ancillary Terrestrial Components into their systems. The 10–F standard is appropriate for the interference analysis of such non-satellite system components.

43. In the *Third Memorandum Opinion and Order*, we both grant and deny petitions for reconsideration and clarification of the above-referenced *First Report and Order and Further Notice of Proposed Rulemaking*. With respect to the 1990–2025 MHz band, we grant petitions and revise the sunset date (*i.e.* the date by which new licensees are no longer obligated to relocate incumbents in the band);

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[1] *See* 5 U.S.C. 603. The RFA, see 5 U.S.C. 601–612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Public Law 104–121, Title II, 110 Stat. 857 (1996).

[2] Amendment of Section 2.106 of the Commission's Rules to Allocate Spectrum at 2 GHz for Use by the Mobile-Satellite Service, ET Docket No. 95–18, *First Report and Order and Further Notice of Proposed Rule Making*, 12 FCC Rcd 7388 (1997), 62 FR 19509 and 62 FR 19538, April 22, 1997, respectively.

[3] Amendment of Section 2.106 of the Commission's Rules to Allocate Spectrum at 2 GHz for Use by the Mobile-Satellite Service, ET Docket No. 95–18, *Memorandum Opinion and Order and Third Notice of Proposed Rulemaking and Order*, 13 FCC Rcd 23949 (1998) 63 FR 69606 and 63 FR 69562, December 17, 1998.

[4] Flexibility for Delivery of Communications by Mobile Satellite Service Providers in the 2 GHz Band, the L-Band and the 1.6/2.4 GHz Band, IB Docket No. 01–185, *Notice of Proposed Rulemaking*, 16 FCC Rcd 15532 (2001), 66 FR 47621, September 13, 2001.

[5] Amendment of Part 2 of the Commission's Rules to Allocate Spectrum Below 3 GHz for Mobile and Fixed Services to Support the Introduction of New Advanced Wireless Services, Including Third Generation Wireless Systems, ET Docket No. 00–258, *Memorandum Opinion and Order and Further Notice of Proposed Rulemaking*, 16 FCC Rcd 16043 (2001), 66 FR 47591, September 13, 2001.

[6] *See* 5 U.S.C. 604.

[7] Amendment of Part 2 of the Commission's Rules to Allocate Spectrum Below 3 GHz for Mobile and Fixed Services to Support the Introduction of New Advanced Wireless Services, Including Third Generation Wireless Systems, ET Docket No. 00–258, *Third Report and Order, Third Notice of Proposed Rulemaking, and Second Memorandum Opinion and Order*, 18 FCC Rcd 2223 (2003), 68 FR 12015 and 68 FR 11986, March 13, 2003, respectively.

[8] Flexibility for Delivery of Communications by Mobile Satellite Service Providers in the 2 GHz Band, the L-Band, and the 1.6/2.4 GHz Bands, IB Docket No. 01–185, Report and Order and Notice of Proposed Rulemaking, 18 FCC Rcd 1962 (2003), 68 FR 33640, June 5, 2003, Errata (rel. March 7, 2003), appeal pending, AT&T Wireless Services, Inc. and Cellco Partnership d/b/a Verizon Wireless v. FCC, No. 03–1191 (D.C. Cir. filed July 8, 2003).

require that fixed facilities operating in BAS channels 1 and 2 (1990–2008 MHz and 2008–2025 MHz, respectively) be relocated prior to the initiation of MSS service; and modify the channel plan for the frequency band to which BAS operations will be relocated. We otherwise deny the petitions relating to the 1990–2025 MHz band and retain our previously adopted relocation rules. The changes we adopt are necessary to recognize the entry of new fixed and mobile service licensees in the 1990–2025 MHz band and the lack of negotiations to date between MSS and BAS licensees; to provide relief to fixed BAS facilities that would otherwise have to cease operation for three years or more; and to provide a new BAS channel plan that promotes efficiencies in equipment manufacture and operation by incorporating uniform channel sizes. For the 2180–2200 MHz band, we adopt a date certain from which FS–MSS negotiations and the sunset date run, and clarify that a transfer or assignment will not affect a FS licensee's relocation rights. We otherwise deny the petitions relating to the 2180–2200 MHz band and retain our previously adopted relocation rules. The changes we adopt are necessary to provide clarity to the relocation process, and serve to reduce the notification requirements for MSS licensees regarding initiation of the negotiation period that were required under the previous relocation rules.

44. Collectively, the rules we adopt in the *Third Report and Order and Third Memorandum Opinion and Order* are designed to allow for the rapid provision of MSS in the 2 GHz band by resolving outstanding issues relating to the relocation of incumbent users in the 1990–2025 MHz and 2180–2200 MHz bands. These actions are based on our response to petitions for reconsideration and clarification filed in the docket, in conjunction with the proposals we set forth in the *Notice of Proposed Rulemaking* in IB Docket No. 01–185 and the *Further Notice of Proposed Rulemaking* component of the *Memorandum Opinion and Order and Further Notice of Proposed Rulemaking* in ET Docket No. 00–258.

B. Sumary of Significant Issues Raised by Public Comments in Response to the IRFA

45. There were no comments filed that specifically addressed the rules and policies proposed in the IRFA.

C. Description and Estimate of the Number of Small Entities to Which the Rules Will Apply

46. The RFA directs agencies to provide a description of, and, where feasible, an estimate of; the number of small entities that may be affected by the rules adopted herein.[9] The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."[10] In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.[11] A "small business concern" is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).[12]

47. *Fixed Microwave Services.* Microwave services include both common carrier[13] and private-operational fixed[14] services. The SBA has developed a small business size standard for Cellular and Other Wireless Telecommunication, of which these fixed microwave services are a part, and which consists of all such firms having 1,500 or fewer employees.[15] According to Census Bureau data for 1997, in this category there was a total of 977 firms that operated for the entire year.[16] Of this total, 965 firms had employment of 999 or fewer employees, and an additional twelve firms had employment of 1,000 employees or more.[17] Thus, under this size standard, the majority of firms can be considered small.

48. *Broadcast Auxiliary Service (BAS).* BAS involves a variety of transmitters, generally used to relay broadcast programming to the public (through translator and booster stations) or within the program distribution chain (from a remote news gathering unit back to the stations). The Commission has not developed a definition of small entities specific to broadcast auxiliary licensees. The U.S. Small Business Administration (SBA) has developed small business size standards, as follows: (1) For TV BAS, we will use the size standard for Television Broadcasting, which consists of all such companies having annual receipts of no more than $12.0 million;[18] (2) For Aural BAS, we will use the size standard for Radio Stations, which consists of all such companies having annual receipts of no more than $6 million;[19] (3) For Remote Pickup BAS we will use the small business size standard for Television Broadcasting when used by a TV station and that for Radio Stations when used by such a station.

49. According to Commission staff review of BIA Publications, Inc. Master Access Television Analyzer Database as of May 16, 2003, about 814 of the 1,220 commercial television stations in the United States had revenues of $12 million or less. We note, however, that, in assessing whether a business concern qualifies as small under the above definition, business (control) affiliations[20] must be included.[21] Our estimate, therefore, likely overstates the number of small entities that might be affected by our action, because the revenue figure on which it is based does not include or aggregate revenues from affiliated companies. There are also 2,127 low power television stations (LPTV).[22] Given the nature of this service, we will presume that all LPTV licensees qualify as small entities under the SBA size standard. According to Commission staff review of BIA Publications, Inc., Master Access Radio Analyzer Database, as of May 16, 2003, about 10,427 of the 10,945 commercial radio stations in the United States had revenue of $6 million or less. We note,

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[9] 5 U.S.C. 604(a)(3).

[10] 5 U.S.C. 601(6).

[11] 5 U.S.C. 601(3) (incorporating by reference the definition of "small-business concern" in the Small Business Act, 15 U.S.C. 632). Pursuant to 5 U.S.C. 601(3), the statutory definition of a small business applies "unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the **Federal Register**."

[12] 15 U.S.C. 632.

[13] 47 CFR 101 *et seq.* (formerly, part 21 of the Commission's Rules).

[14] Persons eligible under parts 80 and 90 of the Commission's rules can use Private Operational-Fixed Microwave services. *See* 47 CFR parts 80 and 90. Stations in this service are called operational-fixed to distinguish them from common carrier and public fixed stations. Only the licensee may use the operational-fixed station, and only for communications related to the licensee's commercial, industrial, or safety operations.

[15] 13 CFR 121.201, NAICS code 517212 (changed from 513322 in October 2002).

[16] U.S. Census Bureau, 1997 Economic Census, Subject Series: Information, "Establishment and Firm Size (Including Legal Form of Organization)," Table 5, NAICS code 513322 (issued October 2000)

[17] Id. The census data do not provide a more precise estimate of the number of firms that have 1,500 or fewer employees; the largest category provided is "Firms with 1,000 employees or more."

[18] 13 CFR 121.201, NAICS code 515120

[19] Id. NAICS code 515112

[20] "Concerns are affiliates of each other when one concern controls or has the power to control the other or a third party or parties controls or has to power to control both." 13 CFR 121.103(a)(1).

[21] "SBA counts the receipts or employees of the concern whose size is at issue and those of all its domestic concern's size." 13 CFR 121.103(a)(4).

[22] FCC News Release, "Broadcast Station Totals as of September 30, 2002" (Nov. 6, 2002)

however, that many radio stations are affiliated with much larger corporations with much higher revenue, and, that in assessing whether a business concern qualifies as small under the above definition, such business (control) affiliations [23] are included.[24] Our estimate, therefore, likely overstates the number of small businesses that might be affected by our action.

50. *Cable Antenna Relay Service (CARS).* CARS includes transmitters generally used to relay cable programming within cable television system distribution systems. The SBA has developed a small business size standard for Cable and other Program Distribution, which consists of all such companies having annual receipts of no more than $12.5 million. According to Census Bureau data for 1997, there were 1,311 firms within the industry category Cable and Other Program Distribution, total, that operated for the entire year.[25] Of this total, 1,180 firms had annual receipts of under $10 million, and an additional 52 firms had receipts of $10 million to $24,999,999.00.[26] Thus, under this standard, the majority of firms can be considered small.

51. *Geostationary, Non-Geostationary Orbit, Fixed Satellite, or Mobile Satellite Service Operators (including 2 GHz MSS systems).* The Commission has not developed a definition of small entities applicable to geostationary or non-geostationary orbit, fixed-satellite or mobile-satellite service operators. The SBA has developed a small business size standard for Satellite Telecommunications Carriers, which consists of all such companies having $12.5 million or less in annual receipts.[27] According to Census Bureau data for 1997, there were 324 firms that operated for the entire year.[28] Of this total, 273 firms had annual receipts under $10 million, and an additional twenty-four firms had annual receipts of $10 million to $24,999,990.[29] Thus, under this size standard, the majority of firms can be considered small.

[23] "Concerns are affiliates of each other when one concern controls or has the power to control the other, or a third party or parties controls or has the power to control both." 13 CFR 121.103(a)(1).

[24] "SBA counts the receipts or employees of the concern whose size is at issue and those of all its domestic and foreign affiliates, regardless of whether the affiliates are organized for profit, in determining the concern's size." 13 CFR 121.103(a)(4).

[25] 13 CFR 121.201, NAICS code 517510 (changed from 513220 in October 2002).

[26] Id.

[27] 13 CFR 121.201, NAICS code 517410 (changed from 513340 in October 2002).

[28] U.S. Census Bureau, 1997 Economic Census, Subject Series: Information, "Receipt Size of Firms Subject to Federal Income Tax: 1997," Table 4, NAICS code 513340 (issued October 2000).

[29] Id.

D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

52. The *Third Report and Order and Third Memorandum Opinion and Order* modifies relocation rules that were originally adopted in the *Second Report and Order and Second Memorandum Opinion and Order* in this docket. To a large degree, the item contains no new reporting, recordkeeping, or other compliance requirements. For example, we retain the requirement that all BAS operations in markets 1–30 be relocated prior to the initiation of MSS in the band; decline to change the qualifications by which a BAS licensee is eligible for relocation; continue to permit BAS licensees to operate on a 17-megahertz wide channel plan within the reduced BAS spectrum band if all licensees within a market so choose; and do not alter the relocation process for FS licensees (such as adding provisions to permit self-relocation or adopting "rolling" negotiation periods). Because we previously addressed the reporting, recordkeeping, and other compliance requirements associated with these matters as part of the FRFA adopted in the *Second Report and Order and Second Memorandum Opinion and Order*, we incorporate by reference those aspects of the reporting and other compliance requirements that remain unchanged.

53. Our decision, however, modifies several dates associated with the relocation of BAS and FS incumbents. Specifically, the duration of the mandatory negotiation period for BAS markets 1–30, FS stations, and the sunset date are all based on the publication date of the item in the **Federal Register**. We previously froze the mandatory negotiation period for BAS relocation—originally scheduled to end on September 6, 2003—because unresolved issues relating to MSS deployment had limited the negotiations between MSS and BAS licensees.[30] Because the *Third Report and Order and Third Memorandum Opinion and Order* adopts rules and procedures that will allow the relocation of BAS and FS licensees to continue, we establish new dates associated with relocation of BAS and FS incumbents. Because the new dates are designed to afford parties that are involved in the relocation with time frames that are substantially similar to those that were previously adopted, the change in dates will have no adverse impact on all parties involved in the relocation, including smaller entities.

54. The initiation of Phase II of the BAS relocation and the requirement that all fixed BAS stations operating on channels 1 and 2 be relocated prior to the initiation of MSS operations both have the potential to affect the compliance burdens associated with relocation. The initiation of Phase II of the relocation process will reduce the overall relocation burdens for MSS by eliminating the expense and reporting requirements that are associated with Phase I. There will be no disruption and no uncertainty for BAS licensees because the rules adopted herein provide sufficient time for fixed facilities to relocate without losing their ability to operate on their existing primary status.

E. Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

55. The RFA requires an agency to describe any significant alternatives that it has considered in developing its approach, which may include the following four alternatives (among others): "(1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities; (3) the use of performance rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for such small entities."[31]

56. In response to Petitions for Reconsideration of the *Second Report and Order and Second Memorandum Opinion and Order*, we concluded that the temporary loss of BAS channels 1 and 2 during relocation would have the potential to disrupt fixed BAS operations and uniquely burden licensees. For example, loss of the studio-to-transmitter links would likely necessitate television broadcast stations to obtain alternate facilities to transport their signal to their transmitter for broadcast. Otherwise, these licensees would have to wait for as many as five years before their facilities would be relocated. Because we are reluctant to impose such a delay which would unacceptably jeopardize television operations that rely on fixed BAS facilities on channels 1 and 2, we decline to exempt smaller entities from the rule requiring the rapid relocation of these facilities.

57. We retained the general rule that staggers the relocation of BAS facilities based on a market-size approach. Under this rule, the burden of MSS entrants to relocate BAS facilities is staggered over time, based on the size of a particular BAS market. Unlike mobile BAS operations, which can typically be tuned to operate on different channels, fixed BAS facilities are tuned to a single channel. Because of the importance of these fixed channels and because the temporary loss of channels 1 and 2 could uniquely impair operations for BAS licensees with fixed facilities tuned to these channels, we concluded that such facilities should be relocated without delay. We also rejected proposals that would have MSS relocate all BAS facilities, regardless of their fixed or mobile status or the size of market in which they operate. Although this action would have provided the same relief for fixed BAS facilities operating on channels 1 and 2, a wholesale front-loaded relocation of all BAS facilities would have imposed significant burdens on MSS licensees, including those MSS licensees that are small entities.

F. Report to Congress

58. The Commission will send a copy of the *Third Report and Order and Third Memorandum Opinion and Order* including this FRFA, in a report to be sent to Congress pursuant to the Congressional Review Act.[32] In addition, the Commission will send a copy of the Second Report and Order, including this FRFA, to the Chief Counsel for Advocacy of the SBA. A copy of this *Third Report and Order and Third Memorandum Opinion and Order* and FRFA (or summaries thereof) will also be published in the **Federal Register**.[33]

Ordering Clauses

59. Pursuant to sections 4(i), 7, 302, 303(c), 303(e), 303(f), 303(g) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. sections 154(i), 157, 302, 303(c), 303(e), 303(f), 303(g) and 303(r), this Third Report and Order and Third Memorandum Opinion and Order IS ADOPTED and that parts 2, 74, 78, and 101 of the Commission's Rules ARE AMENDED as specified in rule changes, effective January 7, 2004.

60. Pursuant to sections 4(i), 303(f), and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303(f), and 303(r), and 553(d) of the Administrative Procedure Act, 5 U.S.C. 553(d), the expiration date of the initial two-year mandatory BAS negotiation period for Phase I set forth in the *Second Report and Order* in ET Docket No. 95–18 IS HEREBY SUSPENDED until the effective date of the rules adopted in this *Third Report and Order and Third Memorandum Opinion and Order*, effective immediately upon release of this order, consistent with the terms discussed in the order.

61. Pursuant to sections 4(i), 302, 303(e), 303(f), 303(g), 303(r) and 405 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 302, 303(e), 303(f), 303(g) and 405, that the petitions for reconsideration in ET Docket No. 95–18 filed by Joint Petitioners (CICC, FWCC, *et al*), Broadcast Filers (Cosmos Broadcasting Corp., Cox Broadcasting, *et al*), Society of Broadcast Engineers, Inc., and National Association of Broadcasters and the Association for Maximum Service Television, Inc., ARE GRANTED to the extent discussed in the Third Report and Order and Third Memorandum Opinion and Order.

62. The petitions for reconsideration in ET Docket No. 95–18 filed by Joint Petitioners (CICC, FWCC, *et al*) and Celsat America, Inc. ARE DISMISSED AS MOOT.

63. The petitions for reconsideration in ET Docket No. 95–18 filed by Joint Petitioners (CICC, FWCC, *et al*), Enron North America Corp., SBC Communications, Inc., Broadcast Filers (Cosmos Broadcasting Corp., Cox Broadcasting, *et al*), Society of Broadcast Engineers, Inc., and National Association of Broadcasters and the Association for Maximum Service Television, Inc., ARE DENIED in all other respects.

64. The Consumer and Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of this Third Report and Order and Third Memorandum Opinion and Order, including the Final Regulatory Flexibility Certification, to the Chief Counsel for Advocacy of the Small Business Administration.

65. The proceeding in ET Docket No. 95–18 IS TERMINATED.

List of Subjects

47 CFR Part 2

Communications equipment, Radio.

47 CFR Part 74 and 101

Radio.

47 CFR Part 78

Cable television, Radio.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

Rule Changes

■ For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR parts 2, 74, 78 and 101 as follows:

PART 2—FREQUENCY ALLOCATIONS AND RADIO TREATY MATTERS; GENERAL RULES AND REGULATIONS

■ 1. The authority citation for part 2 continues to read as follows:

Authority: 47 U.S.C. 154, 302a, 303, and 336, unless otherwise noted.

■ 2. Section 2.106, the Table of Frequency Allocations, is amended by revising footnotes NG156, NG168, NG177 and NG178 in the list of non-Federal Government (NG) Footnotes to read as follows:

§ 2.106 Table of Frequency Allocations.

* * * * *

Non-Federal Government (NG) Footnotes

* * * * *

NG156 The band 2000–2020 MHz is also allocated to the fixed and mobile services on a primary basis for facilities where the receipt date of the initial application was prior to June 27, 2000, and on a secondary basis for all other initial applications. Not later than December 9, 2013, the band 2000–2020 MHz is allocated to the fixed and mobile services on a secondary basis.

* * * * *

NG168 The band 2180–2200 MHz is also allocated to the fixed and mobile services on a primary basis for facilities where the receipt date of the initial application was prior to January 16, 1992, and on a secondary basis for all other initial applications. Not later than December 9, 2013, the band 2180–2200 MHz is allocated to the fixed and mobile services on a secondary basis.

* * * * *

NG177 In the bands 1990–2000 MHz and 2020–2025 MHz, where the receipt date of the initial application for facilities in the fixed and mobile services was prior to June 27, 2000, said facilities shall operate on a primary basis and all later-applied-for facilities shall operate on a secondary basis to any service licensed pursuant to the allocation adopted in FCC 03–16, 68 FR 11986, March 13, 2003 ("Advanced Wireless Services"). Not later than December 9, 2013, all such facilities in the bands 1990–2000 MHz and 2020–

[30] Amendment of Section 2.106 of the Commission's Rules to Allocate Spectrum at 2 GHz for use by the Mobile-Satellite Service, ET Docket No. 95–18, *Order*, 17 FCC Rcd 15141 (2002).

[31] 5 U.S.C. 603(c)(1)–(c)(4).

[32] *See* 5 U.S.C. 801(a)(1)(A).

[33] *See* 5 U.S.C. 604(b).

2025 MHz shall operate on a secondary basis to Advanced Wireless Services.

NG178 In the band 2165–2180 MHz, where the receipt date of the initial application for facilities in the fixed and mobile services was prior to January 16, 1992, said facilities shall operate on a primary basis and all later-applied-for facilities shall operate on a secondary basis to any service licensed pursuant to the allocation adopted in FCC 03–16, 68 FR 11986, March 13, 2003 ("Advanced Wireless Services"). Not later than December 9, 2013, all such facilities in the band 2165–2180 MHz shall operate on a secondary basis to Advanced Wireless Services.

* * * * *

PART 74—EXPERIMENTAL RADIO, AUXILIARY, SPECIAL BROADCAST AND OTHER PROGRAM DISTRIBUTIONAL SERVICES

■ 3. The authority citation for part 74 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 307, 336(f), 336(h) and 554.

■ 4. Section 74.602 is amended by revising paragraph (a)(3)(i), and by revising and redesignating paragraph (a)(3)(ii) as (a)(3)(iii) and by adding a new paragraph (a)(3)(ii) and by removing and reserving paragraph (a)(4) to read as follows:

§ 74.602 Frequency assignment.

(a) * * *

(3)(i) After January 7, 2004, stations may adhere to the channel plan specified in paragraph (a) of this section, or the following channel plan in Band A:

Channel A1r—2025.5–2037.5 MHz
Channel A2r—2037.5–2049.5 MHz
Channel A3r—2049.5–2061.5 MHz
Channel A4—2061.5–2073.5 MHz
Channel A5r—2073.5–2085.5 MHz
Channel A6r—2085.5–2097.5 MHz
Channel A7r—2097.5–2109.5 MHz

(ii) Stations adhering to the channel plan specified in paragraph (a)(3)(i) of this section may also use the following 40 data return link (DRL) channels to facilitate their operations in the 2025.5–2109.5 MHz band:

Lower band DRL channels

2025.000–2025.025 MHz
2025.025–2025.050 MHz
2025.050–2025.075 MHz
2025.075–2025.100 MHz
2025.100–2025.125 MHz
2025.125–2025.150 MHz
2025.150–2025.175 MHz
2025.175–2025.200 MHz
2025.200–2025.225 MHz
2025.225–2025.250 MHz
2025.250–2025.275 MHz
2025.275–2025.300 MHz
2025.300–2025.325 MHz
2025.325–2025.350 MHz
2025.350–2025.375 MHz
2025.375–2025.400 MHz
2025.400–2025.425 MHz
2025.425–2025.450 MHz
2025.450–2025.475 MHz
2025.475–2025.500 MHz

Upper band DRL channels

2109.500–2109.525 MHz
2109.525–2109.550 MHz
2109.550–2109.575 MHz
2109.575–2109.600 MHz
2109.600–2109.625 MHz
2109.625–2109.650 MHz
2109.650–2109.675 MHz
2109.675–2109.700 MHz
2109.700–2109.725 MHz
2109.725–2109.750 MHz
2109.750–2109.775 MHz
2109.775–2109.800 MHz
2109.800–2109.825 MHz
2109.825–2109.850 MHz
2109.850–2109.875 MHz
2109.875–2109.900 MHz
2109.900–2109.925 MHz
2109.925–2109.950 MHz
2109.950–2109.975 MHz
2109.975–2110.000 MHz

(iii) Broadcast Auxiliary Service, Cable Television Remote Pickup Service, and Local Television Transmission Service licensees in Nielsen Designated Market Areas (DMAs) 1–30, as such DMAs existed on September 6, 2000, will be required to use the Band A channel plan in paragraph (a)(3)(i) of this section after completion of relocation by an Emerging Technologies licensee in accorance with § 74.690 of this chapter. Licensees declining relocation and licensees in Nielsen DMAs 31–210, as such DMAs existed on September 6, 2000, will be required to discontinue use of the 1990–2025 MHz on the date that the first Mobile-Satellite Service licensee begins operations in the 2000–2020 MHz band.

(4) [reserved]

* * * * *

■ 5. Section 74.690 is amended by revising paragraphs (a), (b), and (e) to read as follows:

§ 74.690 Transition of the 1990–2025 MHz band from the Broadcast Auxiliary Service to emerging technologies.

(a) Licensees proposing to implement Mobile-Satellite Services using emerging technologies (MSS Licensees) may negotiate with Broadcast Auxiliary Service licensees operating on a primary basis and fixed service licensees operating on a primary basis in the 1990–2025 MHz band (Existing Licensees) for the purpose of agreeing to terms under which the Existing Licensees would relocate their operations to the 2025–2110 MHz band, to other authorized bands, or to other media; or, alternatively, would discontinue the use of the 1990–2025 MHz band when MSS operations commence in the 2000–2020 MHz band.

(b) An Existing Licensee in the 1990–2025 MHz band allocated for licensed emerging technology services will maintain primary status in the band until the Existing Licensee's operations are relocated by a MSS Licensee or are discontinued under the terms of paragraph (a) of this section.

* * * * *

(e) Subject to the terms of this paragraph (e), the relocation of Existing Licensees will be carried out in the following manner:

(1) Existing Licensees and MSS licensees may negotiate individually or collectively for relocation of Existing Licensees to one of the channel plans specified in § 74.602(a)(3) of this chapter. Parties may not decline to negotiate, though Existing Licensees may decline to be relocated.

(i) MSS licensees must relocate all Existing Licensees in Nielsen Designated Market Areas (DMAs) 1–30, as such DMAs existed on September 6, 2000, and all fixed stations operating in the 1990–2025 MHz band on a primary basis, prior to beginning operations, except those Existing Licensees that decline relocation. Such relocation negotiations shall be conducted as "mandatory negotiations," as that term is used in § 101.73 of this chapter. If these parties are unable to reach a negotiated agreement, MSS Licensees may involuntarily relocate such Existing Licensees and fixed stations after December 8, 2004.

(ii) On the date that the first MSS licensee begins operations in the 2000–2020 MHz band, Broadcast Auxiliary Service licensees and fixed service licensees that are not operating on the new channel plan specified in § 74.602(a)(3) of this part must discontinue use of all operations in the 1990–2025 MHz band.

(iii) On the date that the first MSS licensee begins operations in the 2000–2020 MHz band, a one-year mandatory negotiation period begins between MSS licensees and Existing Licensees in Nielsen DMAs 31–210, as such DMAs existed on September 6, 2000. After the end of the mandatory negotiation period, MSS licensees may involuntary relocate any Existing Licensees with which they have been unable to reach a negotiated agreement. As described elsewhere in this paragraph (e), MSS Licensees are obligated to relocate these Existing Licensees within the specified three- and five-year time periods.

(2) Before negotiating with MSS licensees, Existing Licensees in Nielsen Designated Market Areas where there is a BAS frequency coordinator must coordinate and select a band plan for the market area. If an Existing Licensee wishes to operate in the 2025–2110 MHz band using the channels A03-A07 as specified in the Table in § 74.602(a) of this part, then all licensees within that Existing Licensee's market must agree to such operation and all must operate on a secondary basis to any licensee operating on the channel plan specified in § 74.602(a)(3) of this part. All negotiations must produce solutions that adhere to the market area's band plan.

(3) [reserved]

(4) [reserved]

(5) As of the date the first MSS licensee begins operations in the 1990–2025 MHz band, MSS Licensees must relocate Existing Licensees in DMAs 31–100, as they existed as of September 6, 2000, within three years, and in the remaining DMAs, as they existed as of September 6, 2000, within five years.

(6) On December 9, 2013, all Existing Licensees will become secondary in the 1990–2025 MHz band. Upon written demand by any MSS licensee, Existing Licensees must cease operations in the 1990–2025 MHz band within six months.

PART 78—CABLE TELEVISION RELAY SERVICE

■ 6. The authority citation for part 78 continues to read as follows:

Authority: Secs. 2, 3, 4, 301, 303, 307, 308, 309, 48 Stat., as amended, 1064, 1065, 1066, 1081, 1082, 1083, 1084, 1085; 47 U.S.C. 152, 153, 154, 301, 303, 307, 308, 309.

■ 7. Section 78.18 is amended by revising paragraph (a)(6)(ii) to read as follows:

§ 78.18 Frequency assignments.

(a) * * *

(6) * * *

(ii) After a licensee has been relocated in accordance with the provisions of § 78.40, operations will be in the band 2025–2110 MHz. The following channel plan will apply, subject to the provisions of § 74.604 of this part:

Frequency Band (MHz)
2025.5–2037.5
2037.5–2049.5
2049.5–2061.5
2061.5–2073.5
2073.5–2085.5
2085.5–2097.5
2097.5–2109.5

* * * * *

■ 8. Section 78.40 is amended by revising paragraph (f) to read as follows:

§ 78.40 Transition of the 1990–2025 MHz band from the Cable Television Relay Service to emerging technologies.

* * * * *

(f) Subject to the terms of this paragraph (f), the relocation of Existing Licensees will be carried out in the following manner:

(1) Existing Licensees and MSS licensees may negotiate individually or collectively for relocation of Existing Licensees to one of the channel plans specified in § 74.602(a)(3) of this part. Parties may not decline to negotiate, though Existing Licensees may decline to be relocated.

(i) MSS licensees must relocate all Existing Licensees in Nielsen Designated Market Areas (DMAs) 1–30, as such DMAs existed on September 6, 2000, prior to beginning operations, except those Existing Licensees that decline relocation. Such relocation negotiations shall be conducted as "mandatory negotiations," as that term is used in § 101.73 of this chapter. If these parties are unable to reach a negotiated agreement, MSS Licensees may involuntarily relocate such Existing Licensees after December 8, 2004.

(ii) On the date that the first MSS licensee begins operations in the 2000–2020 MHz band, Broadcast Auxiliary Service licensees and fixed service licensees that are not operating on the new channel plan specified in § 78.18(a)(6)(ii) must discontinue use of all operations in the 1990–2025 MHz band.

(iii) On the date that the first MSS licensee begins operations in the 2000–2020 MHz band, a one-year mandatory negotiation period begins between MSS licensees and Existing Licensees in DMAs 31–210, as such DMAs existed on September 6, 2000. After the end of the mandatory negotiation period, MSS licensees may involuntary relocate any Existing Licensees with which they have been unable to reach a negotiated agreement. As described elsewhere in this paragraph (f), MSS Licensees are obligated to relocate these Existing Licensees within the specified three- and five-year time periods.

(2) Before negotiating with MSS licensees, Existing Licensees in Nielsen Designated Market Areas where there is a BAS frequency coordinator must coordinate and select a band plan for the market area. If an Existing Licensee wishes to operate in the 2025–2110 MHz band using the channel plan specified in § 78.18(a)(6)(i) of this part, then all licensees within that Existing Licensee's market must agree to such operation and all must operate on a secondary basis to any licensee operating on the channel plan specified in § 78.18(a)(6)(ii). All negotiations must produce solutions that adhere to the market area's band plan.

(3) [reserved]

(4) [reserved]

(5) As of the date the first MSS Licensee begins operations in the 1990–2025 MHz band, MSS Licensees must relocate Existing Licensees in DMAs 31–100, as they existed as of September 6, 2000, within three years, and in the remaining DMAs, as they existed as of September 6, 2000, within five years.

(6) On December 9, 2013, all Existing Licensees will become secondary in the 1990–2025 MHz band. Upon written demand by any MSS Licensee, Existing Licensees must cease operations in the 1990–2025 MHz band within six months.

■ 9. Section 78.103(e), the table is amended by revising footnote 1 to read as follows:

§ 78.103 Emissions and emission limitations.

* * * * *

[1] After a licensee has been relocated in accordance with § 78.40, the maximum authorized bandwidth in the frequency band 2025 to 2010 MHz will be 12 megahertz.

PART 101—FIXED MICROWAVE SERVICES

■ The authority citation for part 101 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

■ 10. Section 101.69 is amended by revising paragraph (d) to read as follows:

§ 101.69 Transition of the 1850–1990 MHz, 2110–2150 MHz, and 2160–2200 MHz bands from the fixed microwave services to personal communications services and emerging technologies.

* * * * *

(d) Relocation of FMS licensees in the 2180–2200 MHz band by Mobile-Satellite Service (MSS) licensees, including MSS licensees providing Ancillary Terrestrial Component (ATC) service, will be subject to mandatory negotiations only. Mandatory negotiation periods are defined as follows:

(1) The mandatory negotiation period for non-public safety incumbents will end December 8, 2004.

(2) The mandatory negotiation period for public safety incumbents will end December 8, 2005.

■ 11. Section 101.73 is amended by revising paragraph (d) introductory text to read as follows:

§ 101.73 Mandatory negotiations.

* * * * *

(d) *Provisions for Relocation of Fixed Microwave Licensees in the 2180–2200*

MHz band. Notwithstanding references to voluntary negotiation periods elsewhere in this section, relocation of FMS licensees in the 2180–2200 MHz band by Mobile-Satellite Service (MSS) licensees (including MSS licensees providing Ancillary Terrestrial Component "ATC" service) will be subject to mandatory negotiations only. Mandatory negotiations will commence on January 7, 2004. Mandatory negotiations will be conducted with the goal of providing the fixed microwave licensee with comparable facilities, defined as facilities possessing the following characteristics:

* * * * *

■ 12. Section 101.79 is amended by revising the section heading and paragraph (a) to read as follows:

§ 101.79 Sunset provisions for licensees in the 1850–1990 MHz, 2110–2150 MHz, and 2160–2200 MHz bands.

(a) FMS licensees will maintain primary status in the 1850–1990 MHz, 2110–2150 MHz, and 2160–2200 MHz bands unless and until an ET (including MSS/ATC) licensee requires use of the spectrum. ET licensees are not required to pay relocation costs after the relocation rules sunset (*i.e.* ten years after the voluntary period begins for the first ET licensees in the service; or, in the case of the 2180–2200 MHz band, ten years after the mandatory negotiation period begins for MSS/ATC licensees in the service). Once the relocation rules sunset, an ET licensee may require the incumbent to cease operations, provided that the ET licensee intends to turn on a system within interference range of the incumbent, as determined by TIA Bulletin 10-F (for terrestrial-to-terrestrial situations) or TIA Bulletin TSB–86 (for MSS satellite-to-terrestrial situations) or any standard successor. ET licensee notification to the affected FMS licensee must be in writing and must provide the incumbent with no less than six months to vacate the spectrum. After the six-month notice period has expired, the FMS licensee must turn its license back into the Commission, unless the parties have entered into an agreement which allows the FMS licensee to continue to operate on a mutually agreed upon basis.

* * * * *

■ 13. Section 101.99 is redesignated as § 101.82.

[FR Doc. 03–30310 Filed 12–5–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 03–3641, MM Docket No. 99–277, RM–9666]

Digital Television Broadcast Service; Corpus Christi, TX

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Channel 3 of Corpus Christi, Inc., substitutes DTV channel 8 for DTV channel 47 at Corpus Christi. *See* 64 FR 50055, September 15, 1999. DTV channel 8 can be allotted to Corpus Christi in compliance with the principle community coverage requirements of Section 73.625(a) at reference coordinates 27–39–30 N. and 97–36–04 W. with a power of 160, HAAT of 289 meters and with a DTV service population of 491 thousand. Since the community of Corpus Christi is located within 275 kilometers of the U.S.-Mexican border, concurrence by the Mexican government has been obtained for this allotment. With this action, this proceeding is terminated.

DATES: Effective January 5, 2004.

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Media Bureau, (202) 418–1600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 99–277, adopted November 13, 2003, and released November 19, 2003. The full text of this document is available for public inspection and copying during regular business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC. This document may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., CY–B402, Washington, DC, 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com.*

List of Subjects in 47 CFR Part 73

Digital television broadcasting, Television.

■ Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

■ 1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.622 [Amended]

■ 2. Section 73.622(b), the Table of Digital Television Allotments under Texas, is amended by removing DTV channel 47 and adding DTV channel 8 at Corpus Christi.

Federal Communications Commission.

Barbara A. Kreisman,

Chief, Video Division, Media Bureau.

[FR Doc. 03–30308 Filed 12–5–03; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

RIN 1018–AJ02

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 402

[Docket No. 030506115–3298–02]

RIN 0648–AR05

Joint Counterpart Endangered Species Act Section 7 Consultation Regulations

AGENCIES: U.S. Fish and Wildlife Service, Interior; Bureau of Land Management, Interior; National Park Service, Interior; Bureau of Indian Affairs, Interior; Forest Service, Agriculture; National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Commerce.

ACTION: Final rule.

SUMMARY: This final rule codifies joint counterpart regulations for consultation under section 7 of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*) (ESA), to streamline consultation on proposed projects that support the National Fire Plan (NFP), an interagency strategy approved in 2000 to reduce risks of catastrophic wildland fires and restore fire-adapted ecosystems. These counterpart regulations were developed, as part of the President's Healthy Forests Initiative announced in August 2002, by the U.S. Department of the Interior's Fish and Wildlife Service (FWS) and the U.S. Department of Commerce's National Oceanic and Atmospheric Administration, National Marine Fisheries Service (NMFS) (singly or jointly, Service), in cooperation with the U.S. Department of Agriculture's Forest Service (FS) and the Department of Interior's Bureau of Indian Affairs (BIA), Bureau of Land Management (BLM), and National Park Service (NPS). These counterpart regulations, authorized in general at 50 CFR 402.04, provide an optional alternative to the existing section 7 consultation process described in 50 CFR part 402, subparts A and B. The counterpart regulations complement the general consultation regulations in part 402 by providing an alternative process for completing section 7 consultation for agency projects that authorize, fund, or carry out actions that support the NFP. The alternative consultation process contained in these counterpart regulations eliminates the need to conduct informal consultation and eliminates the requirement to obtain written concurrence from the Service for those NFP actions that the Action Agency determines are "not likely to adversely affect" (NLAA) any listed species or designated critical habitat.

DATES: This rule is effective on January 7, 2004.

ADDRESSES: The complete file for this rule is available for inspection, by appointment, during normal business hours at the Division of Consultation, Habitat Conservation Planning, Recovery and State Grants, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Room 420, Arlington, Virginia 22203.

FOR FURTHER INFORMATION CONTACT: Patrick Leonard, Chief, Division of Consultation, Habitat Conservation Planning, Recovery and State Grants, at the above address (Telephone 703/358–2171, Facsimile 703/358–1735) or Phil Williams, Chief, Endangered Species Division, NMFS, 1315 East-West Highway, Silver Spring, MD 20910 (301/713–1401; facsimile 301/713–0376).

SUPPLEMENTARY INFORMATION:

Background

Implementation of National Fire Plan

In response to several years of catastrophic wildland fires throughout the United States culminating in the particularly severe fire season in 2000, when over 6.5 million acres of wildland areas burned, President Clinton directed the Departments of the Interior and Agriculture to develop a report outlining a new approach to managing wildland fires and restoring fire-adapted ecosystems. The report, entitled Managing the Impact of Wildfires on Communities and the Environment, was issued September 8, 2000. This report set forth ways to reduce the impacts of fires on rural communities, a short-term plan for rehabilitation of fire-damaged ecosystems, and ways to limit the introduction of invasive species and address natural restoration processes. The report, and the accompanying budget requests, strategies, plans, and direction, have become known as the NFP. The NFP is intended to reduce risk to communities and natural resources from wildland fires through rehabilitation, restoration and maintenance of fire-adapted ecosystems, and by the reduction of accumulated fuels or highly combustible fuels on forests, woodlands, grasslands, and rangelands.

In August 2002, during another severe wildland fire season in which over 7.1 million acres of wildlands burned, President Bush announced the Healthy Forests Initiative. The initiative was intended to accelerate implementation of the fuels reduction and ecosystem restoration goals of the NFP in order to minimize the damage caused by catastrophic wildfires by reducing unnecessary regulatory obstacles that have at times delayed and frustrated active land management activities. Because of nearly a century of policies to exclude fire from performing its historical role in shaping plant communities, fires in our public forests and rangelands now threaten people, communities, and natural resources in ways never before seen in our Nation's history.

Many of the Nation's forests and rangelands have become unnaturally dense as a result of past fire suppression policies. Today's forests contain previously unrecorded levels of fuels, while highly flammable invasive species now pervade many rangelands. As a result, ecosystem health has suffered significantly across much of the Nation. When coupled with seasonal droughts, these unhealthy forests and rangelands, overloaded with fuels, are vulnerable to unnaturally severe wildland fires. The geographic scope of the problem is enormous, with estimates approaching 200 million acres of forest and rangeland at risk of catastrophic fire. The problem has been building across the landscape for decades. Its sheer size makes it impossible to treat all the acres needing attention in a few years or even within the next decade.

In 2002 alone, the Nation experienced over 88,000 wildland fires that cost the Federal Government $1.6 billion to suppress. Many of these wildfires significantly impacted threatened or endangered species. The Biscuit Fire burned an area of 499,570 acres in Oregon and California that included 49 nest sites and 50,000 acres of designated critical habitat for the threatened northern spotted owl, and 14 nesting areas and 96,000 acres of designated critical habitat for the threatened marbled murrelet. The estimated fire suppression cost was $134,924,847. The Rodeo-Chediski fire in Arizona, the largest fire in the State's post-settlement history, burned through 462,614 acres, including 20 nesting areas for the threatened Mexican spotted owl. Unless fuel loads can be reduced on the thousands of acres classified at high risk of catastrophic wildfires, more adverse effects like those of the 2002 fire season are certain to occur.

The long-term strategy for the NFP is to correct problems associated with the disruption of natural fire cycles as a result of fire suppression policy or the presence of fire-prone non-native invasive species and to minimize risks to public safety and private property due to the increase in amount and complexity of the urban/wildland interface. The NFP calls for a substantial increase in the number of acres treated annually to reduce unnaturally high fuel levels, which will decrease the risks to communities and to the environment caused by unplanned and unwanted wildland fire. These types of preventative actions will help ensure public safety and fulfill the goals of the President's Healthy Forests Initiative.

The FS, BIA, BLM, and NPS, as Federal land management agencies, play an important role in implementing actions under the NFP that will reduce the potential risks of catastrophic wildland fire. The FWS also develops and carries out actions in support of the NFP on National Wildlife Refuges or National Fish Hatcheries. These five agencies constitute the Action Agencies who may use the counterpart regulations contained herein. The types of projects being conducted by these agencies under the NFP include prescribed fire (including naturally occurring wildland fires managed to benefit resources), mechanical fuels treatments (thinning and removal of fuels to prescribed objectives), emergency stabilization, burned area rehabilitation, road maintenance and operation activities, ecosystem restoration, and culvert replacement actions. Prompt implementation of these types of actions will substantially improve the condition of the Nation's forests and rangelands and substantially diminish potential losses of human lives and property caused by wildland fires. The Service and the Action Agencies are adopting these counterpart regulations to accelerate the rate at which these types of activities can be implemented so that the likelihood of catastrophic wildland fires is reduced.

Federal Fuels Treatment Activities

Each of the Action Agencies has substantial experience in planning and implementing projects that further the goals of reducing risks associated with wildland fires, while improving the condition of our public lands and wildlife habitat. The FS works collaboratively with its partners to design and implement projects to meet a variety of land and resource management objectives, including projects to improve habitat for wildlife and fish species. Through several hundred rehabilitation, restoration and hazardous fuels reduction projects under the NFP, the FS treats over 2 million acres each year to benefit natural resources, people, and communities. All of these projects have long-term multiple resource benefits, and several have short-term wildlife benefits as well. On the Winema and Fremont National Forests in Oregon, a thousand acres of forest were thinned and underburned to protect stands and large trees from wildfire, and to increase the longevity of those trees used by bald eagles for nesting and roosting. On the Santa Fe National Forest in New Mexico, after habitat loss due to the Cerro Grande Fire, ground cover in the form of large fallen woody material was restored to benefit the Jemez Mountain salamander. Habitat that had been damaged by post-wildland fire debris flows has been restored to reduce erosion and benefit Yellowstone cutthroat trout on the Custer National Forest in Montana. On the Jefferson National Forest in Virginia, prescribed fire is used every 3 years on Mt. Rogers to maintain the grassy bald area in a grass-forb stage and prevent woody vegetation from becoming established that would out compete rare plant species. Similarly, on the National Forests in Mississippi, prescribed burning reduces woody vegetation and fuels, encourages fire-dependent perennials, and restores and expands remnants of native prairie.

The BIA has planned many beneficial projects under the NFP that are designed to reduce wildland fire risk on Indian lands and to increase public safety around tribal and non-tribal communities. For example, one project will utilize both mechanical treatments and prescribed fire in lodgepole pine and Engelmann spruce forests to reduce fuel loadings and protect residents and residences around the Blackfeet Indian Reservation communities of East Glacier, Little Badger, Babb, St. Mary, Heart Butte, and Kiowa, in northwestern Montana. A second project would also utilize mechanical treatments and prescribed fire to reduce fuel loadings in Douglas-fir, ponderosa pine, and grass fuel types that pose a high level of risk to the residents around the Rocky Boy's Indian Reservation communities of Box Elder Village, Box Elder Creek, Rocky Boy Townsite, Duck Creek, and Parker Canyon, in Central Montana. A third project would reduce fuels in about 1,300 acres of pine, juniper, oak, and grasses, by combining prescribed fire with mechanical fuels treatment techniques on Zuni Tribal forest and woodland resources in New Mexico. This project would create fuel breaks in large contiguous fuels that are at high risk for catastrophic wildfires. Finally, a fourth project will stabilize and rehabilitate 276,000 acres of White Mountain Apache Tribal lands severely damaged in the Rodeo-Chediski Fire. This project will reduce the potential threats to human life and property in surrounding communities, along with threats to cultural resources, water quantity and quality, and soil productivity.

Across the Nation, NPS is implementing numerous projects to support the goals of the NFP. Park superintendents use prescribed fire (including wildland fire), mechanical fuels treatments, and invasive species control to restore or maintain natural ecosystems, to mitigate the effects of past fire suppression policies, and to protect communities from catastrophic wildfires. NPS fire management and restoration efforts generally focus on restoring ecosystem processes rather than on the management of specific species. However, these projects provide important long-term habitat benefits to a variety of threatened or endangered species. For example, Great Smoky Mountains National Park is completing a 1,034-acre yellow pine restoration burn, the largest prescribed burn in the Park's history. The central purpose of the Park's use of fire is to replicate as nearly as possible the role that naturally occurring fires played in shaping and maintaining the Park's biologically diverse ecosystems, while also minimizing the risk of future wildfires. At Washita Battlefield National Historic Site, the use of prescribed fire is intended to restore and maintain grassland/prairie habitats in a healthy condition. The operation was an interagency effort between the FS and the NPS. Similarly, Gulf Islands National Seashore has conducted prescribed burns for habitat restoration and to reduce hazardous fuels. These burns both restore key vegetative communities and provide habitat for relocated gopher tortoises. Other projects have improved habitat for red-cockaded woodpeckers at Big Thicket National Preserve and bald eagles at Lavabeds National Monument. All of these fuels treatment projects will enhance public safety for the communities around the Parks.

The BLM is proceeding with many NFP projects to restore dense pinyon pine and juniper forests and woodlands, nearly devoid of understory shrubs, grasses, and forbs, to a more natural savannah, or open woodland conditions. In the Farmington Field Office, New Mexico, the Pump Mesa project is a multiple phase project to open up the pinyon pine and juniper forest canopy by thinning, wood removal, and prescribed burning, to make space, sunlight, water, and nutrients available for the manual seeding of native understory species that were formerly present on the site. Densities of trees in the pinyon pine systems have increased to the point that large proportions of these woodlands have become highly combustible, supporting crown fires that can produce catastrophic habitat loss for wildlife and high risk to nearby communities. In the Richfield Field Office, the Praetor Slope Fuel Reduction project will mechanically displace patches of juniper and sagebrush to reduce the risk created by large, dense contiguous areas of fuel, while creating valuable deer and elk range, complete with islands and feathered woodlands that provide necessary animal cover. In the Central Montana Fire Management Zone, a number of small and moderate-sized prescribed burns, such as in Cow Creek, Little Bull Whacker, and Fergus Triangle, have been completed to increase wildlife habitat diversity, reduce fuel loads, and increase forage for both livestock and wildlife.

Endangered Species Act Section 7 Consultation

Section 7(a)(2) of the ESA requires that each Federal agency shall, in consultation with and with the assistance of the Service, insure that any action it authorizes, funds, or carries out is not likely to jeopardize the continued existence of any listed species or result in destruction or adverse modification of designated critical habitat. Section 7(b) of the ESA describes the consultation process, which is further developed in regulations at 50 CFR 402.

The existing ESA section 7 regulations require an action agency to complete formal consultation with the Service on any proposed action that may affect a listed species or designated critical habitat, unless following either a biological assessment or informal consultation with the Service, the action agency makes a determination that a proposed action is "not likely to adversely affect" any listed species or designated critical habitat and obtains written concurrence from the Service for the NLAA determination. The alternative consultation process contained in these counterpart regulations will allow the Service to provide training, oversight, and monitoring to an Action Agency through an alternative consultation agreement (ACA) that enables the Action Agency to make an NLAA determination for a project implementing the NFP without informal consultation or written concurrence from the Service.

Using the existing consultation process, the Action Agencies have consulted with the Service on many thousands of proposed actions that ultimately received written concurrence from the Service for NLAA determinations. Those projects had only insignificant or beneficial effects on listed species or posed a discountable risk of adverse effects. The concurrence process for such projects has diverted some of the consultation resources of the Service from projects in greater need of consultation. With the anticipated increase in fire plan projects, the concurrence process could cause delays. These counterpart regulations are being implemented to proactively reduce these anticipated delays and to increase the Service's capability to focus on Federal actions requiring formal consultation by eliminating the requirement to provide written concurrence for actions within the scope of these counterpart regulations.

The Action Agencies have engaged in thousands of formal and informal consultations with the Service in the 30 years since the passage of the ESA, and have developed substantial scientific, planning, mitigation, and other expertise to support informed decision-making and to meet their responsibilities under ESA section 7 to avoid jeopardy and contribute to recovery of listed species. To meet their obligations, the Action Agencies employ large staffs of qualified, experienced, and professional wildlife biologists, fisheries biologists, botanists, and ecologists to help design, evaluate, and implement proposed activities carried out under land use and resource management plans. All of the Action Agencies consult with the Service on actions that implement land use and resource management plans that contribute to the recovery of proposed and listed species and the ecosystems upon which they depend. In particular, the informal consultation and concurrence process has given the Action Agencies considerable familiarity with the standards for making NLAA determinations for their proposed actions.

The Action Agencies have developed familiarity with the standards over time through various activities. The Action Agencies develop proposals and evaluate several thousand actions for possible effects to listed species and designated critical habitat. Agency biologists are members of listed species recovery teams, contribute to management plans that provide specific objectives and guidelines to help recover and protect listed species and designated critical habitat, and cooperate on a continuing basis with Service personnel. In many parts of the country, personnel from the Action Agencies and the Service participate in regular meetings to identify new management projects and the effects to proposed and listed species through formalized streamlined consultation procedures.

The Action Agencies' established biological expertise and active participation in the consultation process provides a solid base of knowledge and understanding of how to implement section 7 of the ESA. By taking advantage of this expertise within the Action Agencies, the counterpart regulations process will help ensure more timely and efficient decisions on planned NFP actions while retaining the protection for listed species and designated critical habitat required by the ESA and other applicable regulations. The Service can rely upon the expertise of the Action Agencies to make NLAA determinations that are consistent with the ESA and its implementing regulations. Moreover, the Action Agencies are committed to implementing this authority in a manner that will be equally as protective of listed species and designated critical habitat as the current procedures that require written concurrence from the Service.

The Healthy Forests Initiative builds from the recognition that more timely environmental reviews of proposed fire plan projects will provide greater benefits to the range, forest lands, and wildlife by reducing the risk of catastrophic wildfire while the reviews are pending. These counterpart regulations provide an additional tool for accomplishing faster reviews. Streamlining the NLAA concurrence process offers a significant opportunity to accelerate NFP projects while providing equal or greater protection of the resources. Under current procedures, the Action Agencies must already complete and document a full ESA analysis to reach an NLAA determination. The counterpart regulations permit a project to proceed following an Action Agency's NLAA determination without an overlapping review by the Service, where the Service has provided specific training and oversight to achieve comparability between the Action Agency's determination and the likely outcome of an overlapping review by the Service. These counterpart regulations should significantly accelerate planning, review, and implementation of NFP actions, and by doing so, should contribute to achieving the habitat management and ecosystem restoration activities contemplated under the NFP.

Summary of Comments Received

On June 5, 2003 (68 FR 33806), we proposed the rule that would establish the joint counterpart regulations for consultation under section 7 of the ESA to streamline consultation on proposed projects that support the NFP. The comment period closed on August 4, 2003. On October 9, 2003 (68 FR 58298), we reopened the comment period on the proposed rule and provided a notice of availability for the Environmental Assessment. The second comment period closed on November 10, 2003. During these two comment periods, the Service received more than 50,000 comments on the proposed rule from a large variety of entities, including State, County, Tribal agencies, industry, conservation groups, religious groups, coalitions, and private individuals. The Service and the Action Agencies considered all of the information and recommendations received from all interested parties on the proposed regulation during the public comment period and appreciated the comments received on the proposed rule. The Service received numerous comments on the scope of the National Fire Plan, for example, appropriate fire cycles, thinning and restoration practices, which were beyond the narrow scope of the proposed rulemaking for the counterpart regulations.

The following is a summary of the comments on the proposed counterpart regulations, and the Service's response.

State and Tribe Comments

We received comments from three States and two Tribal agencies.

Issue: One State recommended including the State fish and wildlife agencies during the development of the ACAs and, where appropriate, during the development of documentation in support of NLAA determinations. Including the States would better ensure

that the best available scientific information is used during the determination analysis by the Action Agencies.

Response: We agree that the State agencies likely have biological information that will be relevant in making an NLAA determination. The Services currently have a joint policy (59 FR 34270) in which we request any information from the State that might be relevant, as well as notify the State of any action that might adversely affect any proposed or listed species or designated critical habitat. The Service will encourage each of the Action Agencies to embrace this policy as a component of the ACA.

Issue: One State, and several commenters, expressed concern that this proposed regulation does not go far enough to improve the overall efficiency of the consultation process and, therefore, should be opened up to all projects, not just fire plan projects. A few commenters suggested including the Corps of Engineers and Environmental Protection Agency in the list of Action Agencies.

Response: These counterpart regulations have been proposed as part of the President's Healthy Forests Initiative to accelerate the rate at which fire plan projects can be implemented. Once these counterpart regulations are adopted and implemented, the Services believe that other agencies may decide that similar counterpart regulations would help to expedite other types of actions. The EPA has already published an advance notice of rulemaking for developing counterpart regulations for pesticides (68 FR 3785, January 24, 2003). The Services will take up any such proposals from other agencies in the future as circumstances may warrant.

Issue: One State and several commenters were concerned that these counterpart regulations relieve the Service of its duties and the resources that will be spent creating a new process could be used more efficiently by the Service to carry out its duties under the ESA.

Response: We agree that the Services will likely experience a small short-term increase in administrative burden as they begin to implement the training and oversight components of the regulations and ACAs. However, this short term burden will be more than balanced out by a substantial long term increase in Service efficiency resulting from a reduction in resources required to review projects that ultimately receive a NLAA concurrence letter. We believe that by removing the need to provide NLAA concurrence letters on NFP projects, the Services will be able to devote greater resources to analyzing and coordinating on projects that do have adverse effects on listed species and designated critical habitat. We believe this shift in resources will not only accelerate NFP projects, but will also generally expedite consultations on other projects, which will make the most efficient use of the Services time. This will ultimately provide more conservation to listed species, thus fulfilling the objectives of the ESA.

Issue: The two Tribal comments stated that the Action Agency will still need to complete a biological assessment for its action. In addition, both tribal commenters requested government-to-government consultation.

Response: We agree that an Action Agency will still need to complete a biological assessment for an action when required by the ESA. The regulations at 50 CFR 402.12 require the preparation of a biological assessment for those Federal actions that are "major construction activities." Given that these counterpart regulations only address those fire plan projects that are not likely to adversely affect listed species or critical habitat, we do not anticipate that a large majority of these actions would otherwise require preparation of a biological assessment.

The standards for making an NLAA determination remain unchanged by these counterpart regulations. These counterpart regulations do not change the analysis that is conducted for determining how a proposed project affects listed species or critical habitat. Therefore, this counterpart regulation will maintain the same level of protection for listed species or designated critical habitat. As such, we do not believe that tribal resources will be affected by implementation of this rule and government-to-government consultation is not necessary at this stage in the process.

General Comments

Issue: Many commenters felt that the proposed counterpart regulations will give some interest groups, such as logging companies and other commercial interests, free reign over public land, which will increase commercial timber sales, and that this result is not in the best interest of the species or the public.

Response: This regulation will apply only to those projects that are within the scope of the NFP and are not likely to adversely affect listed species or critical habitat. Commercial timber sales that adversely affect listed species and designated critical habitat will still need to be analyzed through formal consultation. We believe that implementation of the counterpart regulations will allow the Service to focus its efforts on Federal actions that are likely to adversely affect listed species and critical habitat. This will ultimately benefit listed species.

Issue: Several commenters noted that the proposed rule has failed to offer any empirical evidence substantiating the claim that the regulatory obstacles have unnecessarily delayed active land management activities.

Response: The Healthy Forests Initiative is intended to accelerate implementation of the fuels reduction and ecosystem restoration goals of the NFP in order to minimize damage caused by catastrophic wildfires. Accordingly, the issue is not whether the regulatory process has delayed NFP projects, but rather whether it can be streamlined so as to expedite the projects. The number of consultations conducted for NFP projects is currently relatively low; however the Service anticipates that the number of consultations requested for projects that implement the NFP will increase substantially in the future, as additional funding and effort is directed toward implementation of the NFP. Due to the beneficial effects that this initiative will have to fish and wildlife resources, the Services are ensuring that actions supporting the NFP that are NLAA listed species or critical habitat are not delayed.

Issue: Many commenters believe that the Action Agencies do not have the expertise to make the determinations without concurrence from the Service. They believe that the Service is the expert agency and without the Service's input many of the decisions will have a negative impact on listed species. In particular, the commenters believe that the Action Agencies do not know the biology of the species or the other indirect or cumulative effects that should be factored into the analysis.

Response: The Action Agencies employ large staffs of professional wildlife biologists, botanists, and ecologists to meet their obligations under the Act and other natural resource management laws they implement. The primary responsibility of these professionals is to evaluate how proposed projects will affect listed species and critical habitat.

The counterpart regulations contain a process for making sure that the Action Agencies have the necessary skills to make the NLAA determinations without Service concurrence. First, the Service and the Action Agencies will jointly develop a training program that will allow each Action Agency's staff to develop and maintain the same skills that the Service has in making the NLAA determinations. Second, the ACA will include provisions for incorporating new information on currently listed species and new species and critical habitat into the Action Agency's effects analysis of proposed actions. These two provisions of the ACA will provide the Action Agency with the same expertise and information that the Service possesses. This process will maximize the use of the Service and Action Agencies' resources by incorporating this additional knowledge into the Action Agencies' current wealth of expertise.

Issue: One commenter noted that both the Service and NMFS have policies regarding the use of high quality scientific and commercial data in making decisions. FS and BLM do not have similar policies presenting a challenge to prevent them from making the best decisions possible. One commenter noted that streamlining to speed up accomplishments of one goal may result in decisions being made on inadequate data, lack of perspective on other goals and values, and lack of knowledge of other alternatives, therefore risking failure of making sound and wise decisions. Many commenters believe that, by eliminating the Service, the Action Agencies will not make sound decisions; that is, they will not be considering all of the facts and possible ramifications.

Response: Section 7 of the ESA requires that each agency shall use the best available scientific and commercial information. This standard applies to any analysis that the Action Agency may make, as well as the Service. It is the responsibility of the Action Agency to become aware of all of the information necessary to make the determinations. In signing the ACA, the Action Agency is agreeing to take on the responsibility of making decisions using the best scientific and commercial data available. It is common practice for the Service and the Action Agency to share information in the field, and we expect this practice will continue with the implementation of these counterpart regulations.

The jointly developed training program will allow the Action Agency staff to develop and maintain the same skills that the Service has in making the NLAA determinations. In addition, the Service will retain oversight authority and, through the periodic review and the monitoring program, will evaluate whether the Action Agency has implemented the regulation consistent with the best available scientific and commercial information, the ESA, and the section 7 regulations.

Issue: Several commenters stated that the definition of NFP project is overly broad and the Action Agencies could grant discretion to undertake projects that are directly at odds with the philosophy and purpose of the NFP.

Response: The definition according to the counterpart regulations of a fire plan project is "an action determined by the Action Agency to be within the scope of the NFP as defined in this section." The Action Agency will have the responsibility to justify whether any action it is undertaking falls within the NFP scope. Several examples of typical projects, such as mechanical treatments or prescribed fire, are listed in the preamble for the regulation. While the definition is broad, the Action Agency will ultimately have to determine if the action will further the goals of the NFP to reduce risks associated with wildland fires, while improving the condition of our public lands and wildlife habitat.

Issue: Many commenters believe that the different missions between the Action Agencies and the Service will not allow the Action Agencies to make decisions that would be "equally as protective of listed species and critical habitat." In fact many commenters noted that historically, the action agencies have pursued environmentally damaging projects that were in direct conflict with their own policy. Many commenters suggested that eliminating the Service concurrence is like asking the fox to watch the henhouse. One State noted that they believe the elimination of oversight and environmental review will allow the Action Agencies to abuse the discretion.

Response: The Action Agencies are legally obligated to implement the ESA, and have large staffs of professional biologists fully able to do so. These counterpart regulations do not change the standards that apply in assessing the effects of the action. As stated in § 402.31 of the counterpart regulations, the process established in the counterpart regulation will be as protective to listed species and designated critical habitat as the process established in subpart B of the regulations.

As discussed in the oversight section, § 402.34, the Service Director retains discretion to terminate the ACA if the Action Agency fails to comply with the requirements of the counterpart regulations, section 7 of the Act, or the terms of the ACA. Therefore, we believe that sufficient training, monitoring, and oversight is built in to the process to ensure that the Action Agencies will appropriately implement their responsibilities under section 7 and these regulations.

Issue: Several commenters noted that informal consultation allows the Service to work with the Action Agency to reduce the adverse effects of a project on listed species or critical habitat. Those instances where the Service does not concur with the Action Agencies are the very reason for the consultation with the expert wildlife agencies. Many commenters summarized this thought by stating that the counterpart regulations will eliminate the checks and balances inherent in the Act.

Response: These proposed counterpart regulations do not eliminate the Action Agency's ability to request informal consultation or to engage in day-to-day technical assistance with the Service when making NLAA determinations on fire plan projects. Some commenters may have misconstrued the ultimate use of this authority, which is for actions that support the NFP that are NLAA only. The section 7 standards remain unchanged by the counterpart regulations.

In addition, through the oversight provisions of § 402.34, the Service will work with the Action Agencies to determine whether the Action Agency is implementing the regulation accordingly.

Issue: A couple of commenters thought the Service should make organizational or structural changes to expedite the review process. One commenter suggested a process comprised of a series of stages that would increase the complexity of analysis, if warranted. Another commenter suggested that the process could be further streamlined by using a programmatic consultation approach.

Response: The Service considered administrative changes and agreements that would help streamline reviews in the Environmental Assessment for the Counterpart Regulations, September 30, 2003. As discussed in the EA, the Service and the Action Agencies currently have several agreements in place. While such agreements streamline the process significantly by improving coordination between the consulting agencies, the process still requires involvement of the Service in the concurrence decisions on projects that are NLAA listed species or critical habitat. These types of streamlining processes can work well to meet statutory timelines, but they still encumber the Service's biologists in requiring concurrences for NLAA actions and thereby diverting their attention from actions that require formal consultation. We believe these

counterpart regulations will accelerate the process of approval for fire plan projects and allow the Service to devote more time to analyzing and coordinating on projects that have adverse effects on listed species and designated critical habitat.

Issue: A few commenters suggested using the counterpart regulation to also modify the timeline for formal consultation. At a minimum, it was suggested to set a deadline that is shorter than 90 days for the consultation and 45 days for preparation of the biological opinion.

In addition, a couple of commenters suggested that the counterpart regulation is governed only by the statute and therefore the final regulation could change the NLAA standard such that any project with net benefits is not likely to adversely affect. The commenters noted that, without this modification, the proposed rule will likely be inefficient to streamline consultation. In addition, the rule should be allowed to change the threshold levels for "may affect:"

Response: The focus of the counterpart regulations was to provide an optional alternative to the standard section 7 consultation process that would be consistent with 50 CFR 402.04. The Service is not constrained by the statutory language in that it may (and often does) complete consultations in less than 90 days. The Service has already issued clarifying policy about the importance of considering the long-term benefits of fuel reduction projects such that revising the NLAA standards as part of these regulations is unnecessary to accomplish the goal of streamlining for the Healthy Forests Initiative.

Issue: Contractors of the Action Agency and local governments should be allowed to be a full participant in the consultation process from beginning to end.

Response: This regulation does not change the statutory or regulatory process for applicants to participate in the consultation. We expect that applicants will continue to have participation in the areas of the consultation process that are appropriate.

Issue: Many commenters believe that adoption of this counterpart regulation violates the plain language of the statute, which states that "each Federal agency shall, in consultation with and with the assistance of the Secretary, insure that any action * * *". Specifically, they assert that the proposed counterpart regulations violate sections 7(a)(2), 7(a)(4) and 7(b). By allowing the Action Agencies to reach their own conclusions without the Service concurrence, the Service would not be allowed to provide reasonable and prudent alternatives, reasonable and prudent measures, or to conduct a jeopardy analysis.

Response: The Services have concluded that the counterpart regulation does not violate the language or spirit of the ESA. The counterpart regulation makes no changes to the statutory requirement for formal consultation on agency actions that are likely to adversely affect listed species or designated critical habitat. The counterpart regulation builds upon the fundamental distinction in the current Subpart B consultation regulations between the formal consultation required for more significant projects and the lesser form of consultation required for actions that are not likely to adversely affect listed species or designated critical habitat. Neither informal consultation nor NLAA concurrence is specified in the ESA. The counterpart regulation creates a new, carefully-structured training, monitoring and oversight relationship between the Service and the Action Agency as an alternative for the individual project-based concurrence system that was created in the Subpart B regulatory framework. The counterpart regulation creates a system where the Action Agency is trained and supervised to perform NLAA determinations just as the Service would in a concurrence letter, with less delay and equal protection for listed species and designated critical habitat.

The Service believes that through implementation of the ACA and through the oversight discussed in § 402.34, the counterpart regulations comply with the statute, and the Action Agencies are insuring, in consultation with and with assistance of the Secretary, that any action is not likely to jeopardize the continued existence of any listed species or result in the destruction or adverse modification of critical habitat. Through the periodic review and monitoring program, the Service will provide assistance to the Action Agency by recommending changes to the Action Agency's implementation of the ACA, if necessary. Consultation will continue to occur through the implementation of the ACAs and the ongoing review and monitoring program.

Issue: One commenter believed that the proposed rule violates section 7(c)(1) of the ESA. The commenter suggested that 7(c) places a mandatory duty on Federal Action Agencies to initiate consultation and communication with the Service on all projects.

Response: Section 7(c) of the Act requires each Federal Agency to prepare a biological assessment for the purpose of identifying any endangered or threatened species, which is likely to be affected by an action. Consistent with congressional intent (H.R. Conf. Rep. 96–697, 1979), the regulations at 50 CFR 402.12 specify that this requirement applies only to those Federal actions that are "major construction activities." Given that these counterpart regulations address only those fire plan projects that are not likely to adversely affect listed species or critical habitat, we do not anticipate a large majority of these actions would otherwise require preparation of a biological assessment.

Section-by-Section Analysis

Procedures

Issue: Several commenters suggested that the ACAs should be subject to a 60-day public review and comment period. A few commenters noted that the rule is also unclear as to whether the ACAs are subject to NEPA. Many commenters were concerned that the timetable for developing the ACAs would prolong the implementation of the rule. One commenter suggested that the ACAs should be developed prior to finalization of the counterpart regulations.

Response: The ACAs will be made available to the public as stated in the proposed rule. The details of the individual ACAs will conform to the elements described in the procedures section. The individual ACAs will most likely be categorically excluded from the NEPA requirements. However, with any categorical exclusion, conditions at the time may warrant more environmental analysis consistent with the Action Agencies' requirement to identify extraordinary circumstances under 40 CFR 1508.4. The NEPA determination will be made at the time the individual ACAs are proposed. The Service anticipates that development of the ACAs, for those Action Agencies that want to implement the counterpart regulations, will begin immediately following finalization of the counterpart regulations.

Issue: Many commenters believed that the details outlined in the regulations regarding training, standards, incorporating new information, and the periodic monitoring and program evaluation should be specified in the regulation and not the ACA.

Response: The Service and the Action Agencies wanted to allow maximum flexibility for each individual Action Agency's needs with regard to the specific requirements in the ACA. For instance, the training program for the Forest Service nationwide, which has had extensive experience with section 7 consultation, may be different from the BIA nationwide in which several districts may have more experience than others. Allowing the details of, the training program for example, to be further discussed in the ACA allows for the program to be tailored for each particular Action Agency.

Staff Positions

Issue: One commenter believes that the ACA should list the Action Agency staff making the determinations by name including their academic and professional experience. Then the Service should make sure their skill level is appropriate to make the determinations.

Response: The counterpart regulations and the subsequent ACAs have established a system whereby the Action Agency can make the determinations without concurrence by the Service. The Action Agencies are committed to implementing this authority in a manner that will be equally protective of listed species and critical habitat as the current procedures. In implementing the ACA, the Action Agency will retain full responsibility for compliance with section 7 of the ESA. Given that responsibility, the Action Agency will determine the appropriate skill level for making the determinations.

Training

Issue: Several commenters acknowledged that the Action Agencies already employ the biological expertise necessary to make the NLAA determination; therefore, the training program does not need to be complex, and instead there should be a procedure to certify personnel without training. One commenter suggested just having periodic refresher courses.

Response: While we agree that the Action Agencies already have familiarity with the standards for making an NLAA determination, we believe that a focused training program that discusses how the Service analyzes the NLAA determination when concurrence is requested will achieve an even higher level of protection for listed species and designated critical habitat.

Issue: One commenter suggested that the training program should include principles of conservation biology, the life history of the species of which the determinations will be made, animal ecology, plant ecology, and environmental impact analysis.

Response: The Action Agencies currently make the NLAA determinations based on the recommendations from professional biologists who are employed or contracted by the Action Agencies. The training program envisioned in the counterpart regulation will focus on the fundamental aspects of section 7 that the Action Agency staff will need to understand when making the NLAA determination without the Service concurrence.

Standards

Issue: One State and a few other commenters suggested that uniform national standards should be in the regulation not the ACA, including the specific standards and procedures for implementing the ACA and assuring that the direct and indirect effects of the proposed action will not have an adverse effect on listed species.

Response: The overall standards for making an NLAA determination remain unchanged by these counterpart regulations. The ACA will include specific standards that the individual Action Agency will be applying in assessing the effects of the action. Since the ACAs are between the Service and the individual Action Agency, the specific standards in each ACA can be more individualized for the fire plan projects that each Action Agency may undertake.

Issue: Several commenters noted that any standard developed for effects analysis should not result in a new consultation process that produces unnecessarily lengthy, detailed analyses or require analyses that seek data that are nonexistent or unreliable.

Response: The Service and the Action Agencies agree. The purpose of the counterpart regulations is to accelerate the process of approving NFP projects by reducing the time and effort needed to conduct a consultation for NFP activity that is not likely to adversely affect listed species or designated critical habitat. These counterpart regulations will not change the section 7 standards, only the process by which consultation is conducted.

Monitoring

Issue: One commenter suggested that the periodic review and monitoring program should have on-site audits that occur quarterly and audits of the NLAA decisions that are conducted monthly, with a corrective action plan prepared by the Action Agency, if warranted. If the corrective action plan is not submitted on time, the ACA is automatically void.

Response: The Service and the Action Agencies will determine the most appropriate periodic review and monitoring program for each individual Action Agency. The counterpart regulations do contemplate, if appropriate, the termination of the ACA.

Issue: One commenter suggested that the Action Agencies should conduct the monitoring and periodic review program and then provide the Service with a report.

Response: The Service believes that, to maintain oversight over the program, the periodic review and monitoring must be done jointly between the Service and the Action Agency. This will allow the Service to recommend whether the terms of the ACA should be modified.

Oversight

Issue: The two State commenters, the tribes, and a number of other commenters believe that specific information should be included to clarify under what conditions an Action Agency's ACA may be suspended or revoked should the Action Agencies fail to meet their new ESA responsibilities.

Response: We anticipate that the ACA will provide the detail, specific to each Action Agency, for the periodic review and monitoring program. The agencies anticipate that the details of such items as timing and procedures will be described in the ACA. In addition, the ACA will specify the information that will be necessary to provide for the periodic review. Section 402.33(a)(2)(vi) specifically states that the Action Agency will be responsible for maintaining the necessary records to allow the Service to complete the periodic program evaluation. The Oversight section of the counterpart regulations discusses the standards that the Service will use to evaluate the Action Agencies' implementation of the regulation.

Issue: Several commenters believe that enforcement of the ACA will be problematic because suspension of an ACA resulting from failure to comply will not affect the validity of prior NLAA determinations. If an Action Agency is found violating the mandate of section 7, such a violation will have no bearing upon past projects enabled by the violation. One commenter suggested simply changing 402.34 to "Service Director is required to terminate the ACA if * * *"

Response: We disagree that enforcement will be an issue. The Action Agencies must comply with the terms of the ACA and the counterpart regulations prescribe the remedy for any failure by an Action Agency to comply

with the terms of the ACA. If, through the periodic review and monitoring program, the Service determines that implementation of this regulation is not consistent with the best available information, the ESA, or the section 7 regulations, then the Service will work with the Action Agency to correct the issue. If the consistency issues persist, the Service Director has the ability to terminate the ACA for an individual sub-unit of the Action Agency. This should not call into question any of the other sub-units' determinations or any of the determinations prior to the issue at hand. The Service Director always retains discretion to terminate the ACA with the Action Agency if it fails to comply with the requirements of this subpart, section 7 of the ESA, or the terms of the ACA. The terms of the ACA are intended to be enforceable only through the remedies available to the Services under the counterpart regulations.

Revisions to the Proposed Rule

In § 402.31, we changed "The purpose of these counterpart regulations is to improve the consultation * * *" to read, "The purpose of these counterpart regulations is to enhance the efficiency and effectiveness of the consultation * * *." The change is made to clarify that the intent of these counterpart regulations is to accelerate the rate at which fire plan projects are processed without changing the section 7 consultation standards.

Description/Overview of the Final Rule

Regulations at 50 CFR 402.04 provide that "the consultation procedures may be superseded for a particular Federal agency by joint counterpart regulations among that agency, the Fish and Wildlife Service, and the National Marine Fisheries Service." The preamble to the 1986 regulations for implementing section 7 of the ESA states that "such counterpart regulations must retain the overall degree of protection afforded listed species required by the [ESA] and these regulations. Changes in the general consultation process must be designed to enhance its efficiency without elimination of ultimate Federal agency responsibility for compliance with section 7." The approach in these counterpart regulations is consistent with § 402.04 because it leaves the standards for making NLAA determinations unchanged. The joint counterpart regulations establish an optional alternative process to conduct consultation under section 7 of the ESA for actions that the FS, BIA, BLM, FWS, or NPS might authorize, fund, or carry out to implement the NFP. The procedures outlined in these counterpart regulations differ from the existing procedures in 50 CFR part 402 subparts A and B, § 402.13 and § 402.14(b), by allowing an Action Agency to enter into an ACA with the Service that will allow the Action Agency to make an NLAA determination on a proposed NFP project without informal consultation or written concurrence from the Service. Further, Action Agencies operating under these counterpart regulations retain full responsibility for compliance with section 7 of the ESA.

Under the counterpart regulations, the Action Agencies will enter into an ACA with either FWS, NMFS or both. The ACA will include: (1) A list or description of the staff positions within the Action Agency that will have authority to make NLAA determinations; (2) a program for developing and maintaining the skills necessary within the Action Agency to make NLAA determinations, including a jointly developed training program based on the needs of the Action Agency; (3) provisions for incorporating new information and newly listed species or designated critical habitat into the Action Agency's effects analysis on proposed actions; (4) provisions for the Action Agency to maintain a list of fire plan projects that received NLAA determinations under the agreement; and (5) a mutually agreed upon program for monitoring and periodic program evaluations. By following the procedures in these counterpart regulations and the ACA, the Action Agencies fulfill their ESA section 7 consultation responsibility for actions covered under these regulations.

The purpose of the jointly developed training program between the Action Agency and the Service is to ensure that the Action Agency consistently interprets and applies the relevant provisions of the ESA and the regulations (50 CFR part 402) relevant to these counterpart regulations with the expectation that the Action Agency will reach the same conclusions as the Service. We expect that the training program will be consistent among Action Agencies, subject to differing needs and requirements of each agency, and will rely upon the ESA Consultation Handbook as much as possible. The training program may include jointly developed guidelines for conducting the ESA section 7 effects analysis for the particular listed species and critical habitat that occur in the jurisdiction of the Action Agency requesting the agreement. Training may also emphasize the use of project design criteria for listed species where they have been developed between the Service and the Action Agency.

Because the Service maintains information on listed species, the Service may supply any new information it receives that would be relevant to the effects analysis that the Action Agencies will conduct to make the NLAA determinations. In addition, the Service will coordinate with the Action Agency when new species are proposed for listing or new critical habitat is proposed.

The Service will use monitoring and periodic program reviews to evaluate an Action Agency's performance under the ACA at the end of the first year of implementation and then at intervals specified in the ACA. The evaluation may be on a subunit basis (*e.g.*, a particular National Forest or BLM district) where different subunits of an Action Agency begin implementation of the ACA at different times. The Service will evaluate whether the implementation of this regulation by the Action Agency is consistent with the best available scientific and commercial information, the ESA, and section 7 regulations. The result of the periodic program review may be to recommend changes to the Action Agency's implementation of the ACA. These recommendations could include suspending or excluding any participating Action Agency subunit, but more likely may include additional training. The Service will retain discretion for terminating the ACA if the requirements under the counterpart regulations are not met. However, any such suspension, exclusion, or termination will not affect the legal validity of NLAA determinations made prior to the suspension, exclusion, or termination.

Upon completion of an ACA, the Action Agency and the Service will implement the training program outlined in the ACA. At the Action Agency's discretion, the training program may be designed such that some subunits may begin implementing the ACA before agency personnel in other subunits are fully trained. The Action Agency will assume full responsibility for the adequacy of the NLAA determinations that it makes.

Required Determinations

Regulatory Planning and Review

In accordance with Executive Order 12866, this document is a significant rule because it may raise novel legal or policy issues, and was reviewed by the Office of Management and Budget (OMB) in accordance with the four criteria discussed below.

(a) This counterpart regulation will not have an annual economic effect of $100 million or more or adversely affect an economic sector, productivity, jobs, the environment, or other units of government. The counterpart regulations do not pertain to commercial products or activities or anything traded in the marketplace.

(b) This counterpart regulation is not expected to create inconsistencies with other agencies' actions. FWS and NMFS are responsible for carrying out the Act.

(c) This counterpart regulation is not expected to significantly affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients.

(d) OMB has determined that this rule may raise novel legal or policy issues and, as a result, this rule has undergone OMB review.

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (*i.e.*, small businesses, small organizations, and small government jurisdictions), unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. The Regulatory Flexibility Act requires Federal agencies to provide a statement of the factual basis for certifying that a rule will not have a significant economic impact on a substantial number of small entities.

Pursuant to the Regulatory Flexibility Act, we certified to the Small Business Administration that these regulations would not have a significant economic impact on a substantial number of small entities. The purpose of the rule is to increase the efficiency of the ESA section 7 consultation process for those activities conducted to implement the NFP. The changes will lead to the same protections for listed species as the section 7 consultation regulations at 50 CFR part 402 and will only eliminate the need for the Action Agency to conduct informal consultation with and obtain written concurrence from the Service for those NFP actions that the Action Agency determines are "not likely to adversely affect" (NLAA) any listed species or designated critical habitat.

Regulations at 50 CFR 402.04 provide that "the consultation procedures may be superseded for a particular Federal agency by joint counterpart regulations among that agency, the Fish and Wildlife Service, and the National Marine Fisheries Service." The preamble to the 1986 regulations for implementing section 7 states that "such counterpart regulations must retain the overall degree of protection afforded listed species required by the [ESA] and these regulations. Changes in the general consultation process must be designed to enhance its efficiency without elimination of ultimate Federal agency responsibility for compliance with section 7."

Under the counterpart regulations, the Action Agencies will enter into an Alternative Consultation Agreement (ACA) with either or both of the Services as appropriate. The ACA will include: (1) A list or description of the staff positions within the Action Agency that will have authority to make NLAA determinations; (2) a program for developing and maintaining the skills necessary within the Action Agency to make NLAA determinations, including a jointly developed training program based on the needs of the Action Agency; (3) provisions for incorporating new information and newly listed species or designated critical habitat into the Action Agency's effects analysis on proposed actions; (4) provisions for the Action Agency to maintain a list of fire plan projects that received NLAA determinations under the agreement; and (5) a mutually agreed upon program for monitoring and periodic program evaluations. The purpose of the training program is to ensure the Action Agency consistently interprets and applies the relevant provisions of the ESA and regulations (50 CFR 402), with the expectation that the Action Agency will reach the same conclusion as the Service.

This rule will not have a significant economic impact on a substantial number of small entities for the following reasons: (1) The joint counterpart ESA section 7 regulations apply only to ESA section 7 determinations made by one of the five Federal Action Agencies that implement the NFP; (2) the rule will only remove the requirement for the Action Agencies to conduct informal consultation with and obtain written concurrence from FWS or NMFS on those NFP actions they determine that are NLAA listed species or designated critical habitat; and (3) the regulations are designed to reduce potential economic burdens on the Services and Action Agencies by improving the efficiency of the process. Therefore, we certify that this action will not have a significant economic impact on a substantial number of small businesses, organizations, or governments pursuant to the RFA.

Executive Order 13211

On May 18, 2001, the President issued an Executive Order (E.O. 13211) on regulations that significantly affect energy supply, distribution, and use. Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. Although this rule is a significant action under Executive Order 12866, it is not expected to significantly affect energy supplies, distribution, or use. Therefore, this action is not a significant energy action and no Statement of Energy Effects is required.

Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*):

(a) These counterpart regulations will not "significantly or uniquely" affect small governments. A Small Government Agency Plan is not required. We expect that these counterpart regulations will not result in any significant additional expenditures.

(b) These counterpart regulations will not produce a Federal mandate on State, local, or tribal governments or the private sector of $100 million or greater in any year; that is, it is not a "significant regulatory action" under the Unfunded Mandates Reform Act. These counterpart regulations impose no obligations on State, local, or tribal governments.

Takings

In accordance with Executive Order 12630, these counterpart regulations do not have significant takings implications. These counterpart regulations pertain solely to ESA section 7 consultation coordination procedures, and the procedures have no impact on personal property rights.

Federalism

In accordance with Executive Order 13132, these counterpart regulations do not have significant Federalism effects. A Federalism assessment is not required. In keeping with Department of the Interior and Commerce regulations under section 7 of the ESA, we coordinated development of these counterpart regulations with

appropriate resource agencies throughout the United States.

Civil Justice Reform

In accordance with Executive Order 12988, this rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order. We promulgate these counterpart regulations consistent with 50 CFR 402.04 and section 7 of the ESA.

Paperwork Reduction Act

This rule would not impose any new requirements for collection of information that require approval by the OMB under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). This rule will not impose new record keeping or reporting requirements on State or local governments, individuals, businesses, or organizations. We may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB Control Number.

National Environmental Policy Act

These counterpart regulations have been developed by FWS and NMFS, jointly with FS, BIA, BLM, and NPS according to 50 CFR 402.04. The FWS and NMFS are considered the lead Federal agencies for the preparation of this rule, pursuant to 40 CFR 1501. We have analyzed these counterpart regulations in accordance with the criteria of the National Environmental Policy Act (NEPA), the Department of the Interior Manual (318 DM 2.2(g) and 6.3(D)), and National Oceanic and Atmospheric Administration (NOAA) Administrative Order 216–6 and have determined, after preparation of an environmental assessment, that the action does not have any significant effects. A Finding Of No Significant Impact has been prepared.

Government-to-Government Relationship With Indian Tribes

In accordance with the Secretarial Order 3206, "American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act" (June 5, 1997); the President's memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments" (59 FR 22951); E.O. 13175; and the Department of the Interior's 512 DM 2, we understand that we must relate to recognized Federal Indian Tribes on a Government-to Government basis. These counterpart regulations do not directly affect Tribal resources. These counterpart regulations may have an indirect effect on Native American Tribes as the Bureau of Indian Affairs may, at its discretion, implement the procedures outlined in the counterpart regulations for those activities affecting Tribal resources that they may authorize, fund, or carry out under the NFP. The analysis that is conducted for determining how a proposed project affects listed species or critical habitat remains unchanged by these counterpart regulations. Therefore, tribal resources will be unaffected by implementation of this rule and government-to-government consultation is not necessary.

List of Subjects in 50 CFR Part 402

Endangered and threatened species.

Final Regulation Promulgation

■ For the reasons set forth in the preamble, the Service amends part 402, title 50 of the Code of Federal Regulations as follows:

PART 402—[AMENDED]

■ 1. The authority citation for part 402 continues to read as follows:

Authority: 16 U.S.C. 1531 *et seq.*

■ 2. Add a new Subpart C to read as follows:

Subpart C—Counterpart Regulations For Implementing the National Fire Plan

Sec.
402.30 Definitions.
402.31 Purpose.
402.32 Scope.
402.33 Procedures.
402.34 Oversight.

Subpart C—Counterpart Regulations for Implementing the National Fire Plan

§ 402.30 Definitions.

The definitions in § 402.02 are applicable to this subpart. In addition, the following definitions are applicable only to this subpart.

Action Agency refers to the Department of Agriculture Forest Service (FS) or the Department of the Interior Bureau of Indian Affairs (BIA), Bureau of Land Management (BLM), Fish and Wildlife Service (FWS), or National Park Service (NPS).

Alternative Consultation Agreement (ACA) is the agreement described in § 402.33 of this subpart.

Fire Plan Project is an action determined by the Action Agency to be within the scope of the NFP as defined in this section.

National Fire Plan (NFP) is the September 8, 2000, report to the President from the Departments of the Interior and Agriculture entitled "Managing the Impact of Wildfire on Communities and the Environment" outlining a new approach to managing fires, together with the accompanying budget requests, strategies, plans, and direction, or any amendments thereto.

Service Director refers to the FWS Director or the Assistant Administrator for Fisheries for the National Oceanic and Atmospheric Administration.

§ 402.31 Purpose.

The purpose of these counterpart regulations is to enhance the efficiency and effectiveness of the consultation process under section 7 of the ESA for Fire Plan Projects by providing an optional alternative to the procedures found in §§ 402.13 and 402.14(b) of this part. These regulations permit an Action Agency to enter into an Alternative Consultation Agreement (ACA) with the Service, as described in § 402.33, which will allow the Action Agency to determine that a Fire Plan Project is "not likely to adversely affect" (NLAA) a listed species or designated critical habitat without formal or informal consultation with the Service or written concurrence from the Service. An NLAA determination for a Fire Plan Project made under an ACA, as described in § 402.33, completes the Action Agency's statutory obligation to consult with the Service for that Project. In situations where the Action Agency does not make an NLAA determination under the ACA, the Action Agency would still be required to conduct formal consultation with the Service when required by § 402.14. This process will be as protective to listed species and designated critical habitat as the process established in subpart B of this part. The standards and requirements for formal consultation under subpart B for Fire Plan Projects that do not receive an NLAA determination are unchanged.

§ 402.32 Scope.

(a) Section 402.33 establishes a process by which an Action Agency may determine that a proposed Fire Plan Project is not likely to adversely affect any listed species or designated critical habitat without conducting formal or informal consultation or obtaining written concurrence from the Service.

(b) Section 402.34 establishes the Service's oversight responsibility and the standard for review under this subpart.

(c) Nothing in this subpart C precludes an Action Agency at its discretion from initiating early, informal, or formal consultation as described in §§ 402.11, 402.13, and 402.14, respectively.

(d) The authority granted in this subpart is applicable to an Action Agency only where the Action Agency has entered into an ACA with the Service. An ACA entered into with one Service is valid with regard to listed species and designated critical habitat under the jurisdiction of that Service whether or not the Action Agency has entered into an ACA with the other Service.

§ 402.33 Procedures.

(a) The Action Agency may make an NLAA determination for a Fire Plan Project without informal consultation or written concurrence from the Director if the Action Agency has entered into and implemented an ACA. The Action Agency need not initiate formal consultation on a Fire Plan Project if the Action Agency has made an NLAA determination for the Project under this subpart. The Action Agency and the Service will use the following procedures in establishing an ACA.

(1) *Initiation:* The Action Agency submits a written notification to the Service Director of its intent to enter into an ACA.

(2) *Development and Adoption of the Alternative Consultation Agreement:* The Action Agency enters into an ACA with the Service Director. The ACA will, at a minimum, include the following components:

(i) A list or description of the staff positions within the Action Agency that will have authority to make NLAA determinations under this subpart C.

(ii) Procedures for developing and maintaining the skills necessary within the Action Agency to make NLAA determinations, including a jointly developed training program based on the needs of the Action Agency.

(iii) A description of the standards the Action Agency will apply in assessing the effects of the action, including direct and indirect effects of the action and effects of any actions that are interrelated or interdependent with the proposed action.

(iv) Provisions for incorporating new information and newly listed species or designated critical habitat into the Action Agency's effects analysis of proposed actions.

(v) A mutually agreed upon program for monitoring and periodic program evaluation to occur at the end of the first year following signature of the ACA and periodically thereafter.

(vi) Provisions for the Action Agency to maintain a list of Fire Plan Projects for which the Action Agency has made NLAA determinations. The Action Agency will also maintain the necessary records to allow the Service to complete the periodic program evaluations.

(3) *Training:* Upon completion of the ACA, the Action Agency and the Service will implement the training program outlined in the ACA to the mutual satisfaction of the Action Agency and the Service.

(b) The Action Agency may, at its discretion, allow any subunit of the Action Agency to implement this subpart as soon as the subunit has fulfilled the training requirements of the ACA, upon written notification to the Service. The Action Agency shall at all times have responsibility for the adequacy of all NLAA determinations it makes under this subpart.

(c) The ACA and any related oversight or monitoring reports shall be made available to the public through a notice of availability in the **Federal Register**.

§ 402.34 Oversight.

(a) Through the periodic program evaluation set forth in the ACA, the Service will determine whether the implementation of this subpart by the Action Agency is consistent with the best available scientific and commercial information, the ESA, and section 7 regulations.

(b) The Service Director may use the results of the periodic program evaluation described in the ACA to recommend changes to the Action Agency's implementation of the ACA. If and as appropriate, the Service Director may suspend any subunit participating in the ACA or exclude any subunit from the ACA.

(c) The Service Director retains discretion to terminate the ACA if the Action Agency fails to comply with the requirements of this subpart, section 7 of the ESA, or the terms of the ACA. Termination, suspension, or modification of an ACA does not affect the validity of any NLAA determinations made previously under the authority of this subpart.

Dated: November 26, 2003.

Craig Manson,

Assistant Secretary for Fish and Wildlife and Parks.

Dated: December 3, 2003.

William T. Hogarth,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 03–30393 Filed 12–5–03; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 031126295–3295–01; I.D. 111703B]

Fisheries of the Exclusive Economic Zone Off Alaska; Bering Sea and Aleutian Islands Area; Interim 2004 Harvest Specifications for Groundfish

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Interim final rule.

SUMMARY: NMFS issues interim 2004 total allowable catch (TAC) amounts for each category of groundfish, Community Development Quota (CDQ) reserve amounts, American Fisheries Act (AFA) pollock allocations and sideboard amounts, and prohibited species catch (PSC) allowances and prohibited species quota (PSQ) reserves for the groundfish fisheries of the Bering Sea and Aleutian Islands management area (BSAI). The intended effect is to conserve and manage the groundfish resources in the BSAI.

EFFECTIVE DATE: The interim harvest specifications are effective from 0001 hours, Alaska local time (A.l.t.), January 1, 2004, until the effective date of the final 2004 harvest specifications for BSAI groundfish, which will be published in the **Federal Register**.

ADDRESSES: Copies of the Environmental Assessment (EA) prepared for this action, the final 2002 Stock Assessment and Fishery Evaluation (SAFE) report, dated November 2002, and the final 2003 SAFE report, dated November 2003, are available from the North Pacific Fishery Management Council, West 4th Avenue, Suite 306, Anchorage, AK 99510–2252 (907–271–2809) or from its home page at *http://www.fakr.noaa.gov/npfmc*.

FOR FURTHER INFORMATION CONTACT: Mary Furuness, 907–586–7228, or *mary.furuness@noaa.gov*.

SUPPLEMENTARY INFORMATION:

Background

Federal regulations at 50 CFR part 679 implementing the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP) govern the groundfish fisheries in the BSAI. The North Pacific Fishery Management Council (Council) prepared the FMP, and NMFS approved it under the Magnuson-Stevens Fishery

Conservation and Management Act (Magnuson-Stevens Act). General regulations that also pertain to the U.S. fisheries appear at subpart H of 50 CFR part 600.

The Council met in October 2003 to review scientific information concerning groundfish stocks including the 2002 SAFE report and the EA (see **ADDRESSES**) and recommended proposed 2004 specifications. The Council recommended a proposed total acceptable biological catch (ABC) of 3,127,003 metric tons (mt) and a proposed total TAC of 1,998,443 mt for the 2004 fishing year. The proposed TAC amounts for each species were based on the best available biological and socioeconomic information.

Under § 679.20(c)(1), NMFS published in the **Federal Register** proposed harvest specifications for groundfish in the BSAI for the 2004 fishing year (68 FR 67642, December 3, 2003). That document contains a detailed discussion of the proposed 2004 TACs, initial TACs (ITACs) and related apportionments, CDQ reserves, ABC amounts, overfishing levels, PSC allowances, PSQ reserve amounts, and associated management measures of the BSAI groundfish fishery.

This action provides interim harvest specifications and apportionments thereof for the 2004 fishing year that will become available on January 1, 2004, and remain in effect until superseded by the final 2004 harvest specifications. Background information concerning the 2004 groundfish harvest specification process on which this interim action is based is provided in the above mentioned proposed specification document.

Establishment of Interim TACs

Regulations at § 679.20(b)(1)(i) require that 15 percent of the TAC for each target species or species group, except for pollock and the hook-and-line and pot gear allocation of sablefish, be placed in a non-specified reserve. The AFA supersedes this provision for pollock by requiring that the TAC for this species be fully allocated among the CDQ program, incidental catch allowance (ICA), and inshore, catcher/processor, and mothership directed fishery allowances.

Regulations at § 679.20(b)(1)(iii) require that one half of each TAC amount placed in the non-specified reserve, with the exception of squid, be allocated to the groundfish CDQ reserve and that 20 percent of the hook-and-line and pot gear allocation of sablefish be allocated to the fixed gear sablefish CDQ reserve. Regulations at § 679.20(a)(5)(i)(A) require that 10 percent of the pollock TAC be allocated to the pollock CDQ reserve. With the exception of the hook-and-line and pot gear sablefish CDQ reserve, the CDQ reserves are not further apportioned by gear. Regulations at § 679.21(e)(1)(i) also require that 7.5 percent of each PSC limit, with the exception of herring, be withheld as a PSQ reserve for the CDQ fisheries. Regulations governing the management of the CDQ and PSQ reserves are set forth at §§ 679.30 and 679.31.

Regulations at § 679.20(c)(2) require interim specifications to be effective at 0001 hours, A.l.t., January 1, and remain in effect until superseded by the final groundfish harvest specifications. Regulations at § 679.20(c)(2)(ii) provide that the interim specifications will be established as one-fourth of each proposed ITAC amount and apportionment thereof (not including pollock, Pacific cod, Atka mackerel, and the hook-and-line and pot gear allocation of sablefish), one-fourth of each proposed PSQ reserve and PSC allowance established at § 679.21, and the proposed first seasonal allowance of pollock, Pacific cod and Atka mackerel TAC. As stated in the proposed specifications (68 FR 67642, December 3, 2003), no harvest of groundfish is authorized before the effective date of this action implementing the interim specifications.

Interim 2004 BSAI Groundfish Harvest Specifications

Table 1 provides interim TAC and CDQ amounts and apportionments thereof. Amendment 77 to the FMP, approved by the Secretary of Commerce on October 20, 2003, provides for apportioning the BSAI Pacific cod TAC among hook-and-line and pot gear sectors. A final rule implementing Amendment 77 was published on December 1, 2003 (68 FR 67086), and will be effective by January 1, 2004. Amendment 77 will allocate the 18.3 percent pot gear allocation as: 15 percent to pot catcher vessels and 3.3 percent to pot catcher processors. Regulations at § 679.20(c)(2)(ii) do not provide for an interim specification for the hook-and-line and pot gear allocations of sablefish for the CDQ reserve or for sablefish managed under the Individual Fishing Quota (IFQ) program. As a result, directed fishing for the hook-and-line and pot gear allocations of CDQ sablefish and IFQ sablefish is prohibited until the effective date of the final 2004 groundfish specifications.

TABLE 1.—INTERIM 2004 TAC AMOUNTS FOR GROUNDFISH AND APPORTIONMENTS THEREOF FOR THE BERING SEA AND ALEUTIAN ISLANDS MANAGEMENT AREA[1]

Species and component (if applicable)	Area and/or gear (if applicable)	Interim TAC	Interim CDQ
Pollock:[2]			
AFA Inshore	BS	259,119	
AFA Inshore	SCA Limit[3]	41,769	
AFA Catcher/Processors[4]	BS	207,295	
Catch by C/Ps	BS	189,675	
Catch by CVs[4]	BS	17,620	
Unlisted C/P Limit[4]	BS	1,036	
AFA Catcher/Processors[4]	SCA Limit[3]	145,106	
AFA Mothership	BS	51,824	
AFA Mothership	SCA Limit[3]	36,277	
CDQ	BS		59,670
CDQ	SCA Limit[3]		41,769
ICA	BS	46,990	
ICA	AI	1,000	
ICA	Bogoslof District	50	
Excessive Harvesting Limit[5]	BS	90,692	
Excessive Processing Limit[5]	BS	155,471	
Total Pollock		566,278	59,670

TABLE 1.—INTERIM 2004 TAC AMOUNTS FOR GROUNDFISH AND APPORTIONMENTS THEREOF FOR THE BERING SEA AND ALEUTIAN ISLANDS MANAGEMENT AREA[1]—Continued

Species and component (if applicable)	Area and/or gear (if applicable)	Interim TAC	Interim CDQ
Pacific Cod[6]	Jig	1,411	
	Hook-and-line	42,937	
	Catcher/Processors		
	Hook-and-line Catcher Vessels	161	
	Pot Catcher/Processors	1,771	
	Pot Catcher Vessels	8,051	
	Catcher Vessels <60 Hook-and-line, Pot	1,252	
	ICA	500	
	Trawl Catcher Vessels	29,014	
	Trawl Catcher/Processors	20,724	
CDQ			15,563
Total Pacific Cod		105,821	15,563
Sablefish[7 8]	BS Trawl	283	14
	BS Hook-and-line and Pot	N/A	N/A
	AI Trawl	151	11
	AI Hook-and-line and Pot	N/A	N/A
Total Sablefish		434	25
Atka mackerel[9]	Western AI	8,496	1,499
	Western HLA Limit	5,097	
	Central AI	12,201	2,153
	Central HLA Limit	7,321	
	Eastern AI/BS		781
	Jig Gear	89	
	Other Gear	8,763	
Total Atka Mackerel		29,549	4,433
Yellowfin Sole	BSAI	17,797	1,570
Rock Sole	BSAI	9,350	825
Greenland Turbot	BS	570	50
	AI	281	25
Total Greenland Turbot		850	75
Arrowtooth Flounder	BSAI	2,550	225
Flathead Sole	BSAI	4,250	375
Other flatfish[10]	BSAI	638	56
Alaska plaice	BSAI	2,125	188
Pacific Ocean Perch	BS	300	27
	Western AI	1,227	108
	Central AI	701	62
	Eastern AI	734	65
Total Pacific Ocean Perch		2,962	262
Northern Rockfish	BS	26	2
	AI	1,249	110
Total Northern Rockfish		1275	112
Shortraker/Rougheye[11]	BS	29	3
	AI	177	16
	AI Trawl	53	
	AI Non-trawl	124	
Total Shortraker/Rougheye		206	19
Other Rockfish[12]	BS	204	18
	AI	135	12
Total Other Rockfish		339	30
Squid	BSAI	419	
"Other Species"[13]	BSAI	6,866	606

TABLE 1.—INTERIM 2004 TAC AMOUNTS FOR GROUNDFISH AND APPORTIONMENTS THEREOF FOR THE BERING SEA AND ALEUTIAN ISLANDS MANAGEMENT AREA[1]—Continued

Species and component (if applicable)	Area and/or gear (if applicable)	Interim TAC	Interim CDQ
Total interim TAC		751,709	84,034

[1] Amounts are in mt. These amounts apply to the entire Bering Sea (BS) and Aleutian Islands (AI) management area unless otherwise specified. With the exception of pollock, and for purposes of these specifications, the BS includes the Bogoslof District.

[2] After subtraction for the CDQ reserve and ICA, the pollock ITAC is allocated as a directed fishing allowance (DFA). Ten percent of the pollock TAC is allocated to the pollock CDQ reserve (§ 679.20(a)(5)(i)(A)). NMFS is allocating 3.5 percent of the pollock as an ICA (§ 679.20(a)(5)(i)(A)(*1*)). The first seasonal apportionment of pollock for all sectors is 40 percent of the annual DFA.

[3] The Steller sea lion conservation area (SCA) limits harvest to 28 percent of each sector's annual DFA until April 1. The remaining 12 percent of the annual DFA allocated to the A season may be taken outside of the SCA before April 1 or inside the SCA after April 1. If 28 percent of the annual DFA is not taken inside the SCA before April 1, the remainder is available to be taken inside the SCA after April 1.

[4] Under § 679.20(a)(5)(i)(A)(*4*), not less than 8.5 percent of the DFA allocated to listed catcher/processors (C/Ps) shall be available for harvest only by eligible catcher vessels (CVs) delivering to listed catcher/processors. The AFA unlisted catcher/processors are limited from exceeding a harvest amount of 0.5 percent of the DFA allocated to the AFA catcher/processor sector. § 679.20(a)(5)(i)(A)(*4*)(*iii*).

[5] Regulations at § 679.20(a)(5)(i)(A)(*6*) require that NMFS establish an excessive harvesting share limit equal to 17.5 percent of the sum of the pollock DFAs. Regulations at § 679.20(a)(5)(i)(A)(*7*) require that NMFS establish an excessive processing share limit equal to 30.0 percent of the sum of the pollock DFAs.

[6] After subtraction of the reserves, the ITAC amount for Pacific cod is allocated: 2 percent to vessels using jig gear, 51 percent to hook-and-line or pot gear, and 47 percent to trawl gear. The Pacific cod allocation to trawl gear is split evenly between catcher vessels and catcher/processors (*see* § 679.20(a)(7)(i)). The Pacific cod allocation to hook-and-line or pot gear is further allocated as an ICA and as the following directed fishing allowances: 80 percent to hook-and-line catcher/processors, 0.3 percent to hook-and-line catcher vessels, 3.3 percent to pot catcher/processors, 15 percent to pot catcher vessels, 1.4 percent to catcher vessels under 60 feet LOA using hook-and-line or pot gear (*see* § 679.20(a)(7)(i)(c)). The first seasonal allowances of the ITAC gear apportionments are in effect on January 1 as an interim TAC. The first seasonal allocations are 60 percent of the annual TAC, except for vessels using jig gear (40 percent), trawl catcher/processors (50 percent) and trawl catcher vessels (70 percent).

[7] Sablefish gear allocations are as follows: In the BS subarea, trawl gear is allocated 50 percent, and hook-and-line and pot gear are allocated 50 percent of the TAC. In the AI subarea, trawl gear is allocated 25 percent, and hook-and-line and pot gear are allocated 75 percent of the TAC (*see* § 679.20(a)(4)(iii) and (iv)). One-fourth of the ITAC amount for trawl gear is in effect January 1 as an interim TAC amount.

[8] The sablefish hook-and-line gear fishery is managed under the Individual Fishing Quota (IFQ) program and subject to regulations contained in subpart D of 50 CFR part 679. Twenty percent of the sablefish hook-and-line and pot gear final TAC amount will be reserved for use by CDQ participants. (*see* § 679.31(c).) Existing regulations at § 679.20(c)(2)(ii) do not provide for an interim specification for the CDQ nontrawl sablefish reserve or for an interim specification for sablefish managed under the IFQ program. In addition, in accordance with § 679.7(f)(3)(ii), retention of sablefish caught with fixed gear is prohibited unless the harvest is authorized under a valid IFQ permit and IFQ card. In 2004, IFQ permits and IFQ cards will not be valid before the effective date of the 2004 final specifications. Thus, fishing for sablefish with fixed gear is not authorized under these interim specifications. *See* subpart D of 50 CFR part 679 and § 679.23(g) for guidance on the annual allocation of IFQ and the sablefish fishing season.

[9] Regulations at § 679.20 (a)(8) require that up to 2 percent of the Eastern Aleutian subarea and the BS subarea ITAC be allocated to the jig gear fleet. The amount of this allocation is 1 percent. The jig gear allocation is not apportioned by season. The harvest limitation area (HLA) limit refers to the amount of each seasonal allowance that is available for fishing inside the HLA (§ 679.2). In 2004, 60 percent of each seasonal allowance is available for fishing inside the HLA in the Western and Central AI.

[10] "Other flatfish" includes all flatfish species except for Pacific halibut (a prohibited species), flathead sole, Greenland turbot, rock sole, arrowtooth flounder, yellowfin sole and Alaska plaice.

[11] Under § 679.20(a)(9), the ITAC of shortraker rockfish and rougheye rockfish specified for the Aleutian Islands subarea is allocated 30 percent to vessels using non-trawl gear and 70 percent to vessels using trawl gear.

[12] "Other rockfish" includes all Sebastes and Sebastolobus species except for Pacific ocean perch, northern, shortraker, and rougheye rockfish.

[13] "Other species" includes sculpins, sharks, skates, and octopus. Forage fish, as defined at § 679.2, are not included in the "other species" category.

Interim Allocation of PSC Limits for Crab, Halibut, and Herring

Under § 679.21(e), annual PSC limits are specified for red king crab, *Chionoecetes bairdi* Tanner crab, and *C. opilio* crab in applicable Bycatch Limitation Zones (*see* § 679.2) of the Bering Sea subarea, and for Pacific halibut and Pacific herring throughout the BSAI. Regulations at § 679.21(e) authorize the apportionment of each PSC limit into PSC allowances for specified fishery categories. Under § 679.21(e)(1)(i), 7.5 percent of each PSC limit specified for halibut, crab, and salmon is reserved as a PSQ reserve for use by the groundfish CDQ program.

Regulations at § 679.20(c)(2)(ii) provide that one-fourth of each proposed PSQ reserve and PSC allowance be made available on an interim basis for harvest at the beginning of the fishing year, until superseded by the final harvest specifications. The PSQ reserves and fishery specific interim PSC allowances for halibut and crab are specified in Table 2 and are in effect at 0001 hours, A.l.t., January 1, 2004.

TABLE 2.—INTERIM 2004 PROHIBITED SPECIES BYCATCH ALLOWANCES FOR THE BSAI TRAWL AND NON-TRAWL FISHERIES

	Prohibited species and zone					
	Halibut mortality (mt) BSAI	Herring (mt) BSAI	Red King Crab animals Zone 1[1]	*C. opilio* (animals) COBLZ[2]	*C. bairdi* (animals) Zone 1[1]	*C. bairdi* (animals) Zone 2[1]
Trawl fisheries:						
Yellowfin sole	222	35	4,166	694,245	85,211	447,115
Rock sole/other flatfish/flat. sole[4]	195	5	14,946	242,283	91,330	149,039
Red King Crab Savings Subarea[3]			5,231			

TABLE 2.—INTERIM 2004 PROHIBITED SPECIES BYCATCH ALLOWANCES FOR THE BSAI TRAWL AND NON-TRAWL FISHERIES—Continued

	Prohibited species and zone					
	Halibut mortality (mt) BSAI	Herring (mt) BSAI	Red King Crab animals Zone 1[1]	*C. opilio* (animals) COBLZ[2]	*C. bairdi* (animals) Zone 1[1]	*C. bairdi* (animals) Zone 2[1]
Turbot/arrowtooth/sablefish[5]		2		10,060		
Rockfish—July 1–December 31	17	2		10,059		2,747
Pacific cod	359	5	3,270	31,184	45,778	81,044
Midwater trawl pollock		296				
Pollock/Atka mackerel/other[6]	58	37	50	18,107	4,306	6,868
Total Trawl PSC	850	382	22,432	1,005,938	226,625	686,813
Non-trawl fisheries:						
Pacific cod—Total	194					
Other non-trawl—Total	14					
Groundfish pot & jig	exempt					
Sablefish hook-and-line	exempt					
Total non-trawl PSC	207					
PSQ Reserve[7]	86		1,818	81,562	18,375	55,687
Grand total	1,144	382	24,250	1,087,500	245,000	742,500

[1] Refer to § 679.2 for definitions of areas.

[2] *C. opilio* Bycatch Limitation Zone. Boundaries are defined at 50 CFR part 679, Figure 13.

[3] In October 2003, the Council proposed limiting red king crab for trawl fisheries within the Red King Crab Savings Subarea (RKCSS) to 35 percent of the total allocation to the rock sole, flathead sole, and other flatfish fishery category (§ 679.21(e)(3)(ii)(B)).

[4] "Other flatfish" for PSC monitoring includes all flatfish species, except for Pacific halibut (a prohibited species), greenland turbot, rock sole, yellowfin sole and arrowtooth flounder.

[5] Greenland turbot, arrowtooth flounder, and sablefish fishery category.

[6] Pollock other than pelagic trawl pollock, Atka mackerel, and "other species" fishery category.

[7] With the exception of herring, 7.5 percent of each PSC limit is allocated to the CDQ program as PSQ reserve. The PSQ reserve is not allocated by fishery, gear or season.

Directed Fishing Closures

In accordance with § 679.20(d)(1)(i), if the Administrator, NMFS, Alaska Region (Regional Administrator) determines that any allocation or apportionment of a target species or "other species" category has been or will be reached, the Regional Administrator may establish a directed fishing allowance for that species or species group. If the Regional Administrator establishes a directed fishing allowance, and that allowance is or will be reached before the end of the fishing year, NMFS will prohibit directed fishing for that species or species group in the specified subarea or district (§ 697.20(d)(1)(iii)). Similarly, under regulations at § 679.21(e), if the Regional Administrator determines that a fishery category's bycatch allowance of halibut, red king crab, *C. bairdi* crab or *C. opilio* crab for a specified area has been reached, the Regional Administrator will prohibit directed fishing for each species in that category in the specified area.

The Regional Administrator has determined that the remaining allocation amounts in Table 3 will be necessary as incidental catch to support other anticipated groundfish fisheries for the 2004 fishing year.

TABLE 3.—INTERIM DIRECTED FISHING CLOSURES

Area	Species	Incidental catch amount, in mt
Bogoslof District	Pollock	50
Aleutian Islands subarea	Pollock	1,000
	Northern Rockfish	1,249
	Shortraker/rougheye rockfish trawl	53
	Shortraker/rougheye rockfish non trawl	124
	"Other rockfish"	135
Bering Sea subarea	Pacific ocean perch	300
	"Other rockfish"	204
	Northern rockfish	26
	Shortraker/rougheye rockfish	29
Bering Sea and Aleutian Islands	"Other Species"	6,866

Consequently, in accordance with § 679.20(d)(1)(i), the Regional Administrator establishes the directed fishing allowances for the above species or species groups as zero.

Therefore, in accordance with § 679.20(d)(1)(iii), NMFS is immediately prohibiting directed fishing for these species in the specified areas. These closures will remain in effect from 0001 hrs, A.l.t., January 1, 2004, until superseded by the final 2004 harvest specifications for BSAI groundfish.

In addition, the BSAI Zone 1 annual red king crab allowance specified for the trawl rockfish fishery (§ 679.21(e)(3)(iv)(D)) is 0 mt and the BSAI first seasonal halibut bycatch allowance specified for the trawl rockfish fishery is 0 mt. The BSAI annual halibut bycatch allowance specified for the trawl Greenland turbot/arrowtooth flounder/sablefish fishery categories is 0 mt (§ 679.21(e)(3)(iv)(c)). Therefore, in accordance with § 679.21(e)(7)(ii) and (v), NMFS is prohibiting directed fishing for rockfish by vessels using trawl gear in Zone 1 of the BSAI and directed fishing for Greenland turbot/arrowtooth flounder/sablefish by vessels using trawl gear in the BSAI from 0001 hrs., A.l.t., January 1, 2004, until superseded by the final 2004 harvest specifications for BSAI groundfish. NMFS is also prohibiting directed fishing for rockfish outside Zone 1 in the BSAI until 1200 hrs, A.l.t, July 4, 2004.

While these closures are in effect, the maximum retainable amounts at § 679.20(e) and (f) apply at any time during a fishing trip. These closures to directed fishing are in addition to closures and prohibitions found in regulations at 50 CFR part 679. Areas are defined in § 679.2. In the BSAI, "Other rockfish" includes *Sebastes* and *Sebastōlobus* species except for Pacific ocean perch, shortraker, rougheye, and northern rockfish.

Bering Sea Subarea Inshore Pollock Allocations

Regulations at § 679.4 set forth procedures for AFA inshore catcher vessel pollock cooperatives to apply for and receive cooperative fishing permits and inshore pollock allocations. Table 4 lists the interim pollock allocations to the seven inshore catcher vessel pollock cooperatives for 2004. Allocations for cooperatives and vessels not participating in cooperatives are not made for the AI subarea because the Aleutian Islands (AI) subarea has been closed to directed fishing for pollock.

TABLE 4.—INTERIM 2004 BERING SEA SUBAREA INSHORE COOPERATIVE ALLOCATIONS

Cooperative name and member vessels	Sum of member vessel's official catach histories[1]	Percentage of inshore sector allocation	Interim cooperative allocation
Akutan Catcher Vessel Association—Aldebaran, Arctic Explorer, Arcturus, Blue Fox, Cape Kiwanda, Columbia, Dominator, Exodus, Flying Cloud, Golden Dawn, Golden Pisces, Hazel Lorraine, Intrepid Explorer, Leslie Lee, Lisa Melinda, Majesty, Marcy J, Margaret Lyn, Nordic Explorer, Northern Patriot, Northwest Explorer, Pacific Ram, Pacific Viking, Pegasus, Peggy Jo, Perseverance, Predator, Raven, Royal American, Seeker, Sovereignty, Traveler, Viking Explorer	245,527	28.085	72,773
Arctic Enterprise Association—Bristol Explorer, Ocean Explorer, Pacific Explorer	36,807	4.210	10,909
Northern Victor Fleet Cooperative—Anita J., Collier Brothers, Commodore, Excalibur II, Goldrush, Half Moon Bay, Miss Berdie, Nordic Fury, Pacific Fury, Poseidon, Royal Atlantic, Sunset Bay, Storm Petrel	73,656	8.425	21,831
Peter Pan Fleet Cooperative—Amber Dawn, American Beauty, Elizabeth F, Morning Star, Ocean Leader, Oceanic, Providian, Topaz, Walter N	18,693	2.138	5,541
Unalaska Cooperative—Alaska Rose, Bering Rose, Destination, Great Pacific, Messiah, Morning Star, MS Amy, Progress, Sea Wolf, Vanguard, Western Dawn	106,737	12.209	31,636
UniSea Fleet Cooperative—Alsea, American Eagle, Argosy, Auriga, Aurora, Defender, Gun-Mar, Mar-Gun, Nordic Star, Pacific Monarch, Seadawn, Starfish, Starlite	202,479	23.161	60,015
Westward Fleet Cooperative—A.J., Alaskan Command, Alyeska, Arctic Wind, Caitlin Ann, Chelsea K, Dona Martita, Fierce Allegiance, Hickory Wind, Ocean Hope 3, Pacific Challenger, Pacific Knight, Pacific Prince, Starward, Viking, Westward I	189,942	21.727	56,298
Open access AFA vessels	395	0.045	117
Total inshore allocation	874,238	100	259,119

[1] According to regulations at 679.62(e)(1) the individual catch history for each vessel is equal to the vessel's best 2 of 3 years inshore pollock landings from 1995 through 1997 and includes landings to catcher/processors for vessels that made 500 or more mt of landings to catcher/processors from 1995 through 1997.

According to regulations at § 679.20(a)(5)(i)(a)(3), NMFS must subdivide the inshore allocation into allocations for cooperatives and vessels not fishing in a cooperative. In addition, according to regulations at § 679.22(a)(7)(vii), NMFS must establish harvest limits inside the Steller Sea Lion Conservation Area (SCA) and provides a set-aside so that catcher vessels less than or equal to 99 ft (30.2 m) LOA have the opportunity to operate entirely within the SCA during the A season. Accordingly, table 5 lists the interim apportionment of the Bering Sea subarea inshore pollock allocation into allocations for vessels fishing for an inshore cooperative and for vessels fishing for the inshore open access sector and establishes a cooperative sector SCA set-aside for AFA catcher vessels less than or equal to 99 ft (30.2 m) LOA. The SCA set-aside for catcher vessels less than or equal to 99 ft (30.2 m) LOA that are not participating in a cooperative will be established inseason based on actual participation levels and is not included in table 5.

TABLE 5.—INTERIM 2004 BERING SEA SUBAREA POLLOCK ALLOCATIONS, IN MT, TO THE COOPERATIVE AND OPEN ACCESS SECTORS OF THE INSHORE POLLOCK FISHERY

	A season TAC	A season inside SCA[1]
Cooperative sector:		
Vessels > 99 ft	n/a	163,459
Vessels ≤ 99 ft	n/a	17,842

TABLE 5.—INTERIM 2004 BERING SEA SUBAREA POLLOCK ALLOCATIONS, IN MT, TO THE COOPERATIVE AND OPEN ACCESS SECTORS OF THE INSHORE POLLOCK FISHERY—Continued

	A season TAC	A season inside SCA[1]
Total	259,002	181,301
Open access sector	117	[2]82
Total inshore	259,119	181,383

[1] The Steller Sea Lion Conservation area (SCA) is established at § 679.22(a)(7)(vii).

[2] SCA limitations for vessels less than or equal to 99 ft LOA that are not participating in a cooperative will be established on an inseason basis in accordance with § 679.22(a)(7)(vii)(c)(*2*) which specifies that "the Regional Administrator will prohibit directed fishing for pollock by vessels catching pollock for processing by the inshore component greater than 99 ft (30.2 m) LOA before reaching the inshore SCA harvest limit during the A season to accommodate fishing by vessels less than or equal to 99 ft (30.2 m) inside the SCA for the duration of the inshore seasonal opening."

Listed AFA Catcher/Processor Sideboards

In 2003, the formula for setting AFA catcher/processor sideboard limits for non-pollock groundfish changed from calculations made for sideboard limits in 2000 through 2002. The basis for these sideboard limits is described in detail in the final rule implementing major provisions of the AFA (67 FR 79692, December 30, 2002). The interim 2004 catcher/processor sideboard limits are set out in Table 6.

All non-pollock groundfish that is harvested by listed AFA catcher/processors, whether as targeted catch or incidental catch, will be deducted from the interim sideboard limits in Table 6. However, non-pollock groundfish that is delivered to listed catcher/processors by catcher vessels will not be deducted from the interim 2004 sideboard limits for the listed catcher/processors.

TABLE 6.—INTERIM 2004 BSAI AFA LISTED CATCHER/PROCESSOR GROUNDFISH SIDEBOARDS, IN MT

Target species	Area	1995–1997 Retained catch	1995–1997 Available TAC	1995–1997 Ratio	Interim 2004 TAC available to trawl C/Ps	Interim 2004 C/P sideboard limit
Pacific cod trawl	BSAI	12,424	51,450	0.241	20,724	4,994
Sablefish trawl	BS	8	1,736	0.005	283	1
	AI	0	1,135	0.000	151	0
Atka mackerel	Western AI					
	A season [1]	n/a	n/a	0.200	8,496	1,699
	HLA limit [2]				5,097	
	Central AI					
	A season [1]	n/a	n/a	0.115	12,201	1,403
	HLA limit [2]				7,321	0
Yellowfin sole	BSAI	100,192	527,000	0.190	17,797	3,381
Rock sole	BSAI	6,317	202,107	0.031	9,350	290
Greenland turbot	BS	121	16,911	0.007	850	
	AI	23	6,839	0.003	570	2
Arrowtooth flounder	BSAI	76	36,873	0.002	2,550	5
Flathead sole	BSAI	1,925	87,975	0.022	4,250	94
Alaska plaice	BSAI	3,243		0.035	2,125	74
Other flatfish	BSAI	3,243	92,428	0.035	638	22
Pacific ocean perch	BS	12	5,760	0.002	300	1
	Western AI	54	12,440	0.004	1,227	5
	Central AI	3	6,195	0.000	701	0
	Eastern AI	125	6,265	0.020	734	15
Northern rockfish	BS			0.008	26	0
	AI	83	13,254	0.006	1,249	7
Shortraker/rougheye	BS	8		0.008	29	0
Trawl	AI	42	2,827	0.015	53	1
Other rockfish	BS	18	1,026	0.018	204	4
	AI	22	1,924	0.011	135	1
Squid	BSAI	73	3,670	0.020	419	
Other species	BSAI	553	65,925	0.008	6,866	55

[1] The seasonal apportionment of Atka mackerel in the open access fishery is 50 percent in the A season and 50 percent in the B season. Listed AFA catcher/processors are limited to harvesting no more than zero in the Eastern Aleutian District and Bering Sea subarea, 20 percent of the available TAC in the Western Aleutian District, and 11.5 percent of the available TAC in the Central Aleutian District.

[2] HLA limit refers to the amount of each seasonal allowance that is available for fishing inside the HLA (§ 679.2). In 2004, 60 percent of each seasonal allowance is available for fishing inside the HLA in the Western and Central Aleutian Districts. Pacific cod harvest by trawl gear in the Aleutian Islands HLA, west of 178 degrees W. long. is prohibited during the Atka mackerel HLA directed fisheries.

Regulations at § 679.64(a)(5) establish a formula for PSC sideboard limits for listed AFA catcher/processors. These amounts are equivalent to the percentage of PSC amounts taken in the non-pollock groundfish fisheries by the AFA catcher/processors listed in subsection 208(e) and section 209 of the AFA from 1995 through 1997. PSC amounts taken by listed catcher/processors in BSAI non-pollock groundfish fisheries from 1995 through 1997 are shown in Table 7. These data were used to calculate the PSC catch ratios for pollock catcher/processors shown in Table 7. The 2004 interim PSC limits available to trawl catcher/processors are multiplied by the ratios to determine the PSC sideboard limits for listed AFA catcher/processors in the 2004 interim non-pollock groundfish fisheries.

PSC that is caught by listed AFA catcher/processors participating in any

non-pollock groundfish fishery listed in Table 7 will accrue against the interim 2004 PSC sideboard limits for the listed AFA catcher/processors. Regulations at § 679.21(e)(3)(v), authorize NMFS to close directed fishing for non-pollock groundfish for listed AFA catcher/processors once an interim 2004 PSC sideboard limit listed in Table 7 is reached.

Crab or halibut PSC that is caught by listed AFA catcher/processors while fishing for pollock will accrue against the bycatch allowances annually specified for either the midwater pollock or the pollock/Atka mackerel/other species fishery categories under regulations at § 679.21(e)(3)(iv).

TABLE 7.—INTERIM 2004 BSAI AFA LISTED CATCHER/PROCESSOR PROHBITIED SPECIES SIDEBOARD LIMITS[1]

PSC species	1995–1997			Interim 2004 PSC available to trawl C/Ps	Interim 2004 C/P sideboard limit
	PSC catch	Total PSC	Ratio of PSC catch/ Total PSC		
Halibut mortality	955	11,325	0.084	851	71
Red king crab	3,098	473,750	0.007	22,432	157
C. opilio	2,323,731	15,139,178	0.153	1,005,938	153,908
C. bairdi:					
Zone 1	385,978	2,750,000	0.140	226,625	31,728
Zone 2	406,860	8,100,000	0.050	686,813	34,341

[1] Halibut amounts are in mt of halibut mortality. Crab amounts are in numbers of animals.

AFA Catcher Vessel Sideboards Limits

Regulations at § 679.64(b) establish a formula for setting AFA catcher vessel groundfish and PSC sideboard limits for the BSAI. The basis for these sideboard limits is described in detail in the final rule implementing major provisions of the AFA (67 FR 79692, December 30, 2002). The interim 2004 AFA catcher vessel sideboard limits are shown in Tables 8 and 9.

All harvests of groundfish sideboard species made by non-exempt AFA catcher vessels, whether as targeted catch or incidental catch, will be deducted from the interim sideboard limits listed in Table 8.

TABLE 8.—INTERIM 2004 BSAI AMERICAN FISHERIES ACT CATCHER VESSEL SIDEBOARDS LIMITS, IN MT

Species	Fishery by area/season/processor/gear	Ratio of 1995–1997 AFA CV catch to 1995–1997 TAC	Interim 2004 TAC	Interim 2004 catcher vessel sideboard limit
Pacific cod	BSAI			
	Jig gear	0.0000	1,411	0
	Hook-and-line CV			0
	Jan 1–Jun 10	0.0006	161	0
	Pot gear			0
	Jan 1–Jun 10	0.0006	9,822	6
	CV <60 feet LOA using hook-and-line or pot gear	0.0006	1,252	1
	Trawl gear, catcher vessel, Jan 20–Apr 1	0.8609	29,014	24,978
Sablefish	BS trawl gear	0.0906	283	26
	AI trawl gear	0.0645	151	10
Atka mackerel	*Eastern AI/BS*			0
	Jig gear	0.0031	89	0
	Other gear			0
	Jan 1–Apr 15	0.0032	4,381	14
	Central AI			0
	Jan 1–Apr 15	0.0001	12,201	1
	HLA limit	0.0001	7,321	1
	Western AI, Jan 1–Apr 15	0	8,496	0
	HLA limit	0.0000	5,097	0
Yellowfin sole	BSAI	0.0647	17,797	1,151
Rock sole	BSAI	0.0341	9,350	319
Greenland Turbot	BS	0.0645	570	37
	AI	0.0205	281	6
Arrowtooth flounder	BSAI	0.0690	2,550	176
Alaska plaice	BSAI	0.0441	2,125	94
Other flatfish	BSAI	0.0441	638	28
POP	BS	0.1000	300	30
	Eastern AI	0.0077	734	6
	Central AI	0.0025	701	2
	Western AI	0.0000	1,227	0
Northern rockfish	BS	0.0280	26	1
	AI	0.0089	1,249	11
Shortraker/Rougheye Trawl	BS	0.0048	29	0
	AI	0.0035	53	0

TABLE 8.—INTERIM 2004 BSAI AMERICAN FISHERIES ACT CATCHER VESSEL SIDEBOARDS LIMITS, IN MT—Continued

Species	Fishery by area/season/processor/gear	Ratio of 1995–1997 AFA CV catch to 1995–1997 TAC	Interim 2004 TAC	Interim 2004 catcher vessel sideboard limit
Other rockfish	BS	0.0048	204	1
	AI	0.0095	135	1
Squid	BSAI	0.3827	419	160
Other species	BSAI	0.0541	6,866	371
Flathead Sole	BS trawl gear	0.0505	4,250	215

The AFA catcher vessel PSC limit for halibut and each crab species in the BSAI for which a trawl bycatch limit has been established will be a portion of the PSC limit equal to the ratio of aggregate retained groundfish catch by AFA catcher vessels in each PSC target category from 1995 through 1997, relative to the retained catch of all vessels in that fishery from 1995 through 1997. For the BSAI, the interim PSC sideboard limits for AFA catcher vessels are listed in Table 9.

Halibut and crab PSC that is caught by AFA catcher vessels participating in any non-pollock groundfish fishery listed in Table 9 will accrue against the interim 2004 PSC sideboard limits for AFA catcher vessels. Regulations at § 679.21(d)(8) and (e)(3)(v) provide authority to close directed fishing for non-pollock groundfish for AFA catcher vessels once an interim 2004 PSC sideboard limit for the BSAI listed in Table 9 is reached. PSC that is caught by AFA catcher vessels while fishing for pollock in the BSAI will accrue against either the midwater pollock or the pollock/Atka mackerel/"other species" fishery categories under regulations at § 679.21(e).

TABLE 9.—INTERIM 2004 AMERICAN FISHERIES ACT CATCHER VESSEL PROHIBITED SPECIES CATCH SIDEBOARD LIMITS FOR THE BSAI.[1]

PSC species	Target fishery category[2]	Ratio of 1995–1997 AFA CV retained catch to total retained catch	Interim 2004 PSC Limit	Interim 2004 AFA catcher vessel PSC sideboard limit
Halibut	Pacific cod trawl	0.6183	359	222
	Pacific cod hook-and-line or pot	0.0022	194	0
	Yellowfin sole	0.1144	222	25
	Rock sole/flat. sole/other flatfish[5]	0.2841	195	55
	Turbot/Arrowtooth/Sablefish	0.2327	0	0
	Rockfish (July 4–December 31)	0.0245	17	0
	Pollock/Atka mackerel/Other sp.	0.0227	58	1
Red King Crab	Pacific cod	0.6183	3,270	2,022
Zone 1[4]	Yellowfin sole	0.1144	4,166	477
	Rock sole/flat. sole/other flatfish[5]	0.2841	14,946	4,246
	Pollock/Atka mackerel/Other sp.	0.0227	50	1
C. opilio	Pacific cod	0.6183	31,184	19,281
COBLZ[3]	Yellowfin sole	0.1144	694,245	79,422
	Rock sole/flat. sole/other flatfish[5]	0.2841	242,283	68,833
	Pollock/Atka mackerel/Other sp.	0.0227	18,107	411
	Rockfish	0.0245	10,059	246
	Turbot/Arrowtooth/Sablefish	0.2327	10,060	2,341
C. bairdi	Pacific cod	0.6183	45,778	28,305
Zone 1	Yellowfin sole	0.1144	85,211	9,748
	Rock sole/flat. sole/other flatfish[5]	0.2841	91,330	25,947
	Pollock/Atka mackerel/Other sp.	0.0227	4,306	98
C. bairdi	Pacific cod	0.6183	81,044	50,110
Zone 2	Yellowfin sole	0.1144	447,115	51,150
	Rock sole/flat. sole/other flatfish[5]	0.2841	149,039	42,342
	Pollock/Atka mackerel/Other sp.	0.0227	6,868	156
	Rockfish	0.0245	2,747	67

[1] Halibut amounts are in mt of halibut mortality. Crab amounts are in numbers of animals.
[2] Target fishery categories are defined in regulation at § 679.21(e)(3)(iv).
[3] *C. opilio* Bycatch Limitation Zone. Boundaries are defined at Figure 13 of 50 CFR part 679.
[4] In October 2003, the Council recommended that the red king crab bycatch for trawl fisheries within the Red King Crab Savings Subarea be limited to 35 percent of the total allocation to the rock sole/flathead sole/"other flatfish" fishery category (§ 679.21(e)(3)(ii)(B)).
[5] "Other flatfish" for PSC monitoring includes all flatfish species, except for Pacific halibut (a prohibited species), Greenland turbot, rock sole, yellowfin sole, arrowtooth flounder.

AFA Catcher/Processor and Catcher Vessel Sideboard Directed Fishing Closures

The Regional Administrator has determined that many of the interim AFA catcher/processor and catcher vessel sideboard limits listed in Table 10 and 11 are necessary as incidental catch to support other anticipated groundfish fisheries for the 2004 fishing year. In accordance with § 679.20(d)(1)(iv), the Regional Administrator establishes the limits listed in Table 10 and 11 as directed fishing allowances. The Regional Administrator finds that many of these directed fishing allowances will be reached before the end of the year. Therefore, in accordance with § 679.20(d)(1)(iii), NMFS is prohibiting directed fishing by AFA catcher/processors for the species in the specified areas set out in Table 10 and directed fishing by non-exempt AFA catcher vessels for the species in the specified areas set out in Table 11.

TABLE 10.—INTERIM AMERICAN FISHERIES ACT LISTED CATCHER/PROCESSOR SIDEBOARD DIRECTED FISHING CLOSURES.[1]

Species	Area	Gear types	Incidental catch amount
Sablefish trawl	BS	Trawl	1
	AI	Trawl	0
Rock sole	BSAI	all	290
Greenland turbot	BS	all	6
	AI	all	2
Arrowtooth flounder	BSAI	all	5
Pacific ocean perch	BS	all	1
	Western AI	all	5
	Central AI	all	0
	Eastern AI	all	15
Northern rockfish	BS	all	0
	AI	all	7
Shortraker/Rougheye rockfish	BS	all	0
	AI	all	1
Other rockfish	BS	all	4
	AI	all	1
Squid	BSAI	all	8
Other species	BSAI	all	55

[1] Maximum retainable amounts may be found in Table 11 to 50 CFR part 679. Specified amounts are in mt.

TABLE 11.—INTERIM AMERICAN FISHERIES ACT CATCHER VESSEL SIDEBOARD DIRECTED FISHING CLOSURES.[1]

Species	Area	Gear	Incidental catch amount
Pacific cod	BSAI	hook-and-line	0
	BSAI	pot	6
	BSAI	jig	0
Sablefish	BS	trawl	26
	AI	trawl	10
Atka mackerel	Eastern AI/BS	jig	0
	Eastern AI/BS	other	14
	Central AI	all	1
	Western AI	all	0
Greenland Turbot	BS	all	37
	AI	all	6
Arrowtooth flounder	BSAI	all	176
Pacific ocean perch	BS	all	30
	Western AI	all	6
	Central AI	all	2
	Eastern AI	all	0
Northern rockfish	BS	all	1
	AI	all	11
Shortraker/rougheye rockfish	BS	all	0
	AI	trawl	0
Other rockfish	BS	all	1
	AI	all	1
Squid	BSAI	all	160
Other species	BSAI	all	371

[1] Maximum retainable amounts may be found in Table 11 to 50 CFR part 679. Specified amounts are in mt.

Classification

This action is authorized under 50 CFR 679.20 and is exempt from review under Executive Order 12866.

Because this action is a final action by NMFS, analyses required under the Magnuson-Stevens Act must be completed and considered by the agency before promulgation of the interim harvest specifications.

Regulations at 50 CFR 679.20(c)(2) require NMFS to specify harvest specifications to be effective January 1 and to remain in effect until superceded by the final specifications. Without interim specifications in effect on January 1, the groundfish fisheries would not be able to open, resulting in disruption within the fishing industry. NMFS cannot publish interim specifications until proposed specifications are completed, because the interim specifications are derived from the proposed specifications, as required by regulations at 50 CFR 679.20(c)(2).

The proposed specifications are based on the preliminary recommendations of the Plan Team, which were reviewed by the Scientific and Statistical Committee, Advisory Panel, and Council in October, 2003 in projecting 2003 biomass amounts, as identified in the 2002 SAFE Report, for the proposed 2004 ABC, overfishing levels, and TAC amounts. The Plan Team recommendations incorporate the most current data available from a number of sources, including current-year industry catch levels, and current-year trawl and hydro-acoustic surveys. These data are not available in time for Council review prior to the October Council meeting, as the surveys are conducted during the summer months, and industry catch levels reflect current year activity. These updated data sources represent the best available scientific information. These data provide the basis for the proposed and interim specifications.

The proposed specifications, as required by regulations at 50 CFR 679.20(c)(1)(i)(A), must be published as soon as practicable *after* consultation with the Council, which occurs at the Council's October meeting. This requirement, along with the requirement of national standard 2 of the Magnuson-Stevens Act to use the best scientific information available, prevents NMFS from publishing the proposed specifications early enough to provide sufficient time to have a public comment period for the interim specifications, which are derived from the proposed specifications, and to have the interim specifications effective on January 1.

As stated above, disruption of the fishing industry, and consequent impacts to fishing communities and the public, would occur if the interim specifications were not effective January 1. Additionally, the public is provided an opportunity to comment on the proposed specifications, from which the interim specifications are derived. For these reasons, good cause exists under 5 U.S.C. 553(b)(B) to waive prior notice and opportunity for public comment on this action as such procedures would be impracticable and contrary to the public interest.

Likewise, the AA finds good cause to waive the 30-day delay in effectiveness date of the interim specifications. Regulations at 50 CFR 679.20(c)(2) requires NMFS to establish interim harvest specifications to be effective on January 1 and to remain in effect until superseded by the publication of final harvest specifications by the Office of the Federal Register. NMFS interprets regulations at § 679.20(c)(2) as requiring the filing of interim specifications with the Office of the Federal Register before any harvest of groundfish is authorized. The interim specifications are based on the proposed 2004 specifications.

The interim specifications rely on data used to propose the 2004 specifications, and those data are not available until the after summer surveys are conducted (see above). Without interim specifications in effect on January 1, the groundfish fisheries would not be able to open on that date, resulting in disruption of the fishing industry. These reasons constitute good cause pursuant to 5 U.S.C. 553(d)(3) to waive the 30-day delay in effectiveness date.

Because these interim specifications are not required to be issued with prior notice and opportunity for public comment pursuant to 5 U.S.C. 553, or any other law, the analytical requirements of the Regulatory Flexibility Act do not apply. Consequently, no regulatory flexibility analysis has been prepared for this action.

Authority: 16 U.S.C. 773 *et seq.*, 1801 *et seq.*, and 3631 *et seq.*

Dated: December 2, 2003.

William Hogarth,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 03–30380 Filed 12–5–03; 8:45 am]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 68, No. 235
Monday, December 8, 2003

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF ENERGY

10 CFR Parts 850 and 851

[Docket No. EH–RM–03–WSH]

RIN 1901–AA99

Chronic Beryllium Disease Prevention Programs; Worker Safety and Health

AGENCY: Department of Energy.

ACTION: Proposed rulemaking and opportunity for public comment.

SUMMARY: Pursuant to section 3173 of the Bob Stump National Defense Authorization Act for Fiscal Year 2003 (NDAA), DOE is proposing regulations for worker safety and health at Department of Energy (DOE) workplaces. These proposed regulations are intended to maintain the high level of protection currently afforded workers throughout the DOE complex.

DATES: The comment period for this proposed rule will end on February 6, 2004. The public hearings for this rulemaking will be held on: January 21, 2004 in Arlington, VA (Washington, DC) from 9 a.m. to 12 p.m. and from 1:30 p.m. to 5 p.m.; and February 4, 2004 in Golden CO (Denver) from 9 a.m. to 1 p.m., and from 4 p.m. to 8 p.m. Requests to speak at any of the hearings should be phoned in to Jacqueline D. Rogers, 301–903–5684, by January 20, 2004, for the Arlington, VA (Washington, DC) hearing; and February 2, 2004, for the Golden, CO (Denver) hearing. Each presentation is limited to 10 minutes.

ADDRESSES: Written comments (three copies) on the proposed rule should be addressed to: Jacqueline D. Rogers, U.S. Department of Energy, Docket Number EH–RM–03–WSH; EH–52/270 Corporate Square Building; 1000 Independence Avenue SW, Washington, DC 20585–0270. Alternatively, comments can be filed electronically by e-mail to: *rule851.comments@hq.doe.gov* noting "Worker Safety and Health Rule Comments" in the subject line. Where possible, commenters should identify the specific section to which they are responding.

Copies of the public hearing transcripts, written comments received, and any other docket material may be reviewed on the Web site specially established for this proceeding. The Internet Web site is *http://www.eh.doe.gov/whs/rulemaking.*

The public hearings for this rulemaking will be held at the following addresses:

Arlington, VA (Washington, DC): Marriott Crystal City Hotel, 1999 Jefferson Davis Highway, Arlington, VA 22202.

Golden, CO (Denver): DOE National Renewable Energy Laboratory, Visitor Center, Auditorium, 15013 Denver West Parkway, Golden, CO 80401 (I–70, Exit 263, right at top of exit ramp if coming from Denver, left at stop sign, building on right).

For more information concerning public participation in this rulemaking proceeding, *see* section IV of this notice of proposed rulemaking (Public Comment Procedures).

FOR FURTHER INFORMATION CONTACT: Jacqueline D. Rogers, U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585–0270, 301–903–5684, e-mail: *jackie.rogers@hq.doe.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction
II. Proposed Regulations
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I. Introduction

DOE has broad authority to regulate worker safety and health with respect to its nuclear and nonnuclear functions pursuant to the Atomic Energy Act of 1954 (AEA), 42 U.S.C. 2011 *et seq.*, the Energy Reorganization Act of 1974 (ERA), 42 U.S.C. 5801–5911, and the Department of Energy Organization Act (DOEOA), 42 U.S.C. 7101–7352. Specifically, the AEA authorized and directed the Atomic Energy Commission (AEC) to protect health and promote safety during the performance of activities under the AEA. *See* Sec. 31a.(5) of AEA, 42 U.S.C. 2051(a)(5); Sec. 161b. of AEA, 42 U.S.C 2201(b); Sec. 161i.(3) of AEA, 42 U.S.C. 2201(i)(3); and Sec. 161p. of AEA, 42 U.S.C. 2201(p). The ERA abolished the AEC and replaced it with the Nuclear Regulatory Commission (NRC), which became responsible for the licensing of commercial nuclear activities, and the Energy Research and Development Administration (ERDA), which became responsible for the other functions of the AEC under the AEA, as well as several nonnuclear functions. The ERA authorized ERDA to use the regulatory authority under the AEA to carry out its nuclear and nonnuclear function, including those functions that might become vested in ERDA in the future. *See* Sec. 105(a) of ERA, 42 U.S.C. 5815(a); and Sec. 107 of ERA, 42 U.S.C. 5817. The DOEOA transferred the functions and authorities of ERDA to DOE. *See* Sec. 301(a) of DOEOA, 42 U.S.C. 7151(a); Sec. 641 of DOEOA, 42 U.S.C. 7251; Sec. 644 of DOEOA, 42 U.S.C. 7254.

DOE (like its predecessors, the AEC and the ERDA) has implemented this authority in a comprehensive manner by incorporating appropriate provisions on worker safety and health into the contracts under which work is performed at DOE workplaces. During the past decade, DOE has taken steps to ensure that contractual provisions on worker safety and health are tailored to reflect particular workplace environments. In particular, the *Integration of Environment, Health and Safety into Work Planning and Execution* clause set forth in the DOE procurement regulations requires DOE contractors to establish an integrated safety management system. 48 CFR 952.223–71 and 970.5223–1. As part of this process, a contractor must define the work to be performed, analyze the potential hazards associated with the work, and identify a set of standards and controls that are sufficient to ensure safety and health if implemented properly. The identified standards and controls are incorporated as contractual requirements through the *Laws, Regulations and DOE Directives* clause set forth in the DOE procurement regulations. 48 CFR 970.0470–2 and 970.5204–2. Following the enactment of the Price-Anderson Amendments Act of 1988, Pub. L. 100–408, granting the Department the authority to impose civil penalties for nuclear safety violations on contractors with Price-Anderson indemnification agreements, DOE supplemented its contractual based regulatory approach with a further more specific set of rules set forth in 10 CFR parts 820, 830, and 835 to ensure nuclear safety and protection from radiological hazards during the conduct of DOE activities.

In 2002, Congress directed DOE to promulgate regulations on worker safety and health governing contractors with Price-Anderson indemnification agreements rather than rely exclusively on a contractual approach to establish safe and healthy workplaces. Specifically, section 3173 of the NDAA amended the AEA to add section 234C (codified as 42 U.S.C. 2282c) that requires DOE to promulgate worker safety and health regulations that maintain "the level of protection currently provided to * * * workers." Pub. L. 107–314 (December 2, 2002). These regulations are to include "flexibility * * * to tailor implementation * * * to reflect activities and hazards associated with a particular work environment." Section 234C also makes a DOE contractor with such an indemnification agreement that violates these regulations subject to civil penalties similar to the authority Congress granted to DOE in 1988 with respect to civil penalties. Section 234C also directed DOE to insert in such contracts a clause providing for reducing contractor fees and other payments in the event of a violation by a contractor or contractor employee of any regulation promulgated under section 234C while specifying that both sanctions may not be used for the same violation. The Secretary of Energy has approved the issuance of this Notice to propose regulations to implement the statutory mandate of the NDAA.

II. Proposed Regulations

A. Summary

The proposed regulation would set forth the obligations of DOE contractors (which, consistent with section 234C, proposed § 851.3 would define as entities under contract with DOE, including affiliated entities, subcontractors and suppliers) to provide safe and healthy workplaces for workers (which, consistent with section 234C, proposed § 851.3 would define as employees who perform work in a workplace covered by the proposed regulations). In particular, the proposed regulations would require a contractor responsible for a DOE workplace to ensure: (1) that the workplace is free from recognized hazards that are causing or are likely to cause death or serious bodily harm; and (2) that work is performed in accordance with the worker safety and health program for the workplace. Consistent with section 234C, the worker safety and health program must be approved by DOE and must achieve a level of protection at least substantially equivalent to the level of protection that existed in workplaces throughout the DOE complex in the year 2002 (*i.e.*, the year of enactment of section 3173 of the NDAA) that are comparable to the workplaces to which the program would apply. When the regulations become effective, no work could be performed at a workplace for which DOE had not approved a worker safety and health program. Consistent with section 234C, DOE approval would be based on a determination that the program would achieve the required level of protection.

A contractor would develop and maintain a single worker safety and health program for all the workplaces at a DOE site for which the contractor is responsible and would coordinate with any other DOE contractors responsible for other workplaces at the site to ensure an integrated and consistent approach to worker safety and health at the site. A contractor would discharge its duties concerning the worker safety and health program in a manner consistent with the integrated safety management process set forth in the clauses, *Integration of Environment, Health and Safety into Work Planning and Execution.* 48 CFR 952.223–71, 970.5223–1. First, the contractor would identify and analyze the workplace environment, the work activities performed there, and the potential hazards to workers. On the basis of this identification and analysis, the contractor would select and document a set of workplace safety and health standards that are necessary and sufficient to protect workers from the identified hazards in a manner that achieves a level of protection substantially equivalent to the level of protection that existed in comparable DOE workplaces in 2002.

A contractor should select the combination of appropriate standards that it believes is best designed to achieve the required level of protection in a manner consistent with the Departmental mission it is performing. DOE has included an appendix to the proposed regulations that sets forth a description of worker safety standards and programs generally acceptable for inclusion in a worker safety and health program. This appendix is based on DOE Order 440.1A, which sets forth DOE expectations concerning worker protection and which has been incorporated into most DOE contracts through inclusion of the order's Contractor Requirements Document. This appendix is included only to provide generally acceptable worker safety and health standards and programs and is not intended to prescribe particular standards and programs. The contractor would implement the worker safety and health program for a particular workplace in a manner tailored to fit the particular work environment of that workplace. Radiological hazards would not be covered by the proposed rule to the extent they are regulated by the existing requirements on nuclear safety and radiological protection set forth in 10 CFR parts 820, 830, and 835.

DOE intends to work with its contractors to achieve compliance with the regulations and maintain the high level of protection currently afforded workers. Once the proposed regulations are finalized, if a contractor violated them, DOE could take appropriate enforcement action against the contractor, including, in the case of contractors with indemnification agreements, the imposition of civil penalties or the reduction of contract fees.

With respect to a covered workplace operated by DOE, the proposed regulations would make DOE responsible for ensuring work is performed consistent with the requirements of the proposed regulations, including the establishment, maintenance and implementation of a worker safety and health program.

B. Level of Protection

Section 234C mandates the promulgation by DOE of worker safety and health regulations that provide a level of protection substantially equivalent to that provided to DOE contractor workers when the NDAA was enacted. By focusing on level of protection, section 234C envisions regulations that emphasize results (that is, maintaining or improving the level of protection afforded DOE contractor workers), rather than prescribing detailed courses of action that may not be the most effective or sensible way of addressing a given hazard in a particular situation.

The proposed regulations would incorporate the statutorily mandated level of protection as follows. First, proposed § 851.100 would establish the general rule that a DOE contractor responsible for a workplace must ensure: (1) The workplace is free from recognized hazards that are causing or are likely to cause death or serious bodily harm; and (2) work is performed in accordance with the worker safety and health program for the workplace. This general rule codifies DOE's current expectations concerning the level of protection DOE contractors must afford workers, as set forth in DOE Order 440.1A. Second, proposed § 851.101(c)(2) would require a worker safety and health program to include a set of workplace safety and health standards that would achieve a level of protection at least substantially equivalent to the level of protection that existed in the DOE complex in workplaces comparable to the workplaces to which the program would apply. Third, proposed § 851.102 would prohibit the performance of work at a workplace one year after publication of the final rule unless DOE had approved the worker safety and health program for the workplace on the basis of a determination that the worker safety and health program would achieve a level of protection at least substantially equivalent to the level of protection that existed in comparable workplaces in 2002.

C. Flexibility

Section 234C mandates DOE to promulgate worker safety and health regulations that include sufficient "flexibility—(A) to tailor implementation of such regulations to reflect activities and hazards associated with the particular work environment; (B) to take into account special circumstances at a facility that is, or is expected to be, permanently closed and that is expected to be demolished, or title to which is expected to be transferred to another entity for reuse; and, (C) to achieve national security missions of the Department of Energy in an efficient and timely manner." This provision acknowledges the diversity and uniqueness of the DOE complex and the need to tailor worker safety and health programs to fit particular workplaces.

As a general matter, the proposed regulations would achieve the mandated flexibility by building on the practices and procedures already being undertaken by contractors as part of integrated safety management systems. Specifically, proposed § 851.101(c) would incorporate the essential features of integrated safety management, including: (1) Defining the work; (2) analyzing the hazards; (3) identifying a set of standards necessary and sufficient to control the hazards; (4) implementing the set of standards properly in a manner tailored to reflect the workplace environment; and (5) providing for continuous feedback and improvement. Adherence to this approach should result in the selection of a set of standards tailored to fit the expected work and hazards and the implementation of those standards in a manner tailored to reflect actual workplace conditions.

The proposed regulations also would include specific provisions to address the statutory requirements on flexibility. Proposed § 851.101(a)(2) would require the tailoring of a worker safety and health program to reflect the activities and hazards in a particular workplace. Proposed § 851.101(c)(4) would require a worker safety and health program to provide for tailored implementation of selected standards. Proposed § 851.101(e) would require a worker safety and health program to contain special provisions for transitional workplaces (which would be defined in proposed § 851.3 as facilities that are, or are expected to be, permanently closed and that are expected to be demolished, or title to which are expected to be transferred to another entity for reuse) and national security workplaces (which would be defined as workplaces where DOE undertakes national security missions). Examples of transitional workplaces could include: those sites that are undergoing decontamination, deactivation, dismantlement, or decommissioning; environmental restoration sites; or inactive sites where no ongoing operations are being performed beyond surveillance and maintenance activities.

D. Consistency With Integrated Safety Management

Proposed § 851.101(a) would require contractors to develop worker safety and health programs. These programs should be established in a manner that is consistent with the *Integration of Environment, Health and Safety into Work Planning and Execution* clause set forth in the DOE procurement regulations. 48 CFR 952.223–71, 970.5223–1. As discussed in the preceding sections, the proposed regulations build on existing contract practices and processes to achieve safe and healthy workplaces and incorporate the essential features of integrated safety management. DOE has drafted the proposed regulations to be complementary to integrated safety management. Accordingly, DOE expects contractors to comply with the proposed regulations in a manner that takes advantage of work already done as part of integrated safety management and to minimize duplicative or otherwise unnecessary work.

As a general matter, DOE expects that, if contractors at a DOE site have fulfilled their contractual responsibilities for integrated safety management properly, little, if any, additional work would be necessary to establish the worker safety and health program required by the proposed regulations. Contractors should undertake new analysis and develop new documents only to the extent existing analysis and documents are not sufficient for purposes of the proposed regulations. In determining the allowability of costs incurred by contractors to develop approved worker safety and health programs, the Department will consider whether the amount and nature of a contractor's expenditures are necessary and reasonable in light of the fact that the contractor has an approved integrated safety management system in place.

E. Worker Safety and Health Program

1. Program

To ensure achievement of the required level of protection, proposed § 851.100(b) would require the contractor responsible for a workplace to perform work in accordance with an approved worker safety and health program for the workplace. Proposed § 851.101(b)(1) would require the worker safety and health program to provide for eliminating, limiting or mitigating identified workplace hazards in a manner that is necessary and sufficient to provide adequate protection of workers.

Proposed §§ 851.101(a) and (d)(1) would require a contractor to prepare and maintain a single worker safety and health program that would apply to all the workplaces at a DOE site for which the contractor was responsible. At a site where there were multiple contractors responsible for various workplaces at the site, proposed § 851.101(d)(2)(B) would require the contractors responsible for covered workplaces at the site to coordinate with each other to ensure that the worker safety and health programs at the site were integrated and consistent.

2. Identification and Analysis of Work and Hazards

As part of the process of developing a worker safety and health program, proposed § 851.101(c)(1) would require a contractor to identify and analyze: (1) The work to be performed; (2) the work environment including designs and features of facilities, equipment, operations and procedures important to a safe and healthful workplace; (3) existing and potential workplace hazards; and (4) the risk of worker injury or illness associated with the identified workplace hazards. Proposed § 851.3 would define "workplace hazard" to mean "a physical, chemical, or biological hazard with any potential to cause illness, injury, or death to a person."

Proposed § 851.101(c)(1) would require a contractor to identify and analyze the work and the hazards at the site, facility, activity and workplace level as appropriate. The proposed regulations do not contemplate that a contractor would need to conduct a comprehensive examination of every workplace for which the contractor is responsible at a site in preparing the worker safety and health program. Rather, a contractor would address those hazards that are common to an entire site on a site-wide basis such as fire protection. Then, to the extent appropriate, a contractor would address the hazards associated with particular facilities or activities on a facility or activity basis. Finally, where a particular workplace presented unique circumstances that might require special attention, a contractor would examine that workplace. In analyzing hazards, a contractor would focus on identifying all the hazards that need to be addressed in the worker safety and health plan rather than producing a quantitative risk analysis.

In addition, proposed § 851.101(c)(4)(C) would require the contractor to describe in sufficient detail the extent to which the program is integrated on a site, facility, activity and workplace level, taking into account differences and similarities between the work, hazards, and workplace safety and health standards. An important part of this description would be the extent of the initial identification and analysis and how further identification and analysis would be conducted in particular workplaces to ensure the flow down of the selected standards and their proper implementation in a manner tailored to fit particular workplace environments. This description also would address coordination among worker safety and health programs at a site with multiple programs. The guidance documents prepared for integrated safety management systems contain thorough discussions on identifying and analyzing work and hazards. *See, e.g., Integrated Safety Management System Guide*, DOE Guide 450.4–1B (Mar. 1, 2001).

3. Selection of Set of Workplace Safety and Health Standards

Central to the worker safety and health program for a workplace is the development of a set of "workplace safety and health standards" that provide a level of protection at least substantially equivalent to the level of protection that existed in comparable DOE workplaces in 2002. Proposed § 851.3 would define a "workplace safety and health standard" to mean "a standard or program which addresses a covered workplace hazard by requiring conditions, or the adoption or use of one or more practices, means, methods, operations, or processes, reasonably necessary or appropriate to provide a safe and healthful covered workplace." With the exception of the beryllium standard established by 10 CFR part 850, which contractors must continue to comply with, proposed § 851.101(c)(2) and (3) would permit a contractor to select any combination of appropriate workplace safety and health standards that would achieve the required level of protection.

Appendix A to the proposed regulations contains a description of workplace safety and health standards and programs generally acceptable for inclusion in a worker safety and health program. DOE has derived Appendix A from existing DOE Order 440.1A, which sets forth DOE's expectations for protecting worker safety and health and identifies a number of generally acceptable worker protection standards and programs, including: (1) Certain Occupational Health and Safety Administration (OSHA) standards (29 CFR part 1910); shipyard employment (29 CFR part 1915); marine terminals (29 CFR part 1917); health and safety regulations for longshoring (29 CFR part 1918); health and safety regulations for construction (29 CFR part 1926); and occupational health and safety standards for agriculture (29 CFR part 1928); (2) American Conference of Governmental Industrial Hygienists' threshold limit values for exposures to chemical substances, physical agents and biological substances where they are more protective than the OSHA standards; (3) certain American National Standards Institute (ANSI) standards (ANSI Z136.1 *Safe Use of Lasers;* ANSI Z88.2 *Practices for Respiratory Protection;* ANSI Z49.1 *Safety in Welding, Cutting and Allied Processes*); (4) the National Fire Protection Association's standards for fire protection and electrical safety; (5) the American Society for Mechanical Engineer's standards for boiler and pressure safety; and (6) programs in areas such as firearms safety, explosives safety, industrial hygiene, occupational medicine, and motor vehicle safety.

Appendix A would serve as a guidance document. With the exception of the beryllium standard, the proposed regulations do not mandate the selection of any particular standard or program, including those described in Appendix A. Rather, the proposed regulations obligate a contractor to focus on the objective of safe and healthy workplaces and to select a set of standards and programs that will achieve a level of protection at least substantially equivalent to the level of protection that existed in comparable DOE workplaces in 2002. DOE would be responsible for reviewing the set of standards and programs that a contractor proposed to select as part of the approval of the contractor's worker safety and health program and for assuring itself those standards and programs would meet that level of protection.

Proposed § 851.101(c)(3)(A) would require the incorporation of chronic beryllium disease prevention programs approved under 10 CFR part 850 into the set of workplace safety and health standards. DOE is proposing several technical and conforming amendments to the current beryllium regulations in part 850 which would align that part with the proposed worker safety and health regulations. The scope of § 850.1 would be amended to state that 10 CFR part 850 provides for establishment of a chronic beryllium disease prevention program (CBDPP) that supplements and is deemed an integral part of the worker safety and health program under 10 CFR part 851. The enforcement provision in § 850.4 would also be amended to state that DOE may take appropriate steps pursuant to 10 CFR part 851 to enforce compliance by contractors with part 850 and any DOE-approved CBDPP. This would allow DOE to assess civil penalties under 10 CFR part 851 for violations of the CBDPP under 10 CFR part 850.

4. Implementation

In order for the selected workplace safety and health standards to achieve the required level of protection, the contractor responsible for a workplace must implement them properly in a manner tailored to a particular workplace environment. Proposed § 851.101(c)(4) would require the worker safety and health program to describe how work will be performed in accordance with the selected workplace safety and health standards. This description would identify how the

contractor responsible for a workplace would: (1) Select and use procedures, controls, and work processes in a tailored manner in particular workplaces to implement the selected standards; and (2) select controls on the basis of the following hierarchy in descending order: engineering controls, administrative controls, work practices, and personal protective equipment. Where appropriate, the program might identify specific procedures, controls and work processes and describe how these procedures, controls and work processes would be used to achieve a tailored implementation. At a minimum, proposed § 851.101(c)(4)(C) would require a description of the process by which the set of selected workplace safety and health standards would flow down to a particular workplace, including how a contractor would select the procedures, controls, and work processes to implement the standards in a tailored manner for particular covered workplaces. This description would address the extent to which the flowdown might require additional analysis at the facility, activity and workplace levels. In addition, proposed § 851.101(c)(4)(C) would require a description of how the program was integrated on site, facility, activity and workplace levels, taking into account differences and similarities between the work, hazards, and workplace safety and health standards and, if applicable, coordinated with other worker safety and health programs at the site.

Implementation should focus on workplace hazards that are more likely to cause serious harm to workers. Accordingly, proposed § 851.101(c)(6) would require the worker safety and health program to prioritize the abatement of hazards on the basis of a qualitative evaluation of the relative risk to workers posed by identified workplace hazards. In addition, proposed § 851.101(c)(7) would require a worker safety and health program to address how implementation would incorporate certain features into the worker safety and health program. These features include line management commitment, information and training, ongoing workplace monitoring and observation, medical surveillance and applicability to subcontractors.

5. Evaluation and Feedback

A key element for a successful worker safety and health program is feedback and continuous improvement. Proposed § 851.101(c)(5) would require a contractor to describe how it will update and maintain the program on a continuous basis. The contractor would describe its procedures and processes for feedback activities such as lessons learned, training, updating, document control, and configuration control that may support a worker safety and health program. Moreover, the process of defining the scope of work, analyzing the hazards associated with the work, and identifying a set of standards should be an iterative process performed continually to provide feedback and improvement. This iterative process would provide a contractor with the information necessary to make continual changes and improvements to all aspects of the program and to comply with proposed § 851.102(c) that would require a contractor to evaluate and update a worker safety and health program to reflect changes in the work and the hazards. In addition to contractor initiated revisions, proposed § 851.102(c)(3) would require a contractor to modify a worker safety and health program to incorporate any changes, conditions, or workplace safety and health standards directed by DOE.

F. Submission, Approval and Revision of Worker Safety and Health Programs

1. DOE Approval

Beginning one year after publication of the final rule, proposed § 851.102(a) would prohibit work from being performed at a DOE workplace unless the Program Secretarial Officer (PSO) (which proposed § 851.3 would define as "the Assistant Secretary, Deputy Administrator, Program Office Director, or equivalent DOE official who has primary line management responsibility for a contractor) had approved the worker safety and health program for the workplace on the basis of a determination that the program would achieve a level of protection at least substantially equivalent to the level of protection that existed in comparable DOE workplaces in 2002. A worker protection evaluation report would document the approval and determination. As part of the approval process, the PSO could direct the contractor to modify the worker safety and health program.

To approve the program, DOE would review the content and quality of the worker safety and health program for a DOE site to determine whether the rigor and detail were appropriate for the complexity and hazards expected at workplaces located at the site. DOE also would review the sufficiency of the analysis of work and hazards that supported the program. After approval of a program, DOE would focus its attention on how well a contractor performed in providing safe and healthy workplaces, rather than on the details of how the contractor developed the program.

2. Submittal and Compliance Dates

Proposed § 851.102(b) would require a contractor to submit a worker safety and health program to DOE for approval 180 days after publication of the final rule. This date would give a DOE contractor six months to submit a plan after the issuance of the final rule. The Act provides that the regulations shall take effect one year after the promulgation date of the regulations. DOE would not undertake enforcement actions pursuant to this rule on the basis of conduct prior to the effective date. DOE believes these dates should give contractors ample time to submit programs for approval and begin implementation since contractors already have a contractual obligation to have worker protection programs that should satisfy all or most of the requirements set forth in the proposed regulations.

3. Annual Update

Proposed § 851.102(c) would require a contractor to maintain the worker safety and health program for a workplace by evaluating and updating the worker safety and health program to reflect changes in the work and the hazards. On an annual basis, the contractor would have to submit either an updated worker safety and health program to DOE for approval or a letter stating that no changes were necessary in the currently approved worker safety and health program. Annual updates are an important tool in meeting the requirement for continuous feedback and evaluation and allow a contractor to notify DOE of changes occurring during the past year such as new work to be performed, changes in the facility, building of new facilities or decommissioning of old facilities, associated hazards and performance problems. Only those changes in the workplace that have a potential to impact the worker safety and health program would need to be reflected in the worker safety and health program.

G. Guidance Documents

Proposed § 851.8 would explicitly limit the potential role of a "guidance document" as a source of enforceable worker safety and health requirements. DOE would continue to issue guidance documents to assist contractors in developing their worker safety and health programs, including selecting a set of standards and describing implementing procedures, controls, and work processes, but contractors would not be obligated to use them. Rather, contractors' only obligation would be to comply with the regulations themselves.

Proposed § 851.8 would broadly define the term "guidance document" to include any document that sets forth information related to implementing or otherwise complying with a requirement set forth in the proposed regulations and that DOE has not adopted as a legally binding requirement through notice and comment rulemaking under the Administrative Procedure Act (5 U.S.C. 553). This definition would include proposed Appendices A and B, DOE and industry standards, and any document in the DOE directive system or other informal statement of policy regardless of which DOE official approved or signed the document. Use of the terms "shall" or "must" in a guidance document does not change the non-mandatory character and effect of the document.

Proposed § 851.8(a) would make clear to contractors and DOE officials that guidance documents do not create legally enforceable requirements. Proposed § 851.8(b) would prohibit DOE officials from inspecting or investigating a DOE site to identify violations of the proposed regulations by determining whether a contractor's actions or omissions were consistent with a guidance document. DOE intends that such inspections and investigations will, ordinarily, focus on whether a contractor's actions or omissions comply with the requirements under its worker safety and health program, or on rare occasions, on whether such actions or omissions comply with requirements of a compliance order issued for cause by the Secretary under § 851.6. Proposed § 851.8(c) would identify the limited circumstances in which a guidance document can give rise to an enforceable requirement. Specifically, a guidance document can give rise to an enforceable requirement only to the extent it is explicitly: (1) included by a contractor in the set of workplace safety and health standards identified pursuant to § 851.101(c)(3)(B) of the proposed regulations; or (2) selected or used by a contractor as a procedure, control, or work process to perform work in a tailored manner for particular covered workplaces in accordance with § 851.101(c)(4) of the proposed regulations. Only in these circumstances may DOE pursue an enforcement action on the basis of action inconsistent with a guidance document and, in these circumstances, DOE would base the enforcement action on a provision of the contractor's plan and not the guidance document itself.

Proposed § 851.8 would serve two purposes. First, by precluding imposition of a *de facto* set of requirements in the guise of guidance, it would ensure that, as required by section 234C(a)(3) of the AEA, DOE's implementing regulations include flexibility to tailor implementation of such regulations to reflect activities and hazards associated with a particular work environment. Put more succinctly, proposed § 851.8 would reinforce site-specific integrated safety management as the guiding principle for the proposed regulations. Second, proposed § 851.8 is responsive to potential contractor criticism that reliance on generally applicable, informal policy directives in the area of worker safety and health instead of duly promulgated rules under the Administrative Procedure Act promotes regulatory instability across the DOE complex which is antithetical to effective integrated safety management and to accomplishment of DOE's national security and research missions. Proposed § 851.8 would thus reinforce the shift from a DOE directive-driven regime characterized by informal DOE policies to a regulatory regime characterized by generally applicable rules that have the force and effect of law with respect to DOE officials, as well as with respect to regulated contractors. Moreover, proposed § 851.8 recognizes the responsibility and obligation of a contractor, in the first instance, to select the procedures, controls, and work processes to use in achieving safe and healthy workplaces and implementing its worker safety and health program.

H. Workers Rights

Workers at DOE sites currently have a number of rights related to assuring a safe and healthy workplace. Proposed § 851.103 would list these rights and make clear that workers may exercise these rights without fear of reprisal. Specifically, the proposed regulations would maintain the rights of workers to: (1) Participate in activities described in this section on official time; (2) have access to DOE safety and health publications, the DOE-approved worker safety and health program for the DOE site and the standards, controls and procedures applicable to the covered workplace; (3) observe monitoring or measuring of hazardous agents; (4) have access to monitoring and measuring results and be notified when such results indicate the worker was overexposed to hazardous materials; (5) accompany DOE personnel during an inspection of the workplace; (6) request and receive results of inspections and accident investigations; (7) express concerns related to worker safety and health; (8) decline to perform an assigned task because of a reasonable belief that, under the circumstances, the task poses an imminent risk of death or serious bodily harm to the worker coupled with a reasonable belief that there is insufficient time to seek effective redress through the normal hazard reporting and abatement procedures; (9) stop work, through the worker's supervisor, when the worker discovers employee exposures to imminent danger conditions or other serious hazards, provided that any stop work authority must be exercised in a justifiable and responsible manner in accordance with established procedures; and (10) have access to an appropriate safety and health poster that informs the worker of relevant rights and responsibilities.

I. Enforcement

1. Civil Penalties

Section 234Cb. of the AEA provides that "a person (or any subcontractor or supplier of the person) who has entered into an agreement of indemnification under section 170d. (or any subcontractor or supplier of the person) that violates (or is the employer of a person that violates) any regulation promulgated under [section 234C] shall be subject to a civil penalty of not more than $70,000 for each such violation." For continuing violations, section 234C provides that each day of the violation shall constitute a separate violation for the purposes of computing the civil penalty to be imposed.

Proposed § 851.4(c) would implement this statutory provision by making a contractor whose contract with DOE contains an indemnification agreement (or any subcontractor or supplier thereto) and who violates (or whose employee violates) any requirement of the proposed regulations subject to a civil penalty of not more than $70,000 for each such violation. In the case of a continuing violation, each day of the violation would constitute a separate violation for the purpose of computing the amount of the civil penalty.

2. Contract Fee Reductions

Section 234Cc. of the AEA requires DOE to include provisions in DOE contracts for an appropriate reduction in the fees or amounts paid to the contractor if the contractor or a contractor employee violates the regulations required by section 234C. The Act requires these provisions to be included in each DOE contract with a contractor who has entered into an

agreement of indemnification under section 170d. of the AEA (the Price-Anderson Act). The contract provisions must specify the degrees of violations and the amount of the reduction attributable to each degree of violation.

DOE is implementing this statutory mandate to include provisions for the reduction in fees in contracts for violations of this part pursuant to the contract's *Conditional Payment of Fee* clause. Most DOE management and operating contracts currently contain such a clause providing for reductions of earned fee, fixed fee, profit, or share of cost savings that may otherwise be payable under the contract if performance failures relating to environment, safety and health occur. *See* 48 CFR 970.5215–3, *Conditional Payment of Fee, Profit, or Incentives* (applicable to DOE management and operating contracts and other contracts designated by the Procurement Executive). DOE proposed to amend this clause to set forth the specific criteria and conditions that may precipitate a reduction of earned or fixed fee, profit, or share of cost savings under the contract. The clause would establish reduction ranges that correlate to three specified degrees of performance failures relating to environment, safety and health. *See* 66 FR 8560 (Feb. 1, 2001) (notice of proposed rulemaking). In the final rule, DOE intends to clarify that the term 'environment, health and safety" includes matters relating to "worker health and safety" and to apply the same reduction ranges and degrees of performance failure to worker safety and health. In a parallel provision, proposed § 851.4(b) also would implement this statutory mandate by making a contractor who fails to comply with the requirements of the general rule in proposed § 851.100 subject to a reduction in fees or other payments under a contract with DOE pursuant to the contract's *Conditional Payment of Fee* clause.

3. Relationship of Civil Penalties and Contract Fee Reductions

As a general matter, DOE intends to use civil penalties as the remedy for most violations where DOE may elect between remedies. DOE expects to invoke the provisions for reducing contract fees only in cases involving especially egregious violations or that indicate a general failure to perform under the contract with respect to worker safety and health. Such violations would call into question a contractor's commitment and ability to achieve the fundamental obligation of providing safe and healthy workplaces for workers because of factors such as willfulness, repeated violations, death, serious injury, patterns of systemic violations, flagrant DOE-identified violations, repeated poor performance in an area of concern, or serious breakdown in management controls. Because such violations indicate a general failure to perform under the contract with respect to worker safety and health where both remedies are available and DOE elects to use a reduction in fee, DOE would expect to reduce fees substantially under the *Conditional Payment of Fee* clause.

4. Limitations on Penalties

Section 234Cd. imposes three specific limitations on DOE's authority to seek monetary remedies. Specifically, DOE may not (1) both reduce contract fees and assess civil penalties for the same violation of a worker protection requirement; (2) assess both civil penalties authorized by section 234A (nuclear safety and radiological protection regulations) and by section 234C (worker safety and health regulations) for the same violation; and, (3) with respect to those nonprofit contractors specifically listed as exempt from civil penalties for nuclear safety violations in subsection d. of section 234A of the AEA, assess an aggregate amount of civil penalties and contractor penalties in a fiscal year in excess of the total amount of fees paid by DOE to that nonprofit entity in that fiscal year. Proposed §§ 851.4(d), (e) and (f) sets forth these statutory limitations.

5. Enforcement Procedures

Proposed subpart C of part 851 sets forth the administrative procedures DOE would use to issue enforcement actions and impose civil penalties. In general, DOE has based these procedures on the existing procedural regulations for nuclear safety enforcement in 10 CFR part 820, which has provided the basis for implementing a successful nuclear safety compliance program since the mid 1990s. *See* Procedural Rules for DOE Nuclear Activities, 10 CFR part 820, 58 FR 43680 (Aug. 17, 1993), amended, 62 FR 52481 (Oct. 8, 1997) and 65 FR 15220 (Mar. 22, 2000). The proposed procedures would provide for investigations and inspections, subpoenas, informal conferences, enforcement letters, settlements, consent orders, preliminary notices of violations, and final notices of violations. Contractors would take administrative appeals of final notices of violations to DOE's Office of Hearings and Appeals rather than an administrative law judge as provided for in 10 CFR part 820. Unlike section 234A of the AEA, section 234C does not provide for the use of administrative law judges and other procedural mechanisms. A decision of the Office of Hearings and Appeals would exhaust a contractor's administrative remedies with respect to a final notice of violation and would constitute a final order of DOE.

The proposed regulations would assign responsibility for carrying out these enforcement procedures to the "Director," which proposed § 851.3 would define as "the DOE Official to whom the Secretary has assigned the authority to investigate the nature and extent of compliance with the requirements of" the proposed regulations. DOE expects this function would be assigned to the current Director of the Office of Price-Anderson Enforcement in the Office of Environment, Health and Safety, who is the person to whom the Secretary has assigned the responsibility for enforcing the DOE nuclear safety regulations in 10 CFR parts 820, 830, and 835.

While proposed § 851.201(j) would permit the Director to send an enforcement letter to a contractor to communicate DOE's expectations for compliance with the proposed regulations, the primary responsibility lies with the Program Secretarial Officer for ensuring that a contractor has an approved worker safety and health program that is adequate to achieve a level of protection at least substantially equivalent to the level of protection that existed in 2002 for DOE workplaces comparable to those covered workplaces addressed by the program and that has sufficient detail to allow the Director to conduct inspections or investigations to determine compliance. Proposed § 851.201(j) would make clear that an enforcement letter may not create the basis for any legally enforceable requirement under this part.

With respect to exercising certain functions that might be interpreted as giving direction to DOE's National Nuclear Security Administration's contractors, proposed § 851.206 would make the Administrator of the NNSA responsible for exercising such functions. These functions would be signing and issuing subpoenas, orders to compel attendance, orders disclosing information obtained during an investigation, preliminary notices of violation and final notices of violation. In taking such actions, the NNSA Administrator would consider the Director's recommendations. A similar division of responsibilities has been made for enforcing the DOE nuclear safety regulations under part 820. *See Memorandum of Understanding between NNSA and the Assistant Secretary for Environment, Health and Safety*, Jan. 12, 2001, *http://tis-nt.eh.doe.gov/enforce/handbks/20010108mou.pdf*. Under both part 820 and proposed part 851, the Director would continue to be able to sign enforcement letters and consent orders applicable to NNSA contractors.

6. General Statement of Enforcement Policy

As a guidance document for enforcing this rule, DOE is proposing to issue a general statement of enforcement policy as Appendix B. The proposed policy would set forth the general framework which DOE would follow to ensure compliance with the proposed regulations and to issue enforcement actions and exercise civil penalty authority. The proposed policy would not be binding and would not create any legally enforceable requirements pursuant to this part. It would only provide guidance as to how DOE generally expects to seek compliance with the proposed regulations and to deal with any violations of the proposed regulations.

The proposed policy is intended to achieve dual purposes of promoting proactive behavior on the part of DOE contractors to improve worker safety and health performance and of deterring contractors from violating the proposed regulations. The proposed policy would encourage DOE contractors to self-identify, report and correct worker safety and health noncompliances and would provide adjustment factors to escalate or mitigate civil penalties on the basis of the nature of the violation and the behavior of the contractor.

To accomplish these purposes, the proposed policy would incorporate the basic outlines of DOE's well-established nuclear safety enforcement program in part 820. The enforcement policy would utilize the part 820 severity levels I, II, and III and related adjustment factors. These severity levels and adjustment factors in the policy incorporate concepts OSHA uses in its enforcement program including whether a violation is serious, other-than-serious, willful, repeated, or *de minimis*.

Specifically, the proposed policy would provide guidance on the treatment of violations in three severity levels. A severity level I violation would be a serious violation, which would involve the potential that death or serious physical harm could result from a condition in a workplace, or from one or more practices, means, methods, operations, or processes used in connection with a workplace. A severity level I violation would be subject to a base civil penalty of up to 100% of the maximum base civil penalty or $70,000.

A severity level II violation is an other-than-serious violation, which would involve a potential that the most serious injury or illness that might result from a hazardous condition cannot reasonably be predicted to cause death or serious physical harm to exposed employees but does have a direct relationship to their safety and health. A severity level II violation would be subject to a base civil penalty up to 50% of the maximum base civil penalty or $35,000.

A severity level III violation is a *de minimis* violation. DOE may evaluate minor noncompliances to determine if generic or specific problems exist and consider them in the aggregate as a more serious violation. A severity level III violation would be subject to a base civil penalty up to 10% of the maximum base civil penalty or $7,000.

DOE could modify or remit these base civil penalties consistent with mitigation and adjustment factors set forth in the proposed policy. Factors include the gravity, circumstances, and extent of the violation or violations and, with respect to the violator, any history of prior similar violations and the degree of culpability and knowledge. These factors are the same as those used for part 820 and are similar to the adjustment factors in the proposed *Conditional Payment of Fee* rule but the factors in the proposed fee rule include additional focus on performance under the contract.

Regarding the factor of ability of DOE contractors to pay the civil penalties, the policy provides that it is not DOE's intention that the economic impact of a civil penalty would put a DOE contractor out of business. The policy would also provide that when a contractor asserts that it cannot pay the proposed penalty, DOE would evaluate the relationship of affiliated entities to the contractor such as parent corporations.

Based on the adjustment factors relating to a noncompliance, DOE could mitigate a civil penalty from the statutory maximum of $70,000 per violation per day. Mitigation factors used to reduce a civil penalty include whether a DOE contractor promptly identified and reported a violation and took effective corrective actions. Factors used to increase penalties (but not over the statutory maximum of $70,000) would include whether a violation is repeated or involves willfulness, death, serious physical harm, patterns of systemic violations, flagrant DOE-identified violations, repeated poor performance in an area of concern, or serious breakdowns in management controls.

As noted previously, when both remedies are available, DOE may consider a reduction in contract fees if a violation is especially egregious or indicates a general failure to perform under the contract with respect to worker safety and health. In determining whether to refer a violation to the appropriate DOE official responsible for administering reductions in fee pursuant to the *Conditional Payment of Fee* clause, the Director will generally focus on the factors stated above, such as willfulness, repeated violations, death, serious injury, patterns of systemic violations, flagrant DOE-identified violations, repeated poor performance in an area of concern, or serious breakdown in management controls. In cases where DOE may elect between civil penalties and a contract penalty, these kinds of factors may also lead DOE to consider a reduction in fee if they raise doubts about a contractor's overall performance or ability to perform its contract with proper regard for worker safety and health.

In proposing the base civil penalties for the types of violations in this policy, DOE set the starting base amounts at levels higher than the average OSHA penalty for several reasons. DOE's activities are conducted by large, experienced management and operating contractors and their subcontractors and suppliers. Through the contractual relationships that DOE has with these entities, DOE is in constant dialogue concerning the management and operation of DOE's sites and the performance of its governmental missions. DOE has the authority to require these contractors to develop their own worker safety and health programs for DOE approval and to select standards tailored to the work and the hazards. Moreover, DOE may unilaterally direct contractors to include various provisions in their programs. Thus, the Director is in a position to enforce against these programs and can provide incentives for proactive compliance. The policy strongly encourages self-identification of violations, self-reporting, tracking systems and corrective action programs. Moreover, DOE also has the authority and flexibility to coordinate and choose either a civil penalty or fee reduction remedy based on the enforcement policy and the fee reduction contract clause. The proposed enforcement structure of this rule fits the DOE complex better than would a generic system as found in OSHA's enforcement programs.

Finally, as a tool for implementing the enforcement policy, DOE intends to

provide a voluntary computerized database system to allow contractors to report worker safety and health noncompliances. DOE intends to enhance its Noncompliance Tracking System (NTS), currently used for reporting of noncompliances of the DOE nuclear safety requirements, to permit its use for reporting noncompliances with this rule. DOE will develop appropriate reporting thresholds unique to worker safety and health to assure that the system will focus on issues with the greatest potential consequences for worker safety and health.

J. Scope of the Rule

1. DOE Contractors and DOE-Operated Workplaces

Proposed § 851.1 would establish the scope of the proposed regulations as governing the conduct of activities by or on behalf of DOE. The regulations would thus apply to activities performed by DOE contractors and by DOE at covered workplaces at DOE sites, except for workplaces regulated by the naval nuclear propulsion program or by the Occupational Safety and Health Administration (OHSA). Proposed § 851.3 would define a "covered workplace" as a place where work is conducted by or on behalf of DOE where DOE has oversight responsibility for safety and health and would define "DOE site" as a DOE-owned or leased area or location where DOE activities and operations are performed at one or more facilities or locations. While the proposed regulations would obligate a contractor to ensure its employees performed work in accordance with the proposed regulations, the proposed regulations would not make individual employees subject to enforcement actions or the imposition of penalties.

DOE is proposing to limit the scope of the proposed regulations to DOE sites. However, DOE invites public comment concerning whether the proposed regulations also should cover activities performed away from a DOE site, such as transportation.

DOE is also proposing to apply the proposed regulations to covered workplaces operated by DOE. Proposed § 851.9 would require that for DOE-operated workplaces, DOE must ensure that work is performed consistent with the proposed regulations including the establishment, maintenance and implementation of a worker safety and health program. Proposed § 851.9 would apply to government-owned, government-operated facilities related to DOE's mission, including certain laboratories or operations conducted by DOE, as well as general federal government office workplaces in buildings in Washington DC, Germantown, Maryland, or DOE site offices in the field. Thus, this rule is intended to provide protection to workers who are contractor employees and to workers who are federal employees.

Section 234C mandates DOE to promulgate regulations to cover DOE facilities that are operated by contractors covered by agreements of indemnification under the Price-Anderson Act, 42 U.S.C. 2210(d). The proposed regulations go beyond that mandate to continue DOE's current practice of exercising its statutory authority to direct its contractors to perform work in a manner that protects the safety and health of workers, without regard to whether the contractor is covered by an agreement of indemnification. As a practical matter, the Price-Anderson Act requires DOE to include an agreement of indemnification in every contract that has the potential to involve any activity with any risk of a nuclear incident. As a result, nearly all DOE contracts include an agreement of indemnification, with the exception of contracts relating to the petroleum strategic reserves sites, power administrations, and certain nonnuclear laboratories. While section 234C is not the source of DOE's authority to promulgate the proposed regulations, it is the source of DOE's authority to impose civil penalties. Thus, proposed § 851.4(c) would limit the imposition of civil penalties to contractors covered by an agreement of indemnification. Proposed § 851.4(b) would not limit contractual enforcement actions to contractors covered by an agreement of indemnification since section 234C is not the source of DOE's authority to use contract mechanisms to achieve safe and healthy workplaces.

The proposed regulations also would continue DOE's current practice of exercising its statutory authority to direct its contractors to perform work in a manner that protects the safety and health of workers, without regard to whether the workers are engaged in a nuclear or nonnuclear activity. Section 234C is not limited to nuclear activities in mandating the promulgation of worker protection regulations.

2. OSHA Exclusion

DOE currently exercises its statutory authority broadly throughout the DOE complex to provide safe and healthful workplaces. In a few cases, however, DOE has elected not to exercise its authority and to defer to regulation by OSHA under the Occupational Safety and Health (OSH) Act (29 U.S.C. 651 *et seq.*). Proposed § 851.2(a)(1) would continue the status quo by not covering those facilities regulated by OSHA on December 2, 2002, the date the NDAA was enacted. The OSHA-regulated facilities are: Western Area Power Administration; Southwestern Power Administration; Southeastern Power Administration; Bonneville Power Administration; National Energy Technology Laboratory (NETL), Morgantown, WV; National Energy Technology Laboratory (NETL), Pittsburgh, PA; Strategic Petroleum Reserve (SPR); National Petroleum Technology Office; Albany Research Center; Naval Petroleum & Oil Shale Reserves in CO, UT, & WY; and Naval Petroleum Reserves in California. *See* 65 FR 41492 (July 5, 2000).

3. Naval Reactors

Section 234C explicitly excludes activities conducted under the authority of the Director, Naval Nuclear Propulsion, pursuant to Executive Order 12344, as set forth in Public Law 106–65. Accordingly, proposed § 851.2(a)(2) would exclude workplaces regulated by Naval Reactors.

4. Radiological Hazards

Proposed § 851.2(b) would exclude radiological hazards from the hazards covered by the proposed regulations to the extent they are already regulated by the DOE nuclear safety requirements in 10 CFR parts 820, 830, and 835. These existing rules already deal with radiological hazards in a comprehensive manner through methods such as the Quality Assurance Program Plan, the Safety Basis, the Documented Safety Analysis, and the Radiation Protection Program Plan. The proposed regulations are intended to complement the nuclear safety requirements. Personnel responsible for implementing worker protection and nuclear safety requirements would be expected to coordinate and cooperate in instances where the requirements overlapped. The two sets of requirements should be integrated and applied in a manner that guards against unintended results and provides reasonable assurance of adequate worker protection.

K. Information Requirements

Proposed § 851.5 would require a contractor (1) to maintain complete and accurate records as necessary to substantiate compliance with the proposed regulations; (2) to neither conceal nor destroy any relevant information concerning noncompliance or potential noncompliance with the proposed regulations; and (3) to maintain complete and accurate information in all material respects. Proposed § 851.5(d) would make clear that a contractor must safeguard classified, confidential, and controlled information, including Restricted Data or national security information, in accordance with the applicable provisions of federal statutes and the rules, regulations, and orders of any federal agency.

DOE considered but decided not to propose new reporting requirements in support of the proposed regulations. DOE will continue to use contractual provisions to require contractors to report worker safety and health information which may be used to assess the performance and effectiveness of worker safety and health programs. This information is generally maintained in large, specialized databases which necessitate management flexibility. The primary directive on environment, safety and health reporting that DOE includes in contracts is DOE Order 231.1A. This order requires contractors to record, maintain and post records related to occupational fatalities, injuries, and illnesses occurring among their employees (and subcontractors) arising out of work primarily performed at DOE-owned or -leased facilities. Other relevant reporting directives include occurrence reporting and processing of operations information; performance indicators and analysis of operations information; and accident investigations.

DOE recently has taken steps to eliminate unnecessary reporting requirements related to the subject matter of the proposed regulations. DOE remains committed to reducing the reporting burden where reporting requirements do not contribute to worker safety and health. Accordingly, DOE requests comments on how the reporting burden could be further minimized consistent with that objective. Comments should specify the reporting requirements that give rise to the burden and discuss the reasons for their elimination or suggest how they could be modified to minimize the burden without impairing worker safety and health.

L. Compliance Order

Proposed § 851.6 would make clear that the Secretary of Energy has the authority to issue a Compliance Order that identifies a situation that violates, potentially violates, or otherwise is inconsistent with a requirement of this part; mandates a remedy, work stoppage, or other action; and states the reasons for the remedy, work stoppage, or other action. The compliance order would be a final order that is effective immediately. This mechanism is nearly identical to the provisions in 10 CFR 820.41 and is intended to operate in a similar manner.

M. Interpretations by Office of General Counsel

Proposed § 851.7 would make clear the Office of the General Counsel would have sole responsibility for formulating and issuing any interpretation concerning a requirement in the proposed regulations. Any other written or oral response to any written or oral question would not constitute an interpretation or basis for action inconsistent with the proposed regulations.

III. Procedural Review Requirements

A. Review Under Executive Order 12866

Today's proposed regulatory action has been determined to be a "significant regulatory action" under Executive Order 12866, "Regulatory Planning and Review" (58 FR 51735, October 4, 1993), as amended by Executive Order 13258 (67 FR 9385, February 26, 2002). Accordingly, DOE submitted this notice of proposed rulemaking to the Office of Information and Regulatory Affairs of the Office of Management and Budget, which has completed its review.

B. Review Under Executive Order 12988

With respect to the review of existing regulations and the promulgation of new regulations, Section 3(a) of Executive Order 12988, "Civil Justice Reform" (61 FR 4779, February 7, 1996) imposes on Federal agencies the general duty to adhere to the following requirements: eliminate drafting errors and needless ambiguity, write regulations to minimize litigation, provide a clear legal standard for affected conduct rather than a general standard, and promote simplification and burden reduction. Section 3(b) requires Federal agencies to make every reasonable effort to ensure that a regulation, among other things: clearly specifies the preemptive effect, if any, adequately defines key terms, and addresses other important issues affecting the clarity and general draftsmanship under guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in Section 3(a) and Section 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, the proposed rule meets the relevant standards of Executive Order 12988.

C. Review Under Executive Order 13132

Executive Order 13132 (64 FR 43255, August 10, 1999), imposes certain requirements on agencies formulating and implementing policies or regulations that preempt State law or that have federalism implications. Agencies are required to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and carefully assess the necessity for such actions.

Today's regulatory action has been determined not to be a "policy that has federalism implications," that is, it does not have substantial direct effects on the states, on the relationship between the national government and the states, nor on the distribution of power and responsibility among the various levels of government under Executive Order 13132 (64 FR 43255, August 10, 1999). Accordingly, no "federalism summary impact statement" was prepared or subjected to review under the Executive Order by the Director of the Office of Management and Budget.

D. Review Under Executive Order 13175

Under Executive Order 13175 (65 FR 67249, November 6, 2000) on "Consultation and Coordination with Indian Tribal Governments," DOE may not issue a discretionary rule that has "tribal implications" and imposes substantial direct compliance costs on Indian tribal governments. DOE has determined that the proposed rule would not have such effects and concluded that Executive Order 13175 does not apply to this proposed rule.

E. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) requires that an agency prepare an initial regulatory flexibility analysis for any regulation which a general notice of proposed rulemaking is required, unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities (5 U.S.C. 605(b)).

Today's proposed regulation would establish DOE's requirements for worker safety and health at DOE sites. The contractors who manage and operate DOE facilities would be principally responsible for implementing the rule requirements. DOE considered whether these contractors are "small businesses," as that term is defined in

the Regulatory Flexibility Act's (5 U.S.C. 601(3)). The Regulatory Flexibility Act's definition incorporates the definition of "small business concern" in the Small Business Act, which the Small Business Administration (SBA) has developed through size standards in 13 CFR part 121. The DOE contractors subject to the proposed rule exceed the SBA's size standards for small businesses. In addition, DOE expects that any potential economic impact of this proposed rule on small businesses would be minimal because DOE sites perform work under contracts to DOE or the prime contractor at the site. DOE contractors are reimbursed through their contracts with DOE for the costs of complying with DOE safety and health program requirements. They would not, therefore, be adversely impacted by the requirements in this proposed rule. For these reasons, DOE certifies that today's proposed rule, if promulgated, would not have a significant economic impact on a substantial number of small entities, and therefore, no regulatory flexibility analysis has been prepared. *See* 68 FR 7990 at III.1. and III.1.c. (February 19, 2003).

F. Review Under the Paperwork Reduction Act

The information collection provisions of this proposed rule are not substantially different from those contained in DOE contracts with DOE prime contractors covered by this rule and were previously approved by the Office of Management and Budget (OMB) and assigned OMB Control No. 1910–5103. That approval covered submission of a description of an integrated safety management system required by the *Integration of Environment, Health and Safety into Work Planning and Execution* clause set forth in the DOE procurement regulations. 48 CFR 952.223–71 and 970.5223–1, 62 FR 34842, 34859–60 (June 17, 1997). If contractors at a DOE site fulfill their contractual responsibilities for integrated safety management properly, the worker safety and health program required by the proposed regulations should require little if any new analysis or new documents to the extent that existing analysis and documents are sufficient for purposes of the proposed regulations. Accordingly, no additional Office of Management and Budget clearance is required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) and the procedures implementing that Act, 5 CFR 1320.1 *et seq.*

G. Review Under the National Environmental Policy Act

DOE currently implements its broad authority to regulate worker safety and health through internal DOE directives incorporated into contracts to manage and operate DOE facilities, contract clauses and DOE regulations. This proposed rule would implement the statutory mandate to promulgate worker safety and health regulations for DOE facilities that would provide a level of protection for workers at DOE facilities that is substantially equivalent to the level of protection currently provided to such workers and to provide procedures to ensure compliance with the rule. DOE anticipates that the contractor's work and safety programs required by this regulation would be based on existing programs and that this rule would generally not require the development of a new program. DOE has therefore concluded that promulgation of these regulations would fall into the class of actions that would not individually or cumulatively have a significant impact on the human environment as set forth in the DOE regulations implementing the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*). Specifically, the rule would be covered under the categorical exclusion in paragraph A6 of Appendix A to Subpart D, 10 CFR Part 1021, which applies to the establishment of procedural rulemakings. Accordingly, neither an environmental assessment nor an environmental impact statement is required.

H. Review Under the Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires each Federal agency to prepare a written assessment of the effects of any Federal mandate in a proposed or final agency regulation that may result in the expenditure by states, tribal, or local governments, on the aggregate, or by the private sector, of $100 million in any one year. The Act also requires a Federal agency to develop an effective process to permit timely input by elected officials of state, tribal, or local governments on a proposed "significant intergovernmental mandate," and requires an agency plan for giving notice and opportunity to provide timely input to potentially affected small governments before establishing any requirements that might significantly or uniquely affect small governments. DOE has determined that the proposed rule published today does not contain any Federal mandates affecting small governments, so these requirements do not apply.

I. Review Under Executive Order 13211

Executive Order 13211 (Actions Concerning Regulations That Significantly Affect Energy, Supply, Distribution, or Use), 66 FR 28355 (May 22, 2001) requires preparation and submission to OMB of a Statement of Energy Effects for significant regulatory actions under Executive Order 12866 that are likely to have a significant adverse effect on the supply, distribution, or use of energy. DOE has determined that the proposed rule published today would not have a significant adverse effect on the supply, distribution, or use of energy and thus the requirement to prepare a Statement of Energy Effects does not apply.

J. Review Under the Treasury and General Government Appropriations Act, 1999

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. 105–277) requires Federal agencies to issue a "Family Policymaking Assessment" for any proposed rule that may affect family well-being. The proposed rule has no impact on the autonomy or integrity of the family as an institution. Accordingly, DOE has concluded that it is not necessary to prepare a Family Policymaking Assessment.

K. Review Under the Treasury and General Government Appropriations Act, 2001

The Treasury and General Government Appropriations Act, 2001 (44 U.S.C. 3516, *note*) provides for agencies to review most dissemination of information to the public under guidelines established by each agency pursuant to general guidelines issued by OMB. OMB's guidelines were published at 67 FR 8452 (Feb. 22, 2002), and DOE's guidelines were published at 67 FR 62446 (Oct. 7, 2002). DOE has reviewed today's notice of proposed rulemaking under the OMB and DOE guidelines, and has concluded that it is consistent with applicable policies in those guidelines.

IV. Public Comment Procedures

A. Written Comments

Interested individuals are invited to participate in this proceeding by submitting data, views, or arguments with respect to this proposed rule. Three copies of written comments should be submitted to the address indicated in the **ADDRESSES** section of this notice. To help the DOE review the submitted comments, commenters are requested to reference the paragraph (*e.g.*, § 851.4(a)) to which they refer where possible.

All information provided by commenters will be available for public inspection at the DOE Freedom of Information Reading Room, Room 1E–190, 1000 Independence Avenue, SW., Washington, DC 20585 between the hours of 8:30 a.m. and 4:30 p.m., Monday through Friday, except Federal Holidays. The docket file material for this rulemaking will be under "EH–RM–03–WSH."

DOE also intends to enter all written comments on a Web site specially established for this proceeding. The Internet Web site is *http://www.eh.doe.gov/whs/rulemaking*. To assist DOE in making public comments available on a Web site, interested persons are to submit an electronic version of their written comments in accordance with the instructions in the **DATES** section of this notice of proposed rulemaking.

If you submit information that you believe to be exempt by law from public disclosure, you should submit one complete copy, as well as two copies from which the information claimed to be exempt by law from public disclosure has been deleted. DOE is responsible for the final determination with regard to disclosure or nondisclosure of the information and for treating it accordingly under the Freedom of Information Act section on "Handling Information of a Private Business, Foreign Government, or an International Organization," 10 CFR 1004.11.

B. Public Hearings

Public hearings will be held at the time, date, and place indicated in the **DATES** and **ADDRESSES** sections of this notice of proposed rulemaking. Any person who is interested in making an oral presentation should, by 4:30 p.m. on the date specified, make a phone request to the number in the **DATES** section of this notice of proposed rulemaking. The person should provide a daytime phone number where he or she may be reached. Persons requesting an opportunity to speak will be notified as to the approximate time they will be speaking. Each presentation is limited to 10 minutes. Persons making oral presentations should bring three copies of their statement to the hearing and submit them at the registration desk.

DOE reserves the right to select the persons who will speak. In the event that requests exceed the time allowed, DOE also reserves the right to schedule speakers' presentations and to establish the procedures for conducting the hearing. A DOE official will be designated to preside at each hearing, which will not be judicial or evidentiary. Only those persons conducting the hearing may ask questions. Any further procedural rules needed to conduct the hearing properly will be announced by the DOE presiding official.

A transcript of each hearing will be made available to the public. DOE will retain the record of the full hearing, including the transcript, and make it available on the Web site specially established for this proceeding. The Internet Web site is *http://www.eh.doe.gov/whs/rulemaking*. If DOE must cancel the hearing, it will make every effort to give advance notice.

Prior to holding the public hearings, DOE intends to hold one or more informal information workshops to allow contractors, workers and their representatives to familiarize themselves with the proposed regulation. DOE expects to hold these workshops which could include video or telephone conferencing, approximately three weeks after publication of the proposed regulation and will make information on times and locations available as soon as arrangements are finalized.

List of Subjects

10 CFR Part 850

Beryllium, Chronic beryllium disease, Hazardous substances, Lung diseases, Occupational safety and health, Reporting and recordkeeping requirements.

10 CFR Part 851

Civil penalty, Federal buildings and facilities, Occupational safety and health, Safety, Reporting and recordkeeping requirements.

Issued in Washington, DC, on December 2, 2003.

Beverly Cook,

Assistant Secretary of Environment, Safety, and Health.

For the reasons set forth in the preamble, the Department of Energy proposes to amend chapter III of title 10 of the Code of Federal Regulations as follows:

PART 850—CHRONIC BERYLLIUM DISEASE PREVENTION PROGRAM

1. The authority citation for part 850 is revised to read as follows:

Authority: 42 U.S.C. 2201(i)(3), (p); 42 U.S.C. 2282c; 29 U.S.C. 668; 42 U.S.C. 7101 *et seq.*; 50 U.S.C. 2401 *et seq.*, E.O. 12196, 3 CFR 1981 comp., at 145 as amended.

2. Section 850.1 is revised to read as follows:

§ 850.1 Scope.

This part provides for establishment of a chronic beryllium disease prevention program (CBDPP) that supplements and is deemed an integral part of the worker safety and health program under part 851 of this chapter.

3. Section 850.4 is revised to read as follows:

§ 850.4 Enforcement.

DOE may take appropriate steps pursuant to part 851 of this chapter to enforce compliance by contractors with this part and any DOE-approved CBDPP.

4. A new part 851 is added to chapter III to read as follows:

PART 851—WORKER SAFETY AND HEALTH

Subpart A—General Provisions

Sec.
851.1 Scope.
851.2 Exclusions.
851.3 Definitions.
851.4 Enforcement.
851.5 Information and records.
851.6 Compliance Order.
851.7 Interpretation.
851.8 Guidance documents.
851.9 DOE operated workplaces.

Subpart B—Worker Safety and Health Program

851.100 General rule.
851.101 Worker safety and health program.
851.102 DOE approval of worker safety and health program.
851.103 Worker rights.

Subpart C—Enforcement Process

851.200 Purpose.
851.201 Investigations and inspections.
851.202 Settlement.
851.203 Preliminary notice of violation.
851.204 Final notice of violation.
851.205 Administrative appeal.
851.206 Direction to NNSA contractors.

Appendix A to Part 851—Generally Acceptable Worker Safety and Health Standards and Programs

Appendix B to Part 851—General Statement of Enforcement Policy

Authority: 42 U.S.C. 2201(i)(3), (p); 42 U.S.C. 2282c; 42 U.S.C. 5801 *et seq.*; 42 U.S.C. 7101 *et seq.*; 50 U.S.C. 2401 *et seq.*

Subpart A—General Provisions

§ 851.1 Scope.

This part governs the conduct of activities at DOE sites by or on behalf of DOE.

§ 851.2 Exclusions.

(a) This part does not apply to a DOE site:

(1) Regulated by the Occupational Safety and Health Administration (OSHA) on December 2, 2002; or

(2) Operated under the authority of the Director, Naval Nuclear Propulsion, pursuant to Executive Order 12344, as set forth in Public Law 98–525, 42 U.S.C. 7158 note.

(b) This part does not apply to radiological hazards to the extent regulated by 10 CFR parts 820, 830, or 835.

§ 851.3 Definitions.

The following definitions apply to this part:

AEA means the Atomic Energy Act of 1954, 42 U.S.C. 2011 *et seq.*

Consent order means any written document, signed by the Director and a contractor, containing stipulations or conclusions of fact or law and a remedy acceptable to both DOE and the contractor.

Contractor means any entity, including affiliated entities such as a parent corporation, under contract with DOE (or any subcontractor or supplier thereto).

Covered workplace means a place where work is conducted by or on behalf of DOE where DOE has oversight responsibility for safety and health.

DOE means the United States Department of Energy, including the National Nuclear Security Administration.

DOE site means a DOE-owned or leased area or location where activities and operations are performed at one or more facilities or locations by or on behalf of DOE.

Director means the DOE Official(s) to whom the Secretary has assigned the authority to investigate the nature and extent of compliance with the requirements of this part.

Final notice of violation means a document that determines a contractor has violated or is continuing to violate a requirement of this part and includes:

(1) A statement specifying the requirement of this part to which the violation relates;

(2) A concise statement of the basis for the determination;

(3) Any remedy, including the amount of any civil penalty; and

(4) A statement explaining the reasoning behind any remedy.

Final order means an order of DOE that represents final agency action and, where appropriate, imposes a remedy with which the recipient of the order must comply.

General Counsel means the General Counsel of DOE.

Guidance document means a document that sets forth information related to implementing or otherwise complying with a requirement of this part and that DOE has not adopted as a legally binding requirement through notice and comment rulemaking under the Administrative Procedure Act (5 U.S.C. 553).

Interpretation means a statement by the General Counsel concerning the meaning or effect of a requirement of this part which relates to a specific factual situation but may also be a ruling of general applicability where the General Counsel determines such action to be appropriate.

National security workplace means a covered workplace where national security missions are performed.

NNSA means the National Nuclear Security Administration.

Preliminary notice of violation means a document that sets forth the preliminary conclusions that a contractor has violated or is continuing to violate a requirement of this part and includes:

(1) A statement specifying the requirement of this part to which the violation relates;

(2) A concise statement of the basis for alleging the violation;

(3) Any remedy, including the amount of any proposed civil penalty; and

(4) A statement explaining the reasoning behind any proposed remedy.

Program Secretarial Officer (PSO) means the Assistant Secretary, Deputy Administrator, Program Office Director, or equivalent DOE official who has primary line management responsibility for a contractor.

Remedy means any action necessary or appropriate to rectify, prevent, or penalize a violation of a requirement of this part, including a compliance order, the assessment of civil penalties, the reduction of fees or other payments under a contract, the requirement of specific actions, or the modification, suspension or recission of a contract.

Secretary means the Secretary of Energy.

Transitional workplace means a covered workplace that is, or is expected to be, permanently closed and that is expected to be demolished, or title to which is expected to be transferred to another entity for reuse on behalf of an entity other than DOE.

Worker means an employee who performs work at a covered workplace.

Worker protection evaluation report means the report prepared by DOE to document the basis for approval by DOE of a worker safety and health program, including any conditions for approval.

Worker safety and health program means a program that provides reasonable assurance of a safe and healthful workplace.

Workplace hazard means a physical, chemical, or biological hazard with any potential to cause illness, injury, or death to a person.

Workplace safety and health standard means a standard or program which addresses a workplace hazard by requiring conditions, or the adoption or use of one or more practices, means, methods, operations, or processes, reasonably necessary or appropriate to provide a safe and healthful workplace.

§ 851.4 Enforcement.

(a) The requirements in this part are subject to enforcement by all appropriate means.

(b) A contractor that violates (or whose employee violates) § 851.100 of this part is subject to a reduction in fees or other payments under a contract with DOE, pursuant to the contract's *Conditional Payment of Fee* clause.

(c) A contractor who has entered into an agreement of indemnification under section 170d. of the AEA (or any subcontractor or supplier thereto) and who violates (or whose employee violates) any requirement of this part is subject to a civil penalty of not more than $70,000 for each such violation. If any violation under this subsection is a continuing violation, each day of the violation shall constitute a separate violation for the purpose of computing the civil penalty.

(d) DOE may not penalize a contractor under both paragraphs (b) and (c) of this section for the same violation of a requirement of this part.

(e) In the case of an entity described in subsection d. of section 234A of the AEA, the total amount of contract penalties under paragraph (b) and civil penalties under paragraph (c) of this section in a fiscal year may not exceed the total amount of fees paid by DOE to that entity in that fiscal year.

(f) DOE may not penalize a contractor under both sections 234A and 234C of the AEA for the same violation.

§ 851.5 Information and records.

(a) A contractor must maintain complete and accurate records as necessary to substantiate compliance with the requirements of this part.

(b) A contractor may neither conceal nor destroy any information concerning noncompliance or potential noncompliance with the requirements of this part.

(c) Any information pertaining to a requirement in this part provided to DOE by any contractor or maintained by any contractor for inspection by DOE shall be complete and accurate in all material respects.

(d) Nothing in this part shall relieve any contractor from safeguarding classified, confidential, and controlled information, including Restricted Data or national security information, in accordance with the applicable provisions of federal statutes and the rules, regulations, and orders of any federal agency.

§ 851.6 Compliance Order.

(a) The Secretary may issue to any contractor a Compliance Order that:

(1) Identifies a situation that violates, potentially violates, or otherwise is inconsistent with a requirement of this part;

(2) Mandates a remedy, work stoppage, or other action; and, (3) States the reasons for the remedy, work stoppage, or other action.

(b) A Compliance Order is a final order that is effective immediately unless the Order specifies a different effective date.

(c) Within 15 calendar days of the issuance of a Compliance Order, the recipient of the Order may request the Secretary to rescind or modify the Order. A request does not stay the effectiveness of a Compliance Order unless the Secretary issues an order to that effect.

§ 851.7 Interpretation.

(a) The Office of the General Counsel is solely responsible for formulating and issuing any interpretation concerning a requirement in this part.

(b) Any written or oral response to any written or oral question which is not provided pursuant to paragraph (a) of this section does not constitute an interpretation and does not provide any basis for action inconsistent with a requirement of this part.

§ 851.8 Guidance documents.

(a) Except as provided in paragraph (c) of this section, a guidance document does not establish any requirement legally enforceable pursuant to this part.

(b) Except as provided in paragraph (c) of this section, DOE may not conduct an inspection or investigation to determine compliance with this part on the basis of whether a contractor's actions or omissions are inconsistent with a guidance document.

(c) A provision of a guidance document is legally enforceable pursuant to this part only to the extent it is explicitly:

(1) Included by a contractor in the set of workplace safety and health standards identified pursuant to § 851.101(c)(3)(ii)(B) of this part; or

(2) Selected or used by a contractor as a procedure, control, or work process to perform work in a tailored manner for particular covered workplaces in accordance with § 851.101(c)(4).

§ 851.9 DOE operated workplaces.

With respect to a covered workplace operated by DOE, DOE must ensure work is performed consistent with the requirements of this part, including the establishment, maintenance and implementation of a worker safety and health program.

Subpart B—Worker Safety and Health Program

§ 851.100 General rule.

The contractor responsible for a covered workplace must ensure:

(a) The covered workplace is free from recognized hazards that are causing or are likely to cause death or serious bodily harm; and

(b) Work is performed in accordance with the worker safety and health program for the covered workplace, as approved by DOE.

§ 851.101 Worker safety and health program.

(a) A contractor responsible for one or more workplaces at a DOE site must establish and maintain a worker safety and health program for those workplaces.

(b) A worker safety and health program must:

(1) Provide for eliminating, limiting or mitigating the identified workplace hazards in a manner that is necessary and sufficient to provide adequate protection of workers; and

(2) Be tailored to reflect the activities and hazards in particular work environments.

(c) In establishing a worker safety and health program, a contractor must:

(1) Identify and analyze, as appropriate at the site, facility, activity and workplace level:

(i) The work to be performed;

(ii) The work environment, including designs and features of facilities, equipment, operations and procedures important to a safe and healthful workplace;

(iii) Existing and potential workplace hazards; and

(iv) The risk of worker injury or illness associated with the identified workplace hazards.

(2) Include a set of workplace safety and health standards that achieves a level of protection at least substantially equivalent to the level of protection that existed in comparable DOE workplaces in 2002;

(3) Select and document the included set of workplace safety and health standards that are necessary and sufficient to provide adequate protection of workers:

(i) With respect to beryllium, by incorporating the chronic beryllium disease prevention program adopted pursuant to part 850 of this chapter; and

(ii) With respect to other workplace hazards identified and analyzed pursuant to (c)(1) of this section by identifying and incorporating a set of provisions that are necessary and sufficient to protect workers from the identified hazards, provided that the set is based on:

(A) The workplace safety and health standards in Appendix A of this part;

(B) Other workplace safety and health standards; or

(C) A combination of the workplace safety and health standards in paragraphs (c)(3)(ii)(A) and (c)(3)(ii)(B) of this section.

(4) Describe in sufficient detail how work will be performed in accordance with the set of selected workplace safety and health standards, including:

(i) Selection process and use of procedures, controls, and work processes in a tailored manner for particular covered workplaces;

(ii) Preference for implementation on the basis of the following hierarchy in descending order: engineering controls, administrative controls, work practices, and personal protective equipment; and

(iii) Integration of the program on site, facility, activity and workplace levels, taking into account differences and similarities between the work, hazards, and workplace safety and health standards and, if applicable, coordination with other worker safety and health programs at the site;

(5) Describe how feedback and continuous improvement will be provided for elements of the worker safety and health program.

(6) Prioritize the abatement of hazards on the basis of risks to workers;

(7) Address how the following features will be incorporated into the worker safety and health program:

(i) Line management commitment;

(ii) Information and training;

(iii) Ongoing workplace monitoring and observation;

(iv) Medical surveillance; and

(v) Applicability to subcontractors.

(d)(1) If a contractor is responsible for more than one covered workplace at a DOE site, the contractor must establish and maintain a single worker safety and health program for the workplaces at the site for which the contractor is responsible

(2) If more than one contractor is responsible for covered workplaces at a DOE site, each contractor must:

(i) Establish and maintain a worker safety and health program for the

workplaces for which the contractor is responsible; and

(ii) Coordinate with the other contractors responsible for covered workplaces at the site to ensure that the worker safety and health programs at the site are integrated and consistent.

(e) If a worker safety and health program sets forth a reasonable basis for characterizing particular workplaces as:

(1) Transitional workplaces, it must provide sufficient flexibility to take into account the special circumstances of those workplaces; or

(2) National security workplaces, it must provide sufficient flexibility to achieve national security missions in an efficient and timely manner in those workplaces.

§ 851.102 DOE approval of worker safety and health program.

(a) Beginning one year after publication of the final rule, no work may be performed at a covered workplace unless the PSO has approved the worker safety and health program for the workplace through the issuance of a worker protection evaluation report that determines the worker safety and health program will achieve a level of protection at least substantially equivalent to the level of protection that existed in 2002 for DOE workplaces comparable to those covered workplaces addressed by the program.

(b) Within 180 days after publication of the final rule, a contractor responsible for establishing a worker safety and health program must submit for DOE approval a worker safety and health program that meets the requirements of this subpart.

(c) A contractor must maintain a worker safety and health program by:

(1) Evaluating and updating the worker safety and health program to reflect changes in the activities and hazards;

(2) Annually submitting to DOE either an updated worker safety and health program for approval or a letter stating that no changes are necessary in the currently approved worker safety and health program; and

(3) Incorporating in the worker safety and health program any changes, conditions, or workplace safety and health standards directed by DOE.

§ 851.103 Worker rights.

A worker at a covered workplace has the right, without reprisal, to:

(a) Participate in activities described in this section on official time;

(b) Have access to:

(1) DOE safety and health publications;

(2) The DOE-approved worker safety and health program for the covered workplace; and

(3) The standards, controls and procedures applicable to the covered workplace;

(c) Observe monitoring or measuring of hazardous agents;

(d) Have access to monitoring and measuring results and be notified when such results indicate the worker was overexposed to hazardous materials;

(e) Accompany DOE personnel during an inspection of the workplace;

(f) Request and receive results of inspections and accident investigations;

(g) Express concerns related to worker safety and health;

(h) Decline to perform an assigned task because of a reasonable belief that, under the circumstances, the task poses an imminent risk of death or serious bodily harm to the worker coupled with a reasonable belief that there is insufficient time to seek effective redress through the normal hazard reporting and abatement procedures;

(i) Stop work, through the worker's supervisor, when the worker discovers employee exposures to imminently dangerous conditions or other serious hazards; provided that any stop work authority must be exercised in a justifiable and responsible manner in accordance with established procedures; and

(j) Have access to an appropriate safety and health poster that informs the worker of relevant rights and responsibilities.

Subpart C—Enforcement Process

§ 851.200 Purpose.

This subpart establishes the procedures for investigating the nature and extent of a violation of the requirements of this part, for determining whether a violation of a requirement of this part has occurred, and for imposing an appropriate remedy.

§ 851.201 Investigations and inspections.

(a) The Director may initiate and conduct investigations and inspections relating to the scope, nature and extent of compliance by a contractor with the requirements of this part and take such action as the Director deems necessary and appropriate to the conduct of the investigation or inspection.

(b) Any person may request the Director to initiate an investigation or inspection pursuant to paragraph (a) of this section. A request for an investigation or inspection sets forth the subject matter or activity to be investigated or inspected as fully as possible and includes supporting documentation and information.

(c) The Director must inform any contractor that is the subject of an investigation or inspection in writing at the initiation of the investigation or inspection of the general purpose of the investigation or inspection.

(d) DOE shall not disclose information or documents that are obtained during any investigation or inspection unless the Director directs or authorizes the public disclosure of the investigation. Upon such authorization, the information or documents are a matter of public record and disclosure is not precluded by the Freedom of Information Act, 5 U.S.C. 552 and part 1004 of this title.

(e) A request for confidential treatment of information for purposes of the Freedom of Information Act does not prevent disclosure by the Director if the Director determines disclosure to be in the public interest and otherwise permitted or required by law.

(f) During the course of an investigation or inspection, any contractor may submit any document, statement of facts or memorandum of law for the purpose of explaining the contractor's position or furnish information which the contractor considers relevant to a matter or activity under investigation or inspection.

(g) The Director may convene an informal conference to discuss any situation that might be a violation of a requirement of this part, its significance and cause, any correction taken or not taken by the contractor, any mitigating or aggravating circumstances, and any other useful information. A conference is not normally open to the public and DOE does not make a transcript of the conference. The Director may compel a contractor to attend the conference.

(h) If facts disclosed by an investigation or inspection indicate that further action is unnecessary or unwarranted, the Director may close the investigation without prejudice to further investigation or inspection at any time that circumstances so warrant.

(i) If facts disclosed by an investigation or inspection indicate that corrective action is necessary or warranted, the Director may issue an enforcement letter that closes the investigation subject to the implementation of the corrective actions identified in the enforcement letter.

(j) The Director may issue enforcement letters that communicate DOE's expectations with respect to any aspect of the requirements of this part, including identification and reporting of issues, corrective actions, and implementation of the contractor's

safety and health program; provided that an enforcement letter may not create the basis for any legally enforceable requirement pursuant to this part.

(k) The Director may sign, issue and serve subpoenas.

§ 851.202 Settlement.

(a) DOE encourages settlement of a proceeding under this subpart at any time if the settlement is consistent with this part. The Director and a contractor may confer at any time concerning settlement. A settlement conference is not open to the public and DOE does not make a transcript of the conference.

(b) Notwithstanding any other provision of this part, the Director may resolve any issues in an outstanding proceeding under this subpart with a consent order.

(1) The Director and the contractor, or a duly authorized representative, must sign the consent order and indicate agreement to the terms contained therein.

(2) A contractor does not need to admit in a consent order that a requirement of this part has been violated.

(3) DOE does not need to make a finding in a consent order that a contractor has violated a requirement of this part.

(4) A consent order must set forth the relevant facts which form the basis for the order and what remedy, if any, is imposed.

(5) A consent order shall constitute a final order.

§ 851.203 Preliminary notice of violation.

(a) Based on a determination by the Director that there is a reasonable basis to believe a contractor has violated or is continuing to violate a requirement of this part, the Director may issue a preliminary notice of violation to the contractor.

(b) The Director must send a preliminary notice of violation by certified mail, return receipt requested.

(c) A preliminary notice of violation must indicate:

(1) The date, facts, and nature of each act or omission upon which each alleged violation is based;

(2) The particular provision of the regulation involved in each alleged violation;

(3) The proposed remedy for each alleged violation, including the amount of any civil penalty; and

(4) The right of the contractor to submit a written reply to the Director within 30 calendar days of receipt of the preliminary notice of violation.

(d) A reply to a preliminary notice of violation must contain a statement of all relevant facts pertaining to an alleged violation.

(1) The reply must:

(i) State any facts, explanations and arguments which support a denial of the alleged violation;

(ii) Demonstrate any extenuating circumstances or other reason why a proposed remedy should not be imposed or should be mitigated;

(iii) Discuss the relevant authorities which support the position asserted, including rulings, regulations, interpretations, and previous decisions issued by DOE; and

(iv) Furnish full and complete answers to any questions set forth in the preliminary notice.

(2) Copies of all relevant documents must be submitted with the reply.

(e) If a contractor fails to submit a written reply within 30 calendar days of receipt of a preliminary notice of violation:

(1) The contractor relinquishes any right to appeal any matter in the preliminary notice; and

(2) The preliminary notice, including any proposed remedies therein, constitutes a final order.

§ 851.204 Final notice of violation.

(a) If a contractor submits a written reply within 30 calendar days of receipt of a preliminary notice of violation, the Director must review the submitted reply and make a final determination whether the contractor violated or is continuing to violate a requirement of this part.

(b) Based on a determination by the Director that a contractor has violated or is continuing to violate a requirement of this part, the Director may issue to the contractor a final notice of violation that states concisely the determined violation and any remedy, including the amount of any civil penalty imposed on the contractor. The final notice of violation must state that the contractor may petition the Office of Hearings and Appeals for review of the final notice in accordance with 10 CFR part 1003, subpart G.

(c) The Director must send a final notice of violation by certified mail, return receipt requested.

(d) If a contractor fails to submit a petition for review to the Office of Hearings and Appeals within 30 calendar days of receipt of a final notice of violation pursuant to § 851.205:

(1) The contractor relinquishes any right to appeal any matter in the final notice; and

(2) The final notice, including any remedies therein, constitutes a final order.

§ 851.205 Administrative appeal.

(a) Any contractor that receives a final notice of violation may petition the Office of Hearings and Appeals for review of the final notice in accordance with part 1003, subpart G of this title, within 30 calendar days from receipt of the final notice.

(b) In order to exhaust administrative remedies with respect to a final notice of violation, the contractor must petition the Office of Hearings and Appeals for review in accordance with paragraph (a) of this section.

§ 851.206 Direction to NNSA contractors.

(a) Notwithstanding any other provision of this part, the NNSA Administrator, rather than the Director, signs, issues and serves the following actions that direct NNSA contractors:

(1) Subpoenas;

(2) Orders to compel attendance;

(3) Disclosures of information or documents obtained during an investigation or inspection;

(4) Preliminary notices of violations; and

(5) Final notices of violations.

(b) The NNSA Administrator shall act after consideration of the Director's recommendation.

Appendix A to Part 851—Generally Acceptable Worker Safety and Health Standards and Programs

I. Safety and Health Standards

A. Title 29 of the Code of Federal Regulations (CFR), Part 1910, "Occupational Safety and Health Standards."

B. Title 29 CFR Part 1915, "Shipyard Employment."

C. Title 29 CFR Part 1917, "Marine Terminals."

D. Title 29 CFR Part 1918, "Safety and Health Regulations for Longshoring."

E. Title 29 CFR Part 1926, "Safety and Health Regulations for Construction."

F. Title 29 CFR Part 1928, "Occupational Safety and Health Standards for Agriculture."

G. American Conference of Governmental Industrial Hygienists (ACGIH), "Threshold Limit Values for Chemical Substances and Physical Agents and Biological Exposure Indices" (most recent edition), when ACGIH Threshold Limit Values (TLVs) are lower (more protective) than Occupational Safety and Health Administration (OSHA) Permissible Exposure Limits. When ACGIH TLVs are used as exposure limits, DOE operations must nonetheless comply with the other provisions of any applicable OSHA-expanded health standard.

H. Exposure limits and technical requirements of the American National Standards Institute (ANSI) Z136.1, *Safe Use of Lasers*.

I. ANSI Z88.2, *Practices for Respiratory Protection*.

J. ANSI Z49.1, *Safety in Welding, Cutting and Allied Processes*, Sections 4.3 and E4.3 (of the 1994 edition or equivalent sections of subsequent editions).

K. National Fire Protection Association (NFPA) 70, *National Electrical Code*.

L. National Fire Protection Association 70E, *Electrical Safety Requirements for Employee Workplaces*.

M. Appropriate etiologic agents guidelines and best practices. *See* most current edition of U.S. Department of Health and Human Services Centers for Disease Control and Prevention (CDC) Publication 93–8395, *Biosafety in Microbiological and Biomedical Laboratories;* National Institutes of Health (NIH) publication *Guidelines for Research Involving Recombinant DNA Molecules;* and World Health Organization (WHO) publication *Guidelines for the Safe Transport of Infectious Substances and Diagnostic Specimens*.

II. Safety and Health Programs

A. Construction Safety

1. For each construction operation presenting hazards not experienced in previous project operations or for work performed by a different subcontractor, the construction contractor prepares a task analysis (job hazard analysis) and has it approved prior to commencement of affected work. These analyses identify foreseeable hazards and planned protective measures, provide drawings and/or other documentation of protective measures that a Professional Engineer or other competent person is required to prepare, and define the qualifications of competent persons required for workplace inspections.

2. Inform workers of foreseeable hazards and the protective measures described within the approved task analysis prior to beginning work on the affected construction operation.

3. During periods of active construction, the construction manager has a designated representative on site at all times to conduct and document daily inspections of the workplace; to identify and correct hazards and instances of noncompliance with project safety and health requirements. If immediate corrective action is not possible or the hazard falls outside of project scope, the construction contractor immediately notify affected workers, post appropriate warning signs, implement needed interim control measures, and notify the construction manager of actions taken.

4. The construction contractor prepares and has approved prior to beginning any on-site project work a written project safety and health plan that gives a proposal for implementing the above information. The construction contractor also designates the individual(s) responsible for on-site implementation of the plan, specify qualifications for those individuals, and provide a list of those project operations for which a task analysis is to be performed.

B. Fire Protection

1. Implement a comprehensive fire protection program that includes appropriate facility and site-wide fire protection, fire alarm notification and egress features, and access to a fully staffed, trained, and equipped fire department that is capable of responding in a timely and effective manner to site emergencies.

2. An acceptable fire protection program includes those fire protection criteria and procedures, analyses, hardware and systems, apparatus and equipment, and personnel. This also includes meeting the applicable building code and National Fire Protection Association Codes and Standards or exceeding them (when necessary to meet safety objectives), unless DOE has granted explicit written relief.

3. Fire watcher requirements in National Fire Protection Association (NFPA) 51B, Section 3–3.3 (of the 1994 edition or equivalent section of subsequent editions), are expanded to include responsibility for the safety of the welder(s) in addition to that of the facility.

C. Firearms Safety

1. Establish firearms safety policies and procedures to address safety concerns and the personal protective equipment required. Establish procedures for: storage, handling, cleaning, and maintenance of firearms and associated ammunition; activities such as loading, unloading, and exchanging firearms; use of pyrotechnics and/or explosive projectiles; handling misfires and duds; live fire operations; and training and exercises using engagement simulation systems.

2. Staff members responsible for the direction and operation of the firearms safety program are professionally qualified and have sufficient time and authority to implement the established program. Firearms instructors and armorers are Safeguards and Security Central Training Academy-certified to conduct the level of activity provided.

3. Conduct formal appraisals assessing implementation of procedures, personnel responsibilities, and duty assignments to ensure overall policy objectives and performance criteria are being met by qualified safety personnel.

4. Implement provisions related to firearms safety training, qualification, or re-qualification. Personnel successfully complete and demonstrate understanding of initial firearms safety training before being issued any firearms.

(a) Personnel authorized to carry firearms have access to instruction manuals for each type of duty firearms with which they are armed while on duty. Authorized armed personnel demonstrate both technical and practical knowledge of firearms handling and safety on a semi-annual basis. This demonstration supported by limited scope performance tests, and documents the results of such testing.

(b) All firearms training lesson plans incorporate safety for all aspects of firearms training task performance standards. The lesson plans follow the standards and criteria set forth by the Safeguards and Security Central Training Academy's standard training programs. Conduct safety briefings before any live fire training commences, in accordance with DOE M 473.2–1, *Firearms Qualification Courses Manual*.

(c) Develop a safety analysis and have approved by the Operations Office Manager for the facilities and operation of each live fire range. Complete and have approved a safety analysis prior to implementation of any new training. Incorporate the results of these analyses into procedures, lesson plans, exercise plans, and limited scope performance tests.

(d) Post site-specific firing range safety procedures at all ranges.

(e) Request approval from the DOE Operations Office for the location and use of a live fire range.

5. Transportation, handling, placarding, and storage of munitions conform to the applicable requirements of DOE M 440.1–1, *DOE Explosives Safety Manual*.

D. Explosives Safety

Applicable explosives operations comply with DOE M 440.1–1. Contractor facility management determines the applicability of the requirements to research and development laboratory type operations consistent with the DOE level of protection criteria in the Manual. The administration and management of the Explosives Safety Manual and any deviations from it follows the process specified in Chapter I, Sections 3 and 4, of the Manual. Revisions to the Manual are made through concurrence of the DOE Explosives Safety Committee.

E. Industrial Hygiene

Industrial hygiene programs include the following elements:

1. Initial or baseline surveys of all work areas or operations to identify and evaluate potential worker health risks and periodic resurveys and/or exposure monitoring as appropriate.

2. Coordination with planning and design personnel to anticipate and control health hazards that proposed facilities and operations would introduce.

3. Documented exposure assessment for chemical, physical, and biological agents and ergonomic stressors using recognized exposure assessment methodologies and use of accredited industrial hygiene laboratories.

4. Specification of appropriate controls based on the following hierarchy: engineering; work practices; and personal protective equipment to limit hazardous exposure to acceptable levels. Use of respiratory protection equipment tested under the DOE Respirator Acceptance Program when National Institute for Occupational Safety and Health-approved respiratory protection does not exist for DOE tasks. For security operations conducted in accordance with Presidential Directive Decision 39, U.S. Policy on Counter Terrorism, use of Department of Defense military type masks for respiratory protection by security personnel is acceptable.

5. Professionally and technically qualified industrial hygienists to manage and implement the industrial hygiene program.

F. Occupational Medicine

1. The earliest possible detection and mitigation of occupational illness and injury is the goal of these services. The physician responsible for delivery of medical services is responsible for the planning and implementation of the occupational medical program.

2. Maintenance of a Healthful Work Environment.

(a) The responsible physician performs targeted examinations based on an up-to-date knowledge of work site risk; identify potential or actual health effects resulting from worksite exposures; and communicate the results of health evaluations to management and to those responsible for mitigating worksite hazards.

(b) Contractor management provides to the physician employee job task and hazard analysis information; and summaries of potential worksite exposures of employees prior to mandatory health examinations.

3. Employee Health Examinations. Health examinations are conducted by an occupational health examiner under the direction of a licensed physician in accordance with current sound and acceptable medical practices. The content of health examinations is the responsibility of the physician responsible for the delivery of medical services.

(a) The following classes of examinations are for providing initial and continuing assessment of employee health: pre-placement in accordance with the Americans with Disabilities Act (42 U.S.C. 12101); qualification examinations; fitness for duty; medical surveillance and health monitoring; return to work health evaluations; and termination examinations.

(b) The physician or his/her designee informs contractor management of appropriate employee work restrictions.

4. Monitored Care. Contractor management notifies the physician responsible for the delivery of medical services or his or her designee when an employee has been absent because of an injury or illness for more than 5 consecutive workdays or experiences excessive absenteeism.

5. Employee Counseling and Health Promotion. The physician responsible for delivery of medical services reviews and approves the medical aspects of contractor-sponsored or -supported employee assistance, alcohol, and other substance abuse rehabilitation programs; approve and coordinate all contractor-sponsored or -supported wellness programs; and ensure that immunization programs for blood-borne pathogens and biohazardous waste programs conform to OSHA regulations and Centers for Disease Control guidelines for those employees at risk to these forms of exposure.

6. Medical Records. Develop and maintain an employee medical record for each employee for whom medical services are provided. Observe employee medical records confidentiality, adequately protect and permanently store them.

7. Emergency and Disaster Preparedness. The physician responsible for the delivery of medical services is responsible for the medical portion of the site emergency and disaster plan. Integrate the medical portion with the overall site plan and with the surrounding community emergency and disaster plan.

8. Organizational Staffing. Ensure that the physician responsible for the delivery of medical services is a graduate of a school of medicine or osteopathy who meets the licensing requirements applicable to the location in which the physician works. Occupational medical physicians, occupational health nurses, physician's assistants, nurse practitioners, psychologists, and other occupational health personnel are graduates of accredited schools and is licensed, registered, or certified as required by Federal or State law where employed.

G. Pressure Safety

1. Establish safety policies and procedures to ensure pressure systems are designed, fabricated, tested, inspected, maintained, repaired, and operated by trained and qualified personnel in accordance with applicable and sound engineering principles.

2. Ensure that all pressure vessels, boilers, air receivers, and supporting piping systems conform to the American Society of Mechanical Engineers (ASME) Boiler and Pressure Vessel Safety Code; the American National Standards Institute/ASME B.31 Piping Code; and/or the strictest applicable state and local codes.

3. When national consensus codes are not applicable (because of pressure range, vessel geometry, use of special materials, etc.), implement measures to provide equivalent protection and ensure safety equal to or superior to the intent of the ASME code. Measures include the following:

(a) Design drawings, sketches, and calculations are reviewed and approved by an independent design professional. Documented organizational peer review is acceptable.

(b) Qualified personnel are used to perform examinations and inspections of materials, in-process fabrications, non-destructive tests, and acceptance tests.

(c) Documentation, traceability, and accountability are maintained for each unique pressure vessel or system, including descriptions of design, pressure, testing, operation, repair, and maintenance.

H. Motor Vehicle Safety

A. Motor Vehicle Safety Program protects the safety and health of all drivers and passengers in Government-owned or -leased motor vehicles and powered industrial equipment. The Motor Vehicle Safety Program is tailored for the individual DOE site or facility, based on an analysis of the needs of that particular site or facility, and addresses the following areas:

1. Minimum licensing requirements (including appropriate testing and medical qualification) for personnel operating motor vehicles and powered industrial equipment.

2. Requirements for the use of seat belts and provision of other safety devices.

3. Training for specialty vehicle operators.

4. Requirements for motor vehicle maintenance and inspection.

5. Uniform traffic and pedestrian control devices and road signs.

6. On-site speed limits and other traffic rules.

7. Awareness campaigns and incentive programs to encourage safe driving.

8. Enforcement provisions.

I. Biological Safety

1. Comply with appropriate regulatory measures for the safe possession, handling, transfer, use, or receipt of biological agents, including select agents or toxins, at DOE facilities. *See* 42 CFR part 73 Possession, Use and Transfer of Select Agents and Toxins, 9 CFR part 121 Possession, Use and Transfer of Biological Agents and Toxins, 7 CFR part 331 Possession, Use and Transfer of Biological Agents and Toxins, and 29 CFR 1910.1030, Occupational Exposures to Bloodborne Pathogens, and adhere to the guidance of the CDC publication, *Biosafety in Microbiological and Biomedical Laboratories* (BMBL), as noted in section I, paragraph M of this appendix.

2. Establish an Institutional Biosafety Committee (IBC) or equivalent, which will be responsible for reviewing any work with biological agents, including select agents and toxins, for compliance with appropriate CDC, Department of Agriculture, NIH, requirements and WHO and other international, Federal, State and local guidelines and assessment of containment level, facilities, procedures, practices, and training and expertise of personnel. In addition, this committee should review for compliance the site security, safeguards, and emergency management plans and procedures as related to work with etiologic agents.

3. Maintain a readily retrievable inventory and status of biological agents, including select agents and toxins and confirm compliance with the requirements of this appendix in a written statement to the head of the DOE field element within 60 days of incorporation of this appendix into the contract. Provide to the responsible field and area office, through the laboratory IBC (or its equivalent), an annual status report describing the status and inventory of biological agents, including select agents and toxins and program.

4. Inform the head of the appropriate DOE field element of each Laboratory Registration/Select Agent Program registration application package requesting registration of a laboratory facility at Biosafety Level 2, 3, or 4, for the purpose of transferring, receiving, or handling select agents or toxins.

5. Inform the head of the appropriate DOE field element of each CDC Form EA–101, Transfer of Select Agents, upon initial submission of the Form EA–101 to a vendor or other supplier requesting or ordering a select agent for possession, transfer, receipt, and handling in the registered facility. Inform DOE of final disposition and/or destruction of the select agent, within 10 days of completion of the Form EA–101.

6. Confirm the site safeguards and security plans or security plan, and emergency management programs address biological agents, including select agents and toxins.

7. Establish an immunization policy for personnel working with biological agents based on the recommendations contained in the U.S. Public Health Service Advisory Committee on Immunization Practices (ACIP) and as updated in the CDC *Morbidity and Mortality Weekly Report*. The ACIP provides basic guidance, but specific immunization actions should be based on the DOE facility evaluation of risk and benefit of immunization.

Appendix B to Part 851—General Statement of Enforcement Policy

I. Introduction

(a) This policy statement sets forth the general framework through which the U.S. Department of Energy (DOE) will seek to ensure compliance with its worker safety and health regulations, and, in particular, exercise the civil penalty authority provided

to DOE in section 3173 of Public Law 107–314, Bob Stump National Defense Authorization Act for Fiscal Year 2003 (December 2, 2002) ("NDAA"), amending the Atomic Energy Act ("AEA") to add section 234C. The policy set forth herein is applicable to violations of safety and health regulations in this part by DOE contractors, including DOE contractors who are indemnified under the Price Anderson Act, 42 U.S.C. 2210(d), and their subcontractors and suppliers (hereafter collectively referred to as DOE contractors). This policy statement is not a regulation and is intended only to provide general guidance to those persons subject to the regulations in this part. It is not intended to establish a "cookbook" approach to the initiation and resolution of situations involving noncompliance with the regulations in this part. Rather, DOE intends to consider the particular facts of each noncompliance situation in determining whether enforcement sanctions are appropriate and, if so, the appropriate magnitude of those sanctions. DOE may well deviate from this policy statement when appropriate in the circumstances of particular cases. This policy statement is not applicable to activities and facilities covered under E.O. 12344, 42 U.S.C. 7158 note, pertaining to Naval Nuclear Propulsion, and other activities excluded from the scope of the rule.

(b) The DOE goal in the compliance arena is to enhance and protect the safety and health of workers at DOE facilities by fostering a culture among both the DOE line organizations and the contractors that actively seeks to attain and sustain compliance with the regulations in this part. The enforcement program and policy have been developed with the express purpose of achieving safety inquisitiveness and voluntary compliance. DOE will establish effective administrative processes and positive incentives to the contractors for the open and prompt identification and reporting of noncompliances, performance of effective root cause analysis, and initiation of comprehensive corrective actions to resolve both noncompliance conditions and program or process deficiencies that led to noncompliance.

(c) In the development of the DOE enforcement policy, DOE recognizes that the reasonable exercise of its enforcement authority can help to reduce the likelihood of serious incidents. This can be accomplished by providing greater emphasis on a culture of safety in existing DOE operations, and strong incentives for contractors to identify and correct noncompliance conditions and processes in order to protect human health and the environment. DOE wants to facilitate, encourage, and support contractor initiatives for the prompt identification and correction of problems. DOE will give due consideration to such initiatives and activities in exercising its enforcement discretion.

(d) DOE may modify or remit civil penalties in a manner consistent with the mitigation and adjustment factors set forth in this policy with or without conditions. DOE will carefully consider the facts of each case of noncompliance and will exercise appropriate discretion in taking any enforcement action. Part of the function of a sound enforcement program is to assure a proper and continuing level of safety vigilance. The reasonable exercise of enforcement authority will be facilitated by the appropriate application of safety requirements to DOE facilities and by promoting and coordinating the proper contractor and DOE safety compliance attitude toward those requirements.

II. Purpose

The purpose of the DOE enforcement program is to promote and protect the safety and health of workers at DOE facilities by:

(a) Ensuring compliance by DOE contractors with the regulations in this part.

(b) Providing positive incentives for DOE contractors:

(1) Timely self-identification by contractors of worker safety deficiencies,

(2) Prompt and complete reporting of such deficiencies to DOE,

(3) Prompt correction of safety deficiencies in a manner that precludes recurrence, and,

(4) Identification of modifications in practices or facilities that can improve worker safety and health.

(c) Deterring future violations of DOE requirements by a DOE contractor.

(d) Encouraging the continuous overall improvement of operations at DOE facilities.

III. Statutory Authority

The Department of Energy Organization Act, 42 U.S.C. 7101–7385o, the Energy Reorganization Act of 1974 (ERA), 42 U.S.C. 5801–5911 and the Atomic Energy Act of 1954, as amended, (AEA) 42 U.S.C. 2011, require DOE to protect the public safety and health, as well as the safety of workers at DOE facilities, in conducting its activities, and grant DOE broad authority to achieve this goal. Section 234C of the AEA makes DOE contractors covered by the DOE Price-Anderson indemnification system, and their subcontractors and suppliers, subject to civil penalties for violations of the worker safety and health requirements promulgated in this part. 42 U.S.C. 2282c.

IV. Responsibilities

(a) The Director, as the principal enforcement officer of the DOE, has been delegated the authority to conduct enforcement investigations and conferences, issue Notices of Violations and proposed civil penalties, Enforcement Letters, Consent Orders, subpoenas, orders to compel attendance and disclosure of information or documents obtained during an investigation or inspection. The Secretary issues Compliance Orders.

(b) The NNSA Administrator, rather than the Director, signs, issues and serves the following actions that direct NNSA contractors: subpoenas; orders to compel attendance; disclosure of information or documents obtained during an investigation or inspection; Preliminary Notices of Violations; and Final Notices of Violations. The NNSA Administrator acts after consideration of the Director's recommendation.

V. Procedural Framework

(a) Title 10 CFR part 851 sets forth the procedures DOE will use in exercising its enforcement authority, including the issuance of Notices of Violation and the resolution of an administrative appeal in the event a DOE contractor elects to petition the Office of Hearings and Appeals for review.

(b) Pursuant to 10 CFR part 851 subpart C, the Director initiates the enforcement process by initiating and conducting investigations and inspections and issuing a Preliminary Notice of Violation (PNOV) with or without a proposed civil penalty. The DOE contractor is required to respond in writing to the PNOV within 30 days, either admitting the violation and waiving its right to contest the proposed civil penalty and paying it, admitting the violation but asserting the existence of mitigating circumstances that warrant either the total or partial remission of the civil penalty, or denying that the violation has occurred and providing the basis for its belief that the PNOV is incorrect. After evaluation of the DOE contractor's response, the Director may determine that no violation has occurred, that the violation occurred as alleged in the PNOV but that the proposed civil penalty should be remitted in whole or in part, or that the violation occurred as alleged in the PNOV and that the proposed civil penalty is appropriate, notwithstanding the asserted mitigating circumstances. In the latter two instances, the Director will issue a Final Notice of Violation (FNOV) or an FNOV and proposed civil penalty.

(c) An opportunity to challenge an FNOV is provided in administrative appeal provisions, 10 CFR 851.205. Any contractor that receives an FNOV may petition the Office of Hearings and Appeals for review of the final notice in accordance with 10 CFR part 1003, Subpart G, within 30 calendar days from receipt of the final notice. An administrative appeal proceeding is not initiated until the DOE contractor against which an FNOV has been issued requests an administrative hearing rather than waiving its right to contest the FNOV and proposed civil penalty, if any, and paying the civil penalty. However, it should be emphasized that DOE encourages the voluntary resolution of a noncompliance situation at any time, either informally prior to the initiation of the enforcement process or by consent order before or after any formal proceeding has begun.

VI. Severity of Violations

(a) Violations of the worker safety and health requirements in this part have varying degrees of safety and health significance. Therefore, the relative importance of each violation must be identified as the first step in the enforcement process. Violations of the worker safety and health requirements are categorized in three levels of severity to identify their relative seriousness. Notices of Violation are issued for noncompliance which, when appropriate, propose civil penalties commensurate with the severity level of the violations involved.

(b) To assess the potential safety and health impact of a particular violation, DOE will categorize violations of worker safety and health requirements as follows:

(1) A Severity Level I violation is a serious violation. A serious violation shall be deemed to exist in a place of employment if there is a potential that death or serious physical harm could result from a condition which exists, or from one or more practices, means, methods, operations, or processes which have been adopted or are in use, in such place of employment. A Severity Level I violation would be subject to a base civil penalty of up to 100% of the maximum base civil penalty of $70,000.

(2) A Severity Level II violation is an other-than-serious violation. An other-than-serious violation occurs where the most serious injury or illness that would potentially result from a hazardous condition cannot reasonably be predicted to cause death or serious physical harm to employees but does have a direct relationship to their safety and health. A Severity Level II violation would be subject to a base civil penalty up to 50% of the maximum base civil penalty ($35,000).

(3) A Severity Level III violations is a *de minimis* violation. As a general matter, these minor violations will be identified as noncompliances and tracked to assure that appropriate remedial/corrective action is taken to prevent their recurrence, and evaluated to determine if generic or specific problems exist. If circumstances demonstrate that a number of related minor noncompliances have occurred in a reasonable time frame (*e.g.* all identified during the same assessment), or that related minor noncompliances have recurred despite the DOE contractor's having had sufficient opportunity to correct the problem, DOE may choose in its discretion to consider the noncompliances in the aggregate as a more serious violation warranting a Severity Level III designation, a Notice of Violation and a possible civil penalty. A Severity Level III violation would be subject to a base civil penalty up to 10% of the maximum base civil penalty ($7,000).

(c) Isolated minor violations of worker safety and health regulations will not be the subject of formal enforcement action through the issuance of a Notice of Violation.

(d) The severity level of a violation will be dependent, in part, on the degree of culpability of the DOE contractor with regard to the violation. Thus, inadvertent or negligent violations will be viewed differently from those in which there is gross negligence, deception or willfulness. In addition to the significance of the underlying violation and level of culpability involved, DOE will also consider the position, training and experience of the person involved in the violation. Thus, for example, a violation may be deemed to be more significant if a senior manager of an organization is involved rather than a foreman or non-supervisory employee. In this regard, while management involvement, direct or indirect, in a violation may lead to an increase in the severity level of a violation and proposed civil penalty, the lack of such involvement will not constitute grounds to reduce the severity level of a violation or mitigate a civil penalty. Allowance of mitigation in such circumstances could encourage lack of management involvement in DOE contractor activities and a decrease in protection of worker safety and health.

(e) Other factors which will be considered by DOE in determining the appropriate severity level of a violation are the duration of the violation, the past performance of the DOE contractor in the particular activity area involved, whether the DOE contractor had prior notice of a potential problem, and whether there are multiple examples of the violation in the same time frame rather than an isolated occurrence. The relative weight given to each of these factors in arriving at the appropriate severity level will be dependent on the circumstances of each case.

(f) DOE expects contractors to provide full, complete, timely, and accurate information and reports. Accordingly, the severity level of a violation involving either failure to make a required report or notification to the DOE or an untimely report or notification will be based upon the significance of, and the circumstances surrounding, the matter that should have been reported. A contractor will not normally be cited for a failure to report a condition or event unless the contractor was actually aware or should have been aware of the condition or event which it failed to report.

VII. Enforcement Conferences

(a) Should DOE determine, after completion of all assessment and investigation activities associated with a potential or alleged violation of the worker safety and health requirements, that there is a reasonable basis to believe that a violation has actually occurred, and the violation may warrant a civil penalty or issuance of an enforcement action, DOE will normally hold an enforcement conference with the DOE contractor involved prior to taking enforcement action. DOE may also elect to hold an enforcement conference for potential violations which would not ordinarily warrant a civil penalty or enforcement action but which could, if repeated, lead to such action. The purpose of the enforcement conference is to assure the accuracy of the facts upon which the preliminary determination to consider enforcement action is based, discuss the potential or alleged violations, their significance and causes, and the nature of and schedule for the DOE contractor's corrective actions, determine whether there are any aggravating or mitigating circumstances, and obtain other information which will help determine the appropriate enforcement action.

(b) DOE contractors will be informed prior to a meeting when that meeting is considered to be an enforcement conference. Such conferences are informal mechanisms for candid pre-decisional discussions regarding potential or alleged violations and will not normally be open to the public. In circumstances for which immediate enforcement action is necessary in the interest of worker safety and health, such action will be taken prior to the enforcement conference, which may still be held after the necessary DOE action has been taken.

VIII. Enforcement Letter

(a) In cases where DOE has decided not to conduct an investigation or inspection or issue a Preliminary Notice of Violation (PNOV), DOE may send an Enforcement Letter to the contractor signed by the Director. The Enforcement Letter is intended to communicate the basis of the decision not to pursue enforcement action for a noncompliance. The Enforcement Letter is intended to direct contractors to the desired level of worker safety and health performance. It may be used when DOE concludes the specific noncompliance at issue is not of the level of significance warranted to conduct an investigation or inspection or for issuance of a PNOV. Even where a noncompliance may be significant, the Enforcement Letter recognizes that the contractor's actions may have attenuated the need for enforcement action. The Enforcement Letter will typically recognize how the contractor handled the circumstances surrounding the noncompliance and address additional areas requiring the contractor's attention and DOE's expectations for corrective action. The Enforcement Letter notifies the contractor that when verification is received that corrective actions have been implemented, DOE will close the matter.

(b) In general, Enforcement Letters communicate DOE's expectations with respect to any aspect of the requirements of this part, including identification and reporting of issues, corrective actions, and implementation of the contractor's safety and health program. DOE might, for example, wish to recognize some action of the contractor that is of particular benefit to worker safety and health that is a candidate for emulation by other contractors. On the other hand, DOE may wish to bring a program shortcoming to the attention of the contractor that, but for the lack of worker safety and health significance of the immediate issue, might have resulted in the issuance of a PNOV. An Enforcement Letter is not an enforcement action. An Enforcement Letter cannot provide the basis for a legally enforceable requirement pursuant to this part. Accordingly, a reference to a guidance document in an Enforcement Letter does not make the provisions of the guidance document mandatory or otherwise legally enforceable. There must be an independent basis for making provisions of a guidance document mandatory such as explicit incorporation in the worker safety and health program.

(c) With respect to many noncompliances, an Enforcement Letter may not be required. When DOE decides that a contractor has appropriately corrected a noncompliance or that the significance of the noncompliance is sufficiently low, it may close out an investigation simply through an annotation in the DOE Noncompliance Tracking System (NTS). A closeout of a noncompliance with or without an Enforcement Letter may only take place after DOE has confirmed that corrective actions have been completed.

IX. Enforcement Actions

(a) This section describes the enforcement sanctions available to DOE and specifies the conditions under which each may be used. The basic sanctions are Notices of Violation and civil penalties.

(b) The nature and extent of the enforcement action is intended to reflect the

seriousness of the violation involved. For the vast majority of violations for which DOE assigns severity levels as described previously, a Notice of Violation will be issued, requiring a formal response from the recipient describing the nature of and schedule for corrective actions it intends to take regarding the violation.

1. Notice of Violation

(a) A Notice of Violation (either a Preliminary or Final Notice) is a document setting forth the conclusion of DOE that one or more violations of the worker safety and health requirements has occurred. Such a notice normally requires the recipient to provide a written response which may take one of several positions described in section V of this policy statement. In the event that the recipient concedes the occurrence of the violation, it is required to describe corrective steps which have been taken and the results achieved; remedial actions which will be taken to prevent recurrence; and the date by which full compliance will be achieved.

(b) DOE will use the Notice of Violation as the standard method for formalizing the existence of a violation and, in appropriate cases as described in this section, the Notice of Violation will be issued in conjunction with the proposed imposition of a civil penalty. In certain limited instances, as described in this section, DOE may refrain from the issuance of an otherwise appropriate Notice of Violation. However, a Notice of Violation will virtually always be issued for willful violations, if past corrective actions for similar violations have not been sufficient to prevent recurrence and there are no other mitigating circumstances, or if the circumstances otherwise warrant increasing lower severity level violations to a higher severity level.

(c) DOE contractors are not ordinarily cited for violations resulting from matters not within their control, such as equipment failures that were not avoidable by reasonable quality assurance measures, proper maintenance, or management controls. With regard to the issue of funding, however, DOE does not consider an asserted lack of funding to be a justification for noncompliance with the worker safety and health requirements.

(d) DOE expects the contractors which operate its facilities to have the proper management and supervisory systems in place to assure that all activities at DOE facilities, regardless of who performs them, are carried out in compliance with all the worker safety and health requirements. Therefore, contractors are normally held responsible for the acts of their employees and subcontractor employees in the conduct of activities at DOE facilities. Accordingly, this policy should not be construed to excuse personnel errors.

(e) The limitations on remedies under Sec. 234C will be implemented as follows:

(1) DOE may assess civil penalties of not more than $70,000 per violation per day on contractors (and their subcontractors and suppliers) that are indemnified by the Price-Anderson Act, 42 U.S.C. 2210(d). 10 CFR 851.4(c). DOE will not assess civil penalties on contractors (and their subcontractors and suppliers) that are not indemnified under the Price-Anderson Act.

(2) DOE may seek contract fee reductions through the contract's Conditional Payment of Fee Clause in the Department of Energy Acquisition Regulation (DEAR). *See* 10 CFR 851.4(b); 48 CFR parts 923, 952, 970. Policies for contract fee reductions are not established by this policy statement. The contracting officer must coordinate with the Director, the DOE Official to whom the Secretary has assigned the authority to investigate the nature and extent of compliance with the requirements of this part, before pursuing contract fee reduction in the event of a violation relating to the enforcement of worker safety and health concerns. Likewise, the Director must coordinate with the contracting officer when conducting investigations and pursuing an enforcement action.

(3) For the same violation of a worker safety and health requirement in this part, DOE may pursue either civil penalties (for indemnified contractors and their subcontractors and suppliers) or a contract fee reduction, but not both. 10 CFR 851.4(d).

(4) An upper ceiling applies to civil penalties assessed on certain contractors specifically listed in 170d. of the Atomic Energy Act, 42 U.S.C. 2282a(d), for activities conducted at specified facilities. For these contractors, the total amount of civil penalties and contract penalties in a fiscal year may not exceed the total amount of fees paid by DOE to that entity in that fiscal year. 10 CFR 851.4(e).

(5) DOE will not issue civil penalties under both this part and under the nuclear safety procedural regulations in 10 CFR part 820 for the same violation. 10 CFR 851.4(f).

(f) Regarding the relationship of civil penalties and contract fee reductions where DOE may elect between remedies, DOE generally intends to use civil penalties as the remedy for most violations. Where DOE may elect between remedies, the Director may refer a violation to the appropriate DOE official responsible for administering the *Conditional Payment of Fee* clause to consider invoking the provisions for reducing contract fees if the violation is especially egregious or indicates a general failure to perform under the contract with respect to worker safety and health. In determining whether to refer a violation, the Director generally would focus on factors such as willfulness, repeated violations, death, serious injury, patterns of systemic violations, flagrant DOE-identified violations, repeated poor performance in an area of concern, or serious breakdown in management controls. Such factors involved in a violation would call into question a contractor's commitment and ability to achieve the fundamental obligation of providing safe and healthy workplaces for workers.

2. Civil Penalty

(a) A civil penalty is a monetary penalty that may be imposed for violations of requirements of this part. *See* 10 CFR 851.4(b). Civil penalties are designed to emphasize the need for lasting remedial action, deter future violations, and underscore the importance of DOE contractor self-identification, reporting and correction of violations of the worker safety and health requirements in this part.

(b) Absent mitigating circumstances as described below, or circumstances otherwise warranting the exercise of enforcement discretion by DOE as described in this section, civil penalties will be proposed for Severity Level I and II violations.

(c) DOE will impose different base level penalties considering the severity level of the violation by Price-Anderson indemnified contractors. Table 1 shows the daily base civil penalties for the various categories of severity levels. However, as described above in section IV, the imposition of civil penalties will also take into account the gravity, circumstances, and extent of the violation or violations and, with respect to the violator, any history of prior similar violations and the degree of culpability and knowledge.

(d) Regarding the factor of ability of DOE contractors to pay the civil penalties, it is not DOE's intention that the economic impact of a civil penalty be such that it puts a DOE contractor out of business. Contract termination, rather than civil penalties, is used when the intent is to terminate these activities. The deterrent effect of civil penalties is best served when the amount of such penalties takes this factor into account. However, DOE will evaluate the relationship of affiliated entities to the contractor (such as parent corporations) when the contractor asserts that it cannot pay the proposed penalty.

(e) DOE will review each case involving a proposed civil penalty on its own merits and adjust the base civil penalty values upward or downward appropriately. As indicated above, Table 1 identifies the daily base civil penalty values for different severity levels. After considering all relevant circumstances, civil penalties may be raised or lowered based upon the adjustment factors described below in this section. In no instance will a civil penalty for any one violation exceed the statutory limit of $70,000. However, it should be emphasized that if the DOE contractor is or should have been aware of a violation and has not reported it to DOE and taken corrective action despite an opportunity to do so, each day the condition existed may be considered a separate violation and, as such, subject to a separate civil penalty. Further, as described in this section, the duration of a violation will be taken into account in determining the appropriate severity level of the base civil penalty.

TABLE 1—SEVERITY LEVEL BASE CIVIL PENALTIES

Severity level	Base civil penalty amount (percentage of maximum per violation per day)
I	100
II	50
III	10

3. Adjustment Factors

(a) DOE's enforcement program is not an end in itself, but a means to achieve compliance with the worker safety and health requirements in this part, and civil penalties are to emphasize the importance of compliance and to deter future violations. The single most important goal of the DOE enforcement program is to encourage early identification and reporting of worker protection deficiencies and violations of the worker safety and health requirements in this part by the DOE contractors themselves rather than by DOE, and the prompt correction of any deficiencies and violations so identified. DOE believes that DOE contractors are in the best position to identify and promptly correct noncompliance with the worker safety and health requirements in this part. DOE expects that these contractors should have in place internal compliance programs which will ensure the detection, reporting and prompt correction of worker protection related problems that may constitute, or lead to, violations of the worker safety and health requirements in this part, before, rather than after, DOE has identified such violations. Thus, DOE contractors will almost always be aware of worker safety and health problems before they are discovered by DOE. Obviously, worker safety and health is enhanced if deficiencies are discovered (and promptly corrected) by the DOE contractor, rather than by DOE, which may not otherwise become aware of a deficiency until later on, during the course of an inspection, performance assessment, or following an incident at the facility. Early identification of worker safety and health-related problems by DOE contractors has the added benefit of allowing information which could prevent such problems at other facilities in the DOE complex to be shared with all appropriate DOE contractors.

(b) Pursuant to this enforcement philosophy, DOE will provide substantial incentive for the early self-identification, reporting and prompt correction of problems which constitute, or could lead to, violations of the worker safety and health requirements. Thus, application of the adjustment factors set forth below may result in a reduced or no civil penalty being assessed for violations that are identified, reported, and promptly and effectively corrected by the DOE contractor.

(c) On the other hand, ineffective programs for problem identification and correction are unacceptable. Thus, for example, where a contractor fails to disclose and promptly correct violations of which it was aware or should have been aware, substantial civil penalties are warranted and may be sought, including the assessment of civil penalties for continuing violations on a per day basis.

(d) Further, in cases involving factors of willfulness, repeated violations, death, serious injury, patterns of systemic violations, flagrant DOE-identified violations, repeated poor performance in an area of concern, or serious breakdown in management controls, DOE intends to apply its full statutory enforcement authority where such action is warranted.

4. Identification and Reporting

Reduction of the base civil penalty shown in Table 1 may be given when a DOE contractor identifies the violation and promptly reports the violation to the DOE. In weighing this factor, consideration will be given to, among other things, the opportunity available to discover the violation, the ease of discovery and the promptness and completeness of any required report. No consideration will be given to a reduction in penalty if the DOE contractor does not take prompt action to report the problem to DOE upon discovery, or if the immediate actions necessary to restore compliance with the worker safety and health requirements are not taken.

5. Self-Identification and Tracking Systems

(a) DOE strongly encourages contractors to self-identify noncompliances with the worker safety and health requirements before the noncompliances lead to a string of similar and potentially more significant events or consequences. When a contractor identifies a noncompliance through its own self-monitoring activity, DOE will normally allow a reduction in the amount of civil penalties, unless prior opportunities existed for contractors to identify the noncompliance. DOE will normally not allow a reduction in civil penalties for self-identification if significant DOE intervention was required to induce the contractor to report a noncompliance.

(b) Self-identification of a noncompliance is possibly the single most important factor in considering a reduction in the civil penalty amount. Consideration of self-identification is linked to, among other things, whether prior opportunities existed to discover the violation, and if so, the age and number of such opportunities; the extent to which proper contractor controls should have identified or prevented the violation; whether discovery of the violation resulted from a contractor's self-monitoring activity; the extent of DOE involvement in discovering the violation or in prompting the contractor to identify the violation; and the promptness and completeness of any required report. Self-identification is also considered by DOE in deciding whether to pursue an investigation.

(c) DOE will use the voluntary Noncompliance Tracking System (NTS) which allows contractors to elect to report noncompliances. In the guidance document supporting the NTS, DOE will establish reporting thresholds for reporting items of noncompliance of potentially greater worker safety and health significance into the NTS. Contractors may, however, use their own self-tracking systems to track noncompliances below the reporting threshold. This self-tracking is considered to be acceptable self-reporting as long as DOE has access to the contractor's system and the contractor's system notes the item as a noncompliance with a DOE safety and health requirement. For noncompliances that are below the reportability thresholds, DOE will credit contractor self-tracking as representing self-reporting. If an item is not reported in NTS but only tracked in the contractor's system and DOE subsequently finds the facts and their worker safety and health significance have been significantly mischaracterized, DOE will not credit the internal tracking as representing appropriate self-reporting.

6. Self-Disclosing Events

(a) DOE expects contractors to demonstrate acceptance of responsibility for worker safety and health by proactively identifying noncompliance conditions in their programs and processes. In deciding whether to reduce any civil penalty proposed for violations revealed by the occurrence of a self-disclosing event, DOE will consider the ease with which a contractor could have discovered the noncompliance and the prior opportunities that existed to discover the noncompliance. When the occurrence of an event discloses noncompliances that the contractor could have or should have identified before the event, DOE will not generally allow a reduction in civil penalties for self-identification, even if the underlying noncompliances were reported to DOE. If a contractor simply reacts to events that disclose potentially significant consequences or downplays noncompliances which did not result in significant consequences to worker safety and health, such contractor actions do not lead to the improvement in worker safety and health contemplated by Part 851.

(b) The key test is whether the contractor reasonably could have detected any of the underlying noncompliances that contributed to the event. Examples of events that provide opportunities to identify noncompliances include, but are not limited to:

(1) Prior notifications of potential problems such as those from DOE operational experience publications or vendor equipment deficiency reports;

(2) Normal surveillance, quality assurance assessments, and post-maintenance testing;

(3) Readily observable parameter trends; and

(4) Contractor employee or DOE observations of potential worker safety and health problems.

(c) Failure to utilize these types of events and activities to address noncompliances may result in higher civil penalty assessments or a DOE decision not to reduce civil penalty amounts.

(d) Alternatively, if, following a self-disclosing event, DOE finds that the contractor's processes and procedures were adequate and the contractor's personnel generally behaved in a manner consistent with the contractor's processes and procedures, DOE could conclude that the contractor could not have been reasonably expected to find the single procedural noncompliance that led to the event and thus, might allow a reduction in civil penalties.

7. Corrective Action To Prevent Recurrence

The promptness (or lack thereof) and extent to which the DOE contractor takes corrective action, including actions to identify root cause and prevent recurrence, may result in an increase or decrease in the base civil penalty shown in Table 1. For example, very extensive corrective action may result in DOE's reducing the proposed civil penalty from the base value shown in Table 1. On the other hand, the civil penalty may be increased if initiation of corrective action is not prompt or if the corrective action is only minimally acceptable. In weighing this factor, consideration will be

given to, among other things, the appropriateness, timeliness and degree of initiative associated with the corrective action. The comprehensiveness of the corrective action will also be considered, taking into account factors such as whether the action is focused narrowly to the specific violation or broadly to the general area of concern.

8. DOE's Contribution to a Violation

There may be circumstances in which a violation of a DOE worker safety and health requirement results, in part or entirely, from a direction given by DOE personnel to a DOE contractor to either take or forbear from taking an action at a DOE facility. In such cases, DOE may refrain from issuing an NOV, or may mitigate, either partially or entirely, any proposed civil penalty, provided that the direction upon which the DOE contractor relied is documented in writing, contemporaneously with the direction. It should be emphasized, however, that pursuant to 10 CFR 851.7, no interpretation of a requirement of this part is binding upon DOE unless issued in writing by the Office of the General Counsel. Further, as discussed above in this policy statement, lack of funding by itself will not be considered as a mitigating factor in enforcement actions.

9. Exercise of Discretion

Because DOE wants to encourage and support DOE contractor initiative for prompt self-identification, reporting and correction of problems, DOE may exercise discretion as follows:

(a) In accordance with the previous discussion, DOE may refrain from issuing a civil penalty for a violation which meets all of the following criteria:

(1) The violation is promptly identified and reported to DOE before DOE learns of it or the violation is identified by a DOE independent assessment, inspection or other formal program effort.

(2) The violation is not willful or a violation that could reasonably be expected to have been prevented by the DOE contractor's corrective action for a previous violation.

(3) The DOE contractor, upon discovery of the violation, has taken or begun to take prompt and appropriate action to correct the violation.

(4) The DOE contractor has taken, or has agreed to take, remedial action satisfactory to DOE to preclude recurrence of the violation and the underlying conditions which caused it.

(b) DOE will not issue a Notice of Violation for cases in which the violation discovered by the DOE contractor cannot reasonably be linked to the conduct of that contractor in the design, construction or operation of the DOE facility involved, provided that prompt and appropriate action is taken by the DOE contractor upon identification of the past violation to report to DOE and remedy the problem.

(c) In situations where corrective actions have been completed before termination of an inspection or assessment, a formal response from the contractor is not required and the inspection or integrated performance assessment report serves to document the violation and the corrective action. However, in all instances, the contractor is required to report the noncompliance through established reporting mechanisms so the noncompliance issue and any corrective actions can be properly tracked and monitored.

(d) If DOE initiates an enforcement action for a violation, and as part of the corrective action for that violation, the DOE contractor identifies other examples of the violation with the same root cause, DOE may refrain from initiating an additional enforcement action. In determining whether to exercise this discretion, DOE will consider whether the DOE contractor acted reasonably and in a timely manner appropriate to the safety significance of the initial violation, the comprehensiveness of the corrective action, whether the matter was reported, and whether the additional violation(s) substantially change the safety significance or character of the concern arising out of the initial violation.

(e) It should be emphasized that the preceding paragraphs are solely intended to be examples indicating when enforcement discretion may be exercised to forego the issuance of a civil penalty or, in some cases, the initiation of any enforcement action at all. However, notwithstanding these examples, a civil penalty may be proposed or Notice of Violation issued when, in DOE's judgment, such action is warranted on the basis of the circumstances of an individual case.

X. Inaccurate and Incomplete Information

(a) A violation of the worker safety and health requirements to provide complete and accurate information to DOE, 10 CFR 851.5, can result in the full range of enforcement sanctions, depending upon the circumstances of the particular case and consideration of the factors discussed in this section. Violations involving inaccurate or incomplete information or the failure to provide significant information identified by a DOE contractor normally will be categorized based on the guidance in section VI, "Severity of Violations."

(b) DOE recognizes that oral information may in some situations be inherently less reliable than written submittals because of the absence of an opportunity for reflection and management review. However, DOE must be able to rely on oral communications from officials of DOE contractors concerning significant information. In determining whether to take enforcement action for an oral statement, consideration will be given to such factors as:

(1) The degree of knowledge that the communicator should have had regarding the matter in view of his or her position, training, and experience;

(2) The opportunity and time available prior to the communication to assure the accuracy or completeness of the information;

(3) The degree of intent or negligence, if any, involved;

(4) The formality of the communication;

(5) The reasonableness of DOE reliance on the information;

(6) The importance of the information that was wrong or not provided; and

(7) The reasonableness of the explanation for not providing complete and accurate information.

(c) Absent gross negligence or willfulness, an incomplete or inaccurate oral statement normally will not be subject to enforcement action unless it involves significant information provided by an official of a DOE contractor. However, enforcement action may be taken for an unintentionally incomplete or inaccurate oral statement provided to DOE by an official of a DOE contractor or others on behalf of the DOE contractor, if a record was made of the oral information and provided to the DOE contractor thereby permitting an opportunity to correct the oral information, such as if a transcript of the communication or meeting summary containing the error was made available to the DOE contractor and was not subsequently corrected in a timely manner.

(d) When a DOE contractor has corrected inaccurate or incomplete information, the decision to issue a citation for the initial inaccurate or incomplete information normally will be dependent on the circumstances, including the ease of detection of the error, the timeliness of the correction, whether DOE or the DOE contractor identified the problem with the communication, and whether DOE relied on the information prior to the correction. Generally, if the matter was promptly identified and corrected by the DOE contractor prior to reliance by DOE, or before DOE raised a question about the information, no enforcement action will be taken for the initial inaccurate or incomplete information. On the other hand, if the misinformation is identified after DOE relies on it, or after some question is raised regarding the accuracy of the information, then some enforcement action normally will be taken even if it is in fact corrected.

(e) If the initial submission was accurate when made but later turns out to be erroneous because of newly discovered information or advances in technology, a citation normally would not be appropriate if, when the new information became available, the initial submission was promptly corrected.

(f) The failure to correct inaccurate or incomplete information that the DOE contractor does not identify as significant normally will not constitute a separate violation. However, the circumstances surrounding the failure to correct may be considered relevant to the determination of enforcement action for the initial inaccurate or incomplete statement. For example, an unintentionally inaccurate or incomplete submission may be treated as a more severe matter if a DOE contractor later determines that the initial submission was in error and does not promptly correct it or if there were clear opportunities to identify the error.

XI. Secretarial Notification and Consultation

The Secretary will be provided written notification of all enforcement actions involving proposed civil penalties. The Secretary will be consulted prior to taking action in the following situations:

(a) Any action the Director, or the NNSA Administrator concerning actions involving NNSA contractors, believes warrants the Secretary's involvement; or

(b) Any proposed enforcement action for which the Secretary asks to be consulted.

[FR Doc. 03–30287 Filed 12–5–03; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–390–AD]

RIN 2120–AA64

Airworthiness Directives; Dassault Model Mystere-Falcon 900 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Dassault Model Mystere-Falcon 900 series airplanes. This proposal would require revising the Abnormal Procedures section of the airplane flight manual to advise the flightcrew to avoid use of certain display modes during approaches. This proposal also would require replacing certain symbol generators of the Electronic Flight Information System (EFIS) with modified symbol generators. This action is necessary to prevent distraction of the flightcrew during a critical phase of flight due to certain EFIS displays flashing or going blank, which could result in loss of control of the airplane. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by January 7, 2004.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–390–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov*. Comments sent via fax or the Internet must contain "Docket No. 2001–NM–390–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 or 2000 or ASCII text.

The service information referenced in the proposed rule may be obtained from Dassault Falcon Jet, P.O. Box 2000, South Hackensack, New Jersey 07606. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Tom Rodriguez, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–1137; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2001–NM–390–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–390–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, notified the FAA that an unsafe condition may exist on certain Dassault Model Mystere-Falcon 900 series airplanes. The DGAC advises that, in certain phases of flight, especially during approach, the quantity of data to be processed may lead to saturation of the processors of certain symbol generators used by the Electronic Flight Information System (EFIS). This may cause the EFIS display to flash or go blank. This condition, if not corrected, could result in distraction of the flightcrew during a critical phase of flight, which could result in loss of control of the airplane.

Explanation of Relevant Service Information

Dassault has issued Temporary Change No. 86 to the Abnormal Procedures section of the Mystere-Falcon 900 Airplane Flight Manual (AFM). That Temporary Change advises the flightcrew that certain EFIS displays may blink or blank due to overload of certain symbol generators, and advises the flightcrew to avoid using certain display modes during approaches to decrease the load on the display processor.

Dassault has also issued Service Bulletin F900–281, Revision 1, dated October 3, 2001. That service bulletin describes procedures for replacing certain symbol generators with modified symbol generators. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition.

The DGAC classified the temporary change to the AFM and the service bulletin as mandatory and issued French airworthiness directive 2001–466–033(B), dated October 3, 2001, to ensure the continued airworthiness of these airplanes in France.

FAA's Conclusions

This airplane model is manufactured in France and is type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement,

the DGAC has kept us informed of the situation described above. We have examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require revising the Abnormal Procedures section of the AFM to advise the flightcrew to avoid using certain display modes during approaches, and accomplishing the actions specified in the service bulletin described previously, except as discussed below.

Difference Between Proposed AD and Referenced Service Bulletin

Operators should note that, although the Accomplishment Instructions of the referenced service bulletin describe procedures for completing and returning a card recording compliance with the service bulletin, this proposed AD would not require this action.

Cost Impact

We estimate that 93 airplanes of U.S. registry would be affected by this proposed AD.

It would take approximately 1 work hour per airplane to accomplish the proposed AFM revision, at an average labor rate of $65 per work hour. Based on these figures, the cost impact of this proposed action on U.S. operators is estimated to be $6,045, or $65 per airplane.

It would take approximately 1 work hour per airplane to accomplish the proposed replacement, at an average labor rate of $65 per work hour. Required parts would be provided by the parts manufacturer at no charge. Based on these figures, the cost impact of this proposed action on U.S. operators is estimated to be $6,045, or $65 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Dassault Aviation: Docket 2001–NM–390–AD.

Applicability: Model Mystere-Falcon 900 series airplanes, certificated in any category; serial numbers (S/Ns) 1 through 168 inclusive, and 170 through 178 inclusive; equipped with an SPZ 8000 avionics system.

Compliance: Required as indicated, unless accomplished previously.

To prevent distraction of the flightcrew during a critical phase of flight due to certain Electronic Flight Information System (EFIS) displays flashing or going blank, which could result in loss of control of the airplane, accomplish the following:

Airplane Flight Manual Revision

(a) Within 30 days after the effective date of this AD, revise the Abnormal Procedures section of the Mystere-Falcon 900 Airplane Flight Manual (AFM) to include the information in Temporary Change (TC) No. 86. That TC advises the flightcrew that certain EFIS displays may blink or blank due to overload of certain symbol generators, and advises the flightcrew to avoid using certain display modes during approaches to decrease the load on the display processor. Operate the airplane per the limitations and procedures in the TC.

Note 1: The requirements of paragraph (a) may be done by inserting a copy of TC No. 86 in the AFM. When this TC has been included in general revisions of the AFM, the general revisions may be inserted in the AFM, and TC No. 86 may be removed from the AFM, provided the relevant information in the general revision is identical to that in TC No. 86.

Replacement of Symbol Generators

(b) Within 18 months after the effective date of this AD, do paragraphs (b)(1) and (b)(2) of this AD, per Dassault Service Bulletin F900–281, Revision 1, dated October 3, 2001, except that it is not necessary to complete the compliance card.

(1) Replace all SG–820 symbol generators having part numbers (P/Ns) 7007356–901 or –902, or P/Ns 7007356–903 or –904 without Honeywell Modification S; with symbol generators having a P/N and a Honeywell modification level listed in the "NEW P/N" column of the table under paragraph 3.A. of the service bulletin.

(2) Replace all MG–820 symbol generators having P/Ns 7009289–801 or –802, or P/Ns 7009289–803 or –804 without Honeywell Modification V, with symbol generators having a P/N and a Honeywell modification level listed in the "NEW P/N" column of the table under paragraph 3.B. of the service bulletin.

Parts Installation

(c) As of the effective date of this AD, no person may install a symbol generator having a P/N and a modification level listed in the "OLD P/N" column of the tables under paragraphs 3.A. and 3.B. of Dassault Service Bulletin F900–281, Revision 1, dated October 3, 2001.

Alternative Methods of Compliance

(d) In accordance with 14 CFR 39.19, the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, is authorized to approve alternative methods of compliance for this AD.

Note 2: The subject of this AD is addressed in French airworthiness directive 2001–466–033(B), dated October 3, 2001.

Issued in Renton, Washington, on December 1, 2003.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–30333 Filed 12–5–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–NM–90–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 737–100, –200, –200C, –300, –400, and –500 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Boeing Model 737–100, –200, –200C, –300, –400, and –500 series airplanes. This proposal would require repetitive inspections for corrosion and cracking of the pivot hinge pins of the horizontal stabilizer, certain follow-on inspections, and replacement of the hinge pins with new or serviceable pins if necessary. This action is necessary to prevent failure of the outer and inner hinge pins due to corrosion or cracking, which could allow the pins to migrate out of the joint and result in intermittent movement of the horizontal stabilizer structure and consequent loss of controllability of the airplane. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by January 22, 2004.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2003–NM–90–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov*. Comments sent via fax or the Internet must contain "Docket No. 2003–NM–90–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 or 2000 or ASCII text.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Nancy Marsh, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 917–6440; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the Alert Service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2003–NM–90–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2003–NM–90–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The FAA has received reports of corrosion in the pivot hinge pins that attach the horizontal stabilizer center section to the Body Station 1156 support bulkhead on certain Boeing Model 737–300, –400, and –500 series airplanes. Corrosion has been found on outer primary pins and inner failsafe pins made from both 4330 steel and 15–5 PH corrosion-resistant steel (CRES). Investigation has revealed the presence of heavy corrosion on areas of the outer pin not protected by chrome plating and of heavy corrosion on all areas of the inner pin. Such corrosion or cracking could lead to pin failure and allow the pins to migrate out of the joint, resulting in intermittent movement of the horizontal stabilizer structure and consequent loss of controllability of the airplane.

Similar Airplanes

The pivot hinge pins of the horizontal stabilizer on certain Boeing Model 737–100, –200, and 200C series airplanes are identical to those on the affected Model 737–300, –400, and –500 series airplanes. Therefore, all of these models may be subject to the same unsafe condition.

Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Alert Service Bulletin 737–55A1077, dated December 6, 2001, which describes procedures for performing repetitive detailed and magnetic particle inspections for corrosion and cracking of the hinge pin joints of the horizontal stabilizer. The alert service bulletin also describes procedures for replacing the hinge pins with new or serviceable pins if necessary. Accomplishment of the actions specified in the alert service bulletin is intended to adequately address the identified unsafe condition.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require accomplishment of the actions specified in the alert service bulletin described previously, except as discussed below.

Differences Between the Proposed Rule and the Alert Service Bulletin

Where the Accomplishment Instructions of the alert service bulletin specify a certain area of inspection of the outer pin as area that "includes the tapered shank, the adjacent thread relief radius, and the threaded end, * * *," this AD specifies the area that "includes the tapered shank, the adjacent thread relief radius, or the threaded end, * * *." Additionally, where the Accomplishment Instructions of the alert service bulletin specify a certain other area of inspection of the outer pin as area that "includes the straight shank and the head, * * *," this AD specifies the area that "includes the straight shank or the head, * * *." The manufacturer has advised us that it has notified opertors of its intention to revise the referenced alert service bulletin to reflect these corrections.

Although the alert service bulletin specifies that operators should contact the manufacturer for disposition of certain corrosion conditions, this proposed AD would require operators to repair those conditions per a method approved by the FAA.

Changes to 14 CFR Part 39/Effect on the Proposed AD

On July 10, 2002, the FAA issued a new version of 14 CFR part 39 (67 FR 47997, July 22, 2002), which governs the FAA's airworthiness directives system. The regulation now includes material that relates to altered products, special flight permits, and alternative methods of compliance (AMOCs). Because we have now included this material in part 39, only the office authorized to approve AMOCs is identified in each individual AD.

Change to Labor Rate Estimate

We have reviewed the figures we have used over the past several years to calculate AD costs to operators. To account for various inflationary costs in the airline industry, we find it necessary to increase the labor rate used in these calculations from $60 per work hour to $65 per work hour. The cost impact information, below, reflects this increase in the specified hourly labor rate.

Cost Impact

There are approximately 3,132 airplanes of the affected design in the worldwide fleet. The FAA estimates that 1,250 airplanes of U.S. registry would be affected by this proposed AD.

We estimate that it would take approximately 1 work hour per airplane to accomplish the detailed inspection specified in paragraph (a) of the proposed AD, and that the average labor rate is $65 per work hour. Since the requirements of paragraph (a) of this proposed AD apply to the total affected fleet, the cost impact of the inspections required by paragraph (a) of this proposed AD on U.S. operators is estimated to be $81,250, or $65 per airplane, per inspection cycle.

It would take approximately 6 work hours per airplane, per inspection, to accomplish the detailed and magnetic particle inspections described in Part 2 of the Accomplishment Instructions of the specified alert service bulletin. We estimate that if all airplanes were required to accomplish those inspections, the estimated cost impact of the affected airplanes would be $487,500 or $390 airplane, per inspection cycle.

It would take approximately 12 work hours per airplane, per inspection, to accomplish the detailed and magnetic particle inspections described in Part 3 of the Accomplishment Instructions of the specified alert service bulletin. We estimate that if all airplanes were required to accomplish those inspections, the estimated cost impact of the affected airplanes would be $975,000, or $780 per airplane, per inspection cycle.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this proposed AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Boeing: Docket 2003–NM–90–AD.

Applicability: Model 737–100, –200, –200C, –300, –400, and –500 series airplanes having line numbers 1 through 3132 inclusive; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the outer and inner pivot hinge pins due to corrosion or cracking, which could allow the pins to migrate out of the joint and result in intermittent movement of the horizontal stabilizer structure and consequent loss of controllability of the airplane; accomplish the following:

(a) For all airplanes: Within 90 days after the effective date of this AD, perform a detailed inspection of the pivot hinge pin joints for corrosion and, with hand pressure, check for movement of the hinge pins within the joints of the horizontal stabilizer, per Part 1 of the Accomplishment Instructions of Boeing Alert Service Bulletin 737–55A1077, dated December 6, 2001. Repeat the detailed inspections and check at intervals not to exceed 180 days until the initial inspection specified in paragraph (b), (d), (f), or (h) of this AD, as applicable, is performed.

Note 1: For the purposes of this AD, a detailed inspection is defined as: "An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required."

(1) If no corrosion is found, and if the hinge pins cannot be moved with hand pressure, the hinge pins are serviceable. No further action is required by this paragraph.

(2) If any pin can be moved with hand pressure, before further flight, remove and inspect both pins and perform follow-on corrective actions per Part 3 of the Accomplishment Instructions of the alert service bulletin.

(3) If any corrosion is found, before further flight, remove and perform a detailed inspection of the pin(s) per Figure 2 (inner pin) or Figure 3 (inner and outer pins), as applicable, of the Accomplishment Instructions of the Alert Service Bulletin; and perform follow-on corrective actions, per the Accomplishment Instructions of the alert service bulletin.

(b) For Models 737–100, –200, and 200C series airplanes: Within 3,000 flight hours or 24 months after the effective date of this AD, whichever occurs first, perform a detailed inspection and magnetic particle inspection for corrosion and cracking of the horizontal stabilizer hinge pins, per Part 2 of the Accomplishment Instructions of Boeing Alert Service Bulletin 737–55A1077, dated December 6, 2001.

(1) If no corrosion or cracking is found, before further flight, reinstall the pin unless the condition of the other pin in that joint requires that both pins be replaced. (See paragraphs (b)(3) and (b)(4) of this AD.)

(2) If an outer pin is cracked in the area that includes the tapered shank, the adjacent thread relief radius, or the threaded end, but the inner pin is damage free, before further flight, replace the outer pin with a new or serviceable pin, per the Accomplishment Instructions of the alert service bulletin.

(3) If an outer pin is cracked in the area that includes the straight shank or the head, before further flight, replace both the inner and outer pins with new or serviceable pins, per the Accomplishment Instructions of the alert service bulletin.

(4) If any cracks are found on an inner pin, before further flight, replace both the inner and outer pins with new or serviceable pins, per the Accomplishment Instructions of the alert service bulletin.

(5) On any pin, if corrosion is found on a threaded area or in the thread relief radius adjacent to the threads, before further flight, replace the pin with a new or serviceable pin, per the Accomplishment Instructions of the alert service bulletin.

(6) If any corrosion is found on an area of the pin that is not threaded or in a thread relief radius adjacent to threads, before further flight, repair per a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA.

(c) For Models 737–100, –200, –200C series airplanes: Thereafter, repeat the inspections required by paragraph (b) of this AD at the times specified in paragraph (c)(1) or (c)(2) of this AD, as applicable.

(1) If BMS 3–27 grease (Mastinox 6856K) is used, repeat the inspection at intervals not to exceed 6,000 flight hours or 48 months, whichever occurs first.

(2) If BMS 3–33 grease is used as a substitute for BMS 3–27 grease (Mastinox 6856K), repeat the inspections at intervals not to exceed 3,000 flight hours or 24 months, whichever occurs first.

(d) For Models 737–100, –200, and –200C series airplanes: Within 12,000 flight hours or 96 months after the effective date of this AD, whichever occurs first, perform a detailed inspection and magnetic particle inspection for corrosion and cracking of the horizontal stabilizer hinge pins, per Part 3 of the Accomplishment Instructions of Boeing Alert Service Bulletin 737–55A1077, dated December 6, 2001.

(1) If no corrosion or cracking is found, before further flight, reinstall the pin unless the condition of the other pin in that joint requires that both pins be replaced. (See paragraphs (d)(3) and (d)(4) of this AD.)

(2) If an outer pin is cracked in the area that includes the tapered shank, the adjacent thread relief radius, or the threaded end, but the inner pin is damage free, before further flight, replace the outer pin with a new or serviceable pin, per the Accomplishment Instructions of the alert service bulletin.

(3) If an outer pin is cracked in the area that includes the straight shank and the head, before further flight, replace both the inner and outer pins with new or serviceable pins, per the Accomplishment Instructions of the alert service bulletin.

(4) If any cracks are found on an inner pin, before further flight, replace both the inner and outer pins with new or serviceable pins, per the Accomplishment Instructions of the alert service bulletin.

(5) On any pin, if corrosion is found on a threaded area or in the thread relief radius, adjacent to the threads, before further flight, replace the pin with a new or serviceable pin, per the Accomplishment Instructions of the alert service bulletin.

(6) If any corrosion is found on an area of the pin that is not threaded or in a thread relief radius adjacent to threads, before further flight, repair per a method approved by the Manager, Seattle ACO.

(e) For Models 737–100, –200, –200C series airplanes: Thereafter, repeat the inspections required by paragraph (d) of this AD at the times specified in paragraph (e)(1) or (e)(2) of this AD, as applicable.

(1) If BMS 3–27 grease (Mastinox 6856K) is used, thereafter, repeat the inspections at intervals not to exceed 12,000 flight hours or 96 months, whichever occurs first.

(2) If BMS 3–33 grease is used as a substitute for BMS 3–27 grease (Mastinox 6856K), thereafter, repeat the inspections at intervals not to exceed 6,000 flight hours or 48 months, whichever occurs first.

(f) For Model 737–300, –400, and –500 series airplanes: Within 4,000 flight hours or 24 months from the effective date of this AD, whichever occurs first, inspect the horizontal stabilizer hinge pins, per Part 2 of the Accomplishment Instructions of Boeing Alert Service Bulletin 737–55A1077, dated December 6, 2001.

(1) If no corrosion or cracking is found, before further flight, reinstall the pin unless the condition of the other pin in that joint requires that both pins be replaced. (See paragraphs (f)(3) and (f)(4) of this AD.)

(2) If an outer pin is cracked in the area that includes the tapered shank, the adjacent thread relief radius, or the threaded end, but the inner pin is damage free, before further flight, replace the outer pin with a new or serviceable pin, per the Accomplishment Instructions of the alert service bulletin.

(3) If an outer pin is cracked in the area that includes the straight shank or the head, before further flight, replace both the inner and outer pins with new or serviceable pins, per the Accomplishment Instructions of the alert service bulletin.

(4) If any cracks are found on an inner pin, before further flight, replace both the inner and outer pins with new or serviceable pins, per the Accomplishment Instructions of the alert service bulletin.

(5) On any pin, if corrosion is found on a threaded area or in the thread relief radius adjacent to the threads, before further flight, replace the pin with a new or serviceable pin, per the Accomplishment Instructions of the alert service bulletin.

(6) If any corrosion is found on an area of the pin that is not threaded or in a thread relief radius adjacent to threads, before further flight, repair per a method approved by the Manager, Seattle ACO.

(g) For Model 737–300, –400, and –500 series airplanes: Thereafter, repeat the inspections required by paragraph (f) of this AD at the times specified in paragraph (g)(1) or (g)(2) of this AD, as applicable.

(1) If BMS 3–27 grease (Mastinox 6856K) is used, thereafter, repeat the inspections at intervals not to exceed 8,000 flight hours or 48 months, whichever occurs first.

(2) If BMS 3–33 grease is used as a substitute for BMS 3–27 (Mastinox 6856K), repeat the inspections at intervals not to exceed 4,000 flight hours or 24 months, whichever occurs first.

(h) For Model 737–300, –400, and –500 series airplanes: Within 16,000 flight hours or 96 months from the effective date of this AD, whichever occurs first, perform a detailed inspection and magnetic particle inspection for corrosion or cracking of the horizontal stabilizer hinge pins per Part 3 of the Accomplishment Instructions of Boeing Alert Service Bulletin 737–55A1077, dated December 6, 2001.

(1) If no corrosion or cracking is found, before further flight, reinstall the pin unless the condition of the other pin in that joint requires that both pins be replaced. (See paragraphs (h)(3) and (h)(4) of this AD.)

(2) If an outer pin is cracked in the area that includes the tapered shank, the adjacent thread relief radius, or the threaded end, but the inner pin is damage free, before further flight, replace the outer pin with a new or serviceable pin.

(3) If an outer pin is cracked in the area that includes the straight shank or the head, before further flight, replace both the inner and outer pin with new or serviceable pins.

(4) If any cracks are found on an inner pin, before further flight, replace both the inner and outer pin with new or serviceable pins.

(5) On any pin, if corrosion is found on a threaded area or in the thread relief radius adjacent to the threads, before further flight, replace the pin with a new or serviceable pin.

(6) If any corrosion is found on an area of the pin that is not threaded or in a thread relief radius adjacent to threads, before further flight, contact the Manager, Seattle ACO.

(i) For Model 737–300, –400, and –500 series airplanes: Thereafter, repeat the inspections required by paragraph (h) of this AD at the times specified in paragraph (i)(1) or (i)(2) of this AD, as applicable.

(1) If BMS 3–27 grease (Mastinox 6856K) is used, thereafter, repeat the inspections at intervals not to exceed 16,000 flight hours or 96 months, whichever occurs first.

(2) If BMS 3–33 grease is used as a substitute for BMS 3–27 (Mastinox 6856K), thereafter, repeat the inspections at intervals not to exceed 8,000 flight hours or 48 months, whichever occurs first.

Alternative Methods of Compliance

(j) In accordance with 14 CFR 39.19, the Manager, Seattle ACO, FAA, is authorized to approve alternative methods of compliance for this AD.

Issued in Renton, Washington, on December 1, 2003.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–30334 Filed 12–5–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No.2003–NM–58–AD]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model DC–9–14, DC–9–15, DC–9–15F, DC–9–31, DC–9–32, DC–9–32 (VC–9C), DC–9–33F, DC–9–34, DC–9–34F, DC–9–33F, and DC–9–32F (C–9A, C–9B) Airplanes; and DC–9–20, DC–9–40, and DC–9–50 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness directive (AD), applicable to certain McDonnell Douglas Model DC–9 series airplanes, that currently requires replacing the transformer ballast assembly in the pilot's console with a new, improved ballast assembly. This action would expand the applicability of the existing AD to include additional airplanes. In addition, this action would provide an optional method for accomplishing the requirements of the existing AD. The actions specified by the proposed AD are intended to prevent overheating of the ballast transformers due to aging fluorescent tubes that cause a higher power demand on the ballast transformers, which could result in smoke in the cockpit. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by January 22, 2004.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2003–NM–58–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov*. Comments sent via fax or the Internet must contain "Docket No. 2003–NM–58–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 or 2000 or ASCII text.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024). This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Elvin K. Wheeler, Aerospace Engineer, Systems and Equipment Branch, ANM–130L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5344; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- **Include justification (e.g., reasons or data) for each request.**

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2003–NM–58–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2003–NM–58–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

On December 26, 2001, the FAA issued AD 2001–26–24, amendment 39–12590 (67 FR 497, January 4, 2002), applicable to certain McDonnell Douglas Model DC–9 series airplanes, to require replacement of the transformer ballast assembly in the pilot's console with a new, improved ballast assembly. That action was prompted by instances of smoke emanating from the ballast transformers of the cockpit fluorescent lights. The requirements of that AD are intended to prevent overheating of the ballast transformers due to aging fluorescent tubes that cause a higher power demand on the ballast transformers, which could result in smoke in the cockpit.

Actions Since Issuance of Previous Rule

Since the issuance of that AD, the FAA has reviewed and approved Boeing Alert Service Bulletin DC9–33A114, Revision 03, dated January 16, 2003. The replacement procedure described in Revision 03 is essentially identical to that in Revision 01 of the service bulletin, which was referenced in AD 2001–26–24 as the appropriate source of service information for accomplishing the required actions in that AD. However, Revision 03 of the service bulletin adds additional airplanes to the effectivity listing that are subject to the identified unsafe condition. In addition, Revision 03 of the service bulletin provides for modification of the transformer ballast assembly as an option to replacement of the assembly as required in AD 2001–26–24. Accomplishment of the actions specified in these service bulletins is intended to adequately address the identified unsafe condition.

Boeing Alert Service Bulletin DC9–33A114, Revision 03, refers to Elektronika, Inc. Product Improvement Service Bulletin 33–EKA0199–BPC, Revision D, dated November 25, 2002, as an additional source of service information for accomplishment of the modification of the transformer ballast assembly for McDonnell Douglas Model DC–9 series airplanes.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would supersede AD 2001–26–24 to continue to require replacement of the transformer ballast assembly in the pilot's console with a new, improved ballast assembly. In addition, the proposed AD would expand the applicability of the existing AD to include additional airplanes. The proposed AD would also provide for modification of the transformer ballast assembly as an option to the replacement of the assembly for McDonnell Douglas Model DC–9 series airplanes. The actions would be required to be accomplished in accordance with the service bulletin described previously, except as discussed below.

Explanation of Change to Applicability

In addition to referencing the service bulletin described above, the FAA has revised the applicability of the existing AD to identify model designations as published in the most recent type certificate data sheet.

Cost Impact

There are approximately 575 airplanes of the affected design in the worldwide fleet. The FAA estimates that 477 airplanes of U.S. registry would be affected by this proposed AD.

The replacement that is currently required by AD 2001–26–24 and also proposed as an option in this AD action takes approximately 1 work hour per airplane to accomplish, at an average labor rate of $65 per work hour. Required parts cost approximately between $1,379 and $1,860 per airplane. Based on these figures, the cost impact of the replacement on U.S. operators is estimated to be between $688,788 and $918,225, or between $1,444 and $1,925 per airplane.

The new optional modification that is proposed in this AD action would take approximately 2 work hours per airplane to accomplish, at an average labor rate of $65 per work hour. Required parts cost approximately $4,472 per airplane. Based on these figures, the cost impact of the proposed requirements of this AD on U.S. operators is estimated to be $4,602 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the current or proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–12590 (67 FR 497, January 4, 2002), and by adding a new airworthiness directive (AD), to read as follows:

McDonnell Douglas: Docket 2003–NM–58–AD. Supersedes AD 2001–26–24, Amendment 39–12590.

Applicability: Model DC–9–14, DC–9–15, DC–9–15F, DC–9–31, DC–9–32, DC–9–32 (VC–9C), DC–9–33F, DC–9–34, DC–9–34F, DC–9–33F, and DC–9–32F (C–9A, C–9B) airplanes; and DC–9–20, DC–9–40, and DC–9–50 series airplanes; as listed in Boeing Alert Service Bulletin DC9–33A114, Revision 03, dated January 16, 2003; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent overheating of the ballast transformers due to aging fluorescent tubes that cause a higher power demand on the ballast transformers, which could result in smoke in the cockpit, accomplish the following:

Replacement or Modification

(a) Replace the transformer ballast assembly from the pilot's console with a new, improved ballast assembly per the Work Instructions in McDonnell Douglas Alert Service Bulletin DC9–33A114, Revision 01, dated February 15, 2000; or the Accomplishment Instructions in Boeing Alert Service Bulletin DC9–33A114, Revision 03, dated January 16, 2003; or modify the existing ballast transformer assembly per the Accomplishment Instructions in Boeing Alert Service Bulletin DC9–33A114, Revision 03, dated January 16, 2003; at the applicable time specified in paragraph (a)(1) or (a)(2) of this AD.

Note 1: Boeing Alert Service Bulletin DC9–33A114, Revision 03, refers to Elektronika, Inc. Product Improvement Service Bulletin 33–EKA0199–BPC, Revision D, dated November 25, 2002, as an additional source of service information for accomplishment of the modification of the transformer ballast assembly for McDonnell Douglas Model DC–9 series airplanes.

(1) For airplanes listed in McDonnell Douglas Alert Service Bulletin DC9–33A114, Revision 01, dated February 15, 2000: Within 12 months after February 8, 2002 (the effective date of AD 2001–26–24, amendment 39–12590).

(2) For airplanes having fuselage numbers 1039 and 1046: Within 12 months after the effective date of this AD.

Parts Installation

(b) As of the effective date of this AD, no person shall install a transformer assembly, part number BA170–1, –11, –21, or –MOD.B, on any airplane.

Prior Replacements

(c) Replacements accomplished before the effective date of this AD per McDonnell Douglas Alert Service Bulletin DC9–33A114, Revision 02, dated March 19, 2002, are considered acceptable for compliance with the corresponding action specified in this AD.

Alternative Methods of Compliance

(d)(1) In accordance with 14 CFR 39.19, the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, is authorized to approve alternative methods of compliance (AMOCs) for this AD.

(2) Alternative methods of compliance, approved previously per AD 2001–26–24, amendment 39–12590, are approved as alternative methods of compliance with this AD.

Issued in Renton, Washington, on December 1, 2003.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–30335 Filed 12–5–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–NM–82–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 747–100, 747–200B, 747–200C, 747–200F, 747–300, 747–400, 747–400D, 747–400F, and 747 SR Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Boeing Model 747–100, 747–200B, 747–200C, 747–200F, 747–300, 747–400, 747–400D, 747–400F, and 747 SR series airplanes. This proposal would require inspection of fire extinguisher bottles in the engine and the auxiliary power unit (APU) to determine the part number; and replacement of the fire extinguisher bottles with new fire extinguisher bottles, if necessary. This action is necessary to prevent fractured discharge heads, which could cause the fire extinguishing agent to leak, which could result in an uncontrolled engine fire that could spread to the strut and wing, or an uncontrolled APU fire that could spread to the airplane structure. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by January 22, 2004.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2003–NM–82–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov*. Comments sent via fax or the Internet must contain "Docket No. 2003–NM–82–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 or 2000 or ASCII text.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Sulmo Mariano, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4086; telephone (425) 917–6501; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2003–NM–82–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2003–NM–82–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The FAA has received reports of fractures of the discharge heads on certain fire extinguisher bottles in the engine and auxiliary power unit (APU) of Model 747–400 series airplanes. In one case, the discharge head fractured during installation of the fire extinguisher. In another case, two fire extinguisher bottles discharged during a tailpipe fire were found to have fractured discharge heads. Four other discharge heads were removed from service after an operator performed an x-ray inspection and found hairline cracks. The cause of the cracking and fractures was traced to discharge heads that were manufactured from a cast material, which had sharp edges or burrs on the retaining rings. These sharp edges or burrs caused the discharge head to seat incorrectly. When the discharge head nuts were tightened, the discharge heads fractured at the retaining ring groove. Fractured discharge heads could cause the fire extinguishing agent to leak from the discharge head. As a consequence, there would not be enough fire extinguishing agent to extinguish a fire in the engine or APU fire zone. This condition, if not corrected, could result in fractured heads which could cause the fire extinguishing agent to leak, which could result in an uncontrolled engine fire that could spread to the strut and wing, or an uncontrolled APU fire that could spread to the airplane structure.

The subject area on certain Model 747–100, 747–200B, 747–200C, 747–200F, 747–300, 747–400, 747–400D, 747–400F, and 747 SR series airplanes is almost identical to that on the affected Model 747–400 series airplanes. Therefore, those Model 747–400 series airplanes may be subject to the same unsafe condition revealed on the Model 747–100, 747–200B, 747–200C, 747–200F, 747–300, 747–400, 747–400D, 747–400F, and 747 SR series airplanes.

Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Alert Service Bulletin 747–26A2272, dated January 16, 2003, which describes procedures for inspecting the fire extinguisher bottles in the engine and APU to determine the part number; and, if necessary, replacement of the fire extinguisher bottles with new fire extinguisher bottles that have discharge heads machined from forged rather than cast material. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition.

Boeing Alert Service Bulletin 747–26A2272 refers to Kidde Aerospace Service Bulletin A820400–26–432, dated October 19, 2002; and Kidde Aerospace Service Bulletin A830800–26–433, dated October 19, 2002; as additional sources of service information for accomplishment of the inspection and replacement, if necessary, for Model 747–100, 747–200B, 747–200C, 747–200F, 747–300, 747–400, 747–400D, 747–400F, and 747 SR series airplanes.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require accomplishment of the actions specified in the Boeing service bulletin described previously.

Cost Impact

There are approximately 346 airplanes of the affected design in the worldwide fleet. The FAA estimates that 47 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 1 work hour per airplane to accomplish the proposed inspection, and that the average labor rate is $65 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $3,055, or $65 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this proposed AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Boeing: Docket 2003–NM–82–AD.

Applicability: Boeing Model 747–100, 747–200B, 747–200C, 747–200F, 747–300, 747–400, 747–400D, 747–400F, and 747 SR series airplanes, as listed in Boeing Alert Service Bulletin 747–26A2272, dated January 16, 2003; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent fractured discharge heads, which could cause the fire extinguishing agent to leak, which could result in an uncontrolled engine fire that could spread to the strut and wing, or an uncontrolled auxiliary power unit (APU) fire that could spread to the airplane structure, accomplish the following:

Inspection and Replacement

(a) Within two years after the effective date of this AD: Perform an inspection to determine the part number (P/N) of the fire extinguisher bottles in the engine and the APU per the Accomplishment Instructions of Boeing Alert Service Bulletin 747–26A2272, dated January 16, 2003.

Note 1: Boeing Alert Service Bulletin 747–26A2272 refers to Kidde Aerospace Service Bulletin A820400–26–432, dated October 19, 2002; and Kidde Aerospace Service Bulletin A830800–26–433, dated October 19, 2002; as additional sources of service information for accomplishment of the inspection and replacement, if necessary, for Model 747–100, 747–200B, 747–200C, 747–200F, 747–300, 747–400, 747–400D, 747–400F, and 747 SR series airplanes.

(1) If no "Pre SB A820400–26–432" P/N listed in Table 2 of Kidde Aerospace Service Bulletin A820400–26–432, dated October 19, 2002, is found installed; and if no "Pre SB A830800–26–433" P/N listed in Table 2 of Kidde Aerospace Service Bulletin A830800–26–433, dated October 19, 2002 is found installed; no further action is required by this paragraph.

(2) If any "Pre SB A820400–26–432" P/N listed in Table 2 of Kidde Aerospace Service Bulletin A820400–26–432, dated October 19, 2002 is found installed; or if any "Pre SB A830800–26–433" P/N listed in Table 2 of Kidde Aerospace Service Bulletin A830800–26–433, dated October 19, 2002 is found installed, prior to further flight, replace the fire extinguisher bottle with a new fire extinguisher bottle having the "Post SB" P/N listed in Table 2 of the applicable Kidde Aerospacé service bulletin. Do the actions per the Accomplishment Instructions of Boeing Alert Service Bulletin 747–26A2272, dated January 16, 2003.

Parts Installation

(b) As of the effective date of this AD, no person may install on any airplane a Kidde Aerospace fire extinguisher bottle with any "Pre SB A820400–26–432" P/N listed in Table 2 of Kidde Aerospace Service Bulletin A820400–26–432, dated October 19, 2002; or any "Pre SB A830800–26–433" P/N listed in Table 2 of Kidde Aerospace Service Bulletin A830800–26–433, dated October 19, 2002.

Alternative Methods of Compliance

(c) In accordance with 14 CFR 39.19, the Manager, Seattle Aircraft Certification Office (ACO), FAA, is authorized to approve alternative methods of compliance (AMOCs) for this AD.

Issued in Renton, Washington, on December 1, 2003.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–30836 Filed 12–5–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–275–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 767 Series Airplanes Powered by General Electric or Pratt & Whitney Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness directive (AD), applicable to certain Boeing Model 767 series airplanes powered by General Electric or Pratt & Whitney engines, that currently requires repetitive inspections to detect discrepancies of the four aft-most fastener holes in the horizontal tangs of the midspar fitting of the strut, and corrective actions, if necessary. That AD also provides an optional terminating action for repetitive inspections. This proposal would expand the area on which the inspections are required. This proposal is prompted by reports of cracking at the third row of fasteners in the midspar fitting. The actions specified by the proposed AD are intended to prevent fatigue cracking in the primary strut structure and reduced structural integrity of the strut, which could result in separation of the strut and engine. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by January 22, 2004.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–275–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov*. Comments sent via fax or the Internet must contain "Docket No. 2002–NM–275–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 or 2000 or ASCII text.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Suzanne Masterson, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington; telephone (425) 917–6441; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2002–NM–275–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–275–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

On April 2, 2001, the FAA issued AD 2001–07–05, amendment 39–12170 (66 FR 18523, April 10, 2001), applicable to certain Boeing Model 767 series airplanes powered by General Electric or Pratt & Whitney engines, to require repetitive inspections to detect discrepancies of the aft-most fastener holes in the horizontal tangs of the midspar fitting of the strut, and corrective actions, if necessary. That AD was also prompted by a report indicating fatigue cracking of an inboard midspar fitting on the number two pylon. The requirements of that AD are intended to prevent fatigue cracking in primary strut structure and reduced structural integrity of the strut, which could result in separation of the strut and engine.

Actions Since Issuance of Previous Rule

Since the issuance of AD 2001–07–05, the FAA has received reports of cracking at the third row of fasteners in the midspar fitting. AD 2001–07–05 requires inspections of only the aft-most two rows consisting of four fastener holes in the horizontal tangs of the midspar fitting. The proposed AD expands the area for the inspections from four aft-most fastener holes in the midspar fitting to eight aft-most fastener holes in the midspar fitting.

Issuance of New Service Information

The FAA has reviewed and approved Boeing Service Bulletin 767–54A0101, Revision 3, dated September 5, 2002, which describes repetitive inspections of eight aft-most fastener holes in the midspar fitting, rather than only four aft-most fastener holes. Except as discussed below, the inspections described in this service bulletin are essentially identical to those specified in Revision 1 of the service bulletin, which was referenced in AD 2001–07–05 as the appropriate source of service information. Accomplishment of the actions specified in Revision 3 of the service bulletin is intended to adequately address the identified unsafe condition, except as described below.

Difference Between Proposed Rule and Service Bulletin

Operators should note that, unlike the procedures described in Boeing Service Bulletin 767–54A0101, Revision 3, dated September 5, 2002, during the first detailed inspection, this proposed AD allows for inspection of only four of the aft-most fastener holes as an option to inspecting all eight aft-most fastener holes. After the first detailed inspection, repetitive inspections would include all eight aft-most fastener holes as specified in the service bulletin.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would supersede AD 2001–07–05 to require repetitive inspections to detect discrepancies of the eight aft-most fastener holes in the horizontal tangs of the midspar fitting of the strut, and corrective actions, if necessary.

Editorial Changes to the Existing Requirements

The FAA has changed all references to a "detailed visual inspection" in paragraph (a)(1) of AD 2001–07–05 to "detailed inspection."

The FAA has also added the words "before further flight," to paragraphs (a)(2)(i) and (a)(2)(ii) of the proposed AD, which were inadvertently omitted from paragraphs (a)(2)(i) and (a)(2)(ii) of AD 2001–07–05. It was our intent to follow the compliance times identified in the referenced service bulletin. We have included the compliance time for clarification.

Cost Impact

There are approximately 625 airplanes of the affected design in the worldwide fleet. The FAA estimates that 263 airplanes of U.S. registry would be affected by this proposed AD.

The detailed inspection that is proposed in this AD action would take approximately 1 work hour per airplane to accomplish, at an average labor rate of $65 per work hour. Based on these figures, the cost impact of the proposed inspection on U.S. operators is estimated to be $17,095, or $65 per airplane, per inspection cycle.

The eddy current inspection that is proposed by the AD action would take approximately 3 work hours per airplane to accomplish, at an average labor rate of $65 per work hour. Based on these figures, the cost impact of the proposed inspection on U.S. operators is estimated to be $51,285, or $195 per airplane, per inspection cycle.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the current or proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–12170 (66 FR 18523, April 10, 2001), and by adding a new airworthiness directive (AD), to read as follows:

Boeing: Docket 2002–NM–275–AD. Supersedes AD 2001–07–05, amendment 39–12170.

Applicability: Model 767-series airplanes, as listed in Boeing Service Bulletin 767–54A0101, Revision 3, dated September 5, 2002; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent fatigue cracking in the primary strut structure and reduced structural integrity of the strut, which could result in separation of the strut and engine, accomplish the following:

Requirements of AD 2001–07–05

Repetitive Inspections

(a) Except as provided by paragraph (b) of this AD, before the accumulation of 10,000 total flight cycles, or within 600 flight cycles after May 15, 2001 (the effective date of AD 2001–07–05, amendment 39–12170 (66 FR 18523, April 10, 2001), whichever occurs later: Accomplish the inspections required by paragraph (a)(1) or (a)(2) of this AD, as applicable.

(1) Perform a detailed inspection of the four aft-most fastener holes in the horizontal tangs of the midspar fitting of the strut to detect cracking, in accordance with Part 1, "Detailed Inspection," of the Accomplishment Instructions of Boeing Service Bulletin 767–54A0101, Revision 1, dated February 3, 2000. If no cracking is detected, repeat the inspection thereafter at the applicable intervals specified in Table 1, "Reinspection Intervals for Part 1—Detailed Inspection" included in Figure 1 of the service bulletin.

Note 1: For the purposes of this AD, a detailed inspection is defined as: "An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required."

(2) Perform a high frequency eddy current inspection of the four aft-most fastener holes in the horizontal tangs of the midspar fitting of the strut to detect discrepancies (cracking, incorrect fastener hole diameter), in accordance with Part 2, "High Frequency Eddy Current (HFEC) Inspection," of the Accomplishment Instructions of the service bulletin. Accomplish the requirements specified in paragraph (a)(2)(i) or (a)(2)(ii) of this AD, as applicable; and repeat the inspection thereafter at the applicable intervals specified in Table 2, "Reinspection Intervals for Part 2—HFEC Inspection" included in Figure 1 of the service bulletin.

(i) If no cracking is detected and the fastener hole diameter is less than or equal to 0.5322 inch, before further flight, rework the hole in accordance with Part 3 of the Accomplishment Instructions of the service bulletin.

(ii) If no cracking is detected and the fastener hole diameter is greater than 0.5322 inch, before further flight, accomplish the requirements specified in either paragraph (c)(1) or (c)(2) of this AD.

(b) For airplanes on which the two aft-most fasteners have been inspected in accordance with Boeing Service Bulletin 767–54A0101, Revision 1, dated February 3, 2000, prior to May 15, 2001: Perform the initial inspection of the four aft-most fasteners in accordance with paragraph (a) of this AD before the accumulation of 10,000 total flight cycles, or within 1,500 flight cycles after May 15, 2001, whichever occurs later.

Corrective Actions

(c) If any cracking is detected after accomplishment of any inspection required by paragraph (a) of this AD, before further flight, accomplish the requirements specified in either paragraph (c)(1) or (c)(2) of this AD.

(1) Accomplish the terminating action specified in Part 4 of the Accomplishment Instructions of Boeing Service Bulletin 767–54A0101, Revision 1, dated February 3, 2000; or Boeing Service Bulletin 767–54A0101, Revision 3, dated September 5, 2002. Accomplishment of this paragraph terminates the requirements of this AD.

(2) Replace the midspar fitting of the strut with a serviceable part, or repair in accordance with a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA. Repeat the applicable inspection thereafter at the applicable time specified in paragraph (a)(1) or (a)(2) of this AD.

(d) If any discrepancies (cracking, incorrect fastener hole diameter) are detected during any inspection required by paragraph (a) of this AD, for which the service bulletin specifies that the manufacturer may be contacted for disposition of those repair conditions: Before further flight, accomplish the corrective actions (including fastener hole rework and/or midspar fitting replacement) in accordance with a method approved by the Manager, Seattle ACO; or in accordance with data meeting the type certification basis of the airplane approved by a Boeing Company Designated Engineering Representative who has been authorized by the Manager, Seattle ACO, to make such findings. For a method to be approved by the Manager, Seattle ACO, as required by this paragraph, the Manager's approval letter must specifically reference this AD.

New Requirements of This AD

Additional Inspections

(e) Within 10,000 total flight cycles, or within 600 flight cycles after the effective date of this AD, whichever occurs later: Perform the inspections specified in paragraph (a)(1) or (a)(2) of this AD, as applicable, on all eight aft-most fastener holes or the four forward fastener holes in the group of eight aft-most fastener holes not inspected per paragraph (a)(1), (a)(2), or (b) of this AD. The inspection must be done per the Accomplishment Instructions in Boeing Service Bulletin 767–54A0101, Revision 3, dated September 5, 2002. Accomplishment of the applicable inspection on all eight aft-most fastener holes constitutes terminating action for the repetitive inspection requirements of paragraphs (a)(1), (a)(2), and (b) of this AD.

(f) If no cracking or discrepancy is detected during any inspection required by paragraph (e) of this AD: Perform the follow-on actions specified in paragraph (a)(2)(i) or (a)(2)(ii) of this AD, as applicable, per the Accomplishment Instructions in Boeing Service Bulletin 767–54A0101, Revision 3, dated September 5, 2002; and repeat the inspections of all eight aft-most fastener holes thereafter at the applicable intervals specified in Table 1 of this AD.

TABLE 1.—REPETITIVE INSPECTION INTERVALS FOR ALL EIGHT AFT-MOST FASTENER HOLES

If—	Repetitive intervals—
(1) All eight aft-most fastener holes were inspected per paragraph (e) of this AD:	At the applicable intervals specified in Table 1, "Reinspection Intervals for Part 1—Detailed Inspection," or Table 2, "Reinspection Intervals for Part 2—HFEC Inspection," as applicable. Both tables are included in Figure 1 of the service bulletin.
(2) Only the four forward fastener holes in the group of eight aft-most fastener holes were inspected per paragraph (e) of this AD:	At the next scheduled repetitive inspection required by paragraph (a)(1) or (a)(2) of this AD, as applicable. Thereafter at the applicable intervals specified in Table 1, "Reinspection Intervals for Part 1—Detailed Inspection," or Table 2, "Reinspection Intervals for Part 2—HFEC Inspection," as applicable. Both tables are included in Figure 1 of the service bulletin.

Corrective Actions

(g) If any cracking or discrepancy is detected during any inspection required by paragraph (e) of this AD, before further flight: Accomplish the corrective actions described in paragraph (c) of this AD, per the Accomplishment Instructions in Boeing Service Bulletin 767–54A0101, Revision 3, dated September 5, 2002, except as provided in paragraph (d) of this AD.

Service Bulletin Revisions

(h) Accomplishment of the terminating action in paragraph (c)(1) of this AD, per the original release of Boeing Service Bulletin 767–54A0101, dated September 23, 1999; or Revision 2 of Boeing Service Bulletin 767–54A0101, dated January 10, 2002; is acceptable for compliance with the requirements of this AD. However, as of the effective date of this AD, only the actions described in the Accomplishment Instructions of Boeing Service Bulletin 767–54A0101, Revision 3, dated September 5, 2002, should be used.

Inspections Accomplished Per Previous Issue of Service Bulletin

(i) Inspections required by paragraphs (a) and (b) of this AD that are accomplished before the effective date of this AD per Revision 2 of Boeing Service Bulletin 767–54A0101, dated January 10, 2002; or Revision 3 of Boeing Service Bulletin 767–54A0101, dated September 5, 2002; are considered acceptable for compliance with the corresponding action specified in this AD.

Alternative Methods of Compliance

(j) In accordance with 14 CFR 39.19, the Manager, Seattle ACO, FAA, is authorized to approve alternative methods of compliance (AMOCs) for this AD.

Issued in Renton, Washington, on December 1, 2003.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–30337 Filed 12–5–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–305–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 777 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Boeing Model 777 series airplanes. This proposal would require replacing four socket contacts on the four boost pumps of the main fuel tanks with new, high-quality gold-plated contacts, and sealing the backshell of the connector with potting compound. This action is necessary to prevent a possible source of ignition in a flammable leakage zone, which could result in an undetected and uncontrollable fire in the wheel well or wing trailing edge, and a possible fuel tank explosion. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by January 22, 2004.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–305–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov*. Comments sent via fax or the Internet must contain "Docket No. 2002–NM–305–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 or 2000 or ASCII text.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Margaret Langsted, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington; telephone (425) 917–6500; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2002–NM–305–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–305–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The FAA has received reports indicating that a number of boost pumps in the main fuel tanks of certain Boeing Model 777 series airplanes have been removed due to evidence of severe heat damage to the main electrical power connector. The boost pumps are installed on the rear spar and in the wheel well. The wing trailing edge and the wheel well compartments may have flammable vapor, and do not have fire detection or extinguishing systems. Heat damaged boost pump electrical connectors, if not corrected, are a possible source of ignition in a flammable leakage zone, which could result in an undetected and uncontrollable fire in the wheel well or wing trailing edge, and a possible fuel tank explosion.

Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Special Attention Service Bulletin 777–28–0028, dated October 24, 2002, which describes procedures for replacing the socket contacts in certain positions for all four boost pumps of the main fuel tanks with high-quality gold-plated contacts; and sealing the backshell of the connector with potting compound. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require accomplishment of the actions specified in the service bulletin described previously.

Cost Impact

There are approximately 400 airplanes of the affected design in the worldwide fleet. The FAA estimates that 133 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 4 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $65 per work hour. Required parts would cost approximately $19 per airplane. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $37,107, or $279 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this proposed AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the

time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions. The manufacturer may cover the cost of replacement parts associated with this proposed AD, subject to warranty conditions. Manufacturer warranty remedies may also be available for labor costs associated with this proposed AD. As a result, the costs attributable to the proposed AD may be less than stated above.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Boeing: Docket 2002–NM–305–AD.

Applicability: Model 777–200 and 777–300 series airplanes, line numbers 001 through 400 inclusive, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent a possible source of ignition in a flammable leakage zone, which could result in an undetected and uncontrollable fire in the wheel well or wing trailing edge, and a possible fuel tank explosion, accomplish the following:

Replace and Seal

(a) Within 18 months after the effective date of this AD, for all four boost pumps of the main fuel tanks, replace the socket contacts in positions 2, 4, 6, and 7 with new, high-quality gold-plated contacts; and seal the backshell of the connector with potting compound; per the Accomplishment Instructions of Boeing Special Attention Service Bulletin 777–28–0028, dated October 24, 2002.

Alternative Methods of Compliance

(b) In accordance with 14 CFR 39.19, the Manager, Seattle Aircraft Certification Office (ACO), FAA, is authorized to approve alternative methods of compliance (AMOCs) for this AD.

Issued in Renton, Washington, on December 1, 2003.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–30338 Filed 12–5–03; 8:45 am]

BILLING CODE 4910–13–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[WC Docket No. 03–225; FCC 03–265]

Request To Update Default Compensation Rate for Dial-Around Calls From Payphones

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: By this *Notice of Proposed Rulemaking* (NPRM), the Commission commences a proceeding to consider a new default compensation rate for dial-around calls from payphones. The *NPRM* seeks comment on whether to modify the default rate of $0.24 per-call for dial-around payphone calls established more than four years ago.

DATES: Comments are due on or before January 7, 2004. Written comments by the public on the proposed information collections are due on or before January 7, 2004. Reply comments are due on or before January 22, 2004. Written reply comments by the public on the proposed information collections are due on or before January 22, 2004. Written comments must be submitted by the Office of Management and Budget (OMB) on the proposed information collection(s) on or before February 6, 2004.

ADDRESSES: All filings must be sent to the Commission's Secretary, Marlene H. Dortch, Office of the Secretary, Federal Communications Commission, Room TW–A325, 445 Twelfth Street SW., Washington, DC 20554. In addition to filing comments with the Secretary, a copy of any comments on the information collections contained herein must be submitted to Judith Boley Herman, Federal Communications Commission, Room 1–C804, 445 Twelfth Street SW., Washington, DC 20554, or via the Internet to *Judith-B.Herman@fcc.gov*, and to Kim A. Johnson, OMB Desk Officer, Room 10236 NEOB, 725 17th Street NW., Washington, DC 20503, or via the Internet to *Kim_A._Johnson@omb.eop.gov*.

FOR FURTHER INFORMATION CONTACT: Jon Stover, Wireline Competition Bureau, Pricing Policy Division, (202) 418–0390. For additional information concerning the information collection(s) contained in this document, contact Judith Boley Herman at 202–418–0214, or via the Internet at *Judith-B.Herman@fcc.gov*.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rulemaking (NPRM) in WC Docket No. 03–225, RM No. 10568, adopted on October 28, 2003, and released on October 31, 2003. The complete text of this NPRM is available for public inspection Monday through Thursday from 8 a.m. to 4:30 p.m. and Friday from 8 a.m. to 11:30 a.m. in the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, Room CY–A257, 445 Twelfth Street, SW., Washington, DC 20554. The complete text is available also on the Commission's Internet site at *http://www.fcc.gov*. Alternative formats are available to persons with disabilities by contacting Brian Millin at (202) 418–7426 or TTY (202) 418–7365. The complete text of the NPRM may be purchased from the Commission's duplicating contractor, Qualex International, Room CY–B402, 445 Twelfth Street, SW., Washington, DC 20554, telephone 202–863–2893, facsimile 202–863–2898, or e-mail at *qualexint@aol.com*.

Synopsis of Notice of Proposed Rulemaking

1. The *NPRM* grants petitions for rulemaking filed by the American Public Communications Council (APCC) and the RBOC Payphone Coalition (BellSouth Public Communications, Inc., SBC Communications, Inc., and the Verizon telephone companies). The Commission asks whether the $0.24 rate still ensures that all payphone service providers (PSPs) are fairly compensated for each and every completed call as mandated by 47 U.S.C. 276, or whether a change in the default rate is mandated.

2. According to cost studies submitted by APCC and the RBOC Payphone Coalition, per-payphone costs have not changed dramatically since 1998, but falling call volumes at payphones have caused a major increase in per-call costs at marginal payphones. These two groups of PSPs assert that the current dial-around compensation rate is no longer adequate to ensure widespread deployment of payphones because $0.24 no longer provides cost recovery for PSPs.

3. The petitions for rulemaking were opposed by six interexchange carriers (IXCs) and the Attorney General of the State of Texas. While they do not assert that IXCs can implement targeted call blocking at this time, some IXCs contend that the Commission should not change the default compensation rate because market forces by themselves are able to determine the appropriate level of payphone deployment. These IXCs will be afforded an opportunity to demonstrate how PSPs can be effectively compensated in a fully deregulated market.

4. In finding it unnecessary to issue a Notice of Inquiry (NOI), as requested by some IXCs, the Commission decided it is possible to resolve certain methodological and factual issues, to the extent that they are relevant to our ratesetting task, in the course of determining what, if any, modifications the Commission should make to the dial-around compensation rate.

5. The Commission invites comments both on the general issue of whether to prescribe a different payphone compensation rate and on the specific issue of the amount of the rate. The Commission seeks comment on the cost studies presented in the petitions for rulemaking by APCC and the RBOC Payphone Coalition (Coalition). The Commission seeks comment on whether the methodologies reflected in those studies are consistent with the rate methodology the Commission used in *Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, CC Docket No. 96–128, *Third Report and Order*, 64 FR 13701, March 22, 1999. The Commission also asks whether the cost information presented in those studies accurately represents the costs currently incurred by payphone service providers. The Commission further invites commenting parties to submit additional studies that support or refute the information presented in the APCC and Coalition studies.

6. In the NPRM, the Commission tentatively concludes that the methodology the Commission adopted in the *Third Report and Order* is the appropriate methodology to use in reevaluating the default dial-around compensation rate. The decision to use that methodology was affirmed by the United States Court of Appeals for the D.C. Circuit. The Commission seeks comment on this tentative conclusion.

7. The Commission also invites comment on whether the methodology should be modified in any way due to changes in the payphone industry since its adoption. For example, some IXCs argue that, due to the elasticity of the demand for dial-around calling, an increase in the dial-around rate would suppress demand to such an extent as to reduce total revenues, resulting in increased removal of payphones. APCC and the Regional Bell Operating Companies (RBOCs), on the other hand, argue that there is no reason to believe that dial-around calling is highly price-elastic. In the *Third Report and Order*, the Commission considered the issue of demand elasticity in determining the appropriate allocation of overhead between dial-around calls and other calls, but was unable to reach a firm conclusion. Thus, elasticity issues bear on both the allocation of overhead and the potential for demand suppression. The Commission seeks further comment on the issue of demand elasticity, including the impact of recent increases in the coin calling rate and the cross-elasticity of demand between payphones and wireless telephone service. The Commission invites the submission of any further data that may have become available on these questions. Also, because monthly call volume is a key driver in determining the per-call compensation rate, the Commission seeks comment on the efficacy and merit of the use in the APCC and Coalition cost studies of marginal payphone monthly call volumes of 233.9 and 219, respectively.

8. The Commission seeks comment on whether the particular inputs the Commission adopted in the *Third Report and Order* for various cost categories continue to be appropriate or whether there are changed conditions that warrant modifications of the particular inputs used in 1999. For example, is the depreciation rate used in the *Third Report and Order* still valid? As another example, WorldCom claims that, given the declining payphone base, estimates of capital costs should be based on the price of second-hand payphones. The Commission invites comment on this and other aspects of the cost studies.

9. The Commission seeks comment on whether additional cost categories are needed beyond those identified in the *Third Report and Order*. Are there other cost categories that should be added or modified beyond those on which the Commission relied in the *Third Report and Order*? Specifically, the APCC and Coalition cost studies add an element for collection costs specific to dial-around compensation, and the Coalition study adds an element for uncollectibles. In the *Third Report and Order*, the Commission declined to include these costs in setting the dial-around rate, finding that the record in that docketed proceeding contained insufficient information to determine the extent to which administration costs vary when the number of coinless calls increases relative to coin calls. AT&T and others argue that the *Third Report and Order* methodology precludes the inclusion of an element for bad debt. The Commission invites comment on whether there is now an adequate record to justify such an element, and the appropriate amount of such an element.

10. The Commission seeks comment on whether and how the Commission should consider the revenues and costs associated with the provision of additional services and activities in conjunction with payphones, such as Internet access or rental of advertising space. Are these revenues and costs relevant to the Commission's marginal payphone analysis, and, if so, how? While APCC argues that such contribution is minimal, is there evidence regarding the extent of the net contribution to payphone cost recovery resulting from these activities? Is there any net contribution? If so, the Commission invites parties to supply such evidence with respect to payphones generally and to marginal payphones in particular.

11. Sprint urges the Commission to reconsider adopting a "caller-pays" compensation scheme, in which the caller would deposit coins or other forms of advance payment before making a dial-around call. In the *Third Report and Order*, the Commission noted that some economists would argue that a caller-pays methodology forms the basis for the purest market-based approach. The Commission rejected this approach based on

evidence that Congress disapproved of a caller-pays methodology. For this reason, the Commission tentatively concluded in this NPRM that it should not adopt a "caller-pays" methodology. The Commission seeks comment on this tentative conclusion.

12. Nevertheless, the Commission seeks comment on whether circumstances have changed such that it is now appropriate to reconsider a caller-pays approach to payphone compensation. In fact, in the *Third Report and Order*, the Commission concluded that it should monitor the advance of call blocking technology and other marketplace developments before reconsidering a caller-pays approach. As noted in the NPRM, consumers using dial-around services from payphones may be billed by their interexchange carriers at rates higher than both the default compensation rate and the local coin call rate. Thus the convenience of coinless calling may come at a high price to the consumer. The Commission asks parties to provide information about what service providers charge customers for dial-around and other coinless payphone services. More generally, the Commission seeks comment on how it should analyze the costs and benefits of the Commission policy of prescribing a dial-around compensation rate to be paid by service providers to payphone operators in lieu of a caller-pays system. Finally, the Commission seeks comment on Commission authority to allow advance consumer payment for use of payphones. In particular, does 47 U.S.C. 226(e) permit the Commission to conclude that the Commission need not prescribe compensation apart from advance payment by the consumer? Is so, what factual findings or policy goals would support such a conclusion?

Initial Paperwork Reduction Act Analysis

13. This NPRM contains either proposed or modified information collections. As part of its continuing effort to reduce paperwork burdens, the Commission invites the general public and the Office of Management and Budget (OMB) to take this opportunity to comment on the information collections contained in this NPRM, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. Comments must be identified as responses to the Initial Paperwork Reduction Act Analysis. Public and agency comments are due at the same time as other comments on this NPRM; OMB comments are due 60 days from the date of publication of this NPRM in the **Federal Register**. Comments should address: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

Initial Regulatory Flexibility Act Analysis

14. As required by the Regulatory Flexibility Act (RFA), 5 U.S.C. 603, the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities by the policies and rule(s) proposed in this Notice of Proposed Rulemaking (NPRM). Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA.

15. This present IRFA conforms to the RFA, as amended. *See* 5 U.S.C. 604. The RFA, 5 U.S.C. 601 *et seq.*, has been amended by the Contract with America Advancement Act of 1996, Public Law No. 104–121, 110 Stat. 847 (1996) (CWAA). Title II of the CWAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA). The Commission will send a copy of this NPRM, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration. *See* 5 U.S.C. 604(b).

Need for, and Objectives of, the Proposed Rules

16. In adopting section 276 in 1996, Public Law No. 104–104, 110 Stat. 56 (1996) (codified at 47 U.S.C. 276), Congress mandated *inter alia* that the Commission "establish a per call compensation plan to ensure that all payphone service providers are fairly compensated for each and every completed intrastate and interstate call using their payphone * * * ." In this NPRM, the Commission decided to reexamine the default payphone compensation rate the Commission prescribed in 1999. The overall objective of this proceeding is to evaluate whether changes are necessary to the current default rate of compensation for dial-around calls originating at payphones, in order to ensure that payphone service providers are fairly compensated, promote payphone competition, and promote the widespread deployment of payphone services. The NPRM seeks comment on specific issues related solely to the level of dial-around compensation.

Legal Basis

17. The proposed action is supported by 47 U.S.C. 151, 152, 154(i)-(j), 201, 226 and 276, as well as 47 CFR 1.1, 1.48, 1.411, 1.412, 1.415, 1.419, and 1.1200–1216.

Description and Estimate of the Number of Small Entities to Which Proposed Rules Will Apply

18. The RFA directs agencies to provide a description of, and an estimate of, the number of small entities that may be affected by the rule(s) proposed herein, where feasible. 5 U.S.C. 604(a)(3). The RFA generally defines "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction." 5 U.S.C. 601(6). In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act, unless the Commission has developed one or more definitions that are more appropriate to its activities. 5 U.S.C. 601(3) (incorporating by reference the definition of "small business concern" in 5 U.S.C. 632). Under the Small Business Act, a "small business concern" is one that: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) meets any additional criteria established by the Small Business Administration (SBA). 5 U.S.C. 632. Pursuant to 5 U.S.C. 601(3), the statutory definition of a small business applies "unless an agency after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition in the **Federal Register**."

19. *Small Incumbent Local Exchange Carriers.* We have included small incumbent local exchange carriers in this present RFA analysis. As noted above, a "small business" under the RFA is one that, *inter alia*, meets the pertinent small business size standard (*e.g.*, a telephone communications business having 1,500 or fewer employees), and "is not dominant in its field of operation." 5 U.S.C. 601(3). The SBA's Office of Advocacy contends that, for RFA purposes, small incumbent LECs are not dominant in their field of operation because any such dominance is not "national" in scope.[1] The Commission therefore included small incumbent LECs in this RFA analysis, although the Commission emphasizes that this RFA has no effect on the Commission's analyses and determinations in other, non-RFA contexts.

20. *Wired Telecommunications Carriers.* The SBA has developed a small business size standard for Wired Telecommunications Carriers, which consists of all such companies having 1,500 or fewer employees. 13 CFR 121.201, NAICS code 717110. According to Census Bureau data for 1997, there were 2,225 firms in this category, total, that operated for the entire year. U.S. Census Bureau, 1997 Economic Census, Subject Series: Information, "Establishment and Firm Size (Including Legal Form of Organization)," Table 5, NAICS code 513310 (issued October of 2000). Of this total, 2,201 firms had employment of 999 or fewer employees, and an additional 24 firms had employment of 1,000 employees or more. *Id.* The Commission notes that the census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is "Firms with 1,000 employees or more." Under the size standard of 1,500 or fewer employees, the great majority of Wired Telecommunications Carriers can be considered small.

21. *Incumbent Local Exchange Carriers.* Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to incumbent local exchange services. The closest applicable size standard under the SBA rules is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. 13 CFR 121.201, North American Industry Classification System (NAICS) code 517110. According to Commission data, 1,329 carriers reported that they were engaged in the provision of local exchange services. FCC, Wireline Competition Bureau, Industry Analysis and Technology Division, *Trends in Telephone Service* (May 2002) (hereinafter *Telephone Trends Report*), Table 5.3. Of these 1,329 carriers, an estimated 1,024 have 1,500 or fewer employees and 305 have more than 1,500 employees. *Id.* Consequently, the Commission estimates that most providers of local exchange service are small businesses that may be affected by the rule(s) and policies proposed herein.

22. *Competitive Local Exchange Carriers (CLECs).* Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to providers of competitive local exchange services or to competitive access providers (CAPs) or to "Other Local Exchange Carriers," all of which are discrete categories under which Telecommunications Relay Service (TRS) data are collected. The closest applicable size standard under the SBA rules is for Wired Telecommunications Carriers. Under that SBA size standard, such a business is small if it has 1,500 or fewer employees. 13 CFR 121.201, NAICS code 517110. According to Commission data, 532 companies reported that they were engaged in the provision of either competitive access provider services or competitive local exchange carrier services. *Telephone Trends Report*, Table 5.3. Of these 532 companies, an estimated 411 have 1,500 or fewer employees and 121 have more than 1,500 employees. *Id.* In addition, 55 carriers reported that they were "Other Local Exchange Carriers." *Id.* Of the 55 "Other Local Exchange Carriers," an estimated 53 have 1,500 or fewer employees and two have more than 1,500 employees. *Id.* Consequently, the Commission estimates that most providers of competitive local exchange service, competitive access providers, and "Other Local Exchange Carriers" are small entities that may be affected by the rule(s) and policies proposed herein.

23. *Local Resellers.* The SBA has developed a size standard for small businesses within the category of Telecommunications Resellers. Under that SBA size standard, such a business is small if it has 1,500 or fewer employees. 13 CFR 121.201, NAICS code 517310. According to the Commission data, 134 companies reported that they were engaged in the provision of local resale services. *Telephone Trends Report*, Table 5.3. Of these 134 companies, an estimated 131 have 1,500 or fewer employees and three have more than 1,500 employees. *Id.* Consequently, the Commission estimates that the great majority of local resellers are small entities that may be affected by the rules and policies proposed herein.

24. *Toll Resellers.* The SBA has developed a size standard for small businesses within the category of Telecommunications Resellers. Under that SBA size standard, such a business is small if it has 1,500 or fewer employees. 13 CFR 121.201, NAICS code 517310. According to the Commission's most recent *Telephone Trends Report* data, 576 companies reported that they were engaged in the provision of toll resale services. *Telephone Trends Report*, Table 5.3. Of these 576 companies, an estimated 538 have 1,500 or fewer employees and 38 have more than 1,500 employees. *Id.* Consequently, the Commission estimates that the great majority of toll resellers are small entities that may be affected by the rules and policies proposed herein.

25. *Payphone Service Providers.* Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to payphone service providers (PSPs). The closest applicable size standard under the SBA rules is for Wired Telecommunications Carriers. Under that standard, such a business is small if it has 1,500 or fewer employees. 13 CFR 121.201, NAICS code 517110. According to the Commission's most recent *Telephone Trends Report* data, 936 PSPs reported that they were engaged in the provision of payphone services. *Telephone Trends Report*, Table 5.3. Of these 936 PSPs, an estimated 933 have 1,500 or fewer employees and three have more than 1,500 employees. *Id.* Consequently, the Commission estimates that the great majority of PSPs are small entities that may be affected by the rules and policies proposed herein.

26. *Interexchange Carriers (IXCs).* Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to providers of interexchange services. The closest applicable size standard under the SBA rules is for Wired Telecommunications Carriers. Under that standard, such a business is small if it has 1,500 or fewer employees. 13 CFR 121.201, NAICS code 517110. According to Commission data, 229 carriers reported that their primary telecommunications service activity was the provision of interexchange services. *Telephone Trends Report*, Table 5.3. Of these 229 companies, an estimated 181 have 1,500 or fewer employees and 48 have more than 1,500 employees. *Id.* Consequently, the Commission estimates that the majority of interexchange carriers are small entities that may be affected by the rules and policies proposed herein.

[1] Letter from Jere W. Glover, Chief Counsel of Advocacy, SBA, to William E. Kennard, Chairman, FCC (May 27, 1999). The Small Business Act contains a definition of "small-business concern," which the RFA incorporates into its own definition of "small business." See 15 U.S.C. 601 (3) (RFA). SBA regulations interpret "small business concern" to include the concept of dominance on a national basis. 13 CFR 121.102 (b).

27. *Operator Service Providers.* Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to operator service providers. The closest applicable size standard under the SBA rules is for Wired Telecommunications Carriers. Under that standard, such a business is small if it has 1,500 or fewer employees. 13 CFR 121.201, NAICS code 517110. According to Commission data, 22 companies reported that they were engaged in the provision of operator services. *Telephone Trends Report,* Table 5.3. Of these 22 companies, an estimated 20 have 1,500 or fewer employees and two have more than 1,500 employees. *Id.* Consequently, the Commission estimates that the great majority of operator service providers are small entities that may be affected by the rules and policies proposed herein.

28. *Wired Telecommunication Resellers.* The SBA has developed a size standard for small businesses within the category of Telecommunications Resellers including prepaid calling card providers. Under that SBA size standard, such a business is small if it has 1,500 or fewer employees. 13 CFR 121.201, NAICS code 517310. According to Commission data, 32 companies reported that they were engaged in the provision of prepaid calling cards. *Telephone Trends Report,* Table 5.3. Of these 32 companies, an estimated 31 have 1,500 or fewer employees and one has more than 1,500 employees. *Id.* Consequently, the Commission estimates that the great majority of prepaid calling card providers are small entities that may be affected by the rules and policies proposed herein.

29. *Satellite Service Carriers.* The SBA has developed a small business size standard for Satellite Telecommunications, which consists of all such firms having $12.5 million or less in annual receipts.(13 CFR 121.201, NAICS code 51741). According to Census Bureau data for 1997, in this category there was a total of 324 firms that operated for the entire year (U.S. Census Bureau, 1997 Economic Census, Subject Series: Information, "Establishment and Firm Size {Including Legal Form of Organization}," Table 4, NAICS code 513340). Of this total, 273 firms had annual receipts of under $10 million, and an additional twenty-four firms had receipts of $10 million to $24,999,999. *Id.* Thus, under this size standard, the majority of firms can be considered small.

30. *Other Toll Carriers.* Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to "Other Toll Carriers." This category includes toll carriers that do not fall within the categories of interexchange carriers, operator service providers, prepaid calling card providers, satellite service carriers, or toll resellers. The closest applicable size standard under the SBA rules is for Wired Telecommunications Carriers. Under that standard, such a business is small if it has 1,500 or fewer employees. 13 CFR 121.201, NAICS code 517110. According to Commission data, 42 companies reported that their primary telecommunications service activity was the provision of "Other Toll" services. *Telephone Trends Report,* Table 5.3. Of these 42 companies, an estimated 37 have 1,500 or fewer employees and five have more than 1,500 employees. *Id.* Consequently, the Commission estimates that most "Other Toll Carriers" are small entities that may be affected by the rules and policies proposed herein.

31. *Paging.* The SBA has developed a small business size standard for paging firms. Under that SBA size standard, such a business is small if it has 1,500 or fewer employees. 13 CFR 121.201, NAICS code 517211, and 13 CFR 121.201, NAICS code 517212, respectively.

32. *Cellular and other Wireless Telecommunications.* For the census category of Paging, Census Bureau data for 1997 show that there were 1320 firms in this category, total, that operated for the entire year. U.S. Census Bureau, 1997 Economic Census, Subject Series: Information, "Employment Size of Firms Subject to Federal Income Tax: 1997," Table 5, NAICS code 513321 (issued October of 2000). Of this total, 1303 firms had employment of 999 or fewer employees, and an additional 17 firms had employment of 1,000 employees or more. *Id.* Thus, under this category and associated small business size standard, the great majority of or the census category of Cellular and Other Wireless Telecommunications firms, Census Bureau data for 1997 show that there were 977 firms in this category, total, that operated for the entire year. U.S. Census Bureau, 1997 Economic Census, Subject Series: Information, "Employment Size of Firms Subject to Federal Income Tax: 1997," Table 5, NAICS code 513322. Of this total, 965 firms had employment of 999 or fewer employees, and an additional 12 firms had employment of 1,000 employees or more. Thus, under this second category and size standard, the great majority of firms can, again, be considered small. Consequently, the Commission estimates that most wireless service providers are small entities that may be affected by the rule(s) and policies proposed herein.

33. *Broadband Personal Communications Service.* The broadband personal communications service (PCS) spectrum is divided into six frequency blocks designated A through F, and the Commission has held auctions for each block. The Commission defined "small entity" for Blocks C and F as an entity that has average gross revenues of $40 million or less in the three previous calendar years. *See Amendment of Parts 20 and 24 of the Commission's Rules—Broadband PCS Competitive Bidding and the Commercial Mobile Radio Service Spectrum Cap,* WT Docket No. 96–59, *Report and Order,* 61 FR 33859, July 1, 1996; see also 47 CFR 24.720(b). For Block F, an additional classification for "very small business" was added and is defined as an entity that, together with affiliates, has average gross revenues of not more than $15 million for the preceding three calendar years. *See Amendment of Parts 20 and 24 of the Commission's Rules—Broadband PCS Competitive Bidding and the Commercial Mobile Radio Service Spectrum Cap,* WT Docket No. 96–59, *Report and Order,* 61 FR 33859, July 1, 1996. These standards defining "small entity" in the context of broadband PCS auctions have been approved by the SBA. *See, e.g., Implementation of Section 309(j) of the Communications Act—Competitive Bidding,* PP Docket No. 93–253, *Fifth Report and Order,* 59 FR 37566, July 22, 1994. No small businesses within the SBA-approved small business size standards bid successfully for licenses in Blocks A and B. There were 90 winning bidders that qualified as small entities in the Block C auctions. A total of 93 small and very small business bidders won approximately 40 percent of the 1,479 licenses for Blocks D, E, and F. FCC News, Broadband PCS, D, E and F Block Auction Closes, No. 71744 (rel. Jan. 14, 1997); *see also Amendment of the Commission's Rules Regarding Installment Payment Financing for Personal Communications Services (PCS) Licensees,* WT Docket No. 97–82, *Second Report and Order,* 62 FR 55348, October 24, 1997. On March 23, 1999, the Commission reauctioned 347 C, D, E, and F Block licenses. There were 48 small business winning bidders. On January 26, 2001, the Commission completed the auction of 422 C and F Broadband PCS licenses in Auction No. 35.

34. Of the 35 winning bidders in this auction, 29 qualified as "small" or "very small" businesses. Based on this information, the Commission concludes that the number of small broadband PCS licensees will include the 90 winning C Block bidders, the 93 qualifying bidders in the D, E, and F Block auctions, the 48 winning bidders in the 1999 re-auction, and the 29 winning bidders in the 2001 re-auction, for a total of 260 small entity broadband PCS providers, as defined by the SBA small business size standards and the Commission's auction rules. Consequently, the Commission estimates that 260 broadband PCS providers are small entities that may be affected by the rules and policies proposed herein.

35. *800 MHz and 900 MHz Specialized Mobile Radio Licensees.* The Commission awards "small entity" and "very small entity" bidding credits in auctions for Specialized Mobile Radio (SMR) geographic area licenses in the 800 MHz and 900 MHz bands to firms that had revenues of no more than $15 million in each of the three previous calendar years, or that had revenues of no more than $3 million in each of the three previous calendar years, respectively. 47 CFR 90.814. In the context of both the 800 MHz and 900 MHz SMR service, the definitions of "small entity" and "very small entity" have been approved by the SBA. These bidding credits apply to SMR providers in the 800 MHz and 900 MHz bands that either hold geographic area licenses or have obtained extended implementation authorizations. The Commission does not know how many firms provide 800 MHz or 900 MHz geographic area SMR service pursuant to extended implementation authorizations, nor how many of these providers have annual revenues of no more than $15 million. One firm has over $15 million in revenues. The Commission assumes, for its purposes here, that all of the remaining existing extended implementation authorizations are held by small entities, as that term is defined by the SBA. The Commission has held auctions for geographic area licenses in the 800 MHz and 900 MHz SMR bands. There were 60 winning bidders that qualified as small and very small entities in the 900 MHz auctions. Of the 1,020 licenses won in the 900 MHz auction, bidders qualifying as small and very small entities won 263 licenses. In the 800 MHz SMR auction, 38 of the 524 licenses won were won by small and very small entities. Consequently, the Commission estimates that there are 301 or fewer small entity SMR licensees in the 800 MHz and 900 MHz bands that may be affected by the rules and policies proposed herein.

36. *Rural Radiotelephone Service.* The Commission has not adopted a size standard for small businesses specific to the Rural Radiotelephone Service. The service is defined in 47 CFR 22.99. A significant subset of the Rural Radiotelephone Service is the Basic Exchange Telephone Radio Systems (BETRS). BETRS is defined in 47 CFR 22.757, 22.759. For purposes of this IRFA, the Commission uses the SBA's size standard applicable to Cellular and Other Wireless Telecommunications—an entity employing no more than 1,500 persons. 13 CFR 121.201, NAICS code 517212. There are approximately 1,000 licensees in the Rural Radiotelephone Service, and the Commission estimates that almost all of them qualify as small entities under the SBA's size standard. Consequently, the Commission estimates that there are 1,000 or fewer small entity licensees in the Rural Radiotelphone Service that may be affected by the rules and policies proposed herein.

37. *Fixed Microwave Services.* Microwave services include common carrier, private-operational fixed, and broadcast auxiliary radio services. For common carrier fixed microwave services (except Multipoint Distribution Service), *see* 47 CFR part 101 (formerly 47 CFR part 21). Persons eligible under parts 80 and 90 of the Commission's rules can use Private Operational-Fixed Microwave services. *See* 47 CFR parts 80, 90. Stations in this service are called operational-fixed to distinguish them from common carrier and public fixed stations. Only the licensee may use the operational-fixed station, and only for communications related to the licensee's commercial, industrial, or safety operations. Auxiliary Microwave Service is governed by 47 CFR part 74. The Auxiliary Microwave Service is available to licensees of broadcast stations and to broadcast and cable network entities. Broadcast auxiliary microwave stations are used for relaying broadcast television signals from the studio to the transmitter, or between two points, such as, a main studio and an auxiliary studio. The service also includes mobile TV pickups, which relay signals from a remote location back to the studio.

38. For purposes of this IRFA, the Commission uses the SBA's size standard for the category Cellular and Other Telecommunications, which is 1,500 or fewer employees. 13 CFR 121.201, NAICS code d to 517212. At present, there are approximately 22,015 common carrier fixed licensees and 61,670 private operational-fixed licensees and broadcast auxiliary radio licensees in the microwave services. The Commission has not created a size standard for a small business specifically with respect to microwave services. The Commission does not have data specifying the number of these licensees that have more than 1,500 employees, and thus is unable at this time to estimate with greater precision the number of fixed microwave service licensees that would qualify as small business concerns under the SBA's definition. Consequently, the Commission estimates that there are 22,015 or fewer small common carrier fixed microwave licensees and 61,670 or fewer small private operational-fixed microwave licensees and small broadcast auxiliary radio licensees in the microwave services that may be affected by the rules and policies proposed herein. The Commission notes, however, that the common carrier microwave fixed licensee category includes some large entities.

39. *39 GHz Licensees.* The Commission has created a special small business size standard for 39 GHz licenses—an entity that has average gross revenues of $40 million or less in the three previous calendar years. *See Amendment of the Commission's Rules Regarding the 37.0–38.6 GHz and 38.6–40.0 GHz Bands,* ET Docket No. 95–183, *Report and Order,* 63 FR 6079, February 6, 1998. An additional size standard for "very small business" is: an entity that, together with affiliates, has average gross revenues of not more than $15 million for the preceding three calendar years. *Id.* The SBA has approved these size standards. *See* Letter to Kathleen O'Brien Ham, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, FCC, from Aida Alvarez, Administrator, SBA (Feb. 4, 1998). The auction of the 2,173 39 GHz licenses began on April 12, 2000 and closed on May 8, 2000. The 18 bidders who claimed small business status won 849 licenses. Consequently, the Commission estimates that 18 or fewer 39 GHz licensees are small entities that may be affected by the rules and policies proposed herein.

Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

40. The Commission does not intend that any proposal it may adopt pursuant to this NPRM will increase existing reporting, recordkeeping or other compliance requirements.

Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

41. The RFA requires an agency to describe any significant, specifically small business, alternatives that it has considered in reaching its proposed

approach, which may include the following four alternatives (among others): (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities. 5 U.S.C. 603(c).

42. According to the Petitioners, the existing rate of $.24 does not provide the statutory requirement of fair compensation. Thus, the Commission is concerned that inadequate compensation may undermine the statutory goals of promoting competition among payphone providers while simultaneously ensuring the widespread deployment of payphones. 47 U.S.C. 276. The Commission is further concerned that inadequate payphone compensation may have adverse economic impacts on smaller entities that provide payphone service. The Commission, therefore, is examining various options, including a proposed rule increasing the default rate, to ensure the provision of fair compensation.

43. The Commission, however, recognizes that an alternative approach to increasing the default rate has been proposed by parties who contend that any increase in the default rate may further suppress demand for payphone services. The Commission also recognizes that in proposing this alternative approach, these parties contend that the fully distributed cost methodology may be ripe for reexamination.

44. Another proposed rule under consideration may entail an examination of the revenues generated by non-traditional payphone services such as the provision of internet access. In the alternative, services other than access to the internet, such as data transfer and interactive functionalities may be taken into consideration. Accordingly, the Commission will consider assessments of both the impact of internet access and other new technology services.

45. Finally, the Commission requests comment on any small business related concerns occasioned by proposed rules addressing the reexamination of the default rate, the use of non-traditional payphone services, and other alternatives that may impact small businesses.

Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rules

46. None.

Ex Parte Presentations

47. This matter shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's ex parte rules. 47 CFR 1.1200 *et seq.* Persons making oral ex parte presentations are reminded that memoranda summarizing the presentations must contain summaries of the substance of the presentations and not merely a listing of the subjects discussed. More than a one or two-sentence description of the views and arguments presented generally is required. Other requirements pertaining to oral and written presentations are set forth in 47 CFR 1.1206(b).

Comment Filing Procedures

48. In order to facilitate review of comments and reply comments, parties must include the name of the filing party and the date of the filing on all comments and reply comments. Comments and reply comments must clearly identify the specific portion of the NPRM to which a particular comment or set of comments is responsive.

49. Comments may be filed by using the Commission's Electronic Comment Filing System (ECFS). *See Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 2421 (May 1, 1998). Comments filed through the ECFS may be sent as an electronic file via the Internet to *http://www.fcc.gov/e-file/ecfs.html*. Generally, only one copy of an electronic submission must be filed. In completing the transmittal screen, commenters must include their full name, Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to *ecfs@fcc.gov*, and must include the following words in the body of the message, "get form <*your e-mail address*><=." A sample form and directions will be sent in reply.

50. Comments may be filed by filing paper copies. Parties who choose to file by paper must file an original and five copies of each filing. Two copies of each filing must also be sent to the Chief, Pricing Policy Division, Wireline Competition Bureau, Federal Communications Commission, 445 Twelfth Street SW., Washington, DC 20554.

51. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Natek, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be discarded before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capital Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be sent to 445 Twelfth Street SW., Washington, DC 20554. The Commission advises that electronic media not be sent through the U.S. Postal Service. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

Ordering Clauses

52. Accordingly, the Petitions for Rulemaking filed by APCC and the RBOC Payphone Coalition *are granted* as set forth herein.

53. Pursuant to the authority contained in 47 U.S.C. 151, 154, 201–205, 215, 218, 219, 220, 226, 276 and 405, this Notice of Proposed Rulemaking *is adopted*.

54. The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of this Notice of Proposed Rulemaking, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 64

Communications common carriers, Telecommunications, Telephone.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

Rules Changes

The Federal Communications Commission proposes to amend 47 CFR part 64 as follows:

PART 64—MISCELLANEOUS RULES RELATING TO COMMON CARRIERS

1. The authority citation for part 64 continues to read as follows:

Authority: 47 U.S.C. 154, 254(k); secs. 403(b)(2)(B),(c), Public Law 104–104, 110 Stat. 56. Interpret or apply 47 U.S.C. 201, 218, 225, 226, 228, and 254 (k) unless otherwise noted.

2. Revise § 64.1300 (c) to read as follows:

§ 64.1300 Payphone compensation obligation.

* * * * *

(c) In the absence of an agreement as required by paragraph (a) of this section, the carrier is obligated to compensate the payphone service provider at a per-call rate of $0.__.

[FR Doc. 03–30309 Filed 12–5–03; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. NHTSA–03–16601]

RIN 2127–AJ12

Federal Motor Vehicle Safety Standards; Low Speed Vehicles

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposal addresses two petitions for rulemaking regarding the exclusion of trucks from the definition of "low-speed vehicle" (LSV). The proposed definition would expand the LSV class to include trucks, but would limit the class to small vehicles. In addition, the proposed definition is more complete than the current definition.

DATES: You should submit comments early enough to ensure that Docket Management receives them not later than February 6, 2004.

ADDRESSES: You may submit comments [identified by the DOT DMS Docket Number] by any of the following methods:

- Web Site: *http://dms.dot.gov*. Follow the instructions for submitting comments on the DOT electronic docket site.
- Fax: 1–202–493–2251.
- Mail: Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–001.
- Hand Delivery: Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 am and 5 pm, Monday through Friday, except Federal Holidays.
- Federal eRulemaking Portal: Go to *http://www.regulations.gov*. Follow the online instructions for submitting comments.

Instructions: All submissions must include the agency name and docket number or Regulatory Identification Number (RIN) for this rulemaking. For detailed instructions on submitting comments and additional information on the rulemaking process, see the Requests for Comments heading of the **SUPPLEMENTARY INFORMATION** section of this document. Note that all comments received will be posted without change to *http://dms.dot.gov*, including any personal information provided. Please see the discussion of the Privacy Act under the Comments heading.

Docket: For access to the docket to read background documents or comments received, go to *http://dms.dot.gov* at any time or to Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 am and 5 pm, Monday through Friday, except Federal Holidays.

FOR FURTHER INFORMATION CONTACT: *For non-legal issues:* Gayle Dalrymple, Office of Crash Avoidance Standards, NVS–123, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590, telephone 202–366–5559, facsimile 202–493–2739, e-mail *gayle.dalrymple@nhtsa.dot.gov*.

For legal issues: Christopher Calamita, Office of Chief Counsel, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590, telephone 202–366–2992, facsimile 202–366–3820.

SUPPLEMENTARY INFORMATION:

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I. Background

On June 17, 1998, the National Highway Traffic Safety Administration (NHTSA) published a final rule establishing a new Federal Motor Vehicle Safety Standard (FMVSS) No. 500, "Low-speed vehicles," and added a definition of "low-speed vehicle" (LSV) to 49 CFR 571.3 (63 FR 33194). This new FMVSS and vehicle classification responded to the growing public interest in using golf cars and other similarly sized small vehicles to make short trips for shopping, social and recreational purposes primarily within retirement or other planned, self-contained communities. These vehicles, many of which are electric-powered,[1] offer comparatively low-cost, energy-efficient, low-emission, quiet transportation. Electric LSVs are also known as Neighborhood Electric Vehicles (NEVs). The current definition of LSV is "a 4-wheeled motor vehicle, other than a truck,[2] whose speed attainable in 1.6 km (1 mile) is more than 32 kilometers per hour (20 miles per hour) and not more than 40 kilometers per hour (25 miles per hour) on a paved level surface."

In the preamble to the notice of proposed rulemaking, in the preamble to the final rule, in response to petitions for reconsideration of the final rule, and in letters of interpretation of the definition of LSV, we made it clear that our vision of an LSV is a small, lightweight vehicle that could not meet FMVSSs appropriate for larger and heavier vehicles. (The citations for these documents are provided later in this preamble.) In the NPRM, we proposed the "creation of a new class of vehicle * * * with a definitional criterion of speed alone." Trucks were not excluded; however, low-speed vehicles with "work performing features" (such as a street sweeper) would have been excluded from the equipment requirement of the proposed standard. Not excluding trucks from the LSV definition would have had the unintended result of rendering some vehicles that already met FMVSSs subject to neither those standards nor even the minimum requirements applying to LSVs. In the preamble to the final rule, we noted:

> vehicles with "work performing equipment" (*i.e.*, certain trucks) would have been LSVs under the proposal, although not required to meet Standard No. 500. Under the final rule, these vehicles are no longer included and must continue to meet truck FMVSSs. This change is consistent with the rationale of this rulemaking, which is to eliminate a regulatory conflict involving passenger-carrying vehicles. Further, NHTSA concludes that the truck FMVSSs remain appropriate for trucks with a speed capability between 20 and 25 miles per hour and that these standards have not inhibited their introduction in the past. (63 FR 33194, 33197.)

The trucks under discussion in the above paragraph were heavy vehicles, such as street sweepers and other slow-moving special task vehicles. The

[1] Upon review of LSVs currently manufactured, the agency is not aware of an LSV designed with a non-electric power source.

[2] A "truck" is defined at 49 CFR 571.3(b) as "a motor vehicle with motive power, except a trailer, designed primarily for the transportation of property or special purpose equipment."

exclusion of trucks added in the final rule was meant to prevent these heavy vehicles, which already complied with the appropriate FMVSS, from falling into the new LSV class.

The purpose of low speed vehicles was represented to us at the public meetings prior to the NPRM to establish the LSV class and in comments to that notice, as convenient, low-cost, low-emission transportation of up to four people within the confines of a planned, often gated, community. However, as of July 2002, 17 states allow LSVs to operate on public roads with speed limits up to 35 miles per hour and one state allows their operation on roads with speed limits of up to 40 miles per hour. The laws of 27 states allow LSV operation on public roads, while not specifically regulating them, and the laws of six states prohibit LSVs on public roads without a specific authorizing regulation.[1]

We continue to urge states to be very careful when contemplating the use of these vehicles on public roads. States must remain aware that LSVs do not have the occupant protection capability of other motor vehicles, that their lightweight makes their occupants very vulnerable in any collision with a non-LSV vehicle, and that the force involved in that collision increases proportional to the square of the velocity of travel. For example, the result of a vehicle collision at 35 mph is twice as severe as the same collision at 25 mph. We continue to anticipate that LSV use on roads outside confined, controlled areas will be limited by the fact that occupants will not want to travel at less than 25 miles per hour in mixed-vehicle traffic for other than very short trips, regardless of how states may or may not restrict their use.

Since the publication of the final rule, we have received two petitions regarding the exclusion of trucks from the definition of LSV. The first was a petition for reconsideration of the final rule by Solectria (seconded by Electric Transportation Coalition) asking us to reconsider the exclusion of trucks from the definition of LSV because Solectria manufactures a micro electric pickup truck. Solectria said its truck was "suitable" for many uses off the public roads, such as airport and college properties and in parks. Solectria asked that we amend the definition of LSV to exclude only trucks with a curb weight greater than 2,200 pounds.

In our response to Solectria's petition for reconsideration (65 FR 53219; September 1, 2000), we reiterated the discussion from the preamble to the final rule that we believed excluding trucks from Standard 500 "ensures that such trucks must continue to meet the Federal standards that have always applied to trucks with a maximum speed of more than 20 miles per hour" and that we believed the decision to be "consistent with the rationale of this rulemaking, which is to eliminate a regulatory conflict involving passenger-carrying vehicles." We noted that FMVSSs applicable to trucks with a maximum speed between 20 and 25 miles per hour had not inhibited the introduction of such trucks in the past. However, we also stated,

> We are still considering this petition, and have not reached a decision whether to grant or to deny it. Our decision will be reflected in the notice of proposed rulemaking under consideration for establishing performance requirements for safety equipment on LSVs.

Subsequently, the agency received a petition regarding the LSV definition from Global Electric Motorcars (GEM), a DaimlerChrysler company, in January of 2002. GEM asked that NHTSA change the definition of LSV, "to include "trucks" or vehicles designed primarily for the transportation of property or special purpose equipment, so long as they meet the existing vehicle speed limitations of the definition." GEM noted that the NPRM stated "LSVs would include all motor vehicles, other than motorcycles * * *, whose speed * * * does not exceed 25 mph," and that the agency recognized, "that there is no reasonable justification for subjecting low-speed vehicles like golf carts and mini-bikes to full range of safety standards that apply to heavier, faster vehicles."

GEM contends that excluding trucks from the LSV class "will severely limit manufacturers" ability to fully realize the potential benefits of the LSV rule." GEM currently produces two- and four-passenger LSVs with a cargo bin and a two-passenger model with a short or long metal cargo bed. It would like to expand its line of LSVs to include "small community ambulances, and fire trucks," and believes that applying all truck FMVSS's to these proposed NEV trucks,

> is completely arbitrary because the vehicles are not materially different from their LSV passenger vehicle cousins, and there is no evidence that somehow the vehicles are less safe than those passenger vehicle cousins. * * * Requiring these vehicles to meet the Federal standards for side impact, front impact and air bags would require a vehicle design that would be too heavy for its intended LSV uses.

As a result of the petitions received by both GEM and Solectria, the agency has decided to reconsider the LSV definition. We tentatively agree with the petitioners that the current exclusion of trucks from the LSV definition is too broad and does not fully reflect current interpretations. Therefore, in this notice, we are proposing to drop the exclusion of trucks from the definition, and to limit the LSV class in a more complete way.

II. Proposed Change to Definition of Low-Speed Vehicle

The agency is proposing to amend the definition of low-speed vehicle, in response to the two petitions discussed above. If made final, the amended definition of LSV would eliminate an overly broad restriction on LSVs with cargo carrying capacity and establish a more complete definition.

The current definition of LSV is:

> *Low-speed vehicle* means a 4-wheeled motor vehicle, other than a truck, whose speed attainable in 1.6 km (1 mile) is more than 32 kilometers per hour (20 miles per hour) and not more than 40 kilometers per hour (25 miles per hour) on a paved level surface. (49 CFR 517.3(b))

The agency is proposing the following definition:

> Low-speed vehicle means
> (a) a 4-wheeled motor vehicle,
> (b) whose speed attainable in 1.6 km (1 mile) is more than 32 kilometers per hour (20 miles per hour) and not more than 40 kilometers per hour (25 miles per hour) on a paved level surface,
> (c) whose rated cargo load is at least 36 kilograms (80 pounds), and
> (d) whose GVWR is less than 1,134 kilograms (2,500 pounds).

The amended definition would eliminate the exclusion of "trucks" from the LSV classification and address the petitioners' claim that no logical basis exists to differentiate between passenger and cargo-carrying low-speed vehicles. At the same time, the proposed definition would be more complete and would better communicate the concept that NHTSA has always expressed: LSVs are a class of vehicles for which the FMVSS for cars, trucks, and multipurpose passenger vehicles are inappropriate because of the small size of the vehicles in this class.

Our Rationale for Proposing that LSVs Have a Maximum GVWR of 2500 Pounds and a Minimum Rated Cargo Load of 80 Pounds

The NPRM that proposed to establish the LSV class, initiated "rulemaking based upon oral presentations at the agency's public meetings and written comments received on the appropriate classification and safety regulations for golf cars and other small, light-weight vehicles that are capable of being driven on the public roads." (62 FR 1077, January 8, 1997) In every discussion of LSVs by the agency—from the public meetings preceding the 1997 NPRM through the 2002 NPRM on LSV conspicuity (67 FR 46149, July 12, 2002)[4]—the agency's main reason for excluding these vehicles from compliance with other FMVSS was the idea that such compliance was inappropriate for a class of "small, lightweight vehicles." On June 28, 2000, NHTSA replied to a request for legal interpretation regarding the definition of LSV from Thomas Dahl of Lampasas, Texas. Mr. Dahl asked, "whether speed governing devices are allowed by the NHTSA to meet the interpretation of low-speed vehicle." In its response, the agency stated, in part:

> The preambles of the rulemaking notices under which the definition and Federal Motor Vehicle Safety Standard No. 500, *Low-Speed Vehicles* were adopted, clearly indicate that the purpose of the rulemaking was to accommodate a new category of small motor vehicle which was making its appearance in retirement communities. * * * Because of their small size and light weight, these vehicles could not meet Federal motor vehicle safety standards appropriate for larger and heavier vehicles, such as requirements to be met in 30 mph barrier crashes. The common feature of this emerging class of motor vehicle appeared to be a maximum speed capability of not more than 25 miles per hour as designed and manufactured, and we decided upon that as the principal feature of the definition.

These vehicles needed to be excluded from the FMVSS because of their small size. This decision was appropriate because of the vehicles' low operating speed and restricted areas of use.

It has become apparent from the Solectria and GEM petitions, and letters like Mr. Dahl's, that there is a need to limit the LSV class to small vehicles, to prevent attempts to circumvent the FMVSS for cars, trucks and multipurpose passenger vehicles by applying the LSV classification to vehicle types that are able to meet the standards, and to make the definition more complete. The exclusion of trucks from the definition of LSV does not accomplish this goal. As such, we are proposing to limit the definition of LSV to small vehicles objectively through the use of a limitation on the Gross Vehicle Weight Rating (GVWR) combined with a requirement for a minimum rated cargo load (RCL).

We have tentatively identified vehicles with a GVWR of less than 2,500 pounds as constituting a class of motor vehicles so small that vehicles in this class are generally unable to meet all of the FMVSS required for passenger cars, multipurpose vehicles, and trucks. When trucks were originally excluded from the definition of LSV, the agency was considering heavy, slow moving vehicles (*e.g.*, street cleaners) that, because of their heavier weight, were able to meet all of the FMVSS applicable to trucks. Under the proposed definition, these heavier, but slower moving trucks would still be excluded from the definition of LSV and thus would still be required to meet all of the FMVSSs applicable to trucks.

The tentative GVWR limit is a result of examining the GVWRs of existing NEVs, GVWR ranges submitted by companies registering with NHTSA as intending to manufacture LSVs, and, as a comparison group, small passenger cars, multipurpose passenger vehicles, and trucks that are certified to all applicable FMVSS. We also note that the Society of Automotive Engineers Surface Vehicle Standard J2358, Low Speed Vehicles, includes in its scope:

> any powered vehicle with a minimum of 4-wheels, a maximum level ground speed of more than 32 km/h (20 mph) but less than 40 km/h (25 mph), a maximum rated capacity of 500 kg (1100 lb), and a maximum gross vehicle weight of 1135 kg (2500 lb), that is intended for transporting not more than four (4) persons and operating on designated roadways where permitted by law.

The U.S. Department of Energy conducted a Field Operations Program, "NEVAmerica". We examined the vehicle specifications of the vehicles involved in that program. Five examples are: the Columbia ParCar four-passenger, Ford Th!nk four-passenger, GEM E825 long bed utility, GEM E825 short bed utility, Frazer-Nash 4XLSV NEV. Specifications for these vehicles are given in the table below.

Vehicle	Configuration	GVWR[5] in pounds
GEM E825 Short Bed Utility	2-passenger seating, 4-foot aluminum cargo bed	1,790[6]
GEM E825 Long Bed Utility	2-passenger seating, 6-foot aluminum cargo bed	2,300
Ford Th!nk Neighbor[7]	4-passenger seating,	2,300
Columbia ParCar	4-passenger seating,	2,460
Frazer-Nash 4XLSV NEV	2-passenger seating, pick-up truck-like bed	3,304

[5] As listed in the NEV America results.
[6] GEM sales literature lists this vechilce as 1,850 pounds.
[7] Ford no longer produced the Th!nk vehicle.

Thirty-nine manufacturers have registered with NHTSA as intending to manufacture LSVs. Of these, six manufacturers have listed the GVWR range of their vehicles as including vehicles over 3,500 pounds, five more list the GVWR range of their vehicles as including vehicles over 2,500 pounds, and three manufacturers do not list a GVWR range. We do not know how many of these 39 manufacturers are currently manufacturing and selling vehicles certified as LSVs or the GVWR of any vehicles certified as LSVs.

For comparison purposes, we sought out passenger cars, multipurpose passenger vehicles, and trucks that are certified as fully compliant with all applicable FMVSS. Example vehicles and their GVWR are shown below (model year 2003).

Vehicle	Type	GVWR in pounds
Honda Insight	Passenger car	2,212
Toyota Echo	Passenger car	3,010
Hyundai Accent	Passenger car	3,310
Chevrolet Tracker	SUV	3,483
Honda Civic	Passenger car	3,485
Toyota Prius	Passenger car	3,615
Ford Focus	Passenger car	3,620

[1] "Use of Low-speed Vehicle on Public Roads": Insurance Institute for Highway Safety; July 19, 2002.

Vehicle	Type	GVWR in pounds
Toyota RAV4	SUV	3,841
Jeep Wrangler	SUV	4,450
Ford Ranger	Extended cab pick-up	4,800

It is obvious from this table that there are vehicles currently available, certified to the FMVSS, with a GVWR less than the GVWR of some NEVs. At this time, we believe that there can be no logical justification for allowing wholesale exclusion from the FMVSS of vehicles that are heavier than some fully-certified vehicles, other than providing some weight allowance for an electric propulsion system (which is generally heavier than a small internal-combustion engine). We believe that many LSVs are electric. We are especially hesitant to allow heavier vehicles to be certified as LSVs when there are currently no performance requirements for service brakes and tires appropriate for the weight of the vehicle. We are proposing to set the GVWR ceiling for the LSV class at 2,500 pounds to allow for the generally heavier electric propulsion systems and need for storage batteries. We are currently working on a rulemaking to establish performance standards for LSVs and the issue of the appropriate GVWR for LSVs could be revisited when such requirements are identified. We seek comment from vehicle manufacturers and users on the issue of the appropriate GVWR limit for LSVs.

We are tentatively proposing an additional requirement of a minimum RCL of 80 pounds. Eighty pounds is the approximate weight of two full golf bags. GVWR must be greater than the sum of the unloaded vehicle weight, RCL, and 150 pounds times the number of designated seating positions (DSPs). (49 CFR 567.4(g)(3).) Given the lack of a tire performance standard applicable to this vehicle type, risk of tire failure due to vehicle overloading is increased. Combining a minimum RCL with a maximum GVWR ensures some load carrying capacity in addition to the regulatory requirement of 150 pounds per DSP. Given that these vehicles typically have only two DSPs, they are more likely than an ordinary passenger vehicle to driven fully loaded. We seek comment on our rationale for imposing a minimum RCL, and what that minimum should be.

In summary, the proposed change to the definition of LSV would make the definition more complete and less open to the necessity of interpretation, clearer as to the type of vehicle NHTSA intended to be excluded from the FMVSS for cars, trucks and multipurpose passenger vehicles under the LSV definition, and allow the manufacturers of LSVs more flexibility in the design of their products without sacrificing the safety of the vehicles' users. Further, the crash avoidance and crash protection requirements for an LSV are appropriate for that vehicle's size regardless of whether the vehicle is designed to transport passengers or cargo.

III. Proposed Effective Date

This proposal would remove the provision that precludes the manufacture of trucks as LSVs, and add the restriction that LSVs must have a GVWR less than 2,500 pounds and RCL of at least 80 pounds. The agency has limited knowledge as to the number of manufacturers producing or intending to produce motor vehicles certified as LSVs under the existing definition of that term. Further, the agency has limited knowledge as to the exact specifications of the LSVs currently manufactured and is not aware of any LSV currently manufactured that would no longer be classified as an LSV under the proposed definition. However, based on the information the agency does have, we do not anticipate that any LSV currently produced would need to be redesigned to meet the proposed definition.

Therefore, NHTSA is proposing that an effective date 45 days after the publication of a final rule. The 45 day effective date would allow LSV manufacturers the flexibility to proceed with the introduction of new vehicles as quickly as possible. The agency is requesting comment on the appropriateness of the proposed lead time.

IV. Comments

Questions for Comment

In addition to comments on the proposed rule, the agency is seeking comments on the following specific issues.

1. Are there reasons we should allow some heavier vehicles to be certified as LSVs? If so, would GVWR be sufficient to identify those vehicles or should other criteria be used in conjunction with GVWR?
2. Is restricting the GVWR the most appropriate method of restricting the size of LSVs?
3. Is our belief that many LSVs are electric correct and is the proposed weight allowance for the electric propulsion system appropriate?
4. We request comment on the exact specifications of LSVs that manufacturers are currently producing or planning to produce to aid us in determining if a longer lead time should be provided. With respect to manufacturers contemplating the production of LSVs above the proposed limit, to what extent have investments been made to bring these vehicles to market?
5. We request information on the GVWR, RCL, and power plant specifications of LSVs currently being manufactured.

When commenting on these issues, commenters should remember that vehicles designed primarily for use off the public roads, regardless of weight or speed, are not subject to the FMVSS. Therefore, certification as an LSV is not necessary for vehicles which operate only on private roads and grounds, such as at airports, some academic and business campuses, and industrial plants and grounds.

How Do I Prepare and Submit Comments?

Your comments must be written and in English. To ensure that your comments are correctly filed in the Docket, please include the docket number of this document in your comments.

Your comments must not be more than 15 pages long. (49 CFR 553.21.) We established this limit to encourage you to write your primary comments in a concise fashion. However, you may attach necessary additional documents to your comments. There is no limit on the length of the attachments.

Please submit two copies of your comments, including the attachments, to Docket Management at the address given above under **ADDRESSES**.

You may also submit your comments to the docket electronically by logging onto the Dockets Management System website at *http://dms.dot.gov*. Click on "Help & Information" or "Help/Info" to obtain instructions for filing the document electronically.

How Can I Be Sure That My Comments Were Received?

If you wish Docket Management to notify you upon its receipt of your comments, enclose a self-addressed, stamped postcard in the envelope containing your comments. Upon receiving your comments, Docket Management will return the postcard by mail.

How Do I Submit Confidential Business Information?

If you wish to submit any information under a claim of confidentiality, you should submit three copies of your complete submission, including the information you claim to be confidential business information, to the Chief Counsel, NHTSA, at the address given above under **FOR FURTHER INFORMATION CONTACT**. In addition, you should submit two copies, from which you have deleted the claimed confidential business information, to Docket Management at the address given above under **ADDRESSES**. When you send a comment containing information claimed to be confidential business information, you should include a cover letter setting forth the information specified in our confidential business information regulation. (49 CFR Part 512.)

Will the Agency Consider Late Comments?

We will consider all comments that Docket Management receives before the close of business on the comment closing date indicated above under **DATES**. To the extent possible, we will also consider comments that Docket Management receives after that date. If Docket Management receives a comment too late for us to consider it in developing a final rule (assuming that one is issued), we will consider that comment as an informal suggestion for future rulemaking action.

How Can I Read the Comments Submitted by Other People?

You may read the comments received by Docket Management at the address given above under **ADDRESSES**. The hours of the Docket are indicated above in the same location.

You may also see the comments on the Internet. To read the comments on the Internet, take the following steps:

1. Go to the Docket Management System (DMS) Web page of the Department of Transportation (*http://dms.dot.gov/*).
2. On that page, click on "search."
3. On the next page (*http://dms.dot.gov/search/*), type in the four-digit docket number shown at the beginning of this document. Example: If the docket number were "NHTSA–1998–1234," you would type "1234." After typing the docket number, click on "search."
4. On the next page, which contains docket summary information for the docket you selected, click on the desired comments. You may download the comments. Although the comments are imaged documents, instead of word processing documents, the "pdf" versions of the documents are word searchable.

Please note that even after the comment closing date, we will continue to file relevant information in the Docket as it becomes available. Further, some people may submit late comments. Accordingly, we recommend that you periodically check the Docket for new material.

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, *etc.*). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit *http://dms.dot.gov*.

V. Rulemaking Analyses and Notices

Executive Order 12866 and DOT Regulatory Policies and Procedures

NHTSA has considered the impact of this rulemaking action under E.O. 12866 and the Department of Transportation's regulatory policies and procedures. This rulemaking document was not reviewed under E.O. 12866, "Regulatory Planning and Review." Based on the limited information currently available to the agency, as discussed under Section III, Proposed Effective Date, the agency tentatively concludes that the proposed amendments would not have more than a minimal impact on LSV manufacturers and users. The agency is not aware of any LSV currently produced that would no longer be classified as an LSV under the proposed definition or that would need to be redesigned because of that proposal.

Regulatory Flexibility Act

NHTSA has also considered the impacts of this notice under the Regulatory Flexibility Act. Based on the limited information currently available to the agency, as discussed under Section III, Proposed Effective Date, I certify that the proposed amendment would not have a significant economic impact on LSV manufacturers. The proposed definition would permit more flexibility in the design of LSVs and allow manufacturers to broaden the LSV market. The agency cannot forecast the extent to which manufacturers would take advantage of that opportunity. Therefore, a Preliminary Regulatory Flexibility Analysis has not been performed. The agency is requesting comments on this certification.

Paperwork Reduction Act

NHTSA has analyzed this proposed rule under the Paperwork Reduction Act of 1995 (Pub. L. 104–13) and determined that it would not impose any new information collection requirements as that term is defined by the Office of Management and Budget (OMB) in 5 CFR part 1320.

The National Environmental Policy Act

NHTSA has also analyzed this proposed rule under the National Environmental Policy Act and determined that it would have no significant impact on the human environment. LSV usage is very small in comparison to that of motor vehicles as a whole; therefore, any change to the LSV segment would not have a significant environmental effect.

The Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires agencies to prepare a written assessment of the costs, benefits and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local or tribal governments, in the aggregate, or by the private sector, of more than $100 million annually. This proposal would not result in annual expenditures exceeding the $100 million threshold.

Executive Order 13132 (Federalism)

Executive Order 13132 on "Federalism" requires us to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of "regulatory policies that have federalism implications." The Executive Order defines this phrase to include regulations "that have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." The agency has analyzed this rule in accordance with the principles and criteria set forth in Executive Order

13132 and has determined that it will not have sufficient federalism implications to warrant consultation with State and local officials or the preparation of a federalism summary impact statement. This rule regulates the manufacturers of motor vehicles and motor vehicle equipment and will not have substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132.

Executive Order 12778 (Civil Justice Reform)

This proposed rule has no retroactive effect. NHTSA is not aware of any state law that would be preempted by this proposed rule. This proposed rule would not repeal any existing Federal law or regulation. If this proposal were to become a final rule, it would modify existing law only to the extent that it would change the definition of a low-speed vehicle. This proposed rule would not require submission of a petition for reconsideration or the initiation of other administrative proceedings before a party may file suit in court.

Regulation Identifier Number (RIN)

The Department of Transportation assigns a regulation identifier number (RIN) to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. You may use the RIN contained in the heading at the beginning of this document to find this action in the Unified Agenda.

Plain Language

Executive Order 12866 requires each agency to write all rules in plain language. Application of the principles of plain language includes consideration of the following questions:

—Have we organized the material to suit the public's needs?
—Are the requirements in the rule clearly stated?
—Does the rule contain technical language or jargon that is not clear?
—Would a different format (grouping and order of sections, use of headings, paragraphing) make the rule easier to understand?
—Would more (but shorter) sections be better?
—Could we improve clarity by adding tables, lists, or diagrams?
—What else could we do to make this rulemaking easier to understand?

If you have any responses to these questions, please include them in your comments on this NPRM.

Data Quality Guidelines

After reviewing the provisions of proposed rule, pursuant to OMB's Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated by Federal Agencies ("Guidelines") issued by the Office of Management and Budget (OMB) (67 FR 8452, Feb. 22, 2002) and published in final form by the Department of Transportation on October 1, 2002 (67 FR 61719), NHTSA has determined that nothing in this rulemaking action would result in "information dissemination" to the public, as that term is defined in the Guidelines.

Executive Order 13045

Executive Order 13045 (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be "'economically significant'" as defined under Executive Order 12866, and (2) concerns an environmental, health or safety risk that NHTSA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, we must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by us. As noted earlier, this rule is not economically significant, nor does it concern a safety risk with a disproportionate effect on children.

National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) requires NHTSA to evaluate and use existing voluntary consensus standards in its regulatory activities unless doing so would be inconsistent with applicable law (*e.g.*, the statutory provisions regarding NHTSA's vehicle safety authority) or otherwise impractical. In meeting that available and potentially applicable voluntary consensus standard, we are required by the Act to provide Congress, through OMB, an explanation of the reasons for not using such standards. This rule does not propose any standards, consensus-based or otherwise.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles, Low-speed vehicles.

For reasons set forth in the preamble, NHTSA proposes to amend 49 CFR part 571 as follows:

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

1. The authority citation for part 571 would continue to read as follows:

Authority: 49 U.S.C. 322, 30111, 30166 and 30177; delegation of authority at 49 CFR 1.50.

Subpart A—General

2. Section 571.3(b) would be amended by revising the term "low-speed vehicle" to read as follows:

* * * * *

§ 571.3 Definitions.

* * * * *

(b) *Other definitions* * * *

* * * * *

Low-speed vehicle (LSV) means,

(a) a 4-wheeled motor vehicle,

(b) whose speed attainable in 1.6 km (1 mile) is more than 32 kilometers per hour (20 miles per hour) and not more than 40 kilometers per hour (25 miles per hour) on a paved level surface,

(c) whose rated cargo load is at least 36 kilograms (80 pounds), and

(d) whose GVWR is less than 1,134 kilograms (2,500 pounds).

* * * * *

Dated: December 3, 2003.

Stephen R. Kratzke,

Associate Administrator for Rulemaking.

[FR Doc. 03–30379 Filed 12–5–03; 8:45 am]

BILLING CODE 4910–59–P

Notices

Federal Register
Vol. 68, No. 235
Monday, December 8, 2003

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Foreign Agricultural Service

Trade Adjustment Assistance for Farmers

AGENCY: Foreign Agricultural Service, USDA.

ACTION: Notice.

The Administrator, Foreign Agricultural Service (FAS), today denied a petition for trade adjustment assistance (TAA) that was filed on October 28, 2003, by fresh garlic producers in California.

SUPPLEMENTARY INFORMATION: Upon investigation, the Administrator determined that domestic producer prices did not decline by more than 20 percent during October 2002 through September 2003 when compared with the previous 5-year average, a condition required for certifying a petition for TAA.

FOR FURTHER INFORMATION CONTACT: Jean-Louis Pajot, Coordinator, Trade Adjustment Assistance for Farmers, FAS, USDA, (202) 720–2916, email: *trade.adjustment@fas.usda.gov.*

Dated: November 26, 2003.

A. Ellen Terpstra,

Administrator, Foreign Agricultural Service.

[FR Doc. 03–30324 Filed 12–5–03; 8:45 am]

BILLING CODE 3410–10–M

DEPARTMENT OF AGRICULTURE

Forest Service

Southwest Region; Authorization of Livestock Grazing Activities on the Sacramento Grazing Allotment, Sacramento Ranger District, Lincoln National Forest, Otero County, NM

AGENCY: Forest Service, USDA.

ACTION: Revised Notice of Intent to Prepare a Final Environmental Impact Statement for the Authorization of Livestock Grazing on the Sacramento Grazing Allotment.

SUMMARY: In a previous **Federal Register** announcement (July 5, 2002, Vol 67, No. 129, page 44805) the Forest service provided notice it would prepare a final environmental impact statement on a proposal to authorize livestock grazing activities on the Sacramento Grazing Allotment by October 2000. The project area encompasses approximately 115,000 acres of National Forest lands on the Sacramento Ranger District of the Lincoln National Forest. The Sacramento Grazing allotment comprises approximately 25% of the ranger district. The project has generated controversy on three main points; effects to threatened and endangered animal and plant species, concern for degraded riparian areas, and forage competition between wildlife and livestock. This notice is to advise interested parties that a final environmental impact statement (FEIS) will be available for public review in January 2004.

Responsible Official: The District Ranger will decide whether or not to authorize domestic livestock grazing on the Sacramento Allotment which will include appropriate forest plan standards and guidelines in part 3 of the existing grazing permit. If grazing is authorized, the District Ranger will decide on the permitted number of animals and season of use, range facilities to be constructed, allowable utilization standards, required monitoring, and mitigation measures (best management practices, BMPs).

FOR FURTHER INFORMATION CONTACT: Questions about the proposed project and scope of analysis should be directed to Rick Newmon or Mark Cadwallader at (505 682–2551).

Dated: November 7, 2003.

Jose M. Martinez,

Forest Supervisor, Lincoln National Forest.

[FR Doc. 03–30347 Filed 12–5–03; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Glenn/Colusa County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Glenn/Colusa County Resource Advisory Committee (RAC) will meet in Willows, California. Agenda items to be covered include: (1) Introductions, (2) Approval of Minutes, (3) Public Comment, (4) Brochure for Glenn/Colusa, (5) Glenn County School Project/Possible Action (7) Bear Wallow Trail, (8) Grindstone Chaparral Burn/ Possible Action, (9) General Discussion, (10) Next Agenda.

DATES: The meeting will be held on December 15, 2003, from 1:30 p.m. and end at approximately 4:30 p.m.

ADDRESSES: The meeting will be held at the Mendocino National Forest Supervisor's Office, 825 N. Humboldt Ave., Willows, CA 95988. Individuals wishing to speak or propose agenda items must send their names and proposals to Jim Giachino, DFO, 825 N. Humboldt Ave., Willows, CA 95988.

FOR FURTHER INFORMATION CONTACT: Bobbin Gaddini, Committee Coordinator, USDA, Mendocino National Forest, Grindstone Ranger District, PO Box 164, Elk Creek, CA 95939. (530) 968–5329; e-mail *ggaddini@fs.fed.us.*

SUPPLEMENTARY INFORMATION: The meeting is open to the public. Committee discussion is limited to Forest Service staff and Committee members. However, persons who wish to bring matters to the attention of the Committee may file written statements with the Committee staff before or after the meeting. Public input sessions will be provided and individuals who made written requests by December 11, 2003 will have the opportunity to address the committee at those sessions.

Dated: December 2, 2003.

James F. Giachino,

Designated Federal Official.

[FR Doc. 03–30340 Filed 12–5–03; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA 668–03–1040–DP–083A]

Monument Advisory Committee Meeting Schedule

AGENCY: Bureau of Land Management, Interior; United States Forest Service, Agriculture.

ACTION: Cancellation of the December 2003 meeting and notice of meetings for 2004.

SUMMARY: The Bureau of Land Management (BLM) and United States Forest Service (USFS) announce the cancellation of the December 6th, 2003 meeting for the Advisory Committee to the Santa Rosa and San Jacinto Mountains National Monument (hereinafter referred to as the National Monument). At the October 4th, 2003 the Advisory Committee to the National Monument voted unanimously to cancel the December 6th, 2003 meeting.

The Bureau of Land Management (BLM) and United States Forest Service (USFS) also announce the schedule of meetings for 2004 for the Advisory Committee to the National Monument. The meetings will be held on the following dates:

- Saturday, February 7th, 2004.
- Saturday, June 5th, 2004.
- Saturday, October 2nd, 2004.

Meetings will be held at the Palm Desert City Hall Council Chambers, located at 73–510 Fred Waring Drive, Palm Desert, California, 92260, from 9 a.m. until 4 p.m. or until the agenda items are completed. There will be an hour dedicated to public input from 11 a.m.–12 p.m. A sign up sheet will be located at the meeting room on the day of the meeting. Speakers wishing to comment publicly should sign the public comment sign-in sheet provided at the location of the meetings. All committee meetings, including field examinations, will be open to the general public, including representatives of the news media. Any organization, association, or individual may file a statement with or appear before the committee and its subcommittees regarding topics on a meeting agenda—except that the chairperson or the designated federal official may require written comments to the Advisory Committee. The meetings will have agendas developed and available to the public prior to the meeting date. The agendas for each meeting will be located on the Bureau of Land Management web page for the National Monument (*http://www.ca.blm.gov/palmsprings/*). The 2004 meetings will focus on the implementation of the National Monument Management Plan and other actions affecting the National Monument.

The Monument Advisory Committee (MAC) is a committee of citizens appointed to provide advice to the BLM and USFS with respect to preparation and implementation of the management plan for the National Monument as required in the Santa Rosa and San Jacinto Mountains National Monument Act of 2000 (16 U.S.C. 431nt). The act authorized establishment of the MAC with representative members from State and local jurisdictions, the Agua Caliente Band of Cahuilla Indians, a natural science expert, local conservation organization, local developer or building organization, the Winter Park Authority and a representative from the Pinyon Community Council.

The meetings will be open to the public with attendance limited to space available. Individuals who plan to attend and need special assistance such as sign language interpretations or other reasonable accommodations should notify the contact person listed below in advance of the meeting. Persons wishing to make statements will need to sign up at the meeting location.

DATES: February 7, 2004; June 5, 2004; and October 2, 2004. All meetings will take place from 9 a.m. to 4 p.m. with a morning public comment period from 11 a.m. to 12 p.m. Meetings may end prior to 4 p.m. if all agenda items are completed.

ADDRESSES: The meeting will be held in the Council Chambers of the Palm Desert City Hall, 73–510 Fred Waring Drive, Palm Desert, California, 92260.

FOR FURTHER INFORMATION CONTACT: Written comments should be sent to Miss Danella George, Santa Rosa San Jacinto Mountains National Monument Manager, Bureau of Land Management, P.O. Box 581260, North Palm Springs, CA 92258; or by fax at (760) 251–4899 or by e-mail at *dgeorge@ca.blm.gov*. Information can be found on our Web page: *http://www.ca.blm.gov/palmsprings/*. Documents pertinent to this notice, including comments with the names and addresses of respondents, will be available for public review at the Palm Springs-South Coast Field Office located at 690 W. Garnet Avenue, North Palm Springs, California, during regular business hours 8 a.m. to 4:30 p.m., Monday through Friday, except holidays.

SUPPLEMENTARY INFORMATION: The Santa Rosa and San Jacinto Mountains National Monument was established by act of Congress and signed into law on October 24, 2000. The National Monument was established in order to preserve the nationally significant biological, cultural, recreational, geological, educational and scientific values found in the Santa Rosa and San Jacinto Mountains. This legislation established the first monument to be jointly managed by the Bureau of Land Management (BLM) and the U.S. Forest Service (USFS). The Santa Rosa and San Jacinto Mountains National Monument Act of 2000 affects only Federal lands and Federal interests located within the established boundaries.

The 272,000 acre Monument encompasses 86,400 acres of Bureau of Land Management lands, 64,400 acres of Forest Service lands, 23,000 acres of Agua Caliente Band of Cahuilla Indians lands, 8,500 acres of California Department of Parks and Recreation lands, 35,800 acres of other State of California agencies lands, and 53,900 acres of private land. The BLM and the Forest Service jointly manage Federal lands in the National Monument in coordination with the Agua Caliente Band of Cahuilla Indians, other federal agencies, state agencies and local governments.

On October 24, 2003 the Proposed Management Plan and Final Environmental Impact Statement for the National Monument was released to the public. The Record of Decision for the Final Environmental Impact Statement is expected to be signed in January 2004.

Dated: November 26, 2003.

Danella George,

National Monument Manager.

Melissa Barstow,

Community Planner, Santa Rosa and San Jacinto Mountains National Monument.

[FR Doc. 03–30319 Filed 12–5–03; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

Request for Extension and Revision of a Currently Approved Information Collection

AGENCY: Grain Inspection, Packers and Stockyards Administration, USDA.

ACTION: Notice and request for comments.

SUMMARY: This notice announces our intention to request a three year extension and revision of a currently approved information collection in support of the reporting and recordkeeping requirements under the Packers and Stockyards Act. This approval is required under the Paperwork Reduction Act.

DATES: We will consider comments that we receive by February 6, 2004.

ADDRESSES: Send comments via electronic mail to *comments.gipsa@usda.gov*. Send hardcopy written comments to Tess Butler, GIPSA, USDA, 1400 Independence Avenue, SW., Room 1647–S, Washington, DC 20250–3604, or fax to (202) 690–2755. All comments should make reference to the date and page number of this issue of the **Federal Register**, and will be available for public inspection in the above office during regular business hours (7 CFR 1.27(b)).

SUPPLEMENTARY INFORMATION: The Grain Inspection, Packers and Stockyards Administration (GIPSA) administers and enforces the Packers and Stockyards Act of 1921, as amended and supplemented (7 U.S.C. 181–229) (P&S Act). The P&S Act prohibits unfair, deceptive, and fraudulent practices by livestock market agencies, dealers, stockyard owners, meat packers, swine contractors, and live poultry dealers in the livestock, poultry, and meatpacking industries.

Title: Packers and Stockyards Programs Reporting and Recordkeeping Requirements.

OMB Number: 0580–0015.

Expiration Date of Approval: September 30, 2004.

Type of Request: Extension and revision of a currently approved information collection.

Abstract: The P&S Act and the regulations under the P&S Act authorize the collection of information for the purpose of enforcing the P&S Act and regulations and to conduct studies as requested by Congress. The information is needed for GIPSA to carry out its responsibilities under the P&S Act. The information is necessary to monitor and examine financial, competitive, and trade practices in the livestock, meat packing, and poultry industries. The purpose of this notice is to solicit comments from the public concerning our information collection.

Estimate of Burden: Public reporting and recordkeeping burden for this collection of information is estimated to average 8.5 hours per response.

Respondents (Affected Public): Livestock auction markets, livestock dealers, packer buyers, meat packers, and live poultry dealers.

Estimated Number of Respondents: 10,950.

Estimated Number of Responses per Respondent: 3.3.

Estimated Total Annual Burden on Respondents: 304,106 hours.

Copies of this information collection can be obtained from Tess Butler; see **ADDRESSES** section for contact information.

As required by the Paperwork Reduction Act (44 U.S.C. 3506(c)(2)(A)) and its implementing regulations (5 CFR 1320.8(d)(1)(i)), we specifically request comments on:

(a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(b) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(d) Ways to minimize the burden on the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All responses to this notice will be summarized and included in the request for the Office of Management and Budget approval. All comments will also become a matter of public record.

Authority: 44 U.S.C. 3506 and 5 CFR 1320.8.

Donna Reifschneider,

Administrator, Grain Inspection, Packers and Stockyards Administration.

[FR Doc. 03–30327 Filed 12–5–03; 8:45 am]

BILLING CODE 3410–EN–P

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

Information Collection Activity; Comment Request

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended), the Rural Utilities Service (RUS) invites comments on this information collection for which RUS intends to request approval from the Office of Management and Budget (OMB).

DATES: Comments on this notice must be received by February 6, 2004.

FOR FURTHER INFORMATION CONTACT: Richard C. Annan, Acting Director, Program Development and Regulatory Analysis, Rural Utilities Service, 1400 Independence Ave., SW., STOP 1522, Room 5170 South Building, Washington, DC 20250–1522. Telephone: (202) 720–8818. FAX: (202) 720–4120.

SUPPLEMENTARY INFORMATION: The Office of Management and Budget's (OMB) regulation (5 CFR 1320) implementing provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13) requires that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities (*see* 5 CFR 1320.8(d)). This notice identifies an information collection that RUS is submitting to OMB for extension.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility; (b) the accuracy of the Agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to: Richard C. Annan, Acting Director, Program Development and Regulatory Analysis, Rural Utilities Service, U.S. Department of Agriculture, STOP 1522, Room 5170 South Building, 1400 Independence Ave., SW., Washington, DC 20250–1522. Fax: (202) 720–4120.

Title: Broadband Grant Program.

OMB Control Number: 0572–0127.

Type of Request: Extension of a currently approved information collection.

Abstract: The provision of broadband transmission service is vital to the economic development, education, health, and safety of rural Americans. To further this objective, RUS provides financial assistance in the form of grant to eligible entities that propose, on a "community-oriented connectivity" basis, to provide broadband transmission service that fosters

economic growth and delivers enhanced educational, health care, and public safety services to extremely rural, lower income communities. RUS gives priority to rural areas that it believes have the greatest need for broadband transmission services. Grant authority is utilized to deploy broadband infrastructure to extremely rural, lower income communities on a "community-oriented connectivity" basis. The "community-oriented connectivity" concept integrates the deployment of broadband infrastructure with the practical, everyday uses and applications of the facilities. This broadband access is intended to promote economic development and provide enhanced educational and health care opportunities. RUS provides financial assistance to eligible entities that are proposing to deploy broadband transmission service in rural communities where such service does not currently exist and who will connect the critical community facilities including the local schools, libraries, hospitals, police, fire and rescue services and who will operate a community center that provides free and open access to residents.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 154.87 hours per response.

Respondents: Public bodies, commercial companies, cooperatives, nonprofits, Indian tribes, and limited dividend or mutual associations and must be incorporated or a limited liability company.

Estimated Number of Respondents: 300.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 48,010.

Copies of this information collection can be obtained from MaryPat Daskal, Program Development and Regulatory Analysis, at (202) 720–7853, Fax: (202) 720–4120.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Dated: November 26, 2003.

Hilda Gay Legg,

Administrator, Rural Utilities Service.

[FR Doc. 03–30032 Filed 12–5–03; 8:45 am]

BILLING CODE 3410–15–P

COMMISSION ON CIVIL RIGHTS

Sunshine Act Meeting

AGENCY: U.S. Commission on Civil Rights.

DATE AND TIME: Friday, December 12, 2003, 9:30 a.m.

PLACE: U.S. Commission on Civil Rights. 624 9th Street, NW., 20425.

STATUS:

Agenda

I. Approval of Agenda
II. Approval of Minutes of November 14, 2003 Meeting
III. Announcements
IV. Staff Director's Report
V. State Advisory Report: Minneapolis-St. Paul News Coverage of Minority Communities (Minnesota)
VI. Future Agenda Items

10 a.m. Briefing on Discerning Potential Patterns of Employment Discrimination: An Examination and Analysis of Federal Equal Employment Opportunity Data

FURTHER INFORMATION CONTACT: Les Jin, Press and Communications (202) 376–7700.

Debra A. Carr,

Deputy General Counsel.

[FR Doc. 03–30416 Filed 12–3–03; 4:17 pm]

BILLING CODE 6335–01–M

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce (DOC) has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of Industry and Security (BIS).

Title: License Exception TMP: Special Requirements.

Agency Form Number: None.

OMB Approval Number: 0694–0029.

Type of Request: Submission for OMB review; comment request.

Burden: 1 hour.

Average Time Per Response: 20 minutes per response.

Number of Respondents: 3 respondents.

Needs and Uses: If commodities shipped under License Exception TMP are for news-gathering purposes, the exporter must send BIS a copy of the notification. Also, a TMP exporter must send BIS an explanatory letter if commodities shipped must be detained abroad beyond the 12 month limit. The information is used to determine whether or not an extension should be granted. This collection of information is necessary to identify original export licenses of respondents who request duplicate export licenses for lost or destroyed licenses.

Respondent's Obligation: Required to obtain or retain a benefit.

OMB Desk Officer: David Rostker.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, DOC Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20230.

Dated: December 2, 2003.

Madeleine Clayton,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 03–30321 Filed 12–5–03; 8:45 am]

BILLING CODE 3510–DT–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(C)(2)(A)).

Bureau: International Trade Administration, Import Administration.

Title: Petition Format for Requesting Relief Under U.S. Countervailing Duty Law.

Agency Form Number: ITA–366P.

OMB Number: 0625–0148.

Type of Request: OMB review; comment request.

Burden: 200 hours.

Number of Respondents: 5.

Average Hours Per Response: 40.

Needs and Uses: The International Trade Administration, Import Administration, AD/CVD Enforcement, implements the U.S. antidumping and countervailing duty laws. Import Administration investigates allegations of unfair trade practices by foreign governments and producers and, in conjunction with the U.S. International Trade Commission, can impose duties on the product in question to offset the unfair practices. Form ITA–366P—Format for Petition Requesting Relief Under the U.S. Countervailing Duty Law—is designed for U.S. companies or industries that are unfamiliar with the countervailing duty law and the petition process. The Form is designed for potential petitioners that believe that an industry in the United States is being injured because a foreign competitor is being subsidized unfairly. Since a variety of detailed information is required under the law before initiation of a countervailing duty investigation, the Form is designed to extract such information in the least burdensome manner possible.

Affected Public: Businesses or other for-profit.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain a benefit.

OMB Desk Officer: David Rostker, (202) 395–7340.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482-0266, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230, or e-mail *dhynek@doc.gov.*

Written comments and recommendations for the proposed information collection should be sent to David Rostker, OMB Desk Officer, Room 10202, New Executive Office building, Washington, DC 20503 within 30 days of the publication of this notice in the **Federal Register**.

Dated: December 2, 2003.

Madeleine Clayton,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 03–30322 Filed 12–5–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Census Bureau

Generic Clearance for Master Address File (MAF) and Topologically Integrated Geographic Encoding and Referencing (TIGER) Update Activities

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before February 6, 2004.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dhynek@doc.gov*),

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Bob Tomassoni, Bureau of the Census, SFC2, Room 1308A, Washington, DC 20233. Phone Number 301–763–2036 (or via the Internet at *Robert.G.Tomassoni@Census.Gov*).

SUPPLEMENTARY INFORMATION:

I. Abstract

The Census Bureau presently operates a generic clearance covering activities involving respondent burden associated with updating our Master Address File (MAF) and Topologically Integrated Geographic Encoding and Referencing (TIGER) system. (The MAF is the Census Bureau's address database and TIGER is the geographic database.) We now propose to extend that generic clearance to cover update activities we will undertake during the next three fiscal years.

Under the terms of the generic clearance, we plan to submit a request for OMB approval that will describe all planned activities for the entire period; we will not submit a clearance package for each updating activity. We will send a letter to OMB at least two weeks before the planned start of each activity that gives more exact details, examples of forms, and final estimates of respondent burden. We also will file a year-end summary with OMB after the close of each fiscal year giving results of each activity conducted. This generic clearance enables OMB to review our overall strategy for MAF and TIGER updating in advance, instead of reviewing each activity in isolation shortly before the planned start. The Census Bureau used the MAF for mailing and delivering questionnaires to households during Census 2000. The MAF is also used as a sampling frame for our demographic current surveys. In the past, the Census Bureau built a new address list for each decennial census. The MAF we built for Census 2000 is meant to be kept current, thereby, eliminating the need to build a completely new address list for future censuses and surveys. The TIGER is a geographic system that maps the entire country in Census Blocks with applicable address range or living quarter location information. Linking MAF and TIGER allows us to assign each address to the appropriate Census Block, produce maps as needed and publish results at the appropriate level of geographic detail. The following are descriptions of each activity we plan to conduct under the clearance for the next three fiscal years.

1. Record Linkage Follow-Up (Address Duplication Check) Evaluation

In an effort to compile the most accurate Master Address File (MAF), the Census Bureau is planning the Record Linkage Follow-Up Address Duplication Check Operation to evaluate three different unduplication methods, one duplicate address linking software currently used by our Geography Division (GEO) and possibly two probabilistic matching software programs used by our Planning, Research, and Evaluation Division (PRED).

This operation will address the Census Coverage Improvement objective, which attempts to minimize coverage errors and to gain insight into the causes of housing unit duplication through externally focused, probes and edits and examination of internal processing approaches.

The Record Linkage Follow-Up Address Duplication Check will be conducted in the field to confirm probable housing unit duplicates identified by the unduplication criteria established for the probabilistic record matching and linking software, and not already reconciled from other 2004 Census Test field activities. This 2004 Census Test operation addresses the following question: "Can we reduce duplication at the time of the initial Master Address File (MAF) extract and during address list updating from Address Canvassing and from Update/Leave by using improved address record linkage methods?"

The major objective of the Record Linkage Follow-Up Address Duplication Check operation is to determine the accuracy and future use of address unduplication prior to census operations. Verifiers will perform an Address Duplication Check on housing unit duplicates identified by probabilistic linkage.

The 2004 Census Test Record Linkage Follow-Up Address Duplication Check operation will be conducted in the NW. Queens, NY test site and in Colquitt, Tift, and Thomas counties in Georgia and will be managed out of Local Census Offices. The operation will take place between August 16, 2004 and September 17, 2004 and will consist of a maximum workload of 10,800 addresses.

The universe of linked addresses will come from output generated by the Auto Match and Big Match software and from GEO providing a file that includes the results of their duplicate confidence

indicator run on the MAF for the 2004 Test Sites.

The workload of linked addresses, called clusters, in the Record Linkage Follow-Up Address Duplicate Check operation will be a merged sample of the output from the three duplicate linking programs mentioned above.

A sample of clusters will be included in the Address Duplicate Check. Large clusters, clusters with different Zip Codes, and clusters where two or more addresses are exactly the same, will be included in the Headquarters (HQ) fieldwork. The Headquarters (HQ) fieldwork will consist of no more than 6 people from Census HQ, traveling to the 2004 Census Test sites to review and fieldwork 300 clusters.

Verifiers will locate each address in the cluster on the ground and enter codes based on observation first. Then they will attempt to make contact with the respondent or qualified proxy to confirm the addresses existence for each address shown on the cluster-listing page. Verifiers will enter action codes based on respondent information. The verifiers will try to locate the other addresses shown in the cluster, to verify existence or nonexistence in an effort to confirm duplication of addresses within the cluster. Verifiers will not edit, add, or delete any addresses.

The estimated time per response is 2 minutes. The most burdensome case scenario will be 10,800 addresses in no more than 5,300 address clusters. All of the fieldwork is expected to take place in FY 2004.

2. Address Canvassing

An Address Canvassing operation will take place as part of the 2006 Census Test. The operation will take place during the spring of 2005. The operation will be a standard address canvassing operation where census "listers" will canvass specified blocks and conduct brief interviews to verify or update address information against address information on the Census Bureau's address lists and maps. Lister's will enter action codes for every address based on what they found out during the visit. Lister's will also visit addresses not listed on our address lists and add them. They will record address information and action codes on address listing pages.

Sites for the 2006 Census Test will be selected in 2004. Prior to the selection, there is no available information regarding estimated number of living quarters or respondent burden for the Address Canvassing operation.

3. TIGER Enhancement Database (TED)

The TIGER Enhancement Database (TED) is an inventory of state, local, tribal and commercial geographic data critical to the modernization of the Census Bureau's MAF/TIGER database. More specifically, the TED is an interactive Oracle database containing metadata about the geographic data necessary for coordinate correction and feature update in TIGER. Such metadata include, but are not limited to: Contact information, data accuracy, currency, format, and medium.

TED is designed to be maintained and updated indefinitely to support MAF/TIGER Enhancements Program efforts throughout the decade. Metadata for population of the database will be collected on an ongoing basis from state/local/tribal governments, as well as, industry organizations and clearinghouses, and commercial suppliers.

Determining which governments and commercial sources exist and gathering metadata about what they contain, will require contact with individuals and business entities. Once the inventory of available resources has been completed for all 3,232 counties, the Census Bureau and its contractor will begin to acquire the source materials described in the inventory. These source materials may include satellite imagery, aerial photography, Global Positioning System (GPS) files, Geographic Information System (GIS) files of transportation, hydrography, and other feature layers, address lists, and other graphic and tabular data that will provide updates to the MAF/TIGER database.

In addition to the above, there may be other operations and/or evaluations that could be added in the next three years to help the Census Bureau prepare for Census 2010 and evaluate the quality of work done during various census tests. Any other operations and/or evaluations would be similar to those above and would fall under the clearance as MAF/TIGER updating activities.

II. Method of Collection

The primary method of data collection for most operations/evaluations will be personal interview by Census Listers, Verifiers or Enumerators using the operation/evaluation's listing form. In some cases, the interview could be by telephone callback if no one was home on the initial visit. For TED, the primary method of method of data collection will be telephone contact. See part I for details.

III. Data

OMB Number: 0607–0809.

Form Number: The form numbers for activities have not yet been assigned.

Type of Review: Regular submission.

Affected Public: Individuals or households.

Estimated Number of Respondents: Varies by operation, see chart below for available estimates.

Estimated Time Per Response: Varies by operation, see chart below for available estimates.

Estimated Total Annual Burden Hours: FY04 360.

Estimated Total Annual Cost: The only cost to respondents is that of their time to respond.

Respondent's Obligation: Mandatory.

Legal Authority: Title 13, United States Code, Sections 141 and 193.

Activity	FY 2004 respondents	Average hours per response	Responses per respondent	FY 2004 burden hours
Record Linkage Follow-Up Evaluation	10,800	.033	1	360
Totals	10,800			360

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: December 2, 2003.

Madeleine Clayton,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 03–30323 Filed 12–5–03; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A-580–809]

Notice of Preliminary Results of Antidumping Duty Administrative Review: Circular Welded Non-Alloy Steel Pipe from the Republic of Korea

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Preliminary Results of Sales at Less Than Fair Value.

SUMMARY: In response to requests from interested parties, the Department of Commerce is conducting an administrative review of the antidumping duty order on circular welded non-alloy steel pipe from the Republic of Korea with respect to Husteel Corporation, Ltd.; Hyundai HYSCO; and SeAH Steel Corporation Ltd. This review covers entries of circular welded non-alloy steel pipe into the United States during the period November 1, 2001, through October 31, 2002.

We preliminarily find that, during the period of review, sales of certain circular non-alloy steel pipe from Korea were made below normal value. If the preliminary results are adopted in the final results of this administrative review, we will instruct the U.S. Customs and Border Protection ("CBP") to assess antidumping duties. We invite interested parties to comment on these preliminary results. We will issue the final results not later than 120 days from the date of publication of this notice.

EFFECTIVE DATE: December 8, 2003.

FOR FURTHER INFORMATION CONTACT: Julie Santoboni, Scott Holland or Andrew McAllister, Group I, Office 1, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone (202) 482–4194, (202) 482–1279 or (202) 482–1174, respectively.

SUPPLEMENTARY INFORMATION:

Background

On November 2, 1992, the Department of Commerce ("the Department") published an antidumping duty order on circular welded non-alloy steel pipe ("pipe") from Korea. (*See* 57 FR 49453). On November 1, 2002, the Department of Commerce ("the Department") published a notice in the **Federal Register** of the opportunity for interested parties to request an administrative review of the antidumping duty order on pipe from Korea. *See Notice of Opportunity to Request Administrative Review of Antidumping or Countervailing Duty Order, Finding or Suspend Investigation*, 67 FR 66612 (November 1, 2002). In November 2002, the Department received timely requests for review from Allied Tube and Conduit Corporation and Wheatland Tube Company (collectively, "petitioners") and from Husteel Co. Ltd. ("Husteel"), a Korean exporter/producer of the subject merchandise.

In accordance with 19 CFR 351.221(b)(1), we published a notice of initiation of this antidumping duty administrative review on December 26, 2002, with respect to Husteel, Hyundai HYSCO ("HYSCO"), and SeAH Steel Corporation, Ltd. ("SeAH") (collectively, the "respondents"). *See Notice of Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 67 FR 78772 (December 26, 2002). The period of review ("POR") is November 1, 2001 through October 31, 2002.

On January 6, 2003, the Department issued antidumping duty questionnaires to the respondents. We notified the respondents that they must respond to sections A, B, C and D of the antidumping duty questionnaire.

On January 21, 2003, Husteel and SeAH requested that they be allowed to report their respective cost data on a fiscal-year basis rather than reporting costs for the POR. On January 30, 2003, we requested that the respondents demonstrate that the use of fiscal-year cost reporting would not be distortive. We received information from the respondents on the difference between fiscal-year and POR-based cost reporting on February 11, 2003. On February 24, 2003, we granted the requests and allowed Husteel and SeAH to report their costs for the 2002 fiscal year rather than the POR.

On January 27, 2003, the petitioners requested that the Department conduct verifications of the respondents' questionnaire responses. We received questionnaire responses from all of the respondents in February and March 2003. We issued supplemental questionnaires covering sections A through D to the respondents in May and June 2003, and received responses in June and July 2003. The petitioners submitted comments on the responses in March and July 2003. We received rebuttal comments from HYSCO on July 28, 2003.

On June 6, 2003, we published an extension of the time limit for the completion of the preliminary results of this review to no later than November 30, 2003, in accordance with section 751(a)(3)(A) of the Tariff Act of 1930, as amended ("the Act"). *See Certain Circular Welded Non-Alloy Steel Pipe From Korea: Notice of Extension of Time Limit for 2001–2002 Administrative Review*, 68 FR 33911 (June 6, 2003). The Department verified the sales and cost responses for each of the respondents during September through November 2003.

On November 10, 2003 the petitioners argued certain information submitted by HYSCO at the CEP sales verification constituted new information and should be rejected by the Department.

Scope of the Order

The merchandise subject to this review is circular welded non-alloy steel pipe and tube, of circular cross-section, not more than 406.4mm (16 inches) in outside diameter, regardless of wall thickness, surface finish (black, galvanized, or painted), or end finish (plain end, beveled end, threaded, or threaded and coupled). These pipes and tubes are generally known as standard pipes and tubes and are intended for the low-pressure conveyance of water, steam, natural gas, air, and other liquids and gases in plumbing and heating systems, air-conditioning units, automatic sprinkler systems, and other related uses. Standard pipe may also be used for light load-bearing applications, such as for fence tubing, and as structural pipe tubing used for framing and as support members for reconstruction or load-bearing purposes in the construction, shipbuilding, trucking, farm equipment, and other related industries. Unfinished conduit pipe is also included in this order.

All carbon-steel pipes and tubes within the physical description outlined above are included within the scope of this review except line pipe, oil-country tubular goods, boiler tubing, mechanical tubing, pipe and tube hollows for redraws, finished scaffolding, and finished conduit. In accordance with the Department's *Final Negative Determination of Scope Inquiry on Certain Circular Welded Non-Alloy Steel Pipe and Tube from Brazil, the*

Republic of Korea, Mexico, and Venezuela, 61 FR 11608 (March 21, 1996), pipe certified to the API 5L line-pipe specification and pipe certified to both the API 5L line-pipe specifications and the less-stringent ASTM A-53 standard-pipe specifications, which falls within the physical parameters as outlined above, and entered as line pipe of a kind used for oil and gas pipelines is outside of the scope of the antidumping duty order.

Imports of these products are currently classifiable under the following *Harmonized Tariff Schedule of the United States* ("HTSUS") subheadings: 7306.30.10.00, 7306.30.50.25, 7306.30.50.32, 7306.30.50.40, 7306.30.50.55, 7306.30.50.85, and 7306.30.50.90. Although the HTSUS subheadings are provided for convenience and CBP purposes, our written description of the scope of this proceeding is dispositive.

Verification

As provided in section 782(i) of the Act, during September through November 2003, we verified the information provided by the respondents in Korea and at the U.S. sales facilities using standard verification procedures, including on-site inspection of the manufacturers' facilities, examination of relevant sales, cost and financial records, and selection of original documentation containing relevant information. The Department reported its findings from the SeAH sales and cost verifications conducted in Korea on November 25, 2003. *See* Memorandum to the File, "Verification of the Sales and Cost Response of SeAH Steel Corporation Ltd.," dated November 25, 2003 ("*SeAH Sales and Cost Verification Report*"), which is on file in the CRU. The SeAH CEP verification report and the verification reports for Husteel and HYSCO will be released at a later date.

Fair Value Comparisons

To determine whether sales of circular welded non-alloy steel pipe to the United States were made at less than normal value ("NV"), we compared export price ("EP") or constructed export price ("CEP") to NV, as described in the "Export Price and Constructed Export Price" and "Normal Value" sections of this notice. In accordance with 19 CFR 351.414(c)(2), we compared individual EPs and CEPs to weighted-average NVs, which were calculated in accordance with section 777A(d)(2) of the Act.

Product Comparisons

In accordance with section 771(16) of the Act, we considered all products produced and sold by the respondents in the home market during the POR that fit the description in the "Scope of the Order" section of this notice to be foreign like products for purposes of determining appropriate product comparisons to U.S. sales. We compared U.S. sales to sales of identical merchandise in the home market made in the ordinary course of trade, where possible. Where there were no sales of identical merchandise in the home market made in the ordinary course of trade to compare to U.S. sales, we compared U.S. sales to sales of the most similar foreign like product made in the ordinary course of trade. To determine the appropriate product comparisons, we considered the following physical characteristics of the products in order of importance: grade, nominal pipe size, wall thickness, surface finish and end finish.

Export Price and Constructed Export Price

We calculated EP in accordance with section 772(a) of the Act for those sales where the merchandise was sold to the first unaffiliated purchaser in the United States prior to importation by the exporter or producer outside the United States and the constructed export price methodology was not otherwise indicated. Husteel and HYSCO made EP sales during the POR. We based EP on either FOB or CNF (duty-paid) prices to unaffiliated purchasers in the United States. We identified the correct starting price by adjusting the reported gross unit price, where applicable, for billing adjustments. We made deductions from the starting price for movement expenses in accordance with section 772(c)(2)(A) of the Act. These deductions included, where appropriate, domestic inland freight, brokerage and handling, international freight, marine insurance, U.S. customs duties, U.S. inland freight, and other U.S. transportation expenses.

In accordance with section 772(b) of the Act, we calculated CEP for those sales to the first unaffiliated purchaser that took place after importation into the United States. We based CEP on packed CIF and CNF duty-paid prices to unaffiliated purchasers in the United States. We identified the correct starting price by adjusting the reported gross unit price, where applicable, for billing adjustments and early payment discounts. We made deductions from the starting price for movement expenses, including domestic inland freight, foreign and U.S. brokerage and handling, international freight, marine insurance, U.S. customs duties, and other transportation expenses, where appropriate, in accordance with section 772(c)(2)(A) of the Act. In accordance with section 772(d)(1) of the Act, we deducted those selling expenses associated with economic activities occurring in the United States, including direct and indirect selling expenses, commissions and warranty expenses. We made an adjustment for profit in accordance with section 772(d)(3) of the Act.

We increased EP and CEP, where appropriate, for duty drawback in accordance with section 772(c)(1)(B) of the Act. There are two systems in place in Korea through which Korean companies can claim duty drawback: the individual-rate system or the fixed-rate system (*i.e.*, the simplified fixed drawback system). In prior investigations and administrative reviews, the Department has examined the individual-rate system and found that the government controls in place enable the Department to examine the criteria under this system for receiving a duty drawback adjustment (*i.e.*, that 1) the rebates received were directly linked to import duties paid on inputs used in the manufacture of the subject merchandise, and 2) there were sufficient imports to account for the rebates received). *See Final Results of Antidumping Duty Administrative Review and Partial Termination of Administrative Review: Circular Welded Non-Alloy Steel Pipe From the Republic of Korea*, 62 FR 55574, 55577 (October 27, 1997) and *Certain Polyester Staple Fiber from Korea: Final Results of Antidumping Duty Administrative Review*, 68 FR 59366 (October 15, 2003). Husteel, HYSCO, and SeAH each provided documentation demonstrating that it received duty drawback under the individual-rate system. We examined this documentation and confirmed that each of the companies met the Department's two-prong test for receiving a duty drawback adjustment. Accordingly, we are allowing the full duty drawback adjustment on all of Husteel's, HYSCO's, and SeAH's U.S. sales.

Consistent with the preceding review, we have used the purchase order date as the date of sale for most U.S. transactions. While each company has a slightly different U.S. sales process, consistent throughout the responses is the notion that price and quantity are established, then the factory produces the subject merchandise, and finally, after a significant period of time, the product is shipped and an invoice

issued. Based on this understanding of the respondents' U.S. sales process, for the respondents' CEP non-consignment sales, we have used as date of sale the purchase order date, which reasonably approximates the time at which the material terms of sale are set. For CEP consignment sales and for EP sales, the invoice date has been used as the date of sale.

We have considered the petitioners' argument that certain information submitted by HYSCO at the CEP sales verification constituted new information and should be rejected by the Department. We find that the revised sales data submitted by HYSCO at verification constitutes minor corrections to existing sales information already on the record in this proceeding and does not constitute new information. Accordingly, we have used the revised data bases in the calculation of our preliminary results.

To calculate the EP and CEP, we relied upon the data submitted by the respondents, except where noted below:

SeAH

We made certain minor adjustments to SeAH's submitted sales information based on information found at verification. See SeAH Verification Report and Memorandum from Team to the File, "Preliminary Results Calculation Memorandum for SeAH Steel Corporation Ltd.," dated November 26, 2003 ("SeAH Calculation Memorandum").

Section 201 Duties

The Department notes that merchandise subject to this review is subject to duties imposed under section 201 of the Act ("section 201 duties"). Because the Department has not previously addressed the appropriateness of deducting section 201 duties from export price and constructed export price, on September 9, 2003, the Department published a request for public comments on this issue. *See Antidumping Proceedings: Treatment of Section 201 Duties and Countervailing Duties*, 68 FR 53104 (September 9, 2003). The Department is currently considering these comments. Since the Department has not yet made a determination on this issue, for purposes of these preliminary results, no adjustment has been made.

Normal Value

A. Home Market Viability

In order to determine whether there was a sufficient volume of sales in the home market to serve as a viable basis for calculating NV, we compared each respondent's volume of home market sales of the foreign like product to the volume of its U.S. sales of the subject merchandise. Pursuant to sections 773(a)(1)(B) and (C) of the Act, because each respondent's aggregate volume of home market sales of the foreign like product was greater than five percent of its aggregate volume of U.S. sales of the subject merchandise, we determined that the home market was viable for all producers.

HYSCO and SeAH reported sales in the home market of "overrun" merchandise (*i.e.*, sales of a greater quantity of pipe than the customer ordered due to overproduction). HYSCO claimed that we should disregard "overrun" sales in the home market as outside the ordinary course of trade.

Section 773(a)(1)(B) of the Act provides that normal value shall be based on the price at which the foreign like product is sold in usual commercial quantities and in the ordinary course of trade. Ordinary course of trade is defined in section 771(15) of the Act. We analyzed the following criteria to determine whether "overrun" sales differ from other sales of commercial pipe: (1) ratio of overrun sales to total home market sales; (2) number of overrun customers compared to total number of home market customers; (3) average price of an overrun sale compared to average price of a commercial sale; (4) profitability of overrun sales compared to profitability of commercial sales; and (5) average quantity of an overrun sale compared to the average quantity of a commercial sale. *See Circular Welded Non-Alloy Steel Pipe from the Republic of Korea; Preliminary Results and Rescission in Part of Antidumping Administrative Review*, 65 FR 76218, 76221 (December 6, 2000). Based on our analysis of these criteria and on an analysis of the terms of sale, we found overrun sales made by SeAH and HYSCO to be outside the ordinary course of trade. This analysis is consistent with our treatment of such sales in prior reviews of this proceeding. See Memoranda from Team to the File, "Preliminary Results Calculation Memorandum for Hyundai HYSCO," dated November 26, 2003 and *SeAH Calculation Memorandum*.

B. Arm's Length Test

HYSCO and SeAH made sales in the home market to affiliated and unaffiliated customers. Home market sales made to affiliated customers were either for consumption or further processing into non-subject merchandise. To test whether the sales to affiliates were made at arm's length prices, we compared the starting prices of sales to affiliated and unaffiliated customers net of all movement charges, direct selling expenses, discounts, and packing. Where the price to the affiliated party was, on average, within a range of 98 to 102 percent of the price of the same or comparable merchandise to the unaffiliated parties, we determined that the sales made to the affiliated party were at arm's length. *See Modification Concerning Affiliated Party Sales in the Comparison Market*, 67 FR 69186 (November 15, 2002). In accordance with the Department's practice, we only included in our margin analysis those sales to affiliated parties that were made at arm's length.

C. Cost of Production Analysis

Because we disregarded sales below the cost of production ("COP") in the last completed review for Husteel, HYSCO, and SeAH (*see Circular Welded Non-Alloy Steel Pipe from the Republic of Korea; Final Results of Antidumping Administrative Review*, 66 FR 18747 (April 11, 2001)), we had reasonable grounds to believe or suspect that sales of the foreign product under consideration for the determination of NV in this review for all respondents may have been made at prices below the COP, as provided by section 773(b)(2)(A)(ii) of the Act. Therefore, pursuant to section 773(b)(1) of the Act, we requested that the respondents respond to section D, the cost of production/constructed value section of the questionnaire.

We conducted the COP analysis described below.

1. Calculation of COP

Before making any comparisons to NV, we conducted a COP analysis, pursuant to section 773(b) of the Act, to determine whether the respondents' comparison market sales were made below the COP. We calculated the COP based on the sum of the cost of materials and fabrication for the foreign like product, plus amounts for general and administrative expenses and packing, in accordance with section 773(b)(3) of the Act.

We allowed SeAH and Husteel to report their costs on a fiscal-year basis because their fiscal years were closely aligned with the POR (November-October POR vs. January-December fiscal year), the differences in costs were minimal, and there was no other indication that the use of fiscal-year data would be distortive. *See* February 12, 2003 letter from Judith Wey Rudman to Donald Cameron regarding the cost reporting period.

We relied on the respondents' information as submitted, except for one

minor adjustment to SeAH's production quantities for certain products. *See SeAH Calculation Memorandum.*

2. Test of Comparison Market Prices

On a product-specific basis, we compared the adjusted weighted-average COP to the home market sales of the foreign like product during the POR, as required under section 773(b) of the Act, in order to determine whether sales had been made at prices below the COP. The prices were exclusive of any applicable movement charges, billing adjustments, discounts, commissions, warranties and indirect selling expenses. In determining whether to disregard home market sales made at prices below the COP, we examined, in accordance with sections 773(b)(1)(A) and (B) of the Act, whether such sales were made (1) within an extended period of time in substantial quantities and (2) at prices which did not permit the recovery of costs within a reasonable period of time.

3. Results of COP Test

Pursuant to section 773(b)(1)(C)(i) of the Act, where less than 20 percent of a respondent's sales of a given product were made at prices less than the COP, we did not disregard any below-cost sales of that product because we determined that the below-cost sales were not made in "substantial quantities." Where 20 percent or more of a respondent's sales of a given product during the 12-month period were at prices less than the COP, we determined such sales to have been made in "substantial quantities" within an extended period of time in accordance with section 773(b)(1)(A) of the Act. In such cases, we also determined that such below-cost sales were not made at prices which would permit recovery of all costs within a reasonable period of time, in accordance with section 773(b)(1)(B) of the Act.

We found that for each of the respondents, for certain specific products, more than 20 percent of the home market sales within an extended period of time were at prices less than the COP and, in addition, such sales did not provide for the recovery of costs within a reasonable period of time. We therefore excluded these sales and used the remaining sales, if any, as the basis for determining NV, in accordance with section 773(b)(1) of the Act.

D. Calculation of Normal Value Based on Comparison Market Prices

We calculated NV based on ex-factory, FOB, or delivered prices to affiliated or unaffiliated customers in the home market. We identified the starting price and made adjustments for early payment and other discounts, where appropriate. In accordance with section 773(a)(6)(B)(ii) of the Act, we made deductions for inland freight and warehousing. In addition, we made adjustments under section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410 for differences in circumstances of sale for imputed credit expenses.

When comparing U.S. sales with comparison market sales of similar, but not identical, merchandise, we also made adjustments for physical differences in the merchandise in accordance with section 773(a)(6)(C)(ii) of the Act and 19 CFR 351.411. We based this adjustment on the difference in the variable cost of manufacturing for the foreign like product and subject merchandise, using POR-average costs.

We also made adjustments, where applicable, in accordance with 19 CFR 351.410(e), for indirect selling expenses incurred on home market or U.S. sales where commissions were granted on sales in one market but not in the other (the commission offset). Specifically, where commissions are incurred in one market, but not in the other, we make an allowance for the indirect selling expenses in the other market up to the amount of the commissions.

For HYSCO we also adjusted the reported credit expenses for certain home market sales. *See* Memorandum from Team to the File, "Preliminary Results Calculation Memorandum for Hyundai HYSCO" dated November 26, 2003 ("*HYSCO Calculation Memorandum*").

E. Level of Trade (LOT)

Section 773(a)(1)(B)(i) of the Act states that, to the extent practicable, the Department will calculate NV based on sales at the same level of trade ("LOT") as the EP or CEP. Sales are made at different LOTs if they are made at different marketing stages (or their equivalent). *See* 19 CFR 351.412(c)(2). Substantial differences in selling activities are a necessary, but not sufficient, condition for determining that there is a difference in the stages of marketing. *Id.; see also Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate From South Africa*, 62 FR 61731, 61732 (November 19, 1997). In order to determine whether the comparison sales were at different stages in the marketing process than the U.S. sales, we reviewed the distribution system in each market (*i.e.*, the "chain of distribution"),[1] including selling functions,[2] class of customer ("customer category"), and the level of selling expenses for each type of sale.

Pursuant to section 773(a)(1)(B)(i) of the Act, in identifying levels of trade for EP and comparison market sales (*i.e.*, NV based on either home market or third country prices[3],) we consider the starting prices before any adjustments. For CEP sales, we consider only the selling expenses reflected in the price after the deduction of expenses and profit under section 772(d) of the Act. *See Micron Technology, Inc. v. United States*, 243 F.3d 1301, 1314–1315 (Fed. Cir. 2001).

When the Department is unable to match U.S. sales to sales of the foreign like product in the comparison market at the same LOT as the EP or CEP, the Department may compare the U.S. sale to sales at a different LOT in the comparison market. In comparing EP or CEP sales at a different LOT in the comparison market, where available data make it practicable, we make an LOT adjustment under section 773(a)(7)(A) of the Act. Finally, for CEP sales only, if an NV LOT is more remote from the factory than the CEP LOT and we are unable to make a level of trade adjustment, the Department shall grant a CEP offset, as provided in section 773(a)(7)(B) of the Act. *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from South Africa*, 62 FR 61731 (November 19, 1997).

We obtained information from each respondent regarding the marketing stages involved in making the reported home market and U.S. sales, including a description of the selling activities performed by the respondents for each channel of distribution. Company-specific LOT findings are summarized below:

1. SeAH

SeAH reported two channels of distribution in the home market: (1) sales made by SeAH (channel 1); and (2) sales made by SeAH's affiliates, HSC and SSP (channel 2). Both of these channels serviced all customer types (*i.e.*, affiliated and unaffiliated service centers and end users). We examined these channels and found that they were similar with respect to sales process, freight services, and warehouse/inventory maintenance, advertising activities, technical service and warranty service, and, therefore, constituted one level of trade.

In the U.S. market, SeAH made CEP sales through two channels of distribution: (1) back-to-back transactions (channel 1); and (2) consignment sales (channel 2). The CEP selling activities differ from the home market selling activities only with respect to warranty services. Therefore, we find that the CEP level of trade is similar to the home market level of trade and a level of trade adjustment is not necessary. *See* section 773(a)(7)(A) of the Act.

2. Husteel

Husteel reported that it sells to distributors and end users in the home market, and to U.S. distributors and to an unaffiliated trading company for sale to the United States. Husteel reported a single level of trade in the home market and has not requested a LOT adjustment. We examined the information reported by Husteel and found that home market sales to both customer categories were identical with respect to sales process, freight services, warehouse/inventory maintenance, advertising activities, technical service, and warranty service. Accordingly, we preliminarily find that Husteel had only one LOT for its home market sales.

Husteel states that it is not claiming a LOT adjustment because it has no home market sales that are at the same LOT as that of its CEP sales, and therefore, it cannot quantify an LOT adjustment. Husteel claims that a CEP offset is warranted. For its CEP sales, Husteel reported a single level of trade and channel of distribution. The CEP selling activities differ from the home market selling activities only with respect to freight, delivery, and warranty service. Therefore, we find that the CEP LOT is similar to the home market LOT and a level-of-trade adjustment or CEP offset is not necessary. *See* section 773(a)(7)(A) of the Act.

3. HYSCO

In the home market, Hysco made sales to three customer categories: end-users; distributors; and government agencies. Sales to these customer categories were made through a single channel of distribution (*i.e.*, sales from the manufacturer directly to the customer). The selling functions to each of the three customer categories were similar with respect to sales process, freight services, warehouse/inventory maintenance, advertising activities, technical service, and warranty service. Accordingly, we preliminarily find that HYSCO had one LOT for its home market sales.

Hysco made both EP and CEP sales to the United States during the POR. Both the EP and CEP sales were made through the same channel of distribution (*i.e.*, sales from the manufacturer directly to the customer). The EP and CEP selling activities do not differ from the home market selling activities. Therefore, we find that the U.S. level of trade is similar to the home market level of trade and a level of trade adjustment is not necessary. *See* section 773(a)(7)(A) of the Act.

Currency Conversion

We made currency conversions into U.S. dollars in accordance with section 773A(a) of the Act based on the exchange rates in effect on the dates of the U.S. sales as reported by the Federal Reserve Bank.

Preliminary Results of the Review

As a result of our review, we preliminarily find that the following percentage weighted-average margins exist for the period November 1, 2001, through October 31, 2002:

Manufacturer/Exporter	Margin
HYSCO	0.94%
Husteel	1.77%
SeAH	0.66%

Assessment Rates

Pursuant to 19 CFR 351.212(b), the Department calculates an assessment rate for each importer of the subject merchandise for each respondent. Upon issuance of the final results of this administrative review, if any importer-specific assessment rates calculated in the final results are above *de minimis* (*i.e.*, at or above 0.5 percent), the Department will issue appraisement instructions directly to CBP to assess antidumping duties on appropriate entries. To determine whether the duty assessment rates covering the period were *de minimis*, in accordance with the requirement set forth in 19 CFR 351.106(c)(1), for each respondent we calculate importer (or customer)-specific ad valorem rates by aggregating the dumping margins calculated for all U.S. sales to that importer (or customer) and dividing this amount by the total value of the sales to that importer (or customer). Where an importer (or customer)-specific *ad valorem* rate is greater than *de minimis*, we calculate a per unit assessment rate by aggregating the dumping margins calculated for all U.S. sales to that importer (or customer) and dividing this amount by the total quantity sold to that importer (or customer).

All other entries of the subject merchandise during the POR will be liquidated at the antidumping duty rate in place at the time of entry.

The Department will issue appropriate assessment instructions directly to CBP within 15 days of publication of the final results of this review.

Cash Deposit Rates

The following deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of pipe from Korea entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(1) of the Act: (1) the cash deposit rates for the reviewed companies will be the rates listed above (except no cash deposit will be required if a company's weighted-average margin is *de minimis*, *i.e.*, less than 0.5 percent); (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, the previous review, or the original investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered in this or any previous reviews, the cash deposit rate shall be 4.80 percent, the "all others" rate established in the LTFV investigation. *See Notice of Antidumping Orders: Certain Circular Welded Non-Alloy Steel Pipe from Brazil, the Republic of Korea (Korea), Mexico, and Venezuela, and Amendment to Final Determination of Sales at Less Than Fair Value: Certain Circular Welded Non-Alloy Steel Pipe from Korea*, 57 FR 49453 (November 2, 1992).

These requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

Public Comment

Any interested party may request a hearing within 30 days of publication of this notice. A hearing, if requested, will

[1] The marketing process in the United States and home market begins with the producer and extends to the sale to the final user or customer. The chain of distribution between the two may have many or few links, and the respondents' sales occur somewhere along this chain. In performing this evaluation, we considered each respondent's narrative response to properly determine where in the chain of distribution the sale occurs.

[2] Selling functions associated with a particular chain of distribution help us to evaluate the level(s) of trade in a particular market. For purposes of these preliminary results, we have organized the common selling functions into four major categories: sales process and marketing support, freight and delivery, inventory and warehousing, and quality assurance/warranty services.

[3] Where NV is based on CV, we determine the NV LOT based on the LOT of the sales from which we derive selling expenses, G&A and profit for CV, where possible.

be held 37 days after the publication of this notice, or the first business day thereafter. Interested parties may submit case briefs within 30 days of the date of publication of this notice. Rebuttal briefs, which must be limited to issues raised in the case briefs, may be filed not later than 35 days after the date of publication of this notice. The Department will issue the final results of this administrative review, which will include the results of its analysis of issues raised in any such comments, within 120 days of publication of the preliminary results.

Notification to Importers

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and notice are in accordance with sections 751(a)(1) and 777(I)(1) of the Act.

Dated: December 1, 2003.

James J. Jochum,

Assistant Secretary for Import Administration.

[FR Doc. 03–30382 Filed 12–5–03; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–549–817]

Certain Hot-Rolled Carbon Steel Flat Products From Thailand: Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: December 8, 2003.

FOR FURTHER INFORMATION CONTACT: Michael Ferrier at (202) 482–1394 or Abdelali Elouaradia at (202) 482–1374, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Ave, NW., Washington, DC 20230.

SUMMARY: The Department of Commerce ("the Department") is conducting an administrative review of the antidumping duty order on certain hot-rolled carbon steel flat products from Thailand ("hot-rolled steel") manufactured/exported by Sahaviriya Steel Industries Public Company Limited ("SSI"). The period of review ("POR") covers the period May 3, 2001, through October 31, 2002. We have preliminarily determined that SSI did not make sales of the subject merchandise at less than normal value ("NV") (*i.e.*, they made sales at zero or *de minimis* dumping margins). If these preliminary results are adopted in the final results of this administrative review, we will instruct the U.S. Customs and Border Protection ("CBP") to liquidate appropriate entries without regard to antidumping duties. We invite interested parties to comment on these preliminary results. We request parties who submit argument in these proceedings to submit with the argument (1) a statement of the issues and (2) a brief summary of the argument.

SUPPLEMENTARY INFORMATION:

Background

On November 29, 2001, the Department published the antidumping duty order on hot-rolled steel (*see Antidumping Duty Order: Certain Hot-Rolled Carbon Steel Flat Products From Thailand*, 66 FR 59562) ("*HRC Order*"). On November 1, 2002, the Department published a notice of opportunity to request an administrative review for this order covering the period May 3, 2001, through October 31, 2002 (*see Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 67 FR 66612). On November 27, 2002, SSI requested a review in accordance with 19 CFR 351.213(b)(2) of the Department's regulations, and the petitioners requested reviews of SSI, Nakornthai Strip Mill Public Co., Ltd. ("Nakornthai"), and Siam Strip Mill Public Co., Ltd. ("Siam Strip") under 19 CFR 351.213(b)(1) of the Department's regulations. The petitioners are Nucor Corporation, National Steel Corporation, and United States Steel Corporation. On November 29, 2002, Siam Strip submitted a letter to the Department stating that they did not sell, ship, or export subject merchandise to the United States during the POR. The Department initiated these reviews on December 26, 2002 (*see Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 67 FR 78772).

On January 6, 2003, the Department issued the antidumping duty questionnaire to SSI, Nakornthai, and Siam Strip. On January 10, 2003, petitioners filed a letter requesting that the Department verify the questionnaire responses filed by SSI, Nakornthai, and Siam Strip. On February 19, 2003, SSI filed its section A response. On February 26, 2003, SSI filed its sections B and C responses and on March 5, 2003, SSI filed its section D response. Petitioners filed comments on SSI's section A through D responses on the following dates: March 6, 2003, for section A; March 12, 2003, for sections B and C; and March 20, 2003 for section D. On March 20, 2003, and May 12, 2003, SSI filed comments in response to petitioners' comments. SSI filed its supplemental responses on the following dates: April 15, 2003, for supplemental section A, April 22, 2003, for supplemental section D, and April 15, 2003, for supplemental sections B and C. Petitioners filed additional comments on SSI's supplemental sections A through C responses on April 24, 2003, and May 7, 2003. On May 7, 2003, SSI submitted minor corrections to the data provided in its questionnaire responses. Petitioners filed cost verification comments on May 12, 2003, and May 14, 2003, and sales verification comments on June 10, 2003. SSI filed its third supplemental response with the Department on May 22, 2003. On July 7, 2003, the Department extended the deadline for the preliminary results of this administrative review to no later than December 1, 2003 (*see Notice of Extension of Time Limit for Preliminary Results of Antidumping Duty Administrative Review: Certain Hot-Rolled Carbon Steel Flat Products from Thailand*, 68 FR 40243). On October 6, 2003, SSI submitted additional minor corrections to the data provided in its questionnaire responses. As requested, on October 14, 2003, SSI submitted a revised version of its COP/CV database and a revised sales data base on November 18, 2003.

Partial Rescission

On January 22, 2002, Nakornthai submitted a statement that it had no sales to the United States during the POR. On January 24, 2002, Siam Strip submitted a similar statement. The Department conducted a query of CBP data on entries of hot-rolled steel from Thailand made during the POR, and confirmed that these companies made no entries during this period. Therefore, we preliminarily determine to rescind these reviews with respect to Nakornthai and Siam Strip in accordance with section 351.213 (d)(3) of the Department's regulations.

Scope of the Review

For purposes of this review, the products covered are certain hot-rolled carbon steel flat products of a rectangular shape, of a width of 0.5 inch or greater, neither clad, plated, nor coated with metal and whether or not painted, varnished, or coated with plastics or other non-metallic substances, in coils (whether or not in successively superimposed layers), regardless of thickness, and in straight lengths, of a thickness of less than 4.75 mm and of a width measuring at least 10 times the thickness. Universal mill plate (*i.e.*, flat-rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 mm, but not exceeding 1250 mm, and of a thickness of not less than 4.0 mm, not in coils and without patterns in relief) of a thickness not less than 4.0 mm is not included within the scope of this review.

Specifically included within the scope of this review are vacuum degassed, fully stabilized (commonly referred to as interstitial-free (IF)) steels, high strength low alloy (HSLA) steels, and the substrate for motor lamination steels. IF steels are recognized as low carbon steels with micro-alloying levels of elements such as titanium or niobium (also commonly referred to as columbium), or both, added to stabilize carbon and nitrogen elements. HSLA steels are recognized as steels with micro-alloying levels of elements such as chromium, copper, niobium, vanadium, and molybdenum. The substrate for motor lamination steels contains micro-alloying levels of elements such as silicon and aluminum.

Steel products to be included in the scope of this review, regardless of definitions in the Harmonized Tariff Schedule of the United States (HTSUS), are products in which: (i) Iron predominates, by weight, over each of the other contained elements; (ii) the carbon content is 2 percent or less, by weight; and (iii) none of the elements listed below exceeds the quantity, by weight, respectively indicated:

1.80 percent of manganese, or
2.25 percent of silicon, or
1.00 percent of copper, or
0.50 percent of aluminum, or
1.25 percent of chromium, or
0.30 percent of cobalt, or
0.40 percent of lead, or
1.25 percent of nickel, or
0.30 percent of tungsten, or
0.10 percent of molybdenum, or
0.10 percent of niobium, or
0.15 percent of vanadium, or
0.15 percent of zirconium.

All products that meet the physical and chemical description provided above are within the scope of this review unless otherwise excluded. The following products, by way of example, are outside or specifically excluded from the scope of this review:

- Alloy hot-rolled steel products in which at least one of the chemical elements exceeds those listed above (including, *e.g.*, American Society for Testing and Materials (ASTM) specifications A543, A387, A514, A517, A506).
- Society of Automotive Engineers (SAE)/American Iron & Steel Institute (AISI) grades of series 2300 and higher.
- Ball bearing steels, as defined in the HTSUS.
- Tool steels, as defined in the HTSUS.
- Silico-manganese (as defined in the HTSUS) or silicon electrical steel with a silicon level exceeding 2.25 percent.
- ASTM specifications A710 and A736.
- USS abrasion-resistant steels (USS AR 400, USS AR 500).
- All products (proprietary or otherwise) based on an alloy ASTM specification (sample specifications: ASTM A506, A507).
- Non-rectangular shapes, not in coils, which are the result of having been processed by cutting or stamping and which have assumed the character of articles or products classified outside chapter 72 of the HTSUS.

The merchandise subject to this review is classified in the HTSUS at subheadings: 7208.10.15.00, 7208.10.30.00, 7208.10.60.00, 7208.25.30.00, 7208.25.60.00, 7208.26.00.30, 7208.26.00.60, 7208.27.00.30, 7208.27.00.60, 7208.36.00.30, 7208.36.00.60, 7208.37.00.30, 7208.37.00.60, 7208.38.00.15, 7208.38.00.30, 7208.38.00.90, 7208.39.00.15, 7208.39.00.30, 7208.39.00.90, 7208.40.60.30, 7208.40.60.60, 7208.53.00.00, 7208.54.00.00, 7208.90.00.00, 7211.14.00.90, 7211.19.15.00, 7211.19.20.00, 7211.19.30.00, 7211.19.45.00, 7211.19.60.00, 7211.19.75.30, 7211.19.75.60, and 7211.19.75.90. Certain hot-rolled carbon steel flat products covered by this review, including: vacuum degassed fully stabilized; high strength low alloy; and the substrate for motor lamination steel may also enter under the following tariff numbers: 7225.11.00.00, 7225.19.00.00, 7225.30.30.50, 7225.30.70.00, 7225.40.70.00, 7225.99.00.90, 7226.11.10.00, 7226.11.90.30, 7226.11.90.60, 7226.19.10.00, 7226.19.90.00, 7226.91.50.00, 7226.91.70.00, 7226.91.80.00, and 7226.99.00.00. Subject merchandise may also enter under 7210.70.30.00, 7210.90.90.00, 7211.14.00.30, 7212.40.10.00, 7212.40.50.00, and 7212.50.00.00. Although the HTSUS subheadings are provided for convenience and CBP purposes, the written description of the merchandise under review is dispositive.

Period of Review

The POR is May 3, 2001, through October 31, 2002.

Verification

As provided in section 782(i) of the Tariff Act of 1930, as amended ("the Act"), we verified cost of production from May 26, 2003, through May 30, 2003, and sales information from October 27, 2003, through November 1, 2003, using standard verification procedures, including an examination of relevant sales, cost, financial records, and selection of original documentation containing relevant information. Our verification results are outlined in the public versions of the verification reports and are on file in the Department's Central Records Unit located in Room B–099 of the main Department of Commerce Building, 14th Street and Constitution Avenue, NW., Washington, DC.

Affiliated Party Issue

On March 12, 2003, and May 6, 2003, the petitioner submitted comments alleging that SSI and one of its U.S. customers, a trading company, were affiliated under section 771(33) of the Act. Because of this alleged affiliation, the petitioner claims that the prices from this alleged affiliated customer to the first unaffiliated customers in the U.S. should be used.

SSI and company A (the identity of this other company is business proprietary and can not be disclosed in this public notice) are owners in a number of other ventures (*e.g.*, Thai Cold Rolled Steel and Thai Coated Rolled Steel) and, therefore, the petitioner claims that SSI and company A are affiliated. Company A also is one of two companies that jointly control the U.S. customer. Petitioner claims that because: (1) SSI is affiliated with company A via their involvement in other ventures, and (2) company A is in a position to control the U.S. customer, the Department should find that SSI and the U.S. customer are affiliated and that their relationship has the potential to impact the product under investigation.

The petitioner also emphasizes that the characteristics of SSI's and company A's relationship indicate that there is affiliation based on, for example, the long term capital investment of both

companies in the other ventures and inter-company business relationships (*e.g.*, SSI sells subject merchandise to Thai Cold Rolled and company A acts as SSI's selling arm for some of its non-subject merchandise).

SSI claims that it is not affiliated with company A pursuant to Section 771(33)(F) nor the U.S. customer, a trading company, and thus it did not supplement its U.S. sales data with the sales made by the U.S. trading company to the next unaffiliated customer. SSI claims that it did not commonly control Thai Cold Rolled Steel with company A nor was it required to sell subject merchandise to Thai Cold Rolled Steel and that Thai Cold Rolled Steel has other suppliers. Additionally, SSI points out that it does not have ownership in company A nor in the U.S. customer, and that there are no common family members, officers or director, partner or employer/employee relationships between SSI and company A or the U.S. customer.

In this case, the Department preliminarily does not find that SSI and the U.S. customer were affiliated, because the nature of the relationship between SSI and company A, one of the two owners of the U.S. customer, with respect to non-subject merchandise did not have the potential to impact decisions concerning the production, pricing or cost of the subject merchandise.

Fair Value Comparisons

To determine whether sales of subject merchandise were made in the United States at less than fair value, we compared the export price (EP) or constructed export price (CEP) to the NV, as described in the "Export Price and Constructed Export Price" and "Normal Value" sections of this notice. In accordance with section 777A(d)(1)(A)(i) of the Act, we calculated EPs and compared these prices to weighted-average normal values or CVs, as appropriate.

Export Price

In accordance with section 772 of the Act, we calculated either an EP or a CEP, depending on the nature of each sale. Section 772(a) of the Act defines EP as the price at which the subject merchandise is first sold by the foreign exporter or producer before the date of importation to an unaffiliated purchaser in the United States, or to an unaffiliated purchaser for exportation to the United States. We have preliminarily determined that all of SSI's U.S. sales during the POR were EP sales.

We calculated EP based on prices charged to the first unaffiliated U.S. customer, which was a trading company in this case. We used the final contract date as the date of sale as determined by the Department in the original investigation. We based EP on the packed CFR prices to the first unaffiliated purchasers outside Thailand. We made deductions for movement expenses in accordance with section 772(c)(2)(A) of the Act, including: foreign inland freight and foreign brokerage and handling.

Duty Drawback

Section 772(c)(1)(B) of the Act provides that EP shall be increased by "the amount of any import duties imposed by the country of exportation which have been rebated, or which have not been collected, by reason of the exportation of the subject merchandise to the United States." The Department determines that an adjustment to U.S. price for claimed duty drawback is appropriate when a company can demonstrate that (1) there is a sufficient link between the import duty and the rebate, and (2) there are sufficient imports of the imported material to account for the duty drawback received for the export of the manufactured product (the "two pronged test"). *See Rajinder Pipes Ltd.* v. *United States*, 70 F. Supp. 2d 1350, 1358 (CIT 1999). *See also Certain Welded Carbon Standard Steel Pipes and Tubes from India: Final Results of New Shippers Antidumping Duty Administrative Review, 62 FR 47632 (September 10, 1997) and Federal Mogul Corp.* v. *United States*, 862 F. Supp. 384, 409 (CIT 1994).

During the POR, SSI received duty drawback for its U.S. sales and for certain sales in the home market that were exported from Thailand as non-subject merchandise by unaffiliated further manufacturers and produced from SSI hot-rolled coil. Under the Thai Board of Investment ("BOI") duty drawback scheme, SSI applies to the BOI for a duty exemption for the imported slab with the BOI maintaining a running tally of SSI's requests for slab exemptions. When SSI intends to export, it again applies to the BOI requesting a duty exemption for the exported material. During verification, the Department found that SSI maintains its duty exemption records on a FIFO (first in first out) basis. SSI noted that it applies for the BOI import surcharge exemption when the company expects export sales. Additionally, we noted that when SSI submits its application for duty drawback, SSI is not required by the Thai government to link the specific imported slab to the specific exported hot-rolled coil. The Department concludes that for SSI's U.S. sales, the company uses a methodology consistent with Department practice for applying its duty drawback received upon export of subject merchandise to the United States. *See Far East Mach. II*, 12 CIT at 975, 699 F.Supp. at 312; *see also Final Determination of Sales at Less Than Fair Value: Oil Country Tubular Good from Korea*, 60 FR 33561 (June 28, 1995). SSI meets the second criterion of the two-pronged test for its U.S. sales, as all of SSI's hot-rolled steel is made from imported slab. With respect to the duty drawback SSI received from certain home market sales that were ultimately exported, SSI received duty drawback from the BOI when the exporting company applied for the duty drawback. SSI stated that only one of its home market customers applied to the BOI for the import duty exemption. For this company, SSI applied the amount of drawback it received from the BOI over all of SSI's home market sales to this company. SSI stated that it is unable to determine which sales of hot-rolled coil it made to this further processor were destined for the export market versus the home market. Verification confirms SSI's assertion about the inability to directly link SSI's hot-rolled coil to the further manufactured product, but the Department believes that SSI's domestic customer has an adequate link to the BOI drawbacks for the following reasons. First, SSI stated that this customer applies for duty drawback in the same manner as SSI. Second, SSI's accounting records demonstrate that the company records in its accounting system these duty drawbacks in a similar manner as its U.S. market drawbacks. Thus, the Department finds that there is a sufficient link for SSI's local export sales. Since SSI received this duty drawback from its slab imports, the second criterion of the two pronged test for these local export sales is the same as SSI's direct U.S. sales: all of SSI's hot-rolled steel is made from imported slab. For these preliminary results, the Department is adding the duty drawback as reported by SSI to normal value.

Normal Value

After testing home market viability and whether home market sales were at below-cost prices, the Department calculated NV as noted in the "Price-to-Price Comparisons" and "Price-to-CV Comparison" sections of this notice.

A. Home Market Viability

In determining that there was a sufficient volume of sales in the home market to serve as a viable basis for calculating NV (*i.e.*, the aggregate volume of home market sales of the foreign like product is equal to or greater than five percent of the aggregate volume of U.S. sales), the Department compared the respondent's volume of home market sales of the foreign like product to the volume of U.S. sales of the subject merchandise, in accordance with section 773(a)(1)(C) of the Act. Since the respondent's aggregate volume of home market sales of the foreign like product was greater than five percent of its aggregate volume of U.S. sales for the subject merchandise, the Department determined that the home market was viable for SSI. Therefore, the Department has based NV on home market sales in the usual commercial quantities and in the ordinary course of trade.

On February 14, 2003, petitioners alleged that a particular market situation existed in Thailand during the POR that does not permit a proper comparison with the export price or constructed export price and, therefore, normal value should be calculated based on prices to a third country. On March 4, 2003, SSI responded to petitioners February 14, 2003, letter urging the Department to reject petitioners' claim of a particular market situation in Thailand during the POR. On March 17, 2003, petitioners responded to SSI's March 4, 2003, response. On March 20, 2003, the Department issued a supplemental questionnaire to SSI regarding the alleged particular market situation. SSI filed its supplemental response on March 28, 2003. On April 24, 2003, petitioners filed additional comments and requested that the Department obtain third country sales information from SSI for calculating normal value. On June 10, 2003, the Department issued a second supplemental questionnaire to SSI regarding the particular market situation. SSI filed its response on June 20, 2003. The Department issued a decision memorandum to interested parties stating that a particular market situation did not exist during the POR in Thailand (*see Memorandum For Barbara Tillman, Acting Deputy Assistant Secretary for Import Administration, Group III, From Richard O. Weible, Director, Office 8*, August 22, 2003). The Department concluded that there was insufficient information to suggest that a particular market situation exists, whereby prices for the domestic like product are not competitively set. We have preliminary determined that there is not a particular market situation in Thailand that would prevent a proper comparison with the export price or constructed export price. Therefore, the Department did not request SSI to report sales to its largest third country market.

B. Arm's Length Sales

SSI reported that during the POR, it made sales in the home market to affiliated and unaffiliated end users and distributors/retailers. SSI reported the downstream sales of its affiliated reseller of the foreign like product and SSI's sales to its affiliated customers who consumed the hot-rolled steel in the production of non-subject merchandise. If any sales to affiliated customers in the home market were not made at arm's length prices, we excluded those sales from our analysis because we considered them to be outside the ordinary course of trade. To test whether these sales were made at arm's-length prices, we compared on a model-specific basis the starting prices of sales to affiliated and unaffiliated customers, net of all billing adjustments, early payment discounts, movement charges, direct selling expenses, and home market packing. Where prices to the affiliated party fell, on average, between 98 percent and 102 percent, inclusive, of sale prices of the same or comparable merchandise sold by that exporter or producer to all unaffiliated customers, we determined that sales made to the related party were at arm's length. *See Antidumping Proceedings: Affiliated Party Sales in the Ordinary Course of Trade*, 67 FR 69186 (November 15, 2002). We performed the arm's length test on the sales to SSI's affiliated customers who consumed the hot-rolled steel. We excluded sales to those customers who failed the arm's length test. In our home market NV calculation, we have included SSI's reported downstream sales.

C. Cost of Production Analysis

The Department initiated a sales below cost investigation to determine in fact whether the respondent made home market sales during the POR at prices below their cost of production (COP) within the meaning of section 773(b) of the Act. Based on the fact that the Department had disregarded sales in the less than fair value investigation because they were made below the COP, the Department has reasonable grounds, in accordance with section 773(b)(2)(A)(ii) of the Act, to believe or suspect that respondent made home market sales in this review at prices below the cost of producing the merchandise.

In accordance with section 773(b)(3) of the Act, we calculated COP based on the sum of SSI's cost of materials and fabrication for the foreign like product, plus an amount for home market SG&A, interest expenses, and the cost of all expenses incidental to placing the foreign like product in condition packed ready for shipment.

We used the information from SSI's section D questionnaire and supplemental questionnaire responses to calculate COP, except in the following adjustment. First, we revised the company's reported general and administrative ("G&A") expenses to exclude foreign exchange gains and losses. Second, we revised the company's reported financial expenses to include the total net consolidated foreign exchange gain. In addition, we revised the company's reported financial expenses to exclude gains from investments in affiliated parties. For further discussion of these adjustments, *see Memorandum to Neal Halper, from Mark Todd, regarding Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Results*, dated December 1, 2003.

We compared the weighted-average COP to home market sales prices of the foreign like product, as required under section 773(b) of the Tariff Act. In determining whether to disregard home market sales made at prices less than the COP, we examined whether such sales were made (i) in substantial quantities over an extended period of time, and (ii) at prices which permitted the recovery of all costs within a reasonable period of time. On a product-specific basis, we compared COP to home market prices, less any applicable movement charges, billing adjustments, taxes, and discounts and rebates.

Pursuant to section 773(b)(2)(C)(i) of the Act, where less than twenty percent of SSI's sales of a given product were at prices less than the COP, we did not disregard any below-cost sales of that product because we determined that the below-cost sales were not made in "substantial quantities." Where 20 percent or more of a respondent's sales of a given product during the POR were at prices less than the COP, we determined such sales to have been made in substantial quantities, in accordance with section 773(b)(2)(C)(i) of the Act, within an extended period of time, in accordance with section 773(b)(2)(B) of the Act. In such cases, pursuant to section 773(b)(2)(D) of the Act, we also determined that such sales were not made at prices which would

permit recovery of all costs within a reasonable period of time. Therefore, we disregarded the below-cost sales. Where all sales of a specific product were at prices below the COP, we disregarded all sales of that product and relied on sales of similar merchandise to match.

The results of our cost test for SSI indicated that for certain comparison market models, more than 20 percent of the sales of the model were at prices below COP and were at prices which would not permit the recovery of all costs within a reasonable period of time. In accordance with section 773(b)(1) of the Act, we therefore excluded these below-cost sales from our analysis and used the remaining sales as the basis for determining NV.

Constructed Value

In accordance with section 773(e)(1) of the Act, we calculated constructed value ("CV") based on the sum of respondent's cost of materials, fabrication, SG&A, including interest expenses, and profit. In accordance with section 773(e)(2)(A) of the Act, we based SG&A and profit on the amounts incurred and realized by SSI in connection with the production and sale of the foreign like product in the ordinary course of trade for consumption in the foreign country. We used the CV data SSI supplied in its section D questionnaire and supplemental questionnaire responses with the exception of the adjustments to COP noted above.

Price-to-Price Comparisons

We compared SSI's U.S. sales with contemporaneous sales of the foreign like product in the comparison market. We considered identical hot-rolled products based on the following model-match characteristics: whether or not painted, quality, carbon content, yield strength, thickness, width, coil versus cut-to-length, temper rolled, pickled, edge trim, and patterns in relief. We used a 20 percent DIFMER cost deviation cap as the maximum difference in cost allowable for similar merchandise, which we calculated as the absolute value of the difference between the U.S. and comparison market variable costs of manufacturing divided by the total cost of manufacturing of the U.S. product. In accordance with the Department's practice, where all contemporaneous matches to a U.S. sale observation resulted in DIFMER adjustments exceeding 20 percent of the COM of the U.S. product, we based NV on CV.

For those product comparisons for which there were sales at prices at or above the COP, we based NV on the home market prices to home market customers. We made adjustments, where appropriate, for physical differences in the merchandise in accordance with section 773(a)(6)(C)(ii) of the Act. In accordance with section 773(a)(6)(A) and (B), we deducted home market packing costs and added U.S. packing costs. In addition, we made adjustments for differences in circumstance of sale, as appropriate.

Price-to-CV Comparisons

In accordance with section 773(a)(4) of the Act, we based NV on CV if we were unable to find a contemporaneous comparison market match for the U.S. sale. We calculated CV based on the cost of materials and fabrication employed in producing the subject merchandise, SG&A, interest expense and profit. In accordance with section 773(e)(2)(A) of the Act, we based SG&A expenses, interest and profit on the amounts SSI incurred and realized in connection with the production and sale of the foreign like product in the ordinary course of trade for consumption in Thailand. For selling expenses, we used the weighted-average home market selling expenses. Where appropriate, we made COS adjustments to CV in accordance with section 773(a)(8) of the Act and 19 CFR 351.410 of the Department's regulations.

Currency Conversion

We made currency conversions into U.S. dollars, where appropriate, in accordance with Section 773A(a) of the Act, based on the exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank.

Level of Trade

In accordance with section 773(a)(1)(B) of the Act, to the extent practicable, we determine NV based on sales in the comparison market at the same level of trade (LOT) as the EP transaction or constructed export price (CEP) transaction. The LOT in the comparison market is the LOT of the starting-price sales in the comparison market or, when NV is based on CV, the LOT of the sales from which we derive SG&A expenses and profit. With respect to U.S. price for EP transactions, the LOT is also that of the starting-price sale, which is usually from the exporter to the importer. For CEP, the LOT is that of the constructed sale from the exporter to the importer.

To determine whether comparison market sales are at a different LOT from U.S. sales, we examined stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. If the comparison market sales are at a different LOT, and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison market sales at the LOT of the export transaction, the Department makes a LOT adjustment in accordance with section 773(a)(7)(A) of the Act. For CEP sales, if the NV level is more remote from the factory than the CEP level and there is no basis for determining whether the differences in the levels between NV and CEP sales affects price comparability, the Department adjusts NV under section 773(A)(7)(B) of the Act (the CEP offset provision). *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from South Africa*, 62 FR 61731 (November 19, 1997).

SSI claimed one LOT in the U.S. market and two LOTs in the home market: LOT 1 includes sales through unaffiliated trading companies and direct sales to end-users and LOT 2 includes sales through affiliated trading companies and to service centers. SSI claimed that all U.S. sales are at the same LOT as LOT 1 in the home market. SSI reported four channels of distribution for home market sales made through LOT 1 and LOT 2. The first channel of distribution was sales made through unaffiliated trading companies with two customer categories (*i.e.*, unaffiliated end-users and service centers). The second channel of distribution was sales made through affiliated trading companies with two customer categories (*i.e.*, unaffiliated end-users and service centers). The third channel of distribution was direct sales with two customer categories (*i.e.*, affiliated and unaffiliated end-users and service centers). The fourth channel of distribution was direct sales with one customer category (*i.e.*, affiliated end-users or resellers). In analyzing SSI's selling activities for its home market and U.S. market, we determined that essentially the same services were provided for both markets. Due to the proprietary nature of the levels of these selling activities, for further analysis, *see Memorandum To The File, From Michael Ferrier, regarding Administrative Review of the Antidumping Duty Order on Certain Hot-Rolled Carbon Steel Flat Products from Thailand; Preliminary Results Analysis for SSI*, December 1, 2003. Therefore, based upon this information, we have preliminarily determined that the LOT for all EP sales is the same as the LOT for all sales in the home market. Accordingly, because we find the U.S. sales and home market sales to be at the same LOT, no LOT adjustment under section 773(a)(7)(A) of the Act is warranted for SSI.

Preliminary Results of Review

As a result of our review, we preliminarily determine the weighted-average dumping margin for the period May 5, 2001, through October 31, 2002, to be as follows:

Manufacturer/Exporter	Margin (percent)
Sahaviriya Steel Industries Public Company Limited	0.00

The cash deposit rates for Siam Strip and Nakornthai will continue to be the cash deposit rate established in the original investigation. *See HRC Order.*

Article VI.5 of the General Agreement on Tariffs and Trade (GATT 1994) prohibits assessing dumping duties on the portion of the margin attributable to an export subsidy. In this case, the product under investigation is subject to a countervailing duty investigation. *See Notice of Final Affirmative Countervailing Duty Determination: Certain Hot-Rolled Carbon Steel Flat Products from Thailand*, 66 FR 50410 (October 3, 2001).

Therefore, for all entries of hot-rolled steel from Thailand entered, or withdrawn from warehouse, for consumption on or after the date on which the order in the companion countervailing duty investigation is published in the **Federal Register**, we will request for duty deposit purposes that the CBP deduct the portion of the margin attributable to export subsidies as determined in the countervailing duty investigation. Since SSI received a zero margin for this administrative review, no adjustment for export subsidies is necessary.

The Department will disclose calculations performed in connection with these preliminary results of review within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b) of the Department's regulations. An interested party may request a hearing within 30 days of publication. *See* CFR 351.310(c) of the Department's regulations. Any hearing, if requested, will be held 37 days after the date of publication, or the first business day thereafter, unless the Department alters the date per 19 CFR 351.310(d) of the Department's regulations. Interested parties may submit case briefs and/or written comments no later than 30 days after the date of publication of these preliminary results of review. Rebuttal briefs and rebuttals to written comments, limited to issues raised in the case briefs and comments, may be filed no later than 35 days after the date of publication of this notice. Parties who submit argument in these proceedings are requested to submit with the argument (1) a statement of the issue, (2) a brief summary of the argument and (3) a table of authorities. The Department will issue the final results of this administrative review, including the results of our analysis of the issues raised in any such written comments or at a hearing, within 120 days of publication of these preliminary results.

Upon completion of the administrative review, the Department shall determine, and CBP shall assess, antidumping duties on all appropriate entries. In accordance with 19 CFR 351.212(b)(1) of the Department's regulations, we have calculated assessment rates for the merchandise based on the ratio of the total amount of antidumping duties calculated for the examined sales made during the POR to the total quantity of the sales used to calculate those duties. This rate will be assessed uniformly on all entries of merchandise of that manufacturer/exporter made during the POR. To determine whether the duty assessment rate was *de minimis*, in accordance with the requirement set forth in 19 CFR 351.106(c)(2) of the Department's regulations, we calculated ad valorem ratios based on the EPs. We will instruct CBP to liquidate without regard to antidumping duties any entries for which the assessment rate is *de minimis* (*i.e.*, less than 0.50 percent), pursuant to 19 CFR 351.106(c)(2) of the Department's regulations. The Department will issue appropriate appraisement instructions directly to CBP upon completion of the review.

Furthermore, the following deposit requirement will be effective upon completion of the final results of this administrative review for all shipments of hot-rolled steel from Thailand entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(1) of the Act: (1) The cash deposit rate for the reviewed company will be the rate established in the final results of administrative review, except if the rate is less than 0.50 percent and, therefore, *de minimis* within the meaning of 19 CFR 351.106 of the Department's regulations, the cash deposit will be zero; (2) for merchandise exported by manufacturers or exporters not covered in this review but covered in the original less-than-fair-value (LTFV) investigation or a previous review, the cash deposit will continue to be the most recent rate published in the final determination or final results for which the manufacturer or exporter received a company-specific rate; (3) if the exporter is not a firm covered in this review, or the original investigation, but the manufacturer is, the cash deposit rate will be that established for the manufacturer of the merchandise in the final results of this review, or the LTFV investigation; and (4) if neither the exporter nor the manufacturer is a firm covered in this review or any previous reviews, the cash deposit rate will be 3.86 percent, the "all others" rate established in the LTFV investigation (*see HRC Order*).

This deposit requirement, when imposed at the final results, shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) of the Department's regulations to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

We are issuing and publishing this notice in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: December 1, 2003.

James J. Jochum,

Assistant Secretary for Import Administration.

[FR Doc. 03–30388 Filed 12–5–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–421–807]

Certain Hot-Rolled Carbon Steel Flat Products from the Netherlands; Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of preliminary results of antidumping duty administrative review.

SUMMARY: In response to requests from Nucor Corporation and Bethlehem Steel Corporation, National Steel Corporation,

and United States Steel Corporation (collectively, petitioners), the Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on certain hot-rolled carbon steel flat products (hot-rolled steel) from the Netherlands (A–421–807). This administrative review covers imports of subject merchandise from Corus Staal BV (Corus Staal). The period of review is May 3, 2001 through October 31, 2002.

We preliminarily determine that sales of hot-rolled steel from the Netherlands in the United States have been made below normal value (NV). If these preliminary results are adopted in our final results of administrative review, we will instruct U.S. Customs and Border Protection (Customs) to assess antidumping duties based on the difference between the export price (EP) or constructed export price (CEP) and NV. Interested parties are invited to comment on these preliminary results. Parties who submit argument in this proceeding are requested to submit with the argument: (1) A statement of the issues, (2) a brief summary of the argument, and (3) a table of authorities.

EFFECTIVE DATE: December 8, 2003.

FOR FURTHER INFORMATION CONTACT: Deborah Scott or Robert James, Antidumping and Countervailing Duty Enforcement Group III, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, telephone: (202) 482–2657 or (202) 482–0649, respectively.

SUPPLEMENTARY INFORMATION:

Background

On November 29, 2001, the Department published the antidumping duty order on certain hot-rolled carbon steel flat products from the Netherlands. *See Antidumping Duty Order: Certain Hot-Rolled Carbon Steel Flat Products from the Netherlands*, 66 FR 59565 (November 29, 2001). On November 1, 2002, the Department published the opportunity to request administrative review of, *inter alia*, certain hot-rolled carbon steel flat products from the Netherlands for the period May 3, 2001 through October 31, 2002. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 67 FR 66612 (November 1, 2002).

In accordance with 19 CFR 351.213(b)(1), on November 26 and 27, 2002,[1] petitioners requested that we conduct an administrative review of sales of the subject merchandise made by Corus Staal. On December 26, 2002, the Department published in the **Federal Register** a notice of initiation of this antidumping duty administrative review covering the period May 3, 2001 through October 31, 2002. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 67 FR 78772 (December 26, 2002).

On January 9, 2003, the Department issued its antidumping duty questionnaire to Corus Staal. Corus Staal submitted its response to section A of the questionnaire on January 30, 2003, and its response to sections B, C, D, and E of the questionnaire on March 4, 2003. On March 10, 2003, the Department issued a supplemental questionnaire for section A, to which Corus Staal responded on March 28, 2003. On March 31, 2003, the Department issued a supplemental questionnaire for sections D and E of the questionnaire; Corus Staal submitted its response on April 21, 2003. On April 23, 2003, the Department issued a supplemental questionnaire for sections B and C of the questionnaire. Corus Staal filed its response to the supplemental questionnaire for sections B and C on May 19, 2003. We verified Corus Staal's submitted data as discussed below in the "Verification" section of this notice. Finally, on October 3, 2003, we issued a supplemental questionnaire requesting Corus Staal to report entered value data. Corus Staal responded to this request on October 17, 2003.

Because it was not practicable to complete this review within the normal time frame, on June 19, 2003, we published in the **Federal Register** our notice of extension of time limit for this review. *See Certain Hot-Rolled Carbon Steel Flat Products from the Netherlands; Antidumping Duty Administrative Review; Extension of Time Limit*, June 19, 2003 (68 FR 36769). This extension established the deadline for these preliminary results as December 1, 2003.

Period of Review

The POR is May 3, 2001, through October 31, 2002.

Scope of the Review

For purposes of this order, the products covered are certain hot-rolled carbon steel flat products of a rectangular shape, of a width of 0.5 inch or greater, neither clad, plated, nor coated with metal and whether or not painted, varnished, or coated with plastics or other non-metallic substances, in coils (whether or not in successively superimposed layers), regardless of thickness, and in straight lengths, of a thickness of less than 4.75 mm and of a width measuring at least 10 times the thickness. Universal mill plate (*i.e.*, flat-rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 mm, but not exceeding 1250 mm, and of a thickness of not less than 4.0 mm, not in coils and without patterns in relief) of a thickness not less than 4.0 mm is not included within the scope of this review. Specifically included within the scope of this order are vacuum degassed, fully stabilized (commonly referred to as interstitial-free (IF)) steels, high strength low alloy (HSLA) steels, and the substrate for motor lamination steels. IF steels are recognized as low carbon steels with micro-alloying levels of elements such as titanium or niobium (also commonly referred to as columbium), or both, added to stabilize carbon and nitrogen elements. HSLA steels are recognized as steels with micro-alloying levels of elements such as chromium, copper, niobium, vanadium, and molybdenum. The substrate for motor lamination steels contains micro-alloying levels of elements such silicon and aluminum.

Steel products to be included in the scope of this order, regardless of definitions in the Harmonized Tariff Schedule of the United States (HTS), are products in which: (i) Iron predominates, by weight, over each of the other contained elements; (ii) the carbon content is 2 percent or less, by weight; and (iii) none of the elements listed below exceeds the quantity, by weight, respectively indicated:

1.80 percent of manganese, or
2.25 percent of silicon, or
1.00 percent of copper, or
0.50 percent of aluminum, or
1.25 percent of chromium, or
0.30 percent of cobalt, or
0.40 percent of lead, or
1.25 percent of nickel, or
0.30 percent of tungsten, or
0.10 percent of molybdenum, or
0.10 percent of niobium, or
0.15 percent of vanadium, or
0.15 percent of zirconium.

All products that meet the physical and chemical description provided above are within the scope of this order unless otherwise excluded. The following products, by way of example, are outside or specifically excluded from the scope of this order:

[1] Nucor filed its request for administrative review on November 26, 2002, while Bethlehem Steel Corporation, National Steel Corporation, and United States Steel Corporation filed their request for review on November 27, 2002.

• Alloy hot-rolled steel products in which at least one of the chemical elements exceeds those listed above (including, *e.g.*, ASTM specifications A543, A387, A514, A517, A506).
• Society of Automotive Engineers (SAE)/American Iron and Steel Institute (AISI) grades of series 2300 and higher.
• Ball bearings steels, as defined in the HTS.
• Tool steels, as defined in the HTS.
• Silico-manganese (as defined in the HTS) or silicon electrical steel with a silicon level exceeding 2.25 percent.
• ASTM specifications A710 and A736.
• USS Abrasion-resistant steels (USS AR 400, USS AR 500).
• All products (proprietary or otherwise) based on an alloy ASTM specification (sample specifications: ASTM A506, A507).
• Non-rectangular shapes, not in coils, which are the result of having been processed by cutting or stamping and which have assumed the character of articles or products classified outside chapter 72 of the HTS.

The merchandise subject to this order is classified in the HTS at subheadings: 7208.10.15.00, 7208.10.30.00, 7208.10.60.00, 7208.25.30.00, 7208.25.60.00, 7208.26.00.30, 7208.26.00.60, 7208.27.00.30, 7208.27.00.60, 7208.36.00.30, 7208.36.00.60, 7208.37.00.30, 7208.37.00.60, 7208.38.00.15, 7208.38.00.30, 7208.38.00.90, 7208.39.00.15, 7208.39.00.30, 7208.39.00.90, 7208.40.60.30, 7208.40.60.60, 7208.53.00.00, 7208.54.00.00, 7208.90.00.00, 7211.14.00.90, 7211.19.15.00, 7211.19.20.00, 7211.19.30.00, 7211.19.45.00, 7211.19.60.00, 7211.19.75.30, 7211.19.75.60, and 7211.19.75.90. Certain hot-rolled flat-rolled carbon steel flat products covered by this order, including: vacuum degassed fully stabilized; high strength low alloy; and the substrate for motor lamination steel may also enter under the following tariff numbers: 7225.11.00.00, 7225.19.00.00, 7225.30.30.50, 7225.30.70.00, 7225.40.70.00, 7225.99.00.90, 7226.11.10.00, 7226.11.90.30, 7226.11.90.60, 7226.19.10.00, 7226.19.90.00, 7226.91.50.00, 7226.91.70.00, 7226.91.80.00, and 7226.99.00.00. Subject merchandise may also enter under 7210.70.30.00, 7210.90.90.00, 7211.14.00.30, 7212.40.10.00, 7212.40.50.00, and 7212.50.00.00. Although the HTS subheadings are provided for convenience and U.S. Customs purposes, the written description of the scope of this order is dispositive.

Verification

As provided in section 782(i) of the Tariff Act, we verified the cost and sales information provided by Corus Staal using standard verification procedures, including on-site inspection of the manufacturer's facilities and the examination of relevant sales and financial records. Our verification results are outlined in the public and proprietary versions of the cost and sales verification reports, which are on file in the Central Records Unit of the Department. The Department verified Corus Staal's cost responses from May 12, 2003, through May 16, 2003, and sales responses from June 16, 2003, through June 20, 2003. The Department also verified the value-added information reported by Corus Staal for Thomas Steel Strip Corporation (Thomas Steel) from August 21, 2003, through August 22, 2003. The results of these verifications are found in the cost verification report dated October 2, 2003, the Corus Staal sales verification report dated September 25, 2003, and the Thomas Steel value-added verification report dated October 1, 2003, on file in the Central Records Unit of the Department in room B–099 of the main Commerce building.

Affiliated-Party Sales Issues

During the POR, Corus Staal sold the foreign like product to several affiliated resellers in the home market. These include Namascor BV (Namascor), a service center wholly-owned by Corus Staal, and Laura Metaal BV (Laura), a manufacturer and service center in which Corus Staal's parent company, Corus Nederland BV, has a shareholder interest. For purposes of our analysis, we used Namascor's and Laura's sales to unaffiliated customers, and, where Laura consumed the subject merchandise purchased from Corus Staal in its manufacturing operations, we used Corus Staal's sales to Laura. In addition, Corus Staal sold the foreign like product to Feijen Service Center, a business unit of Corus Service Center Maastricht (Feijen), and to Corus Vlietjonge BV (Vlietjonge),[2] also a service center. Both Feijen and Vlietjonge are affiliated with Corus Staal through the former British Steel companies, whose parent, British Steel plc, merged with Koninklijke Hoogovens NV (now Corus Nederland BV) in October 1999 to form the Corus Group plc. In its January 30, 2003, response to the Department's January 9, 2003, questionnaire and in a letter dated April 9, 2003, Corus Staal requested an exemption from reporting downstream sales by Feijen and Vlietjonge because of the nature and quantity of the products sold. On April 16, 2003, the Department excused Corus Staal from reporting downstream sales by Feijen and Vlietjonge; therefore, we have used Corus Staal's sales to Feijen and Vlietjonge to perform our analysis.

In the U.S. market, Corus Staal sold subject merchandise to Thomas Steel, a further manufacturer of battery-quality hot band steel. Thomas Steel is wholly-owned by Corus USA Inc., which in turn is wholly-owned by Corus Staal's parent company, Corus Nederland BV. Claiming the value-added in the United States by Thomas Steel exceeded substantially the value of the subject merchandise as imported, Corus Staal utilized the "simplified reporting" option for the merchandise further processed by Thomas Steel. Pursuant to section 772(e) of the Tariff Act, when the subject merchandise is imported by an affiliated person and the value added in the United States by the affiliated person is likely to exceed substantially the value of the subject merchandise, we will determine the constructed export price for such merchandise using the price of identical or other subject merchandise if there is a sufficient quantity of sales to provide a reasonable basis for comparison and we determine that the use of such sales is appropriate. If there is not a sufficient quantity of such sales or if we determine that using the price of identical or other subject merchandise is not appropriate, we may use any other reasonable basis to determine the constructed export price. *See, e.g., Preliminary Results and Rescission in Part of Antidumping Duty Administrative Review: Gray Portland Cement and Clinker From Mexico*, 67 FR 57379, 57381 (September 10, 2002) (unchanged for final results, 68 FR 1816 (January 14, 2003)). Consistent with the Department's regulations, we have determined for these preliminary results that the estimated value added in the United States by Thomas Steel accounted for at least 65 percent of the price charged to the first unaffiliated customer for the merchandise as sold in the United States, and therefore, the value added is likely to exceed substantially the value of the subject merchandise. We have also preliminarily determined there is a sufficient quantity of sales remaining to provide a reasonable basis for comparison and that we have no reason to believe another methodology would be appropriate. *See* the memorandum from Robert James and Richard Weible to Barbara E. Tillman, "Simplified

[2] Namascor also resold some of the foreign like product to Vlietjonge.

Reporting' and Value Added in the United States by Thomas Steel," dated July 3, 2003. See also the Thomas Steel value-added verification report at pages 1 to 13, which supports Corus Staal's claim that the value-added in the United States by Thomas Steel exceeded substantially the value of the subject merchandise as imported.

Fair Value Comparisons

To determine whether sales of hot-rolled steel from the Netherlands to the United States were made at less than fair value, we compared the EP or CEP to the NV, as described in the "Export Price and Constructed Export Price" and "Normal Value" sections of this notice, below. In accordance with section 777A(d)(2) of the Tariff Act, we compared the EPs and CEPs of individual U.S. transactions to monthly weighted-average NVs.

Product Comparisons

In accordance with section 771(16) of the Tariff Act, we considered all products produced by the respondent, covered by the descriptions in the "Scope of the Review" section of this notice, to be foreign like products for the purpose of determining appropriate product comparisons to U.S. sales of hot-rolled steel from the Netherlands.

We have relied on the following eleven criteria to match U.S. sales of subject merchandise to comparison-market sales of the foreign like product: whether painted or not, quality, carbon content level, yield strength, thickness, width, whether coil or cut-to-length sheet, whether temper rolled or not, whether pickled or not, whether mill or trimmed edge, and whether the steel is rolled with or without patterns in relief.

Where there were no sales of identical merchandise in the home market to compare to U.S. sales, we compared U.S. sales to the next most similar foreign like product on the basis of the characteristics and reporting instructions listed in the Department's January 9, 2003, questionnaire.

Export Price and Constructed Export Price

Section 772(a) of the Tariff Act defines EP as "the price at which the subject merchandise is first sold (or agreed to be sold) before the date of importation by the producer or exporter of the subject merchandise outside of the United States to an unaffiliated purchaser for exportation to the United States, as adjusted under subsection (c)." Section 772(b) of the Tariff Act defines CEP as the price at which the subject merchandise is first sold (or agreed to be sold) in the United States before or after the date of importation by or for the account of the producer or exporter of such merchandise or by a seller affiliated with the producer or exporter, to a purchaser not affiliated with the producer or exporter, as adjusted under sections 772(c) and (d)."

In the instant review Corus Staal sold subject merchandise through two affiliated steel service centers which further manufacture flat-rolled steel products: Rafferty-Brown Steel Co., Inc. of Connecticut and Rafferty-Brown Steel Co. of North Carolina (collectively, Rafferty Brown). Corus Staal reported each of these transactions as CEP transactions, and the remainder of its U.S. sales of subject merchandise as EP transactions. However, after reviewing the evidence on the record of this review, we have preliminarily determined that certain of Corus Staal's reported EP transactions are classified properly as CEP sales because these sales occurred in the United States. Such a determination is consistent with section 772(b) of the Tariff Act and the U.S. Court of Appeals for the Federal Circuit's (Federal Circuit's) decision in *AK Steel Corp. et. al.* v. *United States*, 226 F.3d 1361, 1374 (Fed. Cir. 2000) (*AK Steel*). In *AK Steel*, the Federal Circuit examined the definitions of EP and CEP, noting "the plain meaning of the language enacted by Congress in 1994 focuses on where the sale takes place and whether the foreign producer or exporter and the U.S. importer are affiliated, making these two factors dispositive of the choice between the two classifications." *AK Steel* at 1369. It also stated that "the critical differences between EP and CEP sales are whether the sale or transaction takes place inside or outside the United States and whether it is made by an affiliate," and noted the phrase "outside the United States" had been added to the 1994 statutory definition of EP (called "purchase price" in the pre-1994 statute). *AK Steel* at 1368–70. Referring to the CEP definition, the *AK Steel* Court then defined the term "seller" as "one who contracts to sell" and the term "sold" as "the transfer of ownership or title." *AK Steel* at 1371. Thus, the classification of a sale as either EP or CEP depends upon where the contract for sale was concluded (*i.e.*, in or outside the United States) and whether the foreign producer or exporter is affiliated with the U.S. importer.

During the POR Corus Staal executed all agreements with U.S. customers and amendments related to those agreements in the Netherlands. *See* Corus Staal's May 19, 2003, supplemental questionnaire response (May 19, 2003, SQR) at 2. Corus Staal also served as the importer of record for subject merchandise entered during the POR. *See* Corus Staal's January 30, 2003, questionnaire response (January 30, 2003, QR) at A–15, footnote 10. However, prior to the start of the POR, agreements and amendments were signed by Corus America, Inc. (CAI). May 19, 2003, SQR at 2. CAI is the entity through whom Corus Steel USA Inc. (CSUSA), a subsidiary of Corus Staal's parent company, Corus Nederland BV, has a contract to provide administrative and some selling functions on Corus Staal's behalf.[1] See the January 30, 2003, QR at A–18 and the March 28, 2003 supplemental questionnaire response (March 28, 2003, SQR) at A–6. In these instances when CAI signed the agreements and amendments, CAI would draft the document and forward it to Corus Staal in the Netherlands for approval. After approving the draft document by dating and signing it, Corus Staal would send the document back to CAI, who would then sign and issue the final version to the customer. *See* Sales Verification Report at 4–5. Thus, some sales made during the second quarter of 2001 (*i.e.*, from May 3 to June 30, 2001) were made subject to agreements and/or amendments signed by CAI in the United States. May 19, 2003, SQR at 2. Because the contracts for sales made during May and June 2001 were concluded in the United States, we find these sales to be CEP transactions within the meaning of section 772(b) of the Tariff Act.

With respect to the remainder of Corus Staal's reported EP sales (*i.e.*, those sales to unaffiliated U.S. customers made between July 1, 2001, and October 30, 2002), we have continued to classify them as EP transactions because the contracts governing these sales were signed by Corus Staal in the Netherlands and Corus Staal served as the importer of record.

For those sales which we are classifying as EP transactions, we calculated the price of Corus Staal's EP sales in accordance with section 772(a) of the Tariff Act. We based EP on the packed, delivered, duty paid prices for export to end users and service centers in the U.S. market. We adjusted gross unit price for billing errors, freight revenue, certain minor processing expenses, and early payment discounts, where applicable. We also made deductions for movement expenses in

[1] CSUSA receives an income from Corus Staal for these services, which are provided by employees of CAI; CAI, in turn, bills CSUSA on a monthly basis. *See* the March 28, 2003, SQR at A–5 and A–6.

accordance with section 772(c)(2)(A) of the Tariff Act; these included, where appropriate, foreign inland freight, foreign brokerage and handling, international freight, U.S. customs duties, U.S. inland freight, and U.S. warehousing expenses.

For those transactions categorized as CEP sales, we calculated price in conformity with section 772(b) of the Tariff Act. We based CEP on the packed, delivered or delivered, duty paid prices to unaffiliated purchasers in the United States. Where applicable, we made adjustments to gross unit price for billing errors, freight revenue, certain minor processing expenses, and early payment discounts. We also made deductions for movement expenses in accordance with section 772(c)(2)(A) of the Tariff Act; these included, where appropriate, foreign inland freight, foreign brokerage and handling, international freight, U.S. customs duties, U.S. inland freight, and U.S. warehousing expenses. In accordance with section 772(d)(1) of the Tariff Act, we deducted those selling expenses associated with economic activities occurring in the United States, including direct selling expenses (imputed credit, warranty expenses, and travel expenses incurred by Corus Staal's U.S. sales team), inventory carrying costs, and indirect selling expenses. For CEP sales, we also made an adjustment for profit in accordance with section 772(d)(3) of the Tariff Act. Finally, with respect to subject merchandise to which value was added in the United States by Rafferty Brown prior to sale to unaffiliated customers, we deducted the cost of further manufacture in accordance with section 772(d)(2) of the Tariff Act.

Section 201 Duties

The Department notes that merchandise subject to this review is subject to duties imposed under section 201 of the Trade Act of 1974, as amended (section 201 duties). Because the Department has not previously addressed the appropriateness of deducting section 201 duties from EP and CEP, on September 9, 2003, the Department published a request for public comments on this issue (68 FR 53104). Comments were received by October 9, 2003, and rebuttal comments were received by November 7, 2003. Since the Department has not made a determination on this issue at this time, for purposes of these preliminary results, no adjustment has been made to EP and CEP.

Level of Trade

In accordance with section 773(a)(1)(B)(i) of the Tariff Act, to the extent practicable, we determine NV based on sales in the comparison market at the same level of trade (LOT) as the CEP transaction. The NV LOT is that of the starting price of the comparison sales in the home market or, when NV is based on constructed value (CV), that of the sales from which we derive selling, general, and administrative (SG&A) expenses and profit. For EP, the LOT is also the level of the starting price sale, which is usually from the exporter to the importer. For CEP, it is the level of the constructed sale from the exporter to the importer.

To determine whether NV sales are at a different LOT than CEP sales, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. If the comparison market sales are at a different LOT, and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison market sales at the LOT of the export transaction, we make a LOT adjustment under section 773(a)(7)(A) of the Tariff Act. Finally, for CEP sales, if the NV level is more remote from the factory than the CEP level and there is no basis for determining whether the differences in the levels between NV and CEP sales affect price comparability, we adjust NV under section 773(a)(7)(B) of the Tariff Act (*i.e.*, the CEP offset provision).

In implementing these principles in the instant review, we obtained information from Corus Staal about the marketing stages involved in its reported U.S. and home market sales, including a description of the selling activities performed by Corus Staal and the level to which each selling activity was performed for each channel of distribution. In identifying LOTs for U.S. CEP sales we considered the selling functions reflected in the starting price after any adjustments under section 772(d) of the Tariff Act.

In the home market, Corus Staal reported two channels of distribution (sales by Corus Staal and sales through its affiliated service centers Namascor and Laura) and three customer categories (end users, steel service centers, and trading companies). *See, e.g.*, Corus Staal's January 30, 2003, QR at A–14. For both channels of distribution in the home market, Corus Staal performed similar selling functions, including strategic and economic planning, advertising, freight and delivery arrangements, technical/warranty services, and sales logistics support. The remaining selling activities performed did not differ significantly by channel of distribution, with the exception of market research and research and development activities, which were performed only by Corus Staal. *See* Corus Staal's January 30, 2003, QR at Exhibit A–8 and pages A–20 through A–34. Because channels of distribution do not qualify as separate levels of trade when the selling functions performed for each channel are sufficiently similar, we have determined that one LOT exists for Corus Staal's home market sales. In addition, we note that while Corus Staal initially claimed there were differences in LOT between home market direct sales and sales through home market affiliated service centers and, therefore, it was entitled to a LOT adjustment for U.S. sales compared to sales made by home market affiliated service centers, it later withdrew its claim. See Corus Staal's January 30, 2003, QR at A–17 and its May 19, 2003 SQR at 16.

In the U.S. market, Corus Staal reported two channels of distribution for its sales of subject merchandise during the POR: EP sales made directly to unaffiliated U.S. customers and CEP sales made through its affiliated service centers, RBC and RBN. For sales classified as EP, Corus Staal reported two customer categories, end users and steel service centers. *See, e.g.*, Corus Staal's January 30, 2003, QR at A–15 and A–16. However, as explained in the "Export Price and Constructed Export Price" section of this notice, we have preliminary determined that certain of Corus Staal's reported EP transactions (*i.e.*, sales from May 3, 2001, to June 30, 2001) are classified properly as CEP sales.

With regard to CEP sales made through RBC and RBN, Corus Staal claimed that a CEP offset is appropriate because RBC's and RBN's sales are made at a point in the distribution process that is less advanced than Corus Staal's home market sales. *See* Corus Staal's January 30, 2003, QR at A–17. As noted above, we determine the U.S. LOT on the basis of the CEP starting price minus the expenses and profit deducted pursuant to section 772(d) of the Tariff Act. In analyzing respondent's request for a CEP offset, we reviewed information provided in section A of Corus Staal's response regarding selling activities performed and services offered in the U.S. and foreign markets. We found there to be few differences in the selling functions performed by Corus Staal on its sales to affiliated service centers in the United States and those

performed on its sales to home market customers. For example, Corus Staal provided similar freight and delivery services, technical/warranty assistance, and sales logistics support on its sales to home market customers and on its sales to RBC and RBN. See, *e.g.*, Corus Staal's January 30, 2003, QR at pages A–20 through A–46. Therefore, the Department has preliminarily determined the record does not support Corus Staal's claim that home market sales are at a different, more advanced LOT than its CEP sales to RBC and RBN. Accordingly, no CEP offset adjustment to NV is warranted for Corus Staal's reported CEP sales.

As to Corus Staal's sales to unaffiliated customers in the United States which we have reclassified as CEP transactions, we considered whether a LOT adjustment may be appropriate. As noted above, we have preliminary determined that one LOT exists in the home market, and therefore, there is no basis upon which to determine whether there is a pattern of consistent price differences between LOTs. Thus, we examined whether Corus Staal's home market sales were at a different, more advanced LOT than its sales to U.S. unaffiliated customers to determine whether a CEP offset was necessary. Comparing the selling activities performed and services offered by Corus Staal on its sales to unaffiliated customers in the United States to those activities performed on its home market sales, we found there to be few differences in the selling functions performed by Corus Staal on its sales to unaffiliated customers in the United States and those performed for sales in the home market. For example, on sales to both home market customers and to unaffiliated U.S. customers, Corus Staal provided similar strategic and economic planning, freight and delivery services, technical/warranty assistance, research and development, and sales logistics support. *See, e.g.*, Corus Staal's January 30, 2003, QR at pages A–20 through A–46. As a result, we preliminarily find that there is not a significant difference in selling functions performed in the U.S. and foreign markets on these sales. Thus, we find that Corus Staal's home market sales and sales to unaffiliated customers in the United States were made at the same LOT; accordingly, no CEP offset adjustment is warranted.

Finally, for those sales which we are continuing to classify as EP, we considered whether a LOT adjustment is warranted. Again, comparing the selling activities performed and services offered by Corus Staal on its sales to unaffiliated customers in the United States to those activities performed on its home market sales, we found there to be few differences in the selling functions performed by Corus Staal. Thus, we find that Corus Staal's home market sales and sales to unaffiliated customers in the United States were made at the same LOT, and therefore, no LOT adjustment is necessary.

Normal Value

A. Selection of Comparison Market

To determine whether there is a sufficient volume of sales in the home market to serve as a viable basis for calculating NV (*i.e.*, the aggregate volume of home market sales of the foreign like product is greater than five percent of the aggregate volume of U.S. sales), we compared the respondent's volume of home market sales of the foreign like product to the volume of U.S. sales of the subject merchandise, in accordance with section 773(a)(1)(B) of the Tariff Act. Because the respondent's aggregate volume of home market sales of the foreign like product was greater than five percent of its aggregate volume of U.S. sales for the subject merchandise, we determined the home market was viable. *See, e.g.*, Corus Staal's January 30, 2003, QR at Attachment A–2.

B. Affiliated Party Transactions and Arm's-Length Test

Corus Staal reported that it made sales in the home market to affiliated resellers and end-users. Sales to affiliated customers in the home market not made at arm's-length prices are excluded from our analysis because we consider them to be outside the ordinary course of trade. See 19 CFR 351.102(b). Prior to performing the arm's-length test, we aggregated multiple customer codes reported for individual affiliates in order to treat them as single entities. *See Antidumping Proceedings: Affiliated Party Sales in the Ordinary Course of Trade*, 67 FR 69186, 69194 (November 15, 2002) (*Modification to Affiliated Party Sales*). To test whether the sales to affiliates were made at arm's length prices, we compared on a model-specific basis the starting prices of sales to affiliated and unaffiliated customers net of all direct selling expenses, discounts and rebates, movement charges, and packing. Where prices to the affiliated party were, on average, within a range of 98 to 102 percent of the price of identical or comparable merchandise to the unaffiliated parties, we determined that the sales made to the affiliated party were at arm's length. *See Modification to Affiliated Party Sales* at 69187–88. In accordance with the Department's practice, we only included in our margin analysis those sales to affiliated parties that were made at arm's length.

C. Cost of Production Analysis

Because we disregarded sales of certain products made at prices below the cost of production (COP) in the investigation of hot-rolled steel from the Netherlands (*see Notice of Final Determination of Sales at Less Than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products From The Netherlands*, 66 FR 50408 (October 3, 2001), as amended, *Notice of Amended Final Determination of Sales at Less Than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products From The Netherlands*, 66 FR 55637 (November 2, 2001)), we have reasonable grounds to believe or suspect that Corus Staal made sales of the foreign like product at prices below the COP, as provided by section 773(b)(2)(A)(ii) of the Tariff Act. Therefore, pursuant to section 773(b)(1) of the Tariff Act, we initiated a COP investigation of sales by Corus Staal.

In accordance with section 773(b)(3) of the Tariff Act, we calculated the weighted-average COP for each model based on the sum of Corus Staal's material and fabrication costs for the foreign like product, plus amounts for SG&A and packing costs. The Department relied on the COP data reported by Corus Staal, except as noted below:

—For merchandise produced at the direct sheet plant (DSP), Corus Staal claimed a start-up adjustment for the entire POR. Having determined that the startup period ended on November 30, 2001, we decreased Corus Staal's claimed startup adjustment accordingly. In addition, for DSP products, we amortized the capital cost (the startup adjustment allowed) of the DSP line over a ten-year period and included 11 months of amortization cost in the total cost of manufacture (TCOM).

—We adjusted Corus Staal's reported standard cost because respondent overstated the amount of general and administrative (G&A) expenses that should have been removed from the standard cost.

—We revised the G&A ratio to exclude the G&A expenses accounted for in the standard cost and to include two adjustments identified on the first day of the cost verification.

—We adjusted Corus Staal's TCOM to reflect the unexplained difference found in its cost reconciliation at the cost verification.

For further detail regarding these adjustments, *see* the Department's "Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Results" (COP Analysis Memorandum), dated December 1, 2003.

Corus Staal reported separate COPs to distinguish between identical CONNUMs produced in both its conventional hot-rolling mill and direct sheet plant. For purposes of our analysis, however, we are not distinguishing between products produced at the two facilities, because the type of facility used to produce the subject merchandise is not one of the criteria used to match U.S. sales of subject merchandise to sales of the foreign like product. For a list of the product characteristics considered in our analysis, see the section "Product Comparisons" above. Thus, we weight-averaged the COPs reported for identical products produced in both the conventional hot-rolling mill and direct sheet plant.[4] We then compared the weighted-average COP figures to the home market sales prices of the foreign like product as required under section 773(b) of the Tariff Act, to determine whether these sales had been made at prices below COP. On a product-specific basis, we compared the COP to home market prices net of billing adjustments, freight revenue, certain minor processing expenses, discounts and rebates, and any applicable movement charges.

In determining whether to disregard home market sales made at prices below the COP, we examined, in accordance with sections 773(b)(1)(A) and (B) of the Tariff Act: whether, within an extended period of time, such sales were made in substantial quantities; and whether such sales were made at prices which permitted the recovery of all costs within a reasonable period of time in the normal course of trade. Pursuant to section 773(b)(2)(C) of the Tariff Act, where less than 20 percent of the respondent's home market sales of a given model were at prices below the COP, we did not disregard any below-cost sales of that model because we determined that the below-cost sales were not made within an extended period of time and in "substantial quantities." Where 20 percent or more of the respondent's home market sales of a given model were at prices less than COP, we disregarded the below-cost sales because: (1) They were made within an extended period of time in "substantial quantities," in accordance with sections 773(b)(2)(B) and (C) of the Tariff Act, and (2) based on our comparison of prices to the weighted-average COPs for the POR, they were at prices which would not permit the recovery of all costs within a reasonable period of time, in accordance with section 773(b)(2)(D) of the Tariff Act.

Our cost test for Corus Staal revealed that for home market sales of certain models, less than 20 percent of the sales of those models were at prices below the COP. We therefore retained all such sales in our analysis and used them as the basis for determining NV. Our cost test also indicated that for certain models, more than 20 percent of the home market sales of those models were sold at prices below COP within an extended period of time and were at prices which would not permit the recovery of all costs within a reasonable period of time. Thus, in accordance with section 773(b)(1) of the Tariff Act, we excluded these below-cost sales from our analysis and used the remaining above-cost sales as the basis for determining NV.

[4] We also eliminated the distinction between conventional hot-rolled mill and direct sheet plant products in Corus Staal's home market and U.S. sales databases.

D. Constructed Value

In accordance with section 773(e) of the Tariff Act, we calculated CV based on the sum of the Corus Staal's material and fabrication costs, SG&A expenses, profit, and U.S. packing costs. We calculated the COP component of CV and weight-averaged the CVs reported for identical products produced in both the conventional hot-rolling mill and direct sheet plant as described above in the "Cost of Production Analysis" section of this notice. In accordance with section 773(e)(2)(A) of the Tariff Act, we based SG&A expenses and profit on the amounts incurred and realized by the respondent in connection with the production and sale of the foreign like product in the ordinary course of trade, for consumption in the foreign country. For selling expenses, we used the actual weighted-average home market direct and indirect selling expenses.

E. Price-to-Price Comparisons

We calculated NV based on prices to unaffiliated customers or prices to affiliated customers we determined to be at arm's length. We adjusted gross unit price for billing adjustments, discounts, rebates, freight revenue, and certain minor processing expenses, where appropriate. We made deductions, where appropriate, for foreign inland freight and warehousing, pursuant to section 773(a)(6)(B) of the Tariff Act. In addition, we made adjustments for differences in cost attributable to differences in physical characteristics of the merchandise (*i.e.*, difmer) pursuant to section 773(a)(6)(C)(ii) of the Tariff Act and 19 CFR 351.411, as well as for differences in circumstances of sale (COS) in accordance with section 773(a)(6)(C)(iii) of the Tariff Act and 19 CFR 351.410. We made COS adjustments for imputed credit expenses (offset by interest revenue), warranty expenses, and credit insurance. Finally, we deducted home market packing costs and added U.S. packing costs in accordance with sections 773(a)(6)(A) and (B) of the Tariff Act.

F. Price-to-CV Comparisons

In accordance with section 773(a)(4) of the Tariff Act, we based NV on CV if we were unable to find a home market match of such or similar merchandise. Where appropriate, we made adjustments to CV in accordance with section 773(a)(8) of the Tariff Act. Where we compared CV to CEP, we deducted from CV the weighted-average home market direct selling expenses.

Currency Conversion

We made currency conversions into U.S. dollars based on the exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank, in accordance with section 773A(a) of the Tariff Act.

Preliminary Results of Review

As a result of our review, we preliminarily determine the weighted-average dumping margin for the period May 3, 2001, through October 31, 2002, to be as follows:

Manufacturer/exporter	Margin (percent)
Corus Staal BV (Corus Staal) ..	5.34

The Department will disclose calculations performed in connection with these preliminary results of review within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b). Interested parties may submit case briefs and/or written comments no later than 30 days after the date of publication of these preliminary results of review. Rebuttal briefs and rebuttals to written comments, limited to issues raised in the case briefs and comments, may be filed no later than 35 days after the date of publication of this notice. Parties who submit argument in these proceedings are requested to submit with the argument: (1) A statement of the issue, (2) a brief summary of the argument, and (3) a table of authorities. An interested party may request a hearing within 30 days of publication. *See* CFR 351.310(c). Any hearing, if requested, will be held 37 days after the date of

publication, or the first business day thereafter, unless the Department alters the date per 19 CFR 351.310(d). The Department will issue the final results of these preliminary results, including the results of our analysis of the issues raised in any such written comments or at a hearing, within 120 days of publication of these preliminary results.

Assessment Rates

Upon completion of this administrative review, the Department will determine, and Customs shall assess, antidumping duties on all appropriate entries. As a result of the Court of International Trade's decision in *Corus Staal BV et al* v. *United States*, Consol. Court No. 02–00003, Slip Op. 03–127 (CIT September 29, 2003), we will not assess duties on merchandise that entered between October 30, 2001 and November 28, 2001, inclusive. For more information, *see Certain Hot-Rolled Carbon Steel Flat Products From The Netherlands: Notice of Final Court Decision and Suspension of Liquidation*, 68 FR 60912 (October 24, 2003). Thus, in accordance with 19 CFR 351.212(b)(1), we will calculate an importer-specific *ad valorem* assessment rate for merchandise based on the ratio of the total amount of antidumping duties calculated for the examined sales made during the POR to the total customs value of the sales used to calculate those duties less the total customs value of the sales of merchandise that entered between October 30, 2001, and November 28, 2001, inclusive. This rate will be assessed uniformly on all entries of that particular importer made during the periods May 3, 2001, through October 29, 2001, and November 29, 2001, through October 31, 2002. The Department will issue appropriate assessment instructions directly to Customs within 15 days of publication of the final results of review.

Furthermore, the following deposit requirements will be effective upon completion of the final results of this administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(1) of the Tariff Act: (1) The cash deposit rate for the reviewed company will be the rate established in the final results of the administrative review (except that no deposit will be required if the rate is zero or *de minimis*, *i.e.*, less than 0.5 percent); (2) if the exporter is not a firm covered in this review, or the original investigation, but the manufacturer is, the cash deposit rate will be that established for the most recent period for the manufacturer of the merchandise; and (3) if neither the exporter nor the manufacturer is a firm covered in this review, any previous reviews, or the LTFV investigation, the cash deposit rate will be 2.59 percent, the "all others" rate established in the LTFV investigation. *See Antidumping Duty Order: Certain Hot-Rolled Carbon Steel Flat Products from the Netherlands*, 67 FR 59565 (November 29, 2001).

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

We are issuing and publishing this notice in accordance with sections 751(a)(1) and 777(i)(1) of the Tariff Act.

Dated: December 1, 2003.

James J. Jochum,

Assistant Secretary for Import Administration.

[FR Doc. 03–30391 Filed 12–5–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A-549–820]

Notice of Final Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances: Prestressed Concrete Steel Wire Strand from Thailand

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final determination of sales at less than fair value and negative final determination of critical circumstances.

EFFECTIVE DATE: December 8, 2003.

FOR FURTHER INFORMATION CONTACT: Carol Henninger or Constance Handley, at (202) 482–3003 or (202) 482–0631, respectively; Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Final Determination

We determine that prestressed concrete steel wire strand (PC strand) from Thailand is being sold, or is likely to be sold, in the United States at less than fair value (LTFV), as provided in section 735 of the Tariff Act of 1930, as amended (the Act). The estimated margins of sales at LTFV are shown in the *Suspension of Liquidation* section of this notice. In addition, we determine that critical circumstances do not exist with respect to PC strand produced and exported by the respondent in this investigation as well as all other producers/exporters.

Case History

The preliminary determination in this investigation was published on July 17, 2003. *See Notice of Preliminary Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Negative Preliminary Determination of Critical Circumstances: Prestressed Concrete Steel Wire Strand from Thailand*, 68 FR 42373 (July 17, 2003) (Preliminary Determination). Since the publication of the preliminary determination, the following events have occurred:

On July 25, 2003, the Department of Commerce (the Department) received a request from the respondent in this investigation, Siam Industrial Wire Co., Ltd. and Cementhai SCT USA (collectively, SIW), proposing a suspension agreement in accordance with the Department's regulations at 19 CFR 351.208. On several occasions, the Department discussed the proposed suspension agreement with counsel to SIW, who subsequently concluded that a suspension agreement would not be pursued. *See Memorandum from Gary Taverman, Director, Office 5, to the File, Re: PC Strand from Thailand - Proposed Suspension Agreement* (November 24, 2003).

In September 2003, the Department verified the questionnaire responses submitted by SIW. The sales and cost verification reports were issued in October 2003. On October 23, 2003, we received case briefs from the petitioners[1] and SIW. On October 28, 2003, we received a rebuttal brief from SIW. A public hearing was held on November 3, 2003.

Scope of Investigation

For purposes of this investigation, PC strand is steel strand produced from wire of non-stainless, non-galvanized steel, which is suitable for use in

[1] The petitioners in this investigation are American Spring Wire Corp., Insteel Wire Products Company, and Sumiden Wire Products Corp.

prestressed concrete (both pretensioned and post-tensioned) applications. The product definition encompasses covered and uncovered strand and all types, grades, and diameters of PC strand.

The merchandise under investigation is currently classifiable under subheadings 7312.10.3010 and 7312.10.3012 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise under investigation is dispositive.

Period of Investigation

The period of investigation (POI) is January 1, 2002, through December 31, 2002. This period corresponds to the four most recent fiscal quarters prior to the month of the filing of the petition (*i.e.*, January 2003) involving imports from a market economy, and is in accordance with the Department's regulations. *See* 19 CFR 351.204(b)(1).

Critical Circumstances

Section 735(a)(3) of the Act provides that the Department will determine that critical circumstances exist if there is a reasonable basis to believe or suspect that: (A)(i) there is a history of dumping and material injury by reason of dumped imports in the United States or elsewhere of the subject merchandise, or (ii) the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the subject merchandise at less than fair value and that there was likely to be material injury by reason of such sales, and (B) there have been massive imports of the subject merchandise over a relatively short period.

In the preliminary determination of this investigation, the Department found that critical circumstances did not exist because there was no reasonable basis to impute knowledge of dumping with respect to imports of PC strand from Thailand, nor was there a history of dumping of PC strand from Thailand. *See Preliminary Determination* at 42377; *see also, Antidumping Duty Investigation of Prestressed Concrete Steel Wire Strand from Thailand Preliminary Negative Determination of Critical Circumstances Memorandum from Salim Bhabhrawala and Carol Henninger to Gary Taverman*, July 10, 2003, on file in the CRU. The Department normally considers margins of 25 percent or more for export price (EP) sales and 15 percent or more for constructed export price (CEP) sales sufficient to impute knowledge of dumping. *See e.g., Preliminary Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate From the People's Republic of China*, 62 FR 31972, 31978 (June 11, 1997). Because the final dumping margin for the respondent is less than 15 percent, we continue to find there is no reasonable basis to impute knowledge of dumping with respect to these imports from Thailand. As noted in the preliminary determination, it is the Department's practice to conduct its critical circumstances analysis of companies in the "All Others" category based on the experience of the investigated company. Because there is no history of dumping of PC strand from Thailand and the final dumping margin for SIW is less than 15 percent, we are determining that critical circumstances do not exist for SIW, as well as all other producers/exporters covered by the "All Others" rate. Accordingly, we find that critical circumstances do not exist for imports of PC strand from Thailand.

Verification

As provided in section 782(i) of the Act, we conducted verification of the cost and sales information submitted by SIW. We used standard verification procedures including examination of relevant accounting and production records, and original source documents provided by the respondent.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs submitted by parties to this proceeding are listed in the appendix to this notice and addressed in the Memorandum from Holly A. Kuga, Acting Deputy Assistant Secretary, to James J. Jochum, Assistant Secretary for Import Administration, RE: Issues and Decision Memorandum for the Final Determination of the Investigation of Prestressed Concrete Steel Wire Strand from Thailand (Decision Memorandum), dated December 1, 2003, and are hereby adopted by this notice. The Decision Memorandum is on file in room B-099 of the main Department building. In addition, a complete version of the Decision Memorandum can be accessed directly on the World Wide Web at www.ita.doc.gov/import_admin/records/frn. The paper and electronic versions of the Decision Memorandum are identical in content.

Changes Since The Preliminary Determination

Based on our findings at verification, and analysis of comments received, we have made adjustments to the preliminary determination calculation methodologies in calculating the final dumping margins in this proceeding. These adjustments are discussed in the Decision Memorandum for this investigation.

Continuation of Suspension of Liquidation

In accordance with section 735(c)(1)(B) of the Act, we are directing U.S. Customs and Border Patrol (CBP) to continue to suspend liquidation of all entries of PC strand exported from Thailand, that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of the preliminary determination. CBP shall continue to require a cash deposit or the posting of a bond based on the estimated weighted-average dumping margins shown below. The suspension of liquidation instructions will remain in effect until further notice.

We determine that the following weighted-average dumping margins exist for Thailand:

Manufacturer/exporter	Margin (percent)
Siam Industrial Wire Co., Ltd.	12.99
All Others	12.99

International Trade Commission Notification

In accordance with section 735(d) of the Act, we have notified the International Trade Commission (ITC) of our determination. The ITC will determine, within 45 days, whether imports of subject merchandise from Canada are causing material injury, or threaten material injury, to an industry in the United States. If the ITC determines that material injury or threat of material injury does not exist, this proceeding will be terminated and all securities posted will be refunded or canceled. If the ITC determines that such injury does exist, the Department will issue an antidumping order directing CBP officials to assess antidumping duties on all imports of the subject merchandise entered, or withdrawn from warehouse for consumption on or after the effective date of the suspension of liquidation.

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested.

Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This determination is issued and published in accordance with sections 735(d) and 777(i)(1) of the Act.

Dated: December 1, 2003.

James J. Jochum,

Assistant Secretary for Import Administration.

APPENDIX

Issues Covered in Decision Memorandum

Comment 1: Allocation of Conversion Costs
Comment 2: Treatment of SIW's Home Market Back-to-Back Sales
Comment 3: Whether to Allow a Constructed Export Price Offset
Comment 4: Corrections to SIW's U.S. sales
Comment 5: Corrections to SIW's Home Market Sales
Comment 6: Corrections to Errors Contained in the Preliminary Margin Calculation Program

[FR Doc. 03–30383 Filed 12–5–03; 8:45 am]
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DEPARTMENT OF COMMERCE

International Trade Administration

[A-201–831]

Notice of Final Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances: Prestressed Concrete Steel Wire Strand from Mexico

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final determination of sales at less than fair value and negative final determination of critical circumstances.

EFFECTIVE DATE: December 8, 2003.

FOR FURTHER INFORMATION CONTACT: James Kemp or Daniel O'Brien at (202) 482–5346 or (202) 482–1376, respectively; AD/CVD Enforcement Group II Office 5, Import Administration, Room 1870, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Final Determination

We determine that prestressed concrete steel wire strand (PC strand) from Mexico is being sold, or is likely to be sold, in the United States at less than fair value (LTFV), as provided in section 735 of the Tariff Act of 1930, as amended (the Act). The estimated margins of sales at LTFV are shown in the *Suspension of Liquidation* section of this notice. In addition, we determine that critical circumstances do not exist with respect to PC strand produced and exported by either Cablesa S.A. de C.V. (Cablesa) or Aceros Camesa S.A. de C.V. (Camesa) as well as all other producers/exporters.

Case History

The preliminary determination in this investigation was published on July 17, 2003. *See Notice of Preliminary Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Affirmative Preliminary Determination of Critical Circumstances in Part: Prestressed Concrete Steel Wire Strand from Mexico*, 68 FR 42373, 42378 (July 17, 2003) (*Preliminary Determination*). Since the publication of the preliminary determination, the following events have occurred:

In August and September 2003, the Department of Commerce (the Department) verified the questionnaire responses submitted by Camesa and Cablesa. The sales and cost verification reports were issued in October 2003. On October 22, 2003, we received case briefs from the petitioners[1] and Cablesa. On October 28, 2003, we received rebuttal briefs from the petitioners, Camesa, and Cablesa. As the only request for a public hearing was made by the petitioners, and that request was subsequently withdrawn, a public hearing was not held.

Scope of Investigation

For purposes of this investigation, PC strand is steel strand produced from wire of non-stainless, non-galvanized steel, which is suitable for use in prestressed concrete (both pretensioned and post-tensioned) applications. The product definition encompasses covered and uncovered strand and all types, grades, and diameters of PC strand.

The merchandise under investigation is currently classifiable under subheadings 7312.10.3010 and 7312.10.3012 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise under investigation is dispositive.

[1] The petitioners in this investigation are American Spring Wire Corp., Insteel Wire Products Company, and Sumiden Wire Products Corp.

Period of Investigation

The period of investigation (POI) is January 1, 2002, through December 31, 2002. This period corresponds to the four most recent fiscal quarters prior to the month of the filing of the petition (*i.e.*, January 2003) and is in accordance with our regulations. *See* 19 CFR 351.204(b)(1).

Class or Kind

In the preliminary determination, we found that uncovered and covered PC strand constituted the same class or kind of merchandise. Since the preliminary determination, no parties commented on this finding. Therefore, for the final determination, we continue to find that uncovered and covered PC strand constitute the same class or kind of merchandise for the reasons outlined in the *Memorandum from James Kemp and Salim Bhabhrawala, to Holly Kuga, Acting Deputy Assistant Secretary, Regarding Consideration of Scope Exclusion Request and Class or Kind* (July 10, 2003) and the *Preliminary Determination*.

Facts Available

In the preliminary determination, we based the dumping margin for Cablesa on adverse facts available pursuant to sections 776(a) and 776(b) of the Act. The use of adverse facts available was warranted for Cablesa because the Department found that the cost information on the record for Cablesa was so incomplete that it could not serve as a reliable basis for reaching a determination. *See Preliminary Determination*.

Since the preliminary determination, Cablesa has responded to two supplemental questionnaires regarding its cost response. However, Cablesa's cost response could not be verified. Therefore, we have determined that the cost information on the record for Cablesa is unreliable and that Cablesa has failed to cooperate by not acting to the best of its ability. As a result, the use of adverse facts available is warranted with respect to Cablesa. *See Memorandum from Holly A. Kuga, Acting Deputy Assistant Secretary, to James J. Jochum, Assistant Secretary for Import Administration, RE: Issues and Decision Memorandum for the Final Determination of the Investigation of Prestressed Concrete Steel Wire Strand from Mexico (Decision Memorandum)*, dated December 1, 2003, at Comment 6 for a discussion of the deficiencies of Cablesa's cost response and the Department's use of adverse facts available.

Our rejection of Cablesa's cost information renders impossible any price-to-price or price-to-constructed value comparisons. This is consistent with Department practice. *See, e.g., Notice of Final Determination of Sales at Less than Fair Value: Grain-Oriented Electrical Steel from Italy*, 59 FR 33952 (July 1, 1994), *Notice of Final Determination of Sales at Less than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products from Venezuela*, 67 FR 62119 (October 3, 2002), and *Notice of Final Results of Antidumping Duty Administrative Review: Certain Cut-to-Length Carbon Steel Plate from Mexico*, 64 FR 76, 77–78 (January 4, 1999).

Accordingly, we have assigned to Cablesa the highest margin stated in the notice of initiation for Mexico. *See Notice of Initiation of Antidumping Duty Investigations: Prestressed Concrete Steel Wire Strand From Brazil, India, the Republic of Korea, Mexico, and Thailand*, 68 FR 9050 (February 27, 2003). We corroborated this margin in the preliminary determination and we continue to find this margin corroborated, pursuant to section 776(c) of the Act. *See* Memoranda regarding corroboration of data contained in the petition for assigning facts available rates, dated July 10, 2003.

Critical Circumstances

For the final determination, based on company-specific shipment data submitted to the Department, we have found that critical circumstances do not exist for either Camesa or Cablesa because there were no massive imports with respect to either respondent. We have also found that critical circumstances do not exist for any companies in the "All Others" category. *See Memorandum from Daniel O'Brien, International Trade Compliance Analyst, to Gary Taverman, Director, Office 5, Re: Final Negative Determination of Critical Circumstances and Decision Memorandum* at Comment 8. *See, also, Memorandum from Daniel O'Brien and Jim Kemp, International Trade Compliance Analysts, to Gary Taverman, Director, Office 5, Re: Verification of the Sales Response of Cablesa S.A. de C.V. in the Investigation of Prestressed Concrete Steel Wire Strand from Mexico* dated October 7, 2003, at 22–23.

Verification

As provided in section 782(i) of the Act, we conducted verification of the cost and sales information submitted by Camesa and Cablesa. We used standard verification procedures including examination of relevant accounting and production records, and original source documents provided by the respondent.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs submitted by parties to this proceeding are listed in the appendix to this notice and addressed in the Decision Memorandum hereby adopted by this notice. The *Decision Memorandum* is on file in room B-099 of the main Department building. In addition, a complete version of the *Decision Memorandum* can be accessed directly on the World Wide Web at www.ita.doc.gov/import_admin/records/frn. The paper and electronic versions of the *Decision Memorandum* are identical in content.

Changes Since The Preliminary Determination

Based on our findings at verification and our analysis of comments received, we have made adjustments to the preliminary determination calculation methodologies in calculating the final dumping margin for Camesa. These adjustments are discussed in the *Decision Memorandum* for this investigation.

Continuation of Suspension of Liquidation

In accordance with section 735(c)(1)(B) of the Act, we are directing Customs and Border Patrol (CBP) to continue to suspend liquidation of all entries of PC strand exported from Mexico, that are entered, or withdrawn from warehouse, for consumption on or after the date of the preliminary determination. CBP shall continue to require a cash deposit or the posting of a bond based on the estimated weighted-average dumping margins shown below. The suspension of liquidation instructions will remain in effect until further notice. Because the Department now determines that critical circumstances do not exist for either respondent, the retroactive suspension of liquidation ordered at the preliminary determination is terminated. CBP shall return all bonds and/or cash deposits posted for entries of PC strand produced and exported by Cablesa during the critical circumstances period (*i.e.* April 18, 2003, to July 17, 2003).

We determine that the following weighted-average dumping margins exist for Mexico:

Manufacturer/exporter	Margin (percent)
Camesa	62.78
Cablesa	77.20
All Others	62.78

International Trade Commission Notification

In accordance with section 735(d) of the Act, we have notified the International Trade Commission (ITC) of our determination. The ITC will determine, within 45 days, whether imports of subject merchandise from Mexico are causing material injury, or threaten material injury, to an industry in the United States. If the ITC determines that material injury or threat of material injury does not exist, this proceeding will be terminated and all securities posted will be refunded or canceled. If the ITC determines that such injury does exist, the Department will issue an antidumping order directing CBP officials to assess antidumping duties on all imports of the subject merchandise entered, or withdrawn from warehouse for consumption on or after the effective date of the suspension of liquidation.

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This determination is issued and published in accordance with sections 735(d) and 777(i)(1) of the Act.

Dated: December 1, 2003.

James J. Jochum,

Assistant Secretary for Import Administration.

APPENDIX

Issues Covered in Decision Memorandum

I. ISSUES SPECIFIC TO ACEROS CAMESA

Comment 1: Unverified Movement Expenses
Comment 2: Indirect Selling Expenses
Comment 3: Understatement of Cost of Manufacturing
Comment 4: General and Administrative Expense
Comment 5: Finance Expense

II. ISSUES SPECIFIC TO CABLESA

Comment 6: Reliability of Cost Information
Comment 7: Adjustments to Cost Information
Comment 8: Critical Circumstances new file

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DEPARTMENT OF COMMERCE

International Trade Administration

[A-533–828]

Notice of Final Determination of Sales at Less Than Fair Value: Prestressed Concrete Steel Wire Strand from India

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: December 8, 2003.

SUMMARY: We determine that prestressed concrete steel wire strand (PC strand) from India is being sold, or is likely to be sold, in the United States at less than fair value (LTFV), as provided in section 735 of the Tariff Act of 1930, as amended (the Act). The estimated margins of sales at LTFV are shown in the *Continuation of Suspension of Investigation* section of this notice.

FOR FURTHER INFORMATION CONTACT: Tisha Loeper-Viti or Martin Claessens at (202) 482–7425 and (202) 482–5451, respectively; Import Administration, International Trade Administration, U.S. Department of Commerce; 14th Street and Constitution Avenue, NW, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Case History

The preliminary determination in this investigation was published on July 17, 2003. *See Notice of Preliminary Determination of Sales at Less Than Fair Value: Prestressed Concrete Steel Wire Strand from India*, 68 FR 42389 (July 17, 2003) (*Preliminary Determination*). Since the publication of the *Preliminary Determination*, the following events have occurred:

On July 31, 2003, Tata Iron and Steel Co. Ltd. (TISCO), the sole respondent in this investigation, requested that the Department of Commerce (the Department) postpone its final determination and fully extend the provisional measures by 60 days. On August 18, 2003, the Department published in the **Federal Register** the postponement of the final determination for PC strand from India. *See Notice of Postponement of Final Antidumping Duty Determinations and Extension of Provisional Measures: Prestressed Concrete Steel Wire Strand From Brazil, India, and the Republic of Korea*, 68 FR 49436 (August 18, 2003).

Scope of Investigation

For purposes of this investigation, PC strand is steel strand produced from wire of non-stainless, non-galvanized steel, which is suitable for use in prestressed concrete (both pretensioned and post-tensioned) applications. The product definition encompasses covered and uncovered strand and all types, grades, and diameters of PC strand. The merchandise under investigation is currently classifiable under subheadings 7312.10.3010 and 7312.10.3012 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise under investigation is dispositive.

Period of Investigation

The period of investigation is January 1, 2002, through December 31, 2002.

Facts Available

In the preliminary determination, we based the dumping margin for the mandatory respondent, TISCO, on adverse facts available pursuant to sections 776(a) and 776(b) of the Act. The use of adverse facts available was warranted in this investigation because TISCO failed to provide the detailed cost information requested by the Department. *See Preliminary Determination*, 68 FR at 42390. The failure of the respondent to supply the requested information significantly impedes this proceeding because the Department cannot accurately determine a margin for this party. Furthermore, the respondent did not give an explanation for its failure to supply such information, nor propose alternatives. Therefore, we found that TISCO failed to cooperate by not acting to the best of its ability. We assigned TISCO the highest margin stated in the notice of initiation. *See Notice of Initiation of Antidumping Duty Investigations: Prestressed Concrete Steel Wire Strand From Brazil, India, the Republic of Korea, Mexico, and Thailand*, 68 FR 9050 (February 27, 2003). We corroborated this margin in the preliminary determination and we continue to find this margin corroborated, pursuant to section 776(c) of the Act. *See* Memorandum regarding Corroboration of Data Contained in the Petition for Assigning Facts Available Rates, dated July 10, 2003. A complete explanation of both the selection and application of facts available can be found in the *Preliminary Determination*. *See Preliminary Determination*, 68 FR at 42390–91. Nothing has changed since the preliminary determination was issued that would affect the Department's selection and application of facts available.

No interested parties have commented since the publication of the preliminary determination on the use of adverse facts available in this investigation, or on the choice of the facts available margin. Accordingly, for the final determination, we are continuing to use the highest margin stated in the notice of initiation for TISCO. The "All Others" rate remains unchanged as well.

Analysis of Comments Received

We received no comments from interested parties in response to our preliminary determination in this investigation. We did not hold a hearing because none was requested.

Continuation of Suspension of Liquidation

In accordance with section 735(c)(1)(B) of the Act, we are directing the U.S. Customs and Border Protection (CBP) to continue to suspend liquidation of all entries of PC strand exported from India that are entered, or withdrawn from warehouse, for consumption on or after the date of the *Preliminary Determination*. The CBP shall continue to require a cash deposit or the posting of a bond based on the estimated dumping margins shown below.

It is generally the Department's practice to decrease the required antidumping duty cash deposit rate by any export subsidies found in a companion countervailing duty investigation based on the presumption that if a respondent benefitted from an export subsidy program, such a subsidy contributed to the lower-priced sales of subject merchandise. This is done to avoid double-application of duties to counteract the same situation. However, in this investigation, TISCO has not cooperated with the Department and has not acted to the best of its ability in providing the Department with necessary information. This has prevented the Department from making its normal determination of whether the subsidies in question may have affected the calculation of the dumping margin. As indicated above, TISCO's margin is based on total adverse facts available, taken from the petition. Insofar as the dumping margin for TISCO is not a calculated margin, there is no way to determine the portion of the dumping margin which is attributable to export subsidies. For that reason, unlike in the preliminary determination, we have not subtracted the amount of any export subsidy from that margin. The suspension of liquidation instructions will remain in effect until further notice.

We determine that the following dumping margins exist:

Manufacturer/exporter	Margin (percent)
Tata Iron and Steel Co. Ltd. (TISCO)	102.07
All Others	83.65

International Trade Commission Notification

In accordance with section 735(d) of the Act, we have notified the International Trade Commission (ITC) of our determination. The ITC will determine, within 45 days, whether imports of subject merchandise from India are causing material injury, or threaten material injury, to an industry in the United States. If the ITC determines that material injury or threat of injury does not exist, this proceeding will be terminated and all securities posted will be refunded or canceled. If the ITC determines that such injury does exist, the Department will issue an antidumping duty order directing CBP officials to assess antidumping duties on all imports of the subject merchandise entered, or withdrawn from warehouse for consumption on or after the effective date of the suspension of liquidation.

This notice also serves as a reminder to parties subject to APO of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This determination is issued and published in accordance with sections 735(d) and 777(i)(1) of the Act.

Dated: December 1, 2003.

James J. Jochum,

Assistant Secretary for Import Administration.

[FR Doc. 03–30385 Filed 12–5–03; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A-580–852]

Notice of Final Determination of Sales at Less Than Fair Value: Prestressed Concrete Steel Wire Strand from the Republic of Korea

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: December 8, 2003.

SUMMARY: We determine that prestressed concrete steel wire strand (PC strand) from the Republic of Korea (Korea) is being sold, or is likely to be sold, in the United States at less than fair value (LTFV), as provided in section 735 of the Tariff Act of 1930, as amended (the Act). The estimated margins of sales at LTFV are shown in the *Continuation of Suspension of Investigation* section of this notice.

FOR FURTHER INFORMATION CONTACT: Marin Weaver or Christopher Welty at (202) 482–2336 and (202) 482–0186, respectively; Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Case History

The preliminary determination in this investigation was published on July 17, 2003. *See Notice of Preliminary Determination of Sales at Less Than Fair Value: Prestressed Concrete Steel Wire Strand from the Republic of Korea*, 68 FR 42393 (July 17, 2003) (*Preliminary Determination*). Since the publication of the *Preliminary Determination*, the following events have occurred:

On August 4, 2003, Kiswire Ltd. (Kiswire) and Dong-Il Steel Manufacturing Co., Ltd. (Dong-Il), two Korean producers/exporters selected as mandatory respondents, requested that the Department of Commerce (the Department) postpone its final determination and fully extend the provisional measures by 60 days. On August 18, 2003, the Department published in the **Federal Register** the postponement of the final determination for PC strand from Korea. *See Notice of Postponement of Final Antidumping Duty Determinations and Extension of Provisional Measures: Prestressed Concrete Steel Wire Strand From Brazil, India, and the Republic of Korea*, 68 FR 49436 (August 18, 2003).

Scope of Investigation

For purposes of this investigation, PC strand is steel strand produced from wire of non-stainless, non-galvanized steel, which is suitable for use in prestressed concrete (both pretensioned and post-tensioned) applications. The product definition encompasses covered and uncovered strand and all types, grades, and diameters of PC strand.

The merchandise under investigation is currently classifiable under subheadings 7312.10.3010 and 7312.10.3012 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise under investigation is dispositive.

Period of Investigation

The period of investigation is January 1, 2002, through December 31, 2002.

Facts Available

In the preliminary determination, we based the dumping margin for the mandatory respondents, Kiswire and Dong-Il, on adverse facts available pursuant to sections 776(a) and 776(b) of the Act. The use of adverse facts available was warranted in this investigation because both of the respondents failed to respond to any part of the antidumping duty questionnaires issued to them by the Department. *See Preliminary Determination*, 68 FR at 42393. The failure of these respondents to supply the requested information significantly impedes this proceeding because the Department cannot accurately determine a margin for these parties. Furthermore, these respondents did not give an explanation for their failure to supply such information, nor propose alternatives. Therefore, we found that Kiswire and Dong-Il failed to cooperate by not acting to the best of their ability. We assigned Kiswire and Dong-Il the highest margin stated in the notice of initiation. *See Notice of Initiation of Antidumping Duty Investigations: Prestressed Concrete Steel Wire Strand From Brazil, India, the Republic of Korea, Mexico, and Thailand*, 68 FR 9050 (February 27, 2003). We corroborated this margin in the preliminary determination and we continue to find this margin corroborated, pursuant to section 776(c) of the Act. *See* Memorandum regarding Corroboration of Data Contained in the Petition for Assigning Facts Available Rates, dated July 10, 2003. A complete explanation of both the selection and application of facts available can be found in the *Preliminary Determination*. *See Preliminary Determination*, 68 FR at 42394–95. Nothing has changed since the preliminary determination was issued that would affect the Department's selection and application of facts available.

No interested parties have commented since the publication of the preliminary determination on the use of adverse facts available in this investigation, or on the choice of the facts available margin. Accordingly, for the final determination, we are continuing to use the highest margin stated in the notice of initiation for Kiswire, and Dong-Il, The "All Others" rate remains unchanged as well.

Analysis of Comments Received

We received no comments from interested parties in response to our preliminary determination in this investigation. We did not hold a hearing because none was requested.

Continuation of Suspension of Liquidation

In accordance with section 735(c)(1)(B) of the Act, we are directing the U.S. Customs and Border Protection (CBP) to continue to suspend liquidation of all entries of PC strand exported from Korea that are entered, or withdrawn from warehouse, for consumption on or after the date of the *Preliminary Determination*. The CBP shall continue to require a cash deposit or the posting of a bond based on the estimated dumping margins shown below. The suspension of liquidation instructions will remain in effect until further notice.

We determine that the following dumping margins exist:

Manufacturer/exporter	Margin (percent)
Kiswire Ltd.	54.19
Dong-Il Steel Manufacturing Co. Ltd.	54.19
All Others	35.64

International Trade Commission Notification

In accordance with section 735(d) of the Act, we have notified the International Trade Commission (ITC) of our determination. The ITC will determine, within 45 days, whether imports of subject merchandise from Korea are causing material injury, or threaten material injury, to an industry in the United States. If the ITC determines that material injury or threat of injury does not exist, this proceeding will be terminated and all securities posted will be refunded or canceled. If the ITC determines that such injury does exist, the Department will issue an antidumping duty order directing CBP officials to assess antidumping duties on all imports of the subject merchandise entered, or withdrawn from warehouse for consumption on or after the effective date of the suspension of liquidation.

This notice also serves as a reminder to parties subject to APO of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This determination is issued and published in accordance with sections 735(d) and 777(i)(1) of the Act.

Dated: December 1, 2003.

James J. Jochum,

Assistant Secretary for Import Administration.

[FR Doc. 03–30386 Filed 12–5–03; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–351–837]

Notice of Final Determination of Sales at Less Than Fair Value: Prestressed Concrete Steel Wire Strand from Brazil

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: December 8, 2003.

SUMMARY: We determine that prestressed concrete steel wire strand (PC strand) from Brazil is being sold, or is likely to be sold, in the United States at less than fair value (LTFV), as provided in section 735 of the Tariff Act of 1930, as amended (the Act). The estimated margins of sales at LTFV are shown in the Continuation of Suspension of Investigation section of this notice.

FOR FURTHER INFORMATION CONTACT: David Layton or Monica Gallardo at (202) 482–0371 and (202) 482–3147, respectively; Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Case History

The preliminary determination in this investigation was published on July 17, 2003. *See Notice of Preliminary Determination of Sales at Less Than Fair Value: Prestressed Concrete Steel Wire Strand from Brazil*, 68 FR 42386 (July 17, 2003) (*Preliminary Determination*). Since the publication of the *Preliminary Determination*, the following events have occurred:

On August 6, 2003, Belgo Bekaert Arames S.A. (BBA), the sole Brazilian producer and mandatory respondent, requested that the Department of Commerce (the Department) postpone its final determination and fully extend the provisional measures by 60 days. On August 18, 2003, the Department published in the **Federal Register** the postponement of the final determination for PC strand from Brazil. *See Notice of Postponement of Final Antidumping Duty Determinations and Extension of Provisional Measures: Prestressed Concrete Steel Wire Strand From Brazil, India, and the Republic of Korea*, 68 FR 49436 (August 18, 2003).

Scope of Investigation

For purposes of this investigation, PC strand is steel strand produced from wire of non-stainless, non-galvanized steel, which is suitable for use in prestressed concrete (both pretensioned and post-tensioned) applications. The product definition encompasses covered and uncovered strand and all types, grades, and diameters of PC strand.

The merchandise under investigation is currently classifiable under subheadings 7312.10.3010 and 7312.10.3012 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise under investigation is dispositive.

Period of Investigation

The period of investigation is January 1, 2002, through December 31, 2002.

Facts Available

In the preliminary determination, we based the dumping margin for the mandatory respondent, BBA, on adverse facts available pursuant to sections 776(a) and 776(b) of the Act. The use of adverse facts available was warranted in this investigation because BBA failed to respond to any part of the antidumping duty questionnaire issued to it by the Department. *See Preliminary Determination*, 68 FR at 42386. The failure of the respondent to supply the requested information significantly impedes this proceeding because the Department cannot accurately determine a margin for this party. Furthermore, the respondent did not give an explanation for its failure to supply such information, nor propose alternatives. Therefore, we found that BBA, failed to cooperate by not acting to the best of its ability. We assigned BBA the highest margin stated in the notice of initiation. *See Notice of Initiation of Antidumping Duty Investigations: Prestressed Concrete Steel Wire Strand From Brazil, India, the Republic of Korea, Mexico, and Thailand*, 68 FR 9050 (February 27, 2003). We corroborated this margin in the preliminary determination and we continue to find this margin corroborated, pursuant to section 776(c) of the Act. *See* Memorandum regarding Corroboration of Data Contained in the Petition for Assigning Facts Available

Rates, dated July 10, 2003. A complete explanation of both the selection and application of facts available can be found in the *Preliminary Determination*. *See Preliminary Determination*, 68 FR at 42387–88. Nothing has changed since the preliminary determination was issued that would affect the Department's selection and application of facts available.

No interested parties have commented since the publication of the preliminary determination on the use of adverse facts available in this investigation, or on the choice of the facts available margin. Accordingly, for the final determination, we are continuing to use the highest margin stated in the notice of initiation for BBA. The "All Others" rate remains unchanged as well.

Analysis of Comments Received

We received no comments from interested parties in response to our preliminary determination in this investigation. We did not hold a hearing because none was requested.

Continuation of Suspension of Liquidation

In accordance with section 735(c)(1)(B) of the Act, we are directing the U.S. Customs and Border Protection (CBP) to continue to suspend liquidation of all entries of PC strand exported from Brazil that are entered, or withdrawn from warehouse, for consumption on or after the date of the *Preliminary Determination*. The CBP shall continue to require a cash deposit or the posting of a bond based on the estimated dumping margins shown below. The suspension of liquidation instructions will remain in effect until further notice.

We determine that the following dumping margins exist:

Manufacturer/exporter	Margin (percent)
Belgo Bekaert Arames S.A.	118.75
All Others.	118.75

International Trade Commission Notification

In accordance with section 735(d) of the Act, we have notified the International Trade Commission (ITC) of our determination. The ITC will determine, within 45 days, whether imports of subject merchandise from Brazil are causing material injury, or threaten material injury, to an industry in the United States. If the ITC determines that material injury or threat of injury does not exist, this proceeding will be terminated and all securities posted will be refunded or canceled. If the ITC determines that such injury does exist, the Department will issue an antidumping duty order directing CBP officials to assess antidumping duties on all imports of the subject merchandise entered, or withdrawn from warehouse for consumption on or after the effective date of the suspension of liquidation.

This notice also serves as a reminder to parties subject to APO of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This determination is issued and published in accordance with sections 735(d) and 777(i)(1) of the Act.

Dated: December 1, 2003.

James J. Jochum,

Assistant Secretary for Import Administration.

[FR Doc. 03–30387 Filed 12–5–03; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–583–831]

Certain Stainless Steel Sheet and Strip in Coils From Taiwan: Extension of Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of extension of time limit for final results of antidumping duty administrative review.

SUMMARY: The Department of Commerce ("the Department") is extending the time limit for the final results of the review of stainless steel sheet and strip in coils ("SSSS") from Taiwan. This review covers the period July 1, 2001 through June 30, 2002.

EFFECTIVE DATE: December 8, 2003.

FOR FURTHER INFORMATION CONTACT: Laurel LaCivita, Enforcement Group III—Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone (202) 482–4243.

Background

On August 27, 2002, the Department published a notice of initiation of a review of SSSS from Taiwan covering the period July 1, 2001 through June 30, 2002. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part*, 67 FR 55000 (August 27, 2002). On August 6, 2003, the Department published the preliminary results of the review. *See Stainless Steel Sheet and Strip in Coils From Taiwan: Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review*, 68 FR 46582 (August 6, 2003), ("*Preliminary Results*"). In the *Preliminary Results*, the Department stated that it would make its final determination for the antidumping duty administrative review no later than 120 days after the date of publication of the *Preliminary Results*, or not later than December 4, 2003.

Extension of Time Limit for Preliminary Results

Section 751(a)(3)(A) of the Act states that if it is not practicable to complete the review within the time specified, the administering authority may extend the 120-day period, following the date of publication of the preliminary results, to issue its final results by an additional 60 days. Completion of the final results within the 120-day period is not practicable for the following reasons: (1) This review requires the Department to analyze YUSCO's complex affiliation and corporate relationships; (2) This review involves certain complex issues which were raised by petitioners after the verification and after the preliminary results of review; and (3) The review involves a large number of transactions and complex adjustments.

Therefore, in accordance with section 751(a)(3)(A) of the Act, the Department is extending the time period for issuing the final results of review by 43 days until January 16, 2004.

This notice is published in accordance with section 751(a)(3)(A) and 777(i) of the Act.

Dated: December 2, 2003.

Barbara E. Tillman,

Acting Deputy Assistant Secretary for Import Administration, Group III.

[FR Doc. 03–30390 Filed 12–5–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–533–829]

Final Affirmative Countervailing Duty Determination: Prestressed Concrete Steel Wire Strand From India

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final affirmative countervailing duty investigation.

SUMMARY: On July 8, 2003, the Department of Commerce (the Department) published in the **Federal Register** its preliminary affirmative determination in the countervailing duty investigation of prestressed concrete steel wire strand (PC strand or subject merchandise) from India for the period April 1, 2001, through March 31, 2002.

The program rates determined in this final determination do not differ from those determined in the preliminary determination. The final net rate for all Indian producers/exporters of subject merchandise is listed below in the "Suspension of Liquidation" section of this notice.

EFFECTIVE DATE: December 8, 2003.

FOR FURTHER INFORMATION CONTACT: Robert Copyak at (202) 482–2209 or Alicia Kinsey at (202) 482–4793, Office of AD/CVD Enforcement VI, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, Room 4012, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

The petition in this investigation was filed by American Spring Wire Corp., Insteel Wire Products Company, and Sumiden Wire Products Corp. (collectively, the petitioners). On July 8, 2003, the Department published the preliminary determination. *See Notice of Preliminary Affirmative Countervailing Duty Determination: Prestressed Concrete Steel Wire Strand from India*, 68 FR 40629 (July 8, 2003) (*Preliminary Determination*), which is on file in room B–099 in the Central Records Unit of the main Commerce building (CRU).

In accordance with section 705(a)(1) of the Tariff Act of 1930, as amended (the Act), we aligned this final determination with the final determination in the antidumping duty investigation of PC strand from India. *See Preliminary Determination*, 68 FR 40629, 40631. We invited interested parties to comment on the Department's findings in the *Preliminary Determination*. On August 27, 2003, we received comments from petitioners supporting the Department's preliminary analysis. We received no other comments. This investigation covers all producers/exporters of subject merchandise in India for the period April 1, 2001, through March 31, 2002.

Scope of the Investigation

The merchandise subject to this investigation is prestressed concrete steel wire (PC strand), which is steel strand produced from wire of non-stainless, non-galvanized steel, which is suitable for use in prestressed concrete (both pre-tensioned and post-tensioned) applications. The product definition encompasses covered and uncovered strand and all types, grades, and diameters of PC strand.

The merchandise under this investigation is currently classifiable under subheadings 7312.10.3010 and 7312.10.3012 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise under investigation is dispositive.

Analysis of Comments Received

The Department's positions on the subsidy programs addressed in this case are discussed the "Issues and Decision Memorandum" (Decision Memorandum) from Holly A. Kuga, Acting Deputy Assistant Secretary, AD/CVD Enforcement II, to James J. Jochum, Assistant Secretary for Import Administration, dated December 1, 2003, which is hereby adopted by this notice. This public memorandum, which is on file in the CRU, also contains the recommended adverse facts available program rates and the adverse facts available total net subsidy rate. A complete version of the Decision Memorandum can be accessed on the World Wide Web at *http://www.ia.ita.doc.gov*, under the heading "**Federal Register** Notices." The paper copy on file in the CRU and the electronic version of the Decision Memorandum are identical in content.

Suspension of Liquidation

In accordance with section 703(b) of the Act, we have calculated the following countervailing duty rate for all Indian producers/exporters of subject merchandise:

Producer/exporter	Net subsidy rate
All producers/exporters.	62.92% *ad valorem*

In accordance with our preliminary affirmative determination, we instructed U.S. Customs and Border Protection (CBP) to suspend liquidation of all entries of prestressed concrete steel wire strand from India, which were entered or withdrawn from warehouse, for consumption on or after July 8, 2003, the date of the publication of our preliminary determination in the **Federal Register**. In accordance with section 703(d) of the Act, we instructed the CBP to discontinue the suspension of liquidation for merchandise entered on or after November 5, 2003, but to continue the suspension of liquidation of entries made between July 8, 2003, and November 4, 2003.

If the International Trade Commission (ITC) issues a final affirmative injury determination, we will issue a countervailing duty order, reinstate suspension of liquidation under section 706(a) of the Act for all entries, and require a cash deposit of estimated countervailing duties for such entries of merchandise in the amount indicated above. If the ITC determines that material injury, or threat of material injury, does not exist, this proceeding will be terminated and all estimated duties deposited or securities posted as a result of the suspension of liquidation will be refunded or canceled.

ITC Notification

In accordance with section 705(d) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all non-privileged and non-proprietary information related to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided that the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order (APO), without the written consent of the Assistant Secretary for Import Administration.

Return or Destruction of Proprietary Information

In the event that the ITC issues a final negative injury determination, this notice will serve as the only reminder to parties subject to APO of their responsibility concerning the destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Failure to comply is a violation of the APO.

This determination is published pursuant to sections 705(d) and 777(i) of the Act.

Dated: December 1, 2003.

James J. Jochum,

Assistant Secretary for Import Administration.

Appendix I—Issues and Decision Memorandum

Summary

Methodology and Background Information

I. Use of Facts Available
II. Programs Determined to Confer Subsidies
  A. Government of India Programs
  1. Pre-shipment and Post-shipment Export Financing
  2. Duty Entitlement Passbook Scheme (DEPS)
  3. Export Promotion Capital Goods Scheme (EPCGS)
  4. Loans From the Steel Development Fund (SDF)
  5. Exemption of Export Credit From Interest Taxes
  6. Advance Licenses
  7. Income Tax Exemption Scheme (Section 80 HHC)
  8. Loan Guarantees From the GOI
  B. State of Maharashtra (SOM) Programs
  1. Sales Tax Incentives
  2. Capital Incentive Scheme
  3. Electricity Duty Exemption Scheme
  4. Octroi Refund Scheme
  5. Exemption of Sales and Purchase Taxes for Certain Investments Related to Automobiles or Automobile Components
  C. Program in the State of Bihar
  1. Sales Tax Incentives
  D. Programs in the State of Jharkhand
  1. Sales Tax Incentives
  2. Captive Electricity Generative Plant Subsidy
  3. Interest Subsidy
  4. Stamp Duty and Registration
  5. Pollution Control Equipment Subsidy
  6. Mega Units
  7. Captive Electricity Tax Exemptions
  E. Program in the State of Gujarat
  1. Sales Tax Incentives
III. Total Ad Valorem Rate
IV. Recommendation

[FR Doc. 03–30389 Filed 12–5–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

North American Free-Trade Agreement, Article 1904, NAFTA Panel Reviews; Request for Panel Review

AGENCY: NAFTA Secretariat, United States Section, International Trade Administration, Department of Commerce.

ACTION: Notice of first request for panel review.

SUMMARY: On November 24, 2003, the Canadian Wheat Board filed a First Request for Panel Review with the United States Section of the NAFTA Secretariat pursuant to Article 1904 of the North American Free Trade Agreement. Panel review was requested of the final results of the Injury determination made by the United States International Trade Commission, respecting Hard Red Spring Wheat from Canada. This determination was published in the **Federal Register**, (68 FR 60707) on October 23, 2003. The NAFTA Secretariat has assigned Case Number USA–CDA–2003–1904–06 to this request.

FOR FURTHER INFORMATION CONTACT: Caratina L. Alston, United States Secretary, NAFTA Secretariat, Suite 2061, 14th and Constitution Avenue, Washington, DC 20230, (202) 482–5438.

SUPPLEMENTARY INFORMATION: Chapter 19 of the North American Free-Trade Agreement ("Agreement") establishes a mechanism to replace domestic judicial review of final determinations in antidumping and countervailing duty cases involving imports from a NAFTA country with review by independent binational panels. When a Request for Panel Review is filed, a panel is established to act in place of national courts to review expeditiously the final determination to determine whether it conforms with the antidumping or countervailing duty law of the country that made the determination.

Under Article 1904 of the Agreement, which came into force on January 1, 1994, the Government of the United States, the Government of Canada and the Government of Mexico established *Rules of Procedure for Article 1904 Binational Panel Reviews* ("Rules"). These Rules were published in the **Federal Register** on February 23, 1994 (59 FR 8686).

A first Request for Panel Review was filed with the United States Section of the NAFTA Secretariat, pursuant to Article 1904 of the Agreement, on November 24, 2003, requesting panel review of the final determination described above.

The Rules provide that:

(a) A Party or interested person may challenge the final determination in whole or in part by filing a Complaint in accordance with Rule 39 within 30 days after the filing of the first Request for Panel Review (the deadline for filing a Complaint is December 24, 2003);

(b) a Party, investigating authority or interested person that does not file a Complaint but that intends to appear in support of any reviewable portion of the final determination may participate in the panel review by filing a Notice of Appearance in accordance with Rule 40 within 45 days after the filing of the first Request for Panel Review (the deadline for filing a Notice of Appearance is January 8, 2004); and

(c) the panel review shall be limited to the allegations of error of fact or law, including the jurisdiction of the investigating authority, that are set out in the Complaints filed in the panel review and the procedural and substantive defenses raised in the panel review.

Dated: December 1, 2003.

Caratina L. Alston,

United States Secretary, NAFTA Secretariat.

[FR Doc. 03–30362 Filed 12–5–03; 8:45 am]

BILLING CODE 3510–GT–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 112503B]

Draft Strategic Plan for Fisheries Research (2004)

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of availability; request for comments.

SUMMARY: NMFS announces the availability of and seeks public comment on the draft NMFS Strategic Plan for Fisheries Research (2004). The Magnuson-Stevens Fishery Conservation and Management Act (MSFCMA) requires the Secretary of Commerce to develop, triennially, a strategic plan for fisheries research for the subsequent years. Any written comments on the draft plan will be considered by NMFS in the development of the final NMFS Strategic Plan for Fisheries Research (2004).

DATES: Comments on the draft NMFS Strategic Plan for Fisheries Research (2004) will be accepted on or before January 7, 2004.

ADDRESSES: Comments on and requests for copies of the draft NMFS Strategic Plan for Fisheries Research (2004) should be directed to Mark Chandler, Research, Analysis, and Coordination Division, Office of Science and Technology, NMFS, NOAA, 1315 East-West Highway, Silver Spring, MD 20910. PHONE: (301) 713–2363. FAX: (301) 713–1875.

Electronic Access: The draft NMFS Strategic Plan for Fisheries Research (2004) may be reviewed in its entirety

on the World Wide Web at http://www.st.nmfs.gov/st2/index.html

FOR FURTHER INFORMATION CONTACT: Mark Chandler at 301–713–2363 ext. 152, e-mail: Mark.Chandler@noaa.gov

SUPPLEMENTARY INFORMATION: Section 404 of the MSFCMA requires the Secretary of Commerce to publish in the **Federal Register** a strategic plan for fisheries research for the 5 years immediately following it's publication. The MSFCMA requires that the plan address four major areas of research: (1) Research to support fishery conservation and management; (2) conservation engineering research; (3) research on the fisheries; and (4) information management research. The MSFCMA specifies that the plan shall contain a limited number of priority objectives for each of these research areas; indicate goals and timetables; provide a role for commercial fishermen in such research; provide for collection and dissemination of complete and accurate information concerning fishing activities; and be developed in cooperation with the Councils and affected states.

This draft plan is based upon and entirely consistent with the overarching NOAA Fisheries Strategic Plan (NFSP) recently released in July 2003. The objectives under each goal in the draft NMFS Strategic Plan for Fisheries Research (2004) correspond to strategies in the NFSP.

The scope of the NMFS Strategic Plan for Fisheries Research (2004) is solely fisheries research to support the MSFCMA. It does not include the regulatory and enforcement components of the NMFS mission. NMFS currently conducts a comprehensive program of fisheries research and involves industry and others interested in fisheries in planning and implementing its objectives.

NMFS intends that the final version of the NMFS Strategic Plan for Fisheries Research (2004) will take advantage of information and recommendations from all interested parties. Therefore, comments and suggestions on this draft NMFS Strategic Plan for Fisheries Research are hereby solicited from the public, other concerned government agencies, the scientific community, industry, and any other person.

Dated: November 25, 2003.

Dr. William Fox, Jr.,

Director, Office of Science and Technology, National Marine Fisheries Service.

[FR Doc. 03–30381 Filed 12–5–03; 8:45 am]

BILLING CODE 3510–22–S

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Proposed Information Collection; Comment Request

AGENCY: Corporation for National and Community Service.

ACTION: Notice.

SUMMARY: The Corporation for National and Community Service (hereinafter the "Corporation"), as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95)(44 U.S.C. 3506(c)(2)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirement on respondents can be properly assessed.

Currently, the Corporation is soliciting comments concerning its proposed renewal of its AmeriCorps*NCCC Team Leader Application, OMB Control Number 3045–0005. This application is used to collect information that will be used by AmeriCorps*NCCC staff in the evaluation and selection of Team Leaders.

Copies of the information collection requests can be obtained by contacting the office listed in the address section of this notice.

DATES: Written comments must be submitted to the individual and office listed in the **ADDRESSES** section by February 6, 2004.

ADDRESSES: You may submit comments, identified by the title of the information collection activity, by any of the following methods:

(1) By mail sent to: Corporation for National and Community Service, AmeriCorps*National Civilian Community Corps; Attention Mr. John Hourihan, Program Officer; Room 9412–D, 1201 New York Avenue NW., Washington, DC 20525.

(2) By hand delivery or by courier to the Corporation's mailroom at Room 6010 at the mail address given in paragraph (1) above, between 9 a.m. and 4 p.m. Monday through Friday, except Federal holidays.

(3) By fax to: (202) 565–2791, Attention Mr. John Hourihan, Program Officer.

(4) Electronically through the Corporation's e-mail address system: *JHourihan@cns.gov.*

FOR FURTHER INFORMATION CONTACT: John Hourihan, (202) 606–5000, ext. 189, or by e-mail at *JHourihan@cns.gov.*

SUPPLEMENTARY INFORMATION: The Corporation is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Corporation, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are expected to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology (*e.g.*, permitting electronic submissions of responses).

Background

The Team Leader Application is completed by applicants who wish to serve as Team Leaders at AmeriCorps*NCCC regional campuses.

Current Action

The Corporation seeks to renew and revise the current application. When revised, the application will include additional information concerning loan deferment, campus schedules, and the number of Team Leaders required. The application will otherwise be used in the same manner as the existing application. The Corporation also seeks to continue using the current application until the revised application is approved by OMB. The current application is due to expire on October 31, 2004.

Type of Review: Renewal.

Agency: Corporation for National and Community Service.

Title: AmeriCorps*NCCC Team Leader Application.

OMB Number: 3045–0005.

Agency Number: None.

Affected Public: Citizens of diverse ages and backgrounds who are committed to national service.

Total Respondents: 500.

Frequency: Bi-Annually.

Average Time Per Response: Two hours.

Estimated Total Burden Hours: 2,000 hours.

Total Burden Cost (capital/startup): None.

Total Burden Cost (operating/maintenance): None.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: December 1, 2003.

Merlene Mazyck,

*Acting Director, AmeriCorps*National Civilian Community Corps.*

[FR Doc. 03–30320 Filed 12–5–03; 8:45 am]

BILLING CODE 6050–$$–P

DEPARTMENT OF DEFENSE

Department of the Army

Performance Review Board Membership for the Office of the Secretary of the Army

AGENCY: Department of the Army, DoD.

ACTION: Notice.

SUMMARY: Notice is given of the names of members of a Performance Review Board for the Department of the Army.

DATES: December 1, 2003.

FOR FURTHER INFORMATION CONTACT: Marilyn Ervin, U.S. Army Senior Executive Service Office, Assistant Secretary of the Army, Manpower & Reserve Affairs, 111 Army Pentagon, Washington, DC 20310–0111.

SUPPLEMENTARY INFORMATION: Section 4314(c)(1) through (5) of Title 5, U.S.C., requires each agency to establish, in accordance with regulations, one or more Senior Executive Service performance review boards. The boards shall review and evaluate the initial appraisal of senior executives' performance by supervisors and make recommendations to the appointing authority or rating official relative to the performance of these executives.

The members of the Performance Review Board for the U.S. Army, Office of the Secretary of the Army, are:

1. Mr. William A. Armbruster, Deputy Assistant Secretary of the Army for Privatization and Partnership, Office of the Assistant Secretary of the Army (OASA) (Installations and Environment).

2. Mr. Frederick R. Budd, Director, Single Agency Manager for Pentagon Information Technology Services, Office of the Secretary.

3. Mr. William H. Campbell, Director of Operations and Support, OASA (Financial Management and Comptroller).

4. Dr. Craig E. College, Deputy Assistant Secretary of the Army (Infrastructure Analysis), OASA (Installations and Environment).

5. Mr. James C. Cooke, Special Assistant for Systems, Office of the Deputy Under Secretary of the Army.

6. Mr. Thomas Druzgal, Deputy Auditor General, Army Audit Agency.

7. Mr. George S. Dunlop, Deputy Assistant Secretary of the Army (Legislation), OASA (Civil Works).

8. Mr. Raymond J. Fatz, Deputy Assistant Secretary of the Army for Environment, Safety, and Occupational Health, OASA (Installations and Environment).

9. Mr. Patrick J. Fitzgerald, Director, Audit Policy Plans and Resources, Army Audit Agency.

10. Mr. Ernest J. Gregory, Principal Deputy Assistant Secretary of the Army (Financial Management and Comptroller).

11. Ms. Judith A. Guenther, Director of Investments, OASA (Financial Management and Comptroller).

12. MG Lynn Hartsell, Director, Army Budget, OASA (Financial Management and Comptroller).

13. Mr. Walter W. Hollis, Deputy Under Secretary of the Army (Operations Research), Office of the Under Secretary of the Army.

14. Dr. Daphne K. Kamely, Special Assistant to the Deputy Assistant Secretary of the Army for Environment, Safety, and Occupational Health, OASA (Installations and Environment).

15. Mr. Stephen E. Keefer, Director, Logistical and Financial Audits, Army Audit Agency.

16. Mr. Thomas E. Kelly, III, Special Assistant to the Secretary of the Army for Science and Technology, Office of the Secretary.

17. Mr. Wesley C. Miller, Director of Management and Control, OASA (Financial Management and Comptroller).

18. Ms. Joyce E. Morrow, Director, Acquisition and Force Management, Army Audit Agency.

19. BG Roger A. Nadeau, Program Executive Officer, Combat Support/Combat Service Support.

20. Mr. Levator Norsworthy, Jr., Deputy General Counsel (Acquisition), Office of the General Counsel.

21. Ms. Tracey L. Pinson, Director of Small and Disadvantaged Business Utilization, Office of the Secretary.

22. Mr. Geoffrey G. Prosch, Principal Deputy Assistant Secretary of the Army (Installation and Environment).

23. Mr. Mat Reres, Deputy General Counsel (Ethics and Fiscal), Office of the General Counsel.

24. Ms. Sandra R. Riley, Deputy Administrative Assistant to Secretary of the Army, Office of the Secretary.

25. Mr. Richard G. Sayre, Special Assistant for Systems, Office of the Deputy Under Secretary of the Army.

26. Mr. Karl F. Schneider, Deputy Assistant Secretary of the Army (Army Review Boards Agency), Office of the Director.

27. Mr. Matthew L. Scully, Director of Business Resources, OASA (Financial Management and Comptroller).

28. Mr. C. Russell Shearer, Special Assistant to the Assistant Secretary of the Army (Installations and Environment).

29. LTG Jerry L. Sinn, Military Deputy for Budget, OASA (Financial Management and Comptroller).

30. Mr. Douglas Sizelove, Assistant Deputy Under Secretary of the Army (Operations Research), Office of the Under Secretary.

31. Mr. James J. Smyth, Deputy Assistant Secretary of the Army (Project Planning and Review), OASA (Civil Works).

32. Mr. Earl H. Stockdale, Jr., Deputy General Counsel (Civil Works and Environment), Office of the General Counsel.

33. Mr. Thomas W. Taylor, Senior Deputy General Counsel, Office of the General Counsel.

34. Ms. Claudia L. Tornblom, Deputy Assistant Secretary of the Army (Management and Budget), OASA (Civil Works).

35. Ms. Carla a. Von Bernewitz, Director, Business Transformation Task Force, Office of the Under Secretary.

36. MG David F. Wherely, Jr., Director, District of Columbia National Guard.

37. Mr. Joseph W. Whitaker, Jr., Office, Deputy Assistant Secretary of the Army (Installations & Housing).

38. Mr. Avon N. Williams, Principal Deputy General Counsel, Office of the General Counsel.

39. Mr. Robert J. Winchester, Assistant for Intelligence Liaison, Office, Chief of Legislative Liaison.

40. Mr. Gary L. Winkler, Director for Enterprise Management, Office of the Chief Information Officer/G–6.

41. Mr. Robert W. Young, Deputy for Coast Analysis, OASA (Financial Management and Comptroller).

Luz D. Ortiz,

Army Federal Register Liaison Officer.

[FR Doc. 03–30365 Filed 12–5–03; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Performance Review Board Membership for the U.S. Army Corps of Engineers

AGENCY: Department of the Army, DoD.

ACTION: Notice.

SUMMARY: Notice is given of the names of members of a Performance Review Board for the Department of the Army.

EFFECTIVE DATE: December 3, 2003.

FOR FURTHER INFORMATION CONTACT: Marilyn Ervin, U.S. Army Senior Executive Service Office, Assistant Secretary of the Army, Manpower & Reserve Affairs, 111 Army Pentagon, Washington, DC 20310–0111.

SUPPLEMENTARY INFORMATION: Section 4314(c)(1) through (5) of title 5, U.S.C., requires each agency to establish, in accordance with regulations, one or more Senior Executive Service performance review boards. The boards shall review and evaluate the initial appraisal of senior executives' performance by supervisors and make recommendations to the appointing authority or rating official relative to the performance of these executives.

The members of the Performance Review Board for the U.S. Army Corps of Engineers are:

1. MG Robert Griffin (Chair), Deputy Chief of Engineers and Deputy Commanding General.

2. Dr. James Houston, Director, Engineer Research and Development Center.

3. BG Robert Crear, Commander, Southwestern Division.

4. Mr. Thomas F. Caver, Deputy Director, Directorate of Civil Works.

5. Ms. Patricia Rivers, Chief Environmental Division, Directorate of Military Programs.

6. Mr. Stephen Coakley, Director of Resource Management.

7. Mr. Steven Stockton, Civil Works and Management Director, South Pacific Division.

8. Mr. Frank Oliva, Civil Works and Technical Director, Pacific Ocean Division.

Luz D. Ortiz,

Army Federal Register Liaison Officer.

[FR Doc. 03–30366 Filed 12–5–03; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Navy

Meeting of the U.S. Naval Academy Board of Visitors

AGENCY: Department of the Navy, DOD.

ACTION: Notice of partially closed meeting.

SUMMARY: The U.S. Naval Academy Board of Visitors will meet to make such inquiry, as the Board shall deem necessary into the state of morale and discipline, the curriculum, instruction, physical equipment, fiscal affairs, and academic methods of the Naval Academy. During this meeting inquiries will relate to the internal personnel rules and practices of the Academy, may involve on-going criminal investigations, and include discussions of personal information the disclosure of which would constitute a clearly unwarranted invasion of personal privacy. The executive session of this meeting will be closed to the public.

DATES: The open session of the meeting will be held on Friday, December 12, 2003, from 8:30 a.m. to 11:15 a.m. The closed Executive Session will be on Friday, December 12, 2003, from 11:15 a.m. to 12 p.m.

ADDRESSES: The meeting will be held at the U.S. Naval Academy, Annapolis, Maryland in the Bo Coppedge dining room of Alumni Hall.

FOR FURTHER INFORMATION CONTACT: Commander Domenick Micillo, Executive Secretary to the Board of Visitors, Office of the Superintendent, U.S. Naval Academy, Annapolis, MD 21402–5000, (410) 293–1503.

SUPPLEMENTARY INFORMATION: This notice of meeting is provided per the Federal Advisory Committee Act (5 U.S.C. App. 2). The executive session of the meeting will consist of discussions of information, which pertain to the conduct of various midshipmen at the Naval Academy and internal Board of Visitors matters. Discussion of such information cannot be adequately segregated from other topics, which precludes opening the executive session of this meeting to the public. In accordance with 5 U.S.C. App. 2, section 10(d), the Secretary of the Navy has determined in writing that the special committee meeting shall be partially closed to the public because they will be concerned with matters as outlined in section 552(b)(2), (5), (6), (7) and (9) of title 5, United States Code.

Dated: December 3, 2003.

J.T. Baltimore,

Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Alternate Federal Register Liaison Officer.

[FR Doc. 03–30424 Filed 12–5–03; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Information Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before January 7, 2004.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Melanie Kadlic, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503, or should be electronically mailed to the Internet address *Melanie_Kadlic@omb.eop.gov.*

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.*, new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: December 2, 2003.

Angela C. Arrington,

Leader, Regulatory Information Management Group, Office of the Chief Information Officer.

Office of Postsecondary Education

Type of Review: Revision.

Title: Application for Strengthening Historically Black Colleges and Universities Program and Historically Black Graduate Institutions.

Frequency: Phase I Annually; Phase II every 5 years.

Affected Public: Not-for-profit institutions; State, local, or tribal gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 117

Burden Hours: 889

Abstract: The information is required of institutions of higher education designated as Historically Black Colleges and Universities and Qualified Graduate Programs, Title III, Part B of the Higher Education Act of 1965, as amended. This information will be used for the evaluation process to determine whether proposed activities are consistent with the legislation and to determine dollar share of congressional appropriation.

Requests for copies of the submission for OMB review; comment request may be accessed from *http://edicsweb.ed.gov*, by selecting the "Browse Pending Collections" link and by clicking on link number 2339. When you access the information collection, click on "Download Attachments" to view. Written requests for information should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW., Room 4050, Regional Office Building 3, Washington, DC 20202–4651, or to the e-mail address *vivan.reese@ed.gov*. Requests may also be electronically mailed to the Internet address *OCIO_RIMG@ed.gov* or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Joseph Schubart at his e-mail address *Joe.Schubart@ed.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 03–30331 Filed 12–5–03; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–24–001]

Algonquin Gas Transmission Company; Notice of Tariff Filing

December 2, 2003.

Take notice that on November 26, 2003, Algonquin Gas Transmission Company (Algonquin) tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1, the revised tariff sheets listed in appendix A of the filing, to be effective on October 10, 2003.

Algonquin states that it is making this filing pursuant to an order issued by the Commission in the above referenced docket on November 7, 2003, 105 FERC § 61,180. The November 7, 2003 Order accepted the tariff sheets listed in the Appendix to that order subject to Algonquin submitting within 20 days, tariff sheets reflecting revised rates for service pursuant to Rate Schedules AFT–1(X–38) and AFT–CL(X–37), as well as new interruptible rates, rate schedules and a pro forma service agreement for service to the Manchester Street and Brayton Point facilities on an interruptible basis. Algonquin contends that the November 26 filing includes revised rates for AFT–1(X–38) and AFT–CL(X–37) service, and new Rate Schedule AIT–2 rates, as well as corresponding statements, schedules, and work papers that support theses rates.

Algonquin states that pursuant to the Commission's Notice of Extension of Time, issued November 21, 2003, in the above referenced docket, it will file the required Statement P testimony to supplement the data filed in this application on or before December 12, 2003. The comment period for this case filed on November 26, 2003 expires December 8, 2003 (*See* 18 CFR 154.210). However, since Algonquin was granted an extension of time to complete its application, filing the required Statement P testimony on or before December 12, interveners will then have seven days from the Statement P filing, until December 19, 2003, in which to supplement their interventions based upon the Statement P testimony which completes Algonquin's application.

Algonquin states that copies of its filing have been mailed to all affected customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with § 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with § 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "e-library". Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-filing" link.

Magalie R. Salas,

Secretary.

[FR Doc. E3–00466 Filed 12–5–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–77–000]

Alliance Pipeline L.P.; Notice of Proposed Change in FERC Gas Tariff

December 2, 2003.

Take notice that on November 26, 2003, Alliance Pipeline L.P. (Alliance) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the following tariff sheets, proposed to become effective January 1, 2004:

First Revised Sheet No. 300
First Revised Sheet No. 301

Alliance states that it is submitting the referenced revised tariff sheets to revise the pro forma Form of Firm Transportation Agreement set forth in its FERC Gas Tariff to insert certain blanks to better permit comparison with its negotiated rate agreements and to ensure that there is no material deviation between its negotiated rate agreements and the pro forma Firm Transportation Agreement.

Alliance states that copies of its filing have been mailed to all customers, state commissions, and other interested parties.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with § 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with § 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the e-Filing link.

Magalie R. Salas,

Secretary.

[FR Doc. E3–00473 Filed 12–5–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–75–000]

CenterPoint Energy Gas Transmission Company; Notice of Credit Report

December 2, 2003.

Take notice that on November 25, 2003, CenterPoint Energy Gas Transmission Company (CEGT) tendered for filing its first annual report of penalty revenue credits, covering such activity during the twelve month reporting period ended July 31, 2003.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with § 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before the date as indicated below. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the e-Filing link.

Comment Date: December 9, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. E3–00471 Filed 12–5–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–71–000]

Colorado Interstate Gas Company; Notice of Proposed Changes in FERC Gas Tariff

December 2, 2003.

Take notice that on November 25, 2003, Colorado Interstate Gas Company (CIG) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the tariff sheets listed on appendix A to the filing, bearing a proposed effective date of January 1, 2004.

CIG states that these tariff sheets enhance the service provided under CIG's Rate Schedule NNT–1 by providing for hourly delivery transfers, revising the hourly overrun calculation process, increasing supply eligibility for short notice diversions, and expanding the types of delivery points eligible for flexible services.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with § 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with § 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the e-Filing link.

Magalie R. Salas,

Secretary.

[FR Doc. E3–00467 Filed 12–5–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–72–000]

Colorado Interstate Gas Company; Notice of Proposed Changes in FERC Gas Tariff

December 2, 2003.

Take notice that on November 25, 2003, Colorado Interstate Gas Company (CIG) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, Fourth Revised Sheet No. 300 bearing a proposed effective date of January 1, 2004.

CIG states the tendered tariff sheet provides for the posting of storage inventory levels on its electronic bulletin board.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with § 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with § 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "eLibrary". Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Magalie R. Salas,

Secretary.

[FR Doc. E3–00468 Filed 12–5–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–74–000]

Colorado Interstate Gas Company; Notice of Proposed Changes in FERC Gas Filing

December 2, 2003.

Take notice that on November 25, 2003, Colorado Interstate Gas Company (CIG) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, Thirtieth Revised Sheet No. 11A, to become effective January 1, 2004.

CIG states the tariff sheet is being filed to revise the Fuel Reimbursement Percentages applicable to Lost, Unaccounted-For and Other Fuel Gas. CIG further states that the tendered tariff sheet is proposed to become effective January 1, 2004.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the e-Filing link.

Magalie R. Salas,

Secretary.

[FR Doc. E3–00470 Filed 12–5–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–73–000]

El Paso Natural Gas Company; Notice of Proposed Changesin FERC Gas Tariff

December 2, 2003.

Take notice that on November 25, 2003, El Paso Natural Gas Company (El Paso) tendered for filing as part of its FERC Gas Tariff, the following tariff sheets to become effective January 1, 2004:

Second Revised Volume No. 1–A

Twenty-Eighth Revised Sheet No. 20
Fifth Revised Sheet No. 21
Twenty-Second Revised Sheet No. 22
Twenty-Seventh Revised Sheet No. 23
Thirty-Fifth Revised Sheet No. 24
Twenty-Eighth Revised Sheet No. 26
Twenty-Eighth Revised Sheet No. 27
Second Revised Sheet No. 113D
Seventh Revised Sheet No. 117
Ninth Revised Sheet No. 118
Second Revised Sheet No. 118A

Third Revised Volume No. 2

Fifty-Fourth Revised Sheet No. 1–D.2
Forty-Eighth Revised Sheet No. 1–D.3

El Paso states that the above tariff sheets are being filed to adjust its Base Rates and Effective Unit Rates for inflation in accordance with its tariff, and to update the Partial Demand Charge Credit.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the e-Filing link.

Magalie R. Salas,

Secretary.

[FR Doc. E3–00469 Filed 12–5–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–80–000]

El Paso Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

December 2, 2003.

Take notice that on November 26, 2003, El Paso Natural Gas Company (EPNG) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1A, the following tariff sheets bearing a proposed effective date of January 1, 2004.

Tenth Revised Sheet No. 256
Tenth Revised Sheet No. 257
First Revised Sheet No. 257A

EPNG states the tendered tariff sheets update the identification of low and high load factor shippers for assessing Gas Research Institute surcharges.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary. Enter

the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the e-Filing link.

Magalie R. Salas,

Secretary.

[FR Doc. E3–00476 Filed 12–5–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–82–000]

Gas Transmission Northwest Corporation; Notice of Proposed Change in FERC Gas Tariff

December 2, 2003.

Take notice that on November 26, 2003, Gas Transmission Northwest Corporation (GTN) tendered for filing to be part of its FERC Gas Tariff, Third Revised Volume No. 1–A, First Revised Sheet No. 225, with an effective date of December 26, 2003.

GTN states that this sheet is being filed to amend GTN's list of acceptable discount transactions to allow for the use of basis differentials in the pricing of discounted rate transactions.

GTN further states that a copy of this filing has been served on GTN's jurisdictional customers and interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the e-Filing link.

Magalie R. Salas,

Secretary.

[FR Doc. E3–00478 Filed 12–5–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–84–000]

Gas Transmission Northwest Corporation; Notice of Tariff Filing

December 2, 2003.

Take notice that on November 26, 2003, Gas Transmission Northwest Corporation (GTN) tendered for filing to be part of its FERC Gas Tariff, Third Revised Volume No. 1–A, First Revised Sheet No. 6, with an effective date of January 1, 2004.

GTN states that the purpose of this filing is to comply with Paragraph 37 of the General Terms and Conditions of its Tariff, "Adjustment Mechanism for Fuel, Line Loss, and Other Unaccounted For Gas Percentages."

GTN further states that a copy of this filing has been served on GTN's jurisdictional customers and interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the e-Filing link.

Magalie R. Salas,

Secretary.

[FR Doc. E3–00480 Filed 12–5–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–361–017]

Gulfstream Natural Gas System, L.L.C.; Notice of Negotiated Rates

December 2, 2003.

Take notice that on November 25, 2003, Gulfstream Natural Gas System, L.L.C. (Gulfstream) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, Original Sheet No. 8N, reflecting an effective date of November 1, 2003. Gulfstream states that it also filed a Service Agreement and Negotiated Rate Letter Agreement.

Gulfstream states that this filing is being made to implement a negotiated rate transaction under Rate Schedule FTS pursuant to section 31 of the General Terms and Conditions of Gulfstream's FERC Gas Tariff. Gulfstream states that Original SheetNo. 8N identifies and describes the negotiated rate agreement, including the exact legal name of the relevant shipper, the negotiated rate, the rate schedule, the contract term, and the contract quantity. Gulfstream also states that Sheet 8N includes footnotes where necessary to provide further details on the agreement listed thereon.

Gulfstream states that it has identified this transaction as non-conforming, but Gulfstream submits that it does not pose a risk for undue discrimination.

Gulfstream states that copies of its filing have been mailed to all affected customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with § 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with § 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the

appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the e-Filing link.

Magalie R. Salas,

Secretary.

[FR Doc. E3–00465 Filed 12–5–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–78–000]

Overthrust Pipeline Company; Notice of Tariff Filing

December 2, 2003.

Take notice that on November 26, 2003, Overthrust Pipeline Company (Overthrust) tendered for filing as part of its FERC Gas Tariff First Revised Volume No. 1–A , the following tariff sheets, to be effective January 1, 2004:

Sixth Revised Sheet No. 60
Sixth Revised Sheet No. 61
Third Revised Sheet No. 61A
Second Revised Sheet No. 62
Second Revised Sheet No. 63
Third Revised Sheet No. 64
Third Revised Sheet No. 65

Overthrust states it is proposing to update the Measurement section of its tariff to comport with current industry measurement standards and practices.

Overthrust states that a copy of this filing has been served upon its customers, the Public Service Commission of Utah and the Public Service Commission of Wyoming.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with § 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with § 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the e-Filing link.

Magalie R. Salas,

Secretary.

[FR Doc. E3–00474 Filed 12–5–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–79–000]

Southern Natural Gas Company; Notice of Tariff Filing

December 2, 2003.

Take notice that on November 26, 2003, Southern Natural Gas Company (Southern) tendered for filing as part of its FERC Gas Tariff, Seventh Revised Volume No. 1, the following tariff sheets, to become effective January 1, 2004:

Sixtieth Revised Sheet No. 14
Eighty-first Revised Sheet No. 15
Sixtieth Revised Sheet No. 16
Eighty-first Revised Sheet No. 17
Forty-fourth Revised Sheet No. 18

Southern states that copies of the filing were served upon Southern's customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208-3676, or TTY, contact (202) 502-8659. The Commission strongly encourages electronic filings. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the e-Filing link.

Magalie R. Salas,

Secretary.

[FR Doc. E3–00475 Filed 12–5–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–76–000]

Southern Star Central Gas Pipeline, Inc; Notice of Filing of Cash-Out-Report

December 2, 2003.

Take notice that on November 25, 2003, Southern Star Central Gas Pipeline, Inc. (Southern Star) tendered for filing its report of net cash out activity.

Southern Star states that pursuant to the cash-out mechanism contained in Section 9.9(a)(iv) of Southern Star's tariff, Shippers are given the option of resolving their imbalances by the end of the calendar month following the month in which the imbalance occurred by cashing out such imbalances at 100% of the spot market price applicable to Southern Star as published in the first issue of Inside FERC's Gas Market Report for the month in which the imbalance occurred.

Southern Star states that a copy of its filing was served on all jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before the date as indicated below. Protests will be

considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the e-Filing link.

Comment Date: December 9, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. E3–00472 Filed 12–5–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–83–000]

Tennessee Gas Pipeline Company; Notice of Filing and Request for Waiver

December 2, 2003.

Take notice that on November 26, 2003, Tennessee Gas Pipeline Company (Tennessee), tendered for filing a current accounting of Tennessee's take-or-pay transition costs and a request for waiver of the requirement that Tennessee restate its take-or-pay transition surcharges.

Tennessee states that this filing of the current accounting is in compliance with Article XXV of the General Terms and Conditions of its FERC Gas Tariff, Fifth Revised Volume No. 1. Tennessee further states that the request for waiver is based on the fact that Tennessee has not incurred any recoverable take-or-pay costs since its last filing on May 30, 2003.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before the date as indicated below. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the e-Filing link.

Comment Date: December 9, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. E3–00479 Filed 12–5–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–81–000]

Tennessee Gas Pipeline Company; Notice of Cashout Report

December 2, 2003.

Take notice that on November 26, 2003, Tennessee Gas Pipeline Company (Tennessee), tendered for filing its Cashout Report for the September 2002 through August 2003 Period.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before the date as indicated below. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the e-Filing link.

Comment Date: December 9, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. E3–00477 Filed 12–5–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC04–29–000, et al.]

Bayou Cove Peaking Power LLC, et al.; Electric Rate and Corporate Filings

December 1, 2003.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. Bayou Cove Peaking Power LLC and Entergy Gulf States, Inc.

[Docket No. EC04–29–000]

Take notice that on November 24, 2003, Bayou Cove Peaking Power LLC (Bayou Cove) and Entergy Gulf States, Inc. (Entergy Gulf States) (collectively, Applicants), tendered for filing with the Commission, pursuant to Section 203 of the Federal Power Act and Part 33 of the Commission's regulations, an application to transfer a substation from Bayou Cove to Entergy Gulf States pursuant to a previously-approved Interconnection and Operating Agreement.

Comment Date: December 15, 2003.

2. New York Independent System Operator, Inc.

[Docket No. ER01–3001–007]

Take notice that on November 24, 2003, the New York Independent System Operator, Inc. (NYISO) submitted further information regarding the relationship of demand response programs and the price of wholesale electricity in New York in compliance with the Commission's October 24, 2003 Order in Docket No. ER01–3001–006. The NYISO states it has served a copy of this filing upon all parties that have executed service agreements under the NYISO's Open Access Transmission Tariff and Market Administration and Control Area Services Tariff.

Comment Date: December 11, 2003.

3. Midwest Independent Transmission System Operator, Inc.

[Docket No. EC04–29–000]

Take notice that on November 24, 2003, the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) corrected its November 21, 2003 compliance filing concerning Schedule 10–FERC (FERC Annual Charges Recovery) of its Open Access Transmission Tariff, FERC Electric Tariff, Second Revised Volume No. 1.

The Midwest ISO has requested the original effective date of September 1, 2003.

The Midwest ISO has also requested waiver of the service requirements set forth in 18 CFR 385.2010. The Midwest ISO states that it has electronically served a copy of this filing, with attachments, upon all Midwest ISO Members, Member representatives of Transmission Owners and Non-Transmission Owners, the Midwest ISO Advisory Committee participants, as well as all state commissions within the region and in addition, the filing has been electronically posted on the Midwest ISO's Web site at *http://www.midwestiso.org* under the heading "Filing to FERC" for other interested parties in this matter. The Midwest ISO states that it will provide hard copies to any interested parties upon request.

Comment Date: December 11, 2003.

4. Sempra Energy Trading Corp.

[Docket Nos. ER03–1413–001]

Take notice that on November 24, 2003, Sempra Energy Trading Corp. (SET) submitted for filing a revised rate schedule, modifying the rate schedule submitted on September 26, 2003 in the above-referenced docket.

Comment Date: December 11, 2003.

5. Watt Works LLC

[Docket No. ER04–98–001]

Take notice that on November 14, 2003, Watt Works LLC filed an amendment to its October 29, 2003 Notice of Cancellation. Watt Works LLC is requesting an effective date of October 22, 2003.

Comment Date: December 5, 2003.

6. PJM Interconnection, L.L.C.

[Docket No. ER04–173–000]

Take notice that on November 24, 2003, PJM Interconnection, L.L.C. (PJM), amended its November 6, 2003 filing in this docket to add two sheets to the Sixth Revised Volume No. 1 of the PJM Tariff that were included in the Fifth Revised Volume No. 1 of the PJM Tariff but inadvertently omitted from the Sixth Revised Volume No. 1 version of the PJM Tariff when it was initially filed on March 20, 2003 in Docket No. RT01–2–006.

PJM requests waiver of the Commission's notice regulations to permit an effective date of March 20, 2003, the initial effective date of the Sixth Revised Volume No. 1 version of the PJM Tariff.

PJM states that copies of this filing have been served upon each person designated on the official service list compiled by the Secretary in this proceeding, all PJM members, and each state electric utility regulatory commission in the PJM region.

Comment Date: December 11, 2003.

7. Southern California Edison Company

[Docket No. ER04–216–000]

Take notice that on November 24, 2003, Southern California Edison Company (SCE) tendered for filing revised rate sheets (Revised Sheets) to the Interconnection Facilities Agreement (Interconnection Agreement) and the Service Agreement for Wholesale Distribution Service (Service Agreement) between the City of Colton (Colton)and SCE. SCE states that the Revised Sheets reflect the parties(agreement to extend the term of service in the Service Agreement to twenty-five (25) years from the commencement date of Distribution Service under the Service Agreement, and to delete all references to the cost responsibility of the circuit breakers by Colton in the Interconnection Agreement.

SCE states that copies of this filing were served upon the Public Utilities Commission of the State of California and Colton.

Comment Date: December 11, 2003.

8. NorthWestern Energy

[Docket No. ER04–217–000]

Take notice that on November 24, 2003, NorthWestern Energy (NWE) tendered for filing with the Federal Energy Regulatory Commission pursuant to 18 CFR 35.13, as a change in rate schedule, Supplements to Rate Schedule FERC No. 175, the General Transfer Agreement between NWE and the Bonneville Power Administration (Bonneville).

NWE states that a copy of the filing was served upon Bonneville.

Comment Date: December 11, 2003.

9. Griffin Energy Marketing, LLC

[Docket No. ER04–218–000]

Take notice that on November 24, 2003, Griffin Energy Marketing, LLC (Griffin Energy) tendered for filing a Notice of Cancellation of its market-based rate tariff, with a requested effective date of November 20, 2003.

Comment Date: December 11, 2003.

10. Deseret Generation & Transmission Co-operative, Inc.

[Docket No. ER04–221–000]

Take notice that on November 24, 2003, Deseret Generation & Transmission Co-operative, Inc. (Deseret) tendered for filing Amendments to First Revised Service Agreement Nos. 1 through 6 to its FERC Electric Tariff, Volume No. 1. The amendment provides for a rate rebate for the calendar year 2003 to each of Deseret's six Member Cooperatives. Deseret requests an effective date of December 1, 2003.

Deseret states that copies of this filing were served upon Deseret's six Member Cooperatives.

Comment Date: December 11, 2003.

11. CPV Milford, LLC

[Docket No. ER04–222–000]

Take notice that on November 24, 2003, CPV Milford, LLC tendered for filing an application for authorization to sell energy, capacity, and ancillary services and to provide asset management services at market-based rates pursuant to Section 205 of the Federal Power Act.

Comment Date: December 11, 2003.

12. PJM Interconnection, L.L.C.

[Docket No. RT01–2–012]

Take notice that on November 24, 2003, PJM Interconnection, L.L.C. (PJM) tendered for filing proposed changes to portions of Schedule 6 of the PJM Operating Agreement, PJM's Regional Transmission Expansion Planning Protocol. PJM states that the proposed amendments are submitted to comply with the Commission's Order in this proceeding dated October 24, 2003.

PJM states that copies of this filing have been served on all parties, as well as on all PJM Members and the state electric utility regulatory commissions in the PJM region.

Comment Date: December 11, 2003.

Standard Paragraph

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such

motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov*, using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number filed to access the document. For assistance, call (202) 502–8222 or TTY, (202) 502–8659. Protests and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Magalie R. Salas,

Secretary.

[FR Doc. E3–00483 Filed 12–5–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL03–124–001, et al.]

Southwestern Power Administration, et al.; Electric Rate and Corporate Filings

November 28, 2003.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. Southwestern Power Administration v. Entergy Arkansas, Inc., Entergy Services, Inc.

[Docket Nos. EL03–124–001 and ER03–843–001]

Take notice that on November 14, 2003, Entergy Services, Inc. (Entergy), as agent for Entergy Arkansas, Inc. (EAI) filed a settlement between EAI and Southwestern Power Administration (Southwestern) which resolves their disputes with respect to Contract DE–PM75–94SW00246–M002.

Comment Date: December 5, 2003.

2. Cogeneration National Corporation

[Docket No. EG04–18–000]

On November 21, 2003, Cogeneration National Corporation (GNC) filed with the Commission pursuant to part 365 of the Commission's regulations an application for a determination of exempt wholesale generator (EWG) status as of the date of the Application. CNG states that it is a corporation duly organized under the laws of California. CNG further states that it is an indirect owner of a partial interest in a 44–MW coal-fueled cogeneration eligible facility located in Stockton, California.

Comment Date: December 12, 2003.

3. CNC/SEGS, Inc.

[Docket No. EG04–19–000]

On November 21, 2003, CNC/SEGS, Inc. (CNC/SEGS) filed with the Commission pursuant to Part 365 of the Commission's regulations an application for a determination of exempt wholesale generator (EWG) status as of the date of the Application. CNC/SEGS states that it is a corporation duly organized under the laws of California. CNC/SEGS further states that it is an indirect owner of a partial interest in a solar-powered small power production facility located near Kramer Junction, California.

Comment Date: December 12, 2003.

4. Southern Company Services, Inc.

[Docket No. ER02–851–013]

Take notice that on November 21, 2003, Southern Company Services, Inc., acting on behalf of Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company, and Savannah Electric and Power Company (collectively, Southern Companies), submitted a compliance filing related to the Commission's March 27, 2002 order, 98 FERC ¶ 61,328 (2002), its October 3, 2003 order, 105 FERC ¶ 61,019 (2003), and the Settlement filed on June 18, 2003.

Comment Date: December 12, 2003.

5. The United Illuminating Company

[Docket No. ER03–31–003]

Take notice that on November 21, 2003, The United Illuminating Company (UI) submitted for fling with the Federal Energy Regulatory Commission (Commission) a revised Interconnection Agreement between UI and Cross-Sound Cable Company, L.L.C., pursuant to UI's Open Access Transmission Tariff, FERC Electric Tariff, Original Volume No. 4, as amended. UI states that the filing is submitted in compliance with the Commission's October 22, 2003 Order on Rehearing and Compliance Filing, 105 FERC ¶ 61,092 (2003).

Comment Date: December 12, 2003.

6. California Independent System Operator Corporation

[Docket No. ER03–1046–002]

Take notice that on November 21, 2003, the California Independent System Operator Corporation (ISO) submitted a compliance filing in response to the Commission's order issued October 22, 2003 concerning Amendment No. 54 to the ISO Tariff, 105 FERC ¶ 61,091 (2003).

The ISO states that the compliance filing has been served on all parties to this proceeding.

Comment Date: December 12, 2003.

7. Midwest Independent Transmission System Operator, Inc.

[Docket No. ER03–1277–001]

Take notice that on November 21, 2003, the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) submitted for filing revisions to Schedule 10–FERC of its Open Access Transmission Tariff, FERC Electric Tariff, Second Revised Volume No. 1, in compliance with the Commission's October 28, 2003 Order issued in Docket No. ER03–1277–000, 105 FERC ¶ 61,144 (2003). The Midwest ISO an effective date of September 1, 2003.

The Midwest ISO states that it has electronically served a copy of this filing, with attachments, upon all Midwest ISO Members, Member representatives of Transmission Owners and Non-Transmission Owners, the Midwest ISO Advisory Committee participants, as well as all state commissions within the region. In addition, Midwest ISO states that the filing has been electronically posted on the Midwest ISO's Web site at *http://www.midwestiso.org* under the heading "Filings to FERC" for other interested parties in this matter. The Midwest ISO will provide hard copies to any interested parties upon request.

Comment Date: December 12, 2003.

8. NEGT Energy Trading—Power, L.P.

[Docket No. ER04–69–001]

Take notice that on November 21, 2003, NEGT Energy Trading—Power, L.P. amended its October 23, 2003 filing in Docket No. ER04–69–000 to correct the effective date of its Fourth Revised FERC Electric Rate Schedule No. 1. The proposed effective date is October 24, 2003.

Comment Date: December 12, 2003.

9. University Park Energy, LLC

[Docket No. ER04–212–000]

Take notice that on November 21, 2003, University Park Energy, LLC (University Park) tendered for filing, pursuant to Section 205 of the Federal Power Act, as FERC Electric Tariff, Original Volume No. 2 a Black Start Service Agreement by and between University Park and Commonwealth Edison Company (ComEd) pursuant to which University Park will provide Black Start service to ComEd from its 300 MW natural gas-fired generating facility located in University Park, Illinois.

University Park states that a copy of this filing was mailed to ComEd and the Illinois Commerce Commission.

Comment Date: December 12, 2003.

10. AK Electric Supply LLC

[Docket No. ER04–213–000]

Take notice that on November 21, 2003, AK Electric Supply LLC (AK) petitioned the Commission for acceptance of WCW Rate Schedule FERC No. 1; the granting of certain blanket approvals, including the authority to sell electricity at market-based rates; and the waiver of certain Commission regulations.

AK states that it intends to engage in wholesale electric power and energy purchases and sales as a marketer. AL further states that it is not in the business of generating or transmitting electric power.

Comment Date: December 12, 2003.

11. WCW International, Inc.

[Docket No. ER04–214–000]

Take notice that on November 21, 2003, WCW International, Inc. (WCW) petitioned the Commission for acceptance of WCW Rate Schedule FERC No. 1; the granting of certain blanket approvals, including the authority to sell electricity at market-based rates; and the waiver of certain Commission regulations.

WCW states that it intends to engage in wholesale electric power and energy purchases and sales as a marketer. WCW further states that it is not in the business of generating or transmitting electric power.

Comment Date: December 12, 2003.

12. Pacific Gas and Electric Company

[Docket No. ER04–215–000]

Take notice that on November 21, 2003, Pacific Gas and Electric Company (PG&E) tendered for filing the Small Facilities Authorization Letter No. 6, submitted pursuant to the Procedures for Implementation (Procedures) ofSection 3.3 of the 1987 Agreement between PG&E and the City and County of San Francisco (City). PG&E states that this is PG&E's fifth quarterly filing submitted pursuant to section 4 of the Procedures, which provides for the quarterly filing of Facilities Authorization Letters. PG&E has requested certain waivers.

PG&E states that copies of this filing have been served upon the City, the California Independent System Operator Corporation, and the California Public Utilities Commission.

Comment Date: December 12, 2003.

13. NEO California Power LLC

[Docket No. ER04–220–000]

Take notice that on November 21, 2003, NEO California Power LLC (NEO California) tendered for filing Schedule A (Contract Service Limits for the 2004 Contract Year), associated with a Must-Run Service Agreement (RMR Agreement) between NEO California and the California Independent System Operator Corporation.

Comment Date: December 12, 2003.

Standard Paragraph

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov*, using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number filed to access the document. For assistance, call (202) 502–8222 or TTY, (202) 502–8659. Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Magalie R. Salas,

Secretary.

[FR Doc. E3–00482 Filed 12–05–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Motions To Intervene and Protests

December 2, 2003.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* New Major License.

b. *Project No.:* 1971–079.

c. *Date Filed:* July 21, 2003.

d. *Applicant:* Idaho Power Company.

e. *Name of Project:* Hells Canyon Hydropower Project.

f. *Location:* On the Snake River in Washington and Adams, Counties, Idaho; and Wallowa and Baker Counties, Oregon. About 5,270 acres of federal lands administered by the Forest Service and the Bureau of Land Management (Payette and Wallowa-Whitman National Forests and Hells Canyon National Recreational Area) are included within the project boundary.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Robert W. Stahman, Vice President, Secretary, and General Counsel, Idaho Power Company, P.O. Box 70, Boise, Idaho 83707.

i. *FERC Contact:* Alan Mitchnick, (202) 502–6074, *alan.mitchnick@ferc.gov*; Emily Carter, (202) 502–6512, *emily.carter@ferc.gov*.

j. *Deadline for filing motions to intervene and protests:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

Motions to intervene and protests may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the "e-Filing" link.

k. This application has been accepted, but is not ready for environmental analysis at this time.

l. The existing Hells Canyon Project consists of three developments: Brownlee Development consists of a 395-foot-high earth and rockfill dam, a 14,621-acre impoundment, and a powerhouse with five generating units producing 585.4 megawatts (MW); Oxbow Development consists of a 209-

foot-high earth and rockfill dam, a 1,150-acre impoundment, and a powerhouse with four generating units producing 460 MW; and Hells Canyon Development consists of a 320-foot-high concrete gravity dam, a 2,412-acre impoundment, and a powerhouse with three generating units producing 391.5 MW. Idaho Power also operates four fish hatcheries and four adult fish traps. Idaho Power proposes to exclude 11 of 12 existing transmission lines from the project.

m. A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

n. Anyone may submit a protest or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, and 385.214. In determining the appropriate action to take, the Commission will consider all protests filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any protests or motions to intervene must be received on or before the specified deadline date for the particular application.

All filings must (1) bear in all capital letters the title "PROTEST" or "MOTION TO INTERVENE" (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. Agencies may obtain copies of the application directly from the applicant. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application.

o. With this notice, we are initiating consultation with the Oregon State Historic Preservation Officer (SHPO), as required by section 106, National Historic Preservation Act, and the regulations of the Advisory Council on Historic Preservation, 36 CFR 800.4.

Magalie R. Salas,

Secretary.

[FR Doc. E3–00462 Filed 12–5–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. P–7387–019]

Erie Boulevard Hydropower, L.P.; Notice of Settlement Agreement and Soliciting Comments

December 2, 2003.

Take notice that the following settlement agreement has been filed with the Commission and is available for public inspection.

a. *Type of Application:* Settlement Agreement.

b. *Project No.:* P–7387–019.

c. *Date filed:* October 20, 2003.

d. *Applicant:* Erie Boulevard Hydropower, L.P.

e. *Name of Project:* Piercefield Hydroelectric Project.

f. *Location:* On the Raquette River, in St. Lawrence and Franklin Counties, New York. The project does not occupy federal lands.

g. *Filed Pursuant to:* Rule 602 of the Commission's Rules of Practice and Procedure, 18 CFR 385.602.

h. *Applicant Contact:* Mr. Jerry L. Sabattis, P.E., Licensing Coordinator, Erie Boulevard Hydropower, L.P., 225 Greenfield Parkway, Liverpool, New York, 13088, telephone (315) 413–2787 and Mr. Samuel S. Hirschey, P.E., Manager, Licensing, Compliance, and Project Properties, 225 Greenfield Parkway, Liverpool, New York, 13088, telephone (315) 413–2790.

i. *FERC Contact:* Janet Hutzel, *janet.hutzel@ferc.gov* (202) 502–8675 or Kim Carter, *kim.carter@ferc.gov* (202) 502–6486.

j. *Deadline for filing comments:* The deadline for filing comments on the Settlement Agreement is 20 days from the date of this notice. The deadline for filing reply comments is 30 days from the date of this notice.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

The Commission's Rules of Practice require all interveners filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

Comments may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the "e-Filing" link.

k. Erie Boulevard Hydropower, L.P. (Erie Boulevard) filed the Piercefield Project Settlement Agreement on behalf of itself and the Adirondack Council, Adirondack Mountain Club, Adirondack Park Agency, American Rivers, American Whitewater, New York Rivers United, New York State Conservation Council, New York State Department of Environmental Conservation, St. Lawrence County, Town of Altamont, Town of Piercefield, U.S. Fish and Wildlife Service, and the National Park Service. The Settlement Agreement is intended to resolve, among the signatories, all issues related to Erie Boulevard's pending Application for New License for the Piercefield Hydroelectric Project, including daily and seasonal impoundment fluctuations, fish movement and protection, baseflow, and recreation. Erie Boulevard requests that the Commission accept and incorporate, into any new license issued for the project, the protection, mitigation, and enhancement measures stated in Section 3.0 of the Settlement Agreement.

l. A copy of the settlement agreement is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at1–866–208–3676, or for TTY, 202–502–8659. A copy is also available for inspection and reproduction at the address in item h above.

You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

Magalie R. Salas,

Secretary.

[FR Doc. E3–00463 Filed 12–5–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Ferc Staff Participation at Oms Board Meeting, Miso Advisory Committee Meetings, and Miso Board of Director Meetings

December 2, 2003.

The Federal Energy Regulatory Commission hereby gives notice that members of its staff will attend the December 11, 2003 Organization of MISO States, Inc. (OMS) Board meeting, calendar year 2004 monthly Midwest Independent Transmission System Operator, Inc. (MISO) Advisory Committee meetings and calendar year 2004 monthly MISO Board of Director meetings. The staff's attendance is part of the Commission's ongoing outreach efforts.

The OMS Board meeting will be held on December 11, 2003—from 10:30 am to 3:00 pm. It will be held at the Lakeside Corporate Center (directly across from MISO's headquarters), 630 West Carmel Drive, Carmel IN 46032

The MISO Advisory Committee meetings for 2004 will be held on January 14, February 18, March 17, April 14, May 19, June 16, July 14, August 18, September 15, October 20, November 17, and December 8, 2004—beginning at 10 am. The Advisory Committee meetings for 2004 will be held at the Lakeside Corporate Center (directly across from MISO's headquarters), 630 West Carmel Drive, Carmel IN 46032.

The MISO Board of Director meetings will be held on January 15, February 19, March 18, April 15, May 20, June 17, July 15, August 19, September 16, October 21, November 18, and December 9, 2004—beginning at 8:30 am. The Board of Director meetings for 2004 will be held at MISO's headquarters, 701 City Center Drive, Carmel, IN 46032.

These meetings are open to the public. The meetings may discuss matters at issue in Docket No. RM01–12–000, Remedying Undue Discrimination Through Open Access Transmission Service and Standard Electricity Market Design; in Docket No. EL02–65–000, *et al.*, Alliance Companies, *et al.*; in Docket No. RT01–87–000, *et al.*, Midwest Independent Transmission System Operator, Inc.; in Docket No. ER03–323, *et al.*, Midwest Independent Transmission System Operator, Inc., and in Docket No. ER03–1118, Midwest Independent Transmission System Operator, Inc.

For more information, contact Patrick Clarey, Office of Markets, Tariffs and Rates, Federal Energy Regulatory Commission at (317) 249–5937 or *patrick.clarey@ferc.gov*, or Christopher Miller, Office of Markets, Tariffs and Rates, Federal Energy Regulatory Commission at (317) 249–5936 or *christopher.miller@ferc.gov*.

Magalie R. Salas,

Secretary.

[FR Doc. E3–00481 Filed 12–5–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–88–000]

National Fuel Gas Supply Corporation; Notice of Proposed Changes in FERC Gas Tariff

December 2, 2003.

Take notice that on November 28, 2003, National Fuel Gas Supply Corporation (National) tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1, Twenty Second Revised Sheet No. 8, with a proposed effective date of January 1, 2004.

National states that the proposed tariff sheet reflects an adjustment to recover through National's EFT rate the costs associated with the Transportation and Storage Cost Adjustment (TSCA) provision set forth in section 23 of the General Terms and Conditions of National's FERC Gas Tariff.

National further states that copies of this compliance filing were served upon the Company's jurisdictional customers and the regulatory commissions of the States of New York, Ohio, Pennsylvania, Delaware, Massachusetts, and New Jersey.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Magalie R. Salas,

Secretary.

[FR Doc. E3–00461 Filed 12–5–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM98–1–000]

Records Governing Off-the Record Communications; Public Notice

December 1, 2003.

This constitutes notice, in accordance with 18 CFR 385.2201(b), of the receipt of exempt and prohibited off-the-record communications.

Order No. 607 (64 FR 51222, September 22, 1999) requires Commission decisional employees, who make or receive an exempt or prohibited off-the-record communication relevant to the merit's of a contested on-the-record proceeding, to deliver a copy of the communication, if written, or a summary of the substance of any oral communication, to the Secretary.

Prohibited communications will be included in a public, non-decisional file associated with, but not a part of, the decisional record of the proceeding. Unless the Commission determines that the prohibited communication and any responses thereto should become a part of the decisional record, the prohibited off-the-record communication will not be considered by the Commission in reaching its decision. Parties to a proceeding may seek the opportunity to respond to any facts or contentions made in a prohibited off-the-record communication, and may request that the Commission place the prohibited communication and responses thereto

in the decisional record. The Commission will grant such a request only when it determines that fairness so requires. Any person identified below as having made a prohibited off-the-record communication shall serve the document on all parties listed on the official service list for the applicable proceeding in accordance with Rule 2010, 18 CFR 385.2010.

Exempt off-the-record communications will be included in the decisional record of the proceeding, unless the communication was with a cooperating agency as described by 40 CFR 1501.6, made under 18 CFR 385.2201(e)(1)(v).

The following is a list of prohibited and exempt communications recently received in the Office of the Secretary. The communications listed are grouped by docket numbers. These filings are available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary (FERRIS) link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC, Online Support at *FERCOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659.

Docket No.	Date filed	Presenter or requester
Prohibited		
1. Docket No. EC03–131–000	11–21–03	Steven E. Moore.
2. Docket No. EC03–131–000	11–25–03	Donald M. Smith.
3. Docket No. ER02–2189–001	11–25–03	Bill Adams.
4. Project No. 2342–000	11–26–03	Jaz Gikling.
Exempt		
1. Project Nos. 11659–002	11–26–03	Richard Levitt.

Magalie R. Salas,
Secretary.

[FR Doc. E3–00464 Filed 12–5–03; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[Docket ID Number OECA–2003–0153; FRL–7593–3]

Agency Information Collection Activities: Proposed Collection; Comment Request; NESHAP for the Manufacture of Amino/Phenolic Resins, EPA ICR Number 1869.03, OMB Control Number 2060–0434

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit the following existing, approved, continuing Information Collection Request (ICR) to the Office of Management and Budget (OMB) for the purpose of renewing the ICR. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the information collections as described at the beginning of **SUPPLEMENTARY INFORMATION**.

DATES: Comments must be submitted on or before February 6, 2004.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier service. Follow the detailed instructions as provided under **SUPPLEMENTARY INFORMATION**, Section I.B.

FOR FURTHER INFORMATION CONTACT: The contact individuals for each ICR are listed under **SUPPLEMENTARY INFORMATION**, Section II. A.

SUPPLEMENTARY INFORMATION:

I. General Information

A. How Can I Get Copies of the ICR Supporting Statement and Other Related Information?

1. *Docket.* EPA has established an official public docket for this ICR NESHAP for the Manufacture of Amino/Phenolic Resins (40 CFR part 63, Subpart OOO), Docket ID Number OECA–2003–0153. The official public docket for this ICR consists of the documents specifically referenced in the ICR, any public comments received, and other information related to each ICR. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket for each ICR is the collection of materials that is available for public viewing at the Enforcement and Compliance Docket and Information Center in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Avenue, NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Enforcement and Compliance Docket and Information Center Docket is (202) 566–1514.

2. *Electronic Access.* You may access this document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr/*. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. After entering the system, select "search," then key in the docket identification number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI, and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Section I.A.1. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the Docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

For additional information about EPA's electronic public docket, visit EPA Dockets online or *see* 67 FR 38102, May 31, 2002.

B. How and to Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier service. To ensure proper receipt by EPA, identify the appropriate docket identification number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider late comments in formulating a final decision. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Section I.C. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. Electronically. If you submit an electronic comment as prescribed below, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets.* Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket*, and follow the online instructions for submitting comments. To access EPA's electronic public docket from the EPA Internet Home Page, select "Information Sources," "Dockets," and "EPA Dockets." After entering the system, select "search," and then key in Docket ID Number. The system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail.* Comments may be sent by electronic mail (e-mail) to *docket.oeca@epa.gov*. Provide the Docket ID Number when submitting your comments. In contrast to EPA's electronic public docket, EPA's e-mail system is not an "anonymous access" system. If you send an e-mail comment directly to the Docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM.* You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Section I.A.1. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By Mail.* Send your comments to the EPA Docket Center using the address provided in Section I.A.1; Attention: Docket ID Number OECA–2003–0153.

3. *By Hand Delivery or Courier Service.* Deliver your comments to the address provided in Section I.A.1; Attention: Docket ID Number OECA–2003–0153. Such deliveries are only accepted during the Docket's normal hours of operation as identified in Section I.A.1.

C. How Should I Submit CBI to the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. Send or deliver information identified as CBI only to the contact individuals listed in Section II.C.; Attention: Docket ID Number OECA–2003–0153. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI. If you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI, and then identify within the disk or CD ROM the specific information that is CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified under the section titled **FOR FURTHER INFORMATION CONTACT**.

D. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

(1) Explain your views as clearly as possible.

(2) Describe any assumptions that you used.

(3) Provide any technical information and/or data you used that support your views.

(4) If you estimate potential burden or costs, explain how you arrived at your estimate.

(5) Provide specific examples to illustrate your concerns.

(6) Offer alternatives.

(7) Make sure to submit your comments by the comment period deadline identified.

(8) To ensure proper receipt by EPA, identify the appropriate docket identification number in the subject line on the first page of your response. It would also be helpful if you provided the name, date, and **Federal Register** citation related to your comments.

E. In What Information Is EPA Particularly Interested?

Pursuant to section 3506(c)(2)(A) of the PRA, EPA specifically solicits comments and information to enable it to:

(1) Evaluate whether the proposed collections of information are necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility.

(2) Evaluate the accuracy of the Agency's estimates of the burdens of the proposed collections of information.

(3) Enhance the quality, utility, and clarity of the information to be collected.

(4) Minimize the burden of the collections of information on those who are to respond, including through the use of appropriate automated or electronic collection technologies or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

II. ICR To Be Renewed

An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's standards are displayed in 40 CFR Part 9.

These information collection requirements are mandatory. Furthermore, the records required by the National Emission Standards for Hazardous Air Pollutants (NESHAP) must be retained by the owner or operator for at least five years. In general, the required information consists of emissions data and other information deemed not to be private.

In the absence of such information collection requirements, enforcement personnel would be unable to determine whether the standards are being met on a continuous basis, as required by the Clean Air Act.

The Agency computed the burden for each of the recordkeeping and reporting requirements applicable to the industry for the currently approved ICR listed in this notice. Where applicable, the Agency identified specific tasks and made assumptions, while being consistent with the concept of the Paperwork Reduction Act.

In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that EPA is planning to submit the following proposed, continuing ICR to the Office of Management and Budget (OMB): NESHAP for the Manufacture of Amino/Phenolic Resins (40 CFR Part 63, Subpart OOO); Docket ID Number OECA–2003–0153; EPA Preliminary ICR Number 1869.03, OMB Control Number 2060–0434; expiration date February 29, 2004.

A. Contact Individual

NESHAP for the Manufacture of Amino/Phenolic Resins (40 CFR Part 63, Subpart OOO); Leonard Lazarus in the Office of Compliance at (202) 564–6369, facsimile number (202) 564–0050, or via e-mail at *lazarus.leonard@epamail.epa.gov;* EPA ICR Number 1869.03; OMB Control Number 2060–0434; expiration date February 29, 2004.

B. Information for ICR

Title: NESHAP for the Manufacture of Amino/Phenolic Resins (40 CFR part 63, Subpart OOO); EPA ICR Number 1869.03; OMB Control Number 2060–0434; expiration date February 29, 2004.

Affected Entities: Respondents are owners and operators of new and existing facilities that engage in the manufacture of amino/phenolic resins and emit hazardous air pollutants.

Abstract: The respondents are subject to the recordkeeping and reporting requirements at 40 CFR part 63, Subpart A—General Provisions, that apply to all NESHAP sources. These requirements include recordkeeping and reporting for startup, shutdown and malfunctions, and semiannual reporting. Exceptions to the General Provisions for this source category are delineated in the standard. The standard includes other requirements such as precompliance reports, notifications of compliance status, other designated reports and information regarding alternative monitoring parameters. Respondents complying with the equipment leak requirements, must follow the recordkeeping and reporting requirements at 40 CFR part 63, Subpart H.

Burden Statement: In the previously approved ICR, the estimated number of respondents for this information collection was 40 with 80 responses per year. The annual industry recordkeeping and reporting burden for this collection of information was 32,252 hours. On the average each respondent reported twice per year and 403 hours were spent preparing each response. There were no operation and maintenance costs associated with continuous emission monitoring (CEM) equipment in the previous ICR. However, there were $80,000 in costs associated with the startup/shutdown of CEM equipment.

Dated: November 20, 2003.

Michael Stahl,

Director, Office of Compliance.

[FR Doc. 03–30044 Filed 12–5–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7595–9]

Proposed Settlement Agreement, Clean Air Act Citizen Suit

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Proposed Settlement Agreement; request for public comment.

SUMMARY: In accordance with section 113(g) of the Clean Air Act, as amended ("Act"), 42 U.S.C. 7413(g), notice is hereby given of a proposed settlement agreement, to address a petition for writ of mandamus filed by Environmental Defense in the U.S. Court of Appeals for the District of Columbia Circuit: *In re Environmental Defense*, No. 03–1220 (D.C. Cir.). On or about July 31, 2003, Petitioner filed a petition asking the Court to issue a writ of mandamus directing EPA to complete remand proceedings ordered by the Court in *Environmental Defense Fund* v. *EPA*, 898 F.2d 183 (D.C. Cir 1990); and to promulgate regulations, consistent with the Clean Air Act, 42 U.S.C. 7476, for the prevention of significant deterioration of air quality by oxides of nitrogen. Under the terms of the proposed settlement agreement, EPA would publish a proposed rulemaking by September 30, 2004 and a final rulemaking by September 30, 2005 setting forth its actions to comply with the remand order.

DATES: Written comments on the proposed settlement agreement must be received by January 7, 2004.

ADDRESSES: Submit your comments, identified by docket ID number OGC–2003–0006, online at *http://www.epa.gov/edocket* (EPA's preferred method); by e-mail to *oei.docket@epa.gov;* mailed to EPA Docket Center, Environmental Protection Agency, Mailcode: 2822T, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; or by hand delivery or courier to EPA Docket Center, EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC, between 8:30 a.m. and 4:30 p.m. Monday through Friday, excluding legal holidays. Comments on a disk or CD–ROM should be formatted in Wordperfect or ASCII file, avoiding the use of special characters and any form of encryption, and may be mailed to the mailing address above.

FOR FURTHER INFORMATION CONTACT: M. Lea Anderson, Air and Radiation Law Office (2344A), Office of General Counsel, U.S. Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460. telephone: (202) 564–5571.

SUPPLEMENTARY INFORMATION:

I. Additional Information About the Proposed Settlement

Pursuant to section 166 of the Clean Air Act, EPA promulgated regulations on October 17, 1998 to prevent significant deterioration of air quality due to emissions of nitrogen oxides. 53 FR 40656. These regulations were challenged, and on March 13, 1990, the United States Court of Appeals for the District of Columbia Circuit ("D.C. Circuit") remanded the regulations to EPA. *Environmental Defense Fund* v. *EPA*, 898 F.2d 183 (D.C. Cir. 1990). At that time, the court declined to establish a deadline for EPA to act on this remand. *Id.*

The settlement agreement provides, among other things, that: (1) By September 30, 2004, EPA shall sign for publication in the **Federal Register** a notice of proposed rulemaking setting forth its proposed action to fully comply with the Court's remand order in *Environmental Defense Fund* v. *EPA*, including any proposed regulations necessary to comply with that remand order; (2) By September 30, 2005, EPA shall sign for publication in the **Federal Register** a notice of final rulemaking setting forth its final action to fully comply with the Court's remand order in *Environmental Defense Fund* v. *EPA*, including any final regulations necessary to comply with that remand order ; and (3) EPA shall file quarterly status reports on the Agency's progress.

For a period of thirty (30) days following the date of publication of this notice, the Agency will receive written comments relating to the proposed settlement agreement from persons who were not named as parties or interveners to the litigation in question. EPA or the Department of Justice may withdraw or withhold consent to the proposed settlement agreement if the comments disclose facts or considerations that indicate that such consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Act. Unless EPA or the Department of Justice determine, based on any comment which may be submitted, that consent to the settlement agreement should be withdrawn, the terms of the agreement will be affirmed.

II. Additional Information About Commenting on the Proposed Settlement Agreement

A. How Can I Get A Copy Of the Settlement Agreement?

EPA has established an official public docket for this action under Docket ID No. OGC–2003–0006 which contains a copy of the settlement agreement. The official public docket is available for public viewing at the Office of Environmental Information (OEI) Docket in the EPA Docket Center, EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OEI Docket is (202) 566–1752.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the appropriate docket identification number.

It is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. Information claimed as CBI and other information whose disclosure is restricted by statute is not included in the official public docket or in EPA's electronic public docket. EPA's policy is that copyrighted material, including copyrighted material contained in a public comment, will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the EPA Docket Center.

B. How and To Whom Do I Submit Comments?

You may submit comments as provided in the **ADDRESSES** section. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments.

If you submit an electronic comment, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment and with any disk or CD ROM you submit. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. Any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. The electronic public docket system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment. In contrast to EPA's electronic public docket, EPA's electronic mail (e-mail) system is not an "anonymous access" system. If you send an e-mail comment directly to the Docket without going

through EPA's electronic public docket, your e-mail address is automatically captured and included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

Dated: December 2, 2003.

Lisa K. Friedman,

Associate General Counsel, Air and Radiation Law Office, Office of General Counsel.

[FR Doc. 03–30873 Filed 12–5–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7596–3]

Subject to Availability of Funding Solicitation Notice; Environmental Information Exchange Network Grant Program; Fiscal Year 2004

SUMMARY: The United States Environmental Protection Agency (EPA) announces that the Environmental Information Exchange Network Grant Program is now soliciting pre-proposals for the Program. The Exchange Network is an Internet and standards-based information systems network among EPA and its partners in States, Tribes, and Territories. It is designed to help integrate information, provide secure real-time access to environmental information, and support the electronic storage and collection of high-quality data and information. The Exchange Network provides a more efficient way of exchanging environmental information at all levels of government and with the public; it revolutionizes the way in which information is sent to and received by EPA and its State, Tribal, and Territorial partners. For examples of projects that EPA has funded in the past, please see the State and Tribal summaries of proposals that are available on the Exchange Network Grant Program Web site at *http://www.epa.gov/Networkg*.

DATES: Pre-proposals must be received electronically at *neengprg@epamail.epa.gov* no later than February 3, 2004.

FOR FURTHER INFORMATION: Contact Rebecca Moser, Office of Information Collection, Office of Environmental Information, U.S. EPA, 1200 Pennsylvania Ave., NW, Mail Code 2823–T, Washington, DC 20460; phone, (202) 566–1679; email, *neengprg@epamail.epa.gov*. For additional information about the Exchange Network Grant Program, please visit the Web site at *http://www.epa.gov/Networkg*. An Information Session for potential applicants has been scheduled for Monday, December 15, 2003, from 2:00 to 4:00 p.m. Eastern Standard Time. If you are interested in participating in this teleconference, please contact Rebecca Moser at the number listed above.

Dated: December 2, 2003.

Mark A. Luttner,

Director, Office of Information Collection, Office of Environmental Information, U.S. Environmental Protection Agency.

FY 2004 Environmental Information Exchange Network Grant Program

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Section I. Eligibility Information

Eligible applicants include States, the District of Columbia, American Samoa, Guam, the Northern Mariana Islands, Puerto Rico, the U.S. Virgin Islands (subsequently referred to collectively as States) and Federally Recognized Indian Tribes (subsequently referred to as Tribes) and agencies or departments within the States or Tribes.

Applicants must indicate an intent and commitment to participate in the Exchange Network. Exchange Network participation involves the use of Web services to move data and information, the use of eXtensible Markup Language (XML) schema to format data, and the use of data standards within these schema to improve data clarity. Applicants should use data standards that have been approved by the Environmental Data Standards Council (EDSC) and XML schema that have been approved by the Technical Resource Group (TRG, a workgroup established by the Network Steering Board (NSB)), where such standards or schema are available. If the appropriate data standards or XML schema are not available, applicants should indicate how they will use existing guidelines to establish common terms, definitions, and XML schema for exchanging their data.

For a list of EDSC-approved data standards, please refer to the EDSC Web site, *http://www.epa.gov/edsc*. Information on EPA's implementation of EDSC-approved data standards is available on the Environmental Data Registry Web site, *http://www.epa.gov/edr*. For guidance on the development of XML schema and the TRG approval process, please refer to the Network Steering Board's (NSB's) Exchange Network Web site *http://www.Exchangenetwork.net*.

Agencies or departments within a State or Tribe should coordinate submissions of pre-proposals through the appropriate State or Tribal environmental agency and indicate that this coordination has taken place in the pre-proposal submitted to EPA. No cost-sharing or matching of funds is required on the part of the applicants.

Section II. Funding Opportunity Description

Congressional action on the President's fiscal year (FY) 2004 budget includes $20 million to support the Exchange Network. Subject to the availability of appropriations for this purpose, EPA is soliciting pre-proposals that will support and accelerate the development of the Exchange Network. Ten percent of the appropriated funds will be set aside for Tribal assistance agreements. The total number and amount of the assistance agreements awarded will depend on the amount of funding for the Exchange Network in the FY 2004 EPA appropriations. The Catalog of Federal Domestic Assistance number is 66.608. Funding beyond FY 2004 will depend on continued appropriations.

Assistance agreements are used by EPA to transfer money, property, services, or anything of value to a recipient to accomplish a public purpose; they may be in the form of a grant or a cooperative agreement. These assistance agreements will be funded in three separate categories: Readiness, Implementation, and Challenge. The funding ranges for these categories will be as follows:

(1) Readiness Category—States up to $150,000 and Tribes up to $75,000;

(2) Implementation Category—States up to $300,000 and Tribes up to $150,000; and

(3) Challenge Category—States up to $750,000 and Tribes up to $300,000.

Section III. Award Information

Subsequent to EPA's receiving FY 2004 appropriations for the Exchange Network, the EPA Administrator may delegate authority to approve pre-proposals for funding to the Assistant Administrator of the Office of Environmental Information (OEI) and delegate authority to award the assistance agreements to the EPA Regional Administrators. Thus, OEI anticipates that the selection of pre-proposals for funding will be made by the OEI Assistant Administrator, as in previous years, and that the processing, awarding, and management of assistance agreements may be handled by the appropriate EPA Regional Offices.

It is EPA's policy to promote competition in the award of assistance agreements. EPA will strive to ensure that the competitive process is fair and open and that no applicant receives an unfair competitive advantage. Only those eligible applicants whose pre-proposals are selected for funding will need to proceed with developing and submitting the formal assistance agreement application package.

After EPA notifies the applicants whose pre-proposals have been selected for funding, those applicants will have 45 days to complete and submit the formal assistance agreement application package to the appropriate Network Regional Coordinator.

The duration of each project and the final scope of activities to be completed will be determined in pre-award discussions between the applicant and the appropriate EPA Network Regional Coordinator. In anticipation of this process, all applicants should refer to the Web site *http://www.epa.gov/ogd/AppKit* and review the forms and documentation required for submitting final applications.

Applicants whose pre-proposals are selected for funding may request that assistance be provided in the form of a grant or cooperative agreement. Such a request should be based on the desired level of EPA involvement in the project and must be made in writing prior to the award of the assistance agreement.

A *grant* may be the most appropriate legal instrument if the proposed activities are not principally for the direct benefit or use of the Federal Government and no substantial involvement is anticipated between EPA and the recipient during the program period. A *cooperative agreement* may be more appropriate if the proposed activities are not principally for the direct benefit or use of the Federal Government and substantial involvement is anticipated between EPA and the recipient during the program period.

All or part of a grant or cooperative agreement may be provided in the form of *in-kind assistance* (in lieu of funding) if it would be more efficient in terms of cost or time for EPA to purchase services or equipment on a recipient's behalf (*e.g.*, through an EPA-approved contractor). (Policy for Distinguishing between Assistance and Acquisition, EPA Order 5700.1, March 22, 1994.)

A recipient may also choose to receive an Exchange Network assistance agreement as part of a *Performance Partnership Grant (PPG)*. PPGs can provide States with greater flexibility during the work plan negotiation process and allow them to organize their work plan components in ways that best suit their specific needs. Where appropriate, the assistance agreement work plan will reflect both EPA and State roles and responsibilities, and a joint performance evaluation process will be negotiated.

For additional information on assistance agreements or for guidance in preparing pre-proposals or final applications, please contact the appropriate Exchange Network Regional Coordinator or Rebecca Moser in EPA's Office of Information Collection (*see* Section IX).

Section IV. Application and Submission Information

Based on an evaluation of pre-proposals, EPA expects to make funding decisions in the Spring of 2004. EPA may ask applicants whose pre-proposals have been selected for funding to modify objectives, work plans, or budgets prior to giving final approval of the award.

Pre-proposals must be submitted electronically in either WordPerfect or Microsoft Word by February 3, 2004, to *neengprg@epa.gov* with an electronic copy to the appropriate Exchange Network Regional Coordinator (*see* Section IX). Each pre-proposal should not exceed 10 single-spaced pages (12 point font).

Pre-proposals should follow the following format:

I. Project Information

State/Tribe/Territory Agency or Department:
Title of Project:
Focus Area (*i.e.*, Readiness, Implementation, or Challenge):
Total Funds Requested from EPA:
Total Project Cost (including State/Tribal cash contributions, if applicable):
Contact Person (name, title, address, phone, fax, and e-mail):

II. Overview

Provide an overview of the project that explains the purpose, goals, and objectives. This section should give reviewers an understanding of the nature and expected outcomes of the project. If applicable, explain how the project will build on previous work supported by the Exchange Network Grant Program.

III. Summary Work Plan

Describe what the project will achieve and who will benefit from the project. Explain each aspect of the project in enough detail to allow reviewers to understand and evaluate it. No specific format is required for this section, but pre-proposals should address the following:

- *Proposed Activities:* List and describe the activities and how they relate to the evaluation criteria described in Section VI of this guidance.
- *Project Milestones:* List the key project milestones, with estimated dates for completion.
- *Performance Measures:* Describe how the success of the project will be measured.
- *Sharing Results:* Indicate a commitment to share results with other Exchange Network partners by working with the NSB to post those results at *http://www.exchangenetwork.net*.

Applicants should be aware that pre-proposals and applications submitted under this or any other EPA assistance agreement program are subject to potential public release under the Freedom of Information Act (FOIA). If an applicant considers any of the information submitted in the pre-proposal or application to be Confidential Business Information (CBI), the applicant must claim that information as CBI when the pre-proposal or application is submitted to EPA [40 CFR 2.203(a)].

Section V. Applicatior Review Information

Pre-proposals will be evaluated separately for each assistance agreement category: Readiness, Implementation, or Challenge. The criteria and scoring system outlined in Section VI will be used to guide the evaluation of each pre-proposal. The scoring system allows each pre-proposal to be given a numeric value based on the criteria. A value of one to a maximum of 90 will be assigned for one or more of the activities listed in the criteria. A value of one to 10 will be assigned for describing the benefits of the project being proposed. The maximum score for any pre-proposal submitted would be 100. Pre-proposals will be initially screened based on this criteria and scoring system.

After the pre-proposals have been initially scored, EPA will form a review panel composed of representatives from EPA Headquarters and Regional Offices. This panel will consider not only the initial scoring, but also the basic

substance and quality of each pre-proposal and the overall mix of projects. The panel may also consider other factors on a case-by-case basis when deciding whether to recommend funding for a specific proposal. The panel will review each pre-proposal and provide its funding recommendations to the OEI Assistant Administrator for a final decision.

Any mandatory requirements set forth in this document may be waived at the discretion of the OEI Assistant Administrator.

Section VI. Assistance Agreement Categories and Evaluation Criteria

OEI will consider funding pre-proposals for the three categories of assistance agreements described below: Readiness, Implementation, and Challenge. The categories have different, but complementary, objectives and evaluation criteria. One cross-cutting criterion for all categories is the description of benefits and advantages of using the Exchange Network to improve existing data exchange practices. This section should not exceed one-half page of the pre-proposal. Each pre-proposal must clearly indicate that the project can be completed in two years or less. The following points are provided to assist, but not limit, applicants in describing the expected benefits of their proposed projects:

- more frequent and/or efficient exchanges;
- better data quality through the use of data standards and validation and error-detection mechanisms;
- greater ability to share and integrate data through the use of data standards, XML schema, and Exchange Network Web services;
- the ability to exchange a variety of data with a number of partners;
- the ability to provide access to new kinds of data using the Exchange Network; and/or
- the ability to use common Exchange Network infrastructure capabilities (*e.g.* XML schema, common security controls, etc.).

Section VI(A). Evaluation Criteria for Tribes

Readiness Category for Tribes

Amount: up to $75,000.

Eligibility: Applicants who have received no more than one Readiness Grant. This category is intended to assist Tribes in building upon their priority information technology investments while constructing initial links to the Exchange Network.

Criteria:

(1) Maximum of 90 points for one or more of the following activities:

(a) Develop the technical infrastructure needed to participate in the Exchange Network (*e.g.*, servers, processors, storage devices/media, telecommunications products/services, computer peripherals). Tribes may wish to use the node client tool that is being made available on the Network Web site.

(b) Develop Web-based services, security enhancements, data quality improvements, locational data improvements (*e.g.*, through global positioning system (GPS) units), or other capabilities that will enhance the Tribe's participation in the Exchange Network.

Make a commitment to share this information with other partners via the Exchange Network Web site at *http://www.exchangenetwork.net*. If a recipient of a previous Exchange Network assistance agreement, outline activities that build on and do not duplicate previously funded activities.

(2) 10 points.

Identify the benefits of the project (see Section VI introduction).

Implementation Category for Tribes

Amount: up to $150,000.

Eligibility: This category is designed to assist Tribes in sharing data and building on their information technology investments, while constructing links to the Exchange Network.

Criteria:

(1) Maximum of 90 points for one or more of the following activities.

All activities listed in the Readiness Category may be considered for funding under this category with the addition of at least one of the following activities:

(a) Share environmental data with other Tribes, States, and/or EPA.

(b) Work with EPA, other Tribes, or States to use Web services they have or plan to provide. Tribes can satisfy the Exchange Network data exchange objectives by using Web service applications, such as those found on the Exchange Network Web site, *http://www.exchangenetwork.net*, under "Tool Box."

(c) Implement a project to link and exchange tribal data assets using standards. Projects could include things such as implementing the EDSC-approved Facility Identification data standard (refer to *http://www.epa.gov/edsc*), referencing water monitoring stations to the National Hydrography Dataset (NHD) (*e.g.*, using the Geospatial One-Stop hydrography data standard, which is currently under review), or other data exchange activities involving the use of data standards.

(d) Enhance public access to data about pollution sources, the environmental performance of regulated facilities, or environmental status and trends.

In addition to pursuing one or more of the activities listed above, applicants must make a commitment to share information about their projects with other partners via the Exchange Network Web site at *http://www.exchangenetwork.net*. If an applicant has received funding through a previous Exchange Network assistance agreement, the applicant must identify activities that build on, but do not duplicate, previously funded activities.

(2) 10 points.

Identify the benefits of the project (*see* Section VI introduction).

SUPPLEMENTARY INFORMATION: Projects funded under the Implementation Category may be collaborative efforts among multiple parties (intertribal, intratribal), but collaboration is not required. If a collaborative project is proposed, the pre-proposal must identify a single lead agency or department that would be responsible for administering the assistance agreement.

Challenge Category for Tribes

Amount: up to $300,000.

Eligibility: Applicants must propose activities that involve collaboration (*e.g.*, intra tribal, intertribal, or State/Tribal) to develop the Exchange Network and demonstrate its value in sharing environmental, natural resources, or human health data and/or related administrative data.

Criteria:

(1) Maximum of 90 points for one or more of the following activities.

(a) Implement any type of data flow using the Exchange Network.

(b) Conduct multi-party planning activities to develop new data flows, explaining how the new data would be used and shared via the Exchange Network. This activity could include developing a collaborative project plan for possible submission to EPA if future funding becomes available.

(c) Use the Exchange Network to integrate and use information for environmental decision-making and public access, including Geospatial data. Projects could include, but are not limited to, activities that would improve the locational data for facilities in EPA's Facility Registry System.

(d) Use the Exchange Network to share data that have not previously been available for environmental and human health protection purposes (*e.g.*, environmentally related health data, regional environmental data, data needed to fill current data gaps, etc.). EPA has recently entered into a Memorandum of Understanding (MOU) with the Centers for Disease Control and Prevention to collaboratively collect data for the Environmental Public Health Tracking System; applicants may be interested in proposing activities that complement this effort using the Exchange Network.

(e) Enhance the Exchange Network by developing tools/applications that use data made available through Web services.

In addition to pursuing one or more of the activities listed above, applicants must make a commitment to share information about their projects with other partners via the Exchange Network Web site at *http://www.exchangenetwork.net*. If an applicant has received funding through a previous Exchange Network assistance agreement, the applicant must identify activities that build on, but do not duplicate, previously funded activities.

(2) 10 points

Identify the benefits of the project (*see* Section VI introduction).

SUPPLEMENTARY INFORMATION: Projects funded under the Challenge Category must be collaborative efforts. The pre-proposal must identify a single lead agency or department that will be responsible for administering the assistance agreement, if awarded.

In addition to the criteria outlined above, EPA may elect to fund complementary pre-proposals from different partners that address related work areas (*e.g.*, XML schema development) and it will seek to leverage and coordinate all of the complementary pre-proposals before reaching final funding decisions.

In making award decisions, EPA will examine the past performance of those who have received previous Exchange Network assistance agreements (*e.g.*, timely and complete semi-annual reports, achievement of performance goals/milestones, etc.). If two proposals have been scored equally, the one with the best previous track record may be ranked higher. If an applicant has not received a prior Exchange Network assistance agreement, that applicant will not be penalized.

Section VI(B). Evaluation Criteria for States

Readiness Category for States

Amount: up to $150,000.

Eligibility: Applicants who have received no more than one Readiness Grant.

Criteria:

(1) Maximum of 90 points:

Develop an operational Exchange Network node in a reasonable period of time (*e.g.*, one to two years) depending on the applicant's current capabilities and previously funded work. In addition to developing an Exchange Network node, applicants must make a commitment to share information about their projects with other partners via the Exchange Network Web site at *http://www.exchangenetwork.net*. If an applicant has received funding through a previous Exchange Network assistance agreement, the applicant must identify activities that build on, but do not duplicate, previously funded activities.

(2) 10 points

Identify the benefits of the project (*see* Section VI introduction).

SUPPLEMENTARY INFORMATION: An Exchange Network node is considered to be operational if it performs the following: (1) Executes all Exchange Network Web service functions (*i.e.*, Authenticate, Submit, Get Status, Query, Notify, Solicit, Download, Node Ping, and Get Services), (2) implements the minimum Exchange Network security practices (including the use of the Network Authorization and Authentication Service), and (3) routinely exchanges one or more data flows. When developing Exchange Network nodes, applicants should refer to the Node Test Suite on the Exchange Network Website. All Network Nodes should pass the interoperability tests on this site. This site also contains technical specifications and protocols, as well as the implementation guidance developed by the NSB's Node 1.0 Workgroup. Please refer to *http:///www.exchangenework.net* and click on "Tool Box."

Implementation Category for States

Amount: up to $300,000.

Eligibility for States: Applicants, or groups of applicants, that (1) have produced a detailed technical plan to develop an operational node by the end of calendar year 2004, (2) have developed an Exchange Network node and are in the final stages of testing that node, (3) are ready to flow data, or (4) are already flowing data.

Criteria:

(1) Maximum of 90 points. If States believe that they can implement more than two or three data flows during the two-year program period, they should identify those data flows in their pre-proposals.

(a) Implement one or more of the following data flows using the Exchange Network (*see* Section VIII for details).

- Air Quality System (AQS)
- Facility Registry System (FRS)
- National Emissions Inventory (NEI)
- Resource Conservation and Recovery Act Information System (RCRAInfo)
- Safe Drinking Water Information System (SDWIS)
- Toxics Release Inventory System (TRIS)

(b) Implement any other type of data flow (regulatory or voluntary, State-to-EPA, facility-to-State, State-to-State, etc.) using the Exchange Network. In addition to implementing one or more data flows, applicants must make a commitment to share information about their projects with other partners via the Exchange Network Web site at *http://www.exchangenetwork.net*. If an applicant has received funding through a previous Exchange Network assistance agreement, the applicant must identify activities that build on, but do not duplicate, previously funded activities.

(2) 10 points.

Identify the benefits of the project (*see* Section VI introduction).

SUPPLEMENTARY INFORMATION: Projects funded under the Implementation Category may be collaborative efforts among multiple parties (interstate or intrastate), but collaboration is not required. If a collaborative project is proposed, the pre-proposal must identify a single lead agency or department that would be responsible for administering the assistance agreement.

Challenge Category for States

Amount: up to $750,000 each.

Eligibility: Applicants must propose innovative projects that involve collaboration (*e.g.*, State-EPA, intrastate, or interstate) to develop the Exchange Network and demonstrate its value in sharing environmental, natural resources, or human health data and/or related administrative data.

Criteria:

(1) Maximum of 90 points for one or more of the following activities. If desired, applicants may propose activities from several different categories [(a)—(f) below) and receive partial credit from multiple categories; but they are not required to do so to receive the full 90 points. Applicants who submit well thought-out, innovative, collaborative proposals for multiple data flows [*i.e.*, as in (a) and/or (b) below] or for just one of the other activities listed [*i.e.*, in (c) through (f) below] will receive the same consideration as those who suggest activities from multiple categories.

(a) Implement one or more of the following data flows using the Exchange

Network (see Section VIII for details) (45 points each).

- Air Quality System (AQS)
- Facility Registry System (FRS)
- National Emissions Inventory (NEI)
- Resource Conservation and Recovery Act Information System (RCRAInfo)
- Safe Drinking Water Information System (SDWIS)
- Toxics Release Inventory System (TRIS)

(b) Implement any other type of data flow (regulatory or voluntary, State-to-EPA, facility-to-State, State-to-State, etc.) using the Exchange Network. (30 points each)

(c) Conduct multi-party planning activities to develop new data flows, explaining how the new data would be used and shared via the Exchange Network. This activity could include developing a collaborative project plan for possible submission to EPA if future funding becomes available. (up to 90 points)

(d) Use the Exchange Network to integrate and use information for environmental decision-making and public access, including geospatial data. Projects could include, but are not limited to, activities that would improve the locational data for facilities in EPA's Facility Registry System. (up to 90 points)

(e) Use the Exchange Network to share data that have not previously been available for environmental and human health protection purposes (*e.g.*, environmentally related health data, regional environmental data, data needed to fill current data gaps, etc.). EPA has recently entered into a Memorandum of Understanding (MOU) with the Centers for Disease Control and Prevention to collaboratively collect data for the Environmental Public Health Tracking System; applicants may be interested in proposing activities that complement this effort using the Exchange Network. (up to 90 points)

(f) Enhance the utilization of the Exchange Network by developing tools/applications that use data made available through Web services (*e.g.*, watershed analysis tools using EPA and other partner/stakeholder data published through Web services). (up to 90 points)

In addition to implementing one or more data flows, applicants must make a commitment to share information about their projects with other partners via the Exchange Network Web site at *http://www.exchangenetwork.net*. If an applicant has received funding through a previous Exchange Network assistance agreement, the applicant must identify activities that build on, but do not duplicate, previously funded activities.

(2) 10 points.

Identify the benefits of the project (*see* Section VI introduction).

SUPPLEMENTARY INFORMATION: Projects funded under the Challenge Category must be collaborative efforts. The pre-proposal must identify a single lead agency or department that will be responsible for administering the assistance agreement, if awarded.

In addition to the criteria outlined above, EPA may elect to fund complementary pre-proposals from different partners that address related work areas (*e.g.*, XML schema development), and it will seek to leverage and coordinate all of the complementary pre-proposals before reaching final funding decisions.

In making award decisions, EPA will examine the past performance of those who have received previous Exchange Network assistance agreements (*e.g.*, timely and complete semi-annual reports, achievement of performance goals/milestones, etc.). If two proposals have been scored equally, the one with the best previous track record may be ranked higher. If an applicant has not received a prior Exchange Network assistance agreement, that applicant will not be penalized.

Section VII. Award Administration Information

The selection of pre-proposals for funding and the awarding of assistance agreements will be posted on the Exchange Network Grant Program Web site (*http://www.epa.gov/Networkg*). Recipients of assistance agreement awards will be required to submit semi-annual and final progress reports. A reporting form template will be provided to all funded grantees by the appropriate Exchange Network Regional Coordinator. Recipients will also be required to complete annual Financial Status Reports. All reports must be prepared in either Microsoft Word or WordPerfect and submitted electronically to the appropriate Exchange Network Regional Coordinator. If a disagreement arises between an eligible applicant and EPA, EPA will follow dispute resolution procedures, as outlined in 40 CFR part 31, subpart F.

Section VIII. EPA Systems Information

Applicants are urged to consider developing FY 2004 proposals that relate to the following EPA national environmental information systems, particularly if submitting proposals for Implementation or Challenge assistance agreements:

- Air Quality System (AQS)
- Facility Registry System (FRS)
- National Emissions Inventory (NEI)
- Resource Conservation and Recovery Act Information System (RCRAInfo)
- Safe Drinking Water Information System (SDWIS)
- Toxics Release Inventory System (TRIS)

By focusing on this limited number of data flows, EPA and its partners should be able to deliver tangible results by the end of the two-year program period.

EPA urges applicants to consider the data flows listed above, but the Agency will also consider other data flow activities, particularly if such activities can demonstrate the value of the Exchange Network. Provided appropriations for the Exchange Network Grant Program become available in FY 2005, EPA plans to highlight two additional data flows in next year's guidance:

- Integrated Compliance Information System—National Pollutant Discharge Elimination System (ICIS–NPDES)
- Storage and Retrieval for Water Quality Data (STORET)

While ICIS–NPDES and STORET data flow activities may be proposed for the FY 2004 Exchange Network Grant Program, they will receive greater attention in FY 2005.

Each of the national environmental information systems identified above is described briefly below, along with current plans for the data flows and suggested activities for consideration by applicants. The implementation schedules for specific data flows differ, but the activities that EPA offices have suggested generally relate to one or more of the following:

- Improve data collection processes, the quality of data in EPA information systems, and the utility of and access to environmental data by all Exchange Network partners;
- Work with EPA to develop XML schema for particular data flows and conduct related data mapping and documentation activities;
- Develop or adapt Exchange Network nodes or node clients as required to implement particular data flows;
- Submit data through the Exchange Network and EPA's Central Data Exchange (CDX) to EPA's national environmental information systems;
- Enhance data validation mechanisms, increase the frequency of data submissions, or enhance error detection/feedback mechanisms using the Exchange Network;
- Work with EPA to develop and implement Web services to obtain, use, and integrate data from EPA and partner information systems for multiple purposes;
- Use the Exchange Network to provide access to data that are not currently available for environmental and human health protection purposes; and/or
- Enhance the value of the Exchange Network by developing tools/applications that use data that are made available through Web services.

Please note that not all of the activities listed above may be appropriate for particular data flows at this time. In addition, applicants may propose other types of data flow activities that have not been mentioned here. All proposals—whether they relate to these specific data flows or the suggested activities—will receive careful consideration by EPA.

Air Quality System (AQS)

System Description

AQS is a national database that contains ambient air quality monitoring data collected by State, Tribal, and local governments. This information is used to determine compliance with clean air standards, assess the nature of air pollution problems in North America, and assess the exposure of humans to toxic and other airborne pollutants.

Status and Plans

- *Flat File:* The transfer of AQS flat files via CDX began in July 2003.
- *XML Schema:* The XML schema for AQS will be available by mid-2004 for voluntary use by agencies. Subsequent to schema development, EPA will develop the capability to receive and process AQS XML data.
- *Other Activities:* In late 2004, EPA expects to deploy Web services that support limited real-time stakeholder queries of selected AQS data.

Suggested Activities for Exchange Network Partners

- Conduct pilot projects to test/use the AQS XML input schema, particularly for submitting data to AQS through CDX and for performing local quality assurance checks (*e.g.*, for format, range, and file structure). EPA is particularly interested in the development of XML error/diagnostic message schema that could accompany the XML input transaction schema. EPA is also interested in the development of XML output schema that describe standard reports and workfiles, based on the final AQS XML input schema.
- Work with EPA to develop Web services and applications that use AQS XML schema to enhance the timeliness, frequency, and/or efficiency of air quality data transmissions to EPA (*e.g.*, possibly including real-time data transmissions).
- Develop/test approaches to implement machine-to-machine transfers of queried data using Web services and CDX.
- If maintaining significant air quality data assets that are not currently in AQS, develop approaches for using the Exchange Network to provide partners with secure access to the data.

Facility Registry System (FRS)

System Description

FRS is a national database of facility identification information. It covers all facilities (places, stations, and sites) that are subject to environmental regulations or are of environmental interest, such as Federal facilities, industrial facilities, and facilities on tribal reservations. Key identifying information stored in FRS includes facility names, alternate facility names, geographic locations (*i.e.*, latitude/longitude), mailing addresses, points of contact, permit and system identification numbers, industrial codes, and parent organizational structures. FRS receives data from EPA's national environmental information systems and from the States, and it can receive user input from an Error Correction Web service application found in Envirofacts and the Enforcement and Compliance History Online (ECHO). The FRS database directly supports EPA's Envirofacts Data Warehouse Web site, the ECHO Web site, and the Integrated Compliance Information System (ICIS). It is also used by many EPA applications, such as Window to My Environment and EnviroMapper.

Status and Plans

- FRS data exchanges using the Exchange Network have been in production since October 2003.
- The Facility Identification schema is available on the Exchange Network Registry (*http://www.exchangenetwork.net*), and it conforms with the XML Design Rules and Conventions Version 1.0.
- EPA currently plans to release Web services to publish FRS facility data through CDX in late 2003.

Suggested Activities for Exchange Network Partners

- Begin exchanging State and Tribal facility identification records with FRS via CDX.
- Develop the capability to use the Exchange Network to obtain, use, and integrate facility data from FRS with other State/Tribal/local data.

National Emission Inventory (NEI)

System Description

NEI is a national database of air emissions information which includes input from numerous State and local air agencies, Tribes, industry, and other Federal databases (*e.g.*, EPA's Clean Air Markets Division (CAMD) Emission Tracking System, Maximum Achievable Control Technology (MACT) Program, and the Toxic Release Inventory (TRI)). The database contains information on stationary and mobile sources that emit criteria air pollutants and precursors, as well as hazardous air pollutants (HAPs). NEI data are used for air dispersion modeling, tracking emission trends, and developing risk assessments, regulations, and regional pollution control strategies.

Status and Plans

- *XML Schema:* In 2004, upgraded schema will be developed for NEI Point Source, Area Non-Road, and On-Road Mobile data.
- Pilot Data Exchanges: EPA will conduct pilot NEI data exchanges with States in 2004.

Suggested Activities for Exchange Network Partners

- Develop approaches/processes to improve the quality of the data in State emissions inventory systems.
- Develop and participate in technical approaches to check the quality of data in State emissions inventory systems and transfer files to ensure that the data are compatible with NEI data content requirements, before the States submit their emissions inventory data to EPA and after the data are submitted to EPA through CDX.
- If maintaining significant emissions data assets that are not currently in NEI, describe the business case(s) and develop approaches for using the Exchange Network to provide partners with secure access to the data, including the documentation of data quality checks that have been performed on the data files that are made available.

Resource Conservation and Recovery Act Information System (RCRAInfo)

System Description

RCRAInfo is a national database that contains data reported by States and Regions on facilities that handle hazardous wastes and are regulated under the Resource Conservation and Recovery Act (RCRA) and equivalent State statutes. RCRAInfo includes five major modules:

Handler, Permitting, Corrective Action, Compliance Monitoring and Enforcement, and Waste Activity Report.

Status and Plans

• *Flat File:* In 2004, EPA's CDX will support Web-based flat file transfers for the RCRAInfo Handler, Permitting, Corrective Action, Compliance Monitoring and Enforcement, and Waste Activity Report modules.

• *XML Schemas:* EPA is currently developing the XML schemas for the Handler, Permitting, and Corrective Action modules and expects these schemas to be available in September 2004. The focus of Exchange Network RCRAInfo data flows in 2004 will be on submitting data to EPA.

• *Other Activities:* In 2005, EPA will enhance RCRAInfo to automate outbound transactions using Web services and allow States to query/retrieve data from RCRAInfo and other State nodes.

Suggested Activities for Exchange Network Partners

• Work with EPA to build Exchange Network nodes to test and implement RCRAInfo data exchanges using XML schemas.

• Work with EPA to refine and test outbound RCRAInfo Web services and build applications to use them. Proposals should identify the target user communities and describe how the development of such Web service applications would provide functionality beyond that provided by RCRAInfo. [RCRAInfo currently provides data entry tools, Headquarters/State/] Regional reports, automated copies of RCRAInfo data for EnviroFacts or the Office of Enforcement and Compliance Assurance (OECA), etc.]

• Establish compatible Web services for hazardous waste information that could be used by authorized EPA/State/Tribal partners. For example, States with significant transfers of wastes to or from other States may wish to establish agreements to gain access to data from other Exchange Network partners.

• Develop automatic periodic updates of State databases from RCRAInfo, utilizing the Exchange Network, CDX scheduling services, and XML schema.

RCRAInfo technical guidance and schedules can be found at *http://cdx.epa.gov/RCRAFT/UserGuide.*

Safe Drinking Water Information System/Federal Version (SDWIS/FED)

System Description

SDWIS/FED is an EPA national database that stores routine information about the Nation's drinking water. SDWIS/FED is designed to replace the Federal Reporting Data System (FRDS), and it stores the information EPA needs to monitor approximately 170,000 public water systems. As required by the Safe Drinking Water Act (SDWA), States oversee public water systems within their jurisdictions to ensure compliance with EPA and State drinking water standards. States periodically report drinking water information to EPA, and this information is stored in SDWIS/FED.

Status and Plans

• *XML Schema:* OW has proposed to develop an XML schema for SDWIS as part of its modernization effort. It plans to conduct a pilot project with States in FY 2004.

• *Modernization Efforts:* OW's Office of Ground Water and Drinking Water (OGWDW) has identified the following milestones for modernizing SDWIS (the milestone numbers correspond to the numbers of suggested State activities outlined below).

1. Maintain most or all historical support functions for both the SDWIS/FED database and SDWIS/STATE software (26 States are currently using SDWIS/STATE and nine additional States are committed and scheduled to use it).

2. Provide drinking water data providers (States and Regions) with access to CDX through a registration process.

3. Conduct a pilot project using XML schema for a State-to-EPA data flow.

4. Conduct a pilot project using FedRep validation software (desktop application). The software incorporates the State-to-Fed XML schema and is intended to move the validation of State data submissions closer to the data providers, thus minimizing reporting delays and errors.

5. Launch the production of the ORACLE replacement database that will allow EPA to receive XML files of drinking water data from States through CDX.

6. Enhance and expand the Drinking Water Data Warehouse. The Drinking Water Data Warehouse extracts data from SDWIS and organizes it into topic-specific Pivot Tables that are available over the Internet for on-line querying by the public. OGWDW is discussing the potential development of new formats for presenting the data.

7. Develop Web-enabled SDWIS/STATE software—the primary State implementation assistance tool.

Suggested Activities for Exchange Network Partners

EPA is interested in enhancing the exchange of drinking water data using the Exchange Network, particularly through node-to-node data exchanges and activities that improve the timeliness and completeness of the data. Suggested State activities include the following (numbers correspond to the modernization milestones outlined above):

1. Help test changes in the SDWIS software that would allow the system to accept XML-formatted data submitted by labs and public water systems.

2. Document efforts to develop/expand State nodes to allow the node-to-node exchange of drinking water data with EPA.

3. a. Document how States are incorporating XML into their local data flows and how these efforts are linked to EPA's development of XML schema for State-to-EPA data flows.

b. Analyze the costs associated with the one-time migration of State drinking water data (for which quarterly reporting is required) from the current DTF format to the new XML format, including the costs associated with data mapping and translator tools.

4. Participate in OW's pilot project to test the FedRep software.

5. a. Use XML to receive drinking water data from labs or public water systems.

b. Use the FedRep validation software (with built-in XML schema) to load the reporting data to State nodes.

c. Exchange data from State nodes with EPA's CDX.

6. There are no specific State activities suggested in relation to EPA's Drinking Water Data Warehouse.

7. a. Develop a Web-enabled version of State drinking water databases (SDWIS/STATE or other).

b. Participate in a pilot project with EPA as OGWDW considers Web-enabling the SDWIS/STATE software.

In addition to the activities suggested above, OGWDW is interested the following potential State activities:

• Develop XML schema for drinking water occurrence data to support the six-year review process.

• Develop XML schema for occurrence data that would tie into the FedRep XML schema for drinking water violation data (currently being piloted by EPA).

Toxic Release Inventory System (TRIS)

System Description

TRIS is populated by TRI-Made Easy (TRI–ME) via CDX. TRI was established under the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA) and expanded by the Pollution Prevention Act of 1990. The Toxics Release Inventory (TRI) is a publicly available database that contains information on toxic chemical releases and other waste management activities reported annually by certain covered industry groups, as well as Federal facilities. States collect the same information from the same reporting population for their own records.

Status and Plans

• TRI–ME: EPA finalized the TRI–ME software for Reporting Year (RY) 2002 in March 2003, making the TRI–ME/CDX process completely paperless. Planning for RY 2003 software will begin in the Fall of 2003.

Suggested Activities for Exchange Network Partners

• Work with EPA to develop common reporting formats that would make it easier for regulated facilities to submit TRI data to States and EPA simultaneously.

• Work with EPA to develop tools/applications that use TRI data that will be made available through Web services using the Exchange Network.

• Develop processes that reduce the amount of time EPA and States must spend on reconciling TRI data received from regulated facilities.

Future Data Flow Activities

As indicated in the introduction to this section, ICIS–NPDES and STORET will receive less emphasis under the FY 2004 Exchange Network Grants Program than the information systems listed above (*i.e.*, AQS, FRS, NEI, RCRAInfo, SDWIS, or TRIS). The following information on ICIS–NDES and STORET is provided primarily to assist Exchange Network partners in planning activities in FY 2005 and beyond.

Integrated Compliance Information System—National Pollutant Discharge Elimination System (ICIS–NPDES) System

System Description

ICIS–NPDES is a modernized version of the Permit Compliance System (PCS). It supports traditional wastewater discharge program functions (*e.g.*, permitting, compliance monitoring, and enforcement), as well as new functions for special regulatory programs [*e.g.*, concentrated animal feeding operations (CAFO)]. ICIS–NPDES allows data exchanges using XML, Web services, and Web forms and provides links to other databases (*i.e.*, FRS, TMDL, RAD, SRS).

Status and Plans

• *XML Schema:* The draft ICIS–NPDES schema is available for States to begin initial data mapping of State system data to ICIS–NPDES. The final ICIS–NPDES schema will be available by June 2004, at which time States can begin finalizing their ICIS–NPDES schema mapping. Testing of the submission/acceptance of XML schema by the ICIS–NPDES system can begin in March 2006. By September 2006, OECA expects to complete the implementation of State NPDES XML data flows into ICIS–NPDES and will no longer accept flat file transfers from States into legacy PCS.

Suggested Activities for Exchange Network Partners in FY 2005 and Beyond

The modernization of legacy PCS into ICIS–NPDES will affect three groups of States:

(1) States that currently submit flat files to legacy PCS,

(2) States that are currently using the CDX–PCS Interim Data Exchange Format (IDEF) or have already been in discussions with EPA about doing so, and

(3) States that are currently indirect users of legacy PCS and/or wish to become direct users of ICIS–NPDES.

States that currently submit flat files to legacy PCS and those that are current/scheduled users of CDX–PCS IDEF may wish to consider some of the following activities, which will support the exchange of NPDES XML data with ICIS–NPDES using the Exchange Network:

• Obtain technical training and support for using XML.

• Extract and convert the data from State NPDES systems into the XML format needed to submit data to ICIS–NPDES.

• Modify State systems to accommodate the new/revised data requirements of ICIS–NPDES.

• Modify State data extraction/conversion software to accommodate new/revised ICIS–NPDES submission and transaction types (*e.g.*, for special regulatory programs).

• In coordination with EPA, clean up the State data in legacy PCS as needed to move the data into ICIS–NPDES.

• In coordination with EPA, synchronize and then migrate the data in legacy PCS to ICIS–NPDES.

• Develop XML export capabilities to generate XML data documents using ICIS–NPDES schema.

• Implement node-to-node communications with CDX.

States that wish to become direct, on-line, users of ICIS–NPDES—rather than submitting data in the XML format through the Exchange Network—may be eligible for funding under a separate grant which OECA plans to offer in FY 2004. Please contact David Piantanida at (202) 564–8318 for further information and assistance about relevant OECA grants.

Storage and Retrieval System (STORET)

System Description

STORET is EPA's main repository of water quality and biological monitoring data. It contains data obtained from a variety of organizations across the United States ranging from small volunteer watershed groups to State and Federal environmental agencies. Currently, data are entered into a locally operated copy of STORET through the use of a series of desktop validation software applications provided by EPA. These data are centralized at EPA and made available to the public through an Internet accessible data warehouse. This architecture ensures that data owners maintain complete control over data content, while at the same time, promoting shared access to these data through the EPA data warehouse.

Status and Plans

(1) *XML Schema:* XML tags which support the Office of Water's Water Quality Data Elements (WQDE) have been published for review. A joint project with the EPA Beaches Program has produced an XML schema which supports a limited subset of Beach Monitoring data and allows data transfer from participating States to EPA. OW plans to develop full STORET XML v2.0 schema(s) by February 2005 which will build off the existing WQDE XML tags and schema from the Beaches project.

• *Future Development:* A task is currently underway to provide specifications for support software (transaction based load modules) necessary to enable STORET to fully participate in the Exchange Network. These software specifications are expected by mid-2004, and will become the foundation for software modules necessary to achieve this goal. States can begin mapping data in State systems to the STORET schema(s) in March 2005. Testing of submission/acceptance of XML schema(s) by the STORET database will take place in October through December 2005. By February 2006, OW plans to complete the implementation of XML data flows into STORET through CDX. STORET will continue to fully support and operate the existing process for moving data from remote copies of STORET to the central STORET Warehouse. STORET

will also build Web Services from the STORET Warehouse to support queries of STORET data for stakeholder use.

Suggested Activities for Exchange Network Partners in FY 2005 and Beyond

- Work with EPA's Office of Water to develop the STORET XML schema in a phased, modular approach.
- If wishing to participate in STORET through CDX, adopt all applicable data standards (*i.e.*, standardized XML tags, chemical nomenclature, taxonomic nomenclature, date formatting, latitude and longitude location and associated method standards).
- Actively participate in the various working groups which are developing these standards.
- Become familiar with the requirements of STORET with regard to the documentation of the monitoring process as well as the documentation of environmental results.
- Begin mapping State data to the STORET v2.0 schema(s) in March 2005.
- Develop applications that use STORET Web Services for stakeholder analyses.
- Begin linking station locations consistent with the National Hydrography Dataset and the Geospatial One-Stop Hydrography Standard.

Section IX. Agency Contacts

EPA Headquarters: Rebecca Moser, Office of Information Collection, Office of Environmental Information, U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Mail Code 2823–T, Washington, DC 20460, (202) 566–1679, *neengprg@epamail.epa.gov*.

EPA Region I: Mike MacDougall, U.S. EPA Region I, 1 Congress Street, Suite 1100 (MIR), Boston, MA 02114, (617) 918–1941, *macdougall.mike@epa.gov*. Ken Blumberg, U.S. EPA Region I, 1 Congress Street, Suite 1100 (MIR), Boston, MA 02114, (617) 918–1084.

EPA Region II: Robert "Bob" Simpson, U.S. EPA Region II, 290 Broadway, New York, NY 10007–1866, (212) 637–3335, *simpson.robert@epa.gov*.

EPA Region III: Joseph Kunz, U.S. EPA Region III, 1650 Arch Street, Philadelphia, PA 19103, (215) 814–2116, Fax (215) 814–5251, *kunz.joseph@epa.gov*.

EPA Region IV: Richard Nawyn, U.S. EPA Region IV, 61 Forsyth Street, Atlanta, GA 30303, (404) 562–8320, *nawyn.richard@epa.gov*.

EPA Region V: Noel Kohl, U.S. EPA Region V, Resource Management Division, 77 W. Jackson Boulevard, Chicago, IL 60604, (312) 886–6224, *kohl.noel@epa.gov*.

EPA Region VI: Dorian Reines, U.S. EPA Region VI, 1445 Ross Ave., Dallas, TX 75202, (214) 665–6542, *reines.dorian@epa.gov*.

EPA Region VII: Maryane Tremaine, U.S. EPA Region VII, 901 N. Fifth Street, Kansas City, KS 66101, (913) 551–7430, *tremaine.maryane@epa.gov*.

EPA Region VIII: Josie Lopez, U.S. EPA Region VIII, 999 18th Street, Suite 500, Denver, CO 80202–2466, *lopez.josie@epa.gov*.

EPA Region IX: Patricia Eklund, U.S. EPA Region IX, 75 Hawthorne Street-Mail Stop SPE–1, San Francisco, CA 94105, (415) 972–3738, *eklund.patrica@epa.gov*.

EPA Region X: Burney Hill, U.S. EPA Region X, 1200 6th Avenue (EMI–095), Seattle, WA 98101, (206) 553–1761, *hill.burney@epa.gov*.

FOR FURTHER INFORMATION CONTACT: Rebecca Moser, Office of Information Collection, U.S. EPA, 1200 Pennsylvania Ave., NW, Washington, DC 20460; phone, (202) 566–1679; e-mail, *neengprg@epamail.epa.gov*.

An Information Session for potential applicants has been scheduled for Monday, December 15, 2003, from 2 to 4 p.m. Eastern Standard Time. If you are interested in participating in this teleconference, please contact Rebecca Moser.

Posting of Document: This document will be posted on the EPA's OEI Web site at *http://www.epa.gov/Networkg/guidance*.

[FR Doc. 03–30374 Filed 12–5–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OEI–2003–0036; FRL–7595–8]

Amendment to System of Records Notice

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: In accordance with the Privacy Act of 1974, as amended, the Environmental Protection Agency (EPA) publishes this amendment to EPA's notice of a system of records entitled "Central Data Exchange-Customer Registration Subsystem (CDX-CRS)", published on March 18, 2002 (67 FR 12010–12013). The original System of Records Notice has been amended to: update the "Location" section to reflect the recent relocation of the CDX-CRS to a new facility; clarify the "Categories of Records in the System" section to describe information collected to support electronic signature functionality on some EPA forms; provide the public with a new System of Record number that will be associated with this system for the remainder of its operational life; provide a new EPA point of contact; and clarify the "purpose" section to ensure the public recognizes that the use of the CDX-CRS is optional and only necessary for those individuals who want to file information electronically with EPA. As described in the original notice, this system will contain information on individuals who have registered and established accounts to access CDX, EPA's electronic compliance filing and environmental data exchange system. Individuals with CDX accounts may engage in electronic filing of environmental documents as permitted under the Government Paperwork Elimination Act (GPEA), and as required under appropriate environmental statutes. Information maintained by the CDX-CRS includes the individual's name and related identifiers, work contact information, supervisor's name and contact information, and information about the EPA program under which the individual plans to report electronically. The information will be used to protect and manage access to the individual's account on CDX.

DATES: This system of records will continue operations.

ADDRESSES: Questions regarding this notice should be referred to the Environmental Protection Agency, Office of Environmental Information, Collection Services Division, MS–2823T, 1200 Pennsylvania Avenue, Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Matthew Leopard at *Leopard.Matthew@epa.gov*, or 202–566–1698. If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

I. General Information

EPA has established an official public docket for this action under Docket ID No. OEI–2003–0036. The official public docket is the collection of materials that is available for public viewing at the OEI Docket in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Ave. NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the OEI Docket is (202) 566–1752.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified above.

Dated: November 25, 2003.

Kimberly T. Nelson,

Assistant Administrator and Chief Information Officer.

EPA–52

SYSTEM NAME:

EPA Central Data Exchange—Customer Registration Subsystem (CDX–CRS)

SYSTEM LOCATION:

The system will be operated and maintained by EPA or organizations under contract with the EPA (henceforth referred to as "EPA") at their place of business. The operational CDX CRS, which performs the routine functions of registering CDX users, is maintained at U.S. EPA National Computer Center, 109 T.W. Alexander Drive, Research Triangle Park, NC 27711. A testing facility which includes a test version of the CDX–CRS which is used to validate any changes to the CDX–CRS system before they become operational, is maintained at Computer Sciences Corporation, 8400 Corporate Drive, New Carrollton, MD 20785.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

This system contains records on all individuals that have either attempted to register or have registered to obtain an account to use CDX for electronically exchanging data with EPA. Registered users of EPA's CDX–CRS may include representatives of industry, government or laboratories exchanging information with EPA through CDX.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system contains records including individual's name, self-assigned user name and security question, work title, work address and related work contact information (*e.g.*, phone and fax numbers, E-mail address), supervisor's name and related contact information, and information related to the EPA reporting program the individual is planning to electronically file or report under (*e.g.*, EPA program ID # and EPA program role), and the method of reporting (web browser, file exchange). In cases where individuals are asked to electronically "sign" certain EPA forms, CDX may request additional information items from an individual such as date of birth, mother's maiden name, high school graduation date, and similar personal identifiers. The individual registering for CDX will generate a self-assigned password that will be stored on the CDX–CRS, but it will only be accessible to the registering individual. The system will also store other system-generated data such as the registration date and time, digital certificate identifier, and other identifiers for internal tracking. Upon assignment of the password and ID code, the user may subsequently access the CDX system by entering these data and CDX will use this information to authenticate the individual's access to CDX.

AUTHORITY FOR MAINTENANCE OF SYSTEM:

In accordance with the Government Paperwork Elimination Act (44 U.S.C. 3504), EPA's electronic compliance filing and environmental data exchange system will enable the "acquisition and use of information technology, including alternative information technologies that provide for electronic submission, maintenance, or disclosure of information as a substitute for paper and for the use and acceptance of electronic signatures." Section 3504(a)(1)(B)(vi) of Title 44, United States Code.

PURPOSE(S):

Central Data Exchange is EPA's portal for electronically exchanging environmental data with our external customers. Individual external users with CDX accounts may choose to engage in secure, electronic filing of environmental documents as permitted under the Government Paperwork Elimination Act (GPEA), and as required under appropriate environmental statutes. CDX–CRS was developed to protect the EPA and CDX system users from individuals seeking to gain unauthorized access to user accounts on CDX. While compliance reporting to EPA may be a mandatory requirement, the use of CDX to file information electronically to EPA is optional. At any time during the CDX registration process the individual may opt out of registering with CDX to file information electronically, and may revert back to existing paper or diskette filings with EPA.

The information contained in records maintained in the CDX–CRS system is used for the purposes of verifying the identity of the individual, informing users of the conditions and terms of using CDX, allowing individual users to establish an account on CDX, providing individual users access to their CDX account for electronically filing compliance data or exchanging other forms of environmental data, allowing individual users to customize, update or terminate their account with CDX, renewing or revoking an individual user's account on CDX, supporting the CDX help desk functions, investigating possible fraud and verifying compliance with program regulations, and initiating legal action against an individual involved in program fraud, abuse, or noncompliance. The information is also used to provide authenticated, protected access to the CDX system, thereby protecting CDX and CDX users from potential harm caused by individuals with malicious intentions gaining unauthorized access to the system.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

CDX–CRS records will be used to facilitate registering CDX system users, issuing a username and password, and subsequently, verifying an individual's identity as he/she seeks to gain routine access to his/her account. In some cases, the user verification process will require EPA to contact the employer, based on the registration information provided by the user. The system has secondary uses that include: using the established username to facilitate tracking service calls or e-mails from the user in the event that there is a change in registration status or a problem the user has with CDX; offering the user new CDX service options, and facilitating the retrieval of user actions (e.g., historical submissions and help tickets); and events while on the CDX system. The records may also be subsequently used for auditing or other internal purposes of the EPA, including but not limited to: instances where enforcement of the conditions of using CDX are necessary; investigation of possible fraud involving a registered user; litigation purposes related to information reported to the agency; contacting the individual in the event of a system modification; a change to CDX; or modification, revocation or termination of user's access privileges to CDX.

EPA may disclose information contained in a record in this system of records under the routine uses listed in

this notice without the consent of the individual if the disclosure is compatible with the purposes for which the record was collected. These disclosures may be made on a case-by-case basis or under a computer matching agreement if the Agency has complied with the computer matching requirements of the Act.

The general routine uses for EPA's CDX are listed as follows: A,B,C,E,F,G,H,I, and K apply. A detailed description of these routine uses can be found in the **Federal Register** Notice (at 66 FR 49947 (2001)) and also on the National Archives and Records Administration website, Privacy Act Issuances—1999 Compilation at: *http://www.access.gpo.gov/su_docs/aces/PrivacyAct.shtml* In addition, the following routine uses may also apply:

Program Disclosures: The Agency may disclose information from this system to Federal, State, or local agencies, private parties such as relatives, present and former employers and business and personal associates, and hearing officials for the following purposes:

(a) To verify the identity of the individual;

(b) To enforce the conditions or terms of Agency program regulations;

(c) To investigate possible fraud and verify compliance with Agency program regulations;

(d) To prepare for litigation or to litigate collection service and audit;

(e) To initiate a limitation, suspension and termination (LS&T), debarment, or suspension action;

(f) To investigate complaints, update files, and correct errors.

Litigation and Alternative Dispute Resolution (ADR) Disclosures:

(a) In the event that one of the parties listed below is involved in litigation or ADR, or has an interest in litigation ADR, the Agency may disclose certain records to the parties described in paragraphs (b), (c), and (d) of this routine use under the conditions specified in those paragraphs:

(i) The Environmental Protection Agency, or any component of the Agency; or

(ii) Any Agency employee in his or her official capacity; or

(iii) Any Agency employee in his or her individual capacity if the Department of Justice (DOJ) has agreed to provide or arrange for representation for the employee;

(iv) Any Agency employee in his or her individual capacity where the agency has agreed to represent the employee; or

(v) The United States where the Agency determines that the litigation is likely to affect the Agency or any of its components.

(b) Disclosure to the DOJ. If the Agency determines that disclosure of certain records to the DOJ is relevant and necessary to litigation or ADR, the Agency may disclose those records as a routine use to the DOJ.

(c) Administrative Disclosures. Agencies that may obtain information under this routine use include, but are not limited to, the Office of Personnel Management, Office of Special Counsel, Merit Systems Protection Board, Federal Labor Relations Authority, Equal Employment Opportunity Commission, and Office of Government Ethics.

(d) Parties, counsels, representatives and witnesses. If the Agency determines that disclosure of certain records to a party, counsel, representative or witness in an administrative proceeding is relevant and necessary to the litigation, the Agency may disclose those records as a routine use to the party, counsel, representative or witness.

Research Disclosure: The Agency may disclose records to a researcher if an appropriate official of the Agency determines that the individual or organization to which the disclosure would be made is qualified to carry out specific research related to functions or purposes of this system of records. The official may disclose records from this system of records to that researcher solely for the purpose of carrying out that research related to the functions or purposes of this system of records. The researcher shall be required to maintain Privacy Act safeguards with respect to the disclosed records.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

The CDX is a system for which the Agency is in the process of establishing a records schedule. The CDX will be taking e-transactions and preserving them in accordance with applicable EPA and other Federal policy and regulations. The CDX currently stores records on magnetic and/or digital formats. All record storage procedures are in accordance with current applicable regulations.

RETRIEVABILITY:

Records are retrievable by the CDX user name, program ID number, or all or part of the individual's name.

SAFEGUARDS:

EPA has minimized the risk of unauthorized access to the system by establishing a secure environment for exchanging electronic information. Physical access to the data system housed within the facility is controlled by a computerized badge reading system, and the entire complex is patrolled by security during non-business hours. The computer system offers a high degree of resistance to tampering and circumvention. Multiple levels of security are maintained with the computer system control program. This system limits data access to EPA and contract staff on a need to know basis, and controls individuals ability to access and alter records with the system. All users of the system of records are given a unique user identification (ID) with personal identifiers. All interactions between the system and the authorized individual users are recorded.

RETENTION AND DISPOSAL:

The EPA will retain and dispose of these records in accordance with National Archives and Records Administration General Records Schedule 20, Item 1.c. This schedule provides disposal authorization for electronic files and hard copy printouts created to monitor system usage, including but not limited to log-in files, audit trail files, system usage files, and cost-back files used to access charges for system use. Records will be deleted or destroyed when the Agency determines they are no longer needed for administrative, legal, audit, or other program purposes.

SYSTEM MANAGERS AND ADDRESS:

USEPA, Office of Environmental Information, (MS2823), 1200 Pennsylvania Ave. NW., Washington, DC 20460, Attn: Chief, Central Receiving Branch.

NOTIFICATION PROCEDURE:

Requests to determine whether this system of records contains a record pertaining to the requesting individual should be sent to the USEPA, Office of Environmental Information, (MS2823T), 1200 Pennsylvania Ave. NW., Washington, D.C. 20460, Attn: Chief, Central Receiving Branch. To send a fax request: 202–566–1684. To determine whether a record exists regarding you in the system of records, provide the system manager with your name and username. Requests must meet the requirements of the regulations at 40 CFR part 16.

RECORD ACCESS PROCEDURES:

A request for record access shall follow the directions described under Notification Procedure and will be addressed to the system manager at the address listed above.

CONTESTING RECORDS PROCEDURES:

If you wish to contest a record in the system of records, contact the system manager with the information described under Notification Procedure, identify the specific items you are contesting, and provide a written justification for each item.

RECORD SOURCE CATEGORIES:

Information is obtained from individuals who have had or seek to have their identity authenticated except that a password and a username are explicitly self-assigned by the user registering to gain access to CDX.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 03–30371 Filed 12–5–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OEI–2003–0034; FRL–7595–7]

Establishment of a New System of Records Notice for the Integrated Grants Management System

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: Pursuant to the provisions of the Privacy Act of 1974 (5 U.S.C. 552a), the Office of Grants and Debarment is giving notice that it proposes to establish a new system of records, Integrated Grants Management System, Fellowship Module. This system of records is an automated information and award process used to review applications, determine eligibility and produce Fellowship award documents.

DATES: The proposed notice will be effective without further notice on January 20, 2004.

ADDRESSES: Questions regarding this notice should be referred to Kathie Herrin, Office of Grants and Debarment, Ronald Reagan Building, 1200 Pennsylvania Ave NW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Kathie Herrin, on (202) 564–5346.

SUPPLEMENTARY INFORMATION:

I. General Information

The EPA Integrated Grants Management System (IGMS)—Fellowship Module system of records does not duplicate any existing Fellowship system of records. Details regarding the new system of records are contained in this Federal Register Notice. The new system is an automated information and award process used to review applications, determine eligibility and produce Fellowship award documents. The system does not change how the privacy of individuals is affected because release of Privacy Act protected information is handled in the same manner regardless of whether the information is contained in an electronic or hard copy form. Access to the system is restricted to authorized users and will be maintained in a secure, password protected computer system, in secure areas and buildings with physical access controls and environmental controls. The system is maintained by the Office of Grants and Debarment under the Office of Administration and Resources Management.

EPA has established an official public docket for this action under Docket ID No. OEI–2003–0034. The official public docket is the collection of materials that is available for public viewing at the OEI Docket in the EPA Docket Center, (EPA/DC) EPA West, Room B102, 1301 Constitution Ave. NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the OEI Docket is (202) 566–1752.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified above.

Dated: October 31, 2003.

Kimberly T. Nelson,

Assistant Administrator, and Chief Information Officer.

EPA–53

SYSTEM NAME:

Integrated Grants Management System (IGMS)—Fellowship Module.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Office of Grants and Debarment, Environmental Protection Agency, Ronald Reagan Building, 1200 Pennsylvania Avenue, NW., Washington, DC 20460.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals (principle investigators and fellows) who request or have previously requested support from the EPA Fellowship programs, either individually or through an academic institution.

CATEGORIES OF RECORDS IN THE SYSTEM:

Fellow information includes name, social security number, address, name and address of sponsor school, and name of school advisor. Fellowship project information includes award date, duration, statutory and regulatory authorities, CFDA, and fiscal data. EPA contact information includes fellowship specialist and project officer.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Federal Grant and Cooperative Agreement Act, 31 U.S.C. 6301 *et seq.*; Clean Air Act, 42 U.S.C. 1857 *et seq.*; Federal Water Pollution Control Act, 33 U.S.C. 1254 *et seq.*; Public Health Service Act, 42 U.S.C. 241 *et seq.*; Solid Waste Disposal Act, 42 U.S.C. 6901 *et seq.*; Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. 136 *et seq.*; Safe Drinking Water Act, 42 U.S.C. 300j–1; Toxic Substances Control Act, 15 U.S.C. 2609, Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. 9660.

PURPOSE(S):

To assist EPA in conducting and documenting the receipt and review of applications and award of fellowship grants in response to solicitations issued by EPA program offices.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

General routine uses A, B, C, D, E, F, G, H, and K apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Electronic databases and hard copy files.

RETRIEVABILITY:

Electronic files may be retrieved by all data elements in the database.

SAFEGUARDS:

Electronic records are maintained in a secure, password protected electronic system. Paper records are maintained in locked file cabinets. All records are maintained in secure, access-controlled areas or buildings.

RETENTION AND DISPOSAL:

Paper copies of awarded proposals are transferred to the Federal Records Center one year after closeout where they are retained for an additional six years in accordance with EPA records schedule 003 as approved by the National Archives and Records Administration. Electronic data will be retained and disposed of in accordance with EPA records schedule 009 pending approval by the National Archives and Records Administration.

SYSTEM MANAGER(S) ADDRESS AND TELEPHONE NUMBER:

Kathie Herrin, Office of Grants and Debarment, Environmental Protection Agency, Ronald Reagan Building, 1200 Pennsylvania Avenue NW, Washington, DC 20460; (202) 564–5346.

NOTIFICATION PROCEDURE:

Any individual who wants to know whether this system of records contains a record about him or her, who wants access to his or her record, or who wants to contest the contents of a record, should make a written request to the System Manager. Complete EPA Privacy Act procedures are set out in 40 CFR part 16.

RECORD ACCESS PROCEDURES:

Requesters will be required to provide adequate identification, such as a driver's license, employee identification card, or other identifying document. Additional identification procedures may be required in some instances.

CONTESTING RECORDS PROCEDURES:

Requests for correction or amendment must identify the record to be changed and the corrective action sought. Complete EPA Privacy Act procedures are set out in 40 CFR part 16.

RECORD SOURCE CATEGORIES:

Academic institutions, principal investigators, applicants, and EPA and other Federal agency personnel.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 03–30372 Filed 12–5–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7594–6]

Notice of Proposed Prospective Purchaser Agreement Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. 9601, et seq., as Amended (CERCLA), Riverfront Superfund Site Operable Unit No. 1, New Haven, MO, EPA Docket No. CERCLA–07–2004–0004

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed Prospective Purchaser Agreement and opportunity for public comment.

SUMMARY: The United States Environmental Protection Agency (EPA) is proposing to enter into an Agreement and Covenant Not to Sue (Prospective Purchaser Agreement) pertaining to the Riverfront Superfund Site, Operable Unit No. 1 (OU1) located in the City of New Haven, Franklin County, Missouri. In addition to the EPA, the parties to this Prospective Purchaser Agreement will be the United States Department of Justice, the Missouri Department of Natural Resources, the Missouri Attorney General's Office, and the Industrial Development Authority of the City of New Haven, Missouri, a Missouri industrial development corporation and the prospective purchaser.

This Prospective Purchaser Agreement is subject to a 15 day public comment period, after which the United States, the EPA, and/or the State of Missouri may modify or withdraw their consent to the Prospective Purchaser Agreement if comments received disclose facts or considerations which indicate that this Prospective Purchaser Agreement is inappropriate, improper or inadequate.

DATES: Comments must be submitted on or before December 23, 2003.

ADDRESSES: Comments should be directed to David Hoefer, Attorney, United States Environmental Protection Agency, Region VII, 901 North 5th Street, Kansas City, Kansas 66101–2798, and should reference the Riverfront Superfund Site, Operable Unit No.1, New Haven, Missouri, Prospective Purchaser Agreement, Docket No. CERCLA–07–2004–0004.

A copy of the Prospective Purchaser Agreement may be obtained by contacting Mr. Hoefer at the above address, by phone at (913) 551–7503, or by e-mail at *hoefer.david@epa.gov*.

SUPPLEMENTARY INFORMATION: New Haven, Missouri is a city with a population of approximately 1,700 located along the southern bank of the Missouri River in Franklin County, Missouri, approximately 40 miles west of St. Louis, Missouri. In 1986, the hazardous substance tetrachloroethene ("PCE"), was detected in two public-supply groundwater wells in the northern part of New Haven. Following this discovery, two new public-supply wells were installed in the southern part of the city, and several investigations into the source of the contamination were conducted by the Missouri Department of Natural Resources and EPA. The Riverfront Superfund Site is comprised of six operable units. The subject of this Prospective Purchaser Agreement is Operable Unit No. 1 (OU1). OU1 is located in the area of the northeast corner of Front Street and Cottonwood Street, just east of downtown New Haven. Located on OU1 is a 15,000 square foot, one story, concrete block and metal building. The highest PCE concentrations for OU1 have been detected in the soils beneath Front Street along the south side of this building. A plume of groundwater contaminated with PCE and its degradation products trichloroethene, cis–1,2-dichloroethene, and vinyl chloride emanates from this area of soil contamination and extends northward in the alluvium to the Missouri River where it discharges. This plume is not contributing to the PCE contamination that affected the city's closed water supply wells. On September 30, 2003, EPA issued a Record of Decision (ROD) for OU1. The ROD provides for the implementation of a remedial action to address contamination at OU1. The selected remedial action includes the use of an in-well stripper unit to treat contaminated soils and the head of the groundwater plume, as well as groundwater monitoring and institutional controls.

The Prospective Purchaser Agreement would resolve certain claims that the United States and the State of Missouri may have against the Industrial Development Authority of the City of New Haven, Missouri, the prospective purchaser of OU1, pursuant to sections 106 and 107(a) of CERCLA, 42 U.S.C. 9606 and 9607(a), with respect to the existing contamination. In addition, the Industrial Development Authority of the City of New Haven, Missouri will receive protection from contribution actions or claims as provided by section 113(f)(2) of CERCLA, 42 U.S.C. 9613(f)(2), for matters addressed in the Prospective Purchaser Agreement.

Pursuant to the Prospective Purchaser Agreement the Industrial Development Authority of the City of New Haven, Missouri has agreed to commit OU1 in perpetuity for civic, park, and/or parking purposes. It will also impose certain use restrictions on OU1 through the grant of a restrictive covenant and easement to the State of Missouri; provide access to OU1 to the United States and the State for response action implementation, maintenance, and monitoring; provide notice of contamination to any successors in interest; exercise due care with regard to contamination at OU1; and cooperate with the United States and the State in its investigation and response to the release or threat of release of hazardous substances at OU1.

If the Industrial Development Authority of the City of New Haven, Missouri fails to comply with the Prospective Purchaser Agreement, it shall be liable for litigation and other enforcement costs incurred by the United States to enforce the Prospective Purchaser Agreement or otherwise obtain compliance.

Dated: November 25, 2003.

William Rice,

Acting Regional Administrator, Region VII.

[FR Doc. 03–30171 Filed 12–5–03; 8:45 am]

BILLING CODE 6560–50–P

FARM CREDIT ADMINISTRATION

Farm Credit Administration Board; Regular Meeting

AGENCY: Farm Credit Administration.

SUMMARY: Notice is hereby given, pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), of the regular meeting of the Farm Credit Administration Board (Board).

DATES: The regular meeting of the Board will be held at the offices of the Farm Credit Administration in McLean, Virginia, on December 11, 2003, from 9 a.m. until such time as the Board concludes its business.

FOR FURTHER INFORMATION CONTACT: Jeanette C. Brinkley, Secretary to the Farm Credit Administration Board, (703) 883–4009, TTY (703) 883–4056.

ADDRESSES: Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090.

SUPPLEMENTARY INFORMATION: Parts of this meeting of the Board will be open to the public (limited space available), and parts will be closed to the public. In order to increase the accessibility to Board meetings, persons requiring assistance should make arrangements in advance. The matters to be considered at the meeting are:

Open Session

A. Approval of Minutes

—November 13, 2003 (open and closed).

B. Reports

- Corporate/Non-corporate Report;
- FCS Building Association Quarterly Report;
- Compliance with Regulations B, M, and Z.

C. New Business—Other

- Final Approval of the FCA 2004–2009 Strategic Plan.

Closed Session*

Reports

- OSMO Quarterly Report;
- Update on the GAO Report Response.

Session closed-exempt pursuant to 5 U.S.C. 552b(c)(8) and (9).

Dated: December 4, 2003.

Jeanette C. Brinkley,

Secretary, Farm Credit Administration Board.

[FR Doc. 03–30438 Filed 12–4–03; 11:22 am]

BILLING CODE 6705–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission for Extension Under Delegated Authority

November 26, 2003.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Pub. L. No. 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Persons wishing to comment on this information collection should submit comments February 6, 2004. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all Paperwork Reduction Act (PRA) comments to Judith B. Herman, Federal Communications Commission, 445 12th Street, SW., Room 1–C804, Washington, DC 20554 or via the Internet to *Judith-B.Herman@fcc.gov*.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Judith B. Herman at 202–418–0214 or via the Internet at *Judith-B.Herman@fcc.gov*

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–0955.

Title: 2 GHz Mobile Satellite Service Reports.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for profit.

Number of Respondents: 9.

Estimated Time Per Response: 3 hours.

Frequency of Response: On occasion reporting requirement and recordkeeping requirement.

Total Annual Burden: 27 hours.

Annual Cost Burden: $14,000.

Needs and Uses: The 2 GHz mobile satellite service rules, 47 CFR Part 25, require disclosure in the form of a narrative statement, through amendments to applications or letters of intent, or orbital debris mitigation design and operational strategies and a casualty risk assessment if planned post-mission disposal involves atmospheric re-entry of spacecraft. This requirement will permit the Commission and the public to comment on each system's design. Two GHz mobile satellite systems receiving expansion spectrum as part of the rural and unserved areas spectrum incentive must provide a report on the actual number of subscriber minutes originating or terminating in unserved areas as a percentage of the actual U.S. system use. This rule will permit the Commission to verify that service is being provided in rural and unserved areas. In addition, system proponents will have to complete critical design review (CDR) within two years of

authorization. CDR is a new milestone for satellite services and will permit the Commission to more closely monitor system construction. Without such information, the Commission could not determine whether satellite licensees are operating in conformance with the Commission's rules.

OMB Control No.: 3060–0969.

Title: Availability of INTELSAT Space Segment Capacity to Users and Providers Seeking to Access INTELSAT Directly.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents: 10.

Estimated Time Per Response: 2 hours.

Frequency of Response: One time filing requirement.

Total Annual Burden: 20 hours.

Annual Cost Burden: $3,000.

Needs and Uses: The Commission is seeking extension (no change) to this information collection. On 9/19/00, the Commission released a Report and Order in IB Docket No. 00–91, FCC 00–340, pursuant to the recently enacted Open-Market Reorganization for the Betterment of International Telecommunications Act (ORBIT Act). Section 641(b) of the Communications Satellite Act of 1962, as amended by the ORBIT Act, requires the FCC to determine whether "sufficient opportunity" exists for users and service providers to "to access INTELSAT space segment capacity directly from INTELSAT to meet their service and capacity requirements." The Report and Order concluded that users and service providers currently do not have sufficient opportunity for direct access to INTELSAT. The Report and Order also concluded that the FCC should adopt a "commercial solution". This requires the parties—Comsat (which controls the most U.S. accessible capacity) and other direct access users, to attempt to negotiate mutually agreeable arrangements and to file reports with the Commission on or before March 13, 2001 on the progress of their negotiations.

OMB Control No.: 3060–0357.

Title: Section 63.701, Requests for Designation as a Recognized Private Operating Agency (RPOA).

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents: 10.

Estimated Time Per Response: 3.5 hours.

Frequency of Response: One time filing requirement.

Total Annual Burden: 35 hours.

Annual Cost Burden: $11,900 (rounded to $12,000).

Needs and Uses: The Commission requests this information in order to make recommendations to the U.S. Department of State for granting recognized private operating agency (RPOA) status to requesting entities. The Commission does not require entities to request RPOA status. Rather, this is a voluntary application process for use by companies that believe that obtaining RPOA status will be beneficial in persuading foreign governments to allow them to conduct business abroad. RPOA status also permits companies to join the International Telecommunications Union's (ITU's) Telecommunications Sector, which is the standards-setting body of the ITU.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 03–30304 Filed 12–5–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission for Extension Under Delegated Authority

November 28, 2003.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act (PRA) of 1995, Pub. L. 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written Paperwork Reduction (PRA) comments should be submitted on or before February 6, 2004. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all Paperwork Reduction Act (PRA) comments to Les Smith, Federal Communications Commission, Room 1–A804, 445 12th Street, SW., Washington, DC 20554 or via the Internet to *Leslie.Smith@fcc.gov*.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Les Smith at 202–418–0217 or via the Internet at *Leslie.Smith@fcc.gov*.

SUPPLEMENTARY INFORMATION: *OMB Control Number:* 3060–0700.

Title: Open Video Systems Provisions.

Form Number: FCC 1275.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities; and State, local or tribal government.

Number of Respondents: 708.

Estimated Time per Response: 0.25 to 20 hours.

Total Annual Burden: 3,910 hours.

Total Annual Costs: None.

Needs and Uses: Section 302 of the Telecommunications Act of 1996 provides for specific entry options for entities wishing to enter the video programming marketplace, one option being to provide cable service over an "Open Video System" ("OVS"). On April 15, 1997, the Commission released a Fourth Report and Order, FCC 97–130, which clarified various OVS rules and modified certain OVS filing procedures.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 03–30306 Filed 12–5–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission, Comments Requested

November 26, 2003.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act (PRA) of 1995, Pub. L. No. 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act that does not display a valid control number. Comments are requested concerning (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written Paperwork Reduction Act (PRA) comments should be submitted on or before February 6, 2004. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all Paperwork Reduction Act (PRA) comments to Judith B. Herman, Federal Communications Commission, Room 1–C804, 445 12th Street, SW., Washington, DC 20554 or via the Internet to Judith-*B.Herman@fcc.gov*.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Judith B. Herman at 202–418–0214 or via the Internet at Judith-*B.Herman@fcc.gov*.

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–0686.

Title: Streamlining the Internet Section 214 Authorization Process and Tariff Requirements.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents: 1,650.

Estimated Time Per Response: .50—3,208 hours.

Frequency of Response: On occasion, quarterly and annual reporting requirements, third party disclosure requirement and recordkeeping requirement.

Total Annual Burden: 73,896 hours.

Total Annual Cost: $12,467,000.

Needs and Uses: On 9/12/00, the Commission adopted an Order on Reconsideration in IB Docket No. 97–142, Rules and Policies on Foreign Participation in the U.S. Telecommunications Market, which addressed petitions seeking reconsideration of the Report and Order in this proceeding in which the Commission modified its rules and policies regarding foreign participation in the U.S. telecommunications market. The Order on Reconsideration, drafted in response to the Telecommunications Act of 1996, mandates the FCC to undertake, in every even-numbered year beginning in 1998, a review of all regulations issued under the Communications Act and to eliminate unnecessary government regulation of the telecommunications industry. The information collections pertaining to Part 63 are necessary largely to determine the qualifications of applicants to provide common carrier international telecommunications service, including applicants that are affiliated with foreign carriers, and to determine whether and under what conditions the authorizations are in the public interest, convenience and necessity. The information collections pertaining to Part 1 of the rules are necessary to determine whether the FCC should grant a license for proposed submarine cables landing in the United States.

OMB Control No.: 3060–0855.

Title: Telecommunications Reporting Worksheet, CC Docket No. 96–45.

Form Nos.: FCC Forms 499, 499–A and 499–Q.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit and not-for-profit institutions.

Number of Respondents: 5,500 respondents; 15,500 responses.

Estimated Time Per Response: 13 hours.

Frequency of Response: On occasion, quarterly, annual and one-time reporting requirements, third party disclosure requirement and recordkeeping requirement.

Total Annual Burden: 201,500 hours.

Total Annual Cost: N/A.

Needs and Uses: This year the Commission modified the way in which it calculates universal service contributions. The Commission will be incorporating changes to the Telecommunications Worksheet, FCC Form 499–A, to reflect the revised methodology and resulting changes in the true-up process. We are anticipating a moderate increase to the total annual burden as a result of revising FCC Form 499–A.

OMB Control No.: 3060–0684.

Title: Amendment to the Commission's Rules Regarding a Plan for Sharing the Costs of Microwave Relocation.

Form No.: N/A.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit and not-for-profit institutions.

Number of Respondents: 2,000.

Estimated Time Per Response: .875—40 hours.

Frequency of Response: On occasion, semi-annual and annual reporting requirements, third party disclosure requirement and recordkeeping requirement.

Total Annual Burden: 32,200 hours.

Total Annual Cost: $862,000.

Needs and Uses: The information collections in this proceeding are necessary to effectuate the relocation of fixed microwave incumbents from the 2 GHz band to clear spectrum for the development of Personal Communications Services (PCS). In addition, the collections are necessary to effectuate the Commission's plan for PCS relocators and subsequent PCS licensees to share the costs of relocating existing 2 GHz microwave facilities, thus providing for a fair and efficient relocation process. The information is used by respondents to negotiate relocation costs and submit relocation information to the clearinghouse; and two clearinghouses to determine the reimbursement obligations owed by later-entrant PCS entities. This information collection makes the following additions to the currently approved collection: (1) Reflects an additional burden of independent third party appraisal of the relocation costs for self-relocating incumbents; and (2) reflects a new estimate of the burden on industry to set up and maintain the clearinghouses.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 03–30307 Filed 12–5–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission, Comments Requested

November 28, 2003.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other

Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act (PRA) of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written Paperwork Reduction Act (PRA) comments should be submitted on or before February 6, 2004. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all Paperwork Reduction Act (PRA) comments to Les Smith, Federal Communications Commission, Room 1–A804, 445 12th Street, SW., Washington, DC 20554, or via the Internet to *Leslie.Smith@fcc.gov*.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Les Smith at (202) 418–0217 or via the Internet at *Leslie.Smith@fcc.gov*.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–1032.

Title: Commercial Availability of Navigation Devices and Compatibility Between Cable Systems and Consumer Electronics Equipment, CS Docket No. 97–80 and PP Docket No. 00–67.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents: 563.

Estimated Time Per Response: 30 seconds to 40 hours.

Frequency of Response: Recordkeeping; On occasion reporting requirements; Third party disclosure.

Total Annual Burden: 72,402 hours.

Total Annual Costs: None.

Needs and Uses: In its earlier Further Notice of Proposed Rulemaking ("FNPRM"), *Commercial Availability of Navigation Devices and Compatibility Between Cable Systems and Consumer Electronic Equipment*, CS Docket No. 97–80 and PP Docket No. 00–67, the FCC sought comment on a *Memorandum of Understanding Among Cable MSOs and Consumer Electronics Manufacturers* ("MOU") filed on December 19, 2002, by members of the Consumer Electronics Association ("CEA") and the National Cable and Telecommunications Association ("NCTA"). The MOU was a result of inter-industry discussions seeking to establish a so-called "cable plug and play" standard that will ensure the compatibility of cable television systems with DTV receivers and related consumer electronics equipment. The standard will allow consumers to directly attach their DTV receivers to cable systems and receive cable television services without the need for an external navigation device. The compromise reached in the MOU, as detailed in the FNPRM, required the consumer electronics and cable television industries to commit to certain voluntary acts and sought the adoption of various Commission rules. In a *Second Report and Order and Second Further Notice of Proposed Rulemaking*, the Commission adopted final rules that set technical and other criteria that manufacturers would have to meet in order to label or market unidirectional digital cable televisions and other unidirectional digital cable products as "digital cable ready." This regime includes testing and self-certification standards, certification recordkeeping requirements, and consumer information disclosures in appropriate post-sale materials that describe the functionality of these devices and the need to obtain a security module from their cable operator. To the extent manufacturers have complaints regarding the certification process, they may file formal complaints with the Commission. In addition, should manufacturers have complaints regarding administration of the DFAST license which governs the scrambling technology needed to build unidirectional digital cable products, they may also file complaints with the FCC. The Order also prohibits MVPDs from encoding content to activate selectable output controls on unidirectional digital cable products, or the down-resolution of unencrypted broadcast television programming. MVPDs are also limited in the levels of copy protection that could be applied to various categories of programming. As a part of these encoding rules is a petition process for new services within existing business models, a PR Newswire Notice relating to initial classification of new business models, and a complaints process for disputes regarding new business models.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 03–30311 Filed 12–5–03; 8:45 am]

BILLING CODE 6712–10–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Submitted to OMB for Review and Approval

November 26, 2003.

SUMMARY: The Federal Communications Commissions, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before January 7, 2004. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications Commission, Room 1–A804, 445 12th Street, SW., Washington, DC 20554, or via the Internet to *Leslie.Smith@fcc.gov*; or Kim A. Johnson, Office of Management and Budget (OMB), Room 10236 NEOB, Washington, DC 20503, (202) 395–3562 or via the Internet at *Kim_A._Johnson@omb.eop.gov*.

FOR FURTHER INFORMATION CONTACT: For additional information or copy of the information collection(s) contact Les Smith at (202) 418–0217 or via the Internet at *Leslie.Smith@fcc.gov*.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0945.

Title: Section 79.2, Accessibility of Programming Providing Emergency Information.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business and other for-profit entities; Individuals or households; Not-for-profit institutions; and State, local, or tribal governments.

Number of Respondents: 200.

Estimated Time per Response: 1 to 2 hours.

Frequency of Response: Annual and on occasion reporting requirements.

Total Annual Burden: 275 hours.

Total Annual Costs: $5,000.

Needs and Uses: 47 CFR 79.2 states that any broadcast station or multiple video programming distributor (MVPD) that provides local emergency information as part of a regularly schedules newscast or as part of a newscast that interrupts regularly scheduled programming must make the critical details of the information accessible to persons with visual disabilities in the affected local area. Any broadcast station or MVPD that provides emergency information through a crawl or scroll must also accompany that information with an aural tone to alert persons with disabilities that the station or MVPD is providing this information. In addition, 47 CFR 79(c) contains a complaint procedure'a complaint alleging a violation of this section may be transmitted to the FCC: The FCC then will notify the video programming distributor of the complaint, giving the distributor 30 days to reply to the complaint.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 03–30312 Filed 12–5–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection(s) Requirement Submitted to OMB for Emergency Review and Approval

November 26, 2003.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before January 7, 2004. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contacts listed below as soon as possible.

ADDRESSES: Direct all comments to Kim A. Johnson, Office of Management and Budget, Room 10236 NEOB, Washington, DC 20503, (202) 395–3562, or via Internet at *Kim_A._Johnson@omb.eop.gov*; and Les Smith, Federal Communications Commission, Room 1–A804, 445 12th Street, SW., Washington, DC 20554, or via Internet to *Leslie.Smith@fcc.gov*.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s) contact Les Smith at 202–418–0217 or via Internet at *Leslie.Smith@fcc.gov*.

SUPPLEMENTARY INFORMATION: The Commission has requested emergency OMB review of this collection with an approval by December 19, 2003.

OMB Control Number: 3060–XXXX.

Title: New Allocation for Amateur Radio Service, ET Docket No. 02–230.

Type of Review: New collection.

Form Number: N/A.

Respondents: Business or other for-profit entities; Not-for-profit institutions.

Number of Respondents: 5,000.

Estimated Time Per Response: 2–3 mins. (0.03 hrs.).

Frequency of Response: Recordkeeping; On occasion reporting requirements; Third party disclosure.

Total Annual Burden: 150 hours.

Total Annual Cost: None.

Needs and Uses: On April 29, 2003, the Office of Engineering and Technology adopted a Report and Order in *Amendment of Parts 2 and 97 of the Commission's Rules to Create a Low Frequency Allocation for the Amateur Radio Service*, in ET Docket No. 02–98, FCC 03–105. An amateur operator holding a General, Advanced or Amateur Extra Class license may only operate on the channels 5332 kHz, 5348 kHz, 5368 kHz, 5373 kHz, and 5404 kHz. Under the following limitations: (1) a maximum effective radiated power (e.r.p.) of 50 W; and (2) single sideband suppressed carrier modulation (emission designator 2K8J3E), upper sideband voice transmissions only. For the purpose of computing e.r.p. the transmitter PEP will be multiplied with the antenna gain relative to a dipole or the equivalent calculation in decibels. Licensees using other antennas must maintain in their station records either manufacturer data on the antenna gain or calculations of the antenna gain.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 03–30313 Filed 12–5–03; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Community Services

The Community Services Block Grant Training and Technical Assistance Program

Announcement Type: Initial.

Funding Opportunity Number: HHS–ACF–04–OCS 001.

CFDA Number: 93.570.

Funding Opportunity Description: The Office of Community Services announces that competing applications will be accepted for a new cooperative agreement for the collection, analysis, dissemination and use of data and other information about Community Services Block Grant (CSBG) activities and

effective approaches for ameliorating poverty.

Funding Instrument Type: Cooperative Agreement.

Category of Funding Activity: ISS Income Security and Social Services.

Anticipated Total Program Funding: $500,000.

Anticipated Number of Awards: One.

Ceiling on amount of individual awards: $500,000.

Project Periods for Award: This announcement is soliciting applications for project periods of up to five years. Awards, on a competitive basis, will be for a one-year budget period, although project periods may be for five years. Applications for continuation grants funded under these awards beyond the one-year budget period but within the five year project period will be entertained in subsequent years on a noncompetitive basis, subject to availability of funds, satisfactory progress of the grantee and a determination that continued funding would be in the best interest of the government.

Electronic Link to Full Announcement: http://www.acf.hhs.gov/programs/ocs.

Eligibility

Eligible applicants are Community Services Block Grant Eligible Entities, statewide or local organizations or associations including faith-based organizations, for-profit organizations and non-profit organizations with demonstrated expertise in data collection on a nationwide basis and knowledge of and experience with the Community Services Network.

Proof of non-profit status is any one of the following:

(a) A reference to the applicant organization's listing in the Internal Revenue Service's (IRS) most recent list of tax-exempt organizations described in the IRS code.

(b) A copy of a currently valid IRS tax exemption certificate.

(c) A statement from a State taxing body, State Attorney General, or other appropriate State official certifying that the applicant organization has a non-profit status and that none of the net earnings accrue to any private shareholders or individuals.

(d) A certified copy of the organization's certificate of incorporation or similar document that clearly establishes non-profit status.

(e) Any of the items in the subparagraphs immediately above for a State or national parent organization and a statement singed by the parent organization that the applicant organization is a local non-profit affiliate.

Private, non-profit organizations are encouraged to submit with their applications the survey located under "Grant Related Documents and Forms" titled "Survey for Private, Non-Profit Grant Applicants" at *http://www.acf.hhs.gov/programs/ofs/forms.htm.*

Additional Information on Eligibility: On June 27, 2003, the Office of Management and Budget published in the **Federal Register** a new Federal policy applicable to all Federal grant applicants. The policy requires all Federal grant applicants to provide a Dun and Bradstreet Data Universal Numbering System (DUNS) number when applying for Federal grants or cooperative agreements on or after October 1, 2003. The DUNS number will be required whether an applicant is submitting a paper application or using the government-wide electronic portal (*www.Grants.gov*). A DUNS number will be required for every application for a new award or renewal/continuation of an award, including applications or plans under formula, entitlement and block grant programs, submitted on or after October 1, 2003.

Please ensure that your organization has a DUNS number. You may acquire a DUNS number at no cost by calling the dedicated toll-free DUNS number request line on 1–866–705–5711 or you may request a number on-line at *http://www.dnb.com.*

Cost Sharing or Matching: No.

Explanation of Application Due Dates: The closing time and date for receipt of applications is 4:30 p.m. (Eastern Time Zone) on January 7, 2004. Mailed or hand carried applications received after 4:30 p.m. on the closing date will be classified as late.

Deadline: Mailed applications shall be considered as meeting an announced deadline if they are received on or before the deadline time and date at the U.S. Department of Health and Human Services, Administration for Children and Families, Office of Grants Management, Division of Discretionary Grants, 370 L'Enfant Promenade, SW. Mail Stop: Aerospace Building Washington, DC 20447–0002 Attention: Daphne Weeden. Applicants are responsible for mailing applications well in advance, when using all mail services, to ensure that the applications are received on or before the deadline time and date.

Applications hand carried by applicants, applicant couriers, other representatives of the applicant, or by overnight/express mail couriers shall be considered as meeting an announced deadline if they are received on or before the deadline date, between the hours of 8 a.m. and 4:30 p.m., EST, at the U.S. Department of Health and Human Services, Administration for Children and Families, Office of Grants Management, Division of Discretionary Grants, ACF Mail Room, Second Floor Loading Dock, Aerospace Center, 901 D Street, SW., Washington, DC 20024, between Monday and Friday (excluding Federal holidays). This address must appear on the envelope/package containing the application with the note: "Attention: Daphne Weeden". Applicants are cautioned that express/overnight mail services do not always deliver as agreed.

Late applications: Applications which do not meet the criteria above are considered late applications. ACF shall notify each late applicant that its application will not be considered in the current competition.

Extension of deadlines: ACF may extend application deadlines when circumstances such as acts of God (floods, hurricanes, *etc.*) occur, or when there are widespread disruptions of mails service. Determinations to extend or waive deadline requirements rest with the Chief Grants Management Officer.

I. Funding Opportunity Description

Sections 674(b)(2) and 678A(a)(1)(A) of the Community Services Block Grant (CSBG) Act of 1981, (Pub. L. 97–35) as amended by the Community Opportunities, Accountability, Training and Education Services (COATES) Act of 1998 (Pub. L. 105–285), authorizes the Secretary of Health and Human Services to use a percentage of appropriated funds for training, technical assistance, planning, evaluation, performance measurement, monitoring, to assist States in carrying out corrective actions and to correct programmatic deficiencies of eligible entities, and for reporting and data collection activities related to programs or projects carried out under the CSBG Act. The Secretary may administer these activities through grants, contracts or cooperative agreements with appropriate entities.

Definitions of Terms

The following definitions apply:

Community Action Agency (CAA)—refers to local-level organizations that are Community Services Block Grant (CSBG) Eligible Entities. They provide a number of types of assistance with the goals of reducing poverty and enabling low-income families to become economically self-sufficient.

Community Services Network—refers to the various organizations involved in planning and implementing programs funded through the CSBG or providing training, technical assistance or support to them. The network includes local CAAs and other eligible entities; State CSBG offices and their national association; CAA State, regional and national associations; and related organizations that collaborate and participate with CAAs and other eligible entities in their efforts on behalf of low-income people.

Cooperative Agreement—an award instrument of financial assistance when substantial involvement is anticipated between the awarding office, (the Federal government) and the recipient during performance of the contemplated project. Substantial involvement may include collaboration or participation by OCS staff in activities specified in the award and, as appropriate, decision-making at specified milestones related to performance. The involvement may range from joint conduct of a project to OCS approval prior to the recipient's undertaking the next phase in a project.

Nationwide—refers to the scope of the technical assistance, training, data collection, or other capacity-building projects to be undertaken with grant funds. Nationwide projects must provide for the implementation of technical assistance, training or data collection for all or a significant number of States, and the CAAs and other local service providers who administer CSBG funds.

Non-profit Organization—refers to an organization, including faith-based and community-based, which meets the requirement for proof of non-profit status in the "Additional Information on Eligibility" section of this announcement and has demonstrated experience in providing training to individuals and organizations on methods of effectively addressing the needs of low-income families and communities.

Outcome Measures—are indicators that focus on the direct results one wants to have on customers and on communities.

Performance Measurement—is a tool used to assess how a program is accomplishing its mission through the delivery of products, services and activities.

Results-Oriented Management and Accountability (ROMA) System—ROMA is a system, which provides a framework for focusing on results for local agencies funded by the CSBG Program. It involves setting goals and strategies and developing plans and techniques that focus on a result-oriented performance based model for management.

State—means all of the 50 States and the District of Columbia. Except where specifically noted, for purposes of this program announcement, it also includes Territories as defined below.

Technical assistance—is an activity, generally utilizing the services of an expert (often a peer), aimed at enhancing capacity, improving programs and systems, or solving specific problems. Such services may be provided proactively to improve systems or as an intervention to solve specific problems.

Territories—refers to the Commonwealth of Puerto Rico and American Samoa for the purpose of this announcement.

Training—is an educational activity or event that is designed to impart knowledge, understanding or increase the development of skills. Such training activities may be in the form of assembled events such as workshops, seminars, conferences or programs of self-instructional activities.

Priority Area

Collection, Analysis, Dissemination and Use of Data and Other Information about Community Services Block Grant Activities and Effective Approaches for Ameliorating Poverty.

Program Purpose, Scope and Focus

The purpose of this new grant is to improve the collection, analysis and dissemination of quantitative data and other information about: (1) CSBG activities specifically; and (2) successful approaches for ameliorating the effects of poverty generally.

The grant will support four important component activities. The first is to revise and enhance the existing CSBG data collection instrument and to develop and administer an improved strategy for collecting, analyzing and disseminating information about quantitative, statistical and results-oriented data nationwide using a process of continuous collaboration with States and CAAs. The strategy must include relevant technical assistance and training on data issues for States and CAAs.

The second component is to assist in the development and implementation of procedures for establishing performance targets for anti-poverty programs at the State and local level. The information should be comprehensive enough and disseminated in such formats as to enable States and local service providers to improve their planning, management and delivery of services. The information should also be appropriate to assure that the public has a clear understanding of the CSBG program and other anti-poverty programs and their outcomes. Of particular importance is the continued knowledge building and development of the concepts and technologies for results-oriented management in order to meet the requirements of the CSBG Act and the Government Performance and Results Act of 1993.

The third component is to assist in expanding the use of computer-based technologies by CAAs and other Community Services Network partners. This will include providing training and technical assistance and other technical expertise directed at two objectives: (1) Increasing the entire Community Services Network's ability to participate fully on the information highway; and (2) Enhancing the network's ability to use and disseminate data, research and information regarding poverty issues, particularly activities and outcomes produced by CAAs and the entire Community Services Network.

A fourth component will be to provide training and technical assistance to CAAs and other Community Services Network partners concerning a new system-wide integrated program management system. The project supported with this grant will be expected to coordinate and collaborate with the organizations that are planning and designing the system to make it more likely that the CAAs and Community Services Network partners will use the system for authorized CSBG purposes.

II. Award Information

Funding Instrument Type: Cooperative Agreement.

Anticipated total Priority Area Funding: $500,000.

Anticipated Number of Awards: One.

Ceiling on amount of individual Awards: $500,000.

An application that exceeds the upper value of the dollar range specified will be considered "non-responsive" and be returned to the applicant without further review.

Floor of Individual Award Amounts: $500,000.

Average projected Award Amount: $500,000.

III. Eligibility Information

Eligibility

Eligible applicants are Community Services Block Grant Eligible Entities, statewide or local organizations or associations including faith-based organizations, for-profit organizations and non-profit organizations with

demonstrated expertise in data collection on a nationwide basis and knowledge of and experience with the Community Services Network.

Private, non-profit organizations are encouraged to submit with their applications the survey located under "Grant Related Documents and Forms" titled "Survey for Private, Non-Profit Grant Applicants" at *http://www.acf.hhs.gov/programs/ofs/forms.htm.*

Additional Information on Eligibility

On June 27, 2003, the Office of Management and Budget published in the Federal Register a new Federal policy applicable to all Federal grant applicants. The policy requires all Federal grant applicants to provide a Dun and Bradstreet Data Universal Numbering System (DUNS) number when applying for Federal grants or cooperative agreements on or after October 1, 2003. The DUNS number will be required whether an applicant is submitting a paper application or using the government-wide electronic portal *(www.Grants.gov).* A DUNS number will be required for every application for a new award or renewal/continuation of an award, including applications or plans under formula, entitlement and block grant programs, submitted on or after October 1, 2003.

Please ensure that your organization has a DUNS number. You may acquire a DUNS number at no cost by calling the dedicated toll-free DUNS number request line on 1–866–705–5711 or you may request a number on-line at *http://www.dnb.com.*

1. Cost Sharing or Matching

None.

VI. Application and Submission Information

1. Address To Request Application Package

Margaret Washnitzer, Office of Community Services, Administration for Children and Families, 370 L'Enfant Promenade, SW., Suite 500 West, Washington, DC 20447. Email: *mwashnitzer@acf.hhs.gov,* Telephone: (202) 401–9333.

2. Content and Form of Application Submission

1. Application Content

Private, non-profit organizations are encouraged to submit with their applications the survey located under "Grant Related Documents and Forms" titled "Survey for Private, Non-Profit Grant Applicants" at *http://www.acf.hhs.gov/programs/ofs/forms.htm.*

Each application must include the following components:

1. Table of Contents.

2. Abstract of the Proposed Project—very brief, not to exceed 250 words, that would be suitable for use in an announcement that the application has been selected for a grant award and which identifies the type of project, the target population and the major elements of the work plan.

3. Completed Standard Form 424—that has been signed by an Official of the organization applying for the grant who has authority to obligate the organization legally.

4. Standard Form 424A—Budget Information-Non-Construction Programs.

5. Narrative Budget Justification—for each object class category required under Section B, Standard Form 424A.

6. Project Narrative—A narrative that addresses issues described in the "Application Review Information" and the "Review and Selection Criteria" sections of this announcement.

2. Application Format

Each application should include one signed original application and two additional copies of the same application.

Submit application materials on white 8½x11 inch paper only. Do not use colored, oversized or folded materials.

Please do not include organizational brochures or other promotional materials, slides, films, clips, etc.

The font size may be no smaller than 12 pitch and the margins must be at least one inch on all sides.

Number all application pages sequentially throughout the package, beginning with the abstract of the proposed project as page number one.

Please present application materials either in loose-leaf notebooks or in folders with pages two-hole punched at the top center and fastened separately with a slide paper fastener.

3. Page Limitation

The application package including sections for the Table of Contents, Project Abstract, Project and Budget Narratives and Business Plan must not exceed 65 pages. The page limitation does not include the following attachments and appendices: Standard Forms for Assurances, Certifications, Disclosures and appendices. The page limitation also does not apply to any supplemental documents as required in this announcement.

4. Required Standard Forms

Applicants requesting financial assistance for a non-construction project must sign and return Standard Form 424B, Assurances: Non-Construction Programs with their applications.

Applicants must provide a Certification Regarding Lobbying. Prior to receiving an award in excess of $100,000, applicants shall furnish an executed copy of the lobbying certification. Applicants must sign and return the certification with their application.

Applicants must make the appropriate certification of their compliance with the Drug-Free Workplace Act of 1988. By signing and submitting the applications, applicants are providing the certification and need not mail back the certification with the applications.

Applicants must make the appropriate certification that they are not debarred, suspended or otherwise ineligible for award. By signing and submitting the applications, applicants are providing the certification and need not mail back the certification with the applications.

Applicants must make the appropriate certification of their compliance with all Federal statues relating to nondiscrimination. By signing and submitting the applications, applicants are providing the certification and need not mail back a certification form.

Applicants must make the appropriate certification of their compliance with the requirements of the Pro-Children Act of 1994 as outlined in Certification Regarding Environmental Tobacco Smoke.

What to submit	Required content	Required form or format	When to submit
Table of Contents	As described above	Consistent with guidance in "Application Format" section of this announcement.	By application due date.
Abstract of Proposed Project	Brief abstract that identifies the type of project, the target population and the major elements of the proposed project.	Consistent with guidance in "Application Format" section of this announcement.	By application due date.

What to submit	Required content	Required form or format	When to submit
Completed Standard From 424	As described above and per required form.	May be found on *http://www.acf.hhs.gov/programs/ofs/forms.htm.*	By application due date.
Completed Standard Form 424A	As described above and per required form.	May be found on *http://www.acf.hhs.gov/programs/ofs/forms.htm.*	By application due date.
Narrative Budget Justification	As described above "Application Format" section.	Consistent with guidance in of this announcement.	By application due date.
Project Narrative	A narrative that addresses issues described in the "Application Review Information" and the "Review and Selection Criteria" sections of this announcement.	Consistent with guidance in "Application Format" section of this announcement.	By application due date.
Certification regarding lobbying	As described above and per required form.	May be found on *http://www.acf.hhs.gov/programs/ofs/forms.htm.*	By application due date.
Certification regarding drug-free workplace.	As described above and per required form.	May be found on *http://www.acf.hhs.gov/programs/ofs/forms.htm.*	By application due date.
Certification regarding environmental tobacco smoke.	As described above and per required form.	May be found on *http://www.acf.hhs.gov/programs/ofs/forms.htm.*	By application due date.

Submission Date and Times

The closing time and date for receipt of applications is 4:30 p.m. (Eastern Time Zone) on January 7, 2004. Mailed or hand carried applications received after 4:30 p.m. on the closing date will be classified as late.

Deadline: Mailed applications shall be considered as meeting an announced deadline if they are received on or before the deadline time and date at the U.S. Department of Health and Human Services, Administration for Children and Families, Office of Grants Management, Division of Discretionary Grants, 370 L'Enfant Promenade, SW. Mail Stop: Aerospace Building Washington, DC 20447–0002 Attention: Daphne Weeden. Applicants are responsible for mailing applications well in advance, when using all mail services, to ensure that the applications are received on or before the deadline time and date.

Applications hand carried by applicants, applicant couriers, other representatives of the applicant, or by overnight/express mail couriers shall be considered as meeting an announced deadline if they are received on or before the deadline date, between the hours of 8 a.m. and 4:30 p.m., EST, at the U.S. Department of Health and Human Services, Administration for Children and Families, Office of Grants Management, Division of Discretionary Grants, ACF Mail Room, Second Floor Loading Dock, Aerospace Center, 901 D Street, SW., Washington, DC 20024, between Monday and Friday (excluding Federal holidays). This address must appear on the envelope/package containing the application with the note: "Attention: Daphne Weeden".

Applicants are cautioned that express/overnight mail services do not always deliver as agreed.

Late applications: Applications which do not meet the criteria above are considered late applications. ACF shall notify each late applicant that its application will not be considered in the current competition.

Extension of deadlines: ACF may extend application deadlines when circumstances such as acts of God (floods, hurricanes, *etc.*) occur, or when there are widespread disruptions of mails service. Determinations to extend or waive deadline requirements rest with the Chief Grants Management Officer.

ACF will not send acknowledgements of receipt of application materials.

Intergovernmental Review

State Single Point of Contact (SPOC)

This program is covered under Executive Order 12372, "Intergovernmental Review of Federal Programs," and 45 CFR Part 100, "Intergovernmental Review of Department of Health and Human Services Programs and Activities." Under the Order, States may design their own processes for reviewing and commenting on proposed Federal assistance under covered programs. As of October 1, 2003, the following jurisdictions have elected not to participate in the Executive Order process. Applicants from these jurisdictions or for projects administered by federally-recognized Indian Tribes need take no action in regard to E.O. 12372:

All States and Territories except Alabama, Alaska, Arizona, Colorado, Connecticut, Hawaii, Idaho, Indiana, Kansas, Louisiana, Massachusetts, Minnesota, Montana, Nebraska, New Jersey, New York, Ohio, Oklahoma, Oregon, Pennsylvania, South Dakota, Tennessee, Vermont, Virginia, Washington, Wyoming and Palau have elected to participate in the Executive Order process and have established Single Points of Contact (SPOCs). Applicants from these twenty-seven jurisdictions need take no action.

Although the jurisdictions listed above no longer participate in the process, entities which have met the eligibility requirements of the program are still eligible to apply for a grant even if a State, Territory, Commonwealth, etc. does not have a SPOC. All remaining jurisdictions participate in the Executive Order process and have established SPOCs. Applicants from participating jurisdictions should contact their SPOCs as soon as possible to alert them of the prospective applications and receive instructions. Applicants must submit any required material to the SPOCs as soon as possible so that the program office can obtain and review SPOC comments as part of the award process. The applicant must submit all required materials, if any, to the SPOC and indicate the date of this submittal (or the date of contact if no submittal is required) on the Standard Form 424, item 16a. Under 45 CFR 100.8(a)(2), a SPOC has 60 days from the application deadline to comment on proposed new or competing continuation awards.

SPOCs are encouraged to eliminate the submission of routine endorsements as official recommendations. Additionally, SPOCs are requested to

clearly differentiate between mere advisory comments and those official State process recommendations which may trigger the "accommodate or explain" rule.

When comments are submitted directly to ACF, they should be addressed to: Department of Health and Human Services, Administration for Children and Families, Division of Discretionary Grants, 370 L'Enfant Promenade, SW., Mail Stop 6C–462, Washington, DC 20447.

A list of the Single Points of Contact for each State and Territory is included with the application materials for this announcement.

Funding Restrictions

Sub-Contracting or Delegating Projects

OCS will not fund any project where the role of the applicant is primarily to serve as a conduit for funds to organizations other than the applicant. The applicant must have a substantive role in the implementation of the project for which funding is requested. This prohibition does not bar the making of sub-grants or sub-contracting for specific services or activities needed to conduct the project.

Number of Projects in Application

Each application may include only one proposed project.

Other Submission Requirements

Electronic Copy Address Submission

ACF will not accept electronic applications for this grant.

V. Application Review Information

Purpose

The project description provides a major means by which an application is evaluated and ranked to compete with other applications for available assistance. The project description should be concise and complete and should address the activity for which Federal funds are being requested. Supporting documents should be included where they can present information clearly and succinctly. In preparing your project description, all information requested through each specific evaluation criteria should be provided. Awarding offices use this and other information in making their funding recommendations. It is important, therefore, that this information be included in the application.

Introduction

Applicants required to submit a full project description shall prepare the project description statement in accordance with the following instructions and the specified evaluation criteria. The instructions give a broad overview of what your project description should include while the evaluation criteria expands and clarifies more program-specific information that is needed.

Project Summary/Abstract

Provide a summary of the project description (a page or less) with reference to the funding request.

Objectives and Need for Assistance

Clearly identify the physical, economic, social, financial, institutional, and/or other problem(s) requiring a solution. The need for assistance must be demonstrated and the principal and subordinate objectives of the project must be clearly stated; supporting documentation, such as letters of support and testimonials from concerned interests other than the applicant, may be included. Any relevant data based on planning studies should be included or referred to in the endnotes/footnotes. Incorporate demographic data and participant/beneficiary information, as needed. In developing the project description, the applicant may volunteer or be requested to provide information on the total range of projects currently being conducted and supported (or to be initiated), some of which may be outside the scope of the program announcement.

Results or Benefits Expected

Identify the results and benefits to be derived. For example, describe the population to be served by the program and the number of new jobs that will be targeted to the target population. Explain how the project will reach the targeted population, how it will benefit participants including how it will support individuals to become more economically self-sufficient.

Approach

Outline a plan of action which describes the scope and detail of how the proposed work will be accomplished. Account for all functions or activities identified in the application. Cite factors which might accelerate or decelerate the work and state your reason for taking the proposed approach rather than others. Describe any unusual features of the project such as design or technological innovations, reductions in cost or time, or extraordinary social and community involvement.

Provide quantitative monthly or quarterly projections of the accomplishments to be achieved for each function or activity in such terms as the number of people to be served and the number of activities accomplished. Account for all functions or activities identified in the application. Cite factors that might accelerate or decelerate the work and state your reasons for taking the proposed approach rather than others. Describe any unusual features of the project such as design or technical innovations, reductions in cost or time or extraordinary social and community involvement.

Provide quantitative monthly or quarterly projections of the accomplishments to be achieved for each function or activity in, for example such terms as the "number of people served." When accomplishments cannot be quantified by activity or function, list them in chronological order to show the schedule of accomplishments and their target dates.

If any data is to be collected, maintained, and/or disseminated, clearance may be required from the U.S. Office of Management and Budget (OMB). This clearance pertains to any "collection of information that is conducted or sponsored by ACF."

List organizations, cooperating entities, consultants, or other key individuals who will work on the project along with a short description of the nature of their effort or contribution.

Evaluation

Provide a narrative addressing how the results of the project and the conduct of the project will be evaluated. In addressing the evaluation of results, state how you will determine the extent to which the project has achieved its stated objectives and the extent to which the accomplishment of objectives can be attributed to the project. Discuss the criteria to be used to evaluate results, and explain the methodology that will be used to determine if the needs identified and discussed are being met and if the project results and benefits are being achieved. With respect to the conduct of the project, define the procedures to be employed to determine whether the project is being conducted in a manner consistent with the work plan presented and discuss the impact of the project's various activities on the project's effectiveness.

Organizational Profiles

Provide information on the applicant organization(s) and cooperating partners such as organizational charts, financial statements, audit reports or statements from CPAs/Licensed Public Accountants, Employer Identification Numbers, names of bond carriers, contact persons and telephone numbers, child care licenses and other documentation of professional accreditation, information on compliance with Federal/State/local government standards, documentation of experience in the program area, and other pertinent information. Any non-profit organization submitting an application must submit proof of its non-profit status in its application at the time of submission.

The non-profit agency can accomplish this by providing a copy of the applicant's listing in the Internal Revenue Service's (IRS) most recent list of tax-exempt organizations described in Section 501(c)(3) of the IRS code, or by providing a copy of the currently valid IRS tax exemption certificate, or by providing a copy of the articles of incorporation bearing the seal of the State in which the corporation or association is domiciled.

Budget and Budget Justification

Provide line item detail and detailed calculations for each budget object class identified on the Budget Information form. Detailed calculations must include estimation methods, quantities, unit costs, and other similar quantitative detail sufficient for the calculation to be duplicated. The detailed budget must also include a breakout by the funding sources identified in Block 15 of the SF–424.

Provide a narrative budget justification that describes how the categorical costs are derived. Discuss the necessity, reasonableness, and allocability of the proposed costs.

1. Evaluation Criteria

Evaluation Criterion I: Approach (Maximum: 35 Points)

Factors:

(1) The work program is results-oriented, approximately related to the legislative mandate and specifically related to the priority area under which funds are being requested. Applicant addresses the following: specific outcomes to be achieved; performance targets that the project is committed to achieving, including a discussion of and how the project will verify the achievement of these targets; critical milestones which must be achieved if results are to be gained; organizational support, the level of support from the applicant organization; past performance in similar work; and specific resources contributed to the project that are critical to success.

(2) The applicant defines the comprehensive nature of the project and methods that will be used to ensure that the results can be used to address a statewide or nationwide project as defined by the description of the particular priority area.

Evaluation Criterion II: Objectives and Need for Assistance (Maximum: 20 Points)

Factors:

(1) The applicant documents that the proposed project addresses vital needs related to the program purposes and provides statistics and other data and information in support of its contention.

(2) The application provides current supporting documentation or other testimonies regarding needs from State CSBG Directors, CAAs and local service providers and/or State and Regional organizations of CAAs and other local service providers.

Evaluation Criterion III: Organizational Profiles (Maximum: 25 Points)

Factors:

(1) The applicant demonstrates that it has experience and a successful record of accomplishment relevant to the specific activities it proposes to accomplish.

(2) If the applicant proposes to provide training and technical assistance, it details its abilities to provide those services on a nationwide basis. If applicable, information provided by the applicant also addresses related achievements and competence of each cooperating or sponsoring organization.

(3) The applicant fully describes, for example in a resume, the experience and skills of the proposed project director and primary staff showing specific qualifications and professional experiences relevant to the successful implementation of the proposed project.

(4) The applicant describes how it will involve partners in the Community Services Network in its activities. Where appropriate, applicant describes how it will interface with other related organizations.

(5) If subcontracts are proposed, the applicant documents the willingness and capacity of the subcontracting organization(s) to participate as described.

Evaluation Criterion IV: Results or Benefits Expected (Maximum: 15 Points)

Factors:

(1) The applicant describes how the project will assure long-term program and management improvements for State CSBG offices, CAA State and/or regional associations, CAAs and/or other local providers of CSBG services and activities.

(2) The applicant indicates the types and amounts of public and/or private resources it will mobilize, how those resources will directly benefit the project, and how the project will ultimately benefit low-income individuals and families.

(3) If the applicant proposes a project with a training and technical assistance focus, the applicant indicates the number of organizations and/or staff that will benefit from those services.

(4) If the applicant proposes a project with data collection focus, applicant describes the mechanism it will use to collect data, how it can assure collections from a significant number of States, and the number of States willing to submit data to the applicant.

(5) If the applicant proposes to develop a symposium series or other policy-related project(s), the applicant identifies the number and types of beneficiaries.

(6) The applicant describes methods of securing participant feedback and evaluations of activities.

Criterion V: Budget and Budget Justification (Maximum: 5 points)

Factors:

(1) The resources requested are reasonable and adequate to accomplish the project

(2) Total costs are reasonable and consistent with anticipated results.

2. Review and Selection Process

Initial OCS Screening

Each application submitted to OCS will be screened to determine whether it was received by the closing date and time.

Applications received by the closing date and time will be screened for completeness and conformity with the following requirements. Only complete applications that meet the requirements listed below will be reviewed and evaluated competitively. Other applications will be returned to the applicants with a notation that they were unacceptable and will not be reviewed.

All applications must comply with the following requirements except as noted:

(a) The application must contain a signed Standard Form 424 Application for Federal Assistance "SF–424", a Standard Form 424–A Budget Information "SF–424A" and signed Standard Form 424B Assurance—Non-Construction Programs "SF–424B" completed according to instructions provided in this Program Announcement. The forms SF–424 and the SF–424B must be signed by an

official of the organization applying for the grant who has authority to obligate the organization legally. The applicant's legal name as required on the SF–424 (Item 5) must match that listed as corresponding to the Employer Identification Number (Item 6);

(b) The application must include a project narrative that meets requirements set for in this announcement.

(c) The application must contain documentation of the applicant's tax-exempt status as indicated in the "Additional Information on Eligibility" section of this announcement.

OCS Evaluation of Applications

Applications that pass the initial OCS screening will be reviewed and rated by a panel based on the program elements and review criteria presented in relevant sections of this program announcement.

The review criteria are designed to enable the review panel to assess the quality of a proposed project and determine the likelihood of its success. The criteria are closely related to each other and are considered as a whole in judging the overall quality of an application. The review panel awards points only to applications that are responsive to the program elements and relevant review criteria within the context of this program announcement.

The OCS Director and program staff use the reviewer scores when considering competing applications. Reviewer scores will weigh heavily in funding decisions, but will not be the only factors considered.

Applications generally will be considered in order of the average scores assigned by the review panel. Because other important factors are taken into consideration, highly ranked applications are not guaranteed funding. These other considerations include, for example: the timely and proper completion by the applicant of projects funded with OCS funds granted in the last five (5) years; comments of reviewers and government officials; staff evaluation and input; amount and duration of the grant requested and the proposed project's consistency and harmony with OCS goals and policy; geographic distribution of applications; previous program performance of applicants; compliance with grant terms under previous HHS grants, including the actual dedication to program of mobilized resources as set forth in project applications; audit reports; investigative reports; and applicant's progress in resolving any final audit disallowance on previous OCS or other Federal agency grants.

VI. Award Administration Information

1. Award Notices: 90 days after the due date of applications. Following approval of the application selected for funding, ACF will mail a written notice of project approval and authority to draw down project funds. The official award document is the Financial Assistance Award that specifies the amount of Federal funds approved for use in the project, the project and budget period for which support is provided and the terms and conditions of the award.

ACF will notify unsuccessful applicants after the award is issued to the successful applicant.

2. Administrative and National Policy Requirements: 45 CFR part 74.

3. Special Terms and Conditions of Awards: None.

4. Reporting Requirements.

Programmatic Reports: Semi-annually.

Financial Reports: Semi-annually.

Special Reporting Requirements: None.

VII. Agency Contacts

Program Office Contact: Margaret Washnitzer, Office of Community Services, 370 L'Enfant Promenade, SW., Suite 500 West,Aerospace Building, Washington, DC 20447–0002,Email: *mwashnitzer@acf.hhs.gov*,Telephone: (202) 401–9333.

Grants Management Office Contact: Daphne Weeden, Office of Grants Management, Division of Discretionary Grants, 370 L'Enfant Promenade, SW., Aerospace Building, Washington, DC 20447–0002. Email: *dweeden@acf.hhs.gov*, Telephone: (202) 401–2344.

VIII. Other Information

Paperwork Reduction Act of 1995 (Pub. L. 104–13): Under the Paperwork Reduction Act of 1995, Pub. L. 104–13, the Department is required to submit to the Office of Management and Budget (OMB) for review and approval of any reporting and record keeping requirements in regulations including program announcements. This program announcement does not contain information collection requirements beyond those approved for ACF grant applications under the Program Narrative Statement by OMB (Approval Numbers: 0348–0043, 0348–0044, 034800040, 0348–0046, 0925–0418 and 0970–0139).

Public reporting burden for this collection is estimated to average 25 hours per response, including the time for reviewing instructions, gathering and maintaining the data needed and reviewing the collection of information.

The project description is approved under OMB control # 0970–0139 which expires 12/31/03.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Dated: November 24, 2003.

Clarence H. Carter,

Director, Office of Community Services.

[FR Doc. 03–30392 Filed 12–5–03; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2003N–0525]

Agency Information Collection Activities: Proposed Collection; Comment Request; Hazard Analysis and Critical Control Point; Procedures for the Safe and Sanitary Processing and Importing of Juice

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on recordkeeping requirements for applying hazard analysis and critical control point (HAACP) procedures for safe and sanitary processing for processors of fruit and vegetable juice.

DATES: Submit written or electronic comments on the collection of information by February 6, 2004.

ADDRESSES: Submit electronic comments on the collection of information to: *http://www.fda.gov/dockets/ecomments*. Submit written comments on the collection of information to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Peggy Robbins, Office of Management Programs (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. "Collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Hazard Analysis and Critical Control Point (HAACP); Procedures for the Safe and Sanitary Processing and Importing of Juice (OMB Control Number 0910–0466)—Extension

These regulations mandate the application of HACCP procedures to fruit and vegetable juice processing. HACCP is a preventative system of hazard control that can be used by all food processors to ensure the safety of their products to consumers. A HACCP system of preventive controls is the most effective and efficient way to ensure that these food products are safe. FDA's mandate to ensure the safety of the nation's food supply is derived principally from the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 321 *et seq.*). Under the act, FDA has authority to ensure that all foods in interstate commerce, or that have been shipped in interstate commerce, are not contaminated or otherwise adulterated, are produced and held under sanitary conditions, and are not misbranded or deceptively packaged; under 21 U.S.C. 371, the act authorizes the agency to issue regulations for its efficient enforcement. The agency also has authority under the Public Health Service Act (42 U.S.C. 264) to issue and enforce regulations to prevent the introduction, transmission, or spread of communicable diseases from one State to another other State. Information development and recordkeeping are essential parts of any HACCP system. The information collection requirements are narrowly tailored to focus on the development of appropriate controls and document those aspects of processing that are critical to food safety. Through these regulations, FDA is implementing its authority under section 402(a)(4) of the act (21 U.S.C. 342(a)(4)).

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL RECORDKEEPING BURDEN[1]

21 CFR Section	No. of Recordkeepers	Annual Frequency per Record-keeping	Total Annual Records	Hours per Record	Total Hours
120.6(c) and 120.12(a)(1) and (b)	1,875	365	684,375	0.1	68,438
120.7, 120.10(a), and 120.12(a)(2), (b), and (c)	2,300	1.1	2,530	20	50,600
120.8(b)(7) and 120.12(a)(4)(i) and (b)	1,450	14,600	21,170,000	0.01	211,700
120.10(c) and 120.12(a)(4)(ii) and (b)	1,840	12	22,080	0.1	2,208
120.11(a)(1)(iv), 120.11(a)(2), and 120.12(a)(5)	1,840	52	95,680	0.1	9,568
120.11(b) and 120.12(a)(5) and (b)	1,840	1	1,840	4	7,360
120.11(c) and 120.12(a)(5) and (b)	1,840	1	1,840	4	7,360
120.14(a)(2), (c), and (d)	308	1	308	4	1,232
Total					358,466

[1]There are no capital costs or operating and maintenance costs associated with this collection of information.

Table 1 provides a breakdown of the total estimated annual recordkeeping burden. The estimates in this table have been reviewed by the agency's HACCP experts, who have practical experience in observing various processing operations and related recordkeeping activities.

The burden estimates in table 1 are based on an estimate of the total number of juice manufacturing plants (i.e., 2,300) affected by the regulations. Included in this total are 850 plants currently identified in FDA's official establishment inventory plus 1,220 very small apple juice manufacturers and 230 very small orange juice manufacturers. The total burden hours are derived by estimating the number of plants affected by each portion of this final rule and multiplying the corresponding number by the number of records required annually and the hours needed to complete the record. These numbers

were obtained from the agency's final regulatory impact analysis prepared for these regulations.

Moreover, these estimates assume that every processor will prepare sanitary standard operating procedures and a HACCP plan and maintain the associated monitoring records and that every importer will require product safety specifications. In fact, there are likely to be some small number of juice processors that, based upon their hazard analysis, determine that they are not required to have a HACCP plan under these regulations.

Dated: December 1, 2003.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 03–30302 Filed 12–5–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2003N–0529]

Amending the MedWatch Forms to Collect Postmarketing Adverse Event Data Relating to Race and Ethnicity

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; request for comments.

SUMMARY: The Food and Drug Administration (FDA) is requesting comment on the advantages and disadvantages of systematically collecting race and ethnicity data in postmarketing adverse event reports. FDA is also seeking feedback on whether FDA's MedWatch forms (Forms 3500 and 3500A) should be amended to collect the race and ethnicity data. If the MedWatch forms are amended to collect race and ethnicity data, FDA would like comment on how the forms should be amended and the financial impact of amending the forms on both voluntary and mandatory reporters. FDA is also asking for comment on the implications that collecting such race and ethnicity data would have for international reporting of postmarketing adverse events.

DATES: Submit written or electronic comments on this document by February 6, 2004.

ADDRESSES: Submit written comments on identified questions to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.fda.gov/dockets/ecomments*. The MedWatch forms are available on the Internet at *http://www.fda.gov/MedWatch*.

FOR FURTHER INFORMATION CONTACT: Brenda Evelyn, Office of Special Health Issues (HF–12), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4460, *bevelyn@oc.fda.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

A. FDA Regulations

FDA regulations require sponsors to present an analysis of data according to demographic subgroups (age, gender, race), as well as an analysis of modifications of dose or dosage intervals for specific subgroups (21 CFR 314.50(d)(5)(vi)(*a*)) in certain marketing applications.

B. MedWatch Forms

Medwatch Forms FDA 3500 and 3500A are used by voluntary and mandatory reporters, respectively, to collect information on adverse events, product quality problems, and medication errors that occur during marketed use of FDA-regulated products. The MedWatch forms collect demographic and other information about patients in the patient information section (box A), which includes specific data fields for age (box A.2), sex (box A.3), and weight (box A.4). The forms do not, however, include a unique field to capture data on race and ethnicity. Race and ethnicity data can be collected in box B.7 of the MedWatch forms, however, other information is collected in box B.7, including information on preexisting medical conditions (e.g., allergies, pregnancy, smoking and alcohol use, hepatic/renal dysfunction). In addition, the information captured in this section is in a narrative format and cannot be searched efficiently to extract race and ethnicity data. Thus, current placement of race and ethnicity data in box B.7 of the MedWatch forms limits the ability of FDA to analyze postmarketing adverse event data by race and ethnicity.

C. Office of Management and Budget (OMB) Recommendations and FDA Draft Guidance

In 1997, OMB issued recommendations for the collection and use of race and ethnicity data by Federal agencies (Statistical Policy Directive No. 15, Race and Ethnic Standards for Federal Statistics and Administrative Reporting, 1997). In the **Federal Register** of January 30, 2003, FDA made available for comment a draft guidance for industry entitled "Collection of Race and Ethnicity Data in Clinical Trials" (68 FR 4788). In the draft guidance, FDA recommends the use of standardized OMB race and ethnicity categories for data collection in clinical trials. The agency's recommendations are intended to ensure consistency in the analyses of demographic subsets across studies and to help evaluate potential differences in the safety and efficacy of pharmaceutical products among population subgroups.

With respect to collection of the data, in the draft guidance, the agency provided the following recommendations:

1. A two-question format should be used for requesting race and ethnicity information, with the ethnicity question preceding the question about race.
2. Study participants should self-report race and ethnicity information whenever feasible, and individuals should be permitted to designate a multiracial identity. When the collection of self-reported designations is infeasible (e.g., because of the subject's inability to respond), we recommend the information be requested from a first-degree relative or other knowledgeable source.
3. For ethnicity, the following minimum choices should be offered:
   - Hispanic or Latino
   - Not Hispanic or Latino
4. When race and ethnicity information is collected separately, the following minimum choices should be offered for race:
   - American Indian or Alaska Native
   - Asian
   - Black or African American
   - Native Hawaiian or Other Pacific Islander
   - White
5. In certain situations, as directed in OMB Directive 15, more detailed race and ethnicity information may be desired (e.g., White can reflect origins in Europe, the Middle East, or North Africa; Asian can reflect origins from areas ranging from India to Japan). If more detailed characterizations of race or ethnicity are collected to enhance data consistency, these characterizations should be traceable to the five minimum designations for race and two designations for ethnicity listed under numbers 3 and 4 in section I.C of this document.

D. ICH Guidance

In 1998, as part of an international effort among Japan, the European Union, and the United States to harmonize technical requirements for pharmaceutical drug development and regulation (ICH (International Conference on Harmonisation)), FDA published a guidance entitled "E5 Ethnic Factors in the Acceptability of Foreign Clinical Data" (63 FR 31790, June 10, 1998). The E5 guidance provides recommendations to permit the clinical data collected in one region to be used in the registration or approval of a drug or biological product in another region, while allowing for the influence of ethnic factors. The E5 guidance defines ethnic factors that could affect drug response in terms of both intrinsic and extrinsic issues. Because there is the potential for differences in the safety and efficacy of pharmaceutical products among population subgroups, the E5 guidance provides a general framework for how to evaluate medicines with regard to ethnic factors.

II. Scope of Discussion

In view of the background information presented in section I of this document, FDA is requesting comment on the advantages and disadvantages of collecting race and ethnicity data in postmarketing adverse event reports. FDA is also seeking feedback on whether the MedWatch forms should be amended to collect this data based on the standardized categories described in section I.B of this document. Specific comments are being sought on the following questions:

1. Should the MedWatch forms (Forms FDA 3500A and 3500) be amended with a special field or fields to capture adverse event data on race and ethnicity?
2. Should MedWatch race and ethnicity data distinguish between self-reported and observer-reported designations? If so, how should the designations be captured?
3. Would collection of race and ethnicity data on the MedWatch forms have an impact on the ICH E2B guidance relating to the electronic submission of adverse event reports ("E2B Data Elements for Transmission of Individual Case Safety Reports" (63 FR 2396 at 2397, January 15, 1998))?
4. What is the financial impact associated with adding a special field or fields to the MedWatch forms to collect data on race and ethnicity?

III. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments. Two copies of any mailed comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Dated: November 27, 2003.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 03–30300 Filed 12–5–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

In compliance with the requirement for the opportunity for public comment on proposed data collection projects (section 3506(c)(2)(A) of Title 44, United States Code, as amended by the Paperwork Reduction Act of 1995, Pub. L. 104–13), the Health Resources and Services Administration (HRSA) publishes periodic summaries of proposed projects being developed for submission to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995. To request more information on the proposed grant information collection activity or to obtain a copy of the data collection plan and draft instruments, call the HRSA Reports Clearance Officer at (301) 443–1129.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of grantee functions including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project: Ryan White Comprehensive AIDS Resources Emergency (CARE) Act Title I Minority AIDS Initiative (MAI) Annual Plan and Title I MAI Annual Report: New

The CARE Act (codified under Title XXVI of the Public Health Service Act) was first enacted by Congress in 1990, and reauthorized in 1996 and 2000. It addresses the unmet health needs of persons living with HIV by funding primary health care and support services that enhance access to and retention in care. The CARE Act funded services reach over 500,000 individuals; after Medicaid and Medicare, it is the largest single source of Federal funding for HIV/AIDS care for low-income, uninsured, and underinsured Americans. Title I under the CARE Act provides emergency assistance to eligible metropolitan areas (EMAs) the most severely affected by the HIV epidemic, for the purpose of providing a continuum of high quality, community-based care for low-income individuals and families with HIV disease.

In response to a Presidential declaration in 1998 that HIV was a severe and ongoing health crisis among minority communities, the Congress directed a portion of fiscal year (FY) 1999 CARE Act funds to a new Minority AIDS Initiative (MAI) to address the disproportionate impact of HIV on African-American and Hispanic communities. Since then, the focus has been broadened to include all racial and ethnic minority communities. HRSA disburses the Title I component of MAI funds among the 51 EMAs based on a congressionally mandated formula.

The Congress has directed that Title I MAI funds be used through established local planning council processes to improve HIV-related health outcomes for communities of color and reduce existing health disparities. Improved health outcomes include reducing HIV transmission, morbidity and opportunistic disease, and improving life expectancy.

The Title I MAI Annual Plan (Plan) and Title I MAI Annual Report (Report) are designed to collect information from grantees on MAI-funded services, the number and demographics of clients served, and client-level outcomes. This information is needed to monitor and assess: (a) Increases and changes in the type and amount of HIV/AIDS health care and related services being provided to each disproportionately impacted community of color; (b) increases in the number of persons receiving HIV/AIDS services within each racial and ethnic community; and (c) the impact of the Title I MAI funded services in terms of client-level and service-level health outcomes. This information also will be used to plan new technical assistance and capacity development activities, and inform the HIV/AIDS Bureau/HRSA policies and program management.

The Plan and Report will be transmitted by mail and electronically to all Title I grantees and made available through the HRSA web site. Two alternatives will be provided to grantees for submitting Plans and Reports electronically: a designated mailbox for e-mailed electronic reports and a web-based reporting option. The Plan and

Report forms will be linked to reduce the reporting burden, and are designed to include check box responses, fields for reporting budget, expenditure and client data, and open-ended text boxes for describing client or service-level outcomes. The forms will automatically generate totals and percentages and include other automated fields to minimize the time required to complete the Plan and Report, and include built-in checks to minimize possible reporting errors.

The forms will require grantees to collect client, services, and outcomes information from MAI-funded service providers (sub-grantees), which grantees have already been collecting from MAI-funded providers since FY 2000. It will take grantees no longer than 15 minutes to complete a single form (response) for each MAI-funded service provided to each minority racial or ethnic minority community.

In FY 2002, grantees would have completed an average of nine forms/responses to prepare their Title I Annual MAI Plans and eight forms/responses to prepare their Title I Annual MAI Reports. For FY 2003, the average number declined to eight and seven forms/responses respectively. Thirty-eight of the 51 grantees (75%) would have completed 10 or fewer Plans and 10 or fewer Reports during both fiscal years.

Therefore the approximate response burden for Title I grantees in completing *both* the Annual MAI Plan and the Annual MAI Report is estimated as:

Estimated number of grantee respondents	Estiamted responses per grantee	Total number of responses	Hours per response	Estimated total hour burden
51	15	765	.25	191.25

Send comments to Susan G. Queen, PhD. HRSA Reports Clearance Officer, Room 14–33, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 day of this notice.

Dated: November 28, 2003.

Jon L. Nelson,

Associate Administrator for Management and Program Support.

[FR Doc. 03–30303 Filed 12–5–03; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclose of which constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Computational Models of Saccades.

Date: December 4, 2003.

Time: 1 p.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20817. (Telephone Conference Call).

Contact Person: Michael A. Steinmetz, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5172, MSC 7844, Bethesda, MD 20892, (301) 435–1247, *steinmem@csr.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel Sleep.

Date: December 4, 2003.

Time: 12 p.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Telephone Conference Call).

Contact Person: Daniel R. Kenshalo, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5176, MSC 7844, Bethesda, MD 20892, (301) 435–1255, *kenshalod@csr.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 PTHA 04 S: Vascular Calcification.

Date: December 5, 2003.

Time: 1:30 p.m. to 2:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Larry Pinkus, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4132, MSC 7802, Bethesda, MD 20892, (301) 435–1214.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Functional Proteomic Analysis of Cardiac Mitochondria.

Date: December 5, 2003.

Time: 1:30 p.m. to 2:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Anshumali Chaudhari, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4124, MSC 7802, Bethesda, MD 20892, (301) 435–1210.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel Neuroendocrine Control.

Date: December 9, 2003.

Time: 12 p.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Daniel R. Kenshalo, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5176, MSC 7844, Bethesda, MD 20892, (301) 435–1255, *kenshalod@csr.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel ZRG1 CNNT 05M: Member Conflict: Brain Disorders and Clinical Neurociences IRG.

Date: December 10, 2003.

Time: 12 p.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: William C. Benzing, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5190, MSC 7846, Bethesda, MD 20892, (301) 435–1254, *benzingw@mail.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Comparative Genomics.

Date: December 19, 2003.

Time: 2 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Camilla E. Day, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2212, MSC 7890, Bethesda, MD 20892, (301) 435–1037, *dayc@csr.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Metabolism Special Emphasis Panel.

Date: December 19, 2003.

Time: 3:15 p.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Telephone Conference Call).

Contact Person: Ann A. Jerkins, PhD. Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6154, MSC 7892, Bethesda, MD 20892, (301) 435–4514.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Youth Trajectories.

Date: December 22, 2003.

Time: 1 p.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Deborah L. Young-Hyman, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4188, MSC 7808, Bethesda, MD 20892, (301) 451–8008, *younghyd@csr.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: December 2, 2003.

Anna Snouffer,

Deputy Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–30330 Filed 12–5–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4815–N–100]

Notice of Submission of Proposed Information Collection to OMB: Prepayment of Direct Loans on Section 202 and 202/8 Projects

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

This is a request for approval to continue to collect the information from owners of multifamily housing projects who wish to prepay a mortgage financed under Sec. 202. The information is used to determine the viability of the prepayment request.

DATES: *Comments Due Date:* January 7, 2004.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and OMB approval number (2502-pending) and should be sent to: Lauren Wittenberg, OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503; Fax number (202) 395–6974; E-mail *Lauren_Wittenberg@omb.eop.gov*.

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, AYO, Department of Housing and Urban Development, 451 Seventh Street, Southwest, Washington, DC 20410; e-mail *Wayne_Eddins@HUD.gov*; telephone (202) 708–2374. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Eddins or on HUD's Web site at *http://www5.hud.gov:63001/po/i/icbts/collectionsearch.cfm*.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35). The Notice lists the following information: (1) the title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the name and telephone number of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

This Notice also lists the following information:

Title of Proposal: Prepayment of Direct Loans on Section 202 and 202/8 Projects.

OMB Approval Number: 2502-pending.

Form Numbers: HUD–5084.

Description of the Need for the Information and its Proposed Use:

This is a request for approval to continue to collect the information from owners of multifamily housing projects who wish to prepay a mortgage financed under Sec. 202. The information is used to determine the viability of the prepayment request.

Respondents: Business or other for-profit, Not-for-profit institutions.

Frequency of Submission: On occasion.

	Number of respondents	Annual responses	×	Hours per response	=	Burden hours
Reporting Burden	150	150		2		300

Total Estimated Burden Hours: 300
Status: Existing collection in use without an OMB control number.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: December 1, 2003.

Wayne Eddins,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 03–30315 Filed 12–5–03; 8:45 am]

BILLING CODE 4210–72–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4579–FA–23]

Announcement of Funding Award for Fiscal Year 2003 to the Housing Assistance Council

AGENCY: Office of the Assistant Secretary for Policy Development and Research, HUD.

ACTION: Announcement of funding award.

SUMMARY: In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, this document notifies the public of an award for Fiscal Year 2003 to the Housing Assistance Council.

FOR FURTHER INFORMATION CONTACT: Patrick J. Tewey, Director, Budget, Contracts and Program Control Division, Office of Policy Development and Research, Room 8230, 451 7th Street SW., Washington, DC 20410–6000, telephone (202) 708–1796, extension 4098. To provide service for persons who are hearing-or-speech-impaired, this number may be reached via TTY by dialing the Federal Information Relay Service on 1–800–877–TTY, 1–800–877–8339, or (202) 708–1455. (Telephone numbers other than "800" TTY numbers are not toll free.)

SUPPLEMENTARY INFORMATION: The Consolidated Appropriations Resolution of 2003 (Pub. L. 108–7) earmarked $3,278,550 for a grant to the Housing Assistance Council. HUD's Office of Policy Development and Research administers this grant.

The Catalog of Federal Domestic Assistance for these grants is 14.225

In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989 (103 Stat. 1987, 42 U.S.C. 3545), the Department is publishing details concerning this award, as follows:

Housing Assistance Council, Moises Loza, Executive Director, 1025 Vermont Avenue, NW., Suite 606, Washington, DC 20005, Grant #H–21354CA, "Rural Housing Research and Technical Assistance" Amount $3,278,550, Date Awarded 10/01/02.

Dated: November 6, 2003.

Darlene F. Williams,

General Deputy Assistant Secretary, Office of Policy Development and Research.

[FR Doc. 03–30318 Filed 12–5–03; 8:45 am]

BILLING CODE 4210–62–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4579–FA–22]

Announcement of Funding Awards for Fiscal Year 2003, Research and Technology Unsolicited Proposals

AGENCY: Office of the Assistant Secretary for Policy Development and Research, HUD.

ACTION: Announcement of funding awards.

SUMMARY: In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, this document notifies the public of funding awards for Fiscal Year 2003 unsolicited research. The purpose of this document is to announce the names and addresses of the organizations that have been awarded cooperative agreements based on their submission and HUD's acceptance of unsolicited proposals for research funding.

FOR FURTHER INFORMATION CONTACT: Patrick J. Tewey, Director, Budget, Contracts and Program Control Division, Office of Policy Development and Research, Room 8230, 451 7th Street, SW., Washington, DC 20410–6000, telephone (202) 708–1796, extension 4098. To provide service for persons who are hearing-or-speech-impaired, this number may be reached via TTY by dialing the Federal Information Relay Service on 1–800–877–TTY, 1–800–877–8339, or 202–708–1455. (Telephone number, other than "800" TTY numbers are not toll free.)

SUPPLEMENTARY INFORMATION: The Consolidated Appropriations Resolution of 2003 (Pub. L. 108–7) provided $46,694,500 in Research and Technology funds for contracts, grants and necessary expenses of programs and studies relating to housing and urban problems. Included in this amount are $39,243,250 for core Research and Technology and $7,451,250 in funding for the Partnership for Advancing Technology in Housing (PATH) program. The majority of HUD's Research and Technology funding is awarded through competitive solicitations. The unsolicited proposal is another method used by HUD to fund research and development. An unsolicited proposal is submitted to support an idea, method or approach by individuals and organizations solely on the submitter's initiative. Funding of unsolicited proposals is considered a noncompetitive action. An unsolicited proposal demonstrates a unique and innovative concept or a unique capability of the submitter, offers a concept or service not otherwise available to the Government and does not resemble the substance of a pending competitive action. All unsolicited proposals and the resulting award of cooperative agreements include substantial cost sharing on the part of the submitter/awardee.

The Catalog of Federal Domestic Assistance for this program is 14.506.

In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989 (103 Stat. 1987, 42 U.S.C. 3545), the Department is publishing details concerning the recipients of funding awards, as follows:

List of FY2003 Awardees for Cooperatives Agreements

Council of Professional Associations on Federal Statistics (COPAFS), Edward Sparr, Executive Director, 1249 Duke Street, Alexandria, VA 22314, Grant Number: H–21400SG, Project Title: "Seminar on Redefining Metro/Non-Metro", Total Amount $10,000, Date Awarded: 9/23/03

MDRC, Jesus M. Amadeo, Senior Vice President, 16 East 34th Street, New York, NY 10016, Grant Number H–21042CA, Project Title: "Jobs-Plus Community Revitalization Initiative for Public Housing Families", Total Amount $1,100,000, Date Awarded: 5/31/03

NAHB Research Center, Michael Luzier, President, 400 Prince Georges Boulevard, Upper Marlboro, MD 20774, Grant Number: H–21396CA, Project Title: "Tool Base Services 2003, The Portal to Technical Information for the Home Building Industry", Total Amount $905,000, Date Awarded 5/29/03

National Building Museum, G. Martin Moeller, Senior Vice President for Special Projects, 401 F Street, NW., Washington, DC 20001, Grant Number: H–21399CA, Project Title: "National Building Museum Affordable Housing Design Program", Total Amount: $238,700, Date Awarded: 9/23/03

New Mexico State University, Daniel J. Dwyer, Vice Provost for Research, Las Cruces, New Mexico 88003, Grant Number: H–21397CA, Project Title: "Colonias Economic Development Policy", Total Amount: $179,000, Date Awarded: 5/12/03

Touchstone Research Laboratory, Ltd. William Casto, Chief Financial Officer, The Millennium Centre, Triadelphia, WV 26059, Grant Number: H–21363CA, Project Title: "Housing Applications for New Carbon Foam Technology Materials", Total Amount: $187,763, Date Awarded: 11/14/02

University of Colorado, Dorothy Yates, Director, Sponsored Programs, Institute of Public Policy, Graduate School of Public Affairs, 1445 Market Street, Denver, CO 80202, Grant Number: H–21401CA, Project Title: "Employer-Assisted Employee Housing Pilot Program Study in Nicaragua", Total Amount: $20,000, Date Awarded: 7/25/03

University of Maryland at College Park, Monique Anderson, Contract Manager, Office of Research Administration and Advancement, 3112 Lee Building, College Park, MD 20742, Grant H–21403CA, Project Title: "Zoning as a Barrier to Affordable Housing", Total Amount $300,000, Date Awarded: 9/30/03

Urban Land Institute, Cheryl Cummins, Chief Operating Officer, 1025 Thomas Jefferson Street, NW., Washington, DC 20007, Grant Number: H–21404CA, Project Title: "Research on Barriers to Land Acquisition and Infill Development", Total Amount: $151,052, Date Awarded: 9/30/03

Dated: November 6, 2003.

Darlene F. Williams,

General Deputy Assistant Secretary, Office of Policy Development and Research.

[FR Doc. 03–30317 Filed 12–5–03; 8:45 am]

BILLING CODE 4210–62–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4456–N–28]

Privacy Act of 1974; Notice of a Computer Matching Program

AGENCY: Office of the Chief Information Officer, (HUD).

ACTION: Notice of a Computer Matching Program—between HUD and the Department of Justice (DOJ).

SUMMARY: In accordance with the Privacy Act of 1974 (5 U.S.C. 552a), as amended by the Computer Matching and Privacy Protection Act of 1988, as amended, (Pub. L. 100–503), and the Office of Management and Budget (OMB) Guidelines on the Conduct of Matching Programs (54 FR 25818; June 19, 1989), and OMB Bulletin 89–22, "Instructions on Reporting Computer Matching Programs to the Office of Management and Budget (OMB) Congress and the Public," HUD is issuing a public notice of its intent to conduct a recurring computer matching program with DOJ to utilize a computer information system of HUD, the Credit Alert Interactive Voice Response System (CAIVRS), with DOJ's debtor files. The CAIVRS data base now includes delinquent debt information from the Departments of Agriculture, Education, Veteran Affairs and the Small Business Administration. This match will allow prescreening of applicants for debts owed or loans guaranteed by the Federal government to ascertain if the applicant is delinquent in paying a debt owed to or insured by the Federal government. Before granting a loan, a lending agency and/or an authorized lending institution will be able to interrogate the CAIVRS debtor file, which contains the Social Security Numbers (SSNs) of HUD's delinquent debtors and defaulter and debtor files of the DOJ and verify that the loan applicant is not in default on a Federal judgment or delinquent on direct or guaranteed loans of participating Federal programs. As a result of the information produced by this match, the authorized users may not deny, terminate, or make a final decision on any loan assistance to an applicant or take other adverse action against such applicant, until an officer or employee of such agency has independently verified such information.

DATES: *Effective Date:* Computer matching is expected to begin on January 7, 2004 unless comments are received which will result in a contrary determination, or 40 days from the date a computer matching agreement is signed, whichever is later.

Comment Due Date: January 7, 2004.

ADDRESSES: Interested persons are invited to submit comments regarding this notice to the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–0500. Communications should refer to the above docket number and title. A copy of each communication submitted will be available for public inspection and copying between 8 a.m. and 5 p.m. weekdays at the above address.

FOR FURTHER INFORMATION CONTACT: From Recipient Agency Contact: Jeanette Smith, Departmental Privacy Act Officer, Department of Housing and Urban Development, 451 7th St. SW., Room P8001, Washington, DC 20410–3000, telephone number (202) 708–2374. (This is not a toll-free number.) A telecommunication device for hearing and speech-impaired individuals (TTY) is available at 1–800–877–8339 (Federal Information Relay Service).

From Source Agency Contact: Diane E. Watson, Debt Collection Management, Nationwide Central Intake Facility (NCIF), Department of Justice, 1110 Boni Font Street, Suite 220, Silver Spring, Maryland, 20910–3358, telephone number (301) 585–2391. (This is not a toll-free number.)

Reporting of a Matching Program: In accordance with Public Law 100–503, the Computer Matching and Privacy Protection Act of 1988, as amended, and Office of Management and Budget Bulletin 89–22, "Instructions on Reporting Computer Matching Programs to the Office of Management and Budget (OMB), Congress and the Public;" copies of this notice and report are being provided to the Committee on Government Reform of the House of Representatives, the Committee on Governmental Affairs of the Senate, and OMB.

Authority: The matching program will be conducted under the authority of 28 U.S.C. 2301(e) (3611 of the Federal Debt Collection Procedures Act of 1990, Pub. L. 101–647), and OMB Circulars A–129 (Managing Federal Credit Programs) and A–70 (Policies and Guidelines for Federal Credit Programs). One of the purposes of all Executive departments and agencies—including HUD—is to implement efficient management practices for federal credit programs. OMB Circulars A–129 and A–70 were issued under the authority of the Budget and Accounting Act of 1921, as amended; the Budget and Accounting Act of 1950, as amended; the Debt Collection Act of 1982, as amended; and, the Deficit Reduction Act of 1984, as amended.

Objecives to be met by the matching program: By identifying those individuals or corporations against whom the DOJ has filed a judgment, the federal government can expand the prescreening search of their loan applicants to further avoid lending to applicants who are credit risks.

Records to be Matched: HUD will utilize its system of records entitled HUD/DEPT–2, Accounting Records. The debtor files for HUD programs involved are included in this system of records. HUD's debtor files contain information on borrowers and co-borrowers who are currently in default (at least 90 days delinquent on their loans); or who have any outstanding claims paid during the last three years on Title II insured or

guaranteed home mortgage loans; or individuals who have defaulted on Section 312 rehabilitation loans; or individuals who have had a claim paid in the last three years on a Title I loan. For the CAIVRS match, HUD/DEPT–2, system of records, receives its program inputs from HUD/DEPT–28, Property Improvement and Manufactured (Mobile) Home Loans—Default; HUD/DEPT–32, Delinquent/Default/Assigned Temporary Mortgage Assistance Payments (TMAP) Program; and HUD/CPD–1, Rehabilitation Loans-Delinquent/Default. The DOJ will provide HUD with its debtor files contained in its system of records entitled, Debt Collection Management System, JUSTICE/JMD–006. HUD is maintaining DOJ's records only as a ministerial action on behalf of DOJ, not as part of HUD's HUD/DEPT–2 system of records. DOJ's data contain information on individuals or corporations who have defaulted on federal judgments. The DOJ will retain ownership and responsibility for their system of records that they place with HUD. HUD serves only as a record location and routine use recipient for DOJ's data.

Notice Procedures: HUD will notify individuals at the time of application (ensuring that routine use appears on the application form) for guaranteed or direct loans that their records will be matched to determine whether they are delinquent or in default on a federal debt. HUD and DOJ will also publish notices concerning routine use disclosures in the **Federal Register** to inform individuals that a computer match may be performed to determine a loan applicant's credit status with the federal government.

Categories of Records/Individuals Involved: The debtor records include these data elements from HUD's systems of records, HUD/Dept-2: SSN, claim number, program code, and indication of indebtedness. Categories of records include: Records of claims and defaults, repayment agreements, credit reports, financial statements, and records of foreclosures, and federal judgment liens. Categories of individuals include former mortgagors and purchasers of HUD-owned properties, manufactured (mobile) home and home improvement loan debtors who are delinquent or in default on their loans, and rehabilitation loan debtors who are delinquent or in default on their loans, and individuals or corporations against whom judgments have been filed by DOJ.

Period of the Match: Matching will begin at least 40 days from the date copies of the signed (by both Data Integrity Boards) computer matching agreements are sent to both Houses of Congress or at least 30 days from the date this Notice is published in the **Federal Register**, whichever is later, providing no comments are received which would result in a contrary determination. The matching program will be in effect and continue for 18 months with an option to renew for 12 additional months unless one of the parties to the agreement advises the other in writing to terminate or modify the agreement.

Dated: November 26, 2003.

Gloria R. Parker,

Chief Technology Officer.

[FR Doc. 03–30316 Filed 12–5–03; 8:45 am]

BILLING CODE 4210–72–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Indian Child Welfare Act; Receipt of Designated Tribal Agents for Service of Notice

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Indian Affairs is publishing the current list of Designated Tribal Agents for service of notice, including the listings of designated tribal agents received by the Secretary of the Interior prior to the date of this publication.

The regulations implementing the Indian Child Welfare Act (ICWA) provide that Indian tribes may designate an agent other than the tribal chairman for service of notice proceedings under the Act, 25 CFR 23.12. The Secretary of the Interior shall publish in the **Federal Register** on an annual basis the names and addresses of the designated agents.

FOR FURTHER INFORMATION CONTACT: Chet Eagleman, Indian Child Welfare Specialist, Bureau of Indian Affairs, Division of Social Services, 1951 Constitution Avenue, NW., MS–320–SIB, Washington, DC 20240–0001; Telephone: (202) 513–7622.

This notice is published in exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 Departmental Manual 8.1.

Dated: November 21, 2003.

Aurene M. Martin,

Principal Deputy Assistant Secretary—Indian Affairs.

Indian Child Welfare Designated Agents

Alaska Region

Niles Cesar, Regional Director, Alaska Regional Office, P.O. Box 25520, 709 W. 9th, 3rd Floor, Federal Building, Juneau, AK 99802–5520. Telephone: (800) 645–8397; Fax: (907) 586–7252.

Gloria Kate Gorman, MSW, Social Services Director, P.O. Box 25520, 709 W. 9th, 3rd Floor, Federal Building, Juneau, AK 99802–5520. Telephone: (800) 645–8397 Ext. 2; Fax: (907) 586–7057. E-mail: *gloriagorman@bia.gov.*

A

Native Village of Afognak, Leona Haakanson-Crow, P.O. Box 968, Kodiak, AK 99615. Telephone: (907) 486–6357; Fax: (907) 486–6529.

Agdaagux Tribe of King Cove, Della Trumble, Tribal Administrator, P.O. Box 249, King Cove, AK 99612. Telephone: (907) 497–2648; Fax: (907) 497–2803.

Native Village of Akhiok, Kathleen McInally, MSSW, Kodiak Area Native Association, 3449 E. Rezanof Drive, Kodiak, AK 99615. Telephone: (907) 486–9800; Fax: (907) 486–9886. E-mail: *Kathleen.mcinally@kanaweb.org.*

Native Community of Akiachak, Willie Ekamrak, P.O. Box 51070, Akiachak, AK 99551–0070. Telephone: (907) 825–4626; Fax: (907) 825–4029.

Akiak Native Community, Debra M. Jackson or Ivan M. Ivan, P.O. Box 52127, Akiak, AK 99552. Telephone: (907) 765–7118; Fax: (907) 765–7120. E-mail: *akiak1@aol.com.*

Native Village of Akutan, Alice Tcheripanoff, Administrator, P.O. Box 89, Akutan, AK 99553; Telephone: (907) 698–2300; Fax (907) 698–2301. E-mail: *atcheripanoff@yahoo;* and

Grace Smith, Tribal Representative, Aleutian/Pribilof Islands Association, 201 E. 3rd Ave., Anchorage, AK 99501. Telephone: (907) 276–2700 or 222–4237; Fax: (907) 279–4351.

Native Village of Alakanuk, Agnes Phillip, P.O. Box 149, Alakanuk, AK 99554–0103. Telephone: (907) 238–3705; Fax: (907) 238–3429; and

Association of Village Council Presidents, ICWA Counsel, P.O. Box 219, Bethel, AK 99559. Telephone: (907) 543–7367; Fax: (907) 543–7319.

Alatna Village, Harding Sam, Chief or Sharon Scott, Tribal Administrator, P.O. Box 70, Allakaket, AK 99720. Telephone: (907) 968–2304; Fax: (907) 968–2305; and

Legal Department, Tanana Chiefs Conference, Inc., 122 First Avenue, Suite 600, Fairbanks, AK 99701. Telephone: (907) 452–8251; Fax: (907) 459–3953.

Native Village of Aleknagik, Gusty Chythlook, Tribal President, P.O. Box 115, Aleknagik, AK 99555. Telephone: (907) 842–2080; Fax: (907) 842–2081; and

Lou Johnson, Social Services Director, Bristol Bay Native Association, P.O. Box 310, Dillingham, AK 99576. Telephone: (907) 842–4139; Fax: (907) 842–4106. E-mail: *lucillej@bbna.com.*

Native Village of Algaaciq (St. Mary's), Esther Tyson; P.O. Box 48, St. Mary's, AK 99658–0048. Telephone: (907) 438–2335; Fax: (907) 438–2227; and

Association of Village Council Presidents, ICWA Counsel, P.O. Box 219, Bethel, AK 99559. Telephone: (907) 543–7367; Fax: (907) 543–7319.

Allakaket Village, Valerie Bergman, TFYS, P.O. Box 50, Allakaket, AK 99720. Telephone: (907) 968–2303; Fax: (907) 968–2233. E-mail: *Valerie_bergman@hotmail.com;* and

Legal Department, Tanana Chiefs Conference, Inc., 122 First Avenue, Suite 600, Fairbanks, AK 99701. Telephone: (907) 452–8251; Fax: (907) 459–3953.

Native Village of Ambler, Mary R. Ramoth, ICWA Coordinator, Box 47, Ambler, AK 99786–0047. Telephone: (907) 445–2189; Fax: (907) 445–2181.

Village of Anaktuvuk Pass, Sharon Thompson, Arctic Slope Native Association, Ltd., Social Services, 1919 Lathrop Street, Fairbanks, AK 99701. Telephone: (907) 456–1438; Fax: (907) 456–3941.

Yupiit of Andreafski, Elizabeth M. Joe, P.O. Box 88, St. Mary's, AK 99658–0088. Telephone: (907) 438–2572; Fax: (907) 438–2512. E-mail: *emjoe1942@yahoo.com.*

Angoon Community Association, Marlene Zuboff, Executive Director, P.O. Box 190, Angoon, AK 99820. Telephone: (907) 788–3411; Fax: (907) 788–3412. E-mail: *angoon_tribal_govt@yahoo.com.*

Native Village of Aniak, Billy Jean Stewart, ICWA Worker or Ruth Birky, President, Box 349, Aniak, AK 99557. Telephone: (907) 675–4349; Fax: (907) 675–4513.

Native Village of Anvik, Carl Jerue, Jr., Chief or Albert Walker, TFYS, P.O. Box 10, Anvik, AK 99558. Telephone: (907) 663–6322/6378; Fax: (907) 663–6357; and

Legal Department, Tanana Chiefs Conference, Inc., 122 First Avenue, Suite 600, Fairbanks, AK 99701. Telephone: (907) 452–8251; Fax: (907) 459–3953.

Native Village of Arctic Village (See: Native Village of Venetie Tribal Government).

Asa'Carsarmiut Tribe (formerly Mt.Village), JoAnn Barclay or Darlene Peterson, P.O. Box 32107, Mountain Village, AK 99632–107. Telephone: (907) 591–2428; Fax: (907) 591–2934.

Native Village of Atka, Grace Smith, Tribal Representative, Aleutian/Pribilof Islands Association, 201 E. 3rd Avenue, Anchorage, AK 99501. Telephone: (907) 276–2700; Fax: (907) 279–4351. E-mail: *graces@apiai.com.*

Atmautluak Traditional Council, Louisa G. Pavilla, P.O. Box 6568, Atmautluak, AK 99559; Telephone: (907) 553–5510; Fax: (907) 553–5612.

Native Village of Atqasuk Village, Sharon Thompson, Arctic Slope Native Association, Ltd., Social Services, 1919 Lathrop Street, Fairbanks, AK 99701. Telephone: (907) 456–1438; Fax: (907) 456–3941.

B

Native Village of Barrow, ICWA Program, P.O. Box 1130, Barrow, AK 99723. Telephone: (907) 852–8910/4411; Fax: (907) 852–8844.

Native Village of Beaver Village, Legal Department, Tanana Chiefs Conference, Inc., 122 First Avenue, Suite 600, Fairbanks, AK 99701. Telephone: (907) 452–8251; Fax: (907) 452–3953.

Native Village of Belkofski, Grace Smith, Tribal Representative, Aleutian/Pribilof Islands Assoc., 201 E. 3rd Avenue, Anchorage, AK 99501. Telephone: (907) 276–2700 or 222–4237; Fax: (907) 279–4351.

Bethel Village (See: Orutsararmuit)

Village of Bill Moore's Slough, Nancy C. Andrews, P.O. Box 20288, Kotlik, AK 99620. Telephone: (907) 899–4236/4232; Fax: (907) 899–4461.

Village of Birch Creek, Legal Department, Tanana Chiefs Conference, Inc., 122 First Avenue, Suite 600, Fairbanks, AK 99701. Telephone: (907) 452–8251; Fax: (907) 459–3953.

Native Village of Brevig Mission, Linda M. Tocktoo, Tribal Family Coordinator, P.O. Box 85039, Brevig Mission, AK 99785. Telephone: (907) 642–3012; Fax: (907) 642–3042. E-mail: *linda@kawerak.org.*

Native Village of Buckland, Glenna Parrish, ICWA Coordinator, P.O. Box 67, Buckland, AK 99727–0067. Telephone: (907) 494–2169; Fax: (907) 494–2217.

C

Native Village of Cantwell, Carol Clark, ICWA Representative, Copper River Native Association, Drawer "H", Copper Center, AK 99573. Telephone: (907) 822–5241 Ext. 243; Fax: (907) 822–8804.

Central Council Tlingit and Haida Indian Tribes of Alaska, Indian Child Welfare Coordinator, Tribal Family & Youth Services Department, 320 W. Willoughby Avenue, Suite 300, Juneau, AK 99801. Telephone: (907) 463–7169; Fax: (907) 463–7343. E-mail: *lflorendo@ccthita.org.*

Chalkyitsik Village Council, Legal Department, Tanana Chiefs Conference, Inc., 122 First Avenue, Suite 600, Fairbanks, AK 99701. Telephone: (907) 452–8251; Fax: (907) 459–3953.

Cheesh-na Tribal Council (AKA Chistochina), Lotha Wolf, P.O. Box 241, Gakona, AK 99586–0241. Telephone: (907) 452–8251; Fax: (907) 822–5179.

Chefornak Traditional Council, Edward Kinegak, P.O. Box 110, Chefornak, AK 99561–0110. Telephone: (907) 867–8808; Fax: (907) 867–8711; and

Association of Village Council Presidents, ICWA Counsel, P.O. Box 219, Bethel, AK 99559. Telephone: (907) 543–7367; Fax: (907) 543–7319.

Native Village of Chenega, Michael Vigil, P.O. Box 8079, Chenega Bay, AK 99574. Telephone: (907) 573–5386; Fax: (907) 573–5386. E-mail: *chenegaira@starband.net;* and

Paula Pinder, Chugachmiut, Inc., 4201 Tudor Centre Drive, Suite 210, Anchorage, AK 99508. Telephone: (907) 562–4155; Fax: (907) 563–2891.

Native Village of Chevak (AKA Qissunamiut Tribe), Esther Friday, ICWA Worker, P.O. Box 140, Chevak, AK 99563–0140. Telephone: (907) 858–7918; Fax: (907) 858–7812.

Native Village of Chickaloon, Penny Westing, P.O. Box 1105, Chickaloon, AK 99674–1105. Telephone: (907) 745–0707; Fax: (907) 745–0708. E-mail: *penny@chickaloon.org.*

Native Village of Chignik, Tribal President or Marlene Stepanoff, P.O. Box 11, Chignik, AK 99564. Telephone: (907) 749–2445; Fax: (907) 749–2423. E-mail: *cbaytc@aol.com;* and

Lou Johnson, Bristol Bay Native Association, Social Services, P.O. Box 310, Dillingham, AK 99576. Telephone: (907) 842–4139; Fax: (907) 842–4106. E-mail: *lucillej@bbna.com.*

Native Village of Chignik Lagoon, Tribal President or Cara Shangin, P.O. Box 57, Chignik Lagoon, AK 99565. Telephone: (907) 840–2281; Fax: (907) 840–2217; and

Lou Johnson, Bristol Bay Native Association, Social Services, P.O. Box 310, Dillingham, AK 99576. Telephone: (907) 842–4139; Fax: (907) 842–4106. E-mail: *lucillej@bbna.com.*

Chignik Lake Village, Tribal President or Crystal Kalmakoff, P.O. Box 33, Chignik Lake, AK 99548. Telephone: (907) 845–2212; Fax: (907) 845–2217; and

Lou Johnson, Bristol Bay Native Association, Social Services, P.O. Box 310, Dillingham, AK 99576. Telephone: (907) 842–4139; Fax: (907) 842–4106. E-mail: *lucillej@bbna.com.*

Chilkat Indian Village (Klukwan), Denise Kahklen, Tribal Services Specialist, P.O. Box 210, Haines, AK 99827–0210. Telephone: (907) 767–5505; Fax: (907) 767–5408. E-mail: *dekahklen@wtbear.com.*

Chilkoot Indian Association (Haines), Stella Howard, Family Caseworker, CCTHITA Tribal Family & Youth Services, P.O. Box 624, Haines AK 99827. Telephone: (907) 776–2810; Fax: (907) 776–2845. E-mail: *showard@ccthita.org.*

Chinik Eskimo Community (Golovin), Sherri Lewis-Amaktoolik, Tribal Family Coordinator, P.O. Box 62019, Golovin, AK 99762, Telephone: (907) 779–2214/2238; Fax: (907) 779–2829. E-mail: *glv.tfc@kawerak.org.*

Native Village of Chitina, Gyna Gordon, Social Services Specialist, P.O. Box 31, Chitina, AK 99566. Telephone: (907) 823–2283; Fax: (907) 823–2233. E-mail: *chitina@aitc.org.*

Native Village of Chuathbaluk, Tracy Simeon, ICWA Coordinator, P.O. Box CHU, Chuathbaluk, AK 99557. Telephone: (907) 467–4323; Fax: (907) 467–4113.

Native Village of Chuloonawick, Bambi Akers, Tribal Administrator, Box 245, Emmonak, AK 99581. Telephone: (907) 949–1345; Fax: (907) 949–1346. E-mail: *coffice@unicom-alaska.com.*

Circle Native Community, Jeanette Nollner, ICWA Worker, P.O. Box 89, Circle, AK 99773. Telephone: (907) 773–2822; Fax: (907) 773–2823; and

Legal Department, Tanana Chiefs Conference, Inc., 122 First Avenue, Suite 600, Fairbanks, AK 99701. Telephone: (907) 452–8251; Fax: (907) 459–3953.

Village of Clarks Point, Betty Gardiner-Wassily, P.O. Box 9, Clarks Point, AK 99569. Telephone: (907) 236–1427; Fax: (907) 236–1428; and

Lou Johnson, Bristol Bay Native Association, Social Services, P.O. Box 310, Dillingham, AK 99576. Telephone: (907) 842–4139; Fax: (907) 842–4106. E-mail: *lucillej@bbna.com.*

Native Village of Council, Tribal Coordinator, P.O. Box 2050, Nome, AK 99762. Telephone: (907) 443–7649; Fax: (907) 443–5965.

Craig Community Association, Timothy R. Booth, Family Caseworker, CCTHITA Tribal Family Youth Services, P.O. Box 828, Craig AK 99921. Telephone: (907) 826–3948; Fax: (907) 826–5526. E-mail: *tbooth@ccthita.org.*

Village of Crooked Creek, Alex W. Felker, P.O. Box 69, Crooked Creek, AK 99575. Telephone: (907) 432–2261; Fax: (907) 432–2201; and

Association of Village Presidents, ICWA Counsel, P.O. Box 219, Bethel, AK 99559. Telephone: (907) 543–7367; Fax: (907) 543–7319.

Curyung Tribal Council (formerly, Native Village of Dillingham), Tribal President or Chris Itumulria, Tribal Children Service Worker, P.O. Box 216, Dillingham, AK 99576. Telephone: (907) 842–4508; Fax: (907) 842–2510; and

Lou Johnson, Bristol Bay Native Association, Social Services, P.O. Box 310, Dillingham, AK 99576. Telephone: (907) 842–4139; Fax: (907) 842–4106. E-mail: *lucillej@bbna.com.*

D

Native Village of Deering, Roberta Moto, Administrator or Brenda Karmun, ICWA Coordinator, P.O. Box 89, Deering, AK 99736–0089. Telephone: (907) 363–2138; Fax: (907) 363–2195. E-mail: *rrmoto@maniilaq.org* or *bkarmun@maniilaq.org.*

Dillingham (See: Curyung)

Native Village of Diomede, Becky Kunayak, P.O. Box 7079, Diomede, AK 99762. Telephone: (907) 686–2202; Fax: (907) 686–2255.

Village of Dot Lake, William Miller, P.O. Box 2279, Dot Lake, AK 99737–2275. Telephone: (907) 882–2695; Fax: (907) 882–5558; and

Legal Department, Tanana Chiefs Conference, Inc., 122 1st Ave., Ste. 600, Fairbanks, AK 99701. Telephone: (907) 452–8251; Fax: (907) 459–3953.

Douglas Indian Association, Carla A. Casulucan, Human Services Coordinator, P.O. Box 240541, Douglas, AK 99824. Telephone: (907) 364–2916; Fax: (907) 364–2917. E-mail: *ccasulucan-dia@gci.net.*

E

Native Village of Eagle, Joann Beck, Chief, Tribal Administrator, P.O. Box 19, Eagle, AK 99738. Telephone: (907) 547–2281; Fax: (907) 547–2318; and

Legal Department, Tanana Chiefs Conference, Inc., 122 1st Ave., Ste. 600, Fairbanks, AK 99701. Telephone: (907) 452–8251; Fax: (907) 459–3953.

Native Village of Eek, Maryann Hawk, P.O. Box 89, Eek, AK 99578–0063. Telephone: (907) 536–5316; Fax: (907) 536–5711; and

Association of Village Council Presidents, ICWA Counsel, P.O. Box 219, Bethel, AK 99559. Telephone: (907) 543–7367; Fax: (907) 543–7319.

Egegik Village, Tribal President or Marcia Abalama, TCSW, P.O. Box 29, Egegik, AK 99579. Telephone: (907) 233–2211; Fax: (907) 233–2312. E-mail: *mabalama@hotmail.com;* and

Lou Johnson, Bristol Bay Native Assoc., Social Services, P.O. Box 310, Dillingham, AK 99576. Telephone: (907) 842–4139; Fax: (907) 842–4106. E-mail: *lucillej@bbna.com.*

Native Village of Eklutna, Mary Paniyak, 201 Barrow Street, Suite 102B, Anchorage, AK 99501. Telephone: (907) 278–5441; Fax: (907) 278–4293. E-mail: *mpaniyak@gci.net.*

Native Village of Ekuk, Tribal President, 300 Main St., Dillingham, AK 99576. Telephone: (907) 842–3842; Fax: (907) 842–3843; and

Lou Johnson, Bristol Bay Native Assoc.; Social Services, P.O. Box 310, Dillingham, AK 99576. Telephone: (907) 842–4139; Fax: (907) 842–4106. E-mail: *lucillej@bbna.com.*

Ekwok Village, Tribal President or Sandra Stermer, P.O. Box 70, Ekwok, AK 99580. Telephone: (907) 464–3336; Fax: (907) 464–3378; and

Lou Johnson, Bristol Bay Native Association, Social Services, P.O. Box 310, Dillingham, AK 99576. Telephone: (907) 842–4139; Fax: (907) 842–4106. E-mail: *lucillej@bbna.com.*

Native Village of Elim, Frederick Murray, P.O. Box 39070, Elim, AK 99739. Telephone: (907) 890–3737; Fax: (907) 890–3738.

Emmonak Village, Priscilla Kameroff, ICWA Coordinator, P.O. Box 126, Emmonak, AK 99581–0126. Telephone: (907) 949–1820; Fax: (907) 949–1384.

Evansville Village, Legal Department, Tanana Chiefs Conference, Inc., 122 First Avenue, Suite 600, Fairbanks, AK 99701. Telephone: (907) 452–8251; Fax: (907) 459–3953.

Native Village of Eyak (Cordova), Wendi Smith, P.O. Box 1388, Cordova, AK 99574. Telephone: (907) 424–7738; Fax: (907) 424–7739.

F

Native Village of False Pass, Grace Smith, Tribal Representative, Aleutian/Pribilof Islands, 201 E. 3rd Avenue, Anchorage, AK 99501. Telephone: (907) 276–2700 or 222–4237; Fax: (907) 279–4351.

Native Village of Fort Yukon, Betty Flint or Josephine John, P.O. Box 126, Fort Yukon, AK 99740. Telephone: (907) 662–3625; Fax: (907) 662–2118; and

Legal Department, Tanana Chiefs Conference, Inc., 122 First Avenue, Suite 600, Fairbanks, AK 99701. Telephone: (907) 452–8251; Fax: (907) 452–3883/3851.

G

Native Village of Gakona, Carol Clark, Indian Child Welfare Representative, Copper River Native Association, Drawer "H", Copper Center, AK 99573. Telephone: (907) 822–5241 Ext. 243; Fax: (907) 822–8804.

Galena Village (Louden), Brad Schmitz, ICWA Director, P.O. Box 244, Galena, AK 99741. Telephone: (907) 656–1711; Fax: (907) 656–1716. E-mail: *ragine.attla@tananachiefs.org;* and

Legal Department, Tanana Chiefs Conference, Inc., 122 First Avenue, Suite 600, Fairbanks, AK 99701. Telephone: (907) 452–8251; Fax: (907) 452–3953.

Native Village of Gambell, Charlene Apangalook, ICWA Coordinator, P.O. Box 90, Gambell, AK 99742. Telephone: (907) 985–5346; Fax: (907) 985–5014.

Native Village of Georgetown, Glenn Fredericks, President, 1400 Virginia Ct., Anchorage, AK 99501. Telephone: (907) 274–2195; Fax: (907) 274–2196. E-mail: *gtc@gci.net.*

Native Village of Goodnews Bay, ICWA Program, P.O. Box 138, Goodnews Bay, AK 99589–0050. Telephone: (907) 967–8050; Fax: (907) 967–8051; and

Association of Village Council Presidents, ICWA Counsel P.O. Box 219, Bethel, AK 99559. Telephone: (907) 543–7367; Fax: (907) 543–7319.

Organized Village of Grayling, Legal Department, Tanana Chiefs Conference, Inc., 122 First Avenue, Suite 600, Fairbanks, AK 99701. Telephone: (907) 452–8251; Fax: (907) 459–3953.

Gulkana Village, LaMonica Claw, P.O. Box 254, Gakona, AK 99586–0254. Telephone: (907) 822–3746; Fax: (907) 822–3976.

H

Native Village of Hamilton, Henrietta Teeluk, P.O. Box 2024, Kotlik, AK 99620. Telephone: (907) 899–4252; Fax: (907) 899–4202; and

Association of Village Council Presidents, ICWA Counsel, P.O. Box 219, Bethel, AK 99559. Telephone: (907) 543–7367 Fax: (907) 543–7319.

Healy Lake Village, Director of Social Services, P.O. Box 60300, Fairbanks, AK 99706. Telephone; (907) 876–5018; Fax: (907) 876–5013; and

Legal Department, Tanana Chiefs Conference, Inc., 122 First Avenue, Suite 600, Fairbanks, AK 99701. Telephone: (907) 452–8251 Fax: (907) 459–3953.

Holy Cross Village, Debbie Turner, P.O. Box 191, Holy Cross, AK. 99602. Telephone: (907) 476–7169; Fax: (907) 476–7169/7132; and

Legal Department, Tanana Chiefs Conference, Inc., 122 First Avenue, Suite 600, Fairbanks, AK 99701. Telephone: (907) 452–8251; Fax: (907) 459–3953.

Hoonah Indian Association, Leona Santiago, Director of Human Services, P.O. Box 602, Hoonah, AK 99829–0602. Telephone: (907) 945–3545; Fax: (907) 945–3703.

Native Village of Hooper Bay, Ruth Pingayak, P.O. Box 62, Hooper Bay, AK 99604. Telephone: (907) 758–4006; Fax: (907) 758–4606; and

Association of Village Council Presidents, ICWA Counsel, P.O. Box 219, Bethel, AK 99559. Telephone: (907) 543–7367; Fax: (907) 543–7319.

Hughes Village, Ella Sam, First Chief, P.O. Box 45029, Hughes, AK 99745. Telephone: (907) 889–2239 Fax: (907) 889–2252. E-mail: *janet.bifelt@tananachiefs.org;* and

Legal Department, Tanana Chiefs Conference, Inc., 122 First Avenue, Suite 600, Fairbanks, AK 99701. Telephone: (907) 452–8251; Fax: (907) 459–3953.

Huslia Village, William Derendoff, First Chief, P.O. Box 70, Huslia, AK 99746. Telephone: (907) 829–2202; Fax: (907) 829–2214. E-mail: *ginger.attla@tananachiefs.org;* and

Legal Department, Tanana Chiefs Conference, Inc., 122 First Avenue, Suite 600, Fairbanks, AK 99701. Telephone; (907) 452–8251; Fax: (907) 459–3953.

Hydaburg Cooperative Association, Eileen J. Carle, Human Services Director, P.O. Box 206, Hydaburg AK 99922–0305. Telephone: (907) 285–3666; Fax: (907) 285–3470. E-mail: *haidanonnie@hotmail.com.*

I

Igiugig Village, Bernadette Andrew, P.O. Box 4008, Igiugig, AK 99613. Telephone: (907) 533–3211; Fax: (907) 533–3217. E-mail: *igiugig@starband.net.*

Village of Iliamna, Gerald Anelon, Tribal Administrator or Martha Anelon, Social Services P.O. Box 286, Iliamna, AK 99606–0286. Telephone: (907) 571–1246; Fax: (907) 571–1256.

Inupiat Community of Arctic Slope, Nathaniel Olemaun, Jr., Executive Director, P.O. Box 934, Barrow, AK 99723. Telephone: (907) 852–4227; Fax: (907) 852–4609. E-mail: *icasdir@barrow.com.*

Iqurmuit Traditional Council (Russian Mission), Olga Changsak, P.O. Box 09, Russian Mission, AK 99657–0009. Telephone: (907) 584–5511/5512; Fax: (907) 584–5593.

Ivanoff Bay Village, Tribal President, P.O. Box KIB, Ivanof Bay AK, 99695. Telephone: (907) 669–2200; Fax: (907) 669–2207; and

Lou Johnson, Bristol Bay Native Association, Social Services, P.O. Box 310, Dillingham, AK 99576. Telephone: (907) 842–4139; Fax: (907) 842–4106. E-mail: *lucillej@bbna.com.*

K

Kaguyak Village, ICWA Coordinator, 1400 West Benson Blvd, Suite 350, Anchorage, AK 99503. Telephone: (907) 561–0604; Fax: (907) 561–0608.

Organized Village of Kake, Anne Jackson or Carrie Davis, P.O. Box 316, Kake, AK 99830–0316. Telephone: (907) 785–6471; Fax: (907) 785–4902.

Kaktovik Village, Sharon Thompson, Arctic Slope Native Association, Ltd., 1919 Lathrop St., Fairbanks, AK 99701. Telephone: (907) 456–1438; Fax: (907) 458–5151.

Native Village of Kalskag, (AKA Upper Kalskag), Darlene Christensen, P.O. Box 50, Upper Kalskag, AK 99607. Telephone: (907) 471–2418; Fax: (907) 471–2207/2399; and

Association of Village Council Presidents, ICWA Counsel, P.O. Box 219 Bethel, AK 99559. Telephone: (907) 543–7367; Fax: (907) 543–7319.

Native Village of Lower Kalskag, Rose Nook, P.O. Box 27, Lower Kalskag, AK 99626. Telephone: (907) 471–2412; Fax: (907) 471–2378; and

ICWA Counsel, Association of Village Council Presidents, ICWA Counsel, P.O. Box 219, Bethel, AK 99559. Telephone: (907) 543–7367; Fax: (907) 543–7319.

Native Village of Kaltag, Donna L. Esmailka, P.O. Box 129, Kaltag, AK 99748. Telephone: (907) 534–2243; Fax: (907) 534–2299; and

Legal Department, Tanana Chiefs Conference, Inc., 122 First Avenue, Suite 600, Fairbanks, AK 99701. Telephone: (907) 452–8251; Fax: (907) 459–3953.

Native Village of Kanatak, Tribal President, P.O. Box 875910, Wasilla, AK 99654. Telephone: (907) 376–7271; Fax: (907) 376–7203. E-mail: *kanatak@mtaonline.net* or *admin@kanatak.org;* and

Lou Johnson, Bristol Bay Native Association, Social Services, P.O. Box 310, Dillingham, AK 99576. Telephone: (907) 842–4139; Fax: (907) 842–4106. E-mail: *lucillej@bbna.com.*

Native Village of Karluk, Alicia Lyn Reft, P.O. Box 22, Karluk, AK 99603–0000. Telephone: (907) 241–2218; Fax: (907) 241–2208.

Organized Village of Kasaan, Richard Peterson, President, P. O. Box 26-Kasaan, Ketchikan, AK 99950–0340. Telephone: (907) 542–2230; Fax: (907) 542–3006.

Kashunamiut Tribe (see: Chevak).

Native Village of Kasigluk, Lisa Martin, ICWA Program, P.O. Box 19, Kasigluk, AK 99609. Telephone: (907) 477–6418; Fax: (907) 477–6212.

Kenaitze Indian Tribe, Rita Smagge, Executive Director, and Linda Perry, ICWA Program Director, P.O. Box 988, Kenai, AK 99611–0988. Telephone: (907) 283–3633/6423; Fax: (907) 283–3052/7088.

Ketchikan Indian Corporation, Mary Brown, 2960 Tongass Avenue, 5th Floor, Ketchikan, AK 99901. Telephone: (907) 225–4061; Fax: (907) 247–4061.

Native Village of Kiana, Anna Douglas, Tribal Manager, P.O. Box 69, Kiana, AK 99749–0069. Telephone: (907) 475–2109; Fax: (907) 475–2180. E-mail: *aadouglas@maniilaq.org.*

King Cove (see: Agdaagux).

King Island Native Community, Renee L. Carlisle, ICWA Coordinator, P.O. Box 992, Nome, AK 99762. Telephone: (907) 443–5494; Fax: (907) 443–3620.

King Salmon, Tribal President or Ruth Monsen, P.O. Box 68, King Salmon, AK 99613. Telephone: (907) 246–3447; Fax: (907) 246–3449; and

Lou Johnson, Bristol Bay Native Association, Social Services, P.O. Box 310 Dillingham, AK 99576. Telephone: (907) 842–4139; Fax: (907) 842–4106. E-mail: *lucillej@bbna.com.*

Kipnuk Traditional Council, Dendra Martin-Jimmy, ICWA Coordinator, P.O. Box 57, Kipnuk, AK 99614–0057. Telephone: (907) 896–5515; Fax: (907) 896–5240.

Kivalina IRA Council, Colleen Swan-Koenig, P.O. Box 50051, Kivalina, AK 99750–5005. Telephone: (907) 645–2153; Fax: (907) 645–2193/2250.

Klawock Cooperative Association, Henrietta Kato, Family Caseworker, CCTHITA Tribal Family & Youth Services, Box 173, Klawock, AK 99925. Telephone: (907) 755–2326; Fax: (907) 755–2647.

Native Village of Kluti-Kaah (Copper Center), Katherine McConkey, President, P.O. Box 68, Copper Center, AK 99573–0068. Telephone: (907) 822–5541; Fax: (907) 822–5130; and

Carol Clark, ICWA Representative, Cooper River Native Association, Drawer H, Cooper Center, AK 99573. Telephone: (907) 822–5241; Fax: (907) 822–8804.

Knik Tribe, Carol M. Theodore, P.O. Box 871565, Wasilla, AK 99687–1565. Telephone: (907) 373–7991; Fax: (907) 373–2161.

Kobuk Traditional Council, Loretta Garfield, ICWA Coordinator, P.O. Box 51039. Kobuk, AK 99751–0039. Telephone: (907) 948–2255; Fax: (907) 948–2123. E-mail: *lpgarfield@manillaq.org.*

Kodiak Tribal Council, (See: Shoonaq Tribe of Kodiak).

Kokhanok Tribe, Tribal President or Mary Andrew, P.O. Box 1007, Kokhanok, AK 99606. Telephone: (907) 282–2202; Fax: (907) 282–2249. E-mail: *kokhanokvc@yahoo.com;* and

Lou Johnson, Bristol Bay Native Association, Social Services, P.O. Box 310, Dillingham, AK 99576. Telephone: (907) 842–4139; Fax: (907) 842–4106. E-mail: *lucillej@bbna.com.*

New Koliganek Village Council, Tribal President or Sally Larson, Tribal Children Services Worker, P.O. Box 5057, Koliganek AK 99576. Telephone: (907) 596–3425; Fax: (907) 596–3462; and

Lou Johnson, Bristol Bay Native Association, Social Services, P.O. Box 310, Dillingham, AK 99559. Telephone: (907) 842–4139; Fax: (907) 842–4106. E-mail: *lucillej@bbna.com.*

Native Village of Kongiganak, Alexie Lewis, Tribal Administrator, P.O. Box 5092, Kongiganak, AK 99559–5092. Telephone: (907) 557–5226; Fax: (907) 557–5224. E-mail: *kongiganak@aitc.org;* and

Association of Village Council Presidents, ICWA Counsel, P.O. Box 218, Bethel, AK 99559. Telephone: (907) 543–7367; Fax: (907) 543–7319.

Village of Kotlik, Martina Jack, P.O. Box 2026, Kotlik, AK 99620. Telephone: (907) 899–4459; Fax: (907) 899–4459/4790; and

Association of Village Council Presidents, ICWA Counsel, P.O. Box 219, Bethel, AK 99559. Telephone: (907) 543–7367; Fax: (907) 543–7319.

Kotzebue IRA, Ruth Nanouk, Social Services Administrator, P.O. Box 296, Kotzebue, AK 99752–0296. Telephone: (907) 442–3467; Fax: (907) 442–2162. Toll Free: 1 (800) 442–3467. E-mail: *rnanouk@maniilaq.org.*

Native Village of Koyuk, Leo M. Charles Sr., Tribal Family Coordinator, P.O. Box 53030, Koyuk, AK 99753. Telephone: (907) 963–2215; Fax: (907) 963–2300. E-mail: *leo@kawerak.org.*

Koyukuk Native Village, Percy Lolnitz, 1st Chief, P.O. Box 109, Koyukuk, AK 99754. Telephone: (907) 927–2208/2253; Fax: (907) 927–2220; and

Legal Department, Tanana Chiefs Conference, Inc., 122 First Avenue, Suite 600, Fairbanks, AK 99701. Telephone: (907) 452–8251; Fax: (907) 459–3953.

Organized Village of Kwethluk, Chariton A. Epchook, ICWA Coordinator, P.O. Box 30, Kwethluk, AK 99621–0097. Telephone: (907) 757–6043; Fax: (907) 757–6321.

Native Village of Kwigillingok, Andrew Beaver, ICWA Worker, P.O. Box 54, Kwigillingok, AK 99622–0049. Telephone: (907) 588–8705; Fax: (907) 588–8429.

Native Village of Kwinhagak, (a.k.a. Quinkagak), President, P.O. Box 149, Quinhagak, AK 99655–0149. Telephone: (907) 556–8165; Fax: (907) 556–8166.

L

Native Village of Larsen Bay, Michael R. Smith, ICWA, P.O. Box 125, Larsen Bay, AK 99624–0125. Telephone: (907) 847–2270; Fax: (907) 847–2307.

Lesnoi Village (A.K.A. Woody Island), Andy Teuber, Jr., P.O. Box 9009, 326 Center Avenue, Suite 204, Kodiak, AK 99615.

Telephone: (907) 486–2821; Fax: (907) 486–2738. E-mail: *twtc@ptialaska.net.*

Levelock Village, Ida Apokedak, Tribal President or Tricia Anelon, P.O. Box 70, Levelock, AK 99625. Telephone: (907) 287–3030; Fax: (907) 287–3032. E-mail: *levelock@starband.net;* and

Lou Johnson, Bristol Bay Native Association, Social Services, P.O. Box 310, Dillingham, AK 99576. Telephone: (907) 842–4139; Fax: (907) 842–4106. E-mail: *lucillej@bbna.com.*

Lime Village, Anna M. Bobby, Administrator, ICWA Program, P.O. Box LVD, McGrath, AK 99627. Telephone: (907) 526–5236; Fax: (907) 526–5235.

Louden (See: Galena).

M

Manley Hot Springs Village, Elizabeth M. Woods, P.O. Box 105, Manley Hot Springs, AK 99756. Telephone: (907) 672–3177; Fax: (907) 672–3200; and

Legal Department, Tanana Chiefs Conference, Inc., 122 First Avenue, Suite 600, Fairbanks, AK 99701. Telephone: (907) 452–8251; Fax: (907) 459–3953.

Manokotak Village, Tribal President or Bessie Toyukak, P.O. Box 169, Manokotak, AK 99628. Telephone: (907) 289–2067; Fax: (907) 289–1235; and

Lou Johnson, Bristol Bay Native Association, Social Services, P.O. Box 310, Dillingham, AK 99576. Telephone: (907) 842–4139; Fax: (907) 842–4106. E-mail: *lucillej@bbna.com.*

Native Village of Marshall, Rev. Max Isaac, Family Services Director, Box 110, Marshall, AK 99585. Telephone: (907) 679–6302/6128; Fax: (907) 679–6187.

Native Village of Mary's Igloo, Tribal President, P.O. Box 630, Teller, AK 99778. Telephone: (907) 642–2185; Fax: (907) 642–3000.

McGrath Native Village, Legal Department, Tanana Chiefs Conference, Inc., 122 First Avenue, Suite 600, Fairbanks, AK 99701. Telephone: (907) 452–8251; Fax: (907) 459–3953.

Mekoryuk IRA Council, Lillian Shavings, ICWA Coordinator, P.O. Box 66, Mekoryuk, AK 99630. Telephone: (907) 827–8827; Fax: (907) 827–8133.

Mentasta Tribal Council, Lottie Wolf or Kathryn Martin, P.O. Box 6019, Mentasta, AK 99780. Telephone: (907) 291–2328/2319; Fax: (907) 291–2305; E-mail: *lwolf@tribalnet.org* or *kmartin@tribalnet.org.*

Metlakatla Indian Community, Karen D. Thompson, Social Services Director, P.O. Box 85, Metlakatla, AK 99926. Telephone: (907) 886–6914; Fax: (907) 886–6913. E-mail: *karrenn@metlakatla.net.*

Native Village of Minto, Legal Department, Tanana Chiefs Conference, Inc., 122 First Avenue, Suite 600, Fairbanks, AK 99701. Telephone: (907) 452–8251; Fax: (907) 459–3953.

Mountain Village (See: Asa'Carsarmiut Tribe).

N

Naknek Native Village, Wendy Hansen, Box 106, Naknek, AK 99633. Telephone: (907) 246–4210; Fax: (907) 246–3563. E-mail: *nnvcak@bristolbay.com.*

Native Village of Nanwalek, Wendy Hansen, P.O. Box 8028; Nanwalek, AK 99603–6628. Telephone: (907) 281–2274; Fax: (907) 281–2216. E-mail: *priscillaevans@yahoo.com.*

Native Village of Napaimute, Mark Leary, Village Planner, P.O. Box 1301, Bethel, AK 99559. Telephone: (907) 543–2887; Fax: (907) 543–2892. E-mail: *napaimute@avcp.org;* and

Association of Village Council Presidents, ICWA Counsel, P.O. Box 219, Bethel, AK 99559. Telephone: (907) 543–7367; Fax: (907) 543–7319.

Native Village of Napakiak, Freda Andrew or Carol Mogin, P.O. Box 3401, Napakiak, AK 99634. Telephone: (907) 589–2815; Fax: (907) 589–2814.

Native Village of Napaskiak, Ina Evan, P.O. Box 6009, Napaskiak, AK 99559. Telephone: (907) 737–7821; Fax: (907) 737–7845; and

Association of Village Council Presidents, ICWA Counsel, P.O. Box 219, Bethel, AK 99559. Telephone: (907) 543–7367; Fax: (907) 543–7319.

Native Village of Nelson Lagoon, Justine Gundersen or Nanette Johnson, P.O. Box 13, Nelson Lagoon, AK 99571. Telephone: (907) 989–2204; Fax: (907) 989–2233; and

Grace Smith, Tribal Representative, Aleut/Pribilof Islands Association, Inc., 201 E. 3rd Avenue, Anchorage, Alaska 99501. Telephone: (907) 276–2700 or 222–4237; Fax: (907) 279–4351.

Nenana Native Village, Robin Campbell, TFYS, P.O. Box 356, Nenana, AK 99760. Telephone: (907) 832–5840; Fax: (907) 832–1077. E-mail: *robin.campbell@tanachiefs.org;* and

Legal Department, Tanana Chiefs Conference, Inc., 122 First Avenue, Suite 600, Fairbanks, AK 99701. Telephone: (907) 452–8251; Fax: (907) 459–3953.

New Stuyahok Village, Wassillie Andrew, Village Administrator, P.O. Box 49, New Stuyahok, AK 99636. Telephone: (907) 693–3102; Fax: (907) 693–3179. E-mail: *knwvc@starband.net.*

Newhalen Village, Anecia Wassillie, Social Services Coordinator, P.O. Box 207, Newhalen, AK 99606–0207. Telephone: (907) 571–1410/1317; Fax: (907) 571–1537. E-mail: *newhalentribal@starband.net.*

Newtok Village, Margaret Nickerson, P.O. Box 5545, Newtok, AK 99559–5545. Telephone: (907) 237–2314; Fax: (907) 237–2428. E-mail: *ntcamail@yahoo.com.*

Native Village of Nightmute, Janet Lawrence or Bertha Kashatok, ICWA Department, P.O. Box 90021, Nightmute, AK 99690. Telephone: (907) 647–6215; Fax: (907) 647–6112.

Native Village of Nikolai, (Edenzo), Peter A. Tony, P.O. Box 9105, Nikolai, AK 99691. Telephone: (907) 293–2310; Fax: (907) 293–2481; and

Legal Department, Tanana Chiefs Conference, Inc., 122 First Avenue, Suite 600, Fairbanks, AK 99701. Telephone: (907) 452–8251; Fax: (907) 459–3953.

Native Village of Nikolski, Grace Smith, Aleutian/Pribilof Islands Association, 201 E. 3rd Avenue, Anchorage, AK 99501. Telephone: (907) 276–2700 or 222–4237; Fax: (907) 279–4351.

Ninilchik Traditional Council, Michelle Steik, ICWA/CCDF Manager, P.O. Box 39444, Ninilchik, AK 99639. Telephone: (907) 567–3313; Fax: (907) 567–3354. E-mail: *mnsteik@ninilchiktribe-nsn.gov.*

Native Village of Noatak, Sarah R. Penn, ICWA Coordinator, P.O. Box 89, Noatak, AK 99761–0089. Telephone: (907) 485–2176/2173; Fax: (907) 485–2137. E-mail: *spenn@maniilaq.org.*

Nome Eskimo Community, Denise Barengo or Lorlie Shield, P.O. Box 1090, Nome, AK 99762–1090. Telephone: (907) 443–2246; Fax: (907) 443–3539.

Nondalton Village, Susan Bobby or Brenda Trefon, Social Services, P.O. Box 49, Nondalton, AK 99640–0049. Telephone: (907) 294–2220; Fax: (907) 294–2234.

Noorvik Native Community, Nellie Ballot, ICWA Coordinator, P.O. Box 209, Noorvik, AK 99763. Telephone: (907) 636–2144/2258; Fax: (907) 636–2284/2268.

Northway Village, Daisy Northway or Crystalena Sam, P.O. Box 516, Northway, AK 99764. Telephone: (907) 778–2311; Fax: (907) 778–2220; and

Legal Department, Tanana Chiefs Conference, Inc., 122 First Avenue, Suite 600, Fairbanks, AK 99701. Telephone: (907) 452–8251; Fax: (907) 459–3953.

Native Village of Nuiqsut, Sharon Thompson, Arctic Slope Native Association Ltd., Social Services, 1919 Lathrop Street, Fairbanks, AK 99701. Telephone: (907) 456–1438; Fax: (907) 456–3941.

Nulato Village, Kathleen Sam, P.O. Box 65049, Nulato, AK 99765. Telephone: (907) 898–2329; Fax: (907) 898–2207; and

Legal Department, Tanana Chiefs Conference, Inc., 122 First Avenue, Suite 600, Fairbanks, AK 99701. Telephone: (907) 452–8251; Fax: (907) 459–3953.

Nunakauyarmiut Tribe (formerly, Toksook Bay), Barbara A. Lincoln, Community Family Service Specialist, P.O. Box 37002; Toksook Bay, AK 99637–0108. Telephone: (907) 427–7914; Fax: (907) 427–7206.

Nunam Iqua (See: Sheldon Point)

Native Village of Nunapitchuk, Moses Tobeluk, ICWA Worker P.O. Box 104, Nunapitchuk, AK 99641–0130. Telephone: (907) 527–5731; Fax: (907) 527–7711; and

Association of Village Council Presidents, ICWA Counsel, P.O. Box 219, Bethel, AK 99559. Telephone: (907) 543–7367; Fax: (907) 543–7319.

O

Village of Ohogamiut, Nick Isaac, P.O. Box 49, Marshall, AK 99585. Telephone: (907) 679–6517; Fax: (907) 679–6516.

Old Harbor Tribal Council, Lisa Ann Christiansen, P.O. Box 62, Old Harbor, AK 99643–0062. Telephone: (907) 286–2215; Fax: (907) 286–2277.

Native Village of Orutsararmuit, (a.k.a. Bethel), Bertha Kinegak-Friday, Social Services Director, P.O. Box 227, Bethel, AK 99559. Telephone: (907) 543–2608; Fax: (907) 543–2639.

Oscarville Traditional Village, Natasia Larson, ICWA Program, P.O. Box 6129, Oscarville, AK 99559. Telephone: (907) 737–7099; Fax: (907) 737–7428; and

Joan Dewey, ICWA Social Worker, Association of Village Council Presidents, ICWA Counsel, P.O. Box 219, Bethel, AK 99559. Telephone: (907) 543–7367; Fax: (907) 543–7319.

Ouzinkie Tribal Council, Sharon Boskofsky, ICWA Program, P.O. Box 130, Ouzinkie, AK 99644–0130. Telephone: (907) 680–2259/2359; Fax: (907) 680–2214. E-mail: *ouztribal@cs.com.*

P

Native Village of Paimiut, Rebecca Napoleon, P.O. Box 209, Hooper Bay, AK 99604. Telephone: (907) 758–4006; Fax: (907) 758–4024.

Association of Village Council Presidents, ICWA Counsel, P.O. Box 219, Bethel, AK 99559. Telephone: (907) 543–7367; Fax: (907) 543–7319.

Pauloff Harbor Village, Grace Smith, Tribal Representative, Aleutian/Pribilof Islands Association, 201 E. 3rd Avenue, Anchorage, AK 99501. Telephone: (907) 276–2700 or 222–4237; Fax: (907) 279–4351.

Pedro Bay Village, Tribal President or Kenny Jensen, P.O. Box 4720, Pedro Bay, AK 99647–7020. Telephone: (907) 850–2225; Fax: (907) 850–2221.

Native Village of Perryville, Tribal President or Bernice O'Domin, ICWA Program, P.O. Box 101, Perryville, AK 99648–0101. Telephone: (907) 853–8503; Fax: (907) 853–2229. E-mail: *tcswperryville@aol.com;* and

Lou Johnson, Bristol Bay Native Association, Social Services, P.O. Box 310, Dillingham, AK 99576. Telephone: (907) 842–4139; Fax: (907) 842–4106. E-mail: *lucillej@bbna.com.*

Petersburg Indian Association, Loretta ("Betty") Marvin, Family Caseworker, CCTHITA Tribal Family & Youth Services, Box 1418, Petersburg, AK 99833. Telephone: (907) 772–4080; Fax: (907) 772–3637. E-mail: *bmarvin@ccthita.org* or *piageneral@gci.net.*

Native Village of Pilot Point, Tribal President, P.O. Box 449, Pilot Point, AK 99659. Telephone: (907) 797–2208; Fax: (907) 797–2258; and

Lou Johnson, Bristol Bay Native Association, Social Services, P.O. Box 310, Dillingham, AK 99576. Telephone: (907) 842–4139; Fax: (907) 842–4106. E-mail: *lucillej@bbna.com.*

Pilot Station Traditional Village, Rex Nick, ICWA Program, P.O. Box 5119, Pilot Station, AK 99650–5119; Phone: (907) 549–3550; Fax (907) 549–3551; and

Association of Village Council Presidents, ICWA Counsel, P.O. Box 219, Bethel, AK 99559; Phone: (907) 543–7367; Fax: (907) 543–7319.

Native Village of Pitka's Point, Carol Alstrom, P.O. Box 127, St. Mary's, AK 99658. Telephone: (907) 438–2551; Fax: (907) 438–2569; and

Association of Village Council Presidents, ICWA Counsel, P.O. Box 219, Bethel, AK 99559. Telephone: (907) 543–7367; Fax: (907) 543–7319.

Platinum Traditional Village, Helen Kilbuck, P.O. Box 8, Platinum, AK 99651. Telephone: (907) 979–8610; Fax: (907) 979–8178.

Native Village of Point Hope, Daisy Sage, Family Caseworker, P.O. Box 109, Point Hope, AK 99766. Telephone: (907) 368–3122; Fax: (907) 368–2332. E-mail: *daisysage@hotmail.com.*

Native Village of Point Lay, Amos Agnasayga, Box 59031, Pt. Lay, AK 99757. Telephone: (907) 833–2575; and

Sharon Thompson, Arctic Slope Native Association, Ltd., Social Services, 1919 Lathrop Street, Fairbanks, AK 99701. Telephone: (907) 456–1438; Fax: (907) 456–3941.

Port Graham Village Council, Patrick Norman, Chief or Mary Malchoff, Tribal ICWA Worker, P.O. Box 5510, Port Graham, AK 99603. Telephone: (907) 284–2227; Fax: (907) 284–2222. E-mail: *pnorman@starband.net* or *mmlchff@yahoo.com.*

Native Village of Port Heiden, Shannon Matson, Tribal Children Service Worker, P.O. Box 49007, Port Heiden, AK 99549. Telephone: (907) 837–2225; Fax: (907) 837–2297.

Native Village of Port Lions, Enid Knagin, Family Services Coordinator, P.O. Box 69, Port Lions, AK 99550–0069. Telephone: (907) 454–2234; Fax: (907) 454–2434.

Portage Creek Village, Tribal President, P.O. Box PCA Portage Creek, AK 99576. Telephone: (907) 842–2564; Fax: (907) 842–2564; and

Lou Johnson, Bristol Bay Native Association, Social Services, P.O. Box 310, Dillingham, AK 99576. Telephone: (907) 842–4139; Fax: (907) 842–4106; E-mail: *lucillej@bbna.com.*

Q

Qagan Tayagungin Tribe of Sand Point Village, Grace Smith, Tribal Representative, Aleutian/Pribilof Islands Association, 201 E. 3rd Avenue, Anchorage, AK 99501. Telephone: (907) 276–2700 or 222–4237; Fax: (907) 279–4351.

Qawalangin Tribe of Unalaska, Kathy Dirks, P.O. Box 1130, Unalaska, AK 99685. Telephone: (907) 581–6574; Fax: (907) 581–6574; and

Grace Smith, Tribal Representative, Aleutian/Pribilof Islands Association, 201 E. 3rd Avenue, Anchorage, AK 99501. Telephone: (907) 276–2700 or 222–4237; Fax: (907) 279–4351.

Quinhagak (See: Kwinhagak)

R

Rampart Village, James Orrison, Chief, P.O. Box 29, Rampart, AK 99767. Telephone: 358–3312; Fax: (907) 358–3115; and

Legal Department, Tanana Chiefs Conference, Inc., 122 First Avenue, Suite 600, Fairbanks, AK 99701. Telephone: (907) 452–8251; Fax: (907) 459–3953.

Red Devil Traditional Council, Theodore E. Gordon, Sr., Tribal Administrator, P.O. Box 91, Red Devil, AK 99656. Telephone: (907) 447–3223; Fax: (907) 447–3224; and

Association of Village Council Presidents, ICWA Counsel, P.O. Box 219, Bethel, AK 99559. Telephone: (907) 543–7367; Fax: (907) 543–7319.

Ruby Tribal Council, Laura Vines, Tribal Family & Youth Specialist, P.O. Box 117, Ruby, AK 99768. Telephone: (907) 468–4400; Fax: (907) 468–4500; and

Legal Department, Tanana Chiefs Conference, Inc., 122 First Avenue, Suite 600, Fairbanks, AK 99701. Telephone: (907) 452–8251; Fax: (907) 459–3953.

Russian Mission (See: Iqurmuit)

S

Native Village of Salamatoff, Rita Smagge, Kenaitze Indian Tribe, P.O. Box 988, Kenai, AK 99611. Telephone: (907) 283–3633; Fax: (907) 283–3052.

Native Village of Savoonga, Fritz Waghiyi, President or Peggy Akeya, ICWA Coordinator, P.O. Box 34, Savoonga, AK 99769. Telephone: (907) 984–6211; Fax: (907) 984–6027.

Organized Village of Saxman, Janelle Hamilton, Family Caseworker, CCTHITA Tribal Family & Youth Services, Route 2, Box 2, Ketchikan, AK 99901. Telephone: (907) 225–5158; Fax: (907) 247–2912. E-mail: *jreeve@ccthita.org.*

Native Village of Scammon Bay, George H. Smith, Administrator, P.O. Box 110, Scammon Bay, AK 99662. Telephone: (907) 558–5425; Fax: (907) 558–5134. E-mail: *scammonbay@starband.net;* and

Association of Village Council Presidents, ICWA Counsel, P.O. Box 219, Bethel, AK 99559. Telephone: (907) 543–7367; Fax: (907) 543–7319.

Native Village of Selawik, Myrna M. Ticket, ICWA, P.O. Box 59, Selawik, AK 99770–0059. Telephone: (907) 484–2165 Ext. 11; Fax: (907) 484–2226. E-mail: *mmticket@maniilaq.org.*

Seldovia Village Tribe, Sharon Bond, P.O. Drawer L, Seldovia, AK 99663. Telephone: (907) 234–7898 Ext. 26; Fax: (907) 234–7637. E-mail: *sbond@tribalnet.org.*

Shageluk Native Village, Legal Department, Tanana Chiefs Conference, Inc., 122 First Avenue, Suite 600, Fairbanks, AK 99701 Telephone: (907) 452–8251; Fax: (907) 459–3953.

Native Village of Shaktoolik, Priscilla N. Rock, Tribal Family Coordinator, P.O. Box 100, Shaktoolik, AK 99771. Telephone: (907) 955–2444; Fax: (907) 955–2443. E-mail: *Priscilla@kawerak.org.*

Native Village of Sheldon Point, (AKA Nunam Iqua), Edward Adams, Sr. President, Darlene Pete, ICWA, P.O. Box 27, Sheldon Point, AK 99666. Telephone: (907) 498–4184/4186; Fax (907) 498–4185; and

Association of Village Council Presidents, ICWA Counsel, P.O. Box 219, Bethel, AK 99559. Telephone: (907) 543–7367; Fax: (907) 543–7319.

Native Village of Shishmaref, Karla Nayokpuk, P.O. Box 72110, Shishmaref, AK 99772. Telephone: (907) 649–3078; Fax: (907) 649–2278. E-mail: *karla@kawerak.org.*

Shoonaq Tribe of Kodiak (Previously Kodiak Tribal Counsel), Teresa Schneider, 312 West Marine Way, Kodiak, AK 99615. Telephone: (907) 486–4449; Fax: (907) 486–3361.

Native Village of Shungnak, Lizzie Cleveland, P.O. Box 64, Shungnak, AK 99773. Telephone: (907) 437–2163; Fax: (907) 437–2183.

Sitka Tribe of Alaska, Christopher Polasky, Deputy Director of Social Services, 456 Katlian St, Sitka, AK 99835. Telephone: (907) 747–2669 ext. 12; Fax: (907) 747–3918. E-mail: *patalex@ptialaska.net.*

Skagua (Skagway) Village, Indian Child Welfare Coordinator, Central Council Tlingit and Haida Indian Tribes of Alaska, 320 W. Willoughby, Suite 300, Juneau, AK 99801. Telephone: (907) 463–7169; Fax: (907) 463–7343. E-mail: *lflorendo@ccthita.org.*

Village of Sleetmute, Sophie Gregory, Tribal Administrator, P.O. Box 34, Sleetmute, AK 99668. Telephone: (907) 449–4205; Fax: (907) 449–4203; and

Association of Village Council Presidents, ICWA Counsel, P.O. Box 219, Bethel, AK 99559. Telephone: (907) 543–7367; Fax: (907) 543–7319.

Village of Solomon, Wally Johnson, ICWA Coordinator, P.O. Box 2053, Nome, AK 99762. Telephone: (907) 443–4985; Fax: (907) 443–5189.

South Naknek Village, Tribal President or Robert Hodgdon Jr., TCSW, P.O. Box 70106, South Naknek, AK 99670. Telephone: (907) 246–8614; Fax: (907) 246–8613. E-mail: *rlhscsw@bristolbay.com;* and

Lou Johnson, Bristol Bay Native Association, Social Services, P.O. Box 310, Dillingham, AK 99576. Telephone: (907) 842–4139; Fax: (907) 842–4106. E-mail: *lucillej@bbna.com*

St. George Island, Georgia Kashevarof, Administrator, P.O. Box 940, St. George Island, AK 99591. Telephone: (907) 859–2205; Fax: (907) 859–2242. E-mail: *stgcouncil@starband.net;* and

Grace Smith, Tribal Representative, Aleutian/Pribilof Islands Association, 201 E. 3rd Avenue, Anchorage, AK 99501. Telephone: (907) 276–2700 or 222–4237; Fax: (907) 279–4351.

St. Mary's (See: Algaaciq).

Native Village of St. Michael, Milton Cheemuk, IRA Village Council President, P.O. Box 59050, St. Michael, AK 99659. Telephone: (907) 923–2304; Fax: (907) 923–2406.

St. Paul Island, Grace Smith, Tribal Representative, Aleutian/Pribilof Islands Association, 201 E. 3rd Avenue, Anchorage, AK 99501. Telephone: (907) 276–2700 or 222–4237; Fax: (907) 279–4351.

Stebbins Community Association, Tribal President, P.O. Box 71002, Stebbins, AK 99671. Telephone: (907) 934–2334; Fax: (907) 934–2675.

Native Village of Stevens, Legal Department, Tanana Chiefs Conference, Inc., 122 First Avenue, Suite 600, Fairbanks, AK 99701. Telephone: (907) 452–8251; Fax: (907) 459–3953.

Village of Stony River, Mary Macar, ICWA Program; P.O. Box SRV, Stony River, AK 99557. Telephone: (907) 537–3235; Fax: (907) 537–3254; and

Association of Village Council Presidents, ICWA Counsel, P.O. Box 219, Bethel, AK 99559. Telephone: (907) 543–7367; Fax: (907) 543–7319.

T

Takotna Village, Jan Newton, Tribal Administrator, General Delivery, Takotna, AK 99675. Telephone: (907) 298–2212; Fax: (907) 298–2314.

Native Village of Tanacross, Jerry Isaac, President, Debbie Thomas, ICWA Program P.O. Box 76009, Tanacross, AK 99776. Telephone: (907) 883–5024; Fax: (907) 883–4497.

Native Village of Tanana, Carla K. Bonney, Health & Social Services Director, Donna M. Folger, Social Worker, Faith M. Peters, Social Worker, Julie M. Roberts, Executive Director, P.O. Box 130, Tanana, AK 99777. Telephone: (907) 366–7170/7160; Fax: (907) 366–7195/7229. E-mail: *tananahealth@yahoo.com.*

Native Village of Tatitlek, Tribal President, P.O. Box 171, Tatitlek, AK 99677. Telephone: (907) 325–2311; Fax: (907) 325–2298.

Native Village of Tazlina, Carol Clark, Indian Child Welfare Representative, Copper River Native Association, Drawer "H", Copper Center, AK 99573. Telephone: (907) 822–5241 Ext. 243; Fax: (907) 822–8804.

Telida Village, Jo Royal, P.O. Box 32, McGrath, AK 99627. Telephone: (907) 524–3550; Fax: (907) 524–3163. E-mail: *kuskovim@aol.com;* and

Legal Department, Tanana Chiefs Conference, Inc., 122 First Avenue, Suite 600, Fairbanks, AK 99701. Telephone: (907) 452–8251; Fax: (907) 459–3953.

Native Village of Teller, Tribal President, P.O. Box 630, Teller, AK 99778–0567. Telephone: (907) 642–2185; Fax: (907) 642–3000.

Native Village of Tetlin, Nettie J. Warbelow, Box 93, Tok, AK 99780. Telephone: (907) 883–3676; Fax: (907) 883–3034.

Tlingit & Haida Indian Tribes of Alaska (See: Central Council Tlingit and Haida)

Traditional Village of Togiak, Tribal President or Shannon Johnson, P.O. Box 310, Togiak, AK 99678. Telephone: (907) 493–5505; Fax: (907) 493–5734. E-mail: *togtcsw@bbna.com;* and

Lou Johnson, Bristol Bay Native Association, Social Services, P.O. Box 310, Dillingham, AK 99576. Telephone: (907) 842–4139; Fax: (907) 842–4106. E-mail: *lucillej@bbna.com.*

Toksook Bay (See: Nunakauyarmiut Tribe).

Tuluksak Native Community, Lorena Napoka, P.O. Box 95, Tuluksak, AK 99679–0095. Telephone: (907) 695–6902; Fax: (907) 695–6932.

Native Village of Tununak, ICWA Program, P.O. Box 77, Tununak, AK 99681–0077. Telephone: (907) 652–6527; Fax: (907) 652–6220.

Tuntutuliak Traditional Council, Henry Lupie, P.O. Box 8086, Tuntutuliak, AK 99680. Telephone: (907) 256–2128; Fax: (907) 256–2080. E-mail: *tuntutuliak@aitc.org;* and

Association of Village Council Presidents, ICWA Counsel, P.O. Box 219, Bethel, AK 99559. Telephone: (907) 543–7367; Fax: (907) 543–7319.

Twin Hills Village Council, Tribal President, P.O. Box TWA, Twin Hills, AK 99576. Telephone: (907) 525–4821; Fax: (907) 525–4822. E-mail: *maalu@starband.net* or *twinhills@aitc.org;* and

Lou Johnson, Bristol Bay Native Association, Social Services, P.O. Box 310, Dillingham, AK 99576. Telephone: (907) 842–4139; Fax: (907) 842–4106. E-mail: *lucillej@bbna.com.*

The Native Village of Tyonek, Peter Merryman, President or Rose Chuitt, ICWA Coordinator, P.O. Box 82009, Tyonek, AK 99682. Telephone: (907) 583–2771; Fax: (907) 583–2442. E-mail: *tyonek@aol.com;* and

ICWA Coordinator, 1689 C Street, Ste. 211, Anchorage, AK 99501. Telephone: (907) 277–1706; Fax: (907) 277–1756.

U

Ugashik Village, Tribal President or Harriet Beleal, 206 E. Fireweed, #204, Anchorage, AK 99503. Telephone: (907) 338–7611; Fax: (907) 338–7659. E-mail: *ugashik@gci.net* or *icwa@gci.net;* and

Lou Johnson, Bristol Bay Native Association, Social Services, P.O. Box 310 Dillingham, AK 99576. Telephone: (907) 842–4139; Fax: (907) 842–4106. E-mail: *lucillej@bbna.com.*

Umkumiut Native Village, John George, P.O. Box 90062, Nightmute, AK. 99690; and

Association of Village Council Presidents, ICWA Counsel, P.O. Box 219, Bethel, AK 99559; Phone: (907) 543–7367 Fax: (907) 543–7319.

Native Village of Unalakleet, Albert Sarren, Tribal Service Specialist, P.O. Box 357, Unalakleet, AK 99684. Telephone: (907) 624–3526; Fax: (907) 624–5104. E-mail: *icwa.unk@kawerak.org.*

Unalaska (See: Qawalangin Tribe of Unalaska).

Native Village of Unga, Grace Smith, Tribal Representative, Aleutian/Pribilof Islands Association, Social Services, 201 E. 3rd Avenue, Anchorage, AK 99501. Telephone: (907) 276–2700 or 222–4237; Fax: (907) 279–4351.

Native Village of Upper Kalskag (See: Kalskag).

V

Native Village of Venetie Tribal Government, Donna M. Erick, Tribal Administrator, or Nena C. Wilson, ICWA Secretary, P.O. Box 81080, Venetie AK 99781–0080. Telephone: (907) 849–8165/8378; Fax: (907) 849–8097.

W

Village of Wainwright, Sharon Thompson, Arctic Slope Native Association, Ltd., Social Services, 1919 Lathrop Street, Fairbanks, AK 99701. Telephone: (907) 456–1438; Fax: (907) 456–3941.

Native Village of Wales, Joanne Keyes, P.O. Box 549, Wales, AK 99783. Telephone: (907) 664–2185; Fax: (907) 664–3062. E-mail: *Joanne@kawerak.org.*

Native Village of White Mountain, Joleen M. Fagundes, ICWA Coordinator, P.O. Box 84082, White Mountain, AK 99784. Telephone: (907) 638–3651; Fax: (907) 638–3652. E-mail: *joleen@nook.net*

Woody Island (See: Leisnoi Village).

Wrangell Cooperative Association, Elizabeth ("Betty") Newman, Family Caseworker, CCTHITA Tribal Family & Youth Services, Box 1198, Wrangell, AK 99929. Telephone: (907) 874–3482; Fax: (907) 874–2982. E-mail: *bnewman@ccthita.org.*

Y

Yakutat Tlingit Tribe, Ramona Anderstrom, Family Counselor/ Indian Child Welfare, P.O. Box 418, Yakutat, AK 99689. Telephone: (907) 784–3375; Fax: (907) 784–3595.

Eastern Oklahoma Region

Jeanette Hanna, Regional Director: 3100 W. Peak Boulevard, Muskogee, OK 74403 or P.O. Box 8002, Muskogee, OK 74402–8002. Telephone: (918) 781–4600; Fax (918) 781–4604.

Lafonda Mathews, Regional Social Worker, 3100 W. Peak Boulevard, Muskogee, OK 74402–8002 or P.O. Box 8002, Muskogee, OK 74403. Telephone: (918) 781–4613; Fax: (918) 781–4649.

A

Alabama—Quassarte Tribal Town, Tarpie Yargee, Chief, P.O. Box 187, Wetumka, OK 74883. Telephone: (405) 452–3987; Fax (405) 452–3968.

C

Cherokee Nation of Oklahoma, Chadwick Smith, Principal Chief, P.O. Box 948, Tahlequah, OK 74465. Telephone: (918) 456–0671; Fax (918) 458–5580.

The Chickasaw Nation, Bill Anoatubby, Governor, P.O. Box 1548, Ada, OK 74821. Telephone: (580) 436–2603; Fax (580) 436–4287.

Choctaw Nation of Oklahoma, Gregory E. Pyle, Chief, P.O. Drawer 1210, Durant, OK 74702. Telephone: (580) 924–8280; Fax (580) 924–1150.

D

Delaware Tribe of Indians, Larry Jo Brooks, Chief, 220 NW Virginia Ave., Bartlesville, OK 74003. Telephone: (918) 336–5272; Fax (918) 336–5513.

Eastern Shawnee Tribe of Oklahoma, Charles D. Enyart, Chief, P.O. Box 350, Seneca, MO 64865. Telephone: (918) 666–2435; Fax (918) 666–2186.

K

Kialegee Tribal Town, Lowell Wesley, Town King, P.O. Box 332, Wetumka, OK 74883. Telephone: (405) 452–3262; Fax (405) 452–3413.

M

Miami Tribe of Oklahoma, Floyd E. Leonard, Chief, P.O. Box 1326, Miami, OK 74355. Telephone: (918) 542–1445; Fax (918) 542–7260.

Modoc Tribe of Oklahoma, Bill Gene Follis, Chief, 515 G Southeast, Miami, OK 74354. Telephone: (918) 542–1190; Fax (918) 542–5415.

The Muscogee (Creek) Nation, R. Perry Beaver, Principal Chief, P.O. Box 580, Okmulgee, OK 74447. Telephone: (918) 756–8700; Fax (918) 756–2911.

O

Osage Tribe, Jim Roan Gray, Principal Chief, P.O. Box 779, Pawhuska, OK 74056 or 813 Grandview, Pawhuska, OK 74056. Phone: (918) 287–5432; Fax (918) 287–2257.

Ottawa Tribe of Oklahoma, Charles Todd, Chief, P.O. Box 110, Miami, OK 74335. Telephone: (918) 540–1536; Fax (918) 542–3214.

P

Peoria Tribe of Indians of Oklahoma, John P. Froman, Chief, P.O. Box 1527, Miami, OK 74355. Telephone: (918) 540–2535; Fax (918) 540–2538.

Q

Quapaw Tribe of Oklahoma, John Berrey, Chairman, P.O. Box 765, Quapaw, OK 74363. Telephone: (918) 542–1853; Fax (918) 542–4694.

S

Seminole Nation of Oklahoma, Kenneth Chambers, Principal Chief, P.O. Box 1498, Wewoka, OK 74884. Telephone: (405) 257–6287; Fax (405) 257–6205.

Seneca-Cayuga Tribe of Oklahoma, LeRoy Howard, Chief, P.O. Box 1283, Miami, OK 74355. Telephone: (918) 542–6609; Fax (918) 542–3684.

T

Thlopthlocco Tribal Town, Bryan McGertt, Town King, P.O. Box 188, Okemah, OK 74859 or Clearview Road Exit 227, Okemah, OK 74859. Telephone: (918) 623–2620; Fax (918) 623–1810.

U

United Keetoowah Band of Cherokee Indians, Dallas Proctor, Chief, P.O. Box 746, Tahlequah, OK 74465. Telephone: (918) 431–1818; Fax (918) 431–1873.

W

Wyandotte Tribe of Oklahoma, Leaford Bearskin, Chief, P.O. Box 250, Wyandotte, OK 74370 or 64700 E. Highway 60, Wyandotte, OK 74370. Telephone: (918) 678–2297/2298; Fax (918) 678–2944.

Eastern Region

Franklin Keel, Regional Director, 711 Stewarts Ferry Pike, Nashville, TN 37214–2634. Telephone: (615) 467–1700; Fax: (615) 467–1701.

Regional Social Worker, 711 Stewarts Ferry Pike, Nashville, TN 37214–2634. Telephone: (615) 467–1578 Ext. 446; Fax: (615) 467–1579.

A

Aroostook Band of Micmac Indians, William Phillips, Chief, 7 Northern Road, Presque Isle, ME 04769. Telephone: (207) 764–1972; Fax: (207) 764–7667.

C

Catawba Indian Nation of South Carolina, Social Worker, P.O. Box 188, Catawba, SC 29704. Telephone: (803) 366–4792; Fax: (803) 366–0629.

Cayuga Nation of New York, Child Welfare Worker, P.O. Box 11, Versailles, NY 14168. Telephone: (716) 532–4847; Fax: (716) 532–5417.

Chitimacha Tribe of Louisiana, Human Services Director, P.O. Box 661, Charenton, LA 70523. Telephone: (337) 923–7215; Fax: (337) 923–2475.

Coushatta Tribe of Louisiana, Social Services Director, P.O. Box 967, Elton, LA 70532. Telephone: (337) 584–1435; Fax: (337) 584–1474.

E

Eastern Band of Cherokee Indians, Director Family Support Services, 15 Emma Taylor Road, P.O. Box 507, Cherokee, NC 28719. Telephone: (828) 497–6092; Fax: (828) 497–3322.

H

Houlton Band of Maliseet Indians, Director, ICWA Program, 88 Bell Road, Littleton, ME 04730. Telephone: (207) 532–2240 ext. 19; Fax: (207) 532–5605.

J

Jena Band of Choctaw Indians, Director, Social Services, P.O. Box 14, Jena, LA 71342. Telephone: (318) 992–2717; Fax: (318) 992–8244.

M

Mashantucket Pequot Tribal Nation, Child Protective Services, P.O. Box 3060, Mashantucket, CT 06338. Telephone: (860) 396–6756 / 6757; Fax (860) 396–6764.

Miccosukee Tribe, Social Service Program, P.O. Box 440021, Tamiami Station, Miami, FL 33144. Telephone: (305) 223–8380; Fax: (305) 223–1011.

Mississippi Band of Choctaw Indians, Children Services Director, P.O. Box 6050—Choctaw Branch, Choctaw, MS 39350. Telephone: (601) 650–1741; Fax: (601) 656–8817.

Mohegan Indian Tribe, Tribal Attorney, 5 Crow Hill Road, Uncasville, CT 06382. Telephone: (860) 862–6201; Fax (860) 862–6122.

Narragansett Indian Tribe, Director, Child and Family Services, 4533 S. County Trail, Charlestown, RI 02813. Telephone: (401) 364–1265 ext. 17, Fax: (401) 364–6427.

O

Oneida Indian Nation, Member Benefit Dept., P.O. Box 1, Vernon, NY 13476. Telephone: (315) 829–8335; Fax: (315) 829–8392.

Onondaga Nation of New York, Council of Chiefs, P.O. Box 85, Nedrow, NY 13120. Telephone: (315) 469–1875; Fax: (315) 492–4822.

P

Passamaquoddy Tribe of Maine, Child Welfare Coordinator, Indian Township Reservation, P.O. Box 97, Princeton, ME 04668. Telephone: (207) 796–5079; Fax: (207) 796–2218.

Passamaquoddy Tribe of Maine, Child Welfare Director, Pleasant Point Reservation, P.O. Box 343, Perry, ME 04667. Telephone: (207) 853–2600; Fax: (207) 853–6039.

Penobscot Indian Nation of Maine, Human Service Director, 6 River Road, Indian Island, ME 04468. Telephone: (207) 827–7776, Ext. 7492; Fax: (207) 827–2937.

Poarch Band of Creek Indians, Director, Social Services, 5811 Jack Springs Road, Atmore, AL 36502. Telephone: (251) 368–9136 ext. 2600; Fax: (251) 368–0828.

S

Saint Regis Band of Mohawk Indians, ICWA Program Coordinator, 412 State Route 37, Hogansburg, NY 13655. Telephone: (518) 358–4516; Fax: (518) 358–9258.

Seminole Tribe of Florida, Family Services Program, 3006 Josie Billie Avenue, Hollywood, FL 33024. Telephone: (954) 964–6338; Fax (954) 967–5182.

Seneca Nation of New York, Clerk, Genevieve Plummer Building, Box 231, Salamanca, NY 14779. Telephone: (716) 945–1790; Fax: (716) 954–1565.

T

Tonawanda Band of Senecas, Chief, 7027 Meadville Road, Basom, NY 14013. Telephone: (716) 542–4244; Fax: (716) 542–4244.

Tunica-Biloxi Indian Tribe of Louisiana, Social Service Director, P.O. Box 1589, Marksville, LA 71351. Telephone: (318) 253–5100; Fax: (318) 253–9791.

Tuscarora Nation of New York, Supervisor, Community Health Worker, 2015 Mount Hope Road, Lewistown, NY 14092. Telephone: (716) 297–0598, Fax (716) 297–7046.

W

Wampanoag Tribe of Gay Head (Aquinnah), Director, Human Services, 20

Black Brook Road, Aquinnah, MA 02535. Telephone: (508) 645–9265; Fax (508) 645–2755.

Great Plains Region

Regional Director, 115 4th Avenue, SE., Aberdeen, SD 57401. Telephone: (605) 226–7351; Fax (605) 226–7627.

Peggy Davis, Social Worker, 115 4th Avenue, SE., Aberdeen, SD 57401. Telephone: (605) 226–7351; Fax (605) 226–7627.

C

Cheyenne River Sioux Tribe, Richard Pritzkau, ICWA Director, Cheyenne River Sioux Tribe, P.O. Box 747, Eagle Butte, SD 57625. Telephone: (605) 964–6460; Fax: (605) 964–6463.

Crow Creek Sioux Tribe, Pattie Ross, ICWA Director, Crow Creek Sioux Tribe, P.O. Box 50, Fort Thompson, SD 57339. Telephone: (605) 245–2322; Fax: (605) 245–2844.

F

Flandreau Santee Sioux Tribe, Jack Thompson ICWA Administrator, Flandreau Santee Sioux Tribal Social Services, P.O. Box 283, Flandreau, SD 57028. Telephone: (605) 997–5055; Fax: (605) 997–5426.

L

Lower Brule Sioux Tribe, Greg Miller, ICWA Director, Lower Brule Sioux Tribe, P.O. Box 244, Lower Brule, SD 57548. Telephone: (605) 473–5584; Fax: (605) 473–9268.

O

Oglala Sioux Tribe, Floyd White Eye, ICWA Administrator, Oglala Sioux Tribe-ONTRAC, P.O. Box 148, Pine Ridge, SD 57770. Telephone: (605) 856–5270; Fax: (605) 856–5168.

Omaha Tribe of Nebraska, Loretta Marr, ICWA Director, Omaha Tribe of Nebraska, Child Protection Services, P.O. Box 429, Macy, NE 68039. Telephone: (402) 837–5261; Fax: (402) 837–5262.

P

Ponca Tribe of Nebraska, Alpha Marie Goombi, ICWA Specialist, ICWA Program, 1001 Avenue H, Carter Lake, IA 51510. Telephone: (712) 347–6781; Fax: (712) 347–6792 (ICWA Cell (402) 841–9716), Email: ptonicwa@yahoo.com.

R

Rosebud Sioux Tribe, Carol Buchanan, ICWA Specialist, BIA-Rosebud Agency, P.O. Box 500, Rosebud, SD 57570. Telephone: (605) 856–2375; Fax: (605) 856–5192.

S

Santee Sioux Tribe of Nebraska, Martha Thomas, ICWA Specialist, Santee Sioux Tribe of Nebraska, Dakota Tiwahe Social Services Program, Route 2, Box 5191, Niobara, NE 68760. Telephone: (402) 857–2342; Fax: (402) 857–2361.

Sisseton-Wahpeton Sioux Tribe, Evelyn Pilcher, ICWA Director, P.O. Box 509, Agency Village, SD 67262. Telephone: (605) 698–3992; Fax: (605) 698–3999.

Spirit Lake (formerly Devils Lake) Sioux Tribe, Frank Myrick, ICWA Director, Spirit Lake Tribal Social Services, P.O. Box 356, Fort Totten, ND 58335. Telephone: (701) 766–4855; Fax: (701) 766–4273.

Standing Rock Sioux Tribe, Tara Weber, ICWA Specialist, Standing Rock Sioux Tribe, Child Welfare/Social Services, P.O. Box 640, Fort Yates, ND 58538. Telephone: (701) 854–3431; Fax: (701) 854–2119.

T

Three Affiliated Tribes, Jolyn Foote, ICWA Specialist, 404 Frontage Drive, New Town, ND 58763. Telephone: (701) 627–4781; Fax: (701) 627–4225.

Turtle Mountain Band of Chippewa Indians, Marilyn Poitra, ICWA Coordinator, Child Welfare and Family Services, P.O. Box 900, Belcourt, ND 58316. Telephone: (701) 477–5688; Fax: (701) 477–5797.

W

Winnebago Tribe of Nebraska, Celeste Honomichl, ICWA Specialist, Child and Family Services, P.O. Box 723, Winnebago, NE 68071. Telephone: (402) 878–2379; Fax: (402) 878–2228.

Y

Yankton Sioux Tribe, Raymond Cournoyer, ICWA Director, P.O. Box 248, Marty, SD 57361. Telephone: (605) 384–3641.

Midwest Region

Larry Morrin, Regional Director, One Federal Drive, Room 550, Fort Snelling, MN 55111–4007. Telephone: (612) 713–4400; Fax (612) 713–4401.

Rosalie Clark, Regional Social Worker, One Federal Drive, Room 550, Fort Snelling, MN 55111–4007. Telephone: (612) 713–4400, Ext. 1071; Fax (612) 713–4439.

B

Bad River Band of Lake Superior Chippewa Indians of Wisconsin, Catherine Blanchard, ICWA Coordinator, P.O. Box 55, Odanah, WI 54861. Telephone: (715) 682–7136.

Bay Mills Indian Community of Michigan, Cheryl Baragwanath, ICWA Worker, 12124 West Lake Shore Drive, Brimley, MI 49715. Telephone: (906) 248–3204.

Boise Fort Reservation Business Committee, Yvonne King, ICWA Director, P.O. Box 16, Nett Lake, MN 55772. Telephone: (218) 757–3295.

F

Fond du Lac Reservation Business Committee, Julia Jaakola, Social Services Coordinator, 1720 Big Lake Round, Cloquet, MN 55720. Telephone: (218) 879–1227.

Forest County Potawatomi Community of Wisconsin, Karen Ackley, ICWA Coordinator, P.O. Box 340, Crandon, WI 54520. Telephone: (715) 478–7329.

G

Grand Portage Reservation Business Committee, ICWA Coordinator, P.O. Box 428, Grand Portage, MN 55605. Telephone: (218) 475–2453 or 2279.

Grand Traverse Band of Ottawa and Chippewa Indians of Michigan, Derek Baily, Deputy Manager, 2605 NW. Bayshore Drive, Suttons Bay, MI 49682. Telephone: (231) 272–3538.

H

Hannahville Indian Community of Michigan, ICWA Worker, N14911 Hannahville B1 Road, Wilson, MI 49896–9728. Telephone: (906) 466–9320.

Ho-Chunk Nation, ICWA Coordinator, P.O. Box 667, Black River Falls, WI 54615. Telephone: (715) 284–9343; Fax (715) 284–9805.

Huron Potawatomi, Inc., Gilbert Holliday, Chairperson, 2221–1.5 Mile Road, Fulton, MI 49052. Telephone: (616) 729–5151.

K

Keweenaw Bay Indian (Chippewa) Community of the L'Anse Reservation of Michigan, Kimberly Fish, TSS Director, 107 Beartown Road, Baraga MI 49908. Telephone: (906) 353–6623, Ext. 201.

L

Lac Courte Oreilles Band of Lake Superior Chippewa Indians of Wisconsin, Linda Hollen, Tribal Social Services Director, 13394 W. Trepania Road Building #1, Hayward, WI 54843. Telephone: (715) 634–8934.

Lac du Flambeau Band of Lake Superior Chippewa Indians of Wisconsin, Laura Kuehn, ICWA Director, P.O. Box 67, Lac du Flambeau, WI 54538. Telephone: (715) 588–1511.

Lac Vieux Desert Band of Lake Superior Chippewa Indians of Michigan, Robert White, ICWA Coordinator, P.O. Box 249—Choate Road, Watersmeet, MI 49969. Telephone: (906) 358–4940.

Leech Lake Reservation Business Committee, Lillian Reese, TSS Director, 6530 U.S. Highway #2, NW, Cass Lake, MN 56633. Telephone: (218) 335–8200.

Little River Band of Ottawa Indians, Inc., Delsey Teado, ICWA Specialist, 310 Ninth Street, Manistee, MI 49660. Telephone: (213) 398–6609.

Little Traverse Bay Band of Odawa Indians, Inc., Catherine Backus TSS Director, 7500 Odewa Circle, Harbor Springs, MI 49770. Telephone: (231) 242–1400.

Lower Sioux Indian Community of Minnesota, Angie Okeefe, TSS Director, Rural Route 1, Box 308, Morton, MN 56270. Telephone: (507) 697–9108.

M

Match-E-B-Nash-She-Wish Band of Potawatomi Indians of Michigan, ICWA Coordinator, P.O. Box 218, 1743 142nd Avenue, W. 2908 Tribal Office Loop, Dorr, MI 49323. Telephone: (616) 681–8830.

Menominee Indian Tribe of Wisconsin, Mary Husby, Social Services Director, P.O. Box 910, Keshena, WI 54135–0910. Telephone: (715) 799–5161.

Mille Lacs Reservation Business Committee, ICWA Coordinator, 43408 Oodana Drive, Onamia, MN 56359. Telephone: (320) 532–4139.

Minnesota Chippewa Tribe of Minnesota, Adrienne Adkins, Human Services Director, P.O. Box 217, Cass Lake, MN 56633. Telephone: (218) 335–8585.

O

Oneida Tribe of Indians of Wisconsin, ICWA Program, P.O. Box 365, Oneida, WI 54155–0365. Telephone: (920) 869–2214.

P

Pokagon Band of Potawatomi Indians of Michigan, Bill Holmes, TSS Director, 58620 Sink Road, Dowagiac MI 49047. Telephone: (269) 782–4300.

Prairie Island Indian Community of Minnesota, Jodee Gamst, TSS Director, 5636 Sturgam Lake Road, Welch, MN 55089–9540. Telephone: (651) 385–4123.

R

Red Cliff Band of Lake Superior Chippewa Indians of Wisconsin, Pam Burningham, ICWA Director, 88385 Pike Road, Highway 13, Bayfield, WI 54814. Telephone: (715) 779–3747, Ext. 18.

Red Lake Band of Chippewa Indians, Ramona Desjarlait, TSS Director, Box 427, Red Lake, MN 56671. Telephone: (218) 679–2122.

S

Sac & Fox Tribe of the Mississippi in Iowa, ICWA Coordinator, P.O. Box 245, Tama, IA 52339–9629. Telephone: (641) 484–4678; Fax (641) 484–5424.

Saginaw Chippewa Indians of Michigan, Kim Compton, TSS Director, 7070 East Broadway Road, Mt. Pleasant, MI 48858. Telephone: (989) 775–4000; Fax (989) 772–3508.

St. Croix Chippewa Indians of Wisconsin, Heather Cadnotte, ICWA Coordinator, P.O. Box 45287, Hertel, WI 54845. Telephone: (715) 349–2195; Fax (715) 349–5768.

Sault Ste. Marie Tribe of Chippewa Indians of Michigan, ICWA Coordinator, 523 Ashmun Street, Sault Ste. Marie, MI 49783. Telephone: (906) 635–6050; Fax (906) 635–4969.

Shakopee Mdewakanton Sioux Community of Minnesota, Kim Goetzinger, TSS Director, 2330 Sioux Trail NW, Prior Lake, MN 55372. Telephone: (952) 445–8900; Fax (952) 445–8906.

Sokaogon Chippewa (Mole Lake) Community of Wisconsin, Angie Bocek, ICWA Coordinator, 3056 State Highway 55, Crandon, WI 54520. Telephone: (715) 478–7585; Fax (715) 478–7505.

Stockbridge Munsee Community of Wisconsin, Natalie Young, ICWA Coordinator, N8476 Mo He Con Nuck Road, Bowler, WI 54416. Telephone: (715) 793–4111; Fax (715) 793–1307.

U

Upper Sioux Community of Minnesota, Ron Leith, ICWA Director, P.O. Box 147, Granite Falls, MN 56241–0147. Telephone: (320) 564–2360; Fax (320) 564–4482.

W

White Earth Reservation Business Committee, Jeri Jasken, ICWA Coordinator, P.O. Box 70, Naytahwaush, MN 56566. Telephone: (218) 935–5554; Fax (218) 935–2593.

Navajo Region

Elouise Chicharello, Regional Director, P.O. Box 1060, Gallup, NM 87305. Telephone: (505) 863–8314; Fax (505) 863–8324.

Vivian Yazza, Regional Social Worker, 301 West Hill Street, Gallup, NM, 87301. Telephone: (505) 863–8215; Fax: (505) 863–8324.

Northwest Region

Stanley Speaks, Regional Director, 911 NE. 11th Avenue, Portland, OR 97232. Telephone: (503) 231–6702; Fax: (503) 231–2201.

Stella Charles, Regional Social Worker, 911 NE. 11th Avenue, Portland, OR 97232. Telephone: (503) 231–6785; Fax: (503) 231–6731.

B

Burns Paiute Tribe, Phyllis Harrington, H.C. 71, 100 Pasigo Street, Burns, OR 97720. Telephone: (541) 573–7312, Ext. 221; Fax: (541) 573–4217.

C

Chehalis Business Council, Margert Tebo, ICWA, P.O. Box 536, Oakville, WA 98568–9616. Telephone: (360) 273–5911; Fax: (360) 273–5914.

Colville Business Council, ICWA, P.O. Box 150, Nespelem, WA 99155–011. Telephone: (509) 634–2200; Fax (509) 634–4116.

Coeur d'Alene Tribal Council, ICWA, 850 A Street, Box 408, Plummer, ID 83851–0408. Telephone: (208) 686–1800; Fax (208) 686–8813.

Confederated Salish & Kootenai Tribes, ICWA, Attn: Beverly Swaney, Box 278, Pablo, MT 59855–0278. Telephone: (406) 675–2700; Fax (406) 675–2806.

Confederated Tribes of Coos, Lower Umpqua & Siuslaw Indians, ICWA, Attn: Tom Long, 1245 Fulton Ave., Coos Bay, OR 97420. Telephone: (541) 888–7514; Fax (541) 888–7535.

Confederated Tribes of Grand Ronde Community of Oregon, ICWA, 9615 Grand Ronde Road, Grand Ronde, OR 97347–0038. Telephone (503) 879–5211; Fax (503) 879–5964.

Confederated Tribes of the Umatilla Indian Reservation, Board of Trustees, ICWA, P.O. Box 638, Pendleton, OR 97801–0638. Telephone: (541) 966–2645; Fax (541) 278–5391.

Coquille Indian Tribe, ICWA, Attn: Wayne Grant, P.O. Box 3190, Coos Bay, OR 97420. Telephone: (541) 888–9494; Fax (541) 888–3431.

Cow Creek Band of Umpqua Tribe of Indians, ICWA, Rhonda Malone, 2371 NE Stephens, Suite 100, Roseburg, OR 97470–1338. Telephone: (541) 672–9405; Fax: (541) 673–0432.

Cowlitz Indian Tribe, ICWA, Attn: Carolee Morris, ICWA Director, P.O. Box 2547, Longview, WA 98632–8594. Telephone: (360) 577–8140; Fax (360) 577–7432.

H

Hoh Tribal Business Committee, Ruth King, 2464 Lower Hoh Road, Forks, WA 98331. Telephone: (360) 374–6582; Fax: (360) 374–6549.

J

Jamestown Skallam Tribal Council, Liz Mueller, 1033 Old Blyn Hwy, Sequim, WA 98382. Telephone: (360) 683–1109; Fax: (360) 681–4649.

K

Kalispel Tribe of Indians, Deana Nomee, ICWA, P.O. Box 39, Usk, WA 99180. Telephone: (509) 445–1147; Fax: (509) 445–1705.

Klamath Tribe, ICWA, Attn: Anita Harrington, ICWA Specialist, P.O. Box 436, Chiloquin, OR 97624–0436. Telephone: (541) 783–2219; Fax (541) 783–2029.

Kootenai Tribal Council, ICWA, P.O. Box 1269, Bonners Ferry, ID 83805–1269. Telephone: (208) 267–3519; Fax (208) 267–2960.

L

Lower Elwha Tribal Community Council, Jan Lopez, 2851 Lower Elwha Road, Port Angeles, WA 98363–9518. Telephone: (360) 452–8471; Fax: (360) 452–3428.

Lummi Tribe of the Lummi Reservation, Kim Goes Behind, ICWA, 1790 Bayon Road, Bellingham, WA 98225. Telephone: (360) 738–0848; Fax: (360) 738–0068.

M

Makah Indian Tribal Council, ICWA Caseworker, Makah Family Services, P.O. Box 115, Neah Bay, WA 98357–0115, *mfsfam@olypen.com;* Telephone: (360) 645–3270; Fax: (360) 645–2806.

Metlakatla Indian Community, ICWA, Attn: Karen Blandou-Thompson, P.O. Box 8, Metlakatla, AK 99926–0008. Telephone: (907) 886–6911; Fax (907) 886–6913.

Muckleshoot Indian Tribe, Donna Starr, ICWA; 39015 172nd Avenue, SE., Auburn, WA 98092. Telephone: (253) 939–3311; Fax: (253) 939–5311.

N

Nez Perce Tribe; ICWA, P.O. Box 365, Lapwai, ID 83540. Telephone: (208) 843–2463; Fax: (202) 843–7137.

Nisqually Indian Community, Jim Phonias, ICWA 4820 She-Nah-Num Drive, SE., Olympia, WA 98513. Telephone: (360) 456–5221; Fax: (360) 407–0318.

Nooksack Indian Tribe of Washington, Bobbie Hillaire, ICWA, P.O. Box 648, Everson, WA 98247. Telephone: (360) 592–5176; Fax: (360) 592–2125.

Northwestern Band of Shoshoni Nation, ICWA, 427 North Main, Suite 101, Pocatello, ID 83204–3016. Telephone: (208) 478–5712, Fax (208) 478–5713.

P

Port Gamble Indian Community, Vickie Doyle, ICWA, 31912 Little Boston Road, NE., Kingston, WA 98346. Telephone: (360) 297–7623; Fax: (360) 297–4452.

Puyallup Tribe, Sandy Reyes, ICWA, 2002 East 28th Street, Tacoma, WA 98404. Telephone: (253) 573–7827; Fax: (253) 272–9514.

Q

Quileute Tribal Council, Margret Ward, P.O. Box 279, LaPush, WA 98350–0279. Telephone: (360) 374–4325; Fax: (360) 374–6311.

Quinault Indian Nation Business Committee, Clara Hall, P.O. Box 189, Taholah, WA 98587–0189. Telephone: (360) 276–8211 Ext. 240; Fax: (360) 267–6778.

S

Samish Indian Tribe of Washington, Chairman, P.O. Box 217, Anacortes, WA 98221. Telephone: (360) 293–6404; Fax: (360) 299–0790.

Sauk-Suiattle Indian Tribe of Washington, Dana Trailor, ICWA, 5318 Chief Brown Lane, Darrington, WA 98241. Telephone: (360) 436–1900; Fax: (360) 436–0242.

Shoalwater Bay Tribal Council, Lorraine Anderson (Liwac), P.O. Box 130, Tokeland,

WA 98590–0130. Telephone: (360) 267–6766; Fax: (360) 267–6778.

Shoshone Bannock Tribes, ICWA, Ft. Hall Business Council, C/O Tribal Attorney, P.O. Box 306, Ft. Hall, ID 83203. Telephone: (208) 478–3700; Fax: (208) 237–0797.

Siletz Tribal Council, ICWA, Attn: Nancy McCrary, Program Manager, P.O. Box 549, Siletz, OR 97380–0549. Telephone: (541) 444–2532, Fax: (541) 444–2307.

Skokomish Tribal Council, Stacy Miller, N. 80 Tribal Center Road, Shelton, WA 98584–9748. Telephone: (360) 426–7788; Fax: (360) 877–6585.

Snoqualmie Tribe, ICWA, Attn: Marie Ramiez, MSW, P.O. Box 670, Fall City, WA 98024. Telephone: (425) 333–6551; Fax: (425) 333–6727.

Spokane Tribe of Indians, Pauline Ford, ICWA, P.O. Box 540, Wellpinit, WA 99040. Telephone: (509) 258–7502; Fax: (509) 258–7029.

Squaxin Island Tribal Council, Linda Charette, SE 70 Squaxin Lane, Shelton, WA 98584–9200. Telephone: (360) 427–9006; Fax: (360) 427–1957.

Stillaguamish Tribe of Washington, Gary Ramey, ICWA, P.O. Box 277, Arlington, WA 98223–0277. Telephone: (360) 652–7362; Fax: (360) 435–7689.

Suquamish Indian Tribe of the Port Madison Reservation, Ed Barnhart, ICWA, P.O. Box 498, Suquamish, WA 98392. Telephone: (360) 598–3311; Fax: (360) 466–5309.

Swinomish Indians, Tracy Parker, ICWA, P.O. Box 817, LaConner, WA 98256. Telephone: (360) 466–3163.

T

Tulalip Tribe, Inda Jones, ICWA, 6700 Totem Beach Road, Marysville, WA 98271. Telephone: (360) 651–3284; Fax: (360) 651–3290.

U

Upper Skagit Indian Tribe of Washington, Michelle Anderson-Kamato, ICWA, 2284 Community Plaza Way, Sedro Woolley, WA 98284. Telephone: (360) 856–4200; Fax: (360) 856–3537.

W

Warm Springs Tribal Court, Confederated Tribes of Warm Springs Reservation, Chief Judge Lola Sohappy, P.O. Box 850, Warm Springs, OR 97761. Telephone: (541) 553–3454; Fax: (541) 553–3281.

Y

Nak Nu We Sha Program, Yakama Nation, Attn: Ray E. Olney, Program Director or Delores Armour, Social Work Specialist, P.O. Box 151, Toppenish, WA 98948–0151. Telephone: (509) 865–5121, Fax (509) 865–2598.

Pacific Region

Regional Director, BIA, Federal Building, 2800 Cottage Way, Sacramento, CA 95825; Telephone: (916) 978–6000; Fax: (916) 978–6055.

Kevin Sanders, Regional Social Worker, BIA-Federal Building, 2800 Cottage Way, Sacramento, CA. 95825. Telephone: (916) 978–6048; Fax: (916) 978–6055.

A

Agua Caliente Band of Cahuilla Indians, George Robinson Jr., Social Services Director, 600 E. Tahquitz Canyon Way, Palm Springs, CA 92262. Telephone: (760) 325–3400 Ext. 1308.

Alturas Rancheria, Chairperson, P.O. Box 340, Alturas, CA 96101. Telephone: (530) 233–5571.

Auburn Rancheria, Chairperson, United Auburn Indian Community, 661 Newcastle Road, Suite 1, Newcastle, CA 95658. Telephone: (916) 663–3720.

Augustine Band of Mission Indians, Chairperson, P. O. Box 846, Coachella, CA 92236. Telephone: (760) 369–7171.

B

Barona Band of Mission Indians, Program Director, Indian Child Social Services Department, Southern Indian Health Council, Inc., 4058 Willow Rd., Alpine, CA 91903. Telephone: (619) 445–1188.

Bear River Band of Rohnerville Rancheria, Chairperson, 32 Bear River Drive, Loleta, CA 95551. Telephone: (707) 773–1900; Fax: 707–733–1972.

Benton Paiute Reservation, Joseph Salque, Tribal Administrator, 567 Yellow Jacket Road, Benton, CA 93512. Telephone: (760) 933–2321.

Berry Creek Rancheria, Ben Jimenez, ICWA Coordinator, 5 Tyme Way, Oroville, CA 95966. Telephone: (530) 534–3859.

Big Lagoon Rancheria, Pamela Leach, Director, Two Feathers Native American Family Services, 2355 Central Avenue Suite C, McKinleyville, CA 95519. Telephone: (707) 839–1933, Fax: (707) 839–1726.

Big Pine Reservation, Peggy Vega, ICWA Coordinator, Toiyabe Health Project, 52 Tusu Lane, Bishop, CA 93514. Telephone: (760) 873–8464; Fax: (760) 873–3254.

Big Sandy Rancheria, Wylena Jeff, ICWA Coordinator, P.O. Box 337, Auberry, CA 93602. Telephone: (559) 855–4003; Fax: (559) 855–4129.

Big Valley Rancheria, Pam Jack, ICWA Coordinator, 2726 Mission Rancheria Road, Lakeport,CA 95453. Telephone: (707) 263–3924; Fax: (707) 263–3977.

Bishop Reservation, Peggy Vega, ICWA Coordinator, Toiyabe Health Project, 52 Tu Su Lane, Bishop, CA 93514. Telephone: (760) 873–8464.

Blue Lake Rancheria, Chairperson, P.O. Box 428, Blue Lake, CA 95525. Telephone: (707) 668–5101.

Bridgeport Indian Colony, Peggy Vega, ICWA Coordinator, Toiyabe Health Project, 52 Tu Su Lane, Bishop, CA 93514. Telephone: (760) 873–8464.

Buena Vista Rancheria, Chairperson, 4650 Coalmine Road, Ione, CA 95640. Telephone: (209) 274–6512.

C

Cabazon Band of Mission Indians, Christina Lambert, ICWA Rep., 84–245 Indio Springs Drive, Indio, CA 92201. Telephone: (760) 342–2593.

California Valley Miwok Tribe aka Sheep Ranch Rancheria, Chairperson, 1055 Winter Court, Tracy, CA 95376. Telephone: (209) 834–0197.

Cahuilla Band of Mission Indians, Executive Director, Indian Child & Family Services, P.O. Box 2269, Temecula, CA 92590. Telephone: (909) 676–8832.

Campo Band of Mission Indians, Chairperson, 36190 Church Road, Suite 1, Campo, CA 91906. Telephone: (619) 478–9046.

Cedarville Rancheria, Chairperson, ICWA Director, 200 S. Howard Street, Alturas, CA 96101. Telephone: (530) 233–3969; Fax: (530) 233–4776.

Chicken Ranch Rancheria, Chairperson, P.O. Box 1159, Jamestown, CA 95327. Telephone: (209) 984–4806; Fax: (209) 984–5606.

Cloverdale Rancheria, Marcellena Becerra, ICWA Coordinator, 555 S. Cloverdale Blvd. Suite 1, Cloverdale, CA 95425. Telephone: (707) 894–5775; Fax: (707) 894–5727.

Cold Springs Rancheria, Jennifer Philley, ICWA Coordinator, P.O. Box 209, Tollhouse, CA 93667. Telephone: (559) 855–5043; Fax: (559) 855–4445.

Colusa Rancheria, Michele Mitchum, ICWA Coordinator, 50 Wintun Road, Suite D, Colusa, CA 95932. Telephone: (530) 458–8231.

Cortina Rancheria, Chairperson, P.O. Box 1630, Williams, CA 95987. Telephone: (530) 473–3274.

Coyote Valley Reservation, Lorraine Laiwa, ICWA Coordinator, Indian Child Preservation Program, 684 S. Orchard Ave., Ukiah, CA 95482. Telephone: (707) 485–8723.

Cuyapaipe Band of Mission Indians, Tribal Administrator, P.O. Box 2250, Alpine, CA 91903–2250. Telephone: (619) 445–6315.

D

Dry Creek Rancheria, Lorraine Laiwa, ICWA Coordinator, Indian Child and Family Preservation Program, 684 S. Orchard Ave. Ukiah, CA 95482. Telephone: (707) 485–8723.

E

Elem Indian Colony, Lorraine Laiwa, ICWA Coordinator, Indian Child and Family Preservation Program, 684 S. Orchard Ave., Ukiah, CA 95482. Telephone: (707) 485–8723.

Elk Valley Rancheria, Chairperson, P.O. Box 1042, Crescent City, CA 95531. Telephone: (707) 464–4680.

Enterprise Rancheria, Harvey Angle, Chairperson, 1940 Feather River Blvd. Suite B, Oroville, CA 95965. Telephone: (530) 532–9214; Fax: (530) 532–1768.

Ewiiaapaayp Band of Kumeyaay Indians, Tribal Administrator, P.O. Box 2250, Alpine, CA 91903–2250. Telephone: (619) 445–2621.

F

Fort Bidwell Reservation, Chairperson, P.O. Box 129, Fort Bidwell, CA 96112. Telephone: (530) 279–6310; Fax: (530) 279–2621.

Fort Independence Reservation, Peggy Vega, ICWA Coordinator, Toiyabe Health Project, 52 Tu Su Lane, Bishop, CA 93514. Telephone: (760) 873–8464.

G

Graton Rancheria, Tim Campbell, ICWA Coordinator, P.O. Box 481, Novato, CA 94948. Telephone: (707) 763–6143.

Greenville Rancheria, Janeen Pemberton, ICWA Coordinator, Greenville Health Clinic, P.O. Box 279, Greenville, CA 95947.

Telephone: (530) 284–7990; Fax: (530) 284–6612.

Grindstone Rancheria, Tribal Administrator, P.O. Box 63, Elk Creek, CA 95939. Telephone: (530) 968–5365.

Guidiville Rancheria, Chairperson, P.O. Box 339, Talmage, CA 95481. Telephone: (707) 462–3682; Fax: (707) 462–9183.

H

Hoopa Valley Tribe, Director, Social Services, ICWA Program, P.O. Box 1267, Hoopa, CA 95546. Telephone: (530) 625–4236.

Hopland Reservation, Lorraine Laiwa, ICWA Coordinator, Indian Child Preservation Program, 684 S. Orchard Ave., Ukiah, CA 95482. Telephone: (707) 485–8723.

I

Inaja & Cosmit Band of Mission Indians, ICWA Manager, Department of Operations, Indian Health Council, Inc., P.O. Box 406, Pauma Valley, CA 92061. Telephone: (760) 749–1410. Ext. 5321.

Ione Band of Miwok Indians, Chairperson, P.O. Box 1190, Ione, CA 95640. Telephone: (209) 274–6753; Fax: (209) 274–6636.

J

Jackson Rancheria, ICWA Manager, Tuolumne Indian Child & Family Services, P.O. Box 615, Tuolumne, CA 95379. Telephone: (209) 223–1935; Fax: (209) 223–5366.

Jamul Indian Village, Program Director, Indian Child Social Service Department, Southern Indian Health Council, 4058 Willows Rd., Alpine, CA 91903. Telephone: (619) 445–1188.

K

Karuk Tribe of California, Director, Social Services, ICWA Social Worker, 1519 S. Oregon Street, Yreka, CA 96097. Telephone: (530) 493–5305 or (530) 842–9228.

L

La Jolla Band of Luiseno Indians, ICWA Manager, Department of Operations, Indian Health Council, Inc., P.O. Box 406, Pauma Valley, CA 92061. Telephone: (760) 749–1410. Ext 5321.

La Posta Band of Mission Indians, Program Director, Indian Child Social Services Department, Southern Indian Health Council, 4058 Willows Rd., Alpine, CA 91903–2128. Telephone: (619) 445–1188.

Laytonville Rancheria, Deborah Sanders, ICWA Director, P.O. Box 1239, Laytonville, CA 95454. Telephone: (707) 984–6197.

Lone Pine Reservation, Chairperson, P.O. Box 747, Lone Pine, CA 93545. Telephone: (760) 876–1034.

Lower Lake Rancheria, Chairperson, 1083 Vine Street #137, Healdsburg, CA 95448. Telephone: (707) 431–1908.

Los Coyotes Band of Mission Indians, ICWA Manager, Department of Operations, Indian Health Council, Inc., P.O. Box 406, Pauma Valley, CA 92061. Telephone: (760) 749–1410 Ext. 5321.

Lytton Rancheria, Lisa Miller, ICWA Coordinator, 1250 Coddingtown Center, Suite 1. Santa Rosa, CA 95401–3515. Telephone: (707) 575–5917; Fax: (707) 575–6974.

M

Manchester-Point Arena Rancheria, Lorraine Laiwa, ICWA Coordinator, Indian Child Preservation Program, 684 S. Orchard Avenue, Ukiah, CA 95482. Telephone: (707) 485–8723.

Manzanita Band of Mission Indians, Chairperson, P.O. Box 1302, Boulevard, CA 91905. Telephone: (619) 766–4930.

Mechoopda Indian Tribe of the Chico Rancheria, Tom House, Tribal Administrator, 1907–F Mangrove Avenue, Chico, CA 95926. Telephone: (530) 899–8922; Fax: (530) 899–8517.

Mesa Grande Band of Mission Indians, ICWA Manager, Department of Operations, Indian Health Council, Inc., P.O. Box 460, Pauma Valley, CA 92061. Telephone: (760) 749–1410 Ext. 5321.

Middletown Rancheria, Lynette Funez, ICWA Coordinator, P.O. Box 1035, Middletown, CA 95461. Telephone: (707) 987–3670.

Mooretown Rancheria, Francine Mckinley, ICWA Coordinator, 1 Alverda Drive, Oroville, CA 95966. Telephone: (530) 533–3625; Fax: (530) 533–3680.

Morongo Band of Mission Indians, ICWA Representative, 11581 Potrero Road, Banning, CA 92220. Telephone: (909) 849–4697.

N

North Fork Rancheria, Elizabeth Fortune, ICWA Coordinator, P.O. Box 929, North Fork, CA 93643. Telephone: (559) 877–2461; Fax: (559) 877–2467.

P

Pala Band of Mission Indians, Robert Smith, Chairperson, P.O. Box 50, Pala, CA 92059. Telephone: (760) 742–3784.

Paskenta Band of Nomlaki Indians, Ines Crosby, ICWA Coordinator, P.O. Box 398, Orland, CA 95963. Telephone: (530) 865–3119; Fax: (530) 865–2345.

Pauma & Yuima Band of Mission Indians, ICWA Manager, Department of Operations, Indian Health Council, Inc., P.O. Box 406, Pauma Valley, CA 92061. Telephone: 760–749–1410 Ext. 5321.

Pechanga Band of Mission Indians, Mark Macarro, Spokesman, P.O. Box 1477, Temecula, CA 92593. Telephone: (909) 676–2768.

Picayune Rancheria of Chukchansi Indians, Jennifer Stanley, ICWA Coordinator, 46575 Road 417, Coarsegold, CA 93614. Telephone: (559) 683–6633.

Pinoleville Reservation, Chairperson, 367 North State Street, Suite 204, Ukiah, CA 95482. Telephone: (707) 463–1454.

Pit River Reservation, ICWA Director, 37014 Main Street, Burney, CA 96013. Telephone: (530) 335–5421 or 866–335–5530; Fax: (530) 335–3966.

Potter Valley Rancheria, Michael Holman, ICWA Coordinator, 417 D Talmage Road, Ukiah, CA 95482. Telephone: (707) 468–7494.

Q

Quartz Valley Indian Reservation, ICWA Director, P.O. Box 24, Fort Jones, CA 96032. Telephone: (530) 468–5729 or 5937; Fax: (530) 468–2491.

R

Ramona Band of Mission Indians, Executive Director, Indian Child & Family Services, P.O. Box 2269, Temecula, CA 92590. Telephone: (909) 676–8832.

Redding Rancheria, Lynn Fritz, Director, Social Services, 2000 Rancheria Road, Redding, CA 96001–5528. Telephone: (530) 225–8979.

Redwood Valley Reservation, Mary Nevarez, ICWA Coordinator, 3250 Road 1, Redwood Valley, CA 95470. Telephone: (707) 485–0361; Fax: (707) 485–5726.

Resighini Rancheria, Chairperson, P.O. Box 529, Klamath, CA 95548. Telephone: (707) 482–2431; Fax: (707) 482–3425.

Rincon Band of Mission Indians, ICWA Manager, Department of Operations, Indian Health Council, P.O. Box 406, Pauma Valley, CA 92061. Telephone: (760) 749–1410 ext. 5321.

Robinson Rancheria, Cynthia Jefferson, ICWA Coordinator, 1545 E. Highway 20, Nice, CA 95464. Telephone: (707) 275–0527.

Round Valley Reservation, Leslie Azbill, ICWA Coordinator, P.O. Box 448, Covelo, CA 95428. Telephone: (707) 983–6126; Fax: (707) 983–6128.

Rumsey Rancheria, Paula Lorenzo, Chairperson, P.O. Box 18, Brooks, CA 95606 Telephone: (530) 796–3400.

S

San Manuel Band of Mission Indians, Chairperson, P.O. Box 266, Patton, CA 92369. Telephone: (909) 864–8933.

San Pasqual Band of Diegueno Indians, ICWA Manager, Department of Operations, Indian Health Council, Inc., P.O. Box 406, Pauma Valley, CA 92061. Telephone: (760) 749–1410 Ext. 5321.

Santa Rosa Band of Mission Indians. ICWA Representative, P.O. Box 390611, Anza, CA 92539. Telephone: (909) 763–5140.

Santa Rosa Rancheria, Theresa Sam, ICWA Coordinator, P.O. Box 8, Lemoore, CA 93245–0008. Telephone: (209) 924–1278.

Santa Ynez Band of Mission Indians, ICWA Coordinator, P.O. Box 539, Santa Ynez, CA 93460. Telephone: (805) 688–7070 Ext. 20.

Santa Ysabel Band of Mission Indians, ICWA Manager, Department of Operations, Indian Health Council, Inc., P.O. Box 406, Pauma Valley, CA 92061. Telephone: (760) 749–1410 Ext. 5321.

Scotts Valley Rancheria, Sharon Warner, ICWA Coordinator, 149 N. Main Street, Suite 200, Lakeport, CA 95453. Telephone: (707) 263–4771: Fax: (707) 263–4773.

Sherwood Valley Rancheria, Lorraine Laiwa, ICWA Coordinator, Indian Child and Family Preservation Program, 684 S. Orchard Ave., Ukiah, CA 95482. Telephone: (707) 485–8723.

Shingle Springs Rancheria, Chairperson, ICWA Coordinator, P.O. Box 1340, Shingle Springs. CA 95682. Telephone: (530) 676–8010.

Smith River Rancheria, Elvira Rodriquez, ICWA Director, 250 N. Indian Road, Smith River, CA 95567–9525. Telephone: (707) 487–9255; Fax: (707) 487–0930.

Soboba Band of Luiseno Indians, Project Manager, P.O. Box 487. San Jacinto, CA 92581. Telephone: (909) 654–2765.

Stewarts Point Rancheria, Lorraine Laiwa, Indian Child and Family Preservation Program, 684 S. Orchard Ave., Ukiah, CA 95482. Telephone: (707) 485–8273.

Susanville Indian Rancheria, Chairperson, ICWA Director, P.O. Drawer U, Susanville, CA 96130. Telephone: (530) 251–5205.

Sycuan Band of Mission Indians, Program Director, Indian Child Social Services Department, Southern Indian Health Council, 4058 Willow Rd., Alpine, CA 91903–2128. Telephone: (619) 445–1188.

T

Table Bluff Reservation, Elsie McLaughlin-Feliz, Director, Social Services, 1000 Wiyot Drive, Loleta, CA 95551. Telephone: (707) 733–5055; Fax: (707) 733–5601.

Table Mountain Rancheria, Chairperson, P.O. Box 410, Friant, CA 93626–0410. Telephone: (559) 822–2587; Fax: (559) 822–2693.

Timbi-sha Shoshone Tribe, Peggy Vega, Family Services Coordinator, Toiyabe Indian Health Project, 52 Tu Su Lane, Bishop, CA 93514. Telephone: (760) 786–2374.

Torres-Martinez Desert Cahuilla Indians, ICWA Representative, P.O. Box 1160, Thermal, CA 92274. Telephone: (760) 397–0300.

Trinidad Rancheria, Chairperson, P.O. Box 630, Trinidad, CA 95570. Telephone: (707) 677–0211; Fax: (707) 677–3921.

Tule River Reservation, Louise Cornell, ICWA Director, P.O. Box 589, Porterville, CA 93258. Telephone: (559) 781–4271.

Tuolumne Rancheria, John Bergersen, ICWA Coordinator, P.O. Box 699, Tuolumne, CA 95379. Telephone: (209) 928–3475.

Twenty-Nine Palms Band of Mission Indians, Executive Director, Indian Child & Family Services, P.O. Box 2269, Temecula, CA 92590. Telephone: (909) 676–8832.

U

Upper Lake Rancheria, Angeline Arroyo, ICWA Advocate, P.O. Box 516, Upper Lake, CA 95485. Telephone: (707) 275–0737.

V

Viejas (Baron Long) Band of Mission Indians, Program Director, Indian Child Social Services Department, Southern Indian Health Council, 4058 Willow Rd., Alpine, CA 91903–2128. Telephone: (619) 445–1188.

Y

Yurok Tribe, Director, Social Services, ICWA Coordinator, 1034 Sixth Street, Eureka, CA 95501. Telephone: (707) 444–0433; Fax: (707) 444–0437.

Rocky Mountain Region

Keith Beartusk, Regional Director, 316 North 26th Street, Billings, Montana 59101. Telephone: (406) 247—7943; Fax: (406) 247–7976.

Jo Anne Birdshead, Regional Social Worker, 316 North 26th Street, Billings, Montana 59101. Telephone: (406) 247–7988; Fax: (406) 247–7566.

A

Assiniboine and Sioux Tribes of the Fort Peck Reservation of Montana, Chairman, P.O. Box 1027, Poplar, Montana 59255. Telephone: (406) 768–5155; Fax: (406) 768–5478.

B

Blackfeet Tribe of Montana, Indian Child Welfare Act (ICWA) Coordinator, P.O. Box 588, Browning, Montana 59417. Telephone: (406) 338–7806; Fax: (406) 338–7726.

C

Chippewa Cree Tribe of the Rocky Boys Reservation of Montana, Tribal Chairman, Rural Route 1, P.O. Box 544, Box Elder, Montana 59521. Telephone: (406) 395–4478; Fax: (406) 395–4497.

Crow Tribe of the Crow Reservation of Montana, Director of Tribal Social Services, P.O. Box 159, Crow Agency, Montana 59022. Telephone: (406) 638–3932/5; Fax: (406) 638–3957.

E

Eastern Shoshone Tribe of the Wind River Reservation, Chairman, P.O. Box 217, Fort Washakie, Wyoming 82514. Telephone: (307) 332–3040; Fax: (307) 332–4557.

G

Gros Ventre and Assiniboine Tribe of Fort Belknap Community Council, President, Rural Route 1, Box 66, Harlem, Montana 59526. Telephone: (406) 353–2205; Fax: (406) 353–2797.

N

Northern Arapaho Tribe of the Wind River Reservation, Chairman, P.O. Box 217, Fort Washakie, Wyoming 82514. Telephone: (406) 332–6120; Fax: (307) 332–3055.

Northern Cheyenne Tribe of the Northern Cheyenne Reservation, Director, Tribal Social Services, P.O. Box 128, Lame Deer, Montana 59043. Telephone: (406) 477–8321; Fax: (406) 477–8333.

Southern Plains Region

Mike Smith, Regional Director, 1½ mile North Highway 281, P.O. Box 368, Anadarko, OK 73005. Telephone: (405) 247–6673, Ext. 314; Fax: (405) 247–5611.

Retha Murdock, Regional Social Worker, WCD Office Complex, P.O. Box 368, Anadarko, OK 73005. Telephone: (405) 247–6673 Ext. 257; Fax: (405) 247–2895.

A

Absentee-Shawnee Tribe of Oklahoma Indians, Governor, 2025 S. Gordon Cooper Drive, Shawnee, OK 74801. Telephone: (405) 275–4030.

Alabama-Coushatta Tribe of Texas, Chairperson, Route 3, Box 640, Livingston, TX 77351. Telephone: (936) 563–4391.

Apache Tribe of Oklahoma, Chairperson, P.O. Box 1220, Anadarko, OK 73005. Telephone: (405) 247–9493.

C

Caddo Indian Tribe of Oklahoma, Chairperson, P.O. Box 487, Binger, OK 73009. Telephone: (405) 656–2344.

Cheyenne-Arapaho Tribes of Oklahoma, Chairperson, P.O. Box 38, Concho, OK 73022. Telephone: (405) 262–0345.

Citizen Potawatomi Nation, Chairperson, 1901 S. Gordon Cooper Drive, Shawnee, OK 74801. Telephone: (405) 275–3121.

Comanche Indian Tribe of Oklahoma, Chairperson, HC 32, Box 1720, Lawton, OK 73502. Telephone: (580) 492–4988.

D

Delaware Tribe of Western Oklahoma, President, P.O. Box 825, Anadarko, OK 73005. Telephone: (405) 247–2448.

F

Fort Sill Apache Tribe of Oklahoma, Chairperson, Route 2, Box 121, Apache, OK 73006. Telephone: (580) 588–2298.

I

Iowa Tribe of Kansas, Chairperson, 2340 330th Street, White Cloud, KS 66094. Telephone: (785) 595–3258.

Iowa Tribe of Oklahoma, Chairperson, Route 1, Box 721, Perkins, OK 74059. Telephone: (405) 547–2402.

K

Kaw Nation, Chairperson, Drawer 50, Kaw City, OK 74641. Telephone: (580) 269–2552.

Kickapoo Traditional Tribe of Texas, Chairperson, HC 1, Box 9700, Eagle Pass, TX 78852. Telephone: (830) 773–2105.

Kickapoo Tribe of Indians of The Kickapoo Reservation in Kansas, Chairperson, P.O. Box 271, Horton, KS 66439. Telephone: (785) 486–2131.

Kickapoo Tribe of Oklahoma, Chairperson, P.O. Box 70, McLoud, OK 74851. Telephone: (405) 964–2075.

Kiowa Indian Tribe of Oklahoma, Chairperson, P.O. Box 369, Carnegie, OK 73015, Telephone: (580) 654–2300.

O

Otoe-Missouria Tribe of Oklahoma, Chairperson, 8151 Highway 177, Red Rock, OK 74651. Telephone: (580) 723–4466.

P

Pawnee Indian Tribe of Oklahoma, President, P.O. Box 470, Pawnee, OK 74058. Telephone: (918) 762–3621.

Ponca Tribe of Indians of Oklahoma, Chairperson, 20 White Eagle Drive, Ponca City, OK 74601. Telephone: (580) 762–8104.

Prairie Band of Potawatomi Indians of Kansas, Chairperson, 16281 Q. Road, Mayetta, KS 66509. Telephone: (785) 966–2255.

S

Sac and Fox of Missouri in Kansas, Chairman, 305 N. Main Reserve, KS 66434. Telephone: (785) 742–7471.

Sac and Fox Nation of Oklahoma, Principal Chief, Route 2, Box 246, Stroud, OK 74079. Telephone: (918) 968–3526.

Tonkawa Tribe of Oklahoma, President, P.O. Box 70, Tonkawa, OK 74653. Telephone: (580) 628–2561.

Wichita and Affiliated Tribes of Oklahoma, Indian Child Welfare, Coordinator, P.O. Box 729, Anadarko, OK 73005. Telephone: (405) 247–2425.

Southwest Region

Rob Baracker, Regional Director, P.O. Box 26567 (87125), 615 First Street, NW., Albuquerque, NM 87102. Telephone: (505) 346–7105; Fax (505) 346–7530.

Stephanie Birdwell, Regional Social Worker, P.O. Box 26567 (87125), 615 First Street, NW., Albuquerque, NM 87102. Telephone: (505) 346–7105; Fax (505) 346–7530.

A

Pueblo of Acoma, Fred Vallo, Sr., Governor, P.O. Box 339, Acoma, NM 87034. Telephone: (505) 552–6604; Fax (505) 552–7204.

C

Pueblo of Cochiti, Joe Quintana, Director, P.O. Box 70, Cochiti, NM 87072. Telephone: (505) 465–2244; Fax (505) 465–1135.

I

Pueblo of Isleta, Evelyn Ankerpont, ICWA Program, Pueblo of Isleta, P.O. Box 1270, Isleta, NM 87022. Telephone: (505) 869–0422; Fax (505) 869–4236.

J

Pueblo of Jemez, Henrietta Gachupin, Social Services Program, P.O. Box 100, Jemez Pueblo, NM 87024. Telephone: (505) 834–7117; Fax (505) 834–7103.

Jicarilla Apache Nation, Patricia (Pat) Serna, Director of Mental Health & Social Services; P.O. Box 546, Dulce, NM 87528. Telephone: (505) 759–3162; Fax (505) 759–3588.

L

Pueblo of Laguna, Augustine Abeita, Social Service Director, P.O. Box 194, Laguna, NM 87026. Telephone: (505) 552–9712/9713; Fax: (505) 552–6484.

M

Mescalero Apache Tribe, Karen Moreno, Tribal Census Clerk, Mescalero Apache Tribe, P.O. Box 227, Mescalero, NM 88340. Telephone: (505) 464–4494 Ext. 209; Fax: (505) 464–9191.

N

Pueblo of Nambe, Lela Kaskalla, ICWA Coordinator, Pueblo of Nambe, Route 1, Box 117-BB, Santa Fe, NM 87501. Telephone: (505) 455–2036, Ext 18; Fax: (505) 455–2038.

P

Pueblo of Picuris, Kim Nailor, ICWA Coordinator, P.O. Box 127, Penasco, NM 87553. Telephone: (505) 587–1003/2519; Fax: (505) 587–1071.

Pueblo of Pojoaque, Carmen Chavez-Lujan, ICWA Coordinator, Route 11, Box 71, Santa Fe, NM 87501. Telephone: (505) 455–0238; Fax: (505) 455–3363.

R

Ramah Navajo School Board, Inc, Director of Social Services, P.O. Box 250, Pine Hill, NM 87357. Telephone: (505) 775–3221; Fax (505) 775–3520.

S

Pueblo of San Felipe, Jeanette Trancosa, Social Services Program, Pueblo of San Felipe, P.O. Box 4339, San Felipe Pueblo, NM 87004. Telephone: (505) 867–9740; Fax (505) 867–6166.

Pueblo of San Ildefonso, Pauline Cata, ICWA Coordinator, Route 5, Box 315-A, Santa Fe, NM 87506. Telephone: (505) 455–2273, Ext. 310; Fax: (505) 455–7351.

Pueblo of San Juan, Jackie Calabaza, ICWA Coordinator, P.O. Box 1099, San Juan Pueblo, NM 87566. Telephone: (505) 852–4400; Fax: (505) 852–4820.

Pueblo of Sandia, Marianna Kennedy; Pueblo of Sandia, P.O. Box 6008, Bernalillo, NM 87004. Telephone: (505) 771–5133; Fax (505) 867–4997.

Pueblo of Santa Ana, Virginia Ross, ICWA Program, Pueblo of Santa Ana, 2 Dove Road, Bernalillo, NM 87004. Telephone: (505) 867–3301; Fax: (505) 867–3395.

Pueblo of Santa Clara, Fidel Naranjo, ICWA Coordinator P.O. Box 580, Espanola, NM 87532. Telephone: (505) 753–0419; Fax: (505) 753–0420.

Pueblo of Santo Domingo, Doris Bailon, Director of Social Services, P.O. Box 99, Santo Domingo Pueblo, NM 87052. Telephone: (505) 465–0630; Fax (505) 465–2688.

Southern Ute Indian Tribe, Glenna Jenks and Daniel Ukestine, Social Service Program, P.O. Box 737, Ignacio, CO 81137. Telephone: (970) 563–0209; Fax (970) 563–0334.

T

Pueblo of Taos, Phyllis Dodson, Social Service Director, Ms. Linda Aspenwiad, ICWA Coordinator, P.O. Box 1846, Taos, NM 87571. Telephone: (505) 758–7824; Fax: (505) 758–3346, and (505) 758–3346; Fax: (505) 751–3345.

Pueblo of Tesuque, Jeanette Jagles, ICWA Coordinator, Route 5, Box 360-T, Santa Fe, NM 87501. Telephone: (505) 660–9508; Fax (505) 982–2331.

U

Ute Mountain Ute Tribe (Colorado & Utah), Kayla Hatch, Social Services Director, P.O. Box 309, Towaoc, CO 81334. Telephone: (970) 564–5307/5310; Fax (970) 564–5300.

Y

Ysleta del Sur Pueblo, Ignacio Rios Jr., Social Services Administrator, P.O. Box 17579-Ysleta Station, El Paso, TX 79917. Telephone: (915) 859–7913 Ext. 151, Fax (915) 859–4252.

Z

Pueblo of Zia, Gail Salas, ICWA Program, Pueblo of Zia, 135 Capital Square Drive, Zia Pueblo, NM 87053–6013. Telephone: (505) 867–3304; Fax (505) 867–3308.

Pueblo of Zuni, Keahi Souza, Director, P.O. Box 339, Zuni, NM 87327. Telephone: (505) 782–2171; Fax (505) 782–5077.

Western Region

Wayne Nordwall, Regional Director, 400 North 5th Street (85004), P.O. Box 10, Phoenix, AZ 85001. Telephone: (602) 379–6600.

Evelyn S. Roanhorse, Regional Social Worker, 400 North 5th Street (85004), P.O. Box 10, Phoenix, AZ 85001. Telephone: (602) 379–6785.

A

Ak Chin Indian Community, Attention: Richard Huff, Tribal Social Worker, 42507 West Peters & Nall, Maricopa, AZ 85239. Telephone: (520) 568–1092.

B

Battle Mountain Band Council, Chairman, 37 Mountain View Drive, # C, Battle Mountain, NV 89820. Telephone: (775) 635–2004.

C

Chemehuevi Indian Tribe, Attention: Tribal Administrator, Indian Child Welfare Program, P.O. Box 1976, Havasu Lake, CA 92363. Telephone: (760) 858–4301.

Cocopah Indian Tribe, Mr. Kermit Palmer, Tribal Administrator, County 15th and G, Somerton, AZ 85350. Telephone: (928) 627–2102.

Colorado River Indian Tribes, Chairman, Route 1, Box 23–B, Parker, AZ 85344. Telephone: (928) 669–9211.

D

Duckwater Shoshone Tribal Council, Chairman, P.O. Box 140068, Duckwater, NV 89314. Telephone: (775) 863–0227.

E

Elko Band Council, Ms. Lillian Garcia, ICWA Coordinator and Ms. Margaret Yowell, Social Worker, 511 Sunset Street, Elko, NV 89801. Telephone: (775) 738–8889.

Ely Shoshone Tribal Council, Chairperson, 16 Shoshone Circle, Ely, NV 89301. Telephone: (775) 289–3013, Fax: 775–289/3156.

F

Fallon Business Council, Chairperson, 8955 Mission Road, Fallon, NV 89406. Telephone: (775) 423–6075.

Fort McDermitt Tribal Council, Chairman, P.O. Box 457, McDermitt, NV 89421. Telephone: (775) 532–8259.

Fort McDowell Yavapai Tribe, Attention: CPS/ICWA Coordinator, Family and Community Services, P.O. Box 17779, Fountain Hills, AZ 85269. Telephone: (480) 837–5076.

Fort Mojave Indian Tribe, Attention: Social Services Director, 500 Merriman Avenue, Needles, CA 92363. Telephone: (760) 629–3745.

G

Gila River Pima-Maricopa Indian Community, Attention: Drake Lewis, Tribal Social Service Director, P.O. Box 97, Sacaton, AZ 85247. Telephone: (520) 562–3711 Ext 233.

Goshute Business Council (Nevada and Utah), Chairman, P.O. Box 6104, Ibapah, UT 84034; Telephone: (435) 234–1138.

H

Havasupai Tribe, Attention: Phyllis Jones, ICWA Coordinator, P.O. Box 10, Supai, AZ 86435. Telephone: (928) 448–2731, (928) 448–2143.

Hopi Tribe of Arizona, Attention: Linda Bronson, Hopi Guidance Center Social Services Supervisor, P.O. Box 68 Second Mesa, AZ 86043. Telephone: (928) 737–2667.

Hualápai Tribe, Attention: Emma Clark, ICWA Coordinator, P.O. Box 397, Peach Springs, AZ 86434–0397. Telephone: (928) 769–2207, Fax: (928) 763–2494.

K

Kaibab Band of Paiute Indians, Joyce Potter, Director, Social Services Program, HC65 Box 2, Fredonia, AZ 86022. Telephone: (928) 643–6010.

L

Las Vegas Paiute Tribe, Tim Strong, Director, Health and Human Services, #6 Paiute Drive, Las Vegas, NV 89106. Telephone: (702) 382–0784.

Lovelock Tribal Council, Attention: Ms. Runelda Lambert, Indian Child Welfare

Coordinator, P.O. Box 878, Lovelock, NV 89419. Telephone: (775) 273–7861.

M

Moapa Band of the Paiute Indians, Moapa Business Council, Chairman, P.O. Box 340, Moapa, NV 89025–0340. Telephone: (702) 865–2787.

P

Paiute Indian Tribe of Utah, Attention: ICWA Worker, 440 North Paiute Drive, Cedar City, UT 84720. Telephone: (435) 586–1112.

Pascua Yaqui Tribe of Arizona, Chairman, 7474 S. Camino De Oeste, Tucson, AZ 85746. Telephone: (520) 883–5000.

Pyramid Lake Paiute Tribal Council, Bonnie Akaka-Smith, Chairperson, P.O. Box 256, Nixon, NV 89424. Telephone: (775) 574–1000.

Q

Quechan Tribal Council, President, P.O. Box 1899, Yuma, AZ 85366–1899. Telephone: (760) 572–0213.

R

Reno-Sparks Indian Colony, Attention: Director of Social Services, 98 Colony Road, Reno, NV 89502. Telephone: (775) 329–5071.

S

Salt River Pima-Maricopa Indian Community, Staff Attorney's Office or Social Services Division, Child Protective Services, 10005 East Osborn Road, Scottsdale, AZ 85256. Telephone: (480) 850–8470.

San Carlos Apache Tribe, Terry Ross, Director of Tribal Social Services, P.O. Box 0, San Carlos, AZ 85550. Telephone: (928) 475–2313/2314; Fax: (928) 475–2342.

San Juan Southern Paiute Tribe, Administration Office, P.O. Box 1989, Tuba City, AZ 86045. Telephone: (928) 283–4587, Fax: (928) 283–6761.

Shoshone-Paiute Tribes of the Duck Valley Reservation (Nevada), Chairman, P.O. Box 219, Owyhee, NV 89832. Telephone: (208) 759–3100.

Skull Valley Band of Goshute Indians, Attention: ICWA Program Office, Metropolitan Plaza, Suite 110, 2480 S. Main Street, South Salt Lake City, UT 84115. Telephone: (801) 474–0535.

South Fork Band Council, Chairman, HC 30, P.O. Box B–13—Lee, Spring Creek, NV 89815. Telephone: (775) 744–4273.

Summit Lake Paiute Tribe, Chairperson, 655 Anderson Street, Winnemucca, NV 89445. Telephone: (775) 623–5151.

T

Te-Moak Tribe of Western Shoshone Indians, Chairman, 525 Sunset Street, Elko, NV 89801. Telephone: (775) 738–9251.

Tohono O'odham Nation, Attorney General, P.O. Box 1202, Sells, AZ 85634. Telephone: (520) 383–3410.

Tonto Apache Tribe, Attention: Jerry Cramm, Social Services Director, Tonto Reservation #10, Payson, AZ 85541. Telephone: (928) 474–5000, Fax: (928) 474–9125.

U

Ute Indian Tribe of the Uintah & Ouray Reservation (Utah), Attention: ICWA Worker, P.O. Box 190, Fort Duchesne, UT 84026. Telephone: (435) 722–3689.

W

Walker River Paiute Tribe, Chairman, P.O. Box 220, Schurz, NV 89427. Telephone: (775) 773–2306.

Washoe Tribe of Nevada and California (Carson Colony, Dresslerville, Woodfords, Stewart, and Washoe Community Councils), Chairman, 919 Hwy. 395 South, Gardnerville, NV 89410. Telephone: (775) 883–1446.

Wells Indian Colony Band Council, Chairman, P.O. Box 809, Wells, NV 89835. Telephone: (775) 752–3045.

White Mountain Apache Tribe, Cynthia Ethelbah, Child Welfare Administrator, Department of Social Services, P.O. Box 1870, Whiteriver, AZ 85941. Telephone: (928) 338–4164, Fax: (928) 338–1469.

Winnemucca Tribe, Chairman, P.O. Box 1370, Winnemucca, NV 89446.

Y

Yavapai-Apache Tribe, Attention: Danny Brunner, 2400 West Datsi Rd., Camp Verde, AZ 86322–8412. Telephone: (928) 567–9439 Ext. 36, Fax: (928) 567–6487.

Yavapai Prescott Indian Tribe, Attention: Alex Spence, ICWA, 530 East Merritt Avenue, Prescott, AZ 86301. Telephone: (928) 777–0532, Fax: (928) 445–7945.

Yerington Paiute Tribe, Chairman, P.O. Box 171 Campbell Lane, Yerington, NV 89447. Telephone: (775) 463–3301.

Yomba Tribe, Chairman, HC61, Box 6275, Austin, NV 89310. Telephone: (775) 964–2463.

[FR Doc. 03–30245 Filed 12–5–03; 8:45 am]

BILLING CODE 4310–4J–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

Notice of Proposed Information Collection for 1029–0115, 1029–0116 and 1029–0117

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the Office of Surface Mining Reclamation and Enforcement (OSM) is announcing that the information collection requests for 30 CFR part 773 (Requirements for permits and permit processing), part 774 (Revision; Renewal; and Transfer, Assignment, or Sale of Permit Rights), and part 778 (Permit Applications—Minimum Requirements for Legal, Financial, Compliance, and Related Information) have been forwarded to the Office of Management and Budget (OMB) for review and reauthorization. The information collection packages were previously approved and assigned clearance numbers 1029—0115 for 30 CFR part 773, 1029–0116 for 30 CFR part 774, and 1029–0117 for 30 CFR part 778. This notice describes the nature of the information collection activities and the expected burdens.

DATES: OMB has up to 60 days to approve or disapprove the information collection but may respond after 30 days. Therefore, public comments should be submitted to OMB by January 7, 2003, in order to be assured of consideration.

FOR FURTHER INFORMATION CONTACT: To request a copy of the information collection requests, explanatory information and related forms, contact John A. Trelease at (202) 208–2783, or electronically to *jtreleas@osmre.gov*.

SUPPLEMENTARY INFORMATION: The Office of Management and Budget (OMB) regulations at 5 CFR part 1320, which implement provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13), require that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities (*see* 5 CFR 1320.8(d)) OSM has submitted requests to OMB to renew its approval for the collections of information for 30 CFR part 773 (Requirements for permits and permit processing), part 774 (Revision; Renewal; and Transfer, Assignment, or Sale of Permit Rights), and part 778 (Permit Applications—Minimum Requirements for Legal, Financial, Compliance, and Related Information). OSM is requesting a 3-year term of approval for these information collection activities.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for these collections of information are listed in 30 CFR 773.3, which is 1029–0115; in 30 CFR 774.9, which is 1029–0116; and in 30 CFR 778.8, which is 1029–0117.

As required under 5 CFR 1320.8(d), a **Federal Register** notice soliciting comments on these collections of information was published on August 1, 2003 (68 FR 45275). No comments were received. This notice provides the public with an additional 30 days in which to comment on the following information collection activities:

Title: Requirements for Permits and Permit Processing, 30 CFR part 773.

OMB Control Number: 1029–0115.

Summary: The collection activities for this part ensure that the public has the opportunity to review permit applications prior to their approval, and that applicants for permanent program permits or their associates who are in violation of the Surface Mining Control and Reclamation Act do not receive surface coal mining permits pending resolution of their violations.

Bureau Form Number: None.

Frequency of Collection: Once.

Description of Respondents: Applicants for surface coal mining and reclamation permits and State governments and Indian tribes.

Total Annual Responses: 324.

Total Annual Burden Hours: 11,058.

Total Non-wage Costs: $12,040.

Title: Revisions; Renewals; and Transfer, Assignment, or Sale of Permit Rights—30 CFR part 774.

OMB Control Number: 1029–0116.

Summary: Sections 506 and 511 of Pub. L. 95–87 provide that persons seeking permit revisions, renewals, transfer, assignment, or sale of their permit rights for coal mining activities submit relevant information to the regulatory authority to allow the regulatory authority to determine whether the applicant meets the requirements for the action anticipated.

Bureau Form Number: None.

Frequency of Collection: On occasion.

Description of Respondents: Surface coal mining permit applicants and State regulatory authorities.

Total Annual Responses: 6,498.

Total Annual Burden Hours: 49,164.

Title: Permit Applications—Minimum Requirements for Legal, Financial, Compliance, and Related Information—30 CFR part 778.

OMB Control Number: 1029–0117.

Summary: Section 507(b) of Pub. L. 95–87 provides that persons conducting coal mining activities submit to the regulatory authority all relevant information regarding ownership and control of the property affected, their compliance status and history. This information is used to insure all legal, financial and compliance requirements are satisfied prior to issuance or denial of a permit.

Bureau Form Number: None.

Frequency of Collection: Once.

Description of Respondents: Surface coal mining permit applicants and State regulatory authorities.

Total Annual Responses: 301.

Total Annual Burden Hours: 6,436.

Send comments on the need for the collection of information for the performance of the functions of the agency; the accuracy of the agency's burden estimates; ways to enhance the quality, utility and clarity of the information collection; and ways to minimize the information collection burden on respondents, such as use of automated means of collection of the information, to the following address. Please refer to the appropriate OMB control number in all correspondence, 1029—0115 for part 773, 1029—0116 for part 774, and 1029—0117 for part 778.

ADDRESSES: Submit comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Department of Interior Desk Officer, by telefax at (202) 395–6566 or via e-mail to *OIRA_Docket@omb.eop.gov*. Also, please send a copy of your comments to John A. Trelease, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Ave, NW., Room 210—SIB, Washington, DC 20240, or electronically to *jtreleasa@osmre.gov*.

Dated: October 2, 2003.

Richard G. Bryson,

Chief, Division of Regulatory Support.

[FR Doc. 03–30345 Filed 12–5–03; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

Notice of Proposed Information Collection for 1029–0051 and 1029–0120

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the Office of Surface Mining Reclamation and Enforcement (OSM) is announcing its intention to request approval for the collection of information for two forms: technical training program nominations for non-Federal personnel form (OSM 105), and for 30 CFR part 840, Permanent Program Inspection and Enforcement Procedures.The collection described below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The information collection request describes the nature of the information collection and the expected burden and cost.

DATES: OMB has up to 60 days to approve or disapprove the information collection but may respond after 30 days. Therefore, public comments should be submitted to OMB by January 7, 2003, in order to be assured of consideration.

FOR FURTHER INFORMATION CONTACT: To request a copy of the information collection request, explanatory information and related form, contact John A. Trelease at (202) 208–2783, or electronically to *jtreleas@osmre.gov*.

SUPPLEMENTARY INFORMATION: The Office of Management and Budget (OMB) regulations at 5 CFR 1320, which implement provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13), require that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities (*see* 5 CFR 1320.8(d)). OSM has submitted requests to OMB to approve the collection of information for: (1) 30 CFR part 840, Permanent Program Inspection and Enforcement Procedures (OMB control number 1029–0051); and (2) OSM Technical Training Program's Nominations for Non-Federal Personnel Form (OSM 105) (OMB control number 1029–0120). OSM is requesting a 3-year term of approval for this information collection activity.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for these collections of information are found in 840.10 for the inspection and enforcement procedures, and are located on the Training form OSM 105.

As required under 5 CFR 1320.8(d), a **Federal Register** notice soliciting comments on these collections of information was published on August 27, 2003 (68 FR 51592). No comments were received. This notice provides the public with an additional 30 days in which to comment on the following information collection activities:

Title: Permanent Program Inspection and Enforcement Procedures, 30 CFR part 840.

OMB Control Number: 1029–0051.

Abstract: This provision requires the regulatory authority to conduct periodic inspections of coal mining activities, and prepare and maintain inspection reports for public review. This information is necessary to meet the requirements of the Surface Mining Control and Reclamation Act of 1977 and its public participation provisions. Public review assures the public that the State is meeting the requirements for the Act and approved State regulatory program.

Bureau Form Number: None.

Frequency of Collection: Once, monthly, quarterly, and annually.

Description of Respondents: State Regulatory Authorities.

Total Annual Responses: 86,599.

Total Annual Burden Hours: 503,549.

Total Non-wage Costs: $1,000.

Title: Technical Training Program's Nomination for Non-Federal Personnel Form.

OMB Control Number: 1029–0120.

Summary: The information is used to identify and evaluate the training courses requested by students to enhance their job performance, to calculate the number of classes and instructors needed to complete OSM's technical training mission, and to estimate costs to the training program.

Bureau Form Numbers: OSM 105.

Frequency of Collection: Once.

Description of Respondents: State and Tribal regulatory and reclamation employees and industry personnel.

Total Annual Responses: 900.

Total Annual Burden Hours: 105 hours.

Send comments on the need for the collection of information for the performance of the functions of the agency; the accuracy of the agency's burden estimates; ways to enhance the quality, utility and clarity of the information collection; and ways to minimize the information collection burden on respondents, such as use of automated means of collection of the information, to the following address. Please refer to the appropriate OMB control numbers in all correspondence.

ADDRESSES: Submit comments to the Office of Information and Regulatory Affairs; Office of Managmenet and Budget, Attention: Department of Interior Desk Officer, by telefax at (202) 395–6566 or via e-mail to *OIRA_Docket@omb.eop.gov*. Also, please send a copy of your comments to John A. Trelease, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Ave, NW., Room 210–SIB, Washington, DC 20240, or electronically to *jtrelease@osmre.gov*.

Dated: November 4, 2003.

Sarah E. Donnelly,

Acting Chief, Division of Regulatory Support.

[FR Doc. 03–30346 Filed 12–5–03; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF LABOR

Employment Standards Administration

Proposed Collection; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment Standards Administration is soliciting comments concerning the proposed collection: Office of Federal Contract Compliance Programs Recordkeeping and Reporting Requirements, Construction. A copy of the proposed information collection request can be obtained by contacting the office listed below in the **ADDRESSES** section of this Notice.

DATES: Written comments must be submitted to the office listed in the **ADDRESSES** section below on or before February 6, 2004.

ADDRESSES: Ms. Hazel M. Bell, U.S. Department of Labor, 200 Constitution Ave., NW., Room S–3201, Washington, DC 20210, telephone (202) 693–0418, fax (202) 693–1451, *E-mail bell.hazel@dol.gov*. Please use only one method of transmission for comments (mail, fax, or E-mail).

SUPPLEMENTARY INFORMATION:

I. Background: The Office of Federal Contract Compliance Programs (OFCCP) is responsible for the administration of three equal opportunity programs, which prohibit employment discrimination and require affirmative action by Federal contractors and subcontractors. The Acts administered by the OFCCP are Executive Order 11246, as amended Section 503 of the Rehabilitation Act, as amended, and the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended (VEVRAA), 38 U.S.C. 4212. The OFCCP has promulgated regulations implementing these programs, which are found at Title 41 of the Code of Federal Regulations, Chapter 60. For purposes of this clearance request, the programs have been divided functionally into two categories, construction and supply service. This information collection request covers the recordkeeping and reporting requirements for the functional aspects of the program involving construction. A separate information collection request covers the recordkeeping and reporting requirements for functional aspects of the program involving supply and service, and is approved under OMB 1215–0072. This information collection is currently approved for use through December 31, 2003.

II. Review Focus: The Department of Labor is particularly interested in comments which:

- evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- enhance the quality, utility and clarity of the information to be collected; and
- minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

III. Current Actions: The Department of Labor seeks the extension of approval to collect this information in order to carry out its responsibility to enforce the affirmative action and anti-discrimination provisions of the three Acts, which it administers. OFCCP is conducting an internal assessment of the burden hours reported in this information collection request. OFCCP intends to publish the internal study for public comment in seeking a three-year approval on this information collection request. OFCCP is currently seeking a six-month authorization, which will provide sufficient time to complete the internal study.

Type of Review: Extension.

Agency: Employment Standards Administration.

Title: OFCCP Recordkeeping and Reporting Requirements, Construction.

OMB Number: 1215–0163.

Agency Number:

Affected Public: Business or other for-profit, not-for-profit institutions.

Total Respondents: 100,000.

Total Annual responses: 100,000.

Average Time per Response, Recordkeeping: 48 hours.

Records Maintenance: 8 to 24 hours.

Affirmative Action Plan, Initial Development: 18 hours.

Affirmative Action Plan, Annual Update: 7.5 hours.

Affirmative Action Plan, Maintenance: 7.5 hours.

Compliance Reviews: 1–2 hours.

Total Burden Hours, Recordkeeping and Reporting: 4,841,468.

Frequency: Annually.

Total Burden Cost (capital/startup): $8,217.

Total Burden Cost (operating/maintenance): $0.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: December 2, 2003.

Bruce Bohanon,

Chief, Branch of Management Review and Internal Control, Division of Financial Management, Office of Management, Administration and Planning, Employment Standards Administration.

[FR Doc. 03–30367 Filed 12–5–03; 8:45 am]

BILLING CODE 4510–CM–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. NRTL4–93]

Underwriters Laboratories Inc., Expansion of Recognition

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Notice.

SUMMARY: This notice announces the Agency's final decision to approve an expansion of its recognition of Underwriters Laboratories Inc. (UL) as a Nationally Recognized Testing Laboratory (NRTL) to include an additional 19 test standards.

DATES: This recognition becomes effective on December 8, 2003 and, unless modified in accordance with 29 CFR 1910.7, continues in effect while UL remains recognized by OSHA as an NRTL.

FOR FURTHER INFORMATION CONTACT: Bernard Pasquet or Roy Resnick, Office of Technical Programs and Coordination Activities, NRTL Program, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N3653, Washington, DC 20210, or phone (202) 693–2110.

SUPPLEMENTARY INFORMATION:

Notice of Final Decision

The Occupational Safety and Health Administration (OSHA) hereby gives notice of the expansion of recognition of Underwriters Laboratories Inc. (UL) as a Nationally Recognized Testing Laboratory (NRTL). UL's expansion covers the use of additional test standards. OSHA's current scope of recognition for UL may be found in the following informational Web page: *http://www.osha-slc.gov/dts/otpca/nrtl/ul.html*.

OSHA recognition of an NRTL signifies that the organization has met the legal requirements in Section 1910.7 of Title 29, Code of Federal Regulations (29 CFR 1910.7). Recognition is an acknowledgment that the organization can perform independent safety testing and certification of the specific products covered within its scope of recognition and is not a delegation or grant of government authority. As a result of recognition, employers may use products "properly certified" by the NRTL to meet OSHA standards that require testing and certification.

The Agency processes applications by an NRTL for initial recognition or for expansion or renewal of this recognition following requirements in Appendix A to 29 CFR 1910.7. This appendix requires that the Agency publish two notices in the **Federal Register** in processing an application. In the first notice, OSHA announces the application and provides its preliminary finding and, in the second notice, the Agency provides its final decision on the application. These notices set forth the NRTL's scope of recognition or modifications of that scope.

UL submitted an application, dated November 18, 2002 (see Exhibit 30), to expand its recognition to use 41 additional test standards. The NRTL Program staff determined that 10 of the 41 test standards cannot be included in the expansion because they are not "appropriate test standards," within the meaning of 29 CFR 1910.7(c), while an additional twelve are already included in UL's scope. The staff makes similar determinations in processing expansion requests from any NRTL. Therefore, OSHA approves 19 test standards for the expansion, which are listed below.

In connection with UL's expansion request, OSHA did not perform an on-site review (evaluation) of UL. However, an OSHA NRTL Program assessor reviewed information pertinent to this request and recommended that UL be granted the expansion (see Exhibit 31).

OSHA published the notice of its preliminary findings on the expansion request in the **Federal Register** on October 14, 2003 (68 FR 59209). The notice requested submission of any public comments by October 29, 2003. OSHA did not receive any comments pertaining to the application.

The previous notice published by OSHA for UL's recognition covered another expansion of recognition, which became effective on March 25, 2003 (68 FR 14432).

You may obtain or review copies of all public documents pertaining to the UL application by contacting the Docket Office, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N2625, Washington, D.C. 20210. You should refer to Docket No. NRTL4–93, the permanent record of public information on UL's recognition.

The current addresses of the UL facilities already recognized by OSHA are:

Underwriters Laboratories Inc., 333 Pfingsten Road, Northbrook, Illinois 60062;

Underwriters Laboratories Inc., 1285 Walt Whitman Road, Melville, Long Island, New York 11747;

Underwriters Laboratories Inc., 1655 Scott Boulevard, Santa Clara, California 95050;

Underwriters Laboratories Inc., 12 Laboratory Drive, P.O. Box 13995, Research Triangle Park, North Carolina 27709;

Underwriters Laboratories Inc., 2600 N W. Lake Road, Camas, Washington 98607;

UL International Limited, Veristrong Industrial Centre, Block B, 14th Floor, 34 Au Pui Wan Street, Fo Tan Sha Tin, New Territories, Hong Kong;

UL International Services, Ltd., Taiwan Branch, 4th Floor, 260 Da-Yeh Road, Pei Tou District, Taipei City, Taiwan;

UL International Demko A/S, Lyskaer 8, P.O. Box 514, DK–2730, Herlev, Denmark;

Underwriters Laboratory International (U.K.) Ltd., Wonersh House, The Guildway, Old Portsmouth Road, Guildford, Surrey GU3 1LR, United Kingdom;

Underwriters Laboratory International Italia S.r.l., Via Archimede 42, 1–20041 Agrate Brianza, Milan, Italy Testing facility: Z.I. Predda Niedda St. 18, I–07100, Sassari, Italy;

Underwriters Laboratories of Canada, 7 Crouse Road, Scarborough, Ontario, Canada MIR 3A9;

UL Japan Co., Ltd., Shimbashi Ekimae Bldg.—1 Gohkan, 4th floor, Room 402, 2–20–15 Shimbashi Minato Ku. Tokyo 105–0004, Japan;

UL Korea, Ltd., #805, Manhattan Building 36–2, Yeoui-dong, Yeoungdeungpo-gu, Seoul 150–010, Korea;

UL International Germany GmbH, Frankfurter Strasse 229, D–63263 Neu-Isenburg, Germany;

UL International (Netherlands) B.V., Landjuweel 52, NL–3905 PH Veenendaal, Netherlands.

Final Decision and Order

The NRTL Program staff has examined the application, the assessor's recommendation, and other pertinent information. Based upon this examination and the recommendation,

OSHA finds that Underwriters Laboratories Inc. has met the requirements of 29 CFR 1910.7 for expansion of its recognition to include an additional 19 test standards. Pursuant to the authority in 29 CFR 1910.7, OSHA hereby expands the recognition of UL.

Expansion for Additional Standards

OSHA limits the expansion to testing and certification of products for demonstration of conformance to the following 19 test standards, and OSHA has determined the standards are appropriate within the meaning of 29 CFR 1910.7(c).

UL 441 Standard for Gas Vents
UL 508A Industrial Control Panels
UL 515 Electrical Resistance Heat Tracing for Commercial and Industrial Applications
UL 568 Nonmetallic Cable Tray Systems
UL 943B Appliance Leakage-Current Interrupters
UL 1004A Fire Pump Motors
UL 1285 Pipe and Couplings, Polyvinyl Chloride (PVC) for Underground Fire Service
UL 1713 Pressure Pipe and Coupling, Glass Fiber-Reinforced, for Underground Fire Service
UL 2129 Standard for Safety for Halocarbon Clean Agent Fire Extinguishers
UL 2305 Exhibition Display Units, Fabrication and Installation
UL 2351 Spray Nozzles for Fire-Protection Service
UL 2388 Flexible Lighting Products
UL 3111–2–31 Hand-Held Probe Assemblies for Electrical Measurement and Test
UL 60335–2–8 Household and Similar Electrical Appliances, Part 2: Particular Requirements for Electric Shavers, Hair Clippers, and Similar Appliances
UL 61010A–2–010 Electrical Equipment for Laboratory Use; Part 2: Particular Requirements for Laboratory Equipment for the Heating of Materials
UL 61010A–2–041 Electrical Equipment for Laboratory Use; Part 2: Particular Requirements for Autoclaves Using Steam for the Treatment of Medical Materials for Laboratory Processes
UL 61010A–2–042 Electrical Equipment for Laboratory Use; Part 2: Particular Requirements for Autoclaves and Sterilizers Using Toxic Gas for the Treatment of Medical Materials, and for Laboratory Processes
UL 61010A–2–051 Electrical Equipment for Laboratory Use; Part 2: Particular Requirements for Laboratory Equipment Mixing and Stirring
UL 61010A–2–061 Electrical Equipment for Laboratory Use; Part 2: Particular Requirements for Laboratory Atomic Spectrometers with Thermal Atomization and Ionization

OSHA's recognition of UL, or any NRTL, for a particular test standard is limited to equipment or materials (*i.e.*, products) for which OSHA standards require third party testing and certification before use in the workplace. Consequently, any NRTL's scope of recognition excludes any product(s) that fall within the scope of a test standard, but for which OSHA standards do not require NRTL testing and certification.

Many of the UL test standards listed above also are approved as American National Standards by the American National Standards Institute (ANSI). However, for convenience, we use the designation of the standards developing organization for the standard as opposed to the ANSI designation. Under our procedures, any NRTL recognized for an ANSI-approved test standard may use either the latest proprietary version of the test standard or the latest ANSI version of that standard. You may contact ANSI to find out whether or not a test standard is currently ANSI-approved.

Conditions

Underwriters Laboratories Inc. must also abide by the following conditions of the recognition, in addition to those already required by 29 CFR 1910.7:

OSHA must be allowed access to the UL facilities and records for purposes of ascertaining continuing compliance with the terms of its recognition and to investigate as OSHA deems necessary;

If UL has reason to doubt the efficacy of any test standard it is using under this program, it must promptly inform the organization that developed the test standard of this fact and provide that organization with appropriate relevant information upon which its concerns are based;

UL must not engage in or permit others to engage in any misrepresentation of the scope or conditions of its recognition. As part of this condition, UL agrees that it will allow no representation that it is either a recognized or an accredited Nationally Recognized Testing Laboratory (NRTL) without clearly indicating the specific equipment or material to which this recognition is tied, or that its recognition is limited to certain products;

UL must inform OSHA as soon as possible, in writing, of any change of ownership, facilities, or key personnel, and of any major changes in its operations as an NRTL, including details;

UL will continue to meet all the terms of its recognition and will always comply with all OSHA policies pertaining to this recognition; and

UL will continue to meet the [illegible] requirements for recognition in all areas where it has been recognized.

Signed at Washington, DC this 24th day of November, 2003.

John L. Henshaw,

Assistant Secretary.

[FR Doc. 03–30368 Filed 12–5–03; 8:45 am]

BILLING CODE 4510–26–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Records Schedules; Availability and Request for Comments

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Once approved by NARA, records schedules provide mandatory instructions on what happens to records when no longer needed for current Government business. They authorize the preservation of records of continuing value in the National Archives of the United States and the destruction, after a specified period, of records lacking administrative, legal, research, or other value. Notice is published for records schedules in which agencies propose to destroy records not previously authorized for disposal or reduce the retention period of records already authorized for disposal. NARA invites public comments on such records schedules, as required by 44 U.S.C. 3303a(a).

DATES: Requests for copies must be received in writing on or before January 22, 2004. Once the appraisal of the records is completed, NARA will send a copy of the schedule. NARA staff usually prepare appraisal memorandums that contain additional information concerning the records covered by a proposed schedule. These, too, may be requested and will be provided once the appraisal is completed. Requesters will be given 30 days to submit comments.

ADDRESSES: To request a copy of any records schedule identified in this notice, write to the Life Cycle Management Division (NWML), National Archives and Records Administration (NARA), 8601 Adelphi Road, College Park, MD 20740–6001. Requests also may be transmitted by FAX to 301–837–3698 or by e-mail to *records.mgt@nara.gov*. Requesters must cite the control number, which appears in parentheses after the name of the agency which submitted the schedule, and must provide a mailing address. Those who desire appraisal reports should so indicate in their request.

FOR FURTHER INFORMATION CONTACT: Paul M. Wester, Jr., Director, Life Cycle Management Division (NWML), National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740–6001. Telephone: 301–837–3120. E-mail: *records.mgt@nara.gov*.

SUPPLEMENTARY INFORMATION: Each year Federal agencies create billions of records on paper, film, magnetic tape, and other media. To control this accumulation, agency records managers prepare schedules proposing retention periods for records and submit these schedules for NARA's approval, using the Standard Form (SF) 115, Request for Records Disposition Authority. These schedules provide for the timely transfer into the National Archives of historically valuable records and authorize the disposal of all other records after the agency no longer needs them to conduct its business. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. Most schedules, however, cover records of only one office or program or a few series of records. Many of these update previously approved schedules, and some include records proposed as permanent.

No Federal records are authorized for destruction without the approval of the Archivist of the United States. This approval is granted only after a thorough consideration of their administrative use by the agency of origin, the rights of the Government and of private persons directly affected by the Government's activities, and whether or not they have historical or other value.

Besides identifying the Federal agencies and any subdivisions requesting disposition authority, this public notice lists the organizational unit(s) accumulating the records or indicates agency-wide applicability in the case of schedules that cover records that may be accumulated throughout an agency. This notice provides the control number assigned to each schedule, the total number of schedule items, and the number of temporary items (the records proposed for destruction). It also includes a brief description of the temporary records. The records schedule itself contains a full description of the records at the file unit level as well as their disposition. If NARA staff has prepared an appraisal memorandum for the schedule, it too includes information about the records. Further information about the disposition process is available on request.

Schedules Pending:

1. Department of the Army, Agency-wide (N1-AU–03–19, 7 items, 4 temporary items). Counterdrug support program records accumulated in offices responsible for providing input to the program. Included are such records as input to Governors' state plans, copies of approved plans, correspondence, and records relating to personnel matters. Also included are electronic copies of documents created using electronic mail and word processing. Proposed for permanent retention are recordkeeping copies of files relating to counterdrug planning and operations accumulated in the offices having primary responsibility for administering the counterdrug support program.

2. Department of Health and Human Services, National Institutes of Health (N1–443–03–1, 4 items, 4 temporary items). Paper and electronic records relating to funded and unfunded grant awards, including applications, review actions, notices, reports, financial records, closeout documents, and data used for tracking purposes. Also included are electronic copies of records created using electronic mail and word processing. Paper versions of these records were previously approved for disposal.

3. Department of Justice, Professional Responsibility Advisory Office (N1–60–04–1, 3 items, 3 temporary items). Case files relating to requests from attorneys for advice regarding matters of professional responsibility. Included are such records as attorney notes, inquiry summary sheets, assignment sheets, and research notes. Also included are electronic copies of records created using electronic mail and word processing.

4. Department of Justice, Executive Office for U.S. Trustees (N1–60–04–2, 3 items, 3 temporary items). Oversight files used to monitor and evaluate the performance of local U.S. Trustees. Included are such records as performance reviews, budgets, and monthly reports. Also included are electronic copies of records created using electronic mail and word processing.

5. Department of Justice, Bureau of Alcohol, Tobacco, Firearms, and Explosives (N1–436–03–2, 6 items, 6 temporary items). Inputs, outputs, system documentation, and master files associated with the Consolidated Gang Database System, an electronic system which is used to track gang members, gang-related vehicles and weapons, and gang activity. Also included are electronic copies of documents created using electronic mail and word processing.

6. Department of Labor, Bureau of Labor Statistics (N1–257–04–1, 10 items, 10 temporary items). Records relating to surveys, including such files as textual and electronic questionnaires, electronic spreadsheets and databases containing survey results, and administrative records. Also included are electronic copies of records created using electronic mail and word processing.

7. Department of the Treasury, U.S. Mint (N1–104–03–13, 4 items, 4 temporary items). Inputs, outputs, master files, and system documentation associated with the Marketing and Customer Information Clearinghouse, an electronic system which contains transactional data on Mint customers for marketing purposes.

8. Department of the Treasury, U.S. Mint (N1–104–03–07, 4 items, 4 temporary items). Inputs, outputs, master files, and system documentation associated with the Unemployment Compensation Processing System, an electronic system which is used to process unemployment compensation claims. Also included are electronic copies of records created using electronic mail and word processing.

9. Environmental Protection Agency, Office of Environmental Information (N1–412–03–16, 3 items, 3 temporary items). Software programs, master files, and system documentation associated with the Facility Registry System, an electronic system which contains a list of identification numbers that have been assigned to Federal and non-Federal facilities subject to environmental regulations or of environmental interest, along with addresses and names of these facilities.

10. Federal Election Commission, Office of Alternative Dispute Resolution (N1–339–03–2, 4 items, 3 temporary items). Copies of records relating to negotiated and mediated settlements, including electronic copies of records created using electronic mail and word processing. Recordkeeping copies of these files are proposed for permanent retention.

11. National Aeronautics and Space Administration, Columbia Accident Investigation Board (N1–255–04–1, 16 items, 7 temporary items). Paper copies of meeting minutes, presentations, and public mail that have been scanned,

financial records, working files and notes relating to the preparation of the Board's final report and its related appendixes, and records relating to the Board's Web site, including web content records. Also included are electronic copies of records created using electronic mail and word processing. Proposed for permanent retention are such records as electronic recordkeeping copies of approximately 80,000 documents that were gathered during the accident investigation, a database containing minutes of Board meetings, audiovisual and paper records that document the Board's Congressional and public liaison activities, privileged witness testimonies, and the Board's final report and related appendixes. Also proposed for permanent retention are electronic mail messages that were received by the Board from the public as well as scanned images of public comments that were submitted in paper form.

12. National Archives and Records Administration, Agency-wide (N1–64–04–2, 7 items, 6 temporary items). Special project records relating to the Electronic Records Management Initiative. Included are records relating to developing guidance and procedures for agencies to use in electronic records management, project management files, and administrative records. Also included are electronic copies of records created using electronic mail and word processing. Proposed for permanent retention are recordkeeping copies of files accumulated by the agency as Government-wide managing partner in efforts to provide tools needed by Federal agencies to manage their electronic records.

Dated: November 28, 2003.

Michael J. Kurtz,

Assistant Archivist for Record Services—Washington, DC.

[FR Doc. 03–30342 Filed 12–5–03; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL COMMISSION ON TERRORIST ATTACKS UPON THE UNITED STATES

Public Hearing

ACTION: Notice of public hearing.

SUMMARY: The National Commission on Terrorist Attacks Upon the United States will hold its sixth public hearing on December 8, 2003, in Washington, DC. Witnesses will speak about issues related to domestic intelligence collection, protecting privacy while preventing terrorism, and the use of immigration laws to combat terrorism. Representatives of the media should register in advance of the hearing by visiting the Commission's Web site at *http://www.9-11commission.gov*. Seating for the general public will be on a first-come, first-served basis. Press availability will occur at the conclusion of the hearing.

DATES: December 8, 2003, 9 a.m. to 4 p.m. Press availability to follow.

LOCATION: Russell Senate Office Building, Room 253, Washington, DC, 20510.

FOR FURTHER INFORMATION CONTACT: Al Felzenberg, (202) 401–1725 (office) or (202) 236–4878 (cellular).

SUPPLEMENTARY INFORMATION: Please refer to Public Law 107–306 (November 27, 2002), title VI (Legislation creating the Commission), and the Commission's Web site: *http://www.9-11commission.gov*.

Dated: December 2, 2003.

Philip Zelikow,

Executive Director.

[FR Doc. 03–30332 Filed 12–5–03; 8:45 am]

BILLING CODE 4800–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–369 and 50–370]

Duke Energy Corporation; Notice of Withdrawal of Application for Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (NRC, the Commission) has granted the request of Duke Energy Corporation (the licensee) to withdraw its February 27, 2003, application for proposed amendment to Facility Operating License No. NPF–9 and NPF–17 for the McGuire Nuclear Station, Units 1 and 2, located in Mecklenburg County, North Carolina.

The proposed amendment would have revised the Technical Specifications to allow the use of four mixed oxide (MOX) fuel lead test (LTA) assemblies at either of the Catawba Nuclear Station, Units 1 and 2, (Catawba) or the McGuire Nuclear Station, Units 1 and 2.

The Commission had previously issued a Notice of Consideration of Issuance of Amendment published in the **Federal Register** on July 25, 2003 (68 FR 44107). However, by letter dated September 23, 2003, the licensee amended the application to apply only to the use of MOX LTAs at the Catawba units and not to the McGuire units. The NRC staff is treating this as a withdrawal of application for amendment dated February 27, 2003, for McGuire.

For further details with respect to this action, see the application for amendment dated February 27, 2003, and the licensee's letter dated September 23, 2003, which is being treated as a withdrawal of application for amendment. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management Systems (ADAMS) Public Electronic Reading Room on the internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams/html*. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff by telephone at 1–800–397–4209, or 301–415–4737 or by email to *pdr@nrc.gov*.

Dated at Rockville, Maryland this 2nd day of December 2003.

For the Nuclear Regulatory Commission.

Robert E. Martin,

Senior Project Manager, Section 1, Project Directorate II, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 03–30359 Filed 12–5–03; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–286]

Entergy Nuclear Operations, Inc., Indian Point Nuclear Generating Unit No. 3; Exemption

1.0 Background

Entergy Nuclear Operations, Inc. (Entergy, the licensee) is the holder of Facility Operating License No. DPR–64 which authorizes operation of the Indian Point Nuclear Generating Unit No. 3 (IP3). The license provides, among other things, that the facility is subject to all rules, regulations, and orders of the Nuclear Regulatory Commission (NRC, the Commission) now or hereafter in effect.

The facility consists of a pressurized-water reactor located in Westchester County in the State of New York.

2.0 Request/Action

Title 10 of the Code of Federal Regulations (10 CFR), part 50, requires that reactor coolant system (RCS) pressure-temperature (P–T) limits be established for reactor pressure vessels (RPVs) during normal operating and hydrostatic or leak rate testing conditions. Specifically, Appendix G to 10 CFR part 50 states that "[t]he appropriate requirements on both the pressure-temperature limits and the minimum permissible temperature must be met for all conditions." Furthermore, Appendix G to 10 CFR part 50 specifies that the requirements for these limits are based on the application of evaluation procedures given in Appendix G to Section XI of the American Society of Mechanical Engineers Boiler and Pressure Vessel Code (ASME Code). Appendix G to 10 CFR part 50 also specifies that the Editions and Addenda of the ASME Code which are incorporated by reference in 10 CFR 50.55a apply to the requirements in Appendix G to 10 CFR part 50. In the 2003 Edition of 10 CFR, the NRC endorsed Editions and Addenda of the ASME Code through the 1998 Edition and 2000 Addenda. However, Entergy has currently incorporated the 1989 Edition of the ASME Code into the IP3 licensing basis for defining the ASME Code requirements which apply to the facility's ASME Code, Section XI program. Hence, with respect to the statements from Appendix G to 10 CFR part 50 referenced above, it is the 1989 Edition of Appendix G to Section XI of the ASME Code which continues to apply to IP3. Finally, 10 CFR 50.60(b) states that, "[p]roposed alternatives to the described requirements in [Appendix G] of this part or portions thereof may be used when an exemption is granted by the Commission under [10 CFR 50.12]."

Entergy has requested, in a separate submittal dated May 28, 2003, an amendment to the IP3 Technical Specification (TS) P–T limit curves. In order to address the provisions of this amendment, Entergy has also requested that the staff exempt IP3 from the application of specific requirements of Appendix G to 10 CFR part 50, and substitute the use of ASME Code Case N–640. ASME Code Case N–640 permits the use of an alternate reference fracture toughness curve for RPV materials when determining P–T limits. The proposed exemption request is consistent with, and is needed to support, the proposed IP3 TS amendment that was provided in the separate submittal. The proposed IP3 TS amendment will revise the P–T limits for heatup, cooldown, and inservice test limitations for the reactor coolant system (RCS) through 20 effective full-power years of operation.

Code Case N–640

The requested exemption would allow use of ASME Code Case N–640 in conjunction with Appendix G to Section XI of the ASME Code, 10 CFR 50.60(a), and Appendix G to 10 CFR part 50 to establish P–T limits for the IP3 RPV.

The licensee's proposed TS amendment to revise the P–T limits for IP3 relies, in part, on the requested exemption. These revised P–T limits have been developed using the lower bound K_{IC} fracture toughness curve given in Appendix A to Section XI of the ASME Code, Figure A–2200–1, in lieu of the lower bound K_{IA} fracture toughness curve given in Appendix G to Section XI of the ASME Code, Figure G–2210–1, as the basis fracture toughness curve for defining the IP3 P–T limits. All other margins involved with the ASME Code, Section XI, Appendix G process of determining P–T limit curves remain unchanged.

Use of the K_{IC} curve as the basis fracture toughness curve for the development of P–T operating limits is technically correct. The K_{IC} curve appropriately implements the use of a relationship based on static initiation fracture toughness behavior to evaluate the controlled heatup and cooldown process of an RPV, whereas the K_{IA} fracture toughness curve, as given in Appendix G to Section XI of the ASME Code, was developed from more conservative crack arrest and dynamic fracture toughness test data. The application of the K_{IA} fracture toughness curve was initially codified in Appendix G to Section XI of the ASME Code in 1974 to provide a conservative representation of RPV material fracture toughness. This initial conservatism was necessary due to the limited knowledge of RPV material behavior in 1974. Since that time, however, additional knowledge about RPV materials has been gained, which demonstrates that the lower bound on fracture toughness, provided by the K_{IA} fracture toughness curve, is well beyond the margin of safety required to protect the public health and safety from potential RPV failure.

In addition, P-T limit curves based on the K_{IC} fracture toughness curve will enhance overall plant safety by opening the P-T operating window with the greatest safety benefit in the region of low temperature operations. The operating window through which the operator heats up and cools down the RCS is determined by the difference between the maximum allowable pressure, determined by Appendix G to Section XI of the ASME Code, and the minimum required pressure for the reactor coolant pump (RCP) seals adjusted for instrument uncertainties. A narrow operating window could potentially have an adverse safety impact by increasing the possibility of inadvertent overpressure protection system (OPPS) actuation due to pressure surges associated with normal plant evolutions such as RCS pump starts and swapping operating charging pumps with the RCS in a water-solid condition.

Since application of ASME Code Case N–640 provides appropriate procedures to establish maximum postulated defects and to evaluate those defects in the context of establishing RPV P-T limits, this application of the Code Case maintains an adequate margin of safety for protecting RPV materials from brittle failure. Therefore, the licensee concluded that these considerations were special circumstances pursuant to 10 CFR 50.12(a)(2)(ii), "[a]pplication of the regulation in the particular circumstances would not serve the underlying purpose of the rule or is not necessary to achieve the underlying purpose of the rule."

In summary, the ASME Code, Section XI, Appendix G procedure was conservatively developed based on the level of knowledge existing in 1974 concerning reactor coolant pressure boundary materials and the estimated effects of operation. Since 1974, the level of knowledge about the fracture mechanics behavior of RCS materials has been greatly expanded, especially in regard to the effects of radiation embrittlement and the understanding of fracture toughness properties under static and dynamic loading conditions.

3.0 Discussion

Pursuant to 10 CFR 50.12, the Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of 10 CFR part 50 when (1), the exemptions are authorized by law, will not present an undue risk to the public health and safety, and are consistent with the common defense and security; and (2) when special circumstances are present.

Special circumstances, pursuant to 10 CFR 50.12(a)(2)(ii), are present because the continued operation of IP3 with the P-T curves developed in accordance with Appendix G to Section XI of the ASME Code, without the relief provided by ASME Code Case N–640, is not necessary to achieve the underlying purpose of Appendix G to 10 CFR part 50. Application of ASME Code Case N–640 in lieu of the requirements of Appendix G to Section XI of the ASME Code provides an acceptable alternative evaluation procedure, which will

continue to meet the underlying purpose of Appendix G to 10 CFR part 50. The underlying purpose of the regulations in Appendix G to 10 CFR part 50 is to provide an acceptable margin of safety against brittle failure of the RCS during any condition of normal operation to which the pressure boundary may be subjected over its service lifetime.

The NRC staff examined the licensee's rationale to support the exemption request, and accepts the licensee's determination that an exemption would be required to approve the use of ASME Code Case N–640. The staff has also concluded that the use of ASME Code Case N–640 would meet the underlying intent of Appendix G to 10 CFR part 50. The NRC staff concluded that the application of the technical provisions of ASME Code Case N–640 provided sufficient margin in the development of RPV P-T limit curves such that the underlying purpose of the regulations contained in Appendix G to 10 CFR part 50 continued to be met. Therefore, the specific conditions required by the regulations; *i.e.*, the use of all provisions in Appendix G to Section XI of the ASME Code, were not necessary. The NRC staff has, therefore, concluded that the exemption requested by Entergy is justified based on the special circumstances of 10 CFR 50.12(a)(2)(ii), "[a]pplication of the regulation in the particular circumstances would not serve the underlying purpose of the rule or is not necessary to achieve the underlying purpose of the rule."

Based upon a consideration of the conservatism that is explicitly incorporated into the methodologies of Appendix G to 10 CFR part 50 and Appendix G to Section XI of the ASME Code, the staff concluded that the application of ASME Code Case N–640 would provide an adequate margin of safety against brittle failure of the RPV. This is also consistent with the determination that the staff has reached for other licensees under similar conditions based on the same considerations. The staff concludes that the exemption requested by Entergy is appropriate under the special circumstances of 10 CFR 50.12(a)(2)(ii), and the methodology of ASME Code Case N–640 may be used to revise the P-T limits for the IP3 RPV. Pursuant to 10 CFR 50.12(a)(1), the granting of this exemption is authorized by law, will not present undue risk to the public health and safety, and is consistent with the common defense and security. Therefore, the staff considers granting an exemption to 10 CFR 50.60(a) and Appendix G to 10 CFR part 50 to allow use of ASME Code Case N–640 as part of the basis for generating the P-T limit curves for IP3 is appropriate.

4.0 Conclusion

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12(a), the exemption is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security. Also, special circumstances are present. Therefore, the Commission hereby grants Entergy an exemption from the requirements of 10 CFR 50.60 and Appendix G to 10 CFR part 50, to allow for the application of ASME Code Case N–640 in establishing TS requirements for the RPV P-T limits for IP3.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will not have a significant effect on the quality of the human environment (68 FR 67490).

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 2nd day of December, 2003.

For the Nuclear Regulatory Commission.

Ledyard B. Marsh, Director,

Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 03–30360 Filed 12–5–03; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–26282; 812–12912]

The Vanguard Group, Inc., et al.; Notice of Application

December 2, 2003.

AGENCY: Securities and Exchange Commission ("Commission").

ACTION: Notice of application for an order under section 6(c) of the Investment Company Act of 1940 ("Act") for an exemption from sections 2(a)(32), 18(f)(1), 18(i), 22(d) and 24(d) of the Act and rule 22c–1 under the Act, and under sections 6(c) and 17(b) of the Act for an exemption from sections 17(a)(1) and (2) of the Act to the extent necessary to amend a prior order.[1]

Summary of Application: Applicants request an order to amend the Original VIPERs Order. The requested order would permit additional registered investment companies, and their series, to rely on the Original VIPERs Order, and modify certain terms and conditions of the Original VIPERs Order.

Applicants: The Vanguard Group, Inc. ("VGI"), Vanguard Index Funds ("Index Trust"), Vanguard Specialized Funds ("Specialized Trust"), Vanguard World Fund ("World Trust"), and Vanguard Marketing Corporation ("VMC").

Filing Dates: The application was filed on December 13, 2002, and amended on October 30, 2003. Applicants have agreed to file an amendment during the notice period, the substance of which is reflected in this notice.

Hearing or Notification of Hearing: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on December 29, 2003, and should be accompanied by proof of service on applicants, in the form of an affidavit, or for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Applicants, P.O. Box 2600, Valley Forge, PA 19482.

FOR FURTHER INFORMATION CONTACT: Stacy L. Fuller, Senior Counsel, or Michael W. Mundt, Senior Special Counsel, at 202–942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Branch, 450 Fifth Street, NW, Washington, DC 20549–0102 (telephone 202–942–8090).

Applicants' Representations:

1. Index Trust, VGI and VMC (together, "Original Applicants") obtained the Original VIPERs Order to permit the nine series of Index Trust ("Original Applicant Funds") to offer an exchange-traded class of shares ("VIPER Shares"). The Original VIPERs Order granted exemptions under section 6(c) of the Act from sections 2(a)(32), 18(f)(1), 18(i), 22(d) and 24(d) of the Act and rule 22c–1 under the Act and under sections 6(c) and 17(b) of the Act from sections 17(a)(1) and (2) of the Act. The Original Applicants, Specialized Trust, and World Trust (together, "Applicants") seek to amend the Original VIPERs Order to permit additional entities to rely on the relief and to modify certain terms and conditions of the Original VIPERs Order.

2. Index Trust is a Delaware statutory trust registered under the Act as an open-end management investment company, which currently consists of nine series. Specialized Trust is a Delaware statutory trust registered under the Act as an open-end management investment company, which currently consists of five series. World Trust is a Delaware statutory trust registered under the Act as an open-end management investment company, which currently consists of three series.

3. Applicants seek to permit an additional series of Index Trust,[2] a series of Specialized Trust,[3] certain series of World Trust[4] (together with the Original Applicant Funds, "Current Funds"), and other registered open-end management investment companies, and their series, that are advised by VGI or an entity controlled by or under common control with VGI ("Future Funds," and together with the Current Funds, "Funds") to rely on the Original VIPERs Order, as amended by the requested order. All Funds will comply with the terms and conditions of the Original VIPERs Order, as amended by the requested order. Because the amended order would extend relief to Future Funds, Applicants seek to amend condition 1 of the Original VIPERs Order as stated below.

4. Each Fund tracks, or will track, a domestic equity securities index ("Target Index"). The application for the Original VIPERs Order ("Original VIPERs Application") specified the nine Target Indices tracked by the Original Applicant Funds. Applicants note that the Target Indices for six of the Original Applicant Funds have since been replaced.[5] None of those six Original Applicant Funds currently offers a class of VIPER Shares. Consistent with the relief requested for Future Funds, Applicants seek relief to permit any Fund to change its Target Index in a manner that is consistent with the Fund's policies and complies with the terms and conditions of the Original VIPERs Order, as amended by the requested order, including condition 1 below. Any new Target Index would track the same market or market segment as the Fund's existing Target Index. No entity that creates, compiles, sponsors or maintains a Target Index is, or will be, an affiliated person, as defined in section 2(a)(3) of the Act, or an affiliated person of an affiliated person, of the Fund, VGI, VMC, or any promoter or subadviser of the Fund.

5. Conditions 8 and 9 of the Original VIPERs Order require the Original Applicants to include on their website and in the Original Applicant Funds' prospectuses and annual reports, among other things, a comparison of the previous day's net asset value ("NAV") and closing market price of its VIPER Shares. Applicants state that because the Funds' NAV is calculated at 4 p.m., which is the close of trading on the New York Stock Exchange, and the market for VIPER Shares does not close until 4 p.m., the closing market price of a Fund's VIPER Shares is not measured at the same time as its NAV is calculated. Applicants state that the difference in timing could lead to discrepancies between a Fund's NAV and the closing market price of its VIPER Shares, thereby giving investors an inaccurate picture of the correlation between the two figures. Applicants assert that comparing a Fund's NAV to the midpoint of the bid-asked price of its VIPER Shares at the time NAV is calculated ("Bid-Asked Price") would be more appropriate. Applicants accordingly seek to amend conditions 8 and 9 as stated below.

6. In the Original VIPERs Application, the Original Applicants represented that VMC would not market a Fund's VIPER Shares and its retail and institutional shares ("Conventional Shares") in the same advertisement or marketing material. Applicants contend that publishing materials that describe a Fund's VIPER Shares and its Conventional Shares may help investors to determine which class of shares is best for them, so long as the materials clearly outline the differences between the share classes. Accordingly, Applicants propose to modify the representation made in the Original VIPERs Application to permit VMC to market a Fund's VIPER Shares and Conventional Shares in the same advertisement or marketing material with appropriate disclosures explaining the relevant features of each class of shares and highlighting the differences between the classes.

7. Under the Original VIPERs Order, the Original Applicants were granted relief under sections 6(c) and 17(b) from sections 17(a)(1) and (2) to permit persons that are affiliated persons of a Fund, as defined in section 2(a)(3)(A) of the Act, by virtue of owning 5% or more of a Fund's outstanding voting securities ("5% Affiliates"), to purchase and redeem VIPER Shares in large blocks of shares ("Creation Units") through in-kind transactions. Applicants seek an expansion of that relief to permit persons that are affiliated persons, as defined by section 2(a)(3)(C) of the Act, by virtue of owning more than 25% of a Fund's voting securities ("25% Affiliates"), to purchase and redeem Creation Units in-kind with the Funds. The requested relief would also allow affiliated persons of 5% and 25% Affiliates (that are not otherwise affiliated persons of a Fund) to purchase and redeem Creation Units in-kind with the Funds. Applicants state that securities tendered by investors through in-kind transactions with a Fund will be valued in the same manner as they are valued for purposes of calculating the Fund's NAV.

8. Applicants also propose to modify certain other terms of the Original VIPERs Order that they believe to be non-material. First, Applicants indicate that each of the Funds may offer up to three classes of Conventional Shares even though the Original VIPERs Application stated that the Original Applicant Funds only offered one or two classes of Conventional Shares. Second, whereas the Original VIPERs Application specified that each Original Applicant Fund would use a replication indexing method to track its Target Index, Applicants propose to give the Funds the flexibility to track their Target Indices by using a replication or representative sampling strategy.[6]

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[1] Vanguard Index Funds, *et al.*, Investment Company Act Rel. Nos. 24680 (Oct. 6, 2000) (notice) and 24789 (Dec. 12, 2000) (order) ("Original VIPERs Order").

[2] The new series of Index Trust will track the MSCI U.S. Prime Market 750 Index.

[3] Only one of the five existing series of Specialized Trust, which tracks the Morgan Stanley REIT Index, may offer a class of VIPER Shares.

[4] Only one of the three existing series of World Trust, which tracks the Calvert Social Index, currently intends to offer a class of VIPER Shares. Applicants state that future series of World Trust that will offer a class of VIPER Shares will track the following Target Indices: MSCI U.S. Investable Market Consumer Discretionary Index; MSCI U.S. Investable Market Consumer Staples Index; MSCI U.S. Investable Market Energy Index; MSCI U.S. Investable Market Financials Index; MSCI U.S. Investable Market Health Care Index; MSCI U.S. Investable Market Industrials Index; MSCI U.S. Investable Market Information Technology Index; MSCI U.S. Investable Market Materials Index; MSCI U.S. Investable Market Telecommunication Services Index; MSCI U.S. Investable Market Utilities Index.

[5] Specifically, Applicants replaced the S&P MidCap 400 Index, Russell 2000 Index, S&P 500/BARRA Value Index, S&P Small Cap 600/BARRA Value Index, S&P 500/BARRA Growth Index and S&P Small Cap 600/BARRA Growth Index with, respectively, the MSCI U.S. Mid Cap 450 Index, MSCI U.S. Small Cap 1750 Index, MSCI U.S. Prime Market Value Index, MSCI U.S. Small Cap Value Index, MSCI U.S. Prime Market Growth Index and MSCI U.S. Small Cap Growth Index.

[6] Applicants state that each Fund will invest at least 90% of its assets in the component securities of its Target Index and have a tracking error with respect to its Target Index of five percentage points or less.

Third, Applicants seek the flexibility to list each Fund's VIPER Shares on any "national securities exchange," as defined in section 2(a)(26) of the Act ("Exchange"), and not exclusively on the American Stock Exchange, as stated in the Original VIPERs Application. Finally, Applicants seek to clarify two statements in the Original VIPERs Application in which the Original Applicants stated that (a) the product description for the Original Applicant Funds' VIPER Shares ("Product Description") would not contain information that was not also in the Fund's prospectus for VIPER Shares ("VIPER Shares Prospectus") and (b) the Product Description would include a website address where investors could obtain information on the composition and compilation methodology of the Fund's Target Index. Applicants state that because Form N–1A does not require them to include information about a Target Index's website, the Funds' VIPER Shares Prospectuses do not include such information. Applicants state that such information is, however, included in the Funds' Product Descriptions. Applicants state, as a clarification, that other than information about a Target Index's website, a Fund's Product Description does not contain information that is not also in its VIPER Shares Prospectus.

9. For the reasons set forth above and for the reasons set forth in the Original VIPERs Application, Applicants contend that the standards of sections 6(c) and 17(b) are satisfied.

Applicants' Conditions:

Applicants agree that any order granting the requested relief will be subject to the conditions of the Original VIPERs Order, except that conditions 1, 8 and 9 will be amended as follows:

1. Applicants will not register the VIPER Shares of a Future Fund by means of filing a post-effective amendment to a Future Fund's registration statement or by any other means, unless (a) Applicants have requested and received with respect to such VIPER Shares either exemptive relief from the Commission or a no-action letter from the Division of Investment Management of the Commission, or (b) such VIPER Shares will be listed on an Exchange without the need for filing pursuant to rule 19b–4 under the Securities Exchange Act of 1934.

8. Applicants' Web site, which is and will be publicly accessible at no charge, will contain the following information, on a per VIPER Share basis, for each Fund: (a) The prior business-day's closing NAV and the Bid-Asked Price, and a calculation of the premium or discount of the Bid-Asked Price in relation to the closing NAV; and (b) data for a period covering at least the four previous calendar quarters (or the life of a Fund, if shorter) indicating how frequently each Fund's VIPER Shares traded at a premium or discount to NAV based on the Bid-Asked Price and closing NAV, and the magnitude of such premiums and discounts. In addition, the Product Description for each Fund will state that Applicants' website has information about the premiums and discounts at which the Fund's VIPER Shares have traded.

9. The VIPER Shares Prospectus and annual report will include, for each Fund: (a) The information listed in condition 8(b), (i) in the case of the VIPER Shares Prospectus, for the most recently completed calendar year (and the most recently completed quarter or quarters, as applicable), and (ii) in the case of the annual report, for no less than the immediately preceding five fiscal years (or the life of the Fund, if shorter); and (b) the cumulative total return and the average annual total return for one, five and ten year periods (or life of the Fund, if shorter) of (i) a VIPER Share based on NAV and the Bid-Asked Price and (ii) the Fund's Target Index.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 03–30351 Filed 12–5–03; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48863; File No. SR–Amex–2003–65]

Self-Regulatory Organizations; Order Granting Approval of Proposed Rule Change by the American Stock Exchange LLC and Notice of Filing and Order Granting Accelerated Approval of Amendment No. 2 Relating To Enhanced Corporate Governance Requirements Applicable to Listed Companies

December 1, 2003.

I. Introduction

On June 23, 2003, the American Stock Exchange LLC ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b-4 thereunder,[2] a proposed rule change to amend sections 101, 110, 120, 121, 401, 402, 610 and 1009 of the Amex Company Guide, and adopt new sections 801 through 808 of the Amex Company Guide to enhance the corporate governance requirements applicable to listed companies. The proposed rule change, among other things, would require each issuer listed on the Amex to comply with the standards for audit committees mandated by section 10A(m) of the Act[3] and Rule 10A–3 thereunder.[4] The proposed rule change also includes provisions relating to board independence and independent committees, codes of conduct, and other corporate governance issues. On September 9, 2003, the Exchange filed Amendment No. 1 to the proposed rule change.[5] On October 31, 2003, the Commission published the proposed rule change, as modified by Amendment No. 1, for comment in the **Federal Register**.[6] The Commission received one comment letter on the proposal.[7] On December 1, 2003, the Exchange filed Amendment No. 2 to the proposal.[8] This Order approves the proposed rule change, provides notice of Amendment No. 2, and approves Amendment No. 2 on an accelerated basis.

II. Description of Amended Proposal

The proposed rule change, as amended, consists of comprehensive enhancements to the corporate governance requirements applicable to companies listed on the Amex. Some of these changes respond to Rule 10A–3, which requires each national securities exchange and national securities association to have rules that comply with its requirements approved by the Commission no later than December 1, 2003. Other proposed changes relate to board of director composition and independence standards, audit committee composition and authority, compensation and nominating committees, and ethics and disclosure obligations, as discussed in detail in the Notice. The Amex's rule amendments will allow some leeway for small business filers. Under the proposed rule change, small business filers will be subject to the new corporate governance requirements, except that they will only be required to have a board of directors comprised of at least 50% independent directors and an audit committee of at least two independent directors.[9] Such issuers will, of course, be required to comply with Rule 10A–3.[10]

In Amendment No. 2, Amex revised various aspects of its proposal, in a manner that conforms many of its provisions with corporate governance rules of other self-regulatory organizations ("SROs"), which were recently approved by the Commission.[11] The specific proposed revisions included in Amendment No. 2 would:

- Substantially conform the compliance dates and transition periods to those mandated for audit committees by Rule 10A–3 under the Act and adopted by other marketplaces;[12]
- Provide phase-in periods with respect to certain requirements for companies that list in conjunction with an initial public offering, are emerging from bankruptcy, cease to be controlled companies, have staggered boards, or are transferring from other markets;
- Expand certain of the relationships that would preclude a finding of independence to apply not only to directors, but also to family members of directors;
- Exclude non-discretionary charitable match programs and loans permitted under Section 13(k) of the Securities Exchange Act from the definition of payments that would preclude a finding of independence;
- Exclude prior employment as an interim Chairman or Chief Executive Officer ("CEO"), as well as compensation received for such former service, from the relationships and payments that would preclude a finding of independence;
- Specify that business payments from or to an organization that a director (or an immediate family member) is a partner in, controlling shareholder of, or executive officer of, that would preclude a finding of independence (whether to or from the listed company) are tested against the consolidated gross revenues of the director's organization;
- Expand the scope of the relationships with the company's outside auditor that preclude a finding of independence;
- Apply a three year "look-back" to all relationships that would preclude a finding of director independence, but revise such "look-back" periods so that the independence tests applicable to independent directors who are not members of the audit committee, and certain "look-back" periods for independent directors who are members of the audit committee, would be only one year for the first year following Commission approval of the enhanced corporate governance requirements;
- Clarify that a director who qualifies as an audit committee financial expert pursuant to Commission rules is presumed to qualify as a financially sophisticated audit committee member under Amex rules, and conform the Amex rules to those adopted by other markets;
- Clarify the application of the corporate governance requirements to investment companies;
- Provide a different measure of independence for investment companies that is consistent with the Investment Company Act of 1940;[13]
- Clarify that audit committees of listed companies must adopt a formal audit committee charter that addresses the audit committee's responsibilities, including those required by Rule 10A–3;
- Require that audit committees of investment companies must establish procedures for the confidential, anonymous submission of concerns regarding questionable accounting or auditing matters by employees of the investment adviser, administrator, principal underwriter, or any other provider of accounting related services for the investment company, as well as employees of the investment company;
- Codify that audit committees of listed companies must meet on at least a quarterly basis;
- Clarify that independent nominating and compensation committees may either take action or recommend that the board take action;
- Clarify that the new requirements relating to nominating decisions would not apply in cases where the right to nominate a director legally belongs to a third party, or the company is already subject to a legally binding obligation that requires a director nomination structure inconsistent with the new rule;
- Require a nominating committee charter or board resolution addressing the nominations process;
- Remove a provision that would have permitted one director holding 20% or more of the company's stock who is not independent as a result of being an officer of the company to serve on the nominations committee;
- Add a requirement that listed companies must notify the Exchange of any material non-compliance with the enhanced corporate governance requirements;
- Specify that the CEO of a listed company may not be present during voting or deliberations on his or her compensation, and state that compensation for all other officers must be determined, or recommended to the Board for determination, either by the compensation committee or a majority of the independent directors on the company's board of directors;
- Specify that a listed company's required code of conduct and ethics must be publicly available, and any waivers of the code for directors and executive officers must be disclosed within five days in a Commission Form 8–K; and
- Provide that the compensation committee or a majority of independent directors is not precluded from approving awards either with or without board ratification, as may be required to comply with applicable tax and state corporate laws.

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78j–1(m).

[4] 17 CFR 240.10A–3.

[5] *See* Letter from Claudia Crowley, Vice President, Listing Qualifications, Amex, to Nancy Sanow, Assistant Director, Division of Market Regulation, Commission, dated September 5, 2003 ("Amendment No. 1").

[6] *See* Securities Exchange Act Release No. 48706 (October 27, 2003), 68 FR 62109 (October 31, 2003) ("Notice").

[7] Letter from Dorothy M. Donohue, Associate Counsel, Investment Company Institute, to Jonathan G. Katz, Secretary, Commission, dated November 21, 2003 ("ICI Letter"). The ICI Letter supported the Exchange's proposal and, in particular, noted that provisions of the Amex proposal are analogous to rules of the New York Stock Exchange and The Nasdaq Stock Market, which were recently approved by the Commission. *See infra* note and accompanying text.

[8] *See* Letter from Claudia Crowley, Vice President, Listing Qualifications, Amex, to Nancy Sanow, Assistant Director, Division of Market Regulation, Commission, dated November 26, 2003 ("Amendment No. 2"). Amendment No. 2 supersedes and replaces the original proposal and Amendment No. 1 in their entirety. The most significant changes to the proposed rule change that are contained in Amendment No. 2 are summarized in section II. below.

[9] Companies that are not small business filers will be required under the proposed rule change to have a board of directors comprised of a majority of independent directors and an audit committee of at least three independent directors.

[10] In addition, the Amex proposal includes provisions that would prohibit a listed company from appointing or permitting an Exchange employee or Floor Member to serve on its board of directors, place certain restrictions on the division of a listed company's board of directors into classes, and include other small variations from the corporate governance provisions of other SROs.

[11] See Securities Exchange Act Release No. 48745 (November 4, 2003), 68 FR 64154 (November 12, 2003) (approval of File Nos. SR–NYSE–2002–33, SR–NASD–2002–77, SR–NASD–2002–80, SR–NASD–2002–138, SR–NASD–2002–139, and SR–NASD–2002–141) ("NYSE/NASD Corporate Governance Release").

[12] The deadline for compliance with the audit committee requirements of Rule 10A–3 is the earlier of January 15, 2004, or October 31, 2004, (other than for foreign private issuers and small business issuers). The revisions to Amex rules regarding changes to board and committee composition and structure will become effective by the earlier of the issuer's first annual meeting after March 15, 2004, or October 31, 2004, (other than for foreign private issuers and small business issuers). Foreign private issuers and small business issuers must be in compliance with the Rule 10A–3 audit committee requirements and the new board and committee composition and structure provisions by July 31, 2005.

[13] 15 U.S.C. 80a–1 *et seq.*

III. Discussion

After careful review, the Commission finds that the proposed rule change, as amended, is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, with the requirements of section 6(b) of the Act.[14] Specifically, the Commission finds that the proposed rule change is consistent with section 6(b)(5) of the Act,[15] in that it is designed, among other things, to facilitate transactions in securities; to prevent fraudulent and manipulative acts and practices; to promote just and equitable principles of trade; to remove impediments to and perfect the mechanism of a free and open market and a national market system; and in general to protect investors and the public interest; and does not permit unfair discrimination among issuers.

In the Commission's view, the proposed rule change will foster greater transparency, accountability, and objectivity in the oversight by, and decision-making processes of, the boards and key committees of Amex listed issuers. The proposal also will promote compliance with high standards of conduct by the issuers' directors and management. The Commission notes that the Amex has amended its proposal to harmonize it in many areas with rule changes recently approved by the Commission for the New York Stock Exchange, Inc. and the National Association of Securities Dealers, Inc.

In addition, in the Commission's view, the proposed rule change is consonant with Rule 10A–3, which requires that the rules of a national securities exchange prohibit the initial or continued listing of any security of an issuer that is not in compliance with the requirements of any portion of paragraph 9(b) or (c) of Rule 10A–3. In this regard, the proposed rule change will promote independent and objective review and oversight of an Amex-listed issuer's financial reporting practices.

The Commission believes that the provisions that the Amex has included to accommodate small business filers by requiring them to have 50%, rather than a majority, of their boards comprised of independent directors, and by requiring them to have two, rather than three, members on their audit committees, are reasonable.

The Commission also believes that the provision added by Amex to prohibit a listed company from appointing or permitting an employee or Floor Member of the Exchange to serve on its board is reasonable and appropriate, as is the provision placing certain limits on the division of a listed company's board of directors into classes.

The Commission notes that other provisions proposed by Amex vary somewhat from corporate governance rules recently approved by the Commission for other SROs. For example, with respect to the proposed three-year "look back" periods that would apply to relationships that preclude a finding of director independence, certain "look-back" periods would cover only one year for the first year following Commission approval of the requirements, while other "look-back" periods would cover three years following Commission approval of the requirements. Amex also would require each company listed on the Exchange to adopt either a formal written charter or board resolution, as applicable, that addresses the nominations process. Amex also has included a provision to explicitly require an audit committee to meet on a quarterly basis. The Commission believes that these provisions are reasonable.

Furthermore, the Commission finds good cause, consistent with section 19(b)(2) of the Act,[16] to approve Amendment No. 2 to the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. The Commission notes that most of the changes proposed in Amendment No. 2 correspond to similar provisions approved by the Commission for other self-regulatory organizations,[17] and raise no new issues. With respect to changes proposed in Amendment No. 2 that are unique with respect to Amex, the Commission believes that these provisions are reasonable and that accelerating their approval will enable Amex to put into place its complete set of corporate governance standards for listed companies in time for the 2004 proxy season for the large majority of its listed companies. In addition, the Amex provisions relating to audit committees respond to the mandate of Rule 10A–3, which requires SROs to have such rules in place by December 1, 2003.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment No. 2, including whether Amendment No. 2 is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filings will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–Amex–2003–65 and should be submitted by December 29, 2003.

V. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act[18], that Amendment No. 2 be granted accelerated approval and that the proposed rule change (File No. SR–Amex–2003–65), as amended, be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[19]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–30354 Filed 12–05–03; 8:45 am]

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[14] 15 U.S.C. 78(b). In approving the proposed rule change, as amended, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[15] 15 U.S.C. 78(b)(5).

[16] 15 U.S.C. 78s(b)(2).

[17] *See* NYSE/NASD Corporate Governance Release, *supra* n. 11.

[18] 15 U.S.C. 78s(b)(2).

[19] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48859; File No. SR–CHX–2003–23]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto by the Chicago Stock Exchange, Incorporated to Amend Article XX, Rule 37(a)(4) Relating to the Definition of Preopening Order

December 1, 2003.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 1, 2003, the Chicago Stock Exchange, Incorporated ("CHX" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. The Exchange submitted an amendment to the proposed rule change on November 6, 2003.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend CHX Article XX, Rule 37(a)(4), which governs execution of preopening orders on the CHX. Specifically, the CHX seeks to modify the definition of "preopening order" to provide that preopening orders for Nasdaq/NM securities must be received at or prior to 8:20 a.m. (CT), instead of the 8:25 (CT) deadline currently set forth in the rule.[4] Below is the text of the proposed rule change, as amended. New language is *italicized*, and deletions are bracketed.

* * * * *

Chicago Stock Exchange Rules

ARTICLE XX

Regular Trading Sessions

Guaranteed Execution System and Midwest Automated Execution System

RULE 37.

(a) No change to text.

1–3. No change to text.

4. Preopenings. Preopening orders in Dual Trading System issues must be accepted and filled at the primary market opening trading price. In trading halt situations occurring in the primary market, orders will be executed based upon the reopening price. Preopening orders in NASDAQ/NM securities must be accepted and filled on a single price opening at or better than the NBBO at the first unlocked, uncrossed market. In trading halt situations, orders will be executed based on the Exchange reopening price. For purposes of this rule, (a) pre-opening orders in Dual Trading System Issues are orders that are received before a primary market opens a subject security based on a print or based on a quote and (b) preopening orders in NASDAQ/NM securities are orders received at or prior to 8:*20* [25] a.m. (Central Time) on the date of the opening.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the CHX included statements concerning the purpose of and basis for the proposed rule change, as amended, and discussed any comments it received regarding the proposal. The text of these statements may be examined at the places specified in Item IV below. The CHX has prepared summaries, set forth in Sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The CHX seeks to amend CHX Article XX, Rule 37(a)(4), which governs execution of preopening orders on the CHX, by modifying the definition of "preopening order" to provide that preopening orders for Nasdaq/NM securities must be received at or prior to 8:20 a.m. (CT), instead of the 8:25 (CT) deadline currently set forth in the rule.

Under the current version of the CHX rule, all preopening orders for Nasdaq/NM securities are accepted and filled on a single price opening at or better than the national best bid or offer ("NBBO") at the first unlocked, uncrossed market. The Exchange represents that the single price opening for preopening orders was enacted voluntarily by the Exchange in early 2001[5] as an execution guarantee similar to the Exchange's provisions relating to price improvement. The Exchange believes that the single price opening, like price improvement, often provides for execution of preopening orders at execution prices more favorable than if the Exchange did not offer a single price opening. The Exchange's 2001 submission established an 8:25 (CT) deadline for preopening orders. Orders received after 8:25 (CT) are treated as standard market orders under the Exchange's general rules governing execution of market orders.

The proposed change to the rule governing the 8:25 (CT) deadline for preopening orders was formulated by the Exchange's OTC Subcommittee, which is composed of CHX specialists who trade Nasdaq/NM securities. The members of the OTC Subcommittee believe that an earlier deadline for preopening orders is a modest yet important modification to their single price execution guarantee for preopening orders.

To place their request in context, the CHX represents that it is virtually the only market center that guarantees a single price opening at or better than the NBBO at the first unlocked, uncrossed market. The Exchange's competitors generally base their execution of preopening orders on the prices and order imbalances within their own systems, rather than the NBBO for Nasdaq/NM securities. Accordingly, the Exchange believes that its OTC specialists bear a significantly higher degree of risk with respect to preopening orders, since they are obligated to execute such orders based on the first unlocked, uncrossed NBBO. In situations where there is a significant imbalance in preopening orders for a particular issue, this execution guarantee can result in significantly adverse swings in a CHX specialist's position. The Exchange believes that an earlier deadline for preopening orders, by operating to reduce the aggregate amount of preopening orders received by a CHX specialist, would better enable the CHX specialist to manage his position and to better fulfill his specialist duties by giving him time to fully evaluate his position and to make a professional price assessment that would inform his executions once trading commences for the day.[6]

An additional reason for an 8:20 (CT) deadline relates to the operation of NASDAQ's SuperMontage® system, in which the CHX participates. The SuperMontage rules establish 8:20:00 (CT) through 8:29:59 (CT) as the time period during which NASDAQ market makers (including electronic communication networks) can route "trade or move" messages to SuperMontage participants whose quotes might be inferior in price to a price that another participant seeks to

[3] *See* letter from Kathleen M. Boege, Associate General Counsel, CHX, to Nancy J. Sanow, Assistant Director, Division of Market Regulation, Commission, dated November 4, 2003, replacing Form 19b–4 in its entirety ("Amendment No. 1"). In Amendment No. 1, the CHX expands upon the purpose of the proposed rule change.

[4] All times referred to in the proposed rule change, as amended, are Central Time (CT).

[5] *See* Securities Exchange Act Release No. 44062 (March 12, 2001), 66 FR 15514 (March 19, 2001).

[6] Significantly, an order received prior to the open which is not a "preopening" order (*i.e.*, which is received between the preopening order deadline and the 8:30 (CT) open) must still be executed in accordance with the Exchange's BEST rule (CHX Article XX, Rule 37(a)), which requires execution of market and marketable limit orders at the NBBO, or requires a CHX specialist to act as agent for the order to obtain the best available price in the marketplace, using order routing systems where appropriate. The CHX thus does not anticipate that such orders would be disadvantaged in terms of price once they are executed following the open; the orders simply would not participate in the single price opening.

disseminate. Before a CHX specialist can respond to a "trade or move" request in an informed fashion, he must be fully apprised of his updated position, based on the comprehensive data of all preopening orders that he has received. The Exchange believes that an 8:20 (CT) deadline for CHX preopening orders would better enable CHX specialists to comply with SuperMontage rules and procedures governing the vital "trade or move" functionality.

Accordingly, the Exchange believes that the modification requested by the OTC Subcommittee is appropriate. Because the Exchange believes that the current single price opening guarantee was enacted voluntarily as a means of attracting customer order flow and is not required under the Act or any other legislative mandate, the Exchange believes that it is appropriate for OTC specialists to modify slightly the parameters under which this guarantee is available.

2. Statutory Basis

The CHX believes the proposal, as amended, is consistent with the requirements of Section 6(b)[7] of the Act in general, and Section 6(b)(5) of the Act[8] in particular, because it is designed to promote just and equitable principles of trade, to remove impediments and to perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement of Burden on Competition

The Exchange does not believe that the proposed rule change, as amended, will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

(A) by order approve such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

The CHX has requested accelerated approval of the proposed rule change, as amended. While the Commission will not grant accelerated approval at this time, the Commission will consider granting accelerated approval of the proposal, as amended, at the close of an abbreviated comment period of 15 days from the date of publication of the proposal in the **Federal Register**.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change, as amended, that are filed with the Commission, and all written communications relating to the proposed rule change, as amended, between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the CHX. All submissions should refer to File No. SR–CHX–2003–23 and should be submitted by December 23, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–30352 Filed 12–5–03; 8:45 am]

BILLING CODE 8010–01–P

[7] 15 U.S.C. 78f(f)(b).

[8] 15 U.S.C. 78f(b)(5).

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48860; File No. SR–CHX–2003–19]

Self-Regulatory Organizations; Order Granting Partial Approval of Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval of Amendment No. 1 Thereto by the Chicago Stock Exchange, Inc. Relating to Governance of Issuers on the CHX

December 1, 2003.

I. Introduction

On July 28, 2003, the Chicago Stock Exchange, Inc. ("CHX" or "Exchange"), filed with the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b-4 thereunder,[2] a proposed rule change to amend certain provisions of its rules relating to the governance of issuers that list securities on the CHX.

The proposed rule change, among other things, would require each issuer listed on the CHX to establish an independent audit committee and to comply with the standards for audit committees mandated by Section 10A(m) of the Act[3] and Rule 10A–3 thereunder.[4] The proposal also would amend the CHX's Tier I and Tier II listing standards to enhance its requirements relating to the roles and responsibilities of independent directors and independent board committees, including audit committees, nominating committees and compensation committees. The proposal further includes amendments to the CHX's maintenance standards to set out a process that would allow an issuer an opportunity to cure a failure to meet the Exchange's maintenance listing standards, including its governance-related standards.

On October 28, 2003, the Commission published the proposed rule change for comment in the **Federal Register**.[5] The Commission received no comments on the proposal. On November 24, 2003, the Exchange filed Amendment No. 1 to the proposal.[6]

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78j–1(m).

[4] 17 CFR 240.10A–3.

[5] *See* Securities Exchange Act Release No. 48669 (October 21, 2003), 68 FR 61500 (October 28, 2003).

[6] *See* letter from Ellen J. Neely, Senior Vice President and General Counsel, CHX, to Nancy J. Sanow, Assistant Director, Division of Market Regulation, Commission, dated November 21, 2003 ("Amendment No. 1"). In Amendment No. 1, the Exchange requested that the Commission grant approval at this time to: (a) the sections that relate to the Commission's Rule 10A–3 requirements for listed company audit committees; and (b) the sections that set out a process that would provide an issuer with a specific opportunity to cure any failure to meet the Exchange's maintenance standards, including its governance-related standards. In addition, the Exchange proposed in Amendment No. 1 an additional section of rule text in CHX Rule 19(b)(2) to expand, with respect to investment companies, the scope of the requirement that audit committees establish procedures for the confidential, anonymous submission of concerns regarding questionable accounting or auditing matters. In the amendment, CHX set forth the text of the proposed rule change for which it is seeking approval at this time, which is set forth in Section II. below.

Rule 10A–3 requires each national securities exchange and national securities association to have rules that comply with its requirements approved by the Commission no later than December 1, 2003. This Order approves the proposed rule change in part as set forth below, so that the CHX can comply with this deadline. This Order also provides notice of Amendment No. 1 and approves Amendment No. 1 on an accelerated basis. The Commission notes that the CHX is considering revisions to the portions of the proposed rule change that pertain to corporate governance standards other than the revisions to comply with Rule 10A–3 requirements, particularly in light of rule changes by the New York Stock Exchange, Inc. and the National Association of Securities Dealers, Inc. that were recently approved by the Commission.[7] This Order does not relate to those other proposed provisions except to the extent indicated below.

II. Description of the Approved Changes

The Commission is approving in this Order the portions of the proposed rule change that: (a) Implement Rule 10A–3; and (b) amend CHX's maintenance standards as set forth in the rule text that follows.[8] The Commission also is approving an additional provision, included in the text set forth below, relating to complaint procedures of audit committees of investment companies. Rule 10A–3 requires audit committees to establish procedures for "the confidential, anonymous submission by employees of the listed issuer of concerns regarding questionable accounting or auditing matters."[9] The additional provision will require that audit committees of investment companies also establish procedures for the confidential, anonymous submission of such concerns by employees of the investment adviser, administrator, principal underwriter, or any other provider of accounting related services for the investment company, as well as employees of the investment company.

The following is the proposed rule text that the Commission is approving, as set forth by CHX in Amendment No. 1. Proposed new language is in *italics*; proposed deletions are in brackets.

Chicago Stock Exchange Rules

ARTICLE XXVIII

Listed Securities

* * * * *

* * * * *

Maintenance Standards Applicable to All Tier I Issues

RULE 17A. The Exchange reserves the right to delist the securities of any corporation, subject to Securities and Exchange Commission Rules, which engages in practices not in the public interest or whose assets have been depleted to the extent that the company can no longer operate as a going concern or whose securities have become so closely held that it is no longer feasible to maintain a reasonable market in the issue. Furthermore, the Exchange reserves the right to delist the securities of any corporation which has drastically changed its corporate structure and/or its type of operation. The Exchange may also make an appraisal of, and determine on an individual basis, the suitability for continued listing of an issue in the light of all pertinent facts whenever it deems such action appropriate, even though a security meets enumerated criteria (including, but not limited to, continued listing on the NYSE, Amex or Nasdaq National Market). Many factors may be considered in this connection, including, but not limited to, abnormally low selling price or volume of trading, *or failure to comply with required corporate governance standards.*

* * * *Interpretations and Policies*

If the Exchange identifies a Tier I issue as being below the Exchange's maintenance listing requirements, the Exchange will notify the issuer by letter of its determination and the reasons for that determination. In this letter, the Exchange will provide the issuer with an opportunity to provide the Exchange with a plan (the "Plan") to cure the deficiency. Within 10 business days of the receipt of the Exchange's letter, the issuer must contact the Exchange to confirm its receipt of the letter and to report to the Exchange whether or not the issuer intends to present a Plan. If the issuer notifies the Exchange that it does not intend to present a Plan, the Exchange will commence proceedings to suspend and/or delist the issue.

The issuer must present any Plan within 45 days after its receipt of the Exchange's letter. The Plan must describe definitive action that the issuer has taken, or is taking, that would bring it into conformity with the Exchange's maintenance listing requirements within 18 months of receipt of the letter, or within any shorter time period required by the Exchange. (The Exchange will not approve any Plan, under which an issuer is curing a deficiency under SEC Rule 10A–3, which extends beyond the earlier of 12 months or the first annual shareholders' meeting (for circumstances beyond the reasonable control of an issuer) and 6 months (for other circumstances)). The Plan also must set quarterly milestones against which the Exchange will evaluate its progress. Exchange staff will evaluate the Plan and determine whether the issuer has made a reasonable demonstration in the Plan of an ability to come into compliance with the Exchange's maintenance listing requirements. The Exchange will notify the issuer of its determination within 45 days after receipt of the Plan. If the Exchange does not accept the Plan, it will commence proceedings to suspend and/or delist the issue.

If the Exchange accepts the Plan, the Exchange will review the issuer on a quarterly basis to determine the issuer's progress under the Plan. If the issuer fails to meet a material provision of the Plan or one or more of its quarterly milestones, the Exchange will review the facts and circumstances and determine whether to initiate proceedings to suspend and/or delist the issue; provided however, that if an issuer fails to meet a material provision of the Plan that relates to compliance with its obligations under SEC Rule 10A–3, the Exchange will immediately commence proceedings to suspend and/or delist the issue. If, for circumstances that do not involve compliance with SEC Rule 10A–3, the Exchange determines that continued listing is warranted, the Exchange will continue to review the issuer's progress under the Plan on at

[7] *See* Securities Exchange Act Release Nos. 48745 (November 4, 2003), 68 FR 64154 (November 12, 2003) (approval of, among other proposals, File Nos. SR–NYSE–2002–33 and SR–NASD–2002–141) ("NYSE/NASD Corporate Governance Release"). Telephone call between Ellen Neely, Senior Vice President and General Counsel, CHX and Nancy Sanow, Assistant Director, Division of Market Regulation, Commission, and other Commission staff, on November 18, 2003.

[8] The text set forth below also includes several minor changes to the text set forth in the Notice to reflect the fact that the Commission is approving portions of the proposed rule amendments.

[9] 17 CFR 240.10A–3(b)(3)(ii).

least a quarterly basis. If the issuer achieves compliance with the Exchange's maintenance listing requirements before the Plan expires under its terms, the Exchange may choose to consider the Plan ended as of that earlier date.

If an issuer, within one year after the termination of a Plan, is again determined to have failed to meet the Exchange's maintenance listing requirements, the Exchange will review the facts and circumstances (including whether the issuer has fallen into non-compliance with the same standards at issue in its earlier Plan) and will take appropriate action, which could include, but is not limited to, shortening the time periods associated with the submission of any new Plan or immediately commencing proceedings to suspend and/or delist the issue.

These procedures do not prevent the Exchange from suspending trading in an issue immediately, whenever it finds that it is necessary to do so for the protection of investors.

* * * * *

Tier I Corporate Governance and Disclosure Standards Corporate Governance

RULE 19. The following Rule 19 applies [only] to Tier I issuers:

(a) Board of Directors.

Each listed company shall maintain a minimum of two independent directors on its board of directors. For purposes of this section, "independent director" shall mean a person other than an officer or employee of the company or its subsidiaries or any other individual having a relationship which, in the opinion of the board of directors, would interfere with the exercise of independent judgment in carrying out the responsibilities of a director.

(b) Audit Committee.

(1) Audit Committee Composition. Each listed company shall establish and maintain an Audit Committee, a majority of the members of which shall be independent directors, as defined in section (a) above. *In addition to these criteria:*

(A) Each member of the audit committee must meet the criteria for independence set forth in SEC Rule 10A–3 (subject to the exemptions provided in that Rule);

(B) Exceptions.

If a member of an audit committee ceases to meet the independence criteria set forth in SEC Rule 10A–3 for reasons outside the person's reasonable control, that person may remain a member of the committee until the earlier of the next annual shareholders' meeting or one year from the occurrence of the event that caused the member to no longer meet the independence criteria. The issuer must promptly notify the Exchange if this circumstance occurs.

(2) Audit Committee Responsibilities and Authority. The audit committee must have, at a minimum, (A) the responsibilities and authority set forth in SEC Rule 10A–3; and (B) the obligation to conduct an appropriate review of all related party transactions on an ongoing basis and to review potential conflict of interest situations where appropriate. Audit committees for investment companies must also establish procedures for the confidential, anonymous submission of concerns regarding questionable accounting or auditing matters by employees of the investment adviser, administrator, principal underwriter, or any other provider of accounting related services for the investment company, as well as employees of the investment company.

(3) Any issuer that is exempt from the provisions of SEC Rule 10A–3 is not required to meet the requirements set out in sections (b)(1)(A) or (b)(2)(A) above and is not required to meet the additional requirements for audit committees for investment companies set out in the last sentence of section (b)(2).

(c) Reserved.

(d) Reserved.

(e) Reserved.

(f) Governance-Related Certifications. Each issuer's chief executive officer must promptly notify the Exchange after any executive officer of the issuer becomes aware of any material non-compliance by the issuer with applicable standards set out in paragraph (b) of this rule; provided, however, that any issuer that is exempt from the provisions of SEC Rule 10A–3 is not required to meet the requirements of this section (f).

[(a)]*(g) Annual Reports.* No change to text.

[(b)]*(h) Quarterly Reports.* No change to text.

[(c)]*(i) Other Reports.* No change to text.

[(d) Each listed company shall establish and maintain an Audit Committee, a majority of the members of which shall be independent directors, as defined below.]

[(e) Each listed company shall maintain a minimum of two independent directors on its board of directors. For purposes of this section, "independent director" shall mean a person other than an officer or employee of the company or its subsidiaries or any other individual having a relationship which, in the opinion of the board of directors, would interfere with the exercise of independent judgment in carrying out the responsibilities of a director.]

[(f)]*(j) Annual Meeting.* No change to text.

[(g)]*(k) Proxy Solicitations.* No change to text.

[(h) Each issuer shall conduct an appropriate review of all related party transactions on an ongoing basis and shall use the company's audit committee or a comparable body for the review of potential conflict of interest situations where appropriate.]

[(i)]*(l) Stock Certificates.* No change to text.

[(j)]*(m)* No change to text.

[(k)]*(n) Stock Transfer Facilities.* No change to text.

(o) Reserved.

. . . Interpretations and Policies

.01 No change to text.

.02 Reserved.

.03 Reserved.

.04 Reserved.

.05 Transition Periods and Compliance Dates. Sections (a)–(f) will become effective pursuant to the following schedule:

The audit committee requirements mandated by SEC Rule 10A–3 (and the exception set out in section (b)(1)(B) in this rule) will become effective as set out in Rule 10A–3.

* * * * *

Tier II Corporate Governance, Disclosure, and Miscellaneous Requirements

RULE 21. The following Rule 21 applies only to Tier II issuers:

(a) Each issuer shall comply with the governance requirements set out in Rule 19 (a)–(f) of this Article and is subject to Interpretations .02–.05 of that rule.

(b) No change to text.

[(1) Each listed company shall establish and maintain an Audit Committee, a majority of the members of which shall be independent directors.]

[(2) Each listed company shall maintain a minimum of two independent directors on its board of directors. For purposes of this section, "independent director" shall mean a person other than an officer or employee of the company or its subsidiaries or any other individual having a relationship which, in the opinion of the board of directors, would interfere with the exercise of independent judgment in carrying out the responsibilities of a director.]

([d]*c) Stock Certificates.* No change to text.

([e]*d) Changes to Listing Standards.* No change to text.

* * * * *

Tier II Maintenance Standards

RULE 22. (a) The Exchange reserves the right to delist the securities of any corporation, subject to Securities and Exchange Commission Rules, which engages in practices not in the public interest or whose assets have been depleted to the extent that the company can no longer operate as a going concern or whose securities have become so closely held that it is no longer feasible to maintain a reasonable market in the issue. Furthermore, the Exchange reserves the right to delist the securities of any corporation which has drastically changed its corporate structure and/or its type of operation. The Exchange may also make an appraisal of, and determine on an individual basis, the suitability for continued listing of an issue in the light of all pertinent facts whenever it deems such action appropriate, even though a security meets enumerated criteria (including, but not limited to, continued listing on the NYSE, Amex or Nasdaq National Market). Many factors may be considered in this connection, including, but not limited to, abnormally low selling price or volume of trading, *or failure to comply with required corporate governance standards.*

(b)–(d)No change to text.

. . . Interpretations and Policies

If the Exchange identifies a Tier II issue as being below the Exchange's maintenance listing requirements, the Exchange will notify the issuer by letter of its determination and the reasons for that determination. In this letter, the Exchange will provide the issuer with an opportunity to provide the Exchange with a plan (the "Plan") to cure the deficiency. Within 10 business days of the receipt of the Exchange's letter, the issuer must contact the Exchange to confirm its receipt of the letter and to report to the Exchange whether or not the issuer intends to present a Plan. If the issuer notifies the Exchange that it does not intend to present a Plan, the Exchange will commence proceedings to suspend and/or delist the issue.

The issuer must present any Plan within 45 days after its receipt of the Exchange's letter. The Plan must describe definitive action that the issuer has taken, or is taking, that would bring it into conformity with the Exchange's maintenance listing requirements within 18 months of receipt of the letter, or within any shorter time period required by the Exchange. (The Exchange will not approve any Plan, under which an issuer is curing a deficiency under SEC Rule 10A–3, which extends beyond the earlier of 12 months or the first annual shareholders' meeting (for circumstances beyond the reasonable control of an issuer) and 6 months (for other circumstances)). The Plan also must set quarterly milestones against which the Exchange will evaluate its progress. Exchange staff will evaluate the Plan and determine whether the issuer has made a reasonable demonstration in the Plan of an ability to come into compliance with the Exchange's maintenance listing requirements. The Exchange will notify the issuer of its determination within 45 days after receipt of the Plan. If the Exchange does not accept the Plan, it will commence proceedings to suspend and/or delist the issue.

If the Exchange accepts the Plan, the Exchange will review the issuer on a quarterly basis to determine the issuer's progress under the Plan. If the issuer fails to meet a material provision of the Plan or one or more of its quarterly milestones, the Exchange will review the facts and circumstances and determine whether to initiate proceedings to suspend and/or delist the issue; provided however, that if an issuer fails to meet a material provision of the Plan that relates to compliance with its obligations under SEC Rule 10A–3, the Exchange will immediately commence proceedings to suspend and/or delist the issue. If, for circumstances that do not involve compliance with SEC Rule 10A–3, the Exchange determines that continued listing is warranted, the Exchange will continue to review the issuer's progress under the Plan on at least a quarterly basis. If the issuer achieves compliance with the Exchange's maintenance listing requirements before the Plan expires under its terms, the Exchange may choose to consider the Plan ended as of that earlier date.

If an issuer, within one year after the termination of a Plan, is again determined to have failed to meet the Exchange's maintenance listing requirements, the Exchange will review the facts and circumstances (including whether the issuer has fallen into non-compliance with the same standards at issue in its earlier Plan) and will take appropriate action, which could include, but is not limited to, shortening the time periods associated with the submission of any new Plan or immediately commencing proceedings to suspend and/or delist the issue.

These procedures do not prevent the Exchange from suspending trading in an issue immediately, whenever it finds that it is necessary to do so for the protection of investors.

* * * * *

III. Discussion

After careful review, the Commission finds that the provisions of the proposed rule change which are amended by Amendment No. 1 and are set forth in Section II. above, are consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[10] Specifically, the Commission finds that the proposal to require independent audit committees for listed companies is consistent with Section 6(b)(5) of the Act,[11] which requires, among other things, that the CHX's rules be designed to prevent fraudulent and manipulative acts and practices, and, in general, to protect investors and the public interest. Moreover, the Commission believes that the Exchange's proposal to add the new requirements concerning audit committees is appropriate and consonant with Section 10A(m) of the Act and Rule 10A–3 thereunder relating to audit committee standards for listed issuers.

Furthermore, the Commission finds good cause, consistent with Section 19(b)(2) of the Act,[12] to approve Amendment No. 1 to the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. Amendment No. 1 contains a provision that responds to a recommendation by the Commission that self-regulatory organizations take into account, in adopting their rules, the fact that most services are rendered to an investment company by employees of third parties, such as the investment adviser, rather than by employees of the investment company.[13] In Amendment No. 1, the Exchange also made several non-substantive changes to the rule text to reflect the fact that the Commission is approving portions of the proposed amendments. The Commission believes that it is appropriate to accelerate approval of this amendment because it conforms the rule text to similar provisions approved by the Commission

[10] In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f)

[11] 15 U.S.C. 78f(b)(5).

[12] 15 U.S.C. 78s(b)(2).

[13] *See* Securities Act Release No. 8220, Securities Exchange Act Release No. 47654, and Investment Company Act Release No. 26001 (April 9, 2003), 68 FR 18788 (April 16, 2003) (release adopting Rule 10A–3).

for other self-regulatory organizations,[14] and raises no new issues.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment No. 1, including whether Amendment No. 1 is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filings will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–CHX–2003–19 and should be submitted by December 29, 2003.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[15] that the portions of the proposed rule change (File No. SR–CHX–2003–19) set forth above relating to compliance with Rule 10A–3 under the Act, maintenance standards, and audit committee responsibilities and authority, be, and hereby are, approved, and that Amendment No. 1 be granted accelerated approval.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[16]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–30355 Filed 12–5–03; 8:45 am]

BILLING CODE 8010–01–P

[14] *See* NYSE/NASD Corporate Governance Release, *supra* n. 7.

[15] 15 U.S.C. 78s(b)(2).

[16] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48857; File No. SR–NYSE–2002–40]

Self-Regulatory Organizations; Order Granting Approval of Proposed Rule Change by the New York Stock Exchange, Inc. ("NYSE") To Establish Two New Crossing Sessions in the Exchange's Off-Hours Trading Facility

December 1, 2003.

On August 29, 2002, the New York Stock Exchange, Inc. ("NYSE") filed with the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b-4 thereunder,[2] a proposed rule change to introduce into its rules "Crossing Session III" for the execution of guaranteed price coupled orders by member organizations to fill the balance of customer orders at a price that was guaranteed to a customer prior to the close of the Exchange's 9:30 a.m. to 4 p.m. trading session. On August 14, 2003, the NYSE filed Amendment No. 1 to the proposed rule change.[3] On October 8, 2003, the NYSE filed Amendment No. 2 to the proposed rule change.[4] Amendment No. 1 would adopt a new Rule 907 to add a "Crossing Session IV" whereby an unfilled balance of an order may be filled at a price such that the entire order is filled at no worse price than the Volume Weighted Average Price ("VWAP") for the subject security. Proposed Crossing Session III and Crossing Session IV would operate as a one-year pilot. The proposed rule change and Amendment Nos. 1 and 2 thereto were published for notice and comment in the **Federal Register** on October 28, 2003.[5] The Commission received no comments on the proposed rule change.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange[6] and, in particular, the requirements of Section 6(b)(5) of the Act[7] and the rules and regulations thereunder requiring that an exchange have rules that are designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. The Commission believes that the proposed new crossing sessions may improve the transparency of these types of transactions which are currently often effected in non-U.S. markets without reporting. In approving Crossing Session I and Crossing Session II, the Commission granted exemptive relief from Rule 10a-1 under the Act[8] (short sale rule) for transactions effected therein; this exemptive relief is not being extended to transactions effected in Crossing Session III and Crossing Session IV.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[9] that the proposed rule change (SR–NYSE–2002–40), be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–30356 Filed 12–5–03; 8:45 am]

BILLING CODE 8010–01–P

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Mary Yeager, Assistant Secretary, NYSE, to Nancy J. Sanow, Assistant Director, Division of Market Regulation, SEC, dated August 13, 2003, and enclosure ("Amendment No. 1"). Amendment No. 1 proposes to add "Crossing Session IV."

[4] *See* letter from Darla C. Stuckey, Corporate Secretary, NYSE, to Nancy J. Sanow, Assistant Director, Division of Market Regulation, SEC, dated October 7, 2003, and enclosure ("Amendment No. 2"). Amendment No. 2 deletes the reference to a volume-weighted average price ("VWAP") order from paragraph (c) of proposed Rule 907.

[5] Securities Exchange Act Release No. 48659 (October 20, 2003), 68 FR 61532.

[6] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[7] 15 U.S.C. 78f(b)(5).

[8] 17 CFR 240.10a-1.

[9] 15 U.S.C. 78s(b)(2).

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48861; File No. SR–PCX–2003–35]

Self-Regulatory Organizations; Order Granting Partial Approval of a Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval of Amendment No. 2 Thereto by the Pacific Exchange, Inc., To Amend Its Corporate Governance and Disclosure Policies

December 1, 2003.

I. Introduction

On July 14, 2003, the Pacific Exchange, Inc. ("PCX" or "Exchange"), through its wholly owned subsidiary, PCX Equities, Inc. ("PCXE"), filed with the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) of the Securities

Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend its Corporate Governance and Disclosure Policies. The proposed rule change, among other things, would require each issuer listed on the PCX to establish an independent audit committee and to comply with the standards for audit committees mandated by section 10A(m) of the Act[3] and Rule 10A–3 thereunder.[4] The proposed rule change also includes provisions relating to board independence and independent committees, codes of conduct, and other corporate governance issues. On October 14, 2003, the Exchange filed Amendment No. 1 to the proposal.[5] On October 31, 2003, the proposed rule change, as modified by Amendment No. 1, was published for comment in the **Federal Register**.[6] The Commission received no comments on the proposal. On November 18, 2003, the Exchange filed Amendment No. 2 to the proposal.[7]

Rule 10A–3 requires each national securities exchange and national securities association to have rules that comply with its requirements approved by the Commission no later than December 1, 2003.[8] This Order approves the proposed rule change in part as further discussed below, so that the PCX can comply with this deadline. This Order also provides notice of Amendment No. 2 and approves Amendment No. 2 on an accelerated basis. The Commission notes that the PCX is considering revisions to the portions of the proposed rule change that pertain to corporate governance listing standards other than the revisions to comply with Rule 10A–3, particularly in light of rule changes by the New York Stock Exchange, Inc. and the National Association of Securities Dealers, Inc. that were recently approved by the Commission.[9] This Order does not relate to those other proposed provisions.

II. Description of Approved Changes

The Commission is approving in this Order the following provisions of the proposed rule change, which implement the requirements of Rule 10A–3:

(1) The third proposed additional sentence to PCX Rule 5.3, "Corporate Governance and Disclosure Policies," which, as approved states: "Issuers of any security that is listed pursuant to the Rules of the Corporation must comply with the provisions of Rule 5.3(k)(5).";

(2) Proposed PCX Rule 5.3(k)(5)(A) in its entirety, as well as the heading, "Audit Committee," for proposed PCX Rule 5.3(k)(5);

(3) The heading and second sentence of proposed PCX Rule 5.3(n), "Listed Foreign Private Issuers." The rule, as approved, states: "Listed foreign private issuers must comply with the provisions of Rule 5.3(k)(5)";

(4) The proposed change to existing PCX Rule 5.5(a), "Maintenance Requirements and Delisting Procedures," which would add language to conform the rule to Rule 10A–3; and

(5) All the proposed changes to existing PCX Rule 5.5(m), "Delisting Procedures," which consist of adding a cross-reference to Rule 5.3 and referring to violations of Rule 5.3(k)(5), in which case the corporation shall initiate delisting procedures.

In addition, the Commission is approving Amendment No. 2 to the proposed rule change on an accelerated basis. In Amendment No. 2, the PCX proposes to expand, with respect to investment companies, the scope of its proposed provision regarding complaint procedures. Rule 10A–3 requires audit committees to establish procedures for "the confidential, anonymous submission by employees of the listed issuer of concerns regarding questionable accounting or auditing matters."[10] The amended PCX proposal would require that audit committees of investment companies also establish procedures for the confidential, anonymous submission of such concerns by employees of the investment adviser, administrator, principal underwriter, or any other provider of accounting related services for the investment company, as well as employees of the investment company.

III. Discussion

After careful review, the Commission finds that the provisions of the proposed rule change specified above that implement the requirements of Rule 10A–3 are consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[11]

Specifically, the Commission finds that these changes are consistent with section 6(b)(5) of the Act,[12] which requires, among other things, that the PCX's rules be designed to prevent fraudulent and manipulative acts and practices, and, in general, to protect investors and the public interest. Moreover, the Commission believes that the Exchange's proposal to add the new requirements concerning audit committees is appropriate and consonant with section 10A(m) of the Act and Rule 10A–3 thereunder relating to audit committee standards for listed issuers.

Furthermore, the Commission finds good cause, consistent with section 19(b)(2) of the Act,[13] to approve Amendment No. 2 to the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. This expansion of complaint procedures of audit committees at investment companies proposed in Amendment No. 2 responds to a recommendation by the Commission that self-regulatory organizations take into account, in adopting their rules, the fact that most services are rendered to an investment company by employees of third parties, such as the investment adviser, rather than by employees of the investment company.[14] The Commission believes that it is appropriate to accelerate approval of this amendment because it conforms to similar provisions approved by the Commission for other self-

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78j–1(m).

[4] 17 CFR 240.10A–3.

[5] *See* letter from Steven B. Matlin, Senior Counsel, PCX, to Nancy J. Sanow, Assistant Director, Division of Market Regulation, Commission, dated October 8, 2003 ("Amendment No. 1"). In Amendment No. 1, the Exchange made changes to proposed rule text in PCX Rule 5.3(k)(5)(B)(ii)(a).

[6] *See* Securities Exchange Act Release No. 48700 (October 24, 2003), 68 FR 62146 (October 31, 2003).

[7] *See* letter from Steven B. Matlin, Senior Counsel, PCX, to Nancy J. Sanow, Assistant Director, Division of Market Regulation, Commission, dated November 17, 2003 ("Amendment No. 2"). In Amendment No. 2, the Exchange proposed an additional section of rule text, PCX Rule 5.3(k)(5)(A)(v), to expand, with respect to investment companies, the scope of the requirement that audit committees establish procedures for the confidential, anonymous submission of concerns regarding questionable accounting or auditing matters.

[8] 17 CFR 240.10A–3.

[9] *See* Securities Exchange Act Release Nos. 48745 (November 4, 2003), 68 FR 64154 (November 12, 2003) (approval of, among other proposals, File Nos. SR–NYSE–2002–33 and SR–NASD–2002–141) ("NYSE/NASD Corporate Governance Release"). Telephone conference call between Steven Matlin, Senior Counsel, PCX and Nancy Sanow, Assistant Director, Division of Market Regulation, Commission, and other Commission staff, on November 17, 2003.

[10] 17 CFR 240.10A–3(b)(3)(ii).

[11] In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[12] 15 U.S.C. 78f(b)(5).

[13] 15 U.S.C. 78s(b)(2).

[14] *See* Securities Act Release No. 8220, Securities Exchange Act Release No. 47654, and Investment Company Act Release No. 26001 (April 9, 2003), 68 FR 18788 (April 16, 2003) (release adopting Rule 10A–3).

regulatory organizations[15] and raises no new issues.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment No. 2, including whether Amendment No. 2 is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filings will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–PCX–2003–35 and should be submitted by December 29, 2003.

V. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[16] that the portions of the proposed rule change (File No. SR–PCX–2003–35) set forth above relating to compliance with Rule 10A–3 under the Act be, and hereby are, approved, and that Amendment No. 2 relating to complaint procedures of audit committees of investment companies be granted accelerated approval.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[17]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–30353 Filed 12–5–03; 8:45 am]

BILLING CODE 8010–01–P

[15] *See* NYSE/NASD Corporate Governance Release, *supra* n. 9.

[16] 15 U.S.C. 78s(b)(2).

[17] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48851; File No. SR–Phlx–2003–77]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to the Renewal of a Pilot Program To Disengage the Automatic Execution Feature (AUTO–X) of the Exchange's Automated Options Market (AUTOM)

November 26, 2003.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on November 19, 2003, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Phlx. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons, and granting accelerated approval to the proposal for a pilot period of one year.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Phlx proposes to extend, for a one-year period, its Pilot program concerning AUTO–X, whereby AUTO–X is disengaged for a period of 30 seconds after the number of contracts automatically executed in a given class of options meets the specified disengagement size for the option (the "Pilot").[3] The Exchange also proposes to amend Exchange Rule 1080, Philadelphia Stock Exchange Automated Options Market (AUTOM) and Automatic Execution System (AUTO–X),[4] to reflect a systems change to the Pilot that was previously filed for immediate effectiveness with the Commission.[5] The text of the proposed rule change is set forth below. Brackets indicate deletions; indicates new text.

Philadelphia Stock Exchange Automated Options Market (AUTOM) and Automatic Implementation System (AUTO–X)

Rule 1080. (a)–(b) No change.
(c) (i)–(iii) No change.
(iv) (A)–(H) No change.
(I) when the number of contracts automatically executed within a 15 second period in an option (subject to a Pilot program until November 30, 200[3]*4*) exceeds the specified disengagement size, a 30 second period ensues during which subsequent orders are handled manually. *If the Exchange's disseminated size exceeds the specified disengagement size and an eligible order is delivered for a number of contracts that is greater than the specified disengagement size, such an order will be automatically executed up to the disseminated size, followed by an AUTO–X disengagement period of 30 seconds. If the specialist revises the quotation in such an option prior to the expiration of such 30-second period, eligible orders in such an option shall again be executed automatically.*
(v) No change.
(d)–(j) No change.
Commentary:
.01–.07 No change.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Phlx included statements concerning the purpose of, and the basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The Phlx has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to extend the Pilot for a one-year period, and to amend Exchange Rule 1080(c)(iv)(I) to reflect a systems change to the Pilot, as more fully described below. The Pilot was originally approved on a six-month basis for a limited number of eligible options[6] and extended for an additional six-month period.[7] Subsequently, the number of options eligible for the Pilot was expanded to include all Phlx-traded options.[8] In December 2001, the Pilot was extended again for an additional six-month period;[9] and extended again in May 2002,[10] November 2002,[11] and May 2003.[12] In September 2003, the Exchange filed a proposed rule change reflecting a system change to the Pilot, which is described more fully below.[13] The instant proposed rule change would codify the functionality of the system change in Exchange Rule 1080(c)(iv)(I), and would extend the Pilot for an additional one-year period.

The Pilot currently includes the following features:

- Once an automatic execution occurs via AUTO–X in an option, the system begins a "counting" program, which counts the number of contracts executed automatically for that option up to a certain size,[14] which causes AUTO–X to become disengaged for that option.
- When the number of contracts executed automatically for that option exhausts the specified disengagement size for the specific option within a 15 second time frame, the system ceases to automatically execute for that option, and drops all AUTO–X eligible orders in that option for manual handling by the specialist for a period of 30 seconds in order to enable the specialist to refresh quotes in that option.
- Upon the expiration of 30 seconds, automatic executions resume, the "counting" program is set to zero and it begins counting the number of contracts executed automatically within a 15 second time frame again, up to the specified disengagement size.

Again, when the number of contracts automatically executed exhausts the specified disengagement size within a 15 second time frame, the system drops all subsequent AUTO–X eligible orders for manual handling by the specialist for a period of 30 seconds. The system then continues to reset the "counting" program and drop to manual, etc.

In April 2003, the Commission approved a proposal by the Exchange to provide automatic executions for eligible inbound orders (for the account(s) of both customers and broker-dealers) at the Exchange's disseminated price, up to the disseminated size, replacing the previous Exchange rule that allowed a pre-set "AUTO–X guarantee" size, in which eligible orders would be automatically executed up to that AUTO–X guarantee, regardless of the Exchange's disseminated size.[15] Previously, if the Exchange's disseminated size in a particular series was greater than the AUTO–X guarantee, eligible orders delivered via AUTOM for a size greater than the AUTO–X guarantee would be automatically executed at the AUTO–X guaranteed size, and the remainder of the order would be executed manually by the specialist at the disseminated price, up to the remaining disseminated size, in accordance with the Exchange's rules regarding firm quotations.[16]

Because the Exchange currently guarantees automatic executions for eligible orders up to the Exchange's disseminated size, the Exchange has developed a new system that automatically executes eligible orders up to the disseminated size in a given series regardless of the specified disengagement size. Thus, if the disseminated size exceeds the specified disengagement size for the series, and an eligible order is delivered for a number of contracts that is greater than the specified disengagement size, the order will be executed up to the disseminated size, followed by an AUTO–X disengagement period of 30 seconds.[17] If the specialist revises the quote in the series prior to the expiration of 30 seconds, AUTO–X will be automatically re-engaged. The instant proposal would amend Rule 1080(c)(iv)(I) to reflect this enhancement to the system.

The Exchange believes that the system should enable specialists to continue to fulfill their obligations to make fair and orderly markets during periods of peak market activity, while simultaneously enabling them to meet the requirement to provide automatic executions up to the disseminated size, regardless of whether the specified disengagement size is for a number of contracts that is less than the disseminated size.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[18] in general, and furthers the objectives of Section 6(b)(5) of the Act,[19] in particular, in that it that it is designed to perfect the mechanisms of a free and open market and the national market system, protect investors and the public interest and promote just and equitable principles of trade by providing automatic executions for eligible orders up to the Exchange's disseminated size, while continuing to enable Exchange specialists to maintain fair and orderly markets during periods of peak market activity.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Pursuant to a telephone conversation between Richard S. Rudolph, Director and Counsel, Phlx, and Marc McKayle, Special Counsel, Division of Market Regulation ("Division"), Commission on November 25, 2003, the sentence was changed to clarify that the Pilot relates to option classes.

[4] AUTOM is the Exchange's electronic order delivery, routing, execution and reporting system, which provides for the automatic entry and routing of equity option and index option orders to the Exchange trading floor. Orders delivered through AUTOM may be executed manually, or certain orders are eligible for AUTOM's automatic execution feature, AUTO–X. Equity option and index option specialists are required by the Exchange to participate in AUTOM and its features and enhancements. Option orders entered by Exchange members into AUTOM are routed to the appropriate specialist unit on the Exchange trading floor. *See* Exchange Rule 1080.

[5] *See* Securities Exchange Act Release No. 48430 (September 3, 2003), 68 FR 53415 (September 10, 2003) (SR–Phlx–2003–52).

[6] *See* Securities Exchange Act Release No. 43652 (December 1, 2000), 65 FR 77059 (December 8, 2000) (SR–Phlx–00–96).

[7] *See* Securities Exchange Act Release No. 44362 (May 29, 2001), 66 FR 30037 (June 4, 2001) (SR–Phlx–2001–56).

[8] *See* Securities Exchange Act Release No. 44760 (August 31, 2001), 66 FR 47253 (September 11, 2001) (SR–Phlx–2001–79).

[9] *See* Securities Exchange Act Release No. 45090 (November 21, 2001), 66 FR 59834 (November 30, 2001) (SR–Phlx–2001–100).

[10] *See* Securities Exchange Act Release No. 45862 (May 1, 2002), 67 FR 30990 (May 8, 2002) (SR–Phlx–2002–22).

[11] *See* Securities Exchange Act Release No. 46840 (November 15, 2002), 67 FR 70473 (November 22, 2002) (SR–Phlx–2002–59).

[12] *See* Securities Exchange Act Release No. 47955 (May 30, 2003), 68 FR 34458 (June 9, 2003) (SR–Phlx–2003–29).

[13] *See supra* note 5.

[14] Exchange Rule 1080(c)(iv)(I) provides that, when the number of contracts automatically executed within a 15 second period in an option exceeds the "specified disengagement size," a 30 second period ensues during which subsequent orders are handled manually. The specified disengagement size is determined by the specialist and subject to the approval of the Exchange's Options Committee. The specified disengagement size for each option is listed on the Exchange's web site.

[15] *See* Securities Exchange Act Release No. 47646 (April 8, 2003), 68 FR 17976 (April 14, 2003) (SR–Phlx–2003–18).

[16] *See* Exchange Rule 1082.

[17] If either a market order or a limit order is larger than the disseminated size, the remaining unexecuted portion of the order would be manually handled by the specialist in accordance with Exchange Rules. Telephone conversation between Richard S. Rudolph, Director and Counsel, Phlx, and Marc McKayle, Special Counsel, Division, Commission on November 26, 2003.

[18] 15 U.S.C. 78f(b).

[19] 15 U.S.C. 78f(b)(5).

with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Phlx. All submissions should refer to File No. SR–Phlx–2003–77 and should be submitted by December 29, 2003.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[20] In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act, which requires that the rules of an exchange be designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national securities system, and protect investors and the public interest.[21]

The Commission believes that the extension of the Pilot should assist specialists in maintaining fair and orderly markets during periods of peak market activity. In that regard, the Commission notes that in response to Commission staff concerns the Exchange modified its system to provide that if the disseminated size exceeds the specified disengagement size and an eligible order is delivered for a number of contracts that is greater than the specified disengagement size, such an order will be automatically executed up to the disseminated size. The Commission believes that an extension of the Pilot program for a one-year period should allow the Exchange to continue its efforts to deploy more fully automate its systems.

Accordingly, the Commission finds good cause, pursuant to Section 19(b)(2) of the Act,[22] for approving the proposed rule change prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**. The Commission recognizes that, according to the Phlx, no complaints from customers, floor traders, or member firms have been received during the entire period of the Pilot program.[23] The Commission believes that granting accelerated approval to extend the Pilot program for one additional year will allow Phlx to continue, without interruption, the existing operation of its AUTO–X system.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, [24] that the proposed rule change (SR–Phlx–2003–77) is hereby approved on an accelerated basis, as a one-year Pilot, scheduled to expire on November 30, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[25]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–30357 Filed 12–5–03; 8:45 am]

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[20] In approving this proposal, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[21] 15 U.S.C. 78f(b)(5).

[22] 15 U.S.C. 78s(b)(2).

[23] Pursuant to telephone conversation between Richard S. Rudolph, Director and Counsel, Phlx, and Marc McKayle, Special Counsel, Division, Commission on November 24, 2003.

[24] 15 U.S.C. 78s(b)(2).

[25] 17 CFR 200.30–3(a)(12).

TENNESSEE VALLEY AUTHORITY

Paperwork Reduction Act of 1995, as Amended by Public Law 104–13; Proposed Collection; Comment Request

AGENCY: Tennessee Valley Authority.

ACTION: Proposed collection; comment request.

SUMMARY: The proposed information collection described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended). The Tennessee Valley Authority is soliciting public comments on this proposed collection as provided by 5 CFR 1320.8(d)(1). Requests for information, including copies of the information collection proposed and supporting documentation, should be directed to the Agency Clearance Officer: Alice D. Witt, Tennessee Valley Authority, 1101 Market Street (EB 5B), Chattanooga, TN 37402–2801; (423) 751–6832. (SC: 000YZ1N) Comments should be sent to the Agency Clearance Officer no later than February 6, 2004.

SUPPLEMENTARY INFORMATION:

Type of Request: Regular submission, proposal to extend a currently approved collection of information (OMB control number 3316–0062).

Title of Information Collection: TVA Procurement Documents, including Invitation to Bid, Request for Proposal, Request for Quotation, and other related Procurement or Sales Documents.

Frequency of Use: On occasion.

Type of Affected Public: Individuals or households, businesses or other for-profit, non-profit institutions, small businesses or organizations.

Small Business or Organizations Affected: Yes.

Federal Budget Functional Category Code: 999.

Estimated Number of Annual Responses: 24,300.

Estimated Total Annual Burden Hours: 49,100.

Estimated Average Burden Hours Per Response: 0.49.

Need For and Use of Information: TVA procures goods and services to fulfill its statutory obligations and sells surplus items to recover a portion of its investment costs. This activity must be conducted in compliance with a variety of applicable laws, regulations, and Executive Orders. Vendors and purchasers who voluntarily seek to contract with TVA are affected.

Jacklyn J. Stephenson,

Manager, Enterprise Operations, Information Services.

[FR Doc. 03–30341 Filed 12–5–03; 8:45 am]

BILLING CODE 8120–08–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Request for Comments Concerning Compliance With Telecommunications Trade Agreements

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of request for public comment and reply comment.

SUMMARY: Pursuant to section 1377 of the Omnibus Trade and Competitiveness Act of 1988 (19 U.S.C. 3106) ("section 1377"), the Office of the United States Trade Representative ("USTR") is reviewing, and requests comments on: the operation and effectiveness of and the implementation of and compliance with the World Trade Organization ("WTO") Basic Telecommunications Agreement; other WTO agreements affecting market opportunities for telecommunications products and services of the United States; the telecommunications provisions of the North American Free Trade Agreement ("NAFTA"); Chile and Singapore Free Trade Agreements; and, other telecommunications trade agreements. The USTR will conclude the review on March 31, 2004.

DATES: Comments are due by noon on January 5, 2004 and reply comments are due by noon on January 23, 2004.

ADDRESSES: Comments must be submitted to Gloria Blue, Executive Secretary, Trade Policy Staff Committee, ATTN: Section 1377 Comments, Office of the United States Trade Representative, 600 17th Street, NW, Washington, DC 20508.

FOR FURTHER INFORMATION CONTACT: Kenneth Schagrin, Office of Industry and Telecommunications (202) 395–5663; or Jim Kelleher, Office of the General Counsel (202) 395–3858.

SUPPLEMENTARY INFORMATION: Section 1377 requires the USTR to review annually the operation and effectiveness of all U.S. trade agreements regarding telecommunications products and services of the United States that are in force with respect to the United States. The purpose of the review is to determine whether any act, policy, or practice of a country that has entered into a telecommunications trade agreement with the United States is inconsistent with the terms of such agreement, or otherwise denies to U.S. firms, within the context of the terms of such agreements, mutually advantageous market opportunities. For the current review, the USTR seeks comments on:

(1) Whether any WTO member is acting in a manner that is inconsistent with its commitments under the WTO Basic Telecommunications Agreement or with other WTO obligations, *e.g.*, the WTO General Agreement on Trade in Services ("GATS"), including the Annex on Telecommunications and the Reference Paper on Pro-Competitive Regulatory Principles, that affect market opportunities for U.S. telecommunications products and services;

(2) Whether Canada or Mexico has failed to comply with their telecommunications commitments or obligations under NAFTA;

(3) Whether Chile or Singapore has failed to comply with their telecommunications commitments or obligations under the respective free trade agreements with those countries;

(4) Whether other countries have failed to comply with their commitments under additional telecommunications agreements with the United States, *i.e.*, Mutual Recognition Agreements (MRAs) for Conformity Assessment of Telecommunications Equipment: Mutual Recognition Agreements regarding telecommunications equipment trade with the European Union (1997), APEC countries (1998), and CITEL countries (1999).

(5) Whether there remains outstanding issues from previous Section 1377 reviews on those countries or issues previously cited. Last year's review can be found at *http://www.ustr.gov*.

See 63 FR 1140 (January 8, 1998) for further information concerning the agreements listed below and USTR Press Release 2003–23 available at *http://www.ustr.gov*, for the results of the 2003 section 1377 review concerning these agreements.

Public Comment and Reply Comment: Requirements for Submissions

USTR requests comments on: the operation and effectiveness of—including implementation of and compliance with—the WTO Basic Telecommunications Agreement; other WTO agreements affecting market opportunities for telecommunications products and services of the United States; the NAFTA; the Chile and Singapore Free Trade Agreements; and other telecommunications trade agreements with APEC members, CITEL members, the EU, Japan, Korea, Mexico and Taiwan. All comments must be in English, identify on the first page of the comments the telecommunications trade agreement(s) discussed therein, be addressed to Gloria Blue, Executive Secretary, TPSC, ATTN: Section 1377 Comments, Office of the U.S. Trade Representative, and be submitted in 15 copies by noon on January 5, 2004. Reply Comments will also require 15 copies by noon on January 23, 2004.

In order to ensure the most timely and expeditious receipt and consideration of comments and reply comments, USTR has arranged to accept submissions in electronic format (e-mail). Comments should be submitted electronically to *FR0405@USTR.GOV*. An automatic reply confirming receipt of e-mail submission will be sent. E-mail submissions in Microsoft Word or Corel WordPerfect are preferred. If a word processing application other than those two is used, please include in your submission the specific application used. For any document containing business confidential information submitted electronically, the file name of the business confidential version should begin with the characters "BC", and the file name of the public version should begin with the character "P". The "BC" and "P" should be followed by the name of the person or entity submitting the comments or reply comments. Interested persons who make submissions electronically should not provide separate cover letters; rather, information that might appear in a cover letter should be included in the submission itself. Similarly, to the extent possible, any attachments to the submission should be included in the same file as the submission itself, and not as separate files.

We strongly urge people to avail themselves of the electronic filing, if at all possible. If an e-mail submission is impossible, 15 copies may be submitted in accordance with the procedures listed below, and if not filed electronically must be delivered via private commercial courier, and arrangements must be made with Ms. Blue prior to delivery for their receipt. Ms. Blue should be contacted at (202) 395–3475.

All non-confidential comments and reply comments will be placed on the USTR Web site, *http://www.USTR.gov* and in the USTR Reading Room for inspection shortly after the filing deadline, except business confidential information exempt from public inspection in accordance with 15 CFR 2003.6. Confidential information submitted in accordance with 15 CFR 2003.6, must be clearly marked "BUSINESS CONFIDENTIAL" in a contrasting color ink at the top of each page on each of 15 copies, and must be accompanied by 15 copies of a nonconfidential summary of the confidential information. The nonconfidential summary will be placed in the USTR Public Reading Room. Since comments and reply comments will be posted on USTR's Web site, those persons not availing themselves of electronic filing must submit their 15 copies with a diskette. USTR will post the non-confidential version of the filing, therefore the non-confidential version must be clearly marked on the diskette.

An appointment to review the comments may be made by calling the USTR Reading Room at (202) 395–6186. The USTR Reading Room is open to the public from 9:30 a.m. to 12 noon, and from 1 p.m. to 4 p.m., Menday through Friday, and is located in Room 3 of 1724 F Street., NW.

Dated: December 3, 2003.

Carmen Suro-Bredie,

Chairman, Trade Policy Staff Committee.

[FR Doc. 03–30375 Filed 12–5–03; 8:45 am]

BILLING CODE 3190–W3–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2003–16324]

Notice of Request for Clearance of a New Information Collection: Share The Road Safely Campaign Assessment

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the requirement in section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, this notice announces the intention of the FMCSA to request the Office of Management and Budget (OMB) to approve a new information collection related to one of its national motor carrier safety initiatives, titled "Share The Road Safely (STRS)" campaign. The STRS campaign is a public information, education and outreach program designed to improve the motoring public's awareness of the operating limitations of large commercial motor vehicles. The program's goal is to lower the number of crashes, injuries, and fatalities by targeting high-risk drivers with this important safety message. It also seeks to increase motorists' awareness of the STRS campaign and its highway safety messages. When appropriate, campaign efforts will combine local law enforcement activities for car-truck proximity violations. The agency plans to collect information from a sample of the Nation's non-commercial licensed drivers to determine the motoring public's recognition and awareness of FMCSA's STRS campaign.

DATES: Comments must be submitted on or before February 6, 2004.

ADDRESSES: All signed, written comments should refer to the docket number that appears in the heading of this document and must be submitted to the Docket Clerk, U.S. DOT Dockets, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590–0001. All comments received will be available for examination at the above address between 10 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard or envelope.

Electronic Access: An electronic copy of this document may be downloaded using the Internet at the Office of the Federal Register's home page at: *http://www.nara.gov/fedreg* and the Government Printing Office's database at: *http://www.access.gpo.gov/nara*. For Internet users, all comments received will be available for examination at the universal source location: *http://dms.dot.gov*. Please follow the instructions on-line for additional information and guidance.

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Mr. Brian Ronk, Program Manager, Share The Road Safely, (202) 366–1072, Safety Action Programs Division, Office of Safety Programs, Federal Motor Carrier Safety Administration, 400 7th Street SW., Suite 8314, Washington, DC 20590. Office hours are from 7 a.m. to 4:30 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Title: Share The Road Safely Campaign Assessment.

Background: The purpose of the STRS campaign is to help reduce the number of car-truck crashes, injuries, fatalities, and property loss. The campaign was initiated by the FMCSA in 1994 in response to a congressional mandate set forth in the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA) (Public Law 102–240, 105 Stat. 1914 (December 18, 1991), that the FMCSA "educate the motoring public about how to safely share the road with commercial motor vehicles." The principal campaign goal is to increase motorists' awareness of the STRS campaign and its highway safety messages.

The FMCSA will conduct a quantitative analysis of the Share The Road Safely public information, education and outreach campaign and its messages by developing and administering an evaluation study using pre-campaign and post-campaign survey measures. This pre-campaign/post-campaign study will help evaluate the impact the STRS campaign has on increasing motorists' awareness of commercial motor vehicle limitations and unsafe driving practices of the motoring public around large commercial motor vehicles in several ways.

First, the study will be conducted to determine the motoring public's recognition and awareness of the STRS campaign. Second, the study will be used as a starting point from which the campaign will be evaluated at a future date. Third, the study will quantify respondents' knowledge of large commercial motor vehicle (*i.e.*, tractor trailers) limitations; their knowledge of "share the road safely" issues; and their knowledge of the STRS campaign and its messages.

It is anticipated that a sample of 4,000 potential respondents will be needed in order to complete 1,000 interviews for the study in households with telephones using a national random digit dial sample.

Respondents: The respondents will be randomly selected adult licensed drivers. An estimated 1,000 responses will be necessary to conduct the analysis.

Average Burden Per Response: The estimated average burden per response is 9 minutes. It is planned that each respondent will be asked up to 36 specific questions concerning highway safety.

Estimated Total Annual Burden: The estimated total annual burden is 150 hours (1,000 responses x 9 minutes per response).

Frequency: This initial study will help the FMCSA establish a baseline for determining the public's awareness of large commercial motor vehicle limitations, "Share the Road Safely" highway safety issues, and STRS campaign messages. The same information will be collected again in 2 to 3 years to assess improvements in public awareness as a result of STRS public outreach efforts.

Public Comments Invited: Interested parties are invited to send comments regarding any aspect of this information collection, including, but not limited to (1) The necessity and utility of the information collection for the proper performance of the functions of the FMCSA; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the collected information; and (4) ways to minimize the collection burden without reducing the quality of the collected information. Comments submitted in response to this notice will be summarized and/or included in the request for OMB clearance of this information collection.

Authority: Pub. L. 102–240, 105 Stat. 1914; and 49 CFR 1.73.

Issued on: December 1, 2003.

Annette M. Sandberg,

Administrator.

[FR Doc. 03–30377 Filed 12–5–03; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2003–14621]

Impaired Driving Integrated Project Team (IPT) Plan

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of availability of document.

SUMMARY: This notice announces the availability of NHTSA's high priority safety report describing the agency's current and planned activities to address impaired driving. The report is available from the Docket Management System, U.S. Department of Transportation, at *http://dms.dot.gov* or on NHTSA' Web site at *http://www.nhtsa.dot.gov/IPTReports.html*. While the document is final, the agency is offering the public the opportunity to comment on the agency's planned impaired driving activities. The comments will be considered for future agency efforts.

DATES: Comments must be received no later than January 22, 2004.

ADDRESSES: You may submit comments identified by Impaired Driving DOT DMS Docket Number [NHTSA–2003–14621] by any of the following methods:

- Web Site: *http://dms.dot.gov*. Follow the instructions for submitting comments on the DOT electronic docket site.
- Fax: 1–202–493–2251. • Mail: Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW, Nassif Building, Room PL–401, Washington, DC 20590.
- Hand Delivery: Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

Instructions: All submissions must include the agency name and docket number. Note that all comments received will be posted without change to *http://dms.dot.gov*, including any personal information provided.

Docket: For access to the docket to read background documents or comments received, go to *http://dms.dot.gov* at any time or to Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

FOR FURTHER INFORMATION CONTACT: Jim Wright, National Highway Traffic Safety Administration, Room 5118, 400 Seventh Street, SW, Washington, DC 20590. Telephone: 202–366–2724 or Dee Williams, National Highway Traffic Safety Administration, Room 5208, 400 Seventh Street, SW, Washington, DC 20590. Telephone: 202–366–0498.

SUPPLEMENTARY INFORMATION: As a symptom of the larger substance abuse problem, impaired driving leaves thousands dead and injured each year, with a cost of billions to the nation. In 2002 alone, there was an estimated 17,419 alcohol-related motor vehicle deaths. Embedded within issues of alcoholism, underage and problem drinking, drug abuse, and illegal sale of alcohol and other drugs, the solutions to the impaired driving problem are complex, wide-ranging and expensive. NHTSA has made finding solutions to reduce impaired driving one of the agency's highest priorities. Initiatives the agency plans to pursue include:

(1) Priority Initiatives: National Level

a. Behavioral Modification Initiatives
   Provide Leadership in Fostering Federal Agency Collaboration
   Screening and Brief Intervention
   Coordinated Mass Media Campaign
b. Motor Vehicle and Environmental Initiatives
   Generate Vehicle-Based Solutions
   Collaborate with the Federal Highway Administration to Promote Roadway-Based Solutions

(2) Priority Initiatives: State Program Needs

a. Countermeasures
   High Visibility Law Enforcement
   DWI Courts
   DWI Prosecutors
   Increase Efficiency of Offender Processing
   Strong ABC Policy and Enforcement
   Alternative Sanctions/Limitations on Pre-Conviction Diversion Programs
b. Infrastructure Needs
   Promote Statewide Self-Sufficiency
   Increase BAC Testing
   Implement Model Impaired Driving Records System
   Establish DWI Task Forces
   Enact or Strengthen Effective Laws

NHTSA believes the initiatives described in this report will lead to both near-term and longer-term solutions to reducing impaired driving among the United States population.

In September 2002, NHTSA assembled integrated project teams (IPTs) to address four highway safety programs of special interest: safety belt use; impaired driving; vehicle compatibility; and vehicle rollover. The reports associated with vehicle compatibility and vehicle rollover were released in June 2003. The report on safety belt use was released in July 2003. All can be found on NHTSA's Web site at *http://www.nhtsa.dot.gov/IPTReports.html* and also on DOT's docket management system (DMS) at *http://dms.dot.gov/*. The docket numbers for each of the respective reports are as follows:

- Safety Belt Use—NHTSA–2003–14620;
- Impaired Driving—NHTSA–2003–14621;
- Rollover Mitigation—NHTSA–2003–14622; and
- Vehicle Compatibility—NHTSA–2003–14623.

Each document describes the safety problem and provides strategies the agency plans to pursue in addressing vehicle compatibility, increasing safety belt use, reducing impaired driving and mitigating rollover. Comments received will be evaluated and incorporated, as appropriate, into planned agency activities.

How Do I Prepare and Submit Comments?

Your comments must be written and in English. To ensure that your comments are correctly filed in the Docket, please include the Docket number of this document (NHTSA–2003–14621) in your comments.

Please send two paper copies of your comments to Docket Management or submit them electronically. The mailing address is U.S. Department of Transportation Docket Management, Room PL–401, 400 Seventh Street, SW, Washington, DC 20590. If you submit your comments electronically, log onto the Docket Management System Web site at *http://dms.dot.gov* and click on "Help & Information" or "Help/Info" to obtain instructions.

How Can I Be Sure That My Comments Were Received?

If you wish Docket Management to notify you upon its receipt of your comments, enclose a self-addressed, stamped postcard in the envelope containing your comments. Upon receiving your comments, Docket Management will return the postcard by mail.

How Do I Submit Confidential Business Information?

If you wish to submit any information under a claim of confidentiality, send three copies of your complete submission, including the information you claim to be confidential business information, to the Chief Counsel, NCC–110, National Highway Traffic Safety

Administration, Room 5219, 400 Seventh Street, SW, Washington, DC 20590. Include a cover letter supplying the information specified in our confidential business information regulation (49 CFR part 512).

In addition, send two copies from which you have deleted the claimed confidential business information to Docket Management, Room PL–401, 400 Seventh Street, SW, Washington, DC 20590.

Will the Agency Consider Late Comments?

In our response, we will consider all comments that Docket Management receives before the close of business on the comment closing date indicated above under **DATES**. To the extent possible, we will also consider comments that Docket Management receives after that date.

Please note that even after the comment closing date, we will continue to file relevant information in the Docket as it becomes available. Further, some people may submit late comments. Accordingly, we recommend that you periodically check the Docket for new material.

How Can I Read the Comments Submitted by Other People?

You may read the comments by visiting Docket Management in person at Room PL–401, 400 Seventh Street, SW, Washington, DC from 10 a.m. to 5 p.m., Monday through Friday.

You may also see the comments on the Internet by taking the following steps:

- Go to the Docket Management System (DMS) Web page of the Department of Transportation (*http://dms.dot.gov*).
- On that page, click on "search."
- On the next page (*http://dms.dot.gov/search/*) type in the four-digit Docket number shown at the beginning of this document (14621). Click on "search."
- On the next page, which contains Docket summary information for the Docket you selected, click on the desired comments. You may also download the comments.

Authority: 49 U.S.C. 30111, 30117, 30168; delegation of authority at 49 CFR 1.50 and 501.8.

Noble N. Bowie,

Associate Administrator for Planning, Evaluation & Budget.

[FR Doc. 03–30361 Filed 12–5–03; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34417 (Sub–No. 1)]

Union Pacific Railroad Company—Trackage Rights Exemption—The Burlington Northern and Santa Fe Railway Company

AGENCY: Surface Transportation Board, DOT.

ACTION: Partial revocation of exemption.

SUMMARY: The Board, under 49 U.S.C. 10502, revokes the class exemption as it pertains to the trackage rights described in STB Finance Docket No. 34417 to permit the trackage rights to expire on October 15, 2004, in accordance with the agreement of the parties.[1]

DATES: This exemption is effective on January 7, 2004. Petitions to stay must be filed by December 18, 2003. Petitions to reopen must be filed by December 29, 2003.

ADDRESSES: An original and 10 copies of all pleadings referring to STB Finance Docket No. 34417 (Sub-No. 1) must be filed with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001. In addition, a copy of all pleadings must be served on petitioner's representative: Robert T. Opal, 1416 Dodge Street, Room 830, Omaha, NE 68179.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar (202) 565–1609. [Federal Information Relay Service (FIRS) for the hearing impaired: 1–800–877–8339.]

SUPPLEMENTARY INFORMATION: Additional information is contained in the Board's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: ASAP Document Solutions, Suite 405, 1925 K Street, N.W., Washington, DC 20006. Telephone: (202) 293–7878. [Assistance for the hearing impaired is available through FIRS at 1–800–877–8339.]

Board decisions and notices are available on our Web site at "*http://www.stb.dot.gov.*"

Decided: November 24, 2003.

By the Board, Chairman Nober.

Vernon A. Williams,

Secretary.

[FR Doc. 03–29811 Filed 12–5–03; 8:45 am]

BILLING CODE 4915–00–P

[1] On October 14, 2003, UP concurrently filed a verified notice of exemption under the Board's class exemption procedures at 49 CFR 1180.2(d)(7). The notice covered the agreement by BNSF to grant temporary local trackage rights to UP over a BNSF line of railroad between milepost 114.5 and milepost 117.0 near Endicott, NE, a distance of approximately 2.5 miles. UP submits that the trackage rights are only temporary rights, but, because they are "local" rather than "overhead" rights, they do not qualify for the Board's new class exemption for temporary trackage rights at 49 CFR 1180.2(d)(8). *See Union Pacific Railroad Company—Trackage Rights Exemption—The Burlington Northern and Santa Fe Railway Company*, STB Finance Docket No. 34417 (STB served Nov. 3, 2003). The trackage rights operations under the exemption were scheduled to begin on October 21, 2003.

Corrections

Federal Register

Vol. 68, No. 235

Monday, December 8, 2003

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF LABOR

Employment and Training Administration

Federal-State Unemployment Compensation Program: Certifications for 2003 Under the Federal Unemployment Tax Act

Correction

In notice document 03–28404 beginning on page 64369 in the issue of Thursday, November 13, 2003, make the following corrections:

1. On page 64370, in the first column, under the heading "**Certification of States to the Secretary of the Treasury Pursuant to Section 3304(c) of the Internal Revenue Code of 1986**", directly under the entry "North Carolina", add the entry "North Dakota".

2. On the same page, in the same column, under the same heading, the entry "Virgin Island" should read "Virgin Islands".

3. On the same page, in the same column, under the same heading, directly under the entry "Wisconsin", add the entry "Wyoming".

4. On the same page, in the second column, under the heading "**Certification of State Unemployment Compensation Laws to the Secretary of the Treasury Pursuant to Section 3303(b)(1) of the Internal Revenue Code of 1986**", directly under the entry "North Carolina", add the entry "North Dakota".

[FR Doc. C3–28404 Filed 12–5–03; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2003–16498; Airspace Docket No. 03–ACE–82]

Modification of Class E Airspace; Mount Pleasant, IA

Correction

In rule document 03–30014 beginning on page 67357 in the issue of Tuesday, December 2, 2003, make the following correction:

§71.1 [Corrected]

On page 67358, in the first column, in §71.1, under the heading, **ACE IA E5 Mount Pleasant, IA**, the second line should read "(Lat. 40°56′48″N., long. 91°30′40″W.)".

[FR Doc. C3–30014 Filed 12–5–03; 8:45 am]

BILLING CODE 1505–01–D

Federal Register

Monday,
December 8, 2003

Part II

Department of the Interior

Bureau of Land Management

43 CFR Part 4100

Grazing Administration—Exclusive of Alaska; Proposed Rule

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 4100

[WO–220–1020–24 1A]

RIN: 1004–AD42

Grazing Administration—Exclusive of Alaska

AGENCY: Bureau of Land Management, Interior.

ACTION: Proposed rule.

SUMMARY: The Bureau of Land Management (BLM) proposes amending its regulations concerning how BLM administers livestock grazing on public lands. The proposed changes would: improve BLM's day-to-day grazing management efficiency; ensure BLM documents its considerations of the social, cultural, environmental, and economic consequences of grazing changes; provide that changes in grazing use be phased-in under certain circumstances; allow BLM to share title with permittees and lessees to range improvements in certain circumstances; make clear how BLM will authorize grazing if a BLM decision affecting a grazing permit is stayed pending administrative appeal consistent with court rulings; remove provisions in the present regulations concerning conservation use grazing permits; ensure adequate time for developing and successfully implementing an appropriate management action when BLM finds that current grazing management does not meet standards and guidelines for rangeland health, and that authorized grazing is a significant factor in not achieving one or more land health standards or not conforming with guidelines for grazing administration; and revise some administrative fees. We intend these changes to improve working relationships with permittees and lessees, enhance administrative efficiency, and cost effectiveness, clarify the regulations and protect the health of rangelands.

DATES: You should submit your comments on or before February 6, 2004. The BLM may not necessarily consider comments postmarked or received by messenger or electronic mail after the above date in the decision-making process on the final rule.

Public meetings will be held on dates and at times and places to be announced in subsequent **Federal Register** documents.

ADDRESSES: Mail: Director (630), Bureau of Land Management, Eastern States Office, 7450 Boston Boulevard, Springfield, Virginia 22153, Attention: RIN 1004–AD42.

Personal or messenger delivery: 1620 L Street NW., Suite 401, Washington, DC 20036.

Direct Internet response: *http://www.blm.gov/nhp/news/regulatory/index.htm.* or *http://www.blm.gov/grazing.*

E-mail: WOComment@blm.gov.

FOR FURTHER INFORMATION CONTACT: Ken Visser, Rangeland Management Specialist, Rangeland, Soils, Water and Air Group, (202) 452–7743, Ted Hudson (202) 452–5042 or Cynthia Ellis (202) 452–5012 of the Regulatory Affairs Group. Individuals who use a telecommunications device for the deaf (TDD) may contact them individually through the Federal Information Relay Service at 1–800/877–8339, 24 hours a day, seven days a week.

SUPPLEMENTARY INFORMATION:

I. Public Comment Procedures
II. Background
III. Why We Are Proposing This Rule
IV. Section-by-Section Analysis
V. Procedural Matters

I. Public Comment Procedures

A. How Do I File Comments?

If you wish to comment, you may submit your comments by any one of several methods.

- You may mail your comments to: Director (630), Bureau of Land Management, Eastern States Office, 7450 Boston Boulevard, Springfield, Virginia, 22153.
- You may deliver comments to 1620 L Street NW., Suite 401, Washington, DC 20036.
- You may comment via the Internet by accessing our automated commenting system located at *www.blm.gov/nhp/news/regulatory/index.htm* and following the instructions there.
- You may comment via email at *WOComment@blm.gov.*

Please make your comments on the proposed rule as specific as possible, confine them to issues pertinent to the proposed rule, and explain the reason for any changes you recommend. Where possible, your comments should reference the specific section or paragraph of the proposal that you are addressing.

The Department of the Interior may not necessarily consider or include in the Administrative Record for the final rule comments that we receive after the close of the comment period (see **DATES**) or comments delivered to an address other than those listed above (*see* **ADDRESSES**).

B. May I Review Comments Others Submit?

BLM intends to post all comments on the Internet. If you are requesting that your comment remain confidential, do not send us your comment at the Internet or e-mail address because we immediately post all comments we receive on the Internet. Also, comments, including names and street addresses of respondents, will be available for public review at the address listed under **ADDRESSES**: Personal or messenger delivery" during regular business hours (7:45 a.m. to 4:15 p.m.), Monday through Friday, except holidays.

Individual respondents may request confidentiality, which we will honor to the extent allowable by law. If you wish to withhold your name or address, except for the city or town, you must state this prominently at the beginning of your comment. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

II. Background

The regulations on livestock grazing provide the framework for a public land use that has its roots in the settlement of West. The tradition of orderly use of public range in conjunction with private lands was recognized in law with the passage of the Taylor Grazing Act (TGA) in the 1930s, and again in 1976 with the Federal Land Policy and Management Act. The intent of the regulations has always been for the agency to consult and cooperate with the ranchers, private landowners, and other users of the public lands. Our shared purpose must be to sustain the open space, habitat, and watershed values that the public and private lands together can offer.

Providing for livestock grazing is part of the BLM mission to sustain the health, diversity, and productivity of public lands. In part because of its long history, public land grazing is woven into the landscapes and cultures of the rural West, and contributes valuable landscape and culture elements. Our challenge is to establish a framework that helps us accomplish our shared stewardship purpose in a manner that works well in the social and economic context of affected communities.

The ranching families of livestock permittees live and work in the heart of the Western rural landscapes. Their relationship with BLM needs to be more than regulatory if we are to engage in conservation of entire landscapes. Our goals must be to establish simple and practical ways for permittees, lessees, affected state and local officials, and the interested public to engage with BLM in partnerships that will leave improved open space, watershed, and habitat conditions to the next generation.

Without careful consideration of policy decisions affecting ranching, conversion of this rural West to something different is entirely possible. This conversion is frequently in evidence along the expanding urban interfaces of the West: development of ranchland into subdivisions, changes in water use and watershed characteristics, and changes in fire frequency and effects. Some of these changes are necessary as populations grow and shift, but also necessary is retaining large tracts of the rural West. A proper regulatory framework for managing grazing use can contribute to maintaining Western landscapes.

Whenever BLM addresses changes in regulations, we engage in a public dialogue to ensure all points of view are considered. The changes proposed in this rule seek to strike a balance among competing goals, and to keep administrative processes as simple, understandable, and flexible as possible. Meaningful, positive, and sustainable change on the rangelands of the West can best be accomplished through cooperation.

The proposed amendments of the grazing regulations were developed using three primary concepts:

(1) Improving cooperation with all interested persons, especially with directly affected permittees and landowners;

(2) Promoting practical mechanisms for assessing change in rangelands and protecting rangelands by increasing monitoring activities; and

(3) Enhancing administrative efficiency and effectiveness, including addressing legal issues that need clarification.

Applying these three concepts should strengthen the regulations and promote communication oriented toward seeking agreement and working together. Together we can gather more and better information on observed trends in the vegetation communities of the West. We can resolve some legal matters that have been barriers to meaningful dialogue about the issues we need to address. And we can sharpen the focus on the issues that truly need our attention as we seek to ensure proper grazing management as a part of conserving the rural landscapes of the West.

BLM administers livestock grazing on BLM lands within the continental United States under the regulations found at 43 CFR 4100. Statutory authorities supporting these regulations include the following:

1. The Taylor Grazing Act (TGA) as amended (43 U.S.C. 315, 315a through 315r);
2. The Federal Land Policy and Management Act (FLPMA) (43 U.S.C. 1701 *et seq.*) as amended by the Public Rangelands Improvement Act (PRIA) (43 U.S.C. 1901 *et seq.*);
3. Section 4 of the Oregon and California Railroad Lands Act (43 U.S.C. 1181d);
4. Executive orders that transfer land acquired under the Bankhead-Jones Farm Tenant Act (7 U.S.C. 1012) to the Secretary and authorize administration under TGA; and
5. Public land orders, executive orders and agreements authorizing the Secretary to administer livestock grazing on specified lands under TGA or on other lands as specified.

BLM land use plans guide and direct public lands resource management under the multiple-use mandate of the Federal Land Policy and Management Act of 1976. Land use plans specify lands that are available for livestock grazing and the parameters under which grazing is to occur. BLM issues grazing permits or leases for available grazing lands. Grazing permits and leases specify the portion of the landscape BLM authorizes to the permittee or lessee for grazing (*i.e.*, one or more allotments) and establish the terms and conditions of grazing use. Terms and conditions include, at a minimum, the number and class of livestock, when and where they are allowed to graze, and for how long. Grazing use must conform to any applicable allotment management plans, the terms and conditions of the permit or lease, land use plan decisions, and the grazing regulations.

Since the first set of grazing regulations was issued after passage of the TGA in 1934, they have been periodically amended and updated. The last major revision effort was called "Rangeland Reform '94". In February 1995, BLM published comprehensive changes to the grazing regulations and put them into effect in August 1995. Changes made to the rules in 1995 include the following:

1. Revised the term "grazing preference" to mean a priority position against other applicants for receiving a grazing permit, rather than a specified amount of public land forage apportioned and attached to a base property owned or controlled by a permittee or lessee, and added the term "permitted use" to describe forage use amounts authorized by grazing permits or leases;
2. Removed the requirement that one must be engaged in the livestock business to qualify for grazing use on public lands;
3. Required applicants for a new or renewed grazing permit to have a satisfactory record of performance;
4. Provided that BLM could issue a conservation use permit to authorize permittees not to graze their permitted allotments;
5. Limited authorized temporary nonuse to 3 years;
6. Required grazing fee surcharges for permittees who do not own the cattle that graze under their permits;
7. Provided that the United States holds 100 percent of the vested title to permanent range improvements, constructed under cooperative agreements, rather than proportionately sharing title with the cooperators;
8. Required livestock operators and the BLM to use cooperative agreements to authorize new permanent water developments, instead of allowing some water developments to be authorized under range improvement permits;
9. Provided that after August 21, 1995, the United States, if allowed by state water laws, would acquire livestock water rights on public lands;
10. Authorized BLM to approve non-monetary settlement of non-willful grazing trespass under certain circumstances;
11. Expanded the list of prohibited acts applicable to grazing activities;
12. Established Fundamentals of Rangeland Health; and
13. Created a process for developing and applying state or regional standards for land health and guidelines for livestock grazing as a yardstick for grazing management performance.

The Public Lands Council sought judicial review with respect to a number of these provisions. The court upheld all provisions except conservation use (*see* 4, above) (*Public Lands Council* v. *Babbitt*, 929 F.Supp. 1436 (D. Wyo. 1996), *rev'd in part and aff'd in part*, 167 F.3d 1287 (10th Cir. 1999), *aff'd*, 529 U.S. 728 (2000)).

III. Why We Are Proposing This Rule

The current regulations, issued in 1995, require amending to comply with court decisions, improve working relationships with permittees and lessees, enhance administrative procedures and business practices, and promote conservation of public lands.

BLM published an Advance Notice of Proposed Rulemaking (ANPR) and Notice of Intent (NOI) to Prepare an Environmental Impact Statement (EIS) in the **Federal Register** on March 3, 2003, (68 FR 9964–66 and 10030–

10032). These notices requested public comment and input to assist BLM with the scoping process for this proposed rule and the EIS. The comment period on the ANPR and the NOI ended on May 2, 2003.

During the scoping process, BLM held four public meetings to elicit comments and suggestions for the proposed rule and development of the draft environmental impact statement. The meetings were held during March 2003 in Albuquerque, New Mexico; Reno, Nevada; Billings, Montana; and Washington, DC.

We received approximately 8,300 comments on the ANPR and the NOI. The majority of these were varying types of form letters. In response to the ANPR, the majority of commenters opposed allowing livestock operators to temporarily lock gates on public lands in order to protect private property in specific limited situations. We have dropped this proposal from this proposed rule. Many commenters also opposed making any changes to the 1995 grazing regulations and several questioned why BLM was proposing amendments to the grazing regulations so soon after the 1995 changes. Some members of the ranching industry commented that they supported allowing categorical exclusions for routine activities during National Environmental Policy Act (NEPA) compliance; however, this is outside the scope of the rulemaking and is not addressed in today's proposed rule. Many commenters urged BLM to consider increasing monitoring efforts on grazing allotments. Some commenters recommended raising the grazing fees to reflect current market values for livestock. BLM is not addressing grazing fees in today's proposed rule.

We will distribute the Draft EIS (DEIS) on approximately December 19, 2003. Copies will be available on the Internet at *http://www.blm.gov/grazing*, and at the Department of the Interior Library, C Street Lobby, 1849 C Street, NW, Washington, DC 20240. Copies of the DEIS will also be available at BLM State Offices. BLM will publish a Notice of Availability of the DEIS in a separate publication in the **Federal Register**. The DEIS examines the impact of the proposed regulatory changes and alternatives for improving the management of the Nation's public rangelands.

This proposed rule would make changes in several sections of BLM's existing regulations, including revising and creating definitions for key terms pertinent to the grazing administration program. Such changes would include modifying the public participation requirements relating to some day-to-day grazing management matters, and removing provisions authorizing conservation use permits to comply with a Federal Court decision.

The 1995 rule greatly expanded the list of situations in which BLM solicits public comment on pending grazing management decisions. This has led to BLM focusing scarce staff resources and time primarily on managing the public participation process, including organizing and updating mailing lists and handling mailings, rather than on conducting necessary day-to-day grazing management work such as monitoring resource conditions. BLM proposes to retain the interested public consultation requirements for the following specific BLM actions:

1. Apportioning additional forage on BLM managed lands;
2. Development or modification of a grazing activity plan and other BLM land use plans;
3. Planning of the range development or improvement program; and
4. Reviewing and commenting on grazing management evaluation reports.

Also retained in the regulations will be the requirement that BLM provide the interested public with copies of proposed and final grazing decisions and allow them respectively to protest and appeal such grazing decisions.

Although this proposed rule would remove the requirement that BLM consult with the interested public about the following administrative day-to-day actions, BLM could still consult voluntarily on these matters before:

1. Adjusting allotment boundaries,
2. Changing grazing preference,
3. Issuing emergency closures,
4. Renewing or issuing a grazing permit or lease,
5. Modifying permits and leases, or
6. Issuing temporary and non-renewable grazing permits.

BLM may also consult with permittees and lessees, state and local officials, and the interested public on any other matter where the authorized officer finds that such consultation would facilitate management of grazing on the public lands.

This change would require consultation with the interested public where such input would be of the greatest value, such as when deciding vegetation management objectives in an allotment management plan, or preparing reports evaluating range conditions. BLM in cooperation with the grazing operator, would retain the discretion to determine and implement the most appropriate on-the-ground management actions to achieve the objectives and/or respond to the conditions. BLM values productive consultation with the interested public. However, BLM needs some flexibility in order to take responsive, timely, and efficient management action without being required to first undertake mandatory consultation.

We received comments asking BLM to remove the term "interested public" from the regulations and replace the term with "affected interests" as it appeared prior to the 1995 grazing regulation changes. Commenters stated that the involvement of "interested public" is more appropriate for the broader land use plan process and that increased participation from the interested public in day-to-day grazing management matters created more work for BLM and resulted in substantial program-related backlogs. As discussed above, our proposal attempts to address these issues through a change to the definition and modifications in requirements to consult with the interested public.

In order to comply with the 10th Circuit Court of Appeals decision in *Public Lands Council* v. *Babbitt*, 929 F.Supp. 1436 (D. Wyo. 1996), *rev'd in part and aff'd in part*, 167 F.3d 1287 (10th Cir. 1999), *aff'd*, 529 U.S. 728 (2000) the proposed rule would remove language from the 1995 regulations that allowed BLM to issue conservation use permits. The court ruled that the TGA does not authorize BLM to grant conservation use permits.

BLM issues grazing permits and leases to authorize livestock grazing on public lands. In contrast, conservation use permits allowed a permittee to elect not to graze allotments for the duration of the permit, which is typically 10 years. The TGA requires BLM to issue a grazing permit expecting a permittee or lessee to use it to graze livestock. (167 F.3d at 1307–1308). If the permittee or lessee does not plan to graze livestock, BLM can cancel the permit and issue one for that allotment to someone who will use it for its intended purpose. There are circumstances, however, where it is desirable to allow the land to be rested from grazing to protect or improve the condition of resources or to allow relatively short periods of nonuse for the personal or business needs of the operator.

The Tenth Circuit Court's decision in *Public Lands Council* v. *Babbitt* affects another regulatory provision related to "not grazing under a permit." BLM can authorize, on an annual basis, permittees and lessees to graze less than what is provided for in their permit, including not grazing at all. BLM calls this practice "authorized temporary nonuse" and can allow it for purposes of conservation and protection of the public lands, or for reasons associated with business or personal needs of the permittee. The current regulation limits authorized temporary nonuse to 3 consecutive years, after which the permittees must graze as much as they are authorized in their permit or risk losing the unused portion.

The 3 consecutive year temporary nonuse limitation rule was intended to work in conjunction with the regulation that provided for conservation use permits. For example, if the permittee wanted authorized temporary nonuse for more than 3 consecutive years, and BLM agreed that continuing not to graze the allotment(s) was necessary to protect or enhance resources, BLM could replace his "regular" permit with a conservation use permit. However, because of the 10th Circuit Court decision, we no longer have that option, and BLM is limited to issuing "regular" permits only. The current regulations limit authorized temporary nonuse to 3 consecutive years. Therefore, BLM must require permit holders to use the grazing permit at the end of the 3 years even if both the permittee and BLM wish to continue the nonuse for resource stewardship purposes. BLM proposes not to require grazing use of a permit when both the BLM and permittee agree that temporary nonuse is needed for resource stewardship reasons. Although we propose to remove the 3-consecutive-year limitation on authorized nonuse if the purpose of the nonuse is for resource stewardship reasons, we realize that some may wish to acquire a permit and not use it indefinitely, despite the 10th Circuit Court's decision that BLM cannot issue grazing permits not to graze. Where land use plans provide that an acceptable use of the public lands is domestic livestock grazing, then BLM will manage those lands for grazing in accordance with the land use plan.

Failing to "make substantial grazing use as authorized for two consecutive fee years" is prohibited under current grazing regulations. BLM does not propose to amend this provision in this rule. BLM may deny nonuse of a permit if the permittee cannot justify that nonuse is for resource stewardship or personal or business reasons. If BLM denies nonuse, and the permittee does not graze livestock as allowed under the permit for two years in a row, the permit or portion of the permit that is not used is subject to cancellation and would be available for awarding to another applicant. (These same principles pertain to leases.) The changes to nonuse provisions that BLM is proposing today would provide that BLM could authorize nonuse for no longer than one year at a time, but could repeat such annual authorizations for more than 3 consecutive years.

We considered many of the substantive issues that were raised during the scoping period and have incorporated several of these as alternatives in the draft EIS. We did not address, however, some of the issues that commenters raised because they are either beyond the scope of the document, did not meet the basic purposes of these proposed changes to the regulations, or BLM decided we could better address the issues through policy.

The following are issues we considered but do not address in this proposed rule:

- Increasing grazing fees and restructuring grazing based on market demand are outside the scope of this proposed rule.
- Reestablishing BLM grazing advisory boards to provide local advice and recommendations to BLM on grazing issues is not addressed because BLM grazing advisory boards were "sunset" on December 31, 1985, by FLPMA. This proposed rulemaking, however, would provide that BLM cooperate with state, county or locally established grazing boards in reviewing range improvements and allotment management plans on public lands. This review would supplement the counsel of Resource Advisory Councils that BLM established in 1995 to advise BLM and recommend strategies for managing public lands under our multiple-use mandate.
- Modifying management of wild horses and burros or making any changes to The Wild Horse and Burro Act or its implementing regulations are outside the authority and scope of this proposed rule. Issues involving allocation of forage are addressed in land use plans.
- Counting 7 sheep, rather than the current 5, as the equivalent of one animal unit for the purposes of calculating grazing fee billings are not addressed because matters involving the grazing fee are outside the scope of this proposed rule.
- Establishing and managing Reserve Common Allotments is not addressed in this proposed rule. In the ANPR, BLM stated that we were considering proposing provisions to define, establish a regulatory framework, and otherwise support the creation of Reserve Common Allotments. BLM has decided not to proceed with developing Reserve Common Allotments at this time. During BLM's public scoping period many commenters expressed concern about adding special provisions for Reserve Common Allotments in the grazing regulations. Many commenters said they did not think such regulatory provisions were warranted. Ranching interests indicated they would rather have "normal" allotments while environmental interests questioned whether this would be the best use of the land. After considering the reception to this concept, BLM determined it was not in the public interest to proceed with this provision through regulations. BLM will continue to examine the concept of forage reserves through policy-making processes.
- Removing the grazing fee surcharge is not addressed in this proposed rule. The 1995 regulations added a grazing fee surcharge to address the concerns raised by the General Accounting Office and Office of the Inspector General regarding the potential for rancher "windfall profits" arising from BLM's practice of allowing for the subleasing of public land grazing privileges. Some BLM grazing permittees enter pasturing agreements allowing them to take temporary control of a third party's livestock and graze them under their permit or lease. The permittee pays the federal grazing fee and charges the third party an amount negotiated between them for the forage and care of the livestock. BLM assesses a fee surcharge in this circumstance that equals 35 percent of the difference between the current Federal grazing fee and private grazing land lease rates with one exception. BLM does not assess the surcharge when the livestock that are grazed under the permit or lease under a pasturing agreement belong to children of the permittee or lessee under certain circumstances set out under section 4130.7(f). BLM is not proposing to alter the existing surcharges for the following reasons:

  1. BLM continues to believe that the surcharge is an equitable manner in which to address the issue of potential windfall profits to BLM permittees and lessees who choose to enter into pasturing agreements, and
  2. BLM does not want to open issues related to grazing fees at this time.

- Assigning burden of proof to the BLM for appeals is not addressed in this proposed rule. BLM considered including a provision in the proposed rule requiring the BLM to assume the burden of proof for all appeals before the Office of Hearings and Appeals. The burden of proof has been clarified by the Supreme Court to mean the "burden of persuasion" which refers to "the notion that if evidence is evenly balanced, the

party who bears the burden of persuasion must lose." (*Director, Office of Workers' Compensation Programs, Department of Labor* v. *Greenwich Collieries*, 512 U.S. 267, 272 (1994)). Often, the burden of proof had been confused with the "burden of production," which refers to a party's obligation to come forward with evidence to support its claim. The burden of proving a fact remains where it started, but once the party with this burden establishes a prima facie case, the burden to produce evidence shifts. The burden of persuasion, on the other hand, does not shift except in the case of affirmative defenses. Decisions of the Interior Board of Land Appeals (IBLA) hold that a party appealing a BLM decision has the burden of showing the error in the agency's decision. If, for example, the agency denies a permit or lease to a new grazing applicant, that applicant would be expected to point out the error in BLM's decision. Because each case must be analyzed on its own facts, BLM is not proposing to change our regulations to assign the burden of proof for all appeals.

• Changing the definition of monitoring and the process for conducting monitoring is not addressed in this proposed rule. Few comments directly addressed the definition of "monitoring" and those we did receive did not recommend any substantive changes in the definition. Therefore we are not proposing changes to the definition of monitoring. Many comments contained recommendations on how BLM should conduct monitoring. We received many comments from the livestock industry, and environmental and conservation groups, asking BLM to increase monitoring efforts on public lands. BLM considered including new regulatory language regarding monitoring that would have contained explicit direction on the development of allotment-specific resource management objectives and short and long term monitoring programs in consultation with the permittee or lessee. The current regulations, however, already allow BLM to develop resource management objectives and monitoring plans as part of its allotment management plans. As a result, we determined that establishing monitoring methodologies and working with permittees and lessees in collecting and interpreting data and developing monitoring reports are more appropriately handled through BLM's own policy guidance in Manuals and Handbooks. Therefore, BLM has decided not to incorporate details on how to monitor in the proposed rule. We have, however, added a requirement for monitoring in making determinations on rangeland health.

• Requiring permittees or lessees to submit an application for renewal of their permit or lease when their permits or leases expire is not explicitly addressed in the current regulations nor incorporated in the proposed regulations. We are especially interested in public comment on this issue.

• Adding another opportunity for administrative remedy by allowing a protesting party to appeal a BLM field office decision to the BLM State Director was recommended by several commenters during scoping. Such a provision would allow the BLM State Director to stay a decision pending further review. BLM determined it was not advisable to include this provision in the proposed rule. Such authority could cause the appeals process to become too cumbersome and result in more delays in the decision-making process.

• Providing for permittees and lessees to have control of water developments authorized under a range improvement permit was recommended by commenters during scoping. The current regulations do not allow for water developments to be authorized under a range improvement permit. Other commenters suggested that the rule should propose that BLM allow the permittee or lessee to enter into a Memorandum of Understanding with the BLM allowing the improvements to be used other than by livestock owned or controlled by the permit holder. BLM does not believe these regulatory changes are necessary and therefore will not address them in this proposed rule. We believe we can better address these issues in BLM policy and guidance.

• Establishing criteria for BLM's use of full force and effect decision authority was recommended by some commenters during scoping. BLM believes that full force and effect decisions are fact-specific, so that it would be impossible to establish criteria to address each conceivable new decision. We disagree that developing criteria is necessarily helpful or relevant to the decision to issue a full force and effect decision to protect resources.

• Allowing for exchange of use agreements across allotments was recommended during scoping. Under the existing regulations, an exchange-of-use situation occurs where the permittee owns or controls unfenced private lands within the allotment where he grazes or wishes to graze. The permittee may request to graze additional livestock on the allotment to reflect the amount of forage on the private land. If BLM authorizes the additional grazing, all the authorized livestock may graze anywhere within the allotment, and BLM will not charge grazing fees for the extra livestock. BLM received comments requesting that BLM expand this authority to accommodate a transaction called "trade of use" by removing the requirement that private lands in the exchange-of-use situation be located in the same allotment being permitted for grazing. This kind of case might arise in the situation where one permittee or lessee owns or controls unfenced intermingled private lands that are not within his allotment, but rather, within a second permittee's allotment.

The first permittee cannot derive economic gain from the grazing use made on his private lands by the second permittee, unless either—

(1) The first permittee acts to control use of his own land, by means of fencing or through sale of the land or assignment of the land lease for a consideration to the second permittee; or

(2) BLM manages the second permittee's grazing on the first permittee's private land, which BLM currently does not have regulatory authority to do.

A commenter urged that BLM facilitate the "trade-of-use" between these permittees by collecting a grazing fee from the second permittee for grazing use of lands owned by the first permittee but located in the second permittee's allotment, and crediting the fees collected from the second permittee for these lands to the first permittee's grazing fee billing. BLM believes that this type of arrangement is best handled by private arrangement between the permittees, but we encourage additional comments as to whether BLM should set up a separate process for such "trade of use" arrangements, or act as a broker between grazers on such transactions affecting private lands, perhaps for a service charge.

• Allowing BLM to have unrestricted discretion to determine circumstances that would warrant non-monetary settlement of a non-willful grazing trespass was recommended by a commenter during scoping. The current regulations identify the following four conditions—all of which must be satisfied before BLM can approve a non-monetary settlement for non-willful unauthorized livestock use:

1. Evidence that unauthorized use occurred through no fault of the operator.

2. The forage used was insignificant.

3. Public lands have not been not been damaged.

4. Non-monetary settlement is in the best interest of the United States.

We believe this continues to be a reasonable approach, and therefore BLM has decided not to change this provision.

• Removing the requirement for Secretarial approval of amendments to regional standards for healthy rangelands was not addressed in this proposed rule. BLM received a comment urging that we revise the process for approving standards for rangeland health to allow approval of revisions to the standards by BLM State Directors. BLM believes that the requirement for Secretarial approval of standards that BLM State Directors develop ensures that the basic components of rangeland health are reflected in the regionally developed standards. We are not proposing any changes to the applicable provisions of the current regulations.

• Allowing grazing operators, when authorized by BLM, to temporarily lock gates on public lands when necessary to protect private property or livestock was initially considered for incorporation in this proposed rule. Comments during the scoping were nearly unanimously in opposition to this suggestion. This proposed rule does not include this provision.

• Using competitive bidding for assigning permits and leases in place of the current system for allocating grazing preference, assigning grazing permits and the present grazing fee formula was recommended by several commenters. This recommendation would require legislative action and is therefore beyond the scope of this proposed rule.

• Requiring the posting of a bond before filing an appeal was recommended by several commenters. BLM considered the implications and potential challenges to such a provision, and determined that such a provision would burden the general public as well as permittees and lessees. Therefore, it is not included in the proposed rule.

• Moving the general requirements in section 4180 related to the fundamentals of rangeland health and public land health standards and guidelines to BLM's planning regulations at 43 CFR 1610 was recommended during scoping. BLM did not consider such an expansion of the scope of this rulemaking appropriate at this time, and therefore it is not included in the proposed rule.

Whenever BLM proposes changes to these regulations, we are continuing a public dialogue. These proposed changes seek to keep administrative processes as simple, understandable, and flexible as possible.

When we developed proposed changes to the grazing regulations, we considered whether each specific change facilitates any of the following:

1. Promoting cooperation, especially with directly affected permittees and landowners;

2. Promoting practical mechanisms for protecting rangeland health; and

3. Improving administrative efficiency.

By incorporating these criteria, BLM can improve the regulations while creating a climate for communication and cooperation. Working together, BLM, and the public we serve, can obtain better information about observed trends in the vegetative communities of the West. BLM can improve some of the administrative processes so that we can sharpen our focus on the issues that are truly in need of attention as we seek to conserve the rural landscapes of the West.

IV. Section-by-Section Analysis

Rules of Construction: Words and Phrases

For simplicity and to make the rule easier to read and understand we use words that signify the singular to include and apply to the plural and vice versa as provided in 43 CFR 1810.1. Words that signify the masculine gender also include the feminine. Words used in the present tense also apply to the future. The terms "BLM" and "authorized officer" are used interchangeably and include any person authorized by law or by lawful delegation of authority to perform the duties described in this proposed rule.

Section 4100.0–2 Objectives

The proposed rule would remove reference to 43 CFR part 1720, subpart 1725, to reflect changes made to the regulations in 1994 (59 F.R. 29206). Today's proposal acknowledges that the Public Rangelands Improvement Act (PRIA) contributes to the objectives of the regulations. These are technical and editorial corrections.

Section 4100.0–3 Authority

The proposed rule would make 3 editorial corrections to this section. These are non-substantive and would not change the existing regulations.

Section 4100.0–5 Definitions

During the scoping period, BLM received public comments addressing specific definitions. Several commenters asked BLM to keep all current terms consistent with their use, definition, and intent in the TGA. The following describes the proposed changes in definitions and the rationale for each change.

Active use: BLM proposes amending this definition to make clear that the term refers to a forage amount based on the carrying capacity of, and resource conditions in, an allotment. The term does not refer to forage that had been allocated in the past but which BLM has determined is no longer present. We now consider such forage to be in suspension, not in active use. The current definition of "active use" includes "current authorized use including livestock grazing and conservation use." BLM must remove conservation use from the definition because of the 1999 10th Circuit Court decision in *Public Lands Council* v. *Babbitt*.

The 1995 final rules defined conservation use as "authorized active use," in contrast to "nonuse" and "suspended use" even though the term conservation use did, by definition, exclude livestock grazing. The 1995 definition used the term livestock grazing to distinguish between "active" authorized grazing use and "active" authorized conservation use. Removing conservation use from this definition eliminates the need for this distinction. We propose that the amended definition of active use refer to that portion of grazing preference (see proposed definition, this section) that is now available for livestock grazing use based on the known livestock carrying capacity of the rangeland and the resource conditions in an allotment under a permit or lease. The definition would make it plain that "suspended use" is not active use.

Conservation use: The proposed rule would remove the term conservation use, from the definition of "active use," and anywhere else it appears in the existing regulations, in keeping with the 10th Circuit Court decision discussed above. Removing the term conservation use includes revising the definitions of grazing lease and grazing permit to remove all references to conservation use.

Grazing lease: In addition to removing conservation use, BLM proposes editorial changes to this definition to make it easier to read. These changes will not substantively change the current regulations. Several commenters stated that the original meaning of "grazing lease" comes from the TGA and has been subsequently changed and therefore, BLM should restore it. The definition is consistent with the TGA. We intend only to make it clear that BLM issues grazing leases to authorize grazing on lands that are not within grazing districts established under the

TGA, and that these leases include both mandatory terms and conditions (livestock number, place of use, period of use, and amount of forage removal), and other terms and conditions of grazing use.

Grazing permit: In addition to removing conservation use, BLM proposes editorial changes in this definition to make the section easier to read. BLM intends to make it clear that BLM issues grazing permits authorizing grazing within grazing districts established under the TGA. These permits include both mandatory terms and conditions (livestock number, place of use, period of use and amount of forage removal), and other terms and conditions of grazing use. Several environmental and conservation advocacy groups said this term was adequately addressed in the last rulemaking effort and they do not think BLM is justified in changing it now. As with the term "grazing lease," this change is only to clarify and standardize, not substantively change, this definition. We are not making substantive changes to this definition other than removing the term conservation use.

Grazing preference or *preference:* BLM is proposing to define "grazing preference" or "preference" as: "the total number of animal unit months (AUMs) on public lands apportioned and attached to base property owned or controlled by a permittee, lessee, or an applicant for a permit or lease. Grazing preference includes active use and use held in suspension. Grazing preference holders have a superior or priority position against others for the purpose of receiving a grazing permit or lease."

This definition is similar to the definition in the grazing regulations in 1978, which was used until the 1995 rule changes. The 1995 definition, which changed preference from a term having a quantitative meaning (number of AUMs) to a qualitative meaning (superior position), has proven to be confusing. We believe that returning to its long standing meaning will provide greater clarity throughout the regulations.

The concept of grazing preference, as we would define it in this rulemaking, includes two elements:

1. Livestock forage allocation on public lands.

2. Priority for receipt of that allocation, as determined through ownership or control of attached base property.

BLM is proposing to define grazing preference as the total number of AUMs within a grazing allotment that BLM has allocated for livestock use. This forage amount would include "active use," use that is currently available, and "suspended use," that is, use that had been allocated and used by the permittee or lessee, or a predecessor, but that currently is not available and therefore the subject of a BLM suspension. These apportioned forage amounts would be attached to base property. Base property, in turn, is land or water owned or controlled by a permittee, lessee, or party who holds or has applied for a permit or lease.

Ownership or control of base property gives the owner or person controlling the property a preference for receiving a grazing permit or lease authorizing grazing use to the extent of the active preference already "attached" to that property, and priority for receipt of forage that BLM may later determine to be available for livestock grazing to the extent of any suspended preference that may be attached to that property. Attaching or associating a public land forage allocation to or with base property provides a reliable and predictable way to connect ranch property transactions with the priority for use of the public land grazing privileges that BLM associates with that property. This has been the basis for BLM's system of tracking who has priority for receipt of public land grazing privileges since the enactment of the TGA.

The ranch property transaction alone, however, does not provide absolute assurance of receiving the privileges, for two reasons:

(1) TGA provides that only certain parties qualify for grazing use on public lands. Therefore, if an unqualified party acquires a base property, BLM would not issue the party a term grazing permit or lease, regardless of the preference for public land grazing use associated with the base property that the party acquired; and

(2) The forage amount available for livestock grazing use on public lands can fluctuate because of changed resource conditions or changed administrative or management circumstances. When necessary, BLM may adjust the amount of forage available for livestock grazing. Case law has determined that BLM land use planning decisions may adjust livestock forage allocations made before enactment of the Federal Land Policy and Management Act of 1976 to change grazing use to meet objectives specified in land use plans (*see*, for example, *Public Lands Council* v. *Babbitt*, 529 U.S. 728, 739–744 (2000)).

The 1978 definition of "grazing preference" was crafted to meet a specific need. Pre-FLPMA public land livestock forage allocations were linked to base property productivity. This means that among applicants competing for grazing privileges on public lands BLM would not grant privileges to support livestock in excess of the number that they could support on their base property during the time that their livestock were not allowed on public lands. The connection between this base property productivity, called "commensurability," and the amount of grazing privileges granted on public lands was severed by the 1978 regulation change (the same change that defined, for the first time, the term "grazing preference"). The 1978 rule provided that BLM would associate public land grazing privileges with private base properties on a pro-rata acreage basis, rather than on base property productivity.

This change simplified BLM's record-keeping needs. However, the commensurability requirement served as a guidepost for fair and consistent allocation of available forage. To ensure that the record of allocation was preserved, BLM defined the term "grazing preference." Attaching Federal grazing privileges to base properties has been and continues to be the foundation for adjudicating these privileges. BLM has always had the authority and discretion to adjust grazing levels on public lands. The proposed change will once again associate the term "preference" with an amount of allocated forage on public land.

Today's proposed change would ensure that the term "preference" is used consistently. For example, 43 CFR 4110.2–3 (4) states, regarding the transfer of preference, that "The transferee shall file an application for a grazing permit or lease to the extent of the transferred preference * * *" although preference is defined in the same regulations as a "priority position," that is, a singular quality. One either has a priority position or one does not. It is not possible to define the "extent" of a "priority position" in terms of anything but a level or amount, and in the context of the remainder of the rule, that would mean a level or amount of forage.

Another inconsistency arises if one considers the circumstance of a parcel of base property owned by one party, giving that party a priority position (preference), which is subdivided and half sold to another party. Then, the single "preference" accorded the sole owner now is split into two "preferences" because the second party now is accorded preference due to its ownership of base property. The proposed change to this definition and its usage throughout the rule should provide a consistent framework for the efficient administration of the public rangelands.

Interested public: BLM proposes amending the present definition to mean an individual, group, or organization that has:

1. Submitted a written request to BLM to be provided an opportunity to be involved in the process leading to a BLM decision on the management of livestock grazing on public lands, and

2. Followed up that request by commenting on or otherwise participating in the decision-making process as to the management of a specific allotment if there has been an opportunity for such participation, or

3. Submitted written comments to the authorized officer regarding the management of livestock grazing on a specific allotment, as part of the process leading to a BLM decision on the management of livestock grazing on the allotment.

Permitted Use: BLM proposes removing the definition of "permitted use" and replacing this term wherever it occurs in the regulations with either "grazing preference" or "preference," or "active use" depending on the regulatory context. "Permitted use" was introduced as a term in the 1995 regulations change to define an amount of forage allocated by a land use plan for livestock grazing in an allotment. It is expressed in AUMs and includes "active use" (which was further divided into "livestock use" and conservation use) and "suspended use." As discussed above, BLM is proposing to return to using the term "grazing preference" or "preference" to refer to that same livestock forage allocation. Therefore, there is no need for the term "permitted use." Grazing preference would have two components:

1. "Active use," or use currently available on a sustained yield basis, and

2. "Suspended use," or use that had been allocated and available for livestock grazing at some point in the past, but is now in suspension until BLM determines that an increased amount of forage is available on a sustained yield basis for allocation to livestock grazing.

Although the connection between land use plans and grazing preference would not be stated in the definition of "grazing preference" or "preference" as it is being proposed today, the regulatory text would reflect the relationship between "active use" and land use plans at §§ 4110.2–2, 4110.3(a)(3), and 4110.3–1 and between grazing permits and leases and land use plans at § 4130.2.

Suspension: BLM proposes to remove the word "temporary" from the current definition because the word is superfluous. The status of suspended preference is not affected.

Temporary nonuse: BLM proposes making it clear that "temporary nonuse" would mean that portion of active use that BLM allows a permittee or lessee not to use. The permittee or lessee must apply for temporary nonuse.

Subpart 4110—Qualifications and Preference

Section 4110.1 Mandatory Qualifications

We revised this section by moving parts of paragraph (b) and all of paragraph (c), which relate to procedure as opposed to qualifications, to section 4130 and redesignating paragraph (d) as paragraph (c).

Section 4110.2–1 Base Property

The proposed rule makes editorial changes to this section.

Section 4110.2–2 Specifying Grazing Preference

BLM proposes removing the term "permitted use" wherever it occurs in this section and replacing it with the term "grazing preference" or "preference" for the reasons previously explained. BLM does not establish a grazing preference in designated ephemeral or annual rangelands because the forage production on these lands can vary greatly from year to year. On these rangelands, BLM bases the authorized forage removal amount on the availability of forage in that year. As stated earlier, BLM also proposes that grazing preference would include active use and any suspended use.

Section 4110.2–3 Transfer of Grazing Preference

The proposed rule would make editorial changes to this section to conform the rule to the definition of "grazing preference."

Section 4110.2–4 Allotments

BLM proposes to remove the requirement that BLM consult with the interested public before making an allotment boundary adjustment because it is primarily an administrative matter that we implement by decision or agreement following a NEPA analysis of the action. BLM would provide the interested public an opportunity to comment on the action as part of the NEPA process. The interested public would also receive a copy of the proposed and final decisions, including those on allotment boundary adjustments, and would be able to protest and appeal such decisions. This change would contribute to administrative efficiency as discussed above under changes to section 4100.0–5. Definitions.

Section 4110.3 Changes in Grazing Preference

BLM proposes to remove the term "permitted use" wherever it occurs in this section and replace it with the term "grazing preference" for the reasons explained previously. BLM also proposes to simplify this section by dividing the existing text into two paragraphs and adding a third paragraph to clarify that our NEPA documentation addressing changes in grazing preference would include our consideration of the effects of changes in grazing preference on relevant social, economic, and cultural factors.

Generally, BLM managers routinely consider the possible effects of their decisions on these factors through the NEPA process. Public officials use the NEPA process to understand the environmental consequences of potential decisions affecting the human environment. NEPA (42 U.S.C. 4321 *et seq.*) requires Federal agencies to utilize a systematic, interdisciplinary approach to ensure the integrated use of the natural and social sciences and the environmental design arts in planning and in decision-making. In the proposed rule, BLM would analyze and, if appropriate, document the relevant social, economic and cultural effects of the proposed action. BLM is proposing the change to ensure that our managers document their consideration of relevant social, economic, and cultural factors when they comply with NEPA.

Section 4110.3–1 Increasing Active Use

In the 1995 rule, section 4110.3–1 addressed "permitted use." This proposed amendment addresses that portion of the livestock forage allocation that is "active use" as explained in the discussion of its definition. This change is necessary to link the proposed definitions of "preference" and "suspended use." BLM proposes to remove the term "permitted use" from this section wherever it appears and replace it with the term "active use" for the reasons explained previously.

Because the regulation would affect how we regulate available forage, we are asking the public to comment on whether BLM should use the term "available forage" instead of "active use."

BLM is also asking for specific comments relating to this section to help determine whether there have been

situations in which the ability of permittees or lessees to obtain loans was adversely affected by having some of their forage allocation suspended.

BLM also proposes to reorganize this section to describe how we would authorize increased grazing use when additional forage is available either temporarily, or on a sustained yield basis. BLM proposes to add two new paragraphs, (a) and (b), that would clarify who gets priority when we grant additional grazing use because livestock forage has become available on either a nonrenewable basis or a sustained yield basis. This change would clarify existing language and does not substantially depart from the requirements of the existing regulations.

Section 4110.3–2 Decreasing Active Use

BLM proposes replacing the term "permitted use" with the term "active use" wherever it occurs in this section. BLM is proposing to clarify this section by amending paragraph (a) to provide that BLM will document its observations that support the need for temporary suspension of active use and by amending paragraph (b) to provide that BLM will place any reductions in active use made under this paragraph into suspension rather than require a permanent reduction. BLM wants to ensure that it clearly documents the justification for the suspension and believes that it is important to maintain a complete record of forage allocation actions so that it may fairly remove suspensions upon future range recovery.

Section 4110.3–3 Implementing Changes in Active Use

BLM proposes changing the title of this section to reflect that it pertains to both increases and decreases grazing use and to add language to this section to modify how BLM would implement changes in active use. This section would provide that BLM would phase in changes in active use of more than 10 per cent over a 5-year period unless either the affected permittee or lessee agrees to a shorter period or the changes must be made before the end of 5 years to comply with applicable law. When possible, the 5-year phase-in period for changes in active use would provide time for gradual operational adjustments by grazing permittees or lessees to lessen sudden adverse economic impacts that may arise from a reduction, or to allow time to build their herd in the event of an increase. The phase-in period also allows for ongoing monitoring in order to determine whether the initial decision needs to be adjusted. This 5-year phase in period is similar to that specified by the regulations in effect before 1995.

BLM also proposes amending paragraphs (a) and (b) by removing the phrase "the interested public" from this section. Any change in active use would be preceded by reports, including NEPA documents, that analyze data that BLM would use to support the change. Under section 4130.3–1, BLM would provide the interested public the opportunity to comment on these reports. Under section 4160.1 BLM would provide a copy of the proposed and final grazing decisions to implement the change to the interested public. BLM will provide the interested public full opportunity for participation and comment on the action prior to actual implementation. For this reason additional consultation with the interested public regarding the actual scheduling of the change is redundant.

Section 4110.4–2 Decrease in Land Acreage

BLM proposes removing the term "permitted use" from this section and replacing it with the term "grazing preference" for the reasons explained previously.

Subpart 4120—Grazing Management

Section 4120.2 Allotment Management Plans and Resource Activity Plans

BLM proposes to revise paragraph (c) for clarity only.

4120.3 Range Improvements

4120.3–1 Conditions for Range Improvements

BLM proposes to revise paragraph (f) for clarity and to correct a citation to NEPA. The change is not substantive.

4120.3–2 Cooperative Range Improvement Agreements

BLM proposes to revise paragraph (b) to provide that, subject to valid existing rights, cooperators and the United States would share title to permanent structural range improvements constructed under cooperative range improvement agreements on public lands. Such structural improvements include wells, pipelines, or fences constructed on BLM managed public lands. BLM is proposing to revise the regulations to allow contributors to share title to range improvements of public lands proportionate to the value of their contributed labor, material, or equipment to make on-the-ground structural improvements, subject to valid existing rights. This would return the provision on how title for improvements constructed under Cooperative Range Improvement Agreements is shared to that in place before 1995.

During scoping, BLM received comments supporting and opposing the revision. Some opponents to the revision commented that, by re-instituting shared title to range improvements, BLM would be allowing private property rights on public lands. Some commenters supported the provision, stating that it gives livestock operators, who pay for and construct improvements, incentive to invest funds, time, and effort in their allotments.

The current regulations provide that the United States has title to new permanent structural range improvements. BLM has the discretion in administrating the public rangelands to determine where title to range improvements should lie. Sharing title among cooperators and the United States provides the opportunity to maintain some asset value for investments made, thereby encouraging and facilitating private investment in range improvements. Granting title to a structural improvement on public lands does not grant title to the underlying lands. Cooperative Range Improvement Agreements will continue to include provisions that protect the interests of the United States in its lands and resources and ensure BLM's management flexibility on public lands.

Section 4120.3–3 Range Improvement Permits

BLM must remove the term conservation use from this section to comply with the decision of the Tenth Circuit Court of Appeals.

Section 4120.3–8 Range Improvement Fund

BLM is proposing to amend this section only to correct a misspelling.

Section 4120.3–9 Water Rights for the Purpose of Livestock Grazing

BLM proposes to amend this section by removing the reference date in the first sentence and the second sentence in total. This would remove the requirement that livestock water rights be acquired, perfected, maintained and administered in the name of the United States to the extent allowed by the laws of the states where the rights would be acquired. The proposed amendment would provide BLM greater flexibility in negotiating arrangements, within the scope of state processes, for construction of watering facilities in states where the United States is allowed to hold a livestock water right. In those states, BLM would continue to have the option of acquiring the water right as long as we do so in compliance with state water law.

Section 4120.5–2 Cooperation with State, County, and Federal Agencies

BLM proposes amending this section by making an editorial correction and adding a new paragraph (c) to specify that BLM would add state, local, and county-established grazing boards to those groups we routinely cooperate with in administering laws and regulations relating to livestock, livestock diseases, and sanitation. Currently BLM's Resource Advisory Councils provide advice to BLM on the broad range of multiple use activities on public lands including grazing management. Field-level range improvement and allotment management planning programs would also benefit from the additional perspective that locally established grazing advisory boards could provide.

Many states have state, county, or locally established grazing advisory boards whose function is to provide guidance on range improvements on public lands. Section 401(b)(1) of FLPMA states that a portion of the grazing fees BLM collects are set aside for range betterment. BLM is authorized to use one-half the amount collected from the area in which the moneys were derived. BLM may direct these funds after consulting with local area user representatives, to implement on-the-ground range rehabilitation, protection, and improvements on the lands.

Grazing interests and state and local governments expressed concern that BLM has not used state, county, and locally established grazing advisory boards effectively. They commented that these grazing advisory boards are underutilized, yet are a valuable tool for gathering local input for BLM's decision-making processes related to range improvements and allotment management planning. This proposed rule would require BLM to cooperate with state, county, or locally established grazing advisory boards when reviewing range improvements and allotment management plans on public lands. A requirement for BLM to cooperate with such boards would ensure a consistent community-based decision-making process throughout the BLM.

Subpart 4130—Authorizing Grazing Use

Section 4130.1–1 Filing Applications

The existing regulations are somewhat unclear as to the circumstances under which BLM will consider an applicant for a new permit or lease not to have a satisfactory record of performance.

The existing regulations state that we deem applicants for renewals of permits and leases not to have a satisfactory record of performance if:

1. They have had a Federal lease canceled within the previous 36 months;

2. They have had a state lease canceled, for lands in the grazing district where they are seeking a Federal permit, within the previous 36 months, or

3. They have been legally barred from holding a grazing permit or lease.

Under the proposed regulations BLM would limit the number of possible infractions that we would take into account for determining whether an applicant for a new permit has a satisfactory record of performance. The proposed rule would deem applicants for issuance of a new permit or lease to have a satisfactory record of performance if:

1. The applicant or affiliate has not had a Federal lease canceled within the previous 36 months;

2. The applicant or affiliate has not had a state lease canceled, for lands in the grazing district where they are seeking a Federal permit, within the previous 36 months, or

3. The applicant or affiliate has not been legally barred from holding a federal grazing permit or lease by a court of competent jurisdiction.

In addition, BLM proposes moving provisions specifying what we consider to be "satisfactory performance" by an applicant for a permit or lease from section 4110.1 to this section to better organize the regulations.

Section 4130.2 Grazing Permits or Leases

BLM proposes revising this section to make it clear that the grazing permit or lease is the document BLM uses to authorize grazing use for those who hold grazing preference on BLM-managed lands. BLM has been questioned about what we consider to be the fundamental document authorizing preference holders' grazing use. This section makes it clear that it is the permit or lease that authorizes such grazing use and no other document. An example of such a non-authorizing document is a paid grazing fee billing. Although not paying a fee when it is due is a prohibited act, the document upon which BLM bases fees, either a permit or lease, is the document that authorizes the grazing use, not the billing. BLM also uses "other grazing authorizations" such as free use permits, exchange-of-use permits, and crossing permits to authorize grazing for preference and non-preference holders in limited circumstances. These are addressed in §§ 4130.5 and 4130.6.

We propose removing the phrase "types and levels of use authorized" from paragraph (a) and replacing it with the term "grazing preference" because the level of use, the forage amount expressed in AUMs, and the "type" of use, whether active or suspended, are embodied in the term "grazing preference."

We also propose removing the requirement in paragraph (b) that BLM would consult, cooperate, and coordinate with the interested public prior to the issuance or renewal of grazing permits and leases because this consultation is redundant to consultation that already would have occurred as part of the process of completing NEPA analysis and other documentation that is pre-requisite to permit or lease issuance or renewal.

Section 4130.3 Terms and Conditions

BLM proposes adding a new paragraph to this section to specify that when BLM offers a permit or lease, the terms and conditions may be protested and appealed unless the terms and conditions are not subject to OHA appeals (*e.g.* terms and conditions mandated by a biological opinion issued under the Endangered Species Act) or terms and conditions that are part of a permit or lease offered for grazing use on additional land acreage (*see* 4110.1). The proposed rule further states that if those terms and conditions are stayed, BLM could authorize grazing use in accordance with section 4160.4. By adding this language, BLM seeks to clarify that we are providing the opportunity to protest and appeal decisions that specify the terms and conditions of the permit or lease we are offering.

Section 4130.3–2 Other Terms and Conditions

BLM proposes removing paragraph (h) from this section because it is unnecessary. There is no need to disclose on the permit or lease the requirement that the permittee or lessee provide administrative access to BLM. The absence of such disclosure under the proposed rule would not affect the underlying requirement. In 1999 IBLA held that administrative access is an implied condition of a grazing permit whenever administrative access is necessary in order for BLM to carry out its statutory responsibilities on the public lands. (IBLA 98–180R; 98–404R)

Section 4130.3–3 Modifications of Permits or Leases

BLM proposes to amend this section to make it clear that BLM may modify terms and conditions of a permit or lease if we determine that either the active use or related management practice is no longer meeting the management objectives specified in the land use plan, an allotment management plan, or an applicable decision issued under section 4160.3. In addition, BLM is removing the regulatory requirement that we consult with the interested public on any decisions to modify terms and conditions on a permit or lease for the reasons discussed previously.

In the proposed rule the interested public retains, to the extent practical, the opportunity to review and provide input on reports supporting BLM's decisions to increase or decrease grazing use. In clarifying this provision, BLM recognizes that the interested public, permittees and lessees, and the state should all have opportunity to review and submit input to Biological Assessments when they are used to supplement grazing management evaluations.

BLM also proposes to reorganize this section for the sake of clarity and logical flow.

Section 4130.4 Authorization of Temporary Changes in Grazing Use Within the Terms and Conditions of Permits and Leases

BLM is proposing to amend section 4130.4 to provide additional detail on what is meant by the phrase "within the terms and conditions of the permit or lease." BLM proposes that when we refer to "temporary changes within the terms and conditions of the permit or lease," we mean changes to the number of livestock and period of use that BLM may grant in any one grazing year. We would authorize such changes in response to annual variations in growing conditions that arise from normal year-to-year fluctuations in temperature and the timing and amounts of precipitation and to meet locally established range readiness criteria. Under the proposed regulations, "within the terms and conditions of a permit or lease" means that grazing use will:

1. Not result in removing more forage than the "active use" specified by the permit or lease;

2. Begin no earlier than 14 days before the grazing begin date specified by the permit or lease, and end no later than 14 days after the grazing end date specified by the permit or lease.

Providing for temporary changes allows sufficient flexibility to BLM land managers, permittees, and lessees to address seasonal and annual changes, thereby supporting efficient and responsive management of public rangelands.

Livestock periods of use established by the grazing permits are based on the anticipated average dates that the range is "ready" to be grazed. "Range readiness" is the stage of plant growth at which grazing may begin without doing permanent damage to the vegetation community or the soil. The point where the range is "ready" for grazing use can and does vary from year to year around a long-term average date of readiness. A 14-day flexibility period on either side of the grazing begin and end dates specified by the permit or lease is a reasonable way to allow for minor adjustments in grazing use in response to these variations to better correspond grazing use to rangeland conditions. BLM would consider applications for changes in grazing use "within the terms and conditions of the permit or lease" on a case-by-case basis. If BLM approves the change, no formal action other than the issuance and payment of a relevant grazing fee billing would be required. The change would not constitute a formal permit or lease modification. In other words, a temporary change that BLM allowed in one year to respond to the conditions of that year would not be carried forward to the next year. BLM would not consider an application for grazing use that falls outside of this flexibility "within the terms and conditions" of the authorizing permit or lease.

BLM proposes to move provisions addressing approval of "temporary nonuse" from section 4130.2 to this section and amend them to allow BLM to have the discretion to approve applications on a year-to-year basis for temporary nonuse of all or part of the grazing use authorized by a permit or lease when the nonuse is warranted by rangeland conditions or the personal or business needs of the permittee or lessee. Events such as drought, fire or less than average forage growth typically result in "rangeland conditions" that will prompt the need for temporary nonuse of all or part of the grazing use allowed by the permit or lease.

When rangeland conditions are such that less grazing use would be appropriate, BLM encourages operators, if they have not done so already, to apply for nonuse for "conservation and protection of rangeland resources." This is the simplest way to achieve temporary reduced use to respond to rangeland condition needs. In some cases, approval of an application for temporary nonuse precludes the need for BLM to issue a decision to temporarily suspend use under section 4110.3–3(b), although BLM retains the discretion to do this. "Personal and business needs" of the grazing operator refer to actions operators take in the course of managing their business, such as livestock sale, that result in temporary herd size reductions.

Paragraph (e) of this section (paragraph 4130.2(h) in the existing regulations, as revised for clarity) would continue BLM's current discretion to issue a nonrenewable authorization to other qualified applicants to use the forage that became temporarily available as a result of nonuse approved for business or personal reasons. When BLM approves nonuse because we agree that rangeland conditions would benefit from temporary nonuse, we would not authorize another operator to use it. We propose moving the current paragraph (a) to the end of this section and redesignating it as paragraph (f). In newly designated paragraph (f), BLM makes several editorial changes.

BLM also proposes to remove the current three-consecutive-year limit on temporary nonuse. In the ANPR we stated that we would be considering increasing the number of consecutive years that we could authorize temporary nonuse from 3 years to 5 years. In response, BLM received numerous comments on this topic. Some commenters appeared to be confused about this provision as presented in the ANPR because they did not distinguish between the permittee-initiated action of applying for nonuse in proposed section 4130.3 and a BLM initiated action to change preference in proposed section 4110.3. Other commenters asked BLM to allow longer periods of temporary nonuse, and some expressed concerns that extending the authorized nonuse could have impacts on a permittee's ability to retain water rights. We are proposing that BLM have the same discretion to approve temporary nonuse as existed before the 1995 rule changes, to provide us with management flexibility needed to respond to the common occurrence of site-specific fluctuations in available forage levels that may occur for a variety of reasons as explained above.

Section 4130.5 Free-Use Grazing Permits

The proposed rule would remove reference to conservation use in paragraph (b)(1) of this section to conform the regulation to the decision of the Tenth Circuit Court of Appeals. We also propose to remove the word "authorize" to keep the rule internally consistent.

Section 4130.6–2 Nonrenewable Grazing Permits and Leases

The proposed changes to this section would remove the requirement that BLM consult with the interested public before issuing nonrenewable permits and leases. BLM issues nonrenewable permits and leases to allow grazing use of additional forage that is temporarily available. One circumstance under which we would apply this is when BLM has approved an application for nonuse for personal or business reasons as described above. Another circumstance where this regulation might apply is to manage grazing use authorized on "cheatgrass" ranges.

Cheatgrass (*Bromus tectorum*), a nonnative introduced annual, is established on vast acreages in the intermountain west. Its growth characteristics are such that under favorable growing conditions, ranges dominated by cheatgrass may produce 5 times or more forage than what that same range produces in a year experiencing average growing conditions. Its value as forage, however, is limited (hence the common name) because its nutritional value diminishes rapidly by summer, when it dries and becomes highly flammable. Grazing permits issued for use of "cheatgrass range" specify stocking rates on the number of livestock that can be supported in the "average" growth year, and provide generally that we allow use during the spring, when the cheatgrass can meet livestock nutritional needs. When the growth year is favorable, cheatgrass range provides more forage, and in some cases considerably more forage, than that which is allowed to be grazed under the term grazing permit. When this occurs, BLM must be able to respond rapidly to applications for temporary and nonrenewable grazing use because forage quality declines rapidly as the season progresses. Because BLM provides full opportunity for the interested public to comment during the NEPA and planning processes, and because consultation can be a time-consuming process, not generally conducive to the "rapid response" needed to take advantage of situations that would give rise to approval of an application for temporary and nonrenewable use, BLM is proposing to remove the additional public consultation requirement before issuing temporary and nonrenewable grazing permits or leases.

Section 4130.8–1 Payment of Fees

BLM is proposing editorial changes to this section to make it easier to read and corrects a cross-reference in the existing regulations in paragraph (f) (paragraph (h) in the proposed rule) to subpart 4160.

Section 4130.8–3 Service Charge

The proposed rule would remove the reference to conservation use in this section to conform to the Tenth Circuit decision.

BLM is authorized under FLPMA to assess a service charge that reflects our processing costs. The current regulations provide for periodic fee adjustments as costs change. BLM has not adjusted our service charges in many years. When BLM does make changes, the current regulations require public notification in the **Federal Register**.

Except when BLM initiates an action, we are proposing to increase service charge fees as shown in the following table:

Action	Current service charge	Proposed service charge
Issue Crossing Permit ..	$10	$75
Grazing Preference Transfer	10	145
Canceling and replacing grazing fee billing	10	50

As required by Section 304(b) of FLPMA, the service fees on this chart represent BLM's average cost of processing these applications less the estimated portion of the cost incurred for the benefit of the general public interest rather than for the exclusive benefit of the applicant.

Subpart 4140—Prohibited Acts

The current regulations specify a number of prohibited acts. Some of the prohibited acts apply only to grazing permittees or lessees while others apply to anyone who commits those acts while on BLM lands. There are 3 different categories of prohibited acts in the current regulations.

The first category of prohibited acts is set forth in section 4140.1(a) which provides that permittees and lessees who perform any of the 6 prohibited acts listed under this section may be subject to civil penalties under § 4170.1 (*e.g.*, withholding issuance, suspending, or canceling a permit or lease.) Examples of prohibited acts in this category include: violations of special terms and conditions of permits or leases and refusing to remove range improvements when BLM directs their removal. In this category, BLM is proposing to clarify the provision which prohibits the placement of supplemental feed on public lands without authorization. Under the proposed regulation, we are proposing to add that placement of supplemental feed without authorization "or contrary to the terms and conditions of the permit or lease" is a prohibited act. This will further clarify the intent of this section to ensure strict compliance with the terms and conditions of the permit or lease.

A second category of prohibited acts is set forth in section 4140.1(b). Any person (not just a permittee or lessee) who performs one of the 11 prohibited acts in this section is subject to civil and criminal penalties under sections 4170.1 and 4170.2. Examples of the prohibited acts identified in this section include: allowing livestock or other privately owned or controlled animals to graze on or be driven across public lands without a permit or lease; destroying vegetation; and damaging property owned by the United States. BLM is proposing to clarify that a violation of any of the prohibited acts set forth in § 4140.1(b) must occur on BLM-administered lands to be considered a violation. BLM is also proposing to modify and clarify one of the prohibited acts in this section. The current rule at § 4140.1(b)(1)(i) states that it is a prohibited act to graze livestock without a permit or lease and "an annual grazing authorization." This paragraph would be revised to state that it is a prohibited act to graze without a permit or lease or other grazing use authorization and "timely payment of grazing fees." This revision would more accurately characterize the relationship between the document that authorizes grazing, the permit or lease, and the requirement to pay grazing fees as stated in Section 3 of the Taylor Grazing Act. Section 3 states:

> The Secretary of the Interior is * * * authorized to issue * * * permits to graze livestock * * * to settlers, residents and other stock owners * * * upon the payment annually of reasonable fees * * *.

The requirement to pay fees annually has led to the characterization of a paid grazing fee billing as an "annual grazing authorization" for the purposes of applying other provisions of the regulations such as requirements for consultation, the ability to protest and appeal grazing decisions; and what grazing use BLM may authorize if a grazing permitting decision is stayed. This change is intended to make this regulation consistent with the regulation at section 4130.2 which provides that the grazing permit or lease is the document that authorizes grazing use on public lands.

The third category of prohibited acts is set forth in section 4140.1(c). Under this provision, the BLM may take civil

action under section 4170.1 against a grazing permittee or lessee that violates any of the prohibited acts identified in this section. For this category of prohibited acts, unlike the first two categories, the primary responsibility for enforcement generally rests with a Federal or state agency other than BLM. Three sets of prohibited acts are identified in this section. The first set consists of Federal or State laws or regulations pertaining to 6 different activities. Examples include: placement of poisonous bait or hazardous devices designed for the destruction of wildlife; pollution of water resources; and illegal removal or destruction of archeological or cultural resources. The second set of prohibited acts in this section identifies as prohibited acts the violation of specific laws and regulations including the Bald Eagle Protection Act, Endangered Species Act, and any provision of the regulations concerning wild horses and burros. The third set of prohibited acts in this section identifies as prohibited acts the violation of State livestock laws or regulations relating to branding and other livestock related issues. BLM proposes to retain the provisions in the third category of prohibited acts which allow us to withhold, suspend, or cancel all or part of a grazing permit if the lessee or permittee is convicted of violating any of the prohibited acts. The proposed rule would, however, clarify and limit BLM's enforcement authority by limiting its application to prohibited acts performed by a permittee or lessee on his allotment where he is authorized to graze under a BLM permit or lease. This change is intended to further ensure that the performance of the prohibited act is related to the permit or lease under which the violator is operating.

In the ANPR, BLM announced that it was considering which "non-permit related" violations BLM may take into account in penalizing a permittee. BLM received numerous comments opposing and supporting changes to this section. Many affiliates of the livestock industry characterized the current rule's provisions as a form of "double jeopardy." BLM does not believe that violation of the Federal or state laws listed in section 4140.1 violates the Double Jeopardy Clause of the Fifth Amendment of the Constitution when a civil sanction, such as suspending or canceling a permit after conviction for violating environmental laws on an allotment where an individual has a permit or lease to graze, furthers the legitimate objective of encouraging responsible stewardship of public rangelands. Therefore, section 4140.0 is not a punitive measure that can be viewed as causing multiple punishments for the same offense. Furthermore, both the Endangered Species Act (ESA) and the Bald Eagle Protection Act (BEPA) provide for grazing sanctions. The ESA provides that if a Federal grazing permittee or lessee is convicted for a criminal violation of the Act, the agency may suspend, modify, or revoke the permit or lease. The BEPA provides that the head of a Federal agency that issues a grazing permit or lease may immediately cancel such permit or lease when a person who holds it is convicted of violating the Act. Commenters who opposed any changes in the prohibited acts section of the regulations urged BLM to retain current authority to cancel, suspend, or deny permits when the violation is related to environmental protection.

Subpart 4150—Unauthorized Grazing Use

Section 4150.3 Settlement

Existing paragraph (e) of this section has been modified to correct the reference to subpart 4160. We also propose adding a new paragraph (f) to this section to specify that if a permittee or lessee obtains a stay of a decision that demands payment or cancels or suspends a grazing authorization, BLM will allow him to graze under his existing authorization pending resolution of the appeal. This proposed change clarifies existing procedures and will ensure consistent implementation of the regulations.

Subpart 4160—Administrative Remedies

Section 4160.1 Proposed Decisions

BLM proposes to amend this section to specify that a biological evaluation or biological assessment that BLM prepares for purposes of the Endangered Species Act (16 U.S.C. 1531–1544) (ESA) is not a proposed decision for purposes of a protest to BLM, or a final decision for purposes of an appeal to the Office of Hearings and Appeals under the Taylor Grazing Act. This provision would prospectively supersede the decision of the Interior Board of Land Appeals (IBLA) in *Blake* v. *BLM*, 145 IBLA 154, 166 (1998) *aff'd*, 156 IBLA 280 (2000), holding that the protest and appeal provisions of 43 CFR subpart 4160 apply to a biological evaluation or biological assessment.

A Federal agency prepares a biological assessment or biological evaluation when it considers action that may affect species or habitats that are protected under the ESA and are located on land managed by the Federal agency. A biological assessment or biological evaluation necessarily identifies what action an agency is considering, so that the U.S. Fish and Wildlife Service (FWS) or the National Marine Fisheries Service (NMFS) can prepare a biological opinion pursuant to section 7 of the ESA (16 U.S.C. 1536). In addition, a description of the contemplated action would be necessary under proposed section 4130.3–3(b), which would provide for consultation with the interested public and others during the preparation of biological assessments or biological evaluations, to the extent practical. However, biological assessments and biological evaluations are tools that the FWS and the NMFS use to decide whether to initiate formal consultation under section 7 of the ESA. Therefore, they are not proposed grazing decisions that may be protested to BLM, or final grazing decisions appealable to OHA. If formal consultation is not required upon completion of the biological assessment, BLM will issue a proposed decision, such as the issuance of a permit or lease, that may be protested and appealed. If formal consultation is required, upon completion of the Section 7 consultation process BLM will issue a decision that may be the subject of protest and appeal.

Section 4160.3 Final Decisions

In order to reconcile statutory directives found in the Administrative Procedure Act, 5 U.S.C. 701–706 (APA), TGA and FLPMA, BLM proposes to amend this section by—

- Cross-referencing the Department's administrative appeals regulations,
- Clarifying the requirement that one must exhaust administrative remedies, and
- Defining what grazing is authorized while an administrative appeal is pending.

Current paragraph (c) states the 30-day deadline for filing an appeal of a final grazing decision or of a proposed decision that has become final "by default" because no party protested it. The proposed rule would move this text to section 4160.4 on Appeals, where it more properly belongs. BLM believes that the proposed revision would avoid duplication and more clearly cross-reference procedures applicable to grazing decision appeals in the regulations at 43 CFR 4.470. Paragraph (f) of this section would be redesignated paragraph (c) and edited for clarity.

Current paragraphs (d) and (e) describe what grazing is authorized if a petition for stay of a final grazing decision is granted by the Office of Hearings and Appeals. Additional discussions related to those paragraphs appear in section 4160.4, below.

Section 4160.4 Appeals

The proposed rule would amend this section by adding language clarifying how the appeal of a BLM grazing decision, and a petition for a stay of the decision pending appeal, affect the effectiveness of the decision and the continuity of ongoing grazing operations, if any. The current provision merely states the procedural requirements for filing appeals, and defers to the Department of the Interior regulations at 43 CFR 4.470, which do not address the issues of whether and to what degree ongoing activities should continue in the face of an appeal or stay.

The APA provides a right of action against agencies and officers of the United States to persons adversely affected or aggrieved by agency action. However, such action may be sought in a federal court only when a decision is "final." 5 U.S.C. 704. An agency action is not considered final where the agency requires by rule that an administrative appeal to a superior agency authority be filed and provides that the agency action is inoperative while the appeal is pending. The Department's administrative appeals regulations recognize the requirement that a party must first exhaust administrative remedies before resorting to Federal Court: "No decision which at the time of its rendition is subject to appeal to the Director or an Appeals Board shall be considered final so as to be agency action subject to judicial review under 5 U.S.C. 704, unless a petition for a stay of decision has been timely filed and the decision being appealed has been made effective. * * *" 43 CFR 4.21(c).

Under the Department's administrative appeals regulations, unless the authorized officer, the Director of OHA, or IBLA places a decision in immediate effect, a BLM grazing decision is ineffective until the 30-day appeal period expires. If a petition for stay is filed within the appeal period, the decision is not in effect for 45 days after the expiration of the appeal period or until OHA acts on the stay petition, whichever occurs first. If the stay is not granted, the party has exhausted his administrative remedies and may seek review in federal court. If a stay is granted, the decision, with exceptions discussed below, is inoperative while the appeal is pending, and thus under the APA a party must exhaust his administrative remedies before resorting to federal court.

There are instances, however, where grazing may continue even though an appeal has been filed and a stay of the decision has been granted. These situations do not, however, present a conflict with the "finality" requirement found in the APA. The first example occurs when a party appeals, but does not seek a stay of the decision. In such a case the decision will be in effect after the 30-day appeal period, but it is not considered "final" for purposes of the APA since the party did not exhaust his administrative remedies. Under the current regulations, grazing is allowed even after the decision is stayed when there was no valid permit or lease in effect at the time of the appealed decision. BLM regulations provide that in such a situation, grazing would be allowed consistent with the appealed decision even when the decision is stayed. In such a case, a party would have fully complied with OHA's regulations pertaining to exhaustion of administrative remedies, but grazing would be allowed. BLM believes it is necessary to allow grazing even if a stay is granted because the OHA regulations do not establish time frames for resolution of appeals. To do otherwise would potentially eliminate grazing and deny a user the ability to graze the lands for years awaiting an administrative decision. As a result, a party could seek judicial review of the decision since the decision would be effective during the appeal. In cases such as these, the BLM is attempting to find a balance between the exhaustion of administrative remedies under the APA and its responsibilities under FLPMA and TGA to:

- Manage lands for multiple use and sustained yield,
- Regulate the occupancy and use of the rangelands,
- Safeguard grazing privileges,
- Preserve the public rangelands from destruction or unnecessary injury, and
- Provide for the orderly use, improvement, and development of the range.

BLM proposes to set forth the kinds of grazing decisions that would be rendered inoperative by the granting of a stay of a BLM grazing decision:

- Those that modify terms and conditions of a permit or lease during its current term or during the renewal process; and
- Those that offer a permit or lease to a preference transferee with terms and conditions that are different from the previous permit or lease terms and conditions.

It is proposed that if a stay of either of these kinds of decisions is granted, the immediately preceding grazing authorization would not expire and the affected permittee, lessee, or preference applicant would continue grazing under the immediately preceding grazing authorization, subject to any applicable provisions of the stay order and subject to the provisions of proposed section 4130.3(b).

As a result, the appealed decision is inoperative. Nonetheless, grazing under the prior grazing authorization would continue under the APA provision at 5 U.S.C. 558 requiring that "a license with reference to an activity of a continuing nature" does not expire until an agency makes a new determination. Thus, a permittee or lessee who has made timely and sufficient application for a renewal or a new license in accordance with part 4100 would not have his permit or lease expire until the application has been finally determined by the Department of the Interior (5 U.S.C. 558(c)). This approach reconciles the exhaustion provision of the APA and the expectation set forth in the APA that a permittee will continue to operate under the immediately preceding authorization in order to ensure security of tenure.

Where a party has no valid grazing authorization at the time that the decision is rendered, there is a reduction in area available for grazing use, or the applicant is seeking use of ephemeral or annual rangelands, BLM could not authorize use based on the previous year's authorization. Thus, under the proposed rule, grazing would continue pursuant to the decision even in the case of a stay when a decision:

- Modifies a permit or lease because of a decrease in public land acreage available for grazing;
- Affects an application for grazing use of BLM-designated ephemeral or annual rangeland;
- Affects an application for additional forage temporarily available;
- Affects an application for a grazing permit or lease that is not made in conjunction with a preference transfer application.

In these cases, BLM would authorize grazing consistent with the final decision that has been stayed, and affected parties could resort to the Federal Courts without exhausting administrative remedies.

BLM specifically invites comment on this section regarding how it might effectively incorporate both the exhaustion and "activity of a continuing nature" requirements of the APA, and ensure that the public land grazing is managed in such a way as to meet the direction of the TGA and FLPMA.

Subpart 4170—Penalties

Section 4170.1–2 Failure To Use

BLM proposes to remove the term "permitted use" from this section and replace it with the term "active use." This is consistent with our proposed definitions.

Subpart 4180—Fundamentals of Rangeland Health and Standards and Guidelines for Grazing Administration

Section 4180.1 Fundamentals of Rangeland Health

BLM proposes revising the introduction to provide that BLM will take action to change grazing management so that it will assist in achieving the fundamentals, only if there are no applicable standards and guidelines in place.

In the preamble to the final rule for the 1995 grazing regulation amendments, the fundamentals of rangeland health were identified as the basic components of rangeland health and were intended to serve as overarching principles to be supplemented by the standards and guidelines. Stated another way, the standards and guidelines were to be developed under the umbrella of the fundamentals. As such, the standards and guidelines serve as more locally specific measures of rangeland health and acceptable management practices consistent with intent of the fundamentals.

Under the existing regulations at section 4180.1, BLM is required to take appropriate action upon determining that existing grazing management needs to be modified to ensure that the four conditions, which make up the fundamentals of rangeland health, exist. In addition, under the existing regulations at section 4180.2, BLM is required to take appropriate action upon determining that existing management practices or levels of grazing use on public lands are significant factors in failing to achieve the standards and conform to the guidelines for grazing administration. Where regionally specific standards and guidelines have been developed and approved, there is no need for BLM managers to make two separate determinations as suggested by the existing rule. An evaluation of standards attainment and guidelines conformance to determine whether existing grazing management practices or levels of grazing use are significant factors in failing to achieve the standards and conform with the standards and guidelines will effectively satisfy the requirement for an evaluation to determine if existing grazing management needs to be changed to ensure the existence of the conditions as defined by the fundamentals. Thus, an evaluation relating to the fundamental of rangeland health is necessary only in those circumstances where standards and guidelines have not been developed and approved.

BLM proposes revising the introduction also to change the amount of time BLM would need to take action to ensure that resource conditions conform to the requirements of this section. The deadline would change from not later than the start of the next grazing year to not later than the start of the grazing year following BLM's completion of action, including consultation under sections 4110.3–3 and 4130.3–3. This change will provide time for BLM to complete relevant and applicable requirements of law and regulation, such as NEPA compliance documentation, consultation under ESA if applicable, and required consultation under sections 4110.3–3 and 4130.3–3. BLM is doing this because some decisions must address complex resource management circumstances and require time to determine the most appropriate course of action.

BLM received few comments on this provision in response to the ANPR. The ANPR stated that we are considering whether to amend the provision stating when BLM will implement action that changes grazing management after determining that the allotments used by a permittee or lessee are not meeting or significantly progressing toward meeting land health standards. Most of the comments BLM received asked us to implement stricter adherence to the already existing standards and to establish time frames for compliance and consequences for not achieving those time frames. We believe the current framework is effective and achieves compliance. Other commenters asked that we move the fundamentals of rangeland health provisions to Subpart 1610, Resource Management Planning. At this time we plan to leave the health standards in the grazing portion of our regulations.

Section 4180.2 Standards and Guidelines for Grazing Administration

BLM proposes revising paragraph (c) to provide that we would require both assessments of standards attainment and monitoring to support a determination that grazing practices are a significant factor in failing to achieve, or not making significant progress towards achieving rangeland health standards. BLM's current policy is to use all available relevant information, including monitoring data when available, to assess standards attainment.

The change proposed by this rule would require that BLM support standards attainment determinations with assessment and monitoring data.

We would also revise paragraph (c) to provide that within 24 months following a determination that current grazing practices are a significant factor in failing to achieve or make progress towards achievement of standards, BLM would, in compliance with applicable law and with consultation requirements, analyze, formulate, and propose appropriate action intended to remedy the failure to meet the standards. Under the current rule, following the determination BLM must take appropriate action "before the start of the next grazing year."

The new provision states that these requirements would be met upon execution of an agreement or issuance of a final decision to implement appropriate action. Following the agreement or decision, and resolution of any appeals to the decision, BLM would be required to implement the appropriate action before the start of the next grazing year.

BLM also proposes removing the phrase "Category 1 or 2" with respect to the designation of special status to candidate threatened and endangered (T&E) species because the FWS no longer uses these designations.

These changes are being proposed for several reasons. BLM recognizes that one of the thrusts of "Rangeland Reform '94" was to require BLM to implement timely and responsive remedial action upon determining that existing grazing practices were preventing achievement of rangeland health standards. Since the implementation of this rule, BLM has found that in many cases, requiring our field offices to take action "before the start of the next grazing year," *i.e.* within a maximum of 12 months of the determination, is insufficient time to complete the governmental processes involved in making a reasoned choice regarding the appropriate action, and it does not allow for operation adjustments by the affected grazing operators that are not unduly economically disruptive.

Arriving at a proposed remedial response that requires gathering and analyzing relevant information and necessary coordination takes time. BLM must then consider the appropriate action and document reasonable alternatives in accordance with NEPA. Consultation under ESA, which can be time-consuming, may be required at this stage. Then, BLM must develop a proposed grazing decision that implements the action, which is subject to protest and appeal. Should the final decision be stayed pending appeal, further time is consumed. In practice, implementing appropriate action within 12 months of determining that grazing practices need to be changed is unrealistic in many cases. BLM proposes to extend its self-imposed deadline to 24, rather than 12 months in which to complete these processes. BLM believes that this will allow the necessary time to deliberate and implement responsive, reasonable, and lasting remedies.

V. Procedural Matters

Executive Order 12866, Regulatory Planning and Review

The Office of Management and Budget determined that these proposed regulations are a significant regulatory action and therefore subject to review under Executive Order 12866. These proposed regulations would not have an effect of $100 million or more on the economy. The proposed regulatory changes would not adversely affect, in a material way, the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities.

The proposed rule would not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency. BLM is aware that there are differences between its grazing program and the program administered by the U.S. Forest Service (USFS). For example, the USFS regulations and procedures do not include a temporary suspension category, unlike the BLM proposal in section 4110.3–2. The USFS regulations at 36 CFR 222.9(b)(2) provide that title to permanent structural range improvements on National Forest System lands such as pipelines and water troughs remains with the United States, unlike the BLM proposal in section 4120.3–2 that allows for the sharing of the title for some improvements with permittees and lessees. The USFS regulations may provide for a more streamlined process to modify grazing permits, particularly in situations where grazing activities need to be restricted.

Despite these and other differences, BLM believes that any inconsistencies between BLM's grazing program and USFS' are not serious and will not interfere with actions taken or planned by the agencies. They merely represent differences in management approach and philosophy. However, we specifically invite public comment on whether any inconsistencies between the regulations and practices of the two agencies interfere with the operations of any BLM lessees or permittees, or otherwise inconvenience them or any other stakeholders.

These proposed regulations do not alter the budgetary effects of entitlements, grants, user fees, or loan programs or the right or obligations of their recipients; nor do they raise novel legal issues. However, the proposed rule raises novel policy issues by reversing or otherwise changing policy established in a 1995 rule.

Regulatory Flexibility Act

Congress enacted the Regulatory Flexibility Act (RFA) of 1980, as amended, 5 U.S.C. 601–612, to ensure that Government regulations do not unnecessarily or disproportionately burden small entities. The RFA requires a regulatory flexibility analysis if a rule would have a significant economic impact, either detrimental or beneficial, on a substantial number of small entities. BLM prepared an Initial Regulatory Flexibility Act Analysis to address changes we are considering in this proposed rule and has concluded that this proposed rule will not have significant economic impact, either detrimental or beneficial, on a substantial number of small entities. This document is available for review at 1620 L Street NW., Washington, DC 20036 and on the Internet at *http://www.blm.gov.grazing.*

The proposed rule would not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency. The proposed change would not alter the budgetary effects of entitlements, grants, user fees, or loan programs or the rights or obligations of their recipients; nor does it raise novel legal or policy issues, except as discussed in the previous section of the preamble.

Small Business Regulatory Enforcement Fairness Act

This proposed rule is not a "major rule" as defined at 5 U.S.C. 804(2). The changes BLM is proposing to the current grazing regulations would not result in an effect on the economy of $100 million or more, in an increase in costs or prices, or in significant adverse effects on competition, employment, investment, productivity, innovation or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets.

The changes BLM proposes are intended to clarify existing requirements and qualifications. These changes would positively affect all applicants, whether small entities or not.

Unfunded Mandates Reform Act

This amendment of 43 CFR Part 4100, as proposed, would not result in any unfunded mandate to state, local, or tribal governments, or to the private sector, in the aggregate, of $100 million or more. The rule would continue and strengthen requirements for BLM to consult with all of these governmental and other entities whenever they would likely be affected by our actions relating to livestock grazing.

Executive Order 12630, Governmental Actions and Interference With Constitutionally Protected Property Rights

The proposed rule does not represent a government action capable of interfering with constitutionally protected property rights. The relevant statutes and regulations governing grazing on Federal land and case law interpreting these statutes and regulations have consistently recognized grazing on Federal land as a revocable license and not a property interest. Therefore, the Department of the Interior has determined that the rule would not cause a taking of private property or require further discussion of takings implications under this Executive Order.

Executive Order 13132, Federalism

The proposed rule would not have a substantial direct effect on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. BLM's inability to issue conservation use grazing permits neither hinders nor enhances authority vested in states or local governments. The rule would continue and strengthen requirements for BLM to consult with all of these governmental and other entities whenever they would likely be affected by our actions relating to livestock grazing. Therefore, in accordance with Executive Order 13132, BLM has determined that this proposed rule does not have sufficient Federalism implications to warrant preparation of a Federalism Assessment.

Executive Order 13175 Consultation and Coordination With Indian Tribal Governments

In accordance with Executive Order 13175, we have determined that this rule does not include policies that have tribal implications. The rule expressly does not apply to, and these rules

expressly exclude, Indian lands set aside or held for the benefit of Indians from the effects of the rule.

Executive Order 12988, Civil Justice Reform

Under Executive Order 12988, the Office of the Solicitor has determined that this proposed rule would not unduly burden the judicial system and that it meets the requirements of sections 3(a) and 3(b)(2) of the Order.

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), BLM must consider whether this proposed rule will create any additional collection, paperwork, or record keeping burdens on the public. These burdens are permissible only when BLM can justify the practical utility of the information collected under the rule. Office of Management and Budget (OMB) approval is required of any new requirements for a collection of information imposed on 10 or more persons, and a valid OMB control number must be obtained for any covered paperwork.

The information collection requirements contained in Group 4100 have been approved by the OMB under 44 U.S.C. 3501 *et seq.* and assigned the following clearance numbers: 1004–0005, 1004–0019, 1004–0020, 1004–0041, 1004–0047, 1004–0051, 1004–0068. The information would be collected to permit BLM to determine whether an application to utilize public lands for grazing or other purposes should be approved.

Today's proposed rule will necessitate some modifications of terms in the forms used to collect information. However, there will be no change in the reporting burden as a result of today's proposed rule. Therefore, these regulations do not contain information collection requirements that OMB must approve.

National Environmental Policy Act

The BLM has determined that these proposed regulations constitute a major Federal action significantly affecting the quality of the human environment under section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332(2)(C). BLM and all Federal agencies are required by the National Environmental Policy Act (NEPA) to prepare an EIS if a proposed action has potential for significant environmental impacts. BLM has prepared a draft environmental impact statement (DEIS) which will be on file and available to the public in the BLM Administrative Record at the address specified in the **ADDRESSES** section. The Draft Environmental Impact Statement will also be available at *http://www.blm.gov/grazing*. The draft document considers the impacts of this proposed rulemaking to amend the regulations governing livestock grazing on public lands. You may comment on the EIS via the interactive ePlanning Web site, at *http://www.blm.gov/grazing*.

Executive Order 13211, Action Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

In accordance with Executive Order 13211, BLM finds that this proposed rule is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The distribution of or use of energy would not be unduly affected by this proposed rule.

Clarity of the Regulations

Executive Order 12866 requires each agency to write regulations that are simple and easy to understand. We invite your comments on how to make these proposed regulations easier to understand, including answers to questions such as the following: (1) Are the requirements in the proposed regulations clearly stated? (2) Do the proposed regulations contain technical language or jargon that interferes with their clarity? (3) Does the format of the proposed regulations (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce their clarity? (4) Would the regulations be easier to understand if they were divided into more (but shorter) sections? (A "section" appears in bold type and is preceded by the symbol "§" and a numbered heading, for example "§ 4160.4.") (5) Is the description of the proposed regulations in the **SUPPLEMENTARY INFORMATION** section of this preamble helpful in understanding the proposed regulations? How could this description be more helpful in making the proposed regulations easier to understand?

Please send any comments you have on the clarity of the regulations to the address specified in the **ADDRESSES** section.

Author

The principal author of this rule is Ken Visser, Rangeland Management Specialist; Rangeland, Soil, Water and Air Group, assisted by Ted Hudson and Cynthia L. Ellis of the Regulatory Affairs Group.

List of Subjects in 43 CFR Part 4100

Administrative practice and procedure, Grazing lands, Livestock, Penalties, Range management, Reporting and record keeping requirements.

For the reasons stated in the Preamble, and under the authorities cited below, we propose to amend Title 43, Subtitle B, Chapter II, Subchapter D, Part 4100, as follows:

Dated: November 18, 2003.

J. Steven Griles,

Deputy Secretary of the Interior.

PART 4100—GRAZING ADMINISTRATION—EXCLUSIVE OF ALASKA

1. The authority citation for part 4100 continues to read as follows:

Authority: 43 U.S.C. 315, 315a–315r, 1181d, 1740.

Subpart 4100—Grazing Administration—Exclusive of Alaska; General

2. Amend § 4100.0–2 by redesignating the first sentence as paragraph (a) and the second sentence as paragraph (b), and by revising newly designated paragraph (b) to read as follows:

§ 4100.0–2 Objectives.

* * * * *

(b) These objectives will be realized in a manner consistent with land use plans, multiple use, sustained yield, environmental values, economic and other objectives stated in the Taylor Grazing Act of June 28, 1934, as amended (43 U.S.C. 315, 315a–315r); section 102 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701) and the Public Rangelands Improvement Act of 1978 (43 U.S.C. 1901(b)(2)).

3. Amend § 4100.0–3 by revising paragraphs (c), (d), and (f) to read as follows:

§ 4100.0–3 Authority.

* * * * *

(c) Executive orders that transfer land acquired under the Bankhead-Jones Farm Tenant Act of July 22, 1937, as amended (7 U.S.C. 1012), to the Secretary and authorize administration under the Taylor Grazing Act.

(d) Section 4 of the Oregon and California Railroad Land Act of August 28, 1937 (43 U.S.C. 1181d);

* * * * *

(f) Public land orders, Executive orders, and agreements that authorize the Secretary to administer livestock grazing on specified lands under the Taylor Grazing Act or other authority as specified.

4. Amend § 4100.0–5 by removing the definitions of "conservation use" and "permitted use", and revising the definitions of "active use", "grazing lease", "grazing permit", "grazing preference or preference", "interested public", "suspension", and "temporary nonuse", and adding a definition of "preference", to read as follows:

§ 4100.0–5 Definitions.

* * * * *

Active use means that portion of the grazing preference that is:

(1) Available for livestock grazing use under a permit or lease based on rangeland carrying capacity and resource conditions in an allotment; and

(2) Not in suspension.

* * * * *

Grazing lease means a document that authorizes grazing use of the public lands under Section 15 of the Act. A grazing lease specifies grazing preference and the terms and conditions under which lessees make grazing use during the term of the lease.

Grazing permit means a document that authorizes grazing use of the public lands under Section 3 of the Act. A grazing permit specifies grazing preference and the terms and conditions under which permittees make grazing use during the term of the permit.

Grazing preference or *preference* means the total number of animal unit months on public lands apportioned and attached to base property owned or controlled by a permittee, lessee, or an applicant for a permit or lease. Grazing preference includes active use and use held in suspension. Grazing preference holders have a superior or priority position against others for the purpose of receiving a grazing permit or lease.

Interested public means an individual, group, or organization that has:

(1) (i) Submitted a written request to BLM to be provided an opportunity to be involved in the process leading to a BLM decision on the management of livestock grazing on public lands, and

(ii) Followed up that request by commenting on or otherwise participating in the decisionmaking process as to the management of a specific allotment if there has been an opportunity for such participation; or

(2) Submitted written comments to the authorized officer regarding the management of livestock grazing on a specific allotment, as part of the process leading to a BLM decision on the management of livestock grazing on the allotment.

* * * * *

Preference means grazing preference (see definition of "grazing preference").

* * * * *

Suspension means the withholding from active use, through a decision issued by the authorized officer or by agreement, of part or all of the grazing preference specified in a grazing permit or lease.

Temporary nonuse means that portion of active use that the authorized officer authorizes not to be used, in response to an application made by the permittee or lessee.

* * * * *

5. Revise § 4100.0–9 to read as follows:

§ 4100.0–9 Information collection.

The information collection requirements contained in Group 4100 have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* The information is collected to enable the authorized officer to determine whether to approve an application to utilize public lands for grazing or other purposes.

Subpart 4110—Qualifications and Preference

6. Amend § 4110.1 by removing paragraphs (b)(1), (b)(2), and (c), by redesignating paragraph (d) as paragraph (c), and by revising paragraph (b) to read as follows:

§ 4110.1 Mandatory qualifications.

* * * * *

(b) Applicants for the renewal or issuance of new permits and leases and any affiliates must be determined by the authorized officer to have a satisfactory record of performance under § 4130.1–1(b).

* * * * *

7. Amend § 4110.2–1 by redesignating paragraphs (d) and (e) as paragraphs (e) and (f), respectively, and by redesignating the last two sentences of paragraph (c) as paragraph (d).

8. Revise § 4110.2–2 to read as follows:

§ 4110.2–2 Specifying grazing preference.

(a) All grazing permits and grazing leases will specify grazing preference, except for permits and leases for designated ephemeral rangelands, where BLM authorizes livestock use based upon forage availability, or designated annual rangelands. Preference includes active use and any suspended use. Active use is based on the amount of forage available for livestock grazing as established in the land use plan, activity plan, or decision of the authorized officer under § 4110.3–3, except, in the case of designated ephemeral or annual rangelands, a land use plan or activity plan may alternatively prescribe vegetation standards to be met in the use of such rangelands.

(b) The grazing preference specified is attached to the base property supporting the grazing permit or grazing lease.

(c) The animal unit months of grazing preference are attached to:

(1) The acreage of land base property on a pro rata basis, or

(2) Water base property on the basis of livestock forage production within the service area of the water.

9. Amend § 4110.2–3 by revising paragraph (b) to read as follows:

§ 4110.2–3 Transfer of grazing preference.

* * * * *

(b) If base property is sold or leased, the transferee shall within 90 days of the date of sale or lease file with BLM a properly executed transfer application showing the base property and the grazing preference being transferred in animal unit months.

* * * * *

10. Revise § 4110.2–4 to read as follows:

§ 4110.2–4 Allotments.

After consultation, cooperation, and coordination with the affected grazing permittees or lessees and the state having lands or responsibility for managing resources within the area, the authorized officer may designate and adjust grazing allotment boundaries. The authorized officer may combine or divide allotments, through an agreement or by decision, when necessary for the proper and efficient management of public rangelands.

11. Revise § 4110.3 to read as follows:

§ 4110.3 Changes in grazing preference.

(a) The authorized officer will periodically review the grazing preference specified in a grazing permit or lease and make changes in the grazing preference as needed to:

(1) Manage, maintain, or improve rangeland productivity;

(2) Assist in restoring ecosystems to properly functioning conditions;

(3) Conform with land use plans or activity plans; or

(4) Comply with the provisions of subpart 4180.

(b) The authorized officer will support these changes by monitoring, documented field observations, ecological site inventory, or other data acceptable to the authorized officer.

(c) Before changing grazing preference, the authorized officer will undertake the appropriate analysis as

required by the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*). The authorized officer will analyze and, if appropriate, document the relevant social, economic, and cultural effects of the proposed action.

12. Revise § 4110.3–1 to read as follows:

§ 4110.3–1 Increasing active use.

BLM may apportion additional forage to qualified applicants for livestock grazing use consistent with multiple-use management objectives specified in the applicable land use plan.

(a) *Additional forage temporarily available.* When the authorized officer determines that additional livestock forage is temporarily available, he may authorize its use on a nonrenewable basis in the following order:

(1) To permittees or lessees who have preference for grazing use in the allotment where the forage is available, in proportion to their active use; and

(2) To other qualified applicants under § 4130.1–2.

(b) *Additional forage available on a sustained yield basis.* When the authorized officer determines that additional forage is available on a sustained yield basis, he will apportion it in the following manner:

(1) First, to remove all or a part of the suspension of preference of permittees or lessees with permits or leases in the allotment where the forage is available; and

(2) Second, if additional forage remains after ending all suspensions, the authorized officer will consult, cooperate, and coordinate with the affected permittees or lessees, the state having lands responsibility for managing resources within the area, and the interested public, and apportion it in the following order:

(i) Permittees or lessees in proportion to their contribution to stewardship efforts that result in increased forage production;

(ii) Permittee(s) or lessee(s) in proportion to the amount of their grazing preference; and

(iii) Other qualified applicants under § 4130.1–2.

13. Revise § 4110.3–2 to read as follows:

§ 4110.3–2 Decreasing active use.

(a) The authorized officer may suspend active use in whole or in part on a temporary basis due to reasons specified in § 4110.3–3(b)(1), or to facilitate installation, maintenance, or modification of range improvements.

(b) When monitoring or documented field observations show grazing use or patterns of use are not consistent with the provisions of subpart 4180, or grazing use is otherwise causing an unacceptable level or pattern of utilization, or when use exceeds the livestock carrying capacity as determined through monitoring, ecological site inventory, or other acceptable methods, the authorized officer will reduce active use, otherwise modify management practices, or both. To implement reductions under this paragraph, BLM will suspend active use.

14. Revise § 4110.3–3 to read as follows:

§ 4110.3–3 Implementing changes in active use.

(a)(1) After consultation, cooperation, and coordination with the affected permittee or lessee and the state having lands or managing resources within the area, the authorized officer will implement changes in active use through a documented agreement or by a decision. The authorized officer will implement changes in active use in excess of 10 percent over a 5-year period unless:

(i) After consultation with the affected permittees or lessees, an agreement is reached to implement the increase or decrease in less than 5 years, or

(ii) The changes must be made before 5 years have passed in order to comply with applicable law.

(2) Decisions implementing § 4110.3–2 will be issued as proposed decisions pursuant to § 4160.1, except as provided in paragraph (b) of this section.

(b)(1) After consultation with, or a reasonable attempt to consult with, affected permittees or lessees and the state having lands or responsibility for managing resources within the area, the authorized officer will close allotments or portions of allotments to grazing by any kind of livestock or modify authorized grazing use notwithstanding the provisions of paragraph (a) of this section when the authorized officer determines and documents that—

(i) The soil, vegetation, or other resources on the public lands require immediate protection because of conditions such as drought, fire, flood, insect infestation; or

(ii) Continued grazing use poses an imminent likelihood of significant resource damage.

(2) Notices of closure and decisions requiring modification of authorized grazing use may be issued as final decisions effective upon issuance or on the date specified in the decision. Such decisions will remain in effect pending the decision on appeal unless the Office of Hearings and Appeals grants a stay in accordance with § 4.21 of this title.

15. Amend § 4110.4–2 by revising the first sentence of paragraph (a)(2) to read as follows:

§ 4110.4–2 Decrease in land acreage.

(a) * * *

(2) Grazing preference may be canceled in whole or in part. * * *

* * * * *

Subpart 4120—Grazing Management

16. Amend § 4120.2 by revising the final sentence of paragraph (c) to read as follows:

§ 4120.2 Allotment management plans and resource activity plans.

* * * * *

(c) * * * The decision document following the environmental analysis will be issued in accordance with § 4160.1.

* * * * *

17. Amend § 4120.3–1 by revising paragraph (f) to read as follows:

§ 4120.3–1 Conditions for range improvements.

* * * * *

(f) The authorized officer will review proposed range improvement projects as required by the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*). The decision document following the environmental analysis shall be issued in accordance with § 4160.1.

18. Amend § 4120.3–2 by revising paragraph (b) to read as follows:

§ 4120.3–2 Cooperative range improvement agreements.

* * * * *

(b) Subject to valid existing rights, cooperators and the United States share title to permanent structural range improvements such as fences, wells, and pipelines where authorization is granted after February 6, 2004 in proportion to their contribution to on-the-ground project development and construction costs. The authorization for all new permanent water developments, such as spring developments, wells, reservoirs, stock tanks, and pipelines, shall be through cooperative range improvement agreements. The authorized officer will document a permittee's or lessee's interest in contributed funds, labor, and materials to ensure proper credit for the purposes of §§ 4120.3–5 and 4120.3–6(c).

* * * * *

19. Amend § 4120.3–3 by revising the introductory text of paragraph (c) to read as follows:

§ 4120.3–3 Range improvement permits.

* * * * *

(c) Where a permittee or lessee cannot make use of the forage available for livestock and an application for temporary nonuse has been denied or the opportunity to make use of the available forage is requested by the authorized officer, the permittee or lessee shall cooperate with the temporary authorized use of forage by another operator, when it is authorized by the authorized officer following consultation with the preference permittee(s) or lessee(s).

* * * * *

20. Amend § 4120.3–8 by removing the misspelling "whith" from where it appears in the last sentence of paragraph (b) and adding in its place the word "which".

21. Revise § 4120.3–9 to read as follows:

§ 4120.3–9 Water rights for the purpose of livestock grazing on public lands.

Any right that the United States acquires to use water on public land for the purpose of livestock watering on public land will be acquired, perfected, maintained, and administered under the substantive and procedural laws of the state within which such land is located.

22. Amend § 4120.5–2 by removing the word "and" after the semicolon at the end of paragraph (a), removing the period at the end of paragraph (b) and adding in its place a semicolon and the word "and", and adding paragraph (c) to read as follows:

§ 4120.5–2 Cooperation with state, county, and Federal agencies.

* * * * *

(c) State, local, or county-established grazing boards in reviewing range improvements and allotment management plans on public lands.

23. Revise § 4130.1–1 to read as follows:

§ 4130.1–1 Filing applications.

(a) Applications for grazing permits or leases (active use and nonuse), free-use grazing permits and other grazing authorizations shall be filed with the authorized officer at the local Bureau of Land Management office having jurisdiction over the public lands involved.

(b) The authorized officer will determine whether applicants for the renewal or issuance of new permits and leases and any affiliates have a satisfactory record of performance. The authorized officer will not approve such renewal or issuance unless the applicant and all affiliates have a satisfactory record of performance.

(1) *Renewal of permit or lease.*

(i) The authorized officer will deem the applicant for renewal of a grazing permit or lease, and any affiliate, to have a satisfactory record of performance if the authorized officer determines the applicant and affiliates to be in substantial compliance with the terms and conditions of the existing Federal grazing permit or lease for which renewal is sought, and with the rules and regulations applicable to the permit or lease.

(ii) The authorized officer may take into consideration circumstances beyond the control of the applicant or affiliate in determining whether the applicant and affiliates are in substantial compliance with permit or lease terms and conditions and applicable rules and regulations.

(2) *New permit or lease.* The authorized officer will deem applicants for new permits or leases, and any affiliates, to have a record of satisfactory performance when—

(i) The applicant or affiliate has not had any Federal grazing permit or lease canceled, in whole or in part, for violation of the permit or lease within the 36 calendar months immediately preceding the date of application; and

(ii) The applicant or affiliate has not had any state grazing permit or lease, for lands within the grazing allotment for which a Federal permit or lease is sought, canceled, in whole or in part, for violation of the permit or lease within the 36 calendar months immediately preceding the date of application; and

(iii) A court of competent jurisdiction does not bar the applicant or affiliate from holding a Federal grazing permit or lease.

(c) In determining whether affiliation exists, the authorized officer will consider all appropriate factors, including, but not limited to, common ownership, common management, identity of interests among family members, and contractual relationships.

24. Amend § 4130.2 as follows:

A. By adding the word "and" after the semicolon at the end of paragraph (e)(2);

B. By removing paragraphs (g) and (h) and redesignating paragraphs (i) and (j) as paragraphs (g) and (h), respectively;

C. In redesignated paragraph (g), by revising the reference "(see § 4130.3–2)" to read "(see § 4130.3–2(g))"; and

D. By revising paragraphs (a), (b), and (f) to read as follows:

§ 4130.2 Grazing permits and leases.

(a) Grazing permits and leases authorize use on the public lands and other BLM-administered lands that are designated in land use plans as available for livestock grazing. Permits and leases will specify the grazing preference, including active and suspended use. These grazing permits and leases will also specify terms and conditions pursuant to §§ 4130.3, 4130.3–1, and 4130.3–2.

(b) The authorized officer will consult, cooperate, and coordinate with affected permittees and lessees, and the state having lands or responsibility for managing resources within the area, before issuing or renewing grazing permits and leases.

* * * * *

(f) A permit or lease is not valid unless both the BLM and the permittee or lessee have signed it.

* * * * *

25. Amend § 4130.3 by redesignating the existing text as paragraph (a) and adding paragraphs (b) and (c) to read as follows:

§ 4130.3 Terms and conditions.

* * * * *

(b) Upon a BLM offer of a permit or lease, the permit or lease terms and conditions may be protested and appealed under part 4 and subpart 4160 unless:

(1) The terms and conditions of the permit or lease, such as terms and conditions mandated by a biological opinion prepared under the Endangered Species Act, are not subject to review by the Office of Hearings and Appeals; or

(2) The offer of permit or lease responds to an application for a permit or lease for grazing use on additional land acreage (see § 4110.4–1).

(c) If any of the terms and conditions of a BLM-offered permit or lease are stayed pending appeal, BLM will authorize grazing use as provided in § 4160.4.

26. Amend § 4130.3–2 by adding the word "and" after the semicolon at the end of paragraph (f), by removing the semicolon and the word "and" at the end of paragraph (g) and adding in their place a period, and by removing paragraph (h).

27. Revise § 4130.3–3 to read as follows:

§ 4130.3–3 Modification of permits or leases.

(a) Following consultation, cooperation, and coordination with the affected lessees or permittees and the state having lands or responsibility for managing resources within the area, the authorized officer may modify terms and conditions of the permit or lease when the active use or related management practices:

(1) Do not meet management objectives specified in:

(i) The land use plan;

(ii) The pertinent allotment management plan or other activity plan; or

(iii) An applicable decision issued under § 4160.3; or

(2) Do not conform to the provisions of subpart 4180.

(b) To the extent practical, during the preparation of biological assessments or biological evaluations prepared under the Endangered Species Act, and other reports that evaluate monitoring and other data, that the authorized officer uses as a basis for making decisions to increase or decrease grazing use, or to change the terms and conditions of a permit or lease, the authorized officer will provide review opportunity and opportunity to provide input to:

(1) Affected permittees or lessees;

(2) States having lands or responsibility for managing resources within the affected area; and

(3) The interested public.

28. Revise § 4130.4 to read as follows:

§ 4130.4 Authorization of temporary changes in grazing use within the terms and conditions of permits and leases.

(a)(1) The authorized officer may authorize temporary changes in grazing use within the terms and conditions of the permit or lease to:

(i) Respond to annual fluctuations in timing and amount of forage production; or

(ii) Meet locally established range readiness criteria.

(2) The authorized officer will consult, cooperate and coordinate with the permittees or lessees regarding their applications for changes within the terms and conditions of their permit or lease.

(b) For the purposes of this subpart, "within the terms and conditions of the permit or lease" means temporary changes in livestock number, period of use, or both, that would result in grazing use that:

(1) Results in forage removal that does not exceed the amount of active use specified in the permit or lease; and

(2) Occurs either not earlier than 14 days before the begin date specified on the permit or lease, and not later than 14 days after the end date specified on the permit or lease.

(c) Permittees and lessees must apply if they wish—

(1) Not to use all or a part of their active use by applying for temporary nonuse under paragraph (d) of this section;

(2) To activate forage in temporary nonuse; or

(3) To use forage that is temporarily available on designated ephemeral or annual ranges.

(d)(1) Temporary nonuse is authorized—

(i) Only if the authorized officer approves in advance; and

(ii) For no longer than one year at a time.

(2) Permittees or lessees applying for temporary nonuse use must state on their application the reasons supporting nonuse. The authorized officer will authorize nonuse to provide for:

(i) Natural resource conservation, enhancement, or protection, including more rapid progress toward meeting resource condition objectives or attainment of rangeland health standards; or

(ii) The business or personal needs of the permittee or lessee.

(e) Under § 4130.6–2, the authorized officer may authorize qualified applicants to graze forage made available as a result of temporary nonuse approved for the reasons described in paragraph (d)(2)(ii) of this section. The authorized officer will not authorize anyone to graze forage made available as a result of temporary nonuse approved under paragraph (d)(2)(i) of this section.

(f) Permittees or lessees who wish to apply for temporary changes in grazing use within the terms and conditions of their permit or lease should file an application with BLM. The authorized officer will assess a service charge under § 4130.8–3 to process applications for changes in grazing use that require the issuance of a replacement or supplemental billing notice.

29. Amend § 4130.5 by removing the words "authorized" and "or conservation use" from where they appear in paragraph (b)(1).

30. Amend § 4130.6–2 by revising the second sentence to read as follows:

§ 4130.6–2 Nonrenewable grazing permits and leases.

* * * The authorized officer shall consult, cooperate, and coordinate with affected permittees or lessees, and the state having lands or responsibility for managing resources within the area, before issuing nonrenewable grazing permits and leases.

31. Amend § 4130.8–1 by redesignating paragraphs (d), (e), and (f) as paragraphs (f), (g), and (h), respectively, by revising paragraph (c), adding new paragraphs (d) and (e), and revising the last sentence of redesignated paragraph (h), to read as follows:

§ 4130.8–1 Payment of fees.

* * * * *

(c) Except as provided in § 4130.5, the full fee will be charged for each animal unit month of grazing use. For the purposes of calculating the fee, an animal unit month is defined as a month's use and occupancy of range by 1 cow, bull, steer, heifer, horse, burro, mule, 5 sheep, or 5 goats:

(1) Over the age of 6 months at the time of entering the public lands or other lands administered by BLM;

(2) Weaned regardless of age; or

(3) Becoming 12 months of age during the authorized period of use.

(d) BLM will not charge grazing fees for animals that are less than 6 months of age at the time of entering BLM-administered lands, provided that they are the progeny of animals upon which fees are paid, and they will not become 12 months of age during the authorized period of use.

(e) In calculating the billing, the authorized officer will prorate the grazing fee on a daily basis and will round charges to reflect the nearest whole number of animal unit months.

* * * * *

(h) * * * Failure to make payment within 30 days may be a violation of § 4140.1(b)(1) and will result in action by the authorized officer under § 4150.1 and subpart 4160.

32. Revise § 4130.8–3 to read as follows:

§ 4130.8–3 Service charge.

(a) Under Section 304(a) of the Federal Land Policy and Management Act of 1976, the service charge BLM assesses will reflect processing costs. BLM will adjust the charge periodically as costs change, and will inform the public of the changes by publishing a notice in the **Federal Register**.

(b) Except when BLM initiates an action, the authorized officer will assess a service charge for each of the following actions as shown on the table below—

Action	Service charge
Issue crossing permit	$75
Transfer grazing preference	145
Cancel and/or replace a grazing fee billing	50

Subpart 4140—Prohibited Acts

33. Amend § 4140.1 by—

a. Removing the introductory text; and

b. Revising paragraphs (a)(2), (a)(3), the introductory text of paragraph (b), paragraph (b)(1)(i), and paragraph (c) to read as follows:

§ 4140.1 Acts prohibited on public lands.

(a) * * *

(2) Failing to make substantial grazing use as authorized for 2 consecutive fee years. This does not include approved temporary nonuse or use temporarily suspended by the authorized officer;

(3) Placing supplemental feed on these lands without authorization, or contrary to the terms and conditions of the permit or lease;

* * * * *

(b) Persons performing the following prohibited acts on BLM-administered lands are subject to civil and criminal penalties set forth at §§ 4170.1 and 4170.2:

(1) * * *

(i) Without a permit or lease or other grazing use authorization (see § 4130.6) and timely payment of grazing fees;

* * * * *

(c)(1) A grazing permittee or lessee performing any of the prohibited acts listed in paragraphs (c)(2) or (c)(3) of this section on an allotment where he is authorized to graze under a BLM permit or lease may be subject to the civil penalties set forth at § 4170.1–1, if:

(i) The permittee or lessee performs the prohibited act while engaged in activities related to grazing use authorized by his permit or lease;

(ii) The permittee or lessee has been convicted or otherwise found to be in violation of any of these laws or regulations by a court or by final determination of an agency charged with the administration of these laws or regulations; and

(iii) No further appeals are outstanding.

(2) Violation of Federal or state laws or regulations pertaining to the:

(i) Placement of poisonous bait or hazardous devices designed for the destruction of wildlife;

(ii) Application or storage of pesticides, herbicides, or other hazardous materials;

(iii) Alteration or destruction of natural stream courses without authorization;

(iv) Pollution of water sources;

(v) Illegal take, destruction or harassment, or aiding and abetting in the illegal take, destruction or harassment of fish and wildlife resources; and

(vi) Illegal removal or destruction of archeological or cultural resources.

(3) (i) Violation of the Bald Eagle Protection Act (16 U.S.C. 668 *et seq.*), Endangered Species Act (16 U.S.C. 1531 *et seq.*), or any provision of part 4700 of this chapter concerning the protection and management of wild free-roaming horses and burros; or

(ii) Violation of State livestock laws or regulations relating to the branding of livestock; breed, grade, and number of bulls; health and sanitation requirements; and violating State, county, or local laws regarding the stray of livestock from permitted public land grazing areas onto areas that have been formally closed to open range grazing.

Subpart 4150—Unauthorized Grazing Use

34. Amend § 4150.3 by revising the second sentence of paragraph (e) and adding paragraph (f) to read as follows:

§ 4150.3 Settlement.

* * * * *

(e) * * * The authorized officer may take action under subpart 4160 to cancel or suspend grazing authorizations or to deny approval of applications for grazing use until such amounts have been paid. * * *

(f) Upon a stay of a decision issued under paragraph (e) of this section, the authorized officer will allow a permittee or lessee to graze in accordance with this part pending resolution of any appeal.

Subpart 4160—Administrative Remedies

35. Amend § 4160.1 by adding paragraph (d) to read as follows:

§ 4160.1 Proposed decisions.

* * * * *

(d) A biological assessment or biological evaluation prepared for purposes of an Endangered Species Act consultation or conference is not a decision for purposes of protest or appeal.

36. Amend § 4160.3 by removing paragraphs (c), (d), and (e), by redesignating paragraph (f) as paragraph (c), and by revising redesignated paragraph (c) to read as follows:

§ 4160.3 Final decisions.

* * * * *

(c) Notwithstanding the provisions of § 4.21(a) of this title pertaining to the period during which a final decision will not be in effect, the authorized officer may provide that the final decision shall be effective upon issuance or on a date established in the decision, and shall remain in effect pending the decision on appeal unless a stay is granted by the Office of Hearings and Appeals when the authorized officer has made a determination in accordance with § 4110.3–3(b) or § 4150.2(d). Nothing in this section shall affect the authority of the Director of the Office of Hearings and Appeals, the Interior Board of Land Appeals, or an administrative law judge, to provide that the decision becomes effective immediately as provided in § 4.21(a)(1) of this title.

37. Revise § 4160.4 to read as follows:

§ 4160.4 Appeals.

(a) Those who wish to appeal or seek a stay of a BLM grazing decision must follow the requirements set forth in § 4.470 *et seq.* of this title. The appeal or petition for stay must be filed with the BLM office that issued the decision within 30 days after its receipt or within 30 days after the proposed decision becomes final as provided in § 4160.3(a).

(b) When OHA stays implementation of a decision described in paragraph (b)(1) or (b)(2) of this section, the immediately preceding authorization and any terms and conditions therein will not expire, and the permittee, lessee, or preference applicant may continue to graze under the immediately preceding grazing authorization, subject to any relevant provisions of the stay order and § 4130.3(b), and except as provided in paragraph (c) of this section. This paragraph applies to decisions that:

(1) Change the terms and conditions of a permit or lease during the current term;

(2) Offer a permit or lease to a preference transferee with terms and conditions that are different from the permit or lease terms and conditions that are most recently applicable to the allotment or portion of the allotment in question; or

(3) Renew a permit or lease with changed terms and conditions.

(c) When OHA stays implementation of a decision described in paragraphs (c)(1) through (c)(4) of this section, the authorized officer, notwithstanding paragraph (b) of this section, will authorize grazing consistent with the final decision when the decision:

(1) Modifies a permit or lease because of a decrease in public land acreage available for grazing (see § 4110.4–2);

(2) Affects an application for grazing use of BLM-designated ephemeral or annual rangeland;

(3) Affects an application for additional forage temporarily available under § 4110.3–1(a); or

(4) Affects an application for a grazing permit or lease that is not made in conjunction with a preference transfer application (see § 4110.2–3(d)).

Subpart 4170—Penalties

38. Revise § 4170.1–2 to read as follows:

§ 4170.1–2 Failure to use.

If a permittee or lessee has, for 2 consecutive grazing fee years, failed to make substantial use as authorized in the lease or permit, or has failed to maintain or use water base property in

the grazing operation, the authorized officer, after consultation, coordination, and cooperation with the permittee or lessee and any lienholder of record, may cancel whatever amount of active use the permittee or lessee has failed to use.

Subpart 4180—Fundamentals of Rangeland Health and Standards and Guidelines for Grazing Administration

39. Amend § 4180.1 by revising the introductory text and paragraph (d) to read as follows:

§ 4180.1 Fundamentals of rangeland health.

Where standards and guidelines have not been established under § 4180.2(b), and the authorized officer determines that grazing management needs to be modified to assist in achieving the following conditions, the authorized officer will take appropriate action as soon as practicable under § 4180.2 but not later than the start of the grazing year that follows BLM's completion of relevant and applicable requirements of law and regulations and the consultation requirements of §§ 4110.3–3 and 4130.3–3:

* * * * *

(d) Habitats are, or are making significant progress toward being, restored or maintained for Federal threatened and endangered species, Federal proposed or candidate threatened and endangered species, and other at-risk and special status species.

40. Amend § 4180.2 by removing the semicolon at the end of paragraph (e)(12) and adding in its place a period, by revising paragraph (c), the introductory text of paragraph (d), paragraph (d)(4), paragraph (e)(9), the introductory text of paragraph (f), and paragraph (f)(2)(viii), to read as follows:

§ 4180.2 Standards and guidelines for grazing administration.

* * * * *

(c)(1) If the authorized officer determines through standards assessment and monitoring that existing grazing management practices or levels of grazing use on public lands are significant factors in failing to achieve the standards and conform with the guidelines that are made effective under this section, the authorized officer will, in compliance with applicable laws and with the consultation requirements of this part, formulate, propose, and analyze appropriate action to address the failure to meet standards or to conform to the guidelines not later than 24 months after the determination. The requirements of this paragraph are met when the parties execute an applicable and relevant documented agreement or the authorized officer issues an applicable final decision under § 4160.3.

(2) Upon executing the agreement or in the absence of a stay of the final decision, the authorized officer will implement the appropriate action as soon as practicable, but not later than the start of the next grazing year.

(3) The authorized officer will take appropriate action as defined in this paragraph by the deadlines established in paragraphs (c)(1) and (c)(2) of this section. Appropriate action means implementing actions pursuant to subparts 4110, 4120, 4130, and 4160 that will result in significant progress toward fulfillment of the standards and significant progress toward conformance with the guidelines. Practices and activities subject to standards and guidelines include the development of grazing-related portions of activity plans, establishment of terms and conditions of permits, leases, and other grazing authorizations, and range improvement activities such as vegetation manipulation, fence construction, and development of water.

(d) At a minimum, state and regional standards developed or revised under paragraphs (a) and (b) of this section must address the following:

* * * * *

(4) Habitat for endangered, threatened, proposed, candidate, or other at-risk or special status species; and

* * * * *

(e) * * *

(9) Restoring, maintaining or enhancing habitats of Federal proposed, Federal candidate, and other at-risk and special status species to promote their conservation;

* * * * *

(f) Until such time as state or regional standards and guidelines are developed and in effect, the following standards provided in paragraph (f)(1) of this section and guidelines provided in paragraph (f)(2) of this section will apply and will be implemented in accordance with paragraph (c) of this section.

* * * * *

(2) * * *

(viii) Conservation of Federal threatened or endangered, proposed, candidate, and other at risk or special status species is promoted by the restoration and maintenance of their habitats;

* * * * *

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Monday,
December 8, 2003

Part III

Department of Labor

Revisions to the Voluntary Protection Programs To Provide Safe and Healthful Working Conditions; Notice

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

Revisions to the Voluntary Protection Programs To Provide Safe and Healthful Working Conditions

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Notice of revisions to the program.

SUMMARY: The Occupational Safety and Health Administration, wishing to revise the benchmark injury and illness rates used within its Voluntary Protection Programs (VPP), published proposed changes and requested comments from the public (**Federal Register** notice 68 FR 44181, July 25, 2003). The Agency now publishes a discussion of those comments and its final VPP revisions. The revisions change the way OSHA uses Bureau of Labor Statistics industry injury and illness rates to determine whether VPP applicants and participants meet the rate requirements for the VPP Star Program. The revisions also apply to construction applicants' qualification for the Merit Program. No other VPP requirements are changed. Participants will continue to undergo rigorous OSHA assessment to ensure that only worksites with excellent, effective safety and health management systems qualify for VPP Star.

EFFECTIVE DATE: December 8, 2003.

FOR FURTHER INFORMATION CONTACT: Cathy Oliver, Director, Office of Partnerships and Recognition, Occupational Safety and Health Administration, Room N–3700, 200 Constitution Ave. NW., Washington, DC 20210, telephone (202) 693–2213.

SUPPLEMENTARY INFORMATION:

I. Introduction

A. Background

The Voluntary Protection Programs (VPP), adopted by OSHA in **Federal Register** notice 47 FR 29025, July 2, 1982, have established the efficacy of cooperative action among government, industry, and labor to address worker safety and health issues and expand worker protection. VPP participation requirements center on comprehensive management systems with active employee involvement to prevent or control the safety and health hazards at the worksite. Employers who qualify generally view OSHA standards as a minimum level of safety and health performance and set their own more stringent standards where necessary for effective employee protection.

One way that OSHA determines the qualification of applicants and the continuing qualification of participants in the VPP Star Program, the most challenging participation category, is to compare their injury and illness rates to industry rates—benchmarks—published annually by the Bureau of Labor Statistics (BLS). For Star eligibility, rates must be below the benchmark BLS rates. This notice changes the benchmark rates that OSHA employs.

Until now, the benchmarks have been two rates obtained from the most recent year's BLS industry averages for nonfatal injuries and illnesses. These are the industry average incidence rate for nonfatal injuries and illnesses (at the most precise level available), and the industry average incidence rate for cases involving days away from work and restricted work activity. OSHA has been concerned for some time about the effect on some VPP applicants and participants of substantial fluctuations from year to year in a limited number of these BLS industry rates. These fluctuations, statistical anomalies related to BLS sampling, have resulted in the creation of an unpredictable moving target. In any particular year, the fluctuating rate may not fairly represent the injury and illness situation in an industry. There is no easy solution to this problem. Injury and illness rates are useful tools in judging how well a worksite is protecting its employees. OSHA believes, however, that the goals of VPP are not well served when worksites that have established excellent protective systems and that are steadily improving their injury and illness rates fail to obtain Star approval because of statistical anomalies in national rates.

In a July 25, 2003 **Federal Register** notice (68 FR 44181), OSHA proposed a change in the VPP Star benchmark rates and requested public comment. After careful consideration, including analysis of comments received, OSHA has decided to adopt its original proposal. To qualify for Star, applicants' and participants' rates will need to be below the two BLS industry rates for at least 1 of the 3 most recent years published. This change also will apply to construction applicants' qualification for the Merit Program.

No other initial application requirements or ongoing requirements for continued participation are changed. Participants will continue to undergo rigorous OSHA assessment to ensure that only worksites with excellent, effective safety and health management systems qualify for VPP Star.

B. Statutory Framework

The Occupational Safety and Health Act of 1970, 29 U.S.C. 651 *et seq.*, was enacted "to assure so far as possible every working man and woman in the Nation safe and healthful working conditions and to preserve our human resources * * *."

Section 2(b) specifies the measures by which the Congress would have OSHA carry out these purposes. They include the following provisions that establish the legislative framework for the Voluntary Protection Programs:

* * * (1) by encouraging employers and employees in their efforts to reduce the number of occupational safety and health hazards at their places of employment, and to stimulate employers and employees to institute new and to perfect existing programs for providing safe and healthful working conditions;

* * * (4) by building upon advances already made through employer and employee initiative for providing safe and healthful working conditions;

* * * (5)* * * by developing innovative methods, techniques, and approaches for dealing with occupational safety and health problems;

* * * (13) by encouraging joint labor-management efforts to reduce injuries and disease arising out of employment.

II. Discussion of the Comments

This section includes a review of the public comments submitted to OSHA in response to its July 25, 2003 notice. OSHA received comments from 21 respondents. These included seven VPP participating companies, three companies attempting to qualify for VPP, one labor organization, four trade associations, two private consultants, two other occupational safety and health professionals, the Voluntary Protection Programs Participants' Association, and one respondent contacting OSHA on a matter unrelated to VPP.

Overview of Comments

Of the 20 relevant responses, 11 fully supported OSHA's proposal. These included current VPP Star participants, companies seeking VPP approval, and other organizations. A twelfth respondent wrote that the proposal was a "step in the right direction" (Manuel (Mel) Rosas, Safety and Health Consultant, Carolinas Associated General Contractors) and suggested OSHA go further by welcoming into VPP any employer that applies and then mentoring those who need help to meet program requirements. OSHA agrees

that all companies willing to make the effort to achieve VPP recognition deserve the opportunity and the help they may need. OSHA, VPP participants, and others offer outreach, mentoring, VPP application workshops, and training opportunities to interested employers. OSHA is in the process of launching new pilot initiatives designed to assist and recognize incremental improvements in the safety and health management systems of employers willing to commit to the VPP process.

A general theme among the nine respondents who opposed the proposed change was concern that OSHA maintain the high standards of its premier recognition program. Many of the nine interpreted OSHA's proposal as a weakening of VPP eligibility requirements that, as one respondent put it, "would allow substandard applicants [to] achieve the most prestigious safety designation in the United States, that being a VPP Star facility." (James J. Mercurio, CSP.) See II.I. below for a discussion of this concern.

Several respondents took this opportunity to make other suggestions—not related to the benchmark rate issue—for improving VPP. OSHA appreciates this input and intends to consider these suggestions in its continuing effort to improve the program.

What follows is a discussion of alternative proposals put forward by respondents.

A. Address Root Cause of the Rate Fluctuations

One respondent noted that OSHA's proposal did not address the root cause of the rate fluctuations. Bureau of Labor Statistics (BLS) yearly injury and illness rates fluctuate because of the limited size of the sample and the different establishments surveyed each year. Any attempt to eliminate the substantial fluctuations encountered in some industries would require BLS to survey a much larger sample of employers each year. BLS has no plans to change its sampling methodology at this time.

B. Alternative Use of BLS Average Rates

Two respondents favored use of a "rolling average" derived from 3 or 5 years of Bureau of Labor Statistics industry average rates. A site's 3-year rates would have to be below this multiple-year industry average to qualify for Star. Before issuing its proposal, OSHA considered and rejected this approach. A rolling average of, for example, 3 years of BLS industry averages would be meaningful only if the hours worked were roughly equal for each year. However, hours worked in an industry vary from year to year, depending on the economy. It is possible, using unpublished BLS data, to calculate legitimate 3-year averages. Because VPP spans so many industries, however, this would be a costly, time-consuming task. Each year new 3-year averages would need to be calculated and published. OSHA does not consider this a reasonable solution.

C. Alternative To Using National Statistics

One respondent objected to using national statistics when judging a company's qualification for Star. The respondent suggested that OSHA "put the pressure on the companies to really keep the employees safe. Use a hard gauge as a standard. For example, zero deaths, no lost workdays, or no broken bones." The agency has no problem supporting a goal of zero deaths. It believes, however, that setting the injury and illness rate standard for VPP qualification as high as the respondent suggests would be counter-productive. Fewer worksites, particularly those in traditionally hazardous industries, would be willing to commit to the VPP process, a process that has proven its value as a feasible and flexible way to reduce injuries, illnesses, and fatalities substantially. The number of qualifying worksites would drop drastically. Fewer sites would enjoy the benefits of VPP participation, not least of which are the prestige and national recognition that invigorate a site's efforts to continuously improve worker protection. Industries would lose models that currently demonstrate VPP's successful, systematic approach to safety and health management and generously share their expertise and resources by mentoring other companies. As one corporation with sites in the program and a corporate-wide commitment to VPP noted, "The purpose of VPP is to form a partnership between employees, OSHA, and company management to ensure a safe working environment." An unduly restrictive standard for qualification "is not in the best interest of the company and, most importantly, the employees." (Kerry A. Shaffar, Safety Director, Lozier Corporation.)

D. Data From Worker's Compensation System as Alternative Benchmark

One respondent suggested that VPP adopt as its Star benchmark the workers' compensation insurance experience modification rate (EMR), asserting that this is a more reliable indicator of an employer's safety and health experience. The respondent proposed an EMR of less than 1.0 as the rate criterion for Star qualification. OSHA has considered using EMRs for various purposes in the past and has concluded that, for most purposes, EMRs are not as reliable an indicator of industry and worksite conditions as the data the agency currently employs. For example, experience modifications differ from state to state. Using such data for a national program such as VPP poses numerous difficulties. Moreover, workers' compensation system data reflect claims made for compensation, a different universe of injuries and illnesses than OSHA recordables.

As OSHA noted when it issued its final rule revising the recordkeeping requirements "* * * the injury and illness information compiled pursuant to Part 1904 [which BLS uses to calculate its industry rates] is much more reliable, consistent and comprehensive than data from any available alternative data source * * * This is the case because, although some State workers' compensation programs voluntarily provide injury and illness data to OSHA for various purposes, others do not. Further, workers' compensation data vary widely from state to state. Different state workers' compensation laws and administrative systems have resulted in large variations in the content, format, accessibility, and computerization of that system's data. In addition, workers' compensation databases often do not include injury and illness data from employers who elect to self-insure." (66 FR 5923–4, January 19, 2001)

E. Median or Other Distributional Statistic as Alternative Benchmark

One respondent argued that average rates are appropriate only when data follow a normal distribution, with half the sample having values above and half below the median or midpoint of the distribution. The respondent pointed to BLS published data that show injury and illness rates to be skewed, with average rates well above the median. Instead of using an average rate, the respondent argued for OSHA to "designate what fraction of worksites would be considered 'exemplary,' and then set a percentile recorded injury and illness rate based on that * * *. The 75th percentile recorded injury illness rate is readily accessible and would be a minimal criterion." OSHA does not view this approach as a solution. So long as OSHA uses a single year BLS rate as its benchmark—whether that be an industry average rate or an industry 75th percentile rate—the problem of rate fluctuations will remain.

F. Greater Use of Merit Program

One respondent interpreted the proposed change as a way to increase the number of sites participating in VPP and suggested that, rather than change Star requirements, OSHA should admit a company to the VPP Merit program when the applicant's rates do not qualify it for Star. In fact, OSHA currently offers Merit participation to applicants with good safety and health management systems but lower-than-Star-standard rates. The Agency also is piloting a program designed to offer VPP participation to sites not ready for Merit. OSHA desires and expects to expand program participation. However, when a substantial BLS rate fluctuation—a fluctuation that does not appear to reflect a genuine industry trend—is the only reason a site fails to qualify in a particular year for Star and its attendant prestige, OSHA does not view this as a fair and consistent way to operate VPP. It is not unusual for applicants, once they make the commitment to seek Star recognition, to spend years developing and improving their safety and health management systems. The majority of new VPP approvals are to the Star program precisely because most applicants wait until they are operating excellent programs with rates well below their industry average. For a fluctuating industry rate to stymie employees' and managers' efforts to gain Star approval can be frustrating and demoralizing, as attested by numerous applicants, including respondents to this proposal who have gone through this experience.

An applicant, nonetheless, can temporarily enter the Merit program and look forward to gaining Star approval. No such solution exists for the worksite that gains Star approval and continues to provide its employees with exemplary protection, only to have its participation jeopardized by a subsequent substantial one-year drop in the BLS rate. See G. below.

G. Two-Year Rate Reduction Plan

One respondent wrote that OSHA already has a model for addressing the fluctuation in rates: the 2-year rate reduction plan that a Regional Administrator may provide, on a case-by-case basis, to a Star participant whose rate fails to stay below the latest BLS national average. The agency does not view this existing mechanism as a solution to the problem of fluctuating rates. If the site is operating a comprehensive safety and health management system, if there is no indication of problems with the system or the site's performance, if the site's rates are stable or decreasing, and if the site is demonstrating continuous improvement as required, then it is OSHA's position that the site deserves continued, unconditional Star participation.

H. Impact of NAICS on Benchmark Rates

Two respondents suggested postponing any change until more is known about the impact of the changeover from SIC codes to NAICS. OSHA's Office of Statistics and economists we consulted in BLS do not expect the transition to NAICS to produce a different situation with respect to rate fluctuations and benchmarking. No purpose would be served by postponing a solution to this problem.

I. Is This Change a Weakening of VPP Standards?

Among the comments opposing the benchmarking change, one theme stood out: This change will weaken VPP eligibility standards. This is neither OSHA's intent nor its expectation. Central to VPP's eligibility standards is the complex requirement that a site demonstrate it has a safety and health management system that effectively protects employees. Injury and illness rates have always been one of many performance criteria that OSHA uses when assessing a worksite's qualification for VPP Star.

The benchmark change will have the greatest impact on those industries that show significant injury and illness rate variation year to year. Most industries show small trend changes on a year-to-year basis and will be impacted in a small way. Other criteria, including the expectation of continuous improvement, remain unchanged.

One respondent predicted that, under the proposal, a site could potentially have 3 consecutive years of significantly declining performance as measured by rates and still meet the qualification criteria. OSHA cannot imagine a situation where an applicant or participant with such experience would meet the criteria of continuous improvement. Applicants to VPP undergo a lengthy, rigorous review of their safety and health management system and their performance. Once approved, participants continue to undergo OSHA scrutiny. Each year they must submit to OSHA a detailed evaluation of their performance, progress, and plans for improvement that the OSHA Regional VPP Manager then reviews. In addition, OSHA periodically sends a team of safety and health specialists onsite to perform a critical assessment, issue a report, and make a recommendation about continued participation. None of this will change.

In its response to the proposal, the Voluntary Protection Programs Participants' Association (VPPPA), a long-time and vocal advocate for maintaining VPP's high standards, wrote, "The VPPPA believes OSHA's proposal would have the desired effect of normalizing in a fair and equitable manner the benchmarking rates by adjusting for unreasonably divergent rates that may occur in any one particular year." The respondent acknowledged that a "sudden inexplicably large increase in a particular industry rate may make it easier for a worksite to meet the VPP Star requirements." It nonetheless gave its support to the benchmarking change, concluding, "The Association is certain the many other stringent requirements and numerous elements of the VPP certainly continue to ensure that only the worksites with excellent safety and health management systems will gain VPP Star approval, thus maintaining the quality and integrity of the VPP."

OSHA has carefully considered the comments submitted. All clearly were offered in the spirit of protecting and improving a remarkable program that has had a strongly positive impact on worker safety and health. The agency's analysis of the varied alternatives offered, with their potential advantages and disadvantages, has strengthened OSHA's confidence in its original proposal.

Therefore, OSHA is making the following changes to the Voluntary Protection Programs. These changes apply to the latest full version of VPP, published as **Federal Register** notice 65 FR 45650, July 24, 2000.

II. Changes to the VPP

A. The Star Rate Requirement

The following language is substituted for the first sentence of III.F.4.a.(1): For site employees—Two rates reflecting the experience of the most recent 3 calendar years must be below at least 1 of the 3 most recent years of specific industry national averages for nonfatal injuries and illnesses at the most precise level published by the Bureau of Labor Statistics (BLS). OSHA will compare the two site rates against the single year that is most advantageous to the site out of the last 3 published years." The two site rates referenced here are the 3-year total recordable case incidence rate (a single rate that reflects 3 years of total recordable injuries and illnesses), and the 3-year incidence rate for cases involving days away from work and restricted work activity.

B. The Alternative Rate Calculation for Qualifying Small Businesses

The following language is substituted for III.F.4.a.(2)(a):

"To determine whether the employer qualifies for the alternative calculation method, do the following:

- Using the most recent employment statistics (hours worked in the most recent calendar year), calculate a hypothetical total recordable case incidence rate for the employer assuming that the employer had two cases during the year;
- Compare that hypothetical rate to the 3 most recently published years of BLS combined injury/illness total recordable case incidence rates for the industry; and
- If the hypothetical rate (based on two cases) is equal to or higher than the national average for the firm's industry in at least 1 of the 3 years, the employer qualifies for the alternative calculation method."

C. Construction Applicants' Qualification for Merit

The following language is substituted for the first sentence of III.H.2.b.(2):

"For construction, if the incidence rates for the applicant site are not below the industry averages as required for Star, the applicant company must demonstrate that the company-wide 3-year rates are below at least 1 of the 3 most recently published years of BLS rates for the industry, at the most precise published level. OSHA will compare the two company-wide rates against the single year that is most advantageous to the applicant out of the last 3 published years."

Signed at Washington, DC, this 2nd day of December 2003.

John L. Henshaw,

Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 03–30326 Filed 12–5–03; 8:45 am]

BILLING CODE 4510–26–P

Federal Register

Monday,
December 8, 2003

Part IV

The President

Proclamation 7741—To Provide for the Termination of Action Taken With Regard to Imports of Certain Steel Products

Federal Register
Vol. 68, No. 235
Monday, December 8, 2003

Presidential Documents

Title 3—

The President

Proclamation 7741 of December 4, 2003

To Provide for the Termination of Action Taken With Regard to Imports of Certain Steel Products

By the President of the United States of America

A Proclamation

1. Proclamation 7529 of March 5, 2002, implemented actions (safeguard measures) of a type described in section 203(a)(3)(A) and (B) of the Trade Act of 1974, as amended (19 U.S.C. 2253(a)(3)(A) and (B)) (the "Trade Act"), with respect to imports of certain flat steel (consisting of slabs, plate, hot-rolled steel, cold-rolled steel, and coated steel), hot-rolled bar, cold-finished bar, rebar, certain welded tubular products, carbon and alloy fittings, stainless steel bar, stainless steel rod, tin mill products, and stainless steel wire, as defined in paragraph 7 of Proclamation 7529 (collectively, "certain steel products").

2. In Proclamation 7529 and Proclamation 7576 of July 3, 2002, I authorized the United States Trade Representative (USTR) to further consider any request for exclusion of a particular product and upon finding that a particular product should be excluded, to modify the provisions of the Harmonized Tariff Schedule of the United States (HTS) created by the Annex to Proclamation 7529 to exclude such particular product from the pertinent safeguard measure established in Proclamation 7529. Pursuant to that authorization, the USTR published four notices of exclusions of products from the safeguard measures in the **Federal Register** at 67 Fed. Reg. 16484 (April 5, 2002), 67 Fed. Reg. 46221 (July 12, 2002), 67 Fed. Reg. 56182 (August 30, 2002), and 68 Fed. Reg. 15494 (March 31, 2003). The USTR also published notice in the **Federal Register** of technical corrections to that Annex.

3. In a Memorandum of March 5, 2002 (67 Fed. Reg. 10593), pursuant to section 203(a)(3)(I) of the Trade Act (19 U.S.C. 2253(a)(3)(I)), I instructed the Secretary of the Treasury and the Secretary of Commerce to establish a system of import licensing to facilitate the monitoring of imports of certain steel products. To provide for efficient and fair administration of this action, pursuant to section 203(g) of the Trade Act, I instructed the Secretary of Commerce to publish regulations in the **Federal Register** establishing such a system of import licensing (the "Licensing System"). Those regulations were published on December 31, 2002, at 67 Fed. Reg. 79845.

4. Section 204(a) of the Trade Act (19 U.S.C. 2254(a)) requires the United States International Trade Commission (ITC) to monitor developments with respect to the domestic industry while action taken under section 203 remains in effect. If the initial period of a safeguard action exceeds 3 years, then the ITC must submit to the President a report on the results of such monitoring not later than the date that is the mid-point of the initial period of the safeguard action. The ITC report in Investigation Number TA–204–9 was submitted on September 19, 2003.

5. Section 204(b)(1)(A) of the Trade Act (19 U.S.C. 2254(b)(1)(A)) authorizes the President to reduce, modify, or terminate a safeguard action if, after taking into account any report or advice submitted by the ITC and after seeking the advice of the Secretary of Commerce and the Secretary of Labor, he determines that changed circumstances warrant such reduction, modification, or termination. The President's determination may be made, *inter alia*,

on the basis that the effectiveness of the action taken under section 203 has been impaired by changed economic circumstances.

6. In view of the information provided in the ITC report, and having sought advice from the Secretary of Commerce and the Secretary of Labor, I determine that the effectiveness of the actions taken under section 203(a)(3)(A) and (B) of the Trade Act with respect to imports of certain steel products and the exclusions from and technical corrections to the coverage of Proclamation 7529 has been impaired by changed economic circumstances. Accordingly, I have determined, pursuant to section 204(b)(1)(A)(ii), that termination of the actions taken under section 203(a)(3)(A) and (B) set forth in Proclamation 7529 taken with respect to certain steel imports is warranted. The action taken under section 203(a)(3)(I) set forth in the Memorandum of March 5, 2002, requiring the licensing and monitoring of imports of certain steel products remains in effect and shall not terminate until the earlier of March 21, 2005, or such time as the Secretary of Commerce establishes a replacement program.

7. Section 604 of the Trade Act (19 U.S.C. 2483) authorizes the President to embody in the HTS the substance of the relevant provisions of that Act, and of other acts affecting import treatment, and actions thereunder, including the removal, modification, continuance, or imposition of any rate of duty or other import restriction.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, acting under the authority vested in me by the Constitution and the laws of the United States of America, including, but not limited to sections 204 and 604 of the Trade Act and section 301 of title 3, United States Code, do proclaim that:

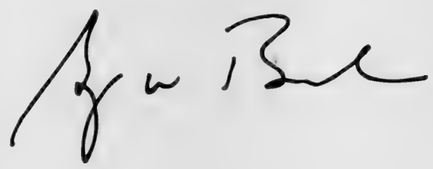
(1) The HTS is modified as provided in the Annex to this proclamation.

(2) The United States Trade Representative is authorized, upon his determination that the Secretary of Commerce has established a replacement program pursuant to paragraph 6 of this proclamation, to terminate the action under section 203(a)(3)(I) of the Trade Act set forth in the Memorandum of March 5, 2002, and the Licensing System and to publish notice of this determination and action in the **Federal Register**.

(3) Any provisions of previous proclamations and Executive Orders that are inconsistent with the actions taken in this proclamation are superseded to the extent of such inconsistency.

(4) The modifications to the HTS made by this proclamation shall be effective with respect to goods entered, or withdrawn from warehouse for consumption, on or after 12:01 a.m., eastern standard time, December 5, 2003.

IN WITNESS WHEREOF, I have hereunto set my hand this fourth day of December, in the year of our Lord two thousand three, and of the Independence of the United States of America the two hundred and twenty-eighth.



Billing code 3195–01–P

Annex

Modifications to the Harmonized Tariff Schedule of the United States

Effective with respect to goods entered, or withdrawn from warehouse for consumption, on or after 12:01 a.m., eastern standard time, December 5, 2003, subchapter III of chapter 99 of the Harmonized Tariff Schedule of the United States is modified by striking U.S. note 11, subheadings 9903.72.03 through 9903.83.00, and all superior descriptions to any such subheadings.

[FR Doc. 03–30578
Filed 12–5–03; 9:22 am]
Billing code 3190–01–C

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  - Trade secrecy claims and disclosures to health professionals; comments due by 12-15-03; published 11-14-03 [FR 03-28420]
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LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "PLUS" (Public Laws Update Service) on 202–741–6043. This list is also available online at *http://www.nara.gov/fedreg/plawcurr.html.*

The text of laws is not published in the **Federal Register** but may be ordered in "slip law" (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at *http://www.access.gpo.gov/nara/nara005.html.* Some laws may not yet be available.

H.R. 23/P.L. 108–146
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H.R. 1683/P.L. 108–147
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H.R. 1904/P.L. 108–148
Healthy Forests Restoration Act of 2003 (Dec. 3, 2003; 117 Stat. 1887)

H.R. 2744/P.L. 108–149
To designate the facility of the United States Postal Service located at 514 17th Street in Moline, Illinois, as the "David Bybee Post Office Building". (Dec. 3, 2003; 117 Stat. 1916)

H.R. 3175/P.L. 108–150
To designate the facility of the United States Postal Service located at 2650 Cleveland Avenue, NW in Canton, Ohio, as the "Richard D. Watkins Post Office Building". (Dec. 3, 2003; 117 Stat. 1917)

H.R. 3379/P.L. 108–151
To designate the facility of the United States Postal Service located at 3210 East 10th Street in Bloomington, Indiana, as the "Francis X. McCloskey Post Office Building". (Dec. 3, 2003; 117 Stat. 1918)

S. 117/P.L. 108–152
Florida National Forest Land Management Act of 2003 (Dec. 3, 2003; 117 Stat. 1919)

S. 189/P.L. 108–153
21st Century Nanotechnology Research and Development Act (Dec. 3, 2003; 117 Stat. 1923)

S. 286/P.L. 108–154
Birth Defects and Developmental Disabilities Prevention Act of 2003 (Dec. 3, 2003; 117 Stat. 1933)

S. 650/P.L. 108–155
Pediatric Research Equity Act of 2003 (Dec. 3, 2003; 117 Stat. 1936)

S. 1685/P.L. 108–156
Basic Pilot Program Extension and Expansion Act of 2003 (Dec. 3, 2003; 117 Stat. 1944)

S. 1720/P.L. 108–157
To provide for Federal court proceedings in Plano, Texas. (Dec. 3, 2003; 117 Stat. 1947)

S. 1824/P.L. 108–158
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H.R. 2622/P.L. 108–159
Fair and Accurate Credit Transactions Act of 2003 (Dec. 4, 2003; 117 Stat. 1952)

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CFR CHECKLIST

This checklist, prepared by the Office of the Federal Register, is published weekly. It is arranged in the order of CFR titles, stock numbers, prices, and revision dates.

An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

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Title	Stock Number	Price	Revision Date
1, 2 (2 Reserved)	(869–050–00001–6)	9.00	[4]Jan. 1, 2003
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[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 56 and 70

[Docket No. PY–03–001]

Increase in Fees and Charges for Egg, Poultry, and Rabbit Grading

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Agricultural Marketing Service (AMS) is increasing the fees and charges for Federal voluntary egg, poultry, and rabbit grading. These fees and charges are increased to cover the increase in salaries of Federal employees, salary increases of State employees cooperatively utilized in administering the programs, and other increased Agency costs.

EFFECTIVE DATE: January 1, 2004.

FOR FURTHER INFORMATION CONTACT: David Bowden, Jr., Chief, Standardization Branch, (202) 720–3506.

SUPPLEMENTARY INFORMATION:

Background and Proposed Changes

The Agricultural Marketing Act (AMA) of 1946 (7 U.S.C. 1621 *et seq.*) authorizes official voluntary grading and certification on a user-fee basis of eggs, poultry, and rabbits. The AMA provides that reasonable fees be collected from users of the program services to cover, as nearly as practicable, the costs of services rendered. The AMS regularly reviews these programs to determine if fees are adequate and if costs are reasonable.

The AMS regularly reviews these programs to determine if fees are adequate and if costs are reasonable. This rule will amend the schedule for fees and charges for grading services rendered to the egg, poultry, and rabbit industries to reflect the costs currently associated with them.

A recent review of the current fee schedule, effective January 1, 2003, revealed that anticipated revenue would not adequately cover increasing program costs. Costs in FY 2004 are projected at $29.8 million. Without a fee increase, FY 2004 revenues are projected at $29.0 million and trust fund balances would be $14.6 million. With a fee increase, FY 2004 revenues are projected at $29.8 million and trust fund balances would remain at $15.2 million.

Employee salaries and benefits account for approximately 82 percent of the total operating budget. The last general and locality salary increase for Federal employees became effective on January 1, 2003, and it materially affected program costs. Projected cost estimates for that increase were based on a salary increase of 2.6 percent, however, the increase was actually 4.02 to 4.87 percent, depending on locality. Another general and locality salary increase estimated at 2 percent is expected in January 2004. Also, from October 2002 through September 2004, salaries and fringe benefits of federally-licensed State employees will have increased by about 3 percent.

The impact of these cost increases was determined for resident, nonresident, and fee services. To offset projected cost increases, the hourly resident and nonresident rate will be increased by approximately 3 percent and the fee rate will be increased by approximately 4 percent. The hourly rate for resident and nonresident service covers graders' salaries and benefits. The hourly rate for fee service covers graders' salaries and benefits, plus the cost of travel and supervision.

As shown in the table below, only the maximum monthly administrative charge that covers overhead costs for resident poultry and shell egg grading would be increased, while other administrative charges would not be changed.

The following table compares current fees and charges with proposed fees and charges for egg, poultry, and rabbit grading as found in 7 CFR parts 56 and 70:

Service	Current	Proposed
Resident Service (egg, poultry, and rabbit grading)		
Inauguration of service	310	310
Hourly charges:		
Regular hours	33.36	34.36
Administrative charges—Poultry grading:		
Per pound of poultry	.00037	.00037
Minimum per month	260	260
Maximum per month	2,675	2,755
Administrative charges—Shell egg grading:		
Per 30-dozen case of shell eggs	.048	.048
Minimum per month	260	260
Maximum per month	2,675	2,755
Administrative charges—Rabbit grading:		
Based on 25% of grader's salary, minimum per month	260	260
Nonresident Service (egg and poultry grading)		
Hourly charges:		
Regular hours	33.36	34.36

Service	Current	Proposed
Administrative charges:		
Based on 25% of grader's salary, minimum per month	260	260
Fee and Appeal Service (egg, poultry, and rabbit grading)		
Hourly charges:		
Regular hours	57.68	60.00
Weekend and holiday hours	66.64	69.32

Comments

Based on the analysis of costs to provide these services, a proposed rule to increase the fees for these services was published in the **Federal Register** (68 FR 37984) on June 26, 2003. Comments on the proposed rule were solicited from interested parties until July 28. No comments were received. The Agency will implement these increases, as proposed, to ensure the financial stability of its grading programs.

Executive Order 12866

This action has been determined to be not significant for purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget (OMB).

Regulatory Flexibility

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), the AMS has considered the economic impact of this action on small entities. It is determined that its provisions would not have a significant economic impact on a substantial number of small entities.

There are about 400 users of Poultry Programs' grading services. These official plants can pack eggs, poultry, and rabbits in packages bearing the USDA grade shield when AMS graders are present to certify that the products meet the grade requirements as labeled. Many of these users are small entities under the criteria established by the Small Business Administration (13 CFR 121.201). These entities are under no obligation to use grading services as authorized under the Agricultural Marketing Act of 1946.

The AMS regularly reviews its user fee financed programs to determine if fees are adequate and if costs are reasonable. A recent review determined that the existing fee schedule, effective January 1, 2003, will not generate sufficient revenues to cover program costs while maintaining an adequate reserve balance in FY 2004. Costs in FY 2004 are projected at $29.8 million. Without a fee increase, FY 2004 revenues are projected at $29.0 million and trust fund balances would be $14.6 million. With a fee increase, FY 2004 revenues are projected at $29.8 million and trust fund balances would remain at $15.2 million.

This action will raise the fees charged to users of grading services. The AMS estimates that overall, this rule will yield an additional $800,000 during FY 2004. The hourly rate for resident and nonresident service will increase by approximately 3 percent and the fee rate will increase by approximately 4 percent. The impact of these rate changes in a poultry plant will range from less than 0.0001 to 0.025 cents per pound of poultry handled. In a shell egg plant, the range will be less than 0.00002 to 0.11 cents per dozen eggs handled.

Civil Justice Reform

This action has been reviewed under Executive Order 12988, Civil Justice Reform. This action is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule. There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of this rule.

Paperwork Reduction

The information collection requirements that appear in the sections to be amended by this action have been previously approved by OMB and assigned OMB Control Numbers under the Paperwork Reduction Act (44 U.S.C. Chapter 35) as follows: § 56.52(a)(4)—No. 0581–0128; and § 70.77(a)(4)—No. 0581–0127.

Pursuant to 5 U.S.C. 533, it is found and determined that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register**. The revised fees need to be implemented on an expedited basis in order to avoid further financial losses in the grading program. The effective date of the fee increase will coincide with the billing cycle that begins on the first day of the first month after the date of publication in the **Federal Register**.

List of Subjects

7 CFR Part 56

Eggs and egg products, Food grades and standards, Food labeling, Reporting and recordkeeping requirements.

7 CFR Part 70

Food grades and standards, Food labeling, Poultry and poultry products, Rabbits and rabbit products, Reporting and recordkeeping requirements.

■ For reasons set forth in the preamble, title 7, Code of Federal Regulations, parts 56 and 70 are amended as follows:

PART 56—GRADING OF SHELL EGGS

■ 1. The authority citation for part 56 continues to read as follows:

Authority: 7 U.S.C. 1621–1627.

■ 2. Section 56.46 is revised to read as follows:

§ 56.46 On a fee basis.

(a) Unless otherwise provided in this part, the fees to be charged and collected for any service performed, in accordance with this part, on a fee basis shall be based on the applicable rates specified in this section.

(b) Fees for grading services will be based on the time required to perform the services. The hourly charge shall be $60.00 and shall include the time actually required to perform the grading, waiting time, travel time, and any clerical costs involved in issuing a certificate.

(c) Grading services rendered on Saturdays, Sundays, or legal holidays shall be charged for at the rate of $69.32 per hour. Information on legal holidays is available from the Supervisor.

■ 3. In § 56.52, paragraph (a)(4) is revised to read as follows:

§ 56.52 Continuous grading performed on resident basis.

* * * * *

(a) * * *

(4) An administrative service charge based upon the aggregate number of 30-dozen cases of all shell eggs handled in the plant per billing period multiplied by $0.048, except that the minimum charge per billing period shall be $260 and the maximum charge shall be $2,755. The minimum charge also applies where an approved application is in effect and no product is handled.

PART 70—VOLUNTARY GRADING OF POULTRY PRODUCTS AND RABBIT PRODUCTS

■ 4. The authority citation for part 70 continues to read as follows:

Authority: 7 U.S.C. 1621–1627.

■ 5. Section 70.71 is revised to read as follows:

§ 70.71 On a fee basis.

(a) Unless otherwise provided in this part, the fees to be charged and collected for any service performed, in accordance with this part, on a fee basis shall be based on the applicable rates specified in this section.

(b) Fees for grading services will be based on the time required to perform such services for class, quality, quantity (weight test), or condition, whether ready-to-cook poultry, ready-to-cook rabbits, or specified poultry food products are involved. The hourly charge shall be $60.00 and shall include the time actually required to perform the work, waiting time, travel time, and any clerical costs involved in issuing a certificate.

(c) Grading services rendered on Saturdays, Sundays, or legal holidays shall be charged for at the rate of $69.32 per hour. Information on legal holidays is available from the Supervisor.

6. In § 70.77, paragraph (a)(4) is revised to read as follows:

§ 70.77 Charges for continuous poultry or rabbit grading performed on a resident basis.

* * * * *

(a) * * *

(4) For poultry grading: An administrative service charge based upon the aggregate weight of the total volume of all live and ready-to-cook poultry handled in the plant per billing period computed in accordance with the following: Total pounds per billing period multiplied by $0.00037, except that the minimum charge per billing period shall be $260 and the maximum charge shall be $2,755. The minimum charge also applies where an approved application is in effect and no product is handled.

* * * * *

Dated: December 4, 2003.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 03–30596 Filed 12–8–03; 8:45 am]

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DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Parts 11 and 16

[Docket No. 03–25]

RIN 1557–AC12

Reporting and Disclosure Requirements for National Banks With Securities Registered Under the Securities Exchange Act of 1934; Securities Offering Disclosure Rules

AGENCY: Office of the Comptroller of the Currency.

ACTION: Final rule.

SUMMARY: The Office of the Comptroller of the Currency (OCC) is revising its regulations to reflect amendments to the Securities Exchange Act of 1934 (Exchange Act) made by the Sarbanes-Oxley Act of 2002 (Sarbanes-Oxley Act). These amendments to the Exchange Act give the OCC the authority to administer and enforce a number of the Sarbanes-Oxley Act's new reporting, disclosure, and corporate governance requirements with respect to national banks that have a class of securities registered under the Exchange Act. We are also revising our securities offering disclosure rules for national banks that issue securities that are not subject to the registration requirements of Securities Act of 1933.

EFFECTIVE DATE: This rule is effective on January 8, 2004.

FOR FURTHER INFORMATION CONTACT: Mary Ann Nash, Counsel, 202–874–5090; or Martha Clarke, Counsel, Legislative & Regulatory Activities Division, 202–874–5090.

SUPPLEMENTARY INFORMATION:

Background

Section 12(i) of the Exchange Act vests the OCC with the powers, functions, and duties otherwise vested with the Securities and Exchange Commission (SEC) to administer and enforce certain provisions of the Exchange Act as they apply to national banks that have a class of securities registered under the Exchange Act (registered national banks).[1]

Prior to the enactment of the Sarbanes-Oxley Act,[2] section 12(i) gave the OCC the authority to administer and enforce sections 12, 13, 14(a), 14(c), 14(d), 14(f), and 16 of the Exchange Act. The Sarbanes-Oxley Act amended some of those sections of the Exchange Act to impose additional requirements and, as a result, the OCC will administer and enforce these new requirements as they apply to registered national banks. In addition, the Sarbanes-Oxley Act amended section 12(i) to add new sections of the securities laws to the list of provisions that are enforced and administered by the OCC.

Titles III and IV of the Sarbanes-Oxley Act include a number of provisions that are designed to improve the corporate governance and financial disclosures of issuers that have a class of securities registered under sections 12(b) or 12(g) of the Exchange Act or that are required to file periodic reports with the SEC under section 15(d) of the Exchange Act (public issuers). All registered national banks are public issuers for purposes of the law.

Pursuant to the amendments to section 12(i) made by the Sarbanes-Oxley Act, the OCC administers and enforces the following new provisions of the Act with respect to registered national banks in addition to any new requirements that were added through amendments to sections of the Exchange Act that were enforced by the OCC prior to the enactment of the Sarbanes-Oxley Act.

- Section 301[3] establishes certain oversight, independence, funding, and other requirements of certain public issuers. It requires the SEC to issue implementing rules that prohibit any national securities exchange or national securities association from listing the securities of an issuer that fails to comply with these audit committee requirements. The SEC issued final rules to implement section 301 on April 9, 2003.[4] The rules took effect on April 25, 2003. In the rules, the SEC applies section 301 only to public issuers listed on a national securities exchange or listed in an automated inter-dealer quotation system of a national securities association.[5] Thus, section 301 applies only to registered national banks that are so listed.
- Section 302 requires the SEC to adopt rules that require the principal executive officers and principal financial officers of public issuers to

[1] Under section 12(i), the OCC and the other Federal banking agencies have the power to issue rules that are necessary to carry out their functions under the Exchange Act. These rules are required to be substantially similar to the SEC's rules unless a Federal banking agency determines that substantially similar regulations with respect to the insured depository institutions that it supervises are not necessary or appropriate in the public interest or for the protection of investors and the agency publishes its findings in the **Federal Register** within 60 days after the SEC issues regulations.

[2] Pub. L. 107–204, 116 Stat. 745 (July 30, 2002)

[3] 15 U.S.C. 78j–1(m).

[4] 68 FR 18788 (April 16, 2003).

[5] *Id.* at 18790; 17 CFR 240.10A–3(e)(9).

include certain certifications in the issuer's annual and quarterly reports filed under the Exchange Act. The SEC issued final rules implementing this section on August 29, 2002.[6] The rules took effect on the same day.

- Section 303 requires the SEC to issue rules prohibiting the officers and directors of public issuers, and persons acting under their direction, from fraudulently influencing, coercing, manipulating, or misleading the issuer's independent auditor for purposes of rendering the issuer's financial statements materially misleading. The SEC published a final rule implementing this section on May 28, 2003.[7] The rule took effect on June 27, 2003.
- Section 304 requires the chief executive officer and chief financial officer of public issuers to reimburse the issuer for certain compensation and profits received if the issuer is required to restate its financial reports due to material noncompliance, as a result of misconduct, with any financial reporting requirements under the Federal securities laws. The requirements of section 304 took effect on July 30, 2002. No implementing regulations are required.
- Section 306(a) prohibits the directors and executive officers of any public issuer of equity securities from purchasing, selling, or transferring any equity security acquired by the director or executive officer in connection with his or her service as a director or executive officer during any "blackout period" with respect to the security. A "blackout period" generally is a period of three consecutive business days during which trading in the issuer's securities is suspended for 50% or more of the beneficiaries of the issuer's individual account plans. The SEC adopted final regulations pursuant to section 306(a) on January 26, 2003.[8] The rules took effect on the same day.
- Section 401(b) requires the SEC to issue rules that prohibit issuers from including misleading *pro forma* financial information in their reports under the securities laws or in any public release. Issuers also must reconcile any *pro forma* financial information included in such filings or public releases with the issuer's financial statements prepared in accordance with generally accepted accounting principles (GAAP). The SEC has issued final implementing regulations,[9] which apply to releases and disclosures made after March 28, 2003, and to annual and quarterly reports filed with respect to fiscal periods ending after March 28, 2003.
- Section 404 mandates that the SEC issue rules that require all annual reports filed under section 13(a) or 15(d) of the Exchange Act to include certain statements and assessments related to the issuer's internal control structures and procedures for financial reporting.[10] There is no statutory deadline for adoption of final rules implementing the requirements of section 404. The SEC adopted final regulations on June 5, 2003.[11]
- Section 406 mandates that the SEC adopt rules that require public issuers to (1) disclose in their periodic reports filed under the Exchange Act whether the issuer has adopted a code of ethics for its senior financial officers and, if not, the reasons why such a code has not been adopted; and (2) promptly disclose on Form 8-K any change to, or waiver of, the issuer's code of ethics. The SEC published a final rule implementing this section on January 31, 2003.[12] The requirements of that rule took effect on March 3, 2003.
- Section 407 mandates that the SEC adopt rules that require public issuers to disclose in their periodic reports filed under the Exchange Act whether the audit committee of the issuer includes at least one financial expert and, if not, the reasons why the audit committee does not include such an expert. The SEC published a final rule implementing this section on January 31, 2003.[13] The requirements of that rule took effect on March 3, 2003.

Description of the Final Rule

On May 21, 2003, the OCC published in the **Federal Register** a notice of proposed rulemaking (NPRM) requesting comment on a proposed regulation implementing the provisions of the Sarbanes-Oxley Act. 68 FR 27753. The OCC did not receive any comments in response to the proposed rule. The OCC, therefore, is adopting the final rule as proposed with only technical changes.

Part 11 of the OCC's regulations, entitled "Securities Exchange Act Disclosure Rules," currently implements the requirements of section 12(i) by applying to registered national banks, by means of cross-reference, the SEC's regulations implementing the reporting and disclosure provisions of sections 12, 13, 14(a), 14(c), 14(d), 14(f), and 16 of the Exchange Act. Part 11 requires national banks to file with the OCC any reports or forms required by the SEC's regulations.

We are amending part 11 to reflect the new provisions of the Sarbanes-Oxley Act that the OCC is required to administer and enforce with respect to registered national banks. Accordingly, the final rule revises § 11.2 to cross-reference new subsection 10A(m) of the Exchange Act and sections 302, 303, 304, 306, 401(b), 404, 406, and 407 of the Sarbanes-Oxley Act. The effect of the final rule is to require registered national banks to comply with the rules issued by the SEC pursuant to those statutory provisions.

Part 16 of the OCC's regulations, entitled "Securities Offering Disclosure Rules," sets forth rules governing the offer and sale of securities by national bank issuers that are not subject to the registration and reporting requirements of the Securities Act of 1933.[14] Section 16.20 of the regulation mirrors the requirements of section 15(d) of the Exchange Act.[15] It requires each national bank that files a registration statement that has been declared effective by the OCC pursuant to part 16 to file the current and periodic reports required by section 13 of the Exchange Act[16] in accordance with the SEC's

[6] 67 FR 57275 (Sept. 9, 2002). Section 906 of the Sarbanes-Oxley Act is a criminal statute and includes another certification requirement that is separate from the certification requirements of section 302. Section 906 provides that all periodic reports that contain financial statements and that are filed by public issuers under sections 13(a) or 15(d) of the Exchange Act must include a written certification by the chief executive officer and chief financial officer (or equivalent) that (1) the report complies with the requirements of section 13(a) or 15(d) of the Exchange Act, and (2) the information contained in the periodic report fairly presents, in all material respects, the financial condition and results of operations of the issuer. Section 906 became effective on July 30, 2002, and persons who knowingly or willfully make false certifications are subject to specified criminal penalties. *See* 18 U.S.C. 1350. The plain language of section 906 specifically refers to periodic reports filed by a public issuer with the SEC although Section 12(i) of the Exchange Act requires bank issuers to file periodic reports with their banking regulator. Because section 906 is a criminal statute, the Department of Justice has jurisdiction to determine whether the requirements of the statute apply to issuers that file their periodic reports with the Federal banking agencies rather than the SEC. Until the Department of Justice clarifies this issue, national bank issuers should continue to file their section 906 certifications as part of the periodic reports that they file with the OCC.

[7] 68 FR 31820 (May 28, 2003).

[8] 68 FR 4338 (Jan. 28, 2003).

[9] 68 FR 4820 (Jan. 30, 2003).

[10] Section 404 also requires the registered public accounting firm that prepares or issues the audit report for the issuer's annual report to attest to, and report on, the issuer's assessment of its internal control structures and procedures for financial reporting.

[11] 68 FR 36636 (June 18, 2003). The effective dates vary depending upon the type of filer and the particular requirement.

[12] 68 FR 5110 (Jan. 31, 2003).

[13] 68 FR 5110 (Jan. 31, 2003).

[14] As of December 31, 2002, there were approximately 20 national banks subject to the requirements of § 16.20.

[15] 15 U.S.C. 78o(d).

[16] 15 U.S.C. 78m.

regulation 15D, as if the securities covered by the registration statement were securities registered pursuant to section 12 of the Exchange Act.

The final rule revises § 16.20 to continue to reference section 13 of the Exchange Act[17] and to add a cross-reference to the requirements of the revised § 11.2(a)(1)(ii). The effect of the final rule is to require banks filing registration statements pursuant to part 16 to continue to comply with section 13 of the Exchange Act and those sections of the Sarbanes-Oxley Act that are directly applicable to section 15(d) filers and that are administered and enforced by the OCC with respect to registered national banks. The final rule is thus consistent with the objectives of part 16, which we adopted in order to promote generally comparable treatment between national bank issuers of securities and other issuers that are directly subject to section 15(d).[18]

Sections 11.2 and 16.20 currently cross-reference both the statutory provisions that the OCC has the authority to administer and enforce and the SEC's regulations implementing those provisions. The final rule removes cross-references to the specific sections of the SEC's regulations in favor of a more general reference to the rules, regulations, and forms adopted by the SEC pursuant to the listed statutory provisions. The existing statutory cross-references in parts 11 and 16 are adequate, in our judgment, to alert registered national banks and national banks required by part 16 to make filings pursuant to section 15(d) of the Exchange Act of the requirements that apply to them and to prompt them to consult the appropriate SEC regulations.

National banks may also monitor the **Federal Register**, the SEC's Web site,[19] and other appropriate publications to ensure that they are aware of developments that affect them. If the rules or forms issued by the SEC under these sections require issuers to file documents with the SEC, national banks must make such filings with the OCC in accordance with the provisions of part 11 or part 16, as appropriate.

CDRI Act Delayed Effective Date

This final rule takes effect 30 days after the date of its publication in the **Federal Register**, consistent with the delayed effective date requirement of the Administrative Procedure Act. *See* 5 U.S.C. 553(d). Section 302 of the Riegle Community Development and Regulatory Improvement Act of 1994 (CDRI Act), 12 U.S.C. 4802(b), provides that regulations that impose additional reporting, disclosure, or other requirements on insured depository institutions may not take effect before the first day of the quarter following publication unless the agency finds that there is good cause to make the rule effective at an earlier date.[20] The requirements of the Sarbanes-Oxley Act that are applied to national banks by the final rule are already in effect for those entities that are directly subject to the Act. Comparable regulation for national banks and similarly situated non-bank entities is best achieved by minimizing additional delay in applying those requirements to national banks. Accordingly, the OCC has determined that there is good cause to dispense with the requirements of the CDRI Act.

Regulatory Analysis

Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b) (RFA), the regulatory flexibility analysis otherwise required under section 604 of the RFA is not required if the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities and publishes its certification and a short, explanatory statement in the **Federal Register** along with its rule. As of December 31, 2002, there were approximately 25 national banks that had a class of securities registered under sections 12(b) or 12(g) of the Exchange Act and therefore subject to the amendments to part 11. As of the same date, only 15 of these institutions have assets of less than $100 million and are considered small entities for purposes of the RFA. *See* 5 U.S.C. 601; 13 CFR 121.201. As of December 31, 2002, there were approximately 20 national banks subject to part 16 reporting requirements.

Based on the relatively small number of national banks affected by the final rule and the fact that the requirements will not materially change the operating environment for those banks, the OCC hereby certifies that this rulemaking will not have a significant economic impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis is not needed.

Paperwork Reduction Act of 1995

In accordance with the requirements of the Paperwork Reduction Act of 1995, the OCC may not conduct or sponsor, and a respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number.

The information collection requirements contained in the notice of proposed rulemaking (68 FR 27753, May 21, 2003) were submitted to OMB for review and approved by OMB under OMB Control Numbers 1557–0106 ((MA)-Securities Exchange Act Disclosure Rules "12 CFR 11) and 1557–0120 ((MA)-Securities Offering Disclosure Rules "12 CFR 16).

The OCC solicited comments on the information collection requirements contained notice of proposed rulemaking. The OCC received no comments.

The collections contained in the final rule are unchanged from the proposed rule.

The OCC is amending 12 CFR part 11 to reflect amendments to section 12(i) of the Securities Exchange Act of 1934 (Exchange Act) made by the Sarbanes-Oxley Act of 2002. These amendments to section 12(i) give the OCC the authority to administer and enforce a number of the Sarbanes-Oxley Act's new reporting, disclosure, and corporate governance requirements with respect to national banks that have a class of securities registered under the Exchange Act.

The OCC is also making conforming amendments to 12 CFR part 16, which prescribes securities offering disclosure rules for national banks that issue securities that are not subject to the registration requirements of the Securities Act of 1933.

12 CFR part 11 references the applicable SEC regulations. The OCC does not maintain its own forms for collecting information and instead requires reporting banks to file SEC forms. Part 11 ensures that publicly owned national banks provide adequate information about their operation to current and potential shareholders, depositors, and to the public. The OCC reviews the information to ensure that it complies with Federal law and makes public all information required to be filed under these rules. Investors, depositors, and the public use the information to make informed investment decisions.

Title: (MA)-Securities Exchange Act Disclosure Rules (12 CFR 11).

OMB Number: 1557–0106.

[17] The proposal also referenced section 10A(m) of the Exchange Act. That reference is removed from the final rule because the SEC has not applied the requirements of section 10A(m) to section 15(d) filers in its final rules. *See* 68 FR at 18790.

[18] *See* 59 FR 54789, 54790 (Nov. 2, 1994) (preamble to most recent substantive revisions to part 16).

[19] *See http://www.sec.gov.*

[20] Pub. L. 103–325, 12 U.S.C. 4802.

regulation 15D, as if the securities covered by the registration statement were securities registered pursuant to section 12 of the Exchange Act.

The final rule revises § 16.20 to continue to reference section 13 of the Exchange Act [17] and to add a cross-reference to the requirements of the revised § 11.2(a)(1)(ii). The effect of the final rule is to require banks filing registration statements pursuant to part 16 to continue to comply with section 13 of the Exchange Act and those sections of the Sarbanes-Oxley Act that are directly applicable to section 15(d) filers and that are administered and enforced by the OCC with respect to registered national banks. The final rule is thus consistent with the objectives of part 16, which we adopted in order to promote generally comparable treatment between national bank issuers of securities and other issuers that are directly subject to section 15(d).[18]

Sections 11.2 and 16.20 currently cross-reference both the statutory provisions that the OCC has the authority to administer and enforce and the SEC's regulations implementing those provisions. The final rule removes cross-references to the specific sections of the SEC's regulations in favor of a more general reference to the rules, regulations, and forms adopted by the SEC pursuant to the listed statutory provisions. The existing statutory cross references in parts 11 and 16 are adequate, in our judgment, to alert registered national banks and national banks required by part 16 to make filings pursuant to section 15(d) of the Exchange Act of the requirements that apply to them and to prompt them to consult the appropriate SEC regulations.

National banks may also monitor the **Federal Register**, the SEC's Web site,[19] and other appropriate publications to ensure that they are aware of developments that affect them. If the rules or forms issued by the SEC under these sections require issuers to file documents with the SEC, national banks must make such filings with the OCC in accordance with the provisions of part 11 or part 16, as appropriate.

CDRI Act Delayed Effective Date

This final rule takes effect 30 days after the date of its publication in the **Federal Register**, consistent with the delayed effective date requirement of the Administrative Procedure Act. *See* 5 U.S.C. 553(d). Section 302 of the Riegle Community Development and Regulatory Improvement Act of 1994 (CDRI Act), 12 U.S.C. 4802(b), provides that regulations that impose additional reporting, disclosure, or other requirements on insured depository institutions may not take effect before the first day of the quarter following publication unless the agency finds that there is good cause to make the rule effective at an earlier date.[20] The requirements of the Sarbanes-Oxley Act that are applied to national banks by the final rule are already in effect for those entities that are directly subject to the Act. Comparable regulation for national banks and similarly situated non-bank entities is best achieved by minimizing additional delay in applying those requirements to national banks. Accordingly, the OCC has determined that there is good cause to dispense with the requirements of the CDRI Act.

Regulatory Analysis

Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b) (RFA), the regulatory flexibility analysis otherwise required under section 604 of the RFA is not required if the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities and publishes its certification and a short, explanatory statement in the **Federal Register** along with its rule. As of December 31, 2002, there were approximately 25 national banks that had a class of securities registered under sections 12(b) or 12(g) of the Exchange Act and therefore subject to the amendments to part 11. As of the same date, only 15 of these institutions have assets of less than $100 million and are considered small entities for purposes of the RFA. *See* 5 U.S.C. 601; 13 CFR 121.201. As of December 31, 2002, there were approximately 20 national banks subject to part 16 reporting requirements.

Based on the relatively small number of national banks affected by the final rule and the fact that the requirements will not materially change the operating environment for those banks, the OCC hereby certifies that this rulemaking will not have a significant economic impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis is not needed.

Pub. L. 103-325, 12 U.S.C. 4802.

Paperwork Reduction Act of 1995

In accordance with the requirements of the Paperwork Reduction Act of 1995, the OCC may not conduct or sponsor, and a respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number.

The information collection requirements contained in the notice of proposed rulemaking (68 FR 27753, May 21, 2003) were submitted to OMB for review and approved by OMB under OMB Control Numbers 1557-0106 ([MA]-Securities Exchange Act Disclosure Rules—12 CFR 11) and 1557-0120 ([MA]-Securities Offering Disclosure Rules—12 CFR 16).

The OCC solicited comments on the information collection requirements contained notice of proposed rulemaking. The OCC received no comments.

The collections contained in the final rule are unchanged from the proposed rule.

The OCC is amending 12 CFR part 11 to reflect amendments to section 12(i) of the Securities Exchange Act of 1934 (Exchange Act) made by the Sarbanes-Oxley Act of 2002. These amendments to section 12(i) give the OCC the authority to administer and enforce a number of the Sarbanes-Oxley Act's new reporting, disclosure, and corporate governance requirements with respect to national banks that have a class of securities registered under the Exchange Act.

The OCC is also making conforming amendments to 12 CFR part 16, which prescribes securities offering disclosure rules for national banks that issue securities that are not subject to the registration requirements of the Securities Act of 1933.

12 CFR part 11 references the applicable SEC regulations. The OCC does not maintain its own forms for collecting information and instead requires reporting banks to file SEC forms. Part 11 ensures that publicly owned national banks provide adequate information about their operation to current and potential shareholders, depositors, and to the public. The OCC reviews the information to ensure that it complies with Federal law and makes public all information required to be filed under these rules. Investors, depositors, and the public use the information to make informed investment decisions.

Title: (MA)-Securities Exchange Act Disclosure Rules (12 CFR 11).

OMB Number: 1557-0106

[17] The proposal also referenced section 30 of the Exchange Act. That reference is removed from the final rule because the SEC has not applied the requirements of section 30A(a)(1) to section 15(d) filers in its final rules. *See* 68 FR at 18760.

[18] *See* 59 FR 54789, 54790 (Nov. 2, 1994) (preamble to most recent substantive revisions to part 16).

[19] *See http://www.sec.gov.*

Form Numbers: SEC Forms 3, 4, 5, 8–K, 10, 10–K, 10–Q, Schedules 13D, 13G, 14A, 14B, and 14C.

Estimated number of respondents: 65.

Estimated number of responses: 331.

Average hours per response: Varies.

Estimated total burden hours: 3,055 hours.

The likely respondents: National banks, individuals.

The information collection requirements in 12 CFR part 16 enable the OCC to perform its responsibilities relating to offerings of securities by national banks by providing the investing public with facts about the condition of a bank, the reasons for raising new capital, and the terms of securities offerings. Part 16 generally requires banks to conform to the Securities and Exchange Commission rules.

Title: (MA)-Securities Offering Disclosure Rules (12 CFR 16).

OMB Number: 1557–0120.

Description: Sections 16.3 and 16.5 require a national bank to file its registration statement with the OCC. Section 16.4 requires a national bank to submit certain communications not deemed an offer to the OCC. Section 16.5 provides an exemption for items that satisfy the requirements of SEC Rule 144, which, in turn, requires certain filings. Section 16.6 requires a national bank to file documents with the OCC and to make certain disclosures to purchasers in sales of nonconvertible debt. Section 16.7 requires a national bank to file a notice with the OCC. Section 16.8 requires a national bank to file offering documents with the OCC. Section 16.15 requires a national bank to file a registration statement and sets forth content requirements for the registration statement. Section 16.17 requires a national bank to file four copies of each document filed under part 16, and requires filers of amendments or revisions to underline or otherwise indicate clearly any changed information. Section 16.18 requires a national bank to file an amended prospectus when the information in the current prospectus becomes stale, or when a change in circumstances makes the current prospectus incorrect. Section 16.19 requires a national bank to submit a request to the OCC if it wishes to withdraw a registration statement, amendment, or exhibit. Section 16.20 requires a national bank to file current and periodic reports as required by sections 12 and 13 of the Exchange Act and SEC Regulation 15D. Section 16.30 requires a national bank to include certain elements and follow certain procedures in any request to the OCC for a no-objection letter.

Estimated number of respondents: 73.

Estimated number of responses: 73.

Average hours per response: Varies.

Estimated total burden hours: 2,333 hours.

Likely respondents: National banks.

Unfunded Mandates Reform Act

Section 202 of the Unfunded Mandates Reform Act of 1995 requires that an agency prepare a budgetary impact statement before promulgating a rule that includes a Federal mandate that may result in expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, or $100 million or more in any one year. If a budgetary impact statement is required, section 205 of the Unfunded Mandates Reform Act also requires an agency to identify and consider a reasonable number of regulatory alternatives before promulgating a rule. The OCC has determined that this final rule will not result in expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, or $100 million or more in any one year. Accordingly, we have not prepared a budgetary impact statement.

Executive Order 12866

The Comptroller of the Currency has determined that this final rule does not constitute a "significant regulatory action" for the purposes of Executive Order 12866.

List of Subjects

12 CFR Part 11

Confidential business information, National banks, Reporting and recordkeeping requirements, Securities.

12 CFR Part 16

National banks, Reporting and recordkeeping requirements, Securities.

Authority and Issuance

■ For the reasons set forth in the preamble, the OCC amends parts 11 and 16 of chapter I of title 12 of the Code of Federal Regulations as follows:

PART 11—SECURITIES EXCHANGE ACT DISCLOSURE RULES

■ 1. The authority citation for part 11 is revised to read as follows:

Authority: 12 U.S.C. 93a; 15 U.S.C. 78l, 78m, 78n, 78p, 78w, 7241, 7242, 7243, 7244, 7261, 7262, 7264, and 7265.

■ 2. Section 11.2 is revised to read as follows:

§ 11.2 Reporting requirements for registered national banks.

(a) *Filing, disclosure and other requirements*—(1) *General.* Except as otherwise provided in this section, a national bank whose securities are subject to registration pursuant to section 12(b) or section 12(g) of the 1934 Act (15 U.S.C. 78l(b) and (g)) shall comply with the rules, regulations, and forms adopted by the Securities and Exchange Commission (Commission) pursuant to:

(i) Sections 10A(m), 12, 13, 14(a), 14(c), 14(d), 14(f), and 16 of the 1934 Act (15 U.S.C. 78f(m), 78l, 78m, 78n(a), (c), (d) and (f), and 78p); and

(ii) Sections 302, 303, 304, 306, 401(b), 404, 406, and 407 of the Sarbanes-Oxley Act of 2002 (codified at 15 U.S.C. 7241, 7242, 7243, 7244, 7261, 7262, 7264, and 7265).

(2) [Reserved.]

(b) *References to the Commission.* Any references to the "Securities and Exchange Commission" or the "Commission" in the rules, regulations and forms described in paragraph (a)(1) of this section shall with respect to securities issued by registered national banks be deemed to refer to the OCC unless the context otherwise requires.

PART 16—SECURITIES OFFERING DISCLOSURE RULES

■ 1. The authority citation for part 16 continues to read as follows:

Authority: 12 U.S.C. 1 *et seq.* and 93a.

■ 2. Section 16.20 is revised to read as follows:

§ 16.20 Compliance with requirements of the securities laws.

(a) Each bank that files a registration statement that has been declared effective pursuant to this part shall comply with the rules, regulations, and forms adopted by the Commission pursuant to section 13 of the Exchange Act and those provisions of the Sarbanes-Oxley Act of 2002 that are listed in 12 CFR 11.2(a)(1)(ii) of this chapter as if the securities covered by the registration statement were securities registered pursuant to section 12 of the Exchange Act (15 U.S.C. 78l).

(b) Suspension of the duty to file current and periodic reports under this section will be in accordance with section 15(d) of the Exchange Act (15 U.S.C. 78o(d)).

(c) Paragraph (a) of this section does not apply if the bank is a subsidiary of a one-bank holding company, the financial statements of the bank and the parent bank holding company are substantially the same, and the bank's parent bank holding company files current and periodic reports pursuant to section 13 of the Exchange Act (15 U.S.C. 78m).

(d) Paragraph (a) of this section does not apply if the bank files the registration statement in connection with a merger, consolidation, or acquisition of assets subject to 12 CFR 5.33(e)(8).

Dated: November 25, 2003.

John D. Hawke, Jr.,

Comptroller of the Currency.

[FR Doc. 03–30442 Filed 12–8–03; 8:45 am]

BILLING CODE 4810–33–P

FEDERAL RESERVE SYSTEM

12 CFR Part 225

[Regulation Y; Docket No. R–1092]

Bank Holding Companies and Change in Bank Control

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board is amending Regulation Y to expand the ability of all bank holding companies, including financial holding companies, to process, store and transmit nonfinancial data in connection with their financial data processing, storage and transmission activities. Specifically, the Board is raising the revenue limit that currently applies to the nonfinancial data processing activities of bank holding companies from 30 percent to 49 percent. The Board also announced that it will consider proposals by a financial holding company to engage in, or acquire a company engaged in, other nonfinancial data processing, information portal, and technology-related activities that the financial holding company believes are complementary to financial activities on a case-by-case basis in accordance with the procedures established by section 4(j) of the Bank Holding Company Act.

EFFECTIVE DATE: The final rule is effective January 8, 2004.

FOR FURTHER INFORMATION CONTACT: Scott G. Alvarez, Associate General Counsel (202–452–3583), or Kieran J. Fallon, Managing Senior Counsel (202–452–5270), Legal Division; David Reilly, Senior Supervisory Financial Analyst (202–452–5214), Division of Banking Supervision and Regulation; Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551 For users of Telecommunications for the Deaf ("TDD") *only*, call 202–263–4869.

SUPPLEMENTARY INFORMATION:

A. Background

The Bank Holding Company Act (12 U.S.C. 1841 *et seq.*) (BHC Act), as amended by the Gramm-Leach-Bliley Act (GLB Act),[1] permits all bank holding companies to engage in any nonbanking activity that the Board had determined, by order or regulation prior to November 12, 1999, to be "so closely related to banking as to be a proper incident thereto" under section 4(c)(8) of the BHC Act.[2] The GLB Act requires bank holding companies to conduct these activities subject to the terms and conditions contained in the Board's regulation or order authorizing the activity, unless the Board modifies those terms or conditions.[3]

The GLB Act also permits a bank holding company or foreign bank that has made an effective election to become a financial holding company (FHC) to engage in a broader range of activities that the GLB Act defines as being financial in nature or incidental to a financial activity, including the sale of insurance as principal or agent, full-scope securities underwriting and dealing, and merchant banking.[4] FHCs also may engage in any other activity that the Board, in consultation with the Secretary of the Treasury, determines to be financial in nature or incidental to a financial activity.[5] The text and legislative history of the GLB Act indicate that the "financial in nature" test was intended to be broader and more flexible than the "closely related to banking" standard that previously governed the scope of permissible nonbanking activities under section 4(c)(8) of the BHC Act.[6] Moreover, the factors that the Board is directed to consider in determining whether an activity is financial in nature or incidental to financial activities indicates that the scope of financial and incidental activities may expand over time in light of, among other things, changes in the marketplace in which FHCs compete.[7]

The GLB Act also permits an FHC to engage in a nonfinancial activity if the Board determines that the activity is "complementary to a financial activity and does not pose a substantial risk to the safety and soundness of depository institutions or the financial system generally."[8] This authority was intended to permit the Board to authorize an FHC to engage, to a limited extent, in activities that appear to be commercial if a meaningful connection exists between the proposed commercial activity and the FHC's financial activities and the proposed commercial activity would not pose undue risks to the safety and soundness of the FHC's affiliated depository institutions or the financial system. The GLB Act requires an FHC to obtain the Board's approval under section 4(j) of the BHC Act prior to engaging in an activity that the FHC believes is complementary to financial activities.[9]

B. Board Proposal

Following passage of the GLB Act, several FHCs, represented by their trade associations, requested that the Board authorize FHCs to engage in, or invest in companies engaged in, a wide range of data processing, technology, communication and e:commerce-related activities. In response to these requests, the Board took several steps. In December 2000, the Board adopted a final rule that authorizes FHCs to act as a "finder" through electronic or other means and thereby bring together buyers and sellers of financial and nonfinancial products for transactions that the parties themselves negotiate and consummate.[10] The Board's Finder Rule addressed several of the activities requested by the FHCs and permits FHCs, among other things, to—

- Host an electronic marketplace on the FHC's Internet Web site that provides hypertext links to the Web sites of third parties;
- Host the Web site of a merchant that

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[1] Pub. L. 106–102, 113 Stat. 1338 (1999).

[2] *See* 12 U.S.C. 1843(c)(8).

[3] *See* id.

[4] *See* 12 U.S.C. 1843(k)(4)(B), (E) and (H).

[5] *See* 12 U.S.C. 1843(k)(1)(A), (2) and (4).

[6] *See* H. Rept. No. 106–434 at 153 (1999) ("Permitting banks to affiliate with firms engaged in financial activities represents a significant expansion from the current requirement that bank affiliates may only be engaged in activities that are closely related to banking.").

[7] The GLB Act directs the Board to consider a variety of factors in considering whether an activity is financial in nature or incidental thereto, including (1) The purposes of the BHC Act and the GLB Act; (2) changes and reasonably expected changes in the marketplace in which FHCs compete and in the technology for delivering financial services; and (3) whether the activity is necessary or appropriate to allow FHCs to compete effectively with other companies providing financial services, to deliver efficiently information and services that are financial in nature through the use of technological means, including any application necessary to protect the security or efficacy of systems for the transmission of data or financial transactions, and to offer customers any available or emerging technological means for using financial services or for the document imaging of data. *See* 12 U.S.C. 1843(k)(3).

[8] *See id.* at section 1843(k)(1)(B).

[9] *See* 12 U.S.C. 1843(j)(1)(A) and (E).

[10] *See* 65 FR 80735, Dec. 22, 2000 (Finder Rule). The Board, in consultation with the Secretary of the Treasury, determined that acting as finder, as defined in the rule, is an activity that is incidental to financial activities.

provides information concerning the merchant and its products and permits buyers to submit orders for such products or services; and

- Operate an Internet Web site that allows multiple buyers and sellers to exchange information concerning the products and services that they are willing to purchase or sell, locate potential counterparties for transactions and enter into transactions between themselves.

To address other aspects of the FHCs' requests, the Board in December 2000, requested comment on a proposed rule that would modify the limits imposed by the Board on the amount of nonfinancial data processing activities that a bank holding company may conduct in connection with its financial data processing activities.[11] Regulation Y currently permits all bank holding companies to provide data processing and data transmission services, facilities (including data processing and data transmission hardware, software, documentation, or operating personnel), data bases, advice and access to such services, facilities and data to any customer if the data processed or furnished are financial, banking or economic in nature.[12] Regulation Y also currently permits a bank holding company or nonbank subsidiary engaged in processing financial data to provide data processing services for nonfinancial data so long as the annual revenues derived by the company or subsidiary from its nonfinancial data processing activities does not exceed 30 percent of the total annual revenue derived by the company or subsidiary from providing data processing services under section 225.28(b)(14).[13] The Board proposed increasing this limit on nonfinancial data processing activities from 30 percent to 49 percent.

The proposal also requested comment on whether the Board should authorize an FHC to invest, as a complementary activity, up to 5 percent of its Tier 1 capital in companies that provide (1) Data storage services for any type of data, so long as the company also provided data storage services for financial data; (2) general data processing services for any type of data, so long as the company derived at least 20 percent of its total revenues from financial data processing activities, providing data processing services to depository institutions and their affiliates, and the sale of other financial products and services; and (3) information portal services over electronic networks.[14] The Board indicated that an FHC would be expected to market and provide financial products or services through any information portal owned under the proposed authority. The Board asked for comment on whether the connections described above between the acquired company's nonfinancial and financial activities were sufficient to ensure that the acquired company's nonfinancial activities were complementary to financial activities within the meaning of the GLB Act. Consistent with the GLB Act, the Board also proposed to require that FHCs obtain the Board's prior approval under section 4(j) of the BHC Act for any proposed investment under these complementary authorities.[15]

The Board also solicited the public's views on whether the Board should develop a proposal that would authorize FHCs to invest in companies engaged in developing new technologies that might support the marketing or sale of financial products or services, providing communication links, or selling and distributing financial and nonfinancial products and services through electronic means. The Board asked commenters supporting further Board action with respect to these investments to provide detailed arguments and data that would support a finding that investments in companies engaged in these activities are financial in nature or incidental or complementary to financial activities. The Board also sought comment on a variety of other potential issues associated with these investments, including whether authorizing such investments would be consistent with the intent of the GLB Act to maintain the general separation of banking and commerce, and whether investments in such companies, if permitted, should be limited to non-controlling positions.

C. Overview of Public Comments

The Board received thirteen comments on the proposal from banks, bank holding companies, and trade associations that represent banking organizations, securities firms and other financial service providers. All of the commenters supported Board action in this area and the Board's efforts to expand the range of activities permissible for bank holding companies and FHCs. Several commenters also stated that the proposal was consistent with Congress's desire, as expressed in the GLB Act, to allow FHCs to engage in an expanded range of financially related activities. Commenters also indicated that the proposal would allow bank holding companies to develop additional sources of revenue and would not present significant safety and soundness concerns.

1. Amending Existing Limits on Nonfinancial Data Processing Activities

Commenters strongly supported the Board's proposal to increase, from 30 percent to 49 percent, the amount of data processing revenues that a bank holding company or nonbank subsidiary engaged in financial data processing activities may derive from processing nonfinancial data. Commenters stated that there are no operational or functional differences between processing financial and nonfinancial data and that the proposal would allow bank holding companies to use more efficiently the systems, expertise and resources that they have developed for processing financial data. Commenters also stated that bank holding companies have gained experience in processing nonfinancial data under the more limited authority currently available under Regulation Y, and that the proposal would allow bank holding companies to meet the needs of their customers more effectively.

Also, customers increasingly are seeking data processing services that can satisfy both the financial and nonfinancial data processing needs of the customer. For example, some hospitals that previously sought only billing, payroll and accounting data processing services from bank holding companies now seek a more complete package of data processing services that include medical record organization, storage and retrieval, as well as billing, payroll and accounting services.

2. General Data Processing, Storage and Portal Services by FHCs

Commenters also supported the proposal to allow FHCs to invest in companies engaged in general data storage, general data processing, or electronic information portal activities. Commenters offered several reasons why the Board should find such investments to be financial in nature,

[11] *See* 65 FR 80384, Dec. 21, 2000.

[12] *See* 12 CFR 225.28(b)(14)(i). The phrases "data processing services" and "data processing activities" used herein refer collectively to the broad array of data processing and data transmission services and functions described above that a bank holding company may perform under section 225.28(b)(14).

[13] *See id.* at section 225.28(b)(14)(ii); Letter from Scott G. Alvarez, Associate General Counsel of the Board, to Bryan G. Handlos, Esq., dated March 8, 1999.

[14] Electronic information portal services involve providing or facilitating the search, exchange, consolidation, screening, filtering or aggregation of any type of information over electronic networks, and may include acting as an Internet service provider and providing on-line search engines, bulletin boards, newsgroup services and "chat" rooms.

[15] *See* 12 U.S.C. 1843(j)(1)(A) and (E).

incidental to financial activities or complementary to financial activities. For example, some commenters argued that data processing and data storage activities are, by their nature, financial activities regardless of the type of data involved. Others argued that the proposed activities were similar to, or an appropriate extension of, the existing data processing activities of bank holding companies or the "finder" activities permissible for FHCs.[16] Similarly, some commenters contended that general data storage activities are functionally similar to the safe deposit and custody services that banks have traditionally offered to their customers.

Alternatively, commenters asserted that the connections required by the proposed rule between the acquired company's nonfinancial activities and financial activities were sufficient to demonstrate that the investments were complementary to financial activities for purposes of the GLB Act. Some, however, argued that the proposed investments should be deemed incidental to financial activities if the acquired company engaged in *any* financial data processing activities or did so to a substantial extent. Similarly, some commenters argued that investing in a company providing information portal services should be deemed to be incidental to financial activities if the portal was used to sell financial products or services, or if the company operating the portal derived a certain portion of its revenues (*e.g.* 50 percent) from financial activities.

Several commenters opposed the proposed 5 percent Tier 1 capital limit on investments made by FHCs in companies providing general data processing, data storage or information portal services. These commenters argued that the 5 percent investment limit was too low, was unnecessary to address any potential safety and soundness issues, or would force FHCs to sell profitable investments or engage in these activities only through separate subsidiaries.[17]

Some commenters also asserted that the 60-day prior notice requirement for complementary investments would impede the ability of FHCs to respond quickly to investment opportunities and marketplace developments, and asked the Board to consider establishing a streamlined notice procedure for complementary investments. One commenter, however, asserted that the prior approval process was appropriate and would allow the Board to review and address on an individualized basis the issues associated with proposals by FHCs to engage in complementary activities.

3. Broad technology, communication and e:commerce investments by FHCs

Commenters generally favored allowing FHCs to invest in companies engaged in developing new technology, providing communication links, or marketing or selling financial and nonfinancial products or services through electronic means and encouraged the Board to take steps to determine that these types of investments are financial in nature or incidental or complementary to financial activities. Only a few commenters, however, addressed specifically this aspect of the proposal and the Board's questions concerning these types of investments. Commenters generally asserted that the financial industry increasingly relies on technology, communication systems, and electronic sales channels to support the marketing and sale of financial products and services. Commenters also asserted that new technologies, systems and networks often are developed and operated to support a wide range of financial and nonfinancial applications, and that companies providing these services may seek equity (rather than contractual) partners. In light of these developments, commenters argued that FHCs must be able to invest in companies developing or operating new technologies, communication systems and electronic sales channels to ensure that these technologies, systems and networks will meet the needs of the financial industry, and to ensure that FHCs do not become reliant on third parties for the tools and delivery channels that may be used in the marketing and sale of financial products and services. Some commenters also noted that while FHCs may invest in technology-related companies under the GLB Act's merchant banking authority,[18] the cross-marketing restrictions imposed on merchant banking investments by the GLB Act may diminish the ability of FHCs to compete for these investments.

D. Explanation of Final Rule

After carefully considering the comments received on the proposal, the Board has adopted a final rule that amends the limitations previously imposed by the Board to allow all bank holding companies additional flexibility to process, store and transmit nonfinancial data in connection with their financial data processing, storage and transmission activities. The Board believes that the final rule will enhance the ability of bank holding companies to compete in the market for data processing services and respond to the financial and nonfinancial data processing needs of their customers. The Board also believes that amending the limitations in this manner would not negatively affect the safety and soundness of bank holding companies and their depository institution subsidiaries.

As discussed further below, the Board also believes that there are a variety of ways that additional nonfinancial data processing, information portal and other technology-related investments and activities may be complementary to the financial activities of an FHC within the meaning of the GLB Act. However, the factors and relationships that may demonstrate that a proposed activity or investment by an FHC is complementary to the financial activities of the FHC may vary based on the facts and circumstances associated with the proposal. In light of these facts, and the limited record developed during this rulemaking, the Board believes it is appropriate at this time to review proposals by FHCs to engage in, or acquire a company engaged in, a complementary activity on a case-by-case basis in accordance with the prior notice procedures established by section 4(j) of the BHC Act. The Board expects to revisit whether it would be appropriate to propose a rule permitting FHCs generally to engage in, or invest in companies engaged in, additional nonfinancial data processing, information portal or other technology-related activities after the Board has gained experience in reviewing requests by individual FHCs to engage complementary activities.

1. Expanded Nonfinancial Data Processing Authority for All Bank Holding Companies

Section 225.28(b)(14) of Regulation Y currently permits bank holding companies, including FHCs, to provide data processing services (including software, hardware, advice and personnel) to any customer if the data to be processed is financial, banking or economic in nature.[19] The authority to

[16] A few commenters asserted that the Board should reclassify acting as a "finder" as an activity that is financial in nature, or should expand the types of services that an FHC may provide when acting as a finder. Such actions are outside the scope of this rulemaking.

[17] A few commenters also stated that no special regulatory capital charge should be imposed on the proposed complementary investments.

[18] See 12 U.S.C. 1843(k)(4)(H).

[19] *See* 12 CFR 225.28(b)(14)(i). Any hardware provided must be offered only in conjunction with

Continued

engage in financial data processing activities permits bank holding companies to provide their customers with a wide range of data processing services, including data processing related to payroll, accounts receivable and accounts payable processing; bill preparation and bill payment; processing credit card, debit card and ATM transactions and other electronic funds transfers; loan processing; credit analysis; tax planning; accounting and bookkeeping services; economic forecasting; and data processing services to support the customer's marketing, sale and delivery of financial products and services over the Internet or other electronic networks, such as home banking or securities brokerage services.[20]

Regulation Y also currently permits a company engaged in financial data processing activities under section 225.28(b)(14) to process nonfinancial data so long as the annual revenue derived by the company from its nonfinancial data processing activities does not exceed 30 percent of the company's total annual data processing revenues. As noted above, the Board proposed to raise this 30 percent limit on the nonfinancial data processing activities of bank holding companies to 49 percent. Commenters strongly supported this change for the reasons outlined above.

The Board has amended its regulatory limitation governing the conduct of data processing activities previously authorized for bank holding companies under section 4(c)(8) of the BHC Act to raise the threshold on nonfinancial data processing services as proposed.[21] In accordance with the GLB Act, all bank holding companies, including FHCs, may take advantage of the expanded data processing authority granted by the final rule.

The Board believes that the final rule will allow all bank holding companies to leverage more effectively the experience and resources they have developed from engaging in financial data processing activities. In addition, by allowing bank holding companies to process additional amounts of nonfinancial data for their customers, the final rule should allow bank holding companies to achieve additional economies of scale and compete more effectively with nonbank providers of data processing services.

The 49-percent revenue limit included in the final rule ensures that the data processing subsidiaries of bank holding companies operating under section 4(c)(8) of the BHC Act remain predominantly engaged in processing financial, banking or economic data. The Board believes this limit provides reasonable assurances that any nonfinancial data processing activities conducted by a bank holding company under section 225.28(b)(14) will remain incidental to the company's financial data processing for purposes of section 4(c)(8) of the BHC Act.

Bank holding companies that provide data processing services to customers should take appropriate steps to maintain the security, integrity and confidentiality of the customer's data.[22] In addition, bank holding companies must take appropriate steps to ensure compliance with all applicable federal and state laws governing the privacy of consumer data processed by the bank holding company on behalf of third parties.

Several commenters asked the Board to clarify the ability of bank holding companies to provide data storage, retrieval and imaging services as part of their data processing activities under section 225.28(b)(14). Data storage, retrieval and imaging are functions that are an integral and often necessary part of data processing and data transmission activities. Accordingly, the Board previously has indicated that the data processing services that bank holding companies may provide under section 225.28(b)(14) include data storage, imaging and retrieval.[23] In light of the commenters' requests, the Board has included language in the final rule that clarifies that bank holding companies may provide data storage, imaging and retrieval services for financial, economic or banking data without limit, and may provide such services for nonfinancial data to the extent permitted by the 49-percent revenue limit adopted by the final rule.[24]

A few commenters also asserted that the Board should allow a bank holding company to use any excess capacity that may exist in the company's data processing systems to process nonfinancial data. The Board previously has indicated that bank holding companies may use any excess capacity that results in good faith from the bank holding company's financial data processing activities under section 225.28(b)(14) to process nonfinancial data, and bank holding companies may continue to use their excess capacity in this manner subject to the Board's regulations and policies governing these activities.[25] The Board also previously has indicated that revenue derived by a bank holding company from the use of excess capacity is not included for purposes of determining the company's compliance with the rule's revenue limit on nonfinancial data processing activities.[26]

A bank holding company may use any currently available or newly developed technological means, including dedicated or shared electronic facilities, the Internet and optical technology, to provide its customers permissible data processing services. In addition, a bank holding company may provide its customers data processing services either as a stand-alone service or in conjunction with other products and services that the bank holding company is authorized to provide under the BHC Act.

The Board notes, however, that the authority to provide data processing services for financial and nonfinancial data does *not* authorize bank holding companies to engage in an activity simply because it involves the use of a computer or the transmission of data in electronic form. Section 225.28(b)(14)

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software designed and marketed for the processing and transmission of financial, banking or economic data, and any general purpose hardware may not constitute more than 30 percent of the cost of any packaged offering. *See* 12 CFR 225.28(b)(14)(i)(B).

[20] *See The Toronto-Dominion Bank*, 83 Federal Reserve Bulletin 335 (1997); *Royal Bank of Canada*, 83 Federal Reserve Bulletin 135 (1997); *Compagnie Financiere de Paribus*, 82 Federal Reserve Bulletin 348 (1996); *BNCCORP, INC.*, 81 Federal Reserve Bulletin 294 (1995); *The Bank of New York Company, Inc.*, 80 Federal Reserve Bulletin 1107 (1994); *Bank One Corporation*, 80 Federal Reserve Bulletin 139 (1994); *see also* Letter from J. Virgil Mattingly, General Counsel of the Board, to Thomas A. Plant, Esq., dated Nov. 25, 1997.

[21] *See* 12 U.S.C. 1843(c)(8). At the time the Board adopted the current 30-percent revenue limit on nonfinancial data processing activities, the Board specifically noted that it reserved the authority to review and adjust this limit as appropriate. *See* 62 FR 9290, 9304, Feb. 28, 1997.

[22] *See* Federal Financial Institutions Examination Council, IT Examination Handbook—Information Security (Dec. 2002).

[23] *See Royal Bank of Canada*, 83 Federal Reserve Bulletin 135 (1997); *BNCCORP, INC.*, 81 Federal Reserve Bulletin 295 (1995); *State Street Boston Corporation*, 81 Federal Reserve Bulletin 1049 (1995).

[24] A few commenters expressed concern that any revenue-based limit on nonfinancial data processing activities may be difficult to monitor or may cause pricing distortions in the market for data processing services. These commenters did not present any evidence indicating that the existing 30-percent test, which also is based on revenue, has caused significant compliance or pricing difficulties, and the Board notes that other measures of activity (such as one based on the quantity of financial and nonfinancial data processed) likely would be even more difficult for bank holding companies to monitor than the existing revenue-based test.

[25] *See* 12 CFR 225.123(e)(1); *Citicorp*, 68 Federal Reserve Bulletin 505, 510 (1982). These policies prohibit a bank holding company from acquiring equipment solely for the purpose of creating excess capacity and limit the ability of bank holding companies to provide hardware and software in connection with their sale or provision of excess data processing capacity. *See* 12 CFR 225.123(e)(1).

[26] *See* 62 FR 9290, 9304 at n.5, Feb. 28, 1997.

permits a bank holding company to provide data processing services to third-party customers to support the functions or activities of the customer. Where the bank holding company's data processing activities represent the conduct of a separate or different activity by the bank holding company itself, the bank holding company must have the authority to engage in that activity under other provisions of Regulation Y. For example, while a bank holding company may provide data processing support to an unaffiliated insurance agency under section 225.28(b)(14), such as, for example, by processing customer payments and optically scanning and storing the insurance policies issued by the agency, a bank holding company may not itself sell insurance (through electronic means or otherwise) under section 225.28(b)(14).

A few commenters asked that the Board permit bank holding companies to determine their compliance with the 49-percent revenue limit on nonfinancial data processing activities on a business line or organization-wide basis. The Board recognizes that there may be situations where a bank holding company has bona fide operational reasons for conducting its financial and related nonfinancial data processing activities through separately incorporated subsidiaries. Accordingly, bank holding companies may request permission to administer the 49-percent revenue limit on a business-line or multiple-entity basis in appropriate circumstances. The Board has delegated authority to its General Counsel, in consultation with the Director of the Division of Banking Supervision and Regulation, to review and act on these requests. Such requests should describe the structure of the holding company's data processing operations, the methodology the holding company proposes to use to administer the revenue test, and the reasons why the holding company believes the proposed methodology is appropriate. The General Counsel or the Board where appropriate will consider any request in light of all the facts and circumstances, including the inter-relationships between the data processing activities conducted by the bank holding company's separate subsidiaries, the holding company's business or operational reasons for conducting its data processing activities in different subsidiaries, and the level of the holding company's ownership interest in the individual subsidiaries.

The Board will revisit whether it would be appropriate to authorize all bank holding companies to monitor compliance with the revenue limit on a consolidated or business-line basis based on the experience gained from reviewing any such requests.

2. General Data Storage, Data Processing, Electronic Information Portal, Technology, Communication and E:Commerce Investments

In response to requests from FHCs, the Board also requested comment on whether the Board should adopt a rule permitting FHCs to invest, as a complementary activity, in any company that provides (1) Data storage services for nonfinancial data without regard to the revenue limitations discussed above, so long as the company provided data storage services for some financial data; (2) data processing services for nonfinancial data, so long as the company derived at least 20 percent of its total revenues from processing financial data, processing data for depository institutions, or the sale of other financial products or services; or (3) electronic information portal services.[27] The Board proposed limiting the aggregate carrying value of an FHC's investments in companies engaged in these activities to 5 percent of the FHC's Tier 1 capital. FHCs also had requested authority to invest in companies that develop technology that might support the marketing or sale of financial products or services in the future; provide communication linkages for any type of information; or market and sell nonfinancial and financial products or services through electronic means.

The Board notes that much of the need expressed by FHCs for authority to make these types of investments may be addressed by the Board's decision to raise the revenue limit on the nonfinancial data processing activities of bank holding companies to 49 percent. In addition, the Board notes that FHCs currently have the authority to make investments in data processing companies that do not comply with the 49 percent revenue limit and other technology-related companies under the GLB Act's merchant banking authority. Although some commenters noted that the cross-marketing restrictions applicable to merchant banking investments may diminish the attractiveness of this investment authority, the Board notes that these restrictions apply only to the depository institution subsidiaries of an FHC (and not to the FHC itself or its nonbank affiliates) and Congress currently is considering legislation that would loosen these restrictions in several important respects.[28] Commenters also presented little evidence that, in the Board's view, indicates why data processing, information portal and the other technology-related activities, without limit on the type of data processed or amount of nonfinancial data processed, should, in all circumstances, be found to be financial in nature or incidental to a financial activity.

The GLB Act does permit an FHC to engage in, or acquire a company engaged in, a nonfinancial activity if the Board determines that the activity is complementary to financial activities and does not pose a substantial risk to the safety and soundness of depository institutions or the financial system. As noted above, this authority was intended to provide the Board a mechanism to allow an FHC to engage to a limited degree in commercial activities if the proposed commercial activities would meaningfully complement or enhance the financial activities of the FHC, and the proposed activities would not present undue risks to the subsidiary depository institutions of the FHC or the financial system.

The Board believes that there are a variety of relationships or connections between a commercial activity or investment and an FHC's financial activities that may indicate that the activity or investment is complementary to the FHC's activities within the meaning of the GLB Act. Ultimately, the determination whether a commercial activity or investment is complementary will depend on the nature of the activity and the level and quality of the many types of connections that may exist between the proposed activity or investment and the FHC's financial activities.

The Board does not believe that the limited record developed during this rulemaking provides the Board a sufficient basis for determining, by rule, that nonfinancial data processing and information portal activities are as a general matter financial in nature, incidental to a financial activity, or complementary to the financial activities of FHCs. The Board also does not believe that the record is sufficient at this time to warrant developing a formal proposal requesting comment on whether the Board should determine, by rule, that the other technology-related

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[27] The Board indicated that it expected an FHC to market or provide financial products or services through any electronic information portal service owned under this proposed authority.

[28] *See* Financial Services Regulatory Relief Act of 2003, section 501, H.R. 1375, 108 Cong., 1st Sess. (2003); H. Rept. 108–152, Part 1, 108 Cong., 1st Sess. (2003).

permits a bank holding company to provide data processing services to third-party customers to support the functions or activities of the customer. Where the bank holding company's data processing activities represent the conduct of a separate or different activity by the bank holding company itself, the bank holding company must have the authority to engage in that activity under other provisions of Regulation Y. For example, while a bank holding company may provide data processing support to an unaffiliated insurance agency under section 225.28(b)(14), such as, for example, by processing customer payments and optically scanning and storing the insurance policies issued by the agency, a bank holding company may not itself sell insurance (through electronic means or otherwise) under section 225.28(b)(14).

A few commenters asked that the Board permit bank holding companies to determine their compliance with the 49-percent revenue limit on nonfinancial data processing activities on a business line or organization-wide basis. The Board recognizes that there may be situations where a bank holding company has bona fide operational reasons for conducting its financial and related nonfinancial data processing activities through separately incorporated subsidiaries. Accordingly, bank holding companies may request permission to administer the 49-percent revenue limit on a business-line or multiple-entity basis in appropriate circumstances. The Board has delegated authority to its General Counsel, in consultation with the Director of the Division of Banking Supervision and Regulation, to review and act on these requests. Such requests should describe the structure of the holding company's data processing operations, the methodology the holding company proposes to use to administer the revenue test, and the reasons why the holding company believes the proposed methodology is appropriate. The General Counsel or the Board where appropriate will consider any request in light of all the facts and circumstances, including the interrelationships between the data processing activities conducted by the bank holding company's separate subsidiaries, the holding company's business or operational reasons for conducting its data processing activities in different subsidiaries, and the level of the holding company's ownership interest in the individual subsidiaries.

The Board will revisit whether it would be appropriate to authorize all bank holding companies to monitor compliance with the revenue limit on a consolidated or business-line basis based on the experience gained from reviewing any such requests.

2. General Data Storage, Data Processing, Electronic Information Portal, Technology, Communication and E-Commerce Investments

In response to requests from FHCs, the Board also requested comment on whether the Board should adopt a rule permitting FHCs to invest, as a complementary activity, in any company that provides (1) Data storage services for nonfinancial data without regard to the revenue limitations discussed above, so long as the company provided data storage services for some financial data; (2) data processing services for nonfinancial data, so long as the company derived at least 20 percent of its total revenues from processing financial data, processing data for depository institutions, or the sale of other financial products or services; or (3) electronic information portal services. The Board proposed limiting the aggregate carrying value of an FHC's investments in companies engaged in these activities to 5 percent of the FHC's Tier 1 capital. FHCs also had requested authority to invest in companies that develop technology that might support the marketing or sale of financial products or services in the future; provide communication linkages for any type of information; or market and sell nonfinancial and financial products or services through electronic means.

The Board notes that much of the need expressed by FHCs for authority to make these types of investments may be addressed by the Board's decision to raise the revenue limit on the nonfinancial data processing activities of bank holding companies to 49 percent. In addition, the Board notes that FHCs currently have the authority to make investments in data processing companies that do not comply with the 49 percent revenue limit and other technology-related companies under the GLB Act's merchant banking authority. Although some commenters noted that the cross-marketing restrictions applicable to merchant banking investments may diminish the attractiveness of this investment authority, the Board notes that these restrictions apply only to the depository institution subsidiaries of an FHC and not to the FHC itself or its nonbank affiliates) and Congress currently is considering legislation that would loosen these restrictions in several important respects. Commenters also presented little evidence that, in the Board's view, indicates why data processing, information portal and the other technology-related activities, without limit on the type of data processed or amount of nonfinancial data processed, should, in all circumstances, be found to be financial in nature or incidental to a financial activity.

The GLB Act does permit an FHC to engage in, or acquire a company engaged in, a nonfinancial activity if the Board determines that the activity is complementary to financial activities and does not pose a substantial risk to the safety and soundness of depository institutions or the financial system. As noted above, this authority was intended to provide the Board a mechanism to allow an FHC to engage to a limited degree in commercial activities if the proposed commercial activities would meaningfully complement or enhance the financial activities of the FHC, and the proposed activities would not present undue risks to the subsidiary depository institutions of the FHC or the financial system.

The Board believes that there are a variety of relationships or connections between a commercial activity or investment and an FHC's financial activities that may indicate that the activity or investment is complementary to the FHC's activities within the meaning of the GLB Act. Ultimately, the determination whether a commercial activity or investment is complementary will depend on the nature of the activity and the level and quality of the many types of connections that may exist between the proposed activity or investment and the FHC's financial activities.

The Board does not believe that the limited record developed during this rulemaking provides the Board a sufficient basis for determining, by rule, that nonfinancial data processing and information portal activities are as a general matter financial in nature, incidental to a financial activity, or complementary to the financial activities of FHCs. The Board also does not believe that the record is sufficient at this time to warrant developing a formal proposal requesting comment on whether the Board should determine, by rule, that the other technol[illegible]

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investments suggested by the initial FHC requestors are as a general matter financial in nature, incidental to a financial activity, or complementary to the financial activities of FHCs.

In light of the foregoing, the Board believes it is appropriate to review proposals by FHCs to engage in, or acquire a company engaged in, general data processing and electronic information portal activities, as well as other nonfinancial technology-related activities, on a case-by-case basis under section 4(j) of the BHC Act. This approach is consistent with the procedure established by the GLB Act for FHCs to engage in complementary activities.[29] This process will allow an FHC to present, and the Board to review, all the connections that may demonstrate that a proposed investment or activity is complementary to the FHC's financial activities for purposes of the GLB Act. Moreover, because the proposed rule would have required FHCs to obtain the Board's approval under section 4(j) prior to making any complementary investment under the proposal, the procedural approach adopted by the Board does not impose any additional filing burden on FHCs.

FHCs that believe a proposed investment or activity is complementary to the FHC's financial activities should submit a notice to the Board in accordance with section 4(j) of the BHC Act and section 225.89 of the Board's Regulation Y (12 CFR 225.89). The notice should, among other things, identify and define the proposed complementary activity, identify the financial activity to which the proposed complementary activity would be complementary, and describe the relationships and connections between the proposed activity and the identified financial activity that the FHC believes support a finding that the proposed activity is complementary.[30] In addition, the notice should explain why the proposed complementary activity or investment would not pose undue risks to the safety and soundness of the FHC's subsidiary depository institutions or the financial system and what, if any, limits would be appropriate to ensure that the investment or activity remains small in relation to the FHC's financial activities.

Regulatory Flexibility Act

In accordance with section 4(a) of the Regulatory Flexibility Act (5 U.S.C. 604(a)), the Board must publish a final regulatory flexibility analysis with this rulemaking. The final rule expands the ability of bank holding companies of all sizes to process, store and transmit nonfinancial data in connection with their financial data processing activities. The Board specifically requested comment on the likely burden that the proposed rule would have on bank holding companies of all sizes, including small bank holding companies.[31] Commenters noted that the rule should enhance the ability of bank holding companies of all sizes to compete with other providers of data processing services, achieve additional economies of scale and utilize more efficiently their existing data processing resources and expertise. In response to comments received, the Board also has clarified the ability of bank holding companies to engage in data storage, imaging and retrieval activities in connection with their permissible data processing activities, and to use any excess capacity that may result, in good faith, from the bank holding company's financial data processing activities to process, store and transmit nonfinancial data.

A few commenters asked that the Board permit bank holding companies to derive more than 49 percent of their data processing revenues from processing, storing or transmitting nonfinancial data, or to apply the rule's revenue limit on nonfinancial data processing activities on a business-line or organization-wide basis. For the reasons discussed in the supplementary information above, the Board does not believe such actions would generally be appropriate or consistent with section 4(c)(8) of the BHC Act. The Board, however, has established a process whereby any bank holding company, including small bank holding companies, may obtain permission to administer the rule's revenue limit on nonfinancial data processing activities on a multiple-entity or consolidated basis. This process will permit bank holding companies, including small bank holding companies, to administer the revenue test in a more flexible manner when such action would be consistent with the BHC Act.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506; 5 CFR 1320 Appendix A.1), the Board has reviewed the final rule under the authority delegated to the Board by the Office of Management and Budget ("OMB"). The Federal Reserve may not conduct or sponsor, and an organization is not required to respond to, an information collection unless it displays a currently valid OMB control number.

As discussed in the **SUPPLEMENTARY INFORMATION** above, bank holding companies may request permission to administer the 49-percent revenue limit on nonfinancial data processing activities adopted by the final rule on a business-line or multiple-entity basis in appropriate circumstances. Such requests should be directed to the Board's General Counsel and should describe the structure of the holding company's data processing operations, the methodology the holding company proposes to use to administer the revenue test, and the reasons why the holding company believes the proposed methodology is appropriate. It is estimated that there will be 5 respondents per year with an estimated burden of 2 hours per response. Therefore the total amount of annual burden is estimated to be 10 hours. There is estimated to be $200 annual cost burden over the annual hour burden. An OMB control number for this information collection will be obtained.

A request may be filed in letter form and there will be no reporting form for this information collection. The agency form number for the notice will be the FR 4021. A bank may request confidentiality for the information contained in the notice in accordance with the Freedom of Information Act and the Board's Rules Regarding the Availability of Information. *See* 5 U.S.C. 552; 12 CFR part 261.

As required by the GLB Act, section 225.89 of the Board's Regulation Y currently requires an FHC to obtain the Board's approval prior to engaging in, or acquiring a company engaged in, an activity that the FHC believes is complementary to a financial activity. *See* 12 CFR 225.89. Section 225.89 also describes the information that must be included in any request to engage in, or acquire a company engaged in, a complementary activity. The Board previously has reviewed and approved this information collection in accordance with the requirements of the Paperwork Reduction Act. *See* Requests for Approval to Engage in an Activity that is Complementary to a Financial Activity (FR 4012; OMB No. 7100–0292).

The Board has a continuing interest in the public's opinions of the Federal Reserve's collections of information. At any time, comments regarding the burden estimate, or any other aspect of this information collection, including suggestions for reducing the burden,

[29] *See* 12 U.S.C. 1843(j)(A) and (E).

[30] *See* 12 CFR 225.89(a).

[31] For purposes of the Regulatory Flexibility Act, small entities are defined to include bank holding companies that have $150 million or less in assets. *See* 13 CFR 121.201. As of March 31, 2003, there were 3117 bank holding companies with consolidated total assets of $150 million or less.

may be sent to: Secretary, Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington, DC 20551; and to the Office of Management and Budget, Paperwork Reduction Project, Washington, DC 20503.

Use of Plain Language

Section 722 of the GLB Act requires the Board to use "plain language" in all proposed and final rules published after January 1, 2000. The Board requested comment on whether there were ways to make the proposed rule easier to understand. One commenter suggested that the Board reformat the portion of the proposed rule relating to the complementary general data processing activities of FHCs (§ 225.89(d)(1)(B) of the proposed rule) to make the rule easier to understand. For the reasons discussed above, the Board has determined not to adopt that section of the proposed rule. The Board also believes that the final rule is written plainly and presented clearly.

List of Subjects in 12 CFR Part 225

Administrative practice and procedures, Banks, Banking, Federal Reserve System, Holding companies, Reporting and recordkeeping requirements, Securities.

Authority and Issuance

■ For the reasons set forth in the preamble, Title 12, Chapter II, of the Code of Federal Regulations is amended as follows:

PART 225—BANK HOLDING COMPANIES AND CHANGE IN BANK CONTROL (REGULATION Y)

■ 1. The authority citation for part 225 continues to read as follows:

Authority: 12 U.S.C. 1817(j)(13), 1818, 1828(o), 1831i, 1831p–1, 1843(c)(8), 1843(k); 1844(b), 1972(1), 2903, 3106, 3108, 3310, 3331–3351, 3907, and 3909; 15 U.S.C. 6801 and 6805.

■ 2. Section 225.28(b)(14) is revised to read as follows:

§ 225.28 List of permissible nonbanking activities.

* * * * *

(b) * * *

(14) *Data processing.* (i) Providing data processing, data storage and data transmission services, facilities (including data processing, data storage and data transmission hardware, software, documentation, or operating personnel), databases, advice, and access to such services, facilities, or data-bases by any technological means, if:

(A) The data to be processed, stored or furnished are financial, banking or economic; and

(B) The hardware provided in connection therewith is offered only in conjunction with software designed and marketed for the processing, storage and transmission of financial, banking, or economic data, and where the general purpose hardware does not constitute more than 30 percent of the cost of any packaged offering.

(ii) A company conducting data processing, data storage, and data transmission activities may conduct data processing, data storage, and data transmission activities not described in paragraph (b)(14)(i) of this section if the total annual revenue derived from those activities does not exceed 49 percent of the company's total annual revenues derived from data processing, data storage and data transmission activities.

Dated: November 26, 2003.

By order of the Board of Governors of the Federal Reserve System

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 03–29997 Filed 12–8–03; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. NM269; Special Conditions No. 25–253–SC]

Special Conditions: Israel Aircraft Industries Model 1124 Airplanes; High-Intensity Radiated Fields (HIRF)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions; request for comments.

SUMMARY: These special conditions are issued for Israel Aircraft Industries Model 1124 airplanes modified by Garrett Aviation Services. These modified airplanes will have a novel or unusual design feature when compared to the state of technology envisioned in the airworthiness standards for transport category airplanes. The modification incorporates the installation of dual Innovative Solutions & Support (IS&S) Air Data Display Unit systems with the IS&S Air Data Sensor that perform critical functions. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for the protection of these systems from the effects of high-intensity-radiated fields (HIRF). These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: The effective date of these special conditions is November 24, 2003.

Comments must be received on or before January 8, 2004.

ADDRESSES: Comments on these special conditions may be mailed in duplicate to: Federal Aviation Administration, Transport Airplane Directorate, Attn: Rules Docket (ANM–113), Docket No. NM269, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; or delivered in duplicate to the Transport Directorate at the above address. All comments must be marked: Docket No. NM269.

FOR FURTHER INFORMATION CONTACT: Greg Dunn, FAA, Airplane and Flight Crew Interface Branch, ANM–111, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2799; facsimile (425) 227–1320.

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA has determined that the notice and opportunity for public comment is impracticable because these procedures would significantly delay certification of the airplane and delivery of the affected airplane. In addition, the substance of these special conditions has been subject to the public comment process in several prior instances with no substantive comments received. The FAA therefore finds that good cause exists for making these special conditions effective upon issuance, however, the FAA invites interested persons to participate in this rulemaking by submitting written comments, data, or views. The most helpful comments reference a specific portion of the special conditions, explain the reason for any recommended change and include supporting data. We ask that you send us two copies of written comments.

We will file in the docket all comments we receive, as well as a report summarizing each substantive public contact with FAA personnel concerning these special conditions. The docket is available for public inspection before and after the commit closing date. If you wish to review the docket in person, go to the address in the **ADDRESSES** section of this preamble between 7:30 a.m. and 4 p.m., Monday thru Friday, except Federal holidays.

We will consider all comments we receive on or before the closing date for comments. We will consider comments filed late if it is possible to do so without incurring expense or delay. We may change these special conditions based on the comments we receive.

If you want the FAA to acknowledge receipt of your comments on this proposal, include with your comments a pre-addressed, stamped postcard on which the docket number appears. We will stamp the date on the postcard and mail it back to you.

Background

On September 26, 2003, Garrett Aviation Services, 1200 North Airport Drive, Capital Airport Springfield, IL 62707, applied for a Supplemental Type Certificate (STC) to modify Israel Aircraft Industries (IAI) Model 1124 airplanes approved under Type Certificate No. A2SW. The IAI Model 1124 is a small transport category airplane. The IAI Model 1124 airplane is powered by two AiResearch Manufacturing Company TFE731–3–1G turbofans and has a maximum takeoff weight of 23,500 pounds. This airplane operates with a 2-pilot crew and can hold up to 10 passengers. The modification incorporates the installation of dual Innovative Solutions & Support Air Data Display Units (ADDU) and a single IS&S Air Data Sensor (ADS) interfaced with an existing Collins AP–105 Autopilot. The ADDU is a replacement for the existing analog flight instrumentation, while also providing additional functional capability and redundancy in the system. The ADS is a digital replacement for the existing analog Collins 590A–3() Air Data Controller which outputs vertical and lateral mode signals to the Collins flight guidance system. The digital avionics/electronics and electrical systems installed under this project in this airplane have the potential to be vulnerable to high-intensity radiated fields (HIRF) external to the airplane.

Type Certification Basis

Under the provisions of 14 CFR 21.101, Garrett Aviation Services must show that the IAI Model 1124 airplanes, as changed, continue to meet the applicable provisions of the regulations incorporated by reference in Type Certificate No. A2SW, or the applicable regulations in effect on the date of application for the change. The regulations incorporated by reference in the type certificate are commonly referred to as the "original type certification basis." The certification basis for the modified IAI Model 1124 airplanes include 14 CFR Part 25, dated February 1, 1964, as amended by Amendments 25–1 through 25–20 except for special conditions and exceptions noted in Type Certificate Data Sheet (TDCS) A2SW.

If the Administrator finds that the applicable airworthiness regulations (*i.e.*, 14 CFR part 25, as amended) do not contain adequate or appropriate safety standards for the IAI Model 1124 airplanes because of novel or unusual design features, special conditions are prescribed under the provisions § 21.16.

In addition to the applicable airworthiness regulations and special conditions, the IAI Model 1124 airplanes must comply with the associated change requirements of § 21.93(b).

Special conditions, as defined in 14 CFR 11.19, are issued in accordance with § 11.38 and become part of the type certification basis in accordance with § 21.101.

Special conditions are initially applicable to the model for which they are issued. Should Garrett Aviation Services apply at a later date for a supplemental type certificate to modify any other model included on the same type certificate to incorporate the same or similar novel or unusual design feature, these special conditions would also apply to the other model under the provisions of 14 CFR 21.101.

Novel or Unusual Design Features

The IAI Model 1124 airplanes modified by Garrett Aviation Services will incorporate dual Air Data Display Units and a single Air Data Sensor system that will perform critical functions. These systems have to potential to be vulnerable to high-intensity radiated fields (HIRF) external to the airplane. The current airworthiness standards (part 25) do not contain adequate or appropriate safety standards for the protection of this equipment from the adverse effect of HIRF. Accordingly, this system is considered to be a novel or unusual design feature.

Discussion

There is no specific regulation that addresses protection requirements for electrical and electronic systems from HIRF. Increased power levels from ground-based radio transmitters and the growing use of sensitive avionics/electronics and electrical systems to command and control airplanes have made it necessary to provide adequate protection.

To ensure that a level of safety is achieved that is equivalent to that intended by the regulations incorporated by reference; special conditions are needed for IAI Model 1124 airplanes modified by Garrett Aviation Services. These special conditions require that new avionics/electronics and electrical systems that perform critical functions be designed and installed to preclude component damage and interruption of function due to both the direct and indirect effects of HIRF.

High-Intensity Radiated Fields (HIRF)

With the trend toward increased power levels from ground-based transmitters, plus the advent of space and satellite communications, coupled with electronic command and control of the airplane, the immunity of critical avionics/electronics and electrical systems to HIRF must be established.

It is not possible to precisely define the HIRF to which the airplane will be exposed in service. There is also uncertainty concerning the effectiveness of airframe shielding for HIRF. Furthermore, coupling of electromagnetic energy to cockpit-installed equipment through the cockpit window apertures is undefined. Based on surveys and analysis of existing HIRF emitters, an adequate level of protection exists when compliance with the HIRF protection special condition is shown with either paragraph 1, or 2 below:

1. A minimum threat of 100 volts rms (root-mean-square) per meter electric field strength from 10 KHz to 18 GHz.

a. The threat must be applied to the system elements and their associated wiring harnesses without the benefit of airframe shielding.

b. Demonstration of this level of protection is established through system tests and analysis.

2. A threat external to the airframe of the following field strengths for the frequency ranges indicated. Both peak and average field strength components from the Table are to be demonstrated.

Frequency	Field Strength (volts per meter)	
	Peak	Average
10 kHz–100 kHz	50	50
100 kHz–500 kHz	50	50
500 kHz–2 MHz	50	50
2 MHz–30 MHz	100	100
30 MHz–70 MHz	50	50
70 MHz–100 MHz	50	50
100 MHz–200 MHz	100	100
200 MHz–400 MHz	100	100
400 MHz–700 MHz	700	50
700 MHz–1 GHz	700	100
1 GHz–2 GHz	2000	200
2 GHz–4 GHz	3000	200
4 GHz–6 GHz	3000	200
6 GHz–8 GHz	1000	200
8 GHz–12 GHz	3000	300
12 GHz–18 GHz	2000	200
18 GHz–40 GHz	600	200

The field strengths are expressed in terms of peak of the root-mean-square (rms) over the complete modulation period.

The threat levels identified above are the result of an FAA review of existing studies on the subject of HIRF, in light of the ongoing work of the Electromagnetic Effects Harmonization Working Group of the Aviation Rulemaking Advisory Committee.

Applicability

As discussed above, these special conditions are applicable to IAI Model 1124 airplanes modified by Garret Aviation Services. Should Garrett Aviation Services apply at a later date for a supplemental type certificate to modify any other model included on the same type certificate to incorporate the same or similar novel or unusual design feature, these special conditions would apply to that model as well under the provisions of § 21.101.

Conclusion

This action affects only certain novel or unusual design features on the IAI Model 1124 airplanes modified by Garrett Aviation Services. It is not a rule of general applicability and affects only the applicant who applied to the FAA for approval of these features on the airplane.

The substance of these special conditions has been subjected to the notice and comment procedure in several prior instances and has been derived without substantive change from those previously issued. Because a delay would significantly affect the certification of the airplane, which is imminent, the FAA has determined that prior public notice and comment are unnecessary and impracticable, and good cause exists for adopting these special conditions upon issuance. The FAA is requesting comments to allow interested persons to submit views that may not have been submitted in response to the prior opportunities to comment described above.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701, 44702, 44704.

The Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the supplemental type certification basis for the Israel Aircraft Industries Model 1124 airplanes modified by Garrett Aviation Services.

1. *Protection from Unwanted Effects of High-Intensity Radiated Fields (HIRF).* Each electrical and electronic system that performs critical functions must be designed and installed to ensure that the operation and operational capability of these systems to perform critical functions are not adversely affected when the airplane is exposed to high-intensity radiated fields.

2. For the purpose of these special conditions, the following definition applies:

Critical Functions: Functions whose failure would contribute to or cause a failure condition that would prevent the continued safe flight and landing of the airplane.

Issued in Renton, Washington, on November 24, 2003.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–30447 Filed 12–8–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. NM271, Special Conditions No. 25–254–SC]

Special Conditions: Boeing Model 707–300 Airplanes; High Intensity Radiated Fields (HIRF)

AGENCY: Federal Aviation Administration (FAA) DOT.

ACTION: Final special conditions; request for comments.

SUMMARY: These special conditions are issued for Boeing Model 707–300 airplanes modified by AeroMech Incorporated. These modified airplanes will have novel and unusual design features when compared to the state of technology envisioned in the airworthiness standards for transport category airplanes. The modification incorporates the installation of dual Innovative Solutions and Support Air Data Display Units. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for the protection of these systems from the effects of high-intensity radiated fields (HIRF). These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that provided by the existing airworthiness standards.

DATES: The effective date of these special conditions is December 1, 2003.

Comments must be received on or before January 8, 2004.

ADDRESSES: Comments on these special conditions may be mailed in duplicate to: Federal Aviation Administration, Transport Airplane Directorate, Attention: Rules Docket (ANM–113), Docket No. NM271, 1601 Lind Avenue, SW., Renton, Washington, 98055–4056; or delivered in duplicate to the Transport Airplane Directorate at the above address. All comments must be marked: Docket No. NM271.

FOR FURTHER INFORMATION CONTACT: Greg Dunn, FAA, Airplane and Flight Crew Interface Branch, ANM–111, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue, SW., Renton, Washington, 98055–4056; telephone (425) 227–2799; facsimile (425) 227–1320.

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA has determined that notice and opportunity for prior public comment is impracticable because these procedures would significantly delay certification of the airplane and thus delivery of the affected aircraft. In addition, the substance of these special conditions has been subject to the public comment process in several prior instances with no substantive comments received. The FAA therefore finds that good cause exists for making these special conditions effective upon issuance; however, the FAA invites interested persons to participate in this rulemaking by submitting written comments, data, or views. The most helpful comments reference a specific portion of the special conditions, explain the reason for any recommended change, and include supporting data. We ask that you send us two copies of written comments.

We will file in the docket all comments we receive, as well as a report summarizing each substantive public contact with FAA personnel concerning these special conditions. The docket is available for public inspection before and after the comment closing date. If you wish to review the docket in person, go to the address in the **ADDRESSES** section of this preamble

between 7:30 a.m., and 4 p.m., Monday through Friday, except Federal holidays.

We will consider all comments we receive on or before the closing date for comments. We will consider comments filed late if it is possible to do so without incurring expense or delay. We may change these special conditions based on the comments we receive.

If you want the FAA to acknowledge receipt of your comments on these special conditions, include with your comments a pre-addressed, stamped postcard on which the docket number appears. We will stamp the date on the postcard and mail it back to you.

Background

On August 29, 2003, AeroMech Incorporated applied to the FAA, Fort Worth Special Certification Office, for a supplemental type certificate (STC) to modify certain Boeing Model 707–300 airplanes. These models are currently approved under Type Certificate No. 4A26. The Model 707–300 is a transport category airplane powered by four Pratt & Whitney turbojet engines. This airplane operates with three flightcrew and can hold up to 189 passengers. The modification incorporates the installation of dual Innovative Solutions and Support (IS&S) Air Data Display Units. The information presented is flight critical. The avionics/electronics and electrical systems installed in this airplane have the potential to be vulnerable to high-intensity radiated fields (HIRF) external to the airplane.

Type Certification Basis

Under the provisions of 14 CFR 21.101, AeroMech Incorporated must show that the Boeing Model 707–300 airplanes, as changed, continue to meet the applicable provisions of the regulations incorporated by reference in Type Certificate No. 4A26, or the applicable regulations in effect on the date of application for the change. The regulations incorporated by reference in the type certificate are commonly referred to as the "original type certification basis." The certification basis for the Model 707–300 airplanes includes Civil Air Regulations (CAR) 4b, as amended by Amendments 4b–1, 4b–2, and 4b–3; and additional requirements identified in the type certificate data sheet that are not relevant to these special conditions.

If the Administrator finds that the applicable airworthiness regulations (CAR 4b, as amended) do not contain adequate or appropriate safety standards for the Boeing Model 707–300 airplanes because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

In addition to the applicable airworthiness regulations and special conditions, the Boeing Model 707–300 airplanes must comply with the fuel vent and exhaust emission requirements of 14 CFR part 34 and the noise certification requirements of 14 CFR part 36.

Special conditions, as defined in 14 CFR 11.19, are issued in accordance with § 11.38 and become part of the type certification basis in accordance with § 21.101.

Special conditions are initially applicable to the model for which they are issued. Should AeroMech Incorporated apply at a later date for a supplemental type certificate to modify any other model included on Type Certificate 4A26 to incorporate the same or similar novel or unusual design feature, these special conditions would also apply to the other model under the provisions of § 21.101.

Novel or Unusual Design Features

As noted earlier, Boeing Model 707–300 airplanes modified by AeroMech Incorporated will incorporate brand new avionics/electronics and electrical systems (IS&S Air Data Display Units) that will perform critical functions. These systems may be vulnerable to high-intensity radiated fields external to the airplane. The current airworthiness standards of part 25 do not contain adequate or appropriate safety standards for the protection of this equipment from the adverse effects of HIRF. Accordingly, this sytem is considered to be a novel or unusual design feature.

Discussion

There is no specific regulation that addresses protection requirements for electrical and electronic systems from HIRF. Increased power levels from ground-based radio transmitters and the growing use of sensitive avionics/electronics and electrical systems to command and control airplanes have made it necessary to provide adequate protection.

To ensure that a level of safety is achieved equivalent to that intended by the regulations incorporated by reference, special conditions are needed for the Boeing Model 707–300 airplanes modified by AeroMech Incorporated. These special conditions require that new avionics/electronics and electrical systems that perform critical functions be designed and installed to preclude component damage and interruption of function due to both the direct and indirect effects of HIRF.

High-Intensity Radiated Fields (HIRF)

With the trend toward increased power levels from ground-based transmitters, and the advent of space and satellite communications coupled with electronic command and control of the airplane, the immunity of critical avionics/electronics and electrical systems to HIRF must be established.

It is not possible to precisely define the HIRF to which the airplane will be exposed in service. There is also uncertainty concerning the effectiveness of airframe shielding for HIRF. Furthermore, coupling of electromagnetic energy to cockpit-installed equipment through the cockpit window apertures is undefined. Based on surveys and analysis of existing HIRF emitters, an adequate level of protection exists when compliance with the HIRF protection special condition is shown with either paragraph 1 or 2 below:

1. A minimum threat of 100 volts rms (root-mean-square) per meter electric field strength from 10 KHz to 18 GHz.

a. The threat must be applied to the system elements and their associated wiring harnesses without the benefit of airframe shielding.

b. Demonstration of this level of protection is established through system tests and analysis.

2. A threat external to the airframe of the field strengths identified in the table below for the frequency ranges indicated. Both peak and average field strength components from the table are to be demonstrated.

Frequency	Field Strength (volts per meter)	
	Peak	Average
10 kHz–100 kHz	50	50
100 kHz–500 kHz	50	50
500 kHZ–2 MHz	50	50
2 MHz–30 MHz	100	100
30 MHz–70 MHz	50	50
70 MHz–100 MHz	50	50
100 MHz–200 MHz	100	100
200 MHz–400 MHz	100	100
400 MHz–700 MHz	700	50
700 MHz–1 GHz	700	100
1 GHz–2 GHz	2000	200
2 GHz–4 GHz	3000	200
4 GHz–6 GHz	3000	200
6 GHz–8 GHz	1000	200
8 GHz–12 GHz	3000	300
12 GHz–18 GHz	2000	200
18 GHz–40 GHz	600	200

The field strengths are expressed in terms of peak of the root-mean-square (rms) over the complete modulation period.

The threat levels identified above are the result of an FAA review of existing studies on the subject of HIRF, in light of the ongoing work of the Electromagnetic Effects Harmonization Working Group of the Aviation Rulemaking Advisory Committee.

Applicability

As discussed above, these special conditions are applicable to Boeing Model 707–300 series airplanes modified by AeroMech Incorporated. Should AeroMech Incorporated apply at a later date for a supplemental type certificate to modify any other model included on Type Certificate 4A26 to incorporate the same or similar novel or unusual design feature, these special conditions would apply to that model as well as under the provisions of § 21.101.

Conclusion

This action affects only certain novel or unusual design features on the Boeing Model 707–300 airplanes modified by AeroMech Incorporated. It is not a rule of general applicability and affects only the applicant who applied to the FAA for approval of these features on the airplane.

The substance of these special conditions has been subjected to the notice and comment procedure in several prior instances and has been derived without substantive change from those previously issued. Because a delay would significantly affect the certification of the airplane, which is imminent, the FAA has determined that prior public notice and comment are unnecessary and impracticable, and good cause exists for adopting these special conditions upon issuance. The FAA is requesting comments to allow interested persons to submit views that may not have been submitted in response to the prior opportunities for comment described above.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

■ The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701, 44702, 44704.

The Special Conditions

■ Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the supplemental type certification basis for the Boeing Model 707–300 airplanes modified by AeroMech Incorporated.

1. *Protection from Unwanted Effects of High-Intensity Radiated Fields (HIRF).* Each electrical and electronic system that performs critical functions must be designed and installed to ensure that the operation and operational capability of these systems to perform critical functions are not adversely affected when the airplane is exposed to high intensity radiated fields.

2. For the purpose of these special conditions, the following definition applies: *Critical Functions:* Functions whose failure would contribute to or cause a failure condition that would prevent the continued safe flight and landing of the airplane.

Issued in Renton, Washington, on December 1, 2003.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–30448 Filed 12–8–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2003–15466; Airspace Docket No. 03–ASO–9]

Establishment of Class D and E Airspace; Ormond Beach, FL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class D and E4 airspace at Ormond Beach, FL. A Federal contract tower with a weather reporting system has been constructed at the Ormond Beach Municipal Airport. Therefore, the airport meets criteria for Class D and E4 airspace. Class D surface area airspace and Class E4 airspace designated as an extension to Class D airspace is required when the control tower is open to contain Standard Instrument Approach Procedures (SIAPs) and other Instrument Flight Rules (IFR) operations at the airport. This action establishes Class D airspace extending upward from the surface to but not including 1,200 feet MSL, within a 3.2-mile radius of the Ormond Beach Municipal Airport and a Class E4 airspace extension that is 4.8 miles wide and extends 6.9 miles northwest of the airport.

EFFECTIVE DATE: 0901 UTC, February 19, 2004.

FOR FURTHER INFORMATION CONTACT: Walter R. Cochran, Manager, Airspace Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5586.

SUPPLEMENTARY INFORMATION:

History

On July 17, 2003, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) by establishing Class D and E4 airspace at Ormond Beach, FL, (68 FR 42322). This action provides adequate Class D and E4 airspace for IFR operations at Ormond Beach Municipal Airport. Class D airspace designations for airspace areas extending upward from the surface of the earth and Class E4 airspace areas designated as an extension to a Class D surface area are published in Paragraphs 5000 and 6004 respectively, of FAA Order 7400.9L, dated September 2, 2003, and effective September 16, 2003, which is incorporated by reference in 14 CFR 71.1. The Class D and Class E4 designations listed in this document will be published subsequently in the Order.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received.

The Rule

This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) establishes Class D and E4 airspace at Ormond Beach, FL.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It therefore, (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in CFR Part 71

Airspace, Incorporation by reference, Navigation (Air).

Adoption of the Amendment

■ In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR Part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

■ 1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9L, Airspace Designations and Reporting Points, dated September 2, 2003, and effective September 16, 2003, is amended as follows:

Paragraph 5000 Class D Airspace

* * * * *

ASO FL D Ormond Beach, FL [NEW]

Ormond Beach Municipal Airport, FL
(Lat. 29°18′04″ N, long. 81°06′50″ W)

That airspace extending upward from the surface, to but not including 1,200 feet MSL within a 3.2-mile radius of Ormond Beach Municipal Airport; excluding that airspace within the Daytona Beach, FL, Class C airspace area. This Class D airspace area is effective during the specific days and times established in advance by a Notice to Airmen. The effective days and times will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Paragraph 6004 Class E4 Airspace Areas Designated as an Extension to a Class D Airspace Area.

* * * * *

ASO FL E4 Ormond Beach, FL [NEW]

Ormond Beach Municipal Airport, FL
(Lat. 29°18′04″ N, long. 81°06′50″ W)
Ormond Beach VORTAC
(Lat. 29°18′12″ N, long. 81°06′46″ W)

That airspace extending upward from the surface within 2.4 miles each side of the Ormond Beach VORTAC 342° radial, extending from the 3.2-mile radius to 6.9 miles northwest of the VORTAC. This Class E4 airspace area is effective during the specific days and times established in advance by a Notice to Airmen. The effective days and times will thereafter be continuously published in the Airport/Facility Directory.

Issued in College Park, Georgia, on November 26, 2003.

Walter R. Cochran,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 03–30461 Filed 12–8–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2003–15229; Airspace Docket No. 03–AEA–05]

Establishment of Class E Airspace; Buckhannon, WV

AGENCY: Federal Aviation Administration (FAA) DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class E airspace at Buckhannon, WV. Controlled airspace extending upward from 700 feet Above Ground Level (AGL) is needed to contain aircraft operating into Upshur County Regional Airport, Buckhannon, WV under Instrument Flight Rules (IFR).

EFFECTIVE DATE: 0901 UTC, April 15, 2004.

FOR FURTHER INFORMATION CONTACT: Mr. Francis Jordan, Airspace Specialist, Airspace Branch, AEA–520, Air Traffic Division, Eastern Region, Federal Aviation Administration, 1 Aviation Plaza, Jamaica, New York 11434–4809, telephone: (718) 553–4521.

SUPPLEMENTARY INFORMATION:

History

On June 30, 2003, a notice proposing to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) by establishing Class E airspace extending upward from 700 feet above the surface within a 6-mile radius of Gettysburg Airport and Travel Center, Gettysburg, PA was published in the **Federal Register** (68 FR 38652–38653). Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA on or before July 30, 2003. No comments to the proposal were received. The rule is adopted as proposed.

The coordinates for this airspace docket are based on North American Datum 83. Class E airspace area designations for airspace extending upward from the surface of the earth are published in paragraph 6005 of FAA Order 7400 9L, dated September 2, 2003, and effective September 16, 2003, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published in the Order.

The Rule

This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) provides controlled Class E airspace extending upward from 700 feet above the surface for aircraft conducting IFR operations within a 6-mile radius of Upshur County Regional Airport, Buckhannon, WV.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affected air traffic procedures and air navigation, it is certified that this rule will not have significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

■ In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

■ 1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; EO 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9L, Airspace Designations and Reporting Points, dated September 2, 2003, and effective September 16, 2003, is amended as follows:

Paragraph 6005 Class E Airspace Areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AEA WV E5, Buckhannon, WV [NEW]

Upshur County Regional Airport, WV
(Lat. 39°00′01″ N., long. 80°16′26″ W.)

That airspace extending upward from 700 feet above the surface within a 6-mile radius of Upshur County Airport, excluding that portion that coincides with the Clarksburg, WV Class E airspace area.

* * * * *

Issued in Jamaica, New York, on November 19, 2003.

John G. McCartney,

Assistant Manager, Air Traffic Division, Eastern Region.

[FR Doc. 03–30458 Filed 12–8–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2003–16080; Airspace Docket No. 03–ACE–72]

Modification of Class E Airspace; Great Bend, KS

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: An examination of controlled airspace for Great Bend, KS revealed discrepancies in the Great Bend Municipal Airport airport reference point and in the direction of the Class E airspace extension. This action corrects the discrepancies by modifying the Great Bend, KS Class E airspace extension. This action corrects the discrepancies by modifying the Great Bend, KS Class E airspace and by incorporating the current Great Bend Municipal Airport reference point and the correct direction of the Class E airspace extension into the Class E airspace legal description.

DATES: This direct final rule is effective on 0901 UTC, April 15, 2004. Comments for inclusion in the Rules Docket must be received on or before January 13, 2004.

ADDRESSES: Send comments on this proposal to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2003–16080/ Airspace Docket No. 03–ACE–72, at the beginning of your comments. You may also submit comments on the Internet at *http://dms.dot.gov*. you may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C, DOT Municipal Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (816) 329–2525.

SUPPLEMENTARY INFORMATION: This amendment to 14 CFR 71 modifies the Class E airspace area extending upward from 700 feet above the surface at Great Bend, KS. It incorporates the current airport reference point for Great Bend Municipal Airport and modifies the Class E airspace extension from the 303° bearing from the airport to the 302° bearing. It brings the legal description of this airsapce area into compliance with FAA Order 7400.2E, Procedures for Handling Airspace Matters. The area will be depicted on appropriate aeronautical charts. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9L, dated September 2, 2003, and effective September 16, 2003, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and, therefore, is issuing it as a direct final rule. Previous actions of this nature have not been controversial and have not resulted in adverse comments or objections. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register** and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

Interested parties are invited to participate in this rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. FAA–2003–16080/Airspace Docket No. 03–ACE–72." The postcard will be date/time stamped and returned to the commenter.

Agency Findings

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

The FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments. For the reasons discussed in the preamble, I certify that this regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

■ Accordingly, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

■ 1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9L, dated September 2, 2003, and effective September 16, 2003, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ACE KS E5 Great Bend, KS

Great Bend Municipal Airport, KS
(Lat. 38°20'39" N., long. 98°51'33" W.)

That airspace extending upward from 700 feet above the surface within a 6.9-mile radius of Great Bend Municipal Airport and within 4 miles each side of the 302° bearing from the airport extending from the 6.9-mile radius to 15.6 miles northwest of the airport.

* * * * *

Issued in Kansas City, MO, on November 24, 2003.

Paul J. Sheridan,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 03–30454 Filed 12–8–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2003–16081–; Airspace Docket No. 03–ACE–73]

Modification of Class E Airspace; Kingman, KS

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: Kingman Municipal Airport, Kingman, KS, has been renamed Kingman Airport—Clyde Cessna Field. Area Navigation (RNAV) Global Positioning System (GPS) Standard Instrument Approach Procedrues (SIAPs) have been developed to serve Kingman Airport—Clyde Cessna Field. Also, an existing SIAP serving Kingman Airport—Clyde Cessna Field has been amended. An examination of controlled airspace for Kingman, KS revealed discrepancies in the legal description of the Class E airspace area.

This action modifies the Kingma, KS Class E airspace area, replaces "Kingman Municipal Airport" in the legal description of Kingman, KS Class E airspace area with "Kingman Airport—Clyde Cessna Field," provides controlled airspace of appropriate dimensions to protect aircraft executing SIAPs to Kingman Airport—Clyde Cessna Field and brings the Class E airspace area and legal description into compliance with FAA Orders.

DATES: This direct final rule is effective on 0901 UTC, April 15, 2004. Comments for inclusion in the Rules Docket must be received on or before January 14, 2004.

ADDRESSES: Send comments on this proposal to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2003–16081/Airspace Docket No. 03–ACE–73, at the beginning of your comments. You may also submit comments on the Internet at *http://www.dms.dot.gov*. You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C, DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (816) 329–2525.

SUPPLEMENTARY INFORMATION: This amendment to 14 CFR 71 modifies the Class E airspace area extending upward from 700 feet above the surface at Kingman, KS. It replaces "Kingman Municipal Airport," the former name of the airport, with "Kingman Airport—Clyde Cessna Field," the new name of the airport, in the legal description. A review of controlled airspace at Kingman, KS indicates existing 700 feet Above Ground Level (AGL) airspace does not meet criteria for diverse departures as specified in FAA Order 7400.2E, Procedures for Handling Airspace Matters. The criteria in FAA Order 7400.2E for an aircraft to reach 1200 feet AGL is based on a standard climb gradient of 200 feet per mile plus the distance from the Airport Reference Point (ARP) to the end of the outermost runway. Any fractional part of a mile is converted to the next higher tenth of a mile. The area is enlarged to conform to the criteria in FAA Order 7400.2E. An amendment to the Very High Frequency Omni-Directional Range (VOR)/Distance Measuring Equipment (DME) Runway (RWY) 18 SIAP raises the final approach fix crossing altitude and thereby eliminates the need for the north extension of the Kingman, KS Class E airspace area. This action brings the legal description of this airspace area into commpliance with FAA Order 7400.2E. The area will be depicted on appropriate aeronautical charts. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9L, dated September 2, 2003, and effective September 16. 2003, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and, therefore, is issuing it as a direct final rule. Previous actions of this nature have not been controversial and have not resulted in adverse comments or objections. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

Interested parties are invited to participate in this rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views, and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. FAA–2003–16081/Airspace Docket No. 03–ACE–73." The postcard will be date/time stamped and returned to the commenter.

Agency Findings

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

The FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments. For the reasons discussed in the preamble, I certify that this regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

■ Accordingly, the Federal Aviation Administration amends 14 CFR part 71 as follows:

Adoption of the Amendment

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

■ 1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9L, dated September 2, 2003, and effective September 16, 2003, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ACE KS E5 Kingman, KS

Kingman Airport—Clyde Cessna Field, KS
(Lat. 37°40'08" N., long. 98°07'26" W.)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Kingman Airport—Clyde Cessna Field.

* * * * *

Issued in Kansas City, MO on November 24, 2003.

Paul J. Sheridan,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 03–30455 Filed 12–8–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2003–16504; Airspace Docket No. 03–ACE–88]

Modification of Class E Airspace; Greenfield, IA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This action modifies the Class E airspace area at Greenfield, IA. A review of controlled airspace for Greenfield Municipal Airport indicates it does not comply with the criteria for 700 feet Above Ground Level (AGL) airspace required for diverse departures as specified in FAA Order 7400.2E. A discrepancy in the airspace extension was also detected. The area is modified and enlarged to conform to the criteria in FAA Order 7400.2E.

DATES: This direct final rule is effective on 0901 UTC, April 15, 2004. Comments for inclusion in the Rules Docket must be received on or before January 22, 2004.

ADDRESSES: Send comments on this proposal to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2003–16504/Airspace Docket No. 03–ACE–88, at the beginning of your comments. You may also submit comments on the Internet at *http://dms.dot.gov*. You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C, DOT Municipal Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (816) 329–2525.

SUPPLEMENTARY INFORMATION: This amendment to 14 CFR part 71 modifies the Class E airspace area extending upward from 700 feet above the surface of the earth at Greenfield, IA. An examination of controlled airspace for Greenfield Municipal Airport reveals it does not meet the criteria for 700 AGL airspace required for diverse departures as specified in FAA Order 7400.2E, Procedures for Handling Airspace Matters. The criteria in FAA Order 7400.2E for an aircraft to reach 1200 feet AGL is based on a standard climb gradient of 200 feet per mile plus the distance from the Airport Reference Point (ARP) to the end of the outermost runway. Any fractional part of a mile is converted to the next higher tenth of a mile. This amendment also modifies the extension to the Greenfield, IA Class E airspace area by defining it with the 144° bearing from the Greenfield nondirectional radio beacon (NDB) versus the current 142° bearing. This amendment brings the legal description of the Greenfield, IA Class E airspace area into compliance with FAA Order 7400.2E. This area will be depicted on appropriate aeronautical charts. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9L, dated September 2, 2003, and effective September 16, 2003, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and, therefore, is issuing it as a direct final rule. Previous actions of this nature have not been controversial and have not resulted in adverse comments or objections. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment

period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

Interested parties are invited to participate in this rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. FAA–2003–16504/Airspace Docket No. 03–ACE–88." The postcard will be date/time stamped and returned to the commenter.

Agency Findings

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

The FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments. For the reasons discussed in the preamble, I certify that this regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

■ Accordingly, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

■ 1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9L, dated September 2, 2003, and effective September 16, 2002, is amended as follows:

* * * * *

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ACE IA E5 Greenfield, IA

Greenfield Municipal Airport, IA
(Lat. 41°19′37″ N., long. 94°26′45″ W.)
Greenfield NDB
(Lat. 41°19′32″ N., long. 94°26′40″ W.)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of Greenfield Municipal Airport and within 2.6 miles each side of the 144° bearing from the Greenfield NDB extending from the 6.4-mile radius to 7.4 miles northwest of the airport.

* * * * *

Issued in Kansas City, MO, on November 24, 2003.

Paul J. Sheridan,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 03–30456 Filed 12–8–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2003–16079; Airspace Docket No. 03–ACE–71]

Establishment of Class E4 Airspace; and Modification of Class E5 Airspace; Goodland, KS

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; correction.

SUMMARY: This action corrects a Final rule that was published in the **Federal Register** on Friday, November 14, 2003, (68 FR 64524) [FR Doc. 03–38538]. It corrects an error in the classification of a Goodland, KS Class E airspace area.

DATES: This direct final rule is effective on 0901 UTC, December 25, 2003.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C, DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (816) 329–2525.

SUPPLEMENTARY INFORMATION:

History

On Monday, September 22, 2003, the FAA proposed to amend 14 CFR part 71 by establishing a Class E airspace area designated as an extension to the Class E surface area and revising the Class E airspace area extending upward from 700 feet or more above the surface at Goodland, KS (68 FR 55015) [FR Doc. 03–24143]. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received and a Final rule was subsequently published in the **Federal Register** on Friday, November 14, 2003, (68 FR 64524) [FR Doc. 03–28538].

A determination has been made that airspace comprising the extension to the Goodland, KS Class E surface area was necessary and properly established. However, this airspace area was erroneously categorized as an extension to the Class E surface area (E4) when it should have been added to the existing Class E airspace designated as a surface area (E2). This correction has no effect on the dimensions or definition of controlled airspace established by the rule, it merely identifies the extension as part of the basic surface area.

■ Accordingly, pursuant to the authority delegated to me, the Goodland, KS Class E4 airspace, as published in the **Federal Register** on Friday, November 14, 2003, (68 FR 64524) [FR Doc. 03–28538] is corrected as follows:

§ 71.1 [Corrected]

■ 1. On page 64524, column 3, following amendatory instruction 2, revise "Paragraph 6004 Class E airspace areas designated as an extension to Class D or Class E Surface area" to read "*Paragraph 6002 Class E Airspace Designated as Surface Areas.*"

■ 2. On page 64524, column 3, following amendatory instruction 2, revise:

"ACE KS E4 Goodland, KS

Renner Field-Goodland Municipal Airport, KS
(Lat. 39°22′14″N., long. 101°41′56″W.)
Goodland VORTAC
(Lat. 39°23′16″N., long. 101°41′32″W.)

That airspace extending upward from the surface within 2.4 miles each side of the Goodland VORTAC 164° radial extending from the 4.1-mile radius of Renner Field-Goodland Municipal Airport to 7 miles southeast of the VORTAC." to read:

"ACE KS E2 Goodland, KS

Renner Field-Goodland Municipal Airport, KS
(Lat. 39°22′14″N., long. 101°41′56″W.)
Goodland VORTAC
(Lat. 39°23′16″N., long. 101°41′32″W.)

Within a 4.1-mile radius of Renner Field-Goodland Municipal Airport and within 2.4 miles each side of the Goodland VORTAC 164° radial extending from the 4.1-mile radius of the airport to 7 miles southeast of the VORTAC."

Issued in Kansas City, MO, on November 24, 2003.

Paul J. Sheridan,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 03–30459 Filed 12–8–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 347

[Docket Nos. 78N–0021 and 78N–021P]

RIN 0910–AA01

Skin Protectant Drug Products for Over-the-Counter Human Use; Final Monograph; Technical Amendment

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; technical amendment.

SUMMARY: The Food and Drug Administration (FDA) is amending the regulation that established conditions under which over-the-counter (OTC) skin protectant drug products are generally recognized as safe and effective and not misbranded as part of FDA's ongoing review of OTC drug products. This amendment revises several of the indications for OTC skin protectant drug products to provide additional labeling claims that should not have been excluded from the final monograph (FM).

DATES: *Effective Date*: This rule is effective June 4, 2004.

Compliance Dates: The compliance date for products subject to part 347 (21 CFR part 347) with annual sales less than $25,000 is June 6, 2005. The compliance date for all other products subject to part 347 is June 4, 2004. The compliance date for combination products containing skin protectant and sunscreen active ingredients in § 347.20(d) and for all products subject to part 352 was stayed until further notice at 68 FR 33362, June 4, 2003.

Comment Date: Submit written or electronic comments by February 9, 2004.

ADDRESSES: Submit written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.fda.gov/dockets/ecomments.*

FOR FURTHER INFORMATION CONTACT: Gerald M. Rachanow, Center for Drug Evaluation and Research (HFD–560), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–2222.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of June 4, 2003 (68 FR 33362), FDA issued a FM for OTC skin protectant drug products in part 347. Section 347.50(b)(2) of that FM includes the following indications for OTC skin protectant drug products:

(2) *For products containing any ingredient in § 347.10(a), (d), (e), (g), (h), (i), (k), (l), (m), and (r)*—(i) The labeling states "temporarily protects" (which may be followed by: "and helps relieve") "chapped or cracked skin" (which may be followed by: "and lips"). This statement may be followed by the optional statement: "helps protect from the drying effects of wind and cold weather". [If both statements are used, each is preceded by a bullet.]

(ii) *For products formulated as a lip protectant.* The labeling states "temporarily protects" (which may be followed by: "and helps relieve") "chapped or cracked lips". This statement may be followed by the optional statement: "helps protect lips from the drying effects of wind and cold weather". [If both statements are used, each is preceded by a bullet.]

Shortly after FDA issued the FM, an industry national trade association submitted a petition ("The petition," Ref. 1) requesting FDA to amend the FM to permit the terms "helps prevent" and "chafed" in the indications in § 347.50(b)(2). The petition stated that FDA had included these terms in the indication in this section proposed in the tentative final monograph (TFM) (February 15, 1983, 48 FR 6820 at 6832), which stated: "Helps prevent and temporarily protects chafed, chapped, cracked, or windburned skin and lips."

The petition noted that the preamble to the FM contained a discussion of a study using nonmonograph concentrations of glycerin (less than 20 percent) that were found to be inadequate to support the indication that had been proposed in the TFM (see 68 FR 33362 at 33367). The petition added that the FM did not provide adequate justification or discussion for the elimination of this claim for other skin protectant active ingredients. The petition stated that skin protectant products are selected frequently for their preventative as well as their protective benefits. The petition requested FDA to reconsider its decision not to include the terms "helps prevent" and "chafed" in the indications in § 347.50(b)(2) of the FM.

II. FDA's Conclusions on the Petition

FDA has reevaluated the indications in § 347.50(b)(2) of the FM and concurs with the petition that these terms should have remained in these indications, as proposed in the TFM. However, because labeling space may be limited for some OTC skin protectant drug products and all manufacturers of these products may not wish to include this additional language in their products' indications, FDA is including these additional terms as optional labeling in the indications in § 347.50(b)(2). Including these additional terms as labeling options will enable those manufacturers who wish to include these terms in product labeling to do so, but will not require all manufacturers of these products to have to include the terms if they do not wish to do so. Accordingly, in this final rule, FDA is amending § 347.50(b)(2) to read as follows:

(2) *For products containing any ingredient in § 347.10(a), (d), (e), (g), (h), (i), (k), (l), (m), and (r)*—(i) The labeling states (optional: "helps prevent and") "temporarily protects" (optional: "and helps relieve") (optional: "chafed,") "chapped or cracked skin" (optional: "and lips"). This statement may be followed by the optional statement: "helps" (optional: "prevent and") "protect from the drying effects of wind and cold weather". [If both statements are used, each is preceded by a bullet.]

(ii) *For products formulated as a lip protectant.* The labeling states (optional: "helps prevent and") "temporarily protects" (optional: "and helps relieve") (optional: "chafed,") "chapped or cracked lips". This statement may be followed by the optional statement: "helps" (optional: "prevent and") "protect from the drying effects of wind and cold weather". [If both statements are used, each is preceded by a bullet.]

FDA concludes that this revised labeling provides manufacturers a number of ways to state the indications for these OTC skin protectant drug

products. Although not requested by the petition, FDA is also amending the indications in § 347.50(e)(1)(ii) [for products formulated and labeled as a lip protectant and that meet the criteria established in § 201.66(d)(10)] and (f)(1)(ii) [for products containing only cocoa butter, petrolatum, or white petrolatum, singly or in combination with each other, and marketed other than as a lip protectant]. FDA is amending these indications so that OTC skin protectant drug products labeled under these sections of the monograph can have comparable labeling to products labeled under § 347.50(b)(2). These amended sections read as follows:

(e)(1)(ii) The heading and the indication required by § 201.66(c)(4) of this chapter may be limited to: "Use [in bold type] helps" (optional: "prevent and") "protect" (optional: "and relieve") "chapped lips". If both optional terms are used, the indication may be limited to: "Use [in bold type] helps prevent, protect, and relieve chapped lips".

(f)(1)(ii) The heading and the indication required by § 201.66(c)(4) of this chapter may be limited to "Use [in bold type] helps protect minor cuts and burns" or "Use [in bold type] helps" (optional: "prevent and") "protect chapped skin" or "Use [in bold type] helps protect minor cuts and burns and" (optional: "prevent and protect") "chapped skin".

FDA also intends to amend one of the indications in § 352.52(f)(1)(ii) to add the optional "prevents" language to be comparable to the other labeling revisions being made above. FDA intends to propose that the revised indication state:

"For a lip protectant product, the heading and the indication required by § 201.66(c)(4) may be limited to: "Use [in bold type] helps protect against sunburn and" (optional: "prevent and protect") "chapped lips".

Because the final monograph for OTC sunscreen drug products in part 352 is currently stayed, FDA intends to propose this revision in an amendment of that monograph, in a future issue of the **Federal Register**.

To the extent that 5 U.S.C. 553 applies to this action, it is exempt from notice and comment because it comes within the good cause exceptions in 5 U.S.C. 553(b)(3)(B) in that obtaining public comment is impracticable, unnecessary, and contrary to public interest. The labeling revisions represent a minor change to reinstate language that should not have been excluded from the FM, and to make other labeling in the FM consistent with the labeling proposed in the TFM. In addition, given the imminence of the current compliance dates (see DATES) for the FM, seeking prior public comment on this delay is contrary to the public interest in the orderly issuance and implementation of regulations. In accordance with 21 CFR 10.40(e)(1), FDA is providing an opportunity for comment on whether the regulation should be modified or revoked.

III. Analysis of Impacts

FDA has examined the impacts of this final rule under Executive Order 12866 and the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1501 *et seq.*). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). Under the Regulatory Flexibility Act, if a rule may have a significant economic impact on a substantial number of small entities, an agency must analyze regulatory options that would minimize any significant impact of the rule on small entities. Section 202(a) of the Unfunded Mandates Reform Act of 1995 requires that agencies prepare a written statement and economic analysis before proposing any rule that may result in an expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of $100 million in any 1 year (adjusted annually for inflation).

FDA concludes that this final rule is consistent with the principles set out in Executive Order 12866 and in these two statutes. The final rule is not a significant regulatory action as defined by the Executive order and so is not subject to review under the Executive order. The Unfunded Mandates Reform Act does not require FDA to prepare a statement of costs and benefits for this final rule, because the final rule is not expected to result in any 1-year expenditure that would exceed $100 million adjusted for inflation. The current inflation adjusted statutory threshold is about $110 million.

The purpose of this final rule is to revise several monograph indications. These changes provide manufacturers of OTC skin protectant drug products additional options to state the uses in the labeling for their products.

All manufacturers of OTC skin protectant drug products will need to relabel their products as a result of the FM issued on June 4, 2003. Based on the amount of time it takes to relabel products (6 to 10 months, on average) FDA estimates that few, if any, manufacturers have relabeled their products as of the date of this technical amendment to the FM.

For the reasons stated in the previous paragraphs and under the Regulatory Flexibility Act (5 U.S.C. 605(b)), the Commissioner of Food and Drugs certifies that this final rule will not have a significant economic impact on a substantial number of small entities.

IV. Paperwork Reduction Act of 1995

FDA concludes that the labeling requirements in this document are not subject to review by the Office of Management and Budget because they do not constitute a "collection of information" under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). Rather, the labeling statements are a "public disclosure of information originally supplied by the Federal Government to the recipient for the purpose of disclosure to the public" (5 CFR 1320.3(c)(2)).

V. Federalism

FDA has analyzed this final rule in accordance with the principles set forth in Executive Order 13132. FDA has determined that the rule does not contain policies that have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, FDA has concluded that the rule does not contain policies that have federalism implications as defined in the Executive order and, consequently, a federalism summary impact statement is not required.

VI. Environmental Impact

FDA has determined under 21 CFR 25.31(a) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

VII. Comments

Interested persons may submit written or electronic comments to the Division of Dockets Management (see **ADDRESSES**). Three copies of all written comments are to be submitted. Individuals submitting written comments or anyone submitting electronic comments may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document and may be accompanied by a supporting memorandum or brief. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

VIII. Reference

The following reference is on display in the Division of Dockets Management (see **ADDRESSES**) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Comment No. PRC1.

List of Subjects in 21 CFR Part 347

Labeling, Over-the-counter drugs.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 347 is amended as follows:

PART 347—SKIN PROTECTANT DRUG PRODUCTS FOR OVER-THE-COUNTER HUMAN USE

■ 1. The authority citation for 21 CFR part 347 continues to read as follows:

Authority: Authority: 21 U.S.C. 321, 351, 352, 353, 355, 360, 371.

■ 2. Section 347.50 is amended by revising paragraphs (b)(2), (e)(1)(ii), and (f)(1)(ii) to read as follows:

§ 347.50 Labeling of skin protectant drug products.

* * * * *

(b) *Indications.* * * *

(2) *For products containing any ingredient in § 347.10(a), (d), (e), (g), (h), (i), (k), (l), (m), and (r)*—(i) *The labeling states* (optional: "helps prevent and") "temporarily protects" (optional: "and helps relieve") (optional: "chafed,") "chapped or cracked skin" (optional: "and lips"). This statement may be followed by the optional statement: "helps" (optional: "prevent and") "protect from the drying effects of wind and cold weather". [If both statements are used, each is preceded by a bullet.]

(ii) *For products formulated as a lip protectant.* The labeling states (optional: "helps prevent and") "temporarily protects" (optional: "and helps relieve") (optional: "chafed,") "chapped or cracked lips". This statement may be followed by the optional statement: "helps" (optional: "prevent and") "protect from the drying effects of wind and cold weather". [If both statements are used, each is preceded by a bullet.]

* * * * *

(e) *Products formulated and labeled as a lip protectant and that meet the criteria established in § 201.66(d)(10) of this chapter.* * * *

(1) * * *

(ii) The heading and the indication required by § 201.66(c)(4) of this chapter may be limited to: "Use [in bold type] helps" (optional: "prevent and") "protect" (optional: "and relieve") "chapped lips". If both optional terms are used, the indication may be limited to: "Use [in bold type] helps prevent, protect, and relieve chapped lips".

* * * * *

(f) *Products containing only cocoa butter, petrolatum, or white petrolatum identified in § 347.10(d), (m), and (r), singly or in combination with each other, and marketed other than as a lip protectant.* (1) * * *

(ii) The heading and the indication required by § 201.66(c)(4) of this chapter may be limited to "Use [in bold type] helps protect minor cuts and burns" or "Use [in bold type] helps" (optional: "prevent and") "protect chapped skin" or "Use [in bold type] helps protect minor cuts and burns and" (optional: "prevent and protect") "chapped skin".

* * * * *

Dated: December 1, 2003.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 03–30394 Filed 12–8–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9094]

RIN 1545–BC01

Return of Partnership Income

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to final and temporary regulations.

SUMMARY: This document contains final and temporary regulations that were published in the **Federal Register** on November 10, 2003 (68 FR 63733), that authorize the Commissioner to provide exceptions to the requirements of section 6301(a) of the Internal Revenue Code for certain partnerships by guidance published in the Internal Revenue Bulletin.

EFFECTIVE DATE: This correction is effective November 5, 2003.

FOR FURTHER INFORMATION CONTACT: David A. Shulman (202) 622–3070 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The final and temporary regulations that are the subject of these corrections are under section 6031 of the Internal Revenue Code.

Need for Correction

As published, these final and temporary regulations (TD 9094) contain errors that may prove to be misleading and are in need of clarification.

Correction of Publication

■ Accordingly, the publication of the final and temporary regulations (TD 9094), which were the subject of FR Doc. 03–28190, is corrected to read as follows:

■ On page 63734, Authority Citation, column 1, the language "Section 1.6031(a)–1T also issued under" is corrected to read "Section 1.6031(a)–1T is also issued under".

Cynthia E. Grigsby,

Acting Chief, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel (Procedure and Administration).

[FR Doc. 03–30524 Filed 12–8–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF DEFENSE

Department of the Navy

32 CFR Part 706

Certifications and Exemptions Under the International Regulations for Preventing Collisions at Sea, 1972

AGENCY: Department of the Navy, DOD.

ACTION: Final rule.

SUMMARY: The Department of the Navy is amending its certifications and exemptions under the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS), to reflect that the Deputy Assistant Judge Advocate General (Admiralty and Maritime Law) has determined that USS PINCKNEY (DDG 91) is a vessel of the Navy which, due to its special construction and purpose, cannot fully comply with certain provisions of the 72 COLREGS without interfering with its special function as a naval ship. The intended effect of this rule is to warn mariners in waters where 72 COLREGS apply.

EFFECTIVE DATE: June 16, 2003.

FOR FURTHER INFORMATION CONTACT: Commander Scott A. Kenney, JAGC, U.S. Navy, Deputy Assistant Judge Advocate General (Admiralty and Maritime Law), Office of the Judge Advocate General, Department of the Navy, 1322 Patterson Ave., SE, Suite 3000, Washington Navy Yard, DC 20374–5066, Telephone number: (202) 685–5040.

SUPPLEMENTARY INFORMATION: Pursuant to the authority granted in 33 U.S.C. 1605, the Department of the Navy

amends 32 CFR Part 706. This amendment provides notice that the Deputy Assistant Judge Advocate General (Admiralty and Maritime Law), under authority delegated by the Secretary of the Navy, has certified that USS PINCKNEY (DDG 91) is a vessel of the Navy which, due to its special construction and purpose, cannot fully comply with the following specific provisions of 72 COLREGS without interfering with its special function as a naval ship: Annex I, paragraph 3(a) pertaining to the location of the forward masthead light in the forward quarter of the vessel, and the horizontal distance between the forward and after masthead lights; Annex I, paragraph 3(c), pertaining to placement of task lights not less than two meters from the fore and aft centerline of the ship in the athwartship direction; Annex I, paragraph 2(f)(i), pertaining to the placement of the masthead light or lights above and clear of all other lights and obstructions; and Annex I, paragraph 2(f)(ii), pertaining to the vertical placement of task lights. The Deputy Assistant Judge Advocate General (Admiralty and Maritime Law) has also certified that the lights involved are located in closest possible compliance with the applicable 72 COLREGS requirements.

Moreover, it has been determined, in accordance with 32 CFR Parts 296 and 701, that publication of this amendment for public comment prior to adoption is impracticable, unnecessary, and contrary to public interest since it is based on technical findings that the placement of lights on this vessel in a manner differently from that prescribed herein will adversely affect the vessel's ability to perform its military functions.

List of Subjects in 32 CFR Part 706

Marine safety, Navigation (water), and Vessels.

■ Accordingly, 32 CFR Part 706 is amended as follows:

PART 706—[AMENDED]

■ 1. The authority citation for 32 CFR Part 706 continues to read as follows:

Authority: 33 U.S.C. 1605.

■ 2. Table Four, Paragraph 15 of § 706.2 is amended by adding, in numerical order, the following entry for USS PINCKNEY:

§ 706.2 Certifications of the Secretary of the Navy under Executive Order 11964 and 33 U.S.C. 1605.

* * * * *

Vessel	Number	Horizontal distance from the fore and aft centerline of the vessel in the athwartship direction
. . . . .	.	.
USS PINCKNEY	DDG 91	1.87 meters.
. . . . .	.	.

■ 3. Table Four, Paragraph 16 of § 706.2 is amended by adding, in numerical order, the following entry for USS PINCKNEY:

§ 706.2 Certifications of the Secretary of the Navy under Executive Order 11964 and 33 U.S.C. 1605.

* * * * *

Vessel	Number	Obstruction angle relative ship's headings
. . . . .	.	.
USS PINCKNEY	DDG 91	107.07 thru 112.50°
. . . . .	.	.

■ 4. Table Five of § 706.2 is amended by adding, in numerical order, the following entry for USS PINCKNEY:

§ 706.2 Certifications of the Secretary of the Navy under Executive Order 11964 and 33 U.S.C. 1605.

* * * * *

TABLE FIVE

Vessel	No.	Masthead lights not over all other lights and obstructions. Annex I, sec. 2(f)	Forward masthead light not in forward quarter of ship. Annex I, sec. 3(a)	After masthead light less than ½ ship's length aft of forward masthead light. Annex I, sec. 3(a)	Percentage horizontal separation attained
. . . . .	.	.	.	.	.
USS PINCKNEY	DDG 91	X	X	X	14.4
. . . . .	.	.	.	.	.

Dated: June 16, 2003.

S.A. Kenney,

Commander, JAGC, U.S. Navy, Deputy Assistant Judge Advocate, General (Admiralty and Maritime Law).

[FR Doc. 03–30418 Filed 12–8–03; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF DEFENSE

Department of the Navy

32 CFR Part 706

Certifications and Exemptions Under the International Regulations for Preventing Collisions at Sea, 1972

AGENCY: Department of the Navy, DOD.

ACTION: Final rule.

SUMMARY: The Department of the Navy is amending its certifications and exemptions under the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS), to reflect that the Deputy Assistant Judge Advocate General (Admiralty and Maritime Law) has determined that USS CHAFEE (DDG 90) is a vessel of the Navy which, due to its special construction and purpose, cannot fully comply with certain provisions of the 72 COLREGS without interfering with its special function as a naval ship. The intended effect of this rule is to warn mariners in waters where 72 COLREGS apply.

EFFECTIVE DATE: June 11, 2003.

FOR FURTHER INFORMATION CONTACT: Captain James H. Hohenstein, JAGC, U.S. Navy Reserve, Deputy Assistant Judge Advocate General (Admiralty and Maritime Law)(Acting), Office of the Judge Advocate General, Department of the Navy, 1322 Patterson Ave. SE., Suite 3000, Washington Navy Yard, DC 20374–5066, Telephone number: (202) 685–5040.

SUPPLEMENTARY INFORMATION: Pursuant to the authority granted in 33 U.S.C. 1605, the Department of the Navy amends 32 CFR part 706. This amendment provides notice that the Deputy Assistant Judge Advocate General (Admiralty and Maritime Law), under authority delegated by the Secretary of the Navy, has certified that USS CHAFEE (DDG 90) is a vessel of the Navy which, due to its special construction and purpose, cannot fully comply with the following specific provisions of 72 COLREGS without interfering with its special function as a naval ship: Annex I, paragraph 3(a) pertaining to the location of the forward masthead light in the forward quarter of the vessel, and the horizontal distance between the forward and after masthead lights; Annex I, paragraph 3(c), pertaining to placement of task lights not less than two meters from the fore and aft centerline of the ship in the athwartship direction; Annex I, paragraph 2(f)(i), pertaining to the placement of the masthead light or lights above and clear of all other lights and obstructions; and Annex I, paragraph 2(f)(ii), pertaining to the vertical placement of task lights. The Deputy Assistant Judge Advocate General (Admiralty and Maritime Law) has also certified that the lights involved are located in closest possible compliance with the applicable 72 COLREGS requirements.

Moreover, it has been determined, in accordance with 32 CFR parts 296 and 701, that publication of this amendment for public comment prior to adoption is impracticable, unnecessary, and contrary to public interest since it is based on technical findings that the placement of lights on this vessel in a manner differently from that prescribed herein will adversely affect the vessel's ability to perform its military functions.

List of Subjects in 32 CFR Part 706

Marine safety, Navigation (water), and Vessels.

■ Accordingly, 32 CFR part 706 is amended as follows:

PART 706—[AMENDED]

■ 1. The authority citation for 32 CFR part 706 continues to read as follows:

Authority: 33 U.S.C. 1605.

■ 2. Table Four, paragraph 15 of § 706.2 is amended by adding, in numerical order, the following entry for USS CHAFEE:

§ 706.2 Certifications of the Secretary of the Navy under Executive Order 11964 and 33 U.S.C. 1605.

* * * * *

Vessel	Number	Horizontal distance from the fore and aft centerline of the vessel in the athwartship direction
. . . . .	.	.
USS CHAFEE	DDG 90	1.90 meters
. . . . .	.	.

■ 3. Table Four, paragraph 16 of § 706.2 is amended by adding, in numerical order, the following entry for USS CHAFEE:

§ 706.2 Certifications of the Secretary of the Navy under Executive Order 11964 and 33 U.S.C. 1605.

* * * * *

Vessel	Number	Obstruction angle relative ship's headings
. . . . .	.	.
USS CHAFEE	DDG 90	108.88 tbru 112.50°
. . . . .	.	.

4. Table Five of § 706.2 is amended by adding, in numerical order, the following entry for USS CHAFEE:

§ 706.2 Certifications of the Secretary of the Navy under Executive Order 11964 and 33 U.S.C. 1605.

* * * * *

TABLE FIVE

Vessel	No.	Masthead lights not over all other lights and obstructions. Annex I, sec. 2(f)	Forward masthead light not in forward quarter of ship. Annex I, sec. 3(a)	After masthead light less than 1/2 × ship's length aft of forward masthead light. Annex I, sec. 3(a)	Percentage horizontal separation attained
. .	.	.	.	.	.
USS CHAFEE	DDG 90	X	X	X	14.6
. .	.	.	.	.	.

Dated: June 11, 2003.

J.H. Hohenstein,

Captain, JAGC, U.S. Navy Reserve, Deputy Assistant Judge Advocate General (Admiralty and Maritime Law) (Acting).

[FR Doc. 03–30411 Filed 12–8–01; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF DEFENSE

Department of the Navy

32 CFR Part 706

Certifications and Exemptions Under the International Regulations for Preventing Collisions at Sea, 1972

AGENCY: Department of the Navy, DOD.

ACTION: Final rule.

SUMMARY: The Department of the Navy is amending its certifications and exemptions under the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS), to reflect that the Deputy Assistant Judge Advocate General (Admiralty and Maritime Law) of the Navy has determined that USS RONALD REAGAN (CVN 76) is a vessel of the Navy which, due to its special construction and purpose, cannot comply fully with certain provisions of the 72 COLREGS without interfering with its special function as a naval ship. The intended effect of this rule is to warn mariners in waters where 72 COLREGS apply.

EFFECTIVE DATE: January 30, 2003.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander Dominick G. Yacono, JAGC, U.S. Navy Deputy Assistant Judge Advocate General (Admiralty and Maritime Law), Office of the Judge Advocate General, Department of the Navy 1322 Patterson Ave. SE., Suite 3000, Washington Navy Yard, DC 20374–5066, Telephone number: (202) 685–5040.

SUPPLEMENTARY INFORMATION: Pursuant to the authority granted in 33 U.S.C. 1605, the Department of the Navy amends 32 CFR part 706. This amendment provides notice that the Deputy Assistant Judge Advocate General (Admiralty and Maritime Law) of the Navy, under authority delegated by the Secretary of the Navy, has certified that USS RONALD REAGAN (CVN 76) is a vessel of the Navy which, due to its special construction and purpose, cannot comply fully with the following specific provisions of 72 COLREGS without interfering with its special function as a naval ship: Rule 21(a), pertaining to the placement of the masthead lights over the fore and aft centerline of the ship; Annex I, paragraph 2(g), pertaining to the placement of the sidelights above the hull; and Annex I, paragraph 3(a), pertaining to the placement of the forward masthead light in the forward quarter of the ship. The Deputy Assistant Judge Advocate General (Admiralty and Maritime Law) has also certified that the lights involved are located in closest possible compliance with the applicable 72 COLREGS requirements.

Moreover, it has been determined, in accordance with 32 CFR parts 296 and 701, that publication of this amendment for public comment prior to adoption is impracticable, unnecessary, and contrary to public interest since it is based on technical findings that the placement of lights on this vessel in a manner differently from that prescribed herein will adversely affect the vessel's ability to perform its military functions.

List of Subjects in 32 CFR Part 706

Marine Safety, Navigation (Water), and Vessels.

■ Accordingly, 32 CFR part 706 is amended as follows:

PART 706—[AMENDED]

■ 1. The authority citation for 32 CFR part 706 continues to read:

Authority: 33 U.S.C. 1605

§ 706.2 [Amended]

■ 2. Table Two of § 706.2 is amended by adding, in numerical order, the following entry for USS RONALD REAGAN:

TABLE TWO

Vessel	Number	Masthead lights, distance to stbd of keel in meters; Rule 21(a)	Forward anchor light, distance below flight dk in meters; § 2(K), Annex I	Forward anchor light, number of; Rule 30(a)(i)	AFT anchor light, distance below flight dk in meters; Rule 21(e), Rule 30(a)(ii)	AFT anchor light, number of; Rule 30(a)(ii)	Side lights, distance below flight dk in meters; § 2(g), Annex I	Side lights, distance forward of forward masthead light in meters; § 3(b), Annex I	Side lights, distance inboard of ship's sides in meters; § 3(b), Annex I
USS RONALD REAGAN	CVN–76	31.09					0.56		

■ 3. Table Five of § 706.2 is amended by adding, in numerical order, the following entry for USS RONALD REAGAN:

TABLE FIVE

Vessel	No.	Masthead lights not over all other lights and obstructions. annex I, sec. 2(f)	Forward masthead light not in forward quarter of ship. annex I, sec. 3(a)	After masthead light less than 1/2 ship's length aft of forward masthead light. annex I, sec. 3(a)	Percentage horizontal separation attained
USS RONALD REAGAN	CVN 76		X		

Dated: January 30, 2003.

D.G. Yacono,

Lieutenant Commander, JAGC, U.S. Navy, Deputy Assistant Judge Advocate, General (Admiralty and Maritime Law).

[FR Doc. 03–30420 Filed 12–8–03; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF DEFENSE

Department of the Navy

32 CFR Part 706

Certifications and Exemptions Under the International Regulations for Preventing Collisions at Sea, 1972

AGENCY: Department of the Navy, DOD.

ACTION: Final rule.

SUMMARY: The Department of the Navy is amending its certifications and exemptions under the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS), to reflect that the Deputy Assistant Judge Advocate General of the Navy (Admiralty and Maritime Law) has determined that USS BENFOLD (DDG 65) is a vessel of the Navy which, due to its special construction and purpose, cannot fully comply with certain provisions of the 72 COLREGS without interfering with its special function as a naval ship. The intended effect of this rule is to warn mariners in waters where 72 COLREGS apply.

EFFECTIVE DATE: July 25, 2003.

FOR FURTHER INFORMATION CONTACT: Commander S. A. Kenney, JAGC, U.S. Navy, Deputy Assistant Judge Advocate General (Admiralty and Maritime Law), Office of the Judge Advocate General, Department of the Navy, 1322 Patterson Ave. SE., Suite 3000, Washington Navy Yard, DC 20374–5066, Telephone number: (202) 685–5040.

SUPPLEMENTARY INFORMATION: Pursuant to the authority granted in 33 U.S.C. 1605, the Department of the Navy amends 32 CFR part 706. This amendment provides notice that the Deputy Assistant Judge Advocate General of the Navy (Admiralty and Maritime Law), under authority delegated by the Secretary of the Navy, has certified that USS BENFOLD (DDG 65) is a vessel of the Navy which, due to its special construction and purpose, cannot fully comply with the following specific provision of 72 COLREGS without interfering with its special function as a naval ship: Annex I paragraph 3(a) pertaining to the location of the forward masthead light in the forward quarter of the vessel, and the horizontal distance between the forward and after masthead lights. The Deputy Assistant Judge Advocate General of the Navy (Admiralty and Maritime Law) has also certified that the lights involved are located in closest possible compliance with the applicable 72 COLREGS requirements. This amendment further provides notice that the Deputy Assistant Judge Advocate General (Admiralty and Maritime Law), has amended that certification to reflect that certain masthead lights on USS BENFOLD (DDG 65), previously certified as not in compliance with 72 COLREGS, now comply with the applicable 72 COLREGS requirements, to wit: the arc of visibility of the forward masthead light is no longer obstructed, as required by Rule 21(a).

Moreover, it has been determined, in accordance with 32 CFR parts 296 and 701, that publication of this amendment for public comment prior to adoption is impracticable, unnecessary, and contrary to public interest since it is based on technical findings that the placement of lights on this vessel in a manner differently from that prescribed herein will adversely affect the vessel's ability to perform its military functions.

List of Subjects in 32 CFR Part 706

Marine safety, Navigation (water), and Vessels.

■ Accordingly, 32 CFR part 706 is amended as follows:

PART 706—[AMENDED]

■ 1. The authority citation for 32 CFR part 706 continues to read as follows:

Authority: 33 U.S.C. 1605.

§ 706.2 [Amended]

■ 2. Table Four, Paragraph 16 of § 706.2 is amended by removing the entry for USS BENFOLD.

■ 3. Table Five of § 706.2 is amended by revising the following entry for USS BENFOLD:

* * * * *

TABLE FIVE

Vessel	No.	Masthead lights not over all other lights and obstructions. annex I, sec. 2(f)	Forward masthead light not in forward quarter of ship. annex I, sec. 3(a)	After mast-head light less than ½ ship's length aft of forward masthead light. annex I, sec. 3(a)	Percentage horizontal separation attained
. .	.	.	.	.	.
USS BENFOLD	DDG 65	X	X	X	21.0
. .	.	.	.	.	.

Dated: July 25, 2003.

S.A. Kenney,

Commander, JAGC, U.S. Navy, Deputy Assistant Judge Advocate General (Admiralty and Maritime Law).

[FR Doc. 03–30421 Filed 12–8–03; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF DEFENSE

Department of the Navy

32 CFR Part 706

Certifications and Exemptions Under the International Regulations for Preventing Collisions at Sea, 1972

AGENCY: Department of the Navy, DOD.

ACTION: Final rule.

SUMMARY: The Department of the Navy is amending its certifications and exemptions under the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS), to reflect that the Deputy Assistant Judge Advocate General (Admiralty and Maritime Law), acting pursuant to authority delegated from the Secretary of the Navy, has determined that USS THEODORE ROOSEVELT (CVN 71) is a vessel of the Navy which, due to its special construction and purpose, cannot comply fully with certain provisions of the 72 COLREGS without interfering with its special functions as a naval aircraft carrier. The intended effect of this rule is to warn mariners in waters where 72 COLREGS apply.

EFFECTIVE DATE: July 25, 2003.

FOR FURTHER INFORMATION CONTACT: Commander S. A. Kenney, JAGC, U.S. Navy, Deputy Assistant Judge Advocate General (Admiralty and Maritime Law), Department of the Navy, Office of the Judge Advocate General, 1322 Patterson Avenue, Suite 3000, SE., Washington Navy Yard, DC 20374, Telephone number: (202) 685–5040.

SUPPLEMENTARY INFORMATION: Pursuant to the authority granted in 33 U.S.C. 1605, the Department of the Navy amends 32 CFR part 706. The Secretary of the Navy previously certified that USS THEODORE ROOSEVELT (CVN 71) is a vessel of the Navy which, due to its special construction and purpose, cannot fully comply with 72 COLREGS. This amendment provides notice that the Deputy Assistant Judge Advocate General (Admiralty and Maritime Law), under authority delegated by the Secretary of the Navy, has amended that certification to reflect that certain anchor lights on USS THEODORE ROOSEVELT (CVN 71), previously certified as not in compliance with 72 COLREGS, now comply with the applicable 72 COLREGS requirements, to wit: the forward and aft anchor lights are now located on the centerline of the ship, the required height above the hull, as required by Rules 21(e), 30(a)(i), and 30 (a)(ii).

Moreover, it has been determined, in accordance with 32 CFR parts 296 and 701, that publication of this amendment for public comment prior to adoption is impracticable, unnecessary, and contrary to public interest since it is based on technical findings that the placement of lights on this vessel in a manner differently from that prescribed herein will adversely affect the vessel's ability to perform its military functions.

List of Subjects in 32 CFR Part 706

Marine safety, Navigation (Water), and Vessels.

■ Accordingly, 32 CFR part 706 is amended as follows:

PART 706—[Amended]

■ 1. The authority citation for part 706 continues to read:

Authority: 33 U.S.C. 1605.

§ 706.2 [Amended]

■ 2. Table Two of § 706.2 is amended by revising the entry for USS THEODORE ROOSEVELT (CVN 71):

TABLE TWO

Vessel	Hull No.	Masthead lights, distance to stbd of keel in meters; Rule 21(a)	Forward anchor light, distance below flight dk in meters; § 2(K), Annex I	Forward anchor light, number of; Rule 30(a)(i)	AFT anchor light, distance below flight dk in meters; Rule 21(e), Rule 30(a)(ii)	AFT anchor light, number of; Rule 30(a)(ii)	Side lights, distance below flight dk in meters; § 2(g) Annex I	Side lights, distance forward of forward masthead light in meters; § 3(b), Annex I	Side lights, distance inboard of ship's sides in meters; § 3(b), Annex I
USS THEODORE ROOSEVELT.	CVN 71	30.0	.....	.....	.....	.....	0.51	.....	.....

Dated: July 25, 2003.

S.A. Kenney,

CDR, JAGC, U.S. Navy, Deputy Assistant Judge Advocate General (Admiralty and Maritime Law).

[FR Doc. 03–30422 Filed 12–8–03; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF DEFENSE

Department of the Navy

32 CFR Part 706

Certifications and Exemptions Under the International Regulations for Preventing Collisions at Sea, 1972; Amendment

AGENCY: Department of the Navy, DOD.

ACTION: Final rule.

SUMMARY: The Department of the Navy is amending its certifications and exemptions under the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS), to reflect that the Deputy Assistant Judge Advocate General of the Navy (Admiralty and Maritime Law) has determined that USS CARNEY (DDG 64) is a vessel of the Navy which, due to its special construction and purpose, cannot fully comply with certain provisions of the 72 COLREGS without interfering with its special function as a naval ship. The intended effect of this rule is to warn mariners in waters where 72 COLREGS apply.

EFFECTIVE DATE: September 17, 2003.

FOR FURTHER INFORMATION CONTACT: Commander Scott A Kenney, JAGC, U.S. Navy, Deputy Assistant Judge Advocate General (Admiralty and Maritime Law), Office of the Judge Advocate General, Department of the Navy, 1322 Patterson Ave. SE., Suite 3000, Washington Navy Yard, DC 20374–5066, Telephone number: (202) 685–5040.

SUPPLEMENTARY INFORMATION: Pursuant to the authority granted in 33 U.S.C. 1605, the Department of the Navy amends 32 CFR part 706. This amendment provides notice that the Deputy Assistant Judge Advocate General of the Navy (Admiralty and Maritime Law), under authority delegated by the Secretary of the Navy, has certified that USS CARNEY (DDG 64) is a vessel of the Navy which, due to its special construction and purpose, cannot fully comply with the following specific provisions of 72 COLREGS without interfering with its special function as a naval ship: Annex I, section 3(a) pertaining to the location of the forward masthead light in the forward quarter of the vessel, and the horizontal distance between the forward and after masthead lights; and, Annex I, section 2(f)(ii) pertaining to vertical placement of task lights. The Deputy Assistant Judge Advocate General of the Navy (Admiralty and Maritime Law) has also certified that the lights involved are located in closest possible compliance with the applicable 72 COLREGS requirements.

Moreover, it has been determined, in accordance with 32 CFR parts 296 and 701, that publication of this amendment for public comment prior to adoption is impracticable, unnecessary, and contrary to public interest since it is based on technical findings that the placement of lights on this vessel in a manner differently from that prescribed herein will adversely affect the vessel's ability to perform its military functions.

List of Subjects in 32 CFR Part 706

Marine Safety, Navigation (Water), and Vessels.

■ Accordingly, 32 CFR part 706 is amended as follows:

PART 706—[AMENDED]

■ 1. The authority citation for 32 CFR part 706 continues to read:

Authority: 33 U.S.C. 1605.

■ 2. Table Five of § 706.2 is amended by revising the following entry for USS CARNEY:

§ 706.2 Certifications of the Secretary of the Navy under Executive Order 11964 and 33 U.S.C. 1605.

* * * * *

TABLE FIVE

Vessel	No.	Masthead lights not over all other lights and obstructions. annex I, sec. 2(f)	Forward masthead light not in forward quarter of ship. annex I, sec. 3(a)	After masthead light less than ½ ship's length aft of forward masthead light. annex I, sec. 3(a)	Percentage horizontal separation attained
USS CARNEY	DDG 64	X	X	X	14.0

Dated: September 17, 2003.

Scott A. Kenney,

Commander, JAGC, U.S. Navy, Deputy Assistant Judge Advocate General (Admiralty and Maritime Law).

[FR Doc. 03–30423 Filed 12–8–03; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF DEFENSE

Department of the Air Force

32 CFR Part 806b

[Air Force Instruction 37–132]

Privacy Act; Implementation

AGENCY: Department of the Air Force, DoD.

ACTION: Final rule.

SUMMARY: The Department of the Air Force is revising an existing exemption rule for the Privacy Act system of records notice F031 AF SP A, entitled Correction and Rehabilitation Records. The amendments consist of changing the system identifier to F031 AF SF A, and revising the reasons for exempting from disclosure certain subsections of the Privacy Act of 1974.

EFFECTIVE DATE: October 30, 2003.

FOR FURTHER INFORMATION CONTACT: Mrs. Anne Rollins at (703) 601–4043 or DSN 329–4043.

SUPPLEMENTARY INFORMATION: The proposed rule was published on August 29, 2003, at 68 FR 51959. No comments were received; therefore, the rule is being adopted as published.

Executive Order 12866, "Regulatory Planning and Review"

It has been determined that Privacy Act rules for the Department of Defense are not significant rules. The rules do not (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy; a sector of the economy; productivity; competition; jobs; the environment; public health or safety; or State, local, or tribal governments or communities; (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another Agency; (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or (4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive order.

Public Law 96–354, "Regulatory Flexibility Act" (5 U.S.C. Chapter 6)

It has been determined that Privacy Act rules for the Department of Defense do not have significant economic impact on a substantial number of small entities because they are concerned only with the administration of Privacy Act systems of records within the Department of Defense.

Public Law 96–511, "Paperwork Reduction Act" (44 U.S.C. Chapter 35)

It has been determined that Privacy Act rules for the Department of Defense impose no information requirements beyond the Department of Defense and that the information collected within the Department of Defense is necessary and consistent with 5 U.S.C. 552a, known as the Privacy Act of 1974.

Section 202, Public Law 104–4, "Unfunded Mandates Reform Act"

It has been determined that the Privacy Act rulemaking for the Department of Defense does not involve a Federal mandate that may result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $100 million or more and that such rulemaking will not significantly or uniquely affect small governments.

Executive Order 13132, "Federalism"

It has been determined that the Privacy Act rules for the Department of Defense do not have federalism implications. The rules do not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government.

List of Subjects in 32 CFR Part 806b

Privacy.

■ Accordingly, 32 CFR part 806b is revised to read as follows:

PART 806b—AIR FORCE PRIVACY ACT PROGRAM

■ 1. The authority citation for 32 CFR part 806b continues to read as follows:

Authority: Pub. L. 93–579, 88 Stat. 1896 (5 U.S.C. 552a).

■ 2. Paragraph (a)(5) of Appendix C to part 806b is revised to read as follows:

Appendix C to Part 806b—General and Specific Exemptions

* * * * *

(a) General exemptions. * * *

(5) *System identifier and name:* F031 AF SF A, Correction and

Rehabilitation Records.

(i) *Exemption:* (A) Parts of this system may be exempt pursuant to 5 U.S.C. 552a(j)(2) if the information is compiled and maintained by a component of the agency, which performs as its principle function any activity pertaining to the enforcement of criminal laws.

(B) Portions of this system of records may be exempt pursuant to 5 U.S.C. 552a(j)(2) from the following subsections of 5 U.S.C. 552a(c)(3), (c)(4), (d), (e)(3), (e)(4)(G), (H) and (I), (e)(5), (e)(8), (f), and (g).

(ii) *Authority:* 5 U.S.C. 552a(j)(2).

(iii) *Reasons:* (A) From subsection (c)(3) because the release of the disclosure accounting, for disclosures pursuant to the routine uses published for this system, would permit the subject of a criminal investigation or matter under investigation to obtain valuable information concerning the nature of that investigation which will present a serious impediment to law enforcement

(B) From subsection (c)(4) because an exemption is being claimed for subsection (d), this subsection will not be applicable.

(C) From subsection (d) because access to the records contained in this system would inform the subject of a criminal investigation of the existence of that investigation, provide the subject of the investigation with information that might enable him to avoid detection or apprehension, and would present a serious impediment to law enforcement.

(D) From subsection (e)(3) would constitute a serious impediment to law enforcement in that it could compromise the existence of a confidential investigation, reveal the identity of confidential sources of information and endanger the life and physical safety of confidential informants.

(E) From subsections (e)(4)(G) and (H) because this system of records is exempt from individual access pursuant to subsections (j)(2) of the Privacy Act of 1974.

(F) From subsection (e)(4)(I) because the identity of specific sources must be withheld in order to protect the confidentiality of the sources of criminal and other law enforcement information. This exemption is further necessary to protect the privacy and physical safety of witnesses and informants.

(G) From subsection (e)(5) because in the collection of information for law enforcement purposes it is impossible to determine in advance what information is accurate, relevant, timely, and complete. With the passage of time, seemingly irrelevant or untimely information may acquire new significance as further investigation brings new details to light and the accuracy of such information can only be determined in a court of law. The restrictions of subsection (e)(5) would restrict the ability of trained investigators and intelligence analysts to exercise their judgment reporting on investigations and impede the development of intelligence necessary for effective law enforcement.

(H) From subsection (e)(8) because the individual notice requirements of subsection (e)(8) could present a serious impediment to law enforcement as this could interfere with the ability to issue search authorizations and could reveal investigative techniques and procedures.

(I) From subsection (f) because this system of records has been exempted from the access provisions of subsection (d).

(J) From subsection (g) because this system of records compiled for law enforcement purposes and has been exempted from the access provisions of subsections (d) and (f).

(K) Consistent with the legislative purpose of the Privacy Act of 1974, the Department of the Air Force will grant access to nonexempt material in the records being maintained. Disclosure will be governed by the Department of the Air Force's Privacy Instruction, but will be limited to the extent that the identity of confidential sources will not be compromised; subjects of an investigation of an actual or potential criminal violation will not be alerted to the investigation; the physical safety of witnesses, informants and law enforcement personnel will not be endangered, the privacy of third parties will not be violated; and that the disclosure would not otherwise impede effective law enforcement. Whenever possible, information of the above nature will be deleted from the requested documents and the balance made available. The controlling principle behind this limited access is to allow disclosures except those indicated above. The decisions to release information from these systems will be made on a case-by-case basis necessary for effective law enforcement.

* * * * *

November 20, 2003.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 03–30400 Filed 12–8–03; 8:45 am]

BILLING CODE 5000–06–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[CGD07–03–200]

RIN 1625–AA11

Regulated Navigation Area; San Carlos Bay, FL

AGENCY: Coast Guard, DHS.

ACTION: Temporary rule; request for comments.

SUMMARY: The Coast Guard is establishing a temporary regulated navigation area on the waters of San Carlos Bay, Florida. The regulated navigation area is needed to minimize the risk of potential bridge allisions by vessels utilizing the main channel under span "A" (bascule portion) of the Sanibel Island Causeway Bridge and enhance the safety of vessels transiting the area and vehicles crossing over the bridge. This temporary rule covers the entire effective period from November 29, 2003 to November 28, 2004, but the Coast Guard may change this rule based on comments received.

DATES: This rule is effective from 12:01 a.m. on November 29, 2003 until 11:59 p.m. on November 28, 2004. Comments must be received by January 29, 2004.

ADDRESSES: You may mail comments and related material to Commander (m), Seventh Coast Guard District, 8th Floor, 909 SE 1st Ave., Miami, FL 33131–3050.

Comments and material received from the public as well as documents indicated in this preamble as being available in the docket are part of docket [CGD07–03–200] and are available for inspection or copying at the Seventh Coast Guard District Marine Safety Division, located at the above address, between 7:30 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander Brian Gove, Project Officer, Seventh Coast Guard District, Marine Safety Branch, telephone 305–415–6743.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking [CGD07–03–200], indicate the specific section of this document to which each comment applies, and give the reason for each comment. The Coast Guard is interested in comments that, among other issues, detail specific economic impact to stakeholders on the waterway. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know that they reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this rule in view of them.

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a NPRM. The updated information concerning the state of disrepair of the Sanibel Island Causeway Bridge was brought to the attention of the Coast Guard on November 25, 2003. Publishing a NPRM and delaying its effective date would be contrary to the public interest because immediate initial action is needed to maximize the risk of potential bridge allusions by vessels utilizing the main channel under span "A" (bascule portion) of the bridge and enhance the safety of vessels transiting the area and vehicles crossing over the bridge. The Coast Guard will issue a broadcast notice to mariners to advise mariners of the restrictions. Additionally, the Coast Guard is soliciting comments on this rule and may make changes in light of them.

For the same reasons, under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. The Coast Guard is making this rule effective on November 29, 2003 because immediate initial action is needed to minimize the risk of potential bridge allisions by vessels utilizing the main channel under span "A" (bascule portion) of the Sanibel Island Causeway Bridge and enhance the safety of vessels transiting the area and vehicles crossing over the bridge.

Public Meeting

We do not now plan to hold a public meeting. However, you may submit a request for a meeting by writing to Marine Safety Division, Seventh Coast Guard District, 909 SE 1st Ave, 8th Floor, Miami, FL 33131, explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

On November 18, 2003, the Lee County Board of Commissioners issued an emergency declaration that present conditions of the Sanibel Island Causeway Bridge pose an immediate threat to the safety of the traveling public. Immediate initial action is thus required to minimize the risk of potential bridge allisions by vessels utilizing the main channel under span "A" (bascule portion) of the bridge and enhance the safety of vessels transiting the area and vehicles crossing over the bridge.

Discussion of Rule

The regulated navigation area will encompass the main channel under the "A" span (bascule portion) of the Sanibel Island Causeway Bridge out to 100 feet on either side of the bridge encompassing the main shipping channel. All vessels are required to transit the area at no wake speed. However, nothing in this rule negates the requirement to operate at a safe speed as provided in the Navigation Rules and Regulations. A one-way traffic scheme is imposed within the regulated navigation area. Overtaking is prohibited. Stern towing is prohibited. Side towing is permitted. However, tugs with barges must be arranged in a push-ahead configuration with barges made up in tandem. Tugs must be of adequate horsepower to fully maneuver the barges. Tug and barge traffic may transit the regulated navigation area at slack water only. These regulations are going into effect to minimize the risk of potential bridge allisions by vessels utilizing the main channel under span "A" (bascule portion) of the Sanibel Island Causeway Bridge and enhance the safety of vessels transiting the area and vehicles crossing over the bridge.

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Homeland Security (DHS).

We expect the economic impact of this rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary. The Coast Guard bases this finding on the following: vessels may still transit the area; the waterway is not a major commercial route, and the Coast Guard expects only modest delays due to the nature of marine traffic that traditionally uses the waterway.

Additionally, the Coast Guard is soliciting comments to determine the impact on the boating public, and may make adjustments based on comments we receive.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule would not have a significant economic impact on a substantial number of small entities. This rule would affect the following entities, some of which might be small entities: the owners or operators of vessels intending to transit a portion of San Carlos Bay. The Coast Guard certifies that this rule would not have a significant economic impact on a substantial number of small entities for the following reasons: vessels may still transit the area; the waterway is not a major commercial route, and the Coast Guard expects only modest delays due to the nature of marine traffic that traditionally uses the waterway.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule has a significant economic impact on it, please submit a comment (*see* **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we want to assist small entities in understanding this rule so that they can better evaluate its effects on them and participate in the rulemaking. If the temporary rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed under **FOR FURTHER INFORMATION CONTACT.** The Coast Guard has created a comment period for this temporary rule, and is particularly interested in comments describing specific economic impacts to small entities. This will allow the Coast Guard to better evaluate impacts to small entities. We also have a point of contact for commenting on actions by employees of the Coast Guard. Small business may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with Federal regulations, to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards.

The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small businesses. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule does not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that might disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. We invite your comments on how this rule might impact tribal governments, even if that impact may not constitute a "tribal implication" under the Order.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

We have analyzed this rule under Commandant Instruction M16475.lD, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction, from further environmental documentation.

An "Environmental Analysis Check List" and a "Categorical Exclusion Determination" (CED) has been placed in the docket where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

■ For the reasons discussed in the preamble, the Coast Guard is amending 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 165.T07–200 to read as follows:

§ 165.T07–200 San Carlos Bay, Florida—Regulated Navigation Area

(a) *Location.* The following area is a regulated navigation area (RNA): the waters bounded by the following points:
NW Corner: 26° 28.992N, 082° 00.895 W;
NE Corner: 26° 28.998N, 082° 00.874 W;
SW Corner: 26° 28.942N, 082° 00.875 W;
SE Corner: 26° 28.948N, 082° 00.854 W.

(b) *Regulations.* (1) A vessel in the RNA established under paragraph (a) of this section will operate at no wake speed. Nothing in this rule is to be construed as to negate the requirement to at all times operate at a safe speed as provided in the Navigation Rules and Regulations.

(2) A one-way traffic scheme is established. Vessel traffic may proceed in one direction at a time through the RNA. Overtaking is prohibited.

(3) Stern tows are not authorized. Side tows may be used. However, tugs with barges must be arranged in a push-ahead configuration with the barges made up in tandem. Tugs must be of adequate horsepower to maneuver the barges. Tug and barge traffic may transit the RNA at slack water only.

(c) *Definition.* The following definitions apply to this section:

Vessel. Every description of watercraft, including non-displacement craft and seaplanes, used or capable of being used as a means of transportation on the water.

Overtaking. A vessel shall be deemed to be overtaking when coming up with another vessel from a direction more than 22.5 degrees abaft her beam, that is, in such a position with reference to the vessel she is overtaking, that at night she would be able to see only the stern light of the vessel but neither of her sidelights.

Slack water. The state of a tidal current when its speed is near zero, especially the moment when a reversing current changes direction and its speed is zero. The term also is applied to the entire period of low speed near the time of turning of the current when it is too weak to be of any practical importance in navigation.

(d) *Enforcement.* Persons in violation of these regulations will be subject to civil penalty under 33 U.S.C. 1232 of this part, to include a maximum civil penalty of $27,500 per violation.

(e) *Effective period.* This section is effective from 12:01 a.m. on November 29, 2003, until 11:59 p.m. on November 28, 2004.

Dated: November 29, 2003.

Harvey E. Johnson, Jr.,

Rear Admiral, U.S. Coast Guard, Commander, Seventh Coast Guard District.

[FR Doc. 03–30446 Filed 12–8–03; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MO 199–1199a; FRL–7592–5]

Approval and Promulgation of Implementation Plans; State of Missouri

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving an amendment to the Missouri State Implementation Plan (SIP) pertaining to an update to a St. Louis city SIP-approved Ordinance and incinerator permit. The effect of this action is to ensure Federal enforceability of the local agency's air program rules and to maintain consistency between the local agency adopted rules and the approved SIP.

DATES: This direct final rule will be effective February 9, 2004, without further notice, unless EPA receives adverse comment by January 8, 2004. If adverse comment is received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Comments may be submitted either by mail or electronically. Written comments should be submitted to Wayne Kaiser, Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101. Electronic comments should be sent either to *kaiser.wayne@epa.gov* or to *http://www.regulations.gov*, which is an alternative method for submitting electronic comments to EPA. To submit comments, please follow the detailed instructions described in "What action is EPA taking" in the **SUPPLEMENTARY INFORMATION** section.

Copies of documents relative to this action are available for public inspection during normal business hours at the above-listed Region 7 location. The interested persons wanting to examine these documents should make an appointment with the office at least 24 hours in advance.

FOR FURTHER INFORMATION CONTACT: Wayne Kaiser at (913) 551–7603, or by e-mail at *kaiser.wayne@epa.gov*.

SUPPLEMENTARY INFORMATION: Throughout this document whenever "we," "us," or "our" is used, we mean EPA. This section provides additional information by addressing the following questions:

What Is a SIP?
What Is the Federal Approval Process for a SIP?
What Does Federal Approval of a State Regulation Mean to Me?
What Is being addressed in this document?
Have the Requirements for Approval of a SIP Revision Been Met?
What Action Is EPA Taking?

What Is a SIP?

Section 110 of the Clean Air Act (CAA) requires States to develop air pollution regulations and control strategies to ensure that State air quality meets the national ambient air quality standards established by EPA. These ambient standards are established under section 109 of the CAA, and they currently address six criteria pollutants. These pollutants are: carbon monoxide, nitrogen dioxide, ozone, lead, particulate matter, and sulfur dioxide.

Each State must submit these regulations and control strategies to EPA for approval and incorporation into the federally-enforceable SIP.

Each federally-approved SIP protects air quality primarily by addressing air pollution at its point of origin. These SIPs can be extensive, containing State regulations or other enforceable documents and supporting information such as emission inventories, monitoring networks, and modeling demonstrations.

What Is the Federal Approval Process for a SIP?

In order for State regulations to be incorporated into the federally-enforceable SIP, States must formally adopt the regulations and control strategies consistent with State and Federal requirements. This process generally includes a public notice, public hearing, public comment period, and a formal adoption by a State-authorized rulemaking body.

Once a State rule, regulation, or control strategy is adopted, the State submits it to us for inclusion into the SIP. We must provide public notice and seek additional public comment regarding the proposed Federal action on the State submission. If adverse comments are received, they must be addressed prior to any final Federal action by us.

All State regulations and supporting information approved by EPA under section 110 of the CAA are incorporated into the federally-approved SIP. Records of such SIP actions are maintained in the Code of Federal Regulations (CFR) at title 40, part 52, entitled "Approval and Promulgation of Implementation Plans." The actual State regulations which are approved are not reproduced in their entirety in the CFR outright but are "incorporated by reference," which means that we have approved a given State regulation with a specific effective date.

What Does Federal Approval of a State Regulation Mean to Me?

Enforcement of the State regulation before and after it is incorporated into the federally-approved SIP is primarily a State responsibility. However, after the regulation is federally approved, we are authorized to take enforcement action against violators. Citizens are also offered legal recourse to address violations as described in section 304 of the CAA.

What Is Being Addressed in This Document?

In August 2003, the St. Louis city Board of Aldermen updated the current SIP-approved Ordinance No. 64749 by rescinding it and adopting replacement Ordinance No. 65645. The only changes in the SIP-approved portion of the new Ordinance is the renumbering of Section 7—Definitions, to Section 6, and Section 17—Open Burning Restrictions, to Section 15.

Approving the new Ordinance subsequently necessitated that a reference to it in a SIP-approved St. Louis University Hospital incinerator permit, No. 00–01–004, be revised. Consequently, we are also approving a letter from the City of St. Louis Department of Health to St. Louis University Hospital, dated April 25, 2003, which revises Section II, B of incinerator permit No. 00–01–004, by updating the referenced Ordinance number to No. 65645.

A technical support document (TSD) containing additional information and background material for this action has been prepared and is available from the EPA contact listed above.

Have the Requirements for Approval of a SIP Revision Been Met?

The State submittal has met the public notice requirements for SIP submissions in accordance with 40 CFR 51.102. The submittal also satisfied the completeness criteria of 40 CFR part 51, appendix V. In addition, as explained above and in more detail in the TSD

which is part of this document, the revision meets the substantive SIP requirements of the CAA, including section 110 and implementing regulations.

What Action Is EPA Taking?

We are approving the State's request to amend the SIP by rescinding the SIP-approved provisions of St. Louis city Ordinance No. 64794 and concurrently approving the same, but renumbered provisions, in Ordinance No. 65645. We are also approving an administrative revision to the incinerator permit for St. Louis University Hospital.

We are processing this action as a direct final action because the revisions make routine changes to the existing rules which are noncontroversial. Therefore, we do not anticipate any adverse comments. Please note that if EPA receives relevant adverse comment on part of this rule and if that part can be severed from the remainder of the rule, EPA may adopt as final those parts of the rule that are not the subject of an adverse comment.

You may submit comments either electronically or by mail. To ensure proper receipt by EPA, identify the appropriate rulemaking identification number, MO 199–1199a, in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments.

1. Electronically. If you submit an electronic comment as prescribed below, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

a. Electronic mail. Comments may be sent by e-mail to *kaiser.wayne@epa.gov*. Please include identification number, MO 199–1199a, in the subject line. EPA's e-mail system is not an "anonymous access" system. If you send an e-mail comment directly without going through Regulations.gov, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket.

b. Regulations.gov. Your use of Regulations.gov is an alternative method of submitting electronic comments to EPA. Go directly to *http://www.regulations.gov*, click on "To Search for Regulations," then select Environmental Protection Agency and use the "go" button. The list of current EPA actions available for comment will be listed. Please follow the online instructions for submitting comments. The system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

2. By Mail. Written comments should be sent to the name and address listed in the **ADDRESSES** section of this document.

Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves State law as meeting Federal requirements and imposes no additional requirements beyond those imposed by State law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under State law and does not impose any additional enforceable duty beyond that required by State law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of Government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a State rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the CAA. This rule also is not subject to Executive Order 13045, "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve State choices, provided that they meet the criteria of the CAA. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the CAA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by February 9, 2004. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: November 18, 2003.

William W. Rice,

Acting Regional Administrator, Region 7.

■ Chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

■ 1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart AA—Missouri

■ 2. Section 52.1320 is amended by:

■ a. In paragraph (c) removing the heading and entries for St. Louis City Ordinance 64749 and adding a heading and entries for St. Louis City Ordinance 65645.

■ b. In paragraph (d) adding an entry to the end of the table for St. Louis University.

■ The revisions and addition read as follows:

§ 52.1320 Identification of plan.

* * * * *

(c) * * *

EPA-APPROVED MISSOURI REGULATIONS

Missouri citation	Title	State effective date	EPA approval date	Explanation
	St. Louis City Ordinance 65645			
Section 6	Definitions	8/28/03	12/9/03 *[insert FR page citation].*	The phrase "other than liquids or gases" in the Refuse definition has not been approved.
Section 15	Open Burning Restrictions	8/28/03	12/9/03 *[insert FR page citation].*	

(d) * * *

EPA-APPROVED STATE SOURCE-SPECIFIC PERMITS AND ORDERS

Name of source	Order/permit number	State effective date	EPA approval date	Explanation
St. Louis University	Permit Matter No. 00–01–004	8/28/03	12/9/03 *[insert FR page citation].*	Updates a reference in section II.B. to Ordinance No. 65645.

* * * * *

[FR Doc. 03–30039 Filed 12–8–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MD152–3105a; FRL–7596–4]

Approval and Promulgation of Air Quality Implementation Plans; Maryland; Control of Emissions of Volatile Organic Compounds From Consumer Products

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve revisions to the Maryland State Implementation Plan (SIP). The revisions pertain to the control of volatile organic compound (VOC) emissions from consumer products. EPA is approving these revisions to the Maryland SIP in accordance with the requirements of the Clean Air Act.

DATES: This rule is effective on January 23, 2004 without further notice, unless EPA receives adverse written comment by January 8, 2004. If EPA receives such comments, it will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Comments may be submitted either by mail or electronically. Written comments should be mailed to Makeba Morris, Chief, Air Quality Planning, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Electronic comments should be sent either to *morris.makeba@epa.gov* or to *http://www.regulations.gov*, which is an alternative method for submitting electronic comments to EPA. To submit comments, please follow the detailed instructions described in Part III of the Supplementary Information section. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; the Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, 1301 Constitution Avenue, NW., Room B108, Washington, DC 20460; and Maryland Department of

the Environment, 1800 Washington Boulevard, Suite 705, Baltimore, Maryland 21230.

FOR FURTHER INFORMATION CONTACT: Rose Quinto, (215) 814–2182, or by e-mail at *quinto.rose@epa.gov*.

SUPPLEMENTARY INFORMATION: On November 19, 2003, the Maryland Department of the Environment (MDE) submitted a formal revision to its State Implementation Plan (SIP). The SIP revision (Maryland SIP revision # 03–07) consists of the standards and requirements to control VOC emissions from consumer products.

I. Background

In December 1999, EPA identified emission reduction shortfalls in several one-hour ozone nonattainment areas in the Ozone Transport Region (OTR) and required those areas to address the shortfalls. The Ozone Transport Commission (OTC) developed control measures into model rules for a number of source categories and estimated emission reduction benefits from implementing those model rules that will close the shortfalls. The OTC Commissioners formally supported these model rules, including a consumer products rule. The OTC Consumer Products model rule was based on the existing rules developed by the California Air Resources Board, which were analyzed and modified by the OTC workgroup to address VOC reduction needs in the OTR. The standards and requirements contained in Maryland's Consumer Products rule are consistent with the OTC model rule.

II. Summary of SIP Revision

On July 25, 2003, the Secretary of the Environment adopted new regulation COMAR 26.11.32, Control of Emissions of VOC from Consumer Products that includes COMAR 26.11.32.01 through COMAR 26.11.32.23. This regulation establishes VOC content limits for approximately 80 categories and subcategories of consumer products. Consumer products are household and industrial products such as cleaning compounds, floor finishes, personal care products, automotive products, disinfectants, aerosol adhesives, and lawn and garden products.

The regulation applies to a person who sells, supplies, offers for sale, or manufactures consumer products on or after January 1, 2005 for use in the State of Maryland. Also included in the regulation are definitions, the VOC content limits, standards and exemptions, innovative products, administrative requirements, recordkeeping and reporting requirements, variances, test methods, and an alternative control plan.

On October 21, 2003, the Secretary of the Environment adopted an amendment to COMAR 26.11.32.01 by the addition of COMAR 26.11.32.01F, which clarifies the enforcement policy relative to the sale of a non-complying consumer product by a retailer. The amendment includes good faith efforts to be used by a retailer in safeguarding against the sale of a non-compliant product, and in the course of business, ensure that the products meet applicable state requirements.

III. Final Action

EPA is approving revisions to the Maryland SIP, COMAR 26.11.32, to establish VOC content limits for approximately 80 categories and subcategories of consumer products that was submitted on November 19, 2003 by MDE. The implementation of this rule will result in the reduction of VOC emissions in the Baltimore Metropolitan Area.

EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comment. However, in the "Proposed Rules" section of today's **Federal Register**, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision if adverse comments are filed. This rule will be effective on January 23, 2004 without further notice unless EPA receives adverse comment by January 8, 2004. If EPA receives adverse comment, EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. EPA will address all public comments in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

You may submit comments either electronically or by mail. To ensure proper receipt by EPA, identify the appropriate rulemaking identification number, MD152–3105, in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments.

1. *Electronically.* If you submit an electronic comment as prescribed below, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *E-mail.* Comments may be sent by electronic mail (e-mail) to *morris.makeba@epa.gov*, attention: MD152–3105. EPA's e-mail system is not an "anonymous access" system. If you send an e-mail comment directly without going through Regulations.gov, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket.

ii. *Regulations.gov.* Your use of Regulation.gov is an alternative method of submitting electronic comments to EPA. Go directly to *http://www.regulations.gov*, then select "Environmental Protection Agency" at the top of the page and use the "go" button. The list of current EPA actions available for comment will be listed. Please follow the online instructions for submitting comments. The system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

iii. *Disk or CD ROM.* You may submit comments on a disk or CD ROM that you mail to the mailing address identified in the **ADDRESSES** section of this document. These electronic submissions will be accepted in WordPerfect, Word or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By Mail.* Written comments should be addressed to the EPA Regional office listed in the **ADDRESSES** section of this document.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing at the EPA Regional Office, as EPA receives them and without change, unless the comment contains copyrighted material, confidential business information (CBI), or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in the official public rulemaking file. The entire printed comment, including the copyrighted material, will be available at the Regional Office for public inspection.

Submittal of CBI Comments

Do not submit information that you consider to be CBI electronically to EPA. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the official public regional rulemaking file. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public file and will be available for public inspection without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

Considerations When Preparing Comments to EPA

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at your estimate.
5. Provide specific examples to illustrate your concerns.
6. Offer alternatives.
7. Make sure to submit your comments by the comment period deadline identified.
8. To ensure proper receipt by EPA, identify the appropriate regional file/rulemaking identification number in the subject line on the first page of your response. It would also be helpful if you provided the name, date, and **Federal Register** citation related to your comments.

IV. Statutory and Executive Order Reviews

A. General Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045, "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

B. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

C. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by February 9, 2004. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and

shall not postpone the effectiveness of such rule or action. This action pertaining to Maryland's Consumer Products Rule, may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: November 28, 2003.

Donald S. Welsh,

Regional Administrator, Region III.

■ 40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

■ 1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart V—Maryland

■ 2. Section 52.1070 is amended by adding paragraph (c)(185) to read as follows:

§ 52.1070 Identification of plan.

* * * * *

(c) * * *

(185) Revisions to the Code of Maryland Administrative Regulations (COMAR) on the Control of VOC Emissions from Consumer Products submitted on November 19, 2003 by the Maryland Department of the Environment:

(i) Incorporation by reference.

(A) A letter dated November 19, 2003 from the Maryland Department of the Environment transmitting additions to Maryland's State Implementation Plan pertaining to the control of volatile organic compounds (VOC) emissions from consumer products.

(B) Addition of new COMAR 26.11.32—Control of Emissions of VOC from Consumer Products:

(*1*) Addition of COMAR 26.11.32.01 through COMAR 26.11.32.23 adopted by the Secretary of the Environment on July 25, 2003 and effective on August 18, 2003.

(*2*) Addition of new COMAR 26.11.32:01F—Retail Sales, adopted by the Secretary of the Environment on October 22, 2003 and effective on November 24, 2003.

(ii) Additional Material.—Remainder of the State submittals pertaining to the revisions listed in paragraph (c)(185)(i) of this section.

[FR Doc. 03–30509 Filed 12–8–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[FRL–7597–5]

Louisiana: Final Authorization of State Hazardous Waste Management Program Revisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Immediate final rule.

SUMMARY: The State of Louisiana has applied for final authorization of revisions to its Hazardous Waste Program under the Resource Conservation and Recovery Act (RCRA). Clusters X, XI and XII which contain Federal rules promulgated from July 1, 1999, to June 30, 2002. The EPA has determined that these revisions satisfy the requirements needed to qualify for final authorization, and is authorizing the State's revisions through this immediate final action. The EPA is publishing this rule to authorize the revisions without a prior proposal because we believe this action is not controversial and do not expect adverse comments. We note that a petition to withdraw the State of Louisiana's authorization to operate its RCRA program dated March 13, 2002 has been filed by Concerned Citizens of New Sarpy and Louisiana Bucket Brigade. Currently, we are in the final stages of review of the allegations contained in the petition. As such, the Region is not yet in a position to determine the outcome of the petition at this time. EPA is continuing to review the Petition and will take whatever action is deemed necessary as a result of its investigation of the allegations contained in the petition. The approval of this revision to the State's authorized program is a completely separate and unrelated action to EPA's review of the petition. Under RCRA Section 3006(b), 42 U.S.C. 6926(b), States must maintain a hazardous waste program that is equivalent to, consistent with, and no less stringent than the Federal Hazardous Waste Program. As the Federal program changes, States must change their programs and ask EPA to authorize the changes. Since there were modifications made to the federal program, the changes to Louisiana's RCRA program are necessary. In most circumstances, the Federal Rules require the authorized State's program be revised within one year of the Federal modification. Therefore, EPA does not believe that action on this revision to Louisiana's program should be delayed. Unless we get adverse comments which oppose this authorization during the comment period, the decision to authorize the State of Louisiana Department of Environmental Quality (LDEQ) revisions to their hazardous waste program will take effect. If adverse comments are received, the EPA will publish a document in the **Federal Register** (FR) either: A withdrawal of the immediate final decisions (and the proposed rule published elsewhere in this issue of the **Federal Register** will serve as a proposal to authorize the changes), or a document containing a response to comments and which either affirms that the immediate final decision takes effect or reverses the decision.

DATES: This immediate final rule is effective February 9, 2004 unless EPA receives adverse written comments by January 8, 2004. Should EPA receive such comments, it will publish a timely document either: Withdrawing the immediate final publication or affirming the publication and responding to comments.

ADDRESSES: Written comments, referring to Docket Number LA–01–03 should be sent to Alima Patterson, Region 6, Regional Authorization Coordinator, State/Tribal Oversight Section (6PD–O), Multimedia Planning and Permitting Division, EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733. You may submit your comments electronically to *Patterson.alima@epa.gov*. Copies of the Louisiana program revision application and the materials which EPA used in evaluating the revision are available for inspection and copying from 8:30 a.m. to 4 p.m. Monday through Friday, at the following addresses: Louisiana Department of Environmental Quality, 602 N. Fifth Street, Baton Rouge, Louisiana 70884–2178, (225) 219–3559 and EPA, Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, phone number (214) 665–8533.

FOR FURTHER INFORMATION CONTACT: Alima Patterson, (214) 665–8533.

SUPPLEMENTARY INFORMATION:

A. Why Are Revisions to State Programs Necessary?

States that receive final authorization from EPA under RCRA Section 3006(b), 42 U.S.C. 6926(b), must maintain a hazardous waste program that is equivalent to, consistent with, and no less stringent than the Federal Hazardous Waste Program. As the Federal program changes, States must change their programs and ask EPA to authorize the changes. Changes to State programs may be necessary when

Federal or State statutory or regulatory authority is modified or when certain other changes occur. Most commonly, States must change their programs because of changes to EPA's regulations in 40 Code of Federal Regulations (CFR) parts 124, 260–266, 268, 270, 273, and 279.

B. What Is the Effect of Today's Authorization Decision?

The effect of this decision is that a facility in Louisiana subject to RCRA will now have to comply with the authorized State requirements instead of the equivalent Federal requirements in order to comply with RCRA. Louisiana has enforcement responsibilities under its State hazardous waste program for violations of such program, but EPA retains its authority under RCRA sections 3007, 3008, 3013, and 7003, which include, among others, authority to: (1) Do inspections, and require monitoring, tests, analyses or reports, (2) enforce RCRA requirements and suspend or revoke permits and (3) take enforcement actions after notice to, and consultation with the State. This action does not impose additional requirements on the regulated community because the regulations for which Louisiana is being authorized by today's action are already effective, and are not changed by today's action.

C. What Is the History of Louisiana's Final Authorization and Its Revisions?

The State of Louisiana initially received final authorization on February 7, 1985 (50 FR 3348), to implement its base Hazardous Waste Management Program. Since the Base Program authorization, the following are publication dates for the State of Louisiana's program revisions: November 28, 1989 (54 FR 48889) effective January 29, 1990; August 26, 1991 (56 FR 41958) effective August 26, 1991; November 7, 1994 (59 FR 55368) effective January 23, 1995; December 23, 1994 (59 FR 66200) effective March 8, 1995; there were technical corrections made on January 23, 1995 (60 FR 4380), effective January 23, 1995; and another technical correction was made on April 11, 1995 (60 FR 18360) effective April 11, 1995. We authorized the following additional revisions: October 17, 1995 (60 FR 53704) effective January 2, 1996; March 28, 1996 (61 FR 13777) effective June 11, 1996; December 29, 1997 (62 FR 67572) effective March 16, 1998; October 23, 1998 (63 FR 56830) effective December 22, 1998; August 25, 1999 (64 FR 46302) effective October 25, 1999 ; September 2, 1999 (64 FR 48099) effective November 1, 1999; February 28, 2000 (65 FR 10411) effective April 28, 2000 and January 2, 2001 (66 FR 23) effective March 5, 2001. On October 23, 2001, April 4, 2003, and June 9, 2003, Louisiana applied for approval of its program revisions for RCRA Clusters X, XI and XII. In this application, Louisiana is seeking approval of RCRA Clusters X, XI and XII in accordance with 40 CFR 271.21(b)(3).

Since 1979, the State of Louisiana, through the Louisiana Department of Natural Resources, has conducted a program designed to regulate those who generate, transport, treat, store, dispose of or recycle hazardous waste. During the 1983 Regular Session of the Louisiana Legislature, Act 97, the Environmental Affairs Act, was adopted. This Act amended and reenacted Louisiana Revised Statutes (LRS) 30:1051 *et seq.* and also created the Louisiana Department of Environmental Quality (LDEQ). During the 1999 Regular Session of Louisiana Legislature, Act 303 revised the LRS 30:2011 *et seq.*, allowing LDEQ to re-engineer itself to perform more efficiently and to meet its strategic goals.

Act 97 transferred the duties and previously delegated responsibilities of the Department of Natural Resources, Office of Environmental Affairs, to LDEQ. The LDEQ and the Department of Natural Resources, Office of Conservation, has a memorandum of understanding that outlines the protocol for activities associated with the exploration, development, or production of oil, gas, or geothermal resources. The LDEQ has lead agency jurisdictional authority for administering the RCRA Subtitle C program in Louisiana. The LDEQ is designated to facilitate communication between the EPA and the State.

The State law governing the generation, transportation, treatment, storage and disposal of hazardous waste can be found in LRS 30:2171–2205. This part may be cited as the "Louisiana Hazardous Waste Control Law." The laws governing hazardous waste should be viewed as part of a larger framework of environmental laws specified in Title 30, Subtitle II Louisiana Revised Statutes. The State of Louisiana adopted the Federal regulations for Cluster X , XI and XII promulgated from July 1, 1999 through June 30, 2002, and the State's regulations which became effective May 20, 1997, June 20, 1998, September 20, 1998, March 20, 1999, August 20, 1999, March 20, 2001, April 20, 2001, July 20, 2001, and March 20, 2003.

State Initiated Changes

The State has made amendments to the provisions listed in the table which follows. These amendments correct typographical and/or printing errors, clarify and make the State's regulations more internally consistent. The State's laws and regulations, as amended by these provisions, provide authority which remains equivalent to and no less stringent than the Federal laws and regulations. These State initiated changes are submitted under the requirements of 40 CFR 271.21(a).

MANIFEST RULE CHANGES

State citation	Federal citation	Result of re-promulgated rule (amended/effective date January 20, 2001)
903	n/a	repealed.
905.A.4	264.71(a)	from more stringent to equivalent.
905.A.5	264.71(a)(5)	from more stringent to equivalent.
905.D	264.71(d)	changed the offices to reflect the re-engineered offices.
907.B	264.72(b)	from more stringent to equivalent.
913	n/a	repealed.
915	n/a	repealed.
917	n/a	repealed.
919	n/a	repealed.
1107.A.8	n/a	reserved.
1107.C	262.22	copies of manifest will no longer be sent to the State.
111.C.1	n/a	Reserved .
Chapter 11. Appendix A		Appendix to Part 262 equivalent.
1309.F	n/a	deleted.

MANIFEST RULE CHANGES—Continued

State citation	Federal citation	Result of re-promulgated rule (amended/effective date January 20, 2001)
1309.G	n/a	deleted.

D. What Changes Are We Authorizing With Today's Action?

Louisiana applied for final approval of its revision to its hazardous waste program in accordance with 40 CFR 271.21. Louisiana's revisions consist of regulations which specifically govern RCRA Clusters X, XI and XII rules. Louisiana requirements are included in a chart with this document. The EPA is now making a final decision, subject to receipt of written adverse comments that oppose this action, that Louisiana's hazardous waste program revision satisfies the requirements necessary to qualify for final authorization. Therefore, we grant Louisiana final authorization for the following program revisions:

Federal citation	State analog
1. Clarification of Standards for Hazardous Waste LDR Treatment Variances, [62 FR 64504] December 5, 1997. (Checklist 162).	Louisiana Revised States (LRS) 30: Section 2180 *et seq.*, as amended May 7, 1996, effective May 7, 1996; Louisiana Hazardous Waste Regulations (LHWR) Sections 2231.C, 2231.D and 2231.G, as amended July 20, 2001, effective July 20, 2001.
2. Land Disposal Restrictions Phase IV—Final Rule Promulgating Treatment Standard for Metal Wastes and Mineral Processing Wastes; Mineral Processing Secondary Material and Bevill Exclusion Issues; Treatment Standards for Hazardous Soils, and Exclusion of Recycled Wood Preserving Wastewaters, [63 FR 28556] May 26, 1998. (Checklist 167 B).	LRS:30:2180 *et seq.*, as amended May 7, 1996; effective May 7, 1996; LHWR Sections 1109.E.1.e. 2223.J, 2236.C.1.a-b, 2245.C.3, Chapter 22. Table 2, and Chapter 49. Table 2, as amended March 20, 2001, effective March 20, 2001; 2223.J, as amended March 20, 1999, effective March 20, 1999; 2231.C–D and 221.G, as amended July 20, 2001, effective July 20, 2001.
3. Hazardous Waste Management System; Modification of the Hazardous Waste Program; Hazardous Waste Lamps, [64 FR 36466] July 6, 1999. (Checklist 181).	LRS:30:2180 *et seq.*, as amended May 7, 1996, effective May 7, 1996; LHWR Sections 105.D.7, 105.D.7.c-d, 305.C.11.b-d, 1501.C.11.b-d, 2201.1.I.5.b-d, 3801.A as amended September 20, 1998, effective September 20, 1998; 3801.B, as amended June 20, 1998, effective June 20, 1998; 3801.C–D, as amended April 20, 2001, effective April 20, 2001; 3803.A.1, 3803.B.2, 3803.B.3, 3805.A, 3807.A, as amended May 20, 1997, effective May 20, 1997; 3809.A, as amended June 20, 1998, effective June 20, 1998, 3809.B, as amended September 20, 1998, effective September 20, 1998, 3809.B.1–2, as amended March 20, 2001, 3809.C, as amended September 20, 198, effective September 20, 1998; 3809.C.1, as amended March 2001, effective March 20. 2001; 3809.C.2, as amended September 20, 1998, effective September 20, 1998; 3813.Definition—Lamps, as amended March 20, 2001, effective March 20, 2001; 3813.Definition—Large Quantity Handler of Universal Waste, as amended September 20, 1998, effective September 20, 1998 and 3813.Definition of small Quantity Handler; May 20, 1997, effective May 20, 1997; 3821.D, 3821.D.1, 3821.D.2. 3823.A.5, 3837, as amended March 20, 2001, effective March 20, 2001; 3813.Definitions—Universal Waste, as amended September 20, 1998, effective September 20, 1998; 3815.B, as amended May 20, 1997, effective May 20, 1997; 3821.D, 3821.D.1–2, and 3823.A.5, as amended March 20. 2001, effective March 20, 2001; 3837, as amended May 20, 1997, effective May 20, 1997, 3841.B.4, 3841.B.5, as amended September 20, 1998, effective September 20, 1998; 3843.D, 3843.D.1–2, 3845.A.5, as amended March 20, 2001, effective March 20, 2001; 3859, 3873.A, as amended May 20, 1997, effective May 20, 1997; 3883.A.1, as amended February 20, 1998, effective February 20, 1998; 4301.C.13.b-c, as amended March 20, 1999, effective March 20, 1999; and 4301.C.13.d, as amended August 20. 1999, effective August 20, 1999.
4. NESHAPS: Final Standards for Hazardous Air Pollutants for Hazardous Waste Combusters, [64 FR 52828; 64 FR 63209] September 30, 1999; and November 19, 1999. (Checklist 182).	LRS:30:2180 *et seq.*, as amended May 7, 1996, effective May 7, 1996; LHWR Sections 109 Definitions—Dioxins and furans (D/F), 109 Definitions—TEQ, 332.B.8, 322.L.9, 529.Intro, 529.F, 525.G, 537.D, 3001.B, 3001.B.1–2, 3001.B.2.a-d, 3001.C–D, 3001.D.1, 3001.D.1.a-D.2–3, 3001.D.3.a-D,3.b, 3001.E–G, 3001.H, 3003.C, 3003.C.1, 3011.C, 3011.C.1-3, 3011.D, 3025.B.1, 3025.B.2.a, 3025.B.2.a.Note, Chapter 30 Appendix H, 3105.B, 3105.B.1–2, 3105.C–E, 3115.E, 3203.Intro, 4513.B, 4513.B.1, 4513.B.2, 4513.C, and Chapter 49.Table 7, as amended March 20, 2001, effective March 20, 2001.
5. Land Disposal Restrictions Phase IV:–Final Rule Promulgating Treatment Standards for Metal Wastes and Mineral Processing Wastes; Mineral Processing Secondary Materials and Bevill Exclusion Issues; Treatment Standards for Hazardous Soils, and Exclusion of Recycled Wood Preserving Wastewaters, [64 FR 56469] October 20, 1999. (Checklist 183).	LRS:30:2180 *et seq.*, as amended May 7, 1996, effective May 7, 1996; LHWR Sections 1109.E.1.e, 2214, as amended March 20, 2001, effective March 20, 2001; 2223.J, as amended March 20, 1999, effective March 20, 1999; 2236.C.1.a-b, 2245.C.3, Chapter 22 Table 2, Chapter 22.Table 7, Chapter 31.Table 1, Chapter 49.Table 4, Chapter 49.Table 6 and Chapter 49.Table 2, as amended March 20, 2001, effective March 20, 2001.
6. Waste Water Treatment Sludges From the Metal Finishing Industry; 180-day Accumulation Time, [65 FR 12378] March 9, 2000. (Checklist 184).	LRS 30:2180 *et seq.*, as amended May 7, 1996, effective May 7, 1996; LHWR Sections 1109.E.1.e, as amended March 20, 2001, effective March 20, 2001, 1109.E.10, 1109.E.10.a-d, 1109.E.10.d.i(a)-(c), 1109.E.10.d.i(c).(i) and (ii), 1109.E.10.d.ii-v, 1109.E.11 and 1109.E.12, as amended July 20, 2001, effective July 20, 2001.

Federal citation	State analog
7. Organobromine Production Wastes; Identification and Listing of Hazardous Waste; Land Disposal Restrictions; Listing of CERCLA Hazardous Substances, Reportable Quantities; Final Rule, [65 FR 14472] March 17, 2000. (Checklist 185).	LRS:30.2180 *et seq.*, as amended May 7, 1996, effective May 7, 1996; LHWR Sections 1109.E.1.e, as amended March 20, 2001, effective March 20, 2001; 2223.J, as amended March 20, 1999, effective March 20, 1999; 2236.C.1.a-b, 2245.C.3, Chapter 22 Table 2, Chapter 49.Table 2, 2214, Chapter 22.Table 2, Chapter 22.Table 7, Chapter 31.Table 1, Chapter 49.Table 2, Chapter 49.Table 4, and Chapter 49.Table 6, as amended March 20, 2001, effective March 20, 2001.
8. Organobromines Production Wastes; Petroleum Refining Wastes; Identification and Listing of Hazardous Waste; Land Disposal Restrictions, Final Rule and Correcting Amendments, [64 FR 36365] June 8, 2000. (Checklist 187).	LRS:30.:2180 *et seq.*, as amended May 7, 1996, effective May 7, 1996; LHWR Section Chapter 49.Table 1, as amended March 20, 1999, effective March 20, 1999.
9. NESHAPS: Final Standards for Hazardous Air Pollutants for Hazardous Waste Combustor, [65 FR 42292] July 10, 2000. (Checklist 188).	LRS:30.:2180 *et seq.*, as amended through 2001 Regular Legislative Session; Louisiana Hazardous Waste Regulations (LHWR) Sections 4909.D.2.d, 3105.B.1, 3105.B.3, 321.C.10.a, as amended March 20, 2003, effective March 20, 2003.
10. NESHAPS: Second Technical Correction Vacatur, [66 FR 27270] May 14, 2001. (Checklist 188.1).	LRS:30.:2180 *et seq.*, as amended through 2001 Regular Legislative Session; Louisiana Hazardous Waste Regulations (LHWR) Sections 4909.D.2.d, 3105.B.1, 3105.B.3, 321.C.10.a as amended March 20, 2003, effective March 20. 2003.
11. NESHAPS; Final Standards for Hazardous Air Pollutants for Hazardous Waste Combustor: Direct Final Rule [66 FR 35087] July 3, 2001. (Checklist 188.2).	LRS:30.:2180 *et seq.*, as amended through 2001 Regular Legislative Session; Louisiana Hazardous Waste Regulations (LHWR) Sections 4909.D.2.d, 3105.B.1, 3105.B.3, 321.C.10.a as amended March 20, 2003, effective March 20. 2003.
12. Chlorinated Aliphatics Listing and LDRs for Newly Identified Wastes, [65 FR 67068] November 8, 2000. (Checklist 189).	LRS:30:2180 *et seq.*, as amended through 2001 Regular Legislative Session; Louisiana Hazardous Waste Regulations (LHWR) Sections 4901.C Table 2, 4901.G Table 6, 3105 Table 1, Sections 2213.A–B, 2213.B.1–5, 2213.C–D, 2213.D.1, Chapter 22 Table 2, and Chapter 22 Table 7, as amended March 20, 2003, effective March 20, 2003.
13. Land Disposal Restrictions Phase IV—Deferral for PCBs in Soil, [65 FR 8137] December 26, 2000. (Checklist 190).	LRS:30:2180 *et seq.*, as amended through 2001 Regular Legislative Session; Louisiana Hazardous Waste Regulations (LHWR) Sections 2215.A–B, 2215.B.1–4. Chapter 22 Table 7, 2236.D, and 2215 Appendix Table 9 as amended March 20. 2003, effective March 20, 2003.
14. Mixed Waste Rule, [66 FR 27218] May 16, 2001. (Checklist 191).	LRS:30:2180 *et seq.*, as amended through 2001 Regular Legislative Session; Louisiana Hazardous Waste Regulations (LHWR) Sections 4201, 109, 4203, 4205. 4207.A–B, 4207.B.1–5, 4209, 4211.A, 4211.A.1, 4211.A.1.a-c, 4211.A.2, 4211.B. 4213.A, 4213.A.1–2, 4213.A.1–4, 4213.B, 4215.A, 4215.A.1–4, 4215.B, 4217.A–B. 4219.A, 4221.A, 4223.A, 4223.A.1, 4223.A.2, 4225.A–4, 4227, 4229.A, 4231.A, 4231.A.1–4, 4233.A, 4235.A, 4235.A.1–3, 4235.A.3, 4237.A, 4237.B, 4237.B.1–7, 4239.A, 4239.A.1–5, 4241.A.1, 4241.A.1.a-c, 4241.A.2, 4241.B, 4243.A, 4243.A.2, 4243.A.2.a-d, and 4243.B–C, as amended March 20, 2003, effective March 20. 2003.
15. Mixture and Derived-From Rules Revisions, [66 FR 27266] May 16,2001. (Checklist 192 A).	LRS:30:2180 *et seq.*, as amended through 2001 Regular Legislative Session; Louisiana Hazardous Waste Regulations (LHWR) Sections 109.Hazardous Waste.2.c, 109.HW.4.f, and 109 Hazardous Waste.4.g, as amended March 20, 2003, effective March 20, 2003.
16. Land Disposal Restrictions Correction, [66 FR 27266] May 16, 2001. (Checklist 192 B).	LRS:30:2180 *et seq.*, as amended through 2001 Regular Legislative Session; Louisiana Hazardous Waste Regulations (LHWR) Section Chapter 22 Table 11, as amended March 20, 2003, effective March 20, 2003.
17. Change of Official EPA Mailing Address, [66 FR 34374] June 28, 2001. (Checklist 193).	LRS:30:2180 *et seq.*, as amended through 2001 Regular Legislative Session; Louisiana Hazardous Waste Regulations (LHWR) Section 110.A.11. as amended March 20, 2003, effective March 20, 2003.
18. Mixture and Derived-From Rules Revision II, [66 FR 50334] October 3, 2001. (Checklist 194).	LRS:30:2180 *et seq.*, as amended through 2001 Regular Legislative Session; Louisiana Hazardous Waste Regulations (LHWR) Sections 109 Hazardous Waste.2.c-vii and 109 Hazardous Waste.4.f, as amended March 20. 2003, effective March 20. 2003.
19. Inorganic Chemical Manufacturing Waste Identification and Listing, [66 FR 58258]; [67 FR 17119] November 20, 2001; April 9, 2002. (Checklist 195).	LRS:30:2180 *et seq.*, as amended through 2001 Regular Legislative Session; Louisiana Hazardous Waste Regulations (LHWR) Sections 105.D.2.p, 105.D.2.p.i, 105.D.2.p.ii-v, 4901.C.Table 2, 4901.G.Table 6, 2219.A, 2219.B, 2219.B.1–5, 2219.C, and 22 Table 2, as amended March 20, 2003, effective March 20. 2003.
20. Corrective Action Management Units (CAMU), [67 FR 2962) January 22, 2002. (Checklist 196).	LRS:30:2180 *et seq.*, as amended through 2001 Regular Legislative Session; Louisiana Hazardous Waste Regulations (LHWR) Sections 109, 2601.A&B, 2602. 2602.A, 2603.A, 2603.A.1, 2603.A.1.b, 2603.A.1.b.i-ii, 2603.A.1.b-c, 2603.A.3. 2603.A.3.a-d, 2603.A.4–5, 2603.B, 2603.b.1, 2603.B.2, 2603.B.326.3.C, 2603.C.2. 2603.C.4–7, 2603.D. 2603.D.1–3, 2603.E, 2603.E.1–3, 2603.E.3.b, 2603.E.3.b.i-ii, 2603.E.4, 2603.E.4.a, 2603.E.4.a.i, 2603.E.4.a.i(a)-(b), 2603.E.4.a.ii-iii, 2603.E.4.b, 2603.E.4.c-d, 2603.E.4.d.i-ii, 2603.E.4.d.iii-vi, 2603.E.4.e, 2603.E.4.e.i-v, 2603.E.4.e.v(a)-(g), 2603.E.5, 2603.E.5.a-c, 2603.E.6, 2603.E.6, 2603.E.6.a, 2603.E.6.a.i-ii, 2603.E.b, 2603.E.6.b.i-ii, 2603.E.6.c, 2603.E.6.c.i-vi, 2603.E.6.d, 2603.E.6.d.i, 2603.E.6.i.(a)-(e), 2603.E.6.d.ii, 2603.E.6.e, 2603.F, 2603.F.1-2, 2603.F.2.a-b, 2603.G–K, 2605.A, 2607.A, 2607.A.12607.A.2, 2607.A.2.a-c, 2607.A.3, 2607.B–E, 2607.E.1-6, 2607.F and 2607.G, as amended March 20, 2003, effective March 20, 2003.

Federal citation	State analog
21. Hazardous Air Pollutant Standards for Combustors; Interim Standards, [67 FR 6792] February 1, 2002. (Checklist 197).	LRS:30:2180 *et seq.*, as amended through 2001 Regular Legislative Session; Louisiana Hazardous Waste Regulations (LHWR) Sections 3105.B.1, 3105.B.4, 3105.B.4.a-b, 4513.B.1, 4513.B.3, 3001B.2.a-d, 529.F, 535.G, 3115.E, 537.D, 2001.A, 2001.A.1, 2001.A.1.a, 2001.A.1.a.i-ii, 2001.A.1.b, 2001A.1.b.i. 2001.A.1.b.i(a)-(b), 2001.A1.b.ii, 2001.A.1.b.ii(a), 2001.A.1.b.ii(b), 2001.A.1.c, 2001.A.1.c.i-ii, 2001.A.2, 2001.A.2.a, 2001.A.2.a.i-ii, 2001.A.2.b. 2001.A.2.b.i(a), 2001.A.2.b.i.(b), 2001.A.2.b.ii, 2001.A.2.b.ii(a), 2001.A.2.b.ii(b), 2001.A.2.c, 2001.A.2.c.i-ii, 2001.B, 2001.B.1, 2001.B.1.a-b, and 2001.B.2, as amended March 20, 2003, effective March 20, 2003.
22. Hazardous Air Pollutant Standards for Combusters; Corrections, [67 FR 6968] February 14, 2002. (Checklist 198).	LRS:30:2180 *et seq.*, as amended through 2001 Regular Legislative Session; Louisiana Hazardous Waste Regulations (LHWR) Sections 3001.A, 3001.B.1, 3001.D.1.a.ii, 3001.D.2.a-b, 3001.D.3, 3001.D.3.a, 3001.D.3.a.iv, and 321.C.10.a, as amended March 20, 2003, effective March 20, 2003.
23. Vacatur of Mineral Processing Spent Materials Being Reclaimed as Solid Wastes and TCLP Use with MGP Waste, [67 FR 11251] March 13, 2002. (Checklist 199).	LRS:30:2180 *et seq.*, as amended through 2001 Regular Legislative Session; Louisiana Hazardous Waste Regulations (LHWR) Sections 109 Solid Waste.3.c, 105.D.1.p, 105.D.1.p.i-iv, 105.D.1.p.iv(a)-(c)(iv), 105.D.1.p.v-vi; and 4903.E.1, as amended March 20, 2003, effective March 20, 2003.

E. What Decision Has EPA Made?

We conclude that Louisiana's application to revise its authorized program meets the statutory and regulatory requirements established by RCRA. Therefore, we grant Louisiana final authorization to incorporate the changes described in the authorization application into its hazardous waste program. Louisiana has responsibility for permitting treatment, storage, and disposal facilities within its borders (except in Indian Country) and for carrying out the aspects of the RCRA program described in its revised program application, subject to the limitations of Hazardous and Solid Waste Amendments of 1984 (HSWA). New Federal requirements and prohibitions imposed by Federal regulations that EPA promulgates under the authority of HSWA take effect in authorized States before they are authorized for the requirements. Thus, EPA will implement those requirements and prohibitions in Louisiana, including issuing permits, until the State is granted authorization to do so.

F. How Do the Revised State Rules Differ From the Federal Rules?

In this authorization of the State of Louisiana's program revisions for RCRA Clusters X, XI and XII, there are no provisions that are more stringent or broader in scope. The State's regulations are equivalent and consistent with the Federal regulations.

G. Who Handles Permits After This Authorization Takes Effect?

The EPA will administer any RCRA permits or portions of permits it has issued to facilities in the State until the State becomes authorized. At the time the State program is authorized for new rules, EPA will transfer all permits or portions of permits issued by EPA to the State. The EPA will not issue any more permits or portions of permits for the provisions listed in this document after the effective date of this authorization. The EPA will continue to implement and issue permits for HSWA requirements for which the State is not yet authorized.

H. Why Wasn't There a Proposed Rule Before Today's Notice?

The EPA is authorizing the State's changes through this immediate final action and is publishing this rule without a prior proposal to authorize the changes because EPA believes it is not controversial and we expect no comments that oppose this action. The EPA is providing an opportunity for public comment now. In addition, in the proposed rules section of today's **Federal Register**, we are publishing a separate document that proposes to authorize the State changes. If EPA receives comments opposing this authorization, that document will serve as a proposal to authorize the changes.

I. Where Do I Send My Comments and When Are They Due?

You should send written comments to Alima Patterson, Regional Authorization Coordinator, State/Tribal Oversight Section (6PD-O), Multimedia Planning and Permitting Division, EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, (214) 665–8533. You may submit comments electronically to Patterson.alima@epa.gov. Please refer to Docket Number LA–01–03. We must receive your comments by January 8, 2004. You may not have an opportunity to comment again. If you want to comment on this action, you must do so at this time.

J. What Happens if EPA Receives Comments Opposing This Action?

If EPA receives comments opposing this action, we will publish a second **Federal Register** document before the immediate final rule takes effect. The second document may withdraw the immediate final rule before it takes effect and a separate document in the proposed rules section of this **Federal Register** will serve as a proposal to authorize the changes or the document may identify the issues raised, respond to comments, and affirm that the immediate final rule will take effect February 9, 2004.

K. When Will This Approval Take Effect?

Unless EPA receives comments opposing this action, this final authorization approval will become effective without further notice on February 9, 2004.

L. Where Can I Review the State's Application?

You can view and copy the State of Louisiana's application from 8:30 a.m. to 4 p.m. Monday through Friday at the following addresses: Louisiana Department of Environmental Quality, 602 N. Fifth Street, Baton Rouge, Louisiana 70884–2178, (225) 219–3559 and EPA, Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, (214) 665–6444. For further information contact Alima Patterson, Region 6 Regional Authorization Coordinator, State/Tribal Oversight Section (6PD-O), Multimedia Planning and Permitting Division, EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, (214) 665–8533.

M. How Does Today's Action Affect Indian Country in Louisiana?

Louisiana is not authorized to carry out its Hazardous Waste Program in Indian country within the State. This authority remains with EPA. Therefore, this action has no effect on Indian country.

N. What Is Codification?

Codification is the process of placing the State's statutes and regulations that comprise the State's authorized hazardous waste program into the Code of Federal Regulations. The EPA does this by referencing the authorized State rules in 40 Code of Federal Regulations part 272. The EPA reserves the amendment of 40 CFR part 272, subpart T for this codification of Louisiana's program changes until a later date.

Administrative Requirements

The Office of Management and Budget has exempted this action from the requirements of Executive Order 12866 (58 FR 51735, October 4, 1993), and therefore this action is not subject to review by OMB. This action authorizes State requirements for the purpose of RCRA 3006 and imposes no additional requirements beyond those imposed by State law. Accordingly, I certify that this action will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this action authorizes pre-existing requirements under State law and does not impose any additional enforceable duty beyond that required by State law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). For the same reason, this action also does not significantly or uniquely affect the communities of Tribal governments, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely authorizes State requirements as part of the State RCRA hazardous waste program without altering the relationship or the distribution of power and responsibilities established by RCRA. This action also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant and it does not make decisions based on environmental health or safety risks. This rule is not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355) May 22, 2001 because it is not a significant regulatory action under Executive Order 12866. Under RCRA section 3006(b), EPA grants a State's application for authorization as long as the State meets the criteria required by RCRA. It would thus be inconsistent with applicable law for EPA, when it reviews a State authorization application, to require the use of any particular voluntary consensus standard in place of another standard that otherwise satisfies the requirements of RCRA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings issued under the Executive Order.

This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this document and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2). This action will be effective on February 9, 2004.

List of Subjects in 40 CFR Part 271

Administrative practice and procedure, Confidential business information, Hazardous materials transportation, Hazardous waste, Indian lands, Intergovernmental relations, Penalties, Reporting and Recordkeeping requirements, Water pollution control, Water supply.

Authority: This notice is issued under the authority of sections 2002(a), 3006, and 7004(b) of the Solid Waste Disposal Act as amended, 42 U.S.C. 6912(a), 6926, 6974(b).

Dated: November 25, 2003.

Richard E. Greene,

Regional Administrator, Region 6.

[FR Doc. 03–30511 Filed 12–8–03; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 2, 15, 18, 90 and 95

[ET Docket Nos. 01–278 and 95–19; FCC 03–149]

Radio Frequency Device Rules

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document relaxes and updates certain regulations for unlicensed devices, to allow for improved operations. It also grants a petition for reconsideration concerning the acceptance of foreign laboratory accreditations and grants a petition for declaratory ruling concerning the certification requirements for transmitters in the private land mobile radio services. The rules will permit the development of new types of unlicensed devices while protecting authorized users of the radio spectrum from harmful interference.

DATES: Effective January 8, 2004. The incorporation by reference of certain publications in this rule is approved by the Director of the Federal Register as of January 8, 2004.

FOR FURTHER INFORMATION CONTACT: Hugh L. Van Tuyl, Office of Engineering and Technology, (202) 418–7506, TTY (202) 418–2989, e-mail: *Hugh.VanTuyl@fcc.gov*.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Second Report and Order and Memorandum Opinion and Order*, ET Docket Nos. 01–278 and 95–19, FCC 03–149, adopted June 25, 2003, and released July 17, 2003. The full text of this document is available for inspection and copying during regular business hours in the FCC Reference Center (Room CY–A257), 445 12th Street, SW., Washington, DC 20554. The complete text of this document also may be purchased from the Commission's copy contractor, Qualex International, 445 12th Street, SW., Room, CY–B402, Washington, DC 20554. The full text may also be downloaded at: *http://www.fcc.gov*. To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio

format), send an e-mail to *fcc504@fcc.gov* or call the FCC Consumer & Governmental Affairs Bureau at (202) 418–0531 (voice), (202) 418–7365 (TTY).

Summary of the Second Report and Order and Memorandum Opinion and Order

1. In this Second Report and Order and Memorandum Opinion and Order, the Commission is updating certain regulations for unlicensed radio frequency devices contained in parts 2, 15 and 18 of our rules. Specifically, the Commission is: (1) Changing certain emission levels in the restricted bands above 38.6 GHz; (2) eliminating the prohibition on data transmissions and making other changes to rules governing part 15 remote control devices; (3) modifying the rules for radio frequency identification systems to allow for improved operation; (4) simplifying the labeling requirement for manufacturer self-authorized equipment; and (5) making other changes to update and correct our rules. Because of certain decisions in this Second Report and Order, the Commission is granting a petition for reconsideration filed by the Information Technology Industry Council (ITI) in ET Docket No. 95–19 to the extent indicated herein and granting a petition for declaratory ruling filed by M/A-COM Private Radio Systems, Inc. to the extent indicated herein.

2. In recent years, there has been a significant increase in the proliferation of unlicensed radio frequency devices that are regulated under part 15 of our rules (part 15 devices). Such devices are increasingly relied upon for many everyday functions in consumers' lives. Examples of common part 15 devices include cordless phones, computers, baby monitors, and garage door openers. The range of applications and technologies for these types of devices continues to evolve at a rapid pace. For example, digital processing speeds of personal computers are above 2400 MHz as compared to only 25 MHz about 10 years ago. Cordless telephones now operate at higher frequencies, with digital modulation techniques providing users with improved performance and additional service features. In addition, technological innovations are now being employed to develop new part 15 equipment and systems for business and professional applications, *e.g.* high speed, high capacity wireless local area networks (LANs). The part 15 rules have been highly successful in permitting the development of new types of unlicensed devices while protecting authorized users of the radio spectrum from harmful interference. Many millions of part 15 devices operate at the current limits without any significant interference problems.

3. On October 15, 2001, the Commission adopted a *Notice of Proposed Rule Making and Order* (*NPRM*), 66 FR 59209, that proposed a number of changes to part 15 and other parts of the rules. These proposals were based on recommendations contained within the *Biennial Regulatory Review 2000 Updated Staff Report*, two petitions for rule making concerning radio frequency identification systems, and other staff recommendations. We received 153 comments and 58 reply comments in response to the *NPRM*. On July 12, 2002, the Commission adopted a *First Report and Order*, 67 FR 48989, in this proceeding that required radar detectors to comply with the part 15 emission limits for unintentional radiators with regard to emissions in the 11.7–12.2 GHz band to protect very small aperture satellite terminals (VSATs) from interference. This Second Report and Order and Memorandum Opinion and Order addresses many of the issues raised in the *NPRM* that were not addressed in the *First Report and Order*. We plan to address the issues of radio frequency identification systems in the 425–435 MHz band and further changes to the emission limits in the restricted band above 38.6 GHz other than those discussed herein at a later date.

Restricted Frequency Bands Above 38.6 GHz

4. Specific frequency bands are designated as restricted bands in part 15 to protect certain sensitive radio services from interference, such as those that protect safety-of-life or those that use very low received levels, such as satellite downlinks or radio astronomy. Only spurious emissions are permitted in restricted bands, and such emissions must comply with the limits in § 15.209. The entire frequency range above 38.6 GHz is a restricted band, although there is an exception that permits transmitters to operate in the 46.7–46.9 GHz, 76–77 GHz and 57–64 GHz bands. At the time this frequency range above 38.6 GHz was designated as a restricted band, there was no requirement in our rules to make measurements above 40 GHz because of limitations in measurement technology. Designating the entire frequency range above 38.6 GHz as restricted, rather than restricting designated segments, was simply a matter of administrative convenience and had no impact on manufacturers because measurements were not required at those frequencies. However, due to advancements in measurement technology, the Commission now requires measurements above 40 GHz for some devices, so these devices must now comply with the restricted band limits.

5. In the *NPRM*, the Commission sought comment on the need for changes to the restricted bands above 38.6 GHz and the potential benefits to manufacturers of such changes. This Commission stated its belief that it is not necessary to restrict the entire band above 38.6 GHz because only certain portions of the band contain sensitive radio services that require this protection, such as those that protect safety-of-life or those that use very low received levels, such as satellite downlinks or radio astronomy. The Commission also stated in the *NPRM* that restricting the entire band above 38.6 GHz makes compliance more difficult to achieve for certain devices because they must comply with tighter harmonic limits than would otherwise apply if the band were not restricted. For example, the limit on harmonic emissions from a transmitter operating in the 24.0–24.25 GHz band under § 15.249 of the rules is 2500 μV/m at 3 meters. However, because the harmonics from a device operating in this band fall in the designated restricted band above 38.6 GHz, they must actually comply with a tighter limit of 500 μV/m at 3 meters. This conflict arose as a result of a 1995 rule change that required spurious emissions from transmitters operating above 10 GHz to be measured at frequencies above 40 GHz. Prior to that date, measurements were not required above 40 GHz for such transmitters, so there was effectively no limit on radiated emissions above 40 GHz.

6. Safety Warning System, L.C. (SWS), the Short Range Automotive Radar Frequency Allocation Group (SARA) and Cisco Systems, Inc. (Cisco) support modifying the restricted band above 38.6 GHz. SWS states that there is no need for a restricted band at the second and third harmonics of the 24 GHz band, and that the current restricted band bars socially valuable products at a reasonable price from the market. SARA states that the Commission should lift the blanket restricted status of frequencies above 38.6 GHz and maintain protection only for bands with sensitive services. It states that at a minimum, the Commission should lift the restriction at the third harmonic of 24 GHz, *i.e.* 72 GHz, because that is the most difficult harmonic to suppress and that lifting that restriction would not adversely affect any passive services. SARA claims that complying with the restricted band harmonic limits can

double the cost of a 24 GHz transmitter. The National Aeronautics and Space Administration (NASA) submitted a list of 13 bands that it believes should be designated as restricted because they are used for passive sensing.

7. We are eliminating the requirement that the second and third harmonics from field disturbance sensors operating under § 15.245 in the 24.075–24.175 GHz band, specifically harmonics in the 48.15–48.35 GHz and 72.225–72.525 GHz bands, must comply with the restricted band limits in § 15.209. We are also eliminating the requirement that the second and third harmonics from devices operating under § 15.249 in the 24.0–24.25 GHz band, specifically harmonics in the 48.0–48.5 GHz and 72.0–72.75 GHz bands, must comply with the restricted band limits in § 15.209. These changes will resolve the current discrepancy in our rules concerning the harmonic emission limits for transmitters in the 24 GHz band. It will permit second and third harmonic emission levels of 2500 μV/m at 3 meters from devices operating in the 24.0–24.5 GHz band under the provisions of 15.249 of the rules, and 25,000 μV/m at 3 meters from disturbance sensors operating in the 24.075–24.175 GHz band under § 15.245 of the rules. These changes will benefit manufacturers because equipment will no longer have to meet limits that are tighter than necessary to control interference. These changes will not result in interference to Federal Government operations because there are currently no such operations in the 48.0–48.5 GHz or 72.0–72.75 GHz bands that would be adversely affected by these changes. In addition, there are currently no non-government operations in these bands. We note that there is a pending proceeding that proposes to change from uplinks to downlinks the Fixed Satellite Service allocation in the 71–75.5 GHz band and the Mobile Satellite Service allocation in the 71–74 GHz band. We do not expect that the changes we are adopting would affect any future operations in the 72.0–72.75 GHz band, even if this band were reallocated for satellite downlinks, because the high propagation losses and directivity of signals at these frequencies would significantly attenuate unwanted signals at a satellite receive site. We believe that there may be additional bands above 38.6 GHz which need not be designated as restricted because they do not contain services that require protection. We are continuing our discussions with NTIA to determine which bands above 38.6 GHz should continue to be designated as restricted and we defer a decision on this matter to a later date.

Data Transmission by Remote Control Devices

8. Section 15.231 of the rules allows the operation of remote control devices in the 40.66–40.70 MHz band and at any frequency above 70 MHz, except in designated restricted bands. There are two separate provisions for operation under this section. The first provision, in paragraph (a) of this rule section, contains field strength limits for devices that transmit control signals, such as those used with alarm systems, door openers and remote switches. A device operated under this paragraph must cease transmission within 5 seconds after being activated automatically or after a manually operated switch is released. Continuous transmissions such as voice and video are not permitted. Data transmissions are permitted only to identify specific transmitters in a system, but no additional data may be sent. For example, a device could transmit a warning when the pressure of a tire is low but could not transmit the actual pressure level, or could remotely activate a thermostat but not transmit the desired temperature setting information. The rule also prohibits periodic transmissions at regular predetermined intervals, although one transmission of not more than one second is permitted once per hour per transmitter in a system to verify the integrity of security transmitters. A device that is employed for radio control purposes during emergencies involving fire, security and safety of life may transmit continuously to signal an alarm. The second provision, in paragraph (e) of this section, allows any type of transmission, including data and transmissions at regular periodic intervals. However, the provisions of this paragraph specify lower field strength limits than paragraph (a). In addition, the provisions of this paragraph limit transmissions to no more than one second, with a silent period between transmissions of at least 30 times the duration of the transmission, but in no case less than 10 seconds. The field strength limits for remote control devices specified in paragraphs (a) and (e) are based on the average value of the measured emissions. For devices that use pulsed emissions, the field strength is determined by averaging over one complete pulse train, including blanking intervals, as long as the pulse train does not exceed 100 milliseconds. In cases where the pulse train exceeds 100 milliseconds, the field strength is determined by averaging over the 100 millisecond interval that produces the maximum value.

9. In the *NPRM*, the Commission proposed to allow data transmissions by remote control devices operating under § 15.231(a) of the rules, stating that the prohibition on data transmissions appears to be unnecessarily constraining and can be an impediment to the development of new types of devices, and that removing this restriction would not result in an increased potential for harmful interference. It also proposed to remove the prohibition on voice, video and continuous transmissions and on the radio control of toys, because data representing voice or video has no greater interference potential than any other type of data, so there is no need to expressly prohibit them. The Commission sought comment on the potential benefits of such changes to manufacturers. It also sought comment on whether allowing data transmissions would result in an increased proliferation of devices or in devices transmitting for a greater amount of time, and whether there is a need to modify the timing requirements in § 15.231 to avoid interference to other radio services.

10. ADEMCO, Cisco, Enalasys, Interlogix, ITI, JCI, Lifeline, Linear and Mattel all support removing the restriction on data transmission by remote control devices. Enalasys submits that removing this restriction will allow manufacturers to make more flexible and imaginative low power remote control devices. JCI states that permitting data transmissions would eliminate confusion about distinguishing between data and recognition codes, which are actually a form of data. ADEMCO believes that permitting data transmissions would enable new products such as comprehensive wireless displays. It also states that the proposed changes would provide for advanced user interfaces, better control capability, improvements in the installation process, and a higher level of security to residential and business premises. Lifeline states that its emergency alert transmitters designed for use by persons living alone would be more useful if voice and data transmissions were permitted, because they would be able to transmit medical data such as blood pressure. Lifeline, Linear, JCI and Mattel support permitting voice transmissions by remote control devices, stating that this change would make devices more useful. JCI and Mattel support permitting video transmissions. Mattel states that this change would permit devices such as video baby monitors to

operate at 300 MHz. It also notes that the proposed elimination of the prohibition on radio control toys would allow for increased bandwidth and multiple receivers needed to permit racing of several remote control cars. Mattel believes that harmful interference is unlikely from such applications because the devices would be battery operated with low radiated radio frequency power. Ademco does not believe that the Commission should remove the restriction on radio control toys because predicted intensive and repeated use of radio control toys could interrupt security, safety and other vital applications of remote control devices. Cisco and ITI state that permitting a limited data stream for remote control devices would not lead to an increase in interference. Cisco notes that the interference potential is a function of the field strength levels and transmission duration and not the type of information being sent. The National Telecommunications and Information Administration (NTIA) expresses concern about the Commission's proposed changes. It states that under the proposed rules, systems using voice and data would proliferate, and that because the only timing restriction would be to turn off after five seconds, some devices could be transmitting virtually all the time. It believes that the increased transmission time of such devices as compared to devices that transmit short-duration control signals would increase the likelihood of interference to licensed services.

11. Several parties recommend rule changes beyond those proposed in the *NPRM*. CEA requests that the Commission allow duty cycle averaging over a one second interval instead of the 100 millisecond interval currently specified in the rules, because this would allow for the longer transmissions necessary to complete the setup, synchronization, transmitter identification and sending of a string of data. Enalasys wants the Commission to permit devices used only by trained operators to operate with 10 dB higher power than currently permitted. JCI wants the Commission to reevaluate its policy of permitting more rapid duty cycles or continuous operation only during emergencies involving fire, security or safety of life. It states that the Commission should permit more rapid duty cycles to report on additional conditions that might endanger property, machinery or the operation of systems. JCI believes that requiring transmissions to cease after five seconds is arbitrary, and believes the Commission should delegate authority to the Office of Engineering and Technology (OET) to waive this requirement at its discretion, although it did not suggest any specific standards that should be considered in granting waivers. Interlogix wants the Commission to permit devices to operate with a total of two seconds of polling time per hour, with no limit on the number of individual transmissions, because it will allow more useful information to be sent, such as the time of entry/exit from a building or the identity of a person entering or leaving. Interlogix also wants the five second transmission time permitted by the rules to be the total transmission time excluding the "off" times between pulses, because it claims that the rule was designed to allow five seconds of continuous transmission, so excluding the "off" times between pulses would allow the same transmission time that the rule originally intended. Interlogix also wants professional installers to be permitted to automatically initiate transmissions longer than five seconds during the set-up of equipment because sophisticated systems often require longer transmissions to initialize them. Ademco supports the Interlogix proposal to allow a total transmission time of two seconds per hour for polling, but it disagrees with both Interlogix and JCI that the five second time limit for transmissions should be changed. It states that this rule is effective in ensuring a quiet band and promotes interference-free operation of part 15 devices. Ademco disagrees with CEA that the duty cycle averaging time should be increased to one second, because it would be contrary to the short-burst principal underlying the shared used of spectrum by devices operating pursuant to the rules. It also disagrees with Enalasys that higher power should be permitted for devices under the control of trained operators because any type of high power operation is incompatible with existing part 15 uses.

12. We find that the restriction on data transmissions by remote control devices in § 15.231(a) should be removed. As noted by the commenting parties, this change will allow manufacturers to make more flexible, imaginative and useful remote control devices. It is not practical to prohibit all data transmissions as NTIA requested. Virtually all modern remote control devices transmit a string of bits, and bits representing identification codes are indistinguishable from bits representing information. Maintaining the prohibition on data transmission inhibits the development of improved devices that pose no significant risk of harmful interference. We note that the interference potential of a device is a function of the field strength and duration of the transmission, rather than the type of information being sent; and, we are not changing the field strength or transmission timing limits. We decline to remove the prohibition on voice, video and continuous transmissions and on the operation of radio control toys as the Commission proposed in the *NPRM*. There are already a number of provisions in part 15 of the rules that permit voice, video, radio control toys, and continuous transmissions in other frequency bands, so there is no need to establish additional provisions for them under § 15.231(a). On further review, allowing such operation would in fact significantly and unnecessarily expand the goal of the *NPRM*, which was to allow manufacturers to develop devices that transmit identification codes, supplemented with the transmission of some additional data. The net result of the changes we are adopting is that operation under § 15.231(a) will continue to be limited to devices that transmit a control signal, but such devices will be permitted to transmit data with the control signal. They will have to meet the same field strength, timing and other operational limits that currently exist. We believe that these changes adequately address NTIA's concerns about harmful interference from devices transmitting continuously because the rules will continue to explicitly prohibit continuous transmissions. Furthermore, the transmission timing and other restrictions in § 15.231(a), which limit operation to devices that transmit a control signal and prohibit voice, video and the radio control of toys, will preclude continuous data transmissions in any case. No changes are being made to § 15.231(e) because data transmissions are already permitted under this section.

13. We decline to allow duty cycle averaging over a one second interval as requested by CEA, rather than over the 100 millisecond interval currently specified in the rules. The requested change effectively allows higher signal strength, which could result in increased interference potential of devices. The current requirement does not preclude devices from transmitting for more than 100 milliseconds as CEA implies; it simply specifies the time interval for determining the average field strength of a device that uses pulsed transmission. Allowing an average to be calculated over a longer time interval could result in a lower value that does not accurately reflect the interference potential because the average could include blanking intervals between signal bursts that would be excluded from an average calculated over a shorter time interval. We also decline to allow trained operators to use equipment which operates with a 10 dB higher power than currently permitted, as requested by Enalasys. Such equipment would have a higher potential for interference to other services, and it is unlikely that even a trained operator would have sufficient information to determine whether harmful interference would occur in a particular location. We decline to broaden the criteria under which more rapid duty cycles are permitted as requested by JCI, or to allow setup transmissions longer than 5 seconds as requested by Interlogix. JCI and Interlogix have not shown why the existing limits are inadequate for the situations it identified. Finally, we decline to change our requirement for a device to cease transmission within five seconds after being activated automatically or after release of a control that manually activates it, and we decline to specify the five second time as excluding the "off" time between pulses. This requirement to cease transmissions within five seconds prevents continuous transmissions which could result in interference to other devices.

14. As recommended by Interlogix and Ademco, we will permit remote control devices to transmit for a maximum of two seconds per hour, instead of the current one second, for polling the integrity of transmitters used in security or safety applications. The number of individual transmissions will not be limited, provided the total transmission time does not exceed two seconds per hour. This change will allow for increased reliability in alarm systems by permitting systems checks to be performed at more frequent intervals. Any increased interference potential as a result of this change is negligible because polling transmissions will still only be permitted for less than one tenth of one percent of the time.

Radio Frequency Identification Systems

15. Radio frequency identification (RFID) systems use radio signals to track and identify items such as shipping containers and merchandise in stores. A system typically consists of a tag mounted on the item to be identified, and a transmitter/receiver unit that interrogates the tag and receives identification data back from the tag. The tag may be a self-powered transmitter, or it may receive power from the interrogating transmitter. RFID systems can operate in a number of frequency bands under part 15. Part 15 currently permits the operation of intentional radiators, including RFID systems, in the 13.553–13.567 MHz band at a field strength limit of 10,000 μV/m at 3 meters. Emissions outside this band must comply with the radiated emission limits in § 15.209, which specifies a limit of 30 μV/m at 30 meters for emissions in the 1.705–30 MHz band.

16. In the *NPRM*, the Commission proposed to modify the part 15 limits for operation in the 13.553–13.567 MHz band and the adjacent 13.110–13.553 MHz and 13.567–14.010 MHz bands, as requested by National Council for Information Technology Standardization Technical Committee B10 (NCITS B10), to allow the development of RFID tags capable of operating uniformly in the United States, Europe and Australia. Specifically, the Commission proposed to increase the maximum field strength within the 13.553–13.567 MHz band from 10,000 μV/m to 15,848 μV/m at a distance of 30 meters, to increase the maximum field strength permitted in the 13.410–13.553 MHz and 13.567–13.710 MHz bands from 30 to 334 μV/m at 30 meters, and to increase the maximum field strength permitted in the 13.110–13.410 MHz and 13.710–14.010 MHz bands from 30 to 106 μV/m at 30 meters. These are the limits developed by the European Telecommunications Standards Institute (ETSI) for low power devices operating in these bands. The Commission further proposed to allow devices operating in the 13.110–14.010 MHz band to place emissions other than spurious emissions into the 13.36–13.41 MHz restricted band because that band is used at only one radio astronomy site in Florida and NTIA has no objection to allowing emissions from RFID devices in this restricted band. In addition, the Commission proposed to allow powered RFID tags and readers to be approved together and labeled with a single FCC identification number.

17. CEA, Chester Piotrowski, DataBrokers, Inc. (DataBrokers), Gap, Inc., MagTek, Inc., Motorola, NCITS B10, Philips Semiconductor (Philips), the Telecommunications Industry Association (TIA), and Texas Instruments (TI) support the proposed changes, stating they will allow increased range for RFID tags, permit the development of new types of devices, and harmonize the United States regulations with those of other countries. TI states that this rule change would simplify the design and manufacturing of RFID products and allow lower costs due to worldwide commonality of standards. Both TI and Philips state that the proposed changes would allow higher security, data transfer rates and read range performance in RFID applications. HID Corporation believes the proposed emission limits are not likely to cause interference to other services and will benefit the public by permitting devices with better performance. It believes that the 13.36–13.41 MHz band should be removed from the list of restricted bands to permit sidebands from devices at 13.553–13.567 MHz to fall in that frequency range.

18. Cubic Corporation (Cubic) states it does not support the proposed changes for RFID tags unless a quantitative analysis is provided to show that new systems will not interfere with existing RFID systems in the band. It states that the petition was premised on the idea that RFID tags would not be self-powered, but new self-powered devices are being developed that will increase the noise floor in the band. Both Cubic and Nickolaus E. Leggett state that part 15 devices should not be permitted to operate in the 13.36–13.41 MHz radio astronomy band because that would make it unusable for radio astronomy. TI responds that Cubic has not shown that operation of RFID tags under the proposed parameters would cause interference to other part 15 RFID tags, and that the emissions from RFID tags would be too low to cause interference to radio astronomy. NTIA states that it has no objection to operation of RFID devices in the 13.110–14.010 MHz band, which includes the 13.36–13.41 MHz restricted band, at the emission levels proposed in the *NPRM*.

19. We are adopting the changes proposed in the *NPRM* to increase the maximum field strength permitted in the 13.553–13.567 MHz band from 10,000 to 15,848 μ/m at 30 meters, to increase the maximum field strength permitted in the 13.410–13.553 MHz and 13.567–13.710 MHz bands from 30 to 334 μV/m at 30 meters, and to increase the maximum field strength permitted in the 13.110–13.410 MHz and 13.710–14.010 MHz bands from 30 to 106 μV/m at 30 meters. In addition, we will permit emissions other than spurious emissions in the restricted band at 13.36–13.41 MHz. These changes will allow for improved operation of RFID tags in the 13.56 MHz band without adverse consequences to other devices, and will allow for the development of RFID tags that can work in both the United States and other countries. As proposed in the *NPRM*, we also will allow powered RFID tags to be

approved either as part of a system with a tag reader under one FCC identification number, or under separate FCC identification numbers. Allowing powered tags and readers to be approved together will simplify the filing requirements in cases where the devices are always sold together, and permitting tags and readers to be approved separately will provide increased flexibility to manufacturers by permitting the sale of different combinations of tags and readers.

20. We disagree with Cubic that an analysis is required to show that new systems would not interfere with existing RFID systems in the band. Cubic has not provided information to indicate that a problem exists warranting scrutiny. We note that part 15 devices have no interference protection from other part 15 devices. Also, because the existing rules for the 13.553–13.567 MHz band place no restrictions on the types or lengths of transmissions, self-powered tags are already permitted. The rule changes we are adopting simply provide for an increase in field strength within the 13.553–13.567 MHz band and adjacent bands. We disagree with Cubic and Nickolaus E. Leggett that emissions from RFID tags should not be permitted in the 13.36–13.41 MHz restricted band. Neither party has provided information beyond unsubstantiated allegations that there are any radio astronomy operations in this band in the United States that would receive interference from RFID tags. Radio astronomy operations in this band in the United States are performed at only a single site in Florida. Further, the proposal was coordinated with the Interdepartment Radio Advisory Committee (IRAC), which includes the National Science Foundation, which represents radio astronomy interests. No objections to the proposed changes were received from radio astronomy interests.

Declaration of Conformity (DoC) Labeling

21. Declaration of Conformity (DoC) is an equipment authorization procedure in which the manufacturer or other responsible party has the equipment tested for compliance at a laboratory accredited to make the required measurements. If an accredited laboratory finds that the equipment complies with the applicable rules, it may be marketed without an approval from the Commission. Equipment authorized through the DoC procedure must be labeled as specified in § 15.19 of the rules, which provides two variations of the DoC label. One is for equipment tested for compliance as a complete unit, and the other is for personal computers assembled from components that were tested separately for compliance. Either variation of label must include the trade name, the equipment model number, the FCC logo, the phrase "For Home or Office Use", and a statement as to whether the complete device was tested for compliance or whether it was assembled from tested components. A compliance information statement must be supplied with equipment authorized through the DoC procedure, and this statement must include the name and model number of the product, a statement that the equipment complies with part 15 of the rules, and the name, address and telephone number of the party responsible for the compliance of the product. The compliance information statement supplied with equipment that was assembled from tested components must also identify the components used in the assembly.

22. In the *NPRM*, the Commission proposed several changes to simplify the labeling required on products authorized through the DoC procedure. It proposed to delete the requirement that the phrase "For Home or Office Use" appear on the label as unnecessary and because including it requires the use of a larger label, which could become increasingly burdensome as advancements in technology result in smaller and smaller equipment. The Commission also proposed to eliminate the statement on the label that the complete device was tested for compliance in order to further streamline the label. However, it proposed to continue requiring that personal computers assembled from tested components contain a statement to that effect on their label because that information could assist us in determining the source of compliance problems when investigating cases of non-compliant equipment. The Commission sought comment on whether electronic labeling should be permitted for devices authorized under the DoC procedure, and if so, the appropriate method for electronically labeling equipment such as computers that are authorized through the DoC procedure.

23. CEA, Cisco, IBM, ITI, Motorola, Shure, Uniden and TIA all support the proposed simplification of the DoC labeling requirements, stating that the changes will allow smaller labels on equipment. CEA, Cisco and Motorola agree that the phrase "For Home or Office Use" is not necessary on the label because Class B devices can be used anywhere. Cisco agrees that the label on a computer assembled from tested components should state that it was assembled from tested components to assist the Commission in determining the source of, and resolving interference that may originate with such devices. IBM requests that we require the statement in § 15.19(a)(3) to appear only in the instruction manual rather than on the product to save space, and that the product be labeled with the phrase "Class A" or "Class B" in place of the statement. Shure requests that we allow manufacturers to use externally accessible areas such as battery compartments for labeling because it is undesirable for labeling on wireless microphones to show up on camera, and because the battery compartment offers protection from wear and perspiration and will be seen when the user replaces batteries. IBM and ITI request that we codify the accepted practice of allowing the trade name and model number to be placed in locations other than the compliance label to avoid using critical space for redundant information. CEA requests that we provide sufficient lead time for manufacturers to plan and implement any labeling changes.

24. IBM, ITI and TIA support permitting electronic labeling for equipment authorized under the DoC procedure in order to reduce costs and allow easy re-labeling of equipment. ITI and TIA believe that electronic labeling should be permitted for equipment authorized under all parts of the rules, as an alternative to physical labeling, and IBM believes that electronic labeling should be permitted to display the FCC identification number of transmitters that are installed in laptops by selecting the proper pull-down menu, similar to what is permitted for software defined radios.

25. As proposed, we are eliminating the requirement for the DoC label to contain the phrase "For Home or Office Use" as unnecessary, because the DoC procedure is applicable to Class B digital devices and other types of equipment that can be used anywhere. This change will simplify the labeling requirements and permit smaller labels on equipment. We are also eliminating as unnecessary the requirement for the DoC label to state if the complete device was tested for compliance. We will continue to require the DoC label on computers assembled from tested components to state that they were assembled from tested components, because that information could assist the Commission in determining the source of compliance problems with such devices. It will be presumed that the complete device was tested for compliance unless the label states otherwise. We believe that the vast majority of equipment subject to DoC is tested as a complete unit rather than assembled from tested components. Therefore, this action will allow labels to be further streamlined on the majority of devices subject to this procedure. Because this change is deregulatory in nature and requires no new information to be added to labels, no transition period is necessary. Responsible parties may continue to use labels that were designed to meet the old requirements as long as they wish and may change to the simplified labels at their convenience.

26. We decline to limit the appearance of the statement required by § 15.19(a)(3) to the instruction manual, as requested by IBM. This statement advises users that operation of the equipment is subject to the conditions that it not cause harmful interference and that it must accept any interference received, including interference that may cause undesired operation. We believe that many users may be unaware of this requirement for part 15 devices, so this statement provides useful information to users. In addition, § 15.19(a)(5) already contains a provision that permits the label to be placed in the instruction manual in cases where a device is so small that it is not practicable to place the statement on the device. We decline to change the rules as requested by ITI and IBM to specify that the trade name and model number do not have to appear on the DoC label if they appear elsewhere on the equipment, because we already permit placement of this information elsewhere on the equipment when necessary. Therefore, there is no need for the recommended rule change. Likewise, labeling for a device may be placed inside a battery compartment when necessary, so there is no need for a rule change.

27. We decline to permit electronic labeling of equipment subject to DoC or for any other equipment except software defined radios. The rules currently permit electronic labeling for software defined radios because there is sometimes a need for a third party to change the identification number of a radio in the field when changes are made to the software that affect the device's operating frequency, modulation type or maximum output power. This permits the identification number to be changed without physical re-labeling of a radio. None of the comments in this proceeding have shown that there is a similar need for us to allow this capability in equipment subject to DoC or in any other equipment besides software defined radios.

Test Procedure for Unlicensed PCS Equipment

28. In the *NPRM*, the Commission proposed to incorporate into our rules by reference American National Standards Institute (ANSI) C63.17–1998 as the procedure it will use for testing unlicensed Personal Communication Service (PCS) equipment. This procedure was developed by the ANSI C63 Committee specifically for testing unlicensed PCS equipment for compliance with the requirements in part 15 of the rules.

29. CEA, Cisco and Motorola support the use of the C63.17–1998 procedure for testing unlicensed PCS equipment. CEA and Motorola state that this procedure will help ensure that equipment complies with the Commission's rules. Cisco states that it was developed by qualified industry experts. We find that ANSI C63.17–1998 provides detailed guidance that will assist manufacturers in measuring unlicensed PCS devices to ensure that they comply with the requirements in our rules. Accordingly, we are incorporating this procedure into the rules by reference as the procedure we will use for testing unlicensed PCS equipment under part 15 of the rules.

Approval of Very Low-Powered Devices

30. Part 15 currently requires all intentional radiators to be certified, regardless of how low an operating power they use. Certification requires the manufacturer to have the equipment tested for compliance, then file an application and wait for approval before the equipment can be marketed. In the *NPRM*, the Commission proposed to exempt intentional radiators operating below 490 kHz from certification if the maximum field strength emitted is more than 40 dB below the applicable part 15 limits. As an alternative, the Commission sought comment on whether such devices should be subject to verification rather than exempted from any form of equipment authorization. Verification simply requires the manufacturer to have the equipment tested and to retain certain information on file. No application filing is required for verification and the equipment may be sold as soon as it is found to comply. The Commission stated that the interference potential of such devices appears to be extremely low, and that requiring certification seems to be an unnecessary burden on manufacturers.

31. The comments support eliminating the certification requirement for very low-powered intentional radiators, arguing that it is burdensome and unnecessary. AdvaMed, Cisco, Linear, Polhemus and Uniden argue that such low-powered devices have a low potential for interference. TRP and AdvaMed state that signals 40 dB below the part 15 limit are below the ambient noise level and are difficult to measure. TRP believes that devices operating below 490 kHz that are battery operated with a self-contained antenna of much less than a wavelength should be exempted from any kind of equipment authorization if all emissions are at least 40 dB below the limit. It also believes that devices that have emissions less than 40 dB below the limit and that connect to the AC power lines should be subject to verification, rather than exempted, because they have a somewhat higher potential for interference. TRP states that compliance by low-powered devices can be determined by mathematical calculation and that open field testing is not necessary. However, ITI believes that devices must be tested to show they are at least 40 dB below the limit. It states that once a device is tested, the additional burden imposed by verification is minor in nature. Wacom recommends that the upper frequency range of devices to be exempted should be 1705 kHz instead of 490 kHz, so that devices can use higher frequencies to avoid interference from computer monitors. TIA states that the 490 kHz cutoff is too restrictive, and believes that the Commission should also eliminate the certification requirement for 2.4 GHz Bluetooth transmitters operating with less than 1 mW of power because they must already go through a rigorous private sector certification process for industry acceptance.

32. We find that requiring certification for intentional radiators operating below 490 kHz that have all emissions at least 40 dB below the limit is an unnecessary burden on manufacturers because the interference potential of such equipment is extremely low. Instead, we will require such equipment to be authorized through the verification procedure, thus eliminating the need for manufacturers to file an application and wait for an approval before marketing their equipment. Under the verification procedure, manufacturers may show that all emissions are at least 40 dB below the limit through testing. We recognize, however, that because of the low signal levels involved, it may be difficult to even detect such emissions with conventional measurement equipment. As an alternative to actual measurements, we will allow

manufacturers instead to demonstrate through calculations or other analysis that all emissions from their equipment will be at least 40 dB below the limit. We find that it is necessary for manufacturers to make a determination that a device complies with the emission limits to prevent harmful interference to authorized services, and to retain records to demonstrate compliance with the limits. The verification procedure is the most appropriate means to ensure that manufacturers make the necessary determination of compliance and maintain records of this determination.

33. We decline to expand this decision to exempt from certification equipment used in bands above 490 kHz. Wacom provided only assertions and no specific technical information to demonstrate that there would be interference problems from computer monitors to low-power transmitters operating below 490 kHz. In addition we believe that the higher level of oversight of certification is necessary at this time to protect the marine distress band at 495–505 kHz and the AM broadcast band at 535–1705 kHz from interference caused by non-compliant equipment. We decline to exempt intentional radiators from authorization if they are battery operated and all radiated emissions are more than 40 dB below the part 15 limits, as requested by TRP. As noted previously, we find that verification is the appropriate means to ensure that manufacturers make the necessary determination of equipment compliance and maintain records of this determination. We decline to permit intentional radiators operating above 490 kHz that have emissions less than 40 dB below the limit to be authorized through verification procedure, rather than the current certification procedure. As TRP noted, such equipment has a higher potential to cause interference, so we find that the higher level of oversight of certification is necessary. We also decline to exempt other types of devices such as Bluetooth transmitters from certification as TIA requested, because such equipment has a significantly higher potential for causing interference than other low power intentional radiators that we are permitting to be verified, so we find that the higher level of oversight of certification is appropriate for such equipment. TIA has not provided information to show that the private sector certification procedure it cites is comparable to our certification procedure for demonstrating compliance with the rules. We also note that Bluetooth devices operating under 1 mW can already be certificated by private sector Telecommunication Certification Bodies.

Information to the User

34. Part 15 requires certain information to be included in the instruction manual, including a statement that unauthorized modifications to a device could void the user's authority to operate it. In addition, the manual for a digital device must include a warning of the potential for interference to other devices and a list of some steps that could possibly eliminate the interference. In the *NPRM*, the Commission proposed to permit manufacturers to provide this type of information in the instruction manual in whatever form the manual is supplied. This could be on paper, a computer disk, a CD–ROM or over the Internet. The Commission noted that while the rules originally envisioned that this information would be included in a paper instruction manual, the Commission has permitted this warning information to be provided by alternative means, such as a CD–ROM. It sought comment on whether Internet-delivered manuals create accessibility problems for consumers without Internet access or for groups of consumers for whom obtaining Internet access is difficult. The Commission also sought comment on whether allowing important information to be delivered only over the Internet would result in certain consumers having insufficient access to information, and on whether allowing warnings to be delivered exclusively online would result in a significant reduction in the number of consumers who receive the warnings.

35. Linear supports the proposed change to the user manual requirements because it should make no difference if the manuals are printed on paper, on a CD–ROM or available over the Internet. ITI states that providing warnings and information statements in the same form as the user manual will result in cost savings to the industry. It believes that allowing alternative means of accessing information could enhance access to the disabled community because computers could "read" information to the user or magnify it for easier viewing. CEA, Motorola and TIA support providing flexibility for manufacturers to provide information by paper, disk, CD–ROM or the Internet, but believe that user warning information pertaining to safety aspects of equipment should be required in hard copy form that can be retained because not all users will have access to a computer or the Internet. Cisco states there is no reason to believe that permitting online delivery will limit access because Internet access is not limited, and because manufacturers can and do provide contact information for consumers who desire to obtain manuals and warning statements by traditional means. IBM and ITI believe that information should be allowed to be made available over the Internet only if that is the sole method through which the user manual is supplied and the equipment will be used with Internet access. IBM requests that the proposed changes also apply to § 15.27(a), which requires a statement in the user's manual when special accessories are required for a device to comply with the rules. Nickolaus E. Leggett and Steven Bryant stated that allowing instruction manuals to be provided over the Internet alone should not be permitted because many households have slow Internet access or no Internet access at all.

36. As proposed, we will permit the warning statements required by part 15 to be placed in the instruction manual when the manual is provided in formats other than paper, such as on a computer disk or over the Internet. This change will provide increased flexibility to manufacturers and will result in cost savings to the industry. As ITI notes, allowing alternative means of accessing information could enhance access to the disabled community because computers could "read" information to the user or magnify it for easier viewing. However, we recognize that some persons do not have access to a computer or the Internet, so such persons would not have the capability of reading instruction manuals in alternative forms. Therefore, we will allow warning statements to be provided in alterative forms only when the instruction manual is provided in the same alternative form and the user can reasonably be expected to have the capability to access information in that form. For example, warning statements may be provided in a manual on a CD–ROM or other type of computer disk when no paper manual is provided, and the equipment either has the capability of reading the disk or is used with equipment that is capable of reading the disk. Warning statements may be provided in a manual on the Internet only when the manual is provided solely over the Internet and the equipment will be used with Internet access. We believe that these requirements will help ensure that the part 15 warning statements are accessible to all persons using a given device. We are also making this change applicable to § 15.27(a) as requested by IBM, because that section lists information that must be included in the instruction manual. We note that the Commission's Laboratory sometimes requires manufacturers to provide information in the instruction manual advising users that equipment must be operated at a minimum distance from the body to comply with the RF safety guidelines in the rules. We will allow such statements to be provided in the same manner as the part 15 warning statements. If the instruction manual is provided in an alternative format, manufacturers can provide the RF safety statements information in hard copy form if they choose, but we will not require them to do so.

Emission Limits Above 2 GHz

37. While the Commission did not propose any changes to the general radiated emission limits in part 15 of the rules or to the radiated emission limits that apply outside the Industrial, Scientific and Medical (ISM) bands under part 18 of the rules, several parties filed comments recommending changes to these limits. ITI states that it may be appropriate to increase the part 15 limits in steps above 6 GHz, 10.5 GHz and 15 GHz, but did not recommend specific limits. Linear believes that the current part 15 limit of 500 μV/m at 3 meters above 960 MHz should increase by 3 dB for every doubling of frequency. Sirius Satellite Radio, Inc. (Sirius) requests that we reduce the current part 15 and 18 limits to 8.6 μV/m at 3 meters in the satellite digital audio radio service (SDARS) band. XM Radio, Inc. (XM) requests that we establish a limit in the SDARS band of 18 μV/m at 3 meters for part 15, 18 and 95 devices operating exclusively in vehicles, and a limit of 8.6 μV/m at 3 meters for such devices operating in all other environments. Intersil and Motorola oppose Sirius' and XM's recommended emission limits in the SDARS bands, disputing the methodology used to arrive at the recommended limits. Because the Notice did not include proposals for any changes to the general radiated emission limits for equipment operating under parts 15, 18 or other parts of the rules, we find that the requests made by ITI and Linear to raise the emission limits above 960 MHz are outside the scope of this proceeding. Likewise, we find that the requests by XM and Sirius for tighter emission limits in the SDARS band are also outside the scope of this proceeding.

Additional Changes to Part 15

38. In the *NPRM*, the Commission proposed additional changes to part 15 of the rules to modify rule sections that needed to be updated to reflect the availability of more recent industry documents, or that needed other minor revisions. The following is a summary of the proposed changes:

- *Section 15.31 Measurement standards:* remove references to measurement procedures that are no longer used, correct the Commission's mailing address, update the reference to reflect the new ANSI C63.4–2001 measurement procedure and clarify the type of antenna used for radiated measurements below 30 MHz.
- *Section 15.118 Cable ready consumer electronics equipment:* correct the Commission's mailing address.
- *Section 15.120* Program blocking technology requirements for television receivers: correct the Commission's mailing address.
- *Section 15.255 Operation in the band 59.0–64.0 GHz:* correct the wording in paragraph (b)(5) from "emission limits" to "emission levels".

39. CEA, IBM, Motorola and TIA support these proposals to update and correct the rules. ITI and Cisco support referencing the C63.4–2001 measurement procedure in place of the C63.4–1992 measurement procedure currently referenced in the rules. They also request that we exclude the use of section 8.2.2 of C63.4, which permits measurements of radiated emissions below 30 MHz to be made with a rod antenna, because the Commission and Telecommunication Certification Bodies only accept measurements made with a calibrated loop antenna. Retlif and ACIL oppose the use of the C63.4–2001 measurement procedure, stating that there will be no consistent application of the new standard for many years because there were wide differences in interpretation of the standard within the committee that approved it. IBM suggests that we permit use of the CISPR 22 measurement procedure below 1 GHz as an alternative to the C63.4 procedure to eliminate the potential for dual testing of products worldwide. IBM also suggests that we adopt the CISPR 22 emission limits as alternatives to our AC power line and radiated emission limits for intentional radiators in §§ 15.207 and 15.209 of the rules. IBM states this could eliminate multiple testing of computers that contain transmitters because our rules permit computers, but not transmitters, to be tested for compliance with the CISPR 22 limits, so multiple tests may be required for one device.

40. We are adopting the changes we proposed to update and correct the rules, including referencing the C63.4–2001 measurement procedure. C63.4–2001 provides clarifications to the measurement procedure and configuration of the equipment under test, but does not contain any significant changes from C63.4–1992 that will affect measurement results. As proposed, we will exclude the use of section 8.2.2 of C63.4–2001 concerning rod antennas because we have found that calibrated loop antennas provide more accurate and repeatable field strength measurements below 30 MHz. Referencing the new procedure is necessary because the C63.4–1992 procedure referenced in our rules is no longer available from the Institute of Electrical and Electronics Engineers (IEEE) Standards Department. We do not accept the recommendation of Retlif and ACIL not to reference C63.4–2001 in the rules. C63.4–2001 has gone through the ANSI review process and has been adopted as an ANSI standard. We decline to specify the use of the CISPR 22 measurement procedure as an alternative to the C63.4 procedure as requested by IBM. We support the concept of a single compliance test for equipment. In this case, though, there are differences between the two procedures and it has not been shown that the procedures produce equivalent measurement results. For example, the CISPR 22 procedure specifies the use of ferrite clamps on some cables on the equipment under test, while the C63.4 procedure does not. We will consider the possibility of recognizing the CISPR 22 procedure as an alternative to the C63.4 procedure, as well as the possibility of accepting the CISPR 22 limits for intentional radiators, at a later time.

Family Radio Service Equipment Measurements.

41. In the *NPRM*, the Commission proposed to require that carrier frequency tolerance measurements for Family Radio Service (FRS) transmitters be made over the temperature range of − 20 °C to +50 °C rather than − 30 °C to +50 °C. This proposal was intended to correct an inadvertent conflict between the rules and existing Commission measurement practices that arose when the Commission streamlined the equipment authorization procedures in 1998.

42. Cobra Electronics Corporation (Cobra) and Uniden America Corporation (Uniden) support the proposed change. Uniden states that measurements should be required only to − 20 °C, because years of experience with radios tested to this temperature show that no adverse consequences have been observed in the real world. Cobra states that millions of FRS units have been produced that were tested to − 20 °C with no reported difficulties

from the users of the radio, so the rules should be amended to reflect the temperature range over which measurements have been required.

43. We find that −20 °C to +50 °C is the appropriate temperature range for which frequency stability measurements should be made on FRS transmitters. FRS is a very short distance voice communication service intended for facilitating family and group activities, and we do not expect that FRS equipment would be used frequently at temperatures below −20 °C (−4 °F). The relatively low power of this equipment means that there would not be a significant risk of interference even if the carrier frequency were to drift out of tolerance below −20 °C. We note that the −20 °C to +50 °C temperature range is consistent with the requirements in part 15 for low power transmitters that require frequency stability measurements. Finally, as Uniden and Cobra stated, many FRS transmitters have been approved and marketed that have been tested to only +20 °C, and there have been no apparent problems. Accordingly, we are requiring the frequency tolerance of FRS transmitters to be measured over the temperature range of −20 °C to +50 °C, as proposed.

Accreditation of Test Laboratories

44. In the *NPRM*, the Commission proposed that a test laboratory that has been accredited by an organization recognized by the Commission would no longer have to file a description of its measurement facilities with the Commission, provided the accrediting organization submitted certain information about the laboratory to the Commission. The information that would have to be submitted would be the laboratory name, address, contact information, scope of accreditation, date of accreditation, and the date by which the accreditation must be renewed. This proposal was intended to reduce the burden on laboratories by eliminating the need for them to file duplicate information with both the Commission and an accrediting organization. The Commission also proposed to clarify the conditions for recognizing the accreditation of laboratories outside the United States. Specifically, laboratories outside the United States would be recognized by the Commission if one of the following two conditions are met: (1) The laboratory has been designated by a foreign authority and recognized by the Commission under the terms of a government-to-government Mutual Recognition Agreement or Arrangement (MRA); or (2) the laboratory has been accredited by an organization whose accreditations are recognized by the Commission.

45. CEA, Cisco, IBM, Motorola and TIA support eliminating the requirement for accredited laboratories to file a description of their measurement facilities with the Commission. These parties state that it is unnecessary for this information to be filed with the Commission because it has already been filed with the accrediting organization. However, Retlif Testing Laboratories (Retlif) and the American Council for Independent Laboratories (ACIL) oppose removing this requirement, stating the change would add costs for the accredited laboratory because the accredited laboratory would have to pay for the accrediting organization to file this information with the Commission. CEA, Cisco, ITI, Motorola and TIA support the proposed criteria for recognizing the accreditations of laboratories outside the United States. Cisco states that the change would be an enormous benefit for companies participating in the global marketplace. ITI states that the proposed change would simplify the conditions under which an accredited laboratory may be accredited for testing to Commission requirements and would be an improvement in the process of obtaining approval to use foreign laboratories for testing for a DoC. IBM and ITI recommend that we recognize the accreditation of foreign laboratories by National Institute of Standards and Technology National Voluntary Laboratory Accreditation Program (NIST NVLAP) or the American Association for Laboratory Accreditation (A2LA). They also believe that the language in the rules should reference "measurement facilities" rather than "open field sites" so as not to preclude the use of semi-anechoic chambers for testing.

46. We are adopting our proposal to not require accredited laboratories to file a description of their measurement facilities with us, provided the accrediting organization has submitted certain information about the laboratories to the Commission. This information must include the laboratory name, address (both the test site address and company mailing address), contact information, the accrediting organization's name, its designation number for the laboratory and the date by which the accreditation must be renewed. In addition, the name of the MRA must be provided for accredited laboratories outside of the United States designated under the terms of a government-to-government MRA. Consistent with the current requirements for filing measurement facility descriptions, the information submitted by the accrediting organization must also include an FCC Registration Number (FRN), which is required for all organizations doing business with the Commission, and a "yes/no" indication as to whether the laboratory will perform testing on a contract basis. This will reduce the burden on accredited laboratories by eliminating the need for them to file duplicate information with the Commission and an accrediting organization.

47. We disagree with Retlif and ACIL that this change would significantly increase costs for laboratories. Accrediting organizations already have the information that we need in their records, and the Commission has developed an electronic system that these organizations can use to quickly and easily transmit the information to us. Further, accrediting organizations currently submit certain information about the laboratories they have accredited in paper form to the Commission, and we do not expect that a change from paper filing to electronic filing of this information will result in any increase in accreditation costs. We are not mandating accreditation for laboratories, and laboratories that are not accredited may continue to use the current procedure for filing test site description information with the Commission to be placed on our test site list.

48. We also are adopting the criteria we proposed for accepting the accreditation of laboratories located outside the United States, which are that the laboratory has been accredited by a foreign authority and recognized by the Commission under the terms of a government-to-government Mutual Recognition Agreement or Arrangement, or that the laboratory has been accredited by an organization whose accreditations are recognized by the Commission. These changes will simplify the conditions for accepting the accreditation of foreign laboratories by eliminating the prohibition on foreign accreditors accrediting laboratories outside their own country. The current rules already permit NVLAP and A2LA to accredit laboratories outside the United States, so there is no need for us to make a change to permit this as requested by IBM and ITI. These changes address the concerns raised by ITI in its petition for reconsideration filed in ET Docket 95–19, so we are in effect granting that petition. We agree with IBM and ITI that the rules should reference "measurement facilities" rather than "open field sites" so as not to preclude the use of semi-anechoic chambers for testing, and the rules we are adopting reflect that recommendation.

Additional Changes to Part 2

49. In the *NPRM*, the Commission proposed to make additional changes to part 2 of the rules to modify sections that need to be updated to reflect the availability of more recent industry documents, or that needed other minor revisions. We received comments supporting the proposals and are adopting the following changes.

- *Section 2.202 Bandwidths:* add entries to the table of necessary bandwidth calculations in paragraph (g) for newer digital modulation types.
- *Section 2.948 Description of measurement facilities:* remove references to expired transition dates and obsolete measurement procedures, update references to reflect the availability of the new ANSI C63.4–2001 measurement procedure, and to correct the Commission's mailing address.
- *Section 2.1033 Application for certification:* re-designate paragraph 2.1033(c)(17) on composite devices as paragraph 2.1033(d) to correct a numbering error.
- *Sections 2.1061 through 2.1065 Filing for Application Reference:* remove this procedure because it is not used.

50. In addition to these changes, we are adding the heading "Telecommunication Certification Bodies (TCBs)" prior to § 2.960 of the rules. This change clarifies that the subsequent sections refer to the requirements for TCBs, and are not part of the requirements for verification, which is the last heading prior to § 2.960. Because this is an editorial change, it can be made without notice and comment.

Changes to Part 18

51. In the *NPRM*, the Commission proposed to delete certain rule sections in part 18 that appear to be unnecessary. We received no comments opposing these proposals, and remain convinced of their propriety. We are therefore adopting the following changes.

- *Section 18.103 Organization and applicability of the rules:* remove because it duplicates the table of contents for part 18.
- *Section 18.105 Other applicable rules:* remove because it provides little information and is not necessary.
- *Section 18.119 Importation:* remove because it duplicates portions of the rules in part 2.

Changes to Part 90

52. In the *NPRM*, the Commission proposed to correct an error in § 90.203(k) of the rules concerning the certification requirements for equipment used in the Private Land Mobile Radio Service (PLMRS). Specifically, the Commission proposed to delete the requirement that PLMRS transmitters in the 220 MHz band comply with minimum standards for spectral efficiency that was erroneously in this section. This error occurred when a summary of the *Report and Order* in ET Docket No. 97–94 streamlining the equipment authorization processes was published in the **Federal Register.** This *Report and Order* modified § 90.203(k) by changing the term "type acceptance" to "certification" throughout, but made no changes to the rest of the section. For clarity, the rule appendix in the *Report and Order* showed the entire text of this paragraph as revised. Subsequent to the adoption of the *Report and Order*, the Commission adopted a *Memorandum Opinion and Order* in a separate proceeding that also revised § 90.203(k). In that action, the Commission removed the requirement for part 90 transmitters operating in the 220 MHz band to comply with spectral efficiency requirements. While the *Memorandum Opinion and Order* was adopted and released after the *Report and Order*, a summary of it was published in the **Federal Register** before the summary of the *Report and Order*. Therefore, when the *Report and Order* was published in the **Federal Register**, the spectral efficiency requirement that was deleted by the *Memorandum Opinion and Order* was inadvertently placed back in the rules.

53. On May 23, 2001, M/A-COM Private Radio Systems, Inc. (M/A-COM) filed a Petition for Declaratory Ruling, requesting that we clarify that the spectral efficiency requirement should no longer be in § 90.203(k) of the rules. M/A-COM notes that this section is incorrect because of the two rule making items adopted by the Commission that were published in the **Federal Register** out of sequence. We are correcting this section by deleting the spectral efficiency requirement that was removed by the *Memorandum Opinion and Order*, and are therefore in effect granting M/A-COM's petition.

Changes to Part 95

54. Section 95.1115(b) specifies the out-of-band field strength limits for transmitters operating in the Wireless Medical Telemetry Service. We are correcting two typographical errors in this section that arose when the rules were published in the **Federal Register.** Specifically, we are correcting the field strength units of measurement to read "μV/m", rather than "μ/m" and "μm" as they currently appear in the rules. Because these are editorial changes, they can be made without notice and comment.

Final Regulatory Flexibility Analysis.

55. As required by the Regulatory Flexibility Act (RFA),[1] an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the *Notice of Proposed Rule Making and Order, Review of Part 15 and other Parts of the Commission's Rules (NPRM).*[2] The Commission sought written public comments on the proposals in the Notice, including comment on the IRFA.[3] This Final Regulatory Flexibility Analysis conforms to the RFA.[4]

A. Need for, and Objectives of, the Second Report and Order and Memorandum Opinion and Order

56. Section 11 of the Communications Act of 1934, as amended, and section 202(h) of the Telecommunications Act of 1996 require the Commission (1) to review biennially its regulations pertaining to telecommunications service providers and broadcast ownership; and (2) to determine whether economic competition has made those regulations no longer necessary in the public interest. The Commission is directed to modify or repeal any such regulations that it finds are no longer in the public interest.

57. As part of the biennial review for the year 2000, the Commission reviewed its regulations pertaining to telecommunications service providers and broadcast ownership and recommended a number of changes to those rules. While not specifically required by statute, the Commission also reviewed parts 2, 15 and 18 as part of this process.

58. The Second Report and Order and Memorandum Opinion and Order makes several changes to part 15 and other parts of the rules. Specifically, it:

(1) Relaxes the restricted band emission limits for the second and third harmonics of low-power transmitters operating in the 24.0–24.25 GHz band.

[1] *See* 5 U.S.C. 603. The RFA, *see* 5 U.S.C. 601 *et seq.*, has been amended by the Contract With America Advancement Act of 1996, Public Law 104–121, 110 Stat. 847 (1996) (CWAAA). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).

[2] *See Notice of Proposed Rule Making and Order* in ET Docket No. 01–278, 16 FCC Rcd 18205 (2001).

[3] *Id.*

[4] *See* 5 U.S.C. 604. We also note that, given the deregulatory nature of our action, we may certify this action under 5 U.S.C. 605.

(2) Removes the restriction on data transmissions by remote control device because it may hinder the development of new types of devices, and the distinction between control signals and data signals is becoming increasingly blurred.

(3) Relaxes the requirements for radio frequency identification (RFID) systems operating at 13.56 MHz to allow faster data transmission. RFID systems use a small transmitter attached to an item that transmits data identifying the item.

(4) Streamlines the labeling process for equipment authorized under the Declaration of Conformity (DoC) procedure. As equipment becomes smaller, it becomes more difficult to include all the information currently required on the label.

(5) Changes the authorization requirement from certification to verification (no application required) for transmitters operating below 490 kHz in which all emissions are at least 40 dB below the part 15 limit.

(6) Make minor corrections and updates to part 15 and other parts of the rules.

B. Summary of Significant Issues Raised by Public Comments in Response to the IRFA

59. None.

C. Description and Estimate of the Number of Small Entities to Which the Rules Will Apply

60. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted.[5] The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."[6] In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.[7] A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.[8]

61. The SBA has developed small business size standards for two pertinent Economic Census categories, "Radio and Television Broadcasting and Communications Equipment" (RTB) and "Other Communications Equipment," both of which consist of all such companies having 750 or fewer employees.[9] According to Census Bureau data for 1997, there were a total of 1,215 establishments in the first category, total, that had operated for the entire year.[10] Of this total, 1,150 had 499 or fewer employees, and an additional 37 establishments had 500 to 999 employees.[11] Consequently, we estimate that the majority of businesses in the first category are small businesses that may be affected by the rules and policies adopted herein. Concerning the second category, the data for 1997 show that there were a total of 499 establishments that operated for the entire year.[12] Of this total, 491 had 499 or fewer employees, and an additional 3 establishments had 500 to 999 employees.[13] Consequently, we estimate that the majority of businesses in the second category are small businesses that may be affected by the rules and policies adopted herein.

D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

62. The Second Report and Order and Memorandum Opinion and Order streamlines the labeling requirements for equipment authorized under the Declaration of Conformity (DoC) procedure. DoC is a self-approval procedure in which the manufacturer has the equipment tested for compliance at a laboratory accredited to make the required measurements. There is an alternative procedure that allows personal computers to be assembled using compliant motherboards and power supplies with no additional testing required. Equipment that complies with the applicable rules may be marketed without an approval from the Commission, and must be labeled as specified in part 15 of the rules. The Second Report and Order and Memorandum Opinion and Order eliminates the requirement for the phrase "For home or office use" to appear on the label for all equipment subject to DoC. In addition, it eliminates the requirement for the phrase "Tested to comply with FCC standards" to appear on the label for equipment that was tested as a complete unit, although this phrase will still be required on personal computers that were assembled from tested components. These changes will permit smaller labels on equipment. These changes will not be required, and small entities can change labels as they change and upgrade models.

63. The Second Report and Order and Memorandum Opinion and Order incorporates the ANSI C63.17–1998 procedure into the part 15 of the rules by reference as the procedure the Commission will use for testing unlicensed Personal Communication Service (PCS) equipment for compliance. Our rules already provide that unlicensed PCS equipment must comply with a number of specialized technical requirements designed to prevent interference between devices. Specifically, there is a defined "spectrum etiquette" that requires unlicensed PCS transmitters to monitor the spectrum for other users before transmitting, and to use a defined transmission format. There was no procedure listed in the rules for testing unlicensed PCS equipment to these requirements. The American National Standards Institute (ANSI) C63 Committee recently completed work on a procedure for measuring unlicensed PCS equipment, which the Second Report and Order incorporates into the rules as the procedure that the Commission will use.

64. Part 15 referenced the ANSI C63.4–1992 procedure as the one that will be used for testing most intentional and unintentional radiators for compliance with the rules. The ANSI C63 Committee recently completed a minor revision of the ANSI C63.4–1992 procedure that contains a number of clarifications to the testing procedures. The Second Report and Order and Memorandum Opinion and Order references the new C63.4–2001 procedure in place of the older version as the procedure that manufacturers should use for compliance testing.

65. The Second Report and Order and Memorandum Opinion and Order changes the temperature range for frequency stability measurements on transmitters used in the Family Radio Service (FRS) under part 95 of the rules. Most transmitters used in licensed services are required to maintain their carrier frequency within a specified tolerance over a range of voltage and temperature variations to minimize the probability of interference to other users. At the time the FRS was established in 1996, a frequency stability limit was specified for transmitters, but no temperature range was specified. The Commission staff informally interpreted that measurements must be made to –20 degrees centigrade. A 1998 rule change to the equipment authorization requirements unintentionally resulted in a new requirement to measure FRS transmitters to –30 degrees centigrade. However, the staff continued requiring measurements to –20 degrees centigrade in the interest of fairness. To clarify our existing practice, the Second Report and Order and Memorandum Opinion and Order specifically requires that FRS transmitters be measured to –20 degree centigrade as the staff has been requiring since 1996.

E. Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

66. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.[14]

67. As noted in section D, *supra*, the changes adopted in the Second Report and Order and Memorandum Opinion and Order are deregulatory in nature, which we expect will simplify compliance and reporting requirements for all parties, particularly small entities. For example, we reduced the amount of information required on the label for products authorized through the Declaration of Conformity self-approval process. Manufacturers will be permitted to use the simplified label as soon as the rules become effective, but are not required to do so.

68. Report to Congress: The Commission will send a copy of the Second Report and Order and Memorandum Opinion and Order, including this FRFA, in a report to be sent to Congress pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A). In addition, the Commission will send a copy of the Second Report and Order and Memorandum Opinion and Order, including FRFA, to the Chief Counsel for Advocacy of the Small Business Administration.

Ordering Clauses

69. Pursuant to the authority contained in sections 4(i), 301, 302, 303(e), 303(f) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. Sections 154(i), 301, 302, 303(e), 303(f) and 303(r), this Second Report and Order and Memorandum Opinion and Order *is adopted* and parts 2, 15, 18, 90 and 95 of the Commission's Rules are amended effective January 8, 2004.

70. Pursuant to the authority contained in sections 4(i), 301, 302, 303(e), 303(f) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 301, 302, 303(e), 303(f) and 303(r), the petition for reconsideration filed by the Information Technology Institute in ET Docket No. 95–19 on September 3, 1997, *is granted* to the extent indicated herein. ET Docket No. 95–19 *is terminated.*

71. Pursuant to the authority contained in sections 4(i), 301, 302, 303(e), 303(f) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 301, 302, 303(e), 303(f) and 303(r), the petition for declaratory ruling filed by M/A–COM Private Radio Systems, Inc. on May 23, 2001, *is granted* to the extent indicated herein.

List of Subjects

47 CFR Part 2

Communications equipment, Incorporation by reference, Radio.

47 CFR Part 15

Communications equipment, Computer technology, Incorporation by reference, Labeling, Radio, Reporting and recordkeeping requirements.

47 CFR Part 18

Radio, Reporting and recordkeeping requirements.

47 CFR Part 90

Communications equipment, Radio.

47 CFR Part 95

Communications equipment, Radio, Reporting and recordkeeping requirements.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

Rule Changes

■ For the reasons set forth in the preamble, the Federal Communications Commission amends 47 CFR parts 2, 15, 18, 90 and 95 to read as follows:

PART 2—FREQUENCY ALLOCATIONS AND RADIO TREATY MATTERS; GENERAL RULES AND REGULATIONS

■ 1. The authority citation for part 2 continues to read as follows:

Authority: 47 U.S.C, 154, 302a, 303 and 336, unless otherwise noted.

■ 2. Section 2.202 is amended by adding seven entries to the end of the table in paragraph (g) to read as follows:

§ 2.202 Bandwidths.

* * * * *

(g) Table of necessary bandwidths.

* * *

Description of emission	Necessary bandwidth		Designation of emission
	Formula	Sample calculation	
. . . . .			
Radio-relay system	$B_n = 2K/t$ K=1.6	Pulse position modulated by 36 voice channel baseband: pulse width at half amplitude 0.4 μS; $B_n = 8 \times 10^6$ Hz = 8 MHz (Bandwidth independent of the number of voice channels).	8M00M7E

[5] 5 U.S.C. 604.

[6] 5 U.S.C. 601(6).

[7] 5 U.S.C. 601(3) incorporating by reference the definition of "small business concern" in 15 U.S.C. 632). Pursuant to the RFA, the statutory definition of a small business applies "unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the **Federal Register**." 5 U.S.C. 601(3).

[8] Small Business Act, 15 U.S.C. 632 (1996).

[9] 13 CFR 121.201, NAICS codes 334220, 334290.

[10] U.S. Census Bureau, 1997 Economic Census, Industry Series: Manufacturing, Radio and Television and Wireless Communications Equipment Manufacturing, "Industry Statistics by Employment Size: 1997," Table 4, NAICS code 334220 (issued Aug. 1999). The number of "establishments" is a less helpful indicator of small business prevalence in this context than would be the number of "firms" or "companies," because the latter take into account the concept of common ownership or control. Any single physical business location is an establishment, and that location and others may be under the common ownership of a given firm. Thus, the numbers given in text may reflect inflated numbers of businesses in this category, including the numbers of small businesses. Census data in this context are available only for establishments.

[11] *Id.*

[12] U.S. Census Bureau, 1997 Economic Census, Industry Series: Manufacturing, Other Communications Equipment Manufacturing, "Industry Statistics by Employment Size: 1997," Table 4, NAICS code 334290 (issued Sept. 1999).

[13] *Id.*

[14] *See* 5 U.S.C. 603(c).

Description of emission	Necessary bandwidth		Designation of emission
	Formula	Sample calculation	
Composite transmission digital modulation using DSB–AM (Microwave radio relay system).	$B_n = 2RK/\log_2 S$	Digital modulation used to send 5 megabits per second by use of amplitude modulation of the main carrier with 4 signaling states. $R = 5 \times 10^6$ bits per second; K = 1; S = 4; B_n = 5 MHz	5M00K7
Binary Frequency Shift Keying	(0.03 < 2D/R < 1.0); .. $B_n = 3.86D + 0.27R$ .. (1.0 < 2D/R <2) ..... $B_n = 2.4D + 1.0R$	Digital modulation used to send 1 megabit per second by frequency shift keying with 2 signaling states and 0.75 MHz peak deviation of the carrier. $R = 1 \times 10^6$ bps; D = 0.75×10^6 Hz; B_n = 2.8 MHz	2M80F1D
Multilevel Frequency Shift Keying	$B_n = (R/\log_2 S) + 2DK$	Digital modulation to send 10 megabits per second by use of frequency shift keying with four signaling states and 2 MHz peak deviation of the main carrier. $R = 10 \times 10^6$ bps; D = 2 MHz; K = 1; S = 4; B_n = 9 MHz	9M00F7D
Phase Shift Keying	$B_n = 2RK/\log_2 S$	Digital modulation used to send 10 megabits per second by use of phase shift keying with 4 signaling states. $R = 10 \times 10^6$ bps; K = 1; S = 4; B_n = 10 MHz	10M0G7D
Quadrature Amplitude Modulation (QAM).	$B_n = 2R/\log_2 S$	64 QAM used to send 135 Mbps has the same necessary bandwidth as 64–PSK used to send 135 Mbps;. $R = 135 \times 10^6$ bps; S = 64; B_n = 45 MHz	45M0W
Minimum Shift Keying	2-ary: ..... $B_n = R(1.18)$ ..... 4-ary: ..... $B_n = R(2.34)$	Digital modulation used to send 2 megabits per second using 2-ary minimum shift keying. $R = 2.36 \times 10^6$ bps; B_n = 2.36 MHz	2M36G1D

■ 3. Section 2.948 is amended by revising paragraphs (a)(2), (a)(3), (b)(8) and (d) and adding paragraph (e) to read as follows.

§ 2.948 Description of measurement facilities.

(a) * * *

(2) If the equipment is to be authorized by the Commission under the certification procedure, the description of the measurement facilities shall be filed with the Commission's Laboratory in Columbia, Maryland. The data describing the measurement facilities need only be filed once but must be updated as changes are made to the measurement facilities or as otherwise described in this section. At least every three years, the organization responsible for filing the data with the Commission shall certify that the data on file is current. A laboratory that has been accredited in accordance with paragraph (d) of this section is not required to file a description of its facilities with the Commission's laboratory, provided the accrediting organization (or designating authority in the case of foreign laboratories) submits the following information to the Commission's laboratory:

(i) Laboratory name, location of test site(s), mailing address and contact information;

(ii) Name of accrediting organization;

(iii) Date of expiration of accreditation;

(iv) Designation number;

(v) FCC Registration Number (FRN);

(vi) A statement as to whether or not the laboratory performs testing on a contract basis;

(vii) For laboratories outside the United States, the name of the mutual recognition agreement or arrangement under which the accreditation of the laboratory is recognized.

(3) If the equipment is to be authorized under the Declaration of Conformity procedure, the laboratory making the measurements must be accredited in accordance with paragraph (d) of this section.

(b) * * *

(8) For a measurement facility that will be used for testing radiated emissions, a plot of site attenuation data taken pursuant to the procedures contained in Sections 5.4.6 through 5.5 of the following procedure: American National Standards Institute (ANSI) C63.4–2001, entitled "American National Standard for Methods of Measurement of Radio-Noise Emissions from Low-Voltage Electrical and Electronic Equipment in the Range of 9 kHz to 40 GHz" published by the American National Standards Institute on June 22, 2001 as document number SH94908. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of C63.4–2001 may be obtained from: IEEE Customer Service, P.O. Box 1331, Piscataway, NJ 08855–1331, or *UPS only* IEEE Customer Service, 445 Hoes Lane, Piscataway, NJ 08854; telephone 1–800–678–4333 or +1–732–981–0600 (outside the United States and Canada). Copies of ANSI C63.4–2001 may be inspected at the following locations:

(i) Federal Communications Commission, 445 12th Street, SW., Office of Engineering and Technology (Room 7–B144), Washington, DC 20554,

(ii) Federal Communications Commission Laboratory, 7435 Oakland Mills Road, Columbia, MD 21046, or

(iii) Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

* * * * *

(d) A laboratory that has been accredited with a scope covering the required measurements shall be deemed competent to test and submit test data for equipment subject to verification, DoC and certification. Such a laboratory shall be accredited by an approved accreditation organization based on the International Organization for Standardization/International Electrotechnical Commission (ISO/IEC) Standard 17025, "General Requirements for the Competence of Calibration and Testing Laboratories." The organization accrediting the laboratory must be approved by the Commission's Office of Engineering and Technology, as indicated in § 0.241 of this chapter, to perform such accreditation based on ISO/IEC 58, "Calibration and Testing Laboratory Accreditation Systems—General Requirements for Operation and Recognition." The frequency for revalidation of the test site and the information that is required to be filed, or retained by the testing party shall comply with the requirements established by the accrediting organization. However, in all cases, test site revalidation shall occur on an interval not to exceed two years.

(e) The accreditation of a laboratory located outside of the United States, or its possessions, will be acceptable only under one of the following conditions:

(1) If the accredited laboratory has been designated by a foreign designating authority and recognized by the Commission under the terms of a government-to-government Mutual Recognition Agreement/Arrangement; or

(2) If the laboratory has been recognized by the Commission as being accredited by an organization that has entered into an arrangement between accrediting organizations and the arrangement has been recognized by the Commission.

■ 4. The following undesignated center heading is inserted before § 2.960 to read as follows: "Telecommunication Certification Bodies (TCBs)".

* * * * *

§ 2.1033 [Amended]

■ 5. Section 2.1033 is amended by redesignating paragraph (c)(17) as paragraph (e).

■ 6. Section 2.1055 is amended by revising paragraph (a)(2) to read as follows:

§ 2.1055 Measurements required: Frequency stability.

(a) * * *

(2) From −20° to +50° centigrade for equipment to be licensed for use in the Maritime Services under part 80 of this chapter, except for Class A, B, and S Emergency Position Indicating Radiobeacons (EPIRBS), and equipment to be licensed for use above 952 MHz at operational fixed stations in all services, stations in the Local Television Transmission Service and Point-to-Point Microwave Radio Service under part 21 of this chapter, equipment licensed for use aboard aircraft in the Aviation Services under part 87 of this chapter, and equipment authorized for use in the Family Radio Service under part 95 of this chapter.

* * * * *

■ 7. The undesignated center heading "FILING FOR APPLICATION REFERENCE" before § 2.1061 is removed.

§§ 2.1061 through 2.1065 [Removed]

■ 8. Sections 2.1061 through 2.1065 are removed.

PART 15—RADIO FREQUENCY DEVICES

■ 9. The authority citation for part 15 continues to read as follows:

Authority: 47 U.S.C. 154, 302, 303, 304, 307, 336 and 544A.

■ 10. Section 15.19 is amended by revising paragraphs (b)(1)(i) and (b)(1)(ii) to read as follows:

§ 15.19 Labeling requirements.

* * * * *

(b) * * *

(1) * * *

(i) If the product is authorized based on testing of the product or system; or

Trade name
Model number

(ii) If a personal computer is authorized based on assembly using separately authorized components, in accordance with § 15.101(c)(2) or (c)(3), and the resulting product is not separately tested:

Trade name
Model number
Assembled from tested components
Complete system not tested

* * * * *

■ 11. Section 15.21 is amended by adding the following sentence to the end of the section to read as follows:

§ 15.21 Information to user.

* * * In cases where the manual is provided only in a form other than paper, such as on a computer disk or over the Internet, the information required by this section may be included in the manual in that alternative form, provided the user can reasonably be expected to have the capability to access information in that form.

■ 12. Section 15.27 is amended by adding the following sentence to the end of paragraph (a) to read as follows:

§ 15.27 Special accessories.

(a) * * * In cases where the manual is provided only in a form other than paper, such as on a computer disk or over the Internet, the information required by this section may be included in the manual in that alternative form, provided the user can reasonably be expected to have the capability to access information in that form.

* * * * *

■ 13. Section 15.31 is amended by revising paragraph (a) to read as follows:

§ 15.31 Measurement standards.

(a) The following measurement procedures are used by the Commission to determine compliance with the technical requirements in this part. Except where noted, copies of these procedures are available from the Commission's current duplicating contractor whose name and address are available from the Commission's Consumer and Governmental Affairs Bureau at 1–888–CALL–FCC (1–888–225–5322).

(1) FCC/OET MP–2: Measurement of UHF Noise Figures of TV Receivers.

(2) Unlicensed Personal Communication Service (UPCS) devices are to be measured for compliance using ANSI C63.17–1998: "Methods of Measurement of the Electromagnetic and Operational Compatibility of Unlicensed Personal Communications Services (UPCS) Devices", (incorporated by reference, see § 15.38). This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

(3) Other intentional and unintentional radiators are to be measured for compliance using the following procedure excluding sections 4.1, 5.2, 5.7, 9 and 14: ANSI C63.4–2001: "Methods of Measurement of Radio-Noise Emissions from Low-Voltage Electrical and Electronic Equipment in the Range of 9 kHz to 40 GHz" (incorporated by reference, see § 15.38). This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

Note to Paragraph (a)(3): Digital devices tested to show compliance with the provisions of §§ 15.107(e) and 15.109(g) must be tested following the ANSI C63.4 procedure described in paragraph (a)(3) of this section.

* * * * *

■ 14. Section 15.38 is amended by revising paragraph (b)(6) and adding paragraph (b)(12) to read as follows:

§ 15.38 Incorporation by reference.

* * * * *

(b) * * *

(6) ANSI C63.4—2001: "Methods of Measurement of Radio-Noise Emissions from Low-Voltage Electrical and Electronic Equipment in the Range of 9 kHz to 40 GHz", 2001, IBR approved for § 15.31, except for sections 4.1, 5.2, 5.7, 9 and 14.

* * * * *

(12) ANSI C63.17–1998: "Methods of Measurement of the Electromagnetic and Operational Compatibility of Unlicensed Personal Communications Services (UPCS) Devices", 1998, IBR approved for § 15.31.

* * * * *

■ 15. Section 15.105 is amended by adding paragraph (e) to read as follows:

§ 15.105 Information to the user.

* * * * *

(e) In cases where the manual is provided only in a form other than paper, such as on a computer disk or over the Internet, the information required by this section may be included in the manual in that alternative form, provided the user can reasonably be expected to have the capability to access information in that form.

§ 15.118 [Amended]

■ 16. Section 15.118(b) is amended by removing "1919 M Street, NW., Dockets Branch (Room 239)," and adding in its place, "445 12th Street, SW.,"

§ 15.120 [Amended]

■ 17. Section 15.120(d) is amended by removing "2000 M Street, NW, Technical Information Center (Suite 230)," and adding in its place, "445 12th Street, SW.,"

■ 18. Section 15.201 is amended by revising paragraph (a) to read as follows:

§ 15.201 Equipment authorization requirement.

(a) Intentional radiators operated as carrier current systems, devices operated under the provisions of §§ 15.211, 15.213, and 15.221, and devices operating below 490 kHz in which all emissions are at least 40 dB below the limits in § 15.209 shall be verified pursuant to the procedures in Subpart J of part 2 of this chapter prior to marketing.

* * * * *

■ 19. Section 15.205 is amended by adding paragraphs (d)(7), (d)(8) and (d)(9) to read as follows:

§ 15.205 Restricted bands of operation.

* * * * *

(d) * * *

(7) Devices operated pursuant to § 15.225 are exempt from complying with this section for the 13.36–13.41 MHz band only.

(8) Devices operated in the 24.075–24.175 GHz band under § 15.245 are exempt from complying with the requirements of this section for the 48.15–48.35 GHz and 72.225–72.525 GHz bands only, and shall not exceed the limits specified in § 15.245(b).

(9) Devices operated in the 24.0–24.25 GHz band under § 15.249 are exempt from complying with the requirements of this section for the 48.0–48.5 GHz and 72.0–72.75 GHz bands only, and shall not exceed the limits specified in § 15.249(a).

* * * * *

■ 20. Section 15.225 is revised to read as follows.

§ 15.225 Operation within the band 13.110–14.010 MHz.

(a) The field strength of any emissions within the band 13.553–13.567 MHz shall not exceed 15,848 microvolts/meter at 30 meters.

(b) Within the bands 13.410–13.553 MHz and 13.567–13.710 MHz, the field strength of any emissions shall not exceed 334 microvolts/meter at 30 meters.

(c) Within the bands 13.110–13.410 MHz and 13.710–14.010 MHz the field strength of any emissions shall not exceed 106 microvolts/meter at 30 meters.

(d) The field strength of any emissions appearing outside of the 13.110–14.010 MHz band shall not exceed the general radiated emission limits in § 15.209.

(e) The frequency tolerance of the carrier signal shall be maintained within +/−0.01% of the operating frequency over a temperature variation of −20 degrees to +50 degrees C at normal supply voltage, and for a variation in the primary supply voltage from 85% to 115% of the rated supply voltage at a temperature of 20 degrees C. For battery operated equipment, the equipment tests shall be performed using a new battery.

(f) In the case of radio frequency powered tags designed to operate with a device authorized under this section, the tag may be approved with the device or be considered as a separate device subject to its own authorization. Powered tags approved with a device under a single application shall be labeled with the same identification number as the device.

■ 21. Section 15.231 is amended by revising paragraphs (a) introductory text and (a)(3) to read as follows:

§ 15.231 Periodic operation in the band 40.66—40.70 MHz and above 70 MHz.

(a) The provisions of this section are restricted to periodic operation within the band 40.66–40.70 MHz and above 70 MHz. Except as shown in paragraph (e) of this section, the intentional radiator is restricted to the transmission of a control signal such as those used with alarm systems, door openers, remote switches, etc. Continuous transmissions, voice, video and the radio control of toys are not permitted. Data is permitted to be sent with a control signal. The following conditions shall be met to comply with the provisions for this periodic operation:

* * * * *

(3) Periodic transmissions at regular predetermined intervals are not permitted. However, polling or supervision transmissions, including data, to determine system integrity of transmitters used in security or safety applications are allowed if the total duration of transmissions does not exceed more than two seconds per hour for each transmitter. There is no limit on the number of individual transmissions, provided the total transmission time does not exceed two seconds per hour.

* * * * *

■ 22. Section 15.245 is amended by revising paragraph (b)(1)(i) and the first sentence of paragraph (b)(1)(iii) to read as follows:

§ 15.245 Operation within the bands 902–928 MHz, 2435–2465 MHz, 5785–5815 MHz, 10500–10550 MHz, and 24075–24175 MHz.

* * * * *

(b) * * *

(1) * * *

(i) For the second and third harmonics of field disturbance sensors operating in the 24075–24175 MHz band and for other field disturbance sensors designed for use only within a building or to open building doors, 25.0 mV/m.

* * * * *

(iii) Field disturbance sensors designed to be used in motor vehicles or aircraft must include features to prevent continuous operation unless their emissions in the restricted bands, other than the second and third harmonics from devices operating in the 24075–24175 MHz band, fully comply with the limits given in § 15.209. * * *

* * * * *

■ 23. Section 15.255 is amended by revising paragraph (b)(5) to read as follows:

§ 15.255 Operation within the band 57–64 GHz.

* * * * *

(b) * * *

(5) The average emission levels shall be calculated, based on the measured peak levels, over the actual time period during which transmission occurs.

* * * * *

PART 18—INDUSTRIAL, SCIENTIFIC, AND MEDICAL EQUIPMENT

■ 24. The authority citation for part 18 continues to read as follows:

Authority: 47 U.S.C. 4, 301, 302, 303, 304, 307.

§ 18.103 [Removed]

■ 25. Section 18.103 is removed.

§ 18.105 [Removed]

■ 26. Section 18.105 is removed.

§ 18.119 [Removed]

■ 27. Section 18.119 is removed.

PART 90—PRIVATE LAND MOBILE RADIO SERVICES

■ 28. The authority citation for part 90 continues to read as follows:

Authority: Sections 4(i), 11, 303(g), 303(r), and 332(c)(7) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 161, 303(g), 303(r), 332(c)(7).

■ 29. Section 90.203 is amended by revising paragraph (k) to read as follows:

§ 90.203 Certification required.

* * * * *

(k) For transmitters operating on frequencies in the 220–222 MHz band, certification will only be granted for equipment with channel bandwidths up to 5 kHz, except that certification will be granted for equipment operating on 220–222 MHz band Channels 1 through 160 (220.0025 through 220.7975/221.0025 through 221.7975), 171 through 180 (220.8525 through 220.8975/221.8525 through 221.8975), and 186 through 200 (220.9275 through 220.9975/221.9275 through 221.9975) with channel bandwidths greater than 5 kHz.

* * * * *

PART 95—PERSONAL RADIO SERVICES

■ 30. The authority citation for part 95 continues to read as follows:

Authority: Secs. 4, 303, 48 Stat. 1066, 1082 as amended, 47 U.S.C. 154, 303.

■ 31. Section 95.1115 is amended by revising paragraphs (b)(1) and (b)(2) to read as follows:

§ 95.1115 General technical requirements.

* * * * *

(b) * * *

(1) Out-of-band emissions below 960 MHz are limited to 200 microvolts/meter, as measured at a distance of 3 meters, using measuring instrumentation with a CISPR quasi-peak detector.

(2) Out-of-band emissions above 960 MHz are limited to 500 microvolts/meter as measured at a distance of 3 meters, using measuring equipment with an averaging detector and a 1 MHz measurement bandwidth.

* * * * *

[FR Doc. 03–30314 Filed 12–8–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 03–3649; MB Docket No. 02–341; RM–10594]

Radio Broadcasting Services; Encino, TX

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In response to a *Notice of Proposed Rulemaking*, 67 FR 71925 (December 3, 2002) this document grants a petition for rulemaking filed by Charles Crawford proposing the allotment of Channel 283A at Encino, Texas, as the community's first local transmission service. Channel 283A is allotted at Encino, Texas, with a site restriction of 6.4 kilometers (4.0 miles) west of the community. Coordinates for Channel 283A at Encino, Texas are 26–55–42 NL and 98–11–56 WL . Since this proposal is within 320 kilometers (199 miles) of the U.S.-Mexico border, concurrence of the Mexican government to the proposed allotment has been requested but not received. Operation with the facilities specified for Encino is subject to modification, suspension, or termination without right to hearing, if found by the Commission to be necessary in order to conform to the 1992 USA-Mexico FM Broadcast Agreement or if specifically objected to by Mexico.

DATES: Effective January 8, 2004.

FOR FURTHER INFORMATION CONTACT: Victoria M. McCauley, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MB Docket No. 02–314, adopted November 14, 2003, and released November 17, 2003. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 445 12th Street, SW., Washington, DC. This document may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC, 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com*.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

■ Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—RADIO BROADCAST SERVICES

■ 1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, and 336.

■ 2. Section 73.202(b), the Table of FM Allotments under Texas, is amended by adding Encino, Channel 283A.

Federal Communications Commission.
John A. Karousos,
Assistant Chief, Audio Division, Media Bureau.
[FR Doc. 03–30410 Filed 12–8–03; 8:45 am]
BILLING CODE 6712–01–P

Proposed Rules

Federal Register
Vol. 68, No. 236
Tuesday, December 9, 2003

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

NUCLEAR REGULATORY COMMISSION

10 CFR Part 35

RIN 3150–AH19

Medical Use of Byproduct Material—Recognition of Specialty Boards

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is proposing to amend its regulations governing the medical use of byproduct material to change its requirements for recognition of specialty boards whose certifications may be used to demonstrate the adequacy of the training and experience of individuals to serve as radiation safety officers, authorized medical physicists, authorized nuclear pharmacists or authorized users. The proposed rule would also revise the requirements for demonstrating the adequacy of training and experience for pathways other than the board certification pathway. This rulemaking is necessary to address the training and experience issue for recognition of specialty board certifications.

DATES: The comment period expires February 23, 2004. Comments received after this date will be considered if it is practical to do so, but the NRC can only assure consideration for comments received on or before this date.

ADDRESSES: You may submit comments by any one of the following methods. Please refer to RIN 3150–AH19 in the subject line of your comments. Comments on rulemakings submitted in writing or in electronic form will be made available to the public in their entirety on the NRC rulemaking web site. Personal information will not be removed from your comments.

Mail comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attn: Rulemakings and Adjudications Staff.

E-mail comments to: *SECY@nrc.gov*. If you do not receive a reply e-mail confirming that we have received your comments, contact us directly at (301) 415–1966. You may also submit comments on this proposed rule, as well as the draft Regulatory Analysis, via the NRC's rulemaking Web site at *http://ruleforum.llnl.gov*. Address questions about our rulemaking Web site to Carol Gallagher (301) 415–5905; e-mail *cag@nrc.gov*.

Hand deliver comments to: 11555 Rockville Pike, Rockville, Maryland 20852, between 7:30 a.m. and 4:15 p.m. on Federal workdays (telephone (301) 415–1966).

Fax comments to: Secretary, U.S. Nuclear Regulatory Commission at (301) 415–1101.

Publicly available documents related to this rulemaking may be examined and copied for a fee at the NRC's Public Document Room (PDR), Public File Area O1 F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland. Selected documents, including comments, can be viewed and downloaded electronically via the NRC rulemaking Web site at *http://ruleforum.llnl.gov*.

Publicly available documents created or received at the NRC after November 1, 1999, are available electronically at the NRC's Electronic Reading Room at *http://www.nrc.gov/NRC/ADAMS/index.html*. From this site, the public can gain entry into the NRC's Agencywide Document Access and Management System (ADAMS), which provides text and image files of NRC's public documents. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the PDR Reference staff at 1–800–397–4209, 301–415–4737 or by e-mail to *pdr@nrc.gov*.

FOR FURTHER INFORMATION CONTACT: Roger W. Broseus, Office of Nuclear Material Safety and Safeguards, Mail Stop T9 C24, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone (301) 415–7608, e-mail *rwb@nrc.gov*.

SUPPLEMENTARY INFORMATION:

Background

During development of revised 10 CFR part 35, published as a proposed rule on August 13, 1998 (63 FR 43516), and as a final rule on April 24, 2002 (67 FR 20249), there was a general belief that the boards recognized by the NRC would meet, or could make adjustments to meet, the new requirements established by that rulemaking governing recognition of specialty boards by the NRC and that these boards would continue to be recognized by NRC. However, when applications for recognition were received, the NRC staff determined that, except for one board, the boards did not meet all the requirements specified in the final rule. Specifically, the boards' certification programs failed to meet the requirements in the final rule regarding preceptor certification and work experience. The only board that currently meets the revised requirements is the Certification Board of Nuclear Cardiology (CBNC) because it developed its certification program based on the final rule. The NRC staff held several discussions with the boards to determine whether the boards would modify their certification processes to meet all the requirements specified in the rule. With the exception of the CBNC, no board indicated that it would modify its certification process.

The current regulations in 10 CFR part 35 offer three pathways for individuals to satisfy training and experience (T&E) requirements to be approved as a radiation safety officer (RSO), authorized medical physicist (AMP), authorized nuclear pharmacist (ANP), or authorized user (AU). These pathways are: (1) Approval of an individual who is certified by a specialty board whose certification has been recognized by the NRC or an Agreement State as meeting the NRC's requirements for training and experience (a "recognized board"); (2) approval based on an evaluation of an individual's training and experience; or (3) identification of an individual's approval on an existing NRC or Agreement State license. For the sake of this discussion, pathway (1) will be referred to as the certification pathway, and pathway (2) as the alternate pathway. For example, in § 35.50, the proposed criteria for meeting training and experience requirements for the certification pathway (1) appear in § 35.50(a); those for the alternate pathway (2) appear in § 35.50(b); and those for pathway (3) appear in § 35.50(c).

On February 19, 2002, in a briefing of the Commission, the Advisory

Committee on Medical Uses of Isotopes (ACMUI) expressed concern about requirements for T&E in the revised 10 CFR part 35, approved by the Commission on October 23, 2000 (SRM–SECY–00–0118). The ACMUI was concerned that if the requirements for recognition of specialty board certifications were to become effective as drafted, there could be potential shortages of individuals qualified to serve as RSOs, AMPs, ANPs and AUs. The ACMUI indicated that, without changes to the requirements for T&E in the final rule approved by the Commission in October 2000, the boards would no longer be qualified for recognition by NRC and, therefore, a board's future diplomates could no longer be approved as RSOs, AMPs, ANPs or AUs.

The ACMUI also expressed the concern that the boards might be "marginalized." Specifically, under the draft final rule, to gain approval via the certification pathway, a candidate for certification would have been required to meet all of the requirements in the alternate pathway, thereby imposing more requirements, beyond those already required by boards, on candidates using the certification pathway for approval. The extra requirements of concern to the ACMUI, incorporated from the alternate pathway by reference, include a specification for length-of-training as well as obtaining a written certification signed by a preceptor. Taken together with other requirements of boards, such as requiring candidates for certification to take written and/or oral examinations, the concern was that candidates seeking approval might bypass the board certification pathway and select the alternate pathway.

Based on these concerns, the ACMUI urged the Commission to implement measures to address the training and experience issues associated with recognition of specialty boards by the NRC in the draft final rule and to find a permanent solution after publication of the final rule. Subsequently, the NRC modified the final rule by reinserting subpart J (as contained in the proposed rule) for a 2-year transition period. Subpart J provides for continuing recognition of the specialty boards listed therein during the transition period. The final rule was published in the **Federal Register** on April 24, 2002 (67 FR 20249), and became effective on October 24, 2002. As specified in § 35.10(c), the 2-year transition period ends on October 24, 2004. In a Staff Requirements Memorandum (SRM–COMSECY–02–0014) dated April 16, 2002, the Commission directed the NRC staff to develop options for addressing the training and experience issue. The intent is to have this new rule in place before the end of the 2-year transition period.

The issue in question concerns the requirements in the rule governing the recognition of specialty boards by the NRC. These requirements are located in the current regulations at 10 CFR 35.50, 35.51, 35.55, 35.190, 35.290, 35.390, 35.392, 35.394, 35.490, 35.590, and 35.690.

The ACMUI formed a subcommittee to develop recommendations on the training and experience issue. A public subcommittee meeting was held on June 21, 2002, at NRC headquarters in Rockville, Maryland. Representatives from 13 boards, associations, and societies participated in the meeting. In addition, 8 boards and societies provided written comments to the ACMUI subcommittee on its recommendations. After considering the comments from the meeting and letters, the subcommittee developed final recommendations and submitted them to the ACMUI for consideration.

The ACMUI full committee discussed the subcommittee's recommendations in a public teleconference meeting on July 8, 2002. Members of the public and representatives from the Society of Nuclear Medicine participated in the teleconference. The ACMUI approved the recommendations of the subcommittee and submitted them in a report to the NRC on August 1, 2002. The report provided a rationale for the recommendations accompanied by suggested rule language. The NRC staff presented three options to the Commission in a Commission paper, SECY–02–0194, dated October 30, 2002, which included the recommendations of the ACMUI at Attachment 2. The three options were: Option (1) retain the existing requirements in the current regulations; Option (2) prepare a proposed rule to modify training and experience requirements based on the recommendations submitted by the ACMUI; and, Option (3) the same as Option 2 with a minor modification (*i.e.*, listing all specialty boards recognized by NRC on the NRC's Web site rather than, as recommended by the ACMUI, listing some boards in the regulation and others on the Web site).

In SRM–02–0194 dated February 12, 2003, the Commission approved Option 3, directing the NRC staff to prepare a proposed rule based on the ACMUI's recommendations with certain exceptions. Current regulations in 10 CFR part 35 require that individuals obtain a written certification that they have satisfactorily completed requirements for T&E and have achieved a level of competency sufficient to function independently (*see, e.g.*, § 35.50(b)(2)). For the sake of discussion, this certification will be referred to herein as a preceptor statement. (The term "preceptor" is defined in § 35.2.) The Commission directed that a list of recognized boards be posted on the NRC's web site, that the preceptor statement remain as written in the current regulations (published April 24, 2002), and that the staff should clarify that the preceptor language does not require an attestation of general clinical competency, but does require sufficient attestation to demonstrate that the candidate has the knowledge to fulfill the duties of the position for which certification is sought. This form of attestation should be preserved both for the certification pathway and the alternate pathway.

The ACMUI briefed the Commission on May 28, 2003, and members conveyed their views regarding the Commission's direction to NRC staff, relating to preceptor statements, in SRM–02–0194. The Commission subsequently issued an SRM on June 20, 2003 (SRM–M030528B). This SRM directed that the staff continue its development of a proposed rule to modify the training and experience requirements in 10 CFR part 35, with appropriate interactions with the ACMUI, so that the revised rule can be in place as promptly as possible. The NRC staff met with the ACMUI via teleconference on July 17, 2003, to further discuss the ACMUI's comments on the proposed rule. This meeting was noticed in the **Federal Register** on July 14, 2003 (68 FR 41665).

During the teleconference with the ACMUI, conducted on July 17, 2003, the ACMUI members continued to voice concern about having recognition of board certifications conditioned on requiring candidates for certification to obtain written attestation of competency signed by a preceptor. The ACMUI recommended that if the Commission still maintained that it was necessary to include a preceptor statement for all authorized positions named in 10 CFR part 35, this requirement would be separated from the criteria for recognition of board certifications, as well as the alternative pathway. Agreement State representatives participated in the teleconference and agreed with this recommendation. In a letter, dated July 23, 2003, Dr. Manuel Cerqueira, Chair of the ACMUI, restated the ACMUI's recommendation that the requirements for a preceptor statement be removed from the certification pathway; however, if the Commission still believed it necessary to include a preceptor statement for all "authorized positions" named in 10 CFR part 35, the ACMUI recommended that this requirement be separated from the board certification pathway and that it be specified separately as a new paragraph in each training section. In SRM–03–0145, issued on October 9, 2003, the Commission approved the recommendation of the ACMUI that the requirement for a preceptor statement be removed from the requirements for recognition of specialty board certifications. The Commission also indicated it should be clear in the proposed rule language that a preceptor statement is required regardless of which training pathway is chosen.

Discussion

The principal changes proposed to 10 CFR part 35 involve revising the criteria for recognizing the certifications of specialty boards. These changes relate to the requirements for training and experience (T&E) that boards would place on candidates seeking board certification. The NRC staff reviewed board certification procedures and made a determination that, with one exception, the boards' certification programs failed to meet the requirements in the current regulations regarding preceptor certification and work experience. This assessment [1] resulted from a detailed comparison, performed by the NRC staff, between requirements in the regulations (in subparts D–H) and specialty board requirements for certification. The changes resulting from adoption of the proposed rule would remedy this situation and result in requirements that are less prescriptive while maintaining public health and safety. These changes would ensure that a clear regulatory determination can be made that specialty boards, both new and existing, meet the relevant criteria for recognition by the NRC or an Agreement State. Minor changes would also be made to the training and experience requirements in the alternate pathway.

The proposed changes to T&E requirements are intended to address issues raised by the ACMUI. However, the NRC disagrees with the ACMUI's belief that the training and experience criteria in the current rule would result in candidates bypassing board certification. The NRC believes that board certification has been and will continue to be essential for physicians, including AUs, to practice medicine. While health physicists, medical physicists, nuclear pharmacists and physicians can serve in the respective categories of RSO, AMP, ANP and AU by satisfying T&E requirements under the alternate pathway, the NRC also believes that individuals who would have sought certification are likely to continue to do so because certifications are useful to individuals for reasons other than satisfying requirements in 10 CFR part 35, *e.g.*, measuring areas of competence that go beyond regulatory requirements established under the Atomic Energy Act. Furthermore, some State agencies now require that individuals be certified by specialty boards before they can practice in some specialties, *e.g.*, as medical physicists and nuclear pharmacists.

The NRC is seeking public comment on specific issues related to this proposed rule (*see* the section entitled "*Invitation for Public Comment on Specific Issues*," below).

Changes to the Certification Pathway

For the certification pathway, the current regulations incorporate the more prescriptive requirements for the alternate pathway. The proposed rule would establish criteria for a board to be recognized by the NRC or an Agreement State.

For the RSO, AMP, and ANP, the proposed criteria include a degree from an accredited college or university, professional experience, passing an examination administered by the board, and in some cases additional training related to the type of use for which an individual would be responsible. The requirement for passing an examination reflects the current practice of certification boards.

The addition of a requirement in § 35.50(a) for candidates for RSO to have a degree is consistent with current standards of certification boards to require a minimum of a baccalaureate degree. The NRC believes that this requirement helps ensure that a candidate for RSO has the level of knowledge necessary to fulfill duties of an RSO. However, the proposed rule will retain current regulatory provisions that allow candidates who do not hold a degree required under proposed revisions to § 35.50(a) to qualify for positions as RSO under provisions in § 35.50(b). Requirements for T&E of candidates to serve as AMPs would be revised for the board certification pathway, in proposed § 35.51(a)(2), to require 2 years of full-time practical training and/or supervised experience under the supervision of a medical physicist certified by a specialty board recognized by the NRC or an Agreement State, or in clinical radiation facilities providing high energy, external beam therapy and brachtherapy services under the direct supervision of physicians who meet the requirements for AUs in §§ 35.400 or 35.600 or under supervision of a certified medical physicist in clinical radiation facilities. This T&E would help ensure that candidates have the level of knowledge necessary to fulfill the duties of an AMP.

The requirement that boards must have candidates for certification obtain a preceptor statement as a condition for NRC recognition of certifications would be removed in the proposed rule; however, individuals would still be required to obtain preceptor statements and licensees would be required to submit them to the NRC (broad scope, type A licensees would be exempt from this requirement as provided under § 35.15(d)). This would be an addition to the current requirement in § 35.14(a) to provide a copy of board certifications to the NRC. Further discussion of the requirement for a preceptor statement appears below under the heading "*Preceptor Certification*." The certification pathway also includes a specification for the number of hours of training and experience for ANPs and AUs for certain uses of byproduct material under §§ 35.100, 35.200, 35.300 (in 35.390, 35.392, 35.394 for uses under 35.300), and 35.500. The ACMUI recommended that the requirement for 200 hours of classroom and laboratory training, now required in §§ 35.490 and 35.690, be removed because it believes that the combination of degree, practical experience, and examination in the criteria for recognizing certifying boards is equivalent to the number of hours of didactic training and experience specified for the alternative pathway. A detailed analysis of T&E requirements was performed by NRC staff and appears as Attachment 1 to SECY–02–0194. This assessment included a comparison of the number of hours of training required both for the board certification and alternate pathway, with estimates of the equivalency of hours of T&E leading to board certification in comparison to the hours required under the alternate pathway. The NRC believes that, although the requirements are not identical, the T&E standard for recognizing certifying boards would be equivalent to the standard for the alternate pathway. The board certification process requires a

[1] "Comparison Between NRC Requirements and Boards Certification Programs," Attachment 2 to SECY–02–0194, "Options for Addressing part 35 Training and Experience Issues Associated with Recognition of Specialty Boards by NRC." SECY–02–0194 is available on the NRC's Web site, *http://www.nrc.gov*, in the "Electronic Reading Room."

candidate to have an academic degree, complete practical experience or a residency program, and pass an examination. Examinations test the knowledge and skills required to perform the applicable activities, including those in proposed §§ 35.490(a)(2) and 35.690(a)(2), to ensure radiation safety. The NRC believes that the combination of a degree, practical experience and an examination in the proposed criteria for recognizing certifying boards would be equivalent to the number of hours of didactic training and experience specified for the alternate pathway. Further, the proposed requirement in the certification pathway for §§ 35.390, 35.490 and 35.690 for completion of an approved, 3-year residency program provides added assurance that T&E is sufficient.

The ACMUI's recommendations included the addition of the Royal College of Physicians and Surgeons of Canada (RCPSC) in listings of entities which approve residency training to satisfy requirements for the board certification pathway for uses under §§ 35.300, 35.400, and 35.600. While the RCPSC was named in subpart J of the current rule, it is not named in other subparts. There are reciprocal arrangements between U.S. entities and the RCPSC regarding approval of residency programs. Thus, the NRC finds these reciprocal agreements to be a sufficient basis to provide that RCPSC be included in various sections of 10 CFR part 35, as previously discussed.

The proposed rule would provide the boards more latitude in making the determination that individuals are fully trained and capable of performing their duties involving radiation safety. These proposed changes to the certification pathway would continue to ensure the safe use of byproduct material by medical licensees by establishing criteria for specialty boards to use in granting certifications. The NRC made a determination that, with the exception of one specialty board, the boards do not meet the requirement in the current rule regarding preceptor certification and work experience. The proposed revisions for the certification pathway would remedy the problem of boards not meeting current requirements in 10 CFR part 35.

Changes to the Alternate Pathway

The proposed rule also contains revised requirements for some of the alternate pathways. Most of these changes are minor and would clarify the requirements for training and experience.

The ACMUI's recommendations for approval as an AU in the alternate pathway in §§ 35.490(b) and 35.690(b) include the addition of the RCPSC to the listings of organizations that approve residency programs. The NRC finds that RCPSC should be included in the listing for the reasons previously discussed above under the heading, "*Changes to the Certification Pathway.*"

Training Specific to Type of Use

The ACMUI recommended that, in addition to meeting minimum training and experience requirements, authorized individuals should have training or experience in the use of byproduct material or specific modalities (types of use), as appropriate, for which a licensee is authorized. The requirement would also apply to newly hired authorized individuals and when a new type of use is added to the licensee's program. The NRC supports these changes, believing that they would ensure that a licensee's staff has adequate knowledge and experience to fulfill the duties for which they are responsible. The proposed rule includes new paragraphs that add this requirement in § 35.50(e) for RSOs, § 35.51(d) for AMPs and for AUs in § 35.690(d) for remote afterloader, teletherapy and gamma stereotactic radiosurgery units. For uses under § 35.300, requirements in § 35.390(b)(1) provide for training specific to type of use which applies to both the board certification and alternate pathways.

Other Changes

In the current rule, § 35.390(b)(1) specifies that work experience for uses of byproduct material in unsealed form for which a written directive is required must include administering dosages of radioactive drugs involving a minimum of three cases in each of the categories for which the individual is requesting authorized user status. Sections 35.390(b)(1)(ii)(G)(*3*) and (*4*) refer to parenteral administration of certain radionuclides. The proposed rule would clarify that this training must be with quantities of radionuclides for which a written directive is required. The NRC supports these changes because, without them, an individual might cite experience with low-level dosages to satisfy requirements for work experience; the changes place emphasis on the need for AUs to have work experience with higher level dosages, for which a written directive is required.

The ACMUI recommended that the requirements for work experience for authorized users in §§ 35.190, 35.290, and 35.390 be changed to require experience with performing quality control check of instruments rather than with calibrating instruments. The proposed rule would effect these recommendations with changes to §§ 35.190(c)(1)(ii)(B), 35.290(c)(1)(ii)(B), 35.390(b)(1)(ii)(B), 35.392(c)(2)(ii), and 35.394(c)(2)(ii). The NRC agrees with this recommendation because ensuring proper function of these instruments involves more than periodic calibration. In addition to instrument calibration, quality control procedures commonly include checks of such parameters as linearity, constancy and functionality (including battery checks).

Training requirements for authorizations as a medical physicist would be changed in § 35.51(b)(1) to remove specific requirements for a degree in biophysics, radiological physics, and health physics, and add the more general, other physical sciences, as well as engineering and applied mathematics. The requirement for 1 year of full-time training in therapeutic radiological physics would be changed to a more general requirement for 1 year of full-time training in medical physics. Similarly, the requirement for training in a clinical radiation oncology facility would be changed to a requirement for training in "clinical radiation facilities." Pluralizing "facility" makes it possible for candidates to receive training in more than one institution. In § 35.690(b)(2), the requirement for candidates to be approved as AUs would be changed to broaden the requirement that supervised clinical experience be received in "radiation therapy" rather than in "radiation oncology." These changes are needed to allow for the therapeutic use of byproduct material in applications other than cancer therapy and allowing for T&E to be obtained in more than one facility.

Current regulations in § 35.50(c) provide that an AMP identified on a licensee's license can serve as an RSO, provided that the individual has experience with the radiation safety aspects of similar types of use of byproduct material for which the individual has responsibilities as an RSO. However, current regulations only require services of an AMP for uses under §§ 35.433 and 35.600; a few AMPs are also named on licenses for uses under § 35.1000. Therefore, individuals who may have adequate T&E to serve as AMPs for types of use licensed under §§ 35.100, 35.200, 35.300, 35.400 and 35.500, are not listed on an NRC or Agreement State license under current rules. Medical physicists who are certified by a specialty board recognized by the Commission or an Agreement State have training and experience in radiation safety aspects of the use of byproduct material for medical purposes. A change to the regulations in § 35.50(c) is proposed that would allow medical physicists, who are certified by a specialty board recognized by the NRC or an Agreement State, to serve as RSOs, while retaining the requirement that such individuals have experience specific to the types of use for which they would be responsible. This change would remove an impediment for individuals who have adequate T&E to become approved as RSOs. It would also avoid placing a burden on licensees to apply for an exemption to regulations and on NRC and Agreement State staff who would be required to process an application for an exemption to regulations in order to approve a licensee's request to have a medical physicist, certified by a recognized specialty board, serve as an RSO.

The term "high energy" is used in the proposed rule text in § 35.51(a)(2)(ii) to specify the type of training to be included in T&E for AMPs. The NRC has not defined the term "high energy" because, to do so, would be overly prescriptive and such definition might be misinterpreted as establishing a threshold for the minimum photon energy for which experience with external beam therapy is appropriate to qualify as an AMP.

Preceptor Certification

10 CFR part 35 currently requires a written certification that the individual has satisfactorily completed the required training and has achieved a level of knowledge or competency sufficient to function independently and requires that the written certification be signed by a preceptor who is a radiation safety officer, authorized medical physicist, authorized nuclear pharmacist or authorized user. This requirement applies to both the board certification and alternate pathways.

The ACMUI recommended that, instead of certifying "competency," the preceptor should attest that the individual has satisfactorily completed the required training and experience. It further recommended that a training program director be allowed to sign the written certification.

As explained above, the Commission considered recommendations of the ACMUI and determined in SRM–02–0194 that the preceptor statement should remain as written in the current regulations. However, the Commission emphasized that the preceptor language does not require an attestation of general clinical competency, but requires sufficient attestation to demonstrate that the candidate has the knowledge to fulfill the duties of the position for which certification is sought.

The ACMUI also recommended that the Commission separate the requirement to obtain a preceptor statement from the certification and alternate pathways, and to specify this requirement as a new paragraph in the sections dealing with T&E for RSOs, AMPs, ANPs, and AUs. The Commission approved this recommendation of the ACMUI, placing the requirement on licensees to submit the preceptor statements to the NRC. The proposed regulations retain the requirements that individuals obtain preceptor statements for both the certification and alternate pathways.

The requirement for licensees to submit a preceptor statement to the NRC appears in the proposed rule in § 35.14(a). Conforming changes are proposed for definitions of RSO, AMP, ANP, and AU in § 35.2 to include the references to a requirement for preceptor statements. Conforming changes are also proposed to include appropriate references to the requirement for a preceptor statement in §§ 35.13(b)(1), 35.13(b)(2), and 35.13(b)(3).

Listing of Recognized Boards

The NRC would list on its Web site, instead of in its regulations, the names of boards whose certification process meets the NRC's criteria. This approach has the advantage of eliminating the need to amend 10 CFR part 35 to effect recognition each time a new board needs to be added to the listing. The ACMUI and specialty board representatives who participated in a public meeting on May 20, 2003, were in agreement with this approach.

Boards that are currently listed in subpart J of part 35 and other boards would be required to apply for recognition under this rule. NRC staff will review a board's submittal with the ACMUI before a decision on recognition of a board is made.

The NRC plans to place the procedures for listing and delisting of specialty boards on its Web site before the effective date of the final rule, if adopted. Because of the important role of board certification, the procedures will provide for making a clear regulatory determination that boards, both new and existing, meet the relevant criteria in the revised regulations. The procedures will provide for both adding new specialty boards to the recognized listing and for removing boards from the recognized list.

The NRC staff does not intend to conduct inspections of the recognized specialty boards, but will monitor trends in medical events. If the NRC staff determines that a series of medical events is associated with a particular specialty and the trend can be attributed to inadequate radiation safety training, the staff will determine whether the inadequate training is related to a board's requirements for radiation safety training. If this is the case, the NRC staff will review the specialty board's certification program. The assessment will include a determination of whether the board's examination adequately assesses the requisite knowledge and skills. If the staff determines that changes in the board's requirements for training in radiation safety are necessary and the board either cannot or will not make adequate changes to its training program to address these needs, then the NRC will withdraw recognition of that specialty board's certification and delist that board. The NRC staff will consult with the ACMUI regarding such actions and will inform the Commission of an NRC staff decision to withdraw recognition. The NRC has reviewed existing procedures for the conduct of inspections and has determined that they provide for collection of the information necessary to evaluate trends in medical events possibly related to requirements for T&E of specialty boards.

Stakeholder Interactions

On May 20, 2003, a public meeting was held to solicit early input on the proposed rule from representatives of professional specialty boards and other interested stakeholders. The meeting was conducted as a facilitated, roundtable discussion with representatives of specialty boards; members of the public also had the opportunity to present their views. NRC staff also made a presentation to the ACMUI on May 20, 2003, regarding the staff's approach to the proposed rule; subsequent to this, further input was obtained from the Chair of the ACMUI and the Chair of the ACMUI subcommittee as well as a comment received via e-mail from a participant in the meeting with the boards.

A draft of this proposed rule was sent to the Agreement States and the ACMUI for 30-day review and comment. A teleconference between NRC staff and the ACMUI was held on July 17, 2003; approximately 12 Agreement State representatives participated in this conference, notice of which appeared in the **Federal Register** on July 14, 2003 (68 FR 41665). Comments of the ACMUI, Agreement States, board

members, and members of the public provided useful information to the NRC in preparing the proposed rule. A person from the State of Alabama represented the Organization of Agreement States and participated as a member of the working group with the NRC staff in the development of this proposed rule.

Additional Recommendations of the ACMUI

At the teleconference held on July 17, 2003, the full ACMUI discussed the draft proposed rule. During the teleconference, the ACMUI approved the NRC staff recommendation to broaden the requirement that supervised clinical experience be received in a "radiation facility" rather than in a "radiation oncology facility" for individuals to qualify as AMPs, in § 35.51(b)(1) of the proposed rule, and to change the requirement for experience in "radiation oncology" in paragraph § 35.690(b)(2) to allow for experience in "radiation therapy." Parallel changes were made to the certification pathway for AMPs in the proposed rule in § 35.51(a)(2)(ii) and in § 35.690(a)(1) for uses under § 35.600. Secondly, the ACMUI recommended that the requirements for experience, described in the current rule in § 35.390(b)(1)(ii)(G), not be included in criteria for recognition of specialty board certifications, but, that they continue to be required for AUs meeting T&E requirements for both the certification and alternate pathways. This recommendation was not adopted because the NRC staff believes that the requirements for work experience in § 35.390(b)(1)(ii)(G) are essential for an individual to be able to function independently as an AU for administration of byproduct material for which a written directive is required. Furthermore, if the requirement were removed from the certification pathway, individuals and applicants for licenses or amendments would be required to provide documentation of completion of requirements for experience required under § 35.390(b)(1)(ii)(G), in addition to evidence of board certification, to gain approval as AUs. Therefore, this requirement was retained in the proposed rule. Thirdly, the ACMUI recommended that the requirement for a preceptor statement be separated from the board certification pathway and the alternate pathway, and specified separately as a new paragraph in each training section. This recommendation was approved by the Commission in SRM–03–0145 and incorporated into the proposed rule. Lastly, the ACMUI recommended that the word "attest" should be used in place of certify (certification) in preceptor statements. The ACMUI explained that the reason for this recommendation was to reflect the current practice that preceptors do not "certify" individuals, but "attest." As noted below under the heading "*Invitation for Public Comment on Specific Issues*," the NRC is inviting comment on the issue of whether the word "attestation" should be used in place of the word "certification" in preceptor statements.

Timing of Agreement State Implementation

Normally, Agreement States have 3 years in which to adopt a compatible rule. Agreement States have until October 24, 2005, to adopt the revised 10 CFR part 35 published on April 24, 2002. For Agreement States to adopt the proposed training and experience requirements contained in this proposed rule and have them in place by October 24, 2005, the Agreement States would have a shortened time frame for developing compatible requirements. Agreement States have voiced concern regarding this shortened time frame. As indicated below under the heading "*Invitation for Public Comment on Specific Issues*," the NRC is inviting comment on the timing of implementation of the proposed rule in Agreement States.

Invitation for Public Comment on Specific Issues.

The NRC is seeking public comment on the following issues:

1. Do the proposed revisions to requirements for training and experience provide reasonable assurance that RSOs, AMPs, ANPs, and AUs will have adequate training in radiation safety?

2. Should Agreement States establish the requirements to conform with this proposed rule by October 24, 2005, or should they follow the normal process and be given a full 3 years to develop a compatible rule? (*See* discussion under the heading, "Timing of Agreement State Implementation," above.)

3. Should the word "attestation" be used in place of the word "certification" in preceptor statements? (*See* discussion under the topic "*Recommendations of the ACMUI*," above.)

Section-by-Section Analysis

Section 35.2—Definitions

This section would be amended to incorporate conforming changes necessitated by amendments to other sections. The definition of authorized medical physicist (AMP) would be changed to include a reference in paragraph (1) to the requirement for obtaining a preceptor statement in proposed § 35.51(c) and the proposed requirement for training specific to type of use in proposed § 35.51(d). The definition for authorized nuclear pharmacist (ANP) would be changed in paragraph (1) to include a reference to the requirement for obtaining a preceptor statement in proposed § 35.55(c). The definition of authorized user (AU) would be changed in paragraph (1) to include references to the requirement for obtaining a preceptor statement in proposed §§ 35.390(c), 35.490(c), and 35.690(c). The requirement for training specific to type of use in proposed § 35.690(d) would also be added to the definition of AU. The definition of radiation safety officer (RSO) would be changed in paragraph (1) to include references to the requirements for obtaining a preceptor statement in proposed § 35.50(c) and 35.50(d)(ii) and to the requirement for training specific to type of use in proposed § 35.50(e).

Section 35.10—Implementation

This section would be amended to incorporate conforming changes necessitated by amendments to other sections. Paragraph (b) would be amended to require implementation of §§ 35.50(c), 35.50(e), 35.51(c), 35.51(d), 35.55(c), 35.390(c), 35.490(c), 35.690(c) and 35.690(d) by the effective date of the regulation.

Section 35.13—License Amendments

Paragraphs (b)(1), (b)(2), and (b)(3) of this section would be amended conform with changes to § 35.14(a) and proposed addition of §§ 35.390(c), 35.490(c), and 35.690(c) which would require submission of preceptor statements to the NRC. Paragraphs (b)(1) and (b)(3) would be amended to reference requirements for T&E specific for types of use added in proposed amendments § 35.690(d) and § 35.51(d), respectively.

Section 35.14—Notifications

This section would be amended to add a requirement to paragraph (a) to submit a copy of a written certification signed by a preceptor in addition to a copy of the board certification now required in this paragraph.

Section 35.50—Training for Radiation Safety Officer

This section would be amended to modify the requirements that must be met as part of a specialty board certification process for the specialty board to be recognized by the Commission or an Agreement State. Instead of requiring that the certification process include the same criteria as the alternate pathway (§ 35.50(b) in the current rule), paragraph (a) would be amended to provide separate requirements for a specialty board's certification process. This process would include a requirement to pass an examination, administered by diplomates of the specialty board, which would evaluate knowledge and competency areas that are important to functioning as an RSO. Requirements for training would be changed to add requirements for a bachelor's or graduate degree from an accredited college or university in physical science or engineering or biological science with a minimum of 20 college credits in physical science, and 5 years of professional experience in health physics, including at least 3 years in applied health physics (graduate training could be substituted for up to 2 years of experience). Paragraph (a) would also be amended to include a statement that recognized board certifications will be posted on the NRC's Web page. The requirement for obtaining a preceptor statement would be removed from the requirements for recognition of specialty board certifications. This requirement, now in paragraph (b)(2), would be moved to paragraph (c) and apply to both the certification and alternate pathway. A new paragraph (d)(2)(i) would be added to allow medical physicists to serve as RSOs if they are certified by a specialty board whose certification process has been recognized by the Commission or an Agreement State, with the requirement for a preceptor statement included in paragraph (d)(2)(ii). A new paragraph (e) would be added to require training in radiation safety, regulatory issues, and emergency procedures for the types of use for which an applicant seeks authorization. Paragraph (e) would apply to all pathways.

Section 35.51—Training for an Authorized Medical Physicist

This section would be amended to modify the requirements that must be met as part of a specialty board certification process for the specialty board to be recognized by the Commission or an Agreement State. Instead of requiring that the certification process include the same criteria as the alternate pathway, paragraph (a) would be amended to provide separate requirements for a specialty board's certification process. This certification process would include a requirement to pass an examination, administered by diplomates of the specialty board, which would evaluate knowledge and competency areas that are important to functioning as an AMP. Paragraph (a) would also be amended to include a statement that recognized board certifications will be posted on the NRC's Web page. The requirement for obtaining a preceptor statement would be removed from the requirements for recognition of specialty board certifications but would, instead, apply to each individual seeking recognition as an AMP; the requirement would be moved from paragraph (b)(2) to a new paragraph (c).

Section 35.57—Training for Experienced Radiation Safety Officer, Teletherapy or Medical Physicist, Authorized User, and Nuclear Pharmacist

Paragraphs (a) and (b) would be amended to change "October 24, 2002," to the effective date of the final rule, if adopted.

Section 35.190—Training for Uptake, Dilution, and Excretion Studies

Paragraph (a) would be amended to modify the requirements that must be met as part of a specialty board certification process for the specialty board to be recognized by the Commission or an Agreement State for uses under § 35.190. A requirement would be added that candidates must pass an examination administered by diplomates of the specialty board. The requirement for obtaining a preceptor statement would be removed from the requirements for recognition of specialty board certifications but would, instead, apply to each individual seeking recognition as an AU under § 35.100. Paragraph (a) would also be amended to include a statement that recognized board certifications will be posted on the NRC's Web page. Paragraph (c)(1)(ii)(B) would be amended to reflect that the work experience must include performing quality control procedures on instruments used to determine the activity of dosages, a change from requiring only the calibration of these instruments.

Section 35.290—Training for Imaging and Localization Studies

Paragraph (a) would be amended to modify the requirements that must be met as part of a specialty board certification process for the specialty board to be recognized by the Commission or an Agreement State for uses under § 35.290. A requirement would be added that candidates must pass an examination, administered by diplomates of the specialty board. The requirement for obtaining a preceptor statement would be removed from the requirements for recognition of specialty board certifications but would, instead, apply to each individual seeking recognition as an AU under § 35.200. Paragraph (a) would also be amended to include a statement that recognized board certifications will be posted on the NRC's Web page. Paragraph (c)(1)(ii)(B) would be amended to reflect that the work experience must include performing quality control procedures on instruments used to determine the

activity of dosages, a change from requiring only the calibration of these instruments.

Section 35.390—Training for Use of Unsealed Byproduct Material for Which a Written Directive Is Required

This section would be amended to modify the requirements that must be met as part of a specialty board certification process for the specialty board to be recognized by the Commission or an Agreement State for uses under § 35.390. Instead of requiring that the certification process include the same criteria as the alternate pathway, paragraph (a) would be amended to provide separate requirements for a specialty board's certification process. The training and experience required for the certification pathway would be changed to include, in § 35.390(a)(1), a requirement that individuals complete 3 years of residency training in a radiation therapy, nuclear medicine or a related medical specialty training program approved by the Residency Review Committee of the Accreditation Council for Medical Education, the Royal College of Physicians and Surgeons of Canada, or the Committee on Post-Graduate Training of the American Osteopathic Association. Paragraph (a) would also be amended to include a statement that recognized board certifications will be posted on the NRC's Web page. The requirement for obtaining a preceptor statement would be removed from the requirements for recognition of specialty board certifications but would, instead, apply to each individual seeking recognition as an AU under § 35.390. The requirement for a preceptor statement would be moved from paragraph (b)(2) to a new paragraph (c). Paragraph (b)(1)(ii)(B) would be amended to reflect that the work experience must include performing quality control procedures on instruments used to determine the activity of dosages, a change from requiring only the calibration of these instruments. In addition, paragraphs (b)(1)(ii)(G)(*3*) and (*4*) would be amended to revise requirements for work experience involving parenteral administration of dosages, clarifying them to indicate that the experience is to be with cases for which written directives are required.

Section 35.392—Training for the Oral Administration of Sodium Iodide I–131 Requiring a Written Directive in Quantities Less Than or Equal to 1.22 Gigabecquerels (33 Millicuries)

Paragraph (a) would be amended to include a statement that recognized board certifications will be posted on the NRC's Web page. Paragraph (c)(2)(ii) would be amended to reflect that the work experience must include performing quality control procedures on instruments used to determine the activity of dosages, a change from requiring only the calibration of these instruments. The requirement for obtaining a preceptor statement would be removed from the requirements for recognition of specialty board certifications but would, instead, apply to each individual seeking recognition as an AU under § 35.392. The requirement for a preceptor statement would be moved from paragraph (c)(3) to a new paragraph (d).

Section 35.394—Training for the Oral Administration of Sodium Iodide I–131 Requiring a Written Directive in Quantities Greater Than 1.22 Gigabecquerels (33 Millicuries)

Paragraph (a) would be amended to include a statement that recognized board certifications will be posted on the NRC's Web page. Paragraph (c)(2)(ii) would be amended to reflect that the work experience must include performing quality control procedures on instruments used to determine the activity of dosages, a change from requiring only the calibration of these instruments. The requirement for obtaining a preceptor statement would be removed from the requirements for recognition of specialty board certifications but would, instead, apply to each individual seeking recognition as an AU under § 35.392. The requirement for a preceptor statement would be moved from paragraph (c)(3) to a new paragraph (d).

Section 35.490—Training for Use in Manual Brachytherapy Sources

This section would be amended to modify the requirements that must be met as part of a specialty board certification process for the specialty board to be recognized by the Commission or an Agreement State. Instead of requiring that the certification process include the same criteria as the alternate pathway, paragraph (a) would provide separate requirements for a specialty board's certification process. The training and experience required for the certification pathway would be changed to include, in § 35.490(a)(1), a requirement that individuals complete 3 years of residency training in a radiation oncology program approved by the Residency Review Committee of the Accreditation Council for Medical Education, the Royal College of Physicians and Surgeons of Canada, or the Committee on Post-Graduate Training of the American Osteopathic Association. Paragraph (a) would also be amended to include a statement that recognized board certifications will be posted on the NRC's Web page. The requirement for obtaining a preceptor statement would be removed from the requirements for recognition of specialty board certifications but would, instead, apply to each individual seeking recognition as an AU under § 35.490. Additionally, paragraph (b)(2) would be amended to include the Royal College of Physicians and Surgeons of Canada in the listing of organizations that can provide approval of the formal training program.

Section 35.590—Training for Use of Sealed Sources for Diagnosis

Paragraph (a) would be amended to include a statement that recognized boards would be posted on the NRC's Web page. Paragraph (b)(5) would be redesignated as paragraph (c) and would apply to both the certification and the alternate pathways. This revision would separate the requirement for training in the use of the device for the uses requested from the requirement for 8 hours of classroom and laboratory training in basic radionuclide handling techniques.

Section 35.690—Training for Use of Remote Afterloader Units, Teletherapy Units, and Gamma Stereotactic Radiosurgery Units

This section would be amended to modify the requirements that must be met as part of a specialty board certification process for the specialty board to be recognized by the Commission or an Agreement State for uses under 35.600. Instead of requiring that the certification process include the same criteria as the alternate pathway, paragraph (a) would be amended to provide separate requirements for a specialty board's certification process. Paragraph (a) would also be amended to include a statement that recognized board certifications will be posted on the NRC's web page. The training and experience required for the certification pathway would be changed to include, in § 35.690(a)(1), a requirement that individuals complete 3 years of residency training in a radiation therapy program approved by the Residency Review Committee of the Accreditation Council for Medical Education, the Royal College of Physicians and Surgeons of Canada, or the Committee on Post-Graduate Training of the American Osteopathic Association. Paragraph (a) would also be amended to include a statement that recognized board certifications will be posted on the NRC's Web page. The requirement for obtaining a preceptor statement would be removed from the requirements for recognition of specialty board certifications but would, instead, apply to each individual seeking recognition as an AU under § 35.690. Additionally, for the alternate pathway, paragraph (b)(2) would be amended to include the Royal College of Physicians and Surgeons of Canada in the listing of organizations that can provide approval of the formal training program. The requirement for experience in "radiation oncology" in paragraph (b)(2) would be modified to allow for experience in "radiation therapy." A new paragraph (c) would be added to require training in device operation, safety procedures, and clinical use for the type(s) of use for which approval as an AU is sought. Paragraph (c) would apply to all pathways.

Agreement State Compatibility

Under the "Policy Statement on Adequacy and Compatibility of Agreement State Programs" approved by the Commission on June 30, 1997, and published in the **Federal Register** on September 3, 1997 (62 FR 46517), this proposed rule would be a matter of compatibility between NRC and the Agreement States, thereby providing consistency among Agreement State and NRC requirements. The Compatibility Categories for the sections amended in this proposed rule would be the same as for the sections in the current regulations. The revisions to §§ 35.2, 35.10, 35.13, 35.14, 35.50, 35.51, 35.190, 35.290, 35.390, 35.392, 35.394, 35.490, 35.590, and 35.690 are classified as Compatibility Category B. A Compatibility Category "B" designation means the requirement has significant direct transboundary implications. Compatibility Category "B" designated Agreement State requirements should be essentially identical to those of NRC.

Plain Language

The Presidential Memorandum dated June 1, 1998, entitled, "Plain Language in Government Writing" directed that the Government's writing be in plain language. This memorandum was published on June 10, 1998 (63 FR 31883). The NRC requests comments on this proposed rule specifically with respect to the clarity and effectiveness of the language used. Comments should be sent to the address listed under the heading **ADDRESSES** above.

Voluntary Consensus Standards

The National Technology Transfer Act of 1995 (Pub. L. 104–113) requires that Federal agencies use technical standards that are developed or adopted by voluntary consensus standards bodies unless the use of such a standard is inconsistent with applicable law or otherwise impractical. In this proposed rule, the NRC would modify the training and experience requirements for radiation safety officer, authorized medical physicists, authorized nuclear pharmacists or authorized users. This action does not constitute the establishment of a standard that establishes generally applicable requirements.

Finding of No Significant Environmental Impact: Environmental Assessment

The Commission has determined under the National Environmental Policy Act of 1969, as amended, and the Commission's regulations in subpart A of 10 CFR part 51, that this rule, if adopted, would not be a major Federal action significantly affecting the quality of the human environment. Therefore, an environmental impact statement is not required. The environmental assessment is presented below.

Introduction

The Nuclear Regulatory Commission (NRC) is proposing to amend its regulations governing the medical use of byproduct material to change its requirements for recognition of specialty boards whose certification may be used to demonstrate the adequacy of the training and experience of individuals to serve as radiation safety officer (RSOs), authorized medical physicists (AMPs), authorized nuclear pharmacists (ANPs) or authorized users (AUs). The proposed rule would also revise the requirements for demonstrating the adequacy of training and experience for pathways other than the board certification pathway. This rulemaking is necessary to address the training and experience issue for recognition of specialty board certifications.

The Proposed Action

The proposed action under consideration is an amendment to the Commission's regulations governing the medical use of byproduct materials (10 CFR part 35). The proposed action would change the requirements for recognition of specialty boards whose certification may be used to demonstrate the adequacy of the training and experience of individuals to serve as an RSO, AMP, ANP, or AU. The proposed action would also amend certain requirements for the training and experience of individuals who do not choose the board certification pathway.

During its revision of 10 CFR part 35, the Commission became aware that, as a result of the changes to its training and experience requirements, specialty boards recognized by the NRC under the former regulations no longer would be qualified for recognition, and that this could result in a shortage of authorized individuals. As a temporary measure to address this issue, the Commission reinserted Subpart J into the final rule which was published in the **Federal Register** on April 24, 2002 (67 FR 20249). Subpart J is effective for a 2-year transition period which will expire on October 24, 2004. The proposed action would address this issue relating to recognition of board certifications after expiration of the 2-year transition period.

Need for the Proposed Action

This rulemaking is needed to address the training and experience issue for recognition of certifications of specialty boards by the NRC for approval of individuals to serve as RSOs, AMPs, ANPs or AUs. Without this rulemaking, the issue of board recognition would not be addressed. Subpart J expires on October 24, 2004, and without this rulemaking, there could be a potential shortage of individuals authorized to perform medical procedures involving the use of byproduct material.

Alternatives to the Proposed Action

An alternative to the proposed action would be to take no action. Subpart J will expire on October 24, 2004. The no-action alternative is not favored because the issues related to training and experience, as they relate to NRC's recognition of specialty boards, would not be resolved and this could result in a shortage of RSOs, AMPs, ANPs and AUs.

Environmental Impacts of the Proposed Action

The NRC prepared an environmental assessment as part of the development of the part 35 final rule published in the **Federal Register** on April 24, 2002 (67 FR 20249). The conclusion from this environmental assessment was that the 10 CFR part 35 amendments would have no significant impact on the public and the environment. Specifically, pertaining to the training and experience requirements, the environmental assessment stated: "The amendments to the training and experience requirements in 10 CFR part 35 focus on knowledge and experience that is integral to radiation safety. These changes are expected to have no significant impact on public health and safety, occupational health and safety, and the environment." The NRC finds that the conclusion is still valid for the proposed revisions to the training and experience requirements in 10 CFR part 35. The revisions currently under consideration also focus on the

knowledge and experience that is integral to radiation safety. The proposed amendments to 10 CFR part 35 are expected to have no significant impact on the public health and safety, occupational health and safety, and the environment.

Agencies and Persons Consulted and Sources Used

The environmental assessment for the final 10 CFR part 35 rulemaking, published in the **Federal Register** (67 FR 20249; April 24, 2002), was used in the preparation of this environmental assessment. The draft environmental assessment was sent to Agreement States and the Advisory Committee on the Medical Use of Isotopes for review and comment. The NRC staff has determined that the proposed action will not affect listed species or critical habitat. Therefore, no further consultation is required under Section 7 of the Endangered Species Act (16 U.S.C. 1531 *et seq*). Likewise, the NRC staff has determined that the proposed action is not the type of activity that has potential to cause effects on historic properties. Therefore, no further consultation is required under Section 106 of the National Historic Preservation Act (16 U.S.C. 470 *et seq*).

Finding of No Significant Impact

Based on the foregoing environmental assessment, the NRC concludes that this rulemaking will not have a significant effect on the quality of the human environment. Therefore, the NRC has determined that an environmental impact statement is not necessary for this rulemaking.

The determination of this environmental assessment is that there will be no significant impact to the public from this action. However, the general public should note that the NRC seeks public participation. Comments on any aspect of the Environmental Assessment may be submitted to the NRC as indicated under the **ADDRESSES** heading.

The NRC has sent a copy of this proposed rule to every State Liaison Officer and requested their comments on the environmental assessment.

Paperwork Reduction Act Statement

This rule amends information collection requirements that are subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). This proposed rule has been submitted to the Office of Management and Budget for review and approval of the information collection requirements.

The burden to the public for these information collections is estimated to average 1.4 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the information collection. The U.S. Nuclear Regulatory Commission is seeking public comment on the potential impact of the information collections contained in the proposed rule and on the following issues:

1. Is the proposed information collection necessary for the proper performance of the functions of the NRC, including whether the information will have practical utility?
2. Is the estimate of burden accurate?
3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?
4. How can the burden of the information collection be minimized, including the use of automated collection techniques?

Send comments on any aspect of these proposed information collections, including suggestions for reducing the burden, to the Records and FOIA/Privacy Services Branch (T5 F52), U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, or by Internet electronic mail at *infocollects@nrc.gov;* and to the Desk Officer, Office of Information and Regulatory Affairs, NEOB–10202, (3150–0010 and 3150–0120), Office of Management and Budget, Washington, DC 20503.

Comments to OMB on the information collections or on the above issues should be submitted by January 8, 2004. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given to comments received after this date.

Public Protection Notification

The NRC may not conduct or sponsor, and a person is not required to respond to, a request for information or an information collection requirement unless the requesting document displays a currently valid OMB control number.

Regulatory Analysis

The Commission has prepared a draft regulatory analysis on this proposed regulation. The analysis examines the costs and benefits of the alternatives considered by the Commission.

The Commission requests public comment on the draft regulatory analysis. Comments on the analysis may be submitted to the NRC as indicated under the **ADDRESSES** heading. The analysis is available for inspection in the NRC Public Document Room, 11555 Rockville Pike, Public File Area O1 F21, Rockville, Maryland. Single copies of the draft regulatory analysis are available from Roger W. Broseus, Office of Nuclear Material Safety and Safeguards, telephone (301) 415–7608, e-mail *rwb@nrc.gov.*

Regulatory Flexibility Certification

As required by the Regulatory Flexibility Act of 1980 (5 U.S.C. 605(b)), the Commission certifies that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. The Nuclear Regulatory Commission (NRC) is proposing to amend its regulations governing the medical use of byproduct material to change its requirements for recognition of specialty boards whose certification may be used to demonstrate the adequacy of the training and experience of individuals to serve as radiation safety officers, authorized medical physicists, authorized nuclear pharmacists or authorized users. The proposed rule would also revise the requirements for demonstrating the adequacy of training and experience of individuals who do not choose pathways other than the board certification pathway. The regulatory flexibility analysis prepared for the final rule on part 35 (67 FR 20249; April 24, 2002) indicated that about 740 out of 1688 licensees could be considered small entities. The proposed rule should have no burden or economic impact on licensees because it does not add new requirements; it would provide a revision to an existing option.

Any small entity subject to this regulation that determines, because of its size, it is likely to bear a disproportionate adverse economic impact should notify the Commission of this opinion in a comment that indicates—

(a) The licensee's size and how the proposed regulation would result in a significant economic burden upon the licensee as compared to the economic burden on a larger licensee;

(b) How the proposed regulations could be modified to take into account the licensee's differing needs or capabilities;

(c) The benefits that would accrue, or the detriments that would be avoided, if the proposed regulations were modified as suggested by the licensee;

(d) How the proposed regulation, as modified, would more closely equalize the impact of NRC regulations or create more equal access to the benefits of Federal programs as opposed to providing special advantages to any individual or group; and

(e) How the proposed regulation, as modified, would still adequately protect public health and safety.

Backfit Analysis

The Commission has determined that the backfit rule does not apply to this proposed rule because these amendments would not involve any provision that would impose backfits as defined in 10 CFR Chapter 1. Therefore, a backfit analysis is not required for this proposed rule.

List of Subjects in 10 CFR Part 35

Byproduct material, Criminal penalties, Drugs, Health facilities, Health professions, Medical devices, Nuclear materials, Occupational safety and health, Radiation protection, Reporting and recordkeeping requirements.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 553; the NRC is proposing to adopt the following amendments to 10 CFR part 35.

PART 35—MEDICAL USE OF BYPRODUCT MATERIAL

1. The authority citation for part 35 continues to read as follows:

Authority: Secs. 81, 161, 182, 183, 68 Stat. 935, 948, 953, 954, as amended (42 U.S.C. 2111, 2201, 2232, 2233); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841).

2. In § 35.2, the definitions of "authorized medical physicist," "authorized nuclear pharmacist," "authorized user," and "radiation safety officer" are amended by republishing the introductory text and revising paragraph (1) of each definition to read as follows:

§ 35.2 Definitions.

* * * * *

Authorized medical physicist means an individual who—

(1) Meets the requirements in §§ 35.51(a), 35.51(c), 35.51(d), and 35.59; or, before October 24, 2004, meets the requirements in §§ 35.961(a), or (b), and 35.59; or

* * * * *

Authorized nuclear pharmacist means a pharmacist who—

(1) Meets the requirements in §§ 35.55(a), 35.55(c) or 35.55(d)(2), 35.55(e), and 35.59; or, before October 24, 2004, meets the requirements in §§ 35.980(a) and 35.59; or

* * * * *

Authorized user means a physician, dentist, or podiatrist who—

(1) Meets the requirements in §§ 35.59 and 35.190(a), 35.290(a), 35.390(a) and (c), 35.392(a), 35.394(a), 35.490(a) and (c), 35.590(a), or 35.690(a), 35.690(c) and 35.690(d); or, before October 24, 2004, meets the requirements in §§ 35.910(a), 35.920(a), 35.930(a), 35.940(a), 35.950(a), 35.960(a) and 35.59; or

* * * * *

Radiation Safety Officer means an individual who—

(1) Meets the requirements in §§ 35.50(a), 35.50(c), 35.50(e), and 35.59; or 35.50(d), 35.50(e), and 35.59; or, before October 24, 2004, §§ 35.900(a) and 35.59; or

* * * * *

3. In § 35.10, paragraph (b) is revised to read as follows:

§ 35.10 Implementation.

* * * * *

(b) A licensee shall implement the training requirements in §§ 35.50(a), 35.50(c), 35.50(e), 35.51(a), 35.51(b), 35.51(c), 35.51(d), 35.55(a), 35.55(c), 35.59, 35.190(a), 35.190(c), 35.290(a), 35.290(c), 35.390(a), 35.390(b), 35.390(c), 35.392(a), 35.392(c), 35.394(a), 35.394(c), 35.490(a), 35.490(b), 35.490(c), 35.590(a), 35.590(b), 35.690(a), 35.690(b), 35.690(c), and 35.690(d) on or before "[insert effective date of final rule]".

* * * * *

4. In § 35.13, paragraphs (b)(1), (b)(2) and (b)(3) are revised to read as follows:

§ 35.13 License amendments.

(b) * * *

(1) For an authorized user, an individual who meets the requirements in §§ 35.190(a); 35.290(a); 35.390(a) and 35.390(c); 35.392(a); 35.394(a); 35.490(a) and 35.490(c); 35.590(a); 35.690(a), 35.690(c) and 35.690(d); 35.910(a); 35.920(a); 35.930(a); 35.932; 35.934; 35.940(a); 35.950(a); or 35.960(a) and 35.59;

(2) For an authorized nuclear pharmacist, an individual who meets the requirements in §§ 35.59 and—

(i) 35.55(a) and 35.55(c) or

(ii) 35.980(a);

(3) For an authorized medical physicist, an individual who meets the requirements in §§ 35.59 and—

(i) 35.51(a), 35.51(c) and 35.51(d) or

(ii) 35.961(a) or (b);

* * * * *

5. In § 35.14, paragraph (a) is revised to read as follows:

§ 35.14 Notifications.

(a) A licensee shall provide the Commission a copy of the board certification and the written certification(s) signed by a preceptor, the Commission or Agreement State license, the permit issued by a Commission master material licensee, the permit issued by a Commission or Agreement State licensee of broad scope, or the permit issued by a Commission master material license broad scope permittee for each individual no later than 30 days after the date that the licensee permits the individual to work as an authorized user, an authorized nuclear pharmacist, or an authorized medical physicist, under § 35.13 (b)(1) through (b)(4).

* * * * *

6. In § 35.50, paragraphs (a) and (c) are revised, paragraph (b)(2) is removed and reserved, and paragraphs (d) and (e) are added to read as follows:

§ 35.50 Training for Radiation Safety Officer.

* * * * *

(a) Is certified by a specialty board whose certification process has been recognized by the Commission or an Agreement State. (Specialty Boards whose certification processes have been recognized by the Commission or an Agreement State will be posted on the NRC's Web page.) To be recognized, a specialty board shall require all candidates for certification to:

(1) Hold a bachelor's or graduate degree from an accredited college or university in physical science or engineering or biological science with a minimum of 20 college credits in physical science;

(2) Have 5 or more years of professional experience in health physics (graduate training may be substituted for no more than 2 years of the required experience) including at least 3 years in applied health physics; and

(3) Pass an examination administered by diplomates of the specialty board, which evaluates knowledge and competence in radiation physics and instrumentation, radiation protection, mathematics pertaining to the use and measurement of radioactivity, radiation biology, and radiation dosimetry; or

(b) * * *

(2) [Reserved]

(c) Has obtained written certification, signed by a preceptor Radiation Safety Officer, that the individual has satisfactorily completed the requirements in paragraph (a) or (b) of this section and has achieved a level of radiation safety knowledge sufficient to function independently as a Radiation Safety Officer for a medical use licensee; or

(d)(1) Is an authorized user, authorized medical physicist, or

authorized nuclear pharmacist identified on the licensee's license and has experience with the radiation safety aspects of similar types of use of byproduct material for which the individual has Radiation Safety Officer responsibilities; or.

(2)(i) Is a medical physicist who has been certified by a specialty board whose certification process has been recognized by the Commission or an Agreement State under § 35.51(a) and has experience with the radiation safety aspects of similar types of use of byproduct material for which the individual has Radiation Safety Officer responsibilities; and

(ii) Has obtained written certification, signed by a preceptor Radiation Safety Officer, that the individual has satisfactorily completed the requirements in paragraph (a) or (b) of this section and has achieved a level of radiation safety knowledge sufficient to function independently as a Radiation Safety Officer for a medical use licensee; and

(e) Has training in the radiation safety, regulatory issues, and emergency procedures for the types of use for which a licensee seeks approval. This training requirement may be satisfied by completing training that is supervised by a radiation safety officer, authorized medical physicist, authorized nuclear pharmacist, or authorized user, as appropriate, who is authorized for the type(s) of use for which the licensee is seeking approval.

7. In § 35.51, paragraphs (a) and (b)(1) are revised, paragraph (b)(2) is removed and reserved, and paragraphs (c) and (d) are added to read as follows:

§ 35.51 Training for an authorized medical physicist.

* * * * *

(a) Is certified by a specialty board whose certification process has been recognized by the Commission or an Agreement State. (Specialty boards whose certification processes have been recognized by the Commission or an Agreement State will be posted on the NRC's Web page.) To be recognized, a specialty board shall require all candidates for certification to:

(1) Hold a master's or doctor's degree in physics, medical physics, other physical science, engineering, or applied mathematics from an accredited college or university;

(2) Have 2 years of full-time practical training and/or supervised experience in medical physics—

(i) Under the supervision of a medical physicist who is certified in medical physics by a specialty board recognized by the Commission or an Agreement State, or

(ii) In clinical radiation facilities providing high energy, external beam therapy and brachytherapy services under the direction of physicians who meet the requirements for authorized users in §§ 35.490 or 35.690;

(3) Pass an examination, administered by diplomates of the specialty board, which assesses knowledge and competence in clinical radiation therapy, radiation safety, calibration, quality assurance, and treatment planning for external beam therapy, brachytherapy, and stereotactic radiosurgery; or

(b)(1) Holds a master's or doctor's degree in physics, medical physics, other physical science, engineering, or applied mathematics from an accredited college or university; and has completed 1 year of full-time training in medical physics and an additional year of full-time work experience under the supervision of an individual who meets the requirements for an authorized medical physicist for the type(s) of use for which the individual is seeking authorization. This training and work experience must be conducted in clinical radiation facilities that provide high energy, external beam therapy and brachytherapy services and must include:

(i) Performing sealed source leak tests and inventories;

(ii) Performing decay corrections;

(iii) Performing full calibration and periodic spot checks of external beam treatment units, stereotactic radiosurgery units, and remote afterloading units as applicable; and

(iv) Conducting radiation surveys around external beam treatment units, stereotactic radiosurgery units, and remote afterloading units as applicable; and

(2) [Reserved]

(c) Has obtained written certification that the individual has satisfactorily completed the requirements in paragraph (a) or (b)(1) of this section and has achieved a level of competency sufficient to function independently as an authorized medical physicist for each type of therapeutic medical unit for which the individual is requesting authorized medical physicist status. The written certification must be signed by a preceptor authorized medical physicist who meets the requirements in § 35.51, or, before October 24, 2004, § 35.961, or equivalent Agreement State requirements for an authorized medical physicist for each type of therapeutic medical unit for which the individual is requesting authorized medical physicist status; and

(d) Has training for the type(s) of use for which authorization is sought that includes hands-on device operation, safety procedures, clinical use, and the operation of a treatment planning system. This training requirement may be satisfied by satisfactorily completing either a training program provided by the vendor or by training supervised by an authorized medical physicist authorized for the type(s) of use for which the individual is seeking authorization.

8. In § 35.55, paragraph (a) is revised, paragraph (b)(2) is removed and reserved, and paragraph (c) is added to read as follows:

§ 35.55 Training for an authorized nuclear pharmacist.

* * * * *

(a) Is certified by a specialty board whose certification process has been recognized by the Commission or an Agreement State. (Specialty boards whose certification processes have been recognized by the Commission or an Agreement State will be posted on the NRC's web page.) To be recognized, a specialty board shall require all candidates for certification to:

(1) Have graduated from a pharmacy program accredited by the American Council on Pharmaceutical Education (ACPE) or have passed the Foreign Pharmacy Graduate Examination Committee (FPGEC) examination;

(2) Hold a current, active license to practice pharmacy;

(3) Provide evidence of having acquired at least 4000 hours of training/experience in nuclear pharmacy practice. Academic training may be substituted for no more than 2000 hours of the required training and experience;

(4) Pass an examination in nuclear pharmacy administered by diplomates of the specialty board, which assesses knowledge and competency in procurement, compounding, quality assurance, dispensing, distribution, health and safety, radiation safety, provision of information and consultation, monitoring patient outcomes, research and development; or

(b) * * *

(2) [Reserved]

(c) Has obtained written certification, signed by a preceptor authorized nuclear pharmacist, that the individual has satisfactorily completed the requirements in paragraph (a) or (b) of this section and has achieved a level of competency sufficient to function independently as an authorized nuclear pharmacist.

§ 35.57 [Amended]

9. In § 35.57, replace both references to "October 24, 2002" with "[insert effective date of final rule]".

10. In § 35.190, paragraphs (a) and (c)(1)(ii)(B) are revised to read as follows:

§ 35.190 Training for uptake, dilution, and excretion studies.

* * * * *

(a) Meets the requirements in paragraph (c)(2) of this section and is certified by a medical specialty board whose certification process has been recognized by the Commission or an Agreement State. (Specialty boards whose certification processes have been recognized by the Commission or an Agreement State will be posted on the NRC's web page.) To be recognized, a specialty board shall require all candidates for certification to:

(1) Meet the requirements in paragraph (c)(1) of this section;

(2) Pass an examination, administered by diplomates of the specialty board, which assesses knowledge and competence in radiation safety, radionuclide handling, and quality control; or

* * * * *

(c) * * *

(1) * * *

(ii) * * *

(B) Performing quality control procedures on instruments used to determine the activity of dosages and performing checks for proper operation of survey meters;

* * * * *

11. In § 35.290, paragraphs (a) and (c)(1)(ii)(B) are revised to read as follows:

§ 35.290 Training for imaging and localization studies.

* * * * *

(a) Meets the requirements in paragraph (c)(2) of this section and is certified by a medical specialty board whose certification process has been recognized by the Commission or an Agreement State. (Specialty boards whose certification processes have been recognized by the Commission or an Agreement State will be posted on the NRC's web page.) To be recognized, a specialty board shall require all candidates for certification to:

(1) Meet the requirements in paragraph (c)(1) of this section;

(2) Pass an examination, administered by diplomates of the specialty board, which assesses knowledge and competence in radiation safety, radionuclide handling, and quality control; or

* * * * *

(c) * * *

(1) * * *

(ii) * * *

(B) Performing quality control procedures on instruments used to determine the activity of dosages and performing checks for proper operation of survey meters;

* * * * *

12. In § 35.390, paragraph (a), paragraphs (b)(1)(ii)(B), and (b)(1)(ii)(G)(*3*) and (*4*) are revised, paragraph (b)(2) is removed and reserved, and paragraph (c) is added to read as follows:

§ 35.390 Training for use of unsealed byproduct material for which a written directive is required.

* * * * *

(a) Is certified by a medical specialty board whose certification process has been recognized by the Commission or an Agreement State. (Specialty boards whose certification processes have been recognized by the Commission or an Agreement State will be posted on the NRC's web page.) To be recognized, a specialty board shall require all candidates for certification to:

(1) Successfully complete a minimum of 3 years of residency training in a radiation therapy or nuclear medicine training program or a program in a related medical specialty that includes 700 hours of training and experience as described in paragraph (b)(1) of this section. Eligible training programs must be approved by the Residency Review Committee of the Accreditation Council for Graduate Medical Education or Royal College of Physicians and Surgeons of Canada or the Committee on Post-Graduate Training of the American Osteopathic Association;

(2) Pass an examination, administered by diplomates of the specialty board, which tests knowledge and competence in radiation safety, radionuclide handling, quality assurance, and clinical use of unsealed byproduct material; or

(b) * * *

(1) * * *

(ii) * * *

(B) Performing quality control procedures on instruments used to determine the activity of dosages, and performing checks for proper operation of survey meters;

* * * * *

(G) * * *

(*3*) Parenteral administration of any beta emitter or a photon-emitting radionuclide with a photon energy less than 150 keV, for which a written directive is required; and/or

(*4*) Parenteral administration of any other radionuclide for which a written directive is required; and

* * * * *

(2) [Reserved]

(c) Has obtained written certification that the individual has satisfactorily completed the requirements in paragraph (a) or (b)(1) of this section and has achieved a level of competency sufficient to function independently as an authorized user for the medical uses authorized under § 35.300. The written certification must be signed by a preceptor authorized user who meets the requirements in § 35.390(a), § 35.390(b), or, before October 24, 2004, § 35.390, or equivalent Agreement State requirements. The preceptor authorized user, who meets the requirements in § 35.390(b), or, before October 24, 2004, § 35.930(b), must have experience in administering dosages in the same dosage category or categories (*i.e.*, § 35.390(b)(1)(ii)(G)(*1*), (*2*), (*3*), or (*4*)) as the individual requesting authorized user status.

* * * * *

13. In § 35.392, paragraphs (a) and (c)(2)(ii) are revised to read as follows:

§ 35.392 Training for the oral administration of sodium iodide I–131 requiring a written directive in quantities less than or equal to 1.22 Gigabecquerels (33 millicuries).

* * * * *

(a) Meets the requirements in paragraph (c)(3) of this section and is certified by a medical specialty board whose certification process includes all of the requirements in paragraphs (c)(1) and (c)(2) of this section and whose certification has been recognized by the Commission or an Agreement State.(Specialty boards whose certification processes have been recognized by the Commission or an Agreement State will be posted on the NRC's web page.) or

* * * * *

(c) * * *

(2) * * *

(ii) Performing quality control procedures on instruments used to determine the activity of dosages and performing checks for proper operation of survey meters;

* * * * *

14. In § 35.394, paragraphs (a) and (c)(2)(ii) are revised to read as follows:

§ 35.394 Training for the oral administration of sodium iodide I–131 requiring a written directive in quantities greater than 1.22 Gigabecquerels (33 millicuries).

* * * * *

(a) Meets the requirements in paragraph (c)(3) of this section and is

certified by a medical specialty board whose certification process includes all of the requirements in paragraphs (c)(1) and (c)(2) of this section and whose certification has been recognized by the Commission or an Agreement State. (Specialty boards whose certification processes have been recognized by the Commission or an Agreement State will be posted on the NRC's web page.); or

* * * * *

(c) * * *

(2) * * *

(ii) Performing quality control procedures on instruments used to determine the activity of dosages and performing checks for proper operation of survey meters;

* * * * *

15. In § 35.490, paragraphs (a) and (b)(2) are revised, paragraph (b)(3) is removed, and paragraph (c) is added to read as follows:

§ 35.490 Training for use of manual brachytherapy sources.

* * * * *

(a) Is certified by a medical specialty board whose certification process has been recognized by the Commission or an Agreement State. (Specialty boards whose certification processes have been recognized by the Commission or an Agreement State will be posted on the NRC's web page.) To be recognized, a specialty board shall require all candidates for certification to:

(1) Successfully complete a minimum of 3 years of residency training in a radiation oncology program approved by the Residency Review Committee of the Accreditation Council for Graduate Medical Education or Royal College of Physicians and Surgeons of Canada or the Committee on Post-Graduate Training of the American Osteopathic Association;

(2) Pass an examination, administered by diplomates of the specialty board, which tests knowledge and competence in radiation safety, radionuclide handling, treatment planning, quality assurance, and clinical use of manual brachytherapy; or

(b) * * *

(2) Has completed 3 years of supervised clinical experience in radiation oncology, under an authorized user who meets the requirements in § 35.490, or, before October 24, 2004, § 35.940, or equivalent Agreement State requirements, as part of a formal training program approved by the Residency Review Committee for Radiation Oncology of the Accreditation Council for Graduate Medical Education or the Royal College of Physicians and Surgeons of Canada or the Committee on Postdoctoral Training of the American Osteopathic Association. This experience may be obtained concurrently with the supervised work experience required by paragraph (b)(1)(ii) of this section; and

(c) Has obtained written certification, signed by a preceptor authorized user who meets the requirements in § 35.490, or, before October 24, 2004, § 35.940, or equivalent Agreement State requirements, that the individual has satisfactorily completed the requirements in paragraphs (a) or (b) of this section and has achieved a level of competency sufficient to function independently as an authorized user of manual brachytherapy sources for the medical uses authorized under § 35.400.

16. In § 35.590, paragraphs (a) and (b) are revised and paragraph (c) is added to read as follows:

§ 35.590 Training for use of sealed sources for diagnosis.

* * * * *

(a) Is certified by a specialty board whose certification process includes all of the requirements in paragraphs (b) and (c) of this section and whose certification has been recognized by the Commission or an Agreement State. (Specialty boards whose certification processes have been recognized by the Commission or an Agreement State will be posted on the NRC's Web page.); or

(b) Has completed 8 hours of classroom and laboratory training in basic radionuclide handling techniques specifically applicable to the use of the device. The training must include —

(1) Radiation physics and instrumentation;

(2) Radiation protection;

(3) Mathematics pertaining to the use and measurement of radioactivity;

(4) Radiation biology; and

(c) Has completed training in the use of the device for the uses requested.

17. In § 35.690, paragraphs (a) and (b)(2) are revised, paragraph (b)(3) is removed, and paragraphs (c) and (d) are added to read as follows:

§ 35.690 Training for use of remote afterloader units, teletherapy units, and gamma stereotactic radiosurgery units.

* * * * *

(a) Is certified by a medical specialty board whose certification process has been recognized by the Commission or an Agreement State. (Specialty boards whose certification processes have been recognized by the Commission or an Agreement State will be posted on the NRC's Web page.) To be recognized, a specialty board shall require all candidates for certification to:

(1) Successfully complete a minimum of 3 years of residency training in a radiation therapy program approved by the Residency Review Committee of the Accreditation Council for Graduate Medical Education or Royal College of Physicians and Surgeons of Canada or the Committee on Post-Graduate Training of the American Osteopathic Association;

(2) Pass an examination, administered by diplomates of the specialty board, which tests knowledge and competence in radiation safety, radionuclide handling, treatment planning, quality assurance, and clinical use of stereotactic radiosurgery, remote afterloaders and external beam therapy; or

(b) * * *

(2) Has completed 3 years of supervised clinical experience in radiation therapy, under an authorized user who meets the requirements in § 35.690, or, before October 24, 2004, § 35.960, or equivalent Agreement State requirements, as part of a formal training program approved by the Residency Review Committee for Radiation Oncology of the Accreditation Council for Graduate Medical Education or Royal College of Physicians and Surgeons of Canada or the Committee on Postdoctoral Training of the American Osteopathic Association. This experience may be obtained concurrently with the supervised work experience required by paragraph (b)(1)(ii) of this section; and

(c) Has obtained written certification that the individual has satisfactorily completed the requirements in paragraphs (a) or (b) of this section and has achieved a level of competency sufficient to function independently as an authorized user of each type of therapeutic medical unit for which the individual is requesting authorized user status. The written certification must be signed by a preceptor authorized user who meets the requirements in § 35.690, or, before October 24, 2004, § 35.960, or equivalent Agreement State requirements for an authorized user for each type of therapeutic medical unit for which the individual is requesting authorized user status; and

(d) Has received training in device operation, safety procedures, and clinical use for the type(s) of use for which authorization is sought. This training requirement may be satisfied by satisfactory completion of a training program provided by the vendor for new users or by receiving training supervised by an authorized user or authorized medical physicist, as appropriate, who is authorized for the type(s) of use for which the individual is seeking authorization.

Dated at Rockville, Maryland, this 2nd day of December, 2003.

For the Nuclear Regulatory Commission.

Annette Vietti-Cook,

Secretary of the Commission.

[FR Doc. 03–30358 Filed 12–8–03; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. NM270; Notice No. 25–03–08–SC]

Special Conditions: Boeing Model 747–100/200B/200F/200C/SR/SP/100B SUD/400/400D/400F Airplanes; Flammability Reduction System (Fuel Tank Inerting)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed special conditions.

SUMMARY: This notice proposes special conditions for the Boeing Model 747–100/200B/200F/200C/SR/SP/100B SUD/400/400D/400F series airplanes. These airplanes, as modified by Boeing Commercial Airplanes, will incorporate a new flammability reduction system that uses a nitrogen generation system to reduce the oxygen content in the center wing fuel tank so that exposure to a combustible mixture of fuel and air is substantially minimized. This system is intended to reduce the average flammability exposure of the fleet of airplanes with the system installed to a level equivalent to 3 percent of the airplane operating time. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for the design and installation of this system. These proposed special conditions contain the additional safety standards that the Administrator considers necessary to ensure an acceptable level of safety for the installation of the system and to define performance objectives that the system must achieve to be considered an acceptable means for minimizing the development of flammable vapors in the fuel tank installation.

DATES: Comments must be received on or before January 23, 2004.

ADDRESSES: Comments on this proposal may be mailed in duplicate to: Federal Aviation Administration, Transport Airplane Directorate, Attn: Rules Docket (ANM–113), Docket No. NM270, 1601 Lind Avenue SW., Renton, Washington, 98055–4056; or delivered in duplicate to the Transport Airplane Directorate at the above address. Comments must be marked: Docket No. NM270. Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4 p.m.

FOR FURTHER INFORMATION CONTACT: Mike Dostert, Propulsion and Mechanical Systems Branch, FAA, ANM–112, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue, SW., Renton, Washington, 98055–4056; telephone (425) 227–2132, facsimile (425) 227–1320, e-mail *mike.dostert@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites interested persons to participate in this rulemaking by submitting written comments, data, or views. The most helpful comments reference a specific portion of the proposed special conditions, explain the reason for any recommended change, and include supporting data. We ask that you send us two copies of written comments.

All comments received will be filed in the docket, as well as a report summarizing each substantive public contact with FAA personnel concerning these proposed special conditions. The docket is available for public inspection before and after the comment closing date. If you wish to review the docket in person, go to the address in the **ADDRESSES** section of this preamble between 7:30 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

We will consider all comments we receive on or before the closing date for comments. We will consider comments filed late if it is possible to do so without incurring expense or delay. We may change these proposed special conditions based on the comments we receive.

If you want the FAA to acknowledge receipt of your comments on these proposed special conditions, include with your comments a pre-addressed, stamped postcard on which the docket number appears. We will stamp the date on the postcard and mail it back to you.

Background

Boeing Commercial Airplanes intends to modify Model 747 series airplanes to incorporate a new flammability reduction system that will inert the center fuel tanks with nitrogen-enriched air. Though the provisions of § 25.981, as amended by Amendment 25–102, will apply to this design change, these special conditions are being proposed to address novel design features.

Regulations used as the standard for certification of transport category airplanes prior to Amendment 25–102, effective June 6, 2001, were intended to prevent fuel tank explosions by eliminating possible ignition sources from inside the airplane fuel tanks. Service experience of airplanes certificated to the earlier standards shows that ignition source prevention alone has not been totally effective at preventing accidents. Commercial transport airplane fuel tank safety requirements have remained relatively unchanged throughout the evolution of piston-powered aircraft and later into the jet age. The fundamental premise for precluding fuel tank explosions has involved establishing that the design does not result in a condition that would cause an ignition source within the fuel tank ullage (tank vapor space). A basic assumption in this approach has been that the fuel tank could contain flammable vapors under a wide range of airplane operating conditions even though there were periods of time in which the vapor space would not support combustion.

Fuel Properties

The flammability temperature range of jet engine fuel vapors varies with the type of jet fuel, the ambient pressure in the tank, and the amount of dissolved oxygen that may be present in the tank due to vibration and sloshing of the fuel that occurs within the tank.

At sea level pressures and with no sloshing or vibration present, Jet A fuel, the most common commercial jet fuel in the United States, and Jet A1 used in most portions of the world, have flammability characteristics that tend to make the fuel vapor-air mixture too "lean" to ignite at temperatures below approximately 100°F, and too "rich" to ignite at temperatures above 175°F. This range of flammability (100°F to 175°F) is reduced to cooler temperatures as the airplane gains altitude due to the corresponding reduction of pressure. For example, at an altitude of 30,000 feet the flammability temperature range is approximately 60°F to 120°F.

The flammability range of Jet B (JP–4), another fuel approved for use on most commercial transport airplanes but not used as a primary fuel, is approximately 15°F to 75°F at sea level, and −20°F to 35°F at 30,000 feet. Because Jet B fuel flammable temperature ranges as a function of pressure altitude are more within normal temperatures at altitudes, airplane fuel tanks are flammable for a much larger portion of the flight.

Most commercial transports are approved for operation at altitudes in the range of 30,000 to 45,000 feet. The FAA has always assumed that airplanes

would be operated with flammable fuel vapors in their fuel tank ullage. Commercial transports operated in the United States, and in most overseas locales, use Jet A or Jet A–1 fuel, which typically limits exposure to operation in the flammability range to warmer days.

Fire Triangle

Three conditions must be present in a fuel tank to support combustion. These include the presence of a suitable amount of fuel vapor, the presence of sufficient oxygen, and the presence of an ignition source. This has been named the fire triangle. Each point of the triangle represents one of these conditions. Because of technological limitations in the past, the FAA philosophy regarding the prevention of fuel tank explosions to ensure airplane safety was to only preclude ignition sources within fuel tanks. This philosophy included application of fail-safe design requirements to fuel tank components (lightning design requirements, fuel tank wiring, fuel tank temperature limits, etc.) that are intended to preclude ignition sources from being present in fuel tanks even when component failures occur.

Need To Address Flammability

Three accidents have occurred in the last 13 years as the result of unknown ignition sources within the fuel tank in spite of past efforts, highlighting the difficulty in continuously preventing ignition from occurring within fuel tanks. In 1996 the National Transportation Safety Board (NTSB) issued recommendations to improve fuel tank safety that included prevention of ignition sources and addressing fuel tank flammability, *i.e.*, the other two points of the fire triangle.

The FAA initiated safety reviews of all larger transport airplane type certificates to review the fail-safe features of previously approved designs and also initiated research into the feasibility of amending the regulations to address fuel tank flammability. Results from the safety reviews indicated a significant number of single and combinations of failures that can result in ignition sources within the fuel tanks. The FAA has adopted rulemaking to require design and/or maintenance actions to address these issues; however, past experience indicates unforeseen design and maintenance errors can result in development of ignition sources. These findings show minimizing or preventing the formation of flammable vapors by addressing the flammability points of the fire triangle will enhance fuel tank safety. On April 3, 1997, the FAA published a notice in the **Federal Register** (62 FR 16014) that requested comments concerning the 1996 NTSB recommendations regarding reduced flammability. That notice provided significant discussion of the service history, background, and issues related to reducing flammability in transport airplane fuel tanks. Comments submitted to that notice indicated additional information was needed before the FAA could initiate rulemaking action to address all of the recommendations.

Past safety initiatives by the FAA and industry to reduce the likelihood of fuel tank explosions resulting from post crash ground fires have evaluated means to address other factors of the fire triangle. Previous attempts were made to develop commercially viable systems or features that would reduce or eliminate other aspects of the fire triangle (fuel or oxygen) such as fuel tank inerting or ullage space vapor "scrubbing" (ventilating the tank ullage with air to remove fuel vapor to prevent the accumulation of flammable concentrations of fuel vapor). Those initial attempts proved to be impractical for commercial transport airplanes due to the weight, complexity, and poor reliability of the systems, or undesirable secondary effects such as unacceptable atmospheric pollution.

Fuel Tank Harmonization Working Group

On January 23, 1998, the FAA published a notice in the **Federal Register** that established an Aviation Rulemaking Advisory Committee (ARAC) working group, the Fuel Tank Harmonization Working Group (FTHWG). The FAA tasked the FTHWG with providing a report to the FAA recommending regulatory text to address limiting fuel tank flammability in both new type certificates and the fleet of in service airplanes. The ARAC consists of interested parties, including the public, and provides a public process to advise the FAA concerning development of new regulations. [**Note:** The FAA formally established ARAC in 1991 (56 FR 2190, January 22, 1991), to provide advice and recommendations concerning the full range of the FAA's safety-related rulemaking activity.]

The FTHWG evaluated numerous possible means of reducing or eliminating hazards associated with explosive vapors in fuel tanks. On July 23, 1998, the ARAC submitted its report to the FAA. The full report is in the docket created for this ARAC working group (Docket No. FAA–1998–4183). This docket can be reviewed on the U.S. Department of Transportation electronic Document Management System on the Internet at *http://dms.dot.gov*.

The report provided a recommendation for the FAA to initiate rulemaking action to amend § 25.981, applicable to new type design airplanes, to include a requirement to limit the time transport airplane fuel tanks could operate with flammable vapors in the vapor space of the tank. The recommended regulatory text proposed, "Limiting the development of flammable conditions in the fuel tanks, based on the intended fuel types, to less than 7 percent of the expected fleet operational time, or providing means to mitigate the effects of an ignition of fuel vapors within the fuel tanks such that any damage caused by an ignition will not prevent continued safe flight and landing." The report included a discussion of various options for showing compliance with this proposal, including managing heat input to the fuel tanks, installation of inerting systems or polyurethane fire suppressing foam, and suppressing an explosion if one occurred.

The level of flammability defined in the proposal was established based on a comparison of the safety record of center wing fuel tanks that, in certain airplanes, are heated by equipment located under the tank, and unheated fuel tanks located in the wing. The ARAC concluded that the safety record of fuel tanks located in the wings with a flammability exposure of 2 to 4 percent of the operational time was adequate and that if the same level could be achieved in center wing fuel tanks, the overall safety objective would be achieved. The thermal analyses documented in the report revealed that center wing fuel tanks that are heated by air conditioning equipment located beneath them contain flammable vapors, on a fleet average basis, in the range of 15 to 30 percent of the fleet operating time.

During the ARAC review, it was also determined that certain airplane types do not locate heat sources adjacent to the fuel tanks and have significant surface areas that allow cooling of the fuel tank by outside air. These airplanes provide significantly reduced flammability exposure, near the 2 to 4 percent value of the wing tanks. The group therefore determined that it would be feasible to design new airplanes such that fuel tank operation in the flammable range would be limited to nearly that of the wing fuel tanks. Findings from the ARAC report indicated that the primary method of compliance available at that time with the requirement proposed by the ARAC would likely be to control heat transfer into and out of fuel tanks such that heating of the fuel would not occur. Design features such as locating the air conditioning equipment away from the fuel tanks, providing ventilation of the air conditioning bay to limit heating and to cool fuel tanks, and/or insulating the tanks from heat sources, would be practical means of complying with the regulation proposed by the ARAC.

In addition to its recommendation to revise § 25.981, the ARAC also recommended that the FAA continue to evaluate means for minimizing the development of flammable vapors within the fuel tanks to determine whether other alternatives, such as ground-based inerting of fuel tanks, could be shown to be cost effective.

To address the ARAC recommendations, the FAA continued with research and development activity to determine the feasibility of requiring inerting for both new and existing designs.

FAA Rulemaking Activity

Based in part on the ARAC recommendations to limit the flammability on new type designs, the FAA developed and published Amendment No. 25–102 in the **Federal Register** on May 7, 2001 (66 FR 23085). The amendment includes changes to § 25.981 that require minimization of fuel tank flammability to address both reduction in the time fuel tanks contain flammable vapors, (new § 25.981(c)), and additional changes regarding prevention of ignition sources in fuel tanks. The new § 25.981(c) is based on the FTHWG recommendation to achieve a safety level equivalent to that achieved by the fleet of transports with unheated aluminum wing tanks, between 2 to 4 percent flammability. The FAA stated in the preamble to Amendment 25–102 that the intent of the rule was to—

> * * * require that practical means, such as transferring heat from the fuel tank (*e.g.*, use of ventilation or cooling air), be incorporated into the airplane design if heat sources were placed in or near the fuel tanks that significantly increased the formation of flammable fuel vapors in the tank, or if the tank is located in an area of the airplane where little or no cooling occurs. The intent of the rule is to require that fuel tanks are not heated, and cool at a rate equivalent to that of a wing tank in the transport airplane being evaluated. This may require incorporating design features to reduce flammability, for example cooling and ventilation means or inerting for fuel tanks located in the center wing box, horizontal stabilizer, or auxiliary fuel tanks located in the cargo compartment.

Advisory circulars associated with Amendment 25–102 include AC 25.981–1B, "Fuel Tank Ignition Source Prevention Guidelines," and AC 25.981–2, "Fuel Tank Flammability Minimization." Like all advisory material, these advisory circulars describe an acceptable means, but not the only means, for demonstrating compliance with the regulations.

FAA Research

In addition to the notice published in the **Federal Register** on April 3, 1997, the FAA initiated research to provide a better understanding of the ignition process of commercial aviation fuel vapors and to explore new concepts for reducing or eliminating the presence of flammable fuel air mixtures within fuel tanks.

Fuel Tank Inerting

In the public comments received in response to the 1997 notice there was reference made to hollow fiber membrane technology that had been developed and was in use in other applications, such as the medical community, to separate oxygen from nitrogen in air. Air is made up of about 78 percent nitrogen and 21 percent oxygen, and the hollow fiber membranes act as a molecular sieve, using the size difference between the nitrogen and oxygen molecules to separate the nitrogen-enriched air (NEA) from the oxygen. In airplane applications NEA is produced when pressurized air from the airplane engines is forced through the hollow fibers. The NEA is then directed, at appropriate nitrogen concentrations, into the ullage space of fuel tanks and displaces the normal fuel vapor/air mixture in the tank.

Use of the hollow fiber technology allowed nitrogen to be separated from air which eliminated the need to carry and store the nitrogen in the airplane. Researchers were aware of the earlier system's shortcomings in the areas of weight, reliability, cost, and performance. Recent advances in the technology have resolved those concerns and eliminated the need for storing nitrogen on board the airplane.

Criteria for Inerting

Earlier fuel tank inerting designs produced for military applications were based on defining "inert" as a maximum oxygen concentration of 9 percent. This value was established by the military for protection of fuel tanks from battle damage. One major finding from the FAA's research and development efforts was the determination that the 9 percent maximum oxygen concentration level benchmark established to protect military airplanes from high-energy ignition sources encountered in battle was significantly lower than that needed to inert civilian transport airplane fuel tanks from ignition sources resulting from airplane system failures and malfunctions that have much lower energy. This FAA research established a maximum value of 12 percent as being adequate at sea level. The test results are currently available on FAA Web site: *http://www.fire.tc.faa.gov/pdf/tno2-79.pdf* and will be published in FAA Technical Note "Limiting Oxygen Concentrations Required to Inert Jet Fuel Vapors Existing at Reduced Fuel Tank Pressures," report number DOT/FAA/AR–TN02/79. As a result of this research, the quantity of nitrogen-enriched air that is needed to inert commercial airplane fuel tanks was lessened so that an effective flammability reduction system can now be smaller and less complex than was originally assumed. The 12 percent value is based on the limited energy sources associated with an electrical arc that could be generated by airplane system failures on typical transport airplanes and does not include events such as explosives, turbulent flow flame propagation, or hostile fire.

As previously discussed, existing fuel tank system requirements (contained in earlier Civil Air Regulation (CAR) 4b and now in 14 Code of Federal Regulations (CFR) part 25) have focused solely on prevention of ignition sources. The flammability reduction system is intended to add an additional layer of safety by reducing the exposure to flammable vapors in the heated center wing tank, not necessarily eliminating them under all operating conditions. Consequently, ignition prevention measures will still be the principal layer of defense in fuel system safety, now augmented by substantially reducing the time that flammable vapors are present in higher flammability tanks. It is expected that by combining these two approaches, particularly for tanks with high flammability exposures, such as the heated center wing tank or tanks with limited cooling, risks for future fuel tank explosions can be substantially reduced.

Boeing Application for Certification of a Fuel Tank Inerting System

On November 15, 2002, Boeing Commercial Airplanes applied for a change to Type Certificate A20WE to modify Model 747–100/200B/200F/200C/SR/SP/100B/300/100B SUD/400/400D/400F series airplanes to incorporate a new flammability reduction system that inerts the center fuel tanks with nitrogen-enriched air. The Model 747–100/200B/200F/200C/SR/SP/100B/300/100B SUD/400/400D/400F series airplanes, approved under

Type Certificate No. A20WE, are four-engine transport airplanes with a passenger capacity up to 624 depending upon the submodel. These airplanes have an approximate maximum gross weight of 910,000 lbs with an operating range up to 7,700 miles.

Type Certification Basis

Under the provisions of § 21.101, Boeing Commercial Airplanes must show that the Model 747–100/200B/200F/200C/SR/SP/100B/300/100B SUD/400/400D/400F series airplanes, as changed, continue to meet the applicable provisions of the regulations incorporated by reference in Type Certificate No. A20WE, or the applicable regulations in effect on the date of application for the change. The regulations incorporated by reference in the type certificate are commonly referred to as the "original type certification basis." The regulations incorporated by reference in Type Certificate A20WE include 14 CFR part 25, dated February 1, 1965, as amended by Amendments 25–1 through 25–70, except for special conditions and exceptions noted in Type Certificate Data Sheet A20WE.

In addition, if the regulations incorporated by reference do not provide adequate standards with respect to the change, the applicant must comply with certain regulations in effect on the date of application for the change. The FAA has determined that the FRS installation on the Boeing Model 747–100/200B/200F/200C/SR/SP/100B/300/100B SUD/400/400D/400F series airplanes must also be shown to comply with § 25.981 at Amendment 25–102.

If the Administrator finds that the applicable airworthiness regulations (14 CFR part 25) do not contain adequate or appropriate safety standards for the Boeing Model 747–100/200B/200F/200C/SR/SP/100B/300/100B SUD/400/400D/400F series airplanes because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

In addition to the applicable airworthiness regulations and special conditions, the Model 747–100/200B/200F/200C/SR/SP/100B/300/100B SUD/400/400D/400F series airplanes must comply with the fuel vent and exhaust emission requirements of 14 CFR part 34 and the acoustical change requirements of § 21.93(b).

Special conditions, as defined in § 11.19, are issued in accordance with § 11.38 and become part of the type certification basis in accordance with § 21.101.

Special conditions are initially applicable to the model for which they are issued. Should the type certificate for that model be amended later to include any other model that incorporates the same or similar novel or unusual design feature, or should any other model already included on the same type certificate be modified to incorporate the same or similar novel or unusual design feature, the special conditions would also apply to the other model under the provisions of § 21.101.

Novel or Unusual Design Features

Boeing has applied for approval of a flammability reduction system (FRS) to minimize the development of flammable vapors in the center fuel tanks of Model 747–100/200B/200F/200C/SR/SP/100B SUD/400/400D/400F series airplanes. Boeing also plans to seek approval of this system on Boeing Model 737, 757, 767, and 777 airplanes.

Boeing has proposed to voluntarily comply with § 25.981(c), Amendment 25–102, which is normally only applicable to new type designs or type design changes affecting fuel tank flammability. The provisions of § 21.101 require Boeing to also comply with §§ 25.981(a) and (b), Amendment 25–102, for the changed aspects of the airplane by showing that the FRS does not introduce any additional potential sources of ignition into the fuel tanks.

The proposed FRS uses a nitrogen generation system (NGS) that comprises a bleed-air shutoff valve, ozone converter, heat exchanger, air conditioning pack air cooling flow shutoff valve, filter, air separation module, temperature regulating valve controller and sensor, high-flow descent control valve, float valve, and system ducting. The system will be located in the air conditioning pack bay below the center wing fuel tank. Engine bleed air from the existing engine pneumatic bleed source will flow through a control valve into an ozone converter and then through a heat exchanger, where it will be cooled using outside cooling air. The cooled air will flow through a filter into an air separation module (ASM) that will generate nitrogen-enriched air (NEA), which will be supplied to the center fuel tank, and also discharge oxygen-enriched air (OEA). The OEA from the ASM will be mixed with cooling air from the heat exchanger to dilute the oxygen concentration and then exhausted overboard. The FRS will also include modifications to the fuel vent system to minimize dilution of the nitrogen-enriched ullage in the center tank due to cross-venting characteristics of the existing center wing fuel tank vent design. Certain features of the FRS may introduce a hazard to the airplane if not properly addressed.

Boeing originally proposed that the system be operated only during flight and that the center tank would continue to be inert upon landing and remain inert during normal ground procedures. Boeing has more recently stated that the FRS may be operated on the ground.

Boeing has proposed that limited dispatch relief for operation with an inoperative NGS be allowed. Boeing has initially proposed a 10-day master minimum equipment list (MMEL) relief for the system. Boeing originally proposed that there be no cockpit or maintenance indication onboard for the NGS, and that periodic maintenance, using ground service equipment, be performed to verify system operation. More recently Boeing has stated that to meet system reliability and availability objectives, built-in test functions would be included and system status indication of some kind would be provided but the indication would not be provided in the cockpit. The reliability of the system is expected to be designed to achieve a mean time between failure (MTBF) of 5000 hours or better.

Discussion

The FAA policy for establishing the type design approval basis of the proposed FRS design will result in application of §§ 25.981(a) and (b), Amendment 25–102, for the proposed changes to the airplane that might increase the risk of ignition of fuel vapors. Boeing will therefore be required to substantiate that changes introduced by the FRS system will meet the ignition prevention requirements of §§ 25.981(a) and (b), Amendment 25–102 and other applicable regulations.

With respect to compliance with § 25.981(c), AC 25.981–2 provides guidance in addressing minimization of fuel tank flammability within a heated fuel tank, but there are no specific regulations that address the design and installation of an FRS that inerts the fuel tank. Since Amendment 25–102 was adopted, significant advancements in inerting technology have reduced the size and complexity of inerting systems. Developments in inerting technology have made it practical to significantly reduce fuel tank flammability below the levels required within the rule. However, due to factors such as the limited availability of bleed air and electrical power, it is not considered practical at this time to develop systems for retrofit into existing airplane designs that can maintain a non-flammable tank ullage in all fuel tanks or during all operating conditions. The FAA also recognizes that fuel tank flammability reduction systems could be developed that would meet the flammability requirements of § 25.981(c), Amendment 25–102, but may not preclude fuel tanks from routinely being flammable under the specific operating conditions present when recent accidents occurred.

Definition of "Inert"

The definition of "inert" within these proposed special conditions provides that all portions of the tank under evaluation, including the bulk average of individual compartments, are equal to or less than the 12 percent oxygen limit at sea level. This is necessary because fuel tanks that are compartmentalized may encounter localized oxygen concentrations in one or more compartments that exceed the 12 percent value. Currently there is not adequate data available to establish whether exceeding the 12 percent limit in one compartment of a fuel tank could create a hazard. For example, ignition of vapors in one compartment could result in a flame front within the compartment that travels to adjacent compartments and results in an ignition source that exceeds the ignition energy values used to establish the 12 percent limit. Therefore, ignition in other compartments of the tank may be possible. Technical discussions with the applicant indicate the pressure rise in a fuel tank that was at or near the 12 percent oxygen concentration level would likely be well below the value that would rupture a typical transport airplane fuel tank. While this may be possible to show, it is not within the scope of these proposed special conditions. Therefore, the effect of the definition of "inert" within these proposed special conditions is that the bulk average of each individual compartment or bay of the tank be evaluated and shown to meet the oxygen concentration limits specified in the definitions section of these proposed special conditions (12 percent or less at sea level) to be considered inert.

Determining Flammability

The methodology for determining fuel tank flammability defined for use in these proposed special conditions is based on that used by ARAC to compare the flammability of unheated aluminum wing fuel tanks to that of tanks that are heated by adjacent equipment. The ARAC evaluated the relative flammability of airplane fuel tanks using a statistical analysis commonly referred to as a "Monte Carlo" analysis that considered a number of factors affecting formation of flammable vapors in the fuel tanks. The Monte Carlo analysis calculates values for the parameter of interest by randomly selecting values for each of the uncertain variables from distribution tables. This calculation is conducted over and over to simulate a process where the variables are random within defined distributions. The results of a large number of flights can then be used to approximate the results of the real world exposure of a large fleet of airplanes.

Factors that are considered in the Monte Carlo analysis included in these special conditions include those affecting all airplane models in the transport airplane fleet such as: a statistical distribution of ground, overnight, and cruise air temperatures likely to be experienced worldwide, a statistical distribution of likely fuel types, and properties of those fuels, a definition of the conditions when the tank in question will be considered flammable, and those affecting specific airplane models such as climb and descent profiles, fuel management, heat transfer characteristics of the fuel tanks, statistical distribution of flight lengths (mission durations) expected for the airplane model worldwide, etc. To quantify the fleet exposure, the Monte Carlo analysis approach is applied to a statistically significant number (1,000,000) of flights where each of the factors described above is randomly selected. The flights are then selected to be representative of the fleet using the defined distributions of the three variables. For example, flight one may be a short mission on a cold day with an average flash point fuel, and flight two may be a long mission on an average day with a low flash point fuel, and on and on until 1,000,000 flights have been defined in this manner. For every one of the 1,000,000 flights, the time that the fuel temperature is above the flash point of the fuel is calculated and used as the parameter that established whether the fuel tank is flammable. Averaging the results for all 1,000,000 flights provides an average percentage of the flight time that any particular flight is considered to be flammable. While these special conditions do not require that the analysis be conducted for 1,000,000 flights, the accuracy of the Monte Carlo analysis improves as the number of flights increases. Therefore, to account for this improved accuracy Appendix 2 of the special conditions defines lower flammability limits if the applicant chooses to use fewer than 1,000,000 flights.

The determination of whether the fuel tank is flammable is based on the temperature of the fuel in the tank determined from the tank thermal model, the atmospheric pressure in the fuel tank, and properties of the fuel loaded for a given flight, which is randomly selected from a database consisting of worldwide data. The criteria in the model is based on the assumption that as these variables change, the concentration of vapors in the tank instantaneously stabilizes and that the fuel tank is at a uniform temperature. This model does not include consideration of the time lag for the vapor concentration to reach equilibrium, the condensation of fuel vapors from differences in temperature that occur in the fuel tanks, or the effect of mass loading (times when the fuel tank is at the unusable fuel level and there is insufficient fuel at a given temperature to form flammable vapors).

Definition of Transport Effects

The effects of mass loading and the effects of fuel vaporization and condensation with time and temperature changes, referred to as "transport effects" in these proposed special conditions, are excluded from consideration in the Monte Carlo model used for demonstrating compliance with these proposed special conditions. These effects have been excluded because they were not considered in the original ARAC analysis, which was based on a relative measure of flammability. For example, the 3 percent flammability value established by the ARAC as the benchmark for fuel tank safety for wing fuel tanks did not include the effects of cooling of the wing tank surfaces and the associated condensation of vapors from the tank ullage. If this effect had been included in the wing tank flammability calculation, it would have resulted in a significantly lower wing tank flammability benchmark value. The ARAC analysis also did not consider the effects of mass loading which would significantly lower the calculated flammability value for fuel tanks that are routinely emptied, e.g., center wing tanks. The FAA and JAA have determined that using the ARAC methodology provides a suitable basis for determining the adequacy of an FRS system.

Flammability Limit

The FAA, in conjunction with the Joint Airworthiness Authorities (JAA) and Transport Canada, has developed criteria within these proposed special conditions that require overall fuel tank flammability to be limited to 3 percent of the fleet average operating time. This overall average flammability limit consists of times when the system

performance cannot maintain an inert tank ullage, primarily during descent when the change in ambient pressures draws air into the fuel tanks and those times when the FRS is inoperative due to failures of the system and dispatch with the system inoperative.

Specific Risk Flammability Limit

These proposed special conditions also include a requirement to limit fuel tank flammability to 3 percent during ground operations, takeoff, and climb phases of flight to address the specific risk associated with operation during warmer day conditions when accidents have occurred. The specific risk requirement is intended to establish minimum system performance levels and therefore the 3 percent flammability limit excludes reliability related contributions, which are addressed in the average flammability assessment. The specific risk requirement may be met by conducting a separate Monte Carlo analysis for each of the specific phases of flight during warmer day conditions defined in the special conditions, without including the times when the FRS is not available because of failures of the system or dispatch with the FRS inoperative.

Inerting System Indications

Fleet average flammability exposure involves several elements, including—

- The time the FRS is working properly and inerts the tank or when the tank is not flammable;
- The time when the FRS is working properly but fails to inert the tank or part of the tank, because of mission variation or other effects;
- The time the FRS is not functioning properly and the operator is unaware of the failure; and
- The time the FRS is not functioning properly and the operator is aware of the failure and is operating the airplane for a limited time under MEL relief.

The applicant may propose that MMEL relief is provided for aircraft operation with the FRS unavailable; however, it is considered a safety system that should be operational to the maximum extent practical. Therefore, these proposed special conditions include reliability and reporting requirements to enhance system reliability so that dispatch of airplanes with the FRS inoperative would be very infrequent. Cockpit indication of the system function that is accessible to the flightcrew is not an explicit requirement, but may be required if the results of the Monte Carlo analysis show the system cannot otherwise meet the flammability and reliability requirements defined in these proposed special conditions. Flight test demonstration and analysis will be required to demonstrate that the performance of the inerting system is effective in inerting the tank during those portions of ground and the flight operations where inerting is needed to meet the flammability requirements of these proposed special conditions.

Various means may be used to ensure system reliability and performance. These may include: system integrity monitoring and indication, redundancy of components, and maintenance actions. A combination of maintenance indication and/or maintenance check procedures will be required to limit exposure to latent failures within the system, or high inherent reliability is needed to assure the system will meet the fuel tank flammability requirements. The inerting system proposed by the applicant does not incorporate redundant features and includes a number of components essential for proper system operation. Past experience has shown inherent reliability of this type of system would be difficult to achieve. Therefore, if system maintenance indication is not provided for features of the system essential for proper system operation, system functional checks will be required for these features. At a minimum, proper function of essential features of the system should be validated once per day by maintenance review of indications or functional checks, possibly prior to the first flight of the day. The determination of a proper interval and procedure will follow completion of the certification testing and demonstration of the system's reliability and performance prior to certification.

Any features or maintenance actions needed to achieve the minimum reliability of the FRS will result in fuel system airworthiness limitations as defined in § 25.981(b). Boeing will be required to include in the instructions for continued airworthiness (ICA) the replacement times, inspection intervals, inspection procedures, and the fuel system limitations required by § 25.981(b). Overall system performance and reliability must achieve a fleet average flammability that meets the requirements of these special conditions. If the system reliability falls to a point where the fleet flammability exposure exceeds these requirements, Boeing will be required to define appropriate corrective actions, to be approved by the FAA, that will bring the exposure back down to the acceptable level.

Boeing has proposed that the FRS be eligible for a 10-day MMEL dispatch interval. The approved interval will be established by the Flight Operations Evaluation Board (FOEB) based on data submitted by the applicant to the FAA. The MMEL dispatch interval is one of the factors affecting system reliability analyses that must be considered early in the design of the FRS, prior to FAA approval of the MMEL. Boeing has requested that the authorities agree to a MMEL inoperative dispatch interval to be used for design of the system. Data presented by Boeing indicates that certain systems on the airplane are routinely repaired prior to the maximum allowable interval. These proposed special conditions require an MMEL dispatch inoperative interval of 60 hours to be used in the analysis as representative of the mean time for which an inoperative condition may occur for the 10-day MMEL maximum interval requested, and that Boeing include actual dispatch inoperative interval data in the quarterly reports required by these special conditions. Boeing may request to use an alternative interval in the reliability analysis. Use of a value less than 60 hours would be a factor considered by the FOEB in establishing the maximum MMEL dispatch limit. The reporting requirement will provide data necessary to validate that the reliability of the FRS achieved in service meets the levels used in the analysis.

Appropriate maintenance and operational limitations with the FRS inoperative may also be required and noted in the MMEL. The MMEL limitations and any operational procedures should be established based on results of the Monte Carlo assessment, including possible effects of the risk associated with portions of the fleet that operate in warmer climates where the fuel tanks are flammable a significant portion of the operational time when not inert. While the system reliability analysis may show that even with an MMEL allowing very long inoperative intervals, it is possible to achieve an overall average fleet exposure equal to or less than that of a typical unheated aluminum wing tank, the intent of the rule is to minimize flammability and the shortest practical MMEL relief interval should be proposed. To ensure limited airplane operation with the system inoperative and to meet the reliability requirements of these proposed special conditions, appropriate level messages that are needed to comply with any dispatch limitations of the MMEL must be provided.

Confined Space Hazard Markings

Introduction of the FRS will result in NEA within the fuel tanks and the possibility of NEA in compartments adjacent to the fuel tanks if leakage from the tank or NEA supply lines were to occur. Lack of oxygen in these areas could be hazardous to maintenance personnel, the passengers, or flightcrew. These proposed special conditions introduce requirements to address this issue.

Affect of FRS on Auxiliary Fuel Tank System Supplemental Type Certificates

Boeing plans to offer a service bulletin that will install the FRS on existing in-service airplanes. Some in-service airplanes have auxiliary fuel tank systems installed that interface with the center wing tank. The Boeing FRS design is intended to provide inerting of the fuel tank volume of the 747 and does not include consideration of the auxiliary tank installations. Installation of the FRS on existing airplanes with auxiliary fuel tank systems may therefore require additional modifications to the auxiliary fuel tank system to prevent development of a condition that may cause the tank to exceed the 12 percent oxygen limit. The FAA will address these issues during development and approval of the service bulletin for the FRS.

Disposal of Oxygen-Enriched Air

The FRS produces both nitrogen-enriched air (NEA) and oxygen-enriched air (OEA). The OEA generated by the FRS could result in a fire hazard if not disposed of properly. The OEA produced in the proposed design is diluted with air from a heat exchanger, which is intended to reduce the OEA concentration to non-hazardous levels. Special requirements are included in these proposed special conditions to address potential leakage of OEA due to failures and safe disposal of the OEA during normal operation.

To ensure that an acceptable level of safety is achieved for the modified airplanes using a system that inerts heated fuel tanks with nitrogen-enriched air, special conditions (per § 21.16) are needed to address the unusual design features of a flammability reduction system. These proposed special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

Applicability

As discussed above, these proposed special conditions are applicable to the Boeing Model 747–100/200B/200F/200C/SR/SP/100B SUD/400/400D/400F series airplanes. Should the type certificate be amended later to include any other model that incorporates the same or similar novel or unusual design feature, or should any other model already included on the same type certificate be modified to incorporate the same or similar novel or unusual design feature, the special conditions would also apply to the other model under the provisions of § 21.101.

Conclusion

This action affects only certain novel or unusual design features on Boeing Model 747–100/200B/200F/200C/SR/SP/100B SUD/400/400D/400F series airplanes. It is not a rule of general applicability and affects only the applicant who applied to the FAA for approval of these features on the airplane.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701, 44702, 44704.

The Proposed Special Conditions

Accordingly, the Federal Aviation Administration (FAA) proposes the following special conditions as part of the type certification basis for Boeing Model 747–100/200B/200F/200C/ SR/SP/100B SUD/400/400D/400F series airplanes, modified by Boeing Commercial Airplanes, to include a flammability reduction system (FRS) that uses a nitrogen generation system to inert the center wing tank with nitrogen-enriched air (NEA).

Compliance with these proposed special conditions does not relieve the applicant from compliance with the existing certification requirements.

I. Definitions.

(a) *Flammable.* With respect to a fluid or gas, flammable means susceptible to igniting readily or to exploding (14 CFR part 1, Definitions). A non-flammable ullage is one where the gas mixture is too lean or too rich to burn and/or is inert per the definition below. For the purposes of these special conditions, a fuel tank is considered flammable when the bulk fuel temperature within any compartment of the tank is within the flammable range for the fuel type being used.

(b) *Flash Point.* The flash point of a flammable fluid is defined as the lowest temperature at which the application of a flame to a heated sample causes the vapor to ignite momentarily, or "flash." The test for jet fuel is defined in the ASTM specification, D56, "Standard Test Method for Flash Point by Tag Close Cup Tester."

(c) *Ignition Energy.* The minimum amount of energy required to ignite fuel vapors. The inert oxygen concentration levels, described below in the definition for inert, were established using approximately a 0.5 Joule spark.

(d) *Inert.* For the purpose of these special conditions, the tank is considered inert when the bulk oxygen concentration within each compartment of the tank is 12 percent or less at sea level up to 10,000 feet, then linearly increasing from 12 percent at 10,000 feet to 14.5 percent at 40,000 feet.

(e) *Inerting.* A process where a noncombustible gas is introduced into the ullage of a fuel tank so that the ullage becomes inert.

(f) *Monte Carlo Analysis.* An analytical tool that provides a means to assess the degree of flammability exposure time for a fuel tank. See Appendices 1 and 2 of these special conditions for specific requirements for conducting the Monte Carlo analysis.

(g) *Operational Time.* For the purpose of these special conditions, the time from the start of preparing the airplane for flight (that is, starting and connecting the auxiliary or ground power unit to the aircraft electrical system) through securing all power sources following flight termination.

(h) *Ullage, or Ullage Space.* The volume within the tank not occupied by liquid fuel at the time interval under evaluation.

(i) *Hazardous atmosphere:* An atmosphere that may expose employees to the risk of death, incapacitation, impairment of ability to self-rescue (that is, escape unaided from a space), injury, or acute illness.

II. System Performance and Reliability

The FRS, for the airplane model under evaluation, must comply with the performance and reliability requirements as follows:

(a) The applicant must submit a Monte Carlo analysis, as defined in Appendices 1 and 2 of these special conditions that—

(1) Demonstrates that the overall fleet flammability exposure of each fuel tank with an FRS installed is equal to or less than 3 percent of operational time; and

(2) Demonstrates that neither the performance (when the FRS is operational) nor reliability (including all periods when the FRS is inoperative) contributions to the 3 percent overall fleet flammability exposure of a tank with an FRS installed are more than 1.8

percent (this will establish appropriate maintenance inspection procedures and intervals as required in paragraph III(a) of these special conditions).

(b) The applicant must submit a Monte Carlo analysis that demonstrates that the FRS, when functional, reduces the overall fleet flammability exposure of each fuel tank with an FRS installed for warm day ground and climb phases to a level equal to or less than 3 percent of operational time in each of these phases for the following conditions—

(1) The analysis must use the subset of 80° F and warmer days from the Monte Carlo analyses done for overall performance; and

(2) The flammability exposure must be calculated by comparing the time during ground and climb phases for which the tank was flammable and not inert, with the total time for the ground and climb phases.

(c) The applicant must provide data from ground testing, and flight testing that—

(1) Validate the inputs to the Monte Carlo analysis needed to meet paragraphs II(a), (b), and (c) of these special conditions; and

(2) Substantiate that the NEA distribution is effective at inerting all portions of the tank where the inerting system is needed to show compliance with these paragraphs.

(d) The applicant must validate that the FRS meets the requirements of paragraphs II(a), (b), and (c) of these special conditions with any combination of engine model, engine thrust rating, fuel type, and relevant pneumatic system configuration approved for the airplane.

(e) Sufficient accessibility for maintenance personnel, or the flightcrew, must be provided to FRS status indications that are necessary to meet the reliability requirements of paragraph II(a) of these special conditions.

(f) The access doors and panels to the fuel tanks (including any tanks that communicate with an inerted tank via a vent system), and to any other enclosed areas that could contain NEA in the event of a system failure, must be permanently stenciled, marked, or placarded as appropriate to warn maintenance crews of the presence of a potentially hazardous atmosphere.

(g) Oxygen-enriched air produced by the nitrogen generation system must not create a hazard during normal operating conditions. It must be established that no single failure or malfunction or probable combination of failures will jeopardize the safe operation of the airplane.

III. Maintenance

(a) Airworthiness Limitations must be identified for all maintenance and/or inspection tasks required to identify failures of components within the FRS that are needed to meet paragraphs II(a), (b), and (c) of these special conditions.

(b) The applicant must provide the maintenance procedures that will be necessary and present a design review that identifies any hazardous aspects to be considered during maintenance of the FRS that will be included in the instructions for continued airworthiness (ICA) or appropriate maintenance documents.

(c) To ensure that the implications of component failures affecting the FRS are adequately assessed on an on-going basis, the applicant must—

(1) Demonstrate effective means to ensure collection of FRS reliability data. The means must provide data affecting FRS availablity, such as component failures, and the FRS inoperative intervals due to dispatch under the MMEL;

(2) Provide a report to the FAA on a quarterly basis for the first five years of service introduction. After that period, continued quarterly reporting may be replaced with other reliability tracking methods found acceptable to the FAA or eliminated if it is established that the reliability of the FRS meets, and will continue to meet, the exposure requirements of paragraphs II(a) and II(b) of these special conditions;

(3) Provide a report to the validating authorities for a period of at least two years following introduction to service; and

(4) Develop service instructions or revise the applicable airplane manual, per a schedule agreed upon by the FAA, to correct any failures of the FRS that occur in service that could increase the fleet flammability exposure of the tank to more than 3 percent.

Appendix 1

Monte Carlo Analysis

(a) A Monte Carlo analysis must be conducted for the fuel tank under evaluation to determine fleet average flammability exposure for the airplane and fuel type under evaluation. An analysis for a fuel tank is defined in Appendix 2 of these special conditions and must be used as the basis for development of the Monte Carlo analysis to satisfy these special conditions. Parameters used in the Monte Carlo analysis must include:

(1) FRS Performance—as defined by system performance.

(2) Cruise Altitude—as defined by airplane performance.

(3) Cruise Ambient Temperature—as defined in Appendix 2 of these special conditions.

(4) Overnight Temperature Drop—as defined in Appendix 2 of these special conditions.

(5) Flash Point—as defined in Appendix 2 of these special conditions.

(6) Fuel Burn—as defined by airplane performance.

(7) Fuel Load—as defined by airplane performance.

(8) Fuel Transfer—as defined by airplane performance.

(9) Fueling—as defined by airplane performance.

(10) Ground Temperature—as defined in Appendix 2 of these special conditions.

(11) Mach Number—as defined by airplane performance.

(12) Mission Distribution—the applicant must either provide their own data with substantiation or use what is defined in Appendix 2 of these special conditions for mission distribution.

(13) Oxygen Evolution—as defined by airplane performance or as defined in Appendix 2 of these special conditions.

(14) Range—as defined by airplane performance.

(15) Tank Thermal Characteristics—as defined by airplane performance.

(16) Descent Profile Distribution—the applicant must either provide its own fleet representative distribution with substantiation or use a fixed 2500 feet per minute descent rate.

(b) The assumptions for the analysis must include—

(1) Predicted system performance;

(2) Vent losses due to crosswind effects and airplane performance;

(3) Periods when the system is operating properly but fails to inert the tank;

(4) Expected system reliability; and

(5) The MMEL/MEL dispatch inoperative period assumed in the reliability analysis, (60 flight hours must be used for a 10-day MMEL dispatch limit unless an alternative period has been approved by the FAA), including action to be taken when dispatching with the FRS inoperative (*Note:* The actual MMEL dispatch inoperative period data must be included in the engineering reporting requirement of paragraph III(c)(1) of these special conditions);

(6) Possible periods of system inoperability due to latent or known failures, including airplane system shut-downs and failures that could cause the FRS to shut down or become inoperative; and

(7) Affects of failures of the FRS that could increase the flammability of the fuel tank.

(c) The variation assumed in the analysis on each of the parameters (as identified under paragraph (a) of this appendix) that affect flammability must be stated and substantiating data must be included.

Appendix 2

I. Monte Carlo Model

The FAA has developed a Monte Carlo model that can be used to calculate fleet average flammability exposure for a fuel tank in an airplane. The program requires the user to enter the airplane performance data specific to the airplane model being evaluated, such as maximum range, cruise mach number, typical step climb altitudes,

tank thermal characteristics specified as exponential heating/cooling time constants, and equilibrium temperatures for various fuel tank conditions. Single flights may be studied, or a multi-flight Monte Carlo analysis may be run. This model is intended to provide comparison trends and not absolute numbers. The general methodology for conducting a Monte Carlo model is described in AC 25.981–2.

The FAA has developed a specific model for calculating fleet average flammability exposure using the Monte Carlo methodology. The FAA model, or one with modifications approved by the FAA, must be used as the means of compliance with these special conditions. The accepted model can be downloaded from the Web site *http://qps.airweb.faa.gov/sfar88flamex*. On this Web site, the model is located under the page "Flam Ex Resources," and is titled "Monte Carlo Model Version 6a." The "6a" represents Version 6A. Only version 6A or later of this model can be used. The following procedures, input variables, and data tables must be used in the analysis if the applicant develops a unique model to determine fleet average flammability exposure for a specific airplane type.

II. Monte Carlo Variables and Data Tables

Fleet average flammability exposure is the percent of the mission time the fuel ullage is flammable for a fleet of an airplane type operating over the range of actual or expected missions and in a world-wide range of environmental conditions and fuel properties. Variables used to calculate fleet flammability exposure must include atmosphere, mission length (as defined in Special Condition I(g), Definitions, as Operational Time), fuel flash point, thermal characteristics of the fuel tank, overnight temperature drop, and oxygen evolution from the fuel into the ullage. Transport effects, including mass loading, flammability lag time, and condensation of vapors due to cold surfaces, are not to be allowed as parameters in the analysis.

Atmosphere

In order to predict flammability along a given flight, the variation of ground ambient temperatures, cruise ambient temperatures, and a method to compute the transition from ground to cruise and back again must be used. The variation of the ground and cruise temperatures and the flash point of the fuel can be defined by a Gaussian curve, given by the 50 percent value and a ± 1-sigma value.

The ground and cruise temperatures are linked by a set of assumptions on the atmosphere. The temperature versus altitude follows a standard lapse rate from the ground temperature until the cruise temperature is reached. Above this altitude, the temperature is fixed at the cruise temperature. This gives a variation in the tropopause altitude. For cold days, an inversion is applied up to 10,000 feet, and then the standard lapse rate is applied.

The analysis must be able to execute a number of flights, and for each flight a separate random number must be generated for each of the three parameters (*i.e.*, ground ambient temperature, cruise ambient temperature, and fuel flash point) using the Gaussian distribution defined in Table 1. The applicant can verify the output values from the Gaussian distribution using Table 2. Table 2 is based on typical use of Jet A type fuel. If an airplane is approved for use of lower flash point fuels such as JP–4, Russian, and Chinese fuels, and it is expected to be used for more than 1 percent of the fleet operating time, then the Monte Carlo analysis must include fuel property variation acceptable to the FAA for the approved fuels.

TABLE 1.—GAUSSIAN DISTRIBUTION FOR GROUND AMBIENT, CRUISE AMBIENT, AND FLASH POINT

Parameter	Temperature in Deg F		
	Ground amb.	Cruise amb.	Flash point (FP)
Mean Temp	59.95	−70	120
neg 1 std dev	20.14	8	8
pos 1 std dev	17.28		

TABLE 2.—VERIFICATION OF TABLE 1

% probability of temps & flash point being below the listed values	Ground amb. Deg F	Cruise amb. Deg F	Flash point Deg F	Ground amb. Deg C	Cruise amb. Deg C	Flash Point (FP) Deg C
1	13.1	−88.6	101.4	−10.5	−67.0	38.5
5	26.8	−83.2	106.8	−2.9	−64.0	41.6
10	34.1	−80.3	109.7	1.2	−62.4	43.2
15	39.1	−78.3	111.7	3.9	−61.3	44.3
20	43.0	−76.7	113.3	6.1	−60.4	45.1
25	46.4	−75.4	114.6	8.0	−59.7	45.9
30	49.4	−74.2	115.8	9.7	−59.0	46.6
35	52.2	−73.1	116.9	11.2	−58.4	47.2
40	54.8	−72.0	118.0	12.7	−57.8	47.8
45	57.4	−71.0	119.0	14.1	−57.2	48.3
50	59.9	−70.0	120.0	15.5	−56.7	48.9
55	62.1	−69.0	121.0	16.7	−56.1	49.4
60	64.3	−68.0	122.0	18.0	−55.5	50.0
65	66.6	−66.9	123.1	19.2	−55.0	50.6
70	69.0	−65.8	124.2	20.6	−54.3	51.2
75	71.6	−64.6	125.4	22.0	−53.7	51.9
80	74.5	−63.3	126.7	23.6	−52.9	52.6
85	77.9	−61.7	128.3	25.5	−52.1	53.5
90	82.1	−59.7	130.3	27.8	−51.0	54.6
95	88.4	−56.8	133.2	31.3	−49.4	56.2
99	100.1	−51.4	138.6	37.9	−46.3	59.2

Flight Mission Distribution

The mission length is determined from an equation that takes the maximum mission length for the airplane and creates multiple flight lengths based on typical airline usage.

The mission length is also used to define the time on the ground prior to takeoff, and the type of flight profile to be followed. Table 3 must be used to define the mission distribution, unless the applicant has more appropriate data for the specific airplane model under evaluation, together with substantiation for the data. A linear interpolation may be used between the table values.

TABLE 3.—MISSION DISTRIBUTION

Airplane Maximum Range—Nautical Miles (NM)

Range (NM)		Distribution of missions (%)									
From	To	1000	2000	3000	4000	5000	6000	7000	8000	9000	10000
0	200	11.7	7.5	6.2	5.5	4.7	4.0	3.4	3.0	2.6	2.3
200	400	27.3	19.9	17.0	15.2	13.2	11.4	9.7	8.5	7.5	6.7
400	600	46.3	40.0	35.7	32.6	28.5	24.9	21.2	18.7	16.4	14.8
600	800	10.3	11.6	11.0	10.2	9.1	8.0	6.9	6.1	5.4	4.8
800	1000	4.4	8.5	8.6	8.2	7.4	6.6	5.7	5.0	4.5	4.0
1000	1200	0.0	4.8	5.3	5.3	4.8	4.3	3.8	3.3	3.0	2.7
1200	1400	0.0	3.6	4.4	4.5	4.2	3.8	3.3	3.0	2.7	2.4
1400	1600	0.0	2.2	3.3	3.5	3.3	3.1	2.7	2.4	2.2	2.0
1600	1800	0.0	1.2	2.3	2.6	2.5	2.4	2.1	1.9	1.7	1.6
1800	2000	0.0	0.7	2.2	2.6	2.6	2.5	2.2	2.0	1.8	1.7
2000	2200	0.0	0.0	1.6	2.1	2.2	2.1	1.9	1.7	1.6	1.4
2200	2400	0.0	0.0	1.1	1.6	1.7	1.7	1.6	1.4	1.3	1.2
2400	2600	0.0	0.0	0.7	1.2	1.4	1.4	1.3	1.2	1.1	1.0
2600	2800	0.0	0.0	0.4	0.9	1.0	1.1	1.0	0.9	0.9	0.8
2800	3000	0.0	0.0	0.2	0.6	0.7	0.8	0.7	0.7	0.6	0.6
3000	3200	0.0	0.0	0.0	0.6	0.8	0.8	0.8	0.8	0.7	0.7
3200	3400	0.0	0.0	0.0	0.7	1.1	1.2	1.2	1.1	1.1	1.0
3400	3600	0.0	0.0	0.0	0.7	1.3	1.6	1.6	1.5	1.5	1.4
3600	3800	0.0	0.0	0.0	0.9	2.2	2.7	2.8	2.7	2.6	2.5
3800	4000	0.0	0.0	0.0	0.5	2.0	2.6	2.8	2.8	2.7	2.6
4000	4200	0.0	0.0	0.0	0.0	2.1	3.0	3.2	3.3	3.2	3.1
4200	4400	0.0	0.0	0.0	0.0	1.4	2.2	2.5	2.6	2.6	2.5
4400	4600	0.0	0.0	0.0	0.0	1.0	2.0	2.3	2.5	2.5	2.4
4600	4800	0.0	0.0	0.0	0.0	0.6	1.5	1.8	2.0	2.0	2.0
4800	5000	0.0	0.0	0.0	0.0	0.2	1.0	1.4	1.5	1.6	1.5
5000	5200	0.0	0.0	0.0	0.0	0.0	0.8	1.1	1.3	1.3	1.3
5200	5400	0.0	0.0	0.0	0.0	0.0	0.8	1.2	1.5	1.6	1.6
5400	5600	0.0	0.0	0.0	0.0	0.0	0.9	1.7	2.1	2.2	2.3
5600	5800	0.0	0.0	0.0	0.0	0.0	0.6	1.6	2.2	2.4	2.5
5800	6000	0.0	0.0	0.0	0.0	0.0	0.2	1.8	2.4	2.8	2.9
6000	6200	0.0	0.0	0.0	0.0	0.0	0.0	1.7	2.6	3.1	3.3
6200	6400	0.0	0.0	0.0	0.0	0.0	0.0	1.4	2.4	2.9	3.1
6400	6600	0.0	0.0	0.0	0.0	0.0	0.0	0.9	1.8	2.2	2.5
6600	6800	0.0	0.0	0.0	0.0	0.0	0.0	0.5	1.2	1.6	1.9
6800	7000	0.0	0.0	0.0	0.0	0.0	0.0	0.2	0.8	1.1	1.3
7000	7200	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.4	0.7	0.8
7200	7400	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.3	0.5	0.7
7400	7600	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.2	0.5	0.6
7600	7800	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.1	0.5	0.7
7800	8000	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.1	0.6	0.8
8000	8200	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.5	0.8
8200	8400	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.5	1.0
8400	8600	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.6	1.3
8600	8800	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.4	1.1
8800	9000	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.2	0.8
9000	9200	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.5
9200	9400	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.2
9400	9600	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.1
9600	9800	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.1
9800	10000	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.1

Fuel Tank Thermal Characteristics

The applicant must account for the thermal conditions of the fuel tank both on the ground and in flight. The Monte Carlo model, available on the Web site listed above, defines the ground condition using an equilibrium delta temperature (relative to the ambient temperature) that the tank will reach given a long enough time, with any heat inputs from airplane sources. Values are also input to define two exponential time constants (one for a near empty tank and one for a near full tank) for the ground condition. These time constants define the time for the fuel in the fuel tank to heat or cool in response to heat input. The fuel is assumed to heat or cool according to a normal exponential transition, governed by the temperature difference between the current temperature and the equilibrium temperature, given by ambient temperature plus delta temperature. Input values for this data can be obtained from validated thermal models of the tank based on ground and flight test data. The inputs for the inflight condition are similar but are used for inflight analysis.

Fuel management techniques are unique to each manufacturer's design and variations in fuel load within the tank for given points in the flight must be accounted for in the model. The model uses a "tank full" time, specified in minutes, that defines the time before touchdown when the fuel tank is still full. For a center wing tank used first, this number would be the maximum flight time, and the tank would start to empty at takeoff. For a main tank used last, the tank will remain full for a shorter time before touch down, and would be "empty" at touch down (i.e., tank empty at 0 minutes before touch down). In the case of a main tank with reserves, the term empty means at reserve level rather than totally empty. The thermal data for tank empty would also be for reserve level.

The model also uses a "tank empty" time to define the time when the tank is emptying, and the program uses a linear interpolation between the exponential time constants for full and empty during the time the tank is emptying. For a tank that is only used for long-range flights, the tank would be full only on very long-range missions and would be empty a long time before touch down. For short flights, it would be empty for the whole flight. For a main tank that carried reserve fuel, it would be full for a long time and would only be down to empty at touch down. In this case, empty would really be at reserve level, and the thermal constants at empty should be those for the reserve level.

The applicant, whether using the available model or using another analysis tool, must propose means to validate thermal time constants and equilibrium temperatures to be used in the analysis. The applicant may propose using a more detailed thermal definition, such as changing time constants as a function of fuel load, provided the details and substantiation information are acceptable and the Monte Carlo model program changes are validated.

Overnight Temperature Drop

An overnight temperature drop must be considered in the Monte Carlo analysis as it may affect the oxygen concentration level in the fuel tank. The overnight temperature drop for these special conditions will be defined using:

- A landing temperature that is a random value based on a Gaussian distribution; and
- An overnight temperature drop that is a random value based on a Gaussian distribution.

For any flight that will end with an overnight ground period (one flight per day out of an average of x flights per day, depending on utilization of the particular airplane model being evaluated), the landing outside air temperature (OAT) is to be chosen as a random value from the following Gaussian curve:

TABLE 4.—LANDING OAT

Parameter	Landing temperature °F
Mean Temp	58.68
neg 1 std dev	20.55
pos 1 std dev	13.21

The outside ambient air temperature (OAT) drop for that night is to be chosen as a random value from the following Gaussian curve:

TABLE 5.—OAT DROP

Parameter	OAT drop temperature °F
Mean Temp	12.0
1 std dev	6.0

Oxygen Evolution

Fuel contains dissolved gases, and in the case of oxygen and nitrogen absorbed from the air, the oxygen level in the fuel can exceed 30 percent, instead of the normal 21 percent oxygen in air. Some of these gases will be released from the fuel during the reduction of ambient pressure experienced in the climb and cruise phases of flight. The applicant must consider the effects of air evolution from the fuel on the level of oxygen in the tank ullage during ground and flight operations and address these effects on the overall performance of the FRS. The applicant must provide the air evolution rate for the fuel tank under evaluation, along with substantiation data.

Number of Flights Required in Analysis

In order for the Monte Carlo analysis to be valid for showing compliance with the flammability requirements of these special conditions, the applicant must run the analysis for an appropriate number of flights to ensure that the flammability exposure for the fuel tank under evaluation meets the criteria defined in Table 6.

TABLE 6.—FLAMMABILITY LIMIT

Number of flights in Monte Carlo analysis	Maximum acceptable fuel tank flammability (%)
1,000	2.73
5,000	2.88
10,000	2.91
100,000	2.98
1,000,000	3.00

Issued in Renton, Washington, on November 28, 2003.

Kevin M. Mullin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–30449 Filed 12–8–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2003–16534; Airspace Docket No. 03–ASO–19]

Proposed Establishment of Class D and Class E4 Airspace; Olive Branch, MS Proposed Amendment of Class E5 Airspace; Memphis, TN

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish Class D and Class E4 airspace at Olive Branch, MS, and amend Class E5 airspace at Memphis, TN. A Federal contract tower with a weather reporting system is being constructed at the Olive Branch Airport. Therefore, the airport will meet the criteria for establishment of Class D and Class E4 airspace. Class D surface area airspace and Class E4 airspace designated as an extension to Class D airspace is required when the control tower is open to contain existing Standard Instrument Approach Procedures (SIAPs) and other Instrument Flight Rules (IFR) operations at the airport. This action would establish Class D airspace extending upward from the surface to and including 2,900 feet MSL within a 4-mile radius of the Olive Branch Airport and Class E airspace extensions that are 5 miles wide and extend 7 miles northeast and south of the airport. A regional evaluation has determined the existing Class E5 airspace area for Memphis, TN, which includes the Olive Branch Airport, should be amended to contain the Nondirectional Radio Beacon (NDB) Or Global Positioning System (GPS) Runway (RWY) 18 and RWY 36 SIAPs. As a result, controlled airspace extending upward from 700 feet Above Ground Level (AGL) is needed to contain the procedure turn airspace area.

DATES: Comments must be received on or before January 8, 2004.

ADDRESSES: Send comments on this proposal to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2003–16534/ Airspace Docket No. 03–ASO–19, at the beginning of your comments. You may also submit comments on the Internet at *http://dms.dot.gov*. You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets

Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket office (telephone 1–800–647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division, Federal Aviation Administration, Room 550, 1701 Columbia Avenue, College Park, Georgia 30337.

FOR FURTHER INFORMATION CONTACT: Walter R. Cochran, Manager, Airspace Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5586.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Commnets to Docket No. FAA–2003–16534/Airspace Docket No. 03–ASO–19." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of the comments received. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

An electronic copy of this document may be downloaded through the Internet at *http://dms.dot.gov*. Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov* or the Superintendent of Documents Web page at *http://www.access.gpo.gov/nara*. Additionally, any person may obtain a copy of this notice by submitting a request to the Federal Aviation Administration, Office of Air Traffic Airspace Management, ATA–400, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–8783. Communications must identify both docket numbers for this notice. Persons interested in being placed on a mailing list for future NPRMs should contact the FAA's Office of Rulemaking, (202) 267–9677, to request a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish Class D airspace and Class E4 airspace at Olive Branch, MS, and amend Class E5 airspace at Memphis, TN. Class D airspace designations for airspace areas extending upward from the surface of the earth, Class E airspace designations for airspace areas designated as an extension to a Class D airspace area and Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in Paragraphs 5000, 6004 and 6005 respectively, of FAA Order 7400.9L, dated September 2, 2003, and effective September 16, 2003, which is incorporated by reference in 14 CFR 71.1. The Class D and Class E airspace designations listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9L, Airspace Designations and Reporting Points, dated September 2, 2003, and effective September 16, 2003, is amended as follows:

Paragraph 5000 Class D Airspace.

* * * * *

ASO MS D Olive Branch, MS [NEW]

Olive Branch Airport, MS
(Lat. 34°58′44″ N, long. 89°47′13″ W)

That airspace extending upward from the surface to and including 2,900 feet MSL with a 4-mile radius of Olive Branch Airport; excluding that airspace within the Memphis Class B airspace area. This Class D airspace area is effective during the specific days and times established in advance by a Notice to Airmen. The effective days and times will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Paragraph 6004 Class E4 Airspace Areas Designated as an Extension to a Class D Airspace Area

* * * * *

ASO MS E Olive Branch, MS [NEW]

Olive Branch Airport, MS
(Lat. 34°58′44″ N, long. 89°47′13″ W)
Olive Branch NDB
(Lat. 34°58′47″ N, long. 89°47′20″ W)

That airspace extending upward from the surface within 2.5 miles each side of the Olive Branch NDB 017° and 170° bearings, extending from the 4-mile radius to 7 miles northeast and south of the NDB. This Class E4 airspace area is effective during the specific days and times established in advance by a Notice of Airmen. The effective days and times will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Paragraph 6005 Class E Airspace Areas Extending Upward from 700 feet or More Above the Surface of the Earth

* * * * *

ASO TN E5 Memphis, TN [REVISED]

Memphis International Airport, TN
Lat. 35°02′33″ N, long 89°58′36″ W
Olive Branch Airport
Lat. 34°58′44″ N, long. 89°47′13″ W
West Memphis Municipal Airport
Lat. 35°08′06″ W, long. 90°14′04″ W
General DeWitt Spain Airport
Lat. 35°12′02″ N, long. 90°03′14″ W
Elvis NDB
Lat. 35°03′41″ N, long. 90°04′18″ W
West Memphis NDB
Lat. 35°08′22″ N, long. 90°13′57″ W

That airspace extending upward from 700 feet above the surface within an 8-mile radius of Memphis International Airport, and within 4 miles north and 8 miles south of the 271° bearing from the Elvis NDB extending from the 8-mile radius to 16 miles west of the Elvis NDB, and within a 7.5-mile radius of Olive Branch Airport, and within 4 miles west and 8 miles east of the 017° bearing and 4 miles west and 8 miles east of the 170° bearing from the Olive Branch NDB extending from the 7.5-mile radius to 16 miles northeast and south of the airport, and within a 6.5-mile radius of West Memphis Municipal Airport, and within 4 miles east and 8 miles west of the 197° from the West Memphis NDB extending from the 6.5-mile radius to 16 miles south of the West Memphis NDB, and within 4 miles east and 8 miles west of the 353° bearing from the West Memphis NDB extending from the 6.5-mile radius to 16 miles north of the West Memphis NDB, and within 6.4-mile radius of General DeWitt Spain Airport; excluding that airspace within the Millington, TN, Class E airspace area.

* * * * *

Issued in College Park, Georgia, on November 26, 2003.

Walter R. Cochran,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 03–30457 Filed 12–8–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2003–16415; Airspace Docket No. 03–AEA–16]

Establishment of Class E Airspace; Calverton, NY

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish Class E airspace at Calverton Executive Airpark Airport (CTO), Calverton, NY. The development of Standard Instrument Approach Procedures (SIAP) based on the Global Positioning System (GPS) to serve flights operating into Calverton Executive Airpark Airport under Instrument Flight Rules (IFR) makes this action necessary. Controlled airspace extending upward from 700 feet Above Ground Level (AGL) is needed to contain aircraft executing the approach. The area would be depicted on aeronautical charts for pilot reference.

DATES: Comments must be received on or before January 8, 2004.

ADDRESSES: Send comments on this proposal to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2003–16415/ Airspace Docket No. 03–AEA–16 at the beginning of your comments. You may also submit comments on the Internet at *http://dms.dot.gov*. You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division, Federal Aviation Administration, Eastern Region, 1 Aviation Plaza, Jamaica, NY 11434–4809.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. FAA–2003–16415/Airspace Docket No. 03–AEA–16". The postcard will be date/time stamped and returned to the commenter.

Availability of NPRMs

An electronic copy of this document may be downloaded through the Internet at *http://dms.dot.gov*. Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov* or the Superintendent of Documents Web page at *http://www.access.gpo.gov/nara*. Additionally, any person may obtain a copy of this notice of by submitting a request to the Federal Aviation Administration, Office of Air Traffic Airspace Management, ATA–400, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–8783. Communications must identify both docket numbers for this notice. Persons interested in being placed on a mailing list for future NPRMs should contact the FAA's Office of Rulemaking (202) 267–9677, to request a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

The Proposal

The FAA is considering an amendment to Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to establish Class E airspace area at Calverton, NY. The development of SIAPs to serve flights operating IFR into Calverton Executive Airpark Airport makes this action necessary. Controlled airspace extending upward from 700 feet AGL is needed to accommodate the SIAPs. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface are published in Paragraph 6005 of FAA Order 7400.9L, dated September 2, 2003, and effective September 16, 2003, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation—(1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that would only affect air traffic procedures and air navigation, it is certified that this proposed rule would not have significant economic

impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; EO 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389

§71.1 [Amended]

The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9L dated September 2, 2003 and effective September 16, 2003, is proposed to be amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

AEA NY E5, Calverton, NY [NEW]

Calverton Executive Airpark-Airport
(Lat. 40°54′54″ N., long 72°47′31″ W.)

That airspace extending upward from 700 feet above the surface within a 6-mile radius of Calverton Executive Airpark Airport, excluding that portion that coincides with the Shirley, NY and Westhampton Beach, NY Class E airspace areas.

* * * * *

Issued in Jamaica, New York, on November 19, 2003.

John G. McCartney,

Assistant Manager, Air Traffic Division, Eastern Region.

[FR Doc. 03–30460 Filed 12–8–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA 2003–16091; Airspace Docket No. ASD 03–AGL–12]

RIN 2120–AA66

Proposed Establishment of Federal Airway V–19; OH

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking, (NPRM).

SUMMARY: This action proposes to establish Federal Airway 19 (V–19) northeast of the Cincinnati, OH, Very High Frequency Omni-directional Range/Tactical Air Navigation (VORTAC). This action would reduce congestion on V–5 between Cincinnati, OH, and Columbus, OH, and enhance the management of aircraft operations over the Cincinnati, OH, area.

DATES: Comments must be received on or before January 23, 2004.

ADDRESSES: Send comments on this proposal to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify FAA Docket No. 2003–16091 and Airspace Docket No. 03–AGL–12, at the beginning of your comments. You may also submit comments on the Internet at *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Steve Rohring, Airspace and Rules Division, ATA–400, Office of Air Traffic Airspace Management, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify both docket numbers (FAA Docket No. FAA–2003–16091 and Airspace Docket No. 03–AGL–12) and be submitted in triplicate to the Docket Management System (*see* **ADDRESSES** section for address and phone number). You may also submit comments through the Internet at *http://dms.dot.gov*.

Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to FAA Docket No. FAA–2003–16091 and Airspace Docket No. 03–AGL–12." The postcard will be date/time stamped and returned to the commenter.

All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the public docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

An electronic copy of this document may be downloaded through the Internet at *http://dms.dot.gov*. Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov* or the Superintendent of Document's Web page at *http://www.gpoaccess.gov/fr/index.html*.

Persons interested in being placed on a mailing list for future NPRMs should call the FAA's Office of Rulemaking, (202) 267–9677, for a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

Background

A review of aircraft operations in the Cincinnati terminal area has identified a need to reduce congestion on V–5 between Columbus, OH and Cincinnati, OH. This congestion is the result of en route aircraft and other aircraft arriving at the Cincinnati/Northern Kentucky International Airport (CVG), while both navigating on V–5. The FAA believes that establishing a new Federal Airway (V–19) to the south of V–5 would relieve the congestion and enhance the management of aircraft operations by providing an alternate route between Cincinnati, OH and Columbus, OH.

The Proposal

The FAA is proposing an amendment to Title 14 Code of Federal Regulations (14 CFR) part 71 (part 71) to establish V–19 in the Cincinnati, OH, area. Specifically, this action proposes to establish V–19 between Cincinnati, OH and Columbus, OH, to the south of V–5 and to the north of the Buckeye Military Operations Area. Establishment of this new airway would reduce congestion on V–5 and enhance the management of aircraft operations over the Cincinnati, OH, area.

Federal airways are published in paragraph 6010(a) of FAA Order 7400.9L dated September 2, 2003, and effective September 16, 2003, which is incorporated by reference in 14 CFR 71.1. The Federal airway listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation: (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.9L, Airspace Designations and Reporting Points, dated September 2, 2003, and effective September 16, 2003, is amended as follows:

Paragraph 6010(a)—Domestic VOR Federal Airways

* * * * *

V–19 (New)

From Cincinnati, OH; INT Cincinnati 063°T (067°M) and Appleton, OH, 229°T (235°M) radials; Appleton.

* * * * *

Issued in Washington, DC, on December 2, 2003.

Reginald C. Matthews,

Manager, Airspace and Rules Division.

[FR Doc. 03–30450 Filed 12–8–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF DEFENSE

32 CFR Part 312

Office of the Inspector General; Privacy Act; Implementation

AGENCY: Office of the Inspector General, DoD.

ACTION: Proposed rule.

SUMMARY: The Office of the Inspector General, DoD (OIG, DoD) is proposing to exempt the system of records CIG–21, entitled "Congressional Correspondence Tracking System" from 5 U.S.C. 552a(j)(2), (k)(1) through (k)(7). The exemption is needed because during the course of a Congressional inquiry, exempt materials from other systems of records may in turn become part of the case records in the system. To the extent that copies of exempt records from those "other" systems of records are entered into the Privacy Act case records, the Inspector General, DoD, hereby claims the same exemptions for the records from those "other" systems that are entered into this system, as claimed for the original primary systems of records of which they are a part. In addition, two administrative changes are also being made.

DATES: Comments must be received on or before February 9, 2004, to be considered by this agency.

ADDRESSES: Send comments to Office of the Inspector General, Department of Defense, 400 Army Navy Drive, Room 223, Arlington, VA 22202–4704.

FOR FURTHER INFORMATION CONTACT: Mr. Darryl R. Aaron at (703) 604–9785.

SUPPLEMENTARY INFORMATION

Executive Order 12866, "Regulatory Planning and Review"

It has been determined that Privacy Act rules for the Department of Defense are not significant rules. The rules do not (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy; a sector of the economy; productivity; competition; jobs; the environment; public health or safety; or State, local, or tribal governments or communities; (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another Agency; (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or (4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

Public Law 96–354, "Regulatory Flexibility Act" (5 U.S.C. Chapter 6)

It has been determined that Privacy Act rules for the Department of Defense do not have a significant economic impact on a substantial number of small entities because they are concerned only with the administration of Privacy Act systems of records within the Department of Defense.

Public Law 96–511, "Paperwork Reduction Act" (44 U.S.C. Chapter 35)

It has been determined that Privacy Act rules for the Department of Defense impose no information requirements beyond the Office of the Inspector General and that the information collected within the Office of the Inspector General is necessary and consistent with 5 U.S.C. 552a, known as the Privacy Act of 1974.

Section 202, Public Law 104–4, "Unfunded Mandates Reform Act"

It has been determined that the Privacy Act rulemaking for the Department of Defense does not involve a Federal mandate that may result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $100 million or more and that such rulemaking will not significantly or uniquely affect small governments.

Executive Order 13132, "Federalism"

It has been determined that the Privacy Act rules for the Department of Defense do not have federalism implications. The rules do not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government.

List of Subjects in 32 CFR Part 312

Privacy.

Accordingly, 32 CFR part 312 is proposed to be amended to read as follows:

PART 312—OFFICE OF THE INSPECTOR GENERAL (OIG) PRIVACY PROGRAM

1. The authority citation for 32 CFR part 312 continues to read as follows:

Authority: Pub. L. 93–579, 88 Stat. 1896 (5 U.S.C. 552a).

2. Section 312.8, paragraph (a) is revised to read as follows:

§312.8 OIG review of request for amendment.

(a) A written acknowledgement of the receipt of a request for amendment of a

record will be provided to the requester within 20 working days, unless final action regarding approval or denial will constitute acknowledgement.

* * * * *

3. Section 312.12, paragraph (b) is revised and paragraph (i) is added to read as follows:

§ 312.12 Exemptions.

* * * * *

(b) The Inspector General of the Department of Defense claims an exemption for the following record systems under the provisions of 5 U.S.C. 552a(j) and (k)(1)–(k)(7) from certain indicated subsections of the Privacy Act of 1974. The exemptions may be invoked and exercised on a case-by-case basis by the Deputy Inspector General for Investigations or the Director, Communications and Congressional Liaison Office, and the Chief, Freedom of Information/Privacy Act Office which serve as the Systems Program Managers. Exemptions will be exercised only when necessary for a specific, significant and legitimate reason connected with the purpose of the records system.

* * * * *

(i) *System Identifier:* CIG–21.

(1) *System name:* Congressional Correspondence Tracking System.

(2) *Exemption:* During the processing of a Congressional inquiry, exempt materials from other systems of records may in turn become part of the case record in this system. To the extent that copies of exempt records from those "other" systems of records are entered into this system, the Inspector General, DoD, claims the same exemptions for the records from those "other" systems that are entered into this system, as claimed for the original primary system of which they are a part.

(3) *Authority:* 5 U.S.C. 552a(j)(2), (k)(1), (k)(2), (k)(3), (k)(4), (k)(5), (k)(6), and (k)(7).

(4) *Reasons:* Records are only exempt from pertinent provisions of 5 U.S.C. 552a to the extent such provisions have been identified and an exemption claimed for the original record and the purposes underlying the exemption for the original record still pertain to the record which is now contained in this system of records. In general, the exemptions were claimed in order to protect properly classified information relating to national defense and foreign policy, to avoid interference during the conduct of criminal, civil, or administrative actions or investigations, to ensure protective services provided the President and others are not compromised, to protect the identity of confidential sources incident to Federal employment, military service, contract, and security clearance determinations, to preserve the confidentiality and integrity of Federal testing materials, and to safeguard evaluation materials used for military promotions when furnished by a confidential source. The exemption rule for the original records will identify the specific reasons why the records are exempt from specific provisions of 5 U.S.C. 552a.

Dated: November 20, 2003.

Patricia L. Toppings,

Alternate OSD Federal Register, Liaison Officer, Department of Defense.

[FR Doc. 03–30396 Filed 12–8–03; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Air Force

32 CFR Part 806b

[Air Force Instruction 37–132]

Privacy Act; Implementation

AGENCY: Department of the Air Force, DoD.

ACTION: Proposed rule.

SUMMARY: The Department of the Air Force is proposing to add an exemption rule for the system of records F071 JTF A, entitled "Computer Network Crime Case System". The (j)(2) and (k)(2) exemptions increase the value of the system of records for law enforcement purposes.

DATES: Comments must be received on or before February 9, 2004, to be considered by this agency.

ADDRESSES: Send comments to the Air Force Privacy Act Officer, AF–CIO/P, 1155 Air Force Pentagon, Washington, DC 20330–1155.

FOR FURTHER INFORMATION CONTACT: Mrs. Anne Rollins at (703) 601–4043 or DSN 329–4043.

SUPPLEMENTARY INFORMATION:

Executive Order 12866, "Regulatory Planning and Review"

It has been determined that Privacy Act rules for the Department of Defense are not significant rules. The rules do not (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy; a sector of the economy; productivity; competition; jobs; the environment; public health or safety; or State, local, or tribal governments or communities; (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another Agency; (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or (4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive order.

Public Law 96–354, "Regulatory Flexibility Act" (5 U.S.C. Chapter 6)

It has been certified that Privacy Act rules for the Department of Defense do not have significant economic impact on a substantial number of small entities because they are concerned only with the administration of Privacy Act systems of records within the Department of Defense.

Public Law 96–511, "Paperwork Reduction Act" (44 U.S.C. Chapter 35)

It has been certified that Privacy Act rules for the Department of Defense impose no information requirements beyond the Department of Defense and that the information collected within the Department of Defense is necessary and consistent with 5 U.S.C. 552a, known as the Privacy Act of 1974.

Section 202, Public Law 104–4, "Unfunded Mandates Reform Act"

It has been certified that the Privacy Act rulemaking for the Department of Defense does not involve a Federal mandate that may result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $100 million or more and that such rulemaking will not significantly or uniquely affect small governments.

Executive Order 13132, "Federalism"

It has been certified that the Privacy Act rules for the Department of Defense do not have federalism implications. The rules do not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government.

List of Subjects in 32 CFR Part 806b

Privacy.

Accordingly, 32 CFR part 806b is proposed to be amended to read as follows:

PART 806b—AIR FORCE PRIVACY ACT PROGRAM

1. The authority citation for 32 CFR part 806b continues to read as follows:

Authority: Pub. L. 93–579, 88 Stat. 1896 (5 U.S.C. 552a).

2. Appendix C to part 806b is amended by adding paragraph (a)(7) to read as follows:

Appendix C to Part 806b—General and Specific Exemptions

a. General exemptions. * * *

(7) *System identifier and name:* F071 JTF A, Computer Network Crime Case System.

(i) *Exemption:* (A) Parts of this system may be exempt pursuant to 5 U.S.C. 552a(j)(2) if the information is compiled and maintained by a component of the agency, which performs as its principle function any activity pertaining to the enforcement of criminal laws. Any portion of this system of records which falls within the provisions of 5 U.S.C. 552a(j)(2) may be exempt from the following subsections of 5 U.S.C. 552a(c)(3), (c)(4), (d), (e)(1), (e)(2), (e)(3), (e)(4)(G), (H), and (I), (e)(5), (e)(8), (f), and (g).

(B) Investigatory material compiled for law enforcement purposes, other than material within the scope of subsection 5 U.S.C. 552a(j)(2), may be exempt pursuant to 5 U.S.C. 552a(k)(2). However, if an individual is denied any right, privilege, or benefit for which he would otherwise be entitled by Federal law or for which he would otherwise be eligible, as a result of the maintenance of the information, the individual will be provided access to the information exempt to the extent that disclosure would reveal the identify of a confidential source.

Note: When claimed, this exemption allows limited protection of investigative reports maintained in a system of records used in personnel or administrative actions. Any portion of this system of records which falls within the provisions of 5 U.S.C. 552a(k)(2) may be exempt from the following subsections of 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (H) and (I), and (f).

(ii) *Authority:* 5 U.S.C. 552a(j)(2) and (k)(2).

(iii) *Reasons:* (A) From subsection (c)(3) because the release of accounting of disclosure would inform a subject that he or she is under investigation. This information would provide considerable advantage to the subject in providing him or her with knowledge concerning the nature of the investigation and the coordinated investigative efforts and techniques employed by the cooperating agencies. This would greatly impede criminal law enforcement.

(B) From subsection (c)(4) and (d), because notification would alert a subject to the fact that an open investigation on that individual is taking place, and might weaken the on-going investigation, reveal investigative techniques, and place confidential informants in jeopardy.

(C) From subsection (e)(1) because the nature of the criminal and/or civil investigative function creates unique problems in prescribing a specific parameter in a particular case with respect to what information is relevant or necessary. Also, information may be received which may relate to a case under the investigative jurisdiction of another agency. The maintenance of this information may be necessary to provide leads for appropriate law enforcement purposes and to establish patterns of activity that may relate to the jurisdiction of other cooperating agencies.

(D) From subsection (e)(2) because collecting information to the fullest extent possible directly from the subject individual may or may not be practical in a criminal and/or civil investigation.

(E) From subsection (e)(3) because supplying an individual with a form containing a Privacy Act Statement would tend to inhibit cooperation by many individuals involved in a criminal and/or civil investigation. The effect would be somewhat adverse to established investigative methods and techniques.

(F) From subsections (e)(4)(G), (H), and (I) because this system of records is exempt from the access provisions of subsection (d).

(G) From subsection (e)(5) because the requirement that records be maintained with attention to accuracy, relevance, timeliness, and completeness would unfairly hamper the investigative process. It is the nature of law enforcement for investigations to uncover the commission of illegal acts at diverse stages. It is frequently impossible to determine initially what information is accurate, relevant, timely, and least of all complete. With the passage of time, seemingly irrelevant or untimely information may acquire new significance as further investigation brings new details to light.

(H) From subsection (e)(8) because the notice requirements of this provision could present a serious impediment to law enforcement by revealing investigative techniques, procedures, and existence of confidential investigations.

(I) From subsection (f) because the agency's rules are inapplicable to those portions of the system that are exempt and would place the burden on the agency of either confirming or denying the existence of a record pertaining to a requesting individual might in itself provide an answer to that individual relating to an on-going investigation. The conduct of a successful investigation leading to the indictment of a criminal offender precludes the applicability of established agency rules relating to verification of record, disclosure of the record to that individual, and record amendment procedures for this record system.

(J) From subsection (g) because this system of records should be exempt to the extent that the civil remedies relate to provisions of 5 U.S.C. 552a from which this rule exempts the system.

Dated: November 20, 2003.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 03–30398 Filed 12–8–03; 8:45 am]

BILLING CODE 5001–06–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MO 199–1199; FRL–7592–4]

Approval and Promulgation of Implementation Plans; State of Missouri

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve the State Implementation Plan (SIP) revision submitted by the state of Missouri pertaining to an update to a St. Louis city SIP-approved ordinance, and permit. The effect of this action is to ensure that the SIP is current and consistent with the revised St. Louis city ordinance and permit and are thus Federally enforceable.

DATES: Comments on this proposed action must be received in writing by January 8, 2004.

ADDRESSES: Comments may be submitted either by mail or electronically. Written comments should be mailed to Wayne Kaiser, Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101. Electronic comments should be sent either to *kaiser.wayne@epa.gov* or to *http://www.regulations.gov*, which is an alternative method for submitting electronic comments to EPA. To submit comments, please follow the detailed instructions described in "What action is EPA taking" in the **SUPPLEMENTARY INFORMATION** section of the direct final rule which is located in the rules section of the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Wayne Kaiser at (913) 551–7603, or by e-mail at *kaiser.wayne@epa.gov*.

SUPPLEMENTARY INFORMATION: In the final rules section of the **Federal Register**, EPA is approving the state's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision amendment and anticipates no relevant adverse comments to this action. A detailed rationale for the approval is set forth in the direct final rule. If no relevant adverse comments are received in response to this action, no further activity is contemplated in relation to this action. If EPA receives relevant adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed action. EPA will not institute a second comment period on this action. Any parties interested in

commenting on this action should do so at this time. Please note that if EPA receives adverse comment on part of this rule and if that part can be severed from the remainder of the rule, EPA may adopt as final those parts of the rule that are not the subject of an adverse comment. For additional information, see the direct final rule which is located in the rules section of this **Federal Register**.

Dated: November 18, 2003.

William W. Rice,

Acting Regional Administrator, Region 7.

[FR Doc. 03–30040 Filed 12–8–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MD152–3105b ; FRL–7596–5]

Approval and Promulgation of Air Quality Implementation Plans; Maryland; Control of Emissions of Volatile Organic Compounds From Consumer Products

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve the State Implementation Plan (SIP) revision submitted by the State of Maryland for the purpose of establishing a regulation to control volatile organic compounds from consumer products. In the Final Rules section of this **Federal Register**, EPA is approving the State's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A more detailed description of the state submittal and EPA's evaluation are included in a Technical Support Document (TSD) prepared in support of this rulemaking action. A copy of the TSD is available, upon request, from the EPA Regional Office listed in the **ADDRESSES** section of this document. If no adverse comments are received in response to this action, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time.

DATES: Comments must be received in writing by January 8, 2004.

ADDRESSES: Comments may be submitted either by mail or electronically. Written comments should be mailed to Makeba Morris, Chief, Air Quality Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Electronic comments should be sent either to *morris.makeba@epa.gov* or to *http://www.regulations.gov*, which is an alternative method for submitting electronic comments to EPA. To submit comments, please follow the detailed instructions described in the Supplementary Information section. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; the Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, 1301 Constitution Avenue, NW., Room B108, Washington, DC 20460; and the Maryland Department of the Environment, 1800 Washington Boulevard, Suite 705, Baltimore, Maryland 21230.

FOR FURTHER INFORMATION CONTACT: Rose Quinto, (215) 814–2182, or by e-mail at *quinto.rose@epa.gov*.

SUPPLEMENTARY INFORMATION: For further information, please see the information provided in the direct final action, Maryland's Control of Emissions of Volatile Organic Compounds from Consumer Products, that is located in the "Rules and Regulations" section of this **Federal Register** publication.

You may submit comments either electronically or by mail. To ensure proper receipt by EPA, identify the appropriate rulemaking identification number MD152–3105 in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments.

1. *Electronically.* If you submit an electronic comment as prescribed below, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *E-mail.* Comments may be sent by electronic mail (e-mail) to *morris.makeba@epa.gov*, attention: MD152–3105. EPA's e-mail system is not an "anonymous access" system. If you send an e-mail comment directly without going through Regulations.gov, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket.

ii. *Regulations.gov.* Your use of Regulation.gov is an alternative method of submitting electronic comments to EPA. Go directly to *http://www.regulations.gov*, then select "Environmental Protection Agency" at the top of the page and use the "go" button. The list of current EPA actions available for comment will be listed. Please follow the online instructions for submitting comments. The system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

iii. *Disk or CD ROM.* You may submit comments on a disk or CD ROM that you mail to the mailing address identified in the **ADDRESSES** section of this document. These electronic submissions will be accepted in WordPerfect, Word or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By Mail.* Written comments should be addressed to the EPA Regional office listed in the **ADDRESSES** section of this document.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing at the EPA Regional Office, as EPA receives them and without change, unless the comment contains copyrighted material, confidential business information (CBI), or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in the official public rulemaking file. The entire printed comment, including the copyrighted material, will be available at the Regional Office for public inspection.

Submittal of CBI Comments

Do not submit information that you consider to be CBI electronically to EPA. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the official public regional rulemaking file. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public file and available for public inspection without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

Considerations When Preparing Comments to EPA

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at your estimate.
5. Provide specific examples to illustrate your concerns.
6. Offer alternatives.
7. Make sure to submit your comments by the comment period deadline identified.
8. To ensure proper receipt by EPA, identify the appropriate regional file/rulemaking identification number in the subject line on the first page of your response. It would also be helpful if you provided the name, date, and **Federal Register** citation related to your comments.

Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

Dated: November 28, 2003.

Donald S. Welsh,

Regional Administrator, Region III.

[FR Doc. 03–30510 Filed 12–8–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[Region II Docket No. NJ 63–263, FRL–7596–7]

Approval and Promulgation of Implementation Plans; New Jersey Emission Statement Program

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve the State Implementation Plan (SIP) revision submitted by the State of New Jersey on January 23, 2003 for the purpose of enhancing an existing Emission Statement Program for stationary sources in New Jersey. The SIP revision consists of amendments to the New Jersey Administrative Code (N.J.A.C.) Title 27, Chapter 27, Subchapter 21 Emission Statements.

The SIP revision was submitted by New Jersey to satisfy the Clean Air Act requirements for stationary sources to report annually to the State on their emissions of volatile organic compounds (VOC), oxides of nitrogen (NO_X) and carbon monoxide (CO), in order for the State to make this data available to EPA and the public.

The rule enhances the reporting requirements of VOC and NO_X and expands the reporting requirement based on specified emission thresholds to include CO, sulfur dioxides (SO_2), total suspended particulate matter (TSP), particulate matter measuring 2.5 microns or less ($PM_{2.5}$), particulate matter measuring 10 microns or less (PM_{10}), ammonia (NH_3), lead (Pb), hazardous air pollutants (HAPS), and carbon dioxide (CO_2) and methane (CH_4). The intended effect is to provide improved information to plan for and attain the air quality standards.

DATES: Comments must be received on or before January 8, 2004.

ADDRESSES: Comments may be submitted either by mail or electronically. Written comments should be mailed to Raymond Werner, Chief, Air Programs Branch, Environmental Protection Agency, Region 2 Office, 290 Broadway, New York, New York 10007–1866. Electronic comments could be sent either to *Werner.Raymond@epa.gov* or to *http://www.regulations.gov*, which is an alternative method for submitting electronic comments to EPA. Go directly to *http://www.regulations.gov*, then select "Environmental Protection Agency" at the top of the page and use the "go" button. Please follow the on-line instructions for submitting comments.

Copies of the state submittal(s) are available at the following addresses for inspection during normal business hours:

New Jersey Department of Environmental Protection and Energy, Office of Air Quality Management, Bureau of Air Quality Planning, 401 East State Street, CN418, Trenton, New Jersey 08625.

Environmental Protection Agency, Region II Office, 290 Broadway, New York, New York 10007–1866.

FOR FURTHER INFORMATION CONTACT: Raymond K. Forde, Air Programs Branch, Environmental Protection Agency, 290 Broadway, 25th Floor, New York, New York 10007–1866, (212) 637–3716, *forde.raymond@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. What Is Required by the Clean Air Act and How Does It Apply to New Jersey?

Emission Statements (Annual Reporting of VOC and NO_X)

The air quality planning and SIP requirements for ozone nonattainment and transport areas are established in subparts I and II of part D of title I of the Clean Air Act, as amended in 1990 (the Act). EPA has published a "General Preamble" and "Appendices to the General Preamble" (see 57 FR 13498 (April 16, 1992), and 57 FR 18070 (April 28, 1992)) describing how EPA intends to review SIPs submitted under Title I of the Act.

EPA has also issued a draft guidance document entitled, "Guidance on the Implementation of an Emission Statement Program" (July 1992), describing the requirements for the Emission Statement Program discussed in this rulemaking.

Section 182(a) of the Act establishes requirements for stationary sources of air pollution to prepare and submit to the state statements each year showing

actual emissions of VOCs and NO_X. Further, states with ozone nonattainment areas are required to submit a revision to their SIPs by November 15, 1992, establishing this Emission Statement Program.

Facilities are required to submit their first emission statement to a state within three years of promulgation of the Act and annually thereafter. If either VOC or NO_X is emitted at or above the minimum reporting level that is established in a state Emission Statement Program, the other pollutant (NO_X or VOC) from the same facility should be included in the emission statement, even if the pollutant is emitted at levels below the minimum reporting level.

Section 182(a)(3)(B)(ii) of the Act allows states to waive, with EPA approval, the requirement for an emission statement for classes or categories of sources with less than 25 tons per year of actual plant-wide NO_X and VOC emissions in nonattainment areas if the class or category is included in the base year and periodic inventories and emissions are calculated using emission factors established by EPA (such as those found in EPA publication AP–42) or other methods acceptable to EPA.

Consolidated Emission Reporting Rule (Annual Reporting for All Criteria Pollutants)

In order to consolidate reporting requirements by the states to EPA, on June 10, 2002 (see FR 39602), EPA published the final Consolidated Emissions Reporting rule (CERR). The purpose of the CERR is to simplify the states' annual reporting of criteria pollutants for which the National Ambient Air Quality Standards (NAAQS) have been established and their precursors (VOC, NO_X, SO_2, PM_{10}, $PM_{2.5}$, CO, NH_3, Pb) to EPA, offer options for data collection and exchange, and unify reporting dates for various categories of criteria pollutant emission inventories. The CERR requires states to report to EPA emissions of NO_X, CO, VOC, Pb, SO_2, PM_{10}, annually for industrial point sources (based on specific emission thresholds) based on calendar year (CY) 2001 and due June 1, 2003 and continuing every year thereafter (*i.e.*, CY 2002 emission inventory due June 1, 2004, CY 2003 emission inventory due June 1, 2005, * * * etc.). One important element of the CERR is a requirement that states collect $PM_{2.5}$ and ammonia (NH_3) emissions data from industrial facilities. Reporting of $PM_{2.5}$ and NH_3 from point sources becomes effective June 2004, for emissions that occurred during calendar year 2002.

New Jersey's Emission Statement rule, which requires facilities to report information for the criteria pollutants and the associated precursors mentioned above, will now enable the State to satisfy the federal CERR requirements for major sources.

Hazardous Air Pollutants (Periodic Reporting of Hazardous Air Pollutants)

In addition to the emission inventory provisions related to NAAQS pollutants, EPA has requested that the states report HAP emissions from anthropogenic sources for the National Toxics Inventory. The National Toxics Inventory (NTI) is an emission inventory developed every three years (1993, 1996, 1999, etc.) by EPA. The NTI is a complete national inventory of stationary and mobile sources that emit hazardous air pollutants (HAPs).

The NTI contains emission estimates for large stationary sources (point), small stationary sources (non-point), and mobile sources. Point sources in the NTI include major and area source categories as defined in section 112 of the Clean Air Act. Non-point source categories in the NTI include area sources that are not included in the point sources and other stationary source categories. Individual emission estimates are developed for point sources, while aggregate emission estimates at the county level are developed and recorded for non-point stationary and mobile sources. The NTI also identifies facilities and non-point source categories that are associated with MACT categories.

Need for NTI Inventory

Title V of the Act requires the Administrator to perform an oversight role with respect to state issued permits, including permits issued to major sources of HAP emissions. In order to determine whether that program is being appropriately and lawfully administrated by the states with respect to major HAP sources, a HAP emission inventory is necessary. States are developing programs to regulate HAPs and State Title V programs must include permits for all HAP sources emitting major quantities of HAPs (10 tons of one HAP or 25 tons of multiple HAPs per year). Thus, the EPA believes including HAPs in the point source inventory is appropriate and necessary.

Section 112(n)(1)(A) of the Act requires EPA to report to Congress on the hazards to public health reasonably anticipated to occur as a result of emissions from electric utility steam generating units. Section 112(n)(1)(B) requires EPA to provide a report to Congress that considers the rate and mass of HAP emissions and the health and environmental effects of these emissions. Section 112(c)(6) requires a list of categories and subcategories of HAP sources subject to standards that account for not less than 90 percent of the aggregate emission of each pollutant. Although these new requirements do not include specific provisions requiring the compilation of HAP emissions inventories, they do introduce the need for such inventories in order to carry out the mandated statutes.

Section 112(k)(3) of the Act mandates that EPA develop a strategy to control emissions of HAPs from area sources in urban areas, and that the strategy achieves a reduction in the incidence of cancer attributable to exposure to HAPs emitted by stationary sources of not less than 75 percent, considering control of emissions from all stationary sources, as well as a substantial reduction in public health risks posed by HAPs from area sources. These mandated risk reductions are to be achieved by taking into account all emission control measures implemented by the Administrator or by the states under this or any other laws. A reliable HAP emission inventory covering all stationary sources of HAPs, including point and area sources, will be important in developing the mandated strategy and demonstrating that the strategy achieves the mandated risk reductions. It would be virtually impossible for EPA to identify and estimate HAP-specific emission reductions from all the federal and State rules that might result in HAP emission reductions. Therefore, EPA believes development of the strategy and assessment of progress in achieving the strategic goals requires the development and periodic update of a HAP emission inventory.

As presented in the July 19, 1999 **Federal Register** action on the National Air Toxics Program: The Integrated Urban Strategy (64 FR 38706), a designed approach has been developed that depends upon a reliable and periodically updated HAP emission inventory as a critical element in the assessments that support the development and evaluation of our urban strategy.

New Jersey's Emission Statement rule, which requires facilities to report information for the hazardous air pollutants, will now help the State to satisfy the HAPs reporting requirements for major sources.

II. What Was Included in New Jersey's Submittal?

New Jersey's Submittal

On January 23, 2003, New Jersey submitted a SIP revision for ozone and CO which included an adopted Emission Statement Regulation. The regulation amends New Jersey Administrative Code Title 7, Chapter 27, Subchapter 21 Emission Statements and Subchapter 22 Operating Permits, and Title 7, Chapter 27A, Subchapter 3 Civil Administrative Penalties and Requests for Adjudicatory Hearings. The amendments were adopted on January 23, 2003, by the New Jersey Department of Environmental Protection (NJDEP) and became effective on February 18, 2003.

EPA's Findings

EPA has determined that an acceptable Emission Statement Program must have several components. Specifically, a state must submit it as a revision to its SIP, and the Emission Statement Program must meet the minimum requirements for reporting as outlined in EPA's, "Guidance on the Implementation of an Emission Statement Program" (July 1992). The program must include, at a minimum, provisions specifying source applicability, definitions, compliance, and specific source reporting requirements.

EPA's detailed review of New Jersey's Emission Statement Program is contained in a technical support document available from the source for further information identified at the beginning of this proposal.

Applicability

In ozone nonattainment areas, facilities which emit VOC or NO_X in amounts of 25 tons per year or more must submit an emission statement. The entire State of New Jersey is designated nonattainment of the NAAQS for ozone. New Jersey's regulation appropriately requires facilities anywhere in the State actually emitting or having the potential to emit 10 tons per year or more of VOC or 25 tons per year or more of NO_X to submit an annual emission statement.

New Jersey's regulation requires sources which have the potential to emit 100 tons per year or more of CO, SO_2, TSP, $PM_{2.5}$, PM_{10}, NH_3 or 5 tons per year or more of Pb to submit annual emission statements.

New Jersey's rule has special provisions which require sources which have the potential to emit VOC greater than 10 tons per year but less than 25 tons per year of VOC, or less than the applicable reporting thresholds for the other criteria pollutants mentioned earlier to report annual emission statements for VOC, NO_X, CO and 36 HAPs.

New Jersey's regulations include special provisions that require sources which have the potential to emit 25 tons per year or more of VOC, or, the potential to emit equal to or higher than the specific emission thresholds for the other criteria pollutants mentioned earlier to submit annual emission statements for VOC, NO_X, CO, SO_2, TSP, Pb, PM_{10}, $PM_{2.5}$, NH_3, CO_2 and CH_4 and 36 HAPs.

EPA has determined that New Jersey has addressed the emission statement applicability provisions in a manner that is acceptable to EPA. In addition, New Jersey's emission statement rule will assist the State in satisfying the annual reporting requirements for the federal CERR, help the State to develop a HAPS emission inventory for use in National Air Toxics Assessment.

Definitions

The key definitions that New Jersey included in its Emission Statement Regulation are consistent with the EPA guidance.

Compliance

All measures and other elements in the SIP must be enforceable by the State and EPA. SIP provisions must also contain a program that provides for enforcement of the control measures and other elements in the SIP (see section 110(a)(2)(C)).

The State of New Jersey has a program in its SIP that will ensure that the requirements of section 182(a)(3)(B) are adequately enforced. In addition, New Jersey has established penalties to be assessed for each reporting violation.

New Jersey's statute and regulations includes the authority to issue compliance orders with appropriate penalties and injunctive relief for sources failing to comply. EPA has determined that New Jersey has an adequate enforcement program in place to satisfy the compliance requirements of an Emission Statement Program.

Reporting Requirements

In accordance with EPA requirements, New Jersey requires the necessary source-supplied data elements from facilities. The survey forms that New Jersey provides to facilities for use in reporting emission statement data are not EPA forms but require the necessary data.

The State's Emission Statement program requires facilities to report on the following pollutants to assist the State in air quality planning needs: hydrochloric acid, hydrazine, methylene chloride, tetrachloroethylene, 1,1,1 trichloroethane, CO_2 and methane. While EPA recognizes the value of this information, EPA will not take enforcement action should a facility not submit this information to the State in an emission statement because these substances do not contribute to violation of the NAAQS.

It should be noted the State's SIP revision request also contains Subchapter 22 Operating Permits and Title 7, Chapter 27A, Subchapter 3 Civil Administrative Penalties and Requests for Adjudicatory Hearings. In this action EPA is officially acting on NJAC Title 7, Chapter 27, Subchapter 21 Emission Statements. However, EPA will not be acting on NJAC Title 7, Subchapter 22 Operating Permits and Title 7, Chapter 27A, Subchapter 3 Civil Administrative Penalties and Requests for Adjudicatory Hearings and will not be incorporating these amendments by reference into the SIP. Title 7, Subchapter 22 involves a separate program under EPA's Title V program. Title 7, Chapter 27A, Subchapter 3 involves enforcement and civil penalties. EPA has its own enforcement provisions separate from the State program.

III. General Information

A. How Can I Get Copies of This Document and Other Related Information?

1. *The Regional Office has established an official public rulemaking file available for inspection at the Regional Office.* EPA has established an official public rulemaking file for this action under Region 2 Docket Number NJ 63–263. The official public file consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public rulemaking file does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public rulemaking file is the collection of materials that is available for public viewing at the Environmental Protection Agency, Region II Office, Air Programs Branch, 290 Broadway, New York, New York 10007–1866. EPA requests that if at all possible, you contact the contact listed in the For Further Information Contact section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30 excluding Federal Holidays.

2. *Copies of the State submittal and EPA's technical support document are also available for public inspection during normal business hours, by appointment at the State Air Agency.*

New Jersey Department of Environmental Protection and Energy, Office of Air Quality Management, Bureau of Air Quality Planning, 401 East State Street, CN418, Trenton, New Jersey 08625.

3. *Electronic Access.* You may access this **Federal Register** document electronically through the Regulations.gov Web site located at *http://www.regulations.gov* where you can find, review, and submit comments on Federal rules that have been published in the **Federal Register**, the Government's legal newspaper, and are open for comment.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing at the EPA Regional Office, as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in the official public rulemaking file. The entire printed comment, including the copyrighted material, will be available at the Regional Office for public inspection.

B. How and to Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate rulemaking identification number by including the text "Public comment on proposed rulemaking Region 2 Docket Number NJ 63–263" in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments.

1. *Electronically.* If you submit an electronic comment as prescribed below, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *E-mail.* Comments may be sent by electronic mail (e-mail) to *Werner.Raymond@epa.gov*, please include the text "Public comment on proposed rulemaking Region 2 Docket Number NJ 63–263" in the subject line. EPA's e-mail system is not an "anonymous access" system. If you send an e-mail comment directly without going through Regulations.gov, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket.

ii. *Regulations.gov.* Your use of Regulations.gov is an alternative method of submitting electronic comments to EPA. Go directly to Regulations.gov at *http://www.regulations.gov*, then click on the button "TO SEARCH FOR REGULATIONS CLICK HERE", and select Environmental Protection Agency as the Agency name to search on. The list of current EPA actions available for comment will be listed. Please follow the online instructions for submitting comments. The system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

iii. *Disk or CD ROM.* You may submit comments on a disk or CD ROM that you mail to the mailing address identified in section 2, directly below. These electronic submissions will be accepted in WordPerfect, Word or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By Mail.* Send your comments to: Raymond Werner, Chief, Air Programs Branch, Environmental Protection Agency, Region II Office, 290 Broadway, New York, New York 10007–1866. Please include the text "Public comment on proposed rulemaking Region 2 Docket Number NJ 63–263" in the subject line on the first page of your comment.

3. *By Hand Delivery or Courier.* Deliver your comments to: Raymond Werner, Chief, Air Programs Branch, Environmental Protection Agency, Region II Office, 290 Broadway, New York, New York 10007–1866. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30 excluding Federal Holidays.

C. How Should I Submit CBI to the Agency?

Do not submit information that you consider to be CBI electronically to EPA. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the official public regional rulemaking file. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public file and available for public inspection without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

IV. What Is EPA's Conclusion?

EPA has concluded that the New Jersey program contains the necessary applicability, compliance and reporting provisions necessary to meet the requirements for an Emission Statement Program. EPA is proposing to approve Subchapter 21, Emission Statements, as part of the SIP.

V. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this proposed action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This proposed action merely proposes to approve state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule proposes to approve pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

This proposed rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have federalism implications because it does not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely proposes to approve a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This proposed rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This proposed rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 40 CFR Part 52

Air pollution control, Carbon monoxide, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: November 28, 2003.

Kathleen C. Callahan,

Acting Regional Administrator, Region 2.

[FR Doc. 03–30514 Filed 12–8–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[FRL–7597–6]

Hazardous Waste Management Program: Final Authorization of State Hazardous Waste Management Program Revisions for State of Louisiana

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule and request for comment.

SUMMARY: The EPA (also "the Agency " in this preamble) is proposing to grant final authorization to the State of Louisiana Department of Environmental Quality (LDEQ) for its hazardous waste program revisions, specifically, revisions needed to meet the Resource Conservation and Recovery Act (RCRA), Clusters X, XI and XII which contains Federal rules promulgated from July 1, 1999, to June 30, 2002. In the "Rules and Regulations" section of this **Federal Register** , EPA is authorizing the revisions as an immediate final rule without prior proposal because the EPA views this action as noncontroversial and anticipates no adverse comments. The Agency has explained the reasons for this authorization in the preamble to the immediate final rule. If EPA does not receive adverse written comments, the immediate final rule will become effective and the Agency will not take further action on this proposal. If EPA receives adverse written comments, a second **Federal Register** document will be published before the time the immediate final rule takes effect. The second document may withdraw the immediate final rule or identify the issues raised, respond to the comments and affirm that the immediate final rule will take effect as scheduled. Any parties interested in commenting on this action should do so at this time.

DATES: Written comments must be received on or before January 8, 2004.

ADDRESSES: Mail written comments to Alima Patterson, Region 6, Regional Authorization Coordinator, State and Oversight Section (6PD–G), Multimedia Planning and Permitting Division, at the address shown below. You can examine copies of the materials submitted by the State of Louisiana during normal business hours at the following locations: EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, (214) 665–6444 ; or Louisiana Department of Environmental Quality, 602 N. Fifth Street, Baton Rouge, Louisiana 70884–2178, (225) 219–3559.

FOR FURTHER INFORMATION CONTACT: Alima Patterson (214) 665–8533.

SUPPLEMENTARY INFORMATION: For additional information, please see the immediate final rule published in the "Rules and Regulations" section of this **Federal Register**.

Dated: November 25, 2003.

Richard E. Greene,

Regional Administrator, Region 6.

[FR Doc. 03–30512 Filed 12–8–03; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 53

WC Docket No. 03–228; DA 03–3742]

Section 272(b)(1)'s "Operate Independently" Requirement for Section 272 Affiliates

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; extension of comment period.

SUMMARY: This document extends the deadline for filing comments and reply comments in an ongoing Commission rulemaking proceeding seeking comment on whether the Commission should modify the rules adopted to implement section 272(b)(1)'s "operate independently" requirement for section 272 affiliates.

DATES: Comments are due December 10, 2003, and reply comments are due December 22, 2003.

FOR FURTHER INFORMATION CONTACT: Christi Shewman, Attorney-Advisor, Competition Policy Division, Wireline Competition Bureau, (202) 418–1686.

SUPPLEMENTARY INFORMATION: On November 21, 2003, the Commission

released a public notice issuing an extension of time for parties to file comments and reply comments in response to a November 4, 2003, Notice of Proposed Rulemaking (NPRM) seeking comment on whether the Commission should modify the rules adopted to implement section 272(b)(1)'s "operate independently" requirement. A summary of the Commission's NPRM was published in the **Federal Register** on November 21, 2003, triggering the cycle for comments and reply comments on the NPRM, 68 FR 65665, November 21, 2003. Due to the intervening Thanksgiving holiday during the comment cycle, the Commission grants, on its own motion, a limited extension of the deadline for filing comments and reply comments in this proceeding.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 03–30441 Filed 12–8–03; 8:45 am]

BILLING CODE 6712–01–P

Notices

Federal Register

Vol. 68, No. 236

Tuesday, December 9, 2003

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

JOINT BOARD FOR THE ENROLLMENT OF ACTUARIES

Meeting of the Advisory Committee

AGENCY: Joint Board for the Enrollment of Actuaries.

ACTION: Notice of Federal Advisory Committee meeting.

SUMMARY: The Executive Director of the Joint Board for the Enrollment of Actuaries gives notice of a meeting of the Advisory Committee on Actuarial Examinations (portions of which will be open to the public) in Washington, DC, at the Office of Professional Responsibility on January 8 and 9, 2004.

DATES: Thursday, January 8, 2004, from 9 a.m. to 5 p.m., and Friday, January 9, 2004, from 8:30 a.m. to 5 p.m.

ADDRESSES: The meeting will be held in Suite 4200E, Conference Room, Fourth Floor, East Tower, Franklin Court Building, 1099 14th Street, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Patrick W. McDonough, Executive Director of the Joint Board for the Enrollment of Actuaries, 202–694–1858.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the Advisory Committee on Actuarial Examinations will meet in Suite 4200E, Conference Room, Fourth Floor, East Tower, Franklin Court Building, 1099 14th Street, NW., Washington, DC, on Thursday, January 8, 2004, from 9 a.m. to 5 p.m., and Friday, January 9, 2004, from 8:30 a.m. to 5 p.m.

The purpose of the meeting is to discuss topics and questions which may be recommended for inclusion on future Joint Board examinations in actuarial mathematics and methodology referred to in 29 U.S.C. 1242(a)(1)(B) and to review the November 2003 Pension (EA–2A) Joint Board Examination in order to make recommendations relative thereto, including the minimum acceptable pass score. Topics for inclusion on the syllabus for the Joint Board's examination program for the May 2004 Basic (EA–1) Examination and the May 2004 Pension (EA–2B) Examination will be discussed.

A determination has been made as required by section 10(d) of the Federal Advisory Committee Act, 5 U.S.C. App., that the portions of the meeting dealing with the discussion of questions which may appear on the Joint Board's examinations and review of the November 2003 Joint Board examination fall within the exceptions to the open meeting requirement set forth in 5 U.S.C. 552b(c)(9)(B), and that the public interest requires that such portions be closed to public participation.

The portion of the meeting dealing with the discussion of the other topics will commence at 1 p.m. on January 9 and will continue for as long as necessary to complete the discussion, but not beyond 3 p.m. Time permitting, after the close of this discussion by Committee members, interested persons may make statements germane to this subject. Persons wishing to make oral statements should notify the Executive Director in writing prior to the meeting in order to aid in scheduling the time available and must submit the written text, or at a minimum, an outline of comments they propose to make orally. Such comments will be limited to 10 minutes in length. All other persons planning to attend the public session must also notify the Executive Director in writing to obtain building entry. Notifications of intent to make an oral statement or to attend must be faxed, no later than December 31, 2003, to 202–694–1876, Attn: Executive Director. Any interested person also may file a written statement for consideration by the Joint Board and the Committee by sending it to the Executive Director: Joint Board for the Enrollment of Actuaries, c/o Internal Revenue Service, Attn: Executive Director SE:OPR, 1111 Constitution Avenue, NW., Washington, DC 20224.

Dated: December 2, 2003.

Patrick W. McDonough,

Executive Director, Joint Board for the Enrollment of Actuaries.

[FR Doc. 03–30523 Filed 12–8–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF AGRICULTURE

Forest Service

Shawnee National Forest, Illinois: Hiker/Equestrian Trails Designation Project (Phase 1)

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The USDA Forest Service Shawnee National Forest intends to prepare an environmental impact statement to disclose the environmental consequences of designating additional miles of National Forest hiker/equestrian system trails within four watersheds on the Forest—Lusk Creek, Upper Bay Creek, Eagle Creek, and Big Grand Pierre Creek—and restricting equestrian use within these watersheds to the system trails.

DATES: Comments concerning the scope of the analysis must be received by January 30, 2004. The draft environmental impact statement is expected to be published in May, 2004 and the final environmental impact statement is expected in September, 2004.

ADDRESSES: Send written comments to Matt Lechner, NEPA Coordinator, Attention: Trails Designation, Shawnee National Forest, 50 Highway 145 South, Harrisburg, IL 62946. Send comments electronically to: *mailroom_r9_shawnee@fs.fed.us;* indicate "Trail Designation" on the subject line.

FOR FURTHER INFORMATION CONTACT: Tim Pohlman, Recreation Program Manager, or Richard Blume-Weaver, Planning Staff Officer, at (618) 253–7114, 1–800–MYWOODS, or e-mail *tpohlman@fs.fed.us* with a copy to *rblume-weaver@fs.fed.us.*

Maps of the trails proposed for designation are available for review at the Forest Supervisor's Office, 50 Highway 145 South, Harrisburg, Illinois; the Vienna-Elizabethtown Ranger District Station, 602 N. 1st St., Vienna, and the Elizabethtown Work Center, Elizabethtown, Illinois; the Jonesboro-Murphysboro Ranger District Station, 521 N. Main St., Jonesboro, and the Murphysboro Work Center, 2221 Walnut, Murphysboro, Illinois; the public libraries in Benton, Carbondale, Golconda, Harrisburg, Jonesboro,

Marion, Metropolis, Murphysboro, Shawneetown, and West Frankfort; and the Southern Illinois University Library, Carbondale. Maps and other information are also available for review on the Shawnee National Forest's Web site: *http://www.fs.fed.us/r9/shawnee*. Click on "Trail Designation Project" under "Current Management News."

SUPPLEMENTARY INFORMATION:

Purpose and Need for Action

The Shawnee National Forest's 1992 Amended Land and Resource Management Plan (Forest Plan) anticipated an increasing demand for trails on the Forest. In addition to identifying a potential trail-corridor system, the Forest Plan allowed equestrians the use of then-existing user-developed trails and the freedom to ride cross-country in most areas of the Forest. In the years since publication of the Forest Plan, public demand for trails has grown without any additions to the Forest's designated trail system. The existing designated trail system does not adequately meet the need for public access to many scenic attractions, nor does it provide equestrians a loop-trail experience. Numerous user-developed trails have been formed outside of the designated trail system; but agency policy prevents the Forest from managing these trails with trail-maintenance funds.

The Shawnee National Forest is ready at this time for a decision on the designation of additional system trails in order to provide recreational users a longer, well-marked, well-maintained trail system and to reduce resource damage from non-designated, unmanaged, user-developed trails. Since the majority of equestrian use occurs in four neighboring watersheds that contain many popular attractions—about 30 percent of the Forest—the first phase of trail designation is focused in these watersheds. The Forest Service intends to conduct further analyses in the remainder of the Forest following implementation of the decision that results from this environmental impact statement.

Proposed Action

The Shawnee National Forest proposes to: (1) Identify a number of miles of trail to add to the Forest's designated trail system within the watersheds of Lusk Creek, Upper Bay Creek, Big Grande Pierre Creek and Eagle Creek, with the additional miles drawn primarily from existing user-developed trails reconstructed and relocated as necessary to avoid resource impacts; (2) construct additional trailheads to provide access to the trail system; (3) amend the Forest Plan to restrict equestrian use in these four watersheds to system trails and roads; and (4) amend as required the trail-density standards in the Forest Plan.

Possible Alternatives

Possible alternatives for evaluation in the environmental impact statement include taking no action, designating trails in the four watersheds within the constraints of the Forest Plan's trail-density standards, and designating all trail-routes identified during a series of public workshops on the trails master-planning process.

Responsible Official: Allen Nicholas, Forest Supervisor, Shawnee National Forest, 50 Highway 145 South, Harrisburg, IL 62946.

Nature of Decision To Be Made

The responsible official will decide whether or not to designate more trails on the Shawnee National Forest, whether or not to construct additional trailheads, whether or not to amend the Forest Plan to restrict equestrian use in the four watersheds to designated trails and roads, and whether or not to amend the trail-density standards specified in the Forest Plan.

Scoping Process

The Shawnee National Forest proposes to scope for information by contacting persons and organizations on the Forest's mailing list and publishing a notice in the newspaper of record. The Forest will accept comments at the above-stated addresses on the scope of the proposed action and alternatives until January 30, 2004.

Two informational public open houses will be held to answer questions regarding the proposed action and to receive scoping comments. The first will be 4 p.m. to 7 p.m. on Tuesday, January 20, 2004 in the Knights of Columbus Hall, 100 Columbus Drive, Marion, Illinois (next to the church on the west side of Russell Street, three blocks south of U.S. Highway 13), and the second will be 4 p.m. to 7 p.m. on Wednesday, January 21, 2004 in the Commons Area of the Vienna High School, 601 N. 1st Street, Vienna, Illinois (across the street from the Vienna Ranger Station).

Preliminary Issues

The Forest Service has identified from previous public comments several preliminary issues related to the proposed action: (1) Designation and construction and/or improvement of additional system trails may cause increased erosion and soil compaction and adversely affect water quality; (2) Increasing trail-density standards may adversely affect wilderness and natural area attributes; (3) Use of additional trails may exceed the physical carrying-capacity of the affected watersheds; and (4) Designation of additional system trails may not provide quality recreational experiences.

Comments Requested

This notice of intent initiates the scoping process that guides the development of the environmental impact statement. In order to ensure adequate identification and discussion in the environmental impact statement of all relevant issues and alternatives, the Forest Service seeks comments related specifically to the proposed action and alternatives. We are especially interested in information that might identify a specific undesired result of implementing the proposed action. Comments received in response to this solicitation, including names and addresses of those who comment, will be considered part of the public record on this proposed action and will be available for public inspection. Comments submitted anonymously will be accepted and considered; however, those who submit anonymous comments will not have the right to appeal subsequent decisions under 36 CFR parts 215 and 217.

Those who comment during the scoping period will be listed to receive a copy of the draft environmental impact statement. In order to conserve resources, the Shawnee National Forest encourages all recipients to view and/or download the draft environmental impact statement from the Shawnee National Forest Web site or accept a copy of the document on a CD. If you are unable to utilize the Web site or a CD, please specify in your comment submittal that you prefer to receive a paper copy of the draft environmental impact statement.

Additionally, pursuant to 7 CFR 1.27(d), any persons may request the agency to withhold a submission from the public record by showing how the Freedom of Information Act (FOIA) permits such confidentiality. Persons requesting such confidentiality should be aware that under FOIA confidentiality may be granted in only very limited circumstances, such as to protect trade secrets. The Forest Service will inform the requester of the agency's decision regarding the request for confidentiality and, should the request be denied, return the submission and notify the requester that the comments may be resubmitted with or without name and address within 90 days.

Early Notice of Importance of Public Participation in Subsequent Environmental Review

A draft environmental impact statement will be prepared for comment. The comment period on the draft environmental impact statement will be 45 days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register**.

The Forest Service believes, at this early stage, that it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statement must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. [*City of Angoon* v. *Hodel*, 803 F.2d 1016,1 022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980)] Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

Comments received, including the name and addresses of those who comment, will be considered part of the public record on this proposal and will be available for public inspection.

(**Authority:** 40 CFR 1501.7 and 1508.22; Forest Service Handbook 1909.15, section 21)

Dated: December 2, 2003.

Huston A. Nicholas,

Forest Supervisor.

[FR Doc. 03–30439 Filed 12–8–03; 8:45 am]

BILLING CODE CMTL–08–M

DEPARTMENT OF AGRICULTURE

Forest Service

Lake County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Lake County Resource Advisory Committee (RAC) will hold a meeting.

DATES: The meeting will be held on January 15, 2004, from 3:30 p.m. to 5 p.m.

ADDRESSES: The meeting will be held at the Lake County Board of Supervisor's Chambers at 255 North Forbes Street, Lakeport, CA.

FOR FURTHER INFORMATION CONTACT: Debbie McIntosh, Committee Coordinator, USDA, Mendocino National Forest, Upper Lake Ranger District, 10025 Elk Mountain Road, Upper Lake, CA 95485. (707) 275–2361: E-mail *dmcintosh@fs.fed.us*.

SUPPLEMENTARY INFORMATION: Agenda items to be covered include: (1) Roll Call/Establish Quorum; (2) Overview of November Sacramento RAC Meeting; (3) Finalize business for 2003; (4) Title II funds available for Projects for 2004; (5) Discuss Project Cost Accounting USFS/County of Lake; (6) Set Next Meeting Date; (7) Public Comment Period: Public input opportunity will be provided and individuals will have the opportunity to address the Committee at that time.

Dated: December 2, 2003.

Blaine P. Baker,

Designated Federal Officer.

[FR Doc. 03–30410 Filed 12–8–03; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Rural Housing Service

Notice of Request for Extension of a Currently Approved Information Collection

AGENCY: Rural Housing Service (RHS), Department of Agriculture (USDA).

ACTION: Proposed collection; comments requested.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Rural Housing Service's intention to request an extension for a currently approved information collection in support of the Rural Community Development Initiative (RCDI) grant program.

DATES: Comments on this notice must be received by February 9, 2004 to be assured of consideration.

FOR FURTHER INFORMATION CONTACT: Beth Jones, Senior Loan Specialist, Community Programs Direct Loan and Grant Processing and Servicing Branch, RHS, USDA, 1400 Independence Ave., SW., Mail Stop 0787, Washington, DC 20250–0787, Telephone (202) 720–1498. E-mail *beth.jones@usda.gov*.

SUPPLEMENTARY INFORMATION:

Title: Notice of Funds Availability (NOFA) Inviting Applications for the Rural Community Development Initiative.

OMB Number: 0575–0180.

Expiration Date of Approval: May 31, 2004.

Type of Request: Extension of a currently approved information collection.

Abstract: RHS, an Agency within the USDA Rural Development mission area, will administer the RCDI grant program through their Community Facilities Division. The intent of the RCDI grant program is to develop the capacity and ability of rural area recipients to undertake projects through a program of financial and technical assistance provided by qualified intermediary organizations. The eligible recipients are nonprofit organizations, low-income rural communities, or Federally recognized tribes. The intermediary may be a qualified private, nonprofit, or public (including tribal) organization. The intermediary is the applicant. The intermediary must have been organized a minimum of 3 years at the time of application. The intermediary will be required to provide matching funds, in the form of cash or committed funding, in an amount at least equal to the RCDI grant.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 1.72 hours per response.

Respondents: Intermediaries and recipients.

Estimated Number of Respondents: 146.

Estimated Number of Responses per Respondent: 2.48.

Estimated Number of Responses: 8.

Estimated Total Annual Burden on Respondents: 2,026.

Copies of this information collection can be obtained from Brigitte Sumter, Regulations and Paperwork Management Branch, at (202) 692–0042.

Comments: Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility; (b) the accuracy of Agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments may be sent to Brigitte Sumter, Regulations and Paperwork Management Branch, U.S. Department of Agriculture, Rural Development, STOP 0742, 1400 Independence Ave. SW., Washington, DC 20250. All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Dated: November 24, 2003.

Arthur A. Garcia,

Administrator, Rural Housing Service.

[FR Doc. 03–30437 Filed 12–8–03; 8:45 am]

BILLING CODE 3410–XV–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Maine Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a conference call of the Maine Advisory Committee will convene at 11 a.m. and adjourn at 12 p.m., Friday, December 12, 2003. The purpose of the conference call is to discuss forum panel format/topics and potential panelists to invite for a community forum on post-9/11 civil rights issues in Maine.

This conference call is available to the public through the following call-in number: 1–888–659–1081, access code: 20610279. Any interested member of the public may call this number and listen to the meeting. Callers can expect to incur charges for calls not initiated using the supplied call-in number or over wireless lines and the Commission will not refund any incurred charges. Callers will incur no charge for calls using the call-in number over land-line connections. Persons with hearing impairments may also follow the proceedings by first calling the Federal Relay Service at 1–800–977–8339 and providing the Service with the conference call number and access code number.

To ensure that the Commission secures an appropriate number of lines for the public, persons are asked to register by contacting Aonghas St-Hilaire of the Eastern Regional Office, 202–376–7533 (TDD 202–376–8116), by 4 p.m. on Thursday, December 11, 2003.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, November 23, 2003.

Ivy L. Davis,

Chief, Regional Programs Coordination Unit.

[FR Doc. 03–30433 Filed 12–4–03; 11:19 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 29–2003]

Wacker Chemical Corporation—Application for Subzone Status; Extension of Comment Period

The comment period for the application for subzone status at the Wacker Chemical Corporation in Adrian, Michigan, submitted by the Greater Detroit Foreign-Trade Zone, Inc. (68 FR 38009, 6/26/03), is being extended again, to December 22, 2003 to allow interested parties additional time in which to comment. Rebuttal comments may be submitted during the subsequent 15 day period, until January 6, 2004. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at one of the following addresses:

1. Submissions Via Express/Package Delivery Services: Foreign-Trade-Zones Board, U.S. Department of Commerce, Franklin Court Building—Suite 4100W, 1099 14th St. NW., Washington, DC 20005; or

2. Submissions Via the U.S. Postal Service: Foreign-Trade-Zones Board, U.S. Department of Commerce, FCB—Suite 4100W, 1401 Constitution Ave. NW., Washington, DC 20230.

Dated: December 3, 2003.

Dennis Puccinelli,

Executive Secretary.

[FR Doc. 03–30491 Filed 12–8–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1306]

Grant of Authority; Establishment of a Foreign-Trade Zone; Koochiching County, MN

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board adopts the following Order:

Whereas, the Foreign-Trade Zones Act provides for "* * * the establishment * * * of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," and authorizes the Foreign-Trade Zones Board to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs ports of entry;

Whereas, the Koochiching Economic Development Authority (the Grantee), a Minnesota public corporation, has made application to the Board (FTZ Docket 22–2003, filed 4/30/03), requesting the establishment of a foreign-trade zone at sites in Koochiching County, Minnesota, within the International Falls-Ranier Customs port of entry;

Whereas, notice inviting public comment has been given in the **Federal Register** (68 FR 23952, 5/6/03); and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and the Board's regulations are satisfied, and that approval of the application is in the public interest;

Now, therefore, the Board hereby grants to the Grantee the privilege of establishing a foreign-trade zone, designated on the records of the Board as Foreign-Trade Zone No. 259, at the sites described in the application, and subject to the Act and the Board's regulations, including § 400.28.

Signed at Washington, DC, this 28th day of November, 2003.

Foreign-Trade Zones Board.

Donald I. Evans,

Secretary of Commerce, Chairman and Executive Officer.

Attest:

Dennis Puccinelli,

Executive Secretary.

[FR Doc. 03–30492 Filed 12–8–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A-570–891]

Notice of Initiation of Antidumping Duty Investigation: Hand Trucks and Certain Parts Thereof from the People's Republic of China

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Initiation of an Antidumping Duty Investigation.

EFFECTIVE DATE: December 9, 2003.

FOR FURTHER INFORMATION CONTACT: Audrey Twyman, Stephen Cho or Daniel J. Alexy at (202) 482–3534, (202) 482–3798, or (202) 482–1540 respectively, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

INITIATION OF INVESTIGATION:

The Petition

On November 13, 2003, the Department of Commerce ("the Department") received a petition filed in proper form by Gleason Industrial Products, Inc. On November 18, 2003, the Department received an amendment to the petition filed in proper form by Gleason Industrial Products, Inc. On November 19, 2003, the Department sent a supplemental questionnaire to Gleason Industrial Products, Inc. and received a response on November 25, 2003. On December 1, 2003, Gleason Industrial Products, Inc. filed an amendment to the petition to include Precision Products Inc. as a co-petitioner ("the petitioners").[1] On December 2, 2003, the Department received a letter from the China Chamber of Commerce for Import & Export of Machinery & Electronics on behalf of their members who produce hand trucks in China claiming that the petitioners do not meet the industry support requirement of section 732(c)(4)(A) of the Tariff Act of 1930, as amended ("the Act"). On December 3, 2003, Gleason Industrial Products, Inc. submitted a response to the China Chamber of Commerce's allegations. Also on December 3, 2003, the Department received a letter from the United Food & Commercial Workers International Union in support of the petition on behalf of their members, some of whom work in Gleason Industrial Products, Inc.'s manufacturing facilities.

In accordance with section 732(b)(1) of the Act, the petitioners allege that imports of hand trucks and certain parts thereof ("hand trucks") from the People's Republic of China ("the PRC") are, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Act, and that imports from the PRC are materially injuring, or are threatening to materially injure, an industry in the United States.

The Department finds that the petitioners filed this petition on behalf of the domestic industry because they are interested parties as defined in section 771(9)(C) of the Act and have demonstrated sufficient industry support with respect to the antidumping investigation that they are requesting the Department to initiate. *See infra,* "Determination of Industry Support for the Petition."

Scope of Investigation

For the purpose of this investigation, the product covered consists of hand trucks manufactured from any material, whether assembled or unassembled, complete or incomplete, suitable for any use, and certain parts thereof, namely the vertical frame, the handling area and the projecting edges or toe plate, and any combination thereof.

A complete or fully assembled hand truck is a hand-propelled barrow consisting of a vertically disposed frame having a handle or more than one handle at or near the upper section of the vertical frame; at least two wheels at or near the lower section of the vertical frame; and a horizontal projecting edge or edges, or toe plate, perpendicular or angled to the vertical frame, at or near the lower section of the vertical frame. The projecting edge or edges, or toe plate, slides under a load for purposes of lifting and/or moving the load.

That the vertical frame can be converted from a vertical setting to a horizontal setting, then operated in that horizontal setting as a platform, is not a basis for exclusion of the hand truck from the scope of this petition. That the vertical frame, handling area, wheels, projecting edges or other parts of the hand truck can be collapsed or folded is not a basis for exclusion of the hand truck from the scope of the petition. That other wheels may be connected to the vertical frame, handling area, projecting edges, or other parts of the hand truck, in addition to the two or more wheels located at or near the lower section of the vertical frame, is not a basis for exclusion of the hand truck from the scope of the petition. Finally, that the hand truck may exhibit physical characteristics in addition to the vertical frame, the handling area, the projecting edges or toe plate, and the two wheels at or near the lower section of the vertical frame, is not a basis for exclusion of the hand truck from the scope of the petition.

Examples of names commonly used to reference hand trucks are hand truck, convertible hand truck, appliance hand truck, cylinder hand truck, bag truck, dolly, or hand trolley. They are typically imported under heading 8716.80.50.10 of the Harmonized Tariff Schedule of the United States ("HTSUS"), although they may also be imported under heading 8716.80.50.90. Specific parts of a hand truck, namely the vertical frame, the handling area and the projecting edges or toe plate, or any combination thereof, are typically imported under heading 8716.90.5060 of the HTSUS. Although the HTSUS subheadings are provided for convenience and for the purposes of U.S. Customs and Border Protection, the Department's written description of the scope is dispositive.

Excluded from the scope are small two-wheel or four-wheel utility carts specifically designed for carrying loads like personal bags or luggage in which the frame is made from telescoping tubular material measuring less than 5/8 inch in diameter; hand trucks that use motorized operations either to move the hand truck from one location to the next or to assist in the lifting of items placed on the hand truck; vertical carriers designed specifically to transport golf bags; and wheels and tires used in the manufacture of hand trucks.

As discussed in the preamble to the Department's regulations (*Antidumping Duties: Countervailing Duties; Final Rule,* 62 FR 27296, 27323 (May 19, 1997)), we are setting aside a period for parties to raise issues regarding product coverage. The Department encourages all parties to submit such comments within 20 calendar days of publication of this notice. Comments should be addressed to Import Administration's Central Records Unit, Room 1870, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230. The period of scope consultations is intended to provide the Department with ample opportunity to consider all comments and consult with parties prior to the issuance of the preliminary determination.

[1] Gleason Industrial Products, Inc. and Precision Products Inc. are both members of the Gleason Group companies. Gleason Industrial Products, Inc. manufactures and sells hand trucks. Precision Products Inc. also manufactures hand trucks, but sells all its hand trucks through Gleason Industrial Products, Inc.

Determination of Industry Support for the Petition

Section 732(b)(1) of the Act requires that a petition be filed on behalf of the domestic industry. Section 732(c)(4)(A) of the Act provides that the Department's industry support determination, which is to be made before the initiation of the investigation, be based on whether a minimum percentage of the relevant industry supports the petition. A petition meets this requirement if the domestic producers or workers who support the petition account for: (1) at least 25 percent of the total production of the domestic like product; and (2) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition. Moreover, section 732(c)(4)(D) of the Act provides that, if the petition does not establish support of domestic producers or workers accounting for more than 50 percent of the total production of the domestic like product, the Department shall: i) poll the industry or rely on other information in order to determine if there is support for the petition, as required by subparagraph (A), or ii) determine industry support using a statistically valid sampling method.

Section 771(4)(A) of the Act defines the "industry" as the producers of a domestic like product. Thus, to determine whether a petition has the requisite industry support, the statute directs the Department to look to producers and workers who produce the domestic like product. The International Trade Commission ("ITC"), which is responsible for determining whether "the domestic industry" has been injured, must also determine what constitutes a domestic like product in order to define the industry. While both the Department and the ITC must apply the same statutory definition regarding the domestic like product (section 771(10) of the Act), they do so for different purposes and pursuant to a separate and distinct authority. In addition, the Department's determination is subject to limitations of time and information. Although this may result in different definitions of the like product, such differences do not render the decision of either agency contrary to the law.[2]

Section 771(10) of the Act defines the domestic like product as "a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this title." Thus, the reference point from which the domestic like product analysis begins is "the article subject to an investigation," *i.e.*, the class or kind of merchandise to be investigated, which normally will be the scope as defined in the petition.

The domestic like product referred to in the petition is the single domestic like product defined in the "Scope of Investigation" section above. The Department has no basis on the record to find this definition of the domestic like product to be inaccurate. The Department, therefore, has adopted this domestic like product definition.

In their initial petition and subsequent submissions, the petitioners state that they comprise more than 50 percent of U.S. hand truck production. Based on all available information, we agree that the petitioners comprise more than 50 percent of the domestic hand truck production and accordingly, determine that the petition has been filed on behalf of the domestic industry within the meaning of section 732(b)(1) of the Act. *See* Initiation Checklist dated December 3, 2003 (public version on file in the Central Records Unit of the Department of Commerce, Room B-099) ("*Initiation Checklist*").

Period of Investigation

The anticipated period of investigation ("POI") is April 1, 2003, through September 30, 2003.

Export Price and Normal Value

The following are descriptions of the allegations of sales at less than fair value upon which the Department based its decision to initiate this investigation. The sources of data relating to export price ("EP"), normal value ("NV"), and factors of production ("FOP"), are discussed in greater detail in the *Initiation Checklist*. Should the need arise to use any of this information as facts available under section 776 of the Act in our preliminary or final determinations, we may re-examine the information and revise the margin calculations, if appropriate.

Regarding an investigation involving a non-market economy ("NME") country, the Department presumes, based on the extent of central government control in an NME, that a single dumping margin, should there be one, is appropriate for all NME exporters in the given country. In the course of this investigation, all parties will have the opportunity to provide relevant information related to the issues of a country's NME status and the granting of separate rates to individual exporters. *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China*, 59 FR 22585, 22586–87 (May 2, 1994).

Export Price

The petitioners based the export price on price quotes from a Chinese producer of hand trucks to unaffiliated purchasers in the United States within the POI as reported in Exhibit 19 of the November 13, 2003 petition. The petitioners claim that the two price quotes obtained were for two models of hand trucks that are among the most prevalent of the models imported from China. Accordingly, we found that the gross unit prices provided by the petitioners represent information that reasonably reflected prices to the United States. Therefore, we relied on the gross unit prices provided in the petition. The prices were quoted FOB Qingdao, the PRC, and the petitioners were conservative because they did not deduct Chinese inland freight from the quoted prices.

Normal Value

The petitioners assert that the PRC is an NME country, and note that in all previous investigations the Department has determined that the PRC is an NME. *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Bulk Aspirin From the People's Republic of China*, 65 FR 33805 (May 25, 2000). The PRC will be treated as an NME unless and until its NME status is revoked. *See* section 771(18)(C)(i) of the Act. Because the PRC's status as an NME remains in effect, the petitioners estimated the dumping margin using an NME methodology.

The petitioners assert that India is the most appropriate surrogate country for the PRC, claiming that India is: 1) at a level of economic development comparable to the PRC in terms of per capita gross national product, and 2) a significant producer of comparable merchandise. The petitioners provided recent U.S. import statistics of hand trucks from India and a report by a researcher in India hired by the petitioners to study the hand truck industry. The report shows that there is significant production of hand trucks in India. Based on the information provided by the petitioners, we believe that the petitioners' use of India as a surrogate country is appropriate for the purpose of initiating this investigation.

The petitioners estimated the quantities of inputs required to produce hand trucks in the PRC based on the petitioners' own experience and their extensive analysis of the two representative hand trucks they acquired from the PRC. Based on the information provided by the petitioners, we believe that the petitioners' FOP methodology represents information reasonably available to the petitioners and is appropriate for purposes of initiating this investigation.

In accordance with section 773(c)(4) of the Act, the petitioners valued FOP, where possible, on reasonably available, public surrogate data from India. The petitioners valued all direct materials (with the exception of ball bearings and tires), packing materials, and scrap based on Indian import values, as published in the 2002 *Monthly Statistics of Foreign Trade of India*. These values were inflated to the current POI using the Indian wholesale price index ("WPI") as reported in the International Monetary Fund's *International Financial Statistics* ("IFS"), and converted to U.S. dollars using the U.S. Federal Reserve exchange rates for India.

Concerning ball bearings and tires for the hand truck, the petitioners valued these inputs using price quotes they obtained from India for ball bearings and tires as surrogate values for the ball bearings and tires for the hand truck. The Department accepted these values as being representative of hand truck ball bearings and tires.

The petitioners valued direct and packing labor using the regression-based wage rate for the PRC, provided by the Department, in accordance with section 351.408(c)(3) of the Department's regulations. The petitioners based the amount of energy used on its own experience. Electricity was valued using the Indian Tata Energy Research Institute *Energy Data Directory and Yearbook (2000/2001)*, and adjusted for inflation to reflect a POI value using the Reserve Bank of India *RBI Bulletin*. Natural gas was valued from an article at *www.indiaonline.com*, and adjusted for inflation based on the Indian WPI.

The petitioners calculated financial ratios using four public financial statements of Indian producers of hand trucks. The Department did not find adequate evidence that one of the Indian firms, Excellent Engineering & Allied Services Private Limited, is a producer of hand trucks because: (1) it is not included in the list of producers of hand trucks submitted by the Indian researcher; (2) its financial statements do not indicate that it is a manufacturer of hand trucks; (3) its direct material costs are lower than the other companies; and (4) its financial statements refer to raw materials as "trading materials." Therefore, we have removed this company's financial ratios from the calculation of normal value. Based on the information provided by the petitioners, we believe that the surrogate values represent information readily available to the petitioners and are acceptable for purposes of initiating this investigation.

Fair Value Comparisons

Based on the data provided by the petitioners, there is reason to believe that imports of hand trucks from the PRC are being, or are likely to be, sold at less than fair value. As a result of a comparison of EP to NV, based on our recalculations described above, the estimated dumping margins range from 314.97 percent to 401.21 percent.

Allegations and Evidence of Material Injury and Causation

The petitioners allege that the U.S. industry producing the domestic like product is being materially injured, or is threatened with material injury, by reason of imports of the subject merchandise sold at less than fair value.

The petitioners contend that the industry's injured condition is evidenced by the loss of sale opportunities, depressed and/or suppressed domestic prices, reduced market share, and reduced profitability. The allegations of injury and causation are supported by relevant evidence including affidavits of company officials, U.S. Census Bureau import statistics, lost sales, and pricing information. We have assessed the allegations and supporting evidence regarding material injury and causation, and we have determined that these allegations are properly supported by adequate evidence and meet the statutory requirements for initiation. *See Initiation Checklist*.

Initiation of Antidumping Investigation

Based upon our examination of the petition on hand trucks, we have found that it meets the requirements of section 732 of the Act. Therefore, we are initiating an antidumping duty investigation to determine whether imports of hand trucks from the PRC are being, or are likely to be, sold in the United States at less than fair value. Unless this deadline is extended pursuant to section 733(b)(1)(A) of the Act, we will make our preliminary determination no later than 140 days after the date of this initiation.

Distribution of Copies of the Petition

In accordance with section 732(b)(3)(A) of the Act, a copy of the public version of the petition has been provided to the representatives of the government of the PRC.

ITC Notification

We have notified the ITC of our initiation as required by section 732(d) of the Act.

Preliminary Determination by the ITC

The ITC will preliminarily determine no later than December 29, 2003, whether there is a reasonable indication that imports of hand trucks from the PRC are causing material injury, or threatening to cause material injury, to a U.S. industry. A negative ITC determination will result in the investigation being terminated; otherwise, this investigation will proceed according to statutory and regulatory time limits.

This notice is issued and published pursuant to section 777(i) of the Act.

Dated: December 3, 2003.

James J. Jochum,

Assistant Secretary for Import Administration.

[FR Doc. 03–30489 Filed 12–8–03; 8:45 am]

BILLING CODE 3510–DS–S

[2] *See USEC, Inc. v. United States*, 132 F. Supp. 2d 1, 8 (Ct. Int'l Trade 2001), citing *Algoma Steel Corp. Ltd. v. United States*, 688 F. Supp. 639, 642–44 (Ct. Int'l Trade 1988).

DEPARTMENT OF COMMERCE

International Trade Administration

[A-412–803]

Notice of Final Results of Antidumping Duty Changed Circumstances Review: Industrial Nitrocellulose from the United Kingdom

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Final Results of Antidumping Duty Changed Circumstances Review.

SUMMARY: On October 16, 2003, the Department of Commerce (the Department) published a notice of preliminary results of its changed circumstances review of the antidumping duty order on industrial nitrocellulose (INC) from the United Kingdom in which we preliminarily determined that Troon Investments Limited (TIL) is the successor-in-interest to Imperial Chemical Industries, PLC (ICI).[1] *See Notice of Preliminary Results of Antidumping Duty Changed Circumstances Review: Industrial Nitrocellulose from the United Kingdom*, 68 FR 59584, 59585 (October 16, 2003) (*Preliminary Results*). We gave interested parties, TIL and Green Tree Chemical Technologies, Inc. (Green Tree), the sole U.S. producer of INC and the petitioner in this proceeding, the

[1] Note: TIL purchased ICI's INC business on December 31, 2002.

opportunity to comment on the *Preliminary Results*. We received no comments from either Green Tree or TIL on the Department's *Preliminary Results*. Therefore, the Department is adopting its preliminary finding that TIL is the successor-in-interest to ICI in these final results.

EFFECTIVE DATE: December 9, 2003.

FOR FURTHER INFORMATION CONTACT: Michele Mire or Howard Smith, AD/CVD Enforcement, Office 4, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone (202) 482–4711 and (202) 482–5193, respectively.

SUPPLEMENTARY INFORMATION:

Background

On July 10, 1990, the Department published in the **Federal Register** (55 FR 28270) the antidumping duty order on INC from the United Kingdom. On March 28, 2003, TIL requested that the Department conduct a changed circumstances review of the antidumping duty order on INC from the United Kingdom, claiming that it is the successor-in-interest to ICI, and, as such, it is entitled to receive the same antidumping treatment accorded to ICI. On April 11, 2003, Green Tree notified the Department that it opposed TIL's request to be considered the successor-in-interest to ICI. On July 18, 2003, and August 14, 2003, at the request of the Department, TIL submitted additional information and documentation pertaining to its changed circumstances request. Notwithstanding Green Tree's objection to finding TIL to be the successor-in-interest to ICI, record evidence indicates that, with the exception of the managing director of the INC business, TIL has made no material changes to the management, production facilities, suppliers of raw materials, or customers of ICI's former INC business. Further, while Green Tree expressed concern over a possible difference between the cost of capital for TIL and ICI, the record indicates that many of the significant factors that affect costs have not changed. Finally, although there has been a change in the legal entity performing U.S. selling functions under TIL, the record indicates that there have been no significant changes in the sales process or pricing of INC. *See Preliminary Results* at 59585. On October 16, 2003, the Department published its preliminary results in the **Federal Register**, finding TIL to be the successor-in-interest to ICI for purposes of determining antidumping liability. *See Preliminary Results*. We invited interested parties to comment on these findings. On October 31, 2003, and November 5, 2003, Green Tree and TIL, respectively, submitted letters in which they notified the Department that they would not file comments on the *Preliminary Results*.

Scope of Review

Imports covered by this review are shipments of INC from the United Kingdom. INC is a dry, white amorphous synthetic chemical with a nitrogen content between 10.8 and 12.2 percent, and is produced from the reaction of cellulose with nitric acid. INC is used as a film-former in coatings, lacquers, furniture finishes, and printing inks. The scope of this order does not include explosive grade nitrocellulose, which has a nitrogen content of greater than 12.2 percent.

INC is currently classified under Harmonized Tariff Schedule of the United States (HTSUS) item number 3912.20.0000. While the HTSUS classification is provided for convenience and customs purposes, the written description remains dispositive as to the scope of the product coverage.

Final Results of Changed Circumstances Review

Because we received no comments from interested parties on the *Preliminary Results*, and for the reasons stated in the *Preliminary Results*, we find the record supports TIL to be the successor-in-interest to ICI for antidumping duty cash deposit purposes. We will instruct Customs and Border Protection to suspend shipments of subject merchandise made by TIL at ICI's cash deposit rate (*i.e.*, 3.06 percent) effective upon publication of this notice. This cash deposit rate shall remain in effect until publication of the next administrative review in which TIL participates.

We are issuing and publishing this determination and notice in accordance with sections 751(b)(1) and 777(i)(1) of the Tariff Act of 1930, as amended, and section 351.216 of the Department's regulations.

Dated: December 1, 2003.

James S. Jochum,

Assistant Secretary for Import Administration.

[FR Doc. 03–30490 Filed 12–8–03; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

Steel Import Licensing and Surge Monitoring

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of continuation of Steel Import Licensing and Surge Monitoring program.

SUMMARY: Pursuant to the Presidential Proclamation to Provide for the Termination of Action Taken with Regard to Imports of Steel Products, issued December 4, 2003, the Department of Commerce will continue the Steel Import Licensing and Surge Monitoring program established effective February 1, 2003 (19 CFR part 360).

DATES: This notice is effective December 4, 2003.

FOR FURTHER INFORMATION CONTACT: Julie Al-Saadawi: telephone (202) 482–1930; fax (202) 501–1377; e-mail *steel_license@ita.doc.gov*. The information contained in this notice is also posted on the import licensing Web site (*http://ia.ita.doc.gov/steel/license/*).

SUPPLEMENTARY INFORMATION: On March 5, 2002, the President issued Proclamation 7529, implementing safeguard measures with respect to certain imported steel products pursuant to sections 201 and 203 of the 1974 Trade Act, 19 U.S.C. 2251, 2253 (67 FR 10553). In an accompanying Memorandum, the President instructed the Secretary of the Treasury and the Secretary of Commerce to establish a system of import licensing to facilitate the monitoring of imports of these steel products, and directed the Secretary of Commerce to publish regulations in the **Federal Register** establishing such a system of import licensing (67 FR 10593, 10596). Pursuant to this direction, Import Administration published proposed regulations establishing a system of import licensing on July 18, 2002 (67 FR 47338), and promulgated final regulations on December 31, 2002, effective February 1, 2003 (67 FR 79845).

On December 4, 2003, the President issued a proclamation terminating the safeguard measures and directing the Secretary of Commerce to continue the steel import licensing system established effective February 1, 2003, until the earlier of March 21, 2005, or such time as the Secretary of Commerce establishes a replacement program.

19 CFR 360.105, promulgated December 31, 2002, and effective February 1, 2003, provided as follows: "The licensing program will be in effect for the duration of the safeguard measures only. Licenses will be required on all subject imports entered during this period. The licenses will be valid for 10 business days after the expiration of the safeguard measures to allow for the final filing of required Customs documentation. Information collected under this system will not be kept longer than the period of time legally required beyond the expiration of these remedies." Section 105, which is itself not a termination provision, referred to the initial period (three years and one day) for which the safeguard measures were proclaimed by the President (Proclamation 7529, section 9), after which they would expire in the absence of further action by the President. The duration of the licensing program is not affected by the early termination of such measures. The President retains authority to implement such other actions, including but not limited to the licensing program, as he deems appropriate and feasible pursuant to 19 U.S.C. 2253, without regard to the early termination of the safeguard measures.

James J. Jochum,

Assistant Secretary for Import Administration.

[FR Doc. 03–30571 Filed 12–8–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 120103D]

Magnuson-Stevens Act Provisions; Atlantic Highly Migratory Species; Exempted Fishing and Scientific Research Permits

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Issuance of 2004 Exempted Fishing and Scientific Research Permits; request for comments.

SUMMARY: NMFS announces the intent to issue Exempted Fishing Permits (EFPs) and Scientific Research Permits (SRPs) for the collection of Atlantic highly migratory species (HMS). These EFPs/SRPs would authorize collections of a limited number of tunas, swordfish, billfishes, and sharks from Federal waters in the Atlantic Ocean and Gulf of Mexico for the purposes of scientific data collection and public display. Generally, the EFPs/SRPs will be valid through December 31, 2004. NMFS also announces the intent to consider issuing EFPs upon receiving applications from U.S. fishermen whose vessels fish for Atlantic HMS while operating under chartering arrangements within the Exclusive Economic Zone (EEZ) of other nations to ensure consistency with another country's regulations without violating U.S. regulations.

DATES: Written comments on these collection, research and fishing activities will be considered by NMFS in issuing such EFPs/SRPs if received on or before December 24, 2003.

ADDRESSES: Send comments to Christopher Rogers, Chief, Highly Migratory Species Management Division (F/SF1), NMFS, 1315 East-West Highway, Silver Spring, MD 20910. EFP/SRP applications and copies of the regulations under which EFPs/SRPs are issued may also be requested from this address. Comments also may be sent via facsimile (fax) to (301)713–1917. Comments will not be accepted if submitted via e-mail or Internet.

FOR FURTHER INFORMATION CONTACT: Heather Stirratt or Sari Kiraly, 301–713–2347; fax: 301–713–1917.

SUPPLEMENTARY INFORMATION: EFPs and SRPs are requested and issued under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*) and/or the Atlantic Tunas Convention Act (16 U.S.C. 971 *et seq.*). Regulations at 50 CFR 600.745 and 50 CFR 635.32 govern scientific research activity, exempted fishing, and exempted educational activity with respect to Atlantic HMS.

Issuance of EFPs and/or SRPs may be necessary because possession of certain shark species is prohibited, possession of billfishes on board commercial fishing vessels is prohibited, and because the commercial fisheries for bluefin tuna, swordfish and large coastal sharks may be closed for extended periods, during which collection of live animals and/or biological samples would otherwise be prohibited. In addition, NMFS regulations at 50 CFR 635.32 regarding implantation or attachment of archival tags in Atlantic HMS require prior authorization and a report on implantation activities.

NMFS seeks public comment on its intention to issue EFPs for the purpose of collecting biological samples under at-sea fisheries observer programs. NMFS intends to issue EFPs to any NMFS or NMFS-approved observer to bring onboard and possess, for scientific research purposes, biological sampling, measurement, etc., any Atlantic swordfish, Atlantic shark, or Atlantic billfish, provided the fish is a recaptured tagged fish, dead prior to being brought onboard, or specifically authorized for sampling by the Director of the Office of Sustainable Fisheries at the request of the Southeast Fisheries Science Center or Northeast Fisheries Science Center. On average, several hundred swordfish and sharks are collected by at-sea observers under such EFPs in any given year.

Collection of bluefin tuna may be authorized for scientific research, age and growth, genetic, and spawning studies. In 2003, five permits for bluefin tuna archival tagging and research were issued. In addition, NMFS issued 12 EFPs allowing commercial pelagic longline fishing vessels to assist NOAA scientists in conducting sea turtle bycatch reduction experiments in the Northeast Distant Waters (NED) of the Grand Banks.

NMFS is also seeking public comment on its intention to issue EFPs for the collection of restricted species of sharks for the purpose of public display. In the Final Fishery Management Plan for Atlantic Tunas, Swordfish and Sharks (HMS FMP), NMFS established a public display and research quota of 60 metric tons wet weight for this purpose. NMFS has preliminarily determined that, based on average weight of sharks landed, approximately 3,000 sharks could be taken with this current quota. The actual number of sharks that would be taken depends on the species and size of the sharks. NMFS believes that harvesting this amount for public display will have a minimal impact on the stock. In 2003, seven EFPs, which authorized the collection of 352 sharks for display purposes, were issued. The total number reported as actually taken will not be known until early 2004. However, of the 402 sharks authorized for collection in seven EFPs issued during 2002, only 37 sharks were reported taken.

Generally, the authorized collections or exemptions would involve activities otherwise prohibited by regulations implementing the HMS FMP and Amendment 1 to the Atlantic Billfish Fishery Management Plan. The EFPs, if issued, may authorize recipients to fish for and possess tunas, billfishes, swordfish, and sharks outside the applicable Federal commercial seasons, size limits and retention limits, or to fish for and possess prohibited species.

NMFS has undertaken a restructuring of the exempted fishing application and reporting procedures for Atlantic HMS. To that effect, on November 10, 2003, NMFS published a final rule (68 FR

63738) that modifies the existing regulations, with the intent of improving accountability of these fishing activities, particularly those conducted fo collect sharks for public display and those undertaken for scientific research. This rule will be effective December 10, 2003.

Specifically, the final rule contains the following provisions: (1) EFP holders must notify the local NMFS Office for Law Enforcement at least 24 hours prior to departure for all fishing trips conducted to collect HMS for the purpose of public display; (2) all live HMS retained for the purpose of public display must be tagged while still on board the fishing vessel with either a conventional dart tag or a microchip Passive Integrated Transponder (PIT) tag, both of which will be supplied by NMFS; (3) if warranted, NMFS may specify conditions for conducting fishing activities to collect HMS for public display in order to minimize mortalities of either targeted or bycatch species; (4) NMFS reserves the right to place an at-sea observer on board an authorized HMS collection vessel; (5) EFP and SRP holders must report all HMS collection activities regardless of whether they occur inside or outside the EEZ; (6) negative reports must be submitted for months when no HMS are collected; (7) applicants for EFP and SRP renewals must include with the application the previous year's year-end report and any delinquent reports for permits issued in prior years, in order to obtain the new permit; and (8) prohibitions concerning the submission of false information and violations of the terms and conditions of EFPs and SRPs. Although unrelated to these provisions, the rule also addresses EFPs for the pelagic longline directed swordfish fishery, in that EFPs would no longer be required for vessels to delay offloading of swordfish when an approved vessel monitoring system (VMS) is operating on board the vessel.

Comments are also requested for the issuance of EFPs to vessels fishing for HMS while operating under chartering arrangements within the EEZ of other nations. These EFPs would allow a U.S. fishing vessel to fish so as to be consistent with another country's regulations without violating U.S. regulations, and would ensure that such vessels report to the proper authorities. To date, however, NMFS has not received requests for such EFPs.

Also in November 2003, NMFS published the Final Amendment 1 to the Fishery Management Plan for Atlantic Tunas, Swordfish and Sharks. While the Amendment focuses primarily on shark management measures, the issuance of EFPs and SRPs is addressed in that a separate display permitting system for HMS is to be developed apart from EFPs and SRPs issued for other purposes. This is an administrative change only, and current quotas as well as application and reporting requirements remain as established under the existing system. This provision may be implemented in a final rule that will likely be published in mid December 2003.

Final decisions on the issuance of any EFPs/SRPs will depend on the submission of all required information about the proposed activities, NMFS' review of public comments received on this notice, consistency with conclusions in the Final Environmental Impact Statement (EIS) contained in the Final HMS FMP (64 FR 13575; March 19, 1999), Environmental Assessments (EAs) or EISs, and any consultations with any appropriate Regional Fishery Management Councils, states, or Federal agencies. NMFS does not anticipate any environmental impacts from the issuance of these EFPs other than impacts already assessed in the Final HMS FMP.

Authority: 16 U.S.C. 971 *et seq.* and 16 U.S.C. 1801 *et seq.*

Dated: December 3, 2003.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 03–30487 Filed 12–8–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 073103B]

Marine Mammals; File No. 881–1710

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Issuance of permit.

SUMMARY: Notice is hereby given that Alaska SeaLife Center (ASLC), 301 Railway Avenue, Seward, AK 99664, (Shannon Atkinson, Ph.D., Principal Investigator) has been issued a permit to take harbor seals (Phoca vitulina) for purposes of scientific research.

ADDRESSES: The permit and related documents are available for review upon written request or by appointment in the following office(s):

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301)713–2289; fax (301)713–0376; and

Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802–1668; phone (907)586–7221; fax (907)586–7249.

FOR FURTHER INFORMATION CONTACT: Amy Sloan or Ruth Johnson, (301)713–2289.

SUPPLEMENTARY INFORMATION: On May 7, 2003, notice was published in the **Federal Register** (68 FR 24443) that a request for a scientific research permit to take the species identified above had been submitted by the above-named organization. The requested permit has been issued under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216).

This permit authorizes collection of eight weaned harbor seals from the wild over a two to three year period in the Gulf of Alaska for long-term holding and research at the ASLC. A maximum of 30 capture attempts will occur per year, and during each capture attempt, up to 20 seals may incidentally be caught in nets and released, and up to 100 seals may be incidentally disturbed at the haul-out sites. Weaned female pups captured will be sampled in the wild as follows: sedation or anesthesia; body mass, morphometrics, and 3D photogrammetry; blood, blubber, whisker, and skin samples; body composition; flipper tagging and microchip implant; ultrasound; fecal and urine collection; skin and mucosal swabs; endoscopy; and disease screening.

Once at the ASLC the following will be performed on the harbor seals: monthly health assessments (as described in sampling above); hormone challenge experiments; weights and measurements; blood sampling; fecal and urine sampling; blubber ultrasound; bio-electrical impedance; total blood volume determination; deuterium oxide administration; feeding trials; mucosal swabs, saliva collection, examination of external genitalia; blubber biopsies; video, photographic, radiographic, digital, and thermal imaging; and anesthesia and sedation as deemed necessary by the attending veterinarian.

This study investigates the importance of lipids in the diets of harbor seals and the long-term effects of high and low lipid diets on the growth, development, maturity, and health of seals. The permit has been issued for a five-year period.

Dated: December 2, 2003.

Stephen L. Leathery,

Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 03–30488 Filed 12–8–03; 8:45 am]

BILLING CODE 3510–22–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Restraint Limits for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in Cambodia

December 4, 2003.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner, Bureau of Customs and Border Protection establishing limits.

EFFECTIVE DATE: January 1, 2004.

FOR FURTHER INFORMATION CONTACT: Roy Unger, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the Bureau of Customs and Border Protection Web site at *http://www.customs.gov*. For information on embargoes and quota re-openings, refer to the Office of Textiles and Apparel Web site at *http://otexa.ita.doc.gov*.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The Memorandum of Understanding of December 29, 2001, between the Governments of the United States and Cambodia amends and extends the bilateral textile agreement of January 20, 1999 to cover the period January 1, 2004 through December 31, 2004.

These limits will be revised when Cambodia becomes a member of the World Trade Organization (WTO) and the United States applies the WTO agreement to Cambodia.

In the letter published below, the Chairman of CITA directs the Commissioner of the Bureau of Customs and Border Protection to establish the 2004 limits, which include a fourteen (14) percent increase to all of Cambodia's quotas under the Labor Standards provision described in **Federal Register** notice 64 FR 60428, published on November 5, 1999.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (*see* **Federal Register** notice 68 FR 1599, published on January 13, 2003). Information regarding the availability of the 2004 CORRELATION will be published in the **Federal Register** at a later date.

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

December 4, 2003.

Commissioner,

Bureau of Customs and Border Protection, Washington, DC 20229.

Dear Commissioner: Pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended; and the Memorandum of Understanding, dated December 29, 2001, between the Governments of the United States and Cambodia, you are directed to prohibit, effective on January 1, 2004, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool and man-made fiber textile products in the following categories, produced or manufactured in Cambodia and exported during the twelve-month period beginning on January 1, 2004 and extending through December 31, 2004, in excess of the following levels of restraint:

Category	Twelve-month restraint limit
331/631	2,364,645 dozen pairs.
334/634	259,348 dozen.
335/635	99,163 dozen.
338/339	4,080,920 dozen.
340/640	1,144,183 dozen.
345	143,403 dozen.
347/348/647/648	4,576,732 dozen.
352/652	915,347 dozen.
435	22,444 dozen.
438	107,834 dozen.
445/446	131,797 dozen.
638/639	1,373,019 dozen.
645/646	381,394 dozen.

Products in the above categories exported during 2003 shall be charged to the applicable category limits for that year (*see* directive dated December 4, 2002) to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such products shall be charged to the limits set forth in this directive.

These limits will be revised when Cambodia becomes a member of the World Trade Organization (WTO) and the United States applies the WTO agreement to Cambodia.

In carrying out the above directions, the Commissioner, Bureau of Customs and Border Protection should construe enfry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. E3–00485 Filed 12–8–03; 8:45 am]

BILLING CODE 3510–DR–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Limits for Certain Wool Textile Products Produced or Manufactured in the Former Yugoslav Republic of Macedonia

December 3, 2003.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner, Bureau of Customs and Border Protection establishing limits.

EFFECTIVE DATE: January 1, 2004.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the Bureau of Customs and Border Protection Web site at *http://www.customs.gov*. For information on embargoes and quota re-openings, refer to the Office of Textiles and Apparel Web site at *http://www.otexa.ita.doc.gov*.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The import restraint limits for textile products, produced or manufactured in the Former Yugoslav Republic of Macedonia and exported during the period January 1, 2004 through December 31, 2004 are based on limits notified to the Textiles Monitoring Body pursuant to the Uruguay Round Agreement on Textiles and Clothing (ATC).

These limits do not apply to goods entered under the Outward Processing Program, as defined in the notice and letter to the Commissioner of Customs, published in the **Federal Register** on December 14, 1999 (*see* 64 FR 69746).

Any shipment for entry under the Outward Processing Program which is not accompanied by valid certification in accordance with the provisions established in the notice and letter to the Commissioner of Customs, published in the **Federal Register** on December 14, 1999 (*see* 64 FR 69743), shall be denied entry. However, the Government of Macedonia may authorize the entry and charges to the appropriate specific limits by the issuance of a valid visa. *Also see* 63 FR 17156, published on April 8, 1998.

In the letter published below, the Chairman of CITA directs the Commissioner, Bureau of Customs and Border Protection to establish the 2004 limits.

These limits are subject to adjustment pursuant to the provisions of the ATC and administrative arrangements notified to the Textiles Monitoring Body. However, as the ATC and all restrictions thereunder will terminate on January 1, 2005, no adjustment for carryforward (borrowing from next year's limits for use in the current year) will be available.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (*see* **Federal Register** notice 68 FR 1599, published on January 13, 2004). Information regarding the 2004 CORRELATION will be published in the **Federal Register** at a later date.

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

December 3, 2003.

Commissioner,
Bureau of Customs and Border Protection, Washington, DC 20229.

Dear Commissioner: Pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended; and the Uruguay Round Agreement on Textiles and Clothing (ATC), you are directed to prohibit, effective on January 1, 2004, entry into the United States for consumption and withdrawal from warehouse for consumption of wool textile products in the following categories, produced or manufactured in the Former Yugoslav Republic of Macedonia and exported during the twelve-month period beginning on January 1, 2004 and extending through December 31, 2004, in excess of the following levels of restraint:

Category	Twelve-month limit
433	23,414 dozen.
434	11,707 dozen.
435	31,955 dozen.
443	196,914 numbers.
448	70,241 dozen.

The limits set forth above are subject to adjustment pursuant to the provisions of the ATC and administrative arrangements notified to the Textiles Monitoring Body.

Products in the above categories exported during 2003 shall be charged to the applicable category limits for that year (*see* directive dated October 9, 2002) to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such products shall be charged to the limits set forth in this directive.

These limits do not apply to goods entered under the Outward Processing Program, as defined in the letter to the Commissioner of Customs, dated December 8, 1999 (*see* 64 FR 69746).

Any shipment for entry under the Outward Processing Program which is not accompanied by a valid certification in accordance with the provisions established in the letter to the Commissioner of Customs, dated December 9, 1999 (*see* 64 FR 69743), shall be denied entry. However, the Government of Macedonia may authorize the entry and charges to the appropriate specific limits by the issuance of a valid visa. *Also see* directive dated April 2, 1998, (63 FR 17156). Any shipment which is declared for entry under the Outward Processing Program but found not to qualify shall be denied entry into the United States.

In carrying out the above directions, the Commissioner, Bureau of Customs and Border Protection should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,
James C. Leonard III,
Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. E3–00486 Filed 12–8–03; 8:45 am]

BILLING CODE 3510–DR–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Restraint Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Nepal

December 3, 2003.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner, Bureau of Customs and Border Protection establishing limits.

EFFECTIVE DATE: January 1, 2004.

FOR FURTHER INFORMATION CONTACT: Roy Unger, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the Bureau of Customs and Border Protection Web site at *http://www.customs.gov*. For information on embargoes and quota re-openings, refer to the Office of Textiles and Apparel Web site at *http://otexa.ita.doc.gov*.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The Bilateral Textile Agreement, effected by exchange of notes dated May 30 and June 1, 1986, as amended and extended, and Memorandum of Understanding (MOU) dated July 13, 2000 between the Governments of the United States and Nepal establish limits for the period January 1, 2004 through December 31, 2004.

These limits will be revised when Nepal becomes a member of the World Trade Organization (WTO) and the United States applies the WTO agreement to Nepal.

In the letter published below, the Chairman of CITA directs the Commissioner, Bureau of Customs and Border Protection to establish the 2004 limits.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 68 FR 1599, published on January 13, 2003). Information regarding the 2004 CORRELATION will be published in the **Federal Register** at a later date.

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

December 3, 2003.

Commissioner,
Bureau of Customs and Border Protection,
Washington, DC 20229.

Dear Commissioner: Pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended; the Bilateral Textile Agreement, effected by exchange of notes dated May 30 and June 1, 1986, as amended and extended; and the Memorandum of Understanding dated July 13, 2000 between the Governments of the United States and Nepal, you are directed to prohibit, effective on January 1, 2004, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton and man-made fiber textile products in the following categories, produced or manufactured in Nepal and exported during the twelve-month period beginning on January 1, 2004 and extending through December 31, 2004, in excess of the following levels of restraint:

Category	Twelve-month restraint limit
336/636	365,462 dozen.
340	479,856 dozen.
341	1,333,220 dozen.
342/642	418,806 dozen.
347/348	1,080,848 dozen.
363	9,773,596 numbers.
369–S [1]	1,106,886 kilograms.
640	241,509 dozen.
641	544,541 dozen.

[1] Category 369–S: only HTS number 6307.10.2005.

The limits set forth above are subject to adjustment pursuant to the provisions of the current bilateral agreement between the Governments of the United States and Nepal.

Products in the above categories exported during 2003 shall be charged to the applicable category limits for that year (see directive dated October 8, 2002) to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such products shall be charged to the limits set forth in this directive.

These limits will be revised when Nepal becomes a member of the World Trade Organization (WTO) and the United States applies the WTO agreement to Nepal.

In carrying out the above directions, the Commissioner, Bureau of Customs and Border Protection should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,
James C. Leonard III,
Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. E3–00487 Filed 12–8–03; 8:45 am]

BILLING CODE 3510–DR–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Restraint Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Pakistan

December 3, 2003.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner, Bureau of Customs and Border Protection establishing limits.

EFFECTIVE DATE: January 1, 2004.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the Bureau of Customs and Border Protection website at *http://www.customs.gov*. For information on embargoes and quota re-openings, refer to the Office of Textiles and Apparel website at *http://otexa.ita.doc.gov*.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The import restraint limits for textile products, produced or manufactured in Pakistan and exported during the period January 1, 2004 through December 31, 2004 are based on limits notified to the Textiles Monitoring Body pursuant to the Uruguay Round Agreement on Textiles and Clothing (ATC).

In the letter published below, the Chairman of CITA directs the Commissioner, Bureau of Customs and Border Protection to establish the 2004 limits.

Carryforward that has been applied to the 2003 limits is being deducted from the 2004 limits.

These limits are subject to adjustment pursuant to the provisions of the ATC and administrative arrangements notified to the Textiles Monitoring Body. However, as the ATC and all restrictions thereunder will terminate on January 1, 2005, no adjustment for carryforward (borrowing from next year's limits for use in the current year) will be available.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 68 FR 1599, published on January 13, 2003). Information regarding the availability of the 2004 CORRELATION will be published in the **Federal Register** at a later date.

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

December 3, 2003.

Commissioner,
Bureau of Customs and Border Protection, Washington, DC 20229.

Dear Commissioner: Pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended; and the Uruguay Round Agreement on Textiles and Clothing (ATC), you are directed to prohibit, effective on January 1, 2004, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton and man-made fiber textile products in the following categories, produced or manufactured in Pakistan and exported during the twelve-month period beginning on January 1, 2004 and extending through December 31, 2004, in excess of the following limits:

Category	Twelve-month restraint limit
Specific limits	
219	15,753,418 square meters.
226/313	209,446,767 square meters.
237	766,188 dozen.
239pt. [1]	3,308,962 kilograms.
314	11,457,029 square meters.
315	132,367,690 square meters.
317/617	61,568,153 square meters.
331pt./631pt. [2]	1,154,600 dozen pairs.
334/634	520,435 dozen.
335/635	803,709 dozen.
336/636	919,428 dozen.
338	7,440,057 dozen.
339	2,604,418 dozen.
340/640	1,225,903 dozen of which not more than 459,713 dozen shall be in Categories 340–D/640–D [3].
341/641	1,586,011 dozen.
342/642	682,604 dozen.
347/348	1,443,013 dozen.
351/651	704,893 dozen.
352/652	1,532,378 dozen.

Category	Twelve-month restraint limit
359–C/659–C[4]	2,758,281 kilograms.
360	9,323,231 numbers.
361	10,840,965 numbers.
363	69,203,441 numbers.
369–S[5]	1,328,942 kilograms.
613/614	41,472,382 square meters.
615	44,119,547 square meters.
625/626/627/628/629	135,692,020 square meters of which not more than 67,846,012 square meters shall be in Category 625; not more than 67,846,012 square meters shall be in Category 626; not more than 67,846,012 square meters shall be in Category 627; not more than 14,037,107 square meters shall be in Category 628; and not more than 67,846,012 square meters shall be in Category 629.
638/639	906,896 dozen.
647/648	1,719,441 dozen.
666–P[6]	1,255,461 kilograms.
666–S[7]	6,646,555 kilograms.

[1] Category 239pt.: only HTS number 6209.20.5040 (diapers).

[2] Category 331pt.: all HTS numbers except 6116.10.1720, 6116.10.4810, 6116.10.5510, 6116.10.7510, 6116.92.6410, 6116.92.6420, 6116.92.6430, 6116.92.6440, 6116.92.7450, 6116.92.7460, 6116.92.7470, 6116.92.8800, 6116.92.9400 and 6116.99.9510; Category 631pt.: all HTS numbers except 6116.10.1730, 6116.10.4820, 6116.10.5520, 6116.10.7520, 6116.93.8800, 6116.93.9400, 6116.99.4800, 6116.99.5400 and 6116.99.9530.

[3] Category 340–D: only HTS numbers 6205.20.2015, 6205.20.2020, 6205.20.2025 and 6205.20.2030; Category 640–D: only HTS numbers 6205.30.2010, 6205.30.2020, 6205.30.2030, 6205.30.2040, 6205.90.3030 and 6205.90.4030.

[4] Category 359–C: only HTS numbers 6103.42.2025, 6103.49.8034, 6104.62.1020, 6104.69.8010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025 and 6211.42.0010; Category 659–C: only HTS numbers 6103.23.0055, 6103.43.2020, 6103.43.2025, 6103.49.2000, 6103.49.8038, 6104.63.1020, 6104.63.1030, 6104.69.1000, 6104.69.8014, 6114.30.3044, 6114.30.3054, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.9010, 6211.33.0010, 6211.33.0017 and 6211.43.0010.

[5] Category 369–S: only HTS number 6307.10.2005.

[6] Category 666–P: only HTS numbers 6302.22.1010, 6302.22.1020, 6302.22.2010, 6302.32.1010, 6302.32.1020, 6302.32.2010 and 6302.32.2020.

[7] Category 666–S: only HTS numbers 6302.22.1030, 6302.22.1040, 6302.22.2020, 6302.32.1030, 6302.32.1040, 6302.32.2030 and 6302.32.2040.

The limits set forth above are subject to adjustment pursuant to the provisions of the ATC and administrative arrangements notified to the Textiles Monitoring Body.

Products in the above categories exported during 2003 shall be charged to the applicable category limits for that year (see directive dated November 1, 2002) to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such products shall be charged to the limits set forth in this directive.

In carrying out the above directions, the Commissioner, Bureau of Customs and Border Protection should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc.03–30481 Filed 12–8–03; 8:45 am]

BILLING CODE 3510–DR–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Restraint Limits for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in Poland

December 3, 2003.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner, Bureau of Customs and Border Protection establishing limits.

EFFECTIVE DATE: January 1, 2004.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the Bureau of Customs and Border Protection website at http://www.customs.gov. For information on embargoes and quota re-openings, refer to the Office of Textiles and Apparel website at http://otexa.ita.doc.gov.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The import restraint limits for textile products, produced or manufactured in Poland and exported during the period January 1, 2004 through December 31, 2004 are based on the limits notified to the Textiles Monitoring Body pursuant to the Uruguay Round Agreement on Textiles and Clothing (ATC).

In the letter published below, the Chairman of CITA directs the Commissioner, Bureau of Customs and Border Protection to establish the limits for the 2004 period.

These limits are subject to adjustment pursuant to the provisions of the ATC and administrative arrangements notified to the Textiles Monitoring Body. However, as the ATC and all restrictions thereunder will terminate on January 1, 2005, no adjustment for carryforward (borrowing from next year's limits for use in the current year) will be available.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 68 FR 1599, published on January 13, 2004). Information regarding the 2004 CORRELATION will be published in the **Federal Register** at a later date.

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

December 3, 2003.

Commissioner,

Bureau of Customs and Border Protection, Washington, DC 20229.

Dear Commissioner: Pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended; and the Uruguay Round Agreement on Textiles and Clothing (ATC), you are directed to prohibit, effective on January 1, 2004, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool and man-made fiber textile products in the following categories, produced or manufactured in Poland and exported during the twelve-month period beginning on January 1, 2004 and extending through December 31, 2004, in excess of the following levels of restraint:

Category	Twelve-month restraint limit
335	367,798 dozen.
338/339	3,960,929 dozen.
410	2,993,198 square meters.
433	21,137 dozen.

Category	Twelve-month restraint limit
434	11,529 dozen.
435	15,086 dozen.
443	251,429 numbers.
611	11,321,188 square meters.
645/646	579,994 dozen.

The limits set forth above are subject to adjustment pursuant to the provisions of the ATC and administrative arrangements notified to the Textiles Monitoring Body.

Products in the above categories exported during 2003 shall be charged to the applicable category limits for that year (see directive dated November 1, 2002) to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such products shall be charged to the limits set forth in this directive.

In carrying out the above directions, the Commissioner, Bureau of Customs and Border Protection should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 03–30482 Filed 12–8–03; 8:45 am]

BILLING CODE 3510–DR–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Restraint Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Qatar

December 3, 2003.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner, Bureau of Customs and Border Protection establishing limits.

EFFECTIVE DATE: January 1, 2004.

FOR FURTHER INFORMATION CONTACT: Roy Unger, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the Bureau of Customs and Border Protection Web site at *http://www.customs.gov*. For information on embargoes and quota re-openings, refer to the Office of Textiles and Apparel website at *http://otexa.ita.doc.gov*.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The import restraint limits for textile products, produced or manufactured in Qatar and exported during the period January 1, 2004 through December 31, 2004 are based on limits notified to the Textiles Monitoring Body pursuant to the Uruguay Round Agreement on Textiles and Clothing (ATC).

In the letter published below, the Chairman of CITA directs the Commissioner, Bureau of Customs and Border Protection to establish the limits for the 2004 period.

These limits are subject to adjustment pursuant to the provisions of the ATC and administrative arrangements notified to the Textiles Monitoring Body. However, as the ATC and all restrictions thereunder will terminate on January 1, 2005, no adjustment for carryforward (borrowing from next year's limits for use in the current year) will be available.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 68 FR 1599, published on January 13, 2003). Information regarding the 2004 CORRELATION will be published in the **Federal Register** at a later date.

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

December 3, 2003.

Commissioner,

Bureau of Customs and Border Protection, Washington, DC 20229.

Dear Commissioner: Pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended; and the Uruguay Round Agreement on Textiles and Clothing (ATC), you are directed to prohibit, effective on January 1, 2004, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton and man-made fiber textile products in the following categories, produced or manufactured in Qatar and exported during the twelve-month period beginning on January 1, 2004 through December 31, 2004, in excess of the following levels of restraint:

Category	Twelve-month restraint limit
340/640	806,934 dozen.
341/641	372,431 dozen.
347/348	918,663 dozen.

The limits set forth above are subject to adjustment pursuant to the provisions of the ATC and administrative arrangements notified to the Textiles Monitoring Body.

Products in the above categories exported during 2003 shall be charged to the applicable category limits for that year (see directive dated November 1, 2002) to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such products shall be charged to the limits set forth in this directive.

In carrying out the above directions, the Commissioner, Bureau of Customs and Border Protection should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 03–30483 Filed 12–8–03; 8:45 am]

BILLING CODE 3510–DR–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of an Import Limit for Certain Wool Textile Products Produced or Manufactured in Russia

December 3, 2003.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner, Bureau of Customs and Border Protection establishing a limit.

EFFECTIVE DATE: January 1, 2004.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the Bureau of Customs and Border Protection Web site at *http://www.customs.gov*. For information on embargoes and quota re-openings, refer to the Office of Textiles and Apparel website at *http://otexa.ita.doc.gov*.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The Bilateral Textile Agreement, effected by exchange of notes dated August 13, 1996 and September 9, 1996, as amended on February 26, 2001, and April 30, 2001, between the Governments of the United States and the Russian Federation establishes a limit for wool textile products in Category 435 for the period January 1, 2004 through December 31, 2004.

In the letter published below, the Chairman of CITA directs the Commissioner, Bureau of Customs and Border Protection to establish the limit for the period January 1, 2004 through December 31, 2004.

This limit may be revised if Russia becomes a member of the World Trade Organization (WTO) and the United States applies the WTO agreement to Russia.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 68 FR 1599, published on January 13, 2003). Information regarding the availability of the 2004 CORRELATION will be published in the **Federal Register** at a later date.

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

December 3, 2003.

Commissioner,
Bureau of Customs and Border Protection, Washington, DC 20229.

Dear Commissioner: Pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended; and the Bilateral Textile Agreement, effected by exchange of notes dated August 13, 1996 and September 9, 1996, as amended on February 26, 2001, and April 30, 2001, between the Governments of the United States and the Russian Federation, you are directed to prohibit, effective on January 1, 2004, entry into the United States for consumption and withdrawal from warehouse for consumption of wool textile products in Category 435, produced or manufactured in Russia and exported during the period beginning on January 1, 2004 and extending through December 31, 2004, in excess of 58,583, dozen.[1]

[1] The limit set forth above is subject to adjustment pursuant to the current bilateral agreement between the Governments of the United States and the Russian Federation.

Products in the above category exported during 2003 shall be charged to the applicable category limit for that year (see directive dated November 1, 2002) to the extent of any unfilled balance. In the event the limit established for that period has been exhausted by previous entries, such products shall be charged to the limit set forth in this directive.

This limit may be revised if Russia becomes a member of the World Trade Organization (WTO) and the United States applies the WTO agreement to Russia.

In carrying out the above directions, the Commissioner, Bureau of Customs and Border Protection should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception of the rulemaking provisions of 5 U.S.C.553(a)(1).

Sincerely,
James C. Leonard III,
Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc.03–30484 Filed 12–8–03; 8:45 am]

BILLING CODE 3510–DR–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Restraint Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Oman

December 3, 2003.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner, Bureau of Customs and Border Protection establishing limits.

EFFECTIVE DATE: January 1, 2004.

FOR FURTHER INFORMATION CONTACT: Roy Unger, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the Bureau of Customs and Border Protection Web site at *http://www.customs.gov*. For information on embargoes and quota re-openings, refer to the Office of Textiles and Apparel Web site at *http://otexa.ita.doc.gov*.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The import restraint limits for textile products, produced or manufactured in Oman and exported during the period January 1, 2004 through December 31, 2004 are based on limits notified to the Textiles Monitoring Body pursuant to the Uruguay Round Agreement on Textiles and Clothing (ATC).

In the letter published below, the Chairman of CITA directs the Commissioner, Bureau of Customs and Border Protection to establish limits for the 2004 period.

These limits are subject to adjustment pursuant to the provisions of the ATC and administrative arrangements notified to the Textiles Monitoring Body. However, as the ATC and all restrictions thereunder will terminate on January 1, 2005, no adjustment for carryforward (borrowing from next year's limits for use in the current year) will be available.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 68 FR 1599, published on January 13, 2003). Information regarding the 2004 CORRELATION will be published in the **Federal Register** at a later date.

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

December 3, 2003.

Commissioner,
Bureau of Customs and Border Protection, Washington, DC 20229.

Dear Commissioner: Pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended; and the Uruguay Round Agreement on Textiles and Clothing (ATC), you are directed to prohibit, effective on January 1, 2004, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton and man-made fiber textile products in the following categories, produced or manufactured in Oman and exported during the twelve-month period beginning on January 1, 2004 and extending through December 31, 2004, in excess of the following levels of restraint:

Category	Twelve-month restraint limit
334/634	190,357 dozen.
335/635	402,819 dozen.
338/339	835,850 dozen.
340/640	402,819 dozen.
341/641	302,113 dozen.
347/348	1,440,076 dozen.
647/648	569,494 dozen.

The limits set forth above are subject to adjustment pursuant to the provisions of the ATC and administrative arrangements notified to the Textiles Monitoring Body.

Products in the above categories exported during 2003 shall be charged to the applicable category limits for that year (see directive dated November 1, 2002) to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such products shall be charged to the limits set forth in this directive.

In carrying out the above directions, the Commissioner, Bureau of Customs and Border Protection should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,
James C. Leonard III,
Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. E3–00488 Filed 12–8–03; 8:45 am]

BILLING CODE 3510–DR–S

DEPARTMENT OF DEFENSE

Office of the Secretary

Supplemental Record of Decision to Conduct Target Launches From Kodiak Launch Complex in Support of the Ground-Based Midcourse Defense Extended Test Range

AGENCIES: Department of Defense, Missile Defense Agency (MDA); Federal Aviation Administration (FAA), Office of the Associate Administrator for Commercial Space Transportation.

ACTION: Notice; Record of Decision (ROD).

SUMMARY: The MDA is issuing this Supplemental ROD to conduct target launches from the Kodiak Launch Complex (KLC) to support the Ground-Based Midcourse Defense (GMD) Extended Test Range (ETR).

FOR INFORMATION CONTACT: For further information on the GMD ETR Environmental Impact Statement (EIS) or this ROD contact Ms. Julia Hudson-Elliot, U.S. Army Space and Missile Defense Command, Attn: SMDC–EN–V, P.O. Box 1500, Huntsville, Alabama 35807–3801.

Public reading copies of the GMD ETR Final EIS, the ROD, and the supplemental ROD are available for review at the public libraries within the communities near proposed activities listed below, and on the MDA Internet site: *http://www.acq.osd.mil./bmdo/*.

- Anchorage Municipal Library, 3600 Denali St., Anchorage, AK 99503
- Kodiak City Library, 319 Lower Mill Bay Rd., Kodiak, AK 99615
- Mountain View Branch Library, 150 S. Bragaw St., Anchorage, AK 99508

SUPPLEMENTARY INFORMATION:

MDA Decision

This ROD selects the remaining portions of the activities proposed in Alternative 2 of the EIS regarding KLC. Those activities include the capability to conduct dual target launches from KLC.

Background

The MDA prepared the GMD ETR EIS to analyze potential impacts on the environment posed by proposed operationally realistic testing in the ETR.

On August 13, 2003, the MDA issued a ROD based on analysis contained in the GMD ETR EIS, **Federal Register**, August 26, 2003 (Volume 68, Number 165), Page 51251–56. The MDA Director considered the information contained within the GMD ETR EIS as well as cost, mission requirements, and other factors in deciding to establish a GMD extended test range capability, to provide for the construction and operation of a Sea-Based-Band Radar (SBX), and to select the location of the SBX Primary Support Base (PSB). That ROD selected portions of Alternative 2, as examined in the EIS, that included the capability to conduct single and dual launches of interceptor and target missiles from the Ronald Reagan Ballistic Missile Defense Test Site (RTS) and Vandenberg Air Force Base (AFB).

At the time when the ROD was signed, the FAA was contemplating re-licensing activities at KLC. Accordingly, MDA deferred the KLC portion of Alternative 2 to ensure FAA re-licensing posed no additional issues. On September 12, 2003, the FAA issued a new license for KLC activities. MDA is now issuing this supplemental ROD regarding the deferred KLC portion of Alternative 2.

NEPA Process

The GMD ETR EIS was prepared pursuant to the Council on Environmental Quality (CEQ) regulation implementing the National Environmental Policy Act (NEPA) (40 CFR parts 1500–1508), DoD Instruction 4715.9, and applicable service environmental regulations that implement these laws and regulations.

The Notice of Intent (NOI) to prepare an EIS for the GMD ETR was published in the **Federal Register** on March 28, 2003, initiating the public scoping process. Public scoping meetings were held from April to December 2002 in eight communities perceived to be affected by the proposed GMD ETR. The Notice of Availability (NOA) of the GMD ETR Draft EIS was published in the **Federal Register** on February 7, 2003. This initiated a public review and comment period for the Draft EIS. Seven public hearings were held in February and March 2003. Comments on the Draft EIS were considered in the preparation of the Final EIS. The NOA for the Final EIS was published in the **Federal Register** on July 15, 2003, initiating an additional 30-day review period. A ROD was signed on August 13, 2003, selecting Alternative 2 described in the EIS, while deferring a decision on the KLC portion of Alternative 2. The ROD is the culmination of the NEPA process.

Alternatives Considered

During the EIS process, alternatives to the proposed action were considered including the No-Action Alternative. Alternatives were organized around potential additional interceptor launch sites to complement the current test scenarios with interceptor launches from RTS. Interceptor missiles would be launched from KLC under Alternative 1, from Vandenberg AFB under Alternative 2, and from both locations under Alternative 3. For details of the alternatives considered, refer to **Federal Register,** August 26, 2003 (Volume 68, Number 165), pages 51251–51256.

Environmental Impacts of Alternatives

The GMD ETR EIS analyzed the environment in terms of 14 resource areas: Air quality, airspace, biological resources, cultural resources, geology and soils, hazardous materials and hazardous waste, health and safety, land use, noise, socioeconomic, transportation, utilities, visual and aesthetic resources, and water resources. Subsistence resources were also considered for potential sites in Alaska. Environmental Justice was addressed separately. Each resource area was discussed at each location as applicable. The potential for cumulative impacts was also evaluated in the EIS.

The impacts of the various alternatives are summarized in depth in Tables ES–1 A, ES1B, and Tables ES 2 through ES II in the Fianl ETR EIS (available on the MDA Internet site: *http://www.acq.osd.mi./bmdo/*). The following is a short summary of the potential impacts of the alternatives at KLC, including the NO-Action Alternative:

Kodiak Launch Complex

a. *Air Quality.* Under the No-Action Alternative, single target and commercial launches would continue.

Under Alternative 2 (the Selected Alternative), a minimal increase in air emissions from dual target launches, support facilities construction, and operation of mobile telemetry will not affect the region's current attainment status. The results of modeling a dual Peacekeeper target launch to determine exhaust emissions of aluminum oxide, hydrogen chloride, and carbon monoxide show that the level of hydrogen chloride will be below the 1-hour Air Force standard, but will exceed the peak hydrogen chloride standard for a short duration. Other emissions were determined to be within National Ambient Air Quality Standards (NAAQS) and Alaska Ambient Air Quality Standards (AAQS). A single Peacekeeper target launch would be within NAAQS, Alaska AAQS, and U.S. Air Force standards. Significant air quality impacts due to target launches are not anticipated. Under Alternative 1, the impacts would be the same as Alternative 2 with the addition of GBI silo construction and GBI launches. The results of modeling to determine exhaust emissions of aluminum oxide, hydrogen chloride, and carbon monoxide show that concentrations produced by dual launches of a Ground-Based Interceptor would remain within NAAQS, Alaska AAQS, and U.S. Air Force standards Significant air quality impacts due to Ground-Based Interceptor (GBI) launches are not anticipated. Alternative 3 would have the same impacts as Alternative 1.

b. *Biological Resources.* Under the No-Action Alternative, temporary effects to vegetation from emissions, discoloration, and foliage loss and temporary, short-term startle effects from noise to wildlife and birds would be possible during testing. Although a remote possibility, individual animals close to the water's surface could be hit by debris. Under Alternative 2 (the Selected Alternative), loss of small amounts of mainly upland vegetation will occur due to construction. Fence lines will be altered to avoid impacts to wetlands. Testing impacts will be similar to those noted in the No Action Alternative. Mobile sensors necessary to support GMD ETR activities will be located on existing disturbed areas with minimal effect to biological resources. Under Alternative 1, the impacts would be the same as Alternative 2, plus additional acreage would be disturbed from GBI silo construction and the addition of dual GBI launches. Alternative 3 would have the same impacts as Alternative 1.

c. *Hazardous Materials and Hazardous Waste.* Under the No-Action Alternative, continued handling and use of limited quantities of hazardous and toxic materials related to pre-launch, launch, and post-launch activities would generate small quantities of hazardous waste. Under Alternative 2 (Selected Alternative), the single and dual target launch activities and support facilities construction will use small quantities of hazardous materials, which will result in the generation of some hazardous and non-hazardous waste that will be similar to current operations. All hazardous materials and waste will be handled in accordance with applicable state and federal regulations. No impact from short-term operation of mobile sensors at existing gravel pad areas are expected. Under Alternative 1, the impacts would be the same as Alternative 2, plus additional construction for IGBI silos and the addition of dual GBI launches. Hazardous materials and hazardous waste handling and potential impacts from the addition of GBI construction and launches would be similar to Alternative 2. Alternative 3 would have the similar impacts as Alternative 1.

d. *Health and Safety.* Under the No-Action Alternative, planning and execution of target and commercial launches would continue. Ground and Launch Hazard Areas, Notices to Airmen, Notices to Mariners, and program Safety plans would protect workers and the general public. Under Alternative 2 (Selected Alternative) planning and execution of single and dual target launches will include establishing Ground and Launch Hazard Areas, issuing Notices to Airmen and Notices to Mariners, and adherences to program Safety plans. These actions will be in compliance with federal, state, and local health and safety requirements and regulations, as well as Department of Defense and KLC Safety Policy and will result in no significant impacts to health and safety. Due to the same precautions taken above, Alternative 1 and 3 would also result in no significant impacts to health and safety.

e. *Land Use.* Under the No-Action Alternative, publication of availability of KLC's beaches and coastline would continue. Under Alternative 2 (Selected Alternative), minimal impacts will occur as a result of site preparation and new construction. This activity will limit the use of a small portion of the overall land available for livestock grazing. Only temporary closures during the transportation of missile components to the launch facilities and up to a full day closure on launch days will occur for the Pasagshak Point Road at the KLC site boundary. Under Alternative 1, the proposed activities would result in impacts similar to Alternative 2, and would not significantly impact the availability of recreational opportunities. Impacts under Alternative 3 would be the same as Alternative 1.

f. *Water Resources.* Under the No-Action Alternative, missile launches would continue to disperse exhaust emission products over a large area. These emissions would not cause a significant water quality impact, and water quality monitoring would continue on an as-needed basis. Under Alternative 2 (Selected Alternative), there is a minor potential for short-term increase in erosion and turbidity of surface waters during construction. Missile launches will disperse exhaust emission products over a large area. These emissions will not cause a significant water quality impact. Water quality monitoring will continue on an as-needed basis. Under Alternative 1, the impacts would be similar as Alternative 2, plus additional construction for GBI silos and the addition of dual GBI launches. Potential impacts from the addition of GBI construction and launches would be similar to Alternative 2. Alternative 3 would have the similar impacts as Alternative 1.

F. Mitigation Measures and Monitoring

The applicable mitigation measures specified for each of the sites selected will be implemented as part of the GMD ETR action. A Mitigation Monitoring Plan has been developed to assist in tracking and implementing these mitigation measures. With the implementation of the mitigation measures, all practicable means to avoid or minimize environmental harm from establishing the GMD ETR considered in this ROD have adopted.

G. Environmentally Preferred Alternative

The environmentally preferred alternative in the EIS is the No-Action Alternative (not proceeding with the GMD ETR), since there would be no new construction or operation of GMD elements at any of the potential sites. Continuation of current site operations at these locations would result in few additional environmental impacts.

Among the three alternatives in the EIS, Alternative 2 is the environmentally preferred action to establish and operate the GMD ETR. The activities proposed in Alternative 2 for KLC will require less construction and ground disturbance than the other alternatives.

Conclusion

In accordance with NEPA, Lieutenant General Kadish considered the information contained within the GMD ETR EIS as well as cost, mission requirements and other factors in deciding to establish and extended GMD test range capability at KLC.

He previously chose Alternative 2, and deferred the portion of Alternative 2 regarding activities at KLC until the FAA re-licensing activity occurred. After his review of this action, he is satisfied that all concerns have been addressed, and is accordingly issuing this supplemental ROD regarding KLC.

Dated: December 3, 2003.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 03–30395 Filed 12–8–03; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0115]

Federal Acquisition Regulation; Submission for OMB Review; Notification of Ownership Changes

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for public comments regarding a reinstatement to OMB clearance (9000–0115).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning notification of ownership changes. A request for public comments was published in the **Federal Register** at 68 FR 48602 on August 14, 2003. No comments were received.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

DATES: Submit comments on or before January 8, 2004.

ADDRESSES: Submit comments, including suggestions for reducing this burden to the General Services Administration, FAR Secretariat (MVA), 1800 F Street, NW., Room 4035, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Edward Loeb, Policy Advisor, Office of Acquisition Policy, GSA, (202) 501–0650.

SUPPLEMENTARY INFORMATION:

A. Purpose

Allowable costs of assets are limited in the event of change in ownership of a contractor. Contractors are required to provide the Government adequate and timely notice of this event per the FAR clause at 52.215–19, Notification of Ownership Changes.

B. Annual Reporting Burden

Respondents: 100.

Responses Per Respondent: 1.

Total Responses: 100.

Hours Per Response: 125.

Total Burden Hours: 125.

Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, FAR Secretariat (MVA), Room 4035, 1800 F Street, NW., Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0115, Notification of Ownership Changes, in all correspondence.

Dated: December 2, 2003.

Ralph J. Destefano,

Acting Director, Acquisition Policy Division.

[FR Doc. 03–30343 Filed 12–8–03; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0034]

Federal Acquisition Regulation; Submission for OMB Review; Examination of Records by Comptroller General and Contract Audit

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for public comments regarding a reinstatement to OMB clearance (9000–0034).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning examination of records by comptroller general/audit-negotiation now retitled examination of records by comptroller general and contract audit. A request for public comments was published in the **Federal Register** at 68 FR 47913 on August 12, 2003. No comments were received.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

DATES: Submit comments on or before January 8, 2004.

ADDRESSES: Submit comments, including suggestions for reducing this burden, to the General Services Administration, FAR Secretariat (MVA), 1800 F Street, NW., Room 4035, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Edward Loeb, Policy Advisor, Office of Acquisition Policy, GSA, (202) 501–0650.

SUPPLEMENTARY INFORMATION:

A. Purpose

The Audit and Records-Negotiation clause, 52.215–2; Contract Terms and Conditions Required to Implement Statutes or Executive Orders-Commercial Items clause, 52.212–5(d); and Audit and Records-Sealed Bidding clause, 52.214–26, implement the requirements of 10 U.S.C. 2313, 41 U.S.C. 254, and 10 U.S.C. 2306. The statutory requirements are that the Comptroller General and/or agency shall have access to, and the right to, examine certain books, documents and records of the contractor for a period of 3 years after final payment. The record retention periods required of the contractor in the clauses are for compliance with the aforementioned statutory requirements. The information must be retained so that audits necessary for contract surveillance, verification of contract pricing, and reimbursement of contractor costs can be performed.

B. Annual Reporting Burden

Respondents: 19,142.
Responses Per Respondent: 20.
Total Responses: 382,840.
Hours Per Response: 0.167.
Total Burden Hours: 63,934.
Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, FAR Secretariat (MVA), 1800 F Street, NW., Room 4035, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0034, Examination of Records by Comptroller General and Contract Audit in all correspondence.

Dated: December 2, 2003.

Ralph J. Destefano,

Acting Director, Acquisition Policy Division.

[FR Doc. 03–30344 Filed 12–8–03; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0157]

Federal Acquisition Regulation; Submission for OMB Review; Consolidated Form for Selection of Architect-Engineer Contracts (SF 330)

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for public comments regarding an extension to an existing OMB clearance (9000–0157).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning consolidated form for selection of architect-engineer and contracts (SF 330). A request for public comments was published at 68 FR 55375 on September 25, 2003. No comments were received.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

DATES: Submit comments on or before January 8, 2004.

ADDRESSES: Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to the General Services Administration, FAR Secretariat (MVA), 1800 F Street, NW, Room 4035, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Cecelia Davis, Acquisition Policy Division, GSA (202) 219–0202.

SUPPLEMENTARY INFORMATION:

A. Purpose

Standard Form 330, Part I is used by all Executive agencies to obtain information from architect-engineer firms interested in a particular project. The information on the form is reviewed by a selection panel composed of professional people and assists the panel in selecting the most qualified architect-engineer firm to perform the specific project. The form is designed to provide a uniform method for architect-engineer firms to submit information on experience, personnel, capabilities of the architect-engineer firm to perform along with information on the consultants they expect to collaborate with on the specific project.

Standard Form 330, Part II is used by all Executive agencies to obtain general uniform information about a firm's experience in architect-engineering projects. Architect-engineer firms are encouraged to update the form annually. The information obtained on this form is used to determine if a firm should be solicited for architect-engineer projects.

B. Annual Reporting Burden

Respondents: 5,000.
Responses Per Respondent: 4.
Total Responses: 20,000.
Hours Per Response: 29.
Total Burden Hours: 580,000.
Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, FAR Secretariat (MVA), Room 4035, 1800 F Street, NW, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0157, Consolidated Form for Selection of Architect-Engineer Contracts (SF 330), in all correspondence.

Dated: December 3, 2003.

Laura Auletta,

Director, Acquisition Policy Division.

[FR Doc. 03–30469 Filed 12–8–03; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

Office of the Inspector General; Privacy Act of 1974; System of Records

AGENCY: Office of the Inspector General, DoD.

ACTION: Notice to add a System of Records.

SUMMARY: The Office of the Inspector General, DoD is proposing to add an exempt system of records to its existing inventory of record systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

The exemption is needed because during the course of processing a Congressional inquiry, exempt materials from other systems of records may become part of the records in this system. To the extent that copies of exempt records from those "other" systems of records are entered into the Congressional case records, the Office of the Inspector General, DoD, hereby claims the same exemptions for the records from those other systems that are entered into this system, as claimed for the original primary systems of records, which they are a part.

Therefore, the Inspector General, DoD is proposing to exempt the system of records CIG–21, entitled, "Congressional Correspondence Tracking System" from 5 U.S.C. 552a(j)(2), (k)(1) through (k)(7).

DATES: This proposed action is effective without further notice on January 8, 2004 unless comments are received which result in a contrary determination.

ADDRESSES: Send comments to Office of the Inspector General, Department of Defense, 400 Army Navy Drive, Room 223; Arlington, VA 22202–4704.

FOR FURTHER INFORMATION CONTACT: Mr. Darryl R. Aaron at (703) 604–9785.

SUPPLEMENTARY INFORMATION: The Inspector General, DoD, systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The proposed system report, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, was submitted on November 17, 2003, to the House Committee on Government Reform, the Senate Committee on Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, "Federal Agency Responsibilities for Maintaining Records About Individuals," dated February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: November 20, 2003.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

CIG–21

SYSTEM NAME:

Congressional Correspondence Tracking System.

SYSTEM LOCATION:

Office of Communications and Congressional Liaison, Office of the Inspector General of the Department of Defense, 400 Army Navy Drive, Arlington, VA 22202–4704.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Any individual who contacts a member of Congress requesting that the member solicit information from the Office of the Inspector General of the Department of Defense (OIG DoD) on their behalf.

CATEGORIES OF RECORDS IN THE SYSTEM:

Correspondence and related records from and to members of Congress pertaining to requests for congressional assistance in resolving problems. Records contain representative's name, constituent's name, subject matter, and case control number. The records may also contain the constituent's Social Security Number, home address, home telephone number, or related personal information provided by the representative making the inquiry.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The Inspector General Act of 1978 (Pub. L. 95–452), as amended; DoD Directive 5106.1, Inspector General of the Department of Defense; OIG Regulation 5545.1, Participation in Congressional Activities; and E.O. 9397 (SSN).

PURPOSE(S):

To maintain a record of all Congressional inquiries and the OIG, DoD response, and to conduct the necessary research so as to provide information responsive to Congressional inquiries.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The DoD "Blanket Routine Uses" set forth at the beginning of the OIG compilation of system of records notices also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper and electronic records are stored in file folders, safes, computerized index listings and electronic storage media on local area network.

RETRIEVABILITY:

Retrieved by constituent's name, representative's name, or by case control number(s).

SAFEGUARDS:

Records are secured in a locked or guarded building and locked cabinets during non-duty hours. Paper records are stored in file cabinets located in an office suite, accessible only to OIG DoD personnel who must use the records to perform their duties.

Computer systems in which records reside are protected through the use of assigned user identification(s) and multiple levels of passwords restricting access.

RETENTION AND DISPOSAL:

Records are permanent. Retire to the Washington National Records Center. Transfer to National Archives in two-year blocks when most recent record is 8 years old.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Office of Communications and Congressional Liaison, Office of the Inspector General of the Department of Defense, 400 Army Navy Drive, Arlington, VA 22202–4704.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Director, Office of Communications and Congressional Liaison, Office of the Inspector General of the Department of Defense, 400 Army Navy Drive, Arlington, VA 22202–4704.

Written requests should contain the individual's full name, all former names and alias under which the file may be maintained and signature.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this system of records should address written requests to the Chief, Freedom of Information Act/Privacy Act Office, 400 Army Navy Drive, Arlington, VA 22202–4704.

Written requests should contain the individual's full name, all former names and alias under which the file may be maintained and signature.

CONTESTING RECORD PROCEDURES:

The OIG's rules for accessing records and for contesting contents and appealing initial agency determinations are published in 32 CFR part 312 or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

The files are composed of correspondence or memoranda from Members of Congress or their staffs.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

During the course of processing a Congressional inquiry, exempt materials from other systems of records may in turn become part of the case records in this system. To the extent that copies of exempt records from those "other" systems of records are entered into this system of records, the Office of the Inspector General, DoD hereby claims the same exemptions for the records from those "other" systems that are entered into this system, as claimed for the original primary systems of records which they are a part.

An exemption rule for this system has been promulgated in accordance with

requirements of 5 U.S.C. 553 (b) (1), (2), and (3), (c) and (e) and published in 32 CFR part 312. For additional information contact the system manager.

[FR Doc. 03–30397 Filed 12–8–03; 8:45 am]
BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Air Force

Privacy Act of 1974; System of Records

AGENCY: Department of the Air Force, DoD.

ACTION: Notice to add a system of records.

SUMMARY: The Department of the Air Force is proposing to add a system of records notice to its inventory of records systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended. The proposed system of records will be exempt to increase its value for law enforcement purposes.

DATES: The actions will be effective on January 8, 2004 unless comments are received that would result in a contrary determination.

ADDRESSES: Send comments to the Air Force FOIA/Privacy Manager, AF–CIO/P, 1155 Air Force Pentagon, Washington, DC 20330–1155.

FOR FURTHER INFORMATION CONTACT: Mrs. Anne P. Rollins at (703) 601–4043.

SUPPLEMENTARY INFORMATION: The Department of the Air Force's record system notices for records systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The proposed system report, as required by 5 U.S.C. 522a(r) of the Privacy Act of 1974, as amended, was submitted on November 17, 2003, to the House Committee on Government Reform, the Senate Committee on Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, 'Federal Agency Responsibilities for Maintaining Records About Individuals,' dated February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: November 20, 2003.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

F071 JTF A

SYSTEM NAME:

Computer Network Crime Case System.

SYSTEM LOCATION:

Law Enforcement and Counterintelligence Center, Joint Task Force—Computer Network Operations, 701 South Courthouse Road, Arlington, VA 22204–2164.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Active duty, retired or former military personnel; current, retired and former civilian employees; dependents of military personnel; and other Department of Defense employees and contractors, both current and former; United States citizens in the United States and abroad; legal aliens; and foreign nationals residing in the U.S. and abroad, who are suspected of violating some law, regulation or directive related to computer network crimes.

CATEGORIES OF RECORDS IN THE SYSTEM:

Reports of investigation, statements of individuals, correspondence, and other informational material pertaining to specific law enforcement and counterintelligence investigations of alleged violations of laws, regulations or directives related to computer network crimes. Name(s) or aliases of the subject, group affiliation (if any), civilian or military status, trusted status, and whether or not the individual is a juvenile.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 8013, Secretary of the Air Force; E.O. 10450, Security Requirements for Government Employment; The Inspector General Act of 1978 (Pub. L. 95–452), as amended, and DoD Directive 5106.1 (32 CFR part 376); E.O. 13213, Critical Infrastructure Protection in the Information Age; DoD Instruction O–8530.2 Support to Computer Network Defense; DoD Directive 5240.2, DoD Counterintelligence; DoD Directive 5200.27, Acquisition of Information Concerning Persons and Organizations not Affiliated with the Department of Defense.

PURPOSE(S):

To identify and assist in prevention and control of computer network crime and related computer network activity within DoD; aid in attribution of criminal activity; and assist in the development of DoD's network defensive posture.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To the Central Intelligence Agency, the Federal Bureau of Investigation, and other counterintelligence/intelligence agencies in matters pertaining to hostile intelligence and terrorist activities directed against the U.S., its installations, or personnel.

To Department of Justice officials to determine if judicial or administrative action is warranted.

To the U.S. Immigration and Naturalization Service in criminal matters, or matters pertaining to hostile intelligence and terrorist activities directed against the U.S., its allies, its installations, or personnel.

To defense and trial counsels for use in judicial and administrative actions.

To the U.S. Secret Service in conjunction with the protection of the President, Vice President, and other designated high-ranking officials.

To the Department of State and U.S. embassies overseas to provide criminal information affecting U.S. diplomatic relations with foreign nations.

To foreign law enforcement agencies where information sharing agreements exist in criminal matters, or matters pertaining to hostile intelligence and terrorist activities directed against the U.S., its allies, its installations, or personnel.

The DoD 'Blanket Routine Uses' published at the beginning of the Air Force's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained on computers and computer output products.

RETRIEVABILITY:

Records are retrieved by name or alias, group affiliation (if any), organization and case number, and/or "key-word" searches based on case information.

SAFEGUARDS:

Records are accessed by custodian of the record system and by person(s) responsible for servicing the record system in performance of their official duties who are properly screened and cleared for need-to-know. Records are stored in an approved automation system, with "password" protection. Records are controlled by personnel screening and are located in an office environment protected by a security alarm system.

RETENTION AND DISPOSAL:

Records are reviewed annually for retention or disposal and are destroyed/deleted when no longer needed, unless the record has been identified as a matter of permanent record with historical value. Permanent records are retained until eligible for transfer to the National Archives and Records Administration. Records identified for disposal are destroyed by erasing, deleting, degaussing, or over-writing the database; hard copy residue is destroyed by shredding, pulping, macerating, or burning.

SYSTEM MANAGER(S) AND ADDRESS:

Law Enforcement and Counterintelligence Center Records Manager, Law Enforcement and Counterintelligence Center, Joint Task Force—Computer Network Operations, 701 South Courthouse Road, Arlington, VA, 22204–2164.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information on themselves should address inquiries to the Law Enforcement Counterintelligence Center Records Manager, Law Enforcement and Counterintelligence Center, Joint Task Force—Computer Network Operations, 701 South Courthouse Road, Arlington, VA 22204–2164.

The requester must provide a notarized statement or an unsworn declaration made in accordance with 28 U.S.C. 1746, in the following format:

If executed without the United States: I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date). (Signature).

If executed within the United States, its territories, possessions, or commonwealths: I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature).

CONTESTING RECORD PROCEDURES:

The Air Force rules for accessing records, and for contesting and appealing initial agency determinations are published in Air Force Instruction 37–132; 32 CFR part 806b; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From DoD and Military Department records; Federal Agency records; foreign law enforcement agencies, security, intelligence, investigatory, or administrative authorities; state, county, and municipal records; employment records of public schools, colleges, universities, technical and trade schools; hospital records; real estate agencies; credit bureaus; financial institutions which maintain credit information on individuals such as loan and mortgage companies, credit unions, banks, etc.; transportation companies (airlines, railroad, etc.); other private records sources deemed necessary in order to complete an investigation; miscellaneous records such as: telephone directories; city directories; Who's Who in America; Who's Who in Commerce and Industry; Who Knows What, a listing of experts in various fields; American Medical Directory; Martindale-Hubbell Law Directory; U.S. Postal Guide; Insurance Directory; Dunn and Bradstreet; and the U.S. Navy BIDEX (Biographical Index); any other type of miscellaneous records deemed necessary to complete the investigation or inquiry; the interview of individuals who have knowledge of the subject's background and activities; the interview of witnesses, victims, confidential sources, and or other individuals deemed necessary to complete the investigation.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Parts of this system may be exempt pursuant to 5 U.S.C. 552a(j)(2) if the information is compiled and maintained by a component of the agency that performs as its principle function any activity pertaining to the enforcement of criminal laws.

Investigatory material compiled for law enforcement purposes, other than material within the scope of subsection 5 U.S.C. 552a(j)(2), may be exempt pursuant to 5 U.S.C. 552a(k)(2). However, if an individual is denied any right, privilege, or benefit for which he would otherwise be entitled by Federal law or for which he would otherwise be eligible, as a result of the maintenance of the information, the individual will be provided access to the information exempt to the extent that disclosure would reveal the identify of a confidential source. NOTE: When claimed, this exemption allows limited protection of investigative reports maintained in a system of records used in personnel or administrative actions.

An exemption rule for this system has been promulgated in accordance with requirements of 5 U.S.C. 553(b)(1), (2), and (3), (c) and (e) published in 32 CFR part 806b. For additional information contact the system manager.

[FR Doc. 03–30399 Filed 12–8–03; 8:45 am]
BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Air Force

Privacy Act of 1974; System of Records

AGENCY: Department of the Air Force, DoD.

ACTION: Notice to amend systems of records.

SUMMARY: The Department of the Air Force is amending a system of records notice in its existing inventory of record systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

DATES: This proposed action will be effective without further notice on January 8, 2004 unless comments are received which result in a contrary determination.

ADDRESSES: Send comments to the Air Force Privacy Act Manager, Office of the Chief Information Officer, AF–CIO/P, 1155 Air Force Pentagon, Washington, DC 20330–1155.

FOR FURTHER INFORMATION CONTACT: Mrs. Anne Rollins at (703) 601–4043.

SUPPLEMENTARY INFORMATION: The Department of the Air Force systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The specific changes to the records systems being amended are set forth below followed by the notices, as amended, published in their entirety. The proposed amendments are not within the purview of subsection (r) of the Privacy Act of 1974; (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: November 20, 2003.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

F044 AF SG E

SYSTEM NAME:

Medical Record System (August 29, 2003, 68 FR 51998).

CHANGES:

* * * * *

RETENTION AND DISPOSAL:

Delete entry and replace with 'While on active duty, the Health Record of a U.S. military member is maintained at the medical unit at which the person receives treatment. On separation or retirement, records are forwarded to the Department of Veterans Affairs, Records Management Center in St. Louis, MO or to the appropriate Veterans Affairs Regional Office if a Veterans Affairs claim has been filed. Records of non-active duty personnel may be hand carried or mailed to the next military medical facility at which treatment will be received or the records are retained at the treating facility until 2 years after the end of the calendar year of the last date of treatment and then retired to the National Personnel Record Center (NPRC) or other designated depository, such as, but not limited to, Medical Director, American Red Cross, Washington, DC 20006 for Red Cross personnel. At NPRC all inpatient, outpatient, and APV records are retained for 50 years after date of last document. In addition, military records sent to the DVA after 1 May 1994 are maintained for 50 years after date of last document.'

* * * * *

F044 AF SG E

SYSTEM NAME:

Medical Record System.

SYSTEM LOCATION:

Headquarters, United States Air Force, Surgeon General (HQ USAF/SG), medical centers, hospitals and clinics, medical aid stations, National Personnel Record Centers, Air National Guard activities, and Air Force Reserve units. Official mailing addresses are published as an appendix to the Air Force compilation of systems notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons treated in an Air Force medical facility and active duty members for whom primary care is provided.

CATEGORIES OF RECORDS IN THE SYSTEM:

Inpatient, outpatient, and ambulatory procedure visit (APV) records of care received in Air Force medical facilities. Documentation includes, but is not limited to, patient's medical history; physical examination; treatment received; supporting documentation such as laboratory and x-ray reports; cover sheets and summaries of hospitalization; diagnoses; procedures or surgery performed; administrative forms which concern medical conditions such as Line of Duty Determinations; physical profiles, and medical recommendations for flying duty. Secondary files are maintained such as patient registers, nominal indices, x-ray and laboratory files, indices and registers.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 55, Medical and Dental Care; 10 U.S.C. 8013, Secretary of the Air Force; and E.O. 9397 (SSN).

PURPOSE(S):

Used to document, plan, and coordinate the health care of patients; aid in preventative health and communicable disease control programs; determine eligibility and suitability for benefits for various programs; adjudicate claims; evaluate care rendered; teach, compile statistical data, and conduct research.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

Information from the inpatient, outpatient, or APV medical records of retirees and dependents may be disclosed to third party payers in accordance with 10 U.S.C. 1095 as amended by Public Law 99–272, for the purpose of collecting reasonable inpatient/outpatient/APV hospital care costs incurred on behalf of retirees or dependents. Records are used and reviewed by health care providers in the performance of their duties. Health care providers include military and civilian providers assigned to the medical facility where care is being provided. Students participating in a training affiliation program with a USAF medical facility may also use and review records as part of their training program. In addition, records may be disclosed to:

(1) Officials and employees of the Department of Veterans Affairs in the performance of their official duties relating to the adjudication of veterans claims and in providing medical care to members of the Air Force.

(2) Officials and employees of other departments and agencies of the Executive Branch of government upon request in the performance of their official duties relating to review of the official qualifications and medical history of applicants and employees who are covered by this record system and for the conduct of research studies.

(3) Private organizations (including educational institutions) and individuals for authorized health research in the interest of the Federal government and the public. When not considered mandatory, patient identification data shall be eliminated from records used for research studies.

(4) Officials and employees of the National Research Council in cooperative studies of the National History of Disease; of prognosis and of epidemiology. Each study in which the records of members and former members of the Air Force are used must be approved by the Surgeon General of the Air Force.

(5) Officials and employees of local and state governments and agencies in the performance of their official duties pursuant to the laws and regulations governing local control of communicable diseases, preventive medicine and safety programs, child abuse and other public health and welfare programs.

(6) Authorized surveying bodies for professional certification and accreditations.

(7) The individual's organization or government agency as necessary when required by Federal statute, E.O., or by treaty.

The DoD "Blanket Routine Uses" published at the beginning of the Air Force's compilation of record system notices apply to this system, except as stipulated in "Note" below.

Note: Records of identity, diagnosis, prognosis or treatment of any client/patient, irrespective of whether or when he/she ceases to be a client/patient, maintained in connection with the performance of any alcohol/drug abuse treatment function conducted, requested, or directly or indirectly assisted by any department or agency of the United States, shall, except as provided herein, be confidential and be disclosed only for the purposes and under the circumstances expressly authorized in 42 U.S.C. 290dd–2. These statutes take precedence over the Privacy Act of 1974 in regard to accessibility of such records except to the individual to whom the record pertains. The DoD "Blanket Routine Uses" do not apply to these types of records.

Note: This system of records contains individually identifiable health information. The DoD Health Information Privacy Regulation (DoD 6025.18–R) issued pursuant to the Health Insurance Portability and Accountability Act of 1996, applies to most such health information. DoD 6025.18–R may place additional procedural requirements on the uses and disclosures of such information beyond those found in the Privacy Act of 1974 or mentioned in this system of records notice.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in paper and machine-readable form.

RETRIEVABILITY:

By name, Social Security Number, or by Military Service Number.

SAFEGUARDS:

Records are accessed by commanders of medical centers, hospitals, and clinics; by custodian of the record system, and by person(s) responsible for servicing the record system in performance of their official duties and by authorized personnel who are properly screened and cleared for need-to-know. Records are stored in locked rooms and cabinets, and access to automated records is controlled and limited.

RETENTION AND DISPOSAL:

While on active duty, the Health Record of a U.S. military member is maintained at the medical unit at which the person receives treatment. On separation or retirement, records are forwarded to the Department of Veterans Affairs, Records Management Center in St. Louis, MO or to the appropriate Veterans Affairs Regional Office if a Veterans Affairs claim has been filed. Records of non-active duty personnel may be hand carried or mailed to the next military medical facility at which treatment will be received or the records are retained at the treating facility until 2 years after the end of the calendar year of the last date of treatment and then retired to the National Personnel Record Center (NPRC) or other designated depository, such as, but not limited to, Medical Director, American Red Cross, Washington, DC 20006 for Red Cross personnel. At NPRC all inpatient, outpatient, and APV records are retained for 50 years after date of last document. In addition, military records sent to the DVA after 1 May 1994 are maintained for 50 years after date of last document.

SYSTEM MANAGER(S) AND ADDRESS:

The Surgeon General, Headquarters United States Air Force.

Chief of Air Force Reserve, Headquarters United States Air Force.

Director of Air National Guard, Headquarters United States Air Force.

Commanders of medical centers, hospitals, clinics, medical aid stations; Commander, Air Force Personnel Center. Official mailing addresses are published as an appendix to the Air Force's compilation of system notices.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contain information about themselves should address inquiries to or visit the system manager. Official mailing addresses are published as an appendix to the Air Force's compilation of record systems notices.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this system should address requests to the system manager. Official mailing addresses are published as an appendix to the Air Force's compilation of systems notices.

Requester must submit full name; Social Security Number (or Military Service Number) through whom eligibility for care is established; date (at least year) treatment was provided; name of facility providing treatment, and whether treatment was as inpatient or outpatient.

CONTESTING RECORD PROCEDURES:

The Air Force rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Air Force Instruction 37–132; 32 CFR part 1806b; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Physicians and other patient care providers such as nurses, dietitians, and physicians assistants. Administrative forms are completed by appropriate military or civilian officials.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 03–30401 Filed 12–8–03; 8:45 am]

BILLING CODE 5001–06–U

DEPARTMENT OF DEFENSE

Department of the Air Force

Privacy Act of 1974; System of Records

AGENCY: Department of the Air Force, DoD.

ACTION: Notice to alter systems of records.

SUMMARY: The Department of the Air Force is proposing to alter an existing system of records notice in its inventory of records systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended. The alteration consists of adding a new category of individuals covered, *i.e.*, non-maintenance organizations may use CAMS to maintain personnel and training data relating to their individuals.

DATES: The actions will be effective on January 8, 2004 unless comments are received that would result in a contrary determination.

ADDRESSES: Send comments to the Air Force FOIA/Privacy Manager, AF–CIO/P, 1155 Air Force Pentagon, Washington, DC 20330–1155.

FOR FURTHER INFORMATION CONTACT: Mrs. Anne P. Rollins at (703) 601–4043.

SUPPLEMENTARY INFORMATION: The Department of the Air Force's record system notices for records systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The proposed system report, as required by 5 U.S.C. 522a(r) of the Privacy Act of 1974, as amended, was submitted on November 17, 2003, to the House Committee on Government Reform, the Senate Committee on Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, "Federal Agency Responsibilities for Maintaining Records About Individuals," dated February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: November 20, 2003.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

F021 AF IL A

SYSTEM NAME:

Core Automated Maintenance System (CAMS) (June 11, 1997, 62 FR 31793).

CHANGES:

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CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Delete entry and replace with 'Individuals assigned to installations that maintain aircraft, missiles, communications-electronics and associated equipment. Non-maintenance organizations may use CAMS to maintain personnel and training data relating to their individuals.'

CATEGORIES OF RECORDS IN THE SYSTEM:

Delete entry and replace with 'Personnel records related to an individual's on-the-job training certification, qualifications, and training.'

* * * * *

PURPOSE(S):

Delete entry and replace with 'Used to establish and maintain personnel data and on-the-job training records.'

* * * * *

STORAGE:

Add to entry 'and computer output products.'

RETENTION AND DISPOSAL:

Delete entry and replace with 'Maintained until superseded, obsolete, or no longer needed. Destroy paper records by tearing, pulping, burning, shredding, or macerating. Destroy computer records by overwriting or degaussing.'

* * * * *

F021 AF IL A

SYSTEM NAME:

Core Automated Maintenance System (CAMS).

SYSTEM LOCATION:

All Air Force installations utilizing the Core Automated Maintenance System (CAMS). Official mailing addresses are published as an appendix to the Air Force's compilation of record systems notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals assigned to installations that maintain aircraft, missiles, communications-electronics and associated equipment. Non-maintenance organizations may use CAMS to maintain personnel and training data relating to their individuals.

CATEGORIES OF RECORDS IN THE SYSTEM:

Personnel records related to an individual's on-the-job training certification, qualifications, and training.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 8013, Secretary of the Air Force; Air Force Instruction 21–101, Aerospace Equipment Maintenance Management; Air Force Instruction 36–2232, Maintenance Training, and E.O. 9397 (SSN).

PURPOSE(S):

Used to establish and maintain personnel data and on-the-job training records.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records, or information contained therein, may specifically be disclosed outside the DOD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The DoD 'Blanket Routine Uses' published at the beginning of the Air Force's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained on disks or tapes and computer output products.

RETRIEVABILITY:

Retrieved by name, man number, or Social Security Number.

SAFEGUARDS:

Records are accessed by person(s) responsible for servicing the record system in performance of their official duties. Records are controlled by computer system software.

RETENTION AND DISPOSAL:

Maintained until superseded, obsolete, or no longer needed. Destroy paper records by tearing, pulping, burning, shredding, or macerating. Destroy computer records by overwriting or degaussing.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Maintenance Data Systems Analysis Section; individuals in charge of documentation or files maintenance section at each unit utilizing CAMS or the Host Database Manager. Official mailing addresses are published as an appendix to the Air Force's compilation of systems of records notices.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to or visit the individuals in charge of documentation or files maintenance section at each unit utilizing CAMS or the Host Database Manager. Official mailing addresses are published as an appendix to the Air Force's compilation of systems of records notices.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to or visit the individuals in charge of documentation or files maintenance section at each unit utilizing CAMS or the Host Database Manager. Official mailing addresses are published as an appendix to the Air Force's compilation of systems of records notices.

CONTESTING RECORD PROCEDURES:

The Air Force rules for accessing records and for contesting contents and appealing initial agency determinations are published in Air Force Instruction 37–132; 32 CFR part 806b; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Information obtained from automated system interfaces and source documents such as reports.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 03–30402 Filed 12–8–03; 8:45 am]

BILLING CODE 5001–06–U

DEPARTMENT OF DEFENSE

Defense Logistics Agency

Privacy Act of 1974; Systems of Records

AGENCY: Defense Logistics Agency, DOD.

ACTION: Notice to delete a system of records.

SUMMARY: The Defense Logistics Agency proposes to delete a system of records notice from its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: This action will be effective without further notice on January 8, 2004, unless comments are received that would result in a contrary determination.

ADDRESSES: Send comments to the Privacy Act Officer, Headquarters, Defense Logistics Agency, ATTN: DSS–B, 8725 John J. Kingman Road, Suite 2533, Fort Belvior, VA 22060–6221.

FOR FURTHER INFORMATION CONTACT: Ms. Susan Salus at (703) 767–6183.

SUPPLEMENTARY INFORMATION: The Defense Logistics Agency notices for systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The Defense Logistics Agency proposes to delete a system of records notice from its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended. The deletion is not within the purview of subsection (r) of the Privacy Act of 1974 (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: November 20, 2003.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

S257.10 DLA–G

SYSTEM NAME:

Standards of Conduct (February 22, 1993, 58 FR 10854).

REASON:

This system is a duplicate of the Office of Government Ethics government-wide systems of records, *i.e.*, OGE/GOVT–1, Executive Branch Personnel Public Financial Disclosure Reports and Other Name-Retrieved Ethics Program Records and OGE/GOVT–2, Executive Branch Confidential Financial Disclosure Reports. Therefore, the DLA notice is being deleted.

[FR Doc. 03–30404 Filed 12–8–03; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Department of the Navy

Privacy Act of 1974; System of Records

AGENCY: Department of the Navy, DoD.

ACTION: Notice to alter a system of records.

SUMMARY: The Department of the Navy is proposing to alter a system of records notice in its existing inventory of records systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended. The alteration expands the records being maintained, and adds a new purpose for collecting the records.

DATES: This proposed action will be effective without further notice on January 8, 2004, unless comments are received which result in a contrary determination.

ADDRESSES: Send comments to Department of the Navy, PA/FOIA Policy Branch, Chief of Naval Operations, N09B10, 2000 Navy Pentagon, Washington, DC 20350–2000.

FOR FURTHER INFORMATION CONTACT: Mrs. Doris Lama at (202) 685–6545 or DSN 325–6545.

SUPPLEMENTARY INFORMATION: The Department of the Navy's record system notices for records systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The proposed system report, as required by 5 U.S.C. 552a(r) of the Privacy Act, was submitted on November 17, 2003, to the House Committee on Government Reform, the Senate Committee on Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, 'Federal Agency Responsibilities for Maintaining Records About Individuals,' dated February 8, 1996, (61 FR 6427, February 20, 1996).

Dated: November 20, 2003.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

N01070–6

SYSTEM NAME:

Employee Explosives Certification Program (February 22, 1993, 58 FR 10698).

CHANGES:

SYSTEM IDENTIFIER:

Delete entry and replace with 'NM01543–1'.

SYSTEM NAME:

Delete entry and replace with 'Explosives Handling Qualification/ Certification Program'.

* * * * *

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Delete entry and replace with 'Navy, Marine Corps, civilian and contractor personnel involved in the process or evolution of explosives operations.'

CATEGORIES OF RECORDS IN THE SYSTEM:

Delete entry and replace with 'Training records contain copies of the individual's state driver's license, Social Security Number, date of birth, home and office addresses, medical certificate stating that an individual has passed an exam by a doctor and is authorized to handle explosives, forklift/government driver's license, date of exam and expiration date.'

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with '10 U.S.C. 5013, Departmental Regulations; 10 U.S.C. 5041, Headquarters, Marine Corps; OPNAVINST 8020.14/MCO P8020.11, Department of the Navy Explosives Safety Program; and E.O. 9397 (SSN).'

PURPOSE(S):

Delete entry and replace with 'To record the names and training of all employees and their qualifications to work in certain categories of explosives operations.

To ensure all individuals performing explosives inspections can validate an individual's qualifications to perform a certain task.'

* * * * *

STORAGE:

Delete entry and replace 'Paper and electronic media.'

RETRIEVABILITY:

Delete entry and replace with 'Name and/or Social Security Number.'

SAFEGUARDS:

Delete entry and replace with 'Documents are marked 'FOR OFFICIAL USE ONLY—PRIVACY SENSITIVE' and are only distributed to those persons having an official need to know. Computerized records are password protected and only accessible by those persons with an official need to know.'

RETENTION AND DISPOSAL:

Delete entry and replace with 'Retain on board and destroy three years after an employee terminates or is no longer involved in explosives processes.'

* * * * *

RECORD SOURCE CATEGORIES:

Delete entry and replace with 'Individual, personnel files, physician, and supervisor.'

* * * * *

NM01543–1

SYSTEM NAME:

Explosives Handling Qualification/ Certification Program.

SYSTEM LOCATION:

Organization elements of the Department of the Navy. Official mailing addresses are published in the Standard Navy Distribution List that is available at *http://www.neds.nebt.daps.mil/sndl.*

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Navy, Marine Corps, civilian and contractor personnel involved in the process or evolution of explosives operations.

CATEGORIES OF RECORDS IN THE SYSTEM:

Training records contain copies of the individual's state driver's license, Social Security Number, date of birth, home and office addresses, medical certificate stating that an individual has passed an exam by a doctor and is authorized to handle explosives, forklift/government driver's license, date of exam and expiration date.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 5013, Departmental Regulations; 10 U.S.C. 5041, Headquarters, Marine Corps; OPNAVINST 8020.14/MCO P8020.11, Department of the Navy Explosives Safety Program; and E.O. 9397 (SSN).

PURPOSE(S):

To record the names and training of all employees and their qualifications to work in certain categories of explosives operations.

To ensure all individuals performing explosives inspections can validate an individual's qualifications to perform a certain task.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The DoD 'Blanket Routine Uses' that appear at the beginning of the Navy's compilation of systems of records notices apply to this system.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

STORAGE:

Paper and electronic media.

RETRIEVABILITY:

Name and/or Social Security Number.

SAFEGUARDS:

Documents are marked 'FOR OFFICIAL USE ONLY—PRIVACY SENSITIVE' and are only distributed to those persons having an official need to know. Computerized records are password protected and only accessible by those persons with an official need to know.

RETENTION AND DISPOSAL:

Retain on board and destroy three years after an employee terminates or is no longer involved in explosives processes.

SYSTEM MANAGER(S) AND ADDRESS:

Policy Official: Commanding Officer, Naval Ordnance Safety and Security Activity, 23 Strauss Avenue, Farragut Hall, Building D–323, Indian Head, MD 20640–5035.

Record Holder: Commanding officer or head of the organization in question. Official mailing addresses are published in the Standard Navy Distribution List that is available at *http://www.neds.nebt.daps.mil/sndl.*

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Commanding officer or head of the organization in question. Individuals may inspect personnel certifying documents at local activity to which individual assigned. Official mailing addresses are published in the Standard Navy Distribution List that is available at *http://www.neds.nebt.daps.mil/sndl.*

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Commanding officer or head of the organization in question. Individuals may inspect personnel certifying documents at local activity to which individual assigned. Official mailing addresses are published in the Standard Navy Distribution List that is available at *http://neds.nebt.daps.mil/sndl.*

CONTESTING RECORD PROCEDURES:

The Department of the Navy's rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Individual, personnel files, physician, and supervisor.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 03–30403 Filed 12–8–03; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF EDUCATION

[CFDA NO. 84.031H]

Office of Postsecondary Education; Strengthening Institutions (SIP), American Indian Tribally Controlled Colleges and Universities (TCCU), Alaska Native and Native Hawaiian-Serving Institutions (ANNH) and Developing Hispanic-Serving Institutions (HSI) Programs; Notice Inviting Applications for Designation as Eligible Institutions for Fiscal Year (FY) 2004

Purpose of Programs: Under the SIP, TCCU, and ANNH Programs, authorized under Part A of Title III of the Higher Education Act of 1965, as amended (HEA), institutions of higher education are eligible to apply for grants if they meet specific statutory and regulatory eligibility requirements. Similarly, institutions of higher education are eligible to apply for grants under the HSI Program, authorized under Title V of the HEA, if they meet specific statutory and regulatory requirements. In addition, an institution that is designated as an eligible institution under those programs may also receive a waiver of certain non-Federal share requirements under the Federal Supplemental Educational Opportunity Grant (FSEOG), the Federal Work Study (FWS), the Student Support Services (SSS) and the Undergraduate International Studies and Foreign Language (UISFL) Programs. The FSEOG, FWS and SSS Programs are authorized under Title IV of the HEA; the UISFL Program is authorized under Title VI of the HEA.

Qualified institutions may receive these waivers even if they are not recipients of grant funds under the Title III Part A Programs or Title V Program.

Special Note: To become eligible, your institution must satisfy several criteria, including one related to needy student enrollment and one related to average Educational and General (E&G) expenditures for a particular base year. Because we changed the collection processes for determining the thresholds for these two criteria, we do not have base year data beyond 2000–2001. In order to award FY 2004 grants in a timely manner, we will use threshold data from the base year 2000–2001 rather than a later base year. In completing your eligibility application, please use data from the base year 2000–2001.

Eligible Applicants: To qualify as an eligible institution under the Title III, Part A Programs or the Title V Program, an accredited institution must, among other requirements, have an enrollment of needy students, and its average E&G expenditures per full-time equivalent (FTE) undergraduate student must be low in comparison with the average E&G expenditures per FTE undergraduate student of institutions that offer similar instruction. To be an eligible Hispanic-Serving Institution, an institution must—

(1) Be accredited or preaccredited by a nationally recognized accrediting agency or association that the Secretary has determined to be a reliable authority as to the quality of education or training offered;

(2) Be legally authorized by the State in which it is located to be a junior college or to provide an educational program for which it awards a bachelor's degree;

(3) Have an enrollment of needy students as described in the *Enrollment of Needy Students* section of this notice;

(4) Have low average educational and general expenditures per full-time equivalent undergraduate student as described in the *Educational and General Expenditures per Full-Time Equivalent Student* section of this notice and the application booklet;

(5) Have, at the time of application, an enrollment of undergraduate full-time equivalent students that is at least 25 percent Hispanic students; and

(6) Provide assurances that not less than 50 percent of its Hispanic students are low-income individuals.

Note: Numbers five and six above are required at the time of submission of the grant application.

The complete eligibility requirements for the Title III, Part A Programs are found in 34 CFR 607.2 through 607.5; the complete eligibility for the HSI Programs are found in 34 CFR 606.2 through 34 CFR 606.5. These regulations may also be accessed by visiting the following Department of Education Web site: *http://www.ed.gov/legislation/FedRegister/finrule/1999–4/121599a.html.*

Enrollment of Needy Students: Under, 34 CFR 606.3(a) and 607.3(a), an institution is considered to have an enrollment of needy students if: (1) At least 50 percent of its degree students received financial assistance under one or more of the following programs: Federal Pell Grant, FSEOG, FWS, and Federal Perkins Loan Programs; or (2) the percentage of its undergraduate degree students who were enrolled on at least a half-time basis and received Federal Pell Grants exceeded the median percentage of undergraduate degree students who were enrolled on at least a half-time basis and received Federal Pell Grants at comparable institutions that offered similar instruction.

To qualify under this latter criterion, an institution's Federal Pell Grant percentage for base year 2000–2001 must be more than the median for its category of comparable institutions provided in the table in this notice.

Educational and General Expenditures per Full-Time Equivalent Student: An institution should compare its 2000–2001 average E&G expenditures per FTE student to the average E&G expenditure per FTE student for its category of comparable institutions contained in the table in this notice. If the institution's average E&G expenditures for the 2000–2001 base year are less than the average for its category of comparable institutions, it meets this eligibility requirement.

An institution's average E&G expenditures are the total amount it expended during the base year for instruction, research, public service, academic support, student services, institutional support including library expenditures, operation and maintenance, scholarships and fellowships, and mandatory transfers.

The following table identifies the relevant median Federal Pell Grant percentages and the relevant average E&G expenditures per FTE student for the base year 2000–2001 for the four categories of comparable institutions:

Type of Institution	Median Pell Grant (percentage)	Average E&G per FTE
2-year public institutions	19.6	$8,668
2-year non-profit private institutions	32.7	20,483
4-year public institutions	23.5	20,789
4-year non-profit private institutions	23.2	31,579

Waiver Information: Institutions of higher education that are unable to meet the needy student enrollment requirement or the average E&G expenditures requirement may apply to the Secretary for waivers of these requirements, as described in 34 CFR 606.3(b), 606.4(c) and (d), 607.3(b) and 607.4(c) and (d). Institutions requesting a waiver of the needy student enrollment requirement or the average E&G expenditures requirement must include in their application detailed information supporting the waiver request, as described in the instructions for completing the application.

With respect to the needy student requirement waiver, 34 CFR 606.3(b)(2) and (3) and 607.3(b)(2) and (3) refer to "low-income" students and families. The regulations define "low-income" as an amount which does not exceed 150 percent of the amount equal to the poverty level in the 2000–2001 base year as established by the U.S. Bureau of the Census, 34 CFR 606.3(c) and 607.3(c).

For the purposes of this waiver provision, the following table sets forth the low-income levels for the various sizes of families:

2000 ANNUAL LOW-INCOME LEVELS

Size of family unit	Contiguous 48 States, the District of Columbia and outlying	Alaska	Hawaii
1	$12,525	$15,645	$14,385
2	16,875	21,090	19,395
3	21,225	26,535	24,405
4	25,575	31,980	29,415
5	29,925	37,425	34,425
6	34,275	42,870	39,435
7	38,625	48,315	44,445
8	42,975	53,760	49,455

For family units with more than eight members, applicants requesting a waiver should add the following amount for each additional family member: $4,350 for the contiguous 48 states, the District of Columbia and outlying jurisdictions; $5,445 for Alaska; and $5,010 for Hawaii.

The figures shown as low-income levels represent amounts equal to 150 percent of the family income levels established by the U.S. Bureau of the

Census for determining poverty status. The Census levels were published by the U.S. Department of Health and Human Services in the **Federal Register** on February 15, 2000 (65 FR 7555–7557).

The information about "metropolitan statistical areas" referenced in 34 CFR 606.3(b)(4) and 607.3(b)(4) may be obtained by requesting the Metropolitan Statistical Areas, 1999, order number PB99–501538, from the National Technical Information Service, Document Sales, 5285 Port Royal Road, Springfield, Virginia 22161, telephone number 1–800–553–6847. There is a charge for this publication.

Applications Available: December 5, 2003.

Deadline for Transmittal of Applications: January 20, 2004 for an applicant institution that wishes to apply for a FY 2004 new grant under the Title III, Part A Programs or the Title V Program; May 28, 2004 for an institution that wishes to apply only for cost-sharing waivers under the FSEOG, FWS, SSS or UISFL Programs; and, January 20, 2004 for an institution that wishes to apply for both a grant under the Title III, Part A Programs or the Title V Program and a waiver of the Non-Federal share requirement.

Electronic Submission of Applications: The Government Paperwork Elimination Act (GPEA) of 1998 (Pub. L. 105–277) and the Federal Financial Assistance Management Improvement Act of 1999 (Pub. L. 106–107) encourage us to undertake initiatives to improve our grant processes. Enhancing the ability of individuals and entities to conduct business with us electronically is a major part of our response to these Acts. Therefore, we are taking steps to adopt the Internet as our chief means of conducting transactions in order to improve services to our customers and to simplify and expedite our business processes.

Some of the procedures in these instructions for transmitting applications differ from those in the Education Department General Administrative Regulations (EDGAR) (34 CFR 75.102). Under the Administrative Procedure Act (5 U.S.C. 553) the Department generally offers interested parties the opportunity to comment on proposed regulations. However, these amendments make procedural changes only and do not establish new substantive policy. Therefore, under 5 U.S.C. 553(b)(A), the Secretary has determined that proposed rulemaking is not required.

We are requiring that applications for institutional eligibility for FY 2004 under Request for Designation as an Eligible Institution be submitted electronically at the following Web site: *http://webprod.cbmiweb.com/Title3and5/index.html.*

If you are unable to submit an application electronically you may submit a written request for a waiver of the electronic submission requirement. In the request, you should explain the reason or reasons that prevent you from using the Internet to submit your application. The request should be addressed to: Mr. Louis Venuto, U.S. Department of Education, 1990 K Street, room 6071, Washington, DC 20202–8513. Please submit your request no later than two weeks before the application deadline date.

If, within two weeks of the application deadline date, you are unable to submit an application electronically, you must submit a paper application by the application deadline date in accordance with the transmittal instructions in the application package. The paper application must include a written request for a waiver documenting the reasons that prevented the applicant from using the Internet to submit the application.

To enter the Web site, you must use your institution's unique 8-digit identifier, *i.e.*, your Office of Postsecondary Education Identification Number (OPE ID number). If you receive a hard copy of the eligibility application and instructions from us in the mail, look for the OPE ID number on the address label. Otherwise, your business office or student financial aid office should have the OPE ID number. If your business office or student financial aid office does not have the OPE ID number, contact the Department, using the e-mail addresses of the contact persons listed in this notice under **FOR APPLICATIONS AND FURTHER INFORMATION CONTACT.**

You will find detailed instructions for completing the application form electronically under the "eligibility 2004" link at either of the following Web sites: *http://www.ed.gov/programs/iduestitle3a.index.html* or *http://www.ed.gov/hsi.*

For institutions of higher education that are unable to meet the needy student enrollment requirement or the average E&G expenditure requirement and wish to request a waiver of one or both of those requirements, you must complete your designation application form electronically and transmit your waiver request narrative document from the following Web site: *http://webprod.cbmiweb.com/Title3and5/index.html.*

If your institution is unable to electronically submit your narrative waiver request, print the electronic application form and mail it along with the waiver request narrative to Mr. Louis Venuto, Team Leader, Institutional Development and Undergraduate Education Service, U.S. Department of Education, 1990 K Street, NW, Room 6071, Request for Eligibility Designation, Washington, DC 20202–8513.

Applicable Regulations: (a) The Education Department General Administrative Regulations in 34 CFR parts 74, 75, 77, 79, 82, 85, 86, 97, 98, and 99. (b) The regulations for the Title III, Part A Programs in 34 CFR part 607, and for the Title V Program in 34 CFR part 606.

FOR APPLICATIONS AND FURTHER INFORMATION CONTACT: Ellen M. Sealey, Carlos Reeder or Delores Anistead, Institutional Development and Undergraduate Education Service, U.S. Department of Education, 1990 K Street, Room 6049, Request for Eligibility Designation, Washington, DC 20202–8513. Ms. Sealey's telephone number is (202) 502–7580. Mr. Reeder's telephone number is (202) 502–7592. Mrs. Anistead's telephone number is (202) 219–7060. Ms. Sealey, Mr. Reeder and Mrs. Anistead may be reached via e-mail at the following addresses: *ellen.sealey@ed.gov, carlos.reeder@ed.gov,* and *delores.anistead@ed.gov.*

If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audio tape, or computer diskette) on request to the contact persons listed under **FOR APPLICATIONS AND FURTHER INFORMATION CONTACT.**

Individuals with disabilities may obtain a copy of the application package in an alternative format by contacting those persons. However, the Department is not able to reproduce in an alternative format the standard forms included in the application package.

Electronic Access to This Document

You may view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister.*

To use PDF, you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using the PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html.*

Program Authority: 20 U.S.C. 1057–1059d, 1101–1103g.

Sally L. Stroup,

Assistant Secretary, Office of Postsecondary Education.

[FR Doc. 03–30432 Filed 12–4–03; 11:19 am]

BILLING CODE 4000–01–P

ENVIRONMENTAL PROTECTION AGENCY

[OECA–2003–0022; FRL–7597–1]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; NESHAP for Magnetic Tape Manufacturing Operations (40 CFR Part 63, Subpart EE), EPA ICR Number 1678.05, OMB Control Number 2060–0326

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. This ICR is scheduled to expire on January 31, 2004. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. This ICR describes the nature of the information collection and its estimated burden and cost.

DATES: Additional comments may be submitted on or before January 8, 2004.

ADDRESSES: Submit your comments, referencing docket ID number OECA–2003–0022, to (1) EPA online using EDOCKET (our preferred method), by e-mail to *docket.oeca@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Enforcement and Compliance Docket and Information Center, Mail Code 2201T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, and (2) OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Leonard Lazarus, Compliance Assessment and Media Programs Division, Mail Code 2223A, Office of Compliance, Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; telephone number: (202) 564–6369; fax number: (202) 564–0050; e-mail address: *lazarus.leonard@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On May 19, 2003 (68 FR 27059), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments.

EPA has established a public docket for this ICR under Docket ID No. OECA–2003–0022, which is available for public viewing at the Enforcement and Compliance Docket and Information Center in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Avenue, NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Enforcement and Compliance Docket and Information Center is (202) 566–1514. An electronic version of the public docket is available through EPA Dockets (EDOCKET) at *http://www.epa.gov/edocket.* Use EDOCKET to submit or view public comments, access the index listing of the contents of the public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the docket ID number identified above.

Any comments related to this ICR should be submitted to EPA and OMB within 30 days of this notice. EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EDOCKET as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose public disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EDOCKET. The entire printed comment, including the copyrighted material, will be available in the public docket. Although identified as an item in the official docket, information claimed as CBI, or whose disclosure is otherwise restricted by statute, is not included in the official public docket, and will not be available for public viewing in EDOCKET. For further information about the electronic docket, *see* EPA's **Federal Register** notice describing the electronic docket at 67 FR 38102 (May 31, 2002), or go to *www.epa.gov/edocket.*

Title: NESHAP for Magnetic Tape Manufacturing Operations (40 CFR part 63, Subpart EE).

Abstract: This NESHAP requires initial notification, performance tests, and periodic reports. Owners or operators are also required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. These notifications, reports, and records are essential in determining compliance and are required, in general, of all sources subject to NESHAP.

Any owner or operator subject to the provisions of this part shall maintain a file of these measurements, and retain the file for at least five years following the date of such measurements, maintain reports, and records. All reports are sent to the delegated State or local authority. In the event that there is no such delegated authority, the reports are sent directly to the EPA Regional Office. This information is being collected to assure compliance with 40 CFR part 63, subpart EE as authorized in sections 112 and 114(a) of the Clean Air Act. The required information consists of emissions data and other information that have been determined not to be private.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9 and are identified on the form and/or instrument, if applicable.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 200 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the

existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Owners or operators of magnetic tape manufacturing operations.

Estimated Number of Respondents: 6.

Frequency of Response: Initial, quarterly, semiannually.

Estimated Total Annual Hour Burden: 3,395 hours.

Estimated Total Annual Cost: $265,000, includes $11,000 annualized capital/startup costs, $36,000 annual O&M costs, and $218,000 labor costs.

Changes in the Estimates: There is a decrease of 3,647 hours in the total estimated burden currently identified in the OMB Inventory of Approved ICR Burdens. This decrease is due to a reduction in the number of sources affected by the standard.

Dated: November 14, 2003.

Doreen Sterling,

Acting Director, Collection Strategies Division.

[FR Doc. 03–30516 Filed 12–8–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OW–2003–0073; FRL–7597–2]

Agency Information Collection Activities: Proposed Collection; Comment Request; National Pollutant Discharge Elimination System (NPDES) Compliance Assessment/ Certification Information, EPA ICR Number 1427.07, OMB Control Number 2040–0110

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit a continuing Information Collection Request (ICR) to the Office of Management and Budget (OMB). This is a request to renew an existing approved collection. This ICR is scheduled to expire on February 29, 2004. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before February 9, 2004.

ADDRESSES: Submit your comments, referencing docket ID number OW–2003–0073, to EPA online using EDOCKET (our preferred method), by e-mail to *OW-Docket@epa.gov*, or by mail to: EPA Docket Center, Environmental Protection Agency, Water Docket (Mail Code 4101T), 1200 Pennsylvania Ave., NW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Jack Faulk, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Mail Code 4203M, Washington, DC 20460; telephone number: 202–564–0768; fax number: 202–564–6431; e-mail address: *faulk.jack@epa.gov*.

SUPPLEMENTARY INFORMATION: EPA has established a public docket for this ICR under Docket ID number OW–2003–0073, which is available for public viewing at the Water Docket in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Water Docket is (202) 566–2426. An electronic version of the public docket is available through EPA Dockets (EDOCKET) at *http://www.epa.gov/edocket*. Use EDOCKET to obtain a copy of the draft collection of information, submit or view public comments, access the index listing of the contents of the public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the docket ID number identified above.

Any comments related to this ICR should be submitted to EPA within 60 days of this notice. EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EDOCKET as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose public disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EDOCKET. The entire printed comment, including the copyrighted material, will be available in the public docket. Although identified as an item in the official docket, information claimed as CBI, or whose disclosure is otherwise restricted by statute, is not included in the official public docket, and will not be available for public viewing in EDOCKET. For further information about the electronic docket, see EPA's **Federal Register** notice describing the electronic docket at 67 FR 38102 (May 31, 2002), or go to *www.epa.gov/edocket*.

Affected entities: Entities potentially affected by this action are those which are issued NPDES permits for the discharge of domestic wastewater, industrial wastewater, and storm water, and for the use and disposal of sewage sludge. In addition, states and territories authorized to administer the NPDES program are also affected.

Title: National Pollutant Discharge Elimination System (NPDES) Compliance Assessment/Certification Information, EPA ICR Number 1427.07, OMB Control Number 2040–0110.

Abstract: Pollutant discharge limits in a NPDES permit are designed to be protective of the environment and the public. Permitting authorities must assess whether the permittee is complying with these discharge limits on a consistent basis. Compliance is assessed by reviewing records, compliance schedule reports, and noncompliance reports for a bypass, upset, or maximum daily limit violations. Permittees must maintain such records, meet compliance schedules, and report violations as mandated in 40 CFR parts 122 and 501. The information that is collected can lead the permitting authority to follow through with informal discussions with the permittee (telephone and/or letters), permit modification, or enforcement action.

Also, consistent with past practice, this ICR incorporates burden from one ICR specific to EPA's effluent limitations guidelines development program that includes NPDES compliance assessment/certification activities. Specifically, the burden and costs associated with the ICR: Best Management Practices Alternatives, Effluent Limitations Guidelines and Standards, Oil and Gas Extraction Point Source Category (40 CFR part 435), EPA ICR No. 1953.02, OMB Control No. 2040–0230, is incorporated into this ICR.

Note that six additional effluent limitations guidelines development ICRs are set to expire in the next three years prior to the next renewal of this Compliance Assessment/Certification ICR. The burden associated with those six ICRs will be incorporated into the Compliance Assessment/Certification ICR as part of the renewal process for those six separate ICRs. The six ICRs include:

1. Milestone Plans for the Bleached Papergrade Kraft and Soda Subcategory of the Pulp, Paper, and Paperboard Point Source Category (40 CFR part 430), EPA ICR No. 1877.02, OMB Control No. 2040–0202;

2. Best Management Practices (BMPs) for Bleached Papergrade Kraft and Soda Subcategory and the Papergrade Kraft Sulfite Subcategory of the Pulp, Paper, and Paperboard Point Source Category (40 CFR part 430), EPA ICR No. 1829.02, OMB Control No. 2040–0207;

3. Pollution Prevention Compliance Alternative; Transportation Equipment Cleaning (TEC) Point Source Category (40 CFR part 442), EPA ICR No. 2018.01, OMB Control No. 2040–0235;

4. Baseline Standards and Best Management Practices for the Coal Mining Point Source Category (40 CFR part 434)—Coal Remining Subcategory and Western Alkaline Coal Mining Subcategory, EPA ICR No. 1944.02, OMB Control No. 2040–0239;

5. Certification in Lieu of Chloroform Minimum Monitoring Requirements for Direct and Indirect Discharging Mills in the Bleached Papergrade Kraft and Soda Subcategory of the Pulp, Paper and Paperboard Manufacturing Category (40 CFR part 430), EPA ICR No. 2015.01, OMB Control No. 2040–0242; and

6. Minimum Monitoring Requirements for Direct and Indirect Discharging Mills in the Bleached Papergrade Kraft and Soda Subcategory and the Papergrade Sulfite Subcategory of the Pulp, Paper and Paperboard Manufacturing Category (40 CFR part 430), EPA ICR No. 1878.01, OMB Control No. 2040–0243.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9. The EPA would like to solicit comments to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(ii) Evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Burden Statement: Based on the information collection requirements contained in the existing ICR, the information collection for compliance assessment and certification activities will involve an estimated 16,500 reporting respondents per year with 2.15 total annual average responses per respondent and 4.15 hours per response for a total of 147,207 hours. In addition, EPA estimates 304,739 recordkeeping respondents per year and 3.86 hours per recordkeeper for a total of 1,166,012 hours. This results in an annual respondent burden of 1,313,219 hours and an annual cost of $31,025,598. States and U.S. territories are also expected to incur a burden and cost associated with this ICR. Specifically, EPA estimates an average annual burden for these respondents of 51,089 hours at a cost of $1,472,488. The total annual burden and cost to respondents, recordkeepers, and government (excluding Federal government) is estimated to be 1,375,308 hours and $32,498,086.

The burden and cost estimate for the additional ICR, namely Best Management Practices Alternatives, Effluent Limitations Guidelines and Standards, Oil and Gas Extraction Point Source Category (40 CFR part 435), EPA ICR No. 1953.02, OMB Control No. 2040–0230 are estimated as follows (as documented in the original rule-related ICR for this regulation): total burden hours for the 67 respondents are 47,168 annually at a cost of $1,200,138. This includes both reporting and recordkeeping activities.

Burden and costs for the additional six ICRs will be incorporated into this ICR as these six ICRs come up for renewal. The current number of annual responses and approved burden hours are provided below.

OMB Control No.	Annual responses	Annual hours
2040–0202	29	1,418
2040–0207	130	60,909
2040–0235	79	19,144
2040–0239	93	9,261
2040–0242	86	480
2040–0243	104	36,858

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Dated: December 3, 2003.

James A. Hanlon,

Director, Office of Wastewater Management.

[FR Doc. 03–30518 Filed 12–8–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7597–7]

Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) or Superfund, Section 128(a); Notice of Grant Funding Guidance for State and Tribal Response Programs

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) will begin to accept requests, from December 1, 2003, through January 31, 2004, for grants to supplement State and Tribal Response Programs. This notice provides guidance on eligibility for funding, use of funding, grant mechanisms and process for awarding funding, the allocation system for distribution of funding, and terms and reporting under these grants. EPA has consulted with State and tribal officials in developing this guidance.

Since 1997, the EPA Brownfields program has funded State and tribal response programs including Superfund Core funding for State and tribal voluntary cleanup programs and pre-remedial site assessment funding for State- and tribal-conducted Targeted Brownfields Assessments (TBA). Through section 128(a), Congress built upon these activities and provided EPA with expanded authority to fund other activities that establish and enhance capacity for State and tribal response programs as well as authority to grant funds to States and tribes to capitalize revolving loan funds and support insurance mechanisms.

The primary goal of this funding is to ensure that State and tribal response programs include, or are taking reasonable steps to include, certain elements and another is to provide funding for other activities that increase the number of response actions

conducted or overseen by a State or tribal response program. This funding is not intended to supplant current State or tribal funding for their response programs. Instead, it is to supplement their funding to increase their response capacity.

For fiscal year 2004, EPA will consider funding requests up to a maximum of $1.5 million per State or tribe. EPA will target funding of at least $3 million for tribal response programs to ensure adequate funding for tribal response programs.

Subject to the availability of funds, EPA regional enforcement and program staff will be available to provide technical assistance to States and tribes as they apply for and carry out these grants.

DATES: This action is effective as of December 1, 2003. EPA expects to make non-competitive grant awards to States and tribes which apply during fiscal year 2004.

ADDRESSES: Mailing addresses for U.S. EPA Regional Offices and U.S. EPA Headquarters can be located at *http://www.epa.gov/brownfields.*

FOR FURTHER INFORMATION CONTACT: The U.S. EPA's Office of Solid Waste and Emergency Response, Office of Brownfields Cleanup and Redevelopment, (202) 566–2777.

SUPPLEMENTARY INFORMATION: The Small Business Liability Relief and Brownfields Revitalization Act (SBLRBRA) was signed into law on January 11, 2002. The Act amends the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended, by adding section 128(a). Section 128(a) authorizes a $50 million grant program [1] to establish and enhance State [2] and tribal [3] response programs. Generally, these response programs address the assessment, cleanup and redevelopment of brownfields sites and other contaminated sites. Section 128(a) grants will be awarded and administered by U.S. Environmental Protection Agency (EPA) regional offices. This document provides guidance that will enable States and tribes to apply for and use section 128(a) funds in Fiscal Year 2004.

State and tribal response programs oversee assessment and cleanup activities at the majority of brownfield sites across the country. The depth and breadth of State and tribal response programs vary. Some focus solely on CERCLA related activities, while others are multi-faceted, for example, addressing sites regulated by the Resource Conservation and Recovery Act (RCRA). Many State programs also offer accompanying financial incentive programs to spur cleanup and redevelopment. In passing section 128(a),[4] Congress recognized the accomplishments of State response programs in cleaning up and redeveloping brownfield sites. Section 128(a) also provides EPA with an opportunity to strengthen its partnership with States and tribes.

Since 1997, the EPA Brownfields program has been funding State and tribal response programs including Superfund Core funding for State and tribal voluntary cleanup programs and pre-remedial site assessment funding for State- and tribal-conducted Targeted Brownfields Assessments (TBA). Both activities were financed with Superfund appropriations and funded under CERCLA section 104(d) cooperative agreement authority. Through section 128(a), Congress built upon these activities and provided EPA with expanded authority to fund other activities that build capacity for State and tribal response programs as well as authority to grant funds to States and Indian tribes to capitalize revolving loan funds and support insurance mechanisms. The primary goal of this funding is to ensure that State and tribal response programs include, or are taking reasonable steps to include, certain elements and another is to provide funding for other activities that increase the number of response actions conducted or overseen, by a State or tribal response program. This funding is not intended to supplant current State or tribal funding for their response programs. Instead, it is to supplement their funding to increase their cleanup capacity.

Subject to the availability of funds, EPA regional enforcement and program staff will be available to provide technical assistance to States and Indian tribes as they apply for and carry out section 128(a) grants.

Eligibility for Funding

To be eligible for funding under CERCLA section 128(a), a State or tribe must:

- Demonstrate that their response program includes, or is taking reasonable steps to include, the four elements of a response program, described below; or be a party to voluntary response program Memorandum of Agreement (MOA)[5] with EPA;

and

- Maintain and make available to the public a record of sites at which response actions have been completed in the previous year and are planned to be addressed in the upcoming year, *see* CERCLA section 128(b)(1)(C).

Note: Failure to meet these requirement will result in a denial of funding for FY04).

With the exception of the section 128(a) funds a State or tribe uses to capitalize a Brownfields Revolving Loan Fund under CERCLA 104(k)(3), States and tribes are not required to provide matching funds for grants awarded under section 128(a).

The Four Elements—Section 128(a)

Section 128(a) requires States or tribes to demonstrate that their response program includes, or is taking reasonable steps to include, four elements. Section 128(a) also authorizes funding for activities necessary to establish and enhance the four elements and to establish and maintain the public record requirement. Generally, the four elements are:

Timely survey and inventory of brownfield sites in State or tribal land. States and tribes must include, or be taking reasonable steps to include, in their response programs a system or process to identify the universe of brownfield sites in their State or tribal land. EPA's goal in funding activities under this element is to enable the State or tribe to establish or enhance a system or process that will provide a reasonable estimate of the number, likely locations, and the general characteristics of brownfield sites in their State or tribal lands. Given funding limitations, EPA will negotiate work plans with States and tribes to achieve this goal efficiently, effectively and within a realistic time frame. For example, many of EPA's Brownfields Assessment grantees conduct inventories of brownfield sites in their communities or jurisdictions. EPA encourages States and tribes to work with these grantees to obtain the information that they have gathered and include it in their survey and inventory.

Oversight and enforcement authorities or other mechanisms and resources. State and tribal response programs must include, or be taking reasonable steps to include, oversight and enforcement authorities or other mechanisms, and resources that are adequate to ensure that:

- A response action will protect human health and the environment and be conducted in accordance with applicable Federal and State law; and
- The necessary response activities are completed if the person conducting the response activities fails to complete the necessary response activities (this includes operation and maintenance or long-term monitoring activities).

Mechanisms and resources to provide meaningful opportunities for public participation.[6] States and tribes must include, or be taking reasonable steps to include, in their response program mechanisms and resources for public participation, including, at a minimum:

- Public access to documents and related materials that a State, tribe, or party conducting the cleanup is relying on or developing in making cleanup decisions or conducting site activities;
- Prior notice and opportunity for public comment on cleanup plans and site activity; and
- A mechanism by which a person who is, or may be, affected by a release or threatened release of a hazardous substance, pollutant, or contaminant at a brownfields site—located in the community in which the person works or resides—may request that a site assessment be conducted. The appropriate State or tribal official must consider this request and appropriately respond.

Mechanisms for approval of a cleanup plan and verification and certification that cleanup is complete. States and tribes must include, or be taking reasonable steps to include, in their response programs mechanisms to approve cleanup plans. In addition States and tribes must include, or be taking reasonable steps to include, in their response programs a requirement for verification by and certification or similar documentation from the State, the tribe, or a licensed site professional to the person conducting a response action indicating that the response action is complete. Written approval by a State or tribal response program official of a proposed cleanup plan is an example of an approval mechanism.

Public Record Requirement

States and tribes (including those with MOAs) that received section 128(a) funding in FY03 must have established and maintained a public record system, described below, in order to receive funds in FY04. Failure to comply with this statutory requirement will result in a denial of funding for FY04 (this includes funding through an incremental grant funding mechanism). Recipients receiving section 128(a) funding for the first time in FY04 must demonstrate, to be eligible for funding in FY05, that they established and maintained the public record, as described below.

Specifically, under section 128(b)(1)(C), States and tribes must:

- Maintain and update, at least annually or more often as appropriate, a record of sites that includes the name and location of sites at which response actions have been completed during the previous year;
- Maintain and update, at least annually or more often as appropriate, a record of sites that includes the name and location of sites at which response actions are planned to be addressed in the next year; and
- Identify in the public record whether or not the site, upon completion of the response action, will be suitable for unrestricted use. If not, the public record must identify the institutional controls relied on in the remedy.

Section 128(a) funds may be used to maintain and make available a public record system that meets the requirements discussed above.

Distinguishing the "survey and inventory" element from the "public record." It is important to note that the public record requirement differs from the "timely survey and inventory" element described in the "Four Elements" section above. The public record addresses sites at which response actions have been completed in the previous year and are planned to be addressed in the upcoming year. In contrast, the "timely survey and inventory" element, described above, refers to a general approach to identifying brownfield sites.

Making the public record easily accessible. EPA's goal is to enable States and tribes to make the public record and other information, such as information from the "survey and inventory" element, easily accessible. For this reason, EPA will allow States and tribes to use section 128(a) funding to make the public record, as well as other information, such as information from the "survey and inventory" element, available to the public via the internet or other means. For example, the Agency would support funding State and tribal efforts to include detailed location information in the public record such as the street address and latitude and longitude information for each site.[7] A State or tribe may also choose to use the section 128(a) funds to make their survey and inventory information available on the Internet as well.

Long-term maintenance of the public record. EPA encourages States and tribes to maintain public record information, including data on institutional controls, on a long term basis (more than one year) for sites at which a response action has been completed. Subject to EPA regional office approval, States or tribes may include development and operation of systems that ensure long term maintenance of the public record, including information on institutional controls, in their work plans.[8]

Use of Funding

Overview

Section 128(a)(1)(B) describes the eligible uses of grants funding by States and tribes. In general, a State or tribe may use a grant to "establish or enhance" their response programs, including elements of the response program that include activities related to responses at brownfield sites with petroleum contamination. States and tribes may use section 128(a) funding to, among other things:

- Develop legislation, regulations, procedures, guidance, *etc.* that would establish or enhance the administrative and legal structure of their response programs;
- Capitalize a revolving loan fund (RLF) for brownfields cleanup under CERCLA section 104(k)(3). These RLFs are subject to the same statutory requirements and grant terms and conditions applicable to RLFs awarded under section 104(k)(3). Requirements include a 20 percent match on the amount of section 128(a) funds used for

[1] The Catalogue of Federal Domestic Assistance entry for the section 128(a) State and Tribal Response Programs grant program is 66.817.

[2] The term "State" is defined in this document as defined in CERCLA section 101(27).

[3] The term "Indian tribe" is defined in this document as it is defined in CERCLA section 101(36). Intertribal consortia, as defined in the **Federal Register** notice at 67 FR 67181, are also eligible for funding under CERCLA 128(a).

[4] The Small Business Liability Relief and Brownfields Revitalization Act (SBLRBRA) was signed into law on January 11, 2002. The Act amends the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended, by adding section 128(a).

[5] The legislative history of SBLRBRA indicates that Congress intended to encourage States and tribes to enter into MOAs for their voluntary response programs. States or tribes that are parties to voluntary response program MOAs are automatically eligible for section 128(a) funding. A list of States that have signed CERCLA VCP MOAs with EPA can be found at *www.epa.gov/brownfields/gdc.htm#vc.*

[6] States and tribes establishing this element may find useful information on public participation on EPA's community involvement Web site at *http://www.epa.gov/superfund/action/community/index.htm.*

[7] For further information on latitude and longitude information, please see EPA's data standards Web site available at *http://oaspub.epa.gov/edr/epastd$.startup.*

[8] States and tribes may find useful information on institutional controls on EPA's institutional controls Web site at *http://www.epa.gov/superfund/action/ic/index.htm.*

the RLF, a prohibition on using EPA grant funds for administrative costs relating to the RLF, and a prohibition on using RLF loans or subgrants for response costs at a site for which the recipient may be potentially liable under section 107 of CERCLA. Other prohibitions contained in CERCLA section 104(k)(4) also apply;

• Purchase environmental insurance or developing a risk-sharing pool, indemnity pool, or insurance mechanism to provide financing for response actions under a State or tribal response program;

• Establish and maintain the required public record described in section B above. EPA considers activities related to maintaining and monitoring institutional controls to be eligible costs under section 128(a); or

• Conduct limited site-specific activities, such as assessment or cleanup, provided such activities are secondary to the primary use of the funds, *i.e.*, to establish and enhance the response program, and are tied to the four elements.

Uses Related to "Establishing" a State or Tribal Response Program

Under CERCLA section 128(a), "establish" includes activities necessary to build the foundation for the four elements of a State or tribal response program and the public record requirement. For example, a State or tribal response program may use section 128(a) funds to develop regulations, procedures, or guidance. For more developed State or tribal response programs, establish may also include activities that keep their program at a level that meets the four elements and maintains a public record required as a condition of funding under CERCLA section 128(b)(1)(C).

Uses Related to "Enhancing" a State or Tribal Response Program

Under CERCLA section 128(a), "enhance" is related to activities that add to or improve a State or tribal response program or increase the number of sites at which response actions are conducted under a State or tribal response program. The legislative history of the provision also makes this clear:

> The vast majority of contaminated sites across the nation will not be cleaned up by the Superfund program. Instead, most sites will be cleaned up under State authority. * * * In recognition of this fact, and the need to create and improve State cleanup capacity, new [Section 128(a)] provides financial assistance to states and tribes to establish or enhance voluntary response programs.
>
> Senate Report 107–2, March 12, 2001, p. 15.

The exact "enhancement" uses that may be allowable depend upon the work plan negotiated between the EPA regional office and the State or tribe. For example, regional offices and States or tribes may agree that section 128(a) funds may be used for outreach and training directly related to increasing awareness of its response program, and improving the skills of program staff. It may also include developing better coordination and understanding of other State response programs, *e.g.*, RCRA or USTs. Other "enhancement" uses may be allowable as well.

Uses Related to Site-Specific Activities

States and tribes may use section 128(a) funds for activities that improve State or tribal capacity to increase the number of sites at which response actions are conducted under the State or tribal response program. Eligible uses of funds include limited site-specific related activities such as conducting assessments or cleanups at *brownfields* sites. Site-specific activities should be secondary to the primary use of the funds, *i.e.*, to establish and enhance the response program, and tied to the elements.

Site-specific assessments and cleanups must comply with all applicable Federal and State laws and are subject to the following restrictions:

• No more than $200,000 per site can be funded for assessments, and no more than $200,000 per site can be funded for cleanups.

• Absent EPA approval, the recipient may not use funds awarded under this agreement to assess and clean up sites owned by the recipient.

• Assessments and cleanups cannot be conducted at sites where the recipient itself is a potentially responsible party pursuant to CERCLA section 107, except for at brownfields sites contaminated by a controlled substance as defined in CERCLA section 101(39)(D)(ii)(I).

• Subgrants cannot be provided to entities that may be potentially responsible parties (pursuant to CERCLA section 107) at the site for which the assessment or cleanup activities are proposed to be conducted.

• Section 128(a) funds cannot be used for assessments or cleanups at sites that do not meet the definition of a brownfield site at CERCLA 101(39).

However, costs incurred for oversight of cleanups at other than brownfields sites may be eligible and allowable costs if such activities are included in the State's or tribe's work plan. For example, auditing of completed site cleanups in States or tribes that use licensed site professionals to verify that sites have been properly cleaned up may be an eligible cost under section 128(a). These costs need not be incurred in connection with a brownfields site to be eligible, but must be authorized under the State's or tribe's work plan to be allowable. Other uses may be eligible and allowable as well, depending upon the work plan negotiated between the EPA regional office and the State or tribe.

Uses Related to Site-Specific Activities at Petroleum Brownfields Sites

States and tribes may use section 128(a) funds for activities that establish and enhance their response programs, even if their response programs address petroleum contamination. Also, the costs of limited site-specific activities, such as site assessments or cleanup at petroleum contaminated brownfields sites, defined at CERCLA section 101(39)(D)(ii)(II), are eligible and are allowable if the activity is included in the work plan negotiated between the EPA regional office and the State or tribe. Section 128(a) funds used to capitalize a Brownfields RLF may be used at brownfields sites contaminated by petroleum to the extent allowed under CERCLA section 104(k)(3) RLF program.

Grant Mechanism and Process for Awarding Funding

Funding authorized under CERCLA section 128(a) will be awarded through a cooperative agreement [9] with a State or tribe. The program will be administered under the general EPA grant and cooperative agreement regulations for States, tribes, and local governments found in the Code of Federal Regulations at 40 CFR part 31. Under these regulations, the grantee for section 128(a) grant program is:

> The government to which a grant is awarded and which is accountable for the use of the funds provided. The grantee is the entire legal entity even if only a particular component of the entity is designated in the grant award document.
>
> 40 CFR 31.3 Grantee

One application per State or tribe. Subject to the availability of funds, EPA regional offices will negotiate and enter into section 128(a) cooperative agreements with eligible and interested States or tribes. EPA will accept only one application from each eligible State or tribe. States and tribes must define the "section 128(a) response program," and may designate a component of the State or tribe that will be EPA's primary point of contact for negotiations on their proposed work plan. When EPA funds the section 128(a) cooperative agreement, States and tribes may distribute these funds among the appropriate State and tribal agencies that are part of the section 128(a) response program. This distribution must be clearly outlined in their annual work plan.

Separate cooperative agreements for the capitalization of RLFs using section 128(a) funds. If a portion of the128(a) grant funds requested will be used to capitalize a revolving loan fund for cleanup, pursuant to 104(k)(3), two separate cooperative agreements must be awarded, *i.e.*, one for the RLF and one for non-RLF uses. States and tribes may, however, submit one initial request for funding, delineating the RLF as a proposed use.

Authority to Manage a Revolving Loan Fund Program. If a State or tribes chooses to use its 128(a) funds to capitalize a revolving loan fund program, the State or tribe must have the authority to manage the program, *e.g.*, issue loans. If the agency/department listed as the point of contact for the 128(a) grant does not have this authority, it must be able to demonstrate that another State or tribal agency does have the authority to manage the RLF and is willing to do so.

Section 128(a) grants are eligible for inclusion in the Performance Partnership Grant (PPG). EPA is considering a pilot project that will allow an appropriate number of States and tribes to include section 128(a) grants in the PPG in FY 2004. For FY 2004, no more than one State and one tribe or Intertribal Consortium per Region, absent approval from the Assistant Administrator, Office of Solid Waste and Emergency Response (OSWER) and the Associate Administrator, Office of Congressional and Intergovernmental Relations (OCIR), will be permitted to include their 128(a) grant funds in the PPG. EPA will establish a process and criteria for determining, in consultation with the States and tribes, whether PPGs are an efficient and effective means of carrying out the section 128(a) program on a long-term national basis. Section 128(a) funds used to capitalize an RLF will not be eligible for inclusion in the PPG.

Project Period. EPA regional offices will determine the project period for each cooperative agreement. These may be for multiple years depending on the regional office's grants policies. Each cooperative agreement must have an annual budget period tied to an annual work plan.

Demonstrating the Four Elements. As part of the annual work plan negotiation process, States or tribes that do not have MOAs must demonstrate that their program includes, or is taking reasonable steps to include, the four elements described above. EPA will not fund, in future years, State or tribal response program annual work plans if EPA determines that these requirements are not met or reasonable progress is not being made. EPA may base this determination on the information the State or tribe provides to support its work plan, or on EPA's review of the State or tribal response program.

Establishing and Maintaining the Public Record. Prior to funding a State's or tribe's annual work plan, EPA regional offices will verify that a public record as described above exists, and is being maintained. Recipients receiving funds for the first time in FY04 will have one year to meet this requirement and may utilize the 128(a) grant funds to do so.

Demonstration of Need to Receive Funds above the FY03 Funding Distribution. Due to the limited amount of funding available, recipients must demonstrate a specific need when requesting an amount above the FY03 allocation. Regions also will review the recipient's utilization rates from the previous fiscal years to determine need in FY04.

Allocation System for Distribution of Funding

EPA regional offices will work with interested States and tribes to develop their annual work plans and funding requests. For Fiscal Year 2004, EPA will consider funding requests up to a maximum of $1.5 million per State or tribe. This limit may be changed in future years based on appropriation amounts and demand for funding. The EPA regional offices will forward each of the funding request amounts and a short summary of the work plan activities to EPA Headquarters. Based on the availability of funds, EPA Headquarters will compile the requested amounts and develop the annual allocation based on State and tribal response program needs described in the work plan summaries.

When EPA Regions negotiate individual State and tribal work plans, it is anticipated that funding will be prioritized as follows:

• Funding for program development activities to establish or enhance the four elements of a State or tribal response program and to enable States and tribes to comply with the public record requirement, including activities related to institutional controls. (States and tribes that have established one or more of the four elements will not be prejudiced in funding distributions if their work plan includes activities that enhance the four elements. States with MOA's will not be prejudiced in funding distributions if their work plan does not include tasks related to establishing or enhancing the four elements.)

• Funding for program development activities to enhance the response program or the cleanup capacity of a State or tribal response program.

• Funding for limited site-specific activities at eligible brownfields sites.

• Funding for environmental insurance mechanisms.

• Funding to capitalize brownfields cleanup revolving loan funds.

States and tribes must break their work plans down into these prioritization categories.

EPA will target funding of at least $3 million per year for tribal response programs. If this funding is not used, it will be carried over and added to at least $3 million in the next fiscal year. It is expected that the funding demand from tribes will increase through the life of this grant program (authorized by Congress through FY2006), and this funding allocation system should ensure that adequate funding for tribal response programs is available in future years.

Terms and Reporting

Cooperative agreements for State and tribal response programs will include programmatic and administrative terms and conditions. These terms and conditions will describe EPA's substantial involvement including technical assistance and collaboration on program development and site-specific activities.

Progress Reports. States and tribes will provide progress reports under 40 CFR 31.40, in accordance with terms and conditions of the cooperative agreement negotiated with EPA regional offices. State and tribal costs for complying with reporting requirements are an eligible expense under the section 128(a) grant. As a minimum, State or tribal progress reports must include both a narrative discussion and performance data relating to the State's or tribe's accomplishments with section 128(a) funding. If applicable, the State or tribe must include information on activities related to establishing or enhancing the four elements of the State's or tribe's response program. All recipients must provide information

[9] A cooperative agreement is a grant to a State or a tribe that includes substantial involvement of EPA regional enforcement and program staff during performance of activities described in the cooperative agreement work plan. Examples of this involvement include technical assistance and collaboration on program development and site-specific activities.

relating to establishing and maintaining the public record.

Reporting Requirements. Depending upon the activities included in the State's or tribe's work plan, an EPA regional office may request that a progress report include:

Information related to the public record. All recipients must report information related to establishing and maintaining the public record, described above. States and tribes can refer to already existing public record, *e.g.*, Web site or other public database to meet this requirement. For the purposes of grant funding only, and depending upon the activities included in the State or tribe's work plan, this may include:

- A list of sites at which response actions have been completed including:
- Date the response action was completed;
- Site name, the name of owner at time of cleanup, and the type of brownfields site (*e.g.*, petroleum, methamphetamine laboratory, mine scarred lands);
- Location of the site (street address, and latitude and longitude);
- Whether an institutional control is in place;
- Explain the type of the institutional control in place (*e.g.*, deed restriction);
- Nature of the contamination at the site (*e.g.*, hazardous substances, contaminants, or pollutants, petroleum contamination, etc.);
- Size of the site in acres.
- A list of sites planned to be addressed by the state or tribal response program including:
- Site name, the name of owner at time of cleanup, and the type of brownfields site (*e.g.*, petroleum, methamphetamine laboratory, mine scarred lands);
- Location of the site (street address, and latitude and longitude);
- To the extent known, whether an institutional control is in place;
- Explain the type of the institutional control in place (*e.g.*, deed restriction);
- To the extent known, the nature of the contamination at the site (*e.g.*, hazardous substances, contaminants, or pollutants, petroleum contamination, etc.);
- Size of the site in acres.

Reporting environmental insurance. Recipients with work plans that include funding for environmental insurance must report:

- Number and description of insurance policies purchased (*e.g.*, type of coverage provided; dollar limits of coverage; category and identity of insured persons; premium; first dollar or umbrella; site specific or blanket; occurrence or claims made, etc.);
- The number of sites covered by the insurance;
- The amount of funds spent on environmental insurance (*e.g.*, amount dedicated to insurance program, or to insurance premiums) and the amount of claims paid by insurers to policy holders.

Reporting for site-specific assessment or cleanup activities. Recipients with work plans that include funding for brownfields site assessments or cleanup must report a list of sites at which site assessments or cleanup have been completed that includes:

- Site name;
- Location of the site (street address and latitude and longitude);
- Size of the site in acres;
- Date the assessment or cleanup was completed;
- Nature of contamination at the site (*e.g.*, hazardous substances, contaminants, or pollutants, petroleum contamination, etc.).

Reporting for other site-specific activities. Recipients with work plans that include funding for other site-specific related activities must include a description of the site-specific activities and the number of sites at which the activity was conducted. For example:

- Number and frequency of oversight audits of licensed site professional certified cleanups;
- Number and frequency of State/tribal oversight audits conducted;
- Number of sites where staff conducted audits, provided technical assistance, or conducted other oversight activities;
- Number of staff conducting oversight audits, providing technical assistance, or conducting other oversight activities.

Reporting for RLF uses. Recipients with work plans that include funding for Revolving Loan Fund (RLF) must include the information required by the terms and conditions for progress reporting under CERCLA section 104(k)(3) RLF grants.

Reporting for Non-MOA States and tribes. All recipients *without* a Voluntary Response Program MOA must report activities related to establishing or enhancing the four elements of the State's or tribe's response program. For each element State/tribes must report how they are maintaining the element or how they are taking reasonable steps to establish or enhance the element as negotiated in individual State/tribal work plans. For example, pursuant to CERCLA section 128(a)(2)(B), reports on the oversight and enforcement authorities/mechanisms element may include:

- A narrative description and copies of applicable documents developed or under development to enable the response program to conduct enforcement and oversight at brownfield sites. For example:
- Legal authorities and mechanisms (*e.g.*, statutes, regulations, orders, agreements);
- Policies and procedures to implement legal authorities; and
- Other mechanisms;
- A description of the resources and staff allocated/to be allocated to the response program to conduct oversight and enforcement at brownfield sites as a result of the grant;
- A narrative description of how these authorities or other mechanisms, and resources, are adequate to ensure that:
- A response action will:
- Protect human health and the environment; and
- Be conducted in accordance with applicable Federal and State law; and
- If the person conducting the response action fails to complete the necessary response activities, including operation and maintenance or long-term monitoring activities, the necessary response activities are completed; and
- A narrative description and copy of appropriate documents demonstrating the exercise of oversight and enforcement authorities by the response program at a brownfield site.

Where-applicable, EPA may require States/tribes to report specific performance measures related to the four elements which can be aggregated for national reporting to Congress.

The regional offices may also request other information be added to the progress reports, as appropriate, to properly document activities described by the cooperative agreement work plan.

EPA regions may allow States or tribes to provide performance data in appropriate electronic format.

The regional offices will forward progress reports to EPA Headquarters, if requested. This information may be used to develop national reports on the outcomes of CERCLA section 128(a) funding to States and tribes.

Dated: November 25, 2003.

Linda Garczynski,

Director, Office of Brownfields Cleanup and Redevelopment, Office of Solid Waste and Emergency Response.

[FR Doc. 03–30519 Filed 12–8–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7597–3]

Clean Water Act Section 303(d): Final Agency Action on 3 Total Maximum Daily Loads (TMDLs)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability.

SUMMARY: This notice announces final agency action on 3 TMDLs prepared by EPA Region 6 for waters listed in the state of Arkansas, under section 303(d) of the Clean Water Act (CWA). These TMDLs were completed in response to the lawsuit styled *Sierra Club, et al.* v. *Clifford, et al.*, No. LR–C–99–114. Documents from the administrative record files for the final 3 TMDLs, including TMDL calculations and responses to comments, may be viewed at *www.epa.gov/earth1r6/6wq/artmdl.htm*

ADDRESSES: The administrative record files for these 3 TMDLs may be obtained by writing or calling Ms. Ellen Caldwell, Environmental Protection Specialist, Water Quality Protection Division, U.S. Environmental Protection Agency Region 6, 1445 Ross Ave., Dallas, TX 75202–2733. Please contact Ms. Caldwell to schedule an inspection.

FOR FURTHER INFORMATION CONTACT: Ellen Caldwell at (214) 665–7513.

SUPPLEMENTARY INFORMATION: In 1999, five Arkansas environmental groups, the Sierra Club, Federation of Fly Fishers, Crooked Creek Coalition, Arkansas Fly Fishers, and Save our Streams (plaintiffs), filed a lawsuit in Federal Court against the United States Environmental Protection Agency (EPA), styled *Sierra Club, et al.* v. *Clifford, et al.*, No. LR–C–99–114. Among other claims, plaintiffs alleged that EPA failed to establish Arkansas TMDLs in a timely manner.

EPA Takes Final Agency Action on 3 TMDLs

By this notice EPA is taking final agency action on the following 3 TMDLs for waters located within the state of Arkansas:

Segment-reach	Waterbody name	Pollutant
AR11110203–904–3.	Stone Dam Creek.	Ammonia.
AR11110203–904–3.	Stone Dam Creek.	Nitrates.
AR11110203–931–10.	Whig Creek ...	Copper.

EPA requested the public to provide EPA with any significant data or information that may impact the 3 TMDLs at **Federal Register** Notice: Volume 68, Number 190, page 56632 (October 1, 2003). The comments received and EPA's response to comments may be found at *www.epa.gov/earth1r6/6wq/artmdl.htm*

Dated: December 1, 2003.

Miguel I. Flores,

Director, Water Quality Protection Division, Region 6.

[FR Doc. 03–30515 Filed 12–8–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7596–9]

Notice of Tentative Approval and Solicitation of Request for a Public Hearing for Public Water System Supervision Program Revisions for the State of Maryland

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of tentative approval and solicitation of requests for a public hearing.

SUMMARY: Notice is hereby given in accordance with the provision of section 1413 of the Safe Drinking Water Act as amended, and the National Primary Drinking Water Regulations Implementation 40 CFR part 142, that the State of Maryland is revising its approved Public Water System Supervision Program. Maryland has adopted the Public Notification Rule requiring the owner or operator of a public water system to give notice to the public for all violations of national primary drinking water regulations as well as for failure to comply with a prescribed treatment technique, for failure to perform required water quality monitoring or for failure to comply with prescribed testing procedures. It has also adopted the Lead and Copper Rule Minor Revisions, which makes minor changes to the existing Lead and Copper Rule, as well as adopting several other minor revisions to its regulations. EPA has determined that these revisions, all effective April 29, 2002, are no less stringent than the corresponding Federal regulations. Therefore, EPA has decided to tentatively approve these program revisions. All interested parties are invited to submit written comments on this determination and may request a public hearing.

DATES: Comments or a request for a public hearing must be submitted by January 8, 2004. This determination shall become effective on January 8, 2004, if no timely and appropriate request for a hearing is received and the Regional Administrator does not elect to hold a hearing on his own motion, and if no comments are received which cause EPA to modify its tentative approval.

ADDRESSES: Comments or a request for a public hearing must be submitted to the U.S. Environmental Protection Agency Region III, 1650 Arch Street, Philadelphia, PA 19103–2029. Comments may also be submitted electronically to Steve Maslowski at *maslowski.steven@epa.gov*.

All documents relating to this determination are available for inspection between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, at the following offices:

- Drinking Water Branch, Water Protection Division, U.S. Environmental Protection Agency Region III, 1650 Arch Street, Philadelphia, PA 19103–2029.
- Water Supply Program, Maryland Department of the Environment, Montgomery Park Business Center, 1800 Washington Blvd, Baltimore, MD 21230.

FOR FURTHER INFORMATION CONTACT: Steve Maslowski, Drinking Water Branch (3WP22) at the Philadelphia address given above; telephone (215) 814–2371 or fax (215) 814–2318.

SUPPLEMENTARY INFORMATION: All interested parties are invited to submit written comments on this determination and may request a public hearing. All comments will be considered, and, if necessary, EPA will issue a response. Frivolous or insubstantial requests for a hearing may be denied by the Regional Administrator. However, if a substantial request for a public hearing is made by January 8, 2004, a public hearing will be held.

A request for public hearing shall include the following: (1) The name, address, and telephone number of the individual, organization, or other entity requesting a hearing; (2) a brief statement of the requesting person's interest in the Regional Administrator's determination and of information that the requesting person intends to submit at such a hearing; and (3) the signature of the individual making the request; or, if the request is made on behalf of an organization or other entity, the signature of a responsible official of the organization or other entity.

Donald S. Welsh,

Regional Administrator, Region III.

[FR Doc. 03–30517 Filed 12–8–03; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than December 22, 2003.

A. Federal Reserve Bank of Kansas City (James Hunter, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. Jeffrey Reder, Westminster, Colorado; William Schmidt, Westminster, Colorado; and Tschudy Schmidt, Fort Collins, Colorado; to acquire additional voting shares of Mountain States Bancorporation, Denver, Colorado, and thereby indirectly acquire additional voting shares of Mountain States Bank, Denver, Colorado.

Board of Governors of the Federal Reserve System, December 2, 2003.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 03–30349 Filed 12–8–03; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at *http://www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than January 1, 2004.

A. Federal Reserve Bank of Cleveland (Nadine W. Wallman, Assistant Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101-2566:

1. National City Corporation, Cleveland, Ohio; to merge with Allegiant Bancorp, Inc., and thereby acquire Allegiant Bank, both of St. Louis, Missouri.

In connection with this application, National City Corporation also has applied to acquire Allegiant Community Development Corporation, Allegiant Investment Counselors, Inc., and Equality Commodity Corporation, all in St. Louis, Missouri, and thereby engage in community development financing and investment activities; financing and investment advisory activities; and flood determination services activities pursuant to Sections 225.28(b)(12)(i), 225.28(b)(6), and 225.28(b)(2) of Regulation Y.

B. Federal Reserve Bank of Chicago (Patrick Wilder, Managing Examiner) 230 South LaSalle Street, Chicago, Illinois 60690-1414:

1. Bank of Montreal, Toronto, Canada, Bankmont Financial Corp., Wilmington, Delaware, and Harris Bankcorp, Inc., Chicago, Illinois; to merge with Lakeland Financial Corp., Round Lake Heights, Illinois, and thereby indirectly acquire Lakeland Community Bank, Round Lake Heights, Illinois.

Board of Governors of the Federal Reserve System, December 2, 2003.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 03–30348 Filed 12–8–03; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center Web site at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than January 2, 2004.

A. Federal Reserve Bank of Kansas City (James Hunter, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. Lindoe, Inc., Ordway, Colorado, to acquire 100 percent of the voting shares of First National Bank of Lake City & Creede, Lake City, Colorado.

B. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. Southwest Bancorporation of Texas, Inc., Houston, Texas, and Southwest Holding Delaware, Inc., Wilmington, Delaware, to acquire 100 percent of Reunion Bancshares, Inc., Dallas, Texas, and indirectly acquire Reunion Bancshares-Delaware, Inc., Dover, Delaware, and Lone Star Bank, Dallas, Texas.

In connection with this application, Southwest Bancorporation of Texas, Inc., Houston, Texas, and Southwest Holding Delaware, Inc., Wilmington, Delaware also have applied to acquire Reunion Mortgage Services, Inc., Dallas, Texas, and thereby engage in nonbanking activities pursuant to section 225.28(b)(1) of Regulation Y.

Board of Governors of the Federal Reserve System, December 3, 2003.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E3–00484 Filed 12–8–03; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: 11:30 p.m., Monday, December 15, 2003.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

FOR FURTHER INFORMATION CONTACT: Michelle A. Smith, Director, Office of Board Members; 202–452–2955.

SUPPLEMENTARY INFORMATION: You may call 202–452–3206 beginning at approximately 5 p.m. two business days before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at http://www.federalreserve.gov for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Board of Governors of the Federal Reserve System, December 5, 2003.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 03–30623 Filed 12–5–03; 1:33 pm]

BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Oncologic Drugs Advisory Committee; Amendment of Notice

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an amendment to the notice of meeting of the Oncologic Drugs Advisory Committee. This meeting was announced in the **Federal Register** of November 18, 2003 (68 FR 65076–65077). The amendment is being made to reflect a change in the *Location* portion of the document. There are no other changes.

FOR FURTHER INFORMATION CONTACT: Johanna Clifford, Center for Drug Evaluation and Research (HFD–21), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, or by express delivery to: 5630 Fishers Lane, rm. 1093, Rockville, MD 20852, 301–827–7001, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 3014512542. Please call the Information Line for up-to-date information on this meeting.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of November 18, 2003 (68 FR 65076–65077), FDA announced that a meeting of the Oncologic Drugs Advisory Committee would be held on December 16, 2003. On page 65077, in the first column, the *Location* portion of the meeting is amended to read as follows:

Location: CDER Advisory Committee conference rm. 1066, 5630 Fishers Lane, Rockville, MD.

This notice is issued under the Federal Advisory Committee Act (5 U.S.C. app. 2) and 21 CFR part 14, relating to advisory committees.

Dated: December 3, 2003.

William K. Hubbard,

Associate Commissioner for Policy and Planning.

[FR Doc. 03–30436 Filed 12–8–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Findings of Scientific Misconduct

AGENCY: Office of the Secretary, HHS.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Office of Research Integrity (ORI) and the Acting Assistant Secretary for Health have taken final action in the following case:

Jianhua (James) Xu, M.S., University of Alberta: Based on the University of Alberta (UA) Report, the respondent's admissions, and additional analysis conducted by ORI in its oversight review, the U.S. Public Health Service (PHS) found that Jianhua (James) Xu, M.S., former technician at UA, engaged in scientific misconduct in research funded by National Heart, Lung, and Blood Institute (NHLBI), National Institutes of Health (NIH), grant R01 HL61751–01.

Mr. Xu performed experiments on the enzyme lipid phosphate phosphatase-1 (LPP–1) from a family of enzymes that affect signal transduction by glycerolipid and sphingolipid phosphate esters as second messengers. A typical experiment involved the investigation of the effects on various glycerolipids, sphingolipids, and other related effector compounds on the activity of LPP–1 either in tissue culture cells or isolated enzyme preparations. Mr. Xu falsified data by adding vanadate to inhibit the enzyme LPP–1, in experiments that purported to show that the inhibition was the result of adding natural lipid effectors. He was also observed deliberately falsifying other colleagues' experiments in a similar manner.

Mr. Xu admits that he alone was responsible for the falsification.

Specifically, Mr. Xu committed scientific misconduct by falsifying data for Figures 1A, 1B, 1C, 2B, 2D, 3, 4, 5, 6, 7, and 8A that he published in: James Xu, *et al.* "Lipid phosphate phosphatase-1 and Ca^{2+} control lysophosphatidate signaling through EDG–2 receptors." Journal of Biological Chemistry 275:27520–27530, 2000. The paper was retracted in Journal of Biological Chemistry 278:38104, 2003.

Due to the falsified data, Manuscript #C0007049 by Xu, *et al.* entitled "Transactivation of platelet-derived growth factor receptors by lysophosphatidate causes tyrosine phosphorylation of lipid phosphate phosphatase-1 and feedback inhibition of EDG–2 receptor activation" was withdrawn. Also, ORI concluded Mr. Xu committed scientific misconduct by deliberately falsifying experiments of other colleagues in the laboratory by adding vanadate to their experiments without the authorization or knowledge of his colleagues.

Mr. Xu provided the following in an admission statement dated March 23, 2003:

For the purpose of disposition of this matter by the Office of Research Integrity ("ORI") of the U.S. Department of Health and Human Services, I confirm that I began falsifying results of experiments, relating to the inhibition of the enzyme lipid phosphate phosphatase (LPP–1), in which I was initially involved. The falsification consisted of the addition of vanadate to tubes containing certain substances. In order to cover up my initial falsification, I also falsified the experiments of others who were doing related experiments. I only falsified these subsequent experiments to the extent necessary to cover up the original falsification and did not falsify any other experiments.

The research misconduct was significant because the research focused on the study of signal transduction by lipid messenger molecules, which play an important role in regulating cellular processes as diverse as wound repair, regeneration of injured corneal tissues, adipocyte growth obesity, and cell division potentially involved in the development of cancers.

Mr. Xu has entered into a Voluntary Exclusion Agreement (Agreement) in which he has voluntarily agreed for a period of four (4) years, beginning on November 10, 2003:

(1) To exclude himself from any contracting or subcontracting with any agency of the United States Government and from eligibility or involvement in nonprocurement programs of the United States Government referred to as "covered transactions" as defined in the debarment regulations at 45 CFR part 76; and

(2) to exclude himself from serving in any advisory capacity to PHS including but not limited to service on any PHS advisory committee, board, and/or peer review committee, or as a consultant.

FOR FURTHER INFORMATION CONTACT: Director, Division of Investigative Oversight, Office of Research Integrity, 1101 Wootton Parkway, Suite 750, Rockville, MD 20852, (301) 443–5330.

Chris B. Pascal,

Director, Office of Research Integrity.

[FR Doc. 03–30535 Filed 12–8–03; 8:45 am]

BILLING CODE 4150–31–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

60Day–04–03]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer on (404) 498–1210.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Send comments to Anne O'Connor, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS–D24, Atlanta, GA 30333. Written comments should be received within 60 days of this notice.

Proposed Project: HIV Prevention Capacity-Building Assistance Information Collection: Reporting and Monitoring System—New—National Center for HIV, STD, and TB Prevention (NCHSTP), Centers for Disease Control and Prevention (CDC).

Background

CDC is requesting a 3-year clearance for information collection forms to monitor the HIV prevention activities of CBA provider grantees funded by CDC from 2004 to 2009. These forms will be used to collect information that assists in monitoring CBA services and activities. CDC is responsible for monitoring and evaluating HIV prevention activities conducted under these cooperative agreements. This requires that CDC have current information regarding the progress of CBA activities and services supported through these cooperative agreements. Therefore, forms such as the Trimester Interim Progress Report, CBA Notification Form, CBA Completion Form, CBA Training Events Report are considered a critical component of the monitoring and evaluation process. Since, this program will encompass approximately 36 CBA provider organizations, there is a need for a standardized system for reporting individual episodes of CBA delivered by all CBA provider grantees. The collection of data will help CDC discern and refine national goals and objectives in the prevention of HIV.

CBA providers will be required to submit CBA Trimester Progress Reports (form A). The purpose of the CBA Trimester Progress Report is to describe CBA undertaken during the previous four months. The Trimester Progress Report will be a narrative on the programs' successes and barriers: process and outcome monitoring data; collaborative and cooperative activities with other organizations; and plans for future activities.

To effectively track and monitor all requests for capacity-building assistance, CBA providers will be required to submit a CBA Notification Form (form B) following each contact with a CBO or HIV prevention stakeholder for CBA services. The purpose of this form is to track all requests for services from CBOs, health departments and stakeholders. Requests for CBA from these CBOs and stakeholders are received by CBA providers on an on-going basis.

CBA providers will also be required to submit a CBA Completion Form (form C) following each episode of CBA service delivered to all CBOs and stakeholders. The purpose of this form is to provide feedback and follow-up information to CDC Project Officers on the types of CBA services and quality of services that were delivered to all CBOs by CBA Providers. CBA Requests from CBOs, health departments, and stakeholders are received by CBA providers on an on-going basis. Information collection will be on-going throughout the duration of the cooperative agreements.

In addition, CBA providers will be required to submit pre-planned CBA training events for a CBA Training Events Report (form D). The CBA Training Events Report is used to disseminate planned capacity building assistance activities delivered by CBA providers, the CDC and other organizations providing training and technical assistance. The calendar is also used as a marketing tool to let CBOs, health departments and stakeholders know what types of technical assistance and training activities are available.

It is estimated that Form A will require 4 hours of preparation by the respondent, Form B will require 15 minutes of preparation by the respondent, and Form C will require 30 minutes of preparation by the respondent, and Form D will require 2 hours of preparation by the respondent. There are no costs to respondents other than their participation in the collection of information.

Form name	No. of respondents	No. of responses per respondent	Average burden per response (in hours)	Total burden (in hours)
Form A: CBA Trimester Report	36 Grantees	3	4	432
Form B: CBA Notification Form	36 CBA Provider Grantees	50	15/60	450
Form C: CBA Completion Form	36 CBA Provider Grantees	25	30/60	450
Form D: CBA Training Events Report	36 CBA Provider Grantees	12	2	864
Total				2196

Dated: November 25, 2003.

Laura Yerdon Martin,

Acting Director, Executive Secretariat, Centers for Disease Control and Prevention.

[FR Doc. 03–30415 Filed 12–8–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–09–04]

Proposed Data Collections Submitted for Public Comment and Recommendations

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 498–1210. Send written comments to CDC, Desk Officer, Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 or by fax to (202) 395–6974. Written comments should be received within 30 days of this notice.

Proposed Project: The National Electronic Injury Surveillance System—All Injury Program (NEISS–AIP) Special Study on Motor Vehicle Safety—New—National Center for Injury Prevention and Control (NCIPC), Centers for Disease Control and Prevention (CDC).

Motor vehicle injuries are the leading cause of death in the U.S. for people aged 1–34. In 2000, more than 40,000 people died as a result of motor vehicle-related injuries. In addition, motor vehicle injuries account for millions of emergency department visits annually, with many victims suffering permanent disabilities. Our goal at the National Center for Injury Prevention and Control is to reduce these deaths and disabilities. A recent priority-setting process revealed several gaps in our knowledge of motor vehicle safety that could be filled with enhancements to the NEISS All-Injury Program data collection system.

Scientific knowledge is being advanced through an expansion of the National Electronic Injury Surveillance System All Injury Program (NEISS–AIP), a collaborative effort by CDC, National Center for Injury Prevention and Control (NCIPC) and the U.S. Consumer Product Safety Commission (CPSC). The NEISS–AIP collects data about all types and external causes of non-fatal injuries and poisonings treated in U.S. hospital emergency departments (EDs). Currently, NEISS–AIP collects information only on the most severe injury. CDC proposes to expand NEISS–AIP by inserting a special screen study for one year, which will be triggered by coding motor vehicle as the cause of the injury. This special screen will permit us to collect all injury diagnoses and body parts affected (up to five), as well as restraint use and blood alcohol concentration for all motor vehicle occupants, when this information is included in the medical chart. The study will identify within that population, child occupants aged 0–12 years. A telephone follow-back survey of parents and caregivers will then be conducted to collect information about their child's seating position, restraint type, and vehicle and crash characteristics. This project will provide vital information about the type and number of injuries incurred in order to improve upon existing interventions or develop new interventions. The estimated annualized burden is 271 hours.

Survey	No. of respondents	No. of responses/respondent	Average burden/response (in hours)
NEISS Motor Vehicle Study (0–12)	1,250 (screening)	1	5/60
NEISS Motor Vehicle Study (0–12)	1,000 (respondents)	1	10/60

Dated: December 1, 2003.

Laura Yerdon Martin,

Acting Director, Executive Secretariat, Centers for Disease Control and Prevention.

[FR Doc. 03–30425 Filed 12–8–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–04–13]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer at (404) 498–1210.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Send comments to Seleda Perryman, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS–D24, Atlanta, GA 30333. Written comments should be received within 60 days of this notice.

Proposed Project: Surveillance for Bloodstream and Vascular Access Infections in Outpatient Hemodialysis Centers, (0920–0442)—Extension—National Center for Infectious Diseases (NCID), Centers for Disease Control and Prevention (CDC).

CDC is proposing an extension of a surveillance survey of bloodstream infections, vascular access infections, infections caused by hospitalization, and antimicrobial infections, all of which starts at U.S. outpatient hemodialysis centers. Although bloodstream and vascular access infections are common in hemodialysis patients, prior to this system there was no previous system to record and track these complications.

Participation in the proposed project is voluntary. Currently about 80–90 centers report data each month. We estimate that about 100 of the approximately 4,500 U.S. outpatient hemodialysis centers will participate in the coming years.

Participating centers may collect data continuously, or may discontinue participation at any time. CDC estimates that the average center will participate for nine months. Each month, participating centers will record the number of hemodialysis patients they treat and maintain a log of all hospitalizations and intravenous (IV) antimicrobial starts. For each hospitalization or IV antimicrobial start, further information (*e.g.*, type of vascular access, clinical symptoms, presence of a vascular access infection, and blood culture results) will be collected. These data may be reported to CDC on paper forms or via a secure Internet site. CDC aggregates this data and generates reports which are sent to participating dialysis centers.

Centers that participate in the Internet-based reporting system may also analyze their own data and print out reports as desired. Rates of bloodstream infection, vascular access infection, and antimicrobial use per 1000 patient-days will be calculated. Also, the percentage of antimicrobial starts for which a blood culture is performed will be calculated. Through use of these data, dialysis centers will be able to track rates of key infectious complications of hemodialysis. This will facilitate quality control improvements to reduce the incidence of infections, and clinical practice guidelines to improve use of antimicrobials. The total cost to the respondents is $157,500.

Form	Number of respondents	Number of responses per respondent	Average burden per response	Total burden (in hours)
Agreement to participate and Practices Survey	100	1	1	100
Census Form	100	12	1	1,200
Log	100	10	1	1,000
Incident Form	100	200	12/60	4,000
Total				6,300

Dated: December 1, 2003.

Laura Yerdon Martin,

Acting Director, Executive Secretariat, Centers for Disease Control and Prevention.

[FR Doc. 03–30426 Filed 12–8–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–04–11]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer on (404) 498–1210.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Send comments to Anne O'Connor, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS–D24, Atlanta, GA 30333. Written comments should be received within 60 days of this notice.

Proposed Project: Pregnancy Risk Assessment Monitoring System (PRAMS) Program Evaluation—New—National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP), Centers for Disease Control and Prevention (CDC).

Background

The Pregnancy Risk Assessment Monitoring System (PRAMS) is a surveillance project of the CDC, National Center for Chronic Disease Prevention and Health Promotion and state health departments. PRAMS collects state-specific, population-based data on maternal attitudes and experiences prior to, during, and immediately following pregnancy.

The goal of the PRAMS project is to improve the health of mothers and infants by reducing adverse outcomes such as low birth weight, infant mortality and morbidity, and maternal morbidity. PRAMS provides state-specific data for planning and assessing health programs and for describing maternal experiences that may contribute to maternal and infant health. PRAMS collects data that are unavailable through other surveillance systems and has become a critical mechanism for identifying and monitoring trends, informing program evaluations and policy decisions, and tracking progress toward Healthy People 2010 objectives that are related to maternal and child health. Currently 31 states and New York City administer PRAMS, representing 62% of all U.S. births. The objectives of the program evaluation are threefold:

1. To inform the operational, analytic, translation, and capacity building functions of the current PRAMS system and make them more efficient, effective and capable of meeting future needs.

2. To provide information that will guide the expansion and support of additional state PRAMS programs.

3. To provide information that will enable the PRAMS system to be more responsive to changes in public health priorities and policies, including the needs of the state programs and the wider MCH community.

A key component of the PRAMS evaluation is a semi-structured mail survey of all 32 PRAMS program directors. The focus of the mail-in survey will be to examine ways to make PRAMS data accessible for analysis, factors promoting capacity and utilization, costs, indicators of success, and additional resources needed to improve quality and responsiveness.

Prior to fielding the survey, a research contractor will conduct one to two hour interviews with 3 to 4 program representatives. These interviews will help to reduce overall respondent burden by assessing whether the survey is comprehensible and relevant, whether the terms and phrases are understood as intended, and whether it is easy to read.

The information obtained from this data collection will help the CDC meet its evaluation objectives as described above, responses are voluntary. No proprietary items or sensitive information will be collected. There is no cost to respondents.

Form	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden (in hours)
Mail-in Survey	32	1	60/60	32

Dated: December 1, 2003.

Laura Yerdon Martin,

Acting Director, Executive Secretariat, Centers for Disease Control and Prevention.

[FR Doc. 03–30427 Filed 12–8–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–04–12]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer on (404)498–1210.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Send comments to Anne O'Connor, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS–D24, Atlanta, GA 30333. Written comments should be received within 60 days of this notice.

Proposed Project: Coal Workers' X-ray Surveillance Program (CWXSP), OMB No. 0920–0020—Extension—National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control and Prevention (CDC).

Background

The CWXSP is a federally mandated program under the Federal Mine Safety and Health Act of 1977, Pub. L. 95–164. The Act provides the regulatory authority for the administration of the CWXSP, a surveillance program to protect the health and safety of underground coal miners. This Program requires the gathering of information from coal mine operators, participating miners, participating x-ray facilities, and participating physicians. The Appalachian Laboratory for Occupational Safety and Health (ALOSH), located in Morgantown, WV, is charged with administration of this Program. There are no costs to respondents.

Respondents	Number of respondents	Number of responses/respondent	Average burden/response (in hours)	Total burden (in hours)
Physicians/interpretations	5000	1	3/60	250
Physicians/certification	300	1	10/60	50
Miners	2500	1	20/60	833
Mine operators	200	1	30/60	100
X-ray facilities	25	1	30/60	13
Total				1246

Dated: December 1, 2003.

Laura Yerdon Martin,

Acting Director, Executive Secretariat, Centers for Disease Control and Prevention.

[FR Doc. 03–30428 Filed 12–8–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2003N–0066]

Agency Information Collection Activities; Announcement of the Office of Management and Budget Approval; Inspection by Accredited Persons Program Under the Medical Device User Fee and Modernization Act of 2002

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled "Inspection by Accredited Persons Program Under the Medical Device User Fee and Modernization Act of 2002" has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: Peggy Robbins, Office of Management Programs (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of October 8, 2003 (68 FR 58113), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under 44 U.S.C. 3507. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has now approved the information collection and has assigned OMB control number 0910–0510. The approval expires on November 30, 2006. A copy of the supporting statement for this information collection is available on the Internet at *http://www.fda.gov/ohrms/dockets*.

Dated: December 3, 2003.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 03–30534 Filed 12–8–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Additional Action on Findings of Scientific Misconduct

AGENCY: Office of the Secretary, HHS.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Office of Research Integrity (ORI) and the Assistant Secretary for Health have taken final additional action in the following case:

Kuei-Fu (Tom) Lin, D.V.M., Medical University of South Carolina (MUSC): Based on the report of an investigation conducted by MUSC and additional analysis conducted by ORI in its oversight review, the U.S. Public Health Service (PHS) found on June 12, 2001, that Dr. Lin, a former graduate student, Department of Biochemistry and Molecular Biology at MUSC, engaged in scientific misconduct in research supported by the National Heart, Lung, and Blood Institute (NHLBI), National Institutes of Health (NIH), grants R01 HL29397, "Regulation and Function of Renal Kallikrein," and R01 HL56686, "Gene Therapy in Experimental Hypertension and Renal Diseases," by falsifying data published in publications in Hypertension 26:847–853, 1995, Hypertension Research 20:269–277, 1997, and Human Gene Therapy 9:1429–1438, 1998.

Subsequent to the execution of a three-year Voluntary Exclusion Agreement (Agreement), Dr. Lin continued to receive PHS funds through April 30, 2003, in material violation of the Agreement. Based on Dr. Lin's aforementioned violation, and in lieu of initiation of debarment proceedings authorized by 45 CFR § 76.305(c)(4) for Dr. Lin's violation of a material provision of the Agreement, the parties have agreed to extend the term of Dr. Lin's voluntary exclusion through April 29, 2007.

FOR FURTHER INFORMATION CONTACT: Director, Division of Investigative Oversight, Office of Research Integrity, 5515 Security Lane, Suite 700, Rockville, MD 20852, (301) 443–5330.

Chris Pascal, J.D.,

Director, Office of Research Integrity.

[FR Doc. 03–30536 Filed 12–8–03; 8:45 am]

BILLING CODE 4150–31–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

[Announcement Number: HRSA–04–077]

Maternal and Child Health Federal Set-Aside Program; Special Projects of Regional and National Significance; Community-Based Abstinence Education Project Grants (CBAE); CFDA #93.110

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Notice of availability of funds.

SUMMARY: The Health Resources and Services Administration (HRSA) announces that approximately $33 million in fiscal year (FY) 2004 funds will be available for making competitive grants to provide abstinence education to adolescents, subject to the availability of appropriations. There are no cost sharing, matching or cost participation requirements of the program. Eligibility is open to public and private entities, including faith-based and community organizations, which develop and/or provide an abstinence program consistent with the definition of "abstinence education" in section 510 of the Social Security Act. In addition, the entity must agree not to provide a participating adolescent any other education regarding sexual conduct in the same setting. All awards will be made under the program authority of section 501(a)(2) of the Social Security Act, the Maternal and Child Health (MCH) Federal Set-Aside Program (42 U.S.C. 701(a)(2)) and will be administered by the Maternal and Child Health Bureau (MCHB), HRSA. HRSA will encourage collaboration from other Federal agencies that have an interest in abstinence education, such as the Administration for Children and Families (ACF) and the Office of Population Affairs (OPA). Contingent on the availability of funding, up to 70 three-year implementation grants, with annual awards ranging from $250,000 to $800,000, will be awarded. Projects may be located in any State, the District of Columbia, and United States territories, commonwealths, and possessions. However, to ensure that there is a more even geographic distribution of grantees, special consideration will be given to highly ranked applications in States that do not have a Federally-funded Special Projects of Regional and National Significance (SPRANS) Community-Based Abstinence Education grant.

This **Federal Register** announcement will appear on the HRSA Home Page at: *http://www.hrsa.gov*. **Federal Register** notices are found by following instructions at: *www.gpoaccess.gov/fr/index.html*.

DATES: Applicants for this program are requested to notify MCHB's Division of State and Community Health by December 31, 2003. Please note that a "notice of intent to submit an application" will be used as a mechanism to deliver technical assistance and to assist in the planning of the objective review; it is not a requirement of the application process. Notification can be made in one of three ways: telephone, 301–443–2204; fax, 301–443–9354; or mail, MCHB, HRSA; Division of State and Community Health; Parklawn Building, Room 18–31; 5600 Fishers Lane; Rockville, MD 20857. MCHB is sponsoring five, one-day pre-application workshops in December 2003 to assist potental applicants in preparing applications that address the requirements of the SPRANS Community-Based Abstinence Education Project Grant program, as described in the Application Guidance. Attendance at a pre-application workshop is not mandatory. The tentative dates and locations of the five workshops are as follows: Kansas City, December 16; San Diego, December 18; Atlanta, January 5; Boston, January 6; and Baltimore, January 9. Registration information and possible schedule changes for these workshops will be posted on the MCHB Homepage at *www.mchb.hrsa.gov*, and can be viewed at the logistics contractor's Web site at *www.psava.com/abed*. The deadline for receipt of applications is February 9, 2004. Applications will be considered "on time" if they are either received on or before the deadline date or postmarked or E marked on or before the deadline date and received in time for the Independent Review Committee review. In the event that questions arise about meeting the application due date, applications must have a legibly dated receipt from a commercial carrier or the U.S. Postal Service. Private metered postmarks will not be accepted as proof of timely mailing. Applications submitted electronically will be time/date stamped electronically, which will serve as receipt of submission. The projected award date is July 1, 2004.

Applications which do not meet the criteria above are considered late applications. HRSA shall notify each late applicant that its application will not be considered in the current competition.

ADDRESSES: To receive a complete application kit, applicants may contact the HRSA Grants Application Center at 1–877–477–2123 (1–877–HRSA–123) by telephone, or register on-line at: *http://www.hrsa.gov*, or by accessing *http://www.hrsa.gov/g_order3.htm* directly. This program uses the standard Form PHS 5161–1 (rev. 7/00) for applications (approved under OMB No. 0920–0428). Applicants must use the appropriate Catalog of Federal Domestic Assistance (CFDA) number when requesting application materials. The CFDA is a Government wide compendium of enumerated Federal programs, projects, services, and activities which provide assistance. The CFDA Number for the Community-Based Abstinence Education Project Grant Program is #93.110.

If applying on paper, the entire application may not exceed 80 pages in length, including the abstract, project and budget narratives, face page, attachments, any appendices and letters of commitment and support. Pages must be numbered consecutively. If applying on-line, the total size of all uploaded files may not exceed 10 MB. Applications that exceed the specified limits will be deemed non-compliant, and will be returned to the applicant without further consideration.

If you choose to submit a paper application, please send the original and two copies to: Grants Management Officer (MCHB), HRSA Grants Application Center, ATTN: Program Announcement No. HRSA–04–0777, The Legin Group, Inc., 901 Russell Avenue, Suite 450, Gaithersburg, Maryland 20879, telephone: 877–474–2345, E-mail: *hrsagac@hrsa.gov*. Upon receipt of a paper application, the Grants Application Center will mail an acknowledgment of receipt to the applicant organization's Program Director.

HRSA encourages applicants to submit applications on-line. To register and/or log-in to prepare your application, go to *https://grants.hrsa.gov/webexternal/login.asp*. For assistance in using the on-line application system, call 877-GO4-HRSA (877–464–4772) between 8:30 a.m. to 5:30 p.m. ET or e-mail *callcenter@hrsa.gov*.

When available, application guidance and the required form for the Community-Based Abstinence Education Grant Program may be downloaded in either Word or Adobe Acrobat format (.pdf) from the HRSA homepage at *http://www.hrsa.gov/grants/preview/*.

Applicants should note that HRSA is currently accepting grant applications online. Please refer to the HRSA grants schedule at *http://www.hrsa.gov/grants.htm* for more information. The automated application process should be faster, easier and better for applicants and for HRSA. We encourage you to take advantage of this new option. Applicants will be notified through the same channels that currently announce the availability of downloadable and paper application materials, including notices on HRSA Web sites and e-mail communications. Once the automated system is in place, applications can be submitted on-line and applicants will receive an electronic confirmation of the submission. Applicants will need to print the face page, sign it, and submit it to the HRSA Grants Application Center, 901 Russell Avenue, Suite 450, Gaithersburg, MD 20879; telephone 1–877–477–2123.

Beginning October 1, 2003, all applicant organizations are required to have a Data Universal Numbering System (DUNS) number in order to apply for a grant from the Federal Government. The DUNS number is a unique nine-character identification number provided by the commercial company, Dun and Bradstreet. There is no charge to obtain a DUNS number. Information about obtaining a DUNS can be found at *http://www.hrsa.gov/grants/duns.htm* or call 1–866–705–5711. Please include the DUNS number next to the OMB approval number on the application face page. Applications will not be reviewed without a DUNS number.

Additionally, the applicant organization will be required to register

with the Federal Government's Central Contractor Registry (CCR) in order to do business with the Federal Government, including electronic. Information about registering with the CCR can be found at *http://www.hrsa.gov/grants/ccr.htm.*

FOR FURTHER INFORMATION CONTACT: Donna Hutten, 301–443–5839 (for questions specific to project activities of the program, program objectives, or the Letter of Intent described above); and Pamela Bell, 301–443–3504 (for grants policy, budgetary, and business questions).

SUPPLEMENTARY INFORMATION:

Abstinence-only education programs are one way to educate young people and create an environment within communities that support teen decisions to postpone sexual activity. Between 1991 and 2001, the prevalence of sexual experience decreased 16 percent among high school students (CDC, *MMWR*, September 27, 2002). In 2001, 45.6 percent of high school students reported having had sexual intercourse and 33.4 percent reported having had sexual intercourse within the previous three months ((CDC, *MMWR*, June 28, 2002). There are some indications that early sexual intercourse by adolescents can have negative effects on social and psychological development. Research shows that teen pregnancy is linked to a list of risk factors similar to those for other problem behaviors of adolescence, such as alcohol and drug use, violence, delinquency, and school drop-out. Teen parenting is associated with the lack of high school completion and the initiation of a cycle of poverty for mothers. The Department of Health and Human Services established the reduction of teen pregnancies as a priority goal in its 1997 strategic plan. Based on preliminary U.S. birth data for 2002, birth rates for teenagers have continued their steady decline. Overall, the teen birth rate has declined 28 percent since 1990. The birth rates for teenagers 15–17 years and 18–19 years have declined 38 and 18 percent, respectively since 1990 (CDC, NCHS, *Vital Statistics Report*, June 25, 2003).

Consistent with other SPRANS grant programs, MCHB encourages coordination and collaboration between the State agencies administering a Section 510 abstinence education grant and community-based organizations applying for a SPRANS Community-Based Abstinence Education Project grant. Such coordination and collaboration is considered beneficial in promoting complementary efforts between State and community agencies and advancing maternal and child health. MCHB also encourages collaboration among Federal agencies with an interest in abstinence-only education programs, such as ACF and OPA.

Projects funded through the SPRANS Community-Based Abstinence Education Grant Program share a common definition of "abstinence education" with the Section 510-funded State programs. For purposes of both programs (as well as abstinence education programs funded under the Title XX Adolescent Family Life program), the term "abstinence education" means "an educational or motivational program which—

(A) has as its exclusive purpose, teaching the social, psychological, and health gains to be realized by abstaining from sexual activity;

(B) teaches abstinence from sexual activity outside marriage as the expected standard for all school age children;

(C) teaches that abstinence from sexual activity is the only certain way to avoid out-of-wedlock pregnancy, sexually transmitted diseases, and other associated health problems;

(D) teaches that a mutually faithful monogamous relationship in the context of marriage is the expected standard of human sexual activity;

(E) teaches that sexual activity outside of the context of marriage is likely to have harmful psychological and physical effects;

(F) teaches that bearing children out-of-wedlock is likely to have harmful consequences for the child, the child's parents, and society;

(G) teaches young people how to reject sexual advances and how alcohol and drug use increases vulnerability to sexual advances; and

(H) teaches the importance of attaining self-sufficiency before engaging in sexual activity."

Curriculum developed or selected for implementation in the SPRANS Community-Based Abstinence Education Grants Program must address all eight elements of the Section 510 abstinence education definition and may not be inconsistent with any aspect of that definition.

Authorization: Section 501(a)(2) of the Social Security Act, 42 U.S.C. 701(a)(2).

Purpose: The purpose of the SPRANS Community-Based Abstinence Education Grant Program is to provide support to public and private entities for the development and implementation of abstinence education programs for adolescents, ages 12 through 18. This program funds the planning and implementation of community-based, abstinence-only educational interventions designed to reduce the proportion of adolescents who have engaged in premarital sexual activity, including but not limited to sexual intercourse; reduce the incidence of out-of-wedlock pregnancies among adolescents; and reduce the incidence of sexually transmitted diseases among adolescents.

Specific objectives for the SPRANS Community-Based Abstinence Education planning and implementation grants are to:

- Support programmatic efforts that foster the development of abstinence-only education for adolescents, ages 12 through 18, in communities across the country.
- Develop and implement abstinence-only programs that target the prevention of teenage pregnancy and premature sexual activity.
- Develop abstinence education approaches that are culturally sensitive and age-appropriate to meet the needs of a diverse audience of adolescents, ages 12 through 18.
- Implement curriculum-based community education programs that promote abstinence decisions to adolescents, ages 12 through 18.

The SPRANS Community-Based Abstinence Education Project Grants Program is complementary to the Title V "Section 510" Abstinence Education Grant Program. Activities funded under the SPRANS Community-Based Abstinence Education Project Grants should enhance the State grantees' efforts to achieve performance goals and objectives established for the existing Section 510 projects in accordance with the requirements of the "Government Performance and Results Act (GPRA) of 1993" (Public Law 103–62). This Act requires the establishment of measurable goals for Federal programs that can be reported as part of the budgetary process, thus linking funding decisions with performance. While SPRANS Community-Based Abstinence Education Program grantees are not responsible for establishing individual program performance targets, grantees are expected to collect and annually report program data that address the six program performance measures presented in Figure 1. This data collection and reporting is essential to the Agency's efforts to assess program-wide performance and progress towards achieving the performance measure objectives.

Figure 1.—SPRANS Community-Based Abstinence Education Grant Program Performance Measures

1. Proportion of program participants who successfully complete or remain enrolled in an abstinence-only education program.

2. Proportion of adolescents who understand that abstinence from sexual activity is the only certain way to avoid out-of-wedlock pregnancy and sexually transmitted disease.

3. Proportion of adolescents who indicate an understanding of the social, psychological and health gains to be realized by abstaining from premarital sexual activity.

4. Proportion of participants who report they have refusal or assertiveness skills necessary to resist sexual urges and advances.

5. Proportion of youth who commit to abstain from sexual activity until marriage.

6. Proportion of participants who intend to avoid situations and risk behaviors, such as drug use and alcohol consumption, which make them more vulnerable to sexual advances and urges.

Each SPRANS Abstinence Education grantee will be required to submit an Annual Progress Summary on its activities, including a narrative discussion of the project's progress toward achieving its goals and objectives, an unduplicated count of clients served, total number of client encounters, a list of the communities served, and a description of the type of project activities being implemented.

Applications for SPRANS Community-Based Abstinence Education implementation grants are required to include a data collection plan that addresses the specified performance measures. In the Annual Progress Summary, implementation grantees will document program data for each performance measure. Further information on reporting requirements for this program and instructions regarding application requirements are included in the Program Guidance.

Curriculum developed or selected for implementation in the SPRANS Community-Based Abstinence Education Grants Program must address all eight elements of the Section 510 abstinence education definition and may not be inconsistent with any element of that definition.

Applicants are required to complete a Curriculum Summary form for every proposed curriculum, which includes documentation that the curriculum is responsive to and consistent with each of the eight elements of the section 510 abstinence education definition. Applicants are required to describe any proposed modifications to the curriculum(a) to address areas of non-compliance. Consistent with other SPRANS programs, consultation and collaboration between the SPRANS Community-Based Abstinence Education grantees and State section 510 grantees are encouraged throughout the life of the project.

Applicants should be aware that SPRANS Community-Based Abstinence Education Project grantees and their contractors/sub-grantees may not expend Federal funds for sectarian instruction, worship, prayer, or proselytization.

Eligibility: Under SPRANS project grant regulations at 42 CFR part 51a.3, any public or private entity, including an Indian tribe or tribal organization (as defined at 25 U.S.C. 450b), is eligible to apply for grants covered by this announcement. State agencies responsible for the administration of the Section 510 Abstinence Education Grant, non-profit organizations and other community-based organizations, including faith-based organizations, are eligible to apply for funding under a SPRANS Community-Based Abstinence Education Project Grant. Projects must clearly and consistently focus on the designated definition of "abstinence education" and applicants must agree not to provide a participating adolescent any other education regarding sexual conduct in the same setting.

Funding Level/Project Period: Contingent on available funding, approximately $33 million will be awarded to support up to 70 new three-year implementation grants in FY 2004, with awards ranging from $250,000 to $800,000 per year. The project period consists of three budget periods, each generally of one year duration. Continuation of any project from one budget period to the next is subject to satisfactory performance and availability of funds.

Review Criteria: The following are generic review criteria applicable to all MCHB programs:

(1) The extent to which the project will contribute to the advancement of maternal and child health and/or improvement of the health of children with special health care needs;

(2) The extent to which the project is responsive to policy concerns applicable to MCH grants and to program objectives, requirements, priorities and/or review criteria for specific project categories, as published in program announcements or guidance materials;

(3) The extent to which the estimated cost to the Government of the project is reasonable, considering the anticipated results;

(4) The extent to which the project personnel are well qualified by training and/or experience for their roles in the project and the applicant organization has adequate facilities and personnel; and

(5) The extent to which, insofar as practicable, the proposed activities, if well executed, are capable of attaining project objectives.

More specific review criteria used to review and rank applications for the SPRANS Community-Based Abstinence Education grant program are included in the application kit. Applicants should pay strict attention to addressing all the criteria delineated in the application kit program guidance, as they are the basis upon which their applications will be judged.

Special consideration will be given to entities in local communities which demonstrate a strong record of support for abstinence education among adolescents. In addition, previous SPRANS Community-Based Abstinence Education grantees will receive this special consideration.

To ensure that there is a geographic distribution of grantees, special consideration may be given to highly ranked applications in States that do not currently have a funded SPRANS Community-Based Abstinence Education grant.

Public Health System Reporting Requirements: This program is subject to the Public Health System Reporting Requirements (approved under OMB No. 0937–0195). Under these requirements, the community-based nongovernmental applicant must prepare and submit a Public Health System Impact Statement (PHSIS). The PHSIS is intended to provide information to State and local health officials to keep them apprised of proposed health services grant applications submitted by community-based nongovernmental organizations within their jurisdictions.

Community-based nongovernmental applicants are required to submit the following information to the head of the appropriate State and local health agencies in the area(s) to be impacted no later than the Federal application receipt due date:

(a) A copy of the face page of the application (SF 424).

(b) A summary of the project (PHSIS), not to exceed one page, which provides:

(1) A description of the population to be served.

(2) A summary of the services to be provided.

(3) A description of the coordination planned with the appropriate State and local health agencies.

It is also permissible to substitute the Project Abstract in place of the PHSIS.

Paperwork Reduction Act of 1995: Data collection requirements have been approved by the Office of Management and Budget (OMB) and are in effect, as required under the Paperwork Reduction Act of 1995 (OMB No. 0915–0272).

Executive Order 12372: The MCH Federal Set-Aside program has been determined to not be a program which is subject to the provisions of Executive Order 12372 concerning intergovernmental review of Federal programs.

Dated: November 28, 2003.

Elizabeth M. Duke,

Administrator.

[FR Doc. 03–30597 Filed 12–5–03; 12:05 pm]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Proposed Collection; Comment Request; Submission for OMB Review; Comment Request; Request for Generic Clearance To Collect Medical Outcome and Risk Factor Data From a Cohort of U.S. Radiologic Technologists

SUMMARY: Under the provisions of section 3507(a)(1(D) of the Paperwork Reduction Act of 1995, the National Cancer Institute, the National Institutes of Health (NIH) has submitted to the Office of Management and Budget (OMB) a request to review and approve the information collection listed below. This proposed information collection was previously published in the **Federal Register** on August 26, 2003, pages 51275–51276 and allowed 60 days for public comment. No public comments were received. The purpose of this notice is to allow an additional 30 days for public comment. The National Institutes of Health may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

Proposed Collection: *Title:* Request for Generic Clearance to Collect Medical Outcome and Risk Factor Data from a Cohort of U.S. Radiologic Technologists. *Type of Information Collection Request:* Reinstatement with change of a previously approved collection (OMB) No. 0925–0403 expired 09/30/1999). Need and Use of Information Collection. The primary aim of this project is to substantially increase knowledge about the long-term health affects associated with protracted low- to moderate-dose radiation exposures. With this submission, the NIH, Office of Communications and Public Liaison, seeks to obtain OMB's generic approval to conduct occasional surveys of a cohort of U.S. radiologic technologist to ascertain incident cancers, benign conditions associated with high risk of cancer, and selected other health outcomes, as well as demographic, lifestyle, reproductive, employment, and other characteristics that may influence health risks. Researchers an the National Cancer Institute and the University of Minnesota have followed a nationwide cohort of 146,000 radiologic technologist since 1982, of whom 110,000 completed at least one of two prior questionnaire surveys and 17,000 are deceased. This cohort is unique because estimates of cumulative radiation dose to specific organs (*e.g.*, breast) are available and the cohort is largely female, offering a rare opportunity to study effects of low-dose radiation exposure on breast and thyroid cancers, the two most sensitive organ sites for radiation carcinogenesis in women. Primary objectives are to quantify radiation dose-response for: (1) Cancers of the breast, thyroid, other radiogenic sites or histologies, and other cancers; (2) benign breast disease, thyroid nodules, and other benign conditions associated with increased cancer risk; and (3) other selected health outcomes that may be related to radiation exposure (*e.g.*, cardiovascular disease). Findings from this study will address an important gap in the scientific understanding of radiation dose-rate affects, *i.e.*, whether cumulative exposures of the same magnitude have the same health effects when received in single or a few doses over a very short period of time (as in atomic bomb or therapeutic exposures) or in many small doses over a protracted period of time (as in medical or nuclear occupational settings). The first survey will be mailed in 2004 to approximately 100,000 living cohort members who completed at least one prior survey and will collect information on: (1) Medical outcomes (as described above) to assess radiation-related risks; (2) detailed job-specific frequency of performing high-dose procedures (*e.g.*, handling isotopes), use of protective measures (*e.g.*, using lead aprons or standing behind shields), and other work practices (*e.g.*, holding patients for x-rays) to refine the organ dose estimates and associated uncertainty distributions; and (3) behavioral, susceptibility, and residential histories for refining estimates of lifetime ultraviolet (UV) radiation exposure to assess in greater detail the risks of melanoma and non-melanoma skin cancer associated with UV and ionizing radiation exposures, separately and jointly. Subsequent surveys will collect updated information on medical outcomes and risk factors of interest at that time. All surveys will be in optical-read format for computerized data capture. *Frequency of Response:* On occasion. *Affected Public:* U.S. radiologic technologists who have willingly participated in earlier investigations to quantify the carcinogenic risks of protracted low- to moderate-dose occupational radiation exposures. The annual reporting burden is as follows: *Estimated Number of Respondents:* 59,200. *Estimated Number of Responses Per Respondent:* 1. *Average Burden Hours per Response:* 0.4983. *Annual Burden Hours Requested:* 29,500. There are no capital costs, operating costs and/or maintenance costs to report.

Request for Comments: Written comments and/or suggestions from the public and affected agencies should address one or more of the following points: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Direct Comments to OMB: Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the: Office of Management and Budget, Office of Regulatory Affairs, New Executive Office Building, Room 10235, Washington, DC 20503, Attention: Desk Officer for NIH. To request more information on the proposed project or to obtain a copy of the date collection plans and instruments, contact: Michele M. Doody, Radiation Epidemiology Branch, National Cancer Institute, Executive Plaza South, Room 7040, Bethesda, MD 20892–7238, or call non-toll-free at (301) 594–7203 or e-mail your request, including your address to: *doodym@exchange.nih.gov.*

Comments Due Date: Comments regarding this information collection are best assured of having their full effect if received within 30 days of the date of this publication.

Dated: December 1, 2003.

Reesa Nichols,

NCI Project Clearance Liaison.

[FR Doc. 03–30495 Filed 12–8–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Notice.

SUMMARY: The inventions listed below are owned by an agency of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

ADDRESSES: Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to the indicated licensing contact at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: (301) 496–7057; fax: (301) 402–0220. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

A Mouse Model for Systemic Inflammation in Glucocerebrosidase-Deficient Mice With Minimal Glucosylceramide Storage

Richard L. Proia (NIDDK). DHHS Reference No. E–256–2003/0—Research Tool. *Licensing Contact:* Susan Carson; (301) 435–5020; *carsonsu@mail.nih.gov.*

Gaucher disease, the most common lysosomal storage disease, is an inherited metabolic disorder in which harmful quantities of the lipid glucocerebroside accumulate in the spleen, liver, lungs, bone marrow and in rare cases in the brain, due to a deficiency of the enzyme glucocerebrosidase (Gba) that catalyses the first step in the biodegradation of glucocerebrosides. Type 1 Gaucher disease is the most common and is distinguished from the other forms of the disease, types 2 and 3, by the lack of neurologic involvement. The clinical features of Type 1 are heterogeneous, vary broadly in clinical severity and affect many organ systems. The major disease manifestations include enlarged spleen and liver, bone lesions, hematologic abnormalities and lung involvement. The disease has also been associated with a sustained inflammatory reaction. Gaucher disease is most prevalent in the Ashkenazi Jewish population with an incidence of approximately 1 in 450 persons while in the general public the incidence is 1 in 100,000. There are an estimated 30,000 Gaucher disease patients world-wide with approximately 3000 patients currently receiving enzyme replacement therapy which has been shown to be highly effective in treatment of the disease. The cost of therapy is approximately $100,000-$300,000 annually and is a life-long treatment, which makes the case for affordable new therapies urgent.

The etiology of the disease has been difficult to study due to the absence of viable mouse models for the disease, as a complete disruption of the glucocerebrosidase (Gba) gene results in rapid neonatal death. In an attempt to produce a viable model scientists at the NIDDK introduced a human Gaucher disease point mutation, L444P, into the mouse Gba gene in order to cause a partial enzyme deficiency (J. Clin. Invest (2002) 109, 1215–1221; Proc. Natl. Acad. Sci. USA (1998) 95, 2503–2508).

The mice exhibit a partial glucocerebrosidase deficiency (15–20% of normal activity), without bulk accumulation of glucosylceramide or the presence of Gaucher cells. The mice demonstrate other clinical features of Gaucher disease, including multisystem inflammation, B cell hyperproliferation, skin abnormalities, anemia and lymphadenopathy. These mice provide a useful model for studying certain aspects of Gaucher disease pathology and in evaluating new therapeutic treatments.

Tec Kinase Deficient Mice

Pamela L. Schwartzberg (NHGRI), Michael J. Lenardo (NIAID), Harold Varmus (EM), Dan Littman (EM). DHHS Reference No. E–178–2003/0 and DHHS Reference No. E–178–2003/1—Research Tools. *Licensing Contact:* Susan Carson; (301) 435–5020; *carsonsu@mail.nih.gov.*

Stimulation of T lymphocytes through the T Cell Receptor (TCR) elicits broad responses required for proper immune function, including cell proliferation, cytokine production and apoptosis. Activation of distinct families of tyrosine kinases (Zap-70, Src) are important in TCR signalling, while the role of other tyrosine kinases, such as the Tec Kinases Rlk and Itk is less clear. However, evidence suggests that these kinases play a role in CD4+ T helper (Th) cell differentiation. Responses to infection are regulated in part by two distinct types of T helper cells, type 1 (Th1) and Th2 subclasses which produce different cytokines and have discrete effector functions. Th1 cells produce interferon-gamma (IFN-gamma), which is a key mediator of cellular immunity. In contrast Th2 cells produce interleukin 4 (IL–4), Il–5, Il–10, and Il–13 which assist humoral immunity and dominate immune responses to both helminths and allergens. Regulation of these subclasses is important not only for normal immune response, but also for abnormal disease processes, including autoimmunity and hypersensitivity. Generation of type 1 and type 2 Th cells is influenced by multiple factors including cytokines, costimulation and TCR-based signals. Understanding the mechanisms and signals important in T cell signalling is important for identifying new therapeutics that target Th1 and Th2-mediated pathologies (for example autoimmune disorders and asthma, respectively).

The Tec family of tyrosine kinases have been implicated as important mediators of polarized cytokine production and Th2 cell differentiation. Rlk is preferentially expressed in Th1 cells and Itk is important in Th2 response. Numerous studies have implicated alterations in the strength of TCR-mediated signals as playing important roles in Th cell differentiation. Researchers at the NIH have developed transgenic mouse models in order to address these issues. Rlk-deficient mice and Rlk/Itk double-deficient mice were generated and have been shown to have defects in TCR responses including proliferation, cytokine production and apoptosis in vitro and adaptive immune response to infectious agents in vivo (Science (1999) 284, 638–641; Nature Immunol (2001) 2: 1183–188). Molecular analyses of cells from these mice indicate that these kinases are critical for proper regulation of phospholipase C, calcium mobilisation and ERK activation as well as activation of downstream transcription factors in response to T cell receptor stimulation. Defects are minor in Rlk-deficient animals and most severe in Rlk/Itk double-deficient mice.

These mice provide a useful mechanistic model for dissecting out the complex interactions of TCR signalling. Additionally, the mice are useful for evaluation of therapeutics directed at specific classes of diseases (Th1 or Th2) and the utility of potential global Tec kinase inhibitors.

A Mouse Model for Type 2 Diabetes

Derek LeRoith and Ana M. Fernandez (NIDDK).

DHHS Reference No. E–132–2003/0—Research Tool.

Licensing Contact: Pradeep Ghosh; (301) 435–5282; *ghoshpr@mail.nih.gov*.

Diabetes affects over 120 million people worldwide (16 million in the US) and is a major health problem with associated health costs estimated at almost $100 billion dollars. Type 2 diabetes affects as many as 10% of the population of the Western World (with 15 million patients in the U.S. alone) and arises from a heterogeneous etiology, with secondary effects from environmental influences. Risk factors for type 2 diabetes include obesity, high blood pressure, high triglycerides and age. Type 2 diabetes is an active area for drug development and there continues to be a need for novel animal models and research tools to aid in the discovery and development of new, more efficient and cost-effective therapeutics.

Peripheral insulin resistance and impaired insulin action are the primary characteristics of type 2 diabetes. The first observable defect in this major disorder occurs in muscle, where glucose disposal in response to insulin is impaired. In an effort to study the progression of diabetes, researchers at NIDDK have developed a transgenic mouse strain (MKR) with a dominant-negative insulin-like growth factor-I receptor (KR–IGF–IR) specifically targeted to skeletal muscle (Genes & Development (2001) 15, 1926–1934). Expression of KR–IGF–IR resulted in the formation of hybrid receptors between the mutant and the endogenous IGF–I and insulin receptors, thereby abrogating the normal function of these receptors and leading to insulin resistance. Pancreatic β-cell dysfunction developed at a relative early age, resulting in diabetes.

One of the great advantages of the MKR mouse over other mouse models is the early onset of the disease phenotype as seen by insulin resistance (as early as 4 weeks), fasting hyperglycemia (from 5 weeks) and abnormal glucose tolerance (at 7–12 weeks). The MKR mice provide an extremely useful model for the study of type 2 diabetes, its pathogenesis and potential new therapies.

A Tet-Regulated Mouse Model for Cataract

Robert W. Sobol, Samuel H. Wilson (NIEHS). DHHS Reference No. E–316–2002/0—Research Tool. *Licensing Contact:* Susan Carson; (301) 435–5020; *carsonsu@mail.nih.gov*.

Cataract is the most common cause of blindness worldwide, with an estimated 25 million blind and 119 million visually impaired individuals worldwide. Over 20 million adults in the U.S. alone are currently diagnosed with cataracts making this disease a major health concern. The incidence of cataract increases with age and a number of etiologic factors have been proposed in the pathogenesis of age-related cataract in humans including genetic factors, environmental factors and metabolic and biochemical changes in the crystalline lens. Ultraviolet radiation exposure and oxidative injury to the lens has been considered by some to be one of the most important factors in cataractogenesis. The present therapy of choice for cataract is laser surgery.

Experimental investigation of human age-related cataract is hindered by a lack of available animal models of cataract. Several laboratory mice strains with heritable cataracts have been studied including the Nakona, Frasier and the Philly mouse strains. An animal model with a predictable phenotype of cataract, particularly one with a pathogenesis relating to oxidative injury to the lens (the proposed central factor in human-related cataract) would be of great value to ophthalmic researchers and in the development of pharmacological agents for delaying or preventing cataract.

Researchers at the NIEHS have developed a transgenic mouse model in which the DNA repair gene DNA polymerase β (β-pol) is highly over-expressed in the lens epithelial cells of the eye (DNA Repair (2003) 609–622). A bicistronic tetracycline-responsive transgenic system was used to over-express β-pol in mice. Over-expression of β-pol in the lens epithelium results in the early onset of severe cortical cataract with cataractogenesis beginning within 4 days after birth. In utero and post-natal suppression of transgenic Flag-β-pol-expression by doxycycline administration completely prevents cataract formation through adulthood, yet cataract is subsequently observed following removal of doxycycline and re-expression of the transgene. This predictable and regulated onset of cataract makes this mouse an ideal animal model both for evaluating new therapeutics for delaying or preventing cataract as well as for understanding the mechanisms responsible for cataract formation.

A Mouse Model for Human Osteoarthritis

Laurent G. Ameye (NIDCR), Marian F. Young (NIDCR), Ake Oldberg (EM), Tianshun Xu (NIDCR). DHHS Reference No. E–081–2002/0—Research Tool. *Licensing Contact:* Susan Carson; (301) 435–5020; *carsonsu@mail.nih.gov*.

Osteoarthritis (OA) is the most common form of arthritis and affects more than 20 million Americans, costing billions of dollars in health care annually. Osteoarthritis is caused by the breakdown of joint cartilage, leading to a loss of the cartilage "cushion" between the bones of the joints. Risk factors associated with OA include age, obesity, traumatic injury and overuse due to sports or occupational stresses. There is no cure for OA and current treatments are directed at the symptomatic relief of pain, and at improving and maintaining joint function. There remains, however, a critical need both to develop OA treatments that focus on slowing down the degenerative process of the disease and for validated animal models to test these new treatments. NIH scientists at the NIDCR have generated a mouse model for osteoarthritis (FASEB J. (2002) 16, 673–680) that fills one part of this important gap.

The mouse model is a double knockout mouse that lacks biglycan and fibromodulin, two members of the small leucine-rich proteoglycan family, and that spontaneously develops OA. All the hallmarks of human osteoarthritis are present, including: progressive degeneration of the articular cartilage from early fibrillation to complete erosion, subchondral sclerosis, an absence of inflammation and development of osteophytes and cysts. Advantages over the existing models for osteoarthritis include: high phenotypic penetrance, early onset (at 1–2 months) and a rapid disease progression (between 3–6 months) which can be accelerated by moderate levels of exercise, such as treadmill running. These properties, combined with a normal life span, make the biglycan/fibromodulin-deficient mouse an ideal animal model for evaluating new drugs and treatments for osteoarthritis.

Dated: December 1, 2003.

Steven M. Ferguson,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 03–30496 Filed 12–8–03; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Notice.

SUMMARY: The invention listed below is owned by an agency of the U.S. Government and is available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

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Human UGRP1 (Uteroglobin-Related Protein 1) Promoter and Its Use

Shioko Kimura and Tomoaki Nimi (NCI). PCT Application No. PCT/US02/19456 filed 18 Jun 2002 (with priority to 20 Jun 2001), which published as WO 03/000111 on 03 Jan 2003 (DHHS Reference No. E–058–2001/0–PCT–02). Licensing Contact: Susan Carson; (301) 435–5020; carsonsu@mail.nih.gov.

Asthma is a genetically complex, multi-factorial disease affecting more than 17 million people in the United States alone and costing approximately US$6 billion to treat annually. Identification, mapping and linkage analyses of Single Nucleotide Polymorphisms (SNPs) have been increasingly used both to study the genetic etiology of asthma and to detect genetic loci contributing to asthma susceptibility. Researchers from the National Cancer Institute have described a novel gene, located in an asthma-susceptibility gene loci 5q31–34, named UGRP1 (uteroglobin-related protein 1) and an associated polymorphism that is significantly associated with asthma (Nimi *et al.* (2002) Am. J. Hum. Genet 70: 718–725).

UGRP1 is a homodimeric secretory protein of ~10 kDA and is expressed only in lung and trachea. The –112G/A polymorphism was identified in the human UGRP1 gene promoter and is responsible for a 24% reduction in the promoter activity in relation to the –112G allele, as examined by transfection analysis. In a case-control study using 169 Japanese individuals (84 with asthma and 85 unrelated healthy controls) those with a –112A allele (G/A or A/A) were 4.1 times more likely to have asthma than were those with the wild-type allele(G/G).

The invention describes the –112G/A polymorphism and the UGRP1 promoter region as well as methods for detecting polymorphisms present in the UGRP1 promoter which can be used as indicators for diagnosing or for predicting a predisposition to develop a respiratory disorder. The complex and polygenic nature of asthma suggests that this potential asthma susceptibility allele can be of great value not only to companies targeting respiratory diseases such as asthma but also to those more broadly involved in gene discovery, gene mapping, association-based candidate polymorphism testing, pharmacogenetics, diagnostics and risk profiling.

Dated: December 1, 2003.

Steven M. Ferguson,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 03–30497 Filed 12–8–03; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, Public Health Service, DHHS.

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Construction of Replication-Competent Chimeric Simian Immunodeficiency Virus (SIV) Human Immunodeficiency Virus Type 1 (HIV–1) Viruses that Replicate Using HIV–1 Reverse Transcriptase and Integrase (IN): A Model System for Development and Testing of Antiviral Agents for the Treatment of HIV–1 Infection

Vijay K. Pathak and Yijun Zhang (NCI). DHHS Reference No. E–019–2004/0—Research Tool. Licensing Contact: Michael Ambrose; (301) 594–6565; *ambrosea@mail.nih.gov*.

Currently antiviral therapy is based on a cocktail that inhibits viral replication. These drugs are targeted toward the Reverse Transcriptase (RT) enzyme to inhibit such replication. However, development of HIV drug resistance to these current therapies is the leading blockage to successful treatment of such patients, and as such, leads to the progression of AIDS and eventual death. The goal of developing successful next generation drugs for HIV must contend with (1) the alarming rate of mutation of HIV and (2) an animal model that represents the natural disease in humans. This latter point must also have as one of its properties; the natural occurring mutation and resistance to the therapy in develop.

To address these questions, a chimeric virus was developed between SIV and HIV. The SIV backbone is altered such that the HIV RT and Integrase (IN) enzymes are expressed in infected cells. This allows the use of the macaque as the animal model and having the RT and IN of HIV as the potential drug targets. In this system, novel therapies can be developed and studied in vivo, in single or in combination form, in a manner more similar to the human HIV infection then is currently available. Further, toxicity studies can be designed and results obtained that are more relevant to the human disease condition.

One other advantage is the ability to use the macaque model to discover additional generations of HIV therapies and tested in the same system. This provides identical biological backgrounds to address toxicity concerns of changing medications as one becomes resistant and newer therapies are administered.

HIV–1/SIV Chimeras Promoting Trimerization of Soluble HIV–1 ENV

Bernard Moss (NIAID). U.S. Provisional Application filed 10 Oct 2003 (DHHS Reference No. E–356–2003/0–US–01). *Licensing Contact:* Susan Ano; (301) 435–5515; *anos@mail.nih.gov*.

The technology describes the replacement of the gp41 segment of HIV–1 gp140 or just the N-terminal portion (85 amino acids) with the corresponding region of SIV to promote efficient trimerization. Functional, virion associated HIV–1 and SIV env have been shown to have an almost exclusively trimeric structure. The chimera that contains only the N-terminal portion of SIV in an HIV–1 background is particularly interesting, since several broadly neutralizing HIV–1 epitopes are present in the C-terminal segment of gp41. Thus, the current technology could be useful as an immunogen to elicit antibodies that recognize a mimic of the native trimeric structure. The region of HIV–1 replaced by SIV sequence contains no known targets of neutralizing antibodies.

Use of a Statin To Kill EBV-Transformed B Cells

Jeffrey Cohen *et al.* (NIAID). U.S. Provisional Application filed 28 Oct 2003 (DHHS Reference No. E–312–2003/0-US–01).

Licensing Contact: Susan Ano; (301) 435–5515; *anos@mail.nih.gov*.

This technology describes the use of certain natural and synthetic statins, including simvastatin, other leukocyte function antigen–1 (LFA–1) inhibiting statins, and compounds derived from LFA–1 inhibiting statins and statin-like compounds, for treatment or prevention of Epstein-Barr Virus (EBV) associated tumors, including lymphomas that express LFA–1 and transforming proteins. Such compounds could also be used to treat tumors associated with other viruses that express LFA–1. Cancers associated with EBV that could be treated with the statins by methods described herein include naspharyngeal carcinoma, Hodgkin's disease, lymphoproliferative disease, T-cell lymphoma, and non-Hodgkin's lymphoma.

HIV-Dependent Expression Vector

Drs. Jon Marsh and Yuntao Wu (NIMH). U.S. Provisional Application No. 60/507,034 filed 28 Sep 2003 (DHHS Reference No. E–276–2003/0-US–01).

Licensing Contact: Sally Hu; (301) 435–5606; *hus@mail.nih.gov*.

This invention provides a DNA construct that can be useful for both diagnostics and AIDS therapeutics. The construct can be incorporated into a retrovirus or into a cell line. This construct mediates the expression of a selected gene in the presence of HIV replication, but is silent in the absence of HIV. The cell line with the incorporated construct can be used as an indicator line for the presence of replication-competent HIV. The virus containing the construct can be used to co-infect a population of HIV-infected cells. If the construct-encoded gene is a reporter, it would specifically identify cells that are infected with HIV. If the construct-encoded gene is a cytotoxin, it would specifically kill cells that are HIV-infected. This invention may offer a novel approach to HIV elimination, as well as detection of HIV infected cells or the presence of cell-free infectious HIV.

Polypeptide Multimers Having Antiviral Activity

Carol Weiss *et al.* (FDA). PCT Application filed 14 Aug 2003 (DHHS Reference No. E–155–2003/0-PCT–01); U.S. Patent Application No. 09/480,336 filed 07 Jan 2000 (DHHS Reference No. E–212–2001/0-US–02).

Licensing Contact: Susan Ano; (301) 435–5515; *anos@mail.nih.gov*.

The technology describes polypeptide multimers that have antiviral and immunogenic activity against HIV. These multimers consist of at least one monomer of the highly conserved N and C heptad regions of gp41 in a ratio of at least 2:1 N to C heptad, with the N and C heptads being connected by linkers. The monomer forms homodimers and homotrimers in solution and mimic fusion intermediate structure. Further, the technology also describes a method of raising a broadly neutralizing antibody response to HIV by administering the polypeptide multimers mentioned above. Thus, these polypeptide multimers may be used as antiviral (anti-HIV) agents. Because the structure of these polypeptide multimers mimics the gp41 fusion intermediate, they can also be used to identify compounds that may inhibit the fusion process.

Discovery of Novel Inhibitors of HIV–1 Integrase and/or RNase H That Can Be Used for the Treatment of Retroviral Infection Including AIDS

Stuart F. J. Le Grice (NCI) *et al.* U.S. Provisional Application filed 31 Oct 2003 (DHHS Reference No. E–022–2003/0-US–01).

Licensing Contact: Sally Hu; (301) 435–5606; e-mail: *hus@mail.nih.gov*.

This invention provides compounds and methods of treating retroviral infection such as AIDS by administration of a dioxtetrahydrobenzo[a]naphthacene compound, particularly a 8,13-dioxo-5,6,8,13-tetrahydro-benzo[a]naphthacene compound, *i.e.* a madurahydroxylactone compound. Retroviruses, such as HIV, need three viral enzymes for replication: reverse transcriptase, protease, and integrase. The prognosis of AIDS patients has recently been improved by the discovery and associated therapeutic administration of reverse transcriptase and/or protease inhibitors. However, a significant portion of AIDS patients fail to respond to such treatments and viral resistance remains a major problem.

It is known that HIV–1 integrase is a rational target for AIDS therapy because genetic studies have demonstrated that the enzyme is essential for viral replication, and because there is no cellular equivalent. On the other hand, the reverse transcriptase RNase H active site is another good target for antiviral therapeutic development because elimination of the RNase H activity of reverse transcriptase arrests virus replication. The compounds reported in this invention may be capable of inhibiting both enzymes since the catalytic centers of integrase and RNase H are structurally similar. As a consequence, this invention can potentially avoid viral resistance, which limits the efficacy of presently administered reverse transcriptase and/or protease inhibitor therapeutic agents. Thus, the invention may be a group of new small molecule agents for treating patients suffering from retroviral infections, particularly patients suffering from Human Immunodeficiency Virus (HIV).

Particles for Imaging Cells

Kathleen Hinds, Cynthia Dunbar (NHLBI). U.S. Patent Application No. 10/313,304 filed 06 Dec 2002 (DHHS Reference No. E–185–2002/0–US–01).

Licensing Contact: Michael Shmilovich; (301) 435–5019; shmilovm@mail.nih.gov.

Available for licensing are NIH patent pending contrast particles for use in MRI and flow cytometry to track cells migration in real time. Present cell-tracking studies rely on labeling cells with ultra-small dextran-coated iron particles that are endocytosed. The contrast agent of the present invention uses larger iron oxide particles, approximately 1 μm, situated in a tri-layer structure. The inner structure is a magnetic molecular complex of FITC (a fluorescent marker) encased in a layer of superparamagnetic microparticles, which is then covered with a shell of inert polystyrene and di-vinyl benzene coated with soluble -COOH groups. Accordingly, the particle is labeled with both a magnetic and fluorescent marker. This dual labeling permits monitoring of the molecule on multiple spatial scales, from intracellular distribution to distribution throughout the animal.

Methods for Detecting Cancer Cells

Thomas Ried, Evelin Schrock, Bijan M. Ghadimi (NHGRI). U.S. Provisional Application No. 60/127,637 filed 01 Apr 1999 (DHHS Reference No. E–211–1998/0–US–01); PCT Application No. PCT/US00/08588 filed 31 Mar 2000 (DHHS Reference No. E–211–1998/0–PCT–02); U.S. Patent Application No. 09/937,864 filed 31 Dec 2000 (DHHS Reference No. E–211–1998/0–US–03). *Licensing Contact:* Michael Ambrose; (301) 594–6565; *ambrosem@mail.nih.gov*.

The present application describes a highly sensitive assay for distinguishing between cancer and non-cancer epithelial cells in the blood. It provides an improved diagnostic technique for detecting cancer and determining the organ-origin of the cancer. This assay can be used to prove the neoplastic nature of cells and predict when shed tumor cells have or will become metastatic. A major advantage of the present invention is that tumor cells can also be recovered as viable cells. Thus, the tumor cells can be kept alive in vitro for a sufficient period of time to determine the effect of particular anti-tumor pharmaceuticals on the cells. Furthermore, the assay provides an early detector of treatment success or failure and thereby allows a treatment regimen to be customized for an individual patient with advanced primary cancer.

Method for Detecting Transmissible Spongiform Encephalopathies

Gary E. Hsich, Kimbra Kenney, Clarence J. Gibbs, Michael G. Harrington (NINDS). U.S. Patent 5,998,149 issued on 07 Dec 1999 (DHHS Reference No. E–055–1996/0–US–01); U.S. Patent 6,406,860 issued on 18 Jul 2002 (DHHS Reference No. E–055–1996/0–US–02). *Licensing Contact:* Michael Ambrose; (301) 594–6565; *ambrosem@mail.nih.gov*.

Improved assays for the detection of transmissible spongiform encephalopathies (TSEs) in humans and non-human mammals have been developed. The assays involve detecting the presence or absence of 14–3–3 proteins in cerebrospinal fluid. Elevated levels of these proteins are indicative of TSEs, in particular Creutzfeldt-Jacob disease in humans and animals with these diseases. This invention is available for licensing on a non-exclusive basis.

Dated: December 1, 2003.

Steven M. Ferguson,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 03–30498 Filed 12–8–03; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel, Steroid Receptor Chaperones in Axonal Elongation.

Date: December 11, 2003.

Time: 8:30 am to 9:30 am.

Agenda: To review and evaluate grant applications.

Place: Ritz-Carlton Hotel at Pentagon City, 1250 South Hayes Street, Arlington, VA 22202, (Telephone Conference Call).

Contact Person: W. Ernest Lyons, PhD, Scientific Review Administrator, Scientific Review Branch, NINDS/NIH/DHHS, Neuroscience Center, 6001 Executive Blvd., Suite 3208, MSC 9529, Bethesda, MD 20892–9529, (301) 496–4056.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel, Molecular Regulation of Neural Migration.

Date: December 11, 2003.

Time: 10 am to 3:30 pm.

Agenda: To review and evaluate grant applications.

Place: Ritz-Carlton Hotel at Pentagon City, 1250 South Hayes Street, Arlington, VA 22202.

Contact Person: W. Ernest Lyons, PhD, Scientific Review Administrator, Scientific Review Branch, NINDS/NIH/DHHS, Neuroscience Center, 6001 Executive Blvd., Suite 3208, MSC 9529, Bethesda, MD 20892–9529, (301) 496–4056.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel, Program in Cognitive Neuroscience.

Date: December 18, 2003.

Time: 1 pm to 2:30 pm.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Richard D. Crosland, PhD, Scientific Review Administrator, Scientific Review Branch, Division of Extramural Research, NINDS/NIH/DHHS, Neuroscience Center, 6001 Executive Blvd., Suite 3208, MSC 9529, Bethesda, MD 20892–9529, 301–594–0635.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel, NeuroAIDS Imaging Studies.

Date: January 8, 2004.

Time: 8 am to 5 pm.

Agenda: To review and evaluate grant applications.

Place: The Fairmont Washington, DC, 2401 M Street, NW, Washington, DC 20037.

Contact Person: Andrea Sawczuk, DDS, PhD, Scientific Review Administrator, Scientific Review Branch, Division of Extramural Research, NINDS/NIH/DHHS, 6001 Executive Boulevard, Room #3208, Bethesda, MD 20892, (301) 496–0660. *sawczuka@ninds.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS)

Dated: December 4, 2003.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–30494 Filed 12–8–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4630–FA–11B]

Announcement of Funding Award—FY 2001 Healthy Homes Grant Program

AGENCY: Office of the Secretary—Office of Healthy Homes Research Grant Program.

ACTION: Announcement of funding awards.

SUMMARY: In accordance with Section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, this announcement notifies the public of additional funding decisions made by the Department in a competition for funding under the Healthy Homes Demonstration and Education Notice of Funding Availability (NOFA). This announcement contains the name and address of the award recipient and the amount of award.

FOR FURTHER INFORMATION CONTACT: Ellen R. Taylor, Department of Housing and Urban Development, Office of Healthy Homes and Lead Hazard Control, Room P3206, 451 Seventh Street, SW., Washington, DC, 20410–3000, telephone (202) 755–1785, ext. 116. Hearing- and speech-impaired persons may access the number above via TTY by calling the toll free Federal Information Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: The authority for Healthy Homes Demonstration and Education Program is sections 501 and 502 of the Housing and Urban Development Act of 1970 and the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 2001, Pub. L. 106–377, approved October 27, 2000.

These awards were the result of a competition announced in a **Federal Register** NOFA published on February 26, 2001 (66 FR 11893). The purpose of the competition was to award grant funding of approximately $1,500,000 for grants and cooperative agreements for the Healthy Homes Research Program. Applications were scored and selected on the basis of selection criteria contained in that Notice.

The Catalog of Federal Domestic Assistance number for this program is 14.900.

A total of $2,239,196 was awarded to six grantees. In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989 (103 Stat. 1987, 42 U.S.C. 3545), the Department is publishing the names, addresses, and amounts of this awards as follows:

Awardee	Address	Amount of grant
Air Quality Sciences, Inc.	1337 Capital Circle, Marietta, GA 30067	$210,299.00
Columbia University	60 Haven Avenue, B–106, New York, NY 10032	505,365.00
Duke University	Box 90077, Durham, NC 27708–0077	405,217.00
Radiation Monitoring Devices, Inc.	44 Hunt Street, Watertown, MA 0272	449,444.00
Research Triangle Institute	3040 Cornwallis Road, Research Triangle Park, NC 27709	220,082.00
University of Cincinnati	PO Box 670056, Cincinnati, OH 45267–0056	448,789.00

Dated: November 4, 2003.

Joseph F. Smith,

Deputy Director, Office of Healthy Homes and Lead Hazard Control.

[FR Doc. 03–30412 Filed 12–8–03; 8:45 am]

BILLING CODE 4210–70–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4723–FA–30]

Announcement of Funding Award—FY 2002 Healthy Homes Demonstration, and Healthy Homes and Lead Technical Studies Grant Programs

AGENCY: Office of the Secretary—Office of Healthy Homes and Lead Hazard Control, HUD.

ACTION: Announcement of funding awards.

SUMMARY: In accordance with Section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, this announcement notifies the public of funding decisions made by the Department in a competition for funding under the Healthy Homes Demonstration and Lead Technical Studies Notice of Funding Availability (NOFA). This announcement contains the name and address of the award recipients and the amounts of award.

FOR FURTHER INFORMATION CONTACT: For the Healthy Homes Demonstration and Healthy Homes Technical Studies Grant Programs, Ellen R. Taylor, Department of Housing and Urban Development, Office of Healthy Homes and Lead Hazard Control, Room P3206, 451 Seventh Street SW., Washington, DC, 20410–3000, telephone (202) 755–1785, ext. 116. For the Lead Technical Studies Grant Program, Warren Friedman, at the same address, phone extension 159. Hearing- and speech-impaired persons may access the numbers above via TTY by calling the toll free Federal Information Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: The authority for the Healthy Homes Demonstration and Lead Technical Studies Program is sections 501 and 502 of the Housing and Urban Development Act of 1970 and the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 2002, Public Law 107–73, approved November 26, 2001.

These awards were the result of a competition announced in **Federal Register** NOFAs published on March 26, 2002 for Healthy Homes and Lead Technical Studies (67 FR 14093), and for Healthy Homes Demonstration (67 FR 14115). The purpose of the competition was to award grant funding of approximately $8,600,000 for grants and cooperative agreements for the Healthy Homes Demonstration and the Healthy Homes Lead Technical Studies Grant Programs. Applications were scored and selected on the basis of selection criteria contained in those Notices.

A total of $8,586,202 was awarded to 17 grantees. $5,947,235 was awarded to 9 Healthy Homes Demonstration grantees, and $2,638,967 was awarded to 8 Healthy Homes and Lead Technical Studies grantees.

The Catalog of Federal Domestic Assistance number for this program is 14.901.

In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989 (103 Stat. 1987, 42 U.S.C. 3545), the Department is publishing the names, addresses, and amounts of this awards as follows:

Awardee	Address	Award Amount
Healthy Homes Demonstration		
City of Phoenix	200 West Washington, 4th Floor Phoenix, AZ 85003	$950,000
Healthy Homes Network	3548 W. 129th Terrace, Leawood, KS 66209	920,805
University of Massachusetts Lowell	600 Suffolk Street—1st Fl. South Lowell, MA 01854	164,748
Coalition to End Childhood Lead Poisoning	2714 Hudson Street, Baltimore, MD 21224	872,032
Montana State University	P.O. Box 173580, Bozeman, MT 59717–3580	326,459
Urban Homesteading Assistance Board, Inc	120 Wall Street, 20th Floor New York, NY 10005	263,191
Mount Sinai School of Medicine	One Gustave L. Levy Place New York, NY 10029–6574	950,000
City of Philadelphia	2100 W. Girard Avenue, Bldg #3 Philadelphia, PA 19130–1400.	800,000
City of Milwaukee Health Department	841 North Broadway—Room 118 Milwaukee, WI 53202	700,000
Healthy Homes Technical Studies		
Saint Louis University	221 N. Grand Avenue, St. Louis, MO 63103	700,000
Advanced Energy Corporation	909 Capability Drive, Suite 2100, Raleigh, NC 27606	700,000
University of Medicine & Dentistry of New Jersey	170 Frelinghuysen Road, Room 236C Piscataway, NJ 08854	238,967
Lead Technical Studies		
Phoenix Science & Technology, Inc.	27 Industrial Ave. Chelmsford, MA 08124	397,118
National Center for Healthy Housing	10227 Wincopin Circle, Suite 205 Columbia, MD 21044	60,804
Research Triangle Institute	3040 Cornwallis Road Research Triangle Park, NC 27709	194,194
University of Cincinnati	P.O. Box 670553 Cincinnati, OH 45267	159,734
University of Cincinnati	P.O. Box 670553 Cincinnati, OH 45267	188,150

Dated: November 5, 2003.

Joseph F. Smith,

Deputy Director, Office of Healthy Homes and Lead Hazard Control.

[FR Doc. 03–30413 Filed 12–8–03; 8:45 am]

BILLING CODE 4210–70–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4757–FA–02]

Announcement of Funding Award—FY 2002 Operation Lead Elimination Action Program (LEAP)

AGENCY: Office of the Secretary—Office of Healthy Homes and Lead Hazard Control, HUD.

ACTION: Announcement of funding awards.

SUMMARY: In accordance with Section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, this announcement notifies the public of additional funding decisions made by the Department in a competition for funding under the LEAP Notice of Funding Availability (NOFA). The purpose of the LEAP program is to leverage private sector resources to eliminate lead poisoning as a major public health threat to young children. This announcement contains the name and address of the award recipient and the amount of award.

FOR FURTHER INFORMATION CONTACT: John Baker, Department of Housing and Urban Development, Office of Healthy Homes and Lead Hazard Control, Room P3206, 451 Seventh Street, SW., Washington, DC 20410–3000, telephone (804) 771–2100 ext. 3765. Hearing- and speech-impaired persons may access the number above via TTY by calling the toll free Federal Information Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: The Operation Lead Elimination Program is authorized by HUD's 2002 Appropriation approved November 26, 2001 (Pub. L. 107–73).

These awards were the result of a competition announced in a **Federal Register** notice published on August 5, 2002 (67 FR 50766). The purpose of the competition was to award grant funding of approximately $6,500,000 for grants and cooperative agreements for the Lead Elimination Action Program. Applications were scored and selected on the basis of selection criteria contained in that notice.

The Catalog of Federal Domestic Assistance number for this program is 14.900.

A total of $6,500,000 was awarded to seven (7) grantees. In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989 (103 Stat. 1987, 42 U.S.C. 3545), the Department is publishing the names, addresses, and amounts of these awards as follows:

Awardee	Address	Amount awarded
The ACCESS Agency	1315 Main Street, Willimantic, CT 06226	800,000
Alliance	227 Massachusetts Avenue, NE, Suite 200, Washington, DC 20002	1,152,013
Energy Programs	1615 M Street, Suite 800, Washington, DC 20036	937,956
National Safety Council	1025 Connecticut Avenue, NW, Suite 1200, Washington, DC 20036	679,346
National Center	10227 Wincopin Circle, Suite 100, Columbia, MD 21044	930,789
Greater Detroit	333 West Fort Street, Suite 1500, Detroit, MI 48226	999,896
Neighborhood Improvement	841 North Broadway, Room 104, Milwaukee, WI 53202	1,000,000

Dated: November 4, 2003.

Joseph F. Smith,

Deputy Director, Office of Healthy Homes and Lead Hazard Control.

[FR Doc. 03–30414 Filed 12–8–03; 8:45 am]

BILLING CODE 4210–70–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4630–FA–11A]

Announcement of Funding Award—FY 2001 Healthy Homes Grant Program

AGENCY: Office of the Secretary—Office of Healthy Homes Demonstration and Education Grant Programs, HUD.

ACTION: Announcement of funding awards.

SUMMARY: In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, this announcement notifies the public of additional funding decisions made by the Department in a competition for funding under the Healthy Homes Demonstration and Education Program Notice of Funding Availability (NOFA). This announcement contains the name and address of the award recipient and the amount of award.

FOR FURTHER INFORMATION CONTACT: Ellen R. Taylor, Department of Housing and Urban Development, Office of Healthy Homes Initiative and Lead Hazard Control, Room P3206, 451 Seventh Street, SW., Washington, DC 20410–3000, telephone (202) 755–1785, ext. 116. Hearing- and speech-impaired persons may access the number above via TTY by calling the toll free Federal Information Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: The authority for Healthy Homes Demonstration and Education Program is sections 501 and 502 of the Housing and Urban Development Act of 1970 and the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 2001, Pub. L. 106–377, approved October 27, 2000.

These awards were the result of a competition announced in a **Federal Register** NOFA published on February 26, 2001 (66 FR 11893). The purpose of the competition was to award grant funding of approximately $5,500,000 for grants and cooperative agreements for the Healthy Homes Demonstration and Education Grant Programs. Applications were scored and selected on the basis of selection criteria contained in that NOFA.

The Catalog of Federal Domestic Assistance number for this program is 14.900.

A total of $5,823,389 was awarded to eight grantees. However, HUD was not able to successfully conclude negotiations with the Research Foundation of the State University of New York for an award of $700,000. This amount was awarded to the next highest scoring application. In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989 (103 Stat. 1987, 42 U.S.C. 3545), the Department is publishing the names, addresses, and amounts of this awards as follows:

Awardee	Address	Amount of grant
The University of Tulsa, OK	600 South College Avenue, Tulsa, OK 74104–3189	$700,000.00
Public Health Dept. Seattle/King County, WA	999 Third Avenue, Suite 1200, Seattle, WA 98104–4039	937,879.00
University of Alabama At Birmingham, AL	1530 3rd Avenue, South Birmingham, AL	850,000.00
Alameda County, CA	2000 Embarcadero, Suite 300, Oakland, CA	850,000.00
Medical & Health Research Association of New York City, NY	40 Worth Street, Suite 720, New York, NY 10013–2988	500,000.00
City of Stamford, CT	888 Washington Boulevard, Stamford, CT 06904	850,000.00
Alaska Housing Finance Corporation, AK	P.O. Box 101020, Anchorage, AK 99510–1020	700,000.00
University of Maryland/Baltimore, MD	655 West Lombard Street, Room 645D, Baltimore, MD 21201	435,510.00

Dated: November 4, 2003.

Joseph F. Smith,

Deputy Director, Office of Healthy Homes and Lead Hazard Control.

[FR Doc. 03–30411 Filed 12–8–03; 8:45 am]

BILLING CODE 4210–70–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4861–C–02]

Notice of Funding Availability for Revitalization of Severely Distressed Public Housing HOPE VI Revitalization and Demolition Grants Fiscal Year 2003; Correction

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice of funding availability; correction.

SUMMARY: On October 21, 2003, HUD published the Notice of Funding Availability (NOFA) for Revitalization of Severely Distressed Public Housing HOPE VI Revitalization and Demolition Grants for Fiscal Year 2003. This notice corrects that funding announcement by notifying applicants of the new government-wide requirement that all applicants for Federal grants and cooperative agreements must provide a Dun and Bradstreet Data Universal Numbering System (DUNS) number with their applications. In addition, this document makes several other corrections to the NOFA.

DATES: (1) Revitalization Applications. Revitalization grant applications are due on January 20, 2004. (2) Demolition Applications. Demolition grant applications will only be accepted from January 5, 2004, through February 18, 2004. Applications received before January 5, 2004, will be returned to the applicant and will not be considered unless resubmitted on or after January 5, 2004, through February 18, 2004. This correction notice makes no change to the application deadlines.

FOR MORE INFORMATION CONTACT: Leigh van Rij, Office of Public Housing Investments, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington DC, 20410–5000; telephone (202) 401–8812 (this is not a toll-free number). Hearing- or speech-impaired individuals may access this number via TTY by calling the toll-free Federal Information Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION: On October 21, 2003 (68 FR 60178), HUD published its Notice of Funding Availability (NOFA) for Revitalization of Severely Distressed Public Housing HOPE VI Revitalization and Demolition Grants for Fiscal Year (FY) 2003. This notice corrects the NOFA by requiring applicants to provide in their application package, a Dun and Bradstreet Data Universal Numbering System (DUNS) number. This correction is required by an Office of Management and Budget (OMB) policy directive issued in the **Federal Register** on June 27, 2003 (68 FR 38402). The policy directive requires all applicants who will be directly receiving funding to provide a DUNS number when applying for Federal grants or cooperative agreements on or after October 1, 2003. This information was inadvertently left out of the October 21, 2003 NOFA.

In addition to the DUNS requirement, HUD makes nine additional corrections in this document. Subsequent to publication, it was discovered that the list of years for which 90 percent of Capital Funds must have been obligated prior to the application deadline, inadvertently included FY1999. This error is corrected in this document. Additionally, it was determined that the paragraph entitled, "Threshold: Selection of Developer" was unclear and is made clear by this correction notice. This document also clarifies the section entitled, "Capacity of Existing HOPE VI Revitalization Grantees." This correction notice makes clear in the "Project Readiness" section of the NOFA and the application kit that applicants will receive 2 Points if the targeted severely distressed public housing site is cleared or the applicant's Revitalization Plan only includes rehabilitation and not demolition of public housing units. Finally, this correction substitutes Attachment 9, the "TDC/Grant Limitations Worksheet," which has been recently updated with current data and instructions.

Subsequent to the October 21, 2003 publication of this NOFA, the **Federal Register** published (68 FR 61044) a correction to the application deadline for the Revitalization grants. The deadline for applications for Revitalization applications under this NOFA is January 20, 2004.

Accordingly, the Notice of Funding Availability for Revitalization of Severely Distressed Public Housing HOPE VI Revitalization and Demolition Grants for Fiscal Year 2003, published in the **Federal Register** on October 21, 2003, (68 FR 60178) is corrected to read as follows:

1. On page 60179, in the middle column, under section III. entitled, "Application Submission Information," a new paragraph (4) is added after paragraph (A)(3) to read as follows:

"(4) New government-wide DUNS requirement. Beginning October 1, 2003, all applicants must provide a Dun and Bradstreet Data Universal Numbering System (DUNS) number to apply for a grant or cooperative agreement from the federal government. Applicants are required to provide a DUNS number with the application. OMB is currently updating the SF–424 to accommodate the submission of the DUNS, however, at this time, applicants should simply indicate the DUNS number on a separate sheet of paper and include with the application package. (This extra page will not count toward the total page number limit for your application.) Organizations can receive a DUNS number at no cost by calling the dedicated toll-free DUNS Number request line at 1–866–705–5711 or applying on-line at *http://www.dunandbradstreet.com*. For faster service, HUD recommends using the telephone request line to obtain the DUNS number.

Failure to provide the DUNS number with your application will be considered a curable deficiency. The DUNS number is considered a threshold requirement and failure to provide the DUNS number will prohibit an organization from receiving an award."

2. On page 60185, in the third column, paragraph (12) is corrected to read as follows: "An applicant must have obligated at least 90 percent of its FY 2000 and 2001 Capital Funds in accordance with Section IV(A)(2) of this NOFA."

3. On page 60188, in the first column, under the paragraph entitled, "(2) Threshold: Obligation of Capital Funds," the second sentence is corrected by removing the year "1999" so the sentence reads as follows: "HUD will not consider any application from a PHA that failed to obligate 90 percent or more of its FY2000 and 2001 Capital Funds by the applicable obligation deadlines, as required by Section (9)(j) of the U.S. Housing Act of 1937, unless the Deputy Secretary has approved an extension."

4. On page 60188, in the middle column, the first sentence in subparagraph (a) under the paragraph entitled, "(4) Threshold: Selection of Developer," is corrected to read as follows: "You have initiated RFQ competitive procurement procedures in accordance with 24 CFR 85.36 and 24 CFR 941.602(d) (as applicable), for your first phase of construction by the application due date."

5. On page 60189, in the third column, the fourth sentence under the paragraph entitled, "(2) Capacity of Existing HOPE VI Revitalization Grantees," is corrected to read as follows: "As indicated in the following tables, up to 5 Points will be deducted if a Grantee has failed to achieve adequate progress in relation to cumulative unit production."

6. On page 60201, in the third column, subparagraph (b) under the paragraph entitled, "(4) Project Readiness," is corrected to read as follows: "(b) You will receive 2 Points if the targeted severely distressed public housing site is cleared or your Revitalization Plan only includes rehabilitation and no demolition of public housing units."

7. On page 60217, the first sentence in paragraph B.1 is corrected to read: "If you are a Moving to Work participant and are not required to enter obligations into LOCCS, review Section IV(A)(2) of the NOFA and indicate the percentage of FY 2000 and 2001 Capital Funds amounts you have obligated."

8. On page 60217, paragraph B.4 is corrected to read as follows: "Capacity of Existing HOPE VI Revitalization Grantees. This Rating Factor is found at Section IV(B)(2). HUD will use information in the quarterly reporting system in order to evaluate this rating factor. This rating factor is only applied to PHAs with existing HOPE VI Revitalization grants from Fiscal Years 1993–2000."

9. On page 60266, entitled, "Attachment 31: Project Readiness," the second item on the list for check-off is corrected to read as follows: "The targeted severely distressed public housing site is cleared or your Revitalization Plan only includes rehabilitation and no demolition of public housing units."

10. The "TDC/Grant Limitations Worksheet," that appears at pages 60256, 60257, and 60258 is removed and replaced with the version appended to this document.

Dated: December 2, 2003.

Michael Liu,

Assistant Secretary for Public and Indian Housing.

BILLING CODE 4210–33–P

Attachment 9:
TDC/Grant Limitations Worksheet

FOLLOW THE STEP-BY-STEP INSTRUCTIONS Page 1

Note: If completing Attachment 9 manually, rather than using the Excel workbook, start at Step 4 (page 2).

Step 1. Select your City from the menu below.
Click as indicated to see the lists of cities, scroll through the list, click on your City, and click "OK."

Step 2. Repeat Step 1 to select your State from the menu below.
Click as indicated to see the lists of states, scroll through the list, click on your State, and click "OK."

This table includes all Total Development Cost (TDC) dollar limits published in HUD Notice PIH 2003-8. If your specific City is not shown in the table, contact Mr. Satinder Munjal for assistance: HUD Office of Public Housing Investments, (202) 708-0614, extension 4196.

If you have selected a valid City/State combination, a table will be created that extends down to row 82. The TDC limits for each unit type shown on this table will be transferred automatically to the table on the next worksheet, "TDC Limit Calculation."

Step 3. After selecting the appropriate City and State, go to Step 4, page 2. (If using the Excel file, click on the worksheet tab entitled "TDC Limit Calculation" at the bottom of this window.)

City		<---Select or Enter City here
StateName		<---Select or Enter State here

		Bedrooms	Type	Data	Total per Unit
Detached / Semi-Detached	TDC Limit per Unit	0			
		1			
		2			
		3			
		4			
		5			
		6			
	HCC Limit per Unit	0			
		1			
		2			
		3			
		4			
		5			
		6			
Elevator	TDC Limit per Unit	0			
		1			
		2			
		3			
		4			
		5			
		6			
	HCC Limit per Unit	0			
		1			
		2			
		3			
		4			
		5			
		6			
Row House	TDC Limit per Unit	0			
		1			
		2			
		3			
		4			
		5			
		6			
	HCC Limit per Unit	0			
		1			
		2			
		3			
		4			
		5			
		6			
Walkup	TDC Limit per Unit	0			
		1			
		2			
		3			
		4			
		5			
		6			
	HCC Limit per Unit	0			
		1			
		2			
		3			
		4			
		5			
		6			

Attachment 9:
TDC/Grant Limitations Worksheet

Page 2

Step 4. Enter name of PHA:

Step 5. (a) Enter name(s) of project(s):

(b) Enter City (from TDC table): Note: Enter City here (manually) or at Step 1, page 1 (if using Excel file)

(c) Enter State (from TDC table): Note: Enter State here (manually) or at Step 1, page 1 (if using Excel file).

Step 6. In the appropriate BUILDING TYPE and Bedroom (BR) categories below, enter the number of NEW UNITS in section 6(a), and/or REHABILITATION UNITS in section 6(b), proposed for funding under this application.
The Excel file version of this form will calculate totals for each unit type, and worksheet totals in section 6(c), based on City and State selected on page 1.
If you are completing this Attachment 9 manually, use the applicable TDC limits for each unit type found in HUD Notice PIH 2003-8.

Definitions

NEW UNITS include all on-site and off-site rental units that will receive public housing operating subsidy. Also include any homeownership units (including lease-purchase), that will be newly-constructed or acquired (with or without rehabilitation) utilizing any HOPE VI grant funds or other public housing capital assistance for development.

REHABILITATION UNITS include only existing public housing units that are proposed for rehabilitation utilizing HOPE VI grant funds or other public housing capital assistance.

Building Types
Detached buildings are single-family dwellings.
Semi-Detached buildings, also referred to as "duplex" units, are structures that include only two units.
Elevator buildings include only those structures with an elevator and four or more floors above ground.
Row House refers to any structure with three or more units that has only vertical common walls.
If a building with three or more units has upper/lower units (and is not an elevator building), it is classified as a Walkup.
Walkup buildings include all structures with three or more units that are not classified as Elevator or Row House.

6(a) NEW UNITS (new construction, and units to be acquired and rehabilitated)

BUILDING TYPE	BR's	Number of Units	HCC Limit per Unit	HCC Totals	Community Renewal Allowance Total	TDC Limit per Unit	TDC Limit Totals
Detached / Semi-Detached	1BR					$ -	$ -
	2BR					$ -	$ -
	3BR					$ -	$ -
	4BR					$ -	$ -
	5BR					$ -	$ -
Elevator	1BR					$ -	$ -
	2BR					$ -	$ -
	3BR					$ -	$ -
	4BR					$ -	$ -
	5BR					$ -	$ -
Row House	1BR					$ -	$ -
	2BR					$ -	$ -
	3BR					$ -	$ -
	4BR					$ -	$ -
	5BR					$ -	$ -
Walkup	1BR					$ -	$ -
	2BR					$ -	$ -
	3BR					$ -	$ -
	4BR					$ -	$ -
	5BR					$ -	$ -

Subtotal New Units: _____

6(b) REHABILITATION UNITS (existing pubic housing units to be rehabilitated)*

BUILDING TYPE	BR's	Number of Units	HCC Limit per Unit	HCC Totals	Comm Renewal Allowance Total	TDC Limit per Unit*	TDC Limit Totals
Detached / Semi-Detached	1BR					$ -	$ -
	2BR					$ -	$ -
	3BR					$ -	$ -
	4BR					$ -	$ -
	5BR					$ -	$ -
Elevator	1BR					$ -	$ -
	2BR					$ -	$ -
	3BR					$ -	$ -
	4BR					$ -	$ -
	5BR					$ -	$ -
Row House	1BR					$ -	$ -
	2BR					$ -	$ -
	3BR					$ -	$ -
	4BR					$ -	$ -
	5BR					$ -	$ -
Walkup	1BR					$ -	$ -
	2BR					$ -	$ -
	3BR					$ -	$ -
	4BR					$ -	$ -
	5BR					$ -	$ -

Subtotal Rehab Units: _____

6(c)

Totals for all New and Rehabilitation Units						$ -

* Rehabilitation Units are eligible for 90% of the TDC limit. If the project unit configuration (number of units or bedrooms) will change due to rehabilitation activities, use the number of units and bedroom sizes after rehabilitation, not the unit configuration before rehabilitation.

Attachment 9:
TDC/Grant Limitations Worksheet

COMPLETE THIS WORKSHEET LAST — **Page 3**

To determine the maximum grant amount that may be requested in this HOPE VI revitalization application, enter the requested information. If you are using the Excel form, totals are calculated automatically.
If you are manually calculating the maximum grant amount that may be requested on this Attachment 9, follow the calculation instructions provided below on this worksheet.

6(d) TDC limit, unadjusted (entered automatically from "TDC Limit Calculation") (To calculate manually, enter the TDC Limit Total for all New and Rehabilitation Units from 6(c), page 2)		$ -
Step 7. Enter HOPE VI request for CSS funding. (from Attachment 7, Sources and Uses Budget) (Note: request for HOPE VI Community and Supportive Services (CSS) funding may not exceed 15% of total grant requested, and amounts above 5% of grant must be matched by other sources.)		$ -
Step 8. Enter HOPE VI funds requested for demolition and remediation of dwelling units. (Enter the combined total of the dwelling unit remediation and dwelling unit demolition line items from Attachment 7, Sources and Uses Budget)	$ -	
Step 9. Enter number of PH units to be demolished (after date of application only).	-	
Step 10. Enter number of PH units to be built back on the original site. (Do not include existing public housing units to be rehabilitated)	(-)	
10(a) Number of PH units to be demolished and not replaced back on original site (Number of units identified in Step 9, minus the number of units identified in Step 10)	-	
10(b) Percent of original PH units to be demolished and not replaced back on original site (Number of units identified in 10(a), divided by number of units identified in Step 9) Example: Step 9 = 100 units to be demolished. Step 10 = 40 PH units to be built back on original site. 10(a) = 60 units demolished and not built back on original site. 10(b) = 60/100 = 60%	- %	
10(c) Demo/abatement costs attributable to units to be demolished and not replaced on orig. site (Dollar amount identified in Step 8, multiplied by percentage identified in 10(b))		$ -
Step 11. Enter HOPE VI request for "extraordinary site costs" (certified by architect or engineer).		$ -
11(a) Subtotal: TDC limit, adjusted (for CSS, abatement/demolition, and extraordinary site costs) (Total of amounts above: 6(d) + Step 7 + 10(c) + Step 11)		$ -
Step 12. Enter all other HUD PH capital assistance proposed for HOPE VI development. (Include any project funds from the following sources: Public Housing Capital Funds or Mod funds (e.g., CIAP or CGP funds); Public Housing Development grants; previously-awarded HOPE VI demolition-only grants; and any borrowed funds secured by Capital Funds (from Attachment 7, Sources and Uses Budget))		($ -)
12(a) Subtotal: Adjusted maximum allowable grant, after accounting for additional capital assistance (Total of Subtotal in 11(a), minus amount identified in Step 12)		$ -
12(b) Maximum allowable HOPE VI Revitalization Grant (In accordance with provisions of the HUD 2003 HOPE VI Notice of Funding Availability)	$20,000,000	
12(c) Maximum allowable 2003 HOPE VI revitalization grant request (The lesser of 12(a) (adjusted max. possible grant), and 12(b) ($20,000,000))		$ -
Step 13. Enter the amount of your 2003 HOPE VI Revitalization Grant Request (If different than maximum allowable grant request, above)		$ -

[FR Doc. 03–30506 Filed 12–8–03; 8:45 am]
BILLING CODE 4210–33–C

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4874–N–01]

Public Housing Operating Fund; Notice of Availability of Information and Request for Comments

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice.

SUMMARY: Through this notice, HUD invites public housing agencies (PHAs), public housing residents, and other interested members of the public to HUD's Web site that provides information about the Public Housing Operating Fund Formula. The Operating Fund Formula determines the allocation of operating subsidies to PHAs. The Operating Fund Formula currently in effect was established by a March 29, 2001, interim rule, which followed a July 10, 2000, proposed rule developed through negotiated rulemaking procedures. The Web site continues the discussion of possible changes to the Operating Fund Formula, initiated during the development of and continuing through the recent release of a study of the cost of operating public housing conducted by the Harvard University Graduate School of Design. HUD's Web site presents issues for consideration and solicits comments from the public on the substance and form of a revised Operating Fund Formula.

DATES: *Comment Due Date:* Comments on the information posted on HUD's Web site will be accepted until January 30, 2004. HUD will update and revise this information on a periodic basis to reflect the availability of data and the public comments received to date. Accordingly, interested parties should visit HUD's Web site periodically during the comment period, and are invited to submit new or revised comments based on the updated information.

ADDRESSES: Interested persons are invited to submit comments regarding the information posted on HUD's Web site, http://www.hud.gov/offices/pih/divisions/ffmd/formulacomments.cfm. Comments must be submitted to: Opfund_Formula_Comments@hud.gov or Chris Kubacki, Public Housing Financial Management Division, Office of Public and Indian Housing—Real Estate Assessment Center, Department of Housing and Urban Development, 1250 Maryland Ave., SW., Suite 800, Washington, DC 20024–5000.

FOR FURTHER INFORMATION CONTACT: Chris Kubacki, Public Housing Financial Management Division, Office of Public and Indian Housing—Real Estate Assessment Center, Department of Housing and Urban Development, 1250 Maryland Ave., SW., Suite 800, Washington, DC 20024–5000; telephone (202) 708–4932 (this is not a toll-free number). Persons with hearing or speech impairments may access this number via TTY by calling the toll-free Federal Information Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

I. Background

Section 9 of the United States Housing Act of 1937 (42 U.S.C. 1437g) establishes an Operating Fund for the purpose of making assistance available to PHAs for the operation and management of public housing. Section 9 also requires that the amount of the assistance to be made available to a PHA from that fund be determined using a formula developed through negotiated rulemaking procedures as provided in subchapter III of chapter 5 of title 5, United States Code, commonly referred to as the Negotiated Rulemaking Act of 1990.

Negotiated rulemaking for an Operating Fund Formula was initiated in March 1999, and consisted of 25 members representing PHAs, tenant organizations, community-based organizations, and the three national organizations representing PHAs—The Public Housing Authorities Directors Association (PHADA), the Council of Large Public Housing Authorities (CLPHA), and the National Association of Housing Redevelopment Officials (NAHRO). The negotiated rulemaking committee concluded with a proposed rule, published on July 10, 2000 (65 FR 42488), which was followed by an interim rule published on March 29, 2001 (66 FR 17276). The March 29, 2001, interim rule established the Operating Fund Formula that is currently in effect.

In accordance with Congressional direction, HUD contracted with the Harvard University Graduate School of Design (Harvard GSD) to conduct a study on the costs incurred in operating well-run public housing. The Harvard GSD performed extensive research on the question of what the expense level of managing public housing should be. HUD invited the members of the negotiated rulemaking committee to be active participants in Harvard GSD's research for and development of the Cost Study. The Harvard GSD also conducted several public meetings to allow for an exchange of views with the public housing industry, beyond those industry members who were part of the Operating Fund Formula negotiated rulemaking committee. The Cost Study was completed and officially released in July 2003, and the release of the Cost Study has prompted further discussion about changes to, and the future of, the Operating Fund Formula. A copy of the Cost Study and related documents may be downloaded from the Harvard GSD Web site (*http://www.gsd.harvard.edu/research/research_centers/phocs/index.html*).

II. This Notice

HUD believes that a reinitiation of the dialogue with the industry and the public on changes to the Operating Fund Formula that commenced with the development of the Cost Study and continued through its release, would be beneficial to the Department and the industry in focusing on changes that should be considered to the Operating Fund Formula. HUD is therefore making available on its Web site information and issues related to possible changes to the Operating Fund Formula (see HUD Web site at *http://www.hud.gov/offices/pih/divisions/ffmd/formulacomments.cfm*).

HUD is specifically seeking comments on the information posted on its Web site. Interested parties may submit comments on this information either electronically or by mail to the addresses listed in the **ADDRESSES** section above. Comments on the information posted on HUD's Web site will be accepted until January 30, 2004.

It is HUD's goal in posting this information to initiate an ongoing dialogue with interested members of the public. Accordingly, HUD will update and revise the information posted on its Web site on a periodic basis to reflect the availability of data and the public comments received to date. Interested parties should visit HUD's Web site periodically during the comment period, and are invited to submit new or revised comments based on the updated information. As part of this ongoing dialogue with the public, public housing residents, PHAs, and other interested parties on issues concerning possible changes to the Operating Fund Formula, HUD may also sponsor one or more meetings to further discuss changes to the Operating Fund Formula.

Dated: December 2, 2003.

Michael M. Liu,
Assistant Secretary for Public and Indian Housing.

[FR Doc. 03–30507 Filed 12–8–03; 8:45 am]
BILLING CODE 4210–33–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Indian Gaming

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of a 2003 amendment to a Tribal-State gaming Compact taking effect between the Stockbridge-Munsee Community and the State of Wisconsin.

SUMMARY: Under Section 11 of the Indian Gaming Regulatory Act of 1988 (IGRA), Pub. L. 100–497, 25 U.S.C. 2710, the Secretary of the Interior shall publish, in the **Federal Register**, notice of the approved Tribal-State compacts for the purpose of engaging in Class III gaming activities on Indian lands. The Assistant Secretary—Indian Affairs, Department of the Interior, through her delegated authority, has deemed approved the 2003 Amendment to the

Stockbridge-Munsee Community and the State of Wisconsin gaming Compact of 1992, as amended in 1998. By the terms of IGRA, the Amendment is considered approved, but only to the extent that the Amendment is consistent with the provisions of IGRA. The Amendment authorizes the Tribe to pay the State between two and a quarter and five percent of net revenues from all class III gaming. The payment to the State is reduced if the scope of non-Indian gaming is expanded within the State or if a federally recognized tribe opens a class III gaming facility within seventy miles of the tribes on reservation gaming facility. In addition the Amendment authorizes, *inter alia*, all banking, percentage and pari-mutuel card games, all forms of live poker, craps, all banking and non-banking dice games, roulette and other wheel games, keno, wheel of fortune, baccarat-chemin de fer, pari-mutuel wagering on horse, harness and dog racing events, Caribbean stud poker, let-it-ride, and pai-gow poker.

EFFECTIVE DATE: December 9, 2003.

FOR FURTHER INFORMATION CONTACT: George T. Skibine, Director, Office of Indian Gaming Management, Bureau of Indian Affairs, Washington, DC 20240, (202) 219–4066.

Dated: December 2, 2003.

Aurene M. Martin,

Principal Deputy Assistant Secretary—Indian Affairs.

[FR Doc. 03–30504 Filed 12–8–03; 8:45 am]

BILLING CODE 4310–4N–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Adjustment of the Amount of an Administrative Costs Assessment

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of adjustment of the amount of an administrative costs assessment (43 CFR 426.20[e]).

SUMMARY: The Bureau of Reclamation (Reclamation, we, our, or us) is increasing the amount of the administrative costs assessment set forth in the Acreage Limitation Rules and Regulations (Regulations), 43 CFR part 426. Section 426.20(e) of the Regulations requires us to periodically review the amount of the administrative costs we incur as a result of certain Reclamation Reform Act of 1982 (RRA) forms and excess land problems and, if needed, adjust the amount of the assessment to reflect new cost data. Based on our latest review of the associated costs, the current $260 administrative costs assessment is being increased to $290.

DATES: The increase in the amount of the administrative costs assessment to $290 becomes effective on January 1, 2004. See the last paragraph in the **SUPPLEMENTARY INFORMATION** section for more details regarding application of the new amount of the assessment.

FOR FURTHER INFORMATION CONTACT: Bureau of Reclamation, Office of Program and Policy Services, Attention: D–5200, P.O. Box 25007, Denver, Colorado 80225.

SUPPLEMENTARY INFORMATION:

Background: Section 426.20 of the Regulations provides that we will assess districts administrative costs if: (1) A district delivers Reclamation irrigation water to land that was ineligible because a landholder did not submit certification or reporting forms to the district prior to receipt of the water; (2) a district does not provide us with corrected landholder certification or reporting forms within 60 calendar days of our request for corrections; or (3) a district delivers Reclamation irrigation water to ineligible excess land. Section 426.20(e) sets the amount of the administrative fee at $260. The amount is based on the additional costs we incur to perform activities to address the problems described in the first sentence of this paragraph. Section 426.20(e) further provides that we will review the associated costs at least once every 5 years and adjust the assessment amount, if needed, to reflect new cost data.

Review Periods: The regulatory provisions for the administrative costs assessment became effective on March 27, 1995. In 2000, we reviewed the cost data for 1995–1999 and determined that the amount of the assessment should remain at $260. In July 2003, we reviewed the cost data for 2000–2002 and determined that the amount of the assessment needs to be increased by $30, to $290. In 2006, we will review the cost data for 2003–2005 and determine if the amount of the administrative costs assessment needs to be adjusted again.

Application of the New Administrative Costs Assessment: The new amount of the administrative costs assessment becomes effective on January 1, 2004. However, application will be based on the date Reclamation actually finds and documents the forms or excess land problem in question. More specifically, if after January 1, 2004, we find a forms or excess land problem described in 43 CFR 426.20, the amount of the administrative costs assessment will be $290. This will be the case even if the problem occurred prior to January 1, 2004. For problems we find prior to January 1, 2004, the amount of the administrative costs assessment will remain at $260.

Dated: October 31, 2003.

Roseann Gonzales,

Acting Deputy Director, Office of Program and Policy Services.

[FR Doc. 03–30417 Filed 12–8–03; 8:45 am]

BILLING CODE 4310–MN–P

INTERNATIONAL TRADE COMMISSION

[Investigation 332–325]

The Economic Effects of Significant U.S. Import Restraints: Fourth Update

AGENCY: United States International Trade Commission.

ACTION: Cancellation of public hearing.

EFFECTIVE DATE: December 3, 2003.

SUMMARY: On November 28, 2003, the Commission received notice that the only scheduled witnesses for the hearing scheduled for December 9, 2003, in this matter have elected to have their written submission serve as a substitute for their oral statement. Therefore, the public hearing in connection with this investigation, scheduled to be held beginning at 9:30 am on December 9, 2003, at the U.S. International Trade Commission Building, 500 E Street, SW., Washington, DC, is canceled. Notice of institution of this investigation and the scheduling of the hearing was published in the **Federal Register** of August 21, 2003 (68 FR 50553). To be assured of consideration by the Commission, written statements relating to the Commission's report should be submitted at the earliest practical date and should be received not later than COB January 10, 2004. All submissions should be addressed to the Secretary, United States International Trade Commission, 500 E Street, SW., Washington, DC 20436. The Commission's rules do not authorize filing submissions with the Secretary by facsimile or electronic means, except to the extent permitted by section 201.8 of the Commission's Rules (19CFR201.8) (*see* Handbook for Electronic Filing Procedures, *ftp://ftp.usitc.gov/pub/reports/electronic_filing_handbook.pdf*).

FOR FURTHER INFORMATION CONTACT: Soamiely Andriamananjara, Project Leader (202–205–3252) or Marinos Tsigas, Deputy Project Leader (202–708–3654), Office of Economics, U.S. International Trade Commission, Washington, DC 20436. For information on the legal aspects of this investigation, contact William Gearhart of the Office of the General Counsel (202–205–2091). Hearing impaired individuals are advised that information on this matter can be obtained by contacting the TDD terminal on (202–205–1810). Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000.

List of Subjects

U.S. Import Restraints, Nontariff measures (NTM), Tariffs, Imports.

By Order of the Commission.

Issued: December 3, 2003.

Marilyn R. Abbott,

Secretary.

[FR Doc. 03–30443 Filed 12–8–03; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Partial Consent Decree Under the Clean Water Act

Under 28 CFR 50.7, notice is hereby given that on December 3, 2003, a proposed Consent Decree on Combined Sewer Overflows, Wastewater Treatment Plants and Implementation of Capacity Assurance Program Plan ("proposed Final Consent Decree") in *United States and State of Ohio* v. *Board of County Commissioners of Hamilton County and the City of Cincinnati*, Civil Action Nos. C–1–02–107 and C–1–02–108, was lodged with the United States District Court for the Southern District of Ohio. On February 15, 2003, the United States previously lodged a proposed Interim Partial Consent Decree on Sanitary Sewer Overflows ("proposed IPCD"). Notice of the proposed IPCD was previously published in the **Federal Register**, and public comments were received on the proposed IPCD from February 28–March 28, 2002. 67 F.R. 9320–21 (Feb. 28, 2002).

On February 15, 2003, concurrently with the lodging of the proposed IPCD, the United States and State of Ohio filed separate complaints seeking injunctive relief from defendants for unauthorized discharges from their sanitary sewer system, located in Hamilton County, Ohio. These unauthorized discharges are also known as sanitary sewer overflows, or SSOs, and are violations of the Clean Water Act. On December 3, 2003, concurrently with the lodging of the proposed Final Consent Decree, the United States, State of Ohio, and Ohio River Valley Water Sanitation Commission ("ORSANCO") filed a Joint Amended Complaint seeking injunctive relief and civil penalties from defendants for violations of the Clean Water Act as well as State and ORSANCO laws and regulations relating to SSOs, combined sewer overflows (CSOs), and defendants' wastewater treatment plants ("WWTPs"). In addition, the United States seeks injunctive relief pursuant to Section 504 of the Clean Water Act, 33 U.S.C. 1364, for an imminent and substantial endangerment resulting from backups of sewage into basements.

The proposed IPCD and the proposed Final Decree, taken together, require the defendants to: Implement an interim and then permanent remedy for SSO 700; to implement certain specified capital improvement projects for certain SSOs and CSOs; to perform modeling and analysis of their sanitary sewer system; to propose a comprehensive Capacity Assurance Program Plan ("CAPP") to address their remaining SSOs and to provide adequate future system capacity; to develop and implement a Long Term Control Plan Update ("LTCPU") to greatly reduce CSOs and bypassing at WWTPs and bring them into compliance with the law; to implement the CAPP and LTCPU, once they are approved by the plaintiffs; to implement a comprehensive sewage "basement backup" program, including interim prevention (*e.g.*, installing backflow prevention devices in houses to prevent sewage in basement), long-term prevention (implementing any additional remedial measures beyond those required by the CAPP or LTCPU to provide adequate sewer capacity to prevent basement backups in the future), cleanup for houses that have had backups, and reimbursement for losses to real or personal property caused by the backups; to perform several Supplemental Environmental Projects, which must cost a minimum of $5.3 million; and to pay a civil penalty of $1.2 million.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed Final Consent Decree and/or the proposed IPCD. (Commenters who have previously submitted comments on the proposed IPCD need not reiterate their comments, and these will be re-reviewed and re-considered by the United States in light of the proposed Final Consent Decree.) Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, D.C. 20044–7611, and should refer to *United States and State of Ohio* v. *Board of County Commissioners of Hamilton County and the City of Cincinnati*, D.J. Ref. 90–5–1–6–341A.

The Final Consent Decree and/or the IPCD may be examined at the Office of the United States Attorney for the Southern District of Ohio, 221 E. 4th Street, Atrium II, Suite 400, Cincinnati, Ohio 45202, and at U.S. EPA Region V, 77 West Jackson Blvd, Chicago, IL 60604–3590. A copy of the Final Consent Decree and/or IPCD may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611. During the public comment period, the Final Consent Decree and/or IPCD may also be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/open.html*. A copy of the Final Consent Decree and/or IPCD may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy of either or both proposed consent decrees, please enclose a check payable to the U.S. Treasury for reproduction costs (at 25 cents per page) as follows:

IPCD, inclusive of Exhibits: $209.00;

IPCD, exclusive of Exhibits: $18.75;

Final Consent Decree, inclusive of Exhibits: $47.00;

Final Consent Decree, exclusive of Exhibits: $27.25.

William D. Brighton,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 03–30470 Filed 12–8–03; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Parole Commission

Public Announcement Pursuant to the Government in the Sunshine Act (Public Law 94–409, 5 U.S.C. Section 552b)

AGENCY: Department of Justice, United States Parole Commission.

TIME AND DATE: 9:30 a.m., Thursday, December 11, 2003.

PLACE: 5550 Friendship Blvd., Fourth Floor, Chevy Chase, MD 20815.

STATUS: Open.

MATTERS TO BE CONSIDERED: The following matters have been placed on

the agenda for the open Parole Commission meeting:

1. Approval of Minutes of Previous Commission Meeting.

2. Reports from the Chairman, Commissioners, Legal, Chief of Staff, Case Operations, and Administrative Sections.

FOR FURTHER INFORMATION CONTACT: Thomas W. Hutchison, Chief of Staff, United States Parole Commission, (301) 492–5590.

Dated: December 4, 2003.

Rockne Chickinell,

General Counsel, U.S. Parole Commission.

[FR Doc. 03–30580 Filed 12–5–03; 10:44 am]

BILLING CODE 4410–31–M

DEPARTMENT OF JUSTICE

Parole Commission

Public Announcement Pursuant to the Government in the Sunshine Act (Public Law 94–409, 5 U.S.C. 552b)

AGENCY: Department of Justice, United States Parole Commission.

DATE AND TIME: 10:30 a.m., Thursday, December 11, 2003.

PLACE: U.S.Parole Commission, 5550 Friendship Boulevard, 4th Floor, Chevy Chase, Maryland 20815.

STATUS: Closed—Meeting.

MATTERS TO BE CONSIDERED: The following matter will be considered during the closed portion of the Commission's Business Meeting:

Appeals to the Commission involving approximately one case decided by the National Commissioners pursuant to reference under 28 CFR 2.27. This case was originally heard by an examiner panel wherein inmates of Federal prisons have applied for parole and are contesting revocation of parole or mandatory release.

FOR FURTHER INFORMATION CONTACT: Thomas W. Hutchison, Chief of Staff, United States Parole Commission, (301) 492–5990.

Dated: December 4, 2003.

Rockne Chickinell,

General Counsel.

[FR Doc. 03–30581 Filed 12–5–03; 10:44 am]

BILLING CODE 4410–31–M

NUCLEAR REGULATORY COMMISSION

Call for Nominations

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is advertising for nominations for the position of Interventional Cardiology Physician on the Advisory Committee on the Medical Uses of Isotopes (ACMUI).

DATES: Nominations are due on or before March 8, 2004.

ADDRESSES: Submit four copies of the nominee's resume to the Office of Human Resources, Attn: Ms. Joyce Riner, Mail Stop T2D32, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

FOR FURTHER INFORMATION CONTACT: Angela R. Williamson, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Telephone (301) 415–5030; e-mail: *arw@nrc.gov*.

SUPPLEMENTARY INFORMATION: The ACMUI advises NRC on policy and technical issues regarding the regulation of the medical use of byproduct material. Responsibilities include providing comments on changes to NRC rules, regulations, and guidance documents; evaluating certain non-routine uses of byproduct material; providing technical assistance in licensing, inspection, and enforcement cases; providing consulting services when necessary; and bringing key issues to the attention of NRC for appropriate action. ACMUI members possess the medical and technical skills needed to address evolving issues. The current membership is comprised of the following professionals: (a) Nuclear medicine physician; (b) nuclear cardiologist; (c) medical physicist in nuclear medicine, unsealed byproduct material; (d) therapy physicist; (e) radiation safety officer; (f) nuclear pharmacist; (g) two radiation oncologists; (h) patients' rights advocate; (i) Food and Drug Administration representative; (j) State government representative; and (k) health care administrator. NRC is inviting nominations for an interventional cardiologist physician to the ACMUI. Nominees should be interventional cardiologist physicians with experience in intravascular brachytherapy use of radiation sources. Committee members serve a 3-year term, with possible reappointment to an additional 3-year term. Nominees must be U.S. citizens and be able to devote approximately 80 hours per year to committee business. Members who are not Federal employees are compensated for their service. In addition, members are reimbursed travel expenses (including per diem, in lieu of subsistence); and are also reimbursed secretarial and correspondence expenses. Members who are full-time Federal employees are reimbursed travel expenses only. Nominees will undergo a security background check and will be required to complete financial disclosure statements, to avoid conflict-of-interest issues.

Dated: December 3, 2003.

Andrew L. Bates,

Advisory Committee Management Officer.

[FR Doc. 03–30468 Filed 12–8–03; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No: (Redacted), License No: (Redacted), EA (Redacted)]

In the Matter of a Power Reactor Licensee Who Transports Spent Nuclear Fuel; Order Modifying License (Effective Immediately)

I

The Licensee identified in Attachment 1 to this Order has been issued a specific license by the U.S. Nuclear Regulatory Commission (NRC or Commission) authorizing the possession of spent nuclear fuel and a general license authorizing the transportation of spent nuclear fuel [in a transportation package approved by the Commission] in accordance with the Atomic Energy Act of 1954, as amended, and 10 CFR parts 50 and 71. This Order is being issued to all such licensees who transport spent nuclear fuel. Commission regulations for the shipment of spent nuclear fuel at 10 CFR 73.37(a) require these licensees to maintain a physical protection system that meets the requirements contained in 10 CFR 73.37(b), (c), (d), and (e).

II

On September 11, 2001, terrorists simultaneously attacked targets in New York, NY, and Washington, DC, utilizing large commercial aircraft as weapons. In response to the attacks and intelligence information subsequently obtained, the Commission issued a number of Safeguards and Threat Advisories to its licensees in order to strengthen licensees' capabilities and readiness to respond to a potential attack on a nuclear facility or regulated activity. The Commission has also communicated with other Federal, State and local government agencies and industry representatives to discuss and evaluate the current threat environment in order to assess the adequacy of security measures at licensed facilities. In addition, the Commission has been conducting a comprehensive review of its safeguards and security programs and requirements.

As a result of its consideration of current safeguards and security plan requirements, as well as a review of information provided by the intelligence community, the Commission has determined that certain additional security measures are required to be implemented by licensees as prudent, interim measures, to address the current threat environment in a consistent manner. Therefore, the Commission is imposing requirements, as set forth in Attachment 2 of this Order, on the Licensee identified in Attachment 1 of this Order.[1] These additional security requirements, which supplement existing regulatory requirements, will provide the Commission with reasonable assurance that the common defense and security continue to be adequately protected in the current threat environment. These requirements will remain in effect until the Commission determines otherwise.

The Commission recognizes that licensees may have already initiated many of the measures set forth in Attachment 2 to this Order in response to previously issued Safeguards and Threat Advisories or on their own. It is also recognized that some measures may not be possible or necessary for all shipments of spent nuclear fuel, or may need to be tailored to accommodate the licensees' specific circumstances to achieve the intended objectives and avoid any unforeseen effect on the safe transport of spent nuclear fuel.

Although the additional security measures implemented by licensees in response to the Safeguards and Threat Advisories have been adequate to provide reasonable assurance of adequate protection of common defense and security, in light of the current threat environment, the Commission concludes that the security measures must be embodied in an Order consistent with the established regulatory framework. In order to provide assurance that licensees are implementing prudent measures to achieve a consistent level of protection to address the current threat environment, the License identified in Attachment 1 to this Order shall be modified to include the requirements identified in Attachment 2 to this Order. In addition, pursuant to 10 CFR 2.202, and in light of the common defense and security matters identified above which warrant the issuance of this Order, the Commission finds that the public health, safety, and interest require that this Order be immediately effective.

[1] Attachments 1 and 2 contain Safeguards Information and will not be released to the public.

III

Accordingly, pursuant to sections 53, 103, 104, 161b, 161i, 161o, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202 and 10 CFR parts 50 and 71, *it is hereby ordered, effective immediately*, that all licenses identified in Attachment 1 to this Order are modified as follows:

A. The Licensee shall, notwithstanding the provisions of any Commission regulation or license to the contrary, comply with the requirements described in Attachment 2 to this Order except to the extent that a more stringent requirement is set forth in the Licensee's security plan. The Licensee shall immediately start implementation of the requirements in Attachment 2 to the Order and shall complete implementation by January 2, 2004, unless otherwise specified in Attachment 2, or before the first shipment after December 3, 2003, whichever is earlier.

B. 1. The Licensee shall, within twenty (20) days of the date of this Order, notify the Commission, (1) if it is unable to comply with any of the requirements described in Attachment 2, (2) if compliance with any of the requirements is unnecessary in their specific circumstances, or (3) if implementation of any of the requirements would cause the Licensee to be in violation of the provisions of any Commission regulation or the facility license. The notification shall provide the Licensee's justification for seeking relief from or variation of any specific requirement.

2. If the Licensee considers that implementation of any of the requirements described in Attachment 2 to this Order would adversely impact the safe transport of spent fuel, the licensee must notify the Commission, within twenty (20) days of this Order, of the adverse safety impact, the basis for its determination that the requirement has an adverse safety impact, and either a proposal for achieving the same objectives specified in the Attachment 2 requirement in question, or a schedule for modifying the activity to address the adverse safety condition. If neither approach is appropriate, the Licensee must supplement its response to Condition B1 of this Order to identify the condition as a requirement with which it cannot comply, with attendant justifications as required in Condition B1.

C. 1. The Licensee shall, within twenty (20) days of the date of this Order, submit to the Commission a schedule for achieving compliance with each requirement described in Attachment 2.

2 The Licensee shall report to the Commission when it has achieved full compliance with the requirements described in Attachment 2.

D. Notwithstanding any provisions of the Commission's regulations to the contrary, all measures implemented or actions taken in response to this Order shall be maintained until the Commission determines otherwise.

Licensee responses to Conditions B1, B2, C1, and C2 above, shall be submitted to the NRC to the attention of the Director, Office of Nuclear Reactor Regulation under 10 CFR 50.4. In addition, Licensee submittals that contain Safeguards Information shall be properly marked and handled in accordance with 10 CFR 73.21.

The Director, Office of Nuclear Reactor Regulation, may, in writing, relax or rescind any of the above conditions upon demonstration by the Licensee of good cause.

IV

In accordance with 10 CFR 2.202, the Licensee must, and any other person adversely affected by this Order may, submit an answer to this Order, and may request a hearing on this Order, within twenty (20) days of the date of this Order. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time in which to submit an answer or request a hearing must be made in writing to the Director, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and include a statement of good cause for the extension. The answer may consent to this Order. Unless the answer consents to this Order, the answer shall, in writing and under oath or affirmation, specifically set forth the matters of fact and law on which the Licensee or other person adversely affected relies and the reasons as to why the Order should not have been issued. Any answer or request for a hearing shall be submitted to the Secretary, Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, ATTN: Rulemakings and Adjudications Staff, Washington, DC 20555–0001. Copies also shall be sent to the Director, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, to the Assistant General Counsel for Materials Litigation and Enforcement at the same address; to the Regional Administrator for the NRC Region appropriate for the specific facility; and to the Licensee if the answer or hearing

request is by a person other than the Licensee. Because of potential disruptions in delivery of mail to United States Government offices, it is requested that answers and requests for hearing be transmitted to the Secretary of the Commission either by means of facsimile transmission to (301) 415–1101 or by e-mail to *hearingdocket@nrc.gov*, and also to the Office of the General Counsel either by means of facsimile transmission to (301) 415–3725 or by e-mail to *OGCMailCenter@nrc.gov*. If a person other than the Licensee requests a hearing, that person shall set forth with particularity the manner in which his interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.714(d).

If a hearing is requested by the Licensee or a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Order should be sustained.

Pursuant to 10 CFR 2.202(c)(2)(i), the Licensee may, in addition to demanding a hearing, at the time the answer is filed or sooner, move the presiding officer to set aside the immediate effectiveness of the Order on the ground that the Order, including the need for immediate effectiveness, is not based on adequate evidence but on mere suspicion, unfounded allegations, or error.

In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions specified in Section III above shall be final twenty (20) days from the date of this Order without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in Section III shall be final when the extension expires if a hearing request has not been received.

An answer or a request for hearing shall not stay the immediate effectiveness of this Order.

Dated at Rockville, Maryland, this 3rd day of December, 2003.

For the Nuclear Regulatory Commission.

J.E. Dyer,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 03–30460 Filed 12–8–03; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Biweekly Notice; Applications and Amendments to Facility Operating Licenses Involving No Significant Hazards Considerations

I. Background

Pursuant to Public Law 97–415, the U.S. Nuclear Regulatory Commission (the Commission or NRC staff) is publishing this regular biweekly notice. Public Law 97–415 revised section 189 of the Atomic Energy Act of 1954, as amended (the Act), to require the Commission to publish notice of any amendments issued, or proposed to be issued, under a new provision of section 189 of the Act. This provision grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from, November 14, through November 26. The last biweekly notice was published on November 25, 2003 (68 FR 66131).

Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received before action is taken. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the Commission's Public Document Room (PDR), located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland. The filing of requests for a hearing and petitions for leave to intervene is discussed below.

By January 8, 2004, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714, which is available at the Commission's PDR, located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/doc-collections/cfr/*. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff, or may be delivered to the Commission's PDR, located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland, by the above date. Because of continuing disruptions in delivery of mail to United States Government offices, it is requested that petitions for leave to intervene and requests for hearing be transmitted to the Secretary of the Commission either by means of facsimile transmission to 301–415–1101 or by e-mail to *hearingdocket@nrc.gov*. A copy of the request for hearing and petition for leave to intervene should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and because of continuing disruptions in delivery of mail to United States Government offices, it is requested that copies be transmitted either by means of facsimile transmission to 301–415–3725 or by e-mail to *OGCMailCenter@nrc.gov*. A copy of the request for hearing and petition for leave to intervene should also be sent to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for a hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's PDR, located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html*. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC PDR Reference staff at 1–800–397–4209, 301–415–4737 or by e-mail to *pdr@nrc.gov*.

AmerGen Energy Company, LLC, Docket No. 50–289, Three Mile Island Nuclear Station, Unit 1 (TMI–1), Dauphin County, Pennsylvania

Date of amendment request: August 6, 2003.

Description of amendment request: This amendment would revise the Technical Specifications (TSs) to incorporate reference to the 10 CFR 50.55a, Codes and Standards, criteria for the inservice reactor building tendon surveillance requirements, to incorporate an administrative change to the TS Definition 1.22 to be consistent with 10 CFR 20.1003, as well as other administrative corrections from previously issued TS amendments.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed revision to Technical Specification 4.4.2.1 and associated Bases Section incorporates reference to the criteria of 10 CFR 50.55a, "Codes and standards," in addition to the existing criteria of Regulatory Guide 1.35. This change provides consistency between the Technical Specification tendon surveillance program criteria and the regulatory requirements specified in 10 CFR 50.55a(b)(2)(vi). These

regulatory requirements and the associated surveillance program ensure that the reactor building tendon prestressing system is capable of maintaining the structural integrity of the containment during operating and accident conditions. The reactor building prestressing system is not an initiator of any accident. Therefore, this change is not related to the probability of any accident previously evaluated. This change ensures that the containment tendon surveillance program addresses the appropriate regulatory criteria. This change does not result in any reduction in the effectiveness of the existing surveillance program. The tendon surveillance program will continue to ensure that the containment structure is capable of performing its intended safety function in the event of a design basis accident. Therefore, this change has no affect on the consequences of an accident previously evaluated.

The proposed changes to Technical Specification Definition 1.22, Technical Specification 3.1.6.6 and associated Bases, and Technical Specification 3.24 Bases are only administrative changes or corrections and have no affect on plant design or operations. Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed revision to Technical Specification 4.4.2.1 and associated Bases Section incorporates references to the criteria of 10 CFR 50.55a, "Codes and standards," in addition to the existing criteria of Regulatory Guide 1.35. This change provides consistency between the Technical Specification tendon surveillance program criteria and the regulatory requirement specified in 10 CFR 50.55a(b)(2)(vi). The proposed Technical Specification change does not result in any reduction in effectiveness of the existing tendon surveillance program. The tendon surveillance program will continue to satisfy the applicable Technical Specification and regulatory required criteria, thus ensuring that the containment structure will perform its design safety function. This change has no affect on the design and operation of plant structures, systems, and components. This change does not introduce any new accident precursors and does not involve any alterations to plant configurations, which could initiate a new or different kind of accident.

The proposed changes to Technical Specification Definition 1.22, Technical Specification 3.1.6.6 and associated Bases, and Technical Specification 3.24 Bases are only administrative changes or corrections and have no affect on plant design or operations.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The proposed revision to Technical Specification 4.4.2.1 and associated Bases Section incorporates reference to the criteria of 10 CFR 50.55a, "Codes and standards," in addition to the existing criteria of Regulatory Guide 1.35. This change provides consistency between the Technical Specification tendon surveillance program criteria and the regulatory requirement specified in 10 CFR 50.55a(b)(2)(vi). The containment examination and inspection requirements specified in 10 CFR 50.55a(b)(2)(vi) meet the same standards as the criteria specified in Regulatory Guide 1.35. The proposed Technical Specification change does not result in any reduction in effectiveness of the existing tendon surveillance program. The tendon surveillance program will continue to satisfy the applicable Technical Specification and regulatory required criteria, thus ensuring that the containment structure will perform its design safety function in accordance with existing margins of safety for containment integrity.

The proposed changes to Technical Specification Definition 1.22, Technical Specification 3.1.6.6 and associated Bases, and Technical Specification 3.24 Bases are only administrative changes or corrections and have no affect on plant design or operations.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Edward J. Cullen, Jr., Esquire, Vice President, General Counsel and Secretary, Exelon Generation Company, LLC, 300 Exelon Way, Kennett Square, PA 19348

NRC Section Chief: Richard J. Laufer.

Arizona Public Service Company, et al., Docket Nos. STN 50–528, STN 50–529, and STN 50–530, Palo Verde Nuclear Generating Station, Units 1, 2, and 3, Maricopa County, Arizona

Date of amendments request: August 22, 2003.

Description of amendments request: The amendments would revise three different sections in the Updated Final Safety Analysis Report (UFSAR) for PVNGS [Palo Verde Nuclear Generating Station], Units 1, 2, and 3. This request would revise the sections of the UFSAR which describe the maximum fuel pin pressurization criteria used for fuel handling accident safety analyses. This change is necessitated due to the combination of higher core burnup designs, fuel which contains erbia poison, and the recent introduction of ZIRLO cladded fuel to the PVNGS reactors.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change would revise sections of the PVNGS UFSAR, which describe the maximum fuel pin pressurization criteria used for fuel handling accident safety analyses.

No additional equipment is being added as a result of the proposed change. None of the failure modes and effects analyses are impacted by the proposed change since no structures, systems, or components (SSCs) are being modified, system lineups remain the same, and operator actions for fuel handling accident are not changing. No manual actions are being substituted for automatic actions. The SSCs relied upon to mitigate the event are not changing. Specifically, the fuel building, BOPESFAS (Balance of Plant-Engineered Safety Features Actuation System), radiation monitor setpoints, etc. . . . are not impacted. The methodology changes will have no impact on the likelihood of a malfunction of any SSCs.

No departures from the design or testing and performance standards outlined in any 10 CFR [Part] 50, Appendix A, General Design Criteria (GDC) will result from the proposed activity. The proposed UFSAR changes will not make any SSCs more likely to fail (no direct effects). Even with higher fuel pin pressures, the use of ZIRLO cladding provides more margin to design stress limits (liftoff pressure) than Zircaloy cladding. Regardless of the fuel type (and hence cladding type), the design stress and code allowable limits will not be exceeded. Palo Verde Nuclear Generating Station (PVNGS) "Fuel Mishandling Accident Evaluation with ZIRLO Fuel Rods" concluded that the analysis of record for fuel handling events involving fuel assemblies containing ZIRLO cladding would remain bounding. No physical changes to any SSCs will be performed as a result of the proposed changes. In addition, system/equipment redundancy requirements are maintained with the proposed UFSAR changes.

Fuel handling accident analyses must ensure doses at the site boundary and control room remains well within 10 CFR Part 100 and 10 CFR [Part] 50 Appendix A, GDC 19 exposure guideline. Restricting the peak assembly average fuel pin pressure to <1200 psig will still result in acceptable doses. Therefore, no indirect effects on SSCs associated with dose limitations are impacted.

Consequences mean dose at the Exclusion Area Boundary (EAB), Low Population Zone (LPZ), and Control Room; therefore, an increase in consequences must involve an increase in radiological doses to the public or to control room operators. No changes to the

dose exposure as a result of a fuel handling accident are proposed for the methodology change and Regulatory Guide 1.25 deviation requested. Therefore, there are no radiological consequence changes for this event.

The fuel handling accident event does involve fuel barrier failure and does involve consequences, however no changes to the fuel handling dose calculation are required since the decontamination factor will remain unchanged even with maximum fuel pin pressure exceeding 1200 psig. Activities affecting on-site dose consequences that may require prior NRC approval are those that impede required actions inside or outside the control room to mitigate the consequences of reactor accidents.

The proposed change does not modify any operator actions and hence will not impede required actions inside or outside the control room to mitigate the consequences of reactor accidents. The proposed change will not prevent or degrade the effectiveness of actions described or assumed in an accident discussed in the UFSAR. The proposed change does alter assumptions previously made in evaluating the radiological consequences of an accident described in the UFSAR, however the altered assumption is a methodology change. If the proposed methodology change were not applied, the calculated dose would increase. The peak assembly average pin pressure concept would allow the decontamination factor (DF) to remain the same and therefore consequences would remain unchanged. The proposed change does not play a direct role in mitigating the radiological consequences of an accident described in the UFSAR. The radiological consequences of the accident described in the UFSAR are bounding for the proposed activity (e.g., the results of the UFSAR analysis bound those that would be associated with the proposed change).

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The accident affected by the proposed change is the fuel handling accident (UFSAR Section 15.7.4). The proposed change does not involve any new equipment and does not operate any existing equipment in a different or more severe manner than what has previously been analyzed. PVNGS evaluations concluded all analyses of record for fuel handling events involving fuel assemblies containing ZIRLO cladding will remain bounding. The material strength of ZIRLO is significantly higher than that for Zircaloy-4. Since the allowable stresses for ZIRLO cladding are significantly higher than for Zircaloy-4, the same number of fuel rods (or fewer) will be damaged by the same accident scenarios as previously evaluated. Regardless of the fuel type (and hence cladding type), the design stress and code allowable limits will not be exceeded. Slight changes in the maximum fuel pin pressure during fuel movement will have no impact on the possibility of creating an accident of a different type as long as the design pressure structural limits of the fuel assembly are not approached. PVNGS calculation documents minimum liftoff pressures will not be challenged regardless of the fuel type or cladding type. Maintaining peak assembly average fuel pin pressure below 1200 psig will not challenge the liftoff pressure design basis limit for the cladding. The peak pin internal pressures for the hot rods never exceed the clad liftoff pressure and therefore the fuel pins will not be more likely to fail. Vendor calculation shows that the ZIRLO cladding fuel design results in a greater margin to the design pressure limit of the fuel cladding and also documents liftoff pressures are not exceeded for PVNGS fuel designs.

The design function of the SSCs required to function during a fuel handling accident is to provide protection to ensure fuel damage is limited to 236 fuel pins (one fuel assembly) and ensuring doses do not exceed established limits. These are indirect affects. This change will not make a SSC more likely to fail (no direct affects). In fact, ZIRLO cladding fuel is less likely to fail than the original Zircaloy-4 cladding fuel. No physical changes to the SSCs will be performed as a result of the proposed change. This proposed change does not change the failure modes for the SSCs required to operate for the fuel handling accident. The cladding calculations document design stress or code allowable limits will not be exceeded. Hence, system/equipment redundancy requirements are maintained. Fuel handling accident analyses must ensure doses at the site boundary remain within acceptable design limits. The cladding calculations document fuel pin pressures do not exceed the design pressure ratings for the fuel assembly. Therefore, no indirect effects on SSCs associated fuel clad pressure boundary exist. None of the failure modes and effects analyses are impacted by this methodology change since no SSCs are being modified, system lineups remain the same, and operator actions are not changing.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

The Nuclear Reactor Regulation (NRR) Safety Evaluation, "Related to Task Interface Agreement 99–03 Regarding Potential Nonconservative Assumptions for Fuel Handling Accident, McGuire Nuclear Station, dated November 24, 1999," states in part, "The NRR staff has concluded that the increased rod pressures associated with extended bumup fuel can be expected to decrease the value of the iodine DF. However, the NRR staff believes that the iodine DF value of 100 provided in Regulatory Guide 1.25 has sufficient margin to compensate for the increases in rod gas pressures at current allowable bumup levels and for the expected increases in gap release fractions. Conservatisms in the assessment of the amount of fuel damage provide additional margin. Design basis fuel handling accidents are not considered to have a high risk significance. On the basis of these findings, the staff concludes that there is reasonable assurance that adequate protection of the public from the effects of design basis fuel handling accidents involving fuel with peak rod average bumups as high as 62 GWD/MTU will continue."

To assess the margin of safety, the methodology specified in Regulatory Guide 1.183, ["]Alternative Radiological Source Terms for Evaluating Design Basis Accidents at Nuclear Power Reactors,["] was evaluated. This regulatory guide suggests a DF of 200 for iodine. This DF is well above the DF of 100 specified by Regulatory Guide 1.25.

APS [Arizona Public Service] proposes that ample margin is retained to justify the continued used [use] of an overall decontamination factor of 100 at a peak assembly average fuel pin pressure of 1200 psig.

Therefore, APS has concluded that the proposed license amendment request does not involve a significant reduction in a margin of safety.

Based on the above, APS concludes that the [activities associated with] the proposed amendment(s) present no significant hazards consideration under the standards set forth in 10 CFR 50.92 ["Issuance of Amendment,"] (c) and, accordingly, a finding of "no significant hazards consideration" is justified.

The NRC staff has reviewed the licensee's analysis and, based on that review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the request for amendments involves no significant hazards consideration.

Attorney for licensee: Kenneth C. Manne, Senior Attorney, Arizona Public Service Company, P.O. Box 52034, Mail Station 7636, Phoenix, Arizona 85072–2034.

NRC Section Chief: Stephen Dembek.

Arizona Public Service Company, et al., Docket Nos. STN 50–528, STN 50–529, and STN 50–530, Palo Verde Nuclear Generating Station, Units 1, 2, and 3, Maricopa County, Arizona.

Date of amendments request: September 17, 2003.

Description of amendments request: The amendments would revise sections of the Technical Specifications (TS) to support replacement of the part length control element assemblies (PLCEAs) with a new design that contains neutron absorber over the entire control section of the CEA. The replacements are referred to as part strength control element assemblies (PSCEAs). Additionally, a change is proposed to TS 3.1.5—"Control Element Assembly (CEA) Alignment," Condition B, to eliminate a potential condition which could cause an unwarranted plant shutdown.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the

issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The physical difference between the 4-finger full strength control element assemblies (FSCEAs) and the PSCEAs involves using Inconel rather than B_4C (boron carbide) over 100% of the active control section of each CEA finger. In addition, the PSCEAs use Inconel tubing to encase solid Inconel slugs, which cover the entire control section of the control element assembly (CEA). The current PLCEAs (also have only 4-fingers) use solid Inconel rods for only the lower half of each finger and B_4C pellets in the top 15 inches (10%) of the control section of the CEA. Although failure of the solid Inconel region due to neutron fluence would be less likely than a typical clad design, the differences in swelling between the Inconel slugs encased by Inconel clad for the PSCEAs will be minor and result in a minimal impact on clad integrity. With the exception of the neutron absorber, the cladding design used for the PSCEAs is similar to the cladding of the full strength CEAs (FSCEAs). The geometry, cladding materials, and the spider assembly that supports the CEA fingers are essentially the same for the 4-finger FSCEAs and the PSCEAs. The principal difference results from the Inconel slugs contained in the PSCEAs being heavier than the B_4C pellets used in the FSCEAs. Even though the weight of a 4-finger PSCEA is greater than the weight of a 4-finger PLCEA or a 4-finger FSCEA, this weight difference is bounded by the 12-finger FSCEAs which are operated by the same CEA drive mechanism system.

The PSCEAs use Inconel as a neutron absorber in the entire control section of each CEA finger and will be operationally used the same way as the PLCEAs. In particular, the insertion restraints that are defined by the power dependent insertion limits (PDILs) for the PLCEAs will remain the same for the PSCEAs. This existing requirement will not result in any significant operational impact on the PSCEAs since the solid Inconel cylinder in the bottom 50% (operating range of the PDILs) of the PLCEAs has essentially the same reactivity worth as that of the PSCEAs.

In addition, renaming the full length CEAs and part length CEAs to full strength CEAs and part strength CEAs, respectively, and providing definition for the PSCEAs will not impact the safe operation of the plant. The terminology will be appropriately changed in any related document, equipment tag, or indication on a control panel.

The PLCEAs are not credited in the accident analyses for accident mitigation. The PSCEA design eliminates an accident scenario involving the insertion of a PLCEA past the PDIL, which results in an axial shift in power due to the upper region of the PLCEAs which has no neutron absorber. This condition will not occur with the PSCEAs because they are filled with neutron absorber over 100% of the control section of each finger.

Concerning TS Limiting Condition for Operation (LCO) 3.1.5, Condition B, proposed change; there are three position indicator channels available for each CEA. Current TS Bases state that, "At least two of the following three CEA position indicator channels shall be OPERABLE for each CEA." Additionally the TS Bases states, "If only one CEA position indicator channel is OPERABLE, continued operation in MODES 1 and 2 may continue, provided, within 6 hours, at least two position indicator channels are returned to OPERABLE status; or within 6 hours and once per 12 hours, verify that the CEA group with the inoperable position indicators are either fully withdrawn or fully inserted while maintaining the insertion limits of LCO 3.1.6, LCO 3.1.7 and LCO 3.1.8." The TS Bases make no restriction or condition limiting only one CEA within a subgroup to having only one CEA position indication channel. Current analyses already assume that more than one CEA in a subgroup could have only one position indicator OPERABLE. Modifying the wording for Condition B, of LCO 3.1.5, will not affect the likelihood or consequences of a CEA drop, slip, ejection, or misalignment. This change will still require at least one position indication channel be available for each CEA.

Consequently, the proposed change does not involve a significant increase in the probability or consequences of an accident.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes do not introduce any new mode of plant operation and the PSCEAs, like the PLCEAs, are not relied upon for accident mitigation. The PSCEAs will be operated in exactly the same manner in which the PLCEAs are operated. The existing operating restrictions for the PLCEAs will apply to the PSCEAs. In particular, the power dependent insertion limit (PDIL) restrictions identified in the Core Operating Limits Report (COLR) will remain the same for the PSCEAs. The PSCEA design uses Inconel over the entire control section of each CEA finger, which will prevent the potential undesired flux redistribution currently associated with the misoperation of PLCEAs. Therefore, the analysis associated with the undesired flux redistribution misoperation for the PLCEAs will be eliminated from PVNGS [Palo Verde Nuclear Generating Station] safety analyses. PSCEA misoperation events are bounded by the existing PLCEA and FSCEA misoperation safety analyses.

In addition, renaming (within the Technical Specifications) the "full length CEAs" and "part length CEAs" to "full strength CEAs" and "part length or part strength CEAs," respectively, and providing a definition for the PSCEAs will not impact the safe operation of the plant. The terminology will be appropriately changed in any related document, equipment tag, or indication on a control panel.

Concerning TS LCO 3.1.5, Condition B proposed change, CEA position indication channels have no control function and provide input to the CEA Calculators (CEACs) and Core Protection Calculators (CPCs) for generation of a penalty factor. This change will still require at least one position indication channel be available for each CEA. Allowing Condition 'B' of LCO 3.1.5 to apply to more than one CEA per group does not create the possibility of a different type of malfunction than previously evaluated in the UFSAR [Updated Final Safety Analysis Report].

Therefore, the proposed amendment will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

The design of the PSCEAs is very similar to the FSCEAs except for the neutron absorber within each finger of a PSCEA. The PSCEAs do not have as strong of a neutron absorber (Inconel) as that which is contained in the FSCEAs (B_4C). There is a weight difference which results from the Inconel slugs contained in the PSCEAs being heavier than the B_4C pellets used in the FSCEAs. Even though the weight of the 4-finger PSCEAs is greater than the weight of the 4-finger PLCEAs, the CEA drive mechanism and support components shall operate within their design bases. Therefore, the PSCEAs can be considered adequate for safety-related applications. Consequently, the differences in design between the current PLCEAs and the PSCEAs do not adversely impact safe operation.

The PLCEAs are not relied upon for shutdown margin or accident mitigation and no new requirements will apply to the PSCEAs. However, the design of the PSCEAs is effectively eliminating the concern associated with the insertion of the PLCEAs past the PDILs which could result in an undesirable shift in neutron flux to the top of the core due to the region within the PLCEAs that do not have neutron absorber. The PSCEAs have neutron absorber throughout their entire control section, which prevents a neutron flux shift to the top of the core if inserted past the PDIL, when compared to that of the PLCEAs.

In addition, renaming the "full length CEAs" and "part length CEAs" to "full strength CEAs" and "part length or part strength CEAs," respectively, and providing definition for the PSCEAs will not impact the safe operation of the plant. The terminology will be appropriately changed in any related document, equipment tag, or indication on a control panel.

Concerning TS LCO 3.1.5, Condition B, proposed change, the current licensing bases already consider having more than one CEA in a CEA group with only one available position indication. The TS Bases for LCO 3.1.5, Condition B state that, "At least two of the following three CEA position indicator channels shall be OPERABLE for each CEA." Additionally the Bases states, "If only one CEA position indicator channel is OPERABLE, continued operation in MODES 1 and 2 may continue, provided, within 6 hours, at least two position indicator channels are returned to OPERABLE status; or within 6 hours and once per 12 hours, verify that the CEA group with the inoperable position indicators are either fully withdrawn or fully inserted while maintaining the insertion limits of LCO 3.1.6, LCO 3.1.7 and LCO 3.1.8." The TS Bases make no restriction or condition limiting only one CEA within a subgroup, to having only one CEA position indication channel OPERABLE. Therefore, modifying the wording for LCO 3.1.5, Condition B, does not involve a significant reduction in the margin of safety since loss of indication to more than one CEA is already considered in the licensing bases.

Therefore, the proposed changes do not involve a significant reduction in the margin of safety.

Based on the above, APS [Arizona Public Service] concludes that the activities associated with the proposed amendment(s) present no significant hazards consideration under the standards set forth in 10 CFR 50.92 ["Issuance of Amendment,"] (c) and, accordingly, a finding of "no significant hazards consideration" is justified.

The NRC staff has reviewed the licensee's analysis and, based on that review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the request for amendments involves no significant hazards consideration.

Attorney for licensee: Kenneth C. Manne, Senior Attorney, Arizona Public Service Company, P.O. Box 52034, Mail Station 7636, Phoenix, Arizona 85072–2034.

NRC Section Chief: Stephen Dembek.

Arizona Public Service Company, et al. Docket Nos. STN 50–528, STN 50–529, and STN 50–530, Palo Verde Nuclear Generating Station, Units 1, 2, and 3, Maricopa County, Arizona

Date of amendment request: October 7, 2003.

Description of amendment request: The licensee is proposing to revise Technical Specification (TS) Section 5.5.6, "Pre-Stressed Concrete Containment Tendon Surveillance Program," for consistency with the requirements of 10 CFR 50.55a(g)(4) for components classified as Code Class CC. The proposed revision to TS 5.5.6 is to indicate that the Containment Tendon Surveillance Program, inspection frequencies, and acceptance criteria shall be in accordance with Section XI, Subsection IWL of the American Society of Mechanical Engineers Boiler and Pressure Vessel Code and the applicable addenda as required by 10 CFR 50.55a, except where an exemption or relief has been authorized by the NRC. The licensee has also proposed to delete the provisions of Surveillance Requirement 3.0.2 from this specification.

In addition, the licensee is proposing to revise TS 5.5.16, "Containment Leakage Rate Testing Program," to add exceptions to Regulatory Guide 1.163, "Performance-Based Containment Leak-Test Program."

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes would revise Technical Specification (TS) Section 5.5.6, "Pre-Stressed Concrete Containment Tendon Surveillance Program," and Section 5.5.16, "Containment Leakage Rate Testing Program," for consistency with the requirements of 10 CFR 50.55a(g)(4) for components classified as Code Class CC. The revised requirements do not affect the function of the containment post-tensioning system components. The post-tensioning systems are passive components whose failure modes could not act as accident initiators or precursors. The improved inspections required by the American Society of Mechanical Engineers (ASME) Code serve to maintain containment response to accident conditions, by causing the identification and repair of defects in the containment.

The proposed change affects the frequency of visual examinations that will be performed for the concrete surfaces of the containment for the purpose of the Containment Leakage Rate Testing Program. In addition, the proposed change allows those examinations to be performed during power operation as opposed to during a refueling outage. The frequency of visual examinations of the concrete surfaces of the containment and the mode of operation during which those examinations are performed has no relationship to or adverse impact on the probability of any of the initiating events assumed in the accident analyses. The proposed change would allow visual examinations that are performed pursuant to NRC approved ASME Code Section XI requirements (except where relief has been granted by the NRC) to meet the intent of visual examinations [as] required by Regulatory Guide 1.163, "Performance-Based Containment Leak-Test Programs," without requiring additional visual examinations pursuant to the Regulatory Guide. The intent of early detection of deterioration will continue to be met by the more rigorous requirements of the ASME Code[-]required visual examinations. As such, the safety function of the containment as a fission product barrier is maintained.

The proposed amendment does not impact any accident initiators, analyzed events, or assumed mitigation of accident or transient events. The proposed changes do not involve the addition or removal of any equipment or any design changes to the facility.

Therefore, this proposed change does not represent a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change revises the Technical Specification administrative controls programs for consistency with the requirements of 10 CFR 50.55a(g)(4) for components classified as Code Class CC. The function of the containment post-tensioning system components are not altered by this change. The improved inspections required by the American Society of Mechanical Engineers (ASME) Code serve to maintain containment response to accident conditions, by causing the identification and repair of defects in the containment. In addition, the change affects the frequency of visual examinations that will be performed for the concrete surface containments. The proposed change also allows those examinations to be performed during power operation as opposed to during a refueling outage. Therefore, this change updates the Technical Specifications to meet the current regulations and eliminates duplication of requirements. The safety function of the containment as a fission product barrier will be maintained.

Therefore, this proposed change does not create the possibility of an accident of a different kind than previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

The proposed change revises the improved Standard Technical Specification administrative controls programs for consistency with the requirements of 10 CFR 50.55a(g)(4) for components classified as Code Class CC. The function of the containment post-tensioning system components are not altered by this change. The change also affects the frequency of visual examinations that will be performed for the concrete surface containments. In addition, the proposed change allows those examinations to be performed during power operation as opposed to during a refueling outage. The change ensures that containment integrity [will be maintained] and ensures that the safety function of the containment as a fission product barrier will be maintained.

Therefore, this proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendments request involves no significant hazards consideration.

Attorney for licensee: Kenneth C. Manne, Senior Attorney, Arizona Public Service Company, P.O. Box 52034, Mail Station 7636, Phoenix, Arizona 85072–2034.

NRC Section Chief: Stephen Dembek.

Dominion Nuclear Connecticut, Inc., Docket No. 50–245, Millstone Power Station, Unit No. 1, New London County, Connecticut

Date of amendment request: September 18, 2003.

Description of amendment request: The licensee is proposing to revise the Design Features Technical Specification 4.2, "Fuel Storage." The licensee's technical specification change implements the following proposed changes:

(1) Eliminates all credit for Boraflex as a neutron absorber.

(2) Reduces the number of fuel assemblies allowed to be stored in the spent fuel pool (SFP) from 3229 to 2959. The fuel will be prohibited from being stored in 270 specific storage rack locations. This is necessary to support the elimination of all credit for Boraflex.

(3) Changes the required spent fuel pool k_{eff} to ≤0.95. This is necessary to support the elimination of all credit for Boraflex.

(4) Eliminates the design features requirements on new fuel storage, since Millstone Unit No. 1 (MP1) is a plant that has ceased power operation and will no longer receive new fuel.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Accidents previously evaluated are the fuel handling accidents[, as] described in the Decommissioned Safety Analysis Report (DSAR), and a seismic event, which is considered as part of the spent fuel rack design.

Since there are no changes to plant hardware, nor any changes in how fuel is moved, there are no changes to the probability of a fuel handling accident. The consequences of a fuel handling accident are not affected, since none of the inputs to the fuel handling accident is affected.

The proposed changes affect the criticality analysis of the spent fuel storage racks. The spent fuel racks will continue to be able to perform their design function, which is to maintain the stored fuel in a sub-critical and cooled condition under all normal and postulated accident conditions. There are no physical hardware changes to the plant from these proposed changes. The revised criticality analysis submitted with these proposed changes demonstrates that fuel will be maintained in a sub-critical condition during all normal and postulated accident conditions, including the seismic event. Since there is no change in the ability of the fuel storage racks to maintain a sub-critical condition due to a seismic event, there is no change in the probability or consequences of this accident.

Reducing the amount of fuel storage is a conservative action, and the spent fuel racks were designed and licensed to allow empty, partially filled, or completely full storage racks. Thus the fuel racks will continue to be able to perform their design function to maintain the fuel in a coolable condition.

The change to the new fuel storage racks is to delete the Technical Specification requirements for the new fuel storage k_{eff} limits. Since MP1 is a plant that has ceased power operation and will no longer receive new fuel, there is no need for these Technical Specification requirements. There are no new fuel related accidents previously analyzed, therefore this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

In summary, the proposed changes do not involve an increase in the probability or consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Since there are no changes to the plant equipment, there is no possibility of a new or different kind of accident being initiated or affected by equipment issues.

Reducing the number of fuel assemblies to be stored in the pool, and discontinuing credit for Boraflex are conservative changes that do not introduce any new or different kind of failure modes.

The changes made primarily affect the nuclear criticality analysis and do not create a new or different kind of accident. Changes in eliminating Boraflex credit, restricting fuel in certain storage locations, and changing the allowable k_{eff} limit are all impacts to the nuclear criticality analysis for the SFP. The SFP criticality analysis is part of the basic design of the system and is not an accident. The ability to maintain the SFP k_{eff} less than or equal to 0.95, as well as within the 10 CFR Part 50 Appendix A, "General Design Criteria for Nuclear Power Plants," Criterion 62 "Prevention of Criticality in Fuel Storage and Handling" (Reference 6) criteria of sub-critical, have been evaluated. Criticality impacts are more appropriately discussed under the margin of safety criterion.

The change to the new fuel storage racks is to delete the Technical Specification requirements for the new fuel storage k_{eff} limits. Since MP1 is a plant that has ceased power operation and will no longer receive new fuel, there is no need for these Technical Specification requirements. Since Millstone 1 currently has no new fuel and new fuel cannot be received, this change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

In summary, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

The margin of safety relevant to the SFP is defined as (1) SFP k_{eff} remains sub-critical by an acceptable margin, and (2) the spent fuel in the SFP remains adequately cooled so that the fission product barriers remain intact.

The industry and regulatory accepted value for [the] required sub-criticality margin[s] in the SFP is to ensure that the k_{eff} of the SFP remains ≤0.95 under all normal and postulated accident conditions. This is documented in the Standard Review Plan, Regulatory Guide 1.13, and ANSI/ANS–57.2, "American National Standard Design Requirements for LWR Spent Fuel Storage Facilities at Nuclear Power Plants." The current MP1 Technical Specifications require a more conservative value of 0.90 for SFP k_{eff}. The proposed Design Features Technical Specification changes the maximum SFP k_{eff} from 0.90 to 0.95. This is not a significant reduction in the margin to [of] safety since the proposed value of 0.95 is consistent with the accepted regulatory guidance for [the] sub-criticality margin. The proposed criticality analysis demonstrates that the SFP k_{eff} remains ≤0.95 on a 95/95 basis under all normal and postulated accident conditions, thus the required margin of criticality safety has been maintained.

The proposed changes conservatively reduce the amount of fuel that can be stored, and therefore do not affect the SFP cooling analysis. Therefore, the spent fuel in the SFP remains adequately cooled so that the fission product barriers remain intact.

The removal of Technical Specification requirements for the new fuel storage k_{eff} limits does not affect the margin of safety since new fuel can no longer be received.

Therefore, based on the above, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Lilliam M. Cuoco, Esq., Senior Nuclear Counsel, Dominion Nuclear Connecticut, Inc., Rope Ferry Road, Waterford, Connecticut 06385.

NRC Section Chief: Stephen Dembek.

Duke Energy Corporation, Docket Nos. 50–269, 50–270, and 50–287, Oconee Nuclear Station, Units 1, 2, and 3, Oconee County, South Carolina.

Date of amendment request: October 16, 2001; as supplemented by letters dated May 20, September 12, and November 21, 2002; and January 27, September 22, and November 20, 2003.

Description of amendment request: The proposed amendments would revise the Technical Specifications to incorporate changes resulting from the use of an alternate source term and the implementation of several plant modifications. Publications of the Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing have already appeared in the **Federal Register** on January 22, 2002 (67FR2922) and October 14, 2003 (68FR59215). The November 20, 2003, submittal contained a revised No Significant Hazards Consideration Determination.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Standards for determining whether a license amendment involves no significant hazards considerations are contained in 10CFR50.92(c). The TS [Technical Specification] changes and modifications as proposed in this LAR [license amendment request] have been evaluated in accordance with 10 CFR 50.92 and determined not to involve any significant hazards considerations.

The proposed LAR includes (1) implementing the AST [alternate source term] for accident analysis as described in Regulatory Guide 1.183; (2) removing the PRVS [penetration room ventilation system] and relaxing the SFPVS [spent fuel pool ventilation system] TS because they are no longer credited for Control Room and off-site doses; (3) revising the CRVS [control room ventilation system] to allow for a one time completion time extension on Conditions B and C when entering the conditions to support implementation of the Control Room intake/booster fan modification; (4) lowering the Reactor Building leakage rate from 0.25 w%/day to 0.20 w%/day; (5) revising the VFTP [ventilation filter testing program] radioactive methyl iodide removal acceptance criterion for SFPVS and CRVS Booster Fan trains; and (6) adoption of TSTF [Technical Specification Task Force]–51.

Plant modifications are also being proposed in concert with the proposed TS changes. They include relocating the existing Control Room outside air intake from the roof of the Auxiliary Building to the roof of the Turbine Building and installing dual intakes for each Control Room; re-routing HPI [high-pressure injection]/LPI [low-pressure injection] relief valve discharge back into the Reactor Building and replacing the existing Caustic Addition system with a passive system.

As a result of this evaluation, Duke has concluded:

1. The proposed amendment will not involve a significant increase in the probability of consequences of an accident previously evaluated.

The AST and those plant systems affected by implementing the proposed changes to the TS are not assumed to initiate design basis accidents. The AST does not affect the design or operations of the facility. Rather, the AST is used to evaluate the consequences of a postulated accident. The implementation of the AST has been evaluated in the revisions to the analysis of the design basis accidents for ONS [Oconee Nuclear Station]. Based on the results of these analyses, it has been demonstrated that, with the requested changes, the dose consequences of these events meet the acceptance criteria of 10 CFR 50.67 and Regulatory Guide 1.183. Therefore, the proposed amendment will not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed amendment will not create the possibility of a new or different kind of accident from any accident previously evaluated.

The AST and those plant systems affected by implementing the proposed changes to the TS are not assumed to initiate design basis accidents. The systems affected by the changes are used to mitigate the consequences of an accident that has already occurred. The proposed TS changes and modifications do not significantly affect the mitigative function of these systems. Consequently, these systems do not alter the nature of events postulated in the Safety Analysis Report nor do they introduce any unique precursor mechanisms. Therefore, the proposed amendment will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed amendment will not involve a significant reduction in the margin of safety.

The implementation of the AST, proposed changes to the TS and the implementation of the proposed modifications have been evaluated in the revisions to the analysis of the consequences of the design basis accidents for the ONS. Based on the results of these analyses, it has been demonstrated that with the requested changes the dose consequences of these events meet the acceptance criteria of 10 CFR 50.67 following the provisions of Regulatory Guide 1.183. Thus, the proposed amendment will not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Anne W. Cottington, Winston and Strawn, 1200 17th Street, NW., Washington, DC 20005,

NRC Section Chief: John A. Nakoski.

Duke Energy Corporation, Docket No. 50–270, Oconee Nuclear Station, Unit 2, Oconee County, South Carolina

Date of amendment request: October 28, 2003.

Description of amendment request: The proposed amendment would revise the licensing basis in the Updated Final Safety Analysis Report to support installation of a passive low-pressure injection (LPI) cross connect inside containment. The proposed changes would revise the licensing basis for selected portions of the core flood and LPI piping to allow exclusion of the dynamic effects associated with postulated pipe rupture of that piping by application of leak-before-break methodology. A similar amendment was approved for Unit 1 by NRC letter dated September 29, 2003.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Pursuant to 10 CFR 50.91, Duke Power Company (Duke) has made the determination that this amendment request involves a No Significant Hazards Consideration by applying the standards established by the NRC regulations in 10 CFR 50.92. This ensures that operation of the facility in accordance with the proposed amendment would not:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated:

The proposed LAR [license amendment request] modifies the Unit 2 licensing basis to allow the dynamic effects associated with postulated pipe rupture of selected portions of the Unit 2 LPI [low-pressure injection]/Core Flood (CF) piping to be excluded from the design basis. The proposed design allowances for these selected portions of piping continue to allow the LPI system design to meet GDC [General Design Criterion] 4 requirements related to environmental and dynamic effects. The proposed LAR will continue to ensure that ONS [Oconee Nuclear Station] can meet design basis requirements associated with the LPI safety function. The addition of the crossover line will enhance the ability of the control room operator to mitigate the consequences of specific events for which LPI is credited. Therefore, the proposed LAR does not involve a significant increase in the probability or consequences of an accident previously evaluated.

(2) Create the possibility of a new or different kind of accident from any kind of accident previously evaluated:

The proposed LAR modifies the Unit 2 licensing basis to allow the dynamic effects associated with postulated pipe rupture of selected portions of the Unit 2 LPI/Core Flood (CF) piping to be excluded from the design basis. The proposed design allowances for these selected portions of piping continue to allow the LPI system design to meet GDC 4 requirements related to environmental and dynamic effects. The systems affected by the changes are used to mitigate the consequences of an accident that has already occurred. The proposed licensing basis change does not affect the mitigating function of these systems. Consequently, these changes do not alter the nature of events postulated in the Safety Analysis Report nor do they introduce any unique precursor mechanisms. Therefore, the proposed amendment will not create the possibility of a new or different kind of accident from any accident previously evaluated.

(3) Involve a significant reduction in the margin of safety:

The proposed licensing basis change does not unfavorably affect any plant safety limits, set points, or design parameters. The change also do [SIC] not unfavorably affect the fuel, fuel cladding, RCS [reactor coolant system], or containment integrity. Therefore, the proposed licensing basis change, which adds new design allowances associated with the passive LPI cross connect modification, do [SIC] not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Anne W. Cottington, Winston and Strawn, 1200 17th Street, NW., Washington, DC 20005.

NRC Section Chief: John A. Nakoski.

Energy Northwest, Docket No. 50–397, Columbia Generating Station, Benton County, Washington

Date of amendment request: November 4, 2003.

Description of amendment request: The proposed change allows entry into a mode or other specified condition in the applicability of a technical specification (TS), while in a condition statement and the associated required actions of the TS, provided the licensee performs a risk assessment and manages risk consistent with the program in place for complying with the requirements of Title 10 of the Code of Federal Regulations (10 CFR), part 50, Section 50.65(a)(4). Limiting Condition for Operation (LCO) 3.0.4 exceptions in individual TSs would be eliminated, and Surveillance Requirement (SR) 3.0.4 revised to reflect the LCO 3.0.4 allowance.

This change was proposed by the industry's Technical Specification Task Force (TSTF) and is designated TSTF–359. The NRC staff issued a notice of opportunity for comment in the **Federal Register** on August 2, 2002 (67 FR 50475), on possible amendments concerning TSTF–359, including a model safety evaluation and model no significant hazards consideration (NSHC) determination, using the consolidated line item improvement process. The NRC staff subsequently issued a notice of availability of the models for referencing in license amendment applications in the **Federal Register** on April 4, 2003 (68 FR 16579). The licensee affirmed the applicability of the following NSHC determination in its application dated November 4, 2003.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), an analysis of the issue of no significant hazards consideration is presented below:

Criterion 1—The Proposed Change Does Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated.

The proposed change allows entry into a mode or other specified condition in the applicability of a TS, while in a TS condition statement and the associated required actions of the TS. Being in a TS condition and the associated required actions is not an initiator of any accident previously evaluated. Therefore, the probability of an accident previously evaluated is not significantly increased. The consequences of an accident while relying on required actions as allowed by proposed LCO 3.0.4, are no different than the consequences of an accident while entering and relying on the required actions while starting in a condition of applicability of the TS. Therefore, the consequences of an accident previously evaluated are not significantly affected by this change. The addition of a requirement to assess and manage the risk introduced by this change will further minimize possible concerns. Therefore, this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Criterion 2—The Proposed Change Does Not Create the Possibility of a New or Different Kind of Accident from any Previously Evaluated.

The proposed change does not involve a physical alteration of the plant (no new or different type of equipment will be installed). Entering into a mode or other specified condition in the applicability of a TS, while in a TS condition statement and the associated required actions of the TS, will not introduce new failure modes or effects and will not, in the absence of other unrelated failures, lead to an accident whose consequences exceed the consequences of accidents previously evaluated. The addition of a requirement to assess and manage the risk introduced by this change will further minimize possible concerns. Thus, this change does not create the possibility of a new or different kind of accident from an accident previously evaluated.

Criterion 3—The Proposed Change Does Not Involve a Significant Reduction in a Margin of Safety.

The proposed change allows entry into a mode or other specified condition in the applicability of a TS, while in a TS condition statement and the associated required actions of the TS. The TS allow operation of the plant without the full complement of equipment through the conditions for not meeting the TS LCO. The risk associated with this allowance is managed by the imposition of required actions that must be performed within the prescribed completion times. The net effect of being in a TS condition on the margin of safety is not considered significant. The proposed change does not alter the required actions or completion times of the TS. The proposed change allows TS conditions to be entered, and the associated required actions and completion times to be used in new circumstances. This use is predicated upon the licensee's performance of a risk assessment and the management of plant risk. The change also eliminates current allowances for utilizing required actions and completion times in similar circumstances, without assessing and managing risk. The net change to the margin of safety is insignificant. Therefore, this change does not involve a significant reduction in a margin of safety.

The NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Thomas C. Poindexter, Esq., Winston & Strawn, 1400 L Street, NW., Washington, DC 20005–3502.

NRC Section Chief: Stephen Dembek.

Entergy Gulf States, Inc., and Entergy Operations, Inc., Docket No. 50–458, River Bend Station, Unit 1, West Feliciana Parish, Louisiana

Date of amendment request: October 21, 2003.

Description of amendment request: The proposed change would remove MODE restrictions that currently prevent performance of Surveillance Requirements (SRs) 3.8.4.7 and 3.8.4.8 for the Division III DC electrical power subsystem while in MODE 1, 2, or 3. These surveillances verify that the battery capacity is adequate to perform its required functions. The changes would allow the performance of SR 3.8.4.7 and SR 3.8.4.8 during normal plant operations rather than only during refueling outages.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The power supplied by the battery is used as a source of control and motive power for the HPCS [High Pressure Core Spray] system logic, HPCS diesel-generator set control and protection, and other Division III related controls. The loads supplied by this system are loads associated with Division III of the Emergency Core Cooling System (ECCS).

The battery testing period is within the period of time that the system will already be out of service for other planned maintenance. The battery test does not increase unavailability of the supported system or represent any change in risk above the current practice of planned system maintenance outages as currently allowed by the TS [Technical Specification]. Any risk associated with the testing of the Division III batteries will be enveloped by the risk management of the system outage.

The out of service condition is controlled and evaluated for safety implications in accordance with 10 CFR 50.65 ["Requirements for monitoring the effectiveness of maintenance at nuclear power plants"]. The HPCS system reliability and availability are monitored and evaluated in relationship to Maintenance Rule goals to ensure that total outage times do not degrade operational safety over time.

Therefore, the proposed change will have no effect on the probability or consequences of any previously evaluated accident.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The request involves the testing of the HPCS battery on-line while the system is already out of service. The testing will not add additional out of service time. Testing during this period has no influence on, nor does it contribute in any way to, the possibility of a new or different kind of accident or malfunction from those previously analyzed. The method of performing this test is not changed. No new accident modes are created by testing during the period when the system is already unavailable. Because the system is already out of service, no safety-related equipment or safety functions are altered as a result of this change.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The battery testing will be performed when the HPCS system is already out of service for maintenance. The out of service condition is controlled and evaluated for safety implications in accordance with 10 CFR 50.65. The batteries are not expected to be unavailable for more than 36 hours. This testing period is within the period of time that the system will already be out of service for other planned maintenance. Therefore, the battery test does not increase unavailability of the supported system or represent any change in risk above the current practice of planned system maintenance outages as currently allowed by the TS. Timing of this test has no effect on any fission product barrier.

Therefore, the propose change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mark Wetterhahn, Esq., Winston & Strawn, 1400 L Street, NW., Washington, DC 20005.

NRC Section Chief: Robert A. Gramm.

Entergy Nuclear Operations, Docket No. 50–247, Indian Point Nuclear Generating Unit No. 2, Westchester County, New York

Date of amendment request: October 21, 2003.

Description of amendment request: The proposed amendment would revise Technical Specification Section 5.5.7, "Steam Generator (SG) Tube Surveillance Program," to allow a one-time extension of the frequency for examination of the SG tubes. Specifically, the amendment would extend the examination, currently due no later than November 17, 2004, to June 17, 2006.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

There is no direct increase in SG leakage because the proposed change does not alter the plant design. The scope of the inspection performed during the first refueling outage subsequent to SG replacement (last outage), exceeded the technical specification requirements for the first two refueling outages combined, after replacement. More tubes were inspected than were required by the technical specifications. Indian Point 2 does not have an active SG damage mechanism and will meet the current industry examination guidelines without performing inspections during the next refueling outage. The results of the Condition Monitoring Assessment subsequent to the last outage, demonstrated that all performance criteria were met during the last operating period. The results of the aforementioned Operational Assessment show that all performance criteria will be met over the proposed operating period.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change will not alter any plant design basis or postulated accident resulting from potential SG tube degradation. The scope of the inspections performed during the last (first after SG replacement) refueling outage significantly exceeds the Technical Specification requirements for the scope of the first two refueling outages combined subsequent to SG replacement.

The proposed change does not affect the SG design, the method of operation, or reactor coolant chemistry controls. No new equipment is being introduced, and installed equipment is not being operated in a new or different manner. The proposed change involves a one-time extension of the SG tube inservice inspection frequency, and therefore will not give rise to new failure modes. In addition, the proposed change does not impact any other plant system or components.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

SG tube integrity is a function of design, environmental, and current physical condition. Extending the SG tube inservice inspection frequency by one operating cycle will not alter the function or design of the SGs. Inspections conducted prior to placing the SGs into service (pre-service inspection) and inspection during the first refueling outage following SG replacement. demonstrate that the SGs do not have fabrication damage or an active damage mechanism. The scope of those inspections significantly exceeds those required by the technical specifications. These inspection results were comparable to similar inspection results for the same model SG installed at other plants, and subsequent inspections at those plants provided results that support the extension request. The improved design of the replacement SGs also provides assurance that significant tube degradation is not likely to occur over the proposed operating period.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mr. John Fulton, Assistant General Counsel, Entergy Nuclear Operations, Inc., 440 Hamilton Avenue, White Plains, NY 10601.

NRC Section Chief: Richard J. Laufer.

Entergy Operations, Inc., Docket No. 50–368, Arkansas Nuclear One, Unit No. 2, Pope County, Arkansas

Date of amendment request: June 30, 2003, as supplemented by letter dated November 20, 2003.

Description of amendment request: The proposed amendment would (1) reorganize the Arkansas Nuclear One, Unit No. 2 (ANO–2) Technical Specifications (TSs) Section 6.0, Administrative Controls, (2) modify the ANO–2 Facility Operating License, and actions and surveillance requirements (SRs) of various other TSs, to support the reorganization of Section 6.0, and (3) modify several actions and SRs that are related to systems that are shared by ANO–2 and Arkansas Nuclear One, Unit No. 1 (ANO–1). These changes are being proposed so that the philosophy and location of the TSs in Section 6.0 reflect the recently approved conversion of the ANO–1 TSs to the Improved Technical Specifications (ITS) and the subsequent amendments to the ANO–1 ITS. This amendment request supersedes the

previous application related to the revision of TS Section 6.0 dated January 31, 2002, as supplemented on June 26 and July 18, 2002. The January 31, 2002, application was previously noticed in the **Federal Register** on March 19, 2002 (67 FR 12602), and the June 30, 2003, application was previously noticed in the **Federal Register** on July 22, 2003 (68 FR 43385).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Do the proposed changes involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

Administrative Changes

The proposed changes involve reformatting and rewording of the existing TSs. The reformatting and rewording process involves no technical changes to existing requirements. As such, the proposed changes are administrative in nature and do not impact initiators of analyzed events or assumed mitigation of accident or transient events.

Less Restrictive—Administrative Deletion of Requirements

The proposed changes relocate requirements from the TSs to other license basis documents which are under licensee control. The documents containing the relocated requirements will be maintained using the provisions of applicable regulatory requirements.

More Restrictive Changes

The proposed changes provide more stringent requirements for the ANO–2 TSs. These more stringent requirements are not assumed to be initiators of analyzed events and will not alter assumptions relative to mitigation of accident or transient events. The more stringent requirements are imposed to ensure process variables, structures, systems, and components are maintained consistent with the safety analyses and licensing basis and to provide greater consistency with the ANO–1 TS and NUREG 1432.

Less Restrictive Changes

(1) A note will be added that allows three (3) hours to perform the channel functional test on the control room radiation monitors without entering the associated Actions.

The control room area radiation monitor is used to support mitigation of the consequences of an accident; however, it is not considered the initiator of any previously analyzed accident. Also, the addition of the Note to allow time for testing reduces the potential for initiation of a previously analyzed accident due to reduced potential for shutdowns and startups due to incomplete or missed surveillances. As such, the proposed revision to include an allowance for testing does not significantly increase the probability of any accident previously evaluated. This change does not result in any hardware changes, but does allow operation for a limited time with an inoperable monitor for the purposes of testing. Since the capability of the control room area radiation monitor to provide the required information continues to be verified, and the time allowed for inoperability for testing is short, the change will not reduce the capability of required equipment to mitigate the event. Also, the consequences of an event occurring during the proposed operation of the unit during the allowed inoperability for testing are the same as the consequences of an event occurring while operating under the current TS Actions. Therefore, this change does not involve a significant increase in the consequences of any accident previously evaluated.

(2) This change will allow the control room boundary to be opened intermittently under administrative controls, and will allow both trains of the CREVS [control room emergency ventilation system] to be inoperable due to control room boundary inoperability for a period of 24 hours.

Neither CREVS nor the control room boundary is the initiator of any accident analyzed in the SAR [Safety Analysis Report]. Therefore, this change does not result in a significant increase in the probability of an accident previously evaluated.

The CREVS and the control room boundary are intended to provide a habitable environment for the control room operators in the event of an accident that results in the release of radioactivity to the environment. The allowance to open the control room boundary intermittently is acceptable, because of the administrative controls that will be implemented to ensure that the opening can be rapidly closed when the need for control room isolation is indicated, restoring the control room habitability envelope. Allowing both CREVS trains to be inoperable for 24 hours due to an inoperable control room boundary is acceptable because of the low probability of an accident requiring control room isolation during any given 24 hour period, because entry into this condition is expected to be an infrequent occurrence, and because preplanned compensatory measures to protect the control room operators from potential hazards are implemented. Therefore, this change will not result in a significant increase in the probability [consequences] of an accident previously evaluated.

(3) An allowance will be added to allow use of a "simulated" or "actual" signal when testing the automatic isolation feature of the control room air filtration system.

The phrase "actual or simulated" in reference to the automatic initiation signal, has been added to the system functional test surveillance test description. This does not impose a requirement to create an "actual" signal, nor does it eliminate any restriction on producing an "actual" signal. The proposed change does not affect the procedures governing plant operations and the acceptability of creating these signals; it simply would allow such a signal to be utilized in evaluating the acceptance criteria for the system functional test requirements. Therefore, the change does not involve a significant increase in the probability of an accident previously evaluated. Since the function of the system functional test remains unaffected the change does not involve a significant increase in the consequences of an accident previously evaluated.

(4) An allowance for the diesel fuel storage tanks to contain less than 22,500 gallons of fuel for up to 48 hours as long as the individual volume is greater than 17,446 gallons will be added. The lower value when summed with the contents of the other tank ensures six days of fuel oil is available. During the 48 hours, the diesel generator is capable of performing its intended function. There is a low probability that an event would occur for which the diesel generator would be required during this short period of time when the lower fuel oil volume is allowed.

The AC Sources are used to support mitigation of the consequences of an accident and can be involved in the initiation of the accident analyzed in SAR. Equipment powered by the AC Sources, which may be considered as an initiator, continues to be assured of electrical power. The proposed increased restoration time involves parameters unrelated to initiating the failure of the AC Sources. As such the proposed time allowance for restoration of limited levels of readiness parameter degradation will not increase the probability of any accident previously evaluated. The proposed changes allow additional time for restoration of parameters that have been identified as not immediately affecting the capability of the power source to provide its required safety function. The identified parameters are capable of being replenished during operation of the diesel generators, and the short additional allowable action time continues to provide adequate assurance of operable required equipment. Therefore, this change does not involve a significant increase in the probability of or the consequences of any accident previously evaluated.

(5) Seven days will be allowed to restore the stored diesel fuel oil total particulates to within the required limits prior to declaring the associated diesel inoperable.

The testing of diesel generator fuel oil is not considered an initiator, or a mitigating factor, in any previously evaluated accident. The presence of particulates does not mean failure of the fuel oil to burn properly in the diesel engine. In addition, particulate concentration is unlikely to change significantly between surveillance intervals (31 days). Therefore, the change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

(6) An allowance for the person who is satisfying the requirement of the radiation protection staff position and for the person filling the Shift Technical Advisor (STA) position to be vacant for not more than two hours in order to provide for unexpected absences is being added. This is consistent with the allowance permitted for the control room operator as reflected in existing TSs.

This change does not result in any changes in hardware or methods of operation. The change allowing the absence of the STA or the radiation protection technician is not considered in the safety analysis, and cannot initiate or affect the mitigation of an accident in any way. Therefore, this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

(7) The STA will be allowed to support the shift crew rather than only the shift supervisor. This provides more flexibility and does not dilute the function of the STA.

This change does not result in any changes in hardware or methods of operation. The change in the support relationship between the STA and the control room staff is not considered in the safety analysis, and cannot initiate or affect the mitigation of an accident in any way. Therefore, this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

(8) The Occupational Radiation Exposure Report will be submitted by April 30 of each calendar year instead of prior to March 1.

This change does not result in any changes in hardware or methods of operation. The change in date for submittal of "after the fact" information is not considered in the safety analysis, and cannot initiate or affect the mitigation of an accident in any way. Therefore, this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

(9) An allowance is proposed that will revise the high radiation areas to include additional previously approved methods for implementation of alternatives to the "control device" or "alarm signal" requirements of 10 CFR [Part] 20. These alternatives provide adequate control of personnel in high radiation areas as evidenced by NRC issuance of NUREG–1432.

The controls for access to a high radiation area are not considered as initiators, or as a mitigation factor, in any previously evaluated accident. Therefore, the change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

(10) An allowance to require periodic testing of stored fuel for the particulates only is proposed.

The testing of diesel generator fuel oil is not considered an initiator or a mitigating factor in any previously evaluated accident. Therefore, the change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

(11) The removal of the requirement to notify the Vice President, Operations ANO within 24 hours of violating a safety limit.

Notification of the Vice President, Operations ANO when a safety limit is violated is not considered an initiator or a mitigating factor in any previously evaluated accident. Therefore, the change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

(12) The Radioactive Effluent Release Report will be submitted by May 1 of each calendar year instead of prior to March 1.

This change does not result in any changes in hardware or methods of operation. The change in date for submittal of "after the fact" information is not considered in the safety analysis, and cannot initiate or affect the mitigation of an accident in any way. Therefore, this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

(13) A change that allows a 25% extension of the frequency in accordance with SR 4.0.2 for the integrated leak tests of each system outside containment that could contain highly radioactive fluids.

The extension of the testing frequency, up to 25% of the test interval, is not considered an initiator or a mitigating factor in any previously evaluated accident. Therefore, the change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

(14) A change that allows the OSRC [Onsite Safety Review Committee] review of the desirability of maintaining a channel in the bypassed condition to be at or before the next regularly scheduled meeting.

The proposed change is not considered an initiator or a mitigating factor in any previously evaluated accident. Therefore, the change does not involve a significant increase in the probability or consequences of any accident previously evaluated.

Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Do the proposed changes create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

Administrative Changes

The proposed changes do not necessitate a physical alteration of the plant (no new or different type of equipment will be installed) or changes in parameters governing normal plant operations. The proposed changes will not impose any different requirements.

Less Restrictive—Administrative Deletion of Requirements

The proposed change does not necessitate a physical alteration of the plant (no new or different type of equipment will be installed) or changes in parameters governing normal plant operations. The proposed changes will not impose any different requirements and adequate control of the information will be maintained.

More Restrictive Changes

The proposed change does not necessitate a physical alteration of the plant (no new or different type of equipment will be installed) or changes in parameters governing normal plant operation. The proposed changes do impose different requirements. However, these changes do not impact the safety analysis and licensing basis.

Less Restrictive Changes

(1) A note will be added that allows three (3) hours to perform the channel functional test on the control room radiation monitors without entering the associated Actions.

The proposed change does not necessitate a physical alteration of the plant (no new or different type of equipment will be installed) or changes in parameters governing normal plant operation. The proposed change will still ensure proper surveillances are required for the equipment considered in the safety analysis. Thus, this change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

(2) This change will allow the control room boundary to be opened intermittently under administrative controls, and will allow both trains of the control room ventilation system (CREVS) to be inoperable due to a control room boundary inoperability for a period of 24 hours.

The proposed change does not necessitate a physical alteration of the unit (no new or different type of equipment will be installed) or changes in parameters governing normal unit operation. Prompt and appropriate compensatory actions will still be taken in the event of an accident. Thus, this change does not create the possibility of a new or different kind of accident from any previously evaluated.

(3) An allowance will be added to allow use of a "simulated" or "actual" signal when testing the automatic isolation feature of the control room air filtration system.

The possibility of a new or different kind of accident from any accident previously evaluated is not created because the proposed change introduces no new mode of plant operation and it does not involve physical modification to the plant.

(4) An allowance for the diesel fuel storage tanks to contain less than 22,500 gallons of fuel for up to 48 hours as long as the individual volume is greater than 17,446 gallons will be added. The lower value when summed with the contents of the other tank ensures six days of fuel oil is available. During the 48 hours, the diesel generator is capable of performing its intended function. There is a low probability that an event would occur for which the diesel generator would be required during this short period of time when the lower fuel oil volume is allowed.

The proposed change does not necessitate a physical alteration of the plant (no new or different type of equipment will be installed) or changes in parameters governing normal plant operation. The proposed change will continue to ensure operable safety equipment is available. Thus, this change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

(5) Seven days will be allowed to restore the stored diesel fuel oil total particulates to within the required limits prior to declaring the associated diesel inoperable.

No changes are proposed in the manipulation of the plant structures, systems, or components, or in the design of the plant structures, systems, or components. The presence of particulates does not mean failure of the fuel oil to burn properly in the diesel engine. In addition, particulate concentration is unlikely to change significantly between surveillance intervals (31 days). Therefore, the change does not

create the possibility of a new or different kind of accident from any accident previously evaluated.

(6) An allowance for the person who is satisfying the requirement of the radiation protection staff position and for the person filling the Shift Technical Advisor (STA) position to be vacant for not more than two hours in order to provide for unexpected absences is proposed. This is consistent with the allowance permitted for the control room operator as reflected in existing TSs.

The proposed change does not necessitate a physical alteration of the plant (no new or different type of equipment will be installed) or changes in parameters governing normal plant operation. The proposed change will impact only the STA and radiation protection staffing positions and does not directly impact the operation of the plant. Thus, this change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

(7) The STA will be allowed to support the shift crew rather than only the shift supervisor. This provides more flexibility and does not dilute the function of the STA.

The proposed change does not necessitate a physical alteration of the plant (no new or different type of equipment will be installed) or changes in parameters governing normal plant operation. The proposed change will impact only the support relationship the STA provides the control room staff and does not directly impact the operation of the plant. Thus, this change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

(8) The Occupational Radiation Exposure Report will be submitted by April 30 of each calendar year instead of prior to March 1.

The proposed change does not necessitate a physical alteration of the plant (no new or different type of equipment will be installed) or changes in parameters governing normal plant operation. The proposed change will impact only the administrative requirements for submittal of information and does not directly impact the operation of the plant. Thus, this change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

(9) An allowance is proposed that will revise the high radiation areas to include additional previously approved methods for implementation of alternates to the "control device" or "alarm signal" requirements of 10 CFR [Part] 20. These alternatives provide adequate control of personnel in high radiation areas as evidenced by NRC issuance of NUREG–1432.

No changes are proposed in the manipulation of the plant structures, systems, or components, or in the design of the plant structures, systems, or components. Therefore, the change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

(10) An allowance to require periodic testing of stored fuel for the particulates only is proposed.

No changes are proposed in the manipulation of the plant structures, systems, or components, or in the design of the plant structures, systems, or components. Therefore, the change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

(11) The removal of the requirement to notify the Vice President, Operations ANO within 24 hours of violating a safety limit.

No changes are proposed that result in the manipulation or the design of plant structures, systems, or components. Therefore, the change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

(12) The Radioactive Effluent Release Report will be submitted by May 1 of each calendar year instead of prior to March 1.

The proposed change does not necessitate a physical alteration of the plant (no new or different type of equipment will be installed) or changes in parameters governing normal plant operation. The proposed change will impact only the administrative requirements for submittal of information and does not directly impact the operation of the plant. Thus, this change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

(13) A change that allows a 25% extension of the frequency in accordance with SR 4.0.2 for the integrated leak tests of each system outside containment that could contain highly radioactive fluids.

No changes are proposed that result in the manipulation or the design of plant structures, systems, or components. Therefore, the change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

(14) A change that allows the OSRC review of the desirability of maintaining a channel in the bypassed condition to be at or before the next regularly scheduled meeting.

No changes are proposed that result in the manipulation or the design of plant structures, systems, or components. Therefore, the change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated.

3. Do the proposed changes involve a significant reduction in a margin of safety?

Response: No.

Administrative Changes

The proposed changes will not reduce the margin of safety because they have no impact on any safety analysis assumptions. The changes are administrative in nature.

Less Restrictive—Administrative Deletion of Requirements

The proposed changes will not reduce a margin of safety because they have no impact on any safety analysis assumptions. In addition, the requirements to be transposed from the TSs to other license basis documents, which are under licensee control, are the same as the exiting TSs. The documents containing the relocated requirements will be maintained using the provisions of applicable regulatory requirements.

More Restrictive Changes

The imposition of more stringent requirements prevents a reduction in the margin of plant safety by:

(a) increasing the scope of the specification to include additional plant equipment,

(b) providing additional actions,

(c) decreasing restoration times, or

(d) imposing new surveillances.

The changes are consistent with the safety analysis and licensing basis.

Less Restrictive Changes

(1) A note will be added that allows three (3) hours to perform the channel functional test on the control room radiation monitors without entering the associated Actions.

The margin of safety for the control room area radiation monitor is based on availability and capability of the instrumentation to provide the required information to the operator. The frequency is based on unit operating experience that demonstrates channel failure is rare, and on the use of less formal but more frequent checks of channels during normal operational use of the displays associated with the required channels. Therefore, the availability and capability of the control room area radiation monitor continues to be assured by the proposed Surveillance Requirements and this change does not involve a significant reduction in a margin of safety.

(2) This change will allow the control room boundary to be opened intermittently under administrative controls, and will allow both trains of the control room ventilation system (CREVS) to be inoperable due to control room boundary inoperability for a period of 24 hours.

This change does not involve a significant reduction in a margin of safety since: (1) Administrative controls will be in place to ensure that an open control room boundary can be rapidly closed when a need for control room isolation is indicated; and (2) an inoperable control room boundary that renders both trains of CREVS inoperable is an infrequent occurrence, the probability of an accident requiring control room isolation during any given 24 hour period is low, and preplanned compensatory measures to protect the control room operators from potential hazards are implemented.

(3) An allowance will be added to use a simulated or actual signal when testing the automatic isolation feature of the control room air filtration system.

Use of an actual signal instead of the existing requirement which limits use to a simulated signal, will not affect the performance of the surveillance test. OPERABILITY is adequately demonstrated in either case since the system itself can not discriminate between "actual" or "simulated" signals. Therefore, the change does not involve a significant reduction in a margin of safety.

(4) An allowance for the diesel fuel storage tanks to contain less than 22,500 gallons of fuel for up to 48 hours as long as the individual volume is greater than 17,446 gallons. The lower value when summed with the contents of the other tank ensures six days of fuel oil is available. During the 48 hours, the diesel generator is capable of performing its intended function. There is a low probability that an event would occur for which the diesel generator would be required during this short period of time when the lower fuel oil volume is allowed.

The parameter limits provide substantial margin to the parameter values that would be absolutely necessary for diesel generator operability. When the parameters are less than their limits this margin is reduced. However, the availability of AC Sources continues to be assured since the allowed time for parameters to be less than their limits is short and the allowed levels for the parameters are adequate to provide the immediately needed power availability. Further, the parameters can be restored to within limits during the proposed time provided should they be required. Therefore, this change does not result in a significant reduction in [a] margin of safety.

(5) Seven days will be allowed to restore the stored diesel fuel oil total particulates to within the required limits prior to declaring the associated diesel inoperable.

The proposed change allows the stored diesel fuel oil total particulates to be outside the required limits for seven days before declaring the associated diesel inoperable. The presence of particulates does not mean failure of the fuel oil to burn properly in the diesel engine. In addition, particulate concentration is unlikely to change significantly between surveillance intervals (31 days). The seven day allowance provides an appropriate backstop to ensure the particulate level is restored to within limits in a reasonable time period. Since the diesel is still capable of performing its function the margin of safety is not reduced.

(6) An allowance for the person who is satisfying the requirement of the radiation protection staff position and for the person filling the Shift Technical Advisor (STA) position to be vacant for not more than two hours in order to provide for unexpected absences is proposed. This is consistent with the allowance permitted for the control room operator as reflected in existing TSs.

The margin of safety is not dependent on the presence of the STA or the radiation protection technician. Therefore, this change does not involve a significant reduction in a margin of safety.

(7) The STA will be allowed to support the shift crew rather than only the shift supervisor. This provides more flexibility and does not dilute the function of the STA.

The margin of safety is not dependent upon who the STA supports. Therefore, this change does not involve a significant reduction in a margin of safety.

(8) The Occupational Radiation Exposure Report will be submitted by April 30 of each calendar year instead of prior to March 1.

The margin of safety is not dependent on the submittal of information. Therefore, this change does not involve a significant reduction in a margin of safety.

(9) An allowance is proposed that will revise the high radiation areas to include additional previously approved methods for implementation of alternates to the "control device" or "alarm signal" requirements of 10 CFR [Part] 20. These alternatives provide adequate control of personnel in high radiation areas as evidenced by NRC issuance of NUREG–1432.

The requirements for control of high radiation areas provide for the use of alternates to the "control device" or "alarm signal" requirements of 10 CFR 20.1601. This change provides such alternative methods for controlling access. These methods and additional administrative requirements have been determined to provide adequate controls to prevent unauthorized and inadvertent access to such areas. Therefore, this change does not involve a significant reduction in a margin of safety.

(10) An allowance to require periodic testing of stored fuel for the particulates only is proposed.

The testing of stored diesel generator fuel oil is revised to require the periodic testing of the stored fuel oil only for particulates (replacing the periodic testing per ASTM–D975) once every 31 days. The change reflects industry-standard acceptable DG fuel oil testing programs. Over the storage life of ANO–2 DG fuel oil, the properties tested by ASTM–D975 are not expected to change and performing these tests once on the new fuel oil provides adequate assurance of the proper initial quality of fuel oil. The periodic testing for particulates monitors a parameter that reflects degradation of fuel oil and can be trended to provide increased confidence that the stored DG fuel oil will support DG operability. Therefore, this change does not involve a significant reduction in a margin of safety.

(11) The removal of the requirement to notify the Vice President, Operations ANO within 24 hours of violating a safety limit.

The margin of safety is not dependent upon notification of the Vice President, Operations ANO upon the violation of a TS safety limit. Therefore, the proposed change does not involve a significant reduction in a margin of safety.

(12) The Radioactive Effluent Release Report will be submitted by May 1 of each calendar year instead of prior to March 1.

The margin of safety is not dependent on the submittal of information. Therefore, this change does not involve a significant reduction in a margin of safety.

(13) A change that allows a 25% extension of the frequency in accordance with SR 4.0.2 for the integrated leak tests of each system outside containment that could contain highly radioactive fluids.

The proposed allowance allows a possible increase in performance interval. However, the test will still be performed at reasonable intervals to ensure the intent of the surveillance is maintained. Therefore, this change does not involve a significant reduction in a margin of safety.

(14) A change that allows the OSRC review of the desirability of maintaining a channel in the bypassed condition to be at or before the next regularly scheduled meeting.

The proposed change allows the OSRC review to occur earlier than previously required if an OSRC meeting is called before the next regularly scheduled meeting. Therefore, the proposed change does not involve a significant reduction in a margin of safety.

Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Nicholas S. Reynolds, Esquire, Winston and Strawn, 1400 L Street, NW., Washington, DC 20005–3502.

NRC Section Chief: Robert A. Gramm.

Entergy Operations Inc., Docket No. 50–382, Waterford Steam Electric Station, Unit 3, (Waterford 3) St. Charles Parish, Louisiana

Date of amendment request: October 22, 2003.

Description of amendment request: The licensee proposes to change the existing pressure/temperature limits (P/T) from 16 to 32 effective full power years (EFPY). In addition, the maximum heatup rate will be changed to 60 °F per hour and the maximum cooldown rate to 100 °F per hour for all reactor coolant system temperatures. For inservice hydrostatic pressure and leak testing, the maximum heatup and cooldown rates will be changed to 60 °F and 100 °F, respectively.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously analyzed?

Response: No.

The probability of occurrence of an accident previously evaluated for Waterford 3 is not altered by the proposed amendment to the TSs [Technical Specifications]. The accidents currently analyzed in the Waterford 3 Final Safety Analysis Report (FSAR) remain the same considering the results of the proposed changes to the P/T limits and the LTOP [low temperature overpressure] enable temperature. The new P/T and LTOP enable temperature limits were based on the NRC [Nuclear Regulatory Commission] accepted methodologies along with the ASME [American Society of Mechanical Engineers] Code [Boiler and Pressure Vessel Code] alternatives. The proposed changes do not impact the integrity of the reactor coolant pressure boundary (RCPB) (*i.e.*, there is no change to the

operating pressure, materials, loadings, etc.). The proposed change does not affect the probability nor consequences of any design basis accident (DBA). The proposed P/T limit curves, maximum heatup and cooldown rates, and the LTOP enable temperature are not considered to be an initiator or contributor to any accident currently evaluated in the Waterford 3 FSAR. The new limits ensure the long term integrity of the RCPB.

Fracture toughness test data are obtained from material specimens contained in capsules that are periodically withdrawn from the reactor vessel. These data permit determination of the conditions under which the vessel can be operated with adequate safety margins against non-ductile fracture throughout its service life. During the spring 2002 Waterford 3 refueling outage, a reactor vessel specimen capsule was withdrawn and analyzed to predict the fracture toughness requirements using projected neutron fluence calculations. For each analyzed transient and steady state condition, the allowable pressure is determined as a function of reactor coolant temperature considering postulated flaws in the reactor vessel beltline, inlet nozzle, outlet nozzle, and closure head.

The predicted radiation induces "RT_{NDT} was calculated using the respective reactor vessel beltline materials copper and nickel contents and neutron fluence applicable to 32 EFPY including an estimated increase in flux due to proposed power uprates. The RT_{NDT} and, in turn, the operating limits for Waterford 3 were adjusted to account for the effects of irradiation on the fracture toughness of the reactor vessel materials. Therefore, new operating limits will be established which are represented in the revised operating curves for heatup/criticality, cooldown, and inservice hydrostatic testing contained in the TSs.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed changes to the P/T and LTOP enable temperature will not create a new accident scenario. The requirements to have P/T limits and LTOP protection are part of the licensing basis for Waterford 3. The approach used to develop the new P/T limits and LTOP enable temperature meets NRC and ASME regulations and guidelines. The data analysis for the vessel specimen removed during the last Waterford 3 refueling outage confirms that the vessel materials are responding as predicted.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The existing P/T curves and LTOP enable temperature in the TSs are reaching their expiration period for the number of years at effective full power operation. The revision of the P/T limits and curves will ensure that Waterford 3 continues to operate within the operating margins allowed by 10 CFR 50.60 and the ASME Code. The material properties used in the analysis are based on results established through Westinghouse material reports for copper and nickel content. The application of ASME Code Case N–641 presents alternative procedures for calculating P/T and LTOP temperatures in lieu of that established for ASME Section XI, Appendix G–2215. The Code alternative allows certain assumptions to be conservatively reduced. However, the procedures allowed by Code Case N–641 still provide significant conservatism and ensure an adequate margin of safety in the development of P/T operating and pressure test limits to prevent non-ductile fractures.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: N.S. Reynolds, Esquire, Winston & Strawn, 1400 L Street NW., Washington, DC 20005–3502.

NRC Section Chief: Robert A. Gramm.

Exelon Generation Company, LLC, Docket Nos. 50–352 and 50–353, Limerick Generating Station, Unit Nos. 1 and 2, Montgomery County, Pennsylvania

Date of amendment request: September 8, 2003.

Description of amendment request: The proposed change allows entry into a mode or other specified condition in the applicability of a Technical Specification (TS), while in a condition statement and the associated required actions of the TS, provided the licensee performs a risk assessment and manages risk consistent with the program in place for complying with the requirements of Title 10 of the Code of Federal Regulations (10 CFR), Part 50, Section 50.65(a)(4). Limiting Condition for Operation (LCO) 3.0.4, exceptions in individual TSs, would be eliminated, and Surveillance Requirement (SR) 3.0.4 revised to reflect the LCO 3.0.4 allowance.

This change was proposed by the industry's Technical Specification Task Force (TSTF) and is designated TSTF–359. The NRC staff issued a notice of opportunity for comment in the **Federal Register** on August 2, 2002 (67 FR 50475), on possible amendments concerning TSTF–359, including a model safety evaluation and model no significant hazards consideration (NSHC) determination, using the consolidated line item improvement process. The NRC staff subsequently issued a notice of availability of the models for referencing in license amendment applications in the **Federal Register** on April 4, 2003 (68 FR 16579). The licensee affirmed the applicability of the following NSHC determination in its application dated September 8, 2003.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), an analysis of the issue of no significant hazards consideration is presented below:

Criterion 1—The Proposed Change Does Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated.

The proposed change allows entry into a mode or other specified condition in the applicability of a TS, while in a TS condition statement and the associated required actions of the TS. Being in a TS condition and the associated required actions is not an initiator of any accident previously evaluated. Therefore, the probability of an accident previously evaluated is not significantly increased. The consequences of an accident while relying on required actions as allowed by proposed LCO 3.0.4, are no different than the consequences of an accident while entering and relying on the required actions while starting in a condition of applicability of the TS. Therefore, the consequences of an accident previously evaluated are not significantly affected by this change. The addition of a requirement to assess and manage the risk introduced by this change will further minimize possible concerns. Therefore, this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Criterion 2—The Proposed Change Does Not Create the Possibility of a New or Different Kind of Accident from any Previously Evaluated.

The proposed change does not involve a physical alteration of the plant (no new or different type of equipment will be installed). Entering into a mode or other specified condition in the applicability of a TS, while in a TS condition statement and the associated required actions of the TS, will not introduce new failure modes or effects and will not, in the absence of other unrelated failures, lead to an accident whose consequences exceed the consequences of accidents previously evaluated. The addition of a requirement to assess and manage the risk introduced by this change will further minimize possible concerns. Thus, this change does not create the possibility of a new or different kind of accident from an accident previously evaluated.

Criterion 3—The Proposed Change Does Not Involve a Significant Reduction in a Margin of Safety.

The proposed change allows entry into a mode or other specified condition in the applicability of a TS, while in a TS condition statement and the associated required actions of the TS. The TS allow operation of the plant without the full complement of equipment through the conditions for not meeting the TS LCO. The risk associated with this allowance is managed by the imposition of required actions that must be performed within the prescribed completion times. The net effect of being in a TS condition on the margin of safety is not considered significant. The proposed change does not alter the required actions or completion times of the TS. The proposed change allows TS conditions to be entered, and the associated required actions and completion times to be used in new circumstances. This use is predicated upon the licensee's performance of a risk assessment and the management of plant risk. The change also eliminates current allowances for utilizing required actions and completion times in similar circumstances, without assessing and managing risk. The net change to the margin of safety is insignificant. Therefore, this change does not involve a significant reduction in a margin of safety.

The NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mr. Edward Cullen, Vice President & General Counsel, Exelon Generation Company, LLC, 2301 Market Street, Philadelphia, PA 19101.

NRC Section Chief: James W. Clifford.

Exelon Generation Company, LLC, and PSEG Nuclear LLC, Dockets Nos. 50–277 and 50–278, Peach Bottom Atomic Power Station, Units 2 and 3, York and Lancaster Counties, Pennsylvania

Date of application for amendments: September 26, 2003.

Description of amendment request: The proposed amendment would modify the fire protection plan (FPP). The change to the FPP would allow converting the existing carbon dioxide (CO_2) fire suppression systems, located in the cable spreading room (CSR) and each of the four emergency diesel generator rooms, from automatic to manual actuation systems.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed activity involves changing the actuation of the carbon dioxide (CO_2) fire suppression systems from automatic to manual. With the exception of the Emergency Diesel Generator (EDG) CO_2 system itself, the proposed activity does not result in any physical changes to safety-related structures, systems, or components (SSCs), or the manner in which safety-related SSCs are operated, maintained, modified, tested, or inspected. The EDG CO_2 system is safety related due to a potential common mode effect on all four EDGs in the event of a seismic event. Eliminating the automatic actuation function of the EDG CO_2 system will thereby eliminate a potential common mode effect on the EDGs. The proposed activity does not degrade the performance or increase the challenges of any safety-related SSCs assumed to function in the accident analysis. As a result, the proposed activity does not introduce any new accident initiators. In addition, fires are not an accident that is previously evaluated. Regardless, the proposed activity does not change the probability of a fire occurring since fire ignition frequency is independent of the method of fire suppression in the room. The consequences of the proposed activity are bounded by the fire safe shutdown analysis, which assumes fire damage throughout the affected fire area. The fire safe shutdown analysis for each of the areas addressed by the proposed activity demonstrates that safe shutdown can be accomplished assuming that no fire suppression is available. In addition, the removal of the automatic discharge capability of the CO_2 system in each of the EDG rooms significantly reduces the potential for an inadvertent discharge to shutdown the EDG if needed for non-fire accident conditions. Similarly, removal of the automatic discharge feature in the CSR significantly reduces the potential for an inadvertent discharge that would require (by procedure) immediate shutdown of both units, and the potential migration of CO_2 into the main control room or other areas. In the future, CO_2 discharge will only occur as a deliberate action to the most extreme fires, as one element of an overall graded approach to fire fighting in the affected areas.

Therefore, changing the actuation of the CO_2 fire suppression systems from automatic to manual does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed activity involves changing the actuation of the CO_2 fire suppression systems from automatic to manual. With the exception of the Emergency Diesel Generator (EDG) CO_2 system itself, the proposed activity does not result in any physical changes to safety-related structures, systems, or components (SSCs), or the manner in which safety-related SSCs are operated, maintained, modified, tested, or inspected. The proposed activity does not degrade the performance or increase the challenges of any safety-related SSCs assumed to function in the accident analysis. As a result, the proposed activity does not introduce nor increase the number of failure mechanisms of a new or different type than those previously evaluated. The fire safe shutdown analysis assumes fire damage throughout the area consistent with a complete lack of fire suppression capability. The elimination of the potential for inadvertent actuation accomplished by changing the CO_2 systems from automatic to manual prevents the CO_2 systems from creating a challenge to existing accidents.

Therefore, changing the actuation of the CO_2 fire suppression system from automatic to manual does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The proposed activity involves changing the actuation of the CO_2 fire suppression systems from automatic to manual. With the exception of the Emergency Diesel Generator (EDG) CO_2 system itself, the proposed activity does not result in any physical changes to safety-related structures, systems, or components (SSCs), or the manner in which safety-related SSCs are operated, maintained, modified, tested, or inspected. The proposed activity does not degrade the performance or increase the challenges of any safety-related SSCs assumed to function in the accident analysis. The proposed activity does not impact plant safety since the conclusions of the fire safe shutdown analysis remain unchanged.

Therefore, changing the actuation of the CO_2 fire suppression system from automatic to manual does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for Licensee: Mr. Edward Cullen, Vice President and General Counsel, Exelon Generation Company, LLC, 2301 Market Street, S23–1, Philadelphia, PA 19101.

NRC Section Chief: James W. Clifford.

FPL Energy Seabrook, LLC, Docket No. 50–443, Seabrook Station, Unit No. 1, Rockingham County, New Hampshire

Date of amendment request: August 25, 2003.

Description of amendment request: The proposed amendment would allow extension of the current Emergency Diesel Generator (EDG) Technical Specifications allowed outage time (AOT) from 72 hours to a period of 14 days. This proposal would be supported by permanently installing a non-safety-related supplemental emergency power system (SEPS).

Basis for proposed no significant hazards consideration determination: As required by Title 10 of the Code of Federal Regulations (10 CFR) Section 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes do not involve a change in the operational limits or physical design of the electrical power systems, particularly the emergency power systems. The proposed changes do not change the function or operation of plant equipment or affect the response of that equipment if called upon to operate. The proposed AOT extensions to allow for additional operational flexibility will not cause a significant increase in the probability or consequences of an accident previously evaluated. In actuality, the installation of the SEPS will have an overall net reduction in core damage frequency. The AOT extensions will lessen the burden of time pressure to quickly determine the cause of failure and perform corrective actions without needing to place the plant in a transient to shutdown because of a short allotted AOT.

A Probabilistic Risk Assessment (PRA) has been performed to quantitatively assess the risk impact of an increase in the Allowed Outage Time. The proposed change results in a significant decrease in core damage frequency (CDF). Large Early Release Frequency (LERF) is dominated by containment bypass and containment isolation failures and remains relatively unchanged by the addition the SEPS combined with a 14-day AOT.

Based on the above, the proposed changes will not significantly increase the probability or consequences of an accident previously evaluated.

2. The proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated.

The proposed changes do not involve a change in the operational limits or physical design of the electrical power systems, particularly the emergency power systems. The proposed changes do not change the function or operation of plant equipment or introduce any new failure-mechanisms. The SEPS and interfacing components with the safety-related busses have been designed to ensure independence and separation, particularly during faulted conditions. As such, no new failure modes are being introduced. The plant equipment will continue to respond per the design and analyses and there will not be a malfunction of a new or different type introduced by the proposed changes.

The proposed amendment extends the Allowed Outage Times for restoring an inoperable EDG to OPERABLE status and extends the period for operability verification of redundant features to allow for minor repair prior to placing the plant in a shutdown transient. The proposed amendment will not result in changes to the type of corrective or preventive maintenance activities associated with the EDGs. Plant operating procedures and the procedures used to respond to abnormal or emergency conditions will be enhanced with the option to use the SEPS when deemed necessary. Assumptions made in the safety analysis related to EDG availability will also remain unchanged. Performance of certain maintenance activities at power requires an evaluation to assure plant safety is maintained or enhanced, which would include evaluation for new or different plant conditions. Therefore, the proposed change will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed changes do not involve a significant reduction in the margin of safety.

The proposed changes do not involve a change in the operational limits. The proposed changes do not change the function or operation of plant equipment or affect the response of that equipment if it is called upon to operate. The performance capability of the emergency diesel generators will not be affected. Installation of the SEPS will have an overall net reduction in core damage frequency. Emergency diesel generator reliability and availability will be improved by implementation of the proposed changes. In addition, administrative controls will ensure there are adequate compensatory measures that can be and will be taken during extended EDG maintenance activities to reduce overall risk. The results of the PRA performed to quantitatively assess the risk impact of an increase in the Allowed Outage Time indicate the proposed change results in a significant decrease in core damage frequency (CDF) by up to 30 percent. Therefore, the proposed changes do not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: M.S. Ross, Esquire, Florida Power & Light Company, P.O. Box 14000, Juno Beach, FL 33408–0420.

NRC Section Chief: James W. Clifford.

FPL Energy Seabrook, LLC, Docket No. 50–443, Seabrook Station, Unit No. 1, Rockingham County, New Hampshire

Date of amendment request: October 6, 2003.

Description of amendment request: The proposed amendment would revise the Seabrook Station licensing basis to implement the alternative source term (AST) methodology of Regulatory Guide (RG) 1.183 through reanalysis of the radiological consequences of a number of the Updated Final Safety Analysis Report Chapter 15 accidents. Further, having revised the licensing basis, the amendment would also revise the definition of dose equivalent I–131 in Technical Specifications Section 1.12.

Basis for proposed no significant hazards consideration determination: As required by Title 10 of the Code of Federal Regulations (10 CFR) Section 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

Alternative source term calculations have been performed that demonstrate the dose consequences remain below limits specified in NRC [Nuclear Regulatory Commission] Regulatory Guide 1.183 (July 2000) and 10CFR50.67. The proposed change does not modify the physical design or operation of the plant. The use of AST changes only the regulatory assumptions regarding the analytical treatment of the design basis accidents and has no direct effect on the probability of the accident. AST has been utilized in the analysis of the limiting design basis accidents listed above. The results of the analyses, which include the proposed change to the Technical Specifications, demonstrate that the dose consequences of these limiting events are all within the regulatory limits. The proposed Technical Specification change to the definition of dose equivalent I–131 is consistent with the implementation of AST and the requirements of RG 1.183 (July 2000).

Therefore, the proposed change does not involve a significant increase the probability or consequences of an accident previously evaluated.

2. The proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated.

The proposed change does not affect any plant structures, systems, or components. The operation of plant systems and equipment will not be affected by this proposed change. The alternative source term and the dose equivalent I–131 definition change do not have the capability to initiate accidents. Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed changes do not involve a significant reduction in the margin of safety.

The proposed implementation of the alternative source term methodology is consistent with NRC RG 1.183 (July 2000). The Technical Specification change to the definition of dose equivalent I131 is consistent with the implementation of AST and the requirements of RG 1.183 (July 2000). Conservative methodologies, per the guidance of RG 1.183 (July 2000), have been used in performing the accident analyses. The radiological consequences of these accidents are all within the regulatory acceptance criteria associated with use of the alternative source term methodology.

The proposed changes continue to ensure that the doses at the exclusion area and low population zone boundaries and in the Control Room are within the corresponding regulatory limits of RG 1.183 (July 2000) and 10CFR50.67. The margin of safety for the radiological consequences of these accidents is considered to be that provided by meeting the applicable regulatory limits, which are set at or below the 10CFR50.67 limits. An acceptable margin of safety is inherent in these limits.

Therefore, the proposed change does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: M.S. Ross, Esquire, Florida Power & Light Company, P.O. Box 14000, Juno Beach, FL 33408–0420.

NRC Section Chief: James W. Clifford.

Pacific Gas and Electric Company, Docket Nos. 50–275 and 50–323, Diablo Canyon Nuclear Power Plant, Unit Nos. 1 and 2, San Luis Obispo County, California

Date of amendment requests: September 26, 2003.

Description of amendment requests: The proposed change allows entry into a mode or other specified condition in the applicability of a Technical Specification (TS), while in a condition statement and the associated required actions of the TS, provided the licensee performs a risk assessment and manages risk consistent with the program in place for complying with the requirements of 10 CFR 50.65(a)(4). Limiting Condition for Operation (LCO) 3.0.4 exceptions in individual TS would be eliminated, and Surveillance Requirement (SR) 3.0.4 revised to reflect the LCO 3.0.4 allowance.

This change was proposed by the industry's Technical Specification Task Force (TSTF) and is designated TSTF–359. The NRC staff issued a notice of opportunity for comment in the **Federal Register** on August 2, 2002 (67 FR 50475), on possible amendments concerning TSTF–359, including a model safety evaluation and model no significant hazards consideration (NSHC) determination, using the consolidated line item improvement process. The NRC staff subsequently issued a notice of availability of the models for referencing in license amendment applications in the **Federal Register** on April 4, 2003 (68 FR 16579). The licensee affirmed the applicability of the following NSHC determination in its application dated September 26, 2003.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), an analysis of the issue of no significant hazards consideration is presented below:

Criterion 1—The Proposed Change Does Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated.

The proposed change allows entry into a mode or other specified condition in the applicability of a TS, while in a TS condition statement and the associated required actions of the TS. Being in a TS condition and the associated required actions is not an initiator of any accident previously evaluated. Therefore, the probability of an accident previously evaluated is not significantly increased. The consequences of an accident while relying on required actions as allowed by proposed LCO 3.0.4, are no different than the consequences of an accident while entering and relying on the required actions while starting in a condition of applicability of the TS. Therefore, the consequences of an accident previously evaluated are not significantly affected by this change. The addition of a requirement to assess and manage the risk introduced by this change will further minimize possible concerns. Therefore, this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Criterion 2—The Proposed Change Does Not Create the Possibility of a New or Different Kind of Accident from any Previously Evaluated.

The proposed change does not involve a physical alteration of the plant (no new or different type of equipment will be installed). Entering into a mode or other specified condition in the applicability of a TS, while in a TS condition statement and the associated required actions of the TS, will not introduce new failure modes or effects and will not, in the absence of other unrelated failures, lead to an accident whose consequences exceed the consequences of accidents previously evaluated. The addition of a requirement to assess and manage the risk introduced by this change will further minimize possible concerns. Thus, this change does not create the possibility of a new or different kind of accident from an accident previously evaluated.

Criterion 3—The Proposed Change Does Not Involve a Significant Reduction in a Margin of Safety.

The proposed change allows entry into a mode or other specified condition in the applicability of a TS, while in a TS condition statement and the associated required actions of the TS. The TS allow operation of the plant without the full complement of equipment through the conditions for not meeting the TS LCO. The risk associated with this allowance is managed by the imposition of required actions that must be performed within the prescribed completion times. The net effect of being in a TS condition on the margin of safety is not considered significant. The proposed change does not alter the required actions or completion times of the TS. The proposed change allows TS conditions to be entered, and the associated required actions and completion times to be used in new circumstances. This use is predicated upon the licensee's performance of a risk assessment and the management of plant risk. The change also eliminates current allowances for utilizing required actions and completion times in similar circumstances, without assessing and managing risk. The net change to the margin of safety is insignificant. Therefore, this change does not involve a significant reduction in a margin of safety.

The NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Richard F. Locke, Esq., Pacific Gas and Electric Company, P.O. Box 7442, San Francisco, California 94120.

NRC Section Chief: Stephen Dembek.

PSEG Nuclear LLC, Docket No. 50–354, Hope Creek Generating Station, Salem County, New Jersey

Date of amendment request: October 23, 2003.

Description of amendment request: The proposed amendment would delete the surveillance requirements associated with the Emergency Diesel Generator lockout features.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed changes to the Technical Specifications (TS) 3/4.8.1.1, AC Sources—Operating, would delete an unnecessary surveillance. The probability of occurrence or the consequences for an accident or malfunction of equipment is not increased by the proposed changes. In addition, the proposed changes do not alter the way any structure, system or component (SSC) functions, do not modify the manner in which the plant is operated, and do not significantly alter equipment out-of-service time. Deleting the surveillance of equipment protection does not change the probability or consequences of any accident and dose consequences are unaffected. No changes to the design of structures, systems, or components (SSC) are made and there are no effects on accident mitigation.

Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The possibility of a new or different kind of accident from any accident or malfunction in the Hope Creek Updated Final Safety Analysis Report (UFSAR) is not created. The Emergency Diesel Generators are accident mitigation equipment and cannot initiate an accident. The proposed changes to the TS do not change the design function or operation of any SSCs. The TS, as amended, would

continue to provide assurance of EDG operability.

Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The proposed changes are procedural in nature and make no changes that affect the ability of plant SSCs to perform their design basis accident functions. In addition, the proposed changes do not change the margin of safety since no SSCs are changed. The results of accident analysis remain unchanged by the proposed changes to TS.

Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Jeffrie J. Keenan, Esquire, Nuclear Business Unit—N21, P.O. Box 236, Hancocks Bridge, NJ 08038.

NRC Section Chief: James W. Clifford.

PSEG Nuclear LLC, Docket No. 50–354, Hope Creek Generating Station, Salem County, New Jersey

Date of amendment request: October 24, 2003.

Description of amendment request: The proposed change to Technical Specifications will revise surveillance requirements associated with reactor protection system instrumentation, control rod block instrumentation, source range monitors, and power distribution limits, to minimize unnecessary testing.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed amendment would revise the Technical Specification (TS) Surveillance Requirements (SRs) for certain Reactor Protection System and Control Rod Block Instrumentation, the source range monitors and power distribution limits, consistent with NUREG–1433, "Standard Technical Specifications (STS) General Electric Plants, BWR [Boiling Water Reactor]/4," Revision 2. No changes are being made to any instrumentation setpoints or plant components. The revised SRs continue to assure that the necessary quality of systems and components is maintained, that facility operation will be within safety limits, and that the Limiting Conditions for Operation will be met.

Since the proposed changes do not affect any accident initiator and since the associated equipment will remain capable of performing its design function, the proposed change does not involve a significant increase in the probability or radiological consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed changes do not change the design function or operation of any plant equipment. No new failure mechanisms, malfunctions, or accident initiators are being introduced by the proposed changes. Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

No changes are being made to any plant instrumentation setpoints or to the required level of redundancy. No changes are being made to any power distribution limits.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Jeffrie J. Keenan, Esquire, Nuclear Business Unit—N21, P.O. Box 236, Hancocks Bridge, NJ 08038.

NRC Section Chief: James W. Clifford.

Virginia Electric and Power Company, Docket Nos. 50–338 and 50–339, North Anna Power Station, Units No. 1 and No. 2, Louisa County, Virginia

Date of amendment request: September 12, 2003.

Description of amendment request: The proposed amendments would revise Technical Specification (TS) Sections 1.1, 3.7.10, 3.7.12, 3.7.13, 3.7.14, 3.9.4, 5.5.2, and 5.5.10, and the associated Bases Sections to implement an alternate source term at North Anna Power Station, Units 1 and 2. The proposed changes would implement NUREG–1465, "Accident Source Terms for Light-Water Nuclear Power Plants," dated February 1995, as the design-basis source term, achieve a consistent design basis for all accident dose assessments, increase operational flexibility by allowing for increased emergency core cooling system leakage and unfiltered control room in-leakage, and eliminate the surveillance requirement to test the bottled air flow rate.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

We have reviewed the proposed TS changes relative to the requirements of 10 CFR 50.92 and determined that a significant hazards consideration is not involved. Specifically, operation of North Anna Power Station with the proposed changes will not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed amendment does not involve a significant increase in the probability or consequence of an accident previously analyzed. The North Anna MCR/ESGR [main control room/emergency switchgear room] EVS [emergency ventilation system], PREACS [pump room exhaust air cleanup system], and MCE [MCR]/ESGR Bottled Air systems only function following the initiation of a design basis radiological accident. Therefore, the changes to these specifications, the definition of currently irradiated fuel, and the increase [of] the depressurization time of [the] containment following a design basis LOCA [loss-of-coolant accident] will not increase the probability of any previously analyzed accident. These systems are not initiators of any design bases accident.

Revised dose calculations, which take into account the changes proposed by this [these] amendment[s] and the use of the alternative source term[,] have been performed for the North Anna design basis radiological accidents. The results of these revised calculations indicate that public and control room doses will not exceed the limits specified in 10 CFR 50.67 and Regulatory Guide 1.183. There is not a significant increase in predicted dose consequences for any of the analyzed accidents. Therefore, the proposed changes do not involve a significant increase in the consequences of any previously analyzed accident.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated.

The implementation of the proposed changes does not create the possibility of an accident of a different type than was previously evaluated in the UFSAR [Updated Final Safety Analysis Report]. Although the proposed changes could affect the operation of the MRC [MCR]/ESGR EVS following a design basis radiological accident, none of these changes can initiate a new or different kind of accident since they are only related to system capabilities that provide protection from accidents that have already occurred. These changes do not alter the nature of events postulated in the UFSAR nor do they introduce any unique precursor mechanisms.

Therefore, the proposed changes do not create the possibility of a new or different kind of accident from those previously analyzed.

3. Involve a significant reduction in the margin of safety.

The implementation of the proposed changes does not reduce the margin of safety. The proposed changes for the MCR/ESGR EVS, PREACS, and MCE [MCR]/ESGR Bottled Air System do not affect the ability of these systems to perform their intended safety functions to maintain dose less than the required limits during design basis radiological events. The revised dose calculations also indicate that the change to the containment depressurization times will continue to maintain the dose to the public and control room operators less than the required limits.

The radiological analysis results, when compared with the revised TEDE [total effective dose equivalent] acceptance criteria, meet the applicable limits. These acceptance criteria have been developed for application to analyses performed with alternative source terms. These acceptance criteria have been developed for the purpose of use in design basis accident analyses such that meeting the stated limits demonstrates adequate protection of public health and safety. It is thus concluded that the margin of safety will not be reduced by the implementation of the changes.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Ms. Lillian M. Cuoco, Esq., Senior Counsel, Dominion Resources Services, Inc., Millstone Power Station, Building 475, 5th Floor, Rope Ferry Road, Rt. 156, Waterford, Connecticut 06385.

NRC Section Chief: John A. Nakoski.

Notice of Issuance of Amendments to Facility Operating Licenses

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing in connection with these actions was published in the **Federal Register** as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) The applications for amendment, (2) the amendment, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment as indicated. All of these items are available for public inspection at the Commission's Public Document Room, located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management Systems (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html*. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) Reference staff at 1–800–397–4209, 301–415–4737 or by e-mail to *pdr@nrc.gov*.

AmerGen Energy Company, LLC, et al., Docket No. 50–219, Oyster Creek Nuclear Generating Station, Ocean County, New Jersey

Date of application for amendment: June 2, 2003.

Brief description of amendment: The amendment revised the Technical Specifications, Sections 3.7.B.1 and 3.7.C.2. Section 3.7.B.1 required that the reactor may remain in operation "for a period not to exceed 7 days in any 30 day period if a startup transformer is out of service." Section 3.7.C.2 required that the reactor may be in operation "for a period not to exceed 7 days in any 30 day period if a diesel generator is out of service." The amendment deleted the phrase "in any 30 day period" from these two sections.

Date of Issuance: November 24, 2003.

Effective date: November 24, 2003 and shall be implemented within 30 days of issuance.

Amendment No.: 239.

Facility Operating License No. DPR–16: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register**: July 8, 2003 (68 FR 40709).

The Commission's related evaluation of this amendment is contained in a Safety Evaluation dated November 24, 2003.

No significant hazards consideration comments received: No.

Entergy Nuclear Operations, Docket No. 50–247, Indian Point Nuclear Generating Unit No. 2, Westchester County, New York

Date of application for amendment: March 27, 2002, as supplemented on May 30, July 10, October 10, October 28, November 26, and December 18, 2002, and on January 6, January 27, February 26, April 8, May 19, June 23, June 26, July 15, August 6, September 11, October 8, and October 14, 2003.

Brief description of amendment: This amendment converts the current Technical Specifications (TS) to a set of Improved TS based on NUREG–1431, Revision 2, "Standard Technical Specifications for Westinghouse Plants," Revision 2, dated June 2001.

Date of issuance: November 21, 2003.

Effective date: As of the date of issuance to be implemented within 60 days.

Amendment No.: 238.

Facility Operating License No. DPR–26: Amendment replaced the current Technical Specifications (TSs) with the Improved TSs in their entirety and revised the license.

Date of initial notice in **Federal Register**: *September 26, 2003 (68 FR 55660).*

The supplemental letters that were received subsequent to the issuance of the **Federal Register** notice provided clarifying information that did not change the no significant hazards consideration.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 21, 2003.

No significant hazards consideration comments received: No.

Entergy Nuclear Operations, Inc., Docket No. 50–293, Pilgrim Nuclear Power Station, Plymouth County, Massachusetts

Date of application for amendment: March 19, 2003.

Brief description of amendment: This amendment deletes Technical Specification (TS) 5.5.3, "Post Accident Sampling," and thereby eliminates the requirements to have and maintain the post accident sampling system at the Pilgrim Nuclear Power Station.

Date of issuance: November 14, 2003.
Effective date: As of the date of issuance, and shall be implemented within 60 days.
Amendment No.: 204.
Facility Operating License No. DPR–35: Amendment revised the TSs.
Date of initial notice in **Federal Register:** *June 10, 2003 (68 FR 34663).*
The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 14, 2003.
No significant hazards consideration comments received: No.

Exelon Generation Company, LLC, Docket Nos. STN 50–454 and STN 50–455, Byron Station, Unit Nos. 1 and 2, Ogle County, Illinois

Docket Nos. STN 50–456 and STN 50–457, Braidwood Station, Unit Nos. 1 and 2, Will County, Illinois

Date of application for amendments: October 16, 2002, as supplemented by letters dated June 20, 2003 and October 14, 2003.
Brief description of amendments: The amendments revise the completion time of Required Action A.1 of Technical Specification 3.8.7, "Inverters-Operating," from the current 24 hours to 7 days for one inoperable instrument bus inverter. This provides greater operational flexibility for online maintenance of an instrument bus inverter with the potential to reduce the duration of refueling outages.
Date of issuance: November 19, 2003.
Effective date: As of the date of issuance and shall be implemented within 30 days.
Amendment Nos.: 135/135, 129/129.
Facility Operating License Nos. NPF–37, NPF–66, NPF–72 and NPF–77: The amendments revised the Technical Specifications.
Date of initial notice in **Federal Register:** December 10, 2002 (67 FR 75874).
The supplemental letters contained clarifying information and did not change the initial no significant hazards consideration determination and did not expand the scope of the original **Federal Register** notice.
The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated November 19, 2003. No significant hazards consideration comments received: No.

Exelon Generation Company, LLC, Docket Nos. 50–373 and 50–374, LaSalle County Station, Units 1 and 2, LaSalle County, Illinois

Date of application for amendments: October 24, 2002 and as supplemented by letter dated June 20, 2003.
Brief description of amendments: The amendments revise Technical Specification 5.5.13, "Primary Containment Leakage Rate Testing Program," to reflect a one-time deferral of the primary containment Type A test to no later than June 13, 2009 for Unit 1 and no later than December 7, 2008 for Unit 2.
Date of issuance: November 19, 2003.
Effective date: As of the date of issuance and shall be implemented within 60 days.
Amendment Nos.: 162, 148.
Facility Operating License Nos. NPF–11 and NPF–18: The amendments revised the Technical Specifications.
Date of initial notice in **Federal Register:** December 10, 2002 (67 FR 75876).
The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated November 19, 2003.
No significant hazards consideration comments received: No.

Exelon Generation Company, LLC, Docket Nos. 50–373 and 50–374, LaSalle County Station, Units 1 and 2, LaSalle County, Illinois

Date of application for amendments: May 19, 2003.
Brief description of amendments: The amendments revise Appendix A, Technical Specifications (TS), of Facility Operating License Nos. NPF–11 and NPF–18. Specifically, the change will decrease the frequency associated with TS Surveillance Requirement (SR) 3.7.7.1 for Turbine Bypass Valve (BPV) testing from 7 to 31 days. The change is consistent with the testing frequency contained in NUREG–1434, "Standard Technical Specifications General Electric Plants, BWR/6," Revision 2, dated June 2001, for BPV testing. The 7-day frequency associated with SR 3.7.7.1 was established in the LaSalle County Station (LSCS) TS during conversion to improved Standard Technical Specifications (STS) format due to the testing frequency contained in the LSCS custom TS and the difficulties experienced with other Electro-Hydraulic Control (EHC) system valves to consistently pass their surveillance tests. LSCS has recently re-evaluated the performance of these valves and has determined that the current performance of these valves supports decreasing the testing frequency of the BPVs from 7 to 31 days.
Date of issuance: November 13, 2003.
Effective date: As of the date of issuance and shall be implemented within 60 days.
Amendment Nos.: 163/148.
Facility Operating License Nos. NPF–11 and NPF–18: The amendments revised the Technical Specifications.
Date of initial notice in **Federal Register:** June 24, 2003 (68 FR 37577).
The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated November 13, 2003.
No significant hazards consideration comments received: No.

Nuclear Management Company, LLC, Docket No. 50–305, Kewaunee Nuclear Power Plant, Kewaunee County, Wisconsin

Date of application for amendment: December 19, 2002, as supplemented July 25, 2003.
Brief description of amendment: The proposed amendment would revise the Kewaunee technical specifications to change the Nuclear Regulatory Commission reporting requirements for the discovery of defective or degraded steam generator tubes so that the requirements are aligned with 10 CFR 50.72 and 10 CFR 50.73.
Date of issuance: November 20, 2003.
Effective date: As of the date of issuance and shall be implemented within 30 days.
Amendment No.: 171.
Facility Operating License No. DPR–43: Amendment revised the Technical Specifications.
Date of initial notice in **Federal Register:** January 21, 2003 (68 FR 2807).
The supplemental letter contained clarifying information and did not change the initial no significant hazards consideration determination and did not expand the scope of the original **Federal Register** notice.
The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 20, 2003.
No significant hazards consideration comments received: No.

Southern Nuclear Operating Company, Inc., Docket Nos. 50–348 and 50–364, Joseph M. Farley Nuclear Plant, Units 1 and 2, Houston County, Alabama
Southern Nuclear Operating Company, Inc., et al., Docket Nos. 50–424 and 50–425, Vogtle Electric Generating Plant, Units 1 and 2, Burke County, Georgia

Date of amendments request: September 2, 2003.
Brief Description of amendments: The amendments extend from 1 hour to 24 hours the completion time for Condition B of Technical Specification 3.5.1, which defines requirements for the restoration of an emergency core cooling system accumulator when it has been declared inoperable for a reason other than boron concentration.

Date of issuance: November 18, 2003.
Effective date: As of the date of issuance and shall be implemented within 60 days from the date of issuance.
Amendment Nos.: 162, 155, 129, & 107.
Facility Operating License Nos. NPF–2 and NPF–8: Amendments revise the Technical Specifications.
Date of initial notice in **Federal Register:** October 14, 2003 (68 FR 59220).
The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated November 18, 2003.
No significant hazards consideration comments received: No.

Tennessee Valley Authority, Docket No. 50–390, Watts Bar Nuclear Plant, Unit 1, Rhea County, Tennessee

Date of application for amendment: December 19, 2002.
Brief description of amendment: The amendment consists of changes to Technical Specification (TS) 5.0, "Administrative Controls," to incorporate three approved TS Task Force (TSTF) changes: TSTF–258, Revision 4, "Changes to Section 5.0, Administrative Controls"; TSTF–299, Revision 0, "Administrative Controls Program 5.5.2.b Test Interval and Exception"; and TSTF–308, Revision 1, "Determination of Cumulative and Projected Dose Contributions in the Radioactive Effluent Controls Program." In addition, two editorial changes are incorporated to update personnel titles and clarify required staffing levels.
Date of issuance: November 13, 2003.
Effective date: As of the date of issuance and shall be implemented within 45 days.
Amendment No.: 49.
Facility Operating License No. NPF–90: Amendment revised the TSs.
Date of initial notice in **Federal Register:** April 1, 2003 (68 FR 15764).
The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 13, 2003.
No significant hazards consideration comments received: No.

For the Nuclear Regulatory Commission
Dated at Rockville, Maryland, this 1st day of December 2003.
Ledyard B. Marsh,
Director, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 03–30246 Filed 12–8–03; 8:45 am]
BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Regulatory Guide; Issuance, Availability

The Nuclear Regulatory Commission (NRC) has issued a new guide in its Regulatory Guide Series. This series has been developed to describe and make available to the public such information as methods acceptable to the NRC staff for implementing specific parts of the NRC's regulations, techniques used by the staff in its review of applications for permits and licenses, and data needed by the NRC staff in its review of applications for permits and licenses.
Regulatory Guide 1.199, "Anchoring Components and Structural Supports in Concrete," has been developed to provide guidance to licensees and applicants on methods acceptable to the NRC staff for complying with the NRC's regulations in the design, evaluation, and quality assurance of anchors (steel embedments) used for component and structural supports on concrete structures.
Comments and suggestions in connection with items for inclusion in guides currently being developed or improvements in all published guides are encouraged at any time. Written comments may be submitted to the Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Questions on the content of this guide may be directed to Mr. H. Graves, (301) 415–5880; *e-mail hlg1@nrc.gov*.
Regulatory guides are available for inspection or downloading at the NRC's Web site at *http://www.nrc.gov* under Regulatory Guides and in NRC's Electronic Reading Room (ADAMS System) at the same site. Single copies of regulatory guides may be obtained free of charge by writing the Reproduction and Distribution Services Section, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, or by fax to (301) 415–2289, or by e-mail to *distribution@nrc.gov*. Issued guides may also be purchased from the National Technical Information Service (NTIS) on a standing order basis. Details on this service may be obtained by writing NTIS at 5285 Port Royal Road, Springfield, VA 22161; telephone 1–800–553–6847; *http://www.ntis.gov*. Regulatory guides are not copyrighted, and Commission approval is not required to reproduce them.
(5 U.S.C. 552(a))

Dated at Rockville, MD this 28th day of November 2003.
For the Nuclear Regulatory Commission.
Ashok C. Thadani,
Director, Office of Nuclear Regulatory Research.

[FR Doc. 03–30467 Filed 12–8–03; 8:45 am]
BILLING CODE 7590–01–P

POSTAL RATE COMMISSION

Facility Tour

AGENCY: Postal Rate Commission.
ACTION: Notice of Commission tour.

SUMMARY: Postal Rate Commissioners and several staff members will tour United Parcel Service (UPS) facilities on December 11 and 12, 2003. On the evening of December 11, from approximately 8 p.m. to 10 p.m., the group will tour the UPS Mail Innovations facility in Paulsboro, NJ. On December 12, from approximately 11:30 a.m. to 1:15 p.m., the group will tour the UPS air hub at the Philadelphia airport. The purpose of the tours (including any related briefings) is to observe operations.

DATES: (1) December 11, 2003: UPS facilities (Paulsboro, NJ). (2) December 12, 2003: UPS facilities (Philadelphia Airport Hub).
FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel, (202) 789–6818.

Dated: December 4, 2003.
Garry J. Sikora,
Acting Secretary.

[FR Doc. 03–30434 Filed 12–8–03; 8:45 am]
BILLING CODE 7710–FW–M

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.
Extension: Rule 11Ac1–1; SEC File No. 270–404; OMB Control No. 3235–0461.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("Commission") has submitted to the Office of Management and Budget ("OMB") a request for extension of the previously approved collection of information discussed below.
Rule 11Ac1–1, Dissemination of Quotations, contains two related collections of information necessary to

disseminate market makers' published quotations to buy and sell securities to the public. The first collection of information is found in Rule 11Ac1–1(c) 17 CFR 11Ac1–1(c). This reporting requirement obligates each "responsible broker or dealer," as defined under the rule, to communicate to its exchange or association its best bids, best offers, and quotation sizes for any subject security, as defined under the rule. The second collection of information is found in Rule 11Ac1–1(b) 17 CFR 11Ac1–1(b). This reporting requirement obligates each exchange and association to make available to quotation vendors for dissemination to the public the best bid, best offer, and aggregate quotation size for each subject security.[1] Brokers, dealers, other market participants, and members of the public rely on published quotation information to determine the best price and market for execution of customer orders.

It is anticipated that 721 respondents, consisting of 180 exchange specialists and 541 OTC market makers, will make 246,788,005 total annual responses pursuant to Rule 11Ac1–1, resulting in an annual aggregate burden of approximately 205,486 hours.

Rule 11Ac1–1 does not impose a retention period for any recordkeeping requirements. Compliance with the rule is mandatory and the information collected is made available to the public. Please note that an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

General comments regarding the estimated burden hours should be directed to the following persons: (i) The Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503; and (ii) Kenneth A. Fogash, Acting Associate Executive Director/CIO, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Comments must be submitted to the Office of Management and Budget within 30 days of this notice.

Dated: December 2, 2003.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–30499 Filed 12–8–03; 8:45 am]

BILLING CODE 8010–01–P

[1] A third requirement under Rule 11Ac1–1, as amended at 17 CFR 11Ac1–1(c)(5), gives electronic communications networks ("ECNs") the option of reporting to an exchange or association for public dissemination, on behalf of their OTC market maker or exchange specialist customers, the best priced orders and the full size for such orders entered by market makers, to satisfy such market makers' reporting obligation under Rule 11Ac1–1(c). Because this reporting requirement is an alternative method of meeting the market makers' reporting obligation, and because it is directed to nine or fewer persons (ECNs), this collection of information is not subject to OMB review under the Paperwork Reduction Act.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48865; File No. SR–CBOE–2003–48]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Board Options Exchange, Incorporated Relating to the Determination of the Closing Exercise Settlement Value for Interest Rate Options and to the Designation of the Reporting Authorities for Interest Rate Options

December 2, 2003.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 [2] thereunder, notice is hereby given that on November 19, 2003, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") submitted to the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the CBOE. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CBOE proposes to amend Interpretation and Policy .01 and .02 under CBOE Rule 23.1 with respect to the determination of the closing exercise settlement value for interest rate options when the designated reporting authority is unable to provide that value and with respect to the designation of the reporting authorities for interest rate options. The text of the proposed rule change is available at the Office of the Secretary, the CBOE, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the CBOE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The CBOE has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The proposed rule change amends Interpretation and Policy .02 to CBOE Rule 23.1, which provides for an alternate method of determining the closing exercise settlement value for the last business day of trading prior to the expiration of any interest rate option should the appropriate reporting authority [3] be unable to do so. Currently, Interpretation and Policy .02 provides that the Exchange would be responsible for determining the applicable closing value by conducting a random poll of a minimum of ten primary government bond dealers. In place of this provision, the Exchange proposes that, in the event the reporting authority does not generate a closing value for the last business day of trading prior to expiration of any interest rate option, the closing value would be determined in accordance with the Rules and By-Laws of the Options Clearing Corporation ("OCC"). The CBOE believes that this change is appropriate because OCC's rules are predominant to the CBOE's rules in the context of determining settlement values when such values are unavailable.

To illustrate, OCC By-Laws, Article XVI (Yield-Based Treasury Options), Section 4 (Unavailability or Inaccuracy of Settlement Value of Underlying Yield), governs the situation in which the settlement value of the underlying yield for series of yield-based options is unreported or otherwise unavailable for the purposes of calculating the settlement amount for exercised option contracts. Section 4(a) provides for methods that would allow OCC to determine the settlement amount(s) for affected series. Specifically, Section 4(a)(2) provides that OCC may fix the settlement amount for exercised contracts of affected series by using the best information available as to the correct settlement value of the underlying yield.

[1] 15 U.S.C 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] CBOE Rule 23.1(h) provides that "[t]he term "reporting authority" in respect of a particular interest rate measure means the institution or reporting service designated by the Exchange as the official source for securing and disseminating the value underlying an interest rate measure."

Additionally, this rule change proposes to delete references to specific reporting authorities for interest rate options in the appropriate Exchange rules. Currently, Interpretation and Policy .01 to CBOE Rule 23.1 identifies the companies that are the official sources for collecting and disseminating the values that underlie an interest rate measure.[4] The Exchange proposes to amend Interpretation and Policy .01 so that specific entities are not enumerated. As such, the Exchange proposes that Interpretation and Policy .01 be changed to reflect that the Exchange may, from time to time, designate a reporting authority to report the values necessary to calculate and disseminate yields for each security or to determine the closing exercise settlement values of expiring interest rate options.

The CBOE believes that this rule change would allow the CBOE to quickly designate a new reporting authority if a situation were to arise in which an approved reporting authority becomes unable to perform the required calculations. The CBOE believes that incidents such as the tragic events of September 11, 2001 or the expansive blackouts of recent weeks illustrate the need for flexibility to take appropriate action in these situations. The Exchange also believes that it may find it operationally beneficial to change a reporting authority for other reasons. The Exchange represents that any reporting authority chosen would need to have demonstrated to the Exchange that it would be operationally capable of performing the required functions. Although the Exchange would have the ability to change the designated reporting authorities for interest rate options under this proposed rule change, the Exchange has represented that it does not intend nor anticipate changing reporting authorities on a regular basis. The Exchange will issue notification of the designation of any new reporting authority for interest rate options in the form of a regulatory circular.

2. Statutory Basis

The CBOE believes that the proposed rule change is consistent with Section 6(b) of the Act [5] in general, and is in furtherance of the objectives of Section 6(b)(5) of the Act [6] in particular, in that providing a reliable source for determining the exercise settlement values of interest rate options, including when the reporting authority previously relied upon for this purpose has discontinued reporting such values, will facilitate exercise transactions in these securities and will thereby serve to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The CBOE does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [7] and Rule 19b–4(f)(6) [8] thereunder, because the proposed rule change: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) by its terms, does not become operative for 30 days after the date of filing. The CBOE provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least 5 business days prior to the filing date.

At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

[4] Interpretation and Policy .01 to CBOE Rule 23.1 identifies Telerate, Inc. as the designated reporting authority of each interest rate option's "current value" and identifies Gov PX as the designated reporting authority of each interest rate option's "closing exercise settlement value."

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(5).

[7] 15 U.S.C. 78s(b)(3)(A).

[8] 17 CFR 240.19b–4(f)(6).

Comments may also be submitted electronically at the following e-mail address: *rule-comments@sec.gov*. All comment letters should refer to File No. SR–CBOE–2003–48. This file number should be included on the subject line if e-mail is used. To help us process and review comments more efficiently, comments should be sent in hardcopy or by e-mail but not by both methods. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the CBOE. All submissions should refer to File No. SR–CBOE–2003–48 and should be submitted by December 30, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 03–30501 Filed 12–8–03; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48868; File No. SR–NASD–2003–165]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment Nos. 1, 2, and 3 Thereto by the National Association of Securities Dealers, Inc. To Establish a New "Discretionary" Order in Nasdaq's SuperMontage System

December 3, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on November 7, 2003, the National Association of Securities Dealers, Inc. ("NASD" or "Association"), through its subsidiary, the Nasdaq Stock Market, Inc. ("Nasdaq"), filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been

[9] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

prepared by Nasdaq. Nasdaq filed Amendment Nos. 1, 2, and 3 to the proposal on November 14, 2003,[3] November 21, 2003,[4] and November 28, 2003, respectively.[5] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq proposes to adopt a new order type, the discretionary order ("DO"), in Nasdaq's National Market Execution System ("NNMS" or "SuperMontage"). Subject to Commission approval, Nasdaq intends to implement the proposed rule change shortly after December 8, 2003, and will inform market participants of the exact implementation date via a Head Trader alert on *www.nasdaqtrader.com*. The text of the proposed rule change appears below. New text is in italics. Deleted text is in brackets.[6]

* * * * *

4700. NASDAQ NATIONAL MARKET EXECUTION SYSTEM (NNMS)

4701. Definitions

Unless stated otherwise, the terms described below shall have the following meaning:

(a)–(jj) No Change.

(kk)–(ll) Reserved.

(mm) No change.

(nn) The term "Discretionary" shall mean, for priced limit orders so designated, an order that when entered into NNMS has both a displayed bid or offer price, as well as a non-displayed discretionary price range in which the participant is also willing to buy or sell, if necessary. The displayed price may be fixed or may be pegged to equal the inside quote on the same side of the market. The pegging of the Discretionary Order may be capped in the same manner as that of a Pegged Order. The discretionary price range of a Discretionary Order that is pegged will be adjusted to follow the pegged displayed price.

* * * * *

4706. Order Entry Parameters

(a) Non-Directed Orders—

(1) General. The following requirements shall apply to Non-Directed Orders Entered by NNMS Market Participants:

(A) An NNMS Participant may enter into the NNMS a Non-Directed Order in order to access the best bid/best offer as displayed in Nasdaq.

(B) A Non-Directed Order must be a market or limit order, must indicate whether it is a buy, short sale, short-sale exempt, or long sale, and may be designated as an "Immediate or Cancel", or as a "Day" or a "Good-till-Cancelled" order. If a priced order designated as "Immediate or Cancel" ("IOC") is not immediately executable, the unexecuted order (or portion thereof) shall be returned to the sender. If a priced order designated as a "Day" order is not immediately executable, the unexecuted order (or portion thereof) shall be retained by NNMS and remain available for potential display/execution until it is cancelled by the entering party, or until 4 p.m. Eastern Time on the day such order was submitted, whichever comes first, whereupon it will be returned to the sender. If the order is designated as "Good-till-Cancelled" ("GTC"), the order (or unexecuted portion thereof) will be retained by NNMS and remain available for potential display/execution until cancelled by the entering party, or until 1 year after entry, whichever comes first. Starting at 7:30 a.m., until the 4 p.m. market close, IOC and Day Non-Directed Orders may be entered into NNMS (or previously entered orders cancelled), but such orders entered prior to market open will not become available for execution until 9:30 a.m. Eastern Time. GTC orders may be entered (or previously entered GTC orders cancelled) between the hours 7:30 a.m. to 6:30 p.m. Eastern Time, but such orders entered prior to market open, or GTC orders carried over from previous trading days, will not become available for execution until 9:30 a.m. Eastern Time. Exception: Non-Directed Day (other than Pegged *and Discretionary* Orders) and GTC orders may be executed prior to market open if required under Rule 4710(b)(3)(B). In addition, an order may be assigned the designations described below.

An order may be designated as "Discretionary", in which case the order will also automatically be designated as Day. A Discretionary Order may not be designated as a Preferenced Order. The order (or unexecuted portion thereof) shall be displayed in the system, if appropriate, using the displayed price selected by the entering party, with the system also retaining a non-displayed discretionary price range within which the entering party is also willing to execute if necessary. If a Discretionary Order is pegged, its displayed price will be adjusted in response to changes in the Nasdaq inside market. Starting at 7:30 a.m., until the 4 p.m. market close, Discretionary Orders may be entered into NNMS (or previously entered orders cancelled), but such orders entered prior to market open will not become available for execution until 9:30 a.m. Eastern Time. Discretionary Orders whose displayed price or discretionary price range does not lock or cross another Quote/Order will be available for execution at 9:30 a.m. All other Discretionary Orders will be added to the time-priority queue described in Rule 4706(a)(1)(F) and (a)(2)(B) and processed by NNMS at market open.

An order may be designated as "Pegged," in which case the order will also automatically be designated as Day. A Pegged Order may not be designated as a Preferenced Order. A Pegged Order (or unexecuted portion thereof) will be retained by NNMS and its price adjusted in response to changes in the Nasdaq inside market. A Pegged Order (*including a Discretionary Order that is pegged*) will be cancelled if there is no displayable Quote/Order to which its price can be pegged. Starting at 7:30 a.m., until the 4 p.m. market close, Pegged Orders may be entered into NNMS (or previously entered orders cancelled), but such orders entered prior to market open will not become available for execution until 9:30 a.m. Eastern Time. The initial price of Pegged Orders (*including Discretionary Orders that are pegged*) entered prior to market open will be established at 9:30 a.m. based on the Nasdaq inside bid or offer at that time. To maintain the capacity and performance of the NNMS, Nasdaq may at any time suspend the entry of Pegged Orders (*including Discretionary Orders that are pegged*) for all securities or for any security. Pegged Orders that are in the NNMS at the time of such suspension will continue to be available for adjustment and execution.

(C)–(E) No Change.

(F) A NNMS Market Participant may enter a Non-Directed Order that is either a market order or a limit order prior to the market's open. Market orders and limit orders designated as Immediate or Cancel orders *and Discretionary Orders whose displayed price or discretionary price range would lock or cross another Quote/Order if they were displayed* shall be held in a time-priority queue that will begin to be processed by NNMS at market open. If an Immediate or Cancel limit order is unmarketable at the time it reaches the front of time-priority processing queue, it will be returned to the entering market participant. Limit orders that are not designated as Immediate or Cancel orders shall be retained by NNMS for potential display in conformity with Rule 4707(b) and/or potential execution in conformity with Rule 4710(b)(1)(B).

(2) Entry of Non-Directed Orders by NNMS Order Entry Firms—In addition to the requirements in paragraph (a)(1) of this rule, the following conditions shall apply to Non-Directed Orders entered by NNMS Order-Entry Firms:

(A) All Non-Directed orders shall be designated as Immediate or Cancel, GTC or Day but shall be required to be entered as Non-Attributable if not entered as IOC. NNMS Order Entry Firms may designate orders as "Pegged[.]" *or "Discretionary,"* in which case the order will also automatically be designated as Day. For IOC orders, if after entry into the NNMS of a Non-Directed Order that is marketable, the order (or the unexecuted portion thereof) becomes non-marketable, the system will return the order (or unexecuted portion thereof) to the entering participant.

(B) A Non-Directed Order that is either a market or limit order may be entered prior to the market's open. [Such limit] *Limit* and market orders *designated as Immediate or Cancel and Discretionary Orders whose displayed price or discretionary price range would lock or cross another Quote/Order if they were displayed* will be held in a time-priority queue that will begin to be processed at market open. A limit order that is designated as IOC and is not marketable at the time it reaches the front of the time-priority processing queue will be returned to the entering participant.

(b)–(e) No change.

4707. Entry and Display of Quotes/Orders

(a) Entry of Quotes/Orders—Nasdaq Quoting Market Participants may enter Quotes/Orders into the NNMS, and NNMS Order Entry Firms may enter Non-Attributable Quotes/Orders into the NNMS, subject to the following requirements and conditions:

(1) No change.

(2) Upon entry of a Quote/Order into the system, the NNMS shall time-stamp it, which time-stamp shall determine the ranking of the Quote/Order for purposes of processing Non-Directed Orders as described in Rule 4710(b). For each subsequent size increase received for an existing quote at a given price, the system will maintain the original time-stamp for the original quantity of the quote and assign a separate time-stamp to that size increase. When a Pegged Order *(including a Discretionary Order that is pegged)* is displayed as a Quote/Order, its time-stamp will be updated whenever its price is adjusted.

(3)–(4) No change.

(b)–(e) No change.

4710. Participant Obligations in NNMS

(a) No change.

(b) Non-Directed Orders

(1) No change.

(A) No change.

(B) No change.

(i)–(iii) No change.

(iv) Exceptions.—The following exceptions shall apply to the above execution parameters:

a. If a Nasdaq Quoting Market Participant or NNMS Order Entry Firm enters a Non-Directed Order into the system, before sending such Non-Directed Order to the next Quoting Market Participants in queue, the NNMS will first attempt to match off the order against the Nasdaq Quoting Market Participant's or NNMS Order Entry Firm's own Quote/Order if the participant is at the best bid/best offer in Nasdaq. Nasdaq Quoting Market Participants and NNMS Order Entry Firms may avoid any attempted automatic system matching permitted by this paragraph through the use of an anti-internalization qualifier (AIQ) quote/order flag containing the following values: "Y" or "I", subject to the following restrictions:

Y—if the Y value is selected, the system will execute the flagged quote/order solely against attributable and non-attributable quotes/orders (displayed and reserve) of Nasdaq Quoting Market Participants and NNMS Order Entry Firms other than the party entering the AIQ "Y" flagged quote/order. If the only available trading interest is that of the same party entered the AIQ "Y" flagged quote/order, the system will not execute at an inferior price level, and will instead return the latest entered of those interacting quote/orders (or unexecuted portions thereof) to the entering party; *provided, however, that in the case of a Discretionary Order interacting with a bid/offer entered by the system pursuant to Rule 4710(b)(5), the Discretionary Order (or unexecuted portions thereof) will be returned.*

I—if the I value is selected, the system will execute against all available trading interest, including the quote/orders of the NNMS Order Entry Firm or Nasdaq Quoting Market Participant that entered the AIQ "I" flagged order, based exclusively on the execution algorithm selected when entering the AIQ I flagged quote/order.

b.–c. No change.

d. Reserved.

e. *If an NNMS Market Participant enters a Discretionary Order, the Discretionary Order shall first be executed against (or delivered in an amount equal to) the Quotes/Orders and Reserve Size of NNMS Market Participants (including displayed Discretionary Orders at their displayed prices) in conformity with this rule and subject to any applicable exceptions. If the full size of the incoming Discretionary Order cannot be executed at its displayed price, the order may also be executed against (or delivered in an amount equal to) the Quotes/Orders and Reserve Size of NNMS Market Participants within the incoming Discretionary Order's discretionary price range (including displayed Discretionary Orders at their displayed prices), in conformity with this rule and subject to any applicable exception. If the full size of the incoming Discretionary Order cannot be executed*

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[3] *See* letter from John M. Yetter, Associate General Counsel, Nasdaq, to Katherine A. England, Assistant Director, Division of Market Regulation ("Division"), Commission, dated November 14, 2003 ("Amendment No. 1"). In Amendment No. 1, Nasdaq clarified that discretionary orders entered by a market maker with an anti-internalization qualifier value of "Y" (*i.e.*, that may not be internalized) would be cancelled if the only available trading interest is a bid/offer from the same market maker entered automatically by the system under NASD Rule 4710(b)(5). In Amendment No. 1, Nasdaq also clarified the order execution priority for discretionary orders resting on the book.

[4] *See* letter from John M. Yetter, Associate General Counsel, Nasdaq, to Katherine A. England, Assistant Director, Division, Commission, dated November 20, 2003 ("Amendment No. 2"). In Amendment No. 2, Nasdaq reiterated its request for accelerated approval of the proposed rule change pursuant to section 19(b)(2) of the Act.

[5] *See* letter from John M. Yetter, Associate General Counsel, Nasdaq, to Katherine A. England, Assistant Director, Division, Commission, dated November 26, 2003 ("Amendment No. 3"). In Amendment No. 3, Nasdaq amended the description of the proposal to, among other things, explain the treatment of discretionary orders at the opening and DAY order only designation. Nasdaq also amended the proposed rule text to clarify the conditions under which a resting discretionary order would execute at a discretionary price and the price priority of discretionary orders, to replace the phrase "order or Quote/Order" with "Non-Directed Order or Quote/Order," and to reflect the Commission's approval of SR–NASD–2003–134. *See* Securities Exchange Act Release No. 48821 (November 20, 2003) (Order granting approval of SR–NASD–2003–134).

[6] The Commission recently published for notice and public comment proposed rule changes filed by Nasdaq that proposes to modify the rules governing the operation of SuperMontage. *See* Securities Exchange Act Release Nos. 48501 (September 17, 2003), 68 FR 56358 (September 30, 2003) (Notice of Filing of SR–NASD–2003–128); 48671 (October 21, 2003), 68 FR 61531 (October 28, 2003) (Notice of Filing of SR–NASD–2003–135); 48674 (October 21, 2003), 68 FR 61508 (October 28, 2003) (Notice of Filing of SR–NASD–2003–149); 48675 (October 21, 2003), 68 FR 61528 (October 28, 2003) (Notice of Filing of SR–NASD–2003–143); and 48798 (November 17, 2003) (Notice of Filing and Immediate Effectiveness of SR–NASD–2003–150). The text of the proposed rule change is shown as marked against the text of the SuperMontage rules as currently in effect, and therefore reflects the immediate effectiveness of SR–NASD–2003–150, but does not reflect proposed rule changes that are not yet effective. Nasdaq represents that it will file such amendments to SR–NASD–2003–165 or other pending filings as Commission staff may request to reflect the approval, disapproval, immediate effectiveness, or withdrawal of other filings.

in this manner, the order may also be executed by (or receive delivery of) displayed Discretionary Orders with discretionary price ranges that overlap with the incoming Discretionary Order's discretionary price range, in conformity with this rule and subject to any applicable exception. The unexecuted portion of a Discretionary Order will then be retained by NNMS for potential display in conformity with Rule 4707(b).

When a Discretionary Order is displayed as a Quote/Order, Non-Directed Orders or Quotes/Orders entered at the displayed price (including incoming Discretionary Orders with a displayed or discretionary price equal to the displayed Discretionary Order's displayed price) may be executed against (or delivered to) the displayed Discretionary Order, and market orders may be executed against (or delivered to) the displayed Discretionary Order when its displayed price is at the inside. Non-Directed Orders or Quotes/Orders (other than Discretionary Orders) entered at a price within the displayed Discretionary Order's discretionary price range may be executed by (or receive delivery of) the displayed Discretionary Order at the price of the incoming Non-Directed Order or Quote/Order if there are no displayed Quotes/Orders at that price or better. Incoming Discretionary Orders with a discretionary price range that overlaps with the displayed Discretionary Order's discretionary price range may be executed by (or receive delivery of) the displayed Discretionary Order at the overlapping price most favorable to the displayed Discretionary Order. A displayed Discretionary Order that may be executed at a price in its discretionary price range will execute against Non-Directed Orders and Quotes/Orders entered by NNMS Participants in the automatic execution functionality of the NNMS, and will be delivered to Non-Directed Orders and Quotes/Orders entered by NNMS Order-Delivery ECNs.

For purposes of determining execution priority, the price priority of a displayed Discretionary Order will be based on its displayed price when it may be executed at its displayed price. When displayed Discretionary Orders may be executed at prices within their discretionary price ranges, their price priority vis-à-vis one another will be based on their most aggressive discretionary prices, and their price priority vis-à-vis Quotes/Orders that are not Discretionary Orders will be based upon the price at which they are executable.

(C)–(D) No change.

(2)–(8) No change.

(c)–(e) No change.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

To provide increased functionality to system users, Nasdaq proposes to adopt a new order type, DO, for use in SuperMontage. A DO would allow market participants to enter an order that has both a displayed bid or offer price and a non-displayed discretionary price range within which the participant is also willing to buy or sell, if necessary. For example, a market participant may enter a DO to buy at $20.00, with a discretionary price range of $0.05, thereby indicating that the market participant wishes to buy at $20.00, but is also willing to pay up to $20.05, if necessary. If the $20.00 price matches the best offer (*i.e.*, if the $20.00 price is marketable), the DO would first execute against Quotes/Orders and reserve size at that price. If the $20.00 price is not marketable, or if size available at that price is exhausted, the DO would next execute against Quotes/Orders (including DOs at their displayed prices) and reserve size at successively higher prices, up to $20.05, and then interact with displayed DOs with overlapping discretionary price ranges. If the incoming DO is not filled through this process, it would be displayed on the book at $20.00 along with other quotes/orders at that price.

DOs on the book would interact with incoming orders in the following manner. Market orders would execute against or be delivered to a DO's displayed price if it is at the inside market, with the DO's discretionary price range not taken into consideration. Incoming limit orders and DOs that are marketable against the best bid/best offer would likewise execute against or be delivered to a DO with a displayed price at the inside market. Incoming limit orders with prices that fall within the discretionary ranges of DOs may be executed by DOs, with the execution occurring at the price of the incoming order, if there are no displayed Quotes/Orders at that price or better.[7] Similarly, incoming DOs whose discretionary price ranges overlap with the discretionary price ranges of resting DOs would execute at the price most beneficial to the resting order. Thus, if the best bid was $20.00, and a DO to buy at $20.00 with discretion up to $20.02 was on the book, the DO could interact with (i) a market order (at $20.00), (ii) a marketable limit order or DO (at $20.00), (iii) a limit order priced at $20.01 or $20.02 (at the price of the limit order), or (iv) a DO with a discretionary price of $20.01 and/or $20.02, at the lowest overlapping price. For purposes of determining execution priority, the price priority of a displayed DO would be based on its displayed price when it may be executed at its displayed price.[8] When displayed DOs may be executed at prices within their discretionary price ranges, their price priority vis-à-vis one another would be based on their most aggressive discretionary prices, and their price priority vis-à-vis Quotes/Orders that are not DOs will be based upon the price at which they are executable.[9]

If a new quote/order would interact with a resting DO's discretionary price(s), SuperMontage would immediately execute the overlapping portion of the newly-entered quote/order. Thus, if the best bid was $20.00, the best offer was $20.08, and a DO to buy at $20.00 with discretion up to $20.04 was on the book, a new offer at $20.03 would be immediately executed against by the resting DO. If the new quote/order is entered by an NNMS Order-Delivery ECN, however, SuperMontage will instead deliver an order to the ECN for its acceptance.[10]

It should be noted that when SuperMontage matches an incoming Non-Directed Order or Quote/Order against a price in the discretionary price range of a DO submitted by an NNMS Order-Delivery ECN residing in the SuperMontage book, the resting DO would: (i) Automatically execute if the incoming order has been entered by an NNMS automatic-execution participant, or (ii) be delivered if the incoming order has been entered by an NNMS Order-Delivery ECN. This is the case because the participant entering the incoming order would have no awareness of the discretionary price range reflected in the resting DO, and would therefore expect its order to be displayed and provide liquidity, rather than to execute. By contrast, the participant entering the resting DO has, by that fact, expressed a willingness to buy (sell) at prices higher (lower) than its displayed price, but not a willingness to make its potential interest at other price levels known to other market participants. Accordingly, Nasdaq believes that it is more in keeping with the parties' expectations, and therefore fairer, to base the determination of whether the interacting orders should be delivered or automatically executed on the status of the party entering the incoming order, rather than the status of the party that originally entered the DO. When an incoming order is matched against a resting DO entered by an Order-Delivery ECN at the displayed price of the resting DO, however, the incoming order would be delivered to the Order-Delivery ECN.

DOs may only be entered as DAY orders (reflecting Nasdaq's expectation that market participants would not generally seek to reflect discretionary trading interest at multiple price points on an inter-day basis). DOs may be entered (but not displayed or executed) prior to market open. Accordingly, DOs entered before market open that do not lock or cross other Quotes/Orders will be available for interaction with other orders at 9:30 a.m. DOs that would lock or cross another Quote/Order if they were displayed will be held in a time-priority queue (along with IOC orders) and processed by the NNMS at 9:30 a.m. Since a market participant entering a DO would prefer the order to execute at its displayed price (but is also willing to accept executions within its discretionary price range), Nasdaq believes it is appropriate to prevent executions of DOs prior to 9:30 a.m., since the comparatively scattered nature of trading before the market open makes it more likely that the DO would execute at a discretionary price. This is particularly the case during the "opening spin" described in NASD Rule 4710(b)(3)(B), where DOs would have a marked tendency to execute at prices away from their displayed price. For example, if a DO to buy at 10 with a discretionary price range of up to 10.05 was processed through the opening spin, and was entered in time after a Quote/Order to sell with a price of 10.02, the DO could execute at 10.05, since Quotes/Orders in the opening spin are executed at the price of the more recent Quote/Order.[11]

DOs may not be preferenced or directed to another market participant. In conformity with NASD Rule 4706(a)(1)(C), the system will not allow a DO to sell short to be executed if its execution would violate the short sale rule. DOs entered by a market maker with an anti-internalization qualifier value of "Y" (*i.e.*, that may not be internalized) will be cancelled if the only available trading interest is a bid/offer entered automatically by the system under NASD Rule 4710(b)(5) after the market maker's quote has been closed.[12]

Market participants may peg the displayed price of a DO in a manner similar to that of a pegged order.[13] Thus, a market participant can elect to enter a pegged-discretionary order that has its displayed price pegged to equal the Nasdaq inside on the same side of the market as the DO. The discretionary price range of the DO would, in turn, move along with the displayed pegged price. As with a regular pegged order, the market participant entering the order can specify a price cap, so that the displayed price of the order will become permanently fixed if the Nasdaq inside equals the price cap. A DO cannot be designated as a reverse pegged order, however, since its discretionary price range would then lock or cross the price to which the order would be pegged. If Nasdaq suspends the entry of pegged orders during a period when they are negatively impacting system capacity and performance, as permitted by NASD Rule 4706(a)(1)(B), the suspension would apply to pegged-discretionary orders as well.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of section 15A of the Act,[14] in general, and with section 15A(b)(6) of the Act,[15] in particular, in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Nasdaq believes the proposed rule change would provide market participants with a voluntary tool to express potential trading interest at multiple price levels. Nasdaq notes that the Commission has found a similar order offered by at least one other market center to be consistent with the Act.[16]

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the NASD consents, the Commission will:

(A) By order approve such proposed rule change; or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Comments may also be submitted electronically at the following e-mail address: *rule-comments@sec.gov*. All comment letters should refer to File No. SR–NASD–2003–165. This file number should be included on the subject line if e-mail is used. To help us process and review comments more efficiently, comments should be sent in hardcopy or by e-mail but not by both methods. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written

[7] *See* Amendment No. 3, *supra* note 5.

[8] *See* Amendment No. 1, *supra* note 3.

[9] *See* Amendment No. 3, *supra* note 5.

[10] *Id.*

[11] *Id.*

[12] *Id.*

[13] *See* Securities Exchange Act Release No. 48798 (November 17, 2003) (Notice of Filing and Immediate Effectiveness of SR–NASD–2003–150).

[14] 15 U.S.C. 78*o*–3.

[15] 15 U.S.C. 78*o*–3(b)(6).

[16] *See* Securities Exchange Act Release No. 44983 (October 25, 2001), 66 FR 55225 (November 1, 2001) (SR–PCX–00–25).

communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filings will also be available for inspection and copying at the principal office of the Association. All submissions should refer to File No. SR–NASD–2003–165 and should be submitted by December 30, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[17]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 03–30500 Filed 12–8–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48864; File No. SR–NASD–2003–169]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc. To Remove Pricing for Tools and Tools Plus Products

December 2, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4[2] thereunder, notice is hereby given that on November 24, 2003, the National Association of Securities Dealers, Inc. ("NASD"), through its subsidiary, The Nasdaq Stock Market, Inc. ("Nasdaq"), filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Nasdaq. Pursuant to section 19(b)(3)(A)(iii) of the Act[3] and Rule 19b–4(f)(3) thereunder,[4] Nasdaq has designated this proposal as one concerned solely with the administration of the self-regulatory organization, which renders the proposed rule change effective immediately upon filing. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq is proposing to remove pricing for the Tools and Tools Plus products formerly supported by Nasdaq. Nasdaq will implement the proposed rule change immediately.

The text of the proposed rule change is below. Proposed new language is in *italics;* proposed deletions are in [brackets].

* * * * *

7000. Charges for Services and Equipment

7050. Other Services

(a)–(d) No change.

[(e) Software Products]

[(1) The following fees shall be paid by customers of Tools ™:]

[(A) Fee Charge]	[Price]
[Minimum fee per market participant (includes coverage of up to 49 stocks on an unlimited number of Nasdaq Workstation II terminals located at a single office)].	[$1,000/month]
[Coverage of each additional block of 25 or fewer stocks]	[$500/month]
[Each additional office equipped with Tools]	[$1,000/month]
[Aggregate maximum fee per market participant]	[$15,000/month]

[B) Customers who also subscribe to Tools Plus℠ services shall receive the following reduction on fees incurred pursuant to subsection (1)(A):]

[Number of Tools Plus Terminals]	[Discount]
[Five or fewer Tools Plus terminals]	[50%]
[Between six and 15 Tools Plus terminals]	[75%]
[Greater than 15 Tools Plus terminals]	[100%]

[(2) The following deposits and fees shall be paid by all customers of Tools Plus:]

[(A) Each customer shall pay a deposit at the time it initially subscribes to Tools Plus equal to two times the subscriber's aggregate monthly Terminal Charge (as defined below), calculated based on the number of terminals ordered by the subscriber upon subscribing to Tools Plus (the "Deposit"). The Deposit shall be refunded to the customer upon termination of its subscription to Tools Plus after deducting any outstanding balances owed Nasdaq.]

[(B) Terminal Charge]

[Fee Charge]	[Price]
[Terminal Charge per full functionality terminal equipped with Tools Plus]	
[(More than 30 terminals if customer signs two-year contract)]	[$500/terminal/month]
[(All other situations)]	[$750/terminal/month]
[Terminal Charge per correspondent/ floor broker terminal equipped with Tools Plus].	[$350/terminal/month]
[Minimum Terminal Charge]	[$2,000/month]
[(C) Fee Charge]	[Price]

[Market data redistribution charges, which are set by the relevant market data provider, are passed through to Tools Plus subscribers at cost.]

[(D) Labor rates for programming customized interfaces and maintenance on interfaces for customers of Nasdaq Tools Plus shall be billed according to the following rates:]

[Calendar Year 2002]	[Calendar Year 2003 and thereafter]
[Senior Programmer $175/hour]	[$200/hour]
[Programmer $125/hour]	[$150/hour]
[Junior Programmer $100/hour]	[$125/hour]
[Project Management $150/hour]	[$175/hour]
[Network Engineer $125/hour]	[$150/hour]
[Operations Support $100/hour]	[$125/hour]
[Connection Charge to Nasdaq Computer-to-Computer Interface (CTCI)]	[$265/month]
[Connection Charge to Nasdaq Service Delivery Platform (SDP) (charged to subscribers who handle customer orders)].	[$250/month]
[Installation Fee] [1]	
[(one-time charge for Tools Plus and includes up to 15 terminals)]	[$16,000]
[(each additional set of up to 15 terminals)]	[$13,000]
[Port Charges (one-time charge per line)]	[$1,250]
[(one-time aggregate charge for two lines)]	[$2,500]
[Training Fee on-site at customer]	[$400/day (plus travel expenses)]
[Training Fee for course at Nasdaq Tools]	[$150/course]
[Electronic communication network (ECN) maintenance charge (charged to subscribers who route orders to ECN)].	[$250/per ECN/month]

[1] [Installation Fee includes two hours of on-site training of customer personnel and all programming costs associated with one customized interface for the customer to access its clearing firm.]

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Nasdaq has discontinued support for the Tools and Tools Plus software product lines, effective November 14, 2003 and November 11, 2003, respectively. Users of these products were informed in the second quarter of 2003 of Nasdaq's intention to discontinue support of the products in the fourth quarter of 2003. Accordingly, Nasdaq is removing the prices for these product lines from the fee schedule in the NASD Manual.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of section 15A of the Act.[5] The proposed rule change merely eliminates fees for product lines that are no longer supported by Nasdaq.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3)(A)(iii) of the Act[6] and Rule 19b–4(f)(3) thereunder, because Nasdaq has designated the proposal as concerned solely with the administration of the exchange.[7] At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Comments may also be submitted electronically at the following e-mail address: *rule-comments@sec.gov.* All comment letters should refer to File No. SR–NASD–2003–169. This file number should be included on the subject line if e-mail is used. To help us process and review comments more efficiently, comments should be sent in hardcopy or by e-mail but not by both methods. Copies of the submission, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at

[17] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(3).

[5] 15 U.S.C. 78o–3.

[6] 15 U.S.C. 78s(b)(3)(A)(iii).

[7] 17 CFR 240.19b–4(f)(3).

the principal office of the NASD. All submissions should refer to File No. SR–NASD–2003–169 and should be submitted by December 30, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 03–30503 Filed 12–8–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48869; File No. SR–CSE–2003–16]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by National Stock Exchange To Extend a Pilot Amending Exchange Rule 12.6, Customer Priority, To Require Designated Dealers To Better Customer Orders at the National Best Bid or Offer by Whole Penny Increments

December 3, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on November 28, 2003, National Stock Exchange ("Exchange")[3] filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange filed this proposal pursuant to section 19(b)(3)(A) of the Act[4] and Rule 19b–4(f)(6)[5] thereunder, which renders the proposal effective upon filing with the Commission.[6] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[8] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Exchange was formerly known as The Cincinnati Stock Exchange. See Securities Exchange Act Release No. 48774 (November 12, 2003), 68 FR 65332 (November 19, 2003) (SR–CSE–2003–12).

[4] 15 U.S.C. 78s(b)(3)(A).

[5] 17 CFR 240.19b–4(f)(6).

[6] The Exchange gave the Commission written notice of its intention to file the proposed rule change on November 24, 2003. The Commission reviewed the Exchange's submission, and asked the Exchange to file the instant proposed rule change pursuant to Rule 19b–4(f)(6) under the Act. The Exchange asked the Commission to waive the 30-day operative delay. 17 CFR 240.19b–4(f)(6).

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to extend the termination date of a pilot that amended Exchange Rule 12.6, "Customer Priority," to add Interpretation .02.

Interpretation .02 requires an Exchange Designated Dealer ("Specialist") to better the price of a customer limit order that is held by that Specialist if that Specialist determines to trade with an incoming market or marketable limit order.[7] Under the pilot rule, the Specialist is required to better a customer limit order at the national best bid or offer ("NBBO") by at least one penny and at a price outside the current NBBO by at least the nearest penny increment. Through this proposal, the Exchange is seeking only to extend the existing pilot, and the exemption letters associated therewith,[8] through June 30, 2004. The Exchange proposes no other substantive changes to the pilot. The text of the proposed rule change is available at the Exchange and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to extend its pilot program, under Exchange Rule 12.6,[9] which relates to the trading of securities in subpenny increments.[10] Under the pilot, Interpretation .02 of Exchange Rule 12.6 requires a Specialist to better the price of a customer limit order held by the Specialist by at least one penny (for those customer limit orders at the NBBO) or at least the nearest penny increment (for those customer limit orders that are not at the NBBO) if the Specialist determines to trade with an incoming market or marketable limit order.[11]

The purpose of the Interpretation is to prevent a Specialist from taking unfair advantage of customer limit orders held by that Specialist by trading ahead of such orders with incoming market or marketable limit orders. Notwithstanding the fact that a Specialist may price-improve incoming orders by providing prices superior to that of customer limit orders it holds, customers should have a reasonable expectation to have their orders filled at their limit order prices. This expectation should be reflected in reasonable access to incoming contra-side order flow, unless other customers place better-priced limit orders with the Specialist or the Specialist materially improves upon the customer limit order prices (not the customers' quoted prices) it holds.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of section 6(b) of the Act,[12] in general, and section 6(b)(5) of the Act,[13] in particular, which requires, among other things, that the rules of an exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not:

(i) Significantly affect the protection of investors or the public interest;

(ii) Impose any significant burden on competition; and

(iii) Become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to section 19(b)(3)(A) of the Act[14] and Rule 19b–4(f)(6)[15] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

The Exchange has requested that the Commission waive the 30-day operative delay. The Commission believes that such waiver is consistent with the protection of investors and the public interest, for it will allow the pilot to continue without interruption. For these reasons, the Commission designates the proposal to be effective and operative upon filing with the Commission.[16]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Comments may also be submitted electronically at the following e-mail address: *rule-comments@sec.gov*. All comment letters should refer to File No. SR–CSE–2003–16. This file number should be included on the subject line if e-mail is used. To help us process and review comments more efficiently, comments should be sent in hardcopy or by e-mail but not by both methods. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to file number SR–CSE–2003–16 and should be submitted by December 30, 2003.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[17]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 03–30502 Filed 12–8–03; 8:45 am]

BILLING CODE 8010–01–P

[7] *See* Securities Exchange Act Release Nos. 46274 (July 29, 2002), 67 FR 50743 (August 5, 2002) (SR–CSE–2001–06)("Pilot"); 46554 (September 25, 2002), 67 FR 6276 (October 4, 2002)(SR–CSE–2002–12)("Pilot Extension"); 46929 (November 27, 2002), 67 FR 72711 (December 6, 2002)(SR–CSE–2002–17)("Second Extension"); and 47941 (May 29, 2003), 68 FR 33751 (June 5, 2003)(SR–CSE–2003–05)("Third Exemption").

[8] *See* letter from Robert L.D. Colby ("Colby"), Deputy Director ("DD"), Division of Market Regulation ("Division"), Commission, to Jeffrey T. Brown ("Brown"), Senior Vice President ("SVP") and General Counsel ("GC"), the Exchange, (July 26, 2002) ("Initial Exemption Letter") in response to letter from Brown, SVP and GC, Exchange, to Annette Nazareth ("Nazareth"), Director, Division, Commission (November 27, 2001)("Initial Exemptive Request"); letter from Colby, DD, Division, Commission, to Brown, SVP and GC, Exchange (September 25, 2002) (amending and extending Initial Exemption Letter)("Amended Exemption Letter") in response to letter from Brown, SVP and GC, Exchange, to Nazareth, Director, Division, Commission (September 18, 2002)("Amended Exemption Request"); letter from Alden S. Adkins, Associate Director, Division, Commission, to Brown, SVP and GC, Exchange (November 27, 2002)("Second Exemption Extension Letter") in response to letter from Brown, SVP and GC, Exchange, to Nazareth, Director, Division, Commission (November 20, 2002)("Second Exemption Request"); and letter from Colby, DD, Division, Commission, to Brown, SVP and GC, Exchange, (May 29, 2003)("Third Exemption Extension Letter") in response to letter from Brown, SVP and GC, Exchange, to Nazareth, Director, Division, Commission (May 19, 2003)("Third Exemption Request").

[9] Exchange Rule 12.6 provides, in pertinent part, that no member shall (i) personally buy or initiate the purchase of any security traded on the Exchange for its own account or for any account in which it or any associated person of the member is directly or indirectly interested while such member holds or has knowledge that any person associated with it holds an unexecuted market or limit price order to buy such security in the unit of trading for a customer, or (ii) sell or initiate the sale of any such security for any such account while it personally holds or has knowledge that any person associated with it holds an unexecuted market or limit price order to sell such security in the unit of trading for a customer.

[10] In conjunction with the proposed rule change, the Exchange has requested that the Commission again extend the Amended Exemption Request pursuant to Rules 11Ac1–1(e) (17 CFR 240.11Ac1–1(e)), 11Ac1–2(g) (17 CFR 240.11Ac1–2(g)) and 11Ac1–4(d) (17 CFR 240.11Ac1–4(d)) of the Act to allow subpenny quotations to be rounded down (buy orders) and rounded up (sell orders) to the nearest penny for quote dissemination for Nasdaq and listed securities. *See* letter from Jennifer M. Lamie ("Lamie"), Assistant General Counsel ("AGC") and Secretary, to Nazareth, Director, Division, Commission (November 21, 2003) ("Fourth Exemptive Request"). Concurrent with the instant rule proposal, the Commission has granted the Fourth Exemptive Request. *See* letter from Colby, DD, Division, Commission, to Lamie, AGC and Secretary, CSE (December 1, 2003)("Fourth Exemption Letter").

[11] Interpretation .01 to Exchange Rule 12.6 provides that "[i]f a Designated Dealer holds for execution on the Exchange a customer buy order and a customer sell order that can be crossed, the Designated Dealer shall cross them without interpositioning itself as a dealer."

[12] 15 U.S.C. 78f(b).

[13] 15 U.S.C. 78f(b)(5).

[14] 15 U.S.C. 78s(b)(3)(A).

[15] 17 CFR 240.19b–4(f)(6).

[16] For purposes only of accelerating the operative date of the proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

SMALL BUSINESS ADMINISTRATION

Declaration of Disaster #3559, Amdt. 2]

Commonwealth of Puerto Rico

In accordance with notices received from the Department of Homeland Security—Federal Emergency Management Agency, effective November 23 and December 2, 2003, the above numbered declaration is hereby amended to establish the incident period for this disaster as beginning on November 10, 2003, and continuing through November 23, 2003. This declaration is also amended to include the municipalities of Cabo Rojo, Lajas and Luquillo as disaster areas due to damages caused by severe storms, flooding, mudslides and landslides occurring on November 10, 2003, and continuing through November 23, 2003.

In addition, applications for economic injury loans from small businesses located in the contiguous municipalities Hormigueros, Mayaguez, and San German may be filed until the specified date at the previously designated location. All other municipalities contiguous to the above named primary municipalities have been previously declared.

All other information remains the same, *i.e.*, the deadline for filing applications for physical damage is January 20, 2004, and for economic injury the deadline is August 23, 2004.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Dated: December 3, 2003.

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. 03–30430 Filed 12–8–03; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3558, Amdt. 3]

State of West Virginia

In accordance with a notice received from the Department of Homeland Security—Federal Emergency Management Agency, effective November 30, 2003, the above

[17] 17 CFR 200.30–3(a)(12).

numbered declaration is hereby amended to establish the incident period for this disaster as beginning on November 11, 2003, and continuing through November 30, 2003.

All other information remains the same, *i.e.*, the deadline for filing applications for physical damage is January 20, 2004, and for economic injury the deadline is August 23, 2004.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Dated: December 3, 2003.

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. 03–30429 Filed 12–8–03; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3558, Amdt. 2]

State of West Virginia

In accordance with a notice received from the Department of Homeland Security—Federal Emergency Management Agency, effective December 1, 2003, the above numbered declaration is hereby amended to include Harrison County as a disaster area due to damages caused by severe storms, flooding and landslides occurring on November 11, 2003, and continuing.

In addition, applications for economic injury loans from small businesses located in the contiguous county of Barbour in the State of West Virginia may be filed until the specified date at the previously designated location. All other counties contiguous to the above named primary county have been previously declared.

All other information remains the same, *i.e.*, the deadline for filing applications for physical damage is January 20, 2004, and for economic injury the deadline is August 23, 2004.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Dated: December 2, 2003.

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. 03–30431 Filed 12–8–03; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice # 4528]

Notice of Meeting; United States International Telecommunication Advisory Committee; Preparations for ITU–T Study Group 16

January 6, 2004.

The Department of State announces a meeting of the U.S. International Telecommunication Advisory Committee (ITAC). The purpose of the Committee is to advise the Department on policy, technical and operational issues with respect to international telecommunications standardization bodies such as the International Telecommunication Union (ITU).

The ITAC will meet on January 6, 2004 to prepare for an ITU Telecommunication Standardization Study Group 16 meeting to be held in Geneva from January 20–30, 2004. The meeting will be held at the offices of Communication Technologies, 14151 Newbrook Dr., Chantilly, Virginia. The time of the meeting will be announced on the e-mail reflector (list server) *SGD@ALMSNTSA.LMLIST.State.gov*. People may join this reflector by sending a message saying they wish to join the list to *itac@state.gov*.

Dated: November 21, 2003.

James Ennis,

Director, Advanced Network Technologies, Department of State.

[FR Doc. 03–30276 Filed 12–8–03; 8:45 am]

BILLING CODE 4710–45–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2003–71]

Petitions for Exemption; Summary of Petitions Received

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petition for exemption received.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption, part 11 of Title 14, Code of Federal Regulations (14 CFR), this notice contains a summary of a certain petition seeking relief from specified requirements of 14 CFR. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before December 29, 2003.

ADDRESSES: Send comments on the petition to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2003–16288 at the beginning of your comments. If you wish to receive confirmation that the FAA received your comments, include a self-addressed, stamped postcard.

You may also submit comments through the Internet to *http://dms.dot.gov*. You may review the public docket containing the petition, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Dockets Office (telephone 1–800–647–5527) is on the plaza level of the NASSIF Building at the Department of Transportation at the above address. Also, you may review public dockets on the Internet at *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Jan Thor (425–227–2127), Transport Airplane Directorate (ANM–113), Federal Aviation Administration, 1601 Lind Ave SW., Renton, WA 98055–4056; or Caren Centorelli (202–267–8199), Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85 and 11.91.

Issued in Washington, DC, on December 3, 2003.

Gary A. Michel,

Acting Assistant Chief Counsel for Regulations.

Petitions for Exemption

Docket No.: FAA–2003–16288.

Petitioner: Precision Conversions LLC.

Section of 14 CFR Affected: 14 CFR 25.783(h), 25.807(g)(1), 25.807(i)(1), 25.810(a)(1), 25.812(e), 25.812(h), 25.813(b), 25.857(e), 25.1445(a)(2), and 25.1447(c)(1).

Description of Relief Sought: To permit relief from the requirements of these regulations to allow carriage of four non-crewmembers (commonly referred to as supernumeraries) on Boeing Model 757–200 airplanes which have been converted from a passenger to freighter configuration.

[FR Doc. 03–30451 Filed 12–8–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. 2003–70]

Petitions for Exemption; Summary of Petitions Received

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petition for exemption received.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption, part 11 of Title 14, Code of Federal Regulations (14 CFR), this notice contains a summary of a certain petition seeking relief from specified requirements of 14 CFR. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before December 29, 2003.

ADDRESSES: Send comments on the petition to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2003–14299 at the beginning of your comments. If you wish to receive confirmation that the FAA received your comments, include a self-addressed, stamped postcard.

You may also submit comments through the Internet to *http://dms.dot.gov*. You may review the public docket containing the petition, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Dockets Office (telephone 1–800–647–5527) is on the plaza level of the NASSIF Building at the Department of Transportation at the above address. You may also review public dockets on the Internet at *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Madeleine Kolb (425–227–1134), Transport Airplane Directorate (ANM–113), Federal Aviation Administration, 1601 Lind Ave SW., Renton, WA 98055–4056; or Caren Centorelli (202–267–8199), Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85 and 11.91.

Issued in Washington, DC, on December 3, 2003.

Gary A. Michel,

Acting Assistant Chief Counsel for Regulations.

Petitions for Exemption

Docket No.: FAA–2003–14299.

Petitioner: Structural Integrity Engineering.

Section of 14 CFR Affected: 14 CFR 25.812 (e) and (h); 25.813(b); 25.857(e); 25.1447 (c) (1); and 25.1449.

Description of Relief Sought: Exemption to provide relief from the requirements of certain sections of 14 CFR part 25 to allow carriage of non-crewmembers in a compartment behind the flight deck on Boeing Model 757–200 airplanes which have been converted from a passenger to freighter configuration.

[FR Doc. 03–30452 Filed 12–8–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2003–69]

Petitions for Exemption; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing and disposition of petitions for exemption part 11 of title 14, Code of Federal Regulations (14 CFR), this notice contains the disposition of certain petitions previously received. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

FOR FURTHER INFORMATION CONTACT: Caren Centorelli, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591. Tel. (202) 267–8199.

This notice is published pursuant to 14 CFR 11.85 and 11.91.

Issued in Washington, DC, on December 3, 2003.

Gary A. Michel,

Acting Assistant Chief Counsel for Regulations.

Dispositions of Petitions

Docket No.: FAA–2003–16037.

Petitioner: Custom Air Transport.

Section of 14 CFR Affected: 14 CFR 25.855(a), 25.857(e) and 25.1447(c)(1).

Description of Relief Sought/Disposition: To permit type certification of the Boeing 727–200 passenger-to-freight converted airplanes with provisions for the carriage of supernumeraries.

Grant, 11/03/2003, Exemption No. 8164.

Docket No.: FAA–2003–15565.

Petitioner: Israel Aircraft Industries, Ltd.

Section of 14 CFR Affected: 14 CFR 25.783(h), 25.807(g)(1), 25.810(a)(1), 25.813(b)(3) and 25.857(e).

Description of Relief Sought/Disposition: To permit certification of Boeing Model 737–300 airplanes which have been converted from a passenger to a freighter configuration with provisions for the carriage of supernumeraries.

Grant, 11/17/2003, Exemption No. 8174.

[FR Doc. 03–30453 Filed 12–8–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application 04–04–C–00–DUJ To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Dubois-Jefferson County Airport, Falls Creek, PA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Dubois-Jefferson County Airport under the provisions of the 49 U.S.C. 40117 and Part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before January 8, 2004.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Ms. Lori Ledebohm.

Community Planner/PFC Contact, Harrisburg Airports District Office, 3905 Hartzdale Drive, Suite 508, Camp Hill, PA 17011.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Robert W. Shaffer of Clearfield-Jefferson Counties Regional Airport Authority at the following address: P.O. Box 299, Falls Creek, Pennsylvania 15840.

Air carriers and foreign air carriers may submit copies of written comments previously provided to Clearfield-Jefferson Counties Regional Airport Authority under section 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Lori Ledebohm, Community Planner/PFC Contact, Harrisburg Airports District Office, 3905 Hartzdale Drive, Suite 508, Camp Hill, PA 17011, 717–730–2835. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Dubois-Jefferson County Airport under the provisions of the 49 U.S.C. 40117 and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On November 10, 2003, the FAA determined that the application to impose and use the revenue from a PFC submitted by Clearfield-Jefferson Counties Regional Airport Authority was substantially complete within the requirements of section 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than February 7, 2004.

The following is a brief overview of the application

Proposed charge effective date: April 1, 2004.

Proposed charge expiration date: February 1, 2011.

Level of the proposed PFC: $4.50.

Total estimated PFC revenue: $325,413.

Brief description of proposed project(s):

Impose and Use

Airport Master Plan
Wildlife Hazard Assessment
Runway Safety Areas—Runway 7 End
Electrical Vault
Snow Removal Equipment
High Intensity Runway Lighting
ARFF Building
ARFF Vehicle
Replace Security Card Gates
Expand Terminal Apron
Security Enhancements
Impose Runway 25 Safety Area (Land Acquisition), Phase I

PFC Formulation

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: Non-scheduled on-demand air carriers filing FAA Form 1800–31.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA regional Airports office located at: Eastern Region, Airports Division, AEA–610, 1 Aviation Plaza, Jamaica, New York 11434.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at Clearfield-Jefferson Counties Regional Airport Authority.

Issued in Camp Hill, PA on November 21, 2003.

Lori Ledebohm,

PFC Contact, Harrisburg Airports District Office, Eastern Region.

[FR Doc. 03–30464 Filed 12–8–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application 04–03–C–00–CID to Impose and Use the Revenue From a Passenger Facility Charge (PFC) at the Eastern Iowa Airport, Cedar Rapids, IA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at the Eastern Iowa Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before January 8, 2004.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Federal Aviation Administration, Central Region, Airports Division, 901 Locust Street, Kansas City, MO 64106.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Lawrence K. Mullendore, Airport Director, at the following address: The Eastern Iowa Airport, 2515 Wright Brothers Blvd. W, Cedar Rapids, Iowa 52404.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Eastern Iowa Airport, Cedar Rapids, Iowa, under section 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Nicoletta S. Oliver, Airports Compliance Specialist, FAA, Central Region, 901 Locust Street, Kansas City, MO 64106, (816) 329–2642. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at the Eastern Iowa Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On December 2, 2003, the FAA determined that the application to impose and use the revenue from a PFC submitted by the Cedar Rapids Airport Commission, was substantially complete within the requirements of section 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than February 26, 2004.

The following is a brief overview of the application.

Level of the proposed PFC: $4.50.

Proposed charge effective date: March 2004.

Proposed charge expiration date: July 2006.

Total estimated PFC revenue: $4,182,615.

Brief description of proposed project(s): Acquire two snow removal end loaders; Rehabilitate Runway 13/31; Extend south end of Runway 13/31; Improve north end of Runway 13/31 safety area and relocate road; Extend north end of Runway 13/31 and construct Taxiway F connection; Improve east end of Runway 9/27 safety area; Reconstruct T-hangar taxiways and general aviation aprons; Construct runway and taxiways overlay; Construct cargo ramp expansion (Phase I); Construct terminal and cargo ramp expansion and rehabilitation (Phase (II); Construct cargo apron; Rehabilitate cargo apron (Phase III); and Rehabilitate cargo apron (Phase IV).

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT.**

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Eastern Iowa Airport, Cedar Rapids, Iowa.

Issued in Kansas City, Missouri on December 2, 2003.

George A. Hendon,

Manager, Airports Division Central Region.

[FR Doc. 03–30465 Filed 12–8–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Opportunity for Public Comment on Surplus Property Release at George M. Bryan Field Airport, Starkville, MI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on land release request.

SUMMARY: Under the provisions of title 49, U.S.C. section 47153(c), notice is being given that the FAA is considering a request from the city of Starkville to waive the requirement that a 7.87+-acre parcel of surplus property, located at the George M. Bryan Field Airport, be used for aeronautical purposes.

DATES: Comments must be received on or before January 8, 2004.

ADDRESSES: Comments on this notice may be mailed or delivered in triplicate to the FAA at the following address: Jackson Airports District Office, 100 West Cross Street, Suite B, Jackson, MS 39208–2307.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to The honorable Mack Rutledge, Mayor of Starkville, Mississippi at the following address: City Hall, 101 Lampkin Street, Starkville, MS 39759.

FOR FURTHER INFORMATION CONTACT: David Shumate, Program Manager, Jackson Airports District Office, 100 West Cross Street, Suite B, Jackson, MS 39208–2307, (601) 664–9882. The land release request may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA is reviewing a request by the city of Starkville to release 7.87 acres of surplus property at the George M. Bryan Field Airport. The property will be purchased by the city for the construction of a police complex. The net proceeds from the sale of this property will be used for airport purposes.

Any person may inspect the request in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT.** In addition, any person may, upon request, inspect the request, notice and other documents germane to the request in person at the city of Starkville.

Issued in Jackson, Mississippi on December 2, 2003.

Rans D. Black,

Manager, Jackson Airports District Office, Southern Region.

[FR Doc. 03–30463 Filed 12–8–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Golden Triangle Regional Airport, Columbus, MS

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Golden Triangle Regional Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before January 8, 2004.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Jackson Airports District Office, 100 West Cross Street, Jackson, Mississippi, 39208.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Nick Ardillo, Executive Director of the Golden Triangle Regional Airport at the following address: Golden Triangle Regional, Airport Authority, 2080 Airport Road, Columbus, MS 39701.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Golden Triangle Rational Airport Authority under § 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: David Shumate, Program Manager, Jackson Airports District Office, 100 West Cross Street, Jackson, Mississippi, 39208, (601) 664–9882. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Golden Triangle Regional Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On 12–2–2003, the FAA determined that the application to impose and use the revenue from a PFC submitted by Golden Triangle Regional Airport Authority was substantially complete within the requirements of § 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than March 16, 2003.

The following is a brief overview of the application.

PFC Application No.: 04–03–C–00–GTR.

Level of the proposed PFC: $4.50.

Proposed charge effective date: June 1, 2008.

Proposed charge effective date: August 1, 2010.

Total estimated net PFC revenue: $285,555.

Brief description of proposed project(s): Construct Air Traffic Control Tower; Master Plan/Noise Compatibility Study; Handicapped Lift Device; Runway Overlay/Grooving/Paint; Taxiway Sealcoat; Reconstruction of General Aviation Ramp.

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: None.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT.**

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Golden Triangle Regional Airport Authority.

Dated: Issued in Jackson, Mississippi on December 2, 2003.

Rans Black,

Manager, Jackson Airports District Office, Southern Region.

[FR Doc. 03–30462 Filed 12–8–03; 8:45 am]

BILLING CODE 491073–M

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

Proposed Renewal of Information Collection; Comment Request

AGENCY: Office of the Comptroller of the Currency (OCC), Treasury.

ACTION: Notice and request for comment.

SUMMARY: The OCC, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on a continuing information collection, as required by the Paperwork Reduction Act of 1995. Currently, the OCC is soliciting comment concerning its renewal of an information collection titled, "(MA)—Municipal Securities Dealers and Government Securities Brokers and Dealers Registration and Withdrawal."

DATES: You should submit written comments by February 9, 2004.

ADDRESSES: You should direct all written comments to the Communications Division, Attention: 1557–0184, Third Floor, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219. In addition, you may send comments by facsimile transmission to (202) 874–5274, or by electronic mail to *regs.comments@occ.treas.gov*. You can inspect and photocopy the comments at the OCC's Public Reference Room, 250 E Street, SW., Washington, DC, between 9 a.m. and 5 p.m. on business days. You can make an appointment to inspect the comments by calling (202) 874–5043.

FOR FURTHER INFORMATION CONTACT: You can request additional information from or a copy of the collection from John Ference or Camille Dixon, (202) 874–5090, Legislative and Regulatory Activities Division (1557–0184), Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219.

SUPPLEMENTARY INFORMATION:

The OCC is proposing to extend OMB approval of the following information collection:

Title: (MA)—Municipal Securities Dealers and Government Securities Brokers and Dealers Registration and Withdrawal.

OMB Number: 1557–0184.

Form Numbers: MSD, MSDW, MSD–4, MSD–5, G–FIN, G–FINW.

Abstract: This information collection is required to satisfy the requirements of the Securities Act Amendments of 1975 and the Government Securities Act of 1986 which requires that any national bank that acts as a government securities broker/dealer or a municipal securities dealer notify the OCC of its broker/dealer activities. The OCC uses this information to determine which national banks are government and municipal securities broker/dealers and to monitor institutions entry into and exit from government and municipal securities broker/dealer activities. The OCC also uses the information in planning bank examinations.

Type of Review: Renewal of a currently approved collection.

Affected Public: Businesses or other for-profit; individuals.

Estimated Number of Respondents: 100.

Estimated Total Annual Responses: 3,080.

Frequency of Response: On occasion.

Estimated Total Annual Burden: 2,706 burden hours.

Comments: Comments submitted in response to this notice will be summarized and included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on:

(a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information has practical utility;

(b) The accuracy of the agency's estimate of the burden of the collection of information;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected;

(d) Ways to minimize the burden of the collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

(e) Estimates of capital or startup costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: December 1, 2003.

Mark Tenhundfeld,

Assistant Director, Legislative & Regulatory Activities Division.

[FR Doc. 03–30405 Filed 12–8–03; 8:45 am]

BILLING CODE 4810–33–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 1099–OID

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 1099–OID, Original Issue Discount.

DATES: Written comments should be received on or before February 9, 2004, to be assured of consideration.

ADDRESSES: Direct all written comments to R. Joseph Durbala, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Carol Savage at Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224, or at (202) 622–3945, or through the Internet at *CAROL.A.SAVAGE@irs.gov*.

SUPPLEMENTARY INFORMATION:

Title: Original Issue Discount.

OMB Number: 1545–0117.

Form Number: 1099–OID.

Abstract: Form 1099–OID is used for reporting original issue discount as required by section 6049 of the Internal Revenue Code. It is used to verify that income earned on discount obligations is properly reported by the recipient.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses or other for-profit organizations.

Estimated Number of Responses: 5,906,965.

Estimated Time Per Response: 12 min.

Estimated Total Annual Burden Hours: 1,142,324.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: December 2, 2003.

R. Joseph Durbala,

IRS Reports Clearance Officer.

[FR Doc. 03–30525 Filed 12–8–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8879-C

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8879-C, IRS e-file Signature Authorization for Form 1120.

DATES: Written comments should be received on or before February 9, 2004 to be assured of consideration.

ADDRESSES: Direct all written comments to R. Joseph Durbala, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Carol Savage at Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224, or at (202) 622–3945, or through the Internet at *CAROL.A.SAVAGE@irs.gov*.

SUPPLEMENTARY INFORMATION:

Title: IRS e-file Signature Authorization for Form 1120.

OMB Number: 1545–1864.

Form Number: 8879–C.

Abstract: Form 8879–C authorizes an officer of a corporation and an electronic return originator (ERO) to use a personal identification number (PIN) to electronically sign a corporation's electronic income tax return and, if applicable, Electronic Funds Withdrawal Consent.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses or other for-profit organizations.

Estimated Number of Respondents: 7,760.

Estimated Time Per Respondent: 6 hours, 32 minutes.

Estimated Total Annual Burden Hours: 50,673.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: December 2, 2003.

R. Joseph Durbala,

IRS Reports Clearance Officer.

[FR Doc. 03–30526 Filed 12–8–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8831

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8831, Excise Taxes on Excess Inclusions of REMIC Residual Interests.

DATES: Written comments should be received on or before February 9, 2004 to be assured of consideration.

ADDRESSES: Direct all written comments to R. Joseph Durbala Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Larnice Mack at Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224, or at (202) 622–3179, or through the Internet at *Larnice.Mack@irs.gov*.

SUPPLEMENTARY INFORMATION:

Title: Excise Taxes on Excess Inclusions of REMIC Residual Interests.

OMB Number: 1545–1379.

Form Number: 8831.

Abstract: Form 8831 is used by a real estate mortgage investment conduit (REMIC) to figure its excise tax liability under Internal Revenue Code sections 860E(e)(1), 860E(e)(6), and 860E(e)(7). IRS uses the information to determine the correct tax liability of the REMIC.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 31.

Estimated Time Per Response: 7 hours, 39 minutes.

Estimated Total Annual Burden Hours: 237.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: December 1, 2003.

R. Joseph Durbala,

IRS Reports Clearance Officer.

[FR Doc. 03–30527 Filed 12–8–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8498

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8498, Program Sponsor Agreement for Continuing Education for Enrolled Agents.

DATES: Written comments should be received on or before February 9, 2004 to be assured of consideration.

ADDRESSES: Direct all written comments to R. Joseph Durbala, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form should be directed to Carol Savage at Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224, or at (202) 622–3945, or through the Internet at *CAROL.A.SAVAGE@irs.gov*.

SUPPLEMENTARY INFORMATION:

Title: Program Sponsor Agreement for Continuing Education for Enrolled Agents.

OMB Number: 1545–1459.

Form Number: Form 8498.

Abstract: Form 8498 is used by the Director of Practice to determine the qualifications of those individuals or organizations seeking to present continuing professional educational programs for persons enrolled to practice before the Internal Revenue Service.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals and business or other for-profit organizations.

Estimated Number of Respondents: 500.

Estimated Time Per Respondent: 36 minutes.

Estimated Total Annual Burden Hours: 300.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: December 3, 2003.

R. Joseph Durbala,

IRS Reports Clearance Officer.

[FR Doc. 03–30528 Filed 12–8–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8879–S

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8879–S, IRS e-file Signature Authorization for Form 1120S.

DATES: Written comments should be received on or before February 9, 2004 to be assured of consideration.

ADDRESSES: Direct all written comments to R. Joseph Durbala, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Carol Savage at Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224, or at (202) 622–3945, or through the Internet at *CAROL.A.SAVAGE@irs.gov*.

SUPPLEMENTARY INFORMATION:

Title: IRS e-file Signature Authorization for Form 1120S.

OMB Number: 1545–1863.

Form Number: 8879–S.

Abstract: Form 8879–S authorizes an officer of a corporation and an electronic return originator (ERO) to use a personal identification number (PIN) to electronically sign a corporation's electronic income tax return and, if applicable, Electronic Funds Withdrawal Consent.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses or other for-profit organizations.

Estimated Number of Respondents: 11,360.

Estimated Time Per Respondent: 6 hours, 32 minutes.

Estimated Total Annual Burden Hours: 74,181.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: December 3, 2003.

R. Joseph Durbala,

IRS Reports Clearance Officer.

[FR Doc. 03–30529 Filed 12–8–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8453–C

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8453–C, U.S. Corporation Income Tax Declaration for an IRS e-file Return.

DATES: Written comments should be received on or before February 9, 2004 to be assured of consideration.

ADDRESSES: Direct all written comments to R. Joseph Durbala, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Carol Savage at Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224, or at (202) 622–3945, or through the Internet at *CAROL.A.SAVAGE@irs.gov*.

SUPPLEMENTARY INFORMATION:

Title: U.S. Corporation Income Tax Declaration for an IRS e-file Return.

OMB Number: 1545–1866.

Form Number: 8453–C.

Abstract: Form 8453–C is necessary to enable the electronic filing of Form 1120, U.S. Corporation Income Tax Return. The form is created to meet the stated Congressional policy that paperless filing is the preferred and most convenient means of filing Federal tax and information returns.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses or other for-profit organizations.

Estimated Number of Respondents: 2,000.

Estimated Time Per Respondent: 7 hours, 1 minute.

Estimated Total Annual Burden Hours: 14,040.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: December 3, 2003.

R. Joseph Durbala,

IRS Reports Clearance Officer.

[FR Doc. 03–30530 Filed 12–8–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Revenue Procedure 2001–29

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C.

3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Revenue Procedure 2001–29, Leveraged Leases.

DATES: Written comments should be received on or before February 9, 2004 to be assured of consideration.

ADDRESSES: Direct all written comments to R. Joseph Durbula, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of revenue procedure should be directed to Carol Savage at Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224, or at (202) 622–3945, or through the Internet at *CAROL.A.SAVAGE@irs.gov*.

SUPPLEMENTARY INFORMATION:

Title: Leveraged Leases.

OMB Number: 1545–1738.

Revenue Procedure Number: Revenue Procedure 2001–29.

Abstract: Revenue Procedure 2001–29 sets forth the information and representations required to be furnished by taxpayers in requests for an advance ruling that a leveraged lease transaction is, in fact, a valid lease for Federal income tax purposes.

Current Actions: There is no changes being made to the revenue procedure at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households, business or other for-profit organizations, and not-for-profit institutions.

Estimated Number of Respondents: 10.

Estimated Time Per Respondent: 80 hours.

Estimated Total Annual Burden Hours: 800.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: December 3, 2003.

R. Joseph Durbala,

IRS Reports Clearance Officer.

[FR Doc. 03–30531 Filed 12–8–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Area 3 Taxpayer Advocacy Panel (Including the States of Florida, Georgia, Alabama, Mississippi, Louisiana, Arkansas and Tennessee)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Area 3 Taxpayer Advocacy Panel will be conducted (via teleconference). The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Friday, December 19, 2003 from 11 am EDT to 12:30pm EDT.

FOR FURTHER INFORMATION CONTACT: Sallie Chavez at 1–888–912–1227, or (954) 423–7979.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Area 3 Taxpayer Advocacy Panel will be held Friday, December 19, 2003, from 11 am EST to 12:30 pm EST via a telephone conference call. Individual comments will be limited to 5 minutes. If you would like to have the TAP consider a written statement, please call 1–888–912–1227 or (954) 423–7979, or write Sallie Chavez, TAP Office, 1000 South Pine Island Rd., Suite 340, Plantation, FL 33324. Due to limited conference lines, notification of intent to participate in the telephone conference call meeting must be made with Sallie Chavez. Ms. Chavez can be reached at 1–888–912–1227 or (954) 423–7979.

The agenda will include various IRS issues.

Dated: December 2, 2003.

Bernard Coston,

Director, Taxpayer Advocacy Panel.

[FR Doc. 03–30532 Filed 12–8–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Ad Hoc Committee of the Taxpayer Advocacy Panel

AGENCY: Internal Revenue Service (IRS) Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Ad Hoc Committee of the Taxpayer Advocacy Panel will be conducted (via teleconference). The Taxpayer Advocacy Panel (TAP) will be discussing issues on IRS Customer Service.

DATES: The meeting will be held Monday, January 5, 2004.

FOR FURTHER INFORMATION CONTACT: Judi Nicholas at 1–888–912–1227, or (206) 220–6096.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Ad Hoc Committee of the Taxpayer Advocacy Panel will be held Monday, January 5, 2004 from 8am Pacific Time to 9 am Pacific Time via a telephone conference call. If you would like to have the TAP consider a written statement, please call 1–888–912–1227 or (206) 220–6096, or write to Judi Nicholas, TAP Office, 915 2nd Avenue, MS W–406, Seattle, WA 98174. Due to limited conference lines, notification of intent to participate in the telephone conference call meeting must be made with Judi Nicholas. Ms. Nicholas can be reached at 1–888–912–1227 or (206) 220–6096.

The agenda will include the following: Various IRS issues.

Dated: December 2, 2003.

Bernard Coston,

Director, Taxpayer Advocacy Panel.

[FR Doc. 03–30533 Filed 12–8–03; 8:45 am]

BILLING CODE 4830–01–P

Corrections

Federal Register

Vol. 68, No. 236

Tuesday, December 9, 2003

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

PEACE CORPS

22 CFR Part 303

Procedures for Disclosure of Information Under the Freedom of Information Act

Correction

In rule document 03–29409 beginning on page 66006 in the issue of Tuesday, November 25, 2003, make the following correction:

§ 303.9 [Corrected]

On page 66011, in § 303.9, in the second column, paragraph (e)(5)(vi) should read (e)(5)(iv).

[FR Doc. C3–29409 Filed 12–8–03; 8:45 am]

BILLING CODE 1505–01–D

Federal Register

Tuesday,
December 9, 2003

Part II

Department of Education

34 CFR Part 200
Title I—Improving the Academic Achievement of the Disadvantaged; Final Rule

DEPARTMENT OF EDUCATION

34 CFR Part 200

RIN 1810–AA95

Title I—Improving the Academic Achievement of the Disadvantaged

AGENCY: Office of Elementary and Secondary Education, Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary amends the regulations governing the programs administered under title I, part A, of the Elementary and Secondary Education Act of 1965 (ESEA). These regulations are needed to implement statutory provisions regarding State, local educational agency (LEA), and school accountability for the academic achievement of students with the most significant cognitive disabilities and are needed to implement changes to title I of the ESEA made by the No Child Left Behind Act of 2001 (NCLB Act).

DATES: These regulations are effective January 8, 2004.

FOR FURTHER INFORMATION CONTACT: Jacquelyn C. Jackson, Ed.D. Acting Director, Student Achievement and School Accountability Programs, Office of Elementary and Secondary Education, U.S. Department of Education, 400 Maryland Avenue, SW., room 3W202, FB–6, Washington, DC 20202–6132. Telephone: (202) 260–0826.

If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille; large print, audiotape, or computer diskette) on request to the contact person listed under **FOR FURTHER INFORMATION CONTACT**.

SUPPLEMENTARY INFORMATION: These regulations implement statutory provisions of title I of the ESEA, as amended by the NCLB Act (Pub. L. 107–110), enacted January 8, 2002. On March 20, 2003, the Secretary published a notice of proposed rulemaking (NPRM) for title I programs in the **Federal Register** (68 FR 13796). The NPRM proposed allowing States to adopt alternate achievement standards for children with the most significant cognitive disabilities and include assessment scores based on those standards in title I adequate yearly progress (AYP) calculations.

Background

Including Children With Disabilities in State Assessment Programs

The Individuals with Disabilities Education Act (IDEA), section 504 of the Rehabilitation Act of 1973, and title I require inclusion of all students with disabilities in the State assessment system. Title I further requires that the assessment results for all students (and all students with disabilities, among other groups) who have been enrolled in a school for a full academic year be used in calculating AYP for the school, and that the assessment results of students who have been in a district for a full academic year be used in calculating AYP for the district and the State. System accountability should be just that—accountability for everyone in the system. Students with disabilities are a part of the student body. Most of these students spend the majority of their time in general education classrooms, and receive instruction from regular classroom teachers. Regardless of where students receive instruction, all students with disabilities should have access to, participate in, and make progress in, the general curriculum. Thus, all students with disabilities must be included in the measurement of AYP toward meeting the State's standards.

Several critical elements in title I as amended by the NCLB Act ensure that schools are held accountable for educational results, so that the best education possible is provided to each and every student. Three critical elements—academic content standards, academic achievement standards, and assessments aligned to those standards—provide the foundation for an accountability system ensuring that students with disabilities reach high standards. State assessments are the mechanism for determining whether schools have been successful in teaching students the knowledge and skills defined by the content standards. States are required to hold all students to the same standards except that these regulations permit States to measure the achievement of students with the most significant cognitive disabilities based on alternate achievement standards.

Only by including all students in accountability measures will certain unintended negative consequences be avoided. For example, we know from research that when students with disabilities are allowed to be excluded from school accountability measures, the rates of referral of students for special education increase dramatically. (*See* National Center for Educational Outcomes Synthesis 26: *http://education.umn.edu/nceo/OnlinePubs/Synthesis26.html*.) In addition, students with disabilities accrue positive benefits when they are included in school accountability systems. Educators realize that these students also count, just like all other students; they understand that they need to make sure that these students learn to high levels, just like other students. When students with disabilities are part of the accountability system, educators' expectations for these students are more likely to increase.

One State explains the instructional benefits of including students with the most significant cognitive disabilities in its assessment: "Some students with disabilities have never been taught academic skills and concepts, for example, reading, mathematics, science, and social studies, even at very basic levels. Yet all students are capable of learning at a level that engages and challenges them. Teachers who have incorporated learning standards into their instruction cite unanticipated gains in students' performance and understanding. Furthermore, some individualized social, communication, motor, and self-help skills can be practiced during activities based on the learning standards." (*Concerns and Questions about Alternate Assessment. http://www.doe.mass.edu/mcas/alt/QabdC.doc.* September 22, 2003).

Too often in the past, students with disabilities were excluded from assessments and accountability systems, and the consequence was that they did not receive the academic attention they deserved. Access and exposure to the general curriculum for students with disabilities often did not occur, and there was no systemwide measure to indicate whether or what they were learning. These regulations are designed to ensure that schools are held accountable for the educational progress of students with the most significant cognitive disabilities, just as schools are held accountable for the educational results of all other students with disabilities and students without disabilities.

Regulatory Development

In a notice of proposed rule making (NPRM) published in the **Federal Register** (67 FR 50986) on August 6, 2002, the Secretary proposed a regulation to allow States to develop and use alternate achievement standards for students with the most significant cognitive disabilities for the purpose of determining the AYP of States, LEAs, and schools, provided that the number of proficient scores based on the alternate achievement standards included in AYP calculations, at the State and LEA levels separately, did not exceed 0.5 percent of all students in the grades assessed. However, because the comments indicated significant misunderstanding of the proposed rule, § 200.13 of title 34 of the Code of Federal Regulations, as adopted in the final regulations published in the **Federal Register** (67 FR 71710) on December 2, 2002, did not allow any use of alternate achievement standards for students with the most significant cognitive disabilities.

In an NPRM printed in the **Federal Register** on March 20, 2003, the Secretary again proposed to amend the title I regulations to allow States to develop and use alternate achievement standards for students with the most significant cognitive disabilities for the purpose of determining the AYP of States, LEAs, and schools. In the new NPRM, the Secretary proposed that the number of proficient and advanced scores based on alternate achievement standards included in AYP calculations at the State and LEA levels, separately, could not exceed 1.0 percent of all students in the grades assessed at the State and the LEA levels, respectively. One percent of all students is approximately 9.0 percent of students with disabilities.

The March 20, 2003, NPRM included additional explanatory information on the purpose and intent of the proposed regulations. However, the comments on this NPRM, like those received on the August 6, 2002, NPRM, indicated that there continued to be misunderstandings about alternate assessments, alternate achievement standards, and the intent and purpose of the proposed regulations. Many commenters continued to think that the number of students with disabilities who could take an alternate assessment was being limited. The NPRM did not propose limiting the number or percentage of students who take an alternate assessment; rather, it proposed to limit the number of proficient and advanced scores based on alternate achievement standards that may be counted in the calculation of AYP.

Being mindful of timing issues related to these proposed regulations, the submission of State accountability plans, and State efforts to develop assessments that better measure the progress of students with disabilities toward meeting State standards, as well as the fact that some States already had administered out-of-level assessments (instructional level assessments) in the 2002–2003 school year, the Secretary used his transitional authority to afford States flexibility in making AYP determinations, based on data from assessments administered during the 2002–2003 school year. Under that transition policy, a State, in calculating AYP for schools and districts, could use alternate achievement standards for students with the most significant cognitive disabilities (subject to a 1.0 percent cap) and also could use results from out-of-level assessments (instructional level assessments). The Department communicated this transition policy to States through the State accountability system approval process as well as in a letter to each State. (*See http://www.ed.gov/policy/speced/guid/secletter/030627.html.*)

Key Concepts

The following paragraphs clarify the Department's understanding of several critical issues related to these regulations. They are: (1) Alternate assessments; (2) out-of-level assessments; and (3) and the 1.0 percent cap.

Alternate Assessments

An alternate assessment is an assessment designed for the small number of students with disabilities who are unable to participate in the regular State assessment, even with appropriate accommodations. An alternate assessment may include materials collected under several circumstances, including (1) teacher observation of the student, (2) samples of student work produced during regular classroom instruction that demonstrate mastery of specific instructional strategies in place of performance on a computer-scored multiple-choice test covering the same content and skills, or (3) standardized performance tasks produced in an "on-demand" setting, such as completion of an assigned task on test day. To serve the purposes of assessment under title I, an alternate assessment must be aligned with the State's content standards, must yield results separately in both reading/language arts and mathematics, and must be designed and implemented in a manner that supports use of the results as an indicator of AYP.

As part of the State assessment program, alternate assessments should have a clearly defined structure, guidelines for which students may participate, clearly defined scoring criteria and procedures, and a report format that clearly communicates student performance in terms of the academic achievement standards defined by the State. The requirements for high technical quality set forth in §§ 200.2(b) and 200.3(a)(1), including validity, reliability, accessibility, objectivity, and consistency with nationally recognized professional and technical standards, apply to alternate assessments as well as to regular State assessments.

Alternate assessments may be needed for students who have a broad variety of disabling conditions; consequently, a State may employ more than one alternate assessment. An alternate assessment may be scored against grade-level standards, or, in the case of students with the most significant cognitive disabilities, against alternate achievement standards. Therefore, all students taking an alternate assessment are included in calculations of AYP as either proficient (and above) or non-proficient.

An alternate achievement standard is an expectation of performance that differs in complexity from a grade-level achievement standard. These regulations clarify that a State is permitted to use alternate achievement standards to evaluate the performance of students with the most significant cognitive disabilities and to give equal weight to proficient and advanced performance based on the alternate standards in calculating school, district, and State AYP, provided that the number of proficient and advanced scores based on the alternate achievement standards does not exceed 1.0 percent of all students in the grades tested at the State or LEA level. The Secretary may approve an exception for a specified period of time for a State (or a State may approve a higher limit for an LEA.)

If a State chooses to create alternate achievement standards, the State is not limited to setting a single alternate achievement standard. If, however, the State chooses to define multiple alternate achievement standards, it must employ commonly accepted professional practices to define the standards; it must document the relationship among the alternate achievement standards as part of its coherent assessment plan; and it must include in the 1.0 percent cap proficient scores resulting from all assessments based on alternate achievement standards.

Although the 1.0 percent cap is applied to the number of proficient and advanced scores that may be included in AYP determinations, rather than the number of students taking an assessment against alternate achievement standards, this regulation clarifies the Department's position that alternate achievement standards are acceptable only for the small number of students with the most significant cognitive disabilities. In consideration of schools that, for example, are small

schools or provide special services to students with the most significant cognitive disabilities, the numerical cap of 1.0 percent does not apply at the school level. This does not mean, however, that the use of alternate assessments aligned with alternate standards is unlimited at the school level. For most schools, only a small portion of students with disabilities—those with the most significant cognitive disabilities—should appropriately participate in an assessment based on alternate achievement standards, and all other students with disabilities should be assessed against grade-level standards. In general, the Department expects that no more than 9.0 percent of students with disabilities will participate in an assessment based on alternate achievement standards.

The Department expects most students with disabilities to participate in the regular statewide assessment either without accommodations or with appropriate accommodations that are consistent with the accommodations provided during regular instruction. Current § 200.6 requires that the IEP team determine the accommodations necessary to measure the academic achievement of students with disabilities relative to the State's academic content and achievement standards for the grade in which the student is enrolled. Through the IEP process, parents should be informed of the potential consequences, if any, for their child if he or she participates in a regular assessment with particular accommodations, an alternate assessment based on grade-level achievement standards, or an alternate assessment based on alternate achievement standards. (For example, a parent should be informed if a State will not allow a student to graduate with a regular diploma if he or she takes an alternate assessment based on alternate achievement standards.)

Out-of-Level Assessments

In order to improve instruction and achievement for all students with disabilities, the Department expects States to assess as many students as possible with academic assessments aligned to regular achievement standards. To achieve that goal and reduce use of out-of-level assessments, States should work to implement fully the IDEA Amendments of 1997, provide students access to the general curriculum, develop universally designed assessments that measure whether students with disabilities are meeting the State's challenging academic standards, and ensure that both special and regular education teachers set high expectations for students with disabilities and understand the State's academic content standards. The alternate achievement standards associated with an out-of-level assessment used for calculating AYP must meet the requirements of § 200.1(d) and students taking such assessments must be included in AYP calculations. The achievement standards associated with out-of-level assessments may meet the alternate achievement standards under § 200.1(d), only if they are aligned with the State's academic content standards, promote access to the general curriculum, and reflect professional judgment of the highest achievement standards possible. The results from those tests must be included within the 1.0 percent cap for the purposes of calculating AYP, because the achievement standards associated with the content and skills measured by out-of-level assessments are clearly different from the achievement standards in the target grade.

Previous guidance from the Department's Office of Special Education Programs indicated that out-of-level assessments were not alternate assessments. This new guidance, however, recognizes that out-of-level assessments that are administered to students with the most significant cognitive disabilities and that meet the requirements of § 200.1(d) may be considered to be alternate assessments aligned with alternate achievement standards for the purposes of calculating AYP.

1.0 Percent Cap

Alternate achievement standards are appropriate only for students with the most significant cognitive disabilities. The intent of the March 20, 2003, NPRM was not to create a separate category of disability and these regulations do not do so; rather, the intent was to provide for a narrow population of children with disabilities whose proficient and advanced scores based on alternate achievement standards may be included in AYP calculations. Although some commenters argued that no limit should be imposed on the use of scores based on alternate achievement standards in calculating AYP, the Secretary has determined that a cap is warranted both to protect the interests of individual students (by providing an incentive for schools to provide maximum learning opportunities to each student) and to protect the meaningful interpretation and use of State assessment results for determining school, district, and State AYP. This will ensure that States, LEAs, and schools are held accountable for the academic progress of these students and that students with the most significant cognitive disabilities are assigned to a curriculum that is appropriately challenging.

The Secretary welcomes comments and data from States and others about how the regulations are working over time and may consider revising them in the future should the comments indicate a need to do so. In addition, the Department intends to issue a report on the implementation of this regulation after two years of implementation. As data and research on assessing students with disabilities improve, the Department may decide to issue regulations or guidance on other related issues in the future.

Significant Changes From the March 20, 2003, NPRM

Section 200.1 of NPRM proposed defining "students with the most significant cognitive disabilities" as students with disabilities under the IDEA whose intellectual functioning and adaptive behavior are three or more standard deviations below the mean. The regulations remove this definition, thereby giving States greater flexibility in applying the provisions for including a limited number of proficient and advanced scores based on alternate achievement standards in calculating AYP.

At the same time, as described in the discussion of comments related to § 200.6, the regulations require States to implement a number of important safeguards to ensure that this flexibility will be used in an appropriate manner.

Section 200.6 of the NPRM proposed allowing States to measure the achievement of students with the most significant cognitive disabilities against alternate achievement standards. In doing so, it proposed requiring States to establish guidelines ensuring that only students with the most significant cognitive disabilities are tested against alternate standards including establishing clear policies for determining when alternate achievement standards may be used. The regulations retain these provisions while clarifying that a State is not required to use alternate achievement standards. If it does, the regulations establish these additional conditions associated with their use: The State must ensure that parents are informed their children will be assessed based on alternate achievement standards, and the State must report on the number and percentage of students with disabilities taking regular assessments (with or without accommodations), alternate assessments based on grade-level achievement standards, and alternate assessments based on alternate achievement standards. These regulations also require the State to promote the use of appropriate accommodations, provide appropriate guidance to IEP teams, and provide training for teachers and other staff in the administration of assessments to children with the most significant cognitive disabilities. These requirements will encourage States to decrease or eliminate out-of-level testing and other changes in the test that invalidate test results.

Whereas the NPRM proposed requiring reporting on the number and percentage of students with disabilities taking various types of assessments at the school and district levels, these regulations only require reports about the types of assessments used for students with disabilities at the State level. States also must document that students with the most significant cognitive disabilities are, to the extent possible, included in the general curriculum and participating in assessments aligned with content standards. The Department's Office of Special Education Programs, in its regular monitoring, may examine this documentation and the Office of Elementary and Secondary Education may review data during its peer review process for standards and assessments.

In addition, States using alternate achievement standards must promote the use of appropriate accommodations in order to increase the numbers of students with disabilities who can be tested against grade-level academic achievement standards. These regulations promote the use of appropriate testing practices through the dissemination of information about accommodations for regular assessments and ensure that relevant staff know how to administer assessments to students with disabilities.

Section 200.13 of the NPRM proposed providing that the Secretary could permit a State—and a State could permit an LEA—to exceed the 1.0 percent cap on the number of proficient and advanced scores based on alternative achievement standards that can be included in AYP calculations if the State or LEA, as applicable, establishes that the incidence of students with the most significant cognitive disabilities exceeds the limit and if the agency documents circumstances that explain the higher percentage. These regulations retain these provisions but add further requirements to ensure (1) that students who should be assessed against grade-level standards with appropriate accommodations are not being assessed against alternate achievement standards, and (2) that the alternate achievement standards embody challenging academic expectations appropriate for those students who are assessed against them.

Section 200.13(c)(3) of the NPRM proposed requiring a State, in calculating AYP for the State and each LEA, to apply grade-level academic content and achievement standards to assessment results of any students taking alternate assessments that exceeded the percentage limitations. To make the intent of this provision clearer, we are revising § 200.13(c)(4) of these regulations. First, § 200.13(c)(4)(i) clarifies that a State must include the scores of all students with the most significant cognitive disabilities who have been in the LEA or State for a full academic year in calculating AYP. It may not exclude the scores of students who exceed the percentage limitations in § 200.13(c)(1) through (3). Second, § 200.13(c)(4)(ii) requires the State to count as non-proficient, the scores of any such students who exceed the percentage limitations in calculating AYP. In other words, the State must count the scores of these students as not proficient, even if some or all of the students achieved proficiency on the alternate achievement standards. Non-proficient scores are any scores below proficient, as determined by the State accountability plan.

Because the scores of all students must be included, if an LEA or State educational agency (SEA) exceeds their cap, § 200.13(c)(4)(iii) requires the State to determine which proficient scores are counted as non-proficient in the LEAs and schools responsible for students who took alternate assessments aligned to alternate achievement standards. The State has flexibility in determining how to do this.

Section 200.13(c)(4)(iv) through (v) has been added. Section 200.13(c)(4)(iv) clarifies that, in calculating AYP, a State must be consistent in its use of the scores of students with the most significant cognitive disabilities. For example, if there are such students in an LEA who score at the proficient level on the State's alternate assessment but who exceed the 1.0 percent cap, and the State has not granted the LEA an exception, the State may not count those students as proficient in determining AYP at the school, LEA, or State level. Moreover, the State must also count their scores as not proficient in the other subgroups to which they belong. Section 200.13(c)(4)(v), however, emphasizes that the State must ensure that parents are informed of the actual achievement level that a student with the most significant cognitive disabilities attains, even if that student's score is determined to be in the group above the 1.0 percent cap and counted as non-proficient for purposes of calculating AYP.

Multiple Test Administration

The March 20, 2003, NPRM also requested additional comments on § 200.20(c)(3) of the title I regulations published in the **Federal Register** on December 2, 2002. Section 200.20(c)(3) provides that, if a student takes a State assessment for a particular subject or grade level more than once, the State must use the student's results from the first administration to determine AYP. We are not changing § 200.20(c)(3). Through the approval of State accountability systems this year, we have been able to work with States to clarify the intent of these regulations and to implement these requirements in a manner consistent with their test administration policies. We believe these regulations offer more flexibility than commenters understood at the time of the March 20, 2003, NPRM, and that it is not necessary to change § 200.20(c)(3).

Analysis of Comments and Changes

In response to the Secretary's invitation in the NPRM, approximately 100 parties submitted comments on the proposed regulations. An analysis of the comments and of the changes in the regulations since publication of the NPRM is published as an appendix at the end of these regulations.

Executive Order 12866

We have reviewed these final regulations in accordance with Executive Order 12866. Under the terms of the order, we have assessed the potential costs and benefits of this regulatory action.

The potential costs associated with these regulations are those we have determined to be necessary for administering the requirements of the statute effectively and efficiently.

In assessing the potential costs and benefits—both quantitative and qualitative—of these regulations, we have determined that the benefits of the regulations justify the costs.

We have also determined that this regulatory action does not unduly interfere with State, local, and tribal governments in the exercise of their governmental functions.

Regulatory Flexibility Act

The Secretary certifies that these regulations would not have a significant economic impact on a substantial number of small entities.

These provisions require States and LEAs to take certain actions to improve student academic achievement. The Department believes that these activities will be financed through the appropriations for title I and other Federal programs and that the responsibilities encompassed in the law and regulations will not impose a financial burden that States and LEAs will have to meet from non-Federal resources.

Paperwork Reduction Act of 1995

The Paperwork Reduction Act of 1995 does not require you to respond to a collection of information unless it displays a valid Office of Management and Budget (OMB) control number.

Section 200.6 of the proposed regulation contained an information collection requirement. Under the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the Department of Education submitted a copy of this section to the Office of Management and Budget (OMB) for its review as part of the paperwork collection titled "State educational agency, local educational agency, and school data collection and reporting under ESEA, Title I, Part A".

These regulations remove the requirement that LEAS and schools report data and replace them with a requirement that States report data as part of their report to the Secretary required under section 1111(h)(4) of title I. The Department is currently working on a separate paperwork package (1820–0624), covering the 2002–2003 school year, which includes the requirement in these regulations that States report data on the number of students with disabilities taking regular and alternate assessments. This data collection will not require States to report data on the percentage of students with disabilities taking regular and alternate assessments for the 2002–2003 school year. However, the Department can calculate the percentages based on the data that is included in 1820–0624. States will report on the percent of students with disabilities taking regular and alternate assessments will take place for school year 2003–2004. It will be included as part of an existing paperwork package submitted at that time.

Executive Order 12372

These regulations are not subject to the requirements of Executive Order 12372 and the regulations in 34 CFR part 79.

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(Catalog of Federal Domestic Assistance Number: 84.010 Improving Programs Operated by Local Educational Agencies.)

List of Subjects in 34 CFR Part 200

Administrative practice and procedure, Adult education, Children, Education of children with disabilities, Education of disadvantaged children, Elementary and secondary education, Eligibility, Family-centered education, Grant programs—education, Indian education, Institutions of higher education, Local educational agencies, Nonprofit private agencies, Private schools, Public agencies, Reporting and recordkeeping requirements, State-administered programs, State educational agencies.

Dated: November 26, 2003.

Rod Paige,

Secretary of Education.

■ The Secretary amends part 200 of title 34 of the Code of Federal Regulations as follows:

PART 200—TITLE I—IMPROVING THE ACADEMIC ACHIEVEMENT OF THE DISADVANTAGED

■ 1. The authority citation for part 200 continues to read as follows:

Authority: 20 U.S.C. 6301 through 6578, unless otherwise noted.

■ 2. In § 200.1, revise paragraph (a)(1), redesignate paragraphs (d) and (e) as (e) and (f), and add new paragraph (d) to read as follows:

§ 200.1 State responsibilities for developing challenging academic standards.

(a) * * *

(1) Be the same academic standards that the State applies to all public schools and public school students in the State, including the public schools and public school students served under subpart A of this part, except as provided in paragraph (d) of this section;

* * * * *

(d) *Alternate academic achievement standards.* For students under section 602(3) of the Individuals with Disabilities Education Act with the most significant cognitive disabilities who take an alternate assessment, a State may, through a documented and validated standards-setting process, define alternate academic achievement standards, provided those standards—

(1) Are aligned with the State's academic content standards;

(2) Promote access to the general curriculum; and

(3) Reflect professional judgment of the highest achievement standards possible.

* * * * *

■ 3. In § 200.6, revise paragraph (a)(2)(ii) and add new paragraph (a)(2)(iii) to read as follows:

§ 200.6 Inclusion of all students.

* * * * *

(a) * * *

(2) * * *

(ii)(A) Alternate assessments must yield results for the grade in which the student is enrolled in at least reading/language arts, mathematics, and, beginning in the 2007–2008 school year, science, except as provided in the following paragraph.

(B) For students with the most significant cognitive disabilities, alternate assessments may yield results that measure the achievement of those students relative to the alternate academic achievement standards the State has defined under § 200.1(d).

(iii) If a State permits the use of alternate assessments that yield results based on alternate academic achievement standards, the State must—

(A)(*1*) Establish and ensure implementation of clear and appropriate guidelines for Individualized Educational Program (IEP) teams to apply in determining when a child's significant cognitive disability justifies assessment based on alternate academic achievement standards; and

(*2*) Ensure that parents of those students are informed that their child's achievement will be based on alternate achievement standards; and

(B) Report separately, under section 1111(h)(4) of the ESEA, the number and percentage of students with disabilities taking—

(*1*) Alternate assessments based on the alternate academic achievement standards defined under § 200.1(d);

(*2*) Alternate assessments based on the academic achievement standards defined under § 200.1(c); and

(*3*) Regular assessments, including those administered with appropriate accommodations.

(C) Document that students with the most significant cognitive disabilities are, to the extent possible, included in the general curriculum and in assessments aligned with that curriculum;

(D) Develop, disseminate information on, and promote use of appropriate accommodations to increase the number of students with the most significant cognitive disabilities who are tested against grade-level academic achievement standards; and

(E) Ensure that regular and special education teachers and other appropriate staff know how to administer assessments, including making appropriate use of accommodations, for students with the most significant cognitive disabilities.

* * * * *

■ 4. In § 200.13, revise the introductory text of paragraph (b) and paragraph (b)(1), redesignate paragraph (c) as paragraph (d), and add new paragraph (c) to read as follows:

200.13 Adequate yearly progress in general.

* * * * *

(b) A State must define adequate yearly progress, in accordance with §§ 200.14 through 200.20, in a manner that—

(1) Applies the same high standards of academic achievement to all public school students in the State, except as provided in paragraph (c) of this section;

* * * * *

(c)(1) In calculating adequate yearly progress for schools, LEAs, and the State, a State—

(i) Must, consistent with § 200.7(a), include the scores of all students with disabilities, even those with the most significant cognitive disabilities; but

(ii) May include the proficient and advanced scores of students with the most significant cognitive disabilities based on the alternate academic achievement standards in § 200.1(d), provided that the number of those students who score at the proficient or advanced level on those alternate achievement standards at the LEA and at the State levels, separately, does not exceed 1.0 percent of all students in the grades assessed in reading/language arts and in mathematics.

(2) An SEA may request from the Secretary an exception permitting it to exceed the 1.0 percent cap. The Secretary will consider granting, for a specified period of time, an exception to a State if the following conditions are met:

(i) The SEA documents that the incidence of students with the most significant cognitive disabilities exceeds 1.0 percent of all students in the grades assessed.

(ii) The SEA explains why the incidence of such students exceeds 1.0 percent of all students in the combined grades assessed, such as school, community, or health programs in the State that have drawn large numbers of families of students with the most significant cognitive disabilities, or such a small overall student population that it would take only a very few students with such disabilities to exceed the 1.0 percent cap.

(iii) The SEA documents that it is fully and effectively addressing the requirements of § 200.6(a)(2)(iii).

(3)(i) A State may grant an exception to an LEA permitting it to exceed the 1.0 percent cap in paragraph (c)(1) of this section only if the State evaluates the LEA's request using conditions consistent with paragraph (c)(2) of this section.

(ii) The State must review regularly whether an LEA's exception to the 1.0 percent cap is still warranted.

(4) In calculating adequate yearly progress, if the percentage of proficient and advanced scores based on alternate academic achievement standards under § 200.1(d) exceeds the caps in paragraph (c)(1) through (3) of this section at the State or LEA level, the State must do the following:

(i) Consistent with § 200.7(a), include all scores of students with the most significant cognitive disabilities.

(ii) Count as non-proficient the proficient and advanced scores above the caps in paragraph (c)(1) through (3) of this section.

(iii) Determine which proficient scores to count as non-proficient in schools and LEAs responsible for students who take an alternate assessment based on alternate achievement standards.

(iv) Include those non-proficient scores in each applicable subgroup at the school, LEA and State level.

(v) Ensure that parents are informed of the actual academic achievement levels of their students with the most significant cognitive disabilities.

Appendix—Analysis of Comments and Changes

Note: The following appendix will not appear in the Code of Federal Regulations.

Section 200.1 State Responsibilities for Developing Challenging Academic Standards

Comment: Several commenters noted that proposed language requiring "a documented and validated standards-setting process [to] define achievement standards that * * * reflect professional judgment of the highest learning standards possible for those students" seems to be more rigorous than the process required for general assessments.

Discussion: Title I, as amended by the NCLB Act, requires that, for the general assessment, States establish challenging academic content standards that contain rigorous content and encourage the teaching of advanced skills, and challenging student achievement standards that determine how well students are mastering this content. States must create the achievement standards with all students in mind, so that they are realistic for a wide variety of individuals. The standards should represent a consensus among experienced teachers, parents, and other appropriate individuals regarding the performance expected after appropriate student effort in a challenging instructional program. In addition, the law calls for all schools and districts to attain the long-range goal of all students becoming proficient by 2013–14, thereby eliminating existing achievement gaps. For a school, the challenge is to enable all students to meet this achievement standard.

Students with the most significant cognitive disabilities who participate in an alternate assessment are entitled to the same deliberate approach to defining achievement standards that represent a rigorous but realistic challenge for this heterogeneous group of students and a challenging long-range goal for their school and district. The use of "highest learning standards possible" is intended to reflect that the alternate achievement standards should be no less challenging for students with the most significant cognitive disabilities than the standards set for all other students.

Change: None, except that we have deleted the phrase, "for those students," as it was redundant.

Comment: Some commenters expressed confusion regarding the need for achievement standards that are aligned with the State's academic content standards. They questioned what it means for alternate achievement standards to be aligned with the content standards when children with the most significant cognitive disabilities are not working on the same content as their peers.

Discussion: Alternate achievement standards must be aligned with the State's academic content standards, promote access to the general curriculum, and reflect professional judgment of the highest learning standards possible for the group of students with the most significant cognitive disabilities. In practice, alignment with the State's academic content standards means that the State has defined clearly the connection between the instructional content appropriate for non-disabled students and the related knowledge and skills that may serve as the basis for a definition of proficient achievement for students with the most significant cognitive disabilities. One State,

for example, has developed a curriculum framework for students with the most significant cognitive disabilities that moves from grade-level expectations to progressively less complex versions of the standard. This continuum of "entry points" provides a range of options at which a student with disabilities can access the content at an appropriately challenging level. It lists, for example, the following skills for grade 3 through 4 content standards under Mathematics Operations: "Select, use and explain various meanings and models of multiplication and the division of whole numbers. Understand and use the inverse relationship between the two operations." The State's standards document also identifies the essence of the standard in several brief statements, *e.g.*, understand the meaning of multiplication and division; and represent multiplication and division problems concretely. The State then provides several illustrations of the knowledge and skills appropriate for use in the alternate assessment. These range from less complex, "Illustrate the concept of multiplication using groups of objects," to more complex knowledge that approaches grade-level expectations such as "Identify the commutative property of addition and multiplication using number sentences ($3 \times 5 = 5 \times 3$)." *See http://www.doe.mass.edu/mcas/alt/rg/math.doc.*

The alternate achievement standards may include prerequisite or enabling skills that are part of a continuum of skills that culminate in grade-level proficiency. The use of alternate achievement standards, however, must not result in inappropriate placements or assignment of students to a curriculum that does not include academic content.

Change: None.

Comment: One commenter recommended that § 200.1 be revised to require States to develop alternate achievement standards rather than making this authority permissive.

Discussion: Section 1111(b)(1) of title I requires a State to adopt challenging student achievement standards and to apply the same standards "to all schools and children in the State." The Secretary acknowledges, however, that, while *all* children can learn challenging content, evaluating that learning through alternate achievement standards is appropriate for a small, limited percentage of students who are within one or more of the existing categories of disability, and whose cognitive impairments may prevent them from attaining grade-level achievement standards. Therefore, these regulations permit States to measure the achievement of a limited percentage of students—those with the most significant cognitive disabilities—against challenging but alternate achievement standards. Based on the statutory language, the Secretary does not have the authority to *require* a State to adopt alternate achievement standards. The Secretary's interest, however, is in ensuring that if a State adopts such standards, they are rigorous and used only for those students for whom they are appropriate.

Change: None.

Comment: Two commenters indicated a desire for flexibility that would permit individual students to show progress based on IEP goals rather than performance against an additional set of standards.

Discussion: IEP goals address a broad range of individualized instructional needs as well as behavioral and developmental goals. Title I, as amended by the NCLB Act requires that schools be accountable for student achievement only in the content areas of reading/language arts and mathematics and requires assessment of all students in these essential skill areas. To the maximum extent possible, the IEP should provide for student access to, and participation and progress in, the general curriculum. Students with the most significant cognitive disabilities can address many of their IEP goals using materials and activities that are related to the State's reading/language arts and mathematics standards. To ensure that schools are accountable for this group of students, they must be included in the assessment and accountability systems. In order to make confident accountability determinations for schools based on student achievement, including the achievement of students with the most significant cognitive disabilities, alternate achievement standards must ensure consistency in the judgments made about the schools rather than relying on measures that do not permit consistent judgments using comparable measures of achievement across all students. In addition to reporting student successes relative to the achievement standard, well-designed assessments will also show student progress over time.

Change: None.

Comment: Many commenters objected to proposed § 200.1(d)(2) that would define "students with the most significant cognitive disabilities" as those "who have been identified as students with disabilities under IDEA and whose intellectual functioning and adaptive behavior are three or more standard deviations below the mean." Some commenters objected to the definition's implicit reliance on IQ test scores. Others expressed concern that the definition is inconsistent with the 1.0 percent cap.

Discussion: The Secretary agrees with the commenters on both issues. He is concerned that the proposed definition would have placed unwarranted reliance on an IQ test to determine three standard deviations below the mean. Moreover, he acknowledges that it was inconsistent to set a 1.0 percent cap while defining students with the most significant cognitive disabilities as those three standards deviations below the mean. A student may be appropriately assessed on the basis of alternate achievement standards even if the child's intellectual functioning and adaptive behavior are fewer than three standard deviations from the mean. The definition in the NPRM thus restricted the use of alternate achievement standards to a more narrowly defined group of students than many educators feel appropriate based on their professional experience. As a result, the Secretary is removing the proposed definition. Removing the definition while maintaining the 1.0 percent cap gives States and LEAs more latitude in identifying the population that should appropriately be evaluated against alternate achievement standards, while ensuring that alternate achievement standards are not used as a loophole to evade accountability for unwarrantedly large numbers of students with disabilities. At the same time, the Secretary believes there are other safeguards that States adopting alternate achievement standards should establish to ensure that the flexibility to use alternate achievement standards for a small population of students with disabilities is exercised appropriately and is not abused.

Change: The definition in proposed § 200.1(d)(2) is removed from the final regulations. New provisions have been added in § 200.6(a)(2)(iii) (C), (D), and (E) requiring States that are using alternate achievement standards to: (1) Document that students with the most significant cognitive disabilities are included in the general curriculum to the extent possible and are participating in assessments aligned with that curriculum; (2) develop, disseminate information on, and promote the use of appropriate accommodations; (3) ensure that regular and special education teachers and other appropriate staff know how to administer assessments to students with the most significant cognitive disabilities; and (4) ensure that parents are informed that their child is going to be measured against alternate achievement standards.

Comment: Several commenters indicated concern that, because the term "students with the most significant cognitive disabilities" introduces new terminology, it suggests a new category of disability.

Discussion: The intent of the March 20, 2003, NPRM was not to create a new category of disability. Rather, the Secretary intended the term "students with the most significant cognitive disabilities" to include that small number of students, who are (1) within one or more of the 13 existing categories of disability (*e.g.* autism, multiple disabilities, traumatic brain injury, *etc.*), and (2) whose cognitive impairments may prevent them from attaining grade-level achievement standards, even with the very best instruction.

Change: None.

Comment: Several commenters expressed concern that the 1.0 percent cap would unnecessarily limit access of some students with disabilities to alternate assessments.

Discussion: The intent of the NPRM was not to restrict students with disabilities from taking alternate assessments when that is appropriate. The NPRM and this regulation only address the inclusion of scores for AYP calculations. The intent was to provide for a narrow population of children with disabilities whose achievement on alternate assessments is more appropriately measured by alternate achievement standards. The regulations permit the proficient and advanced scores of those students (limited to 1.0 percent of the total population of students in the grades assessed for States and LEAs) to be included in the calculation of AYP, even though their proficient and advanced scores are based on alternate standards. The Secretary developed this policy to ensure that States, LEAs, and schools are held accountable for the progress of *all* students and that students with disabilities—particularly students with the most significant cognitive disabilities—are not inappropriately assigned to a curriculum that is not appropriately challenging in order to avoid accountability consequences.

Change: None.

Comment: Some commenters indicated that the proposed regulations would require new recordkeeping for students with the most significant cognitive disabilities.

Discussion: By eliminating the proposed definition of students with the most significant cognitive disabilities, these regulations should alleviate the concerns of commenters who were worried about the need for additional documentation of individual students' disabling characteristics. The regulations, however, will require States to report separately on the number and percentage of students taking an alternate assessment based on either grade-level achievement standards, or on alternate achievement standards as well as taking regular assessments (including with accommodations). States are already collecting and reporting on the numbers of students with disabilities taking regular assessments and alternate assessments as a part of performance reporting under the IDEA as well as reporting the results under title I and IDEA. Requiring States to report separately on the number of students taking alternate assessments measured against alternate and regular achievement standards is necessary to ensure that alternate achievement standards are being used consistent with the limitation imposed by these regulations.

Change: The regulations have been amended to require that States report on the number (in addition to percentage) of students with disabilities taking alternate assessments measured against regular and alternate achievement standards, and the number and percentage of students with disabilities taking regular assessments.

Comment: One commenter suggested that some students should be assessed using an alternate assessment based on the same standards as all other students.

Discussion: An important purpose for alternate assessments in State assessment systems is to increase the capacity of large-scale accountability systems to create information about how a school, district, or State is doing in terms of overall student performance. As States have gained experience in developing assessment strategies for students with disabilities, it has become apparent that there can be several kinds of alternate assessments. These may include different strategies for gathering information about what students know and can do; for example, (1) teacher observation of the student, (2) collecting and scoring samples of student work produced during regular classroom instruction that demonstrates mastery of specific instructional strategies, in place of performance on a computer scored multiple choice test covering the same content and skills, or (3) student work produced in an "on-demand" setting such as completion of an assigned task on test day. Such variations are permissible under title I as long as the State can to document that the results provide evidence of student knowledge and skills that is comparable to the evidence provided by results from the regular standards-based State assessment.

For a very small group of students with the most significant cognitive disabilities, alternate achievement standards are appropriate. These alternate achievement standards must reflect a set of expectations for students with the most significant cognitive disabilities consistent with the State content standards in reading/language arts and mathematics.

Change: None.

Section 200.6 Inclusion of All Students

Comment: Several commenters suggested that the proposed regulation conflicted with the role of the IEP team in determining how students with disabilities are assessed. Specifically, commenters indicated that it is the responsibility of the IEP team to decide which assessment students with disabilities take and whether students with disabilities take an assessment based on alternate achievement standards. Another commenter recommended that the IEP team develop the alternate assessments.

Discussion: Under the IDEA, a student's IEP team is responsible for determining how that student participates in a State assessment of student achievement. The IEP team is charged with determining whether accommodations for the assessments required under title I are needed by each individual student to enable the student to participate in the assessment. If the IEP team determines that a student will not participate in the regular assessment (or part thereof), the team is required to identify why the assessment is not appropriate for the child and how the child will be assessed, such as through an alternate assessment. IEP teams, however, do not have complete discretion regarding the assessment of students with disabilities. The team decides how a student participates, not whether the student participates in the assessment at all.

For State assessment programs under title I, the State is responsible for establishing the State academic content and achievement standards against which all children in the State will be assessed, including all students with disabilities. In addition, under title I the State is responsible for implementing a system of high-quality, yearly student academic assessments that are aligned with the State's academic content standards, are valid and reliable for the purposes for which they are used, and are consistent with relevant, nationally recognized professional and technical standards. Under the IDEA, the State also is responsible for developing guidelines for the participation of students with disabilities in alternate assessments for those students who cannot participate in the regular State assessments. Thus, for assessments under title I, the IEP team operates in an environment in which the academic content and achievement standards and assessments are set by the State, the technical qualities of the State assessments are well established, (including whether accommodations are valid and do not invalidate test results on all or part of the assessment), and the State has guidelines regarding eligibility for alternate assessments.

Change: None.

Comment: One commenter suggested that the alternate assessment requirement be delayed until 2007–08 to give States time to develop alternate assessments.

Discussion: States have received ample notification of this requirement and should now have alternate assessments in place. Under IDEA, States were required to implement an alternate assessment as of July 1, 2000. The Office of Elementary and Secondary Education notified States in spring 2000 that title I requires that all students with disabilities be included in State assessments, either with accommodations or in an alternate assessment as determined by their IEP team. Further, whatever assessment approach is taken, the scores of students with disabilities must be included in the assessment system for purposes of public reporting and school and district accountability.

Change: None.

Comment: One commenter proposed that alternate assessments include functional life skills in addition to academic content.

Discussion: The purpose of alternate assessments under title I is to measure the progress of schools in increasing the percentage of students who reach or exceed the proficient level on State academic performance standards. While States and LEAs have the authority to develop assessments that measure the acquisition of functional life skills, such assessments are not required by title I and are beyond the scope of these regulations.

Change: None.

Comment: Several commenters requested that the regulation permit the use of out-of-level assessments, although they disagreed about whether out-of-level assessments should be considered as an assessment based on alternate achievement standards or as another form of assessment for which additional flexibility should be permitted.

Discussion: The NCLB Act is based on the premise that holding States, LEAs and schools to high expectations for the learning of all students can significantly improve the educational attainment of all students. Although these regulations recognize that there is a small population of students with disabilities who may not achieve grade-level proficiency, we expect, and State experience indicates, that other students with disabilities can achieve when they are held to high expectations, provided full access to the general curriculum, and taught by teachers highly qualified in the core academic subjects that they teach. Under these regulations, out-of-level assessments are considered to be alternate assessments based on alternate achievement standards to which the cap in § 200.13(c) applies if they are based on alternate achievement standards that meet the requirements of § 200.1(d). If the out-of-level assessment does not meet those requirements, it is not an alternate assessment measuring alternate achievement standards.

Change: None.

Section 200.13 Adequate Yearly Progress in General

Comment: Numerous comments were received on the proposed cap on the

percentage of proficient assessment scores based on alternate achievement standards that may be included in the calculation of AYP. Some commenters said the cap was too high; others said the cap was too low; some said the 1.0 percent cap was appropriate; and still others said there should be no cap at all.

Discussion: The 1.0 percent cap does not restrict the number of students who may participate in an alternate assessment. It does limit the number of proficient and advanced scores based on alternate achievement standards that may be used in the calculation of AYP. A limit is required in order to ensure a thoughtful application of alternate achievement standards and to protect IEP teams from pressure to assign low-performing students to assessments and curricula that are inappropriately restricted in scope, thus limiting educational opportunity for these students.

These regulations maintain the 1.0 percent cap that was included in the proposed regulation. Specifically, § 200.13(c)(1) permits States to use results from assessments aligned to alternate achievement standards for students with the most significant cognitive disabilities in calculating AYP. A State may include the proficient and advanced scores of students with the most significant cognitive disabilities based on the alternate academic achievement standards in § 200.1(d), provided that the number of those students who score at the proficient or advanced level on those alternate achievement standards at the LEA and at the State levels, separately, does not exceed 1.0 percent of all students in the grades assessed. Nationally, 1.0 percent of students in the grades assessed represent approximately 9 percent of students with disabilities, but the actual percent varies across States. Section 200.13(c)(2) permits States to request a slightly higher cap if the State is able to meet the criteria and documentation requirements set forth in this section.

In the discussion of the March 20, 2003, proposed rule, we noted that the 1.0 percent cap was based on current prevalence rates of students with the most significant cognitive disabilities, allowing for reasonable local variation in prevalence. In addition, we cited converging scientific evidence from multiple sources that indicated that the prevalence rates of students with the most significant cognitive disabilities were somewhat less than 1.0 percent. We also noted that these numbers are generally seen as reflecting national rates, and, as a number of commenters on the August 6, 2002, NPRM pointed out, may not account for more localized differences, caused by a number of factors. Factors beyond the control of a school, school district, or even a State may cause the number of students with the most significant cognitive disabilities to exceed a national average percentage of the total student population at the grades assessed. For example, in small schools, a single student may be more than that limit would allow. Moreover, certain schools, districts, or States may have disproportionate numbers of students with the most significant cognitive disabilities because of proximity to special facilities or services.

State data reported to the Department under IDEA also support the 1.0 percent cap. Of the 38 States for which sufficient data are available, 21 States reported 5.0 percent or less of students with disabilities who participated in the State assessment program took an alternate assessment. (Five percent of students with disabilities is roughly equivalent to 0.5 percent of all students.) In 14 other States, between 5.0 and 10.0 percent of students with disabilities participated in State assessment programs through an alternate assessment (Analysis of 2000–2001 Biennial Performance Reports, National Center for Educational Outcomes). In these States, students with disabilities comprise approximately 8.0 to 12.0 percent of the total student population (IDEA Annual Report to Congress, 2001).

The 1.0 percent cap is the limit on the number of proficient or advanced scores based on alternate achievement standards that may count as proficient or advanced for accountability purposes at the LEA and SEA levels. Consequently, in cases where the number of students taking an alternate assessment based on alternate achievement standards exceeds 1.0 percent, it may not be necessary to apply for a higher cap. For example, if 1.0 percent equals 200 students and 400 students are assessed with an alternate assessment based on alternate achievement standards, but only half of the students assessed are "proficient," the LEA would not exceed the cap.

In summary, the Secretary believes that the 1.0 percent cap is consistent with disability incidence rates and the States' use of alternate assessments. It provides sufficient flexibility for States to measure the achievement of students with the most significant cognitive disabilities for accountability purposes, while meeting the spirit and intent of the law that all students be held to high standards.

Change: None.

Comment: None.

Discussion: If a State chooses not to use alternate achievement standards, it must still incorporate the assessment scores of all students with disabilities in AYP determinations, including those with the most significant cognitive disabilities.

Change: Section 200.13(c)(1)(i) has been added to clarify this requirement.

Comment: A number of commenters raised questions about how the 1.0 percent cap would work in practice and how it would be applied at the LEA and State levels. In particular, there were questions about what effect this limitation would have on schools and their AYP calculations.

Discussion: The cap applies at the State and LEA levels, but not at individual schools, and is based on the number of students enrolled in the grade(s) tested. Some districts may deliver special services for students with the most significant cognitive disabilities in one or a few schools. Additionally, the enrollment patterns of students across districts may not result in an even distribution of students with the most significant cognitive disabilities among schools, even if there are not special centers for these students. In these cases, a limitation on the number of students who may score proficient on alternate assessments based on alternate achievement standards may prove unworkable at a school level and not be in the best interests of those students.

The actual enrollment of students who are appropriately assessed with the alternate assessment based on alternate achievement standards may not be evenly distributed across a district. One school may have 2.0 percent of its students score proficient or better on an alternate assessment based on alternate achievement standards, while another school may not have even a single student assessed using alternate achievement standards. The flexibility offered by the Secretary in these regulations is meant to accommodate such distributions. Working through the IEP development process, the district should determine how best to ensure that students with the most significant cognitive disabilities participate in the general curriculum, are assessed appropriately, and, quite importantly, are provided with an education in the least restrictive environment.

All scores based on alternate achievement standards must be included in school, LEA, and State AYP calculations. An individual student's results from such assessments are counted in all appropriate subgroups. Consequently, in those circumstances when a district has more than 1.0 percent of its students score proficient or advanced on an alternate assessment based on alternate achievement standards, the State must determine which proficient scores are counted as non-proficient at schools in the district responsible for students who took an alternate assessment based on alternate achievement standards. This ensures that schools do not have an incentive to inappropriately increase the number of students assessed with an assessment based on alternate achievement standards. To implement this process, each student's score used for calculating AYP must remain the same at each level of the educational system—school, district, and State, and for each group and subgroup of which the student is a member for which AYP is calculated. However, regardless of how an individual student's score is treated in AYP calculations, the parent must be informed of the actual academic achievement level earned by the student.

The LEA is responsible for managing this process at the local level in three ways. First, the LEA must provide information to school personnel and IEP teams about the state assessment, the use of accommodations, and assessment against alternate achievement standards. State guidelines for use of alternate achievement standards should be communicated to local schools early in the school year to ensure consistency between instruction and assessment and to prevent confusion at the time of test administration. A reasonable expectation is that, in most cases, about 9 percent of the students receiving special education services would be tested against alternate achievement standards, unless a school provides special services to students with the most significant disabilities or is particularly small. An LEA may choose to provide individual schools with preliminary estimates of the number of

students to be tested against alternate achievement standards based on the characteristics of the school's student population and existing State guidelines for participation. Second, the LEA should ensure appropriate staff receive training to support sound IEP decisions about which students participate in an alternate assessment based on alternate achievement standards. These decisions should always be made on a case-by-case basis and should support access to the most challenging curriculum possible for the individual student. Finally, the LEA should monitor implementation of assessments based on alternate achievement standards in schools throughout the district to ensure that alternate achievement standards are being used in a manner consistent with the best instructional practices known for students with the most significant cognitive disabilities.

These regulations provide new flexibility to LEAs and schools and will increase the number of schools and LEAs that can make AYP. If an LEA manages the process well, AYP determinations should withstand appeal under the State's accountability system. If an LEA does not manage the cap well, however, and permits schools to assess an inappropriately large number of students with an alternate assessment aligned to alternate achievement standards, the LEA may significantly exceed the cap and, thus, a large number of non-proficient scores would have to be allocated among the schools that administered the alternate assessment aligned with alternate achievement standards. This would potentially create negative consequences for schools that administer the alternate assessment. States should ensure that these regulations are implemented appropriately throughout the State to ensure schools benefit from this new flexibility.

The following example illustrates how the policy works in practice. As determined by its cap, a district may count for AYP purposes no more than 100 students scoring at proficient or advanced on an alternate assessment based on alternate achievement scores. If this district has 150 students scoring at proficient or advanced on an alternate assessment based on alternate achievement scores, and has not received an exception from the State to exceed the 1.0 percent cap, it must (1) count the excess 50 scores as non-proficient, and (2) determine which proficient and advanced scores will be considered not proficient because they exceed the district's 1.0 percent cap when determining AYP for schools responsible for students who took the alternate assessment aligned with alternate achievement standards. To illustrate further, in this particular district there are four schools responsible for students who take alternate assessments aligned to alternate achievement standards.

- In school A, there are 50 proficient scores
- In school B, there are 50 proficient scores
- In school C, there are 25 proficient scores
- In school D, there are 25 proficient scores

The LEA needs to determine which 50 of the 150 "proficient" scores will be counted as "non-proficient" at schools A, B, C and/or D. This district would follow the State's procedures for allocating the scores among its schools. One State might identify a particular method that all districts would use. Another State might permit districts to select among several methods approved by the State.

If a State requests an exception to the 1.0 percent cap, the Secretary believes that the State should be able to document that it is fully and effectively implementing the procedural safeguards set out in § 200.6(a)(2)(iii), as a means of showing that it is appropriately including students with disabilities in its assessment system. Because of these safeguards, the Secretary expects that it will be necessary to grant exceptions only for small increments above the 1.0 percent cap.

Change: Section 200.13(c)(2)(iii) has been added, requiring a State requesting an exception to the cap to document that it is fully and effectively addressing the procedural safeguards of § 200.6(a)(2)(iii). Section 200.13(c)(4)(iv) now includes a provision that requires States to apply the academic achievement level (*e.g.*, advanced, proficient, basic) of students with the most significant cognitive disabilities consistently in calculating AYP for the State, LEA, and school. A new § 200.13(c)(4)(i)–(iii) has been added to explain that States must determine which proficient scores that exceed the cap must count as non-proficient in calculating AYP in LEAs and schools responsible for students who take an alternate assessment based on alternate achievement standards.

Comment: Several commenters expressed concern that a school with the capacity to provide effective services for students with the most significant cognitive disabilities may suffer negative consequences as a result of exceeding the 1.0 percent cap.

Discussion: The 1.0 percent cap on proficient and advanced scores based on alternate achievement standards applies specifically at the State and district levels, although scores must be treated the same for AYP purposes at the State, district and school levels. An extraordinarily effective school that draws students from across the district, or from outside the district may exceed the limit so long as the total number of proficient and advanced scores based on alternate achievement standards does not exceed the 1.0 percent cap within the district. The LEA has considerable discretion to accommodate such schools in determining how to meet the 1.0 percent cap at the LEA level. The responsibility for establishing guidelines to inform local practice and for monitoring the use of alternate achievement standards for AYP rests with the State and LEA. This responsibility is consistent with the typical organization of special education programs at the State and district levels.

Change: None.

Comment: None.

Discussion: The Secretary was concerned that these regulations may lead to confusion between the use of scores based on alternate achievement standards in AYP calculations, and reporting results to parents.

Change: The regulation clarifies in § 200.13(c)(4)(v) that regardless of how a score is used for AYP, the actual score of a child must be reported to parents.

General Comments

Comment: One commenter said that the proposed rule should be subject to negotiated rulemaking.

Discussion: The statutory requirements for negotiated rulemaking apply to regulations initially implementing the NCLB Act, not to subsequent regulatory amendments such as those contained in these regulations. The Secretary previously issued regulations for standards and assessments through a negotiated rulemaking process. (*See* 34 CFR part 200).

Change: None.

Comment: Several commenters recommended that the Department closely monitor the cap to ensure it is being used appropriately.

Discussion: The Secretary agrees with the importance of monitoring State and LEA implementation of these requirements as they relate to students with disabilities. The Department's Office of Special Education Programs and the Student Achievement and School Accountability Programs office in the Office of Elementary and Secondary Education will coordinate their efforts in monitoring States for these requirements, and will establish internal mechanisms to share student achievement data and other pertinent information necessary to assess States' progress in this area. In addition, the Secretary believes that it is crucial that SEAs closely monitor how districts are using the 1.0 percent cap both generally and specifically in the case of an LEA that receives an exception to the 1.0 percent cap.

Change: A new provision is added in § 200.13(c)(3)(ii) that requires States to review annually whether an LEA's exception to the 1.0 percent cap is still warranted.

Section 200.20(c)(3)

Comment: Several commenters suggested that States be able to determine which administration of an assessment counts for AYP purposes, and in cases where a particular assessment is given more than once, the best result from students should be used for determining AYP.

Discussion: States have the authority and responsibility to design assessments that measure what students should know and be able to do at a given point in their schooling. States have an expectation, as evident in the assessments, for when students should learn the content standards. Accordingly, for AYP purposes States must count the assessment results that reflect when they expect all students to have learned the content standards. In other words, the "first administration" is the first time an assessment is officially administered to measure a student's achievement of the State's content standards in the grade or subject for which the State expects the student to have achieved proficiency of those standards. Scores from this first official administration must be used for calculating AYP. Students who have scored at proficient or higher on assessments taken earlier than the first official administration, however, may "bank" those scores, and would not have to retake the test at a later date. Consider the following example: A State administers a third-grade reading test in the

fall and spring, while expecting all students to have learned the material by the spring administration. In this case, the State may use the scores from students who were proficient on the fall administration for calculating AYP and these students would not be required to take the assessment a second time.

Through the accountability review process, we were able to work with States and clarify the intent of the regulation. Consequently we do not believe a change to these regulations is necessary to address the concerns that were submitted earlier this year.

Change: None.

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Federal Register

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Part III

Department of Labor

Employee Benefits Security Administration

29 CFR Part 2510

Electronic Registration Requirements for Investment Advisers To Be Investment Managers Under Title I of ERISA; Proposed Rule

DEPARTMENT OF LABOR

Employee Benefits Security Administration

29 CFR Part 2510

RIN 1210-AA94

Electronic Registration Requirements for Investment Advisers To Be Investment Managers Under Title I of ERISA

AGENCY: Employee Benefits Security Administration, Department of Labor.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains a proposed regulation relating to the definition of investment manager in section 3(38)(B) of Title I of the Employee Retirement Income Security Act of 1974 (ERISA). Under the proposed regulation, in lieu of filing a copy of their state registration forms with the Secretary of Labor, state-registered investment advisers seeking to obtain or maintain investment manager status under Title I of ERISA would have to electronically register through the Investment Adviser Registration Depository (IARD) as an investment adviser with the state in which they maintain their principal office and place of business. The IARD is a centralized electronic filing system, established by the Securities and Exchange Commission (SEC) in conjunction with state securities authorities. The IARD enables investment advisers to satisfy SEC and state registration obligations through the use of the Internet, and current filing information in the IARD database is readily available to the Department and the general public via the Internet. If adopted, the proposed regulation would make electronic registration through the IARD the exclusive method for state-registered investment advisers to satisfy filing requirements for investment manager status under section 3(38)(B)(ii) of Title I of ERISA. The proposed regulation would affect plan trustees, investment managers, other fiduciaries, and plan participants and beneficiaries.

DATES: Written comments (either in print or electronic format) are invited and must be submitted to the Department of Labor on or before February 9, 2004.

ADDRESSES: Interested persons are invited to submit written comments (preferably with three copies) to the Office of Regulations and Interpretations, Room N–5669, Employee Benefits Security Administration, U.S. Department of Labor, 200 Constitution Ave., NW., Washington, DC 20210, Attention: ERISA Investment Manager Electronic Registration NPRM. Written comments may also be sent by Internet to the following address: *E–ORI.EBSA@dol.gov*. All submissions received will be available for public inspection and copying from 8:30 a.m. to 4:30 p.m. at the Public Disclosure Room, Employee Benefits Security Administration, U.S. Department of Labor, Room N–1513, 200 Constitution Ave. NW., Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Florence M. Novellino, Office of Regulations and Interpretations, Employee Benefits Security Administration, U.S. Department of Labor, Washington, DC 20210, telephone (202) 693–8518 (not a toll free number).

SUPPLEMENTARY INFORMATION:

A. Background

Under Title I of the Employee Retirement Income Security Act of 1974 (ERISA), named fiduciaries of plans may appoint investment managers to manage assets of the plan. If the investment manager is a registered investment adviser, bank or insurance company, and meets the other requirements for being an "investment manager" as defined in section 3(38) of ERISA, the plan trustees are relieved from certain liabilities relating to the investment manager's performance.[1]

In 1996, the National Securities Market Improvement Act (NSMIA) amended the Investment Advisers Act of 1940 (Advisers Act) to divide certain investment adviser regulatory responsibilities, including the registration requirements, between the Securities and Exchange Commission (SEC) and the states. Prior to 1996, most investment advisers were required to register with the SEC and in each state in which they were doing business. Pursuant to paragraph (1) of section 203A(a) of the Advisers Act, and SEC rule at 17 CFR 275.203A–1, certain investment advisers are prohibited from registering with the SEC but must register with the state in which the adviser maintains it principal office and place of business.[2] The legislative history of NSMIA indicates that this division of regulatory responsibilities was intended, among other things, to encourage the SEC and state regulators to create a uniform system for "one-stop" filing that would benefit investors, reduce regulatory and paperwork burdens for registered investment advisers, and facilitate supervision of investment advisers.[3]

The SEC implemented that legislative intent at the federal level by publishing a final rule in September of 2000 at 17 CFR 275.203–1 which made electronic filing with the Investment Adviser Registration Depository (IARD) mandatory for SEC-registered advisers. Additionally, all states accept forms filed via the IARD to satisfy state registration requirements, and many mandate state registration via the IARD.[4] Accordingly, the IARD has become a "one-stop" Internet-based centralized filing system that enables investment advisers to satisfy filing obligations with both federal and state securities regulators. Pertinent state registration information in the IARD database is available on the Internet to the general public through the Investment Adviser Public Disclosure (IAPD) Web site that may be directly accessed through the SEC's Web site or through links from various state and investor Web sites. The IAPD Web site contains investment adviser registration data, including information about current registration forms, registration status, services provided, fees charged, and disclosures about certain conflicts of interest and disciplinary events, if any. The IAPD Web site includes information on investment advisers that currently are registered with the SEC or a state, and also contains information on investment advisers that were registered in the previous two years but are no longer registered.

Section 3(38)(B) of Title I of ERISA was also amended to reflect the above-described changes to the investment adviser registration requirements under the Advisers Act.[5] Specifically, section 3(38)(B) of ERISA requires that, to be an investment manager under Title I, an investment adviser must: (i) be registered with the SEC under the Advisers Act of 1940, or (ii) if not registered under such Act by reason of paragraph (1) of section 203A(a) of such Act, be registered as an investment adviser under the laws of the state in which it maintains its principal office and place of business and, at the time the investment adviser last filed the registration form it most recently filed with such state in order to maintain its registration under the laws of such state, it also filed a copy of such form with the Secretary of Labor.

To implement the filing requirements in section 3(38)(B)(ii) of ERISA, the Department announced on January 14, 1998, that state-registered investment advisers seeking to qualify, or remain qualified, as investment managers must file a copy of their most recent state registration form for the state in which it maintains its principal office and place of business with the Department prior to November 10, 1998, and thereafter file with the Department copies of any subsequent filings with that state. The ongoing obligation to file copies with the Department was, however, to be temporary in nature and remain in effect until a centralized database containing the state registration forms, or substantially similar information, was available to the Department.[6]

The current requirement to file with the Department copies of state registration filings already accessible to the Department and the general public via the IAPD Web site places an unnecessary administrative burden on the regulated community. The requirement also results in the Department allocating resources to receive, sort, and store paper copies of information readily available in electronic form. It is the Department's view that use of the IARD as a centralized electronic database would improve the ability of the Department, plan fiduciaries, and plan participants and beneficiaries to readily access registration information regarding investment advisers eligible to be investment managers of ERISA-covered plans. As noted above, not only does the SEC require electronic filing through the IARD for registration under the Advisers Act, but most states also require IARD filing for compliance with state investment adviser registration requirements. While a few states do not make electronic filing through the IARD mandatory, as noted above, all states permit investment advisers to use the IARD to satisfy registration requirements. As described more fully below, the Department believes the majority of investment managers of ERISA-covered plans already file registration forms electronically through the IARD under the Advisers Act or under applicable state securities laws. In the Department's view, the benefits to plan trustees, plan participants and beneficiaries, and the Department of this proposed regulation outweigh the relatively small incremental cost that some investment managers may incur to file state registration filings through the IARD.

B. Summary of the Proposed Regulation

The proposed regulation would add § 2510.3–38 to title 29 of the Code of Federal Regulations. Section 2510.3–38(a) would describe the general filing requirement with the Secretary set forth in section 3(38)(B)(ii) applicable to state-registered investment advisers seeking to become or remain investment managers under Title I of ERISA. The regulation would also make clear that its purpose is to establish the exclusive means to satisfy that filing obligation. Section 2510.3–38(b) would provide that, for a state-registered investment adviser to satisfy the filing requirement in section 3(38)(B)(ii) of ERISA, it must electronically file the required registration forms through the IARD. Section 2510.3–38(b) would also provide that submitting a copy of state registration forms to the Secretary does not constitute compliance with section 3(38)(B)(ii) of ERISA. Section 2510.3–38(c) would define the term "Investment Adviser Registration Depository" and "IARD" for purposes of the regulation as the centralized electronic depository described in 17 CFR 275.203–1. Finally, § 2510.3–38(d) would provide a cross-reference to the SEC Internet site at *http://www.sec.gov/iard* for information on filing investment advisor registration forms with the IARD.

C. Effective Date and Interim Reliance

This regulation is proposed to be effective 60 days after publication of a final rule in the **Federal Register**. If adopted, the proposed regulation would be applicable to investment adviser registration filings due after the effective date of the final regulation. Until the effective date of the final regulation, investment advisers seeking to obtain or maintain investment manager status under Title I of ERISA will be treated as having met the filing obligations with the Secretary of Labor described in section 3(38)(B)(ii) of ERISA for any registration filing due on or after the date the proposed regulation is published in the **Federal Register** if they satisfy the conditions of the proposed regulation.

D. Regulatory Impact Analysis

Summary

The Department has undertaken this proposed rulemaking for the purpose of establishing a single and readily accessible source of consistent information about the registration of investment advisers that are investment managers by virtue of meeting the requirements of section 3(38)(B)(ii) of ERISA. The Department believes the regulation, if implemented as proposed, would benefit plan fiduciaries, investment advisers, and ultimately the participants and beneficiaries of employee benefit plans. Although the anticipated benefits of the proposal are not quantified here, they are expected to more than justify its relatively modest estimated cost.

The estimated cost of the implementation of electronic registration through the IARD for approximately 500 advisers that submitted copies of their state registrations to the Secretary of Labor, and that currently register in only those states that do not mandate IARD filing, is just under $400,000. Ongoing annual costs are estimated at $50,000. These costs will be offset by efficiency gains for plan fiduciaries and for investment advisers that wish to be appointed by plan fiduciaries. As a result of the electronic registration requirement, plan fiduciaries will be able to access a single source of registration information regardless of the size or location of the adviser, and advisers may more readily demonstrate their eligibility to be investment managers in order to gain appointments by plan fiduciaries. Over time, these investment managers may also reduce the handling of paper and the time required to complete the Form ADV, which is the joint SEC and state registration form that is also currently

[1] Section 402(c)(3) of ERISA states that a plan may provide that with respect to control or management of plan assets a named fiduciary may appoint an investment manager or managers to manage (including the power to acquire and dispose of) plan assets. Section 405(d) of ERISA provides in part that, if an investment manager or managers have been appointed under section 402(c)(3), then no trustee shall be liable for the acts or omissions of such investment manager or managers, or be under an obligation to invest or otherwise manage any asset of the plan which is subject to the management of such investment manager.

[2] Specifically, subject to certain exceptions, investment advisers fall into three categories under the NSMIA amendments. First, investment advisers having assets under management of less than $25 million generally are prohibited from registering with the SEC but must register with the state regulatory authority in the state where the investment adviser maintains its principal office and place of business. Those with at least $25 million but less than $30 million may register with the SEC in lieu of filing with state authorities. Those with $30 million or more must register with the SEC. Section 203A(a) of the Advisers Act is codified at 15 U.S.C. 80b–3a(a). *See also* 17 CFR 275.203A–2 for exemptions from the prohibition for certain investment advisers registering with the SEC.

[3] S. Rep. No. 104–293, at 5 (1996).

[4] The State of Wyoming has not promulgated a state investment adviser regulation requirement; therefore all Wyoming-based investment advisers are required to register under the Advisers Act with the SEC via the IARD. *See* 65 FR 57438, 57445 (Sept. 22, 2000).

[5] *See* sec. 308(b)(1) of Title III of NSMIA and Act of November 10, 1997, Sec. 1, Pub. L. 105–72, 111 Stat. 1457.

[6] Pub. L. 105–72 provided that a fiduciary shall be treated as meeting the requirement for filing a copy of the required state registration form with the Secretary if a copy of the form (or substantially similar information) is available to the Secretary from a centralized electronic or other record-keeping database. See Act of November 10, 1997, Sec. 1(b), Pub. L. 105–72, 111 Stat. 1457.

accepted by all the states for State registration purposes. Electronic availability of registration information will also support better and more transparent decision making with respect to the appointment of investment managers, which ultimately benefits the participants and beneficiaries of the plans involved.

Discussion

The proposal would benefit plan fiduciaries that wish to appoint an investment manager pursuant to section 402(c)(3) of ERISA. Under section 405(d)(1) of ERISA, plan fiduciaries are not liable for the acts or omissions of the investment manager, and have no obligation to invest assets subject to management by the investment manager. The centralized source of readily accessible registration information offered by the IARD will help plan fiduciaries more efficiently locate information needed to determine whether advisers they may consider appointing are eligible to be an investment manager under ERISA. The source and format of information will no longer differ based on the size or principal business location of the adviser.

Uniform use of the IARD for all advisers who wish to be or remain as investment managers under ERISA will benefit these advisers as well. The change to electronic filing will not change the incentives for investment advisers to become investment managers under ERISA, but should promote increased efficiency for doing so. Advisers are not required to be an investment manager to conduct advisory activities for any customer. The Department assumes that an adviser's decision whether to meet the definition of investment manager under ERISA is based on factors unrelated to the form or format of their registration. It is therefore expected that those state-registered advisers who filed paper copies of their state registration forms with the Secretary chose to do so to gain an advantage in securing appointments by plan fiduciaries.

In any case, this proposed regulation will not change the content of the filings for these advisers because all states accept the joint SEC and state filing form (Form ADV) for state registration, and with certain exceptions, all of the copies submitted to the Secretary were made on Form ADV.[7] Mandatory use of the IARD will, however, change the format and manner in which the information is transmitted. While the Department expects advisers to incur a cost to establish a procedure for electronic filing through the IARD plus an annual fee, the change to an electronic format and transmission method is expected to be more efficient and less costly over time. Use of the IARD will reduce the paper handling, filing, and mailing costs associated with providing copies to the State or States as well as to the Secretary, and reduce handling to obtain and reproduce signatures. The SEC cited similar efficiency gains in its regulatory impact analysis of the final rule implementing mandatory electronic filing for federally regulated advisers. Securities and Exchange Commission. Electronic Filing by Investment Advisers; Final Rule. 65 FR 57438, Sept. 22, 2000.

The proposed regulation will directly affect only those investment advisers who wish to become or remain as investment managers under section 3(38) of ERISA, who generally have $25 million or less under management and consequently do not register with the SEC, and who register only in states that do not mandate use of the IARD to satisfy state registration requirements. Copies of registration forms submitted to the Secretary by State-registered investment advisers indicate that about 500 State-registered advisers have registered in only a non-IARD state.[8] Prior to the implementation of the IARD and many States' decisions to mandate use of the IARD to meet state adviser registration requirements, about 1,500 advisers provided paper copies of their state registration forms to the Secretary. Based on the data contained in those filings, about 1,000 of these already have the capability to file electronically because they are required to register in states that mandate use of the IARD. The Department therefore assumes that this proposed regulation would affect only those advisers that register only in non-IARD states.

Under existing requirements, State-registered advisers incur a State registration filing fee with every State in which they are required to register, plus postage and handling fees for their submissions. Such fees vary by State. Most if not all of the 500 advisers potentially affected by this proposed regulation now register in only one state. When advisers registered only in non-IARD States register through the IARD, the appropriate state registration fee will be forwarded to the state, such that there will be no net change in state filing fees.

The Advisers Act and Form ADV allow for the requirement that states be provided registration statements. To facilitate state registration, the registrant checks the appropriate boxes on the form for each applicable state, and the IARD then distributes the required information electronically to those states. States will be unaffected because they will continue to receive existing fees, although they will be transmitted in a different manner.

These advisers would, however, newly incur the IARD initial filing fee of $150 for advisers of the size under consideration here, and an annual filing fee of $100. It is also expected that the 500 state-registered advisers will incur a cost for the set-up of the electronic filing capability, and an expenditure of time to adjust internal procedures and put existing information into an electronic format. Filing fees for the first year are expected to total $75,000 in the first year and $50,000 in each subsequent year for these advisers.

The cost of the electronic filing set-up is not known. The SEC did not quantify the cost of set-up in the final rule cited above that pertained to mandatory use of the IARD for registration with the SEC. However, for the purpose of this discussion, the cost for establishment of electronic filing capability has been estimated to be $500, or $250,000 for the 500 advisers affected. This is a one-time cost based on available information on annual fees charged to SEC registrants by commercial providers of service in the industry.[9] An examination of a sample of the 500 individual filings showed that many of the advisers in question already use the software of a single provider for completing their Form ADV. Because this provider performs services to IARD filers who are currently SEC registrants as well, we have assumed that their range of services includes a method of facilitating electronic filing. It is also assumed that all advisers make use of electronic technology in the normal course of business and will not be required to make substantial technological changes as a result of this proposal.

A one-time cost is also estimated for the time required for the adviser to adjust its internal procedures to input data electronically, if necessary. A comparison of a sample of the paper filings received with IARD data indicated that these advisers had not also filed electronically with IARD. It seems likely that many advisers already prepare the forms electronically, regardless of whether they submit them electronically. To account for preparation for electronic transmission, it has been estimated that the advisers will incur the cost of two hours of a financial professional's time at $68 per hour, for a cost of $136 per adviser and a total of $68,000.

The estimated one-time cost of this proposal totals $393,000. The ongoing cost of maintaining registration information and completing and filing Form ADV is not accounted for here because the advisers prepare and file such forms to meet state registration requirements and would continue to do so without regard to this proposed regulation. The ongoing incremental cost of this proposal is therefore $100 per adviser per year, or $50,000.

The Department considered alternatives to this proposal, including issuing no guidance and implementing a standard that would provide the adviser an option to either file a print copy of its state registration or make use of the IARD. The value of greater efficiency through the elimination of dual sources of registration information and promotion of greater accessibility of consistent information through electronic methods was considered to outweigh the relatively modest estimated cost of about $800 per adviser in the first year, and $100 per adviser in each subsequent year. As a result, the Department elected to issue this proposal and seek public comment on its views.

Executive Order 12866

Under Executive Order 12866, the Department must determine whether the regulatory action is "significant" and therefore subject to the requirements of the Executive Order and subject to review by the Office of Management and Budget (OMB). Under section 3(f), the order defines a "significant regulatory action" as an action that is likely to result in a rule (1) having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities (also referred to as "economically significant"); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of the Executive Order, it has been determined that this action is "significant" within the meaning of section 3(f)(4) of the Executive Order and has therefore been reviewed by OMB. The Department has also undertaken the assessment of the costs and benefits of this regulatory action presented above.

Paperwork Reduction Act

As part of its continuing effort to reduce paperwork and respondent burden, the Department of Labor conducts a preclearance consultation program to provide the general public and federal agencies with an opportunity to comment on proposed and continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA 95) (44 U.S.C. 3506(c)(2)(A)). This helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed.

Currently, EBSA is soliciting comments concerning the proposed information collection request (ICR) included in this Notice of Proposed Rulemaking concerning Electronic Registration Requirements for Investment Advisers to be Investment Managers Under Title I of ERISA (ERISA Investment Manager Electronic Registration). A copy of the ICR may be obtained by contacting the individual identified in the PRA Addresses section below.

The Department has submitted a copy of the proposed information collection to OMB in accordance with 44 U.S.C. 3507(d) for review of its information collections. The Department and OMB are particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Comments should be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503; Attention: Desk Officer for the Employee Benefits Security Administration. Although comments may be submitted through February 9, 2004, OMB requests that comments be received within 30 days of publication of the Notice of Proposed Rulemaking to ensure their consideration.

PRA Addresses: Address requests for copies of the ICR to Joseph S. Piacentini, Office of Policy and Research, U.S. Department of Labor, Employee Benefits Security Administration, 200 Constitution Avenue, NW., Room N–5718, Washington, DC 20210. Telephone (202) 693–8410; Fax: (202) 219–5333. These are not toll-free numbers.

The Department is issuing these proposed rules to establish the uniform availability of investment adviser registration information in a centralized electronic database. The proposed rule would affect investment advisers that register with the states rather than SEC by virtue of the requirements of NSMIA, who do not currently register electronically through the IARD, and who wish to fall within the definition of investment manager for purposes of ERISA section 3(38)(B). Such advisers currently file a paper copy of the applicable state registration form with the Secretary of Labor pursuant to section 3(38)(B)(ii) of the statute. The information collection is found in the proposed regulation at section 2520.3–38(b). The basis for the burden estimates is found in the discussion above.

Type of Review: New collection.
Agency: Employee Benefits Security Administration, Department of Labor.
Title: ERISA Investment Manager Electronic Registration.
OMB Number: 1210–0NEW.
Affected Public: Individuals or households; Business or other for-profit.
Respondents: 500.
Frequency of Response: Annually.
Responses: 500.
Estimated Total Burden Hours: 1,000.
Total Annualized Capital/Startup Costs: $275,000.
Total Burden Cost (Operating and Maintenance): $50,000.

[7] Several exceptions were observed; in those cases, the adviser submitted a copy of the State's action on their registration, such as a license or approval form, rather than the registration form itself. In each case, other advisers' filings for the same State were examined to confirm that the state did accept Form ADV filings.

[8] California, Florida, Kentucky, South Carolina, and West Virginia at the time of this writing.

[9] Such fees are used here as a proxy only; the fees do not pertain specifically to electronic set-up or transmission.

Total Annualized Cost: $325,000.

After the year of implementation, the startup cost will be fully defrayed. The ongoing annual operating and maintenance cost will be $50,000.

Unfunded Mandates Reform Act

For purposes of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), as well as Executive Order 12875, this proposed rule does not include any federal mandate that may result in expenditures by State, local, or tribal governments in the aggregate of more than $100 million, or increased expenditures by the private sector of more than $100 million.

Small Business Regulatory Enforcement Fairness Act

The rule being issued here is subject to the Congressional Review Act provisions of the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801 *et seq.*) and, if finalized, will be transmitted to Congress and the Comptroller General for review. The rule is not a "major rule" as that term is defined in 5 U.S.C. 804, because it is not likely to result in (1) an annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, or Federal, State, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) (RFA) imposes certain requirements with respect to federal rules that are subject to the notice and comment requirements of section 553(b) of the Administrative Procedure Act (5 U.S.C. 551 *et seq.*) and that are likely to have a significant economic impact on a substantial number of small entities. Unless an agency certifies that a proposed rule will not have a significant economic impact on a substantial number of small entities, section 603 of the RFA requires that the agency present an initial regulatory flexibility analysis at the time of the publication of the notice of proposed rulemaking describing the impact of the rule on small entities and seeking public comment on such impact. Small entities include small businesses, organizations and governmental jurisdictions.

For purposes of analysis under the RFA, EBSA normally considers a small entity to be an employee benefit plan with fewer than 100 participants, on the basis of the definition found in section 104(a)(2) of ERISA. However, this proposed regulation pertains to investment advisers that are prohibited from registering with the SEC pursuant to section 203(A) of the Advisers Act and SEC rules. This generally includes those advisers that have assets of less than $25 million under management. In its final rule relating to Electronic Filing by Investment Advisers (65 FR 57445, note 86), the SEC states that for purposes of the Advisers Act and the RFA, an investment adviser generally is a small entity if (a) it manages assets of less than $25 million reported on its most recent Schedule I to Form ADV, (b) it does not have total assets of $5 million or more on the last day of the most recent fiscal year, and (c) it is not in a control relationship with another investment adviser that is not a small entity (Rule 0–7 under the Advisers Act).

Because the entities potentially affected by this rule are similar if not identical to those that fall within the SEC definition of small entity for RFA purposes, and because the regulation is expected to have a direct impact on an existing cost of doing business that investment advisers would assume without regard to this proposal, but no economic impact that would be passed on to employee benefit plans, the Department considers it appropriate in this limited circumstance to use the SEC definition for evaluating potential impacts on small entities. The Department invites comments on its election to use this definition. Using this definition, the Department certifies that this proposed regulation would not have a significant economic impact on a substantial number of small entities. The factual basis for this conclusion is described below.

The SEC States that of about 20,000 investment advisers in the United States, some 12,000 do not file with them. As discussed above, approximately 500 investment advisers are expected to incur costs under this regulation. This represents 2.5 percent of the approximately 20,000 advisers doing business in the U.S., or 4 percent of the 12,000 small advisers that do not currently file with the SEC. Thus the number of advisers that will incur costs under this regulation is substantial neither in absolute terms nor as a fraction of the universe of all or of small advisers.

In addition, the economic impact of the proposal is not expected to be significant for any small entity. Seeking investment manager status for purposes of ERISA is not mandatory; small advisers presumably make efforts to meet the terms of the ERISA investment manager definition only when they compute a net benefit for doing so. The proposed regulation will mandate electronic submission of small adviser's registration information, but will not change the content or other requirements for those registrations. The average cost for affected advisers is estimated to be small: about $800 in the initial year, and $100 in each following year. It is possible that some portion of this cost will be passed on to plans.

On this basis, the Department certifies that this proposed regulation would not have a significant economic impact on a substantial number of small entities. The Department invites comments on the potential impact of this proposed regulation on small entities, and on ways in which costs may be limited within the stated objectives of this proposal.

Federalism Statement

Executive Order 13132 (August 4, 1999) outlines fundamental principles of federalism and requires the adherence to specific criteria by federal agencies in the process of their formulation and implementation of policies that have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. This proposed rule does not have federalism implications because it has no substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Section 514 of ERISA provides, with certain exceptions specifically enumerated, that the provisions of Titles I and IV of ERISA supersede any and all laws of the States as they relate to any employee benefit plan covered under ERISA. Although the requirements in this proposed rule do alter the fundamental reporting and disclosure requirements of section 3(38)(B) of ERISA with respect to state-registered investment managers, because the duty of these state-registered advisers to report to the states exists independently of ERISA, and the proposed rule merely prescribes that investment advisers seeking ERISA investment manager status use a specific filing method that is accepted by all states and available as a choice in all states for registration purposes, there is neither a direct implication for the States, nor is there a direct effect on the relationship or distribution of power between the national government and the States. This proposal only affects those State-registered investment advisers who choose to seek investment manager status under section 3(38) of ERISA, advisers not seeking such status are unaffected by this proposed regulation.

Statutory Authority

The proposed regulation would be adopted pursuant to the authority contained in section 505 of ERISA (Pub. L. 93–406, 88 Stat. 894; 29 U.S.C. 1135), and the Act of November 10, 1997, Sec. 1, Pub. L. 105–72, 111 Stat. 1457, and under Secretary of Labor's Order 1–2003, 68 FR 5374 (Feb. 3, 2003).

List of Subjects in 29 CFR Part 2510

Employee benefit plans, Employee Retirement Income Security Act, Pensions, Plan assets.

PART 2510—[AMENDED]

1. The authority citation for part 2510 is revised to read as follows:

Authority: 29 U.S.C. 1002(2), 1002(21), 1002(37), 1002(38), 1002(40), 1031, and 1135; Secretary of Labor's Order 1–2003, 68 FR 5374; Sec. 2510.3–101 also issued under sec. 102 of Reorganization Plan No. 4 of 1978, 43 FR 47713, 3 CFR, 1978 Comp., p. 332 and E.O. 12108, 44 FR 1065, 3 CFR, 1978 Comp., p. 275, and 29 U.S.C. 1135 note. Sec. 2510.3–102 also issued under sec. 102 of Reorganization Plan No. 4 of 1978, 43 FR 47713, 3 CFR, 1978 Comp., p. 332 and E.O. 12108, 44 FR 1065, 3 CFR, 1978 Comp., p. 275. Section 2510.3–38 is also issued under Sec. 1, Pub. L. 105–72, 111 Stat. 1457.

2. Add § 2510.3–38 to read as follows:

2510.3–38 Filing requirements for State registered investment advisers to be investment managers.

(a) *General.* Section 3(38) of the Act sets forth the criteria for a fiduciary to be an investment manager for purposes of section 405 of the Act. Subparagraph (B)(ii) of section 3(38) of the Act provides that, in the case of a fiduciary who is not registered under the Investment Advisers Act of 1940 by reason of paragraph (1) of section 203A(a) of such Act, the fiduciary must be registered as an investment adviser under the laws of the State in which it maintains its principal office and place of business, and, at the time the fiduciary files registration forms with such State to maintain the fiduciary's registration under the laws of such State, also files a copy of such forms with the Secretary of Labor. The purpose of this section is to set forth the exclusive means for investment advisers to satisfy the filing obligation with the Secretary described in subparagraph (B)(ii) of section 3(38) of the Act.

(b) *Filing requirement.* To satisfy the filing requirement with the Secretary in section 3(38)(B)(ii) of the Act, a fiduciary must be registered as an investment adviser with the State in which it maintains its principal office and place of business and file through the Investment Adviser Registration Depository (IARD), in accordance with applicable IARD requirements, the information required to be registered and maintain the fiduciary's registration as an investment adviser in such State. Submitting to the Secretary investment adviser registration forms filed with a State does not constitute compliance with the filing requirement in section 3(38)(B)(ii) of the Act.

(c) *Definitions.* For purposes of this section, the term "Investment Adviser Registration Depository" or "IARD" means the centralized electronic depository described in 17 CFR 275.203–1.

(d) *Cross reference.* Information for investment advisers on how to file through the IARD is available on the Securities and Exchange Commission Web site at *http://www.sec.gov/iard.*

Signed at Washington, DC this 3rd day of December, 2003.

Ann L. Combs,

Assistant Secretary, Employee Benefits Security Administration, U.S. Department of Labor.

[FR Doc. 03–30435 Filed 12–8–03; 8:45 am]

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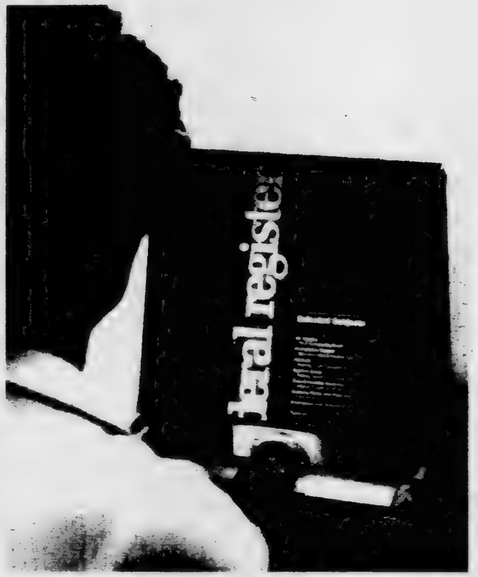
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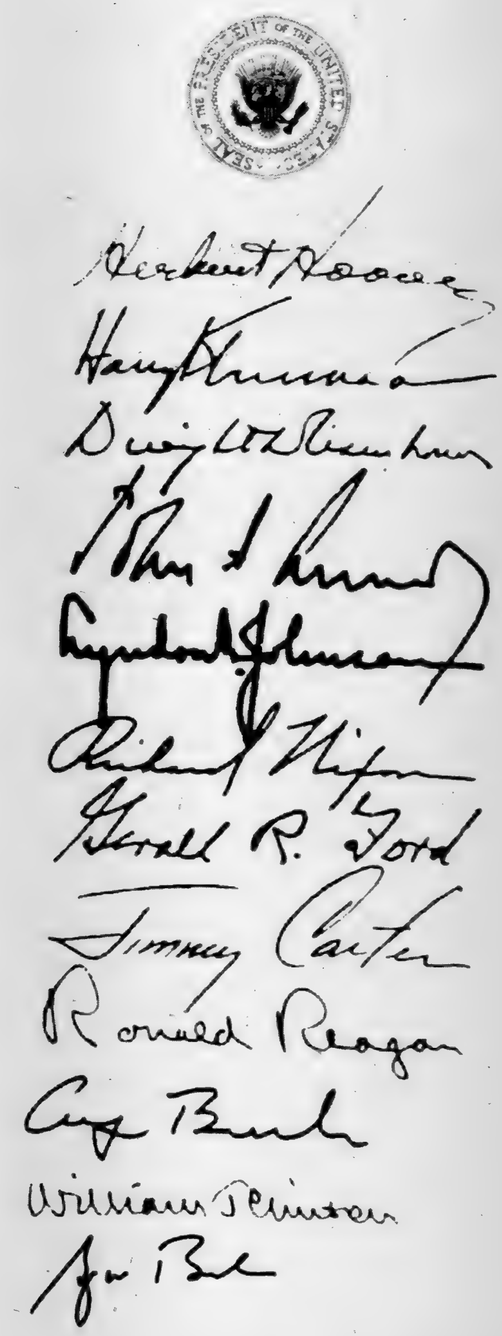
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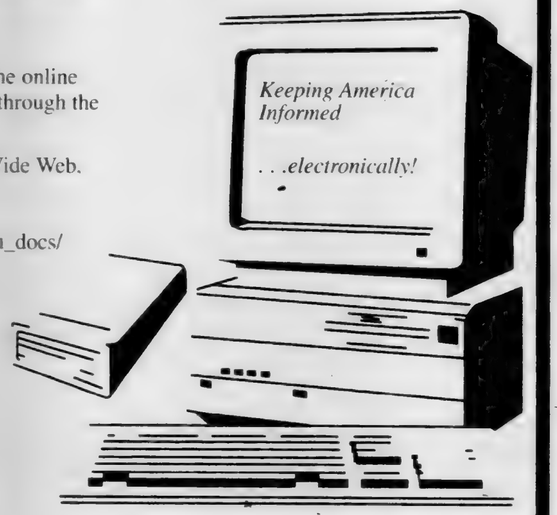
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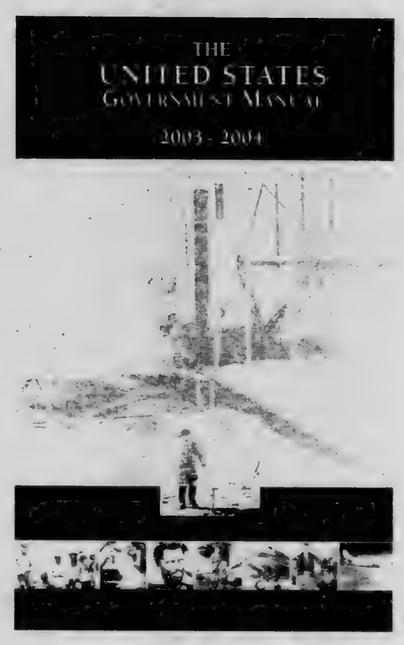
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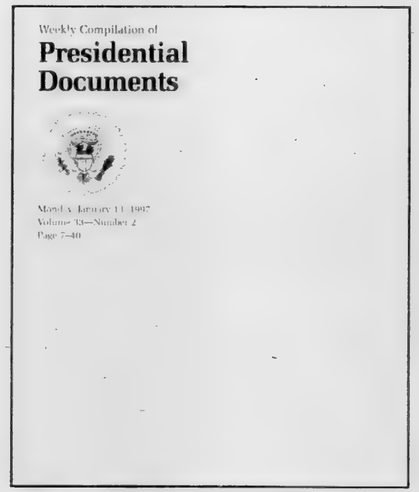
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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 905

[Docket No. FV03–905–1 FIR]

Oranges, Grapefruit, Tangerines, and Tangelos Grown in Florida; Extension and Modification of the Exemption for Shipments of Tree Run Citrus

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (USDA) is adopting, as a final rule, without change, an interim final rule extending for one season the exemption for tree run citrus under the Florida citrus marketing order (order). The order regulates the handling of oranges, grapefruit, tangerines, and tangelos grown in Florida and is administered locally by the Citrus Administrative Committee (committee). This rule continues in effect an exemption for shipments of tree run citrus from grade, size, and assessment requirements for the 2003–04 season. This rule also continues in effect an increase in the limit on the amount of citrus a grower can ship from 1,500 boxes to 3,000 boxes per variety and requires growers to identify their containers with their name and address. The committee believes this action may be a way to increase fresh market shipments, develop new markets, and improve grower returns.

EFFECTIVE DATE: January 9, 2004.

FOR FURTHER INFORMATION CONTACT: Doris Jamieson, Southeast Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 799 Overlook Drive, Suite A, Winter Haven, Florida 33884–1671; telephone: (863) 324–3375, Fax: (863) 325–8793; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, Fax: (202) 720–8938.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, Fax: (202) 720–8938, or E-mail: *Jay.Gueber@usda.gov*.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement No. 84 and Marketing Order No. 905, both as amended (7 CFR part 905), regulating the handling of oranges, grapefruit, tangerines, and tangelos grown in Florida, hereinafter referred to as the "order." The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

USDA is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule continues in effect an extension for one season of an exemption to ship tree run citrus free from grade, size, and assessment requirements under the order. This rule also continues in effect an increase in the limit on the total amount of citrus a grower can ship under the exemption from 1,500 boxes to 3,000 boxes per variety and requires growers to identify their containers with their name and address. This extension is for the 2003–04 season only. The committee believes this action may be a way to increase fresh market shipments, develop new markets, and improve grower returns. This action was recommended unanimously by the committee at its meeting on July 1, 2003.

Section 905.80 of the order provides authority for the committee to exempt certain types of shipments from regulation. Exemptions can be implemented for types of shipments of any variety in such minimum quantities, or for such purposes as the committee with the approval of USDA may specify. No assessment is levied on fruit so shipped. The committee shall, with the approval of USDA, prescribe such rules, regulations, or safeguards as it deems necessary to prevent varieties handled under the provisions of this section from entering channels of trade for other than the purposes authorized by this section.

Section 905.149 of the order's rules and regulations defines grower tree run citrus and outlines the procedures to be used for growers to apply to the committee to ship their own tree run citrus exempt from grade, size, and assessment requirements. The provisions of this section were originally established just for the 2002–03 season. It allowed growers to ship a maximum of 150 1⅗ bushel boxes per variety per shipment up to a seasonal total of 1,500 boxes per variety of their tree run fruit free from order requirements.

This rule continues the amendment to § 905.149 and the extension of its provisions for another season. This rule extends the exemption to ship tree run citrus free from grade, size, and assessment requirements as specified in § 905.149 for the 2003–04 season. This rule also continues to amend § 905.149 by increasing the limit on the amount of citrus a grower can ship during the season from 1,500 boxes to 3,000 boxes

per variety and by requiring that each container in each shipment be labeled with or contain the name and address of the grower. Growers must receive approval from the committee before they can utilize this exemption.

According to Florida Department of Citrus (FDOC) regulation 20–35.006, "Tree run grade is that grade of naturally occurring sound and wholesome citrus fruit which has not been separated either as to grade or size after severance from the tree." Also, FDOC regulation 20–62.002 defines wholesomeness as fruit free from rot, decay, sponginess, unsoundness, leakage, staleness, or other conditions showing physical defects of the fruit. By definition, this fruit is handled by the grower and bypasses normal handler operations. Prior to implementation of this exemption, all tree run citrus had to meet all requirements of the marketing order, as well as State of Florida Statutes and Florida Department of Citrus regulations. Even with this rule, tree run citrus must continue to meet applicable State of Florida Statutes and Florida Department of Citrus regulations, including inspection and any container marking requirements. However, growers will be able to pick, box, and ship directly to buyers, and avoid the costs incurred when citrus is handled by packinghouses.

During the past few seasons, small producers of Florida citrus have expressed concerns about problems incurred when trying to sell their citrus. These concerns include increasing production costs, limited returns, and the availability of markets. For some growers, there is limited demand for the variety of citrus they produce or they do not produce much volume. Consequently, they have difficulty getting packinghouses to pack their fruit. These problems, along with market conditions, have driven a fair number of citrus growers out of the citrus industry.

According to Florida Agricultural Statistics Service, over the past five years, fresh grapefruit sales have dropped 22 percent and fresh orange shipments are down 16 percent. This means fewer cartons are being packed. This can cause problems for varieties that may be out of favor with handlers and consumers, or for a particular variety of fruit where there may be a glut on the market. As a result, packinghouses do not wish to become over stocked with fruit which is difficult to market and, therefore, will not pack less popular minor varieties of fruit or fruit that is in oversupply. Packinghouses do not want to pack what they cannot sell. These factors have caused wholesome fruit to be shipped to processing plants or left on the tree.

When citrus cannot be sold into the fresh market, it can be sold to the processing plants. However, the prices received are considerably lower. During the last five years, only the 1999–2000 season produced on-tree returns for processed grapefruit that exceeded one dollar per box. Over the period from 1977 through 2000, the differential between fresh prices and processed prices has averaged $3.55 per box. The average on-tree price for processed Florida oranges during the 2001–02 season was $3.08 compared to $4.50 for fresh oranges.

In addition, the costs associated with growing for the fresh market are greater than the costs for growing for the processed market. While the costs of growing for the fresh market have been increasing, in many cases the returns to the grower have been decreasing. The cost of picking, packing, hauling, and associated handling costs for fresh fruit is sometimes greater than the grower's return on the fruit. In some cases, where the cost of harvesting exceeds the returns to the grower or the grower cannot find a buyer for the fruit, economic abandonment can occur. According to information from the National Agricultural Statistics Service, the seasons of 1995–96, 1996–97, 1997–98, and 2000–01 had an average economic abandonment of two million boxes or more of red seedless grapefruit alone.

Consequently, growers are looking for other outlets for their fruit in an effort to increase returns. Some growers believe secondary markets exist which are not currently being supplied that would provide additional outlets for their citrus. They think niche markets exist that could be profitable and want the opportunity to service them. They believe they can ship quality fruit directly to out-of-state markets and that it would be well received. These growers contend tree run citrus does not need a minimum grade and size to be marketable, and that they can supply quality fruit to secondary markets not served by packed fruit. However, they believe they need to bypass normal handler operations and the associated costs for it to be profitable.

To address these concerns, the committee recommended that for the 2002–03 season producers be allowed to ship small quantities of their own production directly to market exempt from order requirements. The exemption was for the 2002–03 season and expired July 31, 2003. A final rule on this action was published in the **Federal Register** on January 29, 2003 [68 FR 4361]. The committee agreed that following the 2002–03 season they would review the information provided by growers who applied for and used the tree run exemption to determine if the exemption should be continued.

During the 2002–03 season, 75 growers were approved to ship under the exemption. Approximately 25 growers actually used the exemption, shipping a total of 5,000 1–3/5 bushel boxes of oranges, grapefruit, tangerines, and tangelos. Those producers who took advantage of the exemption believe the program was successful. They were able to sell their fruit and supply markets not already supplied by packed fruit.

The growers who used the exemption believe that one year was not long enough and that it should be extended. They think more time is needed to determine the benefits of the exemption and whether it should be extended on a continuous basis. Growers believe to successfully develop new markets they must demonstrate they can consistently supply new markets with quality fruit and this cannot be done in a single season or without the exemption.

Growers also believe more markets exist. They think more time is needed to identify and research potential markets. In some cases, potential markets were not identified until late in the 2002–03 season when there was not enough fruit available to supply them. Growers want the opportunity to try to supply these markets in the coming season.

In addition, some interested growers did not take advantage of the exemption during the past season. Some stated if the exemption were to be extended for another season, they would use it to try shipping tree run citrus. By extending the exemption for another season, growers will have more time to utilize this opportunity and it will provide the committee with a better indicator of the level of interest and success.

There was also some discussion that the previously established 1,500 box limit on the total amount of each variety of citrus a grower could ship during the season may prevent growers from fully developing new markets. One concern expressed was that should a buyer want additional fruit during the season, a grower may not be able to supply it because they had reached their shipping limit. Another concern was for growers that only produce one variety of citrus. The previous limit of 1,500 boxes per variety for the season could prevent them from utilizing more of their fruit. Also, a producer may identify two or more potential markets, but with the limited amount of fruit that previously could be shipped, the grower could only supply fruit to one market. Growers believe raising the limit on the number of boxes per variety they can ship for the season will allow them to supply the markets previously developed as well as develop additional markets for their tree run fruit.

The committee reviewed this issue and discussed the concerns of small growers and the problems encountered during the past season. The committee determined that offering the exemption for another season will provide additional information on how fruit shipped under the exemption was received by the market. It will also provide a better indication of whether or not other markets exist that packed fruit is not currently supplying, where these markets are located, and approximately how much fruit can be sold in such markets. Extending the exemption also gives other growers an opportunity to try it.

Tree run fruit will be sold primarily to non-competitive, niche markets, such as farmers' markets, flea markets, roadside stands, and similar outlets and will not compete with non-exempt fruit shipped under the order. Fruit is sold in similar markets within the state, and such markets have been successful. Continuing the exemption for another season allows growers to sell directly to similar markets outside of the state, supplying markets that might not otherwise be supplied. The committee believes this action will allow the industry to service more non-traditional markets and may be a way to increase fresh market shipments and to develop new markets.

The committee also discussed the limits on the amount of fruit growers can ship during the season. Several different combinations of shipment totals were discussed. The committee determined that the limit of 150 boxes of each variety per shipment was still appropriate because it allowed the grower to ship a sufficient amount of fruit to make the exemption cost effective, but prevented too much fruit from entering market channels exempt from order requirements. However, the committee did agree that by raising the total amount of citrus a grower can ship during the season, the grower may be able to service more markets and sell more fruit. The committee continues to support the increase in the volume limit from 1,500 boxes to 3,000 boxes per variety under the exemption. This amount provides additional volume for the grower while limiting the amount of fruit that can be shipped under the exemption. Maintaining shipments at these levels will help keep this fruit in non-competitive outlets.

With the potential for additional fruit entering the market under the exemption, ensuring compliance with the provisions of the exemption and reducing the chances of tree run fruit getting into regular market channels is an important consideration. As a means of tracking the fruit and ensuring compliance, the committee decided that each container of tree run fruit should contain the name and address of the grower. Because tree run fruit can be shipped in a variety of containers, the committee thought requiring a label on the containers themselves may be impractical. For some containers, such as a cardboard box, having the name and address printed on the outside of the container would not be problematic. However, on other containers, such as field boxes, plastic boxes, or mesh bags, it can be difficult to print the name and address or affix a label. Therefore, the committee agreed that placing the name and address inside the container provides a means for identifying the owner of the fruit with the least amount of difficulty.

Consequently, for the reasons discussed, the committee voted unanimously to extend the tree run exemption for the 2003–04 season, raise the limit on the amount of citrus a grower can ship from 1,500 boxes to 3,000 boxes per variety, and require that growers identify each container with their name and address. The exemption is extended for the 2003–04 season only, and will expire on July 31, 2004. At the end of the season, the committee will review all available information and decide whether the exemption should be continued on a permanent basis.

Growers will continue to be required to apply to the committee, on the "Grower Tree Run Certificate Application" form provided by the committee, for an exemption to ship tree run citrus fruit to interstate markets. On this form the grower must provide their name; address; phone number; legal description of the grove; variety of citrus to be shipped; and the approximate number of boxes produced in the specified grove. The grower must also certify that the fruit to be shipped comes from the grove owned by the grower applicant. The application form will be submitted to the committee manager and reviewed for completeness and accuracy. The manager will also verify the information provided. After the application has been reviewed, the manager will notify the grower applicant in writing whether the application is approved or denied.

Once the grower has received approval for their application for exemption and begins shipping fruit, a "Report of Shipments Under Grower Tree Run Certificate" form, also provided by the committee, must be completed for each shipment. On this form, the grower will provide the location of the grove, the amount of fruit shipped, the shipping date, and the type of transportation used to ship the fruit, along with the vehicle license number. The grower must supply the Road Guard Station with a copy of the grower certificate report for each shipment, and provide a copy of the report to the committee. This report will enable the committee to maintain compliance and gather data, which will be used to determine the effectiveness of the exemption. Failure to comply with these requirements may result in the cancellation of a grower's certificate.

This rule does not affect the provisions that handlers may ship up to 15 standard packed cartons (12 bushels) of fruit per day exempt from regulatory requirements. Fruit shipped in gift packages that are individually addressed and not for resale, and fruit shipped for animal feed are also exempt from handling requirements under specified conditions. Also, fruit shipped to commercial processors for conversion into canned or frozen products or into a beverage base are not subject to the handling requirements under the order.

Section 8e of the Act requires that whenever grade, size, quality, or maturity requirements are in effect for certain commodities under a domestic marketing order, including citrus, imports of that commodity must meet the same or comparable requirements. This rule does not change the minimum grade and size requirements under the order. Therefore, no change is necessary in the citrus import regulations as a result of this action.

Final Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own

behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 11,000 producers of Florida citrus in the production area and approximately 75 handlers subject to regulation under the marketing order. Small agricultural producers are defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts less than $750,000, and small agricultural service firms are defined as those whose annual receipts are less than $5,000,000.

Based on industry and committee data, the average annual f.o.b. price for fresh Florida oranges, grapefruit, tangerines, and tangelos during the 2002–03 season was approximately $8.55 per 4/5 bushel carton, and total fresh shipments for the 2002–03 season were around 49.3 million cartons of oranges, grapefruit, tangerines, and tangelos. Approximately 20 handlers handled 65 percent of Florida's citrus shipments in 2002–03. Considering the average f.o.b. price, at least 55 percent of the orange, grapefruit, tangerine, and tangelo handlers could be considered small businesses under SBA's definition. Therefore, the majority of Florida citrus handlers may be classified as small entities. The majority of Florida citrus producers may also be classified as small entities.

This rule continues in effect an extension in the provisions of § 905.149 of the rules and regulations under the order for one more season. This rule exempts shipments of small quantities of tree run citrus from the grade, size, and assessment requirements for the 2003–04 season. This rule also continues in effect an increase in the limit on the amount of citrus a grower can ship from 1,500 boxes to 3,000 boxes per variety during the season and requires growers to identify their containers with their name and address. Growers must receive approval from the committee before they can use this exemption. The committee believes this action may be a way to increase fresh market shipments, develop new markets, and improve grower returns. Authority for this action is provided in § 905.80(e).

According to a recent study by the University of Florida—Institute of Food and Agricultural Sciences, production costs for the 2001–02 season ranged from $1.71 per box for processed oranges to $2.41 per box for grapefruit grown for the fresh market. The average packing charge for oranges is approximately $6.50 per box, for grapefruit the charge is approximately $5.75 per box, and for tangerines the charge can be as high at $9 per box. In a time when grower returns are weak, sending fruit to a packinghouse can be cost prohibitive, especially for the small grower. This rule may provide an additional outlet for fruit that might otherwise be forced into the processing market or left on the tree altogether.

This rule will not impose any additional costs on the grower, but have the opposite effect, providing growers the opportunity to reduce the costs associated with having fruit handled by a packinghouse. This action allows growers to ship small quantities of their tree run citrus directly into interstate commerce exempt from the order's grade, size, and assessment requirements and their related costs. With this action, growers will be able to reduce handling costs and use those savings toward developing additional markets not serviced by packed fruit. This rule will benefit all growers regardless of size, but it is expected to have a particular benefit for the small grower.

The committee considered alternatives to this action. One possible alternative was not extending the exemption for another season. However, the committee believes the exemption does provide other possible outlets for fruit and may help increase returns to growers, so this alternative was rejected. Another alternative considered was removing the limit on the total amount of citrus a grower could ship during the season. Committee members had concerns about allowing this exemption without some limit on total shipments. The committee agreed that an increase in the limit would provide additional opportunities for growers without causing any market disruption or making it more difficult to keep tree run fruit in noncompetitive outlets. Therefore, this alternative was also rejected.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the information collection requirements contained in this rule have been previously approved by the Office of Management and Budget (OMB) and assigned OMB No. 0581–0189. In addition, as noted in the initial regulatory flexibility analysis, USDA has not identified any relevant Federal rules that duplicate, overlap or conflict with this rule. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

The committee's meeting was widely publicized throughout the citrus industry and all interested persons were invited to attend the meeting and participate in committee deliberations. Like all committee meetings, the July 1, 2003, meeting was a public meeting and all entities, both large and small, were able to express their views on this issue.

An interim final rule concerning this action was published in the **Federal Register** on September 3, 2003 (68 FR 52325). Copies of the rule were mailed by the committee's staff to all committee members and citrus handlers. In addition, the rule was made available through the Internet by the Office of the Federal Register and USDA. That rule provided for a 60-day comment period, which ended November 3, 2003. No comments were received.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: *http://www.ams.usda.gov/fv/moab.html*. Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant material presented, including the committee's recommendation, and other information, it is found that finalizing the interim final rule, without change, as published in the **Federal Register** (68 FR 52325, September 3, 2003) will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 905

Grapefruit, Marketing agreements, Oranges, Reporting and recordkeeping requirements, Tangelos, Tangerines.

PART 905—ORANGES, GRAPEFRUIT, TANGERINES, AND TANGELOS GROWN IN FLORIDA

Accordingly, the interim final rule amending 7 CFR part 905 which was published at 68 FR 52325 on September 3, 2003, is adopted as a final rule without change.

Dated: December 4, 2003.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 03–30600 Filed 12–9–03; 8:45 am]

BILLING CODE 3410–02–P

FEDERAL RESERVE SYSTEM

12 CFR Part 264b

[Docket No. R–1174]

Rules Regarding Foreign Gifts and Decorations

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board is revising its Rules Regarding Foreign Gifts and Decorations, which govern the acceptance, retention, and disposition of gifts and decorations from foreign governments by Board employees under the Foreign Gifts and Decorations Act of 1966, as amended ("Act"). The revisions reorganize and update the language of the existing rules, update the internal procedures of the Office of the Secretary, augment practices for complying with the Act, and delegate certain approval and enforcement authority. The substantive requirements for compliance with the rules remain unchanged.

EFFECTIVE DATE: The final rule is effective January 9, 2004.

FOR FURTHER INFORMATION CONTACT: Robert deV. Frierson, Deputy Secretary of the Board, Board of Governors of the Federal Reserve System, Washington, DC at (202) 452–3711. For users of Telecommunications Device for the Deaf (TDD) *only*, contact (202) 263–4869.

SUPPLEMENTARY INFORMATION: Section 515(a)(1) of the Foreign Relations Authorization Act, Fiscal Year 1978, amended the Foreign Gifts and Decorations Act of 1966 (5 U.S.C. 7342), making substantial changes to the law governing acceptance and retention of gifts and decorations from foreign governments. In 1979, the Board implemented these changes by adopting its Rules Regarding Foreign Gifts and Decorations (12 CFR part 264b).

The final rule updates the organization and language of the existing rules to make them easier to understand. In addition, it augments practices for complying with the Act, which include aggregating the value of all tangible gifts presented at or marking an event for purposes of applying the minimal-value threshold ($285 or less, adjusted every three years for inflation), but not aggregating the total value of tangible gifts received at two or more events, even if on the same day. The revisions also clarify that gifts of travel or travel expenses of more than minimal value for travel taking place entirely outside the United States are accepted in accordance with specific instructions of the Board if preapproved by the Administrative Governor or the Administrative Governor's designee. Gifts of travel or travel expenses accepted without such prior approval must be reported to the Office of the Secretary and must receive after-the-fact approval, or the Board employee is personally liable to repay the expenses.

The final rule also delegates to the Administrative Governor (or designee) the authority to approve acceptance and retention of decorations and to report, after consultation with the General Counsel, to the Attorney General cases in which there is reason to believe that a Board employee has violated the Act. The Office of the Secretary is delegated the authority to approve and retain tangible gifts of more than minimal value for official use.

Regulatory Flexibility Act

This final rule relates solely to the internal management, operations, and personnel of the Board and, therefore, is exempt from notice and comment under 5 U.S.C. 533(a)(2). Accordingly, the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) does not apply and a regulatory flexibility analysis is not required.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506; 5 CFR 1320 appendix A.1), the Board reviewed the final rule under the authority delegated to the Board by the Office of Management and Budget. No collections of information pursuant to the Paperwork Reduction Act are contained in the final rule.

Plain Language

Section 722 of the Gramm-Leach-Bliley Act (12 U.S.C. 4809) requires the Board to use "plain language" in all rules published in the **Federal Register** after January 1, 2000. The Board believes that the final rule is simple and straightforward and is consistent with this "plain language" directive.

List of Subjects in 12 CFR Part 264b

Decorations, medals, awards, Foreign relations, Government employees, Government property.

Authority and Issuance

■ For the reasons set forth in the preamble, revise part 264b of title 12 of the Code of Federal Regulations to read as follows:

PART 264b—RULES REGARDING FOREIGN GIFTS AND DECORATIONS

Sec.

264b.1 Purpose and scope.
264b.2 Definitions.
264b.3 Restrictions on acceptance of gifts and decorations.
264b.4 Gifts of minimal value.
264b.5 Gifts of more than minimal value.
264b.6 Requirements for gifts of more than minimal value.
264b.7 Decorations.
264b.8 Disposition or retention of gifts and decorations deposited with the Office of the Secretary.
264b.9 Enforcement.
264b.10 Certain grants excluded.

Authority: 5 U.S.C. 552, 7342; 12 U.S.C. 248(i).

§ 264b.1 Purpose and scope.

These rules govern when Board employees, their spouses, and their dependents may accept and retain gifts and decorations from foreign governments under the Foreign Gifts and Decorations Act of 1966, as amended (5 U.S.C. 7342) ("Act").

§ 264b.2 Definitions.

When used in this part, the following terms have the meanings indicated:

(a) *Board employees* means:

(1) Members of the Board of Governors of the Federal Reserve System ("Board"), officers, and other employees of the Board, including experts or consultants while employed by, and acting on behalf of, the Board; and

(2) Spouses (unless separated) or dependents (within the meaning of section 152 of the Internal Revenue Code of 1986 (26 U.S.C. 152)) of such persons.

(b) *Foreign government* means:

(1) Any unit of foreign governmental authority, including any foreign national, State, local, or municipal government;

(2) Any international or multinational organization whose membership is composed of any unit of foreign government as described in paragraph (b)(1) of this section; and

(3) Any agent or representative of any such unit or organization, while acting as such.

(c) *Gift* means a tangible or intangible present (other than a decoration) tendered by, or received from, a foreign government.

(d) *Decoration* means an order, device, medal, badge, insignia, emblem, or award tendered by, or received from, a foreign government.

(e) *Minimal value* means retail value in the United States at the time of acceptance of $285 or less as of January 1, 2002, and at 3-year intervals thereafter, as redefined in regulations prescribed by the Administrator of General Services, in consultation with the Secretary of State, to reflect changes in the consumer price index for the immediately preceding 3-year period.

(f) *Administrative Governor* means the Board member serving as the Administrative Governor and includes persons designated by the Administrative Governor to exercise the authority granted under this part in the governor's absence.

§ 264b.3 Restrictions on acceptance of gifts and decorations.

(a) Board employees are prohibited from requesting or otherwise encouraging the tender of a gift or decoration from a foreign government.

(b) Board employees are prohibited from accepting a gift or decoration from a foreign government, except in accordance with this part.

§ 264b.4 Gifts of minimal value.

(a) Board employees may accept and retain a gift of minimal value tendered and received as a souvenir or mark of courtesy. If more than one tangible gift is presented at or marks an event, the value of all such gifts must not exceed "minimal value." If tangible gifts are presented at or mark separate events, their value must not exceed "minimal value" for each event, but may exceed "minimal value" for all events, even if the events occur on the same day.

(b) Board employees may determine at the time a gift is offered whether it is of minimal value, or they may submit an accepted gift as soon as practicable to the Office of the Secretary for valuation.

(c) Disagreements over whether a gift is of minimal value will be resolved by an independent appraisal under procedures established by the Office of the Secretary.

§ 264b.5 Gifts of more than minimal value.

(a) *Educational scholarships or medical treatment.* Board employees may accept and retain gifts of more than minimal value when such gifts are in the nature of an educational scholarship or medical treatment.

(b) *Travel or travel expenses.* Board employees may accept gifts of travel or expenses for travel taking place entirely outside the United States (such as transportation, food, and lodging) of more than minimal value if appropriate, consistent with the interests of the United States, and permitted by the Board under paragraph (b)(1) or (b)(2) of this section.

(1) Board employees may accept gifts of travel or expenses for travel under paragraph (b) of this section in accordance with specific instructions of the Board, as evidenced by the prior approval of the Administrative Governor. Board employees must request prior approval under procedures established by the Office of the Secretary.

(2) Board employees may accept gifts of travel or expenses for travel under paragraph (b) of this section without the prior approval of the Administrative Governor if such expenses are reported under § 264b.6(b) and the Administrative Governor approves their acceptance after the fact. Board employees must personally repay gifts of travel or expenses for travel of more than minimal value that are not approved by the Administrative Governor.

(c) *Other gifts.* (1) Board employees may typically regard the refusal of gifts of more than minimal value at the inception (when offered or received without a prior offer) as consistent with the interests and general policy of the United States.

(2) Board employees may accept gifts of more than minimal value when it appears that refusal would likely cause offense or embarrassment or otherwise adversely affect the foreign relations of the United States. Tangible gifts are considered to have been accepted on behalf of the United States and become the property of the United States on acceptance. Accordingly, they must be deposited and documented in accordance with § 264b.6(a) and can only be returned or otherwise processed by the Office of the Secretary under § 264b.8.

§ 264b.6 Requirements for gifts of more than minimal value.

(a) *Tangible gifts.* Board employees must deposit tangible gifts of more than minimal value with the Office of the Secretary within 60 days of acceptance and assist in preparing a statement that contains the following information for each gift:

(1) The name and position of the Board employee;

(2) A brief description of the gift and the circumstances justifying acceptance;

(3) The identity, if known, of the foreign government and the name and position of the individual who presented the gift;

(4) The date of acceptance of the gift;

(5) The estimated value in the United States of the gift at the time of acceptance; and

(6) The disposition or current location of the gift.

(b) *Travel or travel expenses without prior approval.* Board employees who accept a gift of travel or expenses for travel under § 264b.5(b)(2) without the prior approval of the Administrative Governor must submit a report to the Office of the Secretary within 30 days of acceptance that contains the following information:

(1) The name and position of the Board employee;

(2) A brief description of the gift, including its estimated value, and the circumstances justifying acceptance; and

(3) The identity, if known, of the foreign government and the name and position of the individual who presented the gift.

(c) *Reports to the Secretary of State.* The Office of the Secretary must report the information contained in the statements described in paragraphs (a) and (b) of this section to the Secretary of State, who must publish in the **Federal Register** not later than January 31 of each year a comprehensive listing of all such statements for gifts of more than minimal value that were received by federal employees during the preceding year.

§ 264b.7 Decorations.

(a) Board employees may accept, retain, and wear a decoration tendered or awarded by a foreign government in recognition of active field service in time of combat operations or for other outstanding or unusually meritorious performance, subject to the approval of the Administrative Governor. Requests for approval must be submitted to the Office of the Secretary and contain a statement of the circumstances surrounding the award and include any accompanying documentation. The recipient may retain the decoration pending action on the request.

(b) Decorations accepted by Board employees without the approval of the Administrative Governor are considered to have been accepted on behalf of the United States and must be deposited within 60 days of the decoration's acceptance with the Office of the Secretary for disposition or retention under § 264b.8.

§ 264b.8 Disposition or retention of gifts and decorations deposited with the Office of the Secretary.

(a) The Office of the Secretary may dispose of gifts and decorations deposited under §§ 264b.6(a) and 264b.7(b) by returning them to the donors or by handling them in accordance with instructions from the General Services Administration under applicable law.

(b) The Office of the Secretary may approve and retain gifts and decorations deposited under §§ 264b.6(a) and 264b.7(b) for official use. The Office of the Secretary must dispose of a gift within 30 days of the termination of its official use in accordance with instructions from the General Services Administration under applicable law.

§ 264b.9 Enforcement.

(a) The Administrative Governor, after consultation with the General Counsel, must report to the Attorney General cases in which there is reason to believe that a Board employee has violated the Act.

(b) The Attorney General may bring a civil action in any district court of the United States against a Board employee who knowingly solicits or accepts a gift from a foreign government in violation of the Act, or who fails to deposit or report such a gift as required by the Act. The court may assess a maximum penalty of the retail value of a gift improperly solicited or received plus $5,000.

§ 264b.10 Certain grants excluded.

This part does not apply to grants and other forms of assistance to which § 108A of the Mutual Educational and Cultural Exchange Act of 1961 applies. *See* 22 U.S.C. 2458a.

By order of the Board of Governors of the Federal Reserve System, December 4, 2003.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 03–30632 Filed 12–9–03; 8:45 am]

BILLING CODE 6210–02–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 520

Oral Dosage Form New Animal Drugs; Oxytetracycline Hydrochloride Soluble Powder

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental abbreviated new animal drug application (ANADA) filed by Phoenix Scientific, Inc. The supplemental ANADA provides for use of oxytetracycline hydrochloride soluble powder in honeybees for the control and treatment of foulbrood, and in swine drinking water with a reduction in preslaughter withdrawal time to zero days.

DATES: This rule is effective December 10, 2003.

FOR FURTHER INFORMATION CONTACT: Lonnie W. Luther, Center for Veterinary Medicine (HFV 104), Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855, 301–827–8549, e-mail: *lluther@cvm.fda.gov.*

SUPPLEMENTARY INFORMATION: Phoenix Scientific, Inc., 3915 South 48th St. Terrace, St. Joseph, MO 64503, filed a supplement to ANADA 200–247 that provides for use of Oxytetracycline HCl Soluble Powder-343 for making medicated drinking water for the treatment of various bacterial diseases of livestock. The supplemental ANADA provides for use of oxytetracycline hydrochloride soluble powder in honeybees for the control and treatment of foulbrood, and in swine drinking water with a reduction in preslaughter withdrawal time to zero days. A new container size, a 4.78-ounce packet, is also being approved. The supplemental ANADA is approved as of November 12, 2003, and the regulations are amended in 21 CFR 520.1660d to reflect the approval.

In accordance with the freedom of information provisions of 21 CFR part 20 and 21 CFR 514.11(e)(2)(ii), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, between 9 a.m. and 4 p.m., Monday through Friday.

The agency has determined under 21 CFR 25.33(a)(1) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

This rule does not meet the definition of "rule" in 5 U.S.C. 804(3)(A) because it is a rule of "particular applicability." Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801–808.

List of Subjects in 21 CFR Part 520

Animal drugs.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 520 is amended as follows:

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS

■ 1. The authority citation for 21 CFR part 520 continues to read as follows:

Authority: 21 U.S.C. 360b.

■ 2. Section 520.1660d is amended in the third sentence in paragraph (d)(1)(iii)(C) by removing "withdraw 5 days prior to slaughter those products sponsored by No. 059130 and zero days those products sponsored by No. 000069" and by adding in its place "withdraw zero days prior to slaughter those products sponsored by Nos. 000069 and 059130" and by revising paragraphs (a)(7) and (b)(5) to read as follows:

§ 520.1660d Oxytetracycline hydrochloride soluble powder.

(a) * * *

* * * * *

(7) Each 1.32 grams of powder contains 1 gram of OTC HCl (packet: 4.78 and 9.6 oz.; pails: 2 and 5 lb); each 18.1 grams of powder contains 1 gram of OTC HCl (packet: 6.4 oz.; pails: 2 and 5 lb).

* * * * *

(b) * * *

* * * * *

(5) No. 059130 for use of OTC HCl concentration in paragraph (a)(7) of this section in chickens, turkeys, swine, cattle, sheep, and honeybees.

* * * * *

Dated: November 21, 2003.

Steven D. Vaughn,

Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 03–30642 Filed 12–9–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 522

Injectable or Implantable Dosage Form New Animal Drugs; Meloxicam

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a new animal drug application (NADA) filed by Boehringer Ingelheim Vetmedica, Inc. The NADA provides for use of meloxicam injectable solution in dogs for the control of pain and inflammation associated with osteoarthritis.

DATES: This rule is effective December 10, 2003.

FOR FURTHER INFORMATION CONTACT: Melanie R. Berson, Center for Veterinary Medicine (HFV–110), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–7540, e-mail: *mberson@cvm.fda.gov.*

SUPPLEMENTARY INFORMATION: Boehringer Ingelheim Vetmedica, Inc., 2621 North Belt Highway, St. Joseph, MO 64506–2002, filed NADA 141–219 that provides for use of METACAM (meloxicam) Injectable Solution in dogs for the control of pain and inflammation associated with osteoarthritis. The NADA is approved as of November 12, 2003, and the regulations are amended

in part 522 (21 CFR part 522) by adding § 522.1367 to reflect the approval. The basis of approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of 21 CFR part 20 and 21 CFR 514.11(e)(2)(ii), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, between 9 a.m. and 4 p.m., Monday through Friday.

Under section 512(c)(2)(F)(ii) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b(c)(2)(F)(ii)), this approval qualifies for 3 years of marketing exclusivity beginning November 12, 2003.

The agency has determined under 21 CFR 25.33(d)(1) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

This rule does not meet the definition of "rule" in 5 U.S.C. 804(3)(A) because it is a rule of "particular applicability." Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801–808.

List of Subjects in 21 CFR Part 522

Animal drugs.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 522 is amended as follows:

PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS

■ 1. The authority citation for 21 CFR part 522 continues to read as follows:

Authority: 21 U.S.C. 360b.

■ 2. Section 522.1367 is added to read as follows:

§ 522.1367 Meloxicam.

(a) *Specifications.* Each milliliter of solution contains 5.0 milligrams (mg) meloxicam.

(b) *Sponsor.* See No. 000010 in § 510.600(c) of this chapter.

(c) *Conditions of use in dogs*—(1) *Amount.* Administer 0.2 mg/kilogram (kg) body weight by intravenous or subcutaneous injection on the first day of treatment. For treatment after day 1, administer meloxicam suspension orally at 0.1 mg/kg body weight once daily as in § 520.1350(c) of this chapter.

(2) *Indications for use.* For the control of pain and inflammation associated with osteoarthritis.

(3) *Limitations.* Federal law restricts this drug to use by or on the order of a licensed veterinarian.

Dated: November 21, 2003.

Stephen F. Sundlof,

Director, Center for Veterinary Medicine.

[FR Doc. 03–30643 Filed 12–9–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 948

[WV–095–FOR]

West Virginia Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule; approval of amendment.

SUMMARY: We are approving, with one exception, amendments to the West Virginia surface coal mining regulatory program (the West Virginia program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). The amendments we are approving concern blasting, and amend the Code of State Regulations (CSR) by adding the Surface Mining Blasting Rule, and amend the Code of West Virginia (W. Va. Code) blasting provisions as contained in Enrolled Senate Bill 689. The amendments are intended to improve the operational efficiency of the West Virginia program, and to render the West Virginia program consistent with SMCRA and the Federal regulations.

EFFECTIVE DATE: December 10, 2003.

FOR FURTHER INFORMATION CONTACT: Mr. Roger W. Calhoun, Director, Charleston Field Office, 1027 Virginia Street East, Charleston, West Virginia 25301. Telephone: (304) 347–7158, Internet address: *chfo@osmre.gov*.

SUPPLEMENTARY INFORMATION:

I. Background on the West Virginia Program
II. Submission of the Amendment
III. OSM's Findings
IV. Summary and Disposition of Comments
V. OSM's Decision
VI. Procedural Determinations

I. Background on the West Virginia Program

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its program includes, among other things, "* * * a State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of the Act * * *; and rules and regulations consistent with regulations issued by the Secretary pursuant to the Act." See 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the West Virginia program on January 21, 1981. You can find background information on the West Virginia program, including the Secretary's findings, the disposition of comments, and conditions of approval of the West Virginia program in the January 21, 1981, **Federal Register** (46 FR 5915). You can also find later actions concerning West Virginia's program and program amendments at 30 CFR 948.10, 948.12, 948.13, 948.15, and 948.16.

II. Submission of the Amendment

By letter dated October 30, 2000, West Virginia sent us an amendment to its program (Administrative Record Number WV–1187) under SMCRA (30 U.S.C. 1201 *et seq.*). The amendment added to the West Virginia regulations new Title 199, Series 1, entitled Surface Mining Blasting Rule. These regulations consist of some new blasting provisions and many blasting provisions that were relocated or derived from previously-approved West Virginia blasting provisions. The amendment is intended to revise the State's blasting rules to implement statutory revisions concerning blasting that we approved, with certain exceptions, on November 12, 1999 (64 FR 61507) (Administrative Record Number WV–1143).

We announced receipt of the proposed amendment in the December 5, 2000, **Federal Register** (65 FR 75889) (Administrative Record Number WV–1190). In the same document, we opened the public comment and provided an opportunity for a public hearing or meeting on the amendment's adequacy. We did not hold a hearing or a meeting because no one requested one. The public comment period ended on January 4, 2001. We received comments from one Federal agency and one professional organization.

By letter dated November 28, 2001 (Administrative Record Number WV–1258), West Virginia sent us another proposed amendment to its blasting provisions. The proposed amendment consists of several changes to blasting provisions in the W. Va. Code as contained in Enrolled Senate Bill 689, and changes to the Surface Mining Blasting Rule at CSR 199–1. Senate Bill 689 amends preblast survey requirements, site-specific blasting design requirements, and provisions concerning liability and civil penalties in the event of property damage. We note that the State submitted two versions of CSR 199–1. One version contained underlines of most of the proposed additions and strikethroughs of most of the language proposed for deletion. The second version of CSR 199–1 submitted by the State was a "clean" version with no underlines or strikethroughs of the proposed changes. It was this "clean" version, with sixteen additional revisions, that was adopted by the State Legislature. We announced receipt of the proposed amendment that the State sent us on November 28, 2001, including both versions of CSR 199–1, in the January 31, 2002, **Federal Register** (67 FR 4689) (Administrative Record Number WV–1267). In the same document, we opened the public comment period and provided an opportunity for a public hearing or meeting on the adequacy of the proposed amendment. The public comment period ended on March 4, 2002. We did not hold a hearing or meeting because no one requested one. We received comments from four Federal agencies.

The statutory revisions in Senate Bill 689 were also intended to address the required program amendments codified at 30 CFR 948.16(kkkk) and (llll) concerning preblast survey requirements, and (mmmm) concerning blasting requirements. To expedite our review of the State's responses to those required amendments, we separated those proposed changes from the submittal and published our approval of those provisions (W.Va. Code sections 22–3–13a(g) and 13a(j)(2), and 22–3–30a(a)) in the May 1, 2002, **Federal Register** (67 FR 21904, 21920) (Administrative Record Number WV–1300).

III. OSM's Findings

Following are findings we made concerning the amendments under SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17. We are approving the amendments with one exception noted below. Any revisions that we do not specifically discuss below concern nonsubstantive wording or editorial changes, or recodification changes resulting from these amendments and are approved here without discussion.

A. Revisions to the West Virginia Program That Are Substantively Identical to the Corresponding Provisions of SMCRA and the Federal Regulations, or That Were Previously Approved by OSM and Merely Copied to CSR 199–1, and Do Not Require Specific Findings

Code of West Virginia (W. Va. Code)

22–3–13a(a)(3) Preblast survey requirements (30 CFR 817.62(a))

Code of State Regulations (CSR)

199–1–1 General (30 CFR 816/817.61(a) and 850.1)
199–1–2.9 Definition of "blaster," in conjunction with CSR 38–2–3.1 (30 CFR 850.5)
199–1–2.25 Definition of "explosives," previously approved (30 CFR 816/817.61)
199–1–3.1 Blasting; General requirements (30 CFR 816/817.61(a) and (c)(1))
199–1–3.5 Blast record; previously approved (30 CFR 816/817.68)
199–1–3.6.a Blasting procedures (30 CFR 816/817.64(a),(2),(3); 816/817.67(a))
199–1–3.6.b Safety precautions (30 CFR 816/817.66(b),(c); 816/817.61(c)(3))
199–1–3.6.c Airblast limits (30 CFR 816/817.67(b))
199–1–3.6.d Flyrock (30 CFR 816/817.67(c))
199–1–3.6.e Access to blast area (30 CFR 816/817.66(c))
199–1–3.6.f Blast design (30 CFR 816/817.61(d))
199–1–3.6.g Underground mine (30 CFR 780.13(c))
199–1–3.6.h Scaled distance formulas (30 CFR 816/817.67(d)(2)(i), (d)(3))
199–1–3.6.j Seismograph recording; previously approved (30 CFR 816/817.67(d)(6))
199–1–3.6.k Maximum allowable ground vibration; previously approved (30 CFR 816/817.67(d)(5))
199–1–3.6.l Maximum airblast and ground vibration standards; previously approved (30 CFR 816/817.67(e))
199–1–3.7.b Blasting control for other structures; previously approved (30 CFR 816/817.67(d)(1))
199–1–4.11 Blasting crew; previously approved (30 CFR 850.13(a)(2))

Because these State provisions have been approved previously or contain language that is substantively identical to the corresponding Federal requirements, we find that they are no less effective than those corresponding Federal requirements and can be approved without further discussion.

B. Revisions to West Virginia's Code and Regulations That Require Specific Findings

Code of West Virginia (W. Va. Code)

1. 22–3–13a(g) Preblast survey requirements. This provision provides that pre-blast surveys shall be submitted to the Office of Explosives and Blasting (Office) at least 15 days prior to the start of any "production blasting." The provision is amended by adding the following sentence: "Provided, That once all required surveys have been reviewed and accepted by the Office of Explosives and Blasting, blasting may commence sooner than fifteen days after submittal." We find that the amendment does not render the provision less effective than the Federal regulations at 30 CFR 816/817.62(d), which require that such surveys be promptly submitted to the regulatory authority, and can be approved.

We note that in our November 12, 1999, approval of this provision (64 FR 61507, 61510–61511) we approved W. Va. Code 22–3–13a(g) with the understanding that, as explained by the West Virginia Department of Environmental Protection (WVDEP) at that time, the time limits for submittal of pre-blast surveys at CSR 38–2–6.8.a.4. continue to apply to all blasting other than "production blasting." The State's submittal of the Surface Mining Blasting Rule at CSR 199–1–3.8.a, concerning pre-blast survey, provides that surveys, waivers or affidavits for each dwelling or structure within the pre-blast survey area shall be completed and submitted to the Office of Explosives and Blasting at least 15 days before any blasting may occur. The Federal regulations at 30 CFR 816/817.62(e) provide that surveys requested more than 10 days before the planned initiation of blasting shall be completed by the operator before the initiation of blasting. In Finding B.10 below, on CSR 199–1–3.8, we conclude that the State's 15-day requirement does not render the State provision less effective than 30 CFR 816/817.62(e). Likewise, W.Va. Code 22–3–13a(g) does not conflict with the requirement that surveys requested more than 10 days before the planned initiation of blasting be completed by the operator before the initiation of blasting. Therefore, we find that the provisions are not inconsistent with the Federal preblast survey requirements, and we are approving the amendments to W. Va. Code 22–3–13a(g).

2. 22–3–22a(e) Blasting restrictions. This provision concerns blasting within 1,000 feet of a protected structure. This subsection was amended by adding the words "identified," and "notification area," which are intended to clarify the intent of the last sentence of this provision. These changes were made in response to our recommendations when we initially approved these blasting provisions on November 12, 1999 (64 FR 61507, 61511). As amended, the sentence provides that in the development of a site-specific blasting plan, consideration shall be given, but not limited to "* * * the concerns of the owner or occupant living in the protected structures identified in the blasting schedule notification area." We find that the amendment does not render the provision inconsistent with SMCRA section 515(b)(15)(C), which concerns the prevention of injury to persons and damage to property, and can be approved. We note, however, that in our November 12, 1999, approval of this provision (64 FR at 61511) we approved W. Va. Code 22–3–22a(e) only to the extent that all blast designs, site specific and generic, as explained by WVDEP at that time, comply with the blast design requirements at CSR 38–2–6.5.g.3. These provisions are now located at CSR 199–1–3.6.f.3. Therefore, W.Va. Code 22–3–22a(e) remains approved with the understanding that all blast designs, site specific and generic, comply with the blast design requirements at CSR 199–1–3.6.f.3.

3. 22–3–22a(f) Waiver of the blasting prohibitions. This subsection was amended by deleting the words "or the site specific restriction within one thousand feet in writing" in two locations. The effect of this deletion means that a waiver of the site-specific blast design cannot be obtained within "one thousand feet" of a protected structure. Subsection 22–3–22a(e) provides that blasting within 1,000 feet of a protected structure shall have a site-specific blast design approved by the Office of Explosives and Blasting. Deletion of the words "or the site-specific restriction within one thousand feet in writing" from the waiver provisions of subsection 22–3–22a(f) means that although an owner or occupant may waive the blasting prohibition within 300 feet of a protected structure, the permittee must still provide a site-specific blast design to the Office for all blasting within 1,000 feet of a protected structure. We find that the amendments to this provision do not render the West Virginia program less effective than the Federal regulations at 30 CFR 816/817.61(d) and can be approved.

4. 22–3–30a(b) Blasting requirements. This subsection requires penalties to be imposed for each permit area or contiguous permit areas where blasting was not in compliance with the regulations governing blasting parameters and resulted in property damage to a protected structure. The subsection was amended by adding language to the first sentence that establishes the limits to which the penalties at subsection 22–3–30a(b) will apply. The words "at a surface coal mine operation as defined by the provisions of subdivision (2), subsection (a), section thirteen-a of this article" were added following the word "blast" and before the word "was." In effect, the penalties identified at subsection 22–3–30a(b) apply to surface coal mining operations, except those that are less than 200 acres in a single permitted area or less than 300 acres of contiguous or nearly contiguous area of two or more permitted areas. This revision is intended to ensure that coal operators with relatively small mining operations will not be subject to the penalties authorized by subsection 22–3–30a(b) (see Administrative Record Number WV–1376).

By its terms, 22–3–30a(b) pertains only to blasting violations that result in property damage to protected structures. These punitive penalties are in addition to the civil penalties that will be assessed for blasting violations resulting in property damage under CSR 199–1–8.6, 8.7, and 8.8 (Administrative Record Number WV–1376). These penalties will not apply to blasting violations caused by small surface mining operations as described in W. Va. Code 22–3–13a(1) or to coal extraction by underground coal mining methods. Thus, the supplemental penalties imposed by the State for these blasting violations are not inconsistent with the Federal penalty requirements at section 518 of SMCRA. Furthermore, all blasting violations, regardless of whether they cause damage to protected structures, including damage to water wells, will be subject to the civil penalty assessment requirements set forth in W. Va. Code 22–3–17 and CSR 199–1–8.6, 8.7, and 8.8 (*see* 64 FR at 61513–61514; November 12, 1999). Therefore, we find that the new language does not render the West Virginia program inconsistent with SMCRA at section 518, or the Federal regulations at 30 CFR part 845, and can be approved.

5. 22–3–30a(c) Prohibition against imposing penalties for violations that are merely administrative in nature. This provision was amended by adding language to clarify what penalties may not be imposed on an operator for any violation identified in 22–3–30a(b) that is merely administrative in nature. As amended, this provision provides as follows:

> (c) Notwithstanding the provisions of subsections (a) and (b) of this section, the division [Department] of environmental protection may not impose penalties, as provided for in subsection (b) of this section, on an operator for the violation of any rule identified in subsection (b) of this section that is merely administrative in nature.

We note that W. Va. Code 22–3–30a concerns liability and requires the imposition of punitive penalties in the event of property damage. As discussed above, all blasting related violations will be assessed civil penalties in accordance with W.Va. Code 22–3–17 and CSR 199–1–8.6, 8.7, and 8.8. This would also include blasting violations resulting in property damage that are administrative in nature. Therefore, we find that this provision is not inconsistent with SMCRA section 518(a) concerning penalties, and can be approved.

6. 22–3–30a(e) Blasting within 300 feet of a protected structure. This provision has been amended by adding language concerning site-specific blast designs. As amended, this subsection provides that where an inspection establishes that production blasting is done within 300 feet of a protected structure, without an approved site-specific blast design or not in accordance with an approved site-specific blast design for production blasting within 1,000 feet of a protected structure or within 100 feet of a cemetery, the monetary penalties and revocation, as set out in W. Va. Code 22–3–30a(b), apply. This means that production blasting that is done within 300 feet of a protected structure, even if it was done in accordance with a waiver or a site-specific blast design, and causes property damage will be assessed a supplemental penalty in accordance with W. Va. Code 22–3–30a(b). In addition, all blasting related violations that cause or do not cause property damage to protected structures will be subject to the civil penalty requirements of W. Va. Code 22–3–17 and CSR 199–1–8.6, 8.7, and 8.8. Therefore, we find that subsection 22–3–30a(e), as amended, is no less stringent than SMCRA section 518 and not inconsistent with 30 CFR part 845, and can be approved.

7. 22–3–30a(f) Penalties assessed and collected. This provision is amended by adding a citation to clarify that the penalties and liabilities that must be assessed are those authorized by subsection 22–3–30a(b). As amended, subsection 22–3–30a(f) provides that all penalties and liabilities as set forth in subsection 22–3–30a(b) shall be assessed by the Secretary of the WVDEP and deposited with the treasurer of the State of West Virginia in the "general school fund." In our previous finding concerning this provision (November 12, 1999; 64 FR at 61514), we did not approve subsection 22–3–30a(f) because of the requirement that the fees collected would be deposited in the "general school fund," rather than the "special reclamation fund."

The approved State program at W. Va. Code 22–3–17(d)(2) currently requires that civil penalties be deposited into the State's alternative bonding system, known as the "special reclamation fund." Under 22–3–30a(f), penalties collected from blasting violations that resulted in property damage to protected structures will be deposited into the general school fund. We note that W. Va. Code 22–3–30a(f) only concerns punitive penalty assessments relating to property damage violations due to blasting that supplement the State's existing civil penalty assessments at CSR 38–2–20. All blasting related violations will still be assessed under CSR 199–1–8.6, 8.7, and 8.8 and the monies collected will be deposited in the Special Reclamation Fund. Therefore, the Special Reclamation Fund will continue to receive funds from civil penalty assessments under CSR 199–1–8.6, 8.7, and 8.8, while the general school fund will receive funds from the supplemental penalties assessed under 22–3–30a(b) and (f). Given that existing funds will not be diverted from the Special Reclamation Fund, we find that this provision does not render the West Virginia program inconsistent with SMCRA section 518 concerning penalties and section 509(c) concerning alternative bonding systems, and can be approved.

8. 22–3–30a(h) Applicability. This provision is amended to clarify that the provisions of section 22–3–30a do not apply to the extraction of minerals by underground mining methods, provided that nothing contained in section 22–3–30a may be construed to exempt any coal mining operation from the general performance standards as contained in W. Va. Code 22–3–13 and any rules promulgated pursuant thereto. Blasting associated with surface impacts and surface operations incidental to underground coal mining would be subject to the State's blasting requirements, including the supplemental and civil penalty assessment provisions at 22–3–30a(b), subject to the acreage limitations of that same subsection, and CSR 199–1–8.6, 8.7, and 8.8. We find that as amended, this provision is consistent with SMCRA section 518 and 30 CFR part 845, pertaining to penalty assessments, and can be approved.

Code of State Regulations (CSR)

9. CSR 199–1–2 Definitions. CSR 199–1–2 contains definitions, which are discussed next. Except for the definitions at CSR 199–1–2.15, 2.26, 2.30, 2.32, 2.36, and 2.38, the terms that are defined herein have no specific Federal counterparts.

199–1–2.1 Definition of "active blasting experience." Active blasting experience means experience gained by a person who has worked on a blasting crew, or supervised a blasting crew. Two hundred forty (240) working days constitutes one year of experience. Experience may only be gained by "first hand" participation in activities associated with the storing, handling, transportation and use of explosives or the immediate supervision of those activities within surface coal mined, and the surface areas of underground coal mines. Experience should be related to surface mine blasting: Provided, that other related blasting experience (quarrying operations, *etc.*) may be accepted by the Secretary on a case-by-case basis as qualifying experience. We find that this definition is not inconsistent with SMCRA section 515(b)(15)(D) or the Federal regulations at 30 CFR part 850 and can be approved.

199–1–2.2 defines "air blast" to mean an airborne shock wave resulting from the detonation of explosives. We find that this definition is not inconsistent with SMCRA section 515(b)(15) or the Federal regulations at 30 CFR 816/817.67(b) and can be approved.

199–1–2.3 defines "adjuster" to mean an outside party that is assigned to investigate, document, evaluate and make recommendations on a reported loss. We find that this definition is not inconsistent with SMCRA or the Federal regulations and can be approved.

199–1–2.4 defines "arbitrator" as an impartial individual appointed by the Office of Explosives and Blasting with the authority to settle the disputes between property owners and mine operators as they relate to allegations of blasting damage. We find that this definition is not inconsistent with SMCRA or the Federal regulations and can be approved.

199–1–2.5 defines "arbitration" as the referral of a dispute to a neutral or impartial person for total or partial determination. It is intended to be inexpensive, prompt and fair to the parties. We find that this definition is not inconsistent with SMCRA or the Federal regulations and can be approved.

199–1–2.6 Definition of "blast." This provision was previously approved and was amended by adding the words "planned or unplanned." As amended, "blast" is defined to mean any planned or unplanned detonation(s) of an explosive(s) being initiated simultaneously by a single source. We find that the definition is not inconsistent with the Federal regulations at 30 CFR 816/817.61 concerning the use of explosives and can be approved.

199–1–2.7 defines "blast area" to mean the area surrounding a blast site where flyrock could occur and which should be guarded against entry during the shot. We find that this definition is not inconsistent with SMCRA section 515(b)(15) or the Federal regulations at 30 CFR 816/817.66 and can be approved.

199–1–2.8 defines "blast site" to mean the area where explosive material is handled during loading including the perimeter formed by the loaded blast holes, and 50 feet in all directions from the collar of the outermost borehole or protected by a physical barrier to prevent access to the loaded blast holes. We find that this definition is not inconsistent with SMCRA section 515(b)(15) or the Federal regulations at 30 CFR 816/817.61 and can be approved.

199–1–2.10 defines "blasting complaint" to mean a communication to the Office from a member of the general public expressing concern, aggravation, fear or indications of blasting damage. A blasting complaint may or may not initially indicate damage. We find that this definition is not inconsistent with SMCRA or the Federal regulations and can be approved.

199–1–2.11 defines "blasting claim" to mean an allegation by the property owner of blasting related damage to property. We find that this definition is not inconsistent with SMCRA or the Federal regulations and can be approved.

199–1–2.12 defines "blasting log" as a written record containing all pertinent information about a specific blast as may be required by law or rule. We find that this definition is not inconsistent with SMCRA section 515(b)(15) or the Federal regulations at 30 CFR 816/817.68 and can be approved.

199–1–2.13 defines "blasting vibration" to mean the temporary ground movement produced by a blast that can vary in both intensity and duration. We find that this definition is

not inconsistent with SMCRA section 515(b)(15) or the Federal regulations at 30 CFR 816/817.67 and can be approved.

199–1–2.14 defines "caused by blasting" to mean that there is direct, consistent and conclusive evidence or information that the alleged damage was definitely caused by blasting from the mine site in question. We find that this definition is not inconsistent with SMCRA or the Federal regulations and can be approved.

199–1–2.15 defines "certified blaster" to mean a person who has taken and passed the examination described in CSR 199–1, and has been issued a certification card by the Office. We find that this definition is not inconsistent with SMCRA section 515(b)(15) or the Federal regulations at 30 CFR 816/817.61(c) and 850.5 and can be approved.

199–1–2.16 defines "certified examiner/inspector" to mean a person employed by the Office of Explosives and Blasting who administers training or examinations to applicants for certification as certified blasters, or who inspects surface mining operations and who has taken and passed the examination described in CSR 199–1. We find that this definition is not inconsistent with SMCRA section 515(b)(15) or the Federal regulations and can be approved.

199–1–2.17 defines "chief" to mean the Chief of the Office of Explosives and Blasting. We find that this definition is not inconsistent with SMCRA or the Federal regulations and can be approved.

199–1–2.18 defines "claimant" to mean the property owner who makes a blasting damage claim. We find that this definition is not inconsistent with SMCRA or the Federal regulations and can be approved.

199–1–2.19 defines "claims administrator" to mean the individual, firm or organization that manages the blasting damage claims program for the Office of Explosives and Blasting. We find that this definition is not inconsistent with SMCRA or the Federal regulations and can be approved.

199–1–2.20 defines "construction blasting" to mean blasting to develop haulroads, mine access roads, coal preparation plants, drainage structures, or underground coal mine sites and shall not include production blasting. We find that this definition is not inconsistent with SMCRA section 515(b)(15) or the Federal regulations at 30 CFR 816/817.61 and can be approved.

199–1–2.21 defines "contiguous or nearly contiguous" to mean surface mining operations that share a permit boundary or are within 100 feet of each other at the nearest point. We find that this definition is not inconsistent with SMCRA or the Federal regulations and can be approved.

199–1–2.22 defines "detonation" to mean a chemical reaction resulting in a rapid release of energy. We find that this definition is not inconsistent with SMCRA or the Federal regulations and can be approved.

199–1–2.23 defines "Secretary" to mean the Secretary of the Department of Environmental Protection or the Secretary's authorized agent. We find this definition is not inconsistent with SMCRA or the Federal regulations and can be approved.

199–1–2.24 defines "Department" to mean the Department of Environmental Protection. We find this definition is not inconsistent with SMCRA or the Federal regulations and can be approved.

199–1–2.26 defines "fly rock" to mean rock and/or earth propelled from the blast site through the air or along the ground by the force of the detonated explosives. We find that this definition is consistent with the Federal regulations at 30 CFR 816/817.67(c) regarding flyrock and can be approved.

199–1–2.27 defines "loss value" to mean the amount of money indicated in a given loss to include costs of repairs or replacement costs. We find that this definition is not inconsistent with SMCRA or the Federal regulations and can be approved.

199–1–2.28 defines "not caused by blasting" to mean that there is direct, consistent, and conclusive evidence or information that blasting from the mine site in question was definitely not at fault for the alleged property damage. We find that this definition is not inconsistent with SMCRA or the Federal regulations and can be approved.

199–1–2.29 defines "office" to mean the Office of Explosives and Blasting. We find that this definition is not inconsistent with SMCRA or the Federal regulations and can be approved.

199–1–2.30 Definition of "operator." Operator means any person who is granted or who should obtain a permit to engage in any activity covered by W. Va. Code 22. Under W. Va. Code 22–3–3(o), "operator" is defined as follows:

> (o) "Operator" means any person who is granted or who should obtain a permit to engage in any activity covered by this article and any rule promulgated under this article and includes any person who engages in surface-mining or surface-mining and reclamation operations, or both. The term shall also be construed in a manner consistent with the federal program pursuant to the federal Surface-Mining Control and Reclamation Act of 1977, as amended.

The Federal definition at 30 CFR 701.5 defines "operator" as any person engaged in coal mining who removes or intends to remove more than 250 tons of coal from the earth or from coal refuse piles by mining within 12 consecutive calendar months in any one location. In accordance with the State's statutory definition of "operator," the State's regulatory definition of "operator" must be construed in a manner consistent with the Federal definition of "operator." We find, therefore, that the definition of "operator" at CSR 199–1–2.30, like W. Va. Code 22–3–3(o), is consistent with the Federal definition of "operator" at 30 CFR 701.5 and can be approved.

199–1–2.31 defines "possible caused by blasting" to mean the physical damage in question is not entirely consistent with blasting induced property damage, but that blasting cannot be ruled out as a casual factor. We find that this definition is not inconsistent with SMCRA or the Federal regulations and can be approved.

199–1–2.32 defines "pre-blast survey" to mean the written documentation of the existing condition of a given structure near an area where blasting is to be conducted. The purpose of the survey is to note the pre-blasting condition of the structure and note any observable defects or damage. While the proposed definition does not define near, we note that under W. Va. Code 22–3–13a(a), pre-blast surveys will be conducted for man-made dwellings or structures within ½ mile of the permitted area or under specified circumstances 7/10 mile of the proposed blasting site. We find that this definition, when read together with the statute, is consistent with the Federal regulations at 30 CFR 816/817.62 and can be approved.

199–1–2.33 defines "probably caused by blasting" to mean that there is physical damage present at the site in question that is entirely consistent with blasting induced property damage, and said damage can be attributed to a specific mine site and/or blast event(s). We find that this definition is not inconsistent with SMCRA or the Federal regulations and can be approved.

199–1–2.34 defines "probably not caused by blasting" to mean that there is substantial, but not conclusive information that the alleged damage was caused by something other than blasting. We find that this definition is not inconsistent with SMCRA or the Federal regulations and can be approved.

199–1–2.35 defines "production blasting" to mean blasting that removes the overburden to expose underlying coal seams and shall not include construction blasting. We find that this definition is not inconsistent with SMCRA or the Federal regulations and can be approved.

199–1–2.36 defines "protected structure" to mean any of the following structures that are situated outside the permit area: An occupied dwelling, a temporarily unoccupied dwelling which has been occupied within the past 90 days, a public building, a habitable building for commercial purposes, a school, a church, a community or institutional building, a public park or a water supply. This definition is used in the provisions at CSR 199–1–3.6 to provide protection from blasting damage for such protected structures. CSR 199–1–3.7 provides for the protection of structures in the vicinity of the blasting area which are not defined as protected structures. We find that this definition is not inconsistent with SMCRA or the Federal blasting regulations at 30 CFR 816/817.67 and can be approved.

199–1–2.37 defines "supervised a blasting crew" to mean that a person assumed responsibility for the conduct of a blasting crew(s) and that the crew(s) reported directly to that person. We find that this definition is not inconsistent with SMCRA or the Federal regulations and can be approved.

199–1–2.38 defines "surface mine and surface area of underground mines" to mean:

> all areas except underground workings surface mined or being surfaced mined, including adjacent areas ancillary to the operations, *i.e.*, preparation and processing plants, storage areas, shops, haulageways, roads, and trails, which are covered by the provisions of W. Va. Code 22–3–1 *et seq.*, and rules promulgated under that article.

Although it lacks commas setting apart the phrase, it is our understanding that this definition intends to exclude "underground workings" from the definition of "surface mine and surface area of underground mines." Our finding that this definition is not inconsistent with SMCRA or the Federal definition of "surface coal mining operations" at 30 CFR 700.5 and can be approved is based upon that understanding of its intended meaning.

199–1–2.39 defines "worked on a blasting crew" to mean a person has first-hand experience in storing, handling, transporting, and using explosives, and has participated in the loading, connecting, and preparation of blast holes and has participated in detonating blasts. We find that this definition is not inconsistent with SMCRA or the Federal regulations and can be approved.

10. CSR 199–1–3 Blasting.

199–1–3.2.a Blasting plans. This subdivision is nearly identical to CSR 38–2–6.2 with the following changes. The first sentence was deleted, which required that each application for a permit, where blasting is anticipated, shall include a blasting plan. The deleted sentence was replaced by the following sentence: "As required by statute, all surface mining operations that propose blasting shall include a blasting plan." The W. Va. Code 22–3–9(e) provides that each applicant for a surface-mining permit shall submit to the director as part of the permit application a blasting plan where explosives are to be used, which shall outline the procedures and standards by which the operator will meet the provisions of the blasting performance standards. We find that this new sentence is substantively identical to the Federal requirement at 30 CFR 780.13(a) concerning blasting plan, and that it can be approved.

Proposed 199–1–3.2.a was amended by deleting the phrase "and the terms and conditions of the permit." We find that the deletion of this phrase does not render the provision less effective than the counterpart Federal provision at 30 CFR 780.13(a) and can be approved.

Proposed 199–1–3.2.a was amended to provide that the blasting plan would include methods to be applied in preventing, rather than controlling, the adverse effects of blasting. It was also amended by adding language that requires that blasting plans shall delineate the type of explosives and detonation equipment, the size, the timing and frequency of blasts, and the effect of geologic and topographic conditions on specific blasts. The new language also provides that blasting plans shall be designed to prevent injury to persons, prevent damage to public and private property outside the permit area, prevent adverse impacts on any underground mine, prevent change in the course, channel or availability of ground or surface water outside the permit area, and reduce dust outside the permit area. We find that this new language, which provides for the prevention of the adverse effects of blasting, is substantively identical to the requirements in SMCRA at section 515(b)(15)(C) with one exception. There is no Federal counterpart to the new provision at 199–1–3.2.a.5, which requires that blasting shall be designed to reduce dust outside the permit area. We find, however, that the provision is not inconsistent with the Federal requirements. Therefore, we find that the amendments to CSR 199–1–3.2.a can be approved.

199–1–3.2.b Review of blasting plans. This provision requires the Office of Explosives and Blasting to review blasting plans for administrative and technical completeness. There is no direct Federal counterpart to this provision. However, we find that the provision is not inconsistent with SMCRA section 515(b)(15) and the Federal regulations at 30 CFR 777.15 and 780.13(a) concerning completeness of a permit application and the blasting plan and can be approved.

199–1–3.2.c Inspection and monitoring procedure. This provision provides that each blasting plan shall contain an inspection and monitoring procedure to insure that blasting operations are conducted to eliminate, to the maximum extent technically feasible, adverse impacts to the surrounding environment and surrounding occupied dwellings. In addition, this subdivision provides that for all surface coal extraction operations that will include production blasting, the monitoring procedure shall include provisions for monitoring ground vibrations and air blast. This mandatory monitoring of production blasting is no less effective than the Federal requirements at 30 CFR 780.13(b), which requires each permit application to include a description of any system to be used to monitor compliance with blasting standards. We find that subdivision 3.2.c is consistent with the Federal requirements at 30 CFR 780.13(b) and can be approved.

199–1–3.2.d Review of blasting plans where a blasting related notice of violation (NOV) or cessation order (CO) have been issued. This provision requires that where a blasting related NOV or CO has been issued, the Office shall review the blasting plan within thirty (30) days of final disposition of the NOV or CO. This review will focus on the specific circumstances that led to the enforcement action. If necessary, the blasting plan will be modified to insure all precautions are being taken to safely conduct blasting operations. There is no direct Federal counterpart to this provision. However, we find that subdivision 3.2.d. is consistent with the Federal regulations at 30 CFR 816/817.61(d)(5), which states that the regulatory authority may require changes to the blast design, and can be approved.

199–1–3.3(a) Public notice of blasting operations. This provision is copied from CSR 38–2–6.3 and amended by adding a requirement that copies of the blasting schedule must also be distributed by Certified Mail to residents within seven tenths of a mile of the blasting sites for all surface coal

extraction permits larger than those defined in accordance with W. Va. Code 22–3–13a(a)(1). The State also revised an existing sentence providing that, unless blasting operations will occur on drainage structures and roads, [such] structures are exempt from measuring the notification area. In addition, the State added a requirement that a list of residents, utilities, and owners of man-made structures within the notification area shall be made part of the blasting plan, and shall be updated on an annual basis. Finally, the provision now requires publication and redistribution of the blasting schedule in a newspaper of general circulation in all the counties of the proposed [permit] area, rather than just in the county of the proposed permit area. We find that as amended, CSR 199–1–3.3(a) is consistent with and no less effective than the Federal regulations at 30 CFR 816.64(b) and can be approved.

199–1–3.4 Public notice of surface blasting incident to underground coal mining. This provision, which is nearly identical to the provision at CSR 38–2–6.3.b, is amended by adding the words "and workplaces" immediately following the word "residents" and before the words "or owners." The effect of this amendment is to require that "workplaces" also receive the written notification of the proposed times and locations of the surface blasting operations incidental to underground coal mining operations. We find that the addition of the words "and workplaces" does not render the provision less effective than the Federal regulations at 30 CFR 817.64(a) and 816.79 and can be approved.

199–1–3.6.i Ground vibration. This provision was copied from CSR 38–2–6.5.j and amended by adding language to provide that seismographs used to demonstrate compliance with this subdivision must be shake-table calibrated annually. Also, the annual calibration certificate shall be kept filed with the blasting logs and seismograph records and made available for review as required by subdivision CSR 199–1–3.5.a. While there is no Federal counterpart to the new language, we find that it is not inconsistent with the Federal regulations concerning ground vibration at 30 CFR 816/817.67(d) and that CSR 199–1–3.6.i can be approved.

199–1–3.7.a Blasting control for other structures. This provision was copied from CSR 38–2–6.6.a, and amended by adding language to provide that if alternative maximum allowable limits on vibration are not included in the approved blast plan, the operator shall comply with the limits specified in paragraph 3.6.c.1, and subdivisions 3.6.h and 3.6.i. While there is no direct Federal counterpart to this provision, we find that it is consistent with the intent of 30 CFR 816/817.67(b) and (d) and can be approved.

199–1–3.8 Pre-blast survey. This provision is copied from CSR 38–2–6.8.a.2, and amended by adding the following language at the end of the provision:

> The pre-blast survey shall include a description of the water source and water delivery system. When the water supply is a well, the pre-blast survey shall include written documentation about the type of well, and where available, the well log and information about the depth, age, depth and type of casing, the static water level, flow and recharge data, the pump capacity, the name of the drilling contractor, and the source or sources of the information.

While the proposed language has no direct Federal counterpart, we find that it is consistent with and no less effective than the Federal regulations at 30 CFR 816/817.62(c) and can be approved.

We must note that the State has not included specific procedures in its rules requiring operators, at least 30 days prior to the beginning of blasting operations, to notify residents or owners of structures in writing on how to request a preblast survey. However, this specific requirement is contained in W.Va. Code 22–3–13a(a), and it is our understanding that W.Va. Code 22–3–13a(a) continues to apply.

In addition, subsection 3.8 does not specifically require that copies of the preblast survey be promptly provided the person requesting the survey and the Secretary, and that the report be signed by the person conducting the preblast survey. However, W. Va. Code 22–3–13a(f)(18) specifically requires that the preblast survey include the signature of the person performing the survey. In addition, W. Va. Code 22–3–13a(g) provides that pre-blast surveys must be submitted to the Office of Explosives and Blasting, and that the Office shall provide a copy of the survey to the owner or occupant. It is our understanding that both W. Va. Code 22–3–13a(f)(18) and 22–3–13a(g) continue to apply. Our approval of subsection 3.8 is based upon those understandings.

199–1–3.8.a Pre-blast survey. This provision provides that surveys, waivers or affidavits for each dwelling or structure within the pre-blast survey area shall be completed and submitted to the Office of Explosives and Blasting at least 15 days before any blasting may occur, provided, that once all pre-blast surveys have been accepted by the Office, blasting may commence sooner than 15 days from submittal. There is no direct Federal counterpart to this provision. However, the Federal regulations at 30 CFR 816/817.62(e) provide that surveys requested more than 10 days before the planned initiation of blasting shall be completed by the operator before the initiation of blasting. While subdivision 199–1–3.8.a does not contain a specific counterpart to this language at 30 CFR 816/817.62(e), we find that CSR 199–1–3.8.a does not conflict with the Federal requirement. That is, the State provision in no way prohibits surveys being requested more than 10 days before the planned initiation of blasting. Furthermore, the State's existing regulations at CSR 38–2–6.8.a.4 provide that pre-blast surveys requested more than 10 days before the planned initiation of blasting must be completed before blasting begins. This ensures that any preblast survey that may be requested after the 15-day submission period will be completed before blasting commences. Therefore, we are approving this provision because, when read in conjunction with CSR 38–2–6.8.a.4, it is not inconsistent with 30 CFR 816/817.62(e).

199–1–3.8.a.1 Disagreement with pre-blast survey results. This provision provides that any person who disagrees with the results of the survey may submit a detailed description of the specific areas of disagreement, to the Office of Explosives and Blasting. The description of the areas of disagreement will be made a part of the pre-blast survey on file at the Office. We find that this new provision is no less effective than the Federal regulations at 30 CFR 816/817.62(d) and can be approved.

199–1–3.8.a.2 Structures/renovations after an initial pre-blast survey. This provision provides that if a structure is added to or renovated subsequent to a survey, a survey of such additions and/or renovations shall be performed upon request of the resident or owner. If a pre-blast survey was waived by the owner and was within the requisite area and the property was sold, the new owner may request a pre-blast survey from the operator. An owner within the requisite area may request, from the operator, a pre-blast survey on structures constructed after the original pre-blast survey. We find that this new provision is no less effective than the Federal regulations at 30 CFR 816/817.62(b) and can be approved.

199–1–3.9 Pre-blast surveyors. These new provisions set forth the qualifications for individuals and firms performing pre-blast surveys. There are no Federal counterparts to these provisions. We find, however, that these provisions are not inconsistent with SMCRA section 515(b)(15) concerning the use of explosives, and the Federal regulations at 30 CFR 816/817.62 concerning pre-blasting surveys and can be approved.

199–1–3.10 Pre-blast survey review. This provision sets forth the requirements for submittal of pre-blast surveys to the Office of Explosives and Blasting and review of such surveys by the Office. The Federal regulations at 30 CFR 816/817.62, concerning pre-blasting survey, provide for pre-blast surveys, but the Federal regulations do not contain submittal and review procedures for pre-blast surveys. SMCRA at section 505(b) provides that any State statutory or regulatory provision which is in effect or may become effective after the enactment of SMCRA and that provides for control and regulation of surface mining and reclamation operations for which no provision is contained in SMCRA shall not be construed to be inconsistent with SMCRA. We find that this provision is not inconsistent with the Federal regulations at 30 CFR 816/817.62 concerning pre-blasting surveys and can be approved, to the extent described as follows:

Subdivision 3.10.b provides that the operator or his designee shall correct deficiencies within 30 days from receipt of notice of deficiencies. The Federal regulations at 30 CFR 816/817.62(e) provide that any surveys requested more than 10 days before the planned initiation of blasting shall be completed by the operator before the initiation of blasting. The approved West Virginia program at CSR 38–2–6.8.a.4, concerning pre-blast survey, contains a counterpart to the Federal 10-day requirement at 30 CFR 816/817.62(e). Therefore, we are approving the provision at subdivision 3.10.b. because when read in conjunction with CSR 38–2–6.8.a.4. it is not inconsistent with 30 CFR 816/817.62(e).

Subdivision 3.10.d provides that all pre-blast surveys shall be confidential and only used for evaluating damage claims. This subdivision also provides that the Office of Explosives and Blasting shall develop a procedure for assuring surveys shall remain confidential. The Federal regulations, at 30 CFR 816/817.62, neither require nor preclude pre-blast surveys being confidential, nor do they limit their use to the evaluation of blasting damage claims or expressly specify a broader use of such surveys. While requiring such surveys to be kept confidential appears to pose no consistency problems with respect to Federal regulations, limiting the use of the surveys to damage claims warrants further discussion. The State's amendments at CSR 38–2–2.11 define blasting claim to mean an allegation by the property owner of blasting related damage to property. To the extent issuance of an enforcement action is necessary in resolving a blasting claim because of an operator's failure to repair, we do not find that these regulations preclude the use of a preblast survey to support actions such as the issuance of an NOV. Therefore, we are approving this provision with the understanding that the phrase "only used for evaluating damage claims" does not preclude the use of preblast surveys to support the issuance of NOVs, COs, civil penalties or other forms of alternative enforcement actions under the West Virginia Surface Coal Mining and Reclamation Act and its implementing regulations to achieve the repair of blasting damage and thus resolve a damage claim.

199–1–3.11 Additional protections. This new subsection provides that the Secretary of the WVDEP may prohibit blasting or may prescribe alternative distance, vibration and airblast limits on specific areas, on a case-by-case basis, where research establishes it is necessary, for the protection of public or private property, or the general welfare and safety of the public. While this provision has no direct Federal counterpart, we find that it is consistent with the Federal blasting provisions at 30 CFR 816/817.67(a), (b)(1)(ii), and (d)(5) and can be approved.

11. CSR 199–1–4 Certification of Blasters.

199–1–4.1.a Requirements for certification of blasters. This provision provides that in every surface mine and surface area of an underground mine when blasting operations are being conducted, a certified blaster shall be responsible for the storage, handling, transportation, and use of explosives for each and every blast, and for conducting the blasting operations in accordance with the blasting plans approved in a permit issued pursuant to W. Va. Code 22–3–1 *et seq.*, and the rules promulgated under that article. This provision also provides that each person responsible for blasting operations shall be certified. Each certified blaster shall have proof of certification either on his/her person or on file at the permit area during blasting operations. Certified blasters shall be familiar with the blasting plan and blasting related performance standards for the operation at which they are working. Where more than one certified blaster is working on a blast, the blaster who designed the blast shall supervise the loading operations and sign the blasting log. Furthermore, it provides that nothing in this rule modifies the statutory regulatory authority of the State Fire Marshal and the State Commission to regulate blasting and explosives. Similar provisions regarding certified blasters were previously approved at former W. Va. Code 22–4–3.01(A). We find that the revised provision is consistent with SMCRA sections 515(b)(15)(D) and 719 concerning blasters, and no less effective than the Federal regulations at 30 CFR 816/817.61(c)(1), (2) and (4)(i) and can be approved.

199–1–4.1.b Qualifications for certification. This provision provides that each applicant for certification shall have had at least one (1) year active blasting experience within the past three (3) years, and have demonstrated a working knowledge of and skills of the storage, handling, transportation, and use of explosives, and a knowledge of all State and Federal laws pertaining thereto, by successfully taking and passing the examination for certification required by CSR 199–1–4.3.b. Similar provisions regarding qualifications for certification were previously approved at W. Va. Administrative Regulations, Department of Mines, Chapter 22–4–3.01(A). Although it has no direct Federal counterpart, we find that the revised provision is consistent with the Federal regulations at 30 CFR 850.14(a)(2) and can be approved.

199–1–4.1.c Application for certification. This provision requires that prior to taking the examination for certification, a person must submit an application along with a fifty dollar ($50.00) application fee to the Office to take the examination on forms prescribed by the Secretary of the WVDEP. Upon receipt of an application for examination, the Secretary of the WVDEP shall, after determining that the applicant meets the experience requirements of subsection 199–1–4.1.b, notify the applicant of the date, time, and location of the scheduled examination. Similar provisions regarding application for certification were previously approved at former Chapter 22–4–6.02, except for the $50.00 fee. Although the revised provision has no direct Federal counterpart, we find that it is consistent with the Federal regulations at 30 CFR 850.12(b) and can be approved.

199–1–4.2 Training. This provision provides that the Office of Explosives and Blasting will administer a training program to assist applicants for blaster certification or re-certification in acquiring the knowledge and skills required for certification. The training requirements shall include, at a

minimum, those subject areas set forth in subdivisions 199–1–4.3.b.1.A through 4.3.b.1.K. The Secretary of the WVDEP may establish a fee for training to cover costs to the Office. In lieu of completing the training program, the applicant for certification or re-certification who meets the experience requirements specified in subdivision 199–1–4.1.b, may complete a self-study course using the study guide and other materials available from the Office. Prior to certification, all applicants who choose to self-study will also be required to attend an Office two-hour training session addressing certified blasters' responsibilities and the disciplinary procedures contained in subsections 199–1–4.9 and 4.10. This training will be made available immediately prior to scheduled examinations when necessary. Similar training provisions were previously approved at former Chapter 22–4–3.01(B). In addition, the requirement to allow for completion of a self-study course in lieu of completing the training program was previously approved at CSR 38–2C–4 (61 FR 6511, 6528; February 21, 1996). While the revised provision has no direct Federal counterpart, we find that it is consistent with the requirements of SMCRA at section 515(b)(15)(D) and the Federal regulations at 30 CFR 850.13 and can be approved.

199–1–4.3.a Examinations for Certified Blaster Examiners/Inspectors. This provision provides that all persons employed by the Office, whose duties include training, examining, and certification of blasters and/or inspecting blasting operations shall be a certified examiner/inspector. Certification as an examiner/inspector does not constitute a surface mine blaster certification; however, a surface mine blaster certification is sufficient for certification as an examiner/inspector. The examination for certified examiner/inspector shall at a minimum test the applicant's knowledge as required by CSR 199–1–4.3.b. Similar provisions requiring certification of blaster examiners were previously approved at former Chapter 22–4–4. There is no direct Federal counterpart to this provision. However, we find that the requirements of this provision do not render the West Virginia program less effective than the Federal regulations concerning blasting at 30 CFR part 850 concerning training, examination, and certification of blasters and can be approved.

199–1–4.3.b and 4.3.b.1 Examination for certified blaster. These provisions identify the topics that must be covered in the *Study Guide for West Virginia Surface Mine Blasters* and by the examination for certified blasters. Similar provisions were previously approved at former Chapter 22–4–5.03(A)(1). The requirement providing that the examination will also test on information contained in the self-study course was previously approved for both blaster examiners/inspectors and certified blasters at CSR 38–2C–5.1 and 5.2 (61 FR at 6528; February 21, 1996). At CSR 199–1–4.3.b, the words "three (3) parts" were deleted. This is a nonsubstantive change, relating to parts of the examination that are no longer applicable, that does not affect the approved provision. We find that the revised blaster examination provisions at subdivisions 4.3.b and 4.3.b.1 are consistent with the Federal requirements at 30 CFR 850.13(b) and 850.14(b) and can be approved.

199–1–4.3.b.2 This provision provides that the examination for certified blaster shall also include a simulation examination whereby the applicant must correctly and properly complete a blasting log. A similar provision was previously approved at former Chapter 22–4–5.03(A)(2). While the revised provision has no direct Federal counterpart, we find that it is consistent with the Federal requirement concerning blaster training at 30 CFR 850.13(b)(8) and 850.14(b) and can be approved.

199–1–4.3.b.3 This provision provides that the examination for certified blaster shall also include other portions or parts developed to demonstrate an applicant's ability to use explosives products and equipment properly, as deemed appropriate by the Secretary of the WVDEP. Provisions requiring hands-on simulation, including wiring, checking and shooting a blast were previously approved at former Chapter 22–4–5.03(A)(3). While the revised provision has no direct Federal counterpart, we find that it is consistent with the Federal requirements concerning blaster training at 30 CFR 850.13(b) and 850.14 and can be approved.

199–1–4.3.c Standards for Blaster Exam. This provision provides that a score of 80 percent for the multiple choice examination, and satisfactory completion of the blasting log portion, and any other portions that may be included in the examination, which are graded on a pass/fail basis, are required for successful passage of the examination for certified blaster. Similar provisions were previously approved at former Chapter 22–4–5.03(B), except, as proposed, hands-on simulation may not necessarily be required to pass the examination. We find that the revised provision is not inconsistent with the Federal requirements for blaster examination at 30 CFR 850.14 and can be approved.

199–1–4.3.d Notification of scores. This provision provides that the Office must notify all persons of their scores within 30 days of completing the examination. A person who fails to achieve a passing score of any of the parts of the examination, may apply, after receipt of his or her examination results, to retake the entire examination or any portions that the individual failed to pass. Any person who fails to pass the exam on the second attempt must certify that he/she has taken or retaken the training course described at CSR 199–1–4.2 prior to applying for another examination. Similar provisions regarding notification of scores were previously approved at former Chapter 22–4–5.03(C), except the person was required to retake the entire examination. There is no direct Federal counterpart to this provision. We find, however, that it is consistent with the Federal requirements for blaster examination at 30 CFR 850.14 and can be approved.

199–1–4.4 Approval of certification. This provision provides that upon determination that an applicant for certification has satisfactorily passed the examination, the Secretary of the WVDEP shall, within 30 days of the examination date, issue a certification card to the applicant. Similar provisions regarding approval of certification were previously approved at former Chapter 22–4–6.03. While the revised provision has no direct Federal counterpart, we find that it is consistent with the Federal requirements for blaster examination at 30 CFR 850.15(a) concerning issuance of certification and can be approved.

199–1–4.5 Conditions or practices prohibiting certification. This provision provides that the Secretary of the WVDEP shall not issue a blaster certification or re-certification to persons who: are currently addicted to alcohol, narcotics or other dangerous drugs; have exhibited a pattern of conduct inconsistent with the acceptance of responsibility for blasting operations; or are convicted felons. Similar requirements prohibiting blaster certification were previously approved at former Chapter 22–4–6.01, except for the new provision relating to convicted felons, which has no direct Federal counterpart. Nevertheless, we find that the entire provision is consistent with the Federal provisions concerning issuance of certification at 30 CFR 850.14(a) and 850.15(a) and (b) and can be approved.

199–1–4.6.a Refresher training. This provision provides that all certified blasters must complete a minimum of 12 hours of refresher training during the three-year period that each blaster's certification is in effect. This refresher training requirement may be satisfied by attendance at various professional and technical seminars and meetings approved by the Office, or by attendance at a refresher training session conducted by the Office. The Secretary of the WVDEP may establish a fee for refresher training to cover costs to the Office. Similar provisions requiring annual refresher training were previously approved at former Chapter 22–4–3.01(B). While the revised provision has no direct Federal counterpart, we find that it is consistent with the Federal provision concerning recertification at 30 CFR 850.15(c) and can be approved.

199–1–4.6.b Re-certification of blasters. This provision provides that a certified blaster must be re-certified every three (3) years. Each applicant for re-certification must be currently certified and must document that he or she satisfactorily meets the experience requirements of CSR 199–1–4.1.b and has satisfied the refresher training requirement at CSR 199–1–4.6.a. The application for re-certification must be submitted on forms prescribed by the Secretary with a thirty dollar ($30.00) reapplication fee. Similar provisions regarding re-certification were previously approved at former Chapter 22–4–7.01, except for the re-application fee. While the revised provision has no direct Federal counterpart, we find that it is consistent with the Federal requirement for recertification at 30 CFR 850.15(c) and can be approved.

199–1–4.6.c Re-training. This provision provides that an applicant for re-certification, who does not meet the experience requirements of CSR 199–1–4.1.b, must take the training course, and must take and pass the examination required in CSR 199–1–4.3.b. Similar provisions were previously approved at former 22–4–7.01(B) and CSR 38–2C–8.2, except for the modified provision at subsection 8.2 allowing for the completion of the self-study course as an option to completing the refresher training course, which is to be deleted. While the revised provision has no direct Federal counterpart, we find that it is consistent with the Federal provision regarding training for certified blasters at 30 CFR 850.13(a), as well as the provision for recertification of blasters at 30 CFR 850.15(c), and can be approved.

199–1–4.6.d Re-examination. This provision provides that each certified blaster shall be required to successfully complete the examination for certified surface coal mine blasters at least once every sixth year, as required by CSR 199–1–4.3.b. Similar provisions regarding re-examination were previously approved at former Chapter 22–4–7.02. While the revised provision has no direct Federal counterpart, we find that it is consistent with the Federal requirement for recertification of blasters at 30 CFR 850.15(c) and can be approved.

199–1–4.7 Presentation of certificate; Transfer; and Delegation of authority. This provision provides that: Upon request by the Secretary of the WVDEP, a certified blaster shall exhibit his/her blaster certification card; The certified blaster shall take all reasonable care to protect his/her certification card from loss or unauthorized duplication, and shall immediately report any such loss or duplication to the Office; Blaster's certifications may not be transferred or assigned; and certified blasters shall not delegate their authority or responsibility to any individual who is not a certified blaster. A certified blaster shall not take any instruction or direction on blast design, explosives loading, handling, transportation and detonation from a person not holding a blaster's certificate, if such instruction or direction may result in an unlawful act, or an improper or unlawful action that may result in unlawful effects of a blast. A person not holding a blaster's certification who requires a certified blaster to take such action may be prosecuted under W. Va. Code 22–3–17(c) or (i). Similar provisions regarding presentation, transfer and delegation of blaster certification were previously approved at former Chapter 22–4–8. We find that the revised provision is no less effective than the Federal requirements for recertification of blasters at 30 CFR 850.15(d) and (e) and can be approved.

199–1–4.8 Violations by a certified blaster. This provision provides that the Secretary of the WVDEP may issue a temporary suspension order against a certified blaster who is, based on clear and convincing evidence, in violation of any of the items listed at CSR 199–1–4.8.a through 4.8.e. The proposed language was copied and amended from approved language at CSR 38–2C–10.1 concerning violations, and 38–2–11.1 concerning suspension. Language authorizing the Secretary to issue a cessation order and/or take other action was removed from former CSR 38–2C–10.1, but the Secretary retained authority to issue a notice of violation for violations by a certified blaster as approved on February 21, 1996 (61 FR 6528–6529). The revised provision is similar to CSR 38–2C–10.1 with the following changes. At subsection CSR 199–1–4.8, the words "notice of violation" were deleted and replaced with the words "temporary suspension order." With these changes, the Secretary of WVDEP may issue a temporary suspension order against a certified blaster who is, based on clear and convincing evidence, in violation of any of the provisions listed at CSR 199–1–4.8.a through 4.8.e. We find that the proposed State language as revised is consistent with the Federal regulations at 30 CFR 850.15(b), concerning suspension and revocation of blaster certification, and can be approved, except as follows.

199–1–4.8.c. Violations by a certified blaster. The words "substantial or significant" were added prior to the word "violations;" the words "or state" were added after the word "federal"; and the words "or the approved blast plan for the permit where the blaster is working" were added after the word "explosives." With these changes, violations of Federal or State laws or regulations related to explosives or the approved blasting plan must be "substantial or significant" violations before a temporary suspension order can be issued. We find that the proposed State language is not consistent with the Federal regulations at 30 CFR 850.15(b)(1)(iii) which authorizes suspension or revocation for violation of any provision of the State or Federal explosives laws or regulations. The proposed language is narrower than its Federal counterpart, since it allows for suspension or revocation of blaster certification based only on "substantial or significant" violations. In contrast, the Federal regulations at 30 CFR 850.15(b) authorize suspension or revocation of the blaster certification for any type of violation of State or Federal explosives laws or regulations. Therefore, we are not approving the phrase "substantial or significant" at CSR 199–1–4.8.c. We are approving the reference to State laws and regulations, because it is no less effective than the Federal regulation at 30 CFR 850.15(b)(1)(iii) and can be approved. We also find that the addition of the words "or the approved blast plan for the permit where the blaster is working" do not render the provision less effective than 30 CFR 850.15(b)(1)(iii) and can be approved.

199–1–4.8.d Violations by a certified blaster. This provision identifies "false swearing in order to obtain a blaster's certification card" as a violation that the Secretary may issue a temporary suspension order against a certified blaster. The counterpart Federal

regulations at 30 CFR 850.15(b)(1)(iv) provide that the regulatory authority may suspend or revoke a blaster's certification for, among other reasons, providing false information or a misrepresentation to obtain certification. The Federal provision encompasses more than swearing under oath. It is our understanding that the State provision encompasses swearing under oath, as well as providing false information or a misrepresentation to obtain blaster certification. Our finding that this provision is no less effective than the Federal regulations at 30 CFR 850.15(b)(1)(iv) is based on this understanding. Therefore, subdivision 4.8.d can be approved.

199–1–4.8.e Illegal or improper actions by a blaster. At subdivision 4.8.e., the words "in the use, handling, transportation, or storage of explosives or in designing and executing a blast," were added after the words "certified blaster." In addition, the words "a blast site" are deleted and replaced with the words "or near a mine site." As amended, the Secretary of WVDEP may issue a temporary suspension order against a certified blaster for any illegal or improper action taken by a certified blaster in the use, handling, transportation, or storage of explosives or in designing and executing a blast, which may or has led to injury or death at or near a mine site. While there is no direct Federal counterpart to this new language, we find that it is not inconsistent with the Federal regulations at 30 CFR 850.15(b)(1) and can be approved.

199–1–4.9.a Suspension. This provision provides that upon service of a temporary suspension order, the certified blaster shall be granted a hearing before the Secretary of the WVDEP to show cause why his or her certification should not be suspended or revoked. Similar language was previously approved at CSR 38–2C–11.1, except the former provision provided that issuance of the suspension order was based upon the service of a notice of violation. Prior to the issuance of such an order, the certified blaster would be granted a hearing regarding the proposed suspension. We find that the revised provision is no less effective than the Federal regulations concerning suspension or revocation of the certification of a blaster at 30 CFR 850.15(b)(1) and can be approved. CSR 199–1–4.9.a also provides that the period of suspension will be conditioned on the severity of the violation committed by the certified blaster, and, if the violation can be abated, the time period in which the violation is abated. The Secretary of the WVDEP may require remedial actions and measures and retraining and reexamination as a condition for reinstatement of certification. While there is no direct Federal counterpart to this provision, we find that the State provision is not inconsistent with the Federal regulations at 30 CFR 850.15(b) and can be approved.

199–1–4.9.b Revocation of blaster certification. This provision provides that if the remedial action required to abate a suspension order issued by the Secretary of the WVDEP to a certified blaster, or any other action required at a hearing on the suspension of a blaster's certification, is not taken within the specified time period for abatement, the Secretary of the WVDEP may revoke the blaster's certification and require the blaster to relinquish his or her certification card. Revocation will occur if the certified blaster fails to retrain or fails to take and pass reexamination as a requirement for remedial action as described in subsection 12.1 of this rule. We note that the reference to subsection 12.1 is a typographical error, and the correct citation is subdivision 4.9.a. We approved the deletion of the phrase "or a cessation order" from this subsection on February 21, 1996 (61 FR 6529). The State further proposes to amend this subsection by deleting the words "notice of violation" and adding in their place the words "suspension order." In addition, the phrase "or any other action required at a hearing on the suspension of a blaster's certification" was added to the first sentence, after the words "certified blaster." We find that these changes are not inconsistent with the Federal regulations and can be approved.

While we are approving, with the exception noted above, the State's proposed rules addressing suspension and revocation, we note that there is one Federal requirement not covered by these rules. The State lacks a counterpart to the Federal provision at 30 CFR 850.15(b)(1) that provides that the regulatory authority must suspend or revoke a blaster's certification upon a finding of willful conduct that was previously addressed at West Virginia Administrative Regulations 22–4–6.01.C. Therefore, the State must further amend CSR 199–1–4.9.a and 4.9.b, or otherwise amend the West Virginia program, to provide that upon a finding of willful conduct, the Secretary "shall" revoke or suspend a blaster's certification.

199–1–4.9.c Reinstatement. This provision provides that subject to the discretion of the Secretary of the WVDEP, and based on a petition for reinstatement, any person whose blaster certification has been revoked, may, if the Secretary of the WVDEP is satisfied that the petitioner will comply with all blasting laws and rules, apply to re-take the blasters certification examination, provided the person meets all of the requirements for blasters certification specified by this subsection, and has completed all requirements of the suspension and revocation orders, including the time period of the suspension. While there is no direct Federal counterpart to this provision, we find that the provision is not inconsistent with the Federal regulations concerning suspension and revocation of blasters certifications at 30 CFR 850.15(b) and can be approved.

199–1–4.9.d Civil and criminal penalties. This provision provides that any certified blaster is subject to the individual civil and criminal penalties provided for in W. Va. Code 22–3–17. While there is no direct Federal counterpart to this provision, we find that it is not inconsistent with either SMCRA at section 518 concerning penalties, nor 30 CFR part 846 concerning individual civil penalties and can be approved.

199–1–4.10 Hearings and appeals. This provision provides that any certified blaster who is served a suspension order, revocation order, or civil and criminal sanctions is entitled to the rights of hearings and appeals as provided for in W. Va. Code 22–3–16 and 17. We find that this provision is not inconsistent with the Federal regulations concerning suspensions and revocations of blasters certifications at 30 CFR 850.15(b) and can be approved.

199–1–4.12 Reciprocity with other states. This provision provides that the Secretary of the WVDEP may enter into a reciprocal agreement with other states wherein persons holding a valid certification in that state may apply for certification in West Virginia, and upon approval by the Secretary of the WVDEP, be certified without undergoing the training or examination requirements set forth in this rule. There is no direct Federal counterpart to this State provision. However, because all state coal-mining regulatory programs are subject to the same minimum Federal standards under SMCRA at section.719 and the Federal regulations at 30 CFR part 850, we find that this provision does not render the West Virginia program less effective than those Federal requirements concerning the training, examination, and certification of blasters and can be approved.

12. CSR 199–1–5 Blasting Damage Claim.

199–1–5. Blasting damage claim. This section is new, and identifies the characteristics of the types of blasting damage, and provides requirements concerning filing a claim, responsibilities of claims administrators, and the responsibilities of claims adjusters. There is no direct Federal counterpart to the provisions concerning claims for blasting damage at CSR 199–1–5. We find that these provisions are not inconsistent with SMCRA section 515(b)(15) concerning blasting, nor with the Federal blasting regulations at 30 CFR 816/817.61 through 68 and can be approved. However, one specific provision within section 5 requires further explanation, which follows.

199–1–5.2.a.4 Filing a claim. This provision states that if the property owner declines to submit a claim to the Office of Explosives and Blasting under part 5.2.a.3.C.4, then the Office's involvement will be concluded. We understand this to mean that CSR 199–1–5.2.a.4 authorizes the Office to conclude its involvement with the claims process as identified at CSR 199–1–5, but it does not mean that the Office or the WVDEP will be precluded from issuing a blasting-related NOV, CO, or taking other enforcement actions where blasting-related violations that cause property damage have occurred. Therefore, based upon that understanding, we find that CSR 199–1–5.2.a.4 is not inconsistent with SMCRA and the Federal regulations at 30 CFR 816/817.61–68 and can be approved. If, in future reviews, we should determine that West Virginia is implementing this provision inconsistent with this finding, a further amendment may be required.

13. CSR 199–1–6 Arbitration.

199–1–6 Arbitration for blasting damage claims. This section provides for the listing and selection of arbitrators, preliminary information to the arbitrator, demand for arbitration and timeframes for arbitration, place of arbitration, confidentiality of the arbitration process, presentations to the arbitrator, arbitration award, fees, costs and expenses, binding nature of the award, and payment of the award. There are no Federal counterparts to these provisions concerning arbitration for blasting damage claims. We find, however, that these provisions are not inconsistent with SMCRA section 515(b)(15) concerning blasting, nor with the Federal blasting regulations at 30 CFR 816/817.61 through 816/817.68 and can be approved. However, further explanation of one provision is needed, as follows.

199–1–6.8 Arbitration award, fees, costs, and expenses. This subsection limits a claimant's recovery of costs and attorney fees to $1,000.00 when an operator requests arbitration and the initial claim determination in favor of the claimant is upheld in whole or in part. Otherwise, the parties are equally responsible for the cost of the proceeding and are responsible for their own fees and costs. This provision can not supersede existing attorney fees provisions pertaining to citizens who prevail in enforcement actions or appeals involving blasting violations. Therefore, and with the understanding that this provision does not affect any claimant's involvement in proceedings where fees can be claimed under CSR 199–1–8.13 or CSR 38–2–20.12 regardless of whether or not they enter the arbitration claims process, we find that CSR 199–1–6.8 is not inconsistent with the Federal regulations at 43 CFR 4.1290–96 and can be approved.

14. CSR 199–1–7 Explosive Material Fee.

199–1–7 Explosive Material Fee. These provisions provide for the assessment fee on blasting material, requirements for remittance of the fee, availability of material delivery records and inventories, dedication of the fee, expenditures, sufficiency of fees, authorization of WVDEP to invest accrued earnings, and consequences of noncompliance. There are no direct Federal counterparts to these provisions concerning the explosive material fee. We find, however, that these provisions are not inconsistent with SMCRA section 515(b)(15) concerning blasting, nor with the Federal blasting regulations at 30 CFR 816/817.61 through 68. In addition, we find that CSR 199–1–7.2, regarding the submittal and availability of records concerning the delivery, inventory, and use of explosives is not inconsistent with 30 CFR 840.12(b) concerning inspection of documents. Therefore, we find that CSR 199–1–7 can be approved.

15. CSR 199–1–8 Inspections.

199–1–8 Inspections. These provisions provide for inspections of blasting operations, compliance conferences, notice of violations, cessation orders, show cause orders, civil penalty determinations, procedure for assessing civil penalties, assessment rates, when an individual civil penalty may be assessed, amount of individual civil penalty, procedure for assessment for individual civil penalty, payment of penalty, and fees and costs of administrative proceedings. These provisions at CSR 199–1–8 can be approved because they are identical to approved provisions in the West Virginia program at CSR 38–2–20.1.e. through 20.12 concerning inspection and enforcement, with the following exceptions.

199–1–8.1 Inspections. This subsection states that "[i]nspections shall be made on any prospecting, active surface mining operation, or inactive surface mining operation as necessary to assure compliance with the WV Code 22–3 and 3A, this rule, and the terms and conditions of the blasting plan." We understand that this provision only governs blasting-specific inspections which supplement and do not supersede the inspection frequency requirements for surface coal mining and reclamation operations and prospecting operations contained in CSR 38–2–20.1.a. through 20.1.d. Therefore, and based on our understanding described above, we find subsection 8.1 to be consistent with the Federal regulations at 30 CFR 840.11, and it can be approved.

CSR 199–1–8.3 Notice of Violations. The regulations at subsection 8.3, which govern imminent harm cessation orders, lack a counterpart to CSR 38–2–20.3.a.4, which states that mining without a valid permit or prospecting approval constitutes imminent harm. However, the approved provisions at CSR 38–2–20.3.a.4 require the issuance of a cessation order to an operator conducting mining-related blasting without a valid permit or prospecting approval. Therefore, we find the proposed requirements at CSR 199–1–8.3 to be no less effective than the Federal requirements at 30 CFR 840.13 and 843.11 and can be approved.

CSR 199–1–8.6 Civil Penalty Determinations. The sentence at CSR 199–1–8.6 concerning civil penalty assessments is new, and provides as follows:

> 8.6. Civil Penalty Determinations. Except as specified in WV Code section 22–3–30a(b), civil penalties for any notice of violation issued by the Office of Explosives and Blasting shall be determined by the following procedure.

We approved W. Va. Code 22–3–30a(b) on November 12, 1999 (64 FR 61507, 61517). In approving that provision, we stated that our approval of W. Va. Code 22–3–30a(b) was only upon the condition that any implementing regulations later promulgated by the State contain the four criteria for assessing civil penalties found at section 518(a) of SMCRA. The criteria are history of violations, seriousness of the violation, negligence, and demonstrated good faith of the permittee. As discussed above at Finding B.4., the penalties set forth in W. Va. Code 22–

3–30a(b) are punitive penalties for blasting violations that result in property damage. Because they are punitive in nature, these penalties are in addition to the civil penalties that are assessed under CSR 199–1–8.6, 8.7 and 8.8. The proposed language at CSR 199–1–8.6 reaffirms this finding by providing that the violations cited under W. Va. Code 22–3–30a(b) are exempt from the civil penalty assessment procedures. The determination of the supplemental penalty amounts for blasting violations that result in property damage are limited to the factors set forth in W. Va. Code 22–3–30a(b). Furthermore, notices of violation, including those that are issued by the Office of Explosives and Blasting that relate to property damage, are subject to the civil penalty assessment procedures set forth in CSR 199–1–8.6, 8.7 and 8.8. Given this interpretation, we no longer find our original conditional approval of W. Va. Code 22–3–30a(b) to be applicable. In addition, we find that the new language at CSR 199–1–8.6, 8.7 and 8.8 is not inconsistent with section 518 of SMCRA and the Federal regulations at 30 CFR part 845 and can be approved.

There appear to be errors in the civil penalty assessment rates set forth in subdivisions 8.8.b and 8.8.d concerning seriousness of the violation and the operator's good faith. In the table regarding seriousness of the violation under rating 6, the dollar amount should be $1400, not $1200, and in the good faith table, the percentage under rating 3 should be 15%, not 20% as shown. These typographical errors are also in the civil penalty assessment rate tables at CSR 38–2–20.7.b and 20.7.d. While these errors do not render the tables inconsistent with the Federal requirements, it is recommended that they be revised.

16. Surface Mine Board.

CSR 199–1–9 Surface Mine Board. This provision provides for open meetings, appeals to the surface mine board, and prohibits *ex parte* communication. CSR 199–1–9 concerning Surface Mine Board is identical to the approved West Virginia program at CSR 38–2–21 concerning the Surface Mine Board. Therefore, we find that the addition of CSR 199–1–9 does not render the West Virginia program inconsistent with SMCRA nor less effective than the Federal regulations and can be approved.

IV. Summary and Disposition of Comments

Public Comments

In response to our request for comments from the public on the proposed amendments (*see* Section II of this preamble), we received the following comments from the American Arbitration Association (AAA). By letter dated January 3, 2001 (Administrative Record Number WV–1193), the AAA commented on Section CSR 199–1–17, Arbitration for Blasting Damage Claims. (This section was subsequently recodified at CSR 199–1–6.) Specifically, the AAA commented on subsection CSR 199–1–6.1 that states, "It is anticipated that the office will recommend the roster be maintained by the American Arbitration Association from which the parties will choose the arbitrator."

The AAA acknowledged that it has had discussions with the West Virginia Office of Explosives and Blasting concerning AAA involvement in arbitrating blasting-related disputes. However, the AAA stated that the proposed blasting rule deviates from the AAA's established rules and procedures, and does not conform to its discussions with officials of the West Virginia Office of Explosives and Blasting. The AAA further stated that, although programs such as this do not need to exactly match the AAA's existing rules, the AAA will not be bound through regulation to administer an unfair program.

The AAA stated that it will continue to work with the West Virginia Office of Explosives and Blasting to develop a fair and expeditious program to administer and resolve disputes. However, the AAA stated, the AAA reserves the right to refuse administration of the disputes if the program, at any time, deviates from the established AAA standards.

By letter dated April 20, 2001 (Administrative Record Number WV–1208), WVDEP, Office of Explosives and Blasting sent us a letter with its comments on the AAA's letter. The Office of Explosives and Blasting stated that it is working with the AAA to compile a list of arbitrators according to CSR 199–1–6. The Office stated that since it has no experience with the arbitration process, it fully intends to let the AAA proceed in its normal operating capacity, as long as the Office still meets the requirements of the rule. The Office also stated that in a recent conversation with AAA, the AAA informed the Office that the AAA's comment concerning CSR 199–1–6 is a general statement, sent as documentation of AAA established administrative rules. The Office further stated that it is working with AAA to implement the process.

In response, we acknowledge the AAA's concern and we recognize that its participation with West Virginia in the arbitration of blasting-related disputes is voluntary. We encourage the AAA to continue working with the State Office of Explosives and Blasting to resolve its concerns. We note that any changes the State makes to its blasting rules at CSR 199–1 as a result of its discussions with the AAA will need to be submitted to OSM as a program amendment for approval. In addition, we note that the sentence quoted above that was the subject of the AAA's comment was deleted from the regulations when they were recodified at CSR 199–1–6.

Federal Agency Comments

Under 30 CFR 732.17(h)(11)(i) and section 503(b) of SMCRA, on December 1, 2000, and February 1, 2002, we requested comments on these amendments from various Federal agencies with an actual or potential interest in the West Virginia program (Administrative Record Numbers WV–1188 and WV–1268, respectively). We received comments from three Federal agencies. The U.S. Department of Labor, Mine Safety and Health Administration (MSHA) responded by letter dated March 1, 2002, and stated that the employee and adjacent landowner safety provisions are consistent with MSHA blasting standards (Administrative Record Number WV–1281). MSHA also stated that it found no issues or impact upon coal miner's health and safety.

The U.S. National Park Service responded by letter dated February 5, 2002, and stated that it had no specific comments (Administrative Record Number WV–1270).

The Department of the Army, U.S. Army Corps of Engineers responded on February 26, 2002, and stated that its review found the proposed amendment to be generally satisfactory to the agency (Administrative Record Number WV–1279). In addition, the Corps of Engineers stated that it has a concern with the relationship between the blasting plans discussed in CSR 199–1–3.2 and the agency's responsibilities in administering section 404 of the Clean Water Act. To avoid any confusion that the proposed amendment supersedes the requirements of section 404 of the Clean Water Act, the agency suggested including a statement in the amendment indicating that a separate authorization is required from the U.S. Army Corps of Engineers for all work involving any discharge of dredged or fill material into the waters of the United States. In response, there is nothing in the proposed amendments that supersedes any of the requirements of Section 404 of the Clean Water Act. Therefore, the addition of such a statement in the amendment is not necessary.

Environmental Protection Agency (EPA) Comments

Under 30 CFR 732.17(h)(11)(ii), we are required to obtain written concurrence from EPA for those provisions of the program amendment that relate to air or water quality standards issued under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*). None of these West Virginia amendments pertains to air or water quality standards. Therefore, we did not ask EPA for its concurrence on any of the proposed amendments.

By letters dated December 1, 2000, and February 1, 2002, we requested comments from EPA on these amendments (Administrative Record Numbers WV–1188 and WV–1268, respectively).

The EPA responded by letters dated January 17, 2001, April 13, 2001, and February 28, 2002 (Administrative Record Numbers WV–1196, WV–1207, and WV–1282, respectively). EPA stated that it appears that the amendment is in compliance with the Clean Water Act and other statutes and regulations under the jurisdiction of the EPA.

V. OSM's Decision

Based on the above findings, and except as noted below, we are approving the amendments submitted to us on October 30, 2000 and November 28, 2001.

At CSR 199–1–3.10.d., the phrase "and only used for evaluating damage claims" is approved with the understanding that it does not preclude the use of pre-blast surveys to support the issuance of NOVs, COs, civil penalties or other forms of alternative enforcement actions under the West Virginia Surface Coal Mining and Reclamation Act and its implementing regulations to achieve the repair of blasting damage and thus resolve a damage claim. At CSR 199–1–4.8.c., we are not approving the phrase "substantial or significant." In addition, we are requiring the State to amend CSR 199–1–4.9.a and 4.9.b, or otherwise amend the West Virginia program, to provide that upon finding of willful conduct, the Secretary shall revoke or suspend a blaster's certification.

To implement this decision, we are amending the Federal regulations at 30 CFR part 948, which codify decisions concerning the West Virginia program. We find that good cause exists under 5 U.S.C. 553(d)(3) to make this final rule effective immediately. Section 503(a) of SMCRA requires that the State's program demonstrate that the State has the capability of carrying out the provisions of the Act and meeting its purposes. Making this rule effective immediately will expedite that process. SMCRA requires consistency of State and Federal standards.

VI. Procedural Determinations

Executive Order 12630—Takings

This rule does not have takings implications. This determination is based on the analysis performed for the counterpart Federal regulation.

Executive Order 12866—Regulatory Planning and Review

This rule is exempt from review by the Office of Management and Budget under Executive Order 12866.

Executive Order 12988—Civil Justice Reform

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments because each program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR parts 730, 731, and 732 have been met.

Executive Order 13132—Federalism

This rule does not have Federalism implications. SMCRA delineates the roles of the Federal and State governments with regard to the regulation of surface coal mining and reclamation operations. One of the purposes of SMCRA is to "establish a nationwide program to protect society and the environment from the adverse effects of surface coal mining operations." Section 503(a)(1) of SMCRA requires that State laws regulating surface coal mining and reclamation operations be "in accordance with" the requirements of SMCRA, and section 503(a)(7) requires that State programs contain rules and regulations "consistent with" regulations issued by the Secretary pursuant to SMCRA.

Executive Order 13175—Consultation and Coordination With Indian Tribal Governments

In accordance with Executive Order 13175, we have evaluated the potential effects of this rule on Federally-recognized Indian tribes and have determined that the rule does not have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. The basis for this determination is our decision on a State regulatory program and does not involve Federal regulations involving Indian lands.

Executive Order 13211—Regulations That Significantly Affect The Supply, Distribution, or Use of Energy.

On May 18, 2001, the President issued Executive Order 13211 which requires agencies to prepare a Statement of Energy Effects for a rule that is (1) considered significant under Executive Order 12866, and (2) likely to have a significant adverse effect on the supply, distribution, or use of energy. Because this rule is exempt from review under Executive Order 12866 and is not expected to have a significant adverse effect on the supply, distribution, or use of energy, a Statement of Energy Effects is not required.

National Environmental Policy Act

This rule does not require an environmental impact statement because section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a

substantial number of small entities. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule: (a) Does not have an annual effect on the economy of $100 million; (b) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and (c) Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. This determination is based upon the analysis performed under various laws and executive orders for the counterpart Federal regulations.

Unfunded Mandates

This rule will not impose an unfunded mandate on State, local, or tribal governments or the private sector of $100 million or more in any given year. This determination is based upon the analysis performed under various laws and executive orders for the counterpart Federal regulations.

List of Subjects in 30 CFR Part 948

Intergovernmental relations, Surface mining, Underground mining.

Dated: November 17, 2003.

Brent Wahlquist,

Regional Director, Appalachian Regional Coordinating Center.

■ For the reasons set out in the preamble, 30 CFR part 948 is amended as set forth below:

PART 948—WEST VIRGINIA

■ 1. The authority citation for part 948 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

■ 2. Section 948.12 is amended by adding new paragraph (d) to read as follows:

§ 948.12 State statutory, regulatory, and proposed program amendment provisions not approved.

* * * * *

(d) We are not approving the following provision of the proposed blasting-related program amendment that West Virginia submitted on October 30, 2000, and November 28, 2001: At CSR 199–1–4.8.c, the phrase "substantial or significant" is not approved.

* * * * *

■ 3. Section 948.15 is amended in the table by adding a new entry in chronological order by "Date of publication of final rule" to read as follows:

§ 948.15 Approval of West Virginia regulatory program amendments.

* * * * *

Original amendment submission date	Date of publication of final rule	Citation/description of approved provisions
. . .	. . .	. . .
October 30, 2000, November 28, 2001	December 10, 2003	W.Va. Code 22–3–13a(a)(3), (b), (c), (f)(14), (g); 22a(a), (b), (e), (f), (g); 30a(b), (b)(3), (b)(3)(C), (b)(5), (c), (d), (e), (f), (h). Code of State Regulations CSR 199–1, except as identified at 30 CFR 948.12(d), and subdivision 3.10.d is a qualified approval.

■ 4. Section 948.16 is amended by adding paragraph (a) to read as follows:

§ 948.16 Required regulatory program amendments.

* * * * *

(a) By February 9, 2004, West Virginia must submit either a proposed amendment or a description of an amendment to be proposed, together with a timetable for adoption to amend CSR 199–1–4.9.a and 4.9.b, or otherwise amend the West Virginia program, to provide that upon finding of willful conduct, the Secretary shall revoke or suspend a blaster's certification.

* * * * *

[FR Doc. 03–30550 Filed 12–9–03; 8:45 am]

BILLING CODE 4310–05–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[NV108–SWIa; FRL–7595–5]

Approval and Promulgation of State Air Quality Plans for Designated Facilities and Pollutants; Control of Emissions From Existing Commercial/Industrial Solid Waste Incinerator Units; Nevada

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve a negative declaration submitted by the Nevada Division of Environmental Protection. The negative declaration certifies that commercial/industrial solid waste incinerator units, subject to the requirements of sections 111(d) and 129 of the Clean Air Act, do not exist within the agency's air pollution control jurisdiction.

DATES: This rule is effective on February 9, 2004 without further notice, unless EPA receives adverse comments by January 9, 2004. If we receive such comment, we will publish a timely withdrawal in the **Federal Register** to notify the public that this rule will not take effect.

ADDRESSES: Send comments to Andrew Steckel, Rulemaking Office Chief (AIR–4), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901, or e-mail to *steckel.andrew@epa.gov*, or submit comments at *http://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Mae Wang, EPA Region IX, (415) 947–4124, *wang.mae@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

Sections 111(d) and 129 of the Clean Air Act (CAA or the Act) require States to submit plans to control certain pollutants (designated pollutants) at existing solid waste combustor facilities (designated facilities) whenever standards of performance have been established under section 111(b) for new

sources of the same type, and EPA has established emission guidelines (EG) for such existing sources. A designated pollutant is any pollutant for which no air quality criteria have been issued, and which is not included on a list published under section 108(a) or section 112(b)(1)(A) of the CAA, but emissions of which are subject to a standard of performance for new stationary sources. However, section 129 of the CAA also requires EPA to promulgate EG for commercial/industrial solid waste incinerator (CISWI) units that emit a mixture of air pollutants. These pollutants include organics (dioxins/furans), carbon monoxide, metals (cadmium, lead, mercury), acid gases (hydrogen chloride, sulfur dioxide, and nitrogen oxides) and particulate matter (including opacity).

On December 1, 2000 (65 FR 75338), EPA promulgated CISWI unit new source performance standards and EG, located at 40 CFR part 60, subparts CCCC and DDDD, respectively. The designated facility to which the EG apply is each existing CISWI unit, as defined in subpart DDDD, that commenced construction on or before November 30, 1999.

Subpart B of 40 CFR part 60 establishes procedures to be followed and requirements to be met in the development and submission of State plans for controlling designated pollutants. Also, 40 CFR part 62 provides the procedural framework for the submission of these plans. When designated facilities are located in a State, the State must then develop and submit a plan for the control of the designated pollutant. However, 40 CFR 60.23(b) and 62.06 provide that if there are no existing sources of the designated pollutant in the State, the State may submit a letter of certification to that effect (*i.e.*, negative declaration) in lieu of a plan. The negative declaration exempts the State from the requirements of subpart B for the submittal of a 111(d)/129 plan.

II. Final EPA Action

The Nevada Division of Environmental Protection (NDEP) has determined that there are no designated facilities subject to the CISWI unit EG requirements in its air pollution control jurisdiction. On October 16, 2003, NDEP submitted to EPA a negative declaration letter certifying this fact. EPA is amending 40 CFR part 62, subpart DD (Nevada) to reflect the receipt of this negative declaration letter.

After publication of this **Federal Register** notice, if a CISWI facility is later found within the NDEP jurisdiction, then the overlooked facility will become subject to the requirements of the Federal CISWI 111(d)/129 plan, including the compliance schedule. The Federal plan would no longer apply if EPA subsequently were to receive and approve a 111(d)/129 plan from NDEP.

EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. This action simply reflects already existing Federal requirements for State air pollution control agencies under 40 CFR parts 60 and 62. In the Proposed Rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve NDEP's negative declaration should relevant adverse or critical comments be filed.

This rule will be effective February 9, 2004 without further notice unless the Agency receives relevant adverse comments by January 9, 2004. If EPA receives such comments, then EPA will publish a timely withdrawal in the **Federal Register** to notify the public that the direct final approval will not take effect and we will address the comments in a subsequent final action based on the proposal. The EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

III. Statutory and Executive Order Reviews

A. General Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves a State determination as meeting Federal requirements and imposes no additional requirements beyond those imposed by State law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule does not impose any additional enforceable duty beyond that required by State law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a State negative declaration in response to implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing 111(d)/129 plan submissions, EPA's role is to approve State choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a 111(d)/129 plan submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a 111(d)/129 plan submission, to use VCS in place of a 111(d)/129 plan submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

B. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United

States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

C. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by February 9, 2004. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action approving the section 111(d)/129 negative declaration submitted by NDEP may not be challenged later in proceedings to enforce its requirements (see section 307(b)(2)).

List of Subjects in 40 CFR Part 62

Environmental protection, Administrative practice and procedure, Air pollution control, Aluminum, Fertilizers, Fluoride, Intergovernmental relations, Paper and paper products industry, Phosphate, Reporting and recordkeeping requirements, Sulfur oxides, Sulfuric acid plants, Waste treatment and disposal.

Dated: November 19, 2003.

Alexis Strauss,

Acting Regional Administrator, Region IX.

■ Part 62, Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

PART 62—[AMENDED]

■ 1. The authority citation for part 62 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart DD—Nevada

■ 2. Section 62.7130 is amended by adding paragraph (c) to read as follows:

§ 62.7130 Identification of plan.

* * * * *

(c) The Nevada Division of Environmental Protection submitted on October 16, 2003, a letter certifying that there are no existing commercial/industrial solid waste incineration units in its jurisdiction that are subject to 40 CFR part 60, subpart DDDD.

[FR Doc. 03–30590 Filed 12–9–03; 8:45 am]

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GENERAL SERVICES ADMINISTRATION

41 CFR Part 105–55

[GSPMR Amendment 2003–01; GSPMR Case 2003–105–1]

RIN 3090–AH84

General Services Administration Property Management Regulations; Collection of Claims Owed the United States

AGENCY: Office of Finance, General Services Administration (GSA).

ACTION: Final rule.

SUMMARY: The General Services Administration (GSA) is amending and reissuing its regulations concerning the procedures used to collect debts owed to GSA by incorporating applicable provisions as required by the Debt Collection Improvement Act of 1996 (DCIA) and the Federal Claims Collection Standards.

DATES: Effective date: December 10, 2003.

FOR FURTHER INFORMATION CONTACT: The Regulatory Secretariat, Room 4035, GS Building, Washington, DC, 20405, at (202) 501–4755 for information pertaining to status or publication schedules. For clarification of content, contact Mr. Michael J. Kosar, Office of the Chief Financial Officer Room 3121, 1800 F Street, NW., telephone (202) 501–2029; electronic mail *mike.kosar@gsa.gov*. Please cite GSPMR Amendment 2003–01, GSPMR case 2003–105–1.

SUPPLEMENTARY INFORMATION:

A. Background

GSA is amending and reissuing its debt collection procedures to incorporate changes presented in the amended Federal Claims Collection Standards (FCCS) issued jointly on November 22, 2000, by the Department of the Treasury (Treasury) and the Department of Justice (DOJ), under the Debt Collection Improvement Act of 1996 (DCIA). GSA currently has rules for collecting unpaid debts through three offset methods: administrative, salary, and tax refund. These rules were adopted with then existing provisions of the Debt Collection Act of 1982, the FCCS of 1966, and other authorities governing the collection of Federal debts.

Discussion of Comments. GSA received no comments in response to its proposed rule concerning Collection of Claims Owed the United States published in the **Federal Register** at 68 FR 41274, July 11, 2003.

B. Executive Order 12866

GSA has determined this regulation is not a significant regulatory action as defined in Executive Order 12866 and, accordingly, this regulation has not been reviewed by the Office of Management and Budget.

C. Regulatory Flexibility Act

It is hereby certified that this regulation will not have a significant economic impact on a substantial number of small entities because the regulation either (1) results in greater flexibility for GSA to streamline debt collection regulations, or (2) reflects the statutory language contained in the DCIA. Accordingly, a Regulatory Flexibility Analysis is not required.

D. Executive Order 13132

This regulation will not have a substantial direct effect on the states, on the relationship between the national government and the states, or on distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 13132, it is determined that this regulation does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

E. Unfunded Mandates Reform Act of 1995

This regulation will not result in the expenditure by state, local and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one (1) year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

F. Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 251 of the Small Business Regulatory Enforcement Act, 5 U.S.C. 804. This rule will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic or export markets.

G. Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by the Office of Management and Budget under the Paperwork Reduction Act, 44 U.S.C. 3507 *et seq.*

List of Subjects in 41 CFR Part 105–55

Claims owed the United States, Antitrust, Fraud, Taxes, Interagency claims, Offset, Payments, Administrative practice and procedure, Credit bureaus, Compromise, Suspension, Termination and discharge of debts, Hearing and appeals procedures, Debts.

Dated: December 2, 2003.

Stephen A. Perry,

Administrator of General Services.

■ For the reasons set forth in the preamble, GSA amends 41 CFR chapter 105 as follows:

CHAPTER 105—[AMENDED]

■ 1. Revise part 105–55 to read as follows:

PART 105–55—COLLECTION OF CLAIMS OWED THE UNITED STATES

Sec.

105–55.001 Prescription of standards.
105–55.002 Definitions.
105–55.003 Antitrust, fraud, tax, interagency claims, and claims over $100,000 excluded.
105–55.004 Compromise, waiver, or disposition under other statutes not precluded.
105–55.005 Form of payment.
105–55.006 Subdivision of claims not authorized.
105–55.007 Required administrative proceedings.
105–55.008 No private rights created.
105–55.009 Aggressive agency collection activity.
105–55.010 Demand for payment.
105–55.011 Collection by administrative offset.
105–55.012 Contracting with private collection contractors and with entities that locate and recover unclaimed assets.
105–55.013 Suspension or revocation of eligibility for loans and loan guaranties, licenses, permits, or privileges.
105–55.014 Liquidation of collateral.
105–55.015 Collection in installments.
105–55.016 Interest, penalties, and administrative costs.
105–55.017 Use and disclosure of mailing addresses.
105–55.018 Exemptions.
105–55.019 Compromise of claims.
105–55.020 Bases for compromise.
105–55.021 Enforcement policy.
105–55.022 Joint and several liability.
105–55.023 Further review of compromise offers.
105–55.024 Consideration of tax consequences to the Government.
105–55.025 Mutual releases of the debtor and the Government.
105–55.026 Suspending or terminating collection activity.
105–55.027 Suspension of collection activity.
105–55.028 Termination of collection activity.
105–55.029 Exception to termination.
105–55.030 Discharge of indebtedness; reporting requirements.
105–55.031 Prompt referral to the Department of Justice.
105–55.032 Claims Collection Litigation Report.
105–55.033 Preservation of evidence.
105–55.034 Minimum amount of referrals to the Department of Justice.

Authority: 5 U.S.C. 552–553; 31 U.S.C. 321, 3701, 3711, 3716, 3717, 3718, 3719, 3720B, 3720D; 31 CFR parts 900–904.

§ 105–55.001 Prescription of standards.

(a) The Secretary of the Treasury and the Attorney General of the United States issued regulations for collecting debts owed the United States under the authority contained in 31 U.S.C. 3711(d)(2). The regulations in this part prescribe standards for the General Services Administration (GSA) use in the administrative collection, offset, compromise, and the suspension or termination of collection activity for civil claims for money, funds, or property, as defined by 31 U.S.C. 3701(b), unless specific GSA statutes or regulations apply to such activities or, as provided for by Title 11 of the United States Code, when the claims involve bankruptcy. The regulations in this part also prescribe standards for referring debts to the Department of Justice for litigation. Additional guidance is contained in the Office of Management and Budget's Circular A–129 (Revised), "Policies for Federal Credit Programs and Non-Tax Receivables," the Department of the Treasury's "Managing Federal Receivables," and other publications concerning debt collection and debt management.

(b) GSA is not limited to the remedies contained in this part and will use all authorized remedies, including alternative dispute resolution and arbitration, to collect civil claims, to the extent such remedies are not inconsistent with the Federal Claims Collection Act, as amended, Chapter 37 of Title 31, United States Code; the Debt Collection Act of 1982, 5 U.S.C. 5514; the Debt Collection Improvement Act of 1996, 31 U.S.C. 3701 *et seq.*, or other relevant statutes. The regulations in this part are not intended to impair GSA's common law rights to collect debts.

(c) Standards and policies regarding the classification of debt for accounting purposes (for example, write off of uncollectible debt) are contained in the Office of Management and Budget's Circular A–129 (Revised), "Policies for Federal Credit Programs and Non-Tax Receivables."

§ 105–55.002 Definitions.

(a) *Administrative offset*, as defined in 31 U.S.C. 3701(a)(1), means withholding funds payable by the United States (including funds payable by the United States on behalf of a State government) to, or held by the United States for, a person to satisfy a claim.

(b) *Compromise* means the reduction of a debt as provided in §§ 105–55.019 and 105–55.020.

(c) *Debt collection center* means the Department of the Treasury or other Government agency or division designated by the Secretary of the Treasury with authority to collect debts on behalf of creditor agencies in accordance with 31 U.S.C. 3711(g).

(d) *Debtor* means an individual, organization, association, corporation, partnership, or a State or local government indebted to the United States or a person or entity with legal responsibility for assuming the debtor's obligation.

(e) *Delinquent* or *past-due non-tax debt* means any non-tax debt that has not been paid by the date specified in GSA's initial written demand for payment or applicable agreement or instrument (including a post-delinquency payment agreement), unless other satisfactory payment arrangements have been made.

(f) For the purposes of the standards in this part, unless otherwise stated, the *term Administrator* refers to the *Administrator* of General Services or the Administrator's delegate.

(g) For the purposes of the standards in this part, the terms *claim* and *debt* are synonymous and interchangeable. They refer to an amount of money, funds, or property that has been determined by GSA to be due the United States from any person, organization, or entity, except another Federal agency, from sources which include loans insured or guaranteed by the United States and all other amounts due the United States from fees, leases, rents, royalties, services, sales of real or personal property, overpayments, penalties, damages, interest, fines and forfeitures and all other similar sources, including debt administered by a third party as an agent for the Federal Government. For the purposes of administrative offset under 31 U.S.C. 3716, the terms *claim* and *debt* include an amount of money, funds, or property owed by a person to a State (including past-due support being enforced by a State), the District of Columbia, American Samoa, Guam, the United States Virgin Islands, the Commonwealth of the Northern Mariana Islands, or the Commonwealth of Puerto Rico.

(h) For the purposes of the standards in this part, unless otherwise stated, the terms *GSA* and *Agency* are synonymous and interchangeable.

(i) For the purposes of the standards in this part, unless otherwise stated, *Secretary* means the Secretary of the Treasury or the Secretary's delegate.

(j) For the standards in this part, Federal agencies include agencies of the executive, legislative, and judicial branches of the Government, including Government corporations.

(k) *Hearing* means a review of the documentary evidence concerning the existence and/or amount of a debt, and/or the terms of a repayment schedule, provided such repayment schedule is established other than by a written agreement entered into pursuant to this part. If the hearing official determines the issues in dispute cannot be resolved solely by review of the written record, such as when the validity of the debt turns on the issue of credibility or veracity, an oral hearing may be provided.

(l) *Hearing official* means a Board Judge of the GSA Board of Contract Appeals.

(m) In this part, words in the plural form shall include the singular and vice versa, and words signifying the masculine gender shall include the feminine and vice versa. The terms *includes* and *including* do not exclude matters not listed but do include matters that are in the same general class.

(n) *Reconsideration* means a request by the employee to have a secondary review by GSA of the existence and/or amount of the debt, and/or the proposed offset schedule.

(o) *Recoupment* is a special method for adjusting debts arising under the same transaction or occurrence. For example, obligations arising under the same contract generally are subject to recoupment.

(p) *Taxpayer identifying number* means the identifying number described under section 6109 of the Internal Revenue Code of 1986 (26 U.S.C. 6109). For an individual, the taxpayer identifying number is the individual's social security number.

(q) *Waiver* means the cancellation, remission, forgiveness, or non-recovery of a debt or debt-related charge as permitted or required by law.

§ 105–55.003 Antitrust, fraud, tax, interagency claims, and claims over $100,000 excluded.

(a) The standards in this part relating to compromise, suspension, and termination of collection activity do not apply to any debt based in whole or in part on conduct in violation of the antitrust laws or to any debt involving fraud, the presentation of a false claim, or misrepresentation on the part of the debtor or any party having an interest in the claim. The standards of this part relating to the administrative collection of claims do apply, but only to the extent authorized by the Department of Justice (DOJ) in a particular case. Upon identification of a claim based in whole or in part on conduct in violation of the antitrust laws or any claim involving fraud, the presentation of a false claim, or misrepresentation on the part of the debtor or any party having an interest in the claim, the General Services Administration (GSA) will promptly refer the case to the GSA Office of Inspector General (OIG). The OIG has the responsibility for investigating or referring the matter, where appropriate, to DOJ for action. At its discretion, DOJ may return the claim to GSA for further handling in accordance with the standards of this part.

(b) This part does not apply to tax debts.

(c) This part does not apply to claims between GSA and other Federal agencies.

(d) This part does not apply to claims over $100,000.

§ 105–55.004 Compromise, waiver, or disposition under other statutes not precluded.

Nothing in this part precludes the General Services Administration (GSA) disposition of any claim under statutes and implementing regulations other than subchapter II of chapter 37 of Title 31 of the United States Code (Claims of the United States Government) and the standards in this part. *See, e.g.*, the Federal Medical Care Recovery Act, 42 U.S.C. 2651–2653, and applicable regulations, 28 CFR part 43. In such cases, the laws and regulations specifically applicable to claims collection activities of GSA generally take precedence.

§ 105–55.005 Form of payment.

Claims may be paid in the form of money or, when a contractual basis exists, the General Services Administration may demand the return of specific property or the performance of specific services.

§ 105–55.006 Subdivision of claims not authorized.

Debts will not be subdivided to avoid the monetary ceiling established by 31 U.S.C. 3711(a)(2). A debtor's liability arising from a particular transaction or contract shall be considered a single debt in determining whether the debt is one of less than $100,000 (excluding interest, penalties, and administrative costs) or such higher amount as the Attorney General shall from time to time prescribe for purposes of compromise, suspension or termination of collection activity.

§ 105–55.007 Required administrative proceedings.

The General Services Administration is not required to omit, foreclose, or duplicate administrative proceedings required by contract or other laws or regulations.

§ 105–55.008 No private rights created.

The standards in this part do not create any right or benefit, substantive or procedural, enforceable at law or in equity by a party against the United States, its agencies, its officers, or any other person, nor shall the failure of the General Services Administration to comply with any of the provisions of this part be available to any debtor as a defense.

§ 105–55.009 Aggressive agency collection activity.

(a) The General Services Administration (GSA) will aggressively collect all debts arising out of activities of, or referred or transferred for collection services to, GSA. Collection activities will be undertaken promptly, including letters, telephone calls, electronic mail (e-mail), and Internet inquiries, with follow-up action taken as necessary.

(b) Debts referred or transferred to Treasury, or Treasury-designated debt collection centers under the authority of 31 U.S.C. 3711(g), will be serviced, collected, or compromised, or the collection action will be suspended or terminated, in accordance with the statutory requirements and authorities applicable to the collection of such debts.

(c) GSA will cooperate with other agencies in their debt collection activities.

(d) GSA will consider referring debts that are less than 180 days delinquent to Treasury or to Treasury-designated "debt collection centers" to accomplish efficient, cost effective debt collection. Treasury is a debt collection center, is authorized to designate other Federal agencies as debt collection centers based on their performance in collecting delinquent debts, and may withdraw such designations. Referrals to debt collection centers shall be at the discretion of, and for a time period acceptable to, the Secretary. Referrals may be for servicing, collection, compromise, suspension, or termination of collection action.

(e) GSA will transfer to the Secretary any debt that has been delinquent for a period of 180 days or more so the Secretary may take appropriate action to collect the debt or terminate collection action. *See* 31 CFR 285.12 (Transfer of Debts to Treasury for Collection). This requirement does not apply to any debt that—

(1) Is in litigation or foreclosure;

(2) Will be disposed of under an approved asset sale program;

(3) Has been referred to a private collection contractor for a period of time acceptable to the Secretary;

(4) Is at a debt collection center for a period of time acceptable to the Secretary (*see* paragraph (d) of this section);

(5) Will be collected under internal offset procedures within three years after the debt first became delinquent;

(6) Is exempt from this requirement based on a determination by the Secretary that exemption for a certain class of debt is in the best interest of the United States. GSA may request the Secretary to exempt specific classes of debts;

(7) Is in bankruptcy (*see* § 105–55.010(h));

(8) Involves a deceased debtor;

(9) Is owed to GSA by a foreign government; or

(10) Is in an administrative appeals process, until the process is complete and the amount due is set.

(f) Agencies operating Treasury-designated debt collection centers are authorized to charge a fee for services rendered regarding referred or transferred debts. The fee may be paid out of amounts collected and will be added to the debt as an administrative cost (*see* § 105–55.016).

§ 105–55.010 Demand for payment.

(a) Written demand, as described in paragraph (b) of this section, will be made promptly upon a debtor of the United States in terms informing the debtor of the consequences of failing to cooperate with the General Services Administration (GSA) to resolve the debt. The specific content, timing, and number of demand letters (usually no more than three, thirty days apart) will depend upon the type and amount of the debt and the debtor's response, if any, to GSA's letters, telephone calls, electronic mail (e-mail) or Internet inquiries. In determining the timing of the demand letter(s), GSA will give due regard to the need to refer debts promptly to the Department of Justice for litigation, in accordance with § 105–55.031. When necessary to protect the Government's interest (for example, to prevent the running of a statute of limitations), written demand may be preceded by other appropriate actions under this part, including immediate referral for litigation.

(b) Demand letters will inform the debtor—

(1) The basis and the amount of the indebtedness and the rights, if any, the debtor may have to seek review within GSA (*see* § 105–55.011(e));

(2) The applicable standards for imposing any interest, penalties, or administrative costs (see § 105–55.016);

(3) The date by which payment should be made to avoid late charges (*i.e.*, interest, penalties, and administrative costs) and enforced collection, which generally will not be more than 30 days from the date the demand letter is mailed or hand-delivered; and

(4) The name, address, and phone number of a contact person or office within GSA.

(c) GSA will exercise care to ensure that demand letters are mailed or hand-delivered on the same day they are dated. For the purposes of written demand, notification by electronic mail (e-mail) and/or Internet delivery is considered a form of written demand notice. There is no prescribed format for demand letters. GSA will utilize demand letters and procedures that will lead to the earliest practicable determination of whether the debt can be resolved administratively or must be referred for litigation.

(d) GSA may include in demand letters such items as the willingness to discuss alternative methods of payment; Agency policies with respect to the use of credit bureaus, debt collection centers, and collection agencies; Agency remedies to enforce payment of the debt (including assessment of interest, administrative costs and penalties, administrative garnishment, the use of collection agencies, Federal salary offset, tax refund offset, administrative offset, and litigation); the requirement that any debt delinquent for more than 180 days will be transferred to the Department of the Treasury for collection; and, depending on applicable statutory authority, the debtor's entitlement to consideration of a waiver.

(e) GSA will respond promptly to communications from debtors, within 30 days whenever feasible, and will advise debtors who dispute debts to furnish available evidence to support their contentions.

(f) Prior to the initiation of the demand process or at any time during or after completion of the demand process, if GSA determines to pursue, or is required to pursue, offset, the procedures applicable to offset will be followed (*see* § 105–55.011). The availability of funds or money for debt satisfaction by offset and GSA's determination to pursue collection by offset will release the Agency from the necessity of further compliance with paragraphs (a), (b), (c), and (d) of this section.

(g) Prior to referring a debt for litigation, GSA will advise each person determined to be liable for the debt that, unless the debt can be collected administratively, litigation may be initiated. This notification will comply with Executive Order 12988 (3 CFR, 1996 Comp. pp. 157–163) and may be given as part of a demand letter under paragraph (b) of this section or in a separate document.

(h) When GSA learns a bankruptcy petition has been filed with respect to a debtor, before proceeding with further collection action, the Agency will ascertain the impact of the Bankruptcy Code on any pending or contemplated collection activities. Unless the Agency determines the automatic stay imposed at the time of filing pursuant to 11 U.S.C. 362 has been lifted or is no longer in effect, in most cases collection activity against the debtor will stop immediately.

(1) A proof of claim will be filed in most cases with the bankruptcy court or the Trustee. GSA will refer to the provisions of 11 U.S.C. 106 relating to the consequences on sovereign immunity of filing a proof of claim.

(2) If GSA is a secured creditor, it may seek relief from the automatic stay regarding its security, subject to the provisions and requirements of 11 U.S.C. 362.

(3) Offset is stayed in most cases by the automatic stay. However, GSA will determine whether its payments to the debtor and payments of other agencies available for offset may be frozen by the Agency until relief from the automatic stay can be obtained from the bankruptcy court. GSA also will determine whether recoupment is available.

§ 105–55.011 Collection by administrative offset.

(a) *Scope.* (1) The term "administrative offset" has the meaning provided in 31 U.S.C. 3701(a)(1).

(2) This section does not apply to—

(i) Debts arising under the Social Security Act, except as provided in 42 U.S.C. 404;

(ii) Payments made under the Social Security Act, except as provided for in 31 U.S.C. 3716(c) (*see* 31 CFR 285.4, Federal Benefit Offset);

(iii) Debts arising under, or payments made under, the Internal Revenue Code

(see 31 CFR 285.2, Tax Refund Offset) or the tariff laws of the United States;

(iv) Offsets against Federal salaries to the extent these standards are inconsistent with regulations published to implement such offsets under 5 U.S.C. 5514 and 31 U.S.C. 3716 (see 5 CFR part 550, subpart K, and 31 CFR 285.7, Federal Salary Offset);

(v) Offsets under 31 U.S.C. 3728 against a judgment obtained by a debtor against the United States;

(vi) Offsets or recoupments under common law, State law, or Federal statutes specifically prohibiting offsets or recoupments of particular types of debts; or

(vii) Offsets in the course of judicial proceedings, including bankruptcy.

(3) Unless otherwise provided for by contract or law, debts or payments that are not subject to administrative offset under 31 U.S.C. 3716 may be collected by administrative offset under the common law or other applicable statutory authority.

(4) Unless otherwise provided by law, administrative offset of payments under the authority of 31 U.S.C. 3716 to collect a debt may not be conducted more than 10 years after the General Services Administration's (GSA's) right to collect the debt first accrued, unless facts material to GSA's right to collect the debt were not known and could not reasonably have been known by the official or officials of GSA who were charged with the responsibility to discover and collect such debts. This limitation does not apply to debts reduced to a judgment.

(5) In bankruptcy cases, GSA will ascertain the impact of the Bankruptcy Code, particularly 11 U.S.C. 106, 362, and 553, on pending or contemplated collections by offset.

(b) *Mandatory centralized administrative offset.* (1) GSA is required to refer past due, legally enforceable non-tax debts that are over 180 days delinquent to the Secretary for collection by centralized administrative offset. Debts that are less than 180 days delinquent also may be referred to the Secretary for this purpose. *See* paragraph (b)(3) of this section for debt certification requirements.

(2) The names and taxpayer identifying numbers (TINs) of debtors who owe debts referred to the Secretary as described in paragraph (b)(1) of this section will be compared to the names and TINs on payments to be made by Federal disbursing officials. Federal disbursing officials include disbursing officials of the Department of the Treasury, the Department of Defense, the United States Postal Service, other Government corporations, and disbursing officials of the United States designated by the Secretary. When the name and TIN of a debtor match the name and TIN of a payee and all other requirements for offset have been met, the payment will be offset to satisfy the debt.

(3) Federal disbursing officials will notify the debtor/payee in writing that an offset has occurred to satisfy, in part or in full, a past due, legally enforceable delinquent debt. The notice will include a description of the type and amount of the payment from which the offset was taken, the amount of offset that was taken, the identity of GSA as the creditor agency requesting the offset, and a contact point within GSA who will respond to questions regarding the offset.

(4)(i) Offsets may be initiated only after the debtor—

(A) Has been sent written notice of the type and amount of the debt, the intention of GSA to use administrative offset to collect the debt, and an explanation of the debtor's rights under 31 U.S.C. 3716(c)(7); and

(B) The debtor has been given—

(*1*) The opportunity to inspect and copy Agency records related to the debt;

(*2*) The opportunity for a review within GSA of the determination of indebtedness (*see* paragraph (e) of this section); and

(*3*) The opportunity to make a written agreement to repay the debt.

(ii) The procedures set forth in paragraph (b)(4)(i) of this section may be omitted when—

(A) The offset is in the nature of a recoupment;

(B) The debt arises under a contract as set forth in *Cecile Industries, Inc.* v. *Cheney*, 995 F.2d 1052 (Fed. Cir. 1993) (notice and other procedural protections set forth in 31 U.S.C. 3716(a) do not supplant or restrict established procedures for contractual offsets accommodated by the Contracts Disputes Act); or

(C) In the case of non-centralized administrative offsets conducted under paragraph (c) of this section, GSA first learns of the existence of the amount owed by the debtor when there is insufficient time before payment would be made to the debtor/payee to allow for prior notice and an opportunity for review. When prior notice and an opportunity for review are omitted, GSA will give the debtor such notice and an opportunity for review as soon as practicable and will promptly refund any money ultimately found not to have been owed to the Government.

(iii) When GSA previously has given a debtor any of the required notice and review opportunities with respect to a particular debt (*see, e.g.*, § 105–55.010), the Agency need not duplicate such notice and review opportunities before administrative offset may be initiated.

(5) When referring delinquent debts to the Secretary, GSA will certify, in a form acceptable to the Secretary, that—

(i) The debt(s) is (are) past due and legally enforceable; and

(ii) GSA has complied with all due process requirements under 31 U.S.C. 3716(a) and Agency regulations.

(6) Payments that are prohibited by law from being offset are exempt from centralized administrative offset. The Secretary shall exempt payments under means-tested programs from centralized administrative offset when requested in writing by the Administrator. Also, the Secretary may exempt other classes of payments from centralized offset upon the written request of the Administrator.

(7) Benefit payments made under the Social Security Act (42 U.S.C. 301 *et seq.*), part B of the Black Lung Benefits Act (30 U.S.C. 921 *et seq.*), and any law administered by the Railroad Retirement Board (other than tier 2 benefits), may be offset only in accordance with Treasury regulations, issued in consultation with the Social Security Administration, the Railroad Retirement Board, and the Office of Management and Budget. *See* 31 CFR 285.4.

(8) In accordance with 31 U.S.C. 3716(f), the Secretary may waive the provisions of the Computer Matching and Privacy Protection Act of 1988 concerning matching agreements and post-match notification and verification (5 U.S.C. 552a(o) and (p)) for centralized administrative offset upon receipt of a certification from GSA that the due process requirements enumerated in 31 U.S.C. 3716(a) have been met. The certification of a debt in accordance with paragraph (b)(5) of this section will satisfy this requirement. If such a waiver is granted, only the Data Integrity Board of the Department of the Treasury is required to oversee any matching activities, in accordance with 31 U.S.C. 3716(g). This waiver authority does not apply to offsets conducted under paragraphs (c) and (d) of this section.

(c) *Non-centralized administrative offset.* (1) Generally, non-centralized administrative offsets are ad hoc case-by-case offsets that GSA conducts, at the Agency's discretion, internally or in cooperation with another agency certifying or authorizing payments to the debtor. Unless otherwise prohibited by law, when centralized administrative offset is not available or appropriate, past due, legally enforceable non-tax delinquent debts may be collected through non-centralized administrative offset. In these cases, GSA may make a request directly to a payment authorizing agency to offset a payment due a debtor to collect a delinquent debt. For example, it may be appropriate for GSA to request the Office of Personnel Management (OPM) offset a Federal employee's lump sum payment upon leaving Government service to satisfy an unpaid advance.

(2) Such offsets will occur only after—

(i) The debtor has been provided due process as set forth in paragraph (b)(4) of this section; and

(ii) The payment authorizing agency has received written certification from GSA that the debtor owes the past due, legally enforceable delinquent debt in the amount stated, and that GSA has fully complied with its regulations concerning administrative offset.

(3) Payment authorizing agencies will comply with offset requests by GSA to collect debts owed to the United States, unless the offset would not be in the best interests of the United States with respect to the program of the payment authorizing agency, or would otherwise be contrary to law.

(4) When collecting multiple debts by non-centralized administrative offset, GSA will apply the recovered amounts to those debts in accordance with the best interests of the United States, as determined by the facts and circumstances of the particular case, particularly the applicable statute of limitations.

(d) *Requests to OPM to offset a debtor's anticipated or future benefit payments under the Civil Service Retirement and Disability Fund.* Upon providing OPM written certification that a debtor has been afforded the procedures provided in paragraph (b)(4) of this section, GSA may request OPM to offset a debtor's anticipated or future benefit payments under the Civil Service Retirement and Disability Fund (Fund) in accordance with regulations codified at 5 CFR 831.1801 through 831.1808. Upon receipt of such a request, OPM will identify and "flag" a debtor's account in anticipation of the time when the debtor requests, or becomes eligible to receive, payments from the Fund. This will satisfy any requirement that offset be initiated prior to the expiration of the time limitations referenced in paragraph (a)(4) of this section.

(e) *Review requirements.* (1) A debtor may seek review of a debt by sending a signed and dated petition for review to the official named in the demand letter. A copy of the petition must also be sent to the GSA Board of Contract Appeals (GSBCA) at the address indicated in paragraph (e)(6) of this section.

(2) For purposes of this section, whenever GSA is required to afford a debtor a review within the Agency, the hearing official will provide the debtor with a reasonable opportunity for an oral hearing when the debtor requests reconsideration of the debt and the hearing official determines that the question of the indebtedness cannot be resolved by review of the documentary evidence; for example, when the validity of the debt turns on an issue of credibility or veracity.

(3) Witnesses will be asked to testify under oath or affirmation, and a written transcript of the hearing will be kept and made available to either party in the event of an appeal under the Administrative Procedure Act, 5 U.S.C. 701–706. Arrangements for the taking of the transcript will be made by the hearing official, and all charges associated with the taking of the transcript will be the responsibility of GSA.

(4) In those cases when an oral hearing is not required by this section, the hearing official will accord the debtor a "paper hearing," that is, a determination of the request for reconsideration based upon a review of the written record.

(5) Hearings will be conducted by a Board Judge of the GSBCA. GSA must provide proof that a valid non-tax debt exists, and the debtor must provide evidence that no debt exists or that the amount of the debt is incorrect.

(6) If an oral hearing is provided, the debtor may choose to have it conducted in the hearing official's office located at GSA Central Office, 1800 F St., NW., Washington, DC 20405, at another location designated by the hearing official, or may choose a hearing by telephone. All personal and travel expenses incurred by the debtor in connection with an in-person hearing will be borne by the debtor. All telephonic charges incurred during a hearing will be the responsibility of GSA.

(7) If the debtor is an employee of GSA, the employee may represent himself or herself or may be represented by another person of his or her choice at the hearing. GSA will not compensate the employee for representation expenses, including hourly fees for attorneys, travel expenses, and costs for reproducing documents.

(8) A written decision will be issued by the hearing official no later than 60 days from the date the petition for review is received by GSA. The decision will state the—

(i) Facts supporting the nature and origin of the debt;

(ii) Hearing officials analysis, findings, and conclusions as to the debtor's and/or GSA's grounds;

(iii) Amount and validity of the debt; and

(iv) Repayment schedule, if applicable.

(9) The hearing official's decision will be the final Agency action for the purposes of judicial review under the Administrative Procedure Act (5 U.S.C. 701 *et seq.*).

(f) *Waiver requirements.* (1) Under certain circumstances, a waiver of a claim against an employee of GSA arising out of an erroneous payment of pay, allowances, travel, transportation, or relocation expenses and allowances may be granted in whole or in part.

(2) GSA procedures for waiving a claim of erroneous payment of pay and allowances can be found in GSA Order CFO 4200.1, "Waiver of Claims for Overpayment of Pay and Allowances".

(3) GSA will follow the procedures of 5 U.S.C. 5584 when considering a request for waiver of erroneous payment of travel, transportation, or relocation expenses and allowances.

§ 105–55.012 Contracting with private collection contractors and with entities that locate and recover unclaimed assets.

(a) Subject to the provisions of paragraph (b) of this section, the General Services Administration (GSA) may contract with private collection contractors, as defined in 31 U.S.C. 3701(f), to recover delinquent debts provided that—

(1) GSA retain the authority to resolve disputes, compromise debts, suspend or terminate collection activity; and refer debts for litigation;

(2) The private collection contractor is not allowed to offer the debtor, as an incentive for payment, the opportunity to pay the debt less the private collection contractor's fee unless GSA has granted such authority prior to the offer;

(3) The contract provides that the private collection contractor is subject to the Privacy Act of 1974 to the extent specified in 5 U.S.C. 552a(m), and to applicable Federal and state laws and regulations pertaining to debt collection practices, including but not limited to the Fair Debt Collection Practices Act, 15 U.S.C. 1692; and

(4) The private collection contractor is required to account for all amounts collected.

(b) GSA will use Governmentwide debt collection contracts to obtain debt collection services provided by private collection contractors. However, GSA may refer debts to private collection contractors pursuant to a contract

between the Agency and the private collection contractor only if such debts are not subject to the requirement to transfer debts to Treasury for debt collection. *See* 31 U.S.C. 3711(g); 31 CFR 285.12(e).

(c) GSA may fund private collection contractor contracts in accordance with 31 U.S.C. 3718(b), or as otherwise permitted by law.

(d) GSA may enter into contracts for locating and recovering assets of the United States, such as unclaimed assets.

(e) GSA may enter into contracts for debtor asset and income search reports. In accordance with 31 U.S.C. 3718(b), such contracts may provide that the fee a contractor charges the Agency for such services may be payable from the amounts recovered, unless otherwise prohibited by statute.

§ 105–55.013 Suspension or revocation of eligibility for loans and loan guaranties, licenses, permits, or privileges.

(a) Unless waived by the Administrator, the General Services Administration (GSA) will not extend financial assistance in the form of a loan, loan guarantee, or loan insurance to any person delinquent on a non-tax debt owed to a Federal agency. This prohibition does not apply to disaster loans. The authority to waive the application of this section may be delegated to the Chief Financial Officer and re-delegated only to the Deputy Chief Financial Officer of GSA. GSA may extend credit after the delinquency has been resolved. The Secretary may exempt classes of debts from this prohibition and has prescribed standards defining when a "delinquency" is "resolved" for purposes of this prohibition. *See* 31 CFR 285.13.

(b) In non-bankruptcy cases, GSA, when seeking the collection of statutory penalties, forfeitures, or other types of claims, will consider the suspension or revocation of licenses, permits, or other privileges for any inexcusable or willful failure of a debtor to pay such a debt in accordance with GSA regulations or governing procedures. The debtor will be advised in GSA's written demand for payment of the Agency's ability to suspend or revoke licenses, permits, or privileges. If GSA makes, guarantees, insures, acquires, or participates in loans, the Agency will consider suspending or disqualifying any lender, contractor, or broker from doing further business with the Agency or engaging in programs sponsored by the Agency if such lender, contractor, or broker fails to pay its debts to the Government within a reasonable time or if such lender, contractor, or broker has been suspended, debarred, or disqualified from participation in a program or activity by another Federal agency. The failure of any surety to honor its obligations in accordance with 31 U.S.C. 9305 will be reported to the Treasury. The Treasury will forward notification to all interested agencies that a surety's certificate of authority to do business with the Government has been revoked by the Treasury.

(c) The suspension or revocation of licenses, permits, or privileges also may extend to GSA programs or activities administered by the states on behalf of GSA, to the extent they affect GSA's ability to collect money or funds owed by debtors.

(d) In bankruptcy cases, before advising the debtor of GSA's intention to suspend or revoke licenses, permits, or privileges, the Agency will ascertain the impact of the Bankruptcy Code, particularly 11 U.S.C. 362 and 525, which may restrict such action.

§ 105–55.014 Liquidation of collateral.

(a) The General Services Administration (GSA) will liquidate security or collateral through the exercise of a power of sale in the security instrument or a non-judicial foreclosure, and apply the proceeds to the applicable debt(s), if the debtor fails to pay the debt(s) within a reasonable time after demand and if such action is in the best interest of the United States. Collection from other sources, including liquidation of security or collateral, is not a prerequisite to requiring payment by a surety, insurer, or guarantor unless such action is expressly required by statute or contract.

(b) When GSA learns a bankruptcy petition has been filed with respect to a debtor, the Agency will ascertain the impact of the Bankruptcy Code, including, but not limited to, 11 U.S.C. 362, to determine the applicability of the automatic stay and the procedures for obtaining relief from such stay prior to proceeding under paragraph (a) of this section.

§ 105–55.015 Collection in installments.

(a) Whenever feasible, the General Services Administration (GSA) will collect the total amount of a debt in one lump sum. If a debtor is financially unable to pay a debt in one lump sum, GSA may accept payment in regular installments. GSA may obtain financial statements from debtors who represent they are unable to pay in one lump sum and independently verify such representations whenever possible (*see* § 105–55.020(g)). When GSA agrees to accept payments in regular installments, a legally enforceable written agreement from the debtor will be obtained specifying all of the terms of the arrangement and containing a provision accelerating the debt in the event of default. If the debtor's financial statement discloses the ownership of assets which are free and clear of liens or security interests, or assets in which the debtor owns an equity, the debtor may be asked to secure the payment of an installment note by executing a Security Agreement and Financing Statement transferring to the United States a security interest in the asset until the debt is paid.

(b) The size and frequency of installment payments will bear a reasonable relation to the size of the debt and the debtor's ability to pay. The installment payments will be sufficient in size and frequency to liquidate the debt in three years or less, unless circumstances warrant a longer period.

(c) Security for deferred payments may be obtained in appropriate cases. GSA may accept installment payments notwithstanding the refusal of the debtor to execute a written agreement or to give security, at the Agency's option.

§ 105–55.016 Interest, penalties, and administrative costs.

(a) Except as provided in paragraphs (g), (h), and (i) of this section, the General Services Administration (GSA) will charge interest, penalties, and administrative costs on debts owed to the United States pursuant to 31 U.S.C. 3717. GSA will send by U.S. mail, overnight delivery service, or hand-delivery a written notice to the debtor, at the debtor's most recent address available to the Agency, explaining the Agency's requirements concerning these charges, except where these requirements are included in a contractual or repayment agreement. These charges will continue to accrue until the debt is paid in full or otherwise resolved through compromise, termination, or waiver of the charges.

(b) GSA will charge interest on debts owed the United States as follows:

(1) Interest will accrue from the date of delinquency, or as otherwise provided by law.

(2) Unless otherwise established in a contract, repayment agreement, or by statute, the rate of interest charged will be the rate established annually by the Secretary in accordance with 31 U.S.C. 3717(a)(1). Pursuant to 31 U.S.C. 3717, GSA may charge a higher rate of interest if it is reasonably determined that a higher rate is necessary to protect the rights of the United States. GSA will document the reason(s) for a determination that the higher rate is necessary.

(3) The rate of interest, as initially charged, will remain fixed for the duration of the indebtedness. When a debtor defaults on a repayment agreement and seeks to enter into a new agreement, GSA may require payment of interest at a new rate that reflects the Current Value of Funds Rate (CVFR) at the time the new agreement is executed. Interest will not be compounded, that is, interest will not be charged on interest, penalties, or administrative costs required by this section. If a debtor defaults on a previous repayment agreement, charges that accrued but were not collected under the defaulted agreement will be added to the principal under the new repayment agreement.

(c) GSA will assess administrative costs incurred for processing and handling delinquent debts. The calculation of administrative costs will be based on actual costs incurred or upon estimated costs as determined by the Agency.

(d) Unless otherwise established in a contract, repayment agreement, or by statute, GSA will charge a penalty, pursuant to 31 U.S.C. 3717(e)(2), not to exceed six percent a year on the amount due on a debt that is delinquent for more than 90 days. This charge will accrue from the date of delinquency.

(e) GSA may increase an "administrative debt" by the cost of living adjustment in lieu of charging interest and penalties under this section. "Administrative debt" includes, but is not limited to, a debt based on fines, penalties, and overpayments, but does not include a debt based on the extension of Government credit, such as those arising from loans and loan guaranties. The cost of living adjustment is the percentage by which the Consumer Price Index for the month of June of the calendar year preceding the adjustment exceeds the Consumer Price Index for the month of June of the calendar year in which the debt was determined or last adjusted. Increases to administrative debts will be computed annually. GSA will use this alternative only when there is a legitimate reason to do so, such as when calculating interest and penalties on a debt would be extremely difficult because of the age of the debt.

(f) When a debt is paid in partial or installment payments, amounts received by GSA will be applied first to outstanding penalties, second to administrative charges, third to interest, and last to principal.

(g) GSA will waive the collection of interest, penalty and administrative charges imposed pursuant to this section on the portion of the debt that is paid within 30 days after the date on which interest began to accrue. GSA may extend this 30-day period on a case-by-case basis. In addition, GSA may waive interest, penalties, and administrative costs charged under this section, in whole or in part, without regard to the amount of the debt, either under the criteria set forth in these standards for the compromise of debts, or if the Agency determines that collection of these charges resulted from Agency error, is against equity and good conscience, or is not in the best interest of the United States.

(h) Unless a statute or regulation specifically prohibits collection, interest, penalties and administrative costs will continue to accrue for periods during which collection activity has been suspended pending Agency review or waiver consideration.

(i) GSA is authorized to impose interest and related charges on debts not subject to 31 U.S.C. 3717, in accordance with the common law.

§ 105–55.017 Use and disclosure of mailing addresses.

(a) When attempting to locate a debtor in order to collect or compromise a debt under this part or other authority, the General Services Administration (GSA) may send a request to the Secretary (or designee) to obtain a debtor's mailing address from the records of the Internal Revenue Service.

(b) GSA is authorized to use mailing addresses obtained under paragraph (a) of this section to enforce collection of a delinquent debt and may disclose such mailing addresses to other agencies and to collection agencies for collection purposes.

§ 105–55.018 Exemptions.

(a) The preceding sections of this part, to the extent they reflect remedies or procedures prescribed by the Debt Collection Act of 1982 and the Debt Collection Improvement Act of 1996, such as administrative offset, use of credit bureaus, contracting for collection agencies, and interest and related charges, do not apply to debts arising under, or payments made under, the Internal Revenue Code of 1986, as amended (26 U.S.C. 1 *et seq.*); the Social Security Act (42 U.S.C. 301 *et seq.*), except to the extent provided under 42 U.S.C. 404 and 31 U.S.C. 3716(c); or the tariff laws of the United States. These remedies and procedures, however, may be authorized with respect to debts that are exempt from the Debt Collection Act of 1982 and the Debt Collection Improvement Act of 1996, to the extent they are authorized under some other statute or the common law.

(b) Claims arising from the audit of transportation accounts pursuant to 31 U.S.C. 3726 will be determined, collected, compromised, terminated or settled in accordance with regulation published under the authority of 31 U.S.C. 3726 (*see* 41 CFR part 101–41, administered by the Director, Office of Transportation Audits) and are otherwise exempted from this part.

§ 105–55.019 Compromise of claims.

(a) The standards set forth in this section apply to the compromise of debts pursuant to 31 U.S.C. 3711. The General Services Administration (GSA) may exercise such compromise authority for debts arising out of activities of, or referred or transferred for collection services to, the Agency when the amount of the debt then due, exclusive of interest, penalties, and administrative costs, does not exceed $100,000 or any higher amount authorized by the Attorney General. The Administrator may designate other GSA officials to exercise the authorities in this section.

(b) Unless otherwise provided by law, when the principal balance of a debt, exclusive of interest, penalties, and administrative costs, exceeds $100,000 or any higher amount authorized by the Attorney General, the authority to accept the compromise rests with the Department of Justice. GSA will evaluate the compromise offer, using the factors set forth in § 105–55.020. If an offer to compromise any debt in excess of $100,000 is acceptable to the Agency, GSA will refer the debt to the Civil Division or other appropriate litigating division in the Department of Justice using a Claims Collection Litigation Report. The referral will include appropriate financial information and a recommendation for the acceptance of the compromise offer. Justice Department approval is not required if GSA rejects a compromise offer.

§ 105–55.020 Bases for compromise.

(a) The General Services Administration (GSA) may compromise a debt if the full amount cannot be collected because—

(1) The debtor is unable to pay the full amount in a reasonable time, as verified through credit reports or other financial information.

(2) GSA is unable to collect the debt in full within a reasonable time by enforced collection proceedings.

(3) The cost of collecting the debt does not justify the enforced collection of the full amount.

(4) There is significant doubt concerning the Government's ability to prove its case in court.

(b) In determining the debtor's inability to pay, GSA will consider relevant factors such as the following:

(1) Age and health of the debtor.

(2) Present and potential income.

(3) Inheritance prospects.

(4) The possibility that assets have been concealed or improperly transferred by the debtor.

(5) The availability of assets or income that may be realized by enforced collection proceedings.

(c) GSA will verify the debtor's claim of inability to pay by using a credit report and other financial information as provided in paragraph (g) of this section. GSA will consider the applicable exemptions available to the debtor under State and Federal law in determining the Government's ability to enforce collection. GSA also may consider uncertainty as to the price that collateral or other property will bring at a forced sale in determining the Government's ability to enforce collection. A compromise effected under this section will be for an amount that bears a reasonable relation to the amount that can be recovered by enforced collection procedures, with regard to the exemptions available to the debtor and the time that collection will take.

(d) If there is significant doubt concerning the Government's ability to prove its case in court for the full amount claimed, either because of the legal issues involved or because of a bona fide dispute as to the facts, then the amount accepted in compromise of such cases will fairly reflect the probabilities of successful prosecution to judgment, with due regard given to the availability of witnesses and other evidentiary support for the Government's claim. In determining the litigative risks involved, GSA will consider the probable amount of court costs and attorney fees pursuant to the Equal Access to Justice Act, 28 U.S.C. 2412 that may be imposed against the Government if it is unsuccessful in litigation.

(e) GSA may compromise a debt if the cost of collecting the debt does not justify the enforced collection of the full amount. The amount accepted in compromise in such cases may reflect an appropriate discount for the administrative and litigative costs of collection, with consideration given to the time it will take to effect collection. Collection costs may be a substantial factor in the settlement of small debts. In determining whether the cost of collection justifies enforced collection of the full amount, GSA will consider whether continued collection of the debt, regardless of cost, is necessary to further an enforcement principle, such as the Government's willingness to pursue aggressively defaulting and uncooperative debtors.

(f) GSA generally will not accept compromises payable in installments. This is not an advantageous form of compromise in terms of time and administrative expense. If, however, payment of a compromise in installments is necessary, GSA will obtain a legally enforceable written agreement providing that, in the event of default, the full original principal balance of the debt prior to compromise, less sums paid thereon, is reinstated. Whenever possible, GSA will obtain security for repayment in the manner set forth in § 105–55.015.

(g) To assess the merits of a compromise offer based in whole or in part on the debtor's inability to pay the full amount of a debt within a reasonable time, GSA may obtain a current financial statement from the debtor, executed under penalty of perjury, showing the debtor's assets, liabilities, income and expenses. GSA also may obtain credit reports or other financial information to assess compromise offers. GSA may use their own financial information form or may request suitable forms from the Department of Justice or the local United States Attorney's Office.

§ 105–55.021 Enforcement policy.

Pursuant to this section, the General Services Administration may compromise statutory penalties, forfeitures, or claims established as an aid to enforcement and to compel compliance, if the Agency's enforcement policy in terms of deterrence and securing compliance, present and future, will be adequately served by the Agency's acceptance of the sum to be agreed upon.

§ 105–55.022 Joint and several liability.

(a) When two or more debtors are jointly and severally liable, the General Services Administration (GSA) may pursue collection activity against all debtors, as appropriate. GSA will not attempt to allocate the burden of payment between the debtors but will proceed to liquidate the indebtedness as quickly as possible.

(b) GSA will ensure that a compromise agreement with one debtor does not release the Agency's claim against the remaining debtors. The amount of a compromise with one debtor will not be considered a precedent or binding in determining the amount that will be required from other debtors jointly and severally liable on the claim.

§ 105–55.023 Further review of compromise offers.

If the General Services Administration (GSA) is uncertain whether to accept a firm, written, substantive compromise offer on a debt that is within the Agency's delegated compromise authority, it may refer the offer to the Civil Division or other appropriate litigating division in the Department of Justice (DOJ), using a Claims Collection Litigation Report accompanied by supporting data and particulars concerning the debt. DOJ may act upon such an offer or return it to GSA with instructions or advice.

§ 105–55.024 Consideration of tax consequences to the Government.

In negotiating a compromise, the General Services Administration (GSA) may consider the tax consequences to the Government. In particular, GSA may consider requiring a waiver of tax-loss-carry-forward and tax-loss-carry-back rights of the debtor. For information on discharge of indebtedness reporting requirements see § 105–55.030.

§ 105–55.025 Mutual releases of the debtor and the Government.

In all appropriate instances, a compromise that is accepted by the General Services Administration may be implemented by means of a mutual release, in which the debtor is released from further non-tax liability on the compromised debt in consideration of payment in full of the compromise amount and the Government and its officials, past and present, are released and discharged from any and all claims and causes of action arising from the same transaction that the debtor may have. In the event a mutual release is not executed when a debt is compromised, unless prohibited by law, the debtor is still deemed to have waived any and all claims and causes of action against the Government and its officials related to the transaction giving rise to the compromised debt.

§ 105–55.026 Suspending or terminating collection activity.

(a) The standards set forth in §§ 105–55.027 and 105–55.028 apply to the suspension or termination of collection activity pursuant to 31 U.S.C. 3711 on debts that do not exceed $100,000, or such other amount as the Attorney General may direct, exclusive of interest, penalties, and administrative costs, after deducting the amount of partial payments or collections, if any. Prior to referring a debt to the Department of Justice (DOJ) for litigation, the General Services Administration (GSA) may suspend or terminate collection under this part with respect to debts arising out of activities of, or referred or transferred for collection services to, the Agency.

(b) If, after deducting the amount of any partial payments or collections, the principal amount of a debt exceeds $100,000, or such other amount as the Attorney General may direct, exclusive of interest, penalties, and administrative costs, the authority to suspend or terminate rests solely with DOJ. If GSA believes suspension or termination of any debt in excess of $100,000 may be appropriate, the Agency will refer the debt to the Civil Division or other appropriate litigating division in DOJ, using the Claims Collection Litigation Report. The referral will specify the reasons for the Agency's recommendation. If, prior to referral to DOJ, GSA determines a debt is plainly erroneous or clearly without legal merit, the Agency may terminate collection activity regardless of the amount involved without obtaining DOJ concurrence.

§ 105–55.027 Suspension of collection activity.

(a) The General Services Administration (GSA) may suspend collection activity on a debt when—

(1) The Agency cannot locate the debtor;

(2) The debtor's financial condition is expected to improve; or

(3) The debtor has requested a waiver or review of the debt.

(b) Based on the current financial condition of the debtor, GSA may suspend collection activity on a debt when the debtor's future prospects justify retention of the debt for periodic review and collection activity and—

(1) The applicable statute of limitations has not expired; or

(2) Future collection can be effected by administrative offset, notwithstanding the expiration of the applicable statute of limitations for litigation of claims, with due regard to the 10-year limitation for administrative offset prescribed by 31 U.S.C. 3716(e)(1); or

(3) The debtor agrees to pay interest on the amount of the debt on which collection will be suspended, and such suspension is likely to enhance the debtor's ability to pay the full amount of the principal of the debt with interest at a later date.

(c)(1) GSA will suspend collection activity during the time required for consideration of the debtor's request for waiver or administrative review of the debt if the statute under which the request is sought prohibits the Agency from collecting the debt during that time.

(2) If the statute under which the request is sought does not prohibit collection activity pending consideration of the request, GSA will use discretion, on a case-by-case basis, to suspend collection. Further, GSA ordinarily will suspend collection action upon a request for waiver or review if the Agency is prohibited by statute or regulation from issuing a refund of amounts collected prior to Agency consideration of the debtor's request. However, GSA will not suspend collection when the Agency determines the request for waiver or review is frivolous or was made primarily to delay collection.

(d) When GSA learns a bankruptcy petition has been filed with respect to a debtor, in most cases the collection activity on a debt will be suspended, pursuant to the provisions of 11 U.S.C. 362, 1201, and 1301, unless the Agency can clearly establish the automatic stay has been lifted or is no longer in effect. GSA will, if legally permitted, take the necessary legal steps to ensure no funds or money are paid by the Agency to the debtor until relief from the automatic stay is obtained.

§ 105–55.028 Termination of collection activity.

(a) The General Services Administration (GSA) may terminate collection activity when—

(1) The Agency is unable to collect any substantial amount through its own efforts or through the efforts of others;

(2) The Agency is unable to locate the debtor;

(3) Costs of collection are anticipated to exceed the amount recoverable;

(4) The debt is legally without merit or enforcement of the debt is barred by any applicable statute of limitations;

(5) The debt cannot be substantiated; or

(6) The debt against the debtor has been discharged in bankruptcy.

(b) Before terminating collection activity, GSA will pursue all appropriate means of collection and determine, based upon the results of the collection activity, that the debt is uncollectible. Termination of collection activity ceases active collection of the debt. The termination of collection activity does not preclude GSA from retaining a record of the account for purposes of—

(1) Selling the debt, if the Secretary determines that such sale is in the best interests of the United States;

(2) Pursuing collection at a subsequent date in the event there is a change in the debtor's status or a new collection tool becomes available;

(3) Offsetting against future income or assets not available at the time of termination of collection activity; or

(4) Screening future applicants of loans and loan guaranties, licenses, permits, or privileges for prior indebtedness.

(c) Generally, GSA will terminate collection activity on a debt that has been discharged in bankruptcy, regardless of the amount. GSA may continue collection activity, however, subject to the provisions of the Bankruptcy Code, for any payments provided under a plan of reorganization. Offset and recoupment rights may survive the discharge of the debtor in bankruptcy and, under some circumstances, claims also may survive the discharge. For example, the claims of GSA that it is a known creditor of a debtor may survive a discharge if the Agency did not receive formal notice of the proceedings.

§ 105–55.029 Exception to termination.

When a significant enforcement policy is involved, or recovery of a judgment is a prerequisite to the imposition of administrative sanctions, the General Services Administration may refer debts for litigation even though termination of collection activity may otherwise be appropriate.

§ 105–55.030 Discharge of indebtedness; reporting requirements.

(a) Before discharging a delinquent debt (also referred to as a close out of the debt), the General Services Administration (GSA) will take all appropriate steps to collect the debt in accordance with 31 U.S.C. 3711(g), including, as applicable, administrative offset, tax refund offset, Federal salary offset, referral to Treasury, Treasury-designated debt collection centers or private collection contractors, credit bureau reporting, wage garnishment, litigation, and foreclosure. Discharge of indebtedness is distinct from termination or suspension of collection activity and is governed by the Internal Revenue Code. When collection action on a debt is suspended or terminated, the debt remains delinquent and further collection action may be pursued at a later date in accordance with the standards set forth in this part. When GSA discharges a debt in full or in part, further collection action is prohibited. Therefore, GSA will make the determination that collection action is no longer warranted before discharging a debt. Before discharging a debt, GSA will terminate debt collection action.

(b) Section 3711(i), Title 31, United States Code, requires GSA to sell a delinquent non-tax debt upon termination of collection action if the Secretary determines such a sale is in the best interests of the United States. Since the discharge of a debt precludes any further collection action (including the sale of a delinquent debt), GSA may not discharge a debt until the requirements of 31 U.S.C. 3711(i) have been met.

(c) Upon discharge of a debt of more than $600, GSA must report the discharge to the Internal Revenue Service (IRS) in accordance with the requirements of 26 U.S.C. 6050P and 26 CFR 1.6050P–1. GSA may request Treasury or Treasury-designated debt collection centers to file such a discharge report to the IRS on the Agency's behalf.

(d) When discharging a debt, GSA will request the GSA Office of General Counsel to release any liens of record securing the debt.

§ 105–55.031 Prompt referral to the Department of Justice.

(a) The General Services Administration (GSA) will promptly refer to the Department of Justice (DOJ) for litigation debts on which aggressive collection activity has been taken in accordance with § 105–55.009 and that cannot be compromised, or on which collection activity cannot be suspended or terminated. In accordance with §§ 105–55.027 and 105–55.028, GSA may refer those debts arising out of activities of, or referred or transferred for collection services to, the Agency. Debts for which the principal amount is over $1,000,000, or such other amount as the Attorney General may direct, exclusive of interest and penalties, will be referred to the Civil Division or other division responsible for litigating such debts at DOJ, Washington, DC. Debts for which the principal amount is $1,000,000, or less, or such other amount as the Attorney General may direct, exclusive of interest or penalties, will be referred to DOJ's Nationwide Central Intake Facility as required by the Claims Collection Litigation Report instructions. Debts will be referred as early as possible, consistent with aggressive GSA collection activity and the observance of the standards contained in this part, and, in any event, well within the period for initiating timely lawsuits against the debtors. GSA will make every effort to refer delinquent debts to DOJ for litigation within one year of the date such debts last became delinquent. In the case of guaranteed or insured loans, GSA will make every effort to refer these delinquent debts to DOJ for litigation within one year from the date the loan was presented to the Agency for payment or re-insurance.

(b) DOJ has exclusive jurisdiction over the debts referred to it pursuant to this section. GSA, as the referring agency, will immediately terminate the use of any administrative collection activities to collect a debt at the time of the referral of that debt to DOJ. GSA will advise DOJ of the collection activities which have been utilized to date, and their result. GSA will refrain from having any contact with the debtor and will direct all debtor inquiries concerning the debt to DOJ, except as otherwise agreed between GSA and DOJ. GSA will immediately notify DOJ of any payments credited by the Agency to the debtor's account after referral of a debt under this section. DOJ will notify GSA of any payments it receives from the debtor.

§ 105–55.032 Claims Collection Litigation Report.

(a) Unless excepted by the Department of Justice (DOJ), the General Services Administration (GSA) will complete the Claims Collection Litigation Report (CCLR) (*see* § 105–55.019(b)), accompanied by a signed Certificate of Indebtedness, to refer all administratively uncollectible claims to DOJ for litigation. GSA will complete all sections of the CCLR appropriate to each claim as required by the CCLR instructions and furnish such other information as may be required in specific cases.

(b) GSA will indicate clearly on the CCLR the actions DOJ should take with respect to the referred claim. The CCLR permits the Agency to indicate specifically any of a number of litigative activities which DOJ may pursue, including enforced collection, judgment lien only, renew judgment lien only, renew judgment lien and enforce collection, program enforcement, foreclosure only, and foreclosure and deficiency judgment.

(c) GSA also will use the CCLR to refer claims to DOJ to obtain approval of any proposals to compromise the claims or to suspend or terminate Agency collection activity.

§ 105–55.033 Preservation of evidence.

The General Services Administration (GSA) will take care to preserve all files and records that may be needed by the Department of Justice (DOJ) to prove their claims in court. GSA ordinarily will include certified copies of the documents that form the basis for the claim in the packages referring their claims to DOJ for litigation. GSA will provide originals of such documents immediately upon request by DOJ.

§ 105–55.034 Minimum amount of referrals to the Department of Justice.

(a) The General Services Administration (GSA) will not refer for litigation claims of less than $2,500, exclusive of interest, penalties, and administrative costs, or such other amount as the Attorney General shall from time to time prescribe. The Department of Justice (DOJ) will notify GSA if the Attorney General changes this minimum amount.

(b) GSA will not refer claims of less than the minimum amount unless—

(1) Litigation to collect such smaller claims is important to ensure compliance with the Agency's policies or programs;

(2) The claim is being referred solely for the purpose of securing a judgment against the debtor, which will be filed as a lien against the debtor's property pursuant to 28 U.S.C. 3201 and returned to GSA for enforcement; or

(3) The debtor has the clear ability to pay the claim and the Government effectively can enforce payment, with due regard for the exemptions available to the debtor under State and Federal law and the judicial remedies available to the Government.

(c) GSA will consult with the Financial Litigation Staff of the Executive Office for United States Attorneys in DOJ prior to referring claims valued at less than the minimum amount.

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GENERAL SERVICES ADMINISTRATION

41 CFR Part 105–56

[GSPMR Amendment 2003–02; GSPMR Case 2003–105–3]

RIN 3090–AH86

Salary Offset for Indebtedness of Federal Employees to the United States

AGENCY: Office of Finance, General Services Administration (GSA).

ACTION: Final rule.

SUMMARY: The General Services Administration (GSA) is amending its regulations to implement the salary offset procedures used to collect debts that are owed to the United States by Federal employees. The change conforms GSA regulations to the legislative changes enacted in the Debt Collection Improvement Act of 1996 and the amended procedures presented in the Federal Claims Collection Standards jointly issued by the Department of the Treasury (Treasury) and the Department of Justice (DoJ). The change allows GSA to improve its collection of debts due the United States from Federal employees.

DATES: *Effective date:* December 10, 2003.

FOR FURTHER INFORMATION CONTACT: The Regulatory Secretariat, Room 4035, GS Building, Washington, DC 20405, at (202) 501–4755 for information pertaining to status or publication schedules. For clarification of content, contact Mr. Michael J. Kosar, (202) 501–2029. Please cite GSPMR Amendment 2003–02, GSPMR case 2003–105–3.

SUPPLEMENTARY INFORMATION:

A. Background

GSA currently has rules for collecting unpaid debts through salary offset under the provisions of the Debt Collection Act of 1982, the Federal Claims Collection Standards (FCCS) of 1966, and other authorities governing the collection of Federal debts. The change incorporates changes that are presented in the amended FCCS issued jointly by Treasury and DoJ, and the Debt Collection Improvement Act of 1996 (DCIA).

A new subpart B, Centralized Salary Offset Procedures (CSO)—GSA as Creditor Agency, is added to include procedures for notifying Treasury of delinquent Federal employee debtors from another agency who owe debts to GSA. A new subpart C, Centralized Salary Offset Procedures (CSO)—GSA as Paying Agency, is added to include procedures for offsetting debts of a GSA employee or a cross-serviced agency employee that owes a debt to another agency. The DCIA of 1996 requires Federal agencies to match their delinquent debtor records with records of Federal employees, at least annually, to identify Federal employees who owe delinquent debt to the United States. This part implements the requirement under 5 U.S.C. 5514(a)(1) that all Federal agencies, using a process known as centralized salary offset computer matching, identify Federal employees who owe delinquent non-tax debt to the United States. Centralized salary offset computer matching is the computerized comparison of delinquent debt records with records of Federal employees. The purpose of centralized salary offset computer matching is to identify those debtors whose Federal salaries should be offset to collect delinquent debts owed to the Federal Government. This part specifies the delinquent debt records and Federal employee records that must be included in the salary offset matching process. For purposes of this part, delinquent debt records consist of the debt information submitted to Treasury for purposes of administrative offset as required under 31 U.S.C. 3716(c)(6).

Discussion of Comments

In response to its Notice of Proposed Rule (NPR) concerning Salary Offset for Indebtedness of Federal Employees to the United States (68 FR 41093, July 10, 2003), GSA received internal comments from its National Payroll Center (NPC). A review of the comments is provided in the following comment analysis, including a discussion of GSA's determination whether to incorporate specific suggestions in the final rule. The comment analysis is organized by reference to the paragraph in the NPR.

NPR Sec. 105–56.003, Definitions. The final rule incorporates one commenter's suggestion to list the definitions in alphabetical order.

NPR Sec. 105–56.003(j) and NPR Sec. 105–56.015(m), Definitions. One commenter suggested inserting the word Administration after General Services so the definition reads "Administrator of General Services Administration". The commenter's suggestion and the NPR definitions have the same meaning, however, the NPR definition is considered the more grammatically correct. No change is made to the final rule.

NPR Sec. 105–56.005(b), Employee response. One commenter suggested NPR Sec. 105–56.005(b) specify where an employee should submit their waiver request since the other lettered paragraphs specify a point of contact. They recommend that employees send their signed waiver request to the GSA National Payroll Center (NPC). This suggestion is incorporated in the final rule.

B. Executive Order 12866

GSA has determined that this regulation is not a significant regulatory action as defined in Executive Order 12866, and accordingly, this regulation has not been reviewed by the Office of Management and Budget.

C. Regulatory Flexibility Act

It is hereby certified that this regulation will not have a significant economic impact on a substantial number of small entities because the regulation either (1) results in greater flexibility for GSA to streamline debt collection regulations, or (2) reflects the statutory language contained in the DCIA. Accordingly, a Regulatory Flexibility Analysis is not required.

D. Executive Order 13132

This regulation will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 13132, it is determined that this regulation does not have sufficient federalism implications to warrant the preparation of a federalism assessment.

E. Unfunded Mandates Reform Act of 1995

This regulation will not result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one (1) year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

F. Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 251 of the Small Business Regulatory Enforcement Act, 5 U.S.C. 804. This rule will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic or export markets.

G. Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by the Office of Management and Budget under the Paperwork Reduction Act, 44 U.S.C. 3507 *et seq.*

List of Subjects in 41 CFR Part 105–56

Claims, Salary offset, Payments, Administrative practice and procedure, Hearings, Appeals procedures, Debts, Debt collection, Wages, Government employees.

Dated: December 2, 2003.

Stephen A. Perry,

Administrator of General Services.

■ For the reasons set forth in the preamble, GSA amends 41 CFR chapter 105 as follows:

PART 105–56—SALARY OFFSET FOR INDEBTEDNESS OF FEDERAL EMPLOYEES TO THE UNITED STATES

■ 1. Revise part 105–56 to read as follows:

PART 105–56—SALARY OFFSET FOR INDEBTEDNESS OF FEDERAL EMPLOYEES TO THE UNITED STATES

Subpart A—Salary Offset of General Services Administration Employees

Sec.

105–56.001 Scope.
105–56.002 Excluded debts or claims.
105–56.003 Definitions.
105–56.004 Pre-offset notice.
105–56.005 Employee response.
105–56.006 Petition for pre-offset hearing.
105–56.007 Pre-offset oral hearing.
105–56.008 Pre-offset paper hearing.
105–56.009 Written decision.
105–56.010 Deductions.
105–56.011 Non-waiver of rights.
105–56.012 Refunds.
105–56.013 Coordinating offset with another Federal agency.

Subpart B—Centralized Salary Offset (CSO) Procedures—GSA as Creditor Agency

105–56.014 Purpose and scope.
105–56.015 Definitions.
105–56.016 GSA participation.
105–56.017 Centralized salary offset computer match.
105–56.018 Salary offset.
105–56.019 Offset amount.
105–56.020 Priorities.
105–56.021 Notice.
105–56.022 Fees.
105–56.023 Disposition of amounts collected.

Subpart C—Centralized Salary Offset (CSO) Procedures—GSA as Paying Agency

105–56.024 Purpose and scope.
105–56.025 Definitions.
105–56.026 GSA participation.
105–56.027 Centralized salary offset-computer match.
105–56.028 Salary offset.
105–56.029 Offset amount.
105–56.030 Priorities.
105–56.031 Notice.
105–56.032 Fees.
105–56.033 Disposition of amounts collected.

Authority: 5 U.S.C. 5514; 31 U.S.C. 3711; 31 U.S.C. 3716; 4 CFR part 550, subpart K; 31 CFR part 5; 31 CFR 285.7; 31 CFR parts 900–904.

Subpart A—Salary Offset of General Services Administration Employees

§ 105–56.001 Scope.

(a) This subpart covers internal GSA collections under 5 U.S.C. 5514. It applies when certain debts to the United States are recovered by administrative offset from the disposable pay of a GSA employee or a cross-serviced agency employee, except in situations where the employee consents to the recovery.

(b) The collection of any amount under this subpart will be in accordance with the standards promulgated pursuant to the Debt Collection Improvement Act of 1996 (DCIA), 31 U.S.C. 3701 *et seq.*, and the Federal Claims Collection Standards, 31 CFR parts 900 through 904 as amended, or in accordance with any other statutory authority for the collection of claims of the United States or any Federal agency.

§ 105–56.002 Excluded debts or claims.

This subpart does not apply to the following:

(a) Debts or claims arising under the Internal Revenue Code of 1954 as amended (26 U.S.C. 1 *et seq.*), the Social Security Act (42 U.S.C. 301 *et seq.*), or the tariff laws of the United States.

(b) Any case where collection of a debt by salary offset is explicitly provided for or prohibited by another statute. Debt collection procedures under other statutory authorities, however, must be consistent with the provisions of the Federal Claims Collection Standards, defined at paragraph (h) of § 105–56.003.

(c) An employee election of coverage or of a change of coverage under a Federal benefits program that requires periodic deductions from pay if the amount to be recovered was accumulated over four pay periods or less. However, if the amount to be recovered was accumulated over more than four pay periods, the procedures under § 105–56.004 of this subpart will apply.

(d) Routine adjustment in pay or allowances that is made to correct an overpayment of pay attributable to clerical or administrative errors or delays in processing pay documents, if the overpayment occurred within the four pay periods preceding the adjustment and, at the time of the, adjustment, or as soon after as possible, the employee is provided written notice of the nature and amount of the adjustment.

(e) Any adjustment to collect a debt amounting to $50 or less, if, at the time of the adjustment, or as soon after as possible, the employee is given written notice of the nature and amount of the adjustment and a point of contact for contesting the adjustment.

(f) Debts or claims arising from the accrual of unpaid Health Benefits Insurance (HBI) premiums as the result of an employee's election to continue health insurance coverage during periods of leave without pay (LWOP), or when pay is insufficient to cover premiums. Debt collection procedures for unpaid HBI are covered under 5 CFR part 890, Subpart E.

§ 105–56.003 Definitions.

The following definitions apply to this subpart:

(a) *Administrative offset*, as defined in 31 U.S.C. 3701(a)(1), means withholding funds payable by the United States (including funds payable by the United States on behalf of a State government) to, or held by the United States for, a person to satisfy a claim.

(b) *Agency* means a department, agency or sub-agency, court, court administrative office, or instrumentality in the executive, judicial, or legislative branch of the Federal government, including government corporations.

(c) *Business day* means Monday through Friday, excluding Federal legal holidays. For purposes of computation, the last day of the period will be included unless it is a Federal legal holiday.

(d) *Creditor agency* means any agency that is owed a debt, including a debt collection center when acting on behalf of a creditor agency in matters pertaining to the collection of a debt.

(e) *Cross-serviced agency* means an arrangement between GSA and another agency whereby GSA provides financial support services to the other agency on a reimbursable basis. Financial support services can range from simply providing computer and software timesharing services to full-service administrative processing.

(f) *Disposable pay* means the amount that remains from an employee's Federal pay after required deductions for Federal, State and local income taxes; Social Security taxes, including Medicare taxes; Federal retirement programs, including contributions to the Thrift Savings Plan (TSP); premiums for life (excluding amounts deducted for supplemental coverage) and health insurance benefits; Internal Revenue Service (IRS) tax levies; and such other deductions that may be required by law to be withheld.

(g) *Employee* means any individual employed by GSA or a cross-serviced agency of the executive, legislative, or judicial branches of the Federal Government, including Government corporations.

(h) *FCCS* means the Federal Claims Collection Standards jointly published by the Department of Justice and the Department of the Treasury at 31 CFR parts 900 through 904.

(i) *Financial hardship* means an inability to meet basic living expenses for goods and services necessary for the survival of the debtor and his or her spouse and dependents.

(j) For the purposes of the standards in this subpart, unless otherwise stated, the term "Administrator" refers to the Administrator of General Services or the Administrator's delegate.

(k) For the purposes of the standards in this subpart, the terms "claim" and "debt" are synonymous and interchangeable. They refer to an amount of money, funds, or property that has been determined by GSA to be due the United States from an employee of GSA or a cross-serviced agency from sources which include loans insured or guaranteed by the United States and all other amounts due the United States from fees, leases, rents, royalties, services, sales of real or personal property, overpayments, penalties, damages, interest, fines and forfeitures and all other similar sources, including debt administered by a third party as an agent for the Federal Government. For the purposes of administrative offset under 31 U.S.C. 3716, the terms "claim" and "debt" include an amount of money, funds, or property owed by an employee to a State (including past-due support being enforced by a State), the District of Columbia, American Samoa, Guam, the United States Virgin Islands, the Commonwealth of the Northern Mariana Islands, or the Commonwealth of Puerto Rico.

(l) For the purposes of the standards in this subpart, unless otherwise stated, the terms "GSA" and "Agency" are synonymous and interchangeable.

(m) *Hearing official* means a Board Judge of the GSA Board of Contract Appeals (GSBCA).

(n) *Pay* means basic pay, special pay, incentive pay, retired pay, retainer pay, or in the case of an individual not entitled to basic pay, other authorized pay.

(o) *Pre-offset hearing* means a review of the documentary evidence concerning the existence and/or amount of a debt, and/or the terms of a repayment schedule, provided such repayment schedule is established other than by a written agreement entered into pursuant to this subpart. If the hearing official determines that the issues in dispute cannot be resolved solely by review of the written record, such as when the validity of the debt turns on the issue of credibility or veracity, an oral hearing may be provided.

(p) *Program official* means a supervisor or management official of the employee's service, staff office, cross-serviced agency, or other designated Agency officials.

(q) *Reconsideration* means a request by the employee to have a secondary review by GSA of the existence and/or amount of the debt, and/or the proposed offset schedule.

(r) *Salary offset* means an administrative offset to collect a debt under 5 U.S.C. 5514 by deduction(s) at one or more officially established pay intervals from the current pay account of an employee without his or her consent.

(s) *Waiver* means the cancellation, remission, forgiveness, or non-recovery of a debt or debt-related charge as permitted or required by law.

§ 105–56.004 Pre-offset notice.

An employee must be given written notice from the appropriate program official at least 30 days in advance of initiating a deduction from disposable pay informing him or her of—

(a) The nature, origin and amount of the indebtedness determined by GSA or a cross-serviced agency to be due;

(b) The intention of GSA to initiate proceedings to collect the debt through deductions from the employee's current disposable pay and other eligible payments;

(c) The amount (stated as a fixed dollar amount or as a percentage of pay, not to exceed 15 percent of disposable pay), frequency, proposed beginning date, and duration of the intended deductions;

(d) GSA's policy concerning how interest, penalties, and administrative costs are assessed (*see* 41 CFR part 105–55.017), including a statement that such assessments will be made unless excused under 31 U.S.C. 3717(h) and 31 CFR 901.9(g) and (h);

(e) The employee's right to inspect and copy GSA records relating to the debt, if records of the debt are not attached to the notice, or if the employee or his or her representative cannot personally inspect the records, the right to receive a copy of such records. Any costs associated with copying the records for the debtor will be borne by the debtor. The debtor must give a minimum of three (3) business days notice in advance to GSA of the date on which he or she intends to inspect and copy the records involved;

(f) A demand for repayment providing for an opportunity, under terms agreeable to GSA, for the employee to establish a schedule for the voluntary repayment of the debt by offset or to enter into a written repayment agreement of the debt in lieu of offset;

(g) The employee's right to request a waiver (*see* § 105–56.005(b) of this subpart);

(h) The employee's right to request reconsideration by the Agency of the existence and/or amount of the debt, and/or the proposed offset schedule;

(i) The employee's right to a pre-offset hearing conducted by a hearing official, arranged by the appropriate program official, if a request is filed as prescribed by § 105–56.006 of this subpart;

(j) The method and time period for requesting a hearing, including a statement that the timely filing of a request for hearing will stay the commencement of collection proceedings;

(k) The issuance of a final decision on the hearing, if requested, at the earliest practicable date, but no later than 60 days after the request for hearing is filed, unless the employee requests and the hearing official grants a delay in the proceedings;

(l) The risk that any knowingly false or frivolous statements, representations, or evidence may subject the employee to—

(1) Disciplinary procedures appropriate under 5 U.S.C. Chapter 75, 5 CFR part 752, or any other applicable statutes or regulations;

(2) Penalties under the False Claims Act, 31 U.S.C. 3729–3731, or any other applicable statutory authority; or

(3) Criminal penalties under 18 U.S.C. 286, 287, 1001, and 1002, or any other applicable statutory authority;

(m) Any other rights and remedies available to the employee under statutes or regulations governing the program for which the collection is being made;

(n) The employee's right to a prompt refund if amounts paid or deducted are later waived or found not owed, unless otherwise provided by law (*see* § 105–56.012 of this subpart);

(o) The specific address to which all correspondence must be directed regarding the debt.

§ 105–56.005 Employee response.

(a) *Voluntary repayment agreement.* An employee may submit a request to the appropriate program official who signed the pre-offset notice to enter into a written repayment agreement of the debt in lieu of offset. The request must be made within 7 days of receipt of notice under § 105–56.004 of this subpart. The agreement must be in writing, signed by both the employee and the appropriate program official making the notice, and a signed copy must be sent to the appropriate Finance Center serving the program activity. Acceptance of such an agreement is discretionary with the Agency. An employee who enters into such an agreement may, nevertheless, seek a waiver under paragraph (b) of this section.

(b) *Waiver.* An employee may submit a signed waiver request of overpayment of pay or allowances (*e.g.*, 5 U.S.C. 5584, 10 U.S.C. 2774, or 32 U.S.C. 716) to the GSA National Payroll Center (NPC). When an employee requests waiver

consideration, further collection on the debt may be suspended until a final administrative decision is made on the waiver request. During the period of any suspension, interest, penalties and administrative charges may be held in abeyance. GSA will not duplicate, for purposes of salary offset, any of the notices/procedures already provided the debtor prior to a request for waiver.

(c) *Reconsideration.* (1) An employee may seek a reconsideration of GSA's determination regarding the existence and/or amount of the debt. The request must be submitted to the appropriate program official indicated in the pre-offset notice, within 7 days of receipt of notice under § 105–56.004 of this subpart. Within 20 days of receipt of this notice, the employee must submit a detailed statement of reasons for reconsideration that must be accompanied by supporting documentation.

(2) An employee may request a reconsideration of the proposed offset schedule. The request must be submitted to the appropriate program official indicated in the pre-offset notice, within 7 days of receipt of notice under § 105–56.004 of this subpart. Within 20 days of receipt of this notice, the employee must submit an alternative repayment schedule accompanied by a detailed statement, supported by documentation, evidencing financial hardship resulting from GSA's proposed schedule. Acceptance of the request is at GSA's discretion. GSA will notify the employee in writing of its decision concerning the request to reduce the rate of an involuntary deduction.

§ 105–56.006 Petition for pre-offset hearing.

(a) The employee may request a pre-offset hearing by filing a written petition with the appropriate program official indicated in the pre-offset notice, within 15 days of receipt of the written notice. The petition must state why the employee believes GSA's determination concerning the existence and/or amount of the debt is in error, set forth any objections to the involuntary repayment schedule, and, if the employee is seeking an oral hearing, set forth reasons for an oral hearing. The timely filing of a petition will suspend the commencement of collection proceedings.

(b) The employee's petition or statement must be signed and dated by the employee.

(c) Petitions for hearing made after the expiration of the 15-day period may be accepted if the employee can show that the delay was because of circumstances beyond his or her control or because of failure to receive notice of the time limit.

(d) If the employee timely requests a pre-offset hearing or the timeliness is waived, the appropriate program official must—

(1) Promptly notify the GSBCA and arrange for a hearing official (*see* § 105–56.003(m) of this subpart). The hearing official will notify the employee whether he or she may have an oral or a "paper hearing," *i.e.*, a review on the written record (*see* 31 CFR 901.3(e)); and

(2) Provide the hearing official with a copy of all records on which the determination of the debt and any involuntary repayment schedule are based.

(e) If an oral hearing is to be held, the hearing official will notify the appropriate program official and the employee of the date, time, and location of the hearing. The debtor may choose to have the hearing conducted in the hearing official's office located at GSA Central Office, 1800 F St., NW., Washington, DC 20405, at another location designated by the hearing official, or by telephone. The debtor and any witnesses are responsible for any personal expenses incurred to arrive at a hearing official's office or other designated location (*see* § 105–56.007(c)). All telephonic charges incurred during a hearing will be the responsibility of GSA.

(f) If the employee later elects to have the hearing based only on the written submissions, notification must be given to the hearing official and the appropriate program official at least 3 days before the date of the oral hearing. The hearing official may waive the 3-day requirement for good cause.

(g) If either party, without good cause as determined by the hearing official, does not appear at a scheduled oral hearing, the hearing official will make a determination on the claim which takes into account that party's position as presented in writing only.

§ 105–56.007 Pre-offset oral hearing.

(a) The Agency, represented by the appropriate program official or a representative of the Office of General Counsel, and the employee, and/or his or her representative, will explain their case in the form of an oral presentation with reference to the documentation submitted. The employee may testify on his or her own behalf, subject to cross-examination. Other witnesses may be called to testify when the hearing official determines the testimony to be relevant and not redundant. All witnesses will testify under oath, with the oath having been administered by the hearing official. A written transcript of the hearing will be kept and made available to either party in the event of an appeal under the Administrative Procedure Act, 5 U.S.C. 701–706. Arrangements for the taking of the transcript will be made by the hearing official, and all charges associated with the taking of the transcript will be the responsibility of GSA.

(b) The hearing official will—

(1) Conduct a fair and impartial hearing; and

(2) Preside over the course of the hearing, maintain decorum, and avoid delay in the disposition of the hearing.

(c) The employee may represent himself or herself or may be represented by another person of his or her choice at the hearing. GSA will not compensate the employee for representation expenses, including hourly fees for attorneys, travel expenses, and costs for reproducing documents.

(d) Oral hearings are open to the public. However, the hearing official may close all or any portion of the hearing when doing so is in the best interests of the employee or the Agency.

(e) Oral hearings may be conducted by telephone at the request of the employee. All telephonic charges incurred during a hearing will be the responsibility of GSA.

(f) The hearing official may request written submissions and documentation from the employee and the Agency, in addition to considering evidence offered at the hearing.

§ 105–56.008 Pre-offset paper hearing.

If a hearing is to be held only upon written submissions, the hearing official will issue a decision based upon the record and responses submitted by both the Agency and the employee. *See* § 105–56.006 of this subpart. If either party, without good cause as determined by the hearing official, does not provide written submissions and documentation requested by the hearing official, the hearing official will make a determination on the claim without reference to such submissions and documentation.

§ 105–56.009 Written decision.

(a) Within 60 days of the employee's filing of a petition for a pre-offset hearing, the hearing official will issue a written decision setting forth—

(1) The facts supporting the nature and origin of the debt;

(2) The hearing official's analysis, findings and conclusions as to the employee's or Agency's grounds;

(3) The amount and validity of the debt; and

(4) The repayment schedule, if applicable.

(b) The hearing official's decision will be the final Agency action for the purposes of judicial review under the Administrative Procedure Act (5 U.S.C. 701 *et seq.*).

§ 105–56.110 Deductions.

(a) *When deductions may begin.* Deductions may begin upon the issuance of an Agency decision on a request for reconsideration or waiver (except as provided in § 105–56.005(b) of this subpart) or the issuance of a decision in a pre-offset hearing. In no event will deductions begin sooner than thirty days from the date of the notice letter. If the employee filed a petition for hearing with the appropriate program official before the expiration of the period provided for in § 105–56.006 of this subpart, then deductions will begin after the hearing official has provided the employee with a hearing and the final written decision. The appropriate program official will coordinate with the National Payroll Center to begin offset in accordance with the final written decision.

(b) *Retired or separated employees.* If the employee retires, resigns, or is terminated before collection of the indebtedness is completed, the remaining indebtedness will be offset from any subsequent payments of any nature. If the debt cannot be satisfied from subsequent payments, then the debt will be collected according to the procedures for administrative offset pursuant to § 105–55.011 of this subpart.

(c) *Types of collection.* A debt may be collected in one lump sum or in installments. Collection will be by lump sum unless the employee is able to demonstrate to the program official who signed the notice letter that he or she is financially unable to pay in one lump sum. In these cases, collection will be by installment deductions. Involuntary deductions from pay may not exceed 15 percent of disposable pay.

(d) *Methods of collection.* If the debt cannot be collected in one lump sum, the debt will be collected by deductions at officially established pay intervals from an employee's current pay account, unless the employee and the appropriate program official agree to an alternative repayment schedule. The alternative arrangement must be in writing and signed by both the employee and the appropriate program official.

(1) *Installment deductions.* Installment deductions will be made over the shortest period possible. The size and frequency of installment deductions will bear a reasonable relation to the size of the debt and the employee's ability to pay. However, the amount deducted for any period will not exceed 15 percent of the disposable pay from which the deduction is made, unless the employee has agreed in writing to the deduction of a greater amount. The installment payment normally will be sufficient in size and frequency to liquidate the debt in three (3) years or less, unless circumstances warrant a longer period. Installment payments of less than $100 per pay period will be accepted only in the most unusual circumstances.

(2) *Sources of deductions.* GSA will make salary deductions only from basic pay, special pay, incentive pay, retired pay, retainer pay, or in the case of an employee not entitled to basic pay, other authorized pay.

(e) *Non-Salary payments.* The receipt of collections from salary offsets does not preclude GSA from pursuing other debt collection remedies, including the offset of other Federal payments to satisfy delinquent non-tax debt owed to the United States. GSA will pursue, when appropriate, such debt collection remedies separately or in conjunction with salary offset.

(f) *Interest, penalties and administrative costs.* Interest, penalties and administrative costs on debts under this subpart will be assessed according to the provisions of § 105–55.016 of this subpart.

§ 105–56.011 Non-waiver of rights.

An employee's involuntary payment of all or any portion of a debt being collected under 5 U.S.C. 5514 will not be construed as a waiver of any rights which the employee may have under 5 U.S.C. 5514 or any other provision of contract or law unless there are statutory or contractual provisions to the contrary.

§ 105–56.012 Refunds.

(a) GSA will promptly refund to the employee any amounts offset under these regulations when a debt is waived or otherwise found not owing the United States (unless expressly prohibited by statute or regulation), or GSA is directed by an administrative or judicial order to refund amounts deducted from the employee's current pay or withheld from non-salary payments.

(b) Unless required by Federal law or contract, refunds under this subpart will not bear interest.

§ 105–56.013 Coordinating offset with another Federal agency.

GSA participates in the Centralized Salary Offset (CSO) program (*see* subparts B and C of this part). In those instances when CSO cannot be utilized (*i.e.*, when another agency does not participate in the program), the following procedures apply:

(a) *When GSA is the creditor agency.* When GSA is owed a debt by an employee of another agency, GSA will provide the paying agency with a written certification that the debtor owes GSA a debt and that GSA has complied with these regulations. This certification will include the amount and basis of the debt, the due date of the payment, or the beginning date of installment payments, if any.

(b) *When another agency is the creditor agency.* (1) GSA may use salary offset against one of its employees or cross-serviced agency employees who is indebted to another agency if requested to do so by that agency. Any such request must be accompanied by a certification from the requesting agency that the person owes the debt, the amount of the debt and that the employee has been given the procedural rights required by 5 U.S.C. 5514 and 5 CFR part 550, subpart K.

(2) The creditor agency must advise GSA of the number of installments to be collected, the amount of each installment, and the beginning date of the first installment if it is not the next established pay period.

(3) If GSA receives an improperly completed request, the creditor agency will be requested to supply the required information before any salary offset begins.

(4) If the claim procedures in paragraph (b)(1) of this section have been properly completed, deductions will begin on the next established pay period unless a different period is requested by the creditor agency.

(5) GSA will not review the merits of the creditor agency's determinations with respect to the amount and/or validity of the debt as stated in the debt claim certification.

(6) If the employee begins separation action before GSA collects the total debt due the creditor agency, the following actions will be taken:

(i) When possible, the balance owed the creditor agency will be liquidated from subsequent payments of any nature due the employee from GSA in accordance with 41 CFR part 105–55.011;

(ii) If the total amount of the debt cannot be recovered, GSA will certify the total amount collected to the creditor agency and the employee;

(iii) If GSA is aware that the employee is entitled to payments from the Civil Service Retirement and Disability Fund, or other similar payments, such

information will be provided to the creditor agency so a certified claim can be made against the payments.

(7) If the employee transfers to another Federal agency before GSA collects the total amount due the creditor agency, GSA will certify the total amount collected to the creditor agency and the employee. It is the responsibility of the creditor agency to ensure that collection action is resumed by the new employing agency.

Subpart B—Centralized Salary Offset (CSO) Procedures—GSA as Creditor Agency

§ 105–56.014 Purpose and scope.

(a) This subpart establishes procedures for the offset of Federal salary payments, through the Financial Management Service's (FMS) administrative offset program, to collect delinquent debts owed to the Federal Government. This process is known as centralized salary offset. Rules issued by the Office of Personnel Management contain the requirements Federal agencies must follow prior to conducting salary offset and the procedures for requesting offsets directly from a paying agency. *See* 5 CFR parts 550.1101 through 550.1108.

(b) This subpart implements the requirement under 5 U.S.C. 5514 (a)(1) that all Federal agencies, using a process known as centralized salary offset computer matching, identify Federal employees who owe delinquent non-tax debt to the United States. Centralized salary offset computer matching is the computerized comparison of delinquent debt records with records of Federal employees. The purpose of centralized salary offset computer matching is to identify those debtors whose Federal salaries should be offset to collect delinquent debts owed to the Federal Government.

(c) This subpart specifies the delinquent debt records and Federal employee records that must be included in the salary offset matching process. For purposes of this subpart, delinquent debt records consist of the debt information submitted to FMS for purposes of administrative offset as required under 31 U.S.C. 3716(c)(6). Since GSA submits debts to FMS for purposes of administrative offset, the Agency is not required to submit duplicate information for purposes of centralized salary offset computer matching under 5 U.S.C. 5514(a)(1) and this subpart.

(d) An interagency consortium was established to implement centralized salary offset computer matching on a Governmentwide basis as required under 5 U.S.C. 5514(a)(1). Federal employee records consist of records of Federal salary payments disbursed by members of the consortium.

(e) The receipt of collections from salary offsets does not preclude GSA from pursuing other debt collection remedies, including the offset of other Federal payments to satisfy delinquent non-tax debt owed to the United States. GSA will pursue, when appropriate, such debt collection remedies separately or in conjunction with salary offset.

§ 105–56.015 Definitions.

The following definitions apply to this subpart:

(a) *Administrative offset* means withholding funds payable by the United States to, or held by the United States for, a person to satisfy a debt owed by the payee.

(b) *Agency* means a department, agency or sub-agency, court, court administrative office, or instrumentality in the executive, judicial, or legislative branch of the Federal government, including government corporations.

(c) *Centralized salary offset computer matching* means the computerized comparison of Federal employee records with delinquent debt records to identify Federal employees who owe such debts.

(d) *Consortium* means an interagency group established by the Secretary of the Treasury to implement centralized salary offset computer matching. The group includes all agencies that disburse Federal salary payments.

(e) *Creditor agency* means any agency that is owed a debt, including a debt collection center when acting on behalf of a creditor agency in matters pertaining to the collection of a debt.

(f) *Debt* means any amount of money, funds, or property that has been determined by an appropriate official of the Federal government to be owed to the United States by a person, including debt administered by a third party acting as an agent for the Federal Government. For purposes of this subpart, the term "debt" does not include debts arising under the Internal Revenue Code of 1986 (26 U.S.C. 1 *et seq.*).

(g) *Delinquent debt record* means information about a past-due, legally enforceable debt, submitted by GSA to FMS for purposes of administrative offset (including salary offset) in accordance with the provisions of 31 U.S.C. 3716(c)(6) and applicable regulations. Debt information includes the amount and type of debt and the debtor's name, address, and taxpayer identifying number.

(h) *Disbursing official* means an officer or employee designated to disburse Federal salary payments. This includes all disbursing officials of Federal salary payments, including but not limited to, disbursing officials of the Department of the Treasury, the Department of Defense, the United States Postal Service, any government corporation, and any disbursing official of the United States designated by the Secretary.

(i) *Disposable pay* means the amount that remains from an employee's Federal pay after required deductions for Federal, State and local income taxes; Social Security taxes, including Medicare taxes; Federal retirement programs, including contributions to the Thrift Savings Plan (TSP); premiums for life (excluding amounts deducted for supplemental coverage) and health insurance benefits; Internal Revenue Service (IRS) tax levies; and such other deductions that are required by law to be withheld.

(j) *Federal employee* means a current employee of an agency, including a current member of the Armed Forces or a Reserve of the Armed Forces (Reserves), employees of the United States Postal Service, and seasonal and temporary employees.

(k) *Federal employee records* means records of Federal salary payments that a paying agency has certified to a disbursing official for disbursement.

(l) *FMS* means the Financial Management Service, a bureau of the Department of the Treasury.

(m) For the purposes of the standards in this subpart, unless otherwise stated, the term "Administrator" refers to the Administrator of General Services or the Administrator's delegate.

(n) For the purposes of the standards in this subpart, unless otherwise stated, the terms "GSA" and "Agency" are synonymous and interchangeable.

(o) *Pay* means basic pay, special pay, incentive pay, retired pay, retainer pay, or in the case of an individual not entitled to basic pay, other authorized pay.

(p) *Paying agency* means the agency that employs the Federal employee who owes the debt and authorizes the payment of his or her current pay. A paying agency also includes an agency that performs payroll services on behalf of the employing agency.

(q) *Salary offset* means administrative offset to collect a debt owed by a Federal employee from the current pay account of the employee.

(r) *Secretary* means the Secretary of the Treasury or his or her delegate.

(s) *Taxpayer identifying number* means the identifying number described under section 6109 of the Internal Revenue Code of 1986 (26 U.S.C. 6109). For an individual, the taxpayer identifying number is the individual's social security number.

§ 105–56.016 GSA participation.

(a) As required under 5 U.S.C. 5514(a)(1), GSA must participate at least annually in centralized salary offset computer matching. To meet this requirement, GSA will notify FMS of all past-due, legally enforceable debts delinquent for more than 180 days for purposes of administrative offset, as required under 31 U.S.C. 3716(c)(6). Additionally, GSA may notify FMS of past-due, legally enforceable debts delinquent for less than 180 days for purposes of administrative offset.

(b) Prior to submitting a debt to FMS for purposes of collection by administrative offset, including salary offset, GSA will provide written certification to FMS that—

(1) The debt is past-due and legally enforceable in the amount submitted to FMS and that GSA will ensure that collections (other than collections through offset) are properly credited to the debt;

(2) Except in the case of a judgment debt or as otherwise allowed by law, the debt is referred for offset within ten years after GSA's right of action accrues;

(3) GSA has complied with the provisions of 31 U.S.C. 3716 (administrative offset) and related regulations including, but not limited to, the provisions requiring that GSA provide the debtor with applicable notices and opportunities for a review of the debt; and

(4) GSA has complied with the provisions of 5 U.S.C. 5514 (salary offset) and related regulations including, but not limited to, the provisions requiring that GSA provide the debtor with applicable notices and opportunities for a hearing.

(c) FMS may waive the certification requirement set forth in paragraph (b)(4) of this section as a prerequisite to submitting the debt to FMS. If FMS waives the certification requirement, before an offset occurs, GSA will provide the Federal employee with the notices and opportunities for a hearing as required by 5 U.S.C. 5514 and applicable regulations, and will certify to FMS that the requirements of 5 U.S.C. 5514 and applicable regulations have been met.

(d) GSA will notify FMS immediately of any payments credited by GSA to the debtor's account, other than credits for amounts collected by offset, after submission of the debt to FMS. GSA will notify FMS once the debt is paid in its entirety. GSA will also notify FMS immediately of any change in the status of the legal enforceability of the debt, for example, if the Agency receives notice that the debtor has filed for bankruptcy protection.

§ 105–56.017 Centralized salary offset computer match.

(a) Delinquent debt records will be compared with Federal employee records maintained by members of the consortium or paying agencies. The records will be compared to identify Federal employees who owe delinquent debts for purposes of collecting the debt by administrative offset. A match will occur when the taxpayer identifying number and name of a Federal employee are the same as the taxpayer identifying number and name of a debtor.

(b) As authorized by the provisions of 31 U.S.C. 3716(f), FMS, under a delegation of authority from the Secretary, has waived certain requirements of the Computer Matching and Privacy Protection Act of 1988, 5 U.S.C. 552a, as amended, for administrative offset, including salary offset, upon written certification by the Administrator, or the Administrator's delegate, that the requirements of 31 U.S.C. 3716(a) have been met. Specifically, FMS has waived the requirements for a computer matching agreement contained in 5 U.S.C. 552a(o) and for post-match notice and verification contained in 5 U.S.C. 552a(p). GSA will provide certification in accordance with the provisions of § 105–56.016(b)(3) of this subpart.

§ 105–56.018 Salary offset.

When a match occurs and all other requirements for offset have been met, as required by the provisions of 31 U.S.C. 3716(c), the disbursing official will offset the Federal employee's salary payment to satisfy, in whole or part, the debt owed by the employee. Alternatively, the paying agency, on behalf of the disbursing official, may deduct the amount of the offset from an employee's disposable pay before the employee's salary payment is certified to a disbursing official for disbursement.

§ 105–56.019 Offset amount.

(a) The minimum dollar amount referred for offset under this subpart is $100.

(b) The amount offset from a salary payment under this subpart will be the lesser of—

(1) The amount of the debt, including any interest, penalties and administrative costs; or

(2) Up to 15 percent of the debtor's disposable pay.

(c) Alternatively, the amount offset may be an amount agreed upon, in writing, by the debtor and GSA.

(d) Offsets will continue until the debt, including any interest, penalties, and administrative costs, is paid in full or otherwise resolved to the satisfaction of GSA.

§ 105–56.020 Priorities.

(a) A levy pursuant to the Internal Revenue Code of 1986 (26 U.S.C. 1 *et seq.*) takes precedence over other deductions under this subpart.

(b) When a salary payment may be reduced to collect more than one debt, amounts offset under this subpart will be applied to a debt only after amounts offset have been applied to satisfy past due child support debts assigned to a State pursuant to the Social Security Act under 42 U.S.C. 602(a)(26) or 671(a)(17).

§ 105–56.021 Notice.

(a) Before offsetting a salary payment, the disbursing official, or the paying agency on behalf of the disbursing official, will notify the Federal employee in writing of the date deductions from salary will commence and of the amount of such deductions.

(b)(1) When an offset occurs under this subpart, the disbursing official, or the paying agency on behalf of the disbursing official, will notify the Federal employee in writing that an offset has occurred including—

(i) A description of the payment and the amount of offset taken;

(ii) The identity of GSA as the creditor agency requesting the offset; and

(iii) A contact point within GSA that will handle concerns regarding the offset.

(2) The information described in paragraphs (b)(1)(ii) and (b)(1)(iii) of this section does not need to be provided to the Federal employee when the offset occurs if such information was included in a prior notice from the disbursing official or paying agency.

(c) The disbursing official will advise GSA of the names, mailing addresses, and taxpayer identifying numbers of the debtors from whom amounts of past-due, legally enforceable debt were collected and of the amounts collected from each debtor for GSA. The disbursing official will not advise GSA of the source of payment from which the amounts were collected.

§ 105–56.022 Fees.

Agencies that perform centralized salary offset computer matching services may charge a fee sufficient to cover the full cost for such services. In addition, FMS, or a paying agency acting on behalf of FMS, may charge a fee

sufficient to cover the full cost of implementing the administrative offset program. FMS may deduct the fees from amounts collected by offset or may bill GSA. Fees charged for offset will be based on actual administrative offsets completed and may be added to the debt as an administrative cost.

§ 105–56.023 Disposition of amounts collected.

(a) The disbursing official conducting the offset will transmit amounts collected for debts, less fees charged under § 105–56.022 of this subpart, to GSA.

(b) If an erroneous offset payment is made to GSA, the disbursing official will notify GSA that an erroneous offset payment has been made.

(1) The disbursing official may deduct the amount of the erroneous offset payment from future amounts payable to GSA; or

(2) Alternatively, upon the disbursing official's request, GSA will promptly return to the disbursing official or the affected payee an amount equal to the amount of the erroneous payment (without regard to whether any other amounts payable to GSA have been paid).

(i) The disbursing official and GSA will adjust the debtor records appropriately.

(ii) Unless required by Federal law or contract, refunds under this subpart will not bear interest.

Subpart C—Centralized Salary Offset (CSO) Procedures—GSA as Paying Agency

§ 105–56.024 Purpose and scope.

(a) This subpart establishes procedures for the offset of Federal salary payments, through the Financial Management Service's (FMS) administrative offset program, to collect delinquent debts owed to the Federal Government. This process is known as salary offset. Rules issued by the Office of Personnel Management contain the requirements Federal agencies must follow prior to conducting salary offset and the procedures for requesting offsets directly from a paying agency. *See* 5 CFR parts 550.1101 through 550.1108.

(b) This subpart implements the requirement under 5 U.S.C. 5514(a)(1) that all Federal agencies, using a process known as centralized salary offset computer matching, identify Federal employees who owe delinquent non-tax debt to the United States. Centralized salary offset computer matching is the computerized comparison of delinquent debt records with records of Federal employees. The purpose of centralized salary offset computer matching is to identify those debtors whose Federal salaries should be offset to collect delinquent debts owed to the Federal Government.

(c) This subpart specifies the delinquent debt records and Federal employee records that must be included in the salary offset matching process. For purposes of this subpart, delinquent debt records consist of the debt information submitted to FMS for purposes of administrative offset as required under 31 U.S.C. 3716(c)(6).

(d) An interagency consortium was established to implement centralized salary offset computer matching on a Governmentwide basis as required under 5 U.S.C. 5514(a)(1). Federal employee records consist of records of Federal salary payments disbursed by members of the consortium.

§ 105–56.025 Definitions.

The following definitions apply to this subpart:

(a) *Administrative offset* means withholding funds payable by the United States to, or held by the United States for, a person to satisfy a debt owed by the payee.

(b) *Agency* means a department, agency or sub-agency, court, court administrative office, or instrumentality in the executive, judicial, or legislative branch of the Federal Government, including Government corporations.

(c) *Centralized salary offset computer matching* means the computerized comparison of Federal employee records with delinquent debt records to identify Federal employees who owe such debts.

(d) *Consortium* means an interagency group established by the Secretary of the Treasury to implement centralized salary offset computer matching. The group includes all agencies that disburse Federal salary payments.

(e) *Creditor agency* means any agency that is owed a debt, including a debt collection center when acting on behalf of a creditor agency in matters pertaining to the collection of a debt.

(f) *Cross-serviced agency* means an arrangement between GSA and another agency whereby GSA provides financial support services to the other agency on a reimbursable basis. Financial support services can range from simply providing computer and software timesharing services to full-service administrative processing.

(g) *Debt* means any amount of money, funds, or property that has been determined by an appropriate official of the Federal Government to be owed to the United States by a person, including debt administered by a third party acting as an agent for the Federal Government. For purposes of this subpart, the term "debt" does not include debts arising under the Internal Revenue Code of 1986 (26 U.S.C. 1 *et seq.*).

(h) *Delinquent debt record* means information about a past-due, legally enforceable debt, submitted to GSA by FMS for purposes of administrative offset (including salary offset) in accordance with the provisions of 31 U.S.C. 3716(c)(6) and applicable regulations. Debt information includes the amount and type of debt and the debtor's name, address, and taxpayer identifying number.

(i) *Disbursing official* means an officer or employee designated to disburse Federal salary payments. This includes all disbursing officials of Federal salary payments, including but not limited to, disbursing officials of the Department of the Treasury, the Department of Defense, the United States Postal Service, any government corporation, and any disbursing official of the United States designated by the Secretary.

(j) *Disposable pay* means the amount that remains from an employee's Federal pay after required deductions for Federal, State and local income taxes; Social Security taxes, including Medicare taxes; Federal retirement programs, including contributions to the Thrift Savings Plan (TSP); premiums for life (excluding amounts deducted for supplemental coverage) and health insurance benefits; Internal Revenue Service (IRS) tax levies; and such other deductions that are required by law to be withheld.

(k) *Employee* means any individual employed by GSA or a cross-serviced agency of the executive, legislative, or judicial branches of the Federal Government, including Government corporations.

(l) *Federal employee records* means records of Federal salary payments that a paying agency has certified to a disbursing official for disbursement.

(m) *FMS* means the Financial Management Service, a bureau of the Department of the Treasury.

(n) *Pay* means basic pay, special pay, incentive pay, retired pay, retainer pay, or in the case of an individual not entitled to basic pay, other authorized pay.

(o) *Paying agency* means the agency that employs the Federal employee who owes the debt and authorizes the payment of his or her current pay. A paying agency also includes an agency that performs payroll services on behalf of the employing agency.

(p) *Salary offset* means administrative offset to collect a debt owed by a Federal employee from the current pay account of the employee.

(q) *Secretary* means the Secretary of the Treasury or his or her delegate.

(r) *Taxpayer identifying number* means the identifying number described under section 6109 of the Internal Revenue Code of 1986 (26 U.S.C. 6109). For an individual, the taxpayer identifying number is the individual's social security number.

§ 105–56.026 GSA participation.

(a) As required under 5 U.S.C. 5514(a)(1), creditor agencies must participate at least annually in centralized salary offset computer matching. To meet this requirement, creditor agencies will notify FMS of all past-due, legally enforceable debts delinquent for more than 180 days for purposes of administrative offset, as required under 31 U.S.C. 3716(c)(6). Additionally, creditor agencies may notify FMS of past-due, legally enforceable debts delinquent for less than 180 days for purposes of administrative offset.

(b) Prior to submitting a debt to FMS for purposes of collection by administrative offset, including salary offset, creditor agencies will provide written certification to FMS that—

(1) The debt is past-due and legally enforceable in the amount submitted to FMS and that the creditor agency will ensure that collections (other than collections through offset) are properly credited to the debt;

(2) Except in the case of a judgment debt or as otherwise allowed by law, the debt is referred for offset within ten years after the creditor agency's right of action accrues;

(3) The creditor agency has complied with the provisions of 31 U.S.C. 3716 (administrative offset) and related regulations including, but not limited to, the provisions requiring the creditor agency to provide the debtor with applicable notices and opportunities for a review of the debt; and

(4) The creditor agency has complied with the provisions of 5 U.S.C. 5514 (salary offset) and related regulations including, but not limited to, the provisions requiring the creditor agency to provide the debtor with applicable notices and opportunities for a hearing.

(c) FMS may waive the certification requirement set forth in paragraph (b)(4) of this section as a prerequisite to submitting the debt to FMS. If FMS waives the certification requirement, before an offset occurs, the creditor agency will provide the Federal employee with the notices and opportunities for a hearing as required by 5 U.S.C. 5514 and applicable regulations, and will certify to FMS that the requirements of 5 U.S.C. 5514 and applicable regulations have been met.

(d) The creditor agency will notify FMS immediately of any payments credited by the agency to the debtor's account, other than credits for amounts collected by offset, after submission of the debt to FMS. The creditor agency will notify FMS once the debt is paid in its entirety. The creditor agency will also notify FMS immediately of any change in the status of the legal enforceability of the debt, for example, if the agency receives notice that the debtor has filed for bankruptcy protection.

§ 105–56.027 Centralized salary offset computer match.

(a) Delinquent debt records will be compared with Federal employee records maintained by members of the consortium or paying agencies. The records will be compared to identify Federal employees who owe delinquent debts for purposes of collecting the debt by administrative offset. A match will occur when the taxpayer identifying number and name of a Federal employee are the same as the taxpayer identifying number and name of a debtor.

(b) As authorized by the provisions of 31 U.S.C. 3716(f), FMS, under a delegation of authority from the Secretary, has waived certain requirements of the Computer Matching and Privacy Protection Act of 1988, 5 U.S.C. 552a, as amended, for administrative offset, including salary offset, upon written certification by the creditor agency, that the requirements of 31 U.S.C. 3716(a) have been met. Specifically, FMS has waived the requirements for a computer matching agreement contained in 5 U.S.C. 552a(o) and for post-match notice and verification contained in 5 U.S.C. 552a(p).

§ 105–56.028 Salary offset.

When a match occurs and all other requirements for offset have been met, as required by the provisions of 31 U.S.C. 3716(c), the disbursing official will offset the GSA employee's or cross-serviced agency employee's salary payment to satisfy, in whole or part, the debt owed by the employee. Alternatively, the GSA National Payroll Center, serving as the paying agency, on behalf of the disbursing official, may deduct the amount of the offset from an employee's disposable pay before the employee's salary payment is certified to a disbursing official for disbursement.

§ 105–56.029 Offset amount.

(a) The minimum dollar amount of salary offset under this subpart is $100.

(b) The amount offset from a salary payment under this subpart will be the lesser of—

(1) The amount of the debt, including any interest, penalties and administrative costs; or

(2) Up to 15 percent of the debtor's disposable pay.

(c) Alternatively, the amount offset may be an amount agreed upon, in writing, by the debtor and the creditor agency.

(d) Offsets will continue until the debt, including any interest, penalties, and administrative costs, is paid in full or otherwise resolved to the satisfaction of the creditor agency.

§ 105–56.030 Priorities.

GSA, acting as the paying agency, on behalf of the disbursing official, will apply the order of precedence when processing debts identified by the centralized salary offset computer match program as follows:

(a) A levy pursuant to the Internal Revenue Code of 1986 (26 U.S.C. 1 *et seq.*) takes precedence over other deductions under this subpart.

(b) When a salary payment may be reduced to collect more than one debt, amounts offset under this subpart will be applied to a debt only after amounts offset have been applied to satisfy past due child support debts assigned to a State pursuant to the Social Security Act under 42 U.S.C. 602(a)(26) or 671(a)(17).

§ 105–56.031 Notice.

(a) The disbursing official will provide GSA an electronic list of the names, mailing addresses, and taxpayer identifying numbers of the debtors from whom amounts of past-due, legally enforceable debt are due other Federal agencies. The disbursing official will identify the creditor agency name and a point of contact that will handle concerns regarding the debt.

(b) Before offsetting a salary payment, the GSA National Payroll Center, acting as the paying agency on behalf of the disbursing official, will notify the debtor in writing of the date deductions from salary will commence and of the amount of such deductions.

(c)(1) When an offset occurs under this subpart, the disbursing official, or the GSA National Payroll Center on behalf of the disbursing official, will notify the debtor in writing that an offset has occurred including—

(i) A description of the payment and the amount of offset taken;

(ii) The identity of the creditor agency identified by the disbursing official requesting the offset; and

(iii) A contact point at the creditor agency identified by the disbursing official that will handle concerns regarding the offset.

(2) The information described in paragraphs (c)(1)(ii) and (c)(1)(iii) of this section does not need to be provided to the debtor when the offset occurs if such information was included in a prior notice from the disbursing official or the creditor agency.

§ 105–56.032 Fees.

GSA, while performing centralized salary offset computer matching services, may charge a fee sufficient to cover the full cost for such services. In addition, FMS, or GSA acting as the paying agency on behalf of FMS, may charge a fee sufficient to cover the full cost of implementing the administrative offset program. FMS may deduct the fees from amounts collected by offset or may bill the creditor agency. Fees charged for offset will be based on actual administrative offsets completed.

§ 105–56.033 Disposition of amounts collected.

(a) The disbursing official conducting the offset will transmit amounts collected for debts, less fees charged under § 105–56.032 of this subpart, to the creditor agency.

(b) If an erroneous offset payment is made to the creditor agency, the disbursing official will notify the creditor agency that an erroneous offset payment has been made.

(1) The disbursing official may deduct the amount of the erroneous offset payment from future amounts payable to the creditor agency; or

(2) Alternatively, upon the disbursing official's request, the creditor agency will promptly return to the disbursing official or the affected payee an amount equal to the amount of the erroneous payment (without regard to whether any other amounts payable to the creditor agency have been paid). The disbursing official and the creditor agency will adjust the debtor records appropriately.

[FR Doc. 03–30408 Filed 12–9–03; 8:45 am]
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GENERAL SERVICES ADMINISTRATION

41 CFR Part 105–57

[GSPMR Amendment 2003–03; GSPMR Case 2003–105–2]

RIN 3090–AH85

Administrative Wage Garnishment

AGENCY: Office of Finance, General Services Administration (GSA).

ACTION: Final rule.

SUMMARY: The General Services Administration (GSA) is amending its regulations to implement the administrative wage garnishment provisions contained in the Debt Collection Improvement Act of 1996 (DCIA). Wage garnishment is a process whereby an employer withholds amounts from an employee's wages and pays those amounts to the employee's creditor in satisfaction of a withholding order. The DCIA authorizes Federal agencies to administratively garnish the disposable pay of an individual to collect delinquent non-tax debts owed to the United States in accordance with regulations issued by the Secretary of the Treasury.

This part was previously titled Collection of Debts by Tax Refund Offset. Effective January 1, 1999, the Department of the Treasury started to conduct the tax refund offset program as part of the centralized offset program, known as the Treasury Offset Program (TOP), operated by the Financial Management Service (FMS), a bureau of the Department of the Treasury. Since GSA has a cross-servicing agreement with FMS, which includes the TOP, the Collection of Debts by Tax Refund Offset is no longer valid and is rescinded and replaced with the new part, Administrative Wage Garnishment.

DATES: *Effective date:* December 10, 2003.

FOR FURTHER INFORMATION CONTACT: The Regulatory Secretariat, Room 4035, GS Building, Washington, DC 20405, at (202) 208–7312 for information pertaining to status or publication schedules. For clarification of content, contact Mr. Michael J. Kosar, General Services Administration, Office of Finance (BCD), Office of the Chief Financial Officer, Room 3121, 1800 F Street, NW., Washington, DC 20405, telephone (202) 501–2029; electronic mail at *mike.kosar@gsa.gov*. Please cite GSPMR Amendment 2003–03, GSPMR case 2003–105–2.

SUPPLEMENTARY INFORMATION:

A. Background

This rule implements the wage garnishment provision in section 31001(o) of the Debt Collection Improvement Act of 1996 (DCIA), Public Law 104–134, 110 Stat. 1321–358 (Apr. 26, 1996), codified at 31 U.S.C. 3720D. Wage garnishment is a process whereby an employer withholds amounts from an employee's wages and pays those amounts to the employee's creditor in satisfaction of a withholding order. The DCIA authorizes Federal agencies to administratively garnish up to 15 percent of the disposable pay of a debtor to satisfy delinquent non-tax debt owed to the United States. Prior to the enactment of the DCIA, agencies were required to obtain a court judgment before garnishing the wages of non-Federal employees. Section 31001(o) of the DCIA preempts State laws that prohibit wage garnishment or otherwise govern wage garnishment procedures.

As authorized by the DCIA, a Federal agency collecting delinquent non-tax debt may administratively garnish a delinquent debtor's wages in accordance with regulations promulgated by the Secretary of the Treasury. The Financial Management Service (FMS), a bureau of the Department of the Treasury, is responsible for promulgating the regulations implementing this and other debt collection tools established by the DCIA.

In accordance with the requirements of the DCIA, this rule establishes the following rules and procedures:

1. *Notice.* At least 30 days before GSA initiates garnishment proceedings, the Agency will give the debtor written notice informing him or her of the nature and amount of the debt, the intention of GSA to collect the debt through deductions from pay, and an explanation of the debtor's rights regarding the proposed action.

2. *Rights of the Debtor.* GSA will provide the debtor with an opportunity to inspect and copy records related to the debt, to establish a repayment agreement, and to receive a hearing concerning the existence and/or amount of the debt and/or the terms of a repayment schedule. A hearing will be held prior to the issuance of a withholding order if the debtor's request is received timely. For hearing requests that are not received in the specified time frame, GSA will not delay issuance of the withholding order prior to conducting a hearing. GSA will not garnish the wages of a debtor who has been involuntarily separated from employment until that individual has been reemployed continuously for at least 12 months. The debtor bears the burden of informing GSA of the circumstances surrounding an involuntary separation from employment.

3. *Employer's Responsibilities.* GSA will send to the employer of a delinquent debtor a wage garnishment order directing that the employer pay a portion of the debtor's wages to GSA. This rule requires the debtor's employer to certify certain payment information about the debtor. Employers will not be required to vary their normal pay cycles

in order to comply with the garnishment order.

The DCIA prohibits employers from taking disciplinary actions against the debtor based on the fact that the debtor's wages are subject to administrative garnishment. In addition, the DCIA authorizes GSA to sue an employer for amounts not properly withheld from the wages payable to the debtor.

Discussion of Comments. In response to its Notice of Proposed Rule (NPR) concerning Administrative Wage Garnishment (68 FR 41290, July 11, 2003), GSA received one internal comment and one from another agency. A review of the comments is provided in the following comment analysis, including a discussion of GSA's determination whether to incorporate specific suggestions in the final rule. The comment analysis is organized by reference to the paragraph in the NPR.

NPR Sec. 105–57.005, Hearing. One commenter suggested that transcripts taken during the course of oral hearing proceedings be arranged by the hearing official and all charges associated with the taking of the transcript be the responsibility of GSA. The final rule incorporates this suggestion.

NPR Sec. 105–57.008, Amounts withheld. One commenter questioned if the NPR has the same net base rule as the current Consumer Credit Protection Act (CCPA) limitation of 15 percent of an eligible employee's disposable earnings, but not below $154.50 net per week. Under the NPR and the final rule, the amount of garnishment is the lesser of the amount indicated on the garnishment order up to 15 percent of the debtor's disposable pay or the amount set forth in 15 U.S.C. 1673(a)(2), which is the amount by which a debtor's disposable pay exceeds an amount equal to thirty times the minimum wage. The current minimum wage is $5.15 per hour, times thirty equals $154.50.

B. Executive Order 12866

This rule is not a significant regulatory action as defined in Executive Order 12866. It is hereby certified this regulation, including the certification referenced in this final rule (see § 105–57.007 of this part), will not have a significant economic impact on a substantial number of small entities. Although a substantial number of small entities will be subject to this regulation and to the certification requirement in this rule, the requirements will not have a significant economic impact on these entities. Employers of delinquent debtors must certify certain information about the debtor such as the debtor's employment status and earnings. This information is contained in the employer's payroll records. Therefore, it will not take a significant amount of time or result in a significant cost for an employer to complete the certification form. Even if an employer is served withholding orders on several employees over the course of a year, the cost imposed on the employer to complete the certifications would not have a significant economic impact on that entity. Employers are not required to vary their normal pay cycles in order to comply with a withholding order issued pursuant to this rule.

C. Regulatory Flexibility Act

It is hereby certified this regulation will not have a significant economic impact on a substantial number of small entities because the regulation either (1) results in greater flexibility for GSA to streamline debt collection regulations, or (2) reflects the statutory language contained in the DCIA. Accordingly, a Regulatory Flexibility Analysis is not required.

D. Executive Order 13132

This regulation will not have a substantial direct effect on the states, on the relationship between the national government and the states, or on distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 13132, it is determined this regulation does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

E. Unfunded Mandates Reform Act of 1995

This regulation will not result in the expenditure by state, local and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one (1) year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

F. Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 251 of the Small Business Regulatory Enforcement Act, 5 U.S.C. § 804. This rule will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic or export markets.

G. Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by the Office of Management and Budget under the Paperwork Reduction Act, 44 U.S.C. 3507 *et seq.*

List of Subjects in 41 CFR Part 105–57

Claims, Government public contracts and property management, Income taxes.

Dated: December 2, 2003.

Stephen A. Perry,

Administrator of General Services.

For the reasons set out in the preamble, GSA amends 41 CFR chapter 105 as follows:

CHAPTER 105 [Amended]

1. Revise Part 105–57 to read as follows:

PART 105–57—ADMINISTRATION WAGE GARNISHMENT

Sec.

105–57.001 Purpose, authority and scope.
105–57.002 Definitions.
105–57.003 General rule.
105–57.004 Notice requirements.
105–57.005 Hearing.
105–57.006 Wage garnishment order.
105–57.007 Certification by employer.
105–57.008 Amounts withheld.
105–57.009 Exclusions from garnishment.
105–57.010 Financial hardship.
105–57.011 Ending garnishment.
105–57.012 Actions prohibited by the employer.
105–57.013 Refunds.
105–57.014 Right of action.

Authority: 5 U.S.C. §§ 552–553, 31 U.S.C. § 3720D, 31 CFR part 285.11.

§ 105–57.001 Purpose, authority and scope.

(a) This part provides standards and procedures for GSA to collect money from a debtor's disposable pay by means of administrative wage garnishment to satisfy delinquent non-tax debt owed to the United States.

(b) These standards and procedures are authorized under the wage garnishment provisions of the Debt Collection Improvement Act of 1996, codified at 31 U.S.C. 3720D, and Department of the Treasury Wage Garnishment Regulations at 31 CFR 285.11.

(c) *Scope.* (1) This part applies to any GSA program that gives rise to a delinquent non-tax debt owed to the United States and that pursues recovery of such debt.

(2) This part will apply notwithstanding any provision of State law.

(3) Nothing in this part precludes the compromise of a debt or the suspension or termination of collection action in accordance with applicable law. See, for example, the Federal Claims Collection Standards (FCCS), 31 CFR parts 900 through 904.

(4) The receipt of payments pursuant to this part does not preclude GSA from pursuing other debt collection remedies, including the offset of Federal payments to satisfy delinquent non-tax debt owed to the United States.

GSA may pursue such debt collection remedies separately or in conjunction with administrative wage garnishment.

(5) This part does not apply to the collection of delinquent non-tax debt owed to the United States from the wages of Federal employees from their Federal employment. Federal pay is subject to the Federal salary offset procedures set forth in 5 U.S.C. 5514 and other applicable laws. GSA standards and procedures for offsetting Federal wage payments are stated in 41 CFR part 105–56.

(6) Nothing in this part requires GSA to duplicate notices or administrative proceedings required by contract or other laws or regulations.

§ 105–57.002 Definitions.

(a) *Administrative offset*, as defined in 31 U.S.C. 3701(a)(1), means withholding funds payable by the United States (including funds payable by the United States on behalf of a State government) to, or held by the United States for, a person to satisfy a claim.

(b) *Business day* means Monday through Friday, excluding Federal legal holidays. For purposes of computation, the last day of the period will be included unless it is a Federal legal holiday.

(c) *Day* means calendar day. For purposes of computation, the last day of the period will be included unless it is a Saturday, a Sunday, or a Federal legal holiday.

(d) *Debtor* means an individual who owes a delinquent non-tax debt to the United States.

(e) *"Delinquent" or "past-due" non-tax debt* means any non-tax debt that has not been paid by the date specified in GSA's initial written demand for payment or applicable agreement or instrument (including a post-delinquency payment agreement), unless other satisfactory payment arrangements have been made.

(f) *Disposable pay* means that part of the debtor's compensation (including, but not limited to, salary, bonuses, commissions, and vacation pay) from an employer remaining after the deduction of health insurance premiums and any amounts required by law to be withheld. For purposes of this part, "amounts required by law to be withheld" include amounts for deductions such as social security taxes and withholding taxes, but do not include any amount withheld pursuant to a court order.

(g) *Employer* means a person or entity that employs the services of others and that pays their wages or salaries. The term employer includes, but is not limited to, State and local Governments, but does not include an agency of the Federal Government as defined by 31 CFR 285.11(c).

(h) *Evidence of service* means information retained by GSA indicating the nature of the document to which it pertains, the date of submission of the document, and to whom the document is being submitted. Evidence of service may be retained electronically or otherwise, so long as the manner of retention is sufficient for evidentiary purposes.

(i) *Financial hardship* means an inability to meet basic living expenses for goods and services necessary for the survival of the debtor and his or her spouse and dependents. *See* § 105–57.010 of this part.

(j) For the purposes of the standards in this part, unless otherwise stated, the term "Administrator" refers to the Administrator of General Services or the Administrator's delegate.

(k) For the purposes of the standards in this part, the terms "claim" and "debt" are synonymous and interchangeable.

They refer to an amount of money, funds, or property that has been determined by GSA to be due the United States from any person, organization, or entity, except another Federal agency, from sources which include loans insured or guaranteed by the United States and all other amounts due the United States from fees, leases, rents, royalties, services, sales of real or personal property, overpayments, penalties, damages, interest, fines and forfeitures and all other similar sources, including debt administered by a third party as an agent for the Federal Government. For the purposes of administrative offset under 31 U.S.C. 3716, the terms "claim" and "debt" include an amount of money, funds, or property owed by a person to a State (including past-due support being enforced by a State), the District of Columbia, American Samoa, Guam, the United States Virgin Islands, the Commonwealth of the Northern Mariana Islands, or the Commonwealth of Puerto Rico.

(l) For the purposes of the standards in this part, unless otherwise stated, the terms "GSA" and "Agency" are synonymous and interchangeable.

(m) For the purposes of the standards in this part, unless otherwise stated, "Secretary" means the Secretary of the Treasury or the Secretary's delegate.

(n) *Garnishment* means the process of withholding amounts from an employee's disposable pay and the paying of those amounts to GSA in satisfaction of a withholding order.

(o) *Hearing* means a review of the documentary evidence concerning the existence and/or amount of a debt, and/or the terms of a repayment schedule, provided such repayment schedule is established other than by a written agreement entered into pursuant to this part. If the hearing official determines that the issues in dispute cannot be resolved solely by review of the written record, such as when the validity of the debt turns on the issue of credibility or veracity, an oral hearing may be provided.

(p) *Hearing official* means a Board Judge of the GSA Board of Contract Appeals (GSBCA).

(q) *Withholding order* means "Wage Garnishment Order (SF 329B)", issued by GSA. For purposes of this part, the terms "wage garnishment order" and "garnishment order" have the same meaning as "withholding order."

(r) In this part, words in the plural form shall include the singular and vice versa, and words signifying the masculine gender shall include the feminine and vice versa. The terms "includes" and "including" do not exclude matters not listed but do include matters that are in the same general class.

§ 105–57.003 General rule.

Whenever GSA determines a delinquent debt is owed by an individual, the Agency may initiate administrative proceedings to garnish the wages of the delinquent debtor.

§ 105–57.004 Notice requirements.

(a) At least 30 days before the initiation of garnishment proceedings, GSA will send, by first class mail, overnight delivery service, or hand delivery to the debtor's last known address a written notice informing the debtor of—

(1) The nature and amount of the debt;

(2) The intention of GSA to initiate proceedings to collect the debt through deductions from pay until the debt and all accumulated interest, penalties and administrative costs are paid in full; and

(3) The debtor's rights, including those set forth in paragraph (b) of this section, and the time frame within which the debtor may exercise his or her rights.

(b) The debtor will be afforded the opportunity—

(1) To inspect and copy Agency records related to the debt;

(2) To enter into a written repayment agreement with GSA under terms agreeable to the Agency; and

(3) To request a hearing in accordance with § 105-57.005 of this part concerning the existence and/or amount of the debt, and/or the terms of the proposed repayment schedule under the garnishment order. However, the debtor is not entitled to a hearing concerning the terms of the proposed repayment schedule if these terms have been established by written agreement under paragraph (b)(2) of this section.

(c) The notice required by this section may be included with GSA's demand letter required by 41 CFR 105–55.010.

(d) GSA will keep a copy of the evidence of service indicating the date of submission of the notice. The evidence of service may be retained electronically so long as the manner of retention is sufficient for evidentiary purposes.

§ 105–57.005 Hearing.

(a) GSA will provide a hearing, which at the hearing official's option may be oral or written, if within fifteen (15) business days of submission of the notice by GSA, the debtor submits a signed and dated written request for a hearing, to the official named in the notice, concerning the existence and/or amount of the debt, and/or the terms of the repayment schedule (for repayment schedules established other than by written agreement under § 105–57.004(b)(2) of this part). A copy of the request for a hearing must also be sent to the GSA Board of Contract Appeals (GSBCA) at the address indicated in paragraph (b)(2) of this section.

(b) *Types of hearing or review.* (1) For purposes of this section, whenever GSA is required to afford a debtor a hearing, the hearing official will provide the debtor with a reasonable opportunity for an oral hearing when he/she determines that the issues in dispute cannot be resolved by review of the documentary evidence, for example, when the validity of the claim turns on the issue of credibility or veracity.

(2) If the hearing official determines that an oral hearing is appropriate, he/she will establish the time and location of the hearing. An oral hearing may, at the debtor's option, be conducted either in-person or by telephone conference. In-person hearings will be conducted in the hearing official's office located at GSA Central Office, 1800 F St., NW., Washington, DC 20405, or at another location designated by the hearing official. All personal and travel expenses incurred by the debtor in connection with an in-person hearing will be borne by the debtor. All telephonic charges incurred during a hearing will be the responsibility of GSA.

(3) The debtor may represent himself or herself or may be represented by another person of his or her choice at the hearing. GSA will not compensate the debtor for representation expenses, including hourly fees for attorneys, travel expenses, or costs for reproducing documents.

(4) In those cases when an oral hearing is not required by this section, the hearing official will nevertheless conduct a "paper hearing", that is, the hearing official will decide the issues in dispute based upon a review of the written record. The hearing official will establish a reasonable deadline for the submission of evidence.

(c) Subject to paragraph (k) of this section, if the debtor's written request is received by GSA on or before the 15th business day after the submission of the notice described in § 105–57.004(a) of this part, the Agency will not issue a withholding order under § 105–57.006 of this part until the debtor has been provided the requested hearing and a decision in accordance with paragraphs (h) and (i) of this section has been rendered.

(d) If the debtor's written request for a hearing is received by GSA after the 15th business day following the mailing of the notice described in § 105–57.004(a) of this part, GSA may consider the request timely filed and provide a hearing if the debtor can show that the delay was because of circumstances beyond his or her control. However, GSA will not delay issuance of a withholding order unless the Agency determines that the delay in filing the request was caused by factors over which the debtor had no control, or GSA receives information that the Agency believes justifies a delay or cancellation of the withholding order.

(e) After the debtor requests a hearing, the hearing official will notify the debtor of—

(1) The date and time of a telephonic hearing;

(2) The date, time, and location of an in-person oral hearing; or

(3) The deadline for the submission of evidence for a written hearing.

(f) *Burden of proof.* (1) GSA will have the burden of establishing the existence and/or amount of the debt.

(2) Thereafter, if the debtor disputes the existence and/or amount of the debt, the debtor must prove by a preponderance of the evidence that no debt exists or that the amount of the debt is incorrect. In addition, the debtor may present evidence that the terms of the repayment schedule are unlawful, would cause a financial hardship to the debtor, or that collection of the debt may not be pursued due to operation of law.

(g) The hearing official will arrange and maintain a written transcript of any hearing provided under this section. The transcript will be made available to either party in the event of an appeal under the Administrative Procedure Act, 5 U.S.C. 701 through 706. All charges associated with the taking of the transcript will be the responsibility of GSA. A hearing is not required to be a formal evidentiary-type hearing; however, witnesses who testify in oral hearings will do so under oath or affirmation.

(h) The hearing official will issue a written opinion stating his or her decision, as soon as practicable, but not later than sixty (60) days after the date on which the request for such hearing was received by GSA. If the hearing official is unable to provide the debtor with a hearing and render a decision within 60 days after the receipt of the request for such hearing—

(1) GSA will not issue a withholding order until the hearing is held and a decision rendered; or

(2) If GSA had previously issued a withholding order to the debtor's employer, the Agency will suspend the withholding order beginning on the 61st day after the receipt of the hearing request and continuing until a hearing is held and a decision is rendered.

(i) The written decision will include—

(1) A summary of the facts presented;

(2) The hearing official's findings, analysis and conclusions; and

(3) The terms of any repayment schedules, if applicable.

(j) The hearing official's decision will be the final Agency action for the purposes of judicial review under the Administrative Procedure Act (5 U.S.C. 701 *et seq.*).

(k) In the absence of good cause shown, a debtor who fails to appear at a hearing scheduled pursuant to paragraph (e) of this section, or to provide written submissions within the time set by the hearing official, will be deemed to have waived his or her right to appear and present evidence.

§ 105–57.006 Wage garnishment order.

(a) Unless GSA receives information it believes justifies a delay or cancellation of the withholding order, the Agency will send, by first class mail, overnight delivery service or hand delivery, a SF 329A (Letter to Employer & Important Notice to Employer), a SF 329B (Wage Garnishment Order), a SF 329C (Wage Garnishment Worksheet), and a SF 329D (Employer Certification), to the debtor's employer—

(1) Within 30 days after the debtor fails to make a timely request for a hearing (*i.e.*, within 15 business days after the mailing of the notice described in § 105–57.004(a) of this part); or

(2) If a timely request for a hearing is made by the debtor, within 30 days after a final decision is made by the hearing official to proceed with garnishment.

(b) The withholding order sent to the employer under paragraph (a) of this section will contain the signature of, or the image of the signature of, the Administrator or his or her delegate. The order will contain only the information necessary for the employer to comply with the withholding order. Such information includes the debtor's name, address, and social security number, as well as instructions for withholding and information as to where payments are to be sent.

(c) GSA will retain a copy of the evidence of service indicating the date of submission of the order. The evidence of service may be retained electronically so long as the manner of retention is sufficient for evidentiary purposes.

§ 105–57.007 Certification by employer.

The employer must complete and return the SF 329D (Employer Certification) to GSA within the time frame prescribed in the instructions to the form. The certification will address matters such as information about the debtor's employment status and disposable pay available for withholding.

§ 105–57.008 Amounts withheld.

(a) After receipt of the garnishment order issued under this part, the employer shall deduct from all disposable pay paid to the applicable debtor during each pay period the amount of garnishment described in paragraph (b) of this section. The employer may use the SF 329C (Wage Garnishment Worksheet) to calculate the amount to be deducted from the debtor's disposable pay.

(b) Subject to the provisions of paragraphs (c) and (d) of this section, the amount of garnishment will be the lesser of—

(1) The amount indicated on the garnishment order up to 15 percent of the debtor's disposable pay; or

(2) The amount set forth in 15 U.S.C. 1673(a)(2) (Restriction on Garnishment), which is the amount by which a debtor's disposable pay exceeds an amount equivalent to thirty times the minimum wage. *See* 29 CFR 870.10.

(c) When a debtor's pay is subject to withholding orders with priority, the following will apply:

(1) Unless otherwise provided by Federal law, withholding orders issued under this part will be paid in the amounts set forth under paragraph (b) of this section and will have priority over other withholding orders which are served later in time. Notwithstanding the foregoing, withholding orders for family support will have priority over withholding orders issued under this part.

(2) If amounts are being withheld from a debtor's pay pursuant to a withholding order served on an employer before a withholding order issued pursuant to this part, or if a withholding order for family support is served on an employer at any time, the amounts withheld pursuant to the withholding order issued under this part will be the lesser of—

(i) The amount calculated under paragraph (b) of this section; or

(ii) An amount equal to 25 percent of the debtor's disposable pay less the amount(s) withheld under the withholding order(s) with priority.

(3) If a debtor owes more than one debt to GSA, the Agency may issue multiple withholding orders provided the total amount garnished from the debtor's pay for such orders does not exceed the amount set forth in paragraph (b) of this section.

(d) An amount greater than that set forth in paragraphs (b) and (c) of this section may be withheld upon the written consent of the debtor.

(e) The employer shall promptly pay to GSA all amounts withheld in accordance with the withholding order issued pursuant to this part.

(f) An employer will not be required to vary its normal pay and disbursement cycles in order to comply with the withholding order.

(g) Any assignment or allotment by an employee of his or her earnings will be void to the extent it interferes with or prohibits execution of the withholding order issued under this part, except for any assignment or allotment made pursuant to a family support judgment or order.

(h) The employer will withhold the appropriate amount from the debtor's wages for each pay period until the employer receives notification from GSA to discontinue wage withholding. The garnishment order will indicate a reasonable period of time within which the employer is required to commence wage withholding, usually the first payday after the employer receives the order. However, if the first payday is within ten (10) days after the receipt of the garnishment order, the employer may begin deductions on the second payday.

(i) Payments received through a wage garnishment order will be applied in the following order:

(1) To outstanding penalties.

(2) To administrative costs incurred by GSA to collect the debt.

(3) To interest accrued on the debt at the rate established by the terms of the obligation under which it arose or by applicable law.

(4) To outstanding principal.

§ 105–57.009 Exclusions from garnishment.

GSA will not garnish the wages of a debtor who it knows has been involuntarily separated from employment until the debtor has been reemployed continuously for at least 12 months. The debtor has the burden of informing GSA of the circumstances surrounding an involuntary separation from employment.

§ 105–57.010 Financial hardship.

(a) A debtor whose wages are subject to a wage withholding order under this part, may, at any time, request a review by GSA of the amount garnished, based on materially changed circumstances such as disability, divorce, or catastrophic illness which result in financial hardship.

(b) A debtor requesting a review under paragraph (a) of this section shall submit the basis for claiming the current amount of garnishment results in a financial hardship to the debtor, along with supporting documentation.

(c) If a financial hardship is found, GSA will downwardly adjust, by an amount and for a period of time agreeable to the Agency, the amount garnished to reflect the debtor's financial condition. GSA will notify the employer of any adjustments to the amounts to be withheld.

§ 105–57.011 Ending garnishment.

(a) Once GSA has fully recovered the amounts owed by the debtor, including interest, penalties, and administrative costs consistent with the FCCS, the Agency will send the debtor's employer notification to discontinue wage withholding.

(b) At least annually, GSA will review its debtors' accounts to ensure that garnishment has been terminated for accounts that have been paid in full.

§ 105–57.012 Actions prohibited by the employer.

An employer may not discharge, refuse to employ, or take disciplinary action against the debtor due to the issuance of a withholding order under this part. *See* 31 U.S.C. 3720D(e).

§ 105–57.013 Refunds.

(a) If a hearing official, at a hearing held pursuant to § 105–57.005 of this part, determines that a debt is not legally due and owing to the United States, GSA will promptly refund any amount collected by means of administrative wage garnishment.

(b) Unless required by Federal law or contract, refunds under this part will not bear interest.

§ 105–57.014 Right of action.

GSA may sue any employer for any amount that the employer fails to withhold from wages owed and payable to an employee in accordance with §§ 105–057.006 and 105–57.008 of this part, plus attorney's fees, costs, and if applicable, punitive damages. However, a suit may not be filed before the termination of the collection action involving a particular debtor, unless earlier filing is necessary to avoid expiration of any applicable statute of limitations period. For purposes of this part, "termination of the collection action" occurs when GSA has terminated collection action in accordance with the FCCS or other applicable standards. In any event, termination of the collection action will have been deemed to occur if GSA has not received any payments to satisfy the debt from the particular debtor whose wages were subject to garnishment, in whole or in part, for a period of one (1) year.

[FR Doc. 03–30407 Filed 12–9–03; 8:45 am]
BILLING CODE 6820–34–P

DEPARTMENT OF THE INTERIOR

Office of the Secretary

43 CFR Part 4

RIN 1090–AA84

Special Rules Applicable to Public Land Hearings and Appeals

AGENCY: Office of the Secretary, Interior.

ACTION: Final rule.

SUMMARY: The Office of Hearings and Appeals (OHA) is amending its existing regulations governing petitions for stays of grazing decisions issued by the Bureau of Land Management. The changes would specifically authorize OHA administrative law judges to decide such petitions, which would expedite the administrative review process by eliminating an inefficient division of authority.

EFFECTIVE DATE: January 9, 2004.

FOR FURTHER INFORMATION CONTACT: Will A. Irwin, Administrative Judge, Interior Board of Land Appeals, U. S. Department of the Interior, 801 N. Quincy Street, Suite 300, Arlington, VA 22203, Phone: 703–235–3750. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at (800) 877–8339.

SUPPLEMENTARY INFORMATION:

I. Background

A. The Proposed Rule

On May 22, 2003, the Office of Hearings and Appeals (OHA) proposed to amend its existing regulations governing petitions to stay bureau decisions. 68 FR 27955–27960 (May 22, 2003). As explained in that proposal, the existing regulations governing hearings and appeals of grazing decisions issued by the Bureau of Land Management (BLM) assign responsibility for deciding petitions for a stay of such decisions to the Interior Board of Land Appeals (IBLA) or the Director, OHA. Responsibility for conducting the hearing, ruling on other motions, and making the initial decision on the appeal, however, rests with administrative law judges (ALJs) in the Hearings Division, OHA.

When an appeal of a grazing decision is filed with a BLM field office, the current OHA regulations require that office to forward the appeal to the BLM State Director, and the State Director to transmit it to the OHA Hearings Division office in Salt Lake City, Utah. 43 CFR 4.470(d). If a petition for a stay of the decision accompanies the appeal, the Hearings Division must forward the petition to IBLA in Arlington, Virginia. Under 43 CFR 4.21(b)(4), IBLA (or the OHA Director) has 45 days to decide whether or not to grant the petition; after IBLA decides, it returns the record to the Hearings Division in Salt Lake City. In the meantime, the ALJ to whom the case is assigned normally waits to schedule the hearing and to rule on any motions concerning the appeal, such as a motion to intervene in the appeal or a motion by BLM to dismiss the appeal. IBLA does not have authority to rule on such motions.

This division of responsibility results in delays and inefficiencies that would be alleviated if the ALJs also had authority to rule on petitions for a stay. For example, IBLA sometimes finds during its consideration of a stay petition that a motion to dismiss should be granted. However, under the existing regulations, IBLA cannot grant the motion but must proceed to decide the stay petition and then refer the case, including the motion to dismiss, back to the Hearings Division. If the ALJ had authority to rule on a petition for a stay, he or she could consider any other pending motions at the same time and, where appropriate, grant a motion to dismiss without having to rule on the petition. Moreover, under the existing regulations, IBLA must thoroughly review the record in deciding whether to grant a stay petition, and the ALJ must then do the same in deciding the merits of the case. This is an unnecessary duplication of effort and takes time away from IBLA's consideration of other appeals.

Therefore, OHA proposed amendments to the existing regulations in 43 CFR 4.21 and 4.470 *et seq.* to provide the authority to ALJs to rule on petitions for a stay of BLM grazing decisions. OHA also proposed that any party may appeal to the IBLA an order of an ALJ granting or denying a petition for a stay. Any party (other than BLM) wishing to appeal an order of an ALJ denying a petition for a stay would be able to seek judicial review instead of appealing to IBLA.

OHA also proposed to revise the existing regulatory language to make it clearer and to conform to Departmental requirements for writing rules in plain language. *See* 318 DM 4.2.

B. Responses to Comments

We received comments on the proposed rules from Nordhaus Haltom Taylor Taradash & Bladh, LLP, on behalf of the Jicarilla Apache Nation, the Pueblo of Laguna, and the Pueblo of Santa Ana; the National Wildlife Federation; Budd-Falen Law Offices, P.C.; the National Mining Association; Holme Roberts & Owen LLP, on behalf of Placer Dome America; Jason R. Warran, Esq.; and the American Farm Bureau Federation.

Most commenters expressed agreement with the basic intent of the proposed rule, *i.e.*, to authorize ALJs to decide petitions for stay of BLM grazing decisions. But they raised numerous questions about the proposed amendments to the general regulation in 43 CFR 4.21 and the need for such amendments, and they urged that we limit the final rule to the grazing-related provisions of §§ 4.470–.478.

For example, some commenters were concerned that the proposed amendments to § 4.21 could be misinterpreted to change the current effective date provisions for BLM decisions involving mining operations under 43 CFR subpart 3809, BIA decisions appealable under 25 CFR part 2, or other bureau decisions in unanticipated contexts. In addition, some commenters were concerned that proposed § 4.21 did not make as clear as the existing § 4.21(a) that some bureau decisions may be effective immediately, *i.e.*, during the period when an appeal of the decision may be filed, pursuant to another regulation, *e.g.*, 43 CFR 4160.3(f) or 3809.803. Another commenter questioned whether proposed § 4.21 was as clear as existing § 4.21 that, absent another regulation or petition for a stay, a bureau decision would become effective on the day after the expiration of the time an appeal could be filed. Further, some commenters were concerned about the effect of the proposed rule on the many existing regulations that cross reference § 4.21, prior to the Department's updating those regulations with references to the new sections in the proposed rule.

In light of these questions and concerns, we have decided to defer action on the proposed amendments to 43 CFR 4.21 and consider further the questions raised about those proposed amendments. For this reason, we will limit our responses to comments that related to the proposed amendments (1) extending authority to ALJs to decide petitions for a stay of BLM grazing decisions and (2) providing for appeals of ALJ decisions on such petitions.

One comment suggested that proposed § 4.471(a) be amended to allow the filing of a petition for a stay any time one can satisfy the requirements of proposed § 4.471(d), rather than limiting the time to the 30 days allowed for filing an appeal. The commenter observed that the harm from a BLM decision may not become apparent for some time and that, if an appeal was still pending before an ALJ, there would be no reason the ALJ could not consider the appropriateness of a stay if that time came later. If the decision had already been substantially implemented, that could be taken into consideration in determining the relative harm to the parties. The number of stay petitions might be reduced if the regulations did not force an appellant to decide within 30 days whether a decision was going to cause immediate and irreparable harm, the commenter suggested.

We agree that in some cases the effect of a BLM decision might not become apparent until after 30 days, and we do not wish to encourage the filing of petitions for a stay that may not be necessary. However, under existing IBLA decisions, petitions for a stay may be filed after the 30-day period for filing an appeal has expired. In *Robert E. Oriskovich*, 128 IBLA 69, 70 (1993), IBLA noted that, while the failure to timely file a petition for stay results in the decision being appealed becoming effective on the day following the expiration of the appeal period, nothing in the regulations precludes the filing of a subsequent petition for stay that the Board may, in its discretion, entertain. *See also Western Shoshone National Council*, 130 IBLA 69, 72 (1994) ("Nothing in the regulations at 43 CFR part 4 precludes appellant from filing a petition or request for a stay at any time during a proceeding before the Board. * * * ") Because an administrative law judge would have general jurisdiction over an appeal from a BLM grazing decision, he or she could entertain a petition for a stay that was filed with the Hearings Division at any time the appeal was still pending. Therefore, it is not necessary to amend the regulation in order to allow the filing of a petition for a stay after the appeal period has expired, as the commenter suggested.

Another comment suggested that proposed § 4.478(a) be amended to allow a person adversely affected by the decision of an ALJ on a petition for a stay to appeal to IBLA even if the person was not a "party to the case" as defined in § 4.410(b). For example, if a person had not objected to a proposed BLM decision that became final because he or she agreed with it, the person would not have a right to appeal the BLM decision under § 4.410 since he or she was not adversely affected by the decision and had not previously participated in the decision-making process. See 68 FR 33794, 33803 (June 5, 2003). However, if another party appealed the BLM decision and the ALJ granted a stay, the person could be adversely affected by the stay. In that situation, the commenter argued, the person should be allowed to appeal the stay to IBLA.

The commenter is correct that, if the person was not a "party to the case" as defined in § 4.410(b), he or she would not have a right to appeal the ALJ's stay decision to IBLA. Under that regulation, a "party to the case" is

> One who has taken the action that is the subject of the decision on appeal, is the object of that decision, or has otherwise participated in the process leading to the decision under appeal, *e.g.*, by filing a mining claim or an application for use of public lands, by commenting on an environmental document, or by filing a protest to a proposed action.

Other ways a person in the situation described in the comment could have previously participated in the decision-making process might include commenting on the proposed BLM decision or intervening in the case before the ALJ to oppose the stay petition.

We are not persuaded that a requirement of previous participation in the case is unduly burdensome or should be waived in the situation posited by the commenter. As explained in the preamble to the June 5, 2003, final rule amending § 4.410, this is a codification of longstanding IBLA precedent on who has standing to appeal a decision. 68 FR 33794. We have therefore retained the reference to § 4.410 in final § 4.478(a).

A commenter suggested that, if an appellant sought IBLA review of an ALJ decision on a petition for a stay under proposed § 4.478(a) but the Board did not "expeditiously issue a decision on the appeal" as provided in proposed § 4.478(c), then the appellant should be allowed to abandon that appeal and instead go to federal court under proposed § 4.478(b). The commenter expressed concern that the Board might not quickly decide such appeals, despite the statement in proposed § 4.478(c).

The commenter's concern for timely decisions must be balanced against the significant benefits that inure to both the Department and the courts from the requirement that appellants exhaust their administrative remedies before seeking judicial review. Given the commitment that OHA is making in adopting § 4.478(c), we disagree with the commenter that there is a risk of substantial delay in IBLA's review process sufficient to warrant forgoing those benefits. Of course, if the BLM decision is in effect, one may seek judicial review at any time. *See Darby v. Cisneros*, 509 U.S. 137, 153–54, 113 S. Ct. 2539, 2547–48 (1993).

Other commenters thought the proposed rule was arbitrary in providing that a party could seek immediate judicial review of an ALJ order denying a stay but not of an ALJ order granting a stay; the latter would first have to be appealed to IBLA.

We disagree with the commenters that this result is arbitrary. Under both the proposed and final rule, an appeal to IBLA is available in either situation. However, if a stay is denied, the BLM decision is operative, and judicial review is available under the APA as an alternative to an IBLA appeal. *See* 5 U.S.C. 704; *Darby, supra*. The rule

simply reflects this statutory and decisional authority. If the stay is granted and the BLM decision is inoperative, resort to the courts is not available until the parties have exhausted their administrative remedies.

One comment stated that § 4.479 needs to be amended so as not to require exhaustion of administrative remedies when 43 CFR 4160.3(d) or (e) allows grazing to take place even if a stay has been granted, citing *Idaho Watersheds Project v. Hahn*, 307 F.3d 815, 824–28 (9th Cir. 2002). Section 4160.3(d)–(e) specifies what grazing use is authorized when OHA stays a BLM decision pending appeal. In general,

> An applicant who was granted grazing use in the preceding year may continue at that level of authorized use during the time the decision is stayed. * * * Where an applicant had no authorized grazing use during the previous year * * *, the authorized grazing use shall be consistent with the final decision pending the [OHA] final determination on the appeal.

In *Hahn*, environmental plaintiffs challenged BLM grazing decisions on the grounds that they perpetuated a long-term problem of livestock overgrazing in the Owyhee Resource Area, allegedly in violation of federal statutes and regulations and BLM's own guidelines for rangeland management. BLM and the ranchers argued that the lawsuit should be dismissed because the plaintiffs had not filed an administrative appeal and sought a stay of the grazing decisions and had therefore failed to exhaust their administrative remedies. The court disagreed, holding that, because of § 4160.3(d)–(e), BLM's grazing decisions would not be rendered inoperative even if a stay were granted.

While finding that the plaintiffs were not required to exhaust their administrative remedies under the facts of that case, the court in *Hahn* left open the prospect that, under a different set of facts, a stay would render the final BLM decision inoperative for purposes of 5 U.S.C. 704, even if it resulted in authorized use at the previous year's level. In that situation, exhaustion of administrative remedies would still be required. For example, if a BLM grazing decision increased a rancher's authorized use from the previous year's level and an environmental group challenged that increase, a stay that resulted in authorized use at the previous year's level under § 4160.3(d)–(e) would render the BLM decision inoperative, and exhaustion of administrative remedies would be required. Similarly, if a BLM grazing decision reduced a rancher's authorized use from the previous year's level and the rancher challenged that decrease, a stay that resulted in authorized use at the previous year's level would render the BLM decision inoperative, and exhaustion of administrative remedies would be required. We have revised § 4.479(d) to reflect the court's decision in *Hahn*.

One commenter opposed the proposed regulations on the grounds that, under the Taylor Grazing Act (TGA) and the APA, a BLM decision

> affecting a grazing permit is a sanction and an order within the meaning of the APA [and] cannot become effective until the permittee is afforded a hearing and allowed to present testimony and other evidence. 5 U.S.C. 556(d) & (e). * * * The proposed rule change would be facially invalid. * * * [T]he proposed changes force the holder of a TGA grazing permit to seek a stay when the TGA and the APA mandate that such a stay be automatic.

We disagree that the typical BLM grazing decision is either a "sanction" or an "order" within the meaning of the APA. In fact, in a number of cases, the grazing permittee has sought the BLM decision and wants it to take effect immediately, but another interested party files an appeal and a petition for a stay. In any event, this argument is currently under review in *Wallace v. Bureau of Land Management*, No. 02–1119 (CBS) (D. Colo.). If necessary based on the outcome of that litigation, we will consider further amendments to our regulations at a future time.

C. Section-by-Section Analysis

Section 4.421

We have added a definition for the term "person named in the decision," and that term is then used in §§ 4.470–.472 to identify everyone who must be served with an appeal, petition for a stay, and a response. The term is defined as "an affected applicant, permittee, lessee, or agent or lienholder of record, or an interested public as defined in § 4100.0–5 of this title." BLM is required to serve its proposed decision on these persons under § 4160.1, and will list their names and addresses at the conclusion of its final grazing decision. This will help to ensure that anyone whose interest may be adversely affected by the final BLM decision, or by an appeal of that decision, has an opportunity to participate in the appeal process and will be bound by the outcome.

Section 4.470

This section is based on the existing § 4.470(a)–(b). We have added the phrase, "or within 30 days after a proposed decision becomes final as provided in § 4160.3(a)," to be consistent with § 4160.4. We have also added the phrase, "and serve a copy of the appeal on any other person named in the decision," at the end of § 4.470(a). This language is based on the service requirements in 43 CFR 4.22(b), 4.413(a).

Throughout this preamble and rule, references to a "final BLM grazing decision" or "the decision" should be construed to include any relevant portion of such a decision. Thus an adversely affected party may appeal only a portion of a BLM decision, may petition for or be granted a stay of only a portion of a BLM decision, and so on. Adding a phrase like "or relevant portion thereof" wherever the term "final BLM grazing decision" appears would make the rule cumbersome and would merely state what most readers would take for granted anyway.

Paragraphs (b), (c), and (d) are based on similar language in the existing § 4.470. Paragraphs (b) and (c) are adopted as proposed, and paragraph (d) is modified to refer to the appeal period provided in paragraph (a). We have moved proposed paragraph (e) to redesignated § 4.474 because that section deals with the authority of an ALJ; as a result, proposed paragraph (f) has become paragraph (e).

Section 4.471

Section 4.471 is new; existing § 4.471 has been redesignated as § 4.473. As proposed, new § 4.471 would have referred to the standards and procedures in existing § 4.21 (proposed §§ 4.22–.24) regarding petitions for a stay and requests to make a BLM decision immediately effective. Since we have decided not to amend § 4.21 in this final rule, we have revised § 4.471 so that it fully incorporates the relevant standards and procedures from § 4.21.

In new § 4.471, paragraph (a) specifies where a petition for a stay must be filed, and paragraph (b) specifies where copies must be served.

Proposed paragraph (b), dealing with requests to make a BLM decision effective immediately—and related provisions in proposed §§ 4.474(c)(2) and 4.478(a)(2)—have been deleted. These provisions were intended to extend to the ALJ the authority given to the OHA Director and the Board in § 4.21(a)(1) to make a decision effective immediately when the public interest so requires, notwithstanding the automatic stay provisions of § 4.21(a)(1)–(3). Instead of the several deleted provisions, we have added § 4.479(c) to state the same authority more simply.

Proposed paragraph (c), redesignated as paragraph (b), has been revised to require service of copies of the appeal

and of any petition for a stay on (1) any other person named in the decision from which the appeal is taken, and (2) the appropriate office of the Office of the Solicitor, as provided in § 4.413(a) and (c). We have deleted the requirement to send a copy to the Hearings Division, OHA, in Arlington.

Because we are not amending the general rules in subpart B as proposed, we have revised proposed paragraph (d), redesignated as paragraphs (c) and (d), to incorporate the standards for granting a stay and the burden of proof that are currently found in section 4.21(b)(1)–(2).

Section 4.472

This section is also new; existing § 4.472 has been redesignated as § 4.474. New § 4.472 sets forth procedures and time frames for the filing of various documents by BLM and other persons following receipt of the appeal and petition for a stay. It also sets forth a deadline for a decision by the ALJ on such a petition.

Paragraph (a) is based on existing § 4.470(d). As revised, BLM must transmit an appeal to the Hearings Division, Office of Hearings and Appeals, in Salt Lake City, Utah, within 10 days after receiving the appeal. If a petition for a stay has been received, BLM's transmittal must also include any response BLM wishes to file to the petition and the following documents from the case file: the application, permit, lease, or notice of unauthorized use underlying the final BLM grazing decision; the proposed BLM grazing decision; any protest filed by the appellant under § 4160.2; the final BLM grazing decision; and any other documents that BLM wishes the administrative law judge to consider in deciding the petition for a stay, such as BLM's environmental assessment. If necessary, an ALJ could grant an extension of the 10-day period under § 4.22(f). If BLM files a response, it must serve a copy on the appellant and any other person named in the decision from which the appeal is taken.

Under paragraph (b), any person named in the decision from which the appeal is taken (other than the appellant) who wishes to file a response to the petition for a stay may file a motion to intervene in the appeal together with the response with the Hearings Division within 10 days after receiving the petition. The person must serve a copy of the motion to intervene and response on the appellant, the appropriate office of the Office of the Solicitor, and any other person named in the decision.

Under existing § 4.471, redesignated as § 4.473 by this final rule, BLM is to notify any person it believes may be directly affected by the decision on appeal. Such a person may appear at the hearing and, "upon a proper showing of interest, may be recognized by the administrative law judge as an intervenor in the appeal." For guidance on what interest is sufficient for intervenor status, *see Bear River Land and Grazing* v. *BLM*, 132 IBLA 110, 113–14 (1995). As existing § 4.471 shows, a motion to intervene is not limited to the 10-day period for filing a response to a petition for a stay; but if a person who is not yet a party to the appeal wishes to respond to the petition for a stay, he or she must submit a motion to intervene along with his or her response, within the 10 days allowed for a response to a petition for a stay.

Under paragraph (c), if a petition for a stay has not been filed, BLM must promptly transmit the pertinent documents from the case file to the administrative law judge assigned to the appeal, once the appeal has been docketed by the Hearings Division.

Under paragraph (d), an ALJ must rule on a petition for a stay that is filed with an appeal, and any motion to intervene filed under paragraph (b), within 45 days after the expiration of the appeal period. This deadline is based on existing § 4.21(b)(4).

Paragraph (e), dealing with the effective date of a BLM decision for which a petition for a stay has been filed, is based on § 4.21(a)(3). It provides that any BLM grazing decision that is not already in effect and for which a stay is not granted will become effective immediately after the ALJ denies the petition or fails to act on the petition within the 45-day deadline set forth in paragraph (d).

Paragraph (f) authorizes any party to file a motion to dismiss the appeal or any other appropriate motion with the Hearings Division at any appropriate time and provides for a response to such a motion. This paragraph is also based on language in existing § 4.470(d). The existing regulation provides that the BLM State Director may file a motion to dismiss within 30 days of his or her receipt of the appeal, for any of six specified reasons. In fact, however, under existing Hearings Division and IBLA practice, BLM or any other party may file any appropriate motion at any appropriate time for any appropriate reason. Therefore, new § 4.472(f) is worded more broadly than existing § 4.470(d) to allow for other movants, motions, times for filing, and reasons.

Paragraph (g) requires service of a motion or response on the other parties to the appeal.

Section 4.474

Existing § 4.472 dealing with the authority of an ALJ has been redesignated as new § 4.474(a)–(b). Paragraph (c) has been added to authorize the ALJ to rule on any petition for a stay of a BLM decision or any motion. As noted above, the authority of an ALJ to consolidate appeals, found in existing § 4.470(c) and proposed as § 4.470(e), has been added to this section as paragraph (d).

Section 4.478

Existing § 4.476 dealing with appeals to IBLA has been redesignated as new § 4.478. Because we are not amending the general rules in subpart B as proposed, we have revised proposed paragraph (a) by removing the reference to proposed § 4.24(c) and have incorporated proposed § 4.24(d) through (f) as § 4.478(b) through (d). Proposed § 4.478(b), which was based on existing § 4.476, has become paragraph (e).

Section 4.479

Existing § 4.477 dealing with the effectiveness of a BLM decision pending appeal has been redesignated as § 4.479. Final § 4.479 has been expanded from its proposed version to explain more fully the effectiveness of a BLM grazing decision pending appeal. Paragraph (a) has been added to incorporate the limited automatic stay provisions of existing § 4.21(a) and proposed § 4.22. These automatic stay provisions do not apply if BLM has made its decision immediately effective under § 4160.3, as set forth in proposed § 4.479(a), which is final § 4.479(b), or under § 4190.1, which was added by the June 5, 2003, rulemaking 68 FR 33794, 33804.

As noted previously, final § 4.479(c) has been added to extend to the ALJ the authority given to the OHA Director and the Board in § 4.21(a)(1) to make a decision effective immediately when the public interest so requires, notwithstanding the automatic stay provisions of § 4.21(a)(1)–(3). Proposed § 4.479(b) has been retained as final § 4.479(d). Final § 4.479(e) and (f) modify proposed § 4.479(c) to clarify the requirement for exhaustion of administrative remedies and to reflect the decision in the Hahn case, discussed above.

II. Review Under Procedural Statutes and Executive Orders

A. Regulatory Planning and Review (E.O. 12866)

In accordance with the criteria in Executive Order 12866, the Department finds that this document is not a significant rule. The Office of Management and Budget has not reviewed this rule under Executive Order 12866.

1. This rule will not have an annual economic effect of $100 million or adversely affect an economic sector, productivity, competition, jobs, the environment, public health or safety, or other units of government. A cost-benefit and economic analysis is not required. These amended rules will have virtually no effect on the economy because they will only add authority for ALJs to decide petitions for a stay of BLM grazing decisions, and provide for appeals of ALJ decisions on such petitions.

2. This rule will not create inconsistencies with or interfere with other agencies' actions. The rules amend existing OHA regulations to add authority for ALJs to decide petitions for a stay of BLM grazing decisions, and provide for appeals of ALJ decisions on such petitions.

3. This rule will not alter the budgetary effects of entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients. These regulations have to do only with the procedures for hearings and appeals of BLM grazing decisions, not with entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients. The rule will only add authority for ALJs to decide petitions for a stay of BLM grazing decisions, and provide for appeals of ALJ decisions on such petitions.

4. This rule does not raise novel legal or policy issues. The rule simply extends ALJs' existing authority to include the authority to decide petitions for a stay of BLM grazing decisions, and provides for appeals of ALJ decisions on such petitions.

B. Regulatory Flexibility Act

The Department of the Interior certifies that this rule will not have a significant economic effect on a substantial number of small entities as defined under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The extension of authority to ALJs to decide petitions for a stay of BLM grazing decisions, and providing for appeals of ALJ decisions on such petitions, will have no effect on small entities. A Small Entity Compliance Guide is not required.

C. Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act.

1. This rule will not have an annual effect on the economy of $100 million or more. Granting authority to ALJs to decide petitions for a stay of BLM grazing decisions, and providing for appeals of ALJ decisions on such petitions, will have no effect on the economy.

2. This rule will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. Granting ALJs authority to decide petitions for a stay of BLM grazing decisions, and providing for appeals of ALJ decisions on such petitions, will not affect costs or prices for citizens, individual industries, or government agencies.

3. This rule will not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. Extending authority to ALJs to decide petitions for a stay of BLM grazing decisions, and providing for appeals of ALJ decisions on such petitions, will have no effects, adverse or beneficial, on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

D. Unfunded Mandates Reform Act

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*), the Department finds as follows:

1. This rule will not have a significant or unique effect on State, local, or tribal governments or the private sector. Small governments do not often appeal BLM grazing decisions. Authorizing ALJs to decide petitions for a stay of such decisions, and providing for appeals of ALJ decisions on such petitions, will neither uniquely nor significantly affect these governments because such authority currently exists elsewhere. A statement containing the information required by the Unfunded Mandates Reform Act, 2 U.S.C. 1531 *et seq.*, is not required.

2. This rule will not produce an unfunded Federal mandate of $100 million or more on State, local, or tribal governments or the private sector in any year, *i.e.*, it is not a "significant regulatory action" under the Unfunded Mandates Reform Act.

E. Takings (E.O. 12630)

In accordance with Executive Order 12630, the Department finds that the rule will not have significant takings implications. A takings implication assessment is not required. These amendments to existing rules authorizing ALJs to decide petitions for a stay of BLM grazing decisions, and providing for appeals of ALJ decisions on such petitions, will have no effect on property rights.

F. Federalism (E.O. 13132)

In accordance with Executive Order 13132, the Department finds that the rule does not have sufficient federalism implications to warrant the preparation of a federalism assessment. There is no foreseeable effect on states from extending to ALJs the existing authority to decide petitions for a stay of BLM grazing decisions, and providing for appeals of ALJ decisions on such petitions. A federalism assessment is not required.

G. Civil Justice Reform (E.O. 12988)

In accordance with Executive Order 12988, the Office of the Solicitor has determined that this rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order. These regulations, because they simply extend to ALJs already existing authority to decide petitions for a stay of BLM grazing decisions, and provide for appeals of ALJ decisions on such petitions, will not burden either administrative or judicial tribunals.

H. Paperwork Reduction Act

This rule will not require an information collection from 10 or more parties, and a submission under the Paperwork Reduction Act is not required. An OMB form 83–I has not been prepared and has not been approved by the Office of Policy Analysis. These regulations will only extend authority to ALJs to decide petitions for stay of BLM grazing decisions, and provide for appeals of ALJ decisions on such petitions; they will not require the public to provide information.

I. National Environmental Policy Act

The Department has analyzed this rule in accordance with the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321 *et seq.*, Council on Environmental Quality (CEQ) regulations, 40 CFR part 1500, and the Department of the Interior Departmental Manual (DM). CEQ regulations, at 40 CFR 1508.4, define a "categorical exclusion" as a category of actions that

the Department has determined ordinarily do not individually or cumulatively have a significant effect on the human environment. The regulations further direct each department to adopt NEPA procedures, including categorical exclusions. 40 CFR 1507.3. The Department has determined that this rule is categorically excluded from further environmental analysis under NEPA in accordance with 516 DM 2, Appendix 1, which categorically excludes "[p]olicies, directives, regulations and guidelines of an administrative, financial, legal, technical or procedural nature." In addition, the Department has determined that none of the exceptions to categorical exclusions, listed in 516 DM 2, Appendix 2, applies to this rule. This rule is an administrative and procedural rule, relating to the authority of ALJs to decide petitions for stays of BLM grazing decisions, and providing for appeals of ALJ decisions on such petitions. Therefore, neither an environmental assessment nor an environmental impact statement under NEPA is required.

J. Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments" (59 FR 22951), E.O. 13175, and 512 DM 2, the Department of the Interior has evaluated potential effects of this rule on federally recognized Indian tribes and has determined that there are no potential effects. These rules will not affect Indian trust resources; they will provide authority to ALJs to decide petitions for a stay of BLM grazing decisions, and provide for appeals of ALJ decisions on such petitions.

K. Effects on the Nation's Energy Supply

In accordance with Executive Order 13211, the Department finds that this regulation does not have a significant effect on the nation's energy supply, distribution, or use. Extending authority to ALJs to decide petitions for a stay of BLM grazing decisions, and providing for appeals of ALJ decisions on such petitions, will not affect energy supply or consumption.

List of Subjects in 43 CFR Part 4

Administrative practice and procedure, Grazing lands, Public lands.

Dated: December 3, 2003.

P. Lynn Scarlett,

Assistant Secretary—Policy, Management and Budget.

■ For the reasons set forth in the preamble, part 4, subpart E, of title 43 of the Code of Federal Regulations is amended as set forth below:

PART 4—[AMENDED]

Subpart E—Special Rules Applicable to Public Land Hearings and Appeals

■ 1. The authority for 43 CFR part 4, subpart E, is revised to read as follows:

Authority: Sections 4.470 to 4.480 also issued under the authority of 43 U.S.C. 315a.

■ 2. The cross reference for 43 CFR part 4, subpart E, continues to read as follows:

Cross Reference: See subpart A for the authority, jurisdiction, and membership of the Board of Land Appeals within the Office of Hearings and Appeals. For general rules applicable to proceedings before the Board of Land Appeals as well as the other Appeals Boards of the Office of Hearings and Appeals, *see* subpart B.

■ 3. In § 4.421, revise paragraph (c) and add paragraph (h) to read as follows:

§ 4.421 Definitions

* * * * *

(c) *Bureau* or *BLM* means the Bureau of Land Management.

* * * * *

(h) *Person named in the decision* means any of the following persons identified in a final BLM grazing decision: an affected applicant, permittee, lessee, or agent or lienholder of record, or an interested public as defined in § 4100.0–5 of this title.

§§ 4.471–4.478 [Redesignated]

■ 4. Redesignate §§ 4.471 through 4.478 as §§ 4.473 through 4.480, respectively.

■ 5. Revise § 4.470 and add new §§ 4.471 and 4.472 to read as follows:

§ 4.470 How to appeal a final BLM grazing decision to an administrative law judge.

(a) Any applicant, permittee, lessee, or other person whose interest is adversely affected by a final BLM grazing decision may appeal the decision to an administrative law judge within 30 days after receiving it or within 30 days after a proposed decision becomes final as provided in § 4160.3(a) of this title. To do so, the person must file an appeal with the BLM field office that issued the decision and serve a copy of the appeal on any person named in the decision.

(b) The appeal must state clearly and concisely the reasons why the appellant thinks the BLM grazing decision is wrong.

(c) Any ground for appeal not included in the appeal is waived. The appellant may not present a waived ground for appeal at the hearing unless permitted or ordered to do so by the administrative law judge.

(d) Any person who, after proper notification, does not appeal a final BLM grazing decision within the period provided in paragraph (a) of this section may not later challenge the matters adjudicated in the final BLM decision.

(e) Filing an appeal does not by itself stay the effectiveness of the final BLM decision. To request a stay of the final BLM decision pending appeal, *see* § 4.471.

§ 4.471 How to petition for a stay of a final BLM grazing decision.

(a) An appellant under § 4.470 may petition for a stay of the final BLM grazing decision pending appeal by filing a petition for a stay together with the appeal under § 4.470 with the BLM field office that issued the decision.

(b) Within 15 days after filing the appeal and petition for a stay, the appellant must serve copies on—

(1) Any other person named in the decision from which the appeal is taken; and

(2) The appropriate office of the Office of the Solicitor, in accordance with § 4.413(a) and (c).

(c) A petition for a stay of a final BLM grazing decision pending appeal under paragraph (a) of this section must show sufficient justification based on the following standards:

(1) The relative harm to the parties if the stay is granted or denied;

(2) The likelihood of the appellant's success on the merits;

(3) The likelihood of immediate and irreparable harm if the stay is not granted; and

(4) Whether the public interest favors granting the stay.

(d) The appellant requesting a stay bears the burden of proof to demonstrate that a stay should be granted.

§ 4.472 Action on an appeal and petition for a stay.

(a) BLM must transmit any documents received under §§ 4.470 and 4.471, within 10 days after receipt, to the Hearings Division, Office of Hearings and Appeals, Salt Lake City, Utah. If a petition for a stay has been filed, the transmittal must also include any response BLM wishes to file to a petition for a stay and the following documents from the case file: the application, permit, lease, or notice of unauthorized use underlying the final BLM grazing decision; the proposed BLM grazing decision; any protest filed by the appellant under § 4160.2; the final BLM grazing decision; and any other documents that BLM wishes the administrative law judge to consider in deciding the petition for a stay. BLM must serve a copy of any such response on the appellant and any other person named in the decision from which the appeal is taken.

(b) Any person named in the decision from which an appeal is taken (other than the appellant) who wishes to file a response to the petition for a stay may file with the Hearings Division a motion to intervene in the appeal, together with the response, within 10 days after receiving the petition. Within 15 days after filing the motion to intervene and response, the person must serve copies on the appellant, the appropriate office of the Office of the Solicitor in accordance with § 4.413(a) and (c), and any other person named in the decision.

(c) If a petition for a stay has not been filed, BLM must promptly transmit the following documents from the case file to the administrative law judge assigned to the appeal, once the appeal has been docketed by the Hearings Division: the application, permit, lease, or notice of unauthorized use underlying the final BLM grazing decision; the proposed BLM grazing decision; any protest filed by the appellant under § 4160.2; and the final BLM grazing decision.

(d) Within 45 days after the expiration of the time for filing a notice of appeal, an administrative law judge must grant or deny—

(1) A petition for a stay filed under § 4.471(a), in whole or in part; and

(2) A motion to intervene filed with a response to the petition under paragraph (b) of this section.

(e) Any final BLM grazing decision that is not already in effect and for which a stay is not granted will become effective immediately after the administrative law judge denies a petition for a stay or fails to act on the petition within the time set forth in paragraph (d) of this section.

(f) At any appropriate time, any party may file with the Hearings Division a motion to dismiss the appeal or other appropriate motion. The appellant and any other party may file a response to the motion within 30 days after receiving a copy.

(g) Within 15 days after filing a motion or response under paragraph (f) of this section, any moving or responding party must serve a copy on every other party. Service on BLM must be made on the appropriate office of the Office of the Solicitor in accordance with § 4.413(a) and (c).

■ 6. In newly redesignated § 4.474, add paragraphs (c) and (d) to read as follows:

§ 4.474 Authority of administrative law judge.

* * * * *

(c) The administrative law judge may consider and rule on all motions and petitions, including a petition for a stay of a final BLM grazing decision.

(d) An administrative law judge may consolidate two or more appeals for purposes of hearing and decision when they involve a common issue or issues.

■ 7. Revise newly redesignated § 4.478 to read as follows:

§ 4.478 Appeals to the Board of Land Appeals; judicial review.

(a) Any person who has a right of appeal under § 4.410 or other applicable regulation may appeal to the Board from an order of an administrative law judge granting or denying a petition for a stay.

(b) As an alternative to paragraph (a) of this section, any party other than BLM may seek judicial review under 5 U.S.C. 704 of a final BLM grazing decision if the administrative law judge denies a petition for a stay, either directly or by failing to meet the deadline in § 4.472(d).

(c) If a party appeals under paragraph (a) of this section, the Board must issue an expedited briefing schedule and decide the appeal promptly.

(d) Unless the Board or a court orders otherwise, an appeal under paragraph (a) of this section does not—

(1) Suspend the effectiveness of the decision of the administrative law judge; or

(2) Suspend further proceedings before the administrative law judge.

(e) Any party adversely affected by the administrative law judge's decision on the merits has the right to appeal to the Board under the procedures in this part.

■ 8. Revise newly redesignated § 4.479 to read as follows:

§ 4.479 Effectiveness of decision during appeal.

(a) Consistent with the provisions of §§ 4.21(a) and 4.472(e) and except as provided in paragraphs (b) and (c) of this section or other applicable regulation, a final BLM grazing decision will not be effective—

(1) Until the expiration of the time for filing an appeal under § 4.470(a); and

(2) If a petition for a stay is filed under § 4.471(a), until the administrative law judge denies the petition for a stay or fails to act on the petition within the time set forth in § 4.472(d).

(b) Consistent with the provisions of §§ 4160.3 and 4190.1 of this title and notwithstanding the provisions of § 4.21(a), a final BLM grazing decision may provide that the decision will be effective immediately. Such a decision will remain effective pending a decision on an appeal, unless a stay is granted by an administrative law judge under § 4.472 or by the Board under § 4.478(a).

(c) Notwithstanding the provisions of § 4.21(a), when the public interest requires, an administrative law judge may provide that the final BLM grazing decision will be effective immediately.

(d) An administrative law judge or the Board may change or revoke any action that BLM takes under a final BLM grazing decision on appeal.

(e) In order to ensure exhaustion of administrative remedies before resort to court action, a BLM grazing decision is not final agency action subject to judicial review under 5 U.S.C. 704 unless—

(1) A petition for a stay of the BLM decision has been timely filed and the BLM decision has been made effective under § 4.472(e), or

(2) The BLM decision has been made effective under paragraphs (b) or (c) of this section or other applicable regulation, and a stay has not been granted.

(f) Exhaustion of administrative remedies is not required if a stay would not render the challenged portion of the BLM decision inoperative under subpart 4160 of this title.

[FR Doc. 03–30631 Filed 12–9–03; 8:45 am]

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DEPARTMENT OF ENERGY

48 CFR Parts 904, 923, 952, and 970

RIN 1991–AB54

Acquisition Regulations; Conditional Payment of Fee, Profit, and Other Incentives

AGENCY: Department of Energy.

ACTION: Interim final rule.

SUMMARY: The Department of Energy publishes interim final amendments to its Acquisition Regulation setting forth policies for reductions of fee or other amounts payable to DOE prime contractors because of contractor performance failures related to safeguarding of classified information and to adequate protection of environment, health and safety, including the health and safety of workers, at contractor operated sites.

DATES: This rule is effective January 9, 2004. Written comments on specified portions of this interim final rule

implementing section 234C of the Atomic Energy Act must be received by January 26, 2004.

ADDRESSES: Comments (3 copies) on the specified portions of this interim final rule should be addressed to: Michael L. Righi, U.S. Department of Energy, Office of Procurement and Assistance Policy, ME–61, 1000 Independence Avenue, SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT: Michael L. Righi, Office of Procurement and Assistance Policy (ME–61), 202–586–8175 or *michael.righi@hq.doe.gov*.

SUPPLEMENTARY INFORMATION:

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I. Introduction

Pursuant to the Atomic Energy Act of 1954 (Atomic Energy Act) and other laws, the Department of Energy (DOE or Department) carries out a variety of national defense and energy research, development and demonstration activities at facilities around the nation that are owned by the United States, under the custody and control of DOE, and operated by prime contractors under the supervision of DOE. On February 1, 2001, DOE published a Notice of Proposed Rulemaking (NOPR) (66 FR 8560) to amend portions of the DOE Acquisition Regulation (DEAR) (48 CFR chapter 9) that apply to these prime contractors. The NOPR contained proposed regulatory amendments dealing with reductions in fee and other payments to these contractors as a result of performance failures in carrying out contract obligations related to: (1) Safeguarding classified information; and (2) protection of environment, health and safety, including the health and safety of workers at contract sites. Although this rulemaking is generally authorized by the Atomic Energy Act (42 U.S.C. 2201), the portion of the proposed rule dealing with safeguarding classified information responded to specific statutory directions in section 234B of the Atomic Energy Act (42 U.S.C. 2282b). Subsequent to publication of the proposed rule, the President signed into law a new section 234C, which contains reduction in fee provisions similar to those in section 234B and provides specific directions with regard to protection of worker health and safety.

Today, DOE publishes a notice of interim final rulemaking that responds to the comments on the proposed rule and contains interim final regulatory amendments to the DEAR pursuant to general Atomic Energy Act authorities, as well as pursuant to the specific terms of sections 234B and 234C of the Atomic Energy Act. Since the provisions of section 234C are substantially similar to those of section 234B, DOE does not believe that there are policy issues with regard to section 234C that differ from those concerning section 234B. However, in addition to its review of comments submitted during the comment period on the NOPR, DOE is inviting public comment limited to the portions of the interim final amendments to the DEAR that implement section 234C to ensure that DOE has not overlooked any subtle, relevant issues that are unique to section 234C. Those portions of the interim final rule are specifically identified in part III of this **SUPPLEMENTARY INFORMATION**.

II. Background

Section 3147 of the National Defense Authorization Act for Fiscal Year 2000 added section 234B to the Atomic Energy Act (42 U.S.C. 2282b). Section 234B requires, in part, that DOE contracts provide for an appropriate reduction in the fees or amounts paid to the contractor under the contract in the event of a violation by the contractor or contractor employee of any rule, regulation, or order relating to the safeguarding or security of restricted data or other classified or sensitive information. Section 234B also prescribes that the implementing regulations must specify various degrees of violations and the amount of the reduction attributable to each degree of violation. Section 234B applies to prime contractors, including management and operating (M&O) contractors and certain non-M&O contractors.

Recent legislation, section 3173 of the National Defense Authorization Act for Fiscal Year 2003, which adds section 234C to the Atomic Energy Act (42 U.S.C. 2282c), requires the Department to include in each contract with a contractor of the Department who has entered into an agreement of Price Anderson indemnification (48 CFR 952.250–70) clauses that provide an appropriate reduction in the fees or amounts paid to the contractor under the contract in the event of a violation by the contractor or contractor employee of any regulation promulgated to protect worker safety and health (WS&H). Section 234C also requires that contract provisions specify various degrees of violations and the amount of reduction attributable to each degree of violation. The Department is planning a rulemaking action to establish a new regulation at 10 CFR part 851 to set forth WS&H requirements and to address the civil penalty and enforcement aspects of section 234C. Section 234C specifies that in the event of a violation under the regulations, the Department may pursue either civil or contract penalties, but not both. In the case of non-profit entities described at 42 U.S.C. 2282a(d), the total amount of civil and contract penalties in a fiscal year may not exceed the total amount of fees paid by the Department to that entity in that fiscal year.

As opposed to the NOPR, which would have added two clauses, this interim final rule adds four clauses, three for other than management and operating contracts and one for management and operating contracts. The additional clauses reflect the requirements of section 234C.

Consistent with section 234B of the Atomic Energy Act, for other than management and operating contracts, this interim final rule adds a clause entitled, "Conditional Payment of Fee or Profit—Safeguarding Restricted Data and Other Classified Information" to DEAR part 952. Except for DOE management and operating contracts and other contracts designated by the Procurement Executive, or designee, this clause is prescribed for use in all DOE contracts that involve or are likely to involve classified information but that do not include the clause at 48 CFR 952.250–70, Nuclear hazards indemnification agreement. The clause would provide for reductions of earned fee or profit that is otherwise payable under applicable contracts for contractor violations of laws, regulations, or directives relating to the safeguarding of restricted data and other classified information. Among other things, this clause would provide for fee reductions for violations related to the safeguarding of high risk nuclear weapons-related data. At present, this category consists of data covered by SIGMA 14 or SIGMA 15, but it may include other categories of high risk nuclear weapons-related data should the Department designate additional categories in the future. The clause sets forth the conditions that may precipitate a reduction of fee or profit and percentage reduction ranges that correlate to three degrees of violations.

Consistent with section 234B and C of the Atomic Energy Act, for other than management and operating contracts, this interim final rule adds a clause entitled, "Conditional Payment of Fee or Profit—Safeguarding Restricted Data and Other Classified Information and Protection of Worker Safety and Health" to DEAR part 952. Except for DOE management and operating contracts and other contracts designated by the Procurement Executive, or designee, this clause is prescribed for use in all DOE contracts that involve or are likely to involve classified information and that also include the clause at 48 CFR 952.250–70, Nuclear hazards indemnification agreement. The clause would provide for reductions of earned fee or profit that is otherwise payable under applicable contracts for contractor violations of laws, regulations, or directives relating to the safeguarding of restricted data and other classified information or relating to worker safety and health. The clause sets forth the conditions that may precipitate a reduction of fee or profit and percentage reduction ranges that correlate to three degrees of violations.

Consistent with section 234C of the Atomic Energy Act, for other than management and operating contracts, this interim final rule adds a clause entitled, "Conditional Payment of Fee or Profit-Protection of Worker Safety and Health" to DEAR part 952. Except for DOE management and operating contracts and other contracts designated by the Procurement Executive, or designee, this clause is prescribed for use in all DOE contracts that do not involve and are not likely to involve classified information and that do include the clause at 48 CFR 952.250–70, Nuclear hazards indemnification agreement. The clause would provide for reductions of earned fee or profit that is otherwise payable under applicable contracts for contractor violations of laws, regulations, or directives relating to worker safety and health. The clause sets forth both the conditions that may precipitate a reduction of fee or profit and the percentage reduction ranges that correlate to three degrees of violations.

Consistent with section 234B and C of the Atomic Energy Act, for DOE management and operating contracts and other contracts designated by the Procurement Executive, the clause at 48 CFR 970.5215–3, "Conditional Payment of Fee, Profit, or Other Incentives—Facility Management Contracts," provides for reductions of earned fee, fixed fee, profit, or share of cost savings that may otherwise be payable under the contract if: Performance failures relating to environment, safety and health (ES&H) or the safeguarding of restricted data and other classified information occur (the basic clause); or performance failures relating to ES&H occur (Alternate I of the clause). The clause sets forth the conditions that may precipitate a reduction of earned or fixed fee, profit, or share of cost savings under the contract. The clause also sets forth the percentage fee, profit, or share of cost savings reduction ranges that correlate to the three degrees of performance failures relating to ES&H and to the three degrees of performance failures relating to safeguarding of restricted data and other classified information.

A large number of comments DOE received related to the mitigating factors to be considered before a fee reduction by the contracting officer. The provisions in the NOPR permitted consideration of mitigating factors, but did not make consideration of mitigating factors mandatory. In today's interim final rule, the Department has changed the proposed language so that it is now mandatory for a contracting officer to consider mitigating factors when contemplating a fee reduction. DOE also added a non-exhaustive list of mitigating factors that must be considered by the contracting officer.

Another significant number of comments DOE received related to the percentage fee reductions possible for second and third degree performance failures and the descriptions of what might constitute performance failures, especially ES&H failures. In this interim final rule, the Department has changed the proposed rule language to lower the percentage fee reduction for second and third degree performance failures (from maximums of 50 percent and 25 percent to maximums of 25 percent and 10 percent, respectively) and shortened and simplified the description of performance failures for ES&H issues. Additionally, the interim final rule includes language making it clear that performance failures only occur if the contractor does not comply with the related terms and conditions of the contract. The mere occurrence of an event does not necessarily create the potential for a fee reduction.

The numbering system in this interim final rule differs from the one in the NOPR because it conforms to the new DEAR numbering system established by the final rule published in the **Federal Register** on December 22, 2000 (65 FR 80993), titled "Rewrite of Regulations Governing Management and Operating Contracts."

Contracting officers must apply these DEAR changes to solicitations issued on or after the effective date of this rule.

Contracting officers may, at their discretion, include these DEAR changes in solicitations issued before the effective date of this rule, provided award of the resulting contract(s) occurs on or after the effective date.

Contracting officers must apply these DEAR changes: to contracts extended in accordance with the Department's extend/compete policies and procedures (48 CFR 917.6, 48 CFR 970.1702–1(a), and internal guidance) if the extend/compete decision is made on or after the effective date of this rule, and to options exercised under competitively awarded management and operating contracts (48 CFR 970.1702–1(b)).

In preparing this notice of interim final rulemaking the Department has made a variety of technical changes, which do not warrant extended discussion.

III. Scope of Further Opportunities for Public Comment

The NOPR of February 1, 2001, contained proposed amendments to the DEAR that are consistent with the subsequently enacted requirements of section 234C. A few minor amendments have been necessary to the originally proposed language to specifically address the new section 234C. The amendments are the interim rule portion of this interim final rule. The amendments are: (1) Revised language at DEAR 970.1504–1–2(i)(1) and at 970.5215–3(a)(1)(i) making it clear that the term "environment, safety and health (ES&H)" also includes "worker safety and health (WS&H)"; (2) a new paragraph (c) is added to DEAR 970.2303–1; (3) a new paragraph (b) is added to DEAR 923.7001; (4) new paragraphs (f) and (g) are added to DEAR 923.7002; and (5) new clauses are added at DEAR 952.223–76 and at DEAR 952.223–77. DOE today provides an opportunity for public comment limited to these five regulatory amendments and relevant issues unique to implementing section 234C.

IV. Discussion of Public Comments

This section of the Supplementary Information addresses the major issues that emerged from the public comments. Many of the comments received in response to the NOPR raised issues related to the civil penalty requirements of section 234B, which were outside the

scope of this fee reduction rule, since this rulemaking only addresses the contractual provisions and fee reduction aspects of the statute. The Department always intended to conduct two separate rulemakings, one establishing civil penalty procedural rules similar to the procedural rules to achieve compliance with DOE nuclear safety requirements found at 10 CFR part 820 and the other establishing procurement clauses like those in this rulemaking action. To establish procedural rules, on April 1, 2002, the Department published a second NOPR (67 FR 15339) to implement subsections a, c and d of section 234B. In the second NOPR, the Department proposed to establish a new part 824 to chapter III of title 10 of the Code of Federal Regulations (CFR) to implement all subsections of section 234B of the Atomic Energy Act, except subsection b. A number of the comments received in response to the first NOPR, intended to implement section b of section 234B, were addressed by the publication of the second NOPR, intended to implement subsections a, c and d of section 234B, and need not be addressed at length in this notice.

Other major issues emerging from the public comments on the proposed rule are discussed below. Sixteen respondents submitted comments to the Department.

Mitigating Factors

Comment: Respondents stated that the proposal lacked a sense of proportion between the seriousness of the violation and the contractor's culpability and that fee reductions should decrease as contractor culpability decreases. Others advocated the use of fault based standards for determining amount of fee reductions and that the Department should exclude matters beyond the contractor's control.

Response: These comments regarding the issue of taking into account mitigating circumstances are addressed in the interim final rule through the addition in each of the contract provisions of a statement that the contractor's overall performance on an issue be considered and a mandatory requirement that a list of mitigating factors be considered.

Comment: Respondents were concerned about the risk of violations and resultant fee reductions that could result from changing contract requirements under the directives system.

Response: The DEAR Laws, regulations, and DOE directives clause allows for contract changes when contract requirements change due to a new or modified directive. The contract changes include changes to any contract term or condition, including cost or schedule, that are appropriate. Therefore, any change to the risk of fee reduction that could result from changing contract requirements under the directives system, whether it be increased risk or decreased risk of fee reduction, can be fairly handled under the clause. In those instances where DOE lays new safety or security requirements on the contractor, the contractor must be given adequate time to comply with the new requirements.

Comment: Respondents stated that contractors should not be penalized with a fee reduction for self reporting a problem.

Response: The Department agrees and self reporting has been included in the list of mitigation factors.

E,S&H

Comment: Respondents recommended DOE eliminate the proposed rule's ES&H coverage because it goes beyond the focus in section 234B of the Atomic Energy Act on security issues and is covered adequately by the current clause.

Response: The NOPR covered issues not addressed in the current DEAR clause because the Department determined it was appropriate to address ES&H-related fee reductions in the same manner as security-related fee reductions. The Department's decision to include degrees of violation for ES&H-related fee reductions was fortuitous since, as discussed in an earlier section of this notice, the Department must now address a statutory requirement for fee reductions for violations related to worker safety and health concerns. The new provisions are required to specify various degrees of violations and amount of reduction attributable to each degree of violation. The new requirement is similar to that contained in section 234B of the Atomic Energy Act, which was focused on security concerns.

The Department's proposed rule also included other potential improvements. The current DEAR clause addressing conditional payment of fee, for example, does not require DOE to consider mitigating circumstances for ES&H performance failures that are not catastrophic in determining fee reductions. Nor does it require, for a catastrophic event, both a failure to comply with the ES&H terms and conditions and a negative result before a fee reduction can be imposed. Rather it merely requires that an event occur. Further, the current clause does not limit performance failures for ES&H or catastrophic events to 25 percent (second degree) or 10 percent (third degree) for lesser failures, since it does not address degrees of failure.

Comment: Respondents stated that the proposed language regarding performance failures for ES&H issues was too subjective or vague.

Response: To satisfy respondents' comments, in this interim final rule, a number of changes have been made to the ES&H-related provisions. The language describing the degrees of performance failure has been streamlined, the criteria for failure determinations have been more clearly oriented to the terms of an individual contract, and the consideration of mitigating factors has become more focused on systemic rather than individual failures.

Appeal Process

Comment: Respondents stated that the fee reduction provisions should be subject to the disputes clause and not left to the unilateral discretion of the contracting officer.

Response: Fee reductions are subject to the disputes clause. The contractor will continue to have appeal rights under the Contract Disputes Act notwithstanding the fact that the contract gives the contracting officer unilateral discretion to make determinations for fee reductions. However, the inclusion of this contract term raises the standard of review to arbitrary or capricious conduct by the fee determination official. *See Burnside-Ott Aviation Training Center* v. *Dalton*, 107 F.3rd 854 (Fed. Cir. 1997).

Security Issues

Comment: Respondents stated that the Department should not make fee reductions for security violations in instances where the violations related to problems inherited by the current contractor, such as documents already misclassified sometime in the past.

Response: While the mitigating factors now listed in the clauses do not specifically use the term pre-existing condition, this is the type of situation contemplated by the mitigating factors. The first mitigating factor, for example, is "Degree of control the contractor had over the event or incident."

Comment: Respondents stated that the proposed language was too subjective or vague for the associated penalties. Phrases such as "reasonably expected to result in" and "threaten the successful completion of" were considered too vague for descriptions that could result in fee reductions. Some suggestions were to:

—Define "exceptionally grave damage, serious damage, *etc.*";
—Define "safeguards and security management system" breakdown;
—Define or eliminate "that can reasonably be expected to result in" damage to national security;
—Eliminate conduct "creating a risk" of harm (basing fee reductions on incidents that merely create risk is too subjective);
—Eliminate "or performance failures of similar import";

Respondents also stated that since risk is always present, fee reductions should not be imposed for risk. They stated that the rule would undo current standards of acceptable risk in safeguarding classified information, which set appropriate levels of protection against risk based on vulnerability/risk analyses.

Response: The terms used in the proposed rule and this interim final rule are found in DOE Directives, Executive Orders, and the National Industrial Security Program. As for risk, the Department understands risk is present. The interim final rule makes it clear that fee reductions related to a security violation are only possible if there is a performance failure related to a security violation and that failure is the cause of an undesirable outcome, such as events that cause or could reasonably be expected to cause damage to the national security.

Comment: A number of respondents stated that the fee reductions should be tied to a site specific plan that is part of the security agreement between DOE and contractor. That plan would cite controlling directives, the contractor's security plan, and define degrees of performance failure.

Response: The interim final rule specifically allows for site specific performance criteria/requirements that provide additional definition, guidance for the amount of the reduction, or guidance for the applicability of mitigating factors.

Other Issues

Comment: Respondents stated that there should be a distinction in the rule between contracts that have evaluation periods of different lengths.

Response: DOE disagrees because the parties are free to negotiate appropriate evaluation period lengths, taking into account all the elements of the contract to include, among other things, desired outcomes, equitable allocation of risks, suitable rewards, and potential fee reductions for ES&H or security performance failures.

V. Procedural Requirements

A. Review Under Executive Order 12866

Today's regulatory action has been determined not to be "a significant regulatory action" under Executive Order 12866, "Regulatory Planning and Review" (58 FR 51735, October 4, 1993). Accordingly, this action is not subject to review under that Executive Order by the Office of Information and Regulatory Affairs of the Office of Management and Budget (OMB).

B. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires preparation of an initial regulatory flexibility analysis for any rule that by law must be proposed for public comment, unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. As required by Executive Order 13272, "Proper Consideration of Small Entities in Agency Rulemaking" (67 FR 53461, August 16, 2002), DOE published procedures and policies to ensure that the potential impacts of its draft rules on small entities are properly considered during the rulemaking process (68 FR 7990, February 19, 2003), and has made them available on the Office of General Counsel's Web site: *http://www.gc.doe.gov*. DOE has reviewed today's rule under the provisions of the Regulatory Flexibility Act and the procedures and policies published on February 19, 2003. Because DOE is contractually obligated to reimburse contractors for the cost of complying with regulatory requirements, the rule will not have a significant economic impact on small entities. Since it is clear that the rule will not have an adverse economic impact, there is no need to determine the exact number of small contractors that might be affected by the new requirements. On the basis of the foregoing, DOE certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. Accordingly, DOE did not prepare a regulatory flexibility analysis for this rule.

C. Review Under the Paperwork Reduction Act

No new information collection requirements subject to the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, are imposed by today's regulatory action.

D. Review Under the National Environmental Policy Act

DOE has concluded that promulgation of this rule falls into a class of actions that would not individually or cumulatively have a significant impact on the human environment, as determined by DOE's regulations implementing the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*). Specifically, this rule deals only with agency procedures, and, therefore, is covered under the Categorical Exclusion in paragraph A6 to subpart D, 10 CFR part 1021. Accordingly, neither an environmental assessment nor an environmental impact statement is required.

E. Review Under Executive Order 13132

Executive Order 13132, "Federalism" (64 FR 43255, August 4, 1999) imposes certain requirements on agencies formulating and implementing policies or regulations that preempt State law or that have federalism implications. Agencies are required to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and carefully assess the necessity for such actions. The Executive Order also requires agencies to have an accountable process to ensure meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications. On March 14, 2000, DOE published a statement of policy describing the intergovernmental consultation process it will follow in the development of such regulations (65 FR 13735). DOE has examined today's rule and has determined that it does not preempt State law and does not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. No further action is required by Executive Order 13132.

F. Review Under Executive Order 12988

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, "Civil Justice Reform" (61 FR 4729, February 7, 1996), imposes on Federal agencies the general duty to adhere to the following requirements: (1) Eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; and (3) provide a clear legal standard for affected conduct rather than a general standard and promote simplification and burden reduction. Section 3(b) of

Executive Order 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) Clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in section 3(a) and section 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, this rule meets the relevant standards of Executive Order 12988.

G. Review Under the Unfunded Mandates Reform Act of 1995.

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires each Federal agency to assess the effects of a Federal regulatory action on State, local, and tribal governments, and the private sector. The Department has determined that today's regulatory action does not impose a Federal mandate on State, local or tribal governments or on the private sector.

H. Review Under the Treasury and General Government Appropriations Act, 1999

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. 105–277) requires Federal agencies to issue a Family Policymaking Assessment for any rule that may affect family well-being. This rule would not have any impact on the autonomy or integrity of the family as an institution. Accordingly, DOE has concluded that it is not necessary to prepare a Family Policymaking Assessment.

I. Review Under the Treasury and General Government Appropriations Act, 2001

The Treasury and General Government Appropriations Act, 2001 (44 U.S.C. 3516, note) provides for agencies to review most disseminations of information to the public under guidelines established by each agency pursuant to general guidelines issued by OMB. OMB's guidelines were published at 67 FR 8452 (February 22, 2002), and DOE's guidelines were published at 67 FR 62446 (October 7, 2002). DOE has reviewed today's notice under the OMB and DOE guidelines and has concluded that it is consistent with applicable policies in those guidelines.

J. Review Under Executive Order 13211

Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001) requires Federal agencies to prepare and submit to the Office of Information and Regulatory Affairs (OIRA), Office of Management and Budget, a Statement of Energy Effects for any proposed significant energy action. A "significant energy action" is defined as any action by an agency that promulgated or is expected to lead to promulgation of a final rule, and that: (1) Is a significant regulatory action under Executive Order 12866, or any successor order; and (2) is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (3) is designated by the Administrator of OIRA as a significant energy action. For any proposed significant energy action, the agency must give a detailed statement of any adverse effects on energy supply, distribution, or use should the proposal be implemented, and of reasonable alternatives to the action and their expected benefits on energy supply, distribution, and use. Today's regulatory action is not a significant energy action. Accordingly, DOE has not prepared a Statement of Energy Effects.

K. Review Under the Small Business Regulatory Enforcement Fairness Act.

As required by 5 U.S.C. 801, DOE will report to Congress on the promulgation of today's interim final rule prior to its effective date. The report will state that it has been determined that the rule is not a "major rule" as defined by 5 U.S.C. 801(2).

Issuance of this interim final rule has been approved by the Office of the Secretary of Energy.

List of Subjects in 48 CFR Parts 904, 923, 952, and 970

Government procurement.

Issued in Washington, DC on December 2, 2003.

Richard H. Hopf,

Director, Office of Procurement and Assistance Management, Office of Management, Budget and Evaluation, Department of Energy.

Robert C. Braden, Jr.,

Director, Office of Procurement and Assistance Management, National Nuclear Security Administration.

■ For the reasons set out in the preamble, DOE amends chapter 9 of title 48 of the Code of Federal Regulations as set forth below.

■ 1. The authority citation for parts 904 and 952 is revised to read as follows:

Authority: 42 U.S.C. 2201, 2282a, 2282b, 2282c, 7101 *et seq.*; 41 U.S.C. 418b; 50 U.S.C. 2401 *et seq.*

PART 904—ADMINISTRATIVE MATTERS

■ 2. Section 904.402 is amended by adding a new paragraph (c) to read as follows:

904.402 General.

* * * * *

(c)(1) Section 234B of the Atomic Energy Act (42 U.S.C. 2282b) requires that DOE contracts include a clause that provides for an appropriate reduction in the fees or amounts paid to the contractor under the contract in the event of a violation by the contractor or any contractor employee of any rule, regulation, or order relating to the safeguarding or security of Restricted Data or other classified information. The clause is required for all DOE prime contracts that involve any possibility of contractor access to Restricted Data or other classified information. The clause is required to specify various degrees of violations and the amount of the reduction attributable to each degree of violation. The clause prescribed at 48 CFR 904.404(d)(6) (Conditional Payment of Fee or Profit—Safeguarding Restricted Data and Other Classified Information) or the clause prescribed at 48 CFR 923.7002(f) (Conditional Payment of Fee or Profit—Safeguarding Restricted Data and Other Classified Information and Protection of Worker Safety and Health) shall be used for this purpose unless the clause prescribed at 48 CFR 970.1504–5(c) (Conditional Payment of Fee, Profit, and Other Incentives—Facility Management Contracts) is used.

(2) The clause entitled "Conditional Payment of Fee or Profit—Safeguarding Restricted Data and Other Classified Information" and the clause entitled "Conditional Payment of Fee or Profit—Safeguarding Restricted Data and Other Classified Information and Protection of Worker Safety and Health" provide for reductions of fee or profit that is earned by the contractor depending upon the severity of the contractor's failure to comply with contract terms or conditions relating to the safeguarding of Restricted Data or other classified information. When reviewing performance failures that would otherwise warrant a reduction of earned fee, the contracting officer must consider mitigating factors that may warrant a reduction below the applicable range specified in the clause. Some of the mitigating factors that must be considered are specified in the clause.

(3) The contracting officer must obtain the concurrence of the Head of the Contracting Activity:

(i) Prior to effecting any reduction of fee or amounts otherwise payable to the contractor in accordance with the terms and conditions of the clause entitled "Conditional Payment of Fee or Profit—Safeguarding Restricted Data and Other Classified Information" or of the clause entitled "Conditional Payment of Fee or Profit—Safeguarding Restricted Data and Other Classified Information and Protection of Worker Safety and Health;" and

(ii) For determinations that no reduction of fee is warranted for a particular performance failure(s) that would otherwise warrant a reduction.

■ 3. Section 904.404 is amended by adding a new paragraph (d)(6) to read as follows:

904.404 Solicitation provision and contract clause. [DOE Coverage—Paragraph (d)]

(d) * * *

(6) Except as prescribed in 48 CFR 970.1504–5(c), the contracting officer shall insert the clause at 48 CFR 952.204–76, Conditional Payment of Fee or Profit—Safeguarding Restricted Data and Other Classified Information, in all contracts that contain the clause at 48 CFR 952.204–2, Security, but that do not contain the clause at 48 CFR 952.250–70, Nuclear hazards indemnity agreement.

PART 923—ENVIRONMENT, CONSERVATION, OCCUPATIONAL SAFETY, AND DRUG-FREE WORKPLACE

■ 4. Section 923.7002 is redesignated as § 923.7003 and a new § 923.7002 is added to read as follows:

923.7002 Worker Safety and Health.

(a)(1) Except when the clause prescribed at 48 CFR 970.1504–5(c) is used, the clauses entitled "Conditional Payment of Fee or Profit—Safeguarding Restricted Data and Other Classified Information and Protection of Worker Safety and Health" and "Conditional Payment of Fee or Profit—Protection of Worker Safety and Health" implement the requirements of section 234C of the Atomic Energy Act for the use of a contract clause that provides for an appropriate reduction in the fee or amount paid to the contractor under the contract in the event of a violation by the contractor or any contractor employee of any Departmental regulation relating to the enforcement of worker safety and health concerns. The clauses, in part, provide for reductions in the amount of fee, profit, or share of cost savings that is otherwise earned by the contractor for performance failures relating to worker safety and health violations under the Department's regulations.

(2) The clauses provide for reductions of fee or profit that is earned by the contractor depending upon the severity of the contractor's failure to comply with contract terms or conditions relating to worker safety and health concerns. When reviewing performance failures that would otherwise warrant a reduction of earned fee, the contracting officer must consider mitigating factors that may warrant a reduction below the applicable range specified in the clauses. Some of the mitigating factors that must be considered are specified in the clauses.

(3) The contracting officer must obtain the concurrence of the Head of the Contracting Activity—

(i) Prior to effecting any reduction of fee or amounts otherwise payable to the contractor in accordance with the terms and conditions of the clause entitled "Conditional Payment of Fee or Profit—Safeguarding Restricted Data and Other Classified Information and Protection of Worker Safety and Health" or of the clause entitled "Conditional Payment of Fee or Profit—Protection of Worker Safety and Health"; and

(ii) For determinations that no reduction of fee is warranted for a particular performance failure(s) that would otherwise warrant a reduction.

(4) Section 234C of the Atomic Energy Act provides that DOE shall either pursue civil penalties (implemented at 10 CFR part 851) for a violation under section 234C of the Atomic Energy Act (42 U.S.C. 2282c) or a contract fee reduction, but not both.

(5) The contracting officer must coordinate with the Office of Price Anderson Enforcement within the Office of the Assistant Secretary for Environment, Safety and Health (or with any designated successor office) before pursuing a contract fee reduction in the event of a violation by the contractor or any contractor employee of any Departmental regulation relating to the enforcement of worker health and safety concerns.

■ 5. Redesignated § 923.7003 is further amended by adding a new paragraphs (f) and (g) to read as follows:

923.7003 Contract clauses.

* * * * *

(f) Except as prescribed in 48 CFR 970.1504–5(c), the contracting officer shall insert the clause at 48 CFR 952.223–76, Conditional Payment of Fee or Profit—Safeguarding Restricted Data and Other Classified Information and Protection of Worker Safety and Health, in all contracts that contain both the clause at 48 CFR 952.204–2, Security, and the clause at 48 CFR 952.250–70, Nuclear hazards indemnity agreement.

(g) Except as prescribed in 48 CFR 970.1504–5(c), the contracting officer shall insert the clause at 48 CFR 952.223–77, Conditional Payment of Fee or Profit—Protection of Worker Safety and Health, in all contracts that do not contain the clause at 48 CFR 952.204–2, Security, but that do contain the clause at 48 CFR 952.250–70, Nuclear hazards indemnity agreement.

PART 952—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 6. Section 952.204–76 is added in Subchapter H to read as follows:

952.204–76 Conditional Payment of Fee or Profit—Safeguarding Restricted Data and Other Classified Information.

As prescribed at 48 CFR (DEAR) 904.404(d)(6), insert the following clause.

Conditional Payment of Fee or Profit—Safeguarding Restricted Data and Other Classified Information (JAN 2004)

(a) General. (1) The payment of fee or profit (*i.e.*, award fee, fixed fee, and incentive fee or profit) under this contract is dependent upon the contractor's compliance with the terms and conditions of this contract relating to the safeguarding of Restricted Data and other classified information (*i.e.*, Formerly Restricted Data and National Security Information) including compliance with applicable law, regulation, and DOE directives. The term "contractor" as used in this clause to address failure to comply shall mean "contractor or contractor employee."

(2) In addition to other remedies available to the Government, if the contractor fails to comply with the terms and conditions of this contract relating to the safeguarding of Restricted Data and other classified information, the contracting officer may unilaterally reduce the amount of fee or

profit that is otherwise payable to the contractor in accordance with the terms and conditions of this clause.

(3) Any reduction in the amount of fee or profit earned by the contractor will be determined by the severity of the contractor's failure to comply with contract terms and conditions relating to the safeguarding of Restricted data or other classified information pursuant to the degrees specified in paragraph (c) of this clause.

(b) Reduction Amount. (1) If in any period (*see* 48 CFR 952.204–76 (b)(2)) it is found that the contractor has failed to comply with contract terms and conditions relating to the safeguarding of Restricted Data or other classified information, the contractor's fee or profit of the period may be reduced. Such reduction shall not be less than 26 percent nor greater than 100 percent of the total fee or profit earned for a first degree performance failure, not less than 11 percent nor greater than 25 percent for a second degree performance failure, and up to 10 percent for a third degree performance failure. The contracting officer must consider mitigating factors that may warrant a reduction below the specified range (*see* 48 CFR 904.402(c)). The mitigating factors include, but are not limited to, the following:

(i) Degree of control the contractor had over the event or incident.

(ii) Efforts the contractor had made to anticipate and mitigate the possibility of the event in advance.

(iii) Contractor self-identification and response to the event to mitigate impacts and recurrence.

(iv) General status (trend and absolute performance) of safeguarding Restricted Data and other classified information and compliance in related security areas.

(2)(i) Except in the case of performance-based firm-fixed-price contracts (see paragraph (b)(3) of this clause), the contracting officer, for purposes of this clause, will at the time of contract award, or as soon as practicable thereafter, allocate the total amount of fee or profit that is available under this contract to equal periods of [insert 6 or 12] months to run sequentially for the entire term of the contract (*i.e.*, from the effective date of the contract to the expiration date of the contract, including all options). The amount of fee or profit to be allocated to each period shall be equal to the average monthly fee or profit that is available or otherwise payable during the entire term of the contract, multiplied by the number of months established above for each period.

(ii) Under this clause, the total amount of fee or profit that is subject to reduction in a period in which a performance failure occurs, in combination with any reduction made under any other clause in the contract that provides for a reduction to the fee or profit, shall not exceed the amount of fee or profit that is earned by the contractor in the period established pursuant to paragraph (b)(2)(i) of this clause.

(3) For performance-based firm-fixed-price contracts, the contracting officer will at the time of contract award include negative monetary incentives in the contract for contractor violations relating to the safeguarding of Restricted Data and other classified information.

(c) Safeguarding Restricted Data and Other Classified Information. Performance failures occur if the contractor does not comply with the terms and conditions of this contract relating to the safeguarding of Restricted Data and other classified information. The degrees of performance failures relating to the contractor's obligations under this contract for safeguarding of Restricted Data and other classified information are as follows:

(1) *First Degree:* Performance failures that have been determined, in accordance with applicable law, regulation, or DOE directive, to have resulted in, or that can reasonably be expected to result in, exceptionally grave damage to the national security. The following are examples of performance failures or performance failures of similar import that will be considered first degree:

(i) Non-compliance with applicable laws, regulations, and DOE directives actually resulting in, or creating a risk of, loss, compromise, or unauthorized disclosure of Top Secret Restricted Data or other information classified as Top Secret, any classification level of information in a Special Access Program (SAP), information identified as sensitive compartmented information (SCI), or high risk nuclear weapons-related data.

(ii) Contractor actions that result in a breakdown of the safeguards and security management system that can reasonably be expected to result in the loss, compromise, or unauthorized disclosure of Top Secret Restricted Data, or other information classified as Top Secret, any classification level of information in a SAP, information identified as SCI, or high risk nuclear weapons-related data.

(iii) Failure to promptly report the loss, compromise, or unauthorized disclosure of Top Secret Restricted Data or other information classified as Top Secret, any classification level of information in a SAP, information identified as SCI, or high risk nuclear weapons-related data.

(iv) Failure to timely implement corrective actions stemming from the loss, compromise, or unauthorized disclosure of Secret Restricted Data or other information classified as Secret.

(2) *Second Degree:* Performance failures that have been determined, in accordance with applicable law, regulation, or DOE directive, to have actually resulted in, or that can reasonably be expected to result in, serious damage to the national security. The following are examples of performance failures or performance failures of similar import that will be considered second degree:

(i) Non-compliance with applicable laws, regulations, and DOE directives actually resulting in, or creating risk of, loss, compromise, or unauthorized disclosure of Secret Restricted Data or other information classified as Secret.

(ii) Contractor actions that result in a breakdown of the safeguards and security management system that can reasonably be expected to result in the loss, compromise, or unauthorized disclosure of Sceret Restricted Data, or other information classified as Secret.

(iii) Failure to promptly report the loss, compromise, or unauthorized disclosure of Restricted Data or other information regardless of classification (except for information covered by paragraph (c)(1)(iii) of this clause).

(iv) Failure to timely implement corrective actions stemming from the loss, compromise, or unauthorized disclosure of Secret Restricted Data or other information classified as Secret.

(3) *Third Degree:* Performance failures that have been determined, in accordance with applicable law, regulation, or DOE directive, to have actually resulted in, or that can reasonably be expected to result in, undue risk to the common defense and security. In addition, this category includes performance failures that result from a lack of contractor management and/or employee attention to the proper safeguarding of Restricted Data and other classified information. These performance failures may be indicators of future, more severe performance failures and/or conditions, and if identified and corrected early would prevent serious incidents. The following are examples of performance failures or performance failures of similar import that will be considered third degree:

(i) Non-compliance with applicable laws, regulations, and DOE directives actually resulting in, or creating risk of, loss, compromise, or unauthorized disclosure of Restricted Data or other information classified as Confidential.

(ii) Failure to promptly report alleged or suspected violations of laws, regulations, or directives pertaining to the safeguarding of Restricted Data or other classified information.

(iii) Failure to identify or timely execute corrective actions to mitigate or eliminate identified vulnerabilities and reduce residual risk relating to the protection of Restricted Data or other classified information in accordance with the contractor's Safeguards and Security Plan or other security plan, as applicable.

(iv) Contractor actions that result in performance failures which unto themselves pose minor risk, but when viewed in the aggregate indicate degradation in the integrity of the contractor's safeguards and security management system relating to the protection of Restricted Data and other classified information.

(End of Clause)

■ 7. Section 952.223–76 is added to read as follows:

952.223–76 Conditional Payment of Fee or Profit—Safeguarding Restricted Data and Other Classified Information and Protection of Worker Safety and Health.

As prescribed at 48 CFR (DEAR) 923.7002(f), insert the following clause.

Conditional Payment of Fee or Profit—Safeguarding Restricted Data and Other Classified Information and Protection of Worker Safety and Health (JAN 2004)

(a) General. (1) The payment of fee or profit (*i.e.*, award fee, fixed fee, and incentive fee or profit) under this contract is dependent upon the contractor's compliance with the terms and conditions of this contract relating to the safeguarding of Restricted Data and other classified information (*i.e.*, Formerly Restricted Data and National Security Information) and relating to the protection of worker safety and health, including compliance with applicable law, regulation, and DOE directives. The term "contractor" as used in this clause to address failure to comply shall mean "contractor or contractor employee."

(2) In addition to other remedies available to the Federal Government, if the contractor fails to comply with the terms and conditions of this contract relating to the safeguarding of Restricted Data and other classified information or relating to the protection of worker safety and health, the contracting officer may unilaterally reduce the amount of fee or profit that is otherwise payable to the contractor in accordance with the terms and conditions of this clause.

(3) Any reduction in the amount of fee or profit earned by the contractor will be determined by the severity of the contractor's failure to comply with contract terms and conditions relating to the safeguarding of Restricted data or other classified information or relating to worker safety and health pursuant to the degrees specified in paragraphs (c) and (d) of this clause.

(b) Reduction Amount. (1) If in any period (*see* 48 CFR 952.223–76 (b)(2)) it is found that the contractor has failed to comply with contract terms and conditions relating to the safeguarding of Restricted Data or other classified information or relating to the protection of worker safety and health, the contractor's fee or profit of the period may be reduced. Such reduction shall not be less than 26 percent nor greater than 100 percent of the total fee or profit earned for a first degree performance failure, not less than 11 percent nor greater than 25 percent for a second degree performance failure, and up to 10 percent for a third degree performance failure. The contracting officer must consider mitigating factors that may warrant a reduction below the specified range (*see* 48 CFR 904.402(c) and 48 CFR 923.7001(b)). The mitigating factors include, but are not limited to, the following ((v), (vi), (vii), and (viii) apply to WS&H only):

(i) Degree of control the contractor had over the event or incident.

(ii) Efforts the contractor had made to anticipate and mitigate the possibility of the event in advance.

(iii) Contractor self-identification and response to the event to mitigate impacts and recurrence.

(iv) General status (trend and absolute performance) of: Safeguarding Restricted Data and other classified information and compliance in related security areas; or of protecting WS&H and compliance in related areas.

(v) Contractor demonstration to the Contracting Officer's satisfaction that the principles of industrial WS&H standards are routinely practiced (*e.g.*, Voluntary Protection Program Star Status).

(vi) Event caused by "Good Samaritan" act by the contractor (*e.g.*, offsite emergency response).

(vii) Contractor demonstration that a performance measurement system is routinely used to improve and maintain WS&H performance (including effective resource allocation) and to support DOE corporate decision-making (*e.g.*, policy, WS&H programs).

(viii) Contractor demonstration that an Operating Experience and Feedback Program is functioning that demonstrably affects continuous improvement in WS&H by use of lessons-learned and best practices inter- and intra-DOE sites.

(2)(i) Except in the case of performance-based, firm-fixed-price contracts (*see* paragraph (b)(3) of this clause), the contracting officer, for purposes of this clause, will at the time of contract award, or as soon as practicable thereafter, allocate the total amount of fee or profit that is available under this contract to equal periods of [insert 6 or 12] months to run sequentially for the entire term of the contract (*i.e.*, from the effective date of the contract to the expiration date of the contract, including all options). The amount of fee or profit to be allocated to each period shall be equal to the average monthly fee or profit that is available or otherwise payable during the entire term of the contract, multiplied by the number of months established above for each period.

(ii) Under this clause, the total amount of fee or profit that is subject to reduction in a period in which a performance failure occurs, in combination with any reduction made under any other clause in the contract that provides for a reduction to the fee or profit, shall not exceed the amount of fee or profit that is earned by the contractor in the period established pursuant to paragraph (b)(2)(i) of this clause.

(3) For performance-based firm-fixed-price contracts, the contracting officer will at the time of contract award include negative monetary incentives in the contract for contractor violations relating to the safeguarding of Restricted Data and other classified information and relating to protection of worker safety and health.

(c) Safeguarding Restricted Data and Other Classified Information. Performance failures occur if the contractor does not comply with the terms and conditions of this contract relating to the safeguarding of Restricted Data and other classified information. The degrees of performance failures relating to the contractor's obligations under this contract for safeguarding of Restricted Data and other classified information are as follows:

(1) *First Degree:* Performance failures that have been determined, in accordance with applicable law, regulation, or DOE directive, to have resulted in, or that can reasonably be expected to result in, exceptionally grave damage to the national security. The following are examples of performance failures or performance failures of similar import that will be considered first degree:

(i) Non-compliance with applicable laws, regulations, and DOE directives actually resulting in, or creating a risk of, loss, compromise, or unauthorized disclosure of Top Secret Restricted Data or other information classified as Top Secret, any classification level of information in a Special Access Program (SAP), information identified as sensitive compartmented information (SCI), or high risk nuclear weapons-related data.

(ii) Contractor actions that result in a breakdown of the safeguards and security management system that can reasonably be expected to result in the loss, compromise, or unauthorized disclosure of Top Secret Restricted Data, or other information classified as Top Secret, any classification level of information in a SAP, information identified as SCI, or high risk nuclear weapons-related data.

(iii) Failure to promptly report the loss, compromise, or unauthorized disclosure of Top Secret Restricted Data or other information classified as Top Secret, any classification level of information in a SAP, information identified as SCI, or high risk nuclear weapons-related data.

(iv) Failure to timely implement corrective actions stemming from the loss, compromise, or unauthorized disclosure of Top Secret Restricted Data or other classified information classified as Top Secret, any classification level of information in a SAP, information identified as SCI, or high risk nuclear weapons-related data.

(2) *Second Degree:* Performance failures that have been determined, in accordance with applicable law, regulation, or DOE directive, to have actually resulted in, or that can reasonably be expected to result in, serious damage to the national security. The following are examples of performance failures or performance failures of similar import that will be considered second degree:

(i) Non-compliance with applicable laws, regulations, and DOE directives actually resulting in, or creating risk of, loss, compromise, or unauthorized disclosure of Secret Restricted Data or other information classified as Secret.

(ii) Contractor actions that result in a breakdown of the safeguards and security management system that can reasonably be expected to result in the loss, compromise, or unauthorized disclosure of Secret Restricted Data, or other information classified as Secret.

(iii) Failure to promptly report the loss, compromise, or unauthorized disclosure of Restricted Data or other classified information regardless of classification (except for information covered by paragraph (c)(1)(iii) of this clause).

(iv) Failure to timely implement corrective actions stemming from the loss, compromise, or unauthorized disclosure of Secret Restricted Data or other information classified as Secret.

(3) *Third Degree:* Performance failures that have been determined, in accordance with applicable law, regulation, or DOE directive, to have actually resulted in, or that can reasonably be expected to result in, undue risk to the common defense and security. In addition, this category includes performance failures that result from a lack of contractor management and/or employee attention to the proper safeguarding of Restricted Data and other classified information. These performance failures may be indicators of future, more severe performance failures and/or conditions, and if identified and corrected early would prevent serious incidents. The following are examples of performance failures or performance failures of similar import will be considered third degree:

(i) Non-compliance with applicable laws, regulations, and DOE directives actually resulting in, or creating risk of, loss, compromise, or unauthorized disclosure of Restricted Data or other information classified as Confidential.

(ii) Failure to promptly report alleged or suspected violations of laws, regulations, or directives pertaining to the safeguarding of Restricted Data or other classified information.

(iii) Failure to identify or timely execute corrective actions to mitigate or eliminate identified vulnerabilities and reduce residual risk relating to the protection of Restricted Data or other classified information in accordance with the contractor's Safeguards and Security Plan or other security plan, as applicable.

(iv) Contractor actions that result in performance failures which unto themselves pose minor risk, but when viewed in the aggregate indicate degradation in the integrity of the contractor's safeguards and security management system relating to the protection of Restricted Data and other classified information.

(d) Protection of Worker Safety and Health. Performance failures occur if the contractor does not comply with the contract's WS&H terms and conditions, which may be included in the DOE approved contractor Integrated Safety Management System (ISMS). The degrees of performance failure under which reductions of fee or profit will be determined are:

(1) First Degree: Performance failures that are most adverse to WS&H or could threaten the successful completion of a program or project. For contracts including ISMS requirements, failure to develop and obtain required DOE approval of WS&H aspects of an ISMS is considered first degree. The Government will perform necessary review of the ISMS in a timely manner and will not unreasonably withhold approval of the WS&H aspects of the contractor's ISMS. The following performance failures or performance failures of similar import will be deemed first degree:

(i) Type A accident (defined in DOE Order 225.1A).

(ii) Two Second Degree performance failures during an evaluation period.

(2) Second Degree: Performance failures that are significantly adverse to WS&H. They include failures to comply with approved WS&H aspects of an ISMS that result in an actual injury, exposure, or exceedence that occurred or nearly occurred but had minor practical long-term health consequences. The following performance failures or performance failures of similar import will be considered second degree:

(i) Type B accident (defined in DOE Order 225.1A).

(ii) Non-compliance with approved WS&H aspects of an ISMS that results in a near miss of a Type A or B accident. A near miss is a situation in which an inappropriate action occurs, or a necessary action is omitted, but does not result in an adverse effect.

(iii) Failure to mitigate or notify DOE of an imminent danger situation after discovery, where such notification is a requirement of the contract.

(3) Third Degree: Performance failures that reflect a lack of focus on improving WS&H. They include failures to comply with approved WS&H aspects of an ISMS that result in potential breakdown of the contractor's WS&H system. The following performance failures or performance failures of similar import will be considered third degree:

(i) Failure to implement effective corrective actions to address deficiencies/non-compliance documented through external (*e.g.*, Federal) oversight and/or reported per DOE Order 232.1A requirements, or internal oversight of DOE O 440.1A requirements.

(ii) Multiple similar non-compliances identified by external (*e.g.*, Federal) oversight that in aggregate indicate a significant WS&H system breakdown.

(iii) Non-compliances that either have, or may have, significant negative impacts to workers that indicate a significant WS&H system breakdown.

(iv) Failure to notify DOE upon discovery of events or conditions where notification is required by the terms and conditions of the contract.

(End of Clause)

■ 8. Section 952.223–77 is added to read as follows:

952.223–77 Conditional Payment of Fee or Profit—Protection of Worker Safety and Health.

As prescribed at 48 CFR (DEAR) 923.7002(g), insert the following clause.

Conditional Payment of Fee or Profit—Protection of Worker Safety and Health (JAN 2004)

(a) General. (1) The payment of fee or profit (*i.e.*, award fee, fixed fee, and incentive fee or profit) under this contract is dependent upon the contractor's compliance with the terms and conditions of this contract relating to the protection of worker safety and health (WS&H), including compliance with applicable law, regulation, and DOE directives. The term "contractor" as used in this clause to address failure to comply shall mean "contractor or contractor employee."

(2) In addition to other remedies available to the Federal Government, if the contractor fails to comply with the terms and conditions of this contract relating to the protection of worker safety and health, the contracting officer may unilaterally reduce the amount of fee or profit that is otherwise payable to the contractor in accordance with the terms and conditions of this clause.

(3) Any reduction in the amount of fee or profit earned by the contractor will be determined by the severity of the contractor's failure to comply with contract terms and conditions relating to worker safety and health pursuant to the degrees specified in paragraph (c) of this clause.

(b) Reduction Amount. (1) If in any period (*see* 48 CFR 952.223–77 (b)(2)) it is found that the contractor has failed to comply with contract terms and conditions relating to the protection of worker safety and health, the contractor's fee or profit of the period may be reduced. Such reduction shall not be less than 26% nor greater than 100% of the total fee or profit earned for a first degree performance failure, not less than 11% nor greater than 25% for a second degree performance failure, and up to 10% for a third degree performance failure. The contracting officer must consider mitigating factors that may warrant a reduction below the specified range (*see* 48 CFR 923.7001(b)). The mitigating factors include, but are not limited to, the following:

(i) Degree of control the contractor had over the event or incident.

(ii) Efforts the contractor had made to anticipate and mitigate the possibility of the event in advance.

(iii) Contractor self-identification and response to the event to mitigate impacts and recurrence.

(iv) General status (trend and absolute performance) of protecting WS&H and compliance in related areas.

(v) Contractor demonstration to the Contracting Officer's satisfaction that the principles of industrial WS&H standards are routinely practiced (*e.g.*, Voluntary Protection Program Star Status).

(vi) Event caused by "Good Samaritan" act by the contractor (*e.g.*, offsite emergency response).

(vii) Contractor demonstration that a performance measurement system is routinely used to improve and maintain WS&H performance (including effective resource allocation) and to support DOE corporate decision-making (*e.g.*, policy, WS&H programs).

(viii) Contractor demonstration that an Operating Experience and Feedback Program is functioning that demonstrably affects continuous improvement in WS&H by use of lessons-learned and best practices inter- and intra-DOE sites.

(2)(i) Except in the case of performance based firm-fixed-price contracts (*see* paragraph (b)(3) below), the contracting officer, for purposes of this clause, will at the time of contract award, or as soon as practicable thereafter, allocate the total amount of fee or profit that is available under this contract to equal periods of [insert 6 or 12] months to run sequentially for the entire term of the contract (*i.e.*, from the effective date of the contract to the expiration date of the contract, including all options). The amount of fee or profit to be allocated to each period shall be equal to the average monthly fee or profit that is available or otherwise payable during the entire term of the contract, multiplied by the number of months established above for each period.

(ii) Under this clause, the total amount of fee or profit that is subject to reduction in a period in which a performance failure occurs, in combination with any reduction made under any other clause in the contract that provides for a reduction to the fee or profit, shall not exceed the amount of fee or profit that is earned by the contractor in the period established pursuant to paragraph (b)(2)(i) of this clause.

(3) For performance-based firm-fixed-price contracts, the contracting officer will at the time of contract award include negative monetary incentives in the contract for contractor violations relating to the protection of worker safety and health.

(c) Protection of Worker Safety and Health. Performance failures occur if the contractor does not comply with the contract's WS&H terms and conditions, which may be included in the DOE approved contractor Integrated Safety Management System (ISMS). The degrees of performance failure under which reductions of fee or profit will be determined are:

(1) First Degree: Performance failures that are most adverse to WS&H or could threaten the successful completion of a program or project. For contracts including ISMS requirements, failure to develop and obtain required DOE approval of WS&H aspects of an ISMS is considered first degree. The Government will perform necessary review of the ISMS in a timely manner and will not unreasonably withhold approval of the WS&H aspects of the contractor's ISMS. The following performance failures or performance failures of similar import will be deemed first degree:

(i) Type A accident (defined in DOE Order 225.1A).

(ii) Two Second Degree performance failures during an evaluation period.

(2) Second Degree: Performance failures that are significantly adverse to WS&H. They include failures to comply with approved WS&H aspects of an ISMS that result in an actual injury, exposure, or exceedence that occurred or nearly occurred but had minor practical long-term health consequences. The following performance failures or performance failures of similar import will be considered second degree:

(i) Type B accident (defined in DOE Order 225.1A).

(ii) Non-compliance with approved WS&H aspects of an ISMS that results in a near miss of a Type A or B accident. A near miss is a situation in which an inappropriate action occurs, or a necessary action is omitted, but does not result in an adverse effect.

(iii) Failure to mitigate or notify DOE of an imminent danger situation after discovery, where such notification is a requirement of the contract.

(3) Third Degree: Performance failures that reflect a lack of focus on improving WS&H. They include failures to comply with approved WS&H aspects of an ISMS that result in potential breakdown of the contractor's WS&H system. The following performance failures or performance failures of similar import will be considered third degree:

(i) Failure to implement effective corrective actions to address deficiencies/non-compliance documented through external (*e.g.*, Federal) oversight and/or reported per DOE Order 232.1A requirements, or internal oversight of DOE O 440.1A requirements.

(ii) Multiple similar non-compliances identified by external (*e.g.*, Federal) oversight that in aggregate indicate a significant WS&H system breakdown.

(iii) Non-compliances that either have, or may have, significant negative impacts to workers that indicate a significant WS&H system breakdown.

(iv) Failure to notify DOE upon discovery of events or conditions where notification is required by the terms and conditions of the contract.

(End of Clause)

PART 970—DOE MANAGEMENT AND OPERATING CONTRACTS

■ 9. The authority citation for Part 970 is revised to read as follows:

Authority: 42 U.S.C. 2201, 2282a, 2282b, 2282c; 42 U.S.C. 7101 *et seq.*; 41 U.S.C. 418b; 50 U.S.C. 2401 *et seq.*

■ 10. Section 970.0404–2 is amended by adding paragraph (c) to read as follows:

970.0404–2 General.

* * * * *

(c) For DOE management and operating contracts and other contracts designated by the Procurement Executive, or designee, the clause entitled, "Conditional Payment of Fee, Profit, and Other Incentives—Facility Management Contracts," implements the requirements of section 234B of the Atomic Energy Act (*see* 48 CFR 904.402(c)(1)) for the use of a contract clause that provides for an appropriate reduction in the fee or amount paid to the contractor under the contract in the event of a violation by the contractor or any contractor employee of any rule, regulation, or order relating to the safeguarding or security of Restricted Data or other classified information. The clause, in part, provides for reductions in the amount of fee, profit, or share of cost savings that is otherwise earned by the contractor for performance failures relating to the safeguarding of Restricted Data and other classified information.

■ 11. Section 970.1504–1–2 is amended by adding new paragraph (i) to read as follows:

970.1504–1–2 Fee policy.

* * * * *

(i)(1) In addition to other performance requirements specified in the contract, DOE management and operating contractors and other contractors designated by the Procurement Executive, or designee, are subject to performance requirements relating to: environment, safety, and health (ES&H), including worker safety and health (WS&H); and safeguarding of Restricted Data and other classified information. Performance requirements relating to ES&H will be set forth in the contract's ES&H terms and conditions, including a DOE approved Integrated Safety Management System (ISMS), or similar document. As applicable, performance requirements relating to the safeguarding of Restricted Data and other classified information will be set forth in the clauses of the contract entitled "Security" and "Laws, Regulations, and DOE Directives," as well as in other terms and conditions that prescribe requirements for the safeguarding of Restricted Data and other classified information.

(2) If the contractor does not meet the performance requirements of the contract relating to ES&H or to the safeguarding of Restricted Data and other classified information, otherwise earned fee, fixed fee, profit, or share of cost savings may be unilaterally reduced by the contracting officer in accordance with the clause entitled "Conditional Payment of Fee, Profit, and Other Incentives—Facility Management Contracts."

(3) The clause entitled "Conditional Payment of Fee, Profit, and Other Incentives—Facility Management Contracts," provides for reductions of earned fee, fixed fee, profit, or share of cost savings under the contract depending upon the severity of the contractor's performance failure relating to ES&H requirements and, if applicable, relating to the safeguarding of Restricted Data and other classified information. When reviewing performance failures that would otherwise warrant a potential reduction of earned fee, fixed fee, profit, or share of cost savings, the contracting officer must consider mitigating factors that may warrant a reduction below the applicable range specified in the clause. Some of the mitigating factors that must be considered are included in the clause.

(4) The contracting officer must obtain the concurrence of the cognizant Program Secretarial Officer

(i) Prior to effecting any reduction of fee or profit in accordance with the terms and conditions of the clause entitled, "Conditional Payment of Fee, Profit, and Other Incentives—Facility Management Contracts;" and

(ii) For determinations that no reduction of fee or profit is warranted for a particular performance failure(s) that would otherwise be subject to a reduction.

970.1504–1–3 [Amended]

■ 12. Section 970.1504–1–3 is amended in paragraph (c)(1) in the last sentence by removing "Conditional Payment of Fee, Profit, or Incentives" and adding in its place "Conditional Payment of Fee, Profit, and Other Incentives—Facility Management Contracts."

■ 13. Section 970.1504–5 is amended by revising the heading and revising paragraph (c) to read as follows:

970.1504–5 Solicitation provision and contract clauses.

* * * * *

(c)(1) The contracting officer shall insert the clause at 48 CFR 970.5215–3,

Conditional Payment of Fee, Profit, and Other Incentives—Facility Management Contracts, in all DOE management and operating contracts and other contracts determined by the Procurement Executive, or designee.

(2) The contracting officer shall include the clause with its Alternate I in contracts that do not contain the clause at 48 CFR 952.204–2, Security.

(3) The contracting officer shall include the clause with its Alternate II in contracts that are awarded on a cost-plus-award-fee basis. The contracting officer should consider including the clause with its Alternate II in contracts that are awarded on a multiple fee basis if the cost-plus-award-fee portion of the contract is significant.

* * * * *

■ 14. Section 970.2303–1 is amended by adding paragraph (c) to read as follows:

970.2303–1 General.

* * * * *

(c)(1) For DOE management and operating contracts and other contracts designated by the Procurement Executive, or designee, the clause entitled "Conditional Payment of Fee, Profit, and Other Incentives—Facility Management Contracts" implements the requirements of section 234C of the Atomic Energy Act for the use of a contract clause that provides for an appropriate reduction in the fee or amount paid to the contractor under the contract in the event of a violation by the contractor or any contractor employee of any Departmental regulation relating to the enforcement of worker safety and health concerns. The clause, in part, provides for reductions in the amount of fee, profit, or share of cost savings that is otherwise earned by the contractor for performance failures relating to worker safety and health violations under the Department's regulations.

(2)(i) Section 234C of the Atomic Energy Act states that DOE shall either pursue civil penalties (implemented at 10 CFR part 851) for a violation under section 234C of the Atomic Energy Act (42 U.S.C. 2282c) or a contract fee reduction, but not both.

(ii) The contracting officer must coordinate with the Office of Price Anderson Enforcement within the Office of the Assistant Secretary for Environment, Safety and Health (or with any designated successor office) before pursuing contract fee reduction in the event of a violation by the contractor or any contractor employee of any Departmental regulation relating to the enforcement of worker safety and health concerns.

970.5215–1 [Amended]

■ 15. Section 970.5215–1 is amended in paragraph (c)(3) in the last sentence by removing "Conditional Payment of Fee, Profit, or Incentives" and adding in its place "Conditional Payment of Fee, Profit, and Other Incentives—Facility Management Contracts."

■ 16. Section 970.5215–3 is revised to read as follows:

As prescribed in 48 CFR 970.1504–5(c)(1), insert the following clause:

970.5215–3 Conditional Payment of Fee, Profit, and Other Incentives—Facility Management Contracts (JAN 2004)

(a) General. (1) The payment of earned fee, fixed fee, profit, or share of cost savings under this contract is dependent upon:

(i) The contractor's or contractor employees' compliance with the terms and conditions of this contract relating to environment, safety and health (ES&H), which includes worker safety and health (WS&H), including performance under an approved Integrated Safety Management System (ISMS); and

(ii) The contractor's or contractor employees' compliance with the terms and conditions of this contract relating to the safeguarding of Restricted Data and other classified information.

(2) The ES&H performance requirements of this contract are set forth in its ES&H terms and conditions, including the DOE approved contractor ISMS or similar document. Financial incentives for timely mission accomplishment or cost effectiveness shall never compromise or impede full and effective implementation of the ISMS and full ES&H compliance.

(3) The performance requirements of this contract relating to the safeguarding of Restricted Data and other classified information are set forth in the clauses of this contract entitled, "Security" and "Laws, Regulations, and DOE Directives," as well as in other terms and conditions.

(4) If the contractor does not meet the performance requirements of this contract relating to ES&H or to the safeguarding of Restricted Data and other classified information during any performance evaluation period established under the contract pursuant to the clause of this contract entitled, "Total Available Fee: Base Fee Amount and Performance Fee Amount," otherwise earned fee, fixed fee, profit or share of cost savings may be unilaterally reduced by the contracting officer.

(b) Reduction Amount. (1) The amount of earned fee, fixed fee, profit, or share of cost savings that may be unilaterally reduced will be determined by the severity of the performance failure pursuant to the degrees specified in paragraphs (c) and (d) of this clause.

(2) If a reduction of earned fee, fixed fee, profit, or share of cost savings is warranted, unless mitigating factors apply, such reduction shall not be less than 26 percent nor greater than 100 percent of the amount of earned fee, fixed fee, profit, or the contractor's share of cost savings for a first degree performance failure, not less than 11 percent nor greater than 25 percent for a second degree performance failure, and up to 10 percent for a third degree performance failure.

(3) In determining the amount of the reduction and the applicability of mitigating factors, the contracting officer must consider the contractor's overall performance in meeting the ES&H or security requirements of the contract. Such consideration must include performance against any site specific performance criteria/requirements that provide additional definition, guidance for the amount of reduction, or guidance for the applicability of mitigating factors. In all cases, the contracting officer must consider mitigating factors that may warrant a reduction below the applicable range (*see* 48 CFR 970.1504–1–2). The mitigating factors include, but are not limited to, the following ((v), (vi), (vii) and (viii) apply to ES&H only).

(i) Degree of control the contractor had over the event or incident.

(ii) Efforts the contractor had made to anticipate and mitigate the possibility of the event in advance.

(iii) Contractor self-identification and response to the event to mitigate impacts and recurrence.

(iv) General status (trend and absolute performance) of: ES&H and compliance in related areas; or of safeguarding Restricted Data and other classified information and compliance in related areas.

(v) Contractor demonstration to the contracting officer's satisfaction that the principles of industrial ES&H standards are routinely practiced (*e.g.*, Voluntary Protection Program, ISO 14000).

(vi) Event caused by "Good Samaritan" act by the contractor (*e.g.*, offsite emergency response).

(vii) Contractor demonstration that a performance measurement system is routinely used to improve and maintain ES&H performance (including effective resource allocation) and to support DOE corporate decision-making (*e.g.*, policy, ES&H programs). * * *

(viii) Contractor demonstration that an Operating Experience and Feedback Program is functioning that demonstrably affects continuous improvement in ES&H by use of lessons-learned and best practices inter- and intra-DOE sites.

(4)(i) The amount of fee, fixed fee, profit, or share of cost savings that is otherwise earned by a contractor during an evaluation period may be reduced in accordance with this clause if it is determined that a performance failure warranting a reduction under this clause occurs within the evaluation period.

(ii) The amount of reduction under this clause, in combination with any reduction made under any other clause in the contract, shall not exceed the amount of fee, fixed fee, profit, or the contractor's share of cost savings that is otherwise earned during the evaluation period.

(iii) For the purposes of this clause, earned fee, fixed fee, profit, or share of cost savings for the evaluation period shall mean the amount determined by the contracting officer or fee determination official as otherwise payable based on the contractor's performance during the evaluation period. Where the contract provides for financial incentives that extend beyond a single evaluation period, this amount shall also include: any provisional amounts determined otherwise payable in the evaluation period; and, if provisional payments are not provided for, the allocable amount of any incentive determined otherwise payable at the conclusion of a subsequent evaluation period. The allocable amount shall be the total amount of the earned incentive divided by the number of evaluation periods over which it was earned.

(iv) The Government will effect the reduction as soon as practicable after the end of the evaluation period in which the performance failure occurs. If the Government is not aware of the failure, it will effect the reduction as soon as practical after becoming aware. For any portion of the reduction requiring an allocation the Government will effect the reduction at the end of the evaluation period in which it determines the total amount earned under the incentive. If at any time a reduction causes the sum of the payments the contractor has received for fee, fixed fee, profit, or share of cost savings to exceed the sum of fee, fixed fee, profit, or share of cost savings the contractor has earned (provisionally or otherwise), the contractor shall immediately return the excess to the Government. (What the contractor "has earned" reflects any reduction made under this or any other clause of the contract.)

(v) At the end of the contract:

(A) The Government will pay the contractor the amount by which the sum of fee, fixed fee, profit, or share of cost savings the contractor has earned exceeds the sum of the payments the contractor has received; or

(B) The contractor shall return to the Government the amount by which the sum of the payments the contractor has received exceeds the sum of fee, fixed fee, profit, or share of cost savings the contractor has earned. (What the contractor "has earned" reflects any reduction made under this or any other clause of the contract.)

(c) Environment, Safety and Health (ES&H). Performance failures occur if the contractor does not comply with the contract's ES&H terms and conditions, including the DOE approved contractor ISMS. The degrees of performance failure under which reductions of earned or fixed fee, profit, or share of cost savings will be determined are:

(1) First Degree: Performance failures that are most adverse to ES&H. Failure to develop and obtain required DOE approval of an ISMS is considered first degree. The Government will perform necessary review of the ISMS in a timely manner and will not unreasonably withhold approval of the contractor's ISMS. The following performance failures or performance failures of similar import will be considered first degree.

(i) Type A accident (defined in DOE Order 225.1A).

(ii) Two Second Degree performance failures during an evaluation period.

(2) Second Degree: Performance failures that are significantly adverse to ES&H. They include failures to comply with an approved ISMS that result in an actual injury, exposure, or exceedence that occurred or nearly occurred but had minor practical long-term health consequences. They also include breakdowns of the Safety Management System. The following performance failures or performance failures of similar import will be considered second degree:

(i) Type B accident (defined in DOE Order 225.1A).

(ii) Non-compliance with an approved ISMS that results in a near miss of a Type A or B accident. A near miss is a situation in which an inappropriate action occurs, or a necessary action is omitted, but does not result in an adverse effect.

(iii) Failure to mitigate or notify DOE of an imminent danger situation after discovery, where such notification is a requirement of the contract.

(3) Third Degree: Performance failures that reflect a lack of focus on improving ES&H. They include failures to comply with an approved ISMS that result in potential breakdown of the System. The following performance failures or performance failures of similar import will be considered third degree:

(i) Failure to implement effective corrective actions to address deficiencies/non-compliances documented through: external (*e.g.*, Federal) oversight and/or reported per DOE Order 232.1A requirements; or internal oversight of DOE Order 440.1A requirements.

(ii) Multiple similar non-compliances identified by external (*e.g.*, Federal) oversight that in aggregate indicate a significant programmatic breakdown.

(iii) Non-compliances that either have, or may have, significant negative impacts to the worker, the public, or the environment or that indicate a significant programmatic breakdown.

(iv) Failure to notify DOE upon discovery of events or conditions where notification is required by the terms and conditions of the contract.

(d) Safeguarding Restricted Data and Other Classified Information. Performance failures occur if the contractor does not comply with the terms and conditions of this contract relating to the safeguarding of Restricted Data and other classified information. The degrees of performance failure under which reductions of fee, profit, or share of cost savings will be determined are as follows:

(1) First Degree: Performance failures that have been determined, in accordance with applicable law, DOE regulation, or directive, to have resulted in, or that can reasonably be expected to result in, exceptionally grave damage to the national security. The following are examples of performance failures or performance failures of similar import that will be considered first degree:

(i) Non-compliance with applicable laws, regulations, and DOE directives actually resulting in, or creating a risk of, loss, compromise, or unauthorized disclosure of Top Secret Restricted Data or other information classified as Top Secret, any classification level of information in a Special Access Program (SAP), information identified as sensitive compartmented information (SCI), or high risk nuclear weapons-related data.

(ii) Contractor actions that result in a breakdown of the safeguards and security management system that can reasonably be expected to result in the loss, compromise, or unauthorized disclosure of Top Secret Restricted Data, or other information classified as Top Secret, any classification level of information in a SAP, information identified as SCI, or high risk nuclear weapons-related data.

(iii) Failure to promptly report the loss, compromise, or unauthorized disclosure of Top Secret Restricted Data, or other information classified as Top Secret, any classification level of information in a SAP, information identified as SCI, or high risk nuclear weapons-related data.

(iv) Failure to timely implement corrective actions stemming from the loss, compromise, or unauthorized disclosure of Top Secret Restricted Data or other information classified as Top Secret, any classification level of information in a SAP, information identified as SCI, or high risk nuclear weapons-related data.

(2) Second Degree: Performance failures that have been determined, in accordance with applicable law, DOE regulation, or directive, to have actually resulted in, or that can reasonably be expected to result in, serious damage to the national security. The following are examples of performance failures or performance failures of similar import that will be considered second degree:

(i) Non-compliance with applicable laws, regulations, and DOE directives actually resulting in, or creating risk of, loss, compromise, or unauthorized disclosure of Secret Restricted Data or other information classified as Secret.

(ii) Contractor actions that result in a breakdown of the safeguards and security management system that can reasonably be expected to result in the loss, compromise, or unauthorized disclosure of Secret Restricted Data, or other information classified as Secret.

(iii) Failure to promptly report the loss, compromise, or unauthorized disclosure of Restricted Data or other classified information regardless of classification (except for information covered by paragraph (d)(1)(iii) of this clause).

(iv) Failure to timely implement corrective actions stemming from the loss, compromise, or unauthorized disclosure of Secret Restricted Data or other classified information classified as Secret.

(3) Third Degree: Performance failures that have been determined, in accordance with applicable law, regulation, or DOE directive, to have actually resulted in, or that can reasonably be expected to result in, undue risk to the common defense and security. In addition, this category includes performance failures that result from a lack of contractor management and/or employee attention to the proper safeguarding of Restricted Data and other classified information. These performance failures may be indicators of future, more severe performance failures and/or conditions, and if identified and corrected early would prevent serious incidents. The following are examples of performance failures or performance failures of similar import that will be considered third degree:

(i) Non-compliance with applicable laws, regulations, and DOE directives actually resulting in, or creating risk of, loss, compromise, or unauthorized disclosure of Restricted Data or other information classified as Confidential.

(ii) Failure to promptly report alleged or suspected violations of laws, regulations, or directives pertaining to the safeguarding of Restricted Data or other classified information.

(iii) Failure to identify or timely execute corrective actions to mitigate or eliminate identified vulnerabilities and reduce residual risk relating to the protection of Restricted Data or other classified information in accordance with the contractor's Safeguards and Security Plan or other security plan, as applicable.

(iv) Contractor actions that result in performance failures which unto themselves pose minor risk, but when viewed in the aggregate indicate degradation in the integrity of the contractor's safeguards and security management system relating to the protection of Restricted Data and other classified information.

(End of Clause)

Alternate I (JAN 2004). As prescribed in 48 CFR 970.1504–5(c)(2), replace paragraphs (a), (b)(1), (b)(2), and (b)(3) of the basic clause with the following paragraphs (a), (b)(1), (b)(2), and (b)(3) and delete paragraph (d).

(a) General. (1) The payment of earned fee, fixed fee, profit or share of cost savings under this contract is dependent upon the contractor's or contractor employees' compliance with the terms and conditions of this contract relating to environment, safety and health (ES&H), which includes worker safety and health (WS&H), including performance under an approved Integrated Safety Management System (ISMS).

(2) The ES&H performance requirements of this contract are set forth in its ES&H terms and conditions, including the DOE approved contractor ISMS or similar document. Financial incentives for timely mission accomplishment or cost effectiveness shall never compromise or impede full and effective implementation of the ISMS and full ES&H compliance.

(3) If the contractor does not meet the performance requirements of this contract relating to ES&H during any performance evaluation period established under the contract pursuant to the clause of this contract entitled, "Total Available Fee: Base Fee Amount and Performance Fee Amount," otherwise earned fee, fixed fee, profit or share of cost savings may be unilaterally reduced by the contracting officer.

(b) Reduction Amount. (1) The amount of earned fee, fixed fee, profit, or share of cost savings that may be unilaterally reduced will be determined by the severity of the performance failure pursuant to the degrees specified in paragraph (c) of this clause.

(2) If a reduction of earned fee, fixed fee, profit, or share of cost savings is warranted, unless mitigating factors apply, such reduction shall not be less than 26 percent nor greater than 100 percent of the amount of earned fee, fixed fee, profit, or the contractor's share of cost savings for a first degree performance failure, not less than 11 percent nor greater than 25 percent for a second degree performance failure, and up to 10 percent for a third degree performance failure.

(3) In determining the amount of the reduction and the applicability of mitigating factors, the contracting officer must consider the contractor's overall performance in meeting the ES&H requirements of the contract. Such consideration must include performance against any site specific performance criteria/requirements that provide additional definition, guidance for the amount of reduction, or guidance for the applicability of mitigating factors. In all cases, the contracting officer must consider mitigating factors that may warrant a reduction below the applicable range (*see* 48 CFR 970.1504–1–2). The mitigating factors include the following.

(i) Degree of control the contractor had over the event or incident.

(ii) Efforts the contractor had made to anticipate and mitigate the possibility of the event in advance.

(iii) Contractor self-identification and response to the event to mitigate impacts and recurrence.

(iv) General status (trend and absolute performance) of ES&H and compliance in related areas.

(v) Contractor demonstration to the Contracting Officer's satisfaction that the principles of industrial ES&H standards are routinely practiced (*e.g.*, Voluntary Protection Program Star Status, or ISO 14000 Certification).

(vi) Event caused by "Good Samaritan" act by the contractor (*e.g.*, offsite emergency response).

(vii) Contractor demonstration that a performance measurement system is routinely used to improve and maintain ES&H performance (including effective resource allocation) and to support DOE corporate decision-making (*e.g.*, policy, ES&H programs).

(viii) Contractor demonstration that an Operating Experience and Feedback Program is functioning that demonstrably affects continuous improvement in ES&H by use of lessons-learned and best practices inter- and intra-DOE sites.

Alternate II (JAN 2004). As prescribed in 48 CFR 970.1504–5(c)(3), insert the following as paragraphs (e) and (f) in contracts awarded on a cost-plus-award fee, incentive fee or multiple fee basis (if Alternate I is also used, redesignate the following as paragraphs (d) and (e)).

(e) Minimum requirements for specified level of performance. (1) At a minimum the contractor must perform the following:

(i) The requirements with specific incentives which do not require the achievement of cost efficiencies in order to be performed at the level of performance set forth in the Statement of Work, Work Authorization Directive, or similar document unless an otherwise minimum level of performance has been established in the specific incentive;

(ii) All of the performance requirements directly related to requirements specifically incentivized which do not require the achievement of cost efficiencies in order to be performed at a level of performance such that the overall performance of these related requirements is at an acceptable level; and

(iii) All other requirements at a level of performance such that the total performance of the contract is not jeopardized.

(2) The evaluation of the Contractor's achievement of the level of performance shall be unilaterally determined by the Government. To the extent that the Contractor fails to achieve the minimum performance levels specified in the Statement of Work, Work Authorization Directive, or similar document, during the performance evaluation period, the DOE Operations/Field Office Manager, or designee, may reduce any otherwise earned fee, fixed fee, profit, or shared net savings for the performance evaluation period. Such reduction shall not result in the total of earned fee, fixed fee, profit, or shared net savings being less than 25 percent of the total available fee amount. Such 25 percent shall include base fee, if any.

(f) Minimum requirements for cost performance. (1) Requirements incentivized by other than cost incentives must be performed within their specified cost constraint and must not adversely impact the costs of performing unrelated activities.

(2) The performance of requirements with a specific cost incentive must not adversely impact the costs of performing unrelated requirements.

(3) The contractor's performance within the stipulated cost performance levels for the performance evaluation period shall be determined by the Government. To the extent the contractor fails to achieve the stipulated cost performance levels, the DOE Operations/Field Office Manager, or designee, may reduce in whole or in part any otherwise earned fee, fixed fee, profit, or shared net savings for the performance evaluation period. Such reduction shall not result in the total of earned fee, fixed fee, profit or shared net savings being less than 25 percent of the total available fee amount. Such 25 percent shall include base fee, if any.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[I.D. 120103F]

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Fishery of the Gulf of Mexico; Closure of the Fall Commercial Red Snapper Component

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of closure.

SUMMARY: NMFS closes the commercial fishery for red snapper in the exclusive economic zone (EEZ) of the Gulf of Mexico. NMFS has determined that the fall portion of the annual commercial quota for red snapper will be reached on December 7, 2003. This closure is necessary to protect the red snapper resource.

DATES: Closure is effective noon, local time, December 7, 2003, until noon, local time, on February 1, 2004.

FOR FURTHER INFORMATION CONTACT: Phil Steele, telephone 727–570–5305, fax 727–570–5583, e-mail Phil.Steele@noaa.gov.

SUPPLEMENTARY INFORMATION: The reef fish fishery of the Gulf of Mexico is managed under the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico (FMP). The FMP was prepared by the Gulf of Mexico Fishery Management Council and is implemented under the authority of the Magnuson-Stevens Fishery Conservation and Management Act by regulations at 50 CFR part 622. Those regulations set the commercial quota for red snapper in the Gulf of Mexico at 4.65 million lb (2.11 million kg) for the current fishing year, January 1 through December 31, 2003. The red snapper commercial fishing season is split into two time periods, the first commencing at noon on February 1 with two-thirds of the annual quota (3.10 million lb (1.41 million kg)) available, and the second commencing at noon on October 1 with the remainder of the annual quota available. During the commercial season, the red snapper commercial fishery opens at noon on the first of each month and closes at noon on the 10th of each month, until the applicable commercial quotas are reached.

Under 50 CFR 622.43(a), NMFS is required to close the commercial fishery for a species or species group when the quota for that species or species group is reached, or is projected to be reached, by filing a notification to that effect in the **Federal Register**. Based on current statistics, NMFS has determined that the available fall commercial quota of 1.60 million lb (0.73 million kg) for red snapper will be reached when the fishery closes at noon on December 7, 2003. Accordingly, the commercial fishery in the EEZ in the Gulf of Mexico for red snapper will remain closed until noon, local time, on February 1, 2004. The operator of a vessel with a valid reef fish permit having red snapper aboard must have landed and bartered, traded, or sold such red snapper prior to noon, local time, December 7, 2003.

During the closure, the bag and possession limits specified in 50 CFR 622.39(b) apply to all harvest or possession of red snapper in or from the EEZ in the Gulf of Mexico, and the sale or purchase of red snapper taken from the EEZ is prohibited. In addition, the bag and possession limits for red snapper apply on board a vessel for which a commercial permit for Gulf reef fish has been issued, without regard to where such red snapper were harvested. However, the bag and possession limits for red snapper apply only when the recreational quota for red snapper has not been reached and the bag and possession limit has not been reduced to zero. The 2003 recreational red snapper season opened on April 21, 2003, and closed on October 31, 2003. The prohibition on sale or purchase does not apply to sale or purchase of red snapper that were harvested, landed ashore, and sold prior to noon, local time, December 7, 2003, and were held in cold storage by a dealer or processor.

Classification

This action is taken under 50 CFR 622.43(a) and is exempt from review under Executive Order 12866.

Dated: December 4, 2003.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 03–30607 Filed 12–5–03; 2:41 am]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 68, No. 237
Wednesday, December 10, 2003

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

FEDERAL RESERVE SYSTEM

12 CFR Part 202

[Regulation B; Docket No. R–1168]

Equal Credit Opportunity

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Proposed rule.

SUMMARY: The Board is proposing to amend Regulation B, which implements the Equal Credit Opportunity Act, and the staff commentary to the regulation. Regulation B would be revised to define more specifically the standard for providing "clear and conspicuous" disclosures, and to provide a more uniform standard among the Board's regulations. The staff commentary would be revised to include examples of how to meet this standard. Similar proposed revisions to Regulations E, M, Z and DD appear elsewhere in today's **Federal Register**. These revisions are intended to help ensure that consumers receive noticeable and understandable information that is required by law in connection with obtaining consumer financial products and services. In addition, consistency among the regulations should facilitate compliance by institutions.

DATES: Comments must be received on or before January 30, 2004.

ADDRESSES: Comments should refer to Docket No. R–1168 and should be mailed to Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551. However, because paper mail in the Washington area and at the Board of Governors is subject to delay, please consider submitting your comments by e-mail to *regs.comments@federalreserve.gov*, or faxing them to the Office of the Secretary at (202) 452–3819 or 452–3102. Members of the public may inspect comments in Room MP–500 of the Martin Building between 9 a.m. and 5 p.m. on weekdays pursuant to § 261.12, except as provided in § 261.14, of the Board's Rules Regarding Availability of Information, 12 CFR 261.12 and 261.14.

FOR FURTHER INFORMATION CONTACT: Minh-Duc Le, Senior Attorney, and David A. Stein, Counsel, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, at (202) 452–3667 or 452–2412; for users of Telecommunications Device for the Deaf ("TDD") only, contact (202) 263–4869.

SUPPLEMENTARY INFORMATION:

I. Background

The Equal Credit Opportunity Act (ECOA), 15 U.S.C. 1691–1691f, makes it unlawful for a creditor to discriminate against an applicant in any aspect of a credit transaction on the basis of the applicant's national origin, marital status, religion, sex, color, race, age (provided the applicant has the capacity to contract), receipt of public assistance benefits, or the good faith exercise of a right under the Consumer Credit Protection Act (15 U.S.C. 1601 *et seq.*).

In addition to a general prohibition against discrimination, the regulation contains specific rules concerning: the taking and evaluation of credit applications, how credit history information is reported on accounts used by spouses, procedures and notices for credit denials and other adverse action, and limitations on requiring signatures of persons other than the applicant on credit documents. The act also excepts certain types of credit (such as securities credit) from some requirements, and provides model forms for optional use by creditors. The ECOA is implemented by the Board's Regulation B (12 CFR part 202). An official staff commentary interprets the requirements of Regulation B (12 CFR part 202 (Supp. I)).

II. Proposed Revisions

Section 202.2—Definitions

2(bb) Clear and Conspicuous

The ECOA does not address a standard for the form of disclosures. Regulation B, however, requires creditors to disclose information provided in writing in a clear and conspicuous manner. *See* § 202.4(d). Guidance on how creditors may comply with the clear and conspicuous standard is contained in the staff commentary. *See* comment 4(d)–1.

Consumer financial services and fair lending laws and the Board regulations that implement them contain similar but not identical standards for providing disclosures that consumers will notice and understand. Generally, disclosures must be "clear and conspicuous" under Regulations B (Equal Credit Opportunity), M (Consumer Leasing), Regulation P (Privacy of Consumer Financial Information), Z (Truth in Lending) and DD (Truth in Savings), and "clear and readily understandable" under Regulation E (Electronic Fund Transfers). In interpreting the "clear and conspicuous" standard, the staff commentaries to Regulations B, M and Z provide that disclosures must be "in a reasonably understandable" form; similarly, under Regulation DD disclosures must be in a format that allows consumers "to readily understand the terms of their account." For purposes of the disclosures provided with credit card solicitations and applications, the commentary to Regulation Z provides more specifically that those disclosures must also be "readily noticeable to the consumer." In contrast, the Board's Regulation P (Privacy of Consumer Financial Information) defines the "clear and conspicuous" standard to mean that a disclosure is "reasonably understandable and designed to call attention to the nature and significance of the information" in the disclosure. 12 CFR 216.3(b)(1). Regulation P also provides examples of how to satisfy the standard. 12 CFR 216.3(b)(2).

The Board believes that the recently implemented standard in Regulation P (65 FR 35162, June 1, 2000), articulates with greater precision than the other regulations the concepts underlying the duty to provide disclosures that consumers will notice and understand. Therefore, to provide consistent guidance on the clear and conspicuous standard among its regulations, the Board is proposing to amend Regulation B by adding a definition of "clear and conspicuous" in § 202.2(bb), consistent with the "clear and conspicuous" definition in Regulation P. The staff commentary to Regulation B also would be revised to add comments 2(bb)–1 and –2, consistent with Regulation P's examples of how to meet the clear and conspicuous standard. Similar proposed revisions to Regulations E, M, Z and DD appear elsewhere in today's **Federal Register**. These revisions are intended to help ensure that consumers receive noticeable and understandable information that is required by law in connection with obtaining consumer financial products and services. In addition, consistency among the regulations should facilitate compliance by institutions.

Comment 2(bb)–3 would be added to clarify that the "clear and conspicuous" standard does not prohibit adding other terms to the federally required disclosures (such as contractual provisions or state-required disclosures); nor does it prohibit sending promotional material with the disclosures. Proposed comment 2(bb)–3 also would clarify, however, that the presence of other information may be a factor in determining whether the "clear and conspicuous" standard is met. Generally, segregating federally mandated disclosures from other information is more likely to satisfy the clear and conspicuous standard.

The Board also proposes to adopt for Regulations B, E, M, Z and DD, guidance concerning type-sizes that are deemed to meet the "clear and conspicuous" standard and those that would likely be too small (this guidance currently applies only to credit card solicitations and applications under Regulation Z). *See* proposed comment 2(bb)–2(ii).

The proposal does not add special format requirements to the regulation where none currently exist. Accordingly, even though the revisions clarify that type size can be one factor to consider in determining whether a disclosure is conspicuous, the proposal would not add a specific type-size requirement.

To eliminate redundancy with proposed § 202.2(bb) and its accompanying commentary, the Board also proposes to revise comment 4(d)–1. Guidance regarding the "clear and conspicuous" standard for disclosures transmitted by electronic communication will be considered in the context of rulemakings dealing specifically with electronic delivery of disclosures.

III. Form of Comment Letters

Comment letters should refer to Docket No. R–1168 and, when possible, should use a standard typeface with a font size of 10 or 12; this will enable the Board to convert text submitted in paper form to machine-readable form through electronic scanning, and will facilitate automated retrieval of comments for review. Comments may be mailed electronically to *regs.comments@federalreserve.gov*.

IV. Solicitation of Comments Regarding the Use of "Plain Language"

Section 722 of the Gramm-Leach-Bliley Act of 1999 requires the Board to use "plain language" in all proposed and final rules published after January 1, 2000. The Board invites comments on whether the proposed rules are clearly stated and effectively organized, and how the Board might make the proposed text easier to understand.

V. Initial Regulatory Flexibility Analysis

In accordance with section 3(a) of the Regulatory Flexibility Act, the Board has reviewed the proposed amendments to Regulation B. The proposed amendments are not expected to have any significant impact on small entities. A final regulatory flexibility analysis will be conducted after consideration of comments received during the public comment period.

VI. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506; 5 CFR 1320 Appendix A.1), the Board reviewed the rule under the authority delegated to the Board by the Office of Management and Budget. The Federal Reserve may not conduct or sponsor, and an organization is not required to respond to, this information collection unless it displays a currently valid OMB control number. The OMB control number is 7100–0201.

The collection of information that is revised by this rulemaking is found in 12 CFR part 202. This collection is mandatory to evidence compliance with the requirements of 15 U.S.C. 1691b(a)(1) and Pub. L. 104–208, § 2302(a), and also to ensure that credit is made available to all creditworthy customers without discrimination on the basis of race, color, religion, national origin, sex, marital status, age (provided the applicant has the capacity to contract), receipt of public assistance income, or the fact that the applicant has in good faith exercised any right under the Consumer Credit Protection Act (15 U.S.C. 1600 *et seq.*).

Regulation B applies to all types of creditors, not just state member banks. However, under the Paperwork Reduction Act, the Federal Reserve accounts for the burden of the paperwork associated with the regulation only for entities that are supervised by the Federal Reserve. Appendix A of Regulation B defines these creditors as state member banks, branches and agencies of foreign banks (other than federal branches, federal agencies, and insured state branches of foreign banks), commercial lending companies owned or controlled by foreign banks, and organizations operating under section 25 or 25A of the Federal Reserve Act. Other agencies account for the paperwork burden for the institutions they supervise. Creditors are required to retain records for 12 to 25 months as evidence of compliance.

The proposed revisions would provide creditors with a more uniform definition of providing "clear and conspicuous" disclosures and examples of how to satisfy the clear and conspicuous standard. While the proposal would amend Regulation B and the staff commentary, it is expected that these revisions would not increase the paperwork burden of creditors. The estimated annual burden for entities supervised by the Federal Reserve is approximately 175,711 hours for the 1,312 creditors that are "respondents" for purposes of the Paperwork Reduction Act.

Because the records would be maintained at state member banks and the notices are not provided to the Federal Reserve, no issue of confidentiality arises under the Freedom of Information Act.

Comments on the collection of information should be sent to the Office of Management and Budget, Paperwork Reduction Project (7100–0201), Washington, DC 20503, with copies of such comments sent to Cynthia Ayouch, Federal Reserve Board Clearance Officer, Division of Research and Statistics, Mail Stop 41, Board of Governors of the Federal Reserve System, Washington, DC 20551.

Text of Proposed Revisions

Certain conventions have been used to highlight the proposed revisions. New language is shown inside bold-faced arrows while language that would be deleted is set off with bold-faced brackets.

List of Subjects in 12 CFR Part 202

Aged, Banks, banking, Civil rights, Consumer protections, Credit, Discrimination, Federal Reserve System, Marital status discrimination, Penalties, Religious discrimination, Reporting and record keeping requirements, Sex discrimination.

For the reasons set forth in the preamble, the Board proposes to amend Regulation B, 12 CFR part 202, as set forth below:

PART 202—EQUAL CREDIT OPPORTUNITY (REGULATION B)

1. The authority citation for part 202 continues to read as follows:

Authority: 15 U.S.C. 1691–1691f.

2. Section 202.2 is amended by adding a new paragraph (bb) to read as follows:

§ 202.2 Definitions.

For the purposes of this regulation, unless the context indicates otherwise, the following definitions apply.

* * * * *

(bb) Clear and conspicuous means that a disclosure is reasonably understandable and designed to call attention to the nature and significance of the information in the disclosure.

* * * * *

3. In Supplement I to Part 202:

a. Under *Section 202.2 Definitions*, a new paragraph title *2(bb) Clear and conspicuous* is added, and new paragraphs (bb) 1. through (bb) 3. are added.

b. Under *Section 202.4—General Rules*, under *4(d) Form of Disclosures*, paragraph 1. is revised.

Supplement I to Part 202—Official Staff Interpretations

* * * * *

Section 202.2 Definitions

* * * * *

2(bb) Clear and Conspicuous

1. *Reasonably understandable.* Examples of disclosures that are reasonably understandable include disclosures that:

i. Present the information in the disclosure in clear, concise sentences, paragraphs, and sections;

ii. Use short explanatory sentences or bullet lists whenever possible;

iii. Use definite, concrete, everyday words and active voice whenever possible;

iv. Avoid multiple negatives;

v. Avoid legal and highly technical business terminology whenever possible; and

vi. Avoid explanations that are imprecise and readily subject to different interpretations.

2. *Designed to call attention.* Examples of disclosures that are designed to call attention to the nature and significance of the information include disclosures that:

i. Use a plain-language heading to call attention to the disclosure;

ii. Use a typeface and type size that are easy to read. Disclosures in 12-point type generally meet this standard. Disclosures printed in less than 12-point type do not automatically violate the standard; however, disclosures in less than 8-point type would likely be too small to satisfy the standard;

iii. Provide wide margins and ample line spacing;

iv. Use boldface or italics for key words; and

v. In a document that combines disclosures with other information, use distinctive type size, style, and graphic devices, such as shading or sidebars, to call attention to the disclosures.

3. *Other information.* Except as otherwise provided, the clear and conspicuous standard does not prohibit adding to the required disclosures such items as contractual provisions, explanations of contract terms, state disclosures, and translations; or sending promotional material with the required disclosures. However, the presence of this other information may be a factor in determining whether the clear and conspicuous standard is met.

* * * * *

Section 202.4—General Rules

* * * * *

4(d) Form of Disclosures

1. *Clear and conspicuous.* See § 202.2(bb) and accompanying comments.

[This standard requires that disclosures be presented in a reasonably understandable format in a way that does not obscure the required information. No minimum type size is mandated, but the disclosures must be legible, whether typewritten, handwritten, or printed by computer.]

* * * * *

By order of the Board of Governors of the Federal Reserve System.

Dated: November 25, 2003.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 03–29942 Filed 12–9–03; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

12 CFR Part 205

[Regulation E; Docket No. R–1169]

Electronic Fund Transfers

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Proposed rule.

SUMMARY: The Board is proposing to amend Regulation E, which implements the Electronic Fund Transfers Act, and the staff commentary to the regulation. Regulation E would be revised to require disclosures to be "clear and conspicuous" and to define more specifically the standard to provide a more uniform standard among the Board's regulations. The staff commentary would be revised to include examples of how to meet this standard. Similar proposed revisions to Regulations B, M, Z and DD appear elsewhere in today's **Federal Register**. These revisions are intended to help ensure that consumers receive noticeable and understandable information that is required by law in connection with obtaining consumer financial products and services. In addition, consistency among the regulations should facilitate compliance by institutions.

DATES: Comments must be received on or before January 30, 2004.

ADDRESSES: Comments should refer to Docket No. R–1169 and should be mailed to Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551. However, because paper mail in the Washington area and at the Board of Governors is subject to delay, please consider submitting your comments by e-mail to *regs.comments@federalreserve.gov*, or faxing them to the Office of the Secretary at (202) 452–3819 or 452–3102. Members of the public may inspect comments in Room MP–500 of the Martin Building between 9 a.m. and 5 p.m. on weekdays pursuant to § 261.12, except as provided in § 261.14, of the Board's Rules Regarding Availability of Information, 12 CFR 261.12 and 261.14.

FOR FURTHER INFORMATION CONTACT: Daniel Lonergan, Counsel, and Ky Tran-Trong, Senior Attorney, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, at (202) 452–3667 or 452–2412; for users of Telecommunications Device for the Deaf ("TDD") only, contact (202) 263–4869.

SUPPLEMENTARY INFORMATION:

I. Background

The purpose of the Electronic Fund Transfers Act (EFTA), 15 U.S.C. 1693 *et seq.*, is to provide a basic framework for establishing the rights, liabilities, and responsibilities of participants in electronic fund transfer (EFT) systems. The types of transfers covered by the act and regulation include transfers initiated through an automated teller machine (ATM), point-of-sale (POS) terminal, automated clearinghouse (ACH), telephone bill-payment plan, or remote banking program. The act and regulation require disclosure of terms and conditions of an EFT service; documentation of electronic transfers by means of terminal receipts and periodic account statements; limitations on consumer liability for unauthorized transfers; procedures for error resolution; and certain rights related to preauthorized EFTs. Further, the act and regulation prescribe restrictions on the unsolicited issuance of ATM cards and other access devices. The EFTA is implemented by the Board's Regulation E (12 CFR part 205). An Official Staff Commentary interprets the requirements of Regulation E (12 CFR part 205 (Supp. I)).

II. Proposed Revisions

Section 205.2—Definitions

2(n) Clear and Conspicuous

Section 905(a) of the EFTA requires that disclosures be provided to consumers in readily understandable language. *See* 15 U.S.C. 1693c(a). The EFTA also requires that certain information about EFTs be "clearly" set forth on periodic statements and receipts from an electronic terminal. *See* 15 U.S.C. 1693d(a) and (c). This standard is implemented as "clear and readily understandable" in Regulation E. *See* § 205.4(a)(1).

Consumer financial services and fair lending laws and the Board regulations that implement them contain similar but not identical standards for providing disclosures that consumers will notice and understand. Generally, disclosures must be "clear and conspicuous" under Regulations B (Equal Credit Opportunity), M (Consumer Leasing), Regulation P (Privacy of Consumer Financial Information), Z (Truth in Lending) and DD (Truth in Savings), and "clear and readily understandable" under Regulation E (Electronic Fund Transfers). In interpreting the "clear and conspicuous" standard, the staff commentaries to Regulations B, M and Z provide that disclosures must be "in a reasonably understandable" form; similarly, under Regulation DD disclosures must be in a format that allows consumers "to readily understand the terms of their account." For purposes of the disclosures provided with credit card solicitations and applications, the commentary to Regulation Z provides more specifically that those disclosures must also be "readily noticeable to the consumer." In contrast, the Board's Regulation P (Privacy of Consumer Financial Information) defines the "clear and conspicuous" standard to mean that a disclosure is "reasonably understandable and designed to call attention to the nature and significance of the information" in the disclosure. 12 CFR 216.3(b)(1). Regulation P also provides a series of examples of how to satisfy the standard. 12 CFR 216.3(b)(2).

For the reasons set forth below and pursuant to its authority under sections 904(a) and 904(c) of the EFTA, the Board proposes to conform the general disclosure standard under Regulation E to "clear and conspicuous." Further, to provide consistent guidance on the clear and conspicuous standard among its regulations, the Board is proposing to amend Regulation E by adding a definition for clear and conspicuous in § 205.2(n), consistent with the "clear and conspicuous" definition in Regulation P. The Board believes that the recently implemented standard in Regulation P (65 FR 35162, June 1, 2000), articulates with greater precision than the other regulations the concepts underlying the duty to provide disclosures that consumers will notice and understand. The staff commentary to Regulation E also would be revised to add comments 2(n)-1 and -2, consistent with Regulation P's examples of how to meet the clear and conspicuous standard. Similar proposed revisions to Regulations B, M, Z and DD appear elsewhere in today's **Federal Register**. These revisions are intended to help ensure that consumers receive noticeable and understandable information that is required by law in connection with obtaining consumer financial products and services. In addition, consistency among the regulations should facilitate compliance by institutions.

Additional information may accompany disclosures required under Regulation E. *See* § 205.4(b). Comment 2(n)–3 further clarifies that the "clear and conspicuous" standard does not prohibit adding other items to the federally required disclosures (such as contractual provisions or state-required disclosures); nor does it prohibit sending promotional material with the disclosures. Proposed comment 2(n)–3 would clarify, however, that the presence of other information may be a factor in determining whether the "clear and conspicuous" standard is met. Generally, segregating federally mandated disclosures from other information is more likely to satisfy the clear and conspicuous standard. A new comment 4(b)–1 would be added to cross reference guidance in proposed comment 2(n)–3.

The Board also proposes to adopt for Regulations B, E, M, Z and DD, guidance concerning type-sizes that are deemed to meet the "clear and conspicuous" standard and those that would likely be too small (this guidance currently applies only to credit card solicitations and applications under Regulation Z). *See* proposed comment 2(n)–2(ii).

The proposal does not add special format requirements to the regulation where none currently exist. Accordingly, even though the revisions clarify that type size can be one factor to consider in determining whether a disclosure is conspicuous, the proposal would not add a specific type-size requirement.

Section 205.4—General Disclosure Requirements; Jointly Offered Services

4(a)(1) Form of Disclosures

Under Section 905(a) of the EFTA, the terms and conditions of electronic fund transfers (EFTs) involving a consumer's account must be disclosed in "readily understandable" language. *See* 15 U.S.C. 1693c(a). The EFTA also requires that certain information about EFTs be "clearly" set forth on periodic statements and receipts from an electronic terminal. *See* 15 U.S.C. 1693d(a) and (c). These standards have been implemented as a general disclosure standard of "clear and readily understandable." *See* § 205.4(a)(1). The Board proposes to revise that standard to "clear and conspicuous."

Regarding the standard of "clear" disclosures, the Board believes there is not a significant distinction between the term "readily understandable" as currently contained in section 905(a) of the EFTA and § 205.4(a)(1) of Regulation E and the term "reasonably understandable" as found in the guidance on the "clear" standard in other consumer protection regulations and in proposed § 205.2(n), and with the proposed revision, no substantive difference is intended. Regarding the standard of "conspicuous" disclosures, the Board believes that disclosures provided under the EFTA, like those provided under the other consumer financial services laws administered by the Board, should not only be clear, but also conspicuous, that is, noticeable to consumers to be effective.

The Board is authorized to prescribe regulations that contain provisions that in the judgment of the Board are necessary or proper to effectuate the purposes of the EFTA. *See* 15 U.S.C. 1693b(a) and (c). Thus, the proposed revisions would ensure that consumers receive disclosures of the terms and conditions of EFTs involving their account in a form that allows them to effectively exercise their rights under the EFTA and Regulation E. The Board proposes to exercise its authority under sections 904(a) and 904(c) of the EFTA to amend § 205.4(a)(1) to provide that disclosures required under Regulation E must be "clear and conspicuous" and consistent with the standard contained in other consumer protection regulations. Comment 4(a)–1 would be revised to conform to the amended disclosure standard. Guidance regarding the "clear and conspicuous" standard for disclosures transmitted by electronic communication will be considered in the context of rulemakings dealing

specifically with electronic delivery of disclosures.

III. Form of Comment Letters

Comment letters should refer to Docket No. R–1169 and, when possible, should use a standard typeface with a font size of 10 or 12; this will enable the Board to convert text submitted in paper form to machine-readable form through electronic scanning, and will facilitate automated retrieval of comments for review. Comments may be mailed electronically to *regs.comments@federalreserve.gov.*

IV. Solicitation of Comments Regarding the Use of "Plain Language"

Section 722 of the Gramm-Leach-Bliley Act of 1999 requires the Board to use "plain language" in all proposed and final rules published after January 1, 2000. The Board invites comments on whether the proposed rules are clearly stated and effectively organized, and how the Board might make the proposed text easier to understand.

V. Initial Regulatory Flexibility Analysis

In accordance with section 3(a) of the Regulatory Flexibility Act, the Board has reviewed the proposed amendments to Regulation E. The proposed amendments are not expected to have any significant impact on small entities. A final regulatory flexibility analysis will be conducted after consideration of comments received during the public comment period.

VI. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506; 5 CFR 1320 Appendix A.1), the Board reviewed the rule under the authority delegated to the Board by the Office of Management and Budget. The Federal Reserve may not conduct or sponsor, and an organization is not required to respond to, this information collection unless it displays a currently valid OMB control number. The OMB control number is 7100–0200.

The collection of information that is revised by this rulemaking is found in 12 CFR part 205. This collection is mandatory (15 U.S.C. 1693 *et seq.*) to evidence compliance with the requirements of Regulation E and the Electronic Fund Transfer Act (EFTA). The respondents and recordkeepers are financial institutions. Institutions are required to retain records for twenty-four months. Regulation E applies to all types of financial institutions, not just state member banks; however, under Paperwork Reduction Act regulations, the Federal Reserve accounts for the burden of paperwork associated with the regulation only for the financial institutions it regulates and that meet the criteria set forth in the regulation. Other agencies account for the paperwork burden on their respective constituencies under this regulation.

The proposed revisions would require disclosures to be provided "clearly and conspicuously." The proposed revisions would provide financial institutions with a more uniform definition for "clear and conspicuous" disclosures and provide examples of how to satisfy the clear and conspicuous standard. While the proposal would amend Regulation E and the staff commentary, it is expected that these revisions would not increase the paperwork burden of financial institutions. With respect to state member banks, it is estimated that there are 1,289 respondents and recordkeepers. Current annual burden is estimated to be 48,868 hours.

Because the records would be maintained at state member banks and the notices are not provided to the Federal Reserve, no issue of confidentiality arises under the Freedom of Information Act.

Comments on the collection of information should be sent to the Office of Management and Budget, Paperwork Reduction Project (7100–0200), Washington, DC 20503, with copies of such comments sent to Cynthia Ayouch, Federal Reserve Board Clearance Officer, Division of Research and Statistics, Mail Stop 41, Board of Governors of the Federal Reserve System, Washington, DC 20551.

Text of Proposed Revisions

Certain conventions have been used to highlight the proposed revisions. New language is shown inside bold-faced arrows while language that would be deleted is set off with bold-faced brackets.

List of Subjects in 12 CFR Part 205

Consumer protection, Electronic fund transfers, Federal Reserve System, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, the Board proposes to amend Regulation E, 12 CFR part 205, as set forth below:

PART 205—ELECTRONIC FUND TRANSFERS (REGULATION E)

1. The authority citation for part 205 continues to read as follows:

Authority: 15 U.S.C. 1693 *et seq.*

2. Section 205.2 is amended by adding a new paragraph (n) to read as follows:

§ 205.2 Definitions

For purposes of this part, the following definitions apply:

* * * * *

(n) *Clear and conspicuous* means that a disclosure is reasonably understandable and designed to call attention to the nature and significance of the information in the disclosure.

* * * * *

3. Section 205.4 is amended by revising paragraph (a)(1) to read as follows:

§ 205.4 General disclosure requirements; jointly offered services

(a)(1) *Form of disclosures.* Disclosures required under this part shall be [clear and readily understandable] clear and conspicuous , in writing, and in a form the consumer may keep. A financial institution may use commonly accepted or [readily understandable] clear and conspicuous abbreviations in complying with the disclosure requirements of this part.

* * * * *

4. In Supplement I to Part 205:

a. Under Section 205.2—Definitions, a new paragraph title *2(n) Clear and conspicuous* is added, and new paragraphs (n) 1. through (n) 3. are added.

b. Under Section 205.4—General Disclosure Requirements; Jointly Offered Services, under *4(a) Form of Disclosures,* paragraph 1. is revised.

c. Under Section 205.4—General Disclosure Requirements; Jointly Offered Services, a new paragraph title *4(b) Additional information; disclosures required by other laws* is added, and a new paragraph 1. is added.

Supplement I to Part 205—Official Staff Interpretations

* * * * *

Section 205.2—Definitions

* * * * *

2(n) Clear and Conspicuous

1. *Reasonably understandable.* Examples of disclosures that are reasonably understandable include disclosures that:

i. Present the information in the disclosure in clear, concise sentences, paragraphs, and sections;

ii. Use short explanatory sentences or bullet lists whenever possible;

iii. Use definite, concrete, everyday words and active voice whenever possible;

iv. Avoid multiple negatives;

v. Avoid legal and highly technical business terminology whenever possible; and

vi. Avoid explanations that are imprecise and readily subject to different interpretations.

2. *Designed to call attention.* Examples of disclosures that are designed to call attention to the nature and significance of the information include disclosures that:

i. Use a plain-language heading to call attention to the disclosure;

ii. Use a typeface and type size that are easy to read. Disclosures in 12-point type generally meet this standard. Disclosures printed in less than 12-point type do not automatically violate the standard; however, disclosures in less than 8-point type would likely be too small to satisfy the standard;

iii. Provide wide margins and ample line spacing;

iv. Use boldface or italics for key words; and

v. In a document that combines disclosures with other information, use distinctive type size, style, and graphic devices, such as shading or sidebars, to call attention to the disclosures.

3. *Other information.* Except as otherwise provided, the clear and conspicuous standard does not prohibit adding to the required disclosures such items as contractual provisions, explanations of contract terms, state disclosures, and translations; or sending promotional material with the required disclosures. However, the presence of this other information may be a factor in determining whether the clear and conspicuous standard is met.

* * * * *

Section 205.4—General Disclosure Requirements; Jointly Offered Services

4(a) Form of Disclosures

1. *General.* See § 205.2(n) and accompanying comments. [Although no particular rules govern type size, number of pages, or the relative conspicuousness of various terms,] The disclosures must be in a [clear and readily understandable] clear and conspicuous written form that the consumer may retain. Numbers or codes are permissible [are considered readily understandable] if explained elsewhere on the disclosure form.

* * * * *

4(b) Additional Information; Disclosures Required by Other Laws

1. *Clear and conspicuous.* See comment 2(n)–3.

* * * * *

By order of the Board of Governors of the Federal Reserve System, November 25, 2003.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 03–29943 Filed 12–9–03; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

12 CFR Part 213

[Regulation M; Docket No. R–1170]

Consumer Leasing

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Proposed rule.

SUMMARY: The Board is proposing to amend Regulation M, which implements the Consumer Leasing Act, and the staff commentary to the regulation. Regulation M would be revised to define more specifically the standard for providing "clear and conspicuous" disclosures, and to provide a more uniform standard among the Board's regulations. The staff commentary would be revised to include examples of how to meet this standard. Similar proposed revisions to Regulations B, E, Z and DD appear elsewhere in today's **Federal Register**. These revisions are intended to help ensure that consumers receive noticeable and understandable information that is required by law in connection with obtaining consumer financial products and services. In addition, consistency among the regulations should facilitate compliance by institutions.

DATES: Comments must be received on or before January 30, 2004.

ADDRESSES: Comments should refer to Docket No. R–1170 and should be mailed to Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551. However, because paper mail in the Washington area and at the Board of Governors is subject to delay, please consider submitting your comments by e-mail to *regs.comments@federalreserve.gov,* or faxing them to the Office of the Secretary at (202) 452–3819 or 452–3102. Members of the public may inspect comments in Room MP–500 of the Martin Building between 9 a.m. and 5 p.m. on weekdays pursuant to § 261.12, except as provided in § 261.14, of the Board's Rules Regarding Availability of Information, 12 CFR 261.12 and 261.14.

FOR FURTHER INFORMATION CONTACT: Jane E. Ahrens, Senior Counsel, and David A. Stein, Counsel, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, at (202) 452–3667 or 452–2412; for users of Telecommunications Device for the Deaf ("TDD") only, contact (202) 263–4869.

SUPPLEMENTARY INFORMATION:

I. Background

The Consumer Leasing Act (CLA), 15 U.S.C. 1667–1667e, was enacted into law in 1976 as an amendment to the Truth in Lending Act (TILA), 15 U.S.C. 1601 *et seq.* The CLA requires lessors to provide lessees with uniform cost and other disclosures about certain consumer lease transactions. Disclosures are provided to consumers before they enter into lease transactions, when they renegotiate or extend a lease, and in advertisements that state the availability of consumer leases on particular terms. The act and regulation generally apply to consumer leases of personal property in which the contractual obligation does not exceed $25,000 and has a term of more than four months. An automobile lease is the most common type of consumer lease covered by the regulation. The CLA is implemented by the Board's Regulation M (12 CFR part 213). An official staff commentary interprets the requirements of Regulation M (12 CFR part 213 (Supp. I)).

II. Proposed Revisions

Section 213.2—Definitions

2(q) Clear and Conspicuous

Section 182 of the CLA requires that lessors provide consumers with disclosures in a clear and conspicuous manner. *See* 15 U.S.C. 1667a. This standard is incorporated in Regulation M. *See* §§ 213.3(a) and 213.7(b). Guidance on how lessors may comply with the clear and conspicuous standard is contained in the staff commentary. *See* comments 3(a)–2 and 7(b)–1. The commentary states that under this standard, disclosures must be in a reasonably understandable form.

Consumer financial services and fair lending laws and the Board regulations that implement them contain similar but not identical standards for providing disclosures that consumers will notice and understand. Generally, disclosures must be "clear and conspicuous" under Regulations B (Equal Credit Opportunity), M (Consumer Leasing), Regulation P (Privacy of Consumer Financial Information), Z (Truth in Lending) and DD (Truth in Savings), and "clear and readily understandable" under Regulation E (Electronic Fund Transfers). In interpreting the "clear and conspicuous" standard, the staff commentaries to Regulations B, M and Z provide that disclosures must be "in a reasonably understandable" form; similarly, under Regulation DD disclosures must be in a format that allows consumers "to readily understand the terms of their account." For purposes of the disclosures provided with credit card solicitations and applications, the commentary to Regulation Z provides more specifically that those disclosures must also be "readily noticeable to the consumer." In contrast, the Board's Regulation P (Privacy of Consumer Financial Information) defines the "clear and conspicuous" standard to mean that a disclosure is "reasonably understandable and designed to call attention to the nature and significance

of the information" in the disclosure. 12 CFR 216.3(b)(1). Regulation P also provides examples of how to satisfy the standard. 12 CFR 216.3(b)(2).

The Board believes that the recently implemented standard in Regulation P (65 FR 35162, June 1, 2000), articulates with greater precision than the other regulations the concepts underlying the duty to provide disclosures that consumers will notice and understand. Therefore, to provide consistent guidance on the clear and conspicuous standard among its regulations, the Board is proposing to amend Regulation M by adding a definition for clear and conspicuous in § 213.2(q), consistent with the "clear and conspicuous" definition in Regulation P. The staff commentary to Regulation M also would be revised to add comments 2(q)–1 and –2, consistent with Regulation P's examples of how to meet the clear and conspicuous standard. Similar proposed revisions to Regulations B, E, Z and DD appear elsewhere in today's **Federal Register**. These revisions are intended to help ensure that consumers receive noticeable and understandable information that is required by law in connection with obtaining consumer financial products and services. In addition, consistency among the regulations should facilitate compliance by institutions.

The Board also proposes to adopt for Regulations B, E, M, Z and DD, guidance concerning type sizes that are deemed to meet the "clear and conspicuous" standard and those that would likely be too small (this guidance currently applies only to credit card solicitations and applications under Regulation Z). *See* proposed comment 2(q)–2(ii).

The proposal does not add special format requirements to the regulation where none currently exist. Accordingly, even though the revisions clarify that type size can be one factor to consider in determining whether a disclosure is conspicuous, the proposal would not add a specific type-size requirement. The proposal also would not affect other format rules, such as the existing requirement for segregating disclosures. *See* 12 CFR 213.3(a)(2).

To eliminate redundancy with proposed § 213.2(q) and its accompanying commentary, the Board also proposes to revise comment 3(a)–2 and 7(b)–1. Guidance regarding the "clear and conspicuous" standard for disclosures transmitted by electronic communication will be considered in the context of rulemakings dealing specifically with electronic delivery of disclosures.

III. Form of Comment Letters

Comment letters should refer to Docket No. R–1170 and, when possible, should use a standard typeface with a font size of 10 or 12; this will enable the Board to convert text submitted in paper form to machine-readable form through electronic scanning, and will facilitate automated retrieval of comments for review. Comments may be mailed electronically to *regs.comments@federalreserve.gov*.

IV. Solicitation of Comments Regarding the Use of "Plain Language"

Section 722 of the Gramm-Leach-Bliley Act of 1999 requires the Board to use "plain language" in all proposed and final rules published after January 1, 2000. The Board invites comments on whether the proposed rules are clearly stated and effectively organized, and how the Board might make the proposed text easier to understand.

V. Initial Regulatory Flexibility Analysis

In accordance with section 3(a) of the Regulatory Flexibility Act, the Board has reviewed the proposed amendments to Regulation M. The proposed amendments are not expected to have any significant impact on small entities. A final regulatory flexibility analysis will be conducted after consideration of comments received during the public comment period.

VI. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506; 5 CFR 1320 Appendix A.1), the Board reviewed the rule under the authority delegated to the Board by the Office of Management and Budget. The Federal Reserve may not conduct or sponsor, and an organization is not required to respond to, this information collection unless it displays a currently valid OMB control number. The OMB control number is 7100–0202.

The collection of information that is revised by this rulemaking is found in 12 CFR part 213. This collection is mandatory (15 U.S.C. 1667 *et seq.* and Pub. L. 104–208, 110 Stat. 3009) to evidence compliance with the requirements of Regulation M and the Consumer Leasing Act (CLA). The respondents are individuals or businesses that regularly lease, offer to lease, or arrange for the lease of personal property under a consumer lease. Records, required in order to evidence compliance with the regulation, must be retained for twenty-four months. Regulation M applies to all types of lessors of personal property, not just state member banks; however, under the Paperwork Reduction Act regulations, the Federal Reserve accounts for the paperwork burden associated with the regulation only for state member banks. Other agencies account for the paperwork burden on their respective constituencies under this regulation.

The proposed revisions would provide lessors with a more uniform definition of providing "clear and conspicuous" disclosures and examples of how to satisfy the clear and conspicuous standard. While the proposal would amend Regulation M and the staff commentary, it is expected that these revisions would not increase the paperwork burden of lessors. With respect to state member banks, there are 310 respondents and recordkeepers. Current annual burden is estimated to be 11,179 hours for state member banks.

Because the records would be maintained at state member banks and the notices are not provided to the Federal Reserve, no issue of confidentiality arises under the Freedom of Information Act.

Comments on the collection of information should be sent to the Office of Management and Budget, Paperwork Reduction Project (7100–0202), Washington, DC 20503, with copies of such comments sent to Cynthia Ayouch, Federal Reserve Board Clearance Officer, Division of Research and Statistics, Mail Stop 41, Board of Governors of the Federal Reserve System, Washington, DC 20551.

Text of Proposed Revisions

Certain conventions have been used to highlight the proposed revisions. New language is shown inside bold-faced arrows while language that would be deleted is set off with bold-faced brackets.

List of Subjects in 12 CFR Part 213

Advertising, Federal Reserve System, Reporting and record keeping requirements, Truth in Lending.

For the reasons set forth in the preamble, the Board proposes to amend Regulation M, 12 CFR part 213, as set forth below:

PART 213—CONSUMER LEASING (REGULATION M)

1. The authority citation for part 213 continues to read as follows:

Authority: 15 U.S.C. 1604 and 1667f.

2. Section 213.2 is amended by adding a new paragraph (q) to read as follows:

§ 213.2 Definitions.

For the purposes of this part the following definitions apply:

* * * * *

(q) *Clear and conspicuous* means that a disclosure is reasonably understandable and designed to call attention to the nature and significance of the information in the disclosure.

3. In Supplement I to Part 213:

a. Under Section *213.2—Definitions*, a new paragraph title 2(q) *Clear and conspicuous* is added, and new paragraphs (q)1. and (q)2. are added.

b. Under *Section 213.3—General Disclosure Requirements*, under *3(a) General Requirements*, paragraph 2. is revised.

c. Under *Section 213.7—Advertising*, under 7(b) *Clear and Conspicuous Standard*, paragraph 1. is revised.

Supplement to Part 213—Official Staff Commentary to Regulation M

* * * * *

Section 213.2—Definitions

* * * * *

2(q) Clear and Conspicuous

1. *Reasonably understandable.* Examples of disclosures that are reasonably understandable include disclosures that:

i. Present the information in the disclosure in clear, concise sentences, paragraphs, and sections;

ii. Use short explanatory sentences or bullet lists whenever possible;

iii. Use definite, concrete, everyday words and active voice whenever possible;

iv. Avoid multiple negatives;

v. Avoid legal and highly technical business terminology whenever possible; and

vi. Avoid explanations that are imprecise and readily subject to different interpretations.

2. *Designed to call attention.* Examples of disclosures that are designed to call attention to the nature and significance of the information include disclosures that:

i. Use a plain-language heading to call attention to the disclosure;

ii. Use a typeface and type size that are easy to read. Disclosures in 12-point type generally meet this standard. Disclosures printed in less than 12-point type do not automatically violate the standard; however, disclosures in less than 8-point type would likely be too small to satisfy the standard;

iii. Provide wide margins and ample line spacing;

iv. Use boldface or italics for key words; and

v. In a document that combines disclosures with other information, use distinctive type size, style, and graphic devices, such as shading or sidebars, to call attention to the disclosures.

* * * * *

Section 213.3—General Disclosure Requirements

3(a) General Requirements

* * * * *

2. *Clear and conspicuous standard.* See § 213.2(q) and accompanying comments. [The clear and conspicuous standard requires that disclosures be reasonably understandable. For example, the disclosures must be presented in a way that does not obscure the relationship of the terms to each other; appendix A of this part contains model forms that meet this standard. In addition, although no minimum typesize is required, the disclosures must be legible, whether typewritten, handwritten, or printed by computer.]

* * * * *

Section 213.7—Advertising

* * * * *

7(b) Clear and Conspicuous Standard

1. *Standard.* See § 213.2(q) and accompanying comments. [The disclosures in an advertisement in any media must be reasonably understandable. For example,] Very fine print in a television advertisement or detailed and very rapidly stated information in a radio advertisement does not meet the clear[-]and[-]conspicuous standard if consumers cannot see and read or hear, and cannot comprehend, the information required to be disclosed.

* * * * *

By order of the Board of Governors of the Federal Reserve System, November 25, 2003.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 03–29944 Filed 12–9–03; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

12 CFR Part 226

[Regulation Z; Docket No. R–1167]

Truth in Lending

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Proposed rule.

SUMMARY: The Board is proposing to amend Regulation Z, which implements the Truth in Lending Act, and the staff commentary to the regulation. Regulation Z would be revised to define more specifically the standard for providing "clear and conspicuous" disclosures, and to provide a more uniform standard among the Board's regulations. The staff commentary would be revised to include examples of how to meet this standard. Similar proposed revisions to Regulations B, E, M, and DD appear elsewhere in today's **Federal Register**. These revisions are intended to help ensure that consumers receive noticeable and understandable information that is required by law in connection with obtaining consumer financial products and services. In addition, consistency among the regulations should facilitate compliance by institutions. The Board also is proposing to add an interpretative rule of construction to state that the word "amount" represents a numerical amount throughout Regulation Z. The proposed updates to the staff commentary also provide guidance on consumers' exercise of the right to rescind certain home-secured loans. In addition, the proposal includes several technical revisions to the staff commentary.

DATES: Comments must be received on or before January 30, 2004.

ADDRESSES: Comments should refer to Docket No. R–1167 and should be mailed to Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551. However, because paper mail in the Washington area and at the Board of Governors is subject to delay, please consider submitting your comments by e-mail to *regs.comments@federalreserve.gov*, or faxing them to the Office of the Secretary at (202) 452–3819 or 452–3102. Members of the public may inspect comments in Room MP–500 of the Martin Building between 9 a.m. and 5 p.m. on weekdays pursuant to § 261.12, except as provided in § 261.14, of the Board's Rules Regarding Availability of Information, 12 CFR 261.12 and 261.14.

FOR FURTHER INFORMATION CONTACT: Krista P. DeLargy and Elizabeth A. Eurgubian, Attorneys, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, at (202) 452–3667 or 452–2412; for users of Telecommunications Device for the Deaf ("TDD") only, contact (202) 263–4869.

SUPPLEMENTARY INFORMATION:

I. Background

The purpose of the Truth in Lending Act (TILA), 15 U.S.C. 1601 *et seq.*, is to promote the informed use of consumer credit by providing for disclosures about its terms and cost. The act requires creditors to disclose the cost of credit as a dollar amount (the finance charge) and as an annual percentage rate (APR). Uniformity in creditors' disclosures is intended to assist consumers in comparison shopping for credit. TILA requires additional disclosures for loans secured by consumers' homes and permits consumers to rescind certain transactions that involve their principal dwelling. In addition, the act regulates certain practices of creditors. TILA is implemented by the Board's Regulation Z (12 CFR part 226). An official staff

commentary interprets the requirements of Regulation Z (12 CFR part 226 (Supp. I)).

II. Proposed Revisions

Subpart A—General

Section 226.2—Definitions and Rules of Construction

2(a)(27) Clear and Conspicuous

Section 122(a) of TILA requires disclosures to be made clearly and conspicuously. *See* 15 U.S.C. 1632. This standard is implemented in Regulation Z. *See* § 226.5(a)(1); § 226.17(a)(1); § 226.31(b). Guidance on how creditors may comply with the clear and conspicuous standard is contained in the staff commentary. *See* comment 5(a)(1)–1; 17(a)(1)–1. The commentary states that under this standard, disclosures must be in a reasonably understandable form. For purposes of the disclosures provided with credit card solicitations and applications, the commentary also notes that disclosures must be readily noticeable to the consumer. *See* comment 5a(a)(2)–1.

Consumer financial services and fair lending laws and the Board regulations that implement them contain similar but not identical standards for providing disclosures that consumers will notice and understand. Generally, disclosures must be "clear and conspicuous" under Regulations B (Equal Credit Opportunity), M (Consumer Leasing), Regulation P (Privacy of Consumer Financial Information), Z (Truth in Lending) and DD (Truth in Savings), and "clear and readily understandable" under Regulation E (Electronic Fund Transfers). In interpreting the "clear and conspicuous" standard, the staff commentaries to Regulations B, M and Z provide that disclosures must be "in a reasonably understandable" form; similarly, under Regulation DD disclosures must be in a format that allows consumers "to readily understand the terms of their account." In contrast, the Board's Regulation P (Privacy of Consumer Financial Information) defines the "clear and conspicuous" standard to mean that a disclosure is "reasonably understandable and designed to call attention to the nature and significance of the information" in the disclosure. 12 CFR 216.3(b)(1). Regulation P also provides a series of examples of how to satisfy the standard. 12 CFR 216.3(b)(2).

The Board believes that the recently implemented standard in Regulation P (65 FR 35162, June 1, 2000), articulates with greater precision than the other regulations the concepts underlying the duty to provide disclosures that consumers will notice and understand. Therefore, to provide consistent guidance on the clear and conspicuous standard among its regulations, the Board is proposing to amend Regulation Z by adding a definition for clear and conspicuous in § 226.2(a)(27), consistent with the "clear and conspicuous" definition in Regulation P. The staff commentary to Regulation Z also would be revised to add comments 2(a)(27)–1 and –2, consistent with Regulation P's examples of how to meet the clear and conspicuous standard. Similar proposed revisions to Regulations B, E, M, and DD appear elsewhere in today's **Federal Register**. These revisions are intended to help ensure that consumers receive noticeable and understandable information that is required by law in connection with obtaining consumer financial products and services. In addition, consistency among the regulations should facilitate compliance by institutions.

Proposed comments 2(a)(27)–3 and –4 contain guidance currently in comment 5(a)(1)–1. The "clear and conspicuous" standard does not prohibit adding other items to the federally required disclosures (such as contractual provisions or state-required disclosures); nor does it prohibit sending promotional material with the disclosures. Proposed comment 2(a)(27)–3 would clarify, however, that the presence of other information may be a factor in determining whether the "clear and conspicuous" standard is met. Generally, segregating federally mandated disclosures from other information is more likely to satisfy the clear and conspicuous standard.

The Board also proposes to adopt for Regulations B, E, M, Z and DD, guidance concerning type-sizes that are deemed to meet the "clear and conspicuous" standard and those that would likely be too small (this guidance currently applies only to credit card solicitations and applications under Regulation Z). *See* proposed comment 2(a)(27)–2(ii).

The proposal does not add special format requirements to the regulation where none currently exist. Accordingly, even though the revisions clarify that type size can be one factor to consider in determining whether a disclosure is conspicuous, the proposal would not add a specific type size requirement. Similarly, the proposal also would not affect other format rules, such as the existing requirement for making some disclosures more conspicuous than others (*See* § 226.5(a)(2); § 226.17(a)(2)), or segregating some specific information (*See* § 226.17(a)(1)).

To eliminate redundancy with proposed § 226.2(a)(27) and its accompanying commentary, the Board also proposes to revise the following commentary provisions in Regulation Z that address the "clear and conspicuous" standard: comments 5(a)(1)–1, 5a(a)(2)–1, 16–1, 24–1, and Appendix K (d)(2)–1. In this regard, in comment 5a(a)(2)-1, the guidance regarding disclosures for credit card applications and solicitations that are transmitted by electronic communication, has been deleted. Guidance regarding the "clear and conspicuous" standard for disclosures transmitted by electronic communication will be considered in the context of rulemakings dealing specifically with electronic delivery of disclosures.

2(b) Rules of Construction

The Board proposes to add an interpretative rule of construction in § 226.2(b)(5) stating that where the word "amount" is used to describe a disclosure requirement it refers to a numerical amount throughout Regulation Z. This interpretation addresses a matter discussed in a recent court decision regarding the disclosure of payments scheduled to repay a closed-end credit transaction. *See* 15 U.S.C. 1638(a)(6); 12 CFR 226.18(g). The Board believes that the decision, by endorsing narrative descriptions of amounts rather than numerical amounts, may lead to confusion in disclosures.

The term "amount" has general applicability throughout Regulation Z and the term "amount" is used throughout TILA, for example, to describe disclosures such as the amount financed, the amounts being disbursed to the consumer and to third parties, and the total of payments, which is defined as the amount the consumer will have paid after making all scheduled payments. A broad interpretation of the term suggesting that narrative descriptions may replace numerical "amounts" contravenes TILA's purpose to provide consumers with clear and uniform credit disclosures. Proposed comment 2(b)–2 would provide examples of how the interpretative rule of construction for "amount" applies in certain disclosures required by Regulation Z.

Subpart B—Open-end Credit

Section 226.15—Right of Rescission

15(a) Consumer's Right To Rescind

15(a)(2)

Section 125(a) of TILA provides that, in certain credit transactions in which the consumer's principal dwelling secures an extension of credit, the consumer may rescind the transaction for three business days after becoming obligated on the debt (and for open-end plans, after opening or increasing the credit limit on the plan). *See* 15 U.S.C. 1635(a); 12 CFR 226.15(a)(1). The rescission period may extend up to three years in certain cases. The right of rescission was created to allow consumers time to reexamine their credit contracts and cost disclosures and to reconsider whether they want to place their home at risk by offering it as security for the credit. A consumer exercises the right to rescind by notifying the creditor of the rescission by mail, telegram, or other means of written communication. Creditors must provide consumers with a form to use in exercising the right to rescind, which must include the name and address of the creditor or agent of the creditor to receive the notice. *See* § 226.15(b). Notice is considered given when mailed, or when filed for telegraphic transmission, or, if sent by other means, when delivered to the creditor's designated place of business. *See* § 226.15(a)(2).

Comment 15(a)(2)–1 states that a creditor may designate an agent to receive the notification so long as the agent's name and address appear on the notice provided to the consumer under § 226.15(b). The comment would be revised to address situations where a creditor fails to provide the required form or designate an address for sending the notice. The proposed comment would provide that in such cases, if a consumer sends the notice to someone other than the creditor or assignee, such as a third-party loan servicer acting as the creditor's agent, the consumer's notice of rescission may be effective if under the applicable state law, delivery to that person would be deemed to constitute delivery to the creditor or assignee.

15(d) Effects of Rescission

When a consumer exercises the right to rescind a mortgage transaction, the consumer is not liable for any finance charges or other charges and any security interest in the consumer's home becomes void. *See* 15 U.S.C. 1635(b); § 226.15(d)(1). After the transaction is rescinded, the creditor must tender any money or property given to anyone in connection with the transaction within a specified time frame, which triggers the consumer's duty to return any money or property that the creditor delivered to the consumer, although a court may modify these procedures. *See* § 226.15(d)(2)–(4).

Comment 15(d)(4)–1 would be revised to state expressly that a consumer's substantive right to rescind under § 226.15(a)(1) and § 226.15(d)(1) is not affected by the procedures referred to in § 226.15(d)(2) and (3), or the modification of those procedures by a court. Accordingly, where consumers seek rescission and the matter is contested by the creditor, a determination regarding consumers' right to rescind would normally be made before a court determines the amounts owed and establishes the procedures for the parties to tender any money or property. The sequence of procedures should not affect consumers' ability under TILA to establish their substantive right to rescind and to have the lien amount reduced, which may be necessary before consumers are able to establish how they will refinance or otherwise repay the loan.

Subpart C—Closed-End Credit

Section 226.18—Content of Disclosures

18(c) Itemization of Amount Financed

A technical revision would be made to comment 18(c)(1)(iii)–1, to conform a citation to footnote 41 of Regulation Z. No substantive change is intended.

Section 226.19—Certain Residential Mortgage and Variable-Rate Transactions

19(b) Certain Variable-Rate Transactions

Section 226.19(b) applies to all closed-end variable-rate transactions that are secured by the consumer's principal dwelling and have a term greater than one year. Guidance about the applicability of § 226.19 to construction loans was published in comment 19(b)–1. 54 FR 9422, March 7, 1989. That guidance has been inadvertently appended to comment 19(b)(1)–1 in the Code of Federal Regulations. The two comments are restated in their correct form for reprinting in the Code of Federal Regulations. No substantive change is intended.

Section 226.23—Right of Rescission

23(a) Consumer's Right To Rescind

For the reasons discussed above, comment 23(a)(2)–1 would be revised to state the rule for effective delivery of a rescission notice when the creditor fails to provide the required form or designate an address for sending the notice (*See* supplementary information to proposed comment 15(a)(2)–1.)

Section 226.23—Right of Rescission

23(d) Effects of Rescission

For the reasons discussed above; comment 23(d)(4)–1 would be revised to expressly state that a consumer's substantive right to rescind under § 226.23(a)(1) and § 226.23(d)(1) is not affected by the procedures referred to in § 226.23(d)(2) and (3), or the modification of those procedures by a court. (*See* supplementary information to proposed comment 15(d)(4)–1.)

Subpart D—Miscellaneous

Section 226.27—Language of Disclosures

In March 2001, the Board revised § 226.27 to permit creditors to provide disclosures in languages other than English as long as disclosures in English are available to consumers who request them. 66 FR 1739, March 30, 2001. Technical revisions would be made to comment 27–1, and comment 27–2 would be deleted to conform the commentary to § 226.27, as amended. No substantive change is intended.

Subpart E—Special Rules for Certain Home Mortgage Transactions

Section 226.32—Requirements for Certain Closed-End Home Mortgages

32(a) Coverage

Rules for certain closed-end mortgage loans in § 226.32 are triggered, in part, by the amount of "points and fees" payable by the consumer at or before loan closing and the "total loan amount." See § 226.32(a)(1)(ii). Comment 32(a)(1)(ii)–1, which was added in 1996, provides examples for calculating the "total loan amount." 61 FR 14952, April 4, 1996. A technical revision would be made to comment 32(a)(1)(ii)–1, to correct a dollar amount given in one of the examples. No substantive change is intended.

Request for Information Regarding Debt Cancellation and Debt Suspension Agreements

Some lenders have replaced credit insurance products with products known as debt cancellation agreements and debt suspension agreements. Under a debt cancellation agreement or debt suspension agreement, a creditor agrees to cancel, or temporarily suspend, all or part of the borrower's repayment obligation upon the occurrence of a specified event, such as death, disability, or unemployment. The fee for a debt cancellation or debt suspension agreement can be collected monthly or in a lump sum.

At least one state has said it will regulate debt cancellation and

suspension products as insurance, other states have said they will regulate the products as bank products and not as insurance, and still others have not yet announced positions. The Office of the Comptroller of the Currency (OCC) has recently issued regulations governing sales of debt cancellation and suspension agreements by national banks. *See* 12 CFR 37.1 *et seq.*

Under the TILA and Regulation Z, debt cancellation agreements are generally subject to the same disclosure rules as credit insurance. In 1996, the Board revised Regulation Z to establish essentially identical disclosure rules for credit insurance and debt cancellation agreements. Accordingly, although debt cancellation fees satisfy the definition of a "finance charge," they may be excluded from the finance charge on the same conditions as credit insurance premiums (without regard to whether debt cancellation agreements are deemed to be insurance contracts under state law). The types of debt cancellation agreements eligible for the exclusion are limited to those that provide for cancellation of or all or part of a debtor's liability (1) in case of accident or loss of life, health, or income or (2) for amounts exceeding the value of collateral securing the debt (commonly referred to as "gap" coverage, frequently sold in connection with motor vehicle loans). *See* § 226.4(b)(7) and (10), 4(d)(1) and (3).

Industry representatives have asked the Board to address disclosure issues under TILA and Regulation Z that may be raised by the sale of debt cancellation and debt suspension products. Anecdotal evidence suggests that the sale of those products in lieu of credit insurance has increased and that creditors are offering expanded coverage, for example to suspend repayment obligations for life-cycle events such as marriage and divorce. Some industry representatives have stated that additional guidance may be useful in clarifying the circumstances in which products offering expanded coverage qualify for the exclusions in § 226.4(d)(3) for debt cancellation fees, and in clarifying what disclosures should be provided to consumers in certain circumstances.

To consider the requests for guidance more fully, information and comment are solicited as follows:

- What are the similarities and differences among credit insurance, debt cancellation coverage, and debt suspension coverage, in the case of both closed-end and open-end credit?
- With what types of closed-end and open-end credit are debt cancellation and debt suspension products sold? Do creditors typically package multiple types of coverage (*e.g.*, disability and divorce), or sell them separately? Do creditors typically sell the products at, or after, consummation (for closed-end credit) or account opening (for open-end credit plans)?
- What disclosures are made with the sale of a product or upon conversion from one product to another, whether required by TILA or other laws? How are monthly or other periodic fees disclosed to consumers?
- Under Regulation Z, fees for credit protection programs written in connection with a credit transaction are finance charges but some fees may be excluded from the disclosed finance charge if required disclosures are made and the consumer affirmatively elects the optional coverage in writing. *See* § 226.4(b)(7) and (10), 4(d)(1) and (3). Is there a need for guidance concerning the applicability of those provisions to certain types of coverage now available? Are the required disclosures adequate for all types of products subject to § 4(d)(1) or 4(d)(3)?
- Under TILA, a credit card issuer must notify a consumer before changing the consumer's credit insurance provider. See 15 U.S.C. 1637(g); 12 CFR 226.9(f). Card issuers that intend to change credit insurance providers need only notify consumers that they may opt out of the new coverage. Should the Board interpret or amend § 226.9(f) to address conversions from credit insurance to debt cancellation or debt suspension agreements? If so, is there a need to address conversions other than for credit card accounts?
- OCC regulations for national bank sales of debt cancellation and suspension agreements require a customer's affirmative election of the product. If the Board interprets or amends § 226.9(f) to address conversions from credit insurance to debt cancellation or debt suspension agreements, what additional guidance would card issuers need, if any, to comply with both rules?

III. Form of Comment Letters

Comment letters should refer to Docket No. R–1167 and, when possible, should use a standard typeface with a font size of 10 or 12; this will enable the Board to convert text submitted in paper form to machine-readable form through electronic scanning, and will facilitate automated retrieval of comments for review. Comments may be mailed electronically to *regs.comments@federalreserve.gov*.

IV. Solicitation of Comments Regarding the Use of "Plain Language"

Section 722 of the Gramm-Leach-Bliley Act of 1999 requires the Board to use "plain language" in all proposed and final rules published after January 1, 2000. The Board invites comments on whether the proposed rules are clearly stated and effectively organized, and how the Board might make the proposed text easier to understand.

V. Initial Regulatory Flexibility Analysis

In accordance with section 3(a) of the Regulatory Flexibility Act, the Board has reviewed the proposed amendments to Regulation Z. The proposed amendments are not expected to have any significant impact on small entities. A final regulatory flexibility analysis will be conducted after consideration of comments received during the public comment period.

VI. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506; 5 CFR Part 1320 Appendix A.1), the Board reviewed the rule under the authority delegated to the Board by the Office of Management and Budget. The Federal Reserve may not conduct or sponsor, and an organization is not required to respond to, this information collection unless it displays a currently valid OMB control number. The OMB control number is 7100–0199.

The collection of information that is revised by this rulemaking is found in 12 CFR part 226. This collection is mandatory (15 U.S.C. 1601 *et seq.*) to evidence compliance with the requirements of Regulation Z and the Truth in Lending Act (TILA). The respondents and recordkeepers are for-profit financial institutions, including small businesses. Institutions are required to retain records for twenty-four months. This regulation applies to all types of creditors, not just state member banks; however, under Paperwork Reduction Act regulations, the Federal Reserve accounts for the burden of the paperwork associated with the regulation only for state member banks. Other agencies account for the paperwork burden on their respective constituencies under this regulation.

The proposed revisions would provide creditors with a more uniform definition of providing "clear and conspicuous" disclosures and examples of how to satisfy the "clear and conspicuous" standard. The proposed revisions also would provide that the term "amount" represents a numerical amount throughout Regulation Z. The proposed updates to the staff commentary also provide guidance on consumers' exercise of rescission for certain home-secured loans. While the proposal would amend Regulation Z and the staff commentary, it is expected that these revisions would not increase the paperwork burden of creditors. With respect to state member banks, there are 1,312 respondents and recordkeepers. Current annual burden is estimated to be 618,398 hours.

Because the records would be maintained at state member banks and the notices are not provided to the Federal Reserve, no issue of confidentiality arises under the Freedom of Information Act.

Comments on the collection of information should be sent to the Office of Management and Budget, Paperwork Reduction Project (7100–0199), Washington, DC 20503, with copies of such comments sent to Cynthia Ayouch, Federal Reserve Board Clearance Officer, Division of Research and Statistics, Mail Stop 41, Board of Governors of the Federal Reserve System, Washington, DC 20551.

Text of Proposed Revisions

Certain conventions have been used to highlight the proposed revisions. New language is shown inside bold-faced arrows while language that would be deleted is set off with bold-faced brackets.

List of Subjects in 12 CFR Part 226

Advertising, Consumer protection, Federal Reserve System, Reporting and recordkeeping requirements, Truth in Lending.

For the reasons set forth in the preamble, the Board proposes to amend Regulation Z, 12 CFR part 226, as set forth below:

PART 226—TRUTH IN LENDING (REGULATION Z)

1. The authority citation for part 226 would continue to read as follows:

Authority: 12 U.S.C. 3806; 15 U.S.C. 1604 and 1637(c)(5).

2. Section 226.2 is amended by adding a new paragraph (a)(27) and adding a new paragraph (b)(5) to read as follows:

Subpart A—General

* * * * *

§ 226.2 Definitions and rules of construction.

(a) *Definitions.* For purposes of this regulation, the following definitions apply:

* * * * *

(27) *Clear and conspicuous* means that a disclosure is reasonably understandable and designed to call attention to the nature and significance of the information in the disclosure.

* * * * *

(b) *Rules of construction.* For purposes of this regulation, the following rules of construction apply:

* * * * *

(5) Where the word "amount" is used in this regulation to describe disclosure requirements, it refers to a numerical amount.

3. In Supplement I to Part 226:

a. Under *Section 226.2 Definitions and Rules of Construction*, under *2(a) Definitions*, a new paragraph title *2(a)(27) Clear and conspicuous* is added, and new paragraphs (27) 1. through (27) 4. are added; and under *2(b) Rules of Construction*, a new paragraph (b)2. is added.

b. Under *Section 226.5 General Disclosure Requirements*, under *Paragraph 5(a)(1)*, paragraph 1. is revised.

c. Under *Section 226.5a Credit and Charge Card Applications and Solicitations*, under *Paragraph 5a(a)(2)*, paragraph 1. is revised.

d. Under *Section 226.15 Right of Rescission*, under Paragraph 15(a)(2), *paragraph 1.* is revised, and under *Paragraph 15(d)(4)*, paragraph 1. is revised.

e. Under *Section 226.16 Advertising*, paragraph 1. is revised.

f. Under *Section 226.18 Content of Disclosures*, under *Paragraph 18(c)(1)(iii)*, paragraph 1. is revised.

g. Under *Section 226.19 Certain Residential Mortgage and Variable-Rate Transactions*, under *19(b) Certain variable-rate transactions*, paragraph 1. is revised, and under *Paragraph 19(b)(1)*, paragraph 1. is revised.

h. Under *Section 226.23 Right of Rescission*, under *Paragraph 23(a)(2)*, paragraph 1. is revised, and under *Paragraph 23(d)(4)*, paragraph 1. is revised.

i. Under *Section 226.24 Advertising*, paragraph 1. is revised.

j. Under *Section 226.27*, the section title is revised, paragraph 1. is revised, and paragraph 2. is removed and reserved.

k. Under *Section 226.32 Requirements for Certain Closed-End Home Mortgages*, under *Paragraph 32(a)(1)(ii)*, paragraph 1.ii. is revised.

l. Under *Appendix K—Total Annual Loan Cost Rate Computations for Reverse Mortgage Transaction*, under *(d) Reverse mortgage model form and sample form*, under *(d)(2)*, paragraph 1. would be revised.

Supplement I To Part 226—Official Staff Interpretations

* * * * *

Subpart A—General

* * * * *

Section 226.2—Definitions and Rules of Construction

2(a) Definitions.

* * * * *

2(a)(27) Clear and conspicuous.

1. *Reasonably understandable.* Examples of disclosures that are reasonably understandable include disclosures that:

i. Present the information in the disclosure in clear, concise sentences, paragraphs, and sections;

ii. Use short explanatory sentences or bullet lists whenever possible;

iii. Use definite, concrete, everyday words and active voice whenever possible;

iv. Avoid multiple negatives;

v. Avoid legal and highly technical business terminology whenever possible; and

vi. Avoid explanations that are imprecise and readily subject to different interpretations.

2. *Designed to call attention.* Examples of disclosures that are designed to call attention to the nature and significance of the information include disclosures that:

i. Use a plain-language heading to call attention to the disclosure;

ii. Use a typeface and type size that are easy to read. Disclosures in 12-point type generally meet this standard. Disclosures printed in less than 12-point type do not automatically violate the standard; however, disclosures in less than 8-point type would likely be too small to satisfy the standard;

iii. Provide wide margins and ample line spacing;

iv. Use boldface or italics for key words; and

v. In a document that combines disclosures with other information, use distinctive type size, style, and graphic devices, such as shading or sidebars, to call attention to the disclosures.

3. *Other information.* Except as otherwise provided, the "clear and conspicuous" standard does not prohibit adding to the required disclosures such items as contractual provisions, explanations of contract terms, state disclosures, and translations; or sending promotional material with the required disclosures. However, the presence of this other information may be a factor in determining whether the "clear and conspicuous" standard is met.

4. *Use of codes or symbols.* The "clear and conspicuous" standard does not prohibit using codes or symbols such as *APR* (for annual percentage rate), *FC* (for finance charge), or *Cr* (for credit balance), so long as

a legend or description of the code or symbol is provided on the disclosure statement.

* * * * *

2(b) Rules of Construction

* * * * *

2. *Amount.* A creditor would state a dollar amount when disclosing the amount financed, finance charge, or the amount of any payment for a closed-end transaction (Subpart C). A creditor might explain how the amount of any finance charge will be determined by stating a percentage (for example, where the fee is a percentage of each cash advance) or a dollar amount (for example, a minimum finance charge of $1.00) in disclosures provided before the first transaction under an open-end plan (Subpart B).

* * * * *

Subpart B—Open-End Credit

* * * * *

Section 226.5—General Disclosure Requirements

5(a) Form of Disclosures

Paragraph 5(a)(1).

1. *Clear and conspicuous.* See § 226.2(a)(27) and accompanying comments. [The "clear and conspicuous" standard requires that disclosures be in a reasonably understandable form. Except where otherwise provided, the standard does not require that disclosures be segregated from other material or located in any particular place on the disclosure statement, or that numerical amounts or percentages be in any particular type size. (But see comments 5a(a)(2)–1 and –2 for special rules concerning section 226.5a disclosures for credit card applications and solicitations.) The standard does not prohibit:

- Pluralizing required terminology (*finance charge* and *annual percentage rate*).
- Adding to the required disclosures such items as contractual provisions, explanations of contract terms, state disclosures, and translations.
- Sending promotional material with the required disclosures.
- Using commonly accepted or readily understandable abbreviations (such as *mo.* for *month* or *Tx.* for *Texas*) in making any required disclosures.
- Using codes or symbols such as *APR* (for annual percentage rate), *FC* (for finance charge), or *Cr* (for credit balance), so long as a legend or description of the code or symbol is provided on the disclosure statement.]

* * * * *

Section 226.5a—Credit and Charge Card Applications and Solicitations

* * * * *

5a(a) General Rules

5a(a)(2) Form of Disclosures

1. *Clear and conspicuous standard.* See § 226.2(a)(27) and accompanying comments. [For purposes of § 226.5a disclosures, "clear and conspicuous" means in a reasonably understandable form and readily noticeable to the consumer. As to type size, disclosures in 12-point type are deemed to be readily noticeable for purposes of section 226.5a. Disclosures printed in less than 12-point type do not automatically violate the standard; however, disclosures in less than 8-point type would likely be too small to satisfy the standard. Disclosures that are transmitted by electronic communication are judged for purposes of the clear-and-conspicuous standard based on the form in which they are provided even though they may be viewed by the consumer in a different form.]

* * * * *

Section 226.15—Right of Rescission

15(a) Consumer's Right to Rescind

* * * * *

Paragraph 15(a)(2).

1. *Consumer's exercise of right.* The consumer must exercise the right of rescission in writing but not necessarily on the notice supplied under § 226.15(b). Whatever the means of sending the notification of rescission—mail, telegram or other written means—the time period for the creditor's performance under § 226.15(d)(2) does not begin to run until the notification has been received. The creditor may designate an agent to receive the notification so long as the agent's name and address appear on the notice provided to the consumer under § 226.15(b). Where the creditor fails to provide the consumer with a designated address for sending the notification of rescission and the consumer sends the notification to someone other than the creditor or assignee, such as a third-party loan servicer acting as the creditor's agent, state law determines whether delivery to that person constitutes delivery to the creditor or assignee.

* * * * *

15(d) Effects of Rescission

* * * * *

Paragraph 15(d)(4).

1. *Modifications.* The procedures outlined in § 226.15(d)(2) and (3) may be modified by a court. For example, when a consumer is in bankruptcy proceedings and prohibited from returning anything to the creditor, or when the equities dictate, a modification might be made. The consumer s substantive right to rescind under § 226.15(a)(1) and § 226.15(d)(1) is not affected by the procedures referred to in § 226.15(d)(2) and (3), or the modification of those procedures by a court.

* * * * *

Section 226.16—Advertising

1. *Clear and conspicuous standard.* See § 226.2(a)(27) and accompanying comments. [Section 226.16 is subject to the general "clear and conspicuous" standard for subpart B (see § 226.5(a)(1)) but prescribes no specific rules for the format of the necessary disclosures. The credit terms need not be printed in a certain type size nor need they appear in any particular place in the advertisement.]

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Subpart C—Closed-End Credit

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Section 226.18—Content of Disclosures

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18(c) Itemization of Amount Financed

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Paragraph 18(c)(1)(iii).

1. *Amounts paid to others.* This includes, for example, tag and title fees; amounts paid to insurance companies for insurance premiums; security interest fees, and amounts paid to credit bureaus, appraisers or public officials. When several types of insurance premiums are financed, they may, at the creditor's option, be combined and listed in one sum, labeled "insurance" or similar term. This includes, but is not limited to, different types of insurance premiums paid to one company and different types of insurance premiums paid to different companies. Except for insurance companies and other categories noted in footnote [40] 41, third parties must be identified by name.

* * * * *

Section 226.19—Certain Residential Mortgage and Variable-Rate Transactions

* * * * *

19(b) Certain Variable-Rate Transactions

1. *Coverage.* Section 226.19(b) applies to all closed-end variable-rate transactions that are secured by the consumer's principal dwelling and have a term greater than one year. The requirements of this section apply not only to transactions financing the initial acquisition of the consumer's principal dwelling, but also to any other closed-end variable-rate transaction secured by the principal dwelling. Closed-end variable-rate transactions that are not secured by the principal dwelling, or are secured by the principal dwelling but have a term of one year or less, are subject to the disclosure requirements of § 226.18(f)(1) rather than those of § 226.19(b). (Furthermore, "shared-equity" or "shared-appreciation" mortgages are subject to the disclosure requirements of § 226.18(f)(1) rather than those of § 226.19(b) regardless of the general coverage of those sections.) For purposes of this section, the term of a variable-rate demand loan is determined in accordance with the commentary to § 226.17(c)(5). In determining whether a construction loan that may be permanently financed by the same creditor is covered under this section, the creditor may treat the construction and the permanent phases as separate transactions with distinct terms to maturity or as a single combined transaction. For purposes of the disclosures required under § 226.18, the creditor may nevertheless treat the two phases either as separate transactions or as a single combined transaction in accordance with § 226.17(c)(6). Finally, in any assumption of a variable-rate transaction secured by the consumer's principal dwelling with a term greater than one year, disclosures need not be provided under §§ 226.18(f)(2)(ii) or 226.19(b).

* * * * *

Paragraph 19(b)(1).

1. *Substitute.* Creditors who wish to use publications other than the *Consumer Handbook on Adjustable Rate Mortgages* must make a good faith determination that their brochures are suitable substitutes to the *Consumer Handbook.* A substitute is suitable if it is, at a minimum, comparable to the *Consumer Handbook* in substance and comprehensiveness. Creditors are permitted to provide more detailed information than is contained in the *Consumer Handbook.* [In determining whether a construction loan that may be permanently financed by the same creditor is covered under this section, the creditor may treat the construction and the permanent phases as separate transactions with distinct terms to maturity or as a single combined transaction. For purposes of the disclosures required under § 226.18, the creditor may nevertheless treat the two phases either as separate transactions or as a single combined transaction in accordance with § 226.17(c)(6). Finally, in any assumption of a variable-rate transaction secured by the consumer's principal dwelling with a term greater than one year, disclosures need not be provided under §§ 226.18(f)(2)(ii) or 226.19(b).]

* * * * *

Section 226.23—Right of Rescission

23(a) Consumer's Right To Rescind

* * * * *

Paragraph 23(a)(2).

1. *Consumer's exercise of right.* The consumer must exercise the right of rescission in writing but not necessarily on the notice supplied under § 226.23(b). Whatever the means of sending the notification of rescission—mail, telegram or other written means—the time period for the creditor's performance under § 226.23(d)(2) does not begin to run until the notification has been received. The creditor may designate an agent to receive the notification so long as the agent's name and address appear on the notice provided to the consumer under § 226.23(b). Where the creditor fails to provide the consumer with a designated address for sending the notification of rescission and the consumer sends the notification to someone other than the creditor or assignee, such as a third-party loan servicer acting as the creditor's agent, state law determines whether delivery to that person constitutes delivery to the creditor or assignee.

* * * * *

23(d) Effects of Rescission.

* * * * *

Paragraph 23(d)(4).

1. *Modifications.* The procedures outlined in § 226.23(d)(2) and (3) may be modified by a court. For example, when a consumer is in bankruptcy proceedings and prohibited from returning anything to the creditor, or when the equities dictate, a modification might be made. The consumer's substantive right to rescind under § 226.23(a)(1) and § 226.23(d)(1) is not affected by the procedures referred to in § 226.23(d)(2) and (3), or the modification of those procedures by a court.

* * * * *

Section 226.24—Advertising

1. *Clear and conspicuous standard.* See § 226.2(a)(27) and accompanying comments. On a merchandise tag that is an advertisement under the regulation, a creditor is not prohibited under the "clear and conspicuous" standard from including the necessary credit terms on both sides of the tag, so long as each side is accessible. [This section is subject to the general "clear and conspicuous" standard for this subpart but prescribes no specific rules for the format of the necessary disclosures. The credit terms need not be printed in a certain type size nor need they appear in any particular place in the advertisement. For example, a merchandise tag that is an advertisement under the regulation complies with this section if the necessary credit terms are on both sides of the tag, so long as each side is accessible.]

* * * * *

Subpart D—Miscellaneous

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Section 226.27—[Spanish] Language of Disclosures

1. *Subsequent disclosures.* If a creditor [in Puerto Rico] provides initial disclosures in [Spanish] a language other than English, subsequent disclosures need not be in [Spanish] that other language. For example, if the creditor gave Spanish-language initial disclosures, periodic statements and change-in-terms notices may be made in English.

2. [Removed and reserved.]

* * * * *

Subpart E—Special Rules for Certain Home Mortgage Transactions

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Section 226.32—Requirements for Certain Closed-End Home Mortgages

* * * * *

Paragraph 32(a)(1)(ii).

1. *Total loan amount.* For purposes of the "points and fees" test, the total loan amount is calculated by taking the amount financed, as determined according to section 226.18(b), and deducting any cost listed in section 226.32(b)(1)(iii) and section 226.32(b)(1)(iv) that is both included as points and fees under section 226.32(b)(1) and financed by the creditor. Some examples follow, each using a $10,000 amount borrowed, a $300 appraisal fee, and $400 in points. A $500 premium for optional credit life insurance is used in one example.

* * * * *

ii. If the consumer pays the $300 fee for the creditor-conducted appraisal in cash at closing, the $300 is included in the points and fees calculation because it is paid to the creditor. However, because the $300 is not financed by the creditor, the fee is not part of the amount financed under section 226.18(b) [($10,000, in this case)]. In this case, the amount financed is the same as the total loan amount [is] $9,600 ($10,000, less $400 in prepaid finance charges).

* * * * *

Appendix K—Total-Annual-Loan-Cost Rate Computations for Reverse-Mortgage Transactions

* * * * *

(d) Reverse-Mortgage Model Form and Sample Form

* * * * *

(d)(2) Sample Form

1. *General.* [The "clear and conspicuous" standard for reverse-mortgage disclosures does not require disclosures to be printed in any particular type size.] The "clear and conspicuous" standard applies to disclosures required by § 226.33. Disclosures may be made on more than one page, and use both the front and the reverse sides, as long as the pages constitute an integrated document and the table disclosing the total annual loan-cost rates is on a single page.

* * * * *

By order of the Board of Governors of the Federal Reserve System, November 25, 2003.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 03–29945 Filed 12–9–03; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

12 CFR Part 230

[Regulation DD; Docket No. R–1171]

Truth in Savings

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Proposed rule.

SUMMARY: The Board is proposing to amend Regulation DD, which implements the Truth in Savings Act, and the staff commentary to the regulation. Regulation DD would be revised to define more specifically the standard for providing "clear and conspicuous" disclosures, and to provide a more uniform standard among the Board's regulations. The staff commentary would be revised to include examples of how to meet this standard. Similar proposed revisions to Regulations B, E, M, and Z appear elsewhere in today's **Federal Register**. These revisions are intended to help ensure that consumers receive noticeable and understandable information that is required by law in connection with obtaining consumer financial products and services. In addition, consistency among the regulations should facilitate compliance by institutions.

DATES: Comments must be received on or before January 30, 2004.

ADDRESSES: Comments should refer to Docket No. R–1171 and should be mailed to Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551. However, because paper mail in the Washington area and at the Board

of Governors is subject to delay, please consider submitting your comments by e-mail to *regs.comments@federalreserve.gov*, or faxing them to the Office of the Secretary at (202) 452–3819 or 452–3102. Members of the public may inspect comments in Room MP–500 of the Martin Building between 9 a.m. and 5 p.m. on weekdays pursuant to § 261.12, except as provided in § 261.14, of the Board's Rules Regarding Availability of Information, 12 CFR 261.12 and 261.14.

FOR FURTHER INFORMATION CONTACT: Krista P. DeLargy and Elizabeth A. Eurgubian, Attorneys, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, at (202) 452–3667 or 452–2412; for users of Telecommunications Device for the Deaf ("TDD") only, contact (202) 263–4869.

SUPPLEMENTARY INFORMATION:

I. Background

The purpose of the Truth in Savings Act (TISA), 12 U.S.C. 4301 *et seq.*, is to assist consumers in comparing deposit accounts offered by depository institutions, principally through the disclosure of fees, the annual percentage yield (APY), the interest rate, and other account terms. The act and regulation require depository institutions to provide a consumer with disclosures upon request and before an account is opened. Institutions are not required to provide periodic statements; but if they do, the act and regulation require that fees, yields, and other information be provided on the statements. Notice must be given to accountholders before an adverse change in account terms occurs and prior to the renewal of certificates of deposit (time accounts). The TISA is implemented by the Board's Regulation DD (12 CFR part 230). An official staff commentary interprets the requirements of Regulation DD (12 CFR part 230 (Supp. I)).

II. Proposed Revisions

Section 230.2—Definitions

2(w) Clear and Conspicuous

Section 264(e) of TISA requires disclosures to be made in clear and plain language and presented in a format designed to allow consumers to readily understand the terms of the accounts offered. *See* 12 U.S.C. 4303(e). This standard is implemented in Regulation DD. *See* §§ 230.3(a) and 230.8(c). Guidance on how depository institutions may comply with the clear and conspicuous standard is contained in the staff commentary. *See* comment 3(a)–1. The commentary states that under this standard, disclosures must be in a readily understandable form.

Consumer financial services and fair lending laws and the Board regulations that implement them contain similar but not identical standards for providing disclosures that consumers will notice and understand. Generally, disclosures must be "clear and conspicuous" under Regulations B (Equal Credit Opportunity), M (Consumer Leasing), Regulation P (Privacy of Consumer Financial Information), Z (Truth in Lending) and DD (Truth in Savings), and "clear and readily understandable" under Regulation E (Electronic Fund Transfers). In interpreting the "clear and conspicuous" standard, the staff commentaries to Regulations B, M and Z provide that disclosures must be "in a reasonably understandable" form; similarly, under Regulation DD disclosures must be in a format that allows consumers "to readily understand the terms of their account." For purposes of the disclosures provided with credit card solicitations and applications, the commentary to Regulation Z provides more specifically that those disclosures must also be "readily noticeable to the consumer." In contrast, the Board's Regulation P (Privacy of Consumer Financial Information) defines the "clear and conspicuous" standard to mean that a disclosure is "reasonably understandable and designed to call attention to the nature and significance of the information" in the disclosure. 12 CFR 216.3(b)(1). Regulation P also provides examples of how to satisfy the standard. 12 CFR 216.3(b)(2).

The Board believes that the recently implemented standard in Regulation P (65 FR 35162, June 1, 2000), articulates with greater precision than the other regulations the concepts underlying the duty to provide disclosures that consumers will notice and understand. Therefore, to provide consistent guidance on the clear and conspicuous standard among its regulations, the Board is proposing to amend Regulation DD by adding a definition of clear and conspicuous in § 230.2(w), consistent with the "clear and conspicuous" definition in Regulation P. The staff commentary to Regulation DD also would be revised to add comments 2(w)–1 and –2, consistent with Regulation P's examples of how to meet the clear and conspicuous standard. Similar proposed revisions to Regulations B, E, M and Z appear elsewhere in today's **Federal Register**. These revisions are intended to help ensure that consumers receive noticeable and understandable information that is required by law in connection with obtaining consumer financial products and services. In addition, consistency among the regulations should facilitate compliance by institutions.

Additional information may accompany disclosures required under Regulation DD. *See* § 230.3(a), comment 6(a)–4. Proposed comment 2(w)–3 further clarifies that the "clear and conspicuous" standard generally does not prohibit adding other terms to the federally required disclosures (such as contractual provisions or state-required disclosures); nor does it prohibit sending promotional material with the disclosures. Proposed comment 2(w)–3 would clarify, however, that the presence of other information may be a factor in determining whether the "clear and conspicuous" standard is met. Generally, segregating federally mandated disclosures from other information is more likely to satisfy the clear and conspicuous standard.

The Board also proposes to adopt for Regulations B, E, M, Z and DD, guidance concerning type-sizes that are deemed to meet the "clear and conspicuous" standard and those that would likely be too small (this guidance currently applies only to credit card solicitations and applications under Regulation Z). *See* proposed comment 2(w)–2(ii).

The proposal does not add special format requirements to the regulation where none currently exist. Accordingly, even though the revisions clarify that type size can be one factor to consider in determining whether a disclosure is conspicuous, the proposal would not add a specific type-size requirement.

The Board also proposes to delete as unnecessary the guidance in comment 3(a)–1 and replace it with a cross-reference to § 230.2(w) and accompanying comments. Guidance regarding the "clear and conspicuous" standard for disclosures transmitted by electronic communication will be considered in the context of rulemakings dealing specifically with electronic delivery of disclosures.

III. Form of Comment Letters

Comment letters should refer to Docket No. R–1171 and, when possible, should use a standard typeface with a font size of 10 or 12; this will enable the Board to convert text submitted in paper form to machine-readable form through electronic scanning, and will facilitate automated retrieval of comments for review. Comments may be mailed electronically to *regs.comments@federalreserve.gov*.

IV. Solicitation of Comments Regarding the Use of "Plain Language"

Section 722 of the Gramm-Leach-Bliley Act of 1999 requires the Board to use "plain language" in all proposed and final rules published after January 1, 2000. The Board invites comments on whether the proposed rules are clearly stated and effectively organized, and how the Board might make the proposed text easier to understand.

V. Initial Regulatory Flexibility Analysis

In accordance with section 3(a) of the Regulatory Flexibility Act, the Board has reviewed the proposed amendments to Regulation DD. The proposed amendments are not expected to have any significant impact on small entities. A final regulatory flexibility analysis will be prepared and will consider comments received during the public comment period.

VI. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506; 5 CFR 1320 Appendix A.1), the Board reviewed the rule under the authority delegated to the Board by the Office of Management and Budget. The Federal Reserve may not conduct or sponsor, and an organization is not required to respond to, this information collection unless it displays a currently valid OMB control number. The OMB control number is 7100–0271.

The collection of information that is revised by this rulemaking is found in 12 CFR part 230. This collection is mandatory (15 U.S.C. 4301 *et seq.*) to evidence compliance with the requirements of Regulation DD and the Truth in Savings Act (TISA). The respondents and recordkeepers are for-profit depository institutions, including small businesses. Institutions are required to retain records for twenty-four months. This regulation applies to all types of depository institutions, not just state member banks; however, under Paperwork Reduction Act regulations, the Federal Reserve accounts for the burden of the paperwork associated with the regulation only for state member banks. Other agencies account for the paperwork burden on their respective constituencies under this regulation.

The proposed revisions would provide depository institutions with a more uniform definition for "clear and conspicuous" disclosures and provide examples of how to satisfy the clear and conspicuous standard. While the proposal would amend Regulation DD and the staff commentary, it is expected that these revisions would not increase the paperwork burden of depository institutions. With respect to state member banks, it is estimated that there are 976 respondents and recordkeepers. Current annual burden is estimated to be 146,644 hours.

Because the records would be maintained at state member banks and the notices are not provided to the Federal Reserve, no issue of confidentiality arises under the Freedom of Information Act.

Comments on the collection of information should be sent to the Office of Management and Budget, Paperwork Reduction Project (7100–0271), Washington, DC 20503, with copies of such comments sent to Cynthia Ayouch, Federal Reserve Board Clearance Officer, Division of Research and Statistics, Mail Stop 41, Board of Governors of the Federal Reserve System, Washington, DC 20551.

Text of Proposed Revisions

Certain conventions have been used to highlight the proposed revisions. New language is shown inside bold-faced arrows while language that would be deleted is set off with bold-faced brackets.

List of Subjects in 12 CFR Part 230

Advertising, Banks, banking, Consumer Protection, Federal Reserve System, Reporting and record keeping requirements, Truth in Savings.

For the reasons set forth in the preamble, the Board proposes to amend Regulation DD, 12 CFR part 230, as set forth below:

PART 230—TRUTH IN SAVINGS (REGULATION DD)

1. The authority citation for part 230 continues to read as follows:

Authority: 12 U.S.C. 4301 *et seq.*

2. Section 230.2 is amended by adding a new paragraph (w) to read as follows:

§ 230.2 Definitions.

For the purposes of this regulation the following definitions apply:

* * * * *

(w) *Clear and conspicuous* means that a disclosure is reasonably understandable and designed to call attention to the nature and significance of the information in the disclosure.

3. In Supplement I to Part 230:

a. Under Section 230.2 Definitions, a new paragraph title *(w) Clear and conspicuous* is added, and new paragraphs (w) 1. through (w) 3. are added.

b. Under Section 230.3 General disclosure requirements, under *(a) Form*, paragraph 1. is revised.

Supplement I to Part 230—Official Staff Interpretations

* * * * *

Section 230.2 Definitions

* * * * *

(w) Clear and conspicuous

1. *Reasonably understandable.* Examples of disclosures that are reasonably understandable include disclosures that:

i. Present the information in the disclosure in clear, concise sentences, paragraphs, and sections;

ii. Use short explanatory sentences or bullet lists whenever possible;

iii. Use definite, concrete, everyday words and active voice whenever possible;

iv. Avoid multiple negatives;

v. Avoid legal and highly technical business terminology whenever possible; and

vi. Avoid explanations that are imprecise and readily subject to different interpretations.

2. *Designed to call attention.* Examples of disclosures that are designed to call attention to the nature and significance of the information include disclosures that:

i. Use a plain-language heading to call attention to the disclosure;

ii. Use a typeface and type size that are easy to read. Disclosures in 12-point type generally meet this standard. Disclosures printed in less than 12-point type do not automatically violate the standard; however, disclosures in less than 8-point type would likely be too small to satisfy the standard;

iii. Provide wide margins and ample line spacing;

iv. Use boldface or italics for key words; and

v. In a document that combines disclosures with other information, use distinctive type size, style, and graphic devices, such as shading or sidebars, to call attention to the disclosures.

3. *Other information.* Except as otherwise provided, the clear and conspicuous standard does not prohibit adding to the required disclosures such items as contractual provisions, explanations of contract terms, state disclosures, and translations; or sending promotional material with the required disclosures. However, the presence of this other information may be a factor in determining whether the clear and conspicuous standard is met.

Section 230.3 General disclosure requirements

(a) *Form*

1. *Clear and conspicuous.* See § 230.2(w) and accompanying comments. [*Design Requirements.* Disclosures must be presented in a format that allows consumers to readily understand the terms of their account. Institutions are not required to use a particular type size or typeface, nor are institutions required to state any term more conspicuously than any other term. Disclosures may be made:

i. In any order

ii. In combination with other disclosures or account terms

iii. In combination with disclosures for other types of accounts, as long as it is clear to consumers which disclosures apply to their account

iv. On more than one page and on the front and reverse sides

v. By using inserts to a document or filling in blanks

vi. On more than one document, as long as the documents are provided at the same time.]

* * * * *

By order of the Board of Governors of the Federal Reserve System

Dated: November 25, 2003.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 03–29946 Filed 12–9–03; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–NE–35–AD]

RIN 2120–AA64

Airworthiness Directives; Pratt & Whitney Canada Models PW123, PW123B, PW123C, PW123D, PW123E, PW123AF, PW124B, PW125B, PW126A, PW127, PW127E, PW127F, and PW127G Turboprop Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for Pratt & Whitney Canada (PWC) models PW123, PW123B, PW123C, PW123D, PW123E, PW123AF, PW124B, PW125B, PW126A, PW127, PW127E, PW127F, and PW127G turboprop engines. This proposed AD would require initial and repetitive gap inspections of the bypass valve cover, on certain part number (P/N) mechanical fuel controls (MFCs), and replacement of those MFCs as mandatory terminating action to the repetitive inspections. This proposed AD is prompted by sixteen reports of loss of engine throttle response and overspeed, eight of which resulted in in-flight shutdown. We are proposing this AD to prevent loss of throttle response and overspeed, resulting in engine in-flight shutdown.

DATES: We must receive any comments on this proposed AD by February 9, 2004.

ADDRESSES: Use one of the following addresses to submit comments on this proposed AD:

- By mail: Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 2003–NE–35–AD, 12 New England Executive Park, Burlington, MA 01803–5299.
- By fax: (781) 238–7055.
- By e-mail: *9-ane-adcomment@faa.gov.*

You can get the service information identified in this proposed AD from Honeywell Engines & Systems, Technical Publications Department, 111 South 34th Street, Phoenix, Arizona 85034; telephone (602) 365–5535; fax (602) 365–5577.

You may examine the AD docket, by appointment, at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA.

FOR FURTHER INFORMATION CONTACT: Ian Dargin, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7178; fax (781) 238–7199.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to submit any written relevant data, views, or arguments regarding this proposal. Send your comments to an address listed under **ADDRESSES.** Include "AD Docket No. 2003–NE–35–AD" in the subject line of your comments. If you want us to acknowledge receipt of your mailed comments, send us a self-addressed, stamped postcard with the docket number written on it; we will date-stamp your postcard and mail it back to you. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. If a person contacts us verbally, and that contact relates to a substantive part of this proposed AD, we will summarize the contact and place the summary in the docket. We will consider all comments received by the closing date and may amend the proposed AD in light of those comments.

We are reviewing the writing style we currently use in regulatory documents. We are interested in your comments on whether the style of this document is clear, and your suggestions to improve the clarity of our communications that affect you. You may get more information about plain language at *http://www.faa.gov/language* and *http://www.plainlanguage.gov.*

Examining the AD Docket

You may examine the AD Docket (including any comments and service information), by appointment, between 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. *See* **ADDRESSES** for the location.

Discussion

Transport Canada, which is the airworthiness authority for Canada, recently notified the FAA that an unsafe condition may exist on PWC models PW123, PW123B, PW123C, PW123D, PW123E, PW123AF, PW124B, PW125B, PW126A, PW127, PW127E, PW127F, and PW127G turboprop engines. Transport Canada advises that sixteen reports of loss of engine throttle response and overspeed have been received, eight of which resulted in in-flight shutdown. Investigation by the manufacturer revealed that the cause of this problem is dislodgement of the outer lip of the mechanical fuel control bypass valve diaphragm. The dislodgement is caused by inadequate preload applied to the bypass valve diaphragm outer lip during the assembly of the MFC.

Relevant Service Information

We have reviewed and approved the technical contents of Honeywell Service Information Bulletin (SIB) No. 82, dated September 14, 2001, that describes procedures for detecting dislodgement of the outer lip of the MFC bypass valve diaphragm, by performing gap inspections of the bypass valve cover on affected MFCs.

Differences Between This Proposed AD and the Manufacturer's Service Information

Although Honeywell SIB No. 82, dated September 14, 2001, suggests the gap inspections be done periodically at the aircraft "A" check, this proposal requires initial gap inspections within 500 hours time-in-service (TIS) after the effective date of the proposed AD, and repetitive gap inspections at intervals of 1,500 hours TIS. This proposal also requires replacement of the MFC with an MFC that has an improved design bypass valve diaphragm.

FAA's Determination and Requirements of the Proposed AD

These PWC models PW123, PW123B, PW123C, PW123D, PW123E, PW123AF, PW124B, PW125B, PW126A, PW127, PW127E, PW127F, and PW127G turboprop engines, manufactured in Canada, are type-certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, Transport Canada has kept us informed of the situation described above. We have examined Transport Canada's findings, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States. Therefore, we are proposing this AD, which would require:

- Initial gap inspection of the bypass valve cover on affected MFCs, within 500 hours time-in-service (TIS) after the effective date of the proposed AD.
- Repetitive gap inspections of the bypass valve cover on affected MFCs, at intervals of 1,500 hours TIS.
- Replacement of the affected MFC with an MFC that has an improved design bypass valve diaphragm, within 4,500 hours-in-service or 24 months from the effective date of this AD, whichever occurs first, as mandatory terminating action to the repetitive inspections of the proposed AD.

The proposed AD would require you to use the service information described previously to perform the inspections.

Changes to 14 CFR Part 39—Effect on the Proposed AD

On July 10, 2002, we issued a new version of 14 CFR part 39 (67 FR 47998, July 22, 2002), which governs the FAA's AD system. This regulation now includes material that relates to altered products, special flight permits, and alternative methods of compliance. This material previously was included in each individual AD. Since this material is included in 14 CFR part 39, we will not include it in future AD actions.

Costs of Compliance

There are approximately 2,800 PWC models PW123, PW123B, PW123C, PW123D, PW123E, PW123AF, PW124B, PW125B, PW126A, PW127, PW127E, PW127F, and PW127G turboprop engines of the affected design in the worldwide fleet. We estimate that 473 engines installed on airplanes of U.S. registry would be affected by this proposed AD. We also estimate that it would take about 0.1 work hour per engine to perform the proposed inspection, about 1 work hour per engine to replace the MFC during maintenance, and that the average labor rate is $65 per work hour. Required parts would cost approximately $72,000 per engine. Based on these figures, we estimate the total cost of the proposed AD to U.S. operators to be $34,089,819. The manufacturer has stated that it may provide the new design MFCs at no cost to operators, and that if the MFC is replaced at shop visit, no additional labor costs will be incurred.

Regulatory Findings

We have determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that the proposed regulation:

1. Is not a "significant regulatory action" under Executive Order 12866;

2. Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and

3. Would not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a summary of the costs to comply with this proposal and placed it in the AD Docket. You may get a copy of this summary by sending a request to us at the address listed under **ADDRESSES.** Include "AD Docket No. 2003–NE–35–AD" in your request.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. The FAA amends § 39.13 by adding the following new airworthiness directive:

Pratt & Whitney Canada: Docket No. 2003–NE–35–AD.

Comments Due Date

(a) The FAA must receive comments on this airworthiness directive (AD) action by February 9, 2004.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Pratt & Whitney Canada (PWC) models PW123, PW123B, PW123C, PW123D, PW123E, PW123AF, PW124B, PW125B, PW126A, PW127, PW127E, PW127F, and PW127G turboprop engines, with mechanical fuel controls (MFCs), part numbers (P/Ns) 3244841–21, 3244853–17, 3244855–15, 3244857–14, 3244858–23, 3244871–5, 3244873–4, and 3244874–4, installed. These engines are installed on, but not limited to, Aerospatiale ATR 42 and ATR 72, BAE Systems (Operations) Limited ATP, Bombardier Inc. DHC–8–200 series, DHC–8–300 series, GL–215T, and CL–415, Construcciones Aeronauticas, S.A. (CASA) C–295, Fokker Aircraft B.V. F27 Mark 050, and Mark 060 airplanes.

Unsafe Condition

(d) This AD is prompted by sixteen reports of loss of engine throttle response and overspeed, eight of which resulted in in-flight shutdown. We are issuing this AD to prevent loss of throttle response and overspeed, resulting in engine in-flight shutdown.

Compliance

(e) You are responsible for having the actions required by this AD performed within the compliance times specified unless the actions have already been done.

Initial Gap Inspection

(f) Within 500 hours time-in-service (TIS) after the effective date of the AD, perform a gap inspection between the MFC bypass valve cover and the MFC main body, and disposition the MFC. Follow paragraphs 5.0 through 5.3 of Honeywell Service Information Bulletin (SIB) No. 82, dated September 14, 2001, to do the inspection and MFC disposition.

Repetitive Gap Inspections

(g) At intervals of 1,500 hours TIS from the last gap inspection, perform repetitive gap inspections between the MFC bypass valve cover and the MFC main body and disposition the MFC. Follow paragraphs 5.0 through 5.3 of Honeywell SIB No. 82, dated September 14, 2001, to do the inspection and MFC disposition.

Mandatory Terminating Action

(h) Within 4,500 hours TIS or 24 months from the effective date of this AD, whichever occurs first, replace the MFC with an MFC not having a P/N listed in paragraph (c) of this AD.

(i) Replacement of the MFC with an MFC whose P/N is not listed in paragraph (c) of this AD constitutes mandatory terminating action to the repetitive inspection requirements specified in paragraph (g) of this AD. Information on new design replacement MFCs can be found in PWC Service Bulletin No. PW100–72–21562, Revision 2, dated December 7, 2000.

Alternative Methods of Compliance

(j) The Manager, Engine Certification Office, has the authority to approve alternative methods of compliance for this AD if requested using the procedures found in 14 CFR 39.19.

Material Incorporated by Reference

(k) You must use Honeywell Service Information Bulletin No. 82, dated September 14, 2001, to perform the inspections required

by this AD. Approval of incorporation by reference from the Office of the Federal Register is pending.

Related Information

(l) Transport Canada airworthiness directive CF–2002–34, dated July 15, 2002, and Pratt & Whitney Service Bulletin No. PW100–72–21669, dated October 2, 2001, also address the subject of this AD.

Issued in Burlington, Massachusetts, on December 4, 2003.

Jay J. Pardee,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 03–30587 Filed 12–9–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Parts 1917 and 1918

[Docket No. S–025A]

RIN 1218–AA56

Longshoring and Marine Terminals; Vertical Tandem Lifts

AGENCY: Occupational Safety and Health Administration (OSHA), Department of Labor.

ACTION: Extension of comment period.

SUMMARY: The Department of Labor is extending the comment and hearing request period for its proposed standard titled Longshoring and Marine Terminals; Vertical Tandem Lifts, for an additional sixty (60) days until February 13, 2004.

DATES: *Written Comments:* Comments and hearing requests must be submitted by the following dates.

Hard Copy: You must submit your comments and hearing requests (postmarked or sent) by February 13, 2004.

Facsimile and electronic transmission: You must submit your comments and hearing requests by February 13, 2004. (Please *see* the **SUPPLEMENTARY INFORMATION** below for additional information on submitting comments.)

ADDRESSES: You may submit comments and hearing requests, identified by docket number S–025A and/or RIN number 1218–AA56, by any of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments.
- Agency Web Site: Follow the instructions for submitting comments, hearing requests, or electronic documents through the OSHA Internet Home page at *http://ecomments,.osha.gov*.
- Fax: If your submissions, including any attachments, are 10 pages or fewer, you may fax them to the OSHA Docket Office at (202) 693–1648. You must include the docket number of this notice, Docket No. S–025AS, in your comments or hearing request.
- Mail: Submit three copies of your comments or hearing requests to the OSHA Docket Office, Docket No. S–025A, Room N–2625, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. Because of security-related problems, there may be a significant delay in the receipt of submissions by regular mail.
- Hand Delivery/Courier: Submit three copies of your comments or hearing requests to the OSHA Docket Office, Docket No. S–025A, Room N–2625, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. OSHA Docket Office and Department of Labor hours of operation are 8:15 a.m. to 4:45 p.m., e.s.t. Please contact the OSHA Docket Office at (202) 693–2350 (OSHA's TTY number is (877) 889–5627) for information about security procedures concerning the delivery of materials by express delivery, hand delivery, and messenger service.

Instructions: All submissions received must include the agency name and the docket number S–025A or Regulatory Information Number (RIN) 1218–AA56 for this rulemaking. For detailed instructions on submitting comments and additional information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: For access to the docket to read background documents or comments received, go to OSHA's Web page at *http://www.osha.gov* or the OSHA Docket Office at the address above. Contact the OSHA Docket Office at (202) 693–2350 (OSHA's TTY number is (877) 889–5627 for information about materials not available through the OSHA Web page and for assistance in using the Web page to locate docket submissions.

FOR FURTHER INFORMATION CONTACT: For technical inquiries, contact Paul Rossi, OSHA, Office of Maritime, Directorate of Standards and Guidance, U.S. Department of Labor, Room N–3609, 200 Constitution Avenue, NW., Washington, DC 20210; telephone: (202) 693–2086. For general information and press inquiries, contact OSHA, Office of Communications, U.S. Department of Labor, Room N–3647, 200 Constitution Avenue, NW., Washington, DC 20210; telephone: (202) 693–1999. For additional copies of this **Federal Register** notice, contact OSHA, Office of Publications, U.S. Department of Labor, Room N–3101, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693–1888. Electronic copies of this **Federal Register** notice, as well as news releases and other relevant documents, are available at OSHA's Web page on the Internet at *http://www.osha.gov*.

SUPPLEMENTARY INFORMATION:

I. Extension of Comment Period

OSHA announced publication of its proposed standard for Longshoring and Marine Terminals; Vertical Tandem Lifts, in the **Federal Register** on September 16, 2003 (68 FR 54297). In that notice, the Agency provided the public with ninety (90) days to submit written comments, with a final date of December 15, 2003. Several interested persons have an extension of the deadline for submitting comments based on the need for additional time to gather information and to provide a thorough review and response to the proposed standard. In light of the interest expressed by the public, OSHA is providing an additional sixty (60) days for the submission of comments and hearing requests. Accordingly, written comments and hearing requests must now be submitted by February 13, 2004.

II. Obtaining Copies of the Proposed Standard

You can download the proposed standard for Vertical Tandem Lifts from OSHA's Web page at *http://www.osha.gov*. A printed copy of the proposed standard is available from the OSHA Office of Publications, Room N–3101, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210, or by telephone at (800) 321–OSHA (6742). You may fax your request for a copy of the proposed standard to (202) 693–2498.

III. Submission of Comments and Internet Access to Comments

You may submit comments in response to this document by (1) hard copy, (2) fax transmission (facsimile), or (3) electronically through the OSHA Web page. You may supplement electronic submissions by uploading document files electronically. If you wish to mail additional materials in reference to an electronic submission, you must submit three copies of the materials to the OSHA Docket Office at the address above. The additional materials must clearly identify your electronic comments by name, date,

subject, and docket number so we can attach them to your comments. Because of security-related procedures the use of regular mail may cause a significant delay in the receipt of comments. Please contact the OSHA Docket Office at (202) 693–2350 (TTY (877) 889–5627) for information about security procedures concerning the delivery of materials by express delivery, hand delivery, and messenger service.

All comments and submissions will be available for inspection and copying at the OSHA Docket Office at the above address. Comments and submissions will be posted on OSHA's Web page at *http://www.osha./gov*. OSHA cautions you about submitting personal information such as social security numbers, date of birth, etc. Contact the OSHA Docket Office at (202) 693–2350 (TTY (877) 889–5627) for information about materials not available through the OSHA Web page and for assistance in using the Internet to locate docket submissions.

Authority and Signature

The notice was prepared under the direction of John L. Henshaw, Assistant Security for Occupational Safety and Health. It is issued under sections 4, 6 and 8 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657), Section 41 of the Longshore and Harbor Workers' Compensation Act (33 U.S.C. 941), Secretary's Order 5–2002 (67 FR 65008), and 29 CFR part 1911.

Signed at Washington, DC, this 4th day of December 2003.

John L. Henshaw,

Assistant Secretary of Labor.

[FR Doc. 03–30576 Filed 12–9–03; 8:45 am]

BILLING CODE 4510–26–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 51

[FRL–7598–2]

EPA Responses to State and Tribal 8-Hour Ozone Air Quality Designation Recommendations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability.

SUMMARY: Notice is hereby given that the EPA has posted its responses to States' and Tribes' 8-hour ozone air quality designation recommendations on the web. If a State or Tribe wishes to submit additional information to EPA regarding the designations, we have requested that they submit that information no later than February 6, 2004.

ADDRESSES: The EPA's responses are available for public inspection at EPA's Web site at: *http://www.epa.gov/ozonedesignations* and at the Office of Air and Radiation (OAR) Docket Center, Docket Number OAR 2003–0083, respectively. State and Tribal recommendations are also available at the same EPA website and docket locations.

FOR FURTHER INFORMATION CONTACT: Ms. Sharon Reinders, Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Mail Code C539–02, Research Triangle Park, NC 27711, phone number (919) 541–5284 or by e-mail at: *reinders.sharon@epa.gov* or Ms. Annie Nikbakht, Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Mail Code C539–02, Research Triangle Park, NC 27711, phone number (919) 541–5246 or by e-mail at: *nikbakht.annie@epa.gov*. Mr. Barry Gilbert can be contacted for air quality technical issues: Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Mail Code C539–02, Research Triangle Park, NC 27711, phone number (919) 541–5238 or by email at: *gibert.barry@epa.gov*.

SUPPLEMENTARY INFORMATION:

A. How Can I Get Copies of This Document and Other Related Information?

1. *Docket.* The EPA has established an official public docket for this action under Docket ID Number OAR 2003–0083. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the OAR Docket Center, (EPA/DC) EPA West, Room B102, 1301 Constitution Avenue, NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OAR Docket is (202) 566–1742.

2. Electronic Access. You may access this **Federal Register** document electronically through the EPA Internet under the **Federal Register** listings at *http://www.epa.gov/fedrgstrl*.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the appropriate docket identification number. The EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in A.1.

List of Subjects

Air pollution control, Intergovernmental relations, Ozone, Particulate matter, Transportation, Volatile organic compounds.

Authority: 42 U.S.C. 7408, 42 U.S.C. 7410, 42 U.S.C. 7501–7511f; 42 U.S.C. 7601(a)(1).

Dated: December 4, 2003.

Henry C. Thomas,

Acting Director, Office of Air Quality Planning and Standards.

[FR Doc. 03–30582 Filed 12–9–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[NV108–SWIb; FRL–7595–6]

Approval and Promulgation of State Air Quality Plans for Designated Facilities and Pollutants; Control of Emissions From Existing Commercial/Industrial Solid Waste Incinerator Units; Nevada

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a negative declaration submitted by the Nevada Division of Environmental Protection. The negative declaration certifies that commercial/industrial solid waste incinerator units, which are subject to the requirements of sections 111(d) and 129 of the Clean Air Act, do not exist within the agency's air pollution control jurisdiction.

DATES: Comments must be received in writing by January 9, 2004.

ADDRESSES: Send comments to Andrew Steckel, Rulemaking Office Chief (AIR–4), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901, or e-mail to *steckel.andrew@epa.gov*, or submit comments at *http://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Mae Wang, EPA Region IX, (415) 947–4124, *wang.mae@epa.gov*.

SUPPLEMENTARY INFORMATION: This proposal addresses a Clean Air Act section 111(d)/129 negative declaration submitted by the Nevada Division of Environmental Protection certifying that commercial/industrial solid waste incinerator units do not exist within its air pollution control jurisdiction. This negative declaration was submitted on October 16, 2003. For further information, please see the information provided in the direct final action, with the same title, that is located in the "Rules and Regulations" section of this **Federal Register** publication. If no adverse comments are received in response to this action, no further activity will be contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time.

Dated: November 19, 2003.

Alexis Strauss,

Acting Regional Administrator, Region IX.

[FR Doc. 03–30391 Filed 12–9–03; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–2003–0265; FRL–7330–8]

Bitertanol, Chlorpropham, Cloprop, Combustion Product Gas, Cyanazine, et al.; Proposed Tolerance Actions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document proposes to revoke certain tolerances and tolerance exemptions for residues of the fungicide and insecticide dinocap; insecticides combustion product gas, ethion, formetanate hydrochloride, nicotine-containing compounds, polyoxyethylene, and tartar emetic; herbicides chlorpropham, cyanazine, and tridiphane; fungicides bitertanol, 1,1,1-trichloroethane, and triforine; and the plant regulators cloprop and 4,6-dinitro-o-cresol because these specific tolerances are either no longer needed or are associated with food uses that are no longer current or registered in the United States. Also, EPA is proposing to modify certain ethion tolerances before they expire. The regulatory actions proposed in this document contribute toward the Agency's tolerance reassessment requirements of the Federal Food, Drug, and Cosmetic Act (FFDCA) section 408(q), as amended by the Food Quality Protection Act (FQPA) of 1996. By law, EPA is required by August 2006 to reassess the tolerances in existence on August 2, 1996. The regulatory actions in this document pertain to the proposed revocation of 61 tolerances and tolerance exemptions. Because three tolerances were previously reassessed, 58 tolerances/exemptions would be counted as reassessed toward the August, 2006 review deadline.

DATES: Comments, identified by docket ID number OPP–2003–0265, must be received on or before February 9, 2004.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Joseph Nevola, Special Review and Reregistration Division (7508C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave, NW., Washington, DC 20460–0001; telephone number: (703) 308–8037; e-mail address:*nevola.joseph@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS 111)
- Animal production (NAICS 112)
- Food manufacturing (NAICS 311)
- Pesticide manufacturing (NAICS 32532)

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. To determine whether you or your business may be affected by this action, you should carefully examine the applicability provisions in Unit II.A. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number OPP–2003–0265. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr/*. A frequently updated electronic version of 40 CFR part 180 is available at *http://www.access.gpo.gov/nara/cfr/cfrhtml_00/Title_40/40cfr180_00.html*, a beta site currently under development.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the appropriate docket ID number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the Docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

C. How and To Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit I.D. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically.* If you submit an electronic comment as prescribed in this unit, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets.* Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket/*, and follow the online instructions for submitting comments. Once in the system, select "search," and then key in docket ID number OPP–2003–0265. The system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail.* Comments may be sent by e-mail to *opp-docket@epa.gov*, Attention: Docket ID Number OPP–2003–0265. In contrast to EPA's electronic public docket, EPA's e-mail system is not an "anonymous access" system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM.* You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Unit I.C.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By mail.* Send your comments to: Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001, Attention: Docket ID Number OPP–2003–0265.

3. *By hand delivery or courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, Attention: Docket ID Number OPP–2003–0265. Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit I.B.1.

D. How Should I Submit CBI to the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Offer alternative ways to improve the proposed rule or collection activity.

7. Make sure to submit your comments by the deadline in this document.

8. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

F. What Can I do if I Wish the Agency to Maintain a Tolerance that the Agency Proposes to Revoke?

This proposed rule provides a comment period of 60 days for any person to state an interest in retaining a tolerance or tolerance exemption proposed for revocation. If EPA receives a comment within the 60–day period to that effect, EPA will not proceed to revoke the tolerance/exemption immediately. However, EPA will take steps to ensure the submission of any needed supporting data and will issue an order in the **Federal Register** under the Federal Food, Drug, and Cosmetic Act (FFDCA) section 408(f) if needed. The order would specify data needed and the time frames for its submission, and would require that within 90 days some person or persons notify EPA that they will submit the data. If the data are not submitted as required in the order, EPA will take appropriate action under FFDCA.

EPA issues a final rule after considering comments that are submitted in response to this proposed rule. In addition to submitting comments in response to this proposal, you may also submit an objection at the time of the final rule. If you fail to file an objection to the final rule within the time period specified, you will have waived the right to raise any issues resolved in the final rule. After the specified time, issues resolved in the final rule cannot be raised again in any subsequent proceedings.

II. Background

A. What Action is the Agency Taking?

EPA is proposing to revoke certain tolerances and tolerance exemptions for residues of the fungicide and insecticide dinocap; insecticides combustion product gas, ethion, formetanate hydrochloride, nicotine-containing compounds, polyoxyethylene, and tartar emetic; herbicides chlorpropham, cyanazine, and tridiphane; fungicides bitertanol, 1,1,1-trichloroethane, and triforine; and the plant regulators cloprop and 4,6-dinitro-o-cresol because these specific tolerances and exemptions correspond to uses no longer current or registered under FIFRA in the United States. It is EPA's general practice to propose revocation of those tolerances and tolerance exemptions for residues of pesticide active ingredients on crop uses for which there are no active registrations under FIFRA, unless any person in comments on the proposal indicates a need for the tolerance or tolerance exemption to cover residues in or on imported commodities or domestic commodities legally treated.

Concerning the Reregistration Eligibility Decisions (REDs) for chlorpropham and ethion and the Report on FQPA Tolerance Reassessment Progress and Interim Risk Management Decision (TRED) for chlorpropham mentioned in this rule, printed copies of the REDs and TREDs may be obtained from EPA's National Service Center for Environmental Publications (EPA/NSCEP), P.O. Box 42419, Cincinnati, OH 45242–2419, telephone 1–800–490–9198; fax 1–513–489–8695; internet at *http://www.epa.gov/ncepihom/* and from the National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, VA 22161, telephone 1–800–553–6847 or 703–605–6000; internet at *http://www.ntis.gov/*. Electronic copies of REDs and TREDs are available on the internet at *http://www.epa.gov/pesticides/reregistration/status.htm*.

1. *Bitertanol*. EPA is proposing to revoke the tolerance in 40 CFR 180.457 for residues of beta-([1,1'-biphenyl]-4-yloxy)-alpha-(1,1-dimethylethyl)-1H-1,2,4-triazole-1-ethanol, also called bitertanol, in or on banana (whole) because no active U.S. registrations have existed for its associated commodity use since 1992 and the tolerance is no longer needed.

2. *Chlorpropham*. In the 1996 RED for chlorpropham, EPA required environmental fate and ecological effects data to maintain the spinach registration, which was registered as a Special Local Need under FIFRA 24(c) and was not being supported by the primary registrants of technical chlorpropham. In February 2002, EPA canceled the last Special Local Need registration, but allowed use until December 31, 2002. On July 19, 2002, EPA reassessed the spinach tolerance in a TRED for chlorpropham. That reassessment decision was a recommendation to revoke the spinach tolerance because there are no active registrations and the tolerance is no longer needed. The Agency believes that there has been sufficient time for chlorpropham-treated spinach to clear the channels of trade. Therefore, EPA is proposing to revoke the interim tolerance in 40 CFR 180.319 regarding isopropyl m-chlorocarbanilate (CIPC), called chlorpropham, for residues in or on spinach.

3. *Cloprop*. On January 21, 1998 (63 FR 3057)(FRL–5743–8), EPA published a Notice of Proposed Rulemaking in the **Federal Register** in which the Agency proposed to revoke all cloprop tolerances. On January 26, 1998, the Pineapple Growers Association of Hawaii commented and requested that the pineapple tolerance for cloprop not be revoked for 5 years. On October 26, 1998 (63 FR 57062)(FRL–6035–8), EPA published a final rule in the **Federal Register** in which the Agency responded and stated that it would not revoke the cloprop tolerance on pineapple at that time. On September 21, 2001, EPA amended its authorization of a specific emergency exemption under Section 18 of FIFRA for application of cloprop on pineapple in Hawaii (which was to expire on August 3, 2001) until August 2, 2002. The Agency believes that there has been sufficient time for cloprop-treated pineapple to clear the channels of trade. Therefore, EPA is now proposing to revoke the tolerance in 40 CFR 180.325 for residues of 2-(m-chlorophenoxy) propionic acid, called cloprop, from application of the acid or of 2-(m-chlorophenoxy) propionamide in or on pineapple because no active registration exists and the tolerance is no longer needed.

4. *Combustion product gas*. EPA is proposing to revoke the tolerance exemption in 40 CFR 180.1051 for residues of the gas produced by the controlled combustion in air of butane, propane, or natural gas in or on all food commodities (except fresh meat) when used after harvest in modified atmospheres for stored product with prescribed conditions. The Agency is proposing this revocation because no active U.S. registrations have existed since 1993.

5. *Cyanazine*. In November 1994, EPA initiated a Special Review of cyanazine based on concerns that cyanazine may pose a risk of inducing cancer in humans from dietary, occupational, and residential exposure. In the **Federal Register** of July 25, 1996 (61 FR 39023) (FRL–5385–7), EPA announced a final determination to terminate the cyanazine Special Review. In the same notice, EPA accepted requests for the voluntary cancellation of cyanazine registrations effective December 31, 1999 and ordered the cancellations to take effect on January 1, 2000, authorized sale and distribution of such products in the channels of trade in accordance with their labels through September 30, 2002, and prohibited the use of cyanazine products after December 31, 2002. EPA issued an order confirming the cyanazine cancellation on January 6, 2000 (65 FR 771) (FRL–6486–7).

EPA proposed to revoke the tolerances for cyanazine on April 23, 1999 (64 FR 19961) (FRL–6076–4). Only one significant comment was received in response to that document. Griffin L.L.C. requested that EPA not revoke the tolerances for cyanazine and due to Griffin's interest in maintaining those tolerances as import tolerances, the Agency did not take action on cyanazine at that time (64 FR 39078, July 21, 1999) (FRL–6093–9). However, in a letter to the Agency dated August 24, 1999, Griffin L.L.C. stated that it no longer needs EPA to maintain import tolerances for cyanazine. The Agency believes that there has been sufficient time for cyanazine-treated commodities to clear the channels of trade. Therefore, EPA is proposing to revoke the tolerances in 40 CFR 180.307 for residues of the herbicide 2-[[4-Chloro-6-(ethylamino)-s-triazin-2-yl]amino]-2-methylpropionitrile, called cyanazine, in or on corn, forage; corn, fresh, kernal plus cob with husks removed; corn, grain; corn, stover; cotton, undelinted seed; sorghum, forage; sorghum, grain; sorghum, grain, stover; wheat, forage; wheat, grain; and wheat, straw.

6. *4,6-Dinitro-o-cresol*. EPA is proposing to revoke the tolerance in 40 CFR 180.344 for residues of 4,6-dinitro-o-cresol (DNOC) and its sodium salt in or on apple from application to apple trees at the blossom stage because no active U.S. registrations have existed for its associated commodity use since 1993.

7. *Dinocap*. On April 26, 2002 (67 FR 20767)(FRL–6833–8), EPA published a notice in the **Federal Register** under section 6(f)(1) of FIFRA announcing its receipt of a request from the registrant for cancellation of the last active dinocap product registrations. EPA approved the registrants' requests for voluntary cancellation and issued cancellation orders with an effective date of October 24, 2002 which allowed the registrants to sell and distribute existing stocks of the canceled products until February 14, 2003. The Agency believes that there is sufficient time for end users to exhaust those existing stocks and treated commodities to clear the channels of trade by February 14, 2004. Therefore, EPA is proposing to revoke the tolerances in 40 CFR 180.341 for combined residues that is a mixture of 2,4-dinitro-6-octylphenyl crotonate and 2,6-dinitro-4-octylphenyl crotonate, called dinocap, in or on apple and grape with a expiration/revocation date of February 14, 2004.

8. *Ethion*. On July 31, 2002 (67 FR 49606)(FRL–7191–4), EPA published a final rule in the **Federal Register** which revoked ethion tolerances on citrus fruit; dried citrus pulp, and certain animal commodities with expiration/revocation dates of October 1, 2008. The Agency acknowledged that citrus and animal feed (citrus, dried pulp) with legal residues of ethion can take several years to clear channels of trade from ethion's last legal use date of December 31, 2004.

In the July 2002 final rule, EPA did not act on the cattle and milk fat tolerances for ethion because of an existing cattle ear tag product. On October 16, 2002 (67 FR 63909)(FRL–7276–6), EPA published a notice in the **Federal Register** under section 6(f)(1) of FIFRA announcing its receipt of a request from the registrant for cancellation of the last cattle ear tag product for ethion. EPA approved the registrant's request for voluntary cancellation and on June 4, 2003 issued a cancellation order with an effective date of May 31, 2003, i.e., the order allowed the basic registrant to distribute and sell existing stocks of the canceled product until May 31, 2003. Therefore, EPA is now proposing to revoke tolerances in 40 CFR 180.173 for residues of the insecticide ethion (*O,O,O',O'*-tetraethyl *S,S'*-methylene bisphosphorodithioate) including its oxygen analog (*S*-[[(diethoxyphosphinothioyl) thio]methyl] *O,O*-diethyl phosphorothioate) in or on cattle, fat; cattle, meat byproducts; cattle, meat (fat basis); and milk fat (reflecting (n) residues in milk), each with an expiration/revocation date of October 1, 2008. These proposed dates are consistent with the expiration/revocation date concerning the ethion tolerance on dried citrus pulp, an animal feed. In addition and in accordance with the 2001 RED for ethion, EPA is proposing not only to revoke the cattle tolerances, but also to decrease them based on an available ruminant feeding study to 0.2 ppm during the period before they expire on October 1, 2008. In the RED, EPA found that these revised tolerances are safe in accordance with section 408 of the FFDCA. (A copy of the ethion RED will be made available in the docket for this proposed rule. See the ethion RED Part IV(C)(1)(b): Tolerance Summary).

Also, in the 2001 RED for ethion, EPA recommended that the citrus tolerances should be revoked, but also be raised during the period before they expire (from 10.0 to 25.0 ppm for dehydrated pulp and from 2.0 to 5.0 ppm for citrus fruits) based on the available citrus field trial and processing data. In the RED, EPA found that these revised tolerances are safe in accordance with section 408 of the FFDCA. (See the ethion RED Part IV(C)(1)(b): Tolerance Summary). Therefore, in 40 CFR 180.173, while the citrus, dried pulp and fruit, citrus tolerances will continue to expire on October 1, 2008, the Agency is proposing to increase the tolerances for citrus, dried pulp (10 ppm) and fruit, citrus (2.0 ppm) during the period before they expire to 25.0 and 5.0 ppm, respectively.

In addition, to conform to current Agency practice, EPA is proposing in 40 CFR 180.173 to revise the commodity terminologies for "fruit, citrus" to "fruit, citrus, group 10;" and "milk fat (reflecting (N) residues in milk)" to "milk, fat, reflecting negligible residues in milk."

9. *Formetanate hydrochloride*. EPA had initiated negotiations with the registrant for formetanate hydrochloride due to Agency concerns. As one measure to reduce concerns, the registrant agreed to delete the product use on plums and prunes, which appear to benefit little from use of the product. Pursuant to section 6(f) of FIFRA, EPA received the request for voluntary amendments to delete the aforementioned uses from the registrations. On February 8, 2000, a 6(f)(1) notice of receipt of the request by the registrant was published in the **Federal Register** (65 FR 6208) (FRL–6489–6). EPA granted the registrant's request to waive the 180–day comment period, but the Agency provided a 30–day public comment period, and granted the requested amendments to delete those uses from registration labels on May 31, 2000. Except for the purpose of relabeling, the Agency had prohibited sale and distribution by the registrant after December 1, 1999 and by persons other than the registrant, including existing stocks, after June 1, 2000, of products labeled for use on plums and prunes.

Because there are no active registrations for use of formetanate hydrochloride on plums and prunes, the tolerances are no longer needed. Therefore, EPA is proposing to revoke the tolerances in 40 CFR 180.276(a)(1) for residues of the insecticide formetanate hydrochloride in or on plum, prune, fresh and in 40 CFR 180.276(a)(2) for residues of the

insecticide formetanate hydrochloride in or on dried prunes.

10. *Nicotine-containing compounds.* On December 6, 2002 (67 FR 72673)(FRL–7281–5), EPA published a notice in the **Federal Register** under section 6(f)(1) of FIFRA announcing its receipt of a request from the registrant to amend a registration for a product whose active ingredient is a nicotine-containing compound and delete greenhouse food crop uses, including cucumber, lettuce, and tomato. (These were the last active food use registrations for nicotine-containing compounds). EPA approved the registrants' requests for voluntary deletion of these uses and allowed a period of 18 months for the registrant to sell and distribute existing stocks until December 4, 2004. The Agency believes that there is sufficient time for end users to exhaust those existing stocks and treated commodities to clear the channels of trade by December 4, 2005. Therefore, EPA is proposing to revoke the tolerances in 40 CFR 180.167 for residues of nicotine-containing compounds in or on cucumber, lettuce, and tomato with expiration/revocation dates of December 4, 2005.

11. *Polyoxyethylene.* EPA is proposing to revoke the tolerance exemptions in 40 CFR 180.1078 for residues of poly(oxy-1,2-ethanediyl), alpha-isooctadyl-omega-hydroxy, also called polyoxyethylene, in or on fish, shellfish, irrigated crops, meat, milk, poultry, and eggs because no active U.S. registrations have existed since 1990.

12. *Tartar emetic.* EPA is proposing to revoke the tolerances in 40 CFR 180.179 for residues, calculated as combined antimony trioxide, in or on fruit, citrus; grape, and onion because no active U.S. registrations have existed for their associated commodity uses since 1992.

13. *1,1,1-Trichloroethane.* EPA is proposing to revoke the tolerance exemption in 40 CFR 180.1012 for residues of 1,1,1-trichloroethane when used in the postharvest fumigation of citrus fruits because no active U.S. registrations have existed since 1989.

14. *Tridiphane.* On September 26, 2001 (66 FR 49184)(FRL–6802–1), EPA published a notice in the **Federal Register** under section 6(f)(1) of FIFRA announcing its receipt of a request from the registrant for cancellation of the last active tridiphane product registration. EPA approved the registrants' request for voluntary cancellation and issued a cancellation order with an effective date of April 5, 2002 which allowed the registrant to sell and distribute existing stocks of the canceled product until July 17, 2002. The Agency believes that there has been sufficient time for end users to exhaust those existing stocks and for treated commodities to clear the channels of trade. Therefore, EPA is proposing to revoke the tolerances in 40 CFR 180.424 for residues of 2-(3,5-dichlorophenyl)-2-(2,2,2-trichloroethyl)-oxirane, called tridiphane, in or on corn, grain, field; corn, forage; and corn, stover.

15. *Triforine.* On December 24, 1997 (62 FR 67365)(FRL–5761–8), EPA published a notice in the **Federal Register** under section 6(f)(1) of FIFRA announcing its receipt of a request from the registrant to amend a triforine product registration and delete certain triforine uses, including almonds, apples, apricots, asparagus, blueberries, cherries, cranberries, nectarines, plums, and prunes. EPA approved the registrants' requests for voluntary deletion of these uses and allowed a period of 18 months for the registrant to sell and distribute existing stocks (until approximately the end of 1999). Also, on July 31, 1998 (63 FR 41145)(FRL–6015–8), EPA published a notice in the **Federal Register** which announced cancellation of a triforine registration for non-payment of 1998 maintenance fee and issuance of a cancellation order which permitted the registrant to sell and distribute existing stocks of the canceled product until January 15, 1999.

The Agency believes that end users had sufficient time (at least 3½ years beyond the endpoint for sale and distribution by registrants) to exhaust those existing stocks and for treated commodities to have cleared the channels of trade. Therefore, EPA is proposing to revoke the tolerances in 40 CFR 180.382(a) for residues of triforine in or on almond, hulls; almond; apple; apricot; bell pepper; blueberry; cantaloupe; cherry; cranberry; cucumber; eggplant; hop, dried cone; hop, spent; nectarine; peach; plum; plum, prune, fresh; strawberry; and watermelon; and in § 180.382(c) for residues of triforine in or on asparagus because no active U.S. registrations exist which cover those commodities.

B. What is the Agency's Authority for Taking this Action?

A "tolerance" represents the maximum level for residues of pesticide chemicals legally allowed in or on raw agricultural commodities and processed foods. Section 408 of FFDCA. 21 U.S.C. 301 et seq., as amended by the FQPA of 1996, Public Law 104–170, authorizes the establishment of tolerances, exemptions from tolerance requirements, modifications in tolerances, and revocation of tolerances for residues of pesticide chemicals in or on raw agricultural commodities and processed foods (21 U.S.C. 346(a)). Without a tolerance or exemption, food containing pesticide residues is considered to be unsafe and therefore "adulterated" under section 402(a) of the FFDCA. Such food may not be distributed in interstate commerce (21 U.S.C. 331(a) and 342(a)). For a food-use pesticide to be sold and distributed, the pesticide must not only have appropriate tolerances under the FFDCA, but also must be registered under FIFRA (7 U.S.C. et seq.). Food-use pesticides not registered in the United States must have tolerances in order for commodities treated with those pesticides to be imported into the United States.

EPA's general practice is to propose revocation of tolerances for residues of pesticide active ingredients on crops for which FIFRA registrations no longer exist and on which the pesticide may therefore no longer be used in the United States. EPA has historically been concerned that retention of tolerances that are not necessary to cover residues in or on legally treated foods may encourage misuse of pesticides within the United States. Nonetheless, EPA will establish and maintain tolerances even when corresponding domestic uses are canceled if the tolerances, which EPA refers to as "import tolerances," are necessary to allow importation into the United States of food containing such pesticide residues. However, where there are no imported commodities that require these import tolerances, the Agency believes it is appropriate to revoke tolerances for unregistered pesticides in order to prevent potential misuse.

Furthermore, as a general matter, the Agency believes that retention of import tolerances not needed to cover any imported food may result in unnecessary restriction on trade of pesticides and foods. Under section 408 of the FFDCA, a tolerance may only be established or maintained if EPA determines that the tolerance is safe based on a number of factors, including an assessment of the aggregate exposure to the pesticide and an assessment of the cumulative effects of such pesticide and other substances that have a common mechanism of toxicity. In doing so, EPA must consider potential contributions to such exposure from all tolerances. If the cumulative risk is such that the tolerances in aggregate are not safe, then every one of these tolerances is potentially vulnerable to revocation. Furthermore, if unneeded tolerances are included in the aggregate and cumulative risk assessments, the estimated exposure to the pesticide would be inflated. Consequently, it may

be more difficult for others to obtain needed tolerances or to register needed new uses. To avoid potential trade restrictions, the Agency is proposing to revoke tolerances for residues on crops for which FIFRA registrations no longer exist, unless someone expresses a need for such tolerances. Through this proposed rule, the Agency is inviting individuals who need these import tolerances to identify themselves and the tolerances that are needed to cover imported commodities.

Parties interested in retention of the tolerances or tolerance exemptions should be aware that additional data may be needed to support retention. These parties should be aware that, under FFDCA section 408(f), if the Agency determines that additional information is reasonably required to support the continuation of a tolerance, EPA may require that parties interested in maintaining the tolerances provide the necessary information. If the requisite information is not submitted, EPA may issue an order revoking the tolerance at issue.

C. When do These Actions Become Effective?

For this rule, the proposed actions will affect tolerances and tolerance exemptions for uses which have been canceled, in some cases, for many years. With the exception of certain tolerances for dinocap, ethion, and nicotine-containing compounds for which EPA is proposing specific expiration/revocation dates, the Agency is proposing that these revocations, modifications, and commodity terminology revisions become effective 90 days following publication of a final rule in the **Federal Register**. EPA is proposing to delay the effectiveness of those revocations for 90 days following publication of a final rule to ensure that all affected parties receive notice of EPA's actions. With the exception of dinocap, ethion, and nicotine-containing compounds, the Agency believes that existing stocks of pesticide products labeled for the uses associated with the tolerances and tolerance exemptions proposed for revocation have been completely exhausted and that treated commodities have cleared the channels of trade.

EPA is proposing expiration/revocation dates of February 14, 2004 for the dinocap tolerances on apple and grape. Also, EPA is proposing expiration/revocation dates of October 1, 2008 for the ethion tolerances on milk fat and the fat, meat, and meat byproducts of cattle. In addition, EPA is proposing expiration/revocation dates of December 4, 2005 for the nicotine-containing compounds tolerances on cucumber, lettuce, and tomato. The Agency believes that these revocation dates allow users time to exhaust stocks and allow sufficient time for passage of treated commodities through the channels of trade. However, if EPA is presented with information that existing stocks would still be available and that information is verified, the Agency will consider extending the expiration date of the tolerance. If you have comments regarding existing stocks and whether the effective date allows sufficient time for treated commodities to clear the channels of trade, please submit comments as described under Unit I.C. of the **SUPPLEMENTARY INFORMATION**.

Any commodities listed in this proposal treated with the pesticides subject to this proposal, and in the channels of trade following the tolerance revocations, shall be subject to FFDCA section 408(l)(5), as established by FQPA. Under this section, any residues of these pesticides in or on such food shall not render the food adulterated so long as it is shown to the satisfaction of the Food and Drug Administration that: (1) The residue is present as the result of an application or use of the pesticide at a time and in a manner that was lawful under FIFRA, and (2) the residue does not exceed the level that was authorized at the time of the application or use to be present on the food under a tolerance or exemption from tolerance. Evidence to show that food was lawfully treated may include records that verify the dates that the pesticide was applied to such food.

D. What Is the Contribution to Tolerance Reassessment?

By law, EPA is required by August 2006 to reassess the tolerances in existence on August 2, 1996. As of November 20, 2003, EPA has reassessed 6,628 tolerances. This document proposes to revoke a total of 61 tolerances and tolerance exemptions, 3 of which were previously counted as reassessed (1 via the chlorpropham TRED and 2 via the dinocap RED). Therefore, 58 tolerances/exemptions would be counted as reassessed toward the August, 2006 review deadline of FFDCA section 408(q), as amended by FQPA in 1996.

III. Are the Proposed Actions Consistent with International Obligations?

The tolerance and tolerance exemption revocations in this proposal are not discriminatory and are designed to ensure that both domestically-produced and imported foods meet the food safety standards established by the FFDCA. The same food safety standards apply to domestically produced and imported foods.

EPA is working to ensure that the U.S. tolerance reassessment program under FQPA does not disrupt international trade. EPA considers Codex Maximum Residue Limits (MRLs) in setting U.S. tolerances and in reassessing them. MRLs are established by the Codex Committee on Pesticide Residues, a committee within the Codex Alimentarius Commission, an international organization formed to promote the coordination of international food standards. It is EPA's policy to harmonize U.S. tolerances with Codex MRLs to the extent possible, provided that the MRLs achieve the level of protection required under FFDCA. EPA's effort to harmonize with Codex MRLs is summarized in the tolerance reassessment section of individual Reregistration Eligibility Decision documents. EPA has developed guidance concerning submissions for import tolerance support (65 FR 35069, June 1, 2000) (FRL–6559–3). This guidance will be made available to interested persons. Electronic copies are available on the internet at *http://www.epa.gov/*. On the Home Page select "Laws, Regulations, and Dockets," then select "Regulations and Proposed Rules" and then look up the entry for this document under "**Federal Register**—Environmental Documents." You can also go directly to the "Federal Register" listings at *http://www.epa.gov/fedrgstr/*.

IV. Statutory and Executive Order Reviews

In this proposed rule EPA is proposing to modify and revoke specific tolerances and tolerance exemptions established under FFDCA section 408. The Office of Management and Budget (OMB) has exempted these types of actions (i.e., modification of a tolerance and tolerance revocation for which extraordinary circumstances do not exist) from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this proposed rule has been exempted from review under Executive Order 12866 due to its lack of significance, this proposed rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001). This proposed rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any special considerations as required by Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or OMB review or any other Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Pursuant to the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), the Agency previously assessed whether establishment of tolerances, exemptions from tolerances, raising of tolerance levels, expansion of exemptions, or revocations of tolerances might significantly impact a substantial number of small entities and concluded that, as a general matter, these actions do not impose a significant economic impact on a substantial number of small entities. These analyses for tolerance establishments and modifications, and for tolerance revocations were published on May 4, 1981 (46 FR 24950) and December 17, 1997 (62 FR 66020), respectively, and were provided to the Chief Counsel for Advocacy of the Small Business Administration. Taking into account this analysis, and available information concerning the pesticides listed in this rule, I certify that this action will not have a significant economic impact on a substantial number of small entities. Specifically, as per the 1997 notice, EPA has reviewed its available data on imports and foreign pesticide usage and concludes that there is a reasonable international supply of food not treated with canceled pesticides. Furthermore, for the pesticides named in this proposed rule, the Agency knows of no extraordinary circumstances that exist as to the present proposed revocations that would change the EPA's previous analysis. Any comments about the Agency's determination should be submitted to the EPA along with comments on the proposal, and will be addressed prior to issuing a final rule. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." This proposed rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of the FFDCA. For these same reasons, the Agency has determined that this proposed rule does not have any "tribal implications" as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." "Policies that have tribal implications" is defined in the Executive Order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes." This proposed rule will not have substantial direct effects on tribal governments, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this proposed rule.

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: November 20, 2003.

James Jones,

Director, Office of Pesticide Programs.

Therefore, it is proposed that 40 CFR part 180 be amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346(a) and 371.

2. Section 180.167 is amended by revising the table in paragraph (a) to read as follows:

§ 180.167 Nicotine-containing compounds; tolerances for residues.

(a) * * *

Commodity	Parts per million	Expiration/ Revocation Date
Cucumber	2.0	12/4/05
Lettuce	2.0	12/4/05
Tomato	2.0	12/4/05

* * * * *

3. Section 180.173 is amended by revising the table in paragraph (a) to read as follows:

§ 180.173 Ethion; tolerances for residues.

(a) * * *

Commodity	Parts per million	Expiration/ Revocation Date
Cattle, fat	0.2	10/1/08
Cattle, meat (fat basis)	0.2	10/1/08
Cattle, meat by-products	0.2	10/1/08
Citrus, dried pulp	25.0	10/1/08
Fruit, citrus, group 10	5.0	10/1/08
Goat, fat	0.2	10/1/08
Goat, meat	0.2	10/1/08
Goat, meat by-products	0.2	10/1/08
Hog, fat	0.2	10/1/08
Hog, meat	0.2	10/1/08
Hog, meat by-products	0.2	10/1/08
Horse, fat	0.2	10/1/08
Horse, meat	0.2	10/1/08
Horse, meat by-products	0.2	10/1/08
Milk, fat, reflecting negligible residues in milk	0.5	10/1/08
Sheep, fat	0.2	10/1/08
Sheep, meat	0.2	10/1/08
Sheep, meat by-products	0.2	10/1/08

* * * * *

§ 180.179 [Removed]

4. Section 180.179 is removed.

5. Section 180.276 is revised to read as follows:

§ 180.276 Formetanate hydrochloride; tolerances for residues.

(a) *General.* Tolerances are established for residues of the insecticide formetanate hydrochloride (m-[[(dimethylamino) methylene]amino]phenyl methylcarbamate hydrochloride) in or on raw agricultural commodities as follows:

Commodity	Parts per million
Apple	3.0
Grapefruit	4.0
Lemon	4.0
Lime	4.0
Nectarine	4.0
Orange, sweet	4.0
Peach	5.0
Pear	3.0
Tangerine	4.0

(b) *Section 18 emergency exemptions.* [Reserved]

(c) *Tolerances with regional registrations.* [Reserved]

(d) *Indirect or inadvertent residues.* [Reserved]

§ 180.307 [Removed]

6. Section 180.307 is removed.

§ 180.319 [Amended]

7. Section 180.319 is amended by removing the Isopropyl m-chlorocarbanilate (CIPC) entry for spinach.

§ 180.325 [Removed]

8. Section 180.325 is removed.

9. Section 180.341 is revised to read as follows:

§ 180.341 2,4-Dinitro-6-octylphenyl crotonate and 2,6-dinitro-4-octylphenyl crotonate; tolerances for residues.

(a) *General.* Tolerances are established for combined negligible residues of a fungicide and insecticide that is a mixture of 2,4-dinitro-6-octylphenyl crotonate and 2,6-dinitro-4-octylphenyl crotonate in or on a raw agricultural commodoties as follows:

Commodity	Parts per million	Expiration/ Revocation Date
Apple	0.1	2/14/04
Grape	0.1	2/14/04

(b) *Section 18 emergency exemptions.* [Reserved]

(c) *Tolerances with regional registrations.* [Reserved]

(d) *Indirect or inadvertent residues.* [Reserved]

§§ 180.344, 180.382, 180.424, 180.457,180.1012, 180.1051, and 180.1078 [Removed]

10. Sections 180.344, 180.382, 180.424, 180.457, 180.1012, 180.1051, and 180.1078 are removed.

[FR Doc. 03–30272 Filed 12–9–03; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 247

[RCRA–2003–0005; SWH–FRL–7594–9]

RIN 2050–AE23

Comprehensive Procurement Guideline V for Procurement of Products Containing Recovered Materials

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA or the Agency) today is proposing an amendment to the May 1, 1995, Comprehensive Procurement Guideline (CPG) under the Resource Conservation and Recovery Act (RCRA) and the Executive Order "Greening the Government Through Waste Prevention, Recycling, and Federal Acquisition." Specifically, EPA is proposing to revise the current compost designation to include compost made from manure or biosolids, and designate fertilizers made from recovered organic materials. EPA is also proposing to consolidate all compost designations under one item called "compost made from recovered organic materials."

EPA is required to designate items that are or can be made with recovered materials and to recommend practices that procuring agencies can use to procure designated items. Once EPA designates an item, any procuring agency that uses appropriated federal funds to procure that item must purchase the item containing the highest percentage of recovered materials practicable. Today's proposed action will use government purchasing power to stimulate the use of these materials in the manufacture of new products, thereby fostering markets for materials recovered from solid waste.

DATES: EPA will accept public comments on this proposed rule until February 9, 2004.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Send your comments by mail to: OSWER Docket Center, Environmental Protection Agency, Mailcode: 5305T, 1200 Pennsylvania Ave. NW., Washington, DC 20460, Attention Docket ID No. RCRA–2003–0005. Follow the detailed instructions as provided in Unit I.C of the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: For general information contact the RCRA Call Center at (800) 424–9346 or TDD (800) 553–7672 (hearing impaired). In the Washington, DC, metropolitan area, call (703) 412–9810 or TDD (703) 412–3323. For technical information on individual item designations, contact Sue Nogas at (703) 308–0199.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Regulated Entities

This action may potentially affect those "procuring agencies"—a term defined in RCRA section 1004(17)—that purchase the following: composts made from manure or biosolids and fertilizers made from recovered organic materials. For purposes of RCRA section 6002, procuring agencies include the following: (1) Any federal agency; (2) any state or local agencies using appropriated federal funds for a procurement; or (3) any contractors with these agencies (with respect to work performed under the contract). The requirements of section 6002 apply to such procuring agencies only when procuring designated items where the price of the item exceeds $10,000 or the quantity of the item purchased in the previous year exceeded $10,000. Potential regulated entities for this rule are shown in Table 1.

TABLE 1.—ENTITIES POTENTIALLY SUBJECT TO SECTION 6002 REQUIREMENTS TRIGGERED BY CPG AMENDMENTS

Category	Examples of regulated entities
Federal Government	Federal departments or agencies that procure $10,000 or more of a designated item in a given year.
State Government	A state agency that uses appropriated Federal funds to procure $10,000 or more of a designated item in a given year.

TABLE 1.—ENTITIES POTENTIALLY SUBJECT TO SECTION 6002 REQUIREMENTS TRIGGERED BY CPG AMENDMENTS—Continued

Category	Examples of regulated entities
Local Government	A local agency that uses appropriated Federal funds to procure $10,000 or more of a designated item in a given year.
Contractor	A contractor working on a project funded by appropriated Federal funds that purchases $10,000 or more of a designated item in a given year.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. This table lists the types of entities of which EPA is now aware that could potentially be subject to regulatory requirements triggered by this action. To determine whether your procurement practices are affected by this action, you should carefully examine the applicability criteria in 40 CFR 247.2. If you have questions regarding the applicability of this action to a particular entity, consult the individuals listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

B. How Can I Get Copies of This Document and Other Related Information?

1. Docket. EPA has established an official public docket for this action under Docket ID No. RCRA–2003–0005. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the OSWER Docket in the EPA Docket Center, (EPA/DC) EPA West, Room B102, 1301 Constitution Ave. NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OSWER Docket is (202) 566–0270. Copies cost $.15 per page.

2. Electronic Access. You may access this **Federal Register** document electronically through the EPA Internet under the **Federal Register** listings at *http://www.epa.gov/fedrgstr/*, and you may make comments on this proposed rule at the Federal e-rulemaking portal, *http://www.regulations.gov*.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the appropriate docket identification number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the Docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

C. How and to Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket identification number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments. However, late comments may be considered if time permits.

1. Electronically. If you submit an electronic comment as prescribed below, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. EPA Dockets. Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket*, and follow the online instructions for submitting comments. To access EPA's electronic public docket from the EPA Internet Home Page, select "Information Sources," "Dockets," and "EPA Dockets." Once in the system, select "search," and then key in Docket ID No. RCRA–2003–0005. The system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. E-mail. Comments may be sent by electronic mail (e-mail) to rcra-docket@epa.gov, Attention Docket ID No. RCRA–2003–0005. In contrast to EPA's electronic public docket, EPA's e-mail system is not an "anonymous access" system. If you send an e-mail comment directly to the Docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. Disk or CD ROM. You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Unit I.C.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. By Mail. Send your comments to: OSWER Docket, EPA Docket Center, Environmental Protection Agency, Mailcode: 5305T, 1200 Pennsylvania Ave., NW., Washington, DC, 20460, Attention Docket ID No. RCRA–2003–0005.

3. By Hand Delivery or Courier. Deliver your comments to: EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Ave. NW., Washington, DC. Attention Docket ID No. RCRA–2003–0005. Such deliveries are only accepted during the Docket's normal hours of operation as identified in Unit I.B.1.

D. How Should I Submit CBI to the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket. Send or deliver information identified as CBI only to the following address: Document Control Officer (5305W), Office of Solid Waste, U.S. Environmental Protection Agency, Ariel Rios Building, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, Attention Docket ID No. RCRA–2003–0005. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at your estimate.
5. Provide specific examples to illustrate your concerns.
6. Offer alternatives.
7. Make sure to submit your comments by the comment period deadline identified.
8. To ensure proper receipt by EPA, identify the appropriate docket identification number in the subject line on the first page of your response. It would also be helpful if you provided the name, date, and **Federal Register** citation related to your comments.

Preamble Outline

I. What is the statutory authority for this proposed amendment?
II. What is the background for this action?
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B. How can I comment on EPA's proposed rule?
C. Where can I find additional information on this proposed rule?
III. What are the definitions of terms used in today's proposed action?
IV. Landscaping Products
A. Compost Made From Manure or Biosolids
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B. Fertilizers Made From Recovered Organic Materials
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F. Executive Order 13175: Consultation and Coordination with Indian Tribal Governments
G. Executive Order 13045: Protection of Children from Environmental Health and Safety Risks
H. Executive Order 13211: Actions that Significantly Affect Energy Supply, Distribution, or Use
I. National Technolcgy Transfer and Advancement Act
VII. Supporting Information and Accessing Internet

I. What Is the Statutory Authority for This Proposed Amendment?

EPA ("the Agency") is proposing this amendment to the Comprehensive Procurement Guideline under the authority of sections 2002(a) and 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976; 42 U.S.C. 6912(a) and 6962. This proposal also implements section 502 of Executive Order 13101 (Executive Order), "Greening the Government Through Waste Prevention, Recycling, and Federal Acquisition" (63 FR 49643, September 14, 1998).

II. What Is the Background for This Action?

Section 6002(e) of RCRA requires EPA to designate items that are or can be made with recovered materials and to recommend practices to help procuring agencies meet their obligations for procuring items designated under RCRA section 6002. After EPA designates an item, RCRA requires that each procuring agency, when purchasing a designated item, must purchase that item made of the highest percentage of recovered materials practicable.

Executive Order 13101 establishes the procedure EPA must follow when implementing RCRA section 6002(e). Section 502 of the Executive Order directs EPA to issue a Comprehensive Procurement Guideline (CPG) that designates items that are or can be made with recovered materials. Concurrent with the CPG, EPA must publish recommended procurement practices for purchasing designated items, including recovered material content ranges, in a related Recovered Materials Advisory Notice (RMAN). The Executive Order also directs EPA to update the CPG every 2 years and to issue RMANs periodically to reflect changing market conditions.

The first CPG (CPG I) was published on May 1, 1995 (60 FR 21370). It established eight product categories, designated 19 new items in seven of those categories, and consolidated five

earlier item designations.[1] At the same time, EPA also published a notice of availability of the first RMAN (RMAN I) (60 FR 21386). On November 13, 1997, EPA published CPG II (62 FR 60962), which designated an additional 12 items. At the same time, EPA published an RMAN II notice (62 FR 60975). Paper Products RMANs were issued on May 29, 1996 (61 FR 26985) and June 8, 1998 (63 FR 31214). On January 19, 2000, EPA published CPG III (65 FR 3070), which designated an additional 18 items. At the same time, EPA published an RMAN III notice (65 FR 3082). On August 28, 2001, EPA published a proposed CPG IV (66 FR 45256), which proposed to designate an additional 11 items. At the same time, EPA published a draft RMAN IV notice (66 FR 45297). EPA expects to promulgate the final CPG IV and publish a notice concerning the availability of RMAN IV in the near future. For more information on CPG, go to the EPA Web site at *http://www.epa.gov/cpg/*.

Today, in CPG V, EPA is proposing to revise the current compost designation to include composts made from manure or biosolids, and also designate fertilizers made from recovered organic materials.[2,3] Both of these items fall under the Landscaping Products category of designations in the CPG.

A. What Criteria Does EPA Use for Selecting Items for Designation?

While not limiting consideration to these criteria, RCRA section 6002(e) requires EPA to consider the following when determining which items it will designate:

(1) Availability of the item;

(2) Potential impact of the procurement of the item by procuring agencies on the solid waste stream;

(3) Economic and technological feasibility of producing the item; and

(4) Other uses for the recovered materials used to produce the item.

EPA consulted with Federal procurement and requirement officials to identify other criteria to consider when selecting items for designation. Based on these discussions, the Agency concluded that the factors set forth in RCRA section 6002(c) should also be considered in its selection decisions. This provision requires each procuring agency that procures an item designated by EPA to procure the item composed of the highest percentage of recovered materials practicable, while maintaining a satisfactory level of competition. A procuring agency, however, may decide not to procure an EPA-designated item containing recovered materials if it determines: (1) The item is not available within a reasonable period of time, (2) the item fails to meet the performance standards set forth in the Agency's specification, or (3) the item is available only at an unreasonable price.

EPA recognized that the above criteria limit the conditions under which procuring agencies must purchase EPA-designated items with recovered materials content, and, thereby, could limit the potential impact of an individual item designation on the demand for that recovered content item in the U.S. economy. (The limitations of RCRA section 6002(c) also effectively describe the circumstances in which a designated item is "available" for purposes of the statute.) For these reasons, EPA is also taking into account the limitations cited in RCRA section 6002(c) in its selection of items for designation in today's proposed CPG V. Thus, the Agency considers the following criteria in selecting items for designation: (1) use of materials found in solid waste; (2) economic and technological feasibility and performance; (3) impact of government procurement, availability and competition; and (4) other uses for recovered materials. These criteria are discussed in detail in Section II of the document entitled, "Background Document for Proposed CPG V and Draft RMAN V." A copy of this document is included in the RCRA public docket for this rule.

EPA has adopted two approaches in its designation of items that are made with recovered materials. For some items, such as paper and paper products, the Agency designates broad categories of items and provides information in the related RMAN as to their appropriate applications or uses. For other items, such as plastic trash bags, EPA designates specific items, and, in some instances, includes in the designation the specific types of recovered materials or applications to which the designation applies. The Agency explained these approaches to designating items in the preamble to CPG I (60 FR 21373, May 1, 1995).

The Agency has learned that some procuring agencies may erroneously believe that the designation of a broad category of items in a CPG requires them (1) to procure all items included in such category with recovered materials content and (2) to establish an affirmative procurement program for the entire category of items, even where specific items within the category may not meet current performance standards. This is not required under RCRA as implemented through the CPGs and RMANs. RCRA section 6002 does not require a procuring agency to purchase recovered-content items that are not available or that do not meet a procuring agency's specifications or reasonable performance standards for the contemplated use. Further, section 6002 does not require a procuring agency to purchase such items if the item with recovered materials content is only available at an unreasonable price or the purchase of such item is inconsistent with maintaining a reasonable level of competition. However, EPA stresses that, when procuring any product for which a recovered materials alternative is available that meets the procuring agency's performance needs, the procuring agency should seek to purchase the product made with the highest percentage of recovered materials practicable.

The items proposed for designation today have all been evaluated with respect to EPA's criteria. Details of these evaluations are discussed in the "Background Document for Proposed CPG V and RMAN V. Section IV of this preamble provides a summary of EPA's rationale for designating these items.

B. How Can I Comment on EPA's Proposed Rule?

EPA requests comments and information throughout this preamble. In general, the Agency is requesting comments on: (1) the items selected for designation and (2) the accuracy of the information presented in the discussions of the basis of the item designations. Requests for specific comments and information are included in the narrative discussions for each of the designated items, which follow in Section IV.

EPA also is requesting comments on the draft RMAN V published in the notice section of today's **Federal Register**. It includes procurement methods for each of the items EPA is proposing to designate today.

[1] Between 1983 and 1989, EPA issued five guidelines for the procurement of products containing recovered materials, which were previously codified at 40 CFR parts 248, 249, 250, 252, and 253. These products include cement and concrete containing fly ash, paper and paper products, re-refined lubricating oils, retread tires, and building insulation.

[2] A number of parties have asked EPA to consider the following items for future CPG designations: asphalt, electronics, industrial ceramics, offset guardrail blocks, roofing sealants and refuse-derived fuel. EPA will consider these for future designation.

[3] This regulatory proposal is an important component of EPA's recently announced "Resource Conservation Challenge," which is designed to encourage and provide new incentives for increased reuse and recycling of materials (for further information on this initiative, see *www.epa.gov/epaoswer/osw/conserve/index.htm.*)

C. Where Can I Find Additional Information on This Proposed Rule?

For additional background information, including information on RCRA requirements, Executive Order directives, and the criteria and methodology for selecting the proposed designated items, please consult "Background Document for Proposed CPG V and Draft RMAN V." Information on obtaining this background document is provided in Section VII, Supporting Information and Accessing Internet.

III. What Are the Definitions of Terms EPA Used in Today's Proposed Rule?

Today, in § 247.3, EPA is proposing to revise the previous definition of compost from CPG III (65 FR 3070) and add the term, and a definition for, "organic fertilizer." Specifically, EPA is proposing to define compost as "* * * a thermophilic converted product with high humus content. Compost can be used as a soil amendment and can also be used to prevent or remediate pollutants in soil, air, and storm water run-off," and define organic fertilizer as "* * * a single or blended substance, made from organic matter, such as plant and animal by-products, manure-based/biosolid products, and rock and mineral powders, that contains one or more recognized plant nutrient(s) and is used primarily for its plant nutrient content and is designed for use or claimed to have value in promoting plant growth." These new definitions are based on common industry and United States Department of Agriculture (USDA) definitions. EPA specifically requests comments on each of these definitions.

IV. Landscaping Products

A. Compost Made From Manure or Biosolids

The information obtained by EPA demonstrates that compost made from manure or biosolids is commercially available. Therefore, today in § 247.15(b), EPA proposes to revise the current compost designation to include compost made from manure or biosolids as an item whose procurement will carry out the objectives of section 6002 of RCRA. Furthermore, in order to simplify the designation of compost and make it easier for procuring agencies to track and report their purchases of compost, the Agency is also proposing to amend the previous designations of yard trimmings compost and food waste compost and consolidate them with the designation of compost made from manure or biosolids into one item called "compost made from recovered organic materials." EPA believes that these four organic materials (*i.e.*, yard waste, food waste, manure, and biosolids) are the most commonly used in commercially available compost. EPA is also aware that other organic materials could be used in compost, but these are generally mixed with one or more of the aforementioned materials. For this reason, EPA is proposing to use the general term "organic materials" in its compost designation, rather than limit the designation to specific types of organic materials.

1. Background

Compost has a variety of uses and improves soil quality and productivity as well as preventing and controlling erosion. Mixed organic materials, such as animal manure, yard trimmings, food waste, and biosolids, must go through a controlled heat process before they can be used as high quality, biologically stable, and mature compost. The U.S. Composting Council defines compost as the stabilized and sanitized product of composting; compost is largely decomposed material and is in the process of humification (curing). Compost has little resemblance in physical form to the original material from which it was made. Compost is a soil amendment, to improve soils. Compost is not a complete fertilizer unless amended, although composts contain fertilizer properties, *e.g.*, nitrogen, phosphorus, and potassium, that must be included in calculations for fertilizer application.

2. Rationale for Designation

EPA has concluded that composts made from recovered organic materials meet the statutory criteria for designation. A final designation would require that a procuring agency, when purchasing compost, purchase compost containing recovered organic materials, such as yard trimmings, food waste, animal manure, and biosolids, when the compost meets applicable specifications and performance requirements.

a. Use of materials in solid waste. Using manure and biosolids compost has great potential to make beneficial use of a large amount of the animal manure and biosolids produced in the United States. In addition, because other materials may serve as bulking agents in manure and biosolids compost, designation of this item may increase the level of recovered material diverted from the solid waste stream further. The recovered materials used as bulking agents include sawdust, extruded rice husks, straw, leaves, wood chips, corn stalks, and ground tree and shrub trimmings.

In the United States, beef cattle generate 27 million tons of manure solids annually and dairy cattle in confinement produce approximately 21 million tons of solids annually. Swine produce about 16 million tons of solid waste annually.

EPA estimates that the 16,000 public owned treatment works in the United States generate approximately 7 million tons of sewage sludge annually. Until 1992, millions of tons of biosolids were dumped into the Atlantic Ocean. This practice, however, was made illegal as a result of public concern over ocean pollution. About 60 percent of all sewage sludge is treated to generate biosolids that are beneficially used as a fertilizer on farmland. Of the remainder, 17 percent ends up buried in a landfill; 20 percent is incinerated; and about 3 percent is used as landfill or mine reclamation cover.

b. Technically proven uses. Compost can be used in a variety of applications including:

- Soil enrichment: agriculture (soil conditioning, fertilizer amendment, erosion control, development of marginal lands, mulch, rooting medium, sod production); silviculture; horticulture.
- Pollution remediation (treatment of contaminated soils and reclamation of mining waste).

In addition to the primary benefits achieved from using compost in these ways, these applications have the added benefit of preventing pollution by reducing the amount of chemicals normally used and reducing nonpoint source pollution and VOC emissions associated with those chemicals.

It should also be noted that, if improperly managed, animal manures generated by beef feedlot and dairy operations can and have created significant environmental problems, including human health issues caused by contamination of surface water and groundwater. Using animal manures as a raw material for compost, as opposed to applying it directly to the land or stockpiling it, can alleviate many of these problems, while providing an important agricultural service.

EPA and USDA finalized a rule that requires Concentrated Animal Feeding Operations (CAFOs) to obtain permits, submit annual reports, and develop and follow plans for handling manure and wastewater (68 FR 7176, February 12, 2003). In EPA's view, this rule may encourage feeding operations to compost their manure as an agricultural or landscaping product. This will not only benefit the environment, but more of this compost will be available for purchase and use.

In addition, EPA issued regulations in 1993 that limit the pollutants and

pathogens in biosolids, entitled "The Standards for the Use or Disposal of Sewage Sludge," otherwise known as "the Part 503 Biosolids Rule." (40 CFR part 503) If biosolids are included as part of the compost, the processing and product are subject to the Part 503 Biosolids Rule. Furthermore, if the finished compost product meets 40 CFR part 503 Biosolids Rule Class A specifications for the highest level of pathogen and vector control (as described in section 2.3.1 of part 503) and specific metals limits, the compost product can be widely used, like any other fertilizer or soil-conditioning product.

Most States have their own regulations governing composting facilities and the marketing of compost products. The U.S. Composting Council (USCC) has developed protocols, called "Test Methods for the Examination of Composting and Compost (TMECC)," which are standardized methods for the composting industry to test and evaluate compost and verify the physical, chemical, and biological characteristics of composting source materials and compost products. The TMECC also includes material testing guidelines to ensure product safety and market claims. USCC's Seal of Testing Assurance program includes standards for testing procedures of composted materials for nutrients, moisture, salt content, and chemicals.

The U.S. Department of Transportation's (U.S. DOT) Standard Specifications for Construction of Roads and Bridges on Federal Highway Projects 1996 specifies mature compost for use as a roadside improvement material.

Pursuant to recently passed legislation, USDA will be issuing guidelines on biobased products which could include composts made from plant or animal byproducts. Any specifications issued under the USDA guidelines which may be germane to the CPG designation and RMAN recommendations may be referenced by EPA in the future.

c. Impact of government procurement. A Presidential memorandum entitled "Environmentally and Economically Beneficial Practices on Federal Landscaped Ground" was signed on April 26, 1994 encourages agencies to develop practical and cost-effective landscaping methods that preserve and enhance the local environment. This memorandum requires the use of mulch and compost by Federal agencies and in Federally funded projects.

Government agencies typically use compost and fertilizers for numerous applications, including landscaping, agriculture, bioremediation, roadside maintenance, and erosion control. Although EPA does not know the exact amounts of these materials used by agencies, it believes it is significant, and that composts made from manure or biosolids could be used in many of these applications.

d. Other Uses for Recovered Materials. In selecting items for consideration, EPA also considers the following: (1) The possibility of one recovered material displacing another recovered material as feedstock, thereby resulting in no net reduction in materials requiring disposal; (2) the diversion of recovered materials from one product to another, possibly creating shortages in feedstocks for one or both products; and (3) the ability of manufacturers to obtain recovered materials in sufficient quantities to produce the item under consideration.

While other uses for recovered materials are a consideration, they are not a determining factor when selecting items for designation, because EPA believes an item designation would have the positive effect of expanding markets for all recovered materials used to manufacture the designated item.

B. Fertilizers Made From Recovered Organic Materials

The information obtained by EPA demonstrates that fertilizers containing recovered organic materials are commercially available. Therefore, today in § 247.15(f), EPA proposes to designate fertilizers containing recovered organic materials as an item whose procurement will carry out the objectives of section 6002 of RCRA.

1. Background

In order to compensate for the limited supply of vital nutrients and to provide the plant with the necessary environment to fully mature, fertilizers are often added to soil. The most essential nutrients—nitrogen, phosphorus, and potassium—are often expressed as the N–P–K ratio following the name of a fertilizer (*e.g.*, 10–10–10).

Many sources of organic matter are available for the production of organic fertilizers, including plant and animal by-products, manure-based/biosolid products, and rock and mineral powders.

Organic fertilizers can be used to replace traditional chemical fertilizers in various applications, such as agriculture and crop production, landscaping, horticulture, parks and other recreational facilities, on school campuses, and for golf course and turf maintenance.

2. Rationale for Designation

EPA has concluded that fertilizers containing recovered organic materials meet the statutory criteria for selecting items for designation. A final designation would require that a procuring agency, when purchasing fertilizers, procure those that contain recovered organic materials when they meet applicable specifications and performance requirements.

a. Use of materials in solid waste. Organic fertilizers can contain up to 100 percent recovered materials and can have a mixture of various plant, animal, and mineral content depending on the desired use and the manufacturer. The use of organic fertilizers can help reduce the amount of agricultural by-products, manufacturing and processing waste, and other materials that would otherwise have to be disposed, stockpiled, or treated. These organic materials may be combined with other waste materials, such as saw dust or wood shavings, as is the case with poultry fertilizer. The amount of these wastes diverted from the waste stream varies depending on the materials used and the size of the farm or agricultural activity that supplies the materials.

b. Technically proven uses. Organic fertilizers have the potential to provide various benefits:

- Improve physical soil properties, either directly or by activating living organisms in the soil.
- Provide better soil structure as a result of soil loosening and crumb stabilization.
- Increase water-holding capacity and soil aeration.
- Enhance uptake and utilization of plant nutrients, which leads to increased pathogen resistance and hardiness.
- Slow the leaching of nutrients from soil, resulting in extended availability through the growing season.

As noted above, and pursuant to recently passed legislation, USDA will be issuing guidelines on biobased products which could include fertilizers made from plant or animal matter. Any specifications issued under the USDA guidelines which may be germane to the CPG designation and RMAN recommendations may be referenced by EPA in the future.

The Organic Materials Review Institute (OMRI) has developed lists of materials allowed and prohibited for use in the production, processing, and handling of organically grown products. Samples from these lists can be found at *http://www.omri.org.* It also should be noted that organic fertilizers being made or sold should comply with all applicable Federal, State, and local regulations. Many states have their own guidelines and regulations for fertilizer production and use. For example, a state may prohibit the use of organic fertilizer made with biosolids on agricultural food crops.

In addition, as mentioned above, biosolids can be used in the production of organic fertilizer and must meet the requirements specified in EPA's part 503 Biosolids Rule before they can be beneficially used. The 40 CFR part 503 Biosolids Rule land application requirements ensure that any biosolids that are land applied contain pathogens and metals that are below specified levels to protect the health of humans, animals, and plants.

In proposing to designate fertilizers made from recovered organic materials, EPA is not placing any limitations on the organic materials, but rather is relying on Federal, State, and local regulations and guidance, as well as existing industry standards. EPA is requesting comment on whether it should place any limitations on the recovered organic materials contained in the fertilizers that the Agency today is proposing to designate, and on what those limitations should be.

c. Impact of government procurement. Government agencies purchase, or use appropriated funds to purchase, fertilizers. Although most government agencies would likely purchase fertilizers indirectly via a contracted landscaping service, it is nevertheless clear that agencies have a demand for fertilizers, for applications such as landscaping, golf course and turf maintenance, and as an amendment for grass, bushes, and trees in parks and recreational facilities. According to one procurement official, even though fertilizers are generally part of contracted services, agencies are at liberty to specify a particular type of nutrient analysis for any type of fertilizer (organic or synthetic) they would like to use.

EPA does not have specific data on the amount of fertilizers procured by government agencies, although EPA believes that the quantities are substantial. Thus, the agency believes these items are procured in sufficient quantities to support the designation of these items.

d. Other Uses for Recovered Materials. In selecting items for consideration, EPA also considers the following: (1) The possibility of one recovered material displacing another recovered material as feedstock, thereby resulting in no net reduction in materials requiring disposal; (2) the diversion of recovered materials from one product to another, possibly creating shortages in feedstocks for one or both products; and (3) the ability of manufacturers to obtain recovered materials in sufficient quantities to produce the item under consideration.

While other uses for recovered materials are a consideration, they are not a determining factor when selecting items for designation, because EPA believes an item designation would have the positive effect of expanding markets for all recovered materials used to manufacture the designated item.

V. Where Can Agencies Get More Information on the Availability of EPA-Designated Items?

EPA has identified a number of manufacturers and vendors of the items proposed for designation in today's rule. Once the item designations in today's proposal become final, a list of these companies will be placed in the OSWER Docket for this action and will be added to EPA's CPG Supplier Database, which is accessible from the CPG Web site *http://www.epa.gov/cpg.* This database will be updated periodically as new sources of designated items are identified and product information changes. Procuring agencies should contact the manufacturers and vendors directly to discuss their specific needs and to obtain detailed information on the availability and price of recycled products meeting those needs.

Other information may be available from GSA, DLA, state and local recycling offices, private corporations, and trade associations. Refer to Appendix II of the document, "Background Document for Proposed CPG V and Draft RMAN V," located in the OSWER Docket, for more detailed information on these sources of information.

VI. Administrative Assessments

A. Executive Order 12866: Regulatory Planning and Review

Executive Order 12866 requires agencies to determine whether a regulatory action is "significant." The Order defines a "significant" regulatory action as one that is likely to result in a proposed rule that may: (1) Have an annual effect on the economy of $100 million or more or adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local, or tribal governments or communities; (2) create serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

It has been determined that this rule is not a "significant regulatory action" under the terms of Executive Order 12866 and is therefore not subject to OMB review. EPA estimates that the costs associated with today's proposed rule are well below the $100 million threshold. EPA has prepared an Economic Impact Analysis (EIA) to evaluate the potential impact of today's action. The results of the EIA are discussed below. More information on the estimated economic impact of today's proposed rule is included in the Economic Impact Analysis for this proposed rule, a copy of which is in the OSWER docket.

1. Summary of Costs

As shown in Table 2 below, EPA estimates that the annualized costs of today's proposed rule will range from $1.2 to $2.3 million, with costs being spread across all procuring agencies (*i.e.*, Federal agencies, State and local agencies that use appropriated Federal funds to procure designated items, and government contractors). These costs are annualized over a 10-year period at a three percent discount rate. Details of the costs associated with today's proposed rule are provided in the Economic Impact Analysis for this proposed rule.

TABLE 2.—SUMMARY OF ANNUALIZED COSTS OF PROPOSED CPG V AMENDMENTS TO ALL PROCURING AGENCIES

Procuring agency	Total annualized costs ($1000)	Best estimate total annualized costs ($1000)
Federal Agencies	$577–$1,153	$1,153
States	207–413	413
Local Governments	361–722	722
Contractors	10–20	20
Total	1,154–2,308	2,308

As a result of today's proposed rule, procuring agencies will be required to take certain actions pursuant to RCRA section 6002, including rule review and implementation; estimation, certification, and verification of designated item procurement; and for Federal agencies, reporting and recordkeeping. The costs shown in Table 2 represent the estimated annualized costs associated with these activities. Table 2 also includes estimates for Federal agencies that will incur costs for specification revisions and affirmative procurement program modification. More details of the costs associated with today's proposed rule are included in the Economic Impact Analysis.

There may be both positive and negative impacts to individual businesses, including small businesses. EPA anticipates that today's proposed rule will provide additional opportunities for recycling businesses to begin supplying recovered materials to manufacturers and products made from recovered materials to procuring agencies. In addition, other businesses, including small businesses, that do not directly contract with procuring agencies may be affected positively by the increased demand for recovered materials. These include businesses involved in materials recovery programs and materials recycling. Municipalities that run recycling programs are also expected to benefit from increased demand for certain materials collected in recycling programs.

EPA is unable to determine the number of businesses, including small businesses, that may be adversely impacted by today's proposed rule. For example, if a business currently supplies products to a procuring agency and those products are made only out of virgin materials, the amendments to the CPG may reduce that company's ability to compete for future contracts. However, the amendments to the CPG will not affect existing purchase orders, nor will it preclude businesses from adapting their product lines to meet new specifications or solicitation requirements for products containing recovered materials. Thus, many businesses, including small businesses, that market to procuring agencies have the option to adapt their product lines to meet specifications.

2. Product Cost

Another potential cost of today's action is the possible price differential between an item made with recovered materials and an equivalent item manufactured using virgin materials. The relative prices of recycled content products compared to prices of comparable virgin products vary. In many cases, recycled content products are less expensive than similar virgin products. In other cases, virgin products have lower prices than recycled content products. Many factors can affect the price of various products. For example, temporary fluctuations in the overall economy can create oversupplies of virgin products, leading to a decrease in prices for these items. Under RCRA section 6002(c), procuring agencies are not required to purchase a product containing recovered materials if it is only available at an unreasonable price. However, the decision to pay more or less for such a product is left up to the procuring agency.

3. Summary of Benefits

EPA anticipates that today's proposed rule will result in increased opportunities for recycling and waste prevention. Waste prevention can reduce the nation's reliance on natural resources by reducing the amount of materials used in making products. Using less raw materials results in a commensurate reduction in energy use and a reduction in the generation and release of air and water pollutants associated with manufacturing. Additionally, waste prevention leads to a reduction in the environmental impacts of mining, harvesting, and other raw material extraction processes.

Recycling can affect the more efficient use of natural resources. For many products, the use of recovered materials in manufacturing can result in significantly lower energy and material input costs than when virgin raw materials are used; reduce the generation and release of air and water pollutants often associated with manufacturing; and reduce the environmental impacts of mining, harvesting, and other extraction of natural resources. In addition to conserving non-renewable resources and reducing the environmental impacts associated with resource extraction and processing, recycling can also divert large amounts of materials from landfills, thus reducing waste disposal costs and conserving increasingly valuable space for the management of materials that truly require disposal.

By purchasing products made from recovered materials, government agencies can increase opportunities for all of these benefits. On a national and regional level, today's proposed rule can result in expanding and strengthening markets for materials diverted or recovered through public and private collection programs. Also, since many state and local governments, as well as private companies, reference EPA guidelines when purchasing designated items, this rule can result in increased purchase of recycled products, locally, regionally, and nationally and provide opportunities for businesses involved in recycling activities.

B. Paperwork Reduction Act

This proposed rule contains no new information collection requirements. Therefore, this rule is not subject to the Paperwork Reduction Act.

C. Regulatory Flexibility Act (RFA)

The RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts on small entities of today's rule, small entity is defined as: (1) A small business as defined by RFA default definitions for small business (based on Small Business Administration size standards); (2) a small governmental jurisdiction that is a government of a city, county, town, school district, or special district with a population of less than 50,000; or (3) a small organization that is any not-for-profit enterprise that is independently owned and operated and is not dominant in its field.

EPA evaluated the potential costs of its proposed designations to determine whether its actions would have a significant impact on a substantial number of small entities. In the case of small entities that are small governmental jurisdictions, EPA has concluded that the proposal, if promulgated, will not have a significant economic impact. EPA concluded that no small government with a population of less than 50,000 is likely to incur costs associated with the designation of the 2 items because it is improbable that such jurisdictions will purchase more than $10,000 of any designated item. Consequently, RCRA section 6002 would not apply to their purchases of designated items. Moreover, there is no evidence that complying with the requirements of RCRA section 6002 would impose significant additional costs on the small governmental entity to comply in the event that a small governmental jurisdiction purchased more than $10,000 worth of a designated item. This is the case because in many instances, items with recovered materials content may be less expensive than items produced from virgin material.

Furthermore, EPA similarly concluded that the economic impact on small entities that are small businesses would not be significant. Any costs to small businesses that are "procuring agencies" (and subject to RCRA section 6002) are likely to be insubstantial. RCRA section 6002 applies to a contractor with a Federal agency (or a state or local agency that is a procuring agency under section 6002) when the contractor is purchasing a designated item, is using Federal money to do so, and exceeds the $10,000 threshold. There is an exception for purchases that are "incidental to" the purposes of the contract, *i.e.*, not the direct result of the funds disbursement. For example, a courier service contractor is not required to purchase re-refined oil and retread tires for its fleets because purchases of these items are incidental to the purpose of the contract. Therefore, as a practical matter, there would be very limited circumstances when a contractor's status as a "procuring agency" for section 6002 purposes would impose additional costs on the contractor. Thus, for example, if a state or Federal agency is contracting with a supplier to obtain a designated item, then the cost of the designated item (any associated costs of meeting section 6002 requirements) to the supplier presumably will be fully recovered in the contract price. Any costs to small businesses that are "procuring agencies" (and subject to section 6002) are likely to be insubstantial. Even if a small business is required to purchase other items with recovered materials content, such items may be less expensive than items with virgin content.

After considering the economic impacts of today's proposed rule on small entities, EPA certifies that the proposal, if promulgated, would not have a significant economic impact on a substantial number of small entities.

This proposal, therefore, does not require a regulatory flexibility analysis. The basis for EPA's conclusions that today's proposed rule, if adopted, will not have a significant impact on a substantial number of small entities is described in greater detail in the EIA for the proposed rule.

While not a factor relevant to determining whether the proposed rule will have a significant impact for RFA purposes, EPA has concluded that the effect of today's proposed rule would be to provide positive opportunities to businesses engaged in recycling and the manufacture of recycled products. Purchase and use of recycled products by procuring agencies increase demand for these products and result in private sector development of new technologies, creating business and employment opportunities that enhance local, regional, and national economies. Technological innovation associated with the use of recovered materials can translate into economic growth and increased industry competitiveness worldwide, thereby, creating opportunities for small entities.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub. L. 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments and the private sector. Under section 202, EPA generally must prepare a written statement, including cost-benefit analysis, for proposed and final rules with Federal mandates that may result in estimated costs to state, local, or tribal governments in the aggregate, or to the private sector, of $100 million or more in any one year. When such a statement is required for EPA rules, under section 205 of the Act, EPA must identify and consider alternatives, including the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. EPA must select that alternative, unless the Administrator explains in the final rule why it was not selected or it is inconsistent with law. Before EPA establishes regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must develop under section 203 of the Act a small government agency plan. The plan must provide for notifying potentially affected small governments, giving them meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising them on compliance with the regulatory requirements.

EPA has determined that today's proposed rule does not include a Federal mandate that may result in estimated annualized costs of $100 million or more to either State or local or tribal governments in the aggregate, or to the private sector. To the extent enforceable duties arise as a result of this proposed rule on State and local governments, they are exempt from inclusion as Federal intergovernmental mandates if such duties are conditions of Federal assistance. Even if they are not conditions of Federal assistance, such enforceable duties do not result in a significant regulatory action being imposed upon State and local governments since the estimated aggregate cost of compliance for them are not expected to exceed, at the maximum, $1.1 million annually. The cost of enforceable duties that may arise as a result of today's proposed rule on the private sector are estimated not to exceed $20,000 annually. Thus, the proposed rule is not subject to the written statement requirement in sections 202 and 205 of the Act.

The designated items included in the proposed CPG V may give rise to additional obligations under section 6002(i) (requiring procuring agencies to adopt affirmative procurement programs and to amend their specifications) for state and local governments. As noted above, the expense associated with any additional costs is not expected to exceed, at the maximum, $1.1 million annually. In compliance with Executive Order 12875 entitled Enhancing the Intergovernmental Partnership, 58 FR

58093 (October 28, 1993), which requires the involvement of state and local governments in the development of certain Federal regulatory actions, EPA conducts a wide outreach effort and actively seeks the input of representatives of state and local governments in the process of developing its guidelines.

When EPA proposes to designate items in a CPG, information about the proposal is distributed to governmental organizations so that they can inform their members about the proposals and solicit their comments. These organizations include the U.S. Conference of Mayors, the National Association of Counties, the National Association of Towns and Townships, the National Association of State Purchasing Officials, and the American Association of State Highway and Transportation Officials. EPA also provides information to potentially affected entities through relevant recycling, solid waste, environmental, and industry publications. In addition, EPA's regional offices sponsor and participate in regional and state meetings at which information about proposed and final designations of items in a CPG is presented. Finally, EPA has sponsored buy-recycled education and outreach activities by organizations such as the U.S. Conference of Mayors, the Northeast Recycling Council, Environmental Defense, Keep America Beautiful, and the California Local Government Commission, whose target audience includes small governmental entities.

The requirements do not significantly affect small governments, because they are subject to the same requirements as other entities whose duties result from today's rule. As discussed above, the expense associated with any additional costs to state and local governments is not expected to exceed, at the maximum, $1.1 million annually. The requirements do not uniquely affect small governments because they have the same ability to purchase these designated items as other entities whose duties result from today's rule. Additionally, use of designated items affects small governments in the same manner as other such entities. Thus, any applicable requirements of section 203 of the Act have been satisfied.

E. Executive Order 13132: Federalism

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by state and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government."

This proposed rule does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. The proposed rule will not impose substantial costs on states and localities. A final rule would require procuring agencies to perform certain activities pursuant to RCRA section 6002, including rule review and implementation, and for Federal agencies, reporting and record keeping. As noted above, EPA estimates that the total annualized costs of today's proposed rule will range from $1.2–$2.3 million. EPA's estimate reflects the costs of the rule for all procuring agencies (*i.e.*, Federal agencies, State and local agencies that use appropriated Federal funds to procure designated items, and government contractors), not just states and localities. Thus, the costs to states and localities alone will be even lower and not substantial. Thus, Executive Order 13132 does not apply to this rule.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Under Executive Order 13175, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian Tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13175 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13175 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's proposed rule does not significantly or uniquely affect the communities of Indian tribal governments. The proposed rule does not impose any mandate on tribal governments or impose any duties on these entities. Accordingly, the requirements of section 3(b) of Executive Order 13175 do not apply to this proposal.

G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks

Executive Order 13045, entitled "Protection of Children From Environmental Health and Safety Risks" (62 FR 19885, April 23, 1997), applies to any rule that EPA determines is (1) "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children; and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

EPA interprets the Executive Order 13045 as encompassing only those regulatory actions that are risk based or health based, such that the analysis required under section 5–501 of the Executive Order has the potential to influence the regulation. This proposed rule is not subject to Executive Order 13045 because it does not involve decisions regarding environmental health or safety risks.

H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

This rule is not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355 (May 22, 2001)) because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act ("NTTAA"), Pub. L. No. 104–113, Section 12(d)(15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, business practices) that are developed or adopted by voluntary consensus standard bodies. The NTTAA directs EPA to provide Congress explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This proposed rule does not establish technical standards. Therefore, the Agency has not conducted a search to identify potentially applicable test methods from voluntary consensus standard bodies. As part of this rulemaking effort, EPA has developed guidance for procuring agencies to use in complying with section 6002's obligation to purchase items with recovered materials content to the maximum extent practicable. These recommendations include reference to any known industry standards and, as previously noted, are published today in the companion RMAN for the designated items. In developing these recommendations, EPA did consider current voluntary consensus standards on recovered materials content.

VII. Supporting Information and Accessing Internet

The index of supporting materials for today's proposed CPG V is available in the OSWER Docket and on the Internet. The address and telephone number of the OSWER Docket are provided in the **SUPPLEMENTARY INFORMATION** section above. To access information on the Internet, go to the EPA Dockets Web site at *http://www.epa.gov/edocket/*. The index and the following supporting materials are available in the OSWER Docket and on the Internet:

"Background Document for Proposed CPG V and Draft RMAN V," U.S. EPA, Office of Solid Waste and Emergency Response, March 2003.

"Economic Impact Analysis for Proposed Comprehensive Procurement Guideline V," U.S. EPA, Office of Solid Waste and Emergency Response, March 2003.

Copies of the following supporting materials are available for viewing at the OSWER Docket only:

"Recovered Materials Product Research for the Comprehensive Procurement Guideline V," Draft Report, December 2002.

List of Subjects in 40 CFR Part 247

Environmental protection, Government procurement, Recycling.

Dated: November 25, 2003.

Michael O. Leavitt,

Administrator.

For the reasons discussed in the preamble, EPA proposes to amend 40 CFR part 247 as follows:

PART 247—COMPREHENSIVE PROCUREMENT GUIDELINE FOR PRODUCTS CONTAINING RECOVERED MATERIALS

1. The authority citation for part 247 continues to read as follows:

Authority: 42 U.S.C. 6912(a) and 6962; E.O. 13101, 63 FR 49643, 3 CFR, 1998 Comp., P. 210.

2. Amend § 247.3 by revising the definition of "Compost" and by adding in alphabetical order a new definition for "Organic fertilizer" to read as follows:

§ 247.3 Definitions.

* * * * *

Compost is a thermophilic converted product with high humus content. Compost can be used as a soil amendment and can also be used to prevent or remediate pollutants in soil, air, and storm water run-off.

* * * * *

Organic fertilizer is a single or blended substance, made from organic matter such as plant and animal by-products, manure-based/biosolid products, and rock and mineral powders, that contains one or more recognized plant nutrient(s) and is used primarily for its plant nutrient content and is designed for use or claimed to have value in promoting plant growth.

* * * * *

3. In § 247.15, revise paragraph (b) and add paragraph (f) to read as follows:

§ 247.15 Landscaping products.

* * * * *

(b) Compost made from recovered organic materials.

* * * * *

(f) Fertilizers made from recovered organic materials.

* * * * *

[FR Doc. 03–30266 Filed 12–9–03; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 2 and 15

[ET Docket No. 03–201; FCC 03–223]

Modification of the Commission's Rules for Unlicensed Devices and Equipment Approval

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document proposes to review and update certain rules contained in the Commission's rules. We take these actions as part of our ongoing process of updating our rules to promote more efficient sharing of spectrum used by unlicensed devices and remove unnecessary regulations that inhibit such sharing.

DATES: Comments must be filed on or before January 9, 2004, and reply comments must be filed on or before January 26, 2004.

FOR FURTHER INFORMATION CONTACT: Neal McNeil, Office of Engineering and Technology, (202) 418–2408, TTY (202) 418–2989, e-mail: *Neal.McNeil@fcc.gov*.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Notice of Proposed Rule Making*, ET Docket No. 03–201, FCC 03–223, adopted September 10, 2003, and released September 17, 2003. The full text of this document is available for inspection and copying during normal business hours in the FCC Reference Center (Room CY–A257), 445 12th Street, SW., Washington, DC 20554. The complete text of this document also may be purchased from the Commission's copy contractor, Qualex International, 445 12th Street, SW., Room CY–B402, Washington, DC 20554. The full text may also be downloaded at: *www.fcc.gov*. Alternate formats are available to persons with disabilities by contacting Brian Millin at (202) 418–7426 or TTY (202) 418–7365.

Pursuant to §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments on or before January 9, 2004, and reply comments on or before January 26, 2004. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. *See Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121, May 1, 1998. Comments filed through the ECFS can be sent as an electronic file via the Internet to *http://www.fcc.gov/e-file/ecfs.html*. Generally, only one copy of an electronic submission must be filed.

If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to *ecfs@fcc.gov*, and should include the following words in the body of the message, "get form <your e-mail address>." A sample form and directions will be sent in reply. Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, commenters must submit two additional copies for each additional docket or rulemaking number.

All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Natek, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express mail, and Priority Mail should be addressed to 445 12th Street, SW., Washington, DC 20554.

Summary of Notice of Proposed Rulemaking

A. Proposed Revisions to Part 15

1. *Advanced Antenna Technologies.* Systems employing advanced antenna designs such as sectorized antennas and phased array adaptive antennas are now being used, or contemplated for use, as part of wide area network systems operating in the 2.4 GHz band. Sectorized antenna systems take a traditional omnidirectional coverage area and subdivide it into fixed sectors that are each covered using a single beam or antenna element to transmit desired information to all devices in the sector. For example, a sectorized system can be made from two individual antennas, each covering 60°of azimuth around the antenna structure, resulting in 120° of coverage. Operationally, each sector is treated as a different cell, the range of which is greater than that of a system using a single omnidirectional antenna. A phased array antenna system consists of a group of radiating elements arranged and driven in such a way that their radiated fields add in some directions and cancel in others. The combined fields can produce a single beam, or multiple beams pointing in various directions while minimizing radiation in other areas. Properties of the resultant beams such as intensity, direction, or beamwidth can be adjusted by altering the input signal to each radiating element.

2. We believe that it is in the public interest to accommodate efficiently configured sectorized and phased array antenna technologies. To date, the Commission has not generally authorized the operation of sectorized antennas by spread spectrum systems, but, by individual interpretation of its rules, we have allowed a few phased array systems to operate. However, we are receiving an increasing number of questions about how to accommodate these multiple beam systems in spread spectrum operations. After taking these requests under consideration, we tentatively conclude that spread spectrum systems using sectorized and/or phased array systems could provide important benefits for providing communications to a local area. Therefore, we believe that we should revise the rules to clearly facilitate broader deployment of advanced antenna designs with spread spectrum systems and to provide a stable environment in which to foster the continued development and installation of these spectrum efficient technologies.

3. We seek comment regarding the characteristics that a system would need to exhibit in order to be classified as a sectorized or phased array antenna system. As an initial matter, we propose to clarify that sectorized or phased array antenna systems must be capable of forming at least two discrete beams. Second, we propose to limit the total simultaneous beamwidth radiating from the antenna structure to 120°, regardless of the number of beams formed. The 120° of bandwidth need not be continuous and may be divided among various independent beams pointing in different directions around the antenna structure. Commenting parties should provide detailed suggestions regarding any additional modes of operation that should be considered acceptable as a definition for sectorized or phased array installations.

4. Sectorized and phased array antenna systems divide the total power from a transmitter among various transmission azimuths and the power may be distributed equally or at varying levels among those azimuths. The radiated emissions are directionalized along each sector or azimuth in order to communicate with an associated receiver. Accordingly, these antenna systems may resemble point-to-point operation at any given moment. Therefore, we propose to allow such systems to operate at the same power levels as point-to-point directional antennas. Specifically, we propose to limit the total power that may be applied to each individual beam to the applicable power level specified in 47 CFR 15.247(b), *i.e.*, 0.125 watt or 1 watt, depending upon the type of modulation used. This implies that the total operating power, the aggregate power in all beams, could exceed the output power permitted for a single point-to-point system. We propose, therefore, to limit the aggregate power transmitted simultaneously on all beams to 8 dB above the limit for an individual beam. For instance, the 8 dB limit will enable antenna systems to create up to 6 individual beams or sectors, all operating at the point-to-point limit. Finally, we propose to require that the transmitter output power be reduced by 1 dB for each 3 dB that the directional antenna gain of the complete system exceeds 6 dBi. We seek comment on these proposals. Further, we seek comment with regard to whether the Commission should specify a maximum E.I.R.P. limit for each individual beam. If so, what should that limit be?

5. *Replacement Antennas for Unlicensed Devices.* We wish to develop more flexible antenna requirements for unlicensed devices. We propose to provide that flexibility by requiring testing only with the highest gain antenna of each type that would be used with the transmitter at the maximum output power of that transmitter. Any antenna of a similar type that does not exceed the antenna gain of tested antennas may be used without retesting. Use of an antenna of a different type than the tested antenna (*i.e.* yagi antenna vs. a horn antenna) or one that exceeds the gain of a tested antenna would require retesting and new approval by either a Telecommunication Certification Body or the Commission. Manufacturers would be expected to supply a list of acceptable antenna types with applications for equipment authorization.

6. *Flexible Equipment Authorization for Radio Transmission Systems.* We are proposing a number of rule changes to enable WISPs to customize their transmission systems without the need to obtain a new equipment authorization for every combination of components. Specifically, we will allow professional radio system installers and parties that offer a commercial radio service under the unlicensed rules to substitute technically equivalent components in systems that have been granted equipment authorization. We believe such parties have the technical competence to ensure that the systems they deploy continue to comply with the FCC rules. We invite comment as to whether specific criteria are necessary to qualify as a professional radio system installer or commercial service provider, and if so, what those criteria should be. We also request views as to whether any other parties should be afforded similar flexibility. We will require the professional installer or commercial service provider to place a label on the transmission system that lists the FCC Identification Number of the system that was granted equipment authorization, identifies any components that were substituted, and designates a point of contact for the party that installed the system.

7. We also propose to allow marketing of separate radio frequency power amplifiers on a limited basis. We will restrict such marketing to amplifiers that are only capable of operation under the spread spectrum rules in § 15.247 and under the U–NII rules for the 5750–5850 MHz band. Further, we propose to require that such amplifiers obtain an equipment authorization (certification) and demonstrate that they cannot operate with an output power of more than 1 Watt, which is the maximum permitted under the rules. We believe that this rule change would be of benefit not only for WISPs, but also for consumers and businesses generally. We invite comment as to whether we should instead provide only a more narrow relaxation to allow separate marketing of power amplifiers that are designed in a way such that they can only be used with a specific system that is covered by an equipment authorization, such as through use of a unique connector or via an electronic handshake with a host device. We also recognize that frequency hopping systems that employ fewer than 75 hops are limited to an output power of 125 mW and invite comment as to whether the unique connector requirement may be necessary to ensure that 1 Watt amplifiers are not used with devices that are limited to 125 mW. We invite comment on these proposals and solicit views on other ways the equipment authorization rules might be modified to provide added flexibility without creating undue risk of interference to radio services or unlicensed devices.

8. *Measurement Procedures for Digital Modulation Systems.* We propose to harmonize the measurement procedures for digital modulation devices authorized under § 15.247 with the digital U–NII devices authorized under § 15.407. Specifically, we propose to allow entities performing compliance testing for § 15.247 devices to use an average, rather than overall peak, emission as provided by § 15.407, paragraphs (a)(4) and (a)(5) when measuring transmit power. We propose this change for devices using digital modulation that operate in the 915 MHz, 2.4 GHz and 5.7 GHz bands. We seek comment on whether a change in measurement procedure for such devices would have any detrimental impact on the installed base of products.

9. *Frequency Hopping Channel Spacing Requirements.* In its comments filed in response to the 2002 Regulatory Flexibility Act Review, the Bluetooth Special Interest Group (Bluetooth SIG) suggests a modification of the channel separation requirement for frequency hopping spread spectrum systems. Section 15.247(a)(1) of the rules requires that frequency hopping systems have hopping channel center frequencies separated by either a minimum of 25 kHz or the 20 dB bandwidth of the hopping channel, whichever is greater. The Bluetooth SIG requests that this channel spacing requirement be modified to allow hopping channel carrier frequencies to be more closely spaced. In particular, it seeks to modify the requirement to allow a separation of a minimum of 25 kHz or two-thirds of the 20 dB bandwidth of the hopping channel, whichever is greater. Although the request did not specify the operating band to which the changes should apply, we interpret the request as being applicable to devices operating in the 2.4 GHz band because the Bluetooth product line operates in the 2.4 GHz band.

10. We propose to modify the frequency hopping spacing requirement to permit certain systems in the 2.4 GHz band to utilize hopping channels separated by either 25 KHz or two-thirds of the 20 dB bandwidth, whichever is greater. We recognize that although a single device's channels will not overlap in time, the use of multiple devices simultaneously in a given area may cause the spectral occupancy and power density to increase, leading to an increased risk of interference. Therefore, we seek comment on the interference potential of new waveforms with more gradual roll-off and potentially higher spectral power densities at the channel band edges.

11. *Part 15 Unlicensed Modular Transmitter Approvals.* The *NPRM* proposes to codify the requirements for authorization of modular transmitters into our rules. These transmitters are self-contained devices missing only a power supply and data source to make them functional. Once authorized, the transmitters can be installed into a number of different devices to provide wireless connectivity. The completed combination does not need further Commission approval, saving manufacturers the time and expense associated with multiple authorizations.

12. Currently, in order to have modular transmitters authorized, manufacturers must follow guidance contained in a public notice issued by the Office of Engineering and Technology. A new class of modular transmitters is now under development. These new modules consist of two or more sub-components, each of which may be incorporated in different assemblies. In order to accommodate this new technology, we propose to incorporate the guidance contained in the Office of Engineering and Technology public notice into the Commission's rules. We also propose appropriate changes to facilitate the authorization of developing modular transmitter technology.

13. *Improving Sharing in the Unlicensed Bands.* We invite comment on whether a spectrum sharing etiquette should be considered for devices that operate on an unlicensed basis, in addition to Unlicensed PCS devices. If so, should the Commission or the industry develop the criteria establishing access conditions? What characteristics need to be considered (*e.g.* spectrum monitoring requirements, bandwidth limits, variable output power levels)? Could an etiquette be implemented in such a way as to ensure continued flexibility for technological development, which has been the cornerstone of unlicensed operation? If a spectrum sharing etiquette is feasible, we seek comment regarding the bands to which the etiquette should apply. Finally, given the number of unlicensed devices currently in operation without a sharing etiquette, how effective will such an etiquette imposed on new entrants be in improving spectrum sharing?

14. *Special Temporary Authority.* We are proposing to delete the provisions in §15.7 of the rules for obtaining a Special Temporary Authority (STA). The Office of Engineering and Technology has not granted any STAs under part 15 nor had any formal requests for an STA under these rules in the last 10 years. We believe that this need is being met through the allowances for STAs under the provisions in part 5 for experimental licenses. We invite comment as to whether there is any need to maintain the part 15 provisions for STAs.

B. Proposed Revisions to Part 2

15. *Import Conditions.* Section 2.1204 of the rules limits the importation of radio frequency devices that have not yet received equipment authorization and are not intended for operation within one of the Commission's licensed services to 200 or fewer units for testing and evaluation, and 10 or fewer units for demonstration at industry trade shows, provided the devices will not be offered for sale or marketed. Devices intended for use in a licensed service can be imported in greater numbers: 2000 or fewer for testing and evaluation and 200 or fewer for demonstration purposes.

16. Hewlett-Packard ("HP") asks that the Commission increase the number of devices, not intended for use in a licensed service, that may be imported to 2000 or fewer for testing and evaluation and 100 or fewer for demonstration purposes. Furthermore, HP requests that the modified rules be expanded to permit demonstration prototypes to be used, in addition to trade shows, for any other purpose designed to build market awareness. As an alternative to the suggested rule changes, HP states that the Commission could consider combining §§ 2.1204(a)(3) and 2.1204(a)(4) to create a limit of 2100 devices for all pre-authorized units to be used for, "design refinement, software development, marketing and customer support program development, or any other needed product development purpose, including promoting market awareness."

17. We believe that a relaxation of the import restrictions may be appropriate for devices not intended for use in licensed services. However, we seek comment on the potential for abuse of a revised importation rule. Further, we seek comment on HP's proposal to modify our rules to permit demonstration prototype to be used "for any purpose designed to build market awareness."

18. *Electronic Filing. Section 2.913(c) Submittal of equipment authorization application or information to the Commission.* Currently, the Commission requires applications for equipment certification to be filed electronically, but provides a waiver process for manual filing. In the five years that this rule has been in place, we have not received any waivers requests. Thus we propose to delete the provisions for a paper filing of an application for Certification.

19. *Section 2.926(c) FCC Identifier, Grantee Code.* The FCC Identifier listed on equipment authorizations issued by the Commission consists of a grantee code assigned by the Commission and an equipment product code assigned by the grantee. Section 2.926(c) permits applicants to submit a written request for assignment of a grantee code. We propose to modify this section of the rules to require electronic filing for all grantee code assignment requests.

20. *Section 2.929(c) and (d) Changes in name, address, ownership or control of grantee.* The current rules require the grantee of an equipment authorization to supply the Commission with a written notification whenever a change in name, address, ownership, or control of grantee occurs. We believe that notification can be accomplished faster and more efficiently electronically. Therefore, we propose to modify these sections of the Rules to require electronic filing for all changes in address, company name, contact person, and control/sale of the grantee.

21. *Accreditation of Test Laboratories. Section 2.948 Description of Measurement Facilities.* Currently the Commission's rules do not address re-evaluation intervals for laboratories that submit part 15 and part 18 test data for certification. Accrediting bodies that evaluate the laboratories generally determine these intervals themselves. While domestic laboratories are generally re-evaluated at two-year intervals, some Accrediting Bodies reassess foreign laboratories only every 7 years. We believe that it is important that all laboratories, both foreign and domestic, be re-certified on a common interval. Accordingly, we propose to clarify that all test sites, both foreign and domestic, must be reassessed by their Accrediting Body every two years.

22. *Section 2.962 Requirements for a Telecommunication Certification Body.* Section 2.962(e)(1) states that the Commission will designate as a Telecommunications Certification Body any organization that meets the qualification criteria and is accredited by NIST or its recognized accreditor. The rule section does not place requirements on re-accreditation periods. We believe that it is important that Telecommunications Certification Bodies are routinely re-accredited to ensure continued compliance with applicable standards. Accordingly, in this section, we propose to clarify that every Telecommunications Certification Body must be re-accredited every 2 years for continued accreditation.

Initial Regulatory Flexibility Analysis

23. As required by the Regulatory Flexibility Act (RFA),[1] the Commission has prepared this present Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities by the policies and rules proposed in this Notice of Proposed Rule Making (NPRM). Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the NPRM provided in paragraph 62 of the item. The Commission will send a copy of the NPRM, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA).[2]

A. Need for, and Objectives of, the Proposed Rules

24. Section 11 of the Communications Act of 1934, as amended, and section 202(h) of the Telecommunications Act of 1996 require the Commission (1) to review biennially its regulations pertaining to telecommunications service providers and broadcast ownership; and (2) to determine whether economic competition has made those regulations no longer necessary in the public interest. The Commission is directed to modify or repeal any such regulations that it finds are no longer in the public interest.

25. On September 6, 2002, the Commission released a *Public Notice* seeking comments regarding Commission rules which may be outdated and in need of revision.[3] The *Public Notice* identified a number of rule sections in parts 2 and 15 as candidates for review, and encouraged interested parties to provide comment on these rules. Subsequently, on September 26, 2002, the Commission released a separate *Public Notice* seeking suggestions as to which rule

[1] *See* 5 U.S.C. 603. The RFA, *see* 5 U.S.C. 601 *et. seq.*, has been amended by the Contract With America Advancement Act of 1996, Public Law 104–112, 110 Stat. 847 (1996)(CWAAA). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).

[2] *See* 5 U.S.C. 603(a).

[3] *See* Public Notice, "FCC Seeks Comment Regarding Possible Revision or Elimination of Rules Under The Regulatory Flexibility Act, 5 U.S.C. 610," released September 6, 2002, DA 02–2152.

parts administered by the Commission's Office of Engineering and Technology should be modified or repealed as part of the 2002 biennial review.[4] Some of the comments filed in response to these *Public Notices* are addressed by the NPRM. The NPRM also addresses other issues raised as a result of recent changes in technology.

26. The NPRM proposes several changes to parts 2, 15 and other parts of the rules. Specifically, it proposes to:

(1) Modify the rules to permit the use of advanced antenna technologies with spread spectrum devices in the 2.4 GHz band;

(2) Modify the replacement antenna restriction for part 15 devices;

(3) Modify the equipment authorization procedures to provide more flexibility to configure transmission systems without the need to obtain separate authorization for every combination of system components;

(4) Harmonize the measurement procedures for digital modulation systems authorized pursuant to § 15.247 of the rules with those for similar U–NII devices authorized under §§ 15.401–15.407 of the rules;[5]

(5) Modify the channel spacing requirements for frequency hopping spread spectrum devices in the 2.4 GHz band in order to remove barriers to the introduction of new technology that uses wider bandwidths;

(6) Clarify the equipment authorization requirements for modular transmitters; and

(7) Make other changes to update or correct parts 2 and 15 of our rules.

27. These proposals, if adopted, will prove beneficial to manufacturers and users of unlicensed technology, including those who provide services to rural communities. Specifically, we note that a growing number of service providers are using unlicensed devices within wireless networks to serve the varied needs of industry, government, and general consumers alike. One of the more interesting developments is the emergence of wireless Internet service providers or "WISPs." Using unlicensed devices, WISPs around the country are providing an alternative high-speed connection in areas where cable or DSL services have been slow to arrive. We believe that the increased flexibility proposed herein will help to foster a viable last mile solution for delivering Internet services, other data applications, or even video and voice services to underserved, rural, or isolated communities.

[4] *See* Public Notice, "The Commission Seeks Public Comment in the 2002 Biennial Review of Telecommunications Regulations within the Purview of the Office of Engineering and Technology," released September 26, 2002, ET-Docket No. 02–312.

[5] 47 CFR 15.247.

B. Legal Basis

28. The proposed action is authorized under sections 4(i), 301, 302, 303(e), 303(f), 303(r), 304 and 307 of the Communications Act of 1934, as amended, 47 U.S.C. sections 154(i), 301, 302, 303(e), 303(f), 303(r), 304 and 307.

C. Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply

29. The RFA directs agencies to provide a description of, and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted.[6] The RFA defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small business concern" under section 3 of the Small Business Act.[7] Under the Small Business Act, a "small business concern" is one that: (1) Is independently owned and operated; (2) is not dominant in its field of operations; and (3) meets many additional criteria established by the Small Business Administration (SBA).[8]

30. A small organization is generally "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field."[9] Nationwide, as of 1992, there were approximately 275,801 small organizations.[10] The term "small governmental jurisdiction" is defined as "governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand."[11] As of 1997, there were approximately 87,453 governmental jurisdictions in the United States.[12] This number includes 39,044 counties, municipal governments, and townships, of which 27,546 have populations of fewer than 50,000 and 11,498 counties, municipal governments, and townships have populations of 50,000 or more. Thus, we estimate that the number of small governmental jurisdictions is approximately 75,955 or fewer.

[6] *See* U.S.C. 603(b)(3).

[7] Id. 601(3).

[8] *Id.* 632

[9] 5 U.S.C. 601(4).

[10] 1992 Economic Census, U.S. Bureau of the Census, , Table 6 (special tabulation of data under contract to Office of Advocacy of the U.S. Small Business Administration).

[11] 5 U.S.C. 601(5).

[12] 1995 Census of Governments, U.S. Census Bureau, United States Department of Commerce, Statistical Abstract of the United States (2000).

31. The Commission has not developed a definition of small entities applicable to unlicensed communications devices manufacturers. Therefore, we will utilize the SBA definition application to manufacturers of Radio and Television Broadcasting and Communications Equipment. Under the SBA's regulations, a radio and television broadcasting and wireless communications equipment manufacturer must have 750 or fewer employees in order to qualify as a small business concern.[13] Census Bureau data indicates that there are 1,215 U.S. establishments that manufacture radio and television broadcasting and wireless communications equipment, and that 1,150 of these establishments have fewer than 500 employees and would be classified as small entities.[14] The remaining 65 establishments have 500 or more employees; however, we are unable to determine how many of those have fewer than 750 employees and therefore, also qualify as small entities under the SBA definition. We therefore conclude that there are no more than 1,150 small manufacturers of radio and television broadcasting and wireless communications equipment.

D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

32. Part 15 transmitters are already required to be authorized under the Commission's certification procedure as a prerequisite to marketing and importation. *See* 47 CFR 15.101, 15.201, 15.305, and 15.405. The changes proposed in this proceeding would not change any of the current reporting or recordkeeping requirements. Further, the proposed regulations add permissible measurement techniques and methods of operation. The proposals would not require the modification of any existing products.

E. Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

33. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include

[13] 13 CFR 121.201, NAICS code 334220.

[14] Economics and Statistics Administration, Bureau of Census, U.S. Department of Commerce. 1997 Economic Census, Industry Series—Manufacturing, Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing, Table 4 at 9 (1999). The amount of 500 employees was used to estimate the number of small business firms because the relevant Census categories stopped at 499 employees and began at 500 employees. No category for 750 employees existed. Thus, the number is as accurate as it is possible to calculate with the available information

the following four alternatives: (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.

34. At this time, the Commission does not believe the proposals contained in this NPRM will have a significant economic impact on small entities. The NPRM does not propose new device design standards. Instead, it relaxes the rules with respect to the types of devices which are allowed to operate pursuant to the Commission's regulations. There is no burden of compliance with the proposed changes. Manufacturers may continue to produce devices which comply with the former rules and, if desired, design devices to comply with the new regulations. The proposed rules will apply equally to large and small entities. Therefore, there is no inequitable impact on small entities. Finally, this notice does not recommend a deadline for implementation. We believe that the proposals are relatively simple and do not require a transition period to implement. An entity desiring to take advantage of the relaxed regulations may do so at any time.

35. Unless our views are altered by comments, we find that the proposed rule changes contained in this NPRM will not present a significant economic burden to small entities. Therefore it is not necessary at this time to propose alternative rules. Notwithstanding our finding, we request comment on alternatives that might minimize the amount of adverse economic impact, if any, on small entities.

F. Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rule

36. None.

Ordering Clauses

37. Pursuant to the authority contained in sections 4(i), 301, 302, 303(e), 303(f), 303(r), 304 and 307 of the Communications Act of 1934, as amended, 47 USC 154(i), 301, 302, 303(e), 303(f), 303(r), 304, and 307, the Notice of Proposed Rule Making is adopted.

38. The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, shall send a copy of this NPRM, including the Initial Regulatory Flexibility Analysis, to the chief Counsel for Advocacy of the Small Business Administration.

List of Subjects

47 CFR Part 2

Communications equipment.

47 CFR Part 15

Communications equipment.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

Rule Changes

For the reasons set forth in the preamble, the Federal Communications Commission proposes to amend 47 CFR parts 2 and 15 as follows:

PART 2—FREQUENCY ALLOCATIONS AND RADIO TREATY MATTERS; GENERAL RULES AND REGULATIONS

1. The authority citation for part 2 continues to read as follows:

Authority: 47 U.S.C. 154, 302a, 303 and 336, unless otherwise noted.

2. Section 2.913 is revised to read as follows:

§ 2.913 Submittal of equipment authorization application or information to the Commission.

(a) All applications for equipment authorization must be filed electronically via the Internet. Information on the procedures for electronically filing equipment authorization applications can be obtained from the address in paragraph (c) of this section and from the Internet.

(b) Unless otherwise directed, fees for applications for the equipment authorization, pursuant to § 1.1103 of this chapter, must be submitted either electronically via the Internet or by following the procedures described in § 0.401(b) of this chapter. The address for fees submitted by mail is: Federal Communications Commission, Equipment Approval Services, P.O. Box 358315, Pittsburgh, PA 15251–5315. If the applicant chooses to make use of an air courier/package delivery service, the following address must appear on the outside of the package/envelope: Federal Communications Commission, c/o Mellon Bank, Mellon Client, Service Center, 500 Ross Street—Room 670, Pittsburgh, PA 15262–0001.

(c) Any equipment samples requested by the Commission pursuant to the provisions of subpart J of this part shall, unless otherwise directed, be submitted to the Federal Communications Commission Laboratory, 7435 Oakland Mills Road, Columbia, Maryland, 21046.

3. Section 2.926 is amended by revising paragraph (c) to read as follows:

§ 2.926 FCC identifier.

* * * * *

(c) A grantee code will have three characters consisting of Arabic numerals, capital letters, or combination thereof. A prospective grantee or his authorized representative may receive a grantee code electronically via the Internet. The code may be obtained at any time prior to submittal of the application for equipment authorization. However, the fee required by § 1.1103 of this chapter must be submitted and validated within 30 days of the issuance of the grantee code, or the code will be removed from the Commission's records and a new grantee code will have to be obtained.

* * * * *

4. Section 2.929 is amended by revising paragraphs (c) and (d) to read as follows:

§ 2.929 Changes in name, address, ownership or control of grantee.

* * * * *

(c) Whenever there is a change in the name and/or address of the grantee of an equipment authorization, notice of such change(s) shall be submitted to the Commission via the Internet within 30 days after the grantee starts using the new name and/or address.

(d) In the case of transactions affecting the grantee, such as a transfer of control or sale to another company, mergers, or transfer of manufacturing rights, notice must be given to the Commission via the Internet within 60 days after the consummation of the transaction. Depending on the circumstances in each case, the Commission may require new applications for equipment authorization. In reaching a decision the Commission will consider whether the acquiring party can adequately ensure and accept responsibility for continued compliance with the regulations. In general, new applications for each device will not be required. A single application for equipment authorization may be filed covering all the affected equipment.

5. Section 2.948 is amended by revising paragraph (d) introductory text and removing paragraph (d)(3) to read as follows:

§ 2.948 Description of measurement facilities.

* * * * *

(d) A laboratory that has been accredited with a scope covering the required measurements shall be deemed competent to test and submit test data for equipment subject to verification,

Declaration of Conformity, and certification. Such a laboratory shall be accredited by an approved accreditation organization based on the International Organization for Standardization/International Electrotechnical Commission (ISO/IEC) Standard 17025, "General Requirements for the Competence of Calibration and Testing Laboratories." The organization accrediting the laboratory must be approved by the Commission's Office of Engineering and Technology, as indicated in § 0.241 of this chapter, to perform such accreditation based on ISO/IEC 58, "Calibration and Testing Laboratory Accreditation Systems—General Requirements for Operation and Recognition." The frequency for revalidation of the test site and the information that is required to be filed, or retained by the testing party shall comply with the requirements established by the accrediting organization. However, in all cases, test site revalidation shall occur on an interval not to exceed two years.

* * * * *

6. Section 2.962 is amended by revising paragraphs (c)(4), (e) introductory text, (f)(1), (f)(3), (g)(3) and by adding paragraph (c)(7) to read as follows:

§ 2.962 Requirements for Telecommunication Certification Bodies.

* * * * *

(c) * * *

(4) The TCB shall demonstrate an ability to recognize situations where interpretations of the regulations or test procedures may be necessary. The appropriate key certification and laboratory personnel shall demonstrate a knowledge of how to obtain current and correct technical regulation interpretations. The competence of the Telecommunication Certification Body shall be demonstrated by assessment. The general competence, efficiency, experience, familiarity with technical regulations and products included in those technical regulations, as well as compliance with applicable parts of the ISO/IEC Guides 25 and 65, shall be taken into consideration.

* * * * *

(7) A Telecommunication Certification Body shall be reassessed for continued accreditation on intervals not exceeding two years.

* * * * *

(e) Designation of a TCB. * * *

* * * * *

(f) * * *

(1) A TCB shall certify equipment in accordance with the Commission's rules and policies.

* * * * *

(3) A TCB may establish and assess fees for processing certification applications and other tasks as required by the Commission.

* * * * *

(g) * * *

(3) If during post market surveillance of a certified product, a Telecommunication Certification Body determines that a product fails to comply with the applicable technical regulations, the Telecommunication Certification Body shall immediately notify the grantee and the Commission. A follow-up report shall also be provided within thirty days of the action taken by the grantee to correct the situation.

* * * * *

PART 15—RADIO FREQUENCY DEVICES

7. The authority citation for part 15 continues to read as follows:

Authority: 47 U.S.C. 154, 302, 303, 304, 307, 336, and 544A.

§ 15.7 [Removed]

8. Section 15.7 is removed.

9. Section 15.203 is revised to read as follows:

§ 15.203 Antenna requirement.

(a) An intentional radiator shall be designed to ensure that no antenna other than that certificated with the device may be used. The use of a permanently attached antenna or of an antenna that uses a unique coupling to the intentional radiator shall be considered sufficient to comply with the provisions of this section. The manufacturer may design the unit so that a broken antenna can be replaced by the user, but the use of a standard antenna jack or electrical connector is prohibited. This requirement does not apply to carrier current devices or to devices operated under the provisions of §§ 15.211, 15.213, 15.217, 15.219, or 15.221. Further, this requirement does not apply to intentional radiators that must be professionally installed, such as perimeter protection systems and some field disturbance sensors, or to other intentional radiators which, in accordance with § 15.31(d), must be measured at the installation site. However, the installer shall be responsible for ensuring that the proper antenna is employed so that the limits in this part are not exceeded.

(b) Intentional radiators may be certificated with multiple antenna types. Manufacturers must supply a list of acceptable antenna types with applications for equipment authorization. Compliance testing must be performed using the highest gain antenna of each type of antenna to be certified and with the transmitter operating at its maximum output power. Any antenna meeting the specifications of tested antennas can be used with the device without retesting. Use of an antenna of a different type than the tested antenna, one that exceeds the gain of a tested antenna, or one that does not meet the tested antenna specifications will require retesting and new approval by either a TCB or the Commission.

10. Section 15.204 is amended by adding paragraphs (b)(1), (b)(2) and (b)(3) and by revising paragraph (c) to read as follows:

§ 15.204 External radio frequency power amplifiers and antenna modifications.

* * * * *

(b) * * *

(1) A transmission system consisting of an intentional radiator, an external radio frequency power amplifier, and an antenna, may be authorized, marketed and used under this part. However, when a transmission system is authorized as a system, it must always be marketed as a complete system and must always be used in the configuration in which it was authorized. Except as described in paragraph (b)(3) of this section, an external radio frequency power amplifier shall be marketed only in the system configuration with which the amplifier is authorized and shall not be marketed as a separate product.

(2) Professional radio system installers and parties that offer commercial radio services may substitute technically equivalent components, including external radio frequency power amplifiers and/or antennas, in systems that have been granted prior equipment authorization. The professional installer or commercial service provider must place a label on the transmission system that lists the FCC Identification Number of the system that was granted equipment authorization, identifies any components that were substituted, and designates a point of contact for the party that installed the system.

(3) An external radio frequency power amplifier may be marketed for individual sale provided it is intended for use in conjunction with a transmitter that operates in the 902–928 MHz, 2400–2483.5 MHz, and 5725–5850 MHz bands pursuant to § 15.247 or a transmitter that operates in the 5.725–

5.825 GHz band pursuant to § 15.407. The output power of such an amplifier must not exceed the maximum permitted output power of its associated transmitter.

(c) Except as otherwise described in paragraph (b) of this section, only the antenna with which an intentional radiator is authorized may be used with the intentional radiator.

11. Section 15.212 is added to read as follows:

§ 15.212 Modular transmitters.

(a) The radio elements of the modular transmitter must have its own shielding. If the modular transmitter consists of two or more partitioned sections, the interface between the sections of the modular system must be digital with a minimum signaling amplitude of 150 mV peak-to-peak. The physical crystal and tuning capacitors for partitioned modules can be located external to the shielded radio elements.

(b) The modular transmitter must have buffered modulation/data inputs (if such inputs are provided) to ensure that the module will comply with part 15 requirements under conditions of excessive data rates or over-modulation. For partitioned modules, control information and other data may be exchanged between the firmware and radio front end.

(c) The modular transmitter must have its own power supply regulation.

(d) The modular transmitter must comply with the antenna requirements of §§ 15.203 and 15.204(c). The antenna must either be permanently attached or employ a "unique" antenna coupler (at all connections between the module and the antenna, including the cable). Any antenna used with the module must be approved with the module, either at the time of initial authorization or through a Class II permissive change. The "professional installation" provision of § 15.203 may not be applied to modules.

(e)(1) The modular transmitter must be tested in a stand-alone configuration, *i.e.*, the module must not be inside another device during testing. Unless the transmitter module will be battery powered, it must comply with the AC line conducted requirements found in § 15.207. AC or DC power lines and data input/output lines connected to the module must not contain ferrites, unless they will be marketed with the module (*see* § 15.27(a)). The length of these lines used during testing shall be a length typical of actual use or, if that length is unknown, at least 10 centimeters to insure that there is no coupling between the case of the module and supporting test equipment. Any accessories, peripherals, or support equipment connected to the module during testing shall be unmodified or commercially available (*see* § 15.31(i)).

(2) A module comprised of two or more sections shall be tested installed on a reference platform or final host device. Signal injection testing shall be performed on the implementation with a length of cable not exceeding ten centimeters connecting the module components and platform.

(f) The modular transmitter must be labeled with its own FCC ID number, and, if the FCC ID is not visible when the module is installed inside another device, then the outside of the device into which the module is installed must also display a label referring to the enclosed module. This exterior label can use wording such as the following: "Contains Transmitter Module FCC ID: XYZMODEL1" or "Contains FCC ID: XYZMODEL1." Any similar wording that expresses the same meaning may be used. The Grantee may either provide such a label, an example of which must be included in the application for equipment authorization, or, must provide adequate instructions to parties that may include the module in their product that such a label must be placed on the outside of the device. In the latter case, a copy of these instructions must be included in the application for equipment authorization.

(g) The modular transmitter must comply with any specific rule or operating requirements applicable to the transmitter and the manufacturer must provide adequate instructions along with the module to explain any such requirements. A copy of these instructions must be included in the application for equipment authorization.

(h) The modular transmitter must comply with any applicable RF exposure requirements.

(i) The type number of a partitioned module will consist of a digital word 4 bytes in length with the following bit definition: 16 bits for the company information, 16 bits for the Device Number.

12. Section 15.247 is amended by revising paragraph (a)(1) introductory text and by adding paragraphs (b)(6), (b)(7), (b)(8), (b)(9), (b)(10), (b)(11) and (e) to read as follows:

§ 15.247 Operation within the bands 902–928 MHz, 2400–2483.5 MHz, and 5725–5850 MHz.

(a) * * *

(1) Frequency hopping systems shall have hopping channel carrier frequencies separated by a minimum of 25 kHz or the 20 dB bandwidth of the hopping channel, whichever is greater. Frequency hopping systems in the 2.4 GHz band may have hopping channel carrier frequencies separated by 25 kHz or two-thirds of the 20 dB bandwidth of the hopping channel, whichever is greater, provided the systems employ fewer than 75 hopping channels and operate with an output power no greater than 125 mW. The system shall hop to channel frequencies that are selected at the system hopping rate from a pseudorandomly ordered list of hopping frequencies. Each frequency must be used equally on the average by each transmitter. The system receivers shall have input bandwidths that match the hopping channel bandwidths of their corresponding transmitters and shall shift frequencies in synchronization with the transmitted signals.

* * * * *

(b) * * *

(6) A device that operates in the 2.4 GHz band and transmits to multiple receivers (simultaneously or sequentially) will be permitted to operate at point-to-point power levels if it satisfies both of the following conditions:

(i) It must form multiple directional beams (simultaneously or sequentially) for the purpose of focusing energy on different receivers or groups of receivers.

(ii) It must transmit different information to each receiver.

(7) For devices qualifying as point-to-point under this interpretation, total RF power supplied to the array or arrays that comprise the device (*i.e.*, sum of power supplied to all antennas, antenna elements, staves, etc. and summed across all carriers or frequency channels) is limited as follows:

(i) Total power is limited to the applicable power level as specified in paragraph (b)(1) or (b)(3) of this section.

(ii) Total power must be reduced by 1 dB for each 3 dB of directional gain above 6 dB of the antenna/array device, as defined in paragraph (b)(9) of this section.

(8) The power limits specified previously will be applied to the aggregate power of all simultaneously operated frequency channels and directional beams, except that, for devices that transmit on multiple beams simultaneously (on the same or different frequency channels), a higher total power level may be allowed. For such devices, both of the following power limits must be satisfied.

(i) The power supplied to each beam will be subject to the power limit as specified in paragraph (b)(7)(i) of this section.

(ii) Aggregate power transmitted simultaneously on all beams must not exceed the power limit determined in paragraph (b)(7)(i) of this section by more than 8 dB.

(9) Directional gain shall be computed as follows:

(i) Directional gain will be assumed to be equal to the sum of 10 log (# of array elements or staves) and the directional gain of the individual elements or staves (or of the element or stave having the highest gain if all are not the same).

(ii) A value for directional gain less than that given by (b)(9)(i) of this section will be accepted only if sufficient evidence is presented that the directional gain cannot exceed the proposed value (for example due to shading of the array, or coherence loss in the beamforming).

(10) If a device transmits in only single sector (single directional beam), then it does not satisfy the conditions of paragraph (b)(6) of this section and must be evaluated under point-to-multipoint rules.

(11) If a device transmits in multiple sectors (multiple beams pointed in different directions) and satisfies the conditions of paragraph (b)(6)(i) of this section, then the device may operate at point-to-point power levels computed according to paragraphs (b)(7) and (b)(8) of this section. Power in each sector must satisfy the limit in paragraph (b)(7)(i) of this section, and total RF power supplied to all antennas (all sectors) simultaneously must satisfy the limit in (b)(8)(ii) of this section.

* * * * *

(e) The peak output power and peak power spectral density for digitally modulated system may be determined in accordance with the provisions specified in §§ 15.407(a)(4) and 15.407(a)(5).

* * * * *

[FR Doc. 03–30540 Filed 12–9–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 52

[CC Docket No. 95–116; FCC 03–284]

Telephone Number Portability

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document initiates an examination of how to facilitate wireless-to-wireline porting in cases where the rate center associated with the wireless number is different from the rate center in which the wireline carrier seeks to serve the customer. In addition, this document examines whether to reduce the duration of the porting interval for ports between wireless and wireline carriers.

DATES: Comments are due on or before December 30, 2003, and reply comments are due on or before January 9, 2004.

FOR FURTHER INFORMATION CONTACT: Jennifer Salhus, Attorney, 202–418–1310.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission Further Notice of Proposed Rulemaking, (FNPRM) released November 10, 2003 (FCC 03–284). The full text of the FNPRM is available for inspection and copying during normal business hours in the FCC Reference Center, Room CY–A257, 445 12th St., SW., Washington, DC 20554. The complete text may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th St., SW., Room CY–B402, Washington, DC, telephone (202) 863–2893, facsimile (202) 863–2898, or via e-mail *qualexint@aol.com*. Additionally, the complete item is available on the Commission's web site at *http://www.fcc.gov/wtb*.

Synopsis of the FNPRM

1. In the FNPRM, the Commission seeks comment on how to facilitate wireless-to-wireline porting in cases where the rate center associated with the wireless number is different from the rate center in which the wireline carrier seeks to serve the customer. Specifically, the Commission seeks comment on technical impediments associated with requiring wireless-to-wireline number portability when the location of the wireline facilities serving the customer requesting the port is not in the rate center where the wireless number is assigned. In addition to technical factors, the Commission seeks comment on whether there are regulatory requirements that prevent wireline carriers from porting wireless numbers when the rate center associated with the number and the customer's physical location do not match.

2. Next, the FNPRM seeks comment on whether to reduce the current wireline four business-day porting interval for intermodal porting. Particularly, the Commission seeks comment on whether there are practical or technical impediments to requiring wireline carriers to achieve a reduced porting interval for intermodal ports. The Commission seeks comment on an appropriate transition period in the event a shorter porting interval is adopted, during which time carriers can modify and test their systems and procedures.

Administrative Matters

Initial Regulatory Flexibility Analysis

3. As required by the Regulatory Flexibility Act, as amended (RFA), the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities by the policies and rules proposed in the FNPRM. Written public comments are requested on the IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the FNPRM. This is a summary of the full text of the IRFA. The full text of the IRFA may be found at Appendix B of the full text of the FNPRM. The Commission will send a copy of the FNPRM, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration. *See* 5 U.S.C. 603(a).

A. Need for, and Objectives of, the Proposed Rules

4. The FNPRM seeks comment on how to facilitate wireless-to-wireline porting where the rate center associated with the wireless number and the rate center in which the wireline carrier seeks to serve the customer do not match. The FNPRM also seeks comment on whether the Commission should reduce the current four-business day porting interval for intermodal porting.

B. Legal Basis for Proposed Rules

5. The proposed action is authorized under § 52.23 of the Commission's rules, 47 CFR 52.23, and in sections 1, 3, 4(i), 201, 202, 251 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 153, 154(i), 201–202, and 251.

C. Description and Estimate of the Number of Small Entities To Which the Proposed Rules Will Apply

6. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted. The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction." In addition, the term "small business" has the same meaning as the term "small business concern" under section 3 of the Small Business Act. Under the Small business Act, a "small business concern" is one that: (i) Is independently owned and operated; (ii) is not dominant in its field of operation; and (iii) satisfies any

additional criteria established by the Small Business Administration (SBA). A small organization is generally "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field." Nationwide, as of 1992, there were approximately 275,801 small organizations.

7. Incumbent Local Exchange Carriers. We have included small incumbent local exchange carriers LECs in the RFA analysis. As noted above, a "small business" under the RFA is one that, *inter alia*, meets the pertinent small business size standard (*e.g.*, a telephone communications business having 1,500 or fewer employees), and "is not dominant in its field of operation." The SBA's Office of Advocacy contends that, for RFA purposes, small incumbent LECs are not dominant in their field of operation because any such dominance is not "national" in scope. We have therefore included small incumbent LECs in the RFA analysis, although we emphasize that this RFA action has no effect on the Commission's analyses and determinations in other, non-RFA contexts. According to the FCC's *Telephone Trends Report* data, 1,337 incumbent local exchange carriers reported that they were engaged in the provision of local exchange services. Of these 1,337 carriers, an estimated 1,032 have 1,500 or fewer employees and 305 have more than 1,500 employees.

8. Competitive Local Exchange Carriers. Neither the Commission nor the SBA has developed a specific small business size standard for providers of competitive local exchange services. The closest applicable size standard under the SBA rules is for Wired Telecommunications Carriers. Under that standard, such a business is small if it has 1,500 or fewer employees. According to the FCC's *Telephone Trends Report* data, 609 companies reported that they were engaged in the provision of either competitive access provider services or competitive local exchange carrier services. Of these 609 companies, an estimated 458 have 1,500 or fewer employees and 151 have more than 1,500 employees.

9. Wireless Service Providers. The SBA has developed a size standard for small businesses within the two separate categories of Cellular and Other Wireless Telecommunications or Paging. Under that standard, such a business is small if it has 1,500 or fewer employees. According to the FCC's *Telephone Trends Report* data, 719 companies reported that they were engaged in the provision of wireless telephony. Of these 719 companies, an estimated 294 have 1,500 or fewer employees and 425 have more than 1,500 employees.

D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities

10. To address concerns regarding wireline carriers' ability to compete for wireless customers through porting, future rules may change wireline porting guidelines. In addition, future rules may require wireline carriers to reduce the length of the current wireline porting interval for ports to wireless carriers. These potential changes may impose new obligations and costs on carriers. Commenters should discuss whether such changes would pose an unreasonable burden on any group of carriers, including small entity carriers.

E. Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

11. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (i) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (ii) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (iii) the use of performance, rather than design, standards; and (iv) an exemption from coverage of the rule, or any part thereof, for small entities.

12. The FNPRM reflects the Commission's concern about the implications of its regulatory requirements on small entities. Particularly, the FNPRM seeks comment on the concern that wireline carriers, including small wireline carriers, have expressed that permitting wireless carriers to port numbers wherever their rate center overlaps the rate center in which the number is assigned would give wireless carriers an unfair competitive advantage over wireline carriers. Wireline carriers contend that while permitting porting outside of wireline rate center boundaries may facilitate widespread wireline-to-wireless porting, wireless-to-wireline porting can only occur in cases where the wireless customer is physically located in the wireline rate center associated with the phone number. If the customer's physical location is outside the rate center associated with the number, porting the number to a wireline telephone at the customer's location could result in calls to and from that number being rated as toll calls. As a result, LECs assert, they are effectively precluded from offering wireless-to-wireline porting to those wireless subscribers who are not located in the wireline rate center associated with their wireless numbers.

13. The FNPRM seeks comment on how to facilitate wireless-to-wireline porting when the location of the wireline facilities serving the customer requesting the port is not in the rate center where the wireless number is assigned. The FNPRM seeks comment on whether there are technical or regulatory obstacles that prevent wireline carriers from porting-in wireless numbers when the rate center associated with the number and the customer's physical location do not match. The FNPRM asks commenters that contend that such obstacles exist and result in a competitive disadvantage to submit proposals to mitigate these obstacles.

14. In addition, the FNPRM seeks comment on alternative methods to facilitate wireless-to-wireline porting. To the extent that wireless-to-wireline porting may raise issues regarding the rating of calls to and from the ported number when the rate center of the ported number and the physical location of the customer do not match, the FNPRM seeks comment on the extent to which wireline carriers should absorb the cost of allowing the customers with a number ported from a wireless carrier to maintain the same local calling area that the customer had with the wireless service provider. Alternatively, the FNPRM seeks comment about whether wireline carriers may serve customers with numbers ported from wireless carriers on a Foreign Exchange (FX) or Virtual FX basis. The FNPRM seeks comment on the procedural, technical, and regulatory implications of each of these approaches. These questions provide an excellent opportunity for small entity commenters and others concerned with small entity issues to describe their concerns and propose alternative approaches.

15. The FNPRM also seeks comment about whether the Commission should require wireline carriers to reduce the length of the current wireline porting interval for ports to wireless carriers. The FNPRM analyzes the current wireline porting interval and seeks comment about whether there are technical or practical impediments to requiring wireline carriers to achieve shorter porting intervals for intermodal porting. The FNPRM recognizes that, if a reduced porting interval was adopted, carriers may need additional time to modify and test their systems and procedures. Accordingly, the FNPRM seeks comment on an appropriate transition period in the event a shorter porting interval is adopted.

16. Throughout the FNPRM the Commission emphasizes in its request for comment, the individual impacts on carriers as well as the critical competition goals at the core of this proceeding. The Commission will consider all of the alternatives contained not only in the FNPRM, but also in the resultant comments, particularly those relating to minimizing the effect on small businesses.

F. Federal Rules That Overlap, Duplicate, or Conflict With the Proposed Rules

17. None.

Ex Parte Presentations

18. This is a "permit but disclose" proceeding pursuant to § 1.1206 of the Commission's rules. Ex parte presentations that are made with respect to the issues involved in the Petition will be allowed but must be disclosed in accordance with the requirements of § 1.1206(b) of the Commission's rules.

19. Comments filed through the ECFS can be sent as an electronic file via the Internet to *http://www.fcc.gov/e-file/ecfs.html*. Generally, only one copy of an electronic submission must be filed. In completing the transmittal screen, filing parties should include their full name, Postal Service mailing address, and the applicable docket number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, parties should send an e-mail to *ecfs@fcc.gov*, and should include the following words in the body of the message, "get form <your e-mail address>." A sample form and directions will be sent in reply. Commenters also may obtain a copy of the ASCII Electronic Transmittal Form (FORM–ET) at *http://www.fcc.gov/e-file/email.html*.

20. Parties who choose to file by paper must file an original and four copies of each filing. Each filing should include the applicable docket number. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Natek, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW., Washington, DC 20554. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

21. Parties who choose to file by paper should also submit their comments on diskette. These diskettes should be submitted to the Commission's Secretary, Marlene H. Dortch, Office of the Secretary, Federal Communications Commission. The Commission's contractor, Natek, Inc., will receive hand-delivered or messenger-delivered diskette filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to: 445 12th Street, SW., Washington, DC 20554. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission. Such a submission should be on a 3.5-inch diskette formatted in an IBM compatible format using Word for Windows or compatible software. The diskette should be accompanied by a cover letter and should be submitted in "read only" mode. The diskette should be clearly labeled with the commenter's name, the docket number of this proceeding, type of pleading (comment or reply comment), date of submission, and the name of the electronic file on the diskette. The label should also include the following phrase "Disk Copy—Not an Original." Each diskette should contain only one party's pleading, preferably in a single electronic file. In addition, commenters must send diskette copies to the Commission's copy contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554.

22. Alternative formats (computer diskette, large print, audio recording and Braille) are available to persons with disabilities by contacting Brian Millin, of the Consumer and Governmental Affairs Bureau, at (202) 418–7426 (voice) or (202) 418–7365 (TTY), or at *bmillin@fcc.gov*.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 03–30542 Filed 12–9–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 03–3746; MB Docket No. 03–175; RM–10719]

Radio Broadcasting Services; Rising Star, TX

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; dismissal.

SUMMARY: In this document, the Commission dismisses a petition for rule making filed by Charles Crawford ("Petitioner"), requesting the allotment of Channel 290C3 at Rising Star, Texas. *See* 68 FR 47283, August 8, 2003. Petitioner's comments were late-filed with no request to accept on a late-filed basis. Although timely filed, a counterproposal filed by Katherine Pyeatt was dismissed as unacceptable due to a short spacing to a licensed station. With this action, this proceeding is terminated.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Media Bureau. (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MB Docket No. 03–175, adopted November 21, 2003, and released November 26, 2003. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center, 445 12th Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Natek, Inc., Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 202–863–2893, facsimile 202–863–2898.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 03–30544 Filed 12–9–03; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 223, 224, and 660

[Docket No. 031125294–3294–01; I.D. 102903C]

RIN 0648–AP42

Fisheries Off West Coast States and in the Western Pacific; Highly Migratory Species Fisheries

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes regulations to implement the Fishery Management Plan for U.S. West Coast Fisheries for Highly Migratory Species (FMP), which was submitted by the Pacific Fishery Management Council (Pacific Council) for review and approval by the Secretary of Commerce.

DATES: Comments must be received by January 26, 2004.

ADDRESSES: Comments should be sent to Rodney R. McInnis, Acting Administrator, Southwest Region, NMFS, 501 West Ocean Boulevard, Suite 4200, Long Beach, CA 90802.

Copies of the FMP, environmental impact statement (EIS), regulatory impact review (RIR), and an initial regulatory flexibility analysis (IRFA) may be obtained from Donald O. McIsaac, Executive Director, Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 200, Portland, OR 97220–1384. Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this proposed rule may be submitted to Svein Fougner, Southwest Region, NMFS, 501 West Ocean Boulevard, Suite 4200, Long Beach, CA 90802, and by e-mail to *David_Rostker@omb.eop.gov*, or faxed to 202–395–7285.

FOR FURTHER INFORMATION CONTACT: Svein Fougner, Sustainable Fisheries Division, NMFS, at 562–980–4040.

SUPPLEMENTARY INFORMATION: The Pacific Council prepared the FMP under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), 16 U.S.C. 1801 *et seq.* On January 18, 2002, a notice of availability of a Draft Environmental Impact Statement for the FMP was published in the **Federal Register** (67 FR 2651). The Pacific Council held 7 public hearings on the FMP from January 28, 2002, to February 4, 2002, in the States of Washington, Oregon, and California. At its March 2002 meeting in Sacramento, CA, the Pacific Council reviewed public comments received at the hearings, considered written and oral comments, and adopted preliminary preferred alternatives for some issues, leaving its decision on other alternatives for a future meeting. At its October-November 2002 meeting in Foster City, CA, the Pacific Council adopted all of its preferred alternatives and voted to submit the FMP for Secretarial review.

Among the preferred alternatives was a provision to allow longline fishing targeting swordfish east of 150° W. longitude (long.). Before the final FMP document was submitted, however, NMFS informed the Pacific Council at its March 2003 meeting in Sacramento, CA about potential impacts of the fishery under the preferred alternative on endangered sea turtles. NMFS asked the Pacific Council to delay submission of the FMP to provide time for a rigorous scientific analysis of recently collected observer data, and review of the results by the Pacific Council and its advisory bodies, prior to final completion and submission of the FMP. Those data indicated that take rates of sea turtles in the longline fishery in the eastern Pacific were similar to those in the western Pacific, and if those rates were representative of what could be expected in the fishery, there could be excessive sea turtle takes under the Pacific Council's preferred alternative. At the Pacific Council's June 2003 meeting in Foster City, CA, NMFS presented reports on the catch rates of turtles in the longline fishery and the results of the scientific analysis of the data. NMFS informed the Pacific Council that allowing longline fishing targeting swordfish east of 150° W. long. may not provide sufficient protection to endangered and threatened sea turtles. Therefore, this alternative might not be approved. The Pacific Council then heard reports from its advisory bodies and public comments and concluded that the FMP should be submitted without changing any of its preferred alternatives. The Pacific Council then completed the final FMP and submitted it for Secretarial review. A Notice of Availability of the FMP was published in the **Federal Register** at 68 FR 62763, November 6, 2003.

The FMP that would be implemented by this proposed rule is intended to address concerns about the effect of fishing on highly migratory species (HMS) off the U.S. West Coast and on ocean resources caught incidentally to fishing for HMS. The fish species included in the management unit are tuna (yellowfin, bigeye, skipjack, albacore, and northern bluefin), billfish (striped marlin and swordfish), oceanic sharks (common thresher, bigeye thresher, pelagic thresher, shortfin mako, blue), and dorado (also commonly known as mahi mahi and dolphinfish). Other species ranging throughout the Pacific Ocean throughout the Pacific are taken incidental to fishing for HMS but are not in the management unit. A significant amount of information exists on some species, such as some of the tunas, but comprehensive stock assessments are needed for many species, which are harvested by numerous coastal and distant-water fishing nations throughout the Pacific. United States fishermen fish HMS in the U.S. exclusive economic zone (U.S. EEZ), in the exclusive economic zones of other nations, and on the high seas.

Marine mammals, sea turtles, and sea birds also are occasionally caught incidental to fishing for HMS by some gear types. The effect on such species of takes by fishing gear is a problem throughout the Pacific Ocean, and the United States has in many cases already taken action under the authority of the Magnuson-Stevens Act, the Endangered Species Act (ESA) and the Marine Mammal Protection Act (MMPA) to minimize or mitigate the impact of U.S. fisheries on these resources. The FMP would provide additional protective measures for West Coast HMS fisheries.

The FMP, if approved, would directly impose certain conservation and management measures on the fisheries as well as provide a procedural framework for future management actions that might be necessary as the international and U.S. fisheries change.

Management Unit Species

The FMP is intended to ensure conservation and promote the achievement of optimum yield of those HMS that are defined as management unit species in the FMP. The FMP is designed to conserve HMS throughout their individual ranges, both within and beyond the U.S. EEZ to the extent practicable, recognizing that management authority of all species falls within many jurisdictions. The Pacific Council reviewed 6 alternatives for designating management unit species. As indicated, the proposed species to be managed are striped marlin and swordfish; common, pelagic, and bigeye thresher shark, shortfin mako (bonito) shark), and blue shark; north Pacific albacore, yellowfin, bigeye, skipjack, and northern bluefin tuna; and dorado. Other groupings of species (e.g., excluding dorado or excluding bigeye and pelagic thresher sharks) are included in the FMP as alternatives to the preferred alternative, and public comment is sought on what species should be in the management unit.

Tuna

Some tuna species are highly productive and are harvested by fishing fleets of many countries. For example, yellowfin and bigeye tuna are harvested by the United States, Mexico, Costa Rica, and other coastal states in Central and South America. Harvest limits for yellowfin and bigeye tuna in the eastern Pacific are set by the Inter-American Tropical Tuna Commission (IATTC) and not by NMFS through the FMP. However, the decisions made by the IATTC regarding harvest limits and the basis for those decisions would be available to the Pacific Council for its review. Opinions of the Pacific Council on international management would be forwarded to the U.S. State Department through NMFS. If allocations among U.S. fishermen became necessary as a result of decisions by the IATTC, the Pacific Council would be the body with the responsibility to make recommendations to NMFS regarding implementation. A similar arrangement would be utilized by NMFS for any fishery in which an international organization is involved. No harvest limits for bluefin tuna, skipjack tuna, or north Pacific albacore are proposed by the FMP at this time, although a maximum sustainable yield for each species of tuna is contained in the FMP. Unilateral harvest limits for these species would have no practical effect, given the international nature of the fisheries for these species and the low portion of total catches for which the U.S. fleet is responsible in most cases. However, if international action to limit harvests is agreed to, then the Pacific Council may play a role in implementing such limits with respect to U.S. fisheries.

Sharks

Most sharks are less productive than other HMS and are vulnerable to overfishing. Although shark species included in the management unit range throughout the Pacific Ocean and are not being overfished, the FMP proposes to adopt harvest limits off the Pacific coast for common thresher of 340 metric tons (mt) and shortfin mako of 150 mt to prevent local depletion. The thresher shark harvest guideline is lower than the recommended harvest limit set in the tri-state fishery management plan for this species developed by the States of California, Oregon, and Washington. The justification for a more conservative approach in the FMP is the result of an analysis of historical harvests explained in Chapter 3 of the FMP, which contains an estimate of a local maximum sustainable yield that is less than that contained in the tri-state plan. No harvest limit is proposed for pelagic thresher shark, bigeye thresher shark or blue shark. Public comment is sought on this approach and whether harvest limits should be placed on other species.

Other Species

No harvest limits are proposed for striped marlin, dorado, or swordfish. Again, unilateral limits for U.S. fisheries would have no beneficial effect, given the international nature of the fisheries and the small share of total catch made by U.S. vessels. Like many HMS, striped marlin off the Pacific coast is at the northern limit of its range off California. The sale of striped marlin would be prohibited to prevent commercial targeting of this species, which has such high value for recreational fisheries. This species has been a target of recreational fisheries for decades. The proposed limit on the sale of marlin contained in the FMP continues a prohibition that has been in California law since the 1930s.

Fishing Gear Employed

HMS are harvested off the West Coast by five commercial gear groups and various recreational fisheries. Under the FMP, the authorized commercial gears are surface hook-and-line, drift gillnet, longline, purse seine, and harpoon. Recreational anglers would be allowed to pursue HMS from commercial passenger fishing vessels and from private boats with hook-and-line gear.

The definition of fishing gear is important because gear not defined in regulations implementing the FMP would not be legal gear. For example, mousetrap gear, which is a free floating hook-and-line gear, is not defined in this proposed rule and would not be legal. Likewise, if a drift gillnet is defined as having a mesh size of at least 14 inches (35.56 cm), which is the proposed action in the FMP, any net with a smaller mesh size would not be legal and could not be fished from Pacific coast ports for HMS. This issue is discussed in section 9.2.4.1 of the FMP and in Major Issues below.

Major Issues

1. Management of Longline Fishery

The preferred alternative with regard to longline fishing is to (1) prohibit longline fishing in the U.S. EEZ; (2) adopt, for longline vessels fishing west of 150° W. long., all of the restrictions that apply to longline vessels fishing with a limited entry permit under the Fishery Management Plan for the Pelagic Fisheries of the Western Pacific Region (Pelagics FMP); and (3) adopt, for longline vessels fishing outside the U.S. EEZ and east of 150° W. long., the same restrictions as those that apply to longline vessels fishing with a limited entry permit under the Pelagics FMP, except that the restrictions that prevent shallow sets for swordfish would not apply.

The restrictions preventing shallow sets for swordfish in the central and western Pacific were designed to reduce the impact on threatened and endangered sea turtles taken incidental to swordfish sets. After being presented with available information on the frequency of sea turtle interactions expected under different fishing scenarios, however, the Pacific Council felt that there was not sufficient information available in the eastern Pacific to justify prohibiting swordfish sets east of 150° W. long. Further, the Pacific Council concluded that it could not reasonably estimate the impacts (reduced sea turtle takes, reduced swordfish catches, etc.) if there were partial limits such as time/area closures. Therefore, the FMP proposes that longline vessels be able to target swordfish in the eastern Pacific east of 150° W. long. These vessels would have to comply with all other restrictions, including the requirements to maintain a vessel monitoring system (VMS) on board the vessel, use line clippers and dip nets for turtle release, and use seabird avoidance gear and techniques as in waters west of 150° W. long., as well as complying with the proper handling of sea turtles and seabirds.

This approach would establish consistency with regulations in waters west of 150° W. long. while minimizing the economic impact on vessels fishing from West Coast ports; however, regulations east of 150° W. long. would be different. This is a serious issue for NMFS. Based on available observer data, NMFS is concerned that allowing shallow sets for swordfish east of 150° W. long. may not comply with the ESA; therefore, this measure is at risk of not being approved.

A formal consultation under section 7 of the ESA has been initiated on the effects of the fisheries as they would

operate under the FMP. The consultation will include a review of the impact of all fishing gear regulated by the FMP, the impact of other domestic fishing fleets as they now operate, and the most recent information on the status and trends of sea turtle populations. A biological opinion will be written, and if a jeopardy conclusion is reached, a reasonable and prudent alternative will be provided to the Pacific Council that will be designed to provide sufficient protection for endangered and threatened sea turtles. Even if there is not a jeopardy conclusion, the biological opinion may include reasonable and prudent measures and conservation recommendations to reduce or mitigate sea turtle interactions. Also, an incidental take statement will be issued that may set terms and conditions on fishing to reduce or mitigate sea turtle interactions. The biological opinion will thus provide NMFS and the Pacific Council with information that could be used to develop framework measures under the FMP that would further address the impact of longline fishing on endangered and threatened sea turtles. Finally, it is noted that the observer coverage anticipated under the FMP will greatly improve the information base for future management actions.

A section 7 consultation also has been initiated concerning the potential impacts of the fisheries under the FMP on other species. The FMP requires that longline fishers use seabird avoidance gear and techniques, as is required for central and western Pacific longline fishers. This consultation is scheduled to end on the same time frame as the consultation with respect to species under NMFS jurisdiction.

2. Management of Drift Gillnet Fishing

Drift gillnet fishing is currently regulated by the states and by regulations implementing the MMPA and the ESA. The preferred alternative in the FMP is to incorporate under Magnuson-Stevens Act authority the gear and time/area closures currently in state and ESA regulations into the regulations implementing the FMP. Therefore, state area closures that extend into the U.S. EEZ are included in this proposed rule. Gear restrictions in state regulations and in NMFS regulations under the ESA to protect sea turtles are included as well. The California limited entry program for drift gillnet gear is not included in this proposed rule because the Pacific Council decided not to address overcapitalization issues at this time; however, the California limited entry program would remain in effect under State of California regulations.

Regulations establishing a Take Reduction Plan for drift gillnet vessels that includes specifications for extender lines and pingers, an acoustical device attached to the net, and skipper education workshops can be found at 50 CFR 229.30 and 229.31. These regulations would remain in effect when the FMP is implemented and would not be moved to the section of the CFR that implements the FMP. However, it is anticipated that the Pacific Council will be provided the opportunity to participate in the Take Reduction Team process to ensure that the Take Reduction Team process and recommendations and the FMP process and actions are carried out in a coordinated manner.

Endangered and threatened sea turtles are defined as fish by the Magnuson-Stevens Act. Area and seasonal closures designed to protect sea turtles in the drift gillnet fishery that are currently in effect at 50 CFR 223.206 would be moved to CFR 660 subpart K. The ESA section 7 consultations will address the impacts of drift gillnet fishing on all listed species.

The FMP defines drift gillnet gear as 14–inch (35.56–cm) stretched mesh or greater. A drift gillnet vessel with a mesh size less than 14 inches (35.56 cm) would not be able to target HMS. An incidental landing of 10 HMS per trip, other than swordfish, would be allowed to minimize bycatch of HMS while fishing for state managed species.

3. Permits

This proposed rule would require all commercial vessels fishing for HMS to obtain a permit with an endorsement for the specific gear to be used. A permit would also be required for all recreational charter vessels and commercial passenger carrying fishing vessels (CPFV) fishing for HMS. Other alternatives analyzed in the FMP include a general permit without a gear specification and a permit system that includes all recreational vessels. The purpose of a permit is to identify the vessels in the HMS fisheries so that surveys can be made when management information is required and to notify all participants of potential management actions affecting the fisheries. Permits based on gear type make surveys more efficient because landing and economic information is often needed for specific gear types. Permits would be issued to the owner of a specific vessel. Data would be maintained so that landings by the permitted vessel or by the owner of the vessel can be summarized, which would give the Pacific Council flexibility in determining qualifications for limited entry permits if the Pacific Council should decide to develop a limited entry program. No Federal limited entry program is being proposed at this time because the Pacific Council does not have sufficient information to determine the need for such a program; however, the Pacific Council has assigned its HMS Management Team to begin evaluating a limited entry program for longline vessels fishing from West Coast ports. A limited entry program would require substantial analysis and an amendment to the FMP.

Permits are currently required for vessels fishing on the high seas under the authority of the High Seas Fishing Compliance Act of 1995 and for longline vessels fishing under the authority of the Pelagics FMP. In compliance with United States obligations under the Tuna Conventions Act of 1950, NMFS is also providing information to the Inter-American Tropical Tuna Commission (IATTC) for an international vessel register including all U.S. vessels that fish tuna in the eastern Pacific Ocean. Thus, a list of vessels that would likely fall under the jurisdiction of the FMP has been completed by the Southwest Region, NMFS. The regulations propose issuing HMS permits to all individuals on this list. There would be no qualification requirements for a permit. Vessel owners who have not received a permit to harvest HMS by 60 days following the effective date of the final regulations would have to apply for an HMS permit. All vessels would need an HMS permit by January 1, 2005. There would be no cost to fishermen for this permit.

4. Recording and Recordkeeping

The proposed rule would require all commercial and recreational charter vessels and CPFV to maintain a logbook of catch and effort statistics for their HMS fishing under their permits to be submitted to the Regional Administrator following the end of a fishing trip. The proposed rule allows state logbooks to meet the Federal reporting requirement if those logbooks are submitted on time and provide the required information and if the information is available to the Regional Administrator by agreement with that state. Federal logbooks are now required for: vessels fishing on the high seas under the authority of the High Seas Fishing Compliance Act of 1995, vessels fishing tuna under the authority of the Tuna Conventions Act of 1950, and vessels fishing under the authority of the regulations implementing the Pelagics FMP. A Federal logbook for troll vessels fishing albacore, which is currently voluntary, would be required under the FMP. The State of California requires a logbook for harpoon vessels, drift gillnet vessels, and CPFVs. The State of Oregon requires a logbook for drift gillnet vessels. These state logbooks, which are tailored to specific gear types, would be acceptable under these regulations. Duplicate logbooks would not be required.

5. Bycatch

A number of provisions are included in the FMP to measure and reduce bycatch and to provide better information to assess the amount and type of bycatch in HMS fisheries. The proposed standardized reporting system for bycatch assessment is to initially require that longline, surface hook-and-line, small purse seine fisheries, and recreational charter vessels carry observers when directed by the Regional Administrator. An observer program is already in effect for drift gillnet vessels and longline vessels, though coverage needs to be expanded for the latter. In consultation with the Pacific Council, its advisory bodies, and the fishery participants, NMFS will develop initial observer coverage plans for these fisheries, which will be completed 60 days following approval of the FMP. The observer coverage plans for these fisheries may be adjusted as the initial data is assessed and more is learned about the levels of coverage necessary to obtain statistically reliable data on bycatch in the various fisheries. In the longer term, NMFS will develop observer sampling plans for private recreational vessels to assess potential ways of improving information on managed species and on the quantity of bycatch in recreational fisheries.

The FMP identifies a variety of measures already in effect (e.g., drift gillnet mesh size, time and area closures for certain gear types) to prevent or reduce bycatch and evaluates the practicability of additional bycatch reduction measures.

6. Management Organizations

There is no single, pan-Pacific institution that manages all HMS throughout their ranges. The IATTC adopts conservation measures for yellowfin and bigeye tunas in the eastern Pacific Ocean. Member nations of the IATTC, including the United States, are obligated to implement IATTC conservation measures for their national fisheries. On September 5, 2000, the Convention on Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean was opened for signature by the coastal nations of the western and central Pacific and nations fishing in that region. The Convention has not yet entered into force and has not been ratified by the United States, but it would establish a commission empowered to adopt management measures for HMS throughout their ranges in the central and western Pacific. The IATTC and the new western Pacific commission may play important roles in managing West Coast-based HMS fisheries.

In 1981, the United States and Canada signed the Treaty on Pacific Coast Albacore Tuna Vessels and Port Privileges, which allows fishing vessels of each nation to fish for albacore tuna in waters of the other nation beyond 12 nautical miles. Recently, U.S. albacore fishermen have become concerned about the increased effort by Canadian vessels in U.S. waters and the lack of information on the amount of albacore taken by Canada. The United States engaged in negotiations with Canada on these issues, which resulted in a treaty amendment in July 2002. The United States can promulgate regulations to implement the amended treaty if the U.S. Congress enacts legislation authorizing the promulgation of regulations.

Within the United States, three regional fishery management councils have management responsibility for HMS in the Pacific Ocean: the Pacific, the North Pacific, and the Western Pacific Fishery Management Councils. The Western Pacific Fishery Management Council manages highly migratory species in the central and western Pacific under the authority of the Pelagics FMP. Many of the same stocks of HMS are harvested in separate jurisdictions. In some cases vessels are fishing in the same areas but landing in different jurisdictions, where there may be different management objectives and management measures.

Effective management of HMS in the Pacific will require the Pacific Council to be fully informed of management actions being considered in the international organizations affecting HMS and will require the Pacific Council to coordinate its activities with the Western Pacific Fishery Management Council and North Pacific Fishery Management Council. Although management objectives may differ in the respective areas, consistency is expected to be achieved by NMFS to meet the requirements of the Magnuson-Stevens Act while giving full consideration to local needs.

7. Protected Species and the Framework Process

Drift gillnet and longline vessels encounter endangered and threatened sea turtles and marine mammals during fishing operations, and longline vessels encounter significant numbers of birds. Measures to prevent jeopardy and minimize the impacts on these species have been implemented through regulations under the authority of the MMPA and the ESA. Area closures and special equipment apply to drift gillnet vessels. There is much less information about the extent or nature of interactions with sea turtles and seabirds by vessels engaged in purse seine fishing for tuna, harpoon fishing for swordfish, and trolling for albacore. However, available information indicates that interactions are very rare. The FMP mandates observer coverage to ensure a sound scientific basis for determinations of interactions and impacts and consideration of management adjustments if necessary and appropriate. It is possible that additional data will show that other fishing gear used to harvest highly migratory species has an impact in protected species. The FMP recognizes that the Pacific Council is the body best suited to weigh and consider all potential impacts on fishing for HMS from West Coast ports. The FMP includes framework procedures by which the Pacific Council can consider the need for additional actions as new information becomes available, e.g., observer data demonstrating a protected species interaction problem. The framework process explicitly includes the potential for action to conserve and protect species of special concern.

Section 118(f)(9) of the MMPA authorizes the Assistant Administrator for Fisheries (AA) to promulgate regulations governing commercial fishing operations to implement a take reduction plan to protect or restore a marine mammal stock or species. Likewise, vessels fishing for highly migratory species may have an impact on threatened or endangered species, which could require action by the Assistant Administrator under the authority of the ESA. The Pacific Offshore Cetacean Take Reduction Team established under the MMPA reviews fishery and observer data and provides guidance to NMFS on actions needed to protect marine mammals. The Southwest Regional Administrator will provide these reports to the Pacific Council for recommendations on whether and how best to implement any necessary measures. If appropriate, the Pacific Council will utilize the

framework processes in the FMP to address these issues to the extent FMP regulations are appropriate. This process does not prevent the AA from taking action under the authority of the MMPA and the ESA independent of the Pacific Council process.

The Pacific Council submitted draft regulations with the FMP as required by the Magnuson-Stevens Act. While technical changes have been made for clarity and compliance with requirements of the Office of the **Federal Register**, no substantive changes in the regulations have been made.

Classification

At this time, NMFS has not determined that the FMP this proposed rule would implement is consistent with the national standards of the Magnuson-Stevens Act and other applicable laws. NMFS, in making that determination, will take into account the data, views, and comments received during the comment period.

The Pacific Council prepared the FMP in the format of a final environmental impact statement (FEIS) consistent with the National Environmental Protection Act (NEPA). NOAA expects to file the FEIS with the Environmental Protection Agency after Secretarial review of the FMP has begun but before final action to approve, disapprove, or disapprove in part the FMP. The FMP contains a framework management process that facilitates timely implementation of management measures by the Pacific Council without amending the FMP. This will allow the Pacific Council and NMFS to act quickly to address resource conservation issues. Maximum sustainable yield is established for all managed species to ensure compliance with the Magnuson-Stevens Act, although some species are also managed by international organizations and come within the jurisdiction of other fishery management councils. Consistency of management to ensure effective conservation and management is a goal of the FMP. Harvest limits are established for common thresher and mako shark to prevent local depletion. Although highly migratory, evidence indicates that local depletion of these sharks can occur and would have an impact on these species and the fisheries involved. To protect endangered turtles and protected seabirds, the FMP makes regulations governing longline fishing from West Coast ports consistent with the rules established for longline vessels fishing out of Hawaii, when West Coast vessels are fishing west of 150° W. long.; therefore, all U.S. fishermen must adhere to the same conservation measures in these waters regardless of jurisdiction. However, in waters east of 150° W. long., West Coast longline vessels would not be subject to the same limitation as western Pacific vessels. The impacts of this approach, both with respect to implications for effective management and with respect to ESA issues, will be fully evaluated through the review of the FMP and the section 7 consultations described above. Rules governing drift gillnet fishing issued under the authority of the ESA are incorporated in the FMP. Incorporating rules in the FMP issued under other authorities will ensure wider public review of management issues and broader analysis. Permit and reporting requirements of the FMP build on existing programs to obtain sufficient information needed for management while minimizing duplication.

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

NMFS prepared an IRFA that describes the economic impact this proposed rule, if adopted, would have on small entities. The IRFA is available from NMFS (see **ADDRESSES**). A summary of the IRFA follows:

A fish-harvesting business is considered a "small" business by the Small Business Administration (SBA) if it has annual receipts not in excess of $3.5 million. For related fish-processing businesses, a small business is one that employs 500 or fewer persons. For marinas and charter/party boats, a small business is one with annual receipts not in excess of $5.0 million.

Fishing vessels targeting HMS are expected to be the only types of small entities directly impacted by the proposed actions. Any regulatory action under the FMP that would result in a reduction in domestic landings of HMS are expected to be offset at the processor level by imports at comparative prices. None of the initial regulatory alternatives considered are expected to add to the costs or reduce revenues of marinas and charter/party boats. Only the permit and logbook requirements described below would add additional reporting.

A description of the action, why it is being considered, and the legal basis for this action are contained in the **SUMMARY** and elsewhere in the **SUPPLEMENTARY INFORMATION** of this proposed rule and are not repeated here.

The FMP proposes management of 5 commercial fishing fleets and a fleet of recreational charter vessels. Each fleet has its own gear requirements, each has a differential impact on ocean resources, and each has different economic circumstances. The FMP authorizes commercial legal HMS gear as harpoon, surface hook and line, drift gillnet of at least 14–inch (35.56–cm) stretched mesh or greater, purse seine, and pelagic longline. The FMP authorizes rod and reel, spear, and hook and line as recreational gear. An alternative for drift gillnet gear was to allow stretched mesh less than 14 inches (35.56 cm).

The proposed alternative of requiring 14–inch (35.56–cm) stretched mesh or larger is consistent with the historic use of drift gillnet used to target swordfish and sharks. Fishermen estimated that there may be as many as 8–10 vessels that occasionally use small-mesh drift gillnets when albacore and bluefin tuna are available. There could be as many as 20 vessels that might have fished small-mesh drift gillnets at one time or another, based on landing receipts for drift gillnet vessels landing albacore and bluefin tuna, but not swordfish. Vessels fishing small mesh drift gillnet gear would be restricted to landing HMS only as an incidental catch. The economic impact on the four vessels that have been documented as using small mesh drift gillnets amounts to between 20 percent and 48 percent of gross receipts. These vessels landed between 1.0 and 15.0 mt of albacore and 0.0 to 3.0 mt of bluefin tuna during the 2001 season. The vessels might make up for the lost revenue through other small mesh gillnet fisheries or simply return to using large mesh nets because all four vessels also currently possess permits for use of the larger mesh gear. Vessels currently fishing large mesh nets would suffer no economic loss under this alternative as they would not need to modify their gear or current fishing practices. The opportunity for albacore surface hook-and-line vessels to deploy small mesh drift gillnet gear to target albacore while on overnight trips would be preempted under this alternative. Loss of this opportunity would prevent realization of potential efficiency gains from landing more albacore per unit of time on the water.

For drift gillnet vessels using nets with 14–inch (35.56–cm) or greater stretched mesh, the FMP adopts all Federal conservation and management measures in place under the MMPA and ESA; adopts all state regulations for drift gillnet fishing under Magnuson-Stevens Act authority, except the states' limited entry programs, which will remain under state authority; modifies an Oregon closure inside 1000 fathoms to be in effect year round; closes U.S. EEZ waters off Washington to all drift gillnet vessels; and includes provisions (as in current ESA regulations) to establish a turtle protection closure north of Point Sur, CA to 45° N. lat. from August 15 to November 15, and south of Pt. Conception, CA to 120° W. long. during a forecasted or occurring El Nino event in the months of June, July, and August. Existing Federal and state regulations, including current state drift gillnet time-area closures and gear restrictions were deemed appropriate for adopting. However, the Pacific Council concluded that incorporating under MSA authority the existing state limited entry programs would significantly increase Federal costs and administrative burdens and was premature. The Pacific Council may consider limited entry under the FMP in the future and has already asked its plan team to begin consideration of limited entry for the West Coast longline fishery. Closures off Washington and Oregon are intended to protect the common thresher shark, sea turtles and marine mammals. This alternative modifies the current state regulations to prohibit, year round, drift gillnet fishing for swordfish and sharks in U.S. EEZ waters off Oregon east of a line approximating the 1,000 fm curve (deleting an existing May-August prohibition within 75 nautical miles) and prohibits drift gillnet fishing in all U.S. EEZ waters off Washington. The State of Washington currently does not allow the use of drift gillnet gear and Oregon does not allow drift gillnets to target thresher shark, although drift gillnet vessels have fished off both states and landed their catch in California.

Approximately 64 vessels actively participate in the drift gillnet fishery off the U.S. West Coast (see table below). All of these vessels would be considered small businesses under the SBA standards. Therefore, there would be no disproportionate financial impacts between small and large vessels under the proposed action.

TOTAL EX-VESSEL REVENUE AND DEPENDENCE ON SWORDFISH FOR THE 64 DRIFT GILLNET VESSELS WITH LANDINGS IN 2001.

Number of Vessels	Dependence on Drift Gillnet Caught Swordfish (category of swordfish revenue/total revenue)	Average Total Ex-vessel Revenue ($/vessel)	Average Percent Drift Gillnet Swordfish (swordfish revenue/total revenue)
9	< percent	$131,171	2.07 percent
3	< 5 - 10 percent	$80,661	6.51 percent
6	> 10 - 15 percent	$204,164	12.48 percent
8	> 15 - 20 percent	$113,173	17.88 percent
8	> 20 - 25 percent	$78,063	22.43 percent
4	> 25 - 30 percent	$58,497	26.78 percent
5	> 30 - 40 percent	$88,168	37.37 percent
4	> 40 - 50 percent	$142,637	43.72 percent
5	> 50 - 60 percent	$85,076	55.02 percent
8	> 60 - 70 percent	$57,054	65.62 percent
4	> 70 percent	$3,834	87.43 percent

Financial or private costs, and measures of fishing performance are those costs and performance measures faced by individual vessel owners. Short-run, financial or private profit realized by vessel owners from participation in the swordfish/shark gillnet fishery was calculated as the difference between the annual private costs incurred during swordfish/shark fishing operations — the annual variable costs associated with swordfish/shark fishing — and the total ex-vessel revenue generated from the vessel's annual landings from swordfish/shark fishing. Only short-run measures of financial and economic performance were calculated because many vessels typically engage in other types of fishing, and there is no reasonable basis for allocating fixed and common costs across types of fishing, i.e. across drift gillnet, surface hook-and-line, or others. These are costs that do not vary with the level of fishing activity and cannot be assigned to a single type of fishing or output. Under these circumstances common or fixed costs are excluded from the short-run net benefit and financial profit calculations for each management alternative. Although drift gillnet vessels harvest a number of species and will use alternative gears, no attempt was made to evaluate potential changes in fishing strategies by these vessels in response to different opportunities to harvest HMS under each of the regulatory alternatives, and what this would mean in terms of operating costs and ex-vessel revenues under alternative fishing strategies.

Financial impacts of each drift gillnet regulatory alternative were evaluated based on incremental changes from the status quo; i.e., the difference between drift gillnet ex-vessel private profits under the proposed action and drift gillnet private profits under the status quo. The following table reports the estimated incremental changes in short-run financial profits for drift gillnet vessels for each regulatory alternative relative to the status quo. Financial impacts are evaluated as the present value of changes in short-run financial profits over a 25 year time period discounted at 7 percent and 4 percent discount rates. In column two, the present value of the change in average annual short-run financial profit from the status quo (from column three) is calculated for a 25–year time horizon at 7 percent and 4 percent discount rates. Column three reports the difference in estimated average annual short-run financial profit the difference between average annual exvessel revenue and average annual variable costs - under the alternative being considered and the average annual short-run financial profit under the status quo alternative. The discount rate is the rate of interest at which the cash flows associated with the proposed policy are to be discounted. The choice of discount rate reflects social time preference and the opportunity cost of resources that are used under the policy. Social time preference tends to discount the future less heavily than private time preference, while opportunity cost considerations tend to weigh against using lower discount rates for public policies for fear of preempting higher valued private use of the appropriated resources.

The estimated changes in financial profit are based on cost and earnings surveys of industry members. For the drift gillnet fishery, 42 vessel owners (about half the active fleet) responded by providing 2 years of data each. The response rate was sufficient to provide a robust analysis.

The following abbreviations are used in the tables summarizing the analyses:

NQ+ = non-quantifiable positive, NQ- = non-quantifiable negative, NC = no change from status quo, and UN = unknown and NA = not applicable.

Alternative	Change in the Present Value of Short-Run Financial Profits Relative to the Status Quo (25–Year Time Horizon)	Average Annual Change in Short-Run Financial Profits Relative to the Status Quo
Drift Gillnet Alternative 1: Continues the swordfish/shark DGN fishery regulations under current state and Federal authorities. (Status quo/No action)	NC	NC
Drift Gillnet Alternative 2: Differs from status quo with the imposition, on all DGN fishers, of a year round Oregon closure inside 1000 fm (or way point equivalent), elimination of the May-August closure inside 75 miles off Oregon, and the closure of U.S. EEZ waters off Washington. (Proposed Action)	NA	-$56,769
7–percent Discount Rate	-$661,557	NA
4–percent Discount Rate	-$886,843	NA
Drift Gillnet Alternative 3: Endorses or adopts only existing Federal (MMPA, ESA) DGN regulations into FMP; defers to state regulations; no difference from status quo.	NA	NC
7–percent Discount Rate	NC	NA
4–percent Discount Rate	NC	NA
Drift Gillnet Alternative 4: Endorses or adopts all Federal conservation and management measures in place under the MMPA and ESA, and adopts state regulations under MSFCMA authority, but also includes and federalizes the states' limited entry programs; differs from status quo by the impact of federalizing states' limited entry programs.	NA	UN
7–percent Discount Rate	UN	NA
4–percent Discount Rate	UN	NA
Drift Gillnet Alternative 5: Adopts turtle time/area closures per Biological Opinion, including larger area closure north of Point Conception; differs from status quo by the impact of enlarging the closed area.	NA	-$247,764
7–percent Discount Rate	-$2,887,333	NA
4–percent Discount Rate	-$9,052,347	NA
Drift Gillnet Alternative 6: Prohibits the use of drift gillnets to take swordfish and sharks in any U.S. EEZ waters less than 1000 fm off Oregon *and* Washington; differs from status quo by the impact of closing this area.[2]	NA	$310
7–percent Discount Rate	$3,617	NA
4–percent Discount Rate	$4,848	NA
Drift Gillnet Alternative 7: Drift gillnets could not be used to take swordfish and sharks in any U.S. EEZ waters north of 45° N latitude year round, including times when the northern turtle closure is not in effect (Nov 16 to Aug 14); differs from status quo by the impact of closing this area.	NA	-$8,612
7–percent Discount Rate	-$100,365	NA
4–percent Discount Rate	-$134,544	NA
Drift Gillnet Alternative 8: Drift gillnetting would be prohibited inside 75 nm off Oregon from May 1 to August 14 and inside the 1,000 fm curve the rest of the year, and U.S. EEZ waters off Washington would be closed year round to all, including Oregon- and California-based DGN fishers; differs from the status quo by the impact of the closures off Oregon and Washington to all fishers.	NA	-$56,769
7–percent Discount Rate	-$661,557	NA
4–percent Discount Rate	-$886,843	NA

The impact on drift gillnet vessels under Alternative 2, the proposed action, primarily stems from rescinding the closure of the U.S. EEZ to fishing by Oregon vessels inside 75 nautical miles off Oregon from May 1 to August 14, closing waters inside the 1,000 fathom curve off Oregon, and the entire U.S. EEZ off Washington to all fishermen year round. These closures alone reduce the discounted value of short-run financial profits available to the fleet formerly fishing in those areas by $661,557 over 25 years at a 7 percent discount rate; or $886,843 over 25 years at a 4 percent discount rate. (The data used for the financial analysis of the Oregon and Washington closures were provided by 2 fishermen out of the 2–3 active fishermen operating in these areas and covered 2 years of fishing for both respondents.)

Although the absolute level of decline in short-run financial profits from this measure is comparatively small in relation to the entire fishery, the entire burden is borne by the 2–3 vessels that currently fish both swordfish and thresher sharks, but especially the latter using drift gillnet gear in these waters. Their lost opportunity represents a decline of 51 percent in their short-run financial profits.

The FMP establishes a prohibition on the use of pelagic longline gear in the U.S. EEZ. The proposed action continues the *de facto* longline prohibition throughout the U.S. EEZ and minimizes potential bycatch of fish and protected species, and reduces fishery competition problems. There are no vessels currently participating in a pelagic longline fishery within the U.S. EEZ off the U.S. West Coast. Although Oregon is the only state that allows pelagic longlining within the U.S. EEZ on a case by case basis, no landings have occurred. All of the Oregon vessels would be considered small businesses under the SBA standards; therefore, there would be no financial impacts resulting from disproportionality between small and large vessels under the proposed action.

Financial impacts of each pelagic longline regulatory alternative within the U.S. EEZ were evaluated based on incremental changes from the status quo; i.e., the difference between pelagic longline ex-vessel private profits under the proposed action and pelagic longline private profits under the status quo. Because there are no empirical financial data available for this fishery, comparisons are based on the application of economic theory to potential fishing opportunities arising from the regulatory alternatives. The following table reports the estimated incremental qualitative changes in short-run financial profits for vessels for each regulatory alternative relative to the status quo. The annual average change in short-run financial profits is also shown.

Alternative	Change in the Present Value of Short-Run Financial Profits Relative to the Status Quo (25–Year Time Horizon)	Average Annual Change in Short-Run Financial Profits Relative to the Status Quo
Pelagic Longline w/i the U.S. EEZ Alternative 1: Current state measures would remain in place under states' authorities and there would be no new Federal regulations governing longline use in the U.S. EEZ. (Status Quo/No Action)	NC	NC
Pelagic Longline w/i the U.S. EEZ Alternative 2: Establishes a general prohibition on the use of pelagic longline gear in the U.S. EEZ. (Proposed Action)	NC	NC
Pelagic Longline w/i the U.S. EEZ Alternative 3: Prohibits longlining within the West Coast U.S. EEZ by indefinite moratorium, with the potential for re-evaluation by the Pacific Council following completion of a bycatch reduction research program with pre-established strict protocols. Must prove negligible impact on protected and bycatch species. (Ocean Wildlife Campaign Proposal)	NQ+	NQ+
Pelagic Longline w/i the U.S. EEZ Alternative 4: Authorizes a limited entry pelagic longline fishery for tunas and swordfish within the U.S. EEZ, with effort and area restrictions, to evaluate longline gear as an alternative to DGN gear to reduce bycatch or bycatch mortality and protected species interactions. (Industry Proposal)	NQ+	NQ+
Pelagic Longline w/i the U.S. EEZ Alternative 5: Prohibits longlining within the West Coast U.S. EEZ with the potential for re-evaluation by the Pacific Council following completion of a tuna-swordfish-bycatch research experiment carried out under a qualified EFP to determine if longline gear can be fished in ways that produce bycatch and protected species interaction levels that are significantly less than by drift gillnets (a=0.05). (Plan Team Proposal)	NQ+	NQ+

There are not expected to be any financial impacts associated with Alternative 2 because it essentially represents the status quo. It would eliminate the Oregon longline fishery, authorized outside 25 nautical miles under the State's developmental fisheries program permit system. However, there are no active Oregon permits at the present time. This alternative would also eliminate the potential opportunity now available to West Coast based commercial fishermen for fishing off Oregon and California and landing in Oregon, which is currently not being exercised. The other alternatives offer potential increases in financial profits if it can be scientifically determined that there would not be an adverse impact on bycatch and protected species interactions.

Beyond the U.S. EEZ, the FMP applies to West Coast-based longline vessels all of the restrictions applied to Hawaii-based longline vessels when fishing west of 150° W. long., but applies selected restrictions to vessels fishing east of 150° W. long., which allows West Coast-based vessels to target swordfish east of 150° W. long. (except for a partial closure in April and May). Restrictions limit sea turtle and seabird interactions and improve monitoring of the fishery. Swordfish targeting would be allowed east of 150° W. long. for most of the year under the FMP, though the ESA section 7 consultations may result in a finding of jeopardy to one or more species listed under the ESA and alternative management measures may be necessary. The objectives of the proposed action provide for a longline fishing opportunity, giving due consideration to traditional participants in the fisheries, while providing adequate protection to sea turtles and seabirds.

A total of 38 vessels participated in the West Coast-based, high seas pelagic longline fishery during 2001 (see table below). All of these vessels would be considered small businesses under the SBA standards. Therefore, there would be no financial impacts resulting from disproportionality between small and large vessels under the proposed action.

TOTAL EX-VESSEL REVENUE AND DEPENDENCE ON SWORDFISH FOR THE 38 WEST COAST- VESSELS WITH HIGH SEAS PELAGIC LONGLINE LANDINGS IN 2001.

Number of Vessels	Dependence on High Seas Longline Caught Swordfish (category of swordfish revenue/total revenue)	Average Total Ex-vessel Revenue ($/vessel)	Average Percent Longline Swordfish (swordfish revenue/total revenue)
4	< 50 percent	$228,951	32.57 percent
3	50-70 percent	$170,067	60.99 percent
3	> 70-80 percent	$222,089	76.66 percent
4	> 80-90 percent	$258,335	86.77 percent
13	> 90-95 percent	$182,211	93.26 percent
11	> 95 percent	$219,885	97.57 percent

Financial impacts of each high seas pelagic longline regulatory alternative were evaluated based on incremental changes from the status quo; i.e., the difference between pelagic longline ex-vessel private profits under the proposed action and pelagic longline private profits under Alternative 1, the status quo. The following table reports the estimated incremental changes in short-run financial profits for pelagic longline vessels for each regulatory alternative relative to the status quo. Financial impacts are evaluated as the present value of changes in short-run financial profits projected over a 25 year time period, discounted at 7 percent and 4 percent discount rates. The annual average change in short-run financial profits is also shown. The changes in financial profit were estimated using cost and earnings data voluntarily provided by industry members. Owners of 6 vessels provided 2 years of data each; this was about 25 percent of the active fleet in that period.

Under the status quo, the FMP would not impose regulations on the high seas, West Coast-based pelagic longline fishery. Fishing could continue without regulations until regulations are established under other authorities. Therefore, without the FMP, the future of the West Coast-based pelagic longline fishery operating on the high seas is expected to be different from recent conditions. Swordfish is the target species of this fishery, and swordfish sets may be prohibited; gear restrictions (no light sticks, minimum depth of sets, line clippers to release sea turtles) would apply; and seabird avoidance methods would be required. Longline fishing targeting tuna on the high seas out of West Coast ports might then be an alternative if swordfish targeting is prohibited, but current participants in the fishery indicate that without being able to target swordfish, the high seas longline fishery originating from West Coast ports would cease to exist. In view of this likelihood, the estimated financial impacts relative to Alternative 1 assume that regulations are likely in the future that would prohibit West Coast-based pelagic longliners from targeting swordfish on the high seas, and that under those circumstances the fishery would cease to exist.

Alternative 2 would allow the fishery to continue under selected restrictions, and the financial impact of Alternative 2, shown below, is based on a projection of current private profits in the fishery. Estimates of current private profits do not include the private costs that might be incurred in adopting turtle and seabird saving measures, placement of observers, and the installation and use of VMS, and any lost revenues from being unable to fish from 15° N. lat. to the equator, and from 145° W. long. to 180° W. long. during April and May. Therefore, private profits under Alternative 2 in the table below may be overstated. While some West Coast-based, high seas pelagic longliners harvest species other than swordfish, no attempt was made to evaluate potential changes in fishing strategies by these vessels in response to different harvest opportunities under each of the regulatory alternatives, and what this would mean in terms of operating costs and ex-vessel revenues under alternative fishing strategies. Alternative 2 was chosen because the Pacific Council concluded that it could not propose elimination of such a valuable fishery without clear indication that the takes of sea turtles would be excessive.

Alternative 3 would prohibit swordfish targeting with implementation of the FMP. Under Alternative 3 the assumption is that the fishery would disappear in the long run, in which case there is no difference from the status quo.

Alternative	Change in the Present Value of Short-Run Financial Profits Relative to the Status Quo (25–Year Time Horizon)	Average Annual Change in Short-Run Financial Profits Relative to the Status Quo
High Seas Pelagic Longline Alternative 1: States' regulations would apply to longline fishing and landings and Federal regulations may be developed under other authorities. Vessels would have to obtain HSFCA permits and file HSFCA logbooks, as is now the case. (Status Quo/No Action)	NC	NC
High Seas Pelagic Longline Alternative 2: Applies to West Coast-based longline vessels fishing west of 150° W longitude all of the restrictions applied to Hawaii-based longline vessels, but east of 150° W long., applies selected restrictions, allowing West Coast-based vessels to target swordfish east of that line. (Proposed Action)	NA	$6,712,558
7–percent Discount Rate	$78,225,581	NA
4–percent Discount Rate	$105,645,527	NA
High Seas Pelagic Longline Alternative 3: Applies to West Coast-based longline vessels all conservation and management measures applied to Hawaii-based longline vessels to control sea turtle and seabird interactions and to monitor the fishery.	NC	NC
7–percent Discount Rate	NC	NC
4–percent Discount Rate	NC	NC

Alternative 2 would maintain the fishery, but impose some slight additional costs on West Coast-based longliners targeting swordfish on the high seas. Fishermen would have to incur some of the cost of adopting turtle and seabird saving measures, accommodating observers and using monitoring equipment such as a vessel monitoring system. Therefore, under Alternative 2 there would be a slight reduction in annual short-run, financial profits from those reported above. There may also be reductions in swordfish catch rates due to the alternative of turtle and seabird mitigation measures. This could further reduce short-run, financial profits. If subsequent analyses prove that swordfish longlining on the fishing grounds of the West Coast-based, high seas pelagic longline fleet results in less impact on turtles and other protected species (or that these interactions can be avoided), its further development could lead to increased short run financial profits. If on the other hand, subsequent analyses prove that swordfish longlining in the fishing grounds in the eastern north Pacific action area has potential for the same or greater impact on protected species, the fishery may not be able to continue operating unless ways to prevent jeopardy to protected species can be developed. In the latter case there are likely to be additional harvesting costs

involved to perform the prevention measures which in the absence of any improvements in harvest rates, or other efficiency gains, would reduce short-run financial profits.

The fishery will probably be subject to regulations promulgated under other authorities, which are expected to result in its disappearance in time. This is reflected in the long-term status quo, Alternative 1, where financial profits become zero with a phase out of the fishery. In the near term however, the fishery may persist under existing state regulations, in which case short-run financial profits are expected to be $6.8 million per year under the status quo. These are the same as the annual average financial profits that would be expected under Alternative 2 minus the cost of adopting turtle and seabird saving measures, accommodating observers and using monitoring equipment such as vessel monitoring systems. Short and long-term profits would disappear under Alternative 3 with the prohibition on targeting swordfish. Therefore, in the long term, Alternative 3 is the same as the status quo.

The FMP opens the entire U.S. EEZ to purse seine fishing, although there has been little interest in such fishing for highly migratory species off Oregon and Washington. The objectives of the proposed action are to provide for additional purse seine fishing opportunities. There were 27 vessels on average participating in the West Coast-based, coastal purse seine fishery during the 1995–99 period. All of these vessels would be considered small businesses under the SBA standards. Therefore, there would be no financial impacts resulting from disproportionality between small and large vessels under the proposed action.

Financial impacts of each purse seine regulatory alternative were evaluated based on incremental changes from the status quo; i.e., the difference between expected purse seine ex-vessel private profits under the proposed action and private profits under the status quo. The following table reports the estimated incremental qualitative changes in short-run financial profits for pelagic longline vessels for each regulatory alternative relative to the status quo. There are no cost and earnings data available for purse seine fishing for highly migratory species off Oregon and Washington.

Alternative	Change in the Present Value of Short-Run Financial Profits Relative to the Status Quo (25–Year Time Horizon)	Average Annual Change in Short-Run Financial Profits Relative to the Status Quo
Purse Seine Alternative 1: State area closures would remain in effect under states' authorities. (Status Quo/No Action)	NC	NC
Purse Seine Alternative 2: Opens the entire U.S. EEZ to purse seine fishing. (Proposed Action)	NQ+	NQ+
Purse Seine Alternative 3: Closes the area within the U.S. EEZ north of 45° N latitude to purse seine fishing to address bycatch and protected species concerns, and possible adverse impacts on other fisheries.	NQ+	NQ+
Purse Seine Alternative 4: Closes the U.S. EEZ off Washington to purse seine fishing, but allows it off Oregon and California.	NQ+	NQ+

The proposed action will have little impact on private profits because there has been virtually no purse seine fishing for highly migratory species in the waters proposed to be closed.

Northern bluefin tuna do not generally occur in significant numbers in the Pacific Northwest except during periods of elevated water temperature. Thus, there would likely only be an increase in purse seine fishing activity for northern bluefin tuna during El Nino-like conditions. These conditions, by providing an additional fishing opportunity, would likely increase short-run financial profits for purse seiners that currently participate in the Oregon-Washington sardine fishery. Under exceptionally good bluefin fishing in Oregon-Washington waters, this opportunity might extend to California-based purse seiners.

Alternatives 3 and 4 would preclude existing fishing opportunities above 45° N. lat. for California and Oregon vessels. This could reduce their potential financial profits in years of exceptionally good bluefin fishing in these waters.

It is noted that only 2 purse seine vessels were recorded as landing HMS into a West Coast port in 2002. NMFS does not expect the development of a significant HMS purse seine fishery on the West Coast, due to lack of processing capability and markets, and the unlikelihood of new investment in new processing capability under the current price structure.

The FMP would prohibit the sale of striped marlin by all vessels. The objectives are to provide for continued recreational fishing opportunities. Prohibiting sale removes the incentive for commercial fishermen to take striped marlin.

Financial impacts of each regulatory alternative pertaining to the sale of striped marlin were evaluated based on incremental changes from the status quo; i.e., the difference between expected ex-vessel private profits under the proposed action and private profits under the status quo. The following table reports the estimated incremental qualitative changes in short-run financial profits for each regulatory alternative relative to the status quo.

Alternative	Change in the Present Value of Short-Run Financial Profits Relative to the Status Quo (25–Year Time Horizon)	Average Annual Change in Short-Run Financial Profits Relative to the Status Quo
Marlin Sales Alternative 1: The sale of striped marlin would not be prohibited by Federal regulation in this FMP, but would continue to be prohibited by the State of California. (Status Quo/No Action)	NC	NC
Marlin Sales Alternative 2: Prohibits the sale of striped marlin by vessels under PFMC jurisdiction. (Proposed Action)	NC	NC

The proposed action will have little impact on private profits because there is virtually no change from the status quo. Striped marlin cannot now be sold, so no revenue impacts to the fishermen will ensue.

The FMP would require a Federal permit with a specific endorsement for each gear type (harpoon, drift gillnet, surface hook and line, purse seine, and pelagic longline). The permits and endorsements are subject to sanctions, including revocation, as provided by Section 308 (g) of the Magnuson-Stevens Act. Permits are a standard tool used to support management by facilitating collection of biological, economic or social data, facilitating enforcement of laws and regulations, identifying those who would be affected by actions to prevent or reduce excess capacity in the fishery, and providing information to meet international obligations.

A review of NMFS data bases indicates that there are an estimated 1,337 vessels likely to harvest highly migratory species. All vessels would be considered small businesses under the SBA standards. Therefore, there would be no disproportionate financial impacts between small and large vessels under the proposed action. The proposed action is duplicative in the sense that permit requirements implemented for other purposes (e.g., HSFCA) may require a vessel to have more than one permit to fish highly migratory species.

Financial impacts of each regulatory alternative pertaining to commercial fishing permits were evaluated based on incremental changes from the status quo; i.e., the difference between expected ex-vessel private profits under the proposed action and private profits under the status quo. The following table reports the estimated incremental qualitative changes in short-run financial profits for each regulatory alternative relative to the status quo. The annual average change in short-run financial profits is also shown.

Alternative	Change in the Present Value of Short-Run Financial Profits Relative to the Status Quo (25–Year Time Horizon)	Average Annual Change in Short-Run Financial Profits Relative to the Status Quo
Commercial Permit Alternative 1: Require no new Federal permits. Federal permits under other laws would remain in place, as would state permit requirements. (Status Quo/No Action)	NC	NC
Commercial Permit Alternative 2: Requires a Federal permit for HMS vessels with a specific endorsement for each gear type (harpoon, DGN, surface hook and line, purse seine, and pelagic longline). The permit is to be issued to a vessel owner for each specific fishing vessel used in commercial HMS fishing. (Proposed Action)	NQ-	NQ-
Commercial Permit Alternative 3: Requires a Federal permit for all vessels engaged in commercial HMS fisheries within and outside the U.S. EEZ. One permit would cover all HMS fisheries for a given vessel.	NQ-	NQ-
Commercial Permit Alternative 4: Requires a Federal permit for all vessels engaged in selected commercial fisheries. Initial candidates for permits would be vessels engaged in DGN and longline fisheries.	NQ-	NQ-

Under Alternative 2 there would be a slight reduction in financial profits due to the cost of acquiring a commercial permit. Estimates of permit costs for commercial vessels are about $60.00 per vessel: a $40 permit fee and $20 for the time involved in filling out or confirming information on the permit registration form. The same costs would be entailed under Alternatives 3 and 4, no matter what the scope of the permit. This is an additional fixed cost, and although minor, may be disproportionate across smaller vessels engaged in HMS fisheries.

The FMP requires a Federal permit for all charter or commercial passenger carrying fishing vessels (CPFV) from which recreational fishers pursue highly migratory species, but an existing state permit or license for recreational vessels could meet this requirement. As with commercial fishing permits, this measure would provide a mechanism for identifying the scope of the recreational fishery and the participants so that data collection and research could be more focused and effective. There are approximately 300 charter and CPFV vessels on the West Coast. All these vessels would be considered small businesses under the SBA standards; therefore, there would be no financial impacts resulting from disproportionality between small and large vessels under the proposed action. The proposed action would not require new reporting, record-keeping, or other compliance requirements. However, permit processing and periodic permit renewal would be necessary under state laws and regulations.

Financial impacts of each regulatory alternative pertaining to recreational fishing permits were evaluated based on incremental changes from the status quo; i.e., the difference between expected ex-vessel private profits under the proposed action and private profits under the status quo. The following table reports the estimated incremental qualitative changes in short-run financial profits for each regulatory alternative relative to the status quo. The annual average change in short-run financial profits is also shown.

Alternative	Change in the Present Value of Short-Run Financial Profits Relative to the Status Quo (25–Year Time Horizon)	Average Annual Change in Short-Run Financial Profits Relative to the Status Quo
Recreational Permit Alternative 1 Requires no new Federal permits for recreational vessels, private or party/charter. (Status Quo/No Action)	NC	NC
Recreational Permit Alternative 2: Requires a Federal permit for all CPFVs that fish for HMS, but an existing state permit or license for recreational vessels could meet this requirement. The Pacific Council would, however, request states to incorporate in their existing CPFV permit systems an allowance for an HMS species endorsement on permits, so that statistics could be gathered on that segment of the HMS fishery. (Proposed Action)	NQ-	NQ-
Recreational Permit Alternative 3: Requires a separate Federal permit for all CPFVs that fish for HMS; a state permit could not be used to fill this requirement, as in Alternative 2.	NQ-	NQ-
Recreational Permit Alternative 4: Requires a Federal permit for all recreational fishing vessels (private, party and charter/CPFV) that fish for HMS within and outside the U.S. EEZ.	NQ-	NQ-

Under Alternative 2, recreational vessels without a state permit would experience a slight reduction in financial profits due to the cost of acquiring a Federal recreational permit, which is estimated to be about $50.00 per vessel. This is an additional fixed cost, and even though minor, may be disproportionate across smaller vessels engaged in commercial passenger recreational fishing for highly migratory species. The same costs would be entailed under Alternatives 3 and 4, no matter what the scope of the permit. Alternative 3 could be somewhat duplicative if it were to overlap state requirements. If a vessel has a choice between a state and a federally issued permit to meet this requirement, there could be some cost savings, improved financial profits, if there is a difference in costs between state and Federal permits.

The FMP would require all commercial and recreational party or charter fishing vessels to maintain and submit logbooks to NMFS. State or existing Federal logbooks could meet this requirement as long as essential data elements are present and data are available to NMFS subject to a data exchange agreement. This measure would facilitate the monitoring of commercial and recreational vessel activities and enhance data collection. This measure would effect about 1,354 commercial and recreational vessels. The number of vessels for which this requirement poses an increased record keeping burden is unknown, but many vessels already are required to maintain state or existing Federal logbooks that would satisfy this requirement. The proposed action would impose new reporting and record-keeping requirements for some vessels. The proposed action is designed to avoid duplication of existing Federal reporting requirements.

Financial impacts of each regulatory alternative pertaining to fishing vessel reporting requirements were evaluated based on incremental changes from the status quo; i.e., the difference between expected ex-vessel private profits under the proposed action and private profits under the status quo. The following table reports the estimated incremental qualitative changes in short-run financial profits for each regulatory alternative relative to the status quo. The annual average change in short-run financial profits is also shown.

Alternative	Change in the Present Value of Short-Run Financial Profits Relative to the Status Quo (25–Year Time Horizon)	Average Annual Change in Short-Run Financial Profits Relative to the Status Quo
Reporting Requirements Alternative 1: There would be no new Federal requirements for reporting, including Federal provisions for filling out Far Offshore Fishing Declarations. Existing Federal reporting requirements (e.g., HSFCA reports for fishing on the high seas) and state reporting requirements would apply. (Status Quo/No Action)	NC	NC
Reporting Requirements Alternative 2: Requires all commercial and recreational party or charter/CPFV fishing vessels to maintain and submit logbooks to NMFS. State or existing Federal logbooks could meet this requirement as long as essential data elements are present, and data are available to NMFS subject to a data exchange agreement. (Proposed Action)	NQ-	NQ-
Reporting Requirements Alternative 3 Limits new Federal reporting requirements to those commercial vessels that are not already required to report under existing Federal laws.	NQ-	NQ-

Under Alternative 2 there would be a slight reduction in financial profits due to the cost of satisfying the proposed reporting requirements for logbooks for those vessels that do not already meet these requirements. There are also additional reporting requirements associated with the use of vessel monitoring systems and vessel markings. Vessel monitoring systems would be required of longline vessels, but there are not expected to be any costs to vessels under this requirement. All vessels would be required to have identifying numbers, which would impose some additional fixed costs, and although minor, may be disproportionate across smaller vessels engaged in fisheries for highly migratory species. Under Alternative 3, financial impacts would be less because many vessels already maintain logbooks under existing Federal laws.

This proposed rule contains collection-of-information requirements subject to review and approval by OMB under the Paperwork Reduction Act (PRA). These requirements will be submitted to OMB for approval. The public reporting burden for these requirements is estimated to be 5 minutes for a confirmation of records for a permit application, 10 minutes to correct a record for a permit application, 30 minutes for a new permit application, 5 minutes for filling out a log each day, and 45 minutes to affix the official number of a vessel to its bow and weather deck. In addition, for longline vessels, the reporting burden includes 4 hours for installation of a vessel monitoring system, 2 hours for maintenance of the system, and 24 seconds for electronic reporting via the satellite based vessel monitoring system. These estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Public comment is sought regarding whether these proposed collections of information are necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility, the accuracy of the burden estimate, ways to enhance the quality, utility, and clarity of the information to be collected, and ways to minimize the burden of the collection of information, including through the use of automated information technology. Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this rule may be submitted to, Svein Fougner, Assistant Administrator for Sustainable Fisheries, NMFS, Southwest Region (SEE **ADDRESSES**) and by e-mail to *David_Rostker@omb.eop.gov*, or fax to (202) 395–7285.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirement of the PRA, unless that collection of information displays a currently valid OMB control number.

A formal consultation under the ESA was initiated on September 24, 2003. Based on the conclusions of the consultation, the Regional Administrator will determine if fishing activities under this proposed rule are likely to affect adversely endangered or threatened species or their critical habitat under NMFS jurisdiction.

A formal consultation with the Fish and Wildlife Service (FWS) under the ESA was initiated by NMFS on September 22, 2003. Based on the consultation, the FWS will determine if fishing activities under this proposed rule are likely to affect adversely endangered or threatened species or their critical habitat under its jurisdiction.

The Regional Administrator has determined that, based on the information and analyses in the FMP, fishing activities conducted under this proposed rule would have no adverse impacts on marine mammals. Regulations promulgated under MMPA authority to implement a Pacific Offshore Cetacean Take Reduction Plan would remain in effect.

List of Subjects

50 CFR Part 223

Endangered and threatened species, Exports, Imports, Marine mammals, Transportation.

50 CFR Part 224

Administrative practice and procedure, Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements.

50 CFR Part 660

Administrative practice and procedure, American Samoa, Fisheries, Fishing, Guam, Hawaiian Natives, Indians, Northern Mariana Islands, Reporting and recordkeeping requirements.

Dated: December 3, 2003.

William T. Hogarth,

Assistant Administrator, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 223, 50 CFR part 224, and 50 CFR part 660 are proposed to be amended as follows:

50 CFR Chapter VI

PART 223—THREATENED MARINE AND ANADROMOUS SPECIES

1. The authority citation for part 223 continues to read as follows:

Authority: 16 U.S.C. 1531–1543; subpart B, § 223.12 also issued under 16 U.S.C. 1361 *et seq.*

2. In § 223.206, paragraph (d)(6) is removed and reserved.

PART 224—ENDANGERED MARINE AND ANADROMOUS SPECIES

3. The authority citation for part 224 continues to read as follows:

Authority: 16 U.S.C. 1531–1543 and 16 U.S.C. 1361 *et seq.*

4. In § 224.104, paragraph (c) is revised to read as follows:

§ 224.104 Special requirements for fishing activities to protect endangered sea turtles.

* * * * *

(c) Special prohibitions relating to leatherback sea turtles are provided at § 223.206(d)(2)(iv) and § 660.713.

PART 660—FISHERIES OFF THE WEST COAST AND IN THE WESTERN PACIFIC

5. The authority citation for part 660 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

6. Add subpart K to read as follows:

Subpart K-Highly Migratory Fisheries

Sec.

660.701 Purpose and scope.
660.702 Definitions.
660.703 Management area.
660.704 Vessel identification.
660.705 Prohibitions.
660.706 Treaty Indian rights.
660.707 Permits.
660.708 Reporting.
660.709 Annual specifications.
660.710 Closure of directed fishery.
660.711 General catch restrictions.
660.712 Longline.
660.713 Drift net.
660.714 Purse seine.
660.715 Harpoon.
660.716 Surface hook-and-line.
660.717 Framework for revising regulations.
660.718 Exempted fishing.
660.719 Scientific observers.

Subpart K—Highly Migratory Fisheries

§ 660.701 Purpose and scope.

This subpart implements the Fishery Management Plan for U.S. West Coast Fisheries for Highly Migratory Species (FMP). These regulations govern commercial and recreational vessels based on the West Coast and fishing for HMS seaward of the coasts of Washington, Oregon, and California.

§ 660.702 Definitions.

Basket-style longline gear means a type of longline gear that is divided into units called *baskets*, each consisting of a segment of main line to which 10 or more branch lines with hooks are spliced. The mainline and all branch lines are made of multiple braided strands of cotton, nylon, or other synthetic fibers impregnated with tar or other heavy coatings that cause the lines to sink rapidly in seawater.

Closure, when referring to closure of a fishery, means that taking and retaining, possessing, or landing the particular species or species group is prohibited.

Commercial fishing means (1) Fishing by a person who possesses a commercial fishing license or is required by law to possess such license issued by one of the states or the Federal Government as a prerequisite to taking, landing and/or sale; or

(2) Fishing that results in or can be reasonably expected to result in sale, barter, trade or other disposition of fish for other than personal consumption.

Commercial fishing gear means the following types of gear and equipment used in the highly migratory species fisheries:

(1) *Harpoon*. Gear consisting of a pointed dart or iron attached to the end of a pole or stick that is propelled only by hand and not by mechanical means.

(2) *Surface hook-and-line*. Fishing gear, other than longline gear, with one or more hooks attached to one or more lines (includes troll, rod and reel, handline, albacore jig, live bait, and bait boat). Surface hook and line is always attached to the vessel.

(3) *Drift gillnet*. A panel of netting, 14 inch stretched mesh or greater, suspended vertically in the water by floats along the top and weights along the bottom. A drift gillnet is not stationary or anchored to the bottom.

(4) *Purse seine*. An encircling net that may be closed by a purse line threaded through the bottom of the net. Purse seine gear includes ring net, drum purse seine, and lampara nets.

(5) *Pelagic longline*. A main line that is suspended horizontally in the water column and not stationary or anchored, and from which dropper lines with hooks (gangions) are attached. Legal longline gear also includes basket-style longline gear.

Council means the Pacific Fishery Management Council, including its Highly Migratory Species Management Team (HMSMT), Scientific and Statistical Committee (SSC), Highly Migratory Species Advisory Subpanel (HMSAS), and any other committee established by the Council.

Fishing trip is a period of time between landings when fishing is conducted.

Fishing year is the year beginning at 0801 GMT (0001 local time) on April 1 and ending at 0800 GMT on March 31 (2400 local time on September 30) of the following year.

Fishery management area means the U.S. EEZ off the coasts of Washington, Oregon, and California between 3 and 200 nautical miles offshore, and bounded on the north by the Provisional International Boundary between the United States and Canada, and bounded on the south by the International Boundary between the United States and Mexico.

Harvest guideline means a specified numerical harvest objective that is not a quota. Attainment of a harvest guideline does not require closure of a fishery.

Highly Migratory species (HMS) means species managed by the FMP, specifically:

Billfish/Swordfish:

striped marlin (*Tetrapturus audax*)
swordfish (*Xiphias gladius*)

Sharks:

common thresher shark (*Alopias vulpinus*)
pelagic thresher shark (*Alopias pelagicus*)
bigeye thresher shark (*Alopias superciliosus*)
shortfin mako or bonito shark (*Isurus oxyrinchus*)
blue shark (*Prionace glauca*)

Tunas:

north Pacific albacore (*Thunnus alalunga*)
yellowfin tuna (*Thunnus albacares*)
bigeye tuna (*Thunnus obesus*)
skipjack tuna (*Katsuwonus pelamis*)
northern bluefin tuna (*Thunnus orientalis*)

Other:

dorado or dolphinfish (*Coryphaena hippurus*)

Highly Migratory Species Advisory Subpanel (HMSAS) means the individuals comprised of members of the fishing industry and public appointed by the Council to review proposed actions for managing highly migratory species fisheries.

Highly Migratory Species Fishery Management Plan (FMP) means the Fishery Management Plan for the U.S. West Coast Fisheries for Highly Migratory Species developed by the Pacific Fishery Management Council and approved by the Secretary and amendments to the FMP.

Highly Migratory Species Management Team (HMSMT) means the individuals appointed by the Council to review, analyze, and develop management measures for highly migratory species fisheries.

Incidental catch or incidental species means HMS caught while fishing for the primary purpose of catching other species with gear not authorized by the FMP.

Land or landing means offloading fish from a fishing vessel or arriving in port to begin offloading fish or causing fish to be offloaded from a fishing vessel.

Mesh size means the opening between opposing knots in a net. Minimum mesh size means the smallest distance allowed between the inside of one knot to the inside of the opposing knot when the mesh is stretched, regardless of twine size.

Offloading means removing HMS from a vessel.

Permit holder means a permit owner.

Permit owner means a person who owns an HMS permit for a specific vessel fishing with specific authorized fishing gear.

Person, as it applies to fishing conducted under this subpart, means any individual, corporation, partnership, association or other entity (whether or not organized or existing under the laws of any state), and any Federal, state, or local government, or any entity of any such government that is eligible to own a documented vessel under the terms of 46 U.S.C. 12102(a).

Processing or *to process* means the preparation or packaging of HMS to render it suitable for human consumption, industrial uses or long-term storage, including, but not limited to, cooking, canning, smoking, salting, drying, filleting, freezing, or rendering into meal or oil, but does not mean heading and gutting unless additional preparation is done.

Prohibited species means those species and species groups whose retention is prohibited unless authorized by other applicable law (for example, to allow for examination by an authorized observer or to return tagged fish as specified by the tagging agency).

Quota means a specified numerical harvest objective, the attainment (or expected attainment) of which causes closure of the fishery for that species or species group.

Recreational fishing means fishing with authorized recreational fishing gear for personal use only and not for sale, barter or trade of all or any part of the catch.

Recreational charter vessel means a vessel that carries fee-paying passengers for the purpose of recreational fishing.

Regional Administrator means the Administrator, Southwest Region, NMFS, 501 W. Ocean Boulevard, Suite 4200, Long Beach, CA 90802–4213, or a designee.

Special Agent-In-Charge (SAC) means the Special Agent-In-Charge, NMFS, Office of Enforcement, Southwest Region, or a designee of the Special Agent-In-Charge.

Sustainable Fisheries Division (SFD) means the Assistant Regional Administrator for Sustainable Fisheries, Southwest Region, NMFS, or a designee.

Transship means offloading or otherwise transferring HMS or products thereof to a receiving vessel.

Vessel monitoring system unit (VMS unit) means the hardware and software

equipment owned by NMFS, installed on vessels by NMFS, and required by §660.712(d) to track and transmit the positions of fishing vessels.

§ 660.703 Management area.

The fishery management area for the regulation of fishing for HMS comprises the waters of the U.S. EEZ as defined in §660.402 and the high seas seaward of the U.S. EEZ to the extent persons fishing with permits issued under this subpart are active in those areas.

§ 660.704 Vessel identification.

(a) *Official number.* Each fishing vessel subject to this subpart must display its official number on the port and starboard sides of the deckhouse or hull, and on an appropriate weather deck so as to be visible from enforcement vessels and aircraft.

(b) *Numerals.* The official number must be affixed to each vessel subject to this subpart in block Arabic numerals at least 14 inches (35.56 cm) in height. Markings must be legible and of a color that contrasts with the background.

§ 660.705 Prohibitions.

In addition to the general prohibitions specified in § 600.725 of this chapter, it is unlawful for any person to do any of the following:

(a) Fish for HMS in the U.S. EEZ off the Pacific coast without a permit issued under § 660.707 for the use of authorized commercial fishing gear.

(b) Fish with gear in any closed area in which the use of such gear is prohibited under this subpart.

(c) Land HMS at Pacific coast ports without a permit issued under § 600.707 for the use of authorized fishing gear.

(d) Sell HMS without an applicable commercial state fishery license.

(e) When fishing for HMS, fail to return a prohibited species to the sea immediately with a minimum of injury.

(f) Falsify or fail to affix and maintain vessel markings as required by § 660.704.

(g) Fish for HMS in violation of any terms or conditions attached to an exempted fishing permit issued under § 600.745 of this chapter or by § 660.718.

(h) When a directed fishery has been closed for a specific species, take and retain, possess, or land that species after the closure date.

(i) Refuse to submit fishing gear or fish subject to such person's control to inspection by an authorized officer, or to interfere with or prevent, by any means, such an inspection.

(j) Falsify or fail to make and/or file any and all reports of fishing, landing, or any other activity involving HMS, containing all data, and in the exact manner, required by the applicable state law, as specified in § 660.708(b).

(k) Fail to carry aboard a vessel that vessel's permit issued under § 660.707 or exempted fishing permit issued under § 660.718.

(l) Fail to carry a VMS unit as required under § 660.712(d).

(m) Interfere with, tamper with, alter, damage, disable, or impede the operation of a VMS unit or to attempt any of the same; or to move or remove a VMS unit without the prior permission of the SAC.

(n) Make a false statement, oral or written, to an authorized officer, regarding the use, operation, or maintenance of a VMS unit.

(o) Fish for, catch, or harvest HMS with longline gear without a VMS unit on board the vessel after installation of the VMS unit by NMFS.

(p) Possess HMS harvested with longline gear on board a vessel without a VMS unit after NMFS has installed the VMS unit on that vessel.

(q) Direct fishing effort toward the harvest of swordfish (*Xiphias gladius*) using longline gear deployed west of 150° W. long. and north of the equator (0° lat.) on a vessel registered for use of longline gear in violation of § 660.712(a)(2).

(r) Possess a light stick on board a longline vessel when fishing west of 150° W. long. and north of the equator (0° lat.) in violation of § 660.712(a)(7)

(s) Possess more than 10 swordfish on board a longline vessel from a fishing trip where any part of the trip included fishing west of 150° W. long. and north of the equator (0° lat.) in violation of § 660.712(a)(10).

(t) Interfere with, impede, delay, or prevent the installation, maintenance, repair, inspection, or removal of a VMS unit.

(u) Interfere with, impede, delay, or prevent access to a VMS unit by a NMFS observer.

(v) Connect or leave connected additional equipment to a VMS unit without the prior approval of the SAC.

(w) Fish for HMS (including transshipping HMS) with a vessel registered for use with longline gear within closed areas or by use of unapproved gear configurations in violation of § 660.712(a)(1), (a)(2), (a)(4), (a)(5), (a)(6), (a)(8), or (a)(9).

(x) Fail to use a line setting machine or line shooter, with weighted branch lines, to set the main longline when operating a vessel that is registered for use of longline gear and equipped with monofilament main longline, when making deep sets north of 23° N. lat. in violation of § 660.712 (c)(1)(i) and (c)(1)(ii).

(y) Fail to employ basket-style longline gear such that the mainline is deployed slack when operating a vessel registered for use of longline gear north of 23° N. lat. in violation of § 660.712(c)(1)(iii).

(z) Fail to maintain and use blue dye to prepare thawed bait when operating a vessel registered for use of longline gear that is fishing north of 23° N. lat., in violation of § 660.712(c)(2) and (c)(3).

(aa) Fail to retain, handle, and discharge fish, fish parts, and spent bait strategically when operating a vessel registered for use of longline gear that is fishing north of 23° N. lat. in violation of § 660.712 (c)(4) through (c)(7).

(bb) Fail to handle short-tailed albatrosses that are caught by pelagic longline gear in a manner that maximizes the probability of their long-term survival, in violation of § 660.712(c)(8).

(cc) Fail to handle seabirds other than short-tailed albatross that are caught by pelagic longline gear in a manner that maximizes the probability of their long-term survival in violation of § 660.712(c)(9).

(dd) Own a longline vessel registered for use of longline gear that is engaged in longline fishing for HMS without a valid protected species workshop certificate issued by NMFS or a legible copy thereof in violation of § 660.712(e)(3).

(ee) Fish for HMS on a vessel registered for use of longline gear without having on board a valid protected species workshop certificate issued by NMFS or a legible copy thereof in violation of § 660.712(e).

(ff) Fail to carry line clippers, dip nets, and wire or bolt cutters on a vessel registered for use as a longline vessel in violation of § 660.712(b).

(gg) Fail to comply with sea turtle handling, resuscitation, and release requirements specified in § 660.712(b)(4) through (7) when operating a vessel.

(hh) Fail to comply with seabird take mitigation or handling techniques required under § 660.712(c)

(ii) Fish for HMS with a vessel registered for use as a longline vessel without being certified by NMFS for completion of an annual protected species workshop as required under § 660.712(e).

§ 660.706 Pacific Coast Treaty Indian rights.

(a) Pacific Coast treaty Indian tribes have treaty rights to harvest HMS in their usual and accustomed (u&a) fishing areas in U.S. waters.

(b) Pacific Coast treaty Indian tribes means the Hoh, Makah, and Quileute Indian Tribes and the Quinault Indian Nation.

(c) The NMFS recognizes the areas set forth below as marine u&a fishing grounds of the four Washington coastal tribes. The Makah u&a grounds were adjudicated in *U.S.* v. *Washington*, 626 F.Supp. 1405, 1466 (W.D. Wash. 1985), affirmed 730 F.2d 1314 (9th Cir. 1984). The u&a grounds of the Quileute, Hoh, and Quinault tribes have been recognized administratively by NMFS. See, e.g., 64 FR 24087 (May 5, 1999) (u&a grounds for groundfish); 50 CFR 300.64(i) (u&a grounds for halibut). The u&a grounds recognized by NMFS may be revised as ordered by a Federal court.

(d) *Procedures.* The rights referred to in paragraph (a) of this section will be implemented by the Secretary of Commerce, after consideration of the tribal request, the recommendation of the Council, and the comments of the public. The rights will be implemented either through an allocation of fish that will be managed by the tribes, or through regulations that will apply specifically to the tribal fisheries. An allocation or a regulation specific to the tribes shall be initiated by a written request from a Pacific Coast treaty Indian tribe to the NMFS Northwest Regional Administrator, at least 120 days prior to the time the allocation is desired to be effective, and will be subject to public review through the Council process. The Secretary recognizes the sovereign status and co-manager role of Indian tribes over shared Federal and tribal fishery resources. Accordingly, the Secretary will develop tribal allocations and regulations in consultation with the affected tribe(s) and, insofar as possible, with tribal consensus.

(e) *Identification.* A valid treaty Indian identification card issued pursuant to 25 CFR part 249, subpart A, is prima facie evidence that the holder is a member of the Pacific Coast treaty Indian tribe named on the card.

(f) Fishing (on a tribal allocation or under a Federal regulation applicable to tribal fisheries) by a member of a Pacific Coast treaty Indian tribe within that tribe's usual and accustomed fishing area is not subject to provisions of the HMS regulations applicable to non-treaty fisheries.

(g) Any member of a Pacific Coast treaty Indian tribe must comply with any applicable Federal and tribal laws and regulations, when participating in a tribal HMS fishery implemented under paragraph (d) above.

(h) Fishing by a member of a Pacific Coast treaty Indian tribe outside that tribe's usual and accustomed fishing area, or for a species of HMS not covered by a treaty allocation or applicable Federal regulation, is subject to the HMS regulations applicable to non-treaty fisheries.

§ 660.707 Permits.

(a) *General.* This section applies to fishing for HMS off, or landing HMS in, the States of California, Oregon, and Washington.

(1) By January 1, 2005, a commercial fishing vessel or a recreational charter vessel of the United States must be registered for use under a HMS permit if that vessel is used:

(i) To engage in commercial fishing for HMS in the U.S. EEZ off the States of California, Oregon, and Washington;

(ii) To carry passengers for hire on a trip to engage in recreational fishing; or

(iii) To land or transship HMS shoreward of the outer boundary of the U.S. EEZ off the States of California, Oregon, and Washington.

(2) The permit must be on board the vessel and available for inspection by an authorized officer, except that if the permit was issued while the vessel was at sea, this requirement applies only to any subsequent trip.

(3) A permit is valid only for the vessel for which it is registered. A permit not registered for use with a particular vessel may not be used.

(4) A permit is valid only for the gear type for which an endorsement has been issued for that permit.

(5) Only a person eligible to own a documented vessel under the terms of 46 U.S.C. 12102(a) may be issued or may hold (by ownership or otherwise) an HMS permit with an endorsement for use of gear for commercial fishing.

(b) *Application.* (1) Following publication of the final rule implementing the FMP, NMFS will issue permits to the owners of those vessels on a list of vessels obtained from owners previously applying for a permit under the authority of the High Seas Fishing Compliance Act (HSFCA), the Tuna Conventions Act of 1950, and § 660.21(a) of this part.

(2) All permits issued by NMFS in accordance with paragraph (b)(1) of this section will be issued by [date 60 days following effective date of final rule] and for commercial fishing vessels will authorize the use of specific fishing gear.

(3) Beginning on [date 60 days following effective date of final rule], any vessel owner who has not received an HMS permit but who wishes to have such a permit may apply to the SFD for a permit to fish for HMS off the coasts of California, Oregon, and Washington by obtaining a Southwest Region Federal Fisheries application form from the SFD and submitting a completed application. A completed application is one that contains all the necessary information and signatures required. A copy of the application may be obtained at *http://swr.nmfs.noaa.gov/permits.htm.*

(4) A minimum of 15 business days should be allowed for SFD to process a permit application. If an incomplete or improperly completed application is filed, the applicant will be sent a notice of deficiency. If the applicant fails to correct the deficiency within 30 days following the date of notification, the application will be considered abandoned.

(5) Permits issued under this subpart will remain valid for 5 years unless revoked or suspended.

(6) SFD will issue replacement permits without charge to replace lost or mutilated permits. An application for a replacement permit is not considered a new application.

(7) Any permit that has been altered, erased, or mutilated is invalid.

(c) *Display.* A permit issued under this subpart is required to land HMS in any port of California, Oregon and Washington. Any permit issued under this subpart, or a facsimile of the permit, must be on board the vessel at all times while the vessel is fishing for, taking, retaining, possessing, or landing HMS taken when fishing under the permit. Any permit issued under this section must be displayed for inspection upon request of an authorized officer.

(d) *Sanctions.* Procedures governing sanctions and denials are found at subpart D of 15 CFR part 904.

§ 660.708 Reporting and recordkeeping.

(a) *Logbooks.* The operator of any commercial fishing vessel and any recreational charter vessel fishing for HMS in the management area must maintain on board the vessel an accurate and complete record of catch, effort, and other data on logbook report forms provided by the Regional Administrator, or by a state agency that has entered into an agreement with the Regional Administrator. All information specified on the form(s) must be recorded on the forms within 24 hours after the completion of each fishing day. The original logbook form for each day of the fishing trip must be submitted to either the Regional Administrator or the appropriate state management agency within 30 days of each landing or transhipment of HMS. Each form must be signed and dated by the fishing vessel operator.

(1) Logbooks acceptable to meeting the reporting requirements of this section may be found at *http://swr.nmfs.noaa.gov/logbooks.htm*, and may include:

(i) The logbook required under § 300.21 implementing the Tuna Conventions Act of 1950;

(ii) The logbook required under § 660.14 implementing the Fishery Management Plan for the Pelagic Fisheries of the Western Pacific Region;

(iii) The logbook required by § 300.17 implementing the High Seas Fishing Compliance Act of 1995.

(iv) Any logbook required by the fishery management agency of the States of California, Oregon, or Washington.

(2) Any holder of a permit who does not maintain and submit a logbook for a fishing trip under any of the above authorities must obtain a copy of the appropriate logbook from the SFD and maintain and submit the form provided by SFD.

(3) The Regional Administrator may, after consultation with the Council, initiate rulemaking to modify the information to be provided on the fishing logbook forms.

(b) Any person who is required to do so by the applicable state law must make and/or file, retain, or make available any and all reports of HMS containing all data, and in the exact manner, required by the applicable state law.

§ 660.709 Annual specifications.

(a) *Procedure.* (1) In June of each year, the HMSMT will deliver a preliminary SAFE report to the Council for all HMS with any necessary recommendations for harvest guidelines, quotas or other management measures to protect HMS.

(2) In September of each year, the HMSMT will deliver a final SAFE report to the Council. The Council will adopt any necessary harvest guidelines, quotas or other management measures for public review.

(3) In November each year, the Council will take final action to propose any necessary harvest guidelines, quotas, or other management measures and make its recommendations to NMFS. The proposal shall include description of the purpose of the specifications and analyze the impacts of implementing such specifications.

(4) The Regional Administrator will implement through rulemaking any necessary and appropriate harvest guidelines, quotas, or other management measures based on the SAFE report, recommendations from the Council, and the requirements contained in the FMP.

(b) Fishing seasons for all species will begin on April 1 of each year at 0001 hours local time and terminate at 2400 hours local time on March 31 of each subsequent year.

(c) Harvest guidelines, quotas, and other management measures announced for a particular year will remain in effect the following year unless changed through the public review process described in paragraph (a) of this section.

(d) Irrespective of the normal review process, the Council may recommend management action to conserve and manage the fisheries at any time. The Council may adopt a management cycle different from the one described in this section provided that such change is made by a majority vote of the Council and a 6–month notice of the change is given. To the extent such recommendations are found necessary and reasonable, NMFS will implement them through rulemaking.

§ 660.710 Closure of directed fishery.

(a) When a quota has been taken, the Regional Administrator will announce in the **Federal Register** the date of closure of the fishery for the species of concern.

(b) When a harvest guideline has been taken, the Regional Administrator will initiate review of the species of concern according to section 8.4.8 of the FMP and publish in the **Federal Register** any necessary and appropriate regulations following Council recommendations.

§ 660.711 General catch restrictions.

(a) *Prohibited species.* HMS under the FMP for which quotas have been achieved and the fishery closed are prohibited species. In addition, the following are prohibited species:

(1) Any species of salmon

(2) Great white shark

(3) Basking shark

(4) Megamouth shark

(5) Pacific halibut

(b) *Incidental landings.* HMS caught by gear not authorized by this subpart may be landed in incidental amounts as follows:

(1) Drift gillnet vessels with stretched mesh less than 14 inches may land up to 10 HMS per trip, except that no swordfish may be landed.

(2) Bottom longline vessels may land up to 20 percent by weight of management unit sharks in landings of all species or 3 management unit sharks, whichever is greater.

(3) Trawl and pot gear may land up to 1 percent by weight of management unit sharks in a landing of all species or 2 management unit sharks, whichever is greater.

(c) *Marlin prohibition.* The sale of striped marlin is prohibited.

(d) *Sea turtle handling and resuscitation.* All sea turtles taken incidentally in fishing operations by any HMS vessel must be handled in accordance with 50 CFR part 223.206(d)(1).

§ 660.712 Longline fishery.

(a) Gear and fishing restrictions. (1) Owners and operators of vessels registered for use of longline gear may not use longline gear to fish for or target HMS within the U.S. EEZ.

(2) Owners and operators of vessels registered for use of longline gear may not use longline gear to fish for or target swordfish (*Xiphias gladius*) west of 150° W. long. and north of the equator (0° N. lat.).

(3) A person aboard a vessel registered for use of longline gear fishing for HMS west of 150° W. long. and north of the equator (0° N. lat.) may not possess or deploy any float line that is shorter than or equal to 20 m (65.6 ft or 10.9 fm). As used in this paragraph, float line means a line used to suspend the main longline beneath a float.

(4) From April 1 through May 31, owners and operators of vessels registered for use of longline gear may not use longline gear in waters bounded on the south by 0° lat., on the north by 15° N. lat., on the east by 145° W. long., and on the west by 180° long.

(5) From April 1 through May 31, owners and operators of vessels registered for use of longline gear may not receive from another vessel HMS that were harvested by longline gear in waters bounded on the south by 0° lat., on the north by 15° N. lat., on the east by 145° W. long., and on the west by 180° long.

(6) From April 1 through May 31, owners and operators of vessels registered for use of longline gear may not land or transship HMS that were harvested by longline gear in waters bounded on the south by 0° lat., on the north by 15° N. lat., on the east by 145° W. long., and on the west by 180° long.

(7) No light stick may be possessed on board a vessel registered for use of longline gear during fishing trips that include any fishing west of 150° W. long. and north of the equator (0° N. lat.). A light stick as used in this paragraph is any type of light emitting device, including any flourescent glow bead, chemical, or electrically powered light that is affixed underwater to the longline gear.

(8) When a conventional monofilament longline is deployed in waters west of 150° W. long. and north of the equator (0° N. lat.) by a vessel registered for use of longline gear, no fewer than 15 branch lines may be set between any two floats. Vessel operators using basket-style longline gear must set a minimum of 10 branch lines between any 2 floats when fishing in waters north of the equator.

(9) Longline gear deployed west of 150° W. long. and north of the equator (0° N. lat.) by a vessel registered for use of longline gear must be deployed such that the deepest point of the main longline between any two floats, i.e., the deepest point in each sag of the main line, is at a depth greater than 100 m (328.1 ft or 54.6 fm) below the sea surface.

(10) Owners and operators of longline vessels registered for use of longline gear may land or posses no more than 10 swordfish from a fishing trip where any part of the trip included fishing west of 150° W. long. and north of the equator (0° N. lat.).

(b) *Sea turtle take mitigation measures.* (1) Owners and operators of vessels registered for use of longline gear must carry aboard their vessels line clippers meeting the minimum design standards specified in (b)(2) of this section, dip nets meeting minimum standards specified in (b)(3) of this section, and wire or bolt cutters capable of cutting through the vessel's hooks. These items must be used to disengage any hooked or entangled sea turtles with the least harm possible to the sea turtles and as close to the hook as possible in accordance with the requirements specified in (b)(4) through (b)(6) of this section.

(2) Line clippers are intended to cut fishing line as close as possible to hooked or entangled sea turtles. NMFS has established minimum design standards for line clippers. The Arceneaux line clipper (ALC) is a model line clipper that meets these minimum design standards and may be fabricated from readily available and low-cost materials (see figure 1 of this subpart). The minimum design standards are as follows:

(i) The cutting blade must be curved, recessed, contained in a holder, or otherwise afforded some protection to minimize direct contact of the cutting surface with sea turtles or users of the cutting blade.

(ii) The blade must be capable of cutting 2.0–2.1 mm monofilament line and nylon or polypropylene multistrand material commonly known as braided mainline or tarred mainline.

(iii) The line clipper must have an extended reach handle or pole of at least 6 ft (1.82 m).

(iv) The cutting blade must be securely fastened to the extended reach handle or pole to ensure effective deployment and use.

(3) Dip nets are intended to facilitate safe handling of sea turtles and access to sea turtles for purposes of cutting lines in a manner that minimizes injury and trauma to sea turtles. The minimum design standards for dip nets that meet the requirements of this section are:

(i) The dip net must have an extended reach handle of at least 6 ft (1.82 m) of wood or other rigid material able to support a minimum of 100 lbs (34.1 kg) without breaking or significant bending or distortion.

(ii) The dip net must have a net hoop of at least 31 inches (78.74 cm) inside diameter and a bag depth of at least 38 inches (96.52 cm). The bag mesh openings may be no more than 3 inches x 3 inches (7.62 cm x 7.62 cm).

(4) All incidentally taken sea turtles brought aboard for dehooking and/or disentanglement must be handled in a manner to minimize injury and promote post-hooking survival.

(i) When practicable, comatose sea turtles must be brought on board immediately, with a minimum of injury, and handled in accordance with the procedures specified in paragraphs (b)(5) and (b)(6) of this section.

(ii) If a sea turtle is too large or hooked in such a manner as to preclude safe boarding without causing further damage/injury to the turtle, line clippers described in paragraph (b)(2) of this section must be used to clip the line and remove as much line as possible prior to releasing the turtle.

(iii) If a sea turtle is observed to be hooked or entangled by longline gear during hauling operations, the vessel operator must immediately cease hauling operations until the turtle has been removed from the longline gear or brought on board the vessel.

(iv) Hooks must be removed from sea turtles as quickly and carefully as possible. If a hook cannot be removed from a turtle, the line must be cut as close to the hook as possible.

(5) If the sea turtle brought aboard appears dead or comatose, the sea turtle must be placed on its belly (on the bottom shell or plastron) so that the turtle is right side up and its hindquarters elevated at least 6 inches (15.24 cm) for a period of no less than 4 hours and no more than 24 hours. The amount of the elevation depends on the size of the turtle; greater elevations are needed for larger turtles. A reflex test, performed by gently touching the eye and pinching the tail of a sea turtle, must be administered by a vessel operator, at least every 3 hours, to determine if the sea turtle is responsive. Sea turtles being resuscitated must be shaded and kept damp or moist but under no circumstance may be placed into a container holding water. A water-soaked towel placed over the eyes, carapace, and flippers is the most effective method to keep a turtle moist. Those that revive and become active must be returned to the sea in the manner described in paragraph (b)(6) of this section. Sea turtles that fail to revive within the 24–hour period must also be returned to the sea in the manner described in paragraph (b)(6)(i) of this section.

(6) Live turtles must be returned to the sea after handling

in accordance with the requirements of paragraphs (b)(4) and (b)(5) of this section:

(i) By putting the vessel engine in neutral gear so that the

propeller is disengaged and the vessel is stopped, and releasing the turtle away from deployed gear; and

(ii) Observing that the turtle is safely away from the vessel before engaging the propeller and continuing operations.

(7) In addition to the requirements in paragraphs (b) and (c) of this section, a vessel operator shall perform sea turtle handling and resuscitation techniques consistent with § 223.206(d)(1) of this title, as appropriate.

(c) *Longline seabird mitigation measures.* (1) Seabird mitigation techniques. Owners and operators of vessels registered for use of longline gear must ensure that the following actions are taken when fishing north of 23° N. lat.:

(i) Employ a line setting machine or line shooter to set the main longline when making deep sets west of 150° W. long. using monofilament main longline;

(ii) Attach a weight of at least 45 g to each branch line within 1 m of the hook when making deep sets using monofilament main longline;

(iii) When using basket-style longline gear, ensure that the main longline is deployed slack to maximize its sink rate;

(2) Use completely thawed bait that has been dyed blue to an intensity level specified by a color quality control card issued by NMFS;

(3) Maintain a minimum of two cans (each sold as 0.45 kg or 1 lb size) containing blue dye on board the vessel;

(4) Discharge fish, fish parts (offal), or spent bait while setting or hauling longline gear, on the opposite side of the vessel from where the longline gear is being set or hauled;

(5) Retain sufficient quantities of fish, fish parts, or spent bait, between the setting of longline gear for the purpose of strategically discharging it in accordance with paragraph (a)(6) of this section:

(6) Remove all hooks from fish, fish parts, or spent bait prior to its discharge in accordance with paragraph (c)(4) of this section; and

(7) Remove the bill and liver of any swordfish that is caught, sever its head from the trunk and cut it in half vertically, and periodically discharge the butchered heads and livers in accordance with paragraph (a)(6) of this section.

(8) If a short-tailed albatross is hooked or entangled by a vessel registered for use of longline gear, owners and operators must ensure that the following actions are taken:

(i) Stop the vessel to reduce the tension on the line and bring the bird on board the vessel using a dip net;

(ii) Cover the bird with a towel to protect its feathers from oils or damage while being handled;

(iii) Remove any entangled lines from the bird;

(iv) Determine if the bird is alive or dead.

(A) If dead, freeze the bird immediately with an identification tag attached directly to the specimen listing the species, location and date of mortality, and band number if the bird has a leg band. Attach a duplicate identification tag to the bag or container holding the bird. Any leg bands present must remain on the bird. Contact NMFS, the Coast Guard, or the U.S. Fish and Wildlife Service at the numbers listed on the Short-tailed Albatross Handling Placard distributed at the NMFS protected species workshop, inform them that you have a dead short-tailed albatross on board, and submit the bird to NMFS within 72 hours following completion of the fishing trip.

(B) If alive, handle the bird in accordance with paragraphs (c)(8)(iv)(C) through (J) of this section.

(C) Place the bird in a safe enclosed place;

(D) Immediately contact NMFS, the Coast Guard, or the U.S. Fish and Wildlife Service at the numbers listed on the Short-tailed Albatross Handling Placard distributed at the NMFS protected species workshop and request veterinary guidance;

(E) Follow the veterinary guidance regarding the handling and release of the bird.

(F) Complete the short-tailed albatross recovery data form issued by NMFS.

(G) If the bird is externally hooked and no veterinary guidance is received within 24–48 hours, handle the bird in accordance with paragraphs (c)(17)(iv) and (v) of this section, and release the bird only if it meets the following criteria:

(*1*) Able to hold its head erect and respond to noise and motion stimuli;

(*2*) Able to breathe without noise;

(*3*) Capable of flapping and retracting both wings to normal folded position on its back;

(*4*) Able to stand on both feet with toes pointed forward; and

(*5*) Feathers are dry.

(H) If released under paragraph (G) of this section or under the guidance of a veterinarian, all released birds must be placed on the sea surface.

(I) If the hook has been ingested or is inaccessible, keep the bird in a safe, enclosed place and submit it to NMFS immediately upon the vessel's return to port. Do not give the bird food or water.

(J) Complete the short-tailed albatross recovery data form issued by NMFS.

(9) If a seabird other than a short-tailed albatross is hooked or entangled by a vessel registered for use of longline gear, owners and operators must ensure that the following actions are taken:

(i) Stop the vessel to reduce the tension on the line and bring the seabird on board the vessel using a dip net;

(ii) Cover the seabird with a towel to protect its feathers from oils or damage while being handled;

(iii) Remove any entangled lines from the seabird;

(iv) Remove any external hooks by cutting the line as close as possible to the hook, pushing the hook barb out point first, cutting off the hook barb using bolt cutters, and then removing the hook shank;

(v) Cut the fishing line as close as possible to ingested or

inaccessible hooks;

(vi) Leave the bird in a safe enclosed space to recover until its feathers are dry; and

(vii) After recovered, release seabirds by placing them on the sea surface.

(d) *Vessel monitoring system.* (1) Only a VMS unit owned by NMFS and installed by NMFS

complies with the requirement of this subpart.

(2) After the holder of a permit to use longline gear has been notified by the SAC of a specific date for installation of a VMS unit on the permit holder's vessel, the vessel must carry the VMS unit after the date scheduled for installation.

(3) During the experimental VMS program, a longline permit holder shall not be assessed any fee or other charges to obtain and use a VMS unit, including the communication charges related directly to requirements under this section. Communication charges related to any additional equipment attached to the VMS unit by the owner or operator shall be the responsibility of the owner or operator and not NMFS.

(4) The holder of a longline permit and the master of the vessel operating under the permit must:

(i) Provide opportunity for the SAC to install and make operational a VMS unit after notification.

(ii) Carry the VMS unit on board whenever the vessel is at sea.

(iii) Not remove or relocate the VMS unit without prior approval from the SAC.

(5) The SAC has authority over the installation and operation of the VMS unit. The SAC may authorize the connection or order the disconnection of additional equipment, including a computer, to any VMS unit when deemed appropriate by the SAC.

(e) *Protected species workshop.* (1) Each year both the owner and the operator of a vessel registered for use of longline gear must attend and be certified for completion of a workshop conducted by NMFS on mitigation, handling, and release techniques for turtles and seabirds and other protected species.

(2) A protected species workshop certificate will be issued by NMFS annually to any person who has completed the workshop.

(3) An owner of a vessel registered for use of longline gear must have on file a valid protected species workshop certificate or copy issued by NMFS in order to maintain or renew their vessel registration.

(4) An operator of a vessel registered for use of longline gear must have on board the vessel a valid protected species workshop certificate issued by NMFS or a legible copy thereof.

§ 660.713 Drift gillnet fishery.

(a) *Take reduction plan gear restrictions.* Gear restrictions implementing the Pacific Offshore Cetacean Take Reduction Plan under the authority of the Marine Mammal Protection Act of 1972 remain in effect and can be found at 50 CFR 229.31.

(b) *Other gear restrictions.* (1) The maximum length of a drift gillnet on board a vessel shall not exceed 6,000 ft (1,828.8 m).

(2) Up to 1,500 ft (457.2 m) of drift gillnet in separate panels of 600 ft (182.9 m) may be on board the vessel in a storage area.

(c) *Protected Resource Area Closures.* (1) No person may fish with, set, or haul back drift gillnet gear in U.S. waters of the Pacific Ocean from August 15 through November 15 in the area bounded by straight lines connecting the following coordinates in the order listed (see figure 3 of this section):

(i) Pt. Sur at 36° 18.5′ N. lat.;

(ii) 34° 27′ N. lat. 123° 35′ W. long.;

(iii) 34° 27′ N. lat. 129° W. long.;

(iv) 45° N. lat. 129° W. long.; and

(v) the point where 45° N. lat. intersects the Oregon coast.

(2) No person may fish with, set, or haul back drift gillnet gear in U.S. waters of the Pacific Ocean south of 34o 27′ N. lat. (Pt. Conception) and east of 120° W. long. from January 1 through January 31 and from August 15 through August 31 during a forecasted or occurring El Nino event.

(i) The Assistant Administrator will publish a notification in the **Federal Register** that an El Nino event is occurring off, or is forecast for off, the coast of southern California and the requirement for time area closures in the Pacific loggerhead conservation zone. The notification will also be announced in summary form by other methods as the Assistant Administrator determines necessary and appropriate to provide notice to the California/Oregon drift gillnet fishery.

(ii) The Assistant Administrator will rely on information developed by NOAA offices that monitor El Nino events, such as NOAA's Coast Watch program, and developed by the State of California, to determine if such a notice should be published. The requirement for the area closures from January 1 through January 31 and from August 15 through August 31 will remain effective until the Assistant Administrator issues a notice that the El Nino event is no longer occurring.

(d) *Mainland area closures.* The following areas off the Pacific coast are closed to driftnet gear:

(1) Within the U.S. EEZ from the United States-Mexico International Boundary to the California-Oregon border from February 1 through April 30.

(2) In the portion of the U.S. EEZ within 75 nautical miles from the mainland shore from the United States-Mexico International Boundary to the California-Oregon border from May 1 through August 14.

(3) In the portion of the U.S. EEZ within 25 miles of the coastline from December 15 through January 31 of the following year from the United States-Mexico International Boundary to the California-Oregon border.

(4) In the portion of the U.S. EEZ from August 15 through September 30 within the area bounded by line extending from Dana Point to Church Rock on Santa Catalina Island, to Point La Jolla.

(5) In the portion of the U.S. EEZ within 12 nautical miles from the mainland shore north of a line extending west of Point Arguello to the California-Oregon border.

(6) In the portion of the U.S. EEZ within the area bounded by a line from the lighthouse at Point Reyes, California to Noonday Rock, to Southeast Farallon Island to Pillar Point.

(7) In the portion of the U.S. EEZ off the Oregon coast east of a line approximating 1000 fathoms as defined by the following coordinates:

42° 00′ 00″ N. lat. 125° 10′ 30″ W. long.

42° 25′ 39″ N. lat. 124° 59′ 09″ W. long.

42° 30′ 42″ N. lat. 125° 00′ 46″ W. long.

42° 30′ 23″ N. lat. 125° 04′ 14″ W. long.

43° 02′ 56″ N. lat. 125° 06′ 57″ W. long.

43° 01′ 29″ N. lat. 125° 10′ 55″ W. long.

43° 50′ 11″ N. lat. 125° 19′ 14″ W. long.

44° 03″23″ N. lat. 125° 12′ 22″ W. long.

45° 00′ 06″ N. lat. 125° 16′ 42″ W. long.

45° 25′ 27″ N. lat. 125° 16′ 29″ W. long.

45° 45′ 37″ N. lat. 125° 15′ 19″ W. long.

46° 04′ 45″ N. lat. 125° 24′ 41″ W. long.

46° 16′ 00″ N. lat. 125° 20′ 32″ W. long.

(8) In the portion of the U.S. EEZ north of 46° 16′ N. latitude (Washington coast).

(e) *Channel Islands area closures.* The following areas off the Channel Islands are closed to driftnet gear:

(1) *San Miguel Island closures.* (i) Within the portion of the U.S. EEZ north of San Miguel Island between a line extending 6 nautical miles west of Point Bennett and a line extending 6 nautical miles east of Cardwell Point.

(ii) Within the portion of the U.S. EEZ south of San Miguel Island between a line extending 10 nautical miles west of Point Bennett and a line extending 10 nautical miles east of Cardwell Point.

(2) *Santa Rosa Island closure.* Within the portion of the U.S. EEZ north of San Miguel Island between a line extending 6 nautical miles west from Sandy Point and a line extending 6 nautical miles east of Skunk Point from May 1 through July 31.

(3) *San Nicolas Island closure.* In the portion of the U.S. EEZ within a radius of 10 nautical miles of 33° 16′ 41″ N. lat., 119° 34′ 39″ W. long. (west end) from May 1 through July 31.

(4) *San Clemente Island closure.* In the portion of the U.S. EEZ within 6 nautical miles of the coastline on the easterly side of San Clemente Island within a line extending 6 nautical miles west from 33° 02′ 16″ N. lat., 118° 35′ 27″ W. long. and a line extending 6 nautical miles east from the light at Pyramid Head.

§ 660.714 Purse seine. [Reserved]

§ 660.715 Harpoon. [Reserved]

§ 660.716 Surface hook-and-line. [Reserved]

§ 660.717 Framework for revising regulations.

(a) *General.* NMFS will establish and adjust specifications and management measures in accordance with procedures and standards in the FMP.

(b) *Annual actions.* Annual specifications are developed and implemented according to § 660.709.

(c) *Routine management measures.* Consistent with section 3.4 of the FMP, management measures designated as routine may be adjusted during the year after recommendation from the Council, approval by NMFS, and publication in the **Federal Register**.

(d) *Changes to the regulations.* Regulations under this subpart may be promulgated, removed, or revised. Any such action will be made according to the framework measures in section 8.3.4 of the FMP and will be published in the **Federal Register**.

§ 660.718 Exempted fishing.

(a) In the interest of developing an efficient and productive fishery for HMS, the Regional Administrator may issue exempted fishing permits for the harvest of HMS in a manner or at times or places that otherwise would be prohibited.

(b) No exempted fishing for HMS may be conducted unless authorized by an EFP issued for the participating vessel in accordance with the criteria and procedures specified in § 600.745 of this chapter.

§ 660.719 Scientific observers.

(a) All fishing vessels operating in HMS fisheries, including catcher/processors, at-sea processors, and vessels that harvest in Washington, Oregon, or California and land catch in another area, may be required to accommodate NMFS certified observers on board to collect scientific data. Any observer program will be implemented in accordance with the procedures at § 660.717.

(b) All vessels with observers on board must comply with the safety regulations at 50 CFR 600.746.

(c) NMFS shall advise the permit holder or the designated agent of any observer requirement at least 24 hours (not including weekends and Federal holidays) before any trip.

(d) When NMFS notifies the permit holder or designated agent of the obligation to carry an observer in response to a notification under this subpart or as a condition of an EFP issued under 50 CFR 660.718, the vessel may not engage in the fishery without taking the observer.

(e) A permit holder must accommodate a NMFS observer assigned under these regulations. The Regional Administrator's office, and not the observer, will address any concerns raised over accommodations.

(f) The permit holder, vessel operator, and crew must cooperate with the observer in the performance of the observer's duties, including:

(1) Allowing for the embarking and debarking of the observer.

(2) Allowing the observer access to all areas of the vessel

necessary to conduct observer duties.

(3) Allowing the observer access to communications equipment and navigation equipment as necessary to perform observer duties.

(4) Allowing the observer access to VMS units to verify operation, obtain data, and use the communication capabilities of the units for official purposes.

(5) Providing accurate vessel locations by latitude and longitude or loran coordinates, upon request by the observer.

(6) Providing sea turtle, marine mammal, or sea bird specimens as requested.

(7) Notifying the observer in a timely fashion when commercial fishing operations are to begin and end.

(g) The permit holder, operator, and crew must comply with other terms and conditions to ensure the effective deployment and use of observers that the Regional Administrator imposes by written notice.

(h) The permit holder must ensure that assigned observers are provided living quarters comparable to crew members and are provided the same meals, snacks, and amenities as are normally provided to other vessel personnel.

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BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[I.D. 112103E]

RIN 0648–AR66

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Resources of the Gulf of Mexico; Continuation of the Madison/Swanson and Steamboat Lumps Marine Reserves

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of availability of Amendment 21 to the reef fish resources of the Gulf of Mexico; request for comments.

SUMMARY: NMFS announces that the Gulf of Mexico Fishery Management Council (Council) has submitted Amendment 21 to the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico for review, approval, and implementation by NMFS. Amendment 21 would continue the marine reserves at Madison-Swanson and Steamboat Lumps for an additional 6 years and revise the fishing restrictions that apply within the reserves. The intended effects of Amendment 21 are to provide protection for spawning aggregations of gag grouper in order to prevent overfishing, continue protection of a portion of the offshore population of male gag grouper, and evaluate the effect and usefulness of marine reserves as a management tool.

DATES: Written comments must be received on or before February 9, 2004.

ADDRESSES: Written comments must be mailed to Phil Steele, Southeast Regional Office, NMFS, 9721 Executive Center Drive N., St. Petersburg, FL 33702. Comments may also be sent via fax to 727–522–5583. Comments will not be accepted if submitted via e-mail or Internet.

Copies of Amendment 21, which includes an environmental assessment (EA), a supplemental regulatory impact review (RIR) and initial regulatory flexibility analysis (IRFA), and a copy of a minority report filed by three Council members opposing provisions in the amendment that allow seasonal surface trolling within the reserves, may be obtained from the Gulf of Mexico Fishery Management Council, The Commons at Rivergate, 3018 U.S. Highway 301 North, Suite 1000, Tampa, FL 33619–2266; phone: 813–228–2815; fax: 813–833–1844; e-mail: *gulf.council@noaa.gov*.

FOR FURTHER INFORMATION CONTACT: Phil Steele, telephone: 727–570–5305; fax: 727–570–5583; e-mail: *Phil.Steele@noaa.gov*.

SUPPLEMENTARY INFORMATION: The Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), as amended by the Sustainable Fisheries Act, requires each Regional Fishery Management Council to submit any fishery management plan or amendment to NMFS for review and approval, disapproval, or partial approval. The Magnuson-Stevens Act also requires that NMFS, upon receiving a plan or amendment, immediately publish a document in the **Federal Register** stating that the plan or amendment is available for public review and comment.

The Council has submitted Amendment 21 to the subject FMP to NMFS, for Secretarial review. The amendment proposes to: (1) extend the marine reserves at Madison-Swanson and Steamboat Lumps for an additional 6 years; (2) allow surface trolling in the marine reserves during May through October; (3) prohibit all fishing and possession of all fish species in the marine reserves during November through April except for vessels transiting the marine reserves in accordance with the same requirements as those proposed for the Tortugas South and North closed fishing areas (Reef Fish Amendment 19); and (4) prohibit the possession of reef fish within the reserves except for vessels transiting the reserves in accordance with the same requirements as proposed for the Tortugas South and North closed fishing areas (Reef Fish Amendment 19). Additionally, the Council will send a letter to the Highly Migratory Species Division of NMFS requesting that they implement regulations compatible with the proposals in this amendment for species under their jurisdiction.

A proposed rule that would implement measures outlined in the amendment has been prepared. In accordance with the Magnuson-Stevens Act, NMFS is evaluating the proposed rule to determine whether it is consistent with Amendment 21, the FMP, the Magnuson-Stevens Act, and other applicable law. If that determination is affirmative, NMFS will publish the proposed rule in the **Federal Register** for public review and comment.

Comments received by February 9, 2004, whether specifically directed to the FMP or the proposed rule, will be considered by NMFS in its decision to approve, disapprove, or partially approve Amendment 21. Comments received after that date will not be considered by NMFS in this decision. All comments received by NMFS on Amendment 21 or the proposed rule during their respective comment periods will be addressed in the final rule.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: December 4, 2003.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 03–30608 Filed 12–9–03; 8:45 am]

BILLING CODE 3510–22–S

Notices

Federal Register

Vol. 68, No. 237

Wednesday, December 10, 2003

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Doc. No. FV04–371]

Notice of Request for Extension of a Currently Approved Information Collection

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), this notice announces the Agricultural Marketing Service's (AMS) intention to request approval from the Office of Management and Budget for an extension of a currently approved information collection for the Reporting and Recordkeeping Requirements Under Regulations Under the Perishable Agricultural Commodities Act, 1930, as amended.

DATES: Comments received by February 9, 2004 will be considered.

ADDITIONAL INFORMATION OR COMMENTS: Interested persons are invited to submit written comments concerning this proposed rule. Comments must be sent to Dexter Thomas, Senior Marketing Specialist, PACA Branch, F & V Programs, AMS, USDA, 1400 Independence Avenue, SW., Room 2095—So. Bldg., Mail Stop 0242, Washington, DC 20250–0242. E-mail *dexter.thomas@usda.gov*. All comments should reference the docket number and the date and page number of this issue in the **Federal Register** and will be made available for public inspection in the PACA Branch during regular business hours and posted on the Internet at *http://www.ams.usda.gov/fv/paca.htm*.

SUPPLEMENTARY INFORMATION:

Title: Reporting and Recordkeeping Requirements Under Regulations (Other than Rules of Practice) Under the Perishable Agricultural Commodities Act, 1930.

OMB Number: 0581–0031.

Expiration Date of Approval: September 30, 2004.

Type of Request: Extension of a currently approved information collection.

Abstract: The PACA was enacted by Congress in 1930 to establish a code of fair trading practices covering the marketing of fresh and frozen fruits and vegetables in interstate or foreign commerce. It protects growers, shippers, and distributors dealing in those commodities by prohibiting unfair and fraudulent trade practices.

The law provides a forum for resolving contract disputes, and a mechanism for the collection of damages from anyone who fails to meet contractual obligations. In addition, the PACA provides for prompt payment of fruit and vegetable sellers and for revocation of licenses and sanctions against firms or principals who violated the law's standards for fair business practices. The PACA also imposes a statutory trust that attaches to perishable agricultural commodities received by regulated entities, products derived from the commodities, and any receivables or proceeds from the sale of the commodities. The trust exists for the benefit of produce suppliers, sellers, or agents that have not been paid, and continues until they have been paid in full.

The PACA is enforced through a licensing system. All commission merchants, dealers, and brokers engaged in business subject to the PACA must be licensed. Retailers and grocery wholesalers must renew their licenses every three years. All other licensees have the option of a one, two, or three-year license term. Those who engage in practices prohibited by the PACA may have their licenses suspended or revoked.

The information collected is used to administer licensing provisions under the PACA, to adjudicate contract disputes, and for the purpose of enforcing the PACA and the regulations. The purpose of this notice is to solicit comments from the public concerning our information collection.

We estimate the paperwork and time burden on the above to be as follows:

Form FV–211 (or 211–1, or 211–2, or 211–3, or 211–4, or 211–5), Application for License: Average of .25 hours per application per response.

Form FV–231–1 (or 231–1A, or 231–2, or 231–2A), Application for Renewal or Reinstatement of License: Average of .05 hours per application per response.

Regulations Section 46.13—Letters to Notify USDA of Changes in Business Operations: Average of .05 hours per notice per response.

Regulations Section 46.4—Limited Liability Company Articles of Organization and Operating Agreement: Average of .083 hours with approximately 220 recordkeepers.

Regulations Section 46.18—Record of Produce Received: Average of 5 hours with approximately 18,400 recordkeepers.

Regulations Section 46.20—Records Reflecting Lot Numbers: Average of 8.25 hours with approximately 1,000 recordkeepers.

Regulations Section 46.46(d)(2)—Waiver of Rights to Trust Protection: Average of .25 hours per notice with approximately 100 principals.

Regulations Sections 46.46(f) and 46.2(aa)(11)—Copy of Written Agreement Reflecting Times for Payment: Average of 20 hours with approximately 2,670 recordkeepers.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 3.8203 hours per response.

Respondents: Commission merchants, dealers, and brokers engaged in the business of buying, selling, or negotiating the purchase or sale of commercial quantities of fresh and/or frozen fruits and vegetables in interstate or foreign commerce are required to be licensed under the PACA (7 U.S.C. 499(c)(a)).

Estimated Number of Respondents: 15,829.

Estimated Number of Responses: 40,609

Estimated Number of Responses per Respondent: 2.5654.

Estimated Total Annual Burden on Respondents: 155,138.

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to Dexter Thomas, Senior Marketing Specialist, PACA Branch, F & V Programs, AMS, USDA, 1400 Independence Avenue, SW., Room 2095-So. Bldg., Mail Stop 0242, Washington, DC 20250–0242. E-mail—*dexter.thomas@usda.gov*.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will become a matter of public record.

Dated: December 4, 2003.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 03–30599 Filed 12–9–03; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[No. LS–04–02]

Beef Promotion and Research: Certification and Nomination for the Cattlemen's Beef Promotion and Research Board

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Department of Agriculture's (USDA) Agricultural Marketing Service (AMS) is accepting applications from State cattle producer organizations or associations and general farm organizations, as well as cattle or beef importer organizations, who desire to be certified to nominate producers or importers for appointment to vacant positions on the Cattlemen's Beef Promotion and Research Board (Board). Organizations which have not previously been certified that are interested in submitting nominations must complete and submit an official application form to AMS. Previously certified organizations do not need to reapply. Notice is also given that vacancies will occur on the Board and that during a period to be established, nominations will be accepted from eligible organizations and individual importers.

DATES: Applications for certification must be received by close of business January 9, 2004.

ADDRESSES: Certification form as well as copies of the certification and nomination procedures may be requested from Kenneth R. Payne, Chief; Marketing Programs Branch, LS, AMS, USDA; STOP 0251–Room 2638–S; 1400 Independence Avenue, SW.; Washington, DC 20250–0251. The form may also be found on the Internet at *http://www.ams.usda.gov/lsg/mpb/beef/ls25.pdf*.

FOR FURTHER INFORMATION CONTACT: Kenneth R. Payne, Chief, Marketing Programs Branch on 202/720–1115.

SUPPLEMENTARY INFORMATION: The Beef Promotion and Research Act of 1985 (Act)(7 U.S.C. 2901 *et seq.*), enacted December 23, 1985, authorizes the implementation of a Beef Promotion and Research Order (Order). The Order, as published in the July 18, 1986, **Federal Register** (51 FR 26132), provides for the establishment of a Board. The current Board consists of 100 cattle producers and 8 importers appointed by USDA. The duties and responsibilities of the Board are specified in the Order.

The Act and the Order provide that USDA shall either certify or otherwise determine the eligibility of State cattle producer organizations or associations and general farm organizations, as well as any importer organizations or associations to nominate members to the Board to ensure that nominees represent the interests of cattle producers and importers. Nominations for importer representatives may also be made by individuals who import cattle, beef, or beef products. Persons who are individual importers do not need to be certified as eligible to submit nominations. When individual importers submit nominations, they must establish to the satisfaction of USDA that they are in fact importers of cattle, beef, or beef products, pursuant to § 1260.143(b)(2) of the Order [7 CFR 1260.143(b)(2)]. Individual importers are encouraged to contact AMS at the above address to obtain further information concerning the nomination process, including the beginning and ending dates of the established nomination period and required nomination forms and background information sheets. Certification and nomination procedures were promulgated in the final rule, published in the April 4, 1986, **Federal Register** (51 FR 11557) and currently appear at 7 CFR § 1260.500 through § 1260.640. Organizations which have previously been certified to nominate members to the Board do not need to reapply for certification to nominate producers and importers for the upcoming vacancies.

The Act and the Order provide that the members of the Board shall serve for terms of 3 years. The Order also requires USDA to announce when a Board vacancy does or will exist. The following States have one or more members whose terms will expire in early 2005:

State or unit	Number of vacancies
Alabama	1
Arkansas	1
California	2
Colorado	1
Florida	1
Idaho	1
Illinois	1
Indiana	1
Iowa	2
Kansas	2
Kentucky	1
Minnesota	1
Missouri	2
Montana	1
Nebraska	2
New York	1
North Dakota	1
Ohio	1
Oklahoma	2
Oregon	1
Pennsylvania	1
South Dakota	1
Tennessee	1
Texas	5
Virginia	1
Wisconsin	1
Northwest Unit	1
Southeast Unit	1
Importer Unit	1

Since there are no anticipated vacancies on the Board for the remaining States' positions, or for the positions of the Northwest unit, nominations will not be solicited from certified organizations or associations in those States or units.

Uncertified eligible producer organizations and general farm organizations in all States that are interested in being certified as eligible to nominate cattle producers for appointment to the listed producer positions, must complete and submit an official "Application for Certification of Organization or Association," which must be received by close of business [January 9, 2004]. Uncertified eligible importer organizations that are interested in being certified as eligible to nominate importers for appointment to the listed importer positions must apply by the same date. Importers should not use the application form but should provide the requested information by letter as provided for in 7 CFR 1260.540(b). Applications from States or units without vacant positions

on the Board and other applications not received within the 30-day period after publication of this notice in the **Federal Register** will be considered for eligibility to nominate producers or importers for subsequent vacancies on the Board.

Only those organizations or associations which meet the criteria for certification of eligibility promulgated at 7 CFR § 1260.530 are eligible for certification. Those criteria are:

(a) For State organizations or associations:

(1) Total paid membership must be comprised of at least a majority of cattle producers or represent at least a majority of cattle producers in a State or unit,

(2) Membership must represent a substantial number of producers who produce a substantial number of cattle in such State or unit,

(3) There must be a history of stability and permanency, and

(4) There must be a primary or overriding purpose of promoting the economic welfare of cattle producers.

(b) For organizations or associations representing importers, the determination by USDA as to the eligibility of importer organizations or associations to nominate members to the Board shall be based on applications containing the following information:

(1) The number and type of members represented (*i.e.*, beef or cattle importers, etc.),

(2) Annual import volume in pounds of beef and beef products and/or the number of head of cattle,

(3) The stability and permanency of the importer organization or association,

(4) The number of years in existence, and

(5) The names of the countries of origin for cattle, beef, or beef products imported.

All certified organizations and associations, including those that were previously certified in the States or units having vacant positions on the Board, will be notified simultaneously in writing of the beginning and ending dates of the established nomination period and will be provided with required nomination forms and background information sheets.

The names of qualified nominees received by the established due date will be submitted to USDA for consideration as appointees to the Board.

The information collection requirements referenced in this notice have been previously approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C., Chapter 35 and have been assigned OMB No. 0581–0093, except Board member nominee information sheets are assigned OMB No. 0505–0001.

Authority: 7 U.S.C. 2901 *et seq.*

Dated: December 4, 2003.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 03–30604 Filed 12–9–03; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Docket Number FV–04–303]

United States Standards for Grades of Field Grown Leaf Lettuce

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice.

SUMMARY: The Agricultural Marketing Service (AMS), prior to undertaking research and other work associated with creating an official grade standard, is soliciting comments on the petition to create the United States Standards for Grades of Field Grown Leaf Lettuce. At a recent meeting of the Fruit and Vegetable Industry Advisory Committee, AMS was asked to review all the fresh fruit and vegetable grade standards for usefulness in serving the industry and identify commodities that may be better served if a grade standard was developed. As a result, AMS has noted that the industry is interested in the creation of standards for field grown leaf lettuce.

DATES: Comments must be received by February 9, 2004.

ADDRESSES: Interested persons are invited to submit written comments to the Standardization Section, Fresh Products Branch, Fruit and Vegetable Programs, Agricultural Marketing Service, U.S. Department of Agriculture, 1400 Independence Ave. SW., Room 1661 South Building, Stop 0240, Washington, DC 20250–0240, fax (202) 720–8871, E-mail *FPB.DocketClerk@usda.gov*. Comments should make reference to the dates and page number of this issue of the **Federal Register** and will be made available for public inspection in the above office during regular business hours.

FOR FURTHER INFORMATION CONTACT: David L. Priester, at the above address or call (202) 720–2185, e-mail *David.Priester@usda.gov*.

SUPPLEMENTARY INFORMATION: At a recent meeting of the Fruit and Vegetable Industry Advisory Committee, AMS was asked to review all the fresh fruit and vegetable grade standards for usefulness in serving the industry and to identify commodities that may be better served if a grade standard was developed. AMS has identified field grown leaf lettuce as a possible commodity for development of United States Standards for Grades of Field Grown Leaf Lettuce. Currently, there are U.S. Standards for Grades of Greenhouse Leaf Lettuce, but no standards for leaf lettuce grown in open fields. When requested to inspect field grown leaf lettuce, the greenhouse leaf lettuce standards may be used as a reference, but cannot be used for grade determination.

A new standard for leaf lettuce grown in open fields could contain sections pertaining to grades, tolerances, application of tolerances, pack requirements, definitions, and other relevant and necessary provisions. Prior to undertaking detailed work to develop the proposed standards for field grown leaf lettuce, AMS is soliciting comments on the possible development of the standards for grades of field green leaf lettuce and the probable impact on distributors, processors, and growers.

This notice provides for a 60-day comment period for interested parties to comment on the development of the standards. Should AMS conclude that there is a need for the development of the standards, the proposed standards will be published in the **Federal Register** with a request for comments in accordance with 7 CFR part 36.

Authority: 7 U.S.C. 1621–1627.

Dated: December 4, 2003.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 03–30603 Filed 12–9–03; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Doc. No. FV–04–328]

United States Standards for Grades of Frozen Celery

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice.

SUMMARY: The Agricultural Marketing Service (AMS) of the Department of Agriculture (USDA) is establishing the United States Standards for Grades of Frozen Celery. USDA received a petition from a grower and a processor of celery to create grade standards for frozen celery that will include a description of the product, style, sample unit size, grades, ascertaining the grade by sample, and ascertaining the grade by lot. The standard is intended to provide a common language for trade, and a means of measuring value in the marketing of frozen celery.

EFFECTIVE DATE: January 9, 2004.

FOR FURTHER INFORMATION CONTACT: Karen L. Kaufman, Processed Products Branch, Fruit and Vegetable Programs, Agricultural Marketing Service, U.S. Department of Agriculture, STOP 0247, 1400 Independence Avenue SW., Washington, DC 20250–0247; fax (202) 690–1087; or e-mail *karen.kaufman@usda.gov*.

SUPPLEMENTARY INFORMATION: Section 203(c) of the Agricultural Marketing Act of 1946 (7 U.S.C. 1621–1627), as amended, directs and authorizes the Secretary of Agriculture "to develop and improve standards of quality, condition, quantity, grade, and packaging, and recommend and demonstrate such standards in order to encourage uniformity and consistency in commercial practices * * *." AMS is committed to carrying out this authority in a manner that facilitates the marketing of agricultural commodities and makes copies of official standards available upon request. The United States Standards for Grades of Fruits and Vegetables are maintained by USDA/AMS/Fruit and Vegetable Programs and may be obtained by writing to the above address or on the internet at: *http://www.ams.usda.gov/standards/standpfv.htm*.

AMS is establishing the U.S. Standards for Grades of Frozen Celery using the procedures that appear in part 36 of title 7 of the Code of Federal Regulations (7 CFR part 36).

Proposed by the Petitioner

The petitioner, a grower and a processor of celery, requested that USDA develop a standard for frozen celery to be used by the industry. The petitioner provided information on style, sample size and description to AMS to develop the standard. AMS visited the petitioner's facility to collect information on grades of frozen celery and how to ascertain the grade of a sample and of a lot.

AMS prepared a discussion draft of the frozen celery standard, and distributed copies for input to the petitioner, the American Frozen Food Institute (AFFI), and the National Food Processors Association (NFPA). Input from the above groups was used to develop the standard.

Proposed by Fruit and Vegetable Programs, AMS

The first notice proposing to create a new United States Standards for Grades of Frozen Celery was published based on the petition in the May 2, 2001 **Federal Register**. A second notice was published in the February 20, 2003 **Federal Register** (68 FR 8196) based on comments received from the first notice. AMS received three comments in response to the second notice. All of the responses were in favor of the new standard. These comments are available by accessing AMS's Home Page on the Internet at: *http://www.ams.usda.gov/fv/ppb.html*.

Based on recommendations from the commentors the following changes were made to the standard, add "Bias sliced celery" to Section 2.6681. Styles of frozen celery. (a) Sliced celery; changes to Table I—Allowances for Defects in Frozen Celery include the addition of "bias sliced" celery with "sliced" style; for blemished and seriously blemished units no unit larger than a ¼", for insect damage no larger than ⅛"; for grades of "sliced", "bias" and "diced" style: blemished Grade "A" maximum of 3% by weight, Grade "B" maximum of 4% by weight, seriously blemished Grade "A" maximum of 1% by weight, Grade "B" maximum of 2% by weight, for mechanical damage, crushed or broken units for Grade "B" no more than 3% by weight and "sliced" and "bias" style extraneous vegetable material allowed in Grade "A" one piece, and Grade "B" two pieces.

Accordingly, AMS is establishing the United States Standard for Grades of Frozen Celery. The U.S. Standards for Grades of Frozen Celery following the standard format for U.S. Grade Standards. AMS is establishing the definition of "frozen celery" and including "sliced", "bias" and "diced" as the style designations in the standard. Finally, this standard defines the quality factors that affect frozen celery and determine sample unit sizes for this commodity.

This standard establishes the grade levels "A", "B" and "Substandard" and assigns the corresponding score points for each level. The tolerance for each quality factor as defined for each grade level is established.

The grade of a sample unit of frozen celery will be ascertained by considering the factors of varietal characteristics flavor and odor, which are not scored; the ratings for the factors of color, defects, and character, which are scored; the total score; and the limiting rules which apply. This standard will provide a common language for trade, a means of measuring value in the marketing of frozen celery, and provide guidance in the effective utilization of frozen celery. The official grade of a lot of frozen celery covered by these standards will be determined by the procedures set forth in the Regulations Governing Inspection and Certification of Processed Products Thereof, and Certain Other Processed Food Products (§ 52.1 to 52.83).

The U.S. Standards for Grades of Frozen Celery will become effective 30 days after publication of this notice in the **Federal Register**.

Authority: 7 U.S.C. 1621–1627.

Dated: December 4, 2003.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 03–30605 Filed 12–9–03; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Docket Number FV–04–301]

United States Standards for Grades of Greenhouse Tomatoes

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice.

SUMMARY: The Agricultural Marketing Service (AMS), prior to undertaking research and other work associated with revising official grade standards, is soliciting comments on the petition to revise the United States Standards for Grades of Greenhouse Tomatoes. At a recent meeting of the Fruit and Vegetable Industry Advisory Committee, AMS was asked to review all fresh fruit and vegetable grade standards for usefulness in serving the industry. As a result, AMS has noted that the method for determining percentages of defects and size classifications for greenhouse tomatoes needs to be revised to stay in line with current marketing practices. Additionally, AMS is seeking comments regarding any other revisions that may be necessary to better serve the industry.

DATES: Comments must be received by February 9, 2004.

ADDRESSES: Interested persons are invited to submit written comments to the Standardization Section, Fresh Products Branch, Fruit and Vegetable Programs, Agricultural Marketing Service, U.S. Department of Agriculture, 1400 Independence Ave., SW., Room 1661, South Building, Stop 0240, Washington, DC 20250–0240; fax (202)

720–8871, e-mail *FPB.DocketClerk@usda.gov*. Comments should make reference to the dates and page number of this issue of the **Federal Register** and will be made available for public inspection in the above office during regular business hours.

FOR FURTHER INFORMATION CONTACT: David L. Priester, at the above address, or call (202) 720–2185; e-mail *David.Priester@usda.gov*.

SUPPLEMENTARY INFORMATION: At a recent meeting of the Fruit and Vegetable Industry Advisory Committee, AMS was asked to review all fresh fruit and vegetable grade standards for usefulness in serving the industry. AMS has identified the United States Standards for Grades of Greenhouse Tomatoes for possible revision. These standards were last revised in 1966. Since that time, marketing and packaging practices have changed. The current standards state that the size of greenhouse tomatoes and the percentage of defects shall be determined by weight. Currently however, greenhouse tomatoes are packed and marketed in a variety of methods, typically based on size or count. Prior to undertaking detailed work to develop the proposed revised standards, AMS is soliciting comments on the possible revision of the standards for grades of greenhouse tomatoes and the probable impact on distributors, processors, and growers.

This notice provides for a 60-day comment period for interested parties to comment on changes to the standards. Should AMS proceed with revising the standards, the proposed revision of the standards will be published in the **Federal Register** with a request for comments in accordance with 7 CFR part 36.

Authority: 7 U.S.C. 1621–1627.

Dated: December 4, 2003.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 03–30602 Filed 12–9–03; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Docket Number FV–04–302]

United States Standards for Grades of Sweet Potatoes

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice.

SUMMARY: The Agricultural Marketing Service (AMS), prior to undertaking research and other work associated with revising an official grade standard, is soliciting comments on a possible revision to the United States Standards for Grades of Sweet Potatoes. At a recent meeting of the Fruit and Vegetable Industry Advisory Committee, AMS was asked to review all the fresh fruit and vegetable grade standards for usefulness in serving the industry. As a result, AMS has noted that the size requirements for sweet potatoes are complex and may be difficult to apply. Therefore, AMS is soliciting comments on the possible revision of the size requirements. Additionally, AMS is seeking comments regarding any other revisions that may be necessary to better serve the industry.

DATES: Comments must be received by February 9, 2004.

ADDRESSES: Interested persons are invited to submit written comments to the Standardization Section, Fresh Products Branch, Fruit and Vegetable Programs, Agricultural Marketing Service, U.S. Department of Agriculture, 1400 Independence Ave., SW., Room 1661 South Building, Stop 0240, Washington, DC 20250–0240; Fax (202) 720–8871, E-mail *FPB.DocketClerk@usda.gov*.

Comments should make reference to the dates and page number of this issue of the **Federal Register** and will be made available for public inspection in the above office during regular business hours.

FOR FURTHER INFORMATION CONTACT: David L. Priester, at the above address or call (202) 720–2185; E-mail: *David.Priester@usda.gov*.

SUPPLEMENTARY INFORMATION:

Background

At a recent meeting of the Fruit and Vegetable Industry Committee, AMS was asked to review all the fresh fruit and vegetable grade standards for usefulness in serving the industry. AMS has identified the United States Standards for Grades of Sweet Potatoes for a possible revision. These standards were last revised in 1963. As a result, AMS identified the size requirements of the U.S. Extra No. 1 grade and the U.S. No. 1 grade for possible revision. Currently the U.S. Extra No. 1 grade requires that the length of a sweet potato be not less than 3 inches or more than 9 inches, the maximum diameter not to exceed 3¼ inches, the maximum weight not to exceed 18 ounces and unless otherwise specified, the minimum diameter not be less than 1¾ inches. The U.S. No. 1 grade requires the maximum diameter of a sweet potato not to exceed 3½ inches, the maximum weight not to exceed 20 ounces, the length be not less than 3 inches or more than 9 inches unless otherwise specified, and the minimum diameter not be less than 1¾ inches unless otherwise specified. These requirements are complex and may be difficult to apply. While these requirements may have reflected sweet potatoes sizes marketed in the past, but they need to be updated to reflect the marketing of sweet potatoes today. Therefore, AMS believes that a change to these requirements is warranted to better serve the industry. However, prior to undertaking detailed work to develop a proposed revision to the standard, AMS is soliciting comments on the possible revision to the standard and the probable impact on distributors, processors, and growers. Additionally, AMS is seeking comments regarding any other revisions that may be necessary to better serve the industry.

This notice provides for a 60-day comment period for interested parties to comment on changes to the standard. Should AMS proceed with revising the standard, the proposed revision of the standard will be published in the **Federal Register** with a request for comments in accordance with 7 CFR part 36.

Authority: 7 U.S.C. 1621–1627.

Dated: December 4, 2003.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 03–30601 Filed 12–9–03; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–401–806]

Stainless Steel Wire Rod From Sweden; Final Results of Expedited Sunset Review of Antidumping Duty Order

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of expedited sunset review of antidumping duty order on stainless steel wire rod from Sweden.

SUMMARY: On August 1, 2003, the Department of Commerce ("the Department") published the notice of initiation of a sunset review on stainless steel wire rod ("SSWR") from Sweden. On the basis of notice of intent to participate and adequate substantive comments filed on behalf of domestic interested parties and inadequate response (in this case, no response) from respondent interested parties, we determined to conduct an expedited (120-day) review. As a result of this review, we find that revocation of the antidumping duty order would be likely to lead to continuation or recurrence of dumping at the levels listed below in the section entitled "Final Results of Review."

EFFECTIVE DATE: December 10, 2003.

FOR FURTHER INFORMATION CONTACT: Julie Al-Saadawi or Martha Douthit, Office of Policy for Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC, 20230; telephone: (202) 482–1930 or (202) 482–5050, respectively.

SUPPLEMENTARY INFORMATION:

Background

On August 1, 2003, the Department published the notice of initiation of a sunset review of the antidumping order on SSWR from Sweden pursuant to section 751(c) of the Tariff Act of 1930, as amended (the "Act").[1] The Department received Notice of Intent to Participate on behalf of Carpenter Technology Corporation ("domestic interest parties"), within the deadline specified in section 351.218(d)(1)(i) of the Sunset Regulations. The domestic interested parties claimed interested party status under Section 771(9)(C) of the Act, as a U.S. producer of SSWR. We received a complete substantive response, in the sunset review, from the domestic interested parties, within the 30-day deadline specified in the Sunset Regulations under section 351.218(d)(3)(i). The domestic interested parties have been involved in this proceeding since its inception and are committed to full participation in this five-year review.

We did not receive a substantive response from any respondent interested parties to this proceeding. As a result, pursuant to Section 751(c)(3)(B) of the Act and 19 CFR 351.218(e)(1)(ii)(C) of the Department's Regulations, the Department conducted an expedited, 120-day, review of this antidumping duty order.

Scope of Review

Stainless steel wire rod (SSWR) comprises products that are hot-rolled or hot-rolled annealed and/or pickled and/or descaled rounds, squares, octagons, hexagons or other shapes, in coils, that may also be coated with a lubricant containing copper, lime or oxalate. SSWR is made of alloy steels containing, by weight, 1.2 percent or less of carbon and 10.5 percent or more of chromium, with or without other elements. These products are manufactured only by hot-rolling or hot-rolling, annealing, and/or pickling and/or descaling, are normally sold in coiled form, and are of solid cross-section. The majority of SSWR sold in the United States is round in cross-sectional shape, annealed and pickled, and later cold-finished into stainless steel wire or small-diameter bar. The most common size for such products is 5.5 millimeters or 0.217 inches in diameter, which represents the smallest size that normally is produced on a rolling mill and is the size that most wire-drawing machines are set up to draw. The range of SSWR sizes normally sold in the United States is between 0.20 inches and 1.312 inches diameter.

Two stainless steel grades, SF20T and K-M35FL, are excluded from the scope of this review. The following proprietary grades of Kanthal AB are also excluded: Kanthal A–1, Kanthal AF, Kanthal A, Kanthal D, Kanthal DT, Alkrothal 720, and Nikrothal 40. The chemical makeup for the excluded grades is as follows:

SF20T
- Carbon—0.05 max
- Manganese—2.00 max
- Phosphorous—0.05 max
- Sulfur—0.15 max
- Silicon—1.00 max
- Chromium—19.00/21.00
- Molybdenum—1.50/2.50
- Lead—added (0.10/0.30)
- Tellurium—added (0.03 min)

K–M35FL
- Carbon—0.015 max
- Silicon—0.70/1.00
- Manganese—0.40 max
- Phosphorous—0.04 max
- Sulfur—0.03 max
- Nickel—0.30 max
- Chromium—12.50/14.00
- Lead—0.10/0.30
- Aluminum—0.20/0.35

The products subject to this order are currently classifiable under subheadings 7221.00.0005, 7221.00.0015, 7221.00.0030, 7221.00.0045, and 7221.00.0075 of the Harmonized Tariff Schedule of the United States ("HTSUS"). Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise is dispositive. This review cover all imports from all manufacturers, producers, and exporters of SSWR from Sweden.

[1] *Initiation of Five-Year (Sunset) Reviews*, 68 FR 45219 (August 1, 2003).

Analysis of Comments Received

All issues raised in this case by parties to this sunset review are addressed in the "Issues and Decision Memorandum" ("Decision Memo") from Ronald K. Lorentzen, Acting Director, Office of Policy, Import Administration, to James J. Jochum, Assistant Secretary for Import Administration, dated December 1, 2003, which is hereby adopted by this notice. The issues discussed in the Decision Memo include the likelihood of continuation or recurrence of dumping and the magnitude of the margin likely to prevail were the order revoked. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in this public memorandum, which is on file in room B–099 of the main Commerce Building.

In addition, a complete version of the Decision Memo can be accessed directly on the Web at *http://ia.ita.doc.gov/sunset*, under the heading "December 2003." The paper copy and electronic version of the Decision Memorandum are identical in content.

Final Results of Review

We determine that revocation of the antidumping duty on SSWR from Sweden would be likely to lead to continuation or recurrence of dumping at the following percentage weighted-average margins:

Swedish producers/ manufacturers/exporters	Weighted average-margin (percentage)
Fagersta Stainless AB	5.71
All Others	5.71

This notice also serves as the only reminder to parties subject to administrative protective orders ("APO") of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305 of the Department's regulations. Timely notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

We are issuing and publishing this results and notice in accordance with sections 751(c), 752, and 777(i)(1) of the Act.

Dated: December 1, 2003.

James J. Jochum,

Assistant Secretary for Import Administration.

[FR Doc. 03–30624 Filed 12–9–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–475–820]

Stainless Steel Wire Rod From Italy; Final Results of Expedited Sunset Review of Antidumping Duty Order

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of expedited sunset review of antidumping duty order on stainless steel wire rod from Italy.

SUMMARY: On August 1, 2003, the Department of Commerce ("the Department") published the notice of initiation of a sunset review on stainless steel wire rod ("SSWR") from Italy. On the basis of notice of intent to participate and adequate substantive comments filed on behalf of domestic interested parties and inadequate response (in this case, no response) from respondent interested parties, we determined to conduct an expedited (120-day) review. As a result of this review, we find that revocation of the antidumping duty order would be likely to lead to continuation or recurrence of dumping at the levels listed below in the section entitled "Final Results of Review."

EFFECTIVE DATE: December 10, 2003.

FOR FURTHER INFORMATION CONTACT: Ozlem Koray or Martha Douthit, Office of Policy for Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–3675 or (202) 482–5050.

SUPPLEMENTARY INFORMATION:

Background

On August 1, 2003, the Department published the notice of initiation of a sunset review of the antidumping order on SSWR from Italy pursuant to section 751(c) of the Tariff Act of 1930, as amended (the "Act").[1] The Department received Notice of Intent to Participate on behalf of domestic interested party, Carpenter Technology Corporation ("Carpenter Technology"), within the deadline specified in section 351.218(d)(1)(I) of the *Sunset Regulations*. Carpenter Technology claimed interested party status under Section 771(9)(C) of the Act, as U.S. producers of a domestic like product. We received a complete substantive response, in the sunset review, from the domestic interested parties, within the 30-day deadline specified in the *Sunset Regulations* under section 351.218(d)(3)(I). Carpenter Technology has been involved in this proceeding since its inception and are committed to full participation in this five-year review.

We did not receive a substantive response from any respondent interested parties to this proceeding. As a result, pursuant to section 751(c)(3)(B) of the Act and 19 CFR 351.218(e)(1)(ii)(C) of the Department's Regulations, the Department conducted expedited, 120-day, review of this antidumping duty order.

This review covers all imports from all manufacturers, producers, and exporters of SSWR from Italy except for Acciaierie Valbruna/Accierie de Bolazano SpA, who received a *de minimis* rate in the investigation and as a result were excluded from the order.

Scope of Review

SSWR comprises products that are hot-rolled or hot-rolled annealed and/or pickled and/or descaled rounds, squares, octagons, hexagons or other shapes, in coils, that may also be coated with a lubricant containing copper, lime or oxalate. SSWR is made of alloy steels containing, by weight, 1.2 percent or less of carbon and 10.5 percent or more of chromium, with or without other elements. These products are manufactured only by hot-rolling or hot-rolling, annealing, and/or pickling and/or descaling, are normally sold in coiled form, and are of solid cross-section. The majority of SSWR sold in the United States is round in cross-sectional shape, annealed and pickled, and later cold-finished into stainless steel wire or small-diameter bar.The most common size for such products is 5.5 millimeters or 0.217 inches in diameter, which represents the smallest size that normally is produced on a rolling mill and is the size that most wire-drawing machines are set up to draw. The range of SSWR sizes normally sold in the United States is between 0.20 inches and 1.312 inches diameter. Two stainless steel grades, SF20T and K–M35FL, are excluded from the scope of this review. The chemical makeup for the excluded grades is as follows:

SF20T
- Carbon—0.05 max
- Manganese—2.00 max
- Phosphorous—0.05 max
- Sulfur—0.15 max
- Silicon—1.00 max
- Chromium—19.00/21.00
- Molybdenum—1.50/2.50
- Lead—added (0.10/0.30)
- Tellurium—added (0.03 min)

K–M35FL
- Carbon—0.015 max
- Silicon—0.70/1.00
- Manganese—0.40 max
- Phosphorous—0.04 max
- Sulfur—0.03 max
- Nickel—0.30 max
- Chromium—12.50/14.00
- Lead—0.10/0.30
- Aluminum—0.20/0.35

The products subject to this order are currently classifiable under subheadings 7221.00.0005, 7221.00.0015, 7221.00.0030, 7221.00.0045, and 7221.00.0075 of the Harmonized Tariff Schedule of the United States ("HTSUS"). Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise is dispositive.

Analysis of Comments Received

All issues raised in this case by Carpenter Technology to this sunset review are addressed in the "Issues and Decision Memorandum" ("Decision Memo") from Ronald K. Lorentzen, Acting Director, Office of Policy, Import Administration, to James J. Jochum, Assistant Secretary for Import Administration, dated December 1, 2003, which is hereby adopted by this notice. The issues discussed in the Decision Memo include the likelihood of continuation or recurrence of dumping and the magnitude of the margin likely to prevail were the order revoked. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in this public memorandum, which is on file in room B–099 of the main Commerce Building.

In addition, a complete version of the Decision Memo can be accessed directly on the Web at *http://ia.ita.doc.gov/sunset*, under the heading "December 2003." The paper copy and electronic version of the Decision Memorandum are identical in content.

Final Results of Review

We determine that revocation of the antidumping duty on SSWR from Italy would be likely to lead to continuation or recurrence of dumping at the following percentage weighted-average margins:

Manufacturer/producer/exporter	Weighted average margin percentage
Cogne Acciai Speciali S.r.l	12.73
All Others	12.73

This notice also serves as the only reminder to parties subject to administrative protective orders ("APO") of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305 of the Department's regulations. Timely notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

We are issuing and publishing this results and notice in accordance with sections 751(c), 752, and 777(i)(1) of the Act.

Dated: December 1, 2003.

James J. Jochum,

Assistant Secretary, Import Administration.

[FR Doc. 03–30626 Filed 12–9–03; 8:45 am]

BILLING CODE 3510–DS–P

[1] *Initiation of Five-Year (Sunset) Reviews*, 68 FR 45219 (August 1, 2003).

DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–829]

Stainless Steel Wire Rod From South Korea; Final Results of Expedited Sunset Review of Antidumping Duty Order

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of expedited sunset review of antidumping duty order on stainless steel wire rod from South Korea.

SUMMARY: On August 1, 2003, the Department of Commerce ("the Department") published the notice of initiation of a sunset review on stainless steel wire rod ("SSWR") from South Korea. On the basis of notice of intent to participate and adequate substantive comments filed on behalf of domestic interested parties and inadequate response (in this case, no response) from respondent interested parties, we determined to conduct an expedited (120-day) review. As a result of this review, we find that revocation of the antidumping duty order would be likely to lead to continuation or recurrence of dumping at the levels listed below in the section entitled "Final Results of Review."

EFFECTIVE DATE: December 10, 2003.

FOR FURTHER INFORMATION CONTACT: Ozlem Koray or Martha Douthit, Office of Policy for Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–3675 or (202) 482–5050.

SUPPLEMENTARY INFORMATION:

Background

On August 1, 2003, the Department published the notice of initiation of a sunset review of the antidumping order on SSWR from South Korea pursuant to section 751(c) of the Tariff Act of 1930, as amended (the "Act").[1] The Department received Notice of Intent to Participate on behalf of a domestic interested party, Carpenter Technology Corporation ("Carpenter Technology"), within the deadline specified in section 351.218(d)(1)(i) of the *Sunset Regulations*. The domestic interested parties claimed interested party status under section 771(9)(C) of the Act, as U.S. producers of a domestic like product. We received a complete substantive response, in the sunset review, from Carpenter Technology, within the 30-day deadline specified in the *Sunset Regulations* under section 351.218(d)(3)(i). Carpenter Technology has been involved in this proceeding since its inception and are committed to full participation in this five-year review.

We did not receive a substantive response from any respondent interested parties to this proceeding. As a result, pursuant to section 751(c)(3)(B) of the Act and 19 CFR 351.218(e)(1)(ii)(C) of the Department's Regulations, the Department conducted an expedited, 120-day, review of this antidumping duty order.

Scope of Review

SSWR comprises products that are hot-rolled or hot-rolled annealed and/or pickled and/or descaled rounds, squares, octagons, hexagons or other shapes, in coils, that may also be coated with a lubricant containing copper, lime or oxalate. SSWR is made of alloy steels containing, by weight, 1.2 percent or less of carbon and 10.5 percent or more of chromium, with or without other elements. These products are manufactured only by hot-rolling or hot-rolling, annealing, and/or pickling and/or descaling, are normally sold in coiled form, and are of solid cross-section. The majority of SSWR sold in the United States is round in cross-sectional shape, annealed and pickled, and later cold-finished into stainless steel wire or small-diameter bar.The most common size for such products is 5.5 millimeters or 0.217 inches in diameter, which represents the smallest size that normally is produced on a rolling mill and is the size that most wire-drawing machines are set up to draw. The range of SSWR sizes normally sold in the United States is between 0.20 inches and 1.312 inches diameter. Two stainless steel grades, SF20T and K–M35FL, are excluded from the scope of this review. The chemical makeup for the excluded grades is as follows:

SF20T
- Carbon—0.05 max
- Manganese—2.00 max
- Phosphorous—0.05 max
- Sulfur—0.15 max
- Silicon—1.00 max
- Chromium—19.00/21.00
- Molybdenum—1.50/2.50
- Lead—added (0.10/0.30)
- Tellurium—added (0.03 min)

K–M35FL
- Carbon—0.015 max
- Silicon—0.70/1.00
- Manganese—0.40 max
- Phosphorous—0.04 max
- Sulfur—0.03 max
- Nickel—0.30 max
- Chromium—12.50/14.00
- Lead—0.10/0.30
- Aluminum—0.20/0.35

The products subject to this order are currently classifiable under subheadings 7221.00.0005, 7221.00.0015, 7221.00.0030, 7221.00.0045, and 7221.00.0075 of the Harmonized Tariff Schedule of the United States ("HTSUS"). Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise is dispositive. This review cover all imports from all manufacturers, producers, and exporters of SSWR from South Korea.

Analysis of Comments Received

All issues raised in this case by parties to this sunset review are addressed in the "Issues and Decision Memorandum" ("Decision Memo") from Ronald K. Lorentzen, Acting Director, Office of Policy, Import Administration, to James J. Jochum, Assistant Secretary for Import Administration, dated December 1, 2003, which is hereby adopted by this notice. The issues discussed in the Decision Memo include the likelihood of continuation or recurrence of

[1] *Initiation of Five-Year (Sunset) Reviews*, 68 FR 45219 (August 1, 2003).

dumping and the magnitude of the margin likely to prevail were the order revoked. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in this public memorandum, which is on file in room B–099 of the main Commerce Building.

In addition, a complete version of the Decision Memo can be accessed directly on the Web at *http://ia.ita.doc.gov/sunset*, under the heading "December 2003." The paper copy and electronic version of the Decision Memorandum are identical in content.

Final Results of Review

We determine that revocation of the antidumping duty on SSWR from South Korea would be likely to lead to continuation or recurrence of dumping at the following percentage weighted-average margins:

Manufacturer/producer/exporter	Weighted average margin
Dongbang Special Steel Co., Ltd./Changwon Specialty Steel Co. Ltd./Pohang Iron and Steel Co., Ltd	5.77
Sammi Steel Co., Ltd	28.44
All Others	5.77

This notice also serves as the only reminder to parties subject to administrative protective orders ("APO") of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305 of the Department's regulations. Timely notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

We are issuing and publishing this results and notice in accordance with sections 751(c), 752, and 777(i)(1) of the Act.

Dated: December 1, 2003.

James J. Jochum,

Assistant Secretary, Import Administration.

[FR Doc. 03–30627 Filed 12–9–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A-588–843]

Stainless Steel Wire Rod from Japan; Final Results of Expedited Sunset Review of Antidumping Duty Order

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Final Results of Expedited Sunset Review of Antidumping Duty Order on Stainless Steel Wire Rod from Japan.

SUMMARY: On August 1, 2003, the Department of Commerce ("the Department") published the notice of initiation of a sunset review on stainless steel wire rod ("SSWR") from Japan. On the basis of notice of intent to participate and adequate substantive comments filed on behalf of a domestic interested party and inadequate response (in this case, no response) from respondent interested parties, we have determined to conduct an expedited 120-day review. As a result of this review, we find that revocation of the antidumping duty order would be likely to lead to continuation or recurrence of dumping at the levels listed below in the section entitled "Final Results of Review."

EFFECTIVE DATE: December 10, 2003.

FOR FURTHER INFORMATION CONTACT: Alessandra Cortez or Martha Douthit, Office of Policy for Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC, 20230; telephone: (202) 482–5925 or (202) 482–5050, respectively.

SUPPLEMENTARY INFORMATION:

Background

On August 1, 2003, the Department published the notice of initiation of a sunset review of the antidumping order on SSWR from Japan pursuant to section 751(c) of the Tariff Act of 1930, as amended (the "Act").[1] The Department received a Notice of Intent to Participate on behalf a domestic interested party, Carpenter Technology Corporation ("Carpenter Technology"), within the deadline specified in section 351.218(d)(1)(i) of the *Sunset Regulations*. The domestic interested parties claimed interested party status under Section 771(9)(C) of the Act, as a U.S. producer of a domestic like product. We received a complete substantive response, in the sunset review, from the domestic interested parties, within the 30-day deadline specified in the *Sunset Regulations* under section 351.218(d)(3)(i). Carpenter Technology has been involved in this proceeding since its inception and are committed to full participation in this five-year review.

We did not receive a substantive response from any respondent interested parties to this proceeding. As a result, pursuant to Section 751(c)(3)(B) of the Act and 19 CFR 351.218(e)(1)(ii)(C) of the Department's Regulations, the Department has an conducted an expedited, 120-day review of this antidumping duty order.

Scope of Review

SSWR comprises products that are hot-rolled or hot-rolled annealed and/or pickled and/or descaled rounds, squares, octagons, hexagons or other shapes, in coils, that may also be coated with a lubricant containing copper, lime or oxalate. SSWR is made of alloy steels containing, by weight, 1.2 percent or less of carbon and 10.5 percent or more of chromium, with or without other elements. These products are manufactured only by hot-rolling or hot-rolling, annealing, and/or pickling and/or descaling, are normally sold in coiled form, and are of solid cross-section. The majority of SSWR sold in the United States is round in cross-sectional shape, annealed and pickled, and later cold-finished into stainless steel wire or small-diameter bar.

The most common size for such products is 5.5 millimeters or 0.217 inches in diameter, which represents the smallest size that normally is produced on a rolling mill and is the size that most wire-drawing machines are set up to draw. The range of SSWR sizes normally sold in the United States is between 0.20 inches and 1.312 inches diameter. Two stainless steel grades, SF20T and K-M35FL, are excluded from the scope of this review. The chemical makeup for the excluded grades is as follows:

SF20T

Carbon--0.05 max
Manganese--2.00 max
Phosphorous--0.05 max
Sulfur--0.15 max
Silicon--1.00 max
Chromium--19.00/21.00
Molybdenum--1.50/2.50
Lead--added (0.10/0.30)
Tellurium--added (0.03 min)

K-M35FL

Carbon--0.015 max

[1] Initiation of Five-Year (Sunset) Reviews, 68 FR 45219 (August 1, 2003)

Silicon--0.70/1.00
Manganese--0.40 max
Phosphorous--0.04 max
Sulfur--0.03 max
Nickel--0.30 max
Chromium--12.50/14.00
Lead--0.10/0.30
Aluminum--0.20/0.35

The products subject to this order are currently classifiable under subheadings 7221.00.0005, 7221.00.0015, 7221.00.0030, 7221.00.0045, and 7221.00.0075 of the Harmonized Tariff Schedule of the United States ("HTSUS"). Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise is dispositive.

This review covers all imports from all manufacturers, producers, and exporters of SSWR from Japan, except for Hitachi who received a de minimis rate in the investigation and as a result was excluded from the order.

Analysis of Comments Received

All issues raised in this case by parties to this sunset review are addressed in the "Issues and Decision Memorandum" ("Decision Memo") from Ronald K. Lorentzen, Acting Director, Office of Policy, Import Administration, to James J. Jochum, Assistant Secretary for Import Administration, dated December 1, 2003, which is hereby adopted by this notice. The issues discussed in the Decision Memo include the likelihood of continuation or recurrence of dumping and the magnitude of the margin likely to prevail were the order revoked. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in this public memorandum, which is on file in room B-099 of the main Commerce Building.

In addition, a complete version of the Decision Memo can be accessed directly on the Web at http://ia.ita.doc.gov/sunset, under the heading "December 2003." The paper copy and electronic version of the Decision Memorandum are identical in content.

Final Results of Review

We determine that revocation of the antidumping duty on SSWR from Japan would be likely to lead to continuation or recurrence of dumping at the following percentage weighted-average margins:

Manufacturer/producer/exporter	Weighted-Average Margin Percentage
Daido Steel Co., Ltd	34.21
Nippon Steel Corp	21.18
Sanyo Special Steel Co., Ltd	34.21
Sumitomo Electric Industries, Ltd	34.21
All Others	25.26

This notice also serves as the only reminder to parties subject to administrative protective orders ("APO") of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305 of the Department's regulations. Timely notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

We are issuing and publishing this results and notice in accordance with sections 751(c), 752, and 777(i)(1) of the Act.

Dated: December 1, 2003.

James J. Jochum,

Assistant Secretary for Import Administration.

[FR Doc. 03–30628 Filed 12–9–03; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A-583–828]

Stainless Steel Wire Rod from Taiwan; Final Results of Expedited Sunset Review of Antidumping Duty Order

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Final Results of Expedited Sunset Review of Antidumping Duty Order on Stainless Steel Wire Rod from Taiwan.

SUMMARY: On August 1, 2003, the Department of Commerce ("the Department") published the notice of initiation of a sunset review on stainless steel wire rod ("SSWR") from Taiwan. On the basis of notice of intent to participate and adequate substantive comments filed on behalf of domestic interested parties and inadequate response (in this case, no response) from respondent interested parties, we have determined to conduct an expedited, 120-day review. As a result of this review, we find that revocation of the antidumping duty order would be likely to lead to continuation or recurrence of dumping at the levels listed below in the section entitled "Final Results of Review."

EFFECTIVE DATE: December 10, 2003.

FOR FURTHER INFORMATION CONTACT: Alessandra Cortez or Martha Douthit, Office of Policy for Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC, 20230; telephone: (202) 482–5925 or (202) 482–5050, respectively.

SUPPLEMENTARY INFORMATION:

Background

On August 1, 2003, the Department published the notice of initiation of a sunset review of the antidumping order on SSWR from Taiwan pursuant to section 751(c) of the Tariff Act of 1930, as amended (the "Act").[1] The Department received Notice of Intent to Participate on behalf of a domestic interested party, Carpenter Technology Corporation ("Carpenter Technology"), within the deadline specified in section 351.218(d)(1)(i) of the *Sunset Regulations*. Carpenter Technology claimed interested party status under Section 771(9)(C) of the Act, as a U.S. producer of a domestic like product. We received a complete substantive response, in the sunset review, from Carpenter Technology, within the 30-day deadline specified in the *Sunset Regulations* under section 351.218(d)(3)(i). Carpenter Technology have been involved in this proceeding

[1] *Initiation of Five-Year (Sunset) Reviews*, 68 FR 45219 (August 1, 2003)

since its inception and are committed to full participation in this five-year review..

We did not receive a substantive response from any respondent interested parties to this proceeding. As a result, pursuant to Section 751(c)(3)(B) of the Act and 19 CFR 351.218(e)(1)(ii)(C) of the Department's Regulations, the Department has conducted an expedited, 120-day review of this antidumping duty order.

Scope of Review

SSWR comprises products that are hot-rolled or hot-rolled annealed and/or pickled and/or descaled rounds, squares, octagons, hexagons or other shapes, in coils, that may also be coated with a lubricant containing copper, lime or oxalate. SSWR is made of alloy steels containing, by weight, 1.2 percent or less of carbon and 10.5 percent or more of chromium, with or without other elements. These products are manufactured only by hot-rolling or hot-rolling, annealing, and/or pickling and/or descaling, are normally sold in coiled form, and are of solid cross-section. The majority of SSWR sold in the United States is round in cross-sectional shape, annealed and pickled, and later cold-finished into stainless steel wire or small-diameter bar.

The most common size for such products is 5.5 millimeters or 0.217 inches in diameter, which represents the smallest size that normally is produced on a rolling mill and is the size that most wire-drawing machines are set up to draw. The range of SSWR sizes normally sold in the United States is between 0.20 inches and 1.312 inches diameter. Two stainless steel grades, SF20T and K-M35FL, are excluded from the scope of this review. The chemical makeup for the excluded grades is as follows:

SF20T

Carbon--0.05 max
Manganese--2.00 max
Phosphorous--0.05 max
Sulfur--0.15 max
Silicon--1.00 max
Chromium--19.00/21.00
Molybdenum--1.50/2.50
Lead--added (0.10/0.30)
Tellurium--added (0.03 min)

K-M35FL

Carbon--0.015 max
Silicon--0.70/1.00
Manganese--0.40 max
Phosphorous--0.04 max
Sulfur--0.03 max
Nickel--0.30 max
Chromium--12.50/14.00Lead--0.10/0.30
Aluminum--0.20/0.35

The products subject to this order are currently classifiable under subheadings 7221.00.0005, 7221.00.0015, 7221.00.0030, 7221.00.0045, and 7221.00.0075 of the Harmonized Tariff Schedule of the United States ("HTSUS"). Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise is dispositive.

This review covers all imports from all manufacturers, producers, and exporters of SSWR from Taiwan except for Yieh Hsing Enterprise Corp., Ltd., who received a *de minimis* rate in the investigation and as a result was excluded from the order.

Analysis of Comments Received

All issues raised in this case by parties to this sunset review are addressed in the "Issues and Decision Memorandum" ("Decision Memo") from Ronald K. Lorentzen, Acting Director, Office of Policy, Import Administration, to James J. Jochum, Assistant Secretary for Import Administration, dated December 1, 2003, which is hereby adopted by this notice. The issues discussed in the Decision Memo include the likelihood of continuation or recurrence of dumping and the magnitude of the margin likely to prevail were the order revoked. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in this public memorandum, which is on file in room B-099 of the main Commerce Building.

In addition, a complete version of the Decision Memo can be accessed directly on the Web at *http://ia.ita.doc.gov/sunset*, under the heading "December 2003." The paper copy and electronic version of the Decision Memorandum are identical in content.

Final Results of Review

We determine that revocation of the antidumping duty on SSWR from Taiwanwould be likely to lead to continuation or recurrence of dumping at the following percentage weighted-average margins:

Manufacturer/producer/exporter	Weighted Average Margin Percentage
Walsin Cartech Specialty Stee	18.29
Yieh Hsing Enterprise Corporation	Excluded [FN1]
All Others	8.29

[FN1] Yieh Hsing Enterprise Corp. received a *de minimis* rate in the investigation.

This notice also serves as the only reminder to parties subject to administrative protective orders ("APO") of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305 of the Department's regulations. Timely notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

We are issuing and publishing this results and notice in accordance with sections 751(c), 752, and 777(i)(1) of the Act.

Dated: December 1, 2003.

James J. Jochum,

Assistant Secretary for Import Administration.

[FR Doc. 03–30629 Filed 12–9–03; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A-469–807]

Stainless Steel Wire Rod from Spain; Final Results of Expedited Sunset Review of Antidumping Duty Order

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Final Results of Expedited Sunset Review of Antidumping Duty Order on Stainless Steel Wire Rod from Spain.

SUMMARY: On August 1, 2003, the Department of Commerce ("the Department") published the notice of initiation of a sunset review of the antidumping duty order on stainless steel wire rod ("SSWR") from Spain.[1] On the basis of notice of intent to participate and adequate substantive comments filed on behalf of domestic interested parties and inadequate response (in this case, no response) from respondent interested parties, we have determined to conduct an expedited sunset review. Based on our analysis of the comments received, we find that revocation of the antidumping duty order would be likely to lead to continuation or recurrence of dumping at the levels listed below in the section entitled *Final Results of Review*.

EFFECTIVE DATE: December 10, 2003.

FOR FURTHER INFORMATION CONTACT: Martha Douthit, Office of Policy for Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC, 20230; telephone: (202) 482–5050.

SUPPLEMENTARY INFORMATION:

Background

On August 1, 2003, the Department published the notice of initiation of the sunset review of the antidumping duty order on SSWR from Spain. *See Initiation of Five-Year (Sunset) Reviews*, 68 FR 45219 (August 1, 2003), in accordance with section 751(c) of the Tariff Act of 1930, as amended ("the Act"). On August 15, 2003, the Department received a Notice of Intent to Participate on behalf of a domestic interested party, Carpenter Technology Corporation ("Carpenter Technology"), within the deadline specified in section 351.218(d)(1)(i) of the *Sunset Policy Bulletin*. Carpenter Technology claimed interested party status under section 771(9)(C) of the Act, as a U.S. producer of SSWR. Carpenter Technology states that it has been involved in this proceeding since its inception and remain committed to full participation in this sunset review.

We received a complete substantive response from Carpenter Technology on September 2, 2003, within the 30-day deadline specified in the *Sunset Regulations* under section 351.218(d)(3)(i). We did not receive a substantive response from any respondent interested parties to this proceeding. As a result, pursuant to 751(c)(3)(B) of the Act and 19 CFR 351.218(e)(1)(ii)(C) of the *Sunset Regulations*, the Department determined to conduct an expedited, i.e., 120-day, review of this order.

This review covers imports from all known manufacturers and exporters of SSWR from Spain.

Scope of Review

SSWR comprises products that are hot-rolled or hot-rolled annealed and/or pickled and/or

descaled rounds, squares, octagons, hexagons or other shapes, in coils, that may also be coated with a lubricant containing copper, lime or oxalate. SSWR is made of alloy steels containing, by weight, 1.2 percent or less of carbon and 10.5 percent or more of chromium, with or without other elements. These products are manufactured only by hot-rolling or hot-rolling, annealing, and/or pickling and/or descaling, are normally sold in coiled form, and are of solid cross-section. The majority of SSWR sold in the United States is round in cross-sectional shape, annealed and pickled, and later cold-finished into stainless steel wire or small-diameter bar.

The most common size for such products is 5.5 millimeters or 0.217 inches in diameter, which represents the smallest size that normally is produced on a rolling mill and is the size that most wire-drawing machines are set up to draw. The range of SSWR sizes normally sold in the United States is between 0.20 inches and 1.312 inches diameter. Two stainless steel grades, SF20T and K-M35FL, are excluded from the scope of this review. The chemical makeup for the excluded grades is as follows:

SF20T

Carbon--0.05 max
Manganese--2.00 max
Phosphorous--0.05 max
Sulfur--0.15 max
Silicon--1.00 max
Chromium--19.00/21.00
Molybdenum--1.50/2.50
Lead--added (0.10/0.30)

K-M35FL

Carbon--0.015 maxSilicon--0.70/1.00
Manganese--0.40 max
Phosphorous--0.04 max
Sulfur--0.03 max
Nickel--0.30 max
Chromium--12.50/14.00
Lead--0.10/0.30
Aluminum--0.20/0.35

The products subject to this antidumping duty order are currently classifiable under subheadings 7221.00.0005, 7221.00.0015, 7221.00.0030, 7221.00.0045, and 7221.00.0075 of the Harmonized Tariff Schedule of the United States ("HTSUS"). Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise is dispositive.

Analysis of Comments Received

All issues raised in this case by parties to this sunset review are addressed in the "Issues and Decision Memorandum" ("Decision Memo") from Ronald K. Lorentzen, Acting Director, Office of Policy, Import Administration, to James J. Jochum, Assistant Secretary for Import Administration, dated December 1, 2003, which is hereby adopted by this notice. The issues discussed in the Decision Memo include the likelihood of continuation or recurrence of dumping and the magnitude of the margin likely to prevail were the order revoked. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in this public memorandum, which is on file in room B-099 of the main Commerce Building.

In addition, a complete version of the Decision Memo can be accessed directly on the Web at *http://ia.ita.doc.gov/sunset*, under the heading "December 2003." The paper copy and electronic version of the Decision Memorandum are identical in content.

Final Results of Review

We determine that revocation of the antidumping duty on SSWR from Spain would be likely to lead to continuation or recurrence of dumping at the following percentage weighted-average margins:

Manufacturers/producers/exporters	Weighted-AverageMarginPercentage
Roldan, S.A.	4.73
All Others	4.73

[1] *Initiation of Five-Year (Sunset) Reviews*, 68 FR 45219 (August 1, 2003).

This notice also serves as the only reminder to parties subject to administrative protective orders ("APO") of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305 of the Department's regulations. Timely notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

We are issuing and publishing this results and notice in accordance with sections 751(c), 752, and 777(i)(1) of the Act.

Dated: December 1, 2003.

James J. Jochum,

Assistant Secretary for Import Administration

[FR Doc. 03–30630 Filed 12–9–03; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A-570–831]

Fresh Garlic from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review and New Shipper Reviews

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of preliminary results of antidumping duty administrative review and new shipper reviews.

SUMMARY: In response to requests from interested parties, the Department of Commerce is conducting an administrative review and new shipper reviews of the antidumping duty order on fresh garlic from the People's Republic of China. The period of review for the administrative review and the new shipper reviews is November 1, 2001, through October 31, 2002. The reviews cover six manufacturers/exporters.

With respect to the administrative review, we preliminarily determine that Jinan Yipin Corporation, Ltd., has made sales in the United States at prices below normal value and Shandong Heze International Trade and Developing Company has made sales in the United States at prices not below normal value. With respect to the new shipper reviews, we preliminarily determine that Jining Trans-High Trading Co., Ltd., and Zhengzhou Harmoni Spice Co., Ltd., have made sales in the United States at prices not below normal value. Further, we preliminarily determine that Top Pearl Ltd. and Wo Hing (H.K.) Trading Co. are not entitled to separate rates and have assigned them the rate for the country-wide entity.

We invite interested parties to comment on these preliminary results. Parties who submit comments are requested to submit with each argument a statement of the issue and a brief summary of the argument.

EFFECTIVE DATE: December 10, 2003.

FOR FURTHER INFORMATION CONTACT: Minoo Hatten or Mark Ross, Office of Antidumping/Countervailing Duty Enforcement 3, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, DC 20230; telephone (202) 482–1690 or (202) 482–4794, respectively.

SUPPLEMENTARY INFORMATION:

Background

On November 1, 2002, the Department of Commerce (the Department) published a notice of opportunity to request an administrative review of the antidumping duty order on fresh garlic from the People's Republic of China (PRC). *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 67 FR 66612. On December 26, 2002, we published in the **Federal Register** the *Notice of Initiation of Antidumping and Countervailing Duty Administrative Reviews* (67 FR 78772) in which we initiated the administrative review of the antidumping duty order on fresh garlic from the PRC.

We published a notice of initiation of new shipper antidumping duty reviews for Jining Trans-High Trading Co., Ltd. (Trans-High), Zhengzhou Harmoni Spice Co., Ltd. (Harmoni), and Xiangcheng Yisheng Foodstuffs Co., Ltd., on January 6, 2003. *See Notice of Initiation of New Shipper Antidumping Duty Reviews: Fresh Garlic from the People's Republic of China*, 68 FR 542.

On January 24, 2003, the petitioners (the Fresh Garlic Producers Association and its individual members) submitted a request for alignment of the new shipper and administrative reviews. On February 12, 21, and March 5, 2003, each respondent in the new shipper reviews responded in writing to the request for alignment, agreeing to waive the statutory time limits in the new shipper reviews. As all three of the respondents agreed to waive the time limits, we decided to grant the request for alignment of the reviews pursuant to 19 CFR 351.214(j)(3). *See* memorandum to the file from Jennifer Moats entitled "Request Regarding Alignment of New Shipper and Administrative Reviews," dated March 10, 2003.

One company named in the notice of initiation for the administrative review, Fook Huat Tong Kee Pte., Ltd., had no exports or sales of the subject merchandise during the period of review and, consequently, we rescinded the review of this company. In addition, the review requests for Clipper Manufacturing Ltd., Huaiyang Hongda Dehydrated Vegetable Company, Golden Light Trading Company, Ltd., Good Fate International, Phil-Sino International Trading Inc., and Mai Xuan Fruitex Co., Ltd., were withdrawn subsequent to the initiation of the administrative review and, therefore, we rescinded the review of these six companies. *See Fresh Garlic From The People's Republic of China: Partial Rescission of Antidumping Duty Administrative Review*, 68 FR 46580 (August 6, 2003).

On August 7, 2003, we extended the deadline for the issuance of the preliminary results of the administrative and new shipper reviews by 90 days, until October 31, 2003 (68 FR 47020).

On August 15, 2003, we issued supplemental questionnaires in which we requested information from the U.S. customers for the sales involved in the new shipper reviews of Trans-High and Harmoni. We received responses from Trans-High's and Harmoni's U.S. customers on August 29, 2003, and on September 5, 2003, respectively. As detailed in the memorandum from Brian Ellman to the File dated November 25, 2003, we have so far been unable to contact Trans-High's U.S. customer by telephone, facsimile, or Federal Express regarding its incomplete response. As such, we intend to continue to evaluate the information on the record with respect to Trans-High for the final results of review.

On September 26, 2003, the Department determined preliminarily that, based on the use of adverse facts available, the new shipper Xiangcheng Yisheng Foodstuffs Co., Ltd., sold subject merchandise to the United States at prices below normal value. *See Fresh Garlic from the People's Republic of China: Preliminary Results of Antidumping Duty New Shipper Review for Xiangcheng Yisheng Foodstuffs Co., Ltd.*, 68 FR 55583 (September 26, 2003). On October 23, 2003, the Department extended the deadline for issuing the preliminary results for the other companies in these administrative and new shipper reviews until December 1, 2003. *See Fresh Garlic From the People's Republic of China: Notice of Extension of Time Limit for the Preliminary Results of Antidumping Duty Administrative and New Shipper Reviews*, (68 FR 60640).

The petitioners have submitted recent pre-preliminary comments concerning Jinan Yipin. We continue to evaluate these comments and we will consider them for the final results of review.

Scope of the Order

The products subject to the antidumping duty order are all grades of garlic, whole or separated into constituent cloves, whether or not peeled, fresh, chilled, frozen, provisionally preserved, or packed in water or other neutral substance, but not prepared or preserved by the addition of other ingredients or heat processing. The differences between grades are based on color, size, sheathing, and level of decay.

The scope of this order does not include the following: (a) garlic that has been mechanically harvested and that is primarily, but not exclusively, destined for non-fresh use; or (b) garlic that has been specially prepared and cultivated prior to planting and then harvested and otherwise prepared for use as seed.

The subject merchandise is used principally as a food product and for seasoning. The subject garlic is currently classifiable under subheadings 0703.20.0010, 0703.20.0020, 0703.20.0090, 0710.80.7060, 0710.80.9750, 0711.90.6000, and 2005.90.9700 of the *Harmonized Tariff Schedule of the United States* (HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this proceeding is dispositive. In order to be excluded from the antidumping duty order, garlic entered under the HTSUS subheadings listed above that is (1) mechanically harvested and primarily, but not exclusively, destined for non-fresh use or (2) specially prepared and cultivated prior to planting and then harvested and otherwise prepared for use as seed must be accompanied by declarations to U.S. Customs and Border Protection (Customs) to that effect.

Verification

As provided in section 782(i) of the Tariff Act of 1930, as amended (the Act), we verified information provided by certain respondents using standard verification procedures, including on-site inspection of the producers' facilities, the examination of relevant sales and financial records, and the selection of original documentation containing relevant information. Our verification results are outlined in the public versions of the verification reports, which are on file in the Central Records Unit (CRU). With respect to Shandong Heze International Trade and Developing Company (Shandong Heze), the verification took place recently and, therefore, the report is still pending completion and not yet on file. We will issue the report shortly after the issuance of these preliminary results of review and parties can comment on the applicability of the verification findings to our calculations. Following issuance of these preliminary results, we intend to verify the factors-of-production (FOP) information which Jinan Yipin has submitted.

Separate Rates

The Department has treated the PRC as a non-market-economy (NME) country in all past antidumping investigations (*see, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Bulk Aspirin From the People's Republic of China*, 65 FR 33805 (May 25, 2000), and *Notice of Final Determination of Sales at Less Than Fair Value: Certain Non-Frozen Apple Juice Concentrate from the People's Republic of China*, 65 FR 19873 (April 13, 2000)) and in prior segments of this proceeding. A designation as an NME remains in effect until it is revoked by the Department. *See* section 771(18)(C) of the Act. Accordingly, there is a rebuttable presumption that all companies within the PRC are subject to government control and, thus, should be assessed a single antidumping duty rate.

It is the Department's standard policy to assign all exporters of the merchandise subject to review in NME countries a single rate unless an exporter can affirmatively demonstrate an absence of government control, both in law (*de jure*) and in fact (*de facto*), with respect to exports. To establish whether a company is sufficiently independent to be entitled to a separate, company-specific rate, the Department analyzes each exporting entity in an NME country under the test established in the *Final Determination of Sales at Less than Fair Value: Sparklers from the People's Republic of China*, 56 FR 20588 (May 6, 1991) (Sparklers), as amplified by the *Notice of Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China*, 59 FR 22585 (May 2, 1994) (*Silicon Carbide*).

For the reasons discussed in the section below titled "The PRC-Wide Rate and Use of Facts Otherwise Available", we have determined that Top Pearl Ltd. (Top Pearl) and Wo Hing (H.K.) Trading Co. (Wo Hing) do not qualify for a separate rate and are deemed to be covered by the PRC-entity rate.

Jinan Yipin Corporation Ltd. (Jinan Yipin), Shandong Heze, Trans-High, and Harmoni provided separate-rate information in their responses to our original and supplemental questionnaires. Accordingly, we performed separate-rates analyses to determine whether each producer/exporter is independent from government control (*see Notice of Final Determination of Sales at Less Than Fair Value: Bicycles From the People's Republic of China*, 61 FR 56570 (April 30, 1996)).

1. Absence of De Jure Control

The Department considers the following *de jure* criteria in determining whether an individual company may be granted a separate rate: (1) an absence of restrictive stipulations associated with an individual exporter's business and export licenses; (2) any legislative enactments decentralizing control of companies; (3) any other formal measures by the government decentralizing control of companies.

Each respondent has placed on the record a number of documents to demonstrate absence of *de jure* control including the "Foreign Trade Law of the People's Republic of China" and the "Administrative Regulations of the People's Republic of China Governing the Registration of Legal Corporations." The Department has analyzed such PRC laws and found that they establish an absence of *de jure* control. *See, e.g., Preliminary Results of New Shipper Review: Certain Preserved Mushrooms From the People's Republic of China*, 66 FR 30695, 30696 (June 7, 2001). We have no information in this proceeding that would cause us to reconsider this determination.

2. Absence of De Facto Control

Typically, the Department considers four factors in evaluating whether a respondent is subject to *de facto* governmental control of its export functions: (1) whether the export prices are set by, or subject to, the approval of a governmental authority; (2) whether the respondent has authority to negotiate and sign contracts, and other agreements; (3) whether the respondent has autonomy from the government in making decisions regarding the selection of its management; (4) whether the respondent retains the proceeds of its export sales and makes independent decisions regarding disposition of profits or financing of losses. *See Silicon Carbide* at 22587.

As stated in previous cases, there is some evidence that certain enactments

of the PRC central government have not been implemented uniformly among different sectors and/or jurisdictions in the PRC. *See Silicon Carbide* at 22586–22587. Therefore, the Department has determined that an analysis of *de facto* control is critical in determining whether respondents are, in fact, subject to a degree of governmental control which would preclude the Department from assigning separate rates.

Jinan Yipin reported that it is a limited-liability company owned by private investors. Shangdong Heze and Trans-High reported that they are limited-liability companies. Harmoni reported that it is a privately owned company. Each has asserted the following: (1) There is no government participation in setting export prices; (2) sales managers and authorized employees have the authority to bind sales contracts; (3) they do not have to notify any government authorities of management selections; (4) there are no restrictions on the use of export revenue; (5) each is responsible for financing its own losses. Jinan Yipin's, Shangdong Heze's, Trans-High's, and Harmoni's questionnaire responses do not suggest that pricing is coordinated among exporters. During our analysis of the information on the record we found no information indicating the existence of government control. Consequently, we preliminarily determine that Jinan Yipin, Shangdong Heze, Trans-High, and Harmoni have met the criteria for the application of a separate rate.

The PRC-Wide Rate and Use of Facts Otherwise Available

All respondents were given the opportunity to respond to the Department's questionnaire. As explained above, we received questionnaire responses from Jinan Yipin, Shandong Heze, Trans-High, and Harmoni, and we have calculated a separate rate for each of these companies. The PRC-wide rate applies to all entries of subject merchandise except for entries from companies that have received their own rate based on the final results of a prior segment of this proceeding (*e.g.*, Jinan Yipin). As discussed below, Top Pearl and Wo Hing are appropriately considered part of the PRC-wide entity.

Top Pearl and Wo Hing did not respond to the Department's questionnaire. Section 776(a)(2) of the Act provides that, if an interested party or any other person (A) withholds information that has been requested by the administering authority, or (B) fails to provide such information by the deadlines for the submission of the information or in the form and manner requested, subject to subsections (c)(1) and (e) of section 782, the Department shall, subject to section 782(d), use the facts otherwise available in reaching the applicable determination under this title. Furthermore, under section 782(c) of the Act, a respondent has a responsibility not only to notify the Department if it is unable to provide requested information but also to provide a "full explanation and suggested alternative forms." Because Top Pearl and Wo Hing did not respond to the questionnaire, we find that, in accordance with sections 776(a)(2)(A) and (B) of the Act, the use of total facts available is appropriate. *See, e.g., Final Results of Antidumping Duty Administrative Review for Two Manufacturers/Exporters: Certain Preserved Mushrooms from the People's Republic of China*, 65 FR 50183, 50184 (August 17, 2000).

Section 776(b) of the Act provides that, if the Department finds that an interested party "has failed to cooperate by not acting to the best of its ability to comply with a request for information," the Department may use information that is adverse to the interests of the party as facts otherwise available. Adverse inferences are appropriate "to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully." *See* Statement of Administrative Action (SAA) accompanying the URAA, H. Doc. No. 103–316, at 870 (1994). Section 776(b) of the Act authorizes the Department to use as adverse facts-available information derived from the petition, the final determination from the less-than-fair-value (LTFV) investigation, a previous administrative review, or any other information placed on the record.

On December 30, 2002, the Department issued its antidumping duty questionnaire to Top Pearl and Wo Hing via Federal Express. On January 6, 2003, the questionnaire issued to Top Pearl was returned to the Department by Fed Ex because it had been unable to deliver the package. We were able to obtain a correct address for Top Pearl and re-issued the questionnaire on January 14, 2003. We confirmed that the questionnaire was signed for and received on January 16, 2003. *See* memorandum to file regarding questionnaire for Top Pearl, Ltd., dated January 15, 2003, and memorandum from Mark Ross, Program Manager, to Laurie Parkhill, Office Director, entitled "Responses to Questionnaire" dated June 27, 2003 (*Status of Questionnaire Responses Memorandum*). We also confirmed that Wo Hing signed for and received the questionnaire on January 2, 2003. *See Status of Questionnaire Responses Memorandum*. Because Top Pearl and Wo Hing did not provide responses to the Department's questionnaire, the Department is unable to determine Top Pearl's and Wo Hing's eligibility for a separate rate. Thus, Top Pearl and Wo Hing have not rebutted the presumption of government control and are presumed to be part of the PRC entity.

The PRC entity (including Top Pearl and Wo Hing) failed to cooperate to the best of its ability in this administrative review, thus making the use of an adverse inference appropriate. Therefore, in accordance with the Department's practice, as adverse facts available, we have preliminarily assigned to the PRC entity (including Top Pearl and Wo Hing) the PRC-entity rate of 376.67 percent.

Section 776(c) of the Act requires that the Department corroborate, to the extent practicable, a figure which it applies as facts available. To be considered corroborated, information must be found to be both reliable and relevant. Throughout the history of this proceeding, the highest rate ever calculated is 376.67 percent; it is currently the PRC-wide rate and was calculated based on information contained in the petition. *See Notice of Final Determination of Sales at Less Than Fair Value: Fresh Garlic from the People's Republic of China*, 59 FR 49058, 49059 (September 26, 1994). The information contained in the petition was corroborated for the preliminary results of the first administrative review. *See Fresh Garlic from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review and Partial Termination of Administrative Review*, 61 FR 68229, 68230 (December 27, 1996). Further, it was corroborated in subsequent reviews to the extent that the Department referred to the history of corroboration and found that the Department received no information that warranted revisiting the issue. *See Fresh Garlic from the People's Republic of China: Final Results of Antidumping Administrative Review and Rescission of New Shipper Review*, 67 FR 11283 (March 13, 2002). Similarly, no information has been presented in the current review that calls into question the reliability of this information. Thus, the Department finds that the information is reliable.

With respect to the relevance aspect of corroboration, the Department stated in *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, from Japan; Preliminary Results of Antidumping Duty Administrative Reviews and Partial Termination of Administrative Reviews*, 61 FR 57391, 57392 (November 6, 1996) (*TRBs*), that it will "consider information reasonably at its disposal as to whether there are circumstances that would render a margin irrelevant. Where circumstances indicate that the selected margin is not appropriate as adverse facts available, the Department will disregard the margin and determine an appropriate margin." *See TRBs*, 61 FR at 57392. *See* also *Fresh Cut Flowers from Mexico; Preliminary Results of Antidumping Duty Administrative Review*, 61 FR 6812, 6814 (February 22, 1996) (disregarding the highest margin in the case as best information available because the margin was based on another company's uncharacteristic business expense resulting in an extremely high margin). The rate used is the rate currently applicable to Top Pearl, Wo Hing, and all exporters subject to the PRC-wide rate. Further, there is no information on the administrative record of the current review that indicates the application of this rate would be inappropriate or that the margin is not relevant. Therefore, for all sales of subject merchandise exported by Top Pearl and Wo Hing, we have applied, as adverse facts available, the 376.67 percent margin from a prior administrative review of this order and have satisfied the corroboration requirements under section 776(c) of the Act. *See Persulfates from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review*, 66 FR 18439, 18441 (April 9, 2001) (employing a petition rate used as adverse facts available in a previous segment as adverse facts available in the current review).

With respect to Jinan Yipin, the use of adverse facts available is warranted because it has not provided information critical to the calculation of an antidumping duty margin and impeded the conduct of the administrative review by not providing correct and thorough responses to our questions, before, during, and following verification. These inadequacies relate to two issues: (1) whether Jinan Yipin reported some sales to an affiliated party as unaffiliated-party sales and (2) whether Jinan Yipin captured all of its indirect selling expenses on U.S. sales in its response.

We find that, pursuant to section 776(a)(2)(A) of the Act, Jinan Yipin withheld information concerning the relationship between American Yipin's (Jinan Yipin's U.S. affiliate) sales manager, Edward Lee, and one of its customers. As described in detail in the memorandum from Laurie Parkhill, Office Director, AD/CVD Enforcement 3, to Jeffrey May, Deputy Assistant Secretary, Import Administration, dated December 1, 2003 (*Jinan Yipin Facts-Available Memorandum*), the verification team requested information from Edward Lee and American Yipin several times but was given inadequate, incomplete, or incorrect responses. Although American Yipin finally provided answers to many of the questions which the Department requested, it did so only after the Department did a great deal of its own research and presented facts to American Yipin which contradicted earlier statements the company had made. Nonetheless, after all of these questions and responses, new and further issues pertaining to affiliations between affiliates of both American Yipin and the U.S. customer now exist on the record. Thus, with respect to section 776(a)(2)(C) of the Act, the inadequate responses we received throughout the administrative review from Jinan Yipin impeded our process significantly. Thus, pursuant to these provisions, the use of facts otherwise available is warranted in this case.

Section 782(d) of the Act provides that, if the Department determines that a response to a request for information does not comply with the request, the Department shall promptly inform the person submitting the response of the nature of the deficiency and shall, to the extent practicable, provide that person with an opportunity to remedy or explain the deficiency in light of the time limits established for the completion of the review. In this administrative review, the Department issued its standard questionnaire and, in response to inadequate responses and information provided by Jinan Yipin, eventually it supplemented the record with three additional questionnaires. The Department also asked numerous questions during verification as new information came to light throughout the verification. Accordingly and pursuant to section 782(d) of the Act, the Department provided Jinan Yipin with numerous opportunities to remedy or explain deficiencies on the record.

Pursuant to section 776(b) of the Act, the Department has determined that the use of an adverse inference is warranted in this case. Jinan Yipin and its U.S. affiliate, American Yipin, did not act to the best of their abilities in providing the information necessary to conduct this administrative review. Indeed, we learned much of the information now on the record only during or after verification and we were thus unable to evaluate the information completely by the time of issuance of these preliminary results of review. Thus, absent the necessary information on the record and the respondents' repeated failure to act to the best of its ability to provide the information we need for our calculations and analysis, the application of partial adverse facts available is warranted for all of the transactions to Jinan Yipin's U.S. customer in question. We have selected a rate of 376.67 percent to apply to those transactions.

As discussed above, a number used as adverse facts available must be corroborated, pursuant to section 776(c) of the Act. The number is corroborated if it is found to be both reliable and relevant. To determine whether the rate of 376.67 percent is both a relevant and reliable rate to apply to Jinan Yipin's sales to the customer in question (in other words, whether the rate is indicative of the disparity in the respondent's pricing or has probative value), we examined individual U.S. sales made by Jinan Yipin to customers other than the customer in question in the current review and the dumping margins on those transactions. As a result of our analysis, we found sales in commercial quantities with dumping margins near or exceeding 376.67 percent. *See* the output of the margin program attached to the December 1, 2003, analysis memorandum for the preliminary results of review of Jinan Yipin. There is no information on the record that demonstrates that 376.67 percent rate is an inappropriate adverse facts-available rate for Jinan Yipin's sales involving the customer in question. Therefore, we consider the selected rate to be reliable for Jinan Yipin's sales to this customer and to reflect an appropriate adverse inference.

We also find that Jinan Yipin withheld certain information pertinent to the calculation of indirect selling expenses and, thus, the calculation of an antidumping margin. At verification, we found that Edward Lee and two other employees of American Yipin also worked for another company as well and that, for the first three months of American Yipin's operations in Westwego, Louisiana, these employees did not receive any compensation from American Yipin but were, however, paid by the other company consistently.

As discussed in detail in the *Jinan Yipin Facts-Available Memorandum*, where a respondent has failed to provide information we requested, pursuant to section 776(a)(2)(A) of the Act, we must rely on adverse facts available in determining the antidumping duty margin. Section

776(b) of the Act, provides that the Department may use an inference adverse to the interests of a party that has failed to cooperate by not acting to the best of its ability to comply with the Department's request for information. The Department has determined that the use of an adverse inference is warranted in this case because Jinan Yipin did not act to the best of its ability in providing the necessary or accurate information on indirect selling expenses.

With respect to Jinan Yipin's failure to provide critical information for the calculation of U.S. indirect selling expenses, as adverse facts available we were able to rely on a primary source of information. Because we can rely on a primary source of information, section 776(c) of the Act regarding corroboration of the information we use as adverse facts available does not apply. We have identified payroll-related expenses in the other company's 2002 Income Statement and added this amount to American Yipin's indirect expenses and calculated an indirect selling expense factor which we have applied to all of American Yipin sales, thus accounting for the additional indirect selling expenses applicable to U.S. sales of the subject merchandise. Use of this information about indirect selling expenses is adverse to the interests of Jinan Yipin because, had it cooperated to the best of its ability, the amount of indirect selling expenses we would have deducted from the constructed export price would have been less. Moreover, the use of this data is inherently reliable and reasonable because it is based on actual selling expenses incurred in support of the respondent's sales of the subject merchandise during the current period of review. *See* section 776(c) of the Act. For a detailed discussion of the application of partial adverse facts available, *please see* the *Jinan Yipin Facts-Available Memorandum*.

Export Price

In accordance with section 772(a) of the Act, we used the export-price methodology when the first sale to an unaffiliated purchaser was made outside the United States before importation of the merchandise into the United States. We calculated the export price based on prices from Shandong Heze and Trans-High to unaffiliated U.S. customers. We made deductions, where appropriate, from the gross unit price to account for movement expenses such as foreign inland freight, international freight, customs duties, and brokerage and handling. Because certain domestic charges, such as those for foreign inland freight, were provided by NME companies, we valued those charges based on surrogate rates from India. *See* "Memorandum to the File" regarding the factors valuation for the preliminary results of the new shipper and administrative reviews (December 1, 2003) (*FOP Memorandum*).

Constructed Export Price

In accordance with section 772(b) of the Act, we used constructed-export-price methodology when the first sale to an unaffiliated purchaser occurred after importation of the merchandise into the United States. We calculated the constructed export price based on prices from Jinan Yipin and Harmoni to unaffiliated U.S. customers. We made deductions, where appropriate, from the gross unit price to account for movement expenses such as foreign inland freight, international freight, customs duties, and brokerage and handling. Because some movement expenses were provided by NME companies, we valued those charges based on surrogate rates from India. *See FOP Memorandum*.

For a more detailed explanation of the company-specific adjustments that we made in the calculation of the dumping margins for these preliminary results, *see* the company-specific preliminary results analysis memoranda, dated December 1, 2003, on file in the CRU, Room B-099.

Normal Value

1. Surrogate Country

When investigating imports from an NME country, section 773(c)(1) of the Act directs the Department to base normal value, in most circumstances, on the NME producer's factors of production valued in a surrogate market-economy country or countries considered to be appropriate by the Department. In accordance with section 773(c)(4) of the Act, in valuing the factors of production, the Department shall use, to the extent practicable, the prices or costs of factors of production in one or more market-economy countries that are at a level of economic development comparable to the NME country and are significant producers of comparable merchandise. The sources of the surrogate factor values are discussed under the "Factor Valuations" section below.

The Department has determined that India, Pakistan, Indonesia, Sri Lanka, and the Philippines are countries comparable to the PRC in terms of economic development. *See* "Memorandum to Laurie Parkhill" regarding the request for a list of surrogate countries (May 30, 2003). In addition to being among the countries comparable to the PRC in economic development, India is a significant producer of the subject merchandise. We have used India as the surrogate country and, accordingly, have calculated normal value using Indian prices to value the PRC producers' factors of production, when available and appropriate. We have obtained and relied upon publicly available information. *See* "Memorandum to the File" regarding the selection of a surrogate country (December 1, 2003).

In accordance with 19 CFR 351.301(c)(3)(ii), for the final results of an administrative review and a new shipper review, interested parties may submit publicly available information to value the factors of production until 20 days following the date of publication of these preliminary results.

2. Factors of Production

Section 773(c)(1) of the Act provides that the Department shall determine the normal value using a factors-of-production methodology if (1) the merchandise is exported from an NME country and (2) the information does not permit the calculation of normal value using home-market prices, third-country prices, or constructed value under section 773(a) of the Act. Factors of production include the following elements: (1) hours of labor required, (2) quantities of raw materials employed, (3) amounts of energy and other utilities consumed, and (4) representative capital costs. We used factors of production reported by the respondents for materials, energy, labor, and packing. We valued all the input factors using publicly available, published information, as discussed in the "Surrogate Country" and "Factor Valuations" sections of this notice.

3. Factor Valuations

In accordance with section 773(c) of the Act, we calculated normal value based on factors of production reported by the respondents for the period of review. To calculate normal value, we multiplied the reported per-unit factor quantities by publicly available surrogate values from India, with the exception of the surrogate value for ocean freight, which we obtained from an international freight company. In selecting the surrogate values, we considered the quality, specificity, and contemporaneity of the data. As appropriate, we adjusted input prices by including freight costs to make them delivered prices. We calculated these freight costs based on the shortest reported distance from the domestic supplier to the factory and Indian surrogate values. This adjustment is in accordance with the decision in *Sigma Corporation v. United States*, 117 F. 3d 1401, 1407–08 (CAFC 1997). For a detailed description of all the surrogate values used, *see* the FOP Memorandum.

For those Indian rupee values not contemporaneous with the period of review, we adjusted for inflation using wholesale price indices for India published in the International Monetary Fund's *International Financial Statistics*.

Surrogate-value data or sources to obtain such data were obtained from the petitioners, the respondents, and Departmental research.

Except as specified below, we valued raw material inputs using the weighted-average unit import values derived from the *World Trade Atlas*, provided by the Global Trade Information Services, Inc. The source of these values contemporaneous with the period of review, was the Directorate General of Commercial Intelligence and Statistics of the Indian Ministry of Commerce and Industry. We valued garlic seed based on pricing data from the *NHRDF News Letter*, published by India's National Horticultural Research and Development Foundation. We valued diesel fuel and electricity based on data from the International Energy Agency's *Energy Prices & Taxes: Quarterly Statistics* (Third Quarter, 2003). We valued water using the averages of municipal water rates from Asian Development Bank's *Second Water Utilities Data Book: Asian and Pacific Region* (October 1997).

The respondents reported packing inputs consisting of mesh bags, cartons, plastic bands, tape, plastic jars, plastic jar lids, and metal clips. All of these inputs were valued using import data from the *World Trade Atlas* that covered the period of review.

For labor, consistent with 19 CFR 351.408(c)(3), we used the PRC regression-based wage rate that appears on the website for Import Administration (*http://ia.ita.doc.gov/wages/corrected00wages/corrected00wages.htm*). The source of the wage-rate data for the Import Administration's website is the International Labor Organization's *Yearbook of Labour Statistics 2001* (Geneva, 2001), chapter 5B: Wages in Manufacturing.

The respondents claimed an adjustment for revenue earned on the sale of garlic sprouts. We find that sprouts are a by-product of garlic and deducted an offset amount from normal value. As a surrogate value for the sale of sprouts in the PRC, we used an average of Indian wholesale prices for green onions published by the Azadpur Agricultural Produce Marketing Committee.

We valued the truck rate based on an average of truck rates that were published in the Indian publication *Chemical Weekly* during the period of review. We valued foreign brokerage and handling charges based on a value calculated for the LTFV investigation of certain hot-rolled carbon steel flat products from India. For ocean freight, we obtained rate quotes from Maersk Sealand (*www.maersksealand.com*) dating from the period of review for the movement of refrigerated containers from the PRC to the east and west coasts of the United States. We used these quotes to calculate a surrogate freight rate for each coast.

As discussed in the *FOP Memorandum*, the respondents and the petitioners submitted the publicly available financial information of six companies. We concluded that the financial information of four of the companies reflected costs incurred for highly processed food products and that this processing was not comparable with the operations of the respondent garlic companies. We concluded that the financial information for a fifth company was not representative of the financial experiences of the respondent companies because this company did not grow the agricultural products that it sold and, in some cases, performed no processing on these products. We found that the financial information of a tea company was most representative of the financial experiences of the respondent companies because it produced and processed a product that was not highly processed or preserved prior to its sale. Thus, to value factory overhead, selling, general and administrative expenses, and profit, we used rates based on data taken from the 2001/2002 financial statements of Parry Agro Industries Limited.

Preliminary Results of the Reviews

For the administrative review, we preliminarily determine that the following dumping margins exist for the period November 1, 2001, through October 31, 2002:

Exporter	Weighted-average percentage margin
Jinan Yipin Corporation, Ltd.	168.06
Shandong Heze International Trade and Developing Company	0.00
PRC-wide rate (including Top Pearl and Wo Hing)	376.67

For the new shipper reviews we preliminarily determine that the following dumping margins exist for the period November 1, 2001, through October 31, 2002:

Producer and Exporter Combinations	Weighted-average percentage margin
Grown By Jining Yun Feng Agriculture Products Co., Ltd.and Exported By Jining Trans-High Trading Co., Ltd.	0.00
Grown and Exported By Zhengzhou Harmoni Spice Co., Ltd.	0.00

Case briefs or other written comments in at least six copies must be submitted to the Assistant Secretary for Import Administration no later than one week after the issuance of the Department's last verification report in these reviews. Pursuant to 19 CFR 351.309(d)(2), rebuttal briefs are due no later than five days after the submission of case briefs. A list of authorities used, a table of contents, and an executive summary of issues should accompany any briefs submitted to the Department. Executive summaries should be limited to five pages total, including footnotes. In accordance with 19 CFR 351.310, we will hold a public hearing to afford interested parties an opportunity to

comment on arguments raised in case or rebuttal briefs, provided that such a hearing is requested by an interested party. If we receive a request for a hearing, we plan to hold the hearing three days after the deadline for submission of the rebuttal briefs at the U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230. Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 1870, within 30 days after the date of publication of the preliminary results of these reviews in the **Federal Register**. Requests should contain the following information: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. Oral presentations will be limited to issues raised in the briefs.

The Department will publish the final results of these reviews, including its analysis of issues raised in any case or rebuttal briefs, not later than 120 days after the date of publication of this notice. *See* section 751(a)(3) of the Act and 19 CFR 351.213(h)(1).

Assessment Rates

Upon completion of this administrative review and the new shipper reviews, the Department will determine, and Customs shall assess, antidumping duties on all appropriate entries. The Department will issue appropriate assessment instructions directly to Customs upon completion of these reviews. If these preliminary results are adopted in our final results of review, we will direct Customs to assess the resulting rates against the entered customs value for the subject merchandise on each of the entries of each exporters' importer/customer during the period of review.

Cash-Deposit Requirements

The following cash-deposit requirements will be effective upon publication of the final results of the administrative review and new shipper reviews for shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(2)(C) of the Act: (1) for subject merchandise exported by Jinan Yipin or Shangdong Heze, grown by Jining Yun Feng Agriculture Products Co., Ltd., and exported by Trans-High, or grown and exported by Zhengzhou Harmoni Spice Co., Ltd., the cash-deposit rate will be that established in the final results of these reviews; (2) for all other subject merchandise exported by Trans-High or Harmoni but not grown by Jining Yun Feng Agriculture Products Co., Ltd., or Zhengzhou Harmoni Spice Co., Ltd., respectively, the cash-deposit rate will be the PRC countrywide rate, which is 376.67 percent; (3) for all other PRC exporters of subject merchandise which have not been found to be entitled to a separate rate, the cash-deposit rate will be the PRC-wide rate of 376.67 percent; (4) for all non-PRC exporters of subject merchandise, the cash-deposit rate will be the rate applicable to the PRC supplier of that exporter. These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

Notification to Interested Parties

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during the period of these reviews. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

We are issuing and publishing these preliminary results of reviews in accordance with sections 751(a)(2)(B)(iv), 751(a)(3), and 777(i) of the Act.

Dated: December 1, 2003.

James J. Jochum,

Assistant Secretary for Import Administration.

[FR Doc. 03–30625 Filed 12–9–03; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 100903A]

Taking and Importing Marine Mammals; Taking Marine MammalsIncidental to Construction and Operation of Offshore Oil and Gas Facilities in the Beaufort Sea

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of issuance of a letter of authorization.

SUMMARY: In accordance with the Marine Mammal Protection Act (MMPA), as amended, and implementing regulations, notice is hereby given that NMFS has issued a letter of authorization (LOA) to BP Exploration (Alaska), Inc. (BPXA) to take marine mammals incidental to the production of offshore oil and gas at the Northstar development in the Beaufort Sea off Alaska.

DATES: This LOA is effective from December 4, 2003, through December 3, 2004.

ADDRESSES: A copy of BPXA's letter, a list of monitoring reports, and/or the LOA may be obtained by writing to the Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910, or by telephoning one of the contacts listed here.

FOR FURTHER INFORMATION CONTACT: Kenneth R. Hollingshead (301) 713–2055, ext. 128, or Bradley Smith (907) 271–5006.

SUPPLEMENTARY INFORMATION: Section 101(a)(5)(A) of the MMPA (16 U.S.C. 1361 *et seq.*) directs NMFS to allow, on request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region, if certain findings are made by NMFS and regulations are issued. Under the MMPA, the term "take" means to harass, hunt, capture, or kill or to attempt to harass, hunt, capture or kill marine mammals.

Permission may be granted for periods up to 5 years if NMFS finds, after notice and opportunity for public comment, that the taking will have a negligible impact on the species or stock(s) of marine mammals, and will not have an unmitigable adverse impact on the availability of the species or stock(s) of marine mammals for subsistence uses. In addition, NMFS must prescribe regulations setting forth the permissible methods of taking and other means of effecting the least practicable adverse impact on the species and its habitat, and on the availability of the species for subsistence uses. The regulations also must include requirements pertaining to the monitoring and reporting of such taking. Regulations governing the taking of marine mammals incidental to construction and operation of the offshore oil and gas facility at Northstar in the Beaufort Sea were published and made effective on May 25, 2000 (65 FR 34014), and remain in effect until May 25, 2005. These regulations include mitigation, monitoring, and reporting requirements.

Summary of Request

On September 30, 2003, NMFS received a request from BPXA for a renewal of an LOA issued on September 18, 2000 (65 FR 58265, September 28,2000) and reissued on December 14, 2001 (66 FR 65923, December 21, 2001), and December 9, 2002 (67 FR 77750, December 19, 2002) for the taking of marine mammals incidental to oil production operations at Northstar, under section 101(a)(5)(A) of the MMPA. This request (BPXA, 2003) contains information in compliance with 50 CFR 216.209, which updates information provided in BPXA's original application for takings incidental to construction and operations at Northstar. The current LOA for the taking of marine mammals incidental to oil production at the Northstar facility will expire on December 9, 2003.

Impacts on marine mammals may occur through noise from barge, helicopter traffic, drilling, and other noise sources on the island facility. Impacts may also result if there is an oil spill resulting from production. While noise impacts on marine mammals will be low (activities on Northstar Island will make less noise than that from standard jack-up rigs, the concrete island drilling structure, or seismic activity), bowhead whales will likely hear the noise at distances up to 10 km (6.2 mi) from the island. In addition, there may be some harassment, injury, or mortality of ringed seals during winter ice-road construction. Noise impacts may result in Level B harassment of approximately 765 bowheads (i.e., the LOA authorizes up to 765 bowheads annually, with a maximum of 1,533 in 2 out of 5 seasons, and a total of 3,585 in 5 years), 5 gray whales and 91 beluga whales. Year-round operations at Northstar may result in the harassment of up to approximately 191 ringed seals, 10 bearded seals, and 5 spotted seals being harassed and the incidental mortality of up to 5 ringed seal pups. No take is authorized for an oil spill. NMFS and BPXA believe that these estimates remain conservative since, for example, monitoring between November, 2001 and October, 2002 indicate that approximately 110 ringed seals, 1 bearded seal and 10–20 beluga whales were present in the area and potentially may have been affected (Moulton *et al.*, 2003). MacLean and Williams (2003) and Moulton *et al.* (2003) indicate that Northstar production probably had little or no effect on most of the seals and no seals were injured or killed by activities along the ice road or operations at Northstar Island during the late 2002 through early 2003 ice-covered season.

The best estimates of the numbers of bowhead whales displaced offshore by 2 km (1.2 mi) or more during the autumn migrations of 2001 and 2002 were approximately 13 and 19 respectively (Moulton *et al.*, 2003). Presumably, a larger number of bowheads was displaced by less than 2 km (1.2 mi), but current monitoring methods are not capable of quantifying displacement over distances shorter than 2 km (BPXA, 2003). These estimates are based on acoustic monitoring of bowhead whales passing Northstar in the fall, 2001 and 2002 (Greene *et al.*, 2002, 2003). It is possible that the apparent offshore deflection of a small number of bowheads was, at least in part, attributable to a change in calling behavior rather than an actual deflection (BPXA, 2003).

As oil spills are highly unlikely, impacts on marine mammals from an oil spill are also unlikely to take place. However, in order to mitigate the potential for impacts on bowheads and the subsistence use of bowheads, BPXA will not drill into oil-bearing strata during periods of open water or broken ice, essentially the time period between June 13 and ending with the presence of 18 inches of continuous ice cover for one-half mile in all directions. This mitigation is warranted because oil spill cleanup methods are currently inadequate. Additional mitigation has been proposed by BPXA to the North Slope Borough native community to ensure that, in the event that an oil spill does occur, it will not have an unmitigable adverse impact on the subsistence use of the bowhead whale.

Monitoring and Reporting

Monitoring and reporting requirements are contained in the Northstar regulations (50 CFR 216.206) and described on May 25, 2000 (65 FR 34014). Additional information was provided on December 21, 2001 (66 FR 65923) when NMFS issued an LOA to BPXA for oil production at Northstar. Monitoring reports are submitted annually as required by the regulations and the LOA and plans and reports are peer-reviewed as required by the MMPA and regulations. A list of these reports is available upon request (see **ADDRESSES**). In June, 2003, a peer-review meeting was held in Seattle, WA. Participants at that meeting recommended that the future characteristics of the project be reviewed in early- to mid–2004 by a technical committee, which might be constituted and convened under the auspices of the North Slope Borough's Science Advisory Committee. BPXA plans to continue monitoring in 2003/2004 as suggested by the Seattle peer-review panel and accepted by NMFS.

Determinations

Accordingly, NMFS issued an LOA to BPXA on December 4, 2003, authorizing the taking of marine mammals incidental to oil production operations at the Northstar offshore oil and gas facility in state and federal waters in the U.S. Beaufort Sea. Issuance is based on findings, described in the preamble to the final rule (65 FR 34014, May 25, 2000), that the activities described in the LOA will result in the taking of no more than small numbers of bowhead whales, beluga whales, ringed seals, and, possibly California gray whales, bearded seals and spotted seals and that the total taking will have a negligible impact on these marine mammal stocks and would not have an unmitigable adverse impact on the availability of these species or stocks for taking for subsistence uses. NMFS also prescribed the means for effecting the least practicable adverse impact on these stocks. As the results from the monitoring program carried out since 1999 have not indicated that the determinations made in 2000 and 2001 were in error, nor that estimated levels of incidental harassment have been exceeded, and as the activity that was reviewed in 2001 (oil production activities) has not changed, these determinations remain valid.

Dated: December 4, 2003.

Stephen L. Leathery,

Acting Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 03–30609 Filed 12–9–03; 8:45 am]

BILLING CODE 3510–22–S

COMMODITIES FUTURE TRADING COMMISSION

Sunshine Act Meetings

AGENCY: Commodity Futures Trading

TIME AND DATE: 1 p.m., Wednesday, December 17, 2003.

PLACE: 1155 21st St., NW., Washington, DC, Room 1012.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will hold a hearing to receive testimony from industry participants relating to the Commission's consideration of the application of U.S. Furtures Exchange, LLC, for contract market designation.

FOR FURTHER INFORMATION CONTACT: Jean A. Webb, (202) 418–5100 or *http://www.cftc.gov*.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 03–30712 Filed 12–8–03; 1:07 pm]

BILLING CODE 6351–01–M

CONSUMER PRODUCT SAFETY COMMISSION

[CPSC Docket No. 02–2]

Daisy Manufacturing Company, Provisional Acceptance of Settlement Agreement and Order

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: The Commission publishes in the **Federal Register** settlements that it provisionally accepts under the Consumer Product Safety Act, in accordance with 16 CFR. 1115.20. Published below is a provisionally-accepted Settlement Agreement with Daisy Manufacturing Co., Inc. Referenced exhibits are available at the Office of the Secretary or at *http://www.cpsc.gov*.

DATE: Any interested person may request the Commission not to accept this agreement by December 26, 2003.

ADDRESS: Send written requests to CPSC Docket No. 02–2, Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207.

FOR FURTHER INFORMATION CONTACT: Todd A. Stevenson, Consumer Product Safety Commission, Washington, DC 20207; telephone: (301) 504–7923; e-mail: *tstevenson@cpsc.gov*.

SUPPLEMENTARY INFORMATION: The text of the Consent Agreement and Order appears below.

Consent Agreement and Order

1. This Consent Agreement and Order is a settlement proposal by Daisy Manufacturing Company (hereinafter "Respondent" or "Daisy") pursuant to provisions set forth in 16 CFR 1025.26. It proposes a compromise resolution of the matter described herein, without a hearing or a determination of issues of law and fact.

2. Respondent Daisy Manufacturing Company is a corporation organized and existing under the laws of the State of Delaware. Its office is located at 400 West Stribling Drive, Rogers, Arkansas 72756. Respondent is a manufacturer of Daisy brand airguns and Powerline airguns.

The Complaint

3. A description of the alleged hazards, as set forth in the complaint is attached hereto as Exhibit A.

The Position of Respondent

4. Respondent denies all of the staff's allegations as set forth in the complaint as set forth in the Answer attached hereto as Exhibit B.

5. Respondent denies that the airguns described in the complaint contain a defect which creates or could create a substantial product hazard under section 15 of the CPSA, 15 U.S.C. 2064 and section 15 of the FHSA, 15 U.S.C. 1274.

The Proposed Settlement

6. Respondent admits all of the jurisdictional facts as set forth in the complaint herein.

7. Upon final acceptance of this Consent Agreement by the Commission and the issuance of the Final Order herein, Respondent knowingly, voluntarily and expressly waives any rights it may have in this matter (1) To an administrative or judicial hearing, (2) to judicial review or other challenge or contest of the validity of the Commission's actions, (3) to a determination by the Commission as to whether Respondent failed to comply with the CPSA and FHSA, as alleged, (4) to a statement of findings of fact and conclusions of law, and all further procedural steps and all rights to seek judicial review or otherwise to contest the validity of the Commission Order approving this Consent Agreement and (5) to any claims under the Equal Access to Justice Act.

8. The allegations of the complaint herein are resolved by this settlement consisting of a Consent Agreement and Order.

9. This Consent Agreement is entered into for settlement purposes only and does not constitute an admission by Respondent or a determination by the Commission, and settles any claim raised in the complaint by the Commission under Section 15(a) and (d) of the CPSA, and under Section 15 of the FHSA.

10. Upon provisional acceptance of this Consent Agreement and Order by the Commission, this Consent Agreement and Order shall be placed on the public record and shall be published in the **Federal Register** in accordance with the procedures set forth in 16 CFR 1115.20(b).

11. The Commission and Respondent propose to take the following action to settle this proceeding:

A. The following issues raised by the complaint in this proceeding, namely:

(i) The possibility of uniform industry standards for loading and feeding of BB's in all multishot airguns to insure that an airgun, when operated in accordance with the manufacturer's operating instructions, will load, feed or fire properly.

(ii) What is the appropriate age for intended users of airguns that fire projectiles at more than 350 feet per second? (The parties recognize that the present standard is 16 years of age.) shall be submitted for resolution to ASTM Subcommittee F15.06 for the purpose of consideration and determination, in the sole discretion of the Subcommittee, of the extent to which, if at all, they shall be addressed in the voluntary standards ASTM F589 and F590.

The remaining allegations in the complaint are withdrawn and resolved.

B. Respondent will undertake an intensive campaign to instruct users in the safe handling and use of its airguns, at its sole cost and expense during each of the next five (5) years, under the title "Take Aim At Safety". The campaign will include:

(i) a comprehensive media advertising effort titled "Take Aim at Safety". It will be conducted in each year, which began in 2002/2003, for five (5) years, at a cost to Respondent of in excess of $300,000 per year, for a total of $1,500,000. The campaign is described in detail in Exhibit C annexed hereto.

(ii) Daisy will promote safety by the publication and distribution of ten important safety rules, which, if followed, would eliminate every incident, injury or death associated with Daisy's high velocity airguns. Consumers will be encouraged to visit Daisy's Web site to learn Daisy's ten shooting safety rules and earn a safety certificate. They will be eligible to enter a contest to win a VIP tour of the USA Shooting Team Training facility in Colorado Springs, Colorado, annexed as Exhibit D. Each participant will receive a free copy of Daisy's shooting safety rules.

(iii) A sample ad, to be placed in trade and consumer publications, is annexed as Exhibit E.

(iv) Respondent will apply a "Take Aim At Safety" label to the face of all Daisy brand and Powerline brand long gun packaging. The objectives, audiences, and strategies of the media and packaging campaign to be conducted by Respondent is broadly outlined in Exhibit F.

(v) In February 2004 and in each of the four succeeding years thereafter, Daisy will advise the U.S. Consumer Product Safety Commission in writing of the extent to which the Daisy "Take Aim At Safety" campaign was conducted for the preceding year in the same detail as above set forth.

(vi) *Manufacture.* Respondent agrees to manufacture the Model 856 Powerline Airgun with the same single pellet ammunition and feed system as currently being manufactured.

(vii) *Tape Around Airgun Boxes.* Respondent will incorporate a tape band 1½ to 2 inches wide around the Model 856 and 880 gun boxes which will have a repeating message on the pre-printed tape, which will include the "Take Aim at Safety" logo and state:

> **Warning:** This Gun is for Ages 16 and Over. Adult Supervision Required. Careless Use or Misuse of this Gun May Kill Someone"

The tape would have to be cut through, in addition to industrial staples to open the box. This would increase the likelihood that the consumer reads the warning.

(viii) *Hang Tag, Zip Tie or Sticker.* A zip tie is placed over the pumping mechanism of the gun, which must be cut through to use the gun. A hang tag will be attached to the zip tie and will state:

> **Warning:** Always treat this gun as if it is loaded, whether you think it is loaded or not. Even if the gun fails to fire a BB or Pellet one or more times, do not assume it is unloaded. Any airgun may fail to fire for a variety of reasons. Never point the gun in an unsafe direction or at another person.

In lieu of a zip tie or hang tag, a sticker may be replaced on the product featuring the same warning.

(ix) *Poster, Sticker, Counter Card, or Video for Retailers.* For a period of five (5) years, an 8½ X 11 poster, sticker, counter card or video will be sent to retailers for posting during the Christmas season. The poster will contain the 10 Shooting Safety Rules and alert users to free training programs. Take Aim at Safety—Learn and Practice 10 Shooting Safety Rules. Airguns Are Real Guns, Not Toys. Only Use Age Appropriate Airguns. You or Others Could Be Seriously Injured or Killed If These Rules Are Not Followed.

1. *Always Keep the Muzzle Pointed in Safe Direction.* There are several safe "carries" depending on the situation. Never allow the muzzle to point in the direction of a person.

2. *Treat Every Gun as if it Were Loaded.* You can never be positive that you were the last person to handle the gun. Never take anyone's word about whether or not a gun is loaded. Always check a gun to see if it is loaded when removed from storage or received from another person. Even if you have fired an airgun one or more times and no pellet or BB was expelled from the barrel, it does not mean that the magazine of gun is empty of ammunition. Any airgun can fail to feed for any number of reasons. Continue to treat the airgun as loaded and ready to fire. *Always treat a gun as if it is loaded even if you know it isn't.*

3. *Only Load or Cock a Gun When You Are Shooting.* A loaded gun has no place in your home or other public place.

4. *Check Your Target and Beyond Your Target.* Be sure all persons are well clear of the target area before you shoot. Check behind and beyond your target to be certain you have a safe backstop and that no person or property could be endangered.

5. *Anyone Shooting or Near a Shooter Should Wear Shooting Glasses.* Also, all other persons should remain behind the shooter.

6. *Never Climb or Jump with a Gun.* You can't control the direction of the muzzle if you stumble or fall. You should safely lay the gun down or hand it to a companion while you climb or jump over anything.

7. *Avoid Ricochet.* Never shoot at a flat hard surface or at the surface of water. Ammunition can ricochet off of water just like a skipped rock.

8. *Keep the Muzzle Clear.* Never let anything obstruct the muzzle of a gun. Don't allow the muzzle to come in contact with the ground.

9. *Guns Not in Use Should Always Be Unloaded.* Keeping guns unloaded when not in use is critical to the safety of you and others. When you are finished shooting, put the trigger safety in the "on" position and unload the gun. Store guns so that they are inaccessible to untrained shooters and store ammunition separately from the gun.

10. *Respect Other People's Property.* Whether you're target shooting or hunting, if you're a guest on others' land, you should leave it exactly as you found it.

(x) *Free Training.* Respondent will provide an enclosure in the package and notation on the retail poster, sticker or counter card alerting users as to the availability of free training at their local Jaycee or shooting organization and a toll free 800 number for the dissemination of such information and will report progress to the Commission.

(xi) *BB Package.* An insert or package label shall be added to all boxes of BBs alerting the consumers that (1) Always point the gun in a safe direction; (2) Always treat every gun as if it were loaded; (3) Any gun may fail to load, feed or fire a BB for a variety of reasons. Even if the gun fails to fire a BB one or more times, do not assume it is unloaded; (4) A BB can seriously injure or kill you or other humans if it is fired in an unsafe direction; (5) Shoot safely.

12. Upon final acceptance by the Commission of this Consent Agreement an Order, the Commission shall issue that attached Order incorporated herein by reference.

13. Agreements, understandings, representations or interpretations made outside this Consent Agreement and Order may not be used to vary or contradict its terms.

14. This Consent Agreement in no way constitutes an admission of liability of any kind and Respondent has disputed and continues to dispute the allegations made in the complaint of the Consumer Product Safety Commission. Pursuant to Federal Rules of Evidence 403 and applicable case law, it is the parties' intent and they agree that the Consent Agreement and the action itself is not a finding of liability of any kind and not admissible as evidence for any purpose in any proceeding or in any action in state or federal courts.

15. The provisions of this Consent Agreement and Order shall apply to Respondent and Commission and each of their successors and assigns.

Dated: *November 14, 2003.*

Respondent: Daisy Manufacturing Company.

By: (signed by) William M. Griffin, III.

400 West Stribling Drive, Rogers, AR 72756.

Dated: December 3, 2003.

Consumer Product Safety Commission

By: (signed by) Patricia Semple.

4330 East West Highway, Bethesda, Maryland 20814.

Upon consideration of the Consent Agreement submitted by Respondent Daisy Manufacturing Company, Inc., (hereinafter "Respondent"), a corporation, and the Consumer Product Safety Commission ("Commission"), having jurisdiction over the subject matter and Respondent; and it appearing that the Consent Agreement and Order is in the public interest; It is ordered, that the Consent Agreement be and hereby is accepted by Order of the Commission.[1]

For the Commission.

[1] Chairman Stratton and Commissioner Gall voted to accept the proposed Offer of Settlement Commissioner Moore voted to reject the proposed Offer of Settlement.

Dated: December 4, 2003.

Todd A. Stevenson,

Secretary.

[FR Doc. 03–30555 Filed 12–9–03; 8:45 am]

BILLING CODE 5355–01–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Proposed Collection; Comment Request

AGENCY: Office of the Assistant Secretary of Defense for Health Affairs, DoD.

ACTION: Notice.

In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Assistant Secretary of Defense for Health Affairs announces the proposed reinstatement of a public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by February 9, 2004.

ADDRESSES: Written comments and recommendations on the proposed information collection should be sent to the Special Contractor Operations Office (SCOO) of the TRICARE Management Activity, 16401 East CentreTech Parkway, Aurora, CO 80011–9043, ATTN: Major Shannon Lynch.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the above address, or call SCOO Dental Contracts at 303–676–3496.

Title; Associated Form; and OMB Number: TRICARE Retiree Dental Program (TRDP) Enrollment Application; OMB Number 0720–0015.

Needs and Uses: The information collection requirement is necessary to provide the TRDP contractor with the information required to enroll eligible beneficiaries in the TRDP.

Affected Public: (DoD personnel and their families who are eligible for the TRDP).

Annual Burden Hours: 0.15: NOTE this form is completed on initial application only.

Number of Respondents: 50,000/year.

Responses per Respondent: 1.

Average Burden per Response: 9 minutes.

Frequency: Once on initial application for enrollment.

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

Respondents are those believing they are eligible for the TRICARE Retiree Dental program and who wish to join the TRDP. Eligibles include:

- Members of the Uniformed Services entitled to retired pay, including those aged 65 and over, and their eligible family members
- Members of the Retired Reserve/ Retired Guard entitled to retired pay, but is under age 60, and their family members
- All eligible surviving spouses or eligible children
- A spouse and/or eligible child(ren) of certain non-enrolled members
- Medal of Honor Recipients and their eligible family members

The form is the mechanism utilized by the TRDP contractor (Delta Dental) to enroll eligible DoD personnel in the TRDP. Without the form, the contractor is unable to process enrollment applications and enroll eligible beneficiaries.

Dated: December 1, 2003.

Patricia L. Toppings,

Alternate OSD Federal Register, Liaison Officer, Department of Defense.

[FR Doc. 03–30548 Filed 12–9–03; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Proposed Collection; Comment Request

AGENCY: Office of the Assistant Secretary of Defense (Health Affairs), DoD.

ACTION: Notice.

SUMMARY: In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Assistant Secretary of Defense (Health Affairs) announces a proposed information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by February 9, 2004.

ADDRESSES: Written comments and recommendations on the continuing information collection should be sent to the Senior Investigator, DoD-wise Surveillance for Potential Long-Term Adverse Events Associated with Smallpox Vaccination: Hospitalizations and Self-Reported Outcomes, Naval Health Research Center, DoD Center for Deployment Health Research, PO Box 85122, San Diego CA 92186–5122.

FOR FURTHER INFORMATION CONTACT: To request more information on this information collection, please write to the above address or contact Timothy S. Wells, Lt Col, USAF BSC, by calling (619) 553–7522 or e-mail at *Wells@NHRC.NAVY.MIL.*

Title, Associated Form and OMB Number: Prospective Studies of U.S. Military Forces: DoD-wise Surveillance for Potential Long-Term Adverse Events Associated with smallpox Vaccination: Hospitalizations and Self-Reported Outcomes.

Needs and Uses: DoD-wide Surveillance for Potential Long-Term Adverse Events Associated with Smallpox Vaccination: Hospitalizations and Self-Reported Outcomes, a historical prospective study of U.S. military forces, responds to recent recommendations from Congress and the Institute of Medicine to systematically monitor and evaluate potential long-term health consequences of exposure to the smallpox vaccine "Dryvax®".

Affected Public: Individuals.

Annual Burden Hours: 5000 participants × 45 minutes per questionnaire = 3750 hours.

Number of Respondents: 5000 subjects comprised or current and former regular active duty and activated reservists.

Responses per Respondent: 1.

Average Burden per Response: 45 minutes.

Frequency: Once time, cross-sectional.

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

This cross-sectional postal survey is nested within an IRB-approved historical prospective epidemiologic study of DoD medical records designed to ascertain potential long-term deleterious effects of exposure to the smallpox vaccine. The postal survey will systematically collect self-reported demographic, health and exposure data from a randomly selected subset of the US military population. Half of those surveyed will have been immunized with the smallpox vaccine and half will not. Objective DoD healthcare utilization data will already have been collected for all survey subjects. The purpose of the survey will be to determine whether health problems exist among service members that are not visible to the DoD medical treatment system, and further, whether such problems may be related to exposure to the smallpox vaccine. Eligible respondents of this survey are individuals who were included in the historical prospective study and have verifiable mailing addresses.

Dated: December 1, 2003.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 03–30549 Filed 12–9–03; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Designation of Local Redevelopment Authority for Naval Station Roosevelt Roads Military Reservation

AGENCY: Office of Economic Adjustment, DoD.

ACTION: Notice.

SUMMARY: Section § 8132 of Public Law 108–87, Department of Defense Appropriations Act, 2004, September 30, 2003, directs the Secretary of the Navy to close naval Station Roosevelt Roads, Puerto Rico, no later than 6 months after enactment. This notice provides the point of contact, address, and telephone number for the Local Redevelopment Authority (LRA) responsible for developing the redevelopment plan for the Naval Station Roosevelt Roads Military Reservation, Ceiba, Puerto Rico. Representatives of the Commonwealth, local governments, and homeless providers intersted in reuse of the installation should contact the organization listed. The following information will be published in a newspaper of general circulation in the communities in the vicinity of Naval Station Roosevelt Roads.

Installation Name: Naval Station Roosevelt Roads Military Reservation.

LRA Name: Puerto Rico Department of Economic Development and Commerce.

Point of Contact: Honorable Milton Segarro, Secretary.

Address: 355 F.D. Roosevelt Avenue, Suite 404, Hato Rey, PR 00918.

Phone: (787) 758–4747.

EFFECTIVE DATE: November 20, 2003.

FOR FURTHER INFORMATION CONTACT: Director, Office of Economic Adjustmnet, 400 Army Navy Drive, Suite 200, Arlington, VA 22202; telephone (703) 604–6020.

Dated: December 1, 2003.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 03–30547 Filed 12–9–03; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Information Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before January 9, 2004.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Melanie Kadlic, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the Internet address *Melanie_Kadlic@omb.eop.gov.*

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the follwing: (1) Type of review requested, *e.g.*, new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Angela C. Arrington,

Leader, Regulatory information Management Group Office of the Chief Information Officer.

Institute of Education Sciences

Type of Review: Revision.

Title: National Postsecondary Student Aid Study: 2004.

Frequency: One time.

Affected Public: Individuals or household; businesses or other for-profit institutions.

Reporting and Recordkeeping Hour Burden:

Responses: 103,431.

Burden Hours: 43,096.

Abstract: The 2004 National Postsecondary Student Aid Study is being conducted to meet the continuing need for national-level data about significant financial aid issues for students enrolling in postsecondary education. Information about financial aid policies and postsecondary affordability is critical to policymakers who determine the need analysis formulas for Pell Grants, maximum amounts for student loans and other need-based federal programs, and estimate the continuing and future burden that ensuring federal aid places on the Federal Government. For the first time this study will also collect representative data on state aid and tuition policies which have been previously unavailable at the student level. This clearance request covers full-scale activities for the student interview phase of the study. This interview will collect information on background, program of study, enrollment status, federal aid amounts, other types of aid, tuition, school-related expenses, student and parent finances, student employment, credit card usage, and educational expectations.

Requests for copies of the submission for OMB review; comment request may be accessed from *http://edicsweb.ed.gov,* by selecting the

"Browse Pending Collections" link and by clicking on link number 2417. When you access the information collection, click on "Download Attachments" to view. Written requests for information should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW., Room 4050, Regional Office Building 3, Washington, DC 20202–4651 or to the e-mail address *vivan.reese@ed.gov*. Requests may also be electronically mailed to the Internet address *OCIO_RIMG@ed.gov* or faxed to (202) 708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Kathy Axt at her e-mail address *Kathy.Axt@ed.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 03–30545 Filed 12–9–03; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services; List of Correspondence

AGENCY: Department of Education.

ACTION: List of correspondence from July 1, 2003, through September 30, 2003.

SUMMARY: The Secretary is publishing the following list pursuant to section 607(d) of the Individuals with Disabilities Education Act (IDEA). Under section 607(d) of the IDEA, the Secretary is required, on a quarterly basis, to publish in the **Federal Register** a list of correspondence from the Department of Education received by individuals during the previous quarter that describes the interpretations of the Department of Education (Department) of the IDEA or the regulations that implement the IDEA.

FOR FURTHER INFORMATION CONTACT: Melisande Lee or JoLeta Reynolds. Telephone: (202) 205–5507 (press 3).

If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain a copy of this notice in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the contact persons listed in the preceding paragraph.

SUPPLEMENTARY INFORMATION: The following list identifies correspondence from the Department issued from July 1, 2003, through September 30, 2003.

Included on the list are those letters that contain interpretations of the requirements of the IDEA and its implementing regulations, as well as letters and other documents that the Department believes will assist the public in understanding the requirements of the law and its regulations. The date and topic addressed by a letter are identified, and summary information is also provided, as appropriate. To protect the privacy interests of the individual or individuals involved, personally identifiable information has been deleted, as appropriate.

Part A—General Provisions

Section 602—Definitions

Topic Addressed: Special Education and Related Services

- Letters dated August 22, 2003, to National School Transportation Association Regulatory Liaison Robin L. Leeds and National Association for Pupil Transportation Executive Director Michael J. Martin, regarding the obligations of local educational agencies (LEAs) under Part B of the IDEA toward related service providers, including transportation providers.
- OSEP memorandum 03–10 dated August 22, 2003, to State Directors of Special Education, regarding how to ensure safe and appropriate transportation for children with disabilities.

Section 603—Office of Special Education Programs

Topic Addressed: Responsibilities of the Office of Special Education Programs

- Letter dated August 15, 2003, to individual (personally identifiable information redacted), clarifying that Part B of the IDEA does not provide for the Office of Special Education Programs' review of individual State-level complaint decisions or due process hearings, clarifying the procedures for requesting and amending school records, and clarifying the Department's responsibility to monitor a State's compliance with the IDEA.

Part B—Assistance for Education of All Children With Disabilities

Section 611—Authorization; Allotment; Use of Funds; Authorization of Appropriations

Topic Addressed: Distribution of Funds

- OSEP memorandum 08–03 [sic] dated July 1, 2003, regarding implementation of the funding formula and funding formula distributions under section 611 of Part B of the IDEA and requesting that the States sign an Assurance Statement attesting to the accuracy of their funding formula distributions.

Section 612—State Eligibility

Topic Addressed: Free Appropriate Public Education

- Letter dated August 19, 2003, to Children's Advocacy Network of Florida Founder Beth Davis-Wellington, regarding: (1) The role of the individualized education program (IEP) team in implementing the State's policy for retention or promotion of students with disabilities, (2) the establishment of proficiency standards for a regular high school diploma as they relate to children with disabilities and the IDEA requirements; and (3) the timing of initial evaluations for students with disabilities.

Topic Addressed: Free Appropriate Public Education for Eligible Youth With Disabilities Incarcerated in Adult Prisons

- Letter dated August 19, 2003, to Vermont Department of Education Legal Counsel Geoffrey A. Yudien, clarifying that (1) The provisions in 20 U.S.C. 1414(d)(6) and 34 CFR 300.311(c)(1) apply to post-conviction incarcerations; (2) to the extent consistent with the age ranges established under State law, States and LEAs must include in their child find systems those incarcerated youth who would be eligible to receive a free appropriate public education (FAPE) and who do not fall into the exception to the FAPE requirement; (3) individuals in the Federal correctional system fall under the jurisdiction of the Federal Bureau of Prisons (BOP) and the IDEA makes no specific provision for funding educational services through the BOP; and (4) under Part B of the IDEA, if a youth with disabilities is referred or placed by the State into an out-of-State facility, the referring State is generally responsible for ensuring that FAPE is available during the course of the youth's placement in that facility.

Topic Addressed: Procedural Safeguards

- Letter dated September 9, 2003, to North Dakota State Director of Special Education Robert Rutten, clarifying that it is not inconsistent with the State complaint procedures required by 34 CFR 300.660–300.662 for a complainant to have an advocate present during an interview or for the complaint investigator to send a copy of the issues to be investigated to an advocate if requested to do so by the complainant.

Topic Addressed: Least Restrictive Environment

- Letter dated July 23, 2003, to individual (personally identifiable information redacted), clarifying that neither the IDEA nor its implementing regulations define the term "regular classes" nor do they limit the number, or percentage, of students with disabilities that may be placed into a specific regular classroom in order to provide FAPE in the least restrictive environment, consistent with the requirements of 34 CFR 300.550–300.556.
- Letter dated July 1, 2003, to individual (personally identifiable information redacted), clarifying that, under the IDEA, private schools are not subject to the same admission policies which apply to public schools and services plans are prepared only for private school children with disabilities who are designated to receive services.

Topic Addressed: Maintenance of Effort

- Letter dated August 1, 2003, to Washington State Audit Manager Brad White, clarifying that an LEA is not permitted to reduce its level of expenditures under Part B of the IDEA below the level of expenditures for the preceding fiscal year if the decrease is attributed to a reduction in the LEA's retirement rates for its staff.

Topic Addressed: Participation of Children with Disabilities in State and District-Wide Assessments

- Letter dated July 14, 2003, to New Hampshire Disabilities Rights Center Executive Director Dr. Richard Cohen, regarding the requirements for the disaggregation and reporting of assessment and performance indicator data to the public and the Secretary under the IDEA and Title I of the Elementary and Secondary Education Act of 1965, as amended.

Section 613—Local Educational Agency Eligibility

Topic Addressed: Charter Schools

- Letter dated August 8, 2003, to New York State Education Department Deputy Commissioner Lawrence C. Gloeckler, regarding the status of charter schools under New York law for the purposes of Part B of the IDEA and requesting clarification on how the State is ensuring that the requirements for charter schools under the IDEA are being met.

Section 614—Evaluations, Eligibility Determinations, Individualized Education Programs, and Educational Placements

Topic Addressed: Evaluations and Reevaluations

- Letter dated September 5, 2003, to Hofstra University Professor Frank G. Bowe, clarifying that an agency may not use the due process procedures under the IDEA to override the requirement that informed parental consent be obtained before the initial provision of special education and related services.
- Letter dated September 3, 2003, to U.S. Senator Ben Nighthorse Campbell, regarding the use of intelligence quotient tests to determine the eligibility of students with disabilities for special education under section 504 of the Rehabilitation Act of 1973 and under the IDEA.

Topic Addressed: Individualized Education Programs

- Letter dated August 28, 2003, to Fort Thomas Kentucky Independent Schools Assistant Superintendent Rita Byrd, clarifying that Federal regulations do not address the public agency's responsibility to make an employee of the agency, including a student's former teacher, available for IEP meetings.
- Letter dated August 28, 2003, to individual (personally identifiable information redacted), clarifying that whether an employee who is not required by 34 CFR 300.344(a) to be part of an IEP team may be required to attend or be charged leave to attend an IEP meeting is a matter of State and/or local policy.
- Letter dated July 25, 2003, to individual (personally identifiable information redacted), regarding which parties are responsible under the IDEA for developing, reviewing, and, if appropriate, revising the IEP and clarifying that the decision as to who is responsible for putting IEP team decisions in writing is made by the public agency.

Section 615—Procedural Safeguards

Topic Addressed: Surrogate Parents

- Letter dated July 10, 2003, to New Hampshire State Director of Special Education Mary J. Ford, regarding the distinction between a surrogate parent under 34 CFR 300.515 and a person acting as a parent under 34 CFR 300.20.

Part C—Infants and Toddlers With Disabilities

Section 635—Requirements for Statewide System

Topic Addressed: Procedural Safeguards

- Letter dated August 19, 2003, to individual (personally identifiable information redacted), regarding (1) the Office for Civil Rights' authority over complaints related to discrimination based on disability, (2) the resolution of individual complaints and the award of compensatory services under Part C of the IDEA, and (3) the lead agency's responsibility for general supervision of all Part C programs and activities, including the monitoring of agencies carrying out Part C services.

Other Letters That Do Not Interpret the IDEA But May Be of Interest to Readers

Topic Addressed: Free Appropriate Public Education

- Letter dated August 28, 2003, to Chief State School Officers, regarding implementation of the Title I choice and supplemental educational services provisions of the No Child Left Behind Act of 2001 (NCLB).

Topic Addressed: Confidentiality of Education Records

- Letter dated July 2, 2003, to Chief State School Officers, regarding (1) release of student information to military recruiters under the National Defense Authorization Act for Fiscal Year 2002 and (2) the process by which parents are notified and have an opportunity to request that this information not be disclosed without their consent, similar to the "directory information" provisions under the Family Educational Rights and Privacy Act.

Topic Addressed: Personnel Standards

- Letter dated July 28, 2003, to Chief State School Officers, regarding provisions in NCLB, the Teacher Assistance Corps, and efforts to share ideas about improvements in teacher quality.

Electronic Access to This Document

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(Catalog of Federal Domestic Assistance Number 84.027, Assistance to States for Education of Children with Disabilities)

Dated: December 5, 2003.

Troy R. Justesen,

Acting Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 03–30633 Filed 12–9–03; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

National Energy Technology Laboratory Notice of Availability of a Financial Assistance Announcement

AGENCY: National Energy Technology Laboratory, Department of Energy (DOE).

ACTION: Notice of availability of a funding opportunity announcement.

SUMMARY: Notice is hereby given of the intent to issue Funding Opportunity Announcement No. DE–PS26–04NT42061 entitled "Clean Coal Power Initiative." A draft funding opportunity announcement, as a precursor to potentially awarding multiple financial assistance cooperative agreements, is now being developed. Following release of the draft funding opportunity announcement, expected in November 2003, a comment and response period with industry and other potential partners will be conducted prior to final issuance of the funding opportunity announcement. Final issuance of the funding opportunity announcement is anticipated on or about January 16, 2004, with selections expected early in fiscal year 2005. DOE anticipates availability of $300–$400 million to fund projects selected under this announcement, and industry must match (or exceed) the government cost share for every project. DOE anticipates making multiple awards under this funding opportunity announcement.

DATES: The draft announcement will be available on the "Industry Interactive Procurement System" (IIPS) Web page located at *http://e-center.doe.gov* on or about November 26, 2003. Applicants can obtain access to the announcement from the address above or through DOE/NETL's Web site at *http://www.netl.doe.gov/business.*

ADDRESSES: Questions and comments regarding the content of the announcement should be submitted through the "Submit Question" feature of IIPS at *http://e-center.doe.gov.* Locate the announcement on IIPS and then click on the "Submit Question" button at the top. Enter required information. DOE will try to respond to a question within 3 days, unless a similar question and answer have already been posted on the website. You will receive an electronic notification that your question has been answered.

Responses to questions may be viewed through the "View Questions" feature. If no questions have been answered, a statement to that effect will appear. You should periodically check "View Questions" for new questions and answers.

Questions regarding how to submit questions or view responses can be e-mailed to the IIPS HELP Desk at *helpdesk@pr.doe.gov* or by calling 1 (800) 683–0751.

FOR FURTHER INFORMATION CONTACT: Jo Ann C. Zysk, MS 921–107, U.S. Department of Energy, National Energy Technology Laboratory, PO Box 10940, E-mail Address: *zysk@netl.doe.gov,* Telephone Number: (412) 386–6600.

SUPPLEMENTARY INFORMATION: The Clean Coal Power Initiative (CCPI) is a cost-shared partnership between the government and industry to demonstrate advanced coal-based electric power generation technologies. The goal is to accelerate readiness for commercial deployment of advanced technologies to ensure that the United States has clean, reliable, and affordable electricity based on coal, which is fundamental to a strong U.S. economy and to domestic energy security. This CCPI announcement is open to any coal-based technology advancement that results in efficiency, environmental, or economic improvements potentially capable of achieving coal technology performance levels specified in the Coal Power Program Roadmap (*http://www.netl.doe.gov/publications/proceedings/03/CCPI/presentation_markel.pdf.*) The announcement is open to technologies capable of producing any combination of heat, fuels, chemicals, or other useful byproducts in conjunction with electricity generation. Prospective projects must ensure that coal is used for at least 75% of the fuel energy input to the process and that electricity is at least 50% of the energy-equivalent output from the technology demonstration. Additionally, prospective projects must show the potential for rapid market penetration upon successful demonstration of the technology or concept.

The advanced technologies to be demonstrated under this program will be vital to the role that coal will play on the world power production scene. Production of low-cost electricity and power using coal while maintaining a clean environment has the potential to raise the standard of living of not only the citizens of the United States, but of the world as a whole.

Once released, the funding opportunity announcement will be available for downloading from the IIPS Internet page. At this Internet site you will also be able to register with IIPS, enabling you to submit an application. If you need technical assistance in registering or for any other IIPS function, call the IIPS Help Desk at (800) 683–0751 or e-mail the Help Desk personnel at *IIPS_HelpDesk@e-center.doe.gov.* The announcement will only be made available in IIPS, no hard (paper) copies of the announcement and related documents will be made available. Telephone requests, written requests, e-mail requests, or facsimile requests for a copy of the draft funding opportunity announcement package will not be accepted and/or honored. The draft announcement will be open for public comments on November 26, 2003 and will be closed to public comments on December 26, 2003.

The final funding opportunity announcement will be made available on or about January 16, 2004. Applications must be prepared and submitted in accordance with the instructions and forms contained in the announcement. The final announcement document will allow for requests for explanation and/or interpretation.

Issued in Pittsburgh, Pennsylvania, on November 21, 2003.

Dale A. Siciliano,

Director, Acquisition and Assistance Division.

[FR Doc. 03–30610 Filed 12–9–03; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

[Number DE–PS36–04GO94006]

Geothermal Outreach

AGENCY: Golden Field Office, U.S. Department of Energy.

ACTION: Notice of issuance of funding.

SUMMARY: The Department of Energy's (DOE) Office of Energy Efficiency and Renewable Energy (EERE) is seeking applications for communication and outreach projects to supplement the GeoPowering the West (GPW) effort. Through financial assistance awards, DOE intends to provide financial support to States in the Denver and Seattle Regions ONLY, which include Denver (LA, TX, OK, NM, CO, UT, WY, MT, SD, ND, NE) and Seattle (AK, HI, WA, OR, ID, NV, CA, AZ, American Samoa, Guam, and the Northern Mariana Islands) Regions. This program is authorized under provisions of the "Geothermal Energy Research, Development, and Demonstration Act of 1976," Pub. L. 93–410; Renewable Energy and Energy Efficiency Technology Competitiveness Act of 1989, Pub. L. 101–218; and the Energy Policy Act of 1992, Pub. L. 102–486, Title XII.

DATES: Issuance of the announcement is planned for December 1, 2003.

ADDRESSES: To obtain a copy of the announcement, interested parties should access the DOE Golden Field Office home page at *http://www.go.doe.gov/business.html,* click on "Funding Announcements," and then click on access, which, will provide a link to the announcement number in the Industry Interactive Procurement System (IIPS) Web site and provide instructions on using IIPS. The announcement can also be obtained directly through IIPS at *http://e-center.doe.gov* by browsing opportunities by Contracting Activity, for those announcements issued by the Golden Field Office. DOE will not issue paper copies of the announcement.

IIPS provides the medium for disseminating announcements, receiving financial assistance applications, and evaluating the applications in a paperless environment. The application may be submitted by the applicant or a designated representative that receives authorization from the applicant; however, the application documentation must reflect the name and title of the representative authorized to enter the applicant into a legally binding agreement. The applicant or the designated representative must first register in IIPS, entering their first name and last name, then entering the company name/address of the applicant.

For questions regarding the operation of IIPS, contact the IIPS Help Desk at *IIPS_HelpDesk@e-center.doe.gov* or at (800) 683–0751.

FOR FURTHER INFORMATION CONTACT: Questions regarding this announcement should be submitted electronically through IIPS by "submitting a question" on the IIPS "Finanicial Assistance Form" specific to this announcement. Response to questions will be posted on IIPS and available through "View Questions."

Issued in Golden, Colorado, on December 1, 2003.

James P. Damm,

Acting Director, Office of Acquisition and Financicl Assistance.

[FR Doc. 03–30611 Filed 12–9–03; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–445–006]

Alliance Pipeline L.P.; Notice of Negotiated Rates

December 3, 2003.

Take notice that on November 26, 2003, Alliance Pipeline L.P. (Alliance) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the following tariff sheets, proposed to become effective January 1, 2004:

Third Revised Sheet No. 11
Third Revised Sheet No. 12
Third Revised Sheet No. 13
Third Revised Sheet No. 14

Alliance states that copies of its filing have been mailed to all customers, State commissions, and other interested parties.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See,* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the e-Filing link.

Magalie R. Salas,

Secretary.

[FR Doc. E3–00492 Filed 12–9–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–190–025]

Colorado Interstate Gas Company; Notice of Negotiated Rates

December 3, 2003.

Take notice that on November 26, 2003, Colorado Interstate Gas Company (CIG) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets, with an effective date of December 1, 2003:

First Revised Sheet No. 11G
First Revised Sheet No. 11H
First Revised Sheet No. 11O
First Revised Sheet No. 11P

CIG states that the tendered tariff sheets implement a new negotiated rate transaction and update three previously filed negotiated rate transactions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with § 385.214 or § 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with § 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See,* 18 CFR 385.2001(a)(1)(iii) and the

instructions on the Commission's Web site under the e-Filing link.

Magalie R. Salas,

Secretary.

[FR Doc. E3–00507 Filed 12–9–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–518–053]

Gas Transmission Northwest Corporation; Notice of Negotiated Rates

December 3, 2003.

Take notice that on November 26, 2003, Gas Transmission Northwest Corporation (GTN) tendered for filing to be part of its FERC Gas Tariff, Third Revised Volume No. 1–A, Third Revised Sheet No. 15 and Third Revised Sheet No. 23, with an effective date of December 1, 2003.

GTN states that these sheets are being filed to update tariff provisions related to GTN's negotiated rate transactions.

GTN further states that a copy of this filing has been served on GTN's jurisdictional customers and interested State regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the e-Filing link.

Magalie R. Salas,

Secretary.

[FR Doc. E3–00491 Filed 12–9–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–14–002]

Maritimes & Northeast Pipeline, L.L.C.; Notice of Tariff Filing

December 3, 2003.

Take notice that on November 26, 2003, Maritimes & Northeast Pipeline, L.L.C. (Maritimes) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, Sixth Revised Sheet No. 11, with an effective date of December 1, 2003.

Maritimes states that the purpose of this filing is to lower the Fuel Retainage Percentage to 1.10 percent effective December 1, 2003, for all shippers on the Maritimes system. Maritimes states that it agreed to lower the Fuel Retainage Percentage to resolve the issues raised by a shipper in this proceeding.

Maritimes states that copies of its filing have been mailed to all parties listed on the Official Service List in this proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with § 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with § 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the e-Filing link.

Magalie R. Salas,

Secretary.

[FR Doc. E3–00495 Filed 12–9–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

National Fuel Gas Supply Corporation

[Docket No. RP04–88–000]

Notice of Proposed Changes in FERC Gas Tariff

December 3, 2003.

Take notice that on November 28, 2003, National Fuel Gas Supply Corporation (National) tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1, Twenty Second Revised Sheet No. 8, with an effective date of January 1, 2004.

National states that the proposed tariff sheet reflects an adjustment to recover through National's EFT rate the costs associated with the Transportation and Storage Cost Adjustment provision set forth in section 23 of the General Terms and Conditions of National's FERC Gas Tariff.

National further states that copies of the filing were served upon the Company's jurisdictional customers and the regulatory commissions of the States of New York, Ohio, Pennsylvania, Delaware, Massachusetts, and New Jersey.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at

FERCOnlineSupport@ferc.gov or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the e-Filing link.

Magalie R. Salas,

Secretary.

[FR Doc. E3–00501 Filed 12–9–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–89–000]

National Fuel Gas Supply Corporation; Notice of Tariff Filing

December 3, 2003.

Take notice that on November 28, 2003, National Fuel Gas Supply Corporation (National) tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1, Fifty Ninth Revised Sheet No. 9, to become effective December 1, 2003.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the e-Filing link.

Magalie R. Salas,

Secretary.

[FR Doc. E3–00502 Filed 12–9–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–90–000]

National Fuel Gas Supply Corporation; Notice of Tariff Filing

December 3, 2003.

Take notice that on November 28, 2003, National Fuel Gas Supply Corporation (National) tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1, Sixtieth Revised Sheet No. 9 and Seventh Revised Sheet No. 43 to its FERC Gas Tariff, Fourth Revised Volume No. 1, with a proposed effective date of January 1, 2004.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with § 385.214 or § 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with § 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the e-Filing link.

Magalie R. Salas,

Secretary.

[FR Doc. E3–00503 Filed 12–9–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–94–000]

Northern Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

December 3, 2003.

Take notice that on December 1, 2003, Northern Natural Gas Company (Northern), tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, the following tariff sheets, proposed to be effective January 1, 2004:

66 Revised Sheet No. 50
67 Revised Sheet No. 51
65 Revised Sheet No. 53
15 Revised Sheet No. 56

Northern states that this filing establishes the System Balancing Agreement (SBA) cost recovery surcharge to be effective January 1, 2004, for the period January 1 through December 31, 2004.

Northern further states that copies of the filing have been mailed to each of its customers and interested State commissions. Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the e-Filing link.

Magalie R. Salas,

Secretary.

[FR Doc. E3–00506 Filed 12–9–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RP00–404–009 and RP03–398–006]

Northern Natural Gas Company; Notice of Compliance Filing

December 3, 2003.

Take notice that on December 1, 2003, Northern Natural Gas Company (Northern) tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, the following tariff sheets:

2 Substitute 64 Revised Sheet No. 53
Sixth Revised Sheet No. 55
Substitute Second Revised Sheet No. 260A
Eighth Revised Sheet No. 286
Eleventh Revised Sheet No. 287
Substitute Original Sheet No. 305A
Substitute Original Sheet No. 305B
Substitute First Revised Sheet No. 306
Substitute Second Revised Sheet No. 444
Substitute First Revised Sheet No. 445

Northern states that it is filing the above-referenced tariff sheets in compliance with the Commission's Order on Order No. 637 proceeding.

Northern further states that copies of the filing have been mailed to each of its customers and interested State commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's rules and regulations. All such protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the e-Filing link.

Magalie R. Salas,

Secretary.

[FR Doc. E3–00511 Filed 12–9–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–85–000]

Northwest Pipeline Corporation; Notice of Proposed Changes in FERC Gas Tariff

December 3, 2003.

Take notice that on November 26, 2003, Northwest Pipeline Corporation (Northwest) tendered for filing as part of its FERC Gas Tariff, the following tariff sheets, to be effective January 1, 2004:

Third Revised Volume No. 1

Twenty-Sixth Revised Sheet No. 5
Fourth Revised Sheet No. 5–C
Thirteenth Revised Sheet No. 7
Fifteenth Revised Sheet No. 8
Thirteenth Revised Sheet No. 8.1

Original Volume No. 2

Thirty-Sixth Revised Sheet No. 2.1

Northwest states that the purpose of this filing is to change its daily reservation and demand rates to reflect 2004 leap year rates computed on the basis of 366 days.

Northwest states that a copy of this filing has been served upon Northwest's customers and interested state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with § 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with § 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the e-Filing link.

Magalie R. Salas,

Secretary.

[FR Doc. E3–00496 Filed 12–9–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–86–000]

Northwest Pipeline Corporation; Notice of Proposed Changes in FERC Gas Tariff and Filing of Non-Conforming Service Agreements

December 3, 2003.

Take notice that on November 26, 2003, Northwest Pipeline Corporation (Northwest) tendered for filing two Rate Schedule TF–1 non-conforming service agreements. Northwest also tendered First Revised Sheet No. 372 as part of its FERC Gas Tariff, Third Revised Volume No. 1, to be effective December 27, 2003.

Northwest states that a copy of this filing has been served upon Northwest's customers and interested state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with § 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with § 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the e-Filing link.

Magalie R. Salas,

Secretary.

[FR Doc. E3–00497 Filed 12–9–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–91–000]

Questar Pipeline Company; Notice of Tariff Filing

December 3, 2003.

Take notice that on November 28, 2003, Questar Pipeline Company (Questar) tendered for filing as part of its FERC Gas Tariff, Thirtieth Revised Sheet No. 5 to First Revised Volume No. 1, and Thirty-Seventh Revised Sheet No. 8 to Original, Volume No. 3, to be effective January 1, 2004.

Questar states that the tendered tariff sheets revise Questar's Fuel Gas Reimbursement Percentage (FGRP) from the currently effective 1.4% to 2.0%.

Questar states that the FGRP is filed pursuant to Section 12.15 of the General Terms and Conditions of Part 1 of its tariff, First Revised Volume No. 1.

Questar states that a copy of this filing has been served upon its customers, the Public Service Commission of Utah and the Public Service Commission of Wyoming.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with § 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with § 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the e-Filing link.

Magalie R. Salas,

Secretary.

[FR Doc. E3–00504 Filed 12–9–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–611–001]

SCG Pipeline, Inc.; Notice of Compliance Tariff Filing

December 3, 2003.

Take notice that on December 1, 2003, SCG Pipeline, Inc. (SCG) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the following tariff sheets to become effective December 1, 2003:

Substitute Original Sheet No. 55
Original Sheet No. 55A
Substitute Original Sheet No. 67
Substitute Original Sheet No. 68
Original Sheet No. 68A
Substitute Original Sheet No. 69
Original Sheet No. 69A
Substitute Original Sheet No. 70
Original Sheet No. 70A
Substitute Original Sheet No. 71
Substitute Original Sheet No. 73
Substitute Original Sheet No. 85
Original Sheet No. 85A
Substitute Original Sheet No. 91
Substitute Original Sheet No. 103
Original Sheet No. 103A
Substitute Original Sheet No. 104
Original Sheet No. 104A
Substitute Original Sheet No. 124
Substitute Original Sheet No. 126
Substitute Original Sheet No. 161

SCG asserts that the purpose of its filing is to comply with the Commission's Letter Order issued October 30, 2003, at Docket No. RP03–611–000, 105 FERC ¶ 61,160. SCG states that the tariff sheets reflect revisions to SCG's September 22, 2003, FERC Gas Tariff, Original Volume No. 1, with regard to certain penalty provisions and to certain provisions related to NAESB standards.

SCG states that a copy of this filing has been served on the official service list, its customers and interested State commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with § 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with § 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary (FERRIS) link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the e-Filing link.

Magalie R. Salas,

Secretary.

[FR Doc. E3–00494 Filed 12–9–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–87–000]

Southern Star Central Gas Pipeline, Inc.; Notice of Filing of OFO Penalty Report

December 3, 2003.

Take notice that on November 26, 2003, Southern Star Central Gas Pipeline, Inc. (Southern Star) tendered for filing, its report of Operational Flow Order (OFO) refunds.

Southern Star states that a copy of its filing was served on all jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with § 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before the date as indicated below. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://*

www.ferc.gov using the eLibrary. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the e-Filing link.

Intervention and Protests Date: December 10, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. E3–00500 Filed 12–9–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–93–000]

Southern Star Central Gas Pipeline, Inc.; Notice of Proposed Changes in FERC Gas Tariff

December 3, 2003.

Take notice that on December 1, 2003, Southern Star Central Gas Pipeline, Inc. (Southern Star) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, First Revised Sheet No. 12, to become effective January 1, 2004.

Southern Star states that this filing is being made pursuant to article 13 of the general terms and conditions of its FERC Gas Tariff to reflect revised fuel and loss reimbursement percentages. The percentages are based on actual fuel and loss for the 12 months ended September 30, 2003.

Southern Star states that copies of the tariff sheet are being mailed to Southern Star's jurisdictional customers and interested State commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Magalie R. Salas,

Secretary.

[FR Doc. E3–00505 Filed 12–9–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–312–131]

Tennessee Gas Pipeline Company; Notice of Negotiated Rate Tariff Filing

December 3, 2003.

Take notice that on November 26, 2003, Tennessee Gas Pipeline Company (Tennessee) tendered for filing its Negotiated Rate Tariff Filing.

Tennessee's filing requests that the Commission approve a negotiated rate arrangement between Tennessee and Murphy Gas Gathering, Inc. Tennessee requests that the Commission grant such approval effective January 1, 2004.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the e-Filing link.

Magalie R. Salas,

Secretary.

[FR Doc. E3–00508 Filed 12–9–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–312–132]

Tennessee Gas Pipeline Company; Notice of Negotiated Rate Tariff Filing

December 3, 2003.

Take notice that on November 26, 2003, Tennessee Gas Pipeline Company (Tennessee) tendered for filing its Negotiated Rate Tariff Filing.

Tennessee's filing requests that the Commission approve a negotiated rate arrangement between Tennessee and Callon Petroleum Operating Company. Tennessee requests that the Commission grant such approval effective January 1, 2004.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with § 385.214 or § 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with § 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the e-Filing link.

Magalie R. Salas,

Secretary.

[FR Doc. E3–00509 Filed 12–9–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–489–001]

Vector Pipeline L.P.; Notice of Motion To Place Tariff Sheets Into Effect

December 3, 2003.

Take notice that on November 26, 2003, Vector Pipeline L.P. (Vector) filed pursuant to Section 154.206 of the Commission's regulations a motion to place into effect certain tariff sheets to its FERC Gas Tariff that were suspended by order issued June 30, 2003. The tariff sheets are proposed to be effective December 1, 2003.

Vector states that the purpose of the instant filing is to place into effect on December 1, 2003, the end of the suspension period in this proceeding, the rates filed on May 30, 2003 as adjusted to reflect the agreement of the parties in a settlement filed with the Commission on November 4, 2003, as well as certain other tariff sheets that were the subject of the June 30, 2003 Order.

Vector states that copies of this filing are being served on all jurisdictional customers, applicable state commissions, and participants in Docket No. RP03–489–000.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with § 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with § 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the e-Filing link.

Magalie R. Salas,

Secretary.

[FR Doc. E3–00493 Filed 12–9–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–28–010]

Wyoming Interstate Company, Ltd; Notice of Negotiated Rates

December 3, 2003.

Take notice that on November 26, 2003, Wyoming Interstate Company, Ltd. (WIC) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets, with an effective date of December 1, 2003.

Second Revised Sheet No. 105
Original Sheet Nos. 115 and 116
Original Sheet Nos. 118

WIC states that these tariff sheets implement three new negotiated rate transactions and update a previously filed negotiated rate transaction.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the e-Filing link.

Magalie R. Salas,

Secretary.

[FR Doc. E3–00510 Filed 12–9–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC04–30–000, et al.]

Central Illinois Light Company, et al.; Electric Rate and Corporate Filings

December 2, 2003.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. Central Illinois Light Company d/b/a AmerenCILCO and Ameren Energy Marketing Company

[Docket No. EC04–30–000]

Take notice that on November 25, 2003, Central Illinois Light Company d/b/a AmerenCILCO and Ameren Energy Marketing Company (AEM) (collectively Applicants), submitted an application pursuant to section 203 of the Federal Power Act, and part 33 of the Federal Energy Regulatory Commission regulations, 18 CFR part 33, requesting all Commission authorizations and approvals for the assignment by AmerenCILCO to AEM of certain contracts between AmerenCILCO and various counterparties.

AEM states that copies of this filing have been served on all affected state commissions and also parties to the contracts affected by the transfer.

Comment Date: December 16, 2003.

2. Idaho Power Company

[Docket No. EL99–44–008]

Take notice that on November 24, 2003, Idaho Power Company tendered its compliance filing in the above-captioned docket.

Comment Date: December 24, 2003.

3. Black Hills Ontario, L.L.C.

[Docket Nos. EL04–30–000 and QF84–122–004]

Take notice that on November 26, 2003, Black Hills Ontario, L.L.C. (Black Hills) filed a petition with the Federal Energy Regulatory Commission for recertification of its cogeneration facility as a qualifying facility under § 292.205(a) of the Commission's regulations and limited waiver of the Commission's qualifying cogeneration

facility efficiency standard requirement for 2003.

Black Hills states it is a 7.84 MW (average annual net generation) natural gas-fired topping cycle cogeneration facility located at Ontario, California and includes certain transmission interconnection facilities that interconnect the facility with the transmission system of Southern California Edison Company (SCE). Black Hills further states that it sells the electric output of the facility to SCE.

Comment Date: December 26, 2003.

4. Citadel Energy Products LLC

[Docket No. ER02–2339–001]

Take notice that on November 26, 2003, Citadel Energy Products LLC (Citadel) filed an amendment to its tariff to add Appendix A, Market Behavior Rules. Citadel states that with this amendment it satisfies a condition imposed when the tariff originally was accepted by Commission's Letter Order in Docket No. ER02–2339–000 (Aug. 12, 2002). Citadel further states that the text of the amendment is essentially identical to that promulgated by Order issued November 17, 2003, in Docket No. FL01–118–000, 105 FERC ¶61,218.

Comment Date: December 17, 2003.

5. NRG Marketing Services LLC

[Docket No. ER03–955–002]

Take notice that on November 26, 2003, NRG Marketing Services LLC tendered for filing revised tariff sheets to comply with the Federal Energy Regulatory Commission's Order issued November 10, 2003 in the above-referenced docket.

Comment Date: December 17, 2003.

6. Ameren Services Company

[Docket No. ER04–53–001]

Take notice that on November 26, 2003, AmerenEnergy Resources Generating Company (AERG) submitted for filing a Notice of Succession, pursuant to §§ 35.16 and 131.51 of the Commission's regulations. AERG asserts that the purpose of the filing is to amend the Notice of Succession in Docket No. ER04–53–000 by filing the AmerenEnergy Resources Generating Company FERC Electric Tariff, Original Volume No. 1 (Supersedes FERC Central Illinois Generation, Inc. FERC Electric Tariff, Original Volume No. 1).

Comment Date: December 17, 2003.

7. Ameren Services Company

[Docket No. ER04–99–001]

Take notice that on November 26, 2003, Ameren Services Company (ASC) tendered for filing an unexecuted Network Integration Transmission Service and Network Operating Agreement between ASC and Ameren Energy Marketing Company. ASC asserts that the purpose of the filing is to replace the unexecuted Agreements in Docket No. ER04–99–000 with the revised executed Agreements.

Comment Date: December 17, 2003.

8. Ameren Services Company

[Docket No. ER04–100–001]

Take notice that on November 26, 2003, Ameren Services Company (ASC) tendered for filing revised unexecuted Network Integration Transmission Service and Network Operating Agreements between ASC and Ameren Energy Marketing Company. ASC asserts that the purpose of the filing is to replace the unexecuted Agreements in Docket No. ER04–100–000 with the revised executed Agreements.

Comment Date: December 17, 2003.

9. Gulfstream Energy, LLC

[Docket No. ER04–164–000]

Take notice that on December 1, 2003, Gulfstream Energy, LLC, requested a withdrawal of its Notice of Cancellation of market-based rate tariff filed on November 14, 2003, in the above captioned proceeding.

Comment Date: December 15, 2003.

10. Entergy Services, Inc.

[Docket No. ER04–207–001]

Take notice that on November 25, 2003, Entergy Services, Inc., (Entergy) on behalf of the Entergy Operating Companies, tendered for filing an errata filing to correct proposed section 11.3.3.2 as contained in Entergy's November 19, 2003 filing in the above-referenced docket.

Comment Date: December 16, 2003.

11. American Electric Power Service Corporation

[Docket No. ER04–223–000]

Take notice that on November 25, 2003, the American Electric Power Service Corporation (AEPSC) tendered for filing an Amended Interconnection and Operation Agreement between Ohio Power Company and Duke Energy Hanging Rock, LLC. The agreement is pursuant to the AEP Companies' Open Access Transmission Service Tariff (OATT) that has been designated as First Revised Service Agreement No. 315 to the Operating Companies of the American Electric Power System FERC Electric Tariff Third Revised Volume No. 6, effective July 31, 2001. AEP requests an effective date of November 7, 2003.

AEPSC states that a copy of the filing was served upon Duke Energy Hanging Rock, LLC and the Public Utilities Commission of Ohio.

Comment Date: December 16, 2003.

12. PacifiCorp

[Docket No. ER04–224–000]

Take notice that on November 25, 2003, PacifiCorp tendered for filing in accordance with 18 CFR 35 of the Commission's Rules and Regulations a revised Attachment J to its Open Access Transmission Tariff calculating load ratio shares applicable to PacifiCorp's Network Integration Transmission Service Customers.

PacifiCorp states that copies of this filing were supplied to the Public Utility Commission of Oregon, the Washington Utilities and Transportation Commission, and PacifiCorp's Network Customers.

Comment Date: December 16, 2003.

13. Progress Energy on Behalf of Florida Power Corporation

[Docket No. ER04–225–000]

Take notice that on November 25, 2003, Florida Power Corporation (Florida Power) tendered for filing an executed Firm Point-To-Point Transmission Service Agreement with The City of Gainesville Florida d/b/a Gainesville Regional Utilities.

Florida Power states that this Service Agreement is being filed under the terms and conditions of the Open Access Transmission Tariff filed on behalf of Florida Power Corporation.

Florida Power Corporation is requesting an effective date of November 1, 2003 for this Service Agreement. Florida Power Corporation states that a copy of the filing was served upon the North Carolina Utilities Commission and the Florida Public Service Commission.

Comment Date: December 16, 2003.

14. APN Starfirst, LP

[Docket No. ER04–226–000]

Take notice that on November 25, 2003, APN Starfirst, LP (Starfirst) petitioned the Commission for acceptance of Starfirst Rate Schedule FERC No. 1; the granting of certain blanket approvals, including the authority to sell electricity at market-based rates; and the waiver of certain Commission regulations.

Starfirst states that it intends to engage in wholesale electric power and energy purchases and sales as a marketer and is not in the business of generating or transmitting electric power. Starfirst further states that it is a limited partnership engaged primarily in the business of providing energy management services to commercial, industrial, and government entities.

Comment Date: December 16, 2003.

15. Ameren Services Company

[Docket No. ER04–228–000]

Take notice that on November 26, 2003, Ameren Services Company (ASC) tendered for filing Service Agreements for Network Integration Transmission Service and a Network Operating Agreements between ASC and Ameren Energy Marketing Company. ASC asserts that the purpose of the Agreement is to permit ASC to provide transmission service to Customer pursuant to Ameren's Open Access Transmission Tariff.

Comment Date: December 17, 2003.

16. Ameren Services Company

[Docket No. ER04–229–000]

Take notice that on November 26, 2003, Ameren Services Company (ASC) tendered for filing executed Service Agreements for Firm Point-to-Point Service and Non-Firm Point-to-Point Transmission Service between ASC and Exelon Energy Company. ASC asserts that the purpose of the Agreements is to permit ASC to provide transmission service to Exelon Energy Company pursuant to Ameren's Open Access Transmission Tariff.

Comment Date: December 17, 2003.

17. New York Independent System Operator, Inc.

[Docket No. ER04–230–000]

Take notice that on November 26, 2003, the New York Independent System Operator, Inc. (NYISO) tendered for filing revisions to the ISO Market Administration and Control Area Services Tariff proposing a number of tariff revisions associated with the implementation of new Real-Time Scheduling software and related market improvements.

The NYISO states that it has electronically served a copy of this filing on the official representative of each of its customers, on each participant in its stakeholder committees, on the New York Public Service Commission, and on the electric utility regulatory agencies of New Jersey and Pennsylvania. NYISO further states that in addition, the complete filing has been posted on the NYISO's Web site at *http://www.nyiso.com* and the NYISO will make a paper copy available to any interested party that requests one.

Comment Date: December 17, 2003.

18. Conectiv Bethlehem, LLC

[Docket No. ER04–231–000]

Take notice that on November 26, 2003, Conectiv Bethlehem, LLC (CBLLC), filed its Rate Schedule FERC No. 1, and cost support for its Reactive Supply and Voltage Control from Generation Sources Service to be provided by its 885 MW generating station located in Bethlehem, Pennsylvania, pursuant to section 205 of the Federal Power Act and Schedule 2 of the PJM Interconnection, L.L.C. (PJM) Open Access Transmission Tariff. CBLLC seeks an effective date of January 1, 2004.

CBLLC states that copies of the filing were served upon PJM, PPL Electric Utilities Corporation and the Pennsylvania Public Utility Commission.

Comment Date: December 17, 2003.

19. Constellation Power Source, Inc.

[Docket No. ER04–232–000]

Take notice that on November 26, 2003, Constellation Power Source, Inc. (CPS) tendered for filing, under section 205 of the Federal Power Act, a petition requesting that the Commission: (1) Grant CPS authorization to make wholesale sales of electricity to its affiliated utility, Baltimore Gas and Electric Company (BGE) if it is selected as a winning bidder in the competitive solicitation process approved by the Maryland Public Service Commission (MPSC) to secure wholesale supply for BGE's retail Standard Offer Service obligations; and (2) extend the current waiver of the Commission's code of conduct, and other provisions of CPS' market-based rate tariff, to the extent necessary to effectuate such sales to BGE.

Comment Date: December 17, 2003.

20. Southern California Edison Company

[Docket No. ER04–233–000]

Take notice that on November 26, 2003, Southern California Edison Company (SCE) tendered for filing a Letter Agreement between the City of Moreno Valley (Moreno Valley) and SCE. SCE states that the purpose of the Letter Agreement is to provide an interim arrangement pursuant to which SCE will commence the engineering, design, procurement, and construction of the interconnection facilities and distribution system upgrades required to interconnect Moreno Valley's Cactus Load Project to SCE's Distribution System.

SCE states that copies of this filing were served upon the Public Utilities Commission of the State of California and Moreno Valley.

Comment Date: December 17, 2003.

21. Duke Energy Marketing America, LLC

[Docket No. ER04–234–000]

Take notice that on November 26, 2003, Duke Energy Marketing America, LLC (DEMA) petitioned the Federal Energy Regulatory Commission to amend the Western Systems Power Pool (WSPP) Agreement to include DEMA as a participant. DEMA respectfully requests that the Commission allow the amendment to the WSPP Agreement to become effective on November 27, 2003.

DEMA states that a copy of this filing has been served upon the WSPP Executive Committee Chair, WSPP Operating Committee Chair, WSPP General Counsel, and WSPP Secretary/Treasurer.

Comment Date: December 17, 2003.

22. Florida Power Corporation

[Docket No. ER04–235–000]

Take notice that on November 26, 2003, Florida Power Corporation (FPC) tendered for filing an executed Southwest Landfill Generating Facility Parallel Operation Agreement between FPC and Gainesville Regional Utilities. FPC is requesting an effective date of November 1, 2003 for this Rate Schedule.

FPC states that a copy of the filing was served upon the Florida Public Service Commission and the North Carolina Utilities Commission.

Comment Date: December 17, 2003.

23. Vermont Electric Power Company, Inc.

[Docket No. ER04–236–000]

Take notice that on November 26, 2003, Vermont Electric Power Company, Inc. submitted for filing an Operation and Maintenance Agreement and a Bill-Back Agreement between VELCO and Citizens Communication Company.

Comment Date: December 17, 2003.

24. Virginia Electric and Power Company

[Docket No. ER04–237–000]

Take notice that on November 26, 2003, Virginia Electric and Power Company (Dominion Virginia Power) tendered for filing the following:

A Master Power Purchase & Sale Agreement between Virginia Electric and Power Company and North Carolina Electric Membership Corporation, designated as Service Agreement Number 7, under the Company's Wholesale Cost-Based Rate Tariff, FERC Electric Tariff, Original Volume No. 7, effective on January 16, 2002. Dominion Virginia Power requests an effective date of January 1, 2004 for the Master Power Purchase and Sale Agreement,

Amendment 1 of the Master Power Purchase and Sale Agreement, Capacity and System Firm Energy Transaction Confirmation and VA System Confirm-Bridge Transaction Confirmation.

Dominion Virginia Power states that copies of the filing were served upon North Carolina Electric Membership Corporation, the Virginia State Corporation Commission, and the North Carolina Utilities Commission.

Comment Date: December 17, 2003.

25. New England Power Pool

[Docket No. ER04–238–000]

Take notice that on November 26, 2003, the New England Power Pool (NEPOOL) Participants Committee filed revisions to NEPOOL Market Rule 1 to provide greater flexibility for Load Response Resources and to clarify the method for calculating Real-Time Operating Reserve Credits. A January 1, 2004 effective date is requested.

The NEPOOL Participants Committee states that copies of these materials were sent to the NEPOOL Participants and the New England state governors and regulatory commissions.

Comment Date: December 17, 2003.

Standard Paragraph

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov*, using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number filed to access the document. For assistance, call (202) 502–8222 or TTY, (202) 502–8659. Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Magalie R. Salas,

Secretary.

[FR Doc. E3–00512 Filed 12–9–03; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7597–9]

Proposed Settlement Agreement, Clean Air Act Citizen Suit

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed settlement agreement; request for public comment.

SUMMARY: In accordance with section 113(g) of the Clean Air Act, as amended ("Act"), 42 U.S.C. 7413(g), notice is hereby given of a proposed settlement agreement, to address petitions for review filed by Horween Leather Company and Gutmann Leather Company (collectively, "Petitioners") in the United States Court of Appeals for the District of Columbia: *Horween Leather Company* v. *United States Environmental Protection Agency*, No. 02–1138 (D.C. Cir.), and consolidated case *Gutmann Leather Company* v. *United States Environmental Protection Agency*, No. 02–1139 (D.C. Cir.). Petitioners filed petitions for review challenging EPA's "Final Rule for National Emission Standards for Hazardous Air Pollutants for Leather Finishing Operations," published at 67 FR 9156 *et seq.* (February 27, 2002). These standards are based on the performance of Maximum Achievable Control Technology (MACT), and implement section 112(d) of the Clean Air Act. Under the terms of the proposed settlement agreement, Petitioners and EPA will promptly file a pleading for the dismissal of the petitions for review with prejudice if EPA promulgates in final form an amendment to 40 CFR 63.5345, 63.5350, and 63.5460 clarifying the definition of "specialty leather".

DATES: Written comments on the proposed settlement agreement must be received by January 9, 2004.

ADDRESSES: Submit your comments, identified by docket ID number OGC–2003–0007, online at *http://www.epa.gov/edocket* (EPA's preferred method); by e-mail to *oei.docket@epa.gov*; mailed to EPA Docket Center, Environmental Protection Agency, Mailcode: 2822T, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; or by hand delivery or courier to EPA Docket Center, EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC, between 8:30 a.m. and 4:30 p.m. Monday through Friday, excluding legal holidays. Comments on a disk or CD–ROM should be formatted in Wordperfect or ASCII file, avoiding the use of special characters and any form of encryption, and may be mailed to the mailing address above.

FOR FURTHER INFORMATION CONTACT: Steven Silverman, Air and Radiation Law Office (2344A), Office of General Counsel, U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460, telephone: (202) 564–5523.

SUPPLEMENTARY INFORMATION:

I. Additional Information About the Proposed Settlement Agreement

This case concerns a challenge to the rule entitled "National Emission Standards for Hazardous Air Pollutants for Leather Finishing Operations," published at 67 FR 9156 *et seq.* (February 27, 2002). These standards are based on the performance of Maximum Achievable Control Technology (MACT), and implement section 112(d) of the Clean Air Act.

A number of tanneries subject to the rule filed petitions for review. EPA has negotiated a proposed settlement agreement with these petitioners addressing their request for clarification of the definition of "specialty leather", as that term is defined in the rule. The proposed settlement would require EPA to propose a rule amending 40 CFR 63.5345, 63.5350, and 63.5460 clarifying that definition. The proposed rule would also add record-keeping requirements should EPA establish a new subcategory addressing a new type of specialty leather.

For a period of thirty (30) days following the date of publication of this notice, the Agency will receive written comments relating to the proposed settlement agreement from persons who were not named as parties or interveners to the litigation in question. EPA or the Department of Justice may withdraw or withhold consent to the proposed settlement agreement if the comments disclose facts or considerations that indicate that such consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Act. Unless EPA or the Department of Justice determine, based on any comment which may be submitted, that consent to the settlement agreement should be withdrawn, the terms of the agreement will be affirmed.

II. Additional Information About Commenting on the Proposed Settlement Agreement

A. How Can I Get a Copy of the Settlement Agreement?

EPA has established an official public docket for this action under Docket ID No. OGC–2003–0007 which contains a copy of the settlement agreement. The official public docket is available for public viewing at the Office of Environmental Information (OEI) Docket in the EPA Docket Center, EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OEI Docket is (202) 566–1752.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the appropriate docket identification number.

It is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. Information claimed as CBI and other information whose disclosure is restricted by statute is not included in the official public docket or in EPA's electronic public docket. EPA's policy is that copyrighted material, including copyrighted material contained in a public comment, will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the EPA Docket Center.

B. How and to Whom Do I Submit Comments?

You may submit comments as provided in the **ADDRESSES** section. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments.

If you submit an electronic comment, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment and with any disk or CD ROM you submit. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. Any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. The electronic public docket system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment. In contrast to EPA's electronic public docket, EPA's electronic mail (e-mail) system is not an "anonymous access" system. If you send an e-mail comment directly to the Docket without going through EPA's electronic public docket, your e-mail address is automatically captured and included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

Dated: December 4, 2003.

Lisa K. Friedman,

Associate General Counsel, Air and Radiation Law Office, Office of General Counsel.

[FR Doc. 03–30592 Filed 12–9–03; 8:45 am]

BILLING CODE 6560–80–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7597–8]

Stakeholder Comment on Preliminary National Enforcement and Compliance Assurance Priorities for Fiscal Years 2005, 2006 and 2007

AGENCY: Environmental Protection Agency.

ACTION: Solicitation of recommendations and comments.

SUMMARY: This Notice is a Federal Agency request for the public to comment and provide recommendations on triennial national enforcement and compliance assurance priorities to be addressed for fiscal years 2005, 2006 and 2007. The information submitted by commentors will be considered as part of the process EPA uses to identify and select national enforcement and compliance priorities. Final priority selections will be incorporated into the EPA's Office of Enforcement and Compliance Assurance Workplanning Guidance (which provides national program direction for all EPA Regional offices). These priorities will also affect implementation of the enforcement and compliance goals and objectives outlined in the EPA Strategic Plan, as mandated under the Government Performance and Results Act (GPRA).

DATES: The agency must receive comments and recommendations on or before January 12, 2004.

ADDRESSES: Submit all electronic comments and recommendations to *docket.oeca@epa.gov*. Please reference Docket Number OECA–2003–0154 in the submission. (Comments may be submitted on disk in WordPerfect 8.0 or earlier versions) Written comments can be mailed to: Enforcement & Compliance Docket and Information Center (2201T). Docket Number OECA–2003–0154. Office of Enforcement and Compliance Assurance, U.S. Environmental Protection Agency, 1200 Penn. Ave., NW., Washington, DC 20460. Please be aware that mail addressed to EPA headquarters may experience delays in delivery resulting from security screening. Comments may be delivered in person to: U.S. Environmental Protection Agency, Public Reading Room, Room B102, EPA West Building, 1301 Constitution Avenue, NW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Robert Tolpa, Chief, Planning and Analysis Branch; Voice: (202) 564–2337, Fax: (202) 564–0034.

SUPPLEMENTARY INFORMATION:

Contents

A. Background
B. Projected Time Frames
C. Review Information

A. Background

On October 1, 2003, a new EPA Strategic Plan describing how the Agency will utilize its resources to meet its mission became effective. The new Strategic Plan covers fiscal years 2003–2008 and consists of five goals with OECA's activities contained in Goal 5—"Compliance and Environmental Stewardship." Outcome performance

measures in Goal 5 capture OECA's work efforts in terms of environmental results achieved. By focusing on environmental results, rather than the activities of Agency programs and organizational units, the goal structure allows for greater flexibility between EPA and its states and federally-recognized Indian tribes (tribes) for solving environmental problems. EPA consulted extensively with the states in the development of the Strategic Plan.

OECA has now aligned its Fiscal Year 2005 through 2007 (FY 2005–2007) work planning cycle with the Agency's strategic planning cycle. OECA's planning cycle sets out short term, annual and multi-year goals for the Office, establishes work planning requirements for the enforcement and compliance assurance programs within the Agency's ten Regional Offices, establishes a small set of national program priorities and requires the development of performance-based strategies to direct the work in the identified priority areas. By aligning its planning cycle with the Agency's Strategic Plan, OECA will be better able to correlate the environmental results achieved in the national enforcement and compliance priorities to the environmental outcomes projected in Goal 5 of the Strategic Plan. The intent of this **Federal Register** Notice (FR Notice) is to solicit from the public suggestions of new national enforcement and compliance assurance priorities for 2005–2007, and comments on the candidate priorities described below.

This past summer, OECA asked each EPA Regional Office to: (1) Conduct internal discussions about existing and potential national program priorities; and (2) engage its state and tribal regulatory partners in discussions of existing and potential national program priorities for fiscal years 2005–2007. EPA conducted outreach regarding the priorities at an environmental justice forum, which is a federal advisory committee chartered under the Federal Advisory Committee Act (FACA). OECA received comments back from all EPA Regional Offices and six states.

OECA will select the FY 2005–2007 national program priorities using the following criteria:

(a) Significant Environmental Benefit: In what specific areas can the Federal enforcement and compliance assurance programs make a significant positive impact on human health or the environment? What are the known or estimated public health or environmental risks?

(b) *Noncompliance:* Are there particular economic or industrial sectors, geographic areas or facility operations where regulated entities have demonstrated serious patterns of noncompliance?

(c) *EPA Responsibility:* What identified national problem areas or programs are better addressed through EPA's Federal capability in enforcement or compliance assistance?

Based on the analysis of all proposals received and ongoing work, OECA has developed the following preliminary list of suggested FY 2005–2007 national priorities. While not all suggestions submitted appear on the preliminary list of candidates, the opportunity remains for those candidates to be adopted as regional, state, tribal, or local priorities. In considering the following list, please note that OECA remains committed to identifying a very limited number of national priorities to retain flexibility to address emerging problems or issues as they arise. In addition, some current priority areas may be carried forward or refined during the FY 2005–2007 work planning cycle to complete unfinished work. Two current priorities will not be continued through FY 2005–2007. The Petroleum Refining priority is anticipated to be completed by the end of calendar year 2005, and the Resource Conservation and Recovery Act (RCRA) Permit Evaders priority will no longer include a focus on waste-derived fertilizer facilities and foundries. Work such as monitoring or tracking the implementation of Consent Decrees will continue for both as part of the Agency's core program activities.

The following list of candidate priorities is divided into the current priorities and suggested new areas. The tables below include a brief description of the environmental problem in each priority area. Greater detail and background information on each priority area can be found at the DOCKET site identified in the address section of this **Federal Register**.

I. Current Priorities

Priority	Nature of concern
Safe Drinking Water Act—Microbials Plus	Ensure public water systems provide clean and safe drinking water that pose minimal health risks and are largely free from microbiological, chemical or radiological contamination. Efforts would focus upon microbial rules, nitrate requirements and emergency orders to protect public health from contaminants presenting an imminent and substantial endangerment. The suggested priority would also address situations where multiple violations, at one system or different systems in the same geographic area, present an unacceptable cumulative risk to public health.
Clean Water Act/Wet Weather	Ensure compliance with CWA requirements addressing storm water runoff, overflows from combined and sanitary sewers, and concentrated animal feeding operation (CAFO) discharges. These discharges can contain bacteria, pathogens and other pollutants that may cause illnesses in humans, lead to water quality impairment, including beach and shellfish bed closures and harm our nation's water resources.
Clean Air Act (CAA)/New Source Review/Prevention of Significant Deterioration (NSR/PSD).	Ensuring that NSR and PSD requirements of the CAA are implemented. Failure to comply with NSR/PSD requirements may lead to the inadequate control of emissions resulting in the release of thousands of tons of pollution to the air each year, particularly of nitrogen oxides, volatile organic compounds, and particulate matter.
Clean Air Act (CAA)/Air Toxics	Reduce public exposure to toxic air emissions by ensuring compliance through directed monitoring and enforcement with the Maximum Achievable Control Technology (MACT) standards. This is the second phase of this priority following four years of compliance assistance and the development of implementation tools.

II. Suggested New Areas

Title	Nature of concern
Resource Conservation and Recovery Act (RCRA)/Underground Storage Tanks (UST).	Reduce the potential hazard from UST's that can leak petroleum or other hazardous substances into the soil and contaminate groundwater, the source of drinking water for nearly half of all Americans.
Asbestos Hazard Emergency Response Act (AHERA)/Asbestos in Schools.	Minimize or eliminate exposure to airborne friable asbestos in schools. Asbestos is a known carcinogen, and poses a significant potential health risk if students are in an environment where they inhale asbestos fibers.
Financial Responsibility	Strengthen compliance with financial responsibility requirements found under various environmental laws to ensure that individuals or companies handling hazardous waste, hazardous substances, toxic materials or pollutants have adequate funds to close their facilities, cleanup any releases, and compensate any parties affected by their actions.
Ports of Entry	Reduce illegal handling or disposal of hazardous waste stemming from lack of knowledge of hazardous waste management regulations by managers at port of entry warehousing facilities. A potential Homeland Security issue, it is also a potential Environmental Justice (EJ) focus area because many ports of entry facilities are located in low income or non-English speaking neighborhoods.
Tribal	In Indian country and tribal areas in Alaska, address significant human health and environmental problems associated with drinking water and waste management. Ensure compliance within targeted areas and address adjacent noncomplying facilities impacting Indian country and tribal areas.
Auto Salvaging Sector	A significant environmental problem due to significant potential of pollutants such as waste oils, gas, mercury, polychlorinated biphenyls (PCBs), and lead reaching the environment from auto salvaging facilities. This sector includes salvage yards, shredders and their residue and dismantlers. Auto yards are located throughout the United States, and many are small businesses.
RCRA—Mineral Processing	Evidence gathered in recent inspections indicates that mineral processing facilities are failing to obtain the necessary permits and adequately manage their wastes. EPA has found that the mishandling of mineral processing wastes has caused significant environmental damage and resulted in costly cleanups. These highly acidic wastes have caused fish kills and the arsenic and cadmium that these wastes often contain have been found in elevated levels in residential drinking water wells.
Federal Facilities	Improve and better maintain compliance at Federal Facilities through more effective implementation of environmental management systems (EMS). An EMS is an organization's overall plan for handling resources, procedures, processes, and policies to advance environmental protection and performance.
Miscellaneous Plastics	Reduce public exposure to hazardous wastes and pollutants released to the land, air, and water by the miscellaneous plastic products manufacturing sector
Environmental Justice	Ensure that no racial, ethnic or socioeconomic group bears a disproportionate share of negative environmental consequences resulting from industrial, municipal, and commercial activities; or from the execution of federal, state, local and tribal programs and policies. Target one or more areas within each Region for focused attention.
Fuels Management	Potentially large quantities of hazardous pollutants are being emitted to air, surface and ground water, and soil from the storage, distribution and ancillary operations at liquid petroleum and natural gas handling facilities. Ensure compliance across a broad spectrum of environmental statutes to minimize releases.
Significant Noncompliance (SNC) Oversight	Ensure proper management of the enforcement and compliance programs under the CAA, the CWA—National Pollutant Discharge Elimination System, and RCRA by ensuring that instances and patterns of significant noncompliance are identified and addressed by EPA and/or States in a timely manner.

At this time OECA is inviting comments on this preliminary list, and any suggestions for other FY 2005–2007 priorities. When submitting responses to this FR Notice, please rank which of the areas listed above should be a top concern for national focus, as well as suggesting others not included on the current list. If additional problem areas are identified, please provide supporting information on the suggestions and be sure to relate them to the selection criteria. Again, suggested priority areas that are not chosen may be candidates for individual regional, state, or tribal attention and/or continued investigation.

B. Projected Time Frame

After receiving stakeholder responses to this FR Notice OECA will complete its analysis of candidate priorities and present a list recommendations for final approval to the Assistant Administrator for Enforcement and Compliance Assurance in late January, 2004. In February 2004, EPA will issue the draft FY 2005–2007 OECA Work Planning Guidance to Regional Offices, states and tribes for final review. This draft guidance will include the selected EPA enforcement and compliance assurance national priorities.

C. Review Information

Persons interested in obtaining further background information regarding current or proposed FY 2005–2007 national enforcement and compliance assurance priorities may submit a request for hard copy or electronic version of information to: *docket.oeca@epa.gov*, or contact the docket clerk at (202) 566–1514. Please reference Docket Number OECA–2003–0154 in the request. A reasonable fee may be charged by EPA for copying docket materials.

Dated: December 4, 2003.

John Peter Suarez,

Assistant Administrator, Office of Enforcement and Compliance Assurance.

[FR Doc. 03–30593 Filed 12–9–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2003–0380; FRL–7336–1]

Pesticide Products; Registration Applications

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces receipt of applications to register pesticide products containing new active ingredients not included in any previously registered products pursuant to the provisions of section 3(c)(4) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

DATES: Written comments, identified by the docket ID number OPP–2003–0380, must be received on or before January 9, 2004.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Mary Waller, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number (703) 308–9354; e-mail address: *waller.mary@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS 111)
- Animal production (NAICS 112)
- Food manufacturing (NAICS 311)
- Pesticide Manufacturing (NAICS 32532)

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number OPP–2003–0380. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr/*.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the appropriate docket ID number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the Docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

C. How and to Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit I.D. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically.* If you submit an electronic comment as prescribed in this unit, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets.* Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket/*, and follow the online instructions for submitting comments. Once in the system, select "search," and then key in docket ID number OPP–2003–0380. The system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail.* Comments may be sent by e-mail to *opp-docket@epa.gov*, Attention: Docket ID Number OPP–2003–0380. In contrast to EPA's electronic public docket, EPA's e-mail system is not an "anonymous access" system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM.* You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Unit I.C.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By mail.* Send your comments to: Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001, Attention: Docket ID Number OPP–2003–0380.

3. *By hand delivery or courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, Attention: Docket ID Number OPP–2003–0380. Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit I.B.1.

D. How Should I Submit CBI to the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Offer alternative ways to improve the registration activity.

7. Make sure to submit your comments by the deadline in this notice.

8. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. Registration Applications

EPA received applications as follows to register pesticide products containing active ingredients not included in any previously registered products pursuant to the provision of section 3(c)(4) of FIFRA. Notice of receipt of these applications does not imply a decision by the Agency on the applications.

Products Containing Active Ingredients not Included in Any Previously Registered Products

1. *File symbol*: 75753–R. *Applicant*: Agriguard Company, LLC, P.O. Box 630, Cranford, NJ 07016. *Product name*: Furfural Technical. *Product type*: Soil fumigant. *Active ingredient*: Furfural at 99.7%. *Proposed classification/Use*: None. For formulating use only into soil fumigant products for use in greenhouses on cut flowers, greens, transplants, propagative materials and other non-food/non-feed items.

2. *File symbol*: 75753–E. *Applicant*: Agriguard Company, LLC. *Product name*: Multiguard Protect. *Product type*: Soil fumigant. *Active ingredient*: Furfural at 90%. *Proposed classification/Use*:None. Used in greenhouses on cut flowers, greens, transplants, propagative materials and other non-food/non-feed items.

List of Subjects

Environmental protection, Pesticides and pest.

Dated: November 26, 2003.

Peter Caulkins,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 03–30521 Filed 12–9–03; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2003–0305; FRL–7327–7]

Diazinon; Notice of Receipt of Requests to Voluntarily Cancel Certain Pesticide Products

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In accordance with section 6(f)(1) of the Federal Insecticide,

Fungicide, and Rodenticide Act (FIFRA), as amended, EPA is issuing a notice of receipt of requests by registrants to voluntarily cancel the registrations for all of their outdoor non-agricultural end-use products containing diazinon [O,O-diethyl O-(2-isopropyl-6-methyl-4-pyrimidinyl) phosphorothioate]. EPA intends to grant these requests by issuing a cancellation order at the close of the comment period for this announcement, unless the Agency receives substantive comments within the comment period that would merit its further review of these requests. It is EPA's intent that the cancellation of the outdoor non-agricultural end-use products will be effective on December 31, 2004. The Agency requests public comment on these voluntary cancellation requests, and is providing a 180–day comment period.

DATES: Comments on the requested registration cancellations must be submitted to the address provided below and identified by docket identification (ID) number OPP–2003–0305. Comments must be received on or before June 7, 2004.

FOR FURTHER INFORMATION CONTACT: Stephanie Plummer, Special Review and Reregistration Division (7508C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–0076; e-mail address: *plummer.stephanie@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. Although this action may be of particular interest to persons who produce or use pesticides, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the information in this notice, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under docket ID number OPP–2003–0305. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. EPA also established two dockets containing documents in support of the diazinon IRED. They are dockets OPP–34225 and OPP–2002–0251. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr/*.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select "search," then key in the appropriate docket ID number.

II. What Action is the Agency Taking?

This notice announces receipt by the Agency of applications from registrants to cancel 75 pesticide products registered under section 3 of FIFRA. These registrations are listed in ascending sequence by registration number in Table 1 of this unit.

A. Background Information

Diazinon is an organophosphorous insecticide and is one of the most widely used insecticides in the U.S. It is used for outdoor non-agricultural, as well as agricultural, pest control.

Under a December 5, 2000, memorandum of agreement (MOA), the technical registrants of diazinon agreed to certain provisions regarding outdoor non-agricultural end-use products. All companies holding registrations for diazinon outdoor non-agricultural end-use products submitted letters to the Agency agreeing to the following changes in the conditions of their registrations according to the MOA:

1. Stop manufacturing all diazinon outdoor non-agricultural end-use products no later than June 30, 2003.

2. Stop shipment of all diazinon outdoor non-agricultural end-use products no later than August 31, 2003.

3. Voluntarily cancel all diazinon outdoor non-agricultural end-use product registrations by December 31, 2004.

4. Adhere to certain existing stocks provisions, which are explained in Unit IV.

The Reregistration Eligibility Decision (RED) document summarizes the findings of EPA's reregistration process for individual chemical cases, and reflects the Agency's decision on risk assessment and risk management for uses of the individual pesticides. EPA has issued an Interim Reregistration Eligibility Decision (IRED) document assessing the risks from exposure to diazinon.

B. Requests for Voluntary Cancellation

Under section 6(f)(1)(A) of FIFRA, registrants may request, at any time, that their pesticide registrations be canceled or amended to terminate one or more pesticide uses. Section 6(f)(1)(B) of FIFRA requires that before acting on a request for voluntary cancellation, EPA must provide a 30–day public comment period on the request for voluntary cancellation. In addition, section 6(f)(1)(C) of FIFRA requires that EPA provide a 180–day comment period on a request for voluntary termination of any minor agricultural use before granting the request, unless: (1) The registrants request a waiver of the comment period, or (2) the Administrator determines that the continued use of the pesticide would pose an unreasonable adverse effect on the environment. EPA will apply a 180–day comment period to this notice.

TABLE 1.— DIAZINON REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION

Registration number	Product name
16–118	Dragon Granular Lawn Insect Control
16–119	Dragon 5% Diazinon Granules
16–157	Dragon 25% Diazinon Spray
16–166	Dragon Diazinon Water-Based Concentrate
192–161	Dexol Diazinon 5% Granules
228–162	Riverdale Lawn Insect Killer Plus Fertilizer

TABLE 1.— DIAZINON REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION—Continued

Registration number	Product name
228–177	Riverdale 5% Diazinon Insect Killer Granules
239–2364	Ortho Diazinon Insect Spray
239–2375	Ortho Diazinon Granules
239–2479	Ortho Diazinon Soil and Turf Insect Control
239–2503	Ortho Diazinon Granular Fire Ant Killer
239–2619	Hi-Power Ant, Roach, and Spider Spray Formula II
239–2630	Ortho Diazinon Insect Spray Ready-to-Use
239–2643	Ortho Diazinon Insect Spray 2
239–2671	Ortho Diazinon Dust
538-92	Lawn Insect Control Plus Fertilizer
538-187	Scotts Lawn Insect Control
538–204	Western Lawn Insect Control Plus Fertilizer
538–254	Fertilizer Plus Diazinon
538–258	Fertilizer and Diazinon
572–292	5% Diazinon Granular Lawn Insecticide
572–305	Rockland Diazinon Spray
655–556	Prentox Diazinon 5G
829–249	Diazinon Insecticide 25% Spray Concentrate
829–264	SA–50 Brand 5% Diazinon Granules
869–139	Green Light Diazinon 5 Granules
869–231	Green Light Diazinon
961–358	Lebanon Lawn and Garden Insecticide with Diazinon 5G
961–393(old reg. no. 8660–11)	Sta-Green Lawn Insect Control and Fertilizer
1386–648	5% Diazinon Insect Killer Granules
3546–27	Shoofly Hornet Jet-bomb

TABLE 1.— DIAZINON REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION—Continued

Registration number	Product name
7401–216	Ferti-lome Diazinon Insect Spray
7401–222	Ferti-lome Special Diazinon Insect Killer Granules
7401–441	Ferti-lome Diazinon Water Base Concentrate
8378–12	Lawn Insect Control Plus Fertilizer
8378–32	Shaw's 5% Diazinon Insect Granules
8780–51	Turf Line Diazinon 5G Lawn Insect Control
8780–56	Turf Line Arthroban Triple Action #4
8845–92	Spectracide Lawn and Garden Insect Control
8845–95	Spectracide 6000 Lawn and Garden Insect Control
8845–101	Spectracide Fire Ant Killer
9198–45	The Andersons Turf Food with 3.33% Diazinon
9198–62	The Andersons Lawn and Garden Insecticide 5% Diazinon
9688–89	Chemsico Diazinon 2G
10404–14	Lesco Diazinon 3.33% + Fertilizer
10404–23	Lesco Diazinon 5G
19713–263	Drexel Diazinon 5G
19713–264	Drexel Diazinon 2G
19713–317	Bug Spray
28293–199	Unicorn Diazinon 5G Granules
28293–230	Unicorn 25 EC Diazinon
32802–5	All Season Diazinon 5G Insecticide
33955–556	Acme Diazinon 25% Emulsifiable Concentrate
33955–557	Acme Diazinon 5G Lawn and Garden Insect Control

TABLE 1.— DIAZINON REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION—Continued

Registration number	Product name
34704–57	Clean Crop Diazinon 5 Lawn and Garden
34911–13	Hi-Yield 5% Diazinon Insect Killer Granules
34911–23	Hi-Yield Imported Fire Ant Control Granules
40849–30	Enforcer Ant Kill Granules II
42057–90	Diazinon Liquid (Diazinon 25% Emulsifiable)
42057–107	Morgro 5% Diazinon Granular Lawn and Garden Insect Control
51036–69	Diazinon 2G Lawn and Perimeter Granules
51036–97	Diazinon 5G Homeowner
53883–45	Martins Diazinon 25 E Lawn and Garden Insect Control
53883–46	Martin's Diazinon Granular Lawn Insect Control
53883–51	Martins 5% Diazinon Granules
53883–54	Martin's Fire Ant Killer
53883–80 (old reg. no. 37915–6)	Professional Pest Control Formula DC–500
56819–13 (old reg. no. 8780–54)	Turf Diazinon Lawn Insect Control Plus Fertilizer #2
56819–14 (old reg. no. 8780–55)	Turf Diazinon Lawn Insect Control Plus Fertilizer
59144–2	5% Diazinon Granules
59144–28	Diazinon Lawn and Garden Insecticide
61282–25	Diazinon Lawn and Garden WBC
62366–2	Bug Stuff
67572–1	CP Diazinon Lawn and Garden WB Ready-to-Use
75082–2 (old reg. no. 34822–6)	Di-All Paint Insecticide

Table 2 of this unit includes the names and addresses of record for all

registrants of the products in Table 1 of this unit, in ascending sequence by EPA company number:

TABLE 2.—REGISTRANTS REQUESTING VOLUNTARY CANCELLATION

EPA Company number	Company name and address
16	Dragon Chemical Corporation, 7033 Walrond Drive, NW, P.O. Box 7311, Roanoke, VA 24019
192	Value Gardens Supply, LLC, P.O. Box 585, St. Joseph, MO 64502
228	Nufarm Americas Inc., 1333 Burr Ridge Parkway, Suite 125A, Burr Ridge, IL 60527
239	The Ortho Business Group, P.O. Box 190, Marysville, OH 43040
538	The Scotts Company, 14111 Scottslawn Road, Marysville, OH 43041
572	Rockland Corporation, 686 Passaic Avenue, P.O. Box 809, West Caldwell, NJ 07007
655	Prentiss Inc., CB 2000, Floral Park, New York, NY 11001
829	Southern Agricultural Insecticides, Inc., P.O. Box 218, Palmetto, FL 34220
869	Green Light Company, P.O. Box 17985, San Antonio, TX 78217
961	Lebanon Seaboard Corporation, 1600 East Cumberland Street, Lebanon, PA 17042
1386	Universal Cooperatives Inc., 1300 Corporate Center Curve, Eagan, MN 55121
3546	Lynwood Labs Inc., 945 Great Plain Avenue, Needham, MA 02192
7401	Voluntary Purchasing Group Inc., 1806 Auburn Drive, Carrollton, TX 75007
8378	Knox Fertilizer Company Inc., West Culver Road, P.O. Box 248, Knox, IN 46534
8780	Progressive Lawn Research, Inc., 1225 Lehigh Station Road, P.O. Box 400, Henrietta, NY 14467
8845	Spectrum Group, P.O. Box 142642, St. Louis, MO 63114
9198	The Andersons Lawn Fertilizer Division, Inc., P.O. Box 119, Maumee, OH 43537
9688	Chemsico, P.O. Box 142642, St. Louis, MO 63114
10404	Lesco Inc., 15885 Sprague Road, Strongsville, OH 44136
19713	Drexel Chemical Company, 1700 Channel Avenue, P.O. Box 13327, Memphis, TN 38113
28293	Unicorn Laboratories, 12385 Automobile Boulevard, Clearwater, FL 33762
32802	Howard Johnson's Enterprises Inc., 700 West Virginia Street, Suite 222, Milwaukee, WI 53204
33955	PBI/Gordon Corporation, P.O. Box 014090, Kansas City, MO 64101
34704	Platte Chemical Company, Inc., P.O. Box 667, Greeley, CO 80632
34911	Hi-Yield Chemical Company, 1806 Auburn Drive, Carrollton, TX 75007
40849	Enforcer Products, 1310 Seaboard Industrial Boulevard, NW Atlanta, GA30318
42057	Morgro Chemical Company, 145 West Central Avenue, Salt Lake City, UT 84107
51036	Micro-Flo Company LLC, P.O. Box 772099, Memphis, TN 38117
53883	Control Solutions, Inc., 5903 Genoa-Red Bluff, Pasadena, TX 77507
56819	Progressive Lawn Research Inc. C/O High Point Mills Road, P.O. Box 400, Henrietta, NY 14467
59144	Gro Tec Inc., 30856 Rocky Road, Greeley, CO 80631
61282	Hacco, Inc., P.O. Box 7190, Madison, WI 53707
62366	The Valspar Corporation, 30856 Rocky Road, Greeley, CO 80631
67572	Contract Packaging Inc., 10115 Highway 142, North Covington, GA 30014
75082	Supreme Chemicals of Georgia, Inc., 1535 Oak Industrial Lane, Suite B, Cummings, GA 30041

III. What is the Agency's Authority for Taking this Action?

Section 6(f)(1) of FIFRA provides that a registrant of a pesticide product may at any time request that any of its pesticide registrations be canceled. FIFRA further provides that, before acting on the request, EPA must publish a notice of receipt of any such request in the **Federal Register**. After complying with the requirements in 6(f)(1), the Administrator may approve such a request.

IV. Provisions for Disposition of Existing Stocks

The Agency intends to issue a cancellation order following consideration of all comments received during the comment period, unless the comments warrant further review of this request. Any cancellation order issued in response to this request will have an effective date of December 31, 2004.

Existing stocks are those stocks of registered pesticide products which are currently in the United States and which have been packaged, labeled, and released for shipment prior to the effective date of the cancellation action. As noted above, the companies listed in Table 2 in Unit II., have agreed to stop shipment of all diazinon outdoor non-agricultural end-use products no later than August 31, 2003. In accordance with the MOA, all companies holding registrations for outdoor non-agricultural end-use diazinon products agreed to the following existing stocks provisions:

1. Sale and distribution of these outdoor non-agricultural end-use products containing diazinon will not be permitted after December 31, 2004. Except for purposes of product recovery pursuant to the 2000 MOA, shipping such stocks for export consistent with the requirements of FIFRA section 17, or proper disposal in accordance with applicable law.

2. Use of existing stocks may continue until stocks are exhausted. Any such use must be in accordance with the label.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: November 18, 2003.

Betty Shackleford,

Acting Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. 03–30271 Filed 12–9–03; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2003–0200; FRL–7332–5]

Propanil and Fenamiphos; Use Deletion and Product Cancellation Order

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In accordance with section 6(f)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended, the Agency is issuing a Cancellation Order announcing its approval for the voluntary product and use amendments/cancellations submitted by: Agriliance, LLC; Dow AgroSciences, LLC; and RiceCo, LLC, to voluntarily cancel all small grain uses (spring (hard red) wheat, oats, spring barley, and durum wheat) of certain end-use and technical products for the active ingredient propanil (3',4'-dichloropropionanilide), effective July 28, 2003; and Bayer CropScience to voluntary cancel all registrations for products containing the active ingredient fenamiphos (ethyl 3-methyl-4-(methylthio)phenyl-(1-methylethyl)phosphoramidate), effective May 31, 2007. In conjunction with the request for voluntary cancellation, Bayer CropScience has also agreed to amend their existing fenamiphos product registrations and implement interim risk mitigation measures.

FOR FURTHER INFORMATION CONTACT: *For propanil*: Carmen Rodia, Special Review and Reregistration Division (7508C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460–0001; telephone number: (703) 306–0327; fax number: (703) 308–8041; e-mail address: *rodia.carmen@epa.gov*.

For fenamiphos: Tawanda Spears, Special Review and Reregistration Division (7508C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460–0001; telephone number: (703) 308–8050; fax number: (703) 308–8005; e-mail address: *spears.tawanda@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. This action may however, be of interest to persons who are or may be required to conduct testing of chemical substances under FIFRA or the Federal Food, Drug, and Cosmetic Act (FFDCA); environmental, human health, and agricultural advocates; pesticide users; and members of the public interested in the use of pesticides. Since other entities may also be interested, the Agency has not attempted to describe all of the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity or if there are any technical questions related to propanil or fenamiphos, please consult the appropriate chemical review manager as listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket*. EPA has established an official public docket for this action under docket identification (ID) number OPP–2003–0200. The official public docket consists of the documents specifically referenced in this action, any public comments received and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Room 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA 22202–4501. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access*. You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr/*.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://cascade.epa.gov/RightSite/dk_public_ home.htm* to submit or view public comments, access the index listing of the contents of the official public docket and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select "search," then key in the appropriate docket ID number.

II. Background

A. What Action is the Agency Taking?

This Order follows up a June 27, 2003, notice of receipt of written requests by Agriliance, LLC; Dow AgroSciences, LLC; and RiceCo, LLC to voluntarily amend or cancel their product registrations to terminate the use of propanil on small grains (68 FR 38328) (FRL–7310–6). For fenamiphos, this Order follows up a September 27, 2002 (67,FR 61098) (FRL–7274–2), notice of receipt of a request from Bayer CropScience to voluntarily cancel all their registrations for products containing fenamiphos.

As part of these notices, the Agency indicated that it would issue an Order granting the voluntary product and use registration amendments or cancellations unless the Agency received substantive comment within the respective 30–day public comment periods that would merit its further review of these requests. EPA did not receive any comments specific to these cancellations. Accordingly, the Agency hereby issues in this notice a Cancellation Order granting the requested amendments or cancellations for propanil and fenamiphos registrations. Any distribution, sale or use of the products subject to this Cancellation Order is only permitted in accordance with the terms of the existing stocks provisions of this Cancellation Order.

As part of this Cancellation Order, EPA is approving the requested cancellations or amendments of 15 end-use and technical product registrations registered under section 3 of FIFRA as requested by Agriliance, LLC; Bayer CropScience; Dow AgroSciences, LLC; and RiceCo, LLC for the propanil and fenamiphos products identified in Tables 1 and 2 below. For propanil, the cancellations/amendments were effective on July 28, 2003. For fenamiphos, the cancellations are effective May 31, 2007.

Agriliance, LLC; Dow AgroSciences, LLC; and RiceCo, LLC requested that the Administrator waive the 180–day comment period provided under FIFRA section 6(f)(1)(C) for propanil. In addition, Bayer CropScience requested that the Administrator waive the 180–day comment period for fenamiphos. In light of the registrant's requests, EPA provided a 30–day public comment period on the voluntary cancellation and use deletion requests.

The Agency did not receive any comments specific to these cancellations. Accordingly, EPA is issuing an Order in this notice canceling the eight registrations identified in Table 1 and amending the seven registrations listed in Table 2.

TABLE 1.—END-USE AND TECHNICAL PRODUCT REGISTRATION CANCELLATIONS FOR FENAMIPHOS AND PROPANIL

Company Name and Address	EPA Registration Number	Product Name	Chemical Name
Bayer CropScience 2 T.W. Alexander Drive Research Triangle Park, NC 27709	3125–236 (old) 264–726 (new)	NEMACUR 15% Granular	Fenamiphos
	3125–237 (old) 432–1291 (new)	NEMACUR 10% Turf and Ornamental Nematicide	Fenamiphos
	3125–269 (old) 264–727 (new)	NEMACUR Technical Nematicide-Insecticide	Fenamiphos
	3125–283 (old) 264–731(new)	NEMACUR 3	Fenamiphos
	3125–333 (old) 264–739 (old)	NEMACUR Concentrate Nematicide-Insecticide	Fenamiphos
Dow AgroSciences, LLC 9330 Zionsville Road Indianapolis, IN 46268–1054	62719–386	STAMPEDE 3E (Alternate Brand)	Propanil
	62719–404	STAMPEDE CM	Propanil
	62719–413	STAMPEDE 80 EDF (Alternate Brand)	Propanil

TABLE 1.—END-USE AND TECHNICAL PRODUCT REGISTRATION CANCELLATIONS FOR FENAMIPHOS AND PROPANIL

Company Name and Address	EPA Registration Number	Product Name	Chemical Name
Bayer CropScience 2 T.W. Alexander Drive Research Triangle Park, NC 27709	3125–236	NEMACUR 15% Granular	Fenamiphos
	3125–237	NEMACUR 10% Turf and Ornamental Nematicide	Fenamiphos
	3125–269	NEMACUR Technical Nematicide Insecticide	Fenamiphos
	3125–283	NEMACUR 3	Fenamiphos
	3125–333	NEMACUR Concentrate Nematicide-Insecticide	Fenamiphos
Dow AgroSciences, LLC 9330 Zionsville Road Indianapolis, IN 46268–1054	62719–386	STAMPEDE 3E (Alternate Brand)	Propanil
	62719–404	STAMPEDE CM	Propanil
	62719–413	STAMPEDE 80 EDF (Alternate Brand)	Propanil

Pursuant to section 6(f)(1)(A) of FIFRA, Agriliance, LLC; Dow AgroSciences, LLC; and RiceCo, LLC submitted requests to amend a number of their propanil end-use and technical product registrations to terminate the small grains (spring (hard red) wheat, oats, spring barley, and durum wheat) use. In the **Federal Register** of June 27, 2003 (FRL–7310–6), EPA published a notice of receipt of written requests by the registrants to voluntarily amend their product registrations to terminate the use of propanil on small grains as summarized in Table 2 below. EPA did not receive any comments on the notice.

TABLE 2.—END-USE AND TECHNICAL PRODUCT REGISTRATION AMENDMENTS FOR PROPANIL

Company Name and Address	EPA Registration Number	Product Name Use Deletions	Use Deletions
Agriliance, LLC 5600 Cenex Drive Inver Grove Heights, MN 55077–1723	9779–338	PROPANIL 80 EDF	Amend label to delete use on spring (hard red) wheat, spring barley, and durum wheat
Dow AgroSciences, LLC 9330 Zionsville Road Indianapolis, IN 46268–1054	62719–386	STAM F–34	Amend label to delete use on spring (hard red) wheat, oats, spring barley, and durum wheat
	62719–403	STAM TECHNICAL 98% DCA	Amend label to delete use on spring (hard red) wheat, oats, spring barley, and durum wheat
	62719–413	STAM 80 EDF	Amend label to delete use on spring (hard red) wheat, oats, spring barley, and durum wheat
RiceCo, LLC 5100 Poplar Avenue, Suite 2428 Memphis, TN 38137–2428	71085–1	RICECO PROPANIL TECHNICAL	Amend label to delete use on spring (hard red) wheat, spring barley, and durum wheat
	71085–21	RICECO PROPANIL TECHNICAL	Amend label to delete use on spring (hard red) wheat, spring barley and durum wheat
	71085–22	PROPANIL 60 DF	Amend label to delete use on spring (hard red) wheat, spring barley, and durum wheat

Any distribution, sale or use of existing stocks of the products identified in Tables 1 and 2 in a manner inconsistent with the terms of this Cancellation Order or the Existing Stock Provisions in Unit IV. of this notice will be considered a violation of section 12(a)(2)(K) of FIFRA and/or section 12(a)(1)(A) of FIFRA.

B. Amendments to Existing Fenamiphos Product Registrations

In addition to the request to cancel all of their fenamiphos product registrations, Bayer CropScience has also agreed to amend their existing fenamiphos product registrations to:

1. Prohibit all use and formulation for use on extremely vulnerable soils after May 31, 2005.
2. Cap production at 500,000 pounds of fenamiphos manufacturing-use products used in the U.S. for the year ending May 31, 2003.
3. Reduce production by 20% of the previous year's production for each subsequent year during the 5–year phase-out period.

Finally, the Agency approved revised labels submitted by Bayer CropScience implementing risk mitigation measures identified in the Fenamiphos Interim Reregistration Eligibility Decision (IRED) document, which was approved on March 31, 2002.

C. What is the Agency's Authority for Taking this Action?

Pursuant to section 6(f) of FIFRA, EPA hereby approves the requested cancellations or amendments of the propanil and fenamiphos product and use registrations identified in Tables 1 and 2 of this Cancellation Order. Accordingly, the Agency orders that the propanil and fenamiphos end-use and technical product registrations identified in Table 1 are hereby canceled in accordance with the time frames stipulated in Unit II.A. The Agency also orders that all of the uses identified for deletion in Table 2 are hereby canceled from the end-use and technical product registrations identified in Table 2.

III. Import Tolerances for Fenamiphos

Bayer CropScience anticipates that commodities treated with fenamiphos may continue to be imported into the U.S. after the final effective date of cancellation and after existing stocks in the U.S. are exhausted. As such, Bayer CropScience intends to support import tolerances for banana, citrus, garlic, grape, and pineapple.

IV. Existing Stocks Provisions

For purposes of this Cancellation Order, the term "existing stocks" is defined, pursuant to EPA's existing stocks policy (56 FR 29362, June 26, 1991), as those stocks of a registered pesticide product which are currently in the U.S. and which have been packaged, labeled and released for shipment prior to the effective date of the amendment or cancellation. The existing stocks provisions of this Cancellation Order are as follows.

A. Distribution or Sale of Products Bearing Instructions for Use on Agricultural Crops

The distribution and sale of existing stocks by Agriliance, LLC; Dow AgroSciences, LLC; and RiceCo, LLC of any propanil product listed in Table 1 or 2 that bears instructions for use on small grains will not be lawful under

FIFRA after June 28, 2004, except for the purposes of shipping such stocks for export consistent with section 17 of FIFRA or for proper disposal.

As of May 31, 2007, all sale and distribution by Bayer CropScience, the sole registrant of fenamiphos products (manufacturing-use and end-use products), shall be prohibited. Persons other than Bayer CropScience may sell and distribute such products until May 31, 2008.

B. Retail and Other Distribution or Sale of Existing Stock of Products

Persons other than Agriliance, LLC; Dow AgroSciences, LLC; and RiceCo, LLC may continue to sell or distribute the existing stocks of any propanil product listed in Table 2 that bears instructions for use on small grains until those stocks are depleted.

C. Use of Existing Stocks

EPA intends to permit the use of existing stocks of products listed in Table 1 or 2 until such stocks are exhausted, provided such use is in accordance with the existing labeling of that product.

List of Subjects

Environmental protection, Fenamiphos, Pesticides and pests, Propanil.

Dated: November 18, 2003.

Betty Shackleford,

Acting Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. 03–30159 Filed 12–9–03; 8:45 a.m.]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2003–0385; FRL–7337–6]

Spiroxamine; Notice of Filing a Pesticide Petition to Establish a Tolerance for a Certain Pesticide Chemical in or on Food

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of a pesticide petition proposing the establishment of regulations for residues of a certain pesticide chemical in or on various food commodities.

DATES: Comments, identified by docket ID number OPP–2003–0385, must be received on or before January 8, 2004.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Mary L. Waller, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–9354; e-mail address:*waller.mary@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, pesticide manufacturer or formulator. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS 1111)
- Food manufacturing (NAICS 311)
- Pesticide manufacturing (NAICS 32532)

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number OPP–2003–0385. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr/.*

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select "search," then key in the appropriate docket ID number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

C. How and To Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit I.D. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically.* If you submit an electronic comment as prescribed in this unit, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets.* Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket/*, and follow the online instructions for submitting comments. Once in the system, select "search," and then key in docket ID number OPP–2003–0385. The system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail.* Comments may be sent by e-mail to opp-docket@epa.gov, Attention: Docket ID Number OPP–2003–0385. In contrast to EPA's electronic public docket, EPA's e-mail system is not an "anonymous access" system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM.* You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Unit I.C.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By mail.* Send your comments to: Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001, Attention: Docket ID Number OPP–2003–0385.

3. *By hand delivery or courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, Attention: Docket ID Number OPP–2003–0385. Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit I.B.1.

D. How Should I Submit CBI to the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Make sure to submit your comments by the deadline in this notice.

7. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. What Action is the Agency Taking?

EPA has received a pesticide petition as follows proposing the establishment and/or amendment of regulations for residues of a certain pesticide chemical in or on various food commodities under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that this petition contains data or information regarding the elements set forth in FFDCA section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: November 26, 2003.

Peter Caulkins,

Acting Director, Registration Division, Office of Pesticide Programs.

Summary of Petition

The petitioner summary of the pesticide petition is printed below as required by FFDCA section 408(d)(3). The summary of the petition was prepared by the petitioner and represents the view of the petitioner. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

Bayer CropScience

PP 3E6783

EPA has received a pesticide petition (PP 3E6783) from Bayer CropScience, 2 T.W. Alexander Drive, P.O. Box 12014, Research Triangle Park, NC 27709roposing, pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(d), to amend 40 CFR part 180 by establishing a tolerance for residues of Spiroxamine, 8-(1,1-Dimethylethyl)-*N*-ethyl-*N*-propyl-1,4-dioxaspiro[4,5]decane-2-methanamine in or on the raw agricultural commodity hop, dried cone - import at 50.0 parts per million (ppm). EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

A. Residue Chemistry

1. *Plant metabolism.* A hop plant metabolism study has been conducted, and the nature of the residue is adequately understood. An animal metabolism study is not required since the proposed crop to be treated with Spiroxamine is not fed to livestock.

2. *Analytical method.* A method to determine the total residues of Spiroxamine using gas chromatography has been submitted to the EPA. In addition, Spiroxamine has been evaluated using the multi-residue methodologies as published in the FDA Pesticide Analytical Manual, Volume I.

3. *Magnitude of residues.* Eight field trials were conducted on fields in typical hop-growing regions in Germany to assess the residue levels of Spiroxamine, 8-(1,1-dimethylethyl)-*N*-ethyl-*N*-propyl-1,4-dioxaspiro[4,5]decane-2-methanamine, in/on hops following foliar applications. A formulation containing Spiroxamine (KWG 4168 500 EC) was applied in two spray applications as an emulsifiable concentrate formulation containing 500 grams (g) active ingredient/liter(L), with an application rate of 1.5 liters/hectare (L/ha) and 3,000 L of water/ha. This corresponded to a total applied amount of the active ingredient of 0.750 kilograms (kg)/ha. The applications were carried out at growth stages 75–79 and 77–81, respectively (corresponding to a 9–10 day interval between applications).

Duplicate composite samples of hop cones were collected at a 10–day preharvest interval (PHI) from each plot. In addition, single samples were collected on day 0 and, in four of the trials, on days 6 and 13 after treatment. Hop cones were analyzed both fresh and, on days 10 and 13, after kiln drying. The highest total residue value of Spiroxamine (defined as parent and metabolites converted to aminodiol equivalents) in dried hop cones was 30 ppm (highest individual value)/24.5 ppm (highest average value [HAFT] from two samples in a single trial) at a 10–day PHI. The total Spiroxamine residues in hop cones appeared to decline with time. Note: The residue trials submitted with this petition are being submitted as a national submission in Germany in the European Union (EU). The European procedure for calculating a maximum residue limit (MRL) differs from the procedure used in the USA. Although no final decision has yet been made by the European authorities at the present time, an evaluation of the dried-hop cone data according to EU principles leads to an MRL proposal equivalent to 50 ppm total residues of Spiroxamine. In order to avoid possible trade conflicts, it is proposed that the U.S. tolerances be harmonized with the expected EU-MRL.

Samples from two of the above field trials were also processed into beer (four individual processing trials). Average total residues for the dried hop cones prior to processing in these trials were 9.5 and 16 ppm, respectively. In beer, the total residues of Spiroxamine were below the level of detection (i.e., <0.05 ppm) in all four trials.

B. Toxicological Profile

1. *Acute toxicity—KWG 4168 (Spiroxamine) Technical.* The acute oral LD_{50} in male rats was 595 milligrams/kilogram (mg/kg) and in female rats was >500 but <560 mg/kg. The acute dermal LD_{50} in rats was >1,600 and 1,068 mg/kg for males and females, respectively. The 4–hour inhalation LC_{50} in rats was 2.772 and 1.982 milligrams/liter (mg/L) for males and females, respectively. Irritation studies in rabbits revealed Spiroxamine was severely irritating to the skin while not irritating to the eye. Spiroxamine exhibited a skin-sensitizing potential in guinea pigs in both the Magnusson/Kligman maximization test and the Buehler patch test.

2. *Genotoxicty.* The genotoxic action of Spiroxamine was studied in bacteria and mammalian cells with the aid of various *in vitro* test systems (*Salmonella* microsome test, forward mutation assay, cytogenetic study with Chinese hamster ovary cells and unscheduled DNA synthesis test) and in one *in vivo* test (micronucleus test). None of the tests revealed any evidence of a mutagenic or genotoxic potential of Spiroxamine. The compound did not induce point mutations, DNA damage or chromosome aberrations.

3. *Reproductive and developmental toxicity.* In a reproduction study using rats, Spiroxamine was administered for two generations at dietary concentrations of 20, 80 or 300 ppm. Reproductive effects such as reduced litter size at birth and clinical signs of toxicity occurred at the high dose in conjunction with maternal toxicity. The parental and reproductive NOAELs were 20 ppm (equal to 2.13 milligrams per kilogram of bodyweight per day (mg/kg bw/day)) and 80 ppm (equal to 9.19 mg/kg bw/day), respectively.

In a developmental toxicity study in rats, Spiroxamine was administered by oral gavage at dose levels of 0, 10 and 25 mg/kg bw/day and in a supplemental study at doses of 0 and 150 mg/kg bw/day. Severe maternal toxicity occurred at 150 mg/kg bw/day resulting in the deaths of 21 of 25 animals. Embryotoxicity (palatoschisis and omphalocele) was observed at the high dose in conjunction with the severe maternal toxicity. The two lower dose levels did not reveal any maternal or developmental toxicity. The results of these studies showed that the dose of 150 mg/kg bw/day was too high to obtain unequivocal results with respect to embryotoxicity and teratogenicity.

In another oral developmental toxicity study in rats, Spiroxamine was administered by gavage during gestation at doses of 0, 10, 30 or 100 mg/kg bw/day. Developmental toxicity occurred in conjunction with distinct maternal toxicity at the highest dose tested. The maternal NOAEL was 30 mg/kg bw/day based on reduced body weight gain and feed intake at 100 mg/kg bw/day. The NOAEL for developmental toxicity was 30 mg/kg bw/day based on delayed ossification, slightly reduced fetal weights and three cases of palatoschisis at 100 mg/kg bw/day.

In oral developmental toxicity studies in rabbits, Spiroxamine was administered by gavage during gestation at doses of 0, 5, 20 or 80 mg/kg bw/day and in a supplemental study at doses of 0 and 80 mg/kg bw/day. The maternal NOAEL was 20 mg/kg bw/day based on clinical findings, reduced body weight gain, reduced food intake and lethality at 80 mg/kg bw/day. The NOAEL for developmental toxicity was 20 mg/kg bw/day based on marginal developmental toxicity (reduced fetal weight and a slight increased rate of spontaneous malformations) at the highest dose level.

In a dermal developmental toxicity study in rats, Spiroxamine was administered for 6 hours/day during gestation at doses of 0, 5, 20 or 80 mg/kg. Reduced body weight gain occurred in dams at 20 mg/kg and greater. Dose-related skin reactions were observed at all treated doses. Developmental toxicity, such as wavy ribs, occurred in conjunction with maternal toxicity at the highest dose tested. The NOAELs for systemic and local maternal toxicity were 5 and <5 mg/kg, respectively. The NOAEL for developmental toxicity was 20 mg/kg. Spiroxamine did not reveal any teratogenic potential associated with dermal application.

4. *Subchronic toxicity.* In subacute dermal toxicity studies, rabbits were treated with Spiroxamine at doses ranging from 0.05 to 5 mg/kg bw/day for 6 hours/day over a period of 3 weeks. Systemic effects were not observed in these studies. Local irritation, increased skin fold thickness, and histopathological findings of the skin occurred in these studies. The overall NOAELs for local and systemic effects were 0.2 and 5 mg/kg bw/day, respectively.

In a 90-day feeding study, mice were administered Spiroxamine at dietary concentrations of 0, 20, 80, 320 or 1,280 ppm. Effects observed included clinical signs of toxicity, decreased body weight and food consumption, changes in hematological parameters, hyperplastic changes in the epidermis of the auricles and/or tail, and effects on the liver, kidney, and urinary bladder. The NOAEL was 20 ppm (equal to 6.2 mg/kg bw/day) for male mice based on marginally reduced body weight development at 80 ppm. The NOAEL for female mice was 80 ppm (equal to 28.5 mg/kg bw/day) based on slight morphological findings in the liver at 320 ppm.

In another subchronic mouse study, Spiroxamine was administered by oral gavage at doses of 0, 60, 180 or 240 mg/kg. Effects observed included clinical signs of toxicity, and effects of the liver, urinary bladder and hyperplastic changes in the epidermis of the auricles and tails. Evidence of liver enzyme induction was seen in all treatment groups. The NOAEL was <60 mg/kg bw/day for both males and females.

Spiroxamine was administered to rats in a subchronic feeding study at dietary concentrations of 0, 25, 125 or 625 ppm over a period of 13 weeks. Effects included clinical signs of toxicity, reduced body weight gains, changes in hematological parameters, and effects on the liver, urinary bladder, esophagus and forestomach. The NOAEL for both male and female was 25 ppm (equal to 1.9 and 2.7 mg/kg bw/day, respectively) based on histopathological findings in the esophagus and forestomach at 125 ppm.

In two subchronic feeding studies in dogs, Spiroxamine was administered at dietary concentrations of 0, 25, 750 or 1,500 ppm and at 0, 150, 250 or 500 ppm over a period of 13 weeks. Toxicological effects included changes in clinical chemistries, increased relative liver weights, and histopathological findings in the liver. The overall NOAELs from these studies were 500 ppm (equal to 16.9 mg/kg bw/day) and 750 ppm (equal to 21.29 mg/kg bw/day) for males and females, respectively, based on liver effects.

5. *Chronic toxicity.* In a chronic dog study, Spiroxamine was administered at dietary concentrations of 0, 25, 75, 1,000 or 2,000 ppm for a period of 52 weeks. Effects included opthalmological findings, changes in clinical chemistries, mild anemia, and histopathological findings (eye and liver). The NOAEL for both sexes was 75 ppm (equal to 2.47 and 2.48 mg/kg bw/day for males and females, respectively) based on eye and liver effects.

Rats were administered Spiroxamine for 2 years at dietary concentrations of 0, 10, 70 or 490 ppm. Effects included reduced body weight gains, a slight increase in mortality and histopathological findings in the esophagus and urinary bladder. The NOAEL for both sexes was 70 ppm (equal to 4.22 and 5.67 mg/kg bw/day for males and females, respectively) based on esophagus and urinary bladder effects.

The carcinogenicity potential of Spiroxamine was investigated in rats and mice at maximum dietary concentrations of 490 ppm (equal to 32.81 mg/kg bw/day) and 600 ppm (equal to 149.8 mg/kg bw/day), respectively. No evidence of an oncogenic potential of Spiroxamine was found in the long-term studies in rats and mice.

6. *Animal metabolism.* Rats were gavaged with 1 or 100 mg/kg radio-labeled technical Spiroxamine. Seventy percent of the oral low dose was absorbed. Within 48 hours of dosing, over 97% of the dose was excreted in urine and feces. At sacrifice (48 hours post dosing), the radioactivity remaining in the body was below 1% in the low dose groups and approximately 1% and 2% in the male and female rats, respectively, from the high dose group. Concentrations found in tissues and organs were relatively low: i.e., they do not exceed 0.04 micrograms/gram (µg/g). The highest concentrations were found in liver, thymus and adrenals. Slightly smaller concentrations were observed in the thyroid, spleen, fat, ovaries and uterus. The main metabolite in all dose groups is Spiroxamine oxidized to the carboxylic acid in the t-butyl-moiety. The identification rate was approximately 77% of the recovered radioactivity in all dose groups.

7. *Metabolite toxicology.* Toxicological studies have been conducted on KWG 4168 N-oxide, a plant and animal metabolite of Spiroxamine. In an acute oral toxicity study on KWG 4168 N-oxide using female rats, the LD_{50} was 707 mg/kg. In a subacute toxicity study, rats were administered KWG 4168 N-oxide at dietary concentrations of 0, 30, 150 and 1,000 ppm. The highest concentration resulted in treatment-related effects. The main targets were the epithelia of the digestive tract and the urinary bladder. A mild liver enzyme induction was observed without any correlating gross- or micropathological findings. In a subchronic study, rats were administered KWG 4168 N-oxide at dietary concentrations of 0, 25, 125 and 625 ppm, and KWG 4168 at 625 ppm. Toxic effects were observed at 625 ppm for both test substances. Similar effects included delayed body weight development, changes in clinical chemistries and micropathological findings of the esophagus and stomach. The effects were less pronounced for KWG 4168 N-oxide when compared to KWG 4168 (parent). Effects noted only in animals treated with KWG 4168 included changes in hematological

parameters and micropathological findings of the urinary bladder (females). The mutagenic potential of KWG 4168 N-oxide was studied *in vitro* in bacteria and mammalian cells. It did not cause mutations *in vitro* in the Ames assay, the V–79–HPRT gene mutation assay, or produce clastogenicity in the chromosome aberration assay with or without metabolic activation.

8. *Endocrine disruption.* The toxicology data base for Spiroxamine is current and complete. Studies in this data base include evaluation of the potential effects on reproduction and development, and an evaluation of the pathology of the endocrine organs following short- or long-term exposure. These studies revealed no primary endocrine effects due to Spiroxamine.

C. Aggregate Exposure

1. *Dietary exposure.* An aggregate risk assessment was conducted for all pending uses (grape, hop (domestic and imported) and banana (imported)) to assess the potential acute and chronic dietary exposure resulting from applications of Spiroxamine to these crops. Novigen Sciences, Inc.'s Dietary Exposure Evaluation Model (DEEM®) was used to estimate the chronic and acute dietary exposure.

For the acute dietary analysis, the proposed acute reference dose (aRfD) of 0.1 mg/kg/day was used. This aRfD is based on NOELs of 10 mg/kg from an acute oral toxicity and an acute neurotoxicity screening study and applying a 100-fold uncertainty factor.

For the chronic dietary analysis, the proposed chronic reference dose (cRfD) of 0.02 mg/kg/day was used. This cRfD is based on a parental toxicity NOEL of 2.13 mg/kg/day from the two-generation reproduction study and the application of a 100–fold uncertainty factor.

Results from the acute and chronic dietary exposure analyses described below demonstrate a reasonable certainty that no harm to the overall U.S. population or any population subgroup will result from the use of Spiroxamine on grape, hop and banana.

i. *Food.* An acute, Tier 1 dietary (food) risk assessment was conducted using the highest residue values and 100% crop treated. The estimated percent of the aRfD for the overall U.S. population (all seasons) at the 95 percentile is 8.5%. The most highly exposed population subgroup, non-nursing infants, had an exposure equal to 33.3% of the aRfD at the 95 percentile. These exposure estimates in are within EPA's criteria of acceptability.

A chronic, Tier 1 dietary (food) risk assessment was conducted using average residue values and 100% crop treated. The estimated percent of the cRfD for the overall U.S. population (all seasons) is 9.1%. For the most highly exposed population subgroup, children 1 to 6) years old, the exposure consumed 30.6% of the cRfD. These exposure estimates are within EPA's criteria of acceptability.

ii. *Drinking water.* No monitoring data are available for residues of Spiroxamine in ground water, and EPA has established no health advisory levels or maximum contaminant levels for residues of Spiroxamine in drinking water.

Studies show low to no soil mobility for Spiroxamine and its primary metabolites. In addition, field studies show that Spiroxamine and its degradates do not leach below the 6–inch depth level, and show very low potential to leach into ground water. Therefore, it can be concluded with reasonable certainty that no harm will result from acute or chronic aggregate exposure to Spiroxamine residues in drinking water.

2. *Non-dietary exposure.* Spiroxamine is not registered nor are registrations pending for uses that would result in non-dietary exposure.

D. Cumulative Effects

Spiroxamine belongs to a new class of chemistry know as spiroketalamines. Therefore, for this tolerance petition, it is assumed that Spiroxamine does not have a common mechanism of toxicity with other substances and only the potential risks of Spiroxamine in its aggregate exposure are considered.

E. Safety Determination

1. *U.S. population.* Based on the above aggregate food exposure estimates for the overall U.S. population (8.5% of the aRfD and 9.1% of the cRfD), the low potential for Spiroxamine and its degradates to leach into ground water, and the completeness of the toxicity data base, there is reasonable certainty that no harm to the U.S. population will result from aggregate exposure to Spiroxamine.

2. *Infants and children.* In assessing the potential for additional sensitivity of infants and children to residues of Spiroxamine, data from developmental toxicity studies in mice, rats, rabbits and a two-generation reproduction study in the rat are considered. The developmental toxicity studies are designed to evaluate adverse effects on the developing organism resulting from maternal pesticide exposure during gestation. Reproduction studies provide information relating to effects from exposure to the pesticide on the reproductive capability of mating animals and data on systemic toxicity.

Based on the above, aggregate food exposure estimates for the most highly exposed population subgroups, i.e., non-nursing infants and children (1–6 years old), consumed 33.3% and 30.6% of the aRfD and cRfD, respectively. This, in combination with the low potential for Spiroxamine and its degradates to leach into ground water, and on the completeness of the toxicity data base, there is reasonable certainty that no harm to infants and children will result from aggregate exposure to Spiroxamine.

F. International Tolerances

There are no established Codex, Canadian or Mexican MRLs for Spiroxamine.

[FR Doc. E3–00489 Filed 12–8–03; 8:45 am]
BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2003–0362; FRL–7335–5]

Alkyl (C_{10}–C_{16}) Polyglycosides; Notice of Filing a Pesticide Petition to Establish a Tolerance for a Certain Pesticide Chemical in or on Food

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of a pesticide petition proposing the establishment of regulations for residues of a certain pesticide chemical in or on various food commodities.

DATES: Comments, identified by docket ID number OPP–2003–0362, must be received on or before January 9, 2004.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: James Parker, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–0731; e-mail address:*parker.james@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS code 111)
- Animal production (NAICS code 112)
- Food manufacturing (NAICS code 311)
- Pesticide manufacturing (NAICS code 32532)

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under docket ID number OPP–2003–0362. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although, a part of the official docket, the public docket does not include Confidential Business Information (CBI), or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr/*.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although, not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select "search," then key in the appropriate docket ID number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although, not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or on paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

C. How and to Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit I.D. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically.* If you submit an electronic comment as prescribed in this unit, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also, include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets.* Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket/*, and follow the online instructions for submitting comments. Once in the system, select "search," and then key in docket ID number OPP–2003–0362. The system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail.* Comments may be sent by e-mail to opp-docket@epa.gov, Attention: Docket ID number OPP–2003–0362. In contrast to EPA's electronic public docket, EPA's e-mail system is not an "anonymous access"

system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM.* You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Unit I.C.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By mail.* Send your comments to: Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001, Attention: Docket ID number OPP–2003–0362.

3. *By hand delivery or courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, Attention: Docket ID number OPP–2003–0362. Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit I.B.1.

D. How Should I Submit CBI to the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Provide specific examples to illustrate your concerns.
6. Make sure to submit your comments by the deadline in this notice.
7. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. What Action is the Agency Taking?

EPA has received a pesticide petition as follows proposing the establishment and/or amendment of regulations for residues of a certain pesticide chemical in or on various food commodities under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that this petition contains data or information regarding the elements set forth in FFDCA section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and record keeping requirements.

Dated: November 21, 2003.

Susan Lewis,

Acting Director, Registration Division, Office of Pesticide Programs.

Summary of Petition

The petitioner's summary of the pesticide petition is printed below as required by FFDCA section 408(d)(3). The summary of the petition was prepared by the Cognis Corporation and represents the view of the petitioner. The summary may have been edited by the EPA if the terminology used was unclear, the summary contained extraneous material, or the summary unintentionally made the reader conclude that the findings reflected EPA's position and not the position of the petitioner. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

Cognis Corporation

PP 4E4332

EPA has received a pesticide petition (PP 4E4332) from Cognis Corporation, 4900 Este Avenue, Cincinnati, OH 45232 proposing, pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(d), to amend 40 CFR part 180, by establishing a tolerance exemption for residues of alkyl (C_{10}–C_{16}) polyglycosides (CAS Reg. No. 110615-47-9) when used as an inert ingredient in a pesticide product. EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

A. Residue Chemistry

1. *Plant metabolism.* No plant metabolism studies have been submitted in support of this petition since an exemption from tolerance is being requested. In addition, alkyl ($C_{10–16}$) polyglycosides are expected to rapidly degrade to sugars and fatty alcohols in treated plants.

2. *Analytical method.* Since the petitioner has requested a tolerance exemption, a residue analytical method for alkyl ($C_{10–16}$) polyglycosides in food crops is not required.

3. *Magnitude of residues.* Due to the very low toxicity exhibited by the alkyl polyglycosides, in either acute or sub-chronic studies, and the rapid metabolism of these substances to sugars and fatty alcohols, no field residue studies were conducted.

B. Toxicological Profile

1. *Acute toxicity.* Based on acute studies conducted with alkyl ($C_{12–14}$) polyglycosides, the acute toxicity of alkyl ($C_{10–16}$) polyglycosides is expected to be of a very low order. The acute oral LD_{50} for alkyl ($C_{12–14}$) polyglycosides is greater than 5 gram/kilogram (g/kg) body weight and the acute dermal LD_{50} is greater than 2 g/kg body weight. Concentrations of less than 30% alkyl ($C_{12–14}$) polyglycosides are non-irritating to skin. Alkyl ($C_{12–14}$) polyglycosides are not dermal sensitizers.

2. *Genotoxicty.* Based on studies conducted with alkyl ($C_{12–14}$) polyglycosides, alkyl ($C_{10–16}$) polyglycosides are considered non-mutagenic. In the bacterial gene mutation study (Ames test), alkyl ($C_{12–14}$) polyglycosides did not cause an increase in revertants, compared to controls, with or without metabolic activation. In the *in-vitro* cytogenetic study, alkyl ($C_{12–14}$) polyglycosides did not cause an increase in chromosomal aberrations, compared to controls, with or without metabolic activation.

3. *Reproductive and developmental toxicity.* In a developmental toxicity study, test animals were treated with alkyl ($C_{12–14}$) polyglycosides, by gavage, on days 6 through 15 of gestation at doses of 0, 100, 300 and 1,000 mg/kg body weight. There were no maternal or fetal effects noted in any of the test groups. Based on this study, both the maternal and developmental no observed effect level (NOEL) for alkyl ($C_{12–14}$) polyglycosides is greater than 1,000 milligrams/kilogram (mg/kg) body weight.

4. *Subchronic toxicity.* In a sub-chronic (90–day) feeding study, test animals were treated with alkyl ($C_{12–14}$) polyglycosides at doses of 0, 250, 500 and 1,000 mg/kg body weight. The only adverse effect observed in the study, in the mid (500 mg/kg) and high dose (1,000 mg/kg) groups, was reversible dose-dependent irritation and ulceration of the mucous membranes of the forestomach. Based on this study, the no observed adverse effect level (NOAEL) is 1,000 mg/kg body weight and the NOEL is 250 mg/kg/body.

5. *Animal metabolism.* Metabolism studies conducted in the mouse with closely related alkyl polyglycosides show that the -glycosidic bond of the alkyl polyglycosides is rapidly hydrolyzed in the intestine and liver. The degradates are sugars and long-chain alcohols, which then undergo carbohydrate and lipid metabolism.

6. *Metabolite toxicology.* The metabolites of alkyl ($C_{10–16}$) polyglycosides are glucose and fatty alcohols, neither of which present any toxicity concerns.

7. *Endocrine disruption.* There is no information from studies conducted by the Cognis Corporation nor from the published literature which associates the alkyl polyglycosides with endocrine disruption.

C. Aggregate Exposure

1. *Dietary exposure.* A dietary exposure assessment for alkyl (C*10–16*) polyglycosides has not been conducted because the alkyl polyglycosides, as a class of compounds, do not present any toxicological effects of concern. In addition, alkyl ($C_{10–16}$)polyglycosides are expected to be rapidly degraded to glucose and fatty alcohols.

i. *Food.* Crop levels of alkyl (C*10–16*) polyglycosides have not been determined since a tolerance exemption is being requested. Moreover, even if residues of alkyl ($C_{10–16}$) polyglycosides do occur on food crops these residues are of little concern since the alkyl polyglycosides are practically non-toxic.

ii. *Drinking water.* Minimal, if any, residues of alkyl ($C_{10–16}$) polyglycosides are expected to occur in drinking water since alkyl polyglycosides should be rapidly (and completely) biodegraded in soils.

2. *Non-dietary exposure.* Non-dietary (residential) exposure to alkyl ($C_{10–16}$) polyglycosides from the use of this substance as an inert ingredient in pesticide products is anticipated to be insignificant since only short-term exposure will be involved and dermal absorption through the skin is expected to be minimal.

D. Cumulative Effects

No cumulative adverse effects are expected from long-term exposure to alkyl ($C_{10–16}$) polyglycosides since the only affect observed in the safety studies conducted with the alkyl polyglycosides was localized irritation.

E. Safety Determination

1. *U.S. population.* The safety studies performed with the alkyl polyglycosides clearly demonstrate that this class of compounds are practically non-toxic. The only adverse effect observed in any of the studies conducted with the alkyl polyglycosides was localized, reversible irritation of the forestomach in the sub-chronic feeding study. Consequently, the use of the alkyl ($C_{10–16}$) polyglycosides as an inert ingredient in pesticidal formulations applied to growing crops is not anticipated to result in any adverse effects.

2. *Infants and children.* There is no evidence from the safety studies sponsored by Cognis, particularly the developmental toxicity study, nor from the published literature of any unique susceptibilities of infants and/or children to alkyl polyglycoside exposure. Based on the extremely low toxicity of the alkyl polyglycosides no adverse effects on infants and/or children from the use of alkyl ($C_{10–16}$) polyglycosides as an inert ingredient in pesticidal formulations applied to growing crops is anticipated.

F. International Tolerances

There are no approved CODEX maximum residue levels (MRLs) established for residues of alkyl ($C_{10–16}$) polyglycosides.

[FR Doc. 03–30522 Filed 12–9–03; 8:45 am]
BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2003–0361; FRL–7336–2]

Bacillus thuringiensis Cry2Ab2 Protein and the Genetic Material Necessary for its Production in Cotton; Notice of Filing a Pesticide Petition to Amend a Tolerance Exemption for a Certain Pesticide Chemical in or on Food

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of a pesticide petition proposing the establishment of regulations for residues of a certain pesticide chemical in or on various food commodities.

DATES: Comments, identified by docket ID number OPP–2003–0361, must be received on or before January 9, 2004.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Leonard Cole, Biopesticides and Pollution Prevention Division (7511C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–5412; e-mail address: *cole.leonard@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS 111)
- Animal production (NAICS 112)
- Food manufacturing (NAICS 311)
- Pesticide manufacturing (NAICS 32532)

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under docket ID number OPP–2003–0361. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although, a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr/*

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although, not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select "search," then key in the appropriate docket ID number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although, not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or on paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

C. How and to Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit I.D. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically.* If you submit an electronic comment as prescribed in this unit, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also, include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets.* Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket/*, and follow the online instructions for submitting comments. Once in the system, select "search," and then key in docket ID number OPP–2003–0361. The system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail.* Comments may be sent by e-mail to *opp-docket@epa.gov*, Attention: Docket ID number OPP–2003–0361. In contrast to EPA's electronic public docket, EPA's e-mail system is not an "anonymous access" system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM.* You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Unit I.C.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By mail.* Send your comments to: Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001, Attention: Docket ID number OPP–2003–0361.

3. *By hand delivery or courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, Attention: Docket ID number OPP–2003–0361. Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit I.B.1.

D. How Should I Submit CBI to the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Make sure to submit your comments by the deadline in this notice.

7. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. What Action is the Agency Taking?

EPA has received a pesticide petition as follows proposing the establishment and/or amendment of regulations for residues of a certain pesticide chemical in or on various food commodities under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that this petition contains data or information regarding the elements set forth in FFDCA section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: November 19, 2003.

Phil Hutton,

Acting Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

Summary of Petition

The petitioner's summary of the pesticide petition is printed below as required by FFDCA section 408(d)(3). The summary of the petition was prepared by the Monsanto Company and represents the view of the petitioner. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

Monsanto Company

PP 7F4888

EPA has received a request (PP 7F4888) from Monsanto Company, 800 N. Lindberg Blvd., St. Louis, MO 63167, proposing pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(d), to amend 40 CFR part 180, by removing the time limitation for the exemption from the requirement of a tolerance for the plant-incorporated protectant *Bacillus thuringiensis* (*Bt*) Cry2Ab2 protein and the genetic material necessary for its production in cotton or on cotton. The tolerance exemption was originally requested under pesticide petition number (PF 7F4888).

Pursuant to section 408(d)(2)(A)(i) of the FFDCA, as amended, Monsanto Company has submitted the following summary of information, data, and arguments in support of their pesticide petition. This summary was prepared by Monsanto Company and EPA has not fully evaluated the merits of the pesticide petition. The summary may have been edited by EPA if the terminology used was unclear, the summary contained extraneous material, or the summary unintentionally made the reader conclude that the findings reflected EPA's position and not the position of the petitioner.

A. Product Name and Proposed Use Practices

Using plant molecular biology methods, Monsanto developed the Cry2Ab2 protein expressed in cotton plants. The production of Cry2Ab2 protein provides highly effective and selective control of *lepidopteran* insect pests in cotton. Plants producing this protein are derived from plants transformed with the Cry2ab2 gene and the genetic material necessary for its expression in cotton. Cotton plants using the Cry2Ab2 protein provide increased spectrum of activity over present products and in combination with existing technologies has the potential to increase the durability of the *Bt* proteins currently used for insect protection in cotton and increase the opportunities for integrated pest management.

B. Product Identity/Chemistry

1. *Identity of the pesticide and corresponding residues.* The Cry2Ab2 protein is derived from *Bacillus thuringiensis* class of Cry2A proteins which are designated to have a greater than 95% sequence identity. Data characterizing the Cry2Ab2 protein used in cotton have been submitted to EPA.

Because it would be difficult, or impossible, to extract sufficient biologically active protein from plants to perform safety tests, Cry2Ab2 protein from bacteria was produced. Product analysis data show that the microbially expressed and purified Cry2Ab2 delta-enodtoxin is sufficiently similar to that expressed in the plant to be used for safety assessment purposes. Plant- and microbially produced Cry2Ab2 delta-endotoxins were shown by these studies to have similar molecular weights and immunoreactivity (SDS-PAGE and Western blots), to lack detectable post-translational modification (glycosylation), to have identical amino acid sequences in the N-terminal region and to have similar results in bioassays against *Heliothus vierscens* and *Heliocoverpa zea*. The combined results of the above studies indicate a high probability that these two sources produce proteins that are essentially identical by available protein analytical assays.

2. *Magnitude of residue at the time of harvest and method used to determine the residue.* The Cry2Ab2 protein is derived from *Bacillus thuringiensis* class of Cry2A proteins which are designated to have a greater than 95% sequence identity. Data characterizing the Cry2Ab2 protein used in cotton have been submitted to EPA, because it would be difficult, or impossible, to extract sufficient biologically active protein from plants to perform safety tests, Cry2Ab2 protein from bacteria was produced. Product analysis data show that the microbially expressed and purified Cry2Ab2 delta-enodtoxin is sufficiently similar to that expressed in the plant to be used for safety assessment purposes. Plant- and microbially produced Cry2Ab2 delta-endotoxins were shown by these studies to have similar molecular weights and immunoreactivity (SDS-PAGE and Western blots), to lack detectable post-translational modification (glycosylation), to have identical amino acid sequences in the N-terminal region and to have similar results in bioassays against *Heliothus vierscens* and *Heliocoverpa zea*. The combined results of the above studies indicate a high probability that these two sources produce proteins that are essentially identical by available protein analytical assays.

3. *A statement of why an analytical method for detecting and measuring the levels of the pesticide residue are not needed.* A validated extraction and qualitative analytical method (ELISA) for the detection of Cry2Ab2 protein has been submitted to the Agency.

C. Mammalian Toxicological Profile

The data submitted regarding potential health effects of Cry2Ab2 include information on the characterization of the expressed protein in cotton. The acute oral toxicity data submitted support the determination that the Cry2Ab2 protein is non-toxic to humans. When proteins are toxic, they are known to act via acute mechanisms and at very low dose levels.

The acute oral toxicity data submitted support the prediction that the Cry2Ab2 protein would be non-toxic to humans. Male and female mice (10 of each) were dosed with 67,359 and 1,450 milligrams/kilogram body weight (mg/kg bwt) of Cry2Ab2 protein. Outward clinical signs were observed and body weights recorded throughout the 14–day study. Gross necropsies performed at the end of the study indicated no findings of toxicity attributed to exposure to the test substance. No mortality or clinical signs attributed to the test substance were noted during the study. When proteins are toxic, they are known to act via acute mechanisms and at very lose dose levels (Sjoblad, Roy D., et al. "Toxicological Considerations for Protein Components of Biological Pesticide Products," Regulatory Toxicology and Pharmacolocy 15, 3–9 (1992)). Therefore, because no effects were shown to be caused by the Cry2Ab2 proteins, even at relatively high dose levels, the Cry2Ab2 protein is not considered to be toxic. Furthermore, amino acid sequence comparisons showed no similarity between Cry2Ab2 proteins and known toxic proteins available in public protein data bases.

Data were submitted that demonstrate that the Cry2Ab2 delta-toxin is rapidly degraded by gastric fluid *in vitro*. In a solution of simulated gastric fluid (U.S. Pharmacopeia), complete degradation of detectable Cry2Ab2 protein occured within 15 seconds. Incubation in simulated intestinal fluid resulted in a 50 kDa protein digestion product. A comparison of amino acid sequences of know allergens uncovered no evidence of any homology with Cry2Ab2.

Collectively, the submitted data on Cry2Ab2 protein, as well as the history of safe use with other plant-expressed and microbially produced *Bacillus thuringiensis* products, establishes the safety of the Cry2Ab2 protein.

The genetic material necessary for the production of the Cry2Ab2 protein is nucleic acid (DNA) which is common to all forms of plant and animal life and there is no instance where these nucleic acids have been associated with toxic effects related to their consumption as a component of food.

D. Aggregate Exposure

1. *Dietary exposure*—i. *Food.* Monsanto has considered available information on the aggregate exposure levels of consumers (and major identifiable subgroups of consumers) to the protein residue and to other related substances. These considerations include dietary exposure under the existing tolerance exemption and all other tolerances or exemptions in effect for the plant-incorporated protectant residue, and exposure from non-occupational sources. Oral exposure at very low levels may occur, but lack of mammalian toxicity and digestibility has been demonstrated.

ii. *Drinking water.* Movement of the Cry2Ab2 protein to drinking water is highly unlikely given that Cry proteins are known to rapidly degrade in the soil. Oral exposure at very low levels may occur but lack of mammalian toxicity and the digestibility of this protein have been demonstrated.

2. *Non-dietary exposure.* Exposure to Cry2Ab2 proteins via dermal exposure or inhalation is unlikely given that these proteins are contained in the plant and are not exuded and are not volatile. Therefore, worker and bystander exposure resulting from plant pesticides will be negligible and would be unlikely to add measurably to any worker or bystander exposure resulting from microbial or other *Bacillus thuringiensis* formulations.

E. Cumulative Exposure

Available information on the cumulative effects of such residues and other substances that have a common mechanism of toxicity have been submitted. Because there is no indication of mammalian toxicity from this plant-incorporated protectant, there are no cumulative effects.

F. Safety Determination

1. *U.S. population.* There is reasonable certainty that no harm will result from aggregate exposure to the U.S. population, including infants and children, to the Cry2Ab2 protein and the genetic material necessary for its production. This includes all anticipated dietary exposures and all other exposures for which there is reliable information. This conclusion is based on the low toxicity of the protein, lack of allergenicity, digestibility, and low dietary exposure.

2. *Infants and children.* Nondietary exposure to infants and children is not anticipated due to the patterns of use for this plant-incorporated protectant. Submitted data provide no evidence that Cry2Ab2 protein poses any adverse threshold effects that would warrant application of an additional safety factor for the protection of infants and children.

G. Effects on the Immune and Endocrine Systems

The lack of Cry2Ab2 toxicity in high dose acute oral studies and its rapid degradation in a mammalian digestive system suggests minimal risk for adverse effects on the immune system. This pesticidally active ingredient is a protein, derived from sources that are not known to exert an influence on the endocrine system.

H. Existing Tolerances

Bacillus thuringiensis Cry2Ab2 protein and the genetic material necessary for its production in corn and cotton is exempt from the requirement of a tolerance when used as a plant-pesticide in the food and feed commodities of field corn, sweet corn, popcorn, cottonseed, cotton oil, cotton meal, cotton hay, cotton hulls, cotton forage, and cotton gin byproducts (40 CFR 180.1215). Unless amended, this exemption will expire on May 1, 2004.

I. International Tolerances

No Codex maximum residue levels have been established for this plant-incorporated protectant.

[FR Doc. E3–00490 Filed 12–9–03; 8:45 am]
BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2003–0351; FRL–7332–7]

Notice of Filing a Pesticide Petition to Establish an Exemption from the Requirement of a Tolerance for a Certain Pesticide Chemical in or on Food

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of a pesticide petition proposing the establishment of regulations for residues of a certain pesticide chemical in or on various food commodities.

DATES: Comments, identified by docket identification (ID) number OPP–2003–0351, must be received on or before January 9, 2004.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Leonard Cole, Biopesticides and Pollution Prevention Division (7511C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305.5412; e-mail address: *cole.leonard@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS code 111)
- Animal production (NAICS code 112)
- Food manufacturing (NAICS code 311)
- Pesticide manufacturing (NAICS code 32532)

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under docket ID number OPP–2003–0351. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr/.*

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select "search," then key in the appropriate docket ID number.

Certain types of information will not be placed in EPA's Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in

EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

C. How and to Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit I.D. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically.* If you submit an electronic comment as prescribed in this unit, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets.* Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket/*, and follow the online instructions for submitting comments. Once in the system, select "search," and then key in docket ID number OPP–2003–0351. The system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail.* Comments may be sent by e-mail to *opp-docket@epa.gov*, Attention: Docket ID number OPP–2003–0351. In contrast to EPA's electronic public docket, EPA's e-mail system is not an "anonymous access" system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM.* You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Unit I.C.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By mail.* Send your comments to: Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. Attention: Docket ID number OPP–2003–0351.

3. *By hand delivery or courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, Attention: Docket ID number OPP–2003–0351. Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit I.B.1.

D. How Should I Submit CBI to the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Make sure to submit your comments by the deadline in this notice.

7. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. What Action is the Agency Taking?

EPA has received a pesticide petition as follows proposing the establishment and/or amendment of regulations for residues of a certain pesticide chemical in or on various food commodities under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that this petition contains data or information regarding the elements set forth in FFDCA section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: November 17, 2003:

Janet L. Andersen,

Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

Summary of Petition

The petitioner's summary of the pesticide petition is printed below as required by FFDCA section 408(d)(3). The summary of the petition was prepared by the petitioner and represents the views of the petitioner. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

Syngenta Seeds, Incorporated

PP 3F6761

EPA has received a pesticide petition (3F6761) from Syngenta Seeds, Incorporated, P.O. Box 12257, 3054 Cornwallis Road, Research Triangle Park, NC 27709–2257, proposing pursuant to section 408(d) of the FFDCA, 21 U.S.C. 346a(d), to amend 40 CFR part 180 to establish an exemption from the requirement of a tolerance for the plant-pesticide inert ingredient hygromycin B phosphotransferase (APH4) marker protein and the genetic material necessary for it production, proposed for use as a plant-incorporated protectant formulation. APH4 protein is anaminocyclitol phosphotransferase that catalyzes the phosphorylation of hygromycin and closely related aminoglycoside antibiotics. Expression of the APH4 gene in plant cells allows for growth and selection of transformed cells in the presence of hygromycin B. APH4 has no insecticidal activity.

Pursuant to section 408(d)(2)(A)(i) of the FFDCA, as amended, Syngenta Seeds, Incorporated has submitted the following summary of information, data, and arguments in support of their pesticide petition. This summary was prepared by Syngenta Seeds, Incorporated and EPA has not fully evaluated the merits of the pesticide petition. The summary may have been edited by EPA if the terminology used was unclear, the summary contained extraneous material, or the summary unintentionally made the reader conclude that the findings reflected EPA's position and not the position of the petitioner.

A. Product Name and Proposed Use Practices

Hygromycin B phosphotransferase (APH4) marker protein is proposed for use as a plant-incorporated protectant formulation inert ingredient. APH4 protein is an aminocyclitol phosphotransferase that catalyzes the phosphorylation of hygromycin and closely related aminoglycoside antibiotics. Expression of the APH4 gene in plant cells allows for growth and selection of transformed cells in the presence of hygromycin B. APH4 has no insecticidal activity.

B. Product Identity/Chemistry

1. *Identity of the pesticide and corresponding residues.* The APH4 gene in event COT102 cotton plants was derived from a plasmid harbored by a hygromycin-resistant isolate of *E. coli*, and encodes a 341 amino-acid enzyme, hygromycin B phosphotransferase APH4. Hygromycin B phosphotransferases with significant homology to the APH4 protein in event COT102 plants have also been indentified in other microbes including *Streptomyces hygroscopicus*, the source of hygromycin B.

APH4 has a molecular weight of *ca.* 42,000 and catalyzes the phosphorylation of the 4-hydroxyl group on the hyosamine moiety of hygromycin B, thereby inactivating it. The enzyme has a narrow range of substrates, in that it phosphorylates hygromycin B, hygromycin B_2 and the closely-related antibiotics destomycin A and destomycin B, but does not phosphorylate other aminocyclitol or aminoglycoside antibiotics including neomycin, steptomycin, gentamycin, kanamicin, spectinomycin, tobramycin, and amikacin. Hygromycin B is not used in human clinical therapy, but is principally used as an antihelminthic agent in swine and poultry feeds.

2. *Magnitude of residue at the time of harvest and method used to determine the residue.* A determination of the magnitude of residue at harvest is not required for residues exempt from tolerances. However, the petitioner has provided data on the quantity of APH4 protein measured in various plant parts including seeds of VIP3A cotton, as measured by enzyme linked immunosorbent assay (ELISA). APH4 was either not detectable in most COT102 plant tissues or the levels were too low to quantify. Pollen was the only tissue in which quantifiable levels were measured.

3. *A statement of why an analytical method for detecting and measuring the levels of the pesticide residue are not needed.* An analytical method is not required because this petition requests an exemption from tolerances. However, the petitioner has submitted an analytical method for detection of the APH4 protein by ELISA analysis.

C. Mammalian Toxicological Profile

Syngenta Seeds is providing the results of a mammalian toxicology study, *in vitro* digestibility study, and bioinformatics evaluations conducted on the selectable marker protein APH4. These studies, summarized herein, demonstrate the lack of toxicity of the APH4 protein following acute oral exposure to mice, rapid degradation of APH4 upon exposure to simulated gastric intestinal fluids, and the lack of amino acid sequence similarity of the APH4 protein to proteins known to be mammalian toxins or human allergens.

When proteins are toxic, they are known to act *via* acute mechanisms and at very low doses (Sjoblad, R.D., J.T. McClintock and R. Engler (1992) "Toxicological Considerations for Protein Components of Biological Pesticide Products." *Regulatory Toxicol. Pharmacol.* 15: 3–9). Therefore, when a protein demonstrates no acute oral toxicity in high-dose testing using a standard laboratory mammalian test species, this supports the determination that the protein will be non-toxic to humans and other mammals, and will not present a hazard under any realistic exposure scenario, including long-term exposures.

Because it is not possible to extract sufficient APH4 protein from transformed plants for toxicology studies, APH4 protein was produced in recombinant *E. coli* by over-expressing the same APH4 gene that was introduced into VIP3A cotton event COT102. The APH4 gene was cloned into the inducible, over-expression pET-3a® vector (Novagen, Madison, WI) in *E. coli* BL21DE3pLysS. The APH4 protein, as encoded in this vector, was identical in amino acid sequence to that encoded by the plant transformation vector, pCOT1, except for an additional 11 amino acids from the T7 Tag™ and 3 amino acids from the vector polylinker. Following purification from *E. coli*, dialysis and lyophilization, the resulting sample, designated Test Substance APH4–0102, was estimated by ELISA to contain *ca.* 42.6% APH4 protein by weight. The test material was confirmed to be enzymatically active.

An acute mouse oral toxicity study was conducted at the Syngenta Central Toxicology Laboratory (Alderley Park,

Macclesfield, Cheshire, UK) according to EPA Test Guideline OPPTS 870.1100. The test substance APH4–0102 (see above description of test substance) was administered to 5 male and 5 female mice (strain Alderely Park Albino mouse (APfCD–1); 8–9 weeks old) *via* a gavage dose of 1,828 milligrams/kilogram (mg/kg) body weight. The test substance contained *ca.* 42.6% APH4 protein by weight. Therefore, the mice received *ca.* 779 mg APH4/kg body weight. A negative control group (5 mice/sex) concurrently received the dosing vehicle alone, a suspension of 1% methylcellulose, at the same dosing volume as used for the test material mixture. Food was provided *ad libitum*, except during the *ca.* 1–hour prior to dosing, when the animals were fasted. Water was provided *ad libitum* throughout the study. Observations for mortality and clinical/behavioral signs of toxicity were made at least twice on the day of dosing, and at least once daily thereafter for 14 days. Detailed clinical observations were made for each animal at each observation time. Body weights were recorded daily and food consumption was recorded weekly. Surviving animals were euthanized 14 days post dosing and subjected to gross necropsy. Organ weights (brain, liver with gall bladder, kidneys, and spleen) were recorded and principal tissues were processed for microscopic examination.

No mortalities occurred during the study, and no clinical signs of toxicity were observed in either the test or control groups. There were no treatment-related effects on body weight, food consumption, or organ weights, nor were any treatment-related effects observed following macroscopic or microscopic examination. APH4–0102 is not acutely toxic to mice. There is no evidence of toxicity of the test substance at 1,828 mg APH4–0102/kg body weight, representing *ca.* 779 mg APH4 protein/kg body weight. The estimated lethal dose (LD_{50}) value for pure APH4 protein in male and female mice is >779 mg/kg body weight, the single dose tested.

The APH4 protein shows no homology to proteins known to be mammalian toxins or human allergens; is not derived from a source known to produce allergens; is not targeted to a cellular pathway for glycosylation in the plant; and is rapidly degraded upon exposure to simulated gastric and intestinal fluids.

The genetic material necessary for the production of APH4 as an inert ingredient are the nucleic acids, deoxyribonucleic acid (DNA) which comprise genetic material encoding this protein and its regulatory regions. "Regulatory regions" are the genetic material that control the expression of the genetic material encoding the protein, such as promoters, terminators, and enhancers. DNA is common to all forms of plant and animal life and the Agency has previously stated that they are not aware of an instance where these nucleic acids have been associated with toxic effects related to their consumption as a component of food. These ubiquitous nucleic acids, as they appear in the subject inert ingredient, have been adequately characterized. Therefore, no mammalian toxicity is anticipated from dietary exposure to the genetic material necessary for the production of the subject inert plant pesticidal ingredient.

D. Aggregate Exposure

1. *Dietary exposure—i. Food.* Derivatives of cottonseed (*e.g.*, refined cottonseed oil) and fiber (*e.g.*, linters, which are essentially 100% cellulose) are used in some food products. However, APH4 was not detected in most of the samples of COT102–derived cottonseed analyzed or any of the cotton fiber samples analyzed. In the few cottonseed samples in which APH4 was detectable, the quantities were below the limit of quantification (LOQ) (<137 nanogram (ng) APH4/grams (g) fresh weight (wt); <150 ng APH4/g dry wt.). It is expected that any trace quantities of APH4 in cottonseed will be eliminated by standard seed processing methods. As demonstrated by the analysis of cottonseed products for VIP3A protein, no VIP3A was detected in refined cottonseed oil from COT102–derived plants, despite the presence of *ca.* 3 micrograms VIP3A/g seed (fresh or dry wt.). Additionally, no protein of any kind was detected in the same sample of refined cottonseed oil. It can be concluded that APH4, as produced in COT102–derived cotton plants, does not pose a risk of becoming allergenic *via* food, because there will be no exposure *via* food. Additionally, the APH4 protein shows no amino acid sequence homology to known allergens; is not derived from a source known to produce allergens; is not targeted to a cellular pathway for glycosylation in the plant; and is rapidly degraded upon exposure to simulated gastric and intestinal fluids.

ii. *Drinking water.* No exposure to APH4 and the genetic material necessary for its production as an inert ingredient *via* drinking water are expected. The protein is incorporated into the plant and will therefore not be available to drinking water sources.

2. *Non-dietary exposure.* Non-dietary exposure is not anticipated, due to the proposed use pattern of the product. Exposure *via* dermal or inhalation routes is unlikely because the inert ingredient is contained within plant cells. However, if exposure were to occur by non-dietary routes, no risk would be expected because the APH4 protein is not toxic to mammals.

E. Cumulative Exposure

Because there is no indication of mammalian toxicity to the APH4 protein, it is reasonable to conclude that there are no cumulative effects for this inert ingredient.

F. Safety Determination

1. *U.S. population.* The lack of mammalian toxicity at high levels of exposure to the APH4 protein demonstrates the safety of the product at levels well above possible maximum exposure levels anticipated *via* consumption of processed food products produced from VIP3A cotton. Moreover, little to no human dietary exposure to APH4 protein is expected to occur *via* VIP3A cotton. Due to the lack of toxicity of the APH4 protein and its very low potential for allergenicity, dietary exposure is not anticipated to pose any harm for the U.S. population. No special safety provisions are applicable for consumption patterns or for any population sub-groups.

2. *Infants and children.* Syngenta has evaluated the acute toxicity data generated on APH4, the lack of homology to known allergens or toxins, and the limited exposure to this protein based on the residue profile and limited number of food/feed products resulting from cotton and has determined that there is ample evidence to indicate a reasonable certainty of no harm to infants and children as a result of the use of this product.

G. Effects on the Immune and Endocrine Systems

The inert ingredient APH4 is a protein, derived from sources that are not known to exert an influence on the endocrine or immune systems.

H. Existing Tolerances

The registrant is not aware of any known existing tolerances or exemptions for APH4 and the genetic material necessary for its production as an inert ingredient.

I. International Tolerances

The registrant in not aware that any codex maimum residue levels exist for the APH4 protein and the genetic material necessary for its production.

[FR Doc. 03–30520 Filed 12–9–03; 8:45 am]
BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[RCRA–2003–0006; SWH–FRL–7595–1]

Recovered Materials Advisory Notice V

AGENCY: Environmental Protection Agency.

ACTION: Notice of draft document for review.

SUMMARY: The Environmental Protection Agency (EPA or the Agency) today is providing notice of the issuance of a draft Recovered Materials Advisory Notice (RMAN V). The RMAN provides guidance to procuring agencies for purchasing certain items containing recovered materials. Under section 6002 of the Resource Conservation and Recovery Act of 1976, EPA designates items that are or can be made with recovered materials and provides recommendations for the procurement of these items. Elsewhere in today's **Federal Register**, EPA is proposing to revise the current compost designation to include compost made from manure or biosolids, and designate fertilizers made from recovered organic materials. Also in that **Federal Register** notice, EPA is proposing to consolidate all compost designations under one item called "compost made from recovered organic materials."

DATES: EPA will accept public comments on the recommendations contained in the draft RMAN V until February 9, 2004.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. OSWER Docket, EPA Docket Center, Environmental Protection Agency, Mailcode: 5305T, 1200 Pennsylvania Ave., NW., Washington, DC 20460. Attention Docket ID No. RCRA–2003–0006. Follow the detailed instructions as provided in Unit I.B of the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: For general information contact the RCRA Call Center at (800) 424–9346 or TDD (800) 553–7672 (hearing impaired). In the Washington, DC metropolitan area, call (703) 412–9810 or TDD (703) 412–3323. For technical information on individual item recommendations, contact Sue Nogas at (703) 308–0199.

SUPPLEMENTARY INFORMATION:

I. General Information

A. How Can I Get Copies of This Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under Docket ID No. RCRA–2003–0006. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the OSWER Docket in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OSWER Docket is (202) 566–0270.

2. *Electronic Access.* You may access this **Federal Register** document electronically through the EPA Internet under the **Federal Register** listings at *http://www.epa.gov/fedrgstr/*.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the appropriate docket identification number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.A.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA'S electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the Docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

B. How and to Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket identification number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these later comments. However, late comments may be considered if time permits.

1. *Electronically.* If you submit an electronic comment as prescribed below, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information

provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets.* Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket,* and follow the online instructions for submitting comments. To access EPA's electronic public docket from theEPA Internet home page, select "Information Sources," "Dockets," and "EPA Dockets." Once in the system, select "search," and then key in Docket ID No. RCRA–2003–0006. The system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail.* Comments may be sent by electronic mail (e-mail) to *rcra-docket@epa.gov,* Attention Docket ID No. RCRA–2003–0006. In contrast to EPA's electronic public docket, EPA's e-mail system is not an "anonymous access" system. If you send an e-mail comment directly to the Docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM.* You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Unit I.B.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By Mail.* Send your comments to: OSWER Docket, EPA Docket Center, Environmental Protection Agency, Mailcode: 5305T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, Attention Docket ID No. RCRA–2003–0006.

3. *By Hand Delivery or Courier.* Deliver your comments to: EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. Attention Docket ID No. RCRA–2003–0006. Such deliveries are only accepted during the Docket's normal hours of operation as identified in Unit I.A.1.

C. How Should I Submit CBI to the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket. Send or deliver information identified as CBI only to the following address: Document Control Officer (5305W), Office of Solid Waste, U.S. Environmental Protection Agency, Ariel Rios Building, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, Attention Docket ID No. RCRA–2003–0006. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

D. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at your estimate.

5. Provide specific examples to illustrate your concerns.

6. Offer alternatives.

7. Make sure to submit your comments by the comment period deadline identified.

8. To ensure proper receipt by EPA, identify the appropriate docket identification number in the subject line on the first page of your response. It would also be helpful if you provided the name, date, and **Federal Register** citation related to your comments.

II. What Is the Statutory Authority for This Proposed Action?

The draft Recovered Materials Advisory Notice (RMAN V) is issued under the authority of sections 2002(a) and 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 (RCRA), as amended; and 42 U.S.C. 6912(a) and 2962. EPA is also issuing draft RMAN V to comply with section 502 of Executive Order 13101, "Greening the Government Through Waste Prevention, Recycling, and Federal Acquisition" (63 FR 49643, September 14, 1998).

III. What Is the Background for This Proposed Action?

Section 6002 of RCRA establishes a Federal buy-recycled program. RCRA section 6002(e) requires EPA to (1) designate items that are or can be made with recovered materials and (2) prepare guidelines to assist procuring agencies in complying with affirmative procurement requirements set forth in paragraphs (c), (d), and (i) of section 6002. Once EPA has designated items, section 6002 requires that any procuring agency using appropriated Federal funds to procure those items must purchase them composed of the highest percentage of recovered materials practicable. For the purposes of RCRA section 6002, procuring agencies include the following: (1) Any Federal agency; (2) any State or local agencies using appropriated Federal funds for a procurement, or (3) any contractors with these agencies (with respect to work performed under the contract). The requirements of RCRA section 6002 apply to such procuring agencies only when procuring designated items where the price of the item exceeds $10,000 or the quantity of the item purchased in the previous year exceeded $10,000.

Executive Order 13101 directs EPA to designate items in a Comprehensive Procurement Guideline (CPG) and publish guidance that contains EPA's recommended recovered content levels for the designated items in the RMANs. The Executive Order further directs EPA to update the CPG every 2 years and the RMANs periodically to reflect changes in market conditions. EPA codifies the CPG designations in the Code of Federal Regulations (CFR), but because the recommendations are guidance, the RMANs are not codified in the CFR. This process enables EPA to revise its recommendations in response to changes in a product's availability or recovered materials content so as to provide timely assistance to procuring agencies in fulfilling their RCRA section 6002 responsibilities.

The first CPG (CPG I) was published on May 1, 1995 (60 FR 21370). It established eight product categories, designated 19 new items in seven of those categories, and consolidated five earlier item designations.[1] At the same time, EPA also published a notice of availability of the first RMAN (RMAN I) (60 FR 21386). On November 13, 1997, EPA published CPG II (62 FR 60962), which designated an additional 12 items. At the same time, EPA published an RMAN II notice (62 FR 60975). Paper Products RMANs were issued on May 29, 1996 (61 FR 26985), and June 8, 1998 (63 FR 31214). On January 19, 2000, EPA published CPG III (65 FR 3070), which designated an additional 18 items. At the same time, EPA published an RMAN III notice (65 FR 3082). On August 28, 2001, EPA published a proposed CPG IV (66 FR 45256), which proposed to designate an additional 11 items. At the same time, EPA published a draft RMAN IV notice (66 FR 45297). EPA expects to promulgate the final CPG IV and sign a notice concerning the availability of RMAN IV in the near future. For more information on CPG, go to the EPA Web site at *http://www.epa.gov/cpg/.*

Today, in CPG V, EPA is proposing to revise the current compost designation to include compost made from manure or biosolids, and designate fertilizers made from recovered organic materials. EPA is also proposing to consolidate all compost designations under one item called "compost made from recovered organic materials." Once finalized, today's RMAN V will serve as companion guidance to the previous RMANs.

EPA, once again, wants to stress that the recommendations in this notice are just that—recommendations and guidance to procuring agencies in fulfilling their obligations under RCRA section 6002. The designation of an item as one that is or can be produced with recovered materials and the inclusion of recommended content levels for an item in the RMAN does not compel the procurement of an item when the item is not suitable for its intended purpose. RCRA section 6002 is explicit in this regard when it authorizes a procuring agency not to procure a designated item which "fails to meet the performance standards set forth in the applicable specification or fails to meet the reasonable performance standards of the procuring agencies." Section 6002(1)(B), 42 U.S.C. 6962(c)(B).

[1] Between 1983 and 1989, EPA issued five guidelines for the procurement of products containing recovered materials, which were previously codified at 40 CFR parts 248, 249, 250, 252, and 253. These products include cement and concrete containing fly ash, paper and paper products, re-refined lubricating oils, retread tires, and building insulation.

A. What Is the Methodology for Recommending Recovered Materials Content Levels?

In providing guidance in the RMANs, the Executive order directs EPA to present "the range of recovered materials content levels within which the designated recycled items are currently available." Based on the information available to the Agency, EPA generally recommends ranges that encourage manufacturers to incorporate the maximum amount of recovered materials into their products without compromising competition or product performance and availability. EPA recommends that procuring agencies use these ranges, in conjunction with their own research, to establish minimum content standards for use in purchasing the designated items. EPA generally recommends ranges rather than minimum content standards. The items for which recommendations are being proposed today are generally made exclusively from recovered materials (*e.g.,* manure, biosolids, etc.). Therefore, recommended ranges of recovered materials are not appropriate for these items.

EPA reviewed publicly available information, information obtained from product manufacturers, and information provided by other government agencies regarding the use of recovered materials in the items proposed for designation in CPG V.

More information on EPA's methodology for issuing RMANs in contained in "Background Document for Proposed CPG V and Draft RMAN V," found in the RCRA public docket for this notice and on EPA's CPG Web site at *http://www.epa.gov/cpg.*

B. What Are the Definitions of Terms Used in This Proposed Action?

Definitions for the revised definition of "compost" and the new definition of "organic fertilizer" covered in this RMAN V are included in the proposed CPG V published in the proposed rule section of today's **Federal Register**.

C. What Comments Is EPA Requesting?

EPA requests comments, including additional supporting documentation and information, on the types of recovered materials identified in the item recommendations, and other recommendations, including specifications, for purchasing the designated items containing recovered materials.

IV. Supporting Information and Accessing Internet

The index of supporting materials for today's proposed CPG V is available in the OSWER Docket and on the Internet. The address and telephone number of the OSWER Docket are provided in the **SUPPLEMENTARY INFORMATION** section above. To access information on the Internet, go to the EPA Dockets Web site at *http://www.epa.gov/edocket/.* The index and the following supporting materials are available in the OSWER Docket and on the Internet:

"Background Document for Proposed CPG V and Draft RMAN V," U.S. EPA, Office of Solid Waste and Emergency Response, March 2003.

Copies of the following supporting materials are available for viewing at the OSWER Docket only:

"Recovered Materials Product Research for the Comprehensive Procurement Guideline V," Draft Report, December 2002.

Dated: November 25, 2003.

Michael O. Leavitt,

Administrator.

Recovered Materials Advisory Notice V

The following represents EPA's recommendations to procuring agencies for purchasing the items designated by EPA in the Comprehensive Procurement Guideline V (CPG V), in compliance with section 6002 of the Resource Conservation and Recovery Act (RCRA) and Executive Order 13101. These recommendations are interested to be used in conjunction with RMAN I (60 FR 21386, May 1, 1995), the Paper Products RMAN (61 FR 26985, May 29, 1996), the Paper Products RMAN II (63 FR 31214, June 8, 1998), RMAN II (62 FR 60975, November 13, 1997), RMAN III (65 FR 3082, January 19, 2000), and RMAN IV, once it is issued. Refer to the previous RMANs or the Code of Federal Regulations at 40 CFR part 247 for definitions, general recommendations for affirmative procurement programs, and recommendations for previously designated items. EPA has a Web site for the CPG program that provides information on all designated items and RMAN recommendations, including a consolidated RMAN. This information can be found at *www.epa.gov/epg.*

Contents

I. General Recommendations
II. Specific Recommendations for Procurement of Designated Items
Part F. Landscaping Products
Section F–2. Compost Made From Recovered Organic Materials (Revised).
Section F–6. Fertilizers Made From Recovered Organic Materials.

I. General Recommendations

General recommendations for definitions, specifications, and affirmative procurement programs can

be found in the May 1, 1995 RMAN (60 FR 21386).

II. Specific Recommendations for Procurement of Designated Items

Recommendations for purchasing previously-designated items can be found in RMAN I (May 1, 1995); RMAN II (November 13, 1997); RMAN III (January 19, 2000); and the Paper Products RMAN's (May 29, 1996, and June 8, 1998).

Part F—Landscaping Products

Section F–2. Compost Made From Recovered Organic Materials (Revised)

Note: EPA previously designated yard trimmings compost in CPG I and food waste compost in CPG III. The proposed CPG V discusses the use of compost made from manure or biosolids. The final CPG V would consolidate all previous and proposed compost designations under one item called "compost made from recovered organic materials." These materials could include yard trimmings, food waste, manure, biosolids, or other recovered organic materials that can be composted. Following are EPA's revised recommendations for purchasing compost. When EPA issues final recommendations for purchasing composts made from recovered organic materials, procuring agencies should substitute them for the recommendations found in section F–2 of RMAN III.

Preference Program: EPA recommends that procuring agencies purchase or use mature compost made from recovered organic materials in such applications as landscaping, seeding of grass or other plants on roadsides and embankments, as nutritious mulch under trees and shrubs, and in erosion control and soil reclamation. Mature compost is defined as a thermophilic converted product with high humus content, which can be used as a soil amendment and can also be used to prevent or remediate pollutants in soil, air, and storm water run-off.

EPA further recommends that those procuring agencies that have an adequate volume of organic materials, as well as sufficient space for composting, should implement a composting system to produce compost from these materials to meet their landscaping and other needs.

Specifications: EPA recommends that procuring agencies refer to the U.S. Composting Council's Test Methods for the Examination of Composting and Compost (TMECC) at *www.compostingcouncil.org*, which are standardized methods for the composting industry to test and evaluate compost and verify the physical, chemical, and biological characteristics of composting source materials and compost products. The TMECC also includes material testing guidelines to ensure product safety and market claims. Procuring agencies should also check for individual state regulations on the use of compost.

The U.S. Department of Transportation's "Standard Specifications for Construction of Roads and Bridges on Federal Highway Projects 1996" specifies compost as one of the materials suitable for use in roadside revegetation projects associated with road construction.

EPA issued regulations in 1993 that limit the pollutants and pathogens in biosolids, entitled "The Standards for the Use or Disposal of Sewage Sludge," otherwise known as "the Part 503 Biosolids Rule" (40 CFR part 503). If biosolids are included as part of the compost, the processing and product are subject to the Part 503 Biosolids Rule Class A specifications for the highest level of pathogen and vector control (as described in section 2.3.1 of part 503) and specific metals limits, the compost product can be widely used, like any other fertilizer or soil-conditioning product.

Finally, EPA recommends that procuring agencies ensure that there is no language in their specifications relating to landscaping, soil amendments, erosion control, or soil reclamation that would preclude or discourage the use of compost made from recovered organic materials.

Section F–6. Organic Fertilizers

Note: Although fertilizer has some qualities similar to compost, for the purposes of the CPG, compost is considered a separate designation.

Preference Program: EPA recommends that procuring agencies purchase or use fertilizers made from recovered organic materials in such applications as agriculture and crop production, landscaping, horticulture, parks and other recreational facilities, on school campuses, and for golf course and turf maintenance.

Specifications: EPA recommends procuring agencies refer to the Organic Materials Review Institute (OMRI) at *www.omri.org*, which has developed guidelines and lists of materials allowed and prohibited for use in the production, processing, and handling of organically grown products. Procuring agencies should also check for individual state regulations on the use of organic fertilizers.

In addition, as mentioned above, biosolids can be used in the production of organic fertilizer and must meet the requirements specified in EPA's Part 503 Biosolids Rule before they can be beneficially used. The 40 CFR part 503 Biosolids Rule land application requirements ensure that any biosolids that are land applied contain pathogens and metals that are below specified levels to protect the health of humans, animals, and plants.

In proposing to designate fertilizers made from recovered organic materials in the CPG, EPA is not placing any limitations on the organic materials, but rather is relying on federal, state, and local regulations and guidance, as well as existing industry standards. EPA is requesting comment on whether it should place any limitations on the recovered organic materials contained in the fertilizers that the Agency is today proposing to designate in the CPG, and on what those limitations should be. EPA is also seeking comment and information on any other specifications which we should recommend that pertain to fertilizers made with recovered organic materials.

Finally, EPA recommends that procuring agencies ensure that there is no language in their specifications relating to landscaping or soil treatment that would preclude or discourage the use of fertilizers made from recovered organic materials.

[FR Doc. 03–30267 Filed 12–9–03; 8:45 am]
BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

[WC Docket No. 03–194; FCC 03–309]

Application by Qwest Communications International Inc. for Authorization To Provide In-Region, InterLATA Services in Arizona

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: In the document, the Federal Communications Commission (Commission) grants the section 271 application of Qwest Communications International Inc. (Qwest) for authorization to provide in-region, interLATA services in Arizona. The Commission grants Qwest's application based on its conclusion that Qwest has satisfied all of the statutory requirements for entry and fully opened its local exchange markets to competition.

DATES: Effective December 15, 2003.

FOR FURTHER INFORMATION CONTACT: Cathy Carpino, Attorney-Advisor, Wireline Competition Bureau, at (202) 418–1580 or via the Internet at *cathy.carpino@fcc.gov*. The complete text of this Memorandum Opinion and Order is available for inspection and copying during normal business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. Further information may also be obtained by calling the Wireline Competition Bureau's TTY number: (202) 418–0484.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Memorandum Opinion and Order in WC Docket No. 03–194, FCC 03–309, adopted December 3, 2003, and released December 3, 2003. The full text of this order may be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone (202) 863–2893, facsimile (202) 863–2898, or via e-mail *qualexint@aol.com*. It is also available on the Commission's Web site at *http://www.fcc.gov/Bureaus/Common_Carrier/in-region_applications*.

Synopsis of the Order

1. *History of the Application.* On September 4, 2003, Qwest filed an application with the Commission, pursuant to section 271 of the Telecommunications Act of 1996, to provide in-region, interLATA service in the state of Arizona.

2. *The State Commission's Evaluation.* The Arizona Corporation Commission (Arizona Commission), following an extensive review process, determined that Qwest satisfied all 14 of the checklist items contained in section 271. Consequently, the Arizona Commission recommended that the Commission grant Qwest's application to provide in-region, interLATA service in Arizona.

3. *The Department of Justice's Evaluation.* The Department of Justice filed its evaluation on October 9, 2003, recommending approval of the application. The Department of Justice concludes that opportunities are available to competing facilities-based carriers serving business and residential customers.

Primary Issues in Dispute

4. *Checklist Item 2—Unbundled Network Elements.* Section 251(c)(3) requires incumbent LECs to provide "nondiscriminatory access to network elements on an unbundled basis at any technically feasible point on rates, terms, and conditions that are just, reasonable, and nondiscriminatory." Based on the evidence in the record, we conclude that Qwest has satisfied the requirements of checklist item 2.

5. *Operations Support Systems (OSS).* The Commission concludes that Qwest meets its obligation to provide access to its OSS—the systems, databases, and personnel necessary to support the network elements or services. Nondiscriminatory access to OSS ensures that new entrants have the ability to order service for their customers and communicate effectively with Qwest regarding basic activities such as placing orders and providing maintenance and repair services for customers. The Commission finds that Qwest provides access to each of the primary OSS functions (pre-ordering, ordering, provisioning, maintenance and repair, and billing, as well as change management and technical assistance), in order for competitive LECs to compete and in accordance with the Act. In particular, the Commission thus finds that the allegations raised about Qwest's change management process (CMP) in this record do not warrant a finding of checklist noncompliance. The Commission finds that Qwest's CMP and Qwest's pattern of compliance with the CMP satisfies checklist item 2.

6. *Checklist Item 4—Unbundled Local Loops.* The Commission concludes that Qwest provides unbundled local loops in accordance with the requirements of section 271 and our rules. The Commission's conclusion is based on its review of Qwest's performance for all loop types—which include voice grade loops, digital subscriber line-capable loops, and high capacity loops—as well as hot cut provisioning and our review of Qwest's processes for line sharing and line splitting. As of May 31, 2003, competitors have acquired from Qwest and placed into use approximately 37,719 stand-alone unbundled loops in Arizona. With respect to concerns regarding recent changes in Qwest's policy on construction of new facilities related to provisioning of high-capacity unbundled loops, the Commission declines to find this allegation warrants a finding of checklist noncompliance. Absent additional evidence, the Commission is not convinced that Qwest's policy has denied competitive LECs a meaningful opportunity to compete to date.

Other Checklist Items

7. *Checklist Item 2—OSS.* The Commission finds that Qwest demonstrates it provides nondiscriminatory access to its pre-ordering, ordering, provisioning, maintenance and repair, and billing functions. Regarding specific areas for which commenters or the Commission identifies issues with Qwest's OSS performance, the Commission finds that these problems do not demonstrate overall discriminatory treatment or are not sufficient to warrant a finding of checklist noncompliance.

8. *Pricing of Unbundled Network Elements.* The Commission finds, as did the Arizona Commission, that Qwest's UNE rates in Arizona are just, reasonable, and nondiscriminatory as required by section 252(d)(1). Thus, Qwest's UNE rates in Arizona satisfy checklist item 2.

9. *Checklist Items 1, 3, 5–14.* An applicant under section 271 must demonstrate that it complies with item 1 (interconnection), item 3 (poles, ducts, and conduits), item 5 (unbundled transport) item 6 (unbundled local switching), item 7 (E911/operator services/directory assistance), item 8 (white pages), item 9 (numbering administration), item 10 (data bases and signaling), item 11 (number portability), item 12 (local dialing parity), item 13 (reciprocal compensation), and item 14 (resale). Based on the evidence in the record, and in accordance with Commission rules and orders concerning compliance with section 271 of the Act, the Commission concludes that Qwest demonstrates that it is in compliance with checklist items 1, 3, 5, 6, 7, 8, 9, 10, 11, 12, 13, and 14 in Arizona.

Other Statutory Requirements

10. *Compliance with Section 271(c)(1)(A).* In order for the Commission to approve a BOC's application to provide in-region, interLATA services, a BOC must first demonstrate that it satisfies the requirements of either section 271(c)(1)(A) (Track A) or section 271(c)(1)(B) (Track B). The Commission concludes that Qwest satisfies the requirements of Track A in Arizona. This decision is based on the number of interconnection agreements it has implemented with competing carriers in the state of Arizona.

11. *Section 272 Compliance.* Qwest provides evidence that for two of its affiliates—Qwest LD Corp. and Qwest Communications Corporation—it maintains the same structural separation and nondiscrimination safeguards in Arizona as it does in the other 13 states where Qwest has already received section 271 authority. Based on the record before us, the Commission concludes that Qwest has demonstrated that it will comply with the requirements of section 272.

12. *Public Interest Analysis.* The Commission concludes that approval of this application is consistent with the public interest. From its extensive review of the competitive checklist, which embodies the critical elements of market entry under the Act, the Commission finds that barriers to competitive entry in the local exchange markets have been removed and the local exchange markets in Arizona are open to competition.

13. *Section 271(d)(6) Enforcement Authority.* The Commission concludes that, working with the Arizona Commission, we will closely monitor Qwest's post-approval compliance to ensure that Qwest continues to meet the conditions required for section 271 approval. It stands ready to exercise its various statutory enforcement powers quickly and decisively if there is evidence that market-opening conditions have not been sustained.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 03–30541 Filed 12–9–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[WC Docket No. 02–361; WC Docket No. 03–45; WC Docket No. 03–211; DA 03–3777]

FCC Announces Agenda for the Voice Over IP Forum

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: The Federal Communications Commission announces a Forum to discuss Voice over Internet Protocol (VoIP). All FCC Commissioners will participate. The purpose of the Forum is to gather information concerning advancements, innovations, and regulatory issues related to VoIP services. Information concerning the Forum, including the agenda, copies of presentations, and bios of the speakers, will be available at the Forum Web page *http://www.fcc.gov/voip/.*

DATES: The Forum will take place Monday, December 1, 2003, 10:30 a.m. to 3 p.m. The event is open to the public, and there is no fee for attendance. Pre-registration is not required.

ADDRESSES: Federal Communications Commission, Commission Meeting Room, 445 12th Street, SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Robert Pepper, Office of Strategic Planning and Policy Analysis, (202) 418–2030, *voipforum@fcc.gov.*

SUPPLEMENTARY INFORMATION: The Federal Communications Commission announces a Forum to discuss Voice over Internet Protocol (VoIP). All FCC Commissioners will participate. The purpose of the Forum is to gather information concerning advancements, innovations, and regulatory issues related to VoIP services. The agenda and further details are attached. Information concerning the Forum, including the agenda, copies of presentations, and bios of the speakers, will be available at the Forum Web page *http://www.fcc.gov/voip/.*

The VoIP Forum will be webcast live and also archived for later viewing. Access to and additional information concerning the webcast is available at *http://www.fcc.gov/realaudio/.* Audio and video tapes of this meeting can be purchased from CACI Productions, 341 Victory Drive, Herndon, VA 20170, telephone number (703) 834–1470, Ext. 19; fax number (703) 834–0111.

The Forum will open with statements by the Chairman and the Commissioners. There will also be a background presentation by FCC staff regarding FCC Precedents regarding VoIP.

The first panel will address technical and market issues surrounding VoIP service. Panelists will be asked to describe the technology and capabilities of VoIP, and how VoIP can be used to offer end users lower-cost, innovative services with capabilities previously unavailable in voice communications. Panelists will address how the FCC might distinguish among the numerous services employing VoIP, and whether it could feasibly distinguish between VoIP and other IP-enabled applications facilitating communication (ranging from e-mail to instant messaging to videoconferencing to interactive online gaming). The panelists will include Kevin Werbach, Founder, Supernova Group, Charles H. Giancarlo, SVP and General Manager, Cisco Systems, Inc., Jeff Pulver, President and CEO, Pulver.com, John Hodulik, Managing Director, Communications Group, UBS, and John Billock, COO, Time Warner Cable.

The second panel will address public policy questions raised by VoIP. Panelists will be asked to address what, if any, regulatory obligations currently imposed upon traditional circuit-switched voice service providers should be placed upon VoIP providers and whether from either legal or technical perspectives such obligations are feasible. Panelists may focus on traditional utility regulatory issues such as non-discrimination and price regulation as well as social policies such as access by persons with disabilities, universal service, CALEA, and E911. The panelists will include Michael Gallagher, Acting Assistant Secretary, Department of Commerce, Commissioner Carl Wood, California PUC, Commissioner Charles Davidson, Florida PSC, James Crowe, CEO, Level3, Tom Evslin, CEO, ITXC, Jeffrey Citron, CEO, Vonage, and Dr. Gregg Vanderheiden, Rehabilitation Engineering Research Project on Telecommunications Access, University of Wisconsin.

The Forum will end with closing statements by Chairman and Commissioners.

Federal Communications Commission.

Kathleen Ham,

Deputy Chief, Office of Strategic Planning & Policy Analysis.

[FR Doc. 03–30543 Filed 12–9–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than December 26, 2003.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166-2034:

1. Bale South Central Family Limited Partnership, Horse Cave, Kentucky; Bale South Central Family Trust, Horse Cave, Kentucky; as general partner and Thomas M. Bale, Cave City, Kentucky; Lester D. Bale, Horse Cave, Kentucky; William O. Bale, LaFollette, Tennessee; Ellen L. Bale, Glasgow, Kentucky; and Ruth H. Bale, Bowling Green, Kentucky; to acquire control of South Central Bancshares of Kentucky, Inc., Horse Cave, Kentucky, and thereby control First Deposit Bancshares, Inc., Tompkinsville, Kentucky, which controls South Central Savings Bank, FSB, Elizabethtown, Kentucky, and South Central Bank of Monroe County, Tompkinsville, Kentucky; United Central Bancshares, Inc., Bowling Green, Kentucky, which controls South Central Bank of Bowling Green, Inc., Bowling Green, Kentucky; First United Bancshares, Inc., Glasgow, Kentucky, which controls South Central Bank of Barren County, Inc., Glasgow, Kentucky; and South Central Bank of Daviess County, Inc., Ownesboro, Kentucky.

B. Federal Reserve Bank of Kansas City (James Hunter, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. Robert M. Alexander, Calhan, Colorado; to acquire control of Financial Services of the Rockies, and thereby indirectly acquire First National Bank of Colorado Springs, Colorado Springs, Colorado.

Board of Governors of the Federal Reserve System, December 5, 2003.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E3–00513 Filed 12–9–03; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center Web site at *http://www.ffiec.gov/nic/.*

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than January 4, 2004.

A. Federal Reserve Bank of Atlanta (Sue Costello, Vice President) 1000 Peachtree Street, NE., Atlanta, Georgia 30303:

1. PBFC Holding Company, Bude, Mississippi; to become a bank holding company by acquiring 100 percent of the voting shares of Peoples Bank of Franklin County, Bude, Mississippi.

Board of Governors of the Federal Reserve System, December 4, 2003.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E3–00499 Filed 12–9–03; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center Web site at *http://www.ffiec.gov/nic/.*

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than January 5, 2004.

A. Federal Reserve Bank of Chicago (Patrick Wilder, Managing Examiner) 230 South LaSalle Street, Chicago, Illinois 60690-1414:

1. Prairieland Bancorp Employee Stock Ownership Plan and Trust, Bushnell, Illinois; to increase its ownership from 44.33 percent to 49.47 percent of Prairieland Bancorp, Inc., Bushnell, Illinois, and thereby indirectly acquire Farmers and Merchants State Bank, Bushnell, Illinois.

Board of Governors of the Federal Reserve System, December 5, 2003.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E3–00514 Filed 12–9–03; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Notice of Proposals To Engage in Permissible Nonbanking Activities or To Acquire Companies That Are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y (12 CFR part 225) to engage *de novo,* or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act. Additional information on all bank holding companies may be obtained from the National Information Center Web site at *http://www.ffiec.gov/nic/.*

Unless otherwise noted, comments regarding the applications must be

received at the Reserve Bank indicated or the offices of the Board of Governors not later than January 4, 2004.

A. Federal Reserve Bank of New York (Jay Bernstein, Bank Supervision Officer) 33 Liberty Street, New York, New York 10045-0001:

1. J.P. Morgan Chase & Co., New York, New York; to engage *de novo* through its subsidiary, Chase FSB, Newark, Delaware, in operating a federal savings bank, pursuant to section 225.28(b)(4)(ii) of Regulation Y.

Board of Governors of the Federal Reserve System, December 4, 2003.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E3–00498 Filed 12–9–03; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

Sunshine Act Meeting

TIME AND DATE: 11:30 a.m. (EDT); correction, December 15, 2003.

PLACE: 4th Floor, Conference Room, 1250 H Street, NW., Washington, DC.

AGENCY: Federal Retirement Thrift Investment Board.

ACTION: Notice; correction.

SUMMARY: The Federal Retirement Thrift Investment Board published a notice in the **Federal Register** on Friday, December 5, 2003, concerning upcoming Board member meeting.

Correction:

In the **Federal Register** of Friday, December 5, 2003, Vol. 68, No. 234, page 68093, first column, change the time caption to read: 11:30 a.m.

FOR FURTHER INFORMATION CONTACT: Thomas J. Trabucco, Director, Office of External Affairs, (202) 942–1640.

Dated: December 8, 2003.

Elizabeth S. Woodruff,

Secretary to the Board, Federal Retirement Thrift Investment Board.

[FR Doc. 03–30713 Filed 12–8–03; 1:07 pm]

BILLING CODE 6760–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

[Document Identifier: OS–0990–0221]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Office of the Secretary, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Secretary (OS), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

#1 Type of Information Collection Request: Revision of currently approved collection;

Title of Information Collection: Family Planning Annual Report: Forms and Instructions and Supporting Regulations 42 CFR Part 50 and 59;

Form/OMB No.: OS–0990–0221;

Use: This annual reporting requirement is for family planning service delivery projects authorized and funded under the Population Research and Voluntary Family Planning Programs (Section 1001 Title X of the Public Health Service Act, 42 U.S.C. 300). The Family Planning Annual Report (FPAR) is the only source of annual, uniform reporting by all Title X family planning service grantees. Office of Population Affairs uses FPAR data to monitor compliance with statutory requirements, to comply with accountability and performance requirements of Government Performance and Results Act and HHS plans, and to guide program planning and evaluation.

Frequency: Annually;

Affected Public: State, local, or tribal government;

Annual Number of Respondents: 89;

Total Annual Responses: 89;

Average Burden Per Response: 30 hours;

Total Annual Hours: 2,937.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access the HHS Web site address at *http://www.hhs.gov/oirm/infocollect/pending/* or e-mail your request, including your address, phone number, OMB number, and OS document identifier, to *Naomi.Cook@hhs.gov*, or call the Reports Clearance Office on (202) 690–5522. Written comments and recommendations for the proposed information collections must be mailed within 30 days of this notice directly to the OS Paperwork Clearance Officer designated at the following address: Department of Health and Human Services, Office of the Secretary, Assistant Secretary for Budget, Technology, and Finance, Office of Information and Resource Management, Attention: Naomi Cook (0990–0221), Room 531–H, 200 Independence Avenue, SW., Washington DC 20201.

Dated: December 1, 2003.

John P. Burke III,

Office of the Secretary, Paperwork Reduction Act Reports Clearance Officer.

[FR Doc. 03–30551 Filed 12–9–03; 8:45 am]

BILLING CODE 4168–17–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Studies To Determine the Prevalence of a History of Traumatic Brain Injury (TBI) in an Institutionalized Population

Announcement Type: New.

Funding Opportunity Number: 04062.

Catalog of Federal Domestic Assistance Number: 93.136.

Key Dates:

Letter of Intent Deadline: January 9, 2004.

Application Deadline: February 18, 2003.

I. Funding Opportunity Description

Authority: This program is authorized under sections 391(a) and 301(a) of the Public Health Service Act (PHS Act) and 42 U.S.C. 241(a) and 280b(a) as amended.

Purpose: The purpose of the program is to fund a cooperative agreement to conduct pilot studies to investigate methods for determining the prevalence of a history of traumatic brain injury (TBI) in an institutionalized population. For purposes of this RFA, "institutionalized" refers to persons who are either incarcerated or residing in a nursing home. Research on only one of these populations should be proposed.

Anecdotal reports suggest that a very large proportion of the prison population may have experienced one or more TBIs, with many of them occurring prior to incarceration. The cognitive deficits that can result from traumatic brain injuries often are not visible, and behavioral and emotional problems associated with TBI may be attributed to other causes. Thus, prisoners with TBI as well as prison officials may not be aware of the signs, symptoms, and long term problems resulting from TBI, and therefore may not seek or provide appropriate treatment or other interventions. Better methods for identifying incarcerated persons with a history of TBI and related problems could lead to improved management of TBI in this population.

An estimated 20 to 30 percent of persons hospitalized with moderate to severe TBI are discharged to nursing homes, including those for long-term care. Not all of the persons with TBI who are discharged to nursing homes are elderly, but little is known about the age distribution and other characteristics of this population. Of note, research on a small number of persons with TBI residing in long-term nursing facilities found that, with the proper rehabilitation, they recovered sufficient function to return home or live in a supported community living environment. Better information on the number and characteristics of persons with TBI living in nursing homes, including their functional levels, would inform the development of policies to ensure that they receive appropriate rehabilitation services that can help them return to the community.

This program addresses the "Healthy People 2010" focus area of Injury and Violence Prevention.

Measurable outcomes of the program will be in alignment with the following performance goal for the National Center for Injury Prevention and Control (NCIPC):

- Conduct a targeted program of research to reduce injury-related death and disability.

Research Objectives

For research to identify TBI among prisoners:

- To develop valid and reliable measure(s) for ascertaining the history of previous traumatic brain injuries (including those occurring prior to or during incarceration) within a subgroup of the incarcerated population (*e.g.*, adult women or men in prison, or youth in the juvenile justice system), or to validate an existing instrument for use with this population.
- To use these measure(s) to determine the prevalence of a history of TBI in an incarcerated population.

For research to identify persons with TBI in nursing homes:

- To determine the prevalence of persons admitted to nursing homes with a diagnosis of TBI, including those for long-term care, within a state, or alternatively a defined catchment area, for example, multiple census tracts, multiple counties, or a metropolitan area.
- To determine the functional status and other characteristics of a sample of persons with TBI in long-term care facilities.

Activities

Awardee activities for this program are as follows:

- With assistance from the CDC, prepare a detailed research protocol for Institutional Review Board (IRB) approval by all cooperating institutions participating in the study, including CDC. The protocol shall include but is not limited to the following: A detailed description of a reliable and valid existing instrument(s) for use with the proposed population, or the methods for developing such instrument(s); recruitment and enrollment methods including the informed consent process and consent forms; methods for data handling and storage including methods for ensuring participant confidentiality; data analysis methods; and plans for data dissemination. Specific issues and approaches to conducting research in the proposed institutional setting, including any prior experience, must be described.
- Develop a detailed operations manual documenting study methods.
- Train study personnel.
- Recruit study participants.
- Collect and enter the data.
- Provide case level data, without personal identifiers, to the CDC for use in collaborative analyses.
- Analyze and interpret the data.
- Report study findings, including those in peer-reviewed publications.

In a cooperative agreement, CDC staff is substantially involved in the program activities, above and beyond routine grant monitoring.

CDC Activities for this program are as follows:

- Provide technical assistance where applicable and as necessary for effective study planning and management.
- Assist in the development of a research protocol for Institutional (IRB) review by all cooperating institutions participating in the research. CDC will provide guidance about protocol format and content as well as scientific and human subjects considerations.
- The CDC IRB will review and approve the protocol initially and on at least an annual basis until the research project is completed.
- CDC staff will collaborate in the analysis of data and reporting of findings by participating as co-authors in the preparation of peer-reviewed publications.
- CDC staff will convene routine conference calls with the recipient and conduct a site visit annually or as needed to review progress.

II. Award Information

Type of Award: Cooperative agreement. CDC involvement in this program is listed in the Activities Section above.

Fiscal Year Funds: 2004.

Approximate Total Funding: $ 300,000.

Approximate Number of Awards: Two.

Approximate Average Award: $ 150,000.

Floor of Award Range: $ 100,000.

Ceiling of Award Range: $200,000.

Anticipated Award Date: September 1, 2004.

Budget Period Length: 12 months.

Project Period Length: One year.

Throughout the project period, CDC's commitment to continuation of awards will be conditioned on the availability of funds, evidence of satisfactory progress by the recipient (as documented in required reports), and the determination that continued funding is in the best interest of the Federal government.

III. Eligibility Information

1. Eligible Applicants

Applications may be submitted by public and private nonprofit and for profit organizations and by governments and their agencies, such as:

- Public nonprofit organizations
- Private nonprofit organizations
- For profit organizations
- Small, minority, women-owned businesses
- Universities
- Colleges
- Research institutions
- Hospitals
- Community-based organizations
- Faith-based organizations
- Federally recognized Indian tribal governments
- Indian tribes
- Indian tribal organizations
- State and local governments or their *bona fide* agents (this includes the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, the Commonwealth of the Northern Marianna Islands, American Samoa, Guam, the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau)
- Political subdivisions of States (in consultation with States)

A *bona fide* agent is an agency/organization identified by the State as

eligible to submit an application under the State eligibility in lieu of a state application. If you are applying as a *bona fide* agent of a State or local government, you must provide a letter from the State or local government as documentation of your status. Place this documentation behind the first page of your application form.

2. Cost Sharing or Matching

Matching funds are not required for this program.

3. Other Eligibility Requirements

If your application is incomplete or non-responsive to the requirements listed below, it will not be entered into the review process. You will be notified that your application did not meet submission requirements.

- Is there an appropriate degree of commitment and cooperation from other participating parties as evidenced by letters of support detailing the nature and extent of involvement? Letter(s) of support from appropriate officials from departments of corrections, nursing homes, or other agencies responsible for approving the use of existing data sets containing information on these populations, indicating approval for the research, must be included with the application.
- Does the applicant describe research methods that are feasible and appropriate for the corrections setting?
- Is there evidence of the experience and capacity for all key staff members including Curriculum Vitae (CV) and position descriptions?
- Does the research team include expert(s) with experience conducting TBI research relevant to the proposed study?
- Are the investigators requesting a funding amount that is greater than the upper ceiling of the award range?
- Principal investigators (PI's) are encouraged to submit only one proposal in response to this program announcement. With few exceptions (*e.g.*, research issues needing immediate public health attention), only one application per PI will be funded under this announcement.

Note: Title 2 of the United States Code section 1611 states that an organization described in section 501(c)(4) of the Internal Revenue Code that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant, or loan.

4. Individuals Eligible To Become Principal Investigators

Any individual with the skills, knowledge, and resources necessary to carry out the proposed research is invited to work with their institution to develop an application for support. Individuals from underrepresented racial and ethnic groups as well as individuals with disabilities are always encouraged to apply for CDC programs.

IV. Application and Submission Information

1. Address To Request Application Package

To apply for this funding opportunity, use application form PHS 398 (OMB number 0925–0001 rev. 5/2001). Forms and instructions are available in an interactive format on the CDC Web site, at the following Internet address: *http://www.cdc.gov/od/pgo/forminfo.htm*.

Forms and instructions are also available in an interactive format on the National Institutes of Health (NIH) Web site at the following Internet address: *http://grants.nih.gov/grants/funding/phs398/phs398.html*.

If you do not have access to the Internet, or if you have difficulty accessing the forms on-line, you may contact the CDC Procurement and Grants Office Technical Information Management Section (PGO–TIM) staff at: 770–488–2700. Application forms can be mailed to you.

2. Content and Form of Application Submission

Letter of Intent (LOI)

CDC requests that you send a LOI if you intend to apply for this program. Although the LOI is not required, not binding, and does not enter into the review of your subsequent application, your LOI will be used to gauge the level of interest in this program, and to allow CDC to plan the application review. Your LOI must be written in the following format:

- Maximum number of pages: Two;
- Font size: 12-point unreduced;
- Paper size: 8.5 by 11 inches;
- Page margin size: One inch;
- Single spaced;
- Printed only on one side of page;
- Written in English, no jargon.

Your LOI must contain the following information:

- Descriptive title of the proposed research;
- Name, address, e-mail, and telephone number of the Principal Investigator;
- Names of other key personnel;
- Participating institutions;
- Number and title of this Program Announcement (PA).

Application

Follow the PHS 398 application instructions for content and formatting of your application. For further assistance with the PHS 398 application form, contact GrantsInfo, telephone (301) 435–0714, email: *GrantsInfo@nih.gov*.

Your research plan should address activities to be conducted over the entire project period.

You are required to have a Dun and Bradstreet Data Universal Numbering System (DUNS) number to apply for a grant or cooperative agreement from the Federal government. Your DUNS number must be entered in item 11 of the face page of the PHS 398 application form. The DUNS number is a nine-digit identification number, which uniquely identifies business entities. Obtaining a DUNS number is easy and there is no charge. To obtain a DUNS number, access *http://www.dunandbradstreet.com* or call 1–866–705–5711. For more information, *see* the CDC Web site at: *http://www.cdc.gov/od/pgo/funding/pubcommt.htm*.

3. Submission Dates and Times

LOI Deadline Date: January 9, 2004.

Application Deadline Date: February 18, 2004.

Explanation of Deadlines: Applications must be received in the CDC Procurement and Grants Office by 4 p.m. eastern time on the deadline date. If you send your application by the United States Postal Service or commercial delivery service, you must ensure that the carrier will be able to guarantee delivery of the application by the closing date and time. If CDC receives your application after closing due to: (1) Carrier error, when the carrier accepted the package with a guarantee for delivery by the closing date and time, or (2) significant weather delays or natural disasters, you will be given the opportunity to submit documentation of the carriers guarantee. If the documentation verifies a carrier problem, CDC will consider the application as having been received by the deadline.

This announcement is the definitive guide on application submission address and deadline. It supersedes information provided in the application instructions. If your application does not meet the deadline above, it will not be eligible for review, and will be discarded. You will be notified that you did not meet the submission requirements.

CDC will not notify you upon receipt of your application. If you have a question about the receipt of your application, first contact your courier. If you still have a question, contact the PGO–TIM staff at: 770–488–2700. Before calling, please wait two to three days after the application deadline. This will allow time for applications to be processed and logged.

4. Intergovernmental Review of Applications

Executive Order 12372 does not apply to this program.

5. Funding Restrictions

Restrictions, which must be taken into account while writing your budget, are as follows: none.

If you are requesting indirect costs in your budget, you must include a copy of your indirect cost rate agreement. If your indirect cost rate is a provisional rate, the agreement must be less than 12 months of age.

6. Other Submission Requirements

LOI Submission Address: Submit your LOI by express mail, delivery service, fax, or e-mail to: Robin Forbes, Centers for Disease Control and Prevention, National Center for Injury Prevention and Control, 4770 Buford Hwy, NE., Mailstop K–62, Atlanta, GA 30341. Telephone: 770–488–4037; fax: 770–488–1662; email: *cipert@cdc.gov*.

Application Submission Address: Submit the original and five copies of your application by mail or express delivery service to: Technical Information Management—PA# 04062, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341.

Applications may not be submitted electronically at this time.

V. Application Review Information

1. Criteria

You are required to provide measures of effectiveness that will demonstrate the accomplishment of the various identified objectives of the cooperative agreement. Measures of effectiveness must relate to the performance goals stated in the "Purpose" section of this announcement. Measures must be objective and quantitative, and must measure the intended outcome. These measures of effectiveness must be submitted with the application and will be an element of evaluation.

The goals of CDC-supported research are to advance the understanding of biological systems, improve the control and prevention of disease, and enhance health. In the written comments, reviewers will be asked to evaluate the application in order to judge the likelihood that the proposed research will have a substantial impact on the pursuit of these goals.

The scientific review group will address and consider each of the following criteria in assigning the application's overall score, weighting them as appropriate for each application.

The application does not need to be strong in all categories to be judged likely to have major scientific impact and thus deserve a high priority score. For example, an investigator may propose to carry out important work that by its nature is not innovative, but is essential to move a field forward.

The criteria are as follows:

Significance: Does this study address an important problem? If the aims of the application are achieved, how will scientific knowledge be advanced? What will be the effect of these studies on the concepts or methods that drive this field?

Approach: Are the conceptual framework, design, methods, and analyses adequately developed, well-integrated, and appropriate to the aims of the project? Does the applicant acknowledge potential problem areas and consider alternative tactics?

Innovation: Does the project employ novel concepts, approaches or methods? Are the aims original and innovative? Does the project challenge existing paradigms or develop new methodologies or technologies?

Investigator: Is the investigator appropriately trained and well suited to carry out this work? Is the work proposed appropriate to the experience level of the principal investigator and other researchers (if any)?

Environment: Does the scientific environment in which the work will be done contribute to the probability of success? Does the proposed experiment take advantage of unique features of the scientific environment or employ useful collaborative arrangements? Is there evidence of institutional support?

Additional Review Criteria: In addition to the above criteria, the following items will be considered in the determination of scientific merit and priority score:

- Does the applicant describe either (a) existing instruments appropriate for use with the proposed population or (b) scientifically sound plans for developing such instrument(s)?
- Does the applicant describe research methods appropriate for a study in the proposed institutional setting?
- Are there adequate plans for data collection and data management including security of data and assurance of participant confidentiality?
- Is there a statistical analysis plan appropriate for the study design?
- Does the applicant provide a detailed and appropriate timeline for the study?

Protection of Human Subjects from Research Risks: Does the application adequately address the requirements of Title 45 CFR Part 46 for the protection of human subjects? Not scored; however, an application can be disapproved if the research risks are sufficiently serious and protection against risks is so inadequate as to make the entire application unacceptable.

Inclusion of Women and Minorities in Research: Does the application adequately address the CDC Policy requirements regarding the inclusion of woman, ethnic, and racial groups in the proposed research? This includes: (1) The proposed plan for the inclusion of both sexes and racial and ethnic minority populations for appropriate representation; (2) the proposed justification when representation is limited or absent; (3) a statement as to whether the design of the study is adequate to measure differences when warranted; and (4) a statement as to whether the plans for recruitment and outreach for study participants include the process of establishing partnerships with community(ies) and recognition of mutual benefits.

Inclusion of Children as Participants in Research Involving Human Subjects

The NIH maintains a policy that children (*i.e.*, individuals under the age of 21) must be included in all human subjects research, conducted or supported by the NIH, unless there are scientific and ethical reasons not to include them. This policy applies to all initial (Type 1) applications submitted for receipt dates after October 1, 1998.

All investigators proposing research involving human subjects should read the "NIH Policy and Guidelines" on the inclusion of children as participants in research involving human subjects that is available at: *http://grants.nih.gov/grants/funding/children/children.htm*.

Budget: The reasonableness of the proposed budget and the requested period of support in relation to the proposed research. This announcement does not use the modular budget format.

2. Review and Selection Process

Applications will be reviewed for completeness by the Procurement and Grants Office (PGO) and for responsiveness for other eligibility requirements by the National Center for Injury Prevention and Control. Incomplete applications and applications that are non-responsive will not advance through the review

process. You will be notified that you did not meet submission requirements.

Applications that are complete and responsive to the PA will be evaluated for scientific and technical merit by an appropriate peer review group convened by the NCIPC in accordance with the review criteria listed above. As part of the initial merit review, all applications will:

- Undergo a process in which only those applications deemed to have the highest scientific merit, generally the top half of the applications under review, will be discussed and assigned a priority score.
- Receive a written critique.
- Receive a second level review by the Science and Program Review Subcommittee (SPRS) of the Advisory Committee for Injury Prevention and Control (ACIPC).

Applications that are complete and responsive to the PA will be subjected to a preliminary evaluation (streamline review) by a peer review committee, the Initial Review Group (IRG) convened by NCIPC, to determine if the application is of sufficient technical and scientific merit to warrant further review by the IRG. CDC will withdraw from further consideration applications judged to be noncompetitive and promptly notify the principal investigator or program director and the official signing for the applicant organization. Those applications judged to be competitive will be further evaluated by a dual review process.

1. The primary review will be a peer review conducted by the IRG. All applications will be reviewed for scientific merit in accordance with the review criteria listed above.
Applications will be assigned a priority score based on the National Institutes of Health (NIH) scoring system of 100–500 points.

2. The secondary review will be conducted by the Science and Program Review Subcommittee (SPRS) of NCIPC's Advisory Committee for Injury Prevention and Control (ACIPC). The ACIPC Federal agency experts will be invited to attend the secondary review, and will receive modified briefing books (*i.e.*, abstracts, strengths and weaknesses from summary statements, and project officer's briefing materials). ACIPC Federal agency experts will be encouraged to participate in deliberations when applications address overlapping areas of research interest, so that unwarranted duplication in federally-funded research can be avoided and special subject area expertise can be shared. The NCIPC Division Associate Directors for Science (ADS) or their designees will attend the secondary review in a similar capacity as the ACIPC Federal agency experts to assure that research priorities of the announcement are understood and to provide background regarding current research activities. Only SPRS members will vote on funding recommendations, and their recommendations will be carried to the entire ACIPC for voting by the ACIPC members in closed session. If any further review is needed by the ACIPC, regarding the recommendations of the SPRS, the factors considered will be the same as those considered by the SPRS.

The committee's responsibility is to develop funding recommendations for the NCIPC Director based on the results of the primary review, the relevance and balance of proposed research relative to the NCIPC programs and priorities, and to assure that unwarranted duplication of federally-funded research does not occur. The secondary review committee has the latitude to recommend to the NCIPC Director, to reach over better-ranked proposals in order to assure maximal impact and balance of proposed research. The factors to be considered will include:

a. The results of the primary review including the application's priority score as the primary factor in the selection process.

b. The relevance and balance of proposed research relative to the NCIPC programs and priorities.

c. The significance of the proposed activities in relation to the priorities and objectives stated in "Healthy People 2010," the Institute of Medicine report, "Reducing the Burden of Injury," and the "CDC Injury Research Agenda."

Award Criteria: Criteria that will be used to make award decisions include:

- Scientific merit (as determined by peer review)
- Availability of funds
- Programmatic priorities

VI. Award Administration Information

1. Award Notices

Successful applicants will receive a Notice of Grant Award (NGA) from the CDC Procurement and Grants Office. The NGA shall be the only binding, authorizing document between the recipient and CDC. The NGA will be signed by an authorized Grants Management Officer, and mailed to the recipient fiscal officer identified in the application.

2. Administrative and National Policy Requirements

45 CFR part 74 and 92.

For more information on the Code of Federal Regulations, *see* the National Archives and Records Administration at the following Internet address: *http://www.access.gpo.gov/nara/cfr/cfr-table-search.html*.

The following additional requirements apply to this project:

- AR–1—Human Subjects Requirements
- AR–2—Requirements for Inclusion of Women and Racial and Ethnic Minorities in Research
- AR–6—Patient Care
- AR–8—Public Health System Reporting Requirements
- AR–9—Paperwork Reduction Act Requirements
- AR–10—Smoke-Free Workplace Requirements
- AR–11—Healthy People 2010
- AR–12—Lobbying Restrictions
- AR–13—Prohibition on Use of CDC Funds for Certain Gun Control Activities
- AR–14—Accounting System Requirements
- AR–15—Proof of Non-Profit Status
- AR–21—Small, Minority, and Women-Owned Business
- AR–22—Research Integrity
- AR–23—States and Faith-Based Organizations
- AR–24—Health Insurance Portability and Accountability Act Requirements
- AR–25—Release and Sharing of Data

Starting with the December 1, 2003, receipt date, all NCIPC funded investigators seeking more than $500,000 in total costs in a single year are expected to include a plan describing how the final research data will be shared/released or explain why data sharing is not possible. Details on data sharing/release, including the timeliness and name of the project data steward, should be included in a brief paragraph immediately following the Research Plan Section of the PHS 398 form. References to data sharing/release may also be appropriate in other sections of the application (*e.g.* background and significance, human subjects requirements, *etc.*) The content of the data sharing/release plan will vary, depending on the data being collected and how the investigator is planning to share the data. The data sharing/release plan will not count towards the application page limit and will not factor into the determination of scientific merit or priority scores. Investigators should seek guidance from their institutions on issues related to institutional policies, local IRB rules, as well as local, State and Federal laws and regulations, including the Privacy Rule.

Further detail on the requirements for addressing data sharing in applications for NCIPC funding may be obtained by contacting NCIPC program staff or visiting the NCIPC Internet Web site: at *http://www.cdc.gov/ncipc/osp/sharing_policy.htm*.

Additional information on these requirements can be found on the CDC Web site at the following Internet address: *http://www.cdc.gov/od/pgo/funding/ARs.htm*.

3. Reporting

You must provide CDC with an original, plus two copies of the following reports:

1. Interim progress report, (PHS 2590, OMB Number 0925–0001, rev. 5/2001) no less than 90 days before the end of the budget period. The progress report will serve as your non-competing continuation application, and must contain the following elements:

a. Current Budget Period Activities Objectives.

b. Current Budget Period Financial Progress.

c. New Budget Period Program Proposed Activity Objectives.

d. Detailed Line-Item Budget and Justification.

e. Additional Requested Information.

2. Financial status report, no more than 90 days after the end of the budget period.

3. Final financial and performance reports, no more than 90 days after the end of the project period.

These reports must be sent to the Grants Management Specialist listed in the "Agency Contacts" section of the announcement.

VII. Agency Contacts

For general questions about this announcement, contact: Technical Information Management Section, PA#04062, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341. Telephone: 770–488–2700.

For scientific/research program technical assistance, contact: William K. Ramsey, Project Officer, Division of Injury and Disability Outcomes and Programs, Centers for Disease Control and Prevention, 4770 Buford Highway, Mail Stop F–41, Chamblee, GA 30341. Telephone: 770–488–1226; e-mail: *BRamsey1@cdc.gov*.

For questions about peer review, contact: Gwendolyn Cattledge, Scientific Review Administrator, Centers for Disease Control and Prevention, National Center for Injury Prevention and Control, 4770 Buford Highway, NE., MailStop K–02, Atlanta, GA 30341. Telephone: 770–488–1430; e-mail: *gxc8@cdc.gov*.

For budget assistance, contact: Angie Nation, Grants Management Specialist, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341. Telephone: 770–488–2719; e-mail: *aen4@cdc.gov*.

Dated: December 4, 2003.

Edward Schultz,

Acting Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 03–30583 Filed 12–9–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Radiation and Worker Health Advisory Board Meeting; Correction

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following committee meeting:

AGENCY: Advisory Board on Radiation and Worker Health (ABRWH), National Institute for Occupational Safety and Health (NIOSH), HHS.

ACTION: Correction.

Correction: In the **Federal Register** of November 17, 2003, in DOCID: fr17no03–102, Volume 68, Number 221, Page 64902, concerning the purpose for closing a portion of the meeting of the Advisory Board on Radiation and Worker Health, the notice cited an incorrect reason for the meeting closure. Correct "Matters to be Discussed" to read:

The closed portion of the meeting on the afternoon of December 10th will involve a review and discussion of the Independent Government Cost Estimate (IGCE) for task order contracts and proposals of work for the performance of these task order contracts, which could lead to a revision of the IGCE. These contracts will serve to provide technical support consultation to assist the ABRWH in fulfilling its statutory duty to advise the Secretary of Health and Human Services on the scientific validity and quality of dose estimation and reconstruction efforts under the Energy Employees Occupational Illness Compensation Program Act. These discussions will include reviews of the technical proposals to determine adequacy of the proposed approach, and associated contract cost estimates.

This portion of the meeting will be closed to the public in accordance with provisions set forth regarding subject matter considered confidential under the terms of 5 U.S.C. 552b(c)(9)(B), 48 CFR 5.401(b)(1) and (4), and 48 CFR 7.304(d)., and the Determination of the Director of the Management and Services Office, Centers for Disease Control and Prevention, pursuant to Pub. L. 92–463.

FOR FURTHER INFORMATION CONTACT: Larry Elliott, Executive Secretary, ABRWH, NIOSH, CDC, 4676 Columbia Parkway, Cincinnati, Ohio 45226, telephone (513) 533–6825, fax (513) 533–6826.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: December 5, 2003.

Alvin Hall,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 03–30681 Filed 12–9–03; 8:45 am]

BILLING CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2002D–0428]

Guidance for Industry: An Acceptable Circular of Information for the Use of Human Blood and Blood Components; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a document entitled "Guidance for Industry: An Acceptable Circular of Information for the Use of Human Blood and Blood Components" dated December 2003. The guidance document recognizes the "Circular of Information for the Use of Human Blood and Blood Components" (the circular) dated July 2002 as acceptable for use by manufacturers of blood and blood components intended for transfusion. The circular will assist manufacturers in complying with the labeling requirements under FDA regulations. The guidance announced in this notice finalizes the draft guidance of the same title dated October 2002.

DATES: Submit written or electronic comments on agency guidances at any time.

ADDRESSES: Submit written requests for single copies of the guidance to the Office of Communication, Training, and Manufacturers Assistance (HFM–40),

Center for Biologics Evaluation and Research (CBER), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448. Send one self-addressed adhesive label to assist the office in processing your requests. The guidance may also be obtained by mail by calling the CBER Voice Information System at 1–800–835–4709 or 301–827–1800. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

Submit written comments on the guidance to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.fda.gov/dockets/ecomments*.

FOR FURTHER INFORMATION CONTACT: Valerie A. Butler, Center for Biologics Evaluation and Research (HFM–17), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448, 301–827–6210.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a document entitled "Guidance for Industry: An Acceptable Circular of Information for the Use of Human Blood and Blood Components" dated December 2003. The guidance recognizes that the circular dated July 2002 meets the labeling requirements in § 606.122 (21 CFR 606.122) and is acceptable for use by manufacturers of blood and blood components intended for transfusion that are subject to U.S. statutes and regulations. The circular was prepared jointly by the American Association of Blood Banks, America's Blood Centers, and the American National Red Cross. A copy of the circular is included as an attachment in the guidance document. The guidance announced in this notice finalizes the draft guidance of the same title, dated October 2002 (67 FR 64402, October 18, 2002).

The guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The guidance document represents the agency's current thinking on this topic. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirement of the applicable statutes and regulations.

II. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments regarding this guidance. Submit a single copy of electronic comments or two paper copies of any mailed comments, except individuals may submit one paper copy. Comments should be identified with the docket number found in brackets in the heading of this document. A copy of the guidance and received comments are available for public examination in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

III. Electronic Access

Persons with access to the Internet may obtain the guidance and the circular at either *http://www.fda.gov/cber/guidelines.htm* or *http://www.fda.gov/ohrms/dockets/default.htm*. The circular may also be obtained at *http://www.aabb.org*. (FDA has verified the Web site address, but we are not responsible for subsequent changes to the Web site after this document publishes in the **Federal Register**.)

Dated: December 1, 2003.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 03–30644 Filed 12–9–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Inspector General

Program Exclusions: November 2003

AGENCY: Office of Inspector General, HHS.

ACTION: Notice of program exclusions.

During the month of November 2003, the HHS Office of Inspector General imposed exclusions in the cases set forth below. When an exclusion is imposed, no program payment is made to anyone for any items or services (other than an emergency item or service not provided in a hospital emergency room) furnished, ordered or prescribed by an excluded party under the Medicare, Medicaid, and all Federal Health Care programs. In addition, no program payment is made to any business or facility, *e.g.*, a hospital, that submits bills for payment for items or services provided by an excluded party. Program beneficiaries remain free to decide for themselves whether they will continue to use the services of an excluded party even though no program payments will be made for items and services provided by that excluded party. The exclusions have national effect and also apply to all Executive Branch procurement and non-procurement programs and activities.

OFFICE OF INVESTIGATION, OFFICE OF INSPECTOR GENERAL—DHHS, CASE INVESTIGATION MANAGEMENT SYSTEM

[For Press Release From 11/01/2003—11/30/2003]

Subject name	Address	Effective date
PROGRAM-RELATED CONVICTIONS:		
ALLEN, KENNETH	JUNCTION, UT	12/18/2003
ALMO, JENNIFER	LEXINGTON, MS	12/18/2003
ALVARENGA, MARIA	LOS ANGELES, CA	12/18/2003
ARRIOLA, ALICIA	BELL GARDENS, CA	12/18/2003
ATTIKIAN, ARMEN	VAN NUYS, CA	12/18/2003
BARMORE, BURTON	GOLDSBORO, NC	12/18/2003
BELL, DIANE	HOUSTON, TX	12/18/2003
BIRMINGHAM REHABILITATION & PHYSICAL THERAPY CTR, INC	BLOOMFIELD, MI	12/18/2003
BRADLEE PHARMACY, INC	LAS VEGAS, NV	12/18/2003
BURDEN, MARGARET	VIDALIA, LA	12/18/2003
CORE, NICKLAUS	CHANDLER, AZ	12/18/2003
EMMONS, ROSLYN	WASHINGTON, VT	12/18/2003
GAZO, MARIA	NORWALK, CA	12/18/2003
GOFF, ELBERT	LOUISVILLE, KY	12/18/2003
GRAHAM, CARLIN	TALLADEGA, AL	12/18/2003
HEWETT, NANCY	EIGHT MILE, AL	12/18/2003
ISMAIL, MOHAMED	PARSIPPANY, NJ	12/18/2003

OFFICE OF INVESTIGATION, OFFICE OF INSPECTOR GENERAL—DHHS, CASE INVESTIGATION MANAGEMENT SYSTEM—Continued

[For Press Release From 11/01/2003—11/30/2003]

Subject name	Address	Effective date
JONES, GARY	ASHLAND, KY	12/18/2003
LEE, CHANG	LOS ANGELES, CA	12/18/2003
LEE, JONATHON	LOS ANGELES, CA	12/18/2003
LOPEZ, JANICE	YORKTOWN HGTS, NY	12/18/2003
LUCERO, RUBI	SANTE FE, NM	12/18/2003
LUIS, RAFAEL	SALT LAKE CITY, UT	12/18/2003
LUND, KATHLEEN	TEMPE, AZ	12/18/2003
MARTINEZ, TERESA	ORLANDO, FL	12/18/2003
MAYO, HEATHER	WEST VALLEY CITY, UT	12/18/2003
MCCOLLUM, WILLIAM	BIRMINGHAM, AL	12/18/2003
MILLS, BRIAN	BEAUMONT, TX	12/18/2003
MOORE, ROSIE	PHOENIX, AZ	12/18/2003
MURADIAN, HRIPSIME	GLENDALE, CA	12/18/2003
NEVIS, RICHARD	MESA, AZ	12/18/2003
PARMA, JAMES	SCHULENBURG, TX	12/18/2003
PONDERS, LASHON	HOLLYWOOD, FL	12/18/2003
RICHARDSON, KEVIN	ARCADIA, FL	12/18/2003
SAITO, IMELDA	WATERLOO, NY	12/18/2003
SCHALLER, DEBRA	MODESTO, CA	12/18/2003
SMITH, LESTER	LITTLE ROCK, AR	12/18/2003
STARKEY, DARLENE	ALDERSON, WV	12/18/2003
STRICKLAND, CONSTANTINA	GLENDALE, AZ	12/18/2003
STRICKLAND, PAMELA	EAGLE CREEK, OR	12/18/2003
THACHER, FREDERICK	DULUTH, MN	12/18/2003
TOLIBLE, CAROLYN	BRANDON, MS	12/18/2003
WALLACE, CATHERINE	COVENTRY, RI	12/18/2003
WALLER, LAFANTA	BELZONI, MS	12/18/2003
WREN, ALAN	ALBUQUERQUE, NM	12/18/2003
FELONY CONVICTION FOR HEALTH CARE FRAUD:		
ADAS, MOHAMMAD	MAUMEE, OH	12/18/2003
FORESTER, BRUCE	BRONXVILLE, NY	12/18/2003
GATES, LAURIE	EAGLE BRIDGE, NY	12/18/2003
HOUSHYARIMANESH, HAMID	FULLERTON, CA	12/18/2003
LACY, MICHAEL	WESTERVILLE, OH	12/18/2003
LINDER, MICHAEL	HUTCHINSON, KS	12/18/2003
OSWALD, THOMAS	WADSWORTH, OH	12/18/2003
POWELL, LEO	MONROVIA, CA	12/18/2003
RINGLE, WILLIAM	WESTERVILLE, OH	12/18/2003
RUSSELL, BONNIE	BRONX, NY	12/18/2003
TOUSIGNANT, ANASTACIA	MORRISTOWN, MN	12/18/2003
FELONY CONTROL SUBSTANCE CONVICTION:		
ANDERSON, CHERI	KINGMAN, AZ	12/18/2003
AUSTIN, GERALD	SAN JOSE, CA	12/18/2003
BROOKS, SARITA	CALDWELL, AR	12/18/2003
CHAMBERS, DONNA	GREENEVILLE, TN	12/18/2003
CUCHNA, DENISE	GLYNDON, MN	12/18/2003
DAVIES, BRIAN	AKRON, OH	12/18/2003
GIEBLER, COLLEEN	WARMINSTER, PA	12/18/2003
GOIN, JYL	VANDALIA, MO	12/18/2003
LUNDIN, DEBORAH	ANKENY, IA	12/18/2003
LYNCH, CATHEY	SHELBYVILLE, TN	12/18/2003
MORGAN, LAURA	VAL RICO, FL	12/18/2003
STEWART, LAURA	COLORADO SPRINGS, CO	12/18/2003
WELLS, TINA	PARIS, KY	12/18/2003
PATIENT ABUSE/NEGLECT CONVICTIONS:		
BABCOCK, WILLIAM	COALINGA, CA	12/18/2003
CRENSHAW, RHEANNON	FORT WALTON BEACH, FL	12/18/2003
CULVER, BETTY	COLCORD, OK	12/18/2003
FAISON, PATRICIA	FAR ROCKAWAY, NY	12/18/2003
FEDERSPIEL, STEPHEN	LONG BEACH, CA	12/18/2003
FELLERS, TYRONE	FORREST CITY, AR	12/18/2003
HOLMES, ERNEST	WETUMPKA, AL	12/18/2003
JACOBS, JUANITA	COLORADO SPRINGS, CO	12/18/2003
LIVINGSTON, MARK	ROY, UT	12/18/2003
MARCOTTE, CHERIE	SPRINGFIELD, VT	12/18/2003
McCARTER, VALERIE	BUFFALO, NY	12/18/2003
PELKEY, PAMELA	WILLSBORO, NY	12/18/2003
SAWYER, DAVID	MOBERLY, MO	12/18/2003
WARD, PAUL	MOORE, OK	12/18/2003

OFFICE OF INVESTIGATION, OFFICE OF INSPECTOR GENERAL—DHHS, CASE INVESTIGATION MANAGEMENT SYSTEM—Continued

[For Press Release From 11/01/2003—11/30/2003]

Subject name	Address	Effective date
CONVICTION FOR HEALTH CARE FRAUD:		
RAMSDEN, JOHN	POUGHKEEPSIE, NY	12/18/2003
LICENSE REVOCATION/SUSPENSION/SURRENDER:		
ALEXANDER, BRENDA	TOPEKA, KS	12/18/2003
ALLNUTT-BTLER, MARSHA	OWENTON, KY	12/18/2003
ARTHUR, EVA	UNION, MS	12/18/2003
BAILEY, JANET	ST PETERSBURG, FL	12/18/2003
BAKARIC, ABBIE	TOOELE, UT	12/18/2003
BARBATO, STEVEN	DURHAM, NC	12/18/2003
BOBO, PATTY	CLAREMORE, OK	12/18/2003
BOWLING, ROBIN	CHANDLER, AZ	12/18/2003
BOYD, KARLA	CORTE MADERA, CA	12/18/2003
BRAINE, JAMES	EDMOND, OK	12/18/2003
BRANNON, RYAN	PHOENIX, AZ	12/18/2003
BRENDE, MARTI	CUERO, TX	12/18/2003
BRESNICK, SIMON	EGGERTSVILLE, NY	12/18/2003
BROACH, STACY	PINE BLUFF, AR	12/18/2003
BROWN, DEMETRIA	PHOENIX, AZ	12/18/2003
BURDETT, STEVEN	GLOBE, AZ	12/18/2003
BURGESS, CAROLINE	MESA, AZ	12/18/2003
CABANA, JUDY	SEWARD, AK	12/18/2003
CARAVAGELI, ANTHENE	COSTA MESA, CA	12/18/2003
CARNES, JAMES	CHARLOTTE, NC	12/18/2003
CARUTHERS, JEFFERY	LA QUINTA, CA	12/18/2003
CASEY, JOAN	FLAGSTAFF, AZ	12/18/2003
CHALAL, RICHARD	RUSSELLVILLE, AL	12/18/2003
CLARK, BEVERLY	AMARILLO, TX	12/18/2003
CLARK, DAVID	CARMEL, CA	12/18/2003
CLARK, JACOB	PORT ARANSAS, TX	12/18/2003
CLARK, LISA	EASTABOGA, AL	12/18/2003
CLAYPOOL, PATRICIA	AUSTIN, TX	12/18/2003
COE, LAILA	PHOENIX, AZ	12/18/2003
CONARD, MICHELE	TRENTON, NJ	12/18/2003
COOPER, RALPH	JOPLIN, MO	12/18/2003
CURRY, GEORGE	MARISSA, IL	12/18/2003
CUTCLIFFE, SHIRLEY	NIPOMO, CA	12/18/2003
CZARNOTA, TRACI	CARTERET, NJ	12/18/2003
DANKA, PAMELA	NAUGATUCK, CT	12/18/2003
DARWIN, KAREN	HEREFORD, AZ	12/18/2003
DENTON, TAWANNA	STANFORD, KY	12/18/2003
DESAI, PANKAJ	NEW HARTFORD, NY	12/18/2003
DOOYEN, JUANITA	PHOENIX, AZ	12/18/2003
DOWNEY, AMY	ONEONTA, NY	12/18/2003
DRISKILL, MARK	GRAND JUNCTION, CO	12/18/2003
DRUMM, DEBORAH	SCHUYLERVILLE, NY	12/18/2003
EMHE, STEPHEN	MEDIA, PA	12/18/2003
EPHAULT, PATRICIA	SCRANTON, PA	12/18/2003
EVANS, MARK	LA QUINTA, CA	12/18/2003
FEIGEL, LISA	PITTSBURGH, PA	12/18/2003
FONTAINE, DIANNE	WARWICK, RI	12/18/2003
FORRESTER, MARY	BOWLING GREEN, KY	12/18/2003
FRIDLEY, MICHELLE	PASCO, WA	12/18/2003
GABRIEL, STACEY	CLOVERDALE, CA	12/18/2003
GALLAHAIR, NINA	MUNFORD, AL	12/18/2003
GARCIA, CHARLOTTE	ESCONDIDO, CA	12/18/2003
GATES, PARYLUE	RIVIERA BEACH, FL	12/18/2003
GEDRIMAS, ANDREW	CHICAGO, IL	12/18/2003
GEVEDON, ROBERT	LEXINGTON, KY	12/18/2003
GIBBS, KATHY	RACELAND, KY	12/18/2003
GILSON, BRYAN	GRIFFIN, GA	12/18/2003
GONZALES, ANGELICA	PHOENIX, AZ	12/18/2003
GONZALES, SANDRA	PHOENIX, AZ	12/18/2003
GROSSMAN, KRISTY-JO	LACEY, WA	12/18/2003
GUIDOTTI, JANICE	PHILADELPHIA, PA	12/18/2003
GUILIANO, GINA	WOODCLIFF LAKES, NJ	12/18/2003
GWON, SAMUEL	LOS ANGELES, CA	12/18/2003
HADLEY, RUSSELL	LEESBURG, GA	12/18/2003
HARDING, LISA	POWNAL, VT	12/18/2003
HENRY-CAMPER, JOYCE	CLEARWATER, FL	12/18/2003

OFFICE OF INVESTIGATION, OFFICE OF INSPECTOR GENERAL—DHHS, CASE INVESTIGATION MANAGEMENT SYSTEM—Continued

[For Press Release From 11/01/2003—11/30/2003]

Subject name	Address	Effective date
HERINGTON, JULIE	FLORENCE, AZ	12/18/2003
HILL, PAUL	MONTE RIO, CA	12/18/2003
HINKLE, SHELLEY	BIRMINGHAM, AL	12/18/2003
HOLBROOK, GEORGE	TUCKER, GA	12/18/2003
HOLLIDAY, DAVID	MERIDIAN, MS	12/18/2003
HOLLIER, SUSAN	BOSSIER CITY, LA	12/18/2003
HOLSINGER, LORI	FLATWOODS, KY	12/18/2003
HOLT, VALERIE	PHOENIX, AZ	12/18/2003
HOUGLIN, TERRI	LOUISVILLE, KY	12/18/2003
HUCKABY, ANTONETTE	PHOENIX, AZ	12/18/2003
HUDSON, RUBYJEAN	MARYSVILLE, WA	12/18/2003
HUNTER, DIANE	KINGFISHER, OK	12/18/2003
JAMES, SCOTT	MAPLE VALLEY, WA	12/18/2003
JENKINS, JAN	MARTINEZ, GA	12/18/2003
JORDAN, RICHARD	CHINO HILLS, CA	12/18/2003
JUNCO, VICTOR	MIAMI BEACH, FL	12/18/2003
KHAN, RUBAB	LAWRENCEVILLE, GA	12/18/2003
KIBALLO, MARIAN	WARETOWN, NJ	12/18/2003
KIRIKO, PATRICIA	CANOGA PARK, CA	12/18/2003
KOGAN, VADIM	PRINCETON JUNCTION, NJ	12/18/2003
KORMAN, CAROL	BOCA RATON, FL	12/18/2003
KRUGLIKOV, STANISLAV	DULUTH, MN	12/18/2003
LANDRUM, EUGENE	CHICAGO, IL	12/18/2003
LAVELLE, BARBARA	RIDGEFIELD, NJ	12/18/2003
LEISER, ROBERT	DECATUR, IL	12/18/2003
LILLY, APRIL	MOUNT VERNON, IL	12/18/2003
LINDQUIST-BOBER, LORRAINE	ROLLING MEADOWS, IL	12/18/2003
LOCKLEAR, SHARON	PEMBROKE, NC	12/18/2003
LOCKOSKI, TAMMY	HOUSTON, PA	12/18/2003
LONG, JOHN	SANTA ROSA, CA	12/18/2003
LOPEZ, CAROLE	FRESNO, CA	12/18/2003
LUBIN, BARRY	ATLANTA, GA	12/18/2003
MARANGI, ROSEMARIE	COARSEGOLD, CA	12/18/2003
MARTIN, HEATHER	WAUKON, IA	12/18/2003
MCBRIDE, RITA	NEW MARKET, AL	12/18/2003
MCCALLUM, AMY	HILLSBOROUGH, NC	12/18/2003
MCFALL, TARA	HARROGATE, TN	12/18/2003
MCLAREN, JACQUELYN	BATON ROUGE, LA	12/18/2003
MCWILLIAMS, MICHELLE	PETERSBURG, IL	12/18/2003
MINOR, JULIE	ADAMSVILLE, AL	12/18/2003
MOEN, EDNA	SPOKANE, WA	12/18/2003
MORGAN, MELODY	MOULTON, AL	12/18/2003
MORPHEW, LISA	PHOENIX, AZ	12/18/2003
MULLER, MARIANNE	FORT COLLINS, CO	12/18/2003
MYERS NEWTON, TONYA	WOODWARD, OK	12/18/2003
NICHOLSON, GINGER	RINGWOOD, OK	12/18/2003
NOTTINGHAM, MARY	LAWTON, OK	12/18/2003
OHORO, CHERYL	MESA, AZ	12/18/2003
OUELLETT, KEVIN	NEW BRITAIN, CT	12/18/2003
PAULI, LLOYD	COLORADO SPRINGS, CO	12/18/2003
PEISTER, JODI	SUFFERN, NY	12/18/2003
PEZOA, LOIS	AURORA, CO	12/18/2003
PLAZA, JOSE	CORAL GABLES, FL	12/18/2003
PO, TEOFILO	WHITTIER, CA	12/18/2003
QUINTANA, OSCAR	HOUSTON, TX	12/18/2003
RANDALL, DOUGLAS	ERIE, PA	12/18/2003
REED, CARISA	SAN DIEGO, CA	12/18/2003
REED, MARIA	MESA, AZ	12/18/2003
ROBBINS, EDWARD	NEW TAZEWELL, TN	12/18/2003
ROMERO-ROMERO, H	SAN DIEGO, CA	12/18/2003
ROSE, VICKI	HAMBURG, PA	12/18/2003
RUIZESPARZA, NANCY	HUNTINGTON PARK, CA	12/18/2003
SANDORE, RICHARD	ZION, IL	12/18/2003
SCHOETTMER, PAULA	EAGLETOWN, OK	12/18/2003
SEATON, KAREN	SACRAMENTO, CA	12/18/2003
SELF, CHERYL	SIERRA VISTA, AZ	12/18/2003
SEVIGNY, WILLIAM	SANFORD, ME	12/18/2003
SHARP, MARY	PHOENIX, AZ	12/18/2003
SHIRLEY, CHERYL	KNOXVILLE, TN	12/18/2003

OFFICE OF INVESTIGATION, OFFICE OF INSPECTOR GENERAL—DHHS, CASE INVESTIGATION MANAGEMENT SYSTEM—Continued

[For Press Release From 11/01/2003—11/30/2003]

Subject name	Address	Effective date
SKIBA, TERRY	EWA BEACH, HI	12/18/2003
SLUSHER, RODNEY	SPARTANBURG, SC	12/18/2003
SMITH, TRISH	CROFTON, KY	12/18/2003
SPRAGIS, JENNIFER	MARINGOUIN, LA	12/18/2003
STAFFORD, RALPH	PHOENIX, AZ	12/18/2003
STEINER, BARBARA	UNCASVILLE, CT	12/18/2003
STELLER, ROBERT	LOS ANGELES, CA	12/18/2003
SUDELL, LORI	GREENWICH, CT	12/18/2003
TEARPAK, SUZI	PUEBLO, CO	12/18/2003
TERRY, HERBERT	WATERBURY, CT	12/18/2003
TESCHNER, JANIE	GREENSBORO, AL	12/18/2003
THOMAS, KELLY	KAYSVILLE, UT	12/18/2003
THOMAS, MARY	MORRISVILLE, VT	12/18/2003
TINDLE, GARY	OKLAHOMA CITY, OK	12/18/2003
TRASLAVINA, CECILIA	GLENDALE, AZ	12/18/2003
TRUDO, MATHEW	FRIENDSWOOD, TX	12/18/2003
TSAROS, LORAINE	SANTA MARIA, CA	12/18/2003
TUCKER, CHERYL	FLAGSTAFF, AZ	12/18/2003
VAHEY, RENEE	O'FALLON, MO	12/18/2003
VANDERGRIFT, PATRICK	RAGLAND, AL	12/18/2003
VAUGHN, DELANA	ABERDEEN, NC	12/18/2003
VOEGTLIN, MARY	WOODBRIDGE, VA	12/18/2003
WALLACE, LYNETTE	POLKTON, NC	12/18/2003
WALTER, RICHARD	YAKIMA, WA	12/18/2003
WARGO, JOHN	GLASSPORT, PA	12/18/2003
WARWICK, SCOTT	WATERTOWN, SD	12/18/2003
WEBER, MARGARET	NEWFOUNDLAND, NJ	12/18/2003
WESTON, PAMELA	MESA, AZ	12/18/2003
WIGGINS, JACKIE	TUCSON, AZ	12/18/2003
WILLIAMS, ANGELA	ARLEY, AL	12/18/2003
WILSON, KAREN	BELLFLOWER, CA	12/18/2003
WILSON, REGINALD	REDDING, CA	12/18/2003
WISNESKI, DAVID S	WINDSOR, CT	12/18/2003
WOLCHOK, SUSAN	NEW PORT RICHEY, FL	12/18/2003
WOO, HILDA	MONTEREY PARK, CA	12/18/2003
YERMOLENKO, STEPAN	SACRAMENTO, CA	12/18/2003
FEDERAL/STATE EXCLUSION/SUSPENSION:		
BANKS, KENNETH	CAMDEN, NJ	12/18/2003
OWNED/CONTROLLED BY CONVICTED ENTITIES:		
HEARTLAND ANESTHESIA, PC	WATERTOWN, SD	12/18/2003
HYLAND MEDICAL, P C	SALT LAKE CITY, UT	12/18/2003
LEONARD WALKER, MD, PA	VERO BEACH, FL	12/18/2003
NORTHRIDGE DENTAL	NORTHRIDGE, CA	12/18/2003
SUPPORTIVE HEALTH SERVICES CORP	MIAMI, FL	12/18/2003
TRUSTED CARE SERVICES, INC	MEQUON, WI	12/18/2003
DEFAULT ON HEAL LOAN:		
AITKEN, STEVEN	PORTSMOUTH, OH	10/29/2003
ANDRONICO, KENNETH	FORT MYERS, FL	11/12/2003
HOLLOWAY, JIMMY	MONAHANS, TX 1	0/29/2003
MAMBY, AUDLEY	HASLETT, MI	10/27/2003
ORDONEZ-SANSUSKY, LISA	LOS ALTOS, CA	12/18/2003
SCHWARTZ, MOSHE	OWINGS MILLS, MD	12/18/2003
VILLARREAL, JOSE	MCALLEN, TX	12/18/2003

Dated: December 1, 2003.

Katherine B. Petrowski,

Director, Exclusions Staff, Office of Inspector General.

[FR Doc. 03–30552 Filed 12–9–03; 8:45 am]

BILLING CODE 4150–04–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

In compliance with section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 concerning opportunity for public comment on proposed collections of information, the Substance Abuse and Mental Health Services Administration will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the information collection plans, call the SAMHSA Reports Clearance Officer on (301) 443–7978.

Comments are invited on:

(a) Whether the proposed collections of information are necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility;

(b) The accuracy of the agency's estimate of the burden of the proposed collection of information;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(d) Ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project: Substance Abuse Prevention and Treatment Block Grant Synar Report Format, FFY 2005–2007

(OMB No. 0930–0222; Revision)—Section 1926 of the Public Health Service Act [42 U.S.C. 300x–26] stipulates that funding Substance Abuse Prevention and Treatment (SAPT) Block Grant agreements for alcohol and drug abuse programs for fiscal year 1994 and subsequent fiscal years require States to have in effect a law providing that it is unlawful for any manufacturer, retailer, or distributor of tobacco products to sell or distribute any such product to any individual under the age of 18. This section further requires that States conduct annually, random, unannounced inspections to ensure compliance with the law; that the State submit annually a report describing the results of the inspections, and the activities carried out by the State to enforce the required law, the success the State has achieved in reducing the availability of tobacco products to individuals under the age of 18, and the strategies to be utilized by the State for enforcing such law during the fiscal year for which the grant is sought.

Before making an award to a State under the SAPT Block Grant, the Secretary must make a determination that the State has maintained compliance with these requirements. If a determination is made that the State is not in compliance, penalties shall be applied. Penalties range from 10 percent of the Block Grant in applicable year 1 to 40 percent in applicable year 4 and subsequent years. Respondents include the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, Palau, Micronesia, and the Marshall Islands.

Regulations that implement this legislation are at 45 CFR 96.130, are approved by OMB under control number 0930–0163, and require that each State submit an annual Synar report to the Secretary describing their progress in complying with section 1926 of the PHS Act. The Synar report, due December 31 following the fiscal year for which the State is reporting, describes the results of the inspections and the activities carried out by the State to enforce the required law; the success the State has achieved in reducing the availability of tobacco products to individuals under the age of 18; and the strategies to be utilized by the State for enforcing such law during the fiscal year for which the grant is sought.

SAMHSA's Center for Substance Abuse Prevention will request OMB approval of revisions to the current report format associated with section 1926 (42 U.S.C. 300x–26). The report format is changing significantly. Any changes in either formatting or content are being made to simplify the reporting process for the States and to clarify the information as the States report it; both outcomes will facilitate consistent, credible, and efficient monitoring of Synar compliance across the States and will reduce the reporting burden by the States. All of the information required in the new report format is already being collected and reported by the States.

ANNUAL REPORTING BURDEN

45 CFR citation	Number of respondents [1]	Responses per respondent	Hours per response	Total hours burden
Annual Report (Section I—States and Territories) 96.130(e)(1–3)	59	1	15	885
State Plan (Section II—States and Territories) 96.130(e)(4, 5)	59	1	3	177
196.130(g)	59	1	1	59
Total	59		18	1,121

[1] Red Lake Indian Tribe is not subject to tobacco requirements.

Send comments to Nancy Pearce, SAMHSA Reports Clearance Officer, Room 16–105, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated: December 3, 2003.

Anna Marsh,

Acting Executive Officer, SAMHSA.

[FR Doc. 03–30584 Filed 12–9–03; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOMELAND SECURITY

Citizenship and Immigration Services

Agency Information Collection Activities: Proposed Collection; Comments Requested.

ACTION: 30-Day Notice of Information Collection Under Review: Memorandum of Understanding to Participate in an Employment Eligibility Confirmation Pilot Program (File No. OMB–18).

The Department of Homeland Security (DHS), U.S. Citizenship and Immigration Services (CIS) has submitted the following collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** at 68 FR 54912 on September 19, 2003, allowing for a 60-day public review and comment period. No comments were received by the DHS.

A second notice was published in the **Federal Register** at 68 FR 67464 on December 2, 2003, allowing for an additional 30 days for public review and comment. The second notice incorrectly listed the Immigration and Customs Enforcement (ICE) as the DHS

component responsible for this information collection. For administrative reasons pending final organization realignment decisions, the legacy INS Office of Records, which has overall responsibility for the Employment Eligibility Confirmation Pilot Program, was temporarily placed within ICE, as reflected correctly in the September 19 initial notice. In early October, the INS Office of Records was formally transferred to the U.S. Citizenship and Immigration Services (CIS). Therefore the second notice should have listed the CIS as the DHS component responsible for this information collection. Accordingly, the public has 30-days until January 9, 2004 to submit comments. This process is conducted in accordance with 5 CFR 1320.10. Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Homeland Security Office, 725—17th Street, NW., Suite 10102, Washington, DC 20503. Additionally, comments may be submitted to OMB via facsimile to (202) 395–5806.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Revision of a currently approved collection.

(2) *Title of the Form/Collection:* Memorandum of Understanding to Participate in an Employment Eligibility Confirmation Pilot Program.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* No agency form number; File No. OMB–18, SAVE Program, U.S. Citizenship and Immigration Services.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Individuals or households. Employers electing to participate in a pilot will execute a Memorandum of Understanding with the Department of Homeland Security and the Social Security Administration (if applicable), that provides the specific terms and conditions governing the pilot and company information for each site that will be performing employment verification queries.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 5,000 responses at 1 hour and 20 minutes (1.33 hours) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 6,650 hours annually.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan, Director, Regulations and Forms Services Division, Department of Homeland Security, 425 I Street, NW., Room 4034, Washington, DC 20536; (202) 514–3291. Comments and suggestions regarding items contained in this notice, especially regarding the estimated pubic burden and associated response time may also be directed to Richard A. Sloan.

If additional information is required contact: Mr. Steve Cooper, PRA Clearance Officer, Department of Homeland Security, Office of Chief Information Officer, Regional Office Building 3, 7th and D Streets, SW., Suite 4636–26, NW., Washington, DC 20202.

Dated: December 4, 2003.

Richard A. Sloan,

Department Clearance Officer, Department of Homeland Security, U.S. Citizenship and Immigration Services.

[FR Doc. 03–30579 Filed 12–9–03; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4815–N–101]

Notice of Submission of Proposed Information Collection to OMB: Request for Withdrawals from Replacements Reserves/Residual Receipts Funds

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

The proposed information is to be submitted by multifamily project owners to request authorization to withdraw funds from Replacements Reserves funds and/or Residual Receipts Funds. Invoices, receipts, and other documentation are submitted with the request.

DATES: *Comments Due Date:* January 9, 2004.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and OMB approval number (2502—pending) and should be sent to: Lauren Wittenberg, OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503; Fax number (202) 395–6974; e-mail *Lauren_Wittenberg@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, AYO, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; e-mail *Wayne_Eddins@HUD.gov*; telephone (202) 708–2374. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Eddins or on HUD's Web site at *http://www5.hud.gov:63001/po/i/icbts/collectionsearch.cfm.*

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. chapter 35). The notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the name and telephone number of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

This notice also lists the following information:

Title of Proposal: Request for Withdrawals from Replacements Reserves/Residual Receipts Funds.

OMB Approval Number: 2502—pending.

Form Numbers: HUD–9250.

Description of the Need for the Information and its Proposed Use: The proposed information is to be submitted by multifamily project owners to request authorization to withdrawal funds from Replacements Reserves funds and/or Residual Receipts Funds. Invoices, receipts, and other documentation are submitted with the request.

Respondents: Not-for-profit institutions, State, local or tribal government.

Frequency of Submission: On occasion averaging once per annum.

	Number of respondents:	Annual responses:	×	Hours per response:	=	Burden hours:
Reporting Burden	8,500	8,500		0.50		4,250

Total Estimated Burden Hours: 135.

Status: This an existing collection in use without an OMB control number.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: December 3, 2003.

Wayne Eddins,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 03–30570 Filed 12–9–03; 8:45 am]

BILLING CODE 4210–72–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Information Collection To Be Submitted to the Office of Management and Budget (OMB) for Approval Under the Paperwork Reduction Act; Division of International Conservation Requests for Proposals

AGENCY: Fish and Wildlife Service; Interior.

ACTION: Notice; request for comments.

SUMMARY: The U.S. Fish and Wildlife Service (We) will submit the collection of information described below to OMB for approval under the provisions of the Paperwork Reduction Act. An estimate of the information collection burden is included in this notice. If you wish to obtain copies of the proposed information collection requirement, related forms, and/or explanatory material, contact the Service Information Collection Clearance Officer at the address listed below.

DATES: You must submit comments on or before February 9, 2004.

ADDRESSES: Send your comments and suggestions on specific requirements to the Information Collection Clearance Officer, U.S. Fish and Wildlife Service, MS 222–ARLSQ, 4401 N. Fairfax Drive, Arlington, VA 22203.

FOR FURTHER INFORMATION CONTACT: To request a copy of the information collection submission, explanatory information, and/or related forms, contact Anissa Craghead, Information Collection Clearance Officer, at 703–358–2445 or electronically at *Anissa_Craghead@fws.gov.*

SUPPLEMENTARY INFORMATION: OMB regulations at 5 CFR 1320, which implement provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), require that interested members of the public and affected agencies be given an opportunity to comment on information collection and record keeping activities (*see* 5 CFR 1320.8(d)). We are submitting a request to OMB to approve: (1) The revision of the collection of information for four of our multinational species conservation grant fund requests for proposals (Form numbers 3–2214 through 3–2217), and (2) the addition of two new requests for proposals (Form numbers 3–2263 and 3–2264). We are requesting a three-year term of approval for this information collection activity. Federal agencies may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control number for this collection of information is 1018–0123.

Revisions to the currently approved requests for proposals include updating application forms to: (1) Comply with new Government-wide policy directing all funding programs to request Dunn & Bradstreet registration from all applicants; (2) reformat to comply with new Government-wide policies prescribing a standard RFP format; (3) add additional instructions for applicants; (4) request from domestic applicants the submission of standard forms 424, 424a, 424b and DI 2010; and (5) reformat the application cover page form to fit on one page. In addition, two new requests for proposals have been added to the information collection in order to meet our obligations under the requirements of the Convention on Nature Protection and Wildlife Preservation in the Western Hemisphere. The two new requests for proposals and associated forms will be translated into Spanish for the convenience of our Latin American and Caribbean applicants. The new requests for proposals (forms 3–2263 and 3–2264) are noted in the table below. In addition, this information collection is currently titled, "Multinational Species Conservation Fund Requests for Proposals." Due to the addition of two new requests for proposals that are not part of the Multinational Species Conservation Fund, we are proposing to change the title of this information collection to "Division of International Conservation Requests for Proposals."

The information obtained from the first four requests for proposals listed below will be used to select conservation projects for grant funding in accordance with the criteria in several Acts of Congress. The Acts of Congress include the African Elephant Conservation Act, as amended (16 U.S.C. 4201–46), the Rhinoceros and Tiger Conservation Act, as amended (16 U.S.C. 5301–06), the Asian Elephant Conservation Act (16 U.S.C. 4261–4266), and the Great Ape Conservation Act (16 U.S.C. 6301–6305). The information obtained from the final two requests for proposals will be used to select conservation projects for grant funding in accordance with the U.S. Government's obligations under the Western Hemisphere Convention, and

authorized by the Endangered Species Act of 1973, as amended (16 U.S.C. 1531–43). The following table lists the requests for proposals, with their respective burden estimates, that we plan to submit to OMB for approval under the Paperwork Reduction Act.

Name of request for proposals (RFP)	Form No.	Estimated time to complete	Total annual responses	Total annual burden hours
African Elephant Conservation Fund RFP	3–2214	12	60	720
Rhinoceros and Tiger Conservation Fund RFP	3–2215	12	70	840
Asian Elephant Conservation Fund RFP	3–2216	12	50	600
Great Ape Conservation Fund RFP	3–2217	12	60	720
Wildlife Without Borders-Mexico RFP*	3–2263	12	40	480
Wildlife Without Borders-Latin America & the Caribbean RFP*	3–2264	12	55	660

*Note: These are new information collections.

Title: Division of International Conservation Requests for Proposals.

OMB Number: 1018–0123.

Service Form Numbers: 3–2214 through 3–2217, 3–2263 and 2–2264.

Frequency of Collection: Annually.

Description of Respondents: Foreign governments; domestic and foreign non-governmental organizations and individuals.

Total Annual Responses: 335 responses.

Total Annual Burden Hours: 4,020 hours.

We invite comments concerning this collection on: (1) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of burden on the public; (3) ways to enhance the quality, utility and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond.

Dated: November 21, 2003.

Anissa Craghead,

Information Collection Clearance Officer, Fish and Wildlife Service

[FR Doc. 03–30594 Filed 12–9–03; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Receipt of Applications for Endangered Species Permits

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of applications for permits.

SUMMARY: The public is invited to comment on the following applications to conduct certain activities with endangered species. We provide this notice pursuant to section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

DATES: We must receive written data or comments on these applications at the address given below, by January 9, 2004.

ADDRESSES: Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, 1875 Century Boulevard, Suite 200, Atlanta, Georgia 30345 (Attn: Victoria Davis, Permit Biologist).

FOR FURTHER INFORMATION CONTACT: Victoria Davis, telephone (404) 679–4176; facsimile (404) 679–7081.

SUPPLEMENTARY INFORMATION: The public is invited to comment on the following applications for permits to conduct certain activities with endangered species. If you wish to comment, you may submit comments by any one of the following methods. You may mail comments to the Service's Regional Office (*see* **ADDRESSES** section) or via electronic mail (e-mail) to *victoria_davis@fws.gov*. Please submit electronic comments as an ASCII file avoiding the use of special characters and any form of encryption. Please also include your name and return address in your e-mail message. If you do not receive a confirmation from the Service that we have received your e-mail message, contact us directly at the telephone number listed above (*see* **FOR FURTHER INFORMATION CONTACT** section). Finally, you may hand deliver comments to the Service office listed above (*see* **ADDRESSES** section).

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the administrative record. We will honor such requests to the extent allowable by law. There may also be other circumstances in which we would withhold from the administrative record a respondent's identity, as allowable by law. If you wish us to withhold your name and address, you must state this prominently at the beginning of your comments. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

Applicant: Mark D. Farr, Contractor for U.S. Army Corp of Engineers, Vicksburg District, Vicksburg, Mississippi, permit number TE079841–0.

The applicant requests authorization to take (handle and release) the Ouachita rock pocketbook (*Arkansia wheeleri*) while conducting presence/absence and population demography surveys and individual tagging/marking in the Little River from Millwood Lake Dam to the mouth; Sulphur River from Wright Patman Dam to the mouth; McKinney Bayou, Hudson Creek, Maniese Bayou, and Bois d'Arc Creek, Arkansas.

Applicant: Roel Lopez, College Station, Texas, permit number TE079849–0.

The applicant requests authorization to trap Lower Keys rabbits (*Sylvilagus palustris hefneri*) from source populations and translocate them to Little Pine and Water Keys. Four Lower Keys rabbits (2 males and 2 females) would be introduced to Water Key. Two Lower Keys rabbits would be translocated to Little Pine Key to supplement genetic diversity and to resist negative effects of demographic stochastisity (random events) on a small founder population. The proposed activities would take place in Boca Chica Key, Lower Sugarloaf Key, Saddlebunch Keys, Little Pine Key, and Water Keys, Monroe County, Florida.

Applicant: Michael Matthew Gangloff, Auburn University, Alabama, permit number TE079863–0.

The applicant requests to take (capture, examine, release, and collect relic shells) the fat threeridge (*Amblema neislerii*), Anthony's riversnail (*Athearnia anthonyi*), slender campeloma (*Campeloma decampi*), fanshell (*Cyprogenia stegaria*), dromedary pearlymussel (*Dromus dromas*), lacy elimia (*Elimia crenatella*), Chipola slabshell (*Elliptio chipolaensis*), purple bankclimber (*Elliptoideus sloatianus*), yellow blossom (*Epioblasma florentina florentina*), upland combshell (*Epioblasma metastriata*), catspaw (*Epioblasma obliquata obliquata*), southern acornshell (*Epioblasma othcaloogensis*), southern combshell (*Epioblasma penita*), tuberacled blossom (*Epioblasma torulosq torulosa*), turgid blossom (*Epioblasma tugidula*), shiny pigtoe (*Fusconia cor*), finerayed pigtoe (*Fusconia cuneolis*), cracking pearlymussel (*Hemistena lata*), pink mucket (*Lampsilis abrupta*), fine-lined pocketbook (*Lampsilis altilis*), shinyrayed pocketbook (*Lampsilis subangulata*), Alabama lampmussel (*Lampsilis viresens*), birdwing pearlymussel (*Lemiox rimosus*), round rocksnail (*Leptoxis ampla*), plicate rocksnail (*Leptoxis plicata*), painted rocksnail (*Leptoxis taeniata*), flat pebblesnail (*Lepyrium showalteri*), cylindrical lioplax (*Lioplax cyclostomaformis*), Alabama moccasinshell (*Mediondus acutissimus*), Coosa moccasinshell (*Medionidus parvulus*), gulf moccasinshell (*Medionidus penicillatus*), ring pink (*Obovaria retusa*), littlewing pearlymussel (*Pegias fibula*), white wartyback (*Plethobasus cicatricosus*), orangefoot pimpleback (*Plethobasus copperianus*), clubshell (*Pleurobema clava*), black clubshell (*Pleurobema curtum*), southern clubshell (*Pleurobema decisum*), dark pigtoe (*Pleurobema furvum*), southern pigtoe (*Pleurobema georgianum*), flat pigtoe (*Pleurobema marshalli*), ovate clubshell (*Pleurobema perovatum*), rough pigtoe (*Pleurobema plenum*), oval pigtoe (*Pleurobema pyriforme*), heavy pigtoe (*Pleurobema taitianum*), inflated heelsplitter (*Potamilus inflatus*), triangular kidneyshell (*Ptychobranchus greeni*), armored marstonia (*Pyrgulopsis pachyta*), winged mapleleaf (*Quadrula fragosa*), Cumberland monkeyface (*Quadrula intermedia*), stirrupshell (*Quadrula stapes*), pale lilliput (*Toxolasma cylindrellus*), tulotoma snail (*Tulotoma magnifica*), and Cumberland bean (*Villosa trabalis*) while conducting presence and absence surveys. The proposed activities would primarily occur in the rivers, lakes, and streams in the Mobile, Tennessee, and Appalachicola rivers, but also in other drainages within Alabama, Florida, Georgia, and Mississippi.

Applicant: Environmental Services, Inc., Steven M. Jones, Lithonia, Georgia, permit number TE078880–0.

The applicant requests authorization to take (capture, exam, photograph, temporarily hold, and release) the gray bat (*Myotis grisescens*) while conducting a presence/absence survey at a proposed development site in Bartow County, Georgia.

Applicant: Arkansas Highway and Transportation Department, Little Rock, Arkansas, permit number TE079883–0.

The applicant requests authorization to take (capture, exam, and release) the gray bat (*Myotis grisescens*), Indiana bat (*Myotis sodalis*), Louisiana black bear (*Ursus americanus luteolus*), Arkansas fatmucket (*Lampsilis powellii*), Curtis pearlymussel (*Epioblasma florentina curtisii*), fanshell (*Cyprogenia stegaria*), fat pocketbook (*Potamilus capax*), Ouachita rock-pocketbook (*Arkansia wheeleri*), pink mucket (*Lampsilis abrupta*), scaleshell (*Leptodea leptodon*), speckled pocketbook (*Lampsilis streckeri*), turgid-blossom (*Epioblasma turgidula*), winged mapleleaf (*Quadrula fragosa*), magazine mountain shagreen (*Mesodon magazinensis*), American burying beetle (*Nicrophorus americanus*), cave crayfish (*Cambarus aculabrum*), and cave crayfish (*Cambarus zophonastes*) while conducting presence/absence surveys. The proposed activities will take place throughout the State of Arkansas.

Applicant: Geological Survey of Alabama, Thomas E. Shepard, Tuscaloosa, Alabama, permit number TE079923–0.

The applicant requests authorization to take (capture and release) the boulder darter (*Etheostoma wapiti*), slackwater darter (*Etheostoma boschungi*), and snail darter (*Percina tanasi*) while conducting presence/absence surveys in the Elk River System, Alabama.

Applicant: Eric J. Baka, Louisiana Department of Wildlife and Fisheries, Baton Rouge, Louisiana, permit number TE079972–0.

The applicant requests authorization to take (capture, band, monitor nests, install drilled and insert cavities, translocate, release, and monitor) adult and nestling red-cockaded woodpeckers (*Picoides borealis*) while conducting presence and absence surveys, demographic monitoring and cavity restricting, and translocation activities. The proposed activities would take place in the State of Louisiana.

Applicant: Dr. Kathryn Stephenson Craven, Armstrong Atlantic State University, Savannah, Georgia, permit number TE079976–0.

The applicant requests authorization to take (excavate nests post hatching, mark nests with wooden stakes, open unhatched eggs, and collect dead hatchlings and embryos for classification or preservation for research and educational purposes) loggerhead, green, Kemp's Ridley, leatherback, and hawksbill sea turtles while evaluating nest hatch success, sampling of hatched eggs for bacteria/fungus, investigating nest-ant interactions, monitoring of the population for nesting adult sea turtles, and conducting necropsy on stranded sea turtles. The proposed activities would occur along the coastline of the State of Georgia.

Applicant: Mr. Donald Robohm, Sea Chick Mississippi Inc., Escatawpa, Mississippi, permit number TE080009–0.

The applicant requests authorization to take (harass, conduct research using non-lethal aversion techniques) the endangered brown pelican, *Pelecanus occidentalis*, at Sea Chick's facility in Jackson County, Mississippi, for the purpose of reducing fish predation at a commercial fish farming operation.

Dated: November 24, 2003.

J. Mitch King,

Deputy Regional Director.

[FR Doc. 03–30586 Filed 12–9–03; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Hanford Reach National Monument Federal Advisory Committee Meetings

AGENCY: Fish and Wildlife Service, Department of the Interior.

ACTION: Notice of Hanford Reach National Monument Federal Planning Advisory Committee meetings.

SUMMARY: The U.S. Fish and Wildlife Service (Service) is announcing three meetings of the Hanford Reach National Monument Federal Planning Advisory Committee (Committee). In these meetings, the Committee will continue its work on making recommendations to the Service and the Department of Energy (DOE) on the preparation of a Comprehensive Conservation Plan and associated Environmental Impact

Statement (CCP/EIS) which will serve as a long-term management plan for the Hanford Reach National Monument. The Committee's recommendations will focus on identifying and reconciling land management issues, while meeting the directives of Presidential Proclamation 7319 establishing the monument.

DATES: The Committee has scheduled the following meetings:

1. Thursday, January 15, 2004, 9:30 a.m. to 4:30 p.m., Richland, Washington.

2. Wednesday, February 25, 2004, 9:30 a.m. to 4:30 p.m., Richland, Washington.

3. Thursday, April 29, 2004, 9:30 a.m. to 4:30 p.m., Richland, Washington.

ADDRESSES: All three meetings will be held at the Washington State University Tri-Cities Consolidated Information Center, 2770 University Drive, Rooms 120 and 120A, Richland, Washington.

Written comments may be submitted to Mr. Greg Hughes, Designated Federal Official for the Hanford Reach National Monument Federal Planning Advisory Committee, Hanford Reach National Monument/Saddle Mountain National Wildlife Refuge, 3250 Port of Benton Blvd., Richland, Washington, 99352; fax (509) 375–0196. Copies of the draft meeting agenda may be obtained from the Designated Federal Official. Comments may be submitted via email to *hanfordreach@fws.gov*. Additional information regarding the monument and the CCP is available on the monument's Internet site at *http://hanfordreach.fws.gov*.

FOR FURTHER INFORMATION CONTACT: For further information concerning the meetings, contact Mr. Greg Hughes, Designated Federal Official, via telephone at (509) 371–1801, or fax at (509) 375–0196.

SUPPLEMENTARY INFORMATION: Committee meetings are open to the public. Verbal comments may be submitted during the course of the meetings, and written comments may be submitted at the close of the meetings, mailed to the monument office address, or submitted via e-mail. Over the next several months, the Committee will receive information from the Planning Team on the Draft CCP/EIS, and present advice to the Service and DOE on draft products for the CCP/EIS. The Committee will also nominate and elect a chair and a vice-chair after new Committee members are appointed.

Dated: November 26, 2003.

David J. Wesley,

Acting Regional Director, U.S. Fish and Wildlife Service, Portland, Oregon.

[FR Doc. 03–30585 Filed 12–9–03; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Office of Federal Acknowledgment; Final Determination Against Federal Acknowledgment of the Snohomish Tribe of Indians

AGENCY: Assistant Secretary for Indian Affairs, Interior.

ACTION: Notice of final determination.

SUMMARY: Pursuant to section 83.10(m), notice is hereby given that the Assistant Secretary—Indian Affairs (AS–IA) declines to acknowledge a group known as the Snohomish Tribe of Indians (STI), c/o Mr. William Matheson, Suite 201, 144 Railroad Avenue, Edmunds, Washington 98020, as an Indian tribe within the meaning of Federal law. This notice is based on a determination that the petitioning group does not satisfy all seven of the criteria set forth in part 83 of title 25 of the Code of Federal Regulations (25 CFR part 83), specifically criteria 83.7(a), (b), (c), and (e), and therefore does not meet the requirements for a government-to-government relationship with the United States.

DATES: This determination is final and will become effective March 9, 2004, pursuant to section 83.10(l)(4), unless a request for reconsideration is filed pursuant to section 83.11.

FOR FURTHER INFORMATION CONTACT: R. Lee Fleming, Director, Office of Federal Acknowledgment, (202) 513–7650.

SUPPLEMENTARY INFORMATION: This notice is published in the exercise of authority delegated by the Secretary of the Interior to the AS–IA by 209 DM 8.

A notice of the proposed finding (PF) to decline to acknowledge the STI was published in the **Federal Register** on April 11, 1983 (48 FR 15540–1).

This final determination (FD) is made following a review of the STI's response to the PF, the public comments on the PF, and the STI's response to the public comments. It reaches conclusions based on a review and analysis of the existing record, incorporating the evidence considered for the PF, and new evidence in the form of documentation and arguments received from the petitioner and third parties. This notice is based on a determination that the group does not satisfy all seven mandatory criteria for acknowledgment at sections 83.7 (a)–(g).

Criterion 83.7(a): Criterion 83.7(a) requires that the petitioner be identified as an American Indian entity on a substantially continuous basis since 1900. The petitioner has not demonstrated that it meets the requirements before 1950. The petitioner claims that its mostly off-reservation ancestors were part of the historical Snohomish tribe primarily based at the Tulalip Reservation and remained so until 1935, when the historical Snohomish tribe and other tribes at this reservation reorganized as the Tulalip Tribes of the Tulalip Reservation under the Indian Reorganization Act (IRA). Available evidence, however, shows that the petitioner's ancestors were not part of the historical Snohomish tribe. Thus, identifications of the historical Snohomish tribe on the Tulalip Reservation before 1935 did not constitute identifications for the petitioner. In addition, there was no identification of an off-reservation group of STI ancestors between 1900 and 1935.

References to a claims organization called the "Snohomish Tribe of Indians," which included a few of the STI's off-reservation ancestors, occurred in the available evidence only in 1917. The organization was referred to as a Snohomish Indian entity only by a few of its members and a lawyer hired as its spokesperson, which is not evidence within the meaning of 83.7(a). External observers did not identify this group as an American Indian entity. Some of the petitioner's off-reservation ancestors were part of another claims organization called the "Snohomish Tribe of Indians" that existed from 1926 to 1935. This organization's membership included reservation Snohomish, off-reservation ancestors of the petitioning group, and other non-reservation Snohomish descendants. External observers identified this group mainly in its capacity as a claims organization that represented individuals with Indian ancestry. Thus identifications of the 1926 Snohomish claims organization did not constitute identifications of a predecessor group of the petitioner. The 1926 Snohomish claims organization ceased to exist in 1935.

There are no available identifications as an entity of a separate group of the petitioner's ancestors from 1935 to 1949, when the petitioner claims such an entity existed following the reorganization of the Tulalip Tribes of the Tulalip Reservation under the IRA. The evidence shows that the petitioner has not been identified as an American Indian entity from 1900 to 1949 (49 years) and has been identified as an American Indian entity only since 1950, when it originally formed to pursue claims before the Indian Claims Commission (ICC). Therefore, the petitioner does not meet the requirements of criterion 83.7(a).

Criterion 83.7(b): The petitioner has not demonstrated that it meets the requirements of criterion 83.7(b), which requires that a predominant portion of the petitioning group comprises a distinct community and has existed as a community from first sustained contact with non-Indians until the present. In its response to the PF, the petitioner submitted documents pertaining to activities from 1855 until 1999. The newly-submitted documents demonstrated some additional informal social relationships among the petitioner's ancestors on the Quimper Peninsula in Washington State, as well as some additional interaction between some STI ancestors and non-STI Indian households in the Sultan, Washington, area in the late 19th century. However, the evidence submitted by the petitioner, in conjunction with the other evidence in the record, does not demonstrate community as defined under criterion 83.7(b) at any time from first sustained contact with non-Indians to the present.

The petitioner's members largely descend from a number of mid- and late-19th century marriages between Indian women and non-Indian men. Few subsequent marriages have occurred either among members of STI or between members of STI and other groups with Indian ancestry, and thus the group lacks the kinship ties that such marriages create.

The petitioner has not demonstrated that a significant number of its ancestors maintained relationships with the historical Snohomish tribe located on the Tulalip Reservation, or with other Snohomish descendants living off the Tulalip Reservation prior to the formation of the 1926 Snohomish claims organization. This claims organization also included non-Snohomish Indian descendants who are ancestors of many of the current petitioner's members.

Interviews and affidavits submitted by the petitioner provide no evidence for community among the petitioner's members from 1935 to 1999. Interviews conducted by the Department in 2003 indicate that most current members do not regularly interact with each other outside of events sponsored by the formal STI organization. The evidence does not demonstrate that the petitioner has existed as a community historically or presently. Therefore, the petitioner has not met criterion 83.7(b).

Criterion 83.7(c): Criterion 83.7(c) requires that the petitioner has maintained political influence or authority over its members as an autonomous entity from first sustained contact with non-Indians to the present. A review of the available evidence does not demonstrate that the petitioner has met the requirements of this criterion at any time. The petitioner claims that its off-reservation ancestors were part of the historical Snohomish tribe until 1935, and that reservation and off-reservation Snohomish leaders worked with each other until that year. The available evidence does not show that such political cooperation took place between the petitioner's off-reservation ancestors and the reservation Snohomish before 1926. In addition, the evidence does not demonstrate any separate political leadership, formal or informal, existed for any separate off-reservation group of the petitioner's ancestors before 1917. Some of the petitioner's ancestors were part of a 1917 claims organization called the "Snohomish Tribe of Indians," which was described in the available evidence for that year only and had no connection to the reservation Snohomish. The available evidence does not demonstrate that this 1917 organization exercised political leadership or authority over petitioner's ancestors.

Many of the petitioner's ancestors also were part of the 1926 Snohomish claims organization, which included both reservation and non-reservation Snohomish, including some of the STI ancestors. This organization had few functions beyond seeking claims for Indians of Snohomish descent, and did not represent a formalization of the tribal political structure for the historical Snohomish tribe. During the time the 1926 Snohomish claims group existed, the reservation Snohomish continued to have their own political organization and authority. There is no available evidence that this 1926 Snohomish claims organization exerted any political influence over an actual off-reservation entity of the petitioner's ancestors. The 1926 Snohomish claims organization ceased to appear in the available evidence in 1935, after the group lost its claims suit. Therefore, the available evidence does not demonstrate that the petitioner has met the requirements of 83.7(c) from first sustained contact with non-Indians to 1935.

There is no evidence in the record to demonstrate that the 1926 Snohomish claims organization continued after 1935. From 1935 until 1950, there is no available evidence to demonstrate that the petitioner maintained any type of political organization, formal or informal. In 1950, the petitioner formed the "Snohomish Tribe of Indians" in order to pursue claims before the ICC. There is no available evidence to support the petitioner's contention that the 1950 organization was a continuance of the 1926 Snohomish claims organization. Unlike the earlier organization, the 1950 organization was composed almost entirely of off-reservation STI ancestors. The group's leadership concentrated their energy on the claims lawsuit, with some additional discussion and concern over hunting and fishing rights. The group's leadership also joined some "intertribal" organizations. The group continued to pursue the claims issue, which was eventually settled in the late 1960's. The leadership pursued obtaining land for a reservation in 1970, and filed a petition for Federal acknowledgment in 1975. Between 1983 and 2003, the group's leaders have continued to pursue Federal acknowledgment and appear to have become somewhat more active in advocating on behalf of some members. However, the evidence presented by the petitioner has not demonstrated that the leadership maintained a bilateral relationship with the majority of the group, or that most of the members were involved in or knowledgeable about the group's political processes. The evidence does not demonstrate that the actions taken by the leadership were of importance to the majority of the group, The available evidence does not demonstrate that the petitioner maintained political authority or influence over its members since its formation in 1950. Therefore, the petitioner does not meet the requirements of criterion 83.7(c).

Criterion 83.7(d): The petitioner's 1978 constitution and by-laws and 1978 enrollment ordinance were found sufficient to meet the requirements of 83.7(d) in the PF. The Department obtained a copy of the petitioner's governing documents amended and certified on September 18, 1994, which describe its membership criteria and current governing procedures. Because the petitioner has a constitution and an enrollment ordinance, certified by its governing body, that describe its membership criteria and the procedures through which it governs its affairs and its members, the petitioner meets the requirements of criterion 83.7(d).

Criterion 83.7(e): The PF found that the STI did not meet criterion 83.7(e)(1) because a significant percentage of STI

members could not demonstrate Snohomish ancestry. Only 59 percent of STI's 836 members, descending from about 38 or 39 different family lines at the time of the PF, had documented descent from the historical Snohomish tribe.

The PF found that the STI provided an official membership list, separately certified by the group's governing body, as required by 83.7(e)(2). For the FD, the petitioner submitted a membership list, dated March 12, 1999, that identified 1,390 members and was virtually identical with the membership list used for the PF except for the addition of new members. The petitioner's governing body certified the updated membership list by resolution as required under criterion 83.7(e)(2). After auditing the petitioner's membership files and correcting the discrepancies in the 1999 membership list, the current adjusted STI membership totaled 1,113.

Based on new information submitted by the petitioner and the Tulalip Tribes of the Tulalip Reservation, or located by the Department, and other evidence in the record, the Department re-evaluated the STI family lines for evidence of descent from the historical Snohomish tribe. Twenty of the STI family lines, identified as descending from the historical Snohomish tribe in the PF, remain unchanged. Two family lines not previously determined to demonstrate Snohomish ancestry now have been sufficiently documented to show descent from the historical Snohomish tribe, and two "new" family lines, originally considered as part of pre-existing STI family lines, also were found to demonstrate Snohomish descent.

Based on the analysis described above, the evidence for this finding shows that 69 percent of the STI membership (763 of 1,113 members) have documented descent from the historical Snohomish tribe. The petitioner has not demonstrated that the remaining 31 percent of its membership (350 of 1,113 members) are of Snohomish descent or are descended from other Indian tribes that had amalgamated with the petitioner's Snohomish ancestors at some point in history to form a separate and distinct entity. The evidence does not demonstrate that the petitioner as a whole descends from the historical Snohomish tribe. Therefore this FD concludes that the petitioner does not meet criterion 83.7(e).

Criterion 83.7(f): This FD affirms the conclusion of the PF that the petitioner is not principally composed of members of another acknowledged North American Indian tribe. Since the PF, the petitioner obtained enrollment statements from most of its members, who declared that they did not have membership in any other federally acknowledged tribe. Examination of the membership lists of federally recognized tribes in the area did not reveal any names of STI members.

Criterion 83.7(g): This FD affirms the conclusion of the PF that neither the petitioner nor its members are the subject of congressional legislation that has expressly terminated or forbidden the Federal relationship.

Under Section 83.10(m), the AS–IA is required to decline to acknowledge that a petitioner is an Indian tribe if it fails to satisfy any one of the criteria in Section 83.7. The petitioner did not submit evidence sufficient to meet criteria 83.7(a), (b), (c), and (e); and, therefore, does not satisfy the requirements for acknowledgment.

This determination is final and will become effective 90 days from publication of this notice, unless a request for reconsideration is filed pursuant to section 83.11. The petitioner or any interested party may file a request for reconsideration of this determination with the Interior Board of Indian Appeals (section 83.11(a)(1)). The petitioner's or interested party's request must be received no later than March 9, 2004 of the AS–IA's determination in the **Federal Register** (section 83.11(a)(2)).

Dated: December 2, 2003.

Aurene M. Martin,

Principal Deputy Assistant Secretary—Indian Affairs.

[FR Doc. 03–30575 Filed 12–9–03; 8:45 am]

BILLING CODE 4310–45–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Indian Gaming

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of an amendment to a tribal-State gaming compact taking effect between the Little Traverse Bay Bands of Odawa Indians and the State of Michigan.

SUMMARY: Under section 11 of the Indian Gaming Regulatory Act of 1988 (IGRA), Public Law 100–497, 25 U.S.C 2710, the Secretary of the Interior shall publish, in the **Federal Register**, notice of the approved tribal-State compacts for the purpose of engaging in Class III gaming activities on Indian lands. The Assistant Secretary—Indian Affairs, Department of the Interior, through her delegated authority, has deemed approved the amendment to the Class III gaming compact between the Little Traverse Bay Bands of Odawa Indians and the State of Michigan. By the terms of IGRA, the amendment is considered approved, but only to the extent that the amendment is consistent with the provisions of IGRA. The amendment authorizes the addition of a second gaming site in addition to the current site in Petoskey, Michigan. It also creates a 10 county geographical exclusivity area. In exchange for the geographical exclusivity, the tribe agrees to pay between 10 and 12 percent of net win from class III electronic games at the tribe's second site, depending on the amount of actual revenues. The payment to the State ceases if the scope of non-Indian gaming is expanded within the State or if a federally recognized tribe opens a class III gaming facility within the 10 county areas. In addition the payment is reduced if a newly recognized tribe opens a class III facility within the 10 county areas.

EFFECTIVE DATE: December 10, 2003.

FOR FURTHER INFORMATION CONTACT: George T. Skibine, Director, Office of Indian Gaming Management, Bureau of Indian Affairs, Washington, DC 20240, (202) 219–4066.

Dated: December 2, 2003.

Aurene M. Martin,

Principal Deputy Assistant Secretary—Indian Affairs.

[FR Doc. 03–30634 Filed 12–9–03; 8:45 am]

BILLING CODE 4310–4N–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT–020–1010–PO]

Notice of Public Meeting, Eastern Montana Resource Advisory Council Meeting

AGENCY: Bureau of Land Management, Interior, Montana, Billings and Miles City Field Offices.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act (FLPMA) and the Federal Advisory Committee Act of 1972 (FACA), the U.S. Department of the Interior, Bureau of Land Management (BLM) Eastern Montana Resource Advisory Council (RAC), will meet as indicated below.

DATES: The meeting will be held January 15, 2004 in Miles City, MT beginning at 8 a.m. When determined, the meeting place will be announced in a news release. The public comment period will begin at approximately 11 a.m. and the meeting will adjourn at approximately 3:30 p.m.

FOR FURTHER INFORMATION CONTACT: Mark Jacobsen, Public Affairs Specialist, Miles City Field Office, 111 Garryowen Road, Miles City, Montana, 59301. Telephone (406) 233–2831.

SUPPLEMENTARY INFORMATION: The 15-member Council advises the Secretary of the Interior, through the Bureau of Land Management, on a variety of planning and management issues associated with public land management in Montana. At this meeting, topics we plan to discuss include:

Sustaining Working Landscapes Initiative; OHV travel planning update; Recreation 2003 Season Report; Weatherman Draw subcommittee update; Billings shooting area subcommittee update; and CBNG Update and other topics the council may raise.

All meetings are open to the public. The public may present written comments to the Council. Each formal Council meeting will also have time allocated for hearing public comments. Depending on the number of persons wishing to comment and time available, the time for individual oral comments may be limited. Individuals who plan to attend and need special assistance, such as sign language interpretation, tour transportation or other reasonable accommodations, should contact the BLM as provided above.

Dated: December 1, 2003.

David McIlnay,

Field Manager.

[FR Doc. 03–30553 Filed 12–9–03; 8:45 am]

BILLING CODE 4310–$$–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NM–030–1430–ET; NMNM 106227]

Public Land Order No. 7592; Withdrawal of Federal Mineral Estate Within the Red Rock Wildlife Area, New Mexico

AGENCY: Bureau of Land Management.

ACTION: Public land order.

SUMMARY: This order withdraws approximately 712 acres of Federal mineral estate from location and entry under the United States mining laws for 20 years for the Bureau of Land Management to protect desert bighorn sheep habitat within the Red Rock Wildlife Area.

EFFECTIVE DATE: December 10, 2003.

FOR FURTHER INFORMATION CONTACT: Philip Rhinehart, BLM Las Cruces Field Office, 1800 Marquess, Las Cruces, New Mexico 88005, 505–525–4426.

Order

By virtue of the authority vested in the Secretary of the Interior by section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (2000), it is ordered as follows:

1. Subject to valid existing rights, the Federal mineral estate in the following described lands is hereby withdrawn from location and entry under the United States mining laws, 30 U.S.C. Ch. 2 (2000), to protect desert bighorn sheep habitat within the Red Rock Wildlife Area:

New Mexico Principal Meridian

T. 18 S., R. 18 W.,
Sec. 9, lots 1 to 4, inclusive, S½NE¼SW¼, S½NW¼SE¼, and SE¼SE¼;
Sec. 15, NW¼NW¼ and W½SW¼;
Sec. 16, lots 1 to 5, inclusive, and NW¼SE¼;
Sec. 21, NE¼NE¼, W½NE¼, and W½NW¼;
Sec. 22, NW¼NW¼.

The areas described aggregate approximately 712 acres in Grant County.

2. This withdrawal will expire 20 years from the effective date of this order unless, as a result of a review conducted before the expiration date pursuant to Section 204(f) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714(f) (2000), the Secretary determines that the withdrawal shall be extended.

Dated: October 30, 2003.

Rebecca W. Watson,

Assistant Secretary—Land and Minerals Management.

[FR Doc. 03–30622 Filed 12–9–03; 8:45 am]

BILLING CODE 4310–VC–P

DEPARTMENT OF THE INTERIOR

National Park Service

Northeast Region Notice of Availability of Boston Harbor Islands General Management

AGENCY: National Park Service, Interior.

ACTION: Notice of availability.

SUMMARY: The National Park Service (NPS) has prepared a Final General Management Plan and Final Environmental Impact Statement (FEIS) for Boston Harbor Islands National Recreation Area in Massachusetts, both of which are now available from the NPS.

ADDRESSES: The Final General Management Plan and Final Environmental Impact Statement (FEIS) are available on the Internet at *http://www.nps.gov/boha/pphtml/facts.html.* Requests for copies should be sent to George E. Price, Jr., National Park Service Project Manager, Boston Harbor Islands, 408 Atlantic Avenue, Suite 228, Boston, Massachusetts 02110 or *George_Price@nps.gov.*

FOR FURTHER INFORMATION CONTACT: George Price at 617–223–8667.

SUPPLEMENTARY INFORMATION: In collaboration with the Boston Harbor Islands Partnership, the National Park Service prepared a Draft Environmental Impact Statement in accordance with section 102(c) of the National Environmental Policy Act of 1969. NPS received approximately 100 written comments and held 8 formal public meetings during the 60-day public comment period on the Draft EIS. The comments from individuals and public agencies did not require the NPS to add additional alternatives, significantly alter existing alternatives, or make changes to the impact analysis of the effects of any alternative. Therefore, an abbreviated format is used for the responses to comments in the Final EIS, in compliance with the 1978 implementing regulations (40 CFR 1503.4(c)) for National Environmental Policy Act.

Dated: October 14, 2003.

Marie Rust,

Regional Director, Northeast Region, National Park Service.

[FR Doc. 03–30559 Filed 12–9–03; 8:45 am]

BILLING CODE 4310–51–M

DEPARTMENT OF THE INTERIOR

Notice of Intent To Prepare a General Management Plan and Environmental Impact Statement for Gulf Islands National Seashore (FL and MS)

AGENCY: National Park Service.

ACTION: Notice.

SUMMARY: This notice is being published in accordance with 40 CFR 1506.6. Pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969, the National Park Service announces the preparation of an Environmental Impact Statement for the General Management Plan for Gulf Islands National Seashore. The statement will assess potential environmental impacts associated with various types and levels of visitor use and resources management within the National Seashore. This General

Management Plan/Environmental Impact Statement is being prepared to the requirements of the National Parks and Recreation Act of 1978, Public Law 95–625, and in accord with Director's Order Number 2, the planning directive for National Park Service units.

The National Park Service will conduct public scoping meetings in the local area to receive input from interested parties on issues, concerns, and suggestions pertinent to the managaement of Gulf Islands National Seashore. Representatives of the National Park Service will be available to discuss issues, resource concerns, and the planning process at each of the public meetings. Suggestions and ideas for managing the cultural and natural resources and visitor experiences at the park are encouraged.

Anonymous comments will not be considered. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety. However, individual respondents may request that we withhold their names and addresses from the public record, and we will honor such requests to the extent allowed by law. If you wish to withhold your name and/or address, you must state that request prominently at the beginning of your comment. Please note that due to public disclose requirements, the National Park Service, if requeted, may have to make the names and addresses of those who submit written comments public.

DATES: Locations, dates, and times of public scopping meetings will be published in local newspapers and may also be obtained by contacting the park Superintendent. This information will also be published on the General Management Plan Web site (*http://www.nps.gov/guis*) for Gulf Islands National Seashore.

ADDRESSES: Scoping suggestions should be submitted to the following address to ensure adequate consideration by the Service: Superintendent, Guld Islands National Seashore, 1801 Gulf Breeze Parkway, Gulf Breeze, Florida, 32563.

FOR FURTHER INFORMATION CONTACT: Superintendent, Gulf Islands National Seashore, 1801 Gulf Breeze Parkway, Gulf Breeze, Florida, 32563, Telephone: (850) 934–2604, E-mail: *Guis_Superintendent@nps.gov*.

SUPPLEMENTARY INFORMATION: Gulf Islands National Seashore is located on barrier islands, keys, and mainland peninsulas in the Pensacola, Florida area and on a series of Gulf Coast barrier islands between Pascagoula and Gulfport, Mississippi. Gulf Islands National Seashore was authorized by Congress in 1971, to provide preservation of 150 miles of coastline, barrier islands,a nd historic fortifications. The last General Management Plan was completed in 1978 and in the ensuing years must has changed. A revised General Management Plan and Environmental Impact Statement would provide the National Seashore with better guidance and direction in regard to management of natural and cultural resources and providing a quality visitor experience.

The plan will provide direction to correct existing management deficiencies through the establishment of management prescriptions, carrying capacities and appropriate types and levels of development and recreational use for all areas of the park. Resource protection, visitor experiences and community relationships will be improved through completion and implementation of the General Management Plan.

Public documents associated with the planning effort, including all newsletters, will be posted on the internet through the Park's Web site at *http://www.nps.gov/guis*.

The Draft and Final General Manageament Plan and Environmental Impact Statement will be made available to all known interested parties and appropriate agencies. Full public participation by federal, state, and local agencies as well as other concerned organizations and private citizens is invited throughout the preparation process of this document.

The responsible official for this Environmental Impact Statement is Patricia A. Hooks, Acting Regional Director, Southeast Region, National Park Service, 100 Alabama Street SW., 1924 Building, Atlanta, Georgia 30303.

Dated: November 7, 2003.

Patricia A. Hooks,

Acting Regional Director, Southeast Region.

[FR Doc. 03–30561 Filed 12–9–03; 8:45 am]

BILLING CODE 4310–66–M

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Availability of Morristown National Park General Management Plan and Environmental Impact Statement

AGENCY: National Park Service, Interior.

ACTION: Notice of availability.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, the National Park Service announces the availability of the Final General Management Plan and Environmental Impact Statement (GMP/EIS) for Morristown National Historical Park, New Jersey, that proposes a long-term approach to managing the park. Three management alternatives are presented that are consistent with the park's mission, NPS policy, and other laws and regulations. The alternatives incorporate various management prescriptions and zones to ensure that the park's resources are preserved, and that the public can enjoy the park. The environmental consequences that can be anticipated from implementing the various alternatives are documented. Impact topics include cultural and natural resources, visitor experience, park operations, the socioeconomic environment, impairment of resources, and sustainability. Alternative C was identified as the preferred alternative.

The Draft GMP/EIS was available for public review from March 7, 2003 to May 9, 2003. Copies of the comment letters and the National Park Service's responses to those comments are included in the final document. Draft text and graphics were refined and clarified where necessary, and respond to the public comments. Alternative C has been identified as the proposed action in the Final document. The Final GMP/EIS will be available to the public for 30 days, after which, a Record of Decision (ROD) will be signed indicating which alternative has been selected as the proposed plan, and authorizing the National Park Service to implement the plan.

SUPPLEMENTARY INFORMATION: To request a copy of the Final GMP/EIS please contact the National Park Service, Park Planning and Special Studies at the address above. Copies of the Final GMP/EIS will also be available for review at the following locations:

- Morristown National Historical Park headquarters, 30 Washington Place, Morristown, New Jersey
- Morris County Library, 30 E. Hanover Avenue, Whippany, New Jersey
- The Joint Free Public Library of Morristown and Morris Township, 1 Miller Road, Morristown, New Jersey
- Mendham Borough Library, 10 Hilltop Road, Mendham, New Jersey
- Bernards Township Library, 32 S. Maple Avenue, Basking Ridge, New Jersey
- Bernardsville Public Library, 1 Anderson Hill Road, Bernardsville, New Jersey

- Somerset County Library, 1 Vogt Drive, Bridgewater, New Jersey

Dated: October 8, 2003.

Robert W. McIntosh,

Associate Regional Director, Northeast Region.

[FR Doc. 03–30560 Filed 12–9–03; 8:45 am]

BILLING CODE 4310–70–M

DEPARTMENT OF THE INTERIOR

National Park Service

Environmental Assessment for the Yellow Barn/Chautauqua Tower Rehabilitation

AGENCY: National Park Service, Interior.

ACTION: Availability of the Environmental Assessment for the Yellow Barn/Chautauqua Tower Rehabilitation, Montgomery County, Maryland.

SUMMARY: Pursuant to Council on Environmental Quality regulations and National Park Service (NPS) policy, the NPS announces the availability of an Environmental Assessment (EA) for the rehabilitation/reconstruction of the Yellow Barn and Chautauqua Tower at Glen Echo Park, a unit of the George Washington Memorial Parkway. Glen Echo Park is the site of a former amusement park that operated from the late 1890's to 1968. The park is currently operated under a Cooperative Agreement between Montgomery County and the NPS. The buildings provide the Glen Echo Park Partnership for Arts and Culture with administrative space, classrooms, and artists studios. the Chautauqua Tower was constructed in 1891 and the Yellow Barn in 1914 and both buildings are listed on the National Register of Historic Places as contributing elements of the Glen Echo Park Historic District. The Electrical/Mechanical/Plumbing systems of both buildings have reached the end of their design life. Both buildings suffer from numerous structural defects which adversely affect the availability of education and program space. Significant portions of both buildings cannot currently be used due to structural instability or lack of appropriate egress. The EA examines several alternatives for the rehabilitation/reconstruction of the buildings. The subject project is designed to provide safe, accessible classroom and studio space to park users, while maintaining the character of the Glen Echo Park Historic District. The NPS is soliciting comments on this EA. These comments will be considered in evaluating it and making decisions pursuant to the National Environmental Policy Act.

DATES: The EA will remain available for public comment until January 9, 2003. Written comments should be received no later than this date.

ADDRESSES: Comments on this EA should be submitted in writing to: Ms. Audrey F. Calhoun, Superintendent, George Washington Memorial Parkway, Turkey Run Park, McLean, Virginia 22101. The EA will be available for public inspection Monday through Friday, 8 a.m. through 4 p.m. at the GWMP Headquarters, Turkey Run Park, McLean, Virginia; and at the following libraries: Little Falls Library, 5501 Massachusetts Avenue, Bethesda, Maryland, Potomac Library, 10101 Glenolden Drive, Potomac, Maryland, and Bethesda Library, 7400 Arlington Road, Bethesda, Maryland.

SUPPLEMENTARY INFORMATION: An Environmental Impact Statement (EIS) analyzed and selected a Management Plan for Glen Echo Park in February 2001. This Management Plan aims to balance natural/cultural resource protection and visitor use. Pursuant to the EIS, the *stabilization and rehabilitation* of Glen Echo Park structures will proceed in accordance with the recommendations in the *Cost Estimating Criteria for Stabilization & Rehabilitation of Historic Glen Echo Park* (Vitetta Group, 1998) and the subsequent *Glen Echo Park Stabilization and Rehabilitation Plan* (NPS, Montgomery County, State of Maryland, 1999). Rehabilitation projects have already been completed on the Spanish Ballroom and the North Arcade, two additional contributing elements to the Glen Echo Historic District as part of the Glen Echo Park Rehabilitation Project, pursuant to cooperative agreement between the State of Maryland, Montgomery County, and the NPS. Work on this project began in 1999 and is scheduled to finish in 2005.

All interested individuals, agencies, and organizations are urged to provide comments on the EA. The NPS, in making a final decision regarding this matter, will consider all comments received by the closing date.

FOR FURTHER INFORMATION CONTACT: Park Ranger Jeffrey Pinkard (703) 289–2516.

Audrey F. Calhoun,

Superintendent, George Washington Memorial Parkway.

[FR Doc. 03–30558 Filed 12–9–03; 8:45 am]

BILLING CODE 4310–DC–M

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Intent To Prepare a General Management Plan and Environmental Impact Statement.

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, the National Park Service announces its intent to prepare a General Management Plan and Environmental Impact Statement (GMP/EIS) for the Flight 93 National Memorial, Pennsylvania. Prepared by planners at the Flight 93 National Memorial, with assistance from the NPS Northeast Region, the Flight 93 Advisory Commission, the Flight 93 Memorial Task Force, the Families of Flight 93, Inc., advisors, and consultants, the GMP/EIS will propose a long-term approach to managing the Flight 93 National Memorial. Consistent with the memorial's mission, NPS policy, and other laws and regulations, alternatives will be developed to guide the management of the memorial over the next 15 to 20 years. The alternatives will incorporate various zoning, design, and management prescriptions to ensure resource preservation and public enjoyment of the memorial. The environmental consequences that could result from implementing the various alternatives will be evaluated in the plan. Impact topics will include cultural and natural resources, visitor experience, park operations, the socioeconomic environment, impairment, and sustainability. The public will be invited to express concerns about the management and design of the memorial early in the process through public meetings and other media; and will have an opportunity to review and comment on a draft GMP/EIS. Following public review processes outlined under NEPA, the final plan will become official, authorizing implementation of a preferred alternative. The target date for the Record of Decision is September 2005.

Scoping: The National Park Service issued a project scoping newsletter on September 11, 2003 to solicit comments from interested parties; to identify known resources and issues of special concern; and to offer recommendations for the design, construction, and long-term management of the Flight 93 National Memorial. The newsletter and comment form may be obtained at *http://www.flight93memorialproject.org* or by

contacting the project manager. An agency scoping meeting is scheduled for December 15, 2003 from 10 a.m.–12 p.m. at the National Park Service project office, 109 West Main Street, Suite 104, Somerset, PA 15501.

Persons interested in submitting written comments may do so via mail, hand-delivery, facsimile or e-mail to Jeffrey P. Reinbold, Flight 93 NM Project Manager, at the following address:

Jeffrey P. Reinbold, Project Manager, National Park Service, 109 West Main Street, Suite 104, Somerset, PA 15501, Facsimile: (814) 443–2180, E-Mail: jeff_reinbold@nps.gov.

DATES: The National Park Service will accept scoping comments from the public until January 9, 2004.

FOR FURTHER INFORMATION CONTACT: Jeffrey P. Reinbold, National Park Service, 109 West Main Street, Suite 104, Somerset, PA 15501; telephone: (814) 443–4557; e-mail: *jeff_reinbold@nps.gov.*

Dated: November 20, 2003.

Joanne M. Hanley,

Superintendent, Flight 93 National Memorial.

[FR Doc. 03–30563 Filed 12–9–03; 8:45 am]

BILLING CODE 4310–25–P

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Chalmette Battlefield Task Force Committee Meeting

AGENCY: National Park Service, Jean Lafitte National Historical Park and Preserve

ACTION: Notice of Task Force meeting.

SUMMARY: Notice is hereby given in accordance with the Federal Advisory Committee Act, 5 U.S.C. App.1, section 10(a)(2), that a meeting of the Chalmette Battlefield Task Force Committee will be held at 3 p.m. at the following location and date:

DATES: Tuesday December 16, 2003.

ADDRESSES: The Council Chambers Meeting Room at the St. Bernard Parish Government Complex, 8245 W. Judge Perez Drive in Chalmette, LA 70042.

FOR FURTHER INFORMATION, CONTACT: Ms. Geraldine Smith, Superintendent, Jean Lafitte National Historical Park and Preserve, 419 Decatur Street, New Orleans, LA 70130, (504) 589–3882, extension 137 or 108.

SUPPLEMENTARY INFORMATION: The purpose of the Chalmette Battlefield Task Force Committee is to advise the Secretary of the Interior on suggested improvements at the Chalmette Battlefield site within Jean Lafitte National Historical Park and Preserve. The members of the Task Force are as follows: Ms. Elizabeth McDougall, Ms. Faith Moran, Mr. Anthony A. Fernandez, Jr., Mr. Drew Heaphy, Mr. Alvin W. Guillot, Mrs. George W. Davis, Mr. Eric Cager, Mr. Paul V. Perez, Captain Bonnie Pepper Cook, Mr. Michael L. Fraering, Colonel John F. Pugh, Jr., and Geraldine Smith.

The matters to be discussed at this meeting will include a workshop on the mission, purpose, and significance of the Task Force and a planning session for the pending open house meetings. This meeting will be open to the public. However, facilities and space for accommodating members of the public are limited. Any member of the public may file with the committee a written statement concerning the matters to be discussed. Written statements may also be submitted to the superintendent at the address above. Minutes of the meeting will be available at park headquarters for public inspection at 419 Decatur Street, New Orleans, Louisiana for public inspection approximately 4 weeks after the meeting and on the park Web site at *http://www.nps.gov/jela.htm.*

Dated: November 7, 2003.

Patricia A. Hooks,

Acting Regional Director, Southeast Region.

[FR Doc. 03–30562 Filed 12–9–03; 8:45 am]

BILLING CODE 4310–66–P

DEPARTMENT OF THE INTERIOR

National Park Service

Great Sand Dunes National Park Advisory Council Meeting

AGENCY: National Park Service, DOI.

ACTION: Announcement of meeting.

SUMMARY: Great Sand Dunes National Monument and Preserve announces a meeting of the Great Sand Dunes National Park Advisory Council, which was established to provide guidance to the Secretary on long-term planning for Great Sand Dunes National Monument and Preserve.

DATES: The meeting date is:

1. January 12–13, 2004, 9 a.m.–5 p.m., Blanca, CO.

ADDRESSES: The meeting location is:

1. Blanca, Colorado—Blanca Ft. Garland Community Center, 17591 Hwy 160, Blanca, CO 81123.

FOR FURTHER INFORMATION CONTACT: Steve Chaney, (719) 378–6311.

SUPPLEMENTARY INFORMATION: At the fifth meeting of the Great Sand Dunes National Park Advisory Council, the council will learn about resources and opportunity analysis, which involves mapping significant resource areas and includes review of existing information about natural and cultural resources and visitor opportunities.

Hal Grovert,

Acting Regional Director.

[FR Doc. 03–30564 Filed 12–9–03; 8:45 am]

BILLING CODE 4310–66–P

DEPARTMENT OF THE INTERIOR

National Park Service

National Capital Memorial Commission Notice of Public Meeting

AGENCY: National Capital Memorial Commission, National Park Service, Department of the Interior.

ACTION: Notice of meeting.

SUMMARY: Notice is hereby given that a meeting of the National Capital Memorial Commission (the Commission) will be held on Thursday, December 11, 2003, at 1 p.m., at the National Building Museum, Room 312, 5th and F Streets, NW., Washington, DC.

The purpose of the meeting will be to discuss currently authorized and proposed memorials in the District of Columbia and its environs. In addition to discussing general matters and conducting routine business, the Commission will review the status of legislative proposals introduced in the 108th Congress to establish memorials in the District of Columbia and its environs.

(1) Activation of the provisions of the Commemorative Works Clarification Act of 2003.

(2) Legislation currently under consideration by the 108th Congress.

(3) Site Selection Study, Victims of Communism Memorial.

Information Items

(1) Status reports on Congressional actions taken on bills previously reviewed by the Commission.

Other Business

(1) General matters and routine business.

The meeting will be open to the public. Any person may file with the Commission written statement concerning the matters to be discussed. Persons who wish to file a written statement or testify at the meeting or who want further information concerning the meeting may contact Ms. Nancy Young, Secretary to the Commission, at (202) 619–7097.

DATES: December 11, 2003, at 1 p.m.

ADDRESSES: Room 312, National Building Museum, 5th and F Streets, NW., Washington, DC 20001.

FOR FURTHER INFORMATION CONTACT: Ms. Nancy Young, Secretary to the Commission, (202) 619–7097.

SUPPLEMENTARY INFORMATION: The Commission was established by Public Law 99–652, the Commemorative Works Act (40 U.S.C. Chapter 89 *et seq.*), to advise the Secretary of the Interior (the Secretary) and the Administrator, General Services Administration, (the Administrator) on policy and procedures for establishment of (and proposals to establish) commemorative works in the District of Columbia and its environs, as well as such other matters as it may deem appropriate concerning commemorative works.

The Commission examines each memorial proposal for conformance to the Commemorative Works Act, and makes recommendations to the Secretary and the Administrator and to Members and Committees of Congress. The Commission also serves as a source of information for persons seeking to establish memorial in Washington, DC, and its environs.

The members of the Commission are as follows:

Director, National Park Service.
Chairman, National Capital Planning Commission.
Architect of the Capitol.
Chairman, American Battle Monuments Commission.
Chairman, Commission of Fine Arts.
Mayor of the District of Columbia.
Administrator, General Services Administration.
Secretary of Defense.

Dated: November 17, 2003.

Joseph M. Lawler,

Regional Director, National Capital Region.

[FR Doc. 03–30557 Filed 12–9–03; 8:45 am]

BILLING CODE 4310–71–M

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Intent to Repatriate a Cultural Item: U.S. Department of Justice, Federal Bureau of Investigation, San Francisco, CA

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 43 CFR 10.8 (f), of the intent to repatriate a cultural item in the possession of the U.S. Department of Justice, Federal Bureau of Investigation, San Francisco, CA, that meets the definition of sacred object under 25 U.S.C. 3001.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003 (d)(3). The determinations within this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the cultural item. The National Park Service is not responsible for the determinations within this notice.

The cultural item is a braided scalp with a decorative covering of red wool and contrasting blue wool cross.

In 1876, Corporal William O. Taylor acquired the scalp under unknown circumstances while serving as a member of General George A. Custer's Sioux Expedition. The scalp was subsequently acquired by Mr. Alexander Acevedo. On April 4, 1995, Butterfield and Butterfield Auction House, San Francisco, CA, held a sale of items under Mr. Acevedo's control. The estimated sale price of the scalp was listed in the auction catalog as between $3,000 and $4,000. On May 5, 1995, the scalp was sold to Ripley's Entertainment, Orlando, FL, for $7,150.

Accompanying the scalp in the auction catalog was a pipe tomahawk, also acquired by Corporal Taylor in 1876. A faded label attached to the pipe tomahawk reads, "A Black Hills Indian Tomahawk and Pipe/Captured by ... he was ... killed ... and scalped the ... 35 years ... August 19, 1876." The auction catalog listed the battle of Slim Buttes as the source of the pipe tomahawk. It is believed that Corporal Taylor acquired the scalp and the pipe tomahawk after the battle of Slim Buttes. The pipe tomahawk is not considered to be subject to repatriation under NAGPRA.

On April 3, 1996, at the request of the United States Attorney's Office for the Northern District of California, the Federal Bureau of Investigation, San Francisco, CA, began an investigation into the trafficking of Native American scalps by Butterfield and Butterfield Auction House. On July 19, 1996, Ripley's Entertainment released custody of the scalp to Federal Bureau of Investigation agents. The scalp was sent to the Federal Bureau of Investigation, Laboratory Division, Hair and Fiber Section, Washington, DC, for examination. Based on morphological characteristics, the Federal Bureau of Investigation determined that the hair on the scalp exhibits mongoloid characteristics, a classification that encompasses Native American hair.

Historic records indicate that the battle of Slim Buttes occurred on September 9–10, 1876, when forces led by Captain Anson Mills encountered a village of about 37 Minniconjou lodges. The battle was soon joined by warriors from nearby Sans Arc, Brule, and Cheyenne camps. Lakota oral tradition indicates that all of the tribal participants in the battle of Slim Buttes belonged to the Mnikoju (Minniconjou) and Itazipco (Sans Arc) bands. Descendants of the Mnikoju (Minniconjou) and Itazipco (Sans Arc) bands that participated in the battle of Slim Buttes are included in the present-day Cheyenne River Sioux Tribe of the Cheyenne River Reservation, South Dakota.

In 1994, representatives of Cheyenne River Sioux Tribe of the Cheyenne River Reservation, South Dakota; Flandreau Santee Sioux Tribe of South Dakota; Oglala Sioux Tribe of the Pine Ridge Reservation, South Dakota; Rosebud Sioux Tribe of the Rosebud Indian Reservation, South Dakota; and Santee Sioux Tribe of the Santee Reservation of Nebraska signed a memorandum of agreement that authorized representatives of any of the signatory tribes to speak on behalf of all five Indian tribes.

In 2002, a representative of the signatory tribes reviewed the information pertaining to the scalp and concluded that the scalp was a war trophy taken by one of the Mnikoju (Minniconjou) or Itazipco (Sans Arc) warriors from one of their traditional enemies, possibly the Arikara, Pawnee, or Crow. The representative of the signatory tribes identified the scalp as innately sacred. Among the Lakota, scalping is a way of showing contempt for an enemy's prowess in war. The Iwa'kiciwacipi, or scalp dance, was performed to punish the individual from whom the scalp was taken. Another ceremony must be performed after a period of time in order to release the captured spirit of the individual from whom the scalp was taken. The representative of the signatory tribes has requested that the scalp be returned in order to perform the spirit-releasing ceremony. The representative of the signatory tribes also indicated that the signatory tribes do not intend to preclude repatriation of the scalp to any other federally recognized Indian tribe. The signatory tribes will immediately withdraw their request at any time that any federally recognized Indian tribe submits a competing claim to repatriate the scalp.

Officials of the Federal Bureau of Investigation, San Francisco, CA, have determined that, pursuant to 25 U.S.C.

3001 (9–10), the human remains described above represent the physical remains of one individual of Native American ancestry. Officials of the Federal Bureau of Investigation, San Francisco, CA, also have determined that, pursuant to 25 U.S.C. 3001 (2), there is insufficient evidence to reasonably trace a shared group identity between the human remains and an Indian tribe. Officials of the Federal Bureau of Investigation, San Francisco, CA, also have determined that, pursuant to 25 U.S.C. 3001 (3)(C), the cultural item is a specific ceremonial object needed by traditional Native American religious leaders for the practice of traditional Native American religions by their present-day adherents. Finally, officials of the Federal Bureau of Investigation, San Francisco, CA, have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity that can be reasonably traced between the sacred object and the Cheyenne River Sioux Tribe of the Cheyenne River Reservation, South Dakota; Flandreau Santee Sioux Tribe of South Dakota; Lower Sioux Indian Community in the State of Minnesota; Oglala Sioux Tribe of the Pine Ridge Reservation, South Dakota; Rosebud Sioux Tribe of the Rosebud Indian Reservation, South Dakota; and Santee Sioux Tribe of the Santee Reservation of Nebraska.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the sacred object should contact Special Agent Brian J. Guy, Federal Bureau of Investigation, 450 Golden Gate Avenue, San Francisco, CA 94102, telephone (415) 553–7400, before January 9, 2004. Repatriation of the sacred object to the Cheyenne River Sioux Tribe of the Cheyenne River Reservation, South Dakota; Flandreau Santee Sioux Tribe of South Dakota; Lower Sioux Indian Community in the State of Minnesota; Oglala Sioux Tribe of the Pine Ridge Reservation, South Dakota; Rosebud Sioux Tribe of the Rosebud Indian Reservation, South Dakota; and Santee Sioux Tribe of the Santee Reservation of Nebraska may proceed after that date if no additional claimants come forward.

The Federal Bureau of Investigation, San Francisco, CA, is responsible for notifying the Cheyenne River Sioux Tribe of the Cheyenne River Reservation, South Dakota; Crow Tribe of Montana; Flandreau Santee Sioux Tribe of South Dakota; Lower Sioux Indian Community in the State of Minnesota; Oglala Sioux Tribe of the Pine Ridge Reservation, South Dakota; Pawnee Nation of Oklahoma; Rosebud Sioux Tribe of the Rosebud Indian Reservation, South Dakota; Santee Sioux Tribe of the Santee Reservation of Nebraska; Standing Rock Sioux Tribe of North & South Dakota; and Three Affiliated Tribes of the Fort Berthold Reservation, North Dakota that this notice has been published.

Dated: November 5, 2003.

John Robbins,

Assistant Director, Cultural Resources.

[FR Doc. 03–30569 Filed 12–9–03; 8:45 am]

BILLING CODE 4310–50–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Intent to Repatriate Cultural Items: Peabody Museum of Archaeology and Ethnology, Harvard University, Cambridge, MA

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 43 CFR 10.8 (f), of the intent to repatriate cultural items in the possession of the Peabody Museum of Archaeology and Ethnology, Harvard University, Cambridge, MA, that meet the definition of unassociated funerary objects under 25 U.S.C. 3001.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003 (d)(3). The determinations within this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the cultural items. The National Park Service is not responsible for the determinations within this notice.

The two cultural items are one bag of bark fragments and one box of brass kettle fragments.

The cultural items were collected from West Warwick, Kent County, RI, by Dave Straight in 1957 and were donated to the Peabody Museum of Archaeology and Ethnology by the Massachusetts Archaeological Society through Maurice Robbins in the same year. Museum documentation indicates that the cultural items were recovered with human remains, which are not in the possession of the Peabody Museum of Archaeology and Ethnology.

The interment from which the cultural items derive most likely dates to the postcontact period or later (post-A.D. 1500). Copper and brass kettles were European trade items, and therefore support a postcontact temporal context for the burial. In addition, the cultural items were described in museum documentation as "Narragansett," and such a specific attribution suggests that the burial dates to the Historic period. The burial context indicates that the burial was of a Native American. Oral tradition and historical documentation indicate that West Warwick, RI, is within the aboriginal and historic homeland of the Narragansett people during the Contact period. The present-day tribe representing the Narragansett people is the Narragansett Indian Tribe of Rhode Island.

Officials of the Peabody Museum of Archaeology and Ethnology have determined that, pursuant to 25 U.S.C. 3001 (3)(B), the cultural items are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony and are believed, by a preponderance of the evidence, to have been removed from a specific burial site of a Native American individual. Officials of the Peabody Museum of Archaeology and Ethnology also have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity that can be reasonably traced between the unassociated funerary objects and the Narragansett Indian Tribe of Rhode Island.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the unassociated funerary objects should contact Patricia Capone, Repatriation Coordinator, Peabody Museum of Archaeology and Ethnology, Harvard University, 11 Divinity Avenue, Cambridge, MA 02138, telephone (617) 496–3702, before January 9, 2004. Repatriation of the unassociated funerary objects to the Narragansett Indian Tribe of Rhode Island may proceed after that date if no additional claimants come forward.

The Peabody Museum of Archaeology and Ethnology is responsible for notifying the Narragansett Indian Tribe of Rhode Island that this notice has been published.

Dated: October 29, 2003.

John Robbins,

Assistant Director, Cultural Resources.

[FR Doc. 03–30567 Filed 12–9–03; 8:45 am]

BILLING CODE 4310–50–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion: University of Denver Department of Anthropology and Museum of Anthropology, Denver, CO, and U.S. Department of Agriculture, San Juan National Forest, Durango, CO; Correction

AGENCY: National Park Service, Interior.

ACTION: Notice; correction.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains and associated funerary objects in the possession and control of the University of Denver Department of Anthropology and Museum of Anthropology, Denver, CO. The human remains and associated funerary objects were removed from a pithouse on Stollsteimer Mesa, at the junction of the Piedra River and Stollsteimer Creek, Archuleta County, CO.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003 (d)(3). The determinations within this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations within this notice.

This notice corrects which museum or Federal agency has control of the human remains and associated funerary objects per 43 CFR 10.2 (a)(3)(ii). Review of the published and unpublished field records and maps associated with the excavation of the site, and review of the land ownership records of San Juan National Forest, indicate that the site is not located on Federal lands that are administered by San Juan National Forest. Therefore, San Juan National Forest does not have control of the human remains and associated funerary objects.

In the **Federal Register** of October 9, 2001, FR Doc. 01–25157, pages 51474 to 51475, the title of the notice and paragraph numbers 1, 5, and 7 are corrected by deleting all reference to U.S. Department of Agriculture, San Juan National Forest, Durango, CO, San Juan National Forest, and to San Juan National Forest, Forest Supervisor.

The title is corrected by substituting the following title: "Notice of Inventory Completion: University of Denver Department of Anthropology and Museum of Anthropology, Denver, CO."

Paragraph 1 is corrected by substituting the following paragraph:

Notice is here given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains and associated funerary objects in the possession of the University of Denver Department of Anthropology and Museum of Anthropology, Denver, CO. The human remains and associated funerary objects were removed from a pithouse on Stollsteimer Mesa, at the junction of the Piedra River and Stollsteimer Creek, Archuleta County, CO.

Paragraph 5 is corrected by substituting the following paragraph:

The human remains were found in the jar, which had been placed in a cist in a pithouse on Stollsteimer Mesa, at the junction of the Piedra River and Stollsteimer Creek. The pithouse was on the western side of the mesa, above the river. The site is near the Chimney Rock site (5AA245) which dates to the Pueblo II period (A.D. 800–1125). The research of Jeancon, Roberts, and recent investigators has firmly established that the ceramic/architectural sites in the Piedra River drainage in the vicinity of Chimney Rock are Ancestral Puebloan (Anasazi) in nature and are generally contemporaneous with the occupations at Chimney Rock.

Paragraph 7 is corrected by substituting the following paragraph:

Officials of the University of Denver Department of Anthropology and Museum of Anthropology have determined that, pursuant to 25 U.S.C. 3001 (9–10), the human remains described above represent the physical remains of a minimum of two individuals of Native American ancestry. Officials of the University of Denver Department of Anthropology and Museum of Anthropology also have determined that, pursuant to 25 U.S.C. 3001 (3) (A), the nine objects described above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Lastly, officials of the University of Denver Department of Anthropology and Museum of Anthropology have determined that, pursuant to 25 U.S.C. 3001 (2) there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and associated funerary objects and the Hopi Tribe of Arizona; Jicarilla Apache Nation, New Mexico; Navajo Nation, Arizona, New Mexico & Utah; Pueblo of Acoma, New Mexico; Pueblo of Cochiti, New Mexico; Pueblo of Isleta, New Mexico; Pueblo of Jemez, New Mexico; Pueblo of Laguna, New Mexico; Pueblo of Nambe, New Mexico; Pueblo of Picuris, New Mexico; Pueblo of Pojoaque, New Mexico; Pueblo of San Felipe, New Mexico; Pueblo of San Ildefonso, New Mexico; Pueblo of San Juan, New Mexico; Pueblo of Sandia, New Mexico; Pueblo of Santa Ana, New Mexico; Pueblo of Santa Clara, New Mexico; Pueblo of Santo Domingo, New Mexico; Pueblo of Taos, New Mexico; Pueblo of Tesuque, New Mexico; Pueblo of Zia, New Mexico; Skull Valley Band of Goshute Indians of Utah; Southern Ute Indian Tribe of the Southern Ute Reservation, Colorado; Ute Indian Tribe of the Uintah & Ouray Reservation, Utah; Ute Mountain Tribe of the Ute Mountain Reservation, Colorado, New Mexico & Utah; Ysleta Del Sur Pueblo of Texas; and Zuni Tribe of the Zuni Reservation, New Mexico.

Representatives of any Indian tribe that wishes to comment on the information published in this notice should contact Dr. Frank E. Wozniak, NAGPRA Coordinator, USDA Forest Service, 333 Broadway Boulevard SE, Albuquerque, NM, telephone (505) 842–3238, e-mail fwozniak@fs.fed.us before January 9, 2004.

The U.S. Department of Agriculture, San Juan National Forest is responsible for notifying the Colorado River Indian Tribes of the Colorado River Indian Reservation, Arizona and California; Hopi Tribe of Arizona; Jicarilla Apache Nation, New Mexico; Navajo Nation, Arizona, New Mexico & Utah; Pueblo of Acoma, New Mexico; Pueblo of Cochiti, New Mexico; Pueblo of Isleta, New Mexico; Pueblo of Jemez, New Mexico; Pueblo of Laguna, New Mexico; Pueblo of Nambe, New Mexico; Pueblo of Picuris, New Mexico; Pueblo of Pojoaque, New Mexico; Pueblo of San Felipe, New Mexico; Pueblo of San Ildefonso, New Mexico; Pueblo of San Juan, New Mexico; Pueblo of Sandia, New Mexico; Pueblo of Santa Ana, New Mexico; Pueblo of Santa Clara, New Mexico; Pueblo of Santo Domingo, New Mexico; Pueblo of Taos, New Mexico; Pueblo of Tesuque, New Mexico; Pueblo of Zia, New Mexico; Skull Valley Band of Goshute Indians of Utah; Southern Ute Indian Tribe of the Southern Ute Reservation, Colorado; Ute Indian Tribe of the Uintah & Ouray Reservation, Utah; Ute Mountain Tribe of the Ute Mountain Reservation, Colorado, New Mexico & Utah; Ysleta Del Sur Pueblo of Texas; and Zuni Tribe of the Zuni Reservation, New Mexico that this notice has been published.

Dated: October 30, 2003.
John Robbins,
Assistant Director, Cultural Resources.
[FR Doc. 03–30568 Filed 12–9–03; 8:45 am]
BILLING CODE 4310–50–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion: University of Idaho, Alfred W. Bowers Laboratory of Anthropology, Moscow, ID; and Washington State University, Museum of Anthropology, Pullman, WA

AGENCY: National Park Service, Interior.
ACTION: Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains and associated funerary objects. The human remains are in the control of the University of Idaho, Alfred W. Bowers Laboratory of Anthropology, Moscow, ID. The associated funerary objects are in the possession of the Washington State University, Museum of Anthropology, Pullman, WA. The human remains and associated funerary objects were removed from the Asotin cemetery site (45–AS–9) in Asotin County, WA.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations within this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations within this notice.

A detailed assessment of the human remains was made by the professional staffs of the University of Idaho, Alfred W. Bowers Laboratory of Anthropology in consultation with representatives of the Nez Perce Tribe of Idaho. A detailed assessment of the associated funerary objects was made by the professional staff of Washington State University, Museum of Anthropology in consultation with representatives of the Confederated Tribes of the Colville Reservation of Washington and Nez Perce Tribe of Idaho.

In 1956, human remains representing a minimum of 25 individuals were removed during archeological excavations at the Asotin cemetery site (45–AS–9). The Asotin cemetery site is located on private property in Asotin County, WA. The excavations were conducted under the direction of Dr. Richard D. Daughtery. No known individuals were identified. The 921 associated funerary items are 1 lot (0.1 g) of wood fragments; 14 stone flakes; 1 chalcedony geode; 2 projectile points; 1 basalt blade; 1 pestle in 2 pieces; 1 basalt scraper; 19 flat shell beads; 175 whole dentalia shell beads; 1 lot (58.4 g) of dentalia shell bead fragments; 1 lot (3.3 g) of olivella shell fragments, 6 shell pendants; 218 elk tooth beads; 1 lot (62.9 g) of red ochre, 11 coffin nails; 105 brass beads; 1 metal bracelet covered with cotton canvas; 4 brass bracelets; 48 buttons; 2 coiled wire necklaces; 1 brass hook and eye set; 1 brass bead necklace; 1 lot (36.4 g) of hawk bell fragments; 1 brass powder horn cap; 1 powder or snuff can; 1 wire spring-like coil; 1 fragment of an ear or finger ring; 1 leather belt (in pieces) with a small brass buckle; 2 small unidentified metal fragments; 285 glass beads; 1 lot (68.6 g) of very small glass beads; 1 round mirror glass; 1 lot (40.0 g) of beadwork on leather backing; 1 crockery marble; 1 complete necklace of glass, olivella, and metal beads; 1 lot (34.6 g) of leather fragments; 1 lot (50.9 g) of fabric fragments; 1 lot (1.2 g) of ribbon fragments; 1 lot (0.1 g) of cotton string; 1 lot (31.9 g) of elk tooth bead fragments; and 4 hackberry seeds.

The human remains were kept at the Alfred W. Bowers Laboratory of Anthropology until 2000 when they were moved to Nez Perce National Historical Park, Spalding, ID. The Alfred W. Bowers Laboratory of Anthropology has maintained control of the human remains. The National Park Service does not have sufficient legal interest to lawfully treat the human remains as part of its collection.

Burial patterns and artifacts found at the site indicate that the burials removed from the Asotin cemetery site were interred between A.D. 1000 and the mid-19th century. Oral tradition and historical evidence indicate that the cemetery was used by two Nez Perce bands that inhabited the villages of Hasotino and Hesweiwewipu. Descendants of the two bands are known to be members of the Confederated Tribes of the Colville Reservation, Washington and Nez Perce Tribe of Idaho. The Asotin cemetery site is located within the area reserved by the Nez Perce under the Treaty of 1855, but was deleted from tribal lands in the Treaty of 1863. The Indian Claims Commission determined that the area in which the Asotin cemetery site is located was occupied exclusively by the Nez Perce at least since the mid-19th century.

Officials of the University of Idaho, Alfred W. Bowers Laboratory of Anthropology have determined that, pursuant to 25 U.S.C. 3001 (9–10), the human remains described above represent the physical remains of 25 individuals of Native American ancestry. Officials of the Washington State University, Museum of Anthropology have determined that, pursuant to 25 U.S.C. 3001(3)(A), the 921 objects described above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Officials of the University of Idaho, Alfred W. Bowers Laboratory of Anthropology and Washington State University, Museums of Anthropology have determined that, pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and associated funerary objects and the Confederated Tribes and the Colville Reservation, Washington and Nez Perce Tribe of Idaho.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the human remains should contact Leah Evans-Janke, Alfrew W. Bowers Laboratory of Anthropology, University of Idaho, Moscow, ID 83844–1111, telephone (208) 885–3733, before January 9, 2004.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the associated funerary objects should contact Mary Collins, Associate Director, Museum of Anthropology, Washington State University, P.O. Box 62291, Pullman, WA 99164–4910, telephone (509) 335–4314, before January 9, 2004.

Repatriation of the human remains and associated funerary objects to the Confederated Tribes of the Colville Reservation, Washington and Nez Perce Tribe of Idaho may proceed after that date if no additional claimants come forward.

The Museum of Anthropology, Washington State University is responsible for notifying the Confederated Tribes of the Colville Reservation, Washington; Nez Perce Tribe of Idaho; Alfred W. Bowers Laboratory of Anthropology, University of Idaho; and U.S. Department of Interior, National Park Service, Nez Perce National Historical Park that this notice has been published.

Dated: November 7, 2003.
John Robbins,
Assistant Director, Cultural Resources.
[FR Doc. 03–30566 Filed 12–9–03; 8:45 am]
BILLING CODE 4310–50–M

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Intent to Repatriate Cultural Items: Washington State University, Museum of Anthropology, Pullman, WA

AGENCY: National Park Service, Interior.
ACTION: Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 43 CFR 10.8 (f), of the intent to repatriate cultural items in the possession of the Washington State University, Museum of Anthropology, Pullman, WA, that meet the definition of unassociated funerary objects under 25 U.S.C. 3001.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003 (d)(3). The determinations within this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the cultural items. The National Park Service is not responsible for the determinations within this notice.

In 1972, human remains representing a minimum of five individuals were removed from the Asotin cemetery site (45–AS–9), Asotin County, WA, during archeological excavations under the direction of Roderick Sprague of the University of Idaho. The human remains were reburied by the University of Idaho and the Nez Perce Tribe of Idaho shortly after they were excavated. Funerary objects found with the human remains were retained by Dr. Sprague until they were accessioned by the Washington State University, Museum of Anthropology in 1997 and 2000. The 168 unassociated funerary objects are 1 projectile point, 1 stone flake, 1 bear claw, 1 pestle in 2 pieces, 1 lot (0.2 g) of olivella shell bead fragments, 134 dentalia shell beads, 1 lot (2.5 g) of nonhuman bone fragments, 6 whole shell pendants, 11 shell pendant fragments, 1 antler fragment, 1 bone whistle, 1 lot (1.1 g) of bark fragments, 1 lot (324.1 g) of wood fragments, 5 pieces of polished nonhuman bone, 1 lot (18 g) of plant remains, and 1 lot (33.6 g) of matting fragments.

Burial patterns and artifacts found at the site indicate that the burials removed from the Asotin cemetery site originally were interred between A.D. 1000 and the mid–19th century. Oral tradition and historical evidence indicate that the cemetery was used by two Nez Perce bands that inhabited the villages of Hasotino and Hesweiwewipu. Descendants of these two bands are known to be members of the Confederated Tribes of the Colville Reservation, Washington and Nez Perce Tribe of Idaho. The Asotin cemetery site is located within the area reserved by the Nez Perce under the Treaty of 1855, but was deleted from tribal lands in the Treaty of 1863. The Indian Claims Commission determined that the area in which the Asotin cemetery site is located has been occupied exclusively by the Nez Perce at least since the mid–19th century.

Officials of the Washington State University, Museum of Anthropology have determined that, pursuant to 25 U.S.C. 3001 (3)(B), the 168 cultural items described above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of a death rite or ceremony and are believed, by a preponderance of the evidence, to have been removed from a specific burial site of a Native American individual. Officials of the Washington State University, Museum of Anthropology also have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity that can be reasonably traced between the unassociated funerary objects and the Confederated Tribes of the Colville Reservation, Washington and Nez Perce Tribe of Idaho.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the unassociated funerary objects should contact Mary Collins, Associate Director, Museum of Anthropology, Washington State University, P.O. Box 62291, Pullman, WA 99164–4910, telephone (509) 335–4314, before January 9, 2004. Repatriation of the unassociated funerary objects to the Confederated Tribes of the Colville Reservation, Washington and Nez Perce Tribe of Idaho may proceed after that date if no additional claimants come forward.

The Washington State University, Museum of Anthropology is responsible for notifying the Confederated Tribes of the Colville Reservation, Washington and Nez Perce Tribe of Idaho that this notice has been published.

Dated: November 5, 2003.
John Robbins,
Assistant Director, Cultural Resources.
[FR Doc. 03–30565 Filed 12–9–03; 8:45 am]
BILLING CODE 4310–50–S

INTERNATIONAL TRADE COMMISSION

Sunshine Act Meeting

AGENCY: International Trade Commission.
TIME AND DATE: December 15, 2003, at 11 a.m.
PLACE: Room 101, 500 E Street, SW., Washington, DC 20436. Telephone: (202) 205–2000.
STATUS: Open to the public.
MATTERS TO BE CONSIDERED:
1. Agenda for future meetings: None.
2. Minutes.
3. Ratification List.
4. Inv. No. TA–421–4 (Remedy) (Certain Ductile Iron Waterworks Fittings From China)—briefing and vote. (The Commission is currently scheduled to transmit its recommendations on remedy to the President and the United States Trade Representative on or before December 24, 2003.)
5. Outstanding action jackets: None.

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

By order of the Commission:
Issued: December 8, 2003.
Marilyn R. Abbott,
Secretary to the Commission.
[FR Doc. 03–30684 Filed 12–8–03; 10:02 am]
BILLING CODE 7020–02–P

NATIONAL COMMISSION ON LIBRARIES AND INFORMATION SCIENCE

Sunshine Act Meeting

AGENCY: National Commission on Libraries and Information Science (NCLIS).
ACTION: Notice of meetings.

SUMMARY: The National Commission on Libraries and Information Science is holding an open business meeting to discuss Commission programs and administrative matters. Topics will include:
(1) Introductions;
(2) Administrative matters;
(3) History of NCLIS;
(4) Current activities (*e.g.*, Trust and Terror briefing, Information Literacy initiative, *et al.*);

(5) Relationships with other organizations (*e.g.*, Institute of Museum and Library Services, American Library Association);
(6) NCLIS budget;
(7) NCLIS's future direction.

DATE AND TIME: NCLIS Business Meeting—December 15, 2003, 2 p.m. until 5 p.m. December 16, 2003, 9 a.m. until 4:30 p.m. December 17, 2003, 9 a.m. until 12 noon.

ADDRESS: 1110 Vermont Avenue, NW., Suite 820, Washington, DC 20005–3552.

STATUS: Open meeting.

SUPPLEMENTARY INFORMATION: The business meeting is open to the public, subject to space availability. To make special arrangements for physically challenged persons, contact Madeleine McCain, Director of Operations, 1110 Vermont Avenue, NW., Suite 820, Washington, DC 20005, e-mail *mmccain@nclis.gov*, fax (202) 606–9203 or telephone (202) 606–9200.

SUMMARY: The U.S. National Commission on Libraries and Information Science is also holding a closed meeting to review personnel matters. Closing this meeting is in accordance with the exemption provided under title 45, CFR, part 1703.202(a)(6).

DATE AND TIME: NCLIS Closed Meeting—December 16, 2003, 4:30 p.m.–5 p.m.

ADDRESS: 1110 Vermont Avenue, NW., Suite 820, Washington, DC 20005–3552.

STATUS: Closed meeting.

FOR FURTHER INFORMATION CONTACT: Madeleine McCain, Director of Operations, U.S. National Commission on Libraries and Information Science, 1110 Vermont Avenue, NW., Suite 820, Washington, DC 20005, e-mail *mmccain@nclis.gov* fax (202) 606–9203 or telephone (202) 606 9200.

Dated: December 5, 2003.

Robert S. Willard,

NCLIS Executive Director.

[FR Doc. 03–30669 Filed 12–5–03; 4:52 pm]

BILLING CODE 7527–$$–P

NATIONAL COUNCIL ON DISABILITY

Youth Advisory Committee Meeting (Conference Call)

Time and Date: 12 p.m. e.s.t. January 23, 2004.

Place: National Council on Disability, 1331 F Street, NW., Suite 850, Washington, DC, 20004.

Agency: National Council on Disability (NCD).

Status: All parts of this conference call will be open to the public. Those interested in participating in this conference call should contact the appropriate staff member listed below.

Agenda: Roll call, announcements, reports, new business, adjournment.

Contact Person For More Information: Geraldine Drake Hawkins, Ph.D., Program Analyst, National Council on Disability, 1331 F Street, NW., Suite 850, Washington, DC 20004; 202–272–2004 (voice), 202–272–2074 (TTY), 202–272–2022 (fax), *ghawkins@ncd.gov* (e-mail).

Youth Advisory Committee Mission: The purpose of NCD's Youth Advisory Committee is to provide input into NCD activities consistent with the values and goals of the Americans with Disabilities Act.

Dated: December 4, 2003.

Ethel D. Briggs,

Executive Director.

[FR Doc. 03–30493 Filed 12–9–03; 8:45 am]

BILLING CODE 6820–MA–M

THE NATIONAL FOUNDATION FOR THE ARTS AND HUMANITIES

Proposed Collection, Comment Request, Technology and Digitization Survey

AGENCY: Institute of Museum and Library Services.

ACTION: Notice.

SUMMARY: The Institute of Museum and Library Services as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3508(2)(A)] This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently the Institute of Museum and Library Services is soliciting comments concerning the proposed study of the status of use of technology and digitization activities in the nation's museums and libraries.

A copy of the proposed information collection request can be obtained by contacting the individual listed below in the addressee section of this notice.

DATES: Written comments must be submitted to the office listed in the addressee section below on or before February 9, 2004.

IMLS is particularly interested in comments that help the agency to:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collocation of information including the validity of the methodology and assumptions used;
- Enhance the quality, utility and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

ADDRESSES: Send comments to: Barbara Smith, Technology Officer, Institute of Museum and Library Services, 1100 Pennsylvania Ave., NW., Room 223, Washington, DC 20506. Ms. Smith can be reached on Telephone: 202–606–5254 Fax: 202–606–0395 or by e-mail at *bsmith@imls.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

The Institute of Museum and Library Services is an independent Federal grant-making agency authorized by the Museum and Library Services Act, Pub. L. 104–208. The IMLS provides a variety of grant programs to assist the nation's museums and libraries in improving their operations and enhancing their services to the public. Museums and libraries of all sizes and types may receive support from IMLS programs. The Museum and Library Services Act of 2003 includes a strong emphasis on supporting library services through the use of technology and on assisting museums in their educational role and in modernizing their methods and facilities. This solicitation is to develop plans to collect information to assist IMLS in understanding the current status and capacity of museums and libraries to participate in national networks to deliver educational resources to students, life-long learners, underserved populations, and the general public.

II. Current Actions

The core duties of the Institute of Museum and Library Services, as stated in its strategic plan, are to promote excellence in library services and to promote access to museum and library services for a diverse public. This goal will be accomplished in part by promoting access to learning and information resources held by museums and libraries through electronic linkages. IMLS is seeking assistance in developing specific plans to collect information from the US library and museum communities to assess the digitization readiness and capacity of libraries and the technological readiness and capacity of museums. These information collections will be developed based on the varying characteristics of each community. A great deal of information has been collected on the internet access of libraries for internal and public access. The information IMLS collects should build on but not duplicate existing or ongoing collections.

Agency: Institute of Museum and Library Services.

Title: Technology and Digitization Survey.

OMB Number: n/a.

Agency Number: 3137.

Frequency: One time.

Affected Public: Museums, libraries and archives.

Number of Respondents: 2000.

Estimated Time Per Respondent: 1 hour.

Total Burden Hours: 2000.

Total Annualized capital/startup costs: 0.

Total Annual costs: 0.

FOR FURTHER INFORMATION CONTACT: Rebecca Danvers, Director of the Office of Research and Technology, Institute of Museum and Library Services, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, telephone (202) 606–2478.

Dated: December 2, 2003.

Rebecca Danvers,

Director, Office of Research and Technology.

[FR Doc. 03–30554 Filed 12–9–03; 8:45 am]

BILLING CODE 7036–01–M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–237, 50–249]

Exelon Generation Company, LLC, Dresden Nuclear Power Station, Units 2 and 3; Notice of Availability of Draft Supplement 17 to Generic Environmental Impact Statement and Public Meeting for the License Renewal of Dresden Nuclear Power Station, Units 2 and 3

Notice is hereby given that the Nuclear Regulatory Commission (the Commission) has published a draft plant-specific supplement to the Generic Environmental Impact Statement (GEIS), NUREG–1437, regarding the renewal of operating licenses DPR–19 and DPR–25 for an additional 20 years of operation at Dresden Nuclear Power Station (DNPS). DNPS is located in Grundy County, Illinois, approximately 8 miles east of Morris, Illinois. Possible alternatives to the proposed action (license renewal) include no action and reasonable alternative energy sources.

The draft supplement to the GEIS is available for public inspection in the NRC's Public Document Room (PDR) located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, or, electronically, from the Publicly Available Records (PARS) component of NRC's Agencywide Documents Access and Management System (ADAMS). ADAMS is accessible from the NRC Web site at *http://www.nrc.gov/reading-rm.html* (the NRC's Electronic Reading Room). Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC's PDR reference staff at 1–800–397–4209 or 301–415–4737, or by e-mail to *pdr@nrc.gov*. In addition, the Morris Area Public Library, located at 604 West Liberty Street, Morris, Illinois; and the Coal City Public Library District, located at 85 North Garfield Street, Coal City, Illinois, have agreed to make the draft supplement to the GEIS available for public inspection.

Any interested party may submit comments on the draft supplement to the GEIS for consideration by the NRC staff. To be certain of consideration, comments on the draft supplement to the GEIS and the proposed action must be received by February 24, 2004. Comments received after the due date will be considered if it is practical to do so, but the NRC staff is able to assure consideration only for comments received on or before this date. Written comments on the draft supplement to the GEIS should be sent to: Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, Mailstop T–6D59, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

Comments may be hand-delivered to the NRC at 11545 Rockville Pike, Rockville, Maryland, between 7:45 a.m. and 4:15 p.m. on Federal workdays. Electronic comments may be submitted to the NRC by e-mail at *DresdenEIS@nrc.gov*. All comments received by the Commission, including those made by Federal, State, and local agencies, Native American Tribes, or other interested persons, will be made available electronically at the Commission's PDR in Rockville, Maryland, and from the PARS component of ADAMS.

The NRC staff will hold a public meeting to present an overview of the draft plant-specific supplement to the GEIS and to accept public comments on the document. The public meeting will be held on January 14, 2004, at Jennifer's Garden Banquet and Convention Center located at 555 West Gore Road, Morris, Illinois. There will be two sessions to accommodate interested parties. The first session will commence at 1:30 p.m. and will continue until 4:30 p.m. The second session will commence at 7 p.m. and will continue until 10 p.m. Both meetings will be transcribed and will include: (1) A presentation of the contents of the draft plant-specific supplement to the GEIS, and (2) the opportunity for interested government agencies, organizations, and individuals to provide comments on the draft report. Additionally, the NRC staff will host informal discussions one hour prior to the start of each session at the same location. No comments on the draft supplement to the GEIS will be accepted during the informal discussions. To be considered, comments must be provided either at the transcribed public meeting or in writing, as discussed below. Persons may pre-register to attend or present oral comments at the meeting by contacting Mr. Louis L. Wheeler by telephone at 1–800–368–5642, extension 1444, or by e-mail at *dxw@nrc.gov* no later than January 8, 2004. Members of the public may also register to provide oral comments within 15 minutes of the start of each session. Individual, oral comments may be limited by the time available, depending on the number of persons who register. If special equipment or accommodations are needed to attend or present information at the public meeting, the need should be brought to Mr. Wheeler's attention no later than January 8, 2004, to provide the NRC staff adequate notice to determine whether the request can be accommodated.

FOR FURTHER INFORMATION CONTACT: Mr. Louis L. Wheeler, License Renewal and Environmental Impacts Program, Division of Regulatory Improvement Programs, U.S. Nuclear Regulatory Commission, Mail Stop: O–11F1, Washington, DC 20555–0001. Mr. Wheeler may be contacted at the aforementioned telephone number or e-mail address.

Dated in Rockville, Maryland, this 2nd day of December, 2003.

For the Nuclear Regulatory Commission.

Pao-Tsin Kuo,

Program Director, License Renewal and Environmental Impacts Program, Division of Regulatory Improvement Programs, Office of Nuclear Reactor Regulation.

[FR Doc. 03–30589 Filed 12–9–03; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–160]

Georgia Institute of Technology, Georgia Institute of Technology Research Reactor; Notice of Approval of Decommissioning Plan and Notice of License Termination

The U.S. Nuclear Regulatory Commission (NRC) is noticing the approval of the decommissioning plan for the Georgia Institute of Technology (GT or the licensee) GT Research Reactor (GTRR) and is also noticing the termination of Facility Operating License No. R–97 for the GTRR.

The NRC has terminated the license of the decommissioned GTRR, which was in the Neely Nuclear Research Center in the north-central part of the GT campus in the city of Atlanta, Georgia, and has released the site for unrestricted use. The licensee requested termination of the license in a letter to NRC dated June 14, 2002. The GTRR was a 5 MW thermal, heavy-water-moderated, -cooled, and -reflected reactor that was fueled with uranium aluminum alloy plates. It was licensed and first operated in 1964 and had a licensed thermal power level of 1 MW, which was upgraded to 5000 kW thermal in 1974. The reactor was permanently shut down on November 17, 1995. The licensee submitted a decommissioning plan to NRC for review and approval in letters dated July 1, 1998, and February 8 and May 28, 1999. The decommissioning plan was approved by License Amendment No. 14 issued on July 22, 1999.

A "Notice and Solicitation of Comments Pursuant to 10 CFR 20.1405 and 10 CFR 50.82(b)(5) Concerning Proposed Action To Decommission Georgia Institute of Technology Georgia Tech Research Reactor" appeared in the **Federal Register** on February 1, 1999 (64 FR 4902). All comments received were considered by the staff during the review of the GTRR Decommissioning Plan.

The NRC completed its review of the GTRR Final Status Survey Report dated June 2002, which was submitted by the licensee to NRC by letter dated June 14, 2002. The report documented the level of residual radioactivity remaining at the facility and stated that compliance with the criteria as approved in the NRC-approved decommissioning plan had been demonstrated.

Pursuant to 10 CFR 50.82(b)(6), the NRC staff has concluded that the decommissioning has been performed in accordance with the approved decommissioning plan and that the terminal radiation survey and associated documentation demonstrate that the facility and site are suitable for release in accordance with the criteria in the NRC-approved decommissioning plan. Further, on the basis of the decommissioning activities conducted by GT, the NRC's review of the licensee's final status survey report, the results of NRC inspections conducted at the GTRR, and the results of NRC confirmatory surveys, the NRC has concluded that the decommissioning process is complete and the facility and site are suitable to be released for unrestricted use. Based on the NRC staff's conclusions, Facility Operating License No. R–97 is terminated.

For further details see the licensee's application for decommissioning dated July 1, 1998, and February 8 and May 28, 1999; the July 22, 1999, License Amendment No. 14 to Facility Operating License No. R–97; the licensee's request for license termination dated June 14, 2002; the GTRR Final Status Survey Report dated June 2002, which was submitted to NRC by letter dated June 14, 2002; and NRC Inspection Report No. 50–160/2002–20, dated June 24, 2003, and corrected July 17, 2003. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records for GT dated after January 30, 2000, will be accessible electronically from the Agencywide Documents Access and Management System (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html*. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS should call the NRC PDR reference staff at 1–800–397–4209 or 301–415–4737 or e-mail *pdr@nrc.gov*.

Dated in Rockville, Maryland, this 2nd day of December, 2003.

For the Nuclear Regulatory Commission.

Marvin M. Mendonca,

Acting Section Chief, Research and Test Reactors Section, New, Research and Test Reactors Program, Division of Regulatory Improvement Programs, Office of Nuclear Reactor Regulation.

[FR Doc. 03–30588 Filed 12–9–03; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–315 and 50–316]

Indiana Michigan Power Company, Donald C. Cook Nuclear Plant, Units 1 and 2; Notice of Acceptance for Docketing of the Application and Notice of Opportunity for Hearing Regarding Renewal of Facility Operating License Nos. DPR–58 and DPR–74 for an Additional 20-Year Period

The U.S. Nuclear Regulatory Commission (NRC or the Commission) is considering an application for the renewal of Operating License Nos. DPR–58 and DPR–74, which authorize the Indiana Michigan Power Company to operate D. C. Cook Nuclear Plant, at 3304 megawatts thermal for Unit 1 and at 3468 megawatts thermal for Unit 2, respectively. The renewed licenses would authorize the applicant to operate D. C. Cook Nuclear Plant, Units 1 and 2, for an additional 20-years beyond the period specified in the current licenses. The current operating licenses for D. C. Cook Nuclear Plant, Units 1 and 2, expire on October 25, 2014 and December 23, 2017, respectively.

On November 3, 2003, the Commission's staff received an application from Indiana Michigan Power Company, filed pursuant to 10 CFR Part 54, to renew the Operating License Nos. DPR–58 and DPR–74 for D. C. Cook Nuclear Plant, Units 1 and 2, respectively. A Notice of Receipt and Availability of the license renewal application, "Indiana Michigan Power Company, D. C. Cook Nuclear Plant, Units 1 and 2; Notice of Receipt and Availability of Application for Renewal of Facility Operating License Nos. DPR–58 and DPR–74 for an Additional 20-Year Period," was published in the **Federal Register** on November 10, 2003 (68 FR 63824).

The Commission's staff has determined that the Indiana Michigan Power Company has submitted sufficient information in accordance with 10 CFR 54.19, 54.21, 54.22, 54.23, and 51.53(c) that is acceptable for docketing. The current Docket Nos. 50–315 and 50–316 for Operating License Nos. DPR–58 and DPR–74, respectively, will be retained. The docketing of the renewal application does not preclude requesting additional information as the review proceeds, nor does it predict whether the Commission will grant or deny the application.

Before issuance of each requested renewed license, the NRC will have made the findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. In accordance with 10 CFR 54.29, the NRC will issue a renewed license on the basis of its review if it finds that actions have been identified and have been or will be taken with respect to (1) managing the effects of aging during the period of extended operation on the functionality of structures and components that have been identified as requiring aging management review, and (2) time-limited aging analyses that have been identified as requiring review, such that there is reasonable assurance that the activities authorized by the renewed license will continue to be conducted in accordance with the current licensing basis (CLB), and that any changes made to the plant's CLB comply with the Act and the Commission's regulations.

Additionally, in accordance with 10 CFR 51.95(c), the NRC will prepare an environmental impact statement that is a supplement to the Commission's NUREG–1437, "Generic Environmental Impact Statement for License Renewal of Nuclear Power Plants," dated May 1996. Pursuant to 10 CFR 51.26, and as part of the environmental scoping process, the staff intends to hold a public scoping meeting. Detailed information regarding this meeting will be included in a future **Federal Register** notice.

As discussed further herein, in the event that a hearing is held, issues that may be litigating will be confined to those pertinent to the foregoing.

Within 30 days from the date of publication of this *Federal Notice*, the applicant may file a request for a hearing, and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene with respect to the renewal of the licenses in accordance with the provisions of 10 CFR 2.714. Interested persons should consult a current copy of 10 CFR 2.714, which is available at the Commission's Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike (first floor) Rockville, Maryland, and on the NRC Web site at *http://www.nrc.gov/reading-rm/adams.html*. If a request for a hearing or a petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board (ASLB) designated by the Commission or by the Chairman of the ASLB Panel will rule on the request(s) and/or petition(s), and the Secretary or the designated ASLB will issue a notice of hearing or an appropriate order. In the event that no request for a hearing or petition for leave to intervene is filed by the above date, the NRC may, upon completion of its evaluations and upon making the findings required under 10 CFR parts 51 and 54, renew the licenses without further notice.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding and how that interest may be affected by the results of the proceeding, taking into consideration the limited scope of matters that may be considered pursuant to 10 CFR parts 51 and 54. The petition must specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order that may be entered in the proceeding on the petitioner's interest. The petition must also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the board up to 15 days before the first pre-hearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days before the first pre-hearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene that must include a list of the contentions that the petitioner seeks to have litigated in the hearing. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of each contention and a concise statement of the alleged facts or the expert opinion that supports the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. The petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the action under consideration. The contention must be one that, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement that satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

Requests for a hearing and petitions for leave to intervene must be filed with the Secretary of the Commission, U. S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, or it may be delivered to the Commission's Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, 20855–2738, by the above date. Because of the continuing disruptions in delivery of mail to United States Government offices, it is requested that petitions for leave to intervene and requests for hearing be transmitted to the Secretary of the Commission either by means of facsimile transmission to 301–415–1101 or by e-mail to *hearingdocket@nrc.gov*. A copy of the request for hearing and the petition for leave to intervene should also be sent to the Office of the General Counsel, U. S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Again, because of continuing disruptions in delivery of mail to United States Government offices, it is requested that copies be transmitted either by means of facsimile transmission at 301–415–3725 or by e-mail to *OGCMailCenter@nrc.gov*. A copy of the request for hearing and petition for leave to intervene should also be sent to Mr. Mano K. Nazar, Senior Vice President and Chief Nuclear Officer, Indiana Michigan Power Company, Nuclear Generation Group, One Cook Place, Bridgman, MI 49106.

Non-timely filings of petitions for leave to intervene, amended petitions, supplemental petitions, and/or requests for a hearing will not be entertained

absent a determination by the Commission, the presiding officer, or the ASLB that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v), and 2.714(d).

Detailed information about the license renewal process can be found under the Nuclear Reactors icon on the NRC's Web page at *http://www.nrc.gov/reactors/operating/licensing/renewal.html*. A copy of the application to renew the operating licenses for D. C. Cook Nuclear Plant Units 1 and 2, is available for public inspection at the Commission's PDR, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, 20855–2738, and on the NRC's Web page at *http://www.nrc.gov/reactors/operating/licensing/renewal/applications.html* while the application is under review. The NRC maintains an Agencywide Documents Access and Management System (ADAMS), which provides text and image files of NRC's public documents, and a copy of the application is also available electronically through the NRC's Public Electronic Reading Room on the Internet at http://www.nrc.gov/reading-rm/adams.html under ADAMS accession number ML033070179. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) Reference staff at 1–800–397–4209, 301–415–4737 or by e-mail to *pdr@nrc.gov*.

The staff has verified that the license renewal application has been provided to the Bridgman Public Library, 4460 Lake Street, Bridgman, Michigan and the Maud Preston Palenske Memorial Library, 500 Market Street, St. Joseph, Michigan, which are near the D. C. Cook Nuclear Plant.

Dated at Rockville, Maryland, this the 4th day of December, 2003.

For the Nuclear Regulatory Commission.

Pao-Tsin Kuo,

Program Director, License Renewal and Environmental Impacts, Division of Regulatory Improvement Programs, Office of Nuclear Reactor Regulation.

[FR Doc. 03–30687 Filed 12–9–03; 8:45 am]

BILLING CODE 7590–01–U

NUCLEAR REGULATORY COMMISSION

Meetings; Sunshine Act

AGENCY HOLDING THE MEETING: Nuclear Regulatory Commission.

DATE: Weeks of December 8, 15, 22, 29, 2003, January 5, 12, 2004.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and closed.

MATTERS TO BE CONSIDERED:

Week of December 8, 2003

Tuesday, December 9, 2003

1:25 p.m. Affirmation session (public meeting) (if needed).

1:30 p.m. Briefing on Equal Employment Opportunity Program, (public meeting) (contact: Corenthis Kelley, 301–415–7380.

Wednesday, December 10, 2003

9:30 a.m. Briefing on Strategic Workforce Planning and Human Capital Initiatives (closed—ex. 2).

Week of December 15, 2003—Tentative

Tuesday, December 16, 2003

9:30 a.m. Discussion of Security Issues (closed—ex. 1).

Week of December 22, 2003—Tentative

There are no meetings scheduled for the week of December 22, 2003.

Week of December 29, 2003—Tentative

There are no meetings scheduled for the week of December 29, 2003.

Week of January 5, 2004—Tentative

There are no meetings scheduled for the week of January 5, 2004.

Week of January 12, 2004—Tentative

Wednesday, January 14, 2004

9:30 a.m. Briefing on status of Office of Chief Information Officer programs, performance, and plans (public meeting).

This meeting will be Web cast live at the Web address—*http://www.nrc.gov*.

* The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (recording)—(301) 415–1292. Contact person for more information: R. Michelle Schroll, (301) 415–1662.

* * * * *

The NRC Commission Meeting Schedule can be found on the Internet at: *http://www.nrc.gov/what-we-do/policy-making/schedule.html*.

* * * * *

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 (301–415–1969). In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to *dkw@nrc.gov*.

Dated: December 4, 2003.

R. Michelle Schroll,

Information Management Specialist, Office of the Secretary.

[FR Doc. 03–30683 Filed 12–8–03; 10:02 am]

BILLING CODE 7590–01–M

OVERSEAS PRIVATE INVESTMENT CORPORATION

Sunshine Act, Meetings; Public Hearing

TIME AND DATE: 2 PM Tuesday, December 30, 2003.

PLACE: Office of the Corporation, Twelfth Floor Board Room, 1100 New York Avenue, NW., Washington, DC

STATUS: Hearing OPEN to the Public at 2 PM.

PURPOSE: Hearing in conjunction with each meeting of OPIC's Board of Directors, to afford an opportunity for any persons to present views regarding the activities of the Corporation.

Procedures

Individuals wishing to address the hearing orally must provide advance notice to OPIC's Corporation Secretary no later than 5 p.m., Monday, December 29, 2003. The notice must include the indiviudal's name, organization, address, and telephone number, and a concise summary of the subject matter to be presented.

Oral presentations may not exceed ten (10) minutes. The time for individuals presentations may be reduced proportionately, if necessary, to afford all participants who have submitted a timely request to participate an opportunity to be heard.

Participants wishing to submit written statement for the record must submit a copy of such statements to OPIC's Corporate Secretary no later than 5 p.m., Monday, December 29, 2003. Such statements must be typewritten, double-spaced, and may not exceed twenty-five (25) pages.

Upon receipt of the required notice, OPIC will prepare an agenda for the hearing identifying speakers, setting forth the subject on which each participant will speak, and the time allotted for each presentation. The agenda will be available at the hearing.

A written summary of the hearing will be compiled, and such summary will be made available, upon written request to OPIC's Corporation Secretary, at the cost of reproduction.

FOR FURTHER INFORMATION CONTACT: Information on the hearing may be obtained from Connie M. Downs at (202) 336–8438, via facsimile at (202) 218–0136, or via email at *cdown@opic.gov*.

Dated: December 8, 2003.

Connie M. Downs,

OPIC Corporate Secretary.

[FR Doc. 03–30744 Filed 12–8–03; 3:43 pm]

BILLING CODE 3210–01–M

POSTAL RATE COMMISSION

Sunshine Act Meetings

AGENCY: Postal Rate Commission.

TIME AND DATE: Monday, December 8, 2003 through December 11, as needed, during Commission business hours (8 a.m. to 4:30 p.m).

PLACE: Commission conference room, 1333 H Street, NW., suite 300, Washington, DC 20268–0001.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Personnel and compensation matters.

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel, Postal Rate Commission, Suite 300, 1333 H Street, NW., Washington, DC 20268–0001, (202) 789–6820.

Dated: December 8, 2003.

Steven W. Williams,

Secretary.

[FR Doc. 03–30730 Filed 12–8–03; 2:41 pm]

BILLING CODE 7710–FW–M

POSTAL RATE COMMISSION

[Order No. 1387; Docket No. A2003–1]

Dismissal of Appeal of Post Office Closing in Birmingham Green, AL

AGENCY: Postal Rate Commission.

ACTION: Order.

SUMMARY: The Commission is dismissing an appeal (brought by George Prince *et al.*, petitioners) of the closing of a Birmingham Green, Alabama 35237 postal facility. The reason for dismissal is lack of jurisdiction. This facility is a classified postal station, rather than a post office. Controlling precedent holds that the Commission does not have jurisdiction over a closing or consolidation of a postal station.

ADDRESSES: Submit correspondence concerning this matter via the Commission's Filing Online system at *http://www.prc.gov*.

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel, 202–789–6818.

SUPPLEMENTARY INFORMATION:

Regulatory History

68 FR 56350 (September 30, 2003).

Introduction and Summary

On September 17, 2003, three individuals petitioned the Commission to review the Postal Service's actions regarding the Birmingham Green, Alabama Post Office.[1] The Commission gave notice and accepted the appeal in order no. 1384, issued on September 23, 2003.[2] The Postal Service subsequently moved to dismiss this proceeding, arguing that the Commission lacks jurisdiction to consider an appeal under 39 U.S.C. 404(b).[3] After considering the circumstances of this appeal in light of applicable law and precedent in earlier dockets, the Commission has concluded that this proceeding should be dismissed for lack of jurisdiction.

Petitioners' Request for Review

Petitioners George Prince, Terry Finch, and James E. Roberts contest a Postal Service action—which they characterize as a "closing or consolidation"—affecting the Birmingham Green post office, located at 317 North 20th Street in Birmingham, Alabama 35237. Joint Petition at 1. Petitioners document the Postal Service action in two attachments to their pleading.

The first attachment is a letter dated August 27, 2003 and signed by Paul T. Barrett, postmaster of Birmingham. In the letter, Mr. Barrett advises postal customers that "the Birmingham Green Post Office will be officially closed September 12, 2003." In light of this development, he states that customers will be required to change their post office boxes, and that mail will be forwarded in accordance with postal regulations. He further states that "[r]etail services from the Main Post Office will ensure effective and regular services to the Downtown Birmingham community."

The second attachment is a document entitled "Proposal to Consolidate the Birmingham Green Station and Establish a Contract Postal Unit," dated June 20, 2003. According to the document's cover page, the matter was assigned docket number 35237.

The document states at the outset that the Postal Service "is proposing to consolidate the Birmingham Green Station and provide retail services by establishing a contract postal unit (CPU) under the administrative responsibility of the Main Post Office, located 4 blocks away." Proposal to Consolidate at 1. The remainder of the document consists of assessments of the proposal's anticipated effects, under headings entitled "Responsiveness to Community Postal Needs," "Effect on Community," "Effect on Employees," "Economic Savings," and "Other Factors." These areas of inquiry correspond to the criteria the Postal Service is directed to consider in making a statutory determination to close or consolidate a post office, pursuant to 39 U.S.C. 404(b)(2).

Petitioners assert that the Postal Service's determination to close the Birmingham Green facility, announced in a notice of final determination on August 27, 2003 violates the requirement in 39 CFR 241.3(a)(2)(iii) that such determinations be available in writing at least 60 days before discontinuance takes effect. On this basis, petitioners argue that the process was "without observance of procedure required by law," in contravention of 39 U.S.C. 404(b)(5)(B). Joint Petition at 1.

Petitioners also challenge the merits of the Service's decision. They allege that it will have adverse effects on the community served by the Birmingham Green facility and will degrade the degree of service provided; that the Service failed to take into account all the disadvantages of closing the facility; that the Service provided no statement of the facility's income or revenue in its proposal; and that it did not adequately respond to the concerns raised by community members in both questionnaire responses and in a public hearing. Id. at 1–2.

Postal Service Motion To Dismiss

Order no. 1384 established October 3, 2003 as the date for the Postal Service's filing of its administrative record in this appeal. On that date, rather than filing an administrative record, the Service submitted a motion to dismiss this proceeding.[4]

In it motion, the Postal Service submits that the petition does not fall within the Commission's jurisdiction under § 404(b)(5). The Service cites two bases for this conclusion. First, it asserts that the Birmingham Green facility is a classified postal station—one of at least four USPS-operated facilities in downtown Birmingham—and thus is not a post office. Second, the Service represents that operations at the Birmingham Green facility "are currently suspended rather than

[1] Joint Petition for Review and Application for Suspension, September 17, 2003.

[2] Notice and Order Accepting Appeal and Establishing Procedural Schedule Under 39 U.S.C. 404(b)(5), September 23, 2003.

[3] United States Postal Service Motion to Dismiss Proceeding, October 3, 2003.

[4] Id.

formally closed[,]"[5] and that it has been working with Birmingham customers on providing them services, with the expectation that a contract station will be established in the vicinity of the Birmingham Green station.

The Postal Service musters an extensive review of legislative history and case law to support its position "that the procedures mandated by § 404(b) apply only to the closing or consolidation of an independent post office, which is a facility occupied and immediately supervised by a postmaster, and not the closing or consolidation of a station, branch, contract unit, or other subordinate facility under the administrative supervision of a post office."[6] The Service argues at length that Congress, in enacting § 404(b), intended to limit the term "post office" to a definition predating the Reorganization Act that distinguishes between independent post offices and their subordinate retail facilities such as stations and branches.[7] The Service also cites judicial authority in support of the restrictive interpretation of "post office" it urges.[8] Most notably, it invokes the decision in *Shepard Community Association* v. *United States Postal Service*,[9] in which a United States District Court found convincing indications of Congressional intent to distinguish post offices from branches and stations for purposes of applying § 404(b), and accordingly ruled that § 404(b) did not apply to the contested closing of the Shepard station in Columbus, Ohio.

Analysis of Jurisdictional Applicability

The available documentary evidence concerning the Birmingham Green facility, and the nature of the Postal Service's actions affecting it, are somewhat opaque. The Service asks the Commission to infer that operations at the facility have been "suspended," based on the absence of a formal announcement of its closure in the Postal Bulletin.[10] However, Postmaster Barrett's letter of August 27, 2003, publicly discloses an official intention to close the facility, with post office boxes and other services to be provided at the Main Post Office.

At the same time, his apparently contemporaneous administrative responsibility for the Birmingham Green facility implies that its closure would not constitute a statutory "consolidation," which has been found to have "the characteristic of subordinating the day to day overall management of one office having a postmaster to the administrative personnel of another office."[11] If Postmaster Barrett already had administrative responsibility for the Birmingham Green facility, closing it would not appear to constitute a "consolidation" subject to review under § 404(b). Yet, apparently two months earlier, the Postal Service at some administrative level had prepared an analysis on the "Proposal to Consolidate the Birmingham Green Station and Establish a Contract Postal Unit," which petitioners have provided as an attachment to their appeal.

Notwithstanding these unclear circumstances, the Commission finds that the available facts support a conclusion that the Postal Service's actions regarding the Birmingham Green facility—whether considered as a "closing" or a "suspension"—affect a "station or branch" within the service area administered by the Birmingham post office, and thus do not fall within the ambit of the review process provided in 39 U.S.C. 404(b).

The Commission's action in an earlier proceeding, docket no. A82–10, provides useful guidance in this controversy. In that docket, petitioners contested the Postal Service's plan to close the Oceana Station in Virginia Beach, Virginia. In its dispositive order,[12] the Commission considered legal arguments on what it regarded as a threshold issue: whether § 404(b) procedures for closing or consolidating post offices were applicable to the Service's plan to close the Oceana Station.

In deliberating on this issue, the Commission held that the Postal Service decision to close the facility "must be considered within the context of the Postal Service's other actions in the area."[13] After examining the facts presented, the Commission found the proposed closing of the Oceana Station to be one component of a plan to reconfigure the network of postal facilities providing services to various communities in the Virginia Beach area. Employing a "rule of reason," the Commission held that "the requirements of section 404(b) do not pertain to the specific building housing the post office; but rather are concerned with the provision of a facility within the community."[14] In light of the Service's description of its actions in the Virginia Beach area, the Commission concluded "that the Postal Service is merely rearranging the retail facilities in the community[,]"[15] and that the formal requirements of § 404(b) were not intended to apply to such changes. More broadly, the Commission stated that "the Postal Service is not required to follow the formal § 404(b) procedure when it is merely rearranging its retail facilities in a community, as it is doing in Virginia Beach."[16]

Here, as in docket no. A82–10, the Postal Service's action affects one classified station of several in a metropolitan area: in this instance, Birmingham, Alabama.[17] The Postal Service represents that equal or superior service is available at the Birmingham Main post office, less than one-half mile away, but that it is also working to establish a contract station in the vicinity of the Birmingham Green station.[18] These activities indicate that the Service's action with regard to the Birmingham Green station is part of a rearrangement of the retail network serving the Birmingham community, as with the Virginia Beach area in docket no. A82–10. For this reason, the Commission concludes that the procedural requirements of § 404(b) do not apply, and that the appeal of the Postal Service's action regarding the Birmingham Green station does not fall within the Commission's jurisdiction under that section.[19] Therefore, the Postal Service's motion to dismiss this proceeding shall be granted.

The joint petition for review was accompanied by an application for suspension of the Postal Service's action regarding the Birmingham Green station. Inasmuch as the Commission has found § 404(b) inapplicable to the Service's action, the motion for suspension must also be denied.

Ordering Paragraphs The Commission orders:

(a) The United States Postal Service Motion to Dismiss Proceeding, filed October 3, 2003, is granted.

(b) Petitioners' Application for Suspension, filed September 17, 2003, is denied.

(c) The Secretary of the Postal Rate Commission shall publish this order in the **Federal Register**.

By the Commission.

Issued December 3, 2003.
Dated: December 4, 2003.

Steven W. Williams,

Secretary.

[FR Doc. 03–30612 Filed 12–9–03; 8:45 am]

BILLING CODE 7710–FW–P

[5] Id. at 1. (Footnote omitted.)

[6] Id. at 2.

[7] Id. at 3–9.

[8] Id. at 9–14.

[9] *Shepard Community Association* v. *United States Postal Service*, Civ. No. C2–82–425 (S.D. Ohio 1985).

[10] Postal Service Motion to Dismiss, supra, at 1, n. 4.

[11] *Knapp* v. *United States Postal Service*, 449 F. Supp. 158, 162 (C.D. Cal. 1978).

[12] Order No. 436, Order Dismissing Docket No. A82–10, June 25, 1982.

[13] Id. at 7.

[14] Id. at 6–7.

[15] Id. at 8.

[16] Id. at 1.

[17] Id., Attachment No.1, p. 3–7.

[18] Postal Service Motion to Dismiss, supra, at 1–2.

[19] The Commission views this outcome as compatible with, if not in every respect identical to, the court's analysis in the *Shepard* decision, supra.

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 26284; 812–12898]

AIP Alternative Strategies Funds, et al.; Notice of Application

December 4, 2003.

AGENCY: Securities and Exchange Commission ("Commission").

ACTION: Notice of an application under section 6(c) of the Investment Company Act of 1940 ("Act") for an exemption from section 15(a) of the Act and rule 18f–2 under the Act, as well as certain disclosure requirements.

SUMMARY OF APPLICATION: Applicants request an order that would permit them to enter into and materially amend sub-advisory agreements without shareholder approval and would grant relief from certain disclosure requirements.

APPLICANTS: AIP Alternative Strategies Funds ("AIS") and Alternative Investment Partners LLC ("Manager").

FILING DATES: The application was filed on October 22, 2002, and amended on November 14, 2003, and December 4, 2003.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on December 29, 2003, and should be accompanied by proof of service on the applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the Commission's Secretary.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Applicants, c/o Thomas R. Westle, Esq., Blank Rome LLP, 405 Lexington Avenue, 24th Floor, New York, NY 10174.

FOR FURTHER INFORMATION CONTACT: Marc R. Ponchione, Senior Counsel, at (202) 942–7927, or Annette Capretta, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Branch, 450 Fifth Street, NW., Washington, DC 20549–0102 (tel. 202–942–8090).

Applicants' Representations

1. AIS is a Delaware business trust registered under the Act as an open-end management investment company. AIS is organized as a series investment company and has one series, Alpha Strategies I ("Alpha Strategies").[1] The Manager is registered as an investment adviser under the Investment Advisers Act of 1940 ("Advisers Act") and serves as investment adviser to Alpha Strategies pursuant to an investment advisory agreement ("Investment Advisory Agreement"). The Investment Advisory Agreement has been approved by AIS' board of trustees (the "Board"), including a majority of the trustees who are not "interested persons," as defined in section 2(a)(19) of the Act, of AIS ("Independent Trustees"), as well as by Alpha Strategies' shareholders.

2. Under the terms of the Investment Advisory Agreement, the Manager provides investment advisory services to Alpha Strategies, supervises the investment program for Alpha Strategies, and has the authority, subject to Board approval, to enter into separate investment sub-advisory agreements ("Sub-Advisory Agreements") with one or more sub-advisers ("Sub-Advisers"). The Manager monitors and evaluates the Sub-Advisers and recommends to the Board their hiring, retention or termination.[2] Sub-Advisers recommended to the Board by the Manager are selected and approved by the Board, including a majority of the Independent Trustees. Each Sub-Adviser would have discretionary authority to invest the portion of a Series' assets assigned to it. The Manager compensates each Sub-Adviser out of the fees paid to the Manager under the Investment Advisory Agreement.

3. Applicants request an order to permit the Manager, subject to Board approval, to enter into and materially amend Sub-Advisory Agreements without obtaining shareholder approval. The requested relief will not extend to the Research Consultant or to any Sub-Adviser that is an affiliated person, as defined in section 2(a)(3) of the Act, of AIS or the Manager, other than by reason of serving as a Sub-Adviser to one or more of the Series ("Affiliated Sub-Adviser").

4. Applicants also request an exemption from the various disclosure provisions described below that may require a Series to disclose fees paid by the Manager to each Sub-Adviser. An exemption is requested to permit each Series to disclose (as both a dollar amount and as a percentage of each Series' net assets): (a) the aggregate fees paid to the Manager and Affiliated Sub-Advisers; and (b) aggregate fees paid to Sub-Advisers other than Affiliated Sub-Advisers ("Aggregate Fee Disclosure"). For any Series that employs an Affiliated Sub-Adviser, the Series will provide separate disclosure of any fees paid to the Affiliated Sub-Adviser. Each Series also will provide separate disclosure of any fees paid to the Research Consultant.

Applicants' Legal Analysis

1. Section 15(a) of the Act provides, in relevant part, that it is unlawful for any person to act as an investment adviser to a registered investment company except under a written contract that has been approved by the vote of a majority of the company's outstanding voting securities. Rule 18f–2 under the Act provides that each series or class of stock in a series company affected by a matter must approve such matter if the Act requires shareholder approval.

[1] The Applicants request that any relief granted pursuant to the application also apply to any future series of AIS and any other registered open-end management investment companies and their series that (a) Are advised by the Manager or any entity controlling, controlled by, or under common control with the Manager; (b) use the manager/sub-adviser structure described in the application; and (c) comply with the terms and conditions in the application (each, a "Series," and together with Alpha Strategies, the "Series"). AIS is the only existing registered investment company that currently intends to rely on the order. If the name of any Series contains the name of a Sub-Adviser (as defined below), the name of the Manager will appear before the name of the Sub-Adviser.

[2] The Manager's recommendations are based, in part, on research provided by Trust Advisors, LLC (the "Research Consultant"), an investment adviser registered under the Advisers Act and an affiliated person of the Manager. Pursuant to an agreement entered into between the Research Consultant, the Manager, and AIS, on behalf of Alpha Strategies ("Research Consultant Agreement"), the Research Consultant provides the Manager with research and information on Sub-Advisers, and receives a fee from the Manager out of the fees paid by the Series to the Manager.

2. Form N–1A is the registration statement used by open-end investment companies. Item 15(a)(3) of Form N–1A requires disclosure of the method and amount of the investment adviser's compensation.

3. Rule 20a–1 under the Act requires proxies solicited with respect to an investment company to comply with Schedule 14A under the Securities Exchange Act of 1934 ("Exchange Act"). Items 22(c)(1)(ii), 22(c)(1)(iii), 22(c)(8) and 22(c)(9) of Schedule 14A, taken together, require a proxy statement for a shareholder meeting at which the advisory contract will be voted upon to include the "rate of compensation of the investment adviser," the "aggregate amount of the investment adviser's fees," a description of the "terms of the contract to be acted upon," and, if a change in the advisory fee is proposed, the existing and proposed fees and the difference between the two fees.

4. Form N–SAR is the semi-annual report filed with the Commission by registered investment companies. Item 48 of Form N–SAR requires investment companies to disclose the rate schedule for fees paid to their investment advisers, including the Sub-Advisers.

5. Regulation S–X sets forth the requirements for financial statements required to be included as part of investment company registration statements and shareholder reports filed with the Commission. Sections 6–07(2)(a), (b), and (c) of Regulation S–X require that investment companies include in their financial statements information about investment advisory fees.

6. Section 6(c) of the Act provides that the Commission may exempt any person, security, or transaction or any class or classes of persons, securities, or transactions from any provisions of the Act, or from any rule thereunder, if such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicants state that their requested relief meets this standard for the reasons discussed below.

7. Applicants assert that the shareholders are relying on the Manager's experience to select one or more Sub-Advisers best suited to achieve a Series' investment objectives. Applicants assert that, from the perspective of the investor, the role of the Sub-Advisers is comparable to that of the individual portfolio managers employed by traditional investment company advisory firms. Applicants state that requiring shareholder approval of each Sub-Advisory Agreement would impose costs and unnecessary delays on the Series, and may preclude the Manager from acting promptly in a manner considered advisable by the Board. Applicants note that the Investment Advisory Agreement, the Research Consultant Agreement, and any Sub-Advisory Agreement with an Affiliated Sub-Adviser will remain subject to section 15(a) of the Act and rule 18f–2 under the Act.

8. Applicants assert that some Sub-Advisers use a "posted" rate schedule to set their fees. Applicants state that while Sub-Advisers are willing to negotiate fees that are lower than those posted on the schedule, they are reluctant to do so where the fees are disclosed to other prospective and existing customers. Applicants submit that the requested relief will encourage potential Sub-Advisers to negotiate lower sub-advisory fees with the Manager, the benefits of which are passed on to Series shareholders.

Applicants' Conditions

Applicants agree that any order granting the requested relief will be subject to the following conditions:

1. Before any Series may rely on the requested order, the operation of the Series in the manner described in the application will be approved by a majority of the outstanding voting securities of the Series, as defined in the Act, or, in the case of a Series whose public shareholders purchased shares on the basis of a prospectus containing the disclosure contemplated by condition 2 below, by the sole initial shareholder before offering shares of the Series to the public.

2. Each Series will disclose in its prospectus the existence, substance, and effect of any order granted pursuant to the application. In addition, each Series will hold itself out to the public as employing the management structure described in the application. The prospectus will prominently disclose that the Manager has the ultimate responsibility (subject to oversight by the Board) to oversee the Sub-Advisers and recommend their hiring, termination, and replacement.

3. Within 90 days of the hiring of any new Sub-Adviser, shareholders of the relevant Series will be furnished all information about the Sub-Adviser that would be contained in a proxy statement, except as modified to permit Aggregate Fee Disclosure. This information will include Aggregate Fee Disclosure and any change in such disclosure caused by the addition of a new Sub-Adviser. The Manager will meet this condition by providing shareholders, within 90 days of the hiring of a Sub-Adviser, an information statement meeting the requirements of Regulation 14C, Schedule 14C, and Item 22 of Schedule 14A under the Exchange Act, except as modified to permit Aggregate Fee Disclosure.

4. The Manager will not enter into a Sub-Advisory Agreement with any Affiliated Sub-Adviser without that agreement, including the compensation to be paid thereunder, being approved by the shareholders of the applicable Series.

5. At all times, a majority of the Board will be Independent Trustees, and the nomination of new or additional Independent Trustees will be at the discretion of the then existing Independent Trustees.

6. When a Sub-Adviser change is proposed for a Series with an Affiliated Sub-Adviser, the Board, including a majority of the Independent Trustees, will make a separate finding, reflected in the Board's minutes, that the change is in the best interests of the Series and its shareholders and does not involve a conflict of interest from which the Manager or the Affiliated Sub-Adviser derives an inappropriate advantage.

7. Independent counsel knowledgeable about the Act and the duties of Independent Trustees will be engaged to represent the Independent Trustees. The selection of such counsel will be within the discretion of the Independent Trustees.

8. The Manager will provide the Board, no less frequently than quarterly, with information about the Manager's profitability on a per-Series basis. The information will reflect the impact on profitability of the hiring or termination of any Sub-Adviser during the applicable quarter.

9. Whenever a Sub-Adviser is hired or terminated, the Manager will provide the Board with information showing the expected impact on the Manager's profitability.

10. The Manager will provide general management services to each Series, including overall supervisory responsibility for the general management and investment of each Series' portfolio securities, and, subject to review and approval by the Board, will: (a) Set each Series' overall investment strategies, (b) evaluate, select and recommend Sub-Advisers to manage all or a part of a Series' assets, (c) allocate and, when appropriate, reallocate a Series' assets among multiple Sub-Advisers; (d) monitor and evaluate the performance of Sub-Advisers, and (e) implement procedures reasonably designed to ensure that the Sub-Advisers comply with the relevant Series' investment objective, policies and restrictions.

11. No trustee or officer of a Series, or member or officer of the Manager will own, directly or indirectly (other than through a pooled investment vehicle that is not controlled by any such person), any interest in a Sub-Adviser, except for: (a) ownership of interest in the Manager or any entity that controls, is controlled by, or is under common control with the Manager, or (b) ownership of less than 1% of the outstanding securities of any class of equity or debt of a publicly traded company that is either a Sub-Adviser or an entity that controls, is controlled by, or is under common control with a Sub-Adviser.

12. Each Series will disclose in its registration statement the Aggregate Fee Disclosure.

13. The requested order will expire on the effective date of rule 15a–5 under the Investment Company Act, if adopted.

For the Commission, by the Division of Investment Management, under delegated authority.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 03–30577 Filed 12–9–03; 8:45 am]

BILLING CODE 8010–01–P

SOCIAL SECURITY ADMINISTRATION

Modifications to the Disability Determination Procedures; Extension of Testing of Some Disability Redesign Features

AGENCY: Social Security Administration (SSA).

ACTION: Notice of the extension of tests involving modifications to the disability determination procedures.

SUMMARY: We are announcing the extension of tests involving modifications to our disability determination procedures that we are conducting under the authority of current rules codified at 20 CFR 404.906 and 416.1406. These rules provide authority to test several modifications to the disability determination procedures that we normally follow in adjudicating claims for disability insurance benefits under title II of the Social Security Act (the Act) and for supplemental security income payments based on disability under title XVI of the Act. On September 25, 2003, we announced an approach to improve the disability determination process. We have decided to extend the testing of two redesign features of the disability prototype for 21 months to ensure a smooth transition while these changes to the disability determination process are being developed.

DATES: We are extending our selection of cases to be included in these tests from December 31, 2003 until no later than September 30, 2005. If we decide to continue selection of cases for these tests beyond this date, we will publish another notice in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Phil Landis, Disability Process Redesign Staff, Office of Disability Determinations, Social Security Administration, 6401 Security Boulevard, Baltimore, Maryland 21235–6401, 410–965–5388.

SUPPLEMENTARY INFORMATION: Current regulations at 20 CFR 404.906 and 416.1406 authorize us to test, individually, or in any combination, different modifications to the disability determination procedures. We have conducted several tests under the authority of these rules, including a prototype that incorporates a number of modifications to the disability determination procedures that the State agencies use. The prototype included three redesign features, and we previously extended the tests of two of those features: the use of a single decisionmaker, in which a disability examiner may make the initial disability determination in most cases without requiring the signature of a medical consultant; and elimination of the reconsideration level of review. We are now announcing a further extension of the testing of these two features.

We also have conducted another test involving the use of a single decisionmaker who may make the initial disability determination in most cases without requiring the signature of a medical consultant. We are also extending the period during which we will select cases to be included in this test of the single decisionmaker feature.

Extension of Testing of Some Disability Redesign Features

On August 30, 1999, we published in the **Federal Register** a notice announcing a prototype that would test a new disability claims process in 10 States, also called the prototype process (64 FR 47218). On December 23, 1999, we published a notice in the **Federal Register** (65 FR 72134) extending the period during which we would select cases to be included in a separate test of the single decisionmaker feature. In these notices, we stated that selection of cases was expected to be concluded on or about December 31, 2001. We also stated that, if we decided to continue the tests beyond that date, we would publish another notice in the **Federal Register**. We subsequently published notices in the **Federal Register** extending selection of cases for these tests. Most recently, on June 30, 2003, we published a notice extending selection of cases for the tests until no later than December 31, 2003 (68 FR 38737). We also stated that, if we decided to continue selection of cases for these tests beyond that date, we would publish another notice in the **Federal Register**. We have decided to extend selection of cases for two features of the prototype process (single decisionmaker and elimination of the reconsideration step), and the separate test of single decisionmaker beyond December 31, 2003. We expect that our selection of cases for these tests will end on or before September 30, 2005.

This extension also applies to the locations in the State of New York that we added to the prototype test in a notice published in the **Federal Register** on December 26, 2000 (65 FR 81553).

Dated: December 1, 2003.

Martin H. Gerry,

Deputy Commissioner for Disability and Income Security Programs.

[FR Doc. 03–30595 Filed 12–9–03; 8:45 am]

BILLING CODE 4191–02–P

SOCIAL SECURITY ADMINISTRATION

Statement of Organization, Functions and Delegations of Authority

This statement amends Part S and T of the Statement of the Organization, Functions and Delegations of Authority that covers the Social Security Administration (SSA). This notice establishes a new Human Capital Planning Staff at the Deputy Commissioner for Human Resources level. It deletes language from the Office of Workforce Analysis in the Office of the Chief Strategic Officer and adds that language to the **Federal Register** material for the Human Capital Planning Staff. It establishes the Executive and Special Services Staff as a separate Deputy Commissioner for Human Resources' organization. It also retitles and redescribes the functions of two Staffs in the Office of Personnel, *i.e.*, the Project Management Staff (S7BH) and the Personnel Management Information Systems and Payroll Staff (S7BJ). It revises the **Federal Register** language for the Center for Personnel Policy and Staffing and, in addition, it establishes the Center for Employee Benefits in the Office of Personnel. It creates three centers in the Office of Training and three centers in the Office of Civil Rights and Equal Opportunity. It also

amends the Office of the Strategic Officer subchapter to add the SAC Code "TJ" and to delete a function from that subchapter. The new material and changes are as follows:

Chapter S7

Office of the Deputy Commissioner, Human Resources

Section S7.00 *The Office of the Deputy Commissioner, Human Resources*—(Mission):

Add after the colon and before the words "personnel management", "human capital and planning initiatives".

Add the word "and" between the words "opportunity" and "training".

Section S7.10 *The Office of the Deputy Commissioner, Human Resources*—(Organization):

The Office of the Deputy Commissioner, Human Resources, under the leadership of the Deputy Commissioner, Human Resources, includes:

Reletter:
D. to F.
E. to G.
F. to H.
G. to I.
Establish:
D. The Human Capital Planning Staff (S7J).
E. The Executive and Special Services Staff (S7K).

Section S7.20 *The Office of the Deputy Commissioner, Human Resources*—(Functions):

Delete: From C. the Immediate Office of the Deputy Commissioner, paragraphs 2, 3, 4 and 5.

Reletter:
D. to F.
E. to G.
F. to H.
G. to I.
Add:

D. The Human Capital Planning Staff (S7J) provides leadership within DCHR and for the Agency in broad human resources policy areas related to workforce planning and management. The Staff ensures that the Agency's human resources policies and practices are aligned to support the accomplishment of the Agency's mission, vision, goals and strategies; improve hiring and retention strategies to ensure a workforce consistent with the Agency's needs; and create a continuous learning and performance culture that results in a highly productive workforce. The Human Capital Planning Staff provides direction and oversight to the development and integration of the Agency's human resources automated systems and advises the DCHR on matters pertaining to Government-wide automated human resources systems. The Staff continually monitors, analyzes and interprets workforce forecasting data and projects future workforce needs including the types of skills and positions needed. It also develops and implements Agency-wide initiatives, such as competitive sourcing, in support of the effective use of human capital.

E. The Executive and Special Services Staff (S7K) develops and implements all SSA policies and activities relating to the Agency's executive level personnel management program. Recruits for and places individuals in positions in the Senior Executive Service (SES) in accordance with OPM regulations: Provides staff support to the Executive Resources Board in administering a systematic program to manage SSA's executive and professional resources and ensuring the appropriate selection of candidates to participate in official executive development programs. Provides staff support to the Performance Review Board in reviewing performance plans and subsequent appraisals of career and non-career executives in SES and employees in equivalent level positions.

F. *Office of Personnel.* Delete from the sentence that reads: "The Office manages personnel programs in the following areas:" the "and" after "employee recognition" and before "health services".

Add to that sentence: "employee benefits including health and retirement."

Add as the last sentence in F:

"The office also develops and implements an SSA-wide program of Personnel Security and Suitability for employees and contractors and administers the SSA Drug Free Workplace program. It directs the development and operation of SSA's Workers' Compensation program, including SSA's Workers' Compensation Return to Work, Controversion and Investigations programs."

Subchapter S7B

The Office of Personnel

Section S7B.00 *The Office of Personnel*—(Mission):

Add, after the first sentence, "It administers and provides counseling for retirement, health and other employee benefits programs."

Add, beginning as the third sentence:

"The Office of Personnel also develops and implements an SSA-wide program of Personnel Security and Suitability for employees and contractors and administers the SSA Drug Free Workplace program. It directs the development and operation of SSA's Workers' Compensation program, including SSA's Workers' Compensation Return to Work, Controversion and Investigations programs."

Section S7B.10 *The Office of Personnel*—(Organization):

The Office of Personnel under the Associate Commissioner, Office of Personnel, includes:

Reletter:
D. to E.
E. to F.
F. to G.
G. to H.
H. to I.
Establish:
D. The Center for Employee Benefits (S7BL).

Retitle E: The Project Management Staff (S7BH) to the Center for Personnel Security and Project Management (S7BH).

Retitle F: The Personnel Management Information Systems and Payroll Staff (S7BJ) to the Center for Personnel Management Information Systems and Payroll (S7BJ).

Section S7B.20 *The Office of Personnel*—(Functions):

Reletter:
D. to E.
E. to F.
F. to G.
G. to H.
H. to I.
Add:

D. The Center for Employee Benefits (S7BL) directs the Social Security Administration's Retirement and Health Benefits programs. The Center develops the agency's policy on these programs and provides interpretation and guidance to SSA's managers nationwide. Expertise is provided to managers and employees on all Federal Benefit's Programs, including the Civil Service and Federal Employees' Retirement Systems, Thrift Savings Plan, Federal Employees' Health Benefit Plans, Federal Employees' Group Life Insurance, Flexible Spending Accounts and Long Term Care.

Retitle E, the Project Management Staff (S7BH) to the Center for Personnel Security and Project Management (S7BH).

Replace E in its entirety as follows:

1. Develops and implements an SSA-wide program of Personnel Security and Suitability for employees and contractors. Develops and implements SSA's National Security Program.

2. Directs the development and operation of SSA's Workers' Compensation program. Provides assistance to employees regarding claims for lost wages, settlement awards, notices of injury and required medical reports.

3. Provides assistance to employees regarding claims for lost wages, settlement awards, notices of injury and required medical reports.

4. Directs the development and operation of SSA's Workers' Compensation Return to Work, Controversion and Investigations programs.

5. Designs national policies for the SSA Drug Free Workplace program. Develops, implements and manages the day-to-day operation of SSA's drug testing program.

6. Conducts administrative surveys, special studies and projects of SSA-wide significance.

Retitle F, the Personnel Management Information Systems and Payroll Staff (S7BJ), to the Center for Personnel Management Information Systems and Payroll (S7BJ).

Delete from F, paragraph #1, in the first sentence, the words "record keeping".

Delete the remainder of F, after paragraph #2, in its entirety. Add the following:

3. Designs business applications and administrative systems in the personnel arena, including workload management, action tracking and other management support systems. Manages the entire applications development process, including assessing user needs, developing system pilots, designing systems, testing systems, administering databases, training users, and evaluating overall system performance.

4. Evaluates, tests, installs and maintains agency applications software within the networking environment for compatibility with existing software, hardware and networks and serves as point of contact for equipment, software and operational problems and needs within OPE. Ensures the integrity of the LAN, as well as the completion of LAN operations.

5. Develops and provides guidance to SSA's managers, timekeepers and employees on the payroll and time and attendance processes throughout SSA. Is the first point of contact in headquarters on pay and leave issues. Manages the bi-weekly collection and processing of time and attendance data for all SSA employees.

6. Coordinates with the National Business Center in Denver, SSA's payroll provider, on all payroll-related operational, budget and developmental matters.

7. Conducts research on HR modernization, providing recommendations for improving the effectiveness and efficiency of various personnel functions and programs through automation. Performs continuing review of HR technology to bring best practices to personnel operations in SSA.

8. Represents the Agency on interagency workgroups to resolve crosscutting HR automation issues. Serves as liaison with OPM, SSA's payroll provider, and other Federal agencies and monitoring authorities.

9. Directs the design and development of and manages day-to-day operations in support of the Personnel intranet site at the agency level.

Add to H, the Center for Personnel Policy and Staffing (S7BE), paragraph #1, second sentence: "pay and" compensation.

Delete from the second sentence of paragraph #1: "appraisals and performance standards".

Add to the second sentence of paragraph #1 after the word "staffing" and before the words "personnel information": "employment and performance management and awards".

Delete "management communications" from the second sentence of paragraph #1 after the words "disclosure and * * *." Replace "management communications" with "personnel delegations".

Delete the first sentence from paragraph #2: "Directs the development and operation of SSA performance and employee awards programs."

Delete from the first sentence of paragraph #3: "implement policies and regulations".

Add to the first sentence of paragraph #3: Develops "policies" and "implementing guidance".

Add the word "all" to the second sentence of paragraph #3 after the word "processes" and before the word "personnel actions".

Delete paragraph #6 in its entirety. Replace paragraph #6 with the following: "Establishes and maintains the Official Personnel Folders for SSA headquarters employees."

Subchapter S7E

The Office of Civil Rights and Equal Opportunity

Section S7E.10 *The Office of Civil Rights and Equal Opportunity*—(Organization)

Retitle to read as follows: "The Office of Civil Rights and Equal Opportunity, under the leadership of the Associate Commissioner, Office of Civil Rights and Equal Opportunity", includes:

Retitle A., from "The Director, Office of Civil Rights and Equal Opportunity (S7E)" to "The Associate Commissioner, Office of Civil Rights and Equal Opportunity (S7E)."

Retitle B., from "The Immediate Office of the Director, Office of Civil Rights and Equal Opportunity (S7E)" to "The Deputy Associate Commissioner, Office of Civil Rights and Equal Opportunity (S7E)."

Add:

C. The Immediate Office of the Associate Commissioner, Office of Civil Rights and Equal Opportunity (S7E).

D. The Center for Cultural Diversity (S7EC).

E. The Center for Complaints Processing (S7EE).

F. The Center for Disability Services (S7EG).

Section S7E.20 *The Office of Civil Rights and Equal Opportunity*—(Functions)

Replace in its entirety as follows:

A. The Associate Commissioner, Office of Civil Rights and Equal Opportunity (S7E) is directly responsible to the Deputy Commissioner, Human Resources for carrying out OCREO's mission and for providing general supervision to the major components of OCREO.

B. The Deputy Associate Commissioner, Office of Civil Rights and Equal Opportunity (S7E) assists the Associate Commissioner in carrying out his/her responsibilities and performs other duties as the Associate Commissioner prescribes.

C. The Immediate Office of the Associate Commissioner, Office of Civil Rights and Equal Opportunity (S7E) provides the Associate Commissioner and Deputy Associate Commissioner with staff assistance on the full range of their responsibilities.

D. The Center for Cultural Diversity (S7EC).

1. Provides leadership, direction and guidance to the headquarters and field organizations in the formulating and implementing of SSA policies, regulations and procedures pertaining to the development of sound affirmative employment and equal opportunity programs. Approves, on behalf of the Associate Commissioner, Office of Civil Rights and Equal Opportunity, affirmative employment program plans prepared by components and regions. Develops the overall SSA affirmative employment program plan.

2. Develops guidelines and procedures for effective OCREO program planning and monitoring throughout SSA. Develops recommendations on affirmative

employment policy and operations for the Associate Commissioner for Civil Rights and Equal Opportunity.

3. Conducts and coordinates studies or analyses of SSA's human resources and operating policies and procedures to assess their EO impact.

4. Develops and tracks SSA's major initiatives that relate to EO and oversees their implementation.

5. Develops, implements, monitors and evaluates special recruitment plans, programs and projects for targeted equal opportunity groups.

6. Provides office automation support.

7. Administers the Federal Women's Program, Asian Pacific American Program, Hispanic Employment Program, Minority Concerns Program, and the American Indian and Alaska Native Program.

8. Provides central operational responsibility for EO functions and programs.

9. Administers the oversight of the EEO Advisory Groups.

E. The Center for Complaints Processing (S7EE)

1. Directs implementation and evaluation of the SSA Equal Employment Opportunity (EO) Discrimination Complaints Program and Alternative Dispute Resolution (ADR) Program for both Headquarters and the field. Provides advice, guidance and assistance to SSA officials concerning the discrimination complaints process and related management matters.

2. Provides leadership, guidance and direction in implementing SSA policies, regulations and procedures pertaining to the timely, accurate, fair and impartial processing of discrimination complaints throughout the Headquarters and field organizations. Formulates SSA policies, regulations and procedures pertaining to the EO discrimination complaints process and ADR process.

3. Provides overall direction regarding all aspects of SSA's discrimination complaints process and ADR process in order to ensure uniformity in complaints handling, resolutions and dispositions. Directs the preparation of guidelines on all complaints matters.

4. Receives and conducts inquiries and attempts resolution of informal complaints of discrimination. Advises complainants of their rights regarding the discrimination complaints process, ADR process and other related processes.

5. Receives and acknowledges formal complaints of discrimination and makes a determination whether to accept or dismiss the complaint/issue(s). Conducts investigations and oversees the process.

6. Prepares final Agency decisions on complaints of discrimination against SSA. Ensures compliance with any corrective or remedial action directed by SSA, the Equal Employment Opportunity Commission (EEOC) or any other agency having authority to so direct.

7. Develops litigation information and documentation for the Office of the General Counsel and the United States Attorney's Office in employment discrimination court suits filed against SSA. Prepares the Agency's briefs for complaints appealed to EEOC. Also, responds to interrogatories submitted in class complaints. Analyzes new and recent court decisions, public laws and Federal regulations for their impact on SSA complaints processing.

8. Directs special projects and studies of the various aspects of SSA's nationwide discrimination complaints process and ADR process to evaluate the overall effectiveness of the EO program. Directs the analysis of trends observed during projects and studies and implements new procedures as required.

9. Provides the authoritative interpretations on legal, regulatory and technical information regarding discrimination complaints to SSA management nationwide.

10. Reviews non-SSA EO issuances, EEOC and court decisions for applicability to SSA policy statements. Develops instructions and guidelines to transmit or implement EO policy decisions in SSA.

F. The Center for Disability Services (S7EG)

1. Provides program direction and guidance on a variety of issues pertaining to reasonable accommodation for employees with disabilities.

2. Evaluates and interprets policies and procedures and develops and recommends a range of alternatives for the solution of policy issues.

3. Directs and implements an SSA-wide program for providing readers, sign language interpreters, personal assistants, specialized equipment, assistive devices and selective placement.

4. Provides advice and assistance to all SSA components on agency-wide goals and objectives regarding the equal employment of people with disabilities throughout SSA.

5. Plans, conducts and coordinates multidisciplinary projects to resolve EO problems of a broad scope and provides leadership in the development of nationwide guidelines and/or policies and procedures also having national implications.

6. Administers the Program for Employees with Disabilities.

Subchapter S7G

Office of Training

Section S7G.10 *The Office of Training*—(Organization):

The Office of Training under the leadership of the Associate Commissioner, Office of Training (OT), includes:

Retitle A., from "The Director, Office of Training (S7G)" to "The Associate Commissioner, Office of Training (S7G)."

Reletter B to C.

Retitle C, from "The Immediate Office of the Director" to "The Immediate Office of the Associate Commissioner, Office of Training."

Establish:

B. The Deputy Associate Commissioner, Office of Training (S7G).

D. The Center for Employee and Leadership Development (S7GK).

E. The Center for Curricula Development and Delivery (S7GL).

F. The Center for Training Technology (S7GM).

Section S7G.20 *The Office of Training*—(Functions):

A. The Associate Commissioner, Office of Training (S7G) is directly responsible to the Deputy Commissioner, Human Resources for carrying out OT's mission and for providing general supervision to the major component's of OT.

B. The Deputy Associate Commissioner, OT (S7G) assists the Associate Commissioner in carrying out his/her responsibilities and performs other duties as the Associate Commissioner may prescribe.

C. *Replace in its entirety:*

The Immediate Office of the Associate Commissioner, Office of Training (S7G) provides the Associate Commissioner with staff assistance on the full range of his/her responsibilities. It provides the Associate Commissioner with administrative and technical staff assistance. The Associate Commissioner's immediate administrative and technical staff plan, direct, coordinate and administer the activities relative to planning and executing budget activities. The staff interprets OPM training policies and formulate SSA training policy and procedures; maintains the Administration Instructions Manual System related to training policy; acts as OT Liaison with the Office of Personnel on such personnel matters as classification, position management, staffing, recruitment, performance management, and awards; and provides overall support and coordination to the training function. Coordinate travel, training and conference attendance for office staff.

D. *Add:*

The Center for Employee and Leadership Development (S7GK).

1. Manages SSA's national career and leadership development programs from the highest executive levels of SSA managers (SES) to programs for non-management employees.

2. Has Agency-wide responsibility for national training curriculum to provide general skills training, including related developmental activities for non-supervisory personnel.

3. Directs, designs, develops, implements, conducts and evaluates all SSA supervisory, managerial and executive-level training for SSA's newly promoted and seasoned managers.

4. Conducts ongoing research to identify the best approaches to training in the areas of management, general, and systems-support training and in the area of career development programs. Administers contractor support.

5. Provides office automation support and consultant services for all of OT, Deputy Commissioner's office and training classrooms.

6. Directs, designs, develops and implements training to support Agency-wide computer software acquisitions, and administrative initiatives.

E. *Add:*

Center for Curricula Development and Delivery (S7GL).

1. Manages the conversion and provision of training materials in various delivery media; ensures accessibility of all training materials for employees with disabilities.

2. Directs the design, development, implementation and evaluation of disability related programmatic/technical training to meet the needs of SSA direct-service employees and components Agency-wide and the Disability Determination Services, including entry-level training. This includes support for all Agency-wide Accelerated Electronic Disability initiatives.

3. Directs the design, development, implementation and evaluation of Title II Retirement, Survivors and Auxiliary and Medicare related programmatic/technical training to meet the needs of SSA direct-service employees and components Agency-wide, including entry-level training, advanced training programs, and programmatic systems training.

4. Directs the design, development, implementation and evaluation of Title XVI Supplemental Security Income related programmatic/technical training to meet the needs of SSA direct-service employees and components Agency-wide, including entry-level training programs, advanced training programs, and programmatic systems training.

5. Develops guidelines and procedures to determine technical/programmatic training needs in all areas of responsibility, and reviews technical training programs Agency-wide.

6. Responsible for streamlining procedures for printing and delivery of training course materials via E-print.

7. Initiates independent studies and analyses to anticipate and identify new or changing programmatic or other training approaches in a dynamic organizational environment, and designs, develops and implements programs geared to new training delivery technologies and approaches.

F. *Add:*

The Center for Training Technology (S7GM).

1. Directs, designs, develops and manages SSA's Interactive Video Teletraining System for SSA employees and State DDSs.

2. Conducts ongoing research and evaluation to identify automated technologies and training delivery methods (*e.g.*, Interactive Video Teletraining, internet and intranet, training to the desktop, etc.) and instructional methodologies for application to training throughout SSA.

3. Monitors and evaluates Agency training and developmental activities to ensure desired results and effects through the Training Evaluation System.

4. Manages the evaluation and implementation of new technologies and training methods such as the use of distance learning and training to the desktop.

5. Manages special training initiatives such as the SSA Online University, knowledge management, E-learning initiatives and training administration.

6. Administers contractor support.

7. Manages office automation training efforts to provide basic LAN user training, electronic course information training for client server technology. Manages OT's training web site that includes a wide range of topics and materials.

Subchapter T

The Office of the Strategic Officer

Add the SAC Code "TJ" to the subchapter heading, the Mission, Organization, and Functions as follows:

Subchapter TJ

The Office of the Strategic Officer

Section TJ.00 *The Office of the Chief Strategic Officer*—(Mission):

Section TJ.10 *The Office of the Chief Strategic Officer*—(Organization):

Section TJ.20 The Office of the Chief Strategic Officer—(Functions):

Delete from E, The Office of Workforce Analysis, the third sentence from the end of the paragraph that reads: "It develops, analyzes and interprets workforce-forecasting data and projects future workforce needs, including the types of skills and positions required."

Dated: November 26, 2003.

Jo Anne B. Barnhart,

Commissioner of Social Security.

[FR Doc. 03–30546 Filed 12–9–03; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF STATE

Public Notice 4529; Overseas Schools Advisory Council; Notice of Meeting

The Overseas Schools Advisory Council, Department of State, will hold its Executive Committee Meeting on Thursday, January 22, 2004, at 9:30 a.m. in Conference Room 1105, Department of State Building, 2201 C Street, NW., Washington, DC. The meeting is open to the public.

The Overseas Schools Advisory Council works closely with the U.S. business community in improving those American-sponsored schools overseas, which are assisted by the Department of State and which are attended by dependents of U.S. Government families and children of employees of U.S. corporations and foundations abroad.

This meeting will deal with issues related to the work and the support provided by the Overseas Schools Advisory Council to the American-sponsored overseas schools. The agenda includes a review of the recent activities of American-sponsored overseas schools and the overseas schools regional associations, a presentation on the status of education in the United States and its impact on American-sponsored overseas schools, and selection of projects for the 2004 program.

Members of the general public may attend the meeting and join in the discussion, subject to the instructions of the Chair. Admittance of public members will be limited to the seating available. Access to the State Department is controlled, and individual building passes are required for all attendees. Persons who plan to attend should so advise the office of Dr. Keith D. Miller, Department of State, Office of Overseas Schools, Room H328, SA–1, Washington, DC 20522–0132, telephone 202–261–8200, prior to

January 12, 2003. Each visitor will be asked to provide a date of birth and Social Security number at the time of registration and attendance and must carry a valid photo ID to the meeting. All attendees must use the C Street entrance to the building.

Dated: December 4, 2003.

Keith D. Miller,

Executive Secretary, Overseas Schools Advisory Council, Department of State.

[FR Doc. 03–30617 Filed 12–9–03; 8:45 am]

BILLING CODE 4710–24–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34429]

The New York City Economic Development Corporation—Petition for Declaratory Order

AGENCY: Surface Transportation Board.

ACTION: Institution of declaratory order proceeding; request for comments.

SUMMARY: The Surface Transportation Board is instituting a declaratory order proceeding and requesting comments on the petition of the New York City Economic Development Corporation (NYCEDC), acting on behalf of the City of New York, NY (City), for an order confirming that: (1) Pursuant to 49 U.S.C. 10906, the construction project described in the petition is construction of spur or switching track that does not require Board approval; and (2) under 49 U.S.C. 10501(b)(2) and 10901, Federal law preempts the State of New York and the City from requiring permits or other prior approval with respect to the construction proposed here.

DATES: Any interested person may file with the Board written comments concerning NYCEDC's petition by January 9, 2004. Replies will be due on January 29, 2004.

ADDRESSES: Send an original and 10 copies of any comments referring to STB Finance Docket No. 34429 to: Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001. In addition, send one copy of any comments to petitioner's representative: Charles A. Spitulnik, McLeod, Watkinson & Miller, One Massachusetts Avenue, NW., Suite 800, Washington, DC 20001.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 565–1600. Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at: (800) 877–8339.

SUPPLEMENTARY INFORMATION: By petition filed on October 29, 2003, NYCEDC asks the Board to institute a declaratory order proceeding to confirm that: (1) The construction project described in the petition involves the construction of spur or switching track that does not require the Board's approval; and (2) Federal law preempts all otherwise applicable State and local laws with respect to this project.

NYCEDC states that the proposed construction project consists of the addition of a spur and/or switching track to, and the rehabilitation of, the end of the Travis Branch of the Staten Island Railroad (SIRR).[1] According to NYCEDC, this construction project is one part of a plan, called the Staten Island Railroad Reactivation Project, for reactivation of the operations of the former SIRR. On October 22, 2003, the Port Authority of New York and New Jersey (Port Authority) filed a petition for a declaratory order with respect to the proposed construction of a connector between the SIRR and the Chemical Coast Secondary Line. The Board issued a notice instituting a declaratory order proceeding and requesting comments on the Port Authority's petition. *Port Authority of New York and New Jersey—Petition for Declaratory Order*, STB Finance Docket No. 34428 (STB served Nov. 18, 2003). NYCEDC and the Port Authority are in the process of completing major upgrades to the SIRR to enable freight rail movements between Staten Island and the Howland Hook Container Terminal there, on the one hand, and freight rail lines in New Jersey, on the other.

According to petitioner, the segment of the SIRR on which the new track will be built is owned by the City and is managed by NYCEDC pursuant to a contract with the City. NYCEDC claims that the new track is required for the efficient pick up of trains from, and delivery to, a City Department of Sanitation facility (DSNY facility) being constructed on City-owned property at the Fresh Kills landfill site on Staten Island. NYCEDC states that the total length of the right-of-way for the new track will be approximately 6,744 feet, and that the track layout has been designed to minimize interference with the access roads from Victory Boulevard to the Visy Paper and Arthur Kill Power properties. The project will also entail replacing existing timber trestle bridges and timber and bituminous grade crossings, constructing a new Wye connection and potential retaining walls, replacing and repairing tracks at Arlington Yard, repairing and painting the Arthur Kill Lift Bridge, and constructing, replacing, and repairing bridges and bridge underpinnings.

NYCEDC indicates that rail service to and from the DSNY facility will be in unit trains approximately 4,700 feet long and will require that the trains be broken into sections. Petitioner maintains that the disassembly of empty railcar sections in an arriving unit train, and the assembly of full railcar sections into a unit train, will occur in two areas of the right-of-way that have a double-tracked rail layout. These sections are: (1) South of the Visy Paper entrance road and extending across Victory Boulevard and the Consolidated Edison property to the box culvert rail bridge; and (2) at the northern end of the Arthur Kill Power property.

The Board does not exercise licensing authority "over construction, acquisition, operation, abandonment, or discontinuance of spur, industrial, team, switching, or side tracks." 49 U.S.C. 10906. The determination of whether a particular track segment is a "railroad line" requiring Board authorization under 49 U.S.C. 10901(a), or an exempt spur, industrial, team, switching, or side track, turns on the intended use of the track segment. *Nicholson* v. *I.C.C.*, 711 F.2d 364, 368 (D.C. Cir. 1983), *cert. denied*, 464 U.S. 1056 (1984). According to NYCEDC, the intended use of the new track is for switching and for pick up and delivery to and from the DSNY facility. NYCEDC further claims that the new track is switching track according to the factors considered in *CNW—Aban. Exemp.—In McHenry County, IL*, 3 I.C.C.2d 366 (1987), *rev'd on other grounds sub nom. Illinois Commerce Com'n* v. *ICC*, 879 F.2d 917 (D.C. Cir. 1989), because the track is not long, will serve only one shipper,[2] is stub-ended, and will not invade the territory of another railroad or expand the involved market.

Petitioner argues that this case is materially different from *Effingham Railroad Company—Petition for Declaratory Order—Construction at Effingham, IL*, STB Docket No. 41986 (STB served Sept. 12, 1997) (*Effingham*), in which the Board found that construction of a "stub-ended track that would be used exclusively for switching to and from present and future shippers in an industrial park" fell within its jurisdiction. *Id.* Petitioner argues that *Effingham* involved a "new carrier" and a proposal to construct a track that would constitute the new carrier's entire operation, whereas in this case the track is ancillary to and supplemental to the SIRR.

NYCEDC says that it has advised the New York State Department of Environmental Conservation (NYSDEC) of its plans for the proposed construction as they have developed. Petitioner asserts, however, that NYSDEC is attempting to impose permitting and other requirements on it, including the implementation of the state environmental review process, and further asserts that its applications for the permits required by NYSDEC for fill to tidal wetlands have been pending for eleven months and remain unresolved.[3] NYCEDC contends that the state and local permitting and pre-clearance requirements imposed by NYSDEC give that body the ability to impede petitioner's construction of the facilities that are necessary to conduct operations.

NYCEDC maintains that, even though 49 U.S.C. 10906 removes from the Board the authority to approve the construction of the new track, the Board's jurisdiction over the track and its construction prevents any agencies of the state or local governments from imposing regulations or requirements that would have the effect of interfering with the project as it moves forward. According to petitioner, the Board has exclusive and plenary jurisdiction over rail transportation to the extent that it involves "the construction, acquisition, operation, abandonment, or discontinuance of spur, industrial, team, switching, or side tracks, or facilities, even if the tracks are located, or intended to be located, entirely in one state."[4] NYCEDC further argues that state and local permitting or pre-clearance requirements (including environmental requirements) are preempted because, by their nature, they interfere with interstate commerce by giving the state or local body the ability to deny the carrier the right to construct facilities or conduct operations. Petitioner maintains that the requirements that NYSDEC is seeking to impose here, based on state law, are preempted because they go beyond permissible "police power" regulation and amount to impermissible permitting and environmental review requirements.

Finally, NYCEDC asks the Board to expedite its handling of this petition. Specifically, petitioner asks the Board to issue its order in November 2003, *i.e.*, within 30 days of the filing of the petition. Petitioner maintains that the construction season in New York is short, and that it must begin offering construction contracts for bid immediately to allow contracts to be let in time for construction to commence according to schedule.

Granting this request would effectively preclude giving the public notice of and an opportunity to comment on this proceeding. The Board needs to afford notice and an opportunity for comment, given the importance of the project.[5] The Board will process this petition as expeditiously as possible, but must and will provide adequate time for the solicitation, receipt, and consideration of public comments.

By this notice, the Board is requesting comments on NYCEDC's petition.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov*.

Decided: December 4, 2003.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 03–30445 Filed 12–9–03; 8:45 am]

BILLING CODE 4915–00–P

[1] Petitioner indicates that the Board will soon receive a notice of a modified certificate of public convenience and necessity pursuant to 49 CFR 1150.21–.24, advising of the designation of CSX Transportation, Inc. and Norfolk Southern Railway Company as the modified certificate operators of certain lines of the SIRR that had been abandoned and then acquired by the City of New York and the State of New Jersey.

[2] Petitioner states that there is a possibility that another shipper, Visy Paper, may build a lead into its plant from the new track.

[3] According to petitioner, this review is being made pursuant to the New York State Environmental Quality Review Act, N.Y. Envtl. Conserv. Law 8–101, *et seq.* (McKinney 2003).

[4] In support, petitioner cites 49 U.S.C. 10501(b)(2) and *Friends of the Aquifer, et al.*, STB Finance Docket No. 33966 (STB served Aug. 15, 2001).

[5] Moreover, on November 19, 2003, NYSDEC filed a pleading in this matter indicating its intent to submit opposition to the petition and seeking time in which to do so.

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34427]

Buffalo & Pittsburgh Railroad, Inc.—Lease and Operation Exemption—CSX Transportation, Inc.

AGENCY: Surface Transportation Board.

ACTION: Notice of Exemption.

SUMMARY: Under 49 U.S.C. 10502, the Board is granting a petition for exemption from the prior approval requirements of 49 U.S.C. 10902 for Buffalo & Pittsburgh Railroad, Inc., a Class II carrier, to lease from CSX Transportation, Inc., and operate a 40.8-mile rail line between milepost 10.4 at Glenshaw and milepost 51.2 at P&W Junction (New Castle), PA.

DATES: The exemption will be effective on December 23, 2003. Petitions to stay must be filed by December 15, 2003. Petitions to reopen must be filed by December 18, 2003.

ADDRESSES: An original and 10 copies of all pleadings referring to STB Finance Docket No. 34427 must be filed with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001. In addition, one copy of all pleadings must be served on petitioner's representative, Eric M. Hocky, Gollatz, Griffin & Ewing, P.C., Suite 200, Four Penn Center, 1600 John F. Kennedy Blvd., Philadelphia, PA 19103–2808.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 565–1609. Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Board's decision. Copies of the decision may be purchased from ASAP Document Solutions by calling (202) 293–7878 (assistance for the hearing impaired is available through FIRS at 1–800–877–8339) or by visiting Suite 405, 1925 K Street, NW., Washington, DC 20006.

Board decisions and notices are available on our website at *http://www.stb.dot.gov*.

Decided: December 4, 2003.

By the Board, Chairman Nober.

Vernon A. Williams,

Secretary.

[FR Doc. 03–30619 Filed 12–9–03; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

Agency Information Collection Activities: Proposed Extension of Information Collection; Comment Request

AGENCY: Office of the Comptroller of the Currency (OCC), Treasury.

ACTION: Notice and request for comment.

SUMMARY: The OCC, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to comment on the proposed extension, without revision, of a continuing information collection, as required by the Paperwork Reduction Act of 1995. The OCC may not conduct or sponsor, and a respondent is not required to respond to, an information

collection unless it displays a currently valid Office of Management and Budget (OMB) control number. Currently, the OCC is soliciting comment concerning the proposed extension, without change, of OMB approval of an information collection titled, "Lending Limits—12 CFR 32."

DATES: Comments should be submitted by February 9, 2004.

ADDRESSES: Comments should be directed to the OCC and to the OMB Desk Officer for OCC as follows:

OCC: Office of the Comptroller of the Currency, Public Information Room, 250 E Street, SW., Mail Stop 1–5, Attention: 1557–0221, Washington, DC 20219. Commenters are encouraged to submit comments by fax or electronic mail. Comments may be sent by fax to (202) 874–4448, or by electronic mail to *regs.comments@occ.treas.gov*. You can inspect and photocopy comments at the OCC's Public Information Room. You can make an appointment to inspect the comments by calling (202) 874–5043.

OMB Desk Officer for OCC: Joseph F. Lackey, Jr., Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503, or e-mail to *jlackeyj@omb.eop.gov*.

FOR FURTHER INFORMATION CONTACT: You may request additional information from John Ference or Camille Dixon, (202) 874–5090, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219.

SUPPLEMENTARY INFORMATION:

Title: Lending Limits—12 CFR 32.

Type of Review: Extension, without revision, of a currently approved collection.

OMB Control Number: 1557–0221.

Form Number: None.

Abstract: The information collections are found in 12 CFR 32.7(b). The information collections apply generally to all national banks and specifically to those national banks that wish to use exceptions to OCC's lending limits for 1–4 family residential real estate loans and loans to small businesses.

Affected Public: Businesses or other for-profit.

Burden Estimates:

Estimated Number of Respondents: 2,140.

Estimated Number of Responses: 2,140.

Estimated Annual Burden Hours: 55,640 hours.

Frequency of Response: On occasion.

Comments: Comments submitted in response to this notice will be summarized in the request for OMB approval. All comments will become a matter of public record. Comments are invited on:

(a) Whether the collection is necessary for the proper performance of the functions of the agency, including whether the information has practical utility;

(b) The accuracy of the agency's estimate of the burden of the collection of information;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected;

(d) Ways to minimize the burden of the collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

(e) Estimates of capital or startup costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: December 4, 2003.

Mark J. Tenhundfeld,

Assistant Director, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency.

[FR Doc. 03–30618 Filed 12–9–03; 8:45 am]

BILLING CODE 4810–33–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel, E-Filing Issue Committee

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the E-Filing Issue Committee will be conducted (via teleconference). The Taxpayer Advocacy Panel is soliciting public comment, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Thursday, January 8, 2004, from 3 to 4 p.m., eastern time.

FOR FURTHER INFORMATION CONTACT: Mary Ann Delzer at 1–888–912–1227, or (414) 297–1604.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Taxpayer Advocacy Panel, E-Filing Issue Committee will be held Thursday, January 8, 2004, from 3 to 4 p.m., eastern time via a telephone conference call. You can submit written comments to the panel by faxing to (414) 297–1623, or by mail to Taxpayer Advocacy Panel, Stop 1006MIL, 310 West Wisconsin Avenue, Milwaukee, WI 53203–2221. Public comments will also be welcome during the meeting. Please contact Mary Ann Delzer at 1–888–912–1227 or (414) 297–1604 for dial-in information.

The agenda will include the following: Various IRS issues.

Dated: December 3, 2003.

Bernard Coston,

Director, Taxpayer Advocacy Panel.

[FR Doc. 03–30639 Filed 12–9–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Area 2 Taxpayer Advocacy Panel (Including the States of Delaware, North Carolina, South Carolina, New Jersey, Maryland, Pennsylvania, Virginia and the District of Columbia)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Area 2 Taxpayer Advocacy Panel will be conducted (via teleconference). The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Tuesday, January 6, 2004, from 3 p.m. EST to 4:30 p.m. EST.

FOR FURTHER INFORMATION CONTACT: Inez E. De Jesus at 1–(888)–912–1227, or (954)–423–7977.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Area 2 Taxpayer Advocacy Panel will be held Tuesday, January 6, 2004 from 3 p.m. EST to 4:30 p.m. EST via a telephone conference call. Individual comments will be limited to 5 minutes. If you would like to have the TAP consider a written statement, please call 1–(888)–912–1227 or (954)–423–7977, or write Inez E. De Jesus, TAP Office, 1000 South Pine Island Rd., Suite 340, Plantation, FL 33324. Due to limited conference lines, notification of intent to participate in the telephone conference call meeting must be made with Inez E. De Jesus. Ms. De Jesus can be reached at 1–(888)–912–1227 or (954)–423–7977.

The agenda will include the following: Various IRS issues.

Dated: December 3, 2003.

Bernard Cost,

Director, Taxpayer Advocacy Panel.

[FR Doc. 03–30640 Filed 12–9–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0518]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments on the information needed to determine a claimant's entitlement to income-dependent benefits.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before February 9, 2004.

ADDRESSES: Submit written comments on the collection of information to Nancy J. Kessinger, Veterans Benefits Administration (20S52), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420. Please refer to "OMB Control No. 2900–0518" in any correspondence.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 273–7079 or FAX (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Public Law 104–13; 44 U.S.C. 3501–3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Income Verification, VA Form 21–0161a.

OMB Control Number: 2900–0518.

Type of Review: Extension of currently approved collection.

Abstract: VA's compensation and pension programs require the accurate reporting of income by those who are in receipt of income-dependent benefits. VA Form 21–0161a solicits information from employers of beneficiaries who have been identified has having inaccurately reported their income to VA.

Affected Public: Business or other for-profit, not-for-profit institutions, farms, Federal government, and State, local, or tribal government.

Estimated Annual Burden: 15,000 hours.

Estimated Average Burden Per Respondent: 30 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 30,000.

Dated: November 28, 2003.

By direction of the Acting Secretary:

Jacqueline Parks,

IT Specialist, Records Management Service.

[FR Doc. 03–30572 Filed 12–9–03; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0572]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA) is announcing an opportunity for public comment on the proposed collection of information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments on information needed to determine the monetary allowance for a child of a Vietnam veteran born with spina bifida or birth defects.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before February 9, 2004.

ADDRESSES: Submit written comments on the collection of information to Nancy J. Kessinger, Veterans Benefits Administration (20S52), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420. Please refer to "OMB Control No. 2900–0572" in any correspondence.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 273–7079 or FAX (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Public Law 104–13; 44 U.S.C., 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Application for Spina Bifida Benefits, VA Form 21–0304.

OMB Control Number: 2900–0572.

Type of Review: Extension of a currently approved collection.

Abstract: 38 U.S.C 1815, Children of Women Vietnam Veterans Born with Certain Birth Defects, authorizes payment of monetary benefits to, or on behalf of, certain children of female veterans who served in Republic of Vietnam. To be eligible, the child must be the biological child; conceived after the date the veteran first served in Vietnam during the period February 28, 1961 to May 7, 1975; and have certain

birth defects resulting in permanent physical or mental disability.

38 U.S.C. 1805, Spina Bifida Benefits Eligibility, authorizes payment to a spina bifida child-claimant to parent(s) who performed active military, naval, or air service during the Vietnam era during the period January 9, 1962 to May 7, 1975. The child must be the natural child of a Vietnam veteran, regardless of age or marital status, who was conceived after the date on which the veteran first entered the Republic of Vietnam during the Vietnam era. Spina Bifida benefits are payable for all types of spina bifida except spina bifida occulta. The law does not allow payment of both benefits at the same time. If entitlement exists under both laws, benefits will be paid under 38 U.S.C. 1815.

VA Form 21–0304 is used to gather the necessary information to determine eligibility for a monetary allowance and appropriate level of payment.

Affected Public: Individuals or households.

Estimated Annual Burden: 335 hours.

Estimated Average Burden Per Respondent: 10 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 2,000.

Dated: November 28, 2003.

By direction of the Acting Secretary.

Jacqueline Parks,

IT Specialist, Records Management Service.

[FR Doc. 03–30573 Filed 12–9–03; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0578]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Health Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Health Administration (VHA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments on information needed to approve requests for preauthorization of certain health care services and benefits for children of Vietnam veterans.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before February 9, 2004.

ADDRESSES: Submit written comments on the collection of information to Ann Bickoff, Veterans Health Administration (193B1), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or e-mail *ann.bickoff@mail.va.gov*. Please refer to "OMB Control No. 2900–0578" in any correspondence.

FOR FURTHER INFORMATION CONTACT: Ann Bickoff at (202) 273–8310.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Public Law 104–13; 44 U.S.C. 3501–3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VHA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VHA's functions, including whether the information will have practical utility; (2) the accuracy of VHA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Titles

a. Health Care for Certain Children of Vietnam Veterans—Spina Bifida and Covered Birth Defects—Regulation.

b. Claim for Miscellaneous Expenses, VA Form 10–7959e.

OMB Control Number: 2900–0578.

Type of Review: Extension of a currently approved collection.

Abstract: VA's medical regulations 38 CFR part 17 (17.900 through 17.905) established regulations regarding provision of health care for women Vietnam veterans' children born with spina bifida and certain other covered birth defects. The information collected will be used to determine whether to approve requests for preauthorization of certain health care services and benefits for children of Vietnam veterans; the appropriateness of billings for such services; and to make decisions during the review and appeal process.

Beneficiaries complete VA Form 10–7959e to claim payment/reimbursement of expenses related to spina bifida and certain covered birth defects. Health care providers complete standard billing forms such as: Uniform Billing-Forms (UB) 92, and HCFA 1500, Medicare Health Insurance Claims Form. Without the requested information VA will be unable to determine the correct amount to reimburse providers for their services or beneficiaries for covered expenses.

Affected Public: Individuals or households, business or other for-profit, and not for profit institutions.

Estimated Total Annual Burden: 3,400 hours.

Estimated Average Burden Per Respondent: 6½ minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 3,600.

Estimated Total Annual Responses: 31,400.

Dated: November 28, 2003.

By direction of the Secretary:

Jacqueline Parks,

IT Specialist, Records Management Service.

[FR Doc. 03–30574 Filed 12–9–03; 8:45 am]

BILLING CODE 8320–01–P

Corrections

Federal Register

Vol. 68, No. 237

Wednesday, December 10, 2003

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2003–16502; Airspace Docket No. 03–ACE–86]

Modification of Class E Airspace; Waverly, IA

Correction

In rule document 03–30018 beginning on page 67360 in the issue of Tuesday, December 2, 2003, make the following correction:

§ 71.1 [Corrected]

On page 67361, in the third column, in § 71.1, under the heading **ACE IA E5 WAVERLY, IA**, in the sixth line, "with" should read "within".

[FR Doc. C3–30018 Filed 12–9–03; 8:45 am]

BILLING CODE 1505–01–D

Federal Register

Wednesday,
December 10, 2003

Part II

Department of Commerce

Bureau of Industry and Security

15 CFR Parts 740, 743, 772, and 774
December 2002 Wassenaar Arrangement Plenary Agreement Implementation: Categories 1, 2, 3, 4, 5, 6, and 7 of the Commerce Control List, and Reporting Requirements; Final Rule

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Parts 740, 743, 772, and 774

[Docket No. 031017263–3263–01]

RIN 0694–AC85

December 2002 Wassenaar Arrangement Plenary Agreement Implementation: Categories 1, 2, 3, 4, 5, 6, and 7 of the Commerce Control List, and Reporting Requirements

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Final rule.

SUMMARY: The Bureau of Industry and Security (BIS) maintains the Commerce Control List (CCL), which identifies items subject to Department of Commerce export controls. This final rule revises certain entries controlled for national security reasons in Categories 1, 2, 3, 4, 5 Part I (telecommunications), 5 Part II (information security), 6, and 7 to conform with changes in the List of Dual-Use Goods and Technologies maintained and agreed to by governments participating in the Wassenaar Arrangement on Export Controls for Conventional Arms and Dual-Use Goods and Technologies (Wassenaar Arrangement). The Wassenaar Arrangement controls strategic items with the objective of improving regional and international security and stability.

The purpose of this final rule is to make the necessary changes to the Commerce Control List to implement revisions to the Wassenaar List that were agreed upon in the December 2002 meeting, to make necessary revisions to reporting requirements and License Exception GOV restrictions, and to add a statement of understanding for medical equipment.

EFFECTIVE DATE: This rule is effective: December 10, 2003.

FOR FURTHER INFORMATION CONTACT: Patricia Muldonian, Office of Strategic Trade and Foreign Policy Controls, Bureau of Industry and Security, U.S. Department of Commerce at (202) 482–5400.

SUPPLEMENTARY INFORMATION:

Background

In July 1996, the United States and thirty-two other countries gave final approval to the establishment of a new multilateral export control arrangement, called the Wassenaar Arrangement on Export Controls for Conventional Arms and Dual-Use Goods and Technologies (Wassenaar Arrangement). The Wassenaar Arrangement contributes to regional and international security and stability by promoting transparency and greater responsibility in transfers of conventional arms and dual-use goods and technologies, thus preventing destabilizing accumulations of such items. Participating states have committed to exchange information on exports of dual-use goods and technologies to non-participating states for the purposes of enhancing transparency and assisting in developing common understandings of the risks associated with the transfers of these items.

This rule revises a number of national security controlled entries on the Commerce Control List (CCL) to conform with December 2002 revisions to the Wassenaar List of Dual-Use Goods and Technologies. This rule also revises language to provide a complete or more accurate description of controls. A detailed description of the revisions to the CCL is provided below.

Specifically, this rule makes the following amendments to the Commerce Control List:

Category 1—Materials, Chemical, "Microorganisms," and Toxins

- ECCN 1B001 is amended by adding a technical note for 1B001.c.
- ECCN 1C006 is amended by revising paragraph 1C006.a.1 to make an editorial correction, *i.e.*, removing the "or" in the phrase "Synthetic or silahydrocarbon oils", so that it reads "Synthetic silahydrocarbon oils".

Category 2—Materials Processing

- ECCN 2B006 is amended by:
  (a) Removing the ECCN Controls paragraph from the List of Items Controlled;
  (b) Adding new text to 2B006.a; and
  (c) Adding a new note to 2B006.c.

Category 3—Electronics

- ECCN 3A001 is amended by:
  (a) Adding a new paragraph 3A001.a.1.c that adds a new parameter for integrated circuits, designed or rated as radiation hardened, and adding a note for this paragraph;
  (b) Revising the parameters of 3A001.a.5.a.2 and 3A001.a.5.a.3 for analog-to-digital and digital-to-analog converter integrated circuits; and
  (c) Adding a new paragraph 3A001.a.5.a.4 to add a new parameter for analog-to-digital converter integrated circuits.

Note: For commodities no longer controlled under ECCN 3A001, there is a license requirement under ECCN 3A991 for exports and reexports to AT Column 1 countries of the Commerce Country Chart.

- ECCN 3A002 is amended by:
  (a) Adding a new abbreviation ETSI to the note for 3A002.a.2;
  (b) Adding a new paragraph 3A002.a.6 for digital instrumentation data recorders; and
  (c) Revising the parameters for 3A002.c.1, d.1, e, and f.1.

Note: For commodities no longer controlled under ECCN 3A002, there is a license requirement under ECCN 3A992 for exports and reexports to AT Column 1 countries of the Commerce Country Chart.

- ECCN 3A991 is amended by:
  (a) Revising the parameter for batteries in the note for 3A991.j from 26 cm^3 to 27 cm^3 for consistency with the note in 3A001.e.1; and
  (b) Revising the parameters and reformatting 3A991.c for analog-to-digital converter integrated circuits, to continue controls for antiterrorism (AT) reasons for these commodities that were liberalized as a result of changes to the Wassenaar List of Dual-Use Goods and Technologies.
- ECCN 3B001 is amended by revising the parameter for 3B001.f.1.b for minimum resolvable feature size from 0.5 µm to 0.35 µm for "stored program controlled" lithography equipment.

Note: For commodities no longer controlled under ECCN 3B001, there is a license requirement under ECCN 3B991 for exports and reexports to AT Column 1 countries of the Commerce Country Chart.

- ECCNs 3E001 and 3E002 are amended by revising the parameter in paragraph b.1 of the Note from 0.7 µm to 0.5 µm.

Category 4—Computers

- ECCN 4A002 is amended by making an editorial change to 4A002.b.2—revising "bits" to "bit".
- ECCN 4A003 is amended by:
  (a) Revising the "composite theoretical performance" (CTP) parameter in 4A003.b from 28,000 millions of theoretical operations per seconds (MTOPS) to 190,000 MTOPS;
  (b) Making conforming changes of the revised CTP parameter to the AT and XP controls and the Note in the License Requirements section; and
  (c) Removing the phrase "or digital-to-analog" in the CTP paragraph of the License Exception section, because 4A003.e and 3A001.a.5.a only refer to analog-to-digital.

Note: For commodities no longer controlled under ECCN 4A003, there is a license requirement under ECCN 4A994 for exports and reexports to AT Column 1 countries of the Commerce Country Chart.

- ECCN 4D001 is amended by:

(a) Making conforming changes of the revised CTP parameter in 4A003.b to the XP control in the License Requirements section;
(b) Making the existing heading paragraph (a) in the items paragraph of the List of Items Controlled section; and
(c) Adding a new paragraph for other "software".

- ECCN 4D994 is amended by revising the heading to prevent an overlap of controls between 4D001 and 4D994.
- ECCN 4E001 is amended by:
  (a) Making conforming changes of the revised CTP parameter in 4A003.b to the XP control in the License Requirements section;
  (b) Making the existing heading paragraph (a) in the items paragraph of the List of Items Controlled section; and
  (c) Adding a new paragraph for other "technology".
- ECCN 4E992 is amended by revising the heading to prevent an overlap of controls between 4E001 and 4E992.

Category 5—Part I—Telecommunications

- ECCN 5A001 is amended by:
  (a) Adding new text regarding frequency range and output power in 5A001.b.2.b.2;
  (b) Adding "output" after "voice coding" in 5A001.b.6; and
  (c) Adding a new technical note after 5A001.b.6.
- ECCN 5A991 is amended by correcting the numbering of the paragraphs in 5A991.b.6.
- ECCN 5B001 is amended by:
  (a) Revising the parameter for radio equipment employing quadrature-amplitude-modulation (QAM) techniques from "above level 128" to "above level 256" in 5B001.b.4; and
  (b) Revising text regarding equipment employing "common channel signaling" in 5B001.b.5.

Note: For commodities no longer controlled under ECCN 5B001, there is a license requirement under ECCN 5B991 for exports and reexports to AT Column 1 countries of the Commerce Country Chart.

- ECCN 5D001 is amended by:
  (a) Correcting a paragraph citation in the CIV and TSR eligibility paragraphs of the License Exceptions section from "5A001.b.4" to read "5A001.b.5"; and
  (b) Revising the parameter for radio equipment employing quadrature-amplitude-modulation (QAM) techniques from "above level 128" to "above level 256" in 5D001.d.4.

Note: For commodities no longer controlled under ECCN 5D001, there is a license requirement under ECCN 5D991 for exports and reexports to AT Column 1 countries of the Commerce Country Chart.

- ECCN 5E001 is amended by:
  (a) Revising the parameter for radio equipment employing quadrature-amplitude-modulation (QAM) techniques from "above level 128" to "above level 256" in 5E001.c.4.a; and
  (b) Revising text regarding equipment employing "common channel signaling" in 5E001.c.5.

Note: For commodities no longer controlled under ECCN 5E001, there is a license requirement under ECCN 5E991 for exports and reexports to AT Column 1 countries of the Commerce Country Chart.

Category 5—Part II—Information Security

- ECCN 5A002 is amended by:
  (a) Moving and rearranging the text that describes what is not controlled in this entry from the Related Controls paragraph of the List of Items Controlled section to a Note in the beginning of the Item paragraph of the List of Items Controlled section;
  (b) Dividing the existing text in paragraph (a) of the note (regarding "personalized smart cards") into sub-paragraph 1 and a N.B.; and
  (c) Moving the related control note in paragraph 2 of the Related Definitions paragraph of the List of Items Controlled section to a N.B. following 5A002.a.

Category 6—Sensors

- ECCN 6A001 is amended by:
  (a) Removing from LVS eligibility, because these items have been added to Annex 2 of the Wassenaar List:
  (1) 6A001.a.1.b.1 object detection and location systems having a transmitting frequency below 5 kHz or a sound pressure level exceeding 210 dB (reference 1 µPa at 1 m) for equipment with an operating frequency in the band from 30 kHz to 2 kHz inclusive; and
  (2) 6A001.a.2.a.4 hydrophones when designed to operation at depths exceeding 35 m with acceleration compensation.
  (b) Removing paragraph 6A001.a.2.a.2.b piezoelectric polymers, and redesignating paragraph 6A001.a.2.a.2.c flexible piezoelectric ceramic materials as 6A001.a.2.a.2.b.

Note: For commodities no longer controlled under ECCN 6A001, there is a license requirement under ECCN 6A991 for exports and reexports to AT Column 1 countries of the Commerce Country Chart.

- ECCN 6A002 is amended by:
  (a) Revising the parameter for image intensifier tubes in 6A002.a.2.a.2 from 15 µm to 12µm;
  (b) Clarifying the text of 6A002.a.2.a.3 regarding photocathodes;
  (c) Revising the parameter for photocathodes in 6A002.a.2.a.3.a from 240 µA/lm to 350 µA/lm;
  (d) Deleting the word "control" and inserting "apply to" in the note for 6A002.a.2.a.3.c;
  (e) Revising the parameter for specially designed components for image intensifier tubes in 6A002.a.2.b.1 from 15 µm to 12µm;
  (f) Adding a new technical note 2 for 6A002.a.3 to define "cross scan direction" and "scan direction";
  (g) Revising the text of 6A002.a.3.c to apply only to 2-dimensional arrays;
  (h) Adding new paragraphs 6A002.a.3.d and .e to control non-"space-qualified" linear (1-dimensional) "focal plane arrays"
  Fixing the abbreviation for milliradians to read "mrad" instead of "mr" in 6A002.b.1 and 6A002.b.2.b.2.

Note: For commodities no longer controlled under ECCN 6A002, there is a license requirement under ECCN 6A992 for exports and reexports to AT Column 1 countries of the Commerce Country Chart.

- ECCN 6A003 is amended by:
  (a) Adding a new parameter "peak response" in 6A003.b.1 for video cameras incorporating solid state sensors; and
  (b) Redesignating paragraphs 6A003.b.2.a and b.2.b as b.2.b and b.2.c. and adding a new parameter "peak response" in 6A003.b.2.a for scanning cameras and scanning camera systems.
- ECCNs 6A004 and 6A008 are amended by fixing the abbreviation for radian to read "rad" instead of "r" in 6A004.d.2, .d.3.c, .d.3.d.1, .d.3.d.2, and 6A008.j.2.
- ECCN 6A992 is amended to add a paragraph for "direct view imaging equipment operating in the visible or infrared spectrum, incorporating image intensifier tubes having the characteristics listed in 6A992.a.1." to assure that this technology is not decontrolled, but retains an AT control.
- ECCNs 6E001 and 6E002 are amended by removing License Exception TSR eligibility for exports and reexports to destinations outside of Austria, Belgium, Canada, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Japan, Luxembourg, the Netherlands, Portugal, Spain, Sweden, or the United Kingdom of "technology" for the "development" of 6A001.a.2.a.4.

Category 7—Navigation and Avionics

- ECCN 7A003 is amended by:
  (a) Removing the "or" from the end of Note 1, paragraph 1.b; and
  (b) Fixing the abbreviation for radian to read "rad" instead of "r" in 7A003, Note 1, paragraph 2.

All items removed from national security (NS) controls as a result of changes to the Wassenaar List of Dual-Use Goods and Technologies will continue to be controlled for antiterrorism (AT) reasons.

• This rule amends part 772 of the EAR by adding a technical note to the definition of "microcomputer microcircuit" that was inadvertently not inserted in previous regulatory updates. The new technical note reads, "Technical Note 2: The internal storage may be augmented by an external storage."

• This rule clarifies the scope of Wassenaar reporting requirements that apply to License Exception GOV, and makes the following amendments to the Wassenaar Reporting Requirements in section 743.1 of the EAR to conform with changes made to the Wassenaar Arrangement's Annex 1 of the List of Dual-Use Goods and Technologies.

—This rule removes Wassenaar reporting requirements from part 743 for the following: 2B003; 6A001.a.1.b.1, a.2.c and .a.2.e (because these commodities are not eligible for License Exceptions LVS, GBS, or CIV); and 9D001, 9D002, 9D004.a and .c, 9E001, 9E002, 9E003.a.1., .a.2, .a.3, .a.4, .a.5, .a.8, and .a.9 (because these software and technology entries are not eligible for License Exceptions TSR or CIV).

—The Note to paragraph (c)(1)(ii) has also been modified to address the scope of reports required for 2D001 and 2E001.

—Paragraph (c)(2) has been modified to more closely harmonize with Annex 1 text for 4E001 and 4D001.

—This rule adds Wassenaar reporting requirements from part 743 for 5A001.b.5

• This rule makes the following amendments to the list of items ineligible for export or reexport under License Exception GOV, to conform with revisions to the Wassenaar Arrangement's Annex 2 of the List of Dual-Use Goods and Technologies:

• For exports and reexports of commodities and software to the International Atomic Energy Agency (IAEA) and the European Atomic Energy Community (EURATOM), reexports by IAEA and EURATOM for official international safeguard use:

(1) The following items are added to the list of ineligible commodities:

(a) 6A001.a.1.b.1: object detection and location systems having a transmitting frequency below 5 kHz or a sound pressure level exceeding 224 dB (reference 1 μPa at 1 m) for equipment with an operating frequency in the band from 5 kHz to 10 kHz inclusive; and

(b) 6A001.a.2.a.4: Hydrophones when designed to operate at depths exceeding 35 m with acceleration compensation.

(2) In Supplement No. 1 to section 740.11, paragraph (a)(3), the following items are removed from the list of ineligible items:

(a) 6A003, 7D001, 7E001, 7E002, and 7E101 are removed because these items do not appear on Annex 2;

(b) The scope of 6A002 has been narrowed to 6A002.a.1.c, because this is the only paragraph in 6A002 that is on Annex 2;

(c) The scope of 6E001 and 6E002 have been narrowed to only exclude from eligibility technology according to the General Technology Note for the "development" and "production" of equipment in 6A002.a.1.c, because only this technology is both controlled for RS and listed on Annex 2. However, other technology under 6E001 and 6E002 are made ineligible for this license exception under other paragraphs in this supplement.

• For exports or reexports of items for official use within national territory by agencies of cooperating governments, and exports and reexports of items for diplomatic and consular missions of a cooperating government located in any country in Country Group B:

(1) The following items are added to the list of ineligible commodities:

(a) 6A001.a.1.b.1: object detection and location systems having a transmitting frequency below 5 kHz or a sound pressure level exceeding 224 dB (reference 1 μPa at 1 m) for equipment with an operating frequency in the band from 5 kHz to 10 kHz inclusive; and

(b) 6A001.a.2.a.4: Hydrophones when designed to operate at depths exceeding 35 m with acceleration compensation.

(2) In Supplement No. 1 to section 740.11, paragraph (b)(3), the following items are removed from the list of ineligible items:

(a) 6A003, 7D001, 7E001, 7E002, and 7E101 are removed because these items do not appear on Annex 2;

(b) The scope of 6A002 has been narrowed to 6A002.a.1.c, because this is the only paragraph in 6A002 that is on Annex 2; and

(c) The scope of 6E001 and 6E002 have been narrowed to only exclude from eligibility technology according to the General Technology Note for the "development" and "production" of equipment in 6A002.a.1.c, because only this technology is both controlled for RS and listed on Annex 2. However, other technology under 6E001 and 6E002 are made ineligible for this license exception under other paragraphs in this supplement.

This rule also adds a new Supplement No. 3, Statements of Understanding, to part 774 (the existing Supplement No. 3 is removed). This supplement will be used to place understandings affecting export controls that have been agreed upon in multilateral regimes or among agencies within the United States.

The first understanding to be placed in this supplement is a Wassenaar Arrangement statement of understanding concerning medical equipment. It states that commodities that are "specially designed for medical end-use" that "incorporate" commodities or software on the Commerce Control List in Supplement No. 1 to part 774 of the EAR that do not have a reason for control of Nuclear Nonproliferation (NP), Missile Technology (MT), or Chemical & Biological Weapons (CB), are classified as EAR99. This understanding has been a longstanding agreement in the Wassenaar Arrangement, and does not represent a policy or interpretation change under the EAR. BIS has implemented this understanding into decisions on classification requests and license applications, consistent with interpretation 2 in paragraph (b) of section 770.2, *i.e.*, the classification of the assembled machine also covers its component parts.

The statement of understanding has been modified from the original text as it appears in the Wassenaar Dual Use List of 2002, in order to harmonize the language with existing language in the EAR. BIS is providing guidance in notes to the medical statement of understanding to assist the public in determining what is considered "specially designed for medical end-use" and what "incorporate" means. The guidance provided for these terms only applies to the newly added Statement of Understanding for medical equipment.

Although the Export Administration Act expired on August 20, 2001, Executive Order 13222 of August 17, 2001 (66 FR 44025, August 22, 2001), as extended by the Notice of August 7, 2003, (68 FR 47833, 2003 WL 21877490), continues the Regulations in effect under the International Emergency Economic Powers Act

Saving Clause

Shipments of items removed from eligibility for export or reexport without a license, under a particular License Exception authorization or the designator NLR, as a result of this regulatory action, may continue to be exported or reexported under that License Exception authorization or designator until January 9, 2004. In addition, this rule revises the numbering and structure of certain entries on the Commerce Control List. For items under such entries and until March 9, 2004, BIS will accept license applications for items described either by the entries in effect immediately before December 10, 2003, or the entries described in this rule.

Rulemaking Requirements

1. This final rule has been determined to be not significant for purposes of E.O. 12866.

2. Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with a collection of information, subject to the requirements of the Paperwork Reduction Act, unless that collection of information displays a currently valid Office of Management and Budget Control Number. This rule involves a collection of information subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). This collection has been approved by the Office of Management and Budget under control number 0694–0088, "Multi-Purpose Application," which carries a burden hour estimate of 45 minutes for a manual submission and 40 minutes for an electronic submission.

3. This rule does not contain policies with Federalism as that term is defined under E.O. 13132.

4. The provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, the opportunity for public participation, and a delay in effective date, are inapplicable because this regulation involves a military and foreign affairs function of the United States (5 U.S.C. 553(a)(1)). Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this interim rule. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule under the Administrative Procedure Act or by any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are not applicable. Therefore, this regulation is issued in final form. Although there is no formal comment period, public comments on this regulation are welcome on a continuing basis. Comments should be submitted to Sharron Cook, Office of Exporter Services, Bureau of Industry and Security, Department of Commerce, P.O. Box 273, Washington, DC 20044.

List of Subjects

15 CFR Parts 740 and 743

Administrative practice and procedure, Exports, Foreign trade, Reporting and recordkeeping requirements.

15 CFR Part 772

Exports and Foreign trade.

15 CFR Part 774

Exports, Foreign Trade, Reporting and recordkeeping requirements.

■ Accordingly, parts 740, 743, 772, and 774 of the Export Administration Regulations (15 CFR parts 730–799) are amended as follows:

PART 740—[AMENDED]

■ 1. The authority citation for part 740 is revised to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; Sec. 901–911, Pub. L. 106–387; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 7, 2003, 68 FR 47833, August 11, 2003.

■ 2. Section 740.11 is amended by revising:

■ (a) The introductory paragraph to (a)(2), to read as set out below, and

■ (b) The phrase "Controlled by 9D001, specially designed for the" to read "Controlled by 9D001, specially designed or modified for the" in paragraph (a)(2)(vi)(G).

§ 740.11 Governments, international organizations, and international inspections under the Chemical Weapons Convention (GOV).

* * * * *

(a) * * *

(2) The following items controlled for national security (NS) reasons under Export Control Classification Numbers (ECCNs) identified on the Commerce Control List may not be exported or reexported under this License Exception to destinations other than Austria, Belgium, Canada, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Luxembourg, the Netherlands, Portugal, Spain, Sweden, and the United Kingdom: 1C001, 5A001.b.5, 6A001.a.1.b.1 object detection and location systems having a sound pressure level exceeding 210 dB (reference 1 μPa at 1 m) for equipment with an operating frequency in the band from 30 Hz to 2 kHz inclusive, 6A001.a.2.a.1, 6A001.a.2.a.2, 6A001.a.2.a.4, 6A001.a.2.a.5, 6A001.a.2.b, 6A001.a.2.e, 6A002.a.1.c, 6A008.l.3, 6B008, 8A001.b, 8A001.d, 8A002.o.3.b; and

* * * * *

■ 3. Supplement Number 1 to § 740.11 is amended by revising

■ (a) The introductory paragraph to (a)(1), paragraphs (a)(1)(vii)(D) and (E), (a)(3), the introductory paragraph to (b)(1), paragraphs (b)(1)(vii)(D) and (E), and (b)(3), to read as set forth below; and

■ (b) The phrase "Controlled by 9D001, specially designed for the" to read "Controlled by 9D001, specially designed or modified for the" in paragraphs (a)(1)(vi)(G) and (b)(1)(vi)(G).

Supplement No. 1 to § 740.11—Additional Restrictions on Use of License Exception Gov

(a) *Items for official use within national territory by agencies of a Cooperating Government.* * * *

(1) Items identified on the Commerce Control List as controlled for national security (NS) reasons under Export Control Classification Numbers (ECCNs) as follows for export or reexport to destinations other than Austria, Belgium, Canada, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Luxembourg, the Netherlands, Portugal, Spain, Sweden, or the United Kingdom: 1C001, 5A001.b.5, 6A001.a.1.b.1 object detection and location systems having a sound pressure level exceeding 210 dB (reference 1 μPa at 1 m) for equipment with an operating frequency in the band from 30 Hz to 2 kHz inclusive, 6A001.a.2.a.1, 6A001.a.2.a.2; 6A001.a.2.a.4, 6A001.a.2.a.5, 6A001.a.2.b, 6A001.a.2.e, 6A002.a.1.c, 6A008.l.3, 6B008, 8A001.b, 8A001.d, 8A002.o.3.b; and

* * * * *

(vii) "Technology", as follows: * * *

(D) Controlled by 6E001 for the "development" of equipment or "software" in 6A001.a.1.b.1, 6A001.a.2.a.1, 6A001.a.2.a.2, 6A001.a.2.a.4, 6A001.a.2.a.5, 6A001.a.2.b, 6A001.a.2.c, 6A001.a.2.e, 6A001.a.2.f, 6A002.a.1.c, 6A008.l.3, or 6B008, as described in paragraph (a)(1) of this Supplement; and

(E) Controlled by 6E002 for the "production" of equipment controlled by 6A001.a.1.b.1, 6A001.a.2.a.1, 6A001.a.2.a.2, 6A001.a.2.a.4, 6A001.a.2.a.5, 6A001.a.2.b, 6A001.a.2.c, 6A001.a.2.e, 6A001.a.2.f, 6A002.a.1.c, 6A008.l.3, or 6B008, as described in paragraph (a)(1) of this Supplement; and

* * * * *

(3) Regional stability items controlled under Export Control Classification Numbers (ECCNs) 6A002.a.1.c, 6E001 technology according to the General Technology Note for the "development" of equipment in 6A002.a.1.c, and 6E002 technology according to the General Technology Note for the "production" of equipment in 6A002.a.1.c; or

* * * * *

(b) *Diplomatic and consular missions of a cooperating government.* * * *

(1) Items identified on the Commerce Control List as controlled for national security (NS) reasons under Export Control Classification Numbers (ECCNs) as follows for export or reexport to destinations other than Austria, Belgium, Canada, Denmark, Finland, France, Germany, Greece, Ireland,

Italy, Luxembourg, the Netherlands, Portugal, Spain, Sweden, or the United Kingdom: 1C001, 5A001.b.5, 6A001.a.1.b.1 object detection and location systems having a sound pressure level exceeding 210 dB (reference 1 μPa at 1 m) for equipment with an operating frequency in the band from 30 Hz to 2 kHz inclusive, 6A001.a.2.a.1, 6A001.a.2.a.2, 6A001.a.2.a.4, 6A001.a.2.a.5, 6A001.a.2.b, 6A001.a.2.e, 6A002.a.1.c, 6A008.l.3, 6B008, 8A001.b, 8A001.d, 8A002.o.3.b; and

* * * * *

(vii) "Technology", as follows: * * *

(D) Controlled by 6E001 for the "development" of equipment or "software" in 6A001.a.1.b.1, 6A001.a.2.a.1, 6A001.a.2.a.2, 6A001.a.2.a.4, 6A001.a.2.a.5, 6A001.a.2.b, 6A001.a.2.c, 6A001.a.2.e, 6A001.a.2.f, 6A002.a.1.c, 6A008.l.3, or 6B008, as described in paragraph (a)(1) of this Supplement; and

(E) Controlled by 6E002 for the "production" of equipment controlled by 6A001.a.1.b.1, 6A001.a.2.a.1, 6A001.a.2.a.2, 6A001.a.2.a.4, 6A001.a.2.a.5, 6A001.a.2.b, 6A001.a.2.c, 6A001.a.2.e, 6A001.a.2.f, 6A002.a.1.c, 6A008.l.3, or 6B008, as described in paragraph (a)(1) of this Supplement; and

* * * * *

(3) Regional stability items controlled under Export Control Classification Numbers (ECCNs) 6A002.a.1.c, 6E001 technology according to the General Technology Note for the "development" of equipment in 6A002.a.1.c, and 6E002 technology according to the General Technology Note for the "production" of equipment in 6A002.a.1.c; or

* * * * *

PART 743—[AMENDED]

■ 4. The authority citation for part 743 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; Pub. L. 106–508; 50 U.S.C. 1701 *et seq.*; E.O. 13206, 66 FR 16397, April 9, 2001.

■ 5. Section 743.1 is amended by:

■ (a) Revising paragraphs (c)(1)(ii), (c)(1)(vi), (c)(1)(viii), and (c)(2) as set forth below; and

■ (b) Revising all references to "5A001.b.3;" to read "5A001.b.3 or b.5" in paragraph (c)(1)(v).

§ 743.1 Wassenaar Arrangement.

* * * * *

(c) *Items for which reports are required.* (1) * * *

(ii) *Category 2:* 2D001 (certain items only; see Note to this paragraph), 2E001 (certain items only; see Note to this paragraph), and 2E002 (certain items only; see Note to this paragraph);

Note to paragraph (c)(1)(ii): *Reports for 2D001,* for "software", other than that controlled by 2D002, specially designed for the "development" or "production" of the equipment in 2B003 or 2B001.a or .b (changing 6 μm to 5.1 μm in 2B001.a.1 and 2B001.b.1.a; and adding "a positioning accuracy with "all compensations available" equal to or less (better) than 5.1 μm along any linear axis" to the existing text for 2B001.b.2) of the Commerce Control List (CCL).

Reports for 2E001, are for "technology" according to the General Technology Note for "development" of "software" as described in this paragraph for 2D001, or for the equipment in 2B003 or 2B001.a or .b (changing 6μm to 5.1μm in 2B001.a.1 and 2B001.b.1.a; and adding "a positioning accuracy with "all compensations available" equal to or less (better) than 5.1 μm along any linear axis" to the existing text for 2B001.b.2) of the CCL.

Reports for 2E002, are for "technology" according to the General Technology Note for "production" of the equipment in 2B003 or 2B001.a or .b (changing 6 μm to 5.1 μm in 2B001.a.1 and 2B001.b.1.a; and adding "a positioning accuracy with "all compensations available" equal to or less (better) than 5.1 μm along any linear axis" to the existing text for 2B001.b.2) of the CCL.

* * * * *

(vi) *Category 6:* 6A001.a.1.b (changing 10 kHz to 5 kHz and adding the text "or a sound pressure level exceeding 224 dB (reference 1 μPa at 1 m) for equipment with an operating frequency in the band from 5kHz to 10 kHz inclusive" to the existing text in 6A001.a.1.b.1) , and .a.2.d; 6A002.b; 6A004.c and d; 6A006.g (excluding compensators which provide only absolute values of the earth's magnetic field as output (*i.e.*, the frequency bandwidth of the output extends from DC to at least 0.8 Hz) and h; 6A008.d, .h, and .k; 6D001 (for 6A004.c and .d and 6A008.d, .h, and .k); 6D003.a; 6E001 (for equipment and software listed in this paragraph); and 6E002 (for equipment listed in this paragraph);

* * * * *

(viii) *Category 9:* 9B001.b.

(2) Reports for "software" controlled by 4D001(that is specially designed), and "technology" controlled by 4E001 (according to the General Technology Note in Supplement No. 2 to part 774 of the EAR) are required for the "development" or "production" of computers controlled under 4A001.a.2, or for the "development" or "production" of "digital computers" having a CTP exceeding 75,000 MTOPS. For the calculation of CTP, see the Technical Note for Category 4 in the Commerce Control List (Supplement No. 2 to part 774 of the EAR).

* * * * *

PART 772—[AMENDED]

■ 6. The authority citation for part 772 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; E.O. 13222; 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 7, 2003, 68 FR 47833, August 11, 2003.

■ 7. In section 772.1, the definition for "microcomputer microcircuit" is revised to read as follows:

§ 772.1 Definitions of terms as used in the Export Administration Regulations (EAR).

* * * * *

Microcomputer microcircuit. (Cat 3) means a "monolithic integrated circuit" or "multichip integrated circuit" containing an arithmetic logic unit (ALU) capable of executing a series of general purpose instructions from an internal storage, on data contained in the internal storage.

Technical Note 1: The "microprocessor microcircuit" normally does not contain integral user-accessible storage, although storage present on-the-chip may be used in performing its logic function.

Technical Note 2: The internal storage may be augmented by an external storage.

Note: This definition includes chip sets which are designed to operate together to provide the function of a "microprocessor microcircuit."

* * * * *

PART 774—[AMENDED]

■ 8. The authority citation for part 774 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 10 U.S.C. 7420; 10 U.S.C. 7430(e); 18 U.S.C. 2510 *et seq.*; 22 U.S.C. 287c, 22 U.S.C. 3201 *et seq.*, 22 U.S.C. 6004; 30 U.S.C. 185(s), 185(u); 42 U.S.C. 2139a; 42 U.S.C. 6212; 43 U.S.C. 1354; 46 U.S.C. app. 466c; 50 U.S.C. app. 5; Sec. 901–911, Pub. L. 106–387; Sec. 221, Pub. L. 107–56; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 7, 2003, 68 FR 47833, August 11, 2003.

Category 1—Materials, Chemicals, "Microorganisms," and Toxins

■ 9. In Supplement No. 1 to part 774 (the Commerce Control List), Category 1—Materials, Chemicals, Microorganisms, and Toxins, Export Control Classification Number (ECCN) 1B001 is amended by revising the *items* paragraph in the List of Items Controlled section, to read as follows:

1B001 Equipment for the production of fibers, prepregs, preforms or "composites" controlled by 1A002 or 1C010, and specially designed components and accessories therefor.

* * * * *

List of Items Controlled

Unit: * * *
Related Controls: * * *
Related Definitions: * * *
Items:

a. Filament winding machines of which the motions for positioning, wrapping and winding fibers are coordinated and programmed in three or more axes, specially designed for the manufacture of "composite" structures or laminates from "fibrous or filamentary materials";

b. Tape-laying or tow-placement machines of which the motions for positioning and laying tape, tows or sheets are coordinated and programmed in two or more axes, specially designed for the manufacture of "composite" airframe or "missile" structures;

c. Multidirectional, multidimensional weaving machines or interlacing machines, including adapters and modification kits, for weaving, interlacing or braiding fibers to manufacture "composite" structures;

Technical Note: For the purposes of 1B001.c the technique of interlacing includes knitting.

Note: 1B001.c does not control textile machinery not modified for the above end-uses.

d. Equipment specially designed or adapted for the production of reinforcement fibers, as follows:

d.1. Equipment for converting polymeric fibers (such as polyacrylonitrile, rayon, pitch or polycarbosilane) into carbon fibers or silicon carbide fibers, including special equipment to strain the fiber during heating;

d.2. Equipment for the chemical vapor deposition of elements or compounds on heated filamentary substrates to manufacture silicon carbide fibers;

d.3. Equipment for the wet-spinning of refractory ceramics (such as aluminum oxide);

d.4. Equipment for converting aluminum containing precursor fibers into alumina fibers by heat treatment;

e. Equipment for producing prepregs controlled by 1C010.e by the hot melt method;

f. Non-destructive inspection equipment capable of inspecting defects three dimensionally, using ultrasonic or X-ray tomography and specially designed for "composite" materials.

■ 10. In Supplement No. 1 to part 774 (the Commerce Control List), Category 1—Materials, Chemicals, Microorganisms, and Toxins, Export Control Classification Number (ECCN) 1C006 is amended by revising the *items* paragraph in the List of Items Controlled section, to read as follows:

1C006 Fluids and lubricating materials, as follows (see List of Items Controlled).

* * * * *

List of Items Controlled

Unit: * * *
Related Controls: * * *
Related Definitions: * * *
Items:

a. Hydraulic fluids containing, as their principal ingredients, any of the following compounds or materials:

a.1. Synthetic silahydrocarbon oils, having all of the following:

Technical Note: For the purpose of 1C006.a.1, silahydrocarbon oils contain exclusively silicon, hydrogen and carbon.

a.1.a. A flash point exceeding 477 K (204 °C);

a.1.b. A pour point at 239 K (& − 34 °C) or less;

a.1.c. A viscosity index of 75 or more; *and*

a.1.d. A thermal stability at 616 K (343 °C); or

a.2. Chlorofluorocarbons, having all of the following:

Technical Note: For the purpose of 1C006.a.2, chlorofluorocarbons contain exclusively carbon, fluorine and chlorine.

a.2.a. No flash point;

a.2.b. An autogenous ignition temperature exceeding 977 K (704 °C);

a.2.c. A pour point at 219 K (− 54 °C) or less;

a.2.d. A viscosity index of 80 or more; *and*

a.2.e. A boiling point at 473 K (200 °C) or higher;

b. Lubricating materials containing, as their principal ingredients, any of the following compounds or materials:

b.1. Phenylene or alkylphenylene ethers or thio-ethers, or their mixtures, containing more than two ether or thio-ether functions or mixtures thereof; *or*

b.2. Fluorinated silicone fluids with a kinematic viscosity of less than 5,000 mm^2/s (5,000 centistokes) measured at 298 K (25 °C);

c. Damping or flotation fluids with a purity exceeding 99.8%, containing less than 25 particles of 200 μm or larger in size per 100 ml and made from at least 85% of any of the following compounds or materials:

c.1. Dibromotetrafluoroethane;

c.2. Polychlorotrifluoroethylene (oily and waxy modifications only); *or*

c.3. Polybromotrifluoroethylene;

d. Fluorocarbon electronic cooling fluids, having all of the following characteristics:

d.1. Containing 85% by weight or more of any of the following, or mixtures thereof:

d.1.a. Monomeric forms of perfluoropolyalkylether-triazines or perfluoroaliphatic-ethers;

d.1.b. Perfluoroalkylamines;

d.1.c. Perfluorocycloalkanes; *or*

d.1.d. Perfluoroalkanes;

d.2. Density at 298 K (25 °C) of 1.5 g/ml or more;

d.3. In a liquid state at 273 K (0 °C); *and*

d.4. Containing 60% or more by weight of fluorine.

Technical Note: For the purpose of 1C006:

a. Flash point is determined using the Cleveland Open Cup Method described in ASTM D–92 or national equivalents;

b. Pour point is determined using the method described in ASTM D–97 or national equivalents;

c. Viscosity index is determined using the method describe in ASTM D–2270 or national equivalents;

d. Thermal stability is determined by the following test procedure or national equivalents:

Twenty ml of the fluid under test is placed in a 46 ml type 317 stainless steel chamber containing one each of 12.5 mm (nominal) diameter balls of M–10 tool steel, 52100 steel and naval bronze (60% Cu, 39% Zn, 0.75% Sn);

The chamber is purged with nitrogen, sealed at atmospheric pressure and the temperature raised to and maintained at 644 ± 6 K (371 ± 6 °C) for six hours;

The specimen will be considered thermally stable if, on completion of the above procedure, all of the following conditions are met:

1. The loss in weight of each ball is less than 10 mg/mm^2 of ball surface;

2. The change in original viscosity as determined at 311 K (38 °C) is less than 25%; and

3. The total acid or base number is less than 0.40;

e. Autogenous ignition temperature is determined using the method described in ASTM E–659 or national equivalents.

Category 2—Materials Processing

■ 11. In Supplement No. 1 to part 774 (the Commerce Control List), Category 2—Materials Processing, Export Control Classification Number (ECCN) 2B006 is amended by removing the *ECCN Controls* paragraph and revising the *items* paragraph in the List of Items Controlled section, to read as follows:

2B006 Dimensional inspection or measuring systems and equipment, as follows (see List of Items Controlled).

* * * * *

List of Items Controlled

Unit: * * *
Related Controls: * * *
Related Definitions: * * *
Items:

a. Computer controlled, "numerically controlled" or "stored program controlled" co-ordinate measuring machines (CMM), having a three dimensional length (volumetric) maximum permissible error of indication (MPE_E) at any point within the operating range of the machine (*i.e.*, within the length of axes) equal to or less (better) than (1.7 + L/1,000) μm (L is the measured length in mm) tested according to ISO 10360–2 (2001);

b. Linear and angular displacement measuring instruments, as follows:

b.1. Linear displacement measuring instruments having any of the following:

Technical Note: For the purpose of 2B006.b.1 "linear displacement" means the

change of distance between the measuring probe and the measured object.

b.1.a. Non-contact type measuring systems with a "resolution" equal to or less (better) than 0.2 μm within a measuring range up to 0.2 mm;

b.1.b. Linear voltage differential transformer systems having all of the following characteristics:

b.1.b.1. "Linearity" equal to or less (better) than 0.1% within a measuring range up to 5 mm; *and*

b.1.b.2. Drift equal to or less (better) than 0.1% per day at a standard ambient test room temperature ± 1 K; *or*

b.1.c. Measuring systems having all of the following: b.1.c.1. Containing a "laser"; *and*

b.1.c.2. Maintaining, for at least 12 hours, over a temperature range of ± 1 K around a standard temperature and at a standard pressure, all of the following:

b.1.c.2.a. A "resolution" over their full scale of 0.1 μm or less (better); *and*

b.1.c.2.b. A "measurement uncertainty" equal to or less (better) than (0.2 + L/2,000) μm (L is the measured length in mm);

Note: 2B006.b.1 does not control measuring interferometer systems, without closed or open loop feedback, containing a "laser" to measure slide movement errors of machine-tools, dimensional inspection machines or similar equipment.

b.2. Angular displacement measuring instruments having an "angular position deviation" equal to or less (better) than 0.00025°;

Note: 2B006.b.2 does not control optical instruments, such as autocollimators, using collimated light to detect angular displacement of a mirror.

c. Equipment for measuring surface irregularities, by measuring optical scatter as a function of angle, with a sensitivity of 0.5 nm or less (better).

Note: Machine tools that can be used as measuring machines are controlled by this entry if they meet or exceed the criteria specified for the machine tool function or the measuring machine function.

Category 3—Electronics

■ 12. In Supplement No. 1 to part 774 (the Commerce Control List), Category 3—Electronics, Export Control Classification Number (ECCN) 3A001 is amended revising the "items" paragraph in the List of Items Controlled section, to read as follows:

3A001 Electronic components, as follows (see List of Items Controlled).

* * * * *

List of Items Controlled

Unit: * * *

Related Controls: * * *

Related Definitions: * * *

Items:

a. General purpose integrated circuits, as follows:

Note 1: The control status of wafers (finished or unfinished), in which the function has been determined, is to be evaluated against the parameters of 3A001.a.

Note 2: Integrated circuits include the following types:

"Monolithic integrated circuits";

"Hybrid integrated circuits";

"Multichip integrated circuits";

"Film type integrated circuits", including silicon-on-sapphire integrated circuits;

"Optical integrated circuits".

a.1. Integrated circuits, designed or rated as radiation hardened to withstand any of the following:

a.1.a. A total dose of 5×10^3 Gy (Si), or higher;

a.1.b. A dose rate upset of 5×10^6 Gy (Si)/s, or higher; *or*

a.1.c. A fluence (integrated flux) of neutrons (1 MeV equivalent) of 5×10^{13} n/cm² or higher on silicon, or its equivalent for other materials;

Note: 3A001.a.1.c does not apply to Metal Insulator Semiconductors (MIS).

a.2. "Microprocessor microcircuits", "microcomputer microcircuits", microcontroller microcircuits, storage integrated circuits manufactured from a compound semiconductor, analog-to-digital converters, digital-to-analog converters, electro-optical or "optical integrated circuits" designed for "signal processing", field programmable logic devices, neural network integrated circuits, custom integrated circuits for which either the function is unknown or the control status of the equipment in which the integrated circuit will be used in unknown, Fast Fourier Transform (FFT) processors, electrical erasable programmable read-only memories (EEPROMs), flash memories or static random-access memories (SRAMs), having any of the following:

a.2.a. Rated for operation at an ambient temperature above 398 K (125°C);

a.2.b. Rated for operation at an ambient temperature below 218 K (−55°C); *or*

a.2.c. Rated for operation over the entire ambient temperature range from 218 K (−55°C) to 398 K (125° C);

Note: 3A001.a.2 does not apply to integrated circuits for civil automobile or railway train applications.

a.3. "Microprocessor microcircuits", "micro-computer microcircuits" and microcontroller microcircuits, having any of the following characteristics:

Note: 3A001.a.3 includes digital signal processors, digital array processors and digital coprocessors.

a.3.a. [RESERVED]

a.3.b. Manufactured from a compound semiconductor and operating at a clock frequency exceeding 40 MHz; *or*

a.3.c. More than one data or instruction bus or serial communication port that provides a direct external interconnection between parallel "microprocessor microcircuits" with a transfer rate exceeding 150 Mbyte/s;

a.4. Storage integrated circuits manufactured from a compound semiconductor;

a.5. Analog-to-digital and digital-to-analog converter integrated circuits, as follows:

a.5.a. Analog-to-digital converters having any of the following:

a.5.a.1. A resolution of 8 bit or more, but less than 12 bit with a total conversion time of less than 5 ns;

a.5.a.2. A resolution of 12 bit with a total conversion time of less than 20 ns;

a.5.a.3. A resolution of more than 12 bit but equal to or less than 14 bit with a total conversion time of less than 200 ns; *or*

a.5.a.4. A resolution of more than 14 bit with a total conversion time of less than 1 μs;

a.5.b. Digital-to-analog converters with a resolution of 12 bit or more, and a "settling time" of less than 10 ns;

Technical Note: 1. A resolution of n bit corresponds to a quantization of 2^n levels.

2. Total conversion time is the inverse of the sample rate.

a.6. Electro-optical and "optical integrated circuits" designed for "signal processing" having all of the following:

a.6.a. One or more than one internal "laser" diode;

a.6.b. One or more than one internal light detecting element; *and*

a.6.c. Optical waveguides;

a.7. Field programmable logic devices having any of the following:

a.7.a. An equivalent usable gate count of more than 30,000 (2 input gates);

a.7.b. A typical "basic gate propagation delay time" of less than 0.1 ns; *or*

a.7.c. A toggle frequency exceeding 133 MHz;

Note: 3A001.a.7 includes: Simple Programmable Logic Devices (SPLDs), Complex Programmable Logic Devices (CPLDs), Field Programmable Gate Arrays (FPGAs), Field Programmable Logic Arrays (FPLAs), and Field Programmable Interconnects (FPICs).

N.B.: Field programmable logic devices are also known as field programmable gate or field programmable logic arrays.

a.8. [RESERVED]

a.9. Neural network integrated circuits;

a.10. Custom integrated circuits for which the function is unknown, or the control status of the equipment in which the integrated circuits will be used is unknown to the manufacturer, having any of the following:

a.10.a. More than 1,000 terminals;

a.10.b. A typical "basic gate propagation delay time" of less than 0.1 ns; *or*

a.10.c. An operating frequency exceeding 3 GHz;

a.11. Digital integrated circuits, other than those described in 3A001.a.3 to 3A001.a.10 and 3A001.a.12, based upon any compound semiconductor and having any of the following:

a.11.a. An equivalent gate count of more than 3,000 (2 input gates); *or*

a.11.b. A toggle frequency exceeding 1.2 GHz;

a.12. Fast Fourier Transform (FFT) processors having a rated execution time for an N-point complex FFT of less than $(N \log_2 N)/20{,}480$ ms, where N is the number of points;

Technical Note: When N is equal to 1,024 points, the formula in 3A001.a.12 gives an execution time of 500 μs.

b. Microwave or millimeter wave components, as follows:

b.1. Electronic vacuum tubes and cathodes, as follows:

Note 1: 3A001.b.1 does not control tubes designed or rated for operation in any frequency band which meets all of the following characteristics:

(a) Does not exceed 31 GHz; and

(b) Is "allocated by the ITU" for radio-communications services, but not for radio-determination.

Note 2: 3A001.b.1 does not control non-"space-qualified" tubes which meet all the following characteristics:

(a) An average output power equal to or less than 50 W; *and*

(b) Designed or rated for operation in any frequency band which meets all of the following characteristics:

(1) Exceeds 31 GHz but does not exceed 43.5 GHz; *and*

(2) Is "allocated by the ITU" for radio-communications services, but not for radio-determination.

b.1.a. Traveling wave tubes, pulsed or continuous wave, as follows:

b.1.a.1. Operating at frequencies exceeding 31 GHz;

b.1.a.2. Having a cathode heater element with a turn on time to rated RF power of less than 3 seconds;

b.1.a.3. Coupled cavity tubes, or derivatives thereof, with a "fractional bandwidth" of more than 7% or a peak power exceeding 2.5 kW;

b.1.a.4. Helix tubes, or derivatives thereof, with any of the following characteristics:

b.1.a.4.a. An "instantaneous bandwidth" of more than one octave, and average power (expressed in kW) times frequency (expressed in GHz) of more than 0.5;

b.1.a.4.b. An "instantaneous bandwidth" of one octave or less, and average power (expressed in kW) times frequency (expressed in GHz) of more than 1; *or*

b.1.a.4.c. Being "space qualified";

b.1.b. Crossed-field amplifier tubes with a gain of more than 17 dB;

b.1.c. Impregnated cathodes designed for electronic tubes producing a continuous emission current density at rated operating conditions exceeding 5 A/cm²;

b.2. Microwave integrated circuits or modules having all of the following:

b.2.a. Containing "monolithic integrated circuits" having one or more active circuit elements; *and*

b.2.b. Operating at frequencies above 3 GHz;

Note 1: 3A001.b.2 does not control circuits or modules for equipment designed or rated to operate in any frequency band which meets all of the following characteristics:

(a) Does not exceed 31 GHz; and

(b) Is "allocated by the ITU" for radio-communications services, but not for radio-determination.

Note 2: 3A001.b.2 does not control broadcast satellite equipment designed or rated to operate in the frequency range of 40.5 to 42.5 GHz.

b.3. Microwave transistors rated for operation at frequencies exceeding 31 GHz;

b.4. Microwave solid state amplifiers, having any of the following:

b.4.a. Operating frequencies exceeding 10.5 GHz and an "instantaneous bandwidth" of more than half an octave; *or*

b.4.b. Operating frequencies exceeding 31 GHz;

b.5. Electronically or magnetically tunable band-pass or band-stop filters having more than 5 tunable resonators capable of tuning across a 1.5:1 frequency band (f_{max}/f_{min}) in less than 10 μs having any of the following:

b.5.a. A band-pass bandwidth of more than 0.5% of center frequency; *or*

b.5.b. A band-stop bandwidth of less than 0.5% of center frequency;

b.6. Microwave "assemblies" capable of operating at frequencies exceeding 31 GHz;

b.7. Mixers and converters designed to extend the frequency range of equipment described in 3A002.c, 3A002.e or 3A002.f beyond the limits stated therein;

b.8. Microwave power amplifiers containing tubes controlled by 3A001.b and having all of the following:

b.8.a. Operating frequencies above 3 GHz;

b.8.b. An average output power density exceeding 80 W/kg; *and*

b.8.c. A volume of less than 400 cm³;

Note: 3A001.b.8 does not control equipment designed or rated for operation in any frequency band which is "allocated by the ITU" for radio-communications services, but not for radio-determination.

c. Acoustic wave devices, as follows, and specially designed components therefor:

c.1. Surface acoustic wave and surface skimming (shallow bulk) acoustic wave devices (*i.e.*, "signal processing" devices employing elastic waves in materials), having any of the following:

c.1.a. A carrier frequency exceeding 2.5 GHz;

c.1.b. A carrier frequency exceeding 1 GHz, but not exceeding 2.5 GHz, and having any of the following:

c.1.b.1. A frequency side-lobe rejection exceeding 55 dB;

c.1.b.2. A product of the maximum delay time and the bandwidth (time in μs and bandwidth in MHz) of more than 100;

c.1.b.3. A bandwidth greater than 250 MHz; *or*

c.1.b.4. A dispersive delay of more than 10 μs; *or*

c.1.c. A carrier frequency of 1 GHz or less, having any of the following:

c.1.c.1. A product of the maximum delay time and the bandwidth (time in μs and bandwidth in MHz) of more than 100;

c.1.c.2. A dispersive delay of more than 10 μs; *or*

c.1.c.3. A frequency side-lobe rejection exceeding 55 dB and a bandwidth greater than 50 MHz;

c.2. Bulk (volume) acoustic wave devices (*i.e.*, "signal processing" devices employing elastic waves) that permit the direct processing of signals at frequencies exceeding 1 GHz;

c.3. Acoustic-optic "signal processing" devices employing interaction between acoustic waves (bulk wave or surface wave) and light waves that permit the direct processing of signals or images, including spectral analysis, correlation or convolution;

d. Electronic devices and circuits containing components, manufactured from "superconductive" materials specially designed for operation at temperatures below the "critical temperature" of at least one of the "superconductive" constituents, with any of the following:

d.1. Current switching for digital circuits using "superconductive" gates with a product of delay time per gate (in seconds) and power dissipation per gate (in watts) of less than 10^{-14} J; *or*

d.2. Frequency selection at all frequencies using resonant circuits with Q-values exceeding 10,000;

e. High energy devices, as follows:

e.1. Batteries and photovoltaic arrays, as follows:

Note: 3A001.e.1 does not control batteries with volumes equal to or less than 27 cm³ (*e.g.*, standard C-cells or R14 batteries).

e.1.a. Primary cells and batteries having an energy density exceeding 480 Wh/kg and rated for operation in the temperature range from below 243 K (−30°C) to above 343 K (70°C);

e.1.b. Rechargeable cells and batteries having an energy density exceeding 150 Wh/kg after 75 charge/discharge cycles at a discharge current equal to C/5 hours © being the nominal capacity in ampere hours) when operating in the temperature range from below 253 K (−20°C) to above 333 K (60°C);

Technical Note: Energy density is obtained by multiplying the average power in watts (average voltage in volts times average current in amperes) by the duration of the discharge in hours to 75% of the open circuit voltage divided by the total mass of the cell (or battery) in kg.

e.1.c. "Space qualified" and radiation hardened photovoltaic arrays with a specific power exceeding 160 W/m² at an operating temperature of 301 K (28°C) under a tungsten illumination of 1 kW/m² at 2,800 K (2,527°C);

e.2. High energy storage capacitors, as follows:

e.2.a. Capacitors with a repetition rate of less than 10 Hz (single shot capacitors) having all of the following:

e.2.a.1. A voltage rating equal to or more than 5 kV;

e.2.a.2. An energy density equal to or more than 250 J/kg; *and*

e.2.a.3. A total energy equal to or more than 25 kJ;

e.2.b. Capacitors with a repetition rate of 10 Hz or more (repetition rated capacitors) having all of the following:

e.2.b.1. A voltage rating equal to or more than 5 kV;

e.2.b.2. An energy density equal to or more than 50 J/kg;

e.2.b.3. A total energy equal to or more than 100 J; *and*

e.2.b.4. A charge/discharge cycle life equal to or more than 10,000;

e.3. "Superconductive" electromagnets and solenoids specially designed to be fully charged or discharged in less than one second, having all of the following:

Note: 3A001.e.3 does not control "superconductive" electromagnets or solenoids specially designed for Magnetic Resonance Imaging (MRI) medical equipment.

e.3.a. Energy delivered during the discharge exceeding 10 kJ in the first second;

e.3.b. Inner diameter of the current carrying windings of more than 250 mm; *and*

e.3.c. Rated for a magnetic induction of more than 8 T or "overall current density" in the winding of more than 300 A/mm²;

f. Rotary input type shaft absolute position encoders having any of the following:

f.1. A resolution of better than 1 part in 265,000 (18 bit resolution) of full scale; *or*

f.2. An accuracy better than ± 2.5 seconds of arc.

■ 13. In Supplement No. 1 to part 774 (the Commerce Control List), Category 3—Electronics, Export Control Classification Number (ECCN) 3A002 is amended by revising the "items" paragraph in the List of Items Controlled section, to read as follows:

3A002 General purpose electronic equipment, as follows (see List of Items Controlled).

* * * * *

List of Items Controlled

Unit: * * *

Related Controls: * * *

Related Definitions: * * *

Items:

a. Recording equipment, as follows, and specially designed test tape therefor:

a.1.Analog instrumentation magnetic tape recorders, including those permitting the recording of digital signals (*e.g.*, using a high density digital recording (HDDR) module), having any of the following:

a.1.a. A bandwidth exceeding 4 MHz per electronic channel or track;

a.1.b. A bandwidth exceeding 2 MHz per electronic channel or track and having more than 42 tracks; *or*

a.1.c. A time displacement (base) error, measured in accordance with applicable IRIG or EIA documents, of less than ± 0.1 μs;

Note: Analog magnetic tape recorders specially designed for civilian video purposes are not considered to be instrumentation tape recorders.

a.2. Digital video magnetic tape recorders having a maximum digital interface transfer rate exceeding 360 Mbit/s;

Note: 3A002.a.2 does not control digital video magnetic tape recorders specially designed for television recording using a signal format, which may include a compressed signal format, standardized or recommended by the ITU, the IEC, the SMPTE, the EBU, the ETSI, or the IEEE for civil television applications.

a.3. Digital instrumentation magnetic tape data recorders employing helical scan techniques or fixed head techniques, having any of the following:

a.3.a. A maximum digital interface transfer rate exceeding 175 Mbit/s; *or*

a.3.b. Being "space qualified";

Note: 3A002.a.3 does not control analog magnetic tape recorders equipped with HDDR conversion electronics and configured to record only digital data.

a.4. Equipment, having a maximum digital interface transfer rate exceeding 175 Mbit/s, designed to convert digital video magnetic tape recorders for use as digital instrumentation data recorders;

a.5. Waveform digitizers and transient recorders having all of the following:

N.B.: See also 3A292.

a.5.a. Digitizing rates equal to or more than 200 million samples per second and a resolution of 10 bits or more; *and*

a.5.b. A continuous throughput of 2 Gbit/s or more;

Technical Note: For those instruments with a parallel bus architecture, the continuous throughput rate is the highest word rate multiplied by the number of bits in a word. Continuous throughput is the fastest data rate the instrument can output to mass storage without the loss of any information while sustaining the sampling rate and analog-to-digital conversion.

a.6. Digital instrumentation data recorders, using magnetic disk storage technique, having all of the following:

a.6.a. Digitizing rate equal to or more than 100 million samples per second and a resolution of 8 bits or more; and

a.6.b. A continuous throughput of 1 Gbit/s or more;

b. "Frequency synthesizer", "electronic assemblies" having a "frequency switching time" from one selected frequency to another of less than 1 ms;

c. Radio frequency "signal analyzers", as follows:

c.1. "Signal analyzers" capable of analyzing frequencies exceeding 31.8 GHz but less than 37.5 GHz or exceeding 43.5 GHz;

c.2. "Dynamic signal analyzers" having a "real-time bandwidth" exceeding 500 kHz;

Note: 3A002.c.2 does not control those "dynamic signal analyzers" using only constant percentage bandwidth filters (also known as octave or fractional octave filters).

d. Frequency synthesized signal generators producing output frequencies, the accuracy and short term and long term stability of which are controlled, derived from or disciplined by the internal master frequency, and having any of the following:

d.1. A maximum synthesized frequency exceeding 31.8 GHz;

d.2. A "frequency switching time" from one selected frequency to another of less than 1 ms; *or*

d.3. A single sideband (SSB) phase noise better than $-(126 + 20 \log_{10}F - 20 \log_{10}f)$ in dBc/Hz, where F is the off-set from the operating frequency in Hz and f is the operating frequency in MHz;

Note: 3A002.d does not control equipment in which the output frequency is either produced by the addition or subtraction of two or more crystal oscillator frequencies, or by an addition or subtraction followed by a multiplication of the result.

e. Network analyzers with a maximum operating frequency exceeding 43.5 GHz;

f. Microwave test receivers having all of the following:

f.1. A maximum operating frequency exceeding 43.5 GHz; *and*

f.2. Being capable of measuring amplitude and phase simultaneously;

g. Atomic frequency standards having any of the following:

g.1. Long-term stability (aging) less (better) than 1×10^{-11}/month; *or*

g.2. Being "space qualified".

Note: 3A002.g.1 does not control non-"space qualified" rubidium standards.

■ 14. In Supplement No. 1 to part 774 (the Commerce Control List), Category 3—Electronics, Export Control Classification Number (ECCN) 3A991 is amended by revising the "items" paragraph in the List of Items Controlled section, to read as follows:

3A991 Electronic devices and components not controlled by 3A001.

* * * * *

List of Items Controlled

Unit: * * *

Related Controls: * * *

Related Definitions: * * *

Items:

a. "Microprocessor microcircuits", "microcomputer microcircuits", and microcontroller microcircuits having any of the following:

a.1. A "composite theoretical performance" ("CTP") of 6,500 million theoretical operations per second (MTOPS) or more and an arithmetic logic unit with an access width of 32 bit or more;

a.2. A clock frequency rate exceeding 25 MHz; *or*

a.3. More than one data or instruction bus or serial communication port that provides a direct external interconnection between parallel "microprocessor microcircuits" with a transfer rate of 2.5 Mbyte/s.

b. Storage integrated circuits, as follows:

b.1. Electrical erasable programmable read-only memories (EEPROMs) with a storage capacity;

b.1.a. Exceeding 16 Mbits per package for flash memory types; *or*

b.1.b. Exceeding either of the following limits for all other EEPROM types:

b.1.b.1. Exceeding 1 Mbit per package; *or*

b.1.b.2. Exceeding 256 kbit per package and a maximum access time of less than 80 ns;

b.2. Static random access memories (SRAMs) with a storage capacity:

b.2.a. Exceeding 1 Mbit per package; *or*

b.2.b. Exceeding 256 kbit per package and a maximum access time of less than 25 ns;

c. Analog-to-digital converters having any of the following:

c.1. A resolution of 8 bit or more, but less than 12 bit, with a total conversion time of less than 10 ns;

c.2. A resolution of 12 bit with a total conversion time of less than 200 ns;

c.3. A resolution of more than 12 bit but equal to or less than 14 bit with a total conversion time of less than 2 μs; *or*

c.4. A resolution of more than 14 bit with a total conversion time of less than 2 μs;

d. Field programmable logic devices having either of the following:

d.1. An equivalent gate count of more than 5000 (2 input gates); *or*

d.2. A toggle frequency exceeding 100 MHz;

e. Fast Fourier Transform (FFT) processors having a rated execution time for a 1,024 point complex FFT of less than 1 ms.

f. Custom integrated circuits for which either the function is unknown, or the control status of the equipment in which the integrated circuits will be used is unknown to the manufacturer, having any of the following:

f.1. More than 144 terminals; *or*

f.2. A typical "basic propagation delay time" of less than 0.4 ns.

g. Traveling wave tubes, pulsed or continuous wave, as follows:

g.1. Coupled cavity tubes, or derivatives thereof;

g.2. Helix tubes, or derivatives thereof, with any of the following:

g.2.a. An "instantaneous bandwidth" of half an octave or more; *and*

g.2.b. The product of the rated average output power (expressed in kW) and the maximum operating frequency (expressed in GHz) of more than 0.2;

g.2.c. An "instantaneous bandwidth" of less than half an octave; *and*

g.2.d. The product of the rated average output power (expressed in kW) and the maximum operating frequency (expressed in GHz) of more than 0.4;

h. Flexible waveguides designed for use at frequencies exceeding 40 GHz;

i. Surface acoustic wave and surface skimming (shallow bulk) acoustic wave devices (*i.e.*, "signal processing" devices employing elastic waves in materials), having either of the following:

i.1. A carrier frequency exceeding 1 GHz; *or*

i.2. A carrier frequency of 1 GHz or less; *and*

i.2.a. A frequency side-lobe rejection exceeding 55 Db;

i.2.b. A product of the maximum delay time and bandwidth (time in microseconds and bandwidth in MHz) of more than 100; *or*

i.2.c. A dispersive delay of more than 10 microseconds.

j. Batteries, as follows:

Note: 3A991.j does not control batteries with volumes equal to or less than 27 cm^3 (*e.g.*, standard C-cells or UM–2 batteries).

j.1. Primary cells and batteries having an energy density exceeding 350 Wh/kg and rated for operation in the temperature range from below 243 K (−30°C) to above 343 K (70°C);

j.2. Rechargeable cells and batteries having an energy density exceeding 150 Wh/kg after 75 charge/discharge cycles at a discharge current equal to C/5 hours © being the nominal capacity in ampere hours) when operating in the temperature range from below 253 K (−20°C) to above 333 K (60°C);

Technical Note: Energy density is obtained by multiplying the average power in watts (average voltage in volts times average current in amperes) by the duration of the discharge in hours to 75 percent of the open circuit voltage divided by the total mass of the cell (or battery) in kg.

k. "Superconductive" electromagnets or solenoids specially designed to be fully charged or discharged in less than one minute, having all of the following:

Note: 3A991.k does not control "superconductive" electromagnets or solenoids designed for Magnetic Resonance Imaging (MRI) medical equipment.

k.1. Maximum energy delivered during the discharge divided by the duration of the discharge of more than 500 kJ per minute;

k.2. Inner diameter of the current carrying windings of more than 250 mm; *and*

k.3. Rated for a magnetic induction of more than 8T or "overall current density" in the winding of more than 300 A/mm².

l. Circuits or systems for electromagnetic energy storage, containing components manufactured from "superconductive" materials specially designed for operation at temperatures below the "critical temperature" of at least one of their "superconductive" constituents, having all of the following:

1.1. Resonant operating frequencies exceeding 1 MHz;

1.2. A stored energy density of 1 MJ/M^3 or more; *and*

1.3. A discharge time of less than 1 ms;

m. Hydrogen/hydrogen-isotope thyratrons of ceramic-metal construction and rate for a peak current of 500 A or more;

n. Digital integrated circuits based on any compound semiconductor having an equivalent gate count of more than 300 (2 input gates).

■ 15. In Supplement No. 1 to part 774 (the Commerce Control List), Category 3—Electronics, Export Control Classification Number (ECCN) 3B001 is amended by revising the "items" paragraph in the List of Items Controlled section, to read as follows:

3B001 Equipment for the manufacturing of semiconductor devices or materials, as follows (see List of Items Controlled), and specially designed components and accessories therefor.

* * * * *

List of Items Controlled

Unit: * * *

Related Controls: * * *

Related Definitions: * * *

Items:

a. "Stored program controlled" equipment designed for epitaxial growth, as follows:

a.1. Equipment capable of producing a layer thickness uniform to less than ±2.5% across a distance of 75 mm or more;

a.2. Metal organic chemical vapor deposition (MOCVD) reactors specially designed for compound semiconductor crystal growth by the chemical reaction between materials controlled by 3C003 or 3C004;

a.3. Molecular beam epitaxial growth equipment using gas or solid sources;

b. "Stored program controlled" equipment designed for ion implantation, having any of the following:

b.1. A beam energy (accelerating voltage) exceeding 1MeV;

b.2. Being specially designed and optimized to operate at a beam energy (accelerating voltage of less than 2 keV;

b.3. Direct write capability; *or*

b.4. Being capable of high energy oxygen implant into a heated semiconductor material "substrate";

c. "Stored program controlled" anisotropic plasma dry etching equipment, as follows:

c.1. Equipment with cassette-to-cassette operation and load-locks, and having any of the following:

c.1.a. Designed or optimized to produce critical dimensions of 0.3 μm or less with ±5% 3 sigma precision; *or*

c.1.b. Designed for generating less than 0.04 particles/cm^2 with a measurable particle size greater than 0.1 μm in diameter;

c.2. Equipment specially designed for equipment controlled by 3B001.e. and having any of the following:

c.2.a. Designed or optimized to produce critical dimensions of 0.3 μm or less with ±5% 3 sigma precision; *or*

c.2.b. Designed for generating less than 0.04 particles/cm^2 with a measurable particle size greater than 0.1 μm in diameter;

d. "Stored program controlled" plasma enhanced CVD equipment, as follows:

d.1. Equipment with cassette-to-cassette operation and load-locks, and having any of the following:

d.1.a. Designed or optimized to produce critical dimensions of 0.3 μm or less with ±5% 3 sigma precision; *or*

d.1.b. Designed for generating less than 0.04 particles/cm^2 with a measurable particle size greater than 0.1 μm in diameter;

d.2. Equipment specially designed for equipment controlled by 3B001.e. and having any of the following:

d.2.a. Designed or optimized to produce critical dimensions of 0.3 μm or less with ±5% 3 sigma precision; *or*

d.2.b. Designed for generating less than 0.04 particles/cm^2 with a measurable particle size greater than 0.1 μm in diameter;

e. "Stored program controlled" automatic loading multi-chamber central wafer handling systems, having all of the following:

e.1. Interfaces for wafer input and output, to which more than two pieces of semiconductor processing equipment are to be connected; *and*

e.2. Designed to form an integrated system in a vacuum environment for sequential multiple wafer processing;

Note: 3B001.e. does not control automatic robotic wafer handling systems not designed to operate in a vacuum environment.

f. "Stored program controlled" lithography equipment, as follows:

f.1. Align and expose step and repeat (direct step on wafer) or step and scan (scanner) equipment for wafer processing using photo-optical or X-ray methods, having any of the following:

f.1.a. A light source wavelength shorter than 350 nm; *or*

f.1.b. Capable of producing a pattern with a minimum resolvable feature size of 0.35 μm or less;

Technical Note: The minimum resolvable feature size is calculated by the following formula:

$$MRF = \frac{(\text{an exposure light source wavelength in } \mu m) \times (\text{K factor})}{\text{numerical aperture}}$$

Where the K factor = 0.7.

MRF = minimum resolvable feature size.

f.2. Equipment specially designed for mask making or semiconductor device processing using deflected focused electron beam, ion beam or "laser" beam, having any of the following:

f.2.a. A spot size smaller than 0.2 μm;

f.2.b. Being capable of producing a pattern with a feature size of less than 1 μm; *or*

f.2.c. An overlay accuracy of better than ±0.20 μm (3 sigma);

g. Masks and reticles designed for integrated circuits controlled by 3A001;

h. Multi-layer masks with a phase shift layer.

■ 16. In Supplement No. 1 to part 774 (the Commerce Control List), Category 3—Electronics, Export Control Classification Number (ECCN) 3E001 is amended by revising the "items" paragraph in the List of Items Controlled section, to read as follows:

3E001 "Technology" according to the General Technology Note for the "development" or "production" of equipment or materials controlled by 3A (except 3A292, 3A980, 3A981, 3A991 or 3A992), 3B (except 3B991 and 3B992) or 3C.

* * * * *

List of Items Controlled

Unit: * * *
Related Controls: * * *
Related Definition: * * *
Items:
The list of items controlled is contained in the ECCN heading.

Note: 3E001 does not control "technology" for the "development" or "production" of:

(a) Microwave transistors operating at frequencies below 31 GHz;

(b) Integrated circuits controlled by 3A001.a.3 to a.12, having all of the following:

(b.1) Using "technology" of 0.5 μm or more; *and*

(b.2) Not incorporating multi-layer structures.

Technical Note: The term multi-layer structures in Note b.2 does not include devices incorporating a maximum of three metal layers and three polysilicon layers.

■ 17. In Supplement No. 1 to part 774 (the Commerce Control List), Category 3—Electronics, Export Control Classification Number (ECCN) 3E002 is amended by revising the "items" paragraph in the List of Items Controlled section, to read as follows:

3E002 "Technology" according to the General Technology Note other than that controlled in 3E001 for the "development" or "production" of "microprocessor microcircuits", "micro-computer microcircuits" and microcontroller microcircuits having a "composite theoretical performance" ("CTP") of 530 million theoretical operations per second (MTOPS) or more and an arithmetic logic unit with an access width of 32 bits or more.

* * * * *

List of Items Controlled

Unit: * * *
Related Controls: * * *
Related Definitions: * * *
Items:
The list of items controlled is contained in the ECCN heading.

Note: 3E002 does not control "technology" for the "development" or "production" of:

(a) Microwave transistors operating at frequencies below 31 GHz;

(b) Integrated circuits controlled by 3A001.a.3 to a.12, having all of the following:

(b.1) Using "technology" of 0.5 μm or more; and

(b.2) Not incorporating multi-layer structures.

Technical Note: The term multi-layer structures in Note b.2 does not include devices incorporating a maximum of three metal layers and three polysilicon layers.

■ 18. In Supplement No. 1 to part 774 (the Commerce Control List), Category 4—Computers, Export Control Classification Number (ECCN) 4A002 is amended by revising the "Items" paragraph in the List of Items Controlled section, to read as follows:

4A002 "Hybrid computers" and "electronic assemblies" and specially designed components therefor.

* * * * *

List of Items Controlled

Unit: * * *
Related Controls: * * *
Related Definitions: * * *
Items:
a. Containing "digital computers" controlled by 4A003;

b. Containing analog-to-digital converters having all of the following characteristics:

b.1. 32 channels or more; *and*

b.2. A resolution of 14 bit (plus sign bit) or more with a conversion rate of 200,000 conversions/s or more.

■ 19. In Supplement No. 1 to part 774 (the Commerce Control List), Category 4—Computers, Export Control Classification Number (ECCN) 4A003, is amended by revising the "Heading", the License Requirements section, the "CTP" paragraph in the License Exceptions section, and the "items" paragraph in the List of Items Controlled section, to read as follows:

4A003 "Digital computers", "electronic assemblies", and related equipment therefor, as follows, and specially designed components therefor.

License Requirements

Reason for Control: NS, MT, CC, AT, NP, XP=

Control(s)	Country chart
NS applies to 4A003.b and .c	NS Column 1.
NS applies to 4A003.a, .e, and .g	NS Column 2.
MT applies to digital computers used as ancillary equipment for test facilities and equipment that are controlled by 9B005 or 9B006	MT Column 1.
CC applies to "digital computers" for computerized finger-print equipment	CC Column 1.
AT applies to entire entry (refer to 4A994 for controls on "digital computers" with a CTP ≥ 6 but ≤ 190,000 MTOPS)	AT Column 1.

NP applies, unless a License Exception is available. See § 742.3(b) of the EAR for information on applicable licensing review policies.

XP applies to "digital computers" with a CTP greater than 190,000 MTOPS, unless a License Exception is available. XP controls vary according to destination and end-user and end-use; however, XP does not apply to Canada. See § 742.12 of the EAR for additional information.

Note: For all destinations, except Cuba, Iran, Iraq, Libya, North Korea, Sudan, Syria, no license is required (NLR) for computers with a CTP not greater than 190,000 MTOPS and for "electronic assemblies" described in 4A003.c that are not capable of exceeding a CTP greater than 190,000 MTOPS in aggregation. Computers controlled in this entry for MT reasons are not eligible for NLR.

License Exceptions

LVS: * * *
GBS: * * *
CTP: Yes, for computers controlled by 4A003.a or .b, and "electronic assemblies" controlled by 4A003.c, to the exclusion of other technical parameters, with the exception of parameters specified as controlled for Missile Technology (MT) concerns and 4A003.e (equipment performing analog-to-digital conversions exceeding the limits of 3A001.a.5.a). See § 740.7 of the EAR.

CIV: * * *

List of Items Controlled

Unit: * * *
Related Controls: * * *
Related Definitions: * * *
Items:

Note 1: 4A003 includes the following:

a. Vector processors;

b. Array processors;

c. Digital signal processors;

d. Logic processors;

e. Equipment designed for "image enhancement";

f. Equipment designed for "signal processing".

Note 2: The control status of the "digital computers" and related equipment described in 4A003 is determined by the control status of other equipment or systems provided:

a. The "digital computers" or related equipment are essential for the operation of the other equipment or systems;

b. The "digital computers" or related equipment are not a "principal element" of the other equipment or systems; and

N.B. 1: The control status of "signal processing" or "image enhancement" equipment specially designed for other equipment with functions limited to those required for the other equipment is determined by the control status of the other equipment even if it exceeds the "principal element" criterion.

N.B. 2: For the control status of "digital computers" or related equipment for telecommunications equipment, see Category 5, Part 1 (Telecommunications).

c. The "technology" for the "digital computers" and related equipment is determined by 4E.

a. Designed or modified for "fault tolerance";

Note: For the purposes of 4A003.a., "digital computers" and related equipment are not considered to be designed or modified for "fault tolerance" if they utilize any of the following:

1. Error detection or correction algorithms in "main storage";

2. The interconnection of two "digital computers" so that, if the active central processing unit fails, an idling but mirroring central processing unit can continue the system's functioning;

3. The interconnection of two central processing units by data channels or by use of shared storage to permit one central processing unit to perform other work until the second central processing unit fails, at which time the first central processing unit takes over in order to continue the system's functioning; or

4. The synchronization of two central processing units by "software" so that one central processing unit recognizes when the other central processing unit fails and recovers tasks from the failing unit.

b. "Digital computers" having a "composite theoretical performance" ("CTP") exceeding 190,000 million theoretical operations per second (MTOPS);

c. "Electronic assemblies" specially designed or modified to be capable of enhancing performance by aggregation of "computing elements" ("CEs") so that the "CTP" of the aggregation exceeds the limit in 4A003.b.;

Note 1: 4A003.c applies only to "electronic assemblies" and programmable interconnections not exceeding the limit in 4A003.b. when shipped as unintegrated "electronic assemblies". It does not apply to "electronic assemblies" inherently limited by nature of their design for use as related equipment controlled by 4A003.d, or 4A003.e.

Note 2: 4A003.c does not control "electronic assemblies" specially designed for a product or family of products whose maximum configuration does not exceed the limit of 4A003.b.

d. [RESERVED]

e. Equipment performing analog-to-digital conversions exceeding the limits in 3A001.a.5;

f. [RESERVED]

g. Equipment specially designed to provide external interconnection of "digital computers" or associated equipment that allows communications at data rates exceeding 1.25 Gbyte/s.

Note: 4A003.g does not control internal interconnection equipment (*e.g.*, backplanes, buses) passive interconnection equipment, "network access controllers" or "communication channel controllers".

■ 20. In Supplement No. 1 to part 774 (the Commerce Control List), Category 4—Computers, Export Control Classification Number (ECCN) 4D001 is amended by revising the "Heading", License Requirements section, and the "items" paragraph in the List of Items Controlled section, to read as follows:

4D001 "Software" specially designed or modified for the "development", "production" or "use" of equipment or "software" controlled by 4A001 to 4A004, or 4D (except 4D980, 4D993 or 4D994), and other specified software, see List of Items Controlled.

License Requirements

Reason for Control: NS, CC, AT, NP, XP.

Control(s)	Country chart
NS applies to "software" for commodities or software controlled by 4A001 to 4A004, 4D001 to 4D003.	NS Column 1.
CC applies to "software" for computerized finger-print equipment controlled by 4A003 for CC reasons.	CC Column 1.
AT applies to entire entry	AT Column 1.

NP applies, unless a License Exception is available. See § 742.3(b) of the EAR for information on applicable licensing review policies.

XP applies to "software" for computers with a CTP greater than 190,000 MTOPS, unless a License Exception is available. XP controls vary according to destination and end-use; however, XP does not apply to Canada. See § 742.12 of the EAR for additional information.

License Requirement Notes: See § 743.1 of the EAR for reporting requirements for exports under License Exceptions.

License Exceptions * * *

List of Items Controlled

Unit: * * *
Related Controls: * * *
Related Definitions: * * *
Items:
a. "Software" specially designed or modified for the "development", "production" or "use" of equipment or "software" controlled by 4A001 to 4A004, or 4D (except 4D980, 4D993 or 4D994).

b. "Software", other than that controlled by the heading, specially designed or modified for the "development" or "production" of:

b.1. "Digital computers" having a "composite theoretical performance" ("CTP") exceeding 28,000 MTOPS; or

b.2. "Electronic assemblies" specially designed or modified for enhancing performance by aggregation of "computing elements" ("CEs") so that the "CTP" of the aggregation exceeds the limit in 4D001.b.1.

■ 21. In Supplement No. 1 to part 774 (the Commerce Control List), Category 4—Computers, Export Control Classification Number (ECCN) 4D994 is amended by revising the "Heading", to read as follows:

4D994 "Software" other than that controlled in 4D001 specially designed or modified for the "development", "production", or "use" of equipment controlled by 4A101, 4A994, 4B994, and materials controlled by 4C994.

* * * * *

■ 22. In Supplement No. 1 to part 774 (the Commerce Control List), Category 4—Computers, Export Control Classification Number (ECCN) 4E001 is amended by revising the "Heading", License Requirements section, and the "items" paragraph in the List of Items Controlled section, to read as follows:

4E001 "Technology" according to the General Technology Note, for the "development", "production" or "use" of equipment or "software" controlled by 4A (except 4A980, 4A993 or 4A994) or 4D (except 4D980, 4D993, 4D994), and other specified technology, see List of Items Controlled.

License Requirements

Reason for Control: NS, MT, CC, AT, NP, XP.

Control(s)	Country chart
NS applies to "technology" for commodities or software controlled by 4A001 to 4A004, 4D001 to 4D003.	NS Column 1.
MT applies to "technology" for items controlled by 4A001.a and 4A101 for MT reasons.	MT Column 1.

Control(s)	Country chart
CC applies to "technology" for computerized fingerprint equipment controlled by 4A003 for CC reasons.	CC Column 1.
AT applies to entire entry	AT Column 1.

NP applies, unless a License Exception is available. See § 742.3(b) of the EAR for information on applicable licensing review policies.

XP applies to "technology" for computers with a CTP greater than 190,000 MTOPS, unless a License Exception is available. XP controls vary according to destination and end-user and end-use; however, XP does not apply to Canada. See § 742.12 of the EAR for additional information.

License Requirement Notes: See § 743.1 of the EAR for reporting requirements for exports under License Exceptions.

License Exceptions * * *

List of Items Controlled

Unit: * * *
Related Controls: * * *
Related Definitions: * * *
Items:

a. "Technology" according to the General Technology Note, for the "development," "production," or "use" of equipment or "software" controlled by 4A (except 4A980, 4A993 or 4A994) or 4D (except 4D980, 4D993, 4D994).

b. "Technology", other than that controlled by 4E001.a, specially designed or modified for the "development" or "production" of:

b.1. "Digital computers" having a "composite theoretical performance" ("CTP") exceeding 28,000 MTOPS; or

b.2. "Electronic assemblies" specially designed or modified for enhancing performance by aggregation of "computing elements" ("CEs") so that the "CTP" of the aggregation exceeds the limit in 4E001.b.1.

■ 23. In Supplement No. 1 to part 774 (the Commerce Control List), Category 4—Computers, Export Control Classification Number (ECCN) 4E992 is amended by revising the "Heading", to read as follows:

4E992 "Technology" other than that controlled in 4E001 for the "development", "production", or "use" of equipment controlled by 4A994 and 4B994, materials controlled by 4C994, or "software" controlled by 4D993 or 4D994.

* * * * *

■ 24. In Supplement No. 1 to part 774 (the Commerce Control List), Category 5—Telecommunications and "Information Security", Part I—Telecommunications, Export Control Classification Number (ECCN) 5A001 is amended by revising the "items" paragraph in the List of Items Controlled section, to read as follows:

5A001 Telecommunications systems, equipment, and components.

* * * * *

List of Items Controlled

Unit: * * *
Related Controls: * * *
Related Definitions: * * *
Items:

a. Any type of telecommunications equipment having any of the following characteristics, functions or features:

a.1. Specially designed to withstand transitory electronic effects or electromagnetic pulse effects, both arising from a nuclear explosion;

a.2. Specially hardened to withstand gamma, neutron or ion radiation; *or*

a.3. Specially designed to operate outside the temperature range from 218 K (–55° C) to 397 K (124° C).

Note: 5A001.a.3 applies only to electronic equipment.

Note: 5A001.a.2 and 5A001.a.3 do not apply to equipment on board satellites.

b. Telecommunication transmission equipment and systems, and specially designed components and accessories therefor, having any of the following characteristics, functions or features:

b.1 Being underwater communications systems having any of the following characteristics:

b.1.a. An acoustic carrier frequency outside the range from 20 kHz to 60 kHz;

b.1.b. Using an electromagnetic carrier frequency below 30 kHz; *or*

b.1.c. Using electronic beam steering techniques;

b.2. Being radio equipment operating in the 1.5 MHz to 87.5 MHz band and having any of the following characteristics:

b.2.a. Incorporating adaptive techniques providing more than 15 dB suppression of an interfering signal; *or*

b.2.b. Having all of the following:

b.2.b.1. Automatically predicting and selecting frequencies and "total digital transfer rates" per channel to optimize the transmission; *and*

b.2.b.2. Incorporating a linear power amplifier configuration having a capability to support multiple signals simultaneously at an output power of 1 kW or more in the frequency range of 1.5 MHz or more but less than 30 MHz, or 250 W or more in the frequency range of 30 MHz or more but not exceeding 87.5 MHz, over an "instantaneous bandwidth" of one octave or more and with an output harmonic and distortion content of better than – 80 dB;

b.3. Being radio equipment employing "spread spectrum" techniques, including "frequency hopping" techniques, having any of the following characteristics:

b.3.a. User programmable spreading codes; *or*

b.3.b. A total transmitted bandwidth which is 100 or more times the bandwidth of any one information channel and in excess of 50 kHz;

Note: 5A001.b.3.b does not control radio equipment specially designed for use with civil cellular radio-communications systems.

Note: 5A001.b.3 does not control equipment operating at an output power of 1.0 Watt or less.

b.4 Being radio equipment employing "time-modulated ultra-wideband" techniques, having user programmable channelizing or scrambling codes;

b.5. Being digitally controlled radio receivers having all of the following:

b.5.a. More than 1,000 channels;

b.5.b. A "frequency switching time" of less than 1 ms;

b.5.c. Automatic searching or scanning of a part of the electromagnetic spectrum; *and*

b.5.d. Identification of the received signals or the type of transmitter; *or*

Note: 5A001.b.5 does not control radio equipment specially designed for use with civil cellular radio-communications systems.

b.6. Employing functions of digital "signal processing" to provide voice coding output at rates of less than 2,400 bit/s.

Technical Note: For variable rate voice coding, 5A001.b.6 applies to the voice coding output of continuous speech.

c. Optical fiber communication cables, optical fibers and accessories, as follows:

c.1. Optical fibers of more than 500 m in length specified by the manufacturer as being capable of withstanding a proof test tensile stress of 2×109 N/m^2 or more;

Technical Note: Proof Test: on-line or off-line production screen testing that dynamically applies a prescribed tensile stress over a 0.5 to 3 m length of fiber at a running rate of 2 to 5 m/s while passing between capstans approximately 150 mm in diameter. The ambient temperature is a nominal 293 K (20° C) and relative humidity 40%. Equivalent national standards may be used for executing the proof test.

c.2. Optical fiber cables and accessories designed for underwater use.

Note: 5A001.c.2 does not control standard civil telecommunication cables and accessories.

N.B. 1: For underwater umbilical cables, and connectors thereof, see 8A002.a.3.

N.B. 2: For fiber-optic hull penetrators or connectors, see 8A002.c.

d. "Electronically steerable phased array antennae" operating above 31 GHz.

Note: 5A001.d does not control "electronically steerable phased array antennae" for landing systems with instruments meeting ICAO standards covering microwave landing systems (MLS).

■ 25. In Supplement No. 1 to part 774 (the Commerce Control List), Category 5—Telecommunications and "Information Security", Part I—Telecommunications, Export Control Classification Number (ECCN) 5A991 is amended by revising the "items" paragraph in the List of Items Controlled section, to read as follows:

5A991 Telecommunication equipment, not controlled by 5A001.

* * * * *

List of Items Controlled

Unit: * * *
Related Controls: * * *
Related Definitions: * * *
Items:

a. Any type of telecommunications equipment, not controlled by 5A001.a, specially designed to operate outside the temperature range from 219 K (– 54 °C) to 397 K (124 °C).

b. Telecommunication transmission equipment and systems, and specially designed components and accessories therefor, having any of the following characteristics, functions or features:

Note: Telecommunication transmission equipment:

a. Categorized as follows, or combinations thereof:

1. Radio equipment (*e.g.*, transmitters, receivers and transceivers);
2. Line terminating equipment;
3. Intermediate amplifier equipment;
4. Repeater equipment;
5. Regenerator equipment;
6. Translation encoders (transcoders);
7. Multiplex equipment (statistical mutiplex included);
8. Modulators/demodulators (modems);
9. Transmultiplex equipment (see CCITT Rec. G701);
10. "Stored program controlled" digital crossconnection equipment;
11. "Gateways" and bridges;
12. "Media access units"; and

b. Designed for use in single or multi-channel communication via any of the following:

1. Wire (line);
2. Coaxial cable;
3. Optical fiber cable;
4. Electromagnetic radiation; or
5. Underwater acoustic wave propagation.

b.1. Employing digital techniques, including digital processing of analog signals, and designed to operate at a "digital transfer rate" at the highest multiplex level exceeding 45 Mbit/s or a "total digital transfer rate" exceeding 90 Mbit/s;

Note: 5A991.b.1 does not control equipment specially designed to be integrated and operated in any satellite system for civil use.

b.2. Modems using the "bandwidth of one voice channel" with a "data signaling rate" exceeding 9,600 bits per second;

b.3. Being "stored program controlled" digital cross connect equipment with "digital transfer rate" exceeding 8.5 Mbit/s per port.

b.4. Being equipment containing any of the following:

b.4.a. "Network access controllers" and their related common medium having a "digital transfer rate" exceeding 33 Mbit/s; *or*

b.4.b. "Communication channel controllers" with a digital output having a "data signaling rate" exceeding 64,000 bit/s per channel;

Note: If any uncontrolled equipment contains a "network access controller", it cannot have any type of telecommunications interface, except those described in, but not controlled by 5A991.b.4.

b.5. Employing a "laser" and having any of the following characteristics:

b.5.a. A transmission wavelength exceeding 1,000 nm; *or*

b.5.b. Employing analog techniques and having a bandwidth exceeding 45 MHz;

Note: 5A991.b.5.b does not control commercial TV systems.

b.5.c. Employing coherent optical transmission or coherent optical detection techniques (also called optical heterodyne or homodyne techniques);

b.5.d. Employing wavelength division multiplexing techniques; *or*

b.5.e. Performing "optical amplification";

b.6. Radio equipment operating at input or output frequencies exceeding:

b.6.a. 31 GHz for satellite-earth station applications; *or*

b.6.b. 26.5 GHz for other applications;

Note: 5A991.b.6. does not control equipment for civil use when conforming with an International Telecommunications Union (ITU) allocated band between 26.5 GHz and 31 GHz.

b.7. Being radio equipment employing any of the following:

b.7.a. Quadrature-amplitude-modulation (QAM) techniques above level 4 if the "total digital transfer rate" exceeds 8.5 Mbit/s;

b.7.b. QAM techniques above level 16 if the "total digital transfer rate" is equal to or less than 8.5 Mbit/s; *or*

b.7.c. Other digital modulation techniques and having a "spectral efficiency" exceeding 3 bit/s/Hz:

Notes: 1. 5A991.b.7 does not control equipment specially designed to be integrated and operated in any satellite system for civil use.

2. 5A991.b.7 does not control radio relay equipment for operation in an ITU allocated band:

a. Having any of the following:

a.1. Not exceeding 960 MHz; or

a.2. With a "total digital transfer rate" not exceeding 8.5 Mbit/s; and

b. Having a "spectral efficiency" not exceeding 4 bit/s/Hz.

b.8. Providing functions of digital "signal processing" as follows:

b.8.a. Voice coding at rates less than 2,400 bit/s;

b.8.b. Employing circuitry that incorporates "user-accessible programmability" of digital "signal processing" circuits exceeding the limits of 4A003.b.

c. "Stored program controlled" switching equipment and related signaling systems, having any of the following characteristics, functions or features, and specially designed components and accessories therefor:

Note: Statistical multiplexers with digital input and digital output which provide switching are treated as "stored program controlled" switches.

c.1. "Data (message) switching" equipment or systems designed for "packet-mode operation" and assemblies and components therefor, n.e.s.

c.2. Containing "Integrated Services Digital Network" (ISDN) functions and having any of the following:

c.2.a. Switch-terminal (*e.g.*, subscriber line) interfaces with a "digital transfer rate" at the highest multiplex level exceeding 192,000 bit/s, including the associated signaling channel (*e.g.*, 2B+D); or

c.2.b. The capability that a signaling message received by a switch on a given channel that is related to a communication on another channel may be passed through to another switch.

Note: 5A991.c does not preclude the evaluation and appropriate actions taken by the receiving switch or unrelated user message traffic on a D channel of ISDN.

c.3. Routing or switching of "datagram" packets;

c.4. Routing or switching of "fast select" packets;

Note: The restrictions in 5A991.c.3 and c.4 do not apply to networks restricted to using only "network access controllers" or to "network access controllers" themselves.

c.5. Multi-level priority and pre-emption for circuit switching;

Note: 5A991.c.5 does not control single-level call preemption.

c.6. Designed for automatic hand-off of cellular radio calls to other cellular switches or automatic connection to a centralized subscriber data base common to more than one switch;

c.7. Containing "stored program controlled" digital cross connect equipment with "digital transfer rate" exceeding 8.5 Mbit/s per port.

c.8. "Common channel signaling" operating in either non-associated or quasi-associated mode of operation;

c.9. "Dynamic adaptive routing"

Note: 5A991.c.10 does not control packet switches or routers with ports or lines not exceeding the limits in 5A991.c.10.

c.10. Being packet switches, circuit switches and routers with ports or lines exceeding any of the following:

c.10.a. A "data signaling rate" of 64,000 bit/s per channel for a "communications channel controller"; *or*

Note: 5A991.c.10.a does not control multiplex composite links composed only of communication channels not individually controlled by 5A991.b.1.

c.10.b. A "digital transfer rate" of 33 Mbit/s for a "network access controller" and related common media;

c.11. "Optical switching";

c.12. Employing "Asynchronous Transfer Mode ("ATM") techniques.

d. Optical fibers and optical fiber cables of more than 50 m in length designed for single mode operation;

e. Centralized network control having all of the following characteristics:

e.1. Receives data from the nodes; *and*

e.2. Process these data in order to provide control of traffic not requiring operator decisions, and thereby performing "dynamic adaptive routing";

Note: 5A991.e does not preclude control of traffic as a function of predictable statistical traffic conditions.

f. Phased array antennae, operating above 10.5 GHz, containing active elements and distributed components, and designed to permit electronic control of beam shaping and pointing, except for landing systems with instruments meeting International Civil Aviation Organization (ICAO) standards (microwave landing systems (MLS)).

g. Mobile communications equipment, n.e.s., and assemblies and components therefor; *or*

h. Radio relay communications equipment designed for use at frequencies equal to or

exceeding 19.7 GHz and assemblies and components therefor, n.e.s.

■ 26. In Supplement No. 1 to part 774 (the Commerce Control List), Category 5—Telecommunications and "Information Security", Part I—Telecommunications, Export Control Classification Number (ECCN) 5B001 is amended by revising the "items" paragraph in the List of Items Controlled section, to read as follows:

5B001 Telecommunication test, inspection and production equipment, as follows (See List of Items Controlled).

* * * * *

List of Items Controlled

Unit: * * *
Related Controls: * * *
Related Definition: * * *
Items:

a. Equipment and specially designed components or accessories therefor, specially designed for the "development", "production" or "use" of equipment, functions or features controlled by 5A001, 5D001 or 5E001.

Note: 5B001.a. does not control optical fiber characterization equipment.

b. Equipment and specially designed components or accessories therefor, specially designed for the "development" of any of the following telecommunication transmission or "stored program controlled" switching equipment:

b.1. Equipment employing digital techniques, including "Asynchronous Transfer Mode" ("ATM"), designed to operate at a "total digital transfer rate" exceeding 1.5 Gbit/s;

b.2. Equipment employing a "laser" and having any of the following:

b.2.a. A transmission wavelength exceeding 1750 nm;

b.2.b. Performing "optical amplification";

b.2.c. Employing coherent optical transmission or coherent optical detection techniques (also called optical heterodyne or homodyne techniques); *or*

b.2.d. Employing analog techniques and having a bandwidth exceeding 2.5 GHz;

Note: 5B001.b.2.d. does not include equipment specially designed for the "development" of commercial TV systems.

b.3. Equipment employing "optical switching";

b.4. Radio equipment employing quadrature-amplitude-modulation (QAM) techniques above level 256; *or*

b.5. Equipment employing "common channel signaling" operating in non-associated mode of operation.

■ 27. In Supplement No. 1 to part 774 (the Commerce Control List), Category 5—Telecommunications and "Information Security", Part I—Telecommunications, Export Control Classification Number (ECCN) 5D001 is amended by revising the License Exceptions section, and the "items" paragraph in the List of Items Controlled section, to read as follows:

5D001 "Software", as described in the List of Items Controlled.

* * * * *

License Exceptions

CIV: Yes, except for "software" controlled by 5D001.a and specially designed for the "development" or "production" of items controlled by 5A001.b.5 TSR: Yes, except for exports and reexports to destinations outside of Austria, Belgium, Canada, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Japan, Luxembourg, the Netherlands, Portugal, Spain, Sweden, or the United Kingdom of "software" controlled by 5D001.a and specially designed for items controlled by 5A001.b.5.

List of Items Controlled

Unit: * * *
Related Controls: * * *
Related Definitions: * * *
Items:

a. "Software" specially designed or modified for the "development", "production" or "use" of equipment, functions or features controlled by 5A001 or 5B001.

b. "Software" specially designed or modified to support "technology" controlled by 5E001.

c. Specific "software" as follows:

c.1. "Software" specially designed or modified to provide characteristics, functions or features of equipment controlled by 5A001 or 5B001;

c.2. [Reserved];

c.3. "Software", other than in machine-executable form, specially designed for "dynamic adaptive routing".

d. "Software" specially designed or modified for the "development" of any of the following telecommunication transmission or "stored program controlled" switching equipment:

d.1. Equipment employing digital techniques, including "Asynchronous Transfer Mode" ("ATM"), designed to operate at a "total digital transfer rate" exceeding 1.5 Gbit/s;

d.2. Equipment employing a "laser" and having any of the following:

d.2.a. A transmission wavelength exceeding 1750 nm; *or*

d.2.b. Employing analog techniques and having a bandwidth exceeding 2.5 GHz;

Note: 5D001.d.2.b. does not control "software" specially designed or modified for the "development" of commercial TV systems.

d.3. Equipment employing "optical switching"; *or*

d.4. Radio equipment employing quadrature-amplitude-modulation (QAM) techniques above level 256.

■ 28. In Supplement No. 1 to part 774 (the Commerce Control List), Category 5—Telecommunications and "Information Security", Part I—Telecommunications, Export Control Classification Number (ECCN) 5E001 is amended by revising the "items" paragraph in the List of Items Controlled section, to read as follows:

5E001 "Technology", (see List of Items Controlled).

* * * * *

List of Items Controlled

Unit: * * *
Related Controls: * * *
Related Definitions: * * *
Items:

a. "Technology" according to the General Technology Note for the "development", "production" or "use" (excluding operation) of equipment, functions or features or "software" controlled by 5A001, 5B001 or 5D001.

b. Specific "technologies", as follows:

b.1. "Required" "technology" for the "development" or "production" of telecommunications equipment specially designed to be used on board satellites;

b.2. "Technology" for the "development" or "use" of "laser" communication techniques with the capability of automatically acquiring and tracking signals and maintaining communications through exoatmosphere or sub-surface (water) media;

b.3. "Technology" for the "development" of digital cellular radio base station receiving equipment whose reception capabilities that allow multi-band, multi-channel, multi-mode, multi-coding algorithm or multi-protocol operation can be modified by changes in "software";

b.4. "Technology" for the "development" of "spread spectrum" techniques, including "frequency hopping" techniques.

c. "Technology" according the General Technology Note for the "development" or "production" of any of the following telecommunication transmission or "stored program controlled" switching equipment, functions or features:

c.1. Equipment employing digital techniques, including "Asynchronous Transfer Mode" ("ATM"), designed to operate at a "total digital transfer rate" exceeding 1.5 Gbit/s;

c.2. Equipment employing a "laser" and having any of the following:

c.2.a. A transmission wavelength exceeding 1750 nm;

c.2.b. Performing "optical amplification" using praseodymium-doped fluoride fiber amplifiers (PDFFA);

c.2.c. Employing coherent optical transmission or coherent optical detection techniques (also called optical heterodyne or homodyne techniques);

c.2.d. Employing wavelength division multiplexing techniques exceeding 8 optical carriers in a single optical window; *or*

c.2.e. Employing analog techniques and having a bandwidth exceeding 2.5 GHz;

Note: 5E001.c.2.e. does not control "technology" for the "development" or "production" of commercial TV systems.

c.3. Equipment employing "optical switching";

c.4. Radio equipment having any of the following:

c.4.a. Quadrature-amplitude-modulation (QAM) techniques above level 256; *or*

c.4.b. Operating at input or output frequencies exceeding 31 GHz; *or*

Note: 5E001.c.4.b. does not control "technology" for the "development" or "production" of equipment designed or modified for operation in any frequency band which is "allocated by the ITU" for radio-communications services, but not for radio-determination.

c.5. Equipment employing "common channel signaling" operating in non-associated mode of operation.

■ 29. In Supplement No. 1 to part 774 (the Commerce Control List), Category 5—Telecommunications and "Information Security", Part II—"Information Security", Export Control Classification Number (ECCN) 5A002 is amended by revising the "Related Controls", "Related Definitions", and "Items" paragraphs in the List of Items Controlled section, to read as follows:

5A002 Systems, equipment, application specific "electronic assemblies", modules and integrated circuits for "information security", as follows (see List of Items Controlled), and other specially designed components therefor.

* * * * *

List of Items Controlled

Unit: * * *
Related Controls: 5A002 does not control the items listed in paragraphs (a) through (f) in the Note in the items paragraph of this entry. These items are instead controlled under ECCN 5A992.
Related Definitions: N/A
Items:

Note: 5A002 does not control the following. However, these items are instead controlled under 5A992:

(a) "Personalized smart cards":

(1) Where the cryptographic capability is restricted for use in equipment or systems excluded from control paragraphs (b) through (f) of this Note; or

(2) For general public-use applications where the cryptographic capability is not user-accessible and it is specially designed and limited to allow protection of personal data stored within.

N.B.: If a "personalized smart card" has multiple functions, the control status of each function is assessed individually.

(b) Receiving equipment for radio broadcast, pay television or similar restricted audience broadcast of the consumer type, without digital encryption except that exclusively used for sending the billing or program-related information back to the broadcast providers.

(c) Equipment where the cryptographic capability is not user-accessible and which is specially designed and limited to allow any of the following:

(1) Execution of copy-protected "software";

(2) Access to any of the following:

(a) Copy-protected contents stored on read-only media; or

(b) Information stored in encrypted form on media (*e.g.*, in connection with the protection of intellectual property rights) where the media is offered for sale in identical sets to the public; or

(3) Copying control of copyright protected audio/video data.

(d) Cryptographic equipment specially designed and limited for banking use or money transactions;

(e) Portable or mobile radiotelephones for civil use (*e.g.*, for use with commercial civil cellular radio communications systems) that are not capable of end-to-end encryption.

N.B.: The term "money transactions" includes the collection and settlement of fares or credit functions.

(f) Cordless telephone equipment not capable of end-to-end encryption where the maximum effective range of unboosted cordless operation (*e.g.*, a single, unrelayed hop between terminal and home basestation) is less than 400 meters according to the manufacturer's specifications.

Technical Note: Parity bits are not included in the key length.

a. Systems, equipment, application specific "electronic assemblies", modules and integrated circuits for "information security", as follows, and other specially designed components therefor:

N.B.: For the control of global navigation satellite systems receiving equipment containing or employing decryption (*e.g.*, GPS or GLONASS) see 7A005.

a.1. Designed or modified to use "cryptography" employing digital techniques performing any cryptographic function other than authentication or digital signature having any of the following:

Technical Notes:

1. Authentication and digital signature functions include their associated key management function.

2. Authentication includes all aspects of access control where there is no encryption of files or text except as directly related to the protection of passwords, Personal Identification Numbers (PINs) or similar data to prevent unauthorized access.

3. "Cryptography" does not include "fixed" data compression or coding techniques.

Note: 5A002.a.1 includes equipment designed or modified to use "cryptography" employing analog principles when implemented with digital techniques.

a.1.a. A "symmetric algorithm" employing a key length in excess of 56-bits; *or*

a.1.b. An "asymmetric algorithm" where the security of the algorithm is based on any of the following:

a.1.b.1. Factorization of integers in excess of 512 bits (*e.g.*, RSA);

a.1.b.2. Computation of discrete logarithms in a multiplicative group of a finite field of size greater than 512 bits (*e.g.*, Diffie-Hellman over Z/pZ); *or*

a.1.b.3. Discrete logarithms in a group other than mentioned in 5A002.a.1.b.2 in excess of 112 bits (*e.g.*, Diffie-Hellman over an elliptic curve);

a.2. Designed or modified to perform cryptanalytic functions;

a.3. [RESERVED]

a.4. Specially designed or modified to reduce the compromising emanations of information-bearing signals beyond what is necessary for health, safety or electromagnetic interference standards;

a.5. Designed or modified to use cryptographic techniques to generate the spreading code for "spread spectrum" systems, including the hopping code for "frequency hopping" systems;

a.6. Designed or modified to use cryptographic techniques to generate channelizing or scrambling codes for "time-modulated ultra-wideband" systems;

a.7. Designed or modified to provide certified or certifiable "multilevel security" or user isolation at a level exceeding Class B2 of the Trusted Computer System Evaluation Criteria (TCSEC) or equivalent;

a.8. Communications cable systems designed or modified using mechanical, electrical or electronic means to detect surreptitious intrusion.

■ 30. In Supplement No. 1 to part 774 (the Commerce Control List), Category 6—Sensors, Export Control Classification Number (ECCN) 6A001 is amended by revising the License Exceptions section, and the "items" paragraph in the List of Items Controlled section, to read as follows:

6A001 Acoustics.

* * * * *

License Exceptions

LVS: $3000; N/A for 6A001.a.1.b.1 object detection and location systems having a transmitting frequency below 5 kHz or a sound pressure level exceeding 210 dB (reference 1 μ Pa at 1 m) for equipment with an operating frequency in the band from 30 kHz to 2 kHz inclusive; 6A001.a.2.a.1, a.2.a.2, a.2.a.4, a.2.a.5, 6A001.a.2.b; processing equipment controlled by 6A001.a.2.c, and specially designed for real time application with towed acoustic hydrophone arrays; a.2.e.1, a.2.e.2; and bottom or bay cable systems controlled by 6A001.a.2.f and having processing equipment specially designed for real time application with bottom or bay cable systems.

GBS: Yes for 6A001.a.1.b.4.

CIV:Yes for 6A001.a.1.b.4.

List of Items Controlled

Unit: * * *
Related Controls: * * *
Related Definitions: * * *
Items:

a. Marine acoustic systems, equipment and specially designed components therefor, as follows:

a.1. Active (transmitting or transmitting-and-receiving) systems, equipment and specially designed components therefor, as follows:

Note: 6A001.a.1 does not control:

a. Depth sounders operating vertically below the apparatus, not including a scanning function exceeding ± 20°, and limited to measuring the depth of water, the distance of submerged or buried objects or fish finding;

b. Acoustic beacons, as follows:

1. Acoustic emergency beacons;

2. Pingers specially designed for relocating or returning to an underwater position.

a.1.a. Wide-swath bathymetric survey systems designed for sea bed topographic mapping, having all of the following:

a.1.a.1. Being designed to take measurements at an angle exceeding 20° from the vertical;

a.1.a.2. Being designed to measure depths exceeding 600 m below the water surface; *and*

a.1.a.3. Being designed to provide any of the following:

a.1.a.3.a. Incorporation of multiple beams any of which is less than 1.9°; *or*

a.1.a.3.b. Data accuracies of better than 0.3% of water depth across the swath averaged over the individual measurements within the swath;

a.1.b. Object detection or location systems having any of the following:

a.1.b.1. A transmitting frequency below 10 kHz;

a.1.b.2. Sound pressure level exceeding 224dB (reference 1 μPa at 1 m) for equipment with an operating frequency in the band from 10 kHz to 24 kHz inclusive;

a.1.b.3. Sound pressure level exceeding 235 dB (reference 1 μPa at 1 m) for equipment with an operating frequency in the band between 24 kHz and 30 kHz;

a.1.b.4. Forming beams of less than 1° on any axis and having an operating frequency of less than 100 kHz;

a.1.b.5. Designed to operate with an unambiguous display range exceeding 5,120 m; *or*

a.1.b.6. Designed to withstand pressure during normal operation at depths exceeding 1,000 m and having transducers with any of the following:

a.1.b.6.a. Dynamic compensation for pressure; *or*

a.1.b.6.b. Incorporating other than lead zirconate titanate as the transduction element;

a.1.c. Acoustic projectors, including transducers, incorporating piezoelectric, magnetostrictive, electrostrictive, electrodynamic or hydraulic elements operating individually or in a designed combination, having any of the following:

Notes: 1. The control status of acoustic projectors, including transducers, specially designed for other equipment is determined by the control status of the other equipment.

2. 6A001.a.1.c does not control electronic sources that direct the sound vertically only, or mechanical (e.g., air gun or vapor-shock gun) or chemical (e.g., explosive) sources.

a.1.c.1. An instantaneous radiated acoustic power density exceeding 0.01 mW/mm²/Hz for devices operating at frequencies below 10 kHz;

a.1.c.2. A continuously radiated acoustic power density exceeding 0.001 Mw/mm²/Hz for devices operating at frequencies below 10 kHz; *or*

Technical Note: Acoustic power density is obtained by dividing the output acoustic power by the product of the area of the radiating surface and the frequency of operation.

a.1.c.3. Side-lobe suppression exceeding 22 dB;

a.1.d. Acoustic systems, equipment and specially designed components for determining the position of surface vessels or underwater vehicles designed to operate at a range exceeding 1,000 m with a positioning accuracy of less than 10 m rms (root mean square) when measured at a range of 1,000 m:

Note: 6A001.a.1.d includes:

a. Equipment using coherent "signal processing" between two or more beacons and the hydrophone unit carried by the surface vessel or underwater vehicle;

b. Equipment capable of automatically correcting speed-of-sound propagation errors for calculation of a point.

a.2. Passive (receiving, whether or not related in normal application to separate active equipment) systems, equipment and specially designed components therefor, as follows:

a.2.a. Hydrophones having any of the following characteristics:

Note: The control status of hydrophones specially designed for other equipment is determined by the control status of the other equipment.

a.2.a.1. Incorporating continuous flexible sensors or assemblies of discrete sensor elements with either a diameter or length less than 20 mm and with a separation between elements of less than 20 mm;

a.2.a.2. Having any of the following sensing elements:

a.2.a.2.a. Optical fibers; or

a.2.a.2.b. Flexible piezoelectric ceramic materials;

a.2.a.3. A hydrophone sensitivity better than -180dB at any depth with no acceleration compensation;

a.2.a.4. When designed to operate at depths exceeding 35 m with acceleration compensation; *or*

a.2.a.5. Designed for operation at depths exceeding 1,000 m;

Technical Note: Hydrophone sensitivity is defined as twenty times the logarithm to the base 10 of the ratio of rms output voltage to a 1 V rms reference, when the hydrophone sensor, without a pre-amplifier, is placed in a plane wave acoustic field with an rms pressure of 1 μPa. For example, a hydrophone of −160 dB (reference 1 V per μPa) would yield an output voltage of 10^{-8} V in such a field, while one of −180 dB sensitivity would yield only 10^{-9} V output. Thus, −160 dB is better than −180 dB.

a.2.b. Towed acoustic hydrophone arrays having any of the following:

a.2.b.1. Hydrophone group spacing of less than 12.5 m;

a.2.b.2. Designed or "able to be modified" to operate at depths exceeding 35m;

Technical Note: "Able to be modified" in 6A001.a.2.b.2 means having provisions to allow a change of the wiring or interconnections to alter hydrophone group spacing or operating depth limits. These provisions are: spare wiring exceeding 10% of the number of wires, hydrophone group spacing adjustment blocks or internal depth limiting devices that are adjustable or that control more than one hydrophone group.

a.2.b.3. Heading sensors controlled by 6A001.a.2.d;

a.2.b.4. Longitudinally reinforced array hoses;

a.2.b.5. An assembled array of less than 40 mm in diameter;

a.2.b.6. Multiplexed hydrophone group signals designed to operate at depths exceeding 35 m or having an adjustable or removable depth sensing device in order to operate at depths exceeding 35 m; *or*

a.2.b.7. Hydrophone characteristics controlled by 6A001.a.2.a;

a.2.c. Processing equipment, specially designed for towed acoustic hydrophone arrays, having "user accessible programmability" and time or frequency domain processing and correlation, including spectral analysis, digital filtering and beamforming using Fast Fourier or other transforms or processes;

a.2.d. Heading sensors having all of the following:

a.2.d.1. An accuracy of better than ± 0.5°; *and*

a.2.d.2. Designed to operate at depths exceeding 35 m or having an adjustable or removable depth sensing device in order to operate at depths exceeding 35 m;

a.2.e. Bottom or bay cable systems having any of the following:

a.2.e.1. Incorporating hydrophones controlled by 6A001.a.2.a; *or*

a.2.e.2. Incorporating multiplexed hydrophone group signal modules having all of the following characteristics:

a.2.e.2.a. Designed to operate at depths exceeding 35 m or having an adjustable or removal depth sensing device in order to operate at depths exceeding 35 m; *and*

a.2.e.2.b. Capable of being operationally interchanged with towed acoustic hydrophone array modules;

a.2.f. Processing equipment, specially designed for bottom or bay cable systems, having "user accessible programmability" and time or frequency domain processing and correlation, including spectral analysis, digital filtering and beamforming using Fast Fourier or other transforms or processes;

b. Correlation-velocity sonar log equipment designed to measure the horizontal speed of the equipment carrier relative to the sea bed at distances between the carrier and the sea bed exceeding 500 m.

■ 31. In Supplement No. 1 to part 774 (the Commerce Control List), Category 6—Sensors, Export Control Classification Number (ECCN) 6A002 is amended by revising the "items" paragraph in the List of Items Controlled section, to read as follows:

6A002 Optical sensors.

* * * * *

List of Items Controlled

Unit: * * *

Related Controls: * * *

Related Definitions: * * *

Items:

a. Optical detectors, as follows:

Note: 6A002.a does not control germanium or silicon photodevices.

a.1. "Space-qualified" solid-state detectors, as follows:

a.1.a. "Space-qualified" solid-state detectors, having all of the following:

a.1.a.1. A peak response in the wavelength range exceeding 10 nm but not exceeding 300 nm; *and*

a.1.a.2. A response of less than 0.1% relative to the peak response at a wavelength exceeding 400 nm;

a.1.b. "Space-qualified" solid-state detectors, having all of the following:

a.1.b.1. A peak response in the wavelength range exceeding 900 nm but not exceeding 1,200 nm; *and*

a.1.b.2. A response "time constant" of 95 ns or less;

a.1.c. "Space-qualified" solid-state detectors having a peak response in the wavelength range exceeding 1,200 nm but not exceeding 30,000 nm;

a.2. Image intensifier tubes and specially designed components therefor, as follows:

a.2.a. Image intensifier tubes having all of the following:

a.2.a.1. A peak response in the wavelength range exceeding 400 nm but not exceeding 1,050 nm;

a.2.a.2. A microchannel plate for electron image amplification with a hole pitch (center-to-center spacing) of 12 μm or less; *and*

a.2.a.3. Any of the following photocathodes:

a.2.a.3.a. S–20, S–25 or multialkali photocathodes with a luminous sensitivity exceeding 350 μA/lm;

a.2.a.3.b. GaAs or GaInAs photocathodes; *or*

a.2.a.3.c. Other III-V compound semiconductor photocathodes;

Note: 6A002.a.2.a.3.c does not apply to compound semiconductor photocathodes with a maximum radiant sensitivity of 10 mA/W or less.

a.2.b. Specially designed components, as follows:

a.2.b.1. Microchannel plates having a hole pitch (center-to-center spacing) of 12 μm or less;

a.2.b.2. GaAs or GaInAs photocathodes;

a.2.b.3. Other III-V compound semiconductor photocathodes;

Note: 6A002.a.2.b.3 does not control compound semiconductor photocathodes with a maximum radiant sensitivity of 10 mA/W or less.

a.3. Non-"space-qualified" "focal plane arrays", as follows:

Technical Notes:

1. Linear or two-dimensional multi-element detector arrays are referred to as "focal plane arrays".

2. For the purposes of 6A002.a.3. "cross scan direction" is defined as the axis parallel to the linear array of detector elements and the "scan direction" is defined as the axis perpendicular to the linear array of detector elements.

Note 1: 6A002.a.3 includes photoconductive arrays and photovoltaic arrays.

Note 2: 6A002.a.3 does not control:

a. Silicon "focal plane arrays";

b. Multi-element (not to exceed 16 elements) encapsulated photoconductive cells using either lead sulphide or lead selenide;

c. Pyroelectric detectors using any of the following:

c.1. Triglycine sulphate and variants;

c.2. Lead-lanthanum-zirconium titanate and variants;

c.3. Lithium tantalate;

c.4. Polyvinylidene fluoride and variants; or

c.5. Strontium barium niobate and variants.

a.3.a. Non-"space-qualified" "focal plane arrays", having all of the following:

a.3.a.1. Individual elements with a peak response within the wavelength range exceeding 900 nm but not exceeding 1,050 nm; *and*

a.3.a.2. A response "time constant" of less than 0.5 ns;

a.3.b. Non-"space-qualified" "focal plane arrays", having all of the following:

a.3.b.1. Individual elements with a peak response in the wavelength range exceeding 1,050 nm but not exceeding 1,200 nm; *and*

a.3.b.2. A response "time constant" of 95 ns or less;

a.3.c. Non-"space-qualified" non-linear (2-dimensional) "focal plane arrays", having individual elements with a peak response in the wavelength range exceeding 1,200 nm but not exceeding 30,000 nm;

a.3.d. Non-"space-qualified" linear (1-dimensional) "focal plane arrays", having all of the following:

a.3.d.1. Individual elements with a peak response in the wavelength range exceeding 1,200 nm but not exceeding 2,500 nm; *and*

a.3.d.2. Any of the following:

a.3.d.2.a. A ratio of scan direction dimension of the detector element to the cross-scan direction dimension of the detector element of less than 3.8; *or*

a.3.d.2.b. Signal processing in the element (SPRITE);

a.3.e. Non-"space-qualified" linear (1-dimensional) "focal plane arrays", having individual elements with a peak response in the wavelength range exceeding 2,500 nm but not exceeding 30,000 nm.

b. "Monospectral imaging sensors" and "multispectral imaging sensors" designed for remote sensing applications, having any of the following:

b.1. An Instantaneous-Field-Of-View (IFOV) of less than 200 μrad (microradians); *or*

b.2. Being specified for operation in the wavelength range exceeding 400 nm but not exceeding 30,000 nm and having all the following:

b.2.a. Providing output imaging data in digital format; and

b.2.b. Being any of the following:

b.2.b.1. "Space-qualified"; *or*

b.2.b.2. Designed for airborne operation, using other than silicon detectors, and having an IFOV of less than 2.5 mrad (milliradians).

c. Direct view imaging equipment operating in the visible or infrared spectrum, incorporating any of the following:

c.1. Image intensifier tubes having the characteristics listed in 6A002.a.2.a; *or*

c.2. "Focal plane arrays" having the characteristics listed in 6A002.a.3.

Technical Note: "Direct view" refers to imaging equipment, operating in the visible or infrared spectrum, that presents a visual image to a human observer without converting the image into an electronic signal for television display, and that cannot record or store the image photographically, electronically or by any other means.

Note: 6A002.c does not control the following equipment incorporating other than GaAs or GaInAs photocathodes:

a. Industrial or civilian intrusion alarm, traffic or industrial movement control or counting systems;

b. Medical equipment;

c. Industrial equipment used for inspection, sorting or analysis of the properties of materials;

d. Flame detectors for industrial furnaces;

e. Equipment specially designed for laboratory use.

d. Special support components for optical sensors, as follows:

d.1. "Space-qualified" cryocoolers;

d.2. Non-"space-qualified" cryocoolers, having a cooling source temperature below 218 K (−55° C), as follows:

d.2.a. Closed cycle type with a specified Mean-Time-To-Failure (MTTF), or Mean-Time-Between-Failures (MTBF), exceeding 2,500 hours;

d.2.b. Joule-Thomson (JT) self-regulating minicoolers having bore (outside) diameters of less than 8 mm;

d.3. Optical sensing fibers specially fabricated either compositionally or structurally, or modified by coating, to be acoustically, thermally, inertially, electromagnetically or nuclear radiation sensitive.

e. "Space qualified" "focal plane arrays" having more than 2,048 elements per array and having a peak response in the wavelength range exceeding 300 nm but not exceeding 900 nm.

■ 32. In Supplement No. 1 to part 774 (the Commerce Control List), Category 6—Sensors, Export Control Classification Number (ECCN) 6A003 is amended by revising the "items" paragraph in the List of Items Controlled section, to read as follows:

6A003 Cameras.

* * * * *

List of Items Controlled

Unit: * * *

Related Controls: * * *

Related Definitions: * * *

Items:

a. Instrumentation cameras and specially designed components therefor, as follows:

Note: Instrumentation cameras, controlled by 6A003.a.3 to 6A003.a.5, with modular structures should be evaluated by their maximum capability, using plug-ins available according to the camera manufacturer's specifications.

a.1. High-speed cinema recording cameras using any film format from 8 mm to 16 mm inclusive, in which the film is continuously advanced throughout the recording period, and that are capable of recording at framing rates exceeding 13,150 frames/s;

Note: 6A003.a.1 does not control cinema recording cameras designed for civil purposes.

a.2. Mechanical high speed cameras, in which the film does not move, capable of

recording at rates exceeding 1,000,000 frames/s for the full framing height of 35 mm film, or at proportionately higher rates for lesser frame heights, or at proportionately lower rates for greater frame heights;

a.3. Mechanical or electronic streak cameras having writing speeds exceeding 10 mm/μs;

a.4. Electronic framing cameras having a speed exceeding 1,000,000 frames/s;

a.5. Electronic cameras, having all of the following:

a.5.a. An electronic shutter speed (gating capability) of less than 1 μs per full frame; *and*

a.5.b. A read out time allowing a framing rate of more than 125 full frames per second.

a.6. Plug-ins, having all of the following characteristics:

a.6.a. Specially designed for instrumentation cameras which have modular structures and that are controlled by 6A003.a; *and*

a.6.b. Enabling these cameras to meet the characteristics specified in 6A003.a.3, 6A003.a.4 or 6A003.a.5, according to the manufacturer's specifications.

b. Imaging cameras, as follows:

Note: 6A003.b does not control television or video cameras specially designed for television broadcasting.

b.1. Video cameras incorporating solid state sensors, having a peak response in the wavelength range exceeding 10nm, but not exceeding 30,000 nm and any of the following:

b.1.a. More than 4×10^6 "active pixels" per solid state array for monochrome (black and white) cameras;

b.1.b. More than 4×10^6 "active pixels" per solid state array for color cameras incorporating three solid state arrays; *or*

b.1.c. More than 12×10^6 "active pixels" for solid state array color cameras incorporating one solid state array;

Technical Note: For the purposes of this entry, digital video cameras should be evaluated by the maximum number of "active pixels" used for capturing moving images.

b.2. Scanning cameras and scanning camera systems, having all of the following:

b.2.a. A peak response in the wavelength range exceeding 10 nm, but not exceeding 30,000 nm;

b.2.b. Linear detector arrays with more than 8,192 elements per array; *and*

b.2.c. Mechanical scanning in one direction;

b.3. Imaging cameras incorporating image intensifier tubes having the characteristics listed in 6A002.a.2.a;

b.4. Imaging cameras incorporating "focal plane arrays" having the characteristics listed in 6A002.a.3.

Note: 6A003.b.4 does not control imaging cameras incorporating linear "focal plane arrays" with twelve elements or fewer, not employing time-delay-and-integration within the element, designed for any of the following:

a. Industrial or civilian intrusion alarm, traffic or industrial movement control or counting systems;

b. Industrial equipment used for inspection or monitoring of heat flows in buildings, equipment or industrial processes;

c. Industrial equipment used for inspection, sorting or analysis of the properties of materials;

d. Equipment specially designed for laboratory use; or

e. Medical equipment.

■ 33. In Supplement No. 1 to part 774 (the Commerce Control List), Category 6—Sensors, Export Control Classification Number (ECCN) 6A004 is amended by revising the "items" paragraph in the List of Items Controlled section, to read as follows:

6A004 Optics.

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List of Items Controlled

Unit: * * *

Related Controls: * * *

Related Definitions: * * *

Items:

a. Optical mirrors (reflectors), as follows:

a.1. "Deformable mirrors" having either continuous or multi-element surfaces, and specially designed components therefor, capable of dynamically repositioning portions of the surface of the mirror at rates exceeding 100 Hz;

a.2. Lightweight monolithic mirrors having an average "equivalent density" of less than 30 kg/m² and a total mass exceeding 10 kg;

a.3. Lightweight "composite" or foam mirror structures having an average "equivalent density" of less than 30 kg/m² and a total mass exceeding 2 kg;

a.4. Beam steering mirrors more than 100 mm in diameter or length of major axis, that maintain a flatness of lambda/2 or better (lambda is equal to 633 nm) having a control bandwidth exceeding 100 Hz.

b. Optical components made from zinc selenide (ZnSe) or zinc sulphide (ZnS) with transmission in the wavelength range exceeding 3,000 nm but not exceeding 25,000 nm and having any of the following:

b.1. Exceeding 100 cm3 in volume; *or*

b.2. Exceeding 80 mm in diameter or length of major axis and 20 mm in thickness (depth).

c. "Space-qualified" components for optical systems, as follows:

c.1. Lightweighted to less than 20% "equivalent density" compared with a solid blank of the same aperture and thickness;

c.2. Substrates, substrates having surface coatings (single-layer or multi-layer, metallic or dielectric, conducting, semiconducting or insulating) or having protective films;

c.3. Segments or assemblies of mirrors designed to be assembled in space into an optical system with a collecting aperture equivalent to or larger than a single optic 1 m in diameter;

c.4. Manufactured from "composite" materials having a coefficient of linear thermal expansion equal to or less than 5×10^{-6} in any coordinate direction.

d. Optical control equipment, as follows:

d.1. Specially designed to maintain the surface figure or orientation of the "space-qualified" components controlled by 6A004.c.1 or 6A004.c.3;

d.2. Having steering, tracking, stabilization or resonator alignment bandwidths equal to or more than 100 Hz and an accuracy of 10 μrad (microradians) or less;

d.3. Gimbals having all of the following:

d.3.a. A maximum slew exceeding 5°;

d.3.b. A bandwidth of 100 Hz or more;

d.3.c. Angular pointing errors of 200 μrad (microradians) or less; *and*

d.3.d. Having any of the following:

d.3.d.1. Exceeding 0.15 m but not exceeding 1 m in diameter or major axis length and capable of angular accelerations exceeding 2 rad (radians)/s²; *or*

d.3.d.2. Exceeding 1 m in diameter or major axis length and capable of angular accelerations exceeding 0.5 rad (radians)/s²;

d.4. Specially designed to maintain the alignment of phased array or phased segment mirror systems consisting of mirrors with a segment diameter or major axis length of 1 m or more.

e. Aspheric optical elements having all of the following characteristics:

e.1. The largest dimension of the optical-aperture is greater than 400 mm;

e.2. The surface roughness is less than 1 nm (rms) for sampling lengths equal to or greater than 1 mm; *and*

e.3. The coefficient of linear thermal expansion's absolute magnitude is less than 3×10^{-6}/K at 25° C;

Technical Notes:

1. An "aspheric optical element" is any element used in an optical system whose imaging surface or surfaces are designed to depart from the shape of an ideal sphere.

2. Manufacturers are not required to measure the surface roughness listed in 6A004.e.2 unless the optical element was designed or manufactured with the intent to meet, or exceed, the control parameter.

Note: 6A004.e does not control aspheric optical elements having any of the following:

a. A largest optical-aperture dimension less than 1 m and a focal length to aperture ratio equal to or greater than 4.5:1;

b. A largest optical-aperture dimension equal to or greater than 1 m and a focal length to aperture ratio equal to or greater than 7:1;

c. Being designed as Fresnel, flyeye, stripe, prism or diffractive optical elements;

d. Being fabricated from borosilicate glass having a coefficient of linear thermal expansion greater than 2.5×10^{-6}/K at 25° C; or

e. Being an x-ray optical element having inner mirror capabilities (*e.g.*, tube-type mirrors).

N.B.: For aspheric optical elements specially designed for lithographic equipment, see 3B001.

■ 34. In Supplement No. 1 to part 774 (the Commerce Control List), Category 6—Sensors, Export Control Classification Number (ECCN) 6A008 is amended by revising the "items" paragraph in the List of Items Controlled section, to read as follows:

6A008 Radar systems, equipment and assemblies having any of the following characteristics (see List of Items Controlled), and specially designed components therefor.

* * * * *

List of Items Controlled

Unit: * * *

Related Controls: * * *

Related Definitions: * * *

Items:

a. Operating at frequencies from 40 GHz to 230 GHz and having an average output power exceeding 100 mW;

b. Having a tunable bandwidth exceeding ±6.25% of the center operating frequency;

Technical Note: The center operating frequency equals one half of the sum of the highest plus the lowest specified operating frequencies.

c. Capable of operating simultaneously on more than two carrier frequencies;

d. Capable of operating in synthetic aperture (SAR), inverse synthetic aperture (ISAR) radar mode, or sidelooking airborne (SLAR) radar mode;

e. Incorporating "electronically steerable phased array antennae";

f. Capable of heightfinding non-cooperative targets;

Note: 6A008.f does not control precision approach radar (PAR) equipment conforming to ICAO standards.

g. Specially designed for airborne (balloon or airframe mounted) operation and having Doppler "signal processing" for the detection of moving targets;

h. Employing processing of radar signals using any of the following:

h.1. "Radar spread spectrum" techniques; *or*

h.2. "Radar frequency agility" techniques;

i. Providing ground-based operation with a maximum "instrumented range" exceeding 185 km;

Note: 6A008.i does not control:

a. Fishing ground surveillance radar;

b. Ground radar equipment specially designed for en route air traffic control, provided that all the following conditions are met:

1. It has a maximum "instrumented range" of 500 km or less;

2. It is configured so that radar target data can be transmitted only one way from the radar site to one or more civil ATC centers;

3. It contains no provisions for remote control of the radar scan rate from the en route ATC center; and

4. It is to be permanently installed;

c. Weather balloon tracking radars.

j. Being "laser" radar or Light Detection and Ranging (LIDAR) equipment, having any of the following:

j.1. "Space-qualified"; *or*

j.2. Employing coherent heterodyne or homodyne detection techniques and having an angular resolution of less (better) than 20 μrad (microradians);

Note: 6A008.j does not control LIDAR equipment specially designed for surveying or for meteorological observation.

k. Having "signal processing" sub-systems using "pulse compression", with any of the following:

k.1. A "pulse compression" ratio exceeding 150; *or*

k.2. A pulse width of less than 200 ns; *or*

l. Having data processing sub-systems with any of the following:

l.1. "Automatic target tracking" providing, at any antenna rotation, the predicted target position beyond the time of the next antenna beam passage;

Note: 6A008.l.1 does not control conflict alert capability in ATC systems, or marine or harbor radar.

l.2. Calculation of target velocity from primary radar having non-periodic (variable) scanning rates;

l.3. Processing for automatic pattern recognition (feature extraction) and comparison with target characteristic data bases (waveforms or imagery) to identify or classify targets; *or*

l.4. Superposition and correlation, or fusion, of target data from two or more "geographically dispersed" and "interconnected radar sensors" to enhance and discriminate targets.

Note: 6A008.l.4 does not control systems, equipment and assemblies designed for marine traffic control.

■ 35. In Supplement No. 1 to part 774 (the Commerce Control List), Category 6—Sensors, Export Control Classification Number (ECCN) 6A992 is amended by revising the "items" paragraph in the List of Items Controlled section, to read as follows:

6A992 Optical Sensors, not controlled by 6A002.

* * * * *

List of Items Controlled

Unit: * * *

Related Controls: * * *

Related Definitions: * * *

Items:

a. Image intensifier tubes and specially designed components therefor, as follows:

a.1. Image intensifier tubes having all the following:

a.1.a. A peak response in wavelength range exceeding 400 nm, but not exceeding 1,050 nm;

a.1.b. A microchannel plate for electron image amplification with a hole pitch (center-to-center spacing) of less than 25 micrometers; *and*

a.1.c. Having any of the following:

a.1.c.1. An S–20, S–25 or multialkali photocathode; *or*

a.1.c.2. A GaAs or GaInAs photocathode;

a.2. Specially designed microchannel plates having both of the following characteristics:

a.2.a. 15,000 or more hollow tubes per plate; *and*

a.2.b. Hole pitch (center-to-center spacing) of less than 25 micrometers.

b. Direct view imaging equipment operating in the visible or infrared spectrum, incorporating image intensifier tubes having the characteristics listed in 6A992.a.1.

■ 36. In Supplement No. 1 to part 774 (the Commerce Control List), Category 6—Sensors, Export Control Classification Number (ECCN) 6E001 is amended by revising the "TSR" paragraph in the License Exceptions section, to read as follows:

6E001 "Technology" according to the General Technology Note for the "development" of equipment, materials or "software" controlled by 6A (except 6A018, 6A991, 6A992, 6A994, 6A995, 6A996, 6A997, or 6A998), 6B (except 6B995), 6C (except 6C992 or 6C994), or 6D (except 6D991, 6D992, or 6D993).

* * * * *

License Exceptions

CIV: * * *

TSR: Yes, except for the following:

(1) Items controlled for MT reasons;

(2) "Technology" for commodities controlled by 6A002.e, 6A004.e, or 6A008.j.1;

(3) "Technology" for "software" specially designed for "space qualified" "laser" radar or Light Detection and Ranging (LIDAR) equipment defined in 6A008.j.1 and controlled by 6D001 or 6D002;

(4) Exports or reexports to destinations outside of Austria, Belgium, Canada, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Japan, Luxembourg, the Netherlands, Portugal, Spain, Sweden, or the United Kingdom of "technology" for the "development" of the following: (a) Items controlled by 6A001.a.2.a.1, 6A001.a.2.a.2, 6A001.a.2.a.4, 6A001.a.2.a.5, 6A001.a.2.b, 6A001.a.2.e., 6A002.a.1.c, 6A008.l.3, 6B008, 6D003.a; (b) Equipment controlled by 6A001.a.2.c or 6A001.a.2.f when specially designed for real time applications; *or* (c) "Software" controlled by 6D001 and specially designed for the "development" or "production" of equipment controlled by 6A008.l.3 or 6B008; or

(5) Exports or reexports to Rwanda.

* * * * *

■ 37. In Supplement No. 1 to part 774 (the Commerce Control List), Category 6—Sensors, Export Control Classification Number (ECCN) 6E002 is amended by revising the "TSR" paragraph in the License Exceptions section, to read as follows:

6E002 "Technology" according to the General Technology Note for the "production" of equipment or materials controlled by 6A (except 6A018, 6A991, 6A992, 6A994, 6A995, 6A996, 6A997 or 6A998), 6B (except 6B995) or 6C (except 6C992 or 6C994).

* * * * *

License Exceptions

CIV: * * *

TSR: Yes, except for the following:

(1) Items controlled for MT reasons;

(2) "Technology" for commodities controlled by 6A002.e, 6A004.e, 6A008.j.1;

(3) Exports or reexports to destinations outside of Austria, Belgium, Canada, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Japan, Luxembourg, the Netherlands, Portugal, Spain, Sweden, or the United Kingdom of "technology" for the "development" of the following: (a) Items controlled by 6A001.a.2.a.1, 6A001.a.2.a.2.

6A001.a.2.a.4, 6A001.a.2.a.5, 6A001.a.2.b, and 6A001.a.2.c; and (b) Equipment controlled by 6A001.a.2.e and 6A001.a.2.f when specially designed for real time applications; or (c) "Software" controlled by 6D001 and specially designed for the "development" or "production" of equipment controlled by 6A002.a.1.c, 6A008.l.3 or 6B008; or

(4) Exports or reexports to Rwanda.

* * * * *

■ 38. In Supplement No. 1 to part 774 (the Commerce Control List), Category 7—Navigation and Avionics, Export Control Classification Number (ECCN) 7A003 is amended by revising the "items" paragraph in the List of Items Controlled section, to read as follows:

7A003 Inertial Navigation Systems (INS) and specially designed components therefor.

* * * * *

List of Items Controlled

Unit: * * *

Related Controls: * * *

Related Definitions: * * *

Items:

a. Inertial navigation systems (gimballed or strapdown) and inertial equipment designed for "aircraft", land vehicle or "spacecraft" for attitude, guidance or control, having any of the following characteristics, and specially designed components therefor:

a.1. Navigation error (free inertial) subsequent to normal alignment of 0.8 nautical mile per hour (nm/hr) Circular Error Probable (CEP) or less (better); *or*

a.2. Specified to function at linear acceleration levels exceeding 10 g.

b. Hybrid Inertial Navigation Systems embedded with Global Navigation Satellite System(s) (GNSS) or with "Data-Based Referenced Navigation" ("DBRN") System(s) for attitude, guidance or control, subsequent to normal alignment, having an INS navigation position accuracy, after loss of GNSS or "DBRN" for a period of up to 4 minutes, of less (better) than 10 meters Circular Error Probable (CEP).

Note 1: The parameters of 7A003.a and 7A003.b are applicable with any of the following environmental conditions:

1. Input random vibration with an overall magnitude of 7.7 g rms in the first half hour and a total test duration of one and one half hour per axis in each of the three perpendicular axes, when the random vibration meets the following:

a. A constant power spectral density (PSD) value of 0.04 g^2/Hz over a frequency interval of 15 to 1,000 Hz; *and*

b. The PSD attenuates with frequency from 0.04 g^2/Hz to 0.01 g^2/Hz over a frequency interval from 1,000 to 2,000 Hz;

2. A roll and yaw rate of equal to or more than +2.62 rad/s (150 deg/s); *or*

3. According to national standards equivalent to 1. or 2. of this note.

Note 2: 7A003 does not control inertial navigation systems that are certified for use on "civil aircraft" by civil authorities of a country in Country Group A:1.

Technical Notes:

1. 7A003.b refers to systems in which an INS and other independent navigation aids are built into a single unit (embedded) in order to achieve improved performance.

2. "Circular Error Probable" ("CEP")—In a circular normal distribution, the radius of the circle containing 50 percent of the individual measurements being made, or the radius of the circle within which there is a 50 percent probability of being located.

■ 39. Part 774 is amended by revising Supplement No. 3, to read as follows:

Supplement No. 3 to Part 774—Statements of Understanding

Statement of Understanding—medical equipment: Commodities that are "specially designed for medical end-use" that "incorporate" commodities or software on the Commerce Control List (Supplement No. 1 to part 774 of the EAR) that do not have a reason for control of Nuclear Nonproliferation (NP), Missile Technology (MT), or Chemical & Biological Weapons (CB) are designated by the number EAR99 (i.e., are not elsewhere specified on the Commerce Control List).

Notes applicable to State of Understanding related to Medical Equipment:

(1) "Specially designed for medical end-use" means designed for medical treatment or the practice of medicine (does not include medical research).

(2) "Incorporate" into medical equipment means to integrate with, or work indistinguishably into such equipment.

(3) Except for such software that is made publicly available consistent with § 734.3(b)(3) of the EAR, commodities and software "specially designed for medical end-use" remain subject to the EAR.

(4) See also § 770.2(b) interpretation 2, for other types of equipment that incorporate items on the Commerce Control List that are subject to the EAR.

(5) For computers used with medical equipment, see also ECCN 4A003 note 2 regarding the "principal element" rule.

(6) For commodities and software specially designed for medical end-use that incorporate an encryption or other "information security" item subject to the EAR, see also Note 1 to Category 5, Part II of the Commerce Control List.

Dated: December 2, 2003.

Peter Lichtenbaum,

Assistant Secretary.

[FR Doc. 03–30363 Filed 12–9–03; 8:45 am]

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Federal Register

Wednesday,
December 10, 2003

Part III

The President

Proclamation 7742—National Pearl Harbor Remembrance Day, 2003

Federal Register
Vol. 68, No. 237
Wednesday, December 10, 2003

Presidential Documents

Title 3—

The President

Proclamation 7742 of December 5, 2003

National Pearl Harbor Remembrance Day, 2003

By the President of the United States of America

A Proclamation

More than 60 years ago, President Franklin Delano Roosevelt told Americans that December 7, 1941, was "a date which will live in infamy." On that morning, America was attacked without warning and without provocation. More than 2,400 Americans died and 1,100 were wounded. Our country was changed forever. Following that attack, our citizens responded with the strength and resolve that characterizes America in times of adversity, and that same spirit and courage carried us to victory in World War II. On National Pearl Harbor Remembrance Day, we honor the lives lost in that attack and salute the veterans of World War II. We also pay tribute to all those now serving America to advance freedom around the world.

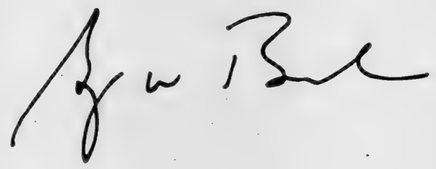
The USS ARIZONA Memorial in Honolulu, Hawaii, stands as a monument to that ship's 1,177 crew members who died as a result of the attack. Since the Memorial's dedication, more than 40 million visitors have honored the heroism of these brave sailors and marines. Laura and I had the opportunity to visit the Memorial in October of this year. It is a fitting tribute to the lives lost in defense of our freedom during the greatest global conflict in history.

America's liberty is sustained by the courage of the American people. Every generation of Americans has answered the call to protect the blessings of freedom and democracy. With the help of our friends and allies, the brave men and women of our Armed Forces are now engaged in a global war on terrorism. And as in the aftermath of the terrible attack on Pearl Harbor, our Nation will stay the course, and we will prevail.

The Congress, by Public Law 103–308, as amended, has designated December 7, 2003, as "National Pearl Harbor Remembrance Day."

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, do hereby proclaim December 7, 2003, as National Pearl Harbor Remembrance Day. I encourage all Americans to observe this solemn occasion with appropriate ceremonies and activities. I urge all Federal agencies, interested organizations, groups, and individuals to fly the flag of the United States at half-staff this December 7 in honor of those who died as a result of their service at Pearl Harbor.

IN WITNESS WHEREOF, I have hereunto set my hand this fifth day of December, in the year of our Lord two thousand three, and of the Independence of the United States of America the two hundred and twenty-eighth.



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Class D airspace; comments due by 12-15-03; published 11-14-03 [FR 03-28539]
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H.R. 421/P.L. 108–160
Environmental Policy and Conflict Resolution Advancement Act of 2003 (Dec. 6, 2003; 117 Stat. 2013)

H.R. 1367/P.L. 108–161
National Veterinary Medical Service Act (Dec. 6, 2003; 117 Stat. 2014)

H.R. 1821/P.L. 108–162
To award a congressional gold medal to Dr. Dorothy Height in recognition of her many contributions to the Nation. (Dec. 6, 2003; 117 Stat. 2017)

H.R. 3038/P.L. 108–163
Health Care Safety Net Amendments Technical Corrections Act of 2003 (Dec. 6, 2003; 117 Stat. 2020)

H.R. 3140/P.L. 108–164
Fairness to Contact Lens Consumers Act (Dec. 6, 2003; 117 Stat. 2024)

H.R. 3166/P.L. 108–165
To designate the facility of the United States Postal Service located at 57 Old Tappan Road in Tappan, New York, as the "John G. Dow Post Office Building". (Dec. 6, 2003; 117 Stat. 2029)

H.R. 3185/P.L. 108–166
To designate the facility of the United States Postal Service located at 38 Spring Street in Nashua, New Hampshire, as the "Hugh Gregg Post Office Building". (Dec. 6, 2003; 117 Stat. 2030)

H.R. 3349/P.L. 108–167
To authorize salary adjustments for Justices and judges of the United States for fiscal year 2004. (Dec. 6, 2003; 117 Stat. 2031)

S. 579/P.L. 108–168
National Transportation Safety Board Reauthorization Act of 2003 (Dec. 6, 2003; 117 Stat. 2032)

S. 1152/P.L. 108–169
To reauthorize the United States Fire Administration, and for other purposes. (Dec. 6, 2003; 117 Stat. 2036)

S. 1156/P.L. 108–170
Veterans Health Care, Capital Asset, and Business Improvement Act of 2003 (Dec. 6, 2003; 117 Stat. 2042)

S. 1768/P.L. 108–171
National Flood Insurance Program Reauthorization Act of 2004 (Dec. 6, 2003; 117 Stat. 2064)

S. 1895/P.L. 108–172
To temporarily extend the programs under the Small Business Act and the Small Business Investment Act of 1958 through March 15, 2004, and for other purposes. (Dec. 6, 2003; 117 Stat. 2065)

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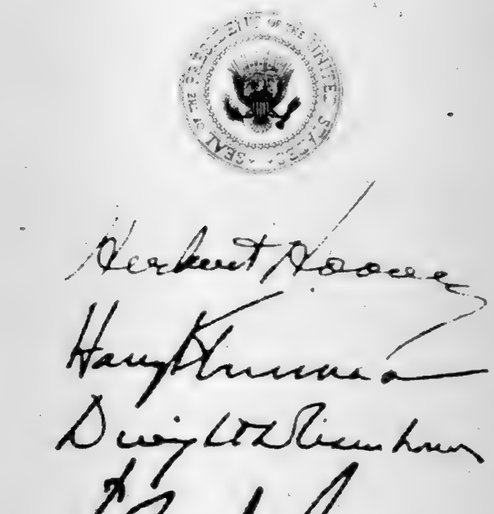
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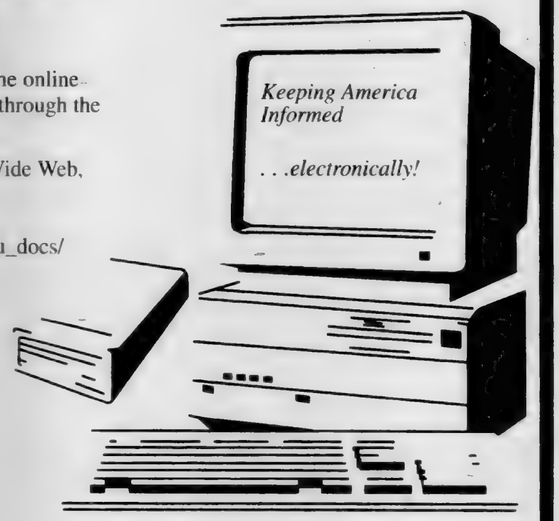
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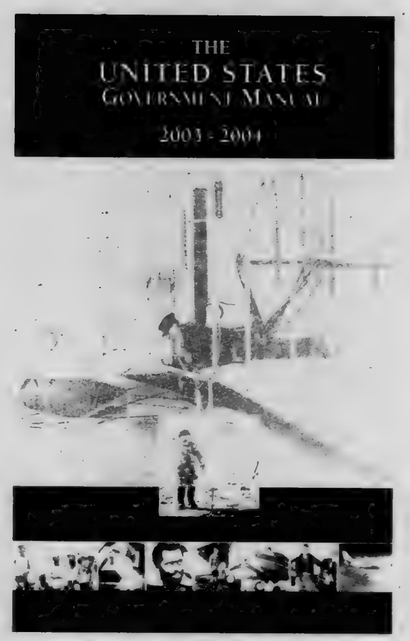
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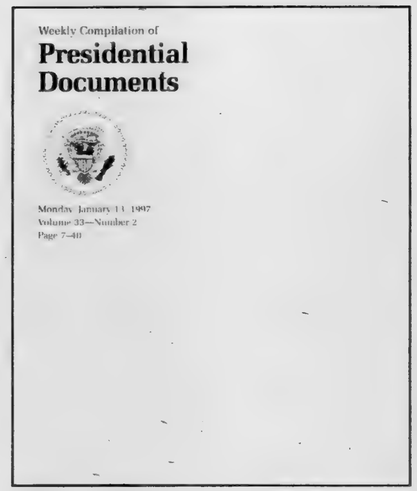
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Vol. 68, No. 238
Thursday, December 11, 2003

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The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Rural Housing Service

7 CFR Part 1942

RIN 0575–AC53

Fire and Rescue and Other Community Facilities Projects

AGENCY: Rural Housing Service, USDA.

ACTION: Direct final rule; correction.

SUMMARY: The Rural Housing Service amended its regulation to include all essential community facility projects $300,000 and under to utilize the authority granted for fire and rescue loans. This document corrects the rule, which was published Monday, November 24, 2003.

EFFECTIVE DATE: February 9, 2004.

FOR FURTHER INFORMATION CONTACT: Cheryl Thompson, Management Analyst, Regulations and Paperwork Management Branch, Support Services Division, U.S. Department of Agriculture, STOP 0742, 1400 Independence Avenue SW., Washington, DC 20250–0742; Telephone: 202–692–0043.

SUPPLEMENTARY INFORMATION:

Need for Correction

As published in the direct final rule, due to an amendatory instruction error, which may be unclear, this action corrects amendatory instruction number 6 to clarify the intent of the regulation change.

Correction of Publication

In FR rule document 03–29212, published November 24, 2003 (68 FR 65829), make the following correction.

■ On page 65830, in the middle column, amendatory instruction number 6 is corrected to read as follows:

§ 1942.104 [Corrected]

■ 6. In § 1942.104, paragraph (a) is revised, paragraphs (b) and (c) are removed, and paragraph (d) is redesignated as paragraph (b) and revised. (The undesignated text following newly designated paragraph (b) remains unchanged).

Dated: December 5, 2003.

Arthur A. Garcia,

Administrator, Rural Housing Service.

[FR Doc. 03–30670 Filed 12–10–03; 8:45 am]

BILLING CODE 3410–XV–P

DEPARTMENT OF COMMERCE

Office of the Secretary

15 CFR Part 6

[Docket No. 031205307–3307–01]

RIN 0690–AA34

Civil Monetary Penalties; Adjustments

AGENCY: Office of the Secretary, Commerce.

ACTION: Final rule.

SUMMARY: This final rule is being issued to correct adjustments to civil monetary penalties (CMP) which appeared in a Final Rule published by the Department of Commerce (the Department) on January 29, 2003, 68 FR 4380. As required by the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996, the Secretary of Commerce adjusted civil monetary penalties within the jurisdiction of the Department on October 24, 1996, and again on November 1, 2000. On September 30, 2002, the United States General Accounting Office (GAO) sent the Secretary of Commerce a letter indicating that the Department's November 1, 2000, adjustment was inconsistent with the requirements of the statute, and recommending corrective action. The Department's rule of January 29, 2003 sought to bring the Department into compliance with GAO's interpretation of the statute. This rule corrects certain penalty amounts and citations provided in that rule This rule is not retroactive. The Department will not adjust individual penalties that have already been imposed. The Department will not, as a matter of policy, seek penalties that are greater than the corrected amounts stated in this rule for violations occurring between November 1, 2000, and the December 11, 2003.

DATES: This rule is effective December 11, 2003.

ADDRESSES: Office of the General Counsel, Department of Commerce, 14th and Constitution Avenue, NW., MS 5876, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Peter Robbins, (202) 482–0846.

SUPPLEMENTARY INFORMATION: The Federal Civil Penalties Inflation Adjustment Act of 1990 (Pub. L. 101–410) provided for the regular evaluation of CMPs to ensure that they continued to maintain their deterrent value and that penalty amounts due to the Federal Government were properly accounted for and collected. On April 26, 1996, the Federal Civil Penalties Inflation Adjustment Act of 1990 was amended by the Debt Collection Improvement Act of 1996 (Pub. L. 104–134) to require each agency to issue regulations to adjust its CMPs for inflation at least every four years. The amendment further provides that any resulting increases in a CMP due to the inflation adjustment should apply only to the violations that occur after the date of the publication in the **Federal Register** of the increased amount of the CMP. Accordingly, the prior penalty amounts remain effective through the date of publication.

In early 2002, GAO determined that in its 2000 adjustments, the Department had adjusted some of its civil penalties in a manner inconsistent with GAO's reading of the statute, and in particular questioned the Department's method of rounding.

As stated in the January 29, 2003, rule, the Department believes that GAO's reading of the Federal Civil Penalties Inflation Adjustment Act of 1990 produces a result which is inconsistent with the stated purpose of the statute (*i.e.*, to keep civil penalties in pace with inflation). Nevertheless, the Department sought to comply with GAO's request that the 2000 adjustments be revised. Accordingly, on January 29, 2003, the Department published a rule listing adjusted CMPs. Unfortunately, there were several improper penalty amounts and citations in that rule. The purpose of this rule is to correct those mistakes.

The changes to the CMPs made by the January 29, 2003, rule and by this rule are not retroactive. The Department will not adjust penalties that were imposed under the CMPs in the November 1, 2000, rule prior to their adjustment in either the January 29, 2003, rule or this rule. In cases in which penalties were not imposed prior to January 29, 2003, and which allege violations that occurred after November 1, 2000, the Department's policy will be not to seek penalties that exceed the amounts that are set by this rule.

During the process of reviewing the above-stated CMPs, the Department has discovered that some CMPs listed in previous adjustment notices have been incorrectly stated. The previous incorrect CMPs were the result of an oversight that failed to properly apply the CMP for the Magnuson-Stevens Fishery Conservation and Management Act, 16 U.S.C. 1851, *et seq.*, to statutes that adopt its CMP by reference. The following statutes' CMPs have been listed to reflect the correct statutorily mandated penalty: 16 U.S.C. 971e(e), Atlantic Tunas Convention Act of 1975 (1995); 16 U.S.C. 3606(b)(1), Atlantic Salmon Convention Act of 1982 (1990); 16 U.S.C. 3637(b), Pacific Salmon Treaty Act of 1985 (1990); 16 U.S.C. 5103(b)(2), Atlantic Coastal Fisheries Cooperative Management Act (1993); 16 U.S.C. 5154(c)(1), Atlantic Striped Bass Conservation Act (1990); and 16 U.S.C. 5606(b), Northwest Atlantic Fisheries Convention Act of 1995.

Rulemaking Requirements

It has been determined that this rule is not significant for purposes of Executive Order 12866.

The Department for good cause finds that notice and opportunity for comments required by 5 U.S.C. 553(b)(B) of the Administrative Procedure Act are unnecessary and contrary to the public interest for this rulemaking because the Debt Collection Improvement Act of 1996 requires the head of each agency to adjust its civil monetary penalties for inflation by regulation at least every four years, and the Federal Civil Monetary Penalty Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996, states how to calculate the inflation adjustment. This rule merely adjusts the Department's CMPs according to the statutory requirements, as interpreted by GAO. Because the Department adjusted the CMPs in 2000 in a manner that was not in compliance with GAO's reading of the law, and then readjusted the CMPs in a manner that did not always accurately reflect the appropriate penalties, the Department is adjusting the CMPs sooner than four years. The Department does not have any discretion in making the adjustments. Additionally, the public interest requires that the published maximums for CMPs be accurate. For the same reasons, and also because the published amounts of some penalties have now been in error between November 1, 2000, and January 29, 2003, as well as the period between January 29, 2003, and December 11, 2003, there also exists good cause to waive the thirty-day delay in effectiveness, pursuant to 5 U.S.C. 553(d)(3).

Because notice and opportunity for comment are not required by 5 U.S.C. 553, or any other law, a Regulatory Flexibility Analysis is not required and was not prepared for the purposes of the Regulatory Flexibility Act.

This rule does not contain information collection requirements for the purposes of the Paperwork Reduction Act.

List of Subjects in 15 CFR Part 6

Law Enforcement, Penalties.

James L. Taylor,

Deputy Chief Financial Officer and Director, for Financial Management.

■ For the reasons set forth in the preamble, subtitle A of title 15 of the Code of Federal Regulations is amended as follows:

PART 6—CIVIL MONETARY PENALTY INFLATION ADJUSTMENTS

■ 1. The authority citation for part 6 continues to read as follows:

Authority: Sec. 4, as amended, and sec. 5, Pub. L. 101–410, 104 Stat. 890 (28 U.S.C. 2461 note); Pub. L. 104–134, 110 Stat. 1321. 28 U.S.C. 2461 note.

■ 2. Section 6.4 is revised to read as follows:

§ 6.4 Ajustment to penalties.

(a) Bureau of Industry and Security

(1) 15 U.S.C. 5408(b)(1), Fastener Quality Act violation, from $27,500 to $27,500.

(2) 22 U.S.C. 6761(a)(1)(A), Chemical Weapons Convention Implementation Act—Inspection Violation, from $25,500 to $25,000.

(3) 22 U.S.C. 6761(a)(1)(B), Chemical Weapons Convention Implementation Act—Record Keeping Violation, from $5,100 to $5,000.

(4) 50 U.S.C. 1705(a), International Emergency Economic Powers Act—Export Administration Regulation Violation, from $12,000 to $11,000.

(5) 50 U.S.C. 1705(a), International Emergency Economic Powers Act—Chemical Weapons Convention Implementation Act, Import Restriction Violation, from $11,000 to $11,000.

(6) 50 U.S.C. App. 2410(c), Export Administration Act—Other Violation, from $12,000 to $11,000.

(7) 50 U.S.C. App. 2410(c), Export Administration Act and Section 38 of the Arms Export Control Act—National Security Violation, from $120,000 to $120,000.

(b) Economic Development Administration

(1) 19 U.S.C. 2349, Trade Act of 1974—False Statements or Submissions with Applications for Assistance, from $6,000 to $5,500.

(2) [Reserved]

(c) Economics and Statistics Administration

(1) 13 U.S.C. 304, Delinquency on Delayed Filing of Export Documentation, from $1,200 to $1,100.

(2) 13 U.S.C. 305, Collection of Foreign Trade Statistics—Violations, from $1,200 to $1,100.

(3) 22 U.S.C. 3105(a), International Investment and Trade in Services Act—Failure to Furnish Information, from $30,000 to $27,500.

(d) International Trade Administration

(1) 19 U.S.C. 81s, Foreign Trade Zone—Violation, from $1,200 to $1,100.

(2) 19 U.S.C. 1677(f)(4) U.S.-Canada FTA Protective Order—Violation, from $120,000 to $120,000.

(e) National Oceanic and Atmospheric Administration

(1) 15 U.S.C. 5623(a)(3), Land Remote Sensing Policy Act of 1992, from $11,900 to $11,000.

(2) 15 U.S.C. 5658(c), Land Remote Sensing Policy Act of 1992, from $11,900 to $11,000.

(3) 16 U.S.C. 773f(a), Northern Pacific Halibut Act of 1982, from $30,000 to $27,500.

(4) 16 U.S.C. 783, Sponge Act (1914), from $600 to $550.

(5) 16 U.S.C. 957, Tuna Conventions Act of 1950 (1962);

(i) Violation/Subsection a, from $30,000 to $27,500.

(ii) Subsequent Violation/Subsection a, from $60,000 to $60,000.

(iii) Violation/Subsection b, from $1,200 to $1,100.

(iv) Subsequent Violation/Subsection b, from $6,000 to $5,500.

(v) Violation/Subsection c, from $120,000 to $120,000.

(6) 16 U.S.C. 971e(e), Atlantic Tunas Convention Act of 1975 (1995), from $109,000 to $120,000.

(7) 16 U.S.C. 972f(b), Eastern Pacific Tuna Licensing Act of 1984;

(i) Violation/Subsections (a)(1)–(3), from $30,000 to $27,500.

(ii) Subsequent Violation/Subsections (a)(1)–(3), from $60,000 to $60,000

(iii) Violation/Subsections (a)(4)–(5), from $6,000 to $5,500.

(iv) Subsequent Violation/Subsections (a)(4)–(5), from $6,000 to $5,500.

(v) Violation/Subsection (a)(6), from $120,000 to $120,000.

(8) 16 U.S.C. 973f(a), South Pacific Tuna Act of 1988, from $300,000 to $300,000.

(9) 16 U.S.C. 1174(b), Fur Seal Act Amendments of 1983, from $11,000 to $11,000.

(10) 16 U.S.C. 1375(a)(1), Marine Mammal Protection Act of 1972 (1981), from $12,000 to $11,000.

(11) 16 U.S.C. 1385(e), Dolphin Protection Consumer Information Act (1996), from $110,000 to $110,000.

(12) 16 U.S.C. 1437(d)(1), National Marine Sanctuaries Act (1992), from $119,000 to $120,000.

(13) 16 U.S.C. 1540(a)(1), Endangered Species Act of 1973;

(i) Knowing Violations of Section 1538 (1988), from $30,000 to $27,500.

(ii) Other Knowing Violations (1988), from $14,000 to $13,200.

(iii) Otherwise Violations (1978), from $600 to $550.

(14) 16 U.S.C. 1858(a), Magnuson-Stevens Fishery Conservation and Management Act (1990), from $120,000 to $120,000.

(15) 16 U.S.C. 2437(a)(1), Antarctic Marine Living Resources Convention Act of 1984;

(i) Knowing Violation, from $12,000 to $11,000.

(ii) Violation, from $6,000 to $5,500.

(16) 16 U.S.C. 2465(a), Antarctic Protection Act of 1990;

(i) Knowing Violation, from $11,000 to $11,000.

(ii) Violation, from $5,500 to $5,500.

(17) 16 U.S.C. 3373(a), Lacey Act Amendments of 1981

(i) Sale and Purchase Violation, from $12,000 to $11,000.

(ii) Marking Violation, from $300 to $275.

(iii) False Labeling Violation, from $12,000 to $11,000.

(iv) Other than Marking Violation, from $12,000 to $11,000.

(18) 16 U.S.C. 3606(b)(1), Atlantic Salmon Convention Act of 1982 (1990), from $120,000 to $120,000.

(19) 16 U.S.C. 3637(b), Pacific Salmon Treaty Act of 1985 (1990), from $120,000 to $120,000.

(20) 16 U.S.C. 4016(b)(1)(B), Fish and Seafood Promotion Act of 1986, from $5,500 to $5,500.

(21) 16 U.S.C. 5010(a)(1), North Pacific Anadromous Stocks Act of 1992, from $110,000 to $110,000.

(22) 16 U.S.C. 5103(b)(2), Atlantic Coastal Fisheries Cooperative Management Act (1993), from $110,000 to $120,000.

(23) 16 U.S.C. 5154(c)(1), Atlantic Striped Bass Conservation Act (1990), from $120,000 to $120,000.

(24) 16 U.S.C. 5507(a)(1), High Seas Fishing Compliance Act of 1995, from $109,000 to $110,000.

(25) 16 U.S.C. 5606(b), Northwest Atlantic Fisheries Convention Act of 1995, from $109,000 to $120,000.

(26) 22 U.S.C. 1978(e), Fishermen's Protective Act of 1967 (1971);

(i) Violation, from $11,000 to $11,000.

(ii) Subsequent Violation, from $27,500 to $27,500.

(27) 30 U.S.C. 1462(a), Deep Seabed Hard Mineral Resources Act (1980), from $30,000 to $27,500.

(28) 42 U.S.C. 9152(c)(1), Ocean Thermal Energy Conversion Act of 1980, from $30,000 to $27,500.

■ 3. Section 6.5 is revised to read as follows:

§ 6.5 Effective date of adjustments.

The adjustments made by Sec. 6.4 of this part, of the penalties there specified, are effective on December 11, 2003, and said penalties, as thus adjusted by the adjustments made by Sec. 6.4 of this part, shall apply only to violations occurring after December 11, 2003, and before the effective date of any future inflation adjustment thereto made subsequent to December 11, 2003 as provided in Sec. 6.6 of this part.

[FR Doc. 03–30621 Filed 12–10–03; 8:45 am]

BILLING CODE 3510–17–P

SOCIAL SECURITY ADMINISTRATION

20 CFR Parts 404 and 416

[Regulation Nos. 4 and 16]

RIN 0960–AE97

Federal Old-Age, Survivors and Disability Insurance and Supplemental Security Income for the Aged, Blind, and Disabled; Administrative Review Process; Video Teleconferencing Appearances Before Administrative Law Judges of the Social Security Administration

AGENCY: Social Security Administration (SSA).

ACTION: Final rule.

SUMMARY: We are adopting without change the final rules that were published in the **Federal Register** on February 3, 2003, at 68 FR 5210, authorizing us to conduct hearings before administrative law judges (ALJs) using video teleconferencing (VTC). The revised rules authorized us to conduct hearings before ALJs at which a party or parties to the hearing and/or a witness or witnesses may appear before the ALJ by VTC. The revised rules also provided that if we schedule you to appear at your hearing by VTC, rather than in person, and you object to use of the VTC procedure, we will reschedule your hearing as one at which you may appear in person before the ALJ. Under the revised rules, the ALJ will also consider any objection you may have to the appearance of a witness by VTC. The purpose of the rules is to provide us with greater flexibility in scheduling and holding hearings, improve hearing process efficiency, and extend another service delivery option to individuals requesting a hearing.

DATES: These rules were effective March 5, 2003.

FOR FURTHER INFORMATION CONTACT: Robert J. Augustine, Social Insurance Specialist, Office of Regulations, Social Security Administration, 100 Altmeyer Building, 6401 Security Boulevard, Baltimore, MD 21235–6401, (410) 965–0020 or TTY 1–800–966–5906, for information about this notice. For information on eligibility or filing for benefits, call our national toll-free number, 1–800–772–1213 or TTY 1–800–325–0778, or visit our Internet site, Social Security Online, at *http://www.socialsecurity.gov.*

Electronic Version

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SUPPLEMENTARY INFORMATION:

Background

On January 5, 2001, at 66 FR 1059, we published a Notice of Proposed Rulemaking (NPRM) in which we proposed to authorize our use of VTC in conducting hearings before ALJs. One provision in the proposed rules would have given claimants the right to veto use of VTC to take both their own testimony and the testimony of vocational experts (VEs) and medical experts (MEs). On February 3, 2003, after considering the public comments received on the NPRM, we published the final rules at 68 FR 5210 authorizing our use of VTC effective March 5, 2003. The final rules made a significant change from the proposed rules by giving claimants the right to veto the use of VTC only for the purpose of taking their own testimony. Accordingly, in publishing the final rules, we requested public comment on the issue of whether

claimants should or should not be empowered to veto use of VTC to take the testimony of expert witnesses.[1]

Our Reasons for Proposing Rules Authorizing Use of VTC[2]

We receive more than 500,000 requests for hearings before ALJs each year. To accommodate the hearing requests of individuals who do not live near a hearing office, we hold approximately 40% of hearings at remote sites, which are generally at least 75 miles from the hearing office.

To make travel to remote hearing sites as cost effective as possible, hearing offices wait until they have a sufficient number of requests for hearing to schedule a full day or, if travel to a remote hearing site requires an overnight stay, several days of hearings. Because of the need to accrue a docket, ALJs travel to some remote hearing sites infrequently. Because many remote hearing sites are in less-populous areas, it can be difficult to find a needed medical and/or vocational expert witness(es) to travel to these sites, and this difficulty may further delay scheduling a hearing. ALJs also travel from their assigned hearing offices to assist other hearing offices when the need arises.

We proposed rules to authorize use of VTC in conducting hearings based on testing conducted in the State of Iowa beginning in 1996 that demonstrated that VTC procedures can be effectively used where large scale, high quality VTC networks exist and claimants want to participate in VTC procedures because doing so reduces the distances they must travel to their hearings. In a survey of participants in the Iowa test, a large percentage of the respondents rated hearings using VTC procedures as "convenient" or "very convenient," and overall service as either "good" or "very good." Test data showed that processing time for these hearings was substantially less than for hearings conducted in person at remote sites during the same time period, and that the ratio of hearings held to hearings scheduled was significantly higher for hearings using VTC procedures than for hearings conducted in person. Being able to hold hearings as scheduled increases our efficiency because we do not have to recontact the individual to determine why he or she did not appear at a scheduled hearing nor reschedule the hearing (which can be time consuming, especially when an expert witness(es) has been scheduled to testify). Further, an ALJ does not spend time waiting for someone who does not appear, as would be the case in a hearing conducted in person at a remote site.

Based on all these factors—claimant satisfaction, ability to provide more timely hearings, savings in ALJ travel time, faster case processing, and higher ratio of hearings held to hearings scheduled—we decided that conducting hearings by VTC would be an efficient service delivery alternative. We also decided that scheduling a hearing for use of VTC, rather than asking someone to elect a hearing using VTC, as we did in our testing of VTC, would improve hearing office efficiency and would permit us to provide faster access to a hearing for some individuals.

Final Rules With Request for Comment

In the final rules with request for comment published February 3, 2003, we revised several sections of our regulations. We revised §§ 404.929 and 416.1429 to state that you may appear at your hearing in person or by VTC. We revised §§ 404.936 and 416.1436 to state that we may schedule your appearance or that of any individual appearing at the hearing to be by VTC and that, if we schedule you to appear by VTC and you tell us that you want to appear in person, we will schedule a hearing at which you may appear in person. We revised §§ 404.938 and 416.1438 to state that if we schedule you or anyone to appear at your hearing by VTC, the notice of hearing will tell you that and provide information about VTC appearances and about how you can tell us that you do not want to appear by VTC. Finally, we revised §§ 404.950(a) and (e) and 416.1450(a) and (e) to state that a party or a witness may appear at a hearing in person or by VTC.

The final rules with request for comment included a number of changes we made in response to the public comments we received on the NPRM, including changes to §§ 404.936 and 416.1436 to clearly reflect the authority of the ALJ to determine how hearings are conducted with respect to the use of VTC to conduct appearances.[3] The final rules with request for comment also set forth, in §§ 404.936(c) and 416.1436(c), specific policies that direct how that authority is to be exercised. Those sections specify that—

> "In setting the time and place of the hearing, the administrative law judge determines whether your appearance or that of any other individual who is to appear at the hearing will be made in person or by video teleconferencing. The administrative law judge will direct that the appearance of an individual be conducted by video teleconferencing if video teleconferencing technology is available to conduct the appearance, use of video teleconferencing to conduct the appearance would be more efficient than conducting the appearance in person, and the administrative law judge does not determine that there is a circumstance in the particular case preventing use of video teleconferencing to conduct the appearance."

As previously noted, the final rules with request for comment also made changes in the rules proposed in the NPRM relative to the issue of whether claimants should have veto authority over the use of VTC for the appearances of VEs and MEs. We made these changes in response to the comments of ALJs who commented on the NPRM, all but one of whom strongly opposed the proposal to allow claimants to veto the use of VTC to conduct the appearances of expert witnesses. (The comments of the remaining ALJ dealt with matters that were not within the scope of the NPRM.) The ALJs who opposed this provision included five ALJs who conducted hearings in the Iowa test and the Association of Administrative Law Judges.

The commenters opposed the proposal to allow claimants to veto VTC appearances by expert witnesses for several reasons. One was that it would defeat the purpose of using VTC as a way to obtain expert testimony when it is impractical for the expert to appear in person, and that it could force ALJs to forgo needed testimony or to take testimony through the time consuming and unwieldy method of written interrogatories. The commenters also expressed concern that the right to veto the appearance of an expert by VTC could be used to prevent the taking of expert testimony that might be adverse to the claimant and to facilitate "expert shopping." It was pointed out that claimants can already object to witnesses based on bias or qualifications. The view was also expressed that due process is fully accorded to the claimant if the claimant can see and cross-examine the expert and confront the expert with documentary evidence.

The ALJs who commented based on their experience in the Iowa test strongly emphasized the practical problems that allowing claimants to veto VTC appearances by experts would cause. These ALJs stated that using VTC to take the testimony of VEs is necessary to utilize these experts effectively because the cost of a VE's appearance can be reduced if, as is possible using VTC procedures, a docket of multiple appearances can be arranged for the expert. They also emphasized the value of VTC in reducing the problems involved in scheduling hearings, citing the example of how much easier it is to make arrangements for one VE to appear by VTC in four hearings occurring on a given day at four different sites than it is to arrange for four VEs to make in-person appearances, at odd times in their workdays, at four sites.

The ALJs who participated in the Iowa test also emphasized that the practical problems in not using VTC to take VE testimony are greatly compounded when it comes to securing the testimony of MEs. They reported that it is only through use of VTC that they are able to provide ME testimony for hearings being held in remote sites, and that MEs will not travel to remote sites when it is technically possible to testify in hearings being held at such sites via VTC. These ALJs also reported that it was their experience that it is almost impossible to get MEs to testify in the larger urban areas where the hearing offices are located, and that it is sometimes necessary to rely on MEs testifying from the medical centers in Ames and Iowa City even in cases being heard in the West Des Moines area.

In explaining our response to these comments (*i.e.*, the decision we made in the final rules with request for comment to deny claimants veto authority over whether hearings will be conducted with a witness or witnesses appearing by VTC), we said—

> The claimant may state objections to a witness appearing by VTC, just as they may state objections to any aspect of the hearing, and they may object to a witness on the basis of perceived bias or lack of expertise. However, a claimant's objection to a witness appearing by VTC will not prevent use of VTC for the appearance, unless the ALJ determines that the claimant's objection is based on a circumstance that warrants having the witness appear in person.

The analysis of the commenting ALJs concerning the impracticalities of giving claimants veto power over the medium whereby expert witnesses make their appearance has caused us to reevaluate our proposal in that regard. We believe these commenters are correct in indicating that giving claimants that power would undermine one of the primary practical benefits of using VTC procedures and adversely impact our ability to use those procedures effectively to improve the hearings process. The commenters also effectively emphasize the significance of the positive practical benefits that can flow from relying on VTC procedures in scheduling and conducting the appearances of expert witnesses.

An important point made in this comment is that implementation of VTC procedures reduces the readiness of experts to travel to remote sites. This is a result that might be expected logically, we believe, and the experience of the ALJs in the Iowa test bears out its occurrence.

Unless we ensure ALJ authority to use VTC to take expert testimony by not empowering claimants to veto its use for that purpose, the reduced readiness of expert witnesses to travel when VTC appearances are technologically possible will adversely affect our ability to preserve a reasonable opportunity for claimants to appear in person if they choose to opt out of scheduled appearances by VTC. If the authority of ALJs to secure expert testimony by VTC is not ensured, the reduced willingness of experts to travel when VTC technology is available could also reduce the efficiency with which we are able to schedule the appearances of experts at the hearings of individuals who live near hearing offices in urban areas and appear in person in those offices for their hearings.

MEs and VEs testify as impartial witnesses. They testify based on the evidence entered into the record and not based on any examination or personal evaluation of the claimant. Where they testify by VTC and their testimony is adverse to a party's claim, the party and his or her representative, if any, will have a complete opportunity to confront and examine the witness regarding the matters that are important with respect to expert testimony—*i.e.*, the expertise of the witness and the accuracy of his or her testimony.

Affording claimants the power to veto the appearance of expert witnesses by VTC would be inconsistent with our existing practices and instructions regarding use of interrogatories to secure the testimony of expert witnesses. While emphasizing the preferability of securing live testimony where feasible, and requiring the ALJ to consider and rule on any claimant objection to the use of interrogatories, our instructions do not mandate non-use of interrogatories merely because a claimant objects to their use. See Hearings, Appeals, and Litigation Law Manual (HALLEX), sections I–2–5–30, I–2–5–42, and I–2–5–57, at *http://www.ssa.gov/OP-Home/hallex/hallex.html*. Thus, allowing claimants to veto the live testimony that experts can give by VTC would invest claimants with an authority that they do not currently have with respect to interrogatories.

Under these final rules, ALJs have discretion to determine that the appearance of any individual must be conducted in person. Thus, to the extent that circumstances could arise in which it would be advisable to schedule an in-person appearance by an expert witness even though a VTC appearance would be possible technologically, the ALJ may schedule such an appearance. That action could be appropriate, for example, where the claimant alleges personal bias or dishonesty on the part of the expert and the ALJ determines that the claimant should have the opportunity to cross-examine the witness in person because of the greater immediacy of an in-person confrontation.[4]

Use of VTC

At present, 15 of our 138 hearing offices and 1 regional office use VTC to conduct hearings. Appearances by VTC are occurring from 12 different remote sites and 2 state networks.

We plan to gradually roll out use of VTC nationally. We will begin to use VTC facilities in the servicing area of a hearing office when the Associate Commissioner for Hearings and Appeals determines that appearances at hearings conducted in the area can be conducted more efficiently by VTC than in person.

We foresee initially scheduling VTC appearances where absent use of VTC:

- We would need to accrue a docket for a remote hearing site.
- An ALJ would need to travel to assist another hearing office.
- An expert witness(es) or appropriate medical specialist(s) would not be available for a hearing site. (In such a case, all participants could be at different locations; for example, the ALJ at a hearing office, the individual at a remote hearing site or another hearing office, and the expert witness(es) at a third location.)

Initially, we plan to locate most remote sites for using VTC to conduct appearances either in space where we have a long-term lease or in another federal building. We are investigating sharing VTC facilities with other federal agencies and states, and, if we can ensure privacy, we may eventually rent commercial space to expand use of VTC as a service delivery option. Calling into SSA's VTC network from private facilities, such as facilities owned by a law firm, may also be possible. Regardless of the type of facility, we will make certain that:

- The individual has the same access to the hearing record when appearing by VTC as he or she would have if appearing in person before the ALJ.
- There is a means of transmitting and receiving additional evidence between all locations and all participants.
- An assistant is present at the VTC site to operate the equipment and provide other help, as required.

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[1] The final rules published on February 3, 2003, were designated as "[f]inal rules with request for comment." This current preamble deals with three sets of rules: (1) The proposed rules published in the NPRM of January 5, 2001; (2) the final rules were requested for comment published February 3, 3002, and (3) these current final rules that adopt the final rules with request for comment without change.

[2] We are summarizing our reasons for proposing rules to authorize use of VTC. For a more detailed review of the history of the development of these rules, see the preamble to the NPRM of January 5, 2001 (66 FR 1059–1062).

[3] For a detailed review of the comments on the NPRM, and of all the changes that the final rules with request for comment made in the proposed rules, see the preamble to the final rules with request for comment of February 3, 2003, 68 FR 5212–5217.

[4] 68 FR 5215–5216 (2003).

• The audio/video transmission is secure and the individual's privacy is protected.

We will follow the same procedures for making audio recordings of hearings using VTC that we do for hearings where all the participants appear in person. We have no plans to videotape hearings in which a party or a witness appears by VTC. If there is a problem with the VTC equipment, before or during a hearing, we will reschedule the hearing as we do now when unforeseen circumstances require us to reschedule a hearing: At the earliest time possible based on the request for hearing filing date.

We reserve the right not to schedule an appearance by VTC for someone who asks to appear by VTC. In many locations, especially in the near term, we may not have the capability to accommodate the request, and the ALJ may determine that an appearance must be conducted in person even where VTC capability exists. As access to VTC expands, we will generally accommodate requests to appear by VTC as space and time permit.

Although use of VTC to conduct hearings has the potential to improve service, we will not require any individual to appear at his or her hearing by VTC if the individual objects to that procedure at the earliest possible opportunity before the time scheduled for the hearing. Under these final rules, if a party timely objects to making his or her appearance by VTC, we will reschedule the hearing as one at which the individual may appear in person.

When we reschedule a hearing because a party objects to making his or her appearance by VTC, we will reschedule the hearing at the earliest time possible based on the date the request for hearing was filed. Where necessary, to expedite the rescheduling, we will give the party the opportunity to appear in person at the hearing office or any other hearing site within the service area of the hearing office at which we are first able to schedule a hearing. The party's travel expenses to the remote site or to the hearing office, and the travel expenses of his or her appointed representative, if any, and the travel expenses of any unsubpoenaed witnesses we determine to be reasonably necessary, will be reimbursed in accordance with the provisions of §§ 404.999a–404 999d and 416.1495–416.1499.

To ensure that a party fully understands the right to decline to appear by VTC, a notice scheduling an individual to appear at his or her hearing by VTC will clearly state:

• What it means to appear by VTC;
• That we have scheduled the individual's appearance to be by VTC;
• That we will schedule a hearing at which the individual may appear in person if the individual tells us that he or she does not want to appear by VTC; and
• How to tell us that.

We will evaluate hearings using VTC procedures to ensure that there is no significant difference in the outcome of hearings conducted using VTC and those conducted in person and that we maintain a high degree of accuracy in decisions made based on hearings using VTC. We will also ensure that individuals:

• Understand that they are not required to appear at their hearings by VTC;
• Understand that a witness is appearing by VTC, when appropriate;
• Know how to tell us if they do not want to appear by VTC;
• Receive a full and fair hearing; and
• Are satisfied with the VTC process in relation to their appearance and the appearances of any witnesses, including the appearances of witnesses who may appear by VTC notwithstanding an objection by the claimant to use of VTC for the appearance.

Public Comments

The final rules with request for comment that were published on February 3, 2003, provided the public with a 60-day comment period. We received a total of ten comments.

Because some of the comments were detailed, we have condensed, summarized, or paraphrased them below. However, we have tried to summarize the commenters' views accurately and to respond to all of the significant issues raised by the commenters that were within the scope of this rulemaking action.

We have not limited ourselves to responding only to those comments that addressed the specific issue on which we solicited comment (*i.e.*, whether claimants should have veto authority over VTC appearances by witnesses as well as veto authority over their own appearances by VTC). Many of the other comments received addressed issues previously addressed or touched on in the comments received in response to the NPRM. However, since the additional comments generally offered some different perspective on the issues, we are responding to those comments as well.

None of the comments we received opposed the change to deny claimants the right to veto use of VTC to conduct the appearance of a witness. However, a number of the comments suggested that we expand our rules to provide more specific guidance regarding the consideration of objections to the use of VTC for taking expert testimony and the factors that could interfere with use of VTC to conduct the appearance of a witness.

Comment: The Railroad Retirement Board (RRB), which had noted in commenting on the proposed rules that it would be interested in making use of SSA's VTC facilities on a fee basis, wrote to again state its interest in exploring the possibility of the RRB using our VTC facilities.

Response: We are exploring the possibilities of sharing VTC facilities with the RRB and other agencies.

Comment: The Association of Administrative Law Judges (AALJ) wrote to restate its strong support for our decision to have the ALJ decide whether to have expert witnesses appear by VTC and to deny claimants the right to veto use of VTC for that purpose.

Response: We considered the AALJ's comments in deciding to change the proposed rules in this respect. The AALJ's restatement of its prior comments supports adoption of the rules published February 3, 2003, without change.

Comment: Noting that we cited the difficulty of finding MEs in remote sites in sparsely populated areas as one justification for using VTC, one commenter suggested that another possible solution would be to increase ME compensation.

Response: We believe that we can increase our ability to secure ME (and VE) services in remote areas by using VTC, and that it will be productive to use VTC for this purpose even if we also identify other ways to ameliorate the problems we have experienced in securing expert testimony in remote areas. VTC use can increase the incentives for an expert witness to appear in remote-site hearings by reducing or eliminating the adverse effect on the expert's professional schedule that can occur if the expert is required to travel to a remote site. Use of VTC can also increase the incentive of experts to appear in Social Security hearings by facilitating the scheduling of multiple appearances for the expert within a limited period.

Comment: In the mistaken belief that we plan to videotape hearings in which appearances are made by VTC, a commenter asked a number of questions about access to and the costs of the videotapes that would result under such a procedure, and about whether the Appeals Council might use these videotapes and the visual clues they provide regarding credibility to make credibility findings over and beyond those of the ALJ.

Response: As we stated above, and in the preambles to the NPRM and the final rules with request for comment, we have no plans to videotape hearings in which a party or witness appears by VTC. We will make audio recordings of these hearings using the same procedures we use in hearings in which all of the participants appear in person. The role of the Appeals Council in considering cases should not be affected by whether VTC was used in conducting an appearance or appearances at the hearing.

Comment: This same commenter asked what savings in real days we project to occur as a result of the use of VTC.

Response: As we noted above and in the prior preambles concerning these rules, the Iowa test results showed that processing time for hearings using VTC procedures was substantially less than for hearings conducted in person at remote sites. The processing time savings achieved by different hearing offices will vary depending on multiple factors, including the rate at which the office uses VTC in the hearings it conducts. Nationally, we expect that the overall effect of using VTC in reducing processing times will increase as we gradually rollout VTC and develop more effective VTC networks.

Comment: A commenter expressed the opinion that VTC is a viable alternative for hearings, provided it remains a choice and not a requirement, and that use of VTC should speed up the hearing process and save money.

Response: We agree with these views. We understand the aspect of this comment that deals with the maintenance of "choice" to be concerned with the claimant's retention of choice regarding the mode of his or her appearance, rather than the specific issue of whether the claimant should have veto authority over VTC appearances of expert witness. We discuss that issue in response to other comments.

Comment: Two commenters questioned whether claimants would find appearing by VTC satisfactory. One commenter thought that the ALJ hearing was already stressful enough for claimants and that adding a camera to the process will only make matters worse. Another thought that the camera "may not cut it" and that represented claimants will want to look the ALJ in the eye and tell their story in person.

Response: Our testing of VTC does not support the conclusion that claimants will find appearing by VTC to be intimidating or unsatisfactory for the purpose of projecting their own credibility. As previously discussed (above and in the prior preambles for these rules), in our testing of VTC in Iowa a large percentage of claimants rated hearings using VTC procedures as "convenient" or "very convenient" and overall service as "good", or "very good." We also note that in commenting on the NPRM, a national organization of claimant representatives reported that one of its members who had represented several hundred claimants in the Iowa test now preferred VTC to in-person hearings because, among other benefits, VTC has a calming effect on his clients.

One of the reasons we retained the right of claimants to opt out of appearing personally by VTC in the final rules with request for comment was to promote claimant satisfaction with the hearing experience. As we noted in the preamble to those rules, claimants may have strong opinions about whether they can best project their own credibility by appearing in person or by VTC. Preserving an option for claimants to appear in person should increase their comfort level in appearing by VTC and help to ensure that they perceive the hearing process as fair.

Comment: Two commenters expressed concerns about the effectiveness of VTC proceedings for the purposes of inquiring fully into the facts. One thought that a "flickering and disembodied" view is no substitute for in-person observation at the hearing and that use of VTC will deprive hearing proceedings of the solemnity that encourages truth telling. Another commenter thought that the decisionmaker would lose the personal contact with the claimant that the commenter believes is needed to assess credibility.

Response: Under the final rules with request for comment, the ALJ has discretion to require in-person appearances, by the claimant or witnesses, in any case in which the ALJ determines that the immediacy of an in-person appearance is needed to inquire fully into the facts. Thus, the rules provide a mechanism to prevent use of VTC where an in-person appearance would be more appropriate.

We believe that any problems in assessing credibility in VTC proceedings would generally be associated with possible instances of inadequate VTC transmission. That was the case, for example, in the incident reported in a comment on the NPRM in which a claimant representative was dissatisfied with a VTC experience because the quality of the VTC transmission was not sufficient to allow the ALJ to perceive the claimant's sweating and shortness of breath. We believe we can generally avoid problems of this type by assuring that our VTC facilities are of high quality. As we noted above and in the prior preambles for these rules, we plan to implement use of VTC in the servicing areas of hearing offices after the Associate Commissioner for Hearings and Appeals determines that appearances at hearings conducted in those areas can be conducted more efficiently by VTC than in person. Where problems do occur, we believe that it will frequently be possible to reach satisfactory solutions on an ad hoc basis, such as happened in the above noted example when the ALJ stipulated to the claimant's sweating and shortness of breath based on the representative's statement describing these conditions. Where technical problems occur and cannot be overcome, the hearing will be rescheduled, as happens when a problem in the audio recording equipment prevents the recording of a hearing.

Comment: One commenter opposed use of VTC on the basis that its use is complicated by technical issues, including problems involved in making the claim file available for review by the claimant and the additional costs associated with having dual staffs at two sites.

Response: The technical problems of concern to this commenter involve matters that we assessed in deciding that using VTC to conduct hearings is an efficient service delivery option. Our judgment in this regard included consideration of the need to establish VTC facilities and to have hearing monitors available at VTC sites to assist in the hearing proceedings. The technical issues we have considered also include the problems involved in ensuring that claimants who appear by VTC will have access to the record that is sufficient and equal to that of claimants who appear in person. We have addressed these problems by establishing procedures to provide the claimant and the representative a copy of the evidence of record or an opportunity to review the file at their local Social Security FO before the hearing is conducted, and/or through use of document cameras to display documents on the day of the hearing.[5]

[5] We address these procedures, together with changes we are making in our standardized notices of hearing to advise claimants concerning the procedures, in HALLEX guidance that we have issued to implement our use of VTC procedures (HALLEX TI I–5–1–16). (*See http://www.ssa.gov/OP-Home/hallex/I-05/I-5-1-16.html.* TI 1–5–1–16 III.E. and Attachment 3.)

Comment: One commenter proposed that we should limit the use of VTC to cases in which the ALJ determines that there is "good cause" to use VTC procedures because the claimant is prevented from traveling by illness or other good reasons. Another commenter expressed the view that use of VTC should be limited to situations in which its use is necessary to allow the appearance of a witnesses who would be unable to appear except by VTC.

Response: Using VTC would not be efficient or cost effective if we limited its use to the relatively small number of cases in which the claimant is unable to travel or there is another factor requiring the use of VTC. The advantages in efficiency and costs savings involved in using VTC accrue where a hearing office is able to use VTC in many of its cases.

We see no basis for making the use of VTC contingent upon the ALJ finding "good cause" to use it in a particular case. As we stated in the preamble to the final rules with request for comment, we believe that the hearing proceedings we conduct using VTC will be fundamentally fair and fully protective of the claimant's right to procedural due process. Based on that belief, we further believe that the best overall policy is to schedule use of VTC to conduct hearings in all instances in which VTC technology is available and would be an efficient means for conducting the appearance(s) of the claimant and/or a witness or witnesses,[6] and the ALJ does not determine that there is a circumstance in the particular case preventing use of VTC to conduct an appearance.

Comment: One commenter expressed concern about unspecified provisions of the final rules with request for comment that "prohibit a right to object to the appearance of an expert witness by VTC."

Response: The final rules with request for comment included no provision prohibiting claimants or their representatives from stating objections on any matter, including the appearance of a witness by VTC. As we noted in the preamble to those rules, claimants may state objections to a witness appearing by VTC, just as they may state objections to any aspect of the hearing.[7]

Comment: Noting that it generally supports the use of VTC provided the right to a full and fair hearing is adequately protected and the technical quality of the hearings is assured, an organization of individuals who represent claimants commented that we should provide guidance for circumstances that warrant having a witness appear in person. For that purpose, the commenter suggested that we should include in our rules language from the preamble to the final rules with request for comment in which we specified that a claimant's objection to a witness appearing by VTC will not prevent the use of VTC "unless the ALJ determines that the claimant's objection is based on a circumstance that warrants having the witness appear in person."[8]

Response: We are not adopting this comment because the provisions of the final rules with request for comment encompass the point made in the preamble language cited in the comment. Sections 404.936(c) and 416.1436(c) of our rules require us to schedule a VTC appearance for the claimant or any other individual "if [VTC] technology is available to conduct the appearance, use of [VTC] to conduct the appearance would be more efficient than conducting the appearance in person, and the [ALJ] *does not determine that there is a circumstance in the particular case preventing use of [VTC] to conduct the appearance.*" (Emphasis added.) A "circumstance preventing use of [VTC]" for an appearance necessarily exists where the ALJ "determines that the claimant's objection is based on a circumstance that warrants having the witness appear in person"; therefore, deciding if there is a circumstance that warrants having a witness appear in person is requisite to deciding if there is a circumstance preventing use of VTC to conduct an appearance.

Comment: This commenter further recommended that our rules should include a requirement that the ALJ consider other factors, such as limitations of the claimant or the representative, that could affect how the hearing is conducted. In this respect, the commenter suggested that we consider including in our rules guidance like that in language from the preamble to the final rules with request for comment indicating that, in deciding whether the claimant's appearance should be scheduled to occur in person or by VTC, the ALJ "will consider any stated preference of the claimant or the representative for or against appearing by VTC, as well as the availability of VTC technology and other factors, such as a claimant's loss of visual and auditory capacities, that may affect how the appearance should be conducted."[9] Another commenter, a claimant's representative who personally has a hearing loss that would interfere with his ability to understand and to question a witness appearing by VTC, made a similar comment.

Response: We are making no change in response to these commenters because our rules already include provisions to require consideration of any factors that would compromise the integrity or fairness of the hearing or make it inappropriate to use VTC for any reason. These provisions are reinforced by provisions that require the ALJ to consider the efficiency of scheduling an appearance to occur by VTC.

In setting the time and place for the hearing, the ALJ is required under §§ 404.936(c) and 416.1436(c) to determine whether the appearance of the claimant or any other individual appearing at the hearing will be made in person or by VTC. To make that determination, the ALJ is required by the provisions of these sections to determine if there is a circumstance preventing use of VTC for the appearance. As the cited preamble language reflects, determining if there is such a circumstance requires the ALJ to consider if there is any factor or factors, such as an auditory loss on the part of one of the participants, that would interfere with using VTC for the appearance. The factors considered will necessarily include any visual or auditory limitations on the part of the claimant's representative that could compromise the ability of the representative to participate effectively in observing, understanding, and questioning the expert if VTC is used to take the expert's testimony.[10]

Under §§ 404.936(c)and 416.1436(c) of the final rules with request for comment, the efficiency of using VTC for an appearance is one of the factors the ALJ must consider in deciding if an appearance should be scheduled to occur by VTC or in person. As we explained above and in the prior preambles to these rules, we plan to use VTC in the service area of a hearing office when the Associate Commissioner for OHA determines that appearances at hearings conducted in the areas can be conducted more efficiently by VTC than in person. However, while the Associate Commissioner makes the decision about the general efficiency of using VTC in an area, the ALJ is responsible for determining if using VTC for any appearance in a particular case will be efficient.

Comment: The same organization also commented that our rules should require the hearing notice to include a statement that a ME and/or a VE will appear by VTC and provide an opportunity to object.

Response: Sections 404.938(b) and 416.1438(b) of the final rules with request for comment specify that the claimant "will also be told if [his/her] appearance or that of any other party or witness is scheduled to be made by [VTC] rather than in person." We reflect these requirements in HALLEX guidance that modifies our standardized notices of hearing to notify claimants that a witness will appear by VTC and to advise them explicitly of their right to object to any aspect of the hearing (see Footnote 7 above).

[6] Concerning the assessment of the efficiency of using VTC, see our response below to the comment recommending that the ALJ consider certain factors when scheduling VTC appearances.

[7] HALLEX TI I–5–1–16 has changed our standardized notices of hearing to notify claimants when a witness will appear by VTC and to advise claimants explicitly that they may object not only with respect to issues, but also "to any other aspect of the scheduled hearing." (TI I–5–1–16, Attachment 3.)

[8] 68 FR 5215 (2003).

[9] 68 FR 5213 (2003).

[10] Our HALLEX instructions implementing VTC procedures specify that the circumstances that might cause the ALJ to require an in-person appearance include that in which the claimant or the representative has a visual or auditory impairment of a type that could adversely *affect his or her ability to appear and participate in the hearing* through VTC, either for the purpose of interacting with the ALJ or another participant in the hearing. (TI–I–5–1–16 III.B.)

Regulatory Procedures

Executive Order 12866, As Amended by Executive Order 13258

We have consulted with the Office of Management and Budget (OMB) and determined that this final rules document meets the criteria for a significant regulatory action under Executive Order 12866, as amended by Executive Order 13258. Thus, it was reviewed by OMB.

Regulatory Flexibility Act

We certify that these rules will not have a significant economic impact on a substantial number of small entities as they affect individuals only. Therefore, a regulatory flexibility analysis as provided in the Regulatory Flexibility Act, as amended, is not required.

Paperwork Reduction Act

The Paperwork Reduction Act (PRA) of 1995 says that no persons are required to respond to a collection of information unless it displays a valid OMB control number. In accordance with the PRA, SSA is providing notice that the Office of Management and Budget has approved the information collection requirements contained in §§ 404.929, 404.936(d), (e) & (f), 404.938(c) (HA–504), 404.950(a), 416.1429, 416.1436(d), (e) and (f), 416.1438(c) (HA–504), and 416.1450(a) of these final rules. The OMB control number for this collection is 0960–0671, expiring November 30, 2004.

(Catalog of Federal Domestic Assistance Program Nos. 96.001, Social Security-Disability Insurance; 96.002, Social Security-Retirement Insurance; 96.003, Social Security-Special Benefits for Persons Aged 72 and Over; 96.004, Social Security-Survivors Insurance; 96.006, Supplemental Security Income.)

List of Subjects

20 CFR Part 404

Administrative practice and procedure, Aged, Blind, Disability benefits, Old-age, Survivors and Disability Insurance, Reporting and recordkeeping requirements, Social Security.

20 CFR Part 416

Administrative practice and procedure, Aged, Blind, Disability benefits, Public assistance programs, Reporting and recordkeeping requirements, Supplemental Security Income (SSI).

Dated: October 3, 2003.

Jo Anne B. Barnhart,

Commissioner of Social Security.

■ Accordingly, the final rules with request for comment amending 20 CFR parts 404 and 416 that were published at 68 FR 5210 on February 3, 2003, are adopted as final rules without change.

[FR Doc. 03–30691 Filed 12–10–03; 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 314 and 601

[Docket No. 2000N–1652]

RIN 0910–AB91

Requirements for Submission of Labeling for Human Prescription Drugs and Biologics in Electronic Format

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending its regulations governing the format in which certain labeling is required to be submitted for review with new drug applications (NDAs), certain biological license applications (BLAs), abbreviated new drug applications (ANDAs), supplements, and annual reports. The final rule requires that certain labeling content be submitted electronically in a form that FDA can process, review, and archive. Submitting the content of labeling in electronic format will simplify the drug labeling review process and speed up the approval of labeling changes.

DATES: The rule is effective June 8, 2004.

FOR FURTHER INFORMATION CONTACT:

Randy Levin, Center for Drug Evaluation and Research (CDER) (HFD–001), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–7756, or

Robert A. Yetter, Center for Biologics Evaluation and Research (HFM–10), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852, 301–827–0373.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of May 3, 2002 (67 FR 22367), FDA published a proposed rule to require the submission of the content of labeling for human prescription drugs and certain biologics in electronic format in a form that FDA can process, review, and archive. This electronic submission requirement would necessitate the amendment of FDA's regulations under §§ 314.50(l) (21 CFR 314.50(l)), 314.81(b)(2)(iii) (21 CFR 314.81(b)(2)(iii)), 314.94(d)(1) (21 CFR 314.94(d)(1)), and the addition of § 601.14 (21 CFR 601.14).

Under current regulations, as noted in the preamble to the proposed rule, labeling for the archival copy of an NDA must be submitted to the agency on paper, labeling for the archival copy of an ANDA may be submitted in any form that FDA and the applicant agree upon, and the current regulations for BLA labeling do not specify a format for submission to the agency. The term "labeling" used in §§ 314.50, 314.94, 314.81, and § 601.12 is defined in section 201(m) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 321(m)) to mean both labels[1] and other written, printed, or graphic matter upon any article or any of its containers or wrappers, or accompanying such article. Thus, requiring the submission of "labeling" entails submission of the label (i.e., the label on the immediate container) and labeling. Labeling consists of the comprehensive prescription drug labeling directed to health care practitioners (i.e., the labeling required under § 201.100(d)(3) (21 CFR 201.100(d)(3)), commonly referred to as the "package insert" or

[1] Under section 201(k) of the act, the term "label" means a display of written, printed, or graphic matter upon the immediate container of any article.

"professional labeling")[2] and other labeling. This final rule applies to the electronic submission of the content of labeling, defined as the contents of the package insert or professional labeling, including all text, tables, and figures.

Each year FDA conducts a word-for-word comparison of the labeling as part of the review process for more than 1,000 proposed labeling changes for approved NDAs and BLAs, and more than 2,600 proposed original and supplemental labeling changes for ANDAs.[3] Because reviewers currently conduct these comparisons manually using two paper copies of the labeling, the process is slow and subject to error. Requiring the electronic submission of labeling for NDAs, certain BLAs, ANDAs, supplements, and annual reports will greatly enhance the accuracy and speed of labeling review. This will result in increased protection of the public health because electronic review and comparison of labeling files will provide a higher degree of certainty that all sections of prescription drug labeling are correct.

Although FDA has not previously required regulatory submissions in electronic format, we have issued several guidances describing how to make voluntary electronic submissions to the agency. In the **Federal Register** of January 28, 1999 (64 FR 4433), we (FDA) issued a guidance on general considerations for electronic submissions entitled "Providing Regulatory Submissions in Electronic Format—General Considerations" (general considerations guidance). In the general considerations guidance, we included a description of the types of electronic file formats that we are able to accept for processing, reviewing, and archiving electronic documents. In the **Federal Register** of January 28, 1999 (64 FR 4432), we announced the availability of a guidance entitled "Providing Regulatory Submissions in Electronic Format—NDAs," which provided information on how to submit a complete archival copy of an NDA in electronic format. In November 1999, we published a guidance to assist applicants in submitting documents in electronic format for review and archive purposes as part of a BLA, product license application (PLA), or establishment license application (ELA) (64 FR 61647, November 12, 1999). Most recently, we published a guidance for ANDAs entitled "Providing Regulatory Submission in Electronic Format—ANDAs" (67 FR 43331, June 27, 2002). In addition, part 11 (21 CFR part 11), concerning electronic records and electronic signatures, describes certain controls for electronic regulatory submissions and states that we are prepared to accept those regulatory submissions that have been identified in the public docket (62 FR 13430, March 20, 1997).

FDA received 13 comments (which raised 21 issues) on the proposed rule and addresses each of those comments in section III of this document. The majority of the comments supported the proposed amendments to FDA's regulations. After careful consideration of the comments, the agency is adopting this final rule without any changes from the proposed rule. The final rule is described in section II of this document.

II. Description of the Final Rule

We are revising our regulations to require the electronic submission of the content of labeling (i.e., the content of the package insert or professional labeling, including all text, tables, and figures) for NDAs, certain BLAs, ANDAs, supplements, and annual reports. This requirement is in addition to existing requirements, found elsewhere in our regulations, that copies of the label and labeling and specimens of enclosures be submitted.

Under the amended regulations that we are adopting in this final rule, §§ 314.50(l), 314.81(b)(2)(iii), and 314.94(d)(1) are revised to require applicants to submit the content of labeling in NDAs, ANDAs, supplements, and annual reports electronically in a form that we can process, review, and archive.[4] Under new § 314.94(d)(1), ANDA applicants are required to submit in electronic format the content of labeling for the proposed drug product (i.e., the content of the generic drug product labeling). As previously stated in the preamble to the proposed rule, ANDA applicants are not required to submit in electronic format the content of labeling for the reference listed drug product. Section 601.14 is added to require applicants for biological products subject to the requirements of § 201.100(d)(3) to submit the content of labeling in BLAs, supplements, and annual reports electronically in a form that we can process, review, and archive.[5]

At this time, portable document format (PDF) is the only type of electronic file format that we have the ability to accept for processing, reviewing, and archiving. PDF is commonly used, easily obtainable, and affordable. Software to convert electronic files to PDF is commercially available at a cost of approximately $100 to $300. The technology necessary to create PDF documents is also publicly available. Because PDF is the only acceptable file type, references to specific media (microfiche, microform, optical disc, and magnetic tape) under §§ 314.50(l)(1) and 314.94.(d)(1) will be deleted.

To be responsive to technological advances, we may recommend in the future that new file formats and software applications be used to submit labeling electronically. As mentioned in the preamble to the proposed rule, we will provide advance notice, in accordance with FDA's good guidance practice regulations under § 10.115 (21 CFR 10.115), so that affected parties will have adequate time to convert to any new format or software. In addition, we expect that such format or software will be widely available before we switch to a new technology. Changes in format and/or software will be identified in public docket number 92S–0251. During any such transition, we will accept submissions using either file format or software.

Finally, these new regulations also make minor changes to reformat and modernize certain regulatory provisions. This final rule is amending § 314.50(l) by adding headings to paragraphs (l)(1) through (l)(4) and by removing the word "shall" and adding in its place the word "must."

[2] Section 201.100(d) requires that any labeling distributed by or on behalf of the manufacturer, packer, or distributor of the drug, that furnishes or purports to furnish information for use of the drug, or which prescribes, recommends, or suggests a dosage for the use of the drug, must meet the content and format requirements in 21 CFR 201.56 and 201.57.

[3] We also conduct a word-for-word comparison of the labeling for the proposed generic drug product and the reference listed drug to verify that any differences in labeling have been correctly annotated and explained by the ANDA applicant under § 314.94(a)(8)(iv).

[4] The submission of labeling for the archival copy of an NDA is required under § 314.50(e)(2)(ii). Section 314.71(b) (21 CFR 314.71(b)) requires that supplements to approved applications submitted to the agency under § 314.70 (21 CFR 314.70) follow the procedures described in § 314.50. Section 314.81(b)(2)(iii) (21 CFR 314.81(b)(2)(iii)) requires that annual reports include "currently used professional labeling, patient brochures, or package inserts." With respect to the archival copy of an ANDA, § 314.94(a)(8)(ii) requires copies of the label and all labeling for the drug product. Under § 314.97 (21 CFR 314.97), supplements and other changes to approved ANDAs must be submitted to the agency under the requirements of §§ 314.70 and 314.71. Under § 314.98(c) (21 CFR 314.98(c)), annual reports for ANDAs must be submitted as required in § 314.81(b)(2)(iii).

[5] Section 601.2 (21 CFR 601.2) describes the requirements for submission of a BLA, which include the requirement that specimens of enclosures and Medication Guides for a product, if any, be submitted. Section 601.12 (21 CFR 601.12) describes the requirements to make changes to an approved BLA, including labeling changes.

III. Comments on the Proposed Rule

FDA received 13 sets of written comments on the proposed rule from manufacturers, trade associations, advocacy groups, consulting firms, and individuals. The majority of the comments supported FDA's proposal to require that the content of certain labeling be submitted electronically in a form that FDA can process, review, and archive. A few comments requested clarification on various aspects of the rule and one comment opposed the exemptions from specific controls under part 11. A summary of the comments received and the agency's responses follows:

A. General Comments

(Comment 1) One comment identified as a typographical error the citation of § 314.50(l). The comment suggested that § 314.50(l)(1)(i) was being referenced as (1)(1)(i).

(Response) This is not a typographical error; we are citing to § 314.50(l)(1)(i) in the proposed rule, but the lower case letter L ("l") looks similar to the number 1.

(Comment 2) One comment recommended adding changes to § 314.70 and § 601.12 to address labeling supplements.

(Response) FDA believes that § 314.70 and § 601.12 do not need any changes because the recommended requirements already exist.

Under § 314.71, all procedures that apply to an application under § 314.50 also apply to supplement submissions. Thus, by amending the provisions in § 314.50, the final rule also covers the requirements for labeling supplements. Similarly, § 601.14 requires applicants for biological products subject to the requirements of § 201.100(d)(3) to submit the content of labeling in BLAs, supplements, and annual reports electronically in a form that FDA can process, review, and archive.

(Comment 3) One comment stated that it supported the adoption of regulations to require bar coding for all pharmaceuticals.

(Response) The agency is pursuing bar coding initiatives separately from this rulemaking. A proposed rule to require bar codes on certain human drug product labels and biological product labels was published in the **Federal Register** of March 14, 2003 (68 FR 12500). This final rule deals solely with the content of labeling for human prescription drugs and biologics submitted to FDA in electronic format that FDA can process, review, and archive.

(Comment 4) Although supportive of the proposed rule, one comment was concerned about industry initiatives to use this rule to advocate for electronic versions as a substitute for printed patient inserts (PPIs).[6] The comment expressed concern that this rule could serve as a basis for the elimination of printed PPIs.

(Response) FDA understands the comment's concern, but the agency's regulation of PPIs is unrelated to the requirement to submit the content of labeling electronically. This rule requires that the content of labeling (i.e., the content of the package insert or professional labeling, including all text, tables, and figures) be submitted electronically. It does not alter the current regulatory treatment of PPIs. The PPIs can be submitted in paper or electronic format under part 11. If the PPI is submitted electronically, it must appear in the electronic format as it would in printed form.

(Comment 5) One comment mentioned that this rule will enable the agency to move forward with other initiatives to make labeling more rapidly available. The comment asks the agency to consider providing certain recommendations on a standard database for labeling and standard display formats for viewing labels.

(Response) FDA welcomes the comment, and we are working on several initiatives to make labeling more readily available to the public. This rule is a necessary step to provide FDA with the information needed to improve the readability, organization, and access to labeling information, including the possibility of using the information in a standard database.

B. Applicability/Scope of the Proposed Rule

(Comment 6) One comment requested that FDA clarify whether the Circular of Information for the Use of Human Blood Components (the Circular) is exempt from this rule. The comment stated that the Circular is prepared on a biannual basis by a committee representing all blood organizations and a single submission is made to FDA. The same version of the Circular is used by the majority of licensed blood establishments.

(Response) It is true that FDA reviews a version of the Circular that a consortium of blood establishments submits periodically. Although individual blood establishments may use different versions of the Circular and must submit those versions in supplemental applications to FDA, the amount of variation from the FDA-recognized Circular is so minimal that electronic submission is not necessary at this time. Therefore, the final rule does not require the submission of the Circular to the agency in electronic format.

(Comment 7) Several comments asked for clarification of the following statement in the proposed rule: "This proposed requirement would be in addition to existing requirements, described in section I.A of this document, that copies of the label and labeling and specimens of enclosures be submitted." The comments requested that the agency explicitly state that no paper copies of labeling are to be submitted.

(Response) The content of labeling is a new labeling type not previously required in the regulations to be submitted. The content of labeling, defined as the contents of the package insert or professional labeling, including all text, tables, and figures for prescription products approved under an ANDA, BLA, or NDA, does not replace any previously required labeling type, including the package insert. In other words, the regulations require the package insert to be submitted in addition to the content of labeling. However, no paper copies of any labeling are required. As discussed in our response to comment 4, the applicant has the option of providing the package insert in paper or electronic format under part 11. The package insert, if submitted electronically, must appear as it would in printed form. Submission in this form allows us to evaluate the format of the package insert, such as font size and positioning of the text.

(Comment 8) A few comments asked for clarification of whether the rule requires the submission in electronic format of all types of labeling, such as carton and container labels, labels submitted with advertising material, and labeling that might be submitted with periodic adverse drug experience reports.

(Response) The agency did not intend that the final rule require the electronic submission of the previously mentioned types of labeling. The rule requires only that the content of labeling (i.e. the content of the package insert or professional labeling, including all text, tables, and figures) be submitted in electronic format.

(Comment 9) Some comments requested clarification of whether the rule restricts the submission of labeling in electronic format to the content of labeling.

[6] The comment refers to patient package inserts as "PIs." FDA, though, refers to such inserts as "PPIs.".

(Response) The agency did not intend to restrict the voluntary submission of labeling in electronic format. Under part 11, an applicant may submit labeling in electronic format as long as the controls in part 11 are met and the labeling is listed in public docket number 92S–0251.[7] Because the agency has listed labeling in conjunction with NDAs, BLAs, and ANDAs in public docket number 92S–0251, applicants may submit all labeling for an NDA, BLA, or ANDA in electronic format.

(Comment 10) Two comments suggested that the electronic submission of labeling submitted with annual reports under § 314.81 should be optional if the product's labeling has not been revised beyond editorial changes. The comments noted that the labeling revisions to older products are infrequent and often insubstantial in nature; therefore, the submission of annual report labeling is not justified by the objectives of this rule.

(Response) FDA disagrees that the electronic submission of labeling in the annual report is not justified by the objectives of the final rule. The labeling submitted with the annual report, aside from editorial corrections, can also include other changes related to the manufacturing of the product. As with other labeling changes, these changes must be reviewed and require the same degree of comparison with previous versions of labeling. In addition, the labeling changes described in the annual report must be included in FDA's database. Finally, it is important to note that in our economic analysis, we found that the one-time costs to convert the labeling in annual reports to electronic format would not be overly burdensome (see section VIII of this document). Accordingly, the electronic submission of labeling submitted with annual reports under § 314.81 is not optional.

C. Reviewer Support and Training

(Comment 11) Some comments expressed concern that reviewers will accept "special requests" to receive the labeling in paper format or other formats to bypass existing agency guidance on electronic submissions. These same comments emphasized the importance of training and support of reviewers and staff in the use of electronic review and version comparison utilities.

(Response) FDA agrees that reviewers should not "bypass" our guidance documents. We train reviewers and managers on the details and provisions of guidance documents. When there are differences in opinion concerning the meaning of such provisions, it is best for the applicant and agency personnel to discuss those differences to ensure that everyone understands the relevant issues and the parties' respective positions. In addition, we will update our specific policy and procedure documents for reviewers to help enforce the common practice of reviewing documents electronically. The reviewers and staff will have sufficient training and support to fulfill their duties in reviewing the electronic version of the content of labeling.

(Comment 12) One comment pointed out that the Office of Generic Drugs (OGD) has limited experience with electronic labeling because it has only recently published guidance on providing an ANDA in electronic format.[8] The comment recommended that OGD pilot a program with industry to accept and process electronic labeling before the effective date of this rule.

(Response) FDA does not believe a pilot program is necessary to prepare OGD reviewers for the implementation of this rule. OGD reviewers used the electronic label review technology for many years before the issuance of the guidance on electronic submissions of ANDAs[9] and; therefore, have adequate experience in this area.

D. Requiring Electronic Submission

(Comment 13) The comments were overwhelmingly supportive of requiring the electronic submission of the content of labeling. The comments commend FDA's goal of using electronic labeling to facilitate labeling reviews. However, a few comments suggested that the agency use appropriate metrics for tracking the gains associated with the electronic submission of labeling.

(Response) The agency agrees with the comment, and notes that, as explained in section II.A of the proposed rule, there will be numerous benefits from the regulation, particularly through enhancing the accuracy and speed of the labeling review process. Nevertheless, it may be difficult to quantify precisely the improvements derived solely from receiving labeling in electronic format because we also plan to improve our current business practice for processing and reviewing such labeling changes. To the extent possible, we plan to evaluate the success of all these changes and hope to make the results of our evaluations available to the public.

(Comment 14) A few comments suggested that the implementation of the rule would improve the availability of labeling to the public.

(Response) We believe that a number of changes are needed to improve the public's access to medication information. This rule is an important and necessary step toward that goal, because it will greatly enhance the accuracy and speed of labeling reviews. We are actively working with the pharmaceutical industry, other government agencies, and health care information suppliers to achieve success in this area. For example, we are currently working with several agencies, including the National Library of Medicine, on an initiative to promote patient safety through accessible medication information (DailyMed Initiative). The electronic submission of the content of labeling will allow the agency to provide the DailyMed system with labeling in a comprehensive, reliable, and structured format. The DailyMed can then use this information to make information on medications available to the public. Consumers, health professionals, and others may use this information in several ways, including to identify drug interactions, contraindications, and possible adverse reactions.

(Comment 15) Some comments suggested that the use of electronic labeling may lead to improvement in the communication between the agency and industry when the review division requests modifications for proposed labeling changes. Specifically, the comments referred to word processing software available for tracking changes and editing documents. In addition, the comments suggested that the use of a secure electronic mail exchange system between applicants and the agency during labeling negotiations could be beneficial.

(Response) We appreciate the suggestion and our guidance document entitled "Providing Regulatory Submissions in Electronic Format—NDAs," currently describes submission of the content of labeling in a word processing format in addition to PDF to support editing changes. As mentioned in the proposed rule, PDF is the only type of electronic file format that we have the ability to process, review, and archive because it is currently the most cost effective and best meets our needs for word-for-word comparisons of files. As for any direct communication between applicants and FDA requiring the editing of specific content of labeling, the guidance notes the utility of also submitting labeling in word processing format to facilitate this editing process. In addition, we are looking into new technologies to improve the methods for exchanging and reviewing labeling changes.

E. Providing Labeling to FDA in Electronic Format

(Comment 16) Two comments requested clarification on how to provide labeling with annual reports. They state that some of the confusion with the annual report labeling is because of the lack of a published guidance document on the submission of annual reports in electronic format. The comments also asked if the hard copy information submitted with annual reports containing electronic labeling (distribution, chemistry, manufacturing and controls, preclinical/clinical) should be submitted to the respective reviewing divisions, the central document room, or both.

(Response) As explained previously, the agency has issued guidance for the electronic submission of NDAs, ANDAs, and BLAs. Although there is no published guidance specifically on providing labeling with annual reports, submission of that labeling is covered by these other agency guidance documents on electronic submissions. Therefore, the content of labeling submitted with annual reports would be prepared and submitted electronically as described in the following FDA guidance documents: (1) "Providing Regulatory Submissions in Electronic Format—General Considerations," (2) "Providing Regulatory Submissions in Electronic Format—NDAs," and (3) "Providing Regulatory Submission in Electronic Format—ANDAs" (see section I for a description of these guidance documents).

It should be noted that this final rule only applies to the electronic submission of the content of labeling. It does not address the electronic submission of annual reports generally or any other part of an application. To the extent that the commentors asked for more detailed information about annual report submissions, applicants should continue following the regulations and guidance documents pertaining to those submissions.

(Comment 17) One comment requested harmonization of all elements of annual reports for NDAs, ANDAs, and BLAs.

(Response) As noted previously, the content of the annual report, other than labeling, is not affected by this regulation. However, the labeling submitted with an annual report will be prepared and submitted electronically in the same fashion as described for other electronic labeling submissions in an application (i.e., original labeling submissions in an NDA, ANDA, or BLA).

(Comment 18) One comment requested that Form FDA 2567 not be required with each labeling component submitted to a BLA because CDER does not require that such a form accompany labeling.

(Response) The agency agrees that Form FDA 2567 is not required when submitting BLA labeling electronically using form 356h (Application to Market a New Drug, Biologic, or an Antibiotic Drug for Human Use). The form should only be used for human blood and blood components (The human blood and blood components circular is not covered by this rule. See comment 6 in section III of this document.)

(Comment 19) Generally, the comments supported our flexible approach regarding the acceptable content of labeling file format. The comments recognized that a flexible approach would enable the industry and FDA to take advantage of future improvements in computer technology and software design. They also agreed with the proposal to describe the method for submitting the content of labeling in guidance, but requested that FDA guidance accompany the final rule. Some comments, however, made suggestions for the use of specific technologies. In addition, we were requested to limit changes to the file format or software specifications.

(Response) Currently, guidance on the submission of labeling is included in the guidance for industry series "Providing Regulatory Submissions in Electronic Format" (see section I of this document). We understand that changes to the file format or software can lead to costly changes in the information technology systems used by industry. For this reason, we plan to limit future changes to those that can lead to increased benefits for both the agency and industry. As mentioned in section II of this final rule, the agency will not switch to new format or software until it is widely available.

(Comment 20) One comment asked that we identify the software used for working on an applicant's labeling (e.g., to compare texts) and whether the software is commercially available or proprietary.

(Response) Currently, the reviewers use Adobe Acrobat and Microsoft Word for reviewing labeling. Both are commercially available. As new technology is developed and we change the software used in reviews, we will make this information available to the public.

F. Part 11 Requirements for Electronic Submissions

(Comment 21) We received a number of comments related to the proposed exemption of the submission of electronic labeling from specific controls under §§ 11.10 and 11.30. Most of the comments were positive and supported the rationale for the exemptions. One comment, however, raised concerns about the effect of the proposed exemptions from part 11 requirements on the integrity of part 11 generally.

(Response) We have recently articulated our current thinking on part 11 in the draft guidance document entitled "Part 11, Electronic Records; Electronic Signatures—Scope and Application" (part 11 draft guidance) issued in the **Federal Register** of February 25, 2003 (68 FR 8775). Among other things, this part 11 draft guidance announces the agency's intent to exercise enforcement discretion in the manner specified in the draft guidance with respect to the specific part 11 requirements of validation (§ 11.10 (a)), copies of records (§ 11.10(b)), record retention, audit trails (§ 11.10(e) and (k)(2)), and any corresponding requirements in § 11.30. This final rule exempts the electronic submission of labeling content from the requirements of § 11.10(a), (c) through (h), and (k), and the corresponding requirements of § 11.30.

We recognize that there are some differences with respect to the exemptions from part 11 requirements provided in this final rule (i.e., § 11.10(a), (c) through (h), and (k), and the corresponding requirements of § 11.30), and the part 11 requirements set forth in the part 11 draft guidance for which the agency intends to exercise enforcement discretion (i.e., § 11.10(a) through (c), (e), and (k)(2), and any other corresponding requirements in 11.30)). Although the final rule does not provide an exemption from § 11.10(b), the part 11 draft guidance announces that we intend to exercise enforcement discretion with respect to that section in the manner described in the draft guidance.

The exemptions in the final rule and the part 11 requirements for which we intend to exercise enforcement discretion, as described in the part 11

[7] A recent draft guidance issued by the agency provides for the exercise of enforcement discretion with respect to the following part 11 requirements: Validation (§ 11.10(a) (21 CFR 11.10(a))); copies of records § 11.10(b)); record retention (§ 11.10(c)); audit trails (§ 11.10(e) and (k)(2)); and any corresponding requirements in § 11.30. See FDA guidance for industry entitled "Part 11, Electronic Records; Electronic Signatures—Scope and Application," available at *www.fda.gov/cder/guidance*.

[8] See "Providing Regulatory Submission in Electronic Format—ANDAs" guidance (67 FR 43331, June 27, 2002).

[9] Id.

draft guidance, differ because the final rule is specific to the electronic submission of labeling content for human prescription drugs and certain biologics, and the part 11 draft guidance applies to the maintenance of all electronic records and to all electronic submissions subject to part 11.

We exempted the submission of electronic labeling content from certain part 11 requirements because we believe these part 11 requirements are not critical to ensure the quality of the content of labeling submitted under this rule and we want to ensure that industry resources are not being spent on unnecessary controls. For example, validation for the system used to generate the labeling record is not necessary because the applicant's verification that the information in the labeling record is accurate serves the same objective. Our review of the content of labeling is based on the version of the labeling record submitted to us. Earlier versions of the record, as well as changes made to the earlier versions, are not relevant to our analysis. Thus, other controls related to the creation, modification, and maintenance of the labeling records are also not needed.

IV. Legal Authority

Our legal authority to amend our regulations governing the format of labeling for human prescription drugs and biologics derives from sections 201, 301, 501, 502, 503, 505, 506, 506A, 506B, 506C, 510, 513–516, 518–520, 701, 704, 721, and 801 of the act (21 U.S.C. 321, 331, 351, 352, 353, 355, 356, 356a, 356b, 356c, 360, 360c–360f, 360h–360j, 371, 374, 379e, and 381); 15 U.S.C. 1451–1561; the Public Health Service Act (42 U.S.C. 216, 241, 262, 263, 264); and section 122, Public Law 105–115, 111 Stat. 2322 (21 U.S.C. 355 note).

V. Paperwork Reduction Act of 1995

This final rule contains information collection provisions that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). A description of these provisions is given below with an estimate of the annual reporting burden. Included in this estimate is the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing each collection of information.

Title: Requirements for Submission of Labeling for Human Prescription Drugs and Biologics in Electronic Format.

Description: FDA is amending its regulations governing the format in which certain labeling is required to be submitted for review with NDAs, certain BLAs, ANDAs, supplements, and annual reports. The final rule requires that the content of labeling for prescription drug and biological products required under § 201.100(d)(3) be submitted to FDA electronically in a form that we can process, review, and archive. Copies of product labeling are currently required to be submitted to FDA for review in NDAs, certain BLAs, ANDAs, certain supplements, and annual reports under §§ 314.50, 314.70, 314.81, 314.94, 314.97, 314.98, §§ 601.2, and 601.12. Copies of labeling may be submitted electronically or on paper. The agency is adding the new requirements because submitting the content of labeling in electronic format will simplify the drug labeling review process and speed up the approval of labeling changes.

As required under section 3506(c)(2)(B) of the Paperwork Reduction Act, FDA provided an opportunity for public comments on May 3, 2002 (67 FR 22367), on the information collection provisions of the proposed rule. FDA received two comments stating that the agency underestimated the time and costs to prepare the content of labeling in electronic format for submission to FDA. Specifically, the comments stated that the 15 minutes to convert the labeling into PDF was underestimated because it did not take into account the time needed to proofread the content of labeling document.

FDA believes that proofreading is not an additional cost for submitting labeling in electronic format for new submissions of NDAs, BLAs, and ANDAs. Labeling is proofread prior to submission regardless of the format. If the labeling is in a word processing file, it is irrelevant whether the document is printed or converted to a PDF file. This is because the finished product, the labeling, is proofread for quality assurance in either case. We also note that someone may need even less time to proofread an electronic file than a printed document because the computer could assist in finding errors. As such, we are not changing the burden estimate for these applications in the final rule.

However, we agree that we should allow for proofreading of labeling under certain circumstances. Applicants that have previously submitted labeling in paper format in annual reports or supplements, but also maintained the labeling document in electronic format, should be provided time for proofreading the converted file. This category of labeling would not require any changes to the labeling since it was last submitted to the agency. It only requires additional time for proofreading to ensure that the electronic document being submitted is the same as the labeling previously submitted in paper format. We estimate that the hours per response (i.e., the time it will take an applicant to submit the labeling content electronically for these annual reports and supplements) will be approximately 5 hours. We discuss this new category of reporting in more detail in this section V when we calculate the burdens associated with submission of electronic labeling in supplements and annual reports. We also add sections to the estimated annual reporting burden chart to report the burdens.

As we noted in the proposed rule, we recognize that some older annual reports may require additional steps, such as accessing the labeling in the archives, putting the content of labeling into an electronic format, and converting it to a PDF file. In response to the proofreading comments mentioned previously, we are allowing an additional 2 hours for proofreading this type of labeling (the proposed rule allowed for 8 hours and the final rule is allowing for 10 hours).

The reporting burdens for submitting labeling as currently required under §§ 314.50, 314.70, 314.81, 314.94, 314.97, and 314.98 have previously been estimated by FDA, and this collection of information was approved by OMB until March 31, 2005, under OMB control number 0910–0001. The reporting burdens associated with current §§ 601.2 and 601.12 have also previously been estimated and this collection of information was approved by OMB until August 31, 2005, under OMB control number 0910–0338 (this includes the collection of information previously approved by OMB under control number 0910–0315). We are not reestimating these approved burdens in this rulemaking. Only the additional reporting burdens associated with the electronic submission of the content of labeling are estimated.

New NDAs (§ 314.50), ANDAs (§ 314.94), and BLAs (§ 601.2): Based on data in the approved collections of information for §§ 314.50, 314.94, and § 601.2, we estimate that approximately 83 NDA applicants, 117 ANDA applicants, and 17 BLA applicants (respondents) submit applications to us annually. We estimate that these applicants (respondents) will submit approximately 85 NDAs, 323 ANDAs, and 17 BLAs each year that will be subject to this rule.[10] Based on our experience with voluntary electronic submissions and our knowledge of the drug and biologic industries, we assume that applicants for new NDAs, ANDAs, and BLAs will already have the necessary labeling in an electronic format that can be easily accessed and converted to a PDF file. Thus, we have estimated that the hours per response, i.e., the additional time necessary for submission of the content of labeling in electronic format for these applications, will be less than 15 minutes. Therefore, we estimate that respondents will spend approximately 106 hours per year submitting the content of labeling to us in accordance with the final rule.

Supplements to NDAs (§ 314.70) and ANDAs (§ 314.97) and BLAs (§ 601.12(f)(1) and (f)(2)): Based on data in the approved collections of information for §§ 314.70, 314.97, and § 601.12(f)(1) and (f)(2), we estimate that approximately 418 NDA applicants, 152 ANDA applicants, and 20 BLA applicants (respondents) submit supplements to approved applications to us annually. We estimate that these applicants (respondents) will submit approximately 630 NDA supplements, 1,000 ANDA supplements, and 20 BLA supplements each year that will be subject to this rule.

Based on our experience with voluntary electronic submissions and our knowledge of the drug and biologic industries, we assume that approximately 254 NDA supplements, 396 ANDA supplements, and 10 BLA supplements will be submitted by applicants who already have the necessary labeling in an electronic format that can be easily accessed and converted to a PDF file. Thus, we have estimated that the hours per response, i.e., the additional time necessary for submission of the content of labeling in electronic format for these supplements, will be less than 15 minutes. Therefore, we estimate that respondents would spend approximately 165 hours per year submitting the content of labeling to us in these supplements under the final rule.

As mentioned previously, we are adding a new category to the paperwork section to allow for proofreading the converted file of labeling that was previously submitted in supplements in paper form (and not requiring any changes since it was last submitted), but is also maintained by the applicant in an electronic format. We estimate that approximately 376 NDA supplements, 604 ANDA supplements, and 10 BLA supplements will be submitted by applicants who previously submitted labeling in paper, but have such labeling available in electronic format. We estimate that the hours per response, i.e., the time it will take an applicant to submit the labeling content electronically for these supplements, will be approximately 5 hours. Therefore, we estimate that in the first year, respondents will spend approximately 4,950 hours submitting the content of labeling that was previously submitted in supplements in paper form. For all supplements combined, we estimate that in the first year, respondents will spend approximately 5,115 hours submitting the content of labeling to us in supplements under the final rule. This expenditure of time will only be necessary the first time that a supplement is submitted with the content of labeling in electronic format. Once the content of labeling has been converted to an electronic format, the time necessary to submit the content of labeling in subsequent supplements will be the same as that for the other types of submissions or less than 15 minutes. Therefore, we estimate that, in subsequent years, respondents will spend approximately 413 hours per year submitting the content of labeling in supplements.

Annual Reports for NDAs (§ 314.81), ANDAs (§ 314.98), and BLAs (§ 601.12(f)(3)): Based on data in the approved collections of information for §§ 314.81, 314.98, and § 601.12(f)(3), we estimate that approximately 275 NDA applicants, 275 ANDA applicants, and 75 BLA applicants (respondents) submit annual reports to us annually. We also estimate that each NDA applicant submits to us approximately 9.45 annual reports, each ANDA applicant submits approximately 16.18 annual reports, and each BLA applicant submits approximately 1 annual report each year. Further, we estimate that the total annual responses, i.e., the total number of annual reports submitted to us per year, will remain approximately 2,600 NDA annual reports, 4,450 ANDA annual reports, and 75 BLA annual reports.

Based on our experience with voluntary electronic submissions and our knowledge of the drug and biologic industries, we estimate that approximately 24 percent of NDA annual reports (624 NDA annual reports), 20 percent of ANDA annual reports (890 ANDA annual reports), and 24 percent of BLA annual reports (18 BLA annual reports), will already have the necessary labeling in an electronic format that can be easily accessed and converted to a PDF file. As discussed above, we estimate that each NDA applicant submits to us approximately 9.45 annual reports, each ANDA applicant submits approximately 16.18 annual reports, and each BLA applicant submits approximately 1 annual report each year. Therefore, approximately 66 NDA applicants, 55 ANDA applicants, and 18 BLA applicants can easily access labeling in electronic form and convert it to a PDF file. For the applicants submitting these annual reports, we estimate that the hours per response, i.e., the additional time necessary for submission of the content of labeling in electronic format in the annual report, will be less than 15 minutes. Therefore, we estimate that respondents would spend approximately 383 hours per year submitting the content of labeling to us in these annual reports under the final rule.

As mentioned previously, we are adding a new category to the paperwork section to allow for proofreading the converted file of labeling that was previously submitted in annual reports in paper form (and not requiring any changes since it was last submitted), but is also maintained by the applicant in an electronic format. For applicants to include labeling content in their annual reports in electronic format, we estimate that approximately 36 percent of NDA annual reports (936 NDA annual reports), 30 percent of ANDA annual reports (1,335 ANDA annual reports), and 36 percent of BLA annual reports (27 BLA annual reports) will be submitted by applicants who previously submitted labeling in paper, but have such labeling available in electronic format. As discussed above, we estimate that each NDA applicant submits to us approximately 9.45 annual reports, each ANDA applicant submits approximately 16.18 annual reports, and each BLA applicant submits approximately 1 annual report each year. Therefore, under the final rule, approximately 99 NDA applicants, 83 ANDA applicants, and 27 BLA applicants would need additional time to proofread these annual reports. We estimate that the hours per response, i.e., the time it will take an applicant to submit the labeling content electronically for these annual reports, will be approximately 5 hours. Therefore, we estimate that respondents would spend approximately 11,490 hours per year submitting the content of labeling to us in these annual reports under the final rule.

We recognize that annual reports for some drug and biological products, particularly older products for which labeling changes have not been made in

[10] The numbers in this final rule have changed from the proposed rule because we have updated the numbers to be more current.

several years, may require additional steps. For applicants to include labeling content in their annual reports in electronic format, we estimate that approximately 40 percent of NDA annual reports (1,040 NDA annual reports), 50 percent of ANDA annual reports (2,225 ANDA annual reports), and 40 percent of BLA annual reports (30 BLA annual reports) will be submitted by applicants who may need to access the labeling in their archives, put the content of labeling into an electronic format, and convert it to a PDF file. As discussed previously, we estimate that each NDA applicant submits to us approximately 9.45 annual reports, each ANDA applicant submits approximately 16.18 annual reports, and each BLA applicant submits approximately 1 annual report each year. Therefore, under the final rule, approximately 110 NDA applicants, 137 ANDA applicants, and 30 BLA applicants would need to put labeling content in an electronic format and convert it to a PDF file. We estimate that the hours per response, i.e., the time it will take an applicant to submit the labeling content electronically for these annual reports, will be approximately 10 hours.[11] Therefore, we estimate that respondents would spend approximately 32,950 hours per year submitting the content of labeling to us in these annual reports under the final rule.

We estimate that in the first year, respondents will spend approximately 44,823 hours submitting the content of labeling to us in annual reports under the final rule. This expenditure of time will only be necessary the first time that an annual report is submitted with the content of labeling in electronic format. Once the content of labeling has been converted to an electronic format, the time necessary to submit the content of labeling in subsequent annual reports will be the same as that for the other types of submissions or less than 15 minutes. Therefore, we estimate that, in subsequent years, respondents will spend approximately 1,781 hours per year submitting the content of labeling in annual reports.

Description of Respondents: An applicant submitting an NDA, ANDA, BLA, supplement, or annual report to us for a drug or biological product.

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

21 CFR Section	No. of Respondents	No. of Responses per Respondent	Total Responses	Hours per Response	Total Hours
Applications: 314.50	83	1.02	85	.25	21
314.94	117	2.76	323	.25	81
601.14 (Applications submitted under § 601.2)	17	1	17	.25	4
Subtotal, applications					106
Supplements: 314.70 (Products not requiring additional steps for electronic submission)	167	1.52	254	.25	63
314.70 (Products requiring additional proofreading)	251	1.50	376	5	1,880
314.97 (Products not requiring additional steps for electronic submission)	61	6.50	396	.25	99
314.97(Products requiring additional proofreading)	91	6.50	604	5	3,020
601.14 (Supplements submitted under § 601.12(f)(1) and (f)(2))(Products not requiring additional steps for electronic submission)	8	1.25	10	.25	3
601.14 (Supplements submitted under § 601.12(f)(1) and (f)(2)) (Products requiring additional proofreading)	12	.83	10	5	50
Subtotal, supplements, year one					5,115
Subtotal, supplements, subsequent years[2]					413
Annual Reports: 314.81 (Products not requiring additional steps for electronic submission)	66	9.45	624	.25	156
314.81 (Products requiring additional proofreading)	99	9.45	936	5	4,680

[11] The number increased from 8 hours to 10 hours to allow for additional time to proofread.

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]—Continued

21 CFR Section	No. of Respondents	No. of Responses per Respondent	Total Responses	Hours per Response	Total Hours
314.81 (Products requiring additional steps for electronic submission)	110	9.45	1,040	10	10,400
314.98 (Products not requiring additional steps for electronic submission)	55	16.18	890	.25	222
314.98 (Products requiring additional proofreading)	83	16.18	1,335	5	6,675
314.98 (Products requiring additional steps for electronic submission)	137	16.18	2,225	10	22,250
601.14 (Annual reports submitted under § 601.12(f)(3) not requiring additional steps for electronic submission)	18	1	18	.25	5
601.14 Annual reports submitted under § 601.12(f)(3) (Products requiring additional proofreading)	27	1	27	5	135
601.14 (Annual reports submitted under § 601.12(f)(3) requiring additional steps for electronic submission)	30	1	30	10	300
Subtotal, annual reports, year one					44,823
Subtotal, annual reports, subsequent years[3]					1,781
Total, year one					50,044
Total, subsequent years[3]					2,300

[1] There are one-time capital costs to: (1) Acquire computer software; (2) train employees to use the software; and (3) convert certain labeling to an electronic format. These costs are estimated to be about $2.3 million (see section VIII of this document). There are no operating or maintenance costs associated with this collection of information.

[2] We estimate that for certain annual reports, respondents will spend 5 hours per response in the first year. We estimate that in subsequent years respondents will spend less than 15 minutes per response for all supplements.

[3] We estimate that for certain annual reports, respondents will spend either 5 or 10 hours per response in the first year. We estimate that in subsequent years respondents will spend less than 15 minutes per response for all annual reports.

In compliance with section 3507(d) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the agency has submitted a copy of this rule to OMB for its review and approval of these information collections.

The information collection provisions in this final rule have been approved under OMB control number 0910–0530. This approval expires on November 30, 2006. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the information collection displays a currently valid OMB control number.

VI. Environmental Impact

The agency has determined under 21 CFR 25.30(h) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

VII. Federalism

FDA has analyzed this final rule in accordance with the principles set forth in Executive Order 13132. FDA has determined that the rule does not contain policies that have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, the agency has concluded that the rule does not contain policies that have federalism implications as defined in the Executive order and, consequently, a federalism summary impact statement is not required.

VIII. Analysis of Economic Impacts

We have examined the impacts of this final rule under Executive Order 12866 and the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). Under the Regulatory Flexibility Act, if a rule may have a significant economic impact on a substantial number of small entities, an agency must consider alternatives that would minimize the economic impact of the rule on small entities. Section 202(a) of the Unfunded

Mandates Reform Act of 1995 requires that agencies prepare a written assessment of anticipated costs and benefits before proposing any rule that may result in an expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million in any one year (adjusted annually for inflation).

We believe that this final rule is consistent with the regulatory philosophy and principles identified in Executive Order 12866 and in these two statutes. The final rule is a significant regulatory action as defined in section 3 paragraph (f)(4) of the Executive order. However, as shown in this section VIII, the final rule will not be an economically significant regulatory action as defined by the Executive order and will not require further analysis under the Regulatory Flexibility Act.

The Unfunded Mandates Reform Act of 1995 does not require FDA to prepare a statement of costs and benefits for the final rule because the final rule would not result in an expenditure of $100 million in any one year, adjusted for inflation. The current inflation-adjusted statutory threshold is approximately $110 million.

The purpose of this final rule is to require applicants to submit in electronic format the content of labeling required under § 201.100(d)(3) in NDAs, ANDAs, BLAs, annual reports, and applicable supplements. Submissions in electronic format will help simplify and speed up our review of these documents. Currently, applicants may voluntarily submit such data in electronic form, but they are not required to do so. The rule will require all applicants of approved and new NDAs, BLAs, and ANDAs to convert the content of labeling to an electronic format for submission. At this time, PDF is the type of electronic file format that we have the ability to accept for processing, reviewing, and archiving. Applicants that do not already have the capabilities to create PDF files will have to acquire the software and expertise to do so or make contractual arrangements to have documents converted.

The economic burden on industry will include a one-time cost to acquire the appropriate computer software and train employees on its use. Applicants may also incur additional one-time costs to revise applications that have not had any labeling changes within the last few years to a format that can be converted to a PDF file. We do not know the number of applicants that currently have the capability to submit electronic files, nor do we have firsthand information on how labeling files are currently maintained or on how much time will be required to train employees on the software and new procedures.

Three comments were received regarding the economic impact analysis. Two of these comments suggested that the cost to convert the content of labeling to a PDF format was underestimated because it did not include the cost to proofread the labeling after it is converted to a PDF file. The time required for proofreading ranged from 4 to 6 hours depending on the complexity/length of the labeling. One of these comments also suggested that the cost for converting older labeling that is only available on paper was underestimated, suggesting that the costs should include costs for equipment, training, and time to scan paper documents.

The agency agrees that we should allow for proofreading of labeling under certain circumstances. Applicants that have previously submitted annual reports or supplements in paper form, but also maintained the documents in electronic format, should be provided time for proofreading the converted file. This category of labeling would not require any changes to the labeling since it was last submitted to the agency. It only requires additional time for proofreading to ensure that it is the same as the labeling submitted in paper format. Five hours was used in this analysis to reflect the cost under these circumstances.

However, we do not agree that proofreading is an incremental cost for labeling that has been changed and is in a word processing file. Proofreading of the finished product for submission (in this case, the PDF file) is done now as part of current industry quality assurance practice. We also do not agree with the comment that costs for scanning labeling should be included in the impact analysis. While scanning paper labeling and using optical character recognition software is an option some firms may choose, it is not required. The labeling can be transcribed into a word processing format and then converted. However, we did increase the time estimate for such conversions by an additional 2 hours and we also increased our estimate of the percent of labeling that is included in this category because we now believe that number was underestimated.

Annually, we receive approximately 425 applications, 7,125 annual reports, and 1,650 supplements that contain labeling from approximately 625 applicants. Based on our experience working with voluntary electronic submissions, we estimate that overall approximately 70 percent of the applicants (440) already have the necessary software and trained personnel to comply with this rule. The remaining 30 percent of applicants (190) would need to purchase software, which costs about $250. Based on agency review, approximately 78 percent of these 190 applicants 148 would be considered small (fewer than 750 employees for drug product manufacturers and fewer than 500 employees for biological product manufacturers). We estimate that each small applicant would need to purchase only one copy of the software, for a total of 148 copies. The remaining 22 percent of applicants (42) that would need to purchase software are large entities. The agency estimates that each of these firms would need to purchase about 3 copies of the software or 126 copies (42 x 3). Thus, the total one-time cost for software is $68,500 ((148 + 126) x $250). Training costs include the cost of the software training course (estimated at $150 for a 6-hour course) and the wages of the employees attending the course (assuming an average weighted wage rate of $40 per hour). We estimate that applicants would train two employees per software purchase (548 employees), for a total one-time cost of $213,720 (($150 + (6 hours x $40)) x 548). The total one-time cost for software and training combined is estimated to be $282,220 ($68,500 + $213,720).

The cost to convert the applicable labeling to an electronic format is a one-time cost. The cost of conversions for new NDAs, BLAs, and ANDAs will be nominal because the file would be in a format easily convertible to PDF. The PDF file, being the finished product, would be proofread for quality assurance. Annually, we receive approximately 1,650 supplements that would be subject to the final rule. Because the majority of products for which supplements are submitted would have had labeling changes within the last few years, most labeling files would be easily accessible. Currently, the labeling in about 40 percent (660) of the supplements received is submitted in a PDF format and would require an estimated additional 15 minutes to comply with this final rule. The labeling in the remaining 60 percent (990) will require an estimated 5 hours to process and proofread. Thus, the total number of hours needed to convert applicable labeling in supplements to a PDF file format is 5,115 ((0.25 x 660) + (5 x 990)).

Labeling in most of the annual reports will also need to be converted. The conversion of this labeling to a PDF file for about 40 percent of NDA annual reports (975). 50 percent of ANDA annual reports (2,295), and 40 percent of BLA annual reports (40), would require additional time to complete because they are not in a format easily convertible to PDF. We estimate that these annual reports would require 10 hours to complete, for a total of 33,100 hours ((975 + 2,295 + 40) x 10). For the content of labeling in the remaining annual reports (3,815), an estimated 40 percent (1,526) would require 15 minutes to process because they are currently in PDF format, and the remaining 2,289 annual reports will require approximately 5 hours to process and proofread, for a total of 11,827 hours ((1,526 x 0.25) + (2,289 x 5)). Thus, the total number of hours needed to convert all applicable labeling to a PDF file format in supplements and annual reports is 50,042 (5,115 + 33,100 + 11,827). Using the weighted average wage rate ($40 per hour), the total one-time costs to convert applicable labeling in supplements and annual reports would be about $2.0 million (50,042 x $40). The cost for the entire rule is estimated to be about $2.3 million ($0.3 million (software and training + $2.0 million labeling)).

Approximately 300 domestic entities would be affected by this final rule, about 240 of which meet the Small Business Administration's definition of a small entity (fewer than 750 employees for drug product manufacturers and fewer than 500 employees for biological product manufacturers). The economic impact of this final rule would vary by firm depending on the number of applications they hold and whether or not the company has PDF capabilities. The number of applications per firm ranges from 1 to 124, with a median of 4 applications per small entity. The average small entity has about 7 applications, and, assuming a worst case scenario—the firm did not have the content of labeling in an electronic format and needed to purchase software and train employees—this rule would cost the average small firm about $4,000 ($1,030 software and training + (7 x 10 hours x $40)), which is about $550 per application. Because these costs would almost certainly be less than 1 percent of product revenues, the agency certifies that this final rule will not have a significant economic impact on a substantial number of small entities.

List of Subjects

21 CFR Part 314

Administrative practice and procedure, Confidential business information, Drugs, Reporting and recordkeeping requirements.

21 CFR Part 601

Administrative practice and procedure, Biologics, Confidential business information.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act, the Public Health Service Act, and under authority delegated to the Commissioner of Food and Drugs, 21 CFR parts 314 and 601 are amended as follows:

PART 314—APPLICATIONS FOR FDA APPROVAL TO MARKET A NEW DRUG

■ 1. The authority citation for 21 CFR part 314 continues to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 353, 355, 355a, 356, 356a, 356b, 356c, 371, 374, 379e.

■ 2. Section 314.50 is amended by revising paragraph (l)(1); by adding headings for paragraphs (l)(2), (l)(3), and (l)(4); by removing from paragraphs (l)(2) and (l)(3) the word "shall" and adding in its place the word "must"; and by adding paragraph (l)(5) to read as follows:

§ 314.50 Content and format of an application.

* * * * *

(l) *Format of an original application.* (1) *Archival copy.* The applicant must submit a complete archival copy of the application that contains the information required under paragraphs (a) through (f) of this section. FDA will maintain the archival copy during the review of the application to permit individual reviewers to refer to information that is not contained in their particular technical sections of the application, to give other agency personnel access to the application for official business, and to maintain in one place a complete copy of the application. Except as required by paragraph (l)(1)(i) of this section, applicants may submit the archival copy on paper or in electronic format provided that electronic submissions are made in accordance with part 11 of this chapter.

(i) *Labeling.* The content of labeling required under § 201.100(d)(3) of this chapter (commonly referred to as the package insert or professional labeling), including all text, tables, and figures, must be submitted to the agency in electronic format as described in paragraph (l)(5) of this section. This requirement is in addition to the requirements of paragraph (e)(2)(ii) of this section that copies of the formatted label and all labeling be submitted. Submissions under this paragraph must be made in accordance with part 11 of this chapter, except for the requirements of § 11.10(a), (c) through (h), and (k), and the corresponding requirements of § 11.30.

(ii) [Reserved]

(2) *Review copy.* * * *

(3) *Field copy.* * * *

(4) *Binding folders.* * * *

(5) *Electronic format submissions.* Electronic format submissions must be in a form that FDA can process, review, and archive. FDA will periodically issue guidance on how to provide the electronic submission (e.g., method of transmission, media, file formats, preparation and organization of files). Submissions under this paragraph must be made in accordance with part 11 of this chapter, except for the requirements of § 11.10(a), (c) through (h), and (k), and the corresponding requirements of § 11.30.

■ 3. Section 314.81 is amended by revising paragraph (b)(2)(iii) to read as follows:

§ 314.81 Other postmarketing reports.

* * * * *

(b) * * *

(2) * * *

(iii) *Labeling.* (*a*) Currently used professional labeling, patient brochures or package inserts (if any), and a representative sample of the package labels.

(*b*) The content of labeling required under § 201.100(d)(3) of this chapter (i.e., the package insert or professional labeling), including all text, tables, and figures, must be submitted in electronic format. Electronic format submissions must be in a form that FDA can process, review, and archive. FDA will periodically issue guidance on how to provide the electronic submission (e.g., method of transmission, media, file formats, preparation and organization of files). Submissions under this paragraph must be made in accordance with part 11 of this chapter, except for the requirements of § 11.10(a), (c) through (h), and (k), and the corresponding requirements of § 11.30.

(*c*) A summary of any changes in labeling that have been made since the last report listed by date in the order in which they were implemented, or if no changes, a statement of that fact.

* * * * *

■ 4. Section 314.94 is amended by revising paragraph (d)(1) to read as follows:

§ 314.94 Content and format of an abbreviated application.

* * * * *

(d) * * * (1) The applicant must submit a complete archival copy of the abbreviated application as required under paragraphs (a) and (c) of this section. FDA will maintain the archival copy during the review of the application to permit individual reviewers to refer to information that is not contained in their particular technical sections of the application, to give other agency personnel access to

the application for official business, and to maintain in one place a complete copy of the application.

(i) *Format of submission.* An applicant may submit portions of the archival copy of the abbreviated application in any form that the applicant and FDA agree is acceptable, except as provided in paragraph (d)(1)(ii) of this section.

(ii) *Labeling.* The content of labeling required under § 201.100(d)(3) of this chapter (commonly referred to as the package insert or professional labeling), including all text, tables, and figures, must be submitted to the agency in electronic format as described in paragraph (d)(1)(iii) of this section. This requirement applies to the content of labeling for the proposed drug product only and is in addition to the requirements of paragraph (a)(8)(ii) of this section that copies of the formatted label and all proposed labeling be submitted. Submissions under this paragraph must be made in accordance with part 11 of this chapter, except for the requirements of § 11.10(a), (c) through (h), and (k), and the corresponding requirements of § 11.30.

(iii) *Electronic format submissions.* Electronic format submissions must be in a form that FDA can process, review, and archive. FDA will periodically issue guidance on how to provide the electronic submission (e.g., method of transmission, media, file formats, preparation and organization of files).

* * * * *

PART 601—LICENSING

■ 5. The authority citation for 21 CFR part 601 continues to read as follows:

Authority: 15 U.S.C. 1451–1561; 21 U.S.C. 321, 351, 352, 353, 355, 356b, 360, 360c–360f, 360h–360j, 371, 374, 379e, 381; 42 U.S.C. 216, 241, 262, 263, 264; sec. 122, Pub. L. 105–115, 111 Stat. 2322 (21 U.S.C. 355 note).

■ 6. Add 601.14 to subpart C to read as follows:

§ 601.14 Regulatory submissions in electronic format.

(a) *General.* Electronic format submissions must be in a form that FDA can process, review, and archive. FDA will periodically issue guidance on how to provide the electronic submission (e.g., method of transmission, media, file formats, preparation and organization of files.)

(b) *Labeling.* The content of labeling required under § 201.100(d)(3) of this chapter (commonly referred to as the package insert or professional labeling), including all text, tables, and figures, must be submitted to the agency in electronic format as described in paragraph (a) of this section. This requirement is in addition to the provisions of §§ 601.2(a) and 601.12(f) that require applicants to submit specimens of the labels, enclosures, and containers, or to submit other final printed labeling. Submissions under this paragraph must be made in accordance with part 11 of this chapter except for the requirements of § 11.10(a), (c) through (h), and (k), and the corresponding requirements of § 11.30.

Dated: July 31, 2003.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 03–30641 Filed 12–9–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9097]

RIN 1545–AX22

Arbitrage Restrictions Applicable to Tax-Exempt Bonds Issued by State and Local Governments

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations on the arbitrage restrictions applicable to tax-exempt bonds issued by state and local governments. The regulations affect issuers of tax-exempt bonds and provide a safe harbor for qualified administrative costs for broker's commissions and similar fees incurred in connection with the acquisition of guaranteed investment contracts or investments purchased for a yield restricted defeasance escrow.

DATES: *Effective Date:* These regulations are effective February 9, 2004.

Applicability Date: For dates of applicability, *see* § 1.148–11(i) of these regulations.

FOR FURTHER INFORMATION CONTACT: Rose M. Weber, (202) 622–3980 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document amends 26 CFR part 1 under section 148 of the Internal Revenue Code by providing rules for determining when certain brokers' commissions or similar fees are qualified administrative costs (the final regulations). On August 27, 1999, the IRS published in the **Federal Register** a notice of proposed rulemaking (REG–105565–99)(64 FR 46876) (the proposed regulations). The proposed regulations modify § 1.148–5(e)(2) to provide a safe harbor for determining whether brokers' commissions and similar fees incurred in connection with the acquisition of guaranteed investment contracts or investments purchased for a yield restricted defeasance escrow are treated as qualified administrative costs. Comments on the proposed regulations were received and a hearing was held on December 14, 1999. After consideration of all the comments, the proposed regulations are adopted as revised by this Treasury decision. The revisions are discussed below.

Explanation of Provisions

I. Existing Regulations

A. Investment Yield and Administrative Costs

Section 148 limits the yield on investments purchased with proceeds of tax-exempt bonds. In general, under § 1.148–5(b)(1) of the existing regulations, the yield on an investment is computed by comparing receipts from the investment to payments for the investment. Section 1.148–5(e)(1) provides that the yield on an investment generally is not adjusted to take into account any costs or expenses paid, directly or indirectly, to purchase, carry, sell, or retire the investment (administrative costs). However, § 1.148–5(e)(2)(i) provides that the yield on nonpurpose investments (as defined in § 1.148–1(b)) is adjusted to take into account qualified administrative costs. Qualified administrative costs are reasonable, direct administrative costs, other than carrying costs, such as separately stated brokerage or selling commissions, but not legal and accounting fees, recordkeeping, custody, and similar costs. In general, under § 1.148–5(e)(2)(i), administrative costs are not reasonable unless they are comparable to administrative costs that would be charged for the same investment or a reasonably comparable investment if acquired with a source of funds other than gross proceeds of tax-exempt bonds (the comparability standard).

B. Special Rule for Guaranteed Investment Contracts

Section 1.148–5(e)(2)(iii) of the existing regulations provides that, for a guaranteed investment contract, a broker's commission or similar fee paid on behalf of either an issuer or the guaranteed investment contract provider generally is a qualified administrative cost to the extent that the present value of the commission, as of the date the contract is allocated to the issue, does not exceed the lesser of (x) a reasonable amount within the meaning of § 1.148–5(e)(2)(i) or (y) the present value of annual payments equal to .05 percent of the weighted average amount reasonably expected to be invested each year of the term of the contract. Present value is computed using the taxable discount rate used by the parties to compute the commission, or if not readily ascertainable, the yield to the issuer on the investment contract or other reasonable taxable discount rate.

C. Special Rule for Yield Restricted Defeasance Escrows

Section 1.148–5(e)(2)(iv) of the existing regulations provides that, for investments purchased for a yield restricted defeasance escrow, a fee paid to a bidding agent is a qualified administrative cost only if the fee is comparable to a fee that would be charged for a reasonably comparable investment if acquired with a source of funds other than gross proceeds of tax-exempt bonds, and it is reasonable. The fee is deemed to meet both the comparability and reasonableness requirements if it does not exceed the lesser of $10,000 or .1 percent of the initial principal amount of investments deposited in the yield restricted defeasance escrow.

II. Proposed Regulations

The proposed regulations were issued in response to comments stating that issuers were having difficulty applying § 1.148–5(e)(2)(iii) and (iv), primarily because of uncertainty about whether a particular broker's commission or similar fee is reasonable. The proposed regulations delete the existing provisions of § 1.148–5(e)(2)(iii) and (iv) and create a single rule for qualified administrative costs that treats a broker's commission or similar fee incurred in connection with a guaranteed investment contract or investments purchased for a yield restricted defeasance escrow as a qualified administrative cost if the fee is reasonable within the meaning of § 1.148–5(e)(2)(i) of the existing regulations.

The proposed regulations also set forth a safe harbor, which treats a broker's commission or similar fee incurred in connection with the acquisition of a guaranteed investment contract or investments purchased for a yield restricted defeasance escrow as reasonable within the meaning of § 1.148–5(e)(2)(i) if two requirements are met. Under the first requirement for the safe harbor, the amount of the broker's commission or similar fee treated by the issuer as a qualified administrative cost cannot exceed the lesser of $25,000 or 0.2 percent of the computational base (the per-investment safe harbor). For guaranteed investment contracts, the computational base is the aggregate amount reasonably expected as of the issue date to be deposited over the term of the contract. For example, for a guaranteed investment contract used to earn a return on what otherwise would be idle cash balances from maturing investments in a yield restricted defeasance escrow, the aggregate amount reasonably expected to be deposited includes all periodic deposits reasonably expected to be made pursuant to the terms of the contract. For investments, other than guaranteed investment contracts, deposited in a yield restricted defeasance escrow, the computational base is the initial amount invested in those investments. Under the second requirement for the safe harbor, for any issue of bonds, the issuer cannot treat as qualified administrative costs more than $75,000 in brokers' commissions or similar fees with respect to all guaranteed investment contracts and investments for yield restricted defeasance escrows purchased with gross proceeds of the issue (the per-issue safe harbor).

III. Final Regulations

A. Safe Harbor Approach

Some commentators suggested that the existing regulations, coupled with competitive market forces, work well to produce reasonable brokers' fees. Commentators also suggested that the proposed regulations will eliminate much of the incentive for the independent bidding agent to actively participate in the market, with the result that, in many cases, tax-exempt bond proceeds will be placed in lower-yielding and often riskier investments. These commentators recommended against adopting the safe harbor in the proposed regulations.

Other commentators suggested that the existing regulations do not work well. They stated that the current rules provide little practical guidance upon which an issuer can rely to determine whether a broker's fee for a guaranteed investment contract is a reasonable amount. These commentators recommended that the safe harbor be adopted with modifications. They suggested that the safe harbor will provide a much needed level of certainty.

The IRS and Treasury Department do not believe the final regulations will result in tax-exempt bond proceeds being invested in low-yielding, risky investments because the regulations do not adversely affect an issuer's incentive to realize investment earnings and to invest in secure investments. To provide simplicity and certainty, the final regulations retain the safe harbor, with certain modifications discussed below. The final regulations do not limit the amount of brokers' fees that may be paid by issuers. Thus, for example, the final regulations do not restrict the ability of an issuer to pay a particular fee that exceeds the safe harbor amount. Furthermore, brokers' commissions or similar fees in excess of the safe harbor are qualified administrative costs if they are reasonable within the meaning of § 1.148–5(e)(2)(i).

B. Per-Investment Safe Harbor

Commentators suggested that, if the per-investment safe harbor is retained, it should be increased. These commentators stated that in some circumstances the safe harbor does not reflect the value provided by brokers, particularly in the case of small or large transactions and long-term debt service reserve fund investments. Suggestions for modifying the per-investment safe harbor included adding a minimum fee for smaller transactions and a sliding scale for larger transactions. Commentators also suggested increasing the computational base for long-term guaranteed investment contracts by treating them as a series of shorter-term contracts.

The final regulations increase the $25,000 amount to $30,000 and provide for a minimum fee of $3,000. Thus, if 0.2 percent of the computational base is less than $3,000, the per-investment safe harbor is $3,000. The final regulations do not adopt a sliding scale and do not treat long-term contracts as a series of shorter-term contracts because the IRS and Treasury Department have concluded that the per-investment safe harbor in the final regulations provides much needed certainty without requiring issuers to pay less than fair market value for brokers' fees.

C. Per-Issue Safe Harbor

Commentators recommended that the per-issue safe harbor be increased or eliminated. Some commentators suggested replacing the per-issue safe harbor with an anti-abuse rule to prevent the artificial creation of multiple investments when a single investment would be appropriate. Suggestions included aggregating separate investments that (1) are made at or about the same time if the bond proceeds being invested have similar

rebate or yield characteristics, or (2) would normally be bid together as a single investment unless there was a good business reason for the separation.

The final regulations retain the per-issue safe harbor and increase the $75,000 amount to $85,000. To maintain simplicity and certainty, the final regulations do not adopt the suggestion to replace the per-issue safe harbor with an anti-abuse rule. The IRS and Treasury Department have concluded that the per-issue safe harbor in the final regulations limits artificial separation of investments without requiring issuers to pay less than fair market value for brokers' fees.

D. Fees in Excess of Safe Harbor

Some commentators requested guidance on the factors for determining whether a fee in excess of the safe harbor is reasonable. Suggested factors included the duration of the contract, the complexity of its terms, the creditworthiness of the issuer, the availability of providers to deliver the contract, the presence of unusual features in the issue or the contract, custom in the industry, and the level of risk to the broker. The IRS and Treasury Department have considered the suggested factors and have concluded that they do not represent administrable standards for determining whether a particular fee is reasonable. Therefore, the final regulations do not specify factors for determining the reasonableness of fees in excess of the safe harbor. Under the final regulations, the determination of whether a fee is reasonable is made based on all the facts and circumstances, including whether the fee satisfies the comparability standard in § 1.148–5(e)(2)(i).

Some commentators suggested that the portion of a fee that is within the safe harbor should be a qualified administrative cost, even if the total fee exceeds the safe harbor. The final regulations adopt this suggestion.

E. Computational Base for Guaranteed Investment Contracts

Commentators suggested that the computational base for a guaranteed investment contract should be determined as of the date the contract is acquired, rather than the issue date, so that the safe harbor may be applied to guaranteed investment contracts that are not anticipated on the issue date. The final regulations adopt this suggestion.

F. Cost-of-Living Adjustments

Commentators requested that the final regulations provide for periodic adjustments to the dollar limits in the safe harbor to reflect inflation. The final regulations provide a cost-of-living adjustment for both the per-investment safe harbor and the per-issue safe harbor. The adjusted safe harbor dollar amounts will be published in the annual revenue procedure that sets forth inflation-adjusted items.

G. Interpretative Rule

One commentator questioned whether the proposed regulations should have been classified as a legislative rule. The IRS and Treasury Department have reviewed the applicable authorities and have determined that the regulations are properly classified as an interpretative rule.

Effective Dates

The final regulations apply to bonds sold on or after February 9, 2004. In the case of bonds sold before February 9, 2004, that are subject to § 1.148–5 (pre-effective date bonds), issuers may apply the final regulations, in whole but not in part, with respect to transactions entered into on or after December 11, 2003. If an issuer applies the final regulations to pre-effective date bonds, the per-issue safe harbor is applied by taking into account all brokers' commissions or similar fees with respect to guaranteed investment contracts and investments for yield restricted defeasance escrows that the issuer treats as qualified administrative costs for the issue, including all such commissions or fees paid before February 9, 2004. For purposes of §§ 1.148–5(e)(2)(iii)(B)(*3*) and 1.148–5(e)(2)(iii)(B)(*6*) of the final regulations (relating to cost-of-living adjustments), transactions entered into before 2003 are treated as entered into in 2003.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because the rule does not impose a collection of information on small entities, the provisions of the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply.

Drafting Information

The principal authors of these final regulations are Rose M. Weber and Rebecca L. Harrigal, Office of Chief Counsel, IRS (TE/GE), and Stephen J. Watson, Office of Tax Policy, Treasury Department. However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

■ Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

■ 1. The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

■ 2. Section 1.148–0 is amended by revising the entry in paragraph (c) for § 1.148–11 (i) to read as follows:

§ 1.148–0 Scope and table of contents.

* * * * *

(c) Table of contents.

* * * * *

§ 1.148–11 Effective dates.

* * * * *

(i) Special rule for certain broker's commissions and similar fees.

* * * * *

■ 3. In § 1.148–5, paragraph (e) is amended as follows:

■ 1. Paragraph (e)(2)(iii) is revised.

■ 2. Paragraph (e)(2)(iv) is removed.

The revision reads as follows:

§ 1.148–5 Yield and valuation of investments.

* * * * *

(e) * * *

(2) * * *

(iii) *Special rule for guaranteed investment contracts and investments purchased for a yield restricted defeasance escrow*—(A) *In general.* An amount paid for a broker's commission or similar fee with respect to a guaranteed investment contract or investments purchased for a yield restricted defeasance escrow is a qualified administrative cost if the fee is reasonable within the meaning of paragraph (e)(2)(i) of this section.

(B) *Safe harbor—(1) In general.* A broker's commission or similar fee with respect to the acquisition of a guaranteed investment contract or investments purchased for a yield restricted defeasance escrow is reasonable within the meaning of paragraph (e)(2)(i) of this section to the extent that—

(*i*) The amount of the fee that the issuer treats as a qualified administrative cost does not exceed the lesser of:

(*A*) $30,000 and

(*B*) 0.2% of the computational base or, if more, $3,000; and

(*ii*) For any issue, the issuer does not treat as qualified administrative costs more than $85,000 in brokers' commissions or similar fees with respect to all guaranteed investment contracts and investments for yield restricted defeasance escrows purchased with gross proceeds of the issue.

(*2*) *Computational base.* For purposes of paragraph (e)(2)(iii)(B)*(1)* of this section, computational base shall mean—

(*i*) For a guaranteed investment contract, the amount of gross proceeds the issuer reasonably expects, as of the date the contract is acquired, to be deposited in the guaranteed investment contract over the term of the contract, and

(*ii*) For investments (other than guaranteed investment contracts) to be deposited in a yield restricted defeasance escrow, the amount of gross proceeds initially invested in those investments.

(*3*) *Cost-of-living adjustment.* In the case of a calendar year after 2004, each of the dollar amounts in paragraph (e)(2)(iii)(B)*(1)* of this section shall be increased by an amount equal to—

(*i*) Such dollar amount; multiplied by

(*ii*) The cost-of-living adjustment determined under section 1(f)(3) for such calendar year by using the language "calendar year 2003" instead of "calendar year 1992" in section 1(f)(3)(B).

(*4*) *Rounding.* If any increase determined under paragraph (e)(2)(iii)(B)*(3)* of this section is not a multiple of $1,000, such increase shall be rounded to the nearest multiple thereof.

(*5*) *Applicable year for cost-of-living adjustment.* The cost-of-living adjustments under paragraph (e)(2)(iii)(B)*(3)* of this section shall apply to the safe harbor amounts under paragraph (e)(2)(iii)(B)*(1)* of this section based on the year the guaranteed investment contract or the investments for the yield restricted defeasance escrow, as applicable, are acquired.

(*6*) *Cost-of-living adjustment to determine remaining amount of per-issue safe harbor*—(i) *In general.* This paragraph (e)(2)(iii)(B)*(6)* applies to determine the portion of the safe harbor amount under paragraph (e)(2)(iii)(B)(1)(*ii*) of this section, as modified by paragraph (e)(2)(iii)(B)*(3)* of this section (the per-issue safe harbor), that is available (the remaining amount) for any year (the determination year) if the per-issue safe harbor was partially used in one or more prior years.

(*ii*) *Remaining amount of per-issue safe harbor.* The remaining amount of the per-issue safe harbor for any determination year is equal to the per-issue safe harbor for that year, reduced by the portion of the per-issue safe harbor used in one or more prior years.

(*iii*) *Portion of per-issue safe harbor used in prior years.* The portion of the per-issue safe harbor used in any prior year (the prior year) is equal to the total amount of broker's commissions or similar fees paid in connection with guaranteed investment contracts or investments for a yield restricted defeasance escrow acquired in the prior year that the issuer treated as qualified administrative costs for the issue, multiplied by a fraction the numerator of which is the per-issue safe harbor for the determination year and the denominator of which is the per-issue safe harbor for the prior year. See paragraph (e)(2)(iii)(C) *Example 2* of this section.

(C) *Examples.* The following examples illustrate the application of the safe harbor in paragraph (e)(2)(iii)(B) of this section:

Example 1. Multipurpose issue. In 2003, the issuer of a multipurpose issue uses brokers to acquire the following investments with gross proceeds of the issue: a guaranteed investment contract for amounts to be deposited in a construction fund (construction GIC), Treasury securities to be deposited in a yield restricted defeasance escrow (Treasury investments) and a guaranteed investment contract that will be used to earn a return on what otherwise would be idle cash balances from maturing investments in the yield restricted defeasance escrow (the float GIC). The issuer deposits $22,000,000 into the construction GIC and reasonably expects that no further deposits will be made over its term. The issuer uses $8,040,000 of the proceeds to purchase the Treasury investments. The issuer reasonably expects that it will make aggregate deposits of $600,000 to the float GIC over its term. The brokers' fees are $30,000 for the construction GIC, $16,080 for the Treasury investments and $3,000 for the float GIC. The issuer has not previously treated any brokers' commissions or similar fees as qualified administrative costs. The issuer may claim all $49,080 in brokers' fees for these investments as qualified administrative costs because the fees do not exceed the safe harbors in paragraph (e)(2)(iii)(B) of this section. Specifically, each of the brokers' fees equals the lesser of $30,000 and 0.2% of the computational base (or, if more, $3,000) (*i.e.*, lesser of $30,000 and 0.2% × $22,000,000 for the construction GIC; lesser of $30,000 and 0.2% × $8,040,000 for the Treasury investments; and lesser of $30,000 and $3,000 for the float GIC). In addition, the total amount of brokers' fees claimed by the issuer as qualified administrative costs ($49,080) does not exceed the per-issue safe harbor of $85,000.

Example 2. Cost-of-living adjustment. In 2003, an issuer issues bonds and uses gross proceeds of the issue to acquire two guaranteed investment contracts. The issuer pays a total of $50,000 in brokers' fees for the two guaranteed investment contracts and treats these fees as qualified administrative costs. In a year subsequent to 2003 (Year Y), the issuer uses gross proceeds of the issue to acquire two additional guaranteed investment contracts, paying a total of $20,000 in broker's fees for the two guaranteed investment contracts, and treats those fees as qualified administrative costs. For Year Y, applying the cost-of-living adjustment under paragraph (e)(2)(iii)(B)(*3*) of this section, the safe harbor dollar limits under paragraph (e)(2)(iii)(B)(*1*) of this section are $3,000, $32,000 and $90,000. The remaining amount of the per-issue safe harbor for Year Y is $37,059 ($90,000–[$50,000 × $90,000/$85,000]). The broker's fees in Year Y do not exceed the per-issue safe harbor under paragraph (e)(2)(iii)(B)(*1*)(*ii*) (as modified by paragraph (e)(2)(iii)(B)(*3*)) of this section because the broker's fees do not exceed the remaining amount of the per-issue safe harbor determined under paragraph (e)(2)(iii)(B)(*6*) of this section for Year Y. In a year subsequent to Year Y (Year Z), the issuer uses gross proceeds of the issue to acquire an additional guaranteed investment contract, pays a broker's fee of $15,000 for the guaranteed investment contract, and treats the broker's fee as a qualified administrative cost. For Year Z, applying the cost-of-living adjustment under paragraph (e)(2)(iii)(B)(*3*) of this section, the safe harbor dollar limits under paragraph (e)(2)(iii)(B)(*1*) of this section are $3,000, $33,000 and $93,000. The remaining amount of the per-issue safe harbor for Year Z is $17,627 ($93,000—[($50,000 × $93,000/$85,000) + ($20,000 × $93,000/$90,000)]). The broker's fee incurred in Year Z does not exceed the per-issue safe harbor under paragraph (e)(2)(iii)(B)(*1*)(*ii*) (as modified by paragraph (e)(2)(iii)(B)(*3*)) of this section because the broker's fee does not exceed the remaining amount of the per-issue safe harbor determined under paragraph (e)(2)(iii)(B)(*6*) of this section for Year Z. See paragraph (e)(2)(iii)(B)(*6*) of this section.

* * * * *

■ 4. Section 1.148–11 is amended by revising paragraph (i) to read as follows:

§ 1.148–11 Effective dates.

* * * * *

(i) *Special rule for certain broker's commissions and similar fees.* Section 1.148–5(e)(2)(iii) applies to bonds sold on or after February 9, 2004. In the case of bonds sold before February 9, 2004, that are subject to § 1.148–5 (pre-effective date bonds), issuers may apply § 1.148–5(e)(2)(iii), in whole but not in part, with respect to transactions entered into on or after December 11, 2003. If an issuer applies § 1.148–5(e)(2)(iii) to pre-effective date bonds, the per-issue safe harbor in § 1.148–5(e)(2)(iii)(B)(*1*)(*ii*) is applied by taking into account all brokers' commissions or similar fees with respect to guaranteed investment contracts and investments for yield restricted defeasance escrows

that the issuer treats as qualified administrative costs for the issue, including all such commissions or fees paid before February 9, 2004. For purposes of §§ 1.148–5(e)(2)(iii)(B)(*3*) and 1.148–5(e)(2)(iii)(B)(*6*) (relating to cost-of-living adjustments), transactions entered into before 2003 are treated as entered into in 2003.

Mark E. Matthews,

Deputy Commissioner for Services and Enforcement.

Approved: December 2, 2003.

Gregory Jenner,

Deputy Assistant Secretary of the Treasury.

[FR Doc. 03–30635 Filed 12–10–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9098]

RIN 1545–BC77

Guidance Under Section 1502; Application of Section 108 to Members of a Consolidated Group

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Temporary regulations.

SUMMARY: This document contains amendments to temporary regulations under section 1502 that govern the application of section 108 when a member of a consolidated group realizes discharge of indebtedness income. These temporary regulations affect corporations filing consolidated returns. The text of the temporary regulations also serves as the text of the proposed regulations set forth in the notice of proposed rulemaking on this subject in the proposed rules section in this issue of the **Federal Register**.

DATES: *Effective Date:* These regulations are effective December 10, 2003.

FOR FURTHER INFORMATION CONTACT: Amber Renee Cook or Marie C. Milnes-Vasquez at (202) 622–7530 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

Section 61(a)(12) of the Internal Revenue Code (Code) provides that gross income includes income from the discharge of indebtedness, except as provided by law. Section 108(a) provides that, in certain cases, gross income of a C corporation does not include certain amounts of discharge of indebtedness income that would otherwise be includible in gross income. In these cases, however, the taxpayer must reduce its tax attributes, including the basis of property, by the excluded amount of discharge of indebtedness income (excluded COD income). This provision reflects Congressional intent of "deferring, but eventually collecting within a reasonable period, tax on ordinary income realized from debt discharge." *See* H.R. Rep. 96–833 at 9 (1980); S. Rep. No. 96–1035 at 10 (1980).

On September 4, 2003, the IRS and Treasury Department published in the **Federal Register** a notice of proposed rulemaking (REG–132760–03, 68 FR 52542) and temporary regulations (TD 9089, 68 FR 52487) under section 1502 (the original regulations). The original regulations provide guidance regarding the determination of the attributes that are available for reduction when a member of a consolidated group realizes excluded COD income and the method for reducing those attributes. As explained in the preamble to the original regulations, those regulations adopt a consolidated approach that is intended to reduce all attributes that are available to the debtor member and contain a rule governing the order in which attributes are reduced. In particular, under the original regulations, the attributes attributable to the debtor member are first subject to reduction. For this purpose, attributes attributable to the debtor member include (1) consolidated attributes attributable to the debtor member, (2) attributes that arose in separate return limitation years of the debtor member, and (3) the basis of property of the debtor member. To the extent that the excluded COD income exceeds the attributes attributable to the debtor member, the original regulations require the reduction of consolidated attributes attributable to other members and attributes attributable to other members that arose (or are treated as arising) in a separate return limitation year to the extent that the debtor member is a member of the separate return limitation year subgroup with respect to such attribute.

Explanation of Provisions

The IRS and Treasury Department have become aware that the original regulations may not provide for the reduction of all the attributes that are in fact available to the debtor member. In particular, those regulations may not require the reduction of tax attributes attributable to members other than the debtor member that arise in a separate return year and that are not subject to a SRLY limitation. Such attributes, for example, include attributes from separate return limitation years that are not subject to a SRLY limitation as a result of the application of the overlap rule of § 1.1502–15(g) or § 1.1502–21(g).

These temporary regulations, therefore, amend the original regulations to include among the tax attributes that are subject to reduction, after the reduction of the tax attributes attributable to the debtor member, tax attributes attributable to members other than the debtor member (other than asset basis) that arose in a separate return year or that arose (or are treated as arising) in a separate return limitation year to the extent that no SRLY limitation applies to the use of such attributes by the group. This amendment is consistent with the approach of the original regulations to make available for reduction all of the attributes that are available to offset income of the debtor member.

Effective Date

These amendments to the original regulations generally apply to discharges of indebtedness that occur after August 29, 2003, but only if the discharge occurs during a taxable year the original return for which is due (without regard to extensions) after December 10, 2003.

Other Issues

The IRS and Treasury Department are aware that there are a number of other technical issues that have been identified regarding the operation of the original regulations. The IRS and Treasury Department are currently studying these issues, including the application of section 1245 to property the basis of which has been reduced, the timing of certain basis adjustments, and the timing of taking into account certain excess loss accounts. It is expected that guidance regarding these issues will be issued in the near future and may available on a retroactive basis.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. These temporary regulations are necessary to provide taxpayers with immediate guidance regarding the application of section 108 when a member of a consolidated group realizes discharge of indebtedness income that is excluded from gross income and the application of previously promulgated regulations regarding such application. Accordingly, good cause is found for dispensing with notice and public procedure pursuant to 5 U.S.C. 553(b)(B) and with a delayed effective date pursuant to 5 U.S.C. 553(d)(3). For applicability of the Regulatory Flexibility Act, please refer to the cross-reference notice of proposed rulemaking published elsewhere in this issue of the **Federal Register**. Pursuant to section 7805(f) of the Code, these temporary regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Drafting Information

The principal author of these regulations is Marie C. Milnes-Vasquez of the Office of Associate Chief Counsel (Corporate). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

■ Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

■ 1. The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Section 1.1502–28T also issued under 26 U.S.C. 1502. * * *

■ 2. Section 1.1502–28T is amended by revising paragraphs (a)(4) and (d) to read as follows:

§ 1.1502–28T Consolidated section 108 (temporary).

(a) * * *

(4) *Reduction of certain tax attributes attributable to other members.* To the extent that, pursuant to paragraph (a)(2) of this section, the excluded COD income is not applied to reduce the tax attributes attributable to the member that realizes the excluded COD income, after the application of paragraph (a)(3) of this section, such amount shall be applied to reduce the remaining consolidated tax attributes of the group as provided in section 108 and this section. Such amount also shall be applied to reduce the tax attributes attributable to members that arose (or are treated as arising) in a separate return limitation year to the extent that the member that realizes excluded COD income is a member of the separate return limitation year subgroup with respect to such attribute if a SRLY limitation applies to the use of such attribute. In addition, such amount shall be applied to reduce the tax attributes attributable to members that arose in a separate return year or that arose (or are treated as arising) in a separate return limitation year if no SRLY limitation applies to the use of such attribute. The reduction of each tax attribute pursuant to the three preceding sentences shall be made in the order prescribed in section 108 and pursuant to the principles of § 1.1502–21T(b)(1). Except as otherwise provided in this paragraph (a)(4), a tax attribute that arose in a separate return year or that arose (or is treated as arising) in a separate return limitation year is not subject to reduction pursuant to this paragraph (a)(4). Basis in assets is not subject to reduction pursuant to this paragraph (a)(4). Finally, to the extent that the realization of excluded COD income by a member pursuant to paragraph (a)(3) does not reduce a tax attribute attributable to such lower-tier member, such excess shall not be applied to reduce tax attributes attributable to any member pursuant to this paragraph (a)(4).

* * * * *

(d) *Effective dates.* This section other than paragraph (a)(4) of this section applies to discharges of indebtedness that occur after August 29, 2003. Paragraph (a)(4) of this section applies to discharges of indebtedness that occur after August 29, 2003, but only if the discharge occurs during a taxable year the original return for which is due (without regard to extensions) after December 10, 2003. However, groups may apply paragraph (a)(4) of this section to discharges of indebtedness that occur after August 29, 2003, and during a taxable year the original return for which is due (without regard to extensions) on or before December 10, 2003. For discharges of indebtedness that occur after August 29, 2003, and during a taxable year the original return for which is due (without regard to extensions) on or before December 10, 2003, paragraph (a)(4) of this section shall apply as in effect on August 29, 2003.

Mark E. Matthews,

Deputy Commissioner for Services and Enforcement.

Approved: December 2, 2003.

Gregory Jenner,

Deputy Assistant Secretary of the Treasury.

[FR Doc. 03–30636 Filed 12–10–03; 8:45 am]

BILLING CODE 4830–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[IN159–1a; FRL–7598–6]

Approval and Promulgation of Air Quality Implementation Plans; Indiana; Oxides of Nitrogen Regulations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving revisions to the oxides of nitrogen (NO_X) budget trading program submitted by Indiana on June 26, 2003, and August 4, 2003. These changes revise Indiana's NO_X State Implementation Plan (SIP) and NO_X budget approved by EPA on November 8, 2001. The most significant change adds 17 units from three sources to the NO_X trading portion of the Indiana plan. The plan revision also includes: A compliance date change to accommodate revised deadlines under the NO_X SIP call; a revised definition of "energy efficiency project" to include anaerobic digestion systems; the addition of formulas to describe an energy efficiency and renewable energy "set aside"; and minor wording changes and correction of typographical errors. These changes are consistent with Indiana's previously approved "Phase I budget."

DATES: This rule is effective on January 26, 2004, unless EPA receives relevant adverse written comments by January 12, 2004. If adverse comment is received, EPA will publish a timely withdrawal of the rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Written comments should be sent to: J. Elmer Bortzer, Chief, Criteria Pollutant Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, *bortzer.jay@epa.gov*. Comments may also be submitted electronically or through hand delivery/courier, please follow the detailed instructions described in subsection (B)(1)(i) through (iii) of the Supplementary Information section.

You may obtain a copy of the submittal and plan revisions at the above address. Please telephone John Paskevicz at (312) 886–6084 if you intend to visit the Region 5 office.

FOR FURTHER INFORMATION CONTACT: John Paskevicz, Engineer, Criteria Pollutant Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, Chicago, Illinois 60604. E-Mail Address: *paskevicz.john@epa.gov*.

SUPPLEMENTARY INFORMATION:

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This **SUPPLEMENTARY INFORMATION** section is organized as follows:

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Throughout this document, the term "you" refers to the reader of this rule and/or to sources subject to the State rule, and the terms "we", "us", or "our" refer to EPA.

I. General Information

A. How Can I Get Copies of This Document and Other Related Information?

1. The Regional Office has established an official public rulemaking file available for inspection at the Regional Office. EPA has established an official public rulemaking file for this action under "Region 5 Air Docket IN159". The official public file consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public rulemaking file does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public rulemaking file is the collection of materials that is available for public viewing at the Air Programs Branch, Air and Radiation Division, EPA Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604. EPA requests that you contact the contact listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30 excluding Federal holidays.

2. *Electronic Access.* You may access this **Federal Register** document electronically through the *regulations.gov* Web site located at *http://www.regulations.gov* where you can find, review, and submit comments on Federal rules that have been published in the **Federal Register** and are open for comment.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public review at the EPA Regional Office, as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in the official public rulemaking file. The entire printed comment, including the copyrighted material, will be available at the Regional Office for public inspection.

B. How and to Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate rulemaking identification number by including the text "Public comment on Direct Final rulemaking Region 5 Air Docket IN159" in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments.

1. *Electronically.* If you submit an electronic comment as prescribed below, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *E-mail.* Comments may be sent by electronic mail (e-mail) to *bortzer.jay@epa.gov.* Please include the text "Public comment on proposed rulemaking Region 5 Air Docket IN159" in the subject line. EPA's e-mail system is not an "anonymous access" system. If you send an e-mail comment directly without going through *Regulations.gov,* EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket.

ii. *Regulations.gov.* Your use of Regulations.gov is an alternative method of submitting electronic comments to EPA. Go directly to Regulations.gov at *http://www.regulations.gov,* then click on the button "TO SEARCH FOR REGULATIONS CLICK HERE," and select Environmental Protection Agency as the Agency name to search on. The list of current EPA actions available for comment will be listed. Please follow the online instructions for submitting comments. The system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

iii. *Disk or CD ROM.* You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Section 2, directly below. These electronic submissions will be accepted in WordPerfect, Word or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By Mail.* Send your comments to: J. Elmer Bortzer, Chief, Criteria Pollutant Section, Air Programs Branch, (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604. Please include the text "Public comment on Direct Final Rulemaking Regional Air Docket IN159" in the subject line on the first page of your comment.

3. *By Hand Delivery or Courier.* Deliver your comments to: J. Elmer Bortzer, Chief, Criteria Pollutant Section, Air Programs Branch, (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, 18th floor, Chicago, Illinois 60604. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30 excluding Federal holidays.

C. How Should I Submit CBI to the Agency?

Do not submit information that you consider to be CBI electronically to EPA. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the official public regional rulemaking file. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public file and available for public inspection. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

II. Background

On November 8, 2001 (66 FR 56465), EPA approved an Indiana NO_X SIP revision because it fulfilled the NO_X SIP Call Phase I emission budget requirements. That plan addressed emissions from electric generating units, large industrial boilers, turbines and cement kilns, in order to achieve reductions and meet the NO_X budget required by EPA's October 27, 1998, NO_X SIP Call. (63 FR 57357). The regulations approved include 326 Indiana Administrative Code (IAC) 10–3, the NO_X reduction program for specific categories, and 326 IAC 10–4, the NO_X budget trading program.

The amendment to the Indiana plan currently before EPA, also referred to by Indiana as the "NO_X fix-up rule," addresses additional matters, some of which occurred after State adoption of the rule. The revisions consist of: (1) Regulating Ispat Inland Steel's and U.S. Steel's blast furnace gas boilers in 326 IAC 10–4 instead of 326 IAC 10–3; (2) correcting the omission of three boilers at Purdue University and specifying their allowance allocations in 326 IAC 10–4; (3) amending the definition of "energy efficiency projects" to include anaerobic digestion systems; (4) adding three new formulas to the energy efficiency renewable energy "set-aside" provisions; (5) changing compliance and other dates for all sources subject to the NO_X trading program, as a result of a judicial decision; and (6) making minor wording changes and correcting typographical errors.

III. Summary of the State Submittal

A. What Sources Are Affected by This Rule Change?

There are a number of sources affected by this rule change. Purdue University's heating plant consists of four boilers which provide steam and electricity to the school. Three of these boilers were originally classified as "small boilers" in the NO_X SIP Call inventory and therefore, were not included the NO_X rules. However, Indiana has determined that these boilers meet the applicable threshold for the NO_X trading program (250 million BTU per hour). IDEM calculated and allocated allowances for the boilers and included these boilers in 326 IAC 10–4.

When EPA approved Indiana's NO_X SIP on November 8, 2001, we determined that the Indiana submittal met the Phase I NO_X SIP Call budget requirement. The plan included Indiana's Phase I budget demonstration and supporting documentation including initial unit allocations and two new rules: 326 IAC 10–3 and 326 IAC 10–4. The final adopted rule included the regulation of blast furnace gas units under 10–3 rather than 10–4. A total of 25 blast furnace gas boilers at 4 facilities with a maximum design heat input of greater than 250 mmBtu/hr were regulated in 326 IAC 10–3. Since all of the units have a low emission rate on a lb/mmBtu basis, IDEM did not include these units in the trading program and did not require further emission reductions. The State inventory notes all of these units use blast furnace gas, natural gas, and/or coke oven gas to make steam. The steam is needed to operate cold air blowers which provide air to stoves and subsequently to the blast furnaces.

The Indiana submittal addressed here moves 14 units from 2 sources (Ispat Inland and U.S. Steel-Gary Works) from 10–3 to 10–4, making the 14 units at these 2 sources part of the trading program, and makes additional allowances available in the trading budget. This approach however, continues to maintain the total overall NO_X budget for the State as is demonstrated in the revised budget demonstration.

EPA does not generally believe it is appropriate to regulate only a portion of a category of similar sources under a cap and trade program, unless conditions (such as those in the opt-in provisions of the model trading rule in 40 Code of Federal Regulations (CFR) part 96) are imposed in order to address the potential for shifting utilization out of the trading program. When only a portion of a group of similar sources is regulated, there is the potential for utilization to be redistributed from capped to non-capped units in the category in such a way that emissions are shifted from within the trading program, meaning allowances are freed up and total emissions increase. When emissions from all sources in a source category are regulated and accounted for in a cap and trade program, utilization shifts among sources do not increase total emissions. However, for the particular source category involved here, specifically blast furnace gas boilers in the iron and steel industry, there seems to be little or no ability to shift utilization among plants. The boilers are located in proximity to blast furnaces and burn the by-product gas from the furnaces, which are used in the iron making process. The iron making process is integral to the steel making process at an iron and steel plant. The four plants in Indiana are owned and operated by four separate companies. In order for utilization of the blast furnace gas boilers at one plant to be shifted to those at another plant, steel production would have to be shifted, which seems highly unlikely. Given the low energy content and economic value of blast furnace gas itself, it is also highly unlikely that such gas from one plant would be transported to be burned at another plant.

Considering the relatively small emissions and the unlikelihood of utilization and emissions shifting, EPA in this unique case accepts Indiana's proposal to split this particular source category for the purposes of Indiana's NO_X budget trading program. However, EPA intends, as part of its review in 2007 of the results of the NO_X SIP call, to evaluate the impact (including the effect on total emissions) of allowing some, but not all, of the blast furnace gas boilers to participate in the NO_X budget trading program.

The State has demonstrated and we agree that the changes submitted by Indiana will continue to provide for the timely compliance with the State's NO_X budget during the 2007 ozone season. The 2 sources which remain in and are subject to the provisions of 326 IAC 10–3 will not adversely affect the overall budget. We are approving the revision because it meets the requirements of § 51.121(b)(1)(I). While the changes increase the trading budget, the overall Phase I budget for Indiana will continue to be met.

These newly included units will make a very small impact on the Indiana overall NO_X budget. The budget remains within the NO_X budget approved on November 8, 2001, (66 FR 56465). Specifically, the November 2001 plan contained a budget of 233,633 tons of NO_X during the 2007 ozone season. The current revision caps NO_X emissions for the same period at 233,548, well within the previously approved budget.

The rule also adds anaerobic digesters to the list of sources in 326 IAC 10–4–

2 eligible for energy efficiency and renewable energy allowances. Anaerobic digesters are closed, air-tight systems that use bacteria to break down organic matter and produce gases through this natural decomposition. One of the gases produced is methane, a combustible gas which is used to power engines to produce electricity. The purpose of this revision is to expand the number of types of projects eligible for energy efficiency renewable energy "set-asides." Indiana has the flexibility to add to this program projects which it believes will have a positive effect on energy efficiency and generation output, and EPA agrees with this addition.

B. What Additional Changes Has Indiana Made?

IDEM has added three new formulas to the energy efficiency and renewable energy set aside provisions in 326 IAC 10–4–9(e). The reason for this revision is to make allowances available, during the ozone control period, to producers of electricity using systems which are highly efficient.

In addition, the rule has revised dates for compliance, changed from May 1, 2003 to May 1, 2004 as a result of a court decision affecting the NO_X SIP call, *Appalachian Power Co. et al.* v. *EPA*, F.3d (D.C. Cir 2001). Finally, IDEM has made minor wording changes and corrected typographical errors.

C. What Public Review Opportunities Did Indiana Provide?

Public notices were published in November 2002 and April 2003 for the two Indiana Air Pollution Control Board hearings in December 2002 and May 2003, respectively. At both of these hearings, Indiana provided the public and the affected sources with an opportunity to comment on the changes to the Indiana NO_X rules. Indiana also provided copies of the record as part of the submittal of the Indiana NO_X plan.

D. Do the Changes Continue To Meet the NO_X Budget for Indiana?

Indiana provided a revised budget demonstration which takes into account the changes to the rule including the addition of the Ispat Inland, U.S. Steel and Purdue boilers to the trading program. The budget revisions affect only the non-EGU source category, and show a net decrease in the overall Indiana NO_X budget.

The changes for the three sources affect the set-asides for new large units at 326 IAC 10–4–9(e)(1)(A)(ii) and at 326 IAC 10–4–9(e)(1)(B) for energy efficiency and renewable energy projects. The Indiana analysis also demonstrates a net change to the overall Phase I budget to be a negative 85 tons during the ozone season. This decrease is the result of including the Purdue boilers in the trading program and allocating NO_X allowances based on a controlled emissions level. In EPA's November 8, 2001 approval of the 2007 Indiana NO_X SIP, the budget was set at 233,633 tons. In this action, following the implementation of these rule changes, the Indiana revised NO_X budget for the 2007 ozone season is 233,548 tons.

IV. EPA Action

EPA is taking final action to approve revisions to the NO_X SIP submitted by Indiana on June 25, 2003, and August 4, 2003. These revisions: shift certain existing sources from the general NO_X reduction rule to the NO_X trading rule; add additional sources to the NO_X trading rule; change the definition of energy efficiency projects to include anaerobic digestion systems; add three new formulas to the energy efficiency and renewable set aside provisions; change compliance dates in accordance with the 2001 court decision; and make some minor wording and typographical changes and corrections. Indiana's NO_X SIP continues to meet the Phase I budget for EPA's NO_X SIP Call.

In meeting this emissions budget, EPA believes the State will achieve reductions in emissions of NO_X which will have a significant impact on ozone air quality in-state and downwind from sources in Indiana.

In the event we receive meaningful written adverse comment, this direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on a proposal published elsewhere in today's **Federal Register**.

V. Statutory and Executive Order Reviews

Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget.

Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

This action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001).

Regulatory Flexibility Act

This action merely approves state law as meeting federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

Unfunded Mandates Reform Act

Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

Executive Order 13175: Coordination With Indian Tribal Governments

This rule also does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

Executive Order 13132: Federalism

This action also does not have federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act.

Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

This rule is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

National Technology Transfer and Advancement Act

In reviewing SIP submissions, USEPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for USEPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply.

Paperwork Reduction Act

This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. USEPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2). This rule will be effective January 26, 2004.

Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by February 9, 2004. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen oxides, Ozone, Reporting and recordkeeping requirements.

Dated: December 2, 2003.

Bharat Mathur,

Acting Regional Administrator, Region 5.

■ For the reasons stated in the preamble, part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52— [AMENDED]

■ 1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart P—Indiana

■ 2. Section 52.770 is amended by adding paragraph (c)(163) to read as follows:

§ 52.770 Identification of plan.

* * * * *

(c) * * *

(163) On June 26, 2003, the Indiana Department of Environmental Management (IDEM) submitted revisions to 326 IAC 10–3 (NO_X Reduction Program for Specific Source Categories) and 326 IAC 10–4 (NO_X Budget Trading Program) of the Indiana Administrative Code (IAC). Also, on August 4, 2003, IDEM submitted a letter containing the Legislative Service Agency Document #00–54(F) as published in the Indiana Register on August 1, 2003, 26 IR 3550, containing the legal and approving signatures. The revised rules change the Indiana Phase I NO_X budget to 233,548 tons per ozone season for 2007.

(i) Incorporation by reference.

(A) Indiana Pollution Control Board rules: 326 IAC 10–3–1 and 326 IAC 10–4–1, 10–4–2, 10–4–9, 10–4–10, 10–4–13, 10–4–14 and 10–4–15. Adopted by the Indiana Pollution Control Board on May 7, 2003. Filed with the Secretary on July 7, 2003. Published at Indiana Register Volume 26, Number 11, August 1, 2003 (26 IR 3550). Effective August 6, 2003.

[FR Doc. 03–30696 Filed 12–10–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 60, 61, and 63

[FRL–7598–4]

Delegation of Authority to the States of Iowa; Kansas; Missouri; Nebraska; Lincoln-Lancaster County, NE; and City of Omaha, NE, for New Source Performance Standards (NSPS), National Emission Standards for Hazardous Air Poliutants (NESHAP); and Maximum Achievable Control Technology (MACT) Sources

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of delegation of authority.

SUMMARY: The states of Iowa, Kansas, Missouri, Nebraska, and the local agencies of Lincoln-Lancaster County, Nebraska, and city of Omaha, Nebraska, have submitted updated regulations for delegation of EPA authority for implementation and enforcement of NSPS, NESHAP, and MACT. The submissions cover new EPA standards and, in some instances, revisions to standards previously delegated. EPA's review of the pertinent regulations shows that they contain adequate and effective procedures for the implementation and enforcement of these Federal standards. This action informs the public of delegations to the above-mentioned agencies.

DATES: This document is effective on December 11, 2003. The dates of delegation can be found in the **SUPPLEMENTARY INFORMATION** section of this document.

ADDRESSES: Copies of documents relative to this action are available for public inspection during normal business hours at the Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101. The interested persons wanting to examine these documents should make an appointment with the office at least 24 hours in advance.

Effective immediately, all notifications, applications, reports, and other correspondence required pursuant to the newly delegated standards and revisions identified in this document should be submitted to the Region 7 office, and, with respect to sources located in the jurisdictions identified in this document, to the following addresses:

Iowa Department of Natural Resources, Air Quality Bureau, 7900 Hickman Road, Urbandale, Iowa 50322.

Kansas Department of Health and Environment, Bureau of Air and Radiation, 1000 S.W. Jackson, Suite 310, Topeka, Kansas 66612.
Missouri Department of Natural Resources, Air Pollution Control Program, Jefferson State Office Building, P.O. Box 176, Jefferson City, Missouri 65102.
Nebraska Department of Environmental Quality, Air and Waste Management Division, P.O. Box 98922, Statehouse Station, Lincoln, Nebraska 68509.
Lincoln-Lancaster County Division of Environmental Health, Air Pollution Control Agency, 3140 "N" Street, Lincoln, Nebraska 68510.
City of Omaha, Public Works Department, Air Quality Control Division, 5600 South 10th Street, Omaha, Nebraska 68107.

FOR FURTHER INFORMATION CONTACT: Wayne Kaiser at (913) 551–7603, or by e-mail at *kaiser.wayne@epa.gov*.

SUPPLEMENTARY INFORMATION: The supplementary information is organized in the following order:

What does this action do?
What is the authority for delegation?
What does delegation accomplish?
What has been delegated?
What has not been delegated?

List of Delegation Tables

Table I—NSPS, 40 CFR part 60
Table II—NESHAP, 40 CFR part 61
Table III—NESHAP, 40 CFR part 63

What Does This Action Do?

The EPA is providing notice that it has delegated authority for implementation and enforcement of the Federal standards shown in the tables below to the state and local air agencies in Region 7. This rule updates the delegation tables previously published at 67 FR 70170 (November 21, 2003). The EPA has established procedures by which these agencies are automatically delegated the authority to implement the standards when they adopt regulations which are identical to the Federal standards. We then periodically provide notice of the new and revised standards for which delegation has been given.

What Is the Authority for Delegation?

1. Section 111(c)(1) of the Clean Air Act (CAA) authorizes EPA to delegate authority to any state agency which submits adequate regulatory procedures for implementation and enforcement of the NSPS program. The NSPS are codified at 40 CFR part 60.

2. Section 112(l) of the CAA and 40 CFR part 63, subpart E, authorizes the EPA to delegate authority to any state or local agency which submits adequate regulatory procedures for implementation and enforcement of emission standards for hazardous air pollutants. The hazardous air pollutant standards are codified at 40 CFR parts 61 and 63, respectively.

What Does Delegation Accomplish?

Delegation confers primary responsibility for implementation and enforcement of the listed standards to the respective state and local air agencies. However, EPA also retains the authority to enforce the standards if it so desires.

What Has Been Delegated?

Tables I, II, and III below list the delegated standards. The first date in each block is the reference date to the CFR contained in the state rule. In general, the state or local agency has adopted the applicable standard through this date as noted in the table. The second date is the most recent effective date of the state agency rule for which the EPA has granted the delegation.

What Has Not Been Delegated?

1. The EPA regulations effective after the first date specified in each block have not been delegated, and authority for implementation of these regulations is retained solely by EPA.

2. In some cases, the standards themselves specify that specific provisions cannot be delegated. You should review the applicable standard for this information.

3. In some cases, the agency rules do not adopt the Federal standard in its entirety. Each agency rule (available from the respective agency) should be consulted for specific information.

4. In some cases, existing delegation agreements between the EPA and the agencies limit the scope of the delegated standards. Copies of delegation agreements are available from the state agencies, or from this office.

5. With respect to 40 CFR part 63, subpart A, General Provisions (see Table III), the EPA has determined that §§ 63.6(g), 63.6(h)(9), 63.7(e)(2)(ii) and (f), 63.8(f), and 63.10(f) cannot be delegated. Additional information is contained in an EPA memorandum titled "Delegation of 40 CFR Part 63 General Provisions Authorities to State and Local Air Pollution Control Agencies" from John Seitz, Director, Office of Air Quality Planning and Standards, dated July 10, 1998.

List of Delegation Tables

TABLE I.—DELEGATION OF AUTHORITY—PART 60 NSPS—REGION 7

Subpart	Source category	State of Iowa	State of Kansas	State of Missouri	State of Nebraska
A	General Provisions	12/31/01	07/01/98	06/30/02	07/01/01
		10/23/03	06/11/99	10/30/03	07/10/02
D	Fossil-Fuel Fired Steam Generators for Which Construction Is Commenced After August 17, 1971.	12/31/01	07/01/98	06/30/02	07/01/01
		10/23/03	06/11/99	10/30/03	07/10/02
Da	Electric Utility Steam Generating Units for Which Construction Is Commenced After September 18, 1978.	12/31/01	07/01/98	06/30/02	07/01/01
		10/23/03	06/11/99	10/30/03	07/10/02
Db	Industrial-Commercial-Institutional Steam Generating Units	12/31/01	07/01/98	06/30/02	07/01/01
		10/23/03	06/11/99	10/30/03	07/10/02
Dc	Small Industrial-Commercial-Institutional Steam Generating Units	12/31/01	07/01/98	06/30/02	07/01/01
		10/23/03	06/11/99	10/30/03	07/10/02
E	Municipal Incinerators	12/31/01	07/01/98	06/30/02	07/01/01
		10/23/03	06/11/99	10/30/03	07/10/02
Ea	Municipal Waste Combustors Constructed After December 20, 1989, and On or Before September 20 1994.	12/31/01	07/01/98	06/30/02	07/01/01
		10/23/03	06/11/99	10/30/03	07/10/02
Eb	Municipal Waste Combustors for Which Construction Is Commenced After September 20, 1994.	12/31/01	07/01/98	06/30/02	07/01/01
		10/23/03	06/11/99	10/30/03	07/10/02
Ec	Hospital/Medical/Infectious Waste Incinerators for Which Construction Commenced After June 20, 1996.	12/31/01	07/01/98	06/30/02	07/01/01
		10/23/03	06/11/99	10/30/03	07/10/02
F	Portland Cement Plants	12/31/01	07/01/98	06/30/02	07/01/01
		10/23/03	06/11/99	10/30/03	07/10/02

TABLE I.—DELEGATION OF AUTHORITY—PART 60 NSPS—REGION 7—Continued

Subpart	Source category	State of Iowa	State of Kansas	State of Missouri	State of Nebraska
G	Nitric Acid Plants	12/31/01	07/01/98	06/30/02	07/01/01
		10/23/03	06/11/99	10/30/03	07/10/02
H	Sulfuric Acid Plants	12/31/01	07/01/98	06/30/02	07/01/01
		10/23/03	06/11/99	10/30/03	07/10/02
I	Asphaltic Concrete Plants	12/31/01	07/01/98	06/30/02	07/01/01
		10/23/03	06/11/99	10/30/03	07/10/02
J	Petroleum Refineries	12/31/01	07/01/98	06/30/02	07/01/01
		10/23/03	06/11/99	10/30/03	07/10/02
K	Storage Vessels for Petroleum Liquid for Which Construction, Reconstruction, or Modification Commenced After June 11, 1973, and Prior to May 19, 1978.	12/31/01	07/01/98	06/30/02	07/01/01
		10/23/03	06/11/99	10/30/03	07/10/02
Ka	Storage Vessels for Petroleum Liquid for Which Construction, Reconstruction, or Modification Commenced After May 18, 1978, and Prior to July 23, 1984.	12/31/01	07/01/98	06/30/02	07/01/01
		10/23/03	06/11/99	10/30/03	07/10/02
Kb	Volatile Organic Liquid Storage Vessels for Which Construction, Reconstruction, or Modification Commenced After July 23, 1984.	12/31/01	07/01/98	06/30/02	07/01/01
		10/23/03	06/11/99	10/30/03	07/10/02
L	Secondary Lead Smelters	12/31/01	07/01/98	06/80/02	07/01/01
		10/23/03	06/11/99	10/30/03	07/10/02
M	Brass & Bronze Production Plants	12/31/01	07/01/98	06/30/02	07/01/01
		10/23/03	06/11/99	10/30/03	07/10/02
N	Basic Oxygen Process Furnaces for Which Construction Is Commenced After June 11, 1973.	12/31/01	07/01/98	06/30/02	07/01/01
		10/23/03	06/11/99	10/30/03	07/10/02
Na	Basic Oxygen Process Steelmaking Facilities for Which Construction Is Commenced After January 20, 1983.	12/31/01	07/01/98	06/30/02	07/01/01
		10/23/03	06/11/99	10/30/03	07/10/02
O	Sewage Treatment Plants	12/31/01	07/01/98	06/30/02	07/01/01
		10/23/03	06/11/99	10/30/03	07/10/02
P	Primary Copper Smelters	12/31/01	07/01/98	06/30/02	07/01/01
		10/23/03	06/11/99	10/30/03	07/10/02
Q	Primary Zinc Smelters	12/31/01	07/01/98	06/30/02	07/01/01
		10/23/03	06/11/99	10/30/03	07/10/02
R	Primary Lead Smelters	12/31/01	07/01/98	06/30/02	07/01/01
		10/23/03	06/11/99	10/30/03	07/10/02
S	Primary Aluminum Reduction Plants	12/31/01	07/01/98	06/30/02	07/01/01
		10/23/03	06/11/99	10/30/03	07/10/02
T	Wet Process Phosphoric Acid Plants	12/31/01	07/01/98	06/30/02	07/01/01
		10/23/03	06/11/99	10/30/03	07/10/02
U	Superphosphoric Acid Plants	12/31/01	07/01/98	06/30/02	07/01/01
		10/23/03	06/11/99	10/30/03	07/10/02
V	Diammonium Phosphate Plants	12/31/01	07/01/98	06/30/02	07/01/01
		10/23/03	06/11/99	10/30/03	07/10/02
W	Triple Superphosphate Plants	12/31/01	07/01/98	06/30/02	07/01/01
		10/23/03	06/11/99	10/30/03	07/10/02
X	Granular Triple Superphosphate Storage Facilities	12/31/01	07/01/98	06/30/02	07/01/01
		10/23/03	06/11/99	10/30/03	07/10/02
Y	Coal Preparation Plants	12/31/01	07/01/98	06/30/02	07/01/01
		10/23/03	06/11/99	10/30/03	07/10/02
Z	Ferroalloy Production Facilities	12/31/01	07/01/98	06/30/02	07/01/01
		10/23/03	06/11/99	10/30/03	07/10/02
AA	Steel Plant Electric Arc Furnaces Constructed After October 21, 1974, and On or Before August 17, 1983.	12/31/01	07/01/98	06/30/02	07/01/01
		10/23/03	06/11/99	10/30/03	07/10/02
AAa	Steel Plant Electric Arc Furnaces & Argon-Oxygen Decarburization Vessels Constructed After August 17, 1983.	12/31/01	07/01/98	06/30/02	07/01/01
		10/23/03	06/11/99	10/30/03	07/10/02
BB	Kraft Pulp Mills	12/31/01	07/01/98	06/30/02	.....
		10/23/03	06/11/99	10/30/03	
CC	Glass Manufacturing Plants	12/31/01	07/01/98	06/30/02	07/01/01
		10/23/03	06/11/99	10/30/03	07/10/02
DD	Grain Elevators	12/31/01	07/01/98	06/30/02	07/01/01
		10/23/03	06/11/99	10/30/03	07/10/02
EE	Surface Coating of Metal Furniture	12/31/01	07/01/98	06/30/0	07/01/01
		10/23/03	06/11/99	10/30/03	07/10/02
GG	Stationary Gas Turbines	12/31/01	07/01/98	06/30/02	07/01/01
		10/23/03	06/11/99	10/30/03	07/10/02
HH	Lime Manufacturing Plants	12/31/01	07/01/98	06/30/02	07/01/01
		10/23/03	06/11/99	10/30/03	07/10/02
KK	Lead-Acid Battery Manufacturing Plants	12/31/01	07/01/98	06/30/02	07/01/01
		10/23/03	06/11/99	10/30/03	07/10/02
LL	Metallic Mineral Processing Plants	12/31/01	07/01/98	06/30/02	07/01/01
		10/23/03	06/11/99	10/30/03	07/10/02
MM	Auto & Light-Duty Truck Surface Coating Operations	12/31/01	07/01/98	06/30/02	07/01/01
		10/23/03	06/11/99	10/30/03	07/10/02

TABLE I.—DELEGATION OF AUTHORITY—PART 60 NSPS—REGION 7—Continued

Subpart	Source category	State of Iowa	State of Kansas	State of Missouri	State of Nebraska
NN	Phosphate Rock Plants	12/31/01	07/01/98	06/30/02	07/01/01
		10/23/03	06/11/99	10/30/03	07/10/62
PP	Ammonium Sulfate Manufacture	12/31/01	07/01/98	06/30/02	07/01/01
		10/23/03	06/11/99	10/30/03	07/10/02
QQ	Graphic Arts Industry: Publication Rotogravure Printing	12/31/01	07/01/98	06/30/02	07/01/01
		10/23/03	06/11/99	10/30/03	07/10/02
RR	Pressure Sensitive Tape & Label Surface Coating Operations	12/31/01	07/01/98	06/30/02	07/01/01
		10/23/03	06/11/99	10/30/03	07/10/02
SS	Industrial Surface Coating: Large Appliances	12/31/01	07/01/98	06/30/02	07/01/01
		10/23/03	06/11/99	10/30/03	07/10/02
TT	Metal Coil Surface Coating	12/31/01	07/01/98	06/30/02	07/01/01
		10/23/03	06/11/99	10/30/03	07/10/02
UU	Asphalt Processing & Asphalt Roofing Manufacture	12/31/01	07/01/98	06/30/02	07/01/01
		10/23/03	06/11/99	10/30/03	07/10/02
VV	SOCMI Equipment Leaks (VOC)	12/31/01	07/01/98	06/30/02	07/01/01
		10/23/03	06/11/99	10/30/03	07/10/02
WW	Beverage Can Surface Coating Industry	12/31/01	07/01/98	06/30/02	07/01/01
		10/23/03	06/11/99	10/30/03	07/10/02
XX	Bulk Gasoline Terminals	12/31/01	07/01/98	06/30/02	07/01/01
		10/23/03	06/11/99	10/30/03	07/10/02
AAA	New Residential Wood Heaters	12/31/01	07/01/98	06/30/02	07/01/01
		10/23/03	06/11/99	10/30/03	07/10/02
BBB	Rubber Tire Manufacturing Industry	12/31/01	07/01/98	06/30/02	07/01/01
		10/23/03	06/11/99	10/30/03	07/10/02
DDD	Polymer Manufacturing Industry (VOC)	12/31/01	07/01/98	06/30/02	07/01/01
		10/23/03	06/11/99	10/30/03	07/10/02
FFF	Flexible Vinyl and Urethane Coating and Printing	12/31/01	07/01/98	06/30/02	07/01/01
		10/23/03	06/11/99	10/30/03	07/10/02
GGG	Equipment Leaks of VOC in Petroleum Refineries	12/31/01	07/01/98	06/30/02	07/01/01
		10/23/03	06/11/99	10/30/03	07/10/02
HHH	Synthetic Fiber Production Facilities	12/31/01	07/01/98	06/30/02	07/01/01
		10/23/03	06/11/99	10/30/03	07/10/02
III	SOCMI AIR Oxidation Unit Processes	12/31/01	07/01/98	06/30/02	07/01/01
		10/23/03	06/11/99	10/30/03	07/10/02
JJJ	Petroleum Dry Cleaners	12/31/01	07/01/98	06/30/02	07/01/01
		10/23/03	06/11/99	10/30/03	07/10/02
KKK	VOC Leaks from Onshore Natural Gas Processing Plants	12/31/01	07/01/98	06/30/02	07/01/01
		10/23/03	06/11/99	10/30/03	07/10/02
LLL	Onshore Natural Gas Processing: SO_2 Emissions	12/31/01	07/01/98	06/30/02	07/01/01
		10/23/03	06/11/99	10/30/03	07/10/02
NNN	VOC Emissions from SOCMI Distillation Operations	12/31/01	07/01/98	06/30/02	07/01/01
		10/23/03	06/11/99	10/30/03	07/10/02
OOO	Nonmetallic Mineral Processing Plants	12/31/01	07/01/98	06/30/02	07/01/01
		10/23/03	06/11/99	10/30/03	07/10/02
PPP	Wool Fiberglass Insulation Manufacturing Plants	12/31/01	07/01/98	06/30/02	07/01/01
		10/23/03	06/11/99	10/30/03	07/10/02
QQQ	VOC Emissions from Petroleum Refinery Wastewater Systems	12/31/01	07/01/98	06/30/02	07/01/01
		10/23/03	06/11/99	10/30/03	07/10/02
RRR	VOC Emissions from SOCMI Reactor Processes	12/31/01	07/01/98	06/30/02	07/01/01
		10/23/03	06/11/99	10/30/03	07/10/02
SSS	Magnetic Tape Coating Facilities	12/31/01	07/01/98	06/30/02	07/01/01
		10/23/03	06/11/99	10/30/03	07/10/02
TTT	Surface Coating of Plastic Parts for Business Machines	12/31/01	07/01/98	06/30/02	07/01/01
		10/23/03	06/11/99	10/30/03	07/10/02
UUU	Calciners & Dryers in Mineral Industries	12/31/01	07/01/98	06/30/02	07/01/01
		10/23/03	06/11/99	10/30/03	07/10/02
VVV	Polymeric Coating of Supporting Substrates Facilities	12/31/01	07/01/98	06/30/02	07/01/01
		10/23/03	06/11/99	10/30/03	07/10/02
WWW	New Municipal Solid Waste Landfills Accepting Waste On or After May 30, 1991.	12/31/01	07/01/98	06/30/02	07/01/01
		10/23/03	06/11/99	10/30/03	07/10/02
AAAA	New Small Municipal Waste Combustion Units	12/31/01	.....	06/30/02	07/01/01
		10/23/03		10/30/03	07/10/02
CCCC	New Commercial and Industrial Solid Waste Incineration Units	12/31/01	.....	06/30/02	07/01/01
		10/23/03		10/30/03	07/10/02

TABLE II.—DELEGATION OF AUTHORITY—PART 61 NESHAP—REGION 7

Subpart	Source category	State of Iowa	State of Kansas	State of Missouri	State of Nebraska	Lincoln-Lancaster County	City of Omaha
A	General Provisions	10/14/97	07/01/98	06/30/02	07/01/01	07/01/92	07/01/01
		05/13/98	06/11/99	10/30/03	07/10/02	07/31/01	04/18/03
B	Radon Emissions From Underground Uranium Mines.	.....	07/01/98	.....	.....	.....	.....
			06/11/99				
C	Beryllium	10/14/97	07/01/98	06/30/02	07/01/01	07/01/92	07/01/01
		05/13/98	06/11/99	10/30/03	07/10/02	07/31/01	04/18/03
D	Beryllium Rocket Motor Firing	10/14/97	07/01/98	06/30/02	07/01/01	07/01/92	07/01/01
		12/23/98	06/11/99	10/30/03	07/10/02	07/31/01	04/18/03
E	Mercury	10/14/97	07/01/98	06/30/02	07/01/01	07/01/92	07/01/01
		05/13/98	06/11/99	10/30/03	07/10/02	07/31/01	04/18/03
F	Vinyl Chloride	10/14/97	07/01/98	06/30/02	07/01/01	07/01/92	07/01/01
		05/13/98	06/11/99	10/30/03	07/10/02	07/31/01	04/18/03
J	Equipment Leaks (Fugitive Emission Sources) of Benzene.	10/14/97	07/01/98	06/30/02	07/01/01	07/01/92	07/01/01
		05/13/98	06/11/99	10/30/03	07/10/02	07/31/01	04/18/03
L	Benzene Emissions From Coke By-Product Recovery Plants.	10/14/97	07/01/98	06/30/02	07/01/01	07/01/92	07/01/01
		05/13/98	06/11/99	10/30/03	07/10/02	07/31/01	04/18/03
M	Asbestos	10/14/97	07/01/98	06/30/02	07/01/01	07/01/92	07/01/01
		05/13/98	06/11/99	10/30/03	07/10/02	07/31/01	04/18/03
N	Inorganic Arsenic Emissions From Glass Manufacturing Plants.	10/14/97	07/01/98	06/30/02	07/01/01	07/01/92	07/01/01
		05/13/98	06/11/99	10/30/03	07/10/02	07/31/01	04/18/03
O	Inorganic Arsenic Emissions From Primary Copper Smelters.	10/14/97	07/01/98	06/30/02	07/01/01	07/01/92	07/01/01
		05/13/98	06/11/99	10/30/03	07/10/02	07/31/01	04/18/03
P	Inorganic Arsenic Emissions From Arsenic Trioxide and Metallic Arsenic Production Facilities.	10/14/97	07/01/98	06/30/02	07/01/01	07/01/92	07/01/01
		05/13/98	06/11/99	10/30/03	07/10/02	07/31/01	04/18/03
Q	Radon Emissions From Department of Energy Facilities.	.....	07/01/98	.....	.....	.....	.....
			06/11/99				
R	Radon Emissions From Phosphogypsum Stacks.	.....	07/01/98	.....	.....	.....	.....
			06/11/99				
T	Radon Emissions From the Disposal of Uranium Mill Tailings.	.....	07/01/98	.....	.....	.....	.....
			06/11/99				
V	Equipment Leaks (Fugitive Emission Sources).	10/14/97	07/01/98	06/30/02	07/01/01	07/01/92	07/01/01
		05/13/98	06/11/99	10/30/03	07/10/02	07/31/01	04/18/03
W	Radon Emissions From Operating Mill Tailings.	.....	07/01/98	.....	.....	.....	.....
			06/11/99				
Y	Benzene Emissions From Benzene Storage Vessels.	10/14/97	07/01/98	06/30/02	07/01/01	07/01/92	07/01/01
		05/13/98	06/11/99	10/30/03	07/10/02	07/31/01	04/18/03
BB	Benzene Emissions From Benzene Transfer Operations.	10/14/97	07/01/98	06/30/02	07/01/01	07/01/92	07/01/01
		05/13/98	06/11/99	10/30/03	07/10/02	07/31/01	04/18/03
FF	Benzene Waste Operations	10/14/97	07/01/98	06/30/02	07/01/01	07/01/92	07/01/01
		05/13/98	06/11/99	10/30/03	07/10/02	07/31/01	04/18/03

TABLE III.—DELEGATION OF AUTHORITY—PART 63 NESHAP—REGION 7

Subpart	Source category	State of Iowa	State of Kansas	State of Missouri	State of Nebraska	Lincoln-Lancaster County	City of Omaha
A	General Provisions	04/29/03	07/01/98	06/30/02	07/01/01	07/01/00	07/01/01
		10/23/03	06/11/99	10/30/03	07/10/02	07/31/01	04/18/03
B	Requirements for Control Technology Determinations for Major Sources in Accordance With Clean Air Act Section 112(g) & (j).	04/29/03	07/01/98	12/31/00	04/05/02	.....	04/05/02
		10/23/03	06/11/99	11/20/02	11/20/02		04/18/03 (112 (g) only)
D	Compliance Extensions for Early Reductions of Hazardous Air Pollutants.	04/29/03	07/01/98	12/31/00	12/29/92	11/21/94	12/29/92
		10/23/03	06/11/99	09/30/02	11/20/02	07/31/01	04/18/03
F	Organic Hazardous Air Pollutants From the Synthetic Organic Chemical Manufacturing Industry for Tetrahydrobenzaldehyde Manufacturing.	04/29/03	07/01/98	06/30/02	07/01/01	07/01/00	07/01/01
		10/23/03	06/11/99	10/30/03	07/10/02	07/31/01	04/18/03
G	Organic Hazardous Air Pollutants From the Synthetic Organic Chemical Manufacturing Industry for Process Vents, Storage Vessels, Transfer Operations, and Wastewater.	04/29/03	07/01/98	06/30/02	07/01/01	07/01/00	07/01/01
		10/23/03	06/11/99	10/30/03	07/10/02	07/31/01	04/18/03
H	Organic Hazardous Air Pollutants for Equipment Leaks.	04/29/03	07/01/98	06/30/02	07/01/01	07/01/00	07/01/01
		10/23/03	06/11/99	10/30/03	07/10/02	07/31/01	04/18/03

TABLE III.—DELEGATION OF AUTHORITY—PART 63 NESHAP—REGION 7—Continued

Subpart	Source category	State of Iowa	State of Kansas	State of Missouri	State of Nebraska	Lincoln-Lancaster County	City of Omaha
I	Organic Hazardous Air Pollutants for Certain Processes Subject to the Negotiated Regulation for Equipment Leaks.	04/29/03 10/23/03	07/01/98 06/11/99	06/30/02 10/30/03	07/01/01 07/10/02	07/01/00 07/31/01	07/01/01 04/18/03
J	Polyvinyl Chloride and Copolymers Production.	04/29/03 10/23/03					
L	Coke Ovens	04/29/03 10/23/03	07/01/98 06/11/99	06/30/02 10/30/03			
M	Dry Cleaning Facilities	04/29/03 10/23/03	07/01/98 06/11/99	06/30/02 10/30/03	07/01/01 07/10/02	07/01/00 07/31/01	07/01/01 04/18/03
N	Chromium Emissions From Hard and Decorative Chromium Electroplating Anodizing Tanks.	04/29/03 10/23/03	07/01/98 06/11/99	06/30/02 10/30/03	07/01/01 07/10/02	07/01/00 07/31/01	07/01/01 04/18/03
O	Ethylene Oxide Sterilization Facilities	04/29/03 10/23/03	07/01/98 06/11/99	06/30/02 10/30/03	07/01/01 07/10/02	07/01/00 07/31/01	07/01/01 04/18/03
Q	Industrial Process Cooling Towers	04/29/03 10/23/03	07/01/98 06/11/99	06/30/02 10/30/03	07/01/01 07/10/02	07/01/00 07/31/01	07/01/01 04/18/03
R	Gasoline Distribution (Stage 1)	04/29/03 10/23/03	07/01/98 06/11/99	06/30/02 10/30/03	07/01/01 07/10/02	07/01/00 07/31/01	07/01/98 04/18/03
S	Pulp and Paper MACT I and MACT III	04/29/03 10/23/03	07/01/98 06/11/99	06/30/02 10/30/03	07/01/01 07/10/02	07/01/00 07/31/01	07/01/01 04/18/03
T	Halogenated Solvent Cleaning	04/29/03 10/23/03	07/01/98 06/11/99	06/20/02 10/30/03	07/01/01 07/10/02	07/01/00 07/31/01	07/01/01 04/18/03
U	Polymers and Resins Group I	04/29/03 10/23/03	07/01/98 06/11/99	06/30/02 10/30/03	07/01/01 07/10/02	07/01/00 07/31/01	07/01/01 04/18/03
W	Polymers & Resins II	04/29/03 10/23/03	07/01/98 06/11/99	06/30/02 10/30/03	07/01/01 07/10/02	07/01/00 07/31/01	07/01/01 04/18/03
X	Secondary Lead Smelting	04/29/03 10/23/03	07/01/98 06/11/99	06/30/02 10/30/03	07/01/01 07/10/02	07/01/00 07/31/01	07/01/01 04/18/03
Y	Marine Tank Vessel Loading Operations	04/29/03 10/23/03	07/01/98 06/11/99	06/30/02 10/30/03			
AA/BB	Phosphoric Acid/ Phosphate Fertilizers	04/29/03 10/23/03		06/30/02 10/30/03	07/01/01 07/10/02	07/01/00 07/31/01	07/01/01 04/18/03
CC	Petroleum Refineries	04/29/03 10/23/03	07/01/98 06/11/99	06/30/02 10/30/03	07/01/01 07/10/02	07/81/97 07/31/01	07/01/01 04/18/03
DD	Off-Site Waste Recovery Operations	04/29/03 10/23/03	07/01/98 06/11/99	06/30/02 10/30/03	07/01/01 07/10/02	07/01/00 07/31/01	07/01/01 04/18/03
EE	Magnetic Tape Manufacturing	04/29/03 10/23/03	07/01/98 06/11/99	06/30/02 10/30/03	07/01/01 07/10/02	07/01/00 07/31/01	07/01/01 04/18/03
GG	Aerospace Manufacturing and Rework Facilities.	04/29/03 10/23/03	07/01/98 06/11/99	06/30/02 10/30/03	07/01/01 07/10/02	07/01/00 07/31/01	07/01/01 04/18/03
HH	Oil & Natural Gas Production	04/29/03 10/23/03		06/30/02 10/30/03	07/01/01 07/10/02	07/01/00 07/31/01	07/01/01 04/18/03
II	Shipbuilding and Ship Repair	04/29/03 10/23/03	07/01/98 06/11/99	06/30/02 10/30/03			
JJ	Wood Furniture Manufacturing Operations	04/29/03 10/23/03	07/01/98 06/11/99	06/30/02 10/30/03	07/01/01 07/10/02	07/01/00 07/31/01	07/01/01 04/18/03
KK	Printing and Publishing Industry	04/29/03 10/23/03	07/01/98 06/11/99	06/30/02 10/30/03	07/01/01 07/10/02	07/01/00 07/31/01	07/01/01 04/18/03
LL	Primary Aluminum Production	04/29/03 10/23/03	07/01/98 06/11/99	06/30/02 10/30/03	07/01/01 07/10/02	07/01/00 07/31/01	07/01/01 04/18/03
MM	Combustion Sources at Kraft, Soda, and Sulfite Pulp & Paper Mills.	04/29/03 10/23/03		06/30/02 10/30/03	07/01/01 07/10/02		07/01/01 04/18/03
OO	Tanks—Level 1		07/01/98 06/11/99	06/30/02 10/30/03	07/01/01 07/10/02	07/01/00 07/31/01	07/01/01 04/18/03
PP	Containers		07/01/98 06/11/99	06/30/02 10/30/03	07/01/01 07/10/02	07/01/00 07/31/01	07/01/01 04/18/03
QQ	Surface Impoundments		07/01/98 06/11/99	06/30/02 10/30/03	07/01/01 07/10/02	07/01/00 07/31/01	07/01/01 04/18/03
RR	Individual Drain Systems		07/01/98 06/11/99	06/30/02 10/30/03	07/01/01 07/10/02	07/01/00 07/31/01	07/01/01 04/18/03
SS	Closed Vent Systems, Control Devices, Recovery Devices and Routing to a Fuel Gas System or a Process.	04/29/03 10/23/03		06/30/02 10/30/03	07/01/01 07/10/02	07/01/00 07/31/01	07/01/01 04/18/03
TT	Equipment Leaks—Control Level 1 Standards.	04/29/03 10/23/03		06/30/02 10/30/03	07/01/01 07/10/02	07/01/00 07/31/01	07/01/01 04/18/03
UU	Equipment Leaks—Control Level 2 Standards.	04/29/03 10/23/03		06/30/02 10/30/03	07/01/01 07/10/02	07/01/00 07/31/01	07/01/01 04/18/03
VV	Oil-Water Separators & Organic-Water Separators.		07/01/98 06/11/99	06/30/02 10/30/03	07/01/01 07/10/02	07/01/00 07/31/01	07/01/01 04/18/03

TABLE III.—DELEGATION OF AUTHORITY—PART 63 NESHAP—REGION 7—Continued

Subpart	Source category	State of Iowa	State of Kansas	State of Missouri	State of Nebraska	Lincoln-Lancaster County	City of Omaha
WW	Storage Vessel (Tanks)—Control Level 2	04/29/03 10/23/03		06/30/02 10/30/03	07/01/01 07/10/02	07/01/00 07/31/01	07/01/01 04/18/03
YY	Generic MACT+, FR 6/29/99: Acetal Resins, Hydrogen Fluoride, Polycarbonates Prod., Acrylic/Modacrylic Fibers. FR 7/12/02: Carbon Black Prod., Cyanide Chemicals Mfg., Ethylene Proc., Spandex Prod..	04/29/03 10/23/03		06/30/02 10/30/03	07/01/01 07/10/02	07/01/00 07/31/01	07/01/01 04/18/03
XX	Ethylene Manuf. Process Units	04/29/03 10/23/03					
CCC	Steel Pickling-HCL Process	04/29/03 10/23/03		06/30/02 10/30/03	07/01/01 07/10/02	07/01/00 07/31/01	07/01/01 04/18/03
DDD	Mineral Wool Production	04/29/03 10/23/03		06/30/02 10/30/03	07/01/01 07/10/02	07/01/00 07/31/01	07/01/01 04/18/03
EEE	Hazardous Waste Combustors	04/29/03 10/23/03		06/30/02 10/30/03		07/01/00 07/31/01	
GGG	Pharmaceutical Production	04/29/03 10/23/03		06/30/02 10/30/03	07/01/01 07/10/02	07/01/00 07/31/01	07/01/01 04/18/03
HHH	Natural Gas Transmission and Storage	04/29/03 10/23/03		06/30/02 10/30/03	07/01/01 07/10/02	07/01/00 07/31/01	07/01/01 04/18/03
III	Flexible Polyurethane Foam Production	04/29/03 10/23/03		06/30/02 10/30/03	07/01/01 07/10/02	07/01/00 07/31/01	07/01/01 04/18/03
JJJ	Polymers and Resins Group IV	04/29/03 10/23/03	07/01/98 06/11/99	06/30/02 10/30/03	07/01/01 04/18/03		
LLL	Portland Cement Manufacturing	04/29/03 10/23/03		06/30/02 10/30/03	07/01/01 07/10/02	07/01/00 07/31/01	07/01/01 04/18/03
MMM	Pesticide Active Ingredient Production	04/29/03 10/23/03		06/30/02 10/30/03	07/01/01 07/10/02	07/01/00 07/31/01	07/01/01 04/18/03
NNN	Wool Fiberglass Manufacturing	04/29/03 10/23/03		06/30/02 10/30/03	07/01/01 07/10/02	07/01/00 07/31/01	07/01/01 04/18/03
OOO	Polymers & Resins III, Amino Resins/Phenolic Resins.	04/29/03 10/23/03		06/30/02 10/30/03	07/01/01 07/10/02	07/01/00 07/31/01	07/01/01 04/18/03
PPP	Polyether Polyols Production	04/29/03 10/23/03		06/30/02 10/30/03	07/01/01 07/10/02	07/01/00 07/31/01	07/01/01 04/18/03
QQQ	Primary Copper	04/29/03 10/23/03		06/30/02 10/30/03			
RRR	Secondary Aluminum	04/29/03 10/23/03		06/30/02 10/30/03	07/01/01 07/10/02		07/01/01 04/18/03
TTT	Primary Lead Smelting	04/29/03 10/23/03		06/30/02 10/30/03	07/01/01 07/10/02	07/01/00 07/31/01	07/01/01 04/18/03
UUU	Petroleum Refineries	04/29/03 10/23/03		06/30/02 10/30/03	07/01/02 11/24/03		
VVV	Publicly Owned Treatment Works	04/29/03 10/23/03		06/30/02 10/30/03	07/01/01 07/10/02		07/01/01 04/18/03
XXX	Ferroalloys Production	04/29/03 10/23/03		06/30/02 10/30/03	07/01/01 07/10/02	07/01/00 07/31/01	07/01/01 04/18/03
AAAA	Municipal Solid Waste Landfills	04/29/03 10/23/03					
CCCC	Manufacturing Nutritional Yeast	04/29/03 10/23/03		06/30/02 10/30/03	07/01/01 07/10/02		07/01/01 04/18/03
EEEE	Organic Liquids Distribution						
FFFF	Misc. Organic Chemical Prod. & Processes.						
GGGG	Solvent Extraction for Vegetable Oil Production.	04/29/03 10/23/03		06/30/02 10/30/03	07/01/01 07/10/02		07/01/01 04/18/03
HHHH	Wet Formed Fiberglass Mat Production	04/29/03 10/23/03		06/30/02 10/30/03	07/01/02 11/24/03		
JJJJ	Paper & Other Web Surface Coating	04/29/03 10/23/03					
KKKK	Metal Can Surface Coating						
MMMM	Misc. Metal Parts and Products Surface Coating.						
NNNN	Large Appliance Surface Coating	04/29/03 10/23/03					
OOOO	Fabric Printing, Coating & Dyeing						
PPPP	Plastic Parts Surface Coating						
QQQQ	Wood Building Products Surface Coating						
RRRR	Metal Furniture Surface Coating	04/29/03 10/23/03					

TABLE III.—DELEGATION OF AUTHORITY—PART 63 NESHAP—REGION 7—Continued

Subpart	Source category	State of Iowa	State of Kansas	State of Missouri	State of Nebraska	Lincoln-Lancaster County	City of Omaha
SSSS	Metal Coil Surface Coating	04/29/03 10/23/03		06/30/02 10/30/03	07/01/02 11/24/03		
TTTT	Leather Finishing Operations	04/29/03 10/23/03		06/30/02 10/30/03	07/01/02 11/24/03		
UUUU	Cellulose Products Manufacturing	04/29/03 10/23/03		06/30/02 10/30/03	07/01/02 11/24/03		
VVVV	Boat Manufacturing	04/29/03 10/23/03		06/30/02 10/30/03	07/01/02 11/24/03		
WWWW	Reinforced Plastic Composites	04/29/03 10/23/03					
XXXX	Rubber Tire Manufacturing	04/29/03 10/23/03					
YYYY	Combustion Turbines						
AAAA	Lime Manufacturing						
BBBB	Semiconductor Manufacturing						
CCCC	Coke Oven: Pushing, Quenching, & Battery Stacks.	04/29/03 10/23/03					
EEEE	Iron and Steel Foundries						
FFFF	Integrated Iron & Steel						
GGGG	Site Remediation						
HHHH	Misc. Coating Manufacturing						
IIII	Mercury Cell Chlor-Alkali Plants						
JJJJ	Brick & Sturctural Clay Prod. Mfg.						
KKKK	Clay Ceramics Mfg.						
LLLL	Asphalt Roofing & Processing	04/29/03 10/23/03					
MMMM	Flexible Polyurethane Foam Fabircation Operation.	04/29/03 10/23/03					
NNNN	Hydrochloric Acid Prod.	04/29/03 10/23/03					
PPPP	Engine Test Cells/Stands	04/29/03 10/23/03					
QQQQ	Friction Products Manufacturing	04/29/03 10/23/03					
RRRR	Taconite Iron Ore Processing						
SSSS	Refactory Products Mfg.	04/29/03 10/23/03					
TTTT	Primary magnesium Refining						

Summary of This Action

All sources subject to the requirements of 40 CFR parts 60, 61, and 63 are also subject to the equivalent requirements of the above-mentioned state or local agencies.

This action informs the public of delegations to the above-mentioned agencies of the above-referenced Federal regulations.

Authority: This document is issued under the authority of sections 101, 110, 112, and 301 of the CAA, as amended (42 U.S.C. 7401, 7410, 7412, and 7601).

Dated: December 1, 2003.

James B. Gulliford,

Regional Administrator, Region 7.

[FR Doc. 03–30706 Filed 12–10–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 60, 61, and 63

[NM–40–2–7445a; FRL–7598–8]

New Source Performance Standards and National Emission Standards for Hazardous Air Pollutants; Delegation of Authority to New Mexico

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule; delegation of authority.

SUMMARY: The New Mexico Environment Department (NMED) has submitted updated regulations for receiving delegation of EPA authority for implementation and enforcement of New Source Performance Standards (NSPS) and National Emission Standards for Hazardous Air Pollutants (NESHAPs) for all sources (both part 70 and non-part 70 sources). These regulations apply to certain NSPS promulgated by EPA, as amended through September 1, 2002, and certain NESHAPs promulgated by EPA, as amended through September 1, 2001 and September 1, 2002. The delegation of authority under this notice does not apply to sources located in Bernalillo County, New Mexico, or sources located in Indian Country. EPA is providing notice that it has approved delegation of certain NSPS to NMED, and taking direct final action to approve the delegation of certain NESHAPs to NMED.

DATES: This rule is effective on February 9, 2004 without further notice, unless EPA receives adverse comment by January 12, 2004. If EPA receives such comment, EPA will publish a timely withdrawal in the **Federal Register** informing the public that this rule will not take effect.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in the **SUPPLEMENTARY INFORMATION** section below.

FOR FURTHER INFORMATION CONTACT: Mr. Jeffery Robinson, U.S. EPA, Region 6, Multimedia Planning and Permitting Division (6PD), 1445 Ross Avenue, Dallas, TX 75202–2733, (214) 665–6435; or electronic mail at *robinson.jeffrey@epa.gov.*

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I. General Information

A. What Is the Public Rulemaking File?

EPA is committed to ensuring public access to the information that is used to inform the public of the Agency's decisions regarding the environment and human health and to ensuring that the public has an opportunity to participate in the Agency's decision process. The official public rulemaking file consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. The public rulemaking file does not include Confidential Business Information (CBI) or other information for which disclosure is restricted by statute, although such information is a part of the administrative record for this action. The public rulemaking file is the collection of materials that is available for public viewing at the Regional Office. The administrative record is the collection of material used to inform the public of the Agency's decision on this rulemaking action.

B. How Can I Get Copies of This Document and Other Related Information?

1. *An official public rulemaking file is available for inspection at the Regional Office.* The Regional Office has established an official public rulemaking file for this action under NM–40–2–7445a. The public rulemaking file is available for viewing at the Air Permits Section, U.S. Environmental Protection Agency, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733. EPA requests that, if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section two working days in advance to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 a.m. to 4 p.m. excluding Federal holidays.

2. *Copies of the State submittal.* Copies of the State submittal are also available for public inspection during official business hours, by appointment at the New Mexico Environment Department, Air Quality Bureau, 1190 St. Francis Drive, Santa Fe, New Mexico 87502.

3. *Electronic Access.* You may access this Federal Register document electronically through the Regulation.gov web site located at *http://www.regulations.gov* where you can find, review, and submit comments on federal rules that are open for comment and have been published in the **Federal Register**.

The E Government Act of 2002 states that to "to the extent practicable" agencies shall accept electronic comments and establish electronic dockets. Also, President Bush's management plan for government includes a government-wide electronic rulemaking system. The first phase of the e-Rulemaking initiative was the development a Federal portal that displays all Federal Register notices and proposed rules open for comment. The URL for this site is *http://www.regulations.gov.* The site also provides the public with the ability to submit electronic comments that can then be transferred to the Agency responsible for the rule.

EPA's policy is to make all comments it receives, whether submitted electronically or on paper, available for public viewing at the Regional Office as EPA receives them and without change. However, those portions of a comment that contain properly identified and claimed CBI or other information for which disclosure is restricted by statute will be excluded from the public rulemaking file. The entire comment, including publicly restricted information, will be included in the administrative record for this action.

C. How and To Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket identification number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in section I.D. below. Do not use e-mail to submit CBI or information protected by statute.

1. *Electronically.* If you submit an electronic comment as prescribed below, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk of CD ROM. This ensures that you can be identified as the submitter of the comment, and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the public rulemaking file, and may be made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. E-mail. Comments may be sent by electronic mail (e-mail) to *robinson.jeffrey@epa.gov,* Attention "Public comment on proposed rulemaking NM–40–2–7445a." In contrast to EPA's electronic public docket, EPA's e-mail system is not an "anonymous access" system. If you send an e-mail comment directly to the Docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official

public docket, and made available in EPA's electronic public docket.

ii. Regulations.gov. As an alternative to email, you may submit comments electronically to EPA by using the Federal web-based portal that displays all **Federal Register** notices and proposed rules open for comment. To use this method, access the Regulations.gov Web site at *http://www.regulations.gov*, then select "Environmental Protection Agency" at the top of the page and click on the "Go" button. The list of current EPA actions available for comment will be displayed. Select the appropriate action and please follow the online instructions for submitting comments. Unlike EPA's e-mail system, the Regulations.gov Web site is an "anonymous" system, which means EPA will not know your identity, e-mail address, or other contact information, unless you provide it in the text of your comments.

iii. Disk or CD–ROM. You may submit comments on a disk or CD–ROM that you mail to the mailing address identified in section I.C.2, directly below. These electronic submissions will be accepted in WordPerfect, Word, or ASCII file format. You should avoid the use of special characters and any form of encryption.

2. By Mail. Send your comments to: Jeff Robinson, Air Permits Section (6PD–R), Multimedia Planning and Permitting Division, U.S. Environmental Protection Agency, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733. Please include the text "Public comment on proposed rulemaking NM–40–2–7445a" in the subject line of the first page of your comments.

3. By Hand Delivery or Courier. Deliver your written comments or comments on a disk or CD–ROM to: Jeff Robinson, Air Permits Section (6PD–R), Multimedia Planning and Permitting Division, U.S. Environmental Protection Agency, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733, Attention "Public comment on proposed rulemaking NM–40–2–7445a." Such deliveries are only accepted during official hours of business, which are Monday through Friday, 8:30 a.m. to 4 p.m., excluding Federal holidays.

D. How Should I Submit CBI to the Agency?

For comments submitted to the Agency by mail or hand delivery, in either paper or electronic format, you may assert a business confidentiality claim covering confidential business information (CBI) included in your comment by clearly marking any part or all of the information as CBI at the time the comment is submitted to EPA. CBI should be submitted separately, if possible, to facilitate handling by EPA. Submit one complete version of the comment that includes the properly labeled CBI for EPA's official docket and one copy that does not contain the CBI to be included in the public docket. If you submit CBI on a disk or CD–ROM, mark on the outside of the disk or the CD–ROM that it contains CBI and then identify the CBI within the disk or CD–ROM. Also submit a non-CBI version if possible. Information which is properly labeled as CBI and submitted by mail or hand delivery will be disclosed only in accordance with procedures set forth in 40 CFR part 2. For comments submitted by EPA's e-mail system or through Regulations.gov, no CBI claim may be asserted. Do not submit CBI to *Regulations.gov* or via EPA's e-mail system. Any claim of CBI will be waived for comments received through *Regulations.gov* or EPA's e-mail system. For further advice on submitting CBI to the Agency, contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice.

E. Privacy Notice

It is important to note that the comments you provide to EPA will be publicly disclosed in a rulemaking docket or on the Internet. The comments are made available for public viewing as EPA receives them and without change. Any personal information you choose to include in your comment will be included in the docket. However, EPA will exclude from the public docket any information labeled confidential business information (CBI), copyrighted material or other information restricted from disclosure by statute.

Comments submitted via Regulations.gov will not collect any personal information, e-mail addresses, or contact information unless they are included in the body of the comment. Comments submitted via Regulations.gov will be submitted anonymously unless you include personal information in the body of the comment. Please be advised that EPA cannot contact you for any necessary clarification if technical difficulties arise unless your contact information is included in the body of comments submitted through Regulations.gov. However, EPA's e-mail system is not an anonymous system. E-mail addresses are automatically captured by EPA's e-mail system and included as part of your comment that is placed in the public rulemaking docket.

F. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at your estimate.
5. Provide specific examples to illustrate your concerns.
6. Offer alternatives.
7. Make sure to submit your comments by the comment period deadline identified.
8. To ensure proper receipt by EPA, identify the appropriate docket identification number in the subject line on the first page of your response. It would also be helpful if you provided the name, date, and **Federal Register** citation related to your comments.

II. What Does This Action Do?

EPA is providing notice that it is delegating authority for implementation and enforcement of certain NSPS to NMED. EPA is also taking direct final action to approve the delegation of certain NESHAPs to NMED. With this delegation, NMED has the primary responsibility to implement and enforce the delegated standards.

III. What Is the Authority for Delegation?

Section 111(c)(1) of the Clean Air Act (CAA) authorizes EPA to delegate authority to any state agency which submits adequate regulatory procedures for implementation and enforcement of the NSPS program. The NSPS standards are codified at 40 CFR part 60.

Section 112(l) of the CAA and 40 CFR part 63, subpart E, authorizes EPA to delegate authority to any state or local agency which submits adequate regulatory procedures for implementation and enforcement of emission standards for hazardous air pollutants. The hazardous air pollutant standards are codified at 40 CFR parts 61 and 63.

IV. What Criteria Must New Mexico's Program Meet To Be Approved?

EPA previously approved NMED's program for the delegation of NSPS. 51 FR 20648 (June 6, 1986). This notice notifies the public that EPA is updating NMED's delegation to implement and enforce certain NSPS. As to the NESHAP standards in parts 61 and 63, section 112(l) of the CAA enables EPA to approve State air toxics programs or rules to operate in place of the Federal air toxics program or rules. 40 CFR part 63, subpart E (Subpart E) governs EPA's approval of State rules or programs under section 112(l).

EPA will approve an air toxics program if we find that:

(1) The State program is "no less stringent" than the corresponding Federal program or rule;

(2) The State has adequate authority and resources to implement and enforce the program;

(3) The schedule for implementation and compliance is sufficiently expeditious; and

(4) The program otherwise complies with Federal guidance.

In order to obtain approval of its program to implement and enforce Federal section 112 rules as promulgated without changes (straight delegation), only the criteria of 40 CFR 63.91(d) must be met. Section 63.91(d)(3) provides that interim or final Title V program approval will satisfy the criteria of § 63.91(d) for part 70 sources.

V. How Did NMED Meet the Subpart E Approval Criteria?

As part of its Title V submission, NMED stated that it intended to use the mechanism of incorporation by reference to adopt unchanged Federal section 112 into its regulations. This applied to both existing and future standards as they applied to part 70 sources. 59 FR 26158, 26160–26161 (May 19, 1994). EPA approved NMED's program for receiving delegation of existing and future standards when it granted final interim approval to NMED's Title V program. 59 FR 59656, 59658 & 56960. In addition, on November 26, 1996, EPA promulgated full approval of the State's operating permits program as administered by NMED. 61 FR 60032. Under 40 CFR 63.91(d)(2), once a state has satisfied up-front approval criteria, it needs only to reference the previous demonstration and reaffirm that it still meets the criteria for any subsequent submittals. NMED has affirmed that it still meets the up-front approval criteria.

VI. What Is Being Delegated?

EPA received requests to update the NSPS and NESHAP delegations on November 13, 1998, August 16, 1999, April 25, 2002, and May 23, 2003. NMED requested the EPA to update the delegation of authority for the following:

A. NSPS (40 CFR part 60 standards) from July 2, 1997, through September 1, 2002;

B. NESHAPs (40 CFR part 61 standards) from July 2, 1997 through September 1, 2001; and

C. NESHAPs (40 CFR part 63 standards) from December 19, 1994 (effective date of final interim approval of NMED's Title V program).

NMED's request was for delegation of certain NSPS and NESHAP for all sources (both part 70 and non-part 70 sources). The request includes revisions of 20 NMAC 2.77, 20 NMAC 2.78, and 20 NMAC 2.82 as adopted by the New Mexico Environmental Improvement Board. For NSPS, this revision incorporated all NSPS promulgated by EPA (except subpart AAA—Standards of Performance for New Residential Wood Heaters) as amended in the **Federal Register** through September 1, 2002. The effective date of the Federal delegation for NSPS under section 111 is the date that this **Federal Register** is published. For the part 61 NESHAPs, this revision included all NESHAPs promulgated by EPA as amended in the **Federal Register** through September 1, 2001, excluding Subparts B, H, I, K, Q, R, T, and W. For the part 63 NESHAPs, this includes the NESHAPs set forth in Table 1 below. The effective date of the Federal delegation for parts 61 and 63 standards is the effective date of this rule.

TABLE 1.—40 CFR PART 63 NESHAPS FOR SOURCE CATEGORIES DELEGATED TO NMED

Subpart	Source category
A	General Provisions.
D	Early Reductions.
F	Hazardous Organic NESHAP (HON)—Synthetic Organic Chemical Manufacturing Industry (SOCMI).
G	HON—SOCMI Process Vents, Storage Vessels, Transfer Operations and Wastewater.
H	HON—Equipment Leaks.
I	HON—Certain Processes Negotiated Equipment Leak Regulation.
J	Polyvinyl Chloride and Copolymers Production.
L	Coke Oven Batteries.
M	Perchloroethylene Dry Cleaning.
N	Chromium Electroplating and Chromium Anodizing Tanks.
O	Ethylene Oxide Sterilizers.
Q	Industrial Process Cooling Towers.
R	Gasoline Distribution.
S	Pulp and Paper Industry.
T	Halogenated Solvent Cleaning.
U	Group I Polymers and Resins.
W	Epoxy Resins Production and Non-Nylon Polyamides Production.
X	Secondary Lead Smelting.
Y	Marine Tank Vessel Loading.
AA	Phosphoric Acid Manufacturing Plants.
BB	Phosphate Fertilizers Production Plants.
CC	Petroleum Refineries.
DD	Off-Site Waste and Recovery Operations.
EE	Magnetic Tape Manufacturing.
GG	Aerospace Manufacturing and Rework Facilities.
HH	Oil and Natural Gas Production Facilities.
II	Shipbuilding and Ship Repair Facilities.
JJ	Wood Furniture Manufacturing Operations.
KK	Printing and Publishing Industry.
LL	Primary Aluminum Reduction Plants.
MM	Chemical Recovery Combustion Sources at Kraft, Soda, Sulfide, and Stand-Alone Semichemical Pulp Mills.
OO	Tanks—Level 1.
PP	Containers.

TABLE 1.—40 CFR PART 63 NESHAPS FOR SOURCE CATEGORIES DELEGATED TO NMED—Continued

Subpart	Source category
QQ	Surface Impoundments.
RR	Individual Drain Systems.
SS	Closed Vent Systems, Control Devices, Recovery Devices and Routing to a Fuel Gas System or a Process.
TT	Equipment Leaks—Control Level 1.
UU	Equipment Leaks—Control Level 2 Standards.
VV	Oil-Water Separators and Organic-Water Separators.
WW	Storage Vessels (Tanks)—Control Level 2.
YY	Generic Maximum Achievable Control Technology Standards.
CCC	Steel Pickling—HCl Process Facilities and Hydrochloric Acid Regeneration Plants.
DDD	Mineral Wool Production.
EEE	Hazardous Waste Combustors.
GGG	Pharmaceuticals Production.
HHH	Natural Gas Transmission and Storage Facilities.
III	Flexible Polyurethane Foam Production.
JJJ	Group IV Polymers and Resins.
LLL	Portland Cement Manufacturing.
MMM	Pesticide Active Ingredient Production.
NNN	Wool Fiberglass Manufacturing.
OOO	Amino/Phenolic Resins.
PPP	Polyether Polyols Production.
QQQ	Primary Copper Smelting.
RRR	Secondary Aluminum Production.
TTT	Primary Lead Smelting.
UUU	Petroleum Refineries—Catalytic Cracking Units, Catalytic Reforming Units and Sulfur Recovery Plants.
VVV	Publicly Owned Treatment Works (POTW).
XXX	Ferroalloys Production: Ferromanganese and Silicomanganese.
CCCC	Nutritional Yeast Manufacturing.
GGGG	Solvent Extraction for Vegetable Oil Production.
HHHH	Wet Formed Fiberglass Mat Production.
NNNN	Surface Coating of Large Appliances.
SSSS	Surface Coating of Metal Coil.
TTTT	Leather Finishing Operations.
UUUU	Cellulose Production Manufacture.
VVVV	Boat Manufacturing.
XXXX	Tire Manufacturing.
CCCCC	Coke Ovens: Pushing, Quenching and Battery Stacks.

VII. What Is Not Being Delegated?

As mentioned above, NMED has not been delegated the authority for the following standards:

40 CFR part 60, subpart AAA (Standards of Performance for New Residential Wood Heaters);

40 CFR part 61, subpart B (National Emission Standards for Radon Emissions from Underground Uranium Mines);

40 CFR part 61, subpart H (National Emission Standards for Emissions of Radionuclides Other Than Radon From Department of Energy Facilities);

40 CFR part 61, subpart I (National Emission Standards for Radionuclide Emissions from Federal Facilities Other Than Nuclear Regulatory Commission Licensees and Not Covered by Subpart H);

40 CFR part 61, subpart K—(National Emission Standards for Radionuclide Emissions from Elemental Phosphorus Plants);

40 CFR part 61, subpart Q (National Emission Standards for Radon Emissions from Department of Energy facilities);

40 CFR part 61, subpart R (National Emission Standards for Radon Emissions from Phosphogypsum Stacks);

40 CFR part 61, subpart T (National Emission Standards for Radon Emissions from the Disposal of Uranium Mill Tailings); and

40 CFR part 61, subpart W (National Emission Standards for Radon Emissions from Operating Mill Tailings).

In addition, EPA cannot delegate to a State any of the Category II Subpart A authorities set forth in 40 CFR 63.91(g)(2). These include the following provisions: § 63.6(g), Approval of Alternative Non-Opacity Standards; § 63.6(h)(9), Approval of Alternative Opacity Standards; § 63.7(e)(2)(ii) and (f), Approval of Major Alternatives to Test Methods; § 63.8(f), Approval of Major Alternatives to Monitoring; and § 63.10(f), Approval of Major Alternatives to Recordkeeping and Reporting. In addition, some MACT standards have certain provisions that cannot be delegated to the States [*e.g.* 40 CFR 63.106(b)].[1] Therefore, any MACT standard that EPA is delegating to NMED that provides that certain authorities cannot be delegated are retained by EPA and not delegated. Furthermore, no authorities are delegated that require rulemaking in the **Federal Register** to implement, or where Federal overview is the only way to ensure national consistency in the application of the standards or requirements of CAA section 112. Finally, section 112(r), the accidental release program authority, is not being delegated by this approval.

All of the inquiries and requests concerning implementation and enforcement of the excluded standards in the State of New Mexico should be directed to the EPA Region 6 Office.

In addition, this delegation to NMED to implement and enforce certain NSPS and NESHAPs does not extend to sources or activities located in Indian country, as defined in 18 U.S.C. 1151. Under this definition, EPA treats as reservations, trust lands validly set aside for the use of a Tribe even if the trust lands have not been formally designated as a reservation. Consistent with previous Federal program approvals or delegations, EPA will continue to implement the NSPS and NESHAPs in Indian country because NMED has not adequately demonstrated its authority over sources and activities located within the exterior boundaries of Indian reservations and other areas in Indian country.

Also, this delegation does not extend to sources or activities located in Bernalillo County because the Albuquerque/Bernalillo County Air Quality Control Board and the Albuquerque Environmental Health Department have jurisdiction to administer and enforce provisions of the New Mexico Air Quality Control Act in Bernalillo County (excluding Indian country). The Albuquerque/Bernalillo County Air Quality Control Board and the Albuquerque Environmental Health Department have been delegated the authority to implement and enforce certain NSPS and NESHAPs by EPA. *See* 60 FR 52329 (October 6, 1995).

[1] On June 23, 2003, EPA modified certain NESHAPs to clarify which authorities can be delegated to State, local, and tribal agencies. 68 FR 37334. However, this delegation is not directly affected by these changes, since NMED is receiving delegation of the part 63 standards that were promulgated by EPA, as amended through September 1, 2002.

VIII. How Will Applicability Determinations Under Section 112 Be Made?

In approving this delegation, NMED will obtain concurrence from EPA on any matter involving the interpretation of section 112 of the CAA or 40 CFR part 63 to the extent that implementation, administration, or enforcement of these sections have not been covered by EPA determinations or guidance.

IX. What Authority Does EPA Have?

We retain the right, as provided by CAA section 112(l)(7), to enforce any applicable emission standard or requirement under section 112. EPA also has the authority to make certain decisions under the General Provisions (subpart A) of part 63. We are granting NMED some of these authorities, and retaining others, as explained in sections VI and VII above. In addition, EPA may review and disapprove of State determinations and subsequently require corrections. (*See* 40 CFR 63.91(g) and 65 FR 55810, 55823, September 14, 2000.)

Furthermore, we retain any authority in an individual emission standard that may not be delegated according to provisions of the standard. Also, listed in the footnotes of the part 63 delegation table at the end of this rule are the authorities that cannot be delegated to any State or local agency which we therefore retain.

X. What Information Must NMED Provide to EPA?

In delegating the authority to implement and enforce these rules and in granting a waiver of EPA notification requirements, we require NMED to input all source information into the Aerometric Information Retrieval System (AIRS) for both point and area sources. NMED must enter this information into the AIRS system and update the information by September 30 of every year. NMED must provide any additional compliance related information to EPA, Region 6, Office of Enforcement and Compliance Assurance within 45 days of a request under 40 CFR 63.96(a).

In receiving delegation for specific General Provisions authorities, NMED must submit to EPA Region 6 on a semi-annual basis, copies of determinations issued under these authorities. For part 63 standards, these determinations include: applicability determinations (§ 63.1); approvals/disapprovals of construction and reconstruction (§ 63.5(e) and (f)); notifications regarding the use of a continuous opacity monitoring system (§ 63.6(h)(7)(ii)); finding of compliance (§ 63.6(h)(8)); approvals/disapprovals of compliance extensions (§ 63.6(i)); approvals/disapprovals of minor (§ 63.7(e)(2)(i)) or intermediate (§ 63.7(e)(2)(ii) and (f)) alternative test methods; approval of shorter sampling times and volumes (§ 63.7(e)(2)(iii)); waiver of performance testing (§ 63.7(e)(2)(iv) and (h)(2), (3)); approvals/disapprovals of minor or intermediate alternative monitoring methods (§ 63.8(f)); approval of adjustments to time periods for submitting reports (§§ 63.9 and 63.10); and approvals/disapprovals of minor alternatives to recordkeeping and reporting (§ 63.10(f)).

Additionally, EPA's Emission Measurement Center of the Emissions Monitoring and Analysis Division must receive copies of any approved intermediate changes to test methods or monitoring. (Please note that intermediate changes to test methods must be demonstrated as equivalent through the procedures set out in EPA method 301.) This information on approved intermediate changes to test methods and monitoring will be used to compile a database of decisions that will be accessible to State and local agencies and EPA Regions for reference in making future decisions. (For definitions of major, intermediate and minor alternative test methods or monitoring methods, *see* 40 CFR 63.90.) The NMED should forward these intermediate test methods or monitoring changes via mail or facsimile to: Chief, Source Categorization Group A, EPA (MD–19), Research Triangle Park, NC 27711, Facsimile telephone number: (919) 541–1039.

XI. What is EPA's Oversight of This Delegation to NMED?

EPA must oversee NMED's decisions to ensure the delegated authorities are being adequately implemented and enforced. We will integrate oversight of the delegated authorities into the existing mechanisms and resources for oversight currently in place. If, during oversight, we determine that NMED made decisions that decreased the stringency of the delegated standards, then NMED shall be required to take corrective actions and the source(s) affected by the decisions will be notified, as required by 40 CFR 63.91(g)(1)(ii). We will initiate withdrawal of the program or rule if the corrective actions taken are insufficient.

XII. Should Sources Submit Notices to EPA or NMED?

All of the information required pursuant to the Federal NSPS and NESHAP (40 CFR parts 60, 61, and 63) should be submitted by sources located outside the boundaries of Bernalillo County and areas outside of Indian country, directly to the NMED at the following address: Harold Runnels Building, 1190 St. Francis Drive, Santa Fe, New Mexico 87502. The NMED is the primary point of contact with respect to delegated NSPS and NESHAPs. Sources do not need to send a copy to EPA. EPA Region 6 waives the requirement that notifications and reports for delegated standards be submitted to EPA in addition to NMED in accordance with 40 CFR 63.9(a)(4)(ii) and 63.10(a)(4)(ii).

XIII. How Will Unchanged Authorities Be Delegated to NMED in the Future?

In the future, NMED will only need to send a letter of request to EPA, Region 6, for those NSPS and NESHAP regulations that NMED has adopted by reference. The letter must reference the previous up-front approval demonstration and reaffirm that it still meets the up-front approval criteria. We will respond in writing to the request stating that the request for delegation is either granted or denied. If a request is approved, the effective date of the delegation will be the date of our response letter. A **Federal Register**

notice will be published to inform the public and affected sources of the delegation, indicating where source notifications and reports should be sent, and to amend the relevant portions of the Code of Federal Regulations showing which NSPS and NESHAP standards have been delegated to NMED.

XIV. What Is the Relationship Between RCRA and the Hazardous Waste Combustor MACT?

As part of today's rule, we are delegating, under the CAA, implementation and enforcement authority for the Hazardous Waste Combustor (HWC) MACT (subpart EEE) to NMED. Many of the sources subject to the HWC MACT are also subject to the RCRA permitting requirements. We expect air emissions and related operating requirements found in the HWC MACT will be included in part 70 permits issued by NMED. However, RCRA permits will still be required for all other aspects of the combustion unit and the facility that are governed by RCRA (*e.g.*, corrective action, general facility standards, other combustor-specific concerns such as materials handling, risk-based emissions limits and operating requirements, as appropriate and other hazardous waste management units).[2] *See* the HWC MACT rule preamble discussion (64 FR 52828, 52839–52843 (September 30, 1999)), and the RCRA Site-Specific Risk Assessment Policy for HWC Facilities dated June 2000 for more information on the interrelationship of the MACT rule with the RCRA Omnibus provision and site specific risk assessments.

[2] EPA promulgated the HWC MACT (40 CFR part 63, subpart EEE) under the joint authority of the CAA and RCRA. Before this rule went in to effect, the air emissions from these sources were primarily regulated under the authority of RCRA. See 40 CFR parts 264, 265, 266, and 270. With the release of HWC MACT, the air emissions are now regulated under both CAA and RCRA. Even though both statutes give EPA the authority to regulate air emissions, we determined that having the emissions standards and permitting requirements in both sets of implementing regulations would be duplicative. For this reason, using the authority provided by section 1006(b) of RCRA, EPA deferred the RCRA requirements for the HWC emission controls to the CAA requirements of 40 CFR part 63, Subpart EEE. After a facility has demonstrated compliance with the HWC MACT, the RCRA standards for air emissions from these units will no longer apply, with the exception of section 3005(c)(3) of RCRA, which requires that each RCRA permit contain the terms and conditions necessary to protect human health and the environment. Under this provision of RCRA, if a regulatory authority determines that more stringent conditions than the HWC MACT are necessary to protect human health and the environment for a particular facility, then that regulatory authority may impose those conditions in the facility's RCRA permit.

XV. Final Action

The public was provided the opportunity to comment on the proposed approval of the program and mechanism for delegation of section 112 standards, as applied to part 70 sources, on May 19, 1994. The proposal was part of EPA's proposed approval of New Mexico's Operating Permits Program. 59 FR at 26160. The EPA did not receive any public comments on the proposed delegation of section 112 standards. 59 FR 59656 (November 18, 1994). In this action, the public is given the opportunity to comment on the approval of NMED request for delegation of authority to implement and enforce certain section 112 standards for all sources (both part 70 and non-part 70 sources) which have been adopted by reference into New Mexico's state regulations. However, the Agency views the approval of these requests as a noncontroversial action and anticipates no adverse comments. Therefore, EPA is publishing this rule without prior proposal. However, in the "Proposed Rules" section of today's **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the program and delegation of authority described in this action if adverse comments are received. This action will be effective February 9, 2004 without further notice unless the Agency receives relevant adverse comments by January 12, 2004.

If EPA receives adverse comments, we will publish a timely withdrawal in the **Federal Register** informing the public the rule will not take effect. We will address all public comments in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. Please note that if we receive adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, we may adopt as final those provisions of the rule that are not the subject of an adverse comment.

XVI. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state request to receive delegation of certain Federal standards, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing delegation submissions, EPA's role is to approve submissions provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a delegation submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA to use VCS in place of a delegation submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply.

This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by February 9, 2004. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects

40 CFR Part 60

Environmental protection, Air pollution control, Administrative practice and procedure, Hazardous substances, Intergovernmental relations, Reporting and recordkeeping requirements.

40 CFR Part 61

Environmental protection, Air pollution control, Administrative practice and procedure, Hazardous substances, Intergovernmental relations, Reporting and recordkeeping requirements.

40 CFR Part 63

Environmental protection, Air pollution control, Administrative practice and procedure, Hazardous substances, Intergovernmental relations, Reporting and recordkeeping requirements.

Authority: This action is issued under the authority of sections 111 and 112 of the Clean Air Act, as amended, 42 U.S.C. 7411 and 7412.

Dated: November 26, 2003.

Lynda F. Carroll,

Acting Regional Administrator, Region 6.

■ 40 CFR parts 60, 61, and 63 are amended as follows:

PART 60—[AMENDED]

■ 1. The authority citation for part 60 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

■ 2. Section 60.4 is amended by revising paragraph (b)(GG) and adding paragraph (e) to read as follows:

§ 60.4 Address

(b) * * *

* * * * *

(GG) State of New Mexico: New Mexico Environment Department, 1190 St. Francis Drive, P.O. Box 26110, Santa Fe, New Mexico 87502. Note: For a list of delegated standards for New Mexico (excluding Bernalillo County and Indian country), see paragraph (e)(1) of this section.

* * * * *

(e) The following lists the specific part 60 standards that have been delegated unchanged to the air pollution control agencies in Region 6.

(1) *New Mexico.* The New Mexico Environment Department has been delegated all part 60 standards promulgated by EPA, except subpart AAA—Standards of Performance for New Residential Wood Heaters, as amended in the **Federal Register** through September 1, 2002.

PART 61—[AMENDED]

■ 3. The authority citation for part 61 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

■ 4. Section 61.04 is amended by revising paragraph (b)(GG) and adding paragraph (c)(6) to read as follows:

§ 61.04 Address.

(b) * * *

* * * * *

(GG) *State of New Mexico:* New Mexico Environment Department, 1190 St. Francis Drive, P.O. Box 26110, Santa Fe, New Mexico 87502. For a list of delegated standards for New Mexico (excluding Bernalillo County and Indian country), see paragraph (c)(6) of this section.

* * * * *

(c) * * *

* * * * *

(6) The following lists the specific part 61 standards that have been delegated unchanged to the air pollution control agencies in Region 6.

(i)–(ii). [Reserved]

(iii) *New Mexico.* The New Mexico Environment Department (NMED) has been delegated the following part 61 standards promulgated by EPA, as amended in the **Federal Register** through September 1, 2001. The (X) symbol is used to indicate each subpart that has been delegated.

DELEGATION STATUS FOR NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS (PART 61 STANDARDS) FOR NEW MEXICO (EXCLUDING BERNALILLO COUNTY AND INDIAN COUNTRY)[1]

Subpart	Source category	New Mexico
A	General Provisions	X
B	Radon Emissions From Underground Uranium Mines.	
C	Beryllium	X
D	Beryllium Rocket Motor Firing	X
E	Mercury	X
F	Vinyl Chloride	X
G	(Reserved).	
H	Emissions of Radionuclides Other Than Radon From Department of Energy Facilities.	
I	Radionuclide Emissions From Federal Facilities Other Than Nuclear Regulatory Commission Licensees and Not Covered by Subpart H.	
J	Equipment Leaks (Fugitive Emission Sources) of Benzene	X
K	Radionuclide Emissions From Elemental Phosphorus Plants.	
L	Benzene Emissions From Coke By-Product Recovery Plants	X
M	Asbestos	X
N	Inorganic Arsenic Emissions From Glass Manufacturing Plants	X
O	Inorganic Arsenic Emissions From Primary Copper Smelters	X

DELEGATION STATUS FOR NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS (PART 61 STANDARDS) FOR NEW MEXICO (EXCLUDING BERNALILLO COUNTY AND INDIAN COUNTRY)[1]—Continued

Subpart	Source category	New Mexico
P	Inorganic Arsenic Emissions From Arsenic Trioxide and Metallic Arsenic Production Facilities	X
Q	Radon Emissions From Department of Energy Facilities.	
R	Radon Emissions From Phosphogypsum Stacks.	
S	(Reserved).	
T	Radon Emissions From the Disposal of Uranium Mill Tailings.	
U	(Reserved).	
V	Equipment Leaks (Fugitive Emission Sources)	X
W	Radon Emissions From Operating Mill Tailings.	
X	(Reserved).	
Y	Benzene Emissions From Benzene Storage Vessels	X
Z–AA	(Reserved).	
BB	Benzene Emissions From Benzene Transfer Operations	X
CC–EE	(Reserved).	
FF	Benzene Waste Operations	X

[1] Program delegated to New Mexico Environment Department (NMED).

(iv)–(vi). [Reserved]

PART 63—[AMENDED]

■ 5. The authority citation for part 63 continues to read as follows:

Authority: 42 U.S.C. 7401, *et seq.*

■ 6. Section 63.99 is amended by adding paragraph (a)(31) to read as follows:

(a) * * *

* * * * *

(31) *New Mexico.*

(i) The following table lists the specific part 63 standards promulgated by EPA, that have been delegated unchanged to the New Mexico Environment Department for all sources (both part 70 and non-part 70 sources). The delegation applies to the following part 63 standards promulgated by EPA, as amended in the **Federal Register** through September 1, 2002. The (X) symbol is used to indicate each subpart that has been delegated.

DELEGATION STATUS FOR PART 63 STANDARDS—NEW MEXICO (EXCLUDING BERNALILLO COUNTY AND INDIAN COUNTRY)[1]

Subpart	Source category	New Mexico
A	General Provisions[2]	X
D	Early Reductions	X
F	Hazardous Organic NESHAP (HON)—Synthetic Organic Chemical Manufacturing Industry (SOCMI)	X
G	HON—SOCMI Process Vents, Storage Vessels, Transfer Operations and Wastewater	X
H	HON—Equipment Leaks	X
I	HON—Certain Processes Negotiated Equipment Leak Regulation	X
J	Polyvinyl Chloride and Copolymers Production	X
K	(Reserved)	
L	Coke Oven Batteries	X
M	Perchloroethylene Dry Cleaning	X
N	Chromium Electroplating and Chromium Anodizing Tanks	X
O	Ethylene Oxide Sterilizers	X
P	(Reserved)	
Q	Industrial Process Cooling Towers	X
R	Gasoline Distribution	X
S	Pulp and Paper Industry	X
T	Halogenated Solvent Cleaning	X
U	Group I Polymers and Resins	X
V	(Reserved)	
W	Epoxy Resins Production and Non-Nylon Polyamides Production	X
X	Secondary Lead Smelting	X
Y	Marine Tank Vessel Loading	X
Z	(Reserved)	
AA	Phosphoric Acid Manufacturing Plants	X
BB	Phosphate Fertilizers Production Plants	X
CC	Petroleum Refineries	X
DD	Off-Site Waste and Recovery Operations	X
EE	Magnetic Tape Manufacturing	X
FF	(Reserved)	
GG	Aerospace Manufacturing and Rework Facilities	X
HH	Oil and Natural Gas Production Facilities	X
II	Shipbuilding and Ship Repair Facilities	X
JJ	Wood Furniture Manufacturing Operations	X
KK	Printing and Publishing Industry	X
LL	Primary Aluminum Reduction Plants	X
MM	Chemical Recovery Combustion Sources at Kraft, Soda, Sulfide, and Stand-Alone Semichemical Pulp Mills.	

DELEGATION STATUS FOR PART 63 STANDARDS—NEW MEXICO (EXCLUDING BERNALILLO COUNTY AND INDIAN COUNTRY)[1]—Continued

Subpart	Source category	New Mexico
NN	(Reserved)	
OO	Tanks—Level 1	X
PP	Containers	X
QQ	Surface Impoundments	X
RR	Individual Drain Systems	X
SS	Closed Vent Systems, Control Devices, Recovery Devices and Routing to a Fuel Gas System or a Process.	X
TT	Equipment Leaks—Control Level 1	X
UU	Equipment Leaks—Control Level 2 Standards	X
VV	Oil-Water Separators and Organic-Water Separators	X
WW	Storage Vessels (Tanks)—Control Level 2	X
XX	(Reserved)	
YY	Generic Maximum Achievable Control Technology Standards	X
ZZ–BBB	(Reserved)	
CCC	Steel Pickling—HCl Process Facilities and Hydrochloric Acid Regeneration	X
DDD	Mineral Wool Production	X
EEE	Hazardous Waste Combustors	X
FFF	(Reserved)	
GGG	Pharmaceuticals Production	X
HHH	Natural Gas Transmission and Storage Facilities	X
III	Flexible Polyurethane Foam Production	X
JJJ	Group IV Polymers and Resins	X
KKK	(Reserved)	
LLL	Portland Cement Manufacturing	X
MMM	Pesticide Active Ingredient Production	X
NNN	Wool Fiberglass Manufacturing	X
OOO	Amino/Phenolic Resins	X
PPP	Polyether Polyols Production	X
QQQ	Primary Copper Smelting	X
RRR	Secondary Aluminum Production	X
SSS	(Reserved)	
TTT	Primary Lead Smelting	X
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VVV	Publicly Owned Treatment Works (POTW)	X
WWW	(Reserved)	
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AAAA	Municipal Solid Waste Landfills	
CCCC	Nutritional Yeast Manufacturing	X
EEEE	Organic Liquids Distribution	
GGGG	Solvent Extraction for Vegetable Oil Production	X
HHHH	Wet Formed Fiberglass Mat Production	X
JJJJ	Paper and other Web (Surface Coating)	
KKKK	Metal Can (Surface Coating)	
NNNN	Surface Coating of Large Appliances	X
OOOO	Fabric Printing Coating and Dyeing	
PPPP	Plastic Parts (Surface Coating)	
QQQQ	Surface Coating of Wood Building Products	
RRRR	Surface Coating of Metal Furniture	
SSSS	Surface Coating for Metal Coil	X
TTTT	Leather Finishing Operations	X
UUUU	Cellulose Production Manufacture	X
VVVV	Boat Manufacturing	X
WWWW	Reinforced Plastic Composites Production	
XXXX	Tire Manufacturing	X
YYYY	Combustion Turbines	
BBBBB	Semiconductor Manufacturing	
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FFFFF	Integrated Iron and Steel	
GGGGG	Site Remediation	
HHHHH	Miscellaneous Coating Manufacturing	
IIIII	Mercury Cell Chlor-Alkali Plants	
JJJJJ	Brick and Structural Clay Products Manufacturing	
KKKKK	Clay Ceramics Manufacturing	
LLLLL	Asphalt Roofing and Processing	
MMMMM	Flexible Polyurethane Foam Fabrication Operation	
NNNNN	Hydrochloric Acid Production, Fumed Silica Production	
PPPPP	Engine Test Facilities	
QQQQQ	Friction Products Manufacturing	
RRRRR	Taconite Iron Ore Processing	
SSSSS	Refractory Products Manufacture	

DELEGATION STATUS FOR PART 63 STANDARDS—NEW MEXICO (EXCLUDING BERNALILLO COUNTY AND INDIAN COUNTRY) [1]—Continued

Subpart	Source category	New Mexico
TTTTT	Primary Magnesium Refining	

[1] Program delegated to New Mexico Environment Department (NMED).
[2] Authorities that cannot be delegated include § 63.6(g), Approval of Alternative Non-Opacity Standards; § 63.6(h)(9), Approval of Alternative Opacity Standards; § 63.7(e)(2)(ii) and (f), Approval of Major Alternatives to Test Methods; § 63.8(f), Approval of Major Alternatives to Monitoring; and § 63.10(f), Approval of Major Alternatives to Recordkeeping and Reporting. In addition, all authorities identified in the certain subparts that EPA has designated that cannot be delegated.

[FR Doc. 03–30710 Filed 12–10–03; 8:45 am]
BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Part 199

[Docket RSPA–07–2995; Notice 11]

Pipeline Safety: Drug Testing; Random Testing Rate

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Notice of minimum annual percentage rate for random drug testing.

SUMMARY: Each year, pipeline operators randomly select employees to test for prohibited drugs. The number of employees selected may not be less than the minimum annual percentage rate the Research and Special Programs Administration's (RSPA) Office of Pipeline Safety (OPS) determines, which is either 50 percent or 25 percent of covered employees based on the industry's positive rate of random tests. In accordance with applicable standards, RSPA/OPS has determined that the positive rate of random drug tests reported by operators this year for testing done in calendar year 2002 is less than 1.0 percent. Therefore, in calendar year 2004, the minimum annual percentage rate for random drug testing is 25 percent of covered employees.

DATES: Effective January 1, 2004, through December 31, 2004.

FOR FURTHER INFORMATION CONTACT: Sheila Wright, RSPA,OPS, Room 7128, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, telephone (202) 366–4554 or e-mail *sheila.wright.rspa.dot.gov*.

SUPPLEMENTARY INFORMATION: Operators of gas, hazardous liquid, and carbon dioxide pipelines and operators of liquefied natural gas facilities must annually submit Management Information System (MIS) reports of drug testing conducted in the previous calendar year (49 CFR 199.119(a)). This information is used to calculate the minimum annual percentage rate at which operators must randomly select covered employees for drug testing during the next calendar year (49 CFR 199.105(c)(2)). If the minimum annual percentage rate for random drug testing is 50 percent, RSPA/OPS may lower the rate to 25 percent if it determines that the positive rate reported for random tests for two consecutive calendar years is less than 1.0 percent (49 CFR 199.105(c)(3)). If the minimum annual percentage rate is 25 percent, RSPA/OPS will increase the rate to 50 percent if it determines that the positive rate reported for random tests for any calendar year is equal to or greater than 1.0 percent (49 CFR 199.105(c)(4)). Part 199 defines "positive rate" as "the number of positive results for random drug tests * * * plus the number of refusals of random tests * * *, divided by the total number of random drug tests * * * plus the number of refusals of random tests. * * *"

Through calendar year 1996, the minimum annual percentage rate for random drug testing in the pipeline industry was 50 percent of covered employees. Based on MIS reports of random testing conducted in 1994 and 1995, RSPA/OPS lowered the minimum rate from 50 percent to 25 percent for calendar year 1997 (61 FR 60206; November 27, 1996). The minimum rate remained at 25 percent in calendar years 1998 (62 FR 59297; Nov. 3, 1997); 1999 (63 FR 58324; Oct. 30, 1998); 2000 (64 FR 66788; Nov. 30, 1999); 2001 (65 FR 81409; Dec. 26, 2000); and 2002 (67 FR 2611; Jan. 18, 2002).

Using the MIS reports received this year for drug testing conducted in calendar year 2002. RSPA/OPS calculated the positive rate of random testing to be 0.7 percent. Since the positive rate continues to be less than 1.0 percent, RSPA/OPS is announcing that the minimum annual percentage rate for random drug testing is 25 percent of covered employees for the period January 1, 2004, through December 31, 2004.

Authority: 49 U.S.C. 5103, 60102, 60104, 60108, 60117, and 60118; 49 CFR 1.53.

Issued in Washington, DC, on December 4, 2003.

Stacey L. Gerard,

Associate Administrator for Pipeline Safety.

[FR Doc. 03–30654 Filed 12–10–03; 8:45 am]
BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. NHTSA 2003–15855]

Federal Motor Vehicle Safety Standards; Occupant Crash Protection

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Denial of petition for rulemaking.

SUMMARY: This document denies a petition for rulemaking to amend Federal Motor Vehicle Safety Standard (FMVSS) No. 208, "Occupant Crash Protection," because it is redundant to pending rulemaking action by the agency.

FOR FURTHER INFORMATION CONTACT: For non-legal issues: Louis Molino, Office of Crashworthiness Standards, NVS–112, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590. Telephone (202) 366–2264. Fax: (202) 493–2290.

For legal issues: Rebecca MacPherson, Office of Chief Counsel, NCC–20, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590. Telephone: (202) 366–2992. Fax: (202) 366–3820.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Background
II. The Petition
III. Discussion and Analysis

I. Background

On May 12, 2000, we published in the **Federal Register** (65 FR 30680) a final rule to require advanced air bags (Docket No. NHTSA–00–7013). The rule amended Federal Motor Vehicle Safety Standard (FMVSS) No. 208, *Occupant Crash Protection,* to require that future air bags be designed so that, compared to current air bags, they create less risk of serious air bag-induced injuries, particularly for small women and young children, and provide improved frontal crash protection for all occupants, by means that include advanced air bag technology.

One means of compliance with part of the advanced air bag regulation is to turn off the passenger air bag by means of a weight sensor and/or some other method of detecting the presence of children. To test the ability of those means to detect the presence of children, the rule specifies that child test dummies be placed in child restraint systems (CRSs) or seats that are in turn placed on the passenger seats. Optionally, for infants in rear facing CRSs, compliance can also be achieved by placing a dummy representing a 12-month-old child in a CRS and assuring that the air bag deploys in a benign manner. Appendix A of FMVSS No. 208 provides a list of CRSs to be used for these compliance tests. The list published with the May 12, 2000 final rule contained 1 car bed, 11 rear-facing seats, 7 convertible seats, and 4 booster seats for a total of 23.

On December 18, 2001, a new FMVSS No. 208 Final Rule was published in response to petitions for reconsideration to the May 12, 2000, Final Rule. A new Appendix A was published as part of this new rule. All seats that were known to be out of production were removed from the list. Replacement seats were added to the list. The number of rear-facing CRSs was reduced by one and the total number of CRSs in Appendix A became 22.

On November 19, 2003, the agency published a document that responded, in part, to petitions for reconsideration to the December 18, 2001, FMVSS No. 208 Final Rule. It addressed detailed dummy and seat positioning issues and other test procedure clarifications presented in the petitions for reconsideration. It also began to deal with issues associated with child restraints specified in Appendix A of FMVSS No. 208. The agency also addressed the methodology for regular updates to Appendix A.

II. The Petition

The Evenflo Company, Inc., petitioned NHTSA to remove specific Evenflo CRS models from Appendix A of FMVSS No. 208 and change the model number designation of another model. There are currently six Evenflo products in Appendix A. One of these products is a booster seat, which Evenflo is not requesting to have removed from the list. On August 30, 2002, Evenflo discontinued production of all CRSs that were not LATCH compliant in accordance with the requirements of S5.9 of FMVSS No. 213. In its petition, Evenflo recommended replacement seats for the five for which removal was requested. The out-of-production seats and the suggested LATCH compliant seats are shown in Table 1. The third column in Table 1 indicates the similarity, noted by Evenflo, between the out-of-production seats and the suggested replacement seats.

TABLE 1

Out-of-production	LATCH seats	Similarity noted by Evenflo
Rear Facing Infant		
204 First Choice	381 Tot Taxi	Base not removable.
282 On My Way Position Right V	386 Port About 5	Equivalent in size.
212 Discovery Adjust Right	316 Discovery	Same seat with LATCH.
Convertible Seats		
425 Horizon V	379 Tribute	Equivalent in size.
254 Medallion	359 Triumph 5	Equivalent in size and 5 pt. Harness.

III. Discussion and Analysis

Evenflo requested that five out-of-production CRSs that it manufactures be removed from Appendix A and replaced. The On My Way Position Right V has already been removed from the list, so four now remain. Evenflo is not unique among the CRS manufacturers represented in Appendix A. The agency understands that since all CRSs except car beds and booster seats must now be LATCH compliant, many of the CRSs in Appendix A are no longer in production in a non-LATCH form. In response to petitions for reconsideration of the December 18, 2001, FMVSS No. 208 Final Rule, we published a notice addressing the issue of how to update Appendix A. The notice addressed the concerns expressed in Evenflo's petition. Therefore, we are denying the Evenflo petition because it is redundant.

Authority: 49 U.S.C. 30162; delegations of authority at 49 CFR 1.50 and 49 CFR 501.8

Issued on: December 8, 2003.

Stephen R. Kratzke,

Associate Administrator for Rulemaking.

[FR Doc. 03–30690 Filed 12–10–03; 8:45 am]
BILLING CODE 4910–59–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 021212307–3037–02; I.D. 120503A]

Fisheries of the Exclusive Economic Zone off Alaska; Recision and Reallocation of Pacific Cod in the Bering Sea and Aleutian Islands Management Area

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Reallocation.

SUMMARY: NMFS is rescinding a previous action that reallocated Pacific

cod among gear types and is reallocating the currently projected unused amount of Pacific cod from vessels using trawl and jig gear to catcher/processor vessels using hook-and-line gear and vessels using pot gear in the Bering Sea and Aleutian Islands management area (BSAI). These actions are necessary to allow the 2003 total allowable catch (TAC) of Pacific cod to be harvested in accordance with regulations at 50 CFR part 679.

DATES: Effective December 8, 2003, until 2400 hours, A.l.t., December 31, 2003.

FOR FURTHER INFORMATION CONTACT: Mary Furuness, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the BSAI exclusive economic zone according to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

Effective November 26, 2003, NMFS reallocated the projected unused amount of Pacific cod from vessels using trawl and jig gear to vessels using hook-and-line gear in the BSAI (68 FR 67379, December 2, 2003). As of December 2, 2003, based on revised catch amounts, NMFS has determined that catcher vessels using trawl gear have already harvested all but 1,671 mt originally apportioned to them by the final 2003 harvest specifications for groundfish in the BSAI (68 FR 9907, March 3, 2003). This reduces the projected unused amount available to catcher/processor vessels using hook-and-line gear by 4,113 metric tons (mt) and to vessels using pot gear by 216 mt. Therefore, NMFS is rescinding the previous action and reallocating the projected unused amount of Pacific cod as follows.

The 2003 BSAI Pacific cod TAC was established by the final 2003 harvest specifications for groundfish in the BSAI (68 FR 9907, March 3, 2003) as 191,938 metric tons. Pursuant to § 679.20(a)(7)(i)(A), 3,839 mt was allocated to vessels using jig gear, 97,388 mt to vessels using hook-and-line or pot gear as a directed fishing allowance, and 90,211 mt to vessels using trawl gear. The share of the Pacific cod TAC allocated to trawl gear was further allocated 50 percent to catcher vessels and 50 percent to catcher/processor vessels (§ 679.20(a)(7)(i)(B)). The share of the Pacific cod TAC allocated to hook-and-line or pot gear was further allocated 80 percent to catcher/processor vessels using hook-and-line gear; 0.3 percent to catcher vessels using hook-and-line gear; 18.3 percent to vessels using pot gear; and 1.4 percent to catcher vessels less than 60 ft LOA that use either hook-and-line or pot gear (§ 679.20(a)(7)(i)).

As of December 2, 2003, the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that trawl catcher/processors will not be able to harvest 11,500 mt and trawl catcher vessels will not be able to harvest 1,671 mt of Pacific cod allocated to those vessels under 679.20(a)(7)(i)(B). Therefore, in accordance with § 679.20(a)(7)(ii), NMFS apportions 13,171 mt of Pacific cod from trawl gear to catcher/processor vessels using hook-and-line gear and vessels using pot gear.

The Regional Administrator has determined that vessels using jig gear will not harvest 3,600 mt of their Pacific cod allocation by the end of the year. Therefore, in accordance with § 679.20(a)(7)(ii), NMFS is reallocating the unused amount of 3,600 mt of Pacific cod allocated to vessels using jig gear to catcher/processor vessels using hook-and-line gear and vessels using pot gear.

In accordance with § 679.20(a)(7)(ii)(C)(2), the combined reallocation of unused Pacific cod from jig gear and trawl gear, 16,771 mt is apportioned so that catcher/processor vessels using hook-and-line gear will receive 95 percent and vessels using pot gear will receive 5 percent of the reallocation.

The harvest specifications for Pacific cod included in the harvest specifications for groundfish in the BSAI (68 FR 9907, March 3, 2003) are revised as follows: 239 mt to vessels using jig gear, 93,843 mt to catcher processor vessels using hook-and-line gear, 18,661 mt to vessels using pot gear, 33,605 mt to trawl catcher/processors, and 43,434 mt to trawl catcher vessels.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA, (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is contrary to the public interest. This requirement is contrary to the public interest as it would delay the implementation of these measures in a timely fashion in order to allow full utilization of the Pacific cod TAC, and therefore reduce the public's ability to use and enjoy the fishery resource.

The AA also finds good cause to waive the 30–day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is taken under 50 CFR 679.20 and is exempt from OMB review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: December 8, 2003.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 03–30714 Filed 12–8–03; 3:17 pm]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 021212307–3037–02; I.D. 120403C]

Fisheries of the Exclusive Economic Zone off Alaska; Pacific Cod by Vessels Using Pot Gear in the Bering Sea and Aleutian Islands

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS is prohibiting directed fishing for Pacific cod by vessels using pot gear in the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the 2003 total allowable catch (TAC) of Pacific cod allocated to vessels using pot gear in this area.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), December 9, 2003, until 2400 hrs, A.l.t., December 31, 2003.

FOR FURTHER INFORMATION CONTACT: Josh Keaton, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the BSAI according to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The 2003 Pacific cod TAC allocated to vessels using pot gear in the BSAI was established as a directed fishing allowance of 17,822 metric tons (mt) by the final 2003 harvest specifications for groundfish in the BSAI (68 FR 9907, March 3, 2003). The Pacific cod TAC allocation for vessels using pot gear was revised on October 17, 2003 (68 FR 59748), on December 2, 2003 (68 FR 67379), and again in a document published elsewhere in this issue, resulting in a directed fishing allowance of 18,661 mt. See § 679.20(c)(3)(iii), § 679.20(c)(5), § 679.20(a)(7)(i)(A) and (C) and § 679.20 (a) (7) (ii).

In accordance with § 679.20(d)(1)(iii), the Administrator, Alaska Region, NMFS, has determined that the 2003 Pacific cod TAC allocated as a directed fishing allowance to vessels using pot gear in the BSAI will soon be reached. Consequently, NMFS is prohibiting directed fishing for Pacific cod by vessels using pot gear in the BSAI.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is contrary to the public interest. This requirement is contrary to the public interest as it would delay the closure of the fishery, lead to exceeding the 2003 Pacific cod TAC allocated as a directed fishing allowance to vessels using pot gear in the BSAI, and therefore reduce the public's ability to use and enjoy the fishery resource.

The AA also finds good cause to waive the 30–day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by § 679.20 and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: December 8, 2003.

Bruce C. Morehead.

Acting Director, Office of Sustainable Fisheries,National Marine Fisheries Service.

[FR Doc. 03–30715 Filed 12–8–03; 3:17 pm]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

Docket No. 021212307–3037–02; I.D. 120403B]

Fisheries of the Exclusive Economic Zone off Alaska; Pacific Cod by Catcher/Processor Vessels Using Hook-and-line Gear in the Bering Sea and Aleutian Islands

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS is prohibiting directed fishing for Pacific cod by catcher/processor vessels using hook-and-line gear in the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the 2003 total allowable catch (TAC) of Pacific cod allocated for catcher/processor vessels using hook-and-line gear in this area.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), December 9, 2003, until 2400 hrs, A.l.t., December 31, 2003.

FOR FURTHER INFORMATION CONTACT: Josh Keaton, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the BSAI according to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The 2003 Pacific cod TAC allocated to catcher/processor vessels using hook-and-line gear in the BSAI was 77,911 metric tons (mt), as established by the final 2003 harvest specifications for groundfish of the BSAI (68 FR 9924, March 3, 2003). The Pacific cod TAC allocation to catcher processor vessels using hook-and-line gear was revised on October 17, 2003 (68 FR 59748), on December 2, 2003 (68 FR 67379), and again in a document published elsewhere in this issue, resulting in a directed fishing allowance of 93,843 mt. See § 679.20(c)(3)(iii), § 679.20(c)(5), and § 679.20(a)(7)(i)(A) and (C).

In accordance with § 679.20(d)(1)(iii), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the 2003 Pacific cod TAC allocated as a directed fishing allowance to catcher/processor vessels using hook-and-line gear in the BSAI will soon be reached. Consequently, NMFS is prohibiting directed fishing for Pacific cod by catcher/processor vessels using hook-and-line gear in the BSAI.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is contrary to the public interest. This requirement is contrary to the public interest as it would delay the closure of the fishery, lead to exceeding the 2003 Pacific cod TAC allocated as a directed fishing allowance allocated to catcher/processor vessels in the BSAI, and therefore reduce the public's ability to use and enjoy the fishery resource.

The AA also finds good cause to waive the 30–day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: December 8, 2003.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 03–30716 Filed 12–8–03; 3:17 pm]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 021212307–3037–02; I.D. 120403A]

Fisheries of the Exclusive Economic Zone off Alaska; Pacific Cod by Catcher Vessels Using Hook-and-Line Gear in the Bering Sea and Aleutian Islands

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS is prohibiting directed fishing for Pacific cod by catcher vessels

using hook-and-line gear in the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the 2003 total allowable catch (TAC) of Pacific cod allocated to catcher vessels using hook-and-line gear in this area.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), December 9, 2003, until 2400 hrs, A.l.t., December 31, 2003.

FOR FURTHER INFORMATION CONTACT: Josh Keaton, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the BSAI according to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The 2003 Pacific cod TAC allocated to catcher vessels using hook-and-line gear in the BSAI was 292 metric tons (mt) as established by the final 2003 harvest specifications for groundfish of the BSAI (68 FR 9924, March 3, 2003). The Pacific cod TAC allocation to catcher vessels using hook-and-line gear was revised on October 17, 2003 (68 FR 59748), on December 2, 2003 (68 FR 67379), and again in a document published elsewhere in this issue, resulting in a net TAC allocation of 292 mt, unchanged from the original allocation.

In accordance with § 679.20(d)(1)(iii), the Administrator, Alaska Region, NMFS, has determined that the 2003 Pacific cod TAC allocated as a directed fishing allowance to catcher vessels using hook-and-line gear in the BSAI will soon be reached. Consequently, NMFS is prohibiting directed fishing for Pacific cod by catcher vessels using hook-and-line gear in the BSAI.

Maximum retainable amounts may be found in the regulations at § 679.20(e) and (f).

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is contrary to the public interest. This requirement is contrary to the public interest as it would delay the closure of the fishery, lead to exceeding the 2003 Pacific cod TAC allocated to catcher vessels using hook-and-line gear in the BSAI, and therefore reduce the public's ability to use and enjoy the fishery resource.

The AA also finds good cause to waive the 30–day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by § 679.20 and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: December 8, 2003.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 03–30717 Filed 12–8–03; 3:17 pm]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 68, No. 238
Thursday, December 11, 2003

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2003–16647]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model DC–9–14, DC–9–15, and DC–9–15F Airplanes; Model DC–9–20, –30, –40, and –50 Series Airplanes; and Model DC–9–81 (MD–81), DC–9–82 (MD–82), DC–9–83 (MD–83), DC–9–87 (MD–87), MD–88, and MD–90–30 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain McDonnell Douglas airplane models. This proposal would require inspection of the captain's and first officer's seat locking pins for minimum engagement with the detent holes in the seat tracks; inspection of the seat lockpins for excessive wear; and corrective actions, if necessary. This action is necessary to prevent uncommanded seat movement during takeoff and/or landing, which could result in interference with the operation of the airplane and consequent temporary loss of control of the airplane. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by January 26, 2004.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. FAA–2003–16647, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov*. Comments sent via fax or the Internet must contain "Docket No. FAA–2003–16647" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 or 2000 or ASCII text.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Services Management, Dept. C1–L5A (D800–0024). This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California.

FOR FURTHER INFORMATION CONTACT: Cheyenne Del Carmen, Aerospace Engineer, Systems and Equipment Branch, ANM–130L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5338; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (e.g., reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2002–NM–203–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. FAA–2003–16647, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The FAA has received reports that on three instances the captain's and/or first officer's seat(s) unexpectedly moved full aft during takeoff of certain McDonnell Douglas Model DC–9–41 and DC–9–33RC airplanes. The cause of the uncommanded seat movement has been attributed to marginal engagement between the seat locking pins and the detent holes of the seat track of the captain's and first officer's seat assemblies. This condition, if not corrected, could lead to uncommanded seat movement during takeoff and/or landing, which could result in interference with the operation of the airplane and consequent temporary loss of control of the airplane.

The captain's and first officer's seat assemblies on certain Model DC–9–41 and DC–9–33RC airplanes are identical to those installed on certain Model DC–9–14, DC–9–15, and DC–9–15F airplanes; certain Model DC–9–20, –30, –40, and –50 series airplanes; and certain Model DC–9–81 (MD–81), DC–9–82 (MD–82), DC–9–83 (MD–83), DC–9–87 (MD–87), MD–88, and MD–90–30 airplanes. Therefore, all of these models may be subject to the identified unsafe condition.

Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Alert Service Bulletin DC9–25A350, Revision 01, dated June 14, 2002 (for Model DC–9–14, DC–9–15, and DC–9–15F airplanes; Model DC–9–20, –30, –40, and –50 series airplanes; and Model DC–9–81 (MD–81), DC–9–82 (MD–82), DC–9–83 (MD–83), DC–9–87 (MD–87), and MD–88 airplanes); and Boeing Alert Service Bulletin MD90–25A009, Revision 01, dated July 1, 2002 (for Model MD–90–30 airplanes).

These service bulletins describe procedures for a detailed inspection of the captain's and first officer's seat locking pins for minimum engagement with the detent holes in the seat tracks; a detailed inspection of the seat lockpins for excessive wear; and corrective actions, if necessary. The corrective actions include adjusting/replacing the seat locking pin with a new pin and/or adjusting/repairing/replacing the seat track with a new track, as applicable. Accomplishment of the actions specified in these service bulletins is intended to adequately address the identified unsafe condition.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require accomplishment of the actions specified in the service bulletins described previously.

Cost Impact

There are approximately 2,166 airplanes of the affected design in the worldwide fleet. The FAA estimates that 1,355 airplanes of U.S. registry would be affected by this proposed AD. It would take approximately between 1 and 3 work hours per seat (depending on airplane configuration) to accomplish the proposed inspection. Each airplane has 2 seats (the captain and first officer seats); therefore, it will take approximately between 2 and 6 work hours per airplane (depending on airplane configuration) to accomplish the required inspection, at the average labor rate of $65 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be between $176,150 and $528,450, or between $130 and $390 per airplane, depending on airplane configuration.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this proposed AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

McDonnell Douglas: Docket FAA–2003–16647.

Applicability: This AD applies to the airplanes listed in Table 1 of this AD, certificated in any category:

TABLE 1.—APPLICABILITY

McDonnell Douglas model	As listed in
DC–9–14, DC–9–15, DC–9–15F, DC–9–21, DC–9–31, DC–9–32, DC–9–32 (VC–9C), DC–9–32F, DC–9–33F, DC–9–34, DC–9–34F, DC–9–32F (C–9A, C–9B), DC–9–41, DC–9–51, DC–9–81 (MD–81), DC–9–82 (MD–82), DC–9–83 (MD–83), DC–9–87 (MD–87), and MD–88 airplanes.	Boeing Alert Service Bulletin DC9–25A350, Revision 01, dated June 14, 2002.
MD–90–30 airplanes	Boeing Alert Service Bulletin MD90–25A009, Revision 01, dated July 1, 2002

Compliance: Required as indicated, unless accomplished previously.

To prevent uncommanded seat movement during takeoff and/or landing, which could result in interference with the operation of the airplane and consequent temporary loss of control of the airplane, accomplish the following:

Service Bulletin Reference

(a) The term "service bulletin," as used in this AD, means the Accomplishment Instructions of the applicable service bulletins listed in Table 1 of this AD.

Inspection for Engagement and Excessive Wear of the Seat Locking Pins

(b) Within 18 months after the effective date of this AD, do the actions specified in paragraphs (b)(1) and (b)(2) of this AD, per the service bulletin.

(1) Do a detailed inspection of the seat locking pin for minimum engagement with the detent holes in the seat track of the captain's and first officer's seat assemblies.

Note 1: For the purposes of this AD, a detailed inspection is defined as: "An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required."

(2) Do a detailed inspection of the seat lock pins for excessive wear.

Corrective Actions

(c) If any discrepancy is detected during the inspections required by paragraph (b) of this AD, before further flight, do the corrective action(s), as applicable, per the service bulletin. Those corrective actions include adjusting/replacing the seat locking pin with a new pin and/or adjusting/repairing/replacing the seat track with a new track.

Alternative Methods of Compliance

(d) In accordance with 14 CFR 39.19, the Manager, Los Angeles Aircraft Certification Office, FAA, is authorized to approve alternative methods of compliance for this AD.

Issued in Renton, Washington, on December 4, 2003.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–30674 Filed 12–10–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2003–16646]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 757–200 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Boeing Model 757–200 series airplanes. This proposal would require repetitive inspections of the intercostals that back up the door stops and hinges at door 2 left and door 2 right for cracks, and corrective action, if necessary. This proposal also would provide for an optional terminating action for the repetitive inspections. This action is necessary to prevent fatigue cracks from propagating in the intercostals, which could lead to the loss of a door in flight and subsequent rapid decompression. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by January 26, 2004.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. FAA–2003–16646, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov*. Comments sent via fax or the Internet must contain "Docket No. FAA–2003–16646" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 or 2000 or ASCII text.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Mark Freisthler, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 917–6426; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number FAA–2003–16646." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. FAA–2003–16646, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The FAA has received reports of cracking in the intercostals that provide structural support for the door stops and hinges at door 2 left and door 2 right for Boeing Model 757–200 series airplanes. The cause of the cracks is fatigue caused by the cyclic pressurization of the cabin. If left undetected, the fatigue cracks will continue to propagate. This condition, if not corrected, could result in the loss of a door in flight and subsequent rapid decompression.

Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Special Attention Service Bulletin 757–53–0086, dated March 14, 2002. The service bulletin describes the following procedures:

- Performing an initial detailed inspection for cracks in the intercostals that back up the door stops and hinges at door 2 left and door 2 right;
- For cases of no crack findings, performing repetitive dye penetrant or eddy current inspections for cracks in the intercostals that back up the door stops and hinges at door 2 left and door 2 right;

• For cases of crack findings or for an optional terminating action, installing a preventative modification of the intercostal (*i.e.* cut off the integral clips at the bend relief on the forward end of the intercostals and install new, separate clips to attach the intercostals to the frame at station 660); and/or replacing the intercostal with a new improved intercostal. Accomplishment of the preventative modification or replacement would eliminate the need for the repetitive inspections.

Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require accomplishment of the actions specified in the service bulletin described previously.

The FAA is not proposing to mandate the preventative modification of each intercostal or the replacement of each intercostal for several reasons:

1. Accessing the intercostals for inspection at the intervals is easily accomplished.

2. The cracks at the intercostals are easily detected by means of a detailed inspection.

3. The cracking of the intercostals could result in compromised structural integrity of the door stops; however, the detailed inspections will preclude the potential occurrence of continued cracking.

Cost Impact

There are approximately 95 airplanes of the affected design in the worldwide fleet. The FAA estimates that 55 airplanes of U.S. registry would be affected by this proposed AD.

We estimate that it would take approximately 8 work hours per airplane to accomplish the proposed inspection, and that the average labor rate is $65 per work hour. Based on these figures, the cost impact of the inspection on U.S. operators is estimated to be $28,600, or $520 per airplane, per inspection cycle.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this proposed AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

The optional preventative modification terminating action, if done, would take approximately 50 work hours per airplane at an average labor rate of $65 per work hour. Based on these figures, we estimate the cost of this optional terminating action to be $3,250 per airplane.

Parts for the optional replacement terminating action would cost approximately $692 for each Top Kit—Door Stop 1 Intercostal (L/H or R/H) and $4,581 for each Top Kit—Intercostal Replacement (L/H or R/H).

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Boeing: Docket FAA–2003–16646.

Applicability: Model 757–200 series airplanes, line numbers 1 through 95 inclusive; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent fatigue cracks from propagating in the intercostals, which could lead to the loss of a door in flight and subsequent rapid decompression, accomplish the following:

Service Bulletin References

(a) The term "service bulletin," as used in this AD, means the Accomplishment Instructions of Boeing Special Attention Service Bulletin 757–53–0086, dated March 14, 2002.

Initial Inspection

(b) Prior to the accumulation of 12,000 total flight cycles, or within 3,000 flight cycles after the effective date of this AD, whichever occurs later: Perform a detailed inspection for cracks of the intercostals that back up the door stops and hinges at door 2 left and door 2 right, per Part I of the service bulletin.

No Crack Findings: Repetitive Inspections

(c) If no crack is found during the inspection required by paragraph (b) of this AD, before further flight, do a dye penetrant or eddy current inspection for cracks of the intercostals that back up the door stops and hinges at door 2 left and door 2 right, per Part I of the service bulletin. Repeat thereafter at intervals not to exceed 3,000 flight cycles, until the preventative modification specified in paragraph (g) of this AD or the replacement specified in paragraph (h) of this AD has been accomplished.

Crack Findings: Modification/Replacement

(d) If, during the inspections required by paragraph (b) and/or (c) of this AD, any intercostal for door stop 1, 4, 5, 6, upper hinge, or lower hinge has cracks, but not beyond the aft edge of the bend relief radius: Before further flight, do the preventative modification specified in paragraph (g) of this AD or the replacement specified in paragraph (h) of this AD.

(e) If, during the inspections required by paragraph (b) and/or (c) of this AD, any intercostal for door stop 2 or 3 has cracks: Before further flight, do the replacement specified in paragraph (h) of this AD.

(f) If, during the inspections required by paragraph (b) and/or (c) of this AD, any intercostal has cracks that extend beyond the aft edge of the bend relief radius: Before further flight, do the replacement specified in paragraph (h) of this AD.

Terminating Actions

(g) Do the preventative modification on the intercostal per Part II of the service bulletin. Accomplishment of the preventative modification on an intercostal per Part II of the service bulletin constitutes terminating action for the repetitive inspection requirements of this AD for the modified intercostal only.

(h) Replace the intercostal with a new improved intercostal per Part III of the service bulletin. Accomplishment of the replacement of an intercostal with a new improved intercostal per Part III of the service bulletin constitutes terminating action for the repetitive inspection requirements of this AD for the replaced intercostal only.

Alternative Methods of Compliance

(i) In accordance with 14 CFR 39.19, the Manager, Seattle Aircraft Certification Office, FAA, is authorized to approve alternative methods of compliance for this AD.

Issued in Renton, Washington, on December 4, 2003.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–30675 Filed 12–10–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2003–16645]

RIN 2120–AA64

Airworthiness Directives; Empresa Brasileira de Aeronautica S.A. (EMBRAER) Model EMB–120 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain EMBRAER Model EMB–120 series airplanes. This proposal would require a one-time inspection for signs of overheating of wiring splices of the pitot/static 1, 2, and auxiliary sensors; the angle-of-attack sensors; the side slip sensors; and the current sensors. This proposal also would require follow-on actions. This action is necessary to prevent overheating of cockpit wiring, which could result in loss of operation of the affected systems, or smoke or fire in the cockpit. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by January 12, 2004.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. FAA–2003–16645, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov*. Comments sent via fax or the Internet must contain "Docket No. FAA–2003–16645" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 or 2000 or ASCII text.

The service information referenced in the proposed rule may be obtained from Empresa Brasileira de Aeronautica S.A. (EMBRAER), P.O. Box 343—CEP 12.225, Sao Jose dos Campos—SP, Brazil. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Todd Thompson, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–1175; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

• Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.

• For each issue, state what specific change to the proposed AD is being requested.

• Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number FAA–2003–16645." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. FAA–2003–16645, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Departmento de Aviacao Civil (DAC), which is the airworthiness authority for Brazil, notified the FAA that an unsafe condition may exist on certain EMBRAER Model EMB–120 series airplanes. The DAC advises that there have been several reports of an electrical burning odor in the cockpit. These occurrences have been attributed to overheating of wiring splices of the pitot/static 1, 2, and auxiliary sensors; left- and right-hand angle-of-attack sensors; side slip sensors; and current sensors. This overheating is caused by concentration of heat from components located next to each other. This condition, if not corrected, could result in overheating of cockpit wiring, which could result in loss of operation of the affected systems, or smoke or fire in the cockpit.

Explanation of Relevant Service Information

EMBRAER has issued Service Bulletin 120–30–0030, Change 01, dated November 28, 2000. Part I of the Accomplishment Instructions of that service bulletin describes procedures for a one-time visual inspection for signs of overheating of wiring splices of the pitot/static 1, 2, and auxiliary sensors; the angle-of-attack sensors; the side slip sensors; and the current sensors. Signs of overheating include discoloration on the electrical wires, terminations, or splices. Part II of the Accomplishment Instructions of the service bulletin describes procedures for follow-on actions, including replacing certain wires and relays and eliminating or relocating splices in the wiring of the pitot/static 1, 2, and auxiliary sensors; the angle-of-attack sensors; the side slip

sensors; and the current sensors. Part III of the Accomplishment Instructions of the service bulletin contains instructions specifically intended for airplanes that have been inspected and modified per the original issue of the service bulletin, dated January 31, 2000. For airplanes on which Part I of the Accomplishment Instructions of the original issue of the service bulletin has been accomplished, but Part II of the Accomplishment Instructions of the original issue of the service bulletin has not been accomplished, Part III of the Accomplishment Instructions of Change 01 of the service bulletin describes procedures for a one-time detailed inspection for signs of overheating of wiring splices of the pitot/static 1, 2, and auxiliary sensors; the angle-of-attack sensors; and the side slip sensor located at the circuit breaker panel. For airplanes on which Part II of the Accomplishment Instructions of the original issue of the service bulletin has been accomplished, Part III of the Accomplishment Instructions of Change 01 of the service bulletin describes procedures for installing new identifications.

Accomplishment of the applicable actions specified in Change 01 of the service bulletin is intended to adequately address the identified unsafe condition. The DAC classified this service bulletin as mandatory and issued Brazilian airworthiness directive 2001–06–02, dated June 26, 2001, to ensure the continued airworthiness of these airplanes in Brazil.

FAA's Conclusions

This airplane model is manufactured in Brazil and is type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed AD

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of the actions specified in the service bulletin described previously, except as discussed below.

Difference Between Proposed AD and Referenced Service Bulletin

The service bulletin refers only to a "visual inspection" to detect signs of overheating of the subject wiring splices. We have determined that the procedures in the service bulletin should be described as a "detailed inspection." Note 1 has been included in this proposed AD to define this type of inspection.

Difference Between Proposed AD and Brazilian Airworthiness Directive

This proposed AD would differ from the parallel Brazilian airworthiness directive in that this proposed AD provides for accomplishment of Part III of the Accomplishment Instructions of Change 01 of the service bulletin on airplanes inspected or modified previously per the original issue of the service bulletin. The Brazilian airworthiness directive does not refer to Part III of the Accomplishment Instructions of Change 01 of the service bulletin.

Cost Impact

The FAA estimates that 250 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 4 work hours per airplane to accomplish the proposed inspection, and that the average labor rate is $65 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $65,000, or $260 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Empresa Brasileira De Aeronautica S.A. (EMBRAER): Docket FAA–2003–16645.

Applicability: Model EMB–120 series airplanes, certificated in any category; serial numbers 120004, and 120006 through 120352 inclusive.

Compliance: Required as indicated, unless accomplished previously.

To prevent overheating of cockpit wiring, which could result in loss of operation of the affected systems, or smoke or fire in the cockpit, accomplish the following:

Airplanes Not Inspected/Modified Previously: One-Time Detailed Inspection

(a) For airplanes on which neither Part I nor Part II of the Accomplishment Instructions of EMBRAER Service Bulletin 120–30–0030, dated January 31, 2000, was accomplished prior to the effective date of this AD: Within 400 flight hours after the effective date of this AD, do a one-time detailed inspection for signs of overheating of wiring splices of the pitot/static 1, 2, and auxiliary sensors; the angle-of-attack sensors; the side slip sensors; and the current sensors, per Part I of the Accomplishment Instructions of EMBRAER Service Bulletin 120–30–0030, Change 01, dated November 28, 2000. Signs of overheating include discoloration on the electrical wires, terminations, or splices.

Note 1: For the purposes of this AD, a detailed inspection is defined as: "An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required."

Airplanes Inspected or Modified Previously: Follow-on Actions

(b) For airplanes on which Part I of the Accomplishment Instructions of EMBRAER Service Bulletin 120–30–0030, dated January 31, 2000, but not Part II of the Accomplishment Instructions of that service bulletin, was accomplished prior to the effective date of this AD: Within 400 flight hours after the effective date of this AD, do a one-time detailed inspection for signs of overheating of wiring splices of the pitot/static 1, 2, and auxiliary sensors; the angle-of-attack sensors; and the side slip sensor located at the circuit breaker panel; per Part III of the Accomplishment Instructions of Embraer Service Bulletin 120–30–0030, Change 01, dated November 28, 2000.

(c) For airplanes on which Part II of the Accomplishment Instructions of EMBRAER Service Bulletin 120–30–0030, dated January 31, 2000, was accomplished prior to the effective date of this AD: Within 400 flight hours after the effective date of this AD, install new identifications by doing all actions in paragraphs 2.4.2. of Part III of the Accomplishment Instructions of Embraer Service Bulletin 120–30–0030, Change 01, dated November 28, 2000.

Follow-On Actions

(d) For all airplanes subject to paragraph (a) or (b) of this AD: At the applicable compliance time specified in paragraph (d)(1) or (d)(2) of this AD, replace wires and relays with new wires and relays; and eliminate or relocate splices in the wiring of the pitot/static 1, 2, and auxiliary sensors; the angle-of-attack sensors; the side slip sensors; and the current sensors; as applicable; by doing all actions in paragraphs 2.3.1 through 2.3.23 of Part II of the Accomplishment Instructions of EMBRAER Service Bulletin 120–30–0030, Change 01, dated November 28, 2000.

(1) If no sign of overheating is found during any inspection per paragraph (a) or (b) of this AD: Do the actions in paragraph (d) of this AD within 2,000 flight hours after the inspection.

(2) If any sign of overheating is found during any inspection per paragraph (a) or (b) of this AD: Do the actions in paragraph (d) of this AD before further flight after the inspection.

Alternative Methods of Compliance

(e) In accordance with 14 CFR 39.19, the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, is authorized to approve alternative methods of compliance for this AD.

Note 2: The subject of this AD is addressed in Brazilian airworthiness directive 2001–06–02, dated June 26, 2001.

Issued in Renton, Washington, on December 4, 2003.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–30676 Filed 12–10–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–79–AD]

RIN 2120–AA64

Airworthiness Directives; Bombardier Model DHC–8–102, –103, –106, –201, –202, –301, –311, and –315 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Bombardier Model DHC–8–102, –103, –106, –201, –202, –301, –311, and –315 airplanes. This proposal would require a one-time inspection to determine the serial numbers of the elevator and aileron servos of the drive assemblies of the automatic flight control system, and follow-on corrective actions if necessary. This action is necessary to prevent separation of the screws from the autopilot clutch assembly of the SM–300 servo, which could result in uncommanded engagement of the autopilot servo and consequent reduced controllability of the airplane. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by January 12, 2004.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–79–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov*. Comments sent via fax or the Internet must contain "Docket No. 2002–NM–79–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 or 2000 or ASCII text.

The service information referenced in the proposed rule may be obtained from Bombardier, Inc., Bombardier Regional Aircraft Division, 123 Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York.

FOR FURTHER INFORMATION CONTACT: Ezra Sasson, Aerospace Engineer, Systems and Flight Test Branch, ANE–172, FAA, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York 11581; telephone (516) 256–7520; fax (516) 568–2716.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action

must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2002–NM–79–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–79–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

Transport Canada Civil Aviation (TCCA), which is the airworthiness authority for Canada, notified the FAA that an unsafe condition may exist on certain Bombardier Model DHC–8–102, –103, –106, –201, –202, –301, –311, –314, and –315 airplanes. TCCA advises that investigation of an incident involving higher-than-normal aileron control forces revealed that the screws in the SM–300 autopilot clutch assembly had backed out sufficiently, causing the clutch to mechanically engage the autopilot servo. Further investigation showed that inadequate adhesive was used on the screws during manufacture of the assembly. The adhesive was used on both elevator and aileron servo assemblies. This condition, if not corrected, could result in uncommanded engagement of the autopilot servo and consequent reduced controllability of the airplane.

Explanation of Relevant Service Information

Bombardier has issued Alert Service Bulletin A8–22–18, Revision "B" dated November 19, 2001, which describes procedures for a one-time inspection to determine the serial numbers of the elevator and aileron servo drive assemblies of the automatic flight control system, and follow-on corrective actions if necessary. The corrective actions involve replacing any elevator or aileron servo having any serial number between 4826 and 5935 inclusive (part number (P/N) 7002260–922 for the elevator servo and P/N 7002260–923 for the aileron servo), and doing an adjustment/test procedure. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition.

The Bombardier service bulletin includes Honeywell Alert Service Bulletin 7002260–22–A0013, dated July 26, 2001, which contains procedures for replacing the clutch screws and applying an epoxy adhesive in lieu of the retaining compound currently used to hold the screws in place, replacing the identification plate, and testing to verify the screw retention.

TCCA classified the Bombardier service bulletin as mandatory and issued Canadian airworthiness directive CF–2001–40, dated November 9, 2001, to ensure the continued airworthiness of these airplanes in Canada.

FAA's Conclusions

These airplane models are manufactured in Canada and are type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, TCCA has kept us informed of the situation described above. We have examined the findings of TCCA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed AD

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of the actions specified in the service bulletin described previously, except as discussed below.

Differences Among Canadian Airworthiness Directive, Service Bulletin, and This Proposed AD

Although paragraph 1.B. of the Honeywell Alert Service Bulletin included in Bombardier Alert Service Bulletin A8–22–18, Revision "B", specifies accomplishment of concurrent requirements, the modifications specified in that paragraph have been done by operators before the effective date of this AD; therefore, this AD does not include those requirements.

Whereas the service bulletin specifies a check for certain serial numbers, and the Canadian airworthiness directive specifies a visual inspection, this proposed AD would require a general visual inspection. A note has been added to the proposed rule to define that inspection.

Bombardier Model DHC–8–314 is not included in the applicability of this AD; it has not been U.S. type certificated.

Cost Impact

We estimate that 200 airplanes of U.S. registry would be affected by this proposed AD.

It would take approximately 1 work hour per airplane to accomplish the proposed inspection, at an average labor rate of $65 per work hour. Based on these figures, the cost impact of the proposed inspection on U.S. operators is estimated to be $13,000, or $65 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the current or proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Bombardier, Inc. (Formerly de Havilland, Inc.): Docket 2002–NM–79–AD.

Applicability: Model DHC–8–102, –103, –106, –201, –202, –301, –311, and –315 airplanes; serial numbers 003 through 580 inclusive; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent separation of the screws in the autopilot clutch assembly of the SM–300 servo, which could result in uncommanded engagement of the autopilot servo and consequent reduced controllability of the airplane, accomplish the following:

One-Time Inspection/Follow-on Corrective Action, if Necessary

(a) Within 12 months after the effective date of this AD: Do a general visual inspection to determine the serial numbers of the elevator and aileron servo drive assemblies of the automatic flight control system per paragraphs III.1. and III.2. of the Accomplishment Instructions of Bombardier Alert Service Bulletin A8–22–18, Revision "B", dated November 19, 2001.

Note 1: For the purposes of this AD, a general visual inspection is defined as: "A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made from within touching distance unless otherwise specified. A mirror may be necessary to enhance visual access to all exposed surfaces in the inspection area. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or droplight and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked."

(1) If any elevator or aileron servo, P/N 7002260–922, or any aileron servo, P/N 7002260–923, with serial numbers 4826 through 5935 inclusive, is found: Before further flight, do all the follow-on actions per paragraphs III.3. and III.4. of the Accomplishment Instructions of Bombardier Alert Service Bulletin A8–22–18, Revision "B", dated November 19, 2001; and per paragraphs 3.A. through 3.F. of the Honeywell Accomplishment Instructions specified on pages 14 through 17 of the Bombardier service bulletin.

(2) If no serial number specified in paragraph (a)(1) of this AD is found, no further action is required by this paragraph.

Part Installation

(b) As of the effective date of this AD, no person may install an elevator or aileron servo, P/N 7002260–922, or an aileron servo, P/N 7002260–923, with serial numbers 4826 through 5935 inclusive, on any airplane.

Note 2: Although Bombardier Alert Service Bulletin A8–22–18, Revision "B", dated November 19, 2001, specifies accomplishment of concurrent requirements, this AD does not include those requirements.

Alternative Methods of Compliance

(c) In accordance with 14 CFR 39.19, the Manager, New York Aircraft Certification Office, FAA, is authorized to approve alternative methods of compliance for this AD.

Note 3: The subject of this AD is addressed in Canadian airworthiness directive CF–2001–40, dated November 9, 2001.

Issued in Renton, Washington, on December 4, 2003.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–30677 Filed 12–10–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

17 CFR Part 403

RIN 1505–AA94

Government Securities Act Regulations: Protection of Customer Securities and Balances

AGENCY: Office of the Assistant Secretary for Financial Markets, Treasury.

ACTION: Proposed rule.

SUMMARY: The Department of the Treasury ("Treasury," or "We," or "Us") is publishing for comment a proposed amendment to the customer protection rules in § 403.4 of the regulations issued under the Government Securities Act of 1986 ("GSA"), as amended.[1] This provision requires entities registered with the Securities and Exchange Commission ("SEC") as specialized government securities brokers and dealers ("registered government securities brokers and dealers") under section 15C(a)(2) of the Securities Exchange Act of 1934 ("the Exchange Act")[2] to comply with the requirements of the SEC customer protection rule ("SEC Rule 15c3–3") with certain modifications. The SEC recently amended Rule 15c3–3 to allow for the expansion of collateral that general purpose brokers and dealers may pledge when borrowing securities from customers. This proposed amendment makes certain conforming technical changes to the GSA regulations that would similarly allow for the expansion of collateral that registered government securities brokers and dealers may pledge when borrowing fully paid or excess-margin securities from customers. The proposed amendment would allow Treasury to designate additional categories of collateral or make subsequent changes to collateral by issuing an order.

DATES: Submit comments on or before January 12, 2004.

ADDRESSES: You may send hard copy comments to: Government Securities Regulations Staff, Bureau of the Public Debt, 999 E Street, NW., Room 315, Washington, DC 20239–0001. You may also send us comments by e-mail at *govsecreg@bpd.treas.gov*. When sending comments by e-mail, please provide your full name and mailing address. You may download this proposed rule, and review the comments we receive, from the Bureau of the Public Debt's Web site at *http://www.publicdebt.treas.gov*. The proposed rule and comments will also be available for public inspection and copying at the Treasury Department Library, Room 1428, Main Treasury Building, 1500 Pennsylvania Avenue, NW., Washington, DC 20220. To visit the library, call (202) 622–0990 for an appointment.

FOR FURTHER INFORMATION CONTACT: Lee Grandy (Associate Director), Deidere Brewer (Government Securities Specialist), or Kevin Hawkins (Government Securities Specialist), Bureau of the Public Debt, Government Securities Regulations Staff, (202) 691–3632 or e-mail us at *govsecreg@bpd.treas.gov*.

SUPPLEMENTARY INFORMATION: The implementing regulations Treasury issued in 1987 under the Government Securities Act of 1986[3] adopted the SEC's customer protection rule at 17 CFR 240.15c3–3 with certain modifications.[4] In adopting regulations to protect customer securities and balances, Treasury attempted to avoid duplicating existing regulations and to minimize the regulations' impact by using existing SEC standards with which many firms were already familiar. Currently, the GSA regulations maintain for registered government securities brokers and dealers the customer protection standards set out in the SEC rules for brokers and dealers when borrowing fully paid or excess-margin securities from customers. Section 403.4 of the GSA regulations requires registered government

[1] 15 U.S.C. 78*o*–5.

[2] 15 U.S.C. 78*o*–5(a)(2).

[3] Pub. L. 99–571, 100 Stat. 3208 (1986).

[4] 52 FR 27910 (July 24, 1987).

securities brokers and dealers to comply with the requirements of SEC Rule 15c3–3 regarding reserves and custody of customer securities.

On March 17, 2003, the SEC published a final amendment to Rule 15c3–3 to allow, through the issuance of an SEC order, the expansion of collateral that brokers and dealers may pledge when borrowing fully paid or excess-margin securities from customers.[5] Since an SEC order cannot be incorporated by reference to apply to registered government securities brokers and dealers, we are proposing a conforming technical change to § 403.1[6] and § 403.4[7] of the GSA regulations. The change would allow Treasury to expand the categories of permissible collateral by issuing an exemptive order. We believe the proposed amendment would continue to protect customer securities and balances while adding liquidity to the securities lending markets and lowering borrowing costs for registered government securities brokers and dealers. In this notice we first provide background on the rule and then describe the proposed changes.

I. Background

A. SEC Rule 15c3–3

In 1972, the SEC adopted the customer protection rule, Rule 15c3–3, to protect customer funds held by brokers and dealers.[8] At that time, securities brokers and dealers were required to pledge cash, U.S. Treasury bills and notes, or letters of credit as collateral when borrowing customer securities. In 1989, the SEC issued a no-action letter that expanded the categories of permissible collateral.[9]

On June 10, 2002, the SEC issued a proposed amendment to Rule 15c3–3 to allow for expanding the categories of collateral brokers and dealers may pledge when borrowing fully paid or excess-margin securities from customers.[10] Under the proposed amendment, the SEC could expand the collateral categories by issuing an SEC order. Prior to amending the customer protection rule, brokers and dealers that pledged fully paid or excess-margin customer securities were required to provide the lenders with collateral covering at a minimum the full amount of the securities loaned, and consisting exclusively of cash, U.S. Treasury bills and notes, or an irrevocable letter of credit issued by a bank. In the proposed amendment the SEC identified categories of collateral being considered for the SEC order. It also discussed certain conditions for the use of the identified types of collateral. The SEC received three favorable comment letters in response to its proposal.[11]

On March 17, 2003, the SEC issued a final amendment to Rule 15c3–3 that was substantially the same as the proposed amendment.[12] The amendment permits brokers and dealers to pledge additional categories of collateral pursuant to orders issued by the SEC. The preamble to the SEC's final amendment stated that the amended rule provides flexibility to ensure receipt of full collateral by customers while allowing for a wider range of permissible collateral, thereby adding liquidity to the securities lending markets and lowering borrowing costs for brokers and dealers.

On April 22, 2003, the SEC issued by order the list of permissible categories of collateral under Rule 15c3–3.[13] The order expands permissible collateral when borrowing a customer's securities to: "government securities" as defined in sections 3(a)(42)(A) and (B) of the Exchange Act; certain "government securities" meeting the definition in section 3(a)(42)(C) of the Exchange Act; securities issued or guaranteed by certain Multilateral Development banks; "mortgage related securities" as defined in section 3(a)(41) of the Exchange Act; certain negotiable certificates of deposit and bankers acceptances; foreign sovereign debt securities; foreign currency; and certain corporate debt securities.

B. Government Securities Act Regulations

When Treasury first issued the implementing regulations[14] for the GSA[15] in 1987, we considered the existing regulation of brokers and dealers registered with the SEC under section 15(b) of the Exchange Act in order to avoid overly burdensome or duplicative regulations. In that regard, the GSA regulations at 17 CFR Chapter IV incorporate, by reference, many of the SEC's rules regulating brokers and dealers including, with modifications, SEC Rule 15c3–3.

Since the SEC does not have the authority to grant exemptions from section 15C or the rules and regulations thereunder,[16] Treasury is issuing a proposed rule that is similar to the SEC's final rule.

The amended rule would allow for expanding the categories of collateral designated as permissible through the issuance of a Treasury exemptive order. We believe the proposed amendment and order would increase liquidity in the securities lending markets and lower borrowing costs for registered government securities brokers and dealers.

II. Analysis

Treasury is considering a more limited list of acceptable collateral for registered government securities brokers and dealers than the list the SEC provided in its order. Registered government securities brokers and dealers,[17] as defined in the GSA regulations, may hold certain non-exempted securities for proprietary purposes. For example, registered government securities brokers and dealers can hold limited positions in foreign sovereign debt as investments; however, they cannot "deal" in such securities. We understand, from discussions with SEC staff, that if a registered government securities broker or dealer were to pledge such securities in a transaction with a customer, it could be viewed as "dealing" in such securities, which consequently could cause it to have to change its registration.

Therefore, after Treasury issues a final rule amendment, the categories of collateral we are considering designating as permissible by order include only exempted securities such as:

1. "Government securities" as defined in Section 3(a)(42)(A) and (B) of the Exchange Act.

2. "Government securities" as defined in Section 3(a)(42)(C) of the Exchange Act issued or guaranteed as to principal or interest by the following corporations: (i) The Federal Home Loan Mortgage Corporation, (ii) the Federal National Mortgage Association, (iii) the Student Loan Marketing Association, or (iv) the Financing Corporation.

3. Securities issued by, or guaranteed as to principal and interest by, the following Multilateral Development Banks—whose obligations are backed by the participating countries, including the U.S.: (i) The International Bank for Reconstruction and Development, (ii) the Inter-American Development Bank, (iii) the Asian Development Bank, (iv) the African Development Bank, (v) the European Bank for Reconstruction and Development, and (vi) the International Finance Corporation.

The categories of permissible collateral would not include securities that have no principal component (*e.g.*, STRIPS).

We believe this proposed rule amendment would protect customers by ensuring their receipt of full collateral, while providing us with the flexibility to expand the categories of collateral that may be pledged by registered government securities brokers and dealers. In developing the proposed rules, we have consulted with the staff of the SEC.

We welcome comments on this proposed rule, in particular whether this proposal meets the customer protection principles of Rule 15c3–3, as modified by § 403.4 of the GSA regulations for these types of collateral.

The rules on collateral discussed in this notice apply only in the context of the customer protection requirement in the GSA regulations as applied to registered government securities brokers and dealers. We note that it does not apply to U.S. Treasury Fiscal Service collateral programs governed by 31 CFR Part 380, Collateral Acceptability and Valuation.

III. Special Analysis

This proposed amendment does not meet the criteria for a "significant regulatory action" under Executive Order 12866.

In addition, under the Regulatory Flexibility Act,[18] we certify that the proposed amendments, if adopted, would not have a significant economic impact on a substantial number of small entities. Currently, there are no registered government securities brokers or dealers which would be considered "small" under the SEC's definition of "small entity."[19] Accordingly, the number of small entities pledging customer securities when borrowing fully paid or excess-margin securities from customers is not significant. As a result, a regulatory flexibility analysis is not required.

The proposed amendment to § 403.4 of the GSA regulations would expand the range of collateral that registered government securities brokers and dealers may pledge when borrowing customer securities. Although the proposed rule amendment is technical in nature, it does not impose any additional burdens on such firms, but provides a broader list of collateral. The amendment should increase liquidity in the government securities market and lower borrowing costs for registered government securities brokers and dealers. The collections of information under the Government Securities Act regulations have previously been reviewed and approved by the Office of Management and Budget under control number 1535–0089.

List of Subjects in 17 CFR Part 403

Banks, Banking, Brokers, Government Securities.

For the reasons set out in the preamble, we propose that 17 CFR Part 403 be amended as follows:

PART 403—PROTECTION OF CUSTOMER SECURITIES AND BALANCES

1. The authority citation for Part 403 continues to read as follows:

Authority: Pub. L. 99–571, § 101, 100 Stat. 3209; Pub. L. 101–432, section 4(b) 104 Stat. 963; Pub. L. 103–202, sections 102, 106, 107 Stat. 2344 (15 U.S.C. 78o–5(a)(5), (b)(1)(A), (b)(4)).

2. Section 403.1 is revised to read as follows:

§ 403.1 Application of part to registered brokers and dealers.

With respect to their activities in government securities, compliance by registered brokers or dealers with § 240.8c–1 of this title (SEC Rule 8c–1), as modified by § 403.2 (a), (b) and (c), with § 240.15c2–1 of this title (SEC Rule 15c2–1), with § 240.15c3–2 of this title (SEC Rule 15c3–2), as modified by § 403.3, and with § 240.15c3–3 of this title (SEC Rule 15c3–3), as modified by §§ 403.4 (a)–(d), (f)(2)–(3), (g)–(j), and (m), constitutes compliance with this part.

3. Section 403.4 is amended by re-designating paragraphs (e) through (l) as paragraphs (f) through (m), respectively, and by adding new paragraph (e) to read as follows:

§ 403.4 Customer Protection—reserves and custody of securities.

* * * * *

(e) For purposes of this section, § 240.15c3–3(b)(3)(iii)(A) of this title is modified to read as follows:

"(A) Must provide to the lender upon the execution of the agreement, or by the close of the business day of the loan if the loan occurs subsequent to the execution of the agreement, collateral that fully secures the loan of securities, consisting exclusively of cash or United States Treasury bills or Treasury notes or an irrevocable letter of credit issued by a bank as defined in section 3(a)(6)(A)–(C) of the Act (15 U.S.C. 78c(a)(6)(A)–(C)) or such other collateral as the Secretary designates as permissible by order as consistent with the public interest, the protection of investors, and the purposes of the Act, after giving consideration to the collateral's liquidity, volatility, market depth and location, and the issuer's creditworthiness; and"

* * * * *

Dated: December 3, 2003.

Brian C. Roseboro,

Assistant Secretary for Financial Markets.

[FR Doc. 03–30485 Filed 12–10–03; 8:45 am]

BILLING CODE 4810–39–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–157164–02]

RIN 1545–BB57

Special Depreciation Allowance; Hearing Cancellation

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Cancellation of notice of public hearing on proposed rulemaking by cross-reference to temporary regulations.

SUMMARY: This document cancels a public hearing on proposed regulations under Sections 168 and 1400L of the Internal Revenue Code relating to the depreciation of property subject to section168 of the Internal Revenue Code (MACRS property) and the depreciation of computer software subject to section 167.

DATES: The public hearing originally scheduled for December 18, 2003, at 10 a.m., is cancelled.

FOR FURTHER INFORMATION CONTACT: Sonya M. Cruse of the Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel (Procedures and Administration), at (202) 622–4693 (not a toll-free number).

SUPPLEMENTARY INFORMATION: A notice of proposed rulemaking by cross-

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[5] 68 FR 12780 (March 17, 2003).

[6] 17 CFR 403.1.

[7] 17 CFR 403.4.

[8] 17 CFR 240.15c3–3.

[9] See Letter from Michael A. Macchiaroli, Assistant Director, Division of Market Regulation, SEC, to Frances R. Bermanzohn, Esq., Senior Vice President of the Public Securities Association (March 2, 1989). The SEC no-action letter provided that under certain facts and circumstances, a broker or dealer could provide to a customer lender as the collateral in a government securities borrowing transaction any of the following: "government securities" as defined in section 3(a)(42)(A) and section 3(a)(42)(B) of the Exchange Act, and securities issued or guaranteed by the Federal Home Loan Mortgage Corporation, the Federal National Mortgage Association, the Student Loan Marketing Association, or the Financing Corporation.

[10] 67 FR 39642 (June 10, 2002).

[11] See *supra* note 10.

[12] See *supra* note 5.

[13] 68 FR 19864 (April 22, 2003).

[14] See *supra* note 4.

[15] See *supra* note 3.

[16] 15 U.S.C. 78mm(b).

[17] *See* 52 FR 5660 (February 25, 1987) and 17 CFR 400.3(o).

[18] 5 U.S.C. 601.

[19] 63 FR 37688, 37672 (July 13, 1998).

reference to temporary regulations and notice of public hearing that appeared in the **Federal Register** on Monday, September 8, 2003, (68 FR 53008), announced that a public hearing was scheduled for December 18, 2003 at 10 a.m., in the auditorium, Internal Revenue Service Building, 1111 Constitution Avenue, NW., Washington, DC. The subject of the public hearing is proposed regulations under sections 168 and 1400L of the Internal Revenue Code.

The public comment period for these regulations expired on November 27, 2003. The notice of proposed rulemaking by cross-reference to temporary regulations and notice of public hearing instructed those interested in testifying at the public hearing to submit a request to speak and an outline of the topics to be addressed. As of Thursday, December 4, 2003, no one has requested to speak. Therefore, the public hearing scheduled for December 18 2003 is cancelled.

Cynthia E. Grigsby,

Acting Chief, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel (Procedures and Administration).

[FR Doc. 03–30638 Filed 12–10–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR 1

[REG–153319–03]

RIN 1545–BC74

Guidance Under Section 1502; Application of Section 108 to Members of a Consolidated Group

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations.

SUMMARY: Temporary regulations in the Rules and Regulations section of this issue of the **Federal Register** amend the Income Tax Regulations relating to section 1502. The text of those regulations also serves as the text of these proposed regulations.

DATES: Written or electronic comments must be received by January 12, 2004.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG–153319–03), room 5203, Internal Revenue Service, POB 7604 Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to: CC:PA:LPD:PR (REG–153319–03), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC. Alternatively, taxpayers may submit comments electronically directly to the IRS Internet site at *www.irs.gov/regs*.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Amber Renee Cook or Marie C. Milnes-Vasquez at (202) 622–7530; concerning submission of comments, La Nita Van Dyke at (202) 622–7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background and Explanation of Provisions

Temporary regulations in the Rules and Regulations section of this issue of the **Federal Register** amend 26 CFR part 1 relating to section 1502. The text of the temporary regulations also serves as the text of these proposed regulations. The preamble to the temporary regulations explains the amendments.

Special Analysis

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. Further, it is hereby certified that these regulations will not have a significant economic impact on a substantial number of small entities. This certification is based on the fact that these regulations will primarily affect affiliated groups of corporations that have elected to file consolidated returns, which tend to be larger businesses. Moreover, the number of taxpayers affected and the average burden are minimal. Accordingly, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Request for a Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written (a signed original and eight (8) copies) or electronic comments that are submitted timely to the IRS. The IRS and Treasury Department specifically request comments on the clarity of the proposed rules and how they may be made easier to understand. All comments will be available for public inspection and copying. A public hearing will be scheduled if requested in writing by any person that timely submits written comments. If a public hearing is scheduled, notice of the date, time, and place for the hearing will be published in the **Federal Register**.

Drafting Information

The principal author of these regulations is Marie C. Milnes-Vasquez of the Office of Associate Chief Counsel (Corporate). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

1. The authority citation continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Section 1.1502–28 also issued under 26 U.S.C. 1502. * * *

2. Section 1.1502–28 is added to read as follows:

§ 1.1502–28 Consolidated section 108.

(The text of this proposed section is the same as the text of § 1.1502–28T published elsewhere in this issue of the **Federal Register**).

Mark E. Matthews,

Deputy Commissioner for Services and Enforcement.

[FR Doc. 03–30637 Filed 12–10–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Parts 19 and 20

RIN 2900–AL77

Board of Veterans' Appeals: Obtaining Evidence and Curing Procedural Defects

AGENCY: Department of Veterans Affairs.

ACTION: Proposed rule.

SUMMARY: The Department of Veterans Affairs proposes to amend the Appeals Regulations and Rules of Practice of the Board of Veterans' Appeals (Board) by removing the Board's authority to develop evidence for initial consideration. Under its current Appeals Regulations and Rules of Practice, the Board is permitted to obtain evidence, clarify the evidence, cure a procedural defect, or perform any other action essential for a proper appellate decision in any appeal properly before it without having to remand the appeal to the agency of original jurisdiction. Some of the regulatory provisions governing this practice were recently invalidated by the United States Court of Appeals for the Federal Circuit. By way of this rulemaking, we propose removing the invalidated portions of the Board's development regulations and changing those regulations to provide that, with certain exceptions, the Board will remand a case to the agency of original jurisdiction when there is a need to obtain evidence, clarify the evidence, correct a procedural defect, or take any other action deemed essential for a proper appellate decision. We also propose to amend the definition of "agency of original jurisdiction," add a new provision that allows the Board to consider additional evidence without having to refer it to the agency of original jurisdiction for consideration in the first instance when this procedural right is waived by the appellant or the appellant's representative, and make other related changes and technical corrections to certain Appeals Regulations and Rules of Practice. The intended effect of this amendment is to make these regulations comply with a recent court decision.

DATES: Comments must be received on or before January 12, 2004.

ADDRESSES: Mail or hand-deliver written comments to: Director, Regulations Management (00REG1), Department of Veterans Affairs, 810 Vermont Avenue, NW., Room 1064, Washington, DC 20420; or fax comments to (202) 273–9026; or e-mail comments to *OGCRegulations@mail.va.gov*. Comments should indicate that they are submitted in response to "RIN 2900–AL77." All written comments will be available for public inspection at the above address in the Office of Regulation Policy and Management, Room 1063B, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays). Please call (202) 273–9515 for an appointment.

FOR FURTHER INFORMATION CONTACT: Steven L. Keller, Senior Deputy Vice Chairman, Board of Veterans' Appeals (01C), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202–565–5978).

SUPPLEMENTARY INFORMATION: The Board of Veterans' Appeals (Board or BVA) is the component of Department of Veterans Affairs (VA) in Washington, DC, that decides appeals from denials of claims for veterans' benefits. An agency of original jurisdiction (AOJ), typically one of VA's 57 regional offices, makes the initial decision on a claim and subsequent decisions if VA receives additional evidence. A claimant who is dissatisfied with an AOJ's decision may appeal to the Board. After a claimant perfects an appeal to the Board, the AOJ certifies the appeal to the Board and transfers the record to the Board, so that the Board can decide the appeal.

While considering an appeal, a BVA veterans law judge, or panel of veterans law judges, sometimes discovers that more evidence is needed, that the current evidence must be clarified, or that a procedural defect must be cured for the appeal to be properly decided. Prior to regulatory changes effective in February 2002, if the Board determined that additional evidence needed to be obtained, current evidence clarified, or a procedural defect cured for the appeal to be properly decided, the case, pursuant to 38 CFR 19.9 (2001), generally had to be remanded to the AOJ to perform the needed action. In addition, any pertinent evidence submitted by the appellant or representative that was accepted by the Board, as well as any such evidence referred to the Board by the AOJ under 38 CFR 19.37(b), was required to be referred to the AOJ for review and preparation of a Supplemental Statement of the Case, unless this procedural right was waived by the appellant or representative, or unless the Board determined that the benefit or benefits to which the evidence related could be allowed on appeal without such referral. 38 CFR 20.1304(c) (2001).

In order to address a growing backlog of claims awaiting decision at VA's Regional Offices and to provide more expeditious processing of appeals, VA modified provisions of its Appeals Regulations and the Board's Rules of Practice to permit the Board to develop the record or cure procedural defects itself without remanding the appeal to the AOJ, and without having to obtain the appellant's waiver. These changes, which most significantly involved the amendment of 38 CFR 19.9 and 20.1304, were published in the **Federal Register** as final amendments on January 23, 2002, 67 FR 3099 (2002), with an effective date of February 22, 2002.

Under the changes made to 38 CFR 19.9 at that time, the Board was still permitted to remand a case needing further development, but no longer was required to do so. Additionally, under the new 38 CFR 19.9(a)(2)(ii), if the Board decided to provide the appellant with the notice required by 38 U.S.C. 5103(a) and/or 38 CFR 3.159(b)(1) (evidence required to substantiate a claim), the appellant would have 30 days to respond to the notice and furnish the requested evidence. Evidence submitted after the Board's decision, but before the expiration of the one-year period following the notice, would be referred to the AOJ for due consideration. 38 CFR 19.31 and 20.1304 also were revised to facilitate the development that could be undertaken at the Board.

A number of petitions challenging the 2002 revisions made to 38 CFR 19.9, 19.31, 20.903 and 20.1304 were filed with the United States Court of Appeals for the Federal Circuit (Federal Circuit). On May 1, 2003, the Federal Circuit issued a decision in *Disabled American Veterans* v. *Secretary of Veterans Affairs*, 327 F.3d 1339 (Fed. Cir. 2003), that invalidated 38 CFR 19.9(a)(2), and 19.9(a)(2)(ii). The Court concluded that the changes made to § 19.9(a)(2) were contrary to 38 U.S.C. 7104(a) because, if the Board obtained new evidence and rendered a decision on the basis of such evidence without obtaining a waiver from the claimant, such action would deprive the claimant of "one review on appeal" of the additional evidence.

On May 21, 2003, the VA Office of the General Counsel (OGC) issued a precedential opinion addressing the impact and effect of the Federal Circuit's decision in *Disabled American Veterans* on the authority of the Board to develop evidence with respect to cases pending before the Board on appeal. In pertinent part, the OGC found that the Court's decision does not prohibit the Board from developing evidence in a case on appeal before the Board, provided that the Board first obtains the appellant's waiver of initial consideration of such evidence by the agency of original jurisdiction. VAOPGCPREC 1–2003 (May 21, 2003).

Although the authority found in VAOPGCPREC 1–2003 still exists, it has been decided that, given its resources and experience, the Veterans Benefits Administration (VBA) is the most appropriate organization within the Department of Veterans Affairs to shoulder responsibility for developing most types of evidence and correcting procedural deficiencies in cases that have been appealed to the BVA. Therefore, in order to remove the two regulatory provisions invalidated by the Federal Circuit, and to effectuate the decision that the development of most types of evidence and correction of procedural deficiencies should be accomplished by VBA, VA proposes to amend 38 CFR 19.9 to require the Board to remand a case to the AOJ if it is found

that further evidence, clarification of the evidence, or correction of a procedural defect is needed. The currently existing exceptions to this requirement that are contained in 38 CFR 19.9(b) are being retained. These exceptions were in effect prior to the 2002 changes made to § 19.9, and one—the Board's consideration of a change in law without the necessity of a remand to the AOJ—was specifically upheld as being a valid provision by the Federal Circuit in the *Disabled American Veterans* decision. A new remand exception also is being added to reflect, as further discussed below, the addition of § 20.1304(c). That new provision will provide appellants with the option of waiving initial consideration by the AOJ of evidence referred to, or received by, the Board.

VA also proposes to revise the definition of "agency of original jurisdiction," as set forth in 38 CFR 20.3(a), to mean "the Department of Veterans Affairs activity or administration that is, the Veterans Benefits Administration, Veterans Health Administration, or National Cemetery Administration, that made the initial determination on a claim." This change is being made to broaden the definition of AOJ so that it is not limited to a particular office within one of the VA activities and administrations, including the office that made the initial determination on a claim. The term "activity" comes from the definition of agency of original jurisdiction included in 38 U.S.C. 7105(b)(1). The purpose of this change is to provide the Administrations, particularly VBA, with the requisite flexibility to process remanded appeals in the most efficient and effective manner possible by reassigning work to different offices as deemed appropriate by management. *See* The Veterans' Benefits Improvements Act of 1994, Public Law 103–446, sections 302, 108 Stat. 4645, 4658 (1994), 38 U.S.C.A. 5101 (West 2003) (Historical and Statutory Notes). This will enable VBA to use its available resources to complete any necessary development and readjudication of a remanded appeal at the most appropriate location.

Additionally, VA proposes to re-promulgate former § 20.1304(c) in substantially the same form as it existed prior to the 2002 regulatory amendments and its removal at that time from the Board's Rules of Practice. Under certain circumstances pertinent evidence may be submitted directly to and accepted by the Board, or may be referred to the Board by the AOJ pursuant to 38 CFR 19.37(b). Unless the Board determines that the benefit or benefits to which the evidence relates may be fully allowed on appeal, and hence there is no possibility of prejudice to the appellant, such newly received evidence must be referred to the AOJ for initial review. Under the proposed revision, such referral will not be required when the appellant or the appellant's representative waives the procedural right to have the newly submitted evidence considered by the AOJ in the first instance. Allowing an appellant to affirmatively waive initial AOJ consideration of newly submitted evidence will reduce the need for Board remands whenever new pertinent evidence is received and considered by the Board in the first instance. In turn, this proposed change will allow for the faster processing of the claims of individual appellants, as well as the processing of appeals at both the AOJ and Board levels, due to the reduction in the number of cases that otherwise would require remand.

Several technical corrections also are being made to 38 CFR 20.1304 to reflect the redesignation of current paragraph (c) as paragraph (d), and the addition of the new paragraph (c) discussed above. In addition, the redesignated paragraph (d) is being amended to reflect that a waiver, in accordance with new paragraph (c) of this section, of initial AOJ consideration of pertinent evidence received by the Board must be obtained from each claimant when a simultaneously contested claim is involved. The purpose of this change is to fully protect the procedural rights of all of the parties involved in a simultaneously contested claim.

This proposed rulemaking also would make several minor amendments and technical corrections to the rules affected by this rulemaking. In addition to the above amendments, we propose revising 38 CFR 19.9 to change the title of "Board Member" to "Veterans Law Judge." On February 10, 2003, 38 CFR 19.2 was revised to allow the use of the title "Veterans Law Judge" as an alternative to "Member of the Board." 68 FR 6621 (2003). The change in language in § 19.9 is being proposed to conform to the new § 19.2.

An amendment is being proposed to 38 CFR 19.38, "Action by agency of original jurisdiction when remand received," to remove the requirement that the AOJ must notify the Board as to the action it has taken on a remanded case. Prior to the Veterans Appeal Control and Locator System (VACOLS) becoming the Department's sole computer appeals tracking system, the AOJs were required to keep the Board informed of the status of Board remand cases. Such action is no longer needed, however, because VACOLS is now the sole appeals tracking system within the Department for both the Board and the AOJs, and any final action taken on a case by the AOJ will be reflected in VACOLS. It is the responsibility of the AOJs to return remanded cases to the Board that are not fully granted by the AOJ on remand. The Board does not have any jurisdiction to take further action on a remanded matter until it is returned by the AOJ. This amendment will make the regulation conform to current practice.

Three changes are being proposed to 38 CFR 20.903, "Notification of evidence secured and law to be considered by the Board and opportunity for response." Section 20.903(a) currently provides that, if the Board requests a legal or medical opinion, both the appellant and the appellant's representative will be notified of the request, but when the opinion is received a copy of the opinion is only provided to the representative or to the appellant, but not to both. Except in circumstances governed by 38 U.S.C. 5701(b)(1), where disclosure of an opinion could possibly be injurious to the physical or mental health of a claimant, it makes no sense to provide an appellant with a copy of an opinion request, but not with a copy of the opinion that is obtained in response to that request. Accordingly, we propose amending § 20.903(a) to state that the Board will furnish a copy of any legal or medical opinion obtained to both the appellant and the appellant's representative, if any. This change will ensure that the appellant is fully informed about and aware of any such opinions obtained by the Board.

The second change being proposed to § 20.903 relates to paragraph (b). If, pursuant to 38 CFR 19.9(a) or 19.37(b), the Board obtains pertinent evidence that was not submitted by the appellant or appellant's representative, Rule 903(b) currently provides that the Board must notify the appellant and the appellant's representative, if any, of the evidence obtained by furnishing a copy of such evidence, and providing a period of 60 days for response, which may include the submission of relevant evidence or argument. With certain exceptions covered elsewhere in the regulations, the AOJ, rather than the Board, will be developing evidence for initial consideration. Consequently, it is being proposed that Rule 903(b) be removed as a result of this change in practice.

The third and final change being proposed to § 20.903 relates to paragraph (c), which is being redesignated as paragraph (b) in light of the proposed removal of Rule 903(b). A cross-reference is being added to the first sentence to make reference to § 19.9(b)(2) as the source of the Board's authority to consider, in the first instance, law not already considered by the AOJ.

Comment Period

Section 6(a)(1) of Executive Order 12866 indicates that, in most cases, a comment period for proposed regulations should be "not less than 60 days." However, for this rulemaking we have provided a comment period of 30 days for the following reasons. First, this rulemaking primarily concerns rules of agency procedure or practice, which are not subject to the Administrative Procedure Act's general requirement of publication for notice and comment. Second, prompt issuance of the proposed amendments is necessary to remove those provisions of our current rules regarding the development of claims on appeal that were invalidated by the United States Court of Appeal for the Federal Circuit in *Disabled American Veterans* v. *Secretary of Veterans Affairs*, 9 327 F. 3d 1339 (Fed. Cir. 2003). Third, and finally, the proposed amendments facilitate the processing of claims remanded from the Board by providing flexibility to VBA in deciding where those remands can best be handled. In that regard, it is important for the final rule to be published expeditiously in order to ensure the efficient and effective processing of appeals under valid regulations.

Unfunded Mandates

The Unfunded Mandates Reform Act requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before developing any rule that may result in an expenditure by State, local, or tribal governments, in the aggregate, or by the private sector of $100 million or more in any given year. This proposed rule would have no consequential effect on State, local, or tribal governments, or the private sector.

Paperwork Reduction Act

This document contains no provisions constituting a collection of information under the Paperwork Reduction Act (44 U.S.C. 3501–3521).

Executive Order 12866

This regulatory amendment has been reviewed by the Office of Management and Budget under the provisions of Executive Order 12866.

Regulatory Flexibility Act

The Secretary hereby certifies that this proposed rule would not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. This proposed rule would affect only VA beneficiaries and would not affect small businesses. Therefore, pursuant to 5 U.S.C. 605(b), this proposed rule is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

List of Subjects in 38 CFR Parts 19 and 20

Administrative practice and procedure, Claims, Veterans.

Approved: October 30, 2003.

Anthony J. Principi,

Secretary of Veterans Affairs.

For the reasons set out in the preamble, 38 CFR parts 19 and 20 are proposed to be amended as set forth below:

PART 19—BOARD OF VETERANS' APPEALS: APPEALS REGULATIONS

1. The authority citation for part 19 continues to read as follows:

Authority: 38 U.S.C. 501(a), unless otherwise noted.

Subpart A—Operation of the Board of Veterans' Appeals

2. Section 19.9 is amended by revising paragraphs (a) and (b) to read as follows:

§ 19.9 Remand for further development.

(a) *General.* If further evidence, clarification of the evidence, correction of a procedural defect, or any other action is essential for a proper appellate decision, a Veterans Law Judge or panel of Veterans Law Judges shall remand the case to the agency of original jurisdiction, specifying the action to be undertaken.

(b) *Exceptions.* A remand to the agency of original jurisdiction is not necessary for the purposes of:

(1) Clarifying a procedural matter before the Board, including the appellant's choice of representative before the Board, the issues on appeal, or requests for a hearing before the Board;

(2) Consideration of an appeal, in accordance with § 20.903(b) of this chapter, with respect to law not already considered by the agency of original jurisdiction. This includes, but is not limited to, statutes, regulations, and court decisions; or

(3) Reviewing additional evidence received by the Board, if, pursuant to § 20.1304(c) of this chapter, the appellant or the appellant's representative waives the right to initial consideration by the agency of original jurisdiction, or if the Board determines that the benefit or benefits to which the evidence relates may be fully allowed on appeal.

* * * * *

Subpart B—Appeals Processing by Agency of Original Jurisdiction

§ 19.38 [Amended]

3. Section 19.38 is amended by removing "the Board and" from the third sentence.

PART 20—BOARD OF VETERANS' APPEALS: RULES OF PRACTICE

4. The authority citation for part 20 continues to read as follows:

Authority: 38 U.S.C. 501(a) and as noted in specific sections.

5. Section 20.3 is amended by revising paragraph (a) to read as follows:

§ 20.3 Rule 3. Definitions.

* * * * *

(a) *Agency of original jurisdiction* means the Department of Veterans Affairs activity or administration, that is, the Veterans Benefits Administration, Veterans Health Administration, or National Cemetery Administration, that made the initial determination on a claim.

* * * * *

6. Section 20.903 is amended by:

a. Revising the second sentence in paragraph (a);

b. Removing paragraph (b);

c. Redesignating paragraph (c) as paragraph (b); and

d. Revising the first sentence in newly redesignated paragraph (b).

The revisions read as follows:

§ 20.903 Rule 903. Notification of evidence secured and law to be considered by the Board and opportunity for response.

(a) * * * When the Board receives the opinion, it will furnish a copy of the opinion to the appellant, subject to the limitations provided in 38 U.S.C. 5701(b)(1), and to the appellant's representative, if any. * * *

(b) * * * If, pursuant to § 19.9(b)(2) of this chapter, the Board intends to consider law not already considered by the agency of original jurisdiction and such consideration could result in denial of the appeal, the Board will notify the appellant and his or her representative, if any, of its intent to do so and that such consideration in the first instance by the Board could result in denial of the appeal. * * *

7. Section 20.1304 is amended by:

a. In paragraphs (a) and (b)(1)(ii), removing "paragraph (c)" from each, and adding, in each place, "paragraph (d)".

b. In paragraph (b)(2), removing "paragraph (b) or (c)" each place it appears, and adding, in each place, "paragraph (a) or (b)".

c. Redesignating paragraph (c) as paragraph (d).

d. Adding new paragraph (c).

e. In newly designated paragraph (d), adding a new sentence immediately after "additional evidence in rebuttal."

The additions read as follows:

§ 20.1304 Rule 1304. Request for change in representation, request for personal hearing, or submission of additional evidence following certification of an appeal to the Board of Veterans' Appeals.

* * * * * *

(c) *Consideration of additional evidence by the Board or by the agency of original jurisdiction.* Any pertinent evidence submitted by the appellant or representative which is accepted by the Board under the provisions of this section, or is submitted by the appellant or representative in response to a § 20.903 of this part, notification, as well as any such evidence referred to the Board by the agency of original jurisdiction under § 19.37(b) of this chapter, must be referred to the agency of original jurisdiction for review, unless this procedural right is waived by the appellant or representative, or unless the Board determines that the benefit or benefits to which the evidence relates may be fully allowed on appeal without such referral. Such a waiver must be in writing or, if a hearing on appeal is conducted, the waiver must be formally and clearly entered on the record orally at the time of the hearing. Evidence is not pertinent if it does not relate to or have a bearing on the appellate issue or issues.

(d) * * * For matters over which the Board does not have original jurisdiction, a waiver of initial agency of original jurisdiction consideration of pertinent additional evidence received by the Board must be obtained from each claimant in accordance with paragraph (c) of this section. * * *

[FR Doc. 03–30648 Filed 12–10–03; 8:45 am]
BILLING CODE 8320–01–P

POSTAL SERVICE

39 CFR Part 111

Required Number of Pieces Increased for 5-Digit and 5-Digit Scheme Packages of Low-Weight Standard Mail Flats

AGENCY: Postal Service.

ACTION: Proposed rule.

SUMMARY: The Postal Service proposes amending *Domestic Mail Manual* (DMM) standards by raising the minimum number of pieces at which required 5-digit and optional 5-digit scheme presort destination packages may be prepared in a Standard Mail job consisting of flat-size pieces that weigh no more than 5 ounces (0.3125 pound) and measure no more than ¾ inch thick. The maximum thickness permitted for nonautomation flats under DMM C050.3.0 and flats prepared in 5-digit scheme presort destination packages under DMM L007 is ¾ inch.

Under current standards, mailers have the option to prepare 5-digit and 5-digit scheme presort destination packages (collectively referred to in this proposed rule as 5-digit packages) of flat-size pieces not more than ¾ inch thick, regardless of weight, whenever there are as few as 10 pieces to the same 5-digit ZIP Code or the same 5-digit scheme destination in DMM L007. Under those same standards, mailers must prepare such packages when there are 17 or more pieces to these destinations. If a mailer selects an optional minimum 5-digit package size from 10 to 16 pieces, that same size must be used consistently throughout the mailing job for all 5-digit packages.

Under the proposed changes, for Standard Mail mailings of flat-size pieces that weigh no more than 5 ounces, mailers would be required to prepare 5-digit packages whenever there are 15 or more pieces to a destination. Mailers would not be permitted to prepare such pieces in 5-digit packages when there are fewer than 15 pieces to a 5-digit ZIP Code or optional 5-digit scheme destination. For mailings of pieces that weigh more than 5 ounces, mailers would be required to prepare 5-digit packages whenever there are 10 or more pieces to a destination.

DATES: Comments must be received on or before January 12, 2004.

ADDRESSES: Send written comments to the Manager, Mailing Standards, ATTN: Neil Berger, U.S. Postal Service, 1735 North Lynn Street, Room 3025, Arlington, VA 22209–6038. Written comments may be submitted via fax to 703–292–4058. Copies of all written comments will be available for inspection and photocopying between 9 a.m. and 4 p.m., Monday through Friday, at Postal Service Headquarters Library, 475 L'Enfant Plaza, SW., Room 11800, Washington, DC 20260–1540.

FOR FURTHER INFORMATION CONTACT: Cheryl Beller, Product Redesign, at (703) 292–3747; or Neil Berger, Mailing Standards, at (703) 292–3645.

SUPPLEMENTARY INFORMATION: Effective September 5, 2002, DMM M610 for nonautomation rate Standard Mail flats, DMM M820 for automation rate Standard Mail flats, and DMM 950 for advanced preparation options of Standard Mail flat-size pieces were revised to allow mailers to select a number from 10 to 17 as the minimum number of pieces at which 5-digit packages are prepared in a Standard Mail job of flat-size pieces no more than ¾ inch thick, without regard to the weight of the individual pieces. Prior to that date, mailers were required to prepare 5-digit packages whenever there were 10 or more pieces to a destination. Effective January 9, 2003, mailing standards in the DMM were amended to permit the preparation of optional 5-digit scheme packages (DMM L007) using the same flexible minimum of 10 to 17 pieces. Under the current standards, mailers may prepare 5-digit (and 5-digit scheme) packages with as few as 10 pieces.

Increased Processing Efficiencies

The Postal Service adopted the current optional 5-digit package minimum (optional with 10 to 16 pieces, required with 17 pieces) based in large part on an examination of the productivities and piece processing efficiencies of the automated flat sorting machine (AFSM) 100, which can handle flat-size pieces up to ¾ inch thick.

Initial analysis of piece, package, and container handling costs indicates that the appropriate minimum for 5-digit packages of Standard Mail flat-size pieces is, on average, above 10 pieces, and that the minimum could be increased for flats likely to be processed on the AFSM 100. AFSM 100-compatible flats are limited to flat-size pieces measuring no more than 12 inches high, 15 inches long, and ¾ inch thick. Increasing the minimum for 5-digit packages could help reduce overall Postal Service processing costs with the additional AFSM 100 piece handlings for pieces moving from 5-digit to 3-digit packages more than offset by reduced package handling costs. Package handling costs include processing the packages, either on a small parcel and bundle sorter (SPBS) or manually, and opening the packages and preparing the mail for piece processing.

Reduced Mailer Production Costs

Increasing the package minimum would also lower mailer production costs, as mailers would prepare fewer packages, with no negative impact on rates or service for pieces that move from 5-digit to 3-digit packages. Analysis of mailings that used a 17-piece minimum for preparing 5-digit packages showed reductions in the total number of 5-digit and 3-digit packages.

Specifically, for low-weight pieces, more packages were eliminated because more pieces that would have been prepared in small 5-digit packages of less than 17 pieces were added to existing 3-digit packages or combined into a single new 3-digit package, and these larger packages were still within the 20-pound maximum package weight. For heavier pieces, fewer packages were eliminated, and the savings in package handlings did not sufficiently offset the costs of the additional piece handlings.

An informal survey of the mailing industry revealed that only a small number of mailers are taking advantage of the option to set their 5-digit package minimum higher than 10 pieces (up to 17 pieces), particularly for mailings of low-weight pieces. With such limited participation by the mailing industry, the Postal Service and mailers are unable to realize the potential cost saving opportunities associated with fewer package handlings.

New Proposed Required Preparation

Because the proposed changes in minimum package size would help reduce mail processing costs—which in turn would help to mitigate future rate increases—and because these proposed changes would have no negative impact on mailers' postage or Postal Service revenue, the Postal Service now believes that it would be in the mutual interests of the mailing industry and the Postal Service to implement the proposed changes before the next omnibus rate case.

Pieces weighing 5 ounces or less represent approximately 80 percent of the volume of Standard Mail flats (both regular and nonprofit rates) not mailed at Enhanced Carrier Route rates. For heavier pieces weighing more than 5 ounces up to the maximum weight of less than 16 ounces, there is a significant drop in cost savings when a 5-digit package minimum higher than 10 pieces is used because fewer total packages, and associated reduced handlings, are eliminated to offset the increased piece handlings. The number of packages that can be eliminated is limited by the maximum package weight of 20 pounds and by restrictions on package height, such as the maximum height of 3 inches for some packages prepared in sacks, related to maintaining package integrity (*see* DMM M020).

The fact that many mailers set their maximum package size below 20 pounds (*e.g.*, 15 pounds) for other reasons, such as creating more uniform packages for building pallets or to limit counterstacking within packages, also reduces the potential savings from using a higher package minimum. For pieces weighing up to 5 ounces, mailers would no longer be able to use an optional minimum higher than 15 pieces. Current standards permit a minimum up to 17 pieces. At the same time, under this proposed rule, mailers would not be permitted to prepare 5-digit or optional 5-digit scheme packages when there are fewer than 15 pieces to a 5-digit or 5-digit scheme destination.

For Standard Mail mailing jobs consisting of flat-size pieces that weigh more than 5 ounces or that are more than ¾ inch thick (automation rate UFSM 1000-compatible pieces only), mailers would be required to prepare 5-digit and optional 5-digit scheme packages whenever there are 10 or more pieces to a 5-digit or 5-digit scheme destination. For ease of administration, mailers would also be required to use the 10-piece 5-digit package minimum for mailing jobs of nonidentical-weight pieces when those jobs include a combination of pieces that weigh up to and including 5 ounces and pieces that weigh more than 5 ounces. Mailers would no longer be permitted to use optional 5-digit package minimums greater than 10 pieces, and up to 17 pieces, as currently permitted for such mailings.

The Postal Service and mailers recognize that the optimal 5-digit package size can vary somewhat from mailing to mailing, based on mailing characteristics such as piece weight, presort density, piece thickness, maximum package size parameters selected, containerization methods, and manufacturing processes. However, for ease of use, a single minimum for pieces weighing up to and including 5 ounces and a single minimum for pieces weighing more than 5-ounces is proposed, rather than a range of minimums (that is, the current range of 10 to 17 pieces).

There are no changes proposed to the preparation standards for other classes of mail or for other Standard Mail processing categories and presort destination package levels. Mailers would continue to be required to prepare 3-digit and area distribution center (ADC) packages whenever there are 10 or more pieces to those destinations, and carrier route packages would continue to be required to contain a minimum of 10 pieces. No changes are proposed for packages of automation rate flat-size pieces measuring more than ¾ inch thick (UFSM 100-compatible pieces) or for any type of container (*e.g.*, letter trays, sacks, pallets).

Current Recommended Preparation

For mailings of pieces that weigh no more than 5 ounces and are currently prepared using a 10-piece package minimum, pieces now prepared in 5-digit packages containing from 10 to 14 pieces, would move either to an existing 3-digit package or be consolidated into new 3-digit packages when the higher minimum of 15 pieces is used for 5-digit package preparation. In either case, the overall number of packages prepared by mailers and processed by the Postal Service would decrease. For example, when the proposed 15-piece package minimum is used, 3.2-ounce catalogs currently prepared in five 5-digit packages that each contain from 10 to 14 pieces for different ZIP Codes within the same 3-digit ZIP Code destination, could be combined with other pieces already in a 3-digit package; alternatively, those pieces could be placed in one new 3-digit package (that weighs less than 20 pounds).

The Postal Service recommends that mailers begin using a minimum of 15 pieces for 5-digit and optional 5-digit scheme package preparation permitted under current mailing standards as soon as possible for mailings of pieces that weigh no more than 5 ounces. The Postal Service also recommends that mailers limit the number of packages they produce and take necessary steps to ensure package integrity, by setting their maximum package size as close to the maximums permitted in DMM M020, particularly for packages prepared on pallets (*e.g.*, 20 pounds).

Movement of pieces from 5-digit packages to 3-digit packages as a result of using a 15-piece minimum under the proposed changes would not impact postage paid by mailers because Standard Mail flats are eligible for the ⅗ rates whether prepared in 5-digit or 3-digit packages, and placed on any pallet level, or when placed in 5-digit sacks, followed by 3-digit sacks, containing at least 125 pieces or 15 pounds of pieces.

The Postal Service is proposing the required use of the 15-piece 5-digit package minimum beginning April 4,

2004. At that time, mailings consisting of flat-size pieces that weigh more than 5 ounces or automation rate pieces that are more than ¾ inch thick regardless of weight would no longer be permitted to use a 5-digit package minimum greater than 10 pieces. Also on that date, mailings of flat-size pieces that weigh no more than 5 ounces (and measure no more than ¾ inch thick) would not be permitted to use a 5-digit package minimum other than 15 pieces.

The April 4, 2004 required implementation date would allow mailers adequate time to install any software changes needed for compliance with the new standards and to test their systems. It will also ensure that all Postal Service personnel and systems are prepared for the change. April 4 is the first Sunday following the required use date (April 1, 2004) of the Postal Service Address Information System (AIS) database released February 1, 2004. This should enable software vendors to include the proposed changes in a regularly scheduled release of their software. Although mailers using the new 15-piece 5-digit package minimum would not be required to use Presort Accuracy Validation and Evaluation (PAVE)-certified software (except for palletized mailings prepared under the package reallocation option in DMM M045, or mailings prepared under DMM M920, M930 or M940), PAVE tests would be available for presort software vendors to test this new minimum.

Although exempt from the notice and comment requirements of the Administrative Procedure Act [5 U.S.C. 553 (b), (c)] regarding proposed rulemaking by 39 U.S.C. 410(a), the Postal Service invites comments on the following proposed revisions of the *Domestic Mail Manual* (DMM) incorporated by reference in the *Code of Federal Regulations. See* 39 CFR part 111.

List of Subjects in 39 CFR Part 111

Administrative practice and procedure, Postal Service.

PART 111—[AMENDED]

1. The authority citation for 39 CFR part 111 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 403, 404, 414, 416, 3001–3011, 3201–3219, 3403–3406, 3621, 3626, 5001.

2. Revise the following sections of the Domestic Mail Manual (DMM) as follows:

Domestic Mail Manual (DMM)

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E Eligibility

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E600 Standard Mail

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E620 Presorted Rates

1.0 BASIC STANDARDS

1.1 All Pieces

* * * * *

[Revise 1.1b to read as follows:]

b. Except as provided in 1.2, be part of a single mailing of at least 200 pieces or 50 pounds of pieces qualifying for Presorted Standard Mail. Basic rate and ⅗ rate pieces prepared as part of the same mailing are subject to a single minimum volume standard. Regular and Nonprofit mailings must meet separate minimum volumes.

* * * * *

2.0 RATES

[Revise 2.0 by reorganizing text to read as follows:]

2.1 Application

Presorted rates for Regular and Nonprofit Standard Mail apply to letters, flats, and machinable and irregular parcels that meet the eligibility standards in E610 and the preparation standards in M045, M610, or, for flat-size mail only, M900.

2.2 Basic Rate

The basic rate applies to pieces that do not meet the standards for ⅗ rates described in 2.3.

2.3 ⅗ Rates

The ⅗ rate applies to qualifying pieces if they are presented:

a. For letter-size pieces (*see* C050.2.0), in quantities of 150 or more pieces for a single 3-digit area, prepared in 5-digit or 3-digit trays.

b. For flat-size pieces (*see* C050.3.0):

(1) In a 5-digit or 5-digit scheme (under M950) package of 10 or more pieces, or 15 or more pieces, as applicable; or in a 3-digit package of 10 or more pieces; placed in a 5-digit, 5-digit scheme (under M920), or 3-digit sack containing at least 125 pieces or 15 pounds of pieces.

(2) In a 5-digit package of 10 or more pieces, or 15 or more pieces, as applicable, that is part of a group of packages sorted to a merged 5-digit sack or merged 5-digit scheme sack (under M920) that contains either at least one qualifying carrier route package of 10 or more pieces, or contains at least 125 pieces or 15 pounds of pieces prepared in 5-digit packages (both automation and Presorted rate 5-digit packages count toward the 125-piece or 15-pound sack minimum).

(3) In a 5-digit or 5-digit scheme package of 10 or more pieces, or 15 or more pieces, as applicable; or in a 3-digit package of 10 or more pieces; palletized under M045, M920, M930, or M940.

c. For machinable parcels (*see* C050.4.0):

(1) In a 5-digit scheme, 5-digit, ASF, or BMC sack containing at least 10 pounds of parcels. (The ⅗ rates are available for parcels in 5-digit scheme or 5-digit sacks only when all possible 5-digit scheme and 5-digit sacks are prepared.)

(2) On a 5-digit scheme, 5-digit, ASF, or BMC pallet. (The ⅗ rates are available for parcels on 5-digit scheme or 5-digit pallets only when all possible 5-digit scheme and 5-digit pallets are prepared.)

d. For irregular parcels (*see* C050.5.0), in a 5-digit scheme, 5-digit, or 3-digit sack containing at least 125 parcels or 15 pounds of parcels.

e. For commingled machinable and irregular parcels, in a 5-digit scheme or 5-digit sack containing at least 10 pounds of parcels. (The ⅗ rates are available for parcels in 5-digit scheme or 5-digit sacks only when all possible 5-digit scheme and 5-digit sacks are prepared.)

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E640 Automation Rates

1.0 REGULAR AND NONPROFIT RATES

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1.5 Rate Application—Flats

Automation rates apply to each piece that is sorted under M045, M820, or M900 into the qualifying groups:

[Revise 1.5a to read as follows:]

a. Pieces in 5-digit or 5-digit scheme packages of 10 or more pieces, or 15 or more pieces, as applicable; or in 3-digit packages of 10 or more pieces qualify for the ⅗ automation rate.

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M Mail Preparation and Sortation

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M600 Standard Mail (Nonautomation)

M610 Presorted Standard Mail

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4.0 PREPARATION—FLAT-SIZE PIECES

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4.2 Packaging and Labeling

Preparation sequence, package size, and labeling:

[Revise 4.2a to read as follows:]

a. 5-digit (required):

(1) For pieces each weighing no more than 5 ounces (0.3125 pound): 15-piece minimum; red Label 5 or OEL.

(2) For pieces each weighing more than 5 ounces (0.3125 pound): 10-piece minimum; red Label 5 or OEL.

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M800 All Automation Mail

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M820 Flat-Size Mail

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5.0 STANDARD MAIL

5.1 Packaging and Labeling

Preparation sequence, package size, and labeling:

[Revise 5.1a and 5.1b to read as follows:]

a. 5-digit scheme (optional):

(1) For pieces weighing no more than 5 ounces (0.3125 pound) each: 15-piece minimum; optional endorsement line (OEL) required.

(2) For pieces weighing more than 5 ounces (0.3125 pound) each: 10-piece minimum; OEL required.

b. 5-digit (required):

(1) For pieces weighing no more than 5 ounces (0.3125 pound) each and measuring no more than ¾ inch thick: 15-piece minimum; red Label 5 or OEL.

(2) For pieces weighing more than 5 ounces (0.3125 pound) each or measuring more than ¾ inch thick: 10-piece minimum; red Label 5 or OEL.

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M900 Advanced Preparation Options for Flats

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M950 Co-Packaging Automation Rate and Presorted Rate Pieces

* * * * *

3.0 STANDARD MAIL

* * * * *

3.2 Package Preparation

Package size, preparation sequence, and labeling:

[Revise 3.2a and 3.2b to read as follows:]

a. 5-digit scheme (optional):

(1) For pieces weighing no more than 5 ounces (0.3125 pound) each: 15-piece minimum; optional endorsement line (OEL) required.

(2) For pieces weighing more than 5 ounces (0.3125 pound) each: 10-piece minimum; OEL required.

b. 5-digit (required):

(1) For pieces weighing no more than 5 ounces (0.3125 pound) each and measuring no more than ¾ inch thick: 15-piece minimum; red Label 5 or OEL.

(2) For pieces weighing more than 5 ounces (0.3125 pound) each or measuring more than 3/4 inch thick: 10-piece minimum; red Label 5 or OEL.

* * * * *

We will publish an appropriate amendment to 39 CFR 111.3 to reflect these changes if the proposal is adopted.

Neva R. Watson,

Attorney, Legal Policy and Ratemaking Law.

[FR Doc. 03–30664 Filed 12–10–03; 8:45 am]

BILLING CODE 7710–12–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[IN159–1b; FRL–7598–5]

Approval and Promulgation of Implementation Plans; Indiana; Oxides of Nitrogen Regulations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA is proposing to approve, through direct final procedure, revisions to the oxides of nitrogen budget trading program plan submitted by Indiana on June 26, 2003, and August 4, 2003. These changes revise Indiana's NO_X State Implementation Plan (SIP) and NO_X budget approved by EPA on November 8, 2001. The most significant change adds three sources to the NO_X trading portion of the Indiana plan. The plan revision also includes: A compliance date change to accommodate revised deadlines under the NO_X SIP call; a revised definition of "energy efficiency project" to include anaerobic digestion systems; the addition of formulas to describe an energy efficiency and renewable energy "set aside"; and minor wording changes and correction of typographical errors. These changes are consistent with Indiana's previously approved "Phase I budget."

In the Final Rules section of this **Federal Register**, EPA is approving these revisions to the State plan for oxides of nitrogen as a direct final rule without prior proposal because we view this action as noncontroversial and anticipate no adverse comments. If no written adverse comments are received in response to the direct final rule, no further activity is contemplated in relation to this proposed rule. If EPA receives meaningful written adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. If no adverse written comments are received, the direct final rule will take effect on the date stated in that document and no further activity will be taken on this proposed rule. Any party interested in commenting on this action should do so at this time.

DATES: Written comments must be received on or before January 12, 2004.

Comments may also be submitted electronically or through hand delivery/courier, please follow the detailed instructions described in Part(I)(B)(1)(i) through (iii) of the **SUPPLEMENTARY INFORMATION** section of the related direct final rule which is published in the Rules section of this **Federal Register**.

ADDRESSES: Written comments should be sent to: J. Elmer Bortzer, Chief, Criteria Pollutant Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604. *bortzer.jay@epa.gov.*

FOR FURTHER INFORMATION CONTACT: John Paskevicz, Engineer, Criteria Pollutant Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, Chicago, Illinois 60604. E-Mail Address: *paskevicz.john@epa.gov.*

SUPPLEMENTARY INFORMATION: For additional information see the direct final rule published in the rules section of this **Federal Register**.

Authority: 42 U.S.C. 4201 *et seq.*

Dated: December 2, 2003.

Bharat Mathur,

Regional Administrator, Region 5.

[FR Doc. 03–30697 Filed 12–10–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 61 and 63

[NM–40–2–7445b; FRL–7598–7]

Approval of the Clean Air Act Section 112(l) Program for Hazardous Air Pollutants and Delegation of Authority to the State of New Mexico

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The New Mexico Environment Department (NMED) has

submitted updated regulations for receiving delegation of EPA authority for implementation and enforcement of National Emission Standards for Hazardous Air Pollutants (NESHAPs) for all sources (both part 70 and non-part 70 sources). These regulations apply to certain NESHAPs promulgated by EPA, as amended through September 1, 2001 and September 1, 2002. The delegation of authority under this action does not apply to sources located in Bernalillo County, New Mexico or sources located in Indian Country. EPA is providing notice proposing to approve the delegation of certain NESHAPs to NMED.

DATES: Written comments must be received by January 12, 2004.

ADDRESSES: Comments must be submitted to Mr. Jeffery Robinson, Air Permits Section, Multimedia Planning and Permitting Division (6PD–R), U.S. Environmental Protection Agency, Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733. Comments may also be submitted electronically or through hand delivery/courier by following the detailed instructions in section I.C–I.F of the Supplementary Information section of the direct final rule located in the Rules section of this **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Mr. Jeffery Robinson, Air Permits Section, Multimedia Planning and Permitting Division (6PD–R), U.S. Environmental Protection Agency, Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733, at (214) 665–6435, or at *robinson.jeffrey@epa.gov*.

SUPPLEMENTARY INFORMATION: In the final rules section of this **Federal Register**, EPA is approving NMED's request for delegation of authority to implement and enforce certain NESHAPs for all sources (both part 70 and non-part 70 sources). NMED has adopted certain NESHAPs by reference into New Mexico's state regulations. In addition, EPA is waiving its notification requirements so sources will only need to send notifications and reports to NMED.

The EPA is taking direct final action without prior proposal because EPA views this as a noncontroversial action and anticipates no adverse comments. A detailed rationale for this approval is set forth in the preamble to the direct final rule. If no adverse comments are received in response to this action rule, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn, and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment. For additional information, see the direct final rule which is published in the Rules section of this **Federal Register**.

Dated: November 26, 2003.

Lynda F. Carroll,

Acting Regional Administrator, Region 6.

[FR Doc. 03–30709 Filed 12–10–03; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 600

[Docket No. 031031272–3272–01; I.D. 102903A]

RIN 0648–AR76

Fisheries of the United States; Essential Fish Habitat

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Advance notice of proposed rulemaking; consideration of revision to Essential Fish Habitat (EFH) guidelines.

SUMMARY: NMFS is seeking public input on the EFH guidelines promulgated through regulation in the January 17, 2002, final rule. Such input is intended to fulfill NMFS' commitment to continually evaluate the efficacy of the EFH guidelines using an appropriate public process.

DATES: Written comments must be received no later than 5 p.m., e.s.t., on or before January 26, 2004.

ADDRESSES: Written comments must be sent to Mr. Rolland A. Schmitten, Director, Office of Habitat Conservation, NOAA National Marine Fisheries Service, F/HC, 1315 East-West Highway, Silver Spring, MD 20910. Comments may also be sent via fax to (301) 427–2570. Comments will not be accepted if submitted via e-mail or the Internet.

FOR FURTHER INFORMATION CONTACT: Karen Abrams at (301) 713–4300 ext. 149.

SUPPLEMENTARY INFORMATION: In January 2002, NMFS promulgated a final rule (67 FR 2343) that established guidelines (50 CFR 600.805 to 600.930) to assist the Regional Fishery Management Councils (Councils) and the Secretary of Commerce (Secretary) in the description and identification of EFH in fishery management plans (FMPs), the identification of adverse effects to EFH, and the identification of actions required to conserve and enhance EFH. The final rule also detailed procedures the Secretary (acting though NMFS), other Federal agencies, and the Councils will use to coordinate, consult, or provide recommendations on Federal and state actions that may adversely affect EFH. Such guidelines promulgated through regulation were mandated in the 1996 amendments incorporated into the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1855(b)(1)(A)). The intended effect of the guidelines is to promote the protection, conservation, and enhancement of EFH.

After a 5–year public process, NMFS finalized the EFH guidelines in 2002. Nevertheless, NMFS recognized that a great deal of interest remained from various stakeholders in how to integrate habitat considerations into fishery management. As a result of this interest, NMFS committed to evaluating the efficacy of the EFH guidelines as they are implemented, to apply the lessons learned from such implementation as appropriate, and to consider changing the regulations if warranted through an appropriate public process.

NMFS recognizes that implementation of the MSA's EFH provisions is complex and requires considerable species and habitat information not always equally available across species or geography. In addition, NMFS recognizes that not all habitats exhibit the same characteristics, and that implementation of the EFH guidelines continues to attract public interest from its stakeholders.

Given ongoing interest in EFH and NMFS' commitment to evaluate the efficacy of the EFH guidelines through an appropriate public process, NMFS solicits input from the public regarding, (1) whether the EFH guidelines (50 CFR 600.805 to 600.930) should be revised and (2) if revisions are desired, what parts of the guidelines should be revised, how should they be revised, and why. NMFS will use this information in determining whether to proceed with a revision to the EFH guidelines, and, if so, the issues to be addressed.

This advance notice of proposed rulemaking has been determined to be significant for the purposes of Executive Order 12866.

Authority: 16 U.S.C. 1801 *et. seq.*

Dated: December 5, 2003.

William T. Hogarth,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 03–30728 Filed 12–10–03; 8:45 am]

BILLING CODE 3510–22–S

Notices

Federal Register
Vol. 68, No. 238
Thursday, December 11, 2003

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Fresno County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Fresno County Resource Advisory Committee will meet in Clovis, California. The purpose of the meeting is to discuss and to recommend project proposals for FY2004 funds regarding the Secure Rural Schools and Community Self-Determination Act of 2000 (Pub. L. 106–393) for expenditure of Payments to States Fresno County Title II funds.

DATES: The meeting will be held on January 13, 2004, from 6:30 p.m. to 9:30 p.m.

ADDRESSES: The meeting will be held at the Supervisors Office, Sierra National Forest, 1600 Tollhouse, Clovis, California 93611. Send written comments to Robbin Ekman, Fresno County Resource Advisory Committee Coordinator, c/o Sierra National Forest, High Sierra Ranger District, 29688 Auberry Road, Prather, CA 93651 or electronically to *rekman@fs.fed.us.*

FOR FURTHER INFORMATION CONTACT: Robbin Ekman, Fresno County Resource Advisory Committee Coordinator, (559) 855–5355, ext. 3341.

SUPPLEMENTARY INFORMATION: The meeting is open to the public. Committee discussion is limited to Forest Service staff and Committee members. However, persons who wish to bring Payments to States Fresno County Title II project matters to the attention of the Committee may file written statements with the Committee staff before or after the meeting.

Public sessions will be provided and individuals who made written requests by January 13, 2004, will have the opportunity to address the Committee at those sessions. Agenda items to be covered include: (1) Call for new projects; (2) Status report from project recipients; and (3) Public comment.

Dated: December 4, 2003.

Ray Porter,

District Ranger.

[FR Doc. 03–30685 Filed 12–10–03; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

[120803B]

Submission for OMB Review; Comment Request

The Department of Commerce has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: An Observer Program for Catcher Vessels in the Pacific Coast Groundfish Fishery.

Form Number(s): None.

OMB Approval Number: 0648–0423.

Type of Request: Regular submission.

Burden Hours: 1,763.

Number of Respondents: 2,116.

Average Hours Per Response: 0.167 (10 minutes).

SUPPLEMENTARY INFORMATION: *Needs and Uses*: This data collection requires that a representative (owner, operator, or manager) for selected catcher vessels participating in the Pacific Coast Groundfish Fishery provide the National Marine Fisheries Service with notification at least 24 hours before departure for a fishing trip and notification when the vessel ceases to participate in the observed portion of the fleet. The information will be used to plan for fishery observer assignments.

Affected Public: Business or other for-profit organizations.

Frequency: On occasion.

Respondent's Obligation: Mandatory.

OMB *Desk Officer*: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at dHynek@doc.gov).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, FAX number 202–395–7285, or David_Rostker@omb.eop.gov.

Dated: December 4, 2003.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 03–30727 Filed 12–10–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Acting Leader, Regulatory Information Management, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: An emergency review has been requested in accordance with the Act (44 U.S.C. Chapter 3507 (j)), since public harm is reasonably likely to result if normal clearance procedures are followed. Approval by the Office of Management and Budget (OMB) has been requested by January 16, 2004.

ADDRESSES: Written comments regarding the emergency review should be addressed to the Office of Information and Regulatory Affairs, Attention: Melanie Kadlic, Desk Officer, Department of Education, Office of Management and Budget; 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Director of OMB provide interested Federal agencies and the public an early opportunity to comment on information collection requests. The Office of Management and Budget (OMB) may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Acting Leader, Regulatory Information Management, Office of the Chief Information Officer, publishes this notice containing proposed information collection requests at the beginning of the Departmental review of the information collection. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.*, new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. ED invites public comment.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner, (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected, and (5) how might the Department minimize the burden of this collection on respondents, including through the use of information technology.

Dated: December 5, 2003.

Joseph Schubart,

Acting Leader, Regulatory Information Management Group, Office of the Chief Information Officer.

Office of Vocational and Adult Education

Type of Review: Reinstatement.

Title: Adult Education and Family Literacy Act State Plan (Pub. L. 105–220).

Abstract: It is unlikely that Congress will pass a reauthorization of the Workforce Investment Act (WIA) this year. Therefore, the enclosed Policy Memorandum is designed to advise states about how to continue their adult education program under section 422 of the General Education Provisions Act (GEPA) [20 U.S.C. 1226 (a)].

Additional Information: Section 422 of the General Education Provisions Act (GEPA) [20 U.S.C. 1226 (a)] provides for the automatic extension of current program operations for one year if current law expires and a reauthorization is anticipated, but not yet available, to take its place.

Frequency: One time state plan.

Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs (primary).

Reporting and Recordkeeping Hour Burden:

Responses: 59.

Burden Hours: 2,655.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov*, by selecting the "Browse Pending Collections" link and by clicking on link number 1907. When you access the information collection, click on "Download Attachments" to view. Written requests for information should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW., Room 4050, Regional Office Building 3, Washington, DC 20202–4651 or to the e-mail address *vivian.reese@ed.gov*. Requests may also be electronically mailed to the internet address *OCIO_RIMG@ed.gov* or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements, contact Sheila Carey at her e-mail address *Sheila.Carey@ed.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 03–30671 Filed 12–10–03; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Acting Leader, Regulatory Information Management Group, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before February 9, 2004.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Acting Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) title; (3) summary of the collection; (4) description of the need for, and proposed use of, the information; (5) respondents and frequency of collection; and (6) reporting and/or recordkeeping burden. OMB invites public comment. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: December 5, 2003.

Joseph Schubart,

Acting Leader, Regulatory Information Management Group, Office of the Chief Information Officer.

Office of the Chief Financial Officer

Type of Review: Revision.

Title: Streamlined Clearance Process for Discretionary Grant Information Collections.

Frequency: Annually.

Affected Public: Individuals or household; Businesses or other for-profit; not-for-profit institutions; State, local, or tribal gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 1.

Burden Hours: 1.

Abstract: The information collection plan provides the U.S. Department of Education with the option of submitting its discretionary grant information collections through a streamlined Paperwork Reduction Act clearance process. This streamlined clearance process will begin when the Department submits the information collection to the Office of Management and Budget (OMB) and, at the same time, publishes a 30-day public comment period notice

in the **Federal Register**. OMB will then have 60 days after the start of the public comment period to reach a decision on the information collection.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov*, by selecting the "Browse Pending Collections" link and by clicking on link number 2421. When you access the information collection, click on "Download Attachments" to view. Written requests for information should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW., Room 4050, Regional Office Building 3, Washington, DC. 20202–4651 or to the e-mail address *vivian_reese@ed.gov*. Requests may also be electronically mailed to the internet address *OCIO_RIMG@ed.gov* or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Kathy Axt at her e-mail address *Kathy.Axt@ed.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 03–30672 Filed 12–10–03; 8:45 am]

BILLING CODE [illegible]-01–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Acting Leader, Regulatory Information Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before January 12, 2004.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Melanie Kadlic, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the Internet address *Melanie_Kadlic@omb.eop.gov*.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Acting Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: December 5, 2003.

Joseph Schubart,

Acting Leader Regulatory Information Management Group, Office of the Chief Information Officer.

Office of Special Education and Rehabilitative Services

Type of Review: Reinstatement.
Title: Part B of the Individuals with Disabilities Education Act Biennial Performance Report.
Frequency: Annually.
Affected Public: State, local, or tribal gov't; SEAs or LEAs; Federal Government.
Reporting and Recordkeeping Hour Burden:
Responses: 60.
Burden Hours: 12,000.
Abstract: State educational agencies are required to establish goals for the performance of children with disabilities in that State that promote the purposes of Part B of the Individuals with Disabilities Education Act (Part B). States must also establish performance indicators that the State will use to assess its progress in achieving these goals. Section 612(a)(16) of Part B requires States to report to the Secretary on the progress that the State has made toward meeting its goals. The Office of Special Education Programs (OSEP) is implementing an integrated, four-part accountability strategy: (1) Verifying the effectiveness and accuracy of States' monitoring, assessment, and data collection systems; (2) attending to States at high risk for compliance, financial, and/or management failure; (3) supporting States in assessing their performance and compliance, and in planning, implementing, and evaluating improvement strategies; and (4) focusing OSEP's intervention on States with low ranking reporting requirements for States' Self-Assessments, Improvement Plans, and Biennial Performance Reports are being combined in this Part B Annual Performance Report.

Requests for copies of the submission for OMB review; comment request may be accessed from *http://edicsweb.ed.gov*, by selecting the "Browse Pending Collections" link and by clicking on link number 2355. When you access the information collection, click on "Download Attachments "to view. Written requests for information should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW., Room 4050, Regional Office Building 3, Washington, DC 20202–4651 or to the e-mail address *vivan.reese@ed.gov*. Requests may also be electronically mailed to the Internet address *OCIO_RIMG@ed.gov* or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Sheila Carey at her e-mail address *Sheila.Carey@ed.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 03–30673 Filed 12–10–03; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–301–098]

ANR Pipeline Company; Notice of Negotiated Rate Filing

December 4, 2003.

Take notice that on December 1, 2003, ANR Pipeline Company (ANR) tendered for filing and approval three amendments to existing negotiated rate service agreements between ANR and NJR Energy Services Company.

ANR requests that the Commission accept and approve the subject negotiated rate agreement amendments to be effective December 1, 2003.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the e-Filing link.

Magalie R. Salas,

Secretary.

[FR Doc. E3–00516 Filed 12–10–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–301–096]

ANR Pipeline Company; Notice of Negotiated Rate Filing

December 4, 2003.

Take notice that, on December 1, 2003, ANR Pipeline Company (ANR) tendered for filing and approval two amendments to negotiated rate service agreements between ANR and Wisconsin Public Service Corporation (WPS).

ANR requests that the Commission accept and approve the subject negotiated rate agreement amendments to be effective December 1, 2003.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the e-Filing link.

Magalie R. Salas,

Secretary.

[FR Doc. E3–00528 Filed 12–10–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–301–097]

ANR Pipeline Company; Notice of Negotiated Rate Filing

December 4, 2003.

Take notice that, on December 1, 2003, ANR Pipeline Company (ANR) tendered for filing and approval three (3) amendments to existing negotiated rate service agreements between ANR and Wisconsin Gas Company.

ANR requests that the Commission accept and approve the subject negotiated rate agreement amendments to be effective December 1, 2003.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the e-Filing link.

Magalie R. Salas,

Secretary.

[FR Doc. E3–00529 Filed 12–10–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–98–000]

Indicated Shippers v. Columbia Gulf Transmission Company; Notice of Complaint

December 4, 2003.

Take notice that on December 3, 2003, pursuant to Rule 206 of the Federal Energy Regulatory Commission's Rules of Practice and Procedure, 18 CFR 385.206 (2003), the Indicated Shippers (BP America Inc. and BP Energy Company; ChevronTexaco Exploration & Production Company, a division of Chevron U.S.A. Inc.; ConocoPhillips Company; and ExxonMobil Gas & Power Marketing Company, a division of Exxon Mobil Corporation) filed a Complaint Requesting Fast Track Processing against Columbia Gulf Transmission Company (CGT). The Indicated Shippers allege that CGT has failed to comply with Section 4 of the Natural Gas Act as well as the Commission's regulations, 18 CFR 154.1(b), 18 CFR 154.204 and 18 CFR 284.7(c), by posting quality limitations through long-term critical notices in lieu of proposing changes to its tariff through a filing with the Commission.

The Indicated Shippers request that the Commission order CGT to cease and desist from its current practice of posting long-term critical notices to impose quality specifications.

Any person desiring to be heard or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211

and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. The answer to the complaint and all comments, interventions or protests must be filed on or before the comment date. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659. The answer to the complaint, comments, protests and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Comment Date: December 23, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. E3–00524 Filed 12–10–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP04–19–000]

Dominion Transmission, Inc.; Notice of Application

December 3, 2003.

Take notice that on November 24, 2003, Dominion Transmission, Inc. (Dominion), 120 Tredegar Street, Richmond, Virginia 23219, filed in Docket No. CP04–19–000, an application pursuant to section 7(b) of the Natural Gas Act (NGA), for permission and approval to abandon five gas storage wells in the Oakford Storage Complex in Westmoreland County, Pennsylvania, all as more fully set forth in the application which is on file with the Commission and open to public inspection. This filing may also be viewed on the Web at *http://www.ferc.gov* using the "eLibrary" link, select "Docket #" and follow the instructions (call 202–208–2222 for assistanee).

Dominion states that the five gas storage wells are geographically located in the Oakford Storage Complex, and were intended for potential use as gas storage wells after the reservoir gas had been sufficiently depleted. However, the wells have never been utilized to provide storage service by either the injection or withdrawal of gas in the storage field. Dominion explains that the wells are, in essence, production wells and their plugging and abandonment will not affect the operational capabilities or diminution of service of the Oakford Storage Complex.

Any questions concerning this amendment may be directed to Anne E. Bomar, Managing Director, Attn.: Lorriane Cote, Dominion Transmission, Inc., 120 Tredegar Street, Richmond, Virginia 23219, at (804) 819–2881 or fax (804) 819–2064.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 385.214 or 385.211) and the regulations under the NGA (18 CFR 157.10) by the comment date, below. A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken; but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Protests and interventions may be filed electronically via the Internet in lieu of paper; *see*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Comment Date: December 15, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. E3–00530 Filed 12–10–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–99–000]

Indicated Shippers v. Tennessee Gas Pipeline Company; Notice of Complaint

December 4, 2003.

Take notice that on December 3, 2003, pursuant to Rule 206 of the Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedure, 18 CFR 385.206 (2003), the Indicated Shippers filed a Complaint Requesting Fast Track Processing against Tennessee Gas Pipeline Company (TGP). The Indicated Shippers allege that TGP has failed to comply with Section 4 of the Natural Gas Act as well as the Commission's regulations, 18 CFR 154.1(b), 18 CFR 154.204 and 18 CFR 284.7(c), by posting quality limitations through long-term critical notices in lieu of proposing changes to its tariff through a filing with the Commission.

The Indicated Shippers request that the Commission order TGP to cease and desist from its current practice of posting long-term critical notices to impose quality specifications.

Any person desiring to be heard or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. The answer to the complaint and all comments, interventions or protests must be filed on or before the comment date. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659. The answer to the complaint, comments, protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Comment Date: December 23, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. E3–00525 Filed 12–10–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–13–011]

East Tennessee Natural Gas Company; Notice of Compliance Filing

December 4, 2003.

Take notice that on December 1, 2003, East Tennessee Natural Gas Company (East Tennessee) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, Substitute Fourth Revised Sheet No. 177, proposed to be effective on November 21, 2003.

East Tennessee states that the purpose of this filing is to comply with the Commission's Order, dated October 31, 2003, in the captioned proceeding. East Tennessee also states that it filed narrative responses and a table, in Appendix B attached to the filing, in compliance with the October 31 Order.

East Tennessee states that copies of the filing were mailed to all parties on the Official Service List in this proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the e-Filing link.

Magalie R. Salas,

Secretary.

[FR Doc. E3–00526 Filed 12–10–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–97–000]

Equitrans, L.P.; Notice of Proposed Changes in FERC Gas Tariff

December 4, 2003.

Take notice that on December 1, 2003, Equitrans, L.P. (Equitrans) tendered for filing, as part of its FERC Gas Tariff, Original Volume No. 1, revised tariff sheets listed in Appendix A to the filing, proposed to become effective on January 1, 2004.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the e-Filing link.

Magalie R. Salas,

Secretary.

[FR Doc. E3–00523 Filed 12–10–03 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–176–096]

Natural Gas Pipeline Company of America; Notice of Negotiated Rates

December 4, 2003.

Take notice that on November 24, 2003, Natural Gas Pipeline Company of America (Natural) tendered for filing to become part of its FERC Gas Tariff, Sixth Revised Volume No. 1, Fourth Revised Sheet No. 26B, to be effective December 1, 2003.

Natural states that the purpose of this filing is to reflect an amendment to an existing negotiated rate agreement between Natural and MidAmerican Energy Company under Natural's Rate Schedule DSS pursuant to Section 49 of the General Terms and Conditions of Natural's Tariff.

Natural states that copies of the filing are being mailed to all parties set out on the Commission's official service list in Docket No. RP99–176.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. See, 18 CFR 385.2001(a)(1)(iii) and the

instructions on the Commission's Web site under the e-Filing link.

Magalie R. Salas,

Secretary.

[FR Doc. E3–00527 Filed 12–10–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–95–000]

OkTex Pipeline Company, Norteño Pipeline Company; Notice Of Tariff Filing

December 4, 2003.

Take notice that on December 1, 2003, Norteño Pipeline Company (Norteño), tendered for filing a tariff sheet to cancel its First Revised Volume No. 1 in accordance with the Order issued by the Federal Energy Regulatory Commission on October 8, 2003, in Docket Nos. CP03–76, *et al.*

Norteño states that the purpose of the filing is to reflect Norteño's intended abandonment of facilities and cancellation of service and the subsequent assumption by OkTex Pipeline Company of Norteño's facilities, service, customers, delivery points, and firm and interruptible rates.

Norteño further states that copies of the filing have been mailed to all affected customers and state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the e-Filing link. *Intervention and Protest Date:* December 26, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. E3–00521 Filed 12–10–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PR04–5–000]

PanEnergy Louisiana Intrastate, LLC; Notice of Petition for Rate Approval

December 4, 2003.

Take notice that on November 28, 2003, PanEnergy Louisiana Intrastate, LLC (PELICO) filed a petition for rate approval pursuant to Section 284.123(b)(2) of the Commission's Regulations. PELICO requests the Commission to approve a rate for firm and interruptible transportation service under Section 311(a)(2) of the Natural Gas Policy Act of $0.2543 per MMBtu.

Any person desiring to participate in this rate proceeding must file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed with the Secretary of the Commission on or before the date as indicated below. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This petition for rate approval is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits I the docket number field to access the document. For Assistant, call (202) 502–8222 or for TTY, (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See*, 18 CFR 385.2001(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. *Intervention and Protest Date:* December 26, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. E3–00519 Filed 12–10–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–69–000]

Piedmont Natural Gas Company, Inc. v. Transcontinental Gas Pipe Line Corporation; Notice of Complaint

December 4, 2003.

Take notice that on November 25, 2003, pursuant to Section 5 of the Natural Gas Act, 15 U.S.C. 717d, and Rule 206 of the Commission regulations, 18 CFR 385.206, Piedmont Natural Gas Company, Inc. (Piedmont) filed a Complaint Requesting Fast Track Procedures against Transcontinental Gas Pipe Line Corporation (Transco). Piedmont alleges that Transco's existing tariff is unjust and unreasonable to the extent that it does not provide for adjusted daily reservation rates for leap years.

Any person desiring to be heard or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. The answer to the complaint and all comments, interventions or protests must be filed on or before the comment date. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659. The answer to the complaint, comments, protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Comment Date: December 15, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. E3–00520 Filed 12–10–03 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP93–541–013]

Young Gas Storage Company, Ltd.; Notice of Application

December 4, 2003.

On November 24, 2003, Young Gas Storage Company, Ltd. (Young), whose mailing address is Post Office Box 1087, Colorado Springs, Colorado 80944, filed an application in the above referenced docket, pursuant to Section 7(c) of the Natural Gas Act (NGA), and Part 157of the Federal Energy Regulatory Commission's (Commission) Rules and Regulations to further amend its certificate of public convenience and necessity issued in Docket Numbers CP93–541–000 *et al.* Young states it is seeking to amend an authorization to construct and operate three additional injection/withdrawal wells, to reclassify two existing injection/withdrawal wells as observation wells, to modify its protection acreage, and to undertake a storage field testing program in the Young Gas Storage Field (Field) located in Morgan County, Colorado, as more fully described in the application. Young further states it is estimated the proposed project will cost approximately $3,240,528. Young also states that this filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at*http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (866) 208–3676, or for TTY, (202) 502–8659.

Any questions regarding this application should be directed to Robert T. Tomlinson, Director, Regulatory Affairs Department, Colorado Interstate Gas Company, as operator for Young Gas Storage Company, Ltd., P.O. Box 1087, Colorado Springs, Colorado 80944, telephone (719) 520–3788.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date stated below file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made in the proceeding with the Commission and must mail a copy to the applicant and to every other party. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission may issue a preliminary determination on non-environmental issues prior to the completion of its review of the environmental aspects of the project. This preliminary determination typically considers such issues as the need for the project and its economic effect on existing customers of the applicant, on other pipelines in the area, and on landowners and communities. For example, the Commission considers the extent to which the applicant may need to exercise eminent domain to obtain rights-of-way for the proposed project and balances that against the non-environmental benefits to be provided by the project. Therefore, if a person has comments on community and landowner impacts from this proposal, it is important either to file comments or to intervene as early in the process as possible.

Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Magalie R. Salas,

Secretary.

[FR Doc. E3–00517 Filed 12–10–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–96–000]

Young Gas Storage Company, Ltd.; Notice of Proposed Changes in FERC Gas Tariff

December 4, 2003.

Take notice that on December 1, 2003, Young Gas Storage Company, Ltd. (Young) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the following tariff sheets, with an effective date of January 1, 2004:

Seventh Revised Sheet No. 80
Original Sheet No. 84A
Original Sheet No. 84B

Young states that these tariff sheets provide shippers the flexibility to nominate for storage injection and withdrawal, scheduling changes at any time during the Gas Day, subject to certain operationally based conditions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the

Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the e-Filing link.

Magalie R. Salas,

Secretary.

[FR Doc. E3–00522 Filed 12–10–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC04–31–000, et al.]

SCS Energy, LLC, et al.; Electric Rate and Corporate Filings

December 3, 2003.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. SCS Energy, LLC; Astoria Energy, LLC

[Docket Nos. EC04–31–000 and ER01–3103–003]

Take notice that on November 26, 2003, SCS Energy, LLC (SCS) and AE Investor, LLC, filed with the Federal Energy Regulatory Commission an application pursuant to Section 203 of the Federal Power Act for authorization to request approval of an indirect change in control of Astoria Energy, LLC.

Comment Date: December 17, 2003.

2. Mirant Delta, LLC; Mirant Potrero, LLC

[Docket No. ER04–227–000]

Take notice that, on November 25, 2003, Mirant Delta, LLC (Mirant Delta) and Mirant Potrero, LLC (Mirant Potrero) tendered for filing certain revised tariff sheets to the Reliability Must-Run Service Agreements between Mirant Delta, Mirant Potrero, and the California Independent System Operator Corporation. The revisions include, inter alia, changes to the: (1) Air Emissions Limitations; (2) Contract Service Limits, (3) Hourly Availability Charges and Penalty Rates, (4) Capital Item Charges and Penalty Rates for the RMR; (5) Prepaid Start-up Costs, and (6) projected outage information for the generating units owned by Mirant Delta and Mirant Potrero, for the year beginning January 1, 2004.

Comment Date: December 16, 2003.

Standard Paragraph

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov*, using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number filed to access the document. For assistance, call (202) 502–8222 or TTY, (202) 502–8659. Protests and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Magalie R. Salas,

Secretary.

[FR Doc. E3–00515 Filed 12–10–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. P–2816–026, EL03–51–001 and EL03–215–000]

North Hartland, LLC and North Hartland, LLC v. Central Vermont Public Service Corp.; Notice of Technical Conference

December 4, 2003.

The Commission Staff will convene a technical conference to discuss issues raised in the proceedings referred to above. The conference to address these issues has been scheduled for December 16, 2003, at 10 a.m. in 92–68 at the offices of the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

All parties to these proceedings may attend.

For further information, please contact Steven Rothenberg at *steven.rothenberg@ferc.gov*.

Magalie R. Salas,

Secretary.

[FR Doc. E3–00518 Filed 12–10–03; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[OECA–2003–0019; FRL–7598–3]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; NSPS for Standards of Performance for Storage Vessels for Petroleum Liquids for Which Construction, Reconstruction or Modification Commenced After June 11, 1973, and Prior to May 19, 1978 (40 CFR Part 60, Subpart K), EPA ICR Number 1797.03, OMB Control Number 2060–0442

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. This ICR is scheduled to expire on January 31, 2004. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. This ICR describes the nature of the information collection and its estimated burden and cost.

DATES: Additional comments may be submitted on or before January 12, 2004.

ADDRESSES: Submit your comments, referencing docket ID number OECA–2003–0019, to (1) EPA online using EDOCKET (our preferred method), by e-mail to *docket.oeca@epa.gov*, or by mail to: EPA Docket Center, Environmental Protection Agency, Enforcement and Compliance Docket and Information Center, Mail Code 2201T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, and (2) OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Rafael Sanchez, Compliance Assurance and Monitoring Programs Division, Office of Compliance, Mail Code 2223A, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 564–7028; fax number: (202) 564–0050; e-mail address: *sanchez.rafael@epa.gov*.

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On May 19, 2003 (68 FR 27059), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments.

EPA has established a public docket for this ICR under Docket ID No. OECA–2003–0019, which is available for public viewing at the Enforcement and Compliance Docket and Information Center in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Avenue, NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Enforcement and Compliance Docket and Information Center is (202) 566–1514. An electronic version of the public docket is available through EPA Dockets (EDOCKET) at *http://www.epa.gov/edocket*. Use EDOCKET to submit or view public comments, access the index listing of the contents of the public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the docket ID number identified above.

Any comments related to this ICR should be submitted to EPA and OMB within 30 days of this notice. EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EDOCKET as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose public disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EDOCKET. The entire printed comment, including the copyrighted material, will be available in the public docket. Although identified as an item in the official docket, information claimed as CBI, or whose disclosure is otherwise restricted by statute, is not included in the official public docket, and will not be available for public viewing in EDOCKET. For further information about the electronic docket, *see* EPA's **Federal Register** notice describing the electronic docket at 67 FR 38102 (May 31, 2002), or go to *www.epa.gov/edocket*.

Title: NSPS for Standards of Performance for Storage Vessels for Petroleum Liquids for Which Construction, Reconstruction or Modification Commenced after June 11, 1973, and Prior to May 19, 1978 (40 CFR Part 60, Subpart K).

Abstract: The New Source Performance Standards (NSPS) for the regulations published at 40 CFR part 60, subpart K were proposed on June 11, 1973, and promulgated on March 8, 1974. These regulations apply to facilities in 40 CFR part 60, subpart K that store petroleum liquids in: storage vessels with petroleum liquids which have a storage capacity greater than 151,416 liters (40,000 gallons), and for which construction commenced after June 11, 1973, and prior to May 19, 1978; storage vessels greater than 151,416 liters (40,000 gallons) but not exceeding 246,052 liters (65,000 gallons), and where construction or modification commenced after March 8, 1974, and prior to May 19, 1978; storage vessels that have a capacity greater than 246,052 liters (65,000 gallons), and where construction or modification commenced after June 11, 1973, and prior to May 19, 1978. Affected facilities report only if a storage vessel is no longer subject to 40 CFR part 60, subpart K and will now be subject to the current storage vessel standard, 40 CFR part 60, subpart Kb. The subpart K standards also require the owner/operator to document (recordkeeping) the activities of the storage period, the maximum true vapor pressure, and the type of petroleum liquid stored. This information is recorded only when a petroleum liquid is changed in the storage vessel. Facilities that are not subject to the Standards of Performance for Storage Vessels for Petroleum Liquids, 40 CFR part 60, subpart K, are storage vessels of petroleum or condensate stored, processed, and/or treated at a drilling and production facility prior to custody transfer.

Responses to this information collection are deemed to be mandatory, per section 114(a) of the Clean Air Act. The required information consists of emissions data and other information that have been determined not to be private. However, any information submitted to the Agency for which a claim of confidentiality is made will be safeguarded according to the Agency policies set forth in title 40, chapter 1, part 2, subpart B—Confidentiality of Business Information (*see* 40 CFR part 2; 41 FR 36902, September 1, 1976; amended by 43 FR 40000, September 8, 1978; 43 FR 42251, September 20, 1978; 44 FR 17674, March 23, 1979).

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9 and are identified on the form and/or instrument, if applicable.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 3 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Owners or operators of facilities that store petroleum liquids for which construction, reconstruction or modification commenced after June 11, 1973, and prior to May 19, 1978.

Estimated Number of Respondents: 220.

Frequency of Response: On occasion.

Estimated Total Annual Hour Burden: 669 hours.

Estimated Total Annual Cost: $43,000, includes $0 annualized capital/startup costs, $0 annual O&M costs, and $43,000 labor costs.

Changes in the Estimates: There is a decrease of 9 hours in the total estimated burden currently identified in the OMB Inventory of Approved ICR Burdens. This decrease in burden from the most recently approved ICR is due to an adjustment. Calculation errors from the previous ICR in reference to the number of respondents were corrected in this ICR.

Dated: December 2, 2003.

Doreen Sterling,

Acting Director, Collection Strategies Division.

[FR Doc. 03–30707 Filed 12–10–03; 8:45 am]

BILLING CODE 6560–50–P

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

SES Performance Review Board

AGENCY: Equal Employment Opportunity Commission.

ACTION: Notice of members of the U.S. Equal Employment Opportunity Commission Performance Review Board (PRB).

SUMMARY: Pursuant to 5 U.S.C. 4314(c)(4), this notice announces the appointment of members of the PRB for the Equal Employment Opportunity Commission (EEOC). The Board reviews the performance appraisals of career and non-career senior executives. The Board makes recommendations regarding proposed performance appraisals, ratings, bonuses and other appropriate personnel actions.

FOR FURTHER INFORMATION CONTACT: Angelica E. Ibarguen, Chief Human Capital Officer, Equal Employment Opportunity Commission, 1801 L Street, NW., Washington, DC 20507, 202–663–4306.

Composition of PRB: The Board shall consist of at least three voting members. When appraising a career appointee's performance or recommending a career appointee for a performance award, more than half of the members must be SES career appointees. The names and titles of the PRB members are as follows:

Primary Members

Angelica E. Ibarguen, Chief Human Capital Officer, EEOC—(Chairperson).

Reuben Daniels, Jr., Director, Charlotte District Office, EEOC—(Member).

James L. Lee, Deputy General Counsel, EEOC—(Member).

Sandra Ziegler, Regional Director, Office of Federal Contract Compliance, U.S. Department of Labor—(Member).

Alternate Member

Lisa Fisher—Acting Director, Office of Communications and Legislative Affairs, EEOC.

DATES: Membership is effective on the date of this notice.

Signed in Washington, DC on this 25th day of November, 2003.

For the Commission.

Cari M. Dominguez,

Chair.

[FR Doc. 03–30661 Filed 12–10–03; 8:45 am]

BILLING CODE 6570–01–M

FEDERAL COMMUNICATIONS COMMISSION

[DA 03–3533]

Request for Durational Billing

AGENCY: Federal Communications Commission.

ACTION: Notice; withdrawal of petition for reconsideration.

SUMMARY: This document provides notice of the proposed withdrawal of a April 21, 1999, petition for reconsideration of the Commission's determination that the cost of imposing technology on payphone service providers in order to implement six second billing increments was prohibitive. The company which filed the reconsideration petition, PocketScience, Inc., was dissolved by its parent company more than two years ago. Thus, there is no existing entity to sponsor the reconsideration petition.

DATES: This petition will be dismissed without prejudice effective January 12, 2004, unless the Wireline Competition Bureau receives an opposition to the withdrawal prior to that date.

ADDRESSES: Oppositions to the withdrawal notice should be mailed to the Commission's Secretary through the Commission's contractor, Natek, Inc., at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002.

FOR FURTHER INFORMATION CONTACT: Jon Stover, Wireline Competition Bureau, Pricing Policy Division, (202) 418-0390.

SUPPLEMENTARY INFORMATION: On January 28, 1999, the Commission determined in the *Third Report and Order, And Order on Reconsideration of the Second Report and Order,* 64 FR 13701 (March 22, 1999) that duration-based billing methodology would result in added expense, delay, and confusion. On April 21, 1999, PocketScience, Inc. filed a petition for reconsideration of this portion of the Third Report and Order. Subsequently, petitioner, PocketScience, Inc. was acquired by PocketMail Inc. in May, 2001. On October 21, 2003, PocketMail, Inc. stated in an e-mail to FCC staff that it had formally dissolved PocketScience Inc. and that it no longer had any interest in pursuing the April 21, 1999, petition. Accordingly, unless there is opposition to the proposed withdrawal, PocketScience's April 21, 1999, petition will be dismissed without prejudice. 47 CFR 1.748. Therefore, this proceeding will be terminated effective January 12, 2004, unless the Wireline Competition Bureau receives an opposition to the withdrawal before that date.

Parties filing oppositions to the withdrawal of this petition must file an original and four copies of each filing. The filings should reference the DA number of this public notice, DA 03–3533. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Natek, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002.

- The filing hours at this location are 8 a.m. to 7 p.m.
- All hand deliveries must be held together with rubber bands or fasteners.
- Any envelopes must be disposed of before entering the building.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.
- U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW., Washington, DC 20554.
- All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission. Parties are also requested to send a courtesy copy of their oppositions to Jon Stover, Pricing Policy Division, Wireline Competition Bureau, Federal Communications Commission. Courtesy copies may also be sent via e-mail to *Jon.Stover@fcc.gov*.

Authority: 47 U.S.C. 152, 153, 154, 155, 303, 307, 308, 309, 315, 317; 44 FR 18501, 67 FR 13223, 47 CFR 0.291, 1.749

Federal Communications Commission.

Tamara Preiss,

Chief, Pricing Policy Division.

[FR Doc. 03–30657 Filed 12–10–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL ELECTION COMMISSION

Sunshine Act Notices

PREVIOUSLY ANNOUNCED DATE & TIME: Thursday, December 11, 2003, 10 a.m. Meeting open to the public.

The following item was added to the agenda: Electioneering Communications Dates. The following item was withdrawn from the agenda: Eligibility Report—John R. Edwards/Edwards for President.

DATE AND TIME: Monday, December 15, 2003, at 10 a.m.

PLACE: 999 E Street, NW., Washington, DC.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. § 437g.

Audits conducted pursuant to 2 U.S.C. 437g, 438(b), and Title 26, U.S.C.

Matters concerning participation in civil actions or proceedings or arbitration.

Internal personnel rules and procedures or matters affecting a particular employee.

DATE AND TIME: Thursday, December 18, 2003, at 10 a.m.

PLACE: 999 E Street, NW., Washington, DC (ninth floor).

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED:

Correction and Approval of Minutes.

Merit and Service Awards.

Election of Officers.

Draft Advisory Opinion 2003–30: Fitzgerald for Senate Committee and Senator Peter Fitzgerald by counsel, Benjamin L. Ginsberg and Glenn M. Willard.

Draft Advisory Opinion 2003–34: Viacom, Inc., Networks, Inc. (Showtime), and TMD Productions, Inc., by counsel, Jan Witold Baran.

Future Meeting Dates.

Routine Administrative Matters.

FOR FURTHER INFORMATION CONTACT: Mr. Ron Harris, Press Officer, Telephone: (202) 694–1220.

Mary W. Dove,

Secretary of the Commission.

[FR Doc. 03–30819 Filed 12–9–03; 3:00 pm]

BILLING CODE 6715–01–M

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Revocations

The Federal Maritime Commission hereby gives notice that the following Ocean Transportation Intermediary licenses have been revoked pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of Ocean Transportation Intermediaries, effective on the corresponding date shown below:

License Number: 8135N.
Name: C & F Worldwide Agency Corp.
Address: Carr. 848 KM 3.2, Calle Diaz Final, Saint Just-Carolina, PR 00983.
Date Revoked: November 15, 2003.
Reason: Failed to maintain a valid bond.

License Number: 4507NF.
Name: Cargo Systems Int'L. Corp.
Address: 1426 NW 82nd Avenue, Miami, FL 33126.
Date Revoked: November 28, 2003.
Reason: Failed to maintain valid bonds.

License Number: 4527F.
Name: Colonial Trade Co., Inc.
Address: 8319 Lages Lane, Baltimore, MD 21244.
Date Revoked: November 27, 2003.
Reason: Failed to maintain a valid bond.

License Number: 3288F.
Name: H. Conrad & Associates, Inc.
Address: 2206 East 7th Avenue, Tampa, FL 33605.
Date Revoked: November 13, 2003.
Reason: Failed to maintain a valid bond.

License Number: 4663NF.
Name: International Freight Services, Inc.
Address: 10125 NW 116th Way, Suite 18, Medley, FL 33178.
Date Revoked: November 30, 2003.
Reason: Failed to maintain valid bonds.

License Number: 17442NF.
Name: Klasman-Varnak USA, Inc.
Address: 1099 Wall Street West, Suite 170, Lyndhurst, NJ 07071.
Date Revoked: November 18, 2003.
Reason: Failed to maintain valid bonds.

License Number: 16329N.
Name: Lanna International Corp.
Address: 69–40 Garfield Avenue, Woodside, NY 11377.
Date Revoked: November 13, 2003.
Reason: Failed to maintain a valid bond.

License Number: 18276N.
Name: Nisco Pacific, Inc.
Address: 500 W. Victoria Street, Compton, CA 90220.
Date Revoked: November 21, 2003.
Reason: Surrendered license voluntarily.

License Number: 10526N.
Name: Polamer, Inc.
Address: 3094 N. Milwaukee Avenue, Chicago, IL 60618.
Date Revoked: November 15, 2003.
Reason: Failed to maintain a valid bond.

License Number: 17668N.
Name: Power Light Shipping Co., Inc.
Address: 15358 Valley Blvd., City of Industry, CA 91746.
Date Revoked: November 21, 2003.
Reason: Failed to maintain a valid bond.

License Number: 15863N.
Name: Seatrex International Corp.
Address: 175 Armstrong Road, Des Plaines, IL 60018.
Date Revoked: November 27, 2003.
Reason: Failed to maintain a valid bond.

Sandra L. Kusumoto,

Director, Bureau of Consumer Complaints and Licensing.

[FR Doc. 03–30665 Filed 12–10–03; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Reissuances

Notice is hereby given that the following Ocean Transportation Intermediary licenses have been reissued by the Federal Maritime Commission pursuant to section 19 of the Shipping Act of 1984, as amended by the Ocean Shipping Reform Act of 1998 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of Ocean Transportation Intermediaries, 46 CFR part 515.

License No.	Name/address	Date reissued
17656NF	Coltrans (USA), Inc., 10925 NW 27th Street, Suite 102, Miami, FL 33172	November 1, 2003.

License No.	Name/address	Date reissued
16950NF	Global Cargo Corporation, 8470 NW 30th Terrace, Miami, FL 33122	September 25, 2003.
14125N	Transtainer Corp., 8100 NW 29th Street, Miami, FL 33122	November 6, 2003.

Sandra L. Kusumoto,
Director, Bureau of Consumer Complaints and Licensing.
[FR Doc. 03–30666 Filed 12–10–03; 8:45 am]
BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission an application for license as a Non-Vessel Operating Common Carrier and Ocean Freight Forwarder—Ocean Transportation Intermediary pursuant to section 19 of the Shipping Act of 1984 as amended (46 U.S.C. app. 1718 and 46 CFR part 515).

Persons knowing of any reason why the following applicants should not receive a license are requested to contact the Office of Transportation Intermediaries, Federal Maritime Commission, Washington, DC 20573.

Non-Vessel Operating Common Carrier Ocean Transportation Intermediary Applicants

Expert Cargo Int'l Co., 11200 S. Hindry Avenue, 2nd Floor, Los Angeles, CA 90045. Scott Jang, Sole Proprietor.

Seahawk Logistics, Inc., 520 Carson Plaza Court, Suite #206, Carson, CA 90746. Officer: Sang Gyu Park, President (Qualifying Individual).

Non-Vessel Operating Common Carrier and Ocean Freight Forwarder Transportation Intermediary Applicants

Dietrich Excel LLC. dba Nautilus Global Shipping LLC, 7818 NW 46th Street, Miami, FL 33166. Officers: Waldyr Silva, General Manager (Qualifying Individual), Joao Carlos Villaca, Partner.

MH Transport, LLC, 1720 North Sam Houston Parkway East, Houston, TX 77032. Officers: Thomas Lyle Armel, Vice President (Qualifying Individual), Olivia Decaro, President.

Dated: December 5, 2003.

Bryant L. VanBrakle,
Secretary.
[FR Doc. 03–30667 Filed 12–10–03; 8:45 am]
BILLING CODE 6730–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–04–14]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer on (404) 498–1210.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Send comments to Seleda Perryman, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS-E11, Atlanta, GA 30333. Written comments should be received within 60 days of this notice.

Proposed Project: Ecology of Bats in Households: A Case-Control Study for Assessing Knowledge, Attitudes, and Health Risks—New—National Center for Infectious Diseases (NCID), Centers for Disease Control and Prevention (CDC).

Bats are associated with many different kinds of infectious diseases that may be pathogenic to humans. Anthropogenic change from urban sprawl provides new roosts for bats in homes and buildings while reducing available natural roosts and putting humans in more frequent contact with bats. The largest public health concern with respect to bat exposure is the transmission of rabies virus—about 75% of human rabies deaths are from bat-associated rabies variants. The current U.S. guidelines for animal rabies prevention and control recommend that bats be excluded from houses and adjacent structures to prevent direct association with humans. While direct association with bats is certainly a risk factor for rabies transmission, little is known about the effects of indirect association with bats and potential adverse health effects. This is of public health concern because many organizations actually promote interactions between bats and humans, without consideration of public health consequences.

The proposed study consists of an investigator-administered questionnaire conducted on site. The survey asks individuals to describe knowledge and attitudes of household members toward cohabitation with bats, including knowledge of rabies risk, general attitude toward bats, and attempts to exterminate the roosts. The questionnaire will also evaluate health outcomes among household members and their pets by administering a survey focused on general well-being, incidence of allergies, frequency and nature of hospital/clinic visits, frequency of bat and bat-ectoparasite exposure, and frequency of post-exposure prophylaxis for rabies. We will also conduct a serological survey for evidence of exposure to bat-associated infectious diseases.

The list of households with roosts is provided by Colorado State University bat researchers, identified through radio-tagging of bats. We plan to improve the knowledge of the ecology of bats and associated rabies transmission by assimilating rabies prevalence data in a bat population with data regarding the roost ecology and bat/human interaction ecology in a rapidly sprawling suburban area in Ft. Collins, Colorado. There is no cost to the respondents.

Respondents	Number of respondents	Number of responses/ respondent	Average burden/response (in hours)	Total burden (in hours)
Telephone enrollment	150	1	6/60	15
Investigator-administered survey	600	1	45/60	450
Total				465

Dated: December 2, 2003.

Alvin Hall,
Director, Management Analysis and Services Office Centers for Disease Control and Prevention.
[FR Doc. 03–30678 Filed 12–10–03; 8:45 am]
BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–04–15]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer on (404) 498–1210.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Send comments to Seleda Perryman, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS–E–11, Atlanta, GA 30333. Written comments should be received within 60 days of this notice.

Proposed Project: Surveillance for Ciguatera Fish Poisoning in Recreational Fishers Utilizing Texas Gulf Coast Oil Rigs—New—National Center for Environmental Health (NCEH), Centers for Disease Control and Prevention (CDC).

This public health surveillance activity will quantify the scope of ciguatera poisonings in the recreational fishing community of coastal Texas. The Texas Department of Health has received reports of ciguatera-toxic fish caught on Texas offshore oil rigs, but anecdotal reports to researchers at the University of Texas suggest that the incidence of ciguatera fish poisoning is greater than what has been reported to the Texas Department of Health. We propose to conduct surveillance activities to identify the prevalence of ciguatera fish poisoning in Texas Gulf Coast oil rigs. This study will provide critical data in guiding efforts to characterize the scope of ciguatera poisonings, to identify risk factors, and to prevent an emerging illness associated with reef ecosystems.

A questionnaire will be administered over a one-year period to recreational spear-fishers and to hook-and-line anglers who have consumed fish caught on the reef ecosystems off the Texas gulf coast. There is no cost to respondents.

Respondent	Number of respondents	Number of responses/ respondent	Average burden per response (in hours)	Total burden (in hours)
Texas Saltwater Fishers	500	1	20/60	167
Total				167

Dated: December 4, 2003.

Alvin Hall,
Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.
[FR Doc. 03–30679 Filed 12–10–03; 8:45 am]
BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Research Resources; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the National Advisory Research Resources Council.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and/or contact proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Research Resources Council.

Date: January 22, 2004.

Open: 8:30 a.m. to 2:45 p.m.

Agenda: Report of Center Director and other issues.

Place: National Institutes of Health, Building 31, 31 Center Drive, Conference Room 10, Bethesda, MD 20892.

Closed: 2:45 pm to Adjournment.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Building 31, 31 Center Drive, Conference Room 10, Bethesda, MD 20892.

Contact Person: Louise E. Ramm, PhD, Deputy Director, National Center for Research Resources, National Institutes of Health, Building 31, Room 3B11, Bethesda, MD 20892, (301) 496–6023.

Information is also available on the Institute's/Center's home page: www.ncrr.nih.gov/newspub/minutes.htm, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.333, Clinical Research; 93.371, Biomedical Technology; 93.389, Research Infrastructure, 93.306, 93.333, National Institutes of Health, HHS)

Dated: December 4, 2003.

Anna Snouffer,

Deputy Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–30725 Filed 12–10–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institutes; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel, Resource Related Research Projects.

Date: January 27, 2004.

Time: 1 p.m. to 2:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Telephone conference call).

Contact Person: Zoe Huang, MD, Health Scientist Administrator, Review Branch, Room 7190, Division of Extramural Affairs, National Heart, Lung, and Blood Institute, National Institutes of Health, 6701 Rockledge Drive, MSC 7924, Bethesda, MD 20892–7924. 301–435–0314.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 932.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: December 4, 2003.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–30720 Filed 12–10–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel, Collaborative Clinical Studies in Drug Abuse.

Date: December 10, 2003.

Time: 9 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6101 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Mark R. Green, PhD, Chief, CEASRB, Office of Extramural Affairs, National Institute on Drug Abuse, NIH, DHHS, Room 220, MSC 8401, 6101 Executive Boulevard, Bethesda, MD 20892–8401, (301) 435–1431.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.277, Drug Abuse Scientist Development Award for Clinicians, Scientist Development Awards, and Research Scientist Awards; 93.278, Drug Abuse National Research Service Awards for Research Training; 93.279, Drug Abuse Research Programs, National Institutes of Health, HHS)

Dated: December 4, 2003.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–30721 Filed 12–10–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Biomedical Imaging and Bioengineering; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the National Advisory Council for Biomedical Imaging and Bioengineering.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

Name of Committee: National Advisory Council for Biomedical Imaging and Bioengineering, Strategic Plan Development Subcommittee.

Date: January 14, 2004.

Time: 9:30 a.m. to 3:30 p.m.

Agenda: Development of Strategic Plan.

Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.

Contact Person: Joan T. Harmon, Director, Division of Extramural Activities, National Institute of Biomedical Imaging and Bioengineering, 6707 Democracy Blvd., Suite 200, Bethesda, MD 20892, (301) 451–4776, *harmonj@nibib.nih.gov.*

Dated: December 4, 2003.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–30723 Filed 12–10–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel.

Date: December 19, 2003.

Time: 3 p.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6700B Rockledge Drive, Bethesda, MD 20895, (Telephone conference Call).

Contact Person: Katherine L. White, PhD, Scientific Review Administrator, AIDS Preclinical Research Review Branch, Scientific Review Program, NIH/NIAID, 6700 B Rockledge Drive, Room 3131, Bethesda, MD 20892, (301) 435–1615, *Kw174b@nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research 93.856, and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: December 4, 2003.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–30724 Filed 12–10–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel.

Date: December 17, 2003.

Time: 11:30 a.m. to 2:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6700B Rockledge Drive, Bethesda, MD 20895, (Telephone Conference Call).

Contact Person: Katherine L. White, PhD, Scientific Review Administrator, AIDS Preclinical Research Review Branch, Scientific Review Program, NIH/NIAID, 6700 B Rockledge Drive, Room 3131, Bethesda, MD 20892, (301) 435–1615, *kw174b@nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel.

Date: December 18, 2003.

Time: 11 a.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6700B Rockledge Drive, Bethesda, MD 20895, (Telephone Conference Call).

Contact Person: Katherine L. White, PhD, Scientific Review Administrator, AIDS Preclinical Research Review Branch, Scientific Review Program, NIH/NIAID, 6700 B Rockledge Drive, Room 3131, Bethesda, MD 20892, (301) 435–1615, *kw174b@nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: December 4, 2003.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–30726 Filed 12–10–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy

Name of Committee: Center for Scientific Review Special Emphasis Panel, Drug Resistance.

Date: December 11, 2003.

Time: 2:30 p.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Telephone conference call).

Contact Person: Marcia Litwack, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6206, MSC 7804, Bethesda, MD 20892. (301) 435–1719.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and, funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 SSS–5 (06) M: PKD Studies.

Date: December 17, 2003.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Telephone conference call).

Contact Person: M. James Scherbenske, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4108, MSC 7814, Bethesda, MD 20892. 301–435–1173.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG 1 SSS–5 (04) M: Transport Studies.

Date: December 18, 2003.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Telephone conference call).

Contact Person: Contact Person: M. James Scherbenske, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4108, MSC 7814, Bethesda, MD 20892. 301–435–1173.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, APO E and Gamma Secretases.

Date: January 6, 2004.

Time: 2 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Telephone conference call).

Contact Person: Carl D. Banner, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4138, MSC 7850, Bethesda, MD 20892. (301) 435–1251. *bannerc@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: December 4, 2003.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–30719 Filed 12–10–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Center for Scientific Review Special Emphasis Panel, December 11, 2003, 1 p.m. to December 11, 2003, 2 p.m., National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 which was published in the **Federal Register** on November 28, 2003, 68 FR 66841–66842.

The meeting will be held on December 29, 2003, from 1 p.m. to 3 p.m. The location remains the same. The meeting is closed to the public.

Dated: December 4, 2003.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–30722 Filed 12–10–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Glen Canyon Dam Adaptive Management Work Group (AMWG), Notice of Meeting

AGENCY: Bureau of Reclamation, Interior.

ACTION: Cancellation of meeting.

SUMMARY: The Bureau of Reclamation is canceling the Adaptive Management Work Group Meeting scheduled for January 7–8, 2004, in Phoenix, Arizona due to additional time required to prepare the Fiscal Year 2005 budget and other agenda items. The meeting will be rescheduled for March 2004 and will be noticed in the **Federal Register** when arrangements have been made.

FOR FURTHER INFORMATION CONTACT: Dennis Kubly, telephone (801) 524–3715; faxogram (801) 524–3858; or via e-mail at *dkubly@uc.usbr.gov.*

Dated: November 26, 2003.

Dennis Kubly,

Chief, Adaptive Management Group, Environmental Resources Division, Upper Colorado Regional Office, Salt Lake City, Utah.

[FR Doc. 03–30680 Filed 12–10–03; 8:45 am]

BILLING CODE 4310–MN–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–1062 (Preliminary)]

Kosher Chicken From Canada

AGENCY: International Trade Commission.

ACTION: Institution of antidumping investigation and scheduling of a preliminary phase investigation.

SUMMARY: The Commission hereby gives notice of the institution of an investigation and commencement of preliminary phase antidumping investigation No. 731–TA–1062 (Preliminary) under section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)) (the Act) to determine whether there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports of kosher chicken from Canada, provided for in subheadings 0207.11.00, 0207.12.00, 0207.13.00, or 0207.14.00 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value. Unless the Department of Commerce extends the time for initiation pursuant to section 732(c)(1)(B) of the Act (19 U.S.C. 1673a(c)(1)(B)), the Commission must reach a preliminary determination in antidumping investigations in 45 days, or in this case by January 15, 2004. The Commission's views are due at Commerce within five business days thereafter, or by January 23, 2004.

For further information concerning the conduct of this investigation and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and B (19 CFR part 207).

EFFECTIVE DATE: December 1, 2003.

FOR FURTHER INFORMATION CONTACT: Debra Baker (202–205–3180), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background—This investigation is being instituted in response to a petition filed on December 1, 2003, by Empire Kosher Poultry, Inc., Mifflintown, PA.

Participation in the investigation and public service list—Persons (other than petitioners) wishing to participate in the investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in sections 201.11 and 207.10 of the Commission's rules, not later than seven days after publication of this notice in the **Federal Register**. Industrial users and (if the merchandise under investigation is sold at the retail level) representative consumer organizations have the right to appear as parties in Commission antidumping investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to this investigation upon the expiration of the period for filing entries of appearance.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in this investigation available to authorized applicants representing interested parties (as defined in 19 U.S.C. 1677(9)) who are parties to the investigation under the APO issued in the investigation, provided that the application is made not later than seven days after the publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Conference—The Commission's Director of Operations has scheduled a conference in connection with this investigation for 9:30 a.m. on December 22, 2003, at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC. Parties wishing to participate in the conference should contact Debra Baker (202–205–3180) not later than December 18, 2003, to arrange for their appearance. Parties in support of the imposition of antidumping duties in this investigation and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the conference.

Written submissions—As provided in sections 201.8 and 207.15 of the Commission's rules, any person may submit to the Commission on or before December 29, 2003, a written brief containing information and arguments pertinent to the subject matter of the investigation. Parties may file written testimony in connection with their presentation at the conference no later than three days before the conference. If briefs or written testimony contain BPI, they must conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means, except to the extent permitted by section 201.8 of the Commission's rules, as amended, 67 FR 68036 (November 8, 2002).

In accordance with sections 201.16(c) and 207.3 of the rules, each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: This investigation is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.12 of the Commission's rules.

By order of the Commission.

Issued: December 8, 2003.

Marilyn R. Abbott,

Secretary.

[FR Doc. 03–30729 Filed 12–10–03; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Settlement Agreements in *Philip Services Corporation* Under the Comprehensive Environmental Response Compensation and Liability Act (CERCLA) and Resource Conservation and Recovery Act (RCRA)

Notice is hereby given that on December 4 and/or 7, 2003, four proposed Settlement Agreements were filed with the United States Bankruptcy Court for the Southern District of Texas in *In re Philip Services Corporation*, No. 03–37718–H2–11 (Bankr. S.D. Tex.). The Settlement Agreements among the United States on behalf of U.S. EPA, the States of Michigan, South Carolina, Alabama, and Washington, and Debtor Philip Services Corporation and its affiliated Debtors resolve CERCLA and RCRA claims as provided in the Settlement Agreements for facilities located on Schaefer Highway in Detroit, Michigan; Vernsdale Road in Rock Hill, South Carolina; 27th Avenue in Birmingham, Alabama; the Pasco Sanitary Landfill in Pasco, Washington; the Pier 91 Site in Seattle, Washington; and the Landsburg Mine Site near Ravensdale, Washington.

Under the Michigan Settlement Agreement, the Governmental Parties will receive the benefit of $559,126 from financial assurance and $823,000 to be paid over five years. Under the South Carolina Settlement Agreement, the Governmental Parties will receive the benefit of $2,981,934 in financial assurance and $1.3 million to be paid over five years. Under the Alabama Settlement Agreement, the Governmental Parties will receive the benefit of $500,000 over five years. Under the Washington Agreement, Debtors are paying $1,000,050 and providing an additional allowed general unsecured claim of $45,000,000 for the Pasco Sanitary Landfill site, paying $740,000 for the Pier 91 Site, and paying $150,000 towards the Landsberg Mine Site.

The Department of Justice will receive comments relating to the Settlement Agreements if such comments are received by the close of Business on December 18, 2003. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, should refer to *In re Philips Services Corporation*, No. 03–37718–H2–11 (Bankr. S.D., Tex.), D.J. Ref. 90–11–3–06852/1, and may be faxed to (202) 514–0097, Attn: Alan Tenenbaum. Commenters may request an opportunity for a public meeting in the affected area, in accordance with section 7003(d) of RCRA, 42 U.S.C. 6973(d).

The Settlement Agreements may be examined at the Office of the United States Attorney for the Southern District of Texas, 910 Travis, Suite 1500, Houston, TX 77005, and at the United States Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. During the public comment period, the Settlement Agreements may also be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/open.html.* A copy of the Settlement Agreements may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S., Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the a;mount of $8.00 for the Michigan Settlement Agreement, $8.25 for the South Carolina Settlement Agreement, $8.25 for the Alabama Settlement Agreement, and $10.50 for the Washington Settlement Agreement and related documents (25 cents per page reproduction cost) payable to the U.S. Treasury.

W. Benjamin Fisherow,

Deputy Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 03–30660 Filed 12–10–03; 8:45 am]

BILLING CODE 4410–15–M

MARINE MAMMAL COMMISSION

Committee Management; Notice of Establishment; Advisory Committee on Acoustic Impacts on Marine Mammals

AGENCY: Marine Mammal Commission.

ACTION: Charter filed for the Advisory Committee on Acoustic Impacts on Marine Mammals.

SUMMARY: The Chairman of the Marine Mammal Commission (Commission) has determined that the establishment of the Advisory Committee on Acoustic Impacts on Marine Mammals (Committee) is necessary and in the public interest in connection with fulfilling Commission mandates created under the Omnibus Appropriations Act of 2003 (Pub. L. 108–7). This determination follows consultation with the Office of Management and Budget and with the Committee Management Secretariat, General Services Administration (GSA).

In accordance with the Federal Advisory Committee Act, the charter has been filed with the GSA, the chair of the Commission, the Senate Committee on Commerce, Science, and Transportation, and the House of Representatives Committee on Resources. A copy of the charter has also been submitted to the Library of Congress.

Name of Committee: Advisory Committee on Acoustic Impacts on Marine Mammals

Purpose and Objective: Committee members will participate in a policy dialogue to review available information, identify research needs, and recommend management actions and strategies related to the impacts of antyhropogenic sound on marine mammals.

Balanced Membership Plans: In an effort to assess the need for an advisory committee, over eighty individuals from a wide variety of interested stakeholder groups were interviewed. The Commission also solicited comments and nominations for the Committee in the **Federal Register**.

The Committee will consist of approximately 26 members representing entities who activities introduce anthropogenic sounds into the marine environment, government regulatory and funding agencies, non-governmental organizations including environmental groups, and scientists with pertinent expertise. Every effort has been made to select Committee members who have a high level of expertise and interest concerning the impacts of sound on marine mammals and other components of the marine environment, who have decision-making authority, and who have demonstrated their ability to represent a constituency and communicate effectively with constituents whose interests they represent.

Duration: Continuing.

Responsible Commission Official: David Cottingham, Executive Director, Marine Mammal Commission, 4340 East-West Hwy., Rm. 905, Bethesda, MD 20814.

DATES: The Commission intends to appoint Committee members in December 2003 and convene the Committee's first meeting in early February 2004. A list of Committee members will be posted on the Commission's Web site (*www.mmc.gov*).

FOR FURTHER INFORMATION CONTACT: Erin Vos, Project Manager for Sound-Related Meetings and Actions, Marine Mammal Commission, 4340 East-West Hwy., Rm. 905, Bethesda, MD 20814, e-mail: *evos@mmc.gov*, tel.: (301) 504–0087, fax: (301) 504–0099; or visit the Commission Web site at *www.mmc.gov*.

Dated: December 4, 2003.

David Cottingham,

Executive Director.

[FR Doc. 03–30682 Filed 12–10–03; 8:45 am]

BILLING CODE 6820–31–M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–369, 50–370, 50–413, and 50–414]

Duke Energy Corporation, McGuire Nuclear Station, Unit Nos. 1 and 2; North Carolina Electric Membership Corporation, Saluda River Electric Cooperative, Inc. for Catawba Nuclear Station, Unit No. 1; and North Carolina Municipal Power Agency No. 1, Piedmont Municipal Power Agency for Catawba Nuclear Station, Unit No. 2; Notice of Issuance of Renewed Facility Operating License Nos. NPF–9, NPF–17, NPF–35, and NPF–52 for an Additional 20-Year Period

Notice is hereby given that the U.S. Nuclear Regulatory Commission (the Commission) has issued Renewed Facility Operating License Nos. NPF–9, NPF–17, NPF–35, and NPF–52 to Duke Energy Corporation (the licensee), the operator of the McGuire Nuclear Station, Unit Nos. 1 and 2 (McGuire, Units 1 and 2), and North Carolina Electric Membership Corporation and Saluda River Electric Cooperative, Inc. for Catawba Nuclear Station, Unit No. 1 (Catawba, Unit 1), and North Carolina Municipal Power Agency No. 1 and Piedmont Municipal Power Agency for Catawba Nuclear Station, Unit No. 2 (Catawba, Unit 2). Renewed Facility Operating License No. NPF–9 authorizes operation of McGuire, Unit 1, by the licensee at reactor core power levels not in excess of 3411 megawatts thermal in accordance with the provisions of the McGuire, Unit 1, renewed license and its Technical Specifications. Renewed Facility Operating License No. NPF–17 authorizes operation of McGuire, Unit 2, by the licensee at reactor core power levels not in excess of 3411 megawatts thermal in accordance with the provisions of the McGuire, Unit 2, renewed license and its Technical Specifications. Renewed Facility Operating License No. NPF–35 authorizes operation of Catawba, Unit 1, by Duke Energy Corporation at reactor core power levels not in excess of 3411 megawatts thermal in accordance with the provisions of the Catawba, Unit 1, renewed license and its Technical Specifications. Renewed Facility Operating License No. NPF–52 authorizes operation of Catawba, Unit 2, by Duke Energy Corporation at reactor core power levels not in excess of 3411 megawatts thermal in accordance with the provisions of the Catawba, Unit 2, renewed license and its Technical Specifications.

McGuire, Units 1 and 2, are pressurized water nuclear reactors located in Mecklenburg County, 17 miles northwest of Charlotte, North Carolina. Catawba, Units 1 and 2, are pressurized water nuclear reactors located in York County, 18 miles southwest of Charlotte, North Carolina.

The applications for the renewed licenses complied with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations. As required by the Act and the Commission's regulations in 10 CFR Chapter I, the Commission has made appropriate findings, which are set forth in each license. Prior public notice of the action involving the proposed issuance of these renewed licenses and of an opportunity for a hearing regarding the proposed issuance of these renewed licenses was published in the **Federal Register** on July 16, 2001 (66 FR 37072).

For further details with respect to this action, see (1) the Duke Energy Corporation's license renewal applications for McGuire, Units 1 and 2, and Catawba, Units 1 and 2, dated June 13, 2001, as supplemented by letters dated March 1, March 8, March 11, March 15, April 15, June 25 (two letters), June 26, July 9, October 2, October 28, November 5, November 14, November 18, November 21, and December 16, 2002; (2) the Commission's safety evaluation report, dated August 14, 2002, and March 2003 (NUREG–1772); (3) the licensee's updated final safety analysis report; and (4) the Commission's final environmental impact statement (NUREG–1437, Supplements 8 and 9), dated December 2002. These documents are available at the NRC's Public Document Room, One White Flint North, 11555 Rockville Pike, first floor, Rockville, Maryland 20852, and can be viewed from the NRC Public Electronic Reading Room at (*http://www.nrc.gov/reading-rm/adams.html*).

Copies of Renewed Facility Operating License Nos. NPF–9, NPF–17, NPF–35, and NPF–52 may be obtained by writing to the U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Director, Division of Regulatory Improvement Programs. Copies of the safety evaluation report (NUREG–1772), and the final environmental impact statement (NUREG–1437, Supplements 8 and 9) may be purchased from the National Technical Information Service, Springfield, Virginia 22161–0002 (*http://www.ntis.gov*), 1–800–553–6847, or the Superintendent of Documents, U.S. Government Printing Office, P.O. Box 371954, Pittsburgh, PA 15250–7954 (*http://www.access.gpo.gov/su_docs/index.html*), 202–512–1800. All orders should clearly identify the NRC publication number and the requestor's Government Printing Office deposit account number or VISA or MasterCard number and expiration date.

Dated at Rockville, Maryland, this 5th day of December 2003.

For the Nuclear Regulatory Commission.

Pao-Tsin Kuo,

Program Director, License Renewal and Environmental Impacts Program, Division of Regulatory Improvement Programs, Office of Nuclear Reactor Regulation.

[FR Doc. 03–30686 Filed 12–10–03; 8:45 am]

BILLING CODE 7590–01–P

RAILROAD RETIREMENT BOARD

Proposed Collection; Comment Request

SUMMARY: In accordance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 which provides opportunity for public comment on new or revised data collections, the Railroad Retirement Board (RRB) will publish periodic summaries of proposed data collections

Comments are invited on: (a) Whether the proposed information collection is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) the accuracy of the RRB's estimate of the burden of the collection of the information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden related to the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Title and purpose of information collection: Request for Internet Services.

The RRB uses a Personal Identification Number (PIN)/Password system that allows RRB customers to conduct business with the agency electronically. As part of the system, the RRB collects information needed to establish a unique PIN/Password that allows customer access to RRB Internet-based services. The information collected is matched against records of the railroad employee that are maintained by the RRB. If the information is verified, the request is approved and the RRB mails a Password Request Code (PRC) to the requestor. If the information provided cannot be verified, the requestor is advised to contact the nearest field office of the RRB to resolve the discrepancy. Once a PRC is obtained from the RRB, the requestor can apply for a PIN/Password online. Once the PIN/Password has been established, the requestor has access to RRB Internet-based services. The RRB estimates that approximately 12,000 requests for PRC's and PIN/Passwords are received annually and that it takes 5 minutes per response to secure a PRC and 1.5 minutes to establish a PIN/Password. Completion is voluntary, however, the RRB will be unable to provide a PRC or allow a requestor to establish a PIN/Password (thereby denying system access), if the requests are not completed. The RRB proposes minor, non-burden impacting, editorial changes to the PRC and PIN/Password screens.

Additional Information or Comments: To request more information or to obtain a copy of the information collection justification, forms, and/or supporting material, please call the RRB Clearance Officer at (312) 751–3363. Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 N. Rush Street, Chicago, Illinois 60611–2092. Written comments should be received within 60 days of this notice.

Chuck Mierzwa,

Clearance Officer.

[FR Doc. 03–30662 Filed 12–10–03; 8:45 am]

BILLING CODE 7905–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35–27771]

Filings Under the Public Utility Holding Company Act of 1935, as Amended ("Act")

December 5, 2003.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated under the Act. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendment(s) is/are available for public inspection through the Commission's Branch of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by December 29, 2003, to the Secretary, Securities and Exchange Commission, Washington, DC 20549–0609, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in the case of an attorney at law, by certificate) should be filed with the request. Any request for hearing should identify specifically the issues of facts or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After December 29, 2003, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

KeySpan Corporation, et al.

[70–9957]

KeySpan Corporation ("KeySpan"), a registered holding company, and its subsidiary, KeySpan Insurance Company ("KIC") (collectively, "Applicants"), One MetroTech Center, Brooklyn, New York 11201, have filed, under sections 9(a), 10, 12(b) and 13(b) of the Act and rules 45 and 54 under the Act, a post-effective amendment to a previous application.

Applicants ask to expand the authority granted to KeySpan by order dated April 24, 2003 (Holding Co. Act Release No. 27669) ("Captive Order"). In the Captive Order, the Commission authorized KeySpan to organize a subsidiary to engage in activities associated with a captive insurance company. In accordance with the Captive Order, KeySpan formed KIC to provide certain insurance services to KeySpan and its subsidiaries ("KeySpan System"). Applicants request authority for KIC to expand the insurance it provides to include property, boiler and machinery, and "all risk" insurance services for the KeySpan System.

The Captive Order authorized KeySpan to organize a captive insurance company that would reinsure certain commercial insurance bought by the KeySpan System from commercial insurance companies. In particular, KIC is authorized to provide to the KeySpan System automobile liability, workers' compensation and general liability insurance coverage. In addition, KIC is authorized to provide general liability and workers' compensation insurance to its principal contractor under an Owner's Controlled Insurance Program ("OCIP"). The contractor provides

scheduled gas main construction and maintenance to the KeySpan System. Except for the general liability and workers' compensation insurance provided to the principal contractor under OCIP, KIC does not intend to extend or provide to any non-affiliated company any insurance services, unless otherwise expressly authorized by the Commission. Currently, KIC assumes the risk of the more predictable loss layer from the commercial insurers for automobile and general liability losses and for workers' compensation. Commercial insurance continues to be purchased for "unpredictable" losses above the predictable loss layers for automobile and general liability and for workers' compensation from various commercial insurance companies. To the extent that KIC procures insurance at a lower cost than could be obtained through traditional insurers, the savings in the premiums flow through ratably to the KeySpan System companies through the operation of the allocation methodology used to establish premiums.

Applicants propose that KIC offer property, boiler and machinery, and "all risk" insurance services to the KeySpan System. KeySpan currently insures these property-related risks through the traditional, commercial insurance market. It has various deductibles ranging from $100,000 on common structures to $2,500,000 on the KeySpan System's power generation units. It purchases limits up to $2 billion from the commercial insurance market. Due to the state of the commercial insurance market, KeySpan has not been able to obtain coverage below the minimum $100,000 deductible. KeySpan says that this has created a burden for some of the smaller KeySpan System companies that do not want to expose themselves to such a large self-insured retention.

KIC could be utilized, Applicants state, to provide property-related coverage with smaller self-insured retentions to those KeySpan System companies that do not have such a large capacity for risk. KIC would allocate premiums based on the property values at KeySpan System company locations down to a level of a $10,000 deductible. This added service would not increase costs to the KeySpan System because such costs are currently, and would continue to be, paid through operating expenses, Applicants state. There would be no additional staffing requirements for KeySpan System companies. To the extent that KIC can provide insurance at a lower cost than that which could be obtained through traditional insurers, the savings will continue to flow through ratably to the KeySpan System companies through the allocation methodology used to establish premiums.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 03–30700 Filed 12–10–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48872; File No. SR–Amex–2003–100]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval to a Proposed Rule Change and Amendment No. 1 Thereto by the American Stock Exchange LLC Relating to Broker Voting on Stock Option and Equity Compensation Plans

December 3, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on November 19, 2003, the American Stock Exchange LLC ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. On November 21, 2003, the Amex filed Amendment No. 1 to the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and is approving the proposal and Amendment No. 1 on an accelerated basis.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Amex Rule 577 and section 723 of the Amex *Company Guide* to provide that a member organization holding a customer's securities in "street" name will not be permitted to give a proxy to vote such shares without instructions from the customer when the matter to be voted upon authorizes the implementation of or material amendment to a stock option or equity compensation plan.

Below is the text of the proposed rule change. Proposed new language is *italicized*; proposed deleted language is [bracketed].

* * * * *

American Stock Exchange Constitution and Rules

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Rule 577. Giving Proxies by Member Organization

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* * * Commentary

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.11 When member organization may not vote without customer instructions.—In the list of meetings of stockholders, after proxy material has been reviewed by the Exchange, each meeting will be designated by an appropriate symbol to indicate either (a) that members may vote a proxy without instructions of beneficial owners, (b) that members may not vote specific matters on the proxy, or (c) that members may not vote the entire proxy.

Generally speaking, a member organization may not give a proxy to vote without instructions from beneficial owners when the matter to be voted upon:

(1) through (8)—No change.

(9) involves waiver or modification of preemptive rights [(except when the company's proposal is to waive such rights with respect to shares being offered pursuant to stock option or purchase plans involving the additional issuance of not more than 5% of the company's outstanding common shares (see Item 12))];

(10) and (11)—No change.

(12) [authorizes issuance of stock, or options to purchase stock, to directors, officers, or employees in an amount which exceeds 5% of the total amount of the class outstanding] *authorizes the implementation of any equity compensation plan, or any material revision to the terms of any existing equity compensation plan (whether or not stockholder approval of such plan is required by Section 711 of the Exchange's Company Guide);*

(13) through (18)—No change.

* * * * *

American Stock Exchange Company Guide

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Section 723. Giving Proxies By Member Organization (See Exchange Rule 577)

* * * * *

.11 When member organization may not vote without customer instructions.—In the list of meetings of stockholders, after proxy material has been reviewed by the Exchange, each meeting will be designated by an appropriate symbol to indicate either (a) that members may vote a proxy without instructions of beneficial owners, (b) that members may not vote specific matters on the proxy, or (c) that members may not vote the entire proxy.

Generally speaking, a member organization may not give a proxy to vote without instructions from beneficial owners when the matter to be voted upon:

(1) through (8)—No change.

(9) involves waiver or modification of preemptive rights [(except when the company's proposal is to waive such rights with respect to shares being offered pursuant to stock option or purchase plans involving the additional issuance of not more than 5% of the company's outstanding common shares (see Item 12))];

(10) and (11)—No change.

(12) [authorizes issuance of stock, or options to purchase stock, to directors, officers, or employees in an amount which exceeds 5% of the total amount of the class outstanding] *authorizes the implementation of any equity compensation plan, or any material revision to the terms of any existing equity compensation plan (whether or not stockholder approval of such plan is required by Section 711 of the Exchange's Company Guide);*

(13) through (18)—No change.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Amex included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The Amex has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

According to the Amex, the Amex and the New York Stock Exchange, Inc. ("NYSE") have historically had virtually identical rules with respect to the circumstances under which a broker holding a customer's securities in "street name" may give a proxy to vote such shares on a particular issuer proposal without the beneficial owner's instructions. Amex Rule 577 and section 723 of the Amex *Company Guide* provide that the Exchange will review issuer proxy materials and designate with respect to each proposal whether Amex member organizations holding customer shares may vote without instructions from the beneficial owner (*i.e.*, the proposal is "routine") or may only vote with instructions (*i.e.*, the proposal is "non-routine").

On June 30, 2003, the Commission jointly approved NYSE and National Association of Securities Dealers, Inc. ("NASD")/The Nasdaq Stock Market, Inc. ("Nasdaq") proposals that required companies to obtain shareholder approval of all equity compensation plans, subject to limited exceptions, and approved rules in the NYSE proposal that classified such plans as "non-routine" for broker voting purposes.[4] On October 9, 2003, the Commission approved a comparable Amex proposal with respect to shareholder approval of stock option and equity compensation plans.[5] That proposal, however, did not address the proxy voting issue being addressed in this instant filing.

The Amex represents that the prior NYSE rules had provided, and that the current Amex rules do provide, that stock option plans are "routine" if all proposals included in the proxy to be voted on do not authorize the issuance of in excess of 5% of the total amount of the shares outstanding to directors, officers or employees. In order to provide greater consistency between marketplaces, the Amex proposes to amend Amex Rule 577 and section 723 of the Amex *Company Guide* to classify stock option and equity compensation plans as "non-routine" for broker voting purposes, thereby requiring instructions from the beneficial owner before a broker can give a proxy on matters related to the implementation of or material amendment to an equity compensation plan. The Amex further proposes that this proposed change become effective as of January 31, 2004.[6]

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6 of the Act[7] in general and furthers the objectives of section 6(b)(5)[8] in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, to protect investors and the public interest and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition.

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Claudia Crowley, Vice President, Listing Qualifications, Amex, to Nancy Sanow, Assistant Director, Division of Market Regulation ("Division"), Commission, dated November 20, 2003 ("Amendment No. 1"). In Amendment No. 1, the Exchange made technical corrections to the proposed rule change to correct typographical errors in the proposed rule text and an incorrect footnote citation in the proposal.

[4] The Commission notes that NASD rules do not allow broker voting on any matters. *See* Securities Exchange Act Release No. 48108 (June 30, 2003), 68 FR 39995 (July 3, 2003) (order approving File Nos. SR–NYSE–2002–46 and SR–NASD–2002–140) ("NYSE and Nasdaq proposals"). *See also* Securities Exchange Act Release No. 48627 (October 14, 2003), 68 FR 60426 (October 22, 2003) (notice of filing and order granting accelerated approval to File No. SR–NASD–2003–130, incorporating amendments to the NASD's recently approved shareholder approval rules for equity compensation plans applicable to Nasdaq quoted securities). The Commission also published a correction to the notice of File No. SR–NASD–2003–130. *See* Securities Exchange Act Release No. 48627A (October 22, 2003), 68 FR 61532 (October 28, 2003). The **Federal Register** subsequently published another correction. *See* Securities Exchange Act Release No. 48627A, 68 FR 62161 (October 31, 2003). Most recently, on October 31, 2003, the Commission simultaneously approved similar proposals regarding shareholder approval of equity compensation plans, including a preclusion on broker voting on such plans, for the Boston Stock Exchange, Inc., the Chicago Stock Exchange, Inc, the Pacific Exchange Inc., the Philadelphia Stock Exchange, Inc., the Chicago Board Options Exchange, Inc., and the Cincinnati Stock Exchange on an accelerated basis. *See* Securities Exchange Act Release Nos. 48733 (October 31, 2003), 68 FR 63143 (November 7, 2003); 48734 (October 31, 2003), 68 FR 63159 (November 7, 2003); 48735 (October 31, 2003), 68 FR 63173 (November 7, 2003); 48736 (October 31, 2003), 68 FR 63180 (November 7, 2003); 48737 (October 31, 2003), 68 FR 63150 (November 7, 2003); and 48738 (October 31, 2003), 68 FR 63166 (November 7, 2003) (collectively, "the Regional Exchange proposals").

[5] *See* Securities Exchange Act Release No. 48610 (October 9, 2003), 68 FR 59650 (October 16, 2003) (order approving File No. SR–Amex–2003–42).

[6] The Amex has represented that it will notify its members of the effective date of the proposed rule change on the Amex's website. Telephone conversation between Claudia Crowley, Vice President, Listing Qualifications, Amex, and Sapna C. Patel, Special Counsel, Division of Market Regulation, Commission, on November 20, 2003.

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Comments may also be submitted electronically at the following e-mail address: *rule-comments@sec.gov*. All comment letters should refer to File No. SR–Amex–2003–100. This file number should be included on the subject line if e-mail is used. To help us process and review comments more efficiently, comments should be sent in hard copy or by e-mail, but not by both methods. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–Amex–2003–100 and should be submitted by January 2, 2004.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

After careful review, the Commission finds that the Amex's proposal is consistent with the Act and the rules and regulations promulgated thereunder applicable to a national securities exchange and, in particular, with the requirements of section 6(b) of the Act.[9] Specifically, the Commission finds that approval of the Amex's proposal is consistent with section 6(b)(5) of the Act [10] in that it is designed to, among other things, facilitate transactions in securities; to prevent fraudulent and manipulative acts and practices; to promote just and equitable principles of trade; to remove impediments to and perfect the mechanism of a free and open market and a national market system; and in general, to protect investors and the public interest, and does not permit unfair discrimination among issuers.

When it approved Amex's proposal relating to shareholder approval of equity compensation plans,[11] the Commission had urged the Amex to adopt a rule similar to the NYSE's rules prohibiting members and member organizations from giving a proxy to vote without explicit instructions from beneficial owners when the matter to be voted on authorizes the implementation of any equity compensation plan, or any material revision to the terms of any existing equity compensation plan.[12]

The Commission believes that the Amex's amended provision precluding broker voting on equity compensation plans is consistent with the Act. The Commission notes that equity compensation plans have become an important issue for shareholders. Because of the potential for dilution from such issuances, shareholders should be making the determination rather than brokers on their behalf. The Commission further notes that, generally under Amex rules, only matters that are considered routine are allowed to be voted on by a broker on behalf of a beneficial owner. Because of the recent significance and concern about equity compensation plans, the Commission believes that it is appropriate for the Amex to decide that shareholder approval of equity compensation plans is not a routine matter and must be voted on by the beneficial owner. As noted above, NASD rules do not provide for broker voting on any matters, and NYSE rules prohibit broker voting on equity compensation plans.[13] Most recently, the Commission approved similar broker voting prohibitions for all of the regional exchanges.[14] Therefore, the Exchange's proposed provision would be consistent with NASD and NYSE rules regarding broker voting on equity compensation plans, as well as with the rules of the regional exchanges. In its approval of the NYSE and Nasdaq proposals, the Commission had considered the impact on smaller issuers, such as those listed on Nasdaq and the Amex, in response to the comments received on this issue.[15] The Commission believes that the benefit of ensuring that the votes reflect the views of beneficial shareholders on equity compensation plans outweighs the potential difficulties in obtaining the vote.

The Commission notes that the Amex has implemented a transition period that would make the proposed new preclusion on broker voting on equity compensation plans effective as of January 31, 2004. The Commission further notes that this transition period is consistent with the transition periods recently approved for the regional exchanges and should ensure that the Amex's broker voting prohibition is in place for the upcoming proxy season and will be implemented by the same time as the other marketplaces.

V. Accelerated Approval of the Amex's Proposal and Amendment No. 1

The Commission finds good cause for approving the Amex's proposal and Amendment No. 1 prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**. The Commission notes that the Amex's proposal is similar to rules that it has recently approved for the NYSE and the regional exchanges on this issue, and is consistent with current NASD rules.[16] The Commission believes that it has already considered and addressed issues that may be raised by the Amex's proposal when it approved the NYSE and Nasdaq proposals.[17] The Commission believes that accelerated approval of the Amex's proposal will allow for immediate harmonization of, and consistency in, the broker voting requirements on equity compensation plans among all of the exchanges and the NASD/Nasdaq. The Commission further believes that making the Amex's rule change effective as of January 31, 2004, is consistent with the transition periods that the Commission has recently approved for the regional exchanges, and will allow the Amex's new broker voting prohibition to be in place for this upcoming proxy season. Further, accelerated approval should allow sufficient time for Amex members to make any necessary adjustments to implement the change by the transition date. Finally, accelerated approval of the Amex proposal will immediately impose the same regulatory standards on Amex members as those imposed on members of other exchanges and the NASD/Nasdaq. Based on the above, the Commission finds good cause, consistent with sections 6(b)(5) and 19(b)(2) of the Act [18] to approve the Amex's proposal and Amendment No. 1 on an accelerated basis.

VI. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[19] that the proposed rule change (SR–Amex–2003–100) and Amendment No. 1 are hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[20]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 03–30663 Filed 12–10–03; 8:45 am]

BILLING CODE 8010–01–P

[9] 15 U.S.C. 78f(b). In approving the Amex's proposal, the Commission has considered the proposed rule's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

[10] 15 U.S.C. 78f(b)(5).

[11] *See supra* note 5.

[12] *See* NYSE Rule 452 and section 402.08 of the NYSE's *Listed Company Manual*.

[13] *See* NASD Rule 2260 and *supra* note 12.

[14] *See* the Regional Exchange proposals, *supra* note 4.

[15] *See also supra* notes 4, 12, and 13.

[16] *See supra* note 4. *See also* section 303A(8) of the NYSE's *Listed Company Manual*; NASD Rule 4350(i) and IM–4350–5. *See also* supra notes 12 and 13.

[17] *See supra* note 4.

[18] 15 U.S.C. 78f(b)(5) and 78s(b)(2).

[19] 15 U.S.C. 78s(b)(2).

[20] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48886; File No. SR–Amex–2003–103]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the American Stock Exchange LLC Relating to Issuer Fees

December 5, 2003.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on November 25, 2003, the American Stock Exchange LLC ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Amex. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Amex proposes to amend Sections 140, 141, 142 and 144 of the Amex *Company Guide* to designate as non-refundable the current one-time $5,000 application processing fee, to establish a late charge of $2,500 payable by issuers whose annual listing fees are more than 60 days past due, and to increase fees for listing additional shares. The Exchange proposes to further amend Sections 141 and 142 of the Amex *Company Guide* to clarify that annual listing fees and additional listing fees do not apply to Nasdaq National Market securities to which the Exchange has extended unlisted trading privileges.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Amex included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Amex has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Sections 140 through 146 of the Amex *Company Guide* describe the Exchange's listing fees. In this proposed rule change, the Exchange proposes to amend Sections 140, 141, 142 and 144 to: (i) Designate as non-refundable the current one-time $5,000 application processing fee, (ii) establish a late charge of $2,500 payable by issuers whose annual listing fees are more than 60 days past due, and (iii) increase fees for listing additional shares. The Exchange believes these fee changes are necessary to adequately fund the Exchange's listed equities business and to develop value-added services for Amex-listed issuers. In addition, the Exchange proposes to further amend Sections 141 and 142 to clarify that annual listing fees and additional listing fees do not apply to Nasdaq National Market securities to which the Exchange has extended unlisted trading privileges.

(i) *Section 140 (Original Listing Fees) and Section 144 (Refunds of Listing Fees).* The Exchange collects original listing fees for new equity, warrant and debt issues in accordance with Section 140 of the Amex *Company Guide*. In addition to original listing fees, a one-time $5,000 application processing fee is assessed companies that do not have a stock, warrant or debt issue already listed on the Exchange.[3] Pursuant to paragraphs (a) and (b) of Section 144, the Exchange refunds $3,500 of the application processing fee if the applicant: (i) Withdraws its application; (ii) fails to gain listing approval, or (iii) cancels a listing authorization without issuing the authorized securities. The Exchange proposes to amend Sections 140 and 144 to designate the full amount of the $5,000 application processing fee as non-refundable.

(ii) *Section 141 (Annual Fees).* The Exchange collects annual listing fees in accordance with Section 141 of the Amex *Company Guide*. Currently, no penalties are assessed issuers that do not pay such fees in a timely manner. To encourage timely payment, the Exchange proposes to amend Section 141 to establish a late charge of $2,500 payable by issuers that fail to remit annual listing fees within 60 days of the billing date.[4] The Exchange proposes to delete the requirement that annual fees that are prorated are payable within thirty days of the date the company receives the invoice. In addition, the Exchange also proposes to delete the requirement that annual fees that are prorated for bond issues are payable in December of year in which they are listed. According to the Exchange, these deletions would result in these fees being payable within sixty days of the invoice date, after which time the proposed late fee would apply.[5] Finally, the Exchange proposes to amend Section 141 to clarify that annual listing fees do not apply to Nasdaq National Market securities to which the Exchange has extended unlisted trading privileges as specified in Commentary .01 of Section 950 of the Amex *Company Guide*.

(iii) Section 142 (Additional Listing Fees). In accordance with paragraph (a) of Section 142 of the Amex *Company Guide*, the current fee for listing additional shares is 2 cents per share, subject to a minimum fee of $2,000 (for 100,000 shares or less) and a maximum fee of $22,500 (for 1,125,000 shares or more) per application. The annual maximum fee per company for listing additional shares is currently $45,000. The Exchange proposes to amend paragraph (a) of Section 142 to: (i) Increase the maximum fee per application from $22,500 to $45,000

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Index Fund Shares listed under Rule 1000A, Trust Issued Receipts listed under Rule 1200 and Closed-End Funds listed under Section 101 of the Amex *Company Guide* are assessed an original listing fee of $5,000 for each series or fund, but not an application processing fee.

[4] The proposed $2,500 late fee will not apply to Trust Issued Receipts, Index Fund Shares, or debt issues.

[5] Telephone conversation between Eric Van Allen, Assistant General Counsel, Amex and Kelly M. Riley, Senior Special Counsel, Division of Market Regulation, Commission, on December 5, 2003.

and, as a result, raise the number of shares associated with the maximum fee from 1,125,000 to 2,250,000 shares ($0.02 × 2,250,000 = $45,000); and (ii) increase the annual maximum fee per company from $45,000 to $60,000. The minimum fee per application would remain unchanged. The Exchange also proposes to amend paragraph (d) of Section 142 ("Substitution Listing") to raise the maximum fee for substituted shares and excess shares from $27,500 to $50,000 per application (corresponding to the proposed $22,500 increase in maximum fees for listing additional shares under Section 142(a)). Furthermore, similar to the abovementioned proposed amendment to Section 141, the Exchange proposes to amend Section 142(a) to clarify that the additional listing fees do not apply to Nasdaq National Market securities to which the Exchange has extended unlisted trading privileges as specified in Commentary .01 of Section 950 of the Amex *Company Guide*.

2. Statutory Basis

The Amex believes that the proposed rule change is consistent with Section 6(b) of the Act,[6] in general, and furthers the objectives of Section 6(b)(4) of the Act,[7] in particular in that the proposed rule change provides for the equitable allocation of reasonable dues, fees and other charges among Exchange members and issuers and other persons using Exchange facilities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Amex does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

The Amex has requested accelerated effectiveness pursuant to Section 19(b)(2) of the Act.[8] In support of its request, the Exchange represents that these fee changes are necessary to adequately fund the Exchange's listed equities business and develop value-added services for Amex listed issuers.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Comments may also be submitted electronically at the following e-mail address: *rule-comments@sec.gov*. All comment letters should refer to File No. SR–Amex–2003–103. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, comments should be sent in hardcopy or by e-mail but not by both methods. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to File No. SR–Amex–2003–103 and should be submitted by January 2, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–30701 Filed 12–10–03; 8:45 am]

BILLING CODE 8010–01–P

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(4).

[8] 15 U.S.C. 78s(b)(2).

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48879; File No. SR–CBOE–2003–36]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by the Chicago Board Options Exchange, Inc., Relating to Trading Crowd Space Dispute Resolution Procedures

December 4, 2003.

I. Introduction

On October 20, 2003, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to adopt new CBOE Rule 24.21, "Index Crowd Space Dispute Resolution Procedures," which establishes guidelines and procedures for resolving disputes among CBOE members concerning the ability to occupy a space in an index option trading crowd.

The proposed rule change was published for comment in the **Federal Register** on October 31, 2003.[3] The Commission received no comments regarding the proposal. This order approves the proposed rule change.

II. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange. Specifically, the Commission believes that the proposal is consistent with Section 6(b)(5) of the Act,[4] which requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.[5] The proposal is also consistent with Section 6(b)(4) of the Act,[6] which requires, among other things, the equitable allocation of reasonable dues, fees and

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 48702 (October 27, 2003), 68 FR 62122.

[4] 15 U.S.C. 78f(b)(5).

[5] In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[6] 15 U.S.C. 78f(b)(4).

other charges among members. The Commission believes that the procedures established by the proposal are designed to provide a fair and impartial process for resolving trading crowd space disputes among CBOE members. According to the CBOE, the recent increase in trading volume and size of trading crowds for certain index options has created a lack of trading spots in certain trading pits.[7] The proposal permits any CBOE member to request the CBOE's assistance in resolving an index option trading crowd space dispute.[8] The proposal is designed to encourage mediated resolutions by requiring the parties to a trading crowd space dispute to cooperate with the Chairman of the FPC in his efforts to mediate before they may request a hearing. In addition, the Hearing Fee, which escalates under certain circumstances set forth in CBOE Rule 24.21(e), should further encourage parties to resolve trading crowd space disputes through mediation rather than through the hearing process.

If a dispute is not resolved through mediation, a CBOE member may request a hearing. The Commission believes that the proposal establishes procedures for selecting impartial Hearing Panels and that the written guidelines in CBOE Rule 24.21(j) should provide the Hearing Panels with guidance in rendering decisions. In addition, the Commission notes that any party may appeal the decision of a Hearing Panel under Chapter XIX of the CBOE's rules.

III. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[9] that the proposed rule change (SR–CBOE–2003–36) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–30702 Filed 12–10–03; 8:45 am]

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[7] The proposal will apply only to CBOE members who trade OEX, SPX, DJX, and DIA options on the floor of the CBOE or who trade any other index options not located at a station shared with equity options, as determined by the appropriate floor procedure Committee ("FPC").

[8] *Id.*

[9] 15 U.S.C. 78s(b)(2).

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48871; File No. SR–CHX–2003–38]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Stock Exchange, Incorporated To Extend a Pilot Rule Interpretation Relating to Trading of Nasdaq/NM Securities in Subpenny Increments

December 3, 2003.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 1, 2003, the Chicago Stock Exchange, Incorporated ("CHX" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange filed the proposal pursuant to Section 19(b)(3)(A) of the Act,[3] and Rule 19b–4(f)(6)[4] thereunder, which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to extend through June 30, 2004, the pilot rule interpretation relating to the trading of Nasdaq/NM securities in subpenny increments. The pilot is due to expire on December 1, 2003. The CHX does not propose to make any substantive or typographical changes to the pilot; the only change is an extension of the pilot's expiration date through June 30, 2004. The text of the proposal is available at the Commission and at the CHX.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the CHX included statements concerning the purpose of and basis for its proposal and discussed any comments it received regarding the proposal. The text of these statements may be examined at the places specified in Item IV below. The CHX has prepared summaries, set forth in Sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On April 6, 2001, the Commission approved, on a pilot basis through July 9, 2001, a pilot rule interpretation (CHX Article XXX, Rule 2, Interpretation and Policy .06 "Trading in Nasdaq/NM Securities in Subpenny Increments")[5] that requires a CHX specialist (including a market maker who holds customer limit orders) to better the price of a customer limit order in his book which is priced at the national best bid or offer ("NBBO") by at least one penny if the specialist determines to trade with an incoming market or marketable limit order. The pilot has been extended several times and is now due to expire on December 1, 2003.[6] The CHX now proposes to extend the pilot through June 30, 2004. The CHX proposes no other changes to the pilot, other than extending it through June 30, 2004.

2. Statutory Basis

The CHX believes the proposal is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b).[7] In particular, the CHX believes the proposal is consistent with Section 6(b)(5) of the Act[8] in that it is designed to promote just and equitable principles of trade, to remove impediments to, and to perfect the mechanism of, a free and open market and a national market system, and, in general, to protect investors and the public interest.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6). The Commission waived the 5-day pre-filing notice requirement.

[5] *See* Securities Exchange Act Release No. 44164 (April 6, 2001), 66 FR 19263 (April 13, 2001) (SR–CHX–2001–07).

[6] *See* Securities Exchange Act Release Nos. 44535 (July 10, 2001), 66 FR 37251 (July 17, 2001) (extending the pilot through November 5, 2001); 45062 (November 15, 2001), 66 FR 58768 (November 23, 2001) (extending the pilot through January 14, 2002); 45386 (February 1, 2002), 67 FR 6062 (February 8, 2002) (extending the pilot through April 15, 2002); 45755 (April 15, 2002), 67 FR 19607 (April 22, 2002) (extending the pilot through September 30, 2002); 46587 (October 2, 2002), 67 FR 63180 (October 10, 2002) (extending the pilot through January 31, 2003); and 47372 (February 14, 2003), 68 FR 8955 (February 26, 2003) (extending the pilot through May 31, 2003); 47961 (May 30, 2003), 68 FR 34448 (June 9, 2003) (extending the pilot through December 1, 2003).

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not:

(i) Significantly affect the protection of investors or the public interest;

(ii) Impose any significant burden on competition; and

(iii) Become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[9] and Rule 19b–4(f)(6) thereunder.[10] At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

The Exchange has requested that the Commission waive the 30-day operative delay. The Commission believes waiving the 30-day operative delay is consistent with the protection of investors and the public interest. Acceleration of the operative date will allow the pilot to continue uninterrupted through June 30, 2004, and allow the Commission to further study the trading of Nasdaq/NM securities in subpenny increments. For these reasons, the Commission designates the proposal to be effective and operative upon filing with the Commission.[11]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Comments may also be submitted electronically at the following e-mail address: *rule-comments@sec.gov*. All comment letters should refer to SR–CHX–2003–38. This file number should be included on the subject line if e-mail is used. To help us process and review comments more efficiently, comments should be sent in hardcopy or by e-mail but not by both methods. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the CHX. All submissions should refer to file number SR–CHX–2003–38 and should be submitted by January 2, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 03–30704 Filed 12–10–03; 8:45 am]

BILLING CODE 8010–01–P

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(6).

[11] For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48878; File No. SR–NASD–2003–173]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to the Nasdaq Closing Cross

December 4, 2003.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on November 25, 2003, the National Association of Securities Dealers, Inc. ("NASD"), through its subsidiary, The Nasdaq Stock Market, Inc. ("Nasdaq"), filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Nasdaq. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq's proposed rule change would establish the Nasdaq Closing Cross for certain Nasdaq National Market securities. There would be three components of the Nasdaq Closing Cross: (1) The creation of On Close and Imbalance Only order types ("Nasdaq Closing Orders") (2) the dissemination of an order imbalance indicator via electronic means; and (3) closing cross processing in SuperMontage at 4:00:00 that would execute the maximum number of shares at a single, representative price that would be the Nasdaq Official Closing Price. The text of the proposed rule change is set forth below. Proposed new language is in *italics*.

* * * * * *

Rule 4709 Nasdaq Closing Cross

(a) Definitions. For the purposes of this rule the term:

(1) "Imbalance" shall mean the number of shares of buy or sell MOC or LOC orders that cannot be matched with other MOC or LOC or IO order shares at any given time.

(2) "Imbalance Only Order" or "IO" shall mean an order to buy or sell at a specified price or better that may be executed only during the Nasdaq Closing Cross and only against an Imbalance. IO orders can be entered between 9:30:01 a.m. and 3:59:59 p.m., but they cannot be cancelled or modified after 3:50:00 except to increase the number of shares or to increase (decrease) the buy (sell) limit price. IO sell (buy) orders will only execute at or above (below) the 4:00:00 SuperMontage offer (bid). All IO orders must be available for automatic execution.

(3) "Limit On Close Order" or "LOC" shall mean an order to buy or sell at a specified price or better that is to be executed only during the Nasdaq Closing Cross. LOC orders can be entered, cancelled, and corrected between 9:30:01 a.m. and 3:50:00 p.m. and will execute only at the price determined by the Nasdaq Closing Cross. All LOC orders must be available for automatic execution.

(4) "Market on Close Order" shall mean an order to buy or sell at the market that is to be executed only during the Nasdaq Closing Cross. MOC orders can be entered, cancelled, and corrected between 9:30:01 a.m. and 3:50:00 p.m. and will execute only at the price determined by the Nasdaq Closing Cross. All MOC orders must be available for automatic execution.

(5) "Nasdaq Closing Cross" shall mean the process for determining the price at which orders shall be executed at the close and for executing those orders.

(6) "Order Imbalance Indicator" shall mean a message disseminated by electronic means containing information about MOC, LOC, and IO orders and the price at which those orders would execute at the time of dissemination.

(b) Order Imbalance Indicator. Beginning at 3:50 p.m., Nasdaq shall disseminate by electronic means an Order Imbalance Indicator every 30 seconds until 3:55, and then every 15 seconds until 3:58, and then every 5 seconds until 3:59, and then every second until market close. The Order Imbalance Indicator shall contain the following real time information:

(1) The number of shares represented by MOC, LOC, and IO orders that are paired at the current SuperMontage inside;

(2) The MOC and LOC imbalance at the current SuperMontage best bid or offer, depending on the direction of the imbalance;

(3) The buy/sell direction of any imbalance at the current SuperMontage inside; and

(4) An indicative price range at which the Nasdaq Closing Cross would occur if the Nasdaq Closing Cross were to occur at that time and the percent by which that range varies from the then current SuperMontage inside. The indicative price range contains the following values:

(A) The price at which the MOC, LOC, and IO orders in the Nasdaq Closing Book would execute, and

(B) The price at which both the MOC, LOC, and IO orders and all executable orders in SuperMontage (excluding volume that is available only by order delivery) would execute.

(C) If no price satisfies subparagraph (A) or (B) above, Nasdaq will disseminate the phrase "market buy" or "market sell".

(c) Processing of Nasdaq Closing Cross.

(1) The Nasdaq Closing Cross will begin at 4:00:00, and after hours trading will commence when the Nasdaq Closing Cross concludes.

(2) The Nasdaq Closing Cross will occur at the price that:

(A) Maximizes the number of shares executed. If more than one such price exists, the Nasdaq Closing Cross shall occur at the price that:

(B) Minimizes the imbalance of on-close orders. If more than one such price exists, the Nasdaq Closing Cross shall occur at the price that:

(C) Minimizes the distance from the 4:00:00 SuperMontage bid-ask midpoint.

(D) If the Nasdaq Closing Cross price established by subparagraphs (A) through (C) above is outside the benchmarks established by Nasdaq by a threshold amount, the Nasdaq Closing Cross will occur at a price within the threshold amounts that best satisfies the conditions of subparagraphs (A) through (C) above. Nasdaq management shall set and modify such benchmarks and thresholds from time to time upon prior notice to market participants.

(3) If the Nasdaq Closing Cross price is selected and fewer than all MOC, LOC and IO orders and fewer than all continuous orders that are available for automatic execution in SuperMontage would be executed, orders will be executed at the Nasdaq Closing Cross price in the following priority:

(A) MOC orders, with time as the secondary priority;

(B) LOC orders, limit orders, IO orders, displayed quotes and reserve interest priced more aggressively than the Nasdaq Closing Cross price;

(C) LOC orders, displayed interest of limit orders, and displayed interest of quotes at the Nasdaq Closing Cross price with time as the secondary priority;

(D) Reserve interest and IO orders at the Nasdaq Closing Cross price with time as the secondary priority; and

(E) Unexecuted MOC, LOC, and IO orders will be canceled.

(4) All orders executed in the Nasdaq Closing Cross will be executed at the Nasdaq Closing Cross price and reported to the consolidated tape with SIZE as the contra party. The Nasdaq Closing Cross price will be the Nasdaq Official Closing Price for stocks that participate in the Nasdaq Closing Cross.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Nasdaq is proposing to establish the Nasdaq Closing Cross, a new process for determining the Nasdaq Official Closing Price ("NOCP") for the most liquid Nasdaq stocks. Nasdaq represents that the proposed Nasdaq Closing Cross is designed to create a more robust close that would allow for price discovery, and an execution that would result in an accurate, tradable closing price. SuperMontage would operate as it does today up until the close. Nasdaq would create two new on-close orders types ("Nasdaq Closing Orders") that would be executable only during the SuperMontage closing cross. Information about the contents and likely market clearing price of the Nasdaq Closing Orders would be disseminated. In the closing process, the Nasdaq Closing Orders and SuperMontage continuous orders would be brought together to create a single Nasdaq Closing Cross. To be executable, all orders and quotes would be required to be subject to automatic execution to avoid the uncertainty and delay associated with order delivery trading interest. Following the Nasdaq Closing Cross, after hours trading would proceed as it does today.

There would be three components of the Nasdaq Closing Cross: (1) The creation of On Close and Imbalance Only order types; (2) the dissemination of an order imbalance indicator via a Nasdaq proprietary data feed; and (3) closing cross processing in SuperMontage at 4:00:00 that would execute the maximum number of shares at a single, representative price that would be the Nasdaq Official Closing Price. Each component is described in detail below.

On Close and Imbalance Only Orders In The Closing Book. The closing process would begin with market participants entering On-Close and Imbalance Only order types in SuperMontage. On-Close orders would be able to be un-priced and entered as market-on-close ("MOC"), or priced and entered as limit-on-close ("LOC"). On-Close orders would be able to be entered, cancelled, and corrected between 9:30:01 a.m. EST and 3:50:00 p.m. but they would not be displayed in the Nasdaq Order Display Facility or disseminated via any data feed. On-Close orders, both MOC and LOC, would execute only at the price determined by the closing Nasdaq cross. Thus, LOC orders would be subject to

price improvement if the buy (sell) order were to be greater than (less than) the closing price.

Imbalance Only ("IO") orders would supplement the liquidity provided by On Close orders and they would execute only within the closing cross against any imbalance in liquidity. IO order types would be required to be priced limit orders; SuperMontage would reject IO orders entered without a price. Like On Close orders, IO orders would not be displayed in the Nasdaq Order Display Facility or disseminated via any data feed. IO orders would be able to be entered until 3:59:59, but they would not be able to be cancelled or modified after 3:50:00 except to increase the number of shares or to increase (decrease) the buy (sell) limit price. IO sell orders would only execute at or above the 4:00:00 SuperMontage inside offer, and IO buy orders would only execute at or below the 4:00:00 SuperMontage inside bid.

The On Close and IO orders would constitute the "Nasdaq Closing Orders" which, as described below, would serve as the basis for the Closing Cross Order Imbalance Indicator.

Order Imbalance Indicator. At 3:50:00, Nasdaq would begin the closing auction calculation and would disseminate an order imbalance indicator on Nasdaq's proprietary data feed. Imbalance information would include several pieces of information regarding the closing cross: (1) The number of shares represented by MOC, LOC, and IO orders that paired at the current SuperMontage inside; (2) the MOC and LOC imbalance at the current SuperMontage best bid or offer, depending on the direction of the imbalance; (3) the buy/sell direction of that imbalance, and the current inside price; (4) an indicative clearing price range at which the Nasdaq Closing Cross would occur if the Nasdaq Closing Cross were to occur at that time; and (5) the percent by which that indicative price varies from the SuperMontage inside price. The indicative clearing price range would be bounded on the far side by the price at which the MOC, LOC, and IO orders would clear with only each other. It would be bounded on the near side by the price at which the Nasdaq Closing Orders and the SuperMontage continuous orders (excluding volume available only by order delivery) would clear. Where no clearing price exists, Nasdaq would disseminate the phrase "market buy" or "market sell."

Nasdaq would disseminate the order imbalance indicator via the Nasdaq Total View data feed at no additional charge to subscribers. The indicator would be disseminated beginning at 3:50:00 and then at more frequent intervals as the time to market close decreases: every 30 seconds beginning at 3:50, every 15 seconds beginning at 3:55, every 5 seconds beginning at 3:58, and every second from 3:59 until market close.

For example, if the SuperMontage Book at 3:59:00 pm were to contain the following orders:

BUY ORDERS

Size	Price
4000	*19.99*
3000	19.98
2000	19.97
10000	19.96

SELL ORDERS

Size	Price
500	*20.00*
35000	20.01
3000	20.02
10000	20.04

And the Nasdaq Closing Orders at that time contains the following orders:

BUY ORDERS

Size	Price
3000	20.02
8000	*Market*
1000	19.99
4000	19.97
500	19.97

SELL ORDERS

Size	Price
5000	*Market*
3000	19.98
1000	20.00
1000	20.02
1000	19.98

Nasdaq would disseminate the following indicative closing information:

- 10,000 shares paired at $20.00;
- 1,000 share buy imbalance;
- Indicative Price Range: $20.01–20.02; and
- Variance from SuperMontage inside of less than 10 percent.

Nasdaq Closing Cross. The Nasdaq Closing Cross would begin at 4:00:00 and, thus, would not affect SuperMontage processing that exists today during normal market hours. The Nasdaq Closing Cross would conclude at approximately 4:00:05 at which time the closing executions would be reported to the consolidated tape for Nasdaq securities and after hours trading would commence just as it does today. The Nasdaq Closing Cross would be designed to accomplish three goals in decreasing priority: (1) Maximize the number of shares executed, (2) minimize the imbalance of on-close orders; and (3) minimize the distance from the 4:00:00 SuperMontage inside bid-ask midpoint.

If the Nasdaq Closing Cross price were to be selected and fewer than all Nasdaq Closing Orders and all continuous orders available for automatic execution in SuperMontage would be executed, the system would execute orders in the following priority:

(1) MOC orders, with time as the secondary priority;

(2) LOC orders, limit orders, IO orders, displayed quotes and reserve interest priced more aggressively than the Nasdaq Closing Cross price;

(3) LOC orders, displayed interest of limit orders, and displayed interest of quotes at the Nasdaq Closing Cross price with time as the secondary priority; and

(4) Reserve interest and IO orders at the Nasdaq Closing Cross price with time as the secondary priority.[3]

All executable orders would be executed at the Nasdaq Closing Cross price and reported to the consolidated tape with SIZE as the contra party. The Nasdaq Closing Cross price and the associated paired volume would then be disseminated via the UTP Trade Data Feed ("UTDF") as the NOCP.

For example, if the continuous SuperMontage and Nasdaq Closing Orders were to contain the following orders:

[3] Short sale orders that participate in the Nasdaq Closing Cross would be required to comply with the applicable Nasdaq short sale rule.

BUY ORDERS

Entry time	Side	Size	Price
3:00	Buy—OC	8000	*Market*
2:30	Buy—OC	3000	20.02
3:31	Buy—Day	4000	19.99
3:35	Buy—OC	1000	19.99
3:59	Buy—Day	3000	19.98
3:59	Buy—Day	2000	19.97
3:40	Buy—OC	4000	19.97
3:52	Buy—IO	500	19.97
3:30	Buy—Day	10000	19.96

SELL ORDERS

Entry time	Side	Size	Price
2:45	Sell—OC	5000	*Market*
3:00	Sell—OC	3000	19.98
3:55	Sell—IO	1000	19.98
3:59	Sell—Day	500	20.00
3:35	Sell—IO	1000	20.00
3:48	Sell—Day	5000	20.01
3:31	Sell—GTC	3000	20.02
3:40	Sell—OC	1000	20.02
3:30	Sell—Day	10000	20.04

The Nasdaq Closing Cross would execute 11,000 shares at $20.01.

Nasdaq would establish a circuit breaker for the closing cross to protect against very unusual occurrences where the price discovery mechanism at the close did not function as expected. Nasdaq has selected two benchmark values representing market conditions approximately five seconds prior to the close: (1) The Volume Weighted Average Nasdaq Inside ("VWAI") over the period from 3:59:54 to 3:59:57;[4] and (2) the Volume Weighted Average Price ("VWAP") based upon SuperMontage executions over the period from 3:59:55 to 4:00:00.[5] After the Nasdaq Crossing Price is selected, Nasdaq would then compare it to the two benchmarks. If the expected Nasdaq Crossing Price were to be within a preset boundary of either the VWAI or the VWAP, the cross would occur at the expected Nasdaq Crossing Price.

If the expected Nasdaq Crossing Price were to be outside a preset boundary ("Threshold Percentage") of both benchmarks, Nasdaq would change the Nasdaq Crossing Price such that it would be within the threshold percentage. The Threshold Percentage would be set by Nasdaq officials and would vary based on market conditions and experience with the close. Nasdaq would publish the Threshold Percentages via its public NasdaqTrader Web site.[6] The modified price would then follow the principles for ordinary crosses: Maximizing volume executed, minimizing the imbalance of On Close orders, and minimizing the distance from the 4:00 SuperMontage bid-ask midpoint (unexecuted shares would be canceled).

Implementation. Upon initial implementation, Nasdaq proposes to apply the closing process to its most liquid issues, namely securities included in the Nasdaq 100 Index, the S&P 500 Index, and the Nasdaq Biotech Index. Nasdaq would have the authority to apply the closing cross to any and all Nasdaq NMS securities. For those securities, the Nasdaq Closing Cross price would be the NOCP. Issues that are not subject to the closing auction would continue to have their NOCP value calculated and disseminated as today. All NOCP values will be disseminated by 4:02:00 with the .M sale condition modifier.

[4] For example, Nasdaq would take every Nasdaq Inside Ask in effect 3:59:54:000 through 3:49:56:999, weight the Ask Price by the product of the time (milliseconds) the quote was in effect and the displayed size (roundlots). The weighted average of all the Inside Ask updates during the indicated time period would be the VWAI Ask for the stock.

[5] For example, Nasdaq would take every last sale eligible SuperMontage Trade report between 3:59:55:000 and the start of the closing process and weight the trade price by the reported volume. The weighted average of all the SuperMontage trade reports would be the VWAP for the stock.

[6] Nasdaq would also be able to also employ the Benchmark Values and Threshold Percentages for determining the Nasdaq Official Closing Price for stocks that are not included in the Nasdaq Closing Cross.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 15A of the Act,[7] in general, and with Section 15A(b)(6) of the Act,[8] in particular, in that Section 15A(b)(6) requires the NASD's rules to be designed, among other things, to protect investors and the public interest. Nasdaq's believes that its current proposal is consistent with the NASD's obligations under these provisions of the Act because it would result in the public dissemination of information that more accurately reflects the trading in a particular security at the close. Furthermore, to the extent a security is a component of an index, Nasdaq believes the index would more accurately reflect the value of the market, or segment of the market, the index is designed to measure. Nasdaq believes the corresponding result should be trades, or other actions, executed at prices more reflective of the current market when the price of an execution, or other action, is based on the last sale, the high price or low price of a security, or the value of an index.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

[7] 15 U.S.C. 78*o*–3.

[8] 15 U.S.C. 78*o*–3(b)(6).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Nasdaq neither solicited nor received written comments with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549–0609. Comments may also be submitted electronically at the following e-mail address: *rule-comments@sec.gov*. All comment letters should refer to File No. SR–NASD–2003–173. This file number should be included on the subject line if e-mail is used. To help us process and review comments more efficiently, comments should be sent in hardcopy or by e-mail but not by both methods. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR–NASD–2003–173 and should be submitted by January 2, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–30699 Filed 12–10–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48877; File No. SR–NASD–2003–179]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc., To Extend the Pilot for the Operation of the Short Sale Rule in a Decimals Environment

December 4, 2003.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 1, 2003, the National Association of Securities Dealers, Inc. ("NASD" or "Association"), through its subsidiary, the Nasdaq Stock Market, Inc. ("Nasdaq"), filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by Nasdaq. Nasdaq filed the proposal pursuant to Section 19(b)(3)(A) of the Act,[3] and Rule 19b–4(f)(6)[4] thereunder, which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq proposes to extend through June 30, 2004, the penny ($0.01) legal short sale standard contained in NASD Interpretative Material 3350 ("IM–3350").[5] Without such an extension this standard would terminate on December 1, 2003. Nasdaq does not propose to make any substantive changes to the pilot; the only change is an extension of the pilot's expiration date through June 30, 2004. Nasdaq requests that the Commission waive both the 5-day notice and 30-day operative requirements contained in Rule 19b–4(f)(6)(iii)[6] of the Act. If such waivers are granted by the Commission, Nasdaq will implement this rule change immediately.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of and basis for its proposal and discussed any comments it received regarding the proposal. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in Sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On March 2, 2001, the Commission approved, on a one-year pilot basis ending March 1, 2002,[7] Nasdaq's proposal to establish a $0.01 above the bid standard for legal short sales in Nasdaq National Market securities as part of the Decimals Implementation Plan for the Equities and Options Markets. The pilot program has been continuously extended since that date and is currently set to expire on December 1, 2003.[8] Nasdaq now proposes to extend, through June 30, 2004, that pilot program. Extension until June 30th, will allow Nasdaq and the Commission to continue to evaluate the impact of the penny short sale pilot and thereafter take action on Nasdaq's separate pending proposal to make the penny short sale standard permanent.[9] If approved, Nasdaq would continue during the pilot period to require NASD members seeking to effect "legal" short sales when the current best (inside) bid displayed by Nasdaq is lower than the previous bid, to execute those short sales at a price that is at least $0.01 above the current inside bid in that security. Nasdaq believes that continuation of this pilot standard appropriately takes into account the important investor protections provided by the short sale rule and the ongoing relationship of the valid short sale price amount to the minimum quotation increment of the Nasdaq market (currently also $0.01).

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act[10] in that it is designed to: (1) Promote just and equitable principles of trade; (2) foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to and facilitating transactions in securities; (3) perfect the mechanism of a free and open market and a national market system; and (4) protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not:

(i) Significantly affect the protection of investors or the public interest;

(ii) Impose any significant burden on competition; and

(iii) Become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, it has become effective pursuant to Section 19(b)(3)(A) of the Act[11] and Rule 19b–4(f)(6) thereunder.[12] At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

Nasdaq has requested that the Commission waive both the 5-day notice and the 30-day operative delay. The Commission believes waiving the 5-day notice and 30-day operative delay is consistent with the protection of investors and the public interest. Acceleration of the operative date will allow the pilot to continue uninterrupted through June 30, 2004, and will provide Nasdaq and the Commission with an opportunity to evaluate the impact of the penny short sale pilot. For these reasons, the Commission designates the proposal to be effective and operative upon filing with the Commission.[13]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Comments may also be submitted electronically at the following e-mail address: *rule-comments@sec.gov*. All comment letters should refer to SR–NASD–2003–179. This file number should be included on the subject line if e-mail is used. To help us process and review comments more efficiently, comments should be sent in hardcopy or by e-mail but not by both methods. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of Nasdaq. All submissions should refer to file number SR–NASD–2003–179 and should be submitted by January 2, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 03–30703 Filed 12–10–03; 8:45 am]

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[9] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

[5] In its filing, Nasdaq inadvertently referred to text changes in subparagraph (b)(1) of IM–3350 instead of subparagraph (b)(2). Changes to NASD Rule 3350 and IM–3350 renumbered subparagraph (b)(1) as subparagraph (b)(2). *See* Securities Exchange Act Release No. 46999 (December 13, 2002), 67 FR 78534 (December 24, 2002). Telephone call between Gregory J. Dumark, Division of Market Regulation, Commission, and Thomas P. Moran, Office of General Counsel, Nasdaq.

[6] 17 CFR 240.19b–4(f)(6)(iii).

[7] Securities Exchange Act Release No. 44030 (March 2, 2001), 66 FR 14235 (March 9, 2001).

[8] Securities Exchange Act Release No. 47309 (February 4, 2003), 68 FR 6981 (February 11, 2003).

[9] *See* SR–NASD 2002–09.

[10] 15 U.S.C. 78o–3(b)(6).

[11] 15 U.S.C. 78s(b)(3)(A).

[12] 17 CFR 240.19b–4(f)(6).

[13] For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48876; File No. SR–NASD–2003–180]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc., To Extend the Pilot for Limit Order Protection of Securities Priced in Decimals

December 4, 2003.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 1, 2003, the National Association of Securities Dealers, Inc. ("NASD" or "Association"), through its subsidiary, the Nasdaq Stock Market, Inc. ("Nasdaq"), filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by Nasdaq. Nasdaq filed the proposal pursuant to Section 19(b)(3)(A) of the Act,[3] and Rule 19b–4(f)(6)[4] thereunder, which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq proposes to extend through June 30, 2004, the current pilot price-improvement standards for decimalized securities contained in NASD Interpretative Material 2110–2—Trading Ahead of Customer Limit Order ("Manning Interpretation" or "Interpretation"). Without such an extension these standards would terminate on December 1, 2003. Nasdaq does not propose to make any substantive changes to the pilot; the only change is an extension of the pilot's expiration date through June 30, 2004. Nasdaq requests that the Commission waive both the 5-day notice and 30-day operative requirements contained in Rule 19b–4(f)(6)(iii)[5] of the Act. If such waivers are granted by the Commission, Nasdaq will implement this rule change immediately.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

[5] 17 CFR 240.19b–4(f)(6)(iii).

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of and basis for its proposal and discussed any comments it received regarding the proposal. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in Sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

NASD's Manning Interpretation requires NASD member firms to provide a minimum level of price improvement to incoming orders in NMS and SmallCap securities if the firm chooses to trade as principal with those incoming orders at prices superior to customer limit orders they currently hold. If a firm fails to provide the minimum level of price improvement to the incoming order, the firm must execute its held customer limit orders. Generally, if a firm fails to provide the requisite amount of price improvement and also fails to execute its held customer limit orders, it is in violation of the Manning Interpretation.

On April 6, 2001,[6] the Commission approved, on a pilot basis, Nasdaq's proposal to establish the following price improvement standards whenever a market maker wished to trade proprietarily in front of its held customer limit orders without triggering an obligation to also execute those orders:

(1) For customer limit orders priced at or inside the best inside market displayed in Nasdaq, the minimum amount of price improvement required is $0.01; and

(2) For customer limit orders priced outside the best inside market displayed in Nasdaq, the market maker must price improve the incoming order by executing the incoming order at a price at least equal to the next superior minimum quotation increment in Nasdaq (currently $0.01).[7]

Since approval, these standards have operated on a pilot basis and are currently scheduled to terminate on December 1, 2003. After consultation with Commission staff, Nasdaq seeks an extension of its current Manning pilot until June 30, 2004. Nasdaq believes that such an extension provides for an appropriate continuation of the current Manning price-improvement standard while the Commission analyzes the issues related to customer limit order protection for decimalized securities, and reviews Nasdaq's separately filed rule proposal to make this pilot permanent.[8]

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act[9] in that it is designed to: (1) Promote just and equitable principles of trade; (2) foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to and facilitating transactions in securities; (3) perfect the mechanism of a free and open market and a national market system; and (4) protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not:

(i) Significantly affect the protection of investors or the public interest;

(ii) Impose any significant burden on competition; and

(iii) Become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, it has become effective pursuant to Section 19(b)(3)(A) of the Act[10] and Rule 19b–4(f)(6) thereunder.[11] At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

Nasdaq has requested that the Commission waive both the 5-day notice and the 30-day operative delay. The Commission believes waiving the 5-day notice and 30-day operative delay is consistent with the protection of investors and the public interest. Acceleration of the operative date will allow the pilot to continue uninterrupted through June 30, 2004, and will allow Nasdaq and the Commission to analyze the issues related to customer limit order protection in a decimals environment. For these reasons, the Commission designates the proposal to be effective and operative upon filing with the Commission.[12]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Comments may also be submitted electronically at the following e-mail address: *rule-comments@sec.gov*. All comment letters should refer to SR–CHX–2003–180. This file number should be included on the subject line if e-mail is used. To help us process and review comments more efficiently, comments should be sent in hardcopy or by e-mail but not by both methods. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of Nasdaq. All submissions should refer to file number SR–NASD–2003–180 and should be submitted by January 2, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 03–30705 Filed 12–10–03; 8:45 am]

BILLING CODE 8010–01–P

[6] *See* Securities Exchange Act Release No. 44165 (April 6, 2001), 66 FR 19268 (April 13, 2001) (order approving proposed rule change modifying NASD's Interpretative Material 2110–2—Trading Ahead of Customer Limit Order).

[7] Pursuant to the terms of the Decimals Implementation Plan for the Equities and Options Markets, the minimum quotation increment for Nasdaq securities (both National Market and SmallCap) at the outset of decimal pricing is $0.01. As such, Nasdaq displays priced quotations to two places beyond the decimal point (to the penny). Quotations submitted to Nasdaq that do not meet this standard are rejected by Nasdaq systems. *See* Securities Exchange Act Release No. 43876 (January 23, 2001), 66 FR 8251 (January 30, 2001).

[8] *See* SR–NASD 2002–10.

[9] 15 U.S.C. 78o–3(b)(6).

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f)(6).

[12] For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[13] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3555]

State of California (Amendment #2)

In accordance with a notice received from the Department of Homeland Security—Federal Emergency Management Agency, effective October 30, 2003, the above numbered declaration is hereby amended to extend the deadline for filing applications for physical damages as a result of this disaster to January 9, 2004.

All other information remains the same, *i.e.*, the deadline for filing applications for economic injury is July 27, 2004.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: December 4, 2003.

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. 03–30659 Filed 12–10–03; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice 4551]

Bureau of Educational and Cultural Affairs Request for Grant Proposals: Women's Political, Educational, and Economic Development for Afghanistan

SUMMARY: The Office of Citizen Exchanges of the Bureau of Educational and Cultural Affairs, United States Department of State, on behalf of the U.S.-Afghan Women's Council and in cooperation with the Office of International Women's Issues of the U.S. Department of State, announces an open competition for grants to support a series of exchanges and training programs promoting "Women's Political, Educational, and Economic Development in Afghanistan." U.S. public and private non-profit organizations meeting the provisions described in Internal Revenue Code section 26 U.S.C. 501(c)(3) may submit proposals to develop and implement exchanges and training programs involving participants from Afghanistan, including training conducted in Afghanistan. These U.S. organizations should have a current presence in Afghanistan, or experience working in Afghanistan, and work in conjunction with Afghan NGO partners. This competition is in direct support of the work plan developed by the U.S.-Afghan Women's Council, which seeks to carry out training programs in partnership with provincial Women's Resource Centers. Up to five grants, not exceeding $150,000 each, may be awarded. Depending on the types and number of proposals received, more than one award may be made in some areas of focus and no awards may be made in others. Proposals that clearly demonstrate significant cost-sharing—with 50% of the amount requested from ECA as the preferred target—will be judged more competitive. For example, an organization requesting $150,000 would be more competitive if the proposal presents at least $75,000 in allowable cost sharing. *A maximum of 10 Afghans traveling to the U.S. will be permitted for each grant awarded under this competition, and all individuals traveling to the U.S. should use their U.S. experience directly for carrying out programs in Afghanistan after their return home.* Deadline for submissions is Friday, February 6, 2004.

Important Note: This Request for Grant Proposals contains language in the "Shipment and Deadline for Proposals" section that is significantly different from that used in the past. Please pay special attention to procedural changes as outlined.

Program Information

Overview: On January 28, 2002, Presidents Bush and Karzai announced the creation of the U.S.-Afghan Women's Council to promote private/public partnerships between U.S. and Afghan institutions and to mobilize private resources to ensure that Afghan women are provided access to the education and skills to which they had no access during the years of Taliban misrule. The Council is co-chaired by the Under Secretary of State for Global Affairs, the Afghan Minister of Women's Affairs and the Minister of Foreign Affairs. The Council is staffed in the United States by the State Department's Office of International Women's Issues. The U.S.-Afghan Women's Council seeks to help integrate women into Afghan society and to prepare them for positions of leadership and management. The priority themes listed below reflect the goals and work plan of the Council, and the exchange and training programs being funded will be carried out as programs of the U.S.-Afghan Women's Council. Please refer to the following Web site for more information on the Council: *http://usawc.state.gov*.

The Office of Citizen Exchanges of the Bureau of Educational and Cultural Affairs (ECA) consults with and supports American public and private nonprofit organizations in developing and implementing multi-phased, often multi-year, exchanges of professionals, community leaders, scholars and academics, public policy advocates, etc. These exchanges address issues of critical importance to both the United States and to the countries with which the exchanges will be conducted. They encourage substantive and cooperative interaction among counterparts, and they entail both theoretical and experiential learning for all participants. A primary goal is the development of sustained, international institutional and individual linkages. In addition to providing a context for professional development and collaborative problem-solving, these projects are intended to introduce participants to one another's political, social, and economic structures, facilitating improved communication and enhancing mutual understanding.

Special Note: The Afghan Ministry of Women's Affairs is establishing Women's Resource Centers throughout Afghanistan. The US-Afghan Women's Council and the Department of State are dedicated to supporting the work of these centers. All proposals submitted in response to this RFGP must feature activities organized in close cooperation with and promoting the work of these centers, including training activities taking place inside these centers in provinces outside of Kabul. All proposals must display an understanding of the work of the Afghan Ministry of Women's Affairs and the Women's Resource Centers and discuss how proposed exchange activities will further the work of these centers. To the extent possible, exchange and training activities in Afghanistan will take place at or center around the Resource Centers in provinces where such Centers have been established. Proposals should also reflect a clear understanding of the work of USAID in support of the Centers and demonstrate how exchanges will complement and further that support.

The Office of Citizen Exchanges solicits proposals for exchange projects that involve the following priority themes:

1. Women's Leadership

Proposals should focus on promoting women's political leadership by strengthening the capacity of grassroots women's organizations to develop the skills of current and future women political leaders and by compiling a repertoire of practical material in the local language(s) for use in workshops, mock campaigns and elections, educational sessions, or other activities. Proposals must reflect a practical knowledge of the political and legislative environment in the partner country. Projects may include components listed in "Guidelines" below and may focus on the following:

• *Workshops for Political Leaders* might include such topics as public speaking, message development, leadership, campaign management, accountability and constituencies, consensus building, surveying, polling, advocacy, voter outreach, networking, working with the media, and fundraising, with the goal of increasing the effectiveness of women's participation in the political process.

• *Women's Political Awareness Campaigns* should educate women on the political process with the goal of increasing their participation in government and politics. Awareness campaigns should be jointly developed and grass-roots, get-out-the-vote campaigns conducted with partner organizations. These should reach the widest possible audience in various regions of the country, in large and small cities, and in towns and villages, with the goal of increasing women's participation in the political process.

• *Women's Human Rights Education* should improve women's understanding of human rights issues and the rule of law. Exchanges and training should be jointly conducted by U.S. and Afghan partner organizations and should reach the widest possible audience.

2. Educational Development and Literacy for Women and Girls

Proposals should focus on exchanges and training for educational administrators and community leaders who are actively involved in managing, delivering or promoting education in formal, informal, and non-traditional settings, including accelerated learning programs for out-of-school and hard-to-reach populations, self-study and distance education, and life skill-based, job skill-related, or functional literacy training. Emphasis should be on providing assistance and support to administrators and others promoting education and literacy. Potential topics for activities include, but are not limited to, promoting professional competence in educational methodology and practice, especially in the area of promoting literacy; strengthening local capacity to support education; increasing understanding of the importance of women's and girls' education for the family and for society and public life; developing leadership and enhancing values of civic responsibility; and developing mentoring programs. Only adult professionals or grassroots practitioners who are not being trained as teachers may be selected to travel internationally for exchange activities. Girls and women may take part as students in pilot sessions and other in-country educational activities.

3. Women-Led Small Business Development

Projects should foster the development of local women-led businesses in Afghanistan and create ongoing international partnerships. Project components in the U.S. or in Afghanistan, with examples of possible topics, include: seminars for women considering micro-enterprise activities (*e.g.* entrepreneurship, management, finance and registration issues); workshops (developing business plans, loan packages, marketing, staff training, appropriate technology); site visits (to chambers of commerce, local governments, women's business associations, small business resource centers); establishment of women's business associations or business resource centers; mentoring; consultancies; internships; job-shadowing; or other activities.

Grant funds may be used to develop or enhance exchanges and training focused on women's business resources and the development of services in Women's Resource Centers, or to further the activities of such a center, but may not be used to furnish new centers. ECA funds may also be used to support women's business associations and regularly published not-for-profit women's business newsletters in the local language and may be used on resources and development of services. No more than $10,000 may be used to purchase computer and/or office equipment. No funds may be used for micro-credit or re-lending activities, though funds may be used for training women considering micro-enterprise activities.

In certain types of program activities, Afghan participants could be linked with U.S. mentors or counterparts with similar work responsibilities in order to ensure ongoing professional interaction. In addition to activities for businesswomen, proposals may include components targeting female heads of households, such as widows, training them to start businesses.

4. Job Skills Training

Job skills training should focus on providing women with practical skills that will have market value and that will better enable them to support their families.

5. NGO Management

NGO management may be addressed as part of the program design, including workshops on NGO management and capacity building for NGOs whose work advances women's political and economic development in civil society. Topics might include strategic planning, volunteer recruitment and management, coalition building, public relations, facilitation training, peer education and outreach, public-private partnerships, information management, and Web site development.

Project Guidelines

Applicants should state expected goals and objectives in the proposal narrative and describe a clear and convincing plan for carrying out project components to fulfill them. Travel costs for a maximum of 10 Afghans per grant will be permitted under this competition.

Suggested activities might include:

1. (If necessary) Initial needs assessment/orientation or training travel by American organizers to develop contacts and relationships with both American Mission officers and counterpart organizations/individuals in the Women's Development Centers in which the exchange activities will be conducted, and to provide initial training for Afghan participants.

2. First training session in Afghanistan (may coincide with needs assessment). American professionals carry out group "train-the-trainer" sessions on the subject of their exchange project, and select no more than 10 outstanding Afghan women participants for further training in the U.S.

3. A U.S.-based program, including orientation for Afghan participants to program purposes and to U.S. society, discussions, site visits, additional training of trainers, or limited internships or job shadowing opportunities.

4. A return visit by American specialists to collaborate with Afghan participants from the U.S.-based program in conducting additional workshops, seminars, or on-site training.

5. Training programs carried out in Afghanistan in Women's Resource Centers led by the Afghans who have received training in the U.S.

6. Distance learning techniques using appropriate technology and activities meant to bridge the digital divide are also encouraged to the extent possible.

This program is not academic in nature. The Office of Citizen Exchanges encourages applicants to be creative and innovative in planning projects. Activities may combine elements of skill enrichment, theoretical orientation, and experiential, community-based initiatives designed to achieve objectives. Activities should provide participants an opportunity to experience each other's culture. Cultural programming may include activities or events hosted by local institutions and home stays with community members.

Projects funded under this competition should enhance partnerships among American and foreign organizations, provide hands-on activities and training sessions with practical materials in the local language, and achieve lasting and sustainable results.

Afghan partner organizations should be identified in the proposal, with project plans developed collaboratively by both the American and Afghan partners. Applicants who have not yet identified local partners but whose proposals reflect significant regional and thematic expertise are also eligible to apply, but priority will be given to organizations that have already developed these links and identified Afghan partner organizations.

Eligibility: U.S. public and private non-profit organizations meeting the provisions described in IRS regulation 26 CFR 1.501(c)(3) are eligible to apply. All proposals will receive equal consideration. U.S. organizations should have an Afghan partner, with the U.S. partner as the principal applicant.

Selection of Participants: Proposals should include a description of an open, merit-based participant selection process for all program components requiring participant selection. A draft application and a sample announcement used for recruitment advertising should be included. For exchange travel to the U.S., priority should be given to participants who have not previously traveled to the United States.

Public Affairs Section Involvement: The Public Affairs Section of the U.S. Embassy (PAS) in Kabul will play an important role in project implementation. PAS Kabul will evaluate project proposals, coordinate planning with the grantee organization and in-country partners, facilitate in-country activities, nominate participants and vet grantee nominations, observe in-country activities when feasible, debrief participants, and evaluate project impact. Applicants should expect to work closely with Embassy PAS in Kabul in selecting participants, and all Afghan exchange participants traveling to the U.S. must be approved by the U.S. Embassy Kabul PAS. PAS Kabul retains the right to nominate participants and to advise the grantee regarding participants recommended by other entities.

PAS Kabul will work with grantee organizations to assist Afghans selected for international travel in obtaining the necessary J–1 visas for entry into the United States. Although project administration and implementation are the responsibility of the grantee, the grantee is expected to inform the PAS in Kabul of its operations and procedures and to coordinate with and involve PAS officers in the development of project activities. The PAS should be consulted regarding country priorities, political and cultural sensitivities, current security concerns, and related logistic and programmatic issues.

Adherence to All Regulations Governing the J Visa

The Office of Citizen Exchanges of the Bureau of Educational and Cultural Affairs is the official program sponsor of exchange programs resulting from this solicitation, and an employee of the Bureau will be the "Responsible Officer" for the program under the terms of 22 CFR part 62, which covers the administration of the Exchange Visitor Program (J visa program). Under the terms of 22 CFR part 62, organizations receiving grants under this RFGP will be third parties "cooperating with or assisting the sponsor in the conduct of the sponsor's program." The actions of grantee program organizations shall be "imputed to the sponsor in evaluating the sponsor's compliance with" 22 CFR part 62. Therefore, the Bureau expects that any organization receiving a grant under this competition will render all assistance necessary to enable the Bureau to fully comply with 22 CFR part 62 *et seq.* The Bureau of Educational and Cultural Affairs places great emphasis on the secure and proper administration of Exchange Visitor (J visa) Programs and adherence by grantee program organizations and program participants to all regulations governing J visa program participant status. Therefore, proposals should explicitly state in writing that the applicant is prepared to assist the Bureau in meeting all requirements governing the administration of Exchange Visitor Programs as set forth in 22 CFR part 62. If the applicant has experience as a designated Exchange Visitor Program Sponsor, the applicant should discuss their record of compliance with 22 CFR part 62 *et seq.*, including the oversight of their Responsible Officers and Alternate Responsible Officers, screening and selection of program participants, provision of pre-arrival information and orientation to participants, monitoring of participants, proper maintenance and security of forms, record-keeping, reporting and other requirements. The Office of Citizen Exchanges of ECA will be responsible for issuing the DS–2019 forms to participants in this program. A copy of the complete regulations governing the administration of Exchange Visitor (J) programs is available at *http://exchanges.state.gov* or from: United States Department of State, Office of Exchange Coordination and Designation, ECA/EC/ECD—SA–44, Room 734, 301 Fourth Street, SW., Washington, DC 20547, Telephone: (202) 401–9810, FAX: (202) 401–9809.

Budget Guidelines

The Bureau expects to award up to five grants, not exceeding $150,000 each, to support program and administrative costs required to implement exchange programs under this competition. Applicants must submit a comprehensive line-item budget based on guidance provided in the Proposal Submission Instructions (PSI) of the Solicitation Package. Grants awarded to organizations with less than four years of experience in conducting international exchange programs will be limited to $60,000. A maximum of 10 Afghans traveling to the U.S. will be permitted for each grant awarded under this competition. Proposals which clearly demonstrate a significant cost-sharing—with 50% of the amount requested from ECA as the preferred target—will be judged more competitive. For example, an organization requesting $150,000 will be more competitive if the proposal contains at least $75,000 in allowable cost sharing.

Allowable costs include the following:

1. Direct Program Expenses (including general program expenses, such as orientation and program-related supplies, educational materials, traveling campaigns, consultants, interpreters, and room rental; and participant program expenses, such as domestic and international travel and per diem)

2. Administrative Expenses, including indirect costs (*i.e.* salaries, telephone/fax, and other direct administrative costs)

3. Travel costs for visa processing purposes: All foreign participants funded by any grant agreement resulting from this competition must travel on J–1 visas. Failure to secure a J–1 visa for the foreign participant will preclude charging the participant's cost to the grant agreement. Participants will apply for J–1 visas only after the Office of Citizen Exchanges and the mission Public Affairs Section or consulate have approved their participation in this program. The Office of Citizen Exchanges will issue DS–2019 forms and deliver to foreign program visitors through the mission Public Affairs Section. All J visas for Afghan program visitors must be issued by the U.S. Consulate in Islamabad or Peshawar, so proposals should include costs for potential participants to travel to Kabul to pick up DS–2019 forms and to Pakistan for visa interviews and processing.

Please refer to the Solicitation Package for complete budget guidelines and formatting instructions. Instructions for downloading the Solicitation Package are provided below.

Announcement Title and Number

All correspondence with the Bureau concerning this RFGP should reference the above title and number: ECA/PE/C/NEA–AF–04–41.

To Download a Solicitation Package Via Internet

The entire Solicitation Package (Request for Grant Proposal and Proposal Submission Instructions), may be downloaded from the Bureau's Web site: <*http://exchanges.state.gov/education/rfgps*>.

Please read all information before downloading. If you are unable to download the Solicitation Package from the Department of State ECA Web site, you may request a copy, which contains required application forms, specific budget instructions, and standard guidelines for proposal preparation, from the Office of Citizen Exchanges.

New OMB Requirement

An OMB policy directive published in the **Federal Register** on Friday, June 27, 2003, requires that all organizations applying for Federal grants or cooperative agreements must provide a Dun and Bradstreet (D&B) Data Universal Numbering System (DUNS) number when applying on or after October 1, 2003. The complete OMB policy directive can be referenced at *http://www.whitehouse.gov/omb/fedreg/062703_grant_identifier.pdf*. Please also visit the ECA Web site at *http://exchanges.state.gov/education/rfgps/menu.hum* for additional information on how to comply with this new directive.

FOR FURTHER INFORMATION CONTACT: The Office of Citizen Exchanges, ECA/PE/C/NEA–AF, U.S. Department of State, 301 Fourth St., SW., Room 216, Washington, DC 20547, Attention: Katherine Van de Vate or Thomas Johnston; Telephone number: 202/619–5320; fax number: 202/619–4350; Internet e-mail address: *vandevatek@pd.state.gov* or *tjohnsto@pd.state.gov*.

Organizations planning to submit proposals are encouraged to contact the program office for consultation. Before doing so, applicants should read the complete **Federal Register** announcement and be prepared to discuss a concrete concept specific to the guidelines set forth in this request for grant proposals (RFGP). Once the RFGP deadline has passed, Bureau staff may not discuss this competition with applicants until the proposal review process has been completed.

Shipment and Deadline for Proposals

Important Note: The deadline for this competition is Friday, February 6, 2004. In light of recent events and heightened security measures, proposal submissions must be made via a nationally recognized overnight delivery service (*i.e.*, DHL, Federal Express, UPS, Airborne Express, or U.S. Postal Service Express Overnight Mail, *etc.*) and be shipped no later than the above deadline. The delivery services used by applicants must have in-place, centralized shipping identification and tracking systems that may be accessed via the Internet and delivery people who are identifiable by commonly recognized uniforms and delivery vehicles. Proposals shipped on or before the above deadline but received at ECA more than seven days after the deadline will be ineligible for further consideration under this competition. Proposals shipped after the established deadline are ineligible for consideration under this competition. It is each applicant's responsibility to ensure that each package is marked with a legible tracking number and to monitor/confirm delivery to ECA via the Internet. Delivery of proposal packages may not be made via local courier service or in person for this competition. Faxed documents will not be accepted at any time. Only proposals submitted as stated above will be considered.

Applicants must follow all instructions in the Solicitation Package. The original and 10 copies of the proposal should be sent to: U.S. Department of State, SA–44, Bureau of Educational and Cultural Affairs, Ref.: ECA/PE/C/NEA–AF–04–41, Program Management, ECA/EX/PM, Room 534, 301 Fourth St., SW., Washington, DC 20547.

Applicants must also submit the "Executive Summary," "Proposal Narrative," and "Budget" sections of the proposal in text (.txt) format on a PC-formatted disk. ECA will transmit these files electronically to the Public Affairs Sections of the relevant U.S. Embassies for review. Once the deadline for submission has passed, Bureau staff may not discuss this competition in any way with applicants until the proposal review process has been completed.

Diversity, Freedom and Democracy Guidelines

Pursuant to ECA's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social, and cultural life. "Diversity" should be interpreted in the broadest sense and encompass differences including, but not limited to ethnicity, race, gender, religion, geographic location, socio-economic status, and physical challenges. Applicants are strongly encouraged to adhere to the advancement of this principle both in program administration and in program content. Please refer to the review criteria under the 'Support for Diversity' section for specific suggestions on incorporating diversity into the total proposal. Public Law 104–319 provides that "in carrying out programs of educational and cultural exchange in countries whose people do not fully enjoy freedom and democracy," the Bureau "shall take appropriate steps to provide opportunities for participation in such programs to human rights and democracy leaders of such countries." Public Law 106–113 requires that the governments of the countries described above do not have inappropriate influence in the selection process. Proposals should reflect advancement of these goals in their program contents, to the full extent deemed feasible.

Review Process

The Bureau will acknowledge receipt of all proposals and will review them for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines stated herein and in the Solicitation Package. All eligible proposals will be reviewed by the Program Office, as well as by Public Affairs Section Kabul, and the Global Issues Bureau Office of International Women's Issues on behalf of the US-Afghan Women's Council. Eligible proposals will be forwarded to panels of State Department officers for advisory review. Proposals may also be reviewed by the Office of the Legal Advisor or by other Department elements. Final funding decisions are at the discretion of the Department of State's Assistant Secretary for Educational and Cultural Affairs. Final technical authority for assistance awards (grants or cooperative agreements) resides with the Bureau's Grants Officer.

Review Criteria

Technically eligible applications will be competitively reviewed according to the criteria stated below. These criteria are not rank-ordered and all carry equal weight in proposal evaluation.

1. *Quality of Program Idea:* Proposals should be substantive, well thought-out, focused on issues of demonstrable relevance to all proposed participants, and responsive, in general, to the exchange suggestions and guidelines described above.

2. *Implementation Plan and Ability to Achieve Objectives:* A detailed project implementation plan should establish a clear and logical connection between the interest, the expertise, and the logistic capacity of the applicant and the objectives to be achieved. The proposal should discuss, in concrete terms, how the institution plans to achieve the objectives. Institutional resources—including personnel—assigned to the project should be adequate and appropriate. The substance of workshops and site visits should be included as an attachment, and the responsibilities of U.S. participants and in-country partners should be clearly described.

3. *Institution's Record/Ability:* Proposals should include an institutional record of successful exchange programs, with reference to responsible fiscal management and full compliance with reporting requirements.

4. *Cost Effectiveness and Cost Sharing:* Administrative costs should be kept to a minimum. Proposals should maximize cost sharing through in-cash and in-kind contributions from the U.S. and partner organization(s). Proposals which clearly demonstrate significant cost-sharing—with 50% of the amount requested from ECA as the preferred target—will be judged more competitive.

5. *Program Evaluation:* Proposals must include a plan and methodology to evaluate the program's successes and challenges. The evaluation plan should show a clear link between program objectives and expected outcomes, and should include a brief description of performance indicators and measurement tools. A draft questionnaire for evaluation purposes may be attached to support the proposal.

6. *Support of Diversity:* Proposals should demonstrate substantive support of ECA's policy on diversity. Program content (orientation, evaluation, program sessions, resource materials, follow-on activities) and program administration (selection process, orientation, evaluation) should address diversity in a comprehensive and relevant manner. Applicants should refer to ECA's Diversity, Freedom and Democracy Guidelines on page four of the Proposal Submission Instructions (PSI).

Authority

Overall grant-making authority for this program is contained in the Mutual Educational and Cultural Exchange Act of 1961, Public Law 87–256, as amended, also known as the Fulbright-Hays Act. The purpose of the Act is "to enable the Government of the United States to increase mutual understanding between the people of the United States and the people of other countries; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations and thus to assist in the development of friendly, sympathetic and peaceful relations between the United States and other countries of the world."

Notice

The terms and conditions published in this RFGP are binding and may not be modified by any Bureau representative. Explanatory information provided by the Bureau or program officers that contradicts published language will not be binding. Issuance of the RFGP does not constitute an award commitment on the part of the U.S. Government. The Bureau reserves the right to reduce, revise, or increase proposal budgets in accordance with the needs of the program and the availability of funds. Awards made will be subject to periodic reporting and evaluation requirements. Organizations will be expected to cooperate with the Bureau in evaluating their programs under the principles of the Government Performance and Results Act (GPRA) of 1993, which requires federal agencies to measure and report on the results of their programs and activities.

Notification

Final awards cannot be made until funds have been appropriated by Congress, allocated and committed through internal Bureau procedures.

Dated: December 2, 2003.

C. Miller Crouch,

Principal Deputy Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 03–30616 Filed 12–10–03; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice 4552]

Bureau of Educational and Cultural Affairs Request for Grant Proposal: High School Social Science Curriculum Development and Teacher Education Project for Armenia

SUMMARY: The Office of Global Educational Programs of the Bureau of Educational and Cultural Affairs in the Department of State announces an open competition for an assistance award to support planning, implementing and evaluating a project to improve social studies education at the high school level in Armenia through subject-related curriculum development and teacher training. Public and private non-profit organizations meeting the provisions described in IRS regulation 26 U.S.C. 501(c)(3) may submit proposals to cooperate with the Bureau in the administration of a three-year project to develop social studies curricula together with a related teaching methodology manual for high school teachers, and to pilot-test and disseminate the curricula and the teachers' manual in schools and at teacher training sites in Armenia.

Important Note: This Request for Grant Proposals contains language in the "Shipment and Deadline for Proposals" that is significantly different from that used in the past. Please pay special attention to procedural changes as outlined.

Project Overview

The project is intended to assist Armenian educators to improve high school-level social studies education in their country. The project will train a team of educators from Armenia to develop curricula in a limited range of social studies subjects. The same team will develop a handbook on teaching methodology for high school teachers that will relate to the subject-specific curricular materials. The materials and the teachers' handbook will be tested

and disseminated in classrooms and at teacher training sites in Armenia.

The rationale for this project is that by introducing more interactive, student-centered teaching practices tied to relevant social studies in Armenia, educators in that country will be better equipped to prepare high school students to participate as citizens in a democratic society.

As part of the effort to promote cooperative relationships within a democratic society, the project will also prepare teachers to relate effectively with other members of the educational community including administrators, parents, students, and officials responsible for educational oversight.

Project Design

The process for developing, testing, publishing, and disseminating the materials and the handbook should include a carefully designed series of exchange visits and related activities within a three-year period. Proposals should describe a strategy for administering the project effectively and for evaluating the results of project implementation. Proposals should also demonstrate that the project's objectives are feasible within the budget proposed and take into account local conditions that may affect recruitment, implementation, teacher training or pilot testing activities in Armenia.

The project design should be outlined within the general framework of three project phases. Full details for each project phase are contained in the POGI.)

Phase One: Recruitment of Participants, Selection of Subjects, and Arrangement of Administrative Details

Although some of the activities in Phase I may be initiated and implemented through correspondence or other kinds of distance communication, the U.S. grantee organization should include within Phase I a planning trip of approximately two to four weeks to Yerevan.

(1) *Recruitment of participants:* Within the first six months of the project, the U.S. grantee organization will communicate with the Public Affairs Section of the U.S. Embassy in Yerevan and with representatives of a local NGO active in the education sector or with other local educators to coordinate the recruitment and selection of approximately six Armenian participants for the curriculum development team. The U.S. applicant should identify in the proposal an NGO or a network of high school and/or social studies educators in Armenia with whom the applicant proposes to work in the recruitment effort. The curriculum development team should include participants with previous training and professional experience with social studies education at the high school level, curriculum development and in-service teacher training.

(2) After the curriculum development team has been selected, the grantee organization should consult with the team members and with other social studies educators in Armenia to assess the high school social studies curricula and related teaching materials that are currently in use as well as the U.S. materials that may be relevant to the needs of high school teachers in Armenia. Based on that analysis, the curriculum development team will select the social studies subjects in which the curricular materials will be developed and the methodologies which the teachers' manual will target.

(3) The grantee organization should consult with the Armenian Ministry of Education regarding the following key features of the project (See POGI for contact information): (a) Approval of paid leave for the Armenian participants during their stays in the U.S. and during subsequent periods of training in Armenia; (b) facilitation of the logistics for the training sessions to be conducted in Armenia through signed agreements with the Ministry of Education or other education authorities; (c) if the project includes activities that will ultimately require government approval, the proposal should include a plan for securing the approval of the Ministry or other relevant educational authorities.

Phase Two: U.S. Workshop

In Phase II of this project, members of the curriculum development team from Armenia will spend approximately 12 weeks in the U.S. attending an intensive curriculum development workshop. The U.S. grantee organization will conduct the workshop at which the team will draft the curricular materials and the teachers' manual in consultation with U.S. specialists with expertise on the targeted subjects and methodologies. The U.S. workshop should include opportunities for the direct observation of U.S. classroom teaching, school administration, and community involvement as appropriate. Consultations with U.S. teachers and professional counterparts, including mentored attendance at professional meetings, may also be appropriate. Proposals should incorporate sufficient time for writing the curricular materials and teachers' manual so that working drafts will have been completed by the time the curriculum development team returns to Armenia.

Phase Three: Pilot-Testing, Teacher Training, Publication, and Dissemination

In Phase III of the project, the grantee organization will implement a program for testing, revising and publishing the curricular materials and teachers' manual drafted in Phase II. Proposals should describe a strategy for collaborating with local high schools, other appropriate educational organizations, and teacher training networks in Armenia to facilitate pilot testing of the curricular materials and the teachers' manual and to train teachers to use these materials in their classrooms. Targeted high schools should include those involved with the Armenia "Connectivity Project" sponsored by the Bureau of Educational and Cultural Affairs. (Information on the Armenia Connectivity Project can be found at *http://www.projectharmony.am).*

Proposals should demonstrate an ability to coordinate and to monitor Phase III activities. Proposals should describe the composition and size of the teacher and student populations that will benefit from the innovations to be introduced through the curriculum development and teacher training effort. In addition, proposals should describe (or outline a strategy for ascertaining) feasible options for publishing the curricular materials and the teachers' manual for dissemination at high schools throughout Armenia.

Project Duration

Pending the availability of funds, grant activities should begin on or around June 1, 2004 and should last for a three-year period. Grant activities are expected to be completed within the three-year timeframe as additional funds beyond the initial grant award are not anticipated.

Project Evaluation

Proposals should describe and budget for project evaluation. Organizations that are awarded Bureau grants must formally submit periodic reports to the Bureau on the project's activities in relation to its objectives. The formal evaluation reports should include an assessment of the status of high school social studies education in Armenia at the time of program inception with specific reference to project objectives; formative evaluation to allow for mid-course revisions in the implementation strategy; and, at the conclusion of the project, summative evaluation of the degree to which the project's objectives have been achieved. The proposal should discuss how the issues raised throughout the formative evaluation process will be assessed and addressed. The summative evaluation should describe the project's influence on the participating institutions and participants, as well as the educational community in Armenia. The summative evaluation should also include recommendations about how to build upon project achievements without additional Bureau support. The use of external evaluators with appropriate subject, cultural, and regional expertise is encouraged. Copies of evaluation reports must be provided to the Department of State.

The grantee organization will be expected to submit intermediate program and financial reports after each project component is concluded. In addition to the formally scheduled reports, the evaluation strategy should include a mechanism for promptly providing the Bureau with information that will equip the Department of State to summarize and illustrate project activities and achievements as they occur.

Project Administration

Proposals should explain how project activities will be administered both in the U.S. and overseas in ways that will ensure that the project maintains a focus on its objectives while adjusting to changing conditions, assessments, and opportunities.

Budget Guidelines

The Bureau anticipates awarding one grant not to exceed $395,000 to support program and administrative costs required to conduct this project. Additional funds beyond the initial grant award are not anticipated. The Bureau encourages applicants to provide maximum levels of cost sharing and funding from private sources in support of its programs. These contributions may include estimated in-kind contributions. Bureau guidelines require that grants to organizations with less than four years of experience in conducting international exchanges be limited to $60,000. Therefore, organizations with less than four years' experience in conducting international exchanges are ineligible to apply under this competition.

Applicants must submit a comprehensive budget for the entire program. There must be a summary budget as well as breakdowns reflecting both administrative and program budgets. Applicants may provide separate sub-budgets for each program component, phase, location, or activity to provide clarification. The summary and the detailed project and administrative budget should be accompanied by a narrative which explains and justifies the amounts requested.

Allowable costs for the program include the following:

(1) Administrative costs, including salaries and benefits.

(2) Program costs, including general program costs and program costs for individual participants in project activities. Please refer to the POGI for complete budget and formatting guidelines.

Announcement Title and Number: All correspondence with the Bureau concerning this RFGP should reference the above title and number *ECA/A/S/U–04–06.*

FOR FURTHER INFORMATION CONTACT: The Humphrey Fellowships and Institutional Linkages Branch, Office of Global Educational Programs, U.S. Department of State, 301 4th Street, SW., Washington, DC 20547, telephone: (202) 205–8379; Fax: (202) 401–1433; or *jcebra@pd.state.gov,* to request a solicitation package. The Solicitation Package contains detailed award criteria, required application forms, specific budget instructions, and standard guidelines for proposal preparation. Please specify Bureau Program Officer Jonathan Cebra on all other inquiries and correspondence.

Please read the complete **Federal Register** announcement before sending inquiries or submitting proposals. Once the RFGP deadline has passed, Bureau staff may not discuss this competition with applicants until the proposal review process has been completed.

To Download a Solicitation Package Via Internet: The entire Solicitation Package may be downloaded from the Bureau's Web site at *http://exchanges.state.gov/education/RFGPs.* Please read all information before downloading.

New OMB Requirement

An OMB policy directive published in the **Federal Register** on Friday, June 27, 2003, requires that all organizations applying for Federal grants or cooperative agreements must provide a Dun and Bradstreet (D&B) Data Universal Numbering System (DUNS) number when applying for all Federal grants or cooperative agreements on or after October 1, 2003. The complete OMB policy directive can be referenced at *http://www.whitehouse.gov/omb/fedreg/062703_grant_identifier.pdf.* Please also visit the ECA Web site at *http://exchanges.state.gov/education/rfgps/menu.htm* for additional information on how to comply with this new directive.

Shipment and Deadline for Proposals

Important Note: The deadline for this competition is Monday, February 9, 2004.

In light of recent events and heightened security measures, proposal submissions must be sent via a nationally recognized overnight delivery service (*i.e.*, DHL, Federal Express, UPS, Airborne Express, or U.S. Postal Service Express Overnight Mail, *etc.*) and **be shipped no later than the above deadline.** The delivery services used by applicants must have in-place, centralized shipping identification and tracking systems that may be accessed via the Internet and delivery people who are identifiable by commonly recognized uniforms and delivery vehicles. It is each applicant's responsibility to ensure that each package is marked with a legible tracking number and to monitor/confirm delivery via the Internet. Faxed documents will not be accepted at any time.

Applicants must follow all instructions in the Solicitation Package. The original and eight copies of the application should be sent to: U.S. Department of State, SA–44, Bureau of Educational and Cultural Affairs, Ref.: ECA/A/S/U–04–05, Program Management, ECA/EX/PM, Room 534, 301 4th Street, SW., Washington, DC 20547.

Applicants must also submit the "Executive Summary" and "Proposal Narrative" sections of the proposal on a 3.5" diskette, formatted for DOS. These documents must be provided in ASCII text (DOS) format with a maximum line length of 65 characters. The Bureau will transmit these files electronically to the Public Affairs section at the US Embassy for its review, with the goal of reducing the time it takes to get embassy comments for the Bureau's grants review process.

Diversity, Freedom and Democracy Guidelines

Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social, and cultural life. "Diversity" should be interpreted in the broadest sense and encompass differences including, but not limited to ethnicity, race, gender, religion, geographic location, socio-economic status, and physical challenges. Applicants are strongly encouraged to adhere to the advancement of this principle both in program administration and in program content. Please refer to the review criteria under the 'Support for Diversity'

section for specific suggestions on incorporating diversity into the total proposal. Pub. L. 104–319 provides that "in carrying out programs of educational and cultural exchange in countries whose people do not fully enjoy freedom and democracy," the Bureau "shall take appropriate steps to provide opportunities for participation in such programs to human rights and democracy leaders of such countries." Pub. L. 106–113 requires that the governments of the countries described above do not have inappropriate influence in the selection process. Proposals should reflect advancement of these goals in their program contents, to the full extent deemed feasible.

Adherence to All Regulations Governing the J Visa

The Bureau of Educational and Cultural Affairs is placing renewed emphasis on the secure and proper administration of Exchange Visitor (J visa) Programs and adherence by grantees and sponsors to all regulations governing the J visa. Therefore, proposals should demonstrate the applicant's capacity to meet all requirements governing the administration of Exchange Visitor Programs as set forth in 22 CFR 6Z, including the oversight of Responsible Officers and Alternate Responsible Officers, screening and selection of program participants, provision of pre-arrival information and orientation to participants, monitoring of participants, proper maintenance and security of forms, record-keeping, reporting and other requirements.

The Grantee will be responsible for issuing DS–2019 forms to participants in this program. A copy of the complete regulations governing the administration of Exchange Visitor (J) programs is available at *http://exchanges.state.gov* or from: United States Department of State, Office of Exchange Coordination and Designation, ECA/EC/ECD—SA–44, Room 734, 301 4th Street, SW., Washington, DC 20547, Telephone: (202) 401–9810, FAX: (202) 401–9809.

Review Process

The Bureau will acknowledge receipt of all proposals and will review them for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines stated herein and in the Solicitation Package. The program office, as well as the Public Affairs Section overseas, where appropriate will review all eligible proposals. Eligible proposals will be forwarded to panels of Bureau officers for advisory review. Proposals may also be reviewed by the Office of the Legal Adviser or by other Department elements. Final funding decisions are at the discretion of the Department of State's Assistant Secretary for Educational and Cultural Affairs. Final technical authority for assistance awards (grants or cooperative agreements) resides with the Bureau's Grants Officer.

Review Criteria

Technically eligible applications will be competitively reviewed according to the criteria stated below. These criteria are not rank ordered and all carry equal weight in the proposal evaluation:

1. *Quality of the program idea:* Proposals should exhibit originality, substance, precision, and relevance to the Bureau's mission and responsiveness to the objectives and guidelines stated in this solicitation. Proposals should demonstrate substantive expertise in curriculum development, social studies education at the high school level, and teacher training.

2. *Creativity and feasibility of program plan:* A detailed agenda and a relevant work plan should demonstrate substantive undertaking, logistical capacity, and a creative utilization of resources and of relevant professional development opportunities. The agenda and work plan should be consistent with the program overview and project design that are outlined in this solicitation.

3. *Ability to achieve project objectives:* Objectives should be reasonable, feasible, and flexible. Proposals should clearly demonstrate how the institution will meet the program's objectives and plan. Proposals should demonstrate an understanding of educational issues in Armenia.

4. *Support of Diversity:* Proposals should demonstrate substantive support of the Bureau's policy on diversity by explaining how issues of diversity are included in program design and implementation. Achievable and relevant features should be cited in both program administration (selection of participants, program venue and program evaluation) and program content (orientation and wrap-up sessions, program meetings, resource materials and follow-up activities). The proposal should demonstrate an understanding of the specific diversity needs in Armenia and should address these needs in terms of the project themes and objectives.

5. *Institutional capacity and record:* Proposed personnel and institutional resources should be adequate and appropriate to achieve the goals of the project. Proposals should demonstrate an institutional record of successful exchange activities, including responsible fiscal management and full compliance with all reporting requirements for past Bureau grants as determined by the Bureau's grants staff. The Bureau will consider the past performance of prior grant recipients as well as the demonstrated potential of new applicants.

6. *Project Evaluation:* Proposals should include a plan to evaluate the activity's success, both as the activities unfold and at the end of the program. A draft survey questionnaire or other evaluation technique should be included together with the description of how project outcomes will be compared with project objectives.

7. *Follow-on Activities:* Proposals should provide a plan for continued follow-on activity (without Bureau support) that ensures that the project activities are not isolated events but are part of a coherent and on-going plan to improve education in Armenia.

8. *Cost-effectiveness:* The overhead and administrative components of the proposal, including salaries and honoraria, should be reasonable and appropriate and should reflect a commitment to pursuing project objectives. The Bureau views cost sharing as a reflection of institutional commitment to the project. Contributions should not be limited to indirect costs.

Authority

Overall grant making authority for this program is contained in the Mutual Educational and Cultural Exchange Act of 1961, Pub. L. 87–256, as amended, also known as the Fulbright-Hays Act. The purpose of the Act is "to enable the Government of the United States to increase mutual understanding between the people of the United States and the people of other countries * * *; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations * * * and thus to assist in the development of friendly, sympathetic and peaceful relations between the United States and the other countries of the world." The funding authority for the program above is provided through the Freedom for Russia and Emerging Eurasian Democracies and Open Markets Support Act of 1993 (FREEDOM Support Act). Programs and projects must conform to Bureau requirements and guidelines outlined in the Solicitation Package. Bureau projects and programs are subject to the availability of funds.

Notice

The terms and conditions published in this RFGP are binding and may not be modified by any Bureau representative. Explanatory information provided by the Bureau that contradicts published language will not be binding. Issuance of the RFGP does not constitute an award commitment on the part of the Government. The Bureau reserves the right to reduce, revise, or increase proposal budgets in accordance with the needs of the program and the availability of funds. Awards made will be subject to periodic reporting and evaluation requirements.

Notification

Final awards cannot be made until funds have been appropriated by Congress, allocated and committed through internal Bureau procedures.

Dated: December 3, 2003.

C. Miller Crouch,

Principal Deputy Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 03–30615 Filed 12–10–03; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice No. (4553)]

Determination Under Presidential Proclamation

I hereby make the determination provided for in Section 5 of the Presidential Proclamation No. 7060, of December 12, 1997, that the suspension of entry into the United States as immigrants or nonimmigrants of senior officials of the National Union for the Total Independence of Angola (UNITA) and adult dependents of their immediate families is no longer necessary. Restrictions imposed in said proclamation pursuant to Section 212(f) of the Immigration and Nationality Act of 1952, as amended (8 U.S.C. 1182(f)), shall therefore lapse, and said proclamation shall terminate, effective immediately.

This determination shall be published in the **Federal Register**.

Dated: November 28, 2003.

Colin L. Powell,

Secretary of State, Department of State.

[FR Doc. 03–30614 Filed 12–10–03; 8:45 am]

BILLING CODE 4710–26–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Determinations Under the African Growth and Opportunity Act

AGENCY: Office of the United States Trade Representative.

ACTION: Notice.

SUMMARY: The United States Trade Representative (USTR) has determined that Mali has adopted an effective visa system and related procedures to prevent unlawful transshipment and the use of counterfeit documents in connection with shipments of textile and apparel articles and has implemented and follows, or is making substantial progress toward implementing and following, the customs procedures required by the African Growth and Opportunity Act (AGOA). Therefore, imports of eligible products from Mali qualify for the textile and apparel benefits provided under the AGOA.

DATES: Effective December 11, 2003.

FOR FURTHER INFORMATION CONTACT: Patrick Coleman, Director for African Affairs, Office of the United States Trade Representative, (202) 395–9514.

SUPPLEMENTARY INFORMATION: The AGOA (Title I of the Trade and Development Act of 2000, Public Law 106–200) provides preferential tariff treatment for imports of certain textile and apparel products of beneficiary sub-Saharan African countries. The textile and apparel trade benefits under the AGOA are available to imports of eligible products from countries that the President designates as "beneficiary sub-Saharan African countries," provided that these countries: (1) Have adopted an effective visa system and related procedures to prevent unlawful transshipment and the use of counterfeit documents; and (2) have implemented and follow, or are making substantial progress toward implementing and following, certain customs procedures that assist the Customs Service in verifying the origin of the products.

In Proclamation 7350 (Oct. 2, 2000), the President designated Mali as a "beneficiary sub-Saharan African country." Proclamation 7350 delegated to the USTR the authority to determine whether designated countries have met the two requirements described above. The President directed the USTR to announce any such determinations in the **Federal Register** and to implement them through modifications of the Harmonized Tariff Schedule of the United States (HTS). Based on actions that Mali has taken, I have determined that Mali has satisfied these two requirements.

Accordingly, pursuant to the authority vested in the USTR by Proclamation 7350, U.S. note 7(a) to subchapter II of chapter 98 of the HTS and U.S. note 1 to subchapter XIX of chapter 98 of the HTS are each modified by inserting "Mali" in alphabetical sequence in the list of countries. The foregoing modifications to the HTS are effective with respect to articles entered, or withdrawn from warehouse for consumption, on or after the effective date of this notice. Importers claiming preferential tariff treatment under the AGOA for entries of textile and apparel articles should ensure that those entries meet the applicable visa requirements. *See Visa Requirements Under the African Growth and Opportunity Act*, 66 FR 7837 (2001).

Robert B. Zoellick,

United States Trade Representative.

[FR Doc. 03–30718 Filed 12–10–03; 8:45 am]

BILLING CODE 3190–W3–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Technical Corrections to the Harmonized Tariff Schedule of the United States

AGENCY: Office of the United States Trade Representative.

ACTION: Notice.

SUMMARY: Pursuant to authority delegated to the United States Trade Representative ("USTR") in Presidential Proclamation 6969 of January 27, 1997 (62 FR 4415), USTR is making technical corrections to subchapter III of chapter 99 of the Harmonized Tariff Schedule of the United States ("HTS") as set forth in the annex to this notice. These modifications correct several inadvertent errors and omissions in subheadings 9903.72.30 through 9903.74.24 of the HTS so that the intended tariff treatment is provided. In addition, USTR is modifying other portions of the HTS so as to reflect the correct treatment of goods described in general note 10(c) of the HTS and subheading 2933.59.95 of the HTS.

EFFECTIVE DATE: The corrections made in this notice are effective with respect to articles entered, or withdrawn from warehouse for consumption, on or after the dates set forth in the annex to this notice.

FOR FURTHER INFORMATION CONTACT: Office of Industry, Office of the United States Trade Representative, 600 17th

Street, NW., Room 501, Washington, DC 20508. Telephone (202) 395–5656.

SUPPLEMENTARY INFORMATION: On March 5, 2002, pursuant to section 203 of the Trade Act of 1974, as amended (the "Trade Act") (19 U.S.C. 2253), the President issued Proclamation 7529 (67 FR 10553), which imposed tariffs and a tariff-rate quota on (a) certain flat steel, consisting of: slabs, plate, hot-rolled steel, cold-rolled steel, and coated steel; (b) hot-rolled bar; (c) cold-finished bar; (d) rebar; (e) certain tubular products; (f) carbon and alloy fittings; (g) stainless steel bar; (h) stainless steel rod; (i) tin mill products; and (j) stainless steel wire, as provided for in subheadings 9903.72.30 through 9903.74.24 of the Harmonized Tariff Schedule of the United States ("HTS") ("safeguard measures") for a period of three years plus 1 day. Effective with respect to goods entered, or withdrawn from warehouse for consumption, on or after 12:01 a.m., e.s.t., on March 20, 2002, Proclamation 7529 modified subchapter III of chapter 99 of the HTS so as to provide for such increased duties and a tariff-rate quota. Proclamation 7529 also delegated to the USTR the authority to consider requests for exclusion of a particular product submitted in accordance with the procedures set out in 66 FR 54321, 54322–54323 (October 26, 2001) and, upon publication in the **Federal Register** of a notice of his finding that a particular product should be excluded, to modify the HTS provision created by the annex to that proclamation to exclude such particular product from the pertinent safeguard measure. On April 5, 2002, USTR published a notice in the **Federal Register** excluding particular products from the safeguard measures, and modified the HTS accordingly. 67 FR 16484. On July 3, the President issued Proclamation 7576, which extended the period for granting exclusions until August 31, 2002. On July 12, 2002, August 30, 2002, and March 31, 2003, USTR published notices in the **Federal Register** excluding additional products from the safeguard measures, and modified the HTS accordingly. 67 FR 46221, 67 FR 56182, and 68 FR 15494.

On March 19, 2002, June 4, 2002, July 12, 2002, August 30, 2002, November 14, 2002, February 11, 2003, March 31, 2003 and June 9, 2003, USTR published **Federal Register** notices (67 FR 12635, 67 FR 38541, 67 FR 46221, 67 FR 56182, 67 FR 69065, 68 FR 6982, 68 FR 15494, 68 FR 34462 respectively) making technical corrections to subchapter III of chapter 99 of the HTS to remedy several technical errors introduced in the annex to Proclamation 7529. These corrections ensured that the intended tariff treatment was provided. Since the publication of these **Federal Register** notices, additional technical errors and omissions in subchapter III of chapter 99 have come to the attention of USTR. Annex I to this notice makes technical corrections to the HTS to remedy these errors and omissions. In particular, the annex to this notice corrects errors in the descriptions of the physical dimensions, chemical composition, or mechanical characteristics of certain products excluded from the application of the safeguard measures.

In addition, it has come to the attention of USTR that there are technical errors and omissions in other chapters of the HTS due to prior proclamations unrelated to Proclamation 7529. Annex II to this notice makes two corrections in the HTS so as to ensure that the intended tariff treatment is accorded. Such corrections are being made pursuant to authority delegated to the USTR in Presidential Proclamation 6969 of January 27, 1997 (62 FR 4415). These modifications correct an inadvertent error in a provision of Presidential Proclamation 6763 of December 23, 1994 (60 FR 1007, 1196) and an inadvertent omission of a conforming change by Presidential Proclamation 7616 of October 31, 2002 (67 FR 67283, 67290) following enactment of section 3106 of the Trade Act of 2002. These changes would appear to have no impact on duty treatment.

Proclamation 6969 authorized the USTR to exercise the authority provided to the President under section 604 of the Trade Act of 1974 (19 U.S.C. 2483) to embody rectifications, technical or conforming changes, or similar modifications in the HTS. Under authority vested in the USTR by Proclamation 6969, the rectifications, technical and conforming changes, and similar modifications set forth in the annex to this notice shall be embodied in the HTS with respect to goods entered, or withdrawn from warehouse for consumption, on or after the dates set forth in the Annex to this notice.

Robert B. Zoellick,

United States Trade Representative.

Annex I

Section I. Effective March 31, 2003 the notice published at 68 FR 15494–15544 is modified by deleting part 1(C) of section I from the annex.

Section II. Unless otherwise specified in a subdivision herein, the following modifications of subchapter III of chapter 99 of the Harmonized Tariff Schedule of the United States shall be effective with respect to goods entered, or withdrawn from warehouse for consumption, on or after 12:01 a.m. EST, on or after the effective date of the individual HTS provision or text being corrected.

1. U.S. note 11 to such subchapter III is hereby modified as follows:

(A) In subdivision (b)(xvi)(A), "1600 mm" is deleted and "1625 mm" is inserted in lieu thereof; "manganese of 2.0" is deleted and "manganese of 2.1" is inserted in lieu thereof; and "minimum" is inserted immediately before "elongation";

(B) In subdivision (b)(xvi)(B), "1600 mm" is deleted and "1625 mm" is inserted in lieu thereof; "minimum yield strength of 793 MPa" is deleted and "yield strength of 700 to 875 MPa" is inserted in lieu thereof; "minimum tensile strength of 931 MPa" is deleted and "tensile strength of 790 to 1100 MPa" is inserted in lieu thereof; and "minimum" is inserted immediately before "elongation";

(C) In subdivision (b)(lii)(A), "0.274 mm" is deleted and "0.273 mm" is inserted in lieu thereof;

(D) In subdivision (c)(xxix)(A), "A624–98" is deleted and "A625–98" is inserted in lieu thereof, and "black plate" is inserted after "reduced";

(E) In subdivision (c)(xxix)(B), "A624–98" is deleted and "A625–98" is inserted in lieu thereof, and "black plate" is inserted after "reduced";

(F) In subdivision (c)(xxxix), "during the 12-month period beginning on July 3, 2002, or July 3, 2003, or during the period July 3, 2004, through March 20, 2005, inclusive;" is deleted and "during the 12-month period beginning on July 12, 2002, or July 12, 2003, or during the period July 12, 2004, through March 20, 2005, inclusive;" is inserted in lieu thereof;

(G) In subdivision (c)(l)(B), "phosphorus 0.012 percent" is deleted and "phosphorus 0.12 percent" is inserted in lieu thereof;

(H) In subdivision (c)(lxx)(B), "carbon 0.13" is deleted and "carbon 0.125 to 0.18" is inserted in lieu thereof; "silicon 0.20" is deleted and "silicon 0.3 to 0.7" is inserted in lieu thereof; "manganese 1.5" is deleted and "manganese 1.3 to 1.75" is inserted in lieu thereof; "niobium (columbium) 0.015" is deleted and "niobium (columbium) 0.005 to 0.025" is inserted in lieu thereof; and "aluminum 0.04" is deleted and "aluminum 0.01 to 0.075" is inserted in lieu thereof;

(I) In subdivision (c)(lxx)(E), "carbon 0.14" is deleted and "carbon 0.1 to 0.155" is inserted in lieu thereof; "silicon 0.20" is deleted and "silicon 0.12 to 0.35" is inserted in lieu thereof; "manganese 1.7" is deleted and "manganese 1.45 to 2.0" is inserted in lieu thereof; "niobium (columbium) 0.015" is deleted and "niobium (columbium) 0.005 to 0.025" is inserted in lieu thereof; and "aluminum 0.04" is deleted and "aluminum 0.01 to 0.075" is inserted in lieu thereof;

(J) In subdivision (c)(lxxii)(A), "carbon 0.11" is deleted and "carbon 0.08 to 0.14" is inserted in lieu thereof; "silicon 0.20" is deleted and "silicon 0.05 to 0.45" is inserted in lieu thereof; "manganese 0.70" is deleted and "manganese 0.5 to 1.0" is inserted in lieu thereof; and "aluminum 0.04" is deleted and "aluminum 0.015 to 0.075" is inserted in lieu thereof;

(K) In subdivision (c)(lxxii)(B), "carbon 0.10" is deleted and "carbon 0.08 to 0.125" is inserted in lieu thereof; "silicon 0.40" is deleted and "silicon 0.3 to 0.55" is inserted in lieu thereof; "manganese 1.50" is deleted and "manganese 1.35 to 1.65" is inserted in lieu thereof; and "aluminum 0.04" is deleted and "aluminum 0.015 to 0.075" is inserted in lieu thereof;

(L) In subdivision (c)(lxxii)(C), "carbon 0.13" is deleted and "carbon 0.1 to 0.155" is inserted in lieu thereof; "silicon 0.20" is deleted and "silicon 0.12 to 0.35" is inserted in lieu thereof; "manganese 1.50" is deleted and "manganese 1.35 to 1.65" is inserted in lieu thereof; "niobium (columbium) 0.015" is deleted and "niobium (columbium) 0.005 to 0.025" is inserted in lieu thereof; and "aluminum 0.04" is deleted and "aluminum 0.01 to 0.075" is inserted in lieu thereof;

(M) In subdivision (c)(lxxii)(D), "carbon 0.15" is deleted and "carbon 0.13 to 0.18" is inserted in lieu thereof; "silicon 0.20" is deleted and "silicon 0.05 to 0.60" is inserted in lieu thereof; "manganese 1.50" is deleted and "manganese 1.3 to 1.75" is inserted in lieu thereof; "niobium (columbium) 0.015" is deleted and "niobium (columbium) 0.005 to 0.025" is inserted in lieu thereof; and "aluminum 0.04" is deleted and "aluminum 0.01 to 0.075" is inserted in lieu thereof;

(N) In subdivision (c)(lxxii)(E), "carbon 0.11" is deleted and "carbon 0.09 to 0.135" is inserted in lieu thereof; "silicon 0.20" is deleted and "silicon 0.12 to 0.35" is inserted in lieu thereof; "manganese 1.60" is deleted and "manganese 1.3 to 1.85" is inserted in lieu thereof; and "aluminum 0.04" is deleted and "aluminum 0.01 to 0.075" is inserted in lieu thereof;

(O) In subdivision (c)(lxxii)(F), "carbon 0.17" is deleted and "carbon 0.15 to 0.2" is inserted in lieu thereof; "silicon 0.50" is deleted and "silicon 0.3 to 0.7" is inserted in lieu thereof; "manganese 1.60 percent" is deleted and "manganese 1.4 to 1.9" is inserted in lieu thereof; "niobium (columbium) 0.015" is deleted and "niobium (columbium) 0.005 to 0.025" is inserted in lieu thereof; and "aluminum 0.04" is deleted and "aluminum 0.01 to 0.075" is inserted in lieu thereof;

(P) In subdivision (c)(lxxii)(G), "carbon 0.13" is deleted and "carbon 0.1 to 0.16" is inserted in lieu thereof; "silicon 0.50" is deleted and "silicon 0.3 to 0.75" is inserted in lieu thereof; and "manganese 1.20" is deleted and "manganese 1.0 to 1.45" is inserted in lieu thereof;

(Q) In subdivision (c)(lxxii)(H), "carbon 0.17" is deleted and "carbon 0.15 to 0.2" is inserted in lieu thereof; "silicon 0.50" is deleted and "silicon 0.3 to 0.7" is inserted in lieu thereof; "manganese 1.60" is deleted and "manganese 1.4 to 1.9" is inserted in lieu thereof; "niobium (columbium) 0.015" is deleted and "niobium (columbium) 0.005 to 0.025" is inserted in lieu thereof; and "aluminum 0.04" is deleted and "aluminum 0.01 to 0.075" is inserted in lieu thereof;

(R) In subdivision (c)(cxxxvi), "bars" is deleted and "steel" is inserted in lieu thereof;

(S) Effective with respect to goods entered, or withdrawn from warehouse for consumption, on or after September 1, 2003, in subdivision (c) (clxvii), "1830 mm" is deleted and "1855 mm" is inserted in lieu thereof;

(T) In subdivision (c)(cxcix), "A624–00" is deleted and "A625–98" is inserted in lieu thereof;

(U) In subdivision (c)(ccxci), "1830 mm" is deleted and "1855 mm" is inserted in lieu thereof;

(V) In subdivision (c)(ccclxxx), "150.38 mm" is deleted and "147.84 mm" is inserted in lieu thereof;

(W) In subdivision (c)(cd), "not" is inserted after "stainless steel bars';

(X) In subdivision (c)(cdy), "6,071 mm to 6,135 mm in length" is deleted and "6.019 mm to 6,135 mm in length" is inserted in lieu thereof; "thickness of 0.02 mm to 0.05 mm" is deleted and "thickness of 0.02 mm to 0.09 mm" is inserted in lieu thereof; "elongation 45 to 50 percent;" is deleted; "hardness 58 to 72 Rockwell B" is deleted and "hardness 58 to 80 Rockwell B" is inserted in lieu thereof;

(Y) In subdivision (c)(cdxxix), "wall thickness of 0.84 mm to 0.92 mm; in any of the following six lengths: (1) 936 mm to 937 mm; (2) 1,033 mm to 1,034 mm; (3) 1,150 mm to 1,151 mm; (4) 3,929 mm to 3,930 mm; (5) 3,950 mm to 3,951 mm; and (6) 4,205 mm to 4,206 mm" is deleted and "with (A) wall thickness of 0.84 mm to 0.94 mm in any of the following four lengths: (1) 936 mm to 937 mm; (2) 1,033 mm to 1,034 mm; (3) 1,115 mm to 1,116 mm; (4) 3,929 mm to 3,930 mm, or, (B) wall thickness of 1.10 mm to 1.30 mm and length of 3,982 mm to 3983 mm" is inserted in lieu thereof; "carbon 0.045 to 0.094" is deleted and "carbon not over 0.1" is inserted in lieu thereof; "manganese 0.30 to 0.554" is deleted and "manganese not over 0.8" is inserted in lieu thereof; "sulfur not over 0.20" is deleted and "sulfur not over 0.025" is inserted in lieu thereof; "phosphorus not over 0.20" is deleted and "phosphorus not over 0.025" is inserted in lieu thereof; "silicon not over 0.30" is deleted and "silicon not over 0.50" is inserted in lieu thereof; "aluminum 0.25 to 0.74" is deleted and "aluminum not less than 0.015" is inserted in lieu thereof; "niobium 0.015 to 0.030" is deleted and "niobium not over 0.090" is inserted in lieu thereof; and "carbon equivalent content of 0.120 to 0.185;" is deleted;

(Z) In subdivision (c)(cdxxx), "0.84 mm to 0.92 mm" is deleted and "0.84 mm to 0.94 mm" is inserted in lieu thereof; "carbon 0.045 to 0.094" is deleted and "carbon not over 0.1" is inserted in lieu thereof; "manganese 0.30 to 0.554" is deleted and "manganese not over 0.8" is inserted in lieu thereof; "sulfur not over 0.20" is deleted and "sulfur not over 0.025" is inserted in lieu thereof; "phosphorus not over 0.20" is deleted and "phosphorus not over 0.025" is inserted in lieu thereof; "silicon not over 0.30" is deleted and "silicon not over 0.50" is inserted in lieu thereof; "aluminum 0.25 to 0.74" is deleted and "aluminum not less than 0.015" is inserted in lieu thereof; "niobium 0.015 to 0.030" is deleted and "niobium not over 0.090" is inserted in lieu thereof; and "carbon equivalent content of 0.120 to 0.185;" is deleted.

2. The following subheadings of such subchapter III are each modified as follows:

(A) In subheading "9903.72.85" , "note 11(b)(viii)" is deleted and "notes 11(b)(viii)(A) through 11(b)(viii)(N) and 11(b)(viii)(P) through 11(b)(viii)(T)" is inserted in lieu thereof;

(B) Subheading "9903.76.72" is deleted;

(C) In subheading 9903.79.73, "2,700" is deleted and "2,700" is inserted in lieu thereof:

3. The following new subheadings are inserted in numerical sequence in subchapter III of chapter 99 of the HTS, with the new material being inserted in the columns entitled "Heading/Subheading", "Article Description", "Rate of Duty 1 General", "Rates of Duty 1 Special" and "Rates of Duty 2", respectively:

	[Goods...:]			
"9903.78.34	Enumerated in U.S. note 11(c)(li) to this subchapter	No change	No change	No change.
9903.78.35	Enumerated in U.S. note 11(c)(cxxxv) to this subchapter	No change	No change	No change.
9903.78.36	Enumerated in U.S. note 11(c)(cxxxvi) to this subchapter	No change	No change	No change.
9903.78.37	Enumerated in U.S. note 11(c)(cclvii) to this subchapter	No change	No change	No change.
9903.78.38	Enumerated in U.S. note 11(c)(cccxxxvii) to this subchapter	No change	No change	No change.
9903.79.81	Enumerated in U.S. note 11(b)(viii)(O) to this subchapter	No change	No change	No change.

Conforming Changes:

Subheading 9903.72.57 is modified by deleting "9903.78.33" and by inserting in lieu thereof "9903.78.38"

Subheading 9903.73.18 is modified by deleting "9903.79.80" and by inserting in lieu thereof "9903.79.81".

Annex II

Technical Corrections to the Harmonized Tariff Schedule of the United States

Effective with respect to goods entered, or withdrawn from warehouse for consumption, on or after the dates indicated in each item below, the Harmonized Tariff Schedule of the United States (HTS) is hereby modified as followed:

1. Effective with respect to goods entered, or withdrawn from warehouse for consumption, on or after August 6, 2002, general note10(c) is modified by deleting "1604.14.20" and by inserting in lieu thereof "1604.14.22'.

2. Effective with respect to goods entered, or withdrawn from warehouse for

consumption, on or after January 1, 1995, subheading 2933.59.95 is modified by inserting the symbol "L," in alphabetical sequence in the Rates of Duty 1-Special subcolumn in the parenthetical expression following the "Free" rate of duty.

[FR Doc. 03–30650 Filed 12–10–03; 8:45 am]
BILLING CODE 3190–W3–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2003–73]

Petitions for Exemption; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption part 11 of Title 14, Code of Federal Regulations (14 CFR), this notice contains the dispositions of certain petitions previously received. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

FOR FURTHER INFORMATION CONTACT: Caren Centorelli, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591. Tel. (202) 267–8199.

This notice is published pursuant to 14 CFR §§ 11.85 and 11.91.

Issued in Washington, DC, on December 5, 2003.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Dispositions of Petitions

Docket No.: FAA–2003–15857.

Petitioner: Northeast Engineering & Development Ltd.

Section of 14 CFR Affected: 14 CFR 25.561, 25.562, and 25.785(b).

Description of Relief Sought/Disposition: To provide relief from the requirements of 14 CFR 25.562 and 25.785(b) for installation of medical stretchers on Airbus Model 330–200 airplanes.

Partial Grant, 11/24/2003, Exemption No.8183.

Docket No.: FAA–2003–16074.

Petitioner: Gulfstream Aerospace Corporation.

Section of 14 CFR Affected: 14 CFR 25.785(b).

Description of Relief Sought/Disposition: To amend Exemption No. 7296 to remove the limitations that restrict its applicability to seats manufactured by ERDA, Inc. and to airplanes manufactured before January 1, 2004. This exemption is applicable to Gulfstream 200 (Galaxy) model airplanes installed in accordance with Supplemental Type Certificate ST09848SC.

Grant, 11/24/2003, Exemption No.7296A.

[FR Doc. 03–30646 Filed 12–10–03; 8:45 am]
BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2003–72]

Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption part 11 of Title 14, Code of Federal Regulations (14 CFR), this notice contains a summary of certain petitions seeking relief from specified requirements of 14 CFR, dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before December 31, 2003.

ADDRESSES: You may submit comments [identified by DOT DMS Docket Number FAA–200X–XXXXX] by any of the following methods:

- Web Site: *http://dms.dot.gov.* Follow the instructions for submitting comments on the DOT electronic docket site.
- Fax: 1–202–493–2251.
- Mail: Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–0001.
- Hand Delivery: Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.
- Federal eRulemaking Portal: Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.

Docket: For access to the docket to read background documents or comments received, go to *http://dms.dot.gov* at any time or to Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

FOR FURTHER INFORMATION CONTACT: Tim Adams, (202) 267–8033, Sandy Buchanan-Sumter, (202) 267–7271, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85 and 11.91.

Issued in Washington, DC, on December 5, 2003.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Petitions for Exemption

Docket No.: FAA–2003–15510.

Petitioner: ATA Airlines, Inc.

Section of 14 CFR Affected: 14 CFR 121.693(e) and 121.697(e)(2).

Description of Relief Sought: To relieve ATA Airlines, Inc., from the requirement to maintain a list of the passengers on the airplanes that ATA Airlines, Inc., operates for the U.S. military.

[FR Doc. 03–30647 Filed 12–10–03; 8:45 am]
BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Cancellation Notice for RTCA Government/Industry Free Flight Steering Committee Meeting

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of cancellation of RTCA/Industry Free Flight Steering Committee Meeting.

SUMMARY: The FAA is issuing this notice to advise the public of the cancellation of the RTCA Government/Industry Free Flight Steering Committee.

CANCELLATION: The December 4, 2003 meeting announced in the **Federal Register** has been canceled. The revised date and location, if any, will be announced later.

FOR FURTHER INFORMATION CONTACT: (1) RTCA Secretariat, 1828 L Street, NW., Suite 805, Washington, DC, 20036; telephone (202) 833–9339; fax (202) 833–9434; Web site *http://www.rtca.org.*

Issued in Washington, DC, on December 1, 2003.

Robert Zoldos,

FAA System Engineer, RTCA Advisory Committee.

[FR Doc. 03–30648 Filed 12–10–03; 8:45 am]
BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2003–15818]

Exemption To Allow Werner Enterprises, Inc. To Use Global Positioning System (GPS) Technology To Monitor and Record Drivers' Hours of Service

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of intent to grant exemption; request for comments.

SUMMARY: FMCSA proposes to grant an exemption to Werner Enterprises, Inc. (Werner) from the requirement that drivers of commercial motor vehicles (CMVs) operating in interstate commerce prepare handwritten records of duty status (RODS). Werner would instead document its drivers' hours of service through the use of GPS technology and complementary computer software programs. Werner has used GPS technology manufactured by Qualcomm, Inc. and computer software programs to manage and record its drivers' duty status since June 10, 1998, when it entered into a Memorandum of Understanding (MOU) with the agency, The MOU was based on the agency's April 6, 1998, notice of interpretation concerning the use of such technology. Werner and FMCSA revised the MOU in March 2002. The agency proposes that the terms and conditions for the exemption be the same as those contained in the revised MOU, with a few exceptions based on recent discussions between FMCSA and Werner. FMCSA has monitored closely Werner's use of the GPS technology since June 1998. Based on this experience, the agency believes that the terms and conditions of the exemption would achieve a level of safety equivalent to, or greater than, that provided by complying with the current RODS requirements.

DATES: Submit comments on or before January 12, 2004.

ADDRESSES: You may submit comments identified by DOT DMS Docket Number FMCSA–2003–15818 by any of the following methods:

- Web site: *http://dms.dot.gov.* Follow the instructions for submitting comments on the DOT electronic docket site.
- Fax: 1–202–493–2251.
- Mail: Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–0001.
- Hand Delivery: Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- Federal eRulemaking Portal: Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.

Instructions: All submissions must include the agency name and docket number for this notice. Note that all comments received will be posted without change to *http://dms.dot.gov* including any personal information provided. Please see the Privacy Act heading for further information.

Docket: For access to the docket to read background documents or comments received, go to *http://dms.dot.gov* and/or Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Privacy Act: Anyone may search the electronic form of all comments received into any of DOT's dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, or other entity). You may review DOT's complete Privacy Act Statement in the **Federal Register** (65 FR 19477, Apr. 11, 2000). This statement is also available at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Mr. Larry W. Minor, Chief of the Vehicle and Roadside Operations Division (MC–PSV), (202) 366–4009, FMCSA, 400 Seventh Street, SW., Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

Background

On April 6, 1998, FMCSA published a notice of interpretation (63 FR 16697, Apr. 6, 1998) requesting motor carriers to participate in a "pilot demonstration project" (the Project). The Project was a voluntary program under which motor carriers with GPS technology and related safety management computer systems could enter into an agreement with the agency to use such systems to record and monitor drivers' hours of service in lieu of complying with the handwritten records of duty status (RODS) requirement of 49 CFR 395.8. The agency indicated that it believes GPS technology and many of the complementary safety management computer systems being used by the motor carrier industry provide at least the same degree of monitoring accuracy as automatic on-board recorders allowed by 49 CFR 395.15. The original deadline for submitting applications was October 5, 1998, with subsequent extensions to June 30, 1999 (63 FR 71791, Dec. 30, 1998), and December 31, 1999 (64 FR 37689, Jul. 13, 1999). The extensions were provided because numerous motor carriers contacted the agency to express an interest in participating in the Project. Although participation in the Project was open to all interested motor carriers, Werner was the only company to sign a memorandum of understanding (MOU) with the agency to allow the use of GPS technology.

Status of Werner's Participation in the Project

On June 10, 1998, Werner entered into an MOU with the agency to use GPS technology and related safety management computer systems as an alternative to handwritten driver RODS. A copy of the MOU is included in the docket referenced at the beginning of this notice. Over the course of the pilot demonstration project, FMCSA conducted onsite reviews and investigated a complaint. The reviews and complaint investigation identified potential improvements to Werner's system that would increase the accuracy of the electronic RODS and thereby raise the level of hours-of-service compliance.

In March 2002, Werner and FMCSA entered into a revised MOU to amend the terms of the June 1998 agreement. A copy of the revised MOU is in the docket referenced at the beginning of this notice. The revised MOU contains specific provisions related to system modifications and internal hours-of-service compliance monitoring reports agreed to by Werner and FMCSA. The March 2002 MOU states:

At the end of the 18-month period of this agreement, an assessment will be made to consider making this pilot program permanent. The FMCSA will automatically extend the agreement period beyond 18

months if the assessment has not been completed, or if an agency decision regarding permanency has not been rendered. If determined not to be permanent, this agreement may be extended, by mutual agreement of both parties, beyond the 18 months specified until the FMCSA establishes a uniform standard for Electronic On-Board Recording.

The current MOU with Werner was to expire in September 2003 but has been extended to December 31, 2003, because the assessment was not complete by the scheduled expiration date. Werner has indicated that it would like to make its current program permanent rather than continue in a pilot demonstration status.

Proposed Terms and Conditions for the Exemption

FMCSA believes that it is appropriate to make a transition from a pilot demonstration project to an exemption, as authorized by 49 U.S.C. 31315(b) and the implementing regulations under 49 CFR part 381. Although Werner has expressed an interest in using GPS technology and complementary computer systems to monitor and record its drivers' duty status on a permanent basis, FMCSA cannot permit this without initiating a notice-and-comment rulemaking proceeding to amend 49 CFR 395.8. The agency does not believe that it is appropriate to amend the safety regulations based on a technology that is currently being used by only one motor carrier. Therefore, the agency proposes to exercise its authority under 49 U.S.C. 31315(b) to make a transition from the Project to an exemption that can be renewed every two years, through a notice-and-comment process. The agency proposes that the terms and conditions for the exemption be the same as those used for the Project, with a few exceptions based on recent discussions between FMCSA and Werner. FMCSA has made a preliminary determination that, used in lieu of the "record of duty status" required by 49 CFR 395.8, Werner's GPS technology and complementary safety management computer systems would achieve the requisite level of safety under 49 U.S.C. 31315(b), provided the following conditions are satisfied:

System Operation

(a) System defaults must record truck stationary time as "on duty, not driving."

(b) Movements of the vehicle greater than two miles must be recorded as driving time.

(c) Speed (which is determined by time and distance between truck location updates) that is calculated to be below 10 miles per hour (mph) may be considered invalid. In these instances, distance traveled may be divided by average driver mph or average State-to-State mph to derive a rough estimate of the driving time. Werner must discontinue the use of driving time modeling entirely if Qualcomm improves the satellite positioning frequency or incorporates other technology that makes the modeling unnecessary.

(d) With the exception of automatically recording the driver's status as "on duty, not driving" when drivers" fuel cards are inserted into the card reader, no system defaults are authorized for routine stops (*i.e.*, deliveries, pickups, rest). Drivers must make the correct duty status entry into the electronic system.

(e) The system must not allow drivers to manipulate the system to conceal driving hours.

The automatic recording of movements of two miles or more as driving time differs from the MOU in that the memorandum uses a criterion of one mile. Werner has advised FMCSA that lowering the vehicle movement threshold to one mile has resulted in a substantial number of errors in documenting driver duty status that require correction by company management. Therefore, Werner has requested that it be allowed to continue using its two-mile criterion rather than risk a significant increase in errors.

In addition, the system operation provision concerning default duty status would differ from the current MOU in that fuel stops would be covered by an automatic default. Werner has informed FMCSA that its drivers generally are unable to enter duty status information during refueling because the canopy structures at most fuel stops interfere with the satellite communications equipment on their vehicles. FMCSA responded that it is permissible under the current MOU to automatically place drivers in an on-duty, not-driving status when drivers' fuel cards are inserted into a card reader. The proposed exemption would explicitly allow the default duty status for refueling. FMCSA requests comments on these proposed differences between the MOU and the terms and conditions of the exemption.

Documentation of System Failures

Werner must require each driver to note immediately any failure of the GPS technology or complementary safety management computer systems, and to immediately begin preparing hard-copy driver logs during the period that the technology is inoperative. Werner must maintain a centralized record of each separate failure, including the date, time periods, individual driver or operating division(s) impacted, and type of failure. Upon request by Federal or State enforcement officials, Werner must provide facsimile copies of its records of duty status for the current day and the previous seven days for the driver(s) affected by the failure. In the event that Werner is unable to produce these facsimile copies within two hours, the driver(s) must manually prepare a driver record of duty status for the current day and reconstruct his or her duty hours for the previous seven (7) days. When the system becomes operational, a fax of the missing records of duty status must be forwarded to the agreed-upon site as soon as possible. Failure to produce either of these two types of documents within two hours constitutes a violation of this exemption and 49 CFR 395.8(a).

Information Required on All CMVs Operated by Werner

Werner would be required to ensure that each commercial motor vehicle it operates has on board and available for review by Federal or State enforcement personnel an information packet containing the following three items:

(a) An instruction sheet describing in detail how hours-of-service data may be retrieved from the on-board GPS equipment;

(b) A supply of blank record of duty status graph-grids sufficient to record the driver's duty status and other related information for the duration of each trip; and

(c) A copy of the exemption issued by FMCSA authorizing Werner to use GPS technology and complementary computer software programs in lieu of the "record of duty status" required by 49 CFR 395.8.

Quarterly Reports

Werner would be required to prepare a compliance report every three months following the effective date of the exemption. The reports must be maintained for six months from the date of preparation and must be made available to FMCSA upon request. The reports must identify:

(a) Driver training and internal audit procedures employed by Werner to ensure the accuracy of the electronic hours-of-service records;

(b) The percent of driver logs in each Werner operating division found through internal auditing to be in violation of the maximum driving time limitations set forth in 49 CFR 395.3(a) and 395.3(b); and

(c) The number of drivers in each Werner operating division, the number of drivers by operating division audited for hours-of-service record accuracy, and the percent of driver logs by operating division found to be in violation of 49 CFR 395.8(e).

Furthermore, the support systems must provide a complete audit trail of edits (changes) made to "driving" time shown on driver duty status records.

FMCSA Access to Safety Management Information System

Werner must allow FMCSA personnel reasonable access to its safety management information system(s). If FMCSA requests access to the system(s), agency personnel will determine the scope and nature of the assessment. At a minimum, access to records will include:

(a) Driver records of duty status created by Werner's GPS and related safety management computer systems;

(b) Driver-dispatch "message histories" and detailed position histories associated with driver records of duty status;

(c) Driver payroll records associated with the driver records of duty status;

(d) Driver shipping document records; and

(e) Miscellaneous trip expense records.

Reporting of Violations of Hours-of-Service Rules

Werner must furnish FMCSA, upon request, a driver-specific report of violations of the requirements related to maximum driving time rules (49 CFR 395.3). With regard to falsification of records of duty status, information must be provided on violations of 49 CFR 395.8(e) for each individual driver requested. Werner must also agree to furnish upon request information indicating what disciplinary and/or remedial action, if any, was taken as a result of a driver's violation of rules set forth in 49 CFR 395.3 and 49 CFR 395.8(e).

Reporting of Corrections or Amendments to Records

Werner must agree to furnish, upon request, information indicating the number of times the "driving" time on driver records of duty status was changed for each driver, and identifying who authorized each altered record.

Documenting Distance Traveled

Werner would be required to ensure that the system for monitoring and recording drivers' hours of service has a means of determining that the mileage each driver travels is based on data from the vehicle's electronic control module or other on-board vehicle system, rather than on less accurate methods such as GPS-based (point-to-point) calculations that may underestimate the distance traveled.

Enforcement of Hours of Service While the Exemption Is in Effect

Under the terms and conditions of this exemption, Werner may require its drivers to use the company's GPS technology and complementary safety management computer systems to record their hours of service in lieu of complying with the requirements of 49 CFR 395.8. FMCSA would, to the greatest extent practicable, communicate with State, Provincial, and local enforcement agencies regarding the terms and conditions of the exemption, if granted. FMCSA would continue its policy of not divulging to any third party proprietary information related to Werner's GPS technology or related safety management computer systems.

In the event that FMCSA conducts a compliance review or any other type of motor carrier safety management investigation of Werner, FMCSA would review, using its automated hours-of-service assessment system, 100 percent of the applicable operating division's hours-of-service records for compliance with the maximum driving time limitations set forth in 49 CFR 395.3. The 100 percent sampling would not extend to any other portion of the regulations reviewed. With respect to the investigation of the accuracy of hours-of-service records (49 CFR 395.8(e)), FMCSA would reserve the right to conduct a sampling of records in accordance with FMCSA policies applicable to all motor carriers, and Werner would retain the right to contest the validity of the sampling used.

Notwithstanding the additional recordkeeping requirements of the quarterly compliance reports that Werner must prepare (*see Quarterly Reports* above), the agency would not hold Werner to a higher standard of compliance than the rest of the industry, nor would it treat Werner differently in conducting investigations of complaints or other types of investigations. At any time during the exemption period, FMCSA may conduct compliance reviews of Werner, consistent with standard operating policies applicable to all motor carriers. These compliance reviews would result in the assignment of a safety rating, and the agency could initiate enforcement action against Werner for serious violations.

Werner's drivers and vehicles would continue to be subject to roadside inspections conducted by FMCSA or State enforcement personnel during the period of the exemption. Werner must ensure that its drivers cooperate with Federal and State enforcement personnel who request information, during roadside inspections, concerning its drivers' hours of service.

Request for Comments

In accordance with 49 U.S.C. 31315 and 31136(e), FMCSA is requesting public comment from all interested persons on the agency's intent to grant Werner an exemption to allow the use of GPS technology and related safety management computer systems to document its drivers' hours of service. All comments received before the close of business on the comment closing date indicated at the beginning of this notice will be considered and will be available for examination in the docket at the location listed under the address section of this notice. Comments received after the comment closing date will be filed in the public docket and considered to the extent practicable, but FMCSA may grant or deny the exemption at any time after the close of the comment period. In addition to late comments, FMCSA also will continue to file in the public docket any relevant information that becomes available after the comment closing date. Interested persons should continue to examine the public docket for new material.

Authority: 49 U.S.C. 31136 and 31315; 49 CFR 1.73.

Issued on: December 5, 2003.

Annette M. Sandberg,

Administrator.

[FR Doc. 03–30692 Filed 12–10–03; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Federal Railroad Administration, DOT.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 and its implementing regulations, the Federal Railroad Administration (FRA) hereby announces that it is seeking renewal of the following currently approved information collection activities. Before submitting these information collection requirements for clearance by the Office of Management and Budget (OMB), FRA is soliciting public comment on specific aspects of the activities identified below.

DATES: Comments must be received no later than February 9, 2004.

ADDRESSES: Submit written comments on any or all of the following proposed activities by mail to either: Mr. Robert Brogan, Office of Safety, Planning and Evaluation Division, RRS–21, Federal Railroad Administration, 1120 Vermont Ave., NW., Mail Stop 17, Washington, DC 20590, or Ms. Debra Steward, Office of Information Technology and Productivity Improvement, RAD–20, Federal Railroad Administration, 1120 Vermont Ave., NW., Mail Stop 35, Washington, DC 20590. Commenters requesting FRA to acknowledge receipt of their respective comments must include a self-addressed stamped postcard stating, "Comments on OMB control number ____." Alternatively, comments may be transmitted via facsimile to (202) 493–6230 or (202) 493–6170, or e-mail to Mr. Brogan at *robert.brogan@fra.dot.gov*, or to Ms. Steward at *debra.steward@fra.dot.gov*. Please refer to the assigned OMB control number in any correspondence submitted. FRA will summarize comments received in response to this notice in a subsequent notice and include them in its information collection submission to OMB for approval.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Brogan, Office of Planning and Evaluation Division, RRS–21, Federal Railroad Administration, 1120 Vermont Ave., NW., Mail Stop 25, Washington, DC 20590 (telephone: (202) 493–6292) or Debra Steward, Office of Information Technology and Productivity Improvement, RAD–20, Federal Railroad Administration, 1120 Vermont Ave., NW., Mail Stop 35, Washington, DC 20590 (telephone: (202) 493–6139). (These telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION: The Paperwork Reduction Act of 1995 (PRA), Public Law 104–13, 2, 109 Stat. 163 (1995) (codified as revised at 44 U.S.C. 3501–3520), and its implementing regulations, 5 CFR. Part 1320, require Federal agencies to provide 60-days notice to the public for comment on information collection activities before seeking approval for reinstatement or renewal by OMB. 44 U.S.C. 3506(c)(2)(A); 5 CFR 1320.8(d)(1), 1320.10(e)(1), 1320.12(a). Specifically, FRA invites interested respondents to comment on the following summary of proposed information collection activities regarding (i) Whether the information collection activities are necessary for FRA to properly execute its functions, including whether the activities will have practical utility; (ii) the accuracy of FRA's estimates of the burden of the information collection activities, including the validity of the methodology and assumptions used to determine the estimates; (iii) ways for FRA to enhance the quality, utility, and clarity of the information being collected; and (iv) ways for FRA to minimize the burden of information collection activities on the public by automated, electronic, mechanical, or other technological collection techniques or other forms of information technology (*e.g.*, permitting electronic submission of responses). *See* 44 U.S.C. § 3506(c)(2)(A)(i)–(iv); 5 CFR 1320.8(d)(1)(i)–(iv). FRA believes that soliciting public comment will promote its efforts to reduce the administrative and paperwork burdens associated with the collection of information mandated by Federal regulations. In summary, FRA reasons that comments received will advance three objectives: (i) Reduce reporting burdens; (ii) ensure that it organizes information collection requirements in a "user friendly" format to improve the use of such information; and (iii) accurately assess the resources expended to retrieve and produce information requested. *See* 44 U.S.C. 3501.

Below are brief summaries of the three currently approved information collection activities that FRA will submit for clearance by OMB as required under the PRA:

Title: Track Safety Standards (Gage Restraint Measurement Systems Amendment).

OMB Control Number: 2130–0010.

Abstract: Qualified persons inspect track and take action to allow safe passage of trains and ensure compliance with prescribed Track Safety Standards. FRA amended the Track Safety Standards to provide procedures for track owners to use Gage Restraint Measurement Systems (GRMS) to assess the ability of their track to maintain proper gage. Under the current Track Safety Standards, track owners must evaluate a track's gage restraint capability through visual inspections conducted at frequencies and intervals specified in the standards. With this amendment, track owners may monitor gage restraint on a designated track segment using GRMS procedures. Individuals employed by the track owner to inspect track must be permitted to exercise their discretion in judging whether the track segment should also be visually inspected by a qualified track inspector.

Form Number(s): None.

Affected Public: Businesses.

Respondent Universe: 685 railroads.

Frequency of Submission: On occasion.

Affected Public: Businesses.

Reporting Burden:

CFR section	Respondent universe (railroads)	Total annual responses	Average time per response	Total annual burden hours	Total annual burden cost
213.14—Excepted Track	160	25 orders	15 minutes	6	$228
—Notification to FRA—Removal of Track Segment From Excepted Statutes.	160	20 notifications	10 minutes	3	114
213.5—Responsibility of Track Owners—Assignment.	685	12 notifications	8 hours	96	3,648
213.7—Designation of Qualified Persons to Supervise Certain Renewals and Inspect Track.	685	1,500 names	10 minutes	250	9,500
—Designations (Partially Qualified under Paragraph c).	31	250 names	10 minutes	42	1,596
213.17—Exeptions	685	8 petitions	24 hours	192	7,296
213.57—Curves; Elevations & Speed Limits.	685	4 requests	40 hours	160	6,080
—Notification to FRA	685	2 notifications	45 minutes	2	76
—Requests for FRA Approval—Test Plans.	1	4 test plans	16 hours	64	2,432
213.110—Gage Restraint Meas. Syts.—Implementing.	685	40 notifications + 4 tech. rpts.	45 minutes/4 hrs	46	1,748 46,250

CFR section	Respondent universe (railroads)	Total annual responses	Average time per response	Total annual burden hours	Total annual burden cost
GRMS Output Reports	685	150 reports	5 minutes	13	494
—GRMS Exception Reports	685	150 reports	5 minutes	13	494
—Procedures For Maintaining GRMS Data.	685	10 doc. proc.	2 hours	20	760
—GRMS Training	685	10 training prog. + 25 tr. sessions.	16 hours	560	21,280
—GRMS Inspections—Two Most Recent Records.	685	200 records	2 hours	400	15,200
213.119—Continuous Weld Rail (CWR)—Records.	150	3,000 records	10 minutes	500	19,500
213.233—Track Inspections By Person/Vehicle—Rcds.	685	2,500 notations	1 minute	42	1,260
213.241—Inspection Records	685	20,000	5 minutes	1,763,941	52,918,230
213.303—Responsibility for Compliance—High Speed Track: Assignment of Responsibility.	2	1 petition	8 hours	8	304
213.305—Designation of Fully Qualified Individuals.	2	150 designations	10 minutes	25	950
—Designation of Partially Qualified Individuals.	2	15 designations	10 minutes	3	114
213.317—Exemption From Any/All Requirements.	2	1	24 hours	24	912
213.329—Curves, Elevation, and Higher Speed Limits.	2	3 notifications	40 hours	120	4,560
—Passenger/Commuter Service Over More Than 1 Trk..	2	3 notifications	45 minutes	2	76
213.333—Track Geometry Measurement Sys.—Rpts..	3	18 reports	20 hours	360	10,800
—Track/Vehicle Measurement Perf. Sys.—Procedures.	1	1 written proc	8 hours	8	304
—Exception Printouts	2	13 printouts	20 hours	260	7,800
213.341—Initial Inspection—New Rail/Welds Mill Insp.	2	2 reports	8 hours	16	608
—Welding Plant Inspection	2	2 reports	8 hours	16	608
—Inspection of Field Welds—Records.	2	200 records	20 minutes	67	2,546
213.343—Continuous Weld Rail—History—Records.	2	200 records	10 minutes	33	1,254
213.345—Vehicle Qualification Testing—Results/Rcds.	1	2 reports	16 hours	32	1,216
213.14—Excepted Track	160	25 orders	15 minutes	6	228
—Notification to FRA—Removal of Track Segment From Excepted Statues.	160	20 notifications	10 minutes	3	114
213.5—Responsibility of Track Owners—Assignment.	685	12 notifications	8 hours	96	3,648
213.7—Designation of Qualified Persons to Supervise Certain Renewals and Inspect Track.	685	1,500 names	10 minutes	250	9,500
—Designations (Partially Qualified under Paragraph c).	31	250 names	10 minutes	42	1,596
213.17—Exemptions	685	8 petitions	24 hours	192	7,296
213.57—Curves; Elevations & Speed Limits.	865	4 requests	40 hours	160	6,080
—Notification to FRA	685	2 notifications	45 minutes	2	76
—Requests for FRA Approval—Test Plans.	1	4 test plans	16 hours	64	2,432
213.110—Gage Restraint Meas. Sys.—Implementing.	685	40 notifications + 4 tech rpts.	45 minutes/4 hrs	46	1,748 46,250
—GRMS Output Reports	685	150 reports	5 minutes	13	494
—GRMS Exception Reports	685	150 reports	5 minutes	13	494
—Procedures For Maintaining GRMS Data.	685	10 doc. proc.	2 hours	20	760
—GRMS Training	685	10 training prog. + 25 tr. sessions.	16 hours	560	21,280
—GRMS Inspections—Two Most Recent Records.	685	200 records	2 hours	400	15,200
213.119—Continuous Weld Rail (CWR)—Records.	150	3,000 records	10 minutes	500	19,500
213.233—Track Inspections By Person/Vehicle—Rcds.	685	2,500 notifications	1 minute	42	1,260
213.241—Inspection Records	685	20,000 records	5 minutes	1,763,941	52,918,230

CFR section	Respondent universe (railroads)	Total annual responses	Average time per response	Total annual burden hours	Total annual burden cost
213.303—Responsibility for Compliance—High Speed Track; Assignment of Responsibility.	2	1 petition	8 hours	8	304
213.347—Automotive or RR Crossing at Grade—Plans.	1	2 plans	8 hours	16	608
213.353—Turnouts and Crossovers	1	1 guide book	40 hours	40	1,520
213.361—Right of Way—Class 8 & 9—Plan Approv.	1	1 plan	40 hous	40	1,520
213.369—Inspection Records	2	500 records	1 minute	8	240
213.369—Inspection Records	2	500 records	1	8	240
—Designation records	2	2 designations	15 minutes	1	38
—Inspection Records of Defects and Remedial Actions.	2	50 records	5 minutes	4	120

Total Responses: 1,635,052.
Total Estimated Total Annual Burden: 1,767,433 hours.
Type of Request: Extension of a Currently Approved Collection.
Title: Special Notice For Repairs.
OMB Control Number: 2130–0504.
Abstract: The Special Notice For Repairs is issued to notify the carrier in writing of an unsafe condition involving a locomotive, car, or track. The carrier must return the form after repairs have been made. The collection of information is used by State and Federal inspectors to remove freight car or locomotives until they can be restored to a serviceable condition. It is also used by State and Federal inspectors to reduce the maximum authorized speed on a section of track until repairs can be made.
Form Number(s): FRA F 6180.8; FRA F 6180.8a.
Affected Public: Businesses.
Respondent Universe: 685 railroads.
Frequency of Submission: On occasion.
Total Responses: 58.
Total Estimated Annual Burden: 7 hours.
Type of Request: Extension of a currently approved collection.
Title: Designation of Qualified Persons.
OMB Control Number: 2130–0511.
Abstract: The collection of information is used to prevent the unsafe movement of defective freight cars. Railroads are required to inspect freight cars for compliance and to determine restrictions on the movements of defective cars.
Form Number(s): None.
Affected Public: Businesses.
Respondent Universe: 685 railroads.
Frequency of Submission: On occasion.
Total Estimated Annual Burden: 40 hours.
Total Responses: 1,200.
Type of Request: Extension of a Currently Approved Collection.

Pursuant to 44 U.S.C. 3507(a) and 5 CFR 1320.5(b), 1320.8(b)(3)(vi), FRA informs all interested parties that it may not conduct or sponsor, and a respondent is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Authority: 44 U.S.C. 3501–3520.

Issued in Washington, DC on December 5, 2003.

Maryann Johnson,

Acting Director, Office of Information Technology and Support Systems, Federal Railroad Administration.

[FR Doc. 03–30652 Filed 12–10–03; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petition for Waiver of Compliance

In accordance with Part 211 of Title 49 Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) received a request for a waiver of compliance with certain requirements of its safety standards. The individual petition is described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested, and the petitioner's arguments in favor of relief.

Canadian Pacific Railway

[Waiver Petition Docket Number FRA–2003–16439]

The Canadian Pacific Railway Company (CPR) seeks a waiver of compliance from certain provisions of the Railroad Locomotive Safety Standards, 49 CFR Part 229, on behalf of themselves, their U.S. subsidiaries, the Delaware & Hudson and the Soo Line Railroads, and the New York Air Brake Corporation (NYAB). Specifically, CPR requests relief from the requirements of 49 CFR 229.27(a)(2) Annual Tests and 49 CFR 229.29(a) Biennial Tests, in order to evaluate extending the required periodic maintenance time intervals for NYAB generation II Computer Controlled Brake (CCB) equipment.

CPR currently owns and operates 213 GE AC4400 locomotives built between December 1998 and September 2003, that are equipped with CCB II brake equipment. In August 2003, CPR, Transport Canada, and NYAB jointly performed a 5-year COT&S with a detailed tear-down inspection of the CCB II brake equipment from two randomly selected locomotives. According to CPR, all of the parties agreed that continued testing of extended COT&S intervals on a year-to-year basis was warranted, based on the encouraging results of the tests and inspections.

CPR has proposed evaluating the extended COT&S intervals according to a test plan that NYAB developed for CPR and Transport Canada. The test plan has assigned locomotives into tests groups based on the scheduled periodic maintenance cycles. Candidate locomotives for test tear-downs would only include those units which have not had a prior COT&S and which have had the least amount of air brake maintenance activity since entering service.

Approval of this waiver will permit the continued operation of the test locomotives in the United States, as the COT&S time intervals are extended beyond the five-year requirement. Also, it will further add to the industry's knowledge of the reliability of the CCB technology, building on a similar waiver (FRA–1999–6252) which was granted to CSXT on in September 1, 2000. It is CPR's intention that FRA would join Transport Canada and NYAB in evaluating the extended COT&S intervals for their CCB equipped locomotives, if this waiver is approved.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (*e.g.*, Waiver Petition Docket Number FRA–2003–16429) and must be submitted to the Docket Clerk, DOT Docket Management Facility, Room PL–401 (Plaza Level), 400 7th Street, SW., Washington, DC 20590. Communications received within 45 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's Web site at *http://dms.dot.gov*.

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78). The Statement may also be found at *http://dms.dot.gov*.

Issued in Washington, DC on December 5, 2003.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. 03–30649 Filed 12–10–03; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petition for Waiver of Compliance

In accordance with part 211 of title 49 Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) received a request for a waiver of compliance with certain requirements of its safety standards. The individual petition is described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested, and the petitioner's arguments in favor of relief.

Union Pacific Railroad Company

[Waiver Petition Docket Number FRA–2003–16306]

The Union Pacific Railroad Company (UP) seeks a waiver of compliance from certain provisions of the Railroad Locomotive Safety Standards, 49 CFR part 229. Specifically, UP requests relief from the requirements of 49 CFR 229.27(a)(2) Annual Tests and 49 CFR 229.29(a) Biennial Tests, applicable to all existing and future installations of electronic air brake equipment furnished by Wabtec Corporation of Wilmerding, Pennsylvania on UP locomotives.

Part 229.27(a)(2) requires that, "Brake cylinder relay valve portions, main reservoir safety valves, brake pipe vent valve portions, feed and reducing valve portions in the air brake system (including related dirt collectors and filters) shall be cleaned, repaired, and tested" at intervals that do not exceed 368 calendar days. Part 229.29(a) requires in part that "* * * all valves, valve portions, MU locomotive brake cylinders and electric-pneumatic master controllers in the air brake system (including related dirt collectors and filters) shall be cleaned, repaired, and tested at intervals that do not exceed 736 calendar days." UP requests these provisions be temporarily waived to allow them to conduct a long term test program designed to show that Wabtec's electronic air brake technology has sufficiently improved overall system reliability and safety to a point where it is now possible to move toward a "component repair as required, performance based COT&S criterion" similar in scope to that outlined a previous waiver granted September 1, 2000, to CSX Transportation in Docket FRA–1999–6252. This referenced waiver covers CSXT locomotives utilizing New York Air Brake Corporation's Computer Controlled Brake (CCB) equipment, with the intent of moving to a component repair as required, performance-based COT&S criterion.

In 1985, the time interval for the requirements of § 229.29(a) was extended to 1,104 calendar days for 26L Brake equipment based on proven service reliability with the evolution of improved components. The time interval for Wabtec's EPIC equipment was extended to five years in 1992, per FRA Test Waiver, H–92–3 (since renamed FRA–2002–13397.) Currently, UP has more than 1700 locomotives equipped with the Wabtec EPIC brake equipment and maintained under the conditions of waiver FRA–2002–13397.

UP believes the "vigilance" capability of Wabtec's electronic equipment is key to this waiver request. This feature employs the controlling computer to constantly monitor the proper functioning of the system as a whole and in real time. If any key operational parameters are found to fall outside of the allowable tolerance established for each, an appropriate action is automatically and immediately initiated to insure safe operation of the equipment. Less critical faults are logged for follow-up maintenance. UP concludes that the combination of real time vigilant monitoring and fault logging enables "EPIC" COT&S intervals to be similarly increased beyond the current five years with no impact on safety.

Therefore, UP proposes to initiate a test program to extend the Wabtec electronic air brake COT&S based on the following assertions: (1) A reduction of pneumatic devices by substitution of computer-based logic; (2) real time fault detection and control of critical faults to a known fail-safe condition made possible by constant "vigilance" of the controlling computer; (3) development of emergency brake cylinder pressure accomplished conventionally by a back-up pneumatic control valve, as well as electronically under all conditions; (4) demonstrated performance to date of Wabtec "EPIC" brake system under the current waiver FRA 2002–13397 (formally H–92–3); and (5) supporting test and inspection results documented over the past decade for the "EPIC" equipment as required by the current waiver.

As part of this waiver request, UP recommends that a detailed test plan, necessary for properly tracking and documenting the results, be jointly developed between UP, Wabtec Corporation, and FRA. At the completion of the test program, UP further requests that FRA conduct a formal review of the results relative to the objective of moving toward a "performance-based COT&S" criterion.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (*e.g.*, Waiver Petition Docket Number FRA–2003–16306) and must be submitted to the Docket Clerk, DOT Docket Management Facility, Room PL–401 (Plaza Level), 400 7th Street, SW., Washington, DC 20590. Communications received within 45 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's Web site at *http://dms.dot.gov*.

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; pages 19477–78). The statement may also be found at *http://dms.dot.gov*.

Issued in Washington, DC on December 5, 2003.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. 03–30650 Filed 12–10–03; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petition for Waiver of Compliance

In accordance with Part 211 of Title 49 Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) received a request for a waiver of compliance from certain requirements of its safety regulations. The individual petition is described below including, the party seeking relief, the regulatory provisions involved, the nature of the relief being requested, and the petitioner's arguments in favor of relief.

Union Pacific Railroad Company

[Waiver Petition Docket Number FRA–2003–14408]

On September 22, 2003, FRA denied a waiver request submitted by the Union Pacific Railroad Company (UP) seeking a waiver of compliance from certain provisions of the Railroad Operating Practices regulations, 49 CFR 218, regarding blue signal protection of workers. Specifically, UP wanted authority to have train and yard crew members, and utility employees to remove and replace batteries in the two-way end-of-train telemetry device (EOT) on the train the individual has been assigned to, without establishing any blue signal protection. UP requested the same relief that was earlier granted to the Burlington Northern and Santa Fe Railway (BNSF) in waiver request FRA–2001–10660. FRA denied the original request because it included utility employees from any working craft. UP is amending the original request, with regard to relief for utility employees. The new request is only for train and yard crew members and operating craft utility employees.

Both 218.25 and 218.27 requires blue signal protection when workers are on, under, or between rolling equipment on main track or other than main track. 218.5 defines worker as any railroad employee assigned to inspect, test, repair, or service railroad rolling equipment or their components, including brake systems. Members of train and yard crews are excluded, except when assigned such work on railroad rolling equipment that is not part of the train or yard movement they have been called to operate (or assigned to as "utility employees"). Utility employees assigned to and functioning as temporary members of a specific train or yard crew (subject to the conditions set forth in 218.22 of this chapter), are excluded only when so assigned and functioning. 218.22(b) states in part: A utility employee may be assigned to serve as a member of a train or yard crew without the protection otherwise required by subpart D of part 218 of this chapter only under the following conditions * * * (5) The utility employee is performing one or more of the following functions: * * * inspect, test, install remove or replace a rear marking device or end of train device. Under all other circumstances a utility employee working on, under, or between railroad rolling equipment must be provided with blue signal protection in accordance with 218.23 through 218.30 of this part.

The FRA has maintained that removing or replacing a battery in an EOT, while the device is in place on the rear of a train, requires blue signal protection since this task is a service and repair to the device. Therefore, the only way a utility employee or a train and yard crew member can legally remove or replace the EOT battery without establishing blue signal protection, is to remove the EOT from the rear of the train and perform the battery work outside the area normally protected by the blue signal.

UP contends that safety would be improved by eliminating the need for employees to remove an EOT and place it on the ground to change the battery, then have to pick it up and re-mount it to the freight car coupler. Once again, UP requests that they be granted a waiver under conditions similar to those listed in BNSF waiver FRA–2001–10660.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (*e.g.*, Waiver Petition Docket Number FRA–2003–14408) and must be submitted to the Docket Clerk, DOT Docket Management Facility, Room PL–401 (Plaza Level), 400 7th Street, SW., Washington, DC 20590. Communications received within 45 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's Web site at *http://dms.dot.gov*.

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000(Volume 65, Number 70; Pages 19477–78). The Statement may also be found at *http://dms.dot.gov*.

Issued in Washington, DC on December 5, 2003.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. 03–30651 Filed 12–10–03; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[NHTSA–03–16121]

Insurer Reporting Requirements; Reports Under 49 U.S.C. on Section 33112(c)

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Notice of availability.

SUMMARY: This notice announces publication by NHTSA of the annual insurer report on motor vehicle theft for the 1997 reporting year. Section 33112(c) of title 49 of the U.S. Code, requires this information to be compiled periodically and published by the agency in a form that will be helpful to the public, the law enforcement community, and Congress. As required by section 33112(c), this report provides information on theft and recovery of vehicles; rating rules and plans used by motor vehicle insurers to reduce premiums due to a reduction in motor vehicle thefts; and actions taken by insurers to assist in deterring thefts.

ADDRESSES: Due to the voluminous content of this report, interested persons may obtain a copy of this report by contacting the U.S. Department of Transportation, Docket Management, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590. (Docket hours are from 10 a.m. to 5 p.m.). Requests should refer to Docket No. 2003–16121. This report without appendices may also be viewed on-line at: *http://www.nhtsa.dot.gov/cars/rules/theft*.

FOR FURTHER INFORMATION: Ms. Rosalind Proctor, Office of Planning and Consumer Standards, NHTSA, 400 Seventh Street, SW., Washington, DC 20590. Ms. Proctor's telephone number is (202) 366–0846. Her fax number is (202) 493–2290.

SUPPLEMENTARY INFORMATION: The Motor Vehicle Theft Law Enforcement Act of 1984 (Theft Act) was implemented to enhance detection and prosecution of motor vehicle theft (Pub. L. 98–547). The Theft Act added a new Title VI to the Motor Vehicle Information and Cost Savings Act, which required the Secretary of Transportation to issue a theft prevention standard for identifying major parts of certain high-theft lines of passenger cars. The Act also addressed several other actions to reduce motor vehicle theft, such as increased criminal penalties for those who traffic in stolen vehicles and parts, curtailment of the exportation of stolen motor vehicles and off-highway mobile equipment, establishment of penalties for dismantling vehicles for the purpose of trafficking in stolen parts, and development of ways to encourage decreases in premiums charged to consumers for motor vehicle theft insurance.

Title VI (which has since been recodified as 49 U.S.C. Chapter 331), was designed to impede the theft of motor vehicles by creating a theft prevention standard which required manufacturers of designated high-theft car lines to inscribe or affix a vehicle identification number onto major components and replacement parts of all vehicle lines selected as high theft. The theft standard became effective in Model Year 1987 for designated high-theft car lines.

The Anti Car Theft Act of 1992 (Pub. L. 102–519) amended the law relating to the parts-marking of major component parts on designated high-theft vehicles. One amendment made by the Anti Car Theft Act was to 49 U.S.C. 33101(10), where the definition of "passenger motor vehicle" now includes a "multipurpose passenger vehicle or light-duty truck when that vehicle or truck is rated at not more than 6.000 pounds gross vehicle weight." Since "passenger motor vehicle" was previously defined to include passenger cars only, the effect of the Anti Car Theft Act is that certain multipurpose passenger vehicle (MPV) and light-duty truck (LDT) lines may be determined to be high-theft vehicles subject to the Federal motor vehicle theft prevention standard (49 CFR part 541).

Section 33112 of title 49 requires subject insurers or designated agents to report annually to the agency on theft and recovery of vehicles, on rating rules and plans used by insurers to reduce premiums due to a reduction in motor vehicle thefts, and on actions taken by insurers to assist in deterring thefts. Rental and leasing companies also are required to provide annual theft reports to the agency. In accordance with 49 CFR 544.5, each insurer, rental and leasing company to which this regulation applies must submit a report annually not later than October 25, beginning with the calendar year for which they are required to report. The report would contain information for the calendar year three years previous to the year in which the report is filed. The report that was due by October 25, 2000, contains the required information for the 1997 calendar year. Interested persons may obtain a copy of individual insurer reports for CY 1997 by contacting the Docket Section, NHTSA, Room 5109, 400 Seventh Street, SW., Washington, DC 20590. Requests should refer to Docket No. 00–001; Notice 04.

The annual insurer reports provided under section 33112 are intended to aid in implementing the Theft Act and fulfilling the Department's requirements to report to the public the results of the insurer reports. The first annual insurer report, referred to as the Section 612 Report on Motor Vehicle Theft, was prepared by the agency and issued in December 1987. The report included theft and recovery data by vehicle type, make, line, and model which were tabulated by insurance companies and, rental and leasing companies. Comprehensive premium information for each of the reporting insurance companies was also included. This report, the 13th, discloses the same subject information and follows the same reporting format.

Issued on: December 5, 2003.

Stephen R. Kratzke,

Associate Administrator for Rulemaking.

[FR Doc. 03–30693 Filed 12–10–03; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2003–16612]

Notice of Receipt of Petition for Decision That Nonconforming 2002 Ferrari 360 Spider and Coupe Passenger Cars Manufactured From September 1, 2002 Through December 31, 2002 Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition for decision that nonconforming 2002 Ferrari 360 Spider and Coupe passenger cars manufactured from September 1, 2002 through December 31, 2002 are eligible for importation.

SUMMARY: This document announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a decision that 2002 Ferrari 360 Spider and Coupe passenger cars manufactured from September 1, 2002 through December 31, 2002 that were not originally manufactured to comply

with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because (1) they are substantially similar to vehicles that were originally manufactured for importation into and sale in the United States and that were certified by their manufacturer as complying with the safety standards, and (2) they are capable of being readily altered to conform to the standards.

DATES: The closing date for comments on the petition is January 12, 2004.

ADDRESSES: Comments should refer to the docket number and notice number, and be submitted to: Docket Management, Room PL–401, 400 Seventh St., SW., Washington, DC 20590. (Docket hours are from 9 a.m. to 5 p.m.).

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Coleman Sachs, Office of Vehicle Safety Compliance, NHTSA (202–366–3151)

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

NHTSA has previously decided that 2002 Ferrari 360 passenger cars manufactured before September 1, 2002 are eligible for importation, and assigned vehicle eligibility number VSP–402 to those vehicles. See notice announcing decision published on April 3, 2003 at 68 FR 16346. Automobile Concepts, Inc. of North Miami, Florida ("AMC") (Registered Importer 01–278) has petitioned NHTSA to decide whether 2002 Ferrari 360 Spider and Coupe passenger cars manufactured from September 1, 2002 through December 31, 2002 are eligible for importation into the United States. The vehicles which AMC believes are substantially similar are 2002 Ferrari 360 Spider and Coupe passenger cars manufactured from September 1, 2002 through December 31, 2002 that were manufactured for importation into, and sale in, the United States and certified by their manufacturer as conforming to all applicable Federal motor vehicle safety standards.

The petitioner claims that it carefully compared non-U.S. certified 2002 Ferrari 360 Spider and Coupe passenger cars manufactured from September 1, 2002 through December 31, 2002 to their U.S.-certified counterparts, and found the vehicles to be substantially similar with respect to compliance with most Federal motor vehicle safety standards.

AMC submitted information with its petition intended to demonstrate that non-U.S. certified 2002 Ferrari 360 Spider and Coupe passenger cars manufactured from September 1, 2002 through December 31, 2002, as originally manufactured, conform to many Federal motor vehicle safety standards in the same manner as their U.S. certified counterparts, or are capable of being readily altered to conform to those standards.

Specifically, the petitioner claims that non-U.S. certified 2002 Ferrari 360 Spider and Coupe passenger cars manufactured from September 1, 2002 through December 31, 2002 are identical to their U.S. certified counterparts with respect to compliance with Standard Nos. 102 *Transmission Shift Lever Sequence*, 103 *Defrosting and Defogging Systems*, 104 *Windshield Wiping and Washing Systems*, 106 *Brake Hoses*, 109 *New Pneumatic Tires*, 113 *Hood Latch Systems*, 116 *Brake Fluid*, 124 *Accelerator Control Systems*, 135 *Passenger Car Brake Systems*, 202 *Head Restraints*, 204 *Steering Control Rearward Displacement*, 205 *Glazing Materials*, 206 *Door Locks and Door Retention Components*, 207 *Seating Systems*, 212 *Windshield Retention*, 216 *Roof Crush Resistance*, 219 *Windshield Zone Intrusion*, and 302 *Flammability of Interior Materials*.

The petitioner also contends that the vehicles are capable of being readily altered to meet the following standards, in the manner indicated:

Standard No. 101 *Controls and Displays:* (a) Inscription of the word "brake" on the instrument cluster in place of the international ECE warning symbol; (b) modification of the speedometer to read in miles per hour. The petitioner states that these modifications will be accomplished by programming the instrument cluster with downloaded U.S. version information, which also results in the appropriate seat belt warning symbol being displayed.

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment:* (a) Installation of U.S.-model front and rear sidemarker assemblies; (b) modification of the tail lamp assembly wiring so that the tail lamps will operate in the same manner as those on U.S.-certified vehicles.

Standard No. 110 *Tire Selection and Rims:* Installation of a tire information placard.

Standard No. 111 *Rearview Mirror:* Inscription of the required warning statement on the face of the passenger side rearview mirror.

Standard No. 114 *Theft Protection:* Programming the instrument cluster with downloaded U.S. version information.

Standard No. 118 *Power Window Systems:* Inspection of each vehicle and installation, on vehicles that are not already so equipped, of a relay so that the windows will not operate with the ignition switched off.

Standard No. 201 *Occupant Protection in Interior Impact:* Inspection of all vehicles and installation, on vehicles that are not already so equipped, of trim components that are necessary to comply with the standard's upper interior impact requirements. The petitioner states that it will install parts previously tested to the standard's requirements by another registered importer, J.K. Technologies LLC of Baltimore, Maryland. For the Spider version of the vehicle, the petitioner identified these parts as including the left and right pillar covers, the windscreen, and linings associated with those components. For the Coupe, the petitioner identified the left and right side rails, the right central pillar, the left pillar, and linings associated with those components.

Standard No. 208 *Occupant Crash Protection:* Inspection of all vehicles and replacement of any seat belts, air bag control units, air bags, and knee bolsters with U.S.-model components on vehicles that are not already so equipped. Petitioner states that the vehicle should be equipped with an automatic restraint system consisting of driver's and passenger's air bags and knee bolsters, air bag crash sensors, and an air bag control unit. Petitioner also states that the vehicle should be equipped with combination lap and shoulder belts that are self-tensioning and that release by means of a single red pushbutton. Petitioner further states that the vehicle is equipped with a seat belt warning lamp.

Standard No. 209 *Seat Belt Assemblies:* Inspection of all vehicles and replacement of the seat belt assemblies with U.S.-model components on vehicles that are not already so equipped.

Standard No. 210 *Seat Belt Assembly Anchorages:* Inspection of all vehicles and replacement of the seat belt anchorages with U.S.-model components on vehicle that are not already so equipped.

Standard No. 214 *Side Impact Protection:* Inspection of all vehicles to ensure that they are equipped with door bars identical to those in U.S. certified models and installation of those components on vehicles that are not already so equipped.

Standard No. 225 *Child Restraint Anchorage Systems:* Installation of U.S.-model tether anchorages in all coupe model vehicles.

Standard No. 301 *Fuel System Integrity:* Replacement of the charcoal canister, air pump, fuel filler neck, and rollover valve with U.S.-model components.

Standard No. 401 *Interior Trunk Release:* Installation of additional cable and an actuator to permit the trunk lid to be released from inside the trunk.

The petitioner states that all vehicles must be inspected prior to importation to ensure that they are equipped with anti-theft devices identical to those found on the U.S.-certified model, which are necessary to meet the requirements of the Theft Prevention Standard found in 49 CFR part 541. The petitioner states that the U.S.-model component will be installed on any vehicles that are not already so equipped.

In addition, the petitioner states that front and rear bumper reinforcements must be added to the vehicles to comply with the Bumper Standard found in 49 CFR part 581. The petitioner states that it will use components that have already been tested to the requirements of the Bumper Standard by another registered importer, Webautoworld of Pompano Beach, Florida.

The petitioner also states that a vehicle identification plate must be affixed to the vehicle near the left windshield post and a reference and certification label must be affixed to the edge of the driver's side door or to the latch post nearest the driver to meet the requirements of 49 CFR part 565. In addition, a certification label must be affixed to the driver's side doorjamb to meet the requirements of 49 CFR part 567.

Interested persons are invited to submit comments on the petition described above. Comments should refer to the docket number and be submitted to: Docket Management, Room PL–401, 400 Seventh St., SW., Washington, DC 20590. [Docket hours are from 9 a.m. to 5 p.m.]. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Authority: 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: December 3, 2003.

Kenneth N. Weinstein,

Associate Administrator for Enforcement.

[FR Doc. 03–30653 Filed 12–10–03; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Petition for Exemption From the Vehicle Theft Prevention Standard; BMW

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Grant of petition for exemption.

SUMMARY: This notice grants in full the petition of BMW of North America, Inc., (BMW) for an exemption of a high-theft line, the BMW 6 vehicle line, from the parts-marking requirements of the vehicle theft prevention standard. This petition is granted because the agency has determined that the antitheft device to be placed on the line as standard equipment is likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts-marking requirements.

DATES: The exemption granted by this notice is effective beginning with the 2004 model year (MY).

FOR FURTHER INFORMATION CONTACT: Ms. Rosalind Proctor, Office of Planning and Consumer Standards, NHTSA, 400 Seventh Street, SW., Washington, DC 20590. Ms. Proctor's telephone number is (202) 366–0846. Her fax number is (202) 493–2290.

SUPPLEMENTARY INFORMATION: In a petition dated July 21, 2003, BMW of North America, Inc. (BMW), requested exemption from the parts-marking requirements of the theft prevention standard (49 CFR Part 541) for the BMW 6 vehicle line, beginning with MY 2004. The petition has been filed pursuant to 49 CFR Part 543, Exemption from Vehicle Theft Prevention Standard, based on the installation of an antitheft device as standard equipment for an entire vehicle line. Based on the evidence submitted by BMW, the agency believes that the antitheft device for the BMW 6 vehicle line is likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts-marking requirements of the theft prevention standard (49 CFR Part 541).

BMW's submittal is considered a complete petition, as required by 49 CFR Part 543.7, in that it meets the general requirements contained in 543.5 and the specific content requirements of 543.6.

In its petition, BMW provided a detailed description and diagram of the identity, design, and location of the components of the antitheft device for the new line. BMW will install its antitheft device as standard equipment on the MY 2004 BMW 6 vehicle line. The antitheft device is a passive, electronically-coded vehicle immobilizer (EWS) system. The device will prevent the vehicle from being driven away under its own engine power in the event the ignition lock and doors have been manipulated. The device is automatically activated when the engine is shut off and the vehicle key is removed from the ignition lock cylinder. In addition to the key, the antitheft device can be activated by the use of its radio frequency remote control. Locking the vehicle door and trunk by using the key cylinder or the radio frequency remote control will further secure the vehicle. BMW stated that the frequency codes for the remote control constantly change to prevent an unauthorized person from opening the

vehicle by intercepting the signals of its remote control.

The EWS system consists of a key with a transponder, a loop antenna (coil) around the steering lock cylinder, an EWS control unit and an engine control unit (DME/DDE) with encoded start release input.

BMW stated that integrated in the key is a transponder chip that consists of a transponder, a small antenna coil, and a memory which can be written to and read from. The memory contains its own unique key and customer service data. The transponder is a special transmitter/receiver that communicates with the EWS control through the transceiver module.

BMW states that the EWS control unit provides the interface to the loop antenna (coil), engine control unit and starter. The primary tasks of the EWS control unit will consist of querying key data from the transponder and providing the coded release of the engine management for a valid key. BMW also states that the engine control unit with coded start release input has been designed in such a manner that the ignition and the fuel supply are only released when a correct release signal has been sent by the EWS control unit. The EWS control unit inspects the key data for correctness and allows the ignition to operate and fuel supply to be released when a correct signal has been received.

The vehicle is also equipped with a central-locking system, which locks all doors, the hood, the trunk and fuel filler lid. To prevent locking the keys in the car upon exiting, the driver door can only be locked with a key or by the radio frequency remote control after it is closed. This also locks the other doors. If the doors are open at the time of locking, they are automatically locked when they are closed.

BMW mentioned the uniqueness of its locks and its ignition key. BMW stated that its vehicle's locks are almost impossible to pick, and its ignition key cannot be duplicated on the open market. BMW also stated that a special key blank, key-cutting machine and owner's individual code are needed to cut a new key and that its key blanks, machines and codes will be closely controlled and new keys will only be issued to authorized persons. Spare keys can only be obtained through the BMW dealer because they are not a copy of lost originals, but new keys with original electronic identifications. Additionally, spare keys can only be obtained when all necessary information (*i.e.*,VIN, registration data, customer data) has been provided by the customer or dealer. Every key request is also documented so that any inquiries by insurance companies and investigative authorities can be followed up.

The battery for BMW's 6 vehicle line will be inaccessibly located and covered as an additional security measure. Disconnecting the battery will not allow unlocking of the vehicle's doors. However, in the event of a crash, an inertia switch will automatically unlock all the doors.

BMW also stated that its antitheft device does not incorporate any audible or visual alarms. However, based on the declining theft rate experience of other vehicles equipped with devices that do not have an audio or visual alarm for which NHTSA has already exempted from the parts-marking requirements, the agency has concluded that the absence of a visual or audio alarm has not prevented these antitheft devices from being effective protection against theft.

BMW compared the device proposed for its new line with devices which NHTSA has previously determined to be as effective in reducing and deterring motor vehicle theft as would compliance with the parts-marking requirements of Part 541, and has concluded that the antitheft device proposed for this new line is no less effective than those devices in the lines for which NHTSA has already granted exemptions from the parts-marking requirements. The antitheft system that BMW intends to install on its 6 vehicle line for the MY 2004 is exactly the same system that BMW installed on its Carline 5 for MY 1997, its Carline 3 for MY 1999, its Carline MINI for MY 2002 and its Z4 for MY 2003. The agency granted BMW's petitions for exemption of its Carline 5 beginning with the 1997 model year, its Carline 3 beginning with the 1999 model year, its Carline MINI beginning with the 2002 model year and its Carline Z4 beginning with the 2003 model year in full (see 61 FR 6292, February 16, 1996, 62 FR 62800, November 25, 1997, 66 FR 33604, June 22, 2001, and 67 FR 45180, July 8, 2002, respectively).

In order to ensure reliability and durability of the device, BMW conducted performance tests based on its own specified standards. BMW provided a detailed list of the following tests it conducted: climatic tests, high temperature endurance run, thermo-shock test in water, chemical resistance, vibrational load, electrical ranges, mechanical shock tests, and electromagnetic field compatibility.

Additionally, BMW stated that its immobilizer system fulfills the requirements of the European vehicle insurance companies which became standard as of January 1995. The requirements prescribe that the vehicle must be equipped with an electronic vehicle immobilizing device which works independently from the mechanical locking system and prevents the operation of the vehicle through the use of coded intervention in the engine management system. In addition, the device must be self-arming (passive), and must become effective upon leaving the vehicle, or not later than the point at which the vehicle is locked, and must deactivate the vehicle only by electronic means and not with the mechanical key.

Based on evidence submitted by BMW, the agency believes that the antitheft device for the 6 vehicle line is likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts-marking requirements of the theft prevention standard (49 CFR Part 541).

The agency believes that the device will provide four of the five types of performance listed in 49 CFR 543.6(a)(3): promoting activation; preventing defeat or circumvention of the device by unauthorized persons; preventing operation of the vehicle by unauthorized entrants; and ensuring the reliability and durability of the device. The device lacks the ability to attract attention to the efforts of unauthorized persons to enter or operate a vehicle by a means other than a key (541.6(a)(3)(ii).

As required by 49 U.S.C. 33106 and 49 CFR 543.6(a)(4) and (5), the agency finds that BMW has provided adequate reasons for its belief that the antitheft device will reduce and deter theft. This conclusion is based on the information BMW provided about its antitheft device.

For the foregoing reasons, the agency hereby grants in full BMW of North America's petition for an exemption for the MY 2004 6 vehicle line from the parts-marking requirements of 49 CFR Part 541.

If BMW decides not to use the exemption for this line, it must formally notify the agency, and, thereafter, the line must be fully marked as required by 49 CFR 541.5 and 541.6 (marking of major component parts and replacement parts).

NHTSA notes that if BMW wishes in the future to modify the device on which this exemption is based, the company may have to submit a petition to modify the exemption. § 543.7(d) states that a Part 543 exemption applies only to vehicles that belong to a line exempted under this part and equipped with the anti-theft device on which the line's exemption is based. Further, § 543.9(c)(2) provides for the submission of petitions "to modify an exemption to permit the use of an antitheft device similar to but differing from the one specified in that exemption." The agency wishes to minimize the administrative burden that § 543.9(c)(2) could place on exempted vehicle manufacturers and itself.

The agency did not intend Part 543 to require the submission of a modification petition for every change to the components or design of an antitheft device. The significance of many such changes could be *de minimis*. Therefore, NHTSA suggests that if the manufacturer contemplates making any changes the effects of which might be characterized as *de minimis*, it should consult the agency before preparing and submitting a petition to modify.

Authority: 49 U.S.C. 33106; delegation of authority at 49 CFR 1.50.

Issued on: December 5, 2003.

Stephen R. Kratzke,

Associate Administrator for Rulemaking.

[FR Doc. 03–30689 Filed 12–10–03; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

[Docket Number: RSPA–98–4957]

Pipeline Safety: Renewal of information Collection: Comment Request

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Notice and request for public comments and OMB approval.

SUMMARY: This notice requests public participation in the Office of Management and Budget (OMB) approval process for the renewal of an existing RSPA information collection. This information collection concerns a pipeline safety regulation that requires hazardous liquid pipeline operators who operate more than 500 miles of pipeline to follow certain protocols in areas designated as high consequence areas (HCAs). RSPA is requesting OMB approval for renewal of this information collection under the Paperwork Reduction Act of 1995 and 5 CFR part 1320. On September 9, 2003, RSPA published in the **Federal Register** (68 FR 53216) a request for public comments on this information collection. None were received. The purpose of this notice is to allow the public an additional 30 days from the date of this notice to send in their comments.

Abstract: RSPA pipeline safety regulation 49 CFR 195.452 designates certain environmentally sensitive areas that are particularly vulnerable to the consequences of hazardous liquid pipeline accidents as high consequence areas (HCAs). The rule was promulgated on December 1, 2000 (65 FR 75378), to provide for thorough assessment and repair of pipeline segments that, in the event of a leak or failure, could affect populated areas, areas unusually sensitive to environmental damage, and commercially navigable waterways. RSPA now requires hazardous liquid pipeline operators with more than 500 miles of pipeline to develop and follow an integrity management program that provides for continually assessing the integrity of all pipeline segments that could affect these high consequence areas.

Copies of this information collection can be reviewed at the U.S. Department of Transportation, Dockets Facility, Plaza 401, 400 Seventh St., SW., Washington, DC 20590, Monday through Friday from 10 a.m. to 5 p.m., excluding public holidays, when the facility is closed. This information collection can also be viewed electronically on the Internet at *dms.dot.gov*.

DATES: Comments on this notice must be received within 30 days of the publication date of this notice to be assured of consideration.

ADDRESSES: Interested persons are invited to send comments directly to the Office Management and Budget, Office of Regulatory Affairs, Attn: Desk Officer for the Department of Transportation, 726 Jackson Place, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Marvin Fell, (202) 366–6205, to ask questions about this notice; or write by e-mail to *marvin.fell@rspa.dot.gov*.

SUPPLEMENTARY INFORMATION: *Abstract:* Certain areas are particularly environmentally sensitive from hazardous liquid pipeline failures. These areas are called high consequence areas (HCA's).

Respondents: Gas and hazardous liquid pipeline operators.

Estimated Number of Respondents: 66.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden Hours on Respondents: 54,780.

OMB Control Number: 2137–0604.

Comments are invited on: (a) The need for the proposed collection of information for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques.

Issued in Washington, DC on December 4, 2003.

Stacey L. Gerard,

Associate Administrator for Pipeline Safety.

[FR Doc. 03–30656 Filed 12–10–03; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Ex Parte No. 558 (Sub–No. 7)]

Railroad Cost of Capital—2003

AGENCY: Surface Transportation Board.

ACTION: Notice of decision instituting a proceeding to determine the railroads' 2003 cost of capital.

SUMMARY: The Board is instituting a proceeding to determine the railroad industry's cost of capital for 2003. The decision solicits comments on: (1) The railroads' 2003 current cost of debt capital; (2) the railroads' 2003 current cost of preferred stock equity capital; (3) the railroads' 2003 cost of common stock equity capital; and (4) the 2003 capital structure mix of the railroad industry on a market value basis.

DATES: Notices of intent to participate are due no later than January 12, 2004. Statements of the railroads are due by March 29, 2004. Statements of other interested persons are due by April 26, 2004. Rebuttal statements by the railroads are due by May 17, 2004.

ADDRESSES: Send an original and 10 copies of statements and a copy of the statement on a 3.5 inch disk in WordPerfect 9.0, and an original and 1 copy of the notice of intent to participate to: Surface Transportation Board, Case Control Branch, 1925 K Street, NW., Washington, DC 20423–0001.

FOR FURTHER INFORMATION CONTACT: Leonard J. Blistein, (202) 565–1529. (Federal Information Relay Service (FIRS) for the hearing impaired: 1 (800) 877–8339.)

SUPPLEMENTARY INFORMATION: The Board's decision is posted on the Board's Web site, *http://*

www.stb.dot.gov. In addition, copies of the decision may be purchased from ASAP Document Solutions by calling 202–293–7878 (assistance for the hearing impaired is available through FIRS at 1–800–877–8339), or by visiting Suite 405, 1925 K Street, NW., Washington, DC 20006, or by email at *asapdoc@verizon.net*.

We preliminarily conclude that the proposed action will not significantly affect either the quality of the human environment or the conservation of energy resources.

Authority: 49 U.S.C. 10704(a).

Decided: December 4, 2004.

By the Board, Chairman Nober.

Vernon A. Williams,

Secretary.

[FR Doc. 03–30620 Filed 12–10–03; 8:45 am]

BILLING CODE 4915–00–P

Corrections

Federal Register

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This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[REG–106030–98]

Proposed Collection; Comment Request for Regulation Project

Correction

In notice document 03–25917 beginning on page 59239 in the issue of Tuesday, October 14, 2003, make the following correction:

On page 59240, in the first column, under the heading **SUPPLEMENTARY INFORMATION**, in the fourth line, "*OMB Number:* 154–1718" should read "*OMB Number:* 1545–1718".

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Thursday,
December 11, 2003

Part II

Department of Energy

Federal Energy Regulatory Commission

18 CFR Part 37, et al.
Standards of Conduct for Transmission Providers; Final Rule

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 37, 161, 250, 284 and 358

[Docket No. RM01–10–000; Order No. 2004]

Standards of Conduct for Transmission Providers

November 25, 2003.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule.

SUMMARY: The Federal Energy Regulatory Commission is adopting standards of conduct that apply uniformly to interstate natural gas pipelines and public utilities (jointly referred to as Transmission Providers). The standards of conduct will govern the relationships between regulated Transmission Providers and all of their Energy Affiliates. The new standards of conduct will eliminate the loophole in the current regulations that do not cover a Transmission Provider's relationship with Energy Affiliates that are not marketers or merchant affiliates. The Final Rule will ensure that Transmission Providers cannot extend their market power over transmission to wholesale energy markets by giving their Energy Affiliates unduly preferential treatment.

EFFECTIVE DATE: The rule will become effective February 9, 2004.

FOR FURTHER INFORMATION CONTACT: Demetra Anas, Office of Market Oversight and Investigation, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC, (202) 502–8178.

SUPPLEMENTARY INFORMATION:

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Before Commissioners: Pat Wood, III, Chairman; William L. Massey, and Nora Mead Brownell.

1. The Federal Energy Regulatory Commission is adding Part 358 to its regulations and revising Parts 37 and 161 of its regulations in response to the changing structure of the energy industry.[1] In this rule, the Commission adopts standards of conduct that apply uniformly to interstate natural gas pipelines and public utilities (jointly referred to as Transmission Providers) that are currently subject to the gas standards of conduct in Part 161 of the Commission's regulations and the electric standards of conduct in Part 37 of the Commission's regulations.[2] In light of the changing structure of the energy industry, the standards of conduct will govern the relationships between regulated Transmission Providers and all of their Energy Affiliates. The new standards of conduct will eliminate the loophole in the current regulations that do not cover a Transmission Provider's relationship with Energy Affiliates that are not marketers or merchant affiliates. The Final Rule will ensure that Transmission Providers cannot extend their market power over transmission to wholesale energy markets by giving their Energy Affiliates unduly preferential treatment.

I. Background

2. On September 27, 2001, the Commission issued a Notice of Proposed Rulemaking (NOPR) in this proceeding.[3] One hundred and fifty-five interested persons submitted comments.[4] Several commenters requested an opportunity for an oral presentation on the matters raised in the NOPR. On April 25, 2002, the Commission published an "Analysis of the Major Issues Raised in the Comments" (Major Issues Analysis), suggesting some possible changes to the proposals in the NOPR. The Major Issues Analysis proposed changes in the definition of an Energy Affiliate, among other things, and provided draft regulatory text.

3. The Major Issues Analysis also gave notice that the Commission would host a full-day technical conference giving interested persons the opportunity to discuss issues raised in the NOPR and the Major Issues Analysis. Approximately 200 participants attended the conference on May 21, 2002. During and following the conference, participants were encouraged to submit drafting options for regulatory text. The Commission then posted all of the proposals on its Internet Website. Since the conference, the Commission has received more than 100 additional comments, many from interested persons who previously submitted comments.

4. This Final Rule is being issued after a review of all the comments filed in this proceeding and will become effective on February 9, 2004. By February 9, 2004, each Transmission Provider is required to file with the Commission and post on the OASIS or its Internet website a plan and schedule for implementing the standards of conduct. By June 1, 2004, all Transmission Providers must comply with the standards of conduct and post procedures on the Internet that will enable customers and the Commission to determine whether Transmission Providers are in compliance with the standards of conduct requirements contained herein.

II. Current Regulations

5. The current standards of conduct restrict the ability of interstate natural gas pipelines and public utilities (Transmission Providers) to give their marketing affiliates or wholesale merchant functions undue preferences over non-affiliated customers. The Commission's goal—to prevent unduly discriminatory behavior—reflects FERC's statutory responsibilities under the NGA and FPA.[5] Both gas[6] and electric[7] standards of conduct rely on

[1] The Commission is also making minor conforming changes in Parts 250 and 284.

[2] The gas standards of conduct are codified at part 161 of the Commission's regulations, 18 CFR part 161 (2003), and the electric standards of conduct are codified at 18 CFR 37.4 (2003).

[3] Standards of Conduct for Transmission Providers, 66 FR 50919 (Oct. 5, 2001), IV FERC Stats. & Regs. Regulation Preambles ¶ 32,555 (Sept. 27, 2001).

[4] *See* Appendix A for a list of commenters.

[5] Sections 4 and 5 of the Natural Gas Act (NGA), 15 U.S.C. 717c and 717e (2000), state that no natural gas company shall make or grant an undue preference or advantage with respect to any transportation or sale of natural gas subject to the Commission's jurisdiction. Similarly, under sections 205 and 206 of the Federal Power Act (FPA), 16 U.S.C. 824d and 824e (2000), no public utility shall make or grant an undue preference with respect to any transmission or sale subject to the Commission's jurisdiction.

[6] Order No. 497, 53 FR 22139 (June 14, 1988), FERC Stats. & Regs., Regulations Preambles 1986–1990 ¶ 30,820 (June 1, 1988); Order No. 497–A, *order on reh'g*, 54 FR 52781 (Dec. 22, 1989), FERC Stats. & Regs., Regulations Preambles 1986–1990 ¶ 30,868 (Dec. 15, 1989); Order No. 497–B, *order extending sunset date*, 55 FR 53291 (Dec. 28, 1990), FERC Stats. & Regs., Regulations Preambles 1986–1990 ¶ 30,908 (Dec. 13, 1990); Order No. 497–C, *order extending sunset date*, 57 FR 9 (Jan. 2, 1992), FERC Stats. & Regs., Regulations Preambles 1991–1996 ¶ 30,934 (Dec. 20, 1991), *reh'g denied*, 57 FR 5815 (Feb. 18, 1992), 58 FERC ¶ 61,139 (Feb. 10, 1992); Tenneco Gas v. FERC (affirmed in part and remanded in part), 969 F.2d 1187 (D.C. Cir. 1992); Order No. 497–D, *order on remand and extending sunset date*, 57 FR 58978 (Dec. 14, 1992), FERC Stats. & Regs . Regulations Preambles 1991–1996 ¶ 30,958 (Dec. 4, 1992); Order No. 497–E, *order on reh'g and extending sunset date*, 59 FR 243 (Jan. 4, 1994), FERC Stats. & Regs., Regulations Preambles 1991–1996 ¶ 30,987 (Dec. 23, 1993); Order No. 497–F, *order denying reh'g and granting clarification*, 59 FR 15336 (Apr. 1, 1994), 66 FERC ¶ 61,347 (Mar. 24, 1994); and Order No. 497–G, *order extending sunset date*, 59 FR 32884 (June 27, 1994), FERC Stats. & Regs., Regulations Preambles 1991–1996 ¶ 30,996 (June 17, 1994).

See also Standards of Conduct and Reporting Requirements for Transportation and Affiliate Transactions, Order No. 566, 59 FR 32885 (June 27, 1994), FERC Stats. & Regs., Regulations Preambles 1991–1996 ¶ 30,997 (June 17, 1994); Order No. 566–A, *order on reh'g*, 59 FR 52896 (Oct. 20, 1994), 69 FERC ¶ 61,044 (Oct. 14, 1994); Order No. 566–B, *order on reh'g*, 59 FR 65707 (Dec. 21, 1994), 69 FERC ¶ 61,334 (Dec. 14, 1994); and Reporting Interstate Natural Gas Pipeline Marketing Affiliates on the Internet, Order No. 599, 63 FR 43075 (Aug. 12, 1998), FERC Stats. & Regs., Regulations Preambles 1996–2000 ¶ 31,064 (July 30, 1998)

[7] Open Access Same-Time Information System (Formerly Real-Time Information Network) and Standards of Conduct, Order No. 889, 61 FR 21737 (May 10, 1996), FERC Stats. & Regs., Regulations Preambles 1991–1996 ¶ 31,035 (Apr. 24, 1996); Order No. 889–A, *order on reh'g*, 62 FR 12484 (Mar. 14, 1997), FERC Stats. & Regs., Regulations Preambles 1996–2000 ¶ 31,049 (Mar. 4, 1997); Order No. 889–B, *reh'g denied*, 62 FR 64715 (Dec. 9, 1997), FERC Stats. & Regs., Regulations Preambles 1996–2000 ¶ 31,253 (Nov. 25, 1997)

See also Promoting Wholesale Competition Through Open Access Non-Discrimination Transmission Services by Public Utilities; Recovery

Continued

similar mechanisms to prevent transmission from being used in an unduly preferential or discriminatory manner by: (1) Separating employees [8] engaged in transmission services from those engaged in commodity marketing services, *i.e.*, marketing or sales for resale of natural gas or electric energy; and (2) ensuring that all transmission customers, affiliated and non-affiliated, are treated on a non-discriminatory basis. The Commission's goals have not changed. This rule is designed to prevent Transmission Providers from giving undue preferences to any of their Energy Affiliates to ensure that transmission is provided on a non-discriminatory basis.

III. Need for the Rule

6. As discussed in the NOPR, significant changes have occurred since the standards of conduct were first adopted. In Order No. 636, the Commission required all interstate natural gas pipelines to provide open-access transportation service and to unbundle their gas sales from transportation.[9] Since then, the market has expanded to include both physical and financial transactions by marketing and non-marketing gas pipeline affiliates.[10] In the gas industry, these changes include unbundling, capacity release, and e-commerce. Today, as a result of growth and consolidations, many interstate natural gas pipeline companies also have a much wider array of affiliates in all sectors of the energy business. The gas industry has experienced consolidations in every sector—pipelines, producers, marketers, LDC/utilities and industrials. Examples include the mergers of El Paso Energy Corporation, Sonat Inc. and the Coastal Corporation, and Columbia Energy Group and NiSource Inc. Marketing affiliates and non-marketing affiliates today offer a variety of new services, such as bundled sales, asset management, price hedging, risk management, and electronic commodity trading. Recently, some pipelines have reduced or eliminated some of these services, while others continue to have active merchant, management and trading functions.

7. Similarly, now that public utility Transmission Providers have been providing open-access service under Order No. 888 for several years, there has been a large increase in the number of power marketers with market-based rates,[11] an increased market for available transmission capacity, and an increased number of power transactions. Electric power is evolving into a more liquid, transparent commodity.

8. Not only are the affiliated entities changing in size and scope, so are the Transmission Providers. As a result of an increase in merger activities there has been a convergence of the gas and electric industries.[12] These industry changes mean that interstate natural gas pipelines and their affiliates not only deal in gas, but also in power, much of which is generated using natural gas. In one of its recent regulatory reviews, the Federal Trade Commission (FTC) found that the proposed acquisition of Panhandle and Trunkline by CMS was likely to adversely affect industrial plants in the CMS local natural gas franchise areas that rely on natural gas as a fuel to generate electric power onsite.[13]

9. The Commission is concerned that a Transmission Provider's market power could be transferred to its affiliated businesses because the existing rules do not cover all affiliate relationships. For example, an integrated entity could exercise market power in delivered natural gas service to raise costs of rival generators or inhibit entry of new generators into wholesale power markets.

10. Although the current standards of conduct limit Transmission Providers' ability to make or grant undue preferences to their wholesale merchant functions or to their marketing affiliates, they do not cover the transmission providers' other non-marketing affiliates, even though the NGA and FPA prohibit a natural gas pipeline company and a public utility from giving any entity an undue preference. Non-marketing affiliates of Transmission Providers compete against non-affiliates for transmission services, in capacity release transactions, in power sales, and in siting new generation. For example, in the gas industry, non-marketing affiliates of interstate natural gas pipelines control large amounts of capacity on their affiliated pipelines, yet they are not covered by the current standards of conduct because they do not actually hold pipeline capacity (functioning instead as asset managers) or they fit within one of the existing exceptions, *e.g.*, producers, gatherers and local distribution companies.[14] *See* 18 CFR 161.2 (2003). A comparison of the October 2003 Index of Customers data to the January 2001 Index of Customers data reveals that the amount of firm capacity held by marketing affiliates has decreased during that period, while the amount of firm capacity held by other affiliates has increased during that period.[15]

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of Stranded Costs by Public Utilities and Transmitting Utilities, Order No. 888, 61 FR 21540 (May 10, 1996), FERC Stats. & Regs., Regulations Preambles 1991–1996 ¶ 31,036 (Apr. 24, 1996) at 31,692; *order on reh'g*, Order No. 888–A, 62 FR 12274 (Mar. 14, 1997), FERC Stats. & Regs., Regulations Preambles 1991–1996 ¶ 31,048 (Mar. 4, 1997); *order on reh'g*, Order No. 888–B, 81 FERC ¶ 61,248 (1997); *order on reh'g*, Order No. 888–C, 82 FERC ¶ 61,046 (1998), *aff'd in relevant part sub nom.*, Transmission Access Policy Study Group v. FERC, 225 F.3d 667 (D.C. Cir. 2000), *cert. granted*, 69 U.S.L.W. 3574 (Nos. 00–568 (in part) and 00–809), *cert. denied* (No. 00–800) (U.S. Feb. 26, 2001).

[8] Each reference to employees includes contractors, consultants and agents.

[9] Order No. 636, Pipeline Service Obligations and Revisions to Regulations Governing Self-Implementing Transportation Under Part 284 of the Commission's Regulations, and Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol, FERC Stats. & Regs. ¶ 30,939 (1992), *order on reh'g*, Order No. 636–A, FERC Stats. & Regs. ¶ 30,950 (1992), *order on reh'g*, Order No. 636–B, 61 FERC ¶ 61,272 (1992), *aff'd in part, rev'd in part, United Distribution Cos. v. FERC*, 88 F.3rd 1105 (D.C. Cir. 1996), *cert denied*, 137 L. Ed 2d 845, 117 S. Ct. 1723 (1997), *on remand*, Order No. 636–C, 78 FERC ¶ 61,186 (1997), *order on reh'g*, Order No. 636–D, 83 FERC ¶ 61,210 (1998).

[10] We also have seen the entry of many financial institutions into the trading arena, *e.g.*, Morgan Stanley Capital Group, Inc., Bank of America, N.A., and UBS AG.

[11] As of October 1, 2003, the Commission has granted approximately 1300 market-based rate authorizations; nearly 880 of these were approved within the last five years. Of the authorizations granted within the last five years, about 500 were granted to investor-owned utilities and their affiliates.

[12] Since 1995, the Commission has received 66 public utility merger applications, 60 of which have been approved, one has been set for hearing and five have been withdrawn or terminated. Several mergers joined gas and electric companies, such as NiSource Inc. with Columbia Energy Group and Dominion Resources, Inc. with Consolidated Natural Gas Company.

[13] In the matter of CMS Energy Company and Panhandle Eastern Pipeline Co. *et al.*, FTC File 991–0046, Analysis of Proposed Consent Order to Aid Public Comment.

[14] A review of data from the 85 interstate natural gas pipelines and certificated storage companies that submitted an Index of Customers for October 2003, shows that 63 of them transport or store gas for their affiliates. Thirty-six pipelines transport gas for their marketing affiliates, which hold an average of 16 percent of the affiliated pipelines' capacity. Similarly, 13 pipelines with storage services "transport" gas for their marketing affiliates, which hold an average of 43 percent of the affiliates storage companies' capacity.

In addition, 33 pipelines transport gas for other (non-marketing) affiliates that hold an average of 42 percent of the affiliated pipelines' capacity, and 16 storage companies "transport" gas for their other affiliates, which hold an average of 46 percent of the affiliated storage companies' capacity.

Staff's review, which looked at all interstate natural gas pipelines that filed Index of Customers is more complete than an INGAA-sponsored study of select pipelines that showed, during 2000, that marketing and non-marketing affiliates of natural gas pipelines contracted for 14.4 percent of the capacity on their affiliated pipeline.

[15] The January 2001 Index of Customers data shows that marketing affiliates held about 18 percent of affiliated interstate natural gas pipelines' firm capacity and non-marketing affiliates held an additional 19 percent of the affiliated pipelines' firm capacity. The October 2003 Index of Customers data shows that marketing affiliates hold about 16 percent of the affiliated pipelines' firm capacity and non-marketing affiliates hold an additional 42 percent of the affiliated pipelines' firm capacity.

11. The current standards of conduct do not address the sharing of confidential shipper information and transportation information with all Energy Affiliates. For example, if an interstate natural gas pipeline informs its affiliated asset manager about a proposed pipeline expansion or upcoming curtailment, the current standards of conduct do not require it to make that information available to non-affiliates, unless the asset manager is a Marketing Affiliate. Nor do the current standards address whether an electric Transmission Provider can share with its generator affiliates information about generation projects planned by competitors. Sharing of information between Transmission Providers and Energy Affiliates undermines and frustrates the efforts of "independent" businesses to buy, sell, build, grow, and provide competitive alternatives in markets where there are concerns about market power. Although Transmission Providers' unduly preferential behavior towards their Energy Affiliates may not violate the current standards of conduct, we believe it violates the general statutory prohibitions against undue discrimination and undue preferences in the provision of interstate transmission services.

12. Many commenters argue generally that the rule is unnecessary. They maintain that there have been relatively few cases of anti-competitive behavior. Some commenters urged the Commission to maintain the status quo. Many public utility Transmission Providers and interstate natural gas pipeline Transmission Providers argue that there is no need for a general rule, and individual instances of abuse can be considered and resolved by the Commission in case-by-case investigations or in individual Commission proceedings.

13. Some commenters supported the Commission's proposal to develop uniform standards of conduct. For example, the American Antitrust Institute said that Transmission Providers have the ability and incentive to adversely affect electricity or gas prices by frustrating or precluding a rival's access to electric transmission or gas transportation. In addition, those companies involved in the converging energy industry support the Commission's initiative because they currently operate under both the electric and gas standards of conduct. Some commenters urge the Commission to adopt stricter prohibitions, such as structural remedies or capacity limits. NASUCA says that the lack of complaints is a "Catch–22." NASUCA states that the reason there have been very few complaints regarding other affiliates is that anti-competitive transactions involving these transactions do not violate the current standards of conduct.

14. Having carefully considered all the comments, the Commission is convinced of the need for a general rule to establish standards of conduct governing relationships between Transmission Providers and their Energy Affiliates. With the creation of the Office of Market Oversight and Investigations (OMOI), the Commission is seeing the results of a more active enforcement program investigating unduly discriminatory practices. Recently, the Enforcement Division of OMOI has uncovered affiliate abuse activity that reveals that some Transmission Providers are giving their affiliates undue preferences and violating the standards of conduct.[16] In addition, several audits of public utilities, conducted by the Division of Regulatory Audits, Office of the Executive Director, revealed violations of the standards of conduct. Specifically, Public Service Company of New Mexico (PNM) failed to comply with the independent functioning requirement.[17] In addition, wholesale merchant function employees had access to computer terminals that allowed them to access transmission system information on the EMS (Energy Management System). More recently, an audit of Ameren Corporation revealed, among other things, that Ameren's transmission employees had engaged in non-public, off-OASIS communications with wholesale merchant function employees and other customers.[18]

15. Transmission Providers continue to have economic incentives to show undue preferences toward their Energy Affiliates. The Commission is adopting new rules to close loopholes in existing rules and to give Transmission Providers specific guidance on how to eliminate undue discrimination and undue preferences in the provision of interstate transmission services, consistent with the directions of the NGA and FPA. The Commission believes that the revised standards of conduct will ensure that Transmission Providers function independently of all their Energy Affiliates. Such separation is vital if the Commission is to ensure that Transmission Providers do not use their access to information about transmission to unfairly benefit their own or their affiliates' sales to the detriment of competitive markets.

IV. Section-by-Section Analysis of Final Rule

A. Applicability—§ 358.1

16. The NOPR proposed that the standards of conduct would apply to all Transmission Providers, as discussed in the section below. The NOPR also stated that the standards of conduct would not apply to Commission-approved Regional Transmission Organizations (RTOs) that comply with the requirements of Order No. 2000.[19] However, RTOs would be subject to the posting requirements in §§ 37.5 and 37.6 of the Commission's regulations, 18 CFR 37.5 and 37.6 (2003). Finally, the NOPR provided that a public utility transmission owner that participates in a Commission-approved RTO and does not operate or control its transmission facilities may request an exemption from the standards of conduct. Following a review of the comments, and as discussed in more detail below, the Commission is adopting this section with modifications, as follows:

§ 358.1 Applicability.

(a) This part applies to any interstate natural gas pipeline that transports gas for others pursuant to subpart A of Part 157 or subparts B or G of Part 284 of this chapter.

(b) This part applies to any public utility that owns, operates, or controls transmission facilities used for the transmission of electric energy in interstate commerce.

(c) This part does not apply to a Transmission Provider that is a Commission-approved Regional Transmission Organization (RTO) or Independent System Operator (ISO). If a public utility transmission owner participates in a Commission-approved RTO or ISO and does

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[16] *See e.g.*, Transcontinental Gas Pipe Line Corp., 102 FERC ¶ 61,302 (2003) (*Transco*); National Fuel Gas Supply Corp., 103 FERC ¶ 61,192 (2003); Idaho Power Corp., 103 FERC ¶ 61,182 (2003) (*Idaho Power*); and Cleco Corp., 104 FERC ¶ 61,125 (2003) (*Cleco*).

[17] April 25, 2000 Letter from John Delaware, Deputy Director and Chief Accountant, to Public Service Company of New Mexico in Docket No. FA99–9–000.

[18] For example, merchant function employees called transmission function employees to request the most up-to-date, non-firm ATC information to save time in submitting requests for transmission service via OASIS. *See* September 27, 2002 Letter from John Delaware, Deputy Executive Director and Chief Accountant to Ameren Corporation in Docket Nos. FA01–5–000, FA01–6–000 and FA01–7–000.

[19] Regional Transmission Organizations, Order No. 2000, 65 FR 809 (Jan. 6, 2000), FERC Stats. & Regs., Regulation Preambles July 1999–December 2000 ¶ 31,089 (Dec. 20, 1999), *order on reh'g*, Order No. 2000–A, 65 FR 12088 (Mar. 8, 2000), FERC Stats. & Regs., Regulation Preambles 1996–2000 ¶ 31,092 (Feb. 25, 2000), *petitions for review pending sub nom.*, Public Utility District No. 1 of Snohomish County, *Washington* v. *FERC* (D.C. Cir., Apr. 24, 2000 (Nos. 00–1174, *et al.*)).

not operate or control its transmission facilities and has no access to transmission or market information covered by § 385.5(b), it may request an exemption from this part.

(d) A Transmission Provider may file a request for an exemption from all or some of the requirements of this part for good cause.

i. Regional Transmission Organizations/ Independent System Operators

17. The NOPR proposed to exempt Commission-approved RTOs from the standards of conduct, while Transmission Providers that are members of RTOs would not automatically be exempt from them. The NOPR stated that depending on how an RTO is structured, there may be a continuing need to apply the standards of conduct to public utility Transmission Providers that are members of RTOs. While an RTO may administer or manage the transmission facilities, there are instances in which a transmission owner continues to physically control or operate the transmission facilities or control centers.[20]

18. EEI urged the Commission to be flexible to accommodate the varying operational arrangements that may be worked out between RTOs or ISOs and participating utilities. EEI, the Kentucky Commission, LG&E and KU urged the Commission to permit utilities that have joined an RTO, but still "technically" operate transmission facilities, to be eligible for exemptions from the rule. They argued that because the RTO "administratively" controls the transmission facilities, concerns about improper transfer and use of transmission information are alleviated.

19. BPA stated that it is unclear whether a Transmission Provider would be eligible for an exemption if, despite turning over operation and control, the Transmission Provider retains preferential access to unposted transmission information and requested that the Commission exempt a Transmission Provider even if it possesses minimal transmission information.

20. BPA has highlighted one of the main concerns of the standards of conduct—information access. If a Transmission Provider operates transmission facilities, regardless of whether it belongs to an RTO/ISO, it has the ability to provide an undue preference to an affiliate and has access to valuable transmission information. Unless the ISO or RTO has a control center and field employees dedicated to the operation and maintenance of all transmission facilities under its operation, a Transmission Provider may be responsible for the operation of the transmission assets (under the direction of the ISO or RTO) and, more importantly, have direct access to transmission information.[21] Participation in an ISO or RTO does not necessarily prevent a Transmission Provider from sharing information with its affiliates preferentially or preferentially operating facilities for the benefit of its Energy Affiliates.

21. NYISO requested clarification that it would not be subject to the rule. The Commission clarifies that NYISO would not be subject to the rule.

22. LILCO urged the Commission to require RTOs to be subject to the requirement to implement tariffs in a non-discriminatory fashion under § 385.5(c) of the Commission's regulations. Similarly, MID and the Illinois Commission requested that the Commission require RTOs and comparable entities (ISOs) to comply with the standards of conduct. MID claimed that RTOs and ISOs often procure Ancillary Services and Energy to meet their customers' needs and such purchases can have a significant effect on the market.

23. The Commission will not require ISOs or RTOs to be subject to the requirements of the standards of conduct as these transmission organizations have been designed and approved by the Commission to eliminate unduly preferential practices. Indeed, one of the many reasons for their creation was to provide a remedy to undue discrimination rather than relying on the standards of conduct. If transmission customers observe that an ISO or RTO is not complying with its Commission-approved tariff or behaving in an unduly discriminatory fashion, it may file a complaint with the Commission, or contact the Commission's Enforcement Hotline or the ISO's or RTO's market monitoring unit (MMU).

ii. Non-Public Utilities

24. The Kentucky Commission, LPPC, Nebraska Public Power District and SMUD urged the Commission to clarify that the standards of conduct will apply to non-public utilities, by virtue of the reciprocity provisions of Order No. 888, in the same manner as the current standards of conduct apply to non-public utilities. Sempra urged the Commission to clarify that public power agencies or non-jurisdictional Transmission Providers that get access to the jurisdictional grid through reciprocity tariffs under Order No. 888 should be required to comply with the standards of conduct to eliminate the preferences they provide to their own merchant operations. The Commission agrees and is amending the proposed regulation to make it clearer which entities are subject to the requirements of the standards of conduct. If a non-public utility voluntarily files a reciprocity open access tariff under Order No. 888, it shall comply with the Final Rule.

iii. Cooperatives and Small Pipelines and Utilities

25. Several commenters, including Alabama Electric Coop., Arkansas Electric Coop., Connexus, Seminole Electric Coop., Old Dominion, Midwest Energy, National Rural Electric Coop. Assoc., Southwest Transmission Coop., East Texas Electric Coop., Wolverine Power Supply Coop., Energy East Companies, Empire Electric District, Wells Rural Electric Coop. and Rural Utilities Service of the Department of Agriculture, asked the Commission to clarify that small utilities or cooperatives (coops) that obtained waivers of the standards of conduct under Order No. 889 would automatically be exempt from the provisions of the Final Rule.[22] Along the same lines, B–R Pipeline, Distrigas of Massachusetts, Hampshire Storage, NiSource, SCG, USG, and U.S. Gypsum and Washington Gas Light urged the Commission to categorically exempt small pipelines or those that were built to serve one or several customers. NRECA requested that the Commission incorporate waiver provisions in the standards of conduct and continue the effectiveness of previously issued waivers.

26. The Industrials recommended that the regulatory text contain a specific exemption provision. Dynegy, on the other hand, urges the Commission not to create broad categorical exemptions from the rule but, rather, to evaluate specific claims of hardship on a case-by-case basis.

27. The Commission will continue the exemptions and partial waivers for the entities that have previously received exemptions and partial waivers under Order No. 889 or Order No. 497. However, an exemption may be revoked if, after an investigation or audit, the Commission determines that the entity no longer qualifies for the exemption or the entity has abused the exemption.

28. In addition, Transmission Providers that did not previously obtain an exemption may request an exemption from all or some of the requirements of Part 358. RUS and NRECA requested clarification that generation and transmission cooperatives and their distribution cooperatives will not be subject to the Final Rule. The Commission clarifies that it will treat generation and transmission cooperatives consistent with the policies established under Order No. 888.[23]

iv. Delay of Applicability

29. Alliance urges the Commission to allow Transmission Providers to delay implementing the Final Rule while the Commission reviews a Transmission Provider's request for an exemption or waiver from the standards of conduct. This is inconsistent with Commission policy to implement rules after reasonable notice; however, apart from the information filing required in § 358.5(e)(1), the Commission is giving Transmission Providers until June 1, 2004 to implement the requirements of the Final Rule. This implementation date should afford Transmission Providers time to fashion requests for waivers or exemptions.

B. General Principles—§ 358.2

30. The NOPR proposed the following general principles for the standards of conduct: (1) A Transmission Providers' employees engaged in transmission system operations must function independently from the Transmission Providers' sales or marketing employees and from any employees of their Energy Affiliates,[24] and (2) a Transmission Provider must treat all transmission customers, affiliated and non-affiliated, on a non-discriminatory basis, and cannot operate its transmission system to benefit preferentially an Energy Affiliate or Marketing Affiliate.

31. No comments were received on this section. Therefore, the Commission is adopting these principles as proposed in the NOPR. These principles are based on Section 4 of the NGA and Section 205 of the FPA, which prohibit a natural gas company or a public utility, respectively, from making or granting an undue preference with respect to transportation/transmission or sale subject to the Commission's jurisdiction.

C. Definitions—§ 358.3

32. As proposed in the NOPR, § 358.3 combines and revises the definitions that were previously contained in §§ 37.3 and 161.2 of the Commission's regulations, and adds, as appropriate, definitions for new terms. The Commission is modifying and adopting the definitions proposed in the NOPR, as discussed below.

i. Definition of a Transmission Provider

33. The NOPR defined a Transmission Provider as:

(1) any public utility that owns, operates or controls facilities used for transmission of electric energy in interstate commerce; or (2) any interstate natural gas pipeline that transports gas for others pursuant to subpart A or Part 157 or subparts B or G of Part 284.

34. The Major Issues Analysis did not address the definition of Transmission Provider. The Commission has reviewed the commenters' recommendations, but, as discussed in more detail below, is adopting the definition of Transmission Provider as proposed.

35. The American Forest and Paper Association (AFPA) urged the Commission to clarify that the definition of a Transmission Provider only includes "any public utility that owns, operates or controls transmission facilities used for the transmission of electric energy in interstate commerce and is subject to the open access requirements of Order No. 888." It requested the Commission to clarify that Transmission Providers do not include industrials that own some discrete transmission facilities used solely for the purpose of interconnecting with the electrical grid. Along the same lines, the Industrials requested clarification that the definition of Transmission Provider will not apply to industrials with self-generation. The Industrials were concerned that the definition would include wholesale sellers such as power marketers and merchant generators with market-based-rate authority and qualifying facilities (QF) because these entities self provide ancillary services or that selling ancillary services would be considered providing "transmission service." Industrials claimed that any generator directly interconnected with an investor-owned transmission system would be deemed a Transmission Provider under the proposed definition. Finally, the Industrials were concerned that owning an interconnect could be interpreted as ownership of a transmission facility. Similarly, Calpine argued that independent generators connected to jurisdictional transmission facilities that do not own transmission facilities, must be excluded from the definition of Transmission Provider.

36. The revision proposed by AFPA is unnecessary. Consistent with our implementation of Order No 888, Industrials that merely interconnect with the interstate transmission grid and sell power would not be a Transmission Provider as used in the Final Rule. Nor is self-generation considered transmission in interstate commerce.

ii. Definition of an Energy Affiliate

37. The NOPR's proposed definition of Energy Affiliate yielded the greatest volume of comments. The NOPR defined the term Energy Affiliate broadly, as:

an affiliate of a Transmission Provider that (1) engages in or is involved in transmission transactions; or (2) manages or controls transmission capacity of a Transmission Provider; or (3) buys, sells, trades or administers natural gas or electric energy; or (4) engages in financial transactions relating to the sale or transmission of natural gas or electric energy.

38. Since the Standards of Conduct seek to prohibit undue preferences and thereby the transfer of market power from the Transmission Provider to its affiliates, the term Energy Affiliate must cover more than the marketers and merchants covered by the existing rules. A narrow definition of Energy Affiliates will not specifically prohibit the transmission function from sharing employees and information with some of its Energy Affiliates who could then receive an unfair advantage in the competitive marketplace. On the other hand, too broad a definition of Energy Affiliate will limit some of the efficiencies gained from certain corporate structures. This language is also intended to cover affiliates that are indirectly involved in transportation, such as asset managers or agents.

39. The definition in the NOPR proposed to govern the relationship between the Transmission Provider, and, among others, affiliated producers, gatherers, local distribution companies (LDCs) and processors. Virtually all of the industry groups argued that the definition of Energy Affiliates is overly broad, and suggested that some narrowing of the definition would be appropriate.

40. In response to numerous comments, the Major Issues Analysis recommended various changes to the definition of Energy Affiliate and provided draft regulatory text. Follow-up comments recommended further

[20] See PJM Interconnection, L.L.C. and Allegheny Power, 96 FERC ¶ 61,060 (2001), where the Commission permitted PJM-West's transmission assets to be operated through PJM's central control center, while the physical control of these transmission assets remained with the transmission owners.

[21] RTOs and ISOs centrally monitor the transmission system, approve transmission service requests through OASIS, and direct member Transmission Providers in the operation of the transmission assets. RTOs, ISOs and member Transmission Providers share transmission information to facilitate safe and reliable operation of the transmission system.

[22] Black Creek Hydro, Inc. 77 FERC ¶ 61,232 (1996).

[23] Order No. 888–A at 30,666.

[24] As noted earlier, when the Commission references employees, it includes contractors, consultants or agents.

changes, which are grouped into several categories. As discussed below, the Commission is revising the definition of Energy Affiliate as follows:

(1) Engages in or is involved in transmission transactions in U.S. energy or transmission markets; or

(2) Manages or controls transmission capacity of a Transmission Provider in U.S. energy or transmission markets; or

(3) Buys, sells, trades or administers natural gas or electric energy in U.S. energy or transmission markets; or

(4) Engages in financial transactions relating to the sale or transmission of natural gas or electric energy in U.S. energy or transmission markets.

(5) An energy affiliate does not include:

(i) A foreign affiliate that does not participate in U.S. energy markets;

(ii) An affiliated Transmission Provider; or

(iii) A holding, parent or service company that does not engage in energy or natural gas commodity transactions or is not involved in transmission transactions in U.S. energy markets; or

(iv) An affiliate that purchases natural gas or energy solely for its own consumption and does not use an affiliated Transmission Provider for transmission of natural gas or energy; or

(v) A state-regulated local distribution company that does not make any off-system sales.

1. LDCs

41. As proposed by the NOPR, Transmission Providers would be required to apply the standards of conduct to their relationships with their affiliated LDCs by eliminating the exemption of Order No. 497, which permitted natural gas pipelines to share employees and information between their transmission businesses and their affiliated LDCs that do not make off-system sales.[25]

42. Fourteen entities, including producers and unaffiliated gas marketers, NASUCA, AIA, the Industrials and the FTC supported the proposed definition of energy affiliate, focusing on LDCs. They asserted that: (1) Conditions have changed since Order No. 497 was promulgated, and LDCs compete more vigorously for access to transmission service; (2) the current exemption is a loophole that permits LDCs to get preferential access to information, which harms competition; and (3) the LDC exemption permits pipelines to circumvent the standards of conduct by using the LDC as a conduit for sharing information. The Connecticut Commission argued that giving LDCs an unfair competitive advantage can only hurt the long-term competitiveness of the market.

43. However, thirty-four commenters, primarily interstate natural gas pipelines and affiliated marketers, INGAA and AGA opposed applying the standards of conduct to a Transmission Provider's relationship with its affiliated LDCs. These commenters recommended that the Commission retain the current exception in Order No. 497 for LDCs that do not engage in off-system sales. They argued that: (1) Section 1 of the NGA makes distribution subject to regulation by the states and not FERC; (2) there is no evidence or market analysis to support eliminating the exemption granted under Order No. 497; (3) to require such separation would cause unnecessary duplication of employees and gas control facilities, resulting in additional costs to customers; [26] and (4) limits on communications with LDCs would impair reliability, and the "emergency" exception in the proposed rule is insufficient.

44. The Commission has decided to retain the existing exemption for LDCs that do not make off-system sales. Specifically, the definition of Energy Affiliates will exclude those LDCs that are regulated by the state, provide solely retail service and engage in no off-system sales. However, the Commission notes that an affiliated LDC that engages in any off-system sale is an Energy Affiliate, and subject to the standards of conduct. An off-system sale would include a situation in which the affiliated LDC had contractually committed for more gas than it needed to serve its on-system customers and sold that gas off its system, *e.g.*, at a hub or on the spot market. Moreover, affiliated LDCs are prohibited from being conduits for improperly sharing information covered by the Final Rule. We also remind Transmission Providers that they are required to comply with the undue discrimination and undue preferences provisions of the NGA vis-à-vis their behavior with their affiliated LDCs and will be subject to greater scrutiny prospectively.

2. Affiliates Not Engaged or Involved in Transmission Transactions, *e.g.*, Trading and Financial Affiliates

45. Thirteen entities, including Ad Hoc Marketers, INGAA and interstate natural gas pipelines, opposed the proposed definition of Energy Affiliates because it does not require the Energy Affiliate to be engaged or involved in transmission transactions on the Transmission Provider's system. These commenters urged the Commission to narrow the definition of Energy Affiliates to apply only to affiliates that are involved in transportation on affiliated Transmission Providers' systems. Similarly, several commenters, including Ad Hoc Marketers, INGAA, Gulf South, and four public utility Transmission Providers requested that the Commission exclude from the definition of Energy Affiliates entities that trade power or are engaged in financial transactions. Gulf South argued that gas futures contracts are traded only for delivery in the future and are unrelated to the current spot market price of gas.

46. The Commission disagrees with the commenters. Although an affiliate may not be directly involved in transmission transactions, the transmission markets and energy-related financial markets are so interconnected that a Transmission Provider does have the ability to operate its transmission system in a manner that gives a trading affiliate an undue preference or provides the trading affiliate with unduly preferential information. For example, a transmission constraint directly impacts the value of the commodity being transported. Preferential access to information about such a constraint could provide a significant benefit to an affiliate engaged in speculative trading of the commodity and cause the price of the commodity to rise to the detriment of the market, even if the trader is not using the affiliated Transmission Provider.

47. Entities involved in the trading of power or gas or in financial transactions related to the sale, purchase or transmission of power or gas are an integral part of the financial and transmission markets. The monthly volume of futures contracts on the NYMEX has grown from approximately 170,000 per month in January 1982 to 7,000,000 per month in January 2000.[27] As seen in the chart below, the financial natural gas (futures) markets and the physical (or spot) markets are closely linked. For example, NYMEX futures prices strongly correlate with transactions to buy and sell natural gas at Henry Hub, the physical delivery point specified in the NYMEX futures contracts.[28]

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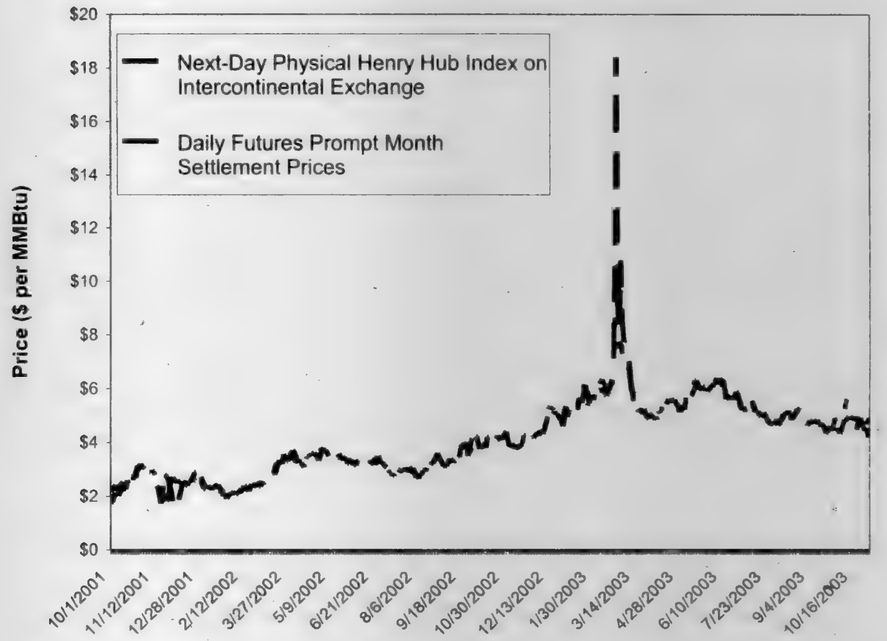
[25] 18 CFR 161.2(e) (2003).

[26] A discussion of the commenters' concerns regarding additional costs is included in the Independent Functioning discussion, below.

[27] "Derivatives and Risk Management in the Petroleum, Natural Gas and Electricity Industries," *www.eia.doe.gov/oiaf/sesrviceerpt/derivative/index* (Oct. 24, 2003).

[28] *See, e.g.*, Fact-Finding Investigation of Potential Manipulation of Electric and Natural Gas Prices, Docket No. PA02-2-000, Final Report on Price Manipulation in Western Market, March 2003 (Chapter IX at pp. IX-2 to IX-9).

Next-Day Physical Henry Hub Indices and NYMEX Prompt Month Futures Settlement Prices October 1, 2001 through October 31, 2003



Sources: www.theice.com, Bloomberg, L.P.

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48. The financial natural gas markets are so interconnected with the natural gas physical markets and the transmission market, that a Transmission Provider has the ability to operate its transmission system in a manner so as to give a trading affiliate an undue preference or to provide the trading affiliate with unduly preferential information. Therefore, the definition of Energy Affiliates in the Final Rule incorporates trading and financial affiliates to the extent they are engaged in transactions in the U.S. energy or gas commodity or transmission markets.

3. Affiliated Transmission Providers

49. Twenty-seven entities, the majority of which are in the interstate natural gas pipeline industry, pointed out that the definition of Energy Affiliate would appear to require Transmission Providers to treat affiliated Transmission Providers as Energy Affiliates. Many argued that such a broad definition of Energy Affiliate would restrict the joint operations of jurisdictional transmission facilities and would mandate unnecessary duplication of jointly operated facilities. INGAA and others pointed out that putting limitations on the relationship between affiliated Transmission Providers would be inconsistent with recent Commission policy. They cited the Commission's orders that required Dominion Transmission, Inc. to apply the gas standards of conduct to its Energy Affiliates as a merger condition.[29] There, the Commission specifically excluded affiliated Transmission Providers from the definition of Energy Affiliates because they are already subject to the non-discrimination provisions of the standards of conduct.

50. The Major Issues Analysis proposed an exemption that would exclude FERC-jurisdictional Transmission Providers from the definition of Energy Affiliate and provided draft regulatory text for comment. Numerous follow-up comments supported this proposed revision, including those filed Cinergy, Entergy, First Energy, NiSource, INGAA, and KM Interstate.

51. The Commission agrees; FERC-jurisdictional interstate natural gas pipelines coordinating transactions with affiliated FERC-jurisdictional interstate natural gas pipelines should be permitted to share transmission function employees and information, since both are bound by the standards of conduct requirements and are prohibited from sharing transmission, customer or market information with their Energy Affiliates. Similarly, a public utility Transmission Provider

[29] Dominion Resources, Inc. and Consolidated Natural Gas Co., 89 FERC ¶ 61,162 (1999), *order on compliance filing*, 91 FERC ¶ 61,140 (2000), *order denying reh'g*, 93 FERC ¶ 61,214 (2000), *vacated and remanded*, (D.C. Cir. No. 01-1169 Slip. Op issued on April 19, 2002), *order on remand pending.*

may share transmission function employees and information with other public utility Transmission Providers. Nor does it appear that communications between FERC-regulated gas Transmission Providers and FERC-regulated public utility Transmission Providers is a problem for the same reason. Moreover, the focus of the standards of conduct is to prevent transmission market power from extending to other products or services, so Transmission Provider to Transmission Provider communications should not violate the purpose of the rule. The definition of energy affiliates, therefore, is clarified to exclude affiliated Transmission Providers. Many commenters expressed support for the language proposed in the Major Issues Analysis, and we will adopt it.

4. Holding or Service Companies

52. Several commenters, including INGAA, Dominion, EEI, NiSource, and Williams, argued that the definition of Energy Affiliates could be construed to include service or holding companies because the definition includes affiliates that engage in financial transactions related to the transmission of natural gas or electricity. The commenters argued that this could limit the ability of senior officers and directors of the holding or service companies to exercise their fiduciary duties for their subsidiaries.

53. As discussed in the Major Issues Analysis, holding and service companies typically do not participate in the energy or transmission markets, and if they do not participate in those markets, they would not be considered Energy Affiliates. As discussed above, affiliates engaged in financial transactions that concern energy or natural gas commodity or transmission markets will be considered Energy Affiliates. Therefore, the Major Issues Analysis recommended that the Commission adopt a definition of Energy Affiliate that excludes holding or service companies that do not engage in and are not involved in energy or natural gas commodity or transmission transactions. The Major Issues Analysis also recommended that the Commission prohibit *any* affiliate, including holding companies or others exempt from the standards of conduct, from acting as a conduit for improperly sharing information.

54. Supplemental comments in response to the language proposed by the Major Issues Analysis were generally supportive of the holding company exception, including those filed by DTE, Gulf South, National Grid, and PacifiCorp and PSE&G. However, several commenters expressed concern that the revision recommended in the Major Issues Analysis was insufficient. They claimed that, even with the narrowing proposed in the Major Issues Analysis, they could not comply with the standards of conduct and the Sarbanes-Oxley Act of 2002 (Sarbanes-Oxley Act), which requires senior corporate executives to be fully informed about the financial conditions of their corporations and their subsidiaries.[10] As noted by various commenters, including EEI and Duke, a parent company with an electric utility or gas distribution system as an operating division would not qualify for the exception proposed by the Major Issues Analysis. They claimed that separating the management or forming a holding company would require corporate reorganization, could be costly, and might trigger the restrictive requirements of the Public Utility Holding Company Act (PUHCA).[11]

55. For example, Duke argued that complying with the Final Rule and the Sarbanes-Oxley Act would be difficult because the Duke Power Division of Duke Energy, which engages in transmission and wholesale and bundled electric sales, would be considered an Energy Affiliate of its interstate natural gas pipeline subsidiaries, and the pipeline subsidiaries would be prohibited from sharing information with the senior management of its Energy Affiliate/parent company, Duke Energy.

56. The Major Issues Analysis specifically excluded holding and service companies, but did not mention "parent companies." Duke encouraged the Commission to extend the holding company exemption to apply to parent companies that may not fall within the legal definition of "holding company," as set forth by PUHCA. NGSA, APGA and IPAA all support Duke's proposal to the extent that the parent companies are not involved in energy transactions. The Commission is adopting this recommendation and will include "parent" companies that are not involved in energy or transmission transactions in the "holding company" exception from the definition of Energy Affiliate.

57. Several commenters were also concerned about Transmission Providers with service corporation subsidiaries that employ virtually all corporate employees, including those who do work for Transmission Providers and Energy Affiliates. The Commission clarifies that if a Transmission Provider utilizes a service corporation or other subsidiary as the mechanism for employment, all the employees assigned, dedicated or working on behalf of a particular entity, *e.g.*, a Transmission Provider or Energy Affiliate, are subject to the standards of conduct requirements as if they were directly employed by the Transmission Provider or Energy Affiliate.

58. In addition, in follow-up comments, National Grid encouraged the Commission to clarify that the holding company exclusion extends to companies engaged or involved in markets not related to energy, power or transmission. The Commission so clarifies.

5. Foreign Affiliates

59. Thirteen commenters, including INGAA, six interstate natural gas pipelines, EEI, five public utility Transmission Providers and Shell objected to the proposed definition of Energy Affiliates to the extent that it included foreign affiliates. They are concerned that Transmission Providers will be required to treat affiliates in Europe, South America and the Caribbean as Energy Affiliates. The Major Issues Analysis urged the Commission to exclude foreign affiliates and revised the draft regulatory text accordingly. Virtually all follow-up comments supported the staff's proposal.

60. The Commission sees no reason to be concerned about the possibility that a Transmission Provider will extend its market power by giving foreign affiliates undue preferences where the foreign affiliates do not participate in energy markets in the United States. The Final Rule clarifies that the definition of Energy Affiliates excludes foreign affiliates that do not participate in the United States (U.S.) energy or transmission markets.

61. In addition, where a foreign affiliate has an ownership interest in a jurisdictional Transmission Provider, that affiliate is, by virtue of its ownership interest, participating in the U.S. energy or transmission markets. For example, a joint venture U.S.-Canadian pipeline would have to treat as Energy Affiliates its Canadian affiliates that buy, sell or trade natural gas or electric energy or engage in or are involved in transmission transactions in U.S. energy markets.

62. On a slightly different note, several pipelines including Alliance, Maritimes and Northeast Pipeline, as well as Duke Energy, Canadian Association of Petroleum Producers and the Alberta Department of Energy, expressed concerned about affiliated pipelines that cross the U.S. and Canadian borders. These companies argued that under the exception proposed by the Major Issues Analysis, affiliated pipelines that cross or interconnect at the U.S. and Canadian borders would fall within the definition of Energy Affiliate. The commenters argued that they should be treated as affiliated pipelines because their operations are closely coordinated and transmission services are shared even though they cross the international border. The Commission agrees and will permit these companies to share their transmission function activities and coordinate along both sides of the border as long as neither of the Transmission Providers shares employees or information with any of its Marketing or Energy Affiliates.

6. Affiliates Buying Power for Themselves

63. Several commenters, including Dominion, Calpine and KM, argued that the Commission needs to clarify the definition of Energy Affiliates because including the terms "buy," "sell," or "administer" could be construed to include an affiliated entity that is purchasing power for its own consumption, such as a communications affiliate that is purchasing power to heat its office building. They argued that under the NOPR, if an affiliate is simply "buying" power for its own energy consumption and not using the affiliated Transmission Provider for transmission, the Transmission Provider would be required to post the organizational charts and job descriptions for the Energy Affiliates, which the commenters argue would be burdensome.

64. In response to these comments, the Major Issues Analysis recommended that the Commission exclude an affiliate of a Transmission Provider that is purchasing electricity or natural gas for its own consumption and is not using an affiliated Transmission Provider for transmission.

65. Although these purchases can have an impact on the energy markets, nonetheless, there is little potential for competitive harm if the definition of Energy Affiliates is clarified to exclude any affiliate of the Transmission Provider that is solely purchasing power or natural gas for its own consumption and is not using an affiliated Transmission Provider for transmission. Therefore, the Commission will adopt this recommendation in the Final Rule. However, this exception is not intended to create a loophole that circumvents the intent of rule, and does not apply to Energy Affiliates that use natural gas or power to produce another source of energy, *e.g.*, generation affiliates.

7. Producers, Gatherers, and Processors

66. The NOPR defined Energy Affiliate to include producers, gatherers and processors. The NOPR states that whether a producer or gatherer is making an on-system sale or an off-system sale, it is still competing for access to the interstate transmission system. NGSA stated that upstream services and transportation services are frequently offered as a single package by pipelines or their affiliates, which allows a pipeline to leverage its market power in the transportation market to gain an advantage in the upstream market. The comments regarding affiliated producers, gatherers, and processors were mostly included in the comments about affiliated LDCs. Commenters, including El Paso Energy Partners, Shell Offshore and Shell Gas, argued that: (1) The Commission does not have jurisdiction over producers, gatherers or intrastate pipelines; (2) there is no evidence to support eliminating the exemption granted under Order No. 497; (3) to require separation would cause unnecessary duplication of employees and gas control facilities, resulting in additional costs to customers; [12] and (4) restrictions on communication would impair reliability.

67. The Commission is adopting the proposed regulation. The Commission is not asserting jurisdiction over the producers, gatherers or processors. The Commission has ample authority to ensure that the interstate pipeline treats all customers, affiliated and unaffiliated, on a non-discriminatory basis by regulating the behavior of the Transmission Provider. Staff's review of the October 2003 Index of Customers indicates that 14 interstate natural gas pipelines transport gas for their production and gathering affiliates, which hold an average of 46% of the affiliated pipelines' capacity. But, unlike LDCs, producers, gatherers and processors are not generally subject to state regulation.

68. Several commenters argue that Section 1 of the NGA makes production and gathering subject to regulation by the states and not the Commission. The Commission is not asserting jurisdiction over producers, gatherers or processors. The Commission has ample authority to ensure that the Transmission Provider treats all customers, affiliated and non-affiliated, on a non-discriminatory basis by regulating the conduct of the transmission provider's interactions with affiliated producers, gatherers or processors.

69. The commenters voiced practical concerns about how the proposed standards of conduct would impact communications between a Transmission Provider and affiliated producers, gatherers, and processors. During the May 21 Conference there was much discussion about the possibility that expanding the standards of conduct would harm deepwater operations and future off-shore development efforts. Several participants stated that competing producers had worked cooperatively on affiliated pipelines to develop deepwater gas reserves. On the other hand, BP argued that Transmission Providers should not be permitted to share any information regarding a shipper's use of the pipeline or information regarding the operations or customers of non-affiliated gatherers that compete with the affiliate. BP argued that the definition of Energy Affiliate should not include affiliate gas processing plants. However, as discussed in more detail below, the Commission is permitting transmission providers to share crucial operational information with certain of its Energy Affiliates.

70. Commenters also argued that there was no evidence that pipelines had unduly favored their producers, gatherers or processing affiliates. However, in a recent example, Transcontinental Gas Pipe Line Corporation and its gathering affiliate, Williams Field Services Company, acted as one entity for purposes of gathering and transporting natural gas in interstate commerce in a monopolistic fashion and abused their market power.[13]

71. The Commission's focus is to ensure comparability of service. To retain a loophole that permits the transmission provider to share employees or give its affiliated producers, gatherers or processors preferential information is inconsistent with the Commission's goal of non-discriminatory interstate transmission service. Producers that are selling energy are competing with other non-affiliated shippers for access to the pipelines' transmission systems. Whether a producer is selling gas from its own production or from the production of another, if is competing

[10] *See* Section 302 of the Sarbanes-Oxley Act, Pub. L. 107–204, Sec. 9, 116 Stat. 745, 777 (2002).

[11] Public Utility Holding Company Act of 1935, 15 U.S.C. 79a *et seq.* (2000).

[12] A discussion of the commenters' concerns regarding additional costs is included in the Independent Functioning discussion, below.

[13] *Shell Offshore Inc.* v. *Transcontinental Gas Pipe Line Corp., et al.*, 100 FERC ¶ 61,254 (2002), *order on reh'g*, 103 FERC ¶ 61,177 (2003), *appeal filed* June 27, 2003 (D.C. Cir. No. 03–1179).

with non-affiliates for access to the pipeline's transportation system. We conclude that providing a producer, gatherer or processor with preferential access to the pipeline's transmission system or information concerning the pipeline's system is inconsistent with NGA Section 4's prohibition against undue preferences or discrimination in the provision of interstate transportation services; accordingly, this Final Rule will prevent such conduct.

8. Intrastate and Hinshaw Pipelines

72. Although the NOPR did not specifically address intrastate or Hinshaw pipelines,[34] the definition of Energy Affiliate proposed in the NOPR would include intrastate and Hinshaw pipelines. Several commenters, including the Association of Texas Intrastate Natural Gas Pipelines, SCE&G and CMS, opposed including intrastate and Hinshaw pipelines in the definition of Energy Affiliate and urged the Commission to retain the current exemption at § 161.2(c)(3) of the Commission's regulations, 18 CFR 161.2(c)(3) (2003), that permits intrastate pipelines to make on-system sales without triggering the standards of conduct. The arguments raised mirror those raised with respect to producers, gatherers or processors, which currently enjoy the same exemption. The Commission's definition of Energy Affiliate in the Final Rule will include intrastate and Hinshaw pipelines. Providing an intrastate pipeline or Hinshaw pipeline preferential access to a transmission system or information concerning a transmission system would be inconsistent with NGA Section 4's prohibitions against undue preferences or discrimination in the provision of interstate transportation service.

iii. Definition of Marketing, Sales or Brokering

73. The NOPR proposed to define marketing, sales or brokering as:

> A sale for resale of natural gas or electric energy in interstate commerce. Sales and marketing employee or unit includes: (1) Any pipeline's sales operating unit, to the extent provided in § 284.286 of this chapter, and (2) an electric transmission provider's sales unit, including those employees that engage in wholesale merchant sales or bundled retail sales.[35]

[34] Hinshaw pipelines are exempt from Commission regulation under the NGA, but they may have limited jurisdiction certificates to provide interstate transportation services like an intrastate pipeline under the Natural Gas Policy Act.

[35] The term bundled retail sales employees, means those employees of the public utility Transmission Provider or its affiliates who market or sell the bundled electric energy product (including generation, transmission, and distribution) delivered to the transmission provider's firm and non-firm retail customers.

74. The NOPR proposed that "marketing" would include a public utility Transmission Provider's sales unit, including all employees that engage in wholesale merchant sales or bundled retail sales functions.[36] This would eliminate the exemption of Order No. 889, which permitted a public utility Transmission Provider to use the same employees for its interstate transmission business and its bundled retail sales business.

75. Fourteen commenters, including the FTC, Cooperatives, Calpine, ELCON, EPSA, NEMA, Transmission Access Policy Group, Transmission Group, several state commissions, and AAI supported the NOPR's proposal to treat retail function employees as marketing affiliate employees. They argued that the Commission can assert jurisdiction over the organizational structure of the jurisdictional public utility and the dissemination of information acquired through the operation of jurisdictional assets. In addition, they argued that: (1) The Commission must ensure that transmission service is not unduly discriminatory; (2) the bundled retail sales represent a large percentage of utilities' sales, and the utilities have little incentive to promote comparability, to improve OASIS or to provide equal quality service; and (3) the distinction between wholesale and retail is artificial and the conditions in the retail market impact the wholesale market.

76. However, thirty-six commenters, including EEI, NASUCA, NARUC, many public utility Transmission Providers, several cooperatives and ten state commissions, opposed treating retail function employees as Marketing Affiliate employees. Many commenters questioned the need to change the standards of conduct for public utility Transmission Providers when the current rules appear to be adequate.[37] For the most part, they contend that: (1) The Commission is exceeding its statutory authority under Section 201 of the FPA, which gives states regulatory authority over facilities used in local distribution, intrastate commerce or retail consumption; (2) there are no competitive concerns because retail service is state regulated; (3) the Transmission Provider may not be able to maintain reliability and would have difficulty in coordinating generation dispatch; (4) some Transmission Providers could not fulfill their state-mandated obligations to be providers of last resort; (5) the Transmission Provider would not be able to engage in integrated resource planning; and (6) separating employees engaged in the bundled sales function for retail load from interstate transmission employees would cause expensive duplication of staff and facilities, without any countervailing competitive benefit.[38]

77. The Major Issues Analysis recommended retaining the proposal in the NOPR. Many commenters submitted follow-up comments opposing the Staff's recommendation. In contrast with some commenters' statements, there have been several recent examples of affiliate abuse in the electric industry. In 2002, Idaho Power favored its wholesale merchant function and marketing affiliate by accepting their representations that certain non-firm transmission requests were necessary to serve native load, when in fact they were not.[39] More recently, the Commission approved a settlement with Cleco Corp. for its 1999–2002 violations of the standards of conduct, including, among other things, sharing of a trading floor by employees engaged in wholesale merchant functions and in retail sales functions.[40]

78. The Commission has ample authority to regulate the behavior of the public utility that owns, operates or controls transmission in interstate commerce and its relationship with any Energy Affiliates. Nevertheless, the Final Rule will retain the exemption of Order No. 889, which permits a public utility Transmission Provider to use the same employees for its interstate transmission business and its bundled retail sales business. However, as stated in Order No. 888–A, "if unbundled retail transmission in interstate commerce occurs voluntarily by a public utility or as a result of a state retail access program, the Commission has exclusive jurisdiction over the rates, terms and conditions of such transmission."[41] The standards of conduct will apply to merchant employees who are engaged in sales or purchase of power that will be resold at retail pursuant to state retail wheeling

[36] Section 284.286 of the Commission's regulations currently requires an interstate natural gas pipeline to separate its interstate transmission function from its unbundled sales service, essentially treating the pipeline's sales business as the equivalent of an affiliated marketing company. *See* 18 CFR 284.286 (2003).

[37] The Commission does not have detailed data on the amount of transmission used for retail electric service.

[38] A discussion of the commenters' concerns regarding additional costs is included in the Independent Functioning discussion, below.

[39] 103 FERC ¶ 61,182 (2003).

[40] 104 FERC ¶ 61,125 (2003).

[41] FERC Stats. & Regs., Regulation Preambles January 1991-June 1996 ¶ 31,036 at 51,781.

programs.[42] The Commission is also clarifying, however, that if a retail sales function employee engages in any wholesale sales, such as selling excess generation to a non-retail customer, the retail function will be treated as a wholesale merchant function. It is not appropriate for an entity that participates in the wholesale market to obtain an undue preference when competing with non-affiliates for transmission capacity.

79. Under the Final Rule, the definition of Marketing, Sales and Brokering includes: A sale for resale of natural gas or electric energy in interstate commerce. Sales and marketing employee or unit includes: (1) any interstate natural gas pipeline's sales operating unit, to the extent provided in § 284.286 of this chapter, and (2) a public utility Transmission Provider's energy sales unit, unless such unit engages solely in bundled retail sales. If a retail sales unit engages in any wholesale sales, the separation of functions requirement will apply.

iv. Definition of a Transmission Function Employee

80. Although the NOPR did not provide a definition for the term "Transmission Function employee," many commenters, including Duke, urged the Commission to adopt a definition to provide additional clarity to the regulations. Following the May 21 Conference, several commenters provided draft regulatory text. In response to the comments, the Commission will add a definition for the term "Transmission Function" to the Final Rule, as follows:

> Transmission Function employee means an employee, contractor, consultant or agent of a Transmission Provider who conducts transmission system operations or reliability functions, including, but not limited to, those who are engaged in day-to-day duties and responsibilities for planning, directing, organizing or carrying out transmission-related operations.

v. Definition of a Reseller

81. The NOPR defined a "reseller" as any transmission customer who offers to sell transmission capacity it has purchased. As noted by Duke, Carolina Power and Light, FPA and several other commenters, the definition of "reseller" was used in the NOPR, but was not used in the rest of the regulatory text. They request that the term be deleted. The Commission agrees and is deleting the term from the Final Rule.

[42] American Electric Power Service Corporation, 81 FERC ¶ 61,332 (1997).

D. Independent Functioning—§ 358.4

82. The NOPR proposed § 358.4, as follows:

> (a) *Separation of functions.*
> (1) Except in emergency circumstances affecting system reliability, the transmission function empioyees of the Transmission Provider must function independently of the Transmission Provider's marketing or sales employees and its energy affiliates' employees.
> (2) Notwithstanding any other provisions in this section, in emergency circumstances affecting system reliability, Transmission Providers may take whatever steps are necessary to keep the system in operation. Transmission Providers must report to the Commission and post on the OASIS or Internet website, as applicable, each emergency that resulted in any deviation from the standards of conduct, within 24 hours of such deviation.
> (3) The Transmission Provider is prohibited from permitting its sales and marketing employees or employees of its energy affiliates from: (i) conducting transmission system operations or reliability functions; and (ii) having access to the system control center or similar facilities used for transmission operations or reliability functions that differs in any way from the access available to other transmission customers.

83. Several commenters proposed an alternative "functional approach," while others focused on implementation of the proposed independent functioning requirement, including: (1) Sharing of senior management between Transmission Providers and their Marketing and Energy Affiliates (corporate governance); (2) sharing of non-transmission support employees between Transmission Providers and Marketing and Energy Affiliates; (3) sharing of field and maintenance employees between Transmission Providers and Marketing and Energy Affiliates; (4) allowing Transmission Provider employees to engage in operational or cash-out sales.

84. In response to the NOPR, commenters focused on whether certain types of non-transmission function employees could be shared between Transmission Providers and their Energy and Marketing Affiliates. The Major Issues Analysis recommended that the Commission adopt the language proposed in the NOPR, with some clarifications to permit the sharing of "support-type" employees. During the May 21 Conference and in follow-up comments, several entities made recommendations regarding an alternative approach.

85. As discussed in more detail below, the Commission is adopting the independent functioning requirement with the modifications discussed below. The independent functioning requirement in the Final Rule is as follows:

> (a) Separation of functions.
> (1) Except in emergency circumstances affecting system reliability, the transmission function employees of the Transmission Provider must function independently of the Transmission Provider's Marketing or Energy Affiliates' employees.
> (2) Notwithstanding any other provisions in this section, in emergency circumstances affecting system reliability, a Transmission Provider may take whatever steps are necessary to keep the system in operation. Transmission Providers must report to the Commission and post on the OASIS or Internet website, as applicable, each emergency that resulted in any deviation from the standards of conduct, within 24 hours of such deviation.
> (3) The Transmission Provider is prohibited from permitting Marketing or Energy Affiliates' employees from: (i) conducting transmission system operations or reliability functions; and (ii) having access to the system control center or similar facilities used for transmission operations or reliability functions that differs in any way from the access available to other transmission customers.
> (4) Transmission Providers are permitted to share support employees and field and maintenance employees with their Marketing and Energy Affiliates.

i. Background and History of Independent Functioning Requirement

86. The principle underlying proposed § 358.4 is that when employees engaged in transmission services function independently, there are significantly fewer opportunities to give unduly preferential treatment to affiliates engaged or involved in commodity transactions or other business activities that compete with non-affiliated customers of the Transmission Providers. Section 358.4(a) combines the separation of functions requirements of current §§ 161.3(g)[43] and 37.4(a)(1) and (2), ensures that the transmission function employees of the Transmission Provider function independently of the Transmission Provider's sales and marketing employees and employees of the Energy Affiliates. Like the separation of functions requirement in current § 37.4(a)(1) and (2), employees engaged in transmission functions would be required to function

[43] 43 Under Standard G. 18 CFR 161.3(g) (2003), to the maximum extent practicable, a pipeline's operating employees and the operating employees of its marketing affiliate must function independently of each other. In Order No. 497–E, the Commission defined operating employees as, in part, those who are engaged in day-to-day duties and responsibilities for planning, directing, organizing or carrying out gas-related operations, including gas transportation, gas sales or gas marketing activities. Order No. 497–E at 30,996.

independently; but, in the event of emergencies affecting system reliability, may take whatever steps are necessary to keep the transmission systems in operation, including, if needed, using affiliates' employees.

87. Currently, under § 37.4(a)(2), if the transmission function of a public utility Transmission Provider utilizes the services of a wholesale merchant function employee during an emergency circumstance affecting system reliability, the public utility Transmission Provider posts each such event on its OASIS and reports it to the Commission in an "EY" docket within 24 hours of a deviation. The Final Rule holds interstate natural gas pipeline Transmission Providers to the same requirement under proposed § 358.4(a). Since 1998, the Commission has received as few as eight and as many as 18 reports of emergency circumstances necessitating deviations from the separation of functions requirement per year.

ii. Energy Affiliate Function or Commercial Function

88. The NOPR proposed to govern the relationship between the Transmission Provider and all of its Energy Affiliates. This approach recognizes that the Commission has jurisdiction over the Transmission Provider and is exercising that jurisdiction by governing the behavior of the Transmission Provider to ensure that it does not provide any Energy Affiliate with any undue preferences. Thus, this approach, which focuses on the corporate entities (*e.g.*, the Transmission Provider) and its employees, restricts the behavior and communications between the regulated Transmission Provider and its Energy Affiliates (Energy Affiliate Approach). The Commission uses this approach in the existing standards of conduct, *i.e.*, the standards of conduct govern the relationship between the interstate natural gas pipeline and its Marketing Affiliates and the public utility Transmission Provider and its wholesale merchant function and affiliated power marketer(s).

89. The majority of commenters supported the Energy Affiliate approach.[44] The Energy Affiliate approach recognizes some of the efficiencies of vertical integration by permitting sharing of certain "support" type functions and service.

90. As an alternative, several commenters proposed the "functional approach." Under a functional approach, the standards of conduct would govern the relationship between the "transmission functions" of a Transmission Provider and its Energy Affiliates and the "commercial functions"[45] or the "energy functions"[46] of the Transmission Provider and its Energy Affiliates (Commercial Function Approach). In a Commercial Function approach, the transmission function of a pipeline and the transmission function(s) of its affiliated LDCs, affiliated intrastate pipelines and other affiliates with transmission services would be able to share employees and communications with each other, and the sales function of a pipeline and the sales functions of any of its affiliates would be able to share employees and communications with each other. But the sales and transmission functions would be prohibited from sharing employees and information with each other. The functional approach prohibits the Transmission Provider's "transmission function" from sharing employees or information with the "commercial" or "energy" function of the energy affiliates, but permits the sharing of employees and information with other "non-commercial" functions of the Energy Affiliates.

91. The functional approach was the subject of much discussion at the May 21 Conference, and 13 commenters supported the functional approach in their supplemental comments.[47] NASUCA opposed the commercial function approach. Many of the trade associations that submitted comments on specific aspects of the NOPR were silent on the type of approach that should be used. Some of the proponents of the functional approach, including Portland, argue that the Commission's approach in the NOPR represents a departure from the requirements of Order No. 889.

92. The Commission has carefully considered the comments and alternative proposals for structuring the Final Rule and is adopting the Energy Affiliate approach. With respect to the Energy Affiliate approach, the regulated Transmission Provider is responsible for ensuring separation of functions and compliance with information disclosure prohibitions between itself and its Energy Affiliates. Under the Commercial Function approach, the responsibility for ensuring compliance would be shared by the transmission function of the Transmission Provider and the non-jurisdictional transmission functions of the unregulated Energy Affiliates. The Commission does not believe that such shared responsibility is workable. The Commission is concerned that it would not be able to enforce compliance with the standards of conduct based on a commercial function approach.

93. The advocates of the Commercial Function approach argued that Transmission Providers would be permitted to share more "support-type" employees than they would under the Energy Affiliate approach. While it may be less costly for some companies to implement the Commercial Function approach, particularly for those companies that are already structured on a functional basis, such as Dominion and Cinergy, the Commission is concerned that it does not have the jurisdiction to direct unregulated Energy Affiliates on how to structure their functions, operations and communications.

94. The Energy Affiliate approach has worked successfully in the past and avoids concerns whether FERC has jurisdiction to direct an unregulated Energy Affiliate on how to structure its functions, operations and communications.

iii. Sharing of Non-Transmission Functions

95. Forty-six commenters, including interstate natural gas pipelines, public utility Transmission Providers, AGA, Cleco Power, EEI, First Energy, INGAA, NGSA and Industrials, were very concerned because the NOPR was silent on whether the Commission would implement the independent functioning requirement consistent with the case law that has developed under the current standards of conduct. Several commenters, including INGAA, asked that the Commission specify which "support employees" and "field personnel" can be shared between the Transmission Provider and its Energy Affiliates. Several commenters, including Cinergy and LG&E, requested that the Commission codify the proposed exception that allows the sharing of field and maintenance employees or identify the types of employees who would qualify as non-operating, *e.g.*, legal, accounting, human resources, and information technology.

[44] However, not all commenters supported the breadth of the definition of Energy Affiliates, *i.e.*, expanding it beyond marketing affiliates.

[45] Dominion proposed defining commercial function employees as those who engage in certain day-to-day activities such as transmission transactions, buy, sell or trade gas or energy or manage or control transmission capacity.

[46] Entergy proposed defining energy function employees as those who engage in purchases for resale, sale, or trade of natural gas or electric energy, but does not capture those that "control" capacity, but do not "hold" it (asset managers).

[47] AEP, Cinergy, Duke (partially), Dominion, Entergy, EEI (partially), FPL, Keyspan, National Grid, PG&E, Portland General Electric, Ohio Commission and Xcel.

96. Historically, the Commission has recognized that different Transmission Providers are faced with different practical circumstances in reviewing the appropriate degree of separation between the Transmission Provider's transmission function and the marketing affiliate or wholesale merchant function. Under the current standards of conduct, the Commission has permitted the transmission function to share with its marketing affiliate or wholesale merchant function non-operating officers or directors and personnel performing various non-operating functions such as legal, accounting, human resources, travel and information technology.[48]

97. By permitting such sharing of non-operating employees, the Commission has allowed the Transmission Provider to realize the benefits of cost savings through integration where the shared employees do not have duties or responsibilities relating to transmission, and generally, would not be in a position to give a marketing affiliate undue preferences. In these circumstances, the sharing of transmission business employees with marketing affiliate employees was not considered to be likely to be harmful to shippers, consumers or competition. The Commission has also recognized that under normal circumstances, highly placed employees, such as officers or directors, are not involved in day-to-day duties and responsibilities and can be shared between a Transmission Provider and its marketing affiliate so long as these individuals comply with the information disclosure prohibitions.[49]

98. When the Commission reviewed public utilities standards of conduct filings, it used a similar approach. The Commission stated that Transmission Providers may allow senior managers, officers or directors to have ultimate responsibility for both transmission system operations and wholesale merchant functions, as long as the persons with shared responsibilities do not participate in directing, organizing or executing transmission system operations or reliability functions or wholesale merchant functions. Further, the Commission stated that Transmission Providers may share "support" staff, such as legal counsel, accounting services and data processing who do not participate in operating activities.[50]

99. The Commission has previously allowed the sharing of billing, accounting and legal employees. The rationale was that accountants and lawyers were obliged by professional responsibility to maintain the confidentiality of transmission or customer information. For those employees involved in "billing," the rationale was that the employees produced the bills after the transmission took place, and those involved in billing would have little opportunity to give marketing affiliates undue preferences. However, the recent investigations indicate that staff has been improper conduits of transmission information.

100. With respect to accountants, at most Transmission Providers, there are accountants who are responsible for day-to-day accounting functions, which may include billing, gas accounting and invoicing. There are also accountants or a "finance department" responsible for pulling together information for the corporation as a whole. The level of sharing of the accounting employees varies among Transmission Providers. In the *Transco* investigation, the Commission learned that marketing affiliate employees involved in billing and accounting had access to significant amounts of transmission information and confidential shipper information through shared databases and provided non-affiliate customer information to marketing affiliate employees.[51] In an investigation of *Cleco*, the Commission learned that accounting and billing employees improperly re-designated certain power sales transactions between the utility's the wholesale merchant function and its affiliated power marketer.[52]

101. Accountants and personnel involved in billing have the ability to provide preferential information, or, as in the case of *Cleco*, alter the books after transactions, to benefit an affiliate. While the Commission recognizes the efficiencies in allowing Transmission Providers to share accountants and employees involved in billing with their Energy Affiliates, we are concerned about their behavior and ability to provide preferential treatment. Therefore, the Commission will require that Transmission Providers train all shared support employees regarding the standards of conduct and that shared employees sign affidavits that they will not be a conduit for sharing transmission, market or customer information with a Marketing or Energy Affiliate.

iv. Sharing of Senior Officers and Directors

102. Many commenters urge the Commission to permit Transmission Providers to share senior officers and directors with their Marketing and Energy Affiliates consistent with current Commission practices.[53]

103. The Major Issues Analysis recommended that the Commission retain this exception. In follow-up comments, this proposal received support from virtually all the commenters. This exception, which impacts the ability of the senior officers and directors to engage in corporate governance functions is important and merits retention. Therefore, the Commission will codify this exception in the regulatory text.

104. In the Final Rule, the Commission will continue to allow senior officers and directors who do not engage in transmission functions, including day-to-day duties and responsibilities for planning, directing, organizing or carrying out transmission-related operations to share such positions with the Transmission Provider and its Marketing or Energy affiliates. These shared executives may not serve as a conduit for sharing transmission, customer or market information with a Marketing or Energy Affiliate.

v. Sharing of Field and Maintenance Personnel

105. Numerous commenters urged the Commission to permit Transmission Providers to share field and maintenance personnel with their Marketing and Energy Affiliates, consistent with the Commission's current practices. In Order No. 497–F and in reviewing Tennessee's standards of conduct, the Commission found that "field employees," such as those who perform manual work (dig trenches) or purely technical duties (operate and

[48] Under Standard G, a pipeline's operating employees and the operating employees of its marketing affiliate must function independently of each other to the maximum extent practicable. See 18 CFR 161.3(g) (2003). In Order No. 497–E, the Commission defined operating employees as, in part, those that are engaged in the day-to-day duties and responsibility for planning, directing, organizing or carrying out gas-related operations, including gas transportation, gas sales or gas marketing activities. *See* Order No. 497–E, FERC Stats. & Regs., Regulations Preambles 1991–1996, at 30,996.

[49] *Id.* at 30,996.

[50] *AEP*, 81 FERC at 62,515.

[51] *Transco*, 102 FERC ¶ 61,302 (2003).

[52] *Cleco*, 104 FERC ¶ 61,125 (2003).

[53] On several occasions, the Commission has specifically addressed the sharing of employees. For example, in reviewing ANR Pipeline Company's standards of conduct, the Commission stated that the potential for abuse when there are shared officers or directors is minimized because the shared officers or directors normally should not receive confidential information from nonaffiliated shippers or potential nonaffiliated shippers nor would they be likely to receive transportation information.

maintain the pipeline's equipment),[54] are supportive in nature and would not have direct operational responsibilities. Similarly, field technicians or mechanics and their immediate supervisors would not be considered operating employees. The Commission added, however, that if supervisory field personnel can control a gas pipeline's operations, they are operating employees. The Commission also stated that if a supervisor has the ability to restrict or shut down the operation of a particular section of the pipeline, that supervisor is considered an operating employee.[55]

106. The Major Issues Analysis recommended that the Commission retain this exception. In follow-up comments, this proposal received support from all the commenters. This exception merits retention. Therefore, the Final Rule will codify this exception in the regulatory text. In the Final Rule, the Commission will continue to allow the sharing of field and maintenance personnel.

vi. Transmission Employees That Engage in Operational Purchases

107. Several interstate natural gas pipelines, as well as INGAA, noted that the NOPR does not appear to retain the historical exclusion that permits transportation function employees to buy and sell gas for operational reasons, including to balance fuel usage, for storage operations, to effectuate cashouts and deplete or replenish line pack.[56]

108. The Major Issues Analysis recommended that the Commission retain this exception. In follow-up comments, this proposal received support from many commenters, including AdHoc Marketers. This exception, which impacts practical operations of the transmission system is important and merits retention. Therefore, the Commission will codify this exception in the regulatory text.

vii. Risk Management Employees

109. Many commenters, including Ad Hoc Marketers, Basin Electric Coop, Florida Power Corp., Gulf South, Carolina Power & Light, Cinergy, PGE, EEI, INGAA, NEMA, NiSource, Pinnacle West, BPA, Atlantic City and Delmarva, urged the Commission to permit the sharing of risk-management employees or functions. Discussions during the May 21 Conference revealed that there are many different definitions, uses and applications of the term risk management and credit management. For example, risk management functions can include: (1) Managing corporate-wide business risk exposure of the corporation and/or its affiliates; (2) business risk exposure for third parties; (3) managing overall corporate investment for the entire corporation; (4) assessing credit risk for counter-parties; (5) approving expansion projects; and (6) establishing spending, trading and capital authorities for each business unit. EEI claims that corporate-wide risk management employees must understand the exposure of the entire corporation, including the Transmission Provider, the wholesale merchant function and Energy Affiliates, so that the corporation may fulfill its fiduciary duties to shareholders and corporate lending covenants. NiSource claims that risk management mitigates the corporation's overall risk and does not profit from transmission or energy commodity markets.

110. There are two issues that relate to risk management: (1) Whether it may be a shared function; and (2) if so, how to handle the transmission, customer and market information received by the risk management employees. According to Carolina Power & Light, Florida Power Corp. and EEI, risk information from business units filters up to senior management or a risk management committee, but then the risk management function does not provide any operational unit with information derived from any other business units and will not be a conduit for sharing information.

111. Several commenters, including FirstEnergy, state that risk management has become a core concern of the ratings organizations and urge the Commission to permit shared risk management. Portland General Electric states that risk management employees cannot use their access to transmission information to the detriment of third parties.

112. Risk management employees are in a position to use transmission, customer and market information to give Energy Affiliates an undue advantage where the members of the risk management committee are made up of employees from the transmission function and the Energy Affiliates. Therefore, any shared risk management employees may not be operating employees of either the Transmission Providers or the Marketing or Energy Affiliates nor can they be a conduit for improperly sharing information.

viii. Costs of Compliance

113. In determining the extent of independent functioning between the Transmission Providers and Energy Affiliates, the Commission has to balance the associated costs of separating shared functions against the benefit to competition and the elimination of discriminatory behavior.

114. As noted by many of the commenters, there will be costs, and for some transmission companies that have fully integrated production, gathering, generation, transmission and distribution functions, those costs could be considerable. In their comments, gas Transmission Providers provided one-time cost estimates to function independently of their affiliated LDCs that ranged from $8,000,000 (Pauite) to $210,000,000 (Questar),[57] while annual cost estimates ranged from $5,000,000 (Paiute) to $16,000,000 (National Fuel). Similarly, public utility Transmission Providers provided one-time cost estimates to function independently of their retail function that ranged from $750,000 (Colorado Springs) to $1,000,000 (DTE), while annual cost estimates ranged from $1,500,000 (Conectiv) to $95,000,000 (Cinergy).[58]

115. Commenters provided estimates of costs in varying levels of detail, but the majority of the commenters' projected costs the independent functioning requirement reflect the "worst-case" scenario, that assumed the Commission would require a complete separation of affiliated Transmission Providers, holding companies and other Energy Affiliates as well as prohibit the sharing of support services and field personnel.[59] As Duke recognized, however, the magnitude of these increased costs depends on whether an LDC or load serving entity is defined as an Energy Affiliate, how the separation is implemented and whether specific functions, like administrative or support functions, and certain information, like specific transaction or reliability information, can be shared between the transmission function and the retail sales function.

116. The Final Rule will not be as costly as anticipated by the commenters because the Final Rule excludes certain categories of affiliates, such as LDCs making only on-system sales, from the definition of Energy Affiliate, does not include solely bundled retail sales employees in the definition of Marketing Affiliate, allows the sharing of certain support and field personnel, and adopts the no-conduit rule as well as other exceptions to the informational disclosure prohibitions. The level of separation of functions required by the Final Rule is needed to ensure that Transmission Providers do not use their access to information about transmission to the detriment of customers or competitors. EPSA states that the long-term benefits could amount to several billion dollars.

117. The Commission disagrees with commenters' arguments that there is no harm to the market under the current level of sharing between Transmission Providers and their Energy Affiliates. There is harm to the market. For example, unduly preferential behavior in favor of a marketing affiliate harmed the retail customers of Idaho in the amount of $5.8 million until the Commission required a refund as a condition of a settlement.[60] Similarly, the retail customers of Louisiana were harmed approximately $2.1 million until the Commission required a refund as a condition of settlement.[61] Although there was no specific quantification of harm caused by the unduly preferential behavior described in the *Transco* settlement, it was of sufficient magnitude that the Commission required the marketing affiliate to exit the market, and Transco paid a record civil penalty of $20 million.

ix. Conclusion

118. The independent functioning requirement is a central component of the standards of conduct which limits the ability of the Transmission Provider to use its market power to preferentially benefit an Energy Affiliate. Nonetheless, it is necessary to recognize the practicalities of operating a transmission system, and, therefore, the Commission will continue to permit the sharing of certain non-transmission function employees between the Transmission Provider and its Marketing and Energy Affiliates in the Final Rule.

119. However, in an investigation of Transco, the Commission learned that there are instances in which a shared information technology function provided a marketing affiliate an undue preference.[62] Specifically, a shared IT employee designed a software program for the marketing affiliate that gave the marketing affiliate access to the pipeline's mainframe databases and used the pipeline's modeling information to optimize the marketing affiliate's nominations on the pipeline's transmission system. In these circumstances, the IT employees were no longer "support" employees, and gave the marketing affiliate unduly preferential access to valuable transmission information.

120. Similarly, if lawyers are participating in directing, organizing or executing transmission system operations or reliability functions or direct the policy of the Transmission Provider, they are not "support staff," rather they are transmission function operating employees who are subject to the standards of conduct. The exemption of "support employees" is not a mechanism to circumvent the prohibition on providing a Marketing or Energy Affiliate an undue preference relating to transmission or preferential access to transmission information.

121. Although the majority of "support employees" are genuinely performing supporting functions, some have or receive access to transmission or customer information. Therefore, the Final Rule will require Transmission Providers to train all of the "support" employees in the standards of conduct and prohibit them from acting as conduits for sharing information with marketing or Energy Affiliates. In addition, Transmission Providers with shared support employees will be subject to greater audit scrutiny.

E. Identification of Affiliates on Internet

122. Section 358.4(b) requires all Transmission Providers to post information with respect to their marketing and sales employees and energy affiliates on their OASIS or Internet Web sites, as applicable. Gas pipelines already post this information with respect to their marketing affiliates under § 161.3(l). Although the current regulations do not require public utility Transmission Providers to post the names and addresses of their marketing affiliates on the OASIS, the Commission did require the posting of organizational charts and job descriptions when it reviewed the electric Transmission Providers' implementation of the standards of conduct.[63] The Major Issues Analysis recommended that the Commission revise some of the posting requirements consistent with some of the commenters' suggestions. Commenters have submitted follow-up comments, which make additional arguments and suggestions. The Final rule requires:

(1) A Transmission Provider must post the names and addresses of its sales and marketing units and Energy Affiliates on its OASIS or Internet Web site.

(2) A Transmission Provider must post on its OASIS or Internet Web site, as applicable, a complete list of the facilities shared by the Transmission Provider and its marketing or sales units or any Energy Affiliates, including the types of facilities shared and their addresses.

(3) A Transmission Provider must post comprehensive organizational charts showing:

(i) The organizational structure of the parent corporation with the relative position in the corporate structure of the Transmission Provider, marketing and sales units and any Energy Affiliates;

(ii) For the Transmission Provider, the business units, job titles and descriptions, and chain of command for all positions, including officers and directors, with the exception of clerical, maintenance, and field positions. The job titles and descriptions must include the employee's title, the employee's duties, whether the employee is involved in transmission or sales, and the name of the supervisory employees who manage non-clerical employees involved in transmission or sales.

(iii) For all employees who are engaged in transmission functions for the Transmission Provider and marketing or sales functions or who are engaged in transmission functions for the Transmission Provider and are employed by any of the Energy Affiliates, the Transmission Provider must post the name of the business unit within the marketing or sales unit or the energy affiliate, the organizational structure in which the employee is located, the employee's name, job title and job description in the marketing or sales unit or energy affiliate, and the employee's position within the chain of command of the marketing or sales unit or energy affiliate.

(iv) The Transmission Provider must update the information on its OASIS or Internet website, as applicable, required by §§ 358.4(1), (2) and (3) within seven business days of any change, posting the date on which the information was updated.

(v) The Transmission Provider must post information concerning potential merger partners as affiliates within seven days after the merger is announced.

(vi) All OASIS or Internet website postings required by Part 358 must comply, as applicable, with the requirements of § 37.3 or §§ 284.12(a) and (c)(3)(v) of this chapter.

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[54] Additional examples of field or maintenance employees include those who read meters, locate lines, do snow removal and maintain the roadways.

[55] Order No. 497–F, 66 FERC ¶ 61,347 at 62,165; Tennessee Gas Pipeline Company, 55 FERC ¶ 61,285 (1990).

[56] *See, e.g.*, East Tennessee Natural Gas Co., 63 FERC ¶ 61,578, *order on reh'g*, 64 FERC ¶ 61,159 (1993).

[57] Questar's estimate includes capital investments, transmission investments, investment in additional systems, legal fees, design engineers, state regulatory efforts, duplicate SCADA and duplicate field operations.

[58] Few public utility transmission providers provided one-time cost estimates; several, like Cinergy and Southern provided estimates over a multi-year basis. $180,000,000 over two years and $350,000,000 over five years, respectively.

[59] Generally, the projected costs included: duplication of system control or control center facilities; duplication of field, maintenance, human resources, information technology, travel and other support-type personnel, duplication of customer service, load forecasting and scheduling employees, duplication of office facilities, computers, software, SCADA, as well as administrative and leasing costs.

[60] Idaho Power Co., IDACORP Energy, L.P., and IDACORP, Inc., 103 FERC ¶ 61,182 (2003).

[61] *Cleco*, 104 FERC ¶ 61,125 (2003).

[62] *Transco*, 102 FERC ¶ 61,302 (2003).

[63] American Electric Power Service Corporation, 81 FERC ¶ 61,332 (1997), *order on reh'g*, 82 FERC ¶ 61,131 (1998); *order on reh'g*, 83 FERC ¶ 61,357 (1998).

i. Posting Organizational Charts

123. The NOPR proposed that organizational charts and job descriptions be updated within three days of a change. Under the current gas standards of conduct, interstate natural gas pipelines are required to make changes to the postings within three days of a change. The Commission has never addressed the frequency of changes to be made under the electric standards of conduct. Commenters asked the Commission to reconsider this proposal. They argued that there would be significantly more information to post if the Commission adopts a broad definition of the term Energy Affiliate. Williston Basin, Sempra and others urged that the organizational charts be updated every seven days. EEI, AEP, Basin Electric, Carolina Power & Light, Florida Power Corp. and PacifiCorp, urged that organizational charts be updated on a quarterly basis. Several commenters, including Carolina Power & Light and Florida Power Corp., argued that the posting of organizational charts is too broad and burdensome and others argued that it may be difficult to post all changes within three days given the complexity of some mergers or buy-outs. While some companies link their employee or human resource databases to the posted organizational charts and job descriptions, so that automatic downloads or updates take place each day, not all Transmission Providers have that capability. In balancing the burden associated with updating information with the efforts that would be needed to post organizational charts, the Commission has decided it would be reasonable to require the information to be posted within seven business days of a change.

124. Currently, the gas standards of conduct and the posting requirements at § 284.12, required gas Transmission Providers to retain information concerning organizational charts and job descriptions for three years. While § 37.6 of the Commission's regulations, 18 CFR 37.6 (2003), requires public utility Transmission Providers to retain OASIS postings for three years, this section did not specifically refer to the posting of organizational chart and job descriptions. Basin Electric recommended that all Transmission Providers be required to retain, for three years, all posted organizational charts and job descriptions to facilitate the Commission's monitoring and enforcement efforts. To avoid any confusion, the Commission will adopt this suggestion in the Final Rule.

125. Several commenters also argued that Transmission Providers that share support employees that are of no interest to the Commission, such as legal, accounting, human resources, information technology, and customer service should not be required to post detailed information and job descriptions for each of these employees. With respect to posting organizational information where a Transmission Provider shares support, field or maintenance employees with its Marketing or Energy Affiliates, the Transmission Provider must clearly identify the business units for the shared employees and provide a description of the shared services functions or responsibilities, but is not required to provide names or job descriptions for the support or field or maintenance employees.

ii. Posting of Merger Information

126. The Commission's current policy with respect to announced mergers is to treat the potential merger partners as affiliates.[64] The NOPR solicited comments on whether the Standards of Conduct should require the posting of the potential merger partners on the OASIS or Internet Website. In response to the NOPR, several commenters, including APGA, Michigan Commission, New Power, Oklahoma Commission, Ohio Commission, Reliant and the CPUC, supported this proposal as being consistent with the Commission's current policy. Pan Canadian Energy urged that the Commission adopt the same posting requirements as the SEC. In contrast, Niagara Mohawk, Williston Basin, Calpine, Carolina Power and Light, Florida Power Corp., National Grid and Questar opposed posting merger information. EEI urged the posting of mergers after they are announced.

127. Following a review of the comments, the Commission will require the posting of merger information within seven days after a potential merger is announced as it is consistent with the Commission's policy on potential merger partners. The Transmission Provider shall post the name(s) and address(es) of potential merger partner(s) and Energy Affiliates on the OASIS or Internet website with the information in § 358.4(b), which requires a Transmission Provider to post the names and addresses of its sales and marketing units and Energy Affiliates on the OASIS or Internet website.

[64] Revised Filing Requirements Under Part 33 of the Commission's Regulations, Order No. 642, 65 FR 70983 (Nov. 28, 2000), FERC Stats. & Regs., Regulations Preambles 1996–2000 ¶ 31,111 at 31,887 (Nov. 15, 2000), *reh'g denied*, Order No. 642–A, 94 FERC ¶ 61,289 (Mar. 15, 2001).

iii. Transfer of Employees

128. Proposed § 358.4(c) parallels the current requirements of § 37.4(b)(2) of the electric standards of conduct, which permits Transmission Provider employees, marketing and sales employees and Energy Affiliate employees to transfer between such functions, as long as such transfers are not used as a means to circumvent the standards of conduct. Notices of employee transfers would be posted on the OASIS or Internet website. Several commenters sought clarification that the Commission did not intend to capture the transfer of all employees between the Energy and Marketing Affiliates. The Commission is granting the clarification. The Commission did not intend to require the posting of employees that transfer between the Energy and Marketing Affiliates.

129. Some commenters, such as Avista and PSE&G opposed the requirement to post the transfers between a Transmission Provider and its Energy Affiliates. While the Industrials urged the Commission to enhance and enforce posting requirements regarding employee transfers, Exelon, National Grid, and AEP asked for clarification that the posting of employees is for those employees that transfer between the Transmission Provider and the Marketing or Energy Affiliate, and not the transfer of employees among all the Marketing and Energy Affiliates.

130. The Commission is adopting § 358.4(c) as proposed. The transfer of employees between transmission and marketing or sales functions or between a Transmission Provider and its Energy Affiliates presents opportunities for the inappropriate sharing of information in circumvention of the standards of conduct. While a one-time transfer of an employee from the Transmission Provider to the marketing or sales function or energy affiliate (or vice versa) may not be a problem, transferring an employee multiple times (*i.e.*, cycling) is inconsistent with the independent functioning requirement. In *KN* Interstate Gas Transmission Company *(KN)*, the Commission prohibited the cycling of employees and held that transferred employees may not use, in their new jobs, transportation information that is not publicly available.[65]

[65] 80 FERC ¶ 61,212 (1997). For example, in *KN*, the Commission suggested that a transferred employee could be restricted to assignments or responsibilities that would not use information obtained from non-affiliated or potential non-affiliated shippers or by showing that the transportation information has lost its commercial value, *i.e.*, a "cooling off" period before or after the transfer.

[66] *See e.g.*, Kinder Morgan Interstate Gas Transmission, L.L.C., *et al.*, 90 FERC ¶ 61,310 (2000).

131. The cycling of employees between the Transmission Provider, the Marketing or Energy Affiliates facilitates the sharing of preferential information between these functions. The posting of transfer information provides a technique to detect possible improper cycling of employees.[66] This enables the Commission and the public to monitor all transfers and to ensure that employees are not cycling between functions.

F. Books and Records

132. Proposed § 358.4(d) parallels current §§ 161.3(j) and 37.4(b)(6). Under this requirement, Transmission Providers must keep separate books and records from those of their Energy Affiliates. This ensures that the companies operate independently. It also helps to ensure that the regulated companies are not used to subsidize or support the unregulated companies. There were no comments regarding proposed § 358.4(d), and the Commission adopts it as proposed in the NOPR.

G. Written Procedures

133. The NOPR proposed that § 358.4(e) would replace the requirements of §§ 161.3(i) and 37.4(c), by requiring Transmission Providers to file with the Commission written procedures implementing the standards of conduct as follows:

> The Transmission Provider must file with the Commission and post on the OASIS or Internet website, current written procedures implementing the standards of conduct as will enable customers and the Commission to determine that the Transmission Provider is in compliance with the requirements of this section.

134. The NOPR solicited comments on whether it is sufficient to file this information with the Commission or whether it should also be posted on the OASIS and Internet websites. As discussed in more detail below, several commenters suggested that it would be sufficient to post the procedures, rather than file them with the Commission, and made several other recommendations that the Commission is adopting in the Final Rule, as follows:

(e) Written procedures.

(1) By February 9, 2004, each Transmission Provider is required to file with the Commission and post on the OASIS or Internet website a plan and schedule for implementing the standards of conduct.

(2) Each Transmission Provider must be in full compliance with the standards of conduct by June 1, 2004.

(3) Each Transmission Provider must post on the OASIS or Internet website, current written procedures implementing the standards of conduct in such detail as will enable customers and the Commission to determine that the Transmission Provider is in compliance with the requirements of this section by June 1, 2004 or within 30 days of becoming subject to the requirements of this part.

(4) Transmission Providers will distribute the written procedures to all Transmission Provider employees and employees of the Marketing and Energy Affiliates.

(5) Transmission Providers shall require all of their employees to attend training and sign an affidavit certifying that they have been trained regarding the standards of conduct requirements.

(6) Transmission Providers are required to designate a Chief Compliance Officer who will be responsible for standards of conduct compliance.

i. Posting Standards of Conduct Procedures.

135. Several commenters recommended that the Commission require the posting of the Transmission Provider's written procedures implementing the Standards of Conduct on the OASIS or Internet website in lieu of filing them with the Commission. The Commission is adopting this suggestion and will modify § 358.4(e) to include a posting requirement instead of a filing requirement. Posting the written procedures on the OASIS or Internet website gives users immediate access to the information and does not create additional administrative burdens for the Commission. Filing the written procedures is not required because the Commission has sufficient mechanisms to address problems through the Enforcement Hotline and complaints under the FPA or the NGA. Moreover, Commission staff will aggressively monitor standards of conduct compliance. Each Transmission Provider is required to post on its OASIS or Internet website written procedures implementing the Standards of Conduct no later than June 1, 2004 or within 30 days of becoming subject to the requirements of Part 358.

136. With respect to the standards of conduct procedures that Transmission Providers will post on their OASIS or Internet Website merely restating the regulations or incorporating them by reference will not show acceptable compliance. The Transmission Providers must explain the measures they use to implement the standards of conduct, *e.g.*, how transmission information and confidential customer information is kept secure, whether the standards of conduct have been distributed to employees, whether employees have been offered training on the standards of conduct, and whether employees are required to read and sign acknowledgment forms.

137. In addition, within 60 days of publication of the Final Rule in the **Federal Register**, each Transmission Provider is required to file with the Commission and post on the OASIS or Internet website an informational filing that includes a plan and schedule for implementing the standards of conduct by June 1, 2004, and the Transmission Provider's projected costs of complying with the standards of conduct.

ii. Training

138. Standards of Conduct training for employees was not discussed in the NOPR, although it is one of the factors the Commission historically looks at when determining if a Transmission Provider has complied with She standards of Conduct. In response to the NOPR, Cinergy, Ohio Commission, PGE and other commenters urged the Commission to require training and evaluation or to formalize the training requirement.

139. The Commission likes this suggestion, and will revise § 358.4(e) to adopt it.

iii. Chief Compliance Officer

140. The Ohio Commission recommended that the Commission should require the creation of a corporate ethics officer for each Transmission Provider, who would investigate and certify, on a periodic basis, whether the Transmission Provider is complying with the standards of conduct requirements. In several recent settlements, the Commission has required the hiring or designation of a Chief Compliance Officer. These individuals have a working knowledge of the company, its structure and operations and have been invaluable in post-settlement compliance activities.

141. It is appropriate to designate an individual to be responsible for standards of conduct compliance. Therefore, in the Final Rule, the Commission is requiring that each Transmission Provider hire or designate a Chief Compliance Officer. This individual will be responsible for employee training, answering employee questions and coordinating audits and investigations with Commission Staff, as well as duties to ensure that the Transmission Provider complies with the standards of conduct.

H. Non-Discrimination Requirements—§ 358.5

142. The principle underlying these requirements is that the Transmission Provider is prohibited from giving the employees of its Marketing or Energy Affiliates any undue preferential treatment. The proposed standards specify the ways in which a Transmission Provider must ensure equal treatment and equal access to information.

i. Information Access and Disclosure Prohibitions

143. The NOPR proposed information access and disclosure prohibitions that tracked the requirements of §§ 161.3(e) and (f) and 37.4(b)(3) and (4) from the gas and electric standards of conduct. The proposed prohibitions prevent a Transmission Provider from giving its Marketing or Energy Affiliates undue preferences over their unaffiliated customers through the exchange of "insider" information. The existing gas and electric standards of conduct concerning the permissible flow of information between affiliates are not consistent with each other, so as a result, the positions of the commenters varied. As discussed below, proposed § 358.5(a) and (b) generated a large volume of comments. Few commenters identified substantive concerns with the specific language of the proposed regulations; rather, they focused on what was not discussed in the NOPR, implementation of the information disclosure prohibitions. The Major Issues Analysis made a variety of recommendations and provided draft regulatory text. Virtually all of the follow-up comments addressed the information requirements. As discussed in more detail below, the Commission is revising the information requirements and, as recommended by commenters, codifying several exceptions. The Final Rule requires:

(a) Information access.

(1) The Transmission Provider must ensure that any employee of the Transmission Provider engaged in marketing or sales or any employee of any Energy Affiliate may only have access to that information available to the Transmission Provider's transmission customers (*i.e.*, the information posted on the OASIS or Internet website, as applicable), and must not have access to any information about the Transmission Provider's transmission system that is not available to all users of an OASIS or Internet website, as applicable.

(2) The Transmission Provider must ensure that any employee of the Transmission Provider engaged in marketing or sales or any employee of any Energy Affiliate is prohibited from obtaining information about the Transmission Provider's transmission system (including, but not limited to, information about available transmission capability, price, curtailments, storage, ancillary services, balancing, maintenance activity, capacity expansion plans or similar information) through access to information not posted on the OASIS or Internet website or that is not otherwise also available to the general public without restriction.

(b) Prohibited disclosure.

(1) An employee of the Transmission Provider may not disclose to its marketing or sales employees, or to employees of the Transmission Provider's Energy Affiliates any information concerning the transmission system of the Transmission Provider or the transmission system of another (including, but not limited to, information received from non-affiliates or information about available transmission capability, price, curtailments, storage, ancillary services, balancing, maintenance activity, capacity expansion plans, or similar information) through non-public communications conducted off the OASIS or Internet website, through access to information not posted on the OASIS or Internet Website that is not contemporaneously available to the public, or through information on the OASIS or Internet website that is not at the same time publicly available.

(2) A Transmission Provider may not share any information, acquired from nonaffiliated transmission customers or potential nonaffiliated transmission customers, or developed in the course of responding to requests for transmission or ancillary service on the OASIS or Internet website, with employees of its Marketing or Energy Affiliates, except to the limited extent information is required to be posted on the OASIS or Internet website in response to a request for transmission service or ancillary services.

(3) If an employee of the Transmission Provider discloses information in a manner contrary to the requirements § 358.5(b)(1) and (2), the Transmission Provider must immediately post such information on the OASIS or Internet website.

(4) A non-affiliated transmission customer may voluntarily consent, in writing, to allow the Transmission Provider to share the non-affiliated customer's information with a Marketing or Energy Affiliate.

(5) A Transmission Provider is not required to contemporaneously disclose to all transmission customers or potential transmission customers information covered by § 358.5(b)(1) if it relates solely to a Marketing or Energy Affiliate's specific request for transmission service.

(6) A Transmission Provider may share generation information necessary to perform generation dispatch with its Marketing and Energy Affiliate that does not include specific information about individual third party transmission transactions or potential transmission arrangements.

(7) Neither a Transmission Provider nor an employee of a Transmission Provider is permitted to use anyone as a conduit for sharing information covered by the prohibitions of § 358.5(b)(1) and (2) with a Marketing or Energy Affiliate.

(8) A Transmission Provider is permitted to share crucial operating information with its Energy Affiliates to maintain the reliability of the transmission system.

A. "No Conduit" or "Automatic Imputation"

144. *Current Policies:* Under the current gas standards of conduct, when an interstate natural gas pipeline company shares transportation information with its marketing affiliate, the pipeline must contemporaneously share that information with non-affiliates.[67] This requirement is designed to prevent a Transmission Provider from giving its marketing affiliate undue preferences over its unaffiliated customers through the exchange of transmission information. In addition, the current gas standards of conduct prohibit a pipeline from sharing with its marketing affiliate any information the pipeline receives from a nonaffiliated shipper or potential nonaffiliated shipper (this is considered confidential customer information).[68] The gas industry commonly refers to this as the "automatic imputation rule" because the Commission's policy is that when an employee who performs functions for the pipeline and its marketing affiliate receives confidential shipper information, the information is automatically divulged or imputed to the marketing affiliate. In *Tenneco*, the Court of Appeals endorsed this approach when it found that the relevant question is not whether a shared employee who receives critical information will disclose it to the affiliate, but whether that shared employee will in fact receive such information in the first place, or alternatively, how the pipeline intends to keep information supplied by nonaffiliated shippers from reaching a shared employee.[69]

145. Over the past 15 years, several interstate natural gas pipelines have urged the Commission to adopt different approaches; (1) apply the "automatic imputation rule" only to shared operating employees; and (2) adopt a "no-conduit rule." [70] Up until now,

[67] Standard F states that to the extent a pipeline provides to a marketing affiliate information related to transportation of natural gas, it must provide that information contemporaneously to all potential shippers, affiliated and non-affiliated on its system. *See* 18 CFR 161.3(f) (2003).

[68] Standard E states that a pipeline may not disclose to its marketing affiliate any information the pipeline receives from a nonaffiliated shipper or potential nonaffiliated shipper. *See* 18 CFR 161.3(e) (2003).

[69] *Tenneco Gas* v. *FERC*, 969 F.2d 1187 (D.C. Cir. 1992) (*affirmed in part and remanded in part*).

[70] Under a "no-conduit rule," a shared non-operating employee could receive confidential information as long as the shared employee did not act as a conduit for actively sharing the information with the marketing affiliate or wholesale merchant function.

Commission has rejected the "no-conduit rule" for the gas industry.[71]

146. In contrast, under the current electric standards of conduct, which contain broader information disclosure prohibitions, the Commission has permitted shared non-operating employees to receive confidential shipper information as long as the shared employee did not act as a conduit for sharing the information with wholesale merchant function employees.[72] In implementing Order No. 889, the Commission justified the different rule because the electric standards of conduct provide a stricter separation of functions requirement than the pipeline standards.[73] When the Commission reviewed the standards of conduct for public utility Transmission Providers, the Commission adopted the "no-conduit" rule, rather than applying the "automatic imputation rule."[74]

147. The NOPR was silent on how the information prohibitions would be applied to shared employees, that is, whether the Commission would adopt the "automatic imputation rule" from the gas standards of conduct or the "no-conduit rule" from the electric standards of conduct. In their Initial Comments, many commenters from both the gas and electric industries, requested, without much explanation, that the Commission codify the "no-conduit rule" and apply to it all Transmission Providers. The Major Issues Analysis proposed to apply the automatic imputation rule. After much discussion at the May 21st Conference, the Commission received more than 100 supplemental comments on this issue. Almost every segment of the industry and all major industry trade associations that opposed the automatic imputation rule argued that it could force the break-up of service companies and that the limitations on the sharing of information would restrict a director, officer or senior manager's ability to engage in corporate governance functions. Of the states that commented, Connecticut favored the automatic imputation rule, while Alabama, Indiana, Nebraska, and Ohio favored the no-conduit rule.

148. A few commenters supported the "automatic-imputation" proposal. NASUCA stated that the no-conduit rule fails to recognize the reality that a person who gains access to important information is likely to act upon that information. Rather than advocate a particular position with respect to these options, the Industrials merely stated that officers and directors should be allowed to discharge their duties. Sempra raised a valid point—the potential for harm is great when the Commission permits the sharing of operating employees, but the danger is low when the shared employees are engaged in "support-type" services, while the potential for cost savings by permitting the sharing of "support-type" services is significant.

149. One significant event that occurred after the NOPR was the passage of the Sarbanes-Oxley Act of 2002 (Sarbanes-Oxley Act), which requires corporate officers to engage in informed oversight and requires CEOs to personally vouch for the veracity, timeliness and fairness of their companies' public disclosures.[75] In addition, there is significant industry-wide concern that the automatic imputation rule would limit the information a director, officer or senior manager could receive, effectively restricting his or her ability to engage in the corporate governance function under the Sarbanes-Oxley Act.[76]

150. After carefully considering the comments, the Final Rule will adopt the "no-conduit rule." As a result, interstate natural gas Transmission Providers, which have been operating under the stricter "automatic imputation rule" since 1987, will now be covered by the more flexible "no conduit rule." This rule will prohibit employees of a Transmission Provider from using any affiliate or employee of an affiliate as a conduit for sharing information that is prohibited by § 358.5(b)(1) and (2).

B. Sharing of Operational Information

151. Many commenters from virtually all segments of the gas industry argued that the separation of functions and the information disclosure prohibitions required by the NOPR will prohibit a Transmission Provider from communicating crucial operational information with its affiliated producers, gatherers or LDCs. They argued that prohibiting certain of these communications will endanger the reliability of the gas transmission systems. NGSA proposed that employees who are responsible solely for the physical operations of their structure (infrastructure operators) be permitted to share operational information because those infrastructure operators are not involved in other functions. Several commenters argued that the Commission should adopt the approach taken when implementing Order No. 889, where the Commission permitted Transmission Providers to share certain types of operational information with its generation function and wholesale merchant function. The Major Issues Analysis recommended that Transmission Providers and their Energy Affiliates be permitted to share crucial operational information necessary to maintain the reliability of the transmission system.

152. In supplemental comments, many commenters, including Alliance, BP America, EEI, Duke, First Energy, INGAA, National Grid, and Williston Basin supported the Staff's proposal. NiSource expressed concern that the exception may be too narrow because certain day-to-day information is needed on both sides of the meter to ensure that a gas pipeline meets its service obligations, regardless of whether the interconnected party is an affiliate. Several commenters encouraged the Commission to create a list of permissible communications. However, the AdHoc Marketers, Cinergy and Shell Offshore discouraged the Commission from creating a "laundry list" of permissible communications because it would be inadequate and incomplete and create regulatory uncertainty.

153. The Commission is declining to create a list of permissible communications. However,

[71] *See* Order Nos. 497–E and F: *Amoco Production Co. and Amoco Energy Trading Co.* v. *Natural Gas Pipeline Company of America*, 83 FERC ¶ 61,197 at 61,849 (1998).

[72] Under the gas standards of conduct, the contemporaneous disclosure requirement only applies to transportation information, while under the electric standards of conduct, the contemporaneous disclosure requirement applies to transmission and market information and prohibits off-OASIS communications. *See* 18 CFR 37.4(4) and 161.3(f) (2003).

[73] Under the gas standards of conduct, to the maximum extent practicable, a pipeline's operating employees and the operating employees must function independent of each other. *See* 18 CFR 161.3(g) (2003). In contrast, the employees of the electric Transmission Provider engaged in transmission system operations must function independently of the employees engaged in wholesale merchant functions, except for emergency circumstances affecting system reliability. *See* 18 CFR 37.4(a)(1) (2003). The key difference is the flexibility under the term "maximum extent practicable," which permits, in certain situations, the sharing of operating employees.

[74] Allegheny Power Service Corp., *et al.*, 84 FERC ¶ 61,316 at 62,425 (1998).

[75] Effective August 29, 2002, the Securities and Exchange Commission adopted a Final Rule that requires the principal executive and financial officers each to certify the financial and other information submitted in quarterly and annual reports to the SEC. *See* Ownership Reports and Trading by Officers, Directors and Principal Security Holders, Final Rule and Request for Comments, 67 FR 56461 (Sept. 3, 2002).

[76] In July 2003, Commission staff met with representatives of the Securities and Exchange Commission (SEC) to get a better understanding how the SEC implements the Sarbanes-Oxley Act, and how the Commission's proposed information disclosure prohibitions would affect compliance with the Sarbanes-Oxley Act.

Transmission Providers are encouraged to contact the Hotline for guidance regarding permissible communications. Although the Commission will permit Transmission Providers and their Energy Affiliates to share crucial operational information necessary to maintain the reliability of the transmission system, we caution that this is not to be a mechanism to circumvent the rules.

C. Generation Dispatch

154. Many commenters argued that the separation of functions and the information disclosure prohibitions suggested by the NOPR would prohibit a Transmission Provider from communicating crucial operational information with its affiliated retail sales function. They argue that prohibiting certain of these communications will endanger the reliability of the electric transmission systems. Several commenters argue that the Commission should adopt the approach taken when implementing Order No. 889, where the Commission permitted Transmission Providers to share certain types of operational information with its generation function and wholesale merchant function.[77] Cinergy and PGE urge the Commission to codify the case-specific exemption that permits Transmission Providers to share with generation dispatch employees information necessary to perform such dispatch, provided that such information does not include specific information about individual third-party transmission arrangements.[78] Although the Commission is not providing a list of types of communications, we will codify the exception that permits the sharing of generation-related information. For example, the Marketing and Energy Affiliates may have access to information such as area control error, regulation rates, but not the specific load of third party transmission customers. Likewise, wholesale merchant function employees or employees of the Energy Affiliates may not have access to information that would enable them to determine, directly or indirectly, the interchange schedules of third party customers, consistent with Commission precedent.[79]

[77] *See, e.g.*, American Electric Power Service Corp., *et al.*, 81 FERC ¶ 61,332 (1997); Allegheny Power Service Corporation, *et al.*, 81 FERC ¶ 61,339 (1997); Allegheny Power Service Corporation, *et al.*, 84 FERC ¶ 61,131 (1998).

[78] *See, e.g.*, Indianapolis Power and Light Co., 90 FERC ¶ 61,174 (2000).

[79] *APS*, 84 FERC ¶ 61,131 (1998).

155. Exelon notes that nuclear plant operators belonging to an Energy Affiliate of a Transmission Provider would be prohibited from receiving information they need to satisfy certain requirements of the Nuclear Regulatory Commission's regulations. For example, station blackout rules require that nuclear stations have real-time information on grid disturbances and the duration of power unavailability under 10 CFR 50.63 (2003). The Transmission Provider would be permitted to share this type of information with its Energy Affiliate under this exception.

D. Voluntary Consent

156. Although the NOPR did not discuss whether a non-affiliate could voluntarily consent, in writing, to allow a Transmission Provider to share the non-affiliate's information with the marketing affiliate, numerous commenters suggested that the Commission codify this exception.[80] The Major Issues Analysis concurred with the commenters' suggestions and provided draft regulatory text to codify this policy. Carolina Power & Light, Duke Energy, EEI and Florida Power Corp., among others, supported the Staff's recommendation. However, in follow-up comments, several commenters, including Indicated Shippers, BP America, BP Energy, Exxon-Mobil, and Occidental Energy Marketing urged the Commission not to adopt the voluntary consent provision. They argue that it is anti-competitive because even if a shipper agreed to disclose the information, the consent may not truly be voluntary because the Transmission Provider could be exercising market power.

157. The Commission is adopting this voluntary consent exception, which impacts practical operations of the transmission system, and is incorporated into the regulatory text of the Final Rule. Any shipper may file a formal complaint or approach the Enforcement Hotline on a confidential basis if a Transmission Provider is abusing this exception. Transmission Providers are required to preserve all written consents, and any amendments, transfers or withdrawals of them.

E. Transaction Specific Exemption

158. Under current policy regarding the gas standards of conduct, an interstate natural gas pipeline is not required to contemporaneously disclose to all shippers information relating to a marketing affiliate's specific request for transportation service.

[80] *See, e.g.*, Southern Natural Gas Company, 70 FERC ¶ 61,348 (1995).

159. In contrast, current § 37.4(b)(3) and (4) of the Commission's regulations, 18 CFR 37.4(b)(3) and (4) (2003), prohibit the disclosure of any transmission information to wholesale merchant employees by off-OASIS communications. Order No. 889 did clarify that this does not foreclose customers, including wholesale merchant employees, from obtaining information about the status of particular transactions.[81] However, the Transmission Provider must provide the same types of information with the same level of detail to all customers presenting similar requests.

160. The NOPR did not specifically address this issue.

161. Virtually every segment of the gas industry requested clarification whether the Commission would continue the "specific-transaction exception." The Major Issues Analysis recommended that the Commission codify this policy and provided draft regulatory text for comment. All the follow-up comments from the gas industry, as well as Cinergy, EEI and Exelon supported the Major Issues Analysis and draft regulatory text. This exception, which impacts practical operations of the transmission system merits retention, and the regulatory text has been revised accordingly.

ii. Implementing Tariffs

162. Proposed § 358.5(c) combines §§ 161.3(a), (b), (c), (d) and (k) and § 37.4(b)(5), under which Transmission Providers are required to treat all customers in a fair and impartial manner. For example, Transmission Providers must apply tariff provisions in a manner that treats all transmission customers in a non-discriminatory manner. Transmission Providers would be prohibited from giving their marketing and sales employees and Energy Affiliates' employees preferential treatment, such as more flexible service. There were no comments on this proposed section in response to the NOPR, and the Final Rule adopts the language as originally proposed.

I. Discounts

163. The NOPR proposed that § 358.5(d) would combine the requirements of §§ 161.3(h) and 37.6(c)(3). The NOPR stated that proposed § 358.5(d) is consistent with the way electric Transmission Providers currently treat discounts—any offer of a

[81] FERC Stats. & Regs., Regulation Preambles 1991–1996 ¶ 31,035 at 31,597.

discount for any transmission service made by the Transmission Provider must be announced to all potential customers solely by posting on the OASIS. The NOPR did not propose to change the OASIS requirements currently codified at § 37.6(c)(3).

164. Proposed § 358.5(d) would change current discounting requirements for natural gas pipelines, however. Currently, § 161.3(h)(1), states that if a pipeline offers a discount to its marketing affiliate, the pipeline must make a comparable discount contemporaneously available to all similarly situated non-affiliated shippers. However, under current § 161.3(h)(2), the pipeline is required to post relevant information (name of affiliate, maximum rate, discounted rate, delivery points, quantity of gas and conditions) on its Internet website within 24 hours of the time at which gas first flows under a discounted transaction. The NOPR also solicited comments on whether it would be necessary to continue posting discount information for gas transactions under proposed § 358.5(d) when rate information is required to be posted under §§ 284.13(b)(1) and (2) of the Commission's regulations.[82]

165. Commenters from the electric industry were largely silent on this issue.

166. A few commenters, APGA, Amoco/BP, CPUC and Reliant, offered unqualified support for the requirement to offer all discounts by posting on OASIS or Internet websites. In addition, the Ohio Commission, Michigan Commission, and Oklahoma Commission stated that advance knowledge of discounts enables affiliates to profit from "insider trading." Twenty-six commenters, primarily from the natural gas industry, INGAA, Ad Hoc Marketers, NGSA, EPSA, and Industrials, strongly opposed posting discounts at the time of the offer. The commenters point out that discounting is fundamentally different between the gas and electric industries. In the gas industry, pipelines face pipeline-to-pipeline competition and competition from alternative fuel sources. They argue that the posting requirement is inconsistent with selective discounting for the gas industry and that this proposal would discourage discounting. Many expressed concern about the vagueness of the word "offer" and offered various definitions or proposals for when the information should be posted. Several commenters, AGA, Dominion, Industrials and NiSource, recommended that discounts be posted after they are executed.

[82] Under 18 CFR 284.13(b)(1) and (2), a pipeline must post on its Internet Web site, no later than the time of the first nomination under a transaction, firm contract information and interruptible agreement information, including the charged rate, the quantity of gas scheduled, receipt and delivery points, the identity of the shipper, and whether the shipper is affiliated.

167. The Major Issues Analysis recommended that the Final Rule require the transmission provider to post a discount at the conclusion of negotiations, "when the discount offer is contractually binding." The majority of follow-up comments supported the Major Issues Analysis recommendation. However, the Transmission Group is concerned that the discount posting requirements will discourage shippers from making early commitments to pipeline projects, *e.g.*, precedent agreements.

168. The Final Rule adopts Commission staff's recommendation. This result balances the importance of equal and timely access to discount information with clarity. The term "offer" could have been interpreted in a variety of ways and the text proposed by staff provided additional clarification on the timing of the posting. However, the current requirement, under § 161.3(h)(2), to post information within 24 hours of gas flow is too late to afford an unaffiliated competitor the opportunity to negotiate a comparable deal in today's fast-paced markets.

169. The Transmission Group has not provided any reason for claiming that the posting of a discount "when the discount offer is contractually binding" would discourage a potential shipper from entering into a precedent agreement. The Commission disagrees with the Transmission Group's suggestion that the posting of discounts will discourage precedent agreements.

V. Conforming Changes

170. The Commission proposes to make conforming changes to the regulations to delete references to Parts 37 and 161, as necessary, and add references to Part 358.

VI. Additional Policy Changes Not Adopted

171. The NOPR also solicited comments on specific additional policy suggestions, such as structural remedies, capacity limits, revising capacity allocation methods, disgorgement of opportunity costs and prohibiting profit sharing mechanisms. For the most part, the commenters, which were predominantly from the gas industry on these policy suggestions, argued that there was no evidence that justified the need for implementing, on a generic basis, the additional policy suggestions discussed in the NOPR. Very few commenters supported any of the measures. At this time, the Commission is not adopting any of these additional measures. However, we note that these are the some of the types of remedies that may be imposed if a Transmission Provider violates the standards of conduct.

172. The NOPR also solicited comments on whether the Commission should, in this proceeding or in a separate proceeding, codify the electric market-based rate power sales codes of conduct to govern the relationship between public utilities and their power marketing affiliates. The Commission has decided not to codify the codes of conduct at this time, but may do so in a separate proceeding.

VII. Regulatory Flexibility Act Certification

173. The Regulatory Flexibility Act[83] requires rulemakings to contain either a description and analysis of the effect that a rule will have on small entities or to certify that the rule will not have a significant economic effect on a substantial number of small entities. Because most Transmission Providers do not fall within the definition of "small entity,"[84] the Commission certifies that this rule will not have a significant economic impact on a substantial number of small entities.

VIII. Information Collection Statement

174. The Office of Management and Budget's (OMB) regulations require approval of certain information collection requirements imposed by agency rules.[85] Upon approval of a collection of information, OMB will assign an OMB control number and an expiration date. Respondents subject to the filing requirements of this rule will not be penalized for failing to respond to these collections of information unless the collections of information display a valid OMB control number.

175. The Final Rule replaces existing rules under Parts 161 and 37 with comparable rules at Part 358. Under the current requirements at Parts 161 and 37, Transmission Providers are posting certain information with respect to their marketing affiliates or wholesale merchant functions on their respective OASIS nodes or Internet websites. The final rule also requires the Transmission Providers to post the same information on their OASIS or Internet websites with respect to the Transmission

[83] 5 U.S.C. 601–612 (2000).

[84] *See* 5 U.S.C. 601(3) (2000).

[85] 5 CFR 1320.11 (2003).

Providers' Energy Affiliates. This information helps potential customers and the Commission determine whether or not there has been discrimination in pipeline/affiliate/nonaffiliated transactions.

176. The Commission is submitting these posting requirements to OMB for its review and approval under Section 3507(d) of the Paperwork Reduction Act of 1995, 44 U.S.C. 3507(d) (2000).

Interested persons may obtain information on the reporting requirements by contacting the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426 (Attention: Michael Miller, Office of the Executive Director, 202–502–8415) or from the Office of Management and Budget (Attention: Desk Officer for the Federal Energy Regulatory Commission, fax: 202–395–7285, e-mail *pamelabeverly.oirasubmission@omb.eop.gov.*).

Public Reporting Burden

177. The Commission did not receive specific comments concerning its burden estimates and uses the same estimates here in the Final Rule. Comments on the substantive issues raised in the NOPR are addressed elsewhere in the Final Rule.

Data collection	Number of respondents	Number of responses	Hours per response	Total annual hours
	257	1	65	16,705

Total Annual Hours for Collection: (Reporting + Recordkeeping, (if appropriate)) = 16,705.

Information Collection Costs:

178. The Commission sought comments on the costs to comply with these requirements. No comments were received. The Commission is projecting the average annualized cost per respondent to be the following: total hours divided by 2,080 (total work hours in a year) times $117,041 = $939,985.53.

Annual Capital/Startup costs	$0
Annualized Costs (Operations & Maintenance)	939,985
Total Annualized Costs	939,985

Title: FERC–592 and 717.

Action: Revision of Currently Approved Collection of Information.

OMB Control No: 1902–0157 and 1902–173.

Respondents: Business or other for profit.

Frequency of Responses: On occasion.

Necessity of the Information:

179. The information is necessary to ensure that all regulated transmission providers treat all transmission customers in a non-discriminatory basis. By requiring the posting of information regarding transmission, all non-affiliated customers have the ability to acquire information simultaneously with affiliated customers in a pro-competitive environment. The information also permits the market participants and the Commission to monitor the transmission market in a timely and efficient manner.

Internal Review

180. The Commission has reviewed the requirements pertaining to natural gas pipelines and transmitting electric utilities and determined the revisions in the final rule are necessary because of the evolving energy market. The Commission is consolidating the standards of conduct to govern the relationships between regulated transmission providers and their affiliates that engage in or are involved in transmission transactions or manage or control transmission capacity. Although the current standards of conduct limit a Transmission Provider's ability to make or grant undue preferences to the wholesale merchant function of their businesses (in the electric area) or to their marketing affiliates, they do not cover the Transmission Providers' other non-marketing affiliates.

181. These requirements conform to the Commission's plan for efficient information collection, communication, and management within the gas and electric industries. The Commission has assured itself, by means of internal review, that there is specific, objective support for the burden estimates associated with the information requirements.

182. Interested persons may obtain information on the reporting requirements by contacting: Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, Attention: Michael Miller, Office of the Chief Information Officer, Phone: (202) 208–1415, fax: (202) 208–2425, e-mail: *Michael.Miller@ferc.gov*.

183. Comments on the requirements of the Final Rule may also be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 [Attention: Desk Officer for the Federal Energy Regulatory Commission].

IX. Environmental Statement

184. Commission regulations require that an environmental assessment or an environmental impact statement be prepared for any Commission action that may have a significant adverse effect on the human environment.[86] The Commission has categorically excluded certain actions from these requirements as not having a significant effect on the human environment.[87] This final rule falls within the categorical exclusions provided in the Commission's regulations.[88] Therefore, an environmental assessment is unnecessary and has not been prepared in this rulemaking.

X. Document Availability

185. In addition to publishing the full text of this document in the **Federal Register,** the Commission also provides all interested persons an opportunity to view and/or print the contents of this document via the Internet through the Commission's home page *http://www.ferc.gov* and in the Commission's Public Reference Room during normal business hours (8:30 a.m. to 5 p.m. Eastern time) at 888 First Street, NE., Room 2A, Washington, DC 20426.

186. From the Commission's home page on the Internet, this information is available in the eLibrary. The full text of this document is available on eLibrary in PDF and Word format for viewing, printing, and/or downloading. To access this document in eLibrary, type the docket number excluding the last three digits of this document in the docket number field.

187. User assistance is available for eLibrary and the Commission's web site during normal business hours from FERC Online Support (by phone at (866) 208–3676 (toll free) or for TTY, contact (202) 502–6652, or by e-mail at *FERCOnlineSupport@ferc.gov,* for TTY (202) 502–8659.

[86] Regulations Implementing National Environmental Policy Act, 52 FR 47897 (Dec. 17, 1987); FERC Stats. & Regs. ¶30,783 (1987).

[87] 18 CFR 380.4 (2003).

[88] 18 CFR 380.4(a)(2)(ii) and 380.4(a)(5) (2003).

XI. Effective Date and Congressional Notification

188. This final rule will take effect on February 9, 2004. The Commission has determined with the concurrence of the Administrator of the Office of Information and Regulatory Affairs of the Office of Management and Budget that this rule is a "non-major rule" within the meaning of Section 251 of the Small Business Regulatory Enforcement Fairness Act of 1996.[89] The Commission will submit the final rule to both houses of Congress and the General Accounting Office.[90]

List of Subjects

18 CFR Part 37

Electric power rates, Electric utilities, Reporting and recordkeeping requirements.

18 CFR Part 161

Natural gas, Reporting and recordkeeping requirements.

18 CFR Part 250

Natural gas, Reporting and recordkeeping requirements.

18 CFR Part 284

Continental Shelf, Natural gas, Reporting and recordkeeping requirements.

18 CFR Part 358

Electric power plants, Electric utilities, Natural gas, Reporting and recordkeeping requirements.

By the Commission. Commissioner Brownell dissenting in part with a separate statement attached.

Magalie R. Salas,

Secretary.

■ In consideration of the foregoing, the Commission amends Chapter I, Title 18 of the Code of Federal Regulations, as follows:

PART 37—OPEN ACCESS SAME-TIME INFORMATION SYSTEMS

■ 1. The authority citation for part 37 continues to read as follows:

Authority: 16 U.S.C. 791–825r, 2601–2645; 31 U.S.C. 9701; 42 U.S.C. 7101–7352.

■ 2. In part 37, the heading is revised to read as set forth above.

§ 37.4 [Removed and Reserved]

■ 3. Section 37.4 is removed and reserved.

§ 37.6 [Amended]

■ 4. In § 37.6(g)(3), the word "§ 37.4(b)(2)" is removed and the word "§ 358.4(c)" is added in its place and in § 37.6(g)(4), the word "§ 37.4(b)(5)(iii)" is removed and the word "§ 358.5(c)(4)" is added in its place.

PART 161—[REMOVED]

■ 5. Part 161 is removed in its entirety.

PART 250—FORMS

■ 6. The authority citation for part 250 continues to read as follows:

Authority: 16 U.S.C. 717–717w, 3301–3432; 42 U.S.C. 7101–7352.

§ 250.16 [Amended]

■ 7. In § 250.16(a), the word "§ 161.2" is removed and the word "§ 358.3" is added in its place and in § 250.16(e), the word "§ 161.3" is removed and the words "§§ 358.4 and 358.5" are added in its place.

PART 284—CERTAIN SALES AND TRANSPORTATION OF NATURAL GAS UNDER THE NATURAL GAS POLICY ACT OF 1978 AND RELATED AUTHORITIES

§ 284.13 [Amended]

■ 8. In § 284.13(a), the word "Part 161" is removed and the word "part 358" is added in its place.

§ 284.286 [Amended]

■ 9. In § 284.286(c), the words "§ 161.3(a), (b), (d), and (k) of this chapter and comply with § 161.3(c), (e), (f), (g), (h), and (l) of this chapter" are removed and the word "part 358" is added in their place.

■ 10. Subchapter S, consisting of part 358, is added to read as follows:

SUBCHAPTER S—STANDARDS OF CONDUCT FOR TRANSMISSION PROVIDERS

PART 358—STANDARDS OF CONDUCT

Sec.

358.1 Applicability.
358.2 General principles.
358.3 Definitions.
358.4 Independent functioning.
358.5 Non-discrimination requirements.

Authority: 15 U.S.C. 717–717w, 3301–3432; 16 U.S.C. 791–825r, 2601–2645; 31 U.S.C. 9701; 42 U.S.C. 7101–7352.

§ 358.1 Applicability.

(a) This part applies to any interstate natural gas pipeline that transports gas for others pursuant to subpart A of part 157 or subparts B or G of part 284 of this chapter.

(b) This part applies to any public utility that owns, operates, or controls facilities used for the transmission of electric energy in interstate commerce.

(c) This part does not apply to a public utility Transmission Provider that is a Commission-approved Independent System Operator (ISO) or Regional Transmission Organization (RTO). If a public utility transmission owner participates in a Commission-approved ISO or RTO and does not operate or control its transmission facilities and has no access to transmission, customer or market information covered by § 385.5(b), it may request an exemption from this part.

(d) A Transmission Provider may file a request for an exemption from all or some of the requirements of this part for good cause.

§ 358.2 General principles.

(a) A Transmission Provider's employees engaged in transmission system operations must function independently from the Transmission Provider's marketing and sales employees, and from any employees of its Energy Affiliates.

(b) A Transmission Provider must treat all transmission customers, affiliated and non-affiliated, on a non-discriminatory basis, and must not operate its transmission system to preferentially benefit an Energy Affiliate.

§ 358.3 Definitions.

(a) *Transmission Provider* means:

(1) Any public utility that owns, operates or controls facilities used for the transmission of electric energy in interstate commerce; or

(2) Any interstate natural gas pipeline that transports gas for others pursuant to subpart A of part 157 or subparts B or G of part 284 of this chapter.

(b) *Affiliate* means:

(1) Another person which controls, is controlled by or is under common control with, such person, and

(2) For any exempt wholesale generator, as defined under Section 32(a) of the Public Utility Holding Company Act of 1935, as amended, the same as provided in Section 214 of the Federal Power Act.

(c) *Control* (including the terms "controlling," "controlled by," and "under common control with") as used in this part and § 250.16 of this chapter, includes, but is not limited to, the possession, directly or indirectly and whether acting alone or in conjunction with others, of the authority to direct or cause the direction of the management or policies of a company. A voting

[89] 5 U.S.C. 804(2) (2000).

[90] 5 U.S.C. 801(a)(1)(A) (2000).

interest of 10 percent or more creates a rebuttable presumption of control.

(d) *Energy Affiliate* means an affiliate of a Transmission Provider that:

(1) Engages in or is involved in transmission transactions in U.S. energy or transmission markets; or

(2) Manages or controls transmission capacity of a Transmission Provider in U.S. energy or transmission markets; or

(3) Buys, sells, trades or administers natural gas or electric energy in U.S. energy or transmission markets; or

(4) Engages in financial transactions relating to the sale or transmission of natural gas or electric energy in U.S. energy or transmission markets.

(5) An Energy Affiliate does not include:

(i) A foreign affiliate that does not participate in U.S. energy markets;

(ii) An affiliated Transmission Provider;

(iii) A holding, parent or service company that does not engage in energy or natural gas commodity markets or is not involved in transmission transactions in U.S. energy markets;

(iv) An affiliate that purchases natural gas or energy solely for its own consumption and does not use an affiliated Transmission Provider for transmission of that natural gas or energy.

(v) A state-regulated local distribution company that does not make any off-system sales.

(e) *Marketing, sales or brokering* means a sale for resale of natural gas or electric energy in interstate commerce. Sales and marketing employee or unit includes:

(1) An interstate natural gas pipeline's sales operating unit, to the extent provided in § 284.286 of this chapter, and

(2) A public utility Transmission Provider's energy sales unit, unless such unit engages solely in bundled retail sales.

(3) Marketing or sales does not include incidental purchases or sales of natural gas to operate interstate natural gas pipeline transmission facilities.

(f) *Transmission* means natural gas transportation, storage, exchange, backhaul, or displacement service provided pursuant to subpart A of part 157 or subparts B or G of part 284 of this chapter; and electric transmission, network or point-to-point service, reliability service, ancillary services or other methods of transportation or the interconnection with jurisdictional transmission facilities.

(g) *Transmission Customer* means any eligible customer, shipper or designated agent that can or does execute a transmission service agreement or can or does receive transmission service, including all persons who have pending requests for transmission service or for information regarding transmission.

(h) *Open Access Same-time Information System or OASIS* refers to the Internet location where a public utility posts the information, by electronic means, required by part 37 of this chapter.

(i) *Internet Web site* refers to the Internet location where an interstate natural gas pipeline posts the information, by electronic means, required by §§ 284.12 and 284.13 of this chapter.

(j) *Transmission Function employee* means an employee, contractor, consultant or agent of a Transmission Provider who conducts transmission system operations or reliability functions, including, but not limited to, those who are engaged in day-to-day duties and responsibilities for planning, directing, organizing or carrying out transmission-related operations.

§ 358.4 Independent functioning.

(a) Separation of functions.

(1) Except in emergency circumstances affecting system reliability, the transmission function employees of the Transmission Provider must function independently of the Transmission Provider's Marketing or Energy Affiliates' employees.

(2) Notwithstanding any other provisions in this section, in emergency circumstances affecting system reliability, a Transmission Provider may take whatever steps are necessary to keep the system in operation. Transmission Providers must report to the Commission and post on the OASIS or Internet website, as applicable, each emergency that resulted in any deviation from the standards of conduct, within 24 hours of such deviation.

(3) The Transmission Provider is prohibited from permitting the employees of its Marketing or Energy Affiliates from:

(i) Conducting transmission system operations or reliability functions; and

(ii) Having access to the system control center or similar facilities used for transmission operations or reliability functions that differs in any way from the access available to other transmission customers.

(4) Transmission Providers are permitted to share support employees and field and maintenance employees with their Marketing and Energy Affiliates.

(b) Identifying affiliates on the public Internet.

(1) A Transmission Provider must post the names and addresses of its sales and marketing units and Energy Affiliates on its OASIS or Internet Web site.

(2) A Transmission Provider must post on its OASIS or Internet Web site, as applicable, a complete list of the facilities shared by the Transmission Provider and its marketing or sales units or any Energy Affiliates, including the types of facilities shared and their addresses.

(3) A Transmission Provider must post comprehensive organizational charts showing:

(i) The organizational structure of the parent corporation with the relative position in the corporate structure of the Transmission Provider, marketing and sales units and any Energy Affiliates;

(ii) For the Transmission Provider, the business units, job titles and descriptions, and chain of command for all positions, including officers and directors, with the exception of clerical, maintenance, and field positions. The job titles and descriptions must include the employee's title, the employee's duties, whether the employee is involved in transmission or sales, and the name of the supervisory employees who manage non-clerical employees involved in transmission or sales.

(iii) For all employees who are engaged in transmission functions for the Transmission Provider and marketing or sales functions or who are engaged in transmission functions for the Transmission Provider and are employed by any of the Energy Affiliates, the Transmission Provider must post the name of the business unit within the marketing or sales unit or the Energy Affiliate, the organizational structure in which the employee is located, the employee's name, job title and job description in the marketing or sales unit or Energy Affiliate, and the employee's position within the chain of command of the marketing or sales unit or Energy Affiliate.

(iv) The Transmission Provider must update the information on its OASIS or Internet website, as applicable, required by §§ 358.4(1), (2) and (3) within seven business days of any change, and post the date on which the information was updated.

(v) The Transmission Provider must post information concerning potential merger partners as affiliates within seven days after the merger is announced.

(vi) All OASIS or Internet website postings required by part 358 must comply, as applicable, with the requirements of § 37.3 or §§ 284.12(a) and (c)(3)(v) of this chapter.

(c) *Transfers.* Employees of the Transmission Provider, marketing or

sales unit or Energy Affiliates are not precluded from transferring among such functions as long as such transfer is not used as a means to circumvent the standards of conduct. Notices of any employee transfers must be posted on the OASIS or Internet website, as applicable. The information to be posted must include: the name of the transferring employee, the respective titles held while performing each function (*i.e.*, on behalf of the Transmission Provider, Marketing Function or Energy Affiliate), and the effective date of the transfer. The information posted under this section must remain on the OASIS or Internet website, as applicable, for 90 days.

(d) *Books and records.* A Transmission Provider must maintain its books of account and records (as prescribed under parts 101, 125, 201 and 225 of this chapter) separately from those of its Energy Affiliates and these must be available for Commission inspections.

(e) *Written procedures.*

(1) By February 9, 2004, each Transmission Provider is required to file with the Commission and post on the OASIS or Internet website a plan and schedule for implementing the standards of conduct.

(2) Each Transmission Provider must be in full compliance with the standards of conduct by June 1, 2004.

(3) The Transmission Provider must post on the OASIS or Internet website, current written procedures implementing the standards of conduct in such detail as will enable customers and the Commission to determine that the Transmission Provider is in compliance with the requirements of this section by June 1, 2004 or within 30 days of becoming subject to the requirements of part 358.

(4) Transmission Providers will distribute the written procedures to all Transmission Provider employees and employees of the Marketing and Energy Affiliates.

(5) Transmission Providers shall require all of their employees to attend training and sign an affidavit certifying that they have been trained regarding the standards of conduct requirements.

(6) Transmission Providers are required to designate a Chief Compliance Officer who will be responsible for standards of conduct compliance.

§ 358.5 Non-discrimination requirements.

(a) Information access.

(1) The Transmission Provider must ensure that any employee of the Transmission Provider engaged in marketing or sales or any employee of any Energy Affiliate may only have access to that information available to the Transmission Provider's transmission customers (*i.e.*, the information posted on the OASIS or Internet website, as applicable), and must not have access to any information about the Transmission Provider's transmission system that is not available to all users of an OASIS or Internet website, as applicable.

(2) The Transmission Provider must ensure that any employee of the Transmission Provider engaged in marketing or sales or any employee of any Energy Affiliate is prohibited from obtaining information about the Transmission Provider's transmission system (including, but not limited to, information about available transmission capability, price, curtailments, storage, ancillary services, balancing, maintenance activity, capacity expansion plans or similar information) through access to information not posted on the OASIS or Internet website or that is not otherwise also available to the general public without restriction.

(b) Prohibited disclosure.

(1) An employee of the Transmission Provider may not disclose to its marketing or sales employees, or to employees of the Transmission Provider's Energy Affiliates any information concerning the transmission system of the Transmission Provider or the transmission system of another (including, but not limited to, information received from non-affiliates or information about available transmission capability, price, curtailments, storage, ancillary services, balancing, maintenance activity, capacity expansion plans, or similar information) through non-public communications conducted off the OASIS or Internet Web site, through access to information not posted on the OASIS or Internet Web site that is not contemporaneously available to the public, or through information on the OASIS or Internet Web site that is not at the same time publicly available.

(2) A Transmission Provider may not share any information, acquired from nonaffiliated transmission customers or potential nonaffiliated transmission customers, or developed in the course of responding to requests for transmission or ancillary service on the OASIS or Internet website, with employees of its marketing or Energy Affiliates, except to the limited extent information is required to be posted on the OASIS or Internet website in response to a request for transmission service or ancillary services.

(3) If an employee of the Transmission Provider discloses information in a manner contrary to the requirements of § 358.5(b)(1) and (2), the Transmission Provider must immediately post such information on the OASIS or Internet Web site.

(4) A non-affiliated transmission customer may voluntarily consent, in writing, to allow the Transmission Provider to share the non-affiliated customer's information with a marketing or Energy Affiliate.

(5) A Transmission Provider is not required to contemporaneously disclose to all transmission customers or potential transmission customers information covered by § 358.5(b)(1) if it relates solely to a Marketing or Energy Affiliate's specific request for transmission service.

(6) A Transmission Provider may share generation information necessary to perform generation dispatch with its Marketing and Energy Affiliate that does not include specific information about individual third party transmission transactions or potential transmission arrangements.

(7) Neither a Transmission Provider nor an employee of a Transmission Provider is permitted to use anyone as a conduit for sharing information covered by the prohibitions of § 358.5(b)(1) and (2) with a marketing or Energy Affiliate.

(8) A Transmission Provider is permitted to share crucial operating information with its Energy Affiliate to maintain the reliability of the transmission system.

(c) Implementing tariffs.

(1) A Transmission Provider must strictly enforce all tariff provisions relating to the sale or purchase of open access transmission service, if these tariff provisions do not permit the use of discretion.

(2) A Transmission Provider must apply all tariff provisions relating to the sale or purchase of open access transmission service in a fair and impartial manner that treats all transmission customers in a non-discriminatory manner, if these tariff provisions permit the use of discretion.

(3) A Transmission Provider must process all similar requests for transmission in the same manner and within the same period of time.

(4) The Transmission Provider must maintain a written log, available for Commission audit, detailing the circumstances and manner in which it exercised its discretion under any terms of the tariff. The information contained in this log is to be posted on the OASIS or Internet Web site within 24 hours of when a Transmission Provider exercises

its discretion under any terms of the tariff.

(5) The Transmission Provider may not, through its tariffs or otherwise, give preference to its own marketing or sales function or to any Energy Affiliate, over any other wholesale customer in matters relating to the sale or purchase of transmission service (including, but not limited to, issues of price, curtailments, scheduling, priority, ancillary services, or balancing).

(d) *Discounts.*

Any offer of a discount for any transmission service made by the Transmission Provider must be posted on the OASIS or Internet Web site contemporaneously with the time that the offer is contractually binding. The posting must include: the name of the customer involved in the discount and whether it is an affiliate or whether an affiliate is involved in the transaction, the rate offered; the maximum rate; the time period for which the discount would apply; the quantity of power or gas scheduled to be moved; the delivery points under the transaction; and any conditions or requirements applicable to the discount. The posting must remain on the OASIS or Internet Web site for 60 days from the date of posting.

Note: The following Attachments will not be published in the *Code of Federal Regulations.*

List of Commenters

Ad Hoc Marketers Group (Ad Hoc Marketers)
AEC Storage and Hub Services, Inc.
Alabama Electric Cooperative, Inc.
Alabama Public Service Commission
Allegheny Energy Service Corporation
Allegheny Power
Algonquin Gas Transmission, LP (Algonquin)
Alliance Pipeline, LP (Alliance)
Alcoa Power Generating, Inc.
Apache Corporation
American Antitrust Institute (AAI)
American Electric Power Service Corporation (AEP)
American Forest and Paper Association (AFPA)
American Gas Association (AGA)
American Iron & Steel Institute
American Public Gas Association (APGA)
American Public Power Association (APPA)
Amoco Production Company and BP Energy Co. (Amoco/BP)
Arkansas Electric Cooperative Corporation
Association of Texas Intrastate Natural Gas Pipelines
Atlanta Gas Light Company
Atlantic City Electric Company and Delmarva Power and Light Co.
Atmos Energy Corporation
Avista Corporation (Avista)
B–R Pipeline Company (B–R Pipeline)
BP Energy Co. (BP)
Bangor Hydro-Electric Company
Basin Electric Power Cooperative, Inc. (Basin Electric)
Bonneville Power Administration (BPA)
Bowater, Inc.
Businesses Advocating Tariff Equity
California Dairy Coalition
California Natural Gas Producers Association
California Oil & Gas Association
California Independent Petroleum Association
California Public Utilities Commission (CPUC)
Calpine Corporation (Calpine)
Canadian Association of Petroleum Producers
Carolina Power & Light Company (CP&L)
CenterPoint Energy Gas Transmission Company (CEGT)
Chattanooga Gas Company
Cheyenne Light Fuel & Power Company
Cinergy Services, Inc. (Cinergy)
City of Memphis
City of New Orleans
CLECO Power LLC (Cleco)
CMS Energy, Inc. (CMS)
Coalition of Midwest Transmission Customers
Colorado Springs Utilities (Colorado Springs)
Commonwealth Edison Company
Congressman Michael Oxley
Connecticut DPUC (Connecticut Commission)
Connecticut Industrial Energy Consumers (New England Pool)
Connexus Energy
Consolidated Edison Company of New York
Delmarva Power & Light Co.
Dairyland Power Cooperative
Discovery Gas Transmission LLC (Discovery)
Discovery Producer Services LLC
Distrigas of Massachusetts Corporation (Distrigas of Massachusetts)
Dominion Resources, Inc. (Dominion)
DTE Energy
Duke Energy Corporation (Duke Energy)
Dynegy, Inc. (Dynegy)
Dynegy Power Marketing, Inc.
East Texas Electric Cooperative, Inc.
Edison Electric Institute (EEI)
El Paso Corporation
El Paso Energy Partners, LP
El Paso Merchant Energy, LP
Electric Power Supply Association (EPSA)
Electricity Consumers Resource Council
Empire District Electric Co.
Enbridge, Inc.
Energy East Companies and Rochester Gas and Electric Corporation
Entergy-Koch Trading, LP
Entergy Services, Inc. (Entergy)
Equitable Resources, Inc. (Equitable)
Exelon Corporation (Exelon)
Exelon Generation Co., LLC
Federal Trade Commission (FTC)
First Electric Cooperative Corp.
FirstEnergy Corporation
Florida Power Corporation (FPC)
Florida Power & Light Company (FP&L)
Florida Public Service Commission (Florida Commission)
Fort Chicago Energy Partners, LP
Gas Processors Association
Georgia Industrial Group
Green Mountain Power Corporation
Gulf South Pipeline Company (Gulf South)
Gulfstream Natural Gas System, LLC
Hampshire Storage Company
Idaho Public Utilities Commission (Idaho Commission)
Illinois Commerce Commission (Illinois Commission)
Illinois Oil & Gas Association
Industrial Gas Users of Florida
Independent Oil & Gas Association of West Virginia (IOGA)
Independent Oil & Gas Association of Pennsylvania
Independent Petroleum Association of America, including, California Natural Gas Producers Association, California Oil and Gas Association, Illinois Oil and Gas Association, International Association of GeoPhysical Contractors, Kansas Independent Oil and Gas Association, Michigan Oil and Gas Association, Ohio Oil and Gas Association, Pennsylvania Oil and Gas Association, Permian Basin Petroleum Association, Independent Oil and Gas Association of West Virginia and Wyoming
Independent Producers Association (IPAA)
Industrial Energy Consumers of Pennsylvania
Industrial Energy Users
Interstate Natural Gas Association of America (INGAA)
International Association of Geophysical Contractors
Kansas Independent Oil & Gas Association
Keyspan Corporation (Keyspan)
Kinder Morgan (KM)
Kinder Morgan Interstate Gas Transmission LLC
Kinder Morgan Interstate Pipelines
Large Public Power Council
LG&E Energy Corporation (LG&E)
Long Island Lighting Company (LILCO)
Long Island Power Authority (LIPA)
M&N Management Company
Maritimes & Northeast Pipeline, LLC (Maritimes & Northeast Pipeline)
Michigan Oil & Gas Association
Michigan Public Service Commission (Michigan Commission)
Midwest Energy, Inc.
Midwest ISO (MISO)
Midwest United Energy LLC
MIGC, Inc. (MIGC)
Minnesota Department of Commerce (Minnesota Commission)
Mirant Americas Energy Marketing (Mirant)
Mississippi Public Utilities Staff (Mississippi Commission)
Modesto Irrigation District (MID)
Monongahela Power Company
Montana Power Co.
Montana-Dakota Utilities Company
National Association of Regulatory Utilities Commissioners (NARUC)
National Association of State Utility Consumer Advocates (NASUCA)
National Energy Marketers Association (NEMA)
National Fuel Gas Distribution Corporation
National Fuel Gas Supply Corporation
National Grid USA (National Grid)
National Propane Gas Association
National Rural Electric Cooperative Association (NRECA)
Natural Gas Pipeline Co. of America
Natural Gas Supply Association (NGSA)
NEPOOL Industrial Customer Coalition
New York Independent System Operator (NYISO)
New York State Public Service Commission (New York Commission)

NICOR Gas
Niagara Mohawk Power Corporation
NiSource, Inc. (NiSource)
North Carolina Utilities Commission (North Carolina Commission)
Northeast Utilities Service Company
Northeastern Independent Transmission Co.
Northern States Power Company
Northwest Natural Gas Company
Ohio Oil & Gas Association
Oklahoma Corporation Commission (Oklahoma Commission)
Oklahoma Gas and Electric Company (OGE)
Orlando Utilities Commission
PacifiCorp
Pancanadian Energy Services, Inc.
PECO Energy Company
Pennsylvania Oil & Gas Association
Pennsylvania Public Utility Commission (Pennsylvania Commission)
Permian Basin Petroleum Association
Piedmont Natural Gas Company
Pinnacle West Companies (Pinnacle West)
Pinnacle West Capital Corporation
PJM Industrial Customer Coalition
Portland General Electric Company
Portland Natural Gas Transmission System
Potomac Edison Company
PPL Companies
Process Gas Consumers Group, including American Forest and Paper Association, American Iron and Steel Institute, Georgia Industrial Group, Industrial Gas Users of Florida, Florida Industrial Gas Users, U.S. Gypsum Co. (Industrials)
Proliance Energy, LLC
PSEG Companies
Public Alliance for Community Energy
Public Service Co. of Colorado
Public Service Co. of North Carolina
Public Utilities Commission of Ohio (Ohio Commission)
Public Utilities Commission of Michigan (Michigan Commission)
Puget Sound Energy, Inc.
Questar Corporation
Questar Market Resources, Inc.
Questar Pipeline Co., Questar Gas Co., Questar Regulated Services Co. (Questar)
Reliant Resource, Inc. (Reliant)
Rural Utilities Service of the U.S. Department of Agriculture (Rural Utilities Service)
Salt River Project
SCANA Energy Marketing, Inc.
SCANA Services, Inc.
SCG Pipeline, Inc. (SCG)
Seminole Electric Cooperative, Inc.
Sempra Energy
Shell Gas Transmission, LLC (Shell Gas)
Shell Offshore, Inc. (Shell Offshore)
South Carolina Electric & Gas Co.
South Carolina Pipeline Corporation
South Carolina Public Service Authority
Southern California Edison Co.
Southern Company Services, Inc. (Southern)
Southwest Gas Corporation (Southwest Gas)
Southwest Transmission Cooperative
Southwestern Public Service Co.
State of Arkansas
State of Colorado
State of Illinois
State of New York
State of Pennsylvania
State of Washington
State of Wyoming
Superior Natural Gas Corporation
Teco Energy, Inc.
Texas Eastern Transmission Company
The New Power Company
Transcanada Pipelines Limited
Transmission Access Policy Study Group (TAPS)
Transmission Group (Northern Natural Gas Co. *et al.*)
Unaffiliated Marketers
UtiliCorp United, Inc.
United States Gypsum Company
Upper Peninsula Power Company
US Gypsum Corporation
USG Pipeline Company
Utah Associated Municipal Power Systems
Utah Division of Public Utilities (Utah Commission)
Vector Pipeline
Vermont Department of Public Service (Vermont Commission)
Viking Gas Transmission Co. (Viking)
Virginia Natural Gas Company
Walter Oil & Gas Corporation
Wastach Energy Corporation
Washington Gas Light Company
Washington Utilities & Transportation Commission (Washington Commission)
Wells Rural Electric Company
West Penn Power Company
West Virginia Energy Users Group
Western Resources, Inc., including Kansas Power & Light (Western Resources)
Westgas Interstate, Inc.
Williams Companies (Williams)
Williams Energy Marketing & Trading Co. (WEMT)
Williston Basin Interstate Pipeline Company (Williston Basin)
Wisconsin Electric Power Co.
Wisconsin Gas Company
Wisconsin Public Service Corporation
Wyoming Independent Producers Association
Wyoming Public Service Commission (Wyoming Commission)
XCEL Energy Companies (Xcel)
XCEL Energy Services, Inc.

Brownell, Commissioner, *dissenting in part*

1. The proposed changes to our standards of conduct generated a great amount of comment. There were many questions raised, clarifications requested and alternative proposals advocated. Many commenters argued that a general rule was unnecessary. I disagree. The current standards of conduct do not reflect the significant changes that have occurred in the electric and gas industries since they were first adopted. In particular, the current standards of conduct do not reflect the interplay between physical and financial transactions that is now present in the energy markets.

2. We had a lot of process and debate. After carefully considering all the comments, we revised and clarified many of the proposed changes to the current standards of conduct. The revised standards of conduct adopted in the Final Rule are a positive step toward eliminating undue discrimination and undue preferences in the provision of interstate transmission service. In particular, the Final Rule:

• Uses the same standards of conduct language for the interstate natural gas pipelines and public utility transmission providers;

• Adopts the "no conduit rule" for implementing information disclosure prohibitions (currently used by public utility transmission providers), which is more flexible than the "automatic imputation rule" (currently used by interstate natural gas pipeline transmission providers);

• Prohibits the Transmission Provider from sharing employees and information with its Energy Affiliates, including affiliated asset managers, and trading and financial affiliates;

• Prohibits the sharing of employees and information across industries (*e.g.*, between a natural gas pipeline and an affiliated generator); and

• Requires mandatory training for employees and the designation of a Chief Compliance Officer.

I support these provisions of the Final Rule.

3. The Final Rule retains the existing exemption from Order No. 497 for affiliated local distribution companies (LDCs) and the existing exemption from Order No. 889 for the bundled retail sales function. In contrast, the Final Rule eliminates the existing exemption in Order No. 497 for affiliated producers, gatherers, processors, intrastate pipelines, and Hinshaw pipelines. The facts and equity support maintaining the existing exemption for affiliated producers, gatherers, processors, intrastate pipelines, and Hinshaw pipelines. Therefore, I will dissent on this one point.

4. There is no practical distinction in the relationship between a jurisdictional pipeline and its affiliated LDCs and the relationship between a jurisdictional pipeline and an affiliated intrastate or Hinshaw pipeline that warrants applying the standards of conduct in an asymmetrical manner. Furthermore, we exempt FERC-jurisdictional transmission providers from the definition of Energy Affiliates. Consequently, for example, affiliated jurisdictional pipelines are permitted to share transmission function employees and information. Again, there appears to be no significant difference in the relationships to support disparate treatment.

5. Under the current standards of conduct, a producer is exempt when selling gas solely from its own production and an LDC is exempt if it only makes on-system sales. There does not appear to be any reason that undue discrimination and undue preferences in the provision of interstate transmission service are more likely to occur with a producer than with an LDC. Furthermore, as the Final Rule notes, there was much discussion at the May 21, 2002 conference about the possibility that expanding the standards of conduct to producers, gatherers and processors would harm deepwater operations and future off-shore development efforts.

6. Lastly, there appears to be insufficient evidence to support eliminating the exemption for affiliated producers, gatherers, and processors. The Final Rule cites *Shell Offshore Inc.* v. *Transcontinental Gas Pipe Line Corp., et al.*, 100 FERC ¶ 61,254 (2002), *order on reh'g*, 103 FERC ¶ 61,177 (2003), *appeal filed* June 27, 2003 (D.C. Cir. No. 03–1179) as the basis for eliminating the exemption for producers, gatherers and

processors. I dissented in that case because, *inter alia*, the evidence of cooperative action was mixed.

7. For these reasons, I respectfully dissent in part.

Nora Mead Brownell,

Commissioner.

[FR Doc. 03–30444 Filed 12–10–03; 8:45 am]
BILLING CODE 6717–01–P



Federal Register

Thursday,
December 11, 2003

Part III

Environmental Protection Agency

40 CFR Part 63
National Emission Standards for Hazardous Air Pollutants: Miscellaneous Coating Manufacturing; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[Docket ID No. OAR–2003–0178; FRL–7554–3]

RIN 2060–AK59

National Emission Standards for Hazardous Air Pollutants: Miscellaneous Coating Manufacturing

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This action promulgates national emission standards for hazardous air pollutants (NESHAP) for miscellaneous coating manufacturing facilities. The final rule establishes emission limits and work practice requirements for new and existing miscellaneous coating manufacturing operations, including process vessels, storage tanks, wastewater, transfer operations, equipment leaks, and heat exchange systems, and implements section 112(d) of the Clean Air Act (CAA) by requiring all major sources to meet hazardous air pollutant (HAP) emission standards reflecting application of the maximum achievable control technology (MACT). The HAP emitted from miscellaneous coating manufacturing facilities include toluene, xylene, glycol ethers, methyl ethyl ketone, and methyl isobutyl ketone. Exposure to these substances has been demonstrated to cause adverse health effects such as irritation of the lung, eye, and mucous membranes, effects on the central nervous system, and cancer. We do not have the type of current detailed data on each of the facilities and the people living around the facilities covered by the final rule for this source category that would be necessary to conduct an analysis to determine the actual population exposures to the HAP emitted from these facilities and the potential for resultant health effects. Therefore, we do not know the extent to which the adverse health effects described above occur in the populations surrounding these facilities. However, to the extent the adverse effects do occur, and the final rule reduces emissions, subsequent exposures will be reduced. The final rule will reduce HAP emissions by 4,900 tons per year (tpy) for existing facilities that manufacture miscellaneous coatings.

EFFECTIVE DATE: December 11, 2003.

ADDRESSES: Docket ID. No. OAR–2003–0178 and A–96–04 are located at the U.S. EPA, Office of Air & Radiation Docket & Information Center (6102T), 1301 Constitution Avenue, NW., room B108, Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Mr. Randy McDonald, Organic Chemicals Group, Emission Standards Division (MD–C504–04), U.S. EPA, Research Triangle Park, NC 27711, telephone number (919) 541–5402, electronic mail (e-mail) address *mcdonald.randy@epa.gov*.

SUPPLEMENTARY INFORMATION: *Regulated Entities.* Categories and entities potentially regulated by this action include:

Category	NAICS[1]	Examples of regulated entities
Industry	3255	Manufacturers of coatings, including inks, paints, or adhesives.

[1] North American Industry Classification System.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. To determine whether your facility is regulated by this action, you should examine the applicability criteria in § 63.7985 of the final rule. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

Docket. The EPA has established official electronic public dockets for this action under Docket ID No. OAR–2003–0178 and A–96–04. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, a public docket does not include Confidential Business Information or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Air and Radiation Docket in the EPA Docket Center, (EPA/DC) EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Air and Radiation Docket is (202) 566–1742. A reasonable fee may be charged for copying docket materials.

Electronic Access. You may access this **Federal Register** document electronically through the EPA Internet under the **Federal Register** listings at *http://www.epa.gov/fedrgstr/*. An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Portions of the docket materials are available electronically through Docket ID No. OAR–2003–0178. Once in the system, select "search," then key in the appropriate docket identification number. You may still access publicly available docket materials through the Docket ID No. A–96–04.

Worldwide Web (WWW). In addition to being available in the docket, an electronic copy of the final rule will also be available on the WWW through the Technology Transfer Network (TTN). Following signature, a copy of the rule will be placed on the TTN's policy and guidance page for newly proposed or promulgated rules at *http://www.epa.gov/ttn/oarpg*. The TTN provides information and technology exchange in various areas of air pollution control. If more information regarding the TTN is needed, call the TTN HELP line at (919) 541–5384.

Judicial Review. Under section 307(b)(1) of the CAA, judicial review of the final NESHAP is available only by filing a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit by February 9, 2004. Under section 307(d)(7)(B) of the CAA, only an objection to a rule or procedure raised with reasonable specificity during the period for public comment can be raised during judicial review. Moreover, under CAA section 307(b)(2) of the CAA, the requirements established by the final rule may not be challenged separately in any civil or criminal proceeding brought to enforce these requirements.

Background Information Document. The EPA proposed the NESHAP for miscellaneous coating manufacturing on April 4, 2002 (67 FR 16154), and received 81 comment letters and comments from 8 speakers at a public hearing on the proposal. A background information document (BID) ("National Emission Standards for Hazardous Air Pollutants (NESHAP) for the Miscellaneous Coating Manufacturing Industry, Summary of Public Comments and Responses,") containing EPA's responses to each public comment is available in Docket ID No. OAR–2003–0178.

Outline. The information presented in this preamble is organized as follows:

I. Background
A. What is the source of authority for development of NESHAP?
B. What criteria are used in the development of NESHAP?
C. What is the history of the source category?
D. What are the health effects associated with the pollutants emitted from miscellaneous coating manufacturing?
E. How did we develop the final rule?
II. Summary of the Final Rule
A. What are the affected sources and emission points?
B. What are the emission limitations and work practice standards?
C. What are the testing and initial compliance requirements?
D. What are the continuous compliance requirements?
E. What are the notification, recordkeeping, and reporting requirements?
III. Summary of Environmental, Energy, and Economic Impacts
A. What are the air emission reduction impacts?
B. What are the cost impacts?
C. What are the economic impacts?
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IV. Summary of Responses to Major Comments
A. What changes to applicability did the commenters suggest?
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C. Standards for Process Vessels
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E. Standards for Wastewater
F. Standards for Equipment Leaks
G. Standards for Transfer Operations
H. Pollution Prevention
I. Initial Compliance
J. Ongoing Compliance
K. Recordkeeping and Reporting
L. Startup, Shutdown, and Malfunction
V. Statutory and Executive Order Reviews
A. Executive Order 12866: Regulatory Planning and Review
B. Paperwork Reduction Act
C. Regulatory Flexibility Act
D. Unfunded Mandates Reform Act
E. Executive Order 13132: Federalism
F. Executive Order 13175: Consultation and Coordination with Indian Tribal Governments
G. Executive Order 13045: Protection of Children from Environmental Health and Safety Risks
H. Executive Order 13211: Actions that Significantly Affect Energy Supply, Distribution, or Use
I. National Technology Transfer Advancement Act
J. Congressional Review Act

I. Background

A. What Is the Source of Authority for Development of NESHAP?

Section 112 of the CAA requires us to list categories and subcategories of major sources and some area sources of HAP and to establish NESHAP for the listed source categories and subcategories. Major sources of HAP are those that are located within a contiguous area and under common control and have the potential to emit greater than 9.1 megagrams per year (Mg/yr) (10 tpy) of any one HAP or 22.7 Mg/yr (25 tpy) of any combination of HAP.

B. What Criteria Are Used in the Development of NESHAP?

Section 112 of the CAA requires that we establish NESHAP for the control of HAP from both new and existing major sources. The CAA requires the NESHAP to reflect the maximum degree of reduction in emissions of HAP that is achievable, taking into consideration the cost of achieving the emissions reductions, any non-air quality health and environmental impacts, and energy requirements. This level of control is commonly referred to as the maximum achievable control technology or MACT.

The MACT floor is the minimum control level allowed for NESHAP and is defined under section 112(d)(3) of the CAA. In essence, the MACT floor ensures that all major sources achieve the level of control already achieved by the better-controlled and lower-emitting sources in each source category or subcategory. For new sources, the MACT floor cannot be less stringent than the emission control that is achieved in practice by the best-controlled similar source. The MACT standards for existing sources can be less stringent than standards for new sources, but they cannot be less stringent than the average emission limitation achieved by the best-performing 12 percent of existing sources for which the Administrator has emissions information (or the best-performing five sources for which the Administrator has or could reasonably obtain emissions information for categories or subcategories with fewer than 30 sources).

In developing MACT, we also consider control options that are more stringent than the floor. In considering whether to establish standards more stringent than the floor, we must consider cost, non-air quality health and environmental impacts, and energy requirements.

C. What Is the History of the Source Category?

Section 112 of the CAA requires us to establish rules for categories of emission sources that emit HAP. On July 16, 1992, we published an initial list of 174 source categories to be regulated (57 FR 31576). The listing was our best attempt to identify major sources of HAP by manufacturing category. Following the publication of that listing, we published a schedule for the promulgation of emission standards for each of the 174 listed source categories. At the time the initial list was published, we recognized that we might have to revise the list from time to time as better information became available.

Based on information we collected in 1995, we realized that several of the original source categories on the list had similar process equipment, emission characteristics and applicable control technologies. Additionally, many of these source categories were on the same schedule for promulgation, by November 15, 2000. Therefore, we decided to combine a number of source categories from the original listing into one broad set of emission standards. On November 7, 1996, we published a **Federal Register** notice combining 21 source categories from the initial list of 174 into the Miscellaneous Organic Chemical Processes source category (61 FR 57602). One of the 21 source categories was the manufacture of paints, coatings, and adhesives.

On November 18, 1999, we published a **Federal Register** notice describing changes to the source category list (64 FR 63035). At that time, we also described our intent to group the source categories into two new source categories instead of one. The two new source categories are called the miscellaneous organic chemical manufacturing source category and the miscellaneous coating manufacturing source category. We proposed the NESHAP for both source categories on April 4, 2002 (67 FR 16154).

Today's action establishes final standards for miscellaneous coating manufacturing (40 CFR part 63, subpart HHHHH). Final standards for miscellaneous organic chemical manufacturing (40 CFR part 63, subpart FFFF) will be published separately.

D. What Are the Health Effects Associated With the Pollutants Emitted From Miscellaneous Coating Manufacturing?

The CAA was created, in part, "to protect and enhance the quality of the Nation's air resources so as to promote the public health and welfare and the productive capacity of the population" (*see* section 101(b) of the CAA). These NESHAP will protect public health by reducing emissions of HAP from miscellaneous coating manufacturing facilities.

Miscellaneous coating manufacturing facilities emit an estimated 6,900 Mg/yr (7,600 tpy) of HAP. Approximately 30

percent of the HAP emitted by miscellaneous coating manufacturing facilities is toluene, 30 percent is xylene, and glycol ethers, methyl ethyl ketone, and methyl isobutyl ketone account for approximately 25 percent. The final rule reduces total HAP emissions from miscellaneous coating manufacturing facilities by 64 percent. As a result of controlling these HAP, the final NESHAP will also reduce emissions of volatile organic compounds (VOC). A summary of the potential health effects caused by exposure to these pollutants is presented in the preamble to the proposed rule (67 FR 16154).

E. How Did We Develop the Final Rule?

We proposed the NESHAP for the Miscellaneous Coating Manufacturing source category on April 4, 2002 (67 FR 16154) and provided an 85-day comment period. We received public comments on the proposed miscellaneous coating manufacturing NESHAP from 81 sources consisting of paint, ink, and adhesives manufacturers, industry trade associations, a federal government agency, an environmental group, and other interested parties. In addition, a public hearing was held, at which 8 of 11 speakers provided testimony related to the proposed miscellaneous coating manufacturing rule. A copy of each of the comment letters is available in Docket ID No. OAR–2003–0178.

The final rule reflects full consideration of all the comments we received on the proposed subpart HHHHH, as well as our reassessment of certain data in the rulemaking record. A detailed response to all comments is included in the BID for the promulgated standards (Docket ID No. OAR–2003–0178).

II. Summary of the Final Rule

A. What Are the Affected Sources and Emission Points?

The affected source for the miscellaneous coating manufacturing source category is the miscellaneous coating manufacturing operations at the facility. These operations include storage tanks, process vessels, equipment components, wastewater treatment and conveyance systems, transfer operations, and ancillary sources such as heat exchange systems.

The final standards for miscellaneous coating manufacturing cover vents from process vessels, storage tanks, wastewater, transfer operations, equipment leaks, and ancillary heat exchange operations. Total baseline HAP emissions for the miscellaneous coating manufacturing source category are estimated to be 6,900 Mg/yr (7,600 tpy).

B. What Are the Emission Limitations and Work Practice Standards?

Process Vessel Vents

For stationary process vessels with capacities greater than or equal to 0.94 cubic meters (m^3) (250 gallons (gal)) at existing sources, the final rule requires an overall reduction, adjusting for capture and control efficiency based on enclosure tests, as applicable, of at least 75 percent by weight for HAP with a vapor pressure greater than or equal to 0.6 kilopascals (kPa) (0.09 pounds per square inch absolute (psia)), and at least a 60 percent reduction by weight for HAP with a vapor pressure less than 0.6 kPa (0.09 psia). The final rule also provides an emissions averaging alternative for stationary process vessels at existing sources that are equipped with a tightly-fitting vented cover. The overall mass reduction in HAP emissions for vessels in the averaging group must be equal to or greater than the reduction that would have resulted if each of the covered vessels were vented to a control device that achieves a 75 percent emissions reduction for HAP with a vapor pressure greater than or equal to 0.6 kPa (0.09 psia) or a 60 percent emissions reduction for HAP with a vapor pressure less than 0.6 kPa (0.09 psia). The final rule requires that portable process vessels at existing sources with capacities greater than or equal to 0.94 m^3 (250 gal) be equipped with a cover. Stationary and portable vessels at new sources must be equipped with a tightly-fitting vented cover, and the vented organic HAP emissions must be reduced by at least 95 percent by weight. Alternatively, for stationary process vessels with capacities greater than or equal to 0.94 m^3 (250 gal) at existing and new sources and portable process vessels with capacities greater than or equal to 0.94 m^3 (250 gal) at new sources, you may install a tightly-fitting vented cover and vent emissions to a condenser operated at specified temperature limits to satisfy the overall control requirement. Another option for meeting the standards for stationary process vessels at existing sources is to use the vessels to produce coatings with less than 5 percent HAP by weight; no additional control of process vessel vents is required when producing such coatings.

We did not specifically request information on process vessels with capacities less than 0.94 m^3 (250 gal). Thus, we do not have information indicating that a sufficient number of sources are using control devices or other HAP emission reduction techniques to enable us to set a MACT floor based on such devices or techniques. Therefore, the MACT floor for process vessels with capacities less than 0.94 m^3 (250 gal) is no emissions reduction. We examined one regulatory alternative that would require the same 75 percent emissions reduction as for larger process vessels. We concluded that the total impacts of this alternative, including cost, non-air quality health and environmental impacts, and energy requirements, are unreasonable in light of the HAP emission reductions achieved. Thus, we did not develop standards for process vessels with capacities less than 250 gal.

Storage Tanks

The standards for storage tanks at existing sources require either organic HAP emissions reductions of 90 percent by weight or more, or the use of floating roofs, or vapor balancing if the storage tanks have capacities greater than or equal to 75 m^3 (20,000 gal) and store material with an organic HAP vapor pressure greater than or equal to 13.1 kPa (1.9 psia). The standards for storage tanks at new sources require either organic HAP emissions reductions of at least 80 percent by weight, the use of floating roofs, or vapor balancing if the storage tanks have capacities greater than or equal to 10,000 gal and store material with an organic HAP vapor pressure greater than or equal to 0.02 psia. The standards for new sources also require either organic HAP emissions reductions of at least 90 percent by weight, the use of floating roofs, or vapor balancing for storage tanks that have capacities equal to or greater than 75 m^3 (20,000 gal) but less than 94 m^3 (25,000 gal) and store material that has an organic HAP vapor pressure greater than or equal to 10.3 kPa (1.5 psia), and tanks with capacities greater than 94 m^3 (25,000 gal) storing material that has an organic HAP vapor pressure greater than or equal to 0.7 kPa (0.1 psia). The final rule does not include standards for storage tanks smaller than 20,000 gal at existing sources or for storage tanks smaller than 10,000 gal at new sources because the MACT floor for these tanks was determined to be no emissions reduction.

Wastewater

For existing sources, the final rule requires that wastewater containing a total partially soluble and soluble HAP load of 750 pounds per year (lb/yr) and a concentration of 4,000 parts per million by weight (ppmw) or greater be treated as hazardous waste or in an enhanced biological treatment unit. The final rule also allows for offsite treatment provided the affected sources that ship their wastewater to an offsite facility for treatment as a hazardous waste note this fact along with the name of the facility to which the wastewater is shipped in their notification of compliance status report. If the wastewater is shipped offsite for treatment in an enhanced biological treatment unit, the offsite facility must comply with the monitoring, recordkeeping, and reporting requirements in subpart HHHHH. For new sources, the applicability triggers for control are more stringent, affecting all streams that contain partially soluble and soluble HAP at a concentration greater than or equal to 1,600 ppmw.

Transfer Operations

Standards for transfer operations at existing and new sources require 75 percent control of HAP emissions from product loading to tank trucks and railcars if the amount of material transferred contains at least 11.4 million liters per year (l/yr) (3.0 million gal/yr) of HAP, and the material has a HAP partial pressure greater than or equal to 10.3 kPa (1.5 psia). Acceptable control strategies also include routing displaced vapors back to the process, or the use of condensers operated below specified temperature limits.

Equipment Leaks

The final rule requires compliance with leak detection and repair (LDAR) programs for equipment leaks. Existing sources must comply with the sensory-based LDAR provisions of 40 CFR part 63, subpart R, the NESHAP for Gas Distribution Facilities. Alternatively, existing sources may comply with the LDAR program in 40 CFR part 63, subpart TT, or subpart UU (the National Emission Standards for Equipment Leaks—Control Level 1 and Control Level 2, respectively) because these alternatives are equivalent to or more stringent than the sensory-based LDAR program. New sources must comply with either the subpart TT or subpart UU LDAR provisions. For heat exchange systems at existing and new sources, the final rule requires a leak detection program, consistent with the program in 40 CFR 63.104 (the Hazardous Organic NESHAP (HON)).

Cleaning operations are considered part of the miscellaneous coating manufacturing operations at existing and new sources. Therefore, cleaning fluids are considered to be process fluids, and the requirements for process vessels, storage tanks, equipment leaks, and wastewater systems that apply to other process operations also apply to cleaning operations.

C. What Are the Testing and Initial Compliance Requirements?

To verify that the required reductions have been achieved, you must either test or use calculation methodologies, depending on the emission stream characteristics, control device, and the type of process vent. Initial compliance demonstration provisions for stationary process vessels at miscellaneous coating manufacturing sources reference the 40 CFR part 63, subpart SS, closed vent system and performance test provisions and the capture efficiency Method 204 in appendix M to 40 CFR part 51. Control devices handling greater than 9.1 Mg/yr (10 tpy) of HAP must be tested, while engineering assessments are allowed for control devices with lower loads and for condensers. Performance test provisions are based on worst case operating conditions for devices controlling process vents.

The initial compliance demonstration procedures reference 40 CFR part 63, subpart SS, for storage tanks complying using control devices and transfer operations, and 40 CFR part 63, subpart WW, for storage tanks complying using floating roofs.

D. What Are the Continuous Compliance Requirements?

The final rule requires monitoring to determine whether you are in compliance with emission limits on an ongoing basis. This monitoring is done either by continuously measuring HAP emissions reductions or by continuously measuring a site-specific operational parameter, the value of which you would establish during the initial compliance demonstration. These parameters are required to be monitored at 15-minute intervals throughout the operation of the control device. For control devices that do not control more than 1 tpy of HAP emissions, only a daily verification of the operating parameter is required, as is provided in 40 CFR part 63, subpart GGG. To demonstrate compliance with work practice standards, such as the requirement to maintain floating roofs, inspection of equipment serves as the monitoring demonstration.

E. What Are the Notification, Recordkeeping, and Reporting Requirements?

The final rule requires recordkeeping and initial and semiannual reporting. The initial notification is required within 120 days of the effective date of the NESHAP. That report, which is very brief, serves to alert appropriate agencies (State agencies and EPA Regional Offices) of the existence of your affected source and puts them on notice for future compliance actions. The precompliance report details compliance alternatives that require preapproval and is required 6 months prior to the compliance date. The notification of compliance status (NOCS) report, which is due 150 days after the compliance date of the NESHAP, is a comprehensive report that describes the affected source and the strategy being used to comply. The final rule also incorporates a number of provisions in subpart A of 40 CFR part 63 (General Provisions), among them the startup, shutdown and malfunction provisions.

III. Summary of Environmental, Energy, and Economic Impacts

A. What Are the Air Emission Reduction Impacts?

We estimate nationwide baseline HAP emissions from the miscellaneous coating manufacturing sources to be 6,900 Mg/yr (7,600 tpy). We project that the final rule will reduce HAP emissions by about 4,400 Mg/yr (4,900 tpy). Because many of the HAP emitted by miscellaneous coating manufacturing facilities are also VOC, the proposed NESHAP will also reduce VOC.

Combustion of fuels to generate electricity and steam will increase secondary emissions of carbon monoxide (CO), nitrogen oxides (NO_X), and sulfur dioxide (SO_2) by about 25 Mg/yr (27 tpy). These impacts were estimated assuming electricity is generated in coal-fired power plants and steam is produced in natural gas-fired industrial boilers.

B. What Are the Cost Impacts?

The cost impacts include the capital cost to install control devices and monitoring equipment, and include the annual costs involved in operating control devices and monitoring equipment, implementing work practices, and conducting performance tests. The annual cost impacts also include the cost savings generated by reducing the loss of product or solvent in the form of emissions. The total capital costs for existing sources are estimated to be $57 million, and the total annualized costs for existing sources are estimated to be $16 million. Total capital costs for new sources are estimated to be $1.3 million per new facility and total annualized costs are estimated to be $.25 million per new facility. Three new facilities were estimated in the first 3 years after promulgation of this rule.

We estimate that in the first 3 years after the effective date of 40 CFR part 63, subpart HHHHH, that the annual cost burden will average $3,500/yr per respondent for recordkeeping and reporting requirements for an estimated 129 sources. Most of these costs are for new and reconstructed sources that must be in compliance upon startup; other costs are for existing sources to prepare initial notifications and plans. In the fourth year after the effective date, existing facilities must begin to monitor and record operating parameters to comply with operating limits and prepare compliance reports. These activities will significantly increase the nationwide annual burden.

We expect that the actual compliance cost impacts of the NESHAP will be less than described above because of the potential to use common control devices, upgrade existing control devices, implement emissions averaging, or comply with the preset temperature limits for condensers. Because the effect of such practices is highly site-specific and data were unavailable to estimate how often the lower cost compliance practices could be utilized, we could not quantify the amount by which actual compliance costs will be reduced.

C. What Are the Economic Impacts?

The economic impact analysis shows that the expected price increase for affected output would be 0.3 percent as a result of the NESHAP for miscellaneous coating manufacturers. The expected change in production of affected output is a reduction of 0.1 percent as a result of the final rule. One plant closure is expected out of the 127 facilities affected by the final rule. It should be noted that the baseline economic conditions of the facility predicted to close affect the closure estimate provided by the economic model, and that the facility predicted to close appears to have low profitability levels currently. Therefore, no adverse impact is expected to occur for those industries that produce output affected by the NESHAP, such as paints, inks, and adhesives.

D. What Are the Non-Air Quality Health and Environmental Impacts and Energy Impacts?

We do not expect wastewater, solid waste, or hazardous waste to be generated from controlling HAP emissions from miscellaneous coating manufacturing facilities. Thus, we expect no non-air quality health impacts from controlling HAP emissions from miscellaneous coating manufacturing facilities. We expect the overall energy demand (*i.e.*, for electricity generation and steam production) to increase by an estimated 32,000 gigajoules per year (30.0 billion British thermal units per year (Btu/yr).

IV. Summary of Responses to Major Comments

A. What Changes to Applicability Did the Commenters Suggest?

Comment: A number of commenters opposed regulation of activities such as mixing additives and other ingredients, thinning, and adjusting tint by facilities that are the end-users of coatings and are subject to any of the surface coating NESHAP; several of the commenters described these activities as "affiliated operations," and they concurred with the definition and draft preamble language for the Paper and Other Web Coating (POWC) NESHAP that were discussed during POWC stakeholder meetings on May 22 and June 26, 2002.[1] For example, several of the commenters requested specific exemptions for affiliated operations at facilities subject to surface coating rules in subpart GG (National Emission Standards for Aerospace Manufacturing and Rework Facilities), subpart KK of 40 CFR part 63 (NESHAP for the Printing and Publishing Industry), and/or subpart JJJJ of 40 CFR part 63 (NESHAP: Paper and Other Web Coating). Another commenter requested an exemption for the onsite formulation and mixing of specialty, ablative coatings that are applied to space vehicles at a National Aeronautics and Space Administration (NASA) site and are exempt from control under subpart GG of 40 CFR part 63. Two commenters requested specific language in either the preamble or final rule to clarify that operations at facilities subject to subpart DDDD of 40 CFR part 63 (the plywood and composite wood products NESHAP) are not subject to subpart HHHHH of 40 CFR part 63. Another commenter also suggested extending the provision to all equipment associated with a process for which another 40 CFR part 63 standard has been promulgated. One commenter stated that end users, particularly those at facilities subject to subpart MMMM of 40 CFR part 63 (NESHAP: Surface Coating of Miscellaneous Metal Parts and Products), should be exempt because subpart MMMM already addresses emissions associated with the use of diluents at such facilities. Another commenter noted that the exemption in § 63.7985(a)(4) of operations that are part of an affected source under another subpart of 40 CFR part 63 should apply to end-users subject to subparts MMMM, IIII (auto surface), and PPPP (plastic parts and products) because affiliated operations are part of the affected sources under those rules. One commenter requested clarification that the exemption in § 63.7985(a)(4) is not limited only to operations that are required to implement controls under other standards.

Two commenters requested exemptions for affiliated operations at facilities subject to any of the surface coating NESHAP. According to the commenters, the exemption is necessary because we obtained no information on end-users while developing subpart HHHHH, some of the regulated community would not have an opportunity to comment on the proposal because some of the surface coating rules will not be published until after subpart HHHHH is finalized, and we considered emissions from affiliated operations in some surface coating source categories to be insignificant when we were developing the surface coating NESHAP. To exclude end users in general, one commenter recommended more clearly defining "coatings manufacturing" with a definition similar to that for "batch process" in subpart GGG of 40 CFR part 63, using a more narrow listing of Standard Industrial Classification (SIC) and North American Industrial Classification System (NAICS) codes, and adding specific exemptions for temporary activities such as mixing prior to painting a tank or structure at a major source.

Response: The final rule does not apply to activities conducted by end users of coating products in preparation for application. As noted by some of the commenters, we have decided to exempt affiliated operations at POWC facilities from subpart HHHHH. In the preamble to the final POWC surface coating MACT rule (67 FR 72330, December 4, 2002), we define affiliated operations at POWC facilities and indicate that they are part of the POWC source category, but they are not part of the POWC affected source for a variety of reasons. We also examined other surface coating rules, and determined that the exemption for affiliated operations should also be applied to sources that are subject to the printing and publishing rule (subpart KK), the aerospace manufacturing rule (subpart GG), the metal coil coating rule (subpart SSSS of 40 CFR part 63), and the miscellaneous metal parts and products rule (subpart MMMM). These five rules lack requirements for affiliated

[1] The final POWC NESHAP was published on December 4, 2002 (67 FR 72330).

operations, but affiliated operations were considered during the development of the rules and controls were determined not to be warranted. We have not extended this exemption to other surface coating rules (or certain other rules) that already include affiliated operations as part of the affected source under the applicable subpart because operations that are part of another affected source are exempt from the final subpart HHHHH according to § 63.7985(a)(4). One commenter's assumption that this exemption is not limited to those operations within another affected source that must implement controls is correct. Preparations for painting equipment or structures at a facility are not part of a manufacturing process and thus are not subject to subpart HHHHH.

Comment: Several commenters recommended clarifying the provision in § 63.7985(c)(3) of the proposed rule that would exempt all equipment associated with a process that has less than 5 percent HAP in process vessels. One commenter noted that this provision will not exempt all water-based coating manufacturing because the actual HAP content in the process vessel varies during the process. To be useful, this commenter stated the determination must be based on the HAP content of the final product. According to another commenter, the exemption should be based on "organic" HAP, and sources should be allowed to determine this percentage based on material safety data sheets (MSDS) or other available information as an alternative to chemical analysis. One commenter suggested that the exemption would be less confusing if it were applied to individual vessels rather than a "coating process" because equipment is generally associated with a specific process vessel and the definition of "process" is too broad. One commenter also stated that if a process vessel is not subject to control because its capacity is less than 250 gallons or the HAP emissions are less than 50 parts per million by volume (ppmv), then it is also reasonable that no other requirements should apply to any of the equipment associated with that process vessel (*i.e.*, the storage tank, equipment leak, and wastewater standards).

To minimize the compliance burden, one commenter requested exemptions for impurities and trace constituents present in quantities less than 0.1 percent by weight for carcinogens and less than 1.0 percent by weight for all other HAP, values which are consistent with the levels that must be provided on MSDS. The commenter stated that this would reduce the burden of determining the HAP content in a vessel for comparison with the 5 percent exemption level and for determining the HAP content in process vessel vents for comparison to the 50 ppmv limit.

Response: Under the proposed rule, whenever the contents of a process vessel contain less than 5 percent HAP by weight, the owner or operator would be exempt from all requirements for the process vessel and related equipment. Under the final rule, this provision has been replaced with a provision that provides for compliance with the stationary process vessel standards at existing sources when the vessel is being used to manufacture a coating that contains less than 5 percent HAP by weight. Our rationale for allowing the mass limit as an alternative standard is based on an estimated equivalent reduction in HAP emissions as compared to complying with the process vessel standards. Although we did not collect specific data on coatings content, we reviewed information that we collected in the development of standards for other coating manufacturing source categories. Based on these data, we concluded that we could achieve equivalent reductions in HAP emissions if coating manufacturers reduce the HAP content of final products to less than 5 percent by weight. In order to achieve equivalent reductions of 75 percent for process vessels, the average HAP content of coatings would have to be greater than 20 percent. Other data collection efforts support the conclusion. For example, the average HAP levels in all the solventborne coatings reported in the metal can and wood building products source categories are 32 and 28 percent, respectively. On a consumption-weighted basis, the HAP content of coatings in the metal can source category is 20 percent. Further, although the HAP content of many water-based coatings is less than 5 percent by weight, we did not include an explicit exemption for waterborne coatings because the HAP content of some waterborne coatings could be relatively high as long as the HAP is soluble in water.

In developing this alternative, we are persuaded by one commenter's suggestion to apply it to all vessels that are associated with the manufacturing of the final product. Although another commenter suggested that identifying all process vessels in a manufacturing process would be confusing, we think that this alternative would actually simplify compliance for most owners and operators. As long as the process vessel meets the definition in the final rule, an owner or operator could comply with the alternative standard when the vessel was processing material that would ultimately contain less than 5 percent HAP by weight as final product.

To further eliminate confusion, we clarified that the alternative applies only to process vessels. Storage tanks are not considered because their control requirements are determined based on the size of the tank and the HAP partial pressure, not whether the tank is used for an individual product. Transfer operations are not considered because their control requirements are determined based on the total annual quantity of coating that is loaded and its weighted average partial pressure. Equipment leaks also are not considered because the need for control is determined by the number of hours a particular component is in organic HAP service within the affected source, not the specific product being produced. Also, we did not exempt wastewater streams from process vessels smaller than 250 gal because we have no evidence that such vessels are cleaned by a different procedure than larger vessels or that the wastewater streams from such cleaning operations are kept separate.

We did not allow in the final rule a *de minimis* exemption of 0.1 or 1 weight percent HAP for trace constituents. This exemption is not relevant to the 5 weight percent HAP product alternative standard. Further, we do not feel that an additional *de minimis* or trace constituent exemption for compliance with the remaining standards is necessary.

Comment: One commenter recommended establishing applicability based on the affected source rather than the major source so that small coating manufacturing operations co-located with large surface coating sources are not subject to subpart HHHHH.

Response: We have not made the suggested change because the definition of a "major source" encompasses an entire plant site without being subdivided according to industrial classifications or activities. This definition is contained in section 112(a)(1) of the CAA, which includes "any stationary source or group of stationary sources located within a contiguous area and under common control that emits or has the potential to emit considering controls, in the aggregate, 10 tpy or more of any HAP or 25 tpy or more of any combination of HAP."

Comment: One commenter requested an exemption for processes with uncontrolled emissions less than 10,000 lb/yr.

Response: We have not incorporated the requested exemption because it is not supported by the available data.

Comment: One commenter requested an exemption for waterborne coatings.

Response: We have not included an explicit exemption for waterborne coatings because the HAP content of a waterborne coating could be relatively high as long as the HAP is soluble in water. However, a source can reformulate coatings to contain less than 5 percent HAP as a means of meeting the process vessel vent emission limits and work practice standards for existing sources.

Comment: One commenter requested an exemption for low vapor pressure HAP.

Response: We did not provide an exemption for low vapor pressure HAP materials because we could not justify a no emissions reduction MACT floor for these materials based on our information. We did not collect information that could be used to support the concept that process vessels containing only low vapor pressure materials would not be controlled to the same levels as those containing higher vapor pressure materials. Further, we reviewed HAP storage tank throughput at facilities that reported control of process vessels, and noted that lower vapor pressure HAP, such as glycol ethers and ethylene glycol, were also used at these facilities. However, for the final rule, we have written the standard for stationary process vessels at existing sources to require 75 percent reduction only for HAP with a vapor pressure greater than or equal to 0.6 kPa. We made this change based on a revised analysis that showed the total impacts of the regulatory alternative are unreasonable for HAP with vapor pressures less than 0.6 kPa. Thus, these HAP must be controlled to the MACT floor level of 60 percent.

Comment: Three commenters requested clarification of how to determine whether 40 CFR part 63, subpart FFFF, or 40 CFR part 63, subpart HHHHH, applies to their operations. One commenter noted that the proposed definition of "coating manufacturing" is expansive and would unnecessarily subject facilities to both subparts.

Response: If the product being manufactured is a coating, and the manufacturing steps involve blending, mixing, diluting, and related formulation operations, without an intended reaction, then the process is subject to subpart HHHHH. If a reaction as well as various other operations are involved, then the process typically is subject to subpart FFFF. However, if the downstream formulation operations are distinct from the preceding synthesis process(es), (perhaps because the synthesized product is isolated and some of it is sold or transferred offsite), then the formulation operations are subject to subpart HHHHH, and the synthesis operations are subject to subpart FFFF. In the event that equipment used for manufacturing products in processes that are subject to subpart FFFF is also used for coating manufacturing operations that are subject to subpart HHHHH, then the primary use of the equipment determines applicability.

B. How Did We Develop the Standards?

Comment: According to one commenter, the lack of standards for all HAP is unlawful. The commenter cited hydrogen chloride (HCl), hydrogen fluoride, chlorine, potassium compounds, and maleic and phthalic anhydrides as examples of HAP that are not regulated. Another commenter recommended listing the HAP that are subject to the final rule, or cross-referencing Table 2 in subpart F of the HON.

Response: The standards in subpart HHHHH apply to all HAP that are used in coating manufacturing. Of the six compounds cited by the first commenter, only HCl and phthalic anhydride are listed in our database. All process vessels larger than 250 gallons that emit any HAP, including the six cited by the first commenter, must be controlled. We did not list the HAP in the final rule because the rule applies to all HAP listed in the Clean Air Act.

Comment: One commenter stated that the thresholds in the proposed subpart HHHHH unlawfully exempt emission points from control. According to the commenter, all emission points must be controlled.

Response: We disagree that every emission point at a major source must be required to reduce emissions. First, section 112(a) of the CAA defines "stationary source" (through reference to section 111(a)) as: * * * any building, structure, facility, or installation which emits or may emit any air pollutant * * *," (42 U.S.C. 7412(a)(3) and 7411(a)(3)). The General Provisions for the MACT program define the term "affected source" as * * * the collection of equipment, activities, or both within a single contiguous area and under common control that is included in a section 112(c) source category or subcategory for which a section 112(d) standard or other relevant standard is established pursuant to section 112 * * *," (40 CFR 63.2). Nothing in the definition of "stationary source" or in the regulatory definition of "affected source" states or implies that each emission point or volume of emissions must be subjected to control requirements in standards promulgated under CAA section 112.

Further, even under the commenter's interpretation of "stationary source," the Agency would still have discretion in regulating individual emission sources. Section 112(d)(1) of the CAA allows the Administrator to * * * distinguish among classes, types, and sizes of sources within a category or subcategory in establishing such standards * * *." We interpret this provision for the miscellaneous coating manufacturing NESHAP, as we have for previous rules, as allowing emission limitations to be established for subcategories of sources based on size or volume of materials processed at the affected source. Under the discretion allowed by the CAA for the Agency to consider sizes of sources, we made the determination that certain small-capacity and low-use operations (*e.g.*, smaller storage tanks) can be analyzed separately for purposes of identifying the MACT floor and determining whether beyond-the-floor requirements are reasonable. In addition, our MACT floor determinations for certain categories (*e.g.*, stationary process vessels), which are set according to section 112(d)(3) of the CAA, reflect the performance levels of the best-performing sources for which we had information, including vapor pressure thresholds or cutoffs below which the best-performing sources do not reduce emissions.

In general, our MACT floor determinations have focused on the best-performing sources in each source category, and they consider add-on control technologies as well as other practices that reduce emissions. As part of our information collection effort, we requested information on emission reduction measures. We generally did not receive information indicating that, for the emission points covered by 40 CFR part 63, subpart HHHHH, sources are currently reducing emissions through measures other than control technologies (*e.g.*, by fuel switching or raw materials or process changes) in sufficient numbers to support a MACT floor based on such measures. Accordingly, our standards include a performance level that represents the level achieved by the best control technology, and a threshold or cutoff that represents the lowest emission potential that is controlled by the best 12 percent of sources. Because the miscellaneous coating manufacturing source category is broad in terms of the numbers and types of processing operations that are covered, one challenge was to develop a format by which all sources could be compared to each other to establish the best-performing sources. The performance level generally is of the format that can be applied to different types of control technology and processes and is generally consistent with existing State and local rules. Thus, different types of control technology and emission levels resulting from existing rules are captured in our MACT floor analysis. The cutoff allows owners and operators that have reduced their emissions below a certain level using one or more methods, including process changes to reduce or eliminate pollution at the source, to comply without additional control. Both performance levels and cutoffs have been set to account for variations in emission stream characteristics so that the standards can be applied consistently across the source category. This approach is consistent with the language of CAA section 112(d)(3) that requires us to set the MACT floor based on the best-performing 12 percent of existing sources.

C. Standards for Process Vessels

Comment: One commenter is not convinced that the existing source MACT floor for portable vessels should be only a cover because some portable vessels have a cover plus add-on control devices, and the actual performance of a covered vessel varies depending on the type of cover and other factors such as the HAP content and vapor pressure of the material being processed. Similarly, the commenter also objected to the existing source MACT floor for stationary process vessels, claiming that it does not reflect the actual performance of the best performers, and that we have not accounted for various factors that affect the performance.

Other commenters indicated that the existing source MACT floor is too stringent, or at the very least the control level should not be increased from 60 percent to 80 percent. For example, one commenter is not convinced that 6 percent, or the average of the best performing 12 percent, are controlled because many of the controls are applied only to vessels with specific characteristics rather than facility-wide. Another commenter questioned the validity of averaging uncontrolled sources with controlled sources in developing the MACT floor, and concluded that the floor should be no control. In response to a solicitation for comment regarding the setting of the floor based on the mean or the median of controlled vessels (*i.e.*, 60 percent versus 80 percent control, respectively), the commenter stated the mean is appropriate for several reasons: (1) There are sufficient data points to use the mean; (2) 60 percent represents a real-world technology, (3) EPA claimed in MACT floor memoranda that the mean is a better measure of the central tendency of the data, (4) EPA indicated during the stakeholder process that the mean would be used as it is representative of the industry and consistent with Congress' intent under the CAA, and (5) EPA guidelines for MACT determinations under CAA section 112(j) state that the MACT floor should be based on the mean unless there is a large discrepancy between the emission reductions achieved by available control options (which the commenter indicated is not the case here because control efficiencies are uniformly distributed between 2 and 99 percent). Numerous other commenters simply stated that the MACT floor has been adequately characterized, and should not be revised

Nearly all of the commenters objected to the apparent requirement for 100 percent capture of emissions for the new and existing source MACT floors for stationary process vessels, and they stated the floor control levels should specify only the efficiency of the control device. They expressed particular concern with a statement in the preamble to the proposed rule that indicated covers must be sealed and gasketed. The commenters noted that 100 percent capture is not feasible (and, therefore, not achieved in practice except possibly if using chemical reaction type vessels and closed solids charging systems) because covers often must include an opening for an agitator shaft, and vessels must be opened periodically to take samples, add material, and perform inspections. They also noted that this requirement contradicts our position in stakeholder meetings and background memoranda, and they concluded that the information collection request (ICR) data do not support a capture component to the floor (*i.e.*, only information about the control efficiency was requested). Even if actual capture efficiencies are allowed, they noted that the proposed overall capture plus control efficiency of 95 percent for process vessels at new sources would be virtually impossible to achieve because it effectively requires nearly 100 percent capture.

Numerous commenters objected to the requirement that emissions from cleaning are subject to control, at least if the vessel does not have an automatic wash system. One commenter noted that most vessels are cleaned by hand, but even vessels that have automatic wash systems must be opened for inspections after cleaning.

Response: We did not adjust the MACT floors for portable or stationary vessels. For portable vessels, the MACT floor is to equip each vessel larger than 250 gal with a cover. Our data show that less than 6 percent of portable vessels are equipped with add-on control devices, but over 90 percent are equipped with covers. We did not receive information regarding any other emission reduction techniques besides the use of covers or add-on control devices for portable vessels in responses to our ICR request for such information. Thus, we do not have information indicating that a sufficient percentage of sources to set a floor are using any emission reduction techniques other than covers, and we cannot support a floor determination based on the use of any other techniques.

Our database includes information for 4,626 stationary process vessels larger than 250 gal. Six percent of all stationary process vessels corresponds to a total of 278 vessels. A total of 368 vessels are equipped with some type of add-on device, or about 8 percent. The average control of the best-performing 12 percent (60 percent reduction) represents a technically feasible level of control and, therefore, we disagree with the assertion that the floor should be no control. The average control efficiency was determined for 368 vessels, including 278 controlled vessels and factoring in no control for the remaining 187 top records.

The commenters also contended that reported efficiencies do not consider capture efficiency. Of the 378 vessels that are controlled, over 278 (6 percent of the stationary process vessels) reported either direct ventilation to control devices, reported closed vent systems to control devices, or reported operating essentially 100 percent capture (routing building exhausts to an incinerator a capture system) and control. Therefore, we concluded that it is appropriate to set the existing source MACT floor for stationary process vessels larger than 250 gal on an overall control efficiency based on the reported efficiencies.

The new source MACT floors for portable and stationary process vessels larger than 250 gal are based on the best-performing source. For both portable and stationary process vessels, the best-performing source covers the vessels and vents emissions through a closed-vent system to a thermal incinerator with an overall control efficiency of 95

percent. Thus, the MACT floors are based on these conditions.

We recognize that basing MACT floors for stationary and portable vessels on capture and control does not overtly consider fuel, materials, process, or similar changes that could result in lower overall mass emissions. However, based on the information we have, we cannot accurately quantify a level of mass emissions that could result from such emission reduction techniques as a MACT floor and that could be achieved by all coating manufacturers given the variability in processing operations, the scale of processing operations, and products manufactured.

We did not specifically request information for portable or stationary process vessels with capacities less than 250 gal, and we do not have any such information. We set a MACT floor of no emissions reductions because we do not have information indicating that a sufficient percentage of sources are using emission reduction techniques or add-on controls to enable us to set a MACT floor.

The MACT floor for stationary process vessels at existing sources is based on overall control. Thus, the final rule specifies that these process vessels must either be equipped with tightly-fitting vented covers and closed vent systems meeting the requirements of subpart SS of 40 CFR part 63. We have decided to exempt some emissions releases that result from safety and hygiene practices because it is unlikely that these vents would reach the 50 ppmv concentration level defined to be a process vessel vent. The exemption also will relieve owners and operators from the burden of demonstrating that they meet the concentration level. Specifically, the definition of process vessel vent excludes flexible elephant trunk systems that draw ambient air (*i.e*, systems that are not ducted, piped, or otherwise connected to the unit operations) away from operators that could be exposed to fumes when vessels are opened. As an alternative, capture efficiency must be considered in the overall control efficiency determination if vessels are not equipped with tightly-fitting vented covers and closed vent systems. Opening of covers for addition of materials, sampling, etc., is included as part of the capture efficiency demonstration. For new sources, the final rule requires the use of tightly-fitting vented covers to controls; determining capture is not an option because, as the commenters noted, achieving 95 percent overall control would require nearly 100 percent capture.

Finally, we have not required control of cleaning that is accomplished manually. However, emissions resulting from automatic wash systems are required to be considered and controlled. Similarly, control is required for emissions resulting from flushing of lines or other equipment with solvent at the end of a batch because these are closed operations.

Comment: Most of the commenters stated that the standard for stationary process vessels at existing sources should be set at the MACT floor. According to the commenters, the cost of the regulatory alternative is unreasonable because our analysis overstated the uncontrolled emissions, used unrealistic model plant and emission stream characteristics, and understated the costs.

The commenters disputed our estimate of uncontrolled emissions for a number of reasons. Their primary argument is that using the Emission Inventory Improvement Program (EIIP) equations would give a more accurate estimate of the HAP emissions than the AP–42 VOC emission factor. They noted that EPA has identified the EIIP equations as the preferred method, companies use them as the basis for title V permits, States prefer them for permitting and compliance demonstrations, and EPA specifies the use of similar equations in 40 CFR part 63, subpart GGG. Conversely, they noted that the AP–42 VOC emission factor is inappropriate because, typically, half or less of the VOC is HAP; the factor is meant to estimate emissions from the entire process, not just stationary process vessels; and the industry has shifted to less volatile solvents in recent years. One commenter provided data showing that the EIIP methodology, calibrated with stack testing, results in emissions equal to about 0.2 to 0.6 percent of HAP throughput. Another commenter also noted that our baseline emissions estimate exceeds facility-wide Toxic Release Inventory (TRI) emissions (which also include non-HAP, fugitives, emissions from portable vessels, and emissions from other processes) by factors between 3 and 36. The commenter also does not believe that 5 facilities generate half of the emissions in the source category. For example, the commenter contacted the facility in our database with the highest estimated emissions and determined that only 2 percent of the solvent throughput is attributable to the manufacture of inks and coatings; the remainder is associated with the distribution of paint thinners and paint reducers.

The commenters considered many of the model plant parameters and emission stream characteristics to be unrealistic. Related to their concerns that 100 percent capture is infeasible, they noted that local exhaust ventilation systems usually convey large volumes of air to minimize worker exposure, reduce the risk of fires, and contain dust. As a result of the high air flow rates, they noted that the HAP concentration is much lower than the 40,000 ppmv in our impacts analysis. Based on stack test data, one commenter stated that actual concentrations are less than 1,200 ppmv. Another commenter indicated the concentrations are in the hundreds of ppmv. The commenters noted that for toluene, the surrogate HAP used in our analysis, 40,000 ppmv is within the flammable range, which poses safety concerns and would necessitate the use of expensive fire/explosion prevention equipment and inerting systems. One commenter stated that xylene should be used as the surrogate HAP because it is now four times more prevalent than toluene. The commenters noted that the model included emissions only from filling, but emissions also result from other process steps such as mixing, gas sweep, heat-up, holding, emptying, and cleaning. They also disagreed with the assumption that a control device needs to be sized to handle emissions from only 5 vessels at a time. For example, one commenter indicated that many facilities have dozens of process vessels being filled simultaneously (as much as 50 to 75 percent of all vessels onsite). Another commenter noted that each vessel would have to have its own condenser because a common header poses safety and product quality risks. One commenter objected to the assumption that condensers can be used to control all process vessels because water cooled condensers will not be effective for the low concentration (and high flow) streams in the industry, and condensers are meant to operate for long periods of time under steady-state conditions, not intermittently during filling steps.

According to this commenter, our cost analysis included a number of errors and deficiencies. For example, the analysis did not include the cost to replace existing vessels with chemical reaction type tanks and raw material addition equipment, which would be needed to even approach 100 percent capture. If cleaning emissions must be controlled, the commenter indicated that a cost for automatic wash systems must be included. Fire and safety instrumentation and systems would be needed since the model operates with toluene in the flammable range.

Even if condensers are assumed to be applicable for all process vessels (which the commenter opposed), the commenter noted the following concerns with the analysis: (1) Solvent recovery is not feasible because the condensed solvent is contaminated with condensed water vapor (and must be disposed of as hazardous waste); (2) the amount of coolant piping and valves per condenser is underestimated; (3) baghouses will be needed upstream of the condenser to remove particulate if solid materials are added to the process vessel; (4) two-stage rather than single stage condensers will be required to operate at the model operating temperature of 32°F; (5) the refrigeration unit needs to be large enough to service 75 percent of the facility's condensers; and (6) costs are needed for foundations and supports, electrical components, instrumentation, insulation, site preparation, and buildings.

The commenter also stated the analysis understates the incremental cost effectiveness relative to the floor because it used uncontrolled emissions rather than baseline emissions; the condenser count is incorrect for more than 30 facilities; the costs for covers were not included for the vessels that do not currently have them; the results reported in $/Mg are actually in $/ton; and the saturation toluene concentration is 37,370 ppmv, not 40,000 ppmv. Based on a sensitivity analysis that incorporates some of these suggested changes and looks at a range of emission stream flows, HAP concentrations, and control devices, the commenter estimated that costs are at least 5 to 20 times higher than our estimate. The commenter noted that these estimates are conservatively low because they do not include costs for chemical reaction tanks, raw material addition equipment, and fire safety equipment; they also do not consider the impact of using a less volatile surrogate HAP on emission reductions. Even without changing the elements in the analysis, the commenter stated that we should consider the average facility cost effectiveness value rather than the nationwide value because a majority of the facilities in the analysis have incremental costs above $3,500/Mg; typically, these facilities are small or produce predominately water-based coatings.

Response: We agree that the EIIP guidance is appropriate for use in estimating emissions from coating manufacturing process sources. We did not use EIIP models because we did not have the level of detail required to conduct emission estimates from the facilities in our database. We considered the 1 to 2 percent solvent throughput values contained in the Chapter 5 AP–42 documentation to be adequate in characterizing the level of emissions for nationwide impacts. And, although one commenter indicated that the EIIP methodology would result in HAP emissions between 0.2 and 0.6 percent of HAP throughput for his facilities, this commenter also calculated a loss of 1.3 percent for one facility due to more conservative assumptions associated with that facility's operations. While our 1 percent factor may be conservative, it was a reasonable value for the impacts analysis. The commenters noted that the AP–42 VOC emission factor is inappropriate because, typically, half or less than half of the VOC is HAP; however, because the factor is based on HAP throughput, only the portion of solvent that is HAP is considered, and therefore, basing the emissions on HAP throughput appropriately limits the estimates to HAP, not VOC. Regarding the comment that our baseline emissions estimate exceeds facility-wide TRI emissions, we note that one commenter indicated that baseline HAP emissions total 6.3 million pounds for all 127 facilities in the database, as compared to our estimate of 13.5 million pounds, roughly a factor of two. Because of the uncertainty associated with estimation methods, and varying operational practices from site to site, these estimates are reasonable.

Regarding assumptions made in our cost analysis of the regulatory alternative for stationary process vessels, we note that the low overall control efficiency (75 percent) enables numerous control scenarios for achieving compliance, including those scenarios where air flows are increased to enable proper capture of emissions from opening in vessels. While we did not cost out this alternative for presentation of impacts, it would likely be a scenario employed by owners and operators. As discussed previously, the two predominant types of control devices are condensers and thermal incinerators. Therefore, to further examine the cost effectiveness of the regulatory alternative, we evaluated the cost effectiveness of applying a capture and control system using thermal incineration. We started with the analyses generated by one commenter, which are based on EPA's COST–AIR control cost spreadsheets for regenerative thermal oxidizers and included the commenter's estimated installation costs for ductwork, auxiliary equipment, vapor collection systems and lids for tanks. The commenter also noted that cost calculations did not include chemical reaction type tanks to approach 100 percent capture, automatic cleaning systems, raw material addition equipment, baghouses or fire control system costs. We also excluded chemical reaction tanks and raw material feed equipment because they would not be needed when high air flow rates and a capture system are used to collect and route emissions from the existing tanks to a thermal incinerator.

The commenter apparently generated an industry-wide cost effectiveness estimate for thermal oxidizers from average flow and concentration value ranges. The commenter did not provide enough information to methodically step through the procedure to arrive at the resulting value of $16,138/Mg. In fact, it was not clear whether the commenter selected ranges of concentrations and flowrates corresponding to 36 stack test data points and then calculated cost effectiveness values from the midpoints of these ranges or whether the commenter calculated the cost effectiveness of 36 stack test data points and developed an arithmetic average. We note that the table supplied by the commenter identifying concentration and flowrate ranges indicates that flowrates and concentrations were considered to be independent of each other and produced a counterintuitive result that flowrate and concentrations would be directly proportional, as opposed to inversely proportional. For example, the low flow rate range midpoint values were listed as 300 cubic feet per minute (cfm) and 50 ppmv, while the high flowrate range midpoints were listed as 7,500 cfm and 1,750 ppmv. We would expect that as flowrates increased, concentrations would decrease, and we concluded that an analysis resulting from the use of these ranges would likely not represent the actual emission stream characteristics. Further, we estimated the cost effectiveness of incinerator controls for these 5 ranges and obtained values ranging from $290,000/Mg for the 300 cfm, 50 ppmv concentration stream to $400/Mg for the stream with 7,500 cfm and 1,750 ppmv, indicating a wide range of cost effectiveness.

We reasoned that a more representative evaluation would be based on a selected model emission stream. This model stream was based on a common value resulting from the histogram presented by the commenter; we selected as model emission stream characteristics a flowrate of 5,000 standard cubic feet per minute (scfm) waste gas and a concentration of 500 ppmv. Our analysis indicated that the cost effectiveness value for this model stream would be $2,200/Mg, assuming only 75 percent reduction of potential HAP emission was achieved. Based on

this result, we concluded that an evaluation of capture and control systems using thermal incineration would result in reasonable costs.

Our original analysis that was the basis for selecting the 75 percent regulatory alternative based on condenser control is still valid and the total impacts, considering the emission reduction achieved as well as cost, non-air quality health and environmental impacts, and energy requirements, are reasonable. Thus, we continue to base the standard for stationary process vessels at existing sources on the regulatory alternative. However, the commenter has pointed out valid concerns regarding our assumptions. Upon review, we agree that we mistakenly overestimated reductions from the regulatory alternative by approximately 15 percent from the uncontrolled levels. Therefore, our estimated total reductions for the regulatory alternative should be on the order of 4,400 Mg/yr, not 5,000 Mg/yr. The revised incremental HAP reduction achieved by the regulatory alternative is about 1,000 Mg/yr, and it reduces costs by an estimated $130/Mg of HAP controlled. The incremental electricity consumption to operate the refrigeration unit for the condensers is about 1.7 million kilowatt hours per year (kWh/yr), and the fuel energy to generate the electricity is about 16 billion Btu/yr. Total CO, NO_x, and SO_2 emissions from combustion of the additional fuel to generate the electricity is 14 Mg/yr. There would be no wastewater, solid waste, or other non-air quality health or environmental impacts.

Regarding concerns expressed by the commenter on the system design requirements, such as the required size of the refrigeration units, the amount of piping and valves per condenser, and various installation cost elements, we recognize that these costs could be higher, depending on the site specific situation. In general, the costs would increase for the MACT floor condenser system as well as the regulatory alternative condenser system. The basis for selecting the 75 percent regulatory alternative is that the incremental cost between the MACT floor of 60 percent and the regulatory alternative is reasonable when considered in light of the non-air quality health and environmental impacts and energy requirements. In our original analysis based on condensation of toluene, the difference in total annual cost of the two model systems, one rendering an exit gas temperature of 36°F and one rendering an exit gas temperature of 50°F, was about the same, $45,100 for the regulatory alternative, and $43,417 for the MACT floor alternative; our costs did not specifically assume that the condenser system rendering an outlet gas temperature of 36°F would require a precooler; however, our conservative approach to estimating condenser costs based on a minimum surface area would account for the precooler costs, since the calculated surface area of the model condenser system was lower than the minimum size for which costs are available. Given all the cost elements, we note that the significant factor in annualized cost differences between the two alternatives is the recovery credit, which for the regulatory alternative was $37,063 while the recovery credit for the MACT floor alternative was $29,650. When subtracted from the total annual cost, the annualized cost for the regulatory alternative was $8,038, while the annualized cost for the MACT floor alternative was $13,766. Because cost effectiveness is expressed as total annualized cost divided by emissions reductions, recovery credit factors in not only by lowering the total cost of the option, but increases the denominator in the cost effectiveness term. The incremental difference between the two models, and also between the nationwide impacts that were essentially extrapolated from these two models, is negative. Further, the effect of the recovery credit essentially drives this decision, and is valid for our analysis. We assumed that each vessel would be equipped with a condenser and the condensed material could be returned directly to the vessel without further refinement; we do not agree that cross contamination would be a problem under this scenario; further, moisture generated from condensation of humid air does not appear to be a concern currently as indicated by the predominance of air systems and lack of nitrogen blanketing systems on storage tanks.

The commenters suggested that our cost analysis would have yielded different conclusions had we designed the model condensation systems for xylene, rather than toluene. We agree that cost effectiveness of implementing the model condensation systems largely depends on emission potential, which in turn varies according to the volatility of the HAP materials. Therefore, we decided to expand the commenter's issue and determine the HAP materials for which incremental costs for the 75 percent regulatory alternative are reasonable. We conducted an additional analysis on a model set of emission events consisting of identical processing steps, but processing a different HAP. For the analysis we evaluated the following HAP: Toluene, xylene, cumene, phenol, and ethylene glycol. These compounds represent a range of vapor pressures for common HAP in the industry. We found that the incremental cost impacts of going above the MACT floor are unreasonable for HAP with vapor pressures less than that of cumene. Therefore, we revised the regulatory alternative and standard for stationary process vessels at existing sources to include a HAP vapor pressure threshold of 0.6 kPa at 25°C. Emissions of HAP with vapor pressures above the threshold must be controlled to the regulatory alternative level of 75 percent, whereas HAP with lower vapor pressures must be controlled to the MACT floor level of 60 percent. About 1 percent of the total HAP throughput in the industry consists of HAP with vapor pressures below the threshold; thus, we did not revise the incremental impacts for the regulatory alternative.

Note that we could not do a similar analysis for thermal incinerators because the efficiency of incinerators is generally assumed at 98 percent, and the analysis becomes dependent on assumptions made about incremental costs of capture efficiency. Instead, we assumed that the incremental analysis based on condenser control alone could also be used to justify the regulatory alternative.

We examined the feasibility of a regulatory alternative for portable process vessels with capacities greater than or equal to 250 gal at existing sources that would require the same 75 percent overall control as the regulatory alternative for stationary process vessels with capacities greater than or equal to 250 gal at existing sources. Using the same condenser cost analysis, we concluded that the total impacts of this option are unreasonable in light of the emissions reductions achieved. The incremental HAP reduction achieved by this beyond-the-floor option is approximately 400 Mg/yr, and the incremental cost was estimated to be approximately $21,000/Mg of HAP controlled. In addition, electricity consumption to operate refrigeration units would increase from zero at the MACT floor to nearly 2.0 million kwh/yr. Fuel consumption (coal) to generate the electricity would increase by more than 19.0 billion Btu/yr; collectively, CO, NO_x, and SO_2 emissions would increase by about 16.5 Mg/yr; and there would be no wastewater, solid waste, or other non-air quality health or environmental impacts.

We also evaluated a regulatory alternative for portable and stationary process vessels smaller than 250 gal at existing sources that would require the same 75 percent overall control as the regulatory alternative for stationary process vessels larger than 250 gal at existing sources. We do not know the number of such vessels or their size distribution. Therefore, we conducted the analysis for a model 250 gal vessel with a tightly-fitting vented cover at baseline that is used in the production of a coating that is manufactured using toluene. As for the other analyses, we assumed the vessel is controlled using a condenser to meet the regulatory alternative, and the condenser can be served by the same refrigeration unit as for the stationary process vessels. We concluded that the total impacts of this alternative are unreasonable in light of the emission reduction achieved. The incremental HAP reduction achieved by this beyond-the-floor alternative is 0.07 Mg/yr, and the incremental cost is over $25,000/Mg of HAP controlled. If the vessel at baseline does not have a tightly-fitting vented cover, the baseline emissions would be greater by an unknown amount, but the total costs would still be unreasonable. We also assumed that there would be no additional electricity or energy impacts because they are based on sized refrigeration systems, and addition of one or more vessels smaller than 250 gal would not require additional refrigeration capacity. Also, there would be no wastewater, solid waste, or other non-air quality health or environmental impacts.

Comment: One commenter requested flexibility in the control requirements for process vessels. The commenter noted that the proposed standard was tailored to the use of condensers on every process vessel, but it is not suited for the use of other control technologies or varying control levels among process vessels. The commenter also urged us to provide flexible averaging provisions that would allow different levels of control on different vessels while achieving overall control equivalent to that achieved by requiring the same control efficiency for each vessel. Furthermore, the commenter stated the proposed emissions averaging provisions are not useful because most vessels are not larger than 10,000 gallons; too few emission points are allowed in the average; it is too complex and burdensome; submitting a plan in the precompliance report 18 months before the compliance date is infeasible because facilities would not have determined how to comply by that date, and the requirement to obtain approval prior to making changes is cumbersome and restricts operations; it does not account for changes in the mix of processes being run; and it should be available for use at anytime, not just when demonstrating initial compliance.

Response: The final rule includes an emissions averaging option for stationary process vessels at existing sources that may address the commenter's concerns. To demonstrate initial compliance with the emissions averaging option, an owner or operator must estimate three sets of emissions for each vessel in the averaging group. First, the owner or operator must determine the uncontrolled emissions. Procedures for estimating uncontrolled emissions are specified in § 63.1257(d)(2), except that for purging events the final subpart HHHHH specifies a procedure for estimating the specific partial pressure of each HAP rather than allowing an assumption of saturation or 25 percent of saturation. Second, the owner or operator must estimate emissions from each vessel in the averaging group as if it were controlled in accordance with the percent reduction standard (*i.e.*, 60 percent or 75 percent reductions depending on the vapor pressure of the HAP in the emission stream). Third, the owner or operator must determine the actual emissions, which may range from uncontrolled for some vessels to control levels significantly higher than those determined in the previous step. The owner or operator must include these data and calculations in the precompliance report along with rationale for why the sum of the actual emissions on a quarterly basis will be less than the sum of the emissions if 60 percent or 75 percent, as applicable, were achieved for each individual vessel. To demonstrate ongoing compliance, the owner or operator must track the number of batches produced, calculate the quarterly actual emissions and emissions under the regular percent reduction standard for each vessel, and sum the two sets of quarterly emissions. Compliance is demonstrated if the sum of the actual emissions is lower than the sum of emissions under the regular percent reduction standard.

D. Standards for Storage Tanks

Comment: One commenter stated the MACT floor for storage tanks was determined incorrectly because we did not consider the actual performance of scrubber controls. The commenter also stated that the standard must be revised because tank capacity and HAP partial pressure cutoffs are illegal.

Response: None of the storage tanks containing organic HAP at the surveyed facilities was controlled with a scrubber. Therefore, the MACT floors for both existing and new sources are based on the actual reported performance of sources' controls and our consideration of whether sources are reducing emissions by other means besides controls.

Regarding tank capacity cutoffs, we considered two subcategories of storage tanks in our floor analysis: tanks with capacities less than 10,000 gal and storage tanks with capacities greater than or equal to 10,000 gal. We did not specifically request information for storage tanks with capacities less than 10,000 gal, and we did not receive any information about such smaller tanks. However, since the costs relative to the amount of control achieved tend to increase as the size of the storage tank decreases, we consider it highly unlikely that the industry is reducing emissions from tanks with capacities smaller than 10,000 gal when they are not reducing emissions from tanks with larger capacities. Thus, we concluded that the existing source and new source MACT floors for storage tanks with capacities less than 10,000 are no emissions reduction. We did not set beyond-the-floor standards for these smaller tanks because the total impacts to reduce emissions from storage tanks smaller than 20,000 gal were found to be unreasonable, and impacts for smaller tanks would be even less favorable.

With respect to storage tanks with capacities greater than or equal to 10,000 gal, fewer than 6 percent of the storage tanks in our database use controls or reduce emissions by any other means. Thus, we concluded that the existing source MACT floor for all storage tanks with capacities greater than or equal to 10,000 gal is no emissions reduction.

In setting the MACT floor for existing sources, we considered whether some facilities may implement emission reduction measures to reduce emissions from storage tanks, instead of using control technologies. Internal and external floating roofs are used to minimize emissions in many other industries, and vapor balancing when filling the tank is another common technique in other industries. However, we did not obtain any information in the responses to the ICR or from other resources that such measures are being used in the miscellaneous coating manufacturing industry. Another factor that can affect the emissions level is the color of the tank, but we have no information to suggest that any facilities are not already using the most favorable color scheme. Also, we have no information that any other measures are being used to reduce emissions. Therefore, because we lack information indicating that a sufficient number of storage tanks employ measures other

than control technologies to reduce HAP emissions to set a floor, we were unable to set a MACT floor based on emission reduction measures.

We examined two regulatory alternatives for storage tanks with capacities greater than or equal to 10,000 gal at existing sources, both of which would require the use of either a floating roof or venting to a control device that reduces emissions by 90 percent. The first alternative would apply to storage tanks with capacities greater than or equal to 20,000 gal that store material with a HAP partial pressure greater than or equal to 1.9 psia. The second alternative uses a size cutoff of 10,000 gal with the same HAP partial pressure cutoff. We set the standard at the level of the first regulatory alternative because, considering the level of emission reduction achieved, the total impacts of that alternative were determined to be reasonable, whereas the total impacts of the second alternative were determined to be unreasonable. Specifically, the first regulatory alternative reduces HAP emissions by 2.5 Mg/yr at an incremental cost of $2,700 to $4,900 per Mg of HAP controlled, depending on the characteristics of the tank. In addition, because this option can be achieved by using floating roofs, there are no non-air quality health or environmental impacts, including wastewater impacts and solid waste impacts, and no energy impacts. The second alternative reduces emissions by 7.5 Mg/yr at an incremental cost of at least $17,000 per Mg of HAP controlled, depending on the characteristics of the tank. The second regulatory alternative also has no non-air quality health or environmental impacts, including wastewater impacts and solid waste impacts, and no energy impacts for tanks that can be controlled with floating roofs. However, horizontal tanks (all of which in our database are smaller than 20,000 gal) must be controlled with an add-on control device such as a condenser. The incremental electricity consumption to run the condensers and fuel energy consumption to generate electricity would be 31,000 kwh/yr and 300 million Btu/yr, respectively. Total CO, NO_X, and SO_2 emissions from combustion of additional fuel to generate the electricity would be about 0.26 Mg/yr. There would be no wastewater, solid waste, or other non-air quality health and environmental impacts.

The new source MACT floor for storage tanks is based on the control achieved by the best-performing source. The proposed floor consisted of 90 percent control of emissions from storage tanks with capacities greater than or equal to 20,000 gal that store material with a HAP partial pressure greater than or equal to 1.5 psia and 90 percent control of emissions from storage tanks with capacities greater than or equal to 25,000 gal that store material with a HAP partial pressure greater than or equal to 0.1 psia. However, another facility reduces emissions by 80 percent from storage tanks with capacities of 10,000 gal that store material with a HAP vapor pressure of 0.02 psia. Upon further consideration since proposal, we determined that we cannot exclude these tanks from the floor analysis simply because the HAP vapor pressure is extremely low. Thus, the revised new source MACT floor for storage tanks consists of venting through a closed-vent system to a control device that reduces HAP emissions by at least 80 percent for storage tanks with a capacity greater than or equal to 10,000 gal that store material with a HAP partial pressure greater than or equal to 0.02 psia; the new source floor also consists of venting emissions through a closed-vent system to a control device that reduces HAP emissions by at least 90 percent for storage tanks with either capacities greater than or equal to 20,000 gal that store material with a HAP partial pressure greater than or equal to 0.1 psia or capacities greater than or equal to 25,000 gal that store material with a HAP partial pressure greater than or equal to 1.5 psia. Each of these new source standards reflects, or is equivalent to, the performance of the best-controlled source because the control levels for existing tanks increase with both increasing tank capacity and increasing HAP partial pressure.

The revised emission limits for storage tanks at new sources are based on the MACT floor because the MACT floor is more stringent than the second regulatory alternative for existing sources, which we determined to have unreasonable impacts.

E. Standards for Wastewater

Comment: Four commenters disagreed with our determination that the MACT floor for wastewater is HON-equivalent management and treatment procedures for wastewater that contains more than 4,000 ppmw of HAP listed in Table 9 to 40 CFR part 63, subpart G. One commenter stated that the floor should be recalculated to be based on the actual performance of the best sources, not simply set at the median concentration of controlled streams. According to one commenter, the floor should be no control because no add-on control is used by more than 6 percent of all wastewater streams. One commenter indicated that we have obtained accurate information on 30 wastewater streams, and all of the data must be used in setting the floor, including data for streams that contain less than 1,000 ppmw of HAP and streams that contain only inorganic HAP. Further, the commenter stated that flow is needed as well as concentration to determine the best performers. Flow is needed to convert concentrations to mass loadings, and it, or total volume, has been used to determine applicability in past rules and is the determining factor in disposal costs. According to the commenter, our assumptions that coating manufacturing facilities are only small quantity generators, and only the concentration drives the cost of disposal, are incorrect. The commenter noted that our database includes wastewater streams that have higher flows than the five top-performing streams that we used to set the MACT floor, but these streams are not sent offsite for treatment because the cost to do so would be prohibitive. In addition, if our assumption that concentration drives the cost of disposal were true, the commenter stated that other streams in the database with concentrations similar to those of the top 5 streams would also be treated offsite, but they are actually treated onsite, sent to a publicly-owned treatment works (POTW), or sent offsite for solidification. Taking all of these factors into account, the commenter concluded the floor should be no control.

The commenter also provided additional comments in the event that we maintain that a floor exists and develop a standard, despite their objections noted above. First, the commenter stated that applicability thresholds must be based on the mean rather than the median because our hierarchy is to use the mean first when it results in a standard that matches real world technology. Second, if the standard still requires management and treatment procedures like those in the HON, the commenter requested an exemption from the steam stripping requirement for streams containing soluble HAP because steam stripping is inefficient and expensive for such streams; the commenter also stated that enclosed sewers are unnecessary for such streams. Third, two commenters requested that offsite RCRA waste treatment facilities not be required to certify that they will meet the requirements for wastewater in the final rule because such facilities are already stringently controlled. One commenter was concerned that RCRA facilities may decline to accept wastewater if they are unnecessarily burdened with compliance requirements under the final rule. The commenter noted that a similar change was made recently to the NESHAP for Publicly Owned Treatment Works (POTW) in response to litigation.

Response: The miscellaneous coating manufacturing database contains ten streams from nine facilities. The 30 streams cited by one commenter was a preliminary draft value that was subsequently changed because it was incorrect.

After consideration of the comments, we decided to make two changes to the MACT floor analysis. First, to simplify the analysis, we have focused on only the actual management and treatment techniques used for the top performing five streams rather than calling them HON-equivalent. All five of these streams are collected and shipped offsite for destruction by combustion at a RCRA hazardous waste treatment facility. Second, we have decided that specifying only a concentration cutoff for determining which streams are subject to control is insufficient. Specifying only the concentration means even very small streams would be subject to control as long as the concentration of HAP listed on Table 9 of the HON (*i.e.*, partially soluble and soluble HAP in the final rule) is greater than or equal to 4,000 ppmw, but this is inconsistent with the statutory requirement to base the floor on the average of the top five streams. We considered specifying either load or flow rate in addition to the concentration, and we decided that load is the best choice. For the top five streams, the load tracks better with the concentration (*i.e.*, ranking the controlled streams by increasing load is the same as ranking by increasing concentration).

Of the top five streams, the median stream has a HAP concentration of 4,000 ppmw and a HAP load of 750 lb/yr. We continue to use the median rather than the mean because the median better represents the central tendency of the data. The top five streams (as well as the other five streams in the database) are skewed towards low concentrations; three of the five have relatively similar low concentrations, but the other two streams have concentrations ten or more times higher. A mean would be closer to the midpoint of the range, but it would not represent the bulk of the data. Therefore, the revised existing source MACT floor for wastewater consists of treatment as a hazardous waste for all streams with partially soluble and soluble HAP at a concentration greater than or equal to 4,000 ppmw and a load greater than or equal to 750 lb/yr. We estimate that a standard based on the MACT floor will reduce HAP emissions by 12.9 Mg/yr (14.2 tpy) at a cost of $306,000 per year.

The revised new source MACT floor is based on the requirements for the best performing stream, which is a stream that contains 1,600 ppmw and 12 lb/yr of partially soluble and soluble HAP. Since this load is negligible, the new source MACT floor consists of treatment as a hazardous waste for wastewater streams that contain partially soluble and soluble HAP at a concentration greater than or equal to 1,600 ppmw at any load.

In setting the MACT floor, we considered whether some facilities may implement emission reduction measures other than control technologies to reduce HAP emissions from wastewater. We requested information on emission reduction measures in our CAA section 114 information collection request. Several facilities reported that they have implemented changes in the type or quantity of cleaning solution used, or in the method of cleaning. However, we do not know how effective these changes were in reducing HAP emissions, and we have no information to conclude that similar measures could be implemented by the facilities that reported HAP in their wastewater. Further, some HAP in the wastewater is HAP that is used in coatings products, and this HAP cannot be reduced without impacting the coating products produced. Therefore, we were unable to set a MACT floor based on emission reduction measures other than treatment.

We examined one regulatory alternative beyond the floor for existing sources that would require treatment as a hazardous waste for wastewater containing partially soluble and soluble HAP at a concentration greater than or equal to 1,000 ppmw and a load greater than or equal to 100 lb/yr. We concluded that the total impacts of this alternative are unreasonable because the incremental cost would be about $280,000/Mg; it would increase electricity consumption by 640 kwh/yr; increase fuel consumption by 182 million Btu/yr; and increase CO, NO_X, and SO_2 emissions by 0.02 Mg/yr. There would be no wastewater or solid waste impacts. Therefore, the standard for wastewater in the final rule is based on the revised MACT floor.

In addition, analyses for the HON and other projects concluded that enhanced biotreatment for soluble HAP compounds could achieve reductions as high as 99 percent. Because wastewater containing soluble HAP is generated at miscellaneous coating manufacturing facilities, the final rule also allows onsite or offsite treatment in an enhanced biological treatment unit as an effectively equivalent alternative for soluble HAP. This alternative also may prove to be less costly than treatment as a hazardous waste for high-volume wastewater streams. Finally, we agree with the comment that Resource Conservation and Recovery Act (RCRA) facilities do not need to certify that they are meeting the requirements of subpart HHHHH; therefore, the final rule requires affected sources that ship their wastewater to an offsite facility for treatment as a hazardous waste to note this fact along with the name of the facility to which the wastewater is shipped in their notification of compliance status report.

F. Standards for Equipment Leaks

Comment: One commenter objected to our determination that the MACT floor is a LDAR program. According to the commenter, the actual performance of the best sources was not determined, and the selected program was simply borrowed from another rulemaking. If we make a determination of the floor based on the actual performance of relevant sources, the commenter noted that we must provide the public an opportunity to comment on it, or the rule would be unlawful, and arbitrary and capricious.

Response: The proposed floor was based on actual performance, but this concept takes a different form for equipment leak controls than for controls on other types of emission points because equipment leaks are essentially malfunctions, which are not predictable. However, a program of inspections and repair will ensure that any leaks that do occur are identified and fixed. We rate the performance of different LDAR programs based on the type of leak detection method, leak definition, and leak frequency. Specifically, performance is higher for instrument-based programs (*i.e.*, using portable organic vapor analyzers and EPA Method 21 of Appendix A to 40 CFR part 60) than sensory programs, lower leak definitions, and increased inspection frequency.

Based on the ICR responses from coating manufacturers, more than 12 percent of the facilities are implementing some type of LDAR program. One facility reported using an organic vapor analyzer (OVA), a 10,000 ppmv leak definition, and various monitoring frequencies for the different types of components; this program appears to be similar to the requirements of 40 CFR part 63, subpart TT (National Emission Standards for

Equipment Leaks—Control Level 1) and 40 CFR part 60, subpart VV (Standards of Performance for Equipment Leaks of VOC in the Synthetic Organic Chemicals Manufacturing Industry). The others reported using a sensory-program, with most of them conducting inspections monthly. No facilities are capturing all of their equipment leak emissions and venting them through a closed-vent system to a control device. Thus, the MACT floor for existing sources was determined to be a sensory-based LDAR program with monthly inspections of all components. The new source MACT floor was determined to be an LDAR program based on 40 CFR part 63, subpart TT, consistent with the program implemented by the best-performing source.

Comment: One commenter objected to the standard being based on an LDAR program because it is a work practice standard rather than an emission limit. According to the commenter, the CAA requires us to set an emission limit rather than a work practice standard unless it is not feasible to prescribe or enforce an emission limit, and the commenter found no evidence or analysis in the record suggesting that it infeasible to do so.

Response: We determined that an LDAR program is the most reasonable option for control of leaking components. Unlike other emission sources, leaking components are not deliberate emission sources but rather result from mechanical limitations associated with process piping and machinery. A well-managed facility follows a preventive maintenance program to minimize leaks but in all practicality cannot guarantee that no leaks will occur. Therefore, an emission standard for equipment leaks would be difficult to enforce or prescribe. In order to develop such an option, all processes and equipment containing process piping that could potentially leak would require complete capture and control. While the practice of enclosing components and venting to control is allowed as an alternative to LDAR, it is not practiced except in limited cases.

Comment: Many commenters stated the standard should be based on the MACT floor (*i.e.*, a sensory-based LDAR program). According to the commenters, we assumed leak frequencies and leak rates that are too high and costs that are too low; changing these assumptions will show the regulatory alternative (*i.e.*, an LDAR program requiring monitoring using Method 21) is not cost effective. According to the commenters, the SOCMI average factors are not representative of the coatings manufacturing industry because coatings processes generally use less volatile HAP, operate at lower temperatures and pressures, and all operation is in the liquid phase. The commenters considered coatings process conditions to be similar to those for gasoline distribution facilities, which they noted are required to comply with a sensory-based LDAR program. To support their position that leak frequencies and emission rates for coatings manufacturing processes are low, one commenter provided monitoring data for 13 facilities in the industry, including bagging sample data for a few of the pumps, valves, and connectors at one facility.

Response: We reviewed the leak data submitted by the commenter for 13 facilities, including three facilities from which data was recently collected by a fugitive emissions contractor. The three-facility study was well documented and conducted by the same contractor and using the same monitoring instrument that was calibrated on methane. Data from the remaining ten facilities was not as well documented and in some cases, the monitoring data appear to have been based on various instruments and that were calibrated on compounds other than methane. While these data may have been adequate for the individual facility purposes, we did not consider them in our analysis because we felt these data were not consistently obtained. The commenter also conducted a bagging study at one of the three plants for which screening data was collected. Using the results of the bagging study, the commenter calculated emission factors that are 0.00054 kilograms per hour (kg/hr)-source for valves, 0.0025 kg/hr-source for pumps, and 0.0000422 kg/hr-source for connectors. In developing the emission factors, the commenter essentially took an arithmetic average of the VOC emission rates for all components in the bagging study.

After reviewing the information, we decided to recalculate the emission factors according to the method documented in both American Petroleum Institute (API) and EPA publications ("Development of Fugitive Emission Factors for Petroleum Marketing Terminals," Publication Number 4588, March 1993, Prepared by Radian Corporation for API; and "Protocol for Equipment Leak Emission Estimates," EPA Publication EPA–453/R–95–017, November 1995). Using the bagging study and the corresponding screening data, we developed emission rate equations for pumps, valves, and connectors that relate the VOC emission rate (in kg/hr) to the average screening value (in ppmv) for each component. As a second step, we used the data from the three-facility screening study to calculate average emission factors. Our analysis resulted in average emission factors of 0.000412 kg/hr-source for valves, 0.0042 kg/hr-source for pumps, and 0.000015 kg/hr-source for connectors. When we applied these emission factors to our model plant that was the basis for the cost analysis, we found that the uncontrolled HAP emissions are 0.70 tpy, versus the 4.03 tpy that was used in the original analysis. For comparison, if we had used the commenter's calculated emission factors, we would have estimated 0.66 tpy HAP, a slightly lower value but well within the same order of magnitude as the factor we developed. In either case, we note that the revised estimate is only about 20 percent of the previous uncontrolled estimate.

We revised our impacts calculation by conservatively assuming that the relative reductions achieved by the MACT floor sensory LDAR program and the regulatory alternative (40 CFR part 63, subpart UU program) would be the same as assumed in prior analyses. For the model facilities, our previous analysis assumed a 29 percent reduction from uncontrolled baseline for the MACT floor and a 62 percent reduction for the subpart UU regulatory alternative. We multiplied the previously estimated nationwide reductions of implementing the MACT floor and the regulatory alternative by the ratio of model facility revised uncontrolled emission over the earlier estimate of uncontrolled emissions, or 0.7/4.03, to obtain revised emissions reductions. We assumed that the capital and total annual cost estimates would be unchanged from the previous analysis. The incremental cost effectiveness of going beyond the floor using this analysis was estimated to be $15,800, and there are essentially no energy impacts or non-air quality health and environmental impacts associated with the regulatory alternative. Therefore, we cannot justify going beyond the floor in the final rule.

G. Standards for Transfer Operations

Comment: One commenter stated we must set a MACT floor for transfer operations at existing sources. According to the commenter, not setting a MACT floor because no State regulations apply to transfer operations is unlawful.

Response: In setting the MACT floor for existing sources, we considered the available information. We did not specifically request information for transfer operations in our CAA section 114 information request. Based on follow-up conversations with representatives from five facilities with high solvent throughput rates that potentially are the most likely to control emissions from transfer operations, we determined that these facilities are not controlling their emissions from transfer operations. We also examined State regulations and determined that they apply only to throughput rates above those at coating manufacturing facilities, and they apply only to loading of tank trucks and railcars, which is less common than filling of smaller containers at coating manufacturing facilities. There are no other known means by which sources may be reducing emissions from transfer operations. Therefore, we concluded that the MACT floor for transfer operations at existing sources is no emissions reductions. Because we lack information indicating that any source is implementing or required to implement any measures to reduce HAP emissions from transfer operations, we concluded that the new source MACT floor also is no emissions reductions.

Comment: One commenter opposed the beyond-the-floor standard for existing and new sources. This commenter also claimed that we have not demonstrated that emissions from transfer operations warrant regulation because the facility on which impacts were estimated is not representative of the industry. The commenter contacted that facility and learned they primarily repackage and distribute paint stripper, thinners, and spray gun cleaning solvent. According to the commenter, we generally overestimated emissions from transfer operations because we assumed that the industry transfers pure solvents or mixtures with high vapor pressures when in fact the industry transfers primarily materials with low vapor pressures, including waterborne products. Furthermore, the commenter stated that the regulatory alternative cannot be justified based on cost because the impacts are based on incorrect assumptions. For example, the commenter suggested the following changes: (1) Use the AP–42 saturation factor of 0.6 for submerged loading in dedicated vapor balance service instead of the assumption that displaced vapors are saturated; (2) use a tank truck filling rate of 25 gal/min instead of 150 gallons per minute (gal/min); (3) use characteristics of toluene (or better yet, xylene) instead of an arbitrary HAP with a molecular weight of 80 and a vapor pressure of 3.93 psia; (4) use a gas flow rate of 100 scfm instead of less than 4 scfm; (5) include capital costs for a refrigeration unit and auxiliary equipment such as a precooler, ductwork, a fan, and pump for collected solvent; and (6) conduct the analysis over a range of coating throughput rates to bracket the actual operations in the industry. Taking these changes into account, the commenter estimated a cost of more than $30,000/Mg for bulk loading tank trucks at rates between 1.8 million gal/yr and 7.3 million gal/yr. Another commenter stated that the standard should be no control.

Response: It appears that the first commenter thinks we used the results of the impacts analysis for one facility as the basis for our decision to set the existing and new source standards at a level beyond the floor. This is not correct. We actually conducted two analyses. The first was a sensitivity analysis, comparable to that suggested by the commenter, to determine the characteristics of emission streams for which the total impacts associated with a regulatory alternative that reduces emissions by 75 percent (the same level as the standard for stationary process vessels at existing sources) was reasonable. The second analysis involved estimating the impacts for existing facilities that met the characteristics from the first analysis.

Based on the results of our sensitivity analysis, we concluded that the total impacts are reasonable in light of the emissions reductions achieved if the coating products that are bulk loaded contain at least 3.0 million gal/yr of HAP with a partial pressure of at least 1.5 psia. The incremental HAP reduction achieved to meet the regulatory alternative for a model facility with these characteristics was estimated to be 10.8 Mg/yr, and the incremental cost was estimated to be $3,200/Mg of HAP removed. These estimates assume the emissions are controlled using a condenser, and that the refrigeration unit used in the process vessels analysis can be replaced by one with a slightly larger capacity to accommodate all of the condensers. The incremental electricity consumption to operate the enlarged refrigeration unit is 3,200 kwh/yr, and the incremental fuel energy consumption to generate the electricity is 31 million Btu per year. Total CO, NO_x, and SO_2 emissions from combustion of the additional fuel is 0.03 Mg/yr. The condensed HAP would be a hazardous waste. There would be no wastewater or other non-air quality health or environmental impacts.

At the maximum product loading volume cited by the commenter, we estimate the HAP or solvent throughput would be about 2.0 million gal/yr (*i.e.*, based on an average 1.75 lb HAP/gal coating); thus, none of the bulk loading scenarios evaluated by the commenter would be subject to control under the standard. However, we provide the following discussion of the analysis in the event that a facility may expand production beyond the rates used in the commenter's analysis, or the quantity of HAP in their product is higher than the average value that we used.

In our analysis, we assumed the emission stream is saturated because emissions occur only as a result of vapor displacement, and the vent from the tank truck or rail car can be hard-piped to a control device. Because our analysis assumes that the control is a condenser with coolant supplied from the same refrigeration unit that we assumed would be used with condensers for process vessel emissions, we did not include the cost of a separate refrigeration unit in this analysis. We also included a smaller maintenance labor factor than would be used for a separate refrigerated condenser system. These assumptions mean the costs for overhead, taxes, and capital recovery are lower in our analysis than the commenter's.

Although we agree that adding costs for a precooler, ductwork, and a pump would be reasonable, we note that the overall cost of the auxiliary equipment in our analysis equals more than 50 percent of the cost for all auxiliary equipment in the commenter's analysis, even though we have a much smaller condenser. Furthermore, based on the commenter's data, it appears that we overestimated the cost of the condenser and waste solvent storage tank, which offsets our lack of costs for other auxiliary equipment.

We assumed a fill rate of 30 gal/min, which we consider to be consistent with the commenter's suggested rate of 25 gal/min. This rate also defines the gas flow into the condenser in our analysis because the system can be hard-piped, and there is no need to include supplemental dilution air at a rate 25 times the flow of the displaced volume. As the commenter noted, we assumed the coating product consists only of HAP solvent and solids. This was done to simplify the analysis. Also, products that contain little HAP or less volatile HAP are not likely to meet the thresholds that we set. Finally, we note that our analysis likely overestimates the actual costs because we assumed a waste disposal unit cost four times higher than the cost the commenter considers to be realistic. Therefore, we maintain that for transfer operations meeting the specified flow rate and partial pressure levels in the regulatory alternative, the incremental cost to

control emissions (relative to the floor of no emissions reduction) is reasonable.

In our second analysis, we searched the database for any facilities with HAP throughput and partial pressure that meet the cutoffs established for the regulatory alternative. We identified only one facility that potentially met the criteria. The estimated impacts for this facility are comparable to those for the model facility. Assuming the commenter is correct that most of the reported throughput at this facility is not associated with coating manufacturing, then the impacts of the standard may be lower than we estimated.

H. Pollution Prevention

Comment: One commenter stated that the exemption for equipment that contain less than 5 percent HAP is not a viable pollution prevention alternative. Several commenters consider the lack of a viable pollution prevention alternative to be a serious shortcoming in the rule as proposed, and they suggested several options for consideration. First, numerous commenters favored an option that allows manufacturers to take credit for reductions achieved by voluntarily choosing to manufacture lower HAP coatings or making other changes in production technology. Second, two commenters suggested exempting any compliance coating manufacturing from subpart HHHHH if the facility certifies that the coatings are manufactured to meet the surface coating rules. Third, one commenter suggested that we consider allowing delayed implementation of subpart HHHHH or provide an opt-out provision for facilities whose emissions drop below major source thresholds; this would minimize the impact of the "once-in, always-in" policy. Fourth, if none of the preceding options is acceptable, one commenter requested that the stringency of the standards be reduced because the industry has already achieved reductions as great as or greater than those expected by the proposed standards. Many commenters cited numerous changes in the industry over the past few years that have reduced emissions from coating manufacturing and have not been accounted for in setting the standards. For example, the shift in production to waterborne, UV cure, and high solids coatings, some of which has been driven by other regulatory requirements, contribute to reducing emissions from coating manufacturing as well as from coating application. One commenter estimated that the shift to manufacturing compliant coatings to meet the surface coating MACT will reduce HAP content of coatings by 265,000 tpy, which also translates into the same reduction in HAP throughput for the manufacturing processes. Assuming 0.5 to 1.0 percent of the throughput is emitted during manufacturing means this reduction in throughput has already achieved a significant fraction of the expected reductions under subpart HHHHH. Other changes that have reduced emissions include the shift to using low vapor pressure solvents, making coatings exclusively in one vessel, and the production of smaller batch sizes with shorter lead times. Finally, the commenters noted that the industry has undertaken various voluntary efforts to reduce emissions including the paint industry's Coatings Care program, ACC's Responsible Care program, EPA's National Environmental Track program, and various State and local programs.

Response: We do not agree that facilities can demonstrate that any of the suggested alternatives are comparable to the specified emission standards. A percent reduction in the HAP content of products may not necessarily yield an equivalent percent reduction in emissions. A format such as a demonstration in reduction of HAP content at coatings manufacturers is not easily linked to overall HAP usage upon application.

I. Initial Compliance

Comment: One commenter has encountered difficulty in applying existing EPA stack sampling methods to determine condenser inlet concentrations of VOC and HAP for use in demonstrating the control efficiency of the condenser. The commenter manufactures adhesives and sealants in closed vessels to which solvent is introduced through closed piping systems, and solids are introduced via closed screw conveyors. Nitrogen is used to purge the conveyors and vessels, and the exhaust gas is vented to a chilled water condenser. The commenter noted that the vapor space in the process vessels is typically saturated with solvent vapor, which quickly overwhelms the sampling equipment. The commenter noted that the sampling equipment also artificially increases the emissions by drawing off vapor from the precondenser headspace that would not otherwise represent emissions. Furthermore, the commenter stated that the method and volume of nitrogen inerting dramatically affects the sampling effectiveness without actually altering total emissions. Therefore, the commenter supported the proposed option that would allow compliance to be demonstrated by documenting operation at a suitable outlet temperature, but the commenter recommended modifying the option to consider the combined effect of covers and other vessel sealing devices as well as the efficiency of the condenser.

Response: Without additional details regarding operation of the equipment, characteristics of the gas stream(s), and modifications to the testing protocol that have already been attempted, we cannot provide constructive suggestions for modifying the sampling methods. However, we note that performance testing is only one of three options for demonstrating initial compliance for condensers. As the commenter indicated, a second option is to demonstrate that the condenser operates below a specified temperature, where the required level is based on the HAP partial pressure of the gas stream entering the condenser. The third option is to determine the percent reduction based on calculations of the uncontrolled and controlled emissions using the equations specified in § 63.1257(d).

J. Ongoing Compliance

Comment: According to one commenter, the monitoring provisions are arbitrary and capricious because they exempt sources with the greatest emissions (*i.e.*, those that fall outside of the MACT floor due to size have the loosest monitoring).

Response: We disagree with the commenter's assertions. The final rule, like the proposed rule, requires monitoring of all control devices. In some cases, to minimize the burden on small operations (*e.g.*, small control devices controlling process vessel vents), the final rule has different monitoring requirements for lower-emitting sources; however, these sources are not sources with the greatest HAP emissions as asserted by the commenter.

Comment: One commenter considered the proposed quality assurance/quality control (QA/QC) requirements for continuous parameter monitors to be unduly burdensome and stated that they contravene existing EPA standards and test methods. The commenter recommended that sources be required to develop preventive maintenance programs that are based on manufacturer's recommendations and actual operating/maintenance history of the instruments. Another commenter recommended adding a provision that allows sources to request approval, using the precompliance report, of alternatives to the QA/QC procedures specified in § 63.8035 of the proposed rule.

Response: The final rule references the QA/QC requirements for continuous parameter monitoring systems (CPMS) in 40 CFR part 63, subpart SS. We deleted the proposed requirements for the same reasons we decided not to implement similar proposed QA/QC requirements in subpart SS (67 FR 46260, July 12, 2002). Specifically, we are currently developing performance specifications for CPMS to be followed by owners and operators of all sources subject to standards under 40 CFR part 63, which includes subpart HHHHH. Also, subpart SS currently specifies requirements for CPMS, and the requirements of subpart SS are referenced by the final rule. Even though they may not be as specific as those proposed, we decided it would be premature to promulgate performance specifications for subpart HHHHH when the performance specifications that would ultimately be promulgated for all 40 CFR part 63 may be significantly different. Until those performance specifications are ready, we consider the requirements in subpart SS to be the best choice because they are consistent with other rules applied to source categories containing similar control and monitoring equipment as in this source category. Further, references to these standard standards streamline compliance requirements for facilities with operations in numerous source categories. The procedures in subpart SS require monitoring equipment to be installed, calibrated, maintained, and operated according to manufacturer's specifications or other written procedures that provide adequate assurance that the equipment would reasonably be expected to monitor accurately. These provisions are consistent with the commenters' suggestions.

K. Recordkeeping and Reporting

Comment: According to one commenter, the initial notification requirements are unnecessary because facilities in the miscellaneous coating source category have already submitted an initial notification under CAA section 112(j). Another commenter considers the notification to be unnecessary because it is already required under title V.

Response: The requirement to submit an initial notification is part of the General Provisions, which apply to all NESHAP. If the required information is already in the sources' title V permit applications, the requirement for sources to copy this information into their one-time initial notifications should not be unduly burdensome. Having this information will help the regulatory authorities and the public better understand what is being regulated, especially since a source's initial notification may be submitted before its title V permit is issued or renewed.

Comment: Three commenters requested that the notification of compliance status report be due no earlier than 150 days or 180 days after the compliance date, as in other rules and the General Provisions. According to the commenters, facilities will need the full 3 years (if not longer) after the promulgation date to respond to actions taken by their customers and to evaluate their own compliance options, particularly to determine whether they can make changes such that they are no longer major sources.

Response: We accept the argument that some facilities may need the full 3 years after the effective date to bring controls online or to make product formulation changes to meet new customer requirements in response to the surface coating MACT rules. Therefore, we have decided to change the due date for the notification of compliance status report. In the final rule, the report is due no later than 150 days after the compliance date, as in many other rules.

L. Startup, Shutdown and Malfunction

Comment: According to one commenter, the startup, shutdown, and malfunction (SSM) provisions are unlawful because they allow sources to avoid enforcement actions merely by complying with their startup, shutdown, and malfunction plan (SSMP), but the CAA requires compliance continuously except for unavoidable deviations during SSM.

Response: We recently adopted final amendments to the General Provisions which address the concerns raised by the commenter (68 FR 32586, May 30, 2003). The final amendments clarify that § 63.6(e)(1)(i) establishes a general duty to minimize emissions. During a period of SSM, that general duty requires an owner or operator to reduce emissions to the greatest extent consistent with safety and good air pollution control practices. However, "during an SSM event, the general duty to minimize emissions does not require an owner or operator to achieve the levels required by the applicable MACT standard at other times, or to make further efforts to reduce emissions if such levels have been successfully achieved." As discussed in the preamble to the final amendments, we disagree with the commenter's legal position that sources' compliance with SSMP requirements in lieu of applicable emission standards is permissible only where violations of emission limitations are unavoidable. As stated in the preamble to the final amendments to the General Provisions, "we believe that we have discretion to make reasonable distinctions concerning those particular activities to which the emission limitations in a MACT standard apply * * *. However, we note that the general duty to minimize emissions is intended to be a legally enforceable duty which applies when the emission limitations in a MACT standard do not apply, thereby limiting exceedances of generally applicable emission limitations to those instances where they cannot be reasonably avoided." We further explained that the general duty to minimize emissions requires that owners or operators review their SSMP on an ongoing basis and make appropriate improvements to ensure that excess emissions are avoided.

Comment: Two commenters recommended that "startup" be defined as in the Amino and Phenolic Resins NESHAP (40 CFR part 63, subpart OOO). According to the commenters, the proposed definition more accurately defines a "new process."

Response: We clarified the definition of "startup" for the final rule. However, we did not use the definition from the Amino and Phenolic Resins final rule because we do not consider the language regarding flexible operation units and continuous processes to be appropriate for the miscellaneous coatings manufacturing source category. For the final rule, we removed the term "family of coatings," and we removed the list of actions that are not startup so that the definition focuses only on items that are startup. In addition, since it is possible that actions taken to bring equipment back online after it has been configured and used to produce a different product, we also decided to specify that the first time equipment is put into operation at the start of a campaign, even if the same product has been produced in the past, is startup if the actions taken differ from routine operation.

Comment: One commenter recommended that we clearly apply the SSMP to the emission control equipment rather than to individual process vessels on a batch to batch basis. According to the commenter, tracking the startup and shutdown of individual process vessels would require thousands of records, it would be nearly impossible to insure that all information is collected properly, and

the tracking adds no environmental value.

Response: Startup and shutdown do apply to control equipment because the definitions specify that they apply to "equipment required or used to comply with this subpart." Similarly, the definition of "malfunction" in § 63.2 specifies that it applies to control equipment. However, startup, shutdown, and malfunction also apply to the processing equipment. We disagree with the commenter's characterization that applying startup, shutdown, and malfunction to process vessels will result in the need to generate thousands of records because startup only applies to new sources, new equipment, and possibly the start of campaigns; and malfunctions, by definition, are infrequent failures of equipment. In addition, the definition of shutdown has been changed to specify that shutdown applies to the cessation of operation of process vessels only if the steps taken to cease operation differ from routine procedures for removing the vessel or equipment from service. This change also makes the definition of shutdown consistent with the revised definition of startup.

Comment: Several commenters recommended excluding periods of SSM from the definition of "deviation" and reporting deviations separately from reporting of SSM events. One commenter noted that periods of SSM are exempt from compliance under the rule as proposed and concluded that the proposed requirements are redundant and provide no useful information regarding compliance. Another commenter also noted that requirements in previous rules and the General Provisions differentiate between SSM events and deviations (or exceedances and excursions, in the terminology of previous rules). According to the commenter, changing the terminology and requirements for the final rule will at a minimum be confusing for facilities that also must comply with previous rules.

Response: We disagree with the commenter's contention that the proposed requirements are redundant. Section 63.6(e) of the General Provisions requires operation at all times (including during periods of SSM) in a manner consistent with safety and good air pollution control practices for minimizing emissions to the levels required by the relevant standards (*i.e.*, meet the standards or comply with the SSMP). Nothing in the General Provisions says the standards do not apply during periods of SSM, but compliance with the SSMP is allowed in the event the standard cannot otherwise be met. Furthermore, although a deviation may occur for a day during which an SSM event also occurs, the recordkeeping and reporting requirements associated with the deviation differ from the recordkeeping and reporting requirements for the SSM event; thus, there is no redundancy. Information about all periods during which an emission limit, operating limit, or work practice standard is not met and the reasons for noncompliance is important. Thus, we have not changed the intent of the requirements for the final rule.

Comment: One commenter considers the proposed requirement for immediate reporting of actions taken that are inconsistent with the SSMP to be overly burdensome. According to the commenter, reporting these events with other SSM events on a semi-annual basis in the compliance report is sufficient, and the commenter noted that this approach has been used in 40 CFR part 63, subpart JJJ (Polymers and Resins) and subpart PPP (Polyether Polyols).

Response: We agree that immediate notifications are not necessary. The industries covered by this source category generally have extensive upset/SSM reporting requirements under the Comprehensive Environmental Response, Compensation, and Liability Act and state reporting requirements that should be adequate in supplying timely notification of events. Further, the final rule requires information regarding actions inconsistent with the SSMP to be submitted in semiannual compliance reports. For these reasons, and to maintain consistency with the HON and the Consolidated Air Rule (CAR), we have overridden the immediate SSM reporting required by §§ 63.6(e)(3)(iv) and 63.10(d)(5)(ii) of the General Provisions.

V. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the EPA must determine whether the regulatory action is "significant" and, therefore, subject to review by the Office of Management and Budget (OMB) and the requirements of the Executive Order. The Executive Order defines a "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) materially alter the budgetary impact of entitlement, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, OMB has notified EPA that it considers this a "significant regulatory action" within the meaning of the Executive Order. The EPA has submitted this action to OMB for review. Changes made in response to OMB suggestions or recommendations will be documented in the public record.

B. Paperwork Reduction Act

The information collection requirements in the final rule have been submitted for approval to OMB under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* The information requirements are not enforceable until OMB approves them. The ICR number is 2115.01.

The information requirements are based on notification, recordkeeping, and reporting requirements in the NESHAP General Provisions (40 CFR part 63, subpart A), which are mandatory for all owners or operators subject to NESHAP. These recordkeeping and reporting requirements are specifically authorized by section 112 of the CAA (42 U.S.C. 7412). All information submitted to the EPA pursuant to the recordkeeping and reporting requirements for which a claim of confidentiality is made is safeguarded according to Agency policies in 40 CFR part 2, subpart B.

The final NESHAP require maintenance inspections of the control devices but do not require any notifications or reports beyond those required by the NESHAP General Provisions (40 CFR part 63, subpart A). The recordkeeping requirements collect only the specific information needed to determine compliance.

The annual public reporting and recordkeeping burden for this collection of information (averaged over the first 3 years after the effective date of the final rule) is estimated to average 79 labor hours per year at an annual cost of $3,500 for 129 respondents. These estimates include one-time submissions of notifications and precompliance reports, preparation of an SSMP with semiannual reports for any event when the procedures in the plan were not followed, preparation of semiannual compliance reports, and recordkeeping. Total annualized capital/startup costs associated with the monitoring requirements for the 3-year period of the ICR are estimated at $10,000/yr. Average operation and maintenance costs associated with the monitoring requirements for the 3-year period are estimated at $34,000/yr.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purpose of collecting, validating, and verifying information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An Agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control number for EPA's regulations in 40 CFR are in 40 CFR part 9. When the ICR is approved by OMB, the Agency will publish a technical amendment to 40 CFR part 9 in the **Federal Register** to display the OMB control number for the approved information collection requirements contained in the final rule.

C. Regulatory Flexibility Act

The EPA has determined that it is not necessary to prepare a regulatory flexibility analysis in connection with the final rule. The EPA has also determined that the final rule will not have a significant economic impact on a substantial number of small entities. For purposes of assessing the impact of today's rule on small entities, small entity is defined as: (1) A small business having up to 500 employees, (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000, and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's final rule on small entities, EPA has concluded that this action will not have a significant economic impact on a substantial number of small entities.

Our economic analysis identified as small businesses 32 of the 58 companies owning affected coating manufacturing facilities. This constitutes 55 percent of the affected businesses. Although small businesses represent 55 percent of the companies withing the source category, they are expected to incur 24 percent of the total industry compliance costs of $16 million. According to EPA's economic assessment, there are two small firms with compliance costs equal to or greater than 3 percent of their sales. In addition, there are five small firms with cost-to-sales ratios between 1 and 3 percent.

An economic impact analysis was performed to estimate the changes in product price and production quantities for the firms affected by subpart HHHHH. The analysis shows that of the 70 facilities owned by affected small firms, one is expected to shut down after implementation of the NESHAP.

The baseline economic condition of the facility predicted to close affects the closure estimate provided by the economic model. Facilities that are already experiencing adverse economic conditions will be more severely impacted than those that are not, and the facility predicted to close currently has low profitability levels.

Although the NESHAP will not have a significant economic impact on a substantial number of small entities, EPA nonetheless has tried to limit the impact of the final rule on small entities. We have worked closely with the National Paint and Coatings Association, the National Association of Printing Ink Manufacturers, and the Adhesives and Sealants Council. These trade organizations, which represent the majority of facilities covered by subpart HHHHH, have represented their members at stakeholder meetings throughout the standards development process. We worked with the coating manufacturers to minimize the overlap of MACT standards and provide several alternative ways to comply with the standards to allow as much flexibility as possible. The multi-process vessel alternative emission limit and the pollution prevention option help those small entities that have been proactive in reducing their HAP emissions and usage, respectively.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures by State, local, and tribal governments, in aggregate, or by the private sector, of $100 million or more in any 1 year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least-costly, most cost-effective, or least-burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

The EPA has determined that the final rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year. The maximum total annual costs of the final rule for any year is estimated to be less than $16 million. Thus, the final rule is not subject to the requirements of sections 202 and 205 of the UMRA.

In addition, the NESHAP contain no regulatory requirements that might significantly or uniquely affect small governments because they contain no requirements that apply to such governments or impose obligations upon them. Therefore, the final rule is not subject to the requirements of section 203 of the UMRA.

E. Executive Order 13132: Federalism

Executive Order 13132 (64 FR 43255, August 10, 1999) requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that

have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

The final rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. None of the sources are owned or operated by State or local governments. Thus, Executive Order 13132 does not apply to the final rule.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Executive Order 13175 (65 FR 67249, November 9, 2000) requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." The final rule does not have tribal implications. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes. No tribal governments own or operate miscellaneous coating operations. Thus, Executive Order 13175 does not apply to the final rule.

G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks

Executive Order 13045 (62 FR 1985, April 23, 1997) applies to any rule that: (1) is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, EPA must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Executive Order has the potential to influence the regulation. The final rule is not subject to the Executive Order because it is based on technology performance and not health or safety risks.

H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution or Use

The final rule is not a "significant energy action" as defined in Executive Order 13211 (66 FR 28355, May 22, 2001) because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Approximately 3.0 million kwh/yr of electricity will be needed to operate fans and pumps for control systems. Generating this amount of electricity will consume about 1,000 tpy of coal. If owners and operators elect to use combustion-based control devices, a small amount of natural gas will also be used.

I. National Technology Transfer Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) of 1995 (Public Law No. 104–113) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in their regulatory and procurement activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, business practices) developed or adopted by one or more voluntary consensus bodies. The NTTAA directs EPA to provide Congress, through annual reports to OMB, with explanations when an agency does not use available and applicable voluntary consensus standards.

The final rule involves technical standards. The final rule uses EPA Methods 1, 1A, 2, 2A, 2C, 2D, 2G, 2F, 3, 3A, 3B, 4, 18, 25, 25A, 26, 26A, 305, 320, 624, 625, 1624, 1625, 1666, 1671, 8260, and 8270. Consistent with the NTTAA, the EPA conducted searches to identify voluntary consensus standards in addition to these EPA methods. The search and review results have been documented and placed in the docket for the NESHAP (Docket ID No. OAR–03–0178). The search for emissions monitoring procedures for measuring emissions of the HAP or surrogates subject to emission limitations in these NESHAP identified 19 voluntary consensus standards that appeared to have possible use in lieu of EPA standard reference methods. However, after reviewing the available standards, EPA determined that 13 of the candidate consensus standards would not be practical due to lack of equivalency, documentation, and validation data. The 13 standards are: ASME C00031 or Performance Test Code 19–10–1981, ASTM D3154–91 (1995), ASTM D3464–96, ASTM D3796–90 (1998), ASTM D5835–95, ASTM D6060–96, ASTM E337–84 (Reapproved 1996), CAN/CSA Z2232.2–M–86, European Norm (EN) 12619 (1999), EN 1911–1,2,3 (1998), ISO 9096:1992, ISO 10396:1993, and ISO 10780:1994. Of the six remaining candidate consensus standards, the following five are under development or under EPA review: ASME/BSR MFC 12M, ASME/BSR MFC 13m, ASTM D5790–95 (1995), ISO/DIS 12039, and ISO/FDIS 14965. The EPA plans to follow, review, and consider adopting these candidate consensus standards after their development and further review by EPA is completed.

One consensus standard, ASTM D6420–99, Standard Test Method for Determination of Gaseous Organic Compounds by Direct Interface Gas Chromatography-Mass Spectrometry (GC/MS), is appropriate in the cases described below for inclusion in these NESHAP in addition to the currently available EPA Method 18 codified at 40 CFR part 60, appendix A for measurement of organic compounds. Therefore, the standard ASTM D6420–99 is cited in the final rule.

Similar to EPA's performance based Method 18, ASTM D6420–99 is also a performance based method for measurement of gaseous organic compounds. However, ASTM D6420–99 was written to support the specific use of highly portable and automated GC/MS. While offering advantages over the traditional Method 18, the ASTM method does allow some less stringent criteria for accepting GC/MS results than required by Method 18. Therefore, ASTM D6420–99 (Docket ID No. OAR–2003–0178) is a suitable alternative to Method 18 only where the target compound(s) are those listed in section 1.1 of ASTM D6420–99; and the target concentration is between 150 ppb(v) and 100 ppm(v).

For target compound(s) not listed in Table 1.1 of ASTM D6420–99, but potentially detected by mass spectrometry, the regulation specifies that the additional system continuing calibration check after each run, as detailed in Section 10.5.3 of the ASTM method, must be followed, met, documented, and submitted with the data report even if there is no moisture condenser used or the compound is not considered water soluble. For target compound(s) not listed in Section 1.1 of ASTM D6420–99, and not amenable to detection by mass spectrometry, ASTM D6420–99 does not apply.

As a result, EPA cites ASTM D6420–99 in subpart HHHHH of part 63. The EPA also cites Method 18 as a gas chromatography (GC) option in addition to ASTM D6420–99. This will allow the continued use of GC configurations other than GC/MS.

Some EPA testing methods and performance standards are specified in § 63.8000(d)(1) of subpart HHHHH. Most of the standards have been used by States and industry for more than 10 years. Nevertheless, under § 63.7(f), the final rule also allows any State or source to apply to EPA for permission to use an alternative method in place of any of the EPA testing methods or performance standards listed in the NESHAP.

J. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing the final rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. The final rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 63

Environmental protection, Administrative practice and procedure, Air pollution control, Hazardous substances, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: August 29, 2003.

Marianne Lamont Horinko,

Acting Administrator.

■ For the reasons stated in the preamble, title 40, chapter I, part 63 of the Code of the Federal Regulations is amended as follows:

PART 63—[AMENDED]

■ 1. The authority citation for part 63 continues to read as follows:

Authority: 42 U.S.C. 7401, *et seq.*

■ 2. Part 63 is amended by adding a new subpart HHHHH to read as follows:

Subpart HHHHH—National Emission Standards for Hazardous Air Pollutants: Miscellaneous Coating Manufacturing

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Subpart HHHHH—National Emission Standards for Hazardous Air Pollutants: Miscellaneous Coating Manufacturing

What This Subpart Covers

§ 63.7980 What is the purpose of this subpart?

This subpart establishes national emission standards for hazardous air pollutants (NESHAP) for miscellaneous coating manufacturing. This subpart also establishes requirements to demonstrate initial and continuous compliance with the emission limits, operating limits, and work practice standards.

§ 63.7985 Am I subject to the requirements in this subpart?

(a) You are subject to the requirements in this subpart if you own or operate miscellaneous coating manufacturing operations, as defined in paragraph (b) of this section, that meet the conditions specified in paragraphs (a)(1) through (4) of this section.

(1) Are located at or are part of a major source of hazardous air pollutants (HAP) emissions, as defined in section 112(a) of the Clean Air Act (CAA).

(2) Manufacture coatings as defined in § 63.8105.

(3) Process, use, or produce HAP.

(4) Are not part of an affected source under another subpart of this part 63.

(b) Miscellaneous coating manufacturing operations include the facilitywide collection of equipment described in paragraphs (b)(1) through (4) of this section that is used to manufacture coatings as defined in § 63.8105. Miscellaneous coating manufacturing operations also include cleaning operations.

(1) Process vessels.

(2) Storage tanks for feedstocks and products.

(3) Components such as pumps, compressors, agitators, pressure relief devices, sampling connection systems, open-ended valves or lines, valves, connectors, and instrumentation systems.

(4) Wastewater tanks and transfer racks.

(c) If the predominant use of a transfer rack leading arm or storage tank

(including storage tanks in series) is associated with miscellaneous coating manufacturing and the loading arm or storage tank is not part of an affected source under a subpart of this part 63, then you must assign the loading arm or storage tank to the miscellaneous coating manufacturing operations. If the predominant use cannot be determined, and the loading arm or storage tank is not part of an affected source under a subpart of this part 63, then you must assign the loading arm or storage tank to the miscellaneous coating manufacturing operations. If the use varies from year to year, then you must base the determination on the utilization that occurred during the year preceding December 11, 2003 or, if the loading arm or storage tank was not in operation during that year, you must base the use on the expected use for the first 5-year period after startup. You must include the determination in the notification of compliance status report specified in § 63.8075(d). You must redetermine the predominant use at least once every 5 years after the compliance date.

(d) The requirements for miscellaneous coatings manufacturing sources in this subpart do not apply to operations described in paragraphs (d)(1) through (4) of this section.

(1) Research and development facilities, as defined in section 112(c)(7) of the CAA.

(2) The affiliated operations located at an affected source under subparts GG (National Emission Standards for Aerospace Manufacturing and Rework Facilities), KK (National Emission Standards for the Printing and Publishing Industry), JJJJ (NESHAP: Paper and Other Web Coating), future MMMM (National Emission Standards for Miscellaneous Metal Parts and Products Surface Coating Operations) and SSSS (NESHAP: Surface Coating of Metal Coil) of 40 CFR part 63. Affiliated operations include, but are not limited to, mixing or dissolving of coating ingredients; coating mixing for viscosity adjustment, color tint or additive blending, or pH adjustment; cleaning of coating lines and coating line parts; handling and storage of coatings and solvent; and conveyance and treatment of wastewater.

(3) Ancillary equipment such as boilers and incinerators (only those not used to comply with the emission limits in Tables 1 through 5 to this subpart), chillers and refrigeration systems, and other equipment that is not directly involved in the manufacturing of a coating (*i.e.*, it operates as a closed system, and materials are not combined with materials used to manufacture the coating).

(4) Quality assurance/quality control laboratories.

§ 63.7990 What parts of my plant does this subpart cover?

(a) This subpart applies to each miscellaneous coating manufacturing affected source as defined in § 63.7985(a).

(b) The miscellaneous coating manufacturing affected source is the miscellaneous coating manufacturing operations as defined in § 63.7985(b).

(c) An affected source is a new affected source if you commenced construction or reconstruction after April 4, 2002, and you met the applicability criteria at the time you commenced construction or reconstruction.

Compliance Dates

§ 63.7995 When do I have to comply with this subpart?

(a) If you have a new affected source, you must comply with this subpart according to the requirements in paragraphs (a)(1) and (2) of this section.

(1) If you start up your new affected source before December 11, 2003, then you must comply with the requirements for new sources in this subpart no later than December 11, 2003.

(2) If you start up your new affected source after December 11, 2003, then you must comply with the requirements for new sources in this subpart upon startup of your affected source.

(b) If you have an existing affected source on December 11, 2003, then you must comply with the requirements for existing sources in this subpart no later than December 11, 2005.

(c) If you add equipment to your existing affected source after December 11, 2003 you must comply with the requirements for existing sources in this subpart upon startup of the added equipment.

(d) You must meet the notification requirements in § 63.8070 according to the schedule in § 63.8070 and in 40 CFR part 63, subpart A. Some of the notifications must be submitted before you are required to comply with the emission limits, operating limits, and work practice standards in this subpart.

Emission Limits, Work Practice Standards, and Compliance Requirements

§ 63.8000 What are my general requirements for complying with this subpart?

(a) You must be in compliance with the emission limits and work practice standards in Tables 1 through 5 to this subpart at all times, except during periods of startup, shutdown, and malfunction. You must meet the requirements specified in paragraphs (b) and (c) of this section. You must meet the requirements specified in §§ 63.8005 through 63.8025 (or the alternative means of compliance in § 63.8050), except as specified in paragraph (d) of this section. You must meet the notification, reporting, and recordkeeping requirements specified in §§ 63.8070, 63.8075, and 63.8080.

(b) *General requirements.* (1) If an emission stream contains halogen atoms, you must determine whether it meets the definition of a halogenated stream by calculating the concentration of each organic compound that contains halogen atoms using the procedures specified in § 63.115(d)(2)(v), multiplying each concentration by the number of halogen atoms in the organic compound, and summing the resulting halogen atom concentrations for all of the organic compounds in the emission stream. Alternatively, you may elect to designate the emission stream as halogenated.

(2) Opening of a safety device, as defined in § 63.8105, is allowed at any time conditions require it to avoid unsafe conditions.

(c) Compliance requirements for closed vent systems and control devices. If you use a control device to comply with an emission limit in Table 1, 2, or 5 to this subpart, you must comply with the requirements in subpart SS of 40 CFR part 63 as specified in paragraphs (c)(1) through (3) of this section, except as specified in paragraph (d) of this section.

(1) If you reduce organic HAP emissions by venting emissions through a closed-vent system to any combination of control devices (except a flare), you must meet the requirements of § 63.982(c) and the requirements referenced therein.

(2) If you reduce organic HAP emissions by venting emissions through a closed-vent system to a flare, you must meet the requirements of § 63.982(b) and the requirements referenced therein. You may not use a flare to control halogenated vent streams or hydrogen halide and halogen HAP emissions.

(3) If you use a halogen reduction device to reduce hydrogen halide and halogen HAP emissions that are generated by combusting halogenated vent streams, you must meet the requirements of § 63.994 and the requirements referenced therein. If you use a halogen reduction device before a combustion device, you must determine the halogen atom emission rate prior to the combustion device according to the procedures in § 63.115(d)(2)(v).

(d) *Exceptions to the requirements specified in other subparts of this part 63.* (1) *Requirements for performance tests.* The requirements specified in paragraphs (d)(1)(i) through (v) of this section apply instead of or in addition to the requirements for performance testing of control devices as specified in subpart SS of 40 CFR part 63.

(i) Conduct gas molecular weight analysis using Method 3, 3A, or 3B in appendix A to 40 CFR part 60.

(ii) Measure moisture content of the stack gas using Method 4 in appendix A to 40 CFR part 60.

(iii) As an alternative to using Method 18, Method 25/25A, or Method 26/26A of 40 CFR part 60, appendix A to comply with any of the emission limits specified in Tables 1 through 7 to this subpart, you may use Method 320 of 40 CFR part 60, appendix A. When using Method 320, you must follow the analyte spiking procedures of section 13 of Method 320, unless you demonstrate that the complete spiking procedure has been conducted at a similar source.

(iv) Section 63.997(c)(1) does not apply. For the purposes of this subpart, results of all initial compliance demonstrations must be included in the notification of compliance status report, which is due 150 days after the compliance date, as specified in § 63.8075(d)(1).

(v) The option in § 63.997(e)(2)(iv)(C) to demonstrate compliance with a percent reduction emission limit by measuring total organic carbon (TOC) is not allowed.

(vi) If you do not have a closed-vent system as defined in § 63.981, you must determine capture efficiency using Method 204 of appendix M to 40 CFR part 51 for all stationary process vessels subject to requirements of Table 1 to this subpart.

(2) *Design evaluation.* To determine the percent reduction of a small control device, you may elect to conduct a design evaluation as specified in § 63.1257(a)(1) instead of a performance test as specified in subpart SS of 40 CFR part 63. You must establish the value(s) and basis for the operating limits as part of the design evaluation.

(3) *Periodic verification.* For a control device with total inlet HAP emissions less than 1 ton per year (tpy), you must establish an operating limit(s) for a parameter(s) that you will measure and record at least once per averaging period (*i.e.*, daily or block) to verify that the control device is operating properly. You may elect to measure the same parameter(s) that is required for control devices that control inlet HAP emissions equal to or greater than 1 tpy. If the parameter will not be measured continuously, you must request approval of your proposed procedure in the precompliance report. You must identify the operating limit(s) and the measurement frequency, and you must provide rationale to support how these measurements demonstrate the control device is operating properly.

(4) *Continuous emissions monitoring systems.* Each continuous emissions monitoring system (CEMS) must be installed, operated, and maintained according to the requirements in § 63.8 and paragraphs (d)(4)(i) through (iv) of this section.

(i) Each CEMS must be installed, operated, and maintained according to the applicable Performance Specification of 40 CFR part 60, appendix B, and according to paragraph (d)(4)(ii) of this section, except as specified in paragraph (d)(4)(i)(A) of this section. For any CEMS meeting Performance Specification 8, you must also comply with appendix F, procedure 1 of 40 CFR part 60.

(A) If you wish to use a CEMS other than a Fourier Transform Infrared Spectroscopy (FTIR) meeting the requirements of Performance Specification 15 to measure hydrogen halide and halogen HAP before we promulgate a Performance Specification for such CEMS, you must prepare a monitoring plan and submit it for approval in accordance with the procedures specified in § 63.8.

(B) [Reserved]

(ii) You must determine the calibration gases and reporting units for TOC CEMS in accordance with paragraph (d)(4)(ii)(A), (B), or (C) of this section.

(A) For CEMS meeting Performance Specification 9 or 15 requirements, determine the target analyte(s) for calibration using either process knowledge of the control device inlet stream or the screening procedures of Method 18 on the control device inlet stream.

(B) For CEMS meeting Performance Specification 8 used to monitor performance of a combustion device, calibrate the instrument on the predominant organic HAP and report the results as carbon (C_1), and use Method 25A or any approved alternative as the reference method for the relative accuracy tests.

(C) For CEMS meeting Performance Specification 8 used to monitor performance of a noncombustion device, determine the predominant organic HAP using either process knowledge or the screening procedures of Method 18 on the control device inlet stream, calibrate the monitor on the predominant organic HAP, and report the results as C_1. Use Method 18, ASTM D6420–99, or any approved alternative as the reference method for the relative accuracy tests, and report the results as C_1.

(iii) You must conduct a performance evaluation of each CEMS according to the requirements in 40 CFR 63.8 and according to the applicable Performance Specification of 40 CFR part 60, appendix B, except that the schedule in § 63.8(e)(4) does not apply, and the results of the performance evaluation must be included in the notification of compliance status report.

(iv) The CEMS data must be reduced to operating day or operating block averages computed using valid data consistent with the data availability requirements specified in § 63.999(c)(6)(i)(B) through (D), except monitoring data also are sufficient to constitute a valid hour of data if measured values are available for at least two of the 15-minute periods during an hour when calibration, quality assurance, or maintenance activities are being performed. An operating block is a period of time from the beginning to end of batch operations in the manufacturing of a coating. Operating block averages may be used only for process vessel data.

(5) *Continuous parameter monitoring.* The provisions in paragraphs (d)(5)(i) through (iii) of this section apply in addition to the requirements for continuous parameter monitoring system (CPMS) in subpart SS of 40 CFR part 63.

(i) You must record the results of each calibration check and all maintenance performed on the CPMS as specified in § 63.998(c)(1)(ii)(A).

(ii) When subpart SS of 40 CFR part 63 uses the term a range or operating range of a monitored parameter, it means an operating limit for a monitored parameter for the purposes of this subpart.

(iii) As an alternative to measuring pH as specified in § 63.994(c)(1)(i), you may elect to continuously monitor the caustic strength of the scrubber effluent.

(6) *Startup, shutdown, and malfunction.* Sections 63.998(b)(2)(iii) and (b)(6)(i)(A), which apply to the exclusion of monitoring data collected during periods of startup, shutdown, and malfunction (SSM) from daily averages, do not apply for the purposes of this subpart.

(7) *Reporting.* (i) When §§ 63.8005 through 63.8025 reference other subparts in this part 63 that use the term periodic report, it means compliance report for the purposes of this subpart.

(ii) When there are conflicts between this subpart and referenced subparts for the due dates of reports required by this subpart, reports must be submitted according to the due dates presented in this subpart.

(iii) Excused excursions, as defined in subpart SS of 40 CFR part 63, are not allowed.

§ 63.8005 What requirements apply to my process vessels?

(a) You must meet each emission limit and work practice standard in Table 1 to this subpart that applies to you, except as specified in §§ 63.8050 and 63.8055, and you must meet each applicable requirement specified in § 63.8000(b). For each control device used to comply with Table 1 to this subpart, you must comply with subpart SS of this part 63 as specified in § 63.8000(c), except as specified in § 63.8000(d) and paragraphs (b) through (g) of this section.

(b) When subpart SS of this part 63 refers to process vents, it means process vessel vents for the purposes of this section.

(c) Process condensers, as defined in § 63.1251, are not considered to be control devices for process vessels.

(d) *Initial compliance.* (1) To demonstrate initial compliance with a percent reduction emission limit in Table 1 to this subpart, you must conduct the performance test or design evaluation under conditions as specified in § 63.7(e)(1), except that the performance test or design evaluation must be conducted under worst-case conditions. Also, the performance test for a control device used to control emissions from process vessels must be conducted according to § 63.1257(b)(8), including the submittal of a site-specific test plan for approval prior to testing: The requirements in § 63.997(e)(1)(i) and (iii) also do not apply for performance tests conducted to determine compliance with the emission limits for process vessels.

(2) For the initial compliance demonstration for condensers, you must determine uncontrolled emissions using the procedures specified in § 63.1257(d)(2), and you must determine controlled emissions using the procedures specified in § 63.1257(d)(3)(i)(B) and (iii).

(3) You must demonstrate that each process condenser is properly operated according to the procedures specified in § 63.1257(d)(2)(i)(C)(*4*)(*ii*) and (d)(3)(iii)(B). The reference in § 63.1257(d)(3)(iii)(B) to the alternative standard in § 63.1254(c) does not apply for the purposes of this subpart. As an alternative to measuring the exhaust gas temperature, as required by § 63.1257(d)(3)(iii)(B), you may elect to measure the liquid temperature in the receiver.

(4) You must conduct a performance test or compliance demonstration equivalent to an initial compliance demonstration within 360 hours of a change in operating conditions that are not considered to be within the previously established worst-case conditions.

(e) *Establishing operating limits.* You must establish operating limits under the conditions required for your initial compliance demonstration, except you may elect to establish operating limit(s) for conditions other than those under which a performance test was conducted as specified in paragraph (e)(1) of this section and, if applicable, paragraph (e)(2) of this section.

(1) The operating limits may be based on the results of the performance test and supplementary information such as engineering assessments and manufacturer's recommendations. These limits may be established for conditions as unique as individual emission episodes. You must provide rationale in the precompliance report for the specific level for each operating limit, including any data and calculations used to develop the limit and a description of why the limit indicates proper operation of the control device. The procedures provided in this paragraph (e)(1) have not been approved by the Administrator and determination of the operating limit using these procedures is subject to review and approval by the Administrator.

(2) If you elect to establish separate operating limits for different emission episodes, you must maintain records as specified in § 63.8085(g) of each point at which you change from one operating limit to another, even if the duration of the monitoring for an operating limit is less than 15 minutes.

(f) *Averaging periods.* If you elect to establish separate operating limits for different emission episodes, you may elect to determine operating block averages instead of the daily averages specified in § 63.998(b)(3). An operating block is a period of time that is equal to the time from the beginning to end of an emission episode or sequence of emission episodes.

(g) *Flow indicators.* If flow to a control device could be intermittent, you must install, calibrate, and operate a flow indicator at the inlet or outlet of the control device to identify periods of no flow. Periods of no flow may not be used in daily or block averages, and it may not be used in fulfilling a minimum data availability requirement.

§ 63.8010 What requirements apply to my storage tanks?

(a) You must meet each emission limit in Table 2 to this subpart that applies to your storage tanks, and you must meet each applicable requirement specified in § 63.8000(b). For each control device used to comply with Table 2 to this subpart, you must comply with subpart SS of this part 63 as specified in § 63.8000(c), except as specified in § 63.8000(d) and paragraphs (b) through (d) of this section.

(b) *Exceptions to subparts SS and WW of this part 63.* (1) If you conduct a performance test or design evaluation for a control device used to control emissions only from storage tanks, you must establish operating limits, conduct monitoring, and keep records using the same procedures as required in subpart SS of this part 63 for control devices used to reduce emissions from process vents instead of the procedures specified in §§ 63.985(c), 63.998(d)(2)(i), and 63.999(b)(2).

(2) When the term storage vessel is used in subparts SS and WW of this part 63, the term storage tank, as defined in § 63.8105 applies for the purposes of this subpart.

(c) *Planned routine maintenance.* The emission limits in Table 2 to this subpart for control devices used to control emissions from storage tanks do not apply during periods of planned routine maintenance. Periods of planned routine maintenance of each control device, during which the control device does not meet the emission limit specified in Table 2 to this subpart, must not exceed 240 hours per year (hr/yr). You may submit an application to the Administrator requesting an extension of this time limit to a total of 360 hr/yr. The application must explain why the extension is needed, it must indicate that no material will be added to the storage tank between the time the 240 hr/yr limit is exceeded and the control device is again operational, and it must be submitted at least 60 days before the 240 hr/yr limit will be exceeded.

(d) *Vapor balancing alternative.* As an alternative to the emission limits specified in Table 2 to this subpart, you may elect to implement vapor balancing in accordance with § 63.1253(f), except as specified in paragraphs (d)(1) and (2) of this section.

(1) To comply with § 63.1253(f)(6)(i), the owner or operator of an offsite cleaning and reloading facility must comply with §§ 63.7995 through 63.8105 instead of complying with § 63.1253(f)(7)(ii).

(2) You may elect to set a pressure relief device to a value less than the 2.5 psig required in § 63.1253(f)(5) if you provide rationale in your notification of compliance status report explaining why the alternative value is sufficient to prevent breathing losses at all times.

§ 63.8015 What requirements apply to my equipment leaks?

(a) You must meet each requirement in Table 3 to this subpart that applies to your equipment leaks, except as specified in paragraphs (b) through (d) of this section.

(b) The requirement in § 63.424(a) to inspect each piece of equipment during the loading of a gasoline cargo tank means when the equipment is operating in organic HAP service for the purposes of this subpart.

(c) When § 63.1036 refers to batch processes, any part of the miscellaneous coating manufacturing operations applies for the purposes of this subpart.

(d) For the purposes of this subpart, pressure testing for leaks in accordance with § 63.1036(b) is not required after reconfiguration of an equipment train if flexible hose connections are the only disturbed equipment.

§ 63.8020 What requirements apply to my wastewater streams?

(a) You must meet each requirement in Table 4 to this subpart that applies to your wastewater streams, and you must meet each applicable requirement specified in § 63.8000 and paragraphs (b) through (d) of this section.

(b) For each wastewater stream that you generate, you must either designate the wastewater stream as a Group 1 wastewater stream according to the procedures in paragraph (b)(1) of this section, or you must determine whether the wastewater stream is a Group 1 wastewater stream according to the procedures in paragraph (b)(2) of this section.

(1) You may designate any wastewater stream as a Group 1 wastewater stream. You do not have to determine the concentration for any designated Group 1 wastewater stream.

(2) For wastewater streams that you do not designate as Group 1 wastewater streams, you must use the procedures specified in § 63.144(b) to establish the concentrations, except as specified in paragraphs (b)(2)(i) and (ii) of this section.

(i) References to Table 8 compounds in § 63.144 do not apply for the purposes of this subpart.

(ii) *Alternative test methods.* (A) As an alternative to the test methods specified in § 63.144(b)(5)(i), you may use Method 8260 or 8270 as specified in § 63.1257(b)(10)(iii).

(B) As an alternative to using the methods specified in § 63.144(b)(5)(i), you may conduct wastewater analyses using Method 1666 or 1671 of 40 CFR part 136, appendix A, and comply with the sampling protocol requirements specified in § 63.144(b)(5)(ii). The validation requirements specified in § 63.144(b)(5)(iii) do not apply if you use Method 1666 or 1671 of 40 CFR part 136, appendix A.

(c) For each enhanced biological treatment unit used to comply with the requirements in Table 4 to this subpart, you must monitor total suspended solids (TSS), biological oxygen demand (BOD), and the biomass concentration. In the precompliance report you must identify and provide rationale for proposed operating limits for these parameters, methods for monitoring, the frequency of monitoring, and recordkeeping and reporting procedures that will demonstrate proper operation of the enhanced biological treatment unit. Alternatively, you may use the precompliance report to request to monitor other parameters, and you must include a description of planned reporting and recordkeeping procedures and the basis for the selected monitoring frequencies and the methods that will be used.

(d) If you transfer the wastewater offsite for enhanced biological treatment, you must obtain written certification from the offsite facility stating that the offsite facility will comply with the requirements of this subpart. The certifying entity may revoke the certification by providing 90 days notice. Upon expiration of the notice period, you may not transfer wastewater to that treatment facility.

§ 63.8025 What requirements apply to my transfer operations?

(a) You must comply with each emission limit and work practice standard in Table 5 to this subpart that applies to your transfer operations, and you must meet all applicable requirements specified in § 63.8000(b). For each control device used to comply with Table 5 to this subpart, you must comply with subpart SS of this part 63 as specified in § 63.8000(c), except as specified in § 63.8000(d) and paragraph (b) of this section.

(b) If you have Group 1 transfer operations, as defined in § 63.8105, then all transfer racks used for bulk loading coatings must meet the requirements for high throughput transfer racks in subpart SS of this part.

§ 63.8030 What requirements apply to my heat exchange systems?

(a) You must comply with the requirements specified in Table 6 to this subpart that apply to your heat exchange systems, except as specified in paragraphs (b) through (e) of this section.

(b) The phrase a chemical manufacturing process unit meeting the conditions of § 63.100(b)(1) through (b)(3) of this section in § 63.104(a) means the miscellaneous coating manufacturing operations defined in § 63.7985(b) for the purposes of this subpart.

(c) The reference to § 63.100(c) in § 63.104(a) does not apply for the purposes of this subpart.

(d) The reference to § 63.103(c)(1) in § 63.104(f)(1) does not apply. For the purposes of this subpart, records must be retained as specified in § 63.10(b)(1).

(e) The reference to the periodic report required by § 63.152(c) of subpart G of this part means the compliance report required by § 63.8075(e) for the purposes of this subpart.

Alternative Means of Compliance

§ 63.8050 How do I comply with emissions averaging for stationary process vessels at existing sources?

(a) As an alternative to complying with the requirements in Table 1 to this subpart for each individual stationary process vessel, you may elect to comply with emissions averaging for stationary process vessels greater than or equal to 250 gallons (gal) at your existing affected source as specified in paragraphs (b) through (e) of this section.

(b) *General requirements.* (1) A State may prohibit averaging of HAP emissions and require the owner or operator of an existing affected source to comply with the emission limits and work practice standards in Table 1 to this subpart.

(2) All stationary process vessels in an emissions averaging group must be equipped with a tightly-fitting vented cover.

(c) *Initial compliance.* To demonstrate initial compliance with the emissions averaging alternative, you must comply with the provisions in paragraphs (c)(1) through (4) of this section.

(1) Estimate uncontrolled emissions from each affected stationary process vessel in pounds per batch using the procedures specified in § 63.1257(d)(2), except as specified in paragraphs (c)(1)(i) and (ii) of this section. For the purposes of this section, uncontrolled emissions means the emissions from the vessel if it were equipped only with a tightly-fitting vented cover. You must identify the range of typical operating parameters and perform the calculation using the values that result in the highest emissions, and you must document the operating parameters and

resulting emissions calculations in the precompliance report.

(i) When you are required to calculate uncontrolled emissions from heating, you may not calculate emissions using Equation 15 of subpart GGG of this part 63.

(ii) The statement in § 63.1257(d)(2)(i)(B) that "the partial pressure of HAP shall be assumed to be 25 percent of the saturated value if the purge flow rate is greater than 100 scfm" does not apply. For the purposes of this subpart, multiply the HAP partial pressure in Equation 12 of 40 CFR part 63, subpart GGG by a HAP-specific saturation factor determined in accordance with Equations 1 through 3 of this section. Solve equation 1 of this section iteratively beginning with saturation factors (in the right-hand side of the equation) of 1.0 for each condensable compound. Stop iterating when the calculated saturation factors for all compounds are the same to two significant figures for subsequent iterations. Note that for multi-component emission streams, saturation factors must be calculated for all noncondensables in the emission stream.

$$S_i = \frac{K_i A}{K_i A + V + \sum_{i=1}^{n} S_i V_i^{sat}} \quad \text{Eq. 1}$$

$$V_i^{sat} = \frac{VP_i}{\left(P_T - \sum_{i=1}^{n} P_i\right)} \quad \text{Eq. 2}$$

$$K_i = K_o \left(\frac{M_o}{M_i}\right)^{1/3} \quad \text{Eq. 3}$$

where:

S_i=saturation factor for individual condensable compounds in the emission stream

P_i=partial pressure of individual condensable compounds in the emission stream calculated using Raoult's Law or other appropriate methods

P_T=pressure of the vessel vapor space

A=surface area of liquid

V=purge flow rate as used in Equation 12 of 40 CFR part 63, subpart GGG

V_i^{sat}=volumetric flowrate of condensable compounds in the emission stream

K_i=mass transfer coefficient of individual condensable compounds in the emission stream

K_o=mass transfer coefficient of a reference compound (*e.g.*, 0.83 cm/s for water)

M_o=molecular weight of reference compound (*e.g.*, 18.02 for water)

M_i=molecular weight of individual condensable compounds in the emission stream

n=number of condensable compounds in the emission stream

(2) Estimate controlled emissions in pounds per batch for each vessel as specified in paragraphs (c)(2)(i) through (iii) of this section.

(i) Except as specified in paragraphs (c)(2)(ii) and (iii) of this section, estimate controlled emissions as if the vessel were controlled in compliance with entry 2.b.i. in Table 1 to this subpart.

(ii) Estimate the controlled emissions using the control level achieved on November 15, 1990 if that value is greater than the applicable control level required by entry 2.b.i in Table 1 to this subpart.

(iii) Estimate the controlled emissions using the control level required to comply with a State or Federal rule other than this subpart if that level is greater than the applicable control level required by entry 2.b.i in Table 1 to this subpart and the other rule was in effect before the date when you request approval to comply with emissions averaging.

(3) Determine actual emissions in pounds per batch for each vessel in accordance with paragraphs (c)(2)(i), (ii), or (iii), as applicable.

(i) If emissions are routed through a closed-vent system to a condenser control device, determine controlled emissions using the procedures specified in § 63.1257(d)(3).

(ii) If emissions are routed through a closed-vent system to any control device other than a condenser, determine actual emissions after determining the efficiency of the control device using the procedures in subpart SS of this part 63 as specified in § 63.8000(c).

(iii) If the vessel is vented to the atmosphere, then actual emissions are equal to the uncontrolled emissions estimated in accordance with paragraph (c)(1) of this section.

(4) Provide rationale in the precompliance report for why the sum of the actual emissions will be less than the sum of emissions from the vessels if they had been controlled in accordance with Table 1 to this subpart. The approved actual emissions calculated according to paragraph (c)(3) of this section are emission limits that must be incorporated into your operating permit.

(d) *Continuous compliance.* (1) Maintain a monthly log of the number of batches produced that can be correlated with the emissions estimates per batch developed in accordance with paragraph (c) of this section.

(2) Sum the actual emissions for all of the process vessels in the emissions averaging group every three months, with the first 3-month period beginning on the compliance date, and compare the resulting total with the total emissions for the vessels calculated in accordance with paragraph (c)(2) of this section. Compliance is demonstrated if the sum of the actual emissions is less than the emissions estimated in accordance with paragraph (c)(2) of this section.

(3) For control devices, establish operating limits and monitor as specified in § 63.8000.

(e) *Recordkeeping and reporting.* Comply with §§ 63.8070, 63.8075, and 63.8080.

§ 63.8055 How do I comply with a weight percent HAP limit in coating products?

(a) As an alternative to complying with the requirements in Table 1 to this subpart for each individual stationary process vessel at an existing source, you may elect to comply with a 5 weight percent HAP limit for process vessels at your affected source that are used to manufacture coatings with a HAP content of less than 0.05 kg per kg product as specified in paragraph (b) of this section.

(b) You may only comply with the alternative during the production of coatings that contain less than 5 weight percent HAP, as determined using any of the procedures specified in paragraphs (b)(1) through (3) of this section.

(1) Method 311 (appendix A to 40 CFR part 63).

(2) Method 24 (appendix A to 40 CFR part 60). You may use Method 24 to determine the mass fraction of volatile matter and use that value as a substitute for the mass fraction of HAP.

(3) You may use an alternative test method for determining mass fraction of HAP if you obtain prior approval by the Administrator. You must follow the procedure in § 63.7(f) to submit an alternative test method for approval.

Notification, Reports, and Records

§ 63.8070 What notifications must I submit and when?

(a) You must submit all of the notifications in §§ 63.6(h)(4) and (5), 63.7(b) and (c), 63.8(e), (f)(4) and (6), 63.9(b) through (h) that apply to you by the dates specified.

(b) *Initial notification.* (1) As specified in § 63.9(b)(2), if you have an existing affected source on December 11, 2003, you must submit an initial notification not later than 120 calendar days after December 11, 2003.

(2) As specified in § 63.9(b)(3), if you start up your new affected source on or after December 11, 2003, you must submit an initial notification not later than 120 calendar days after you become subject to this subpart.

(c) *Notification of performance test.* If you are required to conduct a performance test, you must submit a notification of intent to conduct a performance test at least 60 calendar days before the performance test is scheduled to begin as required in § 63.7(b)(1). For any performance test required as part of the initial compliance procedures for process vessels in Table 1 to this subpart, you must also submit the test plan required by § 63.7(c) and the emission profile with the notification of the performance test.

§ 63.8075 What reports must I submit and when?

(a) You must submit each report in Table 9 to this subpart that applies to you.

(b) Unless the Administrator has approved a different schedule for submission of reports under § 63.10(a), you must submit each report as specified in Table 9 to this subpart and paragraphs (b)(1) and (2) of this section.

(1) The compliance reports must be submitted semiannually. The first report must be submitted no later than 240 days after the applicable compliance date and shall cover the 6-month period beginning on the compliance date. Each subsequent compliance report must cover the 6-month period following the preceding period.

(2) For each affected source that is subject to permitting regulations pursuant to 40 CFR part 70 or 40 CFR part 71, and if the permitting authority has established dates for submitting semiannual reports pursuant to 40 CFR 70.6(a)(3)(iii)(A) or 40 CFR 71.6(a)(3)(iii)(A), you may submit the first and subsequent compliance reports according to the dates the permitting authority has established instead of according to the dates in Table 9.

(c) *Precompliance report.* You must submit a precompliance report to request approval of any of the information in paragraphs (c)(1) through (4) of this section. We will either approve or disapprove the report within 90 days after we receive it. If we disapprove the report, you must still be in compliance with the emission limitations and work practice standards in this subpart by the compliance date.

(1) Requests for approval to set operating limits for parameters other than those specified in §§ 63.8005 through 63.8025, including parameters for enhanced biological treatment units. Alternatively, you may make these requests according to § 63.8(f).

(2) Descriptions of daily or per batch demonstrations to verify that control devices subject to § 63.8000(d)(3) are operating as designed.

(3) A description of the test conditions, data, calculations, and other information used to establish operating limits according to § 63.8005(e)(1).

(4) If you comply with emissions averaging in § 63.8050, the data and results of emission calculations as specified in § 63.8050(c)(1) through (3), and rationale for why the sum of actual emissions will be less than the sum of emissions if the process vessels were controlled in accordance with Table 1 to this subpart as specified in § 63.8050(c)(4).

(d) *Notification of compliance status report.* You must submit a notification of compliance status report according to the schedule in paragraph (d)(2) of this section, and the notification of compliance status report must include the information specified in paragraph (d)(2) of this section.

(1) You must submit the notification of compliance status report no later than 150 days after the applicable compliance date specified in § 63.7995.

(2) The notification of compliance status report must include the information in paragraphs (d)(3)(i) through (vi) of this section.

(i) The results of any applicability determinations (*e.g.*, HAP content of coating products; halogenated vent stream determinations; group determinations for storage tanks, wastewater, and transfer operations; and equipment that is in organic HAP service).

(ii) The results of performance tests, engineering analyses, design evaluations, flare compliance assessments, inspections and repairs, and calculations used to demonstrate initial compliance according to §§ 63.8005 through 63.8025 and 63.8055. For performance tests, results must include descriptions of sampling and analysis procedures and quality assurance procedures.

(iii) Descriptions of monitoring devices, monitoring frequencies, and the operating limits established during the initial compliance demonstrations, including data and calculations to support the levels you establish.

(iv) Identification of parts of the affected source that are subject to overlapping requirements described in § 63.8090 and the authority under which you will comply.

(v) Identify storage tanks for which you are complying with the vapor balancing alternative in § 63.8010(e).

(vi) If you transfer Group 1 wastewater stream to an offsite facility for treatment, include the name and location of the transferee and a description of the Group 1 wastewater stream that is sent to the treatment facility. If the offsite facility provides enhanced biological treatment, also include the certification required by § 63.8020(d) that the offsite facility will comply with the requirements of this subpart.

(e) *Compliance report.* The compliance report must contain the information specified in paragraphs (e)(1) through (8) of this section.

(1) Company name and address.

(2) Statement by a responsible official with that official's name, title, and signature, certifying the accuracy of the content of the report.

(3) Date of report and beginning and ending dates of the reporting period.

(4) Applicable records and information for periodic reports as specified in referenced subparts F, SS, TT, UU, and WW of this part 63.

(5) For each SSM during which excess emissions occur, the compliance report must include the information specified in paragraphs (e)(5)(i) and (ii) of this section.

(i) Records that the procedures specified in your startup, shutdown, and malfunction plan (SSMP) were followed or documentation of actions taken that are not consistent with the SSMP.

(ii) A description of each malfunction.

(6) The compliance report must contain the information on deviations, as defined in § 63.8105, according to paragraphs (e)(6)(i), (ii), and (iii) of this section.

(i) If there are no deviations from any emission limit, operating limit, or work practice standard specified in this subpart, include a statement that there were no deviations from the emission limits, operating limits, or work practice standards during the reporting period.

(ii) For each deviation from an emission limit, operating limit, and work practice standard that occurs at an affected source where you are not using a continuous monitoring system (CMS) to comply with the emission limit or work practice standards in this subpart, you must include the information in paragraphs (e)(6)(ii)(A) through (C) of this section.

(A) The total operating time of each affected source during the reporting period.

(B) Information on the number, duration, and cause of deviations

(including unknown cause, if applicable), as applicable, and the corrective action taken.

(C) Operating logs for the day(s) during which the deviation occurred, except operating logs are not required for deviations of the work practice standards for equipment leaks.

(iii) For each deviation from an emission limit or operating limit occurring at an affected source where you are using a CMS to comply with the emission limit in this subpart, you must include the information in paragraphs (e)(6)(iii)(A) through (K) of this section. This includes periods of SSM.

(A) The date and time that each CMS was inoperative, except for zero (low-level) and high-level checks.

(B) The date, time, and duration that each CEMS was out-of-control, including the information in § 63.8(c)(8).

(C) The date and time that each deviation started and stopped, and whether each deviation occurred during a period of startup, shutdown, or malfunction or during another period.

(D) A summary of the total duration of the deviation during the reporting period, and the total duration as a percent of the total source operating time during that reporting period.

(E) A breakdown of the total duration of the deviations during the reporting period into those that are due to startup, shutdown, control equipment problems, process problems, other known causes, and other unknown causes.

(F) A summary of the total duration of CMS downtime during the reporting period, and the total duration of CMS downtime as a percent of the total source operating time during that reporting period.

(G) An identification of each HAP that is known to be in the emission stream or wastewater stream, as applicable.

(H) A description of the product being produced.

(I) Identification of the CMS.

(J) The date of the latest CMS certification or audit.

(K) The operating day or operating block average values of monitored parameters for each day(s) during which the deviation occurred.

(7) If you use a CEMS, and there were no periods during which it was out-of-control as specified in § 63.8(c)(7), include a statement that there were no periods during which the CEMS was out-of-control during the reporting period.

(8) *Notification of process change.* (i) Except as specified in paragraph (e)(8)(ii) of this section, whenever you change any of the information submitted in either the notification of compliance status report or any previously reported change to the notification of compliance status report, you must document the change in your compliance report. The notification must include all of the information in paragraphs (e)(8)(i)(A) and (B) of this section.

(A) Revisions to any of the information reported in the original notification of compliance status report under paragraph (d) of this section.

(B) Information required by the notification of compliance status report under paragraph (d) of this section for changes involving the addition of processes or equipment at the affected source.

(ii) You must submit a report 60 days before the scheduled implementation date of any of the changes identified in paragraphs (e)(8)(ii)(A), (B), or (C) of this section.

(A) Any change to the information contained in either the precompliance report or any previously reported change to the precompliance report.

(B) A change in the status of a control device from small to large.

(C) A change in compliance status.

§ 63.8080 What records must I keep?

You must keep the records specified in paragraphs (a) through (g) of this section.

(a) Each applicable record required by subpart A of this part 63 and in referenced subparts SS, TT, UU, and WW of this part 63.

(b) If complying with emissions averaging, records of the monthly number of batches for each process vessel, the quarterly actual emissions for each process vessel, the quarterly estimated emissions for each process vessel if it had been controlled as specified in Table 1 to this subpart, and comparison of the sums of the quarterly actual and estimated emissions as specified in § 63.8050(d).

(c) A record of each time a safety device is opened to avoid unsafe conditions in accordance with § 63.8000(b)(2).

(d) Records of the results of each CPMS calibration check and the maintenance performed, as specified in § 63.8000(d)(5).

(e) For each CEMS, you must keep the records of the date and time that each deviation started and stopped, and whether the deviation occurred during a period of startup, shutdown, or malfunction or during another period.

(f) In the SSMP required by § 63.6(e)(3), you are not required to include Group 2 or non-affected emission points. For equipment leaks only, the SSMP requirement is limited to control devices and is optional for other equipment.

(g) If you establish separate operating limits as allowed in § 63.8005(e), you must maintain a log of operation or a daily schedule indicating the time when you change from one operating limit to another.

Other Requirements and Information

§ 63.8090 What compliance options do I have if part of my plant is subject to both this subpart and another subpart?

(a) *Compliance with 40 CFR parts 264 and 265, subparts AA, BB, and/or CC.* (1) After the compliance dates specified in § 63.7995, if a control device that you use to comply with this subpart is also subject to monitoring, recordkeeping, and reporting requirements in 40 CFR part 264, subpart AA, BB, or CC; or the monitoring and recordkeeping requirements in 40 CFR part 265, subpart AA, BB, or CC; and you comply with the periodic reporting requirements under 40 CFR part 264, subpart AA, BB, or CC that would apply to the device if your facility had final-permitted status, you may elect to comply either with the monitoring, recordkeeping, and reporting requirements of this subpart; or with the monitoring and recordkeeping requirements in 40 CFR part 264 or 265 and the reporting requirements in 40 CFR part 264, as described in this paragraph (a), which constitute compliance with the monitoring, recordkeeping, and reporting requirements of this subpart. If you elect to comply with the monitoring, recordkeeping, and reporting requirements in 40 CFR parts 264 and/or 265, you must report the information required for the compliance report in § 63.8075(e), and you must identify in the notification of compliance status report required by § 63.8075(d) the monitoring, recordkeeping, and reporting authority under which you will comply.

(2) After the compliance dates specified in this section, if any equipment at an affected source that is subject to this subpart is also subject to 40 CFR part 264, subpart BB or to 40 CFR part 265, subpart BB, then compliance with the recordkeeping and reporting requirements of 40 CFR part 264 and/or 265 may be used to comply with the recordkeeping and reporting requirements of § 63.1255, to the extent that the requirements of 40 CFR part 264 and/or 265 duplicate the requirements of this subpart. You must identify in the notification of compliance status report required by § 63.8075(d) if you will comply with the recordkeeping and reporting authority under 40 CFR part 264 and/or 265.

(b) *Compliance with 40 CFR part 60, subpart Kb.* After the compliance dates specified in § 63.7995, you are in compliance with this subpart for any storage tank that is assigned to miscellaneous coating manufacturing operations and that is both controlled with a floating roof and in compliance with the provisions of 40 CFR part 60, subpart Kb. You are in compliance with this subpart if you have a storage tank with a fixed roof, closed-vent system, and control device in compliance with 40 CFR part 60, subpart Kb, you must comply with the monitoring, recordkeeping, and reporting requirements in this subpart. You must also identify in your notification of compliance status report required by § 63.8075(d) which storage tanks are in compliance with 40 CFR part 60, subpart Kb.

§ 63.8095 What parts of the General Provisions apply to me?

Table 10 to this subpart shows which parts of the General Provisions in §§ 63.1 through 63.15 apply to you.

§ 63.8100 Who implements and enforces this subpart?

(a) This subpart can be implemented and enforced by us, the U.S. Environmental Protection Agency (U.S. EPA), or a delegated authority such as your State, local, or tribal agency. If the U.S. EPA Administrator has delegated authority to your State, local, or tribal agency, then that agency also has the authority to implement and enforce this subpart. You should contact your U.S. EPA Regional Office to find out if this subpart is delegated to your State, local, or tribal agency.

(b) In delegating implementation and enforcement authority of this subpart to a State, local, or tribal agency under 40 CFR part 63, subpart E, the authorities contained in paragraphs (b)(1) through (4) of this section are retained by the Administrator of U.S. EPA and are not delegated to the State, local, or tribal agency.

(1) Approval of alternatives to the non-opacity emission limits and work practice standards in § 63.8000(a) under § 63.6(g).

(2) Approval of major alternatives to test methods under § 63.7(e)(2)(ii) and (f) and as defined in § 63.90.

(3) Approval of major alternatives to monitoring under § 63.8(f) and as defined in § 63.90.

(4) Approval of major alternatives to recordkeeping and reporting under § 63.10(f) and as defined in § 63.90.

§ 63.8105 What definitions apply to this subpart?

(a) For an affected source complying with the requirements in subpart SS of this part 63, the terms used in this subpart and in subpart SS of this part 63 have the meaning given them in § 63.981, except as specified in §§ 63.8000(d)(5)(ii) and (7), 63.8010(c)(2), 63.8025(b), and paragraph (g) of this section.

(b) For an affected source complying with the requirements in subpart TT of this part 63, the terms used in this subpart and in subpart TT of this part 63 have the meaning given them in § 63.1001.

(c) For an affected source complying with the requirements in subpart UU of this part 63, the terms used in this subpart and in subpart UU of this part 63 have the meaning given them in § 63.1020.

(d) For an affected source complying with the requirements in subpart WW of this part 63, the terms used in this subpart and subpart WW of this part 63 have the meaning given them in § 63.1061, except as specified in §§ 63.8000(d)(7), 63.8010(c)(2), and paragraph (g) of this section.

(e) For an affected source complying with requirements in §§ 63.1253, 63.1257, and 63.1258, the terms used in this subpart and in §§ 63.1253, 63.1257, and 63.1258 have the meaning given them in § 63.1251, except as specified in § 63.8000(d)(7) and paragraph (g) of this section.

(f) For an affected source complying with the requirements of § 63.104, the terms used in this subpart and in § 63.104 have the meaning given them in § 63.101, except as specified in § 63.8000(d)(7) and paragraph (g) of this section.

(g) All other terms used in this subpart are defined in the CAA, in 40 CFR 63.2, and in this paragraph (g). If a term is defined in § 63.2, § 63.981, § 63.1001, § 63.1020, § 63.1061, or § 63.1251 and in this paragraph (g), the definition in this paragraph (g) applies for the purposes of this subpart.

Bulk loading means the loading, into a tank truck or rail car, of liquid coating products that contain one or more of the organic HAP, as defined in section 112 of the CAA, from a loading rack. A loading rack is the system used to fill tank trucks and railcars at a single geographic site.

Coating means any material such as a paint, ink, or adhesive that is intended to be applied to a substrate and consists of a mixture of resins, pigments, solvents, and/or other additives. Typically, these materials are described by Standard Industry Classification (SIC) codes 285 or 289 and North American Industry Classification System (NAICS) codes 3255 and 3259.

Construction means the onsite fabrication, erection, or installation of an affected source. Addition of new equipment to an affected source does not constitute construction, but it may constitute reconstruction of the affected source if it satisfies the definition of reconstruction in § 63.2.

Deviation means any instance in which an affected source subject to this subpart, or an owner or operator of such a source:

(1) Fails to meet any requirement or obligation established by this subpart including, but not limited to, any emission limit, operating limit, or work practice standard;

(2) Fails to meet any term or condition that is adopted to implement an applicable requirement in this subpart and that is included in the operating permit for any affected source required to obtain such a permit; or

(3) Fails to meet any emission limit, operating limit, or work practice standard in this subpart during startup, shutdown, or malfunction, regardless of whether or not such failure is permitted by this subpart.

Enhanced biological treatment system means an aerated, thoroughly mixed treatment unit(s) that contains biomass suspended in water followed by a clarifier that removes biomass from the treated water and recycles recovered biomass to the aeration unit. The mixed liquor volatile suspended solids (biomass) is greater than 1 kilogram per cubic meter throughout each aeration unit. The biomass is suspended and aerated in the water of the aeration unit(s) either by submerged air flow or mechanical agitation. A thoroughly mixed treatment unit is a unit that is designed and operated to approach or achieve uniform biomass distribution and organic compound concentration throughout the aeration unit by quickly dispersing the recycled biomass and the wastewater entering the unit.

Excess emissions means emissions greater than those allowed by the emission limit.

Group 1a storage tank means a storage tank at an existing source with a capacity greater than or equal to 20,000 gal storing material that has a maximum true vapor pressure of total organic HAP greater than or equal to 1.9 pounds per square inch, absolute (psia). Group 1a storage tank also means a storage tank at a new source with either a capacity greater than or equal to 25,000 gal storing material that has a maximum true vapor pressure of total HAP greater than or equal to 0.1 psia or a capacity

greater than or equal to 20,000 gal and less than 25,000 gal storing material that has a maximum true vapor pressure of total HAP greater than or equal to 1.5 psia.

Group 1b storage tank means a storage tank at a new source that has a capacity greater than or equal to 10,000 gal, stores material that has a maximum true vapor pressure of total organic HAP greater than or equal to 0.02 psia, and is not a Group 1a storage tank.

Group 2 storage tank means a storage tank that does not meet the definition of a Group 1a or Group 1b storage tank.

Group 1 transfer operations means all bulk loading of coating products if the coatings contain greater than or equal to 3.0 million gallons per year (gal/yr) of HAP with a weighted average HAP partial pressure greater than or equal to 1.5 psia.

Group 2 transfer operations means bulk loading of coating products that does not meet the definition of Group 1 transfer operations.

Group 1 wastewater stream means a wastewater stream that contains total partially soluble and soluble HAP at an annual average concentration greater than or equal to 4,000 parts per million by weight (ppmw) and load greater than or equal to 750 pounds per year (lb/yr) at an existing source or greater than or equal to 1,600 ppmw and any partially soluble and soluble HAP load at a new source.

Group 2 wastewater stream means a wastewater stream that does not meet the definition of a Group 1 wastewater stream.

Halogenated vent stream means a vent stream determined to contain halogen atoms in organic compounds at a concentration greater than or equal to 20 ppmv as determined by the procedures specified in § 63.8000(b).

Hydrogen halide and halogen HAP means hydrogen chloride, chlorine, and hydrogen fluoride.

In organic HAP service means that a piece of equipment either contains or contacts a fluid (liquid or gas) that is at least 5 percent by weight of total organic HAP as determined according to the provisions of § 63.180(d). The provisions of § 63.180(d) also specify how to determine that a piece of equipment is not in organic HAP service.

Large control device means a control device that controls total HAP emissions of greater than or equal to 10 tpy, before control.

Maximum true vapor pressure means the equilibrium partial pressure exerted by the total organic HAP in the stored or transferred liquid at the temperature equal to the highest calendar-month average of the liquid storage or transfer temperature for liquids stored or transferred above or below the ambient temperature or at the local maximum monthly average temperature as reported by the National Weather Service for liquids stored or transferred at the ambient temperature, as determined:

(1) In accordance with methods described in American Petroleum Institute Publication 2517, Evaporative Loss From External Floating-Roof Tanks (incorporated by reference as specified in § 63.14 of subpart A of this part 63); or

(2) As obtained from standard reference texts; or

(3) As determined by the American Society for Testing and Materials Method D2879–83 (incorporated by reference as specified in § 63.14 of subpart A of this part); or

(4) Any other method approved by the Administrator.

Partially soluble HAP means HAP listed in Table 7 of this subpart.

Point of determination (POD) means each point where process wastewater exits the miscellaneous coating operations.

Note to definition for point of determination: The regulation allows determination of the characteristics of a wastewater stream at the point of determination or downstream of the point of determination if corrections are made for changes in flow rate and annual average concentration of partially soluble and soluble HAP compounds as determined in § 63.144. Such changes include losses by air emissions; reduction of annual average concentration or changes in flow rate by mixing with other water or wastewater streams; and reduction in flow rate or annual average concentration by treating or otherwise handling the wastewater stream to remove or destroy HAP.

Process vessel means any stationary or portable tank or other vessel with a capacity greater than or equal to 250 gal and in which mixing, blending, diluting, dissolving, temporary holding, and other processing steps occur in the manufacturing of a coating.

Process vessel vent means a vent from a process vessel or vents from multiple process vessels that are manifolded together into a common header, through which a HAP-containing gas stream is, or has the potential to be, released to the atmosphere. Emission streams that are undiluted and uncontrolled containing less than 50 ppmv HAP, as determined through process knowledge that no HAP are present in the emission stream or using an engineering assessment as discussed in § 63.1257(d)(2)(ii), test data using Method 18 of 40 CFR part 60, appendix A, or any other test method that has been validated according to the procedures in Method 301 of appendix A of this part, are not considered process vessel vents. Flexible elephant trunk systems when used with closed vent systems and drawing ambient air (*i.e.*, the system is not ducted, piped, or otherwise connected to the unit operations) away from operators when vessels are opened are not process vessel vents. Process vessel vents do not include vents on storage tanks, wastewater emission sources, or pieces of equipment subject to the requirements in Table 3 of this subpart. A gas stream going to a fuel gas system is not a process vessel vent. A gas stream routed to a process for a process purpose is not a process vessel vent.

Recovery device, as used in the wastewater provisions, means an individual unit of equipment used for the purpose of recovering chemicals for fuel value (*i.e.*, net positive heating value), use, reuse, or for sale for fuel value, use, or reuse. Examples of equipment that may be recovery devices include organic removal devices such as decanters, strippers, or thin-film evaporation units. To be a recovery device, a decanter and any other equipment based on the operating principle of gravity separation must receive only multi-phase liquid streams. A recovery device is considered part of the miscellaneous coating manufacturing operations.

Responsible official means responsible official as defined in 40 CFR 70.2.

Safety device means a closure device such as a pressure relief valve, frangible disc, fusible plug, or any other type of device which functions exclusively to prevent physical damage or permanent deformation to a unit or its air emission control equipment by venting gases or vapors directly to the atmosphere during unsafe conditions resulting from an unplanned, accidental, or emergency event. For the purposes of this subpart, a safety device is not used for routine venting of gases or vapors from the vapor headspace underneath a cover such as during filling of the unit or to adjust the pressure in response to normal daily diurnal ambient temperature fluctuations. A safety device is designed to remain in a closed position during normal operations and open only when the internal pressure, or another relevant parameter, exceeds the device threshold setting applicable to the air emission control equipment as determined by the owner or operator based on manufacturer recommendations, applicable regulations, fire protection and prevention codes and practices, or other requirements for the safe handling of flammable, combustible, explosive, reactive, or hazardous materials.

Shutdown means the cessation of operation of an affected source, any process vessels within an affected source, or equipment required or used to comply with this subpart if steps taken to cease operation differ from those under routine procedures for removing the vessel or equipment from service. Shutdown also applies to the emptying and degassing of storage tanks.

Small control device means a control device that controls total HAP emissions of less than 10 tpy, before control.

Soluble HAP means the HAP listed in Table 8 of this subpart.

Startup means the setting in operation of a new affected source. For new equipment added to an affected source, including equipment required or used to comply with this subpart, startup means the first time the equipment is put into operation. Startup includes the setting in operation of equipment any time the steps taken differ from routine procedures for putting the equipment into operation.

Storage tank means a tank or other vessel that is used to store organic liquids that contain one or more HAP as raw material feedstocks or products. The following are not considered storage tanks for the purposes of this subpart:

(1) Vessels permanently attached to motor vehicles such as trucks, railcars, barges, or ships;

(2) Pressure vessels designed to operate in excess of 204.9 kilopascals and without emissions to the atmosphere;

(3) Vessels storing organic liquids that contain HAP only as impurities;

(4) Wastewater storage tanks; and

(5) Process vessels.

Total organic compounds or (TOC) means the total gaseous organic compounds (minus methane and ethane) in a vent stream.

Wastewater storage tank means a stationary structure that is designed to contain an accumulation of wastewater and is constructed primarily of nonearthen materials (*e.g.*, wood, concrete, steel, plastic) which provide structural support.

Wastewater stream means water that is discarded from miscellaneous coating manufacturing operations through a POD, and that contains an annual average concentration of total partially soluble and soluble HAP compounds of at least 1,600 ppmw at any flow rate. For the purposes of this subpart, noncontact cooling water is not considered a wastewater stream.

Work practice standard means any design, equipment, work practice, or operational standard, or combination thereof, that is promulgated pursuant to section 112(h) of the Clean Air Act.

Tables to Subpart HHHHH of Part 63

As required in § 63.8005, you must meet each emission limit and work practice standard in the following table that applies to your process vessels:

TABLE 1 TO SUBPART HHHHH OF PART 63—EMISSION LIMITS AND WORK PRACTICE STANDARDS FOR PROCESS VESSELS

For each . . .	You must . . .	And you must . . .
1. Portable process vessel at an existing source.	Equip the vessel with a cover or lid that must be in place at all times when the vessel contains a HAP.	Non applicable
2. Stationary process vessel at an existing source.	a. Equip the vessel with a cover or lid that must be in place at all times when the vessel contains a HAP; or.	i. Considering both capture and any combination of control (except a flare), reduce emissions by ≥75 percent by weight for each HAP with a vapor pressure ≥0.6 kPa and by ≥60 percent for each HAP with a vapor pressure <0.6 kPa.
	b. Equip the vessel with a tightly fitting vented cover or lid that must be closed at all times when the vessel contains HAP.	i. Reduce emissions of each HAP with a vapor pressure ≥0.6 kPa by ≥75 percent by weight and each HAP with a vapor pressure <0.6 kPa by ≥60 percent by weight by venting emissions through a closed-vent system to any combination of control devices (except a flare); or ii. Reduce emissions of total organic HAP by venting emissions from a non-halogenated vent stream through a closed-vent system to a flare; or iii. Reduce emissions of total organic HAP by venting emissions through a closed-vent system to a condenser that reduces the outlet gas temperature to: <10°C if the process vessel contains HAP with a partial pressure <0.6 kPa, or <2°C if the process vessel contains HAP with a partial pressure ≥0.6 kPa and <17.2 kPa, or <−5°C if the process vessel contains HAP with a partial pressure ≥17.2 kPa.

TABLE 1 TO SUBPART HHHHH OF PART 63—EMISSION LIMITS AND WORK PRACTICE STANDARDS FOR PROCESS VESSELS—Continued

For each . . .	You must . . .	And you must . . .
3. Portable and stationary process vessel at a new source.	a. Equip the vessel with a tightly fitting vented cover or lid that must be closed at all times when the vessel contains HAP.	i. Reduce emissions of total HAP by ≥95 percent by weight by venting emissions through a closed-vent system to any combination of control devices (except a flare); or ii. Reduce emissions of total organic HAP by venting emissions from a non-halogenated vent stream through a closed-vent system to a flare; or iii. Reduce emissions of total organic HAP by venting emissions through a closed-vent system to a condenser that reduces the outlet gas temperature to: <−4°C if the process vessel contains HAP with a partial pressure <0.7 kPa, or <20°C if the process vessel contains HAP with a partial pressure ≥0.7 kPa and <17.2 kPa, or <−30°C if the process vessel contains HAP with a partial pressure ≥17.2 kPa.
4. Halogenated vent steam from a process vessel subject to the requirements of item 2 or 3 of this table for which you use a combustion control device to control organic HAP emissions.	a. Use a halogen reduction device after the combustion control device; or	i. Reduce overall emissions of hydrogen halide and halogen HAP by ≥95 percent; or ii. Reduce overall emissions of hydrogen halide and halogen HAP to ≤0.45 kilogram per hour (kg/hr).
	b. Use a halogen reduction device before the combustion control device.	Reduce the halogen atom mass emission rate to ≤0.45 kg/hr.

As required in § 63.8010, you must meet each emission limit in the following table that applies to your storage tanks:

TABLE 2 TO SUBPART HHHHH OF PART 63—EMISSION LIMITS FOR STORAGE TANKS

For each . . .	Then you must . . .
1. Group 1a storage tank	a. Comply with the requirements of subpart WW of this part, except as specified in § 63.8010(b); or b. Reduce total organic HAP emissions from the storage tank by ≥90 percent by weight by venting emissions through a closed-vent system to any combination of control devices (excluding a flare); or c. Reduce total organic HAP emissions from the storage tank by venting emissions from a non-halogenated vent stream through a closed-vent system to a flare.
2. Group 1b storage tank	a. Comply with the requirements of subpart WW of this part, except as specified in § 63.8010(b); or b. Reduce total organic HAP emissions from the storage tank by ≥80 percent by weight by venting emissions through a closed-vent system to any combination of control devices (excluding a flare); or c. Reduce total organic HAP emissions from the storage tank by venting emissions from a non-halogenated vent stream through a closed-vent system to a flare.

As required in § 63.8015, you must meet each requirement in the following table that applies to your equipment leaks:

TABLE 3 TO SUBPART HHHHH OF PART 63—REQUIREMENTS FOR EQUIPMENT LEAKS

For all . . .	You must . . .
1. Equipment that is in organic HAP service at an existing source.	a. Comply with the requirements in §§ 63.424(a) through (d) and 63.428(e), (f), and (h)(4), except as specified in § 63.8015(b); or b. Comply with the requirements of subpart TT of this part; or c. Comply with the requirements of subpart UU of this part, except as specified in § 63.8015(c) and (d).
2. Equipment that is in organic HAP service at a new source.	a. Comply with the requirements of subpart TT of this part; or b. Comply with the requirements of subpart UU of this part, except as specified in § 63.8015(c) and (d).

TABLE 4 TO SUBPART HHHHH OF PART 63—EMISSION LIMITS AND WORK PRACTICE STANDARDS FOR WASTEWATER STREAMS

For each . . .	You must . . .
1. Wastewater tank used to store a Group 1 wastewater stream.	Maintain a fixed roof, which may have openings necessary for proper venting of the tank, such as pressure/vacuum vent or j-pipe vent.
2. Group 1 wastewater stream.	a. Convey using hard-piping and treat the wastewater as a hazardous waste in accordance with 40 CFR part 264, 265, or 266 either onsite or offsite; or b. If the wastewater contains <50 ppmw of partially soluble HAP, you may elect to treat the wastewater in an enhanced biological treatment system that is located either onsite or offsite.

As required in § 63.8025, you must meet each emission limit and work practice standard in the following table that applies to your transfer operations:

TABLE 5 TO SUBPART HHHHH OF PART 63—EMISSION LIMITS AND WORK PRACTICE STANDARDS FOR TRANSFER OPERATIONS

For each . . .	You must . . .
1. Group 1 transfer operation vent stream.	a. Reduce emissions of total organic HAP by ≥75 percent by weight by venting emissions through a closed-vent system to any combination of control devices (except a flare); or b. Reduce emissions of total organic HAP by venting emissions from a non-halogenated vent stream through a closed-vent system to a flare; or c. Use a vapor balancing system designed and operated to collect organic HAP vapors displaced from tank trucks and railcars during loading and route the collected HAP vapors to the storage tank from which the liquid being loaded originated or to another storage tank connected by a common header.
2. Halogenated Group 1 transfer operation vent stream for which you use a combustion device to control organic HAP emissions.	a. Use a halogen reduction device after the combustion device to reduce emissions of hydrogen halide and halogen HAP by ≥95 percent by weight or to ≤0.45 kg/hr; or b. Use a halogen reduction device before the combustion device to reduce the halogen atom mass emission rate to ≤0.45 kg/hr.

As required in § 63.8030, you must meet each requirement in the following table that applies to your heat exchange systems:

TABLE 6 TO SUBPART HHHHH OF PART 63—REQUIREMENTS FOR HEAT EXCHANGE SYSTEMS

For each . . .	You must . . .
Heat exchange system, as defined in § 63.101.	Comply with the requirements in § 63.104, except as specified in § 63.8030.

As specified in § 63.8020, the partially soluble HAP in wastewater that are subject to management and treatment requirements in this subpart are listed in the following table:

TABLE 7 TO SUBPART HHHHH OF PART 63—PARTIALLY SOLUBLE HAZARDOUS AIR POLLUTANTS

Chemical name . . .	CAS No.
1. 1,1,1-Trichloroethane (methyl chloroform)	71556
2. 1,1,2,2-Tetrachloroethane	79345
3. 1,1,2-Trichloroethane	79005
4. 1,1-Dichloroethylene (vinylidene chloride)	75354
5. 1,2-Dibromoethane	106934
6. 1,2-Dichloroethane (ethylene dichloride)	107062
7. 1,2-Dichloropropane	78875
8. 1,3-Dichloropropene	542756
9. 2,4,5-Trichlorophenol	95954
10. 2-Butanone (MEK)	78933
11. 1,4-Dichlorobenzene	106467
12. 2-Nitropropane	79469
13. 4-Methyl-2-pentanone (MIBK)	108101
14. Acetaldehyde	75070
15. Acrolein	107028

TABLE 7 TO SUBPART HHHHH OF PART 63—PARTIALLY SOLUBLE HAZARDOUS AIR POLLUTANTS—Continued

Chemical name . . .	CAS No.
16. Acrylonitrile	107131
17. Allyl chloride	107051
18. Benzene	71432
19. Benzyl chloride	100447
20. Biphenyl	92524
21. Bromoform (tribromomethane)	75252
22. Bromomethane	74839
23. Butadiene	106990
24. Carbon disulfide	75150
25. Chlorobenzene	108907
26. Chloroethane (ethyl chloride)	75003
27. Chloroform	67663
28. Chloromethane	74873
29. Chloroprene	126998
30. Cumene	98828
31. Dichloroethyl ether	111444
32. Dinitrophenol	51285
33. Epichlorohydrin	106898
34. Ethyl acrylate	140885
35. Ethylbenzene	100414
36. Ethylene oxide	75218
37. Ethylidene dichloride	75343
38. Hexachlorobenzene	118741
39. Hexachlorobutadiene	87683
40. Hexachloroethane	67721
41. Methyl methacrylate	80626
42. Methyl-t-butyl ether	1634044
43. Methylene chloride	75092
44. N-hexane	110543
45. N,N-dimethylaniline	121697
46. Naphthalene	91203
47. Phosgene	75445
48. Propionaldehyde	123386
49. Propylene oxide	75569
50. Styrene	100425
51. Tetrachloroethylene (perchloroethylene)	79345
52. Tetrachloromethane (carbon tetrachloride)	56235
53. Toluene	108883
54. Trichlorobenzene (1,2,4–)	120821
55. Trichloroethylene	79016
56. Trimethylpentane	540841
57. Vinyl acetate	108054
58. Vinyl chloride	75014
59. Xylene (m)	108383
60. Xylene (o)	95476
61. Xylene (p)	106423

As specified in § 63.8020, the soluble HAP in wastewater that are subject to management and treatment requirements of this subpart are listed in the following table:

TABLE 8 TO SUBPART FFFF OF PART 63—SOLUBLE HAZARDOUS AIR POLLUTANTS

Chemical name . . .	CAS No.
1. Acetonitrile	75058
2. Acetophenone	98862
3. Diethyl sulfate	64675
4. Dimethyl hydrazine (1,1)	58147
5. Dimethyl sulfate	77781
6. Dinitrotoluene (2,4)	121142
7. Dioxane (1,4)	123911
8. Ethylene glycol dimethyl ether	110714
9. Ethylene glycol monobutyl ether acetate	112072
10. Ethylene glycol monomethyl ether acetate	110496
11. Isophorone	78591
12. Methanol	67561
13. Nitrobenzene	98953
14. Toluidine (o-)	95534

TABLE 8 TO SUBPART FFFF OF PART 63—SOLUBLE HAZARDOUS AIR POLLUTANTS—Continued

Chemical name . . .	CAS No.
15. Triethylamine	121448

As required in § 63.8075(a) and (b), you must submit each report that applies to you on the schedule shown in the following table:

TABLE 9 TO SUBPART HHHHH OF PART 63—REQUIREMENTS FOR REPORTS

You must submit a . . .	The report must contain . . .	You must submit the report . . .
1. Precompliance report	The information specified in § 63.8075(c)	At least 6 months prior to the compliance date; or for new sources. with the application for approval of construction or reconstruction.
2. Notification of compliance status report	The information specified in § 63.8075(d)	No later than 150 days after the compliance date specified in § 63.7995.
3. Compliance report	The information specified in § 63.8075(e)	Semiannually according to the requirements in § 63.8075(b).

As specified in § 63.8095, the parts of the General Provisions that apply to you are shown in the following table:

TABLE 10 TO SUBPART HHHHH OF PART 63—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART HHHHH

Citation	Subject	Explanation
§ 63.1	Applicability	Yes.
§ 63.2	Definitions	Yes.
§ 63.3	Units and Abbreviations	Yes.
§ 63.4	Prohibited Activities	Yes.
§ 63.5	Construction/Reconstruction	Yes.
§ 63.6(a)	Applicability	Yes.
§ 63.6(b)(1)–(4)	Compliance Dates for New and Reconstructed sources.	Yes.
§ 63.6(b)(5)	Notification	Yes.
§ 63.6(b)(6)	[Reserved].	
§ 63.6(b)(7)	Compliance Dates for New and Reconstructed Area Sources That Become Major.	Yes.
§ 63.6(c)(1)–(2)	Compliance Dates for Existing Sources.	Yes.
§ 63.6(c)(3)–(4)	[Reserved].	
§ 63.6(c)(5)	Compliance Dates for Existing Area Sources That Become Major.	Yes.
§ 63.6(d)	[Reserved].	
§ 63.6(e)(1)–(2)	Operation & Maintenance	Yes.
§ 63.6(e)(3)(i), (ii), and (v) through (viii).	SSMP	Yes, except information regarding Group 2 emission points and equipment leaks is not required in the SSMP, as specified in § 63.8080(f).
§ 63.6(e)(3)(iii) and (iv)	Recordkeeping and Reporting During Startup, Shutdown, and Malfunction (SSM).	No, §§ 63.998(d)(3) and 63.998(c)(1)(ii)(D) through (G) specify the recordkeeping requirement for SSM events, and § 63.8075(e)(5) specifies reporting requirements.
§ 63.6(f)(1)	Compliance Except During SSM	Yes.
§ 63.6(f)(2)–(3)	Methods for Determining Compliance.	Yes.
§ 63.6(g)(1)–(3)	Alternative Standard	Yes.
§ 63.6(h)	Opacity/Visible Emission (VE) Standards.	Only for flares for which Method 22 observations are required as part of a flare compliance assessment.
§ 63.6(i)(1)–(14)	Compliance Extension	Yes.
§ 63.6(j)	Presidential Compliance Exemption.	Yes.
§ 63.7(a)(1)–(2)	Performance Test Dates	Yes, except substitute 150 days for 180 days.
§ 63.7(a)(3)	CAA Section 114 Authority	Yes, and this paragraph also applies to flare compliance assessments as specified under § 63.997(b)(2).
§ 63.7(b)(1)	Notification of Performance Test	Yes.

TABLE 10 TO SUBPART HHHHH OF PART 63—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART HHHHH—Continued

Citation	Subject	Explanation
§63.7(b)(2)	Notification of Rescheduling	Yes.
§63.7(c)	Quality Assurance/Test Plan	Yes, except the test plan must be submitted with the notification of the performance test if the control device controls process vessels.
§63.7(d)	Testing Facilities	Yes.
§63.7(e)(1)	Conditions for Conducting Performance Tests.	Yes, except that performance tests for process vessels must be conducted under worst-case conditions as specified in §63.8005.
§63.7(e)(2)	Conditions for Conducting Performance Tests.	Yes.
§63.7(e)(3)	Test Run Duration	Yes.
§63.7(f)	Alternative Test Method	Yes.
§63.7(g)	Performance Test Data Analysis	Yes.
§63.7(h)	Waiver of Tests	Yes.
§63.8(a)(1)	Applicability of Monitoring Requirements.	Yes.
§63.8(a)(2)	Performance Specifications	Yes.
§63.8(a)(3)	[Reserved].	
§63.8(a)(4)	Monitoring with Flares	Yes.
§63.8(b)(1)	Monitoring	Yes.
§63.8(b)(2)–(3)	Multiple Effluents and Multiple Monitoring Systems.	Yes.
§63.8(c)(1)	Monitoring System Operation and Maintenance.	Yes.
§63.8(c)(1)(i)	Maintain and operate CMS	Yes.
§63.8(c)(1)(ii)	Routine repairs	Yes.
§63.8(c)(1)(iii)	SSMP for CMS	Yes.
§63.8(c)(2)–(3)	Monitoring System Installation	Yes.
§63.8(c)(4)	Requirements	Only for CEMS; requirements for CPMS are specified in referenced subpart SS of 40 CFR part 63. This subpart does not contain requirements for continuous opacity monitoring systems (COMS).
§63.8(c)(4)(i)	CMS Requirements	No. This subpart does not require COMS.
§63.8(c)(4)(ii)	CMS requirements	Yes.
§63.8(c)(5)	COMS Minimum Procedures	No. This subpart does not contain opacity or VE limits.
§63.8(c)(6)	CMS Requirements	Only for CEMS; requirements for CPMS are specified in referenced subpart SS of 40 CFR part 63.
§63.8(c)(7)–(8)	CMS Requirements	Only for CEMS. Requirements for CPMS are specified in referenced subpart SS of 40 CFR part 63.
§63.8(d)	CMS Quality Control	Only for CEMS; requirements for CPMS are specified in referenced subpart SS of 40 CFR part 63.
§63.8(e)	CMS Performance Evaluation	Section 63.8(e)(6)(ii) does not apply because this subpart does not require COMS. Other sections apply only for CEMS; requirements for CPMS are specified in referenced subpart SS of 40 CFR part 63.
§63.8(f)(1)–(5)	Alternative Monitoring Method	Yes, except you may also request approval using the precompliance report.
§63.8(f)(6)	Alternative to Relative Accuracy Test.	Only for CEMS.
§63.8(g)(1)–(4)	Data Reduction	Only when using CEMS, except §63.8(g)(2) does not apply because data reduction requirements for CEMS are specified in §63.8000(d)(4)(iv). The requirements for COMS do not apply because this subpart has no opacity or VE limits.
§63.8(g)(5)	Data Reduction	No. Requirements for CEMS are specified in §63.8000(d)(4). Requirements for CPMS are specified in referenced subpart SS of 40 CFR part 63.
§63.9(a)	Notification Requirements	Yes.
§63.9(b)(1)–(5)	Initial Notifications	Yes.
§63.9(c)	Request for Compliance Extension	Yes.
§63.9(d)	Notification of Special Compliance Requirements for New Source.	Yes.
§63.9(e)	Notification of Performance Test	Yes.
§63.9(f)	Notification of VE/Opacity Test	No. This subpart does not contain opacity or VE limits.
§63.9(g)	Additional Notifications When Using CMS.	Only for CEMS; requirements for CPMS are specified in referenced subpart SS of 40 CFR part 63.
§63.9(h)(1)–(6)	Notification of Compliance Status	Yes, except this subpart has no opacity or VE limits, and §63.9(h)(2) does not apply because §63.8075(d) specifies the required contents and due date of the notification of compliance status report.
§63.9(i)	Adjustment of Submittal Deadlines	Yes.
§63.9(j)	Change in Previous Information	No, §63.8075(e)(8) specifies reporting requirements for process changes.
§63.10(a)	Recordkeeping/Reporting	Yes.
§63.10(b)(1)	Recordkeeping/Reporting	Yes.

TABLE 10 TO SUBPART HHHHH OF PART 63—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART HHHHH—Continued

Citation	Subject	Explanation
§63.10(b)(2)(i)–(iv)	Records related to SSM	No, §§63.998(d)(3) and 63.998(c)(1)(ii)(D) through (G) specify recordkeeping requirements for periods of SSM.
§63.10(b)(2)(iii)	Records related to maintenance of air pollution control equipment.	Yes.
§63.10(b)(2)(vi), (x), and (xi)	CMS Records	Only for CEMS; requirements for CPMS are specified in referenced subpart SS of 40 CFR part 63.
§63.10(b)(2)(vii)–(ix)	Records	Yes.
§63.10(b)(2)(xii)	Records	Yes.
§63.10(b)(2)(xiii)	Records	Yes.
§63.10(b)(2)(xiv)	Records	Yes.
§63.10(b)(3)	Records	Yes.
§63.10(c)(1)–(6),(9)–(15)	Records	Only for CEMS; requirements for CPMS are specified in referenced subpart SS of 40 CFR part 63.
§63.10(c)(7)–(8)	Records	No. Recordkeeping requirements are specified in §63.8080.
§63.10(d)(1)	General Reporting Requirements	Yes.
§63.10(d)(2)	Report of Performance Test Results.	Yes.
§63.10(d)(3)	Reporting Opacity or VE Observations.	No. This subpart does not contain opacity or VE limits.
§63.10(d)(4)	Progress Reports	Yes.
§63.10(d)(5)(i)	SSM Reports	No, §63.8075(e)(5) and (6) specify the SSM reporting requirements.
§63.10(d)(5)(ii)	Immediate SSM reports	No.
§63.10(e)(1)–(2)	Additional CMS Reports	Only for CEMS, but §63.10(e)(2)(ii) does not apply because this subpart does not require COMS.
§63.10(e)(3)	Reports	No. Reporting requirements are specified in §63.8075.
§63.10(e)(3)(i)–(iii)	Reports	No. Reporting requirements are specified in §63.8075.
§63.10(e)(3)(iv)–(v)	Excess Emissions Reports	No. Reporting requirements are specified in §63.8075.
§63.10(e)(3)(vi–viii)	Excess Emissions Report and Summary Report.	No. Reporting requirements are specified in §63.8075.
§63.10(e)(4)	Reporting COMS data	No. This subpart does not contain opacity or VE limits.
§63.10(f)	Waiver for Recordkeeping/Reporting.	Yes.
§63.11	Flares	Yes.
§63.12	Delegation	Yes.
§63.13	Addresses	Yes.
§63.14	Incorporation by Reference	Yes.
§63.15	Availability of Information	Yes.

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Part IV

Securities and Exchange Commission

17 CFR Parts 228, 229, 240 et al.
Disclosure Regarding Nominating Committee Functions and Communications Between Security Holders and Boards of Directors; Final Rule; Republication

SECURITIES AND EXCHANGE COMMISSION

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Editorial Note: Federal Register Rule document 03–29723 was originally published at page 66991 in the issue of Friday, November 28, 2003. In that publication text was left out. The corrected document is republished below in its entirety.

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: We are adopting new disclosure requirements and amendments to existing disclosure requirements to enhance the transparency of the operations of boards of directors. Specifically, we are adopting enhancements to existing disclosure requirements regarding the operations of board nominating committees and a new disclosure requirement concerning the means, if any, by which security holders may communicate with directors. These rules require disclosure but do not mandate any particular action by a company or its board of directors; rather, the new disclosure requirements are intended to make more transparent to security holders the operation of the boards of directors of the companies in which they invest.

DATES: *Effective Date:* January 1, 2004.

Compliance Dates: Registrants must comply with these disclosure requirements in proxy or information statements that are first sent or given to security holders on or after January 1, 2004, and in Forms 10–Q, 10–QSB, 10–K, 10–KSB, and N–CSR for the first reporting period ending after January 1, 2004. Registrants may comply voluntarily with these disclosure requirements before the compliance date.

Comments: Comments regarding the "collection of information" requirements, within the meaning of the Paperwork Reduction Act of 1995, of Regulations S–B and S–K, and Forms 10–Q, 10–QSB, 10–K, 10–KSB, and N–CSR should be received by January 1, 2004.

ADDRESSES: To help us process and review your comments more efficiently, comments should be sent by one method—U.S. mail or electronic mail—only. Comments should be submitted in triplicate to Jonathan G. Katz, Secretary, U.S. Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Comments also may be submitted electronically at the following e-mail address: *rule-comments@sec.gov.* All comment letters should refer to File No. S7–14–03. This number should be included in the subject line if sent via electronic mail. Electronically submitted comment letters will be posted on the Commission's Internet Web site *(http://www.sec.gov).* We do not edit personal information, such as names or electronic mail addresses, from electronic submissions. You should submit only information that you wish to make available publicly.

FOR FURTHER INFORMATION CONTACT: Lillian C. Brown, at (202) 942–2920, Andrew Thorpe, at (202) 942–2910, or Andrew Brady, at (202) 942–2900, in the Division of Corporation Finance, or with respect to investment companies, Christian L. Broadbent, at (202) 942–0721, in the Division of Investment Management, U.S. Securities and Exchange Commission, 450 Fifth Street, NW., Washington DC 20549.

SUPPLEMENTARY INFORMATION: We are adopting amendments to Item 401[1] of Regulation S–B[2] and Item 401[3] of Regulation S–K[4] under the Securities Act of 1933,[5] Items 7 and 22 of Schedule 14A[6] under the Securities Exchange Act of 1934,[7] Rule 30a–2[8] under the Investment Company Act of 1940,[9] Forms 10–Q[10] and 10–QSB[11] under the Exchange Act, and Form N–CSR[12] under the Exchange Act and the Investment Company Act. Although we are not adopting amendments to Schedule 14C[13] under the Exchange Act, the amendments will affect the disclosure provided in Schedule 14C, as Schedule 14C requires disclosure of some items of Schedule 14A. Similarly, although we are not adopting amendments to Forms 10–K[14] and 10–KSB[15] under the Exchange Act, the amendments to Item 401 of Regulations S–B and S–K will affect the disclosure under Forms 10–K and 10–KSB, as those forms require disclosure of the information required by Item 401 of Regulations S–K and S–B.

[1] 17 CFR 228.401.
[2] 17 CFR 228.10 *et seq.*
[3] 17 CFR 229.401.
[4] 17 CFR 229.10 *et seq.*
[5] 15 U.S.C. 77a *et seq.*
[6] 17 CFR 240.14a–101.
[7] 15 U.S.C. 78a *et seq.*
[8] 17 CFR 270.30a–2.
[9] 15 U.S.C. 80a–1 *et seq.*
[10] 17 CFR 249.308a.
[11] 17 CFR 249.308b.
[12] 17 CFR 249.331 and 17 CFR 274.128.
[13] 17 CFR 240.14c–101.
[14] 17 CFR 249.310.
[15] 17 CFR 249.310b.

I. Background

On August 8, 2003, we proposed new disclosure standards intended to increase the transparency of nominating committee functions and the processes by which security holders may communicate with boards of directors of the companies in which they invest.[16] The disclosure standards that we adopt today are, in most respects, those proposed on August 8, 2003. Overall, most commenters supported new disclosure standards relating to nominating committee functions and security holder communications with directors;[17] however, as noted below, we received a number of comments and suggestions with regard to specific components of the proposed disclosure standards.[18] We have revised some elements of the proposed disclosure standards in response to these comments and suggestions.

The requirements we proposed on August 8, 2003,[19] and are adopting today, follow in many respects the recommendations made by the Division of Corporation Finance in a report provided to the Commission on July 15, 2003.[20] This report resulted from our April 14, 2003 directive to the Division to review the proxy rules relating to the election of corporate directors.[21] In preparing the report and developing its recommendations, the Division considered the input of members of the investing, business, legal, and academic communities.[22] The majority of these commenters supported our decision to direct the review and, reflecting concern over corporate director accountability and recent corporate scandals, generally urged us to adopt rules that would grant security holders greater access to the nomination process and greater ability to exercise their rights and responsibilities as owners of their companies.[23] Many of the comments received in connection with the Division's review evidenced a growing concern among security holders that they lack sufficient input into decisions made by the boards of directors of the companies in which they invest.[24] Two particular areas of concern related to the nomination of candidates for election as director and the ability of security holders to communicate effectively with members of boards of directors.[25] We seek to address these concerns with the new disclosure standards we are adopting today.

[16] *See* Release No. 34–48301 (August 8, 2003) [68 FR 48724]. Comments received in response to the proposals, as well as a summary of these comments ("Summary of Comments") may be found in File No. S7–14–03 and on our Web site at *http://www.sec.gov.*

[17] *See* Summary of Comments—File No. S7–14–03.

[18] *See id.*

[19] *See* Release No. 34–48301 (August 8, 2003).

[20] The Division also recommended that we propose amendments to the proxy rules regarding the inclusion in company proxy materials of security holder nominees for election as directors. Our proposals regarding this issue were included in a separate release. *See* Release No. 34–48626 (October 14, 2003) [68 FR 60784]. As such, this adopting release does not address that issue directly. The Division's Staff Report to the Commission, detailing the results of its review of the proxy process related to the nomination and election of directors, can be found on our Web site at *http://www.sec.gov.* Staff Report: Review of the Proxy Process Regarding the Nomination and Election of Directors, Division of Corporation Finance (July 15, 2003).

[21] *See* Press Release No. 2003–46 (April 14, 2003).

[22] On May 1, 2003, we solicited public views on the Division's review of the proxy rules relating to the nomination and election of directors. *See* Release No. 34–47778 (May 1, 2003) [68 FR 24530]. In addition to receiving written comments, the Division spoke with a number of interested parties representing security holders, the business community, and the legal community. Each of the comment letters received, memoranda documenting the Division's meetings, and a summary of the comments ("Summary of Comments") may be found in File No. S7–10–03 and on our Web site, *http://www.sec.gov.* Summary of Comments in Response to the Commission's Solicitation of Public Views Regarding Possible Changes to the Proxy Rules (July 15, 2003).

[23] *See* Summary of Comments—File No. S7–10–03.

[24] *See id.*

[25] *See id.*

[26] Prior to the effectiveness of these amendments, companies must disclose whether they have a nominating committee and, if so, whether that committee considers nominees recommended by security holders and how any such recommendations may be submitted. *See* Paragraphs (d)(1) and (d)(2) of Item 7 of Exchange Act Schedule 14A. *See also* Release No. 34–15384 (December 6, 1978) [43 FR 58522], in which the Commission adopted these disclosure standards. In the 1978 release proposing these disclosure requirements, the Commission stated generally its belief that the new disclosure requirements would facilitate improved accountability and, more specifically, that:

[I]nformation relating to nominating committees would be important to security holders because a nominating committee can, over time, have a significant impact on the composition of the board and also can improve the director selection process by increasing the range of candidates under consideration and intensifying the scrutiny given to their qualifications. Additionally, the Commission believes that the institution of nominating committees can represent a significant step in increasing security holder participation in the corporate electoral process, a subject which the Commission will consider further in connection with its continuing proxy rule re-examination.

Release No. 34–14970 (July 18, 1978) [43 FR 31945].

II. New Disclosure Requirements

A. Disclosure Regarding Nominating Committee Processes

1. Discussion

We are adopting new proxy statement disclosure requirements that will provide greater transparency regarding the nominating committee and the nomination process.[26] This enhanced disclosure is intended to provide security holders with additional, specific information upon which to evaluate the boards of directors and nominating committees of the companies in which they invest. Further, we intend that increased transparency of the nomination process will make that process more understandable to security holders. In particular, we are adopting a number of specific and detailed disclosure requirements because we believe that disclosure in response to each of these requirements will assist security holders in understanding each of the processes and policies of nominating committees and boards of directors regarding the nomination of candidates for director.

Detailed disclosure regarding nomination processes will provide security holders with important information regarding the management and oversight of the companies in which they invest. The specific disclosure requirements we are adopting today will cause companies to provide security holders with that information. We believe that specific, detailed disclosure requirements are necessary and appropriate to assure that investors are provided with disclosure that presents the desired degree of clarity and transparency. In the absence of these specific disclosure requirements, we believe that disclosure could be at a level of generality that would not be sufficiently useful to security holders.

Each of the requirements we are adopting today furthers the goal of providing the transparency that is necessary for security holders to understand the nomination process. For example, the rules we are adopting requiring disclosure of the following matters are necessary to give security holders a more complete overview of the nomination process for directors of the companies in which they invest:

- A company's determination whether to have a nominating committee;
- The nominating committee's charter, if any;
- The nominating committee's processes for identifying and evaluating candidates; and
- The minimum qualifications for a nominating committee-recommended nominee and any qualities and skills that the nominating committee believes are necessary or desirable for board members to possess.

In addition, as noted in the proposing release,[27] we believe that information as to whether nominating committee members are independent within the requirements of listing standards applicable to a company is meaningful to security holders in evaluating the nomination process of a company, how that process works, and the seriousness with which the nomination process is considered by a company. Further, information regarding the persons who recommended each nominee and disclosure as to whether there are third parties that receive compensation related to identifying and evaluating candidates will provide important information as to the process followed by a company.

The ability to participate in the nomination process is an important matter for security holders.[28] Accordingly, we believe that it is important for security holders to understand the specific application of the nomination processes to candidates put forward by security holders. Disclosure as to whether and how they may participate in a company's nomination process, and the manner in which their candidates are evaluated, including differences between how their candidates and how other candidates are evaluated, therefore, represents important information for security holders. Finally, an additional, specific disclosure requirement regarding the treatment of candidates put forward by large security holders or groups of security holders that have a long-term investment interest is appropriate, as it will provide investors with information that is useful in assessing the actions of the nominating committee.

2. Disclosure Requirements

The amendments we are adopting today will expand the current proxy statement disclosure regarding a company's nominating or similar committee to include:

- A statement as to whether the company has a standing nominating committee or a committee performing similar functions[29] and, if the company

[27] *See* Release No. 34–48301 (August 8, 2003).

[28] *See* Release No. 34–14970 (July 18, 1978). *See also* Summary of Comments "File No. S7–10–03 and Summary of Comments "File No. S7–14–03.

[29] As noted earlier in this release, this disclosure currently is required under Paragraph (d)(1) of Item 7 of Exchange Act Schedule 14A.

does not have a standing nominating committee or committee performing similar functions, a statement of the basis for the view of the board of directors that it is appropriate for the company not to have such a committee and identification of each director who participates in the consideration of director nominees;[30]

• The following information regarding the company's director nomination process:[31]

• If the nominating committee has a charter, disclosure of whether a current copy of the charter is available to security holders on the company's Web site. If the nominating committee has a charter and a current copy of the charter is available to security holders on the company's Web site, disclosure of the company's Web site address. If the nominating committee has a charter and a current copy of the charter is not available to security holders on the company's Web site, inclusion of a copy of the charter as an appendix to the company's proxy statement at least once every three fiscal years. If a current copy of the charter is not available to security holders on the company's Web site, and is not included as an appendix to the company's proxy statement, identification of the prior fiscal year in which the charter was so included in satisfaction of the requirement;[32]

• If the nominating committee does not have a charter, a statement of that fact;[33]

• If the company is a listed issuer[34] whose securities are listed on a national securities exchange registered pursuant to section 6(a) of the Exchange Act[35] or in an automated inter-dealer quotation system of a national securities association registered pursuant to section 15A(a) of the Exchange Act[36] that has independence requirements for nominating committee members, disclosure as to whether the members of the nominating committee are independent, as independence for nominating committee members is defined in the listing standards applicable to the listed issuer;[37]

• If the company is not a listed issuer,[38] disclosure as to whether each of the members of the nominating committee is independent. In determining whether a member is independent, the company must use a definition of independence of a national securities exchange registered pursuant to section 6(a) of the Exchange Act or a national securities association registered pursuant to section 15A(a) of the Exchange Act that has been approved by the Commission (as that definition may be modified or supplemented), and state which definition it used. Whatever definition the company chooses, it must apply that definition consistently to all members of the nominating committee and use the independence standards of the same national securities exchange or national securities association for purposes of nominating committee disclosure under this requirement and audit committee disclosure required under Item 7(d)(3)(iv) of Exchange Act Schedule 14A;[39]

• If the nominating committee has a policy with regard to the consideration of any director candidates recommended by security holders, a description of the material elements of that policy, which shall include, but need not be limited to, a statement as to whether the committee will consider director candidates recommended by security holders;[40]

• If the nominating committee does not have a policy with regard to the consideration of any director candidates recommended by security holders, a statement of that fact and a statement of the basis for the view of the board of directors that it is appropriate for the company not to have such a policy;[41]

• If the nominating committee will consider candidates recommended by security holders, a description of the procedures to be followed by security holders in submitting such recommendations;[42]

• A description of any specific, minimum qualifications that the nominating committee believes must be met by a nominating committee-recommended nominee for a position on the company's board of directors, and a description of any specific qualities or skills that the nominating committee believes are necessary for one or more of the company's directors to possess;[43]

• A description of the nominating committee's process for identifying and evaluating nominees for director, including nominees recommended by security holders, and any differences in the manner in which the nominating committee evaluates nominees for director based on whether the nominee is recommended by a security holder;[44]

• With regard to each nominee approved by the nominating committee for inclusion on the company's proxy card (other than nominees who are executive officers or who are directors standing for re-election), a statement as to which one or more of the following categories of persons or entities recommended that nominee: security holder, non-management director, chief executive officer, other executive officer, third-party search firm, or other, specified source;[45]

• If the company pays a fee to any third party or parties to identify or evaluate or assist in identifying or evaluating potential nominees, disclosure of the function performed by each such third party;[46] and

• If the company's nominating committee received, by a date not later than the 120th calendar day before the date of the company's proxy statement released to security holders in connection with the previous year's annual meeting, a recommended nominee from a security holder that beneficially owned more than 5% of the company's voting common stock for at least one year as of the date the recommendation was made, or from a group of security holders that beneficially owned, in the aggregate, more than 5% of the company's voting common stock,[47] with each of the securities used to calculate that ownership held for at least one year as of the date the recommendation was made,[48] identification of the candidate and the security holder or security holder group that recommended the candidate and disclosure as to whether the nominating committee chose to nominate the candidate, provided, however, that no such identification or disclosure is required without the written consent of both the security holder or security holder group and the candidate to be so identified.[49]

[30] See new Paragraph (d)(2)(i) of Item 7 of Exchange Act Schedule 14A.

[31] For the remainder of our discussion of this disclosure requirement, the term "nominating committee" refers to a nominating committee or similar committee or group of directors fulfilling the role of a nominating committee. That group may comprise the full board. See the Instruction to new Paragraph (d)(2)(i) of Item 7 of Exchange Act Schedule 14A. If the company has a standing nominating committee or a committee fulfilling the role of a nominating committee, Item 7(d)(1) of Exchange Act Schedule 14A requires identification of the members of that committee. If the company does not have such a standing committee, new Paragraph (d)(2)(i) of Item 7 of Exchange Act Schedule 14A will require identification of each director who participates in the consideration of director nominees.

[32] See new Paragraph (d)(2)(ii)(A) of Item 7 of Exchange Act Schedule 14A.

[33] See new Paragraph (d)(2)(ii)(B) of Item 7 of Exchange Act Schedule 14A.

[34] As defined in Exchange Act Rule 10A–3 [17 CFR 240.10A–3].

[35] 15 U.S.C. 78f(a).

[36] 15 U.S.C. 78o–3(a).

[37] See new Paragraph (d)(2)(ii)(C) of Item 7 of Exchange Act Schedule 14A.

[38] As defined in Exchange Act Rule 10A–3.

[39] See new Paragraph (d)(2)(ii)(D) of Item 7 of Exchange Act Schedule 14A.

[40] See new Paragraph (d)(2)(ii)(E) of Item 7 of Exchange Act Schedule 14A. As adopted, this disclosure requirement specifies that the company's description of the material elements of its policy with regard to consideration of security holder candidates "need not" be limited to a statement as to whether the nominating committee will consider security holder-recommended candidates. This revision was made in response to a commenter's concern that the proposed requirement (that the disclosure "shall not" be limited to a statement as to whether the committee will consider security holder recommended candidates) implied that a company could not merely have a policy of considering security holder recommended candidates, but instead was required to put in place a more detailed policy with respect to consideration of such candidates. See Committee on Federal Regulation of Securities of the American Bar Association's section of Business Law ("ABA").

[41] See new Paragraph (d)(2)(ii)(F) of Item 7 of Exchange Act Schedule 14A.

[42] Prior to the effectiveness of these amendments, this disclosure is required under Paragraph (d)(2) of Item 7 of Exchange Act Schedule 14A. As a result of the amendments to Item 7 of Exchange Act Schedule 14A that we are adopting today, this requirement will be moved to new Paragraph (d)(2)(ii)(G) of Item 7 of Exchange Act Schedule 14A. In addition, we are adopting a new requirement in Regulations S–B and S–K, and a new reference to that requirement in Exchange Act Forms 10–Q and 10–QSB, that will require companies to disclose any material changes to the procedures that were previously disclosed pursuant to this item. See new Paragraph (b) of Item 5 of Part II to Exchange Act Forms 10–Q and 10–QSB, new Paragraph (g) of Item 401 of Exchange Act Regulation S–B, and new Paragraph (j) of Item 401 of Exchange Act Regulation S–K. In those instances where a material change is implemented during the last quarter of a company's fiscal year, companies will be required to include disclosure of such change in their Exchange Act Form 10–K or 10–KSB. See Item 10 of Part III of Exchange Act Form 10–K, Item 9 of Part III of Exchange Act Form 10–KSB, new Paragraph (g) of Item 401 of Exchange Act Regulation S–B, and new Paragraph (j) of Item 401 of Exchange Act Regulation S–K.

[43] See new Paragraph (d)(2)(ii)(H) of Item 7 of Exchange Act Schedule 14A.

[44] See new Paragraph (d)(2)(ii)(I) of Item 7 of Exchange Act Schedule 14A.

[45] See new Paragraph (d)(2)(ii)(J) of Item 7 of Exchange Act Schedule 14A.

[46] See new Paragraph (d)(2)(ii)(K) of Item 7 of Exchange Act Schedule 14A.

[47] Our use of a more than 5% beneficial ownership threshold to trigger this additional disclosure obligation means that recommendations generally will be made by security holders or groups that have a reporting obligation under Exchange Act Regulation 13D [17 CFR 240.13d–240.13d–102]. Recommending security holders, like other beneficial owners, will continue to report on Exchange Act Schedule 13G [17 CFR 240.13d–102] or Exchange Act Schedule 13D [17 CFR 240.13d–101] based on their purpose or effect in acquiring or holding the company's securities. That determination is not intended to be affected by our adoption of this new disclosure obligation. In addition, we anticipate that security holders may communicate with each other in an effort to aggregate more than 5% of a company's securities before submitting a recommended candidate to a company's nominating committee. The determination as to what communications may be deemed solicitations, either subject to or exempt from the proxy rules, is based on facts and circumstances and is not intended to be affected by our adoption of this new disclosure obligation.

[48] Similar to the method used in Exchange Act Rule 14a–8 [17 CFR 240.14a–8] with regard to security holder proponents, the percentage of securities held by a recommending security holder, as well as the holding period of those securities may be determined by the company, on its own, if the security holder is the registered holder of the securities. If not, the security holder can submit one of the following to the company to evidence the required ownership and holding period:

(1) a written statement from the "record" holder of the securities (usually a broker or bank) verifying that, at the time the security holder made the recommendation, he or she had held the required securities for at least one year; or

(2) if the security holder has filed a Schedule 13D, Schedule 13G, Form 3 [17 CFR 249.103], Form 4 [17 CFR 249.104], and/or Form 5 [17 CFR 249.105], or amendments to those documents or updated forms, reflecting ownership of the securities as of or before the date of the recommendation, a copy of the schedule and/or form, and any subsequent amendments reporting a change in ownership level, as well as a written statement that the security holder continuously held the required securities for the one-year period as of the date of the recommendation.

See Instruction 3 to new Paragraph (d)(2)(ii)(L) of Item 7 of Item 7 of Exchange Act Schedule 14A.

[49] See new Paragraph (d)(2)(ii)(L) of Item 7 of Exchange Act Schedule 14A.

3. Comments Regarding, and Revisions to, the Proposed Disclosure Requirements

In response to our request for comment on the proposed nominating committee disclosure requirements, a majority of commenters who supported the proposed rules believed that increased disclosure about nominating committee processes would be effective in increasing security holder understanding of the nomination process,[50] board accountability,[51] board responsiveness,[52] and a company's corporate governance policies.[53] With regard to the particular components of the proposed disclosure standards, commenters provided more specific input, which we considered carefully in revising certain of the disclosure standards that we are adopting today.

a. Nominating Committee Charter

Commenters generally were of the view that summary disclosure of the material terms of the nominating committee's charter within a company's proxy statement was unnecessary and would lead to excessively lengthy proxy statements.[54] These commenters suggested that it would be adequate to identify where the charter could be found, provide the charter to security holders upon request, and/or attach the charter to the proxy statement once every three years (as is the case for audit committee charters).[55]

The disclosure standard that we are adopting today does not include the proposed requirement that companies describe the material terms of the nominating committee charter. Companies will, instead, be required to disclose whether a current copy of the charter is available to security holders on the company's Web site. Where a company does not make the charter available on its Web site, the company would be required to include a copy of the charter as an appendix to its proxy statement at least once every three fiscal years and, in those proxy statements that do not include the charter as an appendix, the company would be required to identify in which of the prior years the charter was so included. We believe that this disclosure standard will provide security holders with the information regarding a company's nominating committee that was sought in the proposal, without unduly burdening companies.

b. Independence of Nominating Committee Members

In response to the proposed disclosure requirement that listed issuers disclose any instance during the prior fiscal year in which any member of the nominating committee did not satisfy the definition of independence included in the listing standards to which the company is subject, a number of commenters suggested that we revise or delete this requirement.[56] At least one of these commenters believed that independence determinations are interpretive matters and that board members could be unaware of developments that would impact independence.[57] Another commenter suggested that we revise the disclosure requirement to conform to the recently adopted provision that requires companies to state whether members of their audit committees are independent, as defined in applicable listing standards.[58] We believe that it is appropriate to use an approach consistent with the audit committee disclosure standards. Accordingly, the disclosure standard we are adopting

[50] See, e.g., American Federation of State, County, and Municipal Employees ("AFSCME"); Council of Institutional Investors ("CII"); Creative Investment Research, Inc. ("CIR"); Andrew Randall; Pennsylvania State Employees' Retirement System ("SERS").

[51] See, e.g., J.A. Glynn & Co. ("J.A. Glynn"); Robert Schneeweiss.

[52] See, e.g., CII; CIR.

[53] See, e.g., American Community Bankers ("ACB"); California Public Employees' Retirement System ("CalPERS"); CIR; United Brotherhood of Carpenters and Joiners of America ("UBC").

[54] See, e.g., The Business Roundtable ("BRT"); Foley & Lardner ("Foley"); Independent Community Bankers Association ("ICBA"); International Paper Company ("Int'l Paper"); Jenkens & Gilchrist ("Jenkens"); McGuireWoods LLP ("McGuireWoods"); Committee on Securities Regulation of the Business Section of the New York State Bar Association ("NYSBAR"); Sullivan & Cromwell, LLP ("Sullivan"); Wells Fargo & Company ("Wells Fargo").

[55] See, e.g., ICBA; Int'l Paper; McGuireWoods; NYSBAR.

[56] See, e.g., ABA; Sullivan.

[57] See ABA.

[58] See Sullivan. This disclosure requirement is set forth in Paragraph (d)(3)(iv) of Item 7 of Exchange Act Schedule 14A.

will require companies to disclose whether each member of the nominating committee is independent, as independence for nominating committee members is defined in the listing standards applicable to the listed issuer.

c. Qualifications and Skills of Candidates and Overall Board Composition

Commenters provided input with regard to the proposed requirement that companies describe the qualifications, qualities, skills, and overall composition that companies are seeking with regard to board membership. In this regard, some commenters noted that nominating committees' selection processes do not tend to be precise, and that the characteristics a nominating committee looks for may change as the composition of the board changes.[59] In consideration of these comments, the disclosure requirements we are adopting today do not include the proposed requirement that companies describe "any specific standards for the overall structure and composition of the company's board of directors."[60] We are adopting the remaining disclosure items substantially as proposed, as we believe that they will provide valuable information to security holders regarding the nomination process, without resulting in boilerplate disclosures.

Many commenters that supported the disclosure requirements suggested that we expand the requirements to require companies to disclose the extent to which they take into consideration diversity, in particular race and gender, in nominating candidates.[61] We have not included such a requirement in the standards we are adopting today, as we believe this particular consideration, as well as other considerations made by a company, will likely be addressed adequately by the new disclosure item requiring companies to disclose their criteria for considering board candidates. Further, we do not view it as appropriate to identify any specific criteria that a company must address in describing the qualities it looks for in board candidates.

d. Sources of Nominees

Some of the most extensive comment, particularly from the business and legal communities, arose from the proposal to require companies to identify the source of all director nominees, other than incumbent directors and executive officers.[62] Generally speaking, these commenters were of the view that, as proposed, the required disclosure would be difficult to make in a clear and accurate manner because there are multiple "sources" for most nominees.[63] In addition, these commenters objected to naming the specific source on the basis that this disclosure could have a "chilling effect on the search process,"[64] would be immaterial,[65] and could imply that a nominee was unqualified to serve on the board based solely on the position held by the individual (*e.g.*, the chief executive officer) who originally recommended the nominee.[66] While some commenters recommended that we delete this provision, others recommended that we instead require disclosure of the general category of persons who recommended the nominee (*e.g.*, management or security holders).[67] Another commenter recommended that we, instead, require companies to disclose whether nominees are independent from the company and, in the case of nominees proposed by security holders, from the recommending security holders.[68]

We continue to believe that information regarding the sources of company nominees is important for security holders; however, we have revised the disclosure standard to require companies to identify the category or categories of persons or entities that recommended each nominee. In this regard, we have retained the requirement that companies specifically note those instances where a nominee was recommended by the chief executive officer of the company. In providing the required disclosure, companies should consider what category of person initially recommended, or otherwise brought to the attention of the nominating committee, each candidate. In disclosing the category of persons or entities that initially recommended a candidate to the nominating committee, companies should ensure that they identify also any person or entity that caused a particular candidate to be recommended. For example, if the chief executive officer asks a third party to evaluate a potential candidate, and that third party ultimately recommends the candidate to the nominating committee, both the chief executive officer and the third party should be identified as recommending parties in the company's disclosure. We have provided for disclosure of more than one type of source for a nominee to address the possibility of multiple sources.

e. Additional Disclosure Regarding Nominees of Large, Long-Term Security Holders

The additional disclosure requirement with regard to nominees recommended by large, long-term security holders elicited a great deal of comment from most categories of commenters. Generally, commenters from the business and legal communities recommended either deleting the disclosure requirement related to security holder recommendations altogether or increasing the beneficial ownership requirement to 5% or 10% and/or increasing the holding period to two or more years.[69] With regard to the 5% and 10% recommendations, at least one commenter noted that those recommending security holders would be required to report their beneficial ownership under Exchange Act Regulation 13D.[70]

Some of the reasons given by commenters for deleting the requirement were:

- The requirement would give special status to larger security holders;[71]
- 3% security holders could use the disclosure requirement for their own "special interests";[72]
- There could be more than one triggering nomination, thus resulting in complex and confusing disclosure;[73]
- The requirement would create a bias to accept marginal director candidates;[74]
- The requirements, specifically those regarding giving the reasons for rejecting nominees, would "chill" nominating committee discussions;[75]
- The disclosure would not be material to security holders;[76] and
- The disclosure would raise privacy issues for the nominating security holder and candidate.[77]

Conversely, this disclosure item also received strong support from security holders, many of whom recommended that we use a lower ownership percentage trigger or a trigger no more stringent than that proposed.[78]

With regard to the requirement that the reasons for not nominating a candidate be given, many commenters believed that this requirement would be difficult to satisfy, as:

- Nominating committee determinations are not always precise in nature;
- The disclosure would expose candidates to ridicule; and/or
- The disclosure would be an invasion of privacy for all parties involved in the process, including the nominating committee members, whose deliberations would be made public as a result of the disclosure requirement.[79]

Some commenters also expressed the view that this requirement would expose the company and nominating committee members to risk of litigation and would allow security holders to "second guess" the nominating committee's determinations.[80] On the other hand, some commenters were of the view that we should retain the proposed disclosure standard and expand it to require companies to disclose the identity of rejected candidates, provided that the candidates consent to be so identified.[81]

After considering the comments, we continue to believe that disclosure of director recommendations made by large, long-term security holders would provide valuable information that would enable security holders to better understand the nomination process. We have re-evaluated the 3% threshold to trigger the additional disclosure requirement, however, and have determined that ownership of more than 5% is a more appropriate threshold at which to require companies to provide additional disclosure.[82] In this regard, we agree with commenters that a more than 5% ownership threshold has a significant advantage over a lesser ownership threshold, in that recommending security holders would be subject to the beneficial ownership reporting requirements of Exchange Act Regulation 13D. We anticipate that a more than 5% ownership threshold will, in many cases, simplify the process by which a company and the recommending security holder determine that the recommending security holder satisfies the ownership threshold to trigger the additional disclosure requirement and, where a security holder or group has reported its beneficial ownership prior to making a recommendation, will help to ensure that the company and its security holders have basic information about the recommending security holder. This will benefit the company by providing the nominating committee with additional information regarding the recommending security holder and, possibly, the recommended candidate. Further, security holders will benefit through having additional information upon which they can evaluate the nominating committee's response to the security holder recommendation.[83]

In addition, the new disclosure standard will require that companies make the specified disclosures, including identifying both the nominating security holder or security holder group and candidate, only in those instances where both parties have provided to the company their consent to be identified and, where the security holder or group members are not registered holders, the security holder or group members have provided proof of the required ownership and holding period to the company. A security holder or group that seeks to require a company to provide disclosure related to a recommendation would provide their written consent and proof of ownership to the company at the time of the recommendation. The company would not be obligated to request such materials where a security holder or group does not otherwise provide their consent and proof of ownership.[84]

In consideration of the concerns expressed by commenters, including those with regard to boilerplate disclosure and privacy issues, the disclosure standard that we are adopting today does not include the proposed requirement that companies disclose the specific reasons for not nominating a candidate. The requirement will, however, require that companies identify the candidate in addition to the recommending security holder or group. While not required, a company could, of course, choose to explain why it did not nominate one or all of the security holder-recommended candidates.

We also have added language to the disclosure requirement to clarify the date by which a security holder must submit a recommended nominee in order to trigger the additional disclosure requirement by the company—a security holder's recommendation would have to be received by a company's nominating committee by a date not later than the 120th calendar day before the date the company's proxy statement was released to security holders in connection with the previous year's annual meeting.[85] We have added a new instruction clarifying that, where a company has changed its meeting date by more than 30 days, a security holder must make its recommendation by a date that is a reasonable time before the company begins to print and mail its proxy statement in order to trigger the additional disclosures.[86]

In addition, we have added a new instruction that responds to commenters' suggestion that we address how the percentage of securities owned by a nominating security holder would

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[59] *See, e.g.*, Foley; Jenkens; McGuireWoods; NYSBAR; Wells Fargo.

[60] Release No. 34–48301 (August 8, 2003).

[61] *See, e.g.*, Boston Common Asset Management ("Boston"); Calvert Group Ltd. ("Calvert"); Christian Brothers Investment Services ("CBIS"); Nathan Cummings Foundation ("Cummings"); Domini Social Investments LLC ("Domini"); ISIS Asset Management ("ISIS"); J.A. Glynn; James McRitchie, Editor, CorpGov.net and PERSWatch.net, Letter dated September 13, 2003 ("McRitchie2"); Mehri & Skalet PLLC ("Mehri &Skalet"); Denise L. Nappier, Connecticut State Treasurer ("Nappier"); Social Investment Forum Ltd. ("SIF"); Socially Responsible Investment Coalition ("SRIC"); William C. Thompson, Jr., Controller of the City of New York ("Thompson"); The General Board of Pension and Health Benefits of the United Methodist Church ("UMC"); Walden Asset Management ("Walden"). *See also* Jesse Smith Noyes Foundation ("Noyes"). We also received a number of letters that are substantially similar in content that supported additional disclosure describing board consideration of diversity. *See* Letter Type A ("Letter A"); Letter Type B ("Letter B").

[62] *See, e.g.*, ABA; BRT; Intel Corporation ("Intel"); Leggett & Platt Inc. ("Leggett"); NYSBAR; Valero Energy Corporation ("Valero"); Wells Fargo.

[63] *See id.*

[64] American Society of Corporate Secretaries. *See also*, American Corporate Counsel Association ("ACCA"); Valero.

[65] *See, e.g.*, BRT.

[66] *See* Sullivan.

[67] *See* Boston; Intel; Walden.

[68] *See* ABA.

[69] *See, e.g.*, ACB; ACCA; Compass Bancshares, Inc. ("Compass"); Foley; ICBA; Intel; Int'l Paper; Jenkens; Leggett; NYSBAR; Sullivan; Wells Fargo.

[70] *See* Sullivan.

[71] *See id.*

[72] *Id. See also* ABA.

[73] *See* ABA.

[74] *See* Sullivan.

[75] *See, e.g., id.*

[76] *See id.*

[77] *See id.*

[78] *See, e.g.*, American Federation of Labor and Congress of Industrial Organizations ("AFL–CIO"); CII; International Brotherhood of Teamsters ("IBT"); ISIS; McRitchie2; Nappier; SERS; Trillium Asset Management ("Trillium"); UBC. *See also* AFSCME; Association of the Bar of the City of New York's Special Committee on Mergers, Acquisitions and Corporate Control Contests ("NYCBAR").

[79] *See, e.g.*, ABA; BRT; Foley; Jenkens; NYSBAR; Sullivan; Valero.

[80] *See, e.g.*, Compass; Foley; Jenkens.

[81] *See* CII; CIR; Cummings; SERS.

[82] On October 14, 2003, we proposed new rules regarding the inclusion of security holder nominees for director in company proxy materials. *See* Release No. 34–48626 (October 14, 2003). The issue of the appropriate ownership threshold, if any, for any such inclusion of security holder nominees for director is a separate issue from the appropriate ownership threshold for the disclosure we are adopting today and is not addressed in this release.

[83] In this regard, information available to our Office of Economic Analysis indicates that, of the companies listed on the New York Stock Exchange, Nasdaq Stock Market and American Stock Exchange as of December 31, 2002, 57% had at least one institutional security holder that beneficially owned 5% of the common equity or similar securities and 14% had five or more such security holders. This information was derived from filings on Exchange Act Form 13-F [17 CFR 249.325] that indicated that the filing security holder had held its securities for at least one year.

[84] *See* Instruction 4 to new Paragraph (d)(2)(ii)(L) of Item 7 of Exchange Act Schedule 14A.

[85] As is currently required in Exchange Act Rule 14a–8, this date would be calculated by determining the release date disclosed in the previous year's proxy statement, increasing the year by one, and counting back 120 calendar days.

[86] *See* Instruction 2 to new Paragraph (d)(2)(ii)(L) of Item 7 of Exchange Act Schedule 14A. The new instruction is modeled after the approach used with regard to Exchange Act Rule 14a–8 security holder proposals, as set forth in Exchange Act Rule 14a–8(e)(2) [17 CFR 240.14a–8(e)(2)].

be calculated.[87] In this regard we have clarified that the percentage of securities held by a recommending security holder may be determined by reference to the company's most recently filed quarterly or annual report (or any subsequent current report), unless the party relying on such report knows or has reason to believe that the information included in the report is inaccurate.[88]

4. Interaction of the Disclosure Requirements With Recently Revised Market Listing Standards

The New York Stock Exchange and the Nasdaq Stock Market have adopted revised listing standards that, among other requirements, require listed companies to have independent nominating committees.[89] While these listing standard changes demonstrate the importance of the nomination process and the nominating committee, and represent a strengthening of the role and independence of the nominating committee, they do not require nominating committees to consider security holder nominees or companies to make the disclosures described in this release. The disclosure requirements we are adopting today will provide useful information to security holders regarding the nomination process, the manner of evaluating nominees, and the extent to which the boards of directors of the companies in which they invest have a process for considering, and do in fact consider, security holder recommendations. Accordingly, the disclosure requirements we are adopting today will operate in conjunction with the revised listing standards regarding nominating committees.

A number of commenters from the business and legal communities recommended that we delay adoption of the proposed disclosure standards in order to allow the new listing standards regarding nominating committees to take effect.[90] We agree with these commenters that the new listing standards represent a significant strengthening of the nomination process; however, we believe that the disclosure standards that we adopt today are a necessary complement to those listing standards and, accordingly, do not believe such a delay is necessary or appropriate.

B. Disclosure Regarding the Ability of Security Holders To Communicate With Boards of Directors

1. Discussion

We are adopting new disclosure standards with regard to security holder communications with board members. These disclosure standards are intended to improve the transparency of board operations, as well as security holder understanding of the companies in which they invest.[91]

In response to our May 1, 2003 solicitation of input into the proxy process review by the Division of Corporation Finance, representatives of the business community commented that disclosure regarding the means by which security holders may communicate directly with the board of directors would address issues of accountability and responsiveness without extensive disruption or costs.[92] Comments from investors and investor advocacy groups also indicated the view that this disclosure would be helpful;[93] however, these commenters also noted that disclosure alone would not address all issues related to accountability and responsiveness.[94]

We received similar comment with regard to the proposed disclosure requirements, with no clear consensus as to whether the proposed rules would be an effective means to improve board accountability, board responsiveness, and corporate governance policies.[95] Some commenters believed the disclosure would be useful to security holders, including one commenter who expressed the view that the proposed disclosure would provide security holders with important information that provides an understanding of a company's process for communications with the board.[96] Conversely, other commenters did not believe that the proposed rules would be an effective means to improve board accountability, board responsiveness, and corporate governance policies and expressed the view that the disclosure would not be useful to security holders.[97] Overall, we continue to believe that the disclosure will provide security holders with useful information about their ability to communicate with board members. Accordingly, we are adopting, substantially as proposed, the disclosure standards related to security holder communications with board members.

2. Disclosure Requirements

We are adopting a number of specific and detailed disclosure requirements regarding communications by security holders with boards of directors because we believe that these requirements will provide security holders with a better understanding of the manner in which security holders can engage in these communications. In particular, we believe that the disclosure requirements, including whether a board has a process by which security holders can communicate with it, are necessary to give security holders a better picture of a critical component of the board's interaction with security holders. Detailed disclosure regarding that process at a company, if it exists, will be important to security holders in evaluating the nature and quality of the communications process. Further, we believe that the level of specificity in the new disclosure standards will discourage boilerplate disclosure.

Companies will be required to provide the following disclosure with regard to their processes for security holder communications with board members:

- A statement as to whether or not the company's board of directors provides a process for security holders to send communications to the board of directors and, if the company does not have such a process for security holders to send communications to the board of directors, a statement of the basis for the view of the board of directors that it is appropriate for the company not to have such a process;[98]
- If the company has a process for security holders to send communications to the board of directors:
  - a description of the manner in which security holders can send communications to the board and, if applicable, to specified individual directors;[99] and
  - If all security holder communications are not sent directly to board members, a description of the company's process for determining which communications will be relayed to board members;[100] and
- A description of the company's policy, if any, with regard to board members' attendance at annual meetings and a statement of the number of board members who attended the prior year's annual meeting.[101]

3. Comments Regarding, and Revisions to, the Proposed Disclosure Requirements

a. Scope of the Disclosure Requirement

We received a number of comments suggesting that we clarify the application of the disclosure requirements to communications with the board by officers, directors, employees, and agents of the company who also own company securities.[102] We do not believe that all communications from officers, directors, employees, and agents of the company are the types of communications that the disclosure standards should capture. We have, therefore, added a general instruction to the new disclosure requirements clarifying that:

- Communications from an officer or director of the company will not be viewed as security holder communications for purposes of the disclosure requirement;[103] and
- Communications from an employee or agent of the company will be viewed as security holder communications for purposes of the disclosure requirement only if those communications are made solely in such employee's or agent's capacity as a security holder.[104]

In response to our request for comment as to whether the new disclosure standard should apply to communications made in connection with security holder proposals submitted pursuant to Exchange Act Rule 14a–8, one commenter suggested that it would be "inappropriate" to exclude Exchange Act Rule 14a–8 proposals from the new disclosure standard;[105] however, other commenters suggested that Exchange Act Rule 14a–8 communications should be expressly excluded.[106] In particular, one commenter noted that, "[b]oth the security holder proponent and the company are subject to specific, detailed requirements, conditions and deadlines, including regulation of the content of statements about the proposal * * * There is no need to impose another disclosure requirement on this process."[107] We agree that the current disclosure requirements with regard to security holder proposals are adequate to inform security holders of how they may communicate with boards via that mechanism. Accordingly, we have expressly excluded security holder proposals submitted pursuant to Exchange Act Rule 14a–8, and communications made in connection with such proposals, from the definition of "security holder communications" for purposes of the new disclosure standard.[108]

b. Process for Communicating With Board Members

We proposed a standard that would have required companies to identify those directors to whom security holders could send communications. Commenters noted that they did not believe that it would be appropriate to include such a requirement on the basis that named directors could then be targeted for inappropriate correspondence and that some companies may not include specified recipients of security holder communications in their communications procedures.[109]

In consideration of these concerns, we have revised the disclosure requirement to specify that companies should describe how security holders can send communications to the board and, if applicable, to specified individual directors.[110] We also have added a new instruction providing that, in lieu of describing in the proxy statement the manner in which security holders may communicate with board members, the manner in which the company determines those communications that will be forwarded to board members, the company's policy regarding director attendance at annual meetings, and the number of directors who attended the prior year's annual meeting, such information may instead be placed on the company's Web site, provided that the company discloses in its proxy statement the Web site address where such information may be found.[111]

Commenters also expressed concern about the proposed disclosure item related to companies' policies with regard to "filtering" communications.[112] Some commenters suggested that extensive disclosure of a company's process for determining which communications are forwarded to board members would imply that a company was improperly blocking communications from security holders.[113] Such a filtering process is necessary, in the opinion of these commenters, because many security holder communications are related to company products and services, are solicitations, or otherwise relate to improper or irrelevant topics.[114] At least one commenter posited that the proposed disclosure item does not relate directly to company processes to facilitate communications with directors and should be deleted as unnecessary.[115] Another commenter suggested that we revise the disclosure requirement to clarify that purely ministerial activities, such as organizing and collating security holder communications, need not be disclosed.[116] Other commenters noted that, should we retain the disclosure requirement, we should not expand it to include the identity of the party that is responsible for filtering communications.[117]

In consideration of these comments, the disclosure item we are adopting today does not include the requirement that companies identify the department or other group within the company that is responsible for determining which communications are forwarded to

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[87] *See, e.g.*, ABA.

[88] *See* Instruction 1 to new Paragraph (d)(2)(ii)(L) of Item 7 of Exchange Act Schedule 14A. The new instruction is modeled after Exchange Act Rule 13d–1(j) [17 CFR 240.13d–1(j)], which specifies on what basis beneficial holders may calculate the percentage of subject securities they hold for purposes of Exchange Act Regulation 13D.

[89] *See* Release No. 34–48745 (November 4, 2003) [68 FR 64154]. While the NYSE standards include a requirement that listed companies have an independent nominating committee (NYSE section 303A(4)(a)), the Nasdaq standards provide that the nomination of directors may, alternatively, be determined by a majority of the independent directors (NASD Rule 4350(c)). In discussing the NYSE and Nasdaq standards, our references to independent nominating committees encompass this alternative under the Nasdaq standards.

[90] *See, e.g.*, ABA; ACB; ACCA; BRT; CSX Corporation; Foley; ICBA; Jenkens; Valero.

[91] In Exchange Act Release No. 34–48745 (November 4, 2003), the Commission approved a new NYSE listing standard that addresses security holder communications with board members. This standard provides that: "In order that interested parties may be able to make their concerns known to non-management directors, a company must disclose a method for such parties to communicate directly and confidentially with the presiding director [of the non-management directors] or with non-management directors as a group." *See* NYSE Section 303A(3). This method could be analogous to the method in the NYSE listing standards required by Exchange Act Rule 10A–3 regarding audit committees. *See* Commentary to NYSE Section 303A(3). Exchange Act Rule 10A–3(b)(2) requires listing standards relating to audit committees to require that "[e]ach audit committee * * * establish procedures for the receipt, retention and treatment of complaints regarding accounting, internal accounting controls or auditing matters, including procedures for the confidential, anonymous submission by employees of the issuer of concerns regarding questionable accounting or auditing matters."

[92] *See* Summary of Comments—File No. S7–10–03.

[93] *See* id.

[94] *See* id.

[95] *See* Summary of Comments—File No. S7–14–03.

[96] *See* CIR.

[97] *See, e.g.*, ABA; BRT; Les Greenberg, Chairman, Committee of Concerned Shareholders, Letter dated August 9, 2003 ("CCS1"); Valero.

[98] *See* new Paragraph (h)(1) of Item 7 of Exchange Act Schedule 14A.

[99] *See* new Paragraph (h)(2)(i) of Item 7 of Exchange Act Schedule 14A.

[100] *See* new Paragraph (h)(2)(ii) of Item 7 of Exchange Act Schedule 14A.

[101] *See* new Paragraph (h)(3) of Item 7 of Exchange Act Schedule 14A.

[102] *See, e.g.*, Wells Fargo.

[103] *See* Instruction 1 to new Paragraph (h) of Item 7 of Exchange Act Schedule 14A.

[104] *See* id.

[105] AFSCME.

[106] *See* NYSBAR; Valero.

[107] NYSBAR.

[108] *See* Instruction 2 to new Paragraph (h) of Item 7 of Exchange Act Schedule 14A.

[109] *See* NYSBAR.

[110] *See* new Paragraph (h)(2)(i) of Item 7 of Exchange Act Schedule 14A.

[111] *See* the Instruction to new Paragraphs (h)(2) and (h)(3) of Item 7 of Exchange Act Schedule 14A.

[112] *See, e.g.*, ABA; BRT; Intel; NYSBAR; Sullivan.

[113] *See* Sullivan. *See also* ABA.

[114] *See, e.g.*, Wells Fargo.

[115] *See* ABA.

[116] *See* Sullivan.

[117] *See, e.g.*, NYSBAR; Wells Fargo.

directors. We also have added an instruction to clarify that a company's process for collecting and organizing security holder communications, as well as similar or related activities, need not be disclosed, provided that the company's process is approved by a majority of the independent directors.[118]

c. Material Actions Taken by the Board of Directors as a Result of Security Holder Communications

Many commenters expressed concern with regard to the proposal that would have required companies to describe any material action taken by the board of directors during the preceding fiscal year as a result of security holder communications.[119] Most of these commenters suggested deleting this disclosure requirement on the basis that it would be too difficult to tie board actions to specific security holder recommendations.[120] One commenter suggested that the disclosure requirement was too vague and companies would be unsure as to what actions must be disclosed.[121] In consideration of these concerns, the disclosure requirements we are adopting today do not include the proposed requirement related to material actions taken in response to security holder communications.

d. Director Attendance at Annual Meetings

In the proposing release, we asked whether there were alternative ways to achieve our objectives. We further solicited comment on whether we should provide guidance to companies or otherwise address appropriate procedures for companies to implement with regard to security holder communications with board members. We also noted that the term "communications" was meant to be broadly construed. Several commenters suggested that we require companies to disclose whether they have a policy regarding attendance by directors at annual meetings and provide information about annual meeting attendance by directors.[122] We believe that such a disclosure requirement would further our broad objective to provide investors with information about a company's communications policies and general responsiveness to investors' concerns.

Directors' attendance at annual meetings can provide investors with an opportunity to communicate with directors about issues affecting the company. We are adopting a requirement that companies disclose their policy with regard to director attendance at annual meetings and the number of directors who attend the annual meetings, as that disclosure will give security holders a more complete picture of a company's policies related to opportunities for communicating with directors.

C. Related Disclosure in Quarterly and Annual Reports

In response to our request for comment regarding whether material changes to a company's process for security holders to submit nominees for election as director to the company should be disclosed in periodic or current reports, a number of commenters indicated the need to provide security holders with more current information regarding that process.[123] These commenters expressed the concern that the procedures described in a company's proxy statement could change during the course of a fiscal year, and the absence of information regarding those changes could impair significantly security holders' opportunities to submit recommended nominees.[124] In response to these comments, we are adopting new disclosure standards that will require companies to report any material changes to the procedures for security holder nominations in the Exchange Act Form 10–Q, 10–QSB, 10–K, or 10–KSB filed for the period in which the material change occurs.[125] We also are including an instruction clarifying that, for purposes of this disclosure obligation, adoption of procedures by which security holders may recommend nominees to a company's board of directors, where the company previously disclosed that it did not have in place such procedures, will constitute a material change.[126]

D. Investment Companies

The new disclosure requirements regarding board nominating committees and security holders' communications with members of boards will apply to proxy statements of investment companies.[127] Investment companies currently are required to comply with Exchange Act Schedule 14A when soliciting proxies, including proxies relating to the election of directors.[128] Item 22(b)(14)(iv) of Exchange Act Schedule 14A requires investment companies to disclose the same information about nominating committees that currently is required for operating companies by Item 7(d)(2).[129] As with operating companies, the enhanced transparency provided by the amendments is intended to provide security holders with additional, specific information upon which to evaluate the boards of directors and nominating committees of the investment companies in which they invest. Commenters generally supported the application of the proposed

[118] See the Instruction to new Paragraph (h)(2)(ii) of Item 7 of Exchange Act Schedule 14A.

[119] See, e.g., AIA; ACB; ACCA; Warren J. Archer ("Archer"); BRT; DKW Law Group; Domini; Foley; Intel; Int'l Paper; Jenkens; NYCBAR; NYSBAR.

[120] See, e.g., AIA; BRT; Domini; Foley; Intel; Int'l Paper; Jenkens; NYCBAR; NYSBAR.

[121] See NYSBAR.

[122] See Amalgamated Bank and its Long View Funds ("Amalgamated"); Boston; CBIS; CII; Granary Foundation ("Granary"); Letter B; Maine Retirement System; McRitchie2; SERS; SIF; Walden. See also Connie Hansen.

[123] See, e.g., AFL–CIO; AFSCME; Amalgamated; CalPERS; CII; CIR; Cummings; IBT; Int'l Paper; McRitchie2; SERS; SIF; Smith; Trillium; UBC.

[124] See id.

[125] See new Paragraph (b) of Item 5 of Part II to Exchange Act Forms 10–Q and 10–QSB, new Paragraph (g) of Item 401 of Exchange Act Regulation S–B, and new Paragraph (j) of Exchange Act Regulation S–K. In those instances where a material change is implemented during the last quarter of a company's fiscal year, companies will be required to include disclosure of the change in their Exchange Act Form 10–K or 10–KSB. See Item 10 of Part III of Exchange Act Form 10–K, Item 9 of Part III of Exchange Act Form 10–KSB, new Paragraph (g) of Item 401 of Exchange Act Regulation S–B, and new Paragraph (j) of Item 401 of Exchange Act Regulation S–K.

[126] See Instruction 2 to new Paragraph (g) of Item 401 of Exchange Act Regulation S–B and new Paragraph (j) of Item 401 of Exchange Act Regulation S–K.

[127] See Paragraphs (e) of Item 7 and (b) of Item 22 of Exchange Act Schedule 14A. The disclosure requirements will apply to business development companies as well as investment companies registered under the Investment Company Act of 1940 ("Investment Company Act"), except where otherwise noted. Business development companies are a category of closed-end investment company that are not registered under the Investment Company Act, but are subject to certain provisions of that Act. See sections 2(a)(48) and 54–65 of the Investment Company Act [15 U.S.C. 80a–2(a)(48) and 80a–53 – 64].

[128] See Investment Company Act Rule 20a–1 [17 CFR 270.20a–1] (requiring investment companies to comply with Regulation 14A [17 CFR 240.14a–1—240.14a–101]), Schedule 14A, and all other rules and regulations adopted pursuant to section 14(a) of the Exchange Act [15 U.S.C. 78n] that would be applicable to a proxy solicitation if it were made in respect of a security registered pursuant to section 12 of the Exchange Act [15 U.S.C. 78l]).

[129] Investment companies are subject to Items 7 and 22(b) of Exchange Act Schedule 14A when soliciting proxies regarding the election of directors. Currently, in lieu of the disclosure required by Paragraphs (a)–(d)(2) of Item 7, investment companies must provide the information required by Paragraph (b) of Item 22. See Paragraph (e) of Item 7. We are amending Paragraph (e) of Item 7 to apply the disclosure requirements regarding nominating committees in Paragraph (d)(2) of Item 7 to investment companies, and deleting the current disclosure requirement regarding nominating committees in Paragraph (b)(14)(iv) of Item 22 as duplicative.

disclosure requirements to investment companies.[130]

The rules that we are adopting will require disclosure as to whether or not the members of an investment company's nominating committee are "interested persons" of the company as defined in section 2(a)(19) of the Investment Company Act,[131] rather than independent under the listing standards of a national securities exchange or national securities association, as in the case of operating companies.[132] We are requiring disclosure with respect to the section 2(a)(19) test for investment companies because that test is tailored to capture the broad range of affiliations with investment advisers, principal underwriters, and others that are relevant to "independence" in the case of investment companies. Commenters generally supported the use of this test for independence in the case of investment companies.[133] Similarly, with respect to the instruction that states that in describing a company's process for determining which communications will be relayed to board members, collecting and organizing security holder communications need not be disclosed provided that the company's process is approved by a majority of the independent directors, we are specifying in the case of investment companies that the approval required is of a majority of the directors who are not "interested persons" under section 2(a)(19).[134]

As with operating companies, investment companies will be required to state which one or more of certain categories of persons or entities recommended each nominee who is approved by the nominating committee for inclusion on the company's proxy card.[135] However, in recognition of the fact that investment companies are generally externally managed by an investment adviser, the categories will include the following: security holder, director, chief executive officer, other executive officer, or employee of the investment company's investment adviser, principal underwriter, or any affiliated person of the investment adviser or principal underwriter. With respect to the disclosure requirement regarding nominees recommended by large, long-term security holders, we are adopting an instruction clarifying that, for a registered investment company, the percentage of securities held by a recommending security holder may be determined by reference to the company's most recent report on Form N–CSR.[136]

Finally, as with operating companies, we are requiring a registered investment company to provide disclosure regarding material changes to the procedures for security holder nominations of directors. This information will be provided in Form N–CSR.[137]

III. Paperwork Reduction Act

A. Background

The amendments to Exchange Act Schedule 14A contain "collection of information" requirements within the meaning of the Paperwork Reduction Act of 1995.[138] We published a notice requesting comment on the collection of information requirements in the proposing release, and we submitted these requirements to the Office of Management and Budget for review in accordance with the PRA.[139] The titles for the collections of information are:

(1) "Proxy Statements—Regulation 14A (Commission Rules 14a–1 through 14a–15 and Schedule 14A)" (OMB Control No. 3235–0059);

(2) "Information Statements—Regulation 14C (Commission Rules 14c–1 through 14c–7 and Schedule 14C)"[140] (OMB Control No. 3235–0057);

(3) "Rule 20a–1 under the Investment Company Act of 1940, Solicitations of Proxies, Consents and Authorizations" (OMB Control No. 3235–0158);[141]

(4) "Form 10–K" (OMB Control No. 3235–0063);

(5) "Form 10–KSB" (OMB Control No. 3235–0420);

(6) "Form 10–Q" (OMB Control No. 3235–0070);

(7) "Form 10–QSB" (OMB Control No. 3235–0416);

(8) "Regulation S–K" (OMB Control No. 3235–0071);

(9) "Regulation S–B" (OMB Control No. 3235–0417); and

(10) "Form N–CSR" (OMB Control No. 3235–0570).[142]

These regulations, forms and schedules were adopted pursuant to the Securities Act, Exchange Act and Investment Company Act and set forth the disclosure requirements for annual and quarterly reports and proxy and information statements filed by companies to ensure that investors are informed.[143] The hours and costs associated with preparing, filing, and sending these forms and schedules constitute reporting and cost burdens imposed by each collection of information. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

B. Summary of Amendments

Under the amendments, we are expanding the disclosure that currently is required in company proxy or information statements regarding the activities of a company's nominating committee. The new disclosure requirements also will require disclosure in proxy or information statements regarding the policies and procedures regarding security holder communications with boards of directors. We are adopting new requirements for disclosure of company policies with regard to board members' attendance at annual meetings and the number of board members who attended the prior year's annual meeting, as well

[130] See, e.g., ABA; AFL–CIO; Investment Company Institute ("ICI").

[131] 15 U.S.C 80a–2(a)(19).

[132] New Paragraph (b)(14)(ii) of Item 22 of Exchange Act Schedule 14A.

[133] See, e.g., ABA; ICI.

[134] See the Instruction to new Paragraph (h)(2)(ii) of Item 7 of Exchange Act Schedule 14A.

[135] See new Paragraph (d)(2)(ii)(J) of Item 7 of Exchange Act Schedule 14A.

[136] See Instruction 1 to new Paragraph (d)(2)(ii)(L) of Item 7 of Exchange Act Schedule 14A. In the case of business development companies, which are not required to file reports on Form N–CSR, the percentage of securities would be determined by reference to the company's reports on Exchange Act Forms 10–K and 10–Q.

[137] See new Item 9 of Form N–CSR. We are renumbering current Items 9 and 10 as Items 10 and 11, and are adopting a conforming change to Rule 30a–2 under the Investment Company Act to reflect the renumbering of Item 10. Because business development companies file reports on Forms 10–K and 10–Q rather than Form N–CSR, they would provide the required disclosure on these forms.

[138] 44 U.S.C. 3501 *et seq.*

[139] 44 U.S.C. 3507(d) and 5 CFR 1320.11.

[140] Exchange Act Schedule 14C requires disclosure of some items of Exchange Act Schedule 14A. Therefore, while we are not amending the text of Exchange Act Schedule 14C, the amendments to Exchange Act Schedule 14A must also be reflected in the PRA burdens for Exchange Act Schedule 14C.

[141] Investment Company Act Rule 20a–1 requires registered investment companies to comply with Exchange Act Regulation 14A or 14C, as applicable. Therefore, the annual responses to Investment Company Act Rule 20a–1 reflect the number of proxy and information statements that are filed by registered investment companies.

[142] The changes to the collections of information entitled "Regulation S–B" and "Regulation S–K" are reflected in our estimates for Forms 10–Q, 10–QSB, 10–K and 10–KSB. Therefore, we are not changing the burden estimates for those titles.

[143] The proxy rules apply to domestic companies with equity securities registered under section 12 of the Exchange Act and to investment companies registered under the Investment Company Act. There is a discrepancy between the number of annual reports by reporting companies and the number of proxy and information statements filed with the Commission in any given year. This is because some companies are subject to reporting requirements by virtue of section 15(d) of the Exchange Act [15 U.S.C. 78o], and therefore are not covered by the proxy rules. In addition, companies that are not listed on a national securities exchange or the Nasdaq Stock Market may not hold annual meetings and therefore would not be required to file a proxy or information statement.

as disclosure in periodic reports of any material changes to company procedures for security holder nominations. Compliance with the disclosure requirements will be mandatory. There will be no mandatory retention period for the information disclosed, and responses to the disclosure requirements will not be kept confidential.

C. Responses to Request for Comments

We requested comment on the PRA analysis contained in the proposing release. While we received only two comment letters specifically addressing our PRA analysis, we received several comment letters responding to the proposals in general.[144] Although we are adopting the disclosure amendments substantially as proposed, we have made some additions and subtractions to the disclosure requirements in the final rules that will have the net effect of reducing the amount of required disclosures. In response to comments, we are adding a requirement for companies to provide updates in periodic reports regarding material changes to the procedures for security holder nominations. We also are adding a requirement for companies to describe in proxy and information statements their policies regarding director attendance at annual meetings and the number of directors who attended the prior year's annual meeting. After considering the comments, we are not adopting certain of the proposed disclosure requirements. For example, the amendments will not require companies to describe:

- The material terms of their nominating committee charters;
- Any specific standards for the overall structure and composition of the board of directors;
- The specific reasons for the nominating committee's determination not to include a security holder candidate as a nominee; and
- Any material action taken by the board of directors as a result of communications from security holders.

The majority of commenters did not comment on the hours and cost burdens for companies that will result from the amendments; however, we received two comment letters that specifically addressed the paperwork burdens in the proposing release.[145] One commenter noted that given the number of unlisted companies, it is difficult to estimate the compliance burden.[146] One commenter believed that the proposing release underestimated the disclosure burden for the proposed rules, and that the burden could be as high as 12 hours for the first year and 4 hours for following years.[147]

The actual paperwork burden for some companies could be 5 hours per schedule; however, in devising the estimates we considered a number of factors. For example, large companies may incur a greater paperwork burden than small companies, the pre-existing disclosure requirements may enable companies to streamline the collection of information necessary for the new disclosure, and the amendments contain more simplified disclosure requirements from the proposals, which will lower the paperwork burden. After considering these factors, we do not believe that 5 hours per schedule is an accurate burden estimate. However, after considering the comments indicating that we may have underestimated slightly the burden, we are not reducing our burden estimates for proxy and information statements, even though the amendments will reduce the amount of disclosure from that which would have been required by the proposals.

D. Paperwork Burden Estimates

As a result of the changes described above, the reporting and cost burden estimates for the collections of information have changed. While we are not changing the paperwork burden estimates for proxy and information statements, we are adding collection of information requirements in periodic reports under the Exchange Act.

1. Proxy and Information Statements

For purposes of the PRA, we estimated the annual incremental paperwork burden for proxy and information statements under the new disclosure requirements to be approximately 19,557 hours of company personnel time and a cost of approximately $1,955,700 for the services of outside professionals.[148] That estimate included the time and the cost of preparing disclosure that has been appropriately reviewed by executive officers, the disclosure committee, in-house counsel, outside counsel, and members of the board of directors.[149] Because the current rules already require a company to collect and disclose information about the composition, functions, policies and procedures of its nominating committee, we factored the pre-existing burdens into our estimates for the new disclosure requirements.

We derived the paperwork burden estimates by estimating the total amount of time it will take a company to prepare and review the disclosure. We estimated that, over a three-year time period, the annual incremental disclosure burden will be an average of 3 hours per schedule. This estimate was based on two assumptions:

- Companies spend a greater amount of time preparing the disclosure in year one and will become more efficient in preparing the disclosure over the following two years; [150] and
- Not all proxy and information statements involve action to be taken with respect to the election of directors, and therefore will not require companies to provide the disclosure.[151]

This estimate represents the average burden for all companies, both large and small, that are subject to the proxy rules. We expect that the disclosure burden could be greater for larger companies and lower for smaller companies. Table 1, below, illustrates the incremental annual compliance burden of the collection of information in hours and in cost for proxy and information statements under the Exchange Act and Investment Company Act.

[144] *See* discussion of comments in Part II of this release and Summary of Comments—S7–14–03.

[145] *See* ABA; Stoecklein Law Group ("Stoecklein").

[146] *See* ABA.

[147] *See* Stoecklein. Using those numbers as inputs into our model, the annual incremental disclosure burden over a three-year time period would be an average of 5 hours per schedule. Accordingly, using the commenter's assumptions, the annual incremental paperwork burden for all companies to prepare the disclosure would be approximately 32,595 hours of company personnel time and a cost of approximately $3,259,500 for the services of outside professionals.

[148] For convenience, the estimated PRA hour burdens have been rounded to the nearest whole number.

[149] In connection with other recent rulemakings, we have had discussions with several private law firms to estimate an hourly rate of $300 as the cost of outside professionals that assist companies in preparing these disclosures.

[150] We estimated that it will take 6 hours to prepare the disclosure in year one, 3.13 hours in year two, and 2.03 hours in year three.

[151] We estimate that 20% of all proxy and information statements do not include disclosure about directors, and therefore would not include the disclosure required by the amendments. This estimate is based on the proportion of preliminary proxy statements to definitive proxy statements filed in our 2002 fiscal year (2,555/8,692=29%), which has been adjusted downward by 9% to reflect the fact that some preliminary proxy statements contain disclosure about directors. This estimate is based on the rationale that preliminary proxy statements are less likely to contain disclosure about directors because registrants do not file preliminary proxy statements for security holder meetings where the matters to be acted upon involve only the election of directors or other specified matters. *See* Exchange Act Rule 14a–6 [17 CFR 240.14a–6].

TABLE 1: CALCULATION OF INCREMENTAL PRA BURDEN ESTIMATES

	Annual responses	Incremental hours/form	Incremental burden	75% company	25% professional	$300 prof. cost
	(A)	(B)	(C)=(A) × (B)	(D)=(C) × 0.75	(E)=(C) × 0.25	(F)=(E) × $300
SCH 14A	7,188	3.00	21,564.00	16,173	5,391.00	$1,617,300.00
SCH 14C	446	3.00	1,338.00	1,004	334.50	100,350.00
Rule 20a–1	1,058	3.00	3,174.00	2,381	793.50	238,050.00
Total	8,692			19,557		1,955,700.00

2. Periodic Reports

For purposes of the PRA, we estimate the annual incremental paperwork burden for Exchange Act periodic reports under the new disclosure requirements to be approximately 1,311 hours of company personnel time and a cost of approximately $131,100 for the services of outside professionals. We estimate that, over a three-year time period, the annual incremental disclosure burden would be an average of 0.01 hours per Form 10–K and Form 10–KSB, 0.04 hours per Form 10–Q and Form 10–QSB, and 0.03 hours per Form N–CSR.[152] This estimate was based on the following two assumptions:

- Each year, 20% of reporting companies will change materially the procedures by which security holders may recommend nominees to the board of directors; [153] and
- It will take .25 hours to prepare the disclosure regarding material changes to security holder nomination procedures.

Table 2, below, illustrates the incremental annual compliance burden of the collection of information in hours and in cost for periodic reports under the Exchange Act and Investment Company Act.

TABLE 2: CALCULATION OF INCREMENTAL PRA BURDEN ESTIMATES

	Annual responses	Incremental hours/form	Incremental burden	75% company	25% professional	$300 prof. cost
	(A)	(B)	(C)=(A) × (B)	(D)=(C) × 0.75	(E)=(C) × 0.25	(F)=(E) × $300
10–K	8,484	0.01	84.84	64	21.21	$6,000.00
10–KSB	3,820	0.01	38.20	29	9.55	3,000.00
10–Q	23,743	0.04	949.72	712	237.43	71,000.00
10–QSB	11,299	0.04	451.96	339	112.99	34,000.00
N–CSR	7,400	0.03	222.00	167	55.50	17,000.00
Total				1,311		$131,000.00

E. Request for Comment

We request comment in order to (a) evaluate whether the collections of information are necessary for the proper performance of our functions, including whether the information will have practical utility, (b) evaluate the accuracy of our estimate of the burden of the collections of information, (c) determine whether there are ways to enhance the quality, utility, and clarity of the information to be collected, and (d) evaluate whether there are ways to minimize the burden of the collections of information on those who respond, including through the use of automated collection techniques or other forms of information technology.[154]

Any member of the public may direct to us any comments concerning the accuracy of this burden estimate and any suggestions for reducing this burden. Persons who desire to submit comments on the collection of information requirements should direct their comments to the OMB, Attention: Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Washington, DC 20503, and send a copy of the comments to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549, with reference to File No. S7–14–03. Requests for materials submitted to the OMB by us with regard to this collection of information should be in writing, refer to File No. S7–14–03, and be submitted to the Securities and Exchange Commission, Office of Filings and Information Services, Branch of Records Management, 450 Fifth Street, NW., Washington, DC 20549. Because the OMB is required to make a decision concerning the collections of information between 30 and 60 days after publication, your comments are best assured of having their full effect if the OMB receives them within 30 days of publication.

IV. Cost-Benefit Analysis

A. Background

On August 8, 2003 we proposed new disclosure requirements intended to increase the transparency of nominating committee functions and the processes by which security holders may communicate with boards of directors of the companies in which they invest.[155] These proposals followed substantially the recommendations made by the Division of Corporation Finance in a staff report dated July 15, 2003.[156] In

[152] For example, the average burden per form for Form 10–K is calculated as follows: [(8,484 Form 10–Ks × 5% frequency of disclosure × 0.25 hours)/8,484 Form 10–Ks] = .01. The calculation for Form 10–Q is as follows: [(23,743 Form 10–Qs × 15% frequency of disclosure × 0.25 hours)/23,743 Form 10–Qs] = .04. The calculation for Form N–CSR is as follows: [(7,400 Form N–CSRs × 10% frequency of disclosure × 0.25 hours)/7,400 Form N–CSRs] = .03. The discrepancy in quotients is due to the fact that operating companies report on a quarterly basis, while registered management investment companies report on a semi-annual basis.

[153] Under our assumptions, 5% of operating companies will provide the disclosure each quarter (for a total of 20%), while 10% of registered management investment companies will provide the information semi-annually (for a total of 20%).

[154] Comments are requested pursuant to 44 U.S.C. 3506(c)(2)(B).

[155] *See* Release No. 34–48301 (August 8, 2003).

[156] *See* Staff Report: Review of the Proxy Process Regarding the Nomination and Election of Directors, Division of Corporation Finance (July 15, 2003). The Division's Staff Report, detailing the results of its review of the proxy process related to

Continued

preparing this report and developing its recommendations, the Division considered the input of members of the investing, business, legal, and academic communities.[157]

The Commission is adopting the amendments substantially as proposed. The disclosures are designed to build upon existing disclosure requirements to elicit a more detailed discussion of the policies, procedures, and activities of nominating committees as well as the means by which security holders can communicate with boards of directors. We recognize that the amendments will create costs and benefits to the economy. We are sensitive to the costs and benefits imposed by our rules, and we have identified certain costs and benefits of the amendments.

B. Benefits

The primary benefit of the amendments will be to assist security holders in better understanding the policies and procedures that companies maintain to nominate directors and to enable security holders to communicate with directors. In the proposing release, we requested comment on the potential benefits of the proposed rules and have considered the responses. Two commenters in support of the proposals indicated that the rules would provide useful information with little cost.[158] Other commenters believed that the proposed rules would provide little or no benefit.[159] Commenters also suggested that the proposed rules would not provide meaningful disclosure[160] or that the disclosure would be boilerplate.[161]

To address the commenters' concerns, the amendments are drafted in a manner designed to avoid boilerplate and to elicit meaningful disclosure. The more precise disclosure requirements will promote more transparent disclosure among a cross-section of public companies because they will have greater certainty as to the required disclosure. In addition, increasing the amount and quality of information available to investors concerning board policies and procedures also may improve investor confidence because investors may be able to identify the degree to which companies are responsive to security holder concerns. One commenter noted that the proposed disclosure would provide potential investors and potential directors with the ability to compare companies before they choose to invest or agree to be considered for directorship.[162] By providing greater transparency of board policies, we anticipate that the new requirements will allow investors to make more informed choices when deciding how to invest.

To the extent that security holders would prefer to invest in companies with boards that maintain policies and procedures that provide greater security holder oversight, companies may have incentives to adopt more meaningful policies and procedures regarding director nominations and security holder communications. The amendments also may encourage companies to consider their existing policies in relation to policies adopted by other companies and could facilitate competition among companies to adopt policies that reduce costs to security holders. For example, if security holder board nominees are given adequate consideration through the nomination process, a security holder may choose to submit its candidate to the nominating committee rather than incur the expense of soliciting proxies to support the nominee. Moreover, disclosure of the manner in which security holders can send communications to the board may encourage a less costly communications process for providing recommendations to the board than the current process embodied in Exchange Act Rule 14a–8.

C. Costs

The amendments will impose new disclosure requirements on companies subject to the proxy rules.[163] The new requirements are designed to build upon existing disclosure requirements regarding the composition, functions, policies, and procedures of company nominating committees. Thus, the task of complying with the new disclosure requirements could be performed by the same person or group of persons responsible for compliance under the current rules. One commenter believed that the costs would be different on a company-by-company basis and that the disclosure requirements would not result in substantial additional costs for companies that already disclose and have a security holder communications process.[164] For companies that do not have a system in place, the commenter believed that the proposal would burden company resources by requiring a person to administer the communications system.[165] One commenter believed that both the cost of submitting candidates to the nominating committee and the probable benefits are minimal.[166] This commenter noted that, even if a nominating committee were composed entirely of independent directors, it would not likely nominate a candidate recommended by security holders.[167]

For purposes of the PRA, we estimate the annual incremental paperwork burden for all companies to prepare the new disclosure to be approximately 20,868 hours of company personnel time (2.4 hours per company),[168] which translates into an estimated cost of $1,774,000 ($204 per company).[169] We also estimate a cost of approximately $2,086,700 for the services of outside professionals ($240 per company).[170] The figures above include the estimated burdens for investment companies. For investment companies, we estimate the incremental burden to be 2,548 hours of company personnel time (2.4 hours per company),[171] which translates into an estimated cost of $216,580 ($204 per company). We also estimate a cost for investment companies of approximately $255,050 for the services of outside professionals ($240 per company).[172]

[157] On May 1, 2003, the Commission solicited public views on the Division's review of the proxy rules relating to the nomination and election of directors. *See* Release No. 34–47778 (May 1, 2003). In addition to receiving written comments, the Division spoke with a number of interested parties representing security holders, the business community, and the legal community. Each of the comment letters received, memoranda documenting the Division's meetings, and a summary of the comments are included on the Commission's Web site, *http://www.sec.gov*, in comment file number S7–10–03. Summary of Comments in Response to the Commission's Solicitation of Public Views Regarding Possible Changes to the Proxy Rules (July 15, 2003).

[158] *See* AFL–CIO; IBT.

[159] *See, e.g.*, CCS1; Eliot Cohen; Phillip Goldstein, Opportunity Partners L.P., Kimball & Winthrop, Inc. ("Goldstein"); James McRitchie, Editor, CorpGov.net and PERSWatch.net, Letter dated August 17, 2003 ("McRitchie1").

[160] *See, e.g.*, J. Robert Brown, Jr., Professor, University of Denver College of Law ("Brown"); BRT; CCS1; Goldstein; Stoecklein.

[161] *See, e.g.*, ACB; Brown; Granary; Letter B; McRitchie1; Nappier; Stoecklein; Valero.

[162] *See* Eleanor Bloxham, President, The Value Alliance and Corporate Governance Alliance.

[163] The proxy rules apply to domestic companies with equity securities registered under section 12 of the Exchange Act and to investment companies registered under the Investment Company Act.

[164] *See* ABA.

[165] *See id.*

[166] *See* Robert C. Pozen.

[167] *See id.*

[168] 20,868 hours/ 8,692 companies = 2.4 hours per company.

[169] We estimate the average hourly cost of in-house personnel to be $85. This cost estimate is based on data obtained from *The SIA Report on Management and Professional Earnings in the Securities Industry* (October 2001).

[170] $2,086,700/8,692 companies = $240 per company. In connection with other recent rulemakings, we have had discussions with several private law firms to estimate an hourly rate of $300 as the cost of outside professionals that assist companies in preparing these disclosures.

[171] 2,548 hours/1,058 companies = 2.4 hours per company.

[172] $255,050/1,058 companies = $240 per company.

On balance, we believe these estimates are reasonable.

To the extent that the new disclosures influence corporate behavior, however, the costs would extend beyond a disclosure burden. For example, companies may incur additional costs in instituting more responsive policies and procedures regarding director nominations and security holder communications. We have not included these costs in our analysis of the additional disclosure requirement, but have sought comment regarding such costs and related matters. After considering the comments, which are summarized below, we continue to believe that the amendments provide useful information to investors. The amendments do not require a company to adopt any particular policies and procedures. To the extent that a company voluntarily incurs the expense of adopting more responsive board policies, we believe that those costs are justified by the benefits of such policies.

In response to our request for comment, one commenter noted that the initial cost of implementing and maintaining procedures would be high.[173] This commenter identified the indirect cost of the increase in the amount of time that must be spent monitoring corporate activities, which may detract from effective management of the company.[174] The commenter identified costs such as legal fees associated with structuring and reviewing policies, the cost of management time related to structuring policies, fees paid to accountants for managerial and financial statement creation and review, opportunity costs related to missed business opportunities, and other costs.[175]

One commenter believed that the rules could be "extremely costly, time-consuming and potentially disruptive."[176] This commenter explained that the rules could increase significantly the number of communications that are sent to board members and the more corporate directors must divide their time, the less effectively they will discharge their competing functions.[177] Two commenters believed that the disclosure requirements would increase the burden on boards and discourage service.[178]

[173] *See* CIR.

[174] *See id.*

[175] *See id.*

[176] *See* Foley.

[177] *See id.*

[178] *See* CIR; Foley.

D. Small Business Issuers

Although the new rules apply to small business issuers, we do not anticipate any disproportionate impact on small business issuers. Like other issuers, small business issuers should incur relatively minor compliance costs to fulfill their disclosure obligations, and should find it unnecessary to hire extra personnel. Several commenters supported requiring small companies to provide the disclosure.[179]

Other commenters recommended granting outright relief to small businesses or deferring application of the rules to small businesses until the Commission evaluates the impact of the rules.[180] One commenter suggested that small companies that have established procedures could comply voluntarily.[181] These commenters sought relief for small businesses for several reasons. One commenter recommended that we not apply the rules to small businesses because it will "waste the money of small publicly held companies, create confusion * * * and provide no useful service to security holders."[182] This commenter noted that there does not appear to be a significant number of instances where major security holders of small publicly held companies were unable to communicate with boards of directors, particularly because major security holders are in management and/or on the board.[183] Further, this commenter was of the view that, because major unaffiliated security holders potentially can impact the trading price of small business securities, management and the board "take the views of major unaffiliated security holders very seriously."[184] This commenter also noted that the board and security holders will not agree on every aspect of running the company and it is not clear why small businesses need to set up a procedure for every communication with security holders.[185]

One commenter noted that increasing the incremental cost to small businesses by a certain number of hours and assuming that the staff is available already is flawed.[186] One commenter believed that the benefits of increased disclosure would not outweigh a small business issuer's need to reduce expenses.[187] This commenter noted that, as regulatory requirements increase, small businesses will have to hire additional staff or reduce the number of hours spent managing the company.[188]

After reviewing these comments, we are convinced that issues relating to corporate accountability and security holder rights affect small companies as much as they affect large companies. The concerns raised by the commenters addressed primarily the cost of establishing and maintaining new board policies and procedures—not the cost of the disclosure required by the amendments. A small business issuer is not required to adopt new policies and procedures under the amendments. Thus, we do not believe that applying the rules to small business issuers would be inconsistent with the policies underlying the small business issuer disclosure system.

V. Consideration of Burden on Competition and Promotion of Efficiency, Competition, and Capital Formation

Section 23(a)(2) of the Exchange Act[189] requires us, when adopting rules under the Exchange Act, to consider the impact that any new rule would have on competition. In addition, section 23(a)(2) prohibits us from adopting any rule that would impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act. The amendments are intended to make information about the functions of a company's nominating committee of the board of directors, as well as the ability of security holders to communicate with the board of directors, more transparent to investors. We anticipate that the new rules will provide increased information upon which to evaluate the functioning of boards of directors and make investment decisions. The rules may affect competition because they will allow companies to consider their existing policies in relation to policies adopted by other companies. As a result, companies may compete to adopt policies that effectively balance security holder and director interests and, therefore, attract investors.

We have identified one possible area where the rules could potentially place a burden on competition. The new disclosure will enable investors to compare companies' policies and procedures for director nominations and communications with directors. To the

[179] *See* CalPERS; CII; Granary; Letter B; McRitchie2; SERS; SIF; Trillium.

[180] *See* ABA; Archer; Foley; Stoecklein.

[181] *See* ABA.

[182] *See* Archer.

[183] *See id.*

[184] *See id.*

[185] *See id.*

[186] *See id.*

[187] *See* Stoecklein.

[188] *See id.*

[189] 15 U.S.C. 78w(a)(2).

extent that investors may place a premium on a company that provides security holders with favorable director nomination and communication procedures, a company will be at a disadvantage to other companies that maintain more favorable procedures.

Section 2(b) of the Securities Act,[190] section 3(f) of the Exchange Act [191] and section 2(c) of the Investment Company Act [192] require us, when engaging in rulemaking that requires us to consider or determine whether an action is necessary or appropriate in the public interest, to consider, in addition to the protection of investors, whether the action will promote efficiency, competition, and capital formation. We believe the disclosure will make information about the operation of a company's director nomination process more transparent. In addition, disclosure regarding the means by which security holders may communicate directly with a company's board of directors may increase security holder involvement in the companies in which they invest. As a result, we believe that investors may be able to evaluate a company's board of directors more effectively and make more informed investment decisions. We believe that, as a consequence of these developments, there may be some positive impact on the efficiency of markets and capital formation. The possibility of these effects, their magnitude if they were to occur, and the extent to which they will be offset by the costs of the new rules, are difficult to quantify.

We requested comment on these matters in the proposing release. We received no comments in response to these requests.

VI. Final Regulatory Flexibility Analysis

This Final Regulatory Flexibility Analysis has been prepared in accordance with the Regulatory Flexibility Act.[193] This FRFA involves amendments to Items 7 and 22 of Exchange Act Schedule 14A, Item 5 of Exchange Act Forms 10–Q and 10–QSB, Form N–CSR, and Item 401 of Regulations S–B and S–K. The amendments will expand the disclosure that currently is required in company filings regarding the functions of a company's nominating committee. In addition, the amendments will require disclosure regarding the policies and procedures regarding security holder communications with boards of directors. An Initial Regulatory Flexibility Analysis was prepared in accordance with the Regulatory Flexibility Act [194] in conjunction with the proposing release. The proposing release included the IRFA and solicited comments on it.

A. Need for the Amendments

The amendments are designed to address the growing concern among security holders over the accountability of corporate directors and the lack of sufficient security holder input into decisions made by the boards of directors of the companies in which they invest. Currently, companies must state whether they have a nominating committee and, if so, must identify the members of the nominating committee, state the number of committee meetings held, and briefly describe the functions performed by such committees.[195] In addition, if a company has a nominating or similar committee, it must state whether the committee considers nominees recommended by security holders and, if so, must describe how security holders may submit recommended nominees.[196] The amendments are designed to build upon existing disclosure requirements to elicit a more detailed discussion of the policies and procedures of nominating committees as well as the means by which security holders can communicate with boards of directors.

The amended disclosure requirements are designed to enhance transparency of the policies of boards of directors, with the goal of providing security holders a better understanding of the functions and activities of the boards of the companies in which they invest. For example, the amendments relating to nominating committees will require disclosure about the source of director candidates and the level of scrutiny accorded to each candidate. The amendments relating to security holder communications with directors may strengthen the association among security holders and directors by providing security holders with a better understanding of the means by which they may communicate with board members. For example, the amended disclosure will inform security holders of the manner in which to send communications to the board. Moreover, the amendments aim to enable investors to better evaluate a company's responsiveness to security holder issues and inquiries by illuminating the degree of director involvement with security holder concerns.

B. Significant Issues Raised by Public Comment

The Initial Regulatory Flexibility Analysis appeared in the proposing release. We requested comment on any aspect of the IRFA, including the number of small entities that would be affected by the proposals, the nature of the impact, how to quantify the number of small entities that would be affected, and how to quantify the impact of the proposals. While we did not receive any comments that responded directly to the IRFA, we did receive comments addressing the impact on small business issuers. Several commenters supported requiring small companies to provide the disclosure.[197] In that regard, commenters stated, "enhanced disclosure would be of great value to all types of investors."[198] Other commenters recommended granting outright relief to small businesses or deferring application of the rules to small businesses until the Commission evaluates the impact of the rules.[199] One commenter suggested that small companies that have established procedures could comply voluntarily.[200]

Those commenters who sought relief for small businesses did so for several reasons. One commenter recommended that we not apply the rules to small businesses because it will "waste the money of small publicly held companies, create confusion * * * and provide no useful service to security holders."[201] This commenter noted that there does not appear to be a significant number of instances where major security holders of small publicly held companies were unable to communicate with boards of directors, particularly because major security holders are in management and/or on the board.[202] Further, this commenter was of the view that, because major unaffiliated security holders potentially can impact the trading price of small business securities, management and the board "take the views of major unaffiliated security holders very seriously."[203] This commenter also noted that the board and security holders will not agree on every aspect of running the company and it is not clear why small businesses need to set up a procedure for every communication with security holders.[204]

One commenter noted that increasing the incremental cost to small businesses by a certain number of hours and assuming that the staff is available already is flawed.[205] One commenter believed that the benefits of increased disclosure would not outweigh a small business issuer's need to reduce expenses.[206] This commenter noted that, as regulatory requirements increase, small businesses will have to hire additional staff or reduce the number of hours spent managing the company.[207]

After reviewing these comments, we are convinced that issues relating to corporate accountability and security holder rights affect small companies as much as they affect large companies. The concerns raised by the commenters addressed primarily the cost of establishing and maintaining new board policies and procedures "not the cost of the disclosure required by the amendments. A small business issuer is not required to adopt new policies and procedures under the amendments. Thus, we do not believe that applying the rules to small business issuers would be inconsistent with the policies underlying the small business issuer disclosure system. Like other issuers, small business issuers should incur relatively minor compliance costs to fulfill their disclosure obligations, and should find it unnecessary to hire extra personnel. To the extent small businesses decide to adopt such policies, they are likely to do so because they believe the benefits justify the costs.

C. Small Entities Subject to the Amendments

The amendments will affect companies that are small entities. Exchange Act Rule 0–10(a) [208] defines a company, other than an investment company, to be a "small business" or "small organization" for purposes of the Regulatory Flexibility Act if it had total assets of $5 million or less on the last day of its most recent fiscal year. An investment company is considered to be a "small business" if it, together with other investment companies in the same group of related investment companies, has net assets of $50 million or less as of the end of its most recent fiscal year.[209] As discussed below, we believe that the amendments will affect approximately 805, or 32%, of the small entities that are operating companies. We believe that the amendments also will affect approximately 50 of the small entities that are investment companies.

The Commission received 8,692 separate proxy and information statements in its 2002 fiscal year. We estimate that 6,954, or 80%, of those filings involved the election of directors, and therefore will be affected by the new disclosure requirements.[210] Furthermore, we estimate that 5,257 companies are "listed issuers" (as defined in Exchange Act Rule 10A–3) that are subject to the proxy rules.[211] Because the relevant listing standards of national securities exchanges and Nasdaq require that listed issuers hold annual meetings, and state law provides for the election of directors at annual meetings, we estimate that at least 5,257 proxy and information statements involve elections of directors.[212] Of these proxy and information statements, less than 225 relate to operating companies and less than 25 relate to investment companies that constitute "small entities."[213] Therefore, we deduced that 1,697 proxy and information statements relate to the election of directors for companies that are not "listed issuers."[214] We estimate that approximately 580 of the proxy and information statements for operating companies that are not "listed issuers" will be filed by small entities affected by the new rules.[215] We also estimate that approximately 25 of the proxy and information statements for investment companies that are not "listed issuers" will be filed by small entities affected by the new disclosure requirements. Therefore, we estimate that the amendments will, in total, affect approximately 855 small entities.[216]

We requested comment on the number of small entities that would be impacted by our proposals, including any available empirical data. We received no responses to this request.

D. Reporting, Recordkeeping, and Other Compliance Requirements

The amendments are expected to result in some additional costs to comply with the disclosure requirements. Because the current rules already require a company to collect and disclose information about the composition, functions, policies and procedures of its nominating committee, the disclosure should not impose significant new costs for the collection of information. Thus, the task of complying with the nominating committee disclosure could be performed by the same person or group of persons responsible for compliance under the current rules at a minimal incremental cost. Moreover, if a small entity were to maintain a process for security holders to send communications to its board of directors, company personnel would be aware of such procedures and the disclosure burden also would be minimal. If a small entity does not maintain such a process, then the disclosure will consist of a statement that the board does not have a communications process and a statement of the specific basis for the view of the board of directors that it is appropriate for the company not to have such a communications process.

To the extent that the new rules influence corporate behavior, however, the costs will extend beyond a disclosure burden. For example, companies may incur additional costs in instituting more responsive policies and procedures regarding director nominations and security holder communications. The new disclosure

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190 15 U.S.C. 77b(b).

191 15 U.S.C. 78c(f).

192 15 U.S.C. 80a–2(c).

193 5 U.S.C. 601.

194 5 U.S.C. 603.

195 *See* Paragraph (d)(1) of Item 7 of Exchange Act Schedule 14A.

196 *See* Paragraph (d)(2) of Item 7 of Exchange Act Schedule 14A, prior to adoption of these amendments.

197 *See* CalPERS; CII; Granary; Letter B; McRitchie2; SERS; SIF; Trillium.

198 *See* Letter B; McRitchie2.

199 *See* ABA; Archer; Foley; Stoecklein.

200 *See* ABA.

201 *See* Archer.

202 *See id.*

203 *See id.*

204 *See id.*

205 *See id.*

206 *See* Stoecklein.

207 *See id.*

208 17 CFR 240.0–10(a).

209 *Id.*

210 We estimate that 20% of all proxy and information statements do not include disclosure about directors, and therefore would not include the disclosure required by the amendments. This estimate is based on the proportion of preliminary proxy statements to definitive proxy statements filed in our 2002 fiscal year (2,555/8,692=29%), which has been adjusted downward by 9% to reflect the fact that some preliminary proxy statements contain disclosure about directors. This estimate is based on the rationale that preliminary proxy statements are less likely to contain disclosure about directors because registrants do not file preliminary proxy statements for security holder meetings where the matters to be acted upon involve only the election of directors or other specified matters. *See* Exchange Act Rule 14a-6.

211 We derived this estimate from the database provided by the Center for Research in Securities Prices at the University of Chicago, the Standard & Poors Research Insight Compustat Database ("Compustat"), and SEC Form 1392.

212 *See, e.g.*, Rule 302.00 of NYSE listing standards and Rule 4350(e) of Nasdaq listing standards.

213 Data obtained from Compustat indicates that there are less than 225 listed operating companies that are small entities. Information compiled by the Commission staff indicates that there are less than 25 listed investment companies that are small entities.

214 6,536–5,257=1,697.

215 This estimate is based on the proportion of small entities that are reporting companies (2,500) to the total domestic companies quoted on the OTCBB or the Pink Sheets (7,317). We derived the latter figure from individuals within the organization called *http://www.pinksheets.com* and from the OTCBB Web site at *http://www.otcbb.com*.

216 The calculation for the total number of small entities is as follows: 225 listed operating companies + 25 listed investment companies + 580 non-listed operating companies + 25 non-listed investment companies = 855.

requirements, however, do not mandate any specific procedures.

For purposes of the PRA, we estimated that it will take an average of approximately 3 hours per year for companies, large and small, to comply with the new disclosure requirements. We estimated that 75% of the compliance burden will be carried by the company internally and that 25% of the compliance burden will be carried by outside professionals retained by the company. Thus, we estimate the annual incremental paperwork burden for a company subject to the proxy rules will be 2.4 hours per company, which translates into an estimated cost of $204 per company,[217] and a cost of approximately $240 per company for the services of outside professionals.[218] A cost of $444 per small entity may not, however, constitute a significant economic impact. That conclusion is based on our analysis of 1,245 small entities available on the Compustat database. We found that the average revenue of those small entities is $2.07 million per company. Therefore, on average, the estimated $444 compliance expense will constitute approximately .02% of a small entity's revenues, based on the Compustat data.

E. Agency Action To Minimize Effect on Small Entities

The Regulatory Flexibility Act directs the Commission to consider significant alternatives that would accomplish the stated objective, while minimizing any significant adverse impact on small entities. In connection with the proposals, we considered the following alternatives:

(a) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities;

(b) The clarification, consolidation, or simplification of disclosure for small entities;

(c) The use of performance rather than design standards; and

(d) An exemption for small entities from coverage under the proposals.

The Commission has considered a variety of reforms to achieve its regulatory objectives. As one possible approach, we considered requiring companies to include the security holder's proxy card and materials in the company mailing. Alternatively, we considered amending or reinterpreting Exchange Act Rule 14a–8(i)(8)[219] to allow security holder proposals requesting access to the company's proxy card for the purpose of making nominations. We believe that the current disclosure requirements are the most cost-effective approach to address specific concerns related to small entities because the proposals build on existing disclosure requirements.

We have drafted the new disclosure rules to require clear and straightforward disclosure of a company's policies and procedures regarding the nomination of directors and security holder communications. Separate disclosure requirements for small entities would not yield the disclosure that we believe to be necessary to achieve our objectives. In addition, the informational needs of investors in small entities are typically as great as the needs of investors in larger companies. Therefore, it did not seem appropriate to develop separate requirements for small entities involving clarification, consolidation, or simplification of the disclosure.

We have used design rather than performance standards in connection with the new requirements for two reasons. First, based on our past experience, we believe the disclosure will be more useful to investors if there are enumerated informational requirements. The mandated disclosures may be likely to result in a more focused and comprehensive discussion. Second, more precise disclosure requirements will promote more consistent disclosure among a cross-section of public companies because they will have greater certainty as to the required disclosure. In addition, more precise disclosure requirements will improve our ability to enforce the rules. Therefore, adding to the disclosure requirements in existing proxy and information statements appears to be the most effective method of eliciting the disclosure.

VII. Statutory Basis and Text of Amendments

The amendments are being adopted pursuant to sections 2,[220] 6,[221] 7,[222] 10,[223] and 19[224] of the Securities Act, sections 3(b),[225] 12, 13,[226] 14, 15, 23(a)[227] and 36[228] of the Exchange Act, as amended, and sections 8,[229] 20(a),[230] 30,[231] 31,[232] and 38[233] of the Investment Company Act, as amended.

List of Subjects

17 CFR Parts 228, 229, 240 and 249

Reporting and recordkeeping requirements, Securities.

17 CFR Parts 270 and 274

Investment companies, Reporting and recordkeeping requirements, Securities.

Text of the Amendments

■ In accordance with the foregoing, the Securities and Exchange Commission amends Title 17, chapter II of the Code of Federal Regulations as follows:

PART 228—INTEGRATED DISCLOSURE SYSTEM FOR SMALL BUSINESS ISSUERS

■ 1. The general authority citation for Part 228 is revised to read as follows:

Authority: 15 U.S.C. 77e, 77f, 77g, 77h, 77j, 77k, 77s, 77z–2, 77z–3, 77aa(25), 77aa(26), 77ddd, 77eee, 77ggg, 77hhh, 77iii, 77jjj, 77nnn, 77sss, 78l, 78m, 78n, 78o, 78u–5, 78w, 78*ll*, 78mm, 80a–8, 80a–29, 80a–30, 80a–37, 80b–11, and 7201 *et seq.*; and 18 U.S.C. 1350.

* * * * *

■ 2. Amend § 228.401 by adding paragraph (g) to read as follows:

§ 228.401 (Item 401) Directors, Executive Officers, Promoters and Control Persons.

* * * * *

(g) Describe any material changes to the procedures by which security holders may recommend nominees to the registrant's board of directors, where those changes were implemented after the registrant last provided disclosure in response to the requirements of Item 7(d)(2)(ii)(G) of Schedule 14A (§ 240.14a–101), or this Item.

Instructions to paragraph (g) of Item 401:

1. The disclosure required in paragraph (g) need only be provided in a registrant's quarterly or annual reports.

2. For purposes of paragraph (g), adoption of procedures by which security holders may recommend nominees to the registrant's board of directors, where the registrant's most recent disclosure in response to the requirements of Item 7(d)(2)(ii)(G) of Schedule 14A (§ 240.14a–101), or this Item, indicated that the registrant did not have in place such procedures, will constitute a material change.

[217] We estimate the average hourly cost of in-house personnel to be $85. This cost estimate is based on data obtained from *The SIA Report on Management and Professional Earnings in the Securities Industry* (October 2001).

[218] In connection with other recent rulemakings, we have had discussions with several private law firms to estimate an hourly rate of $300 as the cost of outside professionals that assist companies in preparing these disclosures.

[219] 17 CFR 240.14a–8(i)(8).

[220] 15 U.S.C. 77b.

[221] 15 U.S.C. 77f.

[222] 15 U.S.C. 77g.

[223] 15 U.S.C. 77j.

[224] 15 U.S.C. 77s.

[225] 15 U.S.C. 78c(b).

[226] 15 U.S.C. 78m.

[227] 15 U.S.C. 78w(a).

[228] 15 U.S.C. 78mm.

[229] 15 U.S.C. 80a–8.

[230] 15 U.S.C. 80a–20(a).

[231] 15 U.S.C. 80a–29.

[232] 15 U.S.C. 80a–30.

[233] 15 U.S.C. 80a–37.

PART 229—STANDARD INSTRUCTIONS FOR FILING FORMS UNDER SECURITIES ACT OF 1933, SECURITIES EXCHANGE ACT OF 1934 AND ENERGY POLICY AND CONVERVATIONS ACT OF 1975—REGULATION S–K

■ 3. The general authority citation for Part 229 is revised to read as follows:

Authority: 15 U.S.C. 77e, 77f, 77g, 77h, 77j, 77k, 77s, 77z–2, 77z–3, 77aa(25), 77aa(26), 77ddd, 77eee, 77ggg, 77hhh, 77iii, 77jjj, 77nnn, 77sss, 78c, 78i, 78j, 78l, 78m, 78n, 78o, 78u–5, 78w, 78*ll*, 78mm, 79e, 79j, 79n, 79t, 80a–8, 80a–9, 80a–20, 80a–29, 80a–30, 80a–31(c), 80a–37, 80a–38(a), 80a–39, 80b–11, and 7201 *et seq.*; and 18 U.S.C. 1350, unless otherwise noted.

* * * * *

■ 4. Amend § 229.401 by adding paragraph (j) to read as follows:

§ 229.401 (Item 401) Directors, executive officers, promoters and control persons.

* * * * *

(j) Describe any material changes to the procedures by which security holders may recommend nominees to the registrant's board of directors, where those changes were implemented after the registrant last provided disclosure in response to the requirements of Item 7(d)(2)(ii)(G) of Schedule 14A (§ 240.14a–101), or this Item.

Instructions to paragraph (j) of Item 401:

1. The disclosure required in paragraph (j) need only be provided in a registrant's quarterly or annual reports.

2. For purposes of paragraph (j), adoption of procedures by which security holders may recommend nominees to the registrant's board of directors, where the registrant's most recent disclosure in response to the requirements of Item 7(d)(2)(ii)(G) of Schedule 14A (§ 240.14a–101), or this Item, indicated that the registrant did not have in place such procedures, will constitute a material change.

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

■ 5. The general authority citation for part 240 is revised to read as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z–2, 77z–3, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78e, 78f, 78g, 78i, 78j, 78j–1, 78k, 78k–1, 78l, 78m, 78n, 78o, 78p, 78q, 78s, 78u–5, 78w, 78x, 78*ll*, 78mm, 79q, 79t, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4, 80b–11, and 7201 *et seq.*; and 18 U.S.C. 1350, unless otherwise noted.

* * * * *

■ 6. Amend § 240.14a–101 by:

■ a. Revising paragraph (d)(2) of Item 7;

■ b. Revising the reference "paragraphs (a) through (d)(2)" in paragraph (e) of Item 7 to read "paragraphs (a) through (d)(1) and (d)(2)(ii)(D)";

■ c. Adding paragraph (h) to Item 7;

■ d. Revising the reference "paragraphs (d)(3), (f) and (g)" in the introductory text of paragraph (b) of Item 22 to read "paragraphs (d)(2) (other than (d)(2)(ii)(D)), (d)(3), (f), (g), and (h)";

■ e. Revising the last sentence of the introductory text of paragraph (b)(14) of Item 22;

■ f. Revising paragraph (b)(14)(ii) of Item 22;

■ g. Removing the semi-colon and "and" from the end of paragraph (b)(14)(iii) of Item 22 and in their place adding a period;

■ h. Removing paragraph (b)(14)(iv) of Item 22; and

■ i. Adding an Instruction directly after paragraph (b)(14)(iii) of Item 22.

The additions and revisions read as follows:

§ 240.14a–101 Schedule 14A. Information required in proxy statement.

Schedule 14A Information

* * * * *

Item 7. Directors and executive officers.

* * * * *

(d)(1) * * *

(2)(i) If the registrant does not have a standing nominating committee or committee performing similar functions, state the basis for the view of the board of directors that it is appropriate for the registrant not to have such a committee and identify each director who participates in the consideration of director nominees;

(ii) Provide the following information regarding the registrant's director nomination process:

(A) If the nominating committee has a charter, disclose whether a current copy of the charter is available to security holders on the registrant's Web site. If the nominating committee has a charter and a current copy of the charter is available to security holders on the registrant's Web site, provide the registrant's Web site address. If the nominating committee has a charter and a current copy of the charter is not available to security holders on the registrant's Web site, include a copy of the charter as an appendix to the registrant's proxy statement at least once every three fiscal years. If a current copy of the charter is not available to security holders on the registrant's Web site, and is not included as an appendix to the registrant's proxy statement, identify in which of the prior fiscal years the charter was so included in satisfaction of this requirement;

(B) If the nominating committee does not have a charter, state that fact;

(C) If the registrant is a listed issuer (as defined in § 240.10A–3) whose securities are listed on a national securities exchange registered pursuant to section 6(a) of the Act (15 U.S.C. 78f(a)) or in an automated inter-dealer quotation system of a national securities association registered pursuant to section 15A(a) of the Act (15 U.S.C. 78o–3(a)) that has independence requirements for nominating committee members, disclose whether the members of the nominating committee are independent, as independence for nominating committee members is defined in the listing standards applicable to the listed issuer;

(D) If the registrant is not a listed issuer (as defined in § 240.10A–3), disclose whether each of the members of the nominating committee is independent. In determining whether a member is independent, the registrant must use a definition of independence of a national securities exchange registered pursuant to section 6(a) of the Act (15 U.S.C. 78f(a)) or a national securities association registered pursuant to section 15A(a) of the Act (15 U.S.C. 78o–3(a)) that has been approved by the Commission (as that definition may be modified or supplemented), and state which definition it used. Whatever definition the registrant chooses, it must apply that definition consistently to all members of the nominating committee and use the independence standards of the same national securities exchange or national securities association for purposes of nominating committee disclosure under this requirement and audit committee disclosure required under paragraph (d)(3)(iv) of Item 7 of Schedule 14A (§ 240.14a–101);

(E) If the nominating committee has a policy with regard to the consideration of any director candidates recommended by security holders, provide a description of the material elements of that policy, which shall include, but need not be limited to, a statement as to whether the committee will consider director candidates recommended by security holders;

(F) If the nominating committee does not have a policy with regard to the consideration of any director candidates recommended by security holders, state that fact and state the basis for the view of the board of directors that it is appropriate for the registrant not to have such a policy;

(G) If the nominating committee will consider candidates recommended by security holders, describe the procedures to be followed by security holders in submitting such recommendations;

(H) Describe any specific, minimum qualifications that the nominating committee believes must be met by a nominating committee-recommended nominee for a position on the registrant's board of directors, and describe any specific qualities or skills that the nominating committee believes are necessary for one or more of the registrant's directors to possess;

(I) Describe the nominating committee's process for identifying and evaluating nominees for director, including nominees recommended by security holders, and any differences in the manner in which the nominating committee evaluates nominees for director based on whether the nominee is recommended by a security holder;

(J) With regard to each nominee approved by the nominating committee for inclusion on the registrant's proxy card (other than nominees who are executive officers or who are directors standing for re-election), state which one or more of the following categories of persons or entities recommended that nominee: security holder,

non-management director, chief executive officer, other executive officer, third-party search firm, or other, specified source. With regard to each such nominee approved by a nominating committee of an investment company, state which one or more of the following additional categories of persons or entities recommended that nominee: security holder, director, chief executive officer, other executive officer, or employee of the investment company's investment adviser, principal underwriter, or any affiliated person of the investment adviser or principal underwriter;

(K) If the registrant pays a fee to any third party or parties to identify or evaluate or assist in identifying or evaluating potential nominees, disclose the function performed by each such third party; and

(L) If the registrant's nominating committee received, by a date not later than the 120th calendar day before the date of the registrant's proxy statement released to security holders in connection with the previous year's annual meeting, a recommended nominee from a security holder that beneficially owned more than 5% of the registrant's voting common stock for at least one year as of the date the recommendation was made, or from a group of security holders that beneficially owned, in the aggregate, more than 5% of the registrant's voting common stock, with each of the securities used to calculate that ownership held for at least one year as of the date the recommendation was made, identify the candidate and the security holder or security holder group that recommended the candidate and disclose whether the nominating committee chose to nominate the candidate, provided, however, that no such identification or disclosure is required without the written consent of both the security holder or security holder group and the candidate to be so identified.

Instructions to paragraph (d)(2)(ii)(L):

1. For purposes of Item 7(d)(2)(ii)(L), the percentage of securities held by a nominating security holder may be determined using information set forth in the registrant's most recent quarterly or annual report, and any current report subsequent thereto, filed with the Commission pursuant to this Act (or, in the case of a registrant that is an investment company registered under the Investment Company Act of 1940, the registrant's most recent report on Form N–CSR (§§ 249.331 and 274.128)), unless the party relying on such report knows or has reason to believe that the information contained therein is inaccurate.

2. For purposes of the registrant's obligation to provide the disclosure specified in Item 7(d)(2)(ii)(L), where the date of the annual meeting has been changed by more than 30 days from the date of the previous year's meeting, the obligation under that Item will arise where the registrant receives the security holder recommendation a reasonable time before the registrant begins to print and mail its proxy materials.

3. For purposes of Item 7(d)(2)(ii)(L), the percentage of securities held by a recommending security holder, as well as the holding period of those securities, may be determined by the registrant if the security holder is the registered holder of the securities. If the security holder is not the registered owner of the securities, he or she can submit one of the following to the registrant to evidence the required ownership percentage and holding period:

A. A written statement from the "record" holder of the securities (usually a broker or bank) verifying that, at the time the security holder made the recommendation, he or she had held the required securities for at least one year; or

B. If the security holder has filed a Schedule 13D (§ 240.13d–101), Schedule 13G (§ 240.13d–102), Form 3 (§ 249.103), Form 4 (§ 249.104), and/or Form 5 (§ 249.105), or amendments to those documents or updated forms, reflecting ownership of the securities as of or before the date of the recommendation, a copy of the schedule and/or form, and any subsequent amendments reporting a change in ownership level, as well as a written statement that the security holder continuously held the securities for the one-year period as of the date of the recommendation.

4. For purposes of the registrant's obligation to provide the disclosure specified in Item 7(d)(2)(ii)(L), the security holder or group must have provided to the registrant, at the time of the recommendation, the written consent of all parties to be identified and, where the security holder or group members are not registered holders, proof that the security holder or group satisfied the required ownership percentage and holding period as of the date of the recommendation.

Instruction to paragraph (d)(2)(ii): For purposes of Item 7(d)(2)(ii), the term "nominating committee" refers not only to nominating committees and committees performing similar functions, but also to groups of directors fulfilling the role of a nominating committee, including the entire board of directors.

* * * * *

(h)(1) State whether or not the registrant's board of directors provides a process for security holders to send communications to the board of directors and, if the registrant does not have such a process for security holders to send communications to the board of directors, state the basis for the view of the board of directors that it is appropriate for the registrant not to have such a process;

(2) If the registrant has a process for security holders to send communications to the board of directors:

(i) Describe the manner in which security holders can send communications to the board and, if applicable, to specified individual directors; and

(ii) If all security holder communications are not sent directly to board members, describe the registrant's process for determining which communications will be relayed to board members; and

Instruction to paragraph (h)(2)(ii): For purposes of the disclosure required by this paragraph, a registrant's process for collecting and organizing security holder communications, as well as similar or related activities, need not be disclosed provided that the registrant's process is approved by a majority of the independent directors or, in the case of a registrant that is an investment company, a majority of the directors who are not "interested persons" of the investment company as defined in section 2(a)(19) of the Investment Company Act of 1940 (15 U.S.C. 80a–2(a)(19)).

(3) Describe the registrant's policy, if any, with regard to board members' attendance at annual meetings and state the number of board members who attended the prior year's annual meeting.

Instruction to paragraphs (h)(2) and (h)(3): In lieu of providing the information required by paragraphs (h)(2) and (h)(3) in the proxy statement, the registrant may instead provide the registrant's Website address where such information appears.

Instructions to paragraph (h):

1. For purposes of this paragraph, communications from an officer or director of the registrant will not be viewed as "security holder communications." Communications from an employee or agent of the registrant will be viewed as "security holder communications" for purposes of this paragraph only if those communications are made solely in such employee's or agent's capacity as a security holder.

2. For purposes of this paragraph, security holder proposals submitted pursuant to § 240.14a–8, and communications made in connection with such proposals, will not be viewed as "security holder communications."

* * * * *

Item 22. Information required in investment company proxy statement.

* * * * *

(b) * * *

(14) * * * Identify the other standing committees of the Fund's board of directors, and provide the following information about each committee, including any separately designated audit committee and any nominating committee:

* * * * *

(ii) The members of the committee and, in the case of a nominating committee, whether or not the members of the committee are "interested persons" of the Fund as defined in section 2(a)(19) of the Investment Company Act of 1940 (15 U.S.C. 80a–2(a)(19)); and

* * * * *

Instruction to paragraph (b)(14): For purposes of Item 22(b)(14), the term "nominating committee" refers not only to nominating committees and committees performing similar functions, but also to groups of directors fulfilling the role of a nominating committee, including the entire board of directors.

* * * * *

PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

■ 7. The general authority citation for Part 249 is revised to read as follows:

Authority: 15 U.S.C. 78a *et seq.* and 7201 *et seq.*; and 18 U.S.C. 1350, unless otherwise noted.

* * * * *

■ 8. Amend Form 10–Q (referenced in § 249.308a), Item 5 of Part II—Other Information by:

■ a. Designating the existing text in Item 5 as paragraph (a);

■ b. Removing the period at the end of newly designated paragraph (a) and in its place adding "; and"; and

■ c. Adding paragraph (b).

The addition reads as follows:

Note: The text of Form 10–Q does not, and this amendment will not, appear in the Code of Federal Regulations.

Form 10–Q

* * * * *

Part II—Other Information

* * * * *

Item 5. Other Information.

* * * * *

(b) Furnish the information required by Item 401(j) of Regulation S–K (§ 229.401).

* * * * *

■ 9. Amend Form 10–QSB (referenced in § 249.308b), Item 5 to Part II—Other Information by:

■ a. Designating the existing text in Item 5 as paragraph (a);

■ b. Removing the period at the end of newly designated paragraph (a) and in its place adding "; and"; and

■ c. Adding paragraph (b).

The addition reads as follows:

Note: The text of Form 10–QSB does not, and this amendment will not, appear in the Code of Federal Regulations.

Form 10–QSB

* * * * *

Part II—Other Information

* * * * *

Item 5. Other Information.

* * * * *

(b) Furnish the information required by Item 401(g) of Regulation S–B (§ 228.401).

* * * * *

PART 270—RULES AND REGULATIONS, INVESTMENT COMPANY ACT OF 1940

■ 10. The authority citation for part 270 continues to read in part as follows:

Authority: 15 U.S.C. 80a–1 *et seq.*, 80a–34(d), 80a–37, and 80a–39, unless otherwise noted.

* * * * *

■ 11. Amend § 270.30a–2 by:

■ a. Revising the reference "Item 10(a)(2)" in paragraph (a) to read "Item 11(a)(2)"; and

■ b. Revising the reference "Item 10(b)" in paragraph (b) to read "Item 11(b)."

PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

PART 274—FORMS PRESCRIBED UNDER THE INVESTMENT COMPANY ACT OF 1940

■ 12. The authority citation for Part 274 continues to read, in part, as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 78c(b), 78*l*, 78m, 78n, 78o(d), 80a–8, 80a–24, 80a–26, and 80a–29, unless otherwise noted.

* * * * *

■ 13. Amend Form N–CSR (referenced in §§ 249.331 and 274.128) by:

■ a. Revising the reference "10(a)(1)" in General Instruction D and paragraphs (c) and (f)(1) of Item 2 to read "11(a)(1)";

■ b. Redesignating Items 9 and 10 as Items 10 and 11;

■ c. Adding new Item 9; and

■ d. Revising the reference "Item 10" in the heading of the Instruction to newly redesignated Item 11 to read "Item 11."

The addition reads as follows:

Note: The text of Form N–CSR does not, and these amendments will not, appear in the Code of Federal Regulations.

Form N–CSR

* * * * *

Item 9. Submission of Matters to a Vote of Security Holders.

Describe any material changes to the procedures by which shareholders may recommend nominees to the registrant's board of directors, where those changes were implemented after the registrant last provided disclosure in response to the requirements of Item 7(d)(2)(ii)(G) of Schedule 14A (17 CFR 240.14a–101), or this Item.

Instruction: For purposes of this Item, adoption of procedures by which shareholders may recommend nominees to the registrant's board of directors, where the registrant's most recent disclosure in response to the requirements of Item 7(d)(2)(ii)(G) of Schedule 14A (17 CFR 240.14a–101), or this Item, indicated that the registrant did not have in place such procedures, will constitute a material change.

* * * * *

By the Commission.

Dated: November 24, 2003.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 03–29723 Filed 11–26–03; 8:45 am]

[FR Doc. 03–29723 Filed 11–26–03; 8:45 am]

Editorial Note: Federal Register Rule document 03–29723 was originally published at page 66991 in the issue of Friday, November 28, 2003. In that publication text was left out. The corrected document is republished in its entirety.

[FR Doc. R3–29723 Filed 12–10–03; 8:45 am]

BILLING CODE 1505–01–P

Federal Register

Thursday,
December 11, 2003

Part V

Department of Defense
General Services Administration
National Aeronautics and Space Administration

48 CFR Chapter 1, et al.
Federal Acquisition Circular 2001–18;
Final Rules

DEPARTMENT OF DEFENSE
GENERAL SERVICES ADMINISTRATION
NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Chapter 1

Federal Acquisition Circular 2001–18; Introduction

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Summary presentation of final rules and technical amendments and corrections.

SUMMARY: This document summarizes the Federal Acquisition Regulation (FAR) rules agreed to by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council in this Federal Acquisition Circular (FAC) 2001–18. A companion document, the Small Entity Compliance Guide (SECG), follows this FAC. The FAC, including the SECG, is available via the Internet at *http://www.arnet.gov/far.*

DATES: For effective dates and comment dates, see separate documents which follow.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat at (202) 501–4755 for information pertaining to status or publication schedules. For clarification of content, contact the analyst whose name appears in the table below in relation to each FAR case or subject area. Please cite FAC 2001–18 and specific FAR case number(s). Interested parties may also visit our Web site at *http://www.arnet.gov/far.*

Item	Subject	FAR case	Analyst
I	New Consolidated Form for Selection of Architect-Engineer Contractors	2000–608	Davis.
II	Depreciation Cost Principle	2001–026	Loeb.
III	Federal Procurement Data System	2003–019	Zaffos.
IV	Increased Federal Prison Industries, Inc. Waiver Threshold	2003–001	Nelson.
V	Debarment and Suspension—Order Placement and Option Exercise	2002–010	Goral.
VI	Insurance and Pension Costs	2001–037	Loeb.
VII	Debriefing—Competitive Acquisition	2002–014	Wise.
VIII	Technical Amendments.		

SUPPLEMENTARY INFORMATION:
Summaries for each FAR rule follow. For the actual revisions and/or amendments to these

FAR cases, refer to the specific item number and subject set forth in the documents following these item summaries.

FAC 2001–18 amends the FAR as specified below:

Item I—New Consolidated Form for Selection of Architect-Engineer Contractors (FAR Case 2000–608)

This final rule amends the FAR to replace SF 254, Architect-Engineer and Related Services Questionnaire, and SF 255, Architect-Engineer and Related Services Questionnaire for Specific Projects, with SF 330, Architect-Engineer Qualifications. The SF 330 reflects current architect-engineer practices in a streamlined and updated format and is organized into data blocks that readily support automation. An interagency ad hoc committee developed the SF 330. It was based on the results of a joint Federal-industry survey of the existing SFs 254 and 255 conducted by the Standing Committee on Procurement and Contracting of the Federal Facilities Council (FCC) in 1995 and published in 1996 as FCC Report Number 130, entitled "Survey on the Use of SFs 254 and 255 for Architect-Engineer Qualifications." The survey's purpose was to evaluate the current use of the forms, which are used for the submission of qualifications by architect-engineer (A–E) firms interested in Federal contracts, and to identify possible improvements which would enable the existing forms to better serve the needs of Federal agencies and the A–E industry.

The policies and the SF 330, Architect-Engineer Qualifications, of this final rule are effective for all agencies and their solicitations issued on or after January 12, 2004. However, agencies may delay implementation of this final rule until June 8, 2004, at which time it becomes mandatory for all agencies and their solicitations issued on or after that date. Use of the SF 330 becomes effective January 12, 2004. However, until June 8, 2004, agencies may authorize the continued use of the SFs 254 and 255 instead.

Item II—Depreciation Cost Principle (FAR Case 2001–026)

This final rule amends FAR parts 2 and 31 to revise the depreciation cost principle (FAR 31.205–11) by improving clarity and structure and removing unnecessary and duplicative language. The case was initiated at the request of the Aerospace Industries Association. The rule does not change the allowability of depreciation costs. However, changes have been made that may effect the determination of depreciable costs for tangible personal property; for example, only residual values in excess of 10 percent need be used and residual values need not be recognized when certain depreciation methods are used. This rule is of particular interest to contractors and contracting officers who use cost analysis to price contracts and modifications, and who determine or negotiate reasonable costs in accordance with a clause of a contract, *e.g.*, price revision of fixed-price incentive contracts, terminated contracts, or indirect cost rates.

Item III—Federal Procurement Data System (FAR Case 2003–019)

This final rule amends the FAR to revise FAR 4.602 to—

- Reflect that the information in FPDS–NG is available to the general public;
- Provide the website for FPDS–NG, which must be entered as *https://www.fpds.gov;*
- Delete the physical address for the Federal Procurement Data Center;
- Allow agencies to report all transactions between $2,500 and $25,000 to FPDS–NG as either individual contract actions or summary contract actions until September 30, 2004;
- Require all contract actions over $2,500 be reported to FPDS–NG as individual contract actions after September 30, 2004;
- Require agencies to insert the provision at 52.204–6, Data Universal Numbering System (DUNS) Number, in solicitations when the expected award amount will result in the generation of an individual contract action report and the contract does not include FAR clause 52.204–7, Central Contractor Registration; and
- Eliminate the use of the SF 279, Federal Procurement Data System (FPDS)—Individual Contract Action Report, and the SF 281, Federal Procurement Data System (FPDS)—Summary Contract Action Report ($25,000 or Less).

Item IV—Increased Federal Prison Industries, Inc. Waiver Threshold (FAR Case 2003–001)

The interim rule published as Item V of FAC 2001–014 is adopted as final without change. The interim rule amended the FAR to increase the Federal Prison Industries, Inc.'s (FPI) clearance exception threshold at FAR 8.606(e) from $25 to $2,500, and deleted the criterion that delivery is required within 10 days. Federal agencies are not required to make purchases from FPI of products on FPI's Schedule that are at or below this threshold. Federal agencies, however, may continue to consider and purchase products from FPI that are at or below $2,500.

Item V—Debarment and Suspension—Order Placement and Option Exercise (FAR Case 2002–010)

This final rule amends FAR part 9 to address the placement of orders under existing contracts and agreements with contractors that have been debarred, suspended, or proposed for debarment.

Item VI—Insurance and Pension Costs (FAR Case 2001–037)

This final rule amends the FAR to revise the Insurance and Indemnification cost principle (FAR 31.205–19), and the portion of the Compensation for Personal Services cost principle relating to pension costs (FAR 31.205–6(j)). The rule revises both cost principles by improving clarity and structure, and removing unnecessary and duplicative language. Changes to FAR 31.205–6(j) include: Use of terminology consistent with Cost Accounting Standard (CAS) 412, Measurement of Pension Costs, and CAS 413, Adjustment and Allocation of Pension Cost; how the Government receives pension cost adjustment amounts for CAS-covered and non-CAS-covered contracts; revision of the allowability limitation on employee stock ownership plan (ESOP) contributions; and removal of the requirement for the contracting officer to approve the ESOP contribution rate. Changes to FAR 31.205–19 include the elimination of the U.S. Treasury discount rate provision for computing actual losses. The case was initiated as a result of comments and recommendations received from industry and Government representatives during a series of public meetings. This rule is of particular interest to contractors and contracting officers who use cost analysis to price contracts and modifications, and who determine or negotiate reasonable costs in accordance with a clause of a contract, *e.g.*, price revision of fixed-price incentive contracts, terminated contracts, or indirect cost rates.

Item VII—Debriefing—Competitive Acquisition (FAR Case 2002–014)

This rule amends the FAR to include requirements for debriefing unsuccessful offerors under competitive proposals, as required by Sections 1014 and 1064 of the Federal Acquisition Streamlining Act of 1994, as amended, 10 U.S.C. 2305(b) and 41 U.S.C. 253b, respectively. Specifically, 10 U.S.C. 2305(b)(5)(D) and 41 U.S.C. 253b(e)(4) requires each solicitation for competitive proposals to include a statement that prescribes minimal information that shall be disclosed in postaward debriefings. This rule also amends FAR 52.212–1 and 52.215–1 to implement the statutory requirements, and the past performance debriefing requirement at FAR 15.506(d)(2), by listing all the prescribed minimal information that shall be disclosed in postaward debriefings.

Item VIII—Technical Amendments

This amendment makes editorial changes at FAR 1.201–1(b)(1); 6.302–7(c)(1)(i); 13.500(d); 25.701(b); 52.204–7, Alternate I; 52.211–2(a) and (b); and 52.225–13(b).

Dated: December 4, 2003.

Laura Auletta,

Director, Acquisition Policy Division.

Federal Acquisition Circular

Federal Acquisition Circular (FAC) 2001–18 is issued under the authority of the Secretary of Defense, the Administrator of General Services, and the Administrator for the National Aeronautics and Space Administration.

Unless otherwise specified, all Federal Acquisition Regulation (FAR) and other directive material contained in FAC 2001–18 are effective January 12, 2004, except for Items III, IV, and VIII which are effective December 11, 2003.

Dated: December 1, 2003.

Domenic C. Cipicchio,

Acting Director, Defense Procurement and Acquisition Policy.

Dated: December 1, 2003.

Joseph A. Neurauter,

Acting Deputy Associate Administrator, Office of Acquisition Policy, General Services Administration.

Dated: November 24, 2003.

Tom Leudtke,

Assistant Administrator for Procurement, National Aeronautics and Space Administration.

[FR Doc. 03–30471 Filed 12–10–03; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1, 36, and 53

[FAC 2001–18; FAR Case 2000–608; Item I]

RIN 9000–AJ15

Federal Acquisition Regulation; New Consolidated Form for Selection of Architect-Engineer Contractors

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have agreed on a final rule amending the Federal Acquisition Regulation (FAR) to replace Standard Form (SF) 254, Architect-Engineer and Related Services Questionnaire, and SF 255, Architect-Engineer and Related Services Questionnaire for Specific Projects, with SF 330, Architect-Engineer Qualifications. The SF 330 reflects current architect-engineer practices in a streamlined and updated format, and is organized into data blocks that readily support automation.

DATES: *Effective Date:* January 12, 2004.

Applicability Date: The policies and the SF 330, Architect-Engineer Qualifications, of this final rule apply for all agencies and their solicitations issued on or after January 12, 2004. However, agencies may delay implementation of this final rule until June 8, 2004, at which time it becomes mandatory for all agencies and their solicitations issued on or after that date.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC 20405, (202) 501–4755, for information pertaining to status or publication schedules. For clarification of content, contact Ms. Cecelia Davis, Procurement Analyst, at (202) 219–0202. Please cite FAC 2001–18, FAR case 2000–608.

SUPPLEMENTARY INFORMATION:

A. Background

An interagency ad hoc committee developed the SF 330. It was based on the results of a joint Federal-industry survey of the existing Standard Forms (SFs) 254 and 255 conducted by the Standing Committee on Procurement and Contracting of the Federal Facilities Council (FCC) in 1995 and published in 1996 as FCC Report Number 130, entitled "Survey on the Use of Standard Forms 254 and 255 for Architect-Engineer Qualifications." The survey's purpose was to evaluate the current use of the forms which are used for the submission of qualifications by architect-engineer (A–E) firms interested in Federal contracts, and to identify possible improvements which would enable the existing forms to better serve the needs of Federal agencies and the A–E industry. The SFs 254 and 255 have changed little since their introduction in 1975, although the variety of A–E services has greatly expanded and new technologies have dramatically changed the way A–E firms do business. The report states that Federal agencies and A–E industry overwhelmingly support a structured format for submitting A–E qualifications, because the structured format saves time and effort and allows efficient and consistent evaluations. It also recommends many specific changes to the existing forms to enhance their effectiveness and simplify their use. Both Federal and A–E industry practitioners believe that the forms need streamlining as well as updating to facilitate electronic usage. The objectives of the SF 330 are to merge the SFs 254 and 255 into a single streamlined form, expand essential information about qualifications and experience, reflect current architect-engineer disciplines, experience types and technology, eliminate information of marginal value, permit limitations on submission length, and facilitate electronic usage. On October 19, 2001, a proposed FAR rule for a new Architect-Engineer Qualifications form was published in the **Federal Register** (66 FR 53314). The final rule replaces SFs 254 and 255 with SF 330, and makes related FAR revisions in 1.106, 36.603, 36.702, 53.236–2, 53.301–254, 53.301–255, and 53.301–330. SF 330 may be used beginning on January 12, 2004. However, until June 8, 2004, agencies may authorize the continued use of SFs 254 and 255 instead.

1. *Extension of Comment Period.* The FAR Council published this FAR case as a proposed rule in the **Federal Register** on October 19, 2001 (66 FR 53314), and later published an extension on December 20, 2001 (66 FR 65792). This extended the comment period from December 18, 2001, to January 8, 2002. One hundred and ten public comments were received from industry and Federal Government agencies.

2. *Summary of Public Comments.*

A. *General Comments:*

Comment: The new form for A–E qualifications is not necessary.

Response: SFs 254 and 255 were issued in 1975 and have changed little. However, there have been significant changes in the A–E industry since then, such as new technologies, changes in codes and standards, and new laws and regulations. Also, there have been substantial changes in Government contracting processes and agencies' requirements. The SF 330 reflects these changes and provides a more streamlined presentation of essential information required by agencies for selecting A–E firms.

Comment: Significant effort will be required to convert existing databases that have been developed for use with SFs 254 and 255, especially converting the profile codes.

Response: The SF 330 utilizes much of the same information as the SFs 254 and 255, which should minimize the effort required to convert existing databases for use with the new form. All of the existing experience categories that appear on the SF 254 have been retained (although a new alphanumeric system is used for the profile codes), and new experience categories have been added to reflect industry changes since the forms were first developed in 1975. Hence, firms do not have to change the current experience categories for example projects in their databases. Commercial software products for preparing the SF 330 should allow for easy conversion of the existing numeric profile codes to the new alphanumeric profile codes. The change to an alphanumeric code system allows for future profile code additions with minimal changes to the form.

Comment: The SF 330 overemphasizes branch offices, which will increase the cost of submissions and is not relevant for a large firm with a matrix organization.

Response: The A–E selection process is focused on the specific team proposed for the contract. Although a firm may have many branch offices, a specific office is typically assigned the lead role for the work, with possible support from one or more other offices. A Government A–E selection board is mainly concerned with the qualifications of the branch offices designated to perform the work, and not the entire firm. The form and instructions were changed to only require information on the branch offices having a key role in the contract, not all offices.

Comment: The SF 330 does not work well for indefinite delivery contracts (IDCs).

Response: The SF 330 requires submission of essentially the same information as SFs 254 and 255, and can be adapted for use with IDCs in the same manner as SFs 254 and 255. In fact, the language of the SF 330 emphasizes "contracts" instead of "projects" to reflect the Federal Government's current use of IDCs instead of project-specific contracts.

Comment: What is the implementation schedule for the SF 330?

Response: The SF 330 is effective January 12, 2004. However, the Councils have recommended that agencies may delay implementation of the SF 330 until June 8, 2004, at which time it becomes mandatory for all agencies and their solicitations issued on or after that date.

Comment: Can the SF 330 be expanded?

Response: The SF 330 can be expanded in the same manner as the SFs 254 and 255. Data elements have been realigned on the final form to allow vertical expansion and contraction, depending upon the amount of information inserted. Additional sheets can be attached to certain sections.

Comment: The page numbering system is burdensome and confusing.

Response: We eliminated the requirement for insertion of page numbers on the completed form.

Comment: Will the SF 330 be available electronically and in what format?

Response: The SF 330 will be posted electronically on the General Services Administration forms website in a screen-fillable format, Adobe Acrobat Portable Document Format, and possibly other formats. Also, commercial vendors will develop customized software products for preparation of the SF 330, similar to those currently available for the SFs 254 and 255. Individual agencies will specify if electronic submission is required and the specific format to use.

B. *Comments on Part I:*

Comment: The SF 330 overemphasizes the importance of previous relationships and teams, and discourages new firms and teams.

Response: The Brooks A–E Act requires that A–E firms be selected "on the basis of demonstrated competence." Hence, the proven competence of project teams is an important consideration in selecting A–E firms, which is reflected in the information on previous teaming arrangements required on the SF 330. On each contract submission, an A–E firm must decide whether to team with previous partners and subcontractors or to make new alliances.

Comment: The requirement for organizational "flowchart" in Section D is unclear and will be burdensome to show all branch offices.

Response: We have clarified the instructions to require an organizational chart of the proposed team showing the names and roles of all key personnel listed in Section E and the firms they are associated with, as listed in Section C. Also, only those branch offices having a key role in the contract need to be shown, not every office involved.

Comment: Revise Section E to allow more than 5 relevant projects for each key person.

Response: We disagree. Five projects are sufficient to demonstrate that a person has experience in the required type of work. The SF 330 actually provides more space for the experience of key persons than the SF 255.

Comment: Need instructions on the number, size, type, labeling, attachment and page numbering of photos for Section E (Resumes of Key Personnel Proposed for This Contract) and Section F.

Response: The Councils have deleted the instructions and check boxes for photos. If an agency requires photos, it will provide specific submission instructions.

Comment: What happens if a firm has less than 10 example projects to present in Section F?

Response: The requirement for 10 projects is the same as on the SF 255. A firm should present as many relevant projects as it can, up to a total of ten.

Comment: Clarify owner versus client in Section F. The user may be a better point of contact.

Response: The term "project owner" was used on the SF 255 and is used in the same manner on the SF 330. As defined in the instructions, the project owner is the agency, installation, institution, corporation or private individual for whom the project was performed. The client may or may not be the project owner, depending on what organization awarded and managed the A–E contract. The point of contact may be a person associated with the project owner or the organization that contracted for the professional services, as long as the person is familiar with the project and the A–E firm's performance on that project.

Comment: The request for fee information on past projects in Section F violates the Brooks A–E Act on using price in A–E selections.

Response: We have eliminated the requirement for fee information on past projects.

Comment: The matrix in Section G, Key Personnel Participation in Example Projects, is redundant with other information on the SF 330.

Response: The matrix does include the names of the key personnel and their proposed roles from Section E and the titles of the example projects from Section F. But, repetition of this information is necessary to clearly portray which personnel have worked together before on the example projects, which is only partially shown in Section E and Section F. Also, Section E provides space for five relevant projects for each key person, which may or may not be any of the ten example projects for the team in Section F.

Comment: Is there a page limit on Section H—Additional Information? Can photos and graphics be included?

Response: Individual agencies may impose page limitations on the overall SF 330 and/or Section H. Photos and graphics may be inserted in Section H if they are requested by the agency.

C. *Comments on Part II:*

Comment: Will the Architect-Engineer Contract Administration Support System (ACASS) be changed to reflect the SF 330?

Response: Yes. ACASS, which is DoD-wide database maintained by the Portland, Oregon, District of the U.S. Army Corps of Engineers, will be changed to accommodate the SF 330, Part II, instead of the SF 254.

Comment: How are unlisted disciplines added to block 9—Employees by Discipline?

Response: The instructions indicate that any additional unlisted disciplines should be written in under column 9.b and the function code left blank. This is similar to the write-in procedure for the SF 254.

Comment: Many specific additional disciplines should be added to the List of Disciplines (Function Codes) in the instructions.

Response: Thirty commenters recommended specific additions, deletions and/or changes in the listed disciplines. Generally, we have added, deleted, and changed disciplines if suggested by three or more commenters. Specifically, we added the following disciplines: aerial photographer, archeologist, computer programmer, materials handling engineer, geographic information system specialist, hydraulic engineer, hydrographic surveyor, land surveyor, photogrammetrist, remote sensing specialist, sanitary engineer, water resources engineer, and photo interpreter. We deleted topographic surveyor, draftsperson, geospacial information systems, and information systems engineer. We changed specification engineer to specifications writer, and separated electrical/electronics engineer into separate disciplines.

Comment: Firms need to be able to expand block 9 to allow for more than 20 disciplines.

Response: We disagree. The principal competencies and expertise of a firm, which is the focus of the Brooks A–E Act, can typically be covered by its 20 most prevalent disciplines.

Comment: How are unlisted profile codes added to block 10 (Profile of Firm's Experience and Annual Average Revenue for the Last 5 Years)?

Response: The instructions indicate that any additional unlisted relevant experience categories should be written in under column 10.b and the profile codes left blank. This is similar to the write-in procedure for the SF 254.

Comment: Many specific additional experience categories (profile codes) should be added to the List of Experience Categories (Profile Codes) in the instructions.

Response: We revised the experience categories of many profile codes so that they exactly matched all of the existing profile code experience categories on the SF 254, minimizing the conversion of existing project databases to the new form. Twenty-one commenters recommended specific additions, deletions, and/or changes in the listed profile code experience categories. We added and changed the profile code experience categories if suggested by two or more commenters. Specifically, we added the following profile code experience categories: Aerial Photography, Airborne Data and Imagery Collection and Analysis; Anti-Terrorism/Force Protection; Cartography; Charting: Nautical and Aeronautical; Digital Elevation and Terrain Model Development; Digital Orthophotography; Environmental and Natural Resource Mapping;

Environmental Planning; Geodetic Surveying: Ground and Airborne; Geospatial Data Conversion: Scanning, Digitizing, Compilation, Attributing, Scribing, Drafting; Intelligent Transportation Systems; Mapping Location/Addressing Systems; Navigation Structures and Locks; and Remote Sensing. Finally, we changed the following profile code experience categories: Aerial Photogrammetry to Photogrammetry; Design-Build to Design-Build—Preparation of Requests for Proposals; Geographic Information System Development/Analysis to Geographic Information System Services: Development, Analysis, and Data Collection; Land Boundary Surveying to Land Surveying; and Topographic Mapping to Topographic Surveying and Mapping.

Comment: Firms need to be able to expand block 10 to allow for more than 20 profile codes.

Response: We disagree. The principal competencies and expertise of a firm, which is the focus of the Brooks A–E Act, can typically be covered by its 20 most prevalent profile codes.

Comment: Are individual projects illustrating each profile code listed in block 10?

Response: No. The profile code description is inserted in column 10.b. Specific example projects are not required in Part II, although they were required in the SF 254 to illustrate each profile code.

Comment: Block 10—Profile of Firm's Experience, requires data for 5 years, but block 11—Annual Average Professional Services Revenues, requires data for 3 years. The same time period should be used for both blocks.

Response: We disagree. There is no reason that the time periods for these blocks must be the same. The 3-year period for revenues in block 11 was selected to be compatible with the same period used for measuring the revenues of small businesses. A 3-year basis for computing average revenues is sufficient to determine the annual workload capacity of a firm. On the other hand, 3 years is not long enough to characterize the type of work a firm does, especially since the design phase of some large projects can last 2 to 3 years. Therefore, 5 years was selected for block 10.

Comment: Include example projects in Part II as were included in the SF 254.

Response: We disagree. Selection boards rarely refer to the example projects in block 11 of the SF 254. Instead, selection boards focus on the example relevant projects in block 8 of the SF 255, which corresponds with Section F of SF 330, Part I.

This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration certify that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because this final rule does not change the current policy on how architect-engineer contracts are awarded or administered. This change deals directly with the information collection questionnaire, which is a paperwork change. This SF 330 provides a more streamlined format that reflects the current architect-engineer practices and eliminates requesting unnecessary information as requested by the current SFs 254 and 255.

Overall, the SF 330 will request less information than the SFs 254 and 255 and will take no longer to complete than the SFs 254 and 255. There was a comment period and no comments were received from small businesses complaining of any additional burden to them as a result of the SF 330.

C. Paperwork Reduction Act

The Paperwork Reduction Act (Pub. L. 104–13) applies because the final rule contains information collection requirements. The final rule replaces the current SF 254, Architect-Engineer and Related Services Questionnaire, and the current SF 255, Architect-Engineer and Related Services Questionnaire for Specific Project, with a new SF 330, Architect-Engineer Qualifications. The current SF 254 approved information collection requirement states that it takes 1 hour to complete; and the current SF 255 approved information collection requirement states that it takes 1 hour to complete. Experience has shown that these hours are substantially underestimated. The SF 330, Architect-Engineer Qualifications, has been developed by an interagency ad hoc committee, based on Federal Facilities (FCC) Council Technical Report No. 130, "Joint Federal-Industry Survey on the use of SFs 254 and 255 for Architect-Engineer Qualifications," 1996.

To respond to a public comment that the reporting burden for this SF 330 is significantly underestimated, we acknowledge that additional effort will be required initially for firms to become familiar with using the new SF 330. However, after the transition, the SF 330 should take no longer to complete than SFs 254 and 255. Overall, the SF 330 requires less information than SFs 254 and 255. The following information was deleted: duplication of data on number of personnel by discipline (SF 255, block 4 and SF 254, block 8); work currently being performed for Federal agencies (SF 255, block 9); list of all offices and number of personnel in each (SF 254, block 7); revenue information for each of last 5 years (SF 254, block 9); number of projects for each profile code (SF 254, block 10); and 30 example projects (SF 254, block 11). Also, the profile of a firm's project experience is expressed in ranges on the SF 330 instead of specific dollar amounts (SF 254, block 10). The following information was added in comparison to the SF 255: organization chart of proposed team, expanded information on the firm's example projects, and matrix of key personnel participation in example projects. However, firms typically provide much or all of this information now in project submissions. Hence, there is no meaningful burden over current practices. Accordingly, the new information collection requirement for SF 330 has been submitted to the Office of Management and Budget during the proposed rule stage and has received concurrence.

List of Subjects in 48 CFR Parts 1, 36, and 53

Government procurement.

Dated: December 4, 2003.

Laura Auletta,

Director, Acquisition Policy Division.

■ Therefore, DoD, GSA, and NASA amend 48 CFR parts 1, 36, and 53 as set forth below:

■ 1. The authority citation for 48 CFR parts 1, 36, and 53 is revised to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 1—FEDERAL ACQUISITION REGULATIONS SYSTEM

1.106 [Amended]

■ 2. Amend section 1.106 in the table following the introductory paragraph by—

■ a. Removing from FAR segment 36.603 its corresponding OMB Control Number "9000–0004 and 9000–0005" and adding "9000–0157" in its place;

■ b. Removing the FAR segments "SF 254" and "SF 255" and their corresponding OMB Control Numbers "9000–0004" and "9000–0005", respectively; and

■ c. Adding FAR segment "SF 330" and its corresponding OMB Control Number "9000–0157".

PART 36—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

■ 3. Amend section 36.603 by—

■ a. Revising paragraph (b);

■ b. Removing "SF's 254 and 255" from the last sentence of the introductory text of paragraph (c) and adding "SF 330" in its place; and

■ c. Removing "254" from paragraph (d)(1) and adding "330, Part II" in its place; and in paragraph (d)(2) by removing "SF's 254 and 255" and adding "SF 330, Part II," in its place.

■ The revised text reads as follows:

36.603 Collecting data on and appraising firms' qualifications.

* * * * *

(b) *Qualifications data.* To be considered for architect-engineer contracts, a firm must file with the appropriate office or board the Standard Form 330, "Architect-Engineer Qualifications," Part II, and when applicable, SF 330, Part I.

* * * * *

■ 4. Amend section 36.702 by revising paragraph (b) to read as follows:

36.702 Forms for use in contracting for architect-engineer services.

* * * * *

(b) The SF 330, Architect-Engineer Qualifications, shall be used to evaluate firms before awarding a contract for architect-engineer services:

(1) Use the SF 330, Part I—Contract-Specific Qualifications, to obtain information from an architect-engineer firm about its qualifications for a specific contract when the contract amount is expected to exceed the simplified acquisition threshold. Part I may be used when the contract amount is expected to be at or below the simplified acquisition threshold, if the contracting officer determines that its use is appropriate.

(2) Use the SF 330, Part II—General Qualifications, to obtain information from an architect-engineer firm about its general professional qualifications.

* * * * *

PART 53—FORMS

■ 5. Amend section 53.236–2 by revising the section heading; removing paragraphs (b) and (c); redesignating paragraph (d) as paragraph (c); and adding a new paragraph (b) to read as follows:

53.236–2 Architect-engineer services (SF's 252, 330, and 1421).

* * * * *

(b) *SF 330 (1/04), Architect-Engineer Qualifications.* SF 330 is prescribed for use in obtaining information from architect-engineer firms regarding their professional qualifications, as specified in 36.702(b)(1) and (b)(2).

* * * * *

■ 6. Add section 53.301–330 to read as follows:

53.301–330 Architect-Engineer Qualifications.

BILLING CODE 6820–EP–P

ARCHITECT-ENGINEER QUALIFICATIONS

OMB No.: 9000-0157
Expires: 12/31/2003

Public reporting burden for this collection of information is estimated to average a total of 29 hours per response (25 hours for Part 1 and 4 hours for Part 2), including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the FAR Secretariat (MVA), Regulatory and Federal Assistance Publications Division, GSA, Washington, DC 20405.

PURPOSE

Federal agencies use this form to obtain information from architect-engineer (A-E) firms about their professional qualifications. Federal agencies select firms for A-E contracts on the basis of professional qualifications as required by the Brooks A-E Act (40 U.S.C. 1101 - 1104) and Part 36 of the Federal Acquisition Regulation (FAR).

The Brooks A-E Act requires the public announcement of requirements for A-E services (with some exceptions provided by other statutes), and the selection of at least three of the most highly qualified firms based on demonstrated competence and professional qualifications according to specific criteria published in the announcement. The Act then requires the negotiation of a contract at a fair and reasonable price starting first with the most highly qualified firm.

The information used to evaluate firms is from this form and other sources, including performance evaluations, any additional data requested by the agency, and interviews with the most highly qualified firms and their references.

GENERAL INSTRUCTIONS

Part I presents the qualifications for a specific contract.

Part II presents the general qualifications of a firm or a specific branch office of a firm. Part II has two uses:

1. An A-E firm may submit Part II to the appropriate central, regional or local office of each Federal agency to be kept on file. A public announcement is not required for certain contracts, and agencies may use Part II as a basis for selecting at least three of the most highly qualified firms for discussions prior to requesting submission of Part I. Firms are encouraged to update Part II on file with agency offices, as appropriate, according to FAR Part 36. If a firm has branch offices, submit a separate Part II for each branch office seeking work.

2. Prepare a separate Part II for each firm that will be part of the team proposed for a specific contract and submitted with Part I. If a firm has branch offices, submit a separate Part II for each branch office that has a key role on the team.

INDIVIDUAL AGENCY INSTRUCTIONS

Individual agencies may supplement these instructions. For example, they may limit the number of projects or number of pages submitted in Part I in response to a public announcement for a particular project. Carefully comply with any agency instructions when preparing and submitting this form. Be as concise as possible and provide only the information requested by the agency.

DEFINITIONS

Architect-Engineer Services: Defined in FAR 2.101.

Branch Office: A geographically distinct place of business or subsidiary office of a firm that has a key role on the team.

Discipline: Primary technical capabilities of key personnel, as evidenced by academic degree, professional registration, certification, and/or extensive experience.

Firm: Defined in FAR 36.102.

Key Personnel: Individuals who will have major contract responsibilities and/or provide unusual or unique expertise.

SPECIFIC INSTRUCTIONS

Part I - Contract-Specific Qualifications

Section A. Contract Information.

1. Title and Location. Enter the title and location of the contract for which this form is being submitted, exactly as shown in the public announcement or agency request.

2. Public Notice Date. Enter the posted date of the agency's notice on the Federal Business Opportunity website (FedBizOpps), other form of public announcement or agency request for this contract.

3. Solicitation or Project Number. Enter the agency's solicitation number and/or project number, if applicable, exactly as shown in the public announcement or agency request for this contract.

Section B. Architect-Engineer Point of Contact.

4-8. Name, Title, Name of Firm, Telephone Number, Fax (Facsimile) Number and E-mail (Electronic Mail) Address. Provide information for a representative of the prime contractor or joint venture that the agency can contact for additional information.

Section C. Proposed Team.

9-11. Firm Name, Address, and Role in This Contract. Provide the contractual relationship, name, full mailing address, and a brief description of the role of each firm that will be involved in performance of this contract. List the prime contractor or joint venture partners first. If a firm has branch offices, indicate each individual branch office that will have a key role on the team. The named subcontractors and outside associates or consultants must be used, and any change must be approved by the contracting officer. (See FAR Part 52 Clause "Subcontractors and Outside Associates and Consultants (Architect-Engineer Services)".) Attach an additional sheet in the same format as Section C if needed.

Section D. Organizational Chart of Proposed Team.

As an attachment after Section C, present an organizational chart of the proposed team showing the names and roles of all key personnel listed in Section E and the firm they are associated with as listed in Section C.

Section E. Resumes of Key Personnel Proposed for This Contract.

Complete this section for each key person who will participate in this contract. Group by firm, with personnel of the prime contractor or joint venture partner firms first. The following blocks must be completed for each resume:

12. Name. Self-explanatory.

13. Role in This Contract. Self-explanatory.

14. Years Experience. Total years of relevant experience (block 14a), and years of relevant experience with current firm, but not necessarily the same branch office (block 14b).

15. Firm Name and Location. Name, city and state of the firm where the person currently works, which must correspond with one of the firms (or branch office of a firm, if appropriate) listed in Section C.

16. Education. Provide information on the highest relevant academic degree(s) received. Indicate the area(s) of specialization for each degree.

17. Current Professional Registration. Provide information on current relevant professional registration(s) in a State or possession of the United States, Puerto Rico, or the District of Columbia according to FAR Part 36.

18. Other Professional Qualifications. Provide information on any other professional qualifications relating to this contract, such as education, professional registration, publications, organizational memberships, certifications, training, awards, and foreign language capabilities.

19. Relevant Projects. Provide information on up to five projects in which the person had a significant role that demonstrates the person's capability relevant to her/his proposed role in this contract. These projects do not necessarily have to be any of the projects presented in Section F for the project team if the person was not involved in any of those projects or the person worked on other projects that were more relevant than the team projects in Section F. Use the check box provided to indicate if the project was performed with any office of the current firm. If any of the professional services or construction projects are not complete, leave Year Completed blank and indicate the status in Brief Description and Specific Role (block (3)).

Section F. Example Projects Which Best Illustrate Proposed Team's Qualifications for This Contract.

Select projects where multiple team members worked together, if possible, that demonstrate the team's capability to perform work similar to that required for this contract. Complete one Section F for each project. Present ten projects, unless otherwise specified by the agency. Complete the following blocks for each project:

20. Example Project Key Number. Start with "1" for the first project and number consecutively.

21. Title and Location. Title and location of project or contract. For an indefinite delivery contract, the location is the geographic scope of the contract.

22. Year Completed. Enter the year completed of the professional services (such as planning, engineering study, design, or surveying), and/or the year completed of construction, if applicable. If any of the professional services or the construction projects are not complete, leave Year Completed blank and indicate the status in Brief Description of Project and Relevance to This Contract (block 24).

23a. Project Owner. Project owner or user, such as a government agency or installation, an institution, a corporation or private individual.

23b. Point of Contact Name. Provide name of a person associated with the project owner or the organization which contracted for the professional services, who is very familiar with the project and the firm's (or firms') performance.

23c. Point of Contact Telephone Number. Self-explanatory.

24. Brief Description of Project and Relevance to This Contract. Indicate scope, size, cost, principal elements and special features of the project. Discuss the relevance of the example project to this contract. Enter any other information requested by the agency for each example project.

25. Firms from Section C Involved with This Project. Indicate which firms (or branch offices, if appropriate) on the project team were involved in the example project, and their roles. List in the same order as Section C.

Section G. Key Personnel Participation in Example Projects.

This matrix is intended to graphically depict which key personnel identified in Section E worked on the example projects listed in Section F. Complete the following blocks (see example below).

26. and 27. Names of Key Personnel and Role in This Contract. List the names of the key personnel and their proposed roles in this contract in the same order as they appear in Section E.

28. Example Projects Listed in Section F. In the column under each project key number (see block 29) and for each key person, place an "X" under the project key number for participation in the same or similar role.

29. Example Projects Key. List the key numbers and titles of the example projects in the same order as they appear in Section F.

Section H. Additional Information.

30. Use this section to provide additional information specifically requested by the agency or to address selection criteria that are not covered by the information provided in Sections A-G.

Section I. Authorized Representative.

31. and 32. Signature of Authorized Representative and Date. An authorized representative of a joint venture or the prime contractor must sign and date the completed form. Signing attests that the information provided is current and factual, and that all firms on the proposed team agree to work on the project. Joint ventures selected for negotiations must make available a statement of participation by a principal of each member of the joint venture.

33. Name and Title. Self-explanatory.

SAMPLE ENTRIES FOR SECTION G (MATRIX)

26. NAMES OF KEY PERSONNEL (From Section E, Block 12)	27. ROLE IN THIS CONTRACT (From Section E, Block 13)	28. EXAMPLE PROJECTS LISTED IN SECTION F (Fill in "Example Projects Key" section below first, before completing table. Place "X" under project key number for participation in same or similar role.)									
		1	2	3	4	5	6	7	8	9	10
Jane A. Smith	Chief Architect	X		X							
Joseph B. Williams	Chief Mech. Engineer	X	X	X	X						
Tara C. Donovan	Chief Elec. Engineer	X	X		X						

29. EXAMPLE PROJECTS KEY

NO.	TITLE OF EXAMPLE PROJECT (FROM SECTION F)	NO.	TITLE OF EXAMPLE PROJECT (FROM SECTION F)
1	Federal Courthouse, Denver, CO	6	XYZ Corporation Headquarters, Boston, MA
2	Justin J. Wilson Federal Building, Baton Rouge, LA	7	Founder's Museum, Newport RI

Part II - General Qualifications

See the **"General Instructions"** on page 1 for firms with branch offices. Prepare Part II for the specific branch office seeking work if the firm has branch offices.

1. Solicitation Number. If Part II is submitted for a specific contract, insert the agency's solicitation number and/or project number, if applicable, exactly as shown in the public announcement or agency request.

2a-2e. Firm (or Branch Office) Name and Address. Self-explanatory.

3. Year Established. Enter the year the firm (or branch office, if appropriate) was established under the current name.

4. DUNS Number. Insert the Data Universal Numbering System number issued by Dun and Bradstreet Information Services. Firms must have a DUNS number. See FAR Part 4.6.

5. Ownership.

a. Type. Enter the type of ownership or legal structure of the firm (sole proprietor, partnership, corporation, joint venture, etc.).

b. Small Business Status. Refer to the North American Industry Classification System (NAICS) code in the public announcement, and indicate if the firm is a small business according to the current size standard for that NAICS code (for example, Engineering Services (part of NAICS 541330), Architectural Services (NAICS 541310), Surveying and Mapping Services (NAICS 541370)). The small business categories and the internet website for the NAICS codes appear in FAR Part 19. Contact the requesting agency for any questions. Contact your local U.S. Small Business Administration office for any questions regarding Business Status.

6a-6c. Point of Contact. Provide this information for a representative of the firm that the agency can contact for additional information. The representative must be empowered to speak on contractual and policy matters.

7. Name of Firm. Enter the name of the firm if Part II is prepared for a branch office.

8a-8c. Former Firm Names. Indicate any other previous names for the firm (or branch office) during the last six years. Insert the year that this corporate name change was effective and the associated DUNS Number. This information is used to review past performance on Federal contracts.

9. Employees by Discipline. Use the relevant disciplines and associated function codes shown at the end of these instructions and list in the same numerical order. After the listed disciplines, write in any additional disciplines and leave the function code blank. List no more than 20 disciplines. Group remaining employees under "Other Employees" in column b. Each person can be counted only once according to his/her primary function. If Part II is prepared for a firm (including all branch offices), enter the number of employees by disciplines in column c(1). If Part II is prepared for a branch office, enter the number of employees by discipline in column c(2) and for the firm in column c(1).

10. Profile of Firm's Experience and Annual Average Revenue for Last 5 Years. Complete this block for the firm or branch office for which this Part II is prepared. Enter the experience categories which most accurately reflect the firm's technical capabilities and project experience. Use the relevant experience categories and associated profile codes shown at the end of these instructions, and list in the same numerical order. After the listed experience categories, write in any unlisted relevant project experience categories and leave the profile codes blank. For each type of experience, enter the appropriate revenue index number to reflect the professional services revenues received annually (averaged over the last 5 years) by the firm or branch office for performing that type of work. A particular project may be identified with one experience category or it may be broken into components, as best reflects the capabilities and types of work performed by the firm. However, do not double count the revenues received on a particular project.

11. Annual Average Professional Services Revenues of Firm for Last 3 Years. Complete this block for the firm or branch office for which this Part II is prepared. Enter the appropriate revenue index numbers to reflect the professional services revenues received annually (averaged over the last 3 years) by the firm or branch office. Indicate Federal work (performed directly for the Federal Government, either as the prime contractor or subcontractor), non-Federal work (all other domestic and foreign work, including Federally-assisted projects), and the total. If the firm has been in existence for less than 3 years, see the definition for "Annual Receipts" under FAR 19.101.

12. Authorized Representative. An authorized representative of the firm or branch office must sign and date the completed form. Signing attests that the information provided is current and factual. Provide the name and title of the authorized representative who signed the form.

List of Disciplines (Function Codes)

Code	Description	Code	Description
01	Acoustical Engineer	32	Hydraulic Engineer
02	Administrative	33	Hydrographic Surveyor
03	Aerial Photographer	34	Hydrologist
04	Aeronautical Engineer	35	Industrial Engineer
05	Archeologist	36	Industrial Hygienist
06	Architect	37	Interior Designer
07	Biologist	38	Land Surveyor
08	CADD Technician	39	Landscape Architect
09	Cartographer	40	Materials Engineer
10	Chemical Engineer	41	Materials Handling Engineer
11	Chemist	42	Mechanical Engineer
12	Civil Engineer	43	Mining Engineer
13	Communications Engineer	44	Oceänographer
14	Computer Programmer	45	Photo Interpreter
15	Construction Inspector	46	Photogrammetrist
16	Construction Manager	47	Planner: Urban/Regional
17	Corrosion Engineer	48	Project Manager
18	Cost Engineer/Estimator	49	Remote Sensing Specialist
19	Ecologist	50	Risk Assessor
20	Economist	51	Safety/Occupational Health Engineer
21	Electrical Engineer	52	Sanitary Engineer
22	Electronics Engineer	53	Scheduler
23	Environmental Engineer	54	Security Specialist
24	Environmental Scientist	55	Soils Engineer
25	Fire Protection Engineer	56	Specifications Writer
26	Forensic Engineer	57	Structural Engineer
27	Foundation/Geotechnical Engineer	58	Technician/Analyst
28	Geodetic Surveyor	59	Toxicologist
29	Geographic Information System Specialist	60	Transportation Engineer
30	Geologist	61	Value Engineer
31	Health Facility Planner	62	Water Resources Engineer

List of Experience Categories (Profile Codes)

Code	Description	Code	Description
A01	Acoustics, Noise Abatement	E01	Ecological & Archeological Investigations
A02	Aerial Photography; Airborne Data and Imagery Collection and Analysis	E02	Educational Facilities; Classrooms
A03	Agricultural Development; Grain Storage; Farm Mechanization	E03	Electrical Studies and Design
A04	Air Pollution Control	E04	Electronics
A05	Airports; Navaids; Airport Lighting; Aircraft Fueling	E05	Elevators; Escalators; People-Movers
A06	Airports; Terminals and Hangars; Freight Handling	E06	Embassies and Chanceries
A07	Arctic Facilities	E07	Energy Conservation; New Energy Sources
A08	Animal Facilities	E08	Engineering Economics
A09	Anti-Terrorism/Force Protection	E09	Environmental Impact Studies, Assessments or Statements
A10	Asbestos Abatement	E10	Environmental and Natural Resource Mapping
A11	Auditoriums & Theaters	E11	Environmental Planning
A12	Automation; Controls; Instrumentation	E12	Environmental Remediation
		E13	Environmental Testing and Analysis
B01	Barracks; Dormitories		
B02	Bridges	F01	Fallout Shelters; Blast-Resistant Design
		F02	Field Houses; Gyms; Stadiums
C01	Cartography	F03	Fire Protection
C02	Cemeteries *(Planning & Relocation)*	F04	Fisheries; Fish ladders
C03	Charting: Nautical and Aeronautical	F05	Forensic Engineering
C04	Chemical Processing & Storage	F06	Forestry & Forest products
C05	Child Care/Development Facilities		
C06	Churches; Chapels	G01	Garages; Vehicle Maintenance Facilities; Parking Decks
C07	Coastal Engineering		
C08	Codes; Standards; Ordinances	G02	Gas Systems (Propane; Natural, Etc.)
C09	Cold Storage; Refrigeration and Fast Freeze	G03	Geodetic Surveying: Ground and Airborne
C10	Commercial Building *(low rise)*; Shopping Centers	G04	Geographic Information System Services: Development, Analysis, and Data Collection
C11	Community Facilities		
C12	Communications Systems; TV; Microwave	G05	Geospatial Data Conversion: Scanning, Digitizing, Compilation, Attributing, Scribing, Drafting
C13	Computer Facilities; Computer Service		
C14	Conservation and Resource Management	G06	Graphic Design
C15	Construction Management		
C16	Construction Surveying	H01	Harbors; Jetties; Piers, Ship Terminal Facilities
C17	Corrosion Control; Cathodic Protection; Electrolysis	H02	Hazardous Materials Handling and Storage
C18	Cost Estimating; Cost Engineering and Analysis; Parametric Costing; Forecasting	H03	Hazardous, Toxic, Radioactive Waste Remediation
C19	Cryogenic Facilities	H04	Heating; Ventilating; Air Conditioning
		H05	Health Systems Planning
D01	Dams *(Concrete; Arch)*	H06	Highrise; Air-Rights-Type Buildings
D02	Dams *(Earth; Rock)*; Dikes; Levees	H07	Highways; Streets; Airfield Paving; Parking Lots
D03	Desalinization *(Process & Facilities)*	H08	Historical Preservation
D04	Design-Build - Preparation of Requests for Proposals	H09	Hospital & Medical Facilities
D05	Digital Elevation and Terrain Model Development	H10	Hotels; Motels
D06	Digital Orthophotography	H11	Housing *(Residential, Multi-Family; Apartments; Condominiums)*
D07	Dining Halls; Clubs; Restaurants	H12	Hydraulics & Pneumatics
D08	Dredging Studies and Design	H13	Hydrographic Surveying

List of Experience Categories (Profile Codes)

Code	Description
I01	Industrial Buildings; Manufacturing Plants
I02	Industrial Processes; Quality Control
I03	Industrial Waste Treatment
I04	Intelligent Transportation Systems
I05	Interior Design; Space Planning
I06	Irrigation; Drainage
J01	Judicial and Courtroom Facilities
L01	Laboratories; Medical Research Facilities
L02	Land Surveying
L03	Landscape Architecture
L04	Libraries; Museums; Galleries
L05	Lighting (Interior; Display; Theater, Etc.)
L06	Lighting (Exteriors; Streets; Memorials; Athletic Fields, Etc.)
M01	Mapping Location/Addressing Systems
M02	Materials Handling Systems; Conveyors; Sorters
M03	Metallurgy
M04	Microclimatology; Tropical Engineering
M05	Military Design Standards
M06	Mining & Mineralogy
M07	Missile Facilities (Silos; Fuels; Transport)
M08	Modular Systems Design; Pre-Fabricated Structures or Components
N01	Naval Architecture; Off-Shore Platforms
N02	Navigation Structures; Locks
N03	Nuclear Facilities; Nuclear Shielding
O01	Office Buildings; Industrial Parks
O02	Oceanographic Engineering
O03	Ordnance; Munitions; Special Weapons
P01	Petroleum Exploration; Refining
P02	Petroleum and Fuel (Storage and Distribution)
P03	Photogrammetry
P04	Pipelines (Cross-Country - Liquid & Gas)
P05	Planning (Community, Regional,
P06	Areawide and State)
P07	Planning (Site, Installation, and Project)
P08	Plumbing & Piping Design
P09	Prisons & Correctional Facilities
P10	Product, Machine Equipment Design
P11	Pneumatic Structures, Air-Support Buildings
P12	Postal Facilities
P13	Power Generation, Transmission, Distribution
P14	Public Safety Facilities
R01	Radar; Sonar; Radio & Radar Telescopes
R02	Radio Frequency Systems & Shieldings
R03	Railroad; Rapid Transit
R04	Recreation Facilities (Parks, Marinas, Etc.)
R05	Refrigeration Plants/Systems
R06	Rehabilitation (Buildings; Structures; Facilities)
R07	Remote Sensing
R08	Research Facilities
R09	Resources Recovery; Recycling
R10	Risk Analysis
R11	Rivers; Canals; Waterways; Flood Control
R12	Roofing
S01	Safety Engineering; Accident Studies; OSHA Studies
S02	Security Systems; Intruder & Smoke Detection
S03	Seismic Designs & Studies
S04	Sewage Collection, Treatment and Disposal
S05	Soils & Geologic Studies; Foundations
S06	Solar Energy Utilization
S07	Solid Wastes; Incineration; Landfill
S08	Special Environments; Clean Rooms, Etc.
S09	Structural Design; Special Structures
S10	Surveying; Platting; Mapping; Flood Plain Studies
S11	Sustainable Design
S12	Swimming Pools
S13	Storm Water Handling & Facilities
T01	Telephone Systems *(Rural; Mobile; Intercom, Etc.)*
T02	Testing & Inspection Services
T03	Traffic & Transportation Engineering
T04	Topographic Surveying and Mapping
T05	Towers *(Self-Supporting & Guyed Systems)*
T06	Tunnels & Subways

List of Experience Categories (Profile Codes)

Code	Description
U01	Unexploded Ordnance Remediation
U02	Urban Renewals; Community Development
U03	Utilities (Gas and Steam)
V01	Value Analysis; Life-Cycle Costing
W01	Warehouses & Depots
W02	Water Resources; Hydrology; Ground Water
W03	Water Supply; Treatment and Distribution
W04	Wind Tunnels; Research/Testing Facilities Design
Z01	Zoning; Land Use Studies

ARCHITECT - ENGINEER QUALIFICATIONS

PART I - CONTRACT-SPECIFIC QUALIFICATIONS

A. CONTRACT INFORMATION

1. TITLE AND LOCATION *(City and State)*

2. PUBLIC NOTICE DATE | 3. SOLICITATION OR PROJECT NUMBER

B. ARCHITECT-ENGINEER POINT OF CONTACT

4. NAME AND TITLE

5. NAME OF FIRM

6. TELEPHONE NUMBER | 7. FAX NUMBER | 8. E-MAIL ADDRESS

C. PROPOSED TEAM

(Complete this section for the prime contractor and all key subcontractors.)

	(Check) PRIME	(Check) JV PARTNER	(Check) SUBCONTRACTOR	9. FIRM NAME	10. ADDRESS	11. ROLE IN THIS CONTRACT
a.				☐ CHECK IF BRANCH OFFICE		
b.				☐ CHECK IF BRANCH OFFICE		
c.				☐ CHECK IF BRANCH OFFICE		
d.				☐ CHECK IF BRANCH OFFICE		
e.				☐ CHECK IF BRANCH OFFICE		
f.				☐ CHECK IF BRANCH OFFICE		

D. ORGANIZATIONAL CHART OF PROPOSED TEAM ☐ *(Attached)*

E. RESUMES OF KEY PERSONNEL PROPOSED FOR THIS CONTRACT

(Complete one Section E for each key person.)

12. NAME | 13. ROLE IN THIS CONTRACT | 14. YEARS EXPERIENCE: a. TOTAL | b. WITH CURRENT FIRM

15. FIRM NAME AND LOCATION *(City and State)*

16. EDUCATION *(DEGREE AND SPECIALIZATION)* | 17. CURRENT PROFESSIONAL REGISTRATION *(STATE AND DISCIPLINE)*

18. OTHER PROFESSIONAL QUALIFICATIONS *(Publications, Organizations, Training, Awards, etc.)*

19. RELEVANT PROJECTS

	(1) TITLE AND LOCATION *(City and State)*	(2) YEAR COMPLETED: PROFESSIONAL SERVICES	(2) YEAR COMPLETED: CONSTRUCTION *(If applicable)*	(3) BRIEF DESCRIPTION *(Brief scope, size, cost, etc.)* AND SPECIFIC ROLE	☐ Check if project performed with current firm
a.					
b.					
c.					
d.					
e.					

F. EXAMPLE PROJECTS WHICH BEST ILLUSTRATE PROPOSED TEAM'S QUALIFICATIONS FOR THIS CONTRACT
(Present as many projects as requested by the agency, or 10 projects, if not specified. Complete one Section F for each project.)

20. EXAMPLE PROJECT KEY NUMBER	
21. TITLE AND LOCATION *(City and State)*	22. YEAR COMPLETED: PROFESSIONAL SERVICES / CONSTRUCTION *(If applicable)*

23. PROJECT OWNER'S INFORMATION

a. PROJECT OWNER	b. POINT OF CONTACT NAME	c. POINT OF CONTACT TELEPHONE NUMBER

24. BRIEF DESCRIPTION OF PROJECT AND RELEVANCE TO THIS CONTRACT *(Include scope, size, and cost)*

25. FIRMS FROM SECTION C INVOLVED WITH THIS PROJECT

	(1) FIRM NAME	(2) FIRM LOCATION *(City and State)*	(3) ROLE
a.			
b.			
c.			
d.			
e.			
f.			

G. KEY PERSONNEL PARTICIPATION IN EXAMPLE PROJECTS

26. NAMES OF KEY PERSONNEL (From Section E, Block 12)	27. ROLE IN THIS CONTRACT (From Section E, Block 13)	28. EXAMPLE PROJECTS LISTED IN SECTION F (Fill in "Example Projects Key" section below before completing table. Place "X" under project key number for participation in same or similar role.)									
		1	2	3	4	5	6	7	8	9	10

29. EXAMPLE PROJECTS KEY

NO.	TITLE OF EXAMPLE PROJECT (FROM SECTION F)	NO.	TITLE OF EXAMPLE PROJECT (FROM SECTION F)
1		6	
2		7	
3		8	
4		9	
5		10	

H. ADDITIONAL INFORMATION

30. PROVIDE ANY ADDITIONAL INFORMATION REQUESTED BY THE AGENCY. ATTACH ADDITIONAL SHEETS AS NEEDED.

I. AUTHORIZED REPRESENTATIVE

The foregoing is a statement of facts.

31. SIGNATURE	32. DATE

33. NAME AND TITLE

ARCHITECT-ENGINEER QUALIFICATIONS

1. SOLICITATION NUMBER *(If any)*

PART II - GENERAL QUALIFICATIONS

(If a firm has branch offices, complete for each specific branch office seeking work.)

2a. FIRM (OR BRANCH OFFICE) NAME			3. YEAR ESTABLISHED	4. DUNS NUMBER
2b. STREET			5. OWNERSHIP	
			a. TYPE	
2c. CITY	2d. STATE	2e. ZIP CODE	b. SMALL BUSINESS STATUS	
6a. POINT OF CONTACT NAME AND TITLE			7. NAME OF FIRM *(If block 2a is a branch office)*	
6b. TELEPHONE NUMBER	6c. E-MAIL ADDRESS			
8a. FORMER FIRM NAME(S) *(If any)*			8b. YR. ESTABLISHED	8c. DUNS NUMBER

9. EMPLOYEES BY DISCIPLINE

a. Function Code	b. Discipline	c. No. of Employees (1) FIRM	c. No. of Employees (2) BRANCH
	Other Employees		
	Total		

10. PROFILE OF FIRM'S EXPERIENCE AND ANNUAL AVERAGE REVENUE FOR LAST 5 YEARS

a. Profile Code	b. Experience	c. Revenue Index Number *(see below)*

11. ANNUAL AVERAGE PROFESSIONAL SERVICES REVENUES OF FIRM FOR LAST 3 YEARS

(Insert revenue index number shown at right)

a. Federal Work	
b. Non-Federal Work	
c. Total Work	

PROFESSIONAL SERVICES REVENUE INDEX NUMBER

1. Less than $100,000
2. $100,00 to less than $250,000
3. $250,000 to less than $500,000
4. $500,000 to less than $1 million
5. $1 million to less than $2 million
6. $2 million to less than $5 million
7. $5 million to less than $10 million
8. $10 million to less than $25 million
9. $25 million to less than $50 million
10. $50 million or greater

12. AUTHORIZED REPRESENTATIVE

The foregoing is a statement of facts.

a. SIGNATURE	b. DATE

c. NAME AND TITLE

AUTHORIZED FOR LOCAL REPRODUCTION
MANDATORY USE DATE OF FORM 6/2004

[FR Doc. 03–30472 Filed 12–10–03; 8:45 am]
BILLING CODE 6820–EP–C

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 2 and 31

[FAC 2001–18; FAR Case 2001–026; Item II]

RIN 9000–AJ56

Federal Acquisition Regulation; Depreciation Cost Principle

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have agreed on a final rule amending the Federal Acquisition Regulation (FAR) to revise the depreciation cost principle to improve clarity and structure, and remove unnecessary and duplicative language.

DATES: *Effective Date:* January 12, 2004.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, at (202) 501–4755, for information pertaining to status or publication schedules. For clarification of content, contact Mr. Edward Loeb, Policy Advisor, at (202) 501–0650. Please cite FAC 2001–18, FAR case 2001–026.

SUPPLEMENTARY INFORMATION:

A. Background

DoD, GSA, and NASA published a proposed rule in the **Federal Register** at 68 FR 4876, January 30, 2003, with request for comments. Two respondents submitted public comments; a discussion of the major comments is provided below. The Councils considered all comments and concluded that the proposed rule should be converted to a final rule with changes. Differences between the proposed rule and final rule are discussed below.

B. Public Comments

FAR 31.205–11, Depreciation

FAR 31.205–11(a)

Comment 1: Both respondents suggested that the cost principle should allow flexibility in the use of residual values less than 10 percent and, therefore, the word "shall" in the second sentence of proposed FAR 31.205–11(a) should be changed.

Councils' response: Concur. The Councils changed the word "shall" in sentence two of FAR 31.205–11(a) to "need," which conforms with the wording of Cost Accounting Standard (CAS) 409–50(h).

Comment 2: Respondent believes that for clarification and consistency purposes in this area, language in CAS 409–50(h) should be added to the cost principle. Respondent recommended adding the statement regarding the recognition of residual values when certain depreciation methods are used, and the term "significantly" when referring to the allowability of depreciation costs that reduce assets below their residual value.

Councils' response: Concur. The Councils believe the FAR should not be more restrictive than the CAS in this area. Therefore, the Councils added the following sentence as the third sentence of proposed FAR 31.205–11(a): "Where either the declining balance method of depreciation or the class life asset depreciation range system is used, the residual value need not be deducted from capitalized cost to determine depreciable costs." In addition, the Councils added the term "significantly" to the last sentence of proposed FAR 31.205–11(a).

Comment 3: Respondent suggested deleting the last sentence of FAR 31.205–11(a) since it appears to be contradictory to the previous sentence and this requirement is already covered in the definition of "depreciation."

Councils' response: Do not concur. The Councils believe that the sentence does not contradict the previous sentence, and the definition of "depreciation" does not adequately cover this requirement.

FAR 31.205–11(d)

Comment 4: Both respondents suggested deleting the entire proposed paragraph 31.205–11(d). One respondent stated, "Depreciation, by definition, requires a 'cost.' If there is no cost, there is no depreciation. Comments on rental or use charges are already covered in Part 45 and should be covered under 31.205–36, Rental Costs, if considered necessary, and not under the Depreciation Cost Principle."

Councils' response: Do not concur. The Councils believe that in those instances where contractors might put an asset on their books without incurring a cost, *i.e.*, a donated asset, it must be clear that any costs associated with that asset are unallowable.

FAR 31.205–11(f)

Comment 5: Both respondents suggested deleting the third sentence of the proposed FAR 31.205–11(f). They believe the requirements in the sentence are overly prescriptive and instructional. One respondent stated, "FAR 31.109 already provides guidance on how to arrive at advance agreements."

Councils' response: Do not concur. The Councils believe that while FAR 31.109 provides information on advance agreements, it does not address items that should be considered in determining a reasonable amount for a use charge. The Councils believe the guidance is helpful in determining a reasonable charge. However, the last sentence of proposed FAR 31.205–11(f) inappropriately limited the scope of this provision with the words, "the contractor shall consider * * *." Therefore, the Councils have replaced this language with broader guidance, "consideration shall be given to * * *."

FAR 31.205–11(g)

Comment 6: Both respondents recommended revising proposed FAR 31.205–11(g) to more closely reflect the requirements of FAR 31.205–52, Asset valuations resulting from business combinations. They maintain that FAR 31.205–52 does not necessarily "limit" allowability as stated in the proposed words.

Councils' response: Partially concur. It is not necessary to characterize FAR 31.205–52 here as limiting allowability. Therefore, the Councils deleted the words "which limit the allowability of depreciation" from FAR 31.205–11(g). However, the proposed rule inappropriately limited the scope of this provision with the words, "the contractor shall comply with the requirements of 31.205–52." Therefore, the Councils replaced this language with broader guidance, "the requirements of 31.205–52 shall be observed."

FAR 31.205–11(i)

Comment 7: Both respondents recommended deleting the third sentence of FAR 31.205–11(i) as redundant. They also recommended deleting the fourth sentence, as well as paragraph (i)(1), because operating leases and sale and lease back arrangements are already covered under FAR 31.205–36, Rental costs, and need not be repeated in the depreciation cost principle. Finally, they recommended deleting the fifth sentence as repetitive of the first two sentences.

Councils' response: Partially concur. The Councils agree with the recommendation to delete the redundant third sentence: "Capital leases under FAS 13 are subject to the requirements of 31.205–11." The Councils also agree that operating leases are covered in FAR 31.205–36, and, therefore, deleted the fourth sentence: "Operating leases are subject to the requirements of 31.205–36." However, the Councils believe a cross-reference in this cost principle is helpful because of the interchange of the two cost principles and, therefore, inserted a cross-reference after sentence one: "(See 31.205–36 for Operating Leases.)" The Councils disagree with deleting the language relative to sale and leaseback in paragraph (i)(1) since this language is closely related to depreciation costs, but changed the first word from "Rental" to "Lease." Finally, the Councils deleted most of the fifth sentence as duplicative, but changed "except as follows:" to "except that:"

FAR 31.205–11(j)

Comment 8: One respondent suggested revising proposed paragraph (j) in FAR 31.205–11, and asserted that the second sentence of the proposed rule would require contractors to change their depreciation method if different. The other respondent recommended deleting the entire paragraph and stated, "It is obsolete in that it only applies to assets acquired before the effective date of this cost principle (*i.e.*, pre-ASPR time frame)."

Councils' response: Partially concur. The Councils deleted paragraph (j) since the grandfather provision benefits industry and it is no longer needed.

FAR 31.205–36, Rental Costs

FAR 31.205–36(a)

Comment 9: Both respondents recommended deleting the second sentence of FAR 31.205–36(a) since depreciation issues are already covered under 31.205–11, Depreciation, and need not be repeated in FAR 31.205–36.

Councils' response: Concur. The Councils agree that the detailed language does not need to be repeated in FAR 31.205–36, but believe a cross-reference is useful to the users of the cost principles because of the interchange of the two cost principles. Therefore, the second sentence of FAR 31.205–36(a) is deleted and a cross-reference, "(See 31.205–11 for Capital Leases.)," is inserted.

FAR 31.205–36(b)(1)(iv)

Comment 9: Respondent recommended retaining the language at FAR 31.205–36(b)(1)(iv). They stated that no explanation was given for deleting the language.

Councils' response: Do not concur. The respondent appears to have misread the changes made. FAR 31.205–36(b)(4) was deleted, not FAR 31.205–36(b)(1)(iv).

C. Regulatory Planning and Review

This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

D. Regulatory Flexibility Act

The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration certify that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because most contracts awarded to small entities use simplified acquisition procedures or are awarded on a competitive, fixed-price basis, and do not require application of the cost principle discussed in this rule.

E. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 2 and 31

Government procurement.

Dated: December 4, 2003.

Laura Auletta,

Director, Acquisition Policy Division.

■ Therefore, DoD, GSA, and NASA amend 48 CFR parts 2 and 31 as set forth below:

■ 1. The authority citation for 48 CFR parts 2 and 31 is revised to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 2—DEFINITIONS OF WORDS AND TERMS

■ 2. Amend section 2.101 in paragraph (b) by adding, in alphabetical order, the definition "Depreciation" to read as follows:

2.101 Definitions.

* * * * *

Depreciation means a charge to current operations that distributes the cost of a tangible capital asset, less estimated residual value, over the estimated useful life of the asset in a systematic and logical manner. It does not involve a process of valuation. Useful life refers to the prospective period of economic usefulness in a particular contractor's operations as distinguished from physical life; it is evidenced by the actual or estimated retirement and replacement practice of the contractor.

* * * * *

PART 31—CONTRACT COST PRINCIPLES AND PROCEDURES

■ 3. Revise section 31.205–11 to read as follows:

31.205–11 Depreciation.

(a) Depreciation on a contractor's plant, equipment, and other capital facilities is an allowable contract cost, subject to the limitations contained in this cost principle. For tangible personal property, only estimated residual values that exceed 10 percent of the capitalized cost of the asset need be used in establishing depreciable costs. Where either the declining balance method of depreciation or the class life asset depreciation range system is used, the residual value need not be deducted from capitalized cost to determine depreciable costs. Depreciation cost that would significantly reduce the book value of a tangible capital asset below its residual value is unallowable.

(b) Contractors having contracts subject to 48 CFR 9904.409, Depreciation of Tangible Capital Assets, shall adhere to the requirement of that standard for all fully CAS-covered contracts and may elect to adopt the standard for all other contracts. All requirements of 48 CFR 9904.409 are applicable if the election is made, and contractors must continue to follow it until notification of final acceptance of all deliverable items on all open negotiated Government contracts.

(c) For contracts to which 48 CFR 9904.409 is not applied, except as indicated in paragraphs (g) and (h) of this subsection, allowable depreciation shall not exceed the amount used for financial accounting purposes, and shall be determined in a manner consistent with the depreciation policies and procedures followed in the same segment on non-Government business.

(d) Depreciation, rental, or use charges are unallowable on property acquired from the Government at no cost by the contractor or by any division, subsidiary, or affiliate of the contractor under common control.

(e) The depreciation on any item which meets the criteria for allowance at price under 31.205–26(e) may be

based on that price, provided the same policies and procedures are used for costing all business of the using division, subsidiary, or organization under common control.

(f) No depreciation or rental is allowed on property fully depreciated by the contractor or by any division, subsidiary, or affiliate of the contractor under common control. However, a reasonable charge for using fully depreciated property may be agreed upon and allowed (but, see 31.109(h)(2)). In determining the charge, consideration shall be given to cost, total estimated useful life at the time of negotiations, effect of any increased maintenance charges or decreased efficiency due to age, and the amount of depreciation previously charged to Government contracts or subcontracts.

(g) Whether or not the contract is otherwise subject to CAS, the requirements of 31.205–52 shall be observed.

(h) In the event of a write-down from carrying value to fair value as a result of impairments caused by events or changes in circumstances, allowable depreciation of the impaired assets is limited to the amounts that would have been allowed had the assets not been written down (see 31.205–16(g)). However, this does not preclude a change in depreciation resulting from other causes such as permissible changes in estimates of service life, consumption of services, or residual value.

(i) A "capital lease," as defined in Statement of Financial Accounting Standard No. 13 (FAS–13), Accounting for Leases, is subject to the requirements of this cost principle. (See 31.205–36 for Operating Leases.) FAS–13 requires that capital leases be treated as purchased assets, *i.e.*, be capitalized, and the capitalized value of such assets be distributed over their useful lives as depreciation charges or over the leased life as amortization charges, as appropriate, except that—

(1) Lease costs under a sale and leaseback arrangement are allowable up to the amount that would have been allowed had the contractor retained title to the asset; and

(2) If it is determined that the terms of the capital lease have been significantly affected by the fact that the lessee and lessor are related, depreciation charges are not allowable in excess of those that would have occurred if the lease contained terms consistent with those found in a lease between unrelated parties.

31.205–16 [Amended]

■ 4. Amend section 31.205–16 in the first sentence of paragraph (b) by removing "31.205–11(m)" and adding "31.205–11(i)" in its place.

■ 5. Amend section 31.205–36 by revising paragraph (a); and removing paragraph (b)(4) to read as follows:

31.205–36 Rental costs.

(a) This subsection is applicable to the cost of renting or leasing real or personal property acquired under "operating leases" as defined in Statement of Financial Accounting Standards No. 13 (FAS–13), Accounting for Leases. (See 31.205–11 for Capital Leases.)

* * * * *

[FR Doc. 03–30473 Filed 12–10–03; 8:45 am]
BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 4 and 53

[FAC 2001–18; FAR Case 2003–019; Item III]

RIN 9000–AJ76

Federal Acquisition Regulation; Federal Procurement Data System

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have agreed on a final rule amending the Federal Acquisition Regulation (FAR) to reflect changes in contract action reporting to the Federal Procurement Data System—Next Generation (FPDS–NG).

DATES: *Effective Date:* December 11, 2003.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat at (202) 501–4755 for information pertaining to status or publication schedules. For clarification of content, contact Mr. Gerald Zaffos, Procurement Analyst, at (202) 208–6091. Please cite FAC 2001–18, FAR case 2003–019.

SUPPLEMENTARY INFORMATION:

A. Background

The Federal Government is modernizing its procurement data collection system, the Federal Procurement Data System (FPDS). The new system, the Federal Procurement Data System—Next Generation (FPDS–NG), became operational on October 1, 2003, for transactions awarded after that date. FPDS captured data on individual contract actions over $25,000 and summary data on contract actions below $25,000. FPDS–NG allows the Government to capture data on individual transactions regardless of dollar value. As a result, FPDS–NG provides more information to agencies for managing their programs and to the public for better understanding of how taxpayer funds are spent. The capabilities of FPDS–NG provide an efficient means of satisfying the statutory requirement of 41 U.S.C. 417, that each Executive agency maintain a computer file containing the information at FAR 4.601. Consequently, submitting contract action data to FPDS–NG will be considered compliance with the requirements of FAR 4.601.

Therefore, the FAR is being amended to revise 4.602 to—

- Reflect that the information in FPDS–NG is available to the general public;
- Provide the Web site for FPDS–NG, which must be entered as *https://www.fpds.gov;*
- Delete the physical address for the Federal Procurement Data Center;
- Allow agencies to report all transactions between $2,500 and $25,000 to FPDS–NG as either individual contract actions or summary contract actions until September 30, 2004;
- Require all contract actions over $2,500 be reported to FPDS–NG as individual contract actions after September 30, 2004;
- Require agencies to insert the provision at 52.204–6, Data Universal Numbering System (DUNS) Number, in solicitations when the expected award amount will result in the generation of an individual contract action report and the contract does not include FAR clause 52.204–7, Central Contractor Registration; and
- Eliminate the use of the SF 279, Federal Procurement Data System (FPDS)—Individual Contract Action Report, and the SF 281, Federal Procurement Data System (FPDS)—Summary Contract Action Report ($25,000 or Less).

This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act 5 U.S.C. 601, *et seq.*, does not apply because the rule applies to the internal process of Federal agencies and is not a significant revision of the FAR. A Final Regulatory Flexibility Analysis has, therefore, not been prepared.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 4 and 53

Government procurement.

Dated: December 4, 2003.

Laura Auletta,

Director, Acquisition Policy Division.

■ Therefore, DoD, GSA, and NASA amend 48 CFR parts 4 and 53 as set forth below:

■ 1. The authority citation for 48 CFR parts 4 and 53 is revised to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 4—ADMINISTRATIVE MATTERS

■ 2. Amend section 4.601 by adding a sentence to the end of paragraph (a); and removing "from the computer file" from the introductory text of paragraphs (c) and (d). The added text reads as follows:

4.601 Record requirements.

(a) * * * This file shall be accessible to the public using FPDS–NG.

* * * * *

■ 3. Amend section 4.602 by revising paragraphs (a), (b), (c), and (d) to read as follows:

4.602 Federal Procurement Data System.

(a) The FPDS provides a comprehensive mechanism for assembling, organizing, and presenting contract placement data for the Federal Government. Federal agencies will now report data directly to the Federal Procurement Data System—Next Generation (FPDS–NG), which collects, processes, and disseminates official statistical data on Federal contracting. The data provide—

(1) A basis for recurring and special reports to the President, the Congress, the General Accounting Office, Federal executive agencies, and the general public;

(2) A means of measuring and assessing the impact of Federal contracting on the Nation's economy and the extent to which small, veteran-owned small, service-disabled veteran-owned small, HUBZone small, small disadvantaged, and women-owned small business concerns are sharing in Federal contracts; and

(3) Information for other policy and management control purposes, and for public access.

(b) The FPDS Web site, *https://www.fpds.gov*, provides instructions for submitting data. It also provides a complete list of departments, agencies, and other entities that submit data to the FPDS, as well as technical and end-user guidance, and a computer-based tutorial.

(c)(1) Data collection points in each agency shall submit FPDS-required data on contract actions directly to FPDS–NG. Agencies must report all transactions over $2,500 and modifications to those transactions regardless of dollar value.

(2) Agencies participating under the Small Business Competitiveness Demonstration Program (see Subpart 19.10) shall report as an individual contract action all awards, regardless of dollar value, in the designated industry groups.

(3) Agencies may choose to report transactions at or below $2,500, including those made using the Governmentwide commercial purchase card, except as provided in paragraph (c)(2) of this section.

(4) Until September 30, 2004, agencies shall report contract actions between $2,500 and $25,000 either in individual or summary form. After September 30, 2004, agencies shall submit only individual contract action reports.

(d) The contracting officer must identify and report (if it is not pre-populated by the Central Contractor Registration (CCR) database), a Contractor Identification Number for each successful offeror. A Data Universal Numbering System (DUNS) number, which is a nine-digit number assigned by Dun and Bradstreet Information Services to an establishment, is the Contractor Identification Number for Federal contractors. The DUNS number reported must identify the successful offeror's name and address exactly as stated in the offer and resultant contract. The contracting officer must ask the offeror to provide its DUNS number by using either the provision prescribed in paragraph (a) of 4.603 or the FAR clause prescribed at 4.1104. If the successful offeror does not provide its number, the contracting officer must contact the offeror and assist them in obtaining the DUNS number.

* * * * *

■ 4. Amend section 4.603 by revising paragraph (a)(1) to read as follows:

4.603 Solicitation provisions.

(a) * * *

(1) Are expected to result in a requirement for the generation of an individual contract action report (see 4.602(c)); and

* * * * *

PART 53—FORMS

53.204–2 [Reserved]

■ 5. Remove and reserve section 53.204–2.

53.301–279 and 53.301–281 [Removed]

■ 6. Remove sections 53.301–279 and 53.301–281.

[FR Doc. 03–30474 Filed 12–10–03; 8:45 am]
BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 8

[FAC 2001–18; FAR Case 2003–001; Item IV]

RIN 9000–AJ62

Federal Acquisition Regulation; Increased Federal Prison Industries, Inc. Waiver Threshold

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have adopted as final, without change, an interim rule amending the Federal Acquisition Regulation (FAR) to increase the blanket waiver threshold for small dollar value purchases from Federal Prison Industries, Inc. (FPI) by Federal agencies. By increasing this threshold to $2,500, Federal agencies are not required to make purchases from FPI of products on FPI's Schedule that are at or below this threshold.

DATES: *Effective Date:* December 11, 2003.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat at (202) 501–4755, for information pertaining to status or publication schedules. For clarification of content, contact Ms. Linda Nelson, Procurement Analyst, at (202) 501–1900. Please cite FAC 2001–18, FAR case 2003–001.

SUPPLEMENTARY INFORMATION:

A. Background

The Councils have agreed to a final rule increasing the FPI clearance exception threshold at FAR 8.606(e) from $25 to $2,500 and eliminating the criterion that delivery is required within 10 days. The objective of the rule is to increase the dollar threshold necessary to obtain a clearance from FPI. By increasing this threshold to $2,500, Federal agencies are not required to make purchases from FPI of products on FPI's Schedule that are at or below this threshold. Federal agencies, however, may continue to consider and purchase products from FPI that are at or below $2,500. FPI is a mandatory acquisition program established under 18 U.S.C. 4124. Agencies are still required to purchase products on FPI's Schedule from FPI above the $2,500 threshold unless a clearance is obtained pursuant to FAR 8.605.

DoD, GSA, and NASA published an interim rule in the **Federal Register** at 68 FR 28094, May 22, 2003. Three respondents submitted public comments. These comments are discussed below. The Councils concluded that the interim rule should be converted to a final rule without change.

Comment 1: Respondent concurred with the rule.

Comment 2: Respondent wanted assurance that there are no other conflicts with existing wording of the FAR (*e.g.*, FAR 8.603) as a result of the increase in the blanket waiver threshold to $2,500. The respondent believes that the FAR should explicitly state that agencies are not required to make purchases from FPI that are at or below $2,500, if that is the intent. In addition, the Defense FAR Supplement (DFARS) should state that the requirement for a comparability determination does not apply to purchases at or below $2,500.

Councils' response: This rule has created no conflicts with other wording of the FAR. The rule merely increased the dollar threshold for an existing exception to FPI clearance requirements. As was previously the case, Federal agencies are not required (but are permitted) to purchase products from FPI if the dollar value of the purchase is at or below the threshold specified in FAR 8.606(e). The purchase priorities specified in FAR 8.603 have not changed, and apply only in situations where FPI and JWOD agencies produce identical supplies or services.

The recommended DFARS change is outside the scope of this case. DoD published a final DFARS rule on November 14, 2003 (68 FR 64559), to address DoD-unique requirements for purchase of products from FPI.

Comment 3: Respondent stated that language should be included in the rule to make it clear that DoD activities are now governed by the changes legislated in Section 811 of Public Law 107–107 and Section 819 of Public Law 107–314, the National Defense Authorization Acts for Fiscal Years 2002 and 2003, respectively. Under these laws, the UNICOR waiver process has been effectively eliminated for DoD activities. If a DoD contracting officer determines that UNICOR products are not comparable in terms of quality, price, and delivery time, the activity is not required to seek a UNICOR waiver, regardless of the dollar amount of the acquisition. The concern is that DoD contracting officers and UNICOR private sector commissioned sales representatives may interpret this FAR change to mean that DoD must request a UNICOR waiver when the acquisition is over $2,500. To prevent such a misunderstanding, it is vital that references to the above public laws and/or the ensuring DFARS regulations be included in the language that announces this change to the waiver limit of FAR 8.606(e).

Councils' response: The Councils recognize that DoD is governed by separate statutory requirements with regard to purchase of products from FPI (UNICOR), but do not believe additional clarification is required for the FAR. Existing DoD policy on this subject can be found in DFARS Subpart 208.6 (48 CFR Chapter 2, Subpart 208.6). As stated in the response to Comment 2 above, DoD published revisions to DFARS Subpart 208.6 (48 CFR Chapter 2, Subpart 208.6) on November 14, 2003 (68 FR 64559).

This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act does not apply to this rule. This final rule does not constitute a significant FAR revision within the meaning of FAR 1.501 and Public Law 98–577, and publication for public comments is not required. However, the Councils will consider comments from small entities concerning the affected FAR Part 8, in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 601, *et seq.* (FAC 2001–18, FAR case 2003–001), in correspondence. No comments were received on the Regulatory Flexibility Act Statement in the interim rule.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 8

Government procurement.

Dated: December 4, 2003.

Laura Auletta,

Director, Acquisition Policy Division.

Interim Rule Adopted as Final Without Change

■ Accordingly, DoD, GSA, and NASA adopt the interim rule amending 48 CFR part 8 which was published in the **Federal Register** at 68 FR 28094, May 22, 2003, as a final rule without change.

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

[FR Doc. 03–30475 Filed 12–10–03; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 9

[FAC 2001–18; FAR Case 2002–010; Item V]

RIN 9000–AJ48

Federal Acquisition Regulation; Debarment and Suspension—Order Placement and Option Exercise

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have agreed on a final rule amending the Federal Acquisition Regulation (FAR) to address the placement of orders under existing contracts and agreements with contractors that have been debarred, suspended, or proposed for debarment.

DATES: *Effective Date:* January 12, 2004.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat at (202) 501–4755 for information pertaining to status or publication schedules. For clarification of content, contact Mr. Craig R. Goral, Procurement Analyst, at (202) 501–3856. Please cite FAC 2001–18, FAR case 2002–010.

SUPPLEMENTARY INFORMATION:

A. Background

DoD, GSA, and NASA published a proposed rule in the **Federal Register** at 67 FR 67282, November 4, 2002, to require that discretionary actions on the part of agencies meet the same standards as agencies would have to meet in awarding new contracts. The rule prohibited agencies from placing orders exceeding the guaranteed minimum against existing contracts, placing orders against optional Federal Supply Schedule contracts, adding new work, exercising options or otherwise extending the duration of contracts with contractors that are debarred, suspended or proposed for debarment unless the agency head makes a determination that there are compelling reasons for doing so.

Two comments from two commenters were received in response to the proposed rule. The first commenter strongly supported the rule. The second commenter suggested that the rule be clarified to indicate whether it applies to credit card purchases or blanket purchase agreements (BPAs), Memorandums of Agreement (MOAs), Military Interdepartmental Purchase Requests (MIPRs), or Governmentwide acquisition contracts (GWACs). A change was made to the rule to address BPAs and Basic Ordering Agreements (BOAs) based on this recommendation. It was not appropriate to address MOAs or MIPRs because they are not entered into under the FAR. GWACs are indefinite delivery contracts and are, therefore, already covered by the rule. BPAs and BOAs are agreements rather than contracts. However, they should contain the basic clauses that will apply to orders placed under them. Therefore, the Councils revised the rule to address BPAs and BOAs. The requirement that contractors must be responsible is statutory. Contractors debarred, suspended, or proposed for debarment are excluded from doing business with the Government unless there is a compelling reason to conduct business with such a contractor.

This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration certify that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because it only affects orders placed by civilian agencies against existing contracts with contractors that are debarred, suspended or proposed for debarment. The Defense FAR Supplement already prohibits the placement of such orders.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 9

Government procurement.

Dated: December 4, 2003.

Laura Auletta,

Director, Acquisition Policy Division.

■ Therefore, DoD, GSA, and NASA amend 48 CFR part 9 as set forth below:

PART 9—CONTRACTOR QUALIFICATIONS

■ 1. The authority citation for 48 CFR part 9 is revised to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

■ 2. Amend section 9.405 by revising paragraph (a); and removing from paragraphs (d)(2) and (d)(3) the words "or a designee". The revised text reads as follows:

9.405 Effect of listing.

(a) Contractors debarred, suspended, or proposed for debarment are excluded from receiving contracts, and agencies shall not solicit offers from, award contracts to, or consent to subcontracts with these contractors, unless the agency head determines that there is a compelling reason for such action (*see* 9.405–1(b), 9.405–2, 9.406–1(c), 9.407–1(d), and 23.506(e)). Contractors debarred, suspended, or proposed for debarment are also excluded from conducting business with the Government as agents or representatives of other contractors.

* * * * *

■ 3. Amend section 9.405–1 by removing from the first sentence of paragraph (a) the words "or a designee"; revising paragraph (b); and removing paragraph (c). The revised text reads as follows:

9.405–1 Continuation of current contracts.

* * * * *

(b) For contractors debarred, suspended, or proposed for debarment, unless the agency head makes a written determination of the compelling reasons for doing so, ordering activities shall not—

(1) Place orders exceeding the guaranteed minimum under indefinite quantity contracts;

(2) Place orders under optional use Federal Supply Schedule contracts, blanket purchase agreements, or basic ordering agreements; or

(3) Add new work, exercise options, or otherwise extend the duration of current contracts or orders.

9.405–2 [Amended]

■ 4. Amend section 9.405–2 by removing from the first sentence of paragraph (a) the words "or a designee".

[FR Doc. 03–30476 Filed 12–10–03; 8:45 am]

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 31 and 52

[FAC 2001–18; FAR Case 2001–037; Item VI]

RIN 9000–AJ57

Federal Acquisition Regulation; Insurance and Pension Costs

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have agreed on a final rule

amending the Federal Acquisition Regulation (FAR) to revise the insurance and indemnification cost principle, and the portion of the compensation for personal services cost principle relating to pension costs. The rule revises both cost principles by improving clarity and structure and removing unnecessary and duplicative language. The revisions are intended to revise contract cost principles and procedures, in light of the evolution of Generally Accepted Accounting Principles (GAAP), the advent of Acquisition Reform, and experience gained from implementation pertaining to contract cost principles and procedures.

DATES: *Effective Date:* January 12, 2004.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat at (202) 501–4755, for information pertaining to status or publication schedules. For clarification of content, contact Mr. Edward Loeb, Policy Advisor, at (202) 501–0650. Please cite FAC 2001–18, FAR case 2001–037.

SUPPLEMENTARY INFORMATION:

A. Background

DoD, GSA, and NASA published a proposed rule in the **Federal Register** at 68 FR 4880, January 30, 2003, with a request for comments. Four respondents submitted comments. A discussion of the comments is provided below. The Councils considered all comments and concluded that the proposed rule should be converted to a final rule, with changes to the proposed rule. Differences between the proposed rule and final rule are discussed below:

B. Public Comments

General Reformatting of FAR 31.205

Comment 1: In addition to specific comments regarding the subject case, a respondent also recommended reformatting this cost principle as part of a general reformat effort of FAR Part 31, Contract Cost Principles and Procedures. The respondent advocates establishing a common format for the selected costs detailed in FAR 31.205 will increase the clarity of the cost principles and reduce misinterpretation.

Councils' response: Nonconcur. The Councils are unaware of any significant clarity problems with the current FAR cost principles and see no benefit in this recommendation. While it is true that the cost principles do not all share an identical format, it does not follow that this makes them difficult to understand. Moreover, such a comprehensive revision of the cost principles could actually increase disputes by substituting new wording for longstanding, court-tested language.

Of the 48 current FAR cost principles, 16 are only one paragraph long, and 11 more are only two or three paragraphs long. The Councils question the need to "force-fit" such short cost principles into a uniform format, particularly in the absence of any significant clarity problems. Not only would the recommended general reformatting of the cost principles be difficult to accomplish, but it would also offer no obvious benefit to either industry or the Government.

The Councils recommend instead that industry continue to identify those individual cost principles which it views as problematic and to provide specific proposals for appropriate revisions. It should be noted that the continuing Defense Procurement and Acquisition Policy initiative to reduce accounting and administrative burdens in the cost principles, without jeopardizing the Government's interests, has resulted in significant changes or deletions involving more than 20 different cost principles to date. The Councils continue to believe that such a case-by-case cooperative effort with industry offers the best opportunity for meaningful change in this often controversial area.

Incorporating CAS Provisions in FAR Cost Principles

Comment 2: A respondent asserted that the proposed rule incorporates substantial cost accounting standard (CAS) provisions into the FAR cost principles. The respondent believes this creates *de facto* CAS coverage when, by law, promulgations covering the measurement, assignment, and allocation of costs to cost objectives is assigned to the CAS Board, including the thresholds for which contracts will and will not include CAS provisions. The respondent further states that if the FAR includes CAS concepts, the inclusion should be done using direct quotes or references.

Councils' response: Nonconcur. The Councils considered this proposal, but believe that eliminating all CAS from the FAR would create significant problems.

It is the responsibility of the Councils, not the CAS Board, to promulgate rules for the measurement, assignment, and allocation of costs for non-CAS covered contracts. The CAS Board does not have jurisdiction over non-CAS covered contracts. For some costs, particularly deferred compensation including pension costs (CAS 412, 413, and 415), cost of money (CAS 414/417), and self-insurance (CAS 416), the Councils have chosen to use the same requirements for non-CAS covered contracts as the CAS Board has chosen to use for CAS-covered contracts. To eliminate all CAS from the FAR would require removal of these key FAR Part 31 provisions.

As for the subject rule, the issue of an alternative to CAS 412/413 for non-CAS covered contracts was discussed at the public meetings during the spring of 2001. None of the attendees proposed an alternative to the use of CAS 412/413. In fact, most of the attendees supported the application of CAS 412/413 to non-CAS covered contracts. As such, the Councils do not believe there is currently a viable alternative to applying CAS 412/413 to non-CAS covered contracts.

In regard to CAS 416, the proposed rule included the CAS requirements for self-insurance. Without this provision, insurance costs for non-CAS covered contracts would be subject to Generally Accepted Accounting Principles (GAAP), which do not permit a self-insurance charge. The Councils believe it would be inequitable to permit contractors with CAS-covered contracts to charge self-insurance costs while denying such charges for contractors with non-CAS covered contracts. In addition, a contractor with both CAS and non-CAS covered contracts would need two sets of accounting practices if it wanted to charge self-insurance for CAS-covered contracts. Such a requirement would result in an unnecessary administrative burden to both the contractor and the Government.

As for the incorporation of the CAS provisions into the FAR, the respondent did not specify any particular language that it believes has been paraphrased. Nevertheless, the Councils reviewed the proposed rule to see if any such paraphrasing existed and found that the proposed rule references the specific CAS standards (412, 413, and 416); it does not paraphrase any CAS requirements.

FAR 31.205–6—Compensation for Personal Services

FAR 31.205–6(j)—Definition of Pension Plan

Comment 3: A respondent recommends that the current language at FAR 31.205–6(j)(1) be retained and asserts that the current language includes allowability criteria that would be eliminated if the definition is removed. The language currently reads as follows:

> (1) A pension plan, as defined in 31.001, is a deferred compensation plan. Additional benefits such as permanent and total disability and death payments and survivorship payments to beneficiaries of deceased employees *may be treated as pension costs, provided the benefits are an integral part of the pension plan and meet all the criteria pertaining to pension costs.* (Emphasis added.)

Councils' response: Nonconcur. The Councils do not believe the above-italicized language provides allowability criteria. It simply states when additional benefits "may be treated as pension costs." In defining a pension plan, FAR 31.001, Definitions, reads in part:

> * * * Additional benefits such as permanent and total disability and death payments, and survivorship payments to beneficiaries of deceased employees, may be an integral part of a pension plan.

The Councils believe this definition, which is identical to that used in CAS 412, should not be supplemented by the language currently at FAR 31.205–6(j)(1). Under the language at FAR 31.205–6(j)(1), additional benefits that are an integral part of a pension plan "may be treated as pension costs." This phrase could be misinterpreted to mean that a contractor has the right to subjectively choose when such benefits will be pension costs and when they will not. Conversely, the definition at FAR 31.001 and CAS 412 simply states that such benefits may be an integral part of the pension plan.

FAR 31.205–6(j)(3)(i)(C) and FAR Clause 52.215–15(b)(3)—Segment Closings

Comment 4: Two respondents stated that the language at FAR 31.205–6(j) regarding segment closings is more restrictive than the CAS requirements. One respondent asserts there are optional settlement methods provided for in CAS 413, specifically amortization, and that the proposed FAR language does not address underfunding as does the CAS.

Councils' response: Concur in part. Upon further review, the Councils determined that the proposed language on settlement should be deleted. The current language in CAS 413, which is incorporated into FAR 31.205–6(j) by reference, adequately addresses the issue of settlement. Thus, there is no need to include the specific language in the FAR. The Councils, therefore, deleted the proposed language at FAR 31.205–6(j)(3)(C) and the FAR clause at 52.215–5(b)(3).

FAR 31.205–6(j)(6)—Early Retirement Incentive Plans

Comment 5: A respondent asserts that current FAR language clearly states that plans based on life income settlements are not treated as early retirement incentives plans and recommends retaining that language.

Councils' response: Nonconcur. Based on a review of the original promulgation documents, it is clear that the drafters intended to include early retirement incentive payments made from within, as well as outside, the pension trust. Although the drafters believed it would be rare for a pension plan to include an early retirement incentive with a life income settlement, they intended that such amendments be included as early retirement incentives and be subject to the conditions outlined in the cost principle. There was no intention by the drafters to exclude such settlements.

The Councils believe this continues to be an appropriate policy. Early retirement incentive plans include any incentive given to an employee to retire early, regardless of whether payment is made in the form of a life income settlement or a lump sum. The method of payment should not determine whether the cost is allowable. The limitation should apply regardless of whether the contractor decides to make the payment over a period of years or in a single payment.

FAR 31.205–6(q)—Defer Revision to Employee Stock Ownership Plans (ESOPs)

Comment 6: Two respondents recommend that further FAR action be deferred until the CAS Board proposal on ESOPs can be reviewed for consistency.

Councils' response: Nonconcur. The proposed rule does not add any new measurement, assignment, or allocation provisions for ESOPs. Under both the existing and proposed rules, ESOPs that meet the definition of a pension plan are covered by CAS 412, and those that do not are covered by CAS 415. While the proposed rule consolidates the allowability requirements for ESOP costs into a single provision, it does not change the measurement, assignment, or allocability requirements for such costs. Since this FAR provision does not revise existing measurement, assignment, or allocation requirements, the Councils do not believe it should be delayed in anticipation of actions by the CAS Board. The Councils recognize that this FAR provision may require further modification as a result of the current ESOP project being pursued by the CAS Board.

FAR 31.205–6(q)(2)(iii)—Allowability Limitation on ESOP Contributions

Comment 7: A respondent asserts that the proposed provision that limits ESOP contributions in any one year to 25 percent of compensation is inconsistent with the IRS Code and should be revised accordingly.

Councils' response: Concur in part. The fact that the cost is deductible by the IRS does not necessarily mean that it is reasonable or allowable for Government contract costing purposes. Nevertheless, since ESOP costs are included in determining the overall reasonableness of compensation costs, the Councils revised the specific allowability ceiling for ESOP costs to only require that they be deductible under the IRS Code.

FAR 31.205–6(q)(2)(v)—ESOP Stock in Excess of Fair Market Value.

Comment 8: A respondent expressed concern regarding the "new" provision that disallows purchases in excess of fair market value. The respondent believes that this provision could be interpreted as either (a) requiring that valuation be based on the value of the stock immediately after a leveraged ESOP transaction occurs (the "Farnum Theory", which the respondent states has been discredited), or (b) measurement of the value of the stock based on its annual value, rather than the value at the time the shares were acquired by the ESOP trust

Councils' response: Nonconcur. The Councils have not added a new provision. The provision in the proposed rule currently exists in FAR 31.205–6(j)(8)(i)(E), which applies to ESOPs that meet the definition of a pension plan. The proposed rule merely extends the application of that provision to all ESOPs. The Councils believe that purchases in excess of fair market value should not be allowable costs. The words in the proposed FAR 31.205–6(q) are identical to those currently at FAR 31.205–6(j)(8). As such, the Councils do not agree that this change could be interpreted as an endorsement of any new valuation technique.

FAR 31.205–6(q)(2)(iv)—Valuation of ESOP Stock Using IRS Guidelines

Comment 9: A respondent expressed concern regarding the new language that requires valuation of ESOP stock using IRS guidelines on a "case-by-case basis." The respondent recommends that, if the valuation has been done by a competent independent valuation expert, there is no need for the auditing agency to start with a valuation from "scratch."

Councils' response: Nonconcur. The Councils have not added a new provision. The provision in the proposed rule currently exists in FAR 31.205–6(j)(8)(i)(E), which applies to ESOPs that meet the definition of a pension plan. The proposed rule merely extends the application of that provision to all ESOPs. In addition, the Councils believe that deleting the words "case-by-case basis" would cause potential

confusion. The IRS guidelines must be applied based on the particular facts and circumstances of each case, *i.e.*, on a "case-by-case basis." Furthermore, the concerns of the respondent focus on the extent to which the auditor is required to rely upon the work of others, in this case the valuation expert. An independent audit requires that the auditor determine the scope of the audit, including the extent of reliance on the work of others. This issue is properly addressed in Generally Accepted Government Auditing Standards. It is not something that should be addressed in the FAR.

FAR 31.205–19—Insurance and Indemnification

FAR 31.205–19(c)(4)—Definition of Catastrophic Losses

Comment 10: One respondent asserts that self-insurance charges for catastrophic losses should be allowable, and that the definition in the proposed rule could be interpreted to include deductibles or over ceiling amounts for property insurance policies and other high dollar policies. Another respondent states that the new definition of catastrophic losses may cause contention and uncertainty in the field because it does not account for the relatively large losses among different sized contractors. The respondent also believes "very low frequency of loss" adds confusion. The respondent further contends that the definition should be deleted and existing practices that rely upon individual circumstances and general reasonableness should continue to be used.

Councils' response: Concur in part. Upon further review, the Councils deleted the definition of catastrophic losses from the final rule. The Councils continue to believe that the proposed definition is consistent with the intent of the promulgators of the current language, as evidenced by the March 19, 1979, report underlying DAR case 78–400–7.

The intent of the proposed coverage was to distinguish catastrophic losses as used in the cost principle from the type of catastrophic loss anticipated by the illustration at CAS 416.60(h). In that illustration, motor vehicle liability losses in excess of a specified amount were absorbed by the home office and reallocated to all segments. In the particular case described, the specified amount was too low based on loss experience to be considered catastrophic under the provisions of CAS 416. However, the illustration appears to anticipate losses that may be catastrophic to a particular segment of a company but not necessarily catastrophic in a more general sense. The Councils do not believe the drafters of the cost principle intended to disallow self-insurance charges for the type of loss anticipated by the CAS illustration. However, since CAS does not include a definition of catastrophic loss, defining the term in the FAR could cause confusion by the users of these regulations.

As to the respondent's recommendation that self-insurance charges for catastrophic losses should be allowable, the Councils disagree. As was noted in the report on DAR case 78–400–7, the Government should not allow self-insurance charges for catastrophic losses, such as earthquakes, which have a very small likelihood of occurring for any particular contractor.

C. Regulatory Planning and Review

This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

D. Regulatory Flexibility Act

The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration certify that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because most contracts awarded to small entities use simplified acquisition procedures or are awarded on a competitive, fixed-price basis, and do not require application of the cost principle discussed in this rule.

E. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 31 and 52

Government procurement.

Dated: December 4, 2003.

Laura Auletta,

Director, Acquisition Policy Division.

■ Therefore, DoD, GSA, and NASA amend 48 CFR parts 31 and 52 as set forth below:

■ 1. The authority citation for 48 CFR parts 31 and 52 is revised to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 31—CONTRACT COST PRINCIPLES AND PROCEDURES

■ 2. Amend section 31.205–6 by—

■ a. Removing from the second sentence of paragraph (g)(1) "(j)(7)" and adding "(j)(6)" in its place;

■ b. Revising paragraph (j);

■ c. Removing from the second parenthetical in paragraph (p)(2)(i) "paragraphs (j)(5) and (j)(8)" and adding "paragraphs (j)(4) and (q)" in its place; and

■ d. Adding paragraph (q) to read as follows:

31.205–6 Compensation for personal services.

* * * * *

(j) *Pension costs.* (1) Pension plans are normally segregated into two types of plans: defined-benefit and defined-contribution pension plans. The contractor shall measure, assign, and allocate the costs of all defined-benefit pension plans and the costs of all defined-contribution pension plans in compliance with 48 CFR 9904.412—Cost Accounting Standard for Composition and Measurement of Pension Cost, and 48 CFR 9904.413—Adjustment and Allocation of Pension Cost. Pension costs are allowable subject to the referenced standards and the cost limitations and exclusions set forth in paragraph (j)(1)(i) and in paragraphs (j)(2) through (j)(6) of this subsection.

(i) Except for nonqualified pension plans using the pay-as-you-go cost method, to be allowable in the current year, the contractor shall fund pension costs by the time set for filing of the Federal income tax return or any extension. Pension costs assigned to the current year, but not funded by the tax return time, are not allowable in any subsequent year. For nonqualified pension plans using the pay-as-you-go method, to be allowable in the current year, the contractor shall allocate pension costs in the cost accounting period that the pension costs are assigned.

(ii) Pension payments must be paid pursuant to an agreement entered into in good faith between the contractor and employees before the work or services are performed and to the terms and conditions of the established plan. The cost of changes in pension plans are not allowable if the changes are discriminatory to the Government or are not intended to be applied consistently for all employees under similar circumstances in the future.

(iii) Except as provided for early retirement benefits in paragraph (j)(6) of this subsection, one-time-only pension supplements not available to all participants of the basic plan are not allowable as pension costs, unless the supplemental benefits represent a separate pension plan and the benefits are payable for life at the option of the employee.

(iv) Increases in payments to previously retired plan participants covering cost-of-living adjustments are allowable if paid in accordance with a policy or practice consistently followed.

(2) *Defined-benefit pension plans.* The cost limitations and exclusions pertaining to defined-benefit plans are as follows:

(i)(A) Except for nonqualified pension plans, pension costs (see 48 CFR 9904.412–40(a)(1)) assigned to the current accounting period, but not funded during it, are not allowable in subsequent years (except that a payment made to a fund by the time set for filing the Federal income tax return or any extension thereof is considered to have been made during such taxable year). However, any portion of pension cost computed for a cost accounting period, that exceeds the amount required to be funded pursuant to a waiver granted under the provisions of the Employee Retirement Income Security Act of 1974 (ERISA), will be allowable in those future accounting periods in which the funding of such excess amounts occurs (see 48 CFR 9904.412–50(c)(5)).

(B) For nonqualified pension plans, except those using the pay-as-you-go cost method, allowable costs are limited to the amount allocable in accordance with 48 CFR 9904.412–50(d)(2).

(C) For nonqualified pension plans using the pay-as-you-go cost method, allowable costs are limited to the amounts allocable in accordance with 48 CFR 9904.412–50(d)(3).

(ii) Any amount funded in excess of the pension cost assigned to a cost accounting period is not allowable in that period and shall be accounted for as set forth at 48 CFR 9904.412–50(a)(4). The excess amount is allowable in the future period to which it is assigned, to the extent it is not otherwise unallowable.

(iii) Increased pension costs are unallowable if the increase is caused by a delay in funding beyond 30 days after each quarter of the year to which they are assignable. If a composite rate is used for allocating pension costs between the segments of a company and if, because of differences in the timing of the funding by the segments, an inequity exists, allowable pension costs for each segment will be limited to that particular segment's calculation of pension costs as provided for in 48 CFR 9904.413–50(c). The contractor shall make determinations of unallowable costs in accordance with the actuarial method used in calculating pension costs.

(iv) The contracting officer will consider the allowability of the cost of indemnifying the Pension Benefit Guaranty Corporation (PBGC) under ERISA section 4062 or 4064 arising from terminating an employee deferred compensation plan on a case-by-case basis, provided that if insurance was required by the PBGC under ERISA section 4023, it was so obtained and the indemnification payment is not recoverable under the insurance. Consideration under the foregoing circumstances will be primarily for the purpose of appraising the extent to which the indemnification payment is allocable to Government work. If a beneficial or other equitable relationship exists, the Government will participate, despite the requirements of 31.205–19(c)(3) and (d)(3), in the indemnification payment to the extent of its fair share.

(v) Increased pension costs resulting from the withdrawal of assets from a pension fund and transfer to another employee benefit plan fund, or transfer of assets to another account within the same fund, are unallowable except to the extent authorized by an advance agreement. If the withdrawal of assets from a pension fund is a plan termination under ERISA, the provisions of paragraph (j)(3) of this subsection apply. The advance agreement shall—

(A) State the amount of the Government's equitable share in the gross amount withdrawn or transferred; and

(B) Provide that the Government receives a credit equal to the amount of the Government's equitable share of the gross withdrawal or transfer.

(3) *Pension adjustments and asset reversions.* (i) For segment closings, pension plan terminations, or curtailment of benefits, the amount of the adjustment shall be—

(A) For contracts and subcontracts that are subject to full coverage under the Cost Accounting Standards (CAS) Board rules and regulations, the amount measured, assigned, and allocated in accordance with 48 CFR 9904.413–50(c)(12); and

(B) For contracts and subcontracts that are not subject to full coverage under the CAS, the amount measured, assigned, and allocated in accordance with 48 CFR 9904.413–50(c)(12), except the numerator of the fraction at 48 CFR 9904.413–50(c)(12)(vi) is the sum of the pension plan costs allocated to all non-CAS-covered contracts and subcontracts that are subject to Subpart 31.2 or for which cost or pricing data were submitted.

(ii) For all other situations where assets revert to the contractor, or such assets are constructively received by it for any reason, the contractor shall, at the Government's option, make a refund or give a credit to the Government for its equitable share of the gross amount withdrawn. The Government's equitable share shall reflect the Government's participation in pension costs through those contracts for which cost or pricing data were submitted or that are subject to Subpart 31.2. Excise taxes on pension plan asset reversions or withdrawals under this paragraph (j)(3)(ii) are unallowable in accordance with 31.205–41(b)(6).

(4) *Defined-contribution pension plans.* In addition to defined-contribution pension plans, this paragraph also covers profit sharing, savings plans, and other such plans, provided the plans fall within the definition of a pension plan at 31.001.

(i) Allowable pension cost is limited to the net contribution required to be made for a cost accounting period after taking into account dividends and other credits, where applicable. However, any portion of pension cost computed for a cost accounting period that exceeds the amount required to be funded pursuant to a waiver granted under the provisions of ERISA will be allowable in those future accounting periods in which the funding of such excess amounts occurs (see 48 CFR 9904.412–50(c)(5)).

(ii) The provisions of paragraphs (j)(2)(ii) and (iv) of this subsection apply to defined-contribution plans.

(5) *Pension plans using the pay-as-you-go cost method.* When using the pay-as-you-go cost method, the contractor shall measure, assign, and allocate the cost of pension plans in accordance with 48 CFR 9904.412 and 9904.413. Pension costs for a pension plan using the pay-as-you-go cost method are allowable to the extent they are not otherwise unallowable.

(6) *Early retirement incentives.* An early retirement incentive is an incentive given to an employee to retire early. For contract costing purposes, costs of early retirement incentives are allowable subject to the pension cost criteria contained in paragraphs (j)(2)(i) through (iv) of this subsection provided—

(i) The contractor measures, assigns, and allocates the costs in accordance with the contractor's accounting practices for pension costs;

(ii) The incentives are in accordance with the terms and conditions of an early retirement incentive plan;

(iii) The contractor applies the plan only to active employees. The cost of extending the plan to employees who retired or were terminated before the adoption of the plan is unallowable; and

(iv) The present value of the total incentives given to any employee in excess of the amount of the employee's annual salary for the previous fiscal year before the employee's retirement is unallowable. The contractor shall compute the present value in accordance with its accounting practices for pension costs. The contractor shall account for any unallowable costs in accordance with 48 CFR 9904.412–50(a)(2).

* * * * *

(q) *Employee stock ownership plans (ESOP).* (1) An ESOP is a stock bonus plan designed to invest primarily in the stock of the employer corporation. The contractor's contributions to an Employee Stock Ownership Trust (ESOT) may be in the form of cash, stock, or property.

(2) Costs of ESOPs are allowable subject to the following conditions:

(i) For ESOPs that meet the definition of a pension plan at 31.001, the contractor—

(A) Measures, assigns, and allocates the costs in accordance with 48 CFR 9904.412;

(B) Funds the pension costs by the time set for filing of the Federal income tax return or any extension. Pension costs assigned to the current year, but not funded by the tax return time, are not allowable in any subsequent year; and

(C) Meets the requirements of paragraph (j)(2)(ii) of this subsection.

(ii) For ESOPs that do not meet the definition of a pension plan at 31.001, the contractor measures, assigns, and allocates costs in accordance with 48 CFR 9904.415.

(iii) Contributions by the contractor in any one year that exceed the deductibility limits of the Internal Revenue Code for that year are unallowable.

(iv) When the contribution is in the form of stock, the value of the stock contribution is limited to the fair market value of the stock on the date that title is effectively transferred to the trust.

(v) When the contribution is in the form of cash—

(A) Stock purchases by the ESOT in excess of fair market value are unallowable; and

(B) When stock purchases are in excess of fair market value, the contractor shall credit the amount of the excess to the same indirect cost pools that were charged for the ESOP contributions in the year in which the stock purchase occurs. However, when the trust purchases the stock with borrowed funds which will be repaid over a period of years by cash contributions from the contractor to the trust, the contractor shall credit the excess price over fair market value to the indirect cost pools pro rata over the period of years during which the contractor contributes the cash used by the trust to repay the loan.

(vi) When the fair market value of unissued stock or stock of a closely held corporation is not readily determinable, the valuation will be made on a case-by-case basis taking into consideration the guidelines for valuation used by the IRS.

* * * * *

■ 3. Revise section 31.205–19 to read as follows:

31.205–19 Insurance and indemnification.

(a) Insurance by purchase or by self-insuring includes—

(1) Coverage the contractor is required to carry or to have approved, under the terms of the contract; and

(2) Any other coverage the contractor maintains in connection with the general conduct of its business.

(b) For purposes of applying the provisions of this subsection, the Government considers insurance provided by captive insurers (insurers owned by or under control of the contractor) as self-insurance, and charges for it shall comply with the provisions applicable to self-insurance costs in this subsection. However, if the captive insurer also sells insurance to the general public in substantial quantities and it can be demonstrated that the charge to the contractor is based on competitive market forces, the Government will consider the insurance as purchased insurance.

(c) Whether or not the contract is subject to CAS, self-insurance charges are allowable subject to paragraph (e) of this subsection and the following limitations:

(1) The contractor shall measure, assign, and allocate costs in accordance with 48 CFR 9904.416, Accounting for Insurance Costs.

(2) The contractor shall comply with (48 CFR) part 28. However, approval of a contractor's insurance program in accordance with part 28 does not constitute a determination as to the allowability of the program's cost.

(3) If purchased insurance is available, any self-insurance charge plus insurance administration expenses in excess of the cost of comparable purchased insurance plus associated insurance administration expenses is unallowable.

(4) Self-insurance charges for risks of catastrophic losses are unallowable (*see* 28.308(e)).

(d) Purchased insurance costs are allowable, subject to paragraph (e) of this subsection and the following limitations:

(1) For contracts subject to full CAS coverage, the contractor shall measure, assign, and allocate costs in accordance with 48 CFR 9904.416.

(2) For all contracts, premiums for insurance purchased from fronting insurance companies (insurance companies not related to the contractor but who reinsure with a captive insurer of the contractor) are unallowable to the extent they exceed the sum of—

(i) The amount that would have been allowed had the contractor insured directly with the captive insurer; and

(ii) Reasonable fronting company charges for services rendered.

(3) Actual losses are unallowable unless expressly provided for in the contract, except—

(i) Losses incurred under the nominal deductible provisions of purchased insurance, in keeping with sound business practice, are allowable; and

(ii) Minor losses, such as spoilage, breakage, and disappearance of small hand tools that occur in the ordinary course of business and that are not covered by insurance, are allowable.

(e) Self-insurance and purchased insurance costs are subject to the cost limitations in the following paragraphs:

(1) Costs of insurance required or approved pursuant to the contract are allowable.

(2) Costs of insurance maintained by the contractor in connection with the general conduct of its business are allowable subject to the following limitations:

(i) Types and extent of coverage shall follow sound business practice, and the rates and premiums shall be reasonable.

(ii) Costs allowed for business interruption or other similar insurance shall be limited to exclude coverage of profit.

(iii) The cost of property insurance premiums for insurance coverage in excess of the acquisition cost of the insured assets is allowable only when the contractor has a formal written policy assuring that in the event the insured property is involuntarily converted, the new asset shall be valued at the book value of the replaced asset plus or minus adjustments for differences between insurance proceeds and actual replacement cost. If the contractor does not have such a formal written policy, the cost of premiums for insurance coverage in excess of the acquisition cost of the insured asset is unallowable.

(iv) Costs of insurance for the risk of loss of, or damage to, Government property are allowable only to the extent that the contractor is liable for such loss or damage and such insurance does not cover loss or damage which results from willful misconduct or lack of good faith on the part of any of the contractor's directors or officers, or other equivalent representatives.

(v) Costs of insurance on the lives of officers, partners, proprietors, or employees are allowable only to the extent that the insurance represents additional compensation (*see* 31.205–6).

(3) The cost of insurance to protect the contractor against the costs of correcting its own defects in materials and workmanship is unallowable. However, insurance costs to cover fortuitous or casualty losses resulting from defects in materials or workmanship are allowable as a normal business expense.

(4) Premiums for retroactive or backdated insurance written to cover losses that have occurred and are known are unallowable.

(5) The Government is obligated to indemnify the contractor only to the extent authorized by law, as expressly provided for in the contract, except as provided in paragraph (d)(3) of this subsection.

(6) Late premium payment charges related to employee deferred compensation plan insurance incurred pursuant to section 4007 (29 U.S.C. 1307) or section 4023 (29 U.S.C. 1323) of the Employee Retirement Income Security Act of 1974 are unallowable.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 4. Amend section 52.215–15 by revising the date of the clause and paragraph (b) to read as follows:

52.215–15 Pension Adjustments and Asset Reversions.

* * * * *

Pension Adjustments and Asset Reversions (Jan 2004)

* * * * *

(b) For segment closings, pension plan terminations, or curtailment of benefits, the amount of the adjustment shall be—

(1) For contracts and subcontracts that are subject to full coverage under the Cost Accounting Standards (CAS) Board rules and regulations (48 CFR Chapter 99), the amount measured, assigned, and allocated in accordance with 48 CFR 9904.413–50(c)(12); and

(2) For contracts and subcontracts that are not subject to full coverage under the CAS, the amount measured, assigned, and allocated in accordance with 48 CFR 9904.413–50(c)(12), except the numerator of the fraction at 48 CFR 904.413–50(c)(12)(vi) shall be the sum of the pension plan costs allocated to all non-CAS covered contracts and subcontracts that are subject to Federal Acquisition Regulation (FAR) Subpart 31.2 or for which cost or pricing data were submitted.

* * * * *

(End of clause)

[FR Doc. 03–30477 Filed 12–10–03; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 52

[FAC 2001–18; FAR Case 2002–014; Item VII]

RIN 9000–AJ59

Federal Acquisition Regulation; Debriefing—Competitive Acquisition

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have agreed on a final rule amending the Federal Acquisition Regulation (FAR) to implement sections 1014 and 1064 of the Federal Acquisition Streamlining Act of 1994 on requirements for debriefing unsuccessful offerors under competitive proposals.

DATES: *Effective Date:* January 12, 2004.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, at (202) 501–4755, for information pertaining to status or publication schedules. For clarification of content, contact Ms. Julia Wise, Procurement Analyst, at (202) 208–1168. Please cite FAC 2001–18, FAR case 2002–014.

SUPPLEMENTARY INFORMATION:

A. Background

This rule amends the FAR to include requirements for debriefing unsuccessful offerors under competitive proposals, as required by sections 1014 and 1064 of the Federal Acquisition Streamlining Act of 1994 which amended 10 U.S.C. 2305(b) and 41 U.S.C. 253b, respectively. Specifically, 10 U.S.C. 2305(b)(5)(D) and 41 U.S.C. 253b(e)(4) require each solicitation for competitive proposals to include a statement that prescribes minimal information that shall be disclosed in postaward debriefings. Some of the requirements were already incorporated into the clause at FAR 52.215–1, Instructions to Offerors—Competitive Acquisitions, but the notification for debriefings was overlooked during the drafting of the clause at 52.212–1, Instruction to Offerors—Commercial Items. This rule amends FAR 52.212–1 and 52.215–1 to implement the statutory requirements, and the past performance debriefing requirement at FAR 15.506(d)(2), by listing all the prescribed minimal information that shall be disclosed in postaward debriefings.

DoD, GSA, and NASA published a proposed rule in the **Federal Register** at 68 FR 5778, February 4, 2003. Two respondents submitted public comments. The Councils considered the comments before agreeing to publish the proposed rule as final without change. A summary of the comments and their disposition follows:

Comment: The revised FAR clauses should include a debriefing requirement to reveal the number of "points" an offeror received under the evaluation of its past performance.

Response: The Councils do not concur. The clauses, as revised by this final rule, establish a clear requirement for agencies to provide the results of its evaluation of an offeror's past performance. However, agencies successfully use different methods (*e.g.*, adjectival, color coding, and point scoring) to evaluate proposals. Specifying a particular method would limit agency discretion with no apparent associated benefit.

Comment: The revised FAR clauses should include a debriefing requirement to reveal the sources, other than the offeror, of any past performance information received.

Response: The Councils do not concur. FAR 15.506(e) prohibits the identification of individuals providing reference information about an offeror's past performance.

Comment: The rule should be revised to address the requirement to release unit price information clearly and consistently within the FAR.

Response: The Councils appreciate that, as a result of recent court cases, especially *MCI WorldCom* v. *GSA*, 163 F. Supp. 2d 28, the treatment of unit prices under exemption no. 4 of the Freedom of Information Act (5 U.S.C. 552(b)(4)) is in a state of flux which may

ultimately require that FAR 15.503(b)(1)(iv) addressing the release of unit prices be clarified. The Councils will continue to evaluate this issue and will consider whether a case needs to be opened to address this issue.

This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration certify that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory FlexibilityAct, 5 U.S.C. 601, *et seq.*, because the rule primarily clarifies language pertaining to disclosure of information in post-award debriefings currently authorized by statute and does not change existing policy.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 52

Government procurement.

Dated: December 4, 2003.

Laura Auletta,

Director, Acquisition Policy Division.

■ Therefore, DoD, GSA, and NASA amend 48 CFR part 52 as set forth below:

PART 52—SOLICITATIONS PROVISIONS AND CONTRACT CLAUSES

■ 1. The authority citation for 48 CFR part 52 is revised to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

■ 2. Amend section 52.212–1 by revising the date of the provision; and adding paragraph (l) to read as follows:

52.212–1 Instructions to Offerors—Commercial Items.

* * * * *

Instructions to Offerors—Commercial Items (JAN 2004)

* * * * *

(l) *Debriefing.* If a post-award debriefing is given to requesting offerors, the Government shall disclose the following information, if applicable:

(1) The agency's evaluation of the significant weak or deficient factors in the debriefed offeror's offer.

(2) The overall evaluated cost or price and technical rating of the successful and the debriefed offeror and past performance information on the debriefed offeror.

(3) The overall ranking of all offerors, when any ranking was developed by the agency during source selection.

(4) A summary of the rationale for award;

(5) For acquisitions of commercial items, the make and model of the item to be delivered by the successful offeror.

(6) Reasonable responses to relevant questions posed by the debriefed offeror as to whether source-selection procedures set forth in the solicitation, applicable regulations, and other applicable authorities were followed by the agency.

(End of provision)

■ 3. Amend section 52.215–1 by revising the date of the provision and paragraph (f)(11) to read as follows:

52.215–1 Instructions to Offerors—Competitive Acquisition.

* * * * *

Instructions to Offerors—Competitive Acquisition (Jan 2004)

* * * * *

(f) * * *

(11) If a post-award debriefing is given to requesting offerors, the Government shall disclose the following information, if applicable:

(i) The agency's evaluation of the significant weak or deficient factors in the debriefed offeror's offer.

(ii) The overall evaluated cost or price and technical rating of the successful and the debriefed offeror and past performance information on the debriefed offeror.

(iii) The overall ranking of all offerors, when any ranking was developed by the agency during source selection.

(iv) A summary of the rationale for award.

(v) For acquisitions of commercial items, the make and model of the item to be delivered by the successful offeror.

(vi) Reasonable responses to relevant questions posed by the debriefed offeror as to whether source-selection procedures set forth in the solicitation, applicable regulations, and other applicable authorities were followed by the agency.

(End of provision)

* * * * *

[FR Doc. 03–30478 Filed 12–10–03; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1, 6, 13, 25, and 52

[FAC 2001–18; Item VIII]

Federal Acquisition Regulation; Technical Amendments

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: This document makes amendments to the Federal Acquisition Regulation (FAR) in order to update references and make editorial changes.

DATES: *Effective Date:* December 11, 2003.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC 20405, (202) 501–4755, for information pertaining to status or publication schedules. Please cite FAC 2001–18, Technical Amendments.

List of Subjects in 48 CFR Parts 1, 6, 13, 25, and 52

Government procurement.

Dated: December 4, 2003.

Laura Auletta,

Director, Acquisition Policy Division.

■ Therefore, DoD, GSA, and NASA amend 48 CFR parts 1, 6, 13, 25, and 52 as set forth below:

■ 1. The authority citation for 48 CFR parts 1, 6, 13, 25, and 52 is revised to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 1—FEDERAL ACQUISITION REGULATIONS SYSTEM

1.201–1 [Amended]

■ 2. Amend section 1.201–1 in paragraph (b)(1) by adding "Homeland Security," after "Health and Human Services,".

PART 6—COMPETITION REQUIREMENTS

6.302–7 [Amended]

■ 3. Amend section 6.302–7 in paragraph (c)(1)(i) by removing "Transportation" and adding "Homeland Security" in its place.

PART 13—SIMPLIFIED ACQUISITION PROCEDURES

13.500 [Amended]

■ 4. Amend section 13.500 in the first sentence of paragraph (d) by removing "2004" and adding "2006" in its place.

PART 25—FOREIGN ACQUISITION

25.701 [Amended]

■ 5. Amend section 25.701 in the second sentence of paragraph (b) by removing "*http://www.epls.gov/Terlist1.html*" and adding "*http://www.epls.gov/TerList1.html*" in its place.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

52.204–7 [Amended]

■ 6. Amend section 52.204–7 in Alternate I by removing "4.1104(a)" and adding "4.1104" in its place.

52.211–2 [Amended]

■ 7. Amend section 52.211–2 in the provision heading by removing "(Dec 1999)" and adding "(Jan 2004)" in its place; in paragraph (a) by removing "*http://assist.daps.mil*" and adding "*http://assist.daps.dla.mil*" in its place; and in paragraph (b) by removing "(215) 697–2667/2179" and adding "(215) 697–2179" in its place.

52.225–13 [Amended]

■ 8. Amend section 52.225–13 in the clause heading by removing "(Oct 2003)" and adding "(Jan 2004)" in its place; and in the second sentence of paragraph (b) of the clause by removing "*http://www.epls.gov/Terlist1.html*" and adding "*http://www.epls.gov/TerList1.html*" in its place.

[FR Doc. 03–30479 Filed 12–10–03; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Chapter 1

Federal Acquisition Regulation; Small Entity Compliance Guide

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Small Entity Compliance Guide.

SUMMARY: This document is issued under the joint authority of the Secretary of Defense, the Administrator of General Services and the Administrator for the National Aeronautics and Space Administration. This *Small Entity Compliance Guide* has been prepared in accordance with section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996. It consists of a summary of rules appearing in Federal Acquisition Circular (FAC) 2001–18 which amend the FAR. An asterisk (*) next to a rule indicates that a regulatory flexibility analysis has been prepared. Interested parties may obtain further information regarding these rules by referring to FAC 2001–18 which precedes this document. These documents are also available via the Internet at *http://www.arnet.gov/far.*

FOR FURTHER INFORMATION CONTACT: Laurie Duarte, FAR Secretariat, (202) 501–4225. For clarification of content, contact the analyst whose name appears in the table below.

LIST OF RULES IN FAC 2001–18

Item	Subject	FAR case	Analyst
I	New Consolidated Form for Selection of Architect-Engineer Contractors	2000–608	Davis.
II	Depreciation Cost Principle	2001–026	Loeb.
III	Federal Procurement Data System	2003–019	Zaffos.
IV	Increased Federal Prison Industries, Inc. Waiver Threshold	2003–001	Nelson.
V	Debarment and Suspension—Order Placement and Option Exercise	2002–010	Goral.
VI	Insurance and Pension Costs	2001–037	Loeb.
VII	Debriefing—Competitive Acquisition	2002–014	Wise.
VIII	Technical Amendments.		

Item I—New Consolidated Form for Selection of Architect-Engineer Contractors (FAR Case 2000–608)

This final rule amends the FAR to replace SF 254, Architect-Engineer and Related Services Questionnaire, and SF 255, Architect-Engineer and Related Services Questionnaire for Specific Projects, with SF 330, Architect-Engineer Qualifications. The SF 330 reflects current architect-engineer practices in a streamlined and updated format and is organized into data blocks that readily support automation. An interagency *ad hoc* committee developed the SF 330. It was based on the results of a joint Federal-industry survey of the existing SFs 254 and 255 conducted by the Standing Committee on Procurement and Contracting of the Federal Facilities Council (FCC) in 1995 and published in 1996 as FCC Report Number 130, entitled "Survey on the Use of SFs 254 and 255 for Architect-Engineer Qualifications." The survey's purpose was to evaluate the current use of the forms, which are used for the submission of qualifications by architect-engineer (A–E) firms interested in Federal contracts, and to identify possible improvements which would enable the existing forms to better serve the needs of Federal agencies and the A–E industry.

The policies and the SF 330, Architect-Engineer Qualifications, of this final rule are effective for all agencies and their solicitations issued on or after January 12, 2004. However, agencies may delay implementation of this final rule until June 8, 2004, at which time it becomes mandatory for all agencies and their solicitations issued on or after that date. Use of the SF 330 becomes effective January 12, 2004. However, until June 8, 2004, agencies may authorize the continued use of the SFs 254 and 255 instead.

Item II—Depreciation Cost Principle (FAR Case 2001–026)

This final rule amends FAR parts 2 and 31 to revise the depreciation cost principle (FAR 31.205–11) by improving clarity and structure and removing unnecessary and duplicative language. The case was initiated at the request of the Aerospace Industries Association. The rule does not change the allowability of depreciation costs. However, changes have been made that may effect the determination of depreciable costs for tangible personal property; for example, only residual values in excess of 10 percent need be used and residual values need not be recognized when certain depreciation methods are used. This rule is of particular interest to contractors and contracting officers who use cost

analysis to price contracts and modifications, and who determine or negotiate reasonable costs in accordance with a clause of a contract, *e.g.*, price revision of fixed-price incentive contracts, terminated contracts, or indirect cost rates.

Item III—Federal Procurement Data System (FAR Case 2003–019)

This final rule amends the FAR to revise FAR 4.602 to—

- Reflect that the information in FPDS–NG is available to the general public;
- Provide the Web site for FPDS–NG, which must be entered as *https://www.fpds.gov*;
- Delete the physical address for the Federal Procurement Data Center;
- Allow agencies to report all transactions between $2,500 and $25,000 to FPDS–NG as either individual contract actions or summary contract actions until September 30, 2004;
- Require all contract actions over $2,500 be reported to FPDS–NG as individual contract actions after September 30, 2004;
- Require agencies to insert the provision at 52.204–6, Data Universal Numbering System (DUNS) Number, in solicitations when the expected award amount will result in the generation of an individual contract action report and the contract does not include FAR clause 52.204–7, Central Contractor Registration; and
- Eliminate the use of the SF 279, Federal Procurement Data System (FPDS)—Individual Contract Action Report, and the SF 281, Federal Procurement Data System (FPDS)—Summary Contract Action Report ($25,000 or Less).

Item IV—Increased Federal Prison Industries, Inc. Waiver Threshold (FAR Case 2003–001)

The interim rule published as Item V of FAC 2001–014 is adopted as final without change. The interim rule amended the FAR to increase the Federal Prison Industries, Inc.'s (FPI) clearance exception threshold at FAR 8.606(e) from $25 to $2,500, and deleted the criterion that delivery is required within 10 days. Federal agencies are not required to make purchases from FPI of products on FPI's Schedule that are at or below this threshold. Federal agencies, however, may continue to consider and purchase products from FPI that are at or below $2,500.

Item V—Debarment and Suspension—Order Placement and Option Exercise (FAR Case 2002–010)

This final rule amends FAR part 9 to address the placement of orders under existing contracts and agreements with contractors that have been debarred, suspended, or proposed for debarment.

Item VI—Insurance and Pension Costs (FAR Case 2001–037)

This final rule amends the FAR to revise the Insurance and Indemnification cost principle (FAR 31.205–19), and the portion of the Compensation for Personal Services cost principle relating to pension costs (FAR 31.205–6(j)). The rule revises both cost principles by improving clarity and structure, and removing unnecessary and duplicative language. Changes to FAR 31.205–6(j) include: Use of terminology consistent with Cost Accounting Standard (CAS) 412, Measurement of Pension Costs, and CAS 413, Adjustment and Allocation of Pension Cost; how the government receives pension cost adjustment amounts for CAS-covered and non-CAS-covered contracts; revision of the allowability limitation on employee stock ownership plan (ESOP) contributions; and removal of the requirement for the contracting officer to approve the ESOP contribution rate. Changes to FAR 31.205–19 include the elimination of the U.S. Treasury discount rate provision for computing actual losses. The case was initiated as a result of comments and recommendations received from industry and government representatives during a series of public meetings. This rule is of particular interest to contractors and contracting officers who use cost analysis to price contracts and modifications, and who determine or negotiate reasonable costs in accordance with a clause of a contract, *e.g.*, price revision of fixed-price incentive contracts, terminated contracts, or indirect cost rates.

Item VII—Debriefing—Competitive Acquisition (FAR Case 2002–014)

This rule amends the FAR to include requirements for debriefing unsuccessful offerors under competitive proposals, as required by sections 1014 and 1064 of the Federal Acquisition Streamlining Act of 1994, as amended, 10 U.S.C. 2305(b) and 41 U.S.C. 253b, respectively. Specifically, 10 U.S.C. 2305(b)(5)(D) and 41 U.S.C. 253b(e)(4) requires each solicitation for competitive proposals to include a statement that prescribes minimal information that shall be disclosed in postaward debriefings. This rule also amends FAR 52.212–1 and 52.215–1 to implement the statutory requirements, and the past performance debriefing requirement at FAR 15.506(d)(2), by listing all the prescribed minimal information that shall be disclosed in postaward debriefings.

Item VIII—Technical Amendments

This amendment makes editorial changes at FAR 1.201–1(b)(1); 6.302–7(c)(1)(i); 13.500(d); 25.701(b); 52.204–7, Alternate I; 52.211–2(a) and (b); and 52.225–13(b).

Dated: December 4, 2003.

Laura Auletta,

Director, Acquisition Policy Division.

[FR Doc. 03–30480 Filed 12–10–03; 8:45 am]

BILLING CODE 6820–EP–P



Federal Register

Thursday,
December 11, 2003

Part VI

Department of Defense
General Services Administration
National Aeronautics and Space Administration

48 CFR Part 8

Federal Acquisition Regulation; Procurement List; Proposed Rule

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 8

[FAR Case 2003–013]

RIN 9000–AJ82

Federal Acquisition Regulation; Procurement List

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and SpaceAdministration (NASA).

ACTION: Proposed rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) are proposing to amend the Federal Acquisition Regulation (FAR) to clarify the point that the Javits-Wagner O'Day (JWOD) program becomes a mandatory source of supplies and services and to update the address for the Committee for Purchase from People Who Are Blind or Severely Disabled.

DATES: Interested parties should submit comments in writing on or before January 12, 2004 to be considered in the formulation of a final rule.

ADDRESSES: Submit written comments to—General Services Administration, FAR Secretariat (MVA), 1800 F Street, NW., Room 4035, ATTN: Laurie Duarte, Washington, DC 20405.

Submit electronic comments via the Internet to—*farcase.2003–013@gsa.gov*.

Please submit comments only and cite FAR case 2003–013 in all correspondence related to this case.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat at (202) 501–4755 for information pertaining to status or publication schedules. For clarification of content, contact Ms. Linda Nelson, Procurement Analyst, at (202) 501–1900. Please cite FAR case 2003–013.

SUPPLEMENTARY INFORMATION:

A. Background

The rule amends the FAR to clarify that the Javits-Wagner O'Day (JWOD) program becomes a mandatory source of supplies and services when the supplies or services have been added to the Procurement List maintained by the Committee for Purchase from People Who Are Blind or Severely Disabled ("the Committee"). A Web site for the "Procurement List" is added and the address for the Committee has also been updated. These changes are necessary to correct confusion and avoid misuse of mandatory source authority.

This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The Councils do not expect this proposed rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* While we have made changes to clarify when a supply or service becomes a mandatory JWOD source, we have not substantively changed procedures for award and administration of contracts. An Initial Regulatory Flexibility Analysis has, therefore, not been performed. We invite comments from small businesses and other interested parties. The Councils will consider comments from small entities concerning the affected FAR Part 8 in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 601, *et seq.* (FAR case 2003–013), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the proposed changes to the FAR do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 8

Government procurement.

Dated: December 3, 2003.

Laura Auletta,

Director, Acquisition Policy Division.

Therefore, DoD, GSA, and NASA propose amending 48 CFR part 8 as set forth below:

1. The authority citation for 48 CFR part 8 is revised to read as follows:

PART 8—REQUIRED SOURCES OF SUPPLIES AND SERVICES

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

2. Amend section 8.002 by revising paragraphs (a)(1)(iv) and (a)(2)(i) to read as follows:

8.002 Priorities for use of Government supply sources.

(a) * * *

(1) * * *

(iv) Supplies which are on the Procurement List maintained by the Committee for Purchase From People Who Are Blind or Severely Disabled (see Subpart 8.7);

* * * * *

(2) *Services.* (i) Services, which are on the Procurement List maintained by the Committee for Purchase From People Who Are Blind or Severely Disabled (see Subpart 8.7);

* * * * *

8.004 [Amended].

3. Amend section 8.004 by removing "available from" and adding "on the Procurement List maintained by" in its place.

4. Amend section 8.703 by revising the first paragraph to read as follows:

8.703 Procurement list.

The Committee maintains a Procurement List of all supplies and services required to be purchased from JWOD participating nonprofit agencies. The Procurement List may be accessed at: *http://www.jwod.gov/procurementlist.* Questions concerning whether a supply item or service is on the Procurement List may be submitted at Internet e-mail address: *info@jwod.gov* or referred to the Committee offices at the following address and telephone number: Committee for Purchase from People, Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, VA 22202–3259, (703) 603–7740.

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[FR Doc. 03–30694 Filed 12–10–03; 8:45 am]

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Federal Register

Thursday,
December 11, 2003

Part VII

Department of Defense
General Services Administration
National Aeronautics and Space Administration

48 CFR Part 31

Federal Acquisition Regulation; Reimbursement of Relocation Costs on a Lump-Sum Basis; Proposed Rule

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 31

[FAR Case 2003–002]

RIN 9000–AJ81

Federal Acquisition Regulation; Reimbursement of Relocation Costs on a Lump-Sum Basis

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) are proposing to amend the Federal Acquisition Regulation (FAR) to revise the relocation cost principle to expand the use of reimbursement on a lump-sum basis to certain types of employee relocation costs.

EFFECTIVE DATES: Interested parties should submit comments in writing on or before February 9, 2004 to be considered in the formulation of a final rule.

ADDRESSES: Submit written comments to-General Services Administration, FAR Secretariat (MVA), 1800 F Street, NW., Room 4035, ATTN: Laurie Duarte, Washington, DC 20405.

Submit electronic comments via the Internet to—*farcase.2003–002@gsa.gov*.

Please submit comments only and cite FAR case 2003–002 in all correspondence related to this case.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat at (202) 501–4755 for information pertaining to status or publication schedules. For clarification of content, contact Mr. Edward Loeb, Policy Adviser, at (202) 501–0650. Please cite FAR case 2003–002.

SUPPLEMENTARY INFORMATION:

A. Background

The relocation cost principle at FAR 31.205–35 permits the Government to reimburse contractors for certain types of relocation costs, with the exception of miscellaneous costs, up to the employee's actual expenses. For miscellaneous costs that are described at FAR 31.205–35(a)(5), the Government may reimburse the contractor a flat or lump-sum amount up to $5,000, in lieu of actual costs. The cost principle has no ceiling for miscellaneous expenses when reimbursement is based on actual expenses.

In order to help the Councils decide whether to expand the use of reimbursement on a lump-sum basis, DoD, GSA, and NASA published a notice requesting public comments in the **Federal Register** at 67 FR 65468, October 24, 2002, and invited interested parties to provide information to help assess the potential costs and benefits of the lump-sum reimbursement approach. Nine respondents submitted public comments. After reviewing the public comments that were submitted, the Councils decided to explore further the views of interested parties. Accordingly, DoD, GSA, and NASA published a notice of public meeting in the **Federal Register** at 68 FR 4054, January 27, 2003, and invited interested parties to attend a public meeting held on February 6, 2003, at the Department of the Interior, Washington, DC, to present their views on the subject. Representatives from an industry association, a travel and relocation management firm, and a defense contractor presented their views.

It is apparent from the public comments submitted and the discussions at the public meeting that, in addition to the miscellaneous relocation costs for which lump-sum reimbursements are already permitted by FAR 31.205–35(b)(4), it is now common commercial practice to reimburse relocating employees on a lump-sum basis for their house-hunting, final move, and temporary lodging expenses. Accordingly, the Councils are proposing to amend the relocation cost principle to permit contractors the option of being reimbursed on a lump-sum basis for three types of employee relocation costs, namely, (1) costs of finding a new home, (2) costs of travel to the new location, and (3) costs of temporary lodging. These three types of costs are in addition to the miscellaneous relocations costs for which lump-sum reimbursements are already permitted. While individual receipts are not required with a lump-sum approach, contractors would still have to demonstrate that amounts paid are reasonable and appropriate for the circumstances of each relocating employee.

The proposed rule is expected to reduce the accounting and administrative burden of the relocation cost principle on contractors and lead to faster relocations. Costs to the Government are not expected to increase significantly as a result of this revision.

This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The Councils do not expect this proposed rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because most contracts awarded to small entities use simplified acquisition procedures or are awarded on a competitive, fixed-price basis, and do not require application of the cost principles and procedures discussed in this rule. An Initial Regulatory Flexibility Analysis has, therefore, not been performed. We invite comments from small businesses and other interested parties. The Councils will consider comments from small entities concerning the affected FAR Part 31 in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 601, *et seq.* (FAR case 2003–002), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the proposed changes to the FAR do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 31

Government procurement.

Dated: December 8, 2003.

Laura Auletta,

Director, Acquisition Policy Division.

Therefore, DoD, GSA, and NASA propose amending 48 CFR part 31 as set forth below:

PART 31—CONTRACT COST PRINCIPLES AND PROCEDURES

1. The authority citation for 48 CFR part 31 is revised to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

2. Amend section 31.205–35 by revising paragraph (b)(4) to read as follows:

31.205–35 Relocation costs.

* * * * *

(b) * * *

(4) Amounts to be reimbursed shall not exceed the employee's actual expenses, except that reimbursement on an appropriate lump-sum basis to the individual employee may be allowed for any of the following relocation costs:

(i) Costs of finding a new home, as discussed in paragraph (a)(2) of this subsection.

(ii) Costs of travel to the new location, as discussed in paragraph (a)(1) of this subsection (but not costs for the transportation of household goods).

(iii) Costs of temporary lodging, as discussed in paragraph (a)(2) of this subsection.

(iv) Miscellaneous costs of the type discussed in paragraph (a)(5) of this subsection, not to exceed a maximum lump-sum amount of $5,000.

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[FR Doc. 03–30695 Filed 12–10–03; 8:45 am]

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Federal Register

Thursday,
December 11, 2003

Part VIII

Department of the Interior

National Park Service
36 CFR Part 7
Special Regulations; Areas of the National Park System; Final Rule

DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR Part 7

RIN 1024–AD11

Special Regulations; Areas of the National Park System

AGENCY: National Park Service, Interior.

ACTION: Final rule.

SUMMARY: The National Park Service is promulgating this rule to more effectively manage winter visitation and recreational use in Yellowstone and Grand Teton National Parks and the John D. Rockefeller, Jr., Memorial Parkway. This rule is issued in conjunction with the Winter Use Plans Final Environmental Impact Statement and the Final Supplemental Environmental Impact Statement and is necessary to mitigate impacts resulting from oversnow motorized recreation in the parks and to implement the Record of Decision of March 25, 2003. The rule implements an adaptive management strategy. In order to minimize impacts the rule requires that most recreational snowmobiles and snowcoaches operating in the parks meet certain air and sound emissions requirements, be accompanied by a trained guide, and comply with established daily entry limits on the numbers of snowmobiles that may enter the parks. Cross-country routes will continue to remain closed to oversnow motorized vehicles.

DATES: This regulation is effective December 11, 2003.

FOR FURTHER INFORMATION CONTACT: John Sacklin, Planning Office, Yellowstone National Park, 307–344–2021.

SUPPLEMENTARY INFORMATION: The National Park Service (NPS) has been managing winter use issues in Yellowstone National Park (YNP), Grand Teton National Park (GTNP), and the John D. Rockefeller, Jr., Memorial Parkway (the Parkway) for several decades. In 1997, the Fund for Animals and others filed suit, alleging that the NPS failed to: Consult with the U.S. Fish and Wildlife Service on impacts of winter use on threatened and endangered species; prepare an EIS concerning winter use; and evaluate the effects of grooming on wildlife and other park resources. The suit was resolved with a settlement agreement in October 1997 which, among other things, required the NPS to prepare a new winter use plan for the three park units. On October 10, 2000, a Winter Use Plans Final Environmental Impact Statement (FEIS) was published for YNP, GTNP, and the Parkway. A Record of Decision (ROD) was signed by Intermountain Regional Director Karen Wade on November 22, 2000, and subsequently distributed to interested and affected parties. The ROD selected FEIS Alternative G, which eliminated both snowmobile and snowplane use from the parks by the winter of 2003–2004, and provided access via an NPS-managed, mass-transit snowcoach system. This decision was based on a finding that the snowmobile and snowplane use existing at that time, and the snowmobile use analyzed in the FEIS alternatives, impaired park resources and values, thus violating the statutory mandate of the NPS.

Implementing aspects of this decision required a special regulation for each park unit in question. Following publication of a proposed rule and the subsequent public comment period, a final rule was published in the **Federal Register** on January 22, 2001 (66 FR 7260). The rule became effective on April 22, 2001.

On December 6, 2000, the Secretary of the Interior, the Director of the National Park Service and others in the Department of the Interior and the NPS were named as defendants in a lawsuit brought by the International Snowmobile Manufacturers' Association and several groups and individuals. The State of Wyoming subsequently intervened on behalf of the plaintiffs. Following promulgation of final regulations, the original complaint was amended to also challenge the regulations. The lawsuit asked for the decision contained in the ROD be set aside. The lawsuit alleged that NPS failed to give legally mandated consideration to all of the alternatives, made political decisions outside the public process and contrary to evidence and data, failed to give the public appropriate notice and participation, failed to adequately consider and use the proposals and expertise of the cooperating agencies, failed to properly interpret and implement the parks' purpose, discriminated against disabled visitors, and improperly adopted implementing regulations. A procedural settlement was reached on June 29, 2001, under which, NPS prepared a Supplemental Environmental Impact Statement (SEIS). In accordance with the settlement, the SEIS incorporated "any significant new or additional information or data submitted with respect to a winter use plan." Additionally, the NPS provided the opportunity for additional public participation pursuant to NEPA. A Notice of Intent to prepare a Supplemental Environmental Impact Statement was published in the **Federal Register** on July 27, 2001 (66 FR 39197).

A draft SEIS was published on March 29, 2002, and distributed to interested and affected parties. NPS accepted public comments on the draft for 60 days, and 357,405 pieces of correspondence were received. The draft SEIS examined four additional alternatives: Two alternatives that would allow some form of snowmobile access to continue; a no-action alternative, that would implement the November 2000 ROD; and another alternative that would implement the no-action alternative one year later to allow additional time for phasing in snowcoach-only travel. The SEIS focused its analysis only on the issues relevant to allowing recreational snowmobile and snowcoach use in the parks. These impact topics included: Air quality and air quality related values, employee health and safety, natural soundscapes, public health and safety, socioeconomics, wildlife—bison and elk, and visitor experience. The SEIS did not include re-evaluating the decision to ban snowplane use on Jackson Lake because this had not been an issue in the lawsuit, and was not an aspect of the resulting settlement.

On November 18, 2002, the NPS published a final rule (67 FR 69473) based on the FEIS, which generally postponed for one year implementation of the phase-out of snowmobiles in the parks under the January 2001 regulation. This rule allowed for additional time to plan and implement the NPS-managed mass-transit, snowcoach-only system outlined in the FEIS as well as time for completion of the SEIS. The rule delayed the implementation of the daily entry limits on snowmobiles until the winter of 2003–2004 and the complete prohibition on snowmobiles until 2004–2005. The transitional requirement under the 2001 regulation that snowmobile parties use an NPS-permitted guide was also delayed until the 2003–2004 winter use season.

Other provisions under the January 2001 regulation concerning licensing requirements, limits on hours of operation, and the ban on snowplane use remained effective for the winter use season of 2002–2003. The rule also closed to snowmobiles 14 miles of roads that had been previously opened to snowmobile use.

The Notice of Availability for the Final SEIS was published on February 24, 2003 (68 FR 8618). The Final SEIS included a new alternative, alternative 4, consisting of elements which fell within the scope of the analyses contained in the Draft SEIS and which

was identified as the preferred alternative. In addition, the final SEIS included changes to the alternatives, changes in modeling assumptions and analysis, and it incorporated additional new information. Intermountain Regional Director Karen Wade signed a Record of Decision for the SEIS, which became effective on March 25, 2003. In the ROD she stated: "[that there is] broad discretion afforded under the applicable laws and policies to the Service in the operation of these units" * * * [T]here is no single decision mandated by these laws and policies. This is reflected in my ROD from November 2000 * * * and the decision I made herein today * * *'" The Regional Director selected Final SEIS alternative 4 for implementation, and enumerated specific modifications to that alternative. The Final SEIS and ROD each concluded that implementation of Final SEIS alternatives 1a, 1b, 3, or 4 would not be likely to impair park resources or values resulting from motorized oversnow recreation. Promulgation of this rule is necessary to implement the March 25, 2003, ROD. Absent the promulgation of these new regulations, the existing regulations which reduce the numbers of snowmobiles that may be used in the parks during the winter of 2003–2004, but without air and sound emissions requirements, will continue to apply. A detailed description of the background of this regulation is contained in the proposed regulation.

Summary of and Responses to Comments

The NPS published a proposed rule on August 27, 2003 (68 FR 51526) and took comment for 49 days. The NPS received 104,802 documents commenting on the proposed rule, including 90,624 in electronic form, 12,584 in hard copy, and 1,594 in other formats. The comments were categorized into one of four possible positions on the proposed regulations: (1) *Pro Rule*—the commentor generally supports the proposed rule; (2) *Anti Rule, Too Strong*—commentor generally objects to the proposed rule because it places too much of a burden on snowmobilers; (3) *Anti Rule, Weak*—commentor generally objects to the proposed rule because it does not adequately protect park resources due to the presence of snowmobiles; (4) *Unclear*—general position concerning the proposed rule is unclear.

Approximately 91% of all commentors believed the proposed regulation does not adequately protect park resources due to the presence of snowmobiles. These commentors generally believe that the National Park Service should not implement this proposed rule and instead allow the current regulations to take effect, which would eliminate snowmobiles in favor of mass transit snowcoaches. About 8% of all commentors generally supported the proposed regulation, arguing that the NPS has correctly balanced visitor use with preserving park resources. Nearly 2% of commentors offered comments within the scope of the rulemaking, but they were generally unclear as to their position. Less than 1% of commentors generally believed the rule imposed too great of a burden on snowmobilers due to the restrictions associated with the regulation.

The following is a summary of substantive comments on the proposed rule and our responses to them.

Snowmobile BAT

Issue: Many commentors raised concerns that 2004 snowmobile models are more polluting than 2002 model-year machines, despite the NPS' expectations that snowmobile technology will continue to improve. They asserted that the snowmobile industry cannot be relied upon to provide innovative clean and quiet machines in a market that seeks faster and more powerful snowmobiles.

NPS Response: NPS analysis indicates that some snowmobiles' emissions in the 2004 model year have increased slightly since the 2002 model year. 2004 snowmobile models that have been certified as Best Available Technology (BAT) have slightly increased carbon monoxide emissions, relative to the tests on the 2002 models. This is likely due to an increase in horsepower. For hydrocarbon emissions, one manufacturer has slightly decreased emissions since 2002, but another manufacturer has slightly increased emissions. This increase is likely the result of the 2002 snowmobile being a prototype machine, which was significantly altered. In any event, these snowmobiles are still better than the BAT requirement of 90% reduction of hydrocarbons and 70% reduction of carbon monoxide. Sound emissions have been relatively level between 2002–2004 model years. The BAT requirements of this rule may encourage a niche market for a handful of snowmobile models. This may also provide incentives for some manufacturers to design snowmobiles that are cleaner and quieter than our BAT requirements, as future adaptive management decisions will be based in part on noise and air emissions.

Issue: The rule does not recognize permeation emissions from snowmobile fuel systems. Permeation losses from snowmobiles stand to be a source of significant air pollution under the current rule, yet there is no proposed means for testing or regulating this form of pollution.

NPS Response: We agree that permeation emissions could be a source of pollution in the parks. However, the EPA has promulgated regulations that will govern permeation emissions from snowmobile tanks. This is primarily a summer issue when temperatures are higher (as the report cited by the commentor indicates). We feel it is more appropriate to rely on these regulations for controlling permeation emissions. We will monitor air quality in the parks, and continue to evaluate this issue. Should we detect that permeation emissions lead to unacceptable air quality impacts, we will take action under the adaptive management provisions of this regulation.

Issue: Several individuals believe the rule should require that snowmobiles produce the same emissions per passenger as snowcoaches. They recommended that snowmobiles would have to emit, at most, one-sixth the amount of pollution and noise as the cleanest and quietest snowcoaches.

NPS Response: We are trying to provide a range of appropriate activities in the parks, while protecting park resources and values. Use of snowcoaches has definite emissions benefits, relative to snowmobiles, because of their overall lower emissions and their ability to carry as many as seven times the number of passengers. However, we believe it is more appropriate to require that all snowmobiles in the park utilize BAT, which is demonstrably cleaner and quieter than conventional snowmobiles and allows for a range of activities in a manner that ensures protection of park resources and values.

Issue: One commentor recommended including a new section requiring BAT-certified snowmobiles to be visually marked with a sticker or stamp demonstrating BAT compliance. Another commentor questioned how NPS will ensure that each snowmobile has not been modified by the owner in such a way that would increase emissions.

NPS Response: Entrance station personnel will be given information to identify BAT compliant snowmobiles. The requirements that 80 percent of all snowmobilers be accompanied by commercial guides operating under a concessions contract will also provide further assurances that BAT snowmobiles are used. Further, snowmobile engines will already be

labeled with emissions information in compliance with the EPA's snowmobile regulation. NPS will evaluate the need for additional measures as this rule is implemented. If NPS determines that additional measures are necessary, these could be required through the adaptive management framework of this rule. We also considered suggestions of installing remote sensing devices at each entrance, which would detect snowmobile emissions and indicate if they exceed the 15 and 120 g/kW-hr requirements. However, we believe instituting this system as it currently exists is impractical because of the burden on visitors and cost. The final regulation has also been clarified to include language that using a snowmobile or snowcoach which has been modified in such a way as to increase air or sound emissions is prohibited. This provision will provide NPS with sufficient assurance that snowmobiles will not be modified in ways that increase emissions.

Issue: There should be a date by which the park will identify makes, models and year of manufacture of snowmobiles meeting BAT.

NPS Response: The NPS wishes to be as flexible as possible and not have an arbitrary date for determining which snowmobiles are BAT compliant. We will certify snowmobiles as BAT when we have received sufficient information from snowmobile manufacturers concerning the emissions of machines. We recognize that potential customers want to know if a machine is BAT compliant before they order that machine for the upcoming winter season. Consumer demand may provide incentives to the snowmobile manufacturers to disclose emissions information early in the year, so potential customers will know which machines will be BAT and can make appropriate choices in determining which machines to purchase. We strongly encourage anyone who wishes to purchase a snowmobile for the parks to check with the manufacturer to insure it is BAT compliant.

BAT Snowmobile Sound Emissions

Issue: One commentor noted that the proposed rule sets BAT for snowmobiles at 73 dB(A) and the SAE J192 test procedures allows a +2 decibel error range. They claimed this represented no improvement over two-stroke snowmobiles, which typically perform at 75–78 dB(A). Another commentor suggested that we change the BAT requirement to 75 dB(A), since we already allow the 2 dB(A) error range.

NPS Response: The BAT sound requirements established by this rule are noticeably quieter than conventional two stroke-snowmobiles; a 3–5 dB difference represents a doubling of sound emissions. Monitoring will provide NPS with additional data concerning noise impacts, and we may make changes under adaptive management. In addition, if improved technology becomes available, BAT sound requirements could be adjusted accordingly. We are continuing to use 73 dB(A) as our BAT requirement, as we wish to base it on SAE test procedures. If we changed this to 75 dB(A), we would need to eliminate the 2 dB(A) margin of error provided in the SAE J192 testing procedures.

Issue: Several commentors noted that the data NPS relied on to establish the proposed BAT sound requirement was not in full accordance with SAE J192 (March 1985) test method cited in the proposed regulation. Specifically, the atmospheric pressure during the test runs was outside the range specified in the test method. One commentor suggested that final BAT limits should be based on test data that fully complies with the applicable test method and that the test method be a standard SAE procedure. Another commentor recommended revising part 7.13 (l)(4)(ii) to disclose that the J192 test procedure was modified using Yellowstone elevations/barometric pressure.

NPS Response: We recognize that the test procedures used, in part, to determine the BAT sound requirement were based on testing done at Yellowstone National Park, where the atmospheric pressure is lower than the SAE J192 requirements due to the park's elevation. Initial testing data indicates that snowmobiles may test quieter at high elevation, and likewise be able to pass our BAT requirements at higher elevations but fail our requirements near sea level. Therefore, the NPS is initially allowing testing to be performed at reduced barometric pressure, recognizing that snowmobiles will be used in these conditions. The regulatory text has been clarified to note that snowmobile manufacturers may test at any barometric pressure above or equal to 23.4 inches Hg (uncorrected). We are interested in transitioning to the standard SAE J192 test as sufficient test data becomes available.

Issue: The test specified in the proposed rule (SAE J192, 1985 revision) was revised in March 2003. The BAT requirement should be based on this newer test.

NPS Response: We are continuing to use the SAE J192 test, 1985 revision, for several reasons. Most importantly, our BAT requirement was established using the 1985 test procedures along with industry information and modeling. At the time this testing occurred, the J192 testing procedures that were used were the most up to date (revised 1985). However, after that initial testing and after the SEIS was finalized, the SAE updated J192 test procedures in March 2003. The changes from the 1985 procedures to the 2003 procedures could alter the results. For instance, because of technical changes to sound meter settings, snowmobiles may yield slightly quieter test results using the 2003 test procedures. In addition, the rolling start called for in the new procedure may also generate higher sound levels due to increased speed. Therefore, to be consistent with our BAT requirements, we must continue to use the 1985 test. We are interested in transitioning to the March 2003 J192 test because it is a more current procedure, and we will continue to evaluate this issue after these regulations are implemented.

Issue: One commentor recommended that the BAT sound requirement should be adjusted upward by 3 dB(A) to reflect the effects of different atmospheric pressures between Yellowstone and the SAE J192 test procedures.

NPS Response: We believe the BAT sound requirement of 73 dB(A) is appropriate and should not be altered. As noted above, we are allowing manufacturers to test at any barometric pressure above 23.4 inches Hg (uncorrected). Currently, there are two snowmobile manufacturers that have demonstrated compliance with this BAT requirement. Testing for one of these snowmobiles indicates that it is well within our BAT requirement even when tested in the Midwest at approximately 1,000 feet in elevation. This snowmobile yields sound emissions of 71.75 dB(A), well below our BAT requirements. If tested at higher elevation in Yellowstone National Park, we believe this snowmobile would yield sound emissions even below 71 dB(A). If the BAT requirement was increased by 3 dB(A), to 76 dB(A), it would only be 2 dB(A) quieter than the maximum snowmobile sound emissions allowed for any snowmobile. A BAT requirement of 76 dB(A) would be far too high to achieve our goal of insuring that soundscapes are protected.

Issue: One commentor suggested the SAE J2567 test be used for snowmobile sound.

NPS Response: We have no information at this time about the comparability of this test to the SAE J192 test, and the commentor does not provide any further data or information about this test. Accordingly, we have not made this change in the regulation.

BAT Snowmobile Air Emissions

Issue: One commentor was concerned that the 5-mode engine dynamometer is not reasonable since it includes a full throttle measurement while snowmobiles are not allowed to operate at full throttle because of speed limits. Another commentor suggested that we use this test since it is the industry standard.

NPS Response: The 5-mode engine dynamometer is the industry standard test for measuring emissions. It is also the test used by snowmobile manufacturers in determining compliance with the EPA's regulation on snowmobile emissions. Relying on the same testing will simplify compliance procedures for snowmobile manufacturers, as the manufacturers will be able to provide NPS with a copy of their emissions data generated to comply with EPA's rule. Further, snowmobiles used in the park are often operated by users at full throttle during acceleration, even though speed limits are in place. Many four-stroke machines also operate near full throttle when going 45 mph, especially when they are going up hills, weighted with two riders or luggage or other gear, or pulling a tow sled. Eliminating the full throttle mode within the 5-mode test would also amount to a de facto increase in total emissions in the parks.

Issue: One commentor provided a report by an independent firm reviewing the SEIS air quality analysis, which alleged that the SEIS overestimated the air quality impacts resulting from snowmobiles. They requested that NPS re-analyze the air quality impacts of snowmobiles and factor in the new analysis to the final regulation.

NPS Response: The NPS believes the SEIS conclusions concerning air quality impacts resulting from snowmobiles are accurate. While the modeling may have overestimated one emissions factor, others were underestimated. However, specific questions related to the SEIS analysis are beyond the scope of this rule. Further, it would be impossible to re-analyze the air quality impacts of snowmobiles and still publish this final rule prior to the start of the 2003–2004 winter season. The NPS will conduct ongoing monitoring to determine the accuracy of the SEIS analysis.

Issue: One commentor recommended harmonization of the NPS BAT program with EPA's November 2002 regulation. The commentor also suggested that NPS use the EPA's 2012 snowmobile emissions limits as the BAT requirements.

NPS Response: We wish to make the administrative burden for complying with our BAT requirements as simple as possible. Therefore, we are requiring through the final regulation that manufacturers submit to the NPS their Family Emissions Limit (FEL) application, which complies with EPA's regulations. This should minimize the need for snowmobile manufacturers to conduct any additional testing or analysis to demonstrate their compliance with the NPS" air emissions requirements. Generally, engine families contain only a single engine, which are then used in a variety of snowmobile body styles or models. Snowmobile engines that have significant emissions related modifications are categorized as a different engine family. For instance, a four-stroke with a turbo charger would constitute a separate engine family, and require a separate FEL, than the same engine without a turbo charger.

Using FELs will harmonize the process for determining BAT compliance with EPA's regulation. However, we do not believe EPA's Tier 3 emissions limits, which reduce hydrocarbons and carbon monoxide by 50%, will sufficiently protect air quality in the parks, where snowmobile use is highly concentrated. Therefore, the final regulation relies on the proposed BAT requirements of a 90% reduction in hydrocarbons and a 70% reduction in carbon monoxide.

Issue: BAT limits as proposed should only be applied to the average emissions of individual snowmobile models. Thus, BAT limits in the proposed regulation should be compared to Official Test Results (OTR).

NPS Response: When initially contemplated, the NPS intended for the BAT requirements to represent the maximum emissions a snowmobile could emit while still being allowed to enter the parks. Several statements regarding BAT in the ROD and SEIS indicate that "any recreational snowmobile entering YNP must achieve emissions below 15 g/kW-hr for hydrocarbons and 120 g/kW-hr for carbon monoxide." (ROD p. 14) We believe that we can use FEL to demonstrate compliance with BAT and achieve this purpose. If we instead relied on Official Test Results to determine compliance with BAT, some snowmobiles could have emissions greater than our BAT requirements, which could result in an overall increase in emissions in the parks.

Issue: One commentor said the use of OTR as an emission standards basis is not as reliable as the use of FELs, nor is it consistent with EPA's current practice for developing emission standards. They concluded that NPS should base its numerical limits on the use of FEL values.

NPS Response: We agree with these comments and we are adopting the FEL method of demonstrating compliance with BAT in the final regulation. The use of FEL has several advantages. First, use of FEL will ensure that all individual snowmobiles entering the parks achieve our emissions requirements, unless modified or damaged (under the final regulation, snowmobiles which are modified in such a way as to increase air or sound emissions will not be in compliance with BAT and not permitted to enter the parks). For this reason, FEL is the best mechanism to protect park air quality. Use of FEL will also represent the least amount of administrative burden on the snowmobile manufacturers to demonstrate compliance with NPS BAT requirements. Further, the EPA has the authority to insure that manufacturers' claims on their FEL applications are valid. EPA also requires that manufacturers conduct production line testing (PLT) to demonstrate that machines being manufactured actually meet the certification levels. If PLT indicates that emissions exceed the FEL levels, then the manufacturer is required to take corrective action. Through EPA's ability to audit manufacturers' emissions claims, NPS will have sufficient assurance that emissions information and documentation will be reviewed and enforced by the EPA. FEL also takes into account other factors, such as the deterioration rate of snowmobiles (some snowmobiles may produce more emissions as they age), lab-to-lab variability, test-to-test variability, and production line variance. In addition, under the EPA's regulations, all snowmobiles manufactured must be labeled with FEL air emissions information. This will help to ensure that our emissions requirements are consistent with these labels and the use of FEL will avoid potential confusion for consumers.

Issue: One commentor stated that the EPA baseline emissions assumptions for conventional two-stroke snowmobiles (400 g/kW-hr for CO; 150 g/kW-hr for HC) were determined based on the average test results of several snowmobile models. They were not intended to reflect the FEL. Therefore, NPS should rely on OTR.

NPS Response: NPS recognizes that the EPA baseline assumptions represent the emissions of an "average" snowmobile. However, EPA ties this assumption to their FEL requirements. For instance, the EPA regulation requires that all snowmobiles achieve a

50 percent reduction for hydrocarbons and carbon monoxide by 2012 . This reduction is demonstrated with the manufacturer's FEL and is a reduction from the baseline snowmobile assumption. This is the purpose of the FEL "to ensure that snowmobiles are consistently under the certification values, with the difference in emissions benefiting the environment in the form of further emission reductions.

Issue: One commentor said that in developing the appropriate FEL, NPS should not use the current BAT values, which were based on OTR. These do not account for test variability, durability effects, and other inherent sources of variability. When these effects are accounted for (*i.e.*, with a 15–20 percent margin), the BAT values should be adjusted to 18 g/kW-hr for HC and 144 g/kW-hr for CO.

NPS Response: We believe that the BAT requirements identified in the proposed rule are appropriate. As noted elsewhere, these were intended to represent the maximum emissions a snowmobile would be allowed to produce. For instance, one snowmobile manufacturer is currently producing a snowmobile that is certified by EPA at a FEL of 10 g/kW-hr for hydrocarbons and 115 g/kW-hr for carbon monoxide. This is 33.3% better than our hydrocarbon requirements and 4.2% better than our carbon monoxide requirements. Thus, it is clear the industry is currently able to meet our BAT requirements given technology presently used in snowmobiles.

Issue: Snowmobile manufacturers and the public must have significant advance notice before changes are made to BAT requirements. Significant changes in emissions performance require modifications to basic engine and chassis design features. NPS should allow 4 years leadtime before BAT requirements are changed, which is the amount of time EPA generally allows before modifying emissions requirements.

NPS Response: We agree that snowmobile manufacturers must have sufficient advance notice before changes to BAT requirements are enacted. Therefore, the final rule will require that any changes to the BAT requirements will be published in the **Federal Register** and the public will be notified in accordance with 36 CFR 1.7(a). Through this process, snowmobile manufacturers and the public will be notified on the timeframe for changes to BAT requirements in light of the technology that is available at the time, environmental needs, and whatever changes might be proposed. Additional details about the adaptive management process are contained in the response to comments in the adaptive management section. The BAT requirements are not a restriction on what snowmobile manufacturers may produce, but an end-use restriction on which commercially produced snowmobiles may be used in the parks.

BAT Certification Issues

Issue: One commentor noted that the certification process is the responsibility of the snowmobile manufacturers, not the guides and outfitters. Another commentor stated that manufacturers should be allowed to use existing documentation and test methods to certify snowmobiles as BAT compliant. For emissions certification, relevant sections of the current EPA certification template for snowmobiles should be used. The relevant sections include the family information form, the test results form, and the certified models form. This information on the EPA template is subject to audit by EPA and the manufacturer certifies it is correct when submitted to EPA. Production line testing, required by EPA, ensures the units being produced exhibit emission characteristics consistent with the certification values.

NPS Response: We agree that the snowmobile manufacturers have the primary responsibility for documenting compliance with BAT, although guides and outfitters have a responsibility to insure their snowmobiles are BAT compliant and are well-maintained. We also agree that manufacturers should be permitted to use information submitted in accordance with EPA's regulation to document compliance with the NPS BAT requirements. We will accept this application information from manufacturers in support of conditionally certifying a snowmobile as BAT, pending ultimate review and certification by EPA at the same emissions levels identified in the application. Should EPA certify the snowmobile at a level that would no longer meet BAT requirements, this snowmobile would no longer be considered to be BAT compliant and would be phased-out according to a schedule determined by the NPS to be appropriate.

Issue: For sound testing, NPS should confirm compliance with the BAT requirements by using the existing Snowmobile Safety and Certification Committee (SSCC) sound level certification form. Under the SSCC machine safety standards program, snowmobiles are certified by an independent testing company as complying with all SSCC safety standards, including sound standards.

NPS Response: We agree that snowmobile manufacturers should be allowed to use the existing SSCC sound level certification form to demonstrate compliance with NPS BAT requirements. Our regulation does not require this form specifically, as there could be other acceptable documentation in the future. The NPS will work cooperatively with the snowmobile manufacturers on appropriate documentation.

Issue: One commentor suggested that NPS should develop an alternative test method in addition to the manufacturer certification process should a BAT snowmobile be modified.

NPS Response: The primary method for documenting compliance with BAT is the FEL method. All recreational snowmobiles used in the park that are 2005 or later model years must be certified by EPA with an FEL at or below the NPS BAT requirement. However, an individual may modify a snowmobile already approved by the NPS as a BAT machine, so long as these modifications do not increase air or sound emissions. The responsibility to demonstrate that such modifications did not increase emissions would be on the owner. Thus, if after-market emissions reduction equipment became available, a snowmobile owner could install it only on machines already BAT approved.

Snowcoach BAT

Issue: Many commentors said that snowcoaches should be treated the same as snowmobiles for determining compliance with BAT. Snowcoaches should be BAT compliant at the same time snowmobiles are required to be BAT compliant. Many of these individuals do not feel it is fair to exempt historic snowcoaches. Many also said that snowcoaches should not be allowed to operate at 2 dB higher than snowmobiles with speed measured at 25 mph as opposed to full throttle.

NPS Response: The SEIS and EIS air quality analyses indicate that the vast majority of air pollution generated in the parks results from the historic use levels and types of snowmobiles. Little pollution is generated by snowcoaches as a whole, partly because their numbers are far fewer relative to snowmobiles, and also because they are far cleaner on both grams of CO and particulate matter emissions per mile and greater passenger capacity relative to snowmobiles. For sound emissions, the SEIS soundscape analysis noted that a group of 4 BAT snowmobiles, carrying up to 8 people total, has a distance to audibility of 5,810 feet in open terrain under average background conditions. A comparable BAT snowcoach, potentially carrying even more passengers, is audible for only 2,630 feet under the same conditions. Therefore, it is appropriate to allow snowcoaches to be somewhat louder individually, because they can carry many more passengers than a single snowmobile. In addition, the NPS is allowing additional time to phase-in BAT requirements for snowcoaches because of the substantial investment required to upgrade snowcoach technology. Historic snowcoaches are being initially exempted because the NPS wishes to provide incentives to continue operation of these machines to maintain the character of winter touring, as they add to the overall winter experience. Further, there are not very many of these vehicles operating in the parks, (approximately 29) and they provide additional options for visitors.

Issue: One commentor recommended that 2004 engine technology should be required as it becomes phased-in. They stated that replacement of original equipment manufacturer (OEM) equipment on older snowcoaches does not necessarily result in reduced emissions due to open-loop operation of emission control technology.

NPS Response: The NPS intends to work with operators to better understand snowcoach emissions and how they can be reduced. This recommendation could be part of adaptive management, recognizing a phase-in requirement due to the potentially significant investment.

Issue: A commentor asked the NPS to elaborate on how EPA's Tier 2 standards will significantly reduce the open loop mode of operation for snowcoaches.

NPS Response: New 2004 and later medium and heavy duty vehicles (or snowcoaches) will be cleaner and operate more often in closed-loop mode because of the new EPA rules in effect for 2004 and beyond. Manufacturers now have equipment and engine controls that will keep their engines operating in closed loop for more of their power curve, cutting down on the area where these engines would operate in a period of "enrichment" (open loop). Because the engine controls have not been implemented yet, there is some uncertainty about how much the open loop mode will be reduced.

General BAT

Issue: One commentor recommended that part 7.13 (l)(1) include a term defining BAT.

NPS Response: The regulatory text does not use the term "BAT". Therefore we have not defined it in the regulation.

Adaptive Management

Issue: Several commentors suggested there should be a written plan of what monitoring will be done at the minimum, and how, where, and when it will be conducted.

NPS Response: The Final SEIS and ROD included information (Table 12 and Appendix A, respectively) related to monitoring and adaptive management. We will periodically report to the public on the results of monitoring and adaptive management. Administrative details of monitoring are beyond the scope of this rule. We will continue to work with state regulatory agencies in our monitoring programs.

Issue: Several commentors expressed concerns regarding the timeframe for changes under adaptive management. One commentor recommended taking management actions for future winters in August or September, as opposed to July 1 as specified in the preamble of the proposed rule. Adequate time for appropriate analyses of monitoring results must occur. They suggested that a July 1 date does not allow sufficient time for collecting and reporting environmental monitoring data or for the installation of any updated vehicle equipment.

NPS Response: NPS recognizes that monitoring data can take several months to fully analyze. The winter season ends approximately the first week of March. This provides for over 3 months to complete data analysis and provide results to the NPS. At the same time, gateway communities, concessioners, and the public should have adequate notice before any changes are made to the management of winter use. Thus, it is our goal to notify the public of changes in winter use management by July 1. However, if monitoring results are not available by that time, notice could come at a later time.

Issue: One commentor noted that the adaptive management provisions of this rule will not allow for the public to comment on changes in management of winter use. Another commentor requested that in implementing adaptive management, the NPS consult with the cooperating agencies involved in the SEIS process. Another commentor questioned how substantive changes that might have impacts to the human environment can be accomplished through the adaptive management process. Several commentors suggested that the final regulation be more specific in outlining specific procedures entailed in the Parks' adaptive management process.

NPS Response: The public will be notified of all changes under adaptive management, and the regulation has been clarified to reflect the process we will use to provide the public with notice. Some changes to winter use under adaptive management will be published in the **Federal Register** to provide notice to the public. Specifically, we will provide notice in the **Federal Register** and through one or more of the methods identified in 36 CFR 1.7(a) for changes to BAT air and sound emissions requirements, the commercial: non-commercial guiding ratio, new snowcoach-only routes, and the daily entry limits. The public will be notified of changes to other elements of this regulation, such as group size requirements, and hours of park operation, through one or more of the methods in 36 CFR 1.7(a). New snowmobile routes would be promulgated as a special regulation in accordance with 36 CFR 2.18(c). This is in keeping with the philosophy of adaptive management and will provide park managers with the flexibility necessary to respond quickly to changing circumstances and conditions. We will involve our partners, gateway communities, former cooperating agencies, and the public, as appropriate throughout the adaptive management process.

Issue: One commentor stated that if the adaptive management thresholds identified in the ROD are not violated, there will be significant pressure on NPS to relax the daily entry limits, BAT requirements, or guiding requirements. Another commentor stated that the proposed rule does not define what "unacceptable impacts" are under the adaptive management provisions, and it avoids establishing any criteria which would, if met or exceeded, require the Superintendent to impose new management strategies.

NPS Response: NPS will only take action under adaptive management when it is warranted based on resource conditions and visitor experience. Preliminary thresholds, and what constitutes "unacceptable impacts" were established in the SEIS and ROD (Table 12 and Appendix A, respectively) to protect park resources. The thresholds are not intended to necessarily automatically trigger action. Instead, these thresholds would be used by park managers, as would other factors, in a larger context of determining when adjustments in winter use management are appropriate.

Issue: The SEIS demonstrated that impacts of this rule already exceed the thresholds set for air quality, visibility, human health, natural soundscapes, wildlife, and visitor experience.

NPS Response: While NPS does not agree with this blanket statement, actual monitoring will tell the NPS if the thresholds are exceeded. It is not possible to exceed the thresholds set by the ROD until the rule is actually implemented. Further, the SEIS impact analysis was based on models, projections, and expert judgements. While each of these have inherent limitations, they provide the best estimate of impacts, The models' fundamental purpose is to allow comparisons to be made among the alternatives.

Issue: One commentor said it is unacceptable to wait until a "future winter season" to make changes based on adaptive management. They said it should not take a full year to remedy health problems.

NPS Response: Existing regulations ensure that the Superintendent may take emergency action for safety (including health problems), resource protection, or other reasons under the authority of 36 CFR 1.5. For non-emergency adaptive management actions, we would ordinarily announce changes by July 1. These changes would be implemented in a future winter season. For some changes, this could be the following winter season, beginning that December (six months after the announcement). Other changes, which might require a phase-in, could be implemented in December of the following year (an 18-month phase-in).

Daily Entry Limits

Issue: There is no emissions-related basis for the specific limits on snowmobiles proposed in the regulations. The Final SEIS air quality analysis indicates the modeled levels of CO and PM10 will be well below the NAAQS limits. The Prevention of Significant Deterioration increment consumptions under these alternatives were below that permitted under the Clean Air Act. Emissions from snowmobiles do not result in a situation inconsistent with the NPS mission.

NPS Response: The parks are designated as Class I airsheds under the Clean Air Act, which requires that their air quality be the most pristine in the nation. The BAT requirements and daily entry limits are a necessary alternative to eliminating all snowmobile use in the parks.

Issue: One commentor requested that the NPS reconsider the requirement to count commercial guides towards the daily entry limits.

NPS Response: Exempting commercial guides from the daily entry limits would cause a substantial increase in the number of snowmobiles operating in the parks. This increase would not be supported by the SEIS' analysis of impacts. Through adaptive management, daily entry limits could be subject to review and change.

Issue: One commentor questioned how the 40 snowmobiles allowed per day on Jackson Lake will be monitored, and if they would need a reservation.

NPS Response: The NPS will monitor the amount of snowmobile use on Jackson Lake through ranger patrols and visual observation by park staff. Entry to the lake is only at two locations, which may be readily monitored. Snowmobiles will have to be trailered to these two locations as there is no direct access to the lake from points where snowmobiles are otherwise permitted. The operational details of the monitoring are beyond the scope of this rule. If monitoring shows that the number of snowmobiles using Jackson Lake is sufficient to warrant a more stringent monitoring and/or reservation system, a reservation system will be developed as needed (in accordance with 36 CFR 1.5(d) and 1.6).

Issue: Several commentors stated the proposed restrictions on the number of snowmobiles allowed into YNP each day will increase, not decrease, the total number of snowmobiles permitted in the parks throughout a winter season.

NPS Response: This is the first time there has been a limit on snowmobiles in the parks. Therefore, it is inappropriate to compare daily entry limits with historic averages. Additionally, the limits are set below peak usage in the Parks, so they may reduce visitation on particular days. The daily entry limits do not automatically constitute an "increase" from historic visitation. First, it is uncertain at best if visitors will redistribute themselves to other entrances or to other days of the week because their preferred entrance and/or day are already fully utilized. Second, snowmobile visitation numbers for the past 10 years have not exhibited significant growth, nor are there any factors that lead NPS to conclude this trend will change (EIS 184 and SEIS 132).

Guiding

Issue: Some commentors suggested that NPS should not require that all snowombilers travel in groups of at least two snowmobiles. These commentors believed photographers and other individuals wishing to travel alone should be permitted to do so.

NPS Response: We have removed group size limitations from the final regulation. This will allow the Superintendent the flexibility to determine group size requirements based on adaptive management. Changes to group size requirements would be announced using one or more of the methods identified in 1.7 of this section. Initially, we will allow groups of 1–11 snowmobiles, which will permit individuals traveling by themselves to do so. The goal of establishing a minimum group size of two snowmobiles was to concentrate snowmobilers into groups, thus reducing the overall number of snowmobile-wildlife encounters. However, after taking into account public comments and further assessing visitor use patterns, we believe our interest in concentrating snowmobiles will be best achieved by other means. First, the requirement that 80% of all visitors travel with a commercial guide will concentrate groups together, because it is more economical for a guide to offer services with more snowmobiles in the group. Past practice in Yellowstone indicates that most commercially guided groups contain 8–11 snowmobiles. We believe this practice will continue. Further, only a very small number of snowmobile visitors travel by themselves (about 2% according to a 2002–2003 visitor survey). NPS believes this small number of additional groups would have negligible impacts to wildlife. Finally, visitor experience will be enhanced by allowing visitors the opportunity to have a solitary experience on snowmobiles.

Issue: Some commentors suggested that the NPS should adopt different ratios of commercial and non-commercial guides.

NPS Response: We are initially requiring that 80% of all entries be accompanied by a commercial guide, and 20% be accompanied by a non-commercial guide. Through adaptive management, we may alter this ratio. However, at this time we believe it to be prudent to maintain the 80/20 ratio, which was analyzed in the SEIS, selected in the ROD, and specified in the proposed rule in order to retain some opportunity for the public to view the park outside of a commercial group.

Issue: One commentor suggested that the non-commercial guide training should not be too cumbersome, and should be offered through the Internet or by mail. Another commentor suggested that the NPS invest the time and resources into making the non-commercial training program work and give it 2–3 years to work out any issues before making any changes.

NPS Response: NPS is currently developing the non-commercial guide training program. We have previously stated a goal to have the training be

partially off-site (*i.e.*, through the mail or Internet). Details of the implementation of this program are outside the scope of this regulation. NPS agrees that elements of this regulation, including the non-commercial guiding program, will likely require at least two seasons of monitoring to determine their effectiveness before changes are made.

Issue: If some of the daily commercially guided entries are not fully utilized on a given day, they should be re-allocated for non-commercially guided use. The reverse should also be true.

NPS Response: Guiding requirements are in place primarily to protect wildlife and visitor health and safety. Professional, commercial guides typically have greater snowmobiling expertise than non-commercial guides. Therefore, this final rule caps the number of non-commercial guides at 20 percent of the daily entries in Yellowstone, and we will not allow unused commercially guided entries to be re-allocated to non-commercial entries. In addition, it would be impractical at this time to fairly reallocate unused non-commercial entries to commercial guides given the number of concessionaires that we may potentially have operating in the parks. Further, this potentially would prevent visitors from obtaining same-day non-commercially guided reservations. Through adaptive management, however, these details could be changed to enhance visitor experience or protect park resources.

Issue: One commentor asserted that stretching a group of 10 snowmobiles over ⅓ mile (about 160 feet between snowmobiles) is very difficult to monitor. They suggested requiring each snowmobiler to keep a distance of 75–100 feet between machines.

NPS Response: This comment is consistent with the regulation. Outfitters may suggest or require clients to keep a distance of 75–100 feet between machines as appropriate, as long as all the group members stay within a maximum distance of ⅓ mile of the first snowmobile in the group. We want to insure that snowmobilers maintain a safe following distance and that guides have suitable control over (and actually accompany) their parties. The ⅓ mile requirement provides both.

Issue: A commentor said NPS should allow commercial guides to operate on the CDST and Jackson Lake and should offer a prospectus for commercial guiding purposes.

NPS Response: The issue of whether or not the NPS should offer a prospectus for commercial guiding operations on the CDST is outside the scope of this rule. However, the rule does not prohibit commercial guiding on the CDST or Jackson Lake, and the Superintendent of Grand Teton National Park could issue a prospectus for such commercial activities.

Licensing, Registration

Issue: Several commentors did not agree with the requirement that only people with valid driver's licenses be allowed to operate a snowmobile in the parks. There is no evidence that children with a learner's permit cause problems driving snowmobiles.

NPS Response: In ordinary circumstances with automobiles, individuals possessing learner's permits are required to be accompanied by a fully licensed driver. Learner's permits are intended to allow student drivers the opportunity to safely learn positive driving habits while in the presence of an adult. However, operation of snowmobiles in Yellowstone is a totally different environment. Even if an adult was a passenger on the same sled as the learner it is very difficult if not impossible to communicate with the driver over the noise of the snowmobile. Most riders wear helmets and many wear ear plugs. In fact, past experience is that children with learner's permits often will ride on a sled by themselves, with adults on other snowmobiles that would be out of earshot and potentially out of sight. The park and visitors will be safer by requiring that all snowmobile operators have driver's licenses.

Issue: The proposed rule requires that snowmobilers display a State registration sticker from any State in the U.S. This is a change from existing language. What registration is acceptable for Canadian visitors?

NPS Response: We have updated the final regulations to allow visitors to operate snowmobiles registered in Canada in the parks. Otherwise these regulations clarify prior regulations concerning registration.

Entry Passes

Issue: Many commentors said that only allowing one snowmobile to enter the park with an annual pass discriminates against families.

NPS Response: No provision in this final regulation affects this issue, as it is contained in 36 CFR Part 71. NPS is attempting to clarify, not change, existing regulation with regard to entrance passes. The intent in the passes is to admit for free or at a reduced rate, only those persons occupying the same motor vehicle as the pass holder. In the case of snowmobiles, we are allowing the rider of the snowmobile with the pass holder, and the pass holder's immediate family, to enter at the fee rate of the pass holder. Thus, several snowmobiles could qualify for entry under the pass holder's fee rate, so long as it was immediate family only (spouse, parents, and children under the age of 21).

Side Roads

Issue: Many commentors required that NPS re-open the Firehole Canyon Drive, North Canyon Rim Drive, and Riverside Drive to snowmobile use.

NPS Response: NPS believes it to be important to allow for some spatial separation of use and user groups. The side roads will be open to snowcoach riders, skiers, and snowshoers to offer areas of increased quiet and solitude. These road segments amount to approximately 14 miles, while there are still over 180 miles of park roads open to both snowmobile and snowcoach use. In addition, there are thousands of miles of snowmobile trails outside the parks, none of which are open to snowcoaches.

Reservations

Issue: Several commentors said the reservation fee is too expensive.

NPS Response: This issue is beyond the scope of this regulation. However, NPS is working to keep fees reasonable and recover only the costs of administering the reservation system.

Issue: Several commentors stated that people obtaining an entrance reservation under the 20 percent of non-commercially guided daily snowmobile entries should not be allowed to re-sell their entrance reservations for profit, *i.e.*, "scalping" should not be allowed.

NPS Response: NPS agrees with these comments. The passes are not transferable without NPS authorization, and the Superintendent will determine procedures for transfer and publicize them appropriately. Passes that have been transferred without prior authorization are invalid.

Issue: It should be illegal for individuals or groups to purchase snowmobile entrance reservations without the intent to use them.

NPS Response: It would be difficult if not impossible to know if individuals intended to actually use their snowmobile entrance reservations. Further, we have no evidence to date to indicate that this is a problem. Therefore, we are not attempting to regulate this issue through this final rule, but we will address it in the future if needed.

Alcohol Restrictions

Issue: Several commentors noted that the policy of preventing anyone who

has ever received a DUI from being a guide is discriminatory. It would be impossible for concessionaires to know if one of their guides had ever received a DUI and could create undue liability for these concessionaires. In addition, people should not be penalized for mistakes made far in their past. This would also be difficult to enforce and manage.

NPS Response: We have eliminated this stipulation from these regulations.

Issue: One commentor said the term snowcoach "operator" is unclear in the regulation as it pertains to alcohol restrictions for individuals driving a snowcoach, as concessionaires are sometimes referred to as "operators." Concessionaires should not lose their licenses to operate in the parks because of an infraction by an employee, which this language implies. They suggested that NPS change the language to snowcoach "driver."

NPS Response: We have made this change in the regulatory text.

Issue: The Blood Alcohol Content (BAC) requirements for guides should parallel the requirements for commercial drivers. Federal and State rules pertaining to BAC threshold for someone with a Commercial Drivers License (CDL) is .04. If .04 is appropriate for someone with a CDL (semi trucks over 26,000 pounds, buses, etc.), then .02 seems to be an unreasonable standard for a snowmobile guide or coach operator when compared to vehicles being operated by bus or truck drivers.

NPS Response: The NPS agrees and we have changed the BAC maximum for guides to be .04 grams of alcohol per 100 ml of blood or .04 grams of alcohol per 210 liters of breath.

Cross Country Skiing, Etc.

Issue: One commentor questioned the validity of the assertion that 20% of the winter visitors use cross country skis.

NPS Response: As discussed on page 135 of the final SEIS, visitor surveys indicate that 20% of visitors participate in cross country skiing while visiting Yellowstone, although they may enter the park by other means, including snowmobile, snowcoach, or automobile.

Issue: One commentor stated that the NPS should promote human-powered activities in winter, such as skiing and snowshoeing, in order to satisfy the June 20, 2002, Executive Order signed by President Bush to promote personal fitness, and not allow snowmobiling.

NPS Response: The management of the parks in winter provides ample opportunity for people to pursue physical fitness goals by skiing or snowshoeing. The parks groom ski trails, lead snowshoe walks, and there are hundreds of miles of ungroomed trails available for visitors. Grand Teton National Park's Inner Park Road was also closed in 2002–2003 to snowmobiles and is now groomed for cross country skiing.

Natural Soundscapes Issues

Issue: To protect natural soundscapes, one commentor suggested concentrating the departure times from motorized tour groups, so there are significant periods during each day when visitors are likely to be free of noise impacts.

NPS Response: This could be considered under adaptive management if necessary and if evidence indicated it would be effective in improving the natural soundscape. This action would do little to protect the natural soundscape for visitors riding snowmobiles if they were part of a group that was departing at a concentrated time with many other snowmobile groups. However, as the commentor notes, it could result in more periods of quiet for visitors seeking a non-motorized experience.

Issue: Getting away from crowds, peace and tranquility, and quiet are perhaps expectations that cannot be totally met with a destination as popular as Yellowstone. NPS is not obligated to ensure the existence of natural soundscapes along and proximate to road systems.

NPS Response: The NPS is required by law to protect the values of Yellowstone National Park, which include these attributes. These are among the fundamental purposes for the existence of the parks. The natural soundscapes are one of the intrinsic elements of the environment that are associated both with the purpose of the parks and with their natural ecological functioning. The soundscape is an inherent component of the "scenery and the natural and historic objects and the wildlife" protected by the NPS Organic Act. The NPS policy is to facilitate, to the fullest extent practicable, the protection, maintenance, or restoration of the natural soundscape in a condition unimpaired by inappropriate noise sources. Visitors seeking wilderness-dependent experiences have expectations for natural quiet. Visitors viewing wildlife or scenery along park roads also have an expectation for natural quiet that must be accommodated, although perhaps to a lesser degree than visitors in the backcountry. The adaptive management thresholds identified in Table 12 of the SEIS and Appendix A of the ROD recognize these distinctions by instituting different thresholds for different zones. We will be monitoring the soundscape conditions along park roads and in the backcountry to ensure the desired conditions and thresholds identified in the SEIS are being achieved.

Snowcoaches

Issue: Several commentors stated that snowcoaches must offset any declines in total snowmobile use.

NPS Response: NPS agrees that snowcoaches are a critical part of the winter experience and may increase opportunities for access to the parks in winter. We are working to develop a new generation snowcoach, which will substantially improve touring in the parks.

Laws, Policies, Executive Orders

Issue: Many commentors believe the rule is inconsistent with the NPS Organic Act, the General Authorities Act as amended by the Redwood Act, the Clean Air Act, the NPS general snowmobiling regulations (36 CFR 2.18), executive orders, NPS Management Policies, and OSHA regulations to protect employee and visitor health.

NPS Response: The NPS disagrees. This rule will protect park resources and values in an unimpaired condition through adaptive management, daily entry limits, guiding, and BAT requirements. This regulation reflects the NPS' commitment to: provide protection of park resources and values; allowing appropriate levels of visitor use, while recognizing that winter in the parks is a unique experience; and work closely and cooperatively with gateway communities. The NPS believes there is no single decision mandated by the laws and policies governing the national parks, and that these laws and policies provide broad discretion to the NPS in the operation of the parks. Requirements for BAT and snowmobile daily entry limits will substantially improve air quality conditions relative to the current situation of unregulated snowmobile use. This rule will protect public health by establishing air and sound emissions requirements, daily entry limits, and requirements for guides. Finally, the provisions for adaptive management will allow park managers to make adjustments in winter operations to protect park resources and values.

Consistency With Other Regulations

Issue: Some letters stated that the NPS has exempted snowmobiling in the parks from 36 CFR 2.18 through the proposed regulation. They stated that this provision, among other things, prohibits snowmobiling in national parks except where designated and only when their use is consistent with the park's natural, cultural, scenic and aesthetic values, safety considerations, park management objectives, and will not disturb wildlife or damage park resources. The routes designated by this rule are not subject to 36 CFR 2.18(c), and hence exempt from disturbing wildlife. However, new routes would be subject to the language in 36 CFR 2.18(c). This can only be interpreted as an admonition by NPS that snowmobiling cannot coexist in Yellowstone without causing disturbance to wildlife. The NPS should retain the prohibition of wildlife disturbance by snowmobiles in the final rule.

NPS Response: The intent of the proposed rule was to incorporate the appropriate language of 2.18 (including 2.18(c)), and have all the applicable snowmobile regulations in one location. We have clarified the rule to insure the language in question applies to both existing and proposed oversnow routes. Specifically, this regulation no longer supercedes 36 CFR 2.18(c).

Road Grooming

Issue: The proposed rule fails to address road packing and grooming. Habitat degradation may be occurring in conjunction with the changes in bison numbers and distribution. The proposed rule will do nothing to alleviate the ecosystem change generated by changes in bison distribution and numbers.

NPS Response: This rule allows for the Superintendent to take management action should unacceptable impacts to park resources and values, including wildlife, occur. Currently, the NPS believes the evidence of whether or not road grooming is affecting bison distribution and abundance is inconclusive. Thus taking dramatic actions, such as ceasing grooming, appears unwarranted based on the evidence currently available.

Economics

Issue: Several commentors stated that the economic impact of the proposed rule is going to be devastating. Another commentor believed the 2002–2003 visitor survey was flawed because it did not adequately represent a sample of visitors entering through the West Entrance.

NPS Response: An economic impact analysis has been prepared in support of this rulemaking. It found that there will be negligible impacts on the economies surrounding the parks. Further details are contained in this report, which is available at *www.nps.gov/yell*. The study used statistically valid sampling to arrive at its conclusions. This means that only a certain number of visitors at each entrance were surveyed, based on the percent of total visitors that enter through each entrance.

Issue: Banning snowmobiles in Yellowstone will result in a more diverse, sustainable economy for West Yellowstone and attract new winter visitors, especially since snowmobiling is allowed on the adjacent national forest lands.

NPS Response: This rule allows the gateway communities opportunities to benefit economically, as would almost any alternative which maintains winter-time visitation. The purpose for implementing this rule is not related directly to diversifying local economies, however.

Issue: This rule places a tremendous administrative burden on the staffs of the parks, due to the reservation system, monitoring, guiding requirements, etc.

NPS Response: NPS recognizes that there are often substantial costs associated with properly operating and maintaining national parks and will strive to effectively manage these costs.

Consistency With the SEIS and EIS

Issue: Many commentors stated the proposed rule runs counter to the conclusions of the FSEIS.

NPS Response: This regulation is based on the Final SEIS and ROD and is necessary to implement these documents. The NPS believes this rule is consistent with the Final SEIS and ROD, as these documents concluded that park resources will be protected in an unimpaired condition through adaptive management and requirements related to the daily entry limits, guiding, and BAT. Specifically, conclusions regarding impairment are on pages 242–246 of the Final SEIS.

Issue: In the 2001 rule phasing-out snowmobile use, the NPS considered "strict limitations" to mean caps so stringent they would result in "drastically reducing" visitation. In contrast, the 2003 ROD does not anticipate reduced visitation.

NPS Response: This regulation substantially reduces peak-day use of snowmobiles and imposes several types of limitations, beyond daily entry limits to protect park resources and values in an unimpaired condition. These limitations represent a suite of management actions, including BAT and guiding requirements, in addition to the daily entry limits. Further, we could take action under adaptive management if desired resource conditions are not met.

Misc.

Issue: One commentor suggested that the term "recreational snowmobile" be replaced with "snowmobile transportation."

NPS Response: NPS wishes to make a distinction between snowmobiling by visitors for recreational purposes versus snowmobiling by NPS, contractors, researchers, concessioners, or others for administrative or non-administrative snowmobile travel. The term snowmobile transportation does not adequately capture this distinction.

Issue: Several commentors said there are no statistics to back up the claim that towing people is a potential safety hazard and that prohibiting this discourages family participation in snowmobiling. They urged NPS to remove this provision.

NPS Response: NPS believes that towing people on sleds or sliding devices is unacceptable for several reasons, especially in the conditions associated with snowmobiling in the parks. First, this places riders in direct exposure to snowmobile exhaust, including carbon monoxide and air toxics. Although four-stroke snowmobiles are far cleaner than traditional two-strokes, they still produce air pollution. Generally, visitors spend several hours snowmobiling in the parks, which substantially increases exposure risks to those riding in the towing unit. In the case of children, such long-term and direct exposure to these chemicals is especially dangerous. In addition, towing people could present a special hazard if the snowmobile was involved in an accident, or if the towing device did not have lights and was not adequately visible to other drivers. Therefore, to adequately provide for the safety of our visitors we are prohibiting this activity.

Changes to Final Rule

After taking the public comments into consideration, and after additional internal review, several changes were made to the final rule. Those changes are as follows:

A paragraph was added to each park's section to define the scope of the regulations. These regulations address recreational and commercial snowmobile use and are not applicable to the provisions for air and sound emissions, guiding and daily entry limits for the use of snowmobiles by NPS or concessioner employees who live or work in the interior of the park. There are daily circumstances where a person who resides in the interior of the park must exit or transit the park to

retrieve groceries, attend medical appointments, or conduct other types of daily activities which are neither recreational nor commercial in nature. These uses are not intended to count towards daily entry limits or similar types of regulated activities. The parks will be working to produce a directive that addresses this kind of use and manages it appropriately but similar to an administrative use.

Changes were made to paragraph (4) and language added to the new paragraph (6) based on input from the EPA regarding air emissions. EPA provided language on pollution control equipment for snowcoaches as well as language to clarify compliance with the FEL for snowmobiles.

A new paragraph (6) was added to each section to define how the makes, models and years of manufacture for snowmobiles will be approved for use in the parks. Specifically it introduced using the Family Emissions Limits (FEL) as the standard for demonstrating compliance with the hydrocarbon and carbon monoxide emission limits. Additional details on FEL are contained in the Summary of and Response to Comments. In general, after demonstrating compliance with BAT requirements particular snowmobile models will be approved for entry into the parks for six winter use seasons. However, the length of approval may be longer or shorter under the adaptive management framework. For example, technologies may begin to improve so rapidly that a shorter approval period could be warranted. In the future, the period of the approval for each snowmobile will be stated when published as an approved model. The period of approval will not be decreased once published. As of the 2003–2004 winter season, the following models of snowmobiles are approved for entry into the parks:

2002 Arctic Cat 4-Stroke Touring, 2002 Arctic Cat 4-Stroke Trail, 2002 Polaris Frontier Touring, 2003 Arctic Cat 4-Stroke Touring, 2003 Arctic Cat 4-Stroke Trail, 2003 Polaris Frontier Classic, 2003 Polaris Frontier Touring, 2004 Arctic Cat T660 Touring, 2004 Polaris Frontier Classic, and 2004 Polaris Frontier Touring. These snowmobiles are approved for entry into the parks through the 2008–2009 winter season.

Under paragraph (6) there are several references to a certain "model year" snowmobile. For the purposes of this paragraph, the model year refers to the calendar year the snowmobile is intended for use but the snowmobile generally becomes available for commercial sale during the previous calendar year. For example, a model year 2005 snowmobile would generally become available for sale to the public during the fall of 2004.

Also under paragraph (6) a provision was added to specify the minimum barometric pressure at which snowmobiles could be tested to determine compliance with sound emission requirements. Many snowmobiles are tested at the place of manufacture or nearby which can be at a significantly different elevation than Yellowstone or Grand Teton National Parks. In order to make it clear what conditions are allowed for sound testing, a minimum barometric pressure was specified. Additional details on barometric pressure are contained in the Summary of and Response to Comments. Different emission reporting procedures are allowed for 2004 and prior model years because the EPA snowmobile emission regulations implementing FEL were not in effect.

Finally, under paragraph (6) a sentence was added to prohibit the entry of snowmobiles that have been modified in a manner that could affect air or sound emissions. There was a concern that a snowmobile model previously approved for entry could have after-market equipment added or mechanisms adjusted that could increase the decibel level of that model or increase the previously certified air emissions. Besides the possibility of increased air or sound emissions, it was necessary to prohibit these modifications in order to avoid the need for individual snowmobile testing. Modifications of snowmobiles approved under FEL that decrease air or sound emissions could be permitted.

In paragraph (7) language was added to clearly state that oversnow routes are designated in accordance with § 2.18(c). Although it was the intent of the proposed rule to comply with 2.18(c) when designating oversnow routes, it was not clearly stated and thus caused concern to some commentors. The final regulations also remove the language from the proposed rule that could have allowed the Superintendents to designate additional oversnow routes without going through rulemaking.

In paragraph (10) of Yellowstone and the Parkway, the specific group size numbers were removed from the rule. The Superintendents are establishing a maximum group size of 11 initially but will notify the public of this requirement or changes to the requirement through local methods. Had a specific number remained in the regulatory text, a notice in the **Federal Register** would have been required to change it. The final regulations also eliminate the requirement for a minimum group size of 2 as explained in the response to comments. Nonetheless, single snowmobile operators are still required to be certified as a snowmobile guide before operating in the park.

Similarly, the specific hours of operation for snowmobiles or snowcoaches are removed from the regulatory text for each of the parks. Initially, the hours of operation will be from 7 a.m. to 9 p.m. Had a specific number remained in the regulatory text, a notice in the **Federal Register** would have been required to change it. Changes to operating hours will be advertised through local methods.

Paragraph (11) for the Parkway was amended by modifying Table 1 to include a maximum number of snowmobiles on the road segment from Flagg Ranch to the South Entrance of Yellowstone. That road segment can only be accessed from inside the Parkway and the daily entry limit at the South Entrance of Yellowstone (only two miles north of Flagg Ranch) limits the number of snowmobiles that could proceed any further north. However, the park felt it was necessary to clarify that snowmobile use is permitted on that roadway and the daily limit is the same as the South Entrance of Yellowstone.

Paragraph (12) for Yellowstone was added to discuss the ways in which the daily entry limits will be applied and enforced. No reservation system exists for Grand Teton or the Parkway thus no similar regulations exist in those sections. First, a reservation system, managed by a contractor, has been set up to allocate all non-commercial daily entries. Commercial entries are allocated to local guiding businesses through a concessions contract. If you choose to use a commercial guiding service to enter the park, you will not need a separate reservation since this is already allocated to the commercial guiding service through their contract to operate inside the national park. Second, each snowmobile entering the park must have an entrance pass in addition to a reservation. Lastly, the Superintendent has prohibited the use of transferred reservations and entrance passes. This is intended to curtail the resale of these items for profit since there are a limited number of non-commercial reservations for each day. Additionally, the NPS is requiring that the person who holds the reservation must accompany the snowmobile group into the park in order to further discourage the mass purchase and resale of reservations. The NPS acknowledges the limitations of our ability to enforce such a requirement but will make every effort to discourage such activities. The Superintendent has the authority to allow the use of transferred entrance passes for legitimate purposes (a trip cancelled due to illness, or some similar circumstance) through procedures established with the reservation contractor.

A minor change was made to the operating conditions in paragraph (14) for Yellowstone, (13) for the Parkway and (11) for Grand Teton. So as not to exclude Canadian or other foreign visitors, language was changed to allow for all types of motor vehicle operator's licenses, including international driver's licenses, and registration stickers on snowmobiles from the United States and Canada.

Changes were made to paragraph (15) for Yellowstone, (14) for the Parkway and (12) for Grand Teton and the conditions associated with alcohol use and operating a snowmobile or snowcoach. Paragraph (ii) proposed a maximum blood alcohol level of .02 when operating or being in physical control of a snowcoach or serving as a snowmobile guide. The maximum blood alcohol level has been changed to .04 to be consistent with most State commercial drivers' license requirements. Also, the NPS proposed to make any driving under the influence of alcohol or drug violations a disqualifier for being a snowmobile guide or driving a snowcoach. Many commenters felt this was an unreasonably strict requirement and the NPS agreed. If a person is properly and legally licensed by a state to operate a motor vehicle, they will be allowed to operate as a snowmobile guide or snowcoach driver. The requirement to be properly licensed is addressed in paragraph (14) for Yellowstone, (13) for the Parkway and (11) for Grand Teton. Finally, the term snowcoach operator was changed to snowcoach driver. Generally, the term operator refers to the business owner or contract holder, not the person actually driving the vehicle. To be clear, the prohibitions about alcohol consumption apply to the person actually driving the snowcoach, not the person(s) who operate the snowcoach business.

In paragraph (16) for Yellowstone, (15) for the Parkway and (13) for Grand Teton of the proposed regulations oversnow vehicles from the requirements of 36 CFR 2.18 and part of § 2.19. The exemption was proposed so that the existing regulations on such things as maximum operating decibels, operating hours, and operator age would be governed by the new regulations in part 7 for each park unit. However, the inadvertent result was the exclusion of the requirements in § 2.18(c) for designating new snowmobile routes and what factors must be taken into consideration when designating such routes. As a result, only specific paragraphs in section 2.18 have been excluded from applying to the use of oversnow vehicles in the parks since those paragraphs conflict with the Winter Use Management Record of Decision. However, Yellowstone is exempt from paragraph (b) while the Parkway and Grand Teton are not. The use of oversnow vehicles in Grand Teton and the Parkway is subject to paragraph (b) due to the existing concurrent jurisdiction in both park areas. These two units are solely within the boundaries of the State of Wyoming and national park rangers work concurrently with state and county officers enforcing the laws of the State of Wyoming.

Throughout the document there are references to giving notice to the public of changes to the regulations through publication in the **Federal Register** and/or through one of the methods in § 1.7(a). Some changes, which are considered more significant, such as changes to air and sound emissions requirements, daily entry limits, or guiding requirements, will be published as both a change in the **Federal Register** and advertised through other local methods. Less significant changes, like hours of operation, group size or road closures and reopenings, will be advertised only through local methods, a less formal process. The parks will also make every effort to keep current information available on their Web sites including a list of the currently approved snowmobile makes, models, and years of manufacture and monitoring reports (*www.nps.gov/yell* or *www.nps.gov/grte*).

It is the intent of this regulation to have the Superintendents of the three park units work collaboratively when making future winter use management decisions under the adaptive management framework. Although some changes to oversnow vehicle use could be made to one park unit and not affect the other, it is expected that the Superintendents would engage in regular consultation with each other to make decisions that would be in the best interest of all three parks, the visiting public, and local businesses and communities.

Summary of Economic Analysis

The preferred alternative (Alternative 4) and two other alternatives (Alternatives 2 and 3) are analyzed to examine the effect of allowing the use of snowmobile in the Yellowstone National Park, Grand Teton National Park, and the John D. Rockefeller, Jr., Memorial Parkway. Alternative 1b, the delay rule, represents the baseline for this analysis. Under that alternative, most snowmobile use would be prohibited in the parks by the 2004–2005 winter season, with restrictions on snowmobile use phased in during the 2003–2004 winter season. Alternatives 2, 3, and 4 allow for continued recreational snowmobile use subject to daily limits on the number of snowmobiles that can enter the parks. The daily limits on snowmobile use vary across these three alternatives, with Alternatives 2 and 4 allowing the greatest number of snowmobiles in the parks each day. Alternatives 3 and 4 also require snowmobiles to meet air and sound emission requirements and to be part of a guided tour. Alternative 4 allows for at least 20 percent of the tours to be led by non-commercial guides.

The primary beneficiaries of Alternatives 2, 3, and 4 are the park visitors who ride snowmobiles in the parks and the businesses that serve them. Alternative 2 is expected to provide the greatest benefits to snowmobile visitors and businesses, followed by Alternatives 4 and 3 in order of decreasing benefits. The primary group that would incur costs under Alternatives 2, 3, and 4 are the park visitors who do not ride snowmobiles. Alternatives 3 and 4 are expected to impose the least costs on non-snowmobile visitors.

The total present value of net benefits expected from Alternatives 2, 3, and 4 are calculated over a 10-year horizon from the 2003–2004 winter season through the 2012–2013 winter season. A range of net benefits is calculated to acknowledge uncertainty in the benefit and cost estimates. Given the uncertainties of this analysis and acknowledging the range of net benefits presented, the selection of Alternative 4 as the preferred alternative is considered reasonable because it provides increased benefits for snowmobile visitors while containing provisions that should help mitigate the costs imposed on those visitors who are negatively impacted by snowmobile use.

Table 1 presents the total present value of net benefits for Yellowstone National Park only. The amortized net benefits per year over the 10-year timeframe of the analysis for this valuation case are presented in Table 2. To calculate the net benefits to the Yellowstone National Park only, we assumed that the non-snowmobile visitors to Grand Teton are relatively unaffected by snowmobiles as compared

to the non-snowmobile visitors to Yellowstone, thereby effectively assigning zero cost impact to this group. These net benefit estimates therefore may understate the cost estimate. The total present value of net benefits ranges from negative to positive for Alternatives 2 and 4 in this valuation case, and are entirely negative for Alternative 3.

TABLE 1.—TOTAL PRESENT VALUE OF NET BENEFITS FOR YELLOWSTONE NATIONAL PARK ONLY, 2003–2004 TO 2012–2013

	Total present value of net benefits [a]
Alternative 2:	
Discounted at 3% [b]	−$89,310,000 to +$9,660,000
Discounted at 7% [c]	−$73,470,000 to +$6,880,000
Alternative 3:	
Discounted at 3% [b]	−$70,360,000 to −$25,130,000
Discounted at 7% [c]	−$57,920,000 to −$21,750,000
Alternative 4:	
Discounted at 3% [b]	−$56,750,000 to +$5,430,000
Discounted at 7% [c]	−$46,730,000 to +$3,470,000

[a] The range in net benefits reflects the different values obtained for snowmobile visitors using the estimates from two economic valuation models, and the different scenarios analyzed for impacts to businesses.
[b] The economics literature supports a 3% annual discount rate in the valuation of public goods (*e.g.*, Freeman 1993). Federal rulemakings also support a 3% annual discount rate in the valuation of lost natural resource use (61 FR 453; 61 FR 20584).
[c] Office of Management and Budget Circular A–94 (revised January 2003).

TABLE 2.—AMORTIZED NET BENEFITS PER YEAR FOR YELLOWSTONE NATIONAL PARK ONLY, 2003–2004 TO 2012–2013

	Amortized net benefits per year [a]
Alternative 2:	
Discounted at 3% [b]	−$10,470,000 to +$1,130,000
Discounted at 7% [c]	−$10,460,000 to +$979,000
Alternative 3:	
Discounted at 3% [b]	−$8,249,000 to −$2,946,000
Discounted at 7% [c]	−$8,247,000 to −$3,096,000
Alternative 4:	
Discounted at 3% [b]	−$6,653,000 to +$637,000
Discounted at 7% [c]	−$6,653,000 to +$493,000

[a] This is the total present value of net benefits reported in Table 1 amortized over the ten-year analysis timeframe at the indicated discount rate.
[b] The economics literature supports a 3% annual discount rate in the valuation of public goods (*e.g.*, Freeman 1993). Federal rulemakings also support a 3% annual discount rate in the valuation of lost natural resource use (61 FR 453; 61 FR 20584).
[c] Office of Management and Budget Circular A–94 (revised January 2003).

Table 3 presents the total present value of net benefits for both Yellowstone and Grand Teton National Parks. In this valuation case, the non-snowmobile visitors to Grand Teton National Park are assigned the same unit costs as non-snowmobile visitors to Yellowstone National Park. This valuation case may overstate the cost impacts to non-snowmobile visitors to Grand Teton National Park since they are believed to be less than the costs imposed on non-snowmobile visitors to Yellowstone. The amortized net benefits per year over the 10-year timeframe of the analysis for this valuation case are presented in Table 4.

TABLE 3.—TOTAL PRESENT VALUE OF NET BENEFITS FOR YELLOWSTONE AND GRAND TETON NATIONAL PARKS, 2003–2004 TO 2012–2013

	Total present value of net benefits [a]
Alternative 2:	
Discounted at 3% [b]	−$254,717,000 to −$140,490,000
Discounted at 7% [c]	−$208,342,000 to −$116,011,000
Alternative 3:	
Discounted at 3% [b]	−$164,143,000 to −$120,253,000
Discounted at 7% [c]	−$134,319,000 to −$99,504,000
Alternative 4:	
Discounted at 3% [b]	−$141,679,000 to −$64,572,000
Discounted at 7% [c]	−$116,060,000 to −$54,211,000

[a] The range in net benefits reflects the different values obtained for snowmobile visitors using the estimates from two economic valuation models, and the different scenarios analyzed for impacts to businesses.
[b] The economics literature supports a 3% annual discount rate in the valuation of public goods (*e.g.*, Freeman 1993). Federal rulemakings also support a 3% annual discount rate in the valuation of lost natural resource use (61 FR 453; 61 FR 20584).
[c] Office of Management and Budget Circular A–94 (revised January 2003).

TABLE 4.—AMORTIZED NET BENEFITS PER YEAR FOR YELLOWSTONE AND GRAND TETON NATIONAL PARKS, 2003–2004 TO 2012–2013

	Amortized net benefits per year [a]
Alternative 2:	
Discounted at 3% [b]	−$29,860,000 to −$16,470,000
Discounted at 7% [c]	−$29,663,000 to −$16,517,000
Alternative 3:	
Discounted at 3% [b]	−$19,242,000 to −$14,097,000
Discounted at 7% [c]	−$19,124,069 to −$14,167,000
Alternative 4:	
Discounted at 3% [b]	−$16,609,000 to −$7,570,000
Discounted at 7% [c]	−$16,524,000 to −$7,718,000

[a] This is the total present value of net benefits reported in Table 3 amortized over the ten-year analysis timeframe at the indicated discount rate.
[b] The economics literature supports a 3% annual discount rate in the valuation of public goods (*e.g.*, Freeman 1993). Federal rulemakings also support a 3% annual discount rate in the valuation of lost natural resource use (61 FR 453; 61 FR 20584).
[c] Office of Management and Budget Circular A–94 (revised January 2003).

The range of net benefits for the valuation case represented by Tables 3 and 4 is entirely negative for Alternatives 2, 3, and 4.

Compliance With Other Laws

Regulatory Planning and Review (Executive Order 12866)

This document is a significant rule and has been reviewed by the Office of Management and Budget under Executive Order 12866.

(1) This rule will not have an effect of $100 million or more on the economy. It will not adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities. These conclusions are based on the analysis contained in the Final SEIS and a report entitled "Economic Analysis of Regulations on Snowmobile Use in the Greater Yellowstone Area" (MACTEC Engineering and Consulting, Inc., November 2003).

(2) This rule will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency. Implementing actions under this rule will not interfere with plans by other agencies or local government plans, policies, or controls since this is an agency specific change.

(3) This rule does not alter the budgetary effects of entitlements, grants, user fees, or loan programs or the rights or obligations of their recipients. It only affects the use of over-snow machines within specific national parks. No grants or other forms of monetary supplement are involved.

(4) This rule may raise novel legal or policy issues. The issue has generated local as well as national interest on the subject in the Greater Yellowstone Area. The NPS received nearly 360,000 public comment letters on the draft SEIS and over 105,000 comments on the proposed rule. Additionally, this is only the second NPS regulation to use an adaptive management strategy for managing visitor use levels. That concept, coupled with new provisions for Best Available Technology engine requirements, make this proposed rule unique to the NPS.

Regulatory Flexibility Act

The Department of the Interior certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This certification is based on information contained in the report entitled "Economic Analysis of Regulations on Snowmobile Use in the Greater Yellowstone Area" (MACTEC Engineering and Consulting, Inc. November 2003). This report is available on the Yellowstone website.

Small Business Regulatory Enforcement Fairness Act (SBREFA)

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule:

a. Does not have an annual effect on the economy of $100 million or more.

b. Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions.

c. Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. This rulemaking has no effect on methods of manufacturing or production and specifically affects the Montana, Idaho and Wyoming region near the parks, not national or U.S. based enterprises.

Unfunded Mandates Reform Act

This rule does not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than $100 million per year. The rule does not have a significant or unique effect on State, local or tribal governments or the private sector. It addresses public use of national park lands, and imposes no requirements on other agencies or governments.

Takings (Executive Order 12630)

In accordance with Executive Order 12630, the rule does not have significant takings implications. Access to private property located within or adjacent to the parks will still be afforded the same access during winter as before this rule. No other property is affected.

Federalism (Executive Order 13132)

In accordance with Executive Order 13132, the rule does not have sufficient federalism implications to warrant the preparation of a federalism assessment. It addresses public use of national park lands, and imposes no requirements on other agencies or governments.

Civil Justice Reform (Executive Order 12988)

In accordance with Executive Order 12988, the Office of the Solicitor has determined that this rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order.

Paperwork Reduction Act

This regulation does not require an information collection from 10 or more parties and a submission under the Paperwork Reduction Act is not required. An OMB form 83–I is not required.

National Environmental Policy Act

A Final Supplemental Environmental Impact Statement has been completed and a Record of Decision issued. The Final SEIS and ROD are available for review by contacting Yellowstone or Grand Teton Planning Offices or at *www.nps.gov/grte/winteruse/intro.htm.*

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, "Government to Government Relations with Native American Tribal Governments" (59 FR 22951) and 512 DM 2:

We have evaluated potential effects on federally recognized Indian tribes and have determined that there are no potential effects. Numerous tribes in the area were consulted in the development of the SEIS. Their major concern was to reduce the adverse effects on wildlife by snowmobiles. This rule does that through implementation of the guiding requirements and disbursement of snowmobile use through the various entrance stations.

Administrative Procedures Act

NPS recognizes that new rules ordinarily go into effect 30 days after publication in the **Federal Register**. For this regulation, however, we have determined under 5 U.S.C. 553(d) and 318 DM 6.25 that this rule should be effective immediately. This rule relieves a restriction on snowmobile use, and does not require a delay in its effective date. In addition, good cause exists for an immediate effective date because:

(1) Delaying implementation of this rule would prevent it from being in place in time for the opening of the winter use season and would cause it to go into effect well after the season started. Carrying out such a significant change in the terms for winter use mid-season would cause substantial confusion for the public, and could also present implementation and enforcement problems for NPS. It is better to avoid such confusion by ensuring that this new rule is in effect at the start of the season.

(2) Normally, the purpose of the delayed effective date is to give affected parties a chance to learn about a new regulation and how to comply with it. Here, any such benefit to winter users would be greatly outweighed by the harm that a delay in implementation would cause, because it would have significant impacts on visitors planning to visit the park during the forthcoming December-January holiday season, and on various small businesses in the surrounding communities which provide services to the visitors.

Drafting Information: The primary authors of this regulation were Kevin Schneider, Outdoor Recreation Planner, and John Sacklin, Supervisory Park Resource Planner, Yellowstone National Park; Bill Holda, Supervisory Park Ranger, and Gary Pollock, Management Assistant, Grand Teton National Park; and Kym Hall, NPS Special Assistant, and Barry Roth, Deputy Associate Solicitor, Washington, DC.

List of Subjects in 36 CFR Part 7

District of Columbia, National parks, Reporting and recordkeeping requirements.

■ 36 CFR part 7 is amended as set forth below:

PART 7—SPECIAL REGULATIONS, AREAS OF THE NATIONAL PARK SYSTEM

■ 1. The authority for part 7 continues to read as follows:

Authority: 16 U.S.C. 1, 3, 9a, 460(q), 462(k); § 7.96 also issued under D.C. Code 8–137(1981) and D.C. Code 40–721 (1981).

■ 2. Amend § 7.13 to revise paragraph (l) to read as follows:

§ 7.13 Yellowstone National Park.

* * * * *

(l)(1) *What is the scope of this regulation?* The regulations contained in paragraphs (l)(2) through (l)(19) of this section are intended to apply to the use of recreational and commercial snowmobiles. Except where indicated, paragraphs (l)(2) through (l)(19) do not apply to non-administrative snowmobile or snowcoach use by NPS, contractor or concessioner employees who live or work in the interior of the park, or other non-recreational users authorized by the Superintendent.

(2) *What terms do I need to know?* This paragraph also applies to non-administrative snowmobile use by NPS, contractor or concessioner employees, or other non-recreational users authorized by the Superintendent.

Commercial guide means those guides who operate as a snowmobile guide for a fee or compensation and are authorized to operate in the park under a concession contract.

Non-commercial guide means those authorized guides who have successfully completed an NPS-approved training course and provide guiding services without compensation.

Oversnow route means that portion of the unplowed roadway located between the road shoulders and designated by snow poles or other poles, ropes, fencing, or signs erected to regulate over-snow activity. Oversnow routes include pullouts or parking areas that are groomed or marked similarly to roadways and are adjacent to designated oversnow routes. An oversnow route may also be distinguished by the interior boundaries of the berm created by the packing and grooming of the unplowed roadway. The only motorized vehicles permitted on oversnow routes are oversnow vehicles.

Oversnow vehicle means a snowmobile, snowcoach, or other motorized vehicle that is intended for travel primarily on snow and is authorized by the Superintendent to operate in the park. An oversnow vehicle that does not meet the definition of a snowcoach or a snowplane must comply with all requirements applicable to snowmobiles.

Snowcoach means a self-propelled mass transit vehicle intended for travel on snow, having a curb weight of over 1000 pounds (450 kilograms), driven by a track or tracks and steered by skis or tracks, and having a capacity of at least 8 passengers.

Snowplane means a self-propelled vehicle intended for oversnow travel and driven by an air-displacing propeller.

(3) *May I operate a snowmobile in Yellowstone National Park?* You may operate a snowmobile in Yellowstone National Park in compliance with use limits and entry passes, guiding requirements, operating hours and dates, equipment, and operating conditions established pursuant to this section. The Superintendent may establish additional operating conditions and shall provide notice of those conditions in accordance with § 1.7(a) of this chapter or in the **Federal Register**.

(4) *May I operate a snowcoach in Yellowstone National Park?* Commercial snowcoaches may be operated in Yellowstone National Park under a concessions contract. Non-commercial snowcoaches may be operated if authorized by the Superintendent. Snowcoach operation is subject to the conditions stated in the concessions contract and all other conditions identified in this section.

(i) Historic snowcoaches (Bombardier snowcoaches manufactured in 1983 or earlier) are not initially required to meet air or sound requirements.

(ii) Beginning with the winter of 2005–2006, all non-historic snowcoaches must meet NPS air emissions requirements. These requirements are the EPA's emission standards for the vehicle at the time it was manufactured.

(iii) Beginning with the winter of 2008–2009, all non-historic snowcoaches must meet NPS sound requirements. Snowcoaches must operate at or below 75 dB(A) as measured at 25 mph on the A-weighted scale at 50 feet using test procedures similar to Society of Automotive Engineers J1161 (revised 1983).

(iv) All critical emission-related exhaust components (as defined in 40 CFR 86.004–25(b)(3)(iii) through (v)) must be functioning properly. Malfunctioning critical emissions-related components must be replaced with the original equipment manufacturer (OEM) component, where possible. Where OEM parts are not available, aftermarket parts may be used. In general, catalysts that have exceeded their useful life must be replaced unless the operator can demonstrate the catalyst is functioning properly.

(v) Tampering with or disabling a snowcoach's original pollution control equipment is prohibited except for maintenance purposes.

(vi) Individual snowcoaches may be subject to period inspections to determine compliance with the requirements of paragraphs (l)(4)(ii) through (l)(4)(v) of this section.

(5) *Must I operate a certain model of snowmobile?* Only commercially available snowmobiles that meet NPS air and sound emissions requirements may be operated in the park. The Superintendent will approve snowmobile makes, models, and year of manufacture that meet those requirements. The public will be made aware of any new air or sound emissions requirements through publication in the **Federal Register** and using one or more of the methods listed in § 1.7(a) of this chapter. Any snowmobile model not approved by the Superintendent may not be operated in the park.

(6) *How will the Superintendent approve snowmobile makes, models, and year of manufacture for use in the park?* (i) Beginning with the 2005 model year, all snowmobiles must be certified under 40 CFR part 1051, to a Family Emission Limit no greater than 15 g/kW-hr for hydrocarbons and to a Family Emission Limit no greater than 120 g/kW-hr for carbon monoxide.

(A) 2004 model year snowmobiles may use measured emissions levels (official emission results with no deterioration factors applied) to comply with the emission limits specified in paragraph (l)(6)(i) of this section.

(B) Snowmobiles manufactured prior to the 2004 model year may be operated only if they have been shown to have emissions no greater than the requirements identified in paragraph (l)(6)(i) of this section.

(C) The snowmobile test procedures specified by EPA (40 CFR 1051 and 1065) shall be used to measure air emissions from model year 2004 and later snowmobiles. Equivalent procedures may be used for earlier model years.

(ii) For sound emissions, snowmobiles must operate at or below 73dB(A), as measured at full throttle according to Society of Automotive Engineers J192 test procedures (revised 1985). Snowmobiles may be tested at any barometric pressure equal to or above 23.4 inches Hg uncorrected.

(iii) Snowmobiles not operating under a concessions contract are exempt from air and sound emissions requirements for the winter 2003–2004 only.

(iv) The Superintendent may prohibit entry into the park of any snowmobile that has been modified in a manner that may affect air or sound emissions.

(7) *Where must I operate my snowmobile?* You must operate your snowmobile only upon designated oversnow routes established within the park in accordance with § 2.18(c) of this chapter. The following oversnow routes are so designated for snowmobile use:

(i) The Grand Loop Road from its junction with Terrace Springs Drive to Norris Junction.

(ii) Norris Junction to Canyon Junction.

(iii) The Grand Loop Road from Norris Junction to Madison Junction.

(iv) The West Entrance Road from the park boundary at West Yellowstone to Madison Junction.

(v) The Grand Loop Road from Madison Junction to West Thumb.

(vi) The South Entrance Road from the South Entrance to West Thumb.

(vii) The Grand Loop Road from West Thumb to its junction with the East Entrance Road.

(viii) The East Entrance Road from the East Entrance to its junction with the Grand Loop Road.

(ix) The Grand Loop Road from its junction with the East Entrance Road to Canyon Junction.

(x) The South Canyon Rim Drive.

(xi) Lake Butte Road.

(xii) In the developed areas of Madison Junction, Old Faithful, Grant Village, Lake, Fishing Bridge, Canyon, Indian Creek, and Norris.

(xiii) The Superintendent may open or close these routes, or portions thereof, for snowmobile travel after taking into consideration the location of wintering wildlife, appropriate snow cover, public safety, and other factors. Notice of such opening or closing shall be provided by one or more of the methods listed in § 1.7(a) of this chapter.

(xiv) This paragraph also applies to non-administrative snowmobile use by NPS, contractor or concessioner employees, or other non-recreational users authorized by the Superintendent.

(xv) Maps detailing the designated oversnow routes will be available from Park Headquarters.

(8) *What routes are designated for snowcoach use?* Authorized snowcoaches may only be operated on the routes designated for snowmobile use in paragraphs (l)(7)(i) through (l)(7)(xii) of this section and the following additional oversnow routes:

(i) Firehole Canyon Drive.

(ii) Fountain Flat Road.

(iii) Virginia Cascades Drive.

(iv) North Canyon Rim Drive.

(v) Riverside Drive.

(vi) That portion of the Grand Loop Road from Canyon Junction to Washburn Hot Springs overlook.

(vii) The Superintendent may open or close these oversnow routes, or portions thereof, or designate new routes for snowcoach travel after taking into consideration the location of wintering wildlife, appropriate snow cover, public safety, and other factors. Notice of such opening or closing shall be provided by one or more of the methods listed in § 1.7(a) of this chapter.

(viii) This paragraph also applies to non-administrative snowcoach use by NPS, contractor or concessioner employees, or other non-recreational users authorized by the Superintendent.

(9) *Will I be required to use a guide while snowmobiling?* Beginning in the winter of 2004–2005, all snowmobile operators must be accompanied by a guide who has successfully completed an NPS-approved training program. During the winter of 2003–2004 only, the twenty percent (20%) of the authorized daily snowmobile entries that are allocated to the general public do not require a guide.

(10) *What other requirements apply to the use of snowmobile guides?* Eighty percent (80%) of the authorized daily snowmobile entries are allocated under concessions contracts for commercial guiding services while the remaining twenty percent (20%) of the authorized daily snowmobile entries are allocated to the general public for non-commercially guided parties.

(i) Non-commercial guides are required to successfully complete a training program approved by the Superintendent to include training on park rules, safety considerations, and appropriate actions to minimize impacts to wildlife and other park resources.

(ii) Snowmobile parties must travel in a group, including the guide. Maximum or minimum group size may be designated by the Superintendent. Notice of group size requirements shall be provided by one or more of the methods listed in § 1.7(a) of this chapter.

(iii) It is prohibited for non-commercial guides, or anyone else, to receive fees or other forms of compensation for non-commercial guiding services.

(iv) Guided parties must travel together within a maximum of one-third mile of the first snowmobile in the group.

(v) The Superintendent may change requirements related to guiding, including the commercial: non-commercial guide ratio. Except for emergency situations, changes to guiding requirements may be made on an annual basis and the public will be notified of those changes through publication in the **Federal Register** and by one or more of the procedures listed in § 1.7(a) of this chapter.

(11) *Are there limits established for the numbers of snowmobiles permitted to enter the park each day?* Snowmobiles allowed to enter the park each day will be limited to a specific number per entrance. The initial limits are listed in the following table:

TABLE 1 TO § 7.13.—INITIAL DAILY SNOWMOBILE ENTRY LIMITS

Park entrance/road segment	Number of commercially-guided snowmobile entrance passes	Number of non-commercially guided snowmobile entrance passes [1]	Total number of snowmobile entrance passes
(i) YNP—North Entrance	40	10	50
(ii) YNP—West Entrance	440	110	550
(iii) YNP—South Entrance	200	50	250
(iv) YNP—East Entrance	80	20	100

[1] In the 2003–2004 winter season only, these entries will be available for unguided parties, to allow sufficient time to develop and implement a non-commercial guide training program.

(v) The limits established in Table 1 to this section apply until modified by the Superintendent. The Superintendent may establish different limits, after taking into consideration the effectiveness of air and sound emissions requirements, the state of technology, monitoring results, or other relevant information. The public will be made aware of any new limits through publication in the **Federal Register** and using one or more of the methods listed in § 1.7(a) of this chapter.

(12) *How will the daily snowmobile entry limits be enforced?* The daily snowmobile entry limits will be enforced through at least three methods:

(i) The operator of a snowmobile is required to have a reservation to obtain entry into the park and pay any fees associated with that reservation;

(ii) The operator of a snowmobile is required to have an entrance pass to obtain entry into the park and pay any fees associated with that entrance pass; and,

(iii) The person who makes or holds the reservation must accompany the snowmobile group while in the park.

(iv) Reservations or entrance passes that have been obtained using false information, or have been altered, are invalid. Reservations or entrance passes that have been transferred or resold without the authorization of the Superintendent are invalid. The use of an invalid reservation or entrance pass is prohibited.

(13) When may I operate my snowmobile or snowcoach? The Superintendent will determine operating hours and dates. Except for emergency situations, changes to operating hours or dates may be made annually and the public will be notified of those changes through one or more of the methods listed in § 1.7(a) of this chapter.

(14) *What other conditions apply to the operation of oversnow vehicles?* (i) The following are prohibited:

(A) Idling an oversnow vehicle more than 5 minutes at any one time.

(B) Operating an oversnow vehicle while the operator's state motor vehicle license or privilege is suspended or revoked by any state.

(C) Allowing or permitting an unlicensed driver to operate an oversnow vehicle.

(D) Operating an oversnow vehicle in willful or wanton disregard for the safety of persons, property, or park resources or otherwise in a reckless manner.

(E) Operating an oversnow vehicle without a lighted white headlamp and red taillight.

(F) Operating an oversnow vehicle that does not have brakes in good working order.

(G) The towing of persons on skis, sleds or other sliding devices by oversnow vehicles, except in emergency situations.

(ii) The following are required:

(A) All oversnow vehicles that stop on designated routes must pull over to the far right and next to the snow berm. Pullouts must be utilized where available and accessible. Oversnow vehicles may not be stopped in a hazardous location or where the view might be obscured, or operating so slowly as to interfere with the normal flow of traffic.

(B) Oversnow vehicle operators must possess a valid motor vehicle operator's license. A learner's permit does not satisfy this requirement. The license must be carried by the operator at all times.

(C) Equipment sleds towed by a snowmobile must be pulled behind the snowmobile and fastened to the snowmobile with a rigid hitching mechanism.

(D) Snowmobiles must be properly registered and display a valid registration from the United States or Canada.

(iii) The Superintendent may impose other terms and conditions as necessary to protect park resources, visitors, or employees. The public will be notified of any changes through one or more methods listed in § 1.7(a) of this chapter.

(iv) This paragraph also applies to non-administrative snowmobile use by NPS, contractor or concessioner employees, or other non-recreational users as authorized by the Superintendent.

(15) *What conditions apply to alcohol use while operating an oversnow vehicle?* In addition to the regulations contained in 36 CFR 4.23, the following conditions apply:

(i) Operating or being in actual physical control of an oversnow vehicle is prohibited when the driver is under 21 years of age and the alcohol concentration in the driver's blood or breath is 0.02 grams or more of alcohol per 100 milliliters or blood or 0.02 grams or more of alcohol per 210 liters of breath.

(ii) Operating or being in actual physical control of an oversnow vehicle is prohibited when the driver is a snowmobile guide or a snowcoach driver and the alcohol concentration in the operator's blood or breath is 0.04 grams or more of alcohol per 100 milliliters of blood or 0.04 grams or more of alcohol per 210 liters of breath.

(iii) This paragraph also applies to non-administrative snowmobile use by NPS, contractor or concessioner employees, or other non-recreational users as authorized by the Superintendent.

(16) *Do other NPS regulations apply to the use of oversnow vehicles?* (i) The use of oversnow vehicles in Yellowstone is not subject to §§ 2.18 (b), (d), (e) and 2.19(b) of this chapter.

(ii) This paragraph also applies to non-administrative snowmobile use by NPS, contractor or concessioner employees, or other non-recreational users as authorized by the Superintendent.

(17) *Are there any forms of non-motorized oversnow transportation allowed in the park?* Non-motorized travel consisting of skiing, skating, snowshoeing, or walking is permitted unless otherwise restricted pursuant to this section or other provisions of 36 CFR Part 1.

(i) The Superintendent may designate areas of the park as closed, reopen such areas or establish terms and conditions for non-motorized travel within the park in order to protect visitors, employees or park resources.

(ii) Dog sledding or ski-jorring is prohibited.

(18) *May I operate a snowplane in Yellowstone?* The operation of a snowplane in Yellowstone is prohibited.

(19) *Is violating any of the provisions of this section prohibited?* Violating any of the terms, conditions or requirements of paragraphs (l)(2) through (l)(18) of this section is prohibited. Each occurrence of non-compliance with these regulations is a separate violation.

* * * * *

■ 3. Amend § 7.21 to revise paragraph (a) to read as follows:

§ 7.21 John D. Rockefeller, Jr., Memorial Parkway.

(a)(1) *What is the scope of this regulation?* The regulations contained in paragraphs (a)(2) through (a)(18) of this section are intended to apply to the use of recreational and commercial snowmobiles. Except where indicated, paragraphs (a)(2) through (a)(18) do not apply to non-administrative snowmobile or snowcoach use by NPS, contractor or concessioner employees who live or work in the interior of Yellowstone, or other non-recreational users authorized by the Superintendent.

(2) *What terms do I need to know?* All the terms in § 7.13(l)(2) of this part apply to this section. This paragraph applies to non-administrative snowmobile use by NPS or concessioner employees.

(3) *May I operate a snowmobile in the Parkway?* You may operate a snowmobile in the Parkway in compliance with use limits and entry passes, guiding requirements, operating hours and dates, equipment, and operating conditions established pursuant to this section. The Superintendent may establish additional operating conditions and shall provide notice of those conditions in accordance with § 1.7(a) of this chapter or in the **Federal Register**.

(4) *May I operate a snowcoach in the Parkway?* Commercial snowcoaches may be operated in the Parkway under a concessions contract. Non-commercial snowcoaches may be operated if authorized by the Superintendent. Snowcoach operation is subject to the conditions stated in the concessions contract and all other conditions identified in this section.

(i) Historic snowcoaches (Bombardier snowcoaches manufactured in 1983 or earlier) are not initially required to meet air or sound requirements.

(ii) Beginning with the winter of 2005–2006, all non-historic snowcoaches must meet NPS air emissions requirements. These requirements are the EPA's emission standards for the vehicle at the time it was manufactured.

(iii) Beginning with the winter of 2008–2009, all non-historic snowcoaches must meet NPS sound requirements. Snowcoaches must operate at or below 75 dB(A) as measured at 25 mph on the A-weighted scale at 50 feet using test procedures similar to Society of Automotive Engineers J1161 (revised 1983).

(iv) All critical emission-related exhaust components (as defined in 40 CFR 86.004–25(b)(3)(iii)–(v)) must be functioning properly. Malfunctioning critical emissions-related components must be replaced with the original equipment manufacturer (OEM) component, where possible. Where OEM parts are not available, after-market parts may be used. In general, catalysts that have exceeded their useful life must be replaced unless the operator can demonstrate the catalyst is functioning properly.

(v) Tampering with or disabling a snowcoach's original pollution control equipment is prohibited except for maintenance purposes.

(vi) Individual snowcoaches may be subject to periodic inspections to determine compliance with the requirements of paragraphs (a)(4)(ii) through (a)(4)(v) of this section.

(5) *Must I operate a certain model of snowmobile?* Only commercially available snowmobiles that meet NPS air and sound emissions requirements may be operated in the Parkway. The Superintendent will approve snowmobile makes, models, and year of manufacture that meet those requirements. The public will be made aware of any new air or sound emissions requirements through publication in the **Federal Register** and using one or more of the methods listed in § 1.7(a) of this chapter. Any snowmobile model not approved by the Superintendent may not be operated in the Parkway.

(6) *How will the Superintendent approve snowmobile makes, models, and year of manufacture for use in the Parkway?* (i) Beginning with the 2005 model year, all snowmobiles must be certified under 40 CFR part 1051, to a Family Emission Limit no greater than 15 g/kW-hr for hydrocarbons and to a Family Emission Limit no greater than 120 g/kW-hr for carbon monoxide.

(A) 2004 model year snowmobiles may use measured air emissions levels (official emission results with no deterioration factors applied) to comply with the air emission limits specified in paragraph (a)(6)(i) of this section.

(B) Snowmobiles manufactured prior to the 2004 model year may be operated only if they have shown to have air emissions no greater than the requirements identified in paragraph (a)(6)(i) of this section.

(C) The snowmobile test procedures specified by EPA (40 CFR parts 1051 and 1065) shall be used to measure air emissions from model year 2004 and later snowmobiles. Equivalent procedures may be used for earlier model years.

(ii) For sound emissions snowmobiles must operate at or below 73dB(A) as measured at full throttle according to Society of Automotive Engineers J192 test procedures (revised 1985). Snowmobiles may be tested at any barometric pressure equal to or above 23.4 inches Hg uncorrected.

(iii) These air and sound emissions requirements shall not apply to snowmobiles originating in the Targhee

National Forest and traveling on the Grassy Lake Road to Flagg Ranch, however these snowmobiles may not travel further into the Parkway unless they meet the air and sound emissions and all other requirements of this section.

(iv) Snowmobiles not operating under a concessions contract are exempt from air and sound emissions requirements for the winter 2003–2004 only.

(v) The Superintendent may prohibit entry into the Parkway of any snowmobile that has been modified in a manner that may affect air or sound emissions.

(7) *Where must I operate my snowmobile in the Parkway?* You must operate your snowmobile only upon designated oversnow routes established within the Parkway in accordance with 36 CFR 2.18(c). The following oversnow routes are so designated for snowmobile use:

(i) The Continental Divide Snowmobile Trail (CDST) along U.S. Highway 89/287 from the southern boundary of the Parkway north to the Snake River Bridge.

(ii) Along U.S. Highway 89/287 from the Snake River Bridge to the northern boundary of the Parkway.

(iii) Grassy Lake Road from Flagg Ranch to the western boundary of the Parkway.

(iv) The Superintendent may open or close these routes, or portions thereof, for snowmobile travel after taking into consideration the location of wintering wildlife, appropriate snow cover, public safety or other factors. Notice of such opening or closing shall be provided by one or more of the methods listed in § 1.7(a) of this chapter.

(v) This paragraph also applies to non-administrative snowmobile use by NPS, contractor or concessioner employees, or other non-recreational users authorized by the Superintendent.

(vi) Maps detailing the designated oversnow routes will be available from Park Headquarters.

(8) *What routes are designated for snowcoach use?* (i) Authorized snowcoaches may only be operated on the route designated for snowmobile use in paragraph (a)(7)(ii) of this section. No other routes are open to snowcoach use.

(ii) The Superintendent may open or close this oversnow route, or portions thereof, or designate new routes for snowcoach travel after taking into consideration the location of wintering wildlife, appropriate snow cover, public safety, and other factors. Notice of such opening or closing shall be provided by one or more of the methods listed in § 1.7(a) of this chapter.

(iii) This paragraph also applies to non-administrative snowcoach use by NPS, contractor or concessioner employees, or other non-recreational users authorized by the Superintendent.

(9) *Will I be required to use a guide while snowmobiling in the Parkway?* Beginning in the winter of 2004–2005, all snowmobile operators using the oversnow route along U.S. Highway 89/287 from Flagg Ranch to the northern boundary of the parkway must be accompanied by a guide that has successfully completed an NPS-approved training program. A guide is not required in other portions of the Parkway. During the winter of 2003–2004 only, the twenty percent (20%) of the authorized daily snowmobile entries that are allocated to the general public do not require a guide.

(10) *What other requirements apply to the use of snowmobile guides?* Eighty percent (80%) of the authorized daily snowmobile use on U.S. Highway 89/287 from Flagg Ranch to the northern boundary of the Parkway is allocated under concessions contracts for commercial guiding services while the remaining twenty percent (20%) of the authorized daily snowmobile entries are allocated to the general public for non-commercially guided parties.

(i) Non-commercial guides are required to successfully complete a training program approved by the Superintendent to include training on Parkway rules, safety considerations, and appropriate actions to minimize impacts to wildlife and other Parkway resources.

(ii) Snowmobile parties must travel in a group, including the guide. Maximum or minimum group size may be designated by the Superintendent. Notice of group size requirements shall be provided by one or more of the methods listed in § 1.7(a) of this chapter.

(iii) It is prohibited for non-commercial guides, or anyone else, to receive fees or other forms of compensation for non-commercial guiding services.

(iv) Guided parties must travel together within a maximum of one-third mile of the first snowmobile in the group.

(v) The Superintendent may change requirements related to guiding, including the commercial to non-commercial guide ratio. Except for emergency situations, changes to guiding requirements may be made on an annual basis and the public will be notified of those changes through publication in the **Federal Register** and by one or more of the procedures listed in § 1.7(a) of this chapter.

(11) *Are there limits established for the numbers of snowmobiles permitted to enter the Parkway each day?* Snowmobiles allowed to enter the Parkway each day will be limited to a specific number per road segment. The initial limits are listed in the following table:

TABLE 1 TO § 7.21.—INITIAL DAILY SNOWMOBILE ENTRY LIMITS

Park entrance/road segment	Number of commercially-guided snowmobiles	Number of non-commercially guided snowmobiles	Total number of snowmobiles
(i) GTNP and the Parkway—Total Use on CDST[2]	N/A	N/A	[3]75
(ii) Parkway—Total Use Grassy Lake Road	N/A	N/A	[3]75
(iii) Flagg Ranch to Yellowstone South Entrance	200	50	250

[2] The Continental Divide Snowmobile Trail lies within both GTNP and the Parkway. The 75 daily snowmobile use limit applies to total use on this trail in both parks.

[3] These users do not have to be accompanied by a guide.

(iv) The limits established in Table 1 to this section apply until modified by the Superintendent. The Superintendent may establish different limits, after taking into consideration the effectiveness of air and sound emissions requirements, the state of technology, monitoring results, or other relevant information. The public will be made aware of new limits through publication in the **Federal Register** and using one or more of the methods listed in § 1.7(a) of this chapter.

(12) *When may I operate my snowmobile or snowcoach?* The Superintendent will determine operating hours and dates. Except for emergency situations, changes to operating hours or dates may be made annually and the public will be notified of those changes through one or more of the methods listed in § 1.7(a) of this chapter.

(13) *What other conditions apply to the operation of oversnow vehicles?* (i) The following are prohibited:

(A) Idling an oversnow vehicle more than 5 minutes at any one time.

(B) Operating an oversnow vehicle while the operator's state motor vehicle license or privilege is suspended or revoked by any state.

(C) Allowing or permitting an unlicensed driver to operate an oversnow vehicle.

(D) Operating an oversnow vehicle in willful or wanton disregard for the safety of persons, property, or Parkway resources or otherwise in a reckless manner.

(E) Operating an oversnow vehicle without a lighted white headlamp and red taillight.

(F) Operating an oversnow vehicle that does not have brakes in good working order.

(G) The towing of persons on skis, sleds or other sliding devices by oversnow vehicles, except in emergency situations.

(ii) The following are required:

(A) All oversnow vehicles that stop on designated routes must pull over to the far right and next to the snow berm. Pullouts must be utilized where available and accessible. Oversnow vehicles may not be stopped in a hazardous location or where the view might be obscured, or operating so slowly as to interfere with the normal flow of traffic.

(B) Oversnow vehicle operators must possess a valid motor vehicle operator's license. The license must be carried by the operator at all times. A learner's permit does not satisfy this requirement.

(C) Equipment sleds towed by a snowmobile must be pulled behind the snowmobile and fastened to the snowmobile with a rigid hitching mechanism.

(D) Snowmobiles must be properly registered and display a valid registration from the United States or Canada.

(iii) The Superintendent may impose other terms and conditions as necessary to protect Parkway resources, visitors, or employees. The public will be notified of any changes through one or more methods listed in § 1.7(a) of this chapter.

(iv) This paragraph also applies to non-administrative snowmobile use by NPS, contractor or concessioner employees, or other non-recreational users authorized by the Superintendent.

(14) *What conditions apply to alcohol use while operating an oversnow vehicle?* In addition to the regulations in 36 CFR 4.23, the following conditions apply:

(i) Operating or being in actual physical control of an oversnow vehicle is prohibited when the driver is under 21 years of age and the alcohol concentration in the driver's blood or breath is 0.02 grams or more of alcohol per 100 milliliters or blood or 0.02 grams or more of alcohol per 210 liters of breath.

(ii) Operating or being in actual physical control of an oversnow vehicle is prohibited when the driver is a guide or a snowcoach driver and the alcohol concentration in the driver's blood or breath is 0.04 grams or more of alcohol per 100 milliliters of blood or 0.04 grams or more of alcohol per 210 liters of breath.

(iii) This paragraph also applies to non-administrative snowmobile use by NPS, contractor or concessioner employees, or other non-recreational users authorized by the Superintendent.

(15) *Do other NPS regulations apply to the use of oversnow vehicles?* (i) The use of oversnow vehicles in the Parkway is not subject to §§ 2.18(d) and (e) and 2.19(b) of this chapter.

(ii) This paragraph also applies to non-administrative snowmobile use by NPS, contractor or concessioner employees, or other non-recreational users authorized by the Superintendent.

(16) *Are there any forms of non-motorized oversnow transportation allowed in the Parkway?* (i) Non-motorized travel consisting of skiing, skating, snowshoeing, or walking are permitted unless otherwise restricted pursuant to this section or other provisions of 36 CFR Part 1 provided you follow all applicable regulations.

(ii) The Superintendent may designate areas of the Parkway as closed, reopen such areas or establish terms and conditions for non-motorized travel within the Parkway in order to protect visitors, employees or park resources.

(iii) Dog sledding or ski-jorring is prohibited.

(17) *May I operate a snowplane in the Parkway?* The operation of a snowplane in the Parkway is prohibited.

(18) *Is violating any of the provisions of this section prohibited?* Violating any of the terms, conditions or requirements of paragraphs (a)(2) through (a)(17) of this section is prohibited. Each occurrence of non-compliance with these regulations is a separate violation.

* * * * *

■ 4. Amend § 7.22 to revise paragraph (g) to read as follows:

§ 7.22 Grand Teton National Park.

* * * * *

(g)(1) *What is the scope of this regulation?* The regulations contained in paragraphs (g)(2) through (g)(20) of this section are intended to apply to the use of recreational and commercial snowmobiles. Except where indicated, paragraphs (g)(2) through (g)(20) do not apply to non-administrative snowmobile or snowcoach use by NPS or concessioner employees who live or work in the interior of Yellowstone.

(2) *What terms do I need to know?* All the terms in § 7.13(l)(2) of this part apply to this section. This paragraph also applies to non-administrative snowmobile use by NPS, contractor or concessioner employees, or other non-recreational users authorized by the Superintendent.

(3) *May I operate a snowmobile in Grand Teton National Park?* You may operate a snowmobile in Grand Teton National Park in compliance with use limits and entry passes, operating hours and dates, equipment, and operating conditions established in this section. The Superintendent may establish additional operating conditions and shall provide notice of those conditions in accordance with § 1.7(a) of this chapter or in the **Federal Register**.

(4) *May I operate a snowcoach in Grand Teton?* Operate a snowcoach in Grand Teton National Park is prohibited.

(5) *Must I operate a certain model of snowmobile in the park?* Only commercially available snowmobiles that meet NPS air and sound emissions requirements may be operated in the park. The Superintendent will approve snowmobile makes, models, and year of manufacture that meet those requirements. The public will be made aware of any new air or sound emissions requirements through publication in the **Federal Register** and using one or more of the methods listed in § 1.7(a) of this chapter. Any snowmobile model not approved by the Superintendent may not be operated in the park.

(6) *How will the Superintendent approve snowmobile makes, models, and year of manufacture for use in Grand Teton?* (i) Beginning with the 2005 model year, all snowmobiles must be certified under 40 CFR part 1051, to a Family Emission Limit no greater than 15 g/kW-hr for hydrocarbons and to a Family Emission Limit no greater than 120 g/kW-hr for carbon monoxide.

(A) 2004 model year snowmobiles may use measured air emissions levels

(official emission results with no deterioration factors applied) to comply with the air emission limits specified in paragraph (g)(6)(i) of this section.

(B) Snowmobiles manufactured prior to the 2004 model year may be operated only if they have shown to have air emissions no greater than the requirements identified in paragraph (g)(6)(i) of this section.

(C) The snowmobile test procedures specified by EPA (40 CFR 1051 and 1065) shall be used to measure air emissions from model year 2004 and later snowmobiles. Equivalent procedures may be used for earlier model years.

(ii) For sound emissions, snowmobiles must operate at or below 73dB(A), as measured at full throttle according to Society of Automotive Engineers J192 test procedures (revised 1985). Snowmobiles may be tested at any barometric pressure equal to or above 23.4 inches Hg uncorrected.

(iii) These air and sound emissions requirements shall not apply to snowmobiles while in use to access lands authorized by paragraphs (g)(16) and (g)(18) of this section.

(iv) Snowmobiles not operating under a concessions contract are exempt from air and sound emissions requirements for the winter 2003–2004 only.

(v) The Superintendent may prohibit entry into the park of any snowmobile that has been modified in a manner that may affect air or sound emissions.

(7) *Where must I operate my snowmobile?* You must operate your snowmobile only upon designated oversnow routes established within the park in accordance with 36 CFR 2.18(c). The following oversnow routes are so designated for snowmobile use:

(i) The frozen water surface of Jackson Lake for the purposes of ice fishing only. Those persons accessing Jackson Lake for ice fishing must possess a valid Wyoming state fishing license and the proper fishing gear.

(ii) The Continental Divide Snowmobile Trail along U.S. 26/287 from Moran Junction to the eastern park boundary and along U.S. 89/287 from Moran Junction to the north park boundary.

(iii) The Superintendent may open or close these routes, or portions thereof, for snowmobile travel and may establish separate zones for motorized and non-motorized use on Jackson Lake, after taking into consideration the location of wintering wildlife, appropriate snow cover, public safety and other factors. Notice of such opening or closing shall be provided by one or more of the methods listed in § 1.7(a) of this chapter.

(iv) This paragraph also applies to non-administrative snowmobile use by NPS, contractor or concessioner employees, or other non-recreational users authorized by the Superintendent.

(v) Maps detailing the designated oversnow routes will be available from Park Headquarters.

(8) *Will I be required to use a guide while snowmobiling in Grand Teton?* (i) You will not be required to use a guide while snowmobiling in Grand Teton.

(ii) The Superintendent may establish requirements related to the use of guides, including requirements for commercial and/or non-commercial guides. Changes to guiding requirements may be made annually and the public will be notified of those changes through publication in the **Federal Register** and by one or more of the procedures listed in § 1.7(a) of this chapter.

(9) *Are there limits established for the numbers of snowmobiles permitted to operate in Grand Teton each day?* Snowmobiles allowed to enter the park each day will be limited to a specific number per road segment or area. The initial limits are listed in the following table:

TABLE 1 TO § 7.22.—INITIAL DAILY SNOWMOBILE ENTRY LIMITS

Park entrance/road segment	Number of commercially-guided snowmobile entrance passes	Number of non-commercially guided snowmobile entrance passes	Total number of snowmobile entrance passes
(i) GTNP and the Parkway—Total Use on CDST[4]	N/A	N/A	[5] 75
(ii) Jackson Lake	N/A	N/A	[5] 40

[4] The Continental Divide Snowmobile Trail lies within both GTNP and the Parkway. The 75 daily snowmobile use limit applies to total use on this trail in both parks.

[5] These users do not have to be accompanied by a guide.

(iii) The limits established in Table 1 to this section apply until modified by the Superintendent. The Superintendent may establish different limits after taking into consideration the effectiveness of air and sound emissions requirements, the state of technology, monitoring results, or other relevant information. The public will be made aware of new limits through publication in the **Federal Register** and using one or more of the methods listed in § 1.7(a) of this chapter.

(10) *When may I operate my snowmobile?* The Superintendent will determine operating hours and dates. Except for emergency situations, changes to operating hours or dates may be made annually and the public will be notified of those changes through one or more of the methods listed in § 1.7(a) of this chapter.

(11) *What other conditions apply to the operation of oversnow vehicles?* (i) The following are prohibited:

(A) Idling an oversnow vehicle more than 5 minutes at any one time.

(B) Operating an oversnow vehicle while the operator's state motor vehicle license or privilege is suspended or revoked by any state.

(C) Allowing or permitting an unlicensed driver to operate an oversnow vehicle.

(D) Operating an oversnow vehicle in willful or wanton disregard for the safety of persons, property, or park resources or otherwise in a reckless manner.

(E) Operating an oversnow vehicle without a lighted white headlamp and red taillight.

(F) Operating an oversnow vehicle that does not have brakes in good working order.

(G) The towing of persons on skis, sleds or other sliding devices by oversnow vehicles, except in emergency situations.

(ii) The following are required:

(A) All oversnow vehicles that stop on designated routes must pull over to the far right and next to the snow berm. Pullouts must be utilized where available and accessible. Oversnow vehicles may not be stopped in a hazardous location or where the view might be obscured, or operating so slowly as to interfere with the normal flow of traffic.

(B) Oversnow vehicle operators must possess a valid motor vehicle operator's license. The license must be carried by the operator at all times. A learner's permit does not satisfy this requirement.

(C) Equipment sleds towed by a snowmobile must be pulled behind the snowmobile and fastened to the snowmobile with a rigid hitching mechanism.

(D) Snowmobiles must be properly registered and display a valid registration from the United States or Canada.

(iii) The Superintendent may impose other terms and conditions as necessary to protect park resources, visitors, or employees. The public will be notified of any changes through one or more methods listed in § 1.7(a) of this chapter.

(iv) This paragraph also applies to non-administrative snowmobile use by NPS, contractor or concessioner employees, or other non-recreational users authorized by the Superintendent.

(12) *What conditions apply to alcohol use while operating an oversnow vehicle?* In addition to the regulations in 36 CFR 4.23, the following conditions apply:

(i) Operating or being in actual physical control of an oversnow vehicle is prohibited when the driver is under 21 years of age and the alcohol concentration in the driver's blood or breath is 0.02 grams or more of alcohol per 100 milliliters or blood or 0.02 grams or more of alcohol per 210 liters of breath.

(ii) Operating or being in actual physical control of an oversnow vehicle is prohibited when the driver is a commercial guide or a snowcoach driver and the alcohol concentration in the driver's blood or breath is 0.04 grams or more of alcohol per 100 milliliters of blood or 0.04 grams or more of alcohol per 210 liters of breath.

(iii) This paragraph also applies to non-administrative snowmobile use by NPS, contractor or concessioner employees, or other non-recreational users authorized by the Superintendent.

(13) *Do other NPS regulations apply to the use of oversnow vehicles?* The use of oversnow vehicles in Grand Teton is not subject to §§ 2.18(d) and (e) and 2.19(b) of this chapter.

(14) *Are there any forms of non-motorized oversnow transportation allowed in the park?* (i) Non-motorized travel including skiing, skating, snowshoeing, or walking are permitted unless otherwise restricted pursuant to this section or other provisions of 36 CFR Part 1 provided you follow all applicable regulations.

(ii) The Superintendent may designate areas of the park as closed, reopen such areas or establish terms and conditions for non-motorized travel within the park in order to protect visitors, employees or park resources.

(iii) Dog sledding or ski-jorring is prohibited.

(15) *May I operate a snowplane in Grand Teton National Park?* The operation of a snowplane in Grand Teton National Park is prohibited.

(16) *May I continue to access public lands via snowmobile through the park?* Reasonable and direct access, via snowmobile, to adjacent public lands will continue to be permitted on designated routes through the park. Requirements established in this section related to snowmobile operator age, air and sound emissions, guiding and licensing do not apply on these oversnow routes. The following routes only are designated for access via snowmobile to public lands:

(i) From the parking area at Shadow Mountain directly along the unplowed portion of the road to the east park boundary.

(ii) Along the unplowed portion of the Ditch Creek Road directly to the east park boundary.

(17) *For what purpose may I use the routes designated in paragraph (g)(16) of this section?* You may use those routes designated in paragraph (g)(16) of this section only to gain direct access to public lands adjacent to the park boundary.

(18) *May I continue to access private property within or adjacent to the park via snowmobile?* Until such time as the United States takes full possession of an inholding in the park, the Superintendent may establish reasonable and direct access routes via snowmobile, to such inholding, or to private property adjacent to park boundaries for which other routes or means of access are not reasonably available. Requirements established in this section related to air and sound emissions, snowmobile operator age, licensing, and guiding do not apply on these oversnow routes. The following routes are designated for access to properties within or adjacent to the park:

(i) The unplowed portion of Antelope Flats Road off U.S. 26/89 to private lands in the Craighead Subdivision.

(ii) The unplowed portion of the Teton Park Road to the piece of land commonly referred to as the "Clark Property".

(iii) From the Moose-Wilson Road to the land commonly referred to as the "Barker Property".

(iv) From the Moose-Wilson Road to the land commonly referred to as the "Wittimer Property".

(v) From the Moose-Wilson Road to those two pieces of land commonly referred to as the "Halpin Properties".

(vi) From the south end of the plowed sections of the Moose-Wilson Road to that piece of land commonly referred to as the "JY Ranch".

(vii) From Highway 26/89/187 to those lands commonly referred to as the "Meadows", the "Circle EW Ranch", the "Moulton Property", the "Levinson Property" and the "West Property".

(viii) From Cunningham Cabin pullout on U.S. 26/89 near Triangle X to the piece of land commonly referred to as the "Lost Creek Ranch".

(ix) Maps detailing designated routes will be available from Park Headquarters.

(19) *For what purpose may I use the routes designated in paragraph (g)(18) of this section?* Those routes designated in paragraph (g)(18) of this section are only to access private property within or directly adjacent to the park boundary. Use of these roads via snowmobile is authorized only for the landowners and their representatives or guests. Use of these roads by anyone else or for any other purpose is prohibited.

(20) *Is violating any of the provisions of this section prohibited?* Violating any of the terms, conditions or requirements of paragraphs (g)(2) through (g)(19) of this section is prohibited. Each occurrence of non-compliance with these regulations is a separate violation.

David P. Smith.

Deputy Assistant Secretary for Fish and Wildlife and Parks.

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Federal Register

Thursday,
December 11, 2003

Part IX

The President

Proclamation 7743—National Drunk and Drugged Driving Prevention Month, 2003

Federal Register
Vol. 68, No. 238
Thursday, December 11, 2003

Presidential Documents

Title 3—

The President

Proclamation 7743 of December 8, 2003

National Drunk and Drugged Driving Prevention Month, 2003

By the President of the United States of America

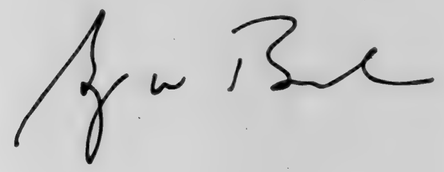
A Proclamation

Last year, more than 17,000 people were killed and 258,000 more were injured in alcohol-related crashes. Such accidents cause unnecessary suffering, loss of life, and expense. During National Drunk and Drugged Driving Prevention Month, we continue our efforts to stop impaired driving and improve the safety of our roads during the holiday season and throughout the year.

We are enhancing both the education of our citizens about the dangers of driving while under the influence and our methods for keeping impaired drivers off the road. My Administration is helping in this fight by supporting the enforcement of traffic programs that teach Americans about the risks of impaired driving. Earlier this year, my Administration proposed to the Congress the Safe, Accountable, Flexible, and Efficient Transportation Equity Act of 2003 (SAFETEA), which would elevate safe transportation to a national priority and increase State resources for existing enforcement and education efforts. While Federal help and funding are important, State and local involvement is also critical. As part of the Department of Transportation's National Highway Traffic Safety Administration's "You Drink & Drive. You Lose." national campaign, from December 19, 2003, through January 4, 2004, more than 10,000 law enforcement agencies will join forces with community, health, government, and business organizations to demonstrate that impaired driving is unacceptable and unlawful.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim December 2003 as National Drunk and Drugged Driving Prevention Month. I encourage all Americans to join the "You Drink & Drive. You Lose." national campaign to protect our citizens from impaired drivers.

IN WITNESS WHEREOF, I have hereunto set my hand this eighth day of December, in the year of our Lord two thousand three, and of the Independence of the United States of America the two hundred and twenty-eighth.



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H.R. 1/P.L. 108–173

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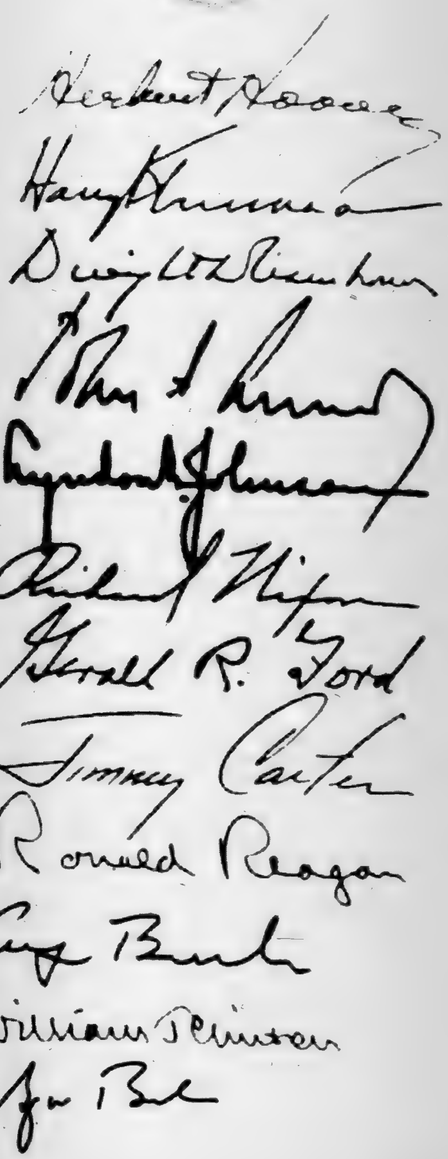
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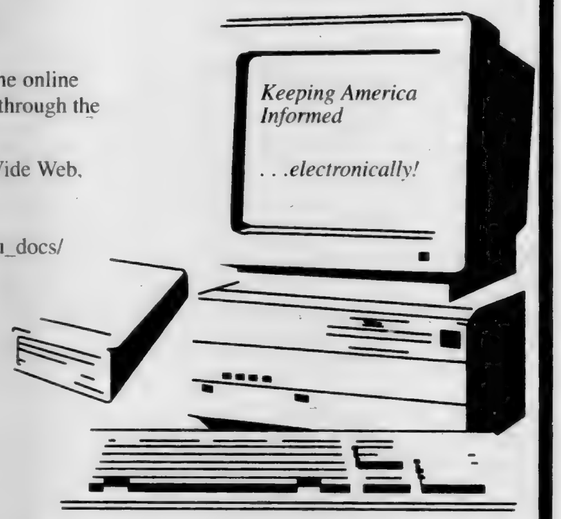
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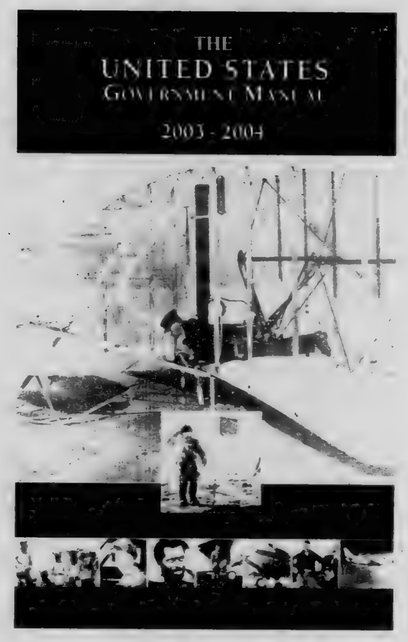
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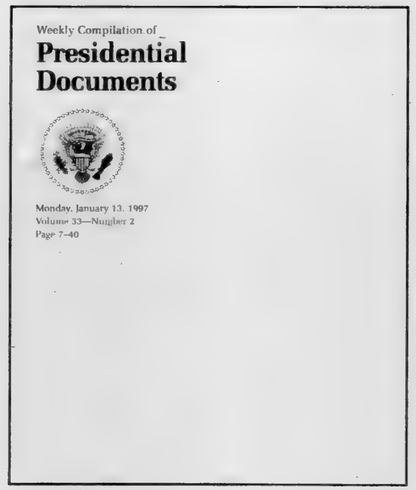
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Title 3—

The President

Executive Order 13320 of December 9, 2003

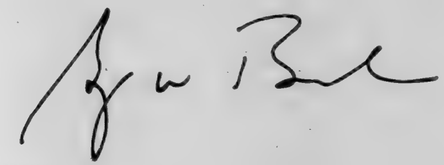
Closing of Executive Departments and Agencies of the Federal Government on Friday, December 26, 2003

By the authority vested in me as President by the Constitution and the laws of the United States of America, it is hereby ordered as follows:

Section 1. All executive branch departments and agencies of the Federal Government shall be closed and their employees excused from duty on Friday, December 26, 2003, the day after Christmas Day, except as provided in section 2 below.

Sec. 2. The heads of executive branch departments and agencies may determine that certain offices and installations of their organizations, or parts thereof, must remain open and that certain employees must report for duty on December 26, 2003, for reasons of national security or defense or other public need.

Sec. 3. Friday, December 26, 2003, shall be considered as falling within the scope of Executive Order 11582 of February 11, 1971, and of 5 U.S.C. 5546 and 6103(b) and other similar statutes insofar as they relate to the pay and leave of employees of the United States.



THE WHITE HOUSE,
December 9, 2003.

[FR Doc. 03–30913
Filed 12–11–03; 8:45 am]
Billing code 3195–01–P

Rules and Regulations

Federal Register
Vol. 68, No. 239
Friday, December 12, 2003

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

GENERAL ACCOUNTING OFFICE

4 CFR Parts 27, 28 and 29

Personnel Appeals Board; Procedural Rules

AGENCY: General Accounting Office, Personnel Appeals Board.

ACTION: Final rule.

SUMMARY: The General Accounting Office Personnel Appeals Board (PAB) has authority with respect to employment practices within the General Accounting Office (GAO or agency), pursuant to the General Accounting Office Personnel Act of 1980. The PAB revises its procedural regulations. The changes are intended to clarify the meaning of some sections, to correct a few provisions affected by changes in law or agency structure, and to refine certain procedures.

DATES: Effective date: January 1, 2004.

FOR FURTHER INFORMATION CONTACT: Beth Don, Executive Director, or Susan Inzeo, Solicitor, 202–512–6137.

SUPPLEMENTARY INFORMATION: The General Accounting Office Personnel Appeals Board is authorized by Congress, pursuant to 31 U.S.C. 751–755, to hear and decide cases brought by GAO employees concerning various personnel matters including adverse or performance-based actions, claims of discrimination, alleged prohibited personnel practices, and labor-management relations. The Board also exercises oversight authority over equal employment opportunity at the agency, and has authority to consider, decide, and order corrective action in labor-management representation matters. The Board's current procedural regulations applicable to GAO appear at 4 CFR parts 27 and 28. The Board is revising these regulations for the purpose of clarifying the meaning of some sections, correcting a few provisions affected by changes in law or agency structure, and streamlining certain procedures. The proposed changes were published for comment in the **Federal Register** at 68 FR 41742, July 15, 2003. The significant changes were summarized and explained in the supplementary information section of the published proposed rules. The Board will not repeat all that explanatory material here.

Comments on Proposed Revisions

The only comments received during the sixty-day comment period were submitted by the Personnel Appeals Board General Counsel. The Board has fully considered these comments and responds as follows.

The General Counsel raised concern regarding the changes to § 27.3 (The General Counsel). The Board's revision deletes the phrase "unless to do so would create a conflict of interest for the General Counsel" following the summary statement of the General Counsel's statutory responsibility, at Board request, to "investigate matters under the jurisdiction of the Board, and otherwise assist the Board in carrying out its functions." The revision more closely tracks the language of the statute and the deleted language is superfluous.

The General Counsel also raised concern about § 28.98(c) (Individual charges in EEO cases; Special rules for adverse and performance-based actions). Specifically, the comment raised the possibility of confusion concerning the provision's applicability to performance-related actions that do not rise to the level of removal. The Board considers that the provision is clear in reference to performance-based removals and actions that rise to the level of adverse actions. Moreover, paragraph (c) of § 28.98 was not proposed for revision at this time.

The General Counsel objected to the reference in the revised § 28.133 (Stay proceedings) that a stay may be requested by the Office of General Counsel rather than the General Counsel. The final version of this provision reflects the Board's acceptance of this comment.

List of Subjects in 4 CFR Parts 27, 28, and 29

Administrative practice and procedures, Equal employment opportunity, Government employees, Labor management relations.

For the reasons stated in the preamble, the General Accounting Office Personnel Appeals Board amends 4 CFR chapter I, subchapter B, parts 27, 28, and 29 as follows:

PART 27—GENERAL ACCOUNTING OFFICE PERSONNEL APPEALS BOARD; ORGANIZATION

■ 1. The authority citation for part 27 continues to read as follows:

Authority: 31 U.S.C. 753.

§ 27.1 [Amended]

■ 2. Amend § 27.1 as follows:

■ a. Remove the words "parts 28 and 29" in the second sentence and add in their place "part 28".

■ b. In the third sentence, remove the word "reconsideration" and add in its place the word "review".

■ 3. Amend § 27.3 by revising the last sentence to read as follows:

§ 27.3 The General Counsel.

* * * The General Counsel, at the request of the Board, shall investigate matters under the jurisdiction of the Board, and otherwise assist the Board in carrying out its functions.

PART 28—GENERAL ACCOUNTING OFFICE PERSONNEL APPEALS BOARD; PROCEDURES APPLICABLE TO CLAIMS CONCERNING EMPLOYMENT PRACTICES AT THE GENERAL ACCOUNTING OFFICE

■ 4. The authority citation continues to read as follows:

Authority: 31 U.S.C. 753.

Subpart A—Purpose, General Definitions, and Jurisdiction

■ 5. Amend § 28.1 by revising paragraphs (a), (b), and the first sentence of paragraph (c) to read as follows:

§ 28.1 Purpose and scope.

(a) The regulations in this part implement the Board's authority with respect to employment practices within the General Accounting Office (GAO), pursuant to the General Accounting Office Personnel Act of 1980 (GAOPA), 31 U.S.C. 751–755.

(b) The purpose of the rules in this part is to establish the procedures to be followed by:

(1) The GAO, in its dealings with the Board:

(2) Employees of the GAO or applicants for employment with the GAO, or groups or organizations claiming to be affected adversely by the operations of the GAO personnel system;

(3) Employees or organizations petitioning for protection of rights or extension of benefits granted to them under subchapters III and IV of Chapter 7 of title 31, United States Code; and

(4) The Board, in carrying out its responsibilities under Subchapters III and IV of chapter 7 of title 31, United States Code.

(c) The scope of the Board's operations encompasses the investigation and adjudication of cases arising under 31 U.S.C. 753. * * *

* * * * *

■ 6. Amend § 28.2 by revising paragraph (a) introductory text, and paragraphs (b)(1) and (b)(3) to read as follows:

§ 28.2 Jurisdiction.

(a) The Board has jurisdiction to hear and decide the following:

* * * * *

(b) * * *

(1) An officer or employee petition involving a removal, suspension for more than 14 days, reduction in grade or pay, or furlough of not more than 30 days;

(2) * * *

(3) The appropriateness of a unit of employees for collective bargaining;

* * * * *

■ 7. Revise § 28.3 to read as follows:

§ 28.3 General definitions.

In this part—

Administrative judge means any individual designated by the Board to preside over a hearing conducted on matters within its jurisdiction. An administrative judge may be a member of the Board, an employee of the Board, or any individual qualified by experience or training to conduct a hearing who is appointed to do so by the Board. When a panel of members or the full Board is hearing a case, the Chair shall designate one of the members to exercise the responsibilities of the administrative judge in the proceedings.

Appeal means a request filed with the full Board for review of an initial decision.

Board means the General Accounting Office Personnel Appeals Board as established by 31 U.S.C. 751 and explained in 4 CFR 27.1.

Charge means any request filed with the PAB Office of General Counsel to investigate any matter within the jurisdiction of the Board, under the provisions of Subchapter IV of chapter 7 of Title 31, United States Code.

Charging Party means any person filing a charge with the PAB Office of General Counsel for investigation.

Clerk of the Board means the Clerk of the Personnel Appeals Board.

Comptroller General means the Comptroller General of the United States.

Days means calendar days.

Director of EEO Oversight means the Personnel Appeals Board Director of EEO Oversight.

Executive Director means the Executive Director of the Personnel Appeals Board.

GAO means the General Accounting Office.

General Counsel means the General Counsel of the Board, as provided for under 31 U.S.C. 752.

Initial Decision means the adjudicatory statement of a case that is issued by an administrative judge who is a member of or appointed by the Board.

Notice of Appeal means a pleading requesting that the full Board review an initial decision.

Person means an employee, an applicant for employment, a former employee, a labor organization or the GAO.

Petition means any request filed with the Board for action to be taken on matters within the jurisdiction of the Board, under the provisions of Subchapter IV of Chapter 7 of title 31, United States Code.

Petitioner means any person filing a petition for Board consideration.

Pleading means a document that initiates a cause of action before the Board, responds to a cause of action, amends a cause of action, responds to an amended cause of action, requests reconsideration of a decision, responds to such a request, requests appellate review by the full Board or responds to such a request.

Request for Reconsideration means a request, filed with the administrative judge who rendered the initial decision, to reconsider that decision in whole or part.

Solicitor means the attorney appointed by the Board to provide advice and assistance to the Board in carrying out its adjudicatory functions and to otherwise provide assistance as directed by the Board.

Workforce Restructuring Action (WRA) means the release of an employee from a job group by separation, demotion, reassignment requiring displacement, or furlough for more than 30 days when the cause of action is lack of work, shortage of funds, insufficient personnel ceiling, reorganization or realignment, an individual's exercise of reemployment or reinstatement rights, correction of skills imbalances, or reduction of high-grade supervisory, or managerial positions.

■ 8. Amend § 28.4 by adding paragraph (d) to read as follows:

§ 28.4 Computation of time.

* * * * *

(d) No written submission shall be accepted by the Clerk of the Board after 4 p.m., Monday through Friday.

Subpart B—Procedures

■ 9. Amend § 28.8 by revising paragraph (a) to read as follows:

§ 28.8 Informal procedural advice.

(a) Persons may seek informal advice on all aspects of the Board's procedures by contacting the Board's Executive Director, Director of EEO Oversight, Solicitor, General Counsel or the Clerk of the Board.

* * * * *

■ 10. Amend § 28.10 by revising the heading and the first sentence of paragraph (a) and paragraph (b)(1) to read as follows:

§ 28.10 Notice of petition rights.

(a) The GAO shall be responsible for ensuring that employees are routinely advised of their rights to petition the Board and that employees who are the object of an adverse or performance-based action are, at the time of the action, adequately advised of their rights to petition the Board. * * *

(b) * * *

(1) Time limits for filing a petition with the Board and the address of the Board;

* * * * *

■ 11. Amend § 28.11 by revising the heading and paragraphs (c), (d)(2) and the last sentence of paragraph (e) to read as follows:

§ 28.11 Filing a charge with the Office of General Counsel.

* * * * *

(c) *How to file.* Charges may be filed with the Office of General Counsel by personal delivery (including commercial carrier) or by mail. The address to be used differs for the two kinds of filing.

(1) A charge may be filed by personal delivery at the Office of General Counsel, Personnel Appeals Board, GAO, Suite 580, Union Center Plaza II, 820 First Street, NE., Washington, DC 20002.

(2) A charge may be filed by mail addressed to the Office of General Counsel, Personnel Appeals Board, Suite 580, Union Center Plaza II, 441 G Street, NW., Washington; DC 20548 *or* Office of General Counsel, Personnel Appeals Board, GAO, Suite 580, Union Center Plaza II, 820 First Street, NE., Washington, DC 20002. When filed by mail, the postmark shall be the date of filing for all submissions to the Office of General Counsel.

(d) * * *

(2) The names and titles of persons, if any, responsible for actions the charging party wishes to have the Office of General Counsel investigate;

* * * * *

(e) * * * When attorney fees are the only issue raised in a charge to the Office of General Counsel, the General Counsel shall transmit the charge to the Board for processing under §§ 28.18 through 28.88 as a petition.

■ 12. Amend § 28.12 as follows:

■ a. Revise paragraphs (c), (d), and (g).

■ b. Add new paragraphs (h) and (i).

The additions and revisions read as follows:

§ 28.12 General Counsel procedures.

* * * * *

(c) Following the investigation, the Office of General Counsel shall provide the charging party with a Right to Petition Letter. Accompanying this letter will be a statement of the General Counsel advising the charging party of the results of the investigation. This statement of the General Counsel is not subject to discovery and may not be introduced into evidence before the Board.

(d)(1) If the General Counsel determines that there are reasonable grounds to believe that the charging party's rights under subchapters III and IV of chapter 7 of title 31, United States Code, have been violated, then the General Counsel shall represent the charging party unless the charging party elects not to be represented by the Office of General Counsel.

(2) If, following the investigation, the General Counsel determines that there are not reasonable grounds to believe that the charging party's rights under subchapters III and IV of chapter 7 of title 31, United States Code, have been violated, then the General Counsel shall not represent the charging party. The charging party may nonetheless file a petition with the Board in accordance with § 28.18.

(3) Any charging party may represent him- or herself or obtain other representation.

* * * * *

(g) If 180 days have elapsed since the filing of the charge, and the Office of General Counsel has not completed the investigation and issued a Right to Petition Letter, the charging party may bring his or her case directly to the Board by filing a petition in accordance with § 28.18. If a charging party exercises this option to file a petition with the Board without waiting for the completion of the investigation, the Office of General Counsel shall not represent the charging party in proceedings before the Board. The charging party may represent him- or herself or obtain other representation. The Office of General Counsel shall close the investigation of the charge upon being notified by the Clerk of the Board that the charging party has filed a petition with the Board under this paragraph (g).

(h) Office of General Counsel settlement: Where the General Counsel under paragraph (a) of this section transmits a settlement which has been agreed to by the parties, the settlement agreement shall be the final disposition of the case.

(i) Confidentiality: (1) It is the Office of General Counsel's policy to protect against the disclosure of documents obtained during the investigation, as a means of ensuring that Office's continuing ability to obtain all relevant information. However, if the Office of General Counsel files a petition with the Personnel Appeals Board on behalf of a charging party pursuant to this section, that Office may disclose the identity of witnesses and a synopsis of their expected testimony. Documents to be offered into evidence at the hearing may be disclosed as required by the prehearing disclosure requirements of § 28.56.

(2) Unless so ordered by a court of competent jurisdiction, no employee of the Personnel Appeals Board Office of General Counsel shall produce or disclose any information or records acquired as part of the performance of his/her official duties or because of his/her official status. Before producing or disclosing such information or records pursuant to court order, an employee shall notify the General Counsel.

■ 13. Revise § 28.13 to read as follows:

§ 28.13 Special procedure for Workforce Restructuring Action.

In the event of a Workforce Restructuring Action (WRA) resulting in an individual's separation from employment, an aggrieved employee may choose to file a petition directly with the Personnel Appeals Board, without first filing the charge with the PAB's Office of General Counsel pursuant to § 28.11. Pursuant to § 28.98, individuals raising discrimination issues in connection with a WRA action need not file a complaint with GAO's Office of Opportunity and Inclusiveness before pursuing a WRA challenge alleging discrimination, either by filing directly with the PAB or by filing a charge with the Board's Office of General Counsel.

Hearing Procedures for Cases Before the Board—General

§ 28.15 [Amended]

■ 14. Amend § 28.15 by removing the word "appeals" and adding in its place the word "petitions" in the first sentence.

■ 15. Amend § 28.17 by revising the heading, paragraphs (a)(2) and (a)(3), paragraphs (b)(1) and (b)(2) and paragraphs (c)(1), (c)(2), and (c)(3) to read as follows:

§ 28.17 Internal petitions of Board employees.

(a) * * *

(2) When an employee of the Board believes that he or she has been denied his or her right to equal employment opportunity, the employee shall bring this matter to the attention of the Board's Executive Director or General Counsel. If the matter cannot be resolved within 10 days, the Executive Director shall notify the employee of his or her right to file an EEO complaint. The employee may consult with either the Board's Solicitor or General Counsel and seek advice with regard to procedural matters concerning the filing of an EEO charge. The employee shall have 20 days from service of this notice to file an EEO charge with the PAB Office of General Counsel. Upon receipt of an EEO charge, the General Counsel shall arrange with the Executive Director for processing in accordance with paragraph (b) of this section. If the EEO allegations involve challenge to a WRA-based separation, the employee may choose to expedite the procedures by filing a petition directly with the Board.

(3) When an employee of the Board wishes to raise any other issue that would be subject to the Board's jurisdiction, the employee shall file a charge with the General Counsel and the General Counsel shall arrange with the Executive Director for processing in accordance with paragraph (b) of this section. If the challenged action is a WRA-based separation from employment, the employee may choose to expedite the procedures by filing a petition directly with the Board.

(b) * * *

(1) If agreed to by the Office of Special Counsel or the EEOC, as appropriate,

that body will appoint and detail a person from among its attorneys to perform the functions of the General Counsel.

(2) If the Special Counsel or the EEOC does not agree to such a procedure, an appointment of an attorney will be sought from the Federal Mediation and Conciliation Service (FMCS).

(3) * * *

(c) * * *

(1) If agreed to by the MSPB or the EEOC, as appropriate, that body will appoint and detail one of its administrative law judges (ALJ) or administrative judges (AJ) to perform the Board's adjudicative functions.

(2) If neither the MSPB nor the EEOC agrees to such a procedure, an appointment of an arbitrator will be sought from the FMCS.

(3) In any event, whoever is so appointed shall possess all of the powers and authority possessed by the Board in employee cases. The decision of the administrative law judge, administrative judge or arbitrator shall be a final decision of the Board. The procedure for judicial review of the decision shall be the same as that described in § 28.90.

* * * * *

■ 16. Amend § 28.18 by revising the heading and paragraphs (a), (b), (c), (d) introductory text, (e) and (f) to read as follows:

§ 28.18 Filing a petition with the Board.

(a) *Who may file.* Any person who is claiming to be affected adversely by GAO action or inaction that is within the Board's jurisdiction under subchapter IV of chapter 7 of title 31, United States Code, or who is alleging that GAO or a labor organization engaged or is engaging in an unfair labor practice, may file a petition if one of the following is met:

(1) The person has received a Right to Petition Letter from the Board's Office of General Counsel; or

(2) At least 180 days have elapsed from the filing of the charge with the Board's Office of General Counsel and that Office has not issued a Right to Petition Letter; or

(3) The person was separated due to a Workforce Restructuring Action and chooses to file a petition directly with the Board, without first filing with the Board's Office of General Counsel, as provided in § 28.13.

(b) *When to file.* (1) Petitions filed pursuant to paragraph (a)(1) of this section must be filed within 30 days after receipt by the charging party of the Right to Petition Letter from the Board's Office of General Counsel.

(2) Petitions filed pursuant to paragraph (a)(2) of this section may be filed at any time after 180 days have elapsed from the filing of the charge with the Board's Office of General Counsel, provided that that Office has not issued a Right to Petition Letter concerning the charge.

(3) Petitions filed pursuant to paragraph (a)(3) of this section must be filed within 30 days after the effective date of the separation due to a Workforce Restructuring Action.

(c) *How to file.* (1) A petition may be filed by hand delivery at the office of the Board, Suite 560, Union Center Plaza II, 820 First Street NE., Washington, DC 20002. It must be received by 4 p.m., Monday through Friday, on the date that it is filed.

(2) A petition may be filed by mail addressed to the Personnel Appeals Board, GAO, Suite 560, Union Center Plaza II, 441 G Street NW., Washington, DC 20548 or Personnel Appeals Board, GAO, Suite 560, Union Center Plaza II, 820 First Street NE., Washington, DC 20002. When filed by mail, the postmark shall be the date of filing for all submissions to the Board.

(d) *What to file.* The petition shall include the following information:

* * * * *

(e) *Failure to raise a claim or defense.* Failure to raise a claim or defense in the petition shall not bar its submission later unless to do so would prejudice the rights of the other parties or unduly delay the proceedings.

(f) *Non-EEO class actions.* One or more persons may file a petition as representatives of a class in any matter within the Board's jurisdiction. For the purpose of determining whether it is appropriate to treat a petition as a class action, the administrative judge will be guided, but not controlled, by the applicable provisions of the Federal Rules of Civil Procedure. See § 28.97 for EEO class actions.

■ 17. Revise § 28.19(a) to read as follows:

§ 28.19 Content of response by charged party.

(a) Within 20 days after service of a copy of a petition, the GAO or other charged party shall file a response containing at least the following:

(1) A statement of the position of the charged party on each allegation set forth therein, including admissions, denials or explanations. If the petition contains numbered paragraphs, the responses should reference the paragraph numbers. If the petition does not contain numbered paragraphs, the responses should quote or otherwise clearly identify the specific allegations of the petition.

(2) Any other defenses to the petition.

(3) Designation of, and signature by, the representative authorized to act for the charged party in the matter.

* * * * *

■ 18. Amend § 28.20 by revising the first and last sentences of paragraph (b)(1) and the first two sentences of paragraph (b)(2) to read as follows:

§ 28.20 Number of pleadings, service and response.

* * * * *

(b) *Service.* (1) The Board will serve copies of a petition upon the parties to the proceeding by mail and/or by facsimile. * * * The Board will not serve copies of any pleadings, motions, or other submissions by the parties after the initial petition.

(2) The parties shall serve on each other one copy of all pleadings other than the initial petition. Service shall be made by mailing, by facsimile or by delivering personally a copy of the pleading to each party on the service list previously provided by the Board.

* * *

* * * * *

■ 19. Revise § 28.21 to read as follows:

§ 28.21 Amendments to petitions and motions practice.

(a) *Amendments to petitions.* The Board, at its discretion, may allow amendments to a petition as long as all persons who are parties to the proceeding have adequate notice to prepare for the new allegations and if to do so would not prejudice the rights of the other parties or unduly delay the proceedings.

(b) *Motions practice.* (1) When an action is before an administrative judge, motions of the parties shall be filed with the Clerk of the Board and shall be in writing except for oral motions made during the hearing. An original and 3 copies of written motions shall be filed with the Clerk of the Board. An original and 3 copies of responses in opposition to written motions must be filed with the Clerk of the Board within 20 days of service of the motion unless the administrative judge requires a shorter time.

(2) When an action is before the full Board, an original and 7 copies of any motion shall be filed with the Clerk of the Board. An original and 7 copies of any responses in opposition to motions must be filed with the Clerk of the Board within 20 days of service of the motion unless the Board requires a shorter time.

(3) A party filing a motion for extension of time, a motion for postponement of a hearing, or any other procedural motion must first contact the other party to determine whether there is any objection to the motion and must state in the motion whether the other party has any objection.

(4) No motions, responses or other submissions will be accepted for filing by the Clerk of the Board after 4 p.m., Monday through Friday. All written submissions shall be served simultaneously upon the other parties to the proceeding. A certificate of service must be attached showing service by mail, facsimile or personal delivery of the submission to the other parties. Further submissions by either party may be filed only with the approval of the administrative judge or full Board.

(5) All written motions and responses thereto shall include a proposed order, where applicable.

(6) Motions for extension of time will be granted only upon a showing of good cause.

(7) *Oral argument.* The administrative judge may allow oral argument on the motion at his or her discretion.

(c) *Motions for summary judgment.* (1) Either party may move for summary judgment by filing a written motion no later than 14 days prior to the commencement of the hearing or as otherwise ordered by the administrative judge.

(2) Motions for summary judgment must be accompanied by a statement of material facts for which there is no genuine dispute and a statement of reasons in support of the motion. The motion may be supported by documents, affidavits, or other evidence.

(3) Summary judgment will be granted if the pleadings, depositions, answers to interrogatories, admissions, affidavits, if any, and other documents show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.

(4) A party moving for summary judgment must make a showing sufficient to establish the existence of each element essential to that party's cause of action and for which that party bears the burden of proof.

(5) When a party moves for summary judgment, the Board will evaluate the motion on its own merits, resolving all reasonable inferences against the moving party.

§ 28.22 [Amended]

■ 20. Amend § 28.22 by removing the words "File recommended or" and adding the word "Issue" in their place in paragraph (b)(12).

■ 21. Amend § 28.24 as follows:

■ a. Revise paragraph (a) introductory text and paragraph (a)(2).

■ b. In paragraph (b), remove the words "an appeal" and add the words "a petition" in their place.

The revision reads as follows:

§ 28.24 Sanctions.

* * * * *

(a) *Failure to comply with an order or subpoena.* When a party fails to comply with an order or subpoena (including an order for the taking of a deposition, for the production of evidence within the party's control, for an admission, or for production of witnesses), the administrative judge may:

(1) * * *

(2) Prohibit the party failing to comply with such order or subpoena from introducing, or otherwise relying upon, evidence relating to the information sought.

* * * * *

Parties, Practitioners and Witnesses

■ 22. Revise the first two sentences of paragraph (a) of § 28.25 to read as follows:

§ 28.25 Representation.

(a) All parties to a petition may be represented in any matter relating to the petition. The parties shall designate their representatives, if any, in the petition or responsive pleading. * * *

* * * * *

■ 23. Amend § 28.27 by revising the first two sentences of paragraph (c) to read as follows:

§ 28.27 Intervenors.

* * * * *

(c) A motion for permission to intervene will be granted where a determination is made by the administrative judge or the Board, where the case is being heard en banc, that the requestor will be affected directly by the outcome of the proceeding. Denial of a motion for intervention may be appealed to the full Board. * * *

* * * * *

§ 28.28 [Amended]

■ 24. Amend § 28.28 by removing the word "appeal" and adding the word "petition" in its place in paragraph (a).

■ 25. Amend § 28.29 by revising paragraph (a)(2) to read as follows:

§ 28.29 Consolidation or joinder.

(a) * * *

(2) Joinder may occur where one person has two or more petitions pending and they are united for consideration. For example, a single petitioner who has one petition pending challenging a 30-day suspension and another petition pending challenging a subsequent dismissal might have the cases joined.

* * * * *

Discovery

§ 28.41 [Amended]

■ 26. Amend § 28.41(b) by removing the word "appeal" in the first sentence and add in its place the word "review".

■ 27. Amend § 28.42 by revising the first sentence of paragraph (d)(5) to read as follows:

§ 28.42 Discovery procedures and protective orders.

* * * * *

(d) * * *

(5) Discovery shall be completed by the time designated by the administrative judge, but no later than 65 days after the service of the notice of filing of a petition. * * *

Subpoenas

■ 28. Amend § 28.46 as follows:

■ a. Revise paragraph (b).

■ b. Remove paragraph (d).

The revision read as follows:

§ 28.46 Motion for subpoena.

* * * * *

(b) *Motion.* (1) A motion for the issuance of a subpoena requiring the attendance and testimony of witnesses or the production of documents or other evidence under § 28.46(a) shall be submitted to the administrative judge at least 15 days in advance of the date scheduled for the commencement of the hearing.

(2) If the subpoena is sought as part of the discovery process, the motion shall be submitted to the administrative judge at least 15 days in advance of the date set for the attendance of the witness at a deposition or the production of documents.

* * * * *

Hearings

■ 29. Amend § 28.56 by adding a second sentence in paragraph (f) to read as follows:

§ 28.56 Hearing procedures, conduct and copies of exhibits.

* * * * *

(f) * * * Multiple exhibits shall be indexed and tabbed.

* * * * *

■ 30. Amend § 28.57 by revising paragraph (b) to read as follows:

§ 28.57 Public hearings.

* * * * *

(b) At the hearing, the petitioner, the petitioner's representative, GAO's legal representative, and a GAO management

representative, who is not expected to testify, each have a right to be present. The Agency management representative shall be designated prior to the hearing.

■ 31. Amend § 28.61 as follows:

■ a. In paragraph (b) introductory text, remove the word "may" and add in its place the word "shall".

■ b. Revise the definition of *harmful error* in paragraph (d).

The revision reads as follows:

§ 28.61 Burden and degree of proof.

* * * * *

(d) * * *

Harmful error means error by the agency in the application of its procedures which, in the absence or cure of the error, might have caused the agency to reach a conclusion different from the one reached.

* * * * *

■ 32. Redesignate § 28.62 as § 28.63, and add a new § 28.62 to read as follows:

§ 28.62 Decision on the record.

(a) The parties may agree to forego a hearing and request that the matter be decided by the presiding administrative judge based upon the record submitted.

(b) If the parties agree to forego a hearing under this subpart, the record will close on the date that the administrative judge sets as the final date for the receipt or filing of submissions of the parties. Once the record closes, no additional evidence or argument will be accepted unless the party seeking to submit it demonstrates that the evidence was not available before the record closed.

(c) In matters submitted for decision on the record under this section, the parties bear the same burdens of proof set forth in § 28.61.

(d) A decision obtained under this section is a decision on the merits of the case and is appealable as if the matter had been adjudicated in an evidentiary hearing.

Evidence

■ 33. Revise § 28.66 to read as follows:

§ 28.66 Admissibility.

Evidence or testimony may be excluded from consideration by the administrative judge if it is irrelevant, immaterial, unduly repetitious or protected by privilege. The administrative judge is not bound by formal evidentiary rules but may rely on the Federal Rules of Evidence for guidance.

■ 34. Revise § 28.69 to read as follows:

§ 28.69 Judicial notice.

The administrative judge on his or her own motion or on motion of a party, may take judicial notice of a fact which is not subject to reasonable dispute because it is either: a matter of common knowledge; or a matter capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned. Judicial notice taken of any fact satisfies a party's burden of proving the fact noticed.

Board Decisions, Attorney's Fees and Judicial Review

§ 28.86 [Removed and reserved]

■ 35. Remove and reserve § 28.86.

■ 36. Amend § 28.87 by revising paragraphs (a) and (b) and paragraph (g) introductory text, to read as follows:

§ 28.87 Board procedures; initial decisions.

(a) When a case is heard in the first instance by a single Board member, a panel of members, or a non-member appointed by the Board, an initial decision shall be issued by that member, panel or individual and served upon the parties.

(b) An aggrieved party may seek reconsideration of or may appeal the initial decision in the following manner:

(1) Within 10 days of the service of the initial decision, such a party may file and serve a request for reconsideration with the administrative judge or panel rendering that decision. Filing of the request for reconsideration shall toll the commencement of the 15 day period for filing a notice of appeal with the full Board, pending disposition of the request for reconsideration by the administrative judge or panel. The administrative judge or panel shall determine if a response is required, and if so, will fix by order the time for the filing of the response. A motion for reconsideration will not be granted without providing an opportunity for response.

(2) Within 15 days of the service of the initial decision, such a party may appeal to the full Board by filing and serving a notice of appeal to the Board.

* * * * *

(g) In conducting its examination of the initial decision, the Board may substitute its own findings of fact and conclusions of law, but the Board generally will defer to demeanor-based credibility determinations made in the initial decision. In determining whether some action other than affirmance of the initial decision is required, the Board will also consider whether:

* * * * *

■ 37. Amend § 28.88 as follows:

■ a. Revise paragraphs (a), (b), and (d).

■ b. Add paragraphs (e) and (f).

The revisions and additions read as follows:

§ 28.88 Board procedures; enforcement.

(a) All decisions and orders of the Board shall be complied with promptly. Whenever a Board decision or order requires a person or party to take any action, the Board may require such person or party to provide the Board and all parties with a compliance report.

(b) When the Board does not receive a report of compliance in accordance with paragraph (a) of this section, the Solicitor shall make inquiries to determine the status of the compliance report and shall report upon the results of the inquiry to the Board.

* * * * *

(d) Upon receipt of a non-compliance report from its Solicitor or of a petition for enforcement of a final decision, the Board may issue a notice to any person to show cause why there was non-compliance. Apart from remedies available to the parties, the Board may seek judicial enforcement of a decision or order issued pursuant to a show cause proceeding.

(e) If the parties enter into a settlement agreement that has been reviewed and approved by the administrative judge, the Board retains jurisdiction to enforce the terms of such settlement agreement.

(f) Any party to a settlement agreement over which the Board retains jurisdiction may petition the Board for enforcement of the terms of such settlement agreement.

■ 38. Revise § 28.89 to read as follows:

§ 28.89 Attorney's fees and costs.

Within 20 days after service of a final decision by the Board, or within 20 days after the date on which an initial decision becomes final pursuant to § 28.87(d), the petitioner, if he or she is the prevailing party, may submit a request for the award of reasonable attorney's fees and costs. GAO may file a response within 20 days after service of the request. Motions for attorney's fees shall be filed in accordance with § 28.21 of these regulations. Rulings on attorney's fees and costs shall be consistent with the standards set forth at 5 U.S.C. 7701(g). The decision of the administrative judge concerning attorney's fees and costs shall be subject to review and shall become final according to the provisions of § 28.87.

Subpart D—Special Procedures; Equal Employment Opportunity (EEO) Cases

■ 39. Amend § 28.95 by revising paragraphs (a) and (d) to read as follows:

§ 28.95 Purpose and scope.

* * * * *

(a) Section 717 of the Civil Rights Act of 1964, as amended (42 U.S.C. 2000e-16), prohibiting discrimination based on race, color, religion, sex or national origin;

* * * * *

(d) Title I of the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 *et seq.*) and sections 501 and 505 of the Rehabilitation Act of 1973 (29 U.S.C. 791, 794a) prohibiting discrimination on the basis of disability; or

* * * * *

■ 40. Amend § 28.97 by revising paragraph (b) introductory text, the first sentence of paragraph (c), paragraphs (d), and (e) to read as follows:

§ 28.97 Class actions in EEO cases.

* * * * *

(b) An appeal from GAO's disposition of any EEO class complaint may be submitted to the Board at the following times:

* * * * *

(c) In EEO class actions, employees shall not file charges with the Board's Office of General Counsel and that Office shall not undertake an independent investigation of a class complaint that has been filed with GAO.

* * *

(d) An appeal of a GAO disposition of an EEO class complaint shall be decided by the Board based upon a review of the administrative record, including any recommended findings and conclusions, developed in the GAO class complaint process. In such cases, the Board will employ the same standards of review set forth in § 28.87.

(e) The parties to an EEO class complaint do not have a right to a de novo evidentiary hearing before the Board. However, either the class representative or GAO may file a motion requesting an evidentiary hearing, rather than having the Board decide the case upon review of the administrative record already developed by GAO. The Board, in its discretion, may grant such motion or, upon its own review of the administrative record, may direct that a new hearing be conducted. If the Board orders a new evidentiary hearing, the class representative shall file a petition on behalf of the class and the case shall be adjudicated before an administrative judge of this Board pursuant to the procedures applicable to an individual EEO complaint processed under § 28.98 of these regulations. For the purpose of determining whether it is appropriate to treat a petition as a class action, the administrative judge will be guided, but not controlled, by the applicable provisions of the Federal Rules of Civil Procedure.

■ 41. Amend § 28.98 by revising paragraphs (d) and (e)(1) to read as follows:

§ 28.98 Individual charges in EEO cases.

* * * * *

(d) *Special rules for WRA based actions.* An individual alleging discrimination issues in connection with a WRA-based separation may follow the procedures outlined above in paragraph (c) of this section for adverse and performance based actions, or may choose instead a third option. In accordance with the provisions of § 28.13, such an individual may challenge that action by filing directly with the PAB, thus bypassing both the Office of Opportunity and Inclusiveness and the Board's Office of General Counsel.

(e)(1) The charging party shall file the charge with the Board's Office of General Counsel in accordance with § 28.11. That Office shall investigate the charge in accordance with § 28.12.

* * * * *

§ 28.99 [Amended]

■ 42. Amend § 28.99 as follows:

■ a. Remove "for review" in the heading.

■ b. In paragraph (b)(1), add "Agency" after "Provision for."

■ 43. Revise § 28.101 to read as follows:

§ 28.101 Termination of Board proceedings when suit is filed in Federal District Court.

Any proceeding before the Board shall be terminated when an employee or applicant who is alleging violation of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000e–16, Title I of the Americans with Disabilities Act of 1990, 42 U.S.C. 12101 *et seq.*, the Age Discrimination in Employment Act, 29 U.S.C. 633a, or the Rehabilitation Act, 29 U.S.C. 791, files suit in Federal District Court on the same cause of action pending before the Personnel Appeals Board.

■ 44. Amend § 28.112 by revising paragraph (a)(3) to read as follows:

§ 28.112 Who may file petitions.

(a) * * *

(3) The GAO if it has a good faith reason to doubt that a majority of employees in the bargaining unit wish to be represented by the labor organization which is currently the exclusive representative of those employees;

* * * * *

■ 45. Amend § 28.113 by revising paragraph (a)(7), the second sentence of paragraph (b), and the first sentence of paragraph (c) to read as follows:

§ 28.113 Contents of representation petitions.

(a) * * *

(7) Membership cards, dues records, or signed statements by employees indicating their desire to support the petition of the labor organization, or similar evidence acceptable to the Board, showing that at least 30 percent of the employees in the proposed unit support the representation petition.

(b) * * * Additionally, a petition under § 28.112(a)(2) shall include evidence satisfactory to the Board that at least 30 percent of the employees in the unit support the petition to determine whether the employees wish to continue to be represented by the labor organization currently having bargaining rights.

(c) The contents of petitions filed under § 28.112(a)(3) shall conform to those provided in petitions under paragraph (a) of this section except that the information required by paragraphs (a)(4) and (a)(7) of this section need not be supplied. * * *

* * * * *

Subpart F—Special Procedures; Unfair Labor Practices

§ 28.121 [Amended]

■ 46. Amend § 28.121(c) as follows:

■ a. Remove "for review" after the word "petition".

■ b. Remove the term "14b" and add in its place the term "15e".

■ c. Add the words "Office of" before the phrase "General Counsel".

§ 28.122 [Amended]

■ 47. Amend § 28.122 as follows:

■ a. Remove ";compelling need" from the heading.

■ b. In paragraph (e) remove "§§ 28.86–28.87" and in its place add "§ 28.87".

■ 48. Amend § 28.123 as follows:

■ a. Revise paragraph (a)(4).

■ b. In paragraph (c), remove the words "Labor/Management Relations" and add the words "Employment Standards" in their place.

The revision reads as follows:

§ 28.123 Standards of conduct for labor organizations.

(a) * * *

(4) Fiscal integrity.

* * * * *

Subpart G—Corrective Action, Disciplinary and Stay Proceedings

§ 28.131 [Amended]

■ 49. Amend paragraph (d) of § 28.131 by removing the words "for review" after

"petition" in both sentences, and adding the words "Board's Office of" before the phrase "General Counsel".

§ 28.132 [Amended]

■ 50. Amend § 28.132 by removing the first sentence in paragraph (e).

■ 51. Amend § 28.133 by revising paragraphs (a), (b), (c), (d), and (e) to read as follows:

§ 28.133 Stay proceedings.

(a) Prior to the effective date of any proposed personnel action, the Board's General Counsel may request, ex parte, the issuance of an initial stay of the proposed personnel action for a period not to exceed 30 days if the General Counsel believes that the proposed personnel action arises out of a prohibited personnel practice. The request shall be in writing and shall specify the nature of the action to be stayed and the basis for the General Counsel's belief. The Board's Office of General Counsel shall serve a copy of the request on the GAO. Within three business days of its filing, the request shall be granted by the Board member designated by the Board Chair to entertain the request unless that Board member determines that the request either:

(1) Fails to satisfy the requirements of this paragraph or

(2) On its face, conclusively establishes that the proposed personnel action did not arise out of an alleged prohibited personnel practice as specified by the General Counsel.

(b) The Board's General Counsel may request the issuance of either:

(1) Further temporary stays for the purpose of allowing additional time to pursue its investigation or

(2) A permanent stay for the purpose of staying the proposed personnel action until a final decision is rendered.

(c) Requests for stays under paragraph (b) of this section shall be received by both the Board and the GAO no less than 10 days before the expiration of any stay then in effect. Any response from GAO to the request shall be received by both the Board and the Board's Office of General Counsel no less than three days before the expiration of any stay then in effect. Any request for stay under this paragraph shall be decided by the Board member who issued the prior stay under paragraph (a) of this section, unless the Board Chair determines that it should be decided by the Board en banc. The Board member, or Board en banc, may require further briefing, oral argument, submission of affidavits or other documentary evidence, or may conduct an evidentiary hearing before rendering a decision. Any stay then in effect may be extended, sua sponte, for a period not to exceed 30 days to enable the Board member, or Board en banc, a reasonable opportunity to render a decision.

(d) A temporary stay under paragraph (b)(1) of this section may be issued if the Board member, or Board en banc, determines that under all of the circumstances the interests of justice would be served by providing more time for the Board's Office of General Counsel to pursue the investigation. However, the duration of any single temporary stay shall not exceed the amount of time reasonably necessary to acquire sufficient information to support a request for a permanent stay in the exercise of a high degree of diligence and, in no event, shall any single temporary stay exceed 60 days except as provided under paragraph (c) of this section for the purpose of allowing time to render a decision.

(e) In determining whether a permanent stay under paragraph (b)(2) of this section should be issued, the Board member, or Board en banc, shall:

(1) Assess the evidence adduced by each side as to whether the proposed personnel action arises out of an alleged prohibited personnel practice as specified by the Board's General Counsel;

(2) Assess the nature and gravity of any harm that could inure to each side if the request for permanent stay is either granted or denied; and

(3) Balance the assessments conducted under paragraphs (e)(1) and (2) of this section.

* * * * *

Subpart I—Ex Parte Communications

■ 52. Amend § 28.146 by revising the second sentence of paragraph (a) to read as follows:

§ 28.146 Explanation and definitions.

(a) * * * The only ex parte communications that are prohibited are those that involve the merits of the case or those that violate other rules requiring submissions to be in writing. * * *

* * * * *

■ 53. Add subpart K, consisting of §§ 28.160 and 28.161 to read as follows:

Subpart K—Access to Records

Sec.

28.160 Request for records.

28.161 Denial of access to information—Appeals.

§ 28.160 Request for records.

(a) Individuals may request access to records pertaining to them that are maintained as described in 4 CFR part 83, by addressing an inquiry to the PAB General Counsel either by mail or by appearing in person at the Personnel Appeals Board Office of General Counsel, 820 First Street, NE., Suite 580, Washington, DC 20002, during business hours on a regular business day. Requests in writing should be clearly and prominently marked "Privacy Act Request." Requests for copies of records shall be subject to duplication fees set forth in 4 CFR 83.17.

(b) Individuals making a request in person shall be required to present satisfactory proof of identity, preferably a document bearing the individual's photograph. Requests by mail or submitted other than in person should contain sufficient information to enable the General Counsel to determine with reasonable certainty that the requester and the subject of the record are one and the same. To assist in this process, individuals should submit their names and addresses, dates and places of birth, social security number, and any other known identifying information such as an agency file number or identification number and a description of the circumstances under which the records were compiled.

(c) *Exemptions from disclosure.* The Personnel Appeals Board General Counsel and the Personnel Appeals Board, in deciding what records are exempt from disclosure, will follow the policies set forth in 4 CFR part 83.

§ 28.161 Denial of access to information—Appeals.

(a) If a request for access to information under § 28.160 is denied, the General Counsel shall give the requester the following information:

(1) The General Counsel's name and business mailing address;

(2) The date of the denial;

(3) The reasons for the denial, including citation of appropriate authorities; and

(4) The individual's right to appeal the denial as set forth in paragraphs (b) and (c) of this section.

(b) Any individual whose request for access to records of the PAB General Counsel has been denied in whole or part by the General Counsel may, within 30 days of receipt of the denial, challenge that decision by filing a written request for review of the decision with the Personnel Appeals Board, 820 First Street, NE., Suite 560, Washington, DC 20002.

(c) The appeal shall describe:

(1) The initial request made by the individual for access to records;

(2) The General Counsel's decision denying the request; and

(3) The reasons why that decision should be modified by the Board.

(d) The Board, en banc, may in its discretion render a decision based on the record, may request oral argument, or may conduct an evidentiary hearing.

PART 29—[REMOVED AND RESERVED]

■ 54. Remove and reserve part 29.

Anne M. Wagner,

Chair, Personnel Appeals Board, U.S. General Accounting Office.

[FR Doc. 03–30698 Filed 12–11–03; 8:45 am]

BILLING CODE 1610–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2003–16505; Airspace Docket No. 03–ACE–89]

Modification of Class E Airspace; Cherokee, IA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This action modifies the Class E airspace areas at Cherokee, IA. A review of controlled airspace for Cherokee Municipal Airport indicates it does not comply with the criteria for 700 feet Above Ground Level (AGL) airspace required for diverse departures as specified in FAA Order 7400.2E, Procedures for Handling Airspace Matters. The review also revealed a discrepancy in the airport reference point (ARP) for Cherokee Municipal Airport. The ARP is used in the legal description for the Cherokee, IA Class E airspace area. This action enlarges the Class E airspace at Cherokee, IA to conform to the criteria in FAA Order 7400.2E. It also modifies the airspace area by adapting it to the revised Cherokee Municipal Airport APR and incorporates the revised ARP into the Class E airspace legal description.

DATES: This direct final rule is effective on 0901 UTC, April 15, 2004. Comments for inclusion in the Rules Docket must be received on or before January 23, 2004.

ADDRESSES: Send comments on this proposal to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2003–16505/Airspace Docket No. 03–ACE–89, at the beginning of your comments. You may also submit comments on the Internet at *http://dms.dot.gov*. You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Docket Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C, DOT Municipal Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (816) 329–2525.

SUPPLEMENTARY INFORMATION: This amendment to 14 CFR 71 modifies the Class E airspace area extending upward from 700 feet above the surface of the earth at Cherokee, IA. An examination of controlled airspace for Cherokee Municipal Airport reveals it does not meet the criteria for 700 AGL airspace required for diverse departures as specified in FAA Order 7400.2E. The criteria in FAA Order 7400.2E for an aircraft to reach 1200 feet AGL is based on a standard climb gradient of 200 feet per mile plus the distance from the ARP to the end of the outermost runway. Any fractional part of a mile is converted to the next higher tenth of a mile. The examination also revealed a discrepancy in the Cherokee Municipal Airport ARP. This amendment enlarges the radius of the controlled airspace area around Cherokee Municipal Airport, corrects the discrepancy in the Cherokee Municipal Airport ARP and beings the legal description into compliance with FAA Order 7400.2E. This area will be depicted on appropriate aeronautical charts. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9L, dated September 2, 2003, and effective September 16, 2003, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and, therefore, is issuing it as a direct final rule. Previous actions of this nature have not been controversial and have not resulted in adverse comments or objection. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will published a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

Interested parties are invited to participate in this rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed stamped postcard on which the following statement is made: "Comments to Docket No. FAA–2003–16505/Airspace Docket No. 03–ACE–89." The postcard will be date/time stamped and returned to the commenter.

Agency Findings

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

The FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments. For the reasons discussed in the preamble, I certify that this regulation (1) is not a "significant

regulatory action" under Executive Order 12866; (2) is not a "significant rule" under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

■ Accordingly, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

■ 1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9L, dated September 2, 2003, and effective September 16, 2003, is amended as follows:

* * * * *

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ACE IA E5 Cherokee, IA

Cherokee Municipal Airport, IA
(Lat. 42°43'54" N., long. 95°33'21" W.)
Pilot Rock NDB
(Lat. 42°43'56" N., long. 95°33'11" W.)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of Cherokee Municipal Airport and within 2.6 miles each side of the 185° bearing from the Pilot Rock NDB extending from the 6.4-mile radius to 7.4 miles south of the airport.

* * * * *

Issued in Kansas City, MO, on November 28, 2003.

Paul J. Sheridan,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 03–30740 Filed 12–11–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 30399; Amdt. No. 3085]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: This rule is effective December 12, 2003. The compliance date for each SIAP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of December 12, 2003.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which the affected airport is located;

3. The Flight Inspection Area Office which originated the SIAP; or

4. The Office of Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

For Purchase—Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Donald P. Pate, Flight Procedure Standards Branch (AMCAFS–420), Flight Technologies and Programs Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd. Oklahoma City, OK 73169 (Mail Address: P.O. Box 25082 Oklahoma City, OK 73125) telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation Regulations (FAR). The applicable FAA Forms are identified as FAA Forms 8260–3, 8260–4, and 8260–5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

The Rule

This amendment to part 97 is effective upon publication of each separate SIAP as contained in the transmittal. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (NFDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require making them effective in less than 30 days. For the remaining SIAPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these SIAPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air Traffic Control, Airports, Incorporation by reference, and Navigation (Air).

Issued in Washington, DC, on December 5, 2003.

James J. Ballough,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

■ 1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44701, 44719, 44721–44722.

■ 2. Part 97 is amended to read as follows:

** * * Effective December 25, 2003*

Orlando, FL, Orlando Intl, ILS OR LOC Rwy 35L, Amdt 5, ILS RWY 35L (Cat II/III), Amdt 5
Orlando, FL, Orlando Intl, ILS OR LOC Rwy 17R, Amdt 4, ILS Rwy 17R (Cat II), Amdt 4
Orlando, FL, Orlando Intl, ILS OR LOC Rwy 35R, Orig, ILS Rwy 35R (Cat II), Orig
Orlando, FL, Orlando Intl, ILS OR LOC Rwy 17L, Orig, ILS Rwy 17L (Cat II), Orig
Orlando, FL, Orlando Intl, ILS OR LOC Rwy 36R, Amdt 7A, ILS Rwy 36R (Cat II, III), Amdt 7A
Orlando, FL, Orlando Intl, ILS OR LOC Rwy 18R, Amdt 6A
Orlando, FL, Orlando Intl, RNAV (GPS) Rwy 17L, Orig
Orlando, FL, Orlando Intl, RNAV (GPS) Rwy 35L, Orig-A
Orlando, FL, Orlando Intl, RNAV (GPS) Rwy 17R, Orig-A
Orlando, FL, Orlando Intl, RNAV (GPS) Rwy 35R, Orig
Minneapolis, MN, Minneapolis-St Paul Intl/Wold-Chamberlain, ILS OR LOC Rwy 12L, Amdt 6, ILS Rwy 12L (Cat II, III), Amdt 6
Baker City, OR, Baker City Muni, VOR–A, Amdt 1

** * Effective February 19, 2004*

Paragould, AR, Kirk Field, VOR Rwy 4, Amdt 4
Paragould, AR, Kirk Field, NDB Rwy 4, Amdt 1
Paragould, AR, Kirk Field, RNAV (GPS) Rwy 4, Orig
Paragould, AR, Kirk Field, GPS Rwy 4, Orig, Cancelled
Paragould, AR, Kirk Field, NDB Rwy 22, Amdt 1
Paragould, AR, Kirk Field, RNAV (GPS) Rwy 22, Orig
Paragould, AR, Kirk Field, GPS Rwy 22, Orig, Cancelled
Beaufort, NC, Michael J. Smith Field, LOC Rwy 26, Amdt 1

[FR Doc. 03–30739 Filed 12–11–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 135

[Docket No.1999–5401; Amendment No. 135–92]

RIN 2120–AE42

Aging Airplane Safety

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; technical amendment.

SUMMARY: The Federal Aviation Administration is making minor technical changes to its aging aircraft regulations as a result of an interim final rule with a request for comments published in the **Federal Register** on December 6, 2002. This final rule requires airplanes covered by the aging aircraft regulations to undergo inspections and records reviews by the Administrator after their 14th year in service and at specified internals thereafter. As part of this final rule, the FAA inadvertently did not make conforming amendments to an applicability section to reflect the existence of two new sections and the redesignation of an existing section. In addition to these changes, an error exists in the heading of a new section. These technical changes are necessary to keep our regulations clear, accurate and current. The intended effect is to make our regulations easier for the public and regulated industry to use. None of these amendments will impose any extra burden or restrictions on persons or organizations affected by these regulations.

EFFECTIVE DATE: This amendment is effective on December 8, 2003.

FOR FURTHER INFORMATION CONTACT: Frederick Sobeck, Airplane Maintenance Division, AFS–304, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267–7355; facsimile (202) 267–5115.

SUPPLEMENTARY INFORMATION:

Background

The FAA is making some technical or administrative changes to its aging aircraft regulations. These changes do not affect the substance of the existing regulations or impose any new requirements and have no impact on activities carried out under the regulations.

The FAA published in the **Federal Register** of December 6, 2002 (67 FR 72726) a document that created a rule requiring (1) airplanes operated under 14 CFR part 121, (2) U.S.-registered multiengine airplanes operated under 14 CFR part 129, and (3) multiengine airplanes used in scheduled operations under 14 CFR part 135 to undergo inspections and records reviews by the Administrator after their 14th year in service and at specified internals thereafter. The FAA inadvertently did not include revisions to § 135.411 to reflect the existence of the new §§ 135.422 and 135.423 and the redesignation of current § 135.423 to § 135.424, effective December 8, 2003. This amendment to § 135.411 will (a) add a reference to new § 135.422 to existing § 135.411(a)(2), (b) add a

reference to new § 135.423 to existing § 135.411(a)(1), and (c) add a reference to the redisignated § 135.424 to existing § 135.411(a)(2). This document makes these appropriate amendatory changes to clearly reflect that new §§ 135.422 and 135.423, as well as redesignated § 135.424, apply to operations under part 135 as specified in § 135.411. This amendment will not impose any added restrictions on operators affected by these regulations.

In addition to the revisions to § 135.411, this amendment also corrects an error in the heading of § 135.423(b)(2). This amendment will not impose any additional restrictions on operators affected by these regulations.

Procedural Matters

Under the Administrative Procedure Act (APA), 5 U.S.C. 553, agencies must generally publish regulations for public comment and give the public at least 30 days notice before adopting regulations. There is an exception to these requirements if the agency for good cause finds that notice and public procedure are impracticable, unnecessary, or contrary to the public interest. In this case, the FAA finds that notice and comment requirements are unnecessary because of the administrative nature of the changes. The changes do not affect the rights or obligations of any regulated entity. It is in the public interest that the changes take effect promptly.

List of Subjects in 14 CFR Part 135

Air taxis, Aircraft, Aviation safety, Reporting and recordkeeping requirements.

The Amendment

■ In consideration of the foregoing, the Federal Aviation Administration amends Title 14 of the Code of Federal Regulations (CFR) part 135 as follows:

PART 135—OPERATING REQUIREMENTS: COMMUTER AND ON-DEMAND OPERATIONS AND RULES GOVERNING PERSONS ON BOARD SUCH AIRCRAFT

■ 1. The authority citation for part 135 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701–44702, 44705, 44709, 44711–44713, 44715–44717, 44722.

■ 2. Amend § 135.411 by revising the first sentence of paragraph (a)(1) and paragraph (a)(2) to read as follows:

§ 135.411 Applicability.

(a) * * *

(1) Aircraft that are type certificated for a passenger seating configuration, excluding any pilot seat, of nine seats or less, shall be maintained under parts 91 and 43 of this chapter and §§ 135.415, 135.416, 135.417, 135.421 and 135.423.

* * *

(2) Aircraft that are type certificated for a passenger seating configuration, excluding any pilot seat, of ten seats or more, shall be maintained under a maintenance program in §§ 135.415, 135.416, 135.417, 135.422, and 135.424 through 135.443.

* * * * *

■ 3. Amend § 135.423 by revising the heading of paragraph (b)(2) to read as follows:

§ 135.423 Aging airplane inspections and records reviews for multiengine airplanes certificated with nine or fewer passenger seats.

* * * * *

(b) * * *

(2) Airplanes exceeding 14 years in service but not 24 years in service on December 8, 2003; initial and repetitive inspections and records review. * * *

Issued in Washington, DC, on December 3, 2003.

Donald P. Byrne,

Assistant Chief Counsel, Regulations Division.

[FR Doc. 03–30645 Filed 12–11–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Part 250

RIN 1010–AC91

Oil and Gas and Sulphur Operations in the Outer Continental Shelf—Revision of Requirements Governing Outer Continental Shelf Rights-of-Use and Easement and Pipeline Rights-of-Way

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Final rule.

SUMMARY: MMS is modifying requirements governing rights-of-use and easements and pipeline rights-of-way on the Outer Continental Shelf (OCS). These changes will increase rental rates for pipeline rights-of-way and establish rentals for rights-of-use and easements. This change is needed because of requests made by lessees and pipeline right-of-way holders to use large areas outside of the area covered by their lease and pipeline right-of-way for accessory structures. This rule will require holders of rights-of-use and easements and holders granted use of large areas as part of a pipeline right-of-way to pay rentals on a per acre basis.

EFFECTIVE DATE: This rule is effective January 12, 2004.

FOR FURTHER INFORMATION CONTACT: John Mirabella, Chief, Office of Offshore Regulations, (703) 787–1600.

SUPPLEMENTARY INFORMATION: Areas of the Gulf of Mexico (GOM) once thought beyond reach, located in water depths greater than 5,000 feet, are now being explored for development. A new generation of drillships and the development of new techniques allow drilling in waters as deep as 10,000 feet. Operators and pipeline right-of-way holders on the OCS are developing more sophisticated and cost-efficient technology that will lower the cost of safely finding, extracting, and delivering deepwater oil and natural gas.

In the next decade, as industry moves further offshore into ultra-deepwater frontiers, the number of floating production vessels will increase substantially. Structures such as tension-leg platforms and floating production and offloading systems will become widely used to produce oil and gas in the GOM. These systems must be stabilized above the seafloor in water depths of 1,000 to 10,000 feet and, therefore, require a mooring system that may have a "footprint" radius greater than 8,500 feet. In some cases, the mooring system may cover the majority of the OCS block on which the facility is positioned.

Additionally, where the cost of producing directly from a production platform in deep water will allow operators to produce only large hydrocarbon discoveries from platforms, operators will produce smaller hydrocarbon discoveries in deep water by means of wells with production trees (the assemblage of valves) that are located on the ocean floor. These subsea systems must be tied back to a host facility by means of pipelines that deliver the production for processing and/or measurement, and cable-like control umbilicals that contain electrical conductors and small diameter steel tubing. Umbilicals allow control of the valves in the production tree and the measurement of pressure and temperature within the well to be accomplished remotely from the host facility (a platform that may not be on or near the lease).

A right-of-use and easement or pipeline right-of-way grant allows lessees and pipeline right-of-way holders the freedom to optimize the placement of their facilities on unleased

OCS areas or areas under lease to other companies. Since the rights-of-use and easements are of value to the recipient of the rights, MMS believes that it is equitable to charge for the rights at a per acre rate that is generally consistent with the rate paid by lessees. This rule establishes that charge for the rights conveyed.

On April 24, 2003, MMS published a proposed rule to modify 30 CFR 250.160, in subpart A, and 30 CFR 250.1009, in Subpart J, to allow MMS to charge an annual rental to compensate the United States for the use of areas outside of the company's lease and to change the rental amount charged to a pipeline right-of-way holder for accessories for the pipeline right-of-way. This rule applies to applicants for pipeline rights-of-way who request a site for accessories for the pipeline right-of-way, and to applicants who request use of an area that is not part of their lease (*i.e.*, a right-of-use and easement). The rule covers new rights-of-use and easements and rights-of-way granted after the effective date of this rule and modifications to existing rights-of-use and easements and rights-of-way when the modification is granted after the effective date of this rule. The rule includes a rental of $5 per acre affected in water depths less than 200 meters and $7.50 per acre affected in water depths of 200 meters or greater. These rental rates correspond to the rental rates charged for leases in those water depths. The total annual rental depends on the size of the area requested, except that a minimum annual rental will be charged based on 90 acres. Therefore, the minimum rental is $450 per year in water depths of less than 200 meters and $675 per year in water depths of 200 meters or greater. Establishing the minimum charge based on 90 acres will ensure that the Federal Government receives sufficient payment to cover administrative costs.

Existing regulations for pipeline right-of-way rentals allow for payment on an annual basis, for a 5-year period, or for multiples of 5 years. This regulation retains these payment options for pipeline rights-of-way and establishes the same payment options for rights-of-use and easements.

Section 160 of Title 30 CFR is rewritten to add a table. Section 1009 is separated and redesignated as Sections 1009 through 1014. Current Sections 1010 through 1014 are redesignated as Sections 1015 through 1019. Redesignated Section 1012 is rewritten to add a table. The use of tables and the use of shorter sections with titles are intended to improve the clarity and readability of the regulation.

The comment period following publication of the proposed rule ended on May 27, 2003. Five comment letters were received during the comment period. One letter from an oil and gas company protested the rule as being in conflict with other rules that provide a royalty suspension under certain circumstances. The company argued that this rule will reduce the effect of the royalty reduction. Of the other four letters, two were received from oil and gas companies, one from seven different associations representing the natural gas and oil industry, and one from a law student. These four letters all supported the proposed rule. The commentors supporting the rule cited the increasing need for large rights-of-use and easement in deep water and considered the proposed rentals reasonable.

As mentioned above, one commentor argued that the fees established in the rule will reduce the effect of the royalty reduction. MMS believes that the increase in rental fees is appropriate because the purposes of these rentals and the purposes of royalty and royalty relief are very different and are unrelated. Royalty reduction provides major financial incentives to encourage specific actions such as deep water exploration that would not be undertaken under normal royalty obligations. This rule does not change that incentive. This rule simply establishes reasonable charges for companies choosing to use large areas of the OCS. Based on the majority of comments received, the rental fees being established are reasonable and will not discourage deep water exploration. In addition, lessees who receive deep-water royalty relief receive a financial benefit and incentive that is of a much greater magnitude than the amount of rentals owed under this rule.

One comment letter supported the change in the regulation but expressed the opinion that the estimate of two requests per year for new or modified rights-of-use and easements is low. The opinion was based on an expectation that production of methane hydrates will require larger rights-of-use and easements. MMS recognizes the potential for production of methane hydrates and the possible need for rights-of-use and easements associated with that production. However, MMS does not agree that such activity will occur soon. The economic effects estimated for the proposed rule were based on projections for the next 5 years. MMS believes that the estimates used are a good estimate of the requests that will be received over the next 5 years.

Commentors made no suggestions for revisions to the proposed regulation.

In revised Section 250.1012(b), the proposed rule used the phrase "including fixed and floating platforms, subsea manifolds, and other similar structures" to describe an accessory to a pipeline right-of-way. The proposed phrase is different from the existing text of the regulation, which used the phrase "including but not limited to a platform." No substantive change was intended. The final rule uses the original phrase to clarify that the rule changes the amount of the rental but does not change the criteria used to determine when a site will be considered an accessory to a pipeline right-of-way.

Procedural Matters

Regulatory Planning and Review (Executive Order 12866)

This rule was determined by the Office of Management and Budget (OMB) to be significant and has been reviewed by OMB under Executive Order 12866.

Over the next 5 years, in water depths 200 meters or greater, MMS anticipates that it will receive an average of two requests per year for a new or modified right-of-use and easement and an average of two requests per year for a new or modified pipeline right-of-way that includes an area for an accessory. These requests will be affected by this rule. Based on historical data, the estimated affected area per request in water depths 200 meters or greater will average 5,760 acres, which is the typical size of one OCS lease block. In these water depths, the new rule imposes a rental of $7.50 per acre affected. This equates to a total cost of $86,400 (5,760 x $7.50 x 2) for pipeline right-of-way applicants and $86,400 (5,760 x $7.50 x 2) for right-of-use and easement applicants.

Over the next 5 years, in water depths less than 200 meters, MMS anticipates, based on requests in recent years, that applicants will submit an average of 10 requests per year for a new right-of-use and easement and an average of two requests per year for a new or modified pipeline right-of-way that includes an area for an accessory. These requests will be affected by this rule. The estimated affected area per request in water depths less than 200 meters will average 90 acres. In these water depths, the new rule imposes a rental of $5 per acre affected. This equates to a total annual cost of $4,500 (90 x $5 x 10) for right-of-use and easement applicants and $900 (90 x $5 x 2) for pipeline right-of-way applicants.

Under this scenario, the annual cost to industry for rentals will be $178,200 ($86,400 + $86,400 + $4,500 + $900).

Since the current regulations provide for an annual rental of $75 per site included in an application for pipeline rights-of-way accessories and no cost for right-of-use and easement applications, the total cost under current rules for these same activities is $300 per year for pipeline right-of-way applicants ($75 x 2 + $75 x 2) and no cost for right-of-use and easement applicants.

(1) This rule will not have an effect of $100 million or more on the economy. It will not adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities.

(2) This rule will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency. Issuance of a pipeline right-of-way or right-of-use and easement does not interfere with the ability of other agencies to exercise their authority.

(3) This rule will not alter the budgetary effects of entitlements, grants, user fees, or loan programs or the rights or obligations of their recipients. This rule will have no effect on the rights of the recipients of entitlements, grants, user fees, or loan programs.

(4) This rule may raise novel legal or policy issues.

Regulatory Flexibility (RF) Act

The Department certifies that this rule will not have a significant economic effect on a substantial number of small entities under the RF Act (5 U.S.C. 601 *et seq.*).

This rule will affect lessees and holders of pipeline rights-of-way in the OCS. This includes about 130 different companies. These companies are generally classified under the North American Industry Classification System (NAICS) code 211111, which includes companies that extract crude petroleum and natural gas. For this NAICS code classification, a small company is one with fewer than 500 employees. Based on these criteria, an estimated 70 percent of these companies are considered small. This rule, therefore, affects a substantial number of small entities.

The companies that are considered small have an average of about 15 offshore facilities. The small companies have estimated annual sales between $10 million and $40 million. As discussed earlier, the total annual cost to industry is estimated to be $178,800. No large or small company will bear a significant cost.

Comments are important. The Small Business and Agriculture Regulatory Enforcement Ombudsman and 10 Regional Fairness Boards were established to receive comments from small business about Federal agency enforcement actions. The Ombudsman will annually evaluate the enforcement activities and rate each agency's responsiveness to small business. If you wish to comment on the actions of MMS, call 1–888–734–3247. You may comment to the Small Business Administration without fear of retaliation. Disciplinary action for retaliation by an MMS employee may include suspension or termination from employment with the Department of the Interior.

Small Business Regulatory Enforcement Fairness Act (SBREFA)

This rule is not a major rule under the SBREFA (5 U.S.C. 804(2)). This rule:

(a) Will not have an annual effect on the economy of $100 million or more.

(b) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions.

(c) Will not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

This rule is not expected to have a significant effect because, as discussed under procedural matters, Regulatory Planning and Review (Executive Order 12866), this rule is estimated to have a total industry effect of $178,200 annually. This amount is not a significant effect for companies that do business on the OCS.

Paperwork Reduction Act (PRA) of 1995

The PRA provides that an agency may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. Until OMB approves a collection of information and assigns a control number, you are not required to respond. The revisions to 30 CFR Part 250, Subparts A and J, refer to, but do not change, information collection requirements in current regulations. OMB has approved the referenced information collection requirements under OMB control numbers 1010–0114 for Subpart A, current expiration date of July 31, 2005; and 1010–0050 for Subpart J, current expiration date of January 31, 2006. The rule imposes no new paperwork requirements, and an OMB form 83–I submission to OMB under the PRA is not required.

Federalism (Executive Order 13132)

With respect to Executive Order 13132, the rule will not have Federalism implications. This rule will not substantially and directly affect the relationship between the Federal and State governments. To the extent that State and local governments have a role in OCS activities, this rule will not affect that role.

Takings (Executive Order 12630)

With respect to Executive Order 12630, the rule will not have significant Takings implications. A Takings Implication Assessment is not required. The rulemaking is not a governmental action capable of interfering with constitutionally protected property rights.

Energy Supply, Distribution, or Use (Executive Order 13211)

This rule is not a significant rule and is not subject to review by the Office of Management and Budget under Executive Order 13211. The rule will not have a significant effect on energy supply, distribution, or use because payments to compensate the Federal Government for making resources unavailable for leasing will occur on the average less than one time a year. The costs due to increases in the rental rate will be very small compared with the costs of operating in the OCS. Thus, a Statement of Energy Effects is not required.

Civil Justice Reform (Executive Order 12988)

With respect to Executive Order 12988, the Office of the Solicitor has determined that this rule will not unduly burden the judicial system and that it meets the requirements of Sections 3(a) and 3(b)(2) of the Executive Order.

National Environmental Policy Act (NEPA) of 1969

This rule will not constitute a major Federal action significantly affecting the quality of the human environment. This rule will not affect the environmental regulations that a right-of-use and easement holder or a pipeline right-of-way holder will need to follow. A detailed statement under the NEPA is not required.

Unfunded Mandate Reform Act (UMRA) of 1995 (Executive Order 12866)

This rule will not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than $100 million per year. The rule will not have a significant or unique effect on State, local, or tribal governments or the private sector. A statement containing the information required by the UMRA (2 U.S.C. 1531 *et seq.*) is not required. This is because the rule will not affect State, local, or tribal governments, and the effect on the private sector is small.

List of Subjects in 30 CFR Part 250

Continental shelf, Environmental impact statements, Environmental protection, Government contracts, Investigations, Mineral royalties, Oil and gas development and production, Oil and gas exploration, Oil and gas reserves, Penalties, Pipelines, Public Lands—mineral resources, Public lands—right-of-way, Reporting and recordkeeping requirements, Sulphur development and production, Sulphur exploration, Surety bonds.

Dated: November 28, 2003.

Patricia E. Morrison,

Acting Assistant Secretary—Land and Minerals Management.

■ For the reasons stated in the preamble, the Minerals Management Service (MMS) amends 30 CFR Part 250 as follows:

■ 1. The authority citation for part 250 continues to read as follows:

Authority: 43 U.S.C. 1331, *et seq.*

■ 2. In § 250.160, new paragraphs (f) through (i) are added to read as follows:

§ 250.160 When will MMS grant me a right-of-use and easement, and what requirements must I meet?

* * * * *

(f) You must pay a fee as required by paragraph (g) of this section if:

(1) You obtain a right-of-use and easement after January 12, 2004; or

(2) You ask MMS to modify your right-of-use and easement to change the footprint of the associated platform, artificial island, or installation or device.

(g) If you meet either of the conditions in paragraph (f) of this section, you must pay a fee to MMS as shown in the following table:

If...	Then...
(1) Your right-of-use and easement site is located in water depths of less than 200 meters;	You must pay a rental of $5 per acre per year with a minimum of $450 per year. The area subject to annual rental includes the areal extent of anchor chains, pipeline risers, and other equipment associated with the platform, artificial island, installation or device.
(2) Your right-of-use and easement site is located in water depths of 200 meters or greater;	You must pay a rental of $7.50 per acre per year with a minimum of $675 per year. The area subject to annual rental includes the areal extent of anchor chains, pipeline risers, and other equipment associated with the platform, artificial island, or installation or device.

(h) You may make the rental payments required by paragraph (g)(1) and (g)(2) of this section on an annual basis, for a 5-year period, or for multiples of 5 years. You must make the first payment at the time you submit the right-of-use and easement application. You must make all subsequent payments before the respective time periods begin.

(i) Late payments. An interest charge shall be assessed on unpaid and underpaid amounts from the date the amounts are due, in accordance with the provisions found in 30 CFR 218.54. If you fail to make a payment that is late after written notice from MMS, MMS may initiate cancellation of the right-of-use grant and easement under 30 CFR 250.1009(d).

■ 3. In Subpart J, §§ 250.1009 through 250.1014 are redesignated as shown in the following table:

Current section and paragraph	Redesignated section and paragraph
250.1009(a)(1)	250.1009(a).
250.1009(a)(2)	250.1009(b).
250.1009(b)(1)	250.1011(a).
250.1009(b)(1)(i)	250.1011(a)(1).
250.1009(b)(1)(ii)	250.1011(a)(2).
250.1009(b)(2)	250.1011(b).
250.1009(b)(2)(i)	250.1011(b)(1).
250.1009(b)(2)(ii)	250.1011(b)(2).
250.1009(b)(2)(iii)	250.1011(b)(3).
250.1009(b)(3)	250.1011(c).
250.1009(b)(4)	250.1011(d).
250.1009(c) introductory text	250.1010 introductory text.
250.1009(c)(1)	250.1010(a).
250.1009(c)(2)	250.1012.
250.1009(c)(3)	250.1010(b).
250.1009(c)(4)	250.1010(c).
250.1009(c)(5)	250.1010(d).
250.1009(c)(6)	250.1010(e).
250.1009(c)(7)(i)	250.1010(f)(1).
250.1009(c)(7)(ii)	250.1010(f)(2).
250.1009(c)(7)(ii)(A)	250.1010(f)(2)(i).
250.1009(c)(7)(ii)(B)	250.1010(f)(2)(ii).
250.1009(c)(8)	250.1010(g).
250.1009(c)(9)	250.1010(h).
250.1009(d)	250.1013.
250.1009(e)	250.1014.
250.1010	250.1015.
250.1011	250.1016.
250.1012	250.1017.
250.1013	250.1018.

Current section and paragraph	Redesignated section and paragraph
250.1014	250.1019.

■ 4. The headings for newly redesignated §§ 250.1010 through 250.1014 are revised, and headings for newly redesignated §§ 250.1015 through 250.1019 are added to read as follows:

§ 250.1009 Requirements to obtain pipeline right-of-way grants.

* * * * *

§ 250.1010 General requirements for pipeline right-of-way holders.

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§ 250.1011 Bond requirements for pipeline right-of-way holders.

* * * * *

§ 250.1012 Required payments for pipeline right-of-way holders.

* * * * *

§ 250.1013 Grounds for forfeiture of pipeline right-of-way grants.

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§ 250.1014 When pipeline right-of-way grants expire.

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§ 250.1015 Applications for pipeline right-of-way grants.

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§ 250.1016 Granting pipeline rights-of-way.

* * * * *

§ 250.1017 Requirements for construction under pipeline right-of-way grants.

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§ 250.1018 Assignment of pipeline right-of-way grants.

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§ 250.1019 Relinquishment of pipeline right-of-way grants.

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■ 5. Redesignated § 250.1012 is revised to read as follows:

§ 250.1012 Required payments for pipeline right-of-way holders.

(a) You must pay MMS an annual rental of $15 for each statute mile, or part of a statute mile, of the OCS that your pipeline right-of-way crosses.

(b) This paragraph applies to you if you obtain a pipeline right-of-way that includes a site for an accessory to the pipeline, including but not limited to a platform. This paragraph also applies if you apply to modify a right-of-way to change the site footprint. In either case, you must pay the amounts shown in the following table.

If...	Then...
(1) Your accessory site is located in water depths of less than 200 meters;	You must pay a rental of $5 per acre per year with a minimum of $450 per year. The area subject to annual rental includes the areal extent of anchor chains, pipeline risers, and other facilities and devices associated with the accessory.
(2) Your accessory site is located in water depths of 200 meters or greater;	You must pay a rental of $7.50 per acre per year with a minimum of $675 per year. The area subject to annual rental includes the areal extent of anchor chains, pipeline risers, and other facilities and devices associated with the accessory.

(c) If you hold a pipeline right-of-way that includes a site for an accessory to your pipeline and you are not covered by paragraph (b) of this section, then you must pay MMS an annual rental of $75 for use of the affected area.

(d) You may make the rental payments required by paragraphs (a), (b)(1), (b)(2), and (c) of this section on an annual basis, for a 5-year period, or for multiples of 5 years. You must make the first payment at the time you submit the pipeline right-of-way application. You must make all subsequent payments before the respective time periods begin.

(e) Late payments. An interest charge shall be assessed on unpaid and underpaid amounts from the date the amounts are due, in accordance with the provisions found in 30 CFR 218.54. If you fail to make a payment that is late after written notice from MMS, MMS may initiate cancellation of the right-of-use grant and easement under 30 CFR 250.1009(d).

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DEPARTMENT OF EDUCATION

34 CFR Parts 668, 674, 682, and 685

Federal Student Aid Programs (Student Assistance General Provisions, Federal Perkins Loan Program, Federal Direct Loan Program, Federal Family Education Loan Program and the Federal Pell Grant Program)

AGENCY: Department of Education.

ACTION: Notice of waivers and modifications of statutory and regulatory provisions pursuant to the Higher Education Relief Opportunities for Students Act of 2003, Pub. L. 108–76.

SUMMARY: The Secretary of Education announces waivers and modifications of statutory and regulatory provisions that are appropriate to assist individuals (referred to in this notice as "affected individuals") who are applicants and recipients of student financial assistance under title IV of the Higher Education Act of 1965, as amended (HEA), and who—

- Are serving on active duty during a war or other military operation or national emergency;
- Are performing qualifying National Guard duty during a war or other military operation or national emergency;
- Reside or are employed in an area that is declared a disaster area by any Federal, State, or local official in connection with a national emergency; or
- Suffered direct economic hardship as a direct result of a war or other military operation or national emergency, as determined by the Secretary.

The Secretary is issuing these waivers and modifications under the authority of section 2(a) of the Higher Education Relief Opportunities for Students (HEROES) Act of 2003, Pub. L. 108–76. Section 2(b) of the HEROES Act requires the Secretary to publish, in a notice in the **Federal Register**, the waivers or modifications of statutory or regulatory provisions applicable to the student financial assistance programs under title IV of the HEA that the Secretary believes are appropriate to ensure that:

- Individuals who are recipients of student financial assistance under title IV are not placed in a worse position financially in relation to that student financial assistance because they are affected individuals;
- Affected individuals who are recipients of student financial assistance are not unduly subject to administrative burden or inadvertent, technical violations or defaults;
- Affected individuals are not penalized when a determination of need for student financial assistance is calculated;
- Affected individuals are not required to return or repay an overpayment of grant funds based on the HEA's Return of Title IV Funds provision; and
- Entities that participate in the student financial assistance programs under title IV of the HEA and that are located in areas that are declared disaster areas by any Federal, State, or local official in connection with a national emergency, or whose operations are significantly affected by such a disaster, receive temporary relief from administrative requirements.

Section 2(b)(1) of the HEROES Act further provides that section 437 of the General Education Provisions Act (20 U.S.C. 1232) and Section 553 of the Administrative Procedure Act (5 U.S.C. 553) do not apply to the contents of this notice.

Section 5 of the HEROES Act defines the following terms used in this notice:

Active duty—The term "active duty" has the meaning given that term in 10 U.S.C. section 101(d)(1), but does not include active duty for training or attendance at a service school (*e.g.*, the U.S. Military Academy or U.S. Naval Academy).

Military operation—The term "military operation" means a contingency operation as that term is defined in 10 U.S.C. section 101(a)(13).

National emergency—The term "national emergency" means a national emergency declared by the President of the United States.

Serving on active duty—The term "serving on active duty during a war or other military operation or national emergency" includes service by an individual who is—

(A) a Reserve member of an Armed Force ordered to active duty under 10 U.S.C. 12301(a), 12301(g), 12302, 12304, or 12306, or any retired member of an Armed Force ordered to active duty under 10 U.S.C. 688, for service in connection with a war or other military operation or national emergency, regardless of the location at which that active duty service is performed; and

(B) any other member of an Armed Force on active duty in connection with any war, operation, or emergency or subsequent actions or conditions who has been assigned to a duty station at a location other than the location at which the individual is normally assigned.

Qualifying National Guard duty—The term "qualifying National Guard duty during a war or other military operation or national emergency" means service as a member of the National Guard on full-time National Guard duty (as defined in 10 U.S.C. 101(d)(5)) under a call to active service authorized by the President or the Secretary of Defense for a period of more than 30 consecutive days under 32 U.S.C. 502(f), in connection with a war, another military operation, or a national emergency declared by the President and supported by Federal funds.

Section 2(c) of the HEROES Act requires the Secretary to provide an impact report to the Committee on Education and the Workforce of the U.S. House of Representatives and the Committee on Health, Education, Labor, and Pensions of the U.S. Senate not later than 15 months after first exercising the authority to issue a waiver or modification under section 2(a) of the HEROES Act. The report will describe the impact of any waivers or modifications on affected individuals and the programs under title IV of the HEA, and the basis for that determination, and will include the Secretary's recommendations for changes to the statutory or regulatory provisions that were the subject of the waivers or modifications. Therefore, a guaranty agency, lender, or institution must document its application of a waiver or modification made in accordance with this notice in such a manner that the institution can, upon request, report to the Secretary on the effect of the waivers and modifications.

EFFECTIVE DATE: December 12, 2003. The provisions of Pub. L. 108–76, and the waivers and modifications in this document, expire on September 30, 2005.

FOR FURTHER INFORMATION CONTACT: For provisions related to the title IV loan programs (Federal Perkins Loan Program, Federal Family Education Loan (FFEL) Program, and Federal Direct Loan (Direct Loan) Program): Ms. Gail McLarnon or Mr. George Harris, Office of Postsecondary Education, U.S. Department of Education, 1990 K Street, NW., (8th Floor), Washington, DC 20006. Internet and Telephone: *Gail.McLarnon@ed.gov* and (202) 219–7048 or *GeorgeOPE.Harris@ed.gov* and (202) 502–7521.

For other provisions: Ms. Wendy Macias, U.S. Department of Education, 1990 K Street, NW. (8th Floor), Washington, DC 20006. Internet and Telephone: *Wendy.Macias@ed.gov* and (202) 502–7526.

If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the program contact persons listed under **FOR FURTHER INFORMATION CONTACT**.

SUPPLEMENTARY INFORMATION:

Category 1: The Secretary is waiving or modifying the following provisions of title IV of the HEA and the Department's regulations for ALL affected individuals specified in the **SUMMARY** section of this notice:

Need Analysis

Section 480 of the HEA provides that, in the calculation of an applicant's expected family contribution (EFC), the term "total income," which is used in the determination of "annual adjusted family income" and "available income," is equal to adjusted gross income plus untaxed income and benefits for the preceding tax year minus excludable income. The HEROES Act allows an institution to substitute adjusted gross income plus untaxed income and benefits received in the first calendar year of the award year for which such determination is made for any affected individual, and for his or her spouse and dependents, if applicable, in order to reflect more accurately the financial condition of an affected individual and his or her family. The Secretary has determined that an institution has the option of using the applicant's original EFC or the EFC based on the data from the first calendar year of the award year.

If an institution chooses to use the alternate EFC, it should use the administrative Professional Judgment procedures established by the Secretary as discussed in the following section on "Professional Judgement."

Professional Judgment

Section 479A of the HEA specifically gives the financial aid administrator (FAA) the authority to use professional judgment to make adjustments on a case-by-case basis to the cost of attendance or to the values of the items used in calculating the EFC to reflect a student's special circumstances. The

Secretary is modifying this provision by removing the requirement that adjustments be made on a case-by-case basis for affected individuals. The use of professional judgment in Federal need analysis is discussed in the Student Financial Aid Handbook.

The Secretary encourages FAAs to use professional judgment in order to reflect more accurately the financial need of affected individuals. To that end, the Secretary encourages institutions to determine need for any affected individual by determining the most beneficial of:

- The individual's need as determined using the adjusted gross income plus untaxed income and benefits received in the first calendar year of the award year;
- The individual's need as determined using professional judgment; or
- The individual's need as determined making no modifications. (For example, in some cases, an individual's income will increase as a result of serving on active duty or performing qualifying National Guard duty.)

The FAA must clearly document the reasons for any adjustment. As usual, any professional judgment decisions made by an FAA that affect a student's eligibility for a Federal Pell Grant must be reported to the Central Processing System (CPS).

Return of Title IV Funds—Grant Overpayments Owed by the Student

Section 484B(b)(2) of the HEA and 34 CFR 668.22(h)(3)(ii) require a student to return or repay, as appropriate, 50 percent of any unearned grant funds for which the student is responsible under the Return of Title IV Funds calculation. For a student who withdraws from an institution because of his or her status as an affected individual, the Secretary is waiving these statutory and regulatory requirements so that a student is not required to return or repay an overpayment of grant funds based on the Return of Title IV Funds provisions. For these students, the Secretary also waives 34 CFR 668.22(h)(4), which:

- Requires an institution to notify a student of a grant overpayment and the actions the student must take to resolve the overpayment;
- Denies eligibility to a student who owes an overpayment and does not take an action to resolve the overpayment; and
- Requires an institution to refer an overpayment to the Secretary under certain conditions.

Therefore, an institution is not required to contact the student, notify NSLDS, or refer the overpayment to the Department. Note that this is a change from previous guidance that instructed institutions to refer these overpayments to the Department. However, the institution must document in the student's file the amount of any overpayment as part of the documentation of the application of this waiver. The student is not required to return or repay an overpayment of grant funds based on the Return of Title IV Funds provision; therefore, an institution must not apply any title IV credit balance to the grant overpayment before paying any amount of the title IV credit balance to the student or parent, in the case of a PLUS loan.

Return of Title IV Funds—Amount of Unearned Funds Owed by the Institution

If the Return of Title IV Funds calculation results in the institution being required to return funds to one or more of the title IV programs, the institution must do so as it must for any student who withdraws. In many cases a return of funds by the institution will reduce the student's loan debt.

Section 484B(b)(1) of the HEA and 34 CFR 668.22(g) provide that an institution must return the lesser of (1) the total amount of unearned aid to be returned; or (2) an amount equal to the student's total institutional charges for the payment period or period of enrollment multiplied by the percentage of unearned aid. The total (initial) amount of institutional charges is used even if the institution fully refunds or otherwise adjusts the amount of institutional charges after the student withdraws. For a student who withdraws because of his or her status as an affected individual, the Secretary is modifying this provision to exclude from the amount of a student's total institutional charges any institutional charges that the institution is required to cover, and has covered, with non-title IV sources of aid. For example, assume a student receives a state grant of $800 that must be used only for tuition charges. The institution applies the state grant toward the total institutional charges of $1,000. The student withdraws. The institution uses $200, the difference between the full institutional charges and the amount of the state grant the institution was required to apply to the institutional charges, as the student's total institutional charges for the payment period or period of enrollment when determining the amount of unearned title IV funds that the institution must return.

Verification of AGI and U.S. Income Tax Paid

34 CFR 668.57(a)(3) provides that when an individual whose income was used in the calculation of the EFC of an applicant for title IV assistance has not filed an income tax return because he or she has been granted a filing extension by the IRS, an institution must accept, in lieu of an income tax return for verification of AGI or income tax paid:

- A copy of IRS Form 4868, "Application for Automatic Extension of Time to File U.S. Individual Income Tax Return," that the individual filed with the IRS for the base year, or a copy of the IRS's approval of an extension beyond the automatic four-month extension if the individual requested an additional extension of the filing time; and
- A copy of each W–2 received for the base year, or for a self-employed individual, a statement signed by the individual certifying the amount of AGI for the base year.

The Secretary is modifying this provision so that the submission of a copy of IRS Form 4868 or a copy of the IRS extension approval is not required if an individual whose income was used in the calculation of the EFC:

- Has not filed and was not required to file an income tax return by the filing deadline because he or she was called up for active duty or for qualifying National Guard duty during a war or other military operation or national emergency; and
- Was not required to file for an extension.

For these individuals, an institution must accept, in lieu of an income tax return for verification of AGI or income tax paid:

- A statement from the individual certifying that he or she has not filed and was not required to file an income tax return or a request for a filing extension because he or she was called up for active duty or for qualifying National Guard duty during a war or other military operation or national emergency; and
- A copy of each W–2 received for the base year, or for a self-employed individual, a statement signed by the individual certifying the amount of AGI for the base year.

The student must submit the tax return to the institution once it is filed with the IRS for the institution to re-verify the AGI and taxes paid.

Category 2: The Secretary is waiving or modifying the following provisions of title IV of the HEA and the Department's regulations for affected individuals who are serving on active duty, performing qualifying National Guard duty during a war or other military operation or national emergency, or who reside or are employed in a disaster area as described in the SUMMARY section of this notice:

Return of Title IV Funds—Postwithdrawal Disbursements

Under 34 CFR 668.22(a)(4)(ii)(A)(3) and (B), a student (or parent for a PLUS loan) must be provided a postwithdrawal disbursement if the student (or parent) responds to an institution's notification of the postwithdrawal disbursement within 14 days of the date that the institution sent the notice. If a student or parent submits a late response, an institution may, but is not required to, make the postwithdrawal disbursement. The Secretary is modifying this requirement so that, for a student who withdraws because of his or her status as an affected individual in this category and is eligible for a postwithdrawal disbursement, the 14-day time period in which the student (or parent) must normally respond to the offer of the post-withdrawal disbursement is extended to 45 days. If the student or parent submits a response after the 45-day period, the institution may, but is not required to, make the postwithdrawal disbursement. As required under the current regulations, if the student or parent submits the timely response instructing the institution to make all or a portion of the postwithdrawal disbursement, or the institution chooses to make a postwithdrawal disbursement based on receipt of a late response, the institution must disburse the funds within 120 days of the date of the institution's determination that the student withdrew.

Leaves of Absence

34 CFR 668.22(d)(4)(iii)(B) requires a student to provide a written, signed, and dated request, which includes the reason for that request, for an approved leave of absence prior to the leave of absence, or at a later date if the student is prevented from providing a prior written request by unforeseen circumstances. It may be appropriate in certain limited cases for an institution to provide an approved leave of absence to a student who must interrupt his or her enrollment because he or she is an affected individual. Therefore, the Secretary is waiving the requirement that the student provide a written request for affected individuals who would have difficulty providing a written request as a result of being an affected individual. The institution's documentation of its decision to grant the leave of absence must include, in addition to the reason for the leave of absence, the reason for waiving the requirement that the waiver be requested in writing.

Treatment of Title IV Credit Balances When a Student Withdraws

Under 34 CFR 668.164(e), an institution must pay any credit balance to the student, or parent in the case of a PLUS loan, within 14 days after the balance occurred. However, if a student (or parent) has provided permission, an institution may use a title IV credit balance to reduce the borrower's loan debt.

Therefore, for students who withdraw because they are affected individuals, the Secretary is modifying 34 CFR 668.164(e) to consider an institution to have met the 14-day requirement if, within that timeframe, the institution attempts to contact the student to suggest that permission be given to the institution allowing it to return the credit balance to the loan program(s). Based upon the instructions of the student (or parent), the institution must promptly return the funds to the title IV loan programs or pay the credit balance to the student (or parent).

If an institution chooses to attempt to contact the student (or parent), it must allow the student (or parent) 45 days to respond. If there is no response within 45 days, the institution must promptly return the funds to the title IV programs. The institution may also choose to pay the credit balance to the student (or parent) without first requesting permission to return the funds to the loan program in order to reduce the borrower's debt.

Cash Management—Borrower Request for Loan Cancellation

Under 34 CFR 668.165(a)(4)(ii), an institution must return loan proceeds or cancel the loan, or both, if the institution receives a loan cancellation request from a borrower within 14 days after the date of the institution's notice to the borrower, or by the first day of the payment period if the institution sends the notice more than 14 days before the first day of the payment period. If an institution receives a late loan cancellation request from a borrower, the institution may, but is not required to, comply with the request. For a borrower who is an affected individual in this category, the Secretary is modifying this provision to require an institution to allow at least 60 days, rather than at least 14 days, for the borrower to request the cancellation of all or a portion of loan proceeds that have been credited to the account at the institution. If an institution receives a loan cancellation request from a borrower after the 60-day period, the institution may, but is not required to, comply with the request.

Cash Management—Student and Parent Authorizations

34 CFR 668.165(b)(1) provides that an institution must obtain a written authorization from a student or parent, as applicable, to:

- Disburse title IV funds to a bank account designated by the student or parent;
- Use title IV funds to pay for current charges other than tuition, fees, room, and board, if the student contracts with the school for room and board; and
- Hold on behalf of the student or parent any title IV funds that would otherwise be paid directly to the student or parent.

The Secretary is modifying these provisions to permit an institution to accept an authorization provided by a student (or parent for a PLUS loan) orally, rather than in writing, if the student or parent is prevented from providing a written authorization because of his or her status as an affected individual in this category.

Satisfactory Academic Progress

Institutions may, in cases where a student failed to meet satisfactory academic progress standards as a direct result of being an affected individual in this category, apply the exception provision of "other special circumstances" contained in 34 CFR 668.34(c)(3) of the regulations.

Borrowers in a Grace Period

Sections 428(b)(7)(D) and 464(c)(7) of the HEA and 34 CFR 674.31(b)(2)(i)(C), 682.209(a)(6), and 685.207(b)(2)(ii) and (c)(2)(ii) exclude from a Federal Perkins Loan, FFEL, or Direct Loan borrower's (title IV borrower's) initial grace period, any period, not to exceed three years, during which a borrower who is a member of an Armed Forces reserve component is called or ordered to active duty for a period of more than 30 days. The statutory and regulatory provisions further require that any single excluded period may not exceed three years and must include the time necessary for the borrower to resume enrollment at the next available regular enrollment period. Lastly, borrowers are entitled to another full six- or nine-month grace period, as applicable, upon completion of the excluded period of service.

The Secretary is modifying these statutory and regulatory provisions to exclude from a title IV borrower's initial

grace period, any period, not to exceed three years, during which a borrower is an affected individual in this category. Any excluded period must include the time necessary for an affected individual in this category to resume enrollment at the next available enrollment period. Affected individuals in this category are also entitled to another full six- or nine-month grace period upon completion of the excluded period of service.

Borrowers in an "In-School" Period

A title IV borrower is considered to be in an "in-school" status and is not required to make payments on a title IV loan that has not entered repayment as long as the borrower is enrolled at an eligible school on at least a half-time basis. Under sections 428(b)(7) and 464(c)(1)(A) of the HEA and 34 CFR 674.31(b)(2), 682.209(a), and 685.207(b), (c), and (e)(2) and (3), when a title IV borrower ceases to be enrolled at an eligible institution on at least a half-time basis, the borrower is obligated to begin repayment of the loan after a six- or nine-month grace period, depending on the title IV loan program and the terms of the borrower's promissory note. The Secretary is modifying the statutory and regulatory provisions that obligate an "in-school" borrower who has dropped below half-time status to begin repayment if the borrower is an affected individual in this category by requiring the holder of the loan to maintain the loan in an "in-school" status for a period not to exceed three years, including the time necessary for the borrower to resume enrollment in the next regular enrollment period, if the borrower is planning to go back to school. The Secretary will pay interest that accrues on a subsidized Stafford Loan as a result of the extension of a borrower's in-school status under this modification.

Borrowers in an In-School or Graduate Fellowship Deferment

Under sections 427(a)(2)(C)(i), 428(b)(1)(M)(i), 428B(a)(2), 428C(b)(4)(C), 455(f)(2)(A), and 464(c)(2)(A)(i)(I) of the HEA and 34 CFR 674.34(b)(1), 682.210(b)(1)(i) and (ii), 682.210(s)(2), 682.210(s)(3), and 685.204(b)(1)(i), a title IV borrower is eligible for a deferment on the loan during periods after the commencement or resumption of the repayment period on the loan when the borrower is enrolled and in attendance as a regular student on at least a half-time basis (or full-time, if required by the terms of the borrower's promissory note) at an eligible institution; enrolled and in attendance as a regular student in a course of study that is part of a graduate fellowship program; or engaged in graduate or post-graduate fellowship-supported study outside the United States. The borrower's deferment period ends when the borrower no longer meets one of the above conditions. The Secretary is waiving the statutory and regulatory eligibility requirements for this deferment for title IV borrowers who were required to interrupt a graduate fellowship deferment or who were in an in-school deferment but who left school because of their status as an affected individual in this category. The holder of the loan is required to maintain the loan in a graduate fellowship deferment or in-school deferment status for a period not to exceed three years during which the borrower is an affected individual. This period includes the time necessary for the borrower to resume his or her graduate fellowship program or resume enrollment in the next regular enrollment period if the borrower returns to school. The Secretary will pay interest that accrues on a subsidized Stafford Loan as a result of extending a borrower's eligibility for deferment under this waiver.

Forbearance

Under section 464(e) of the HEA and 34 CFR 674.33(d)(2), there is a 3-year cumulative limit on the length of forbearances that a Federal Perkins Loan borrower can receive. To assist Perkins borrowers who are affected individuals in this category, the Secretary is waiving these statutory and regulatory requirements so that any forbearance based on a borrower's status as an affected individual is excluded from the 3-year cumulative limit.

Under section 464(e) of the HEA and 34 CFR 674.33(d)(2) and (3), a school must receive a written request and supporting documentation from a Federal Perkins Loan borrower before granting the borrower a forbearance, the terms of which must be in the form of a written agreement. The Secretary is waiving these statutory and regulatory provisions to require an institution to grant forbearance based on the borrower's status as an affected individual in this category for a one-year period, including a 3-month "transition period" that immediately follows that period, without supporting documentation or a written agreement, based on the written or oral request of the borrower, a member of the borrower's family, or another reliable source. The purpose of the 3-month "transition period" is to assist borrowers so that they will not be required to reenter repayment immediately after they are no longer affected individuals.

In order to grant the borrower forbearance beyond the initial period, supporting documentation from the borrower, a member of the borrower's family, or another reliable source is required.

34 CFR 682.211(i)(1) requires an FFEL borrower who requests forbearance because of a military mobilization to provide the loan holder with documentation showing that he or she is subject to a military mobilization. The Secretary is waiving this requirement to allow the borrower to receive forbearance at the request of the borrower, a member of the borrower's family, or another reliable source for a one-year period, including a three-month transition period that immediately follows that period, without providing the loan holder with documentation. In order to grant the borrower forbearance beyond this period, documentation supporting the borrower's military mobilization must be submitted to the holder of the loan.

The Secretary will apply the forbearance waivers and modifications in this section to loans held by the Department of Education.

Collection of Defaulted Loans

In accordance with 34 CFR Part 674, Subpart C-Due Diligence and 682.410, schools and guaranty agencies must attempt to recover amounts owed from defaulted Perkins and FFEL borrowers. The Secretary is waiving the regulatory provisions that require schools and guaranty agencies to attempt collection on defaulted loans for the time period during which the borrower is an affected individual. The school or guaranty agency may stop collection activities upon notification by the borrower, a member of the borrower's family, or another reliable source that the borrower is an affected individual in this category. Collection activities must resume after the borrower has notified the school or guaranty agency that he or she is no longer an affected individual and must include the 3-month transition period. The loan holder must document in the loan file why it has suspended collection activities on the loan, and the loan holder is not required to obtain evidence of the borrower's status while collection activities have been suspended. The Secretary will apply the waivers described in this paragraph to loans held by the Department of Education.

Loan Cancellation

Depending on the loan program, borrowers may qualify for loan cancellation if they are employed full-time in specified occupations, such as teaching, childcare, or law enforcement, pursuant to sections 428J(b)(1), 428K(d)(1), 460(b)(1)(A), and 465(a)(2)(A)–(I) and (a)(3) of the HEA, and 34 CFR 674.53(d), 674.55(a)(2), 674.55(b)(5), 674.55(c)(2), 674.56(d)(1), 674.57(b)(1), 674.58(b), 674.60(b), 682.215, and 685.217. Generally, to qualify for loan cancellation, borrowers must perform uninterrupted, otherwise qualifying service for a specified length of time (for example, one year) or for consecutive periods of time, such as 5 consecutive years. For borrowers who are affected individuals in this category, the Secretary is waiving the requirements that apply to the various loan cancellations that such periods of service be uninterrupted and/or consecutive, if the reason for the interruption is related to the borrower's status as an affected individual. Therefore, the period during which the borrower is an affected individual in this category, including the 3-month transition period, will not be considered an interruption in the required service for the borrower to receive an otherwise eligible loan cancellation. The Secretary will apply the waivers described in this paragraph to loans held by the Department of Education.

Rehabilitation of Defaulted Loans

A borrower of an HEA, title IV loan must make 12 consecutive, monthly, on-time payments to rehabilitate a defaulted loan in accordance with sections 428F(a) and 464(h)(1) of the HEA and 34 CFR 674.39(a)(2), 682.405, and y685.211(f)(1). To assist title IV borrowers who are affected individuals in this category, the Secretary is waiving the statutory and regulatory requirements that payments made to rehabilitate a loan be consecutive. Loan holders should not treat any payment missed during the time that a borrower is an affected individual in this category, or the 3-month transition period, as an interruption in the number of consecutive, monthly, on-time payments required for loan rehabilitation. When the borrower is no longer considered to be an affected individual in this category, the required sequence of qualifying payments may resume at the point they were discontinued as a result of the borrower's status. The Secretary will apply the waivers described in this paragraph to loans held by the Department of Education.

Reinstatement of Title IV Eligibility

Under sections 428F(b) and 464(h)(2) of the HEA and under the definition of "satisfactory repayment arrangement" in 34 CFR 668.35(a)(2), 674.2(b), 682.200(b), and 685.102(b), a defaulted title IV borrower may make six consecutive, monthly, on-time payments to reestablish eligibility for title IV student financial assistance. To assist title IV borrowers who are affected individuals in this category, the Secretary is waiving statutory and regulatory provisions that require the borrower to make consecutive payments in order to reestablish eligibility for title IV student financial assistance. Loan holders should not treat any payment missed during the time that a borrower is an affected individual as an interruption in the six consecutive, monthly, on-time payments required for reestablishing title IV eligibility. When the borrower is no longer considered to be an affected individual or in the 3-month transition period for purposes of this notice, the required sequence of qualifying payments may resume at the point they were discontinued as a result of the borrower's status. The Secretary will apply the waivers described in this paragraph to loans held by the Department of Education.

Consolidation of Defaulted Loans

Under the definition of "satisfactory repayment arrangement" in 34 CFR 682.200(b) and 685.102(b), a defaulted FFEL or Direct Loan borrower may establish eligibility to consolidate a defaulted loan by making three consecutive, monthly, on-time payments on the loan. The Secretary is waiving the regulatory requirement that such payments be consecutive. FFEL loan holders should not treat any payment missed during the time that a borrower is an affected individual in this category as an interruption in the three consecutive, monthly, on-time payments required for establishing eligibility to consolidate a defaulted loan. When the borrower is no longer considered to be an affected individual in this category or in the 3-month transition period, the required sequence of qualifying payments may resume at the point they were discontinued as a result of the borrower's status as an affected individual. The Secretary will apply the waivers described in this paragraph to loans held by the Department of Education.

Category 3: The Secretary is waiving or modifying the following provisions of title IV of the HEA and the Department's regulations for affected individuals who are serving on active duty or performing qualifying National Guard duty during a war or other military operation or national emergency as described in the **SUMMARY** section of this notice:

Military Deferment

Under section 455(f)(4) of the HEA and 34 CFR 674.35(c)(1), 674.36(c)(1), 674.37(c)(1), 682.210(b)(2), and 685.204(d); certain borrowers are eligible for a deferment on their title IV loans for periods, not to exceed 3 years, during which the borrower is on active duty status in the United States Armed Forces. This provision includes a member of the National Guard or the Reserves serving a period of full-time active duty in the Armed Forces. The Secretary is modifying the statutory and regulatory requirements that limit military deferments to a 3-year cumulative period so that the time during which affected individuals in this category are serving on active duty is excluded from this time limit. The Secretary will pay interest that accrues on subsidized Stafford Loans during an extended period of deferment under this modification.

Under 34 CFR 674.38(a)(1) and 682.210(a)(4), a borrower must request the deferment and provide the institution or lender with supporting documentation to receive a deferment. The Secretary is modifying the regulations to allow a loan holder to grant an affected individual in this category a military deferment based on a request from a family member or another reliable source. The Secretary is also waiving documentation requirements to allow a loan holder to grant an affected individual in this category a military deferment for a one-year period without documentation. In order to grant a military deferment beyond the initial period, supporting documentation from the borrower, a member of the borrower's family, or another reliable source is required. The Secretary will apply the waivers described in this paragraph to loans held by the Department of Education.

Institutional Charges and Refunds

The HEROES Act encourages institutions to provide a full refund of tuition, fees, and other institutional charges for the portion of a period of instruction that a student was unable to complete, or for which the student did not receive academic credit, because he or she was called up for active duty or for qualifying National Guard duty during a war or other military operation or national emergency. Alternatively, the Secretary encourages institutions to provide a credit in a comparable amount against future charges.

The HEROES Act also recommends that institutions consider providing easy and flexible reenrollment options to such students who are affected

individuals in this category. Specifically, institutions are urged to minimize deferral of enrollment or reapplication requirements and to provide the greatest flexibility possible with administrative deadlines related to those applications.

Of course, an institution may provide such treatment to affected individuals other than those who are called up to active duty or for qualifying National Guard duty during a war or other military operation or national emergency.

However, before an institution makes a refund of institutional charges, it must perform the required Return of title IV Funds calculations based upon the originally assessed institutional charges. After determining the amount that the institution must return to the title IV Federal student aid programs, any reduction of institutional charges may take into account the funds that the institution is required to return. In other words, we do not expect that an institution would both return funds to the Federal programs and also provide a refund of those same funds to the student.

Category 4: The Secretary is waiving or modifying the following provisions of the HEA and regulations for dependents and spouses of affected individuals who are serving on active duty or performing qualifying National Guard duty during a war or other military operation or national emergency as described in the **SUMMARY** section of this notice:

Verification Signature Requirements

34 CFR 668.57(b) and (c) require signatures to verify the number of family members in the household and the number of family members enrolled in postsecondary institutions. The Secretary is waiving the requirement that a dependent student submit a statement signed by one of the applicant's parents when no responsible parent can provide the required signature because of the parent's status as an affected individual in this category.

Required Signatures on the Free Application for Federal Student Aid (FAFSA), Student Aid Report (SAR), and Institutional Student Information Record (ISIR)

Generally, when a dependent applicant for title IV aid submits an application (FAFSA) or submits corrections to a previously submitted application, at least one parental signature is required. The Secretary is waiving this requirement so that an applicant need not provide a parent's signature when there is no responsible parent who can provide the required signature because of the parent's status as an affected individual in this category. In these situations, a student's high school counselor or the FAA may sign on behalf of the parent as long as the applicant provides adequate documentation concerning the parent's inability to provide a signature due to the parent's status as an affected individual in this category.

Electronic Access to This Document

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister*.

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

You may also view this document in PDF at the following site: *http://www.ifap.ed.gov*.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html*.

Catalog of Federal Domestic Assistance Numbers: 84.007 Federal Supplemental Educational Opportunity Grant Program; 84.032 Federal Family Education Loan Program; 84.032 Federal PLUS Program; 84.033 Federal Work Study Program; 84.038 Federal Perkins Loan Program; 84.063 Federal Pell Grant Program and 84.268 William D. Ford Federal Direct Loan Program.

Program Authority: 20 U.S.C. 1071, 1082, 1087a, 1087aa, Pub. L. 108–76.

Dated: December 8, 2003.

Sally L. Stroup,

Assistant Secretary, Office of Postsecondary Education.

[FR Doc. 03–30781 Filed 12–11–03; 8:45 am]

BILLING CODE 4000–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 296–0427; FRL–7594–2]

Interim Final Determination To Stay and Defer Sanctions, South Coast Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Interim final rule.

SUMMARY: EPA is making an interim final determination to stay and defer imposition of sanctions based on a proposed approval of revisions to the South Coast Air Quality Management District (SCAQMD) portion of the California State Implementation Plan (SIP) published elsewhere in today's **Federal Register.** The revisions concern SCAQMD Rule 1168.

DATES: This interim final determination is effective on December 12, 2003. However, comments will be accepted until January 12, 2004.

ADDRESSES: Send comments to Andy Steckel, Rulemaking Office Chief (AIR–4), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105 or e-mail to *steckel.andrew@epa.gov*, or submit comments at *http://www.regulations.gov*.

You can inspect copies of the submitted rule revisions, EPA's technical support document (TSD), and public comments at our Region IX office during normal business hours by appointment. You may also see copies of the submitted rule revisions by appointment at the following locations:

Rulemaking Office (AIR–4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 1001 "I" Street, Sacramento, CA 95814.

South Coast Air Quality Management District, 21865 E. Copley Drive, Diamond Bar, CA 91765.

A copy of the rule may also be available via the Internet at *http://www.arb.ca.gov/drdb/drdbltxt.htm*. Please be advised that this is not an EPA website and may not contain the same version of the rule that was submitted to EPA.

FOR FURTHER INFORMATION CONTACT: Yvonne Fong, EPA Region IX, (415) 947–4117, *fong.yvonnew@epa.gov*.

SUPPLEMENTARY INFORMATION: Throughout this document, "we," "us" and "our" refer to EPA.

I. Background

On April 26, 2002 (67 FR 20645), we published a limited approval and limited disapproval of SCAQMD Rule 1168. Table 1 lists the rule addressed by our prior limited approval and disapproval with the dates that it was adopted by the local air agency and submitted by the California Air Resources Board (CARB).

TABLE 1.—RULE PREVIOUSLY ACTED ON BY US

Local agency	Rule No.	Rule title	Adopted	Submitted
SCAQMD	1168	Adhesive and Sealant Applications	09/15/00	03/14/01

We based our limited disapproval action on a deficiency in the submittal. This disapproval action started a sanctions clock for imposition of offset sanctions 18 months after May 28, 2002 and highway sanctions 6 months later, pursuant to section 179 of the Clean Air Act (CAA) and our regulations at 40 CFR 52.31.

SCAQMD adopted revisions to Rule 1168 to correct the deficiency identified in our limited disapproval action. Table 2 lists the rule that was submitted to correct the deficiency noted in the previous version with the dates that it was adopted by the local air agency and submitted by the California Air Resources Board (CARB).

TABLE 2.—SUBMITTED RULE

Local agency	Rule No.	Rule title	Adopted	Submitted
SCAQMD	1168	Adhesive and Sealant Applications	10/03/03	11/14/03

In the Proposed Rules section of today's **Federal Register**, we have proposed approval of this submittal because we believe it corrects the deficiency identified in our April 26, 2002 disapproval action. Based on today's proposed approval, we are taking this final rulemaking action, effective on publication, to stay and defer imposition of sanctions that would be triggered by our April 26, 2002 limited disapproval.

EPA is providing the public with an opportunity to comment on this stay and deferral of sanctions. If comments are submitted that change our assessment described in this final determination and the proposed full approval of revised SCAQMD Rule 1168, we intend to take subsequent final action to reimpose sanctions pursuant to 40 CFR 51.31(d). If no comments are submitted that change our assessment, then all sanctions and sanction clocks will be permanently terminated on the effective date of a final rule approval.

II. EPA Action

We are making an interim final determination to stay and defer CAA section 179 sanctions associated with SCAQMD Rule 1168 based on our concurrent proposal to approve the State's SIP revision as correcting the deficiency that initiated sanctions.

Because EPA has preliminarily determined that the State has corrected the deficiency identified in EPA's limited disapproval action, relief from sanctions should be provided as quickly as possible. Therefore, EPA is invoking the good cause exception under the Administrative Procedure Act (APA) in not providing an opportunity for comment before this action takes effect (5 U.S.C. 553(b)(3)). However, by this action EPA is providing the public with a chance to comment on EPA's determination after the effective date, and EPA will consider any comments received in determining whether to reverse such action.

EPA believes that notice-and-comment rulemaking before the effective date of this action is impracticable and contrary to the public interest. EPA has reviewed the State's submittal and, through its proposed action, is indicating that it is more likely than not that the State has corrected the deficiency that started the sanctions clocks. Therefore, it is not in the public interest to initially impose sanctions or to keep applied sanctions in place when the State has most likely done all it can to correct the deficiency that triggered the sanctions clocks. Moreover, it would be impracticable to go through notice-and-comment rulemaking on a finding that the State has corrected the deficiency prior to the rulemaking approving the State's submittal. Therefore, EPA believes that it is necessary to use the interim final rulemaking process to stay and defer sanctions while EPA completes its rulemaking process on the approvability of the State's submittal. Moreover, with respect to the effective date of this action, EPA is invoking the good cause exception to the 30-day notice requirement of the APA because the purpose of this notice is to relieve a restriction (5 U.S.C. 553(d)(1)).

III. Statutory and Executive Order Reviews

This action stays and defers federal sanctions and imposes no additional requirements.

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget.

This action is not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001) because it is not a significant regulatory action.

The administrator certifies that this action will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

This rule does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4).

This rule does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

This action does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999).

This rule is not subject to Executive Order 13045, "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

The requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272) do not apply to this rule because it imposes no standards.

This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report to Congress and the Comptroller General. However, section 808 provides that any rule for which the issuing agency for good cause finds that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest, shall take effect at such time as the agency promulgating the rule determines. 5 U.S.C. 808(2). EPA has made such a good cause finding, including the reasons therefor, and established an effective date of December 12, 2003. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by February 10, 2004. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purpose of judicial review nor does it extend the time within which petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental regulations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: November 20, 2003.

Laura Yoshii,

Deputy Regional Administrator, Region IX.

[FR Doc. 03–30773 Filed 12–11–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 296–0427a; FRL–7593–9]

Revisions to the California State Implementation Plan, South Coast Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve revisions to the South Coast Air Quality Management District (SCAQMD) portion of the California State Implementation Plan (SIP). These revisions concern volatile organic compound (VOC) emissions from adhesives and sealants. We are approving a local rule that regulates these emission sources under the Clean Air Act as amended in 1990 (CAA or the Act).

DATES: This rule is effective on February 10, 2004 without further notice, unless EPA receives adverse comments by January 12, 2004. If we receive such comment, we will publish a timely withdrawal in the **Federal Register** to notify the public that this rule will not take effect.

ADDRESSES: Send comments to Andy Steckel, Rulemaking Office Chief (AIR–4), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901, or e-mail to *steckel.andrew@epa.gov*, or submit comments at *http://www.regulations.gov*.

You can inspect copies of the submitted SIP revisions, EPA's technical support document (TSD), and public comments at our Region IX office during normal business hours by appointment. You may also see copies of the submitted SIP revisions by appointment at the following locations:

Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, Room B–102, 1301 Constitution Avenue, NW., (Mail Code 6102T), Washington, DC 20460.

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 1001 "I" Street, Sacramento, CA 95814.

South Coast Air Quality Management District, 21865 E. Copley Drive, Diamond Bar, CA 91765.

A copy of the rule may also be available via the Internet at *http://www.arb.ca.gov/drdb/drdbltxt.htm*. Please be advised that this is not an EPA website and may not contain the same version of the rule that was submitted to EPA.

FOR FURTHER INFORMATION CONTACT: Yvonne Fong, EPA Region IX, (415) 947–4117, *fong.yvonnew@epa.gov*.

SUPPLEMENTARY INFORMATION: Throughout this document, "we," "us" and "our" refer to EPA.

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I. The State's Submittal

A. What Rule Did the State Submit?

Table 1 lists the rule we are approving with the dates that it was adopted by the local air agency and submitted by the California Air Resources Board (CARB).

TABLE 1.—SUBMITTED RULE

Local agency	Rule No.	Rule title	Adopted	Submitted
SCAQMD	1168	Adhesive and Sealant Applications	10/03/03	11/14/03

On November 19, 2003, a submittal of SCAQMD Rule 1168 was found to meet the completeness criteria in 40 CFR part 51, appendix V, which must be met before formal EPA review.

B. Are There Other Versions of This Rule?

We approved a version of SCAQMD 1168 into the SIP on April 26, 2002 (67 FR 20645). The SCAQMD adopted revisions to the SIP-approved version of Rule 1168 on June 7 and July 12, 2002 and on October 3, 2003. While we can act on only the most recently submitted version, we have reviewed the materials provided with the previous submittals of SCAQMD Rule 1168.

C. What Is the Purpose of the Rule Revisions?

VOCs help produce ground-level ozone and smog, which harm human health and the environment. Section 110(a) of the CAA requires states to submit regulations that control VOC emissions. This rule limits emissions of VOCs resulting from the application of adhesives and sealants.

This rule was also submitted to correct a deficiency we cited in an April 26, 2002 (67 FR 20645) final rulemaking for a previous version of this rule and to stay and defer the potential imposition of section 179 sanctions associated with that final rulemaking. The TSD has more information about this rule.

II. EPA's Evaluation and Action

A. How Is EPA Evaluating the Rule?

Generally, SIP rules must be enforceable (*see* section 110(a) of the Act), must require Reasonably Available Control Technology (RACT) for major sources in nonattainment areas (*see* section 182(a)(2)(A)), and must not relax existing requirements (*see* sections 110(l) and 193). SCAQMD regulates an ozone nonattainment area (*see* 40 CFR part 81), so SCAQMD Rule 1168 must fulfill RACT.

Guidance and policy documents that we used to help evaluate specific enforceability and RACT requirements consistently include the following:

1. Portions of the proposed post-1987 ozone and carbon monoxide policy that concern RACT, 52 FR 45044, November 24, 1987.

2. "Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations," EPA, May 25, 1988 (the Bluebook).

3. "Guidance Document for Correcting Common VOC & Other Rule Deficiencies," EPA Region 9, August 21, 2001 (the Little Bluebook).

4. "Determination of Reasonably Available Control Technology and Best Available Retrofit Control Technology for Adhesives and Sealants," CARB, December 1998.

We also evaluated this rule to determine whether it corrects the deficiency cited in our April 26, 2002 (67 FR 20645) final rulemaking on a previous version of this rule. Our limited disapproval of this earlier version noted that the exemption of light curable products in SCAQMD Rule 1168 conflicted with section 110 and part D of the Act. The TSD has more information on our evaluation.

B. Does the Rule Meet the Evaluation Criteria?

We believe this rule is consistent with the relevant policy and guidance regarding enforceability, RACT, and SIP relaxations. We also conclude that the problematic provision which was found in an earlier version of this rule and which was the basis for our April 26, 2002 final limited disapproval has been corrected. The TSD has more information on our evaluation.

C. Public Comment and Final Action

As authorized in section 110(k)(3) of the Act, EPA is fully approving the submitted rule because we believe it fulfills all relevant requirements. We do not think anyone will object to this approval, so we are finalizing it without proposing it in advance. However, in the Proposed Rules section of this **Federal Register**, we are simultaneously proposing approval of the same submitted rule. If we receive adverse comments by January 12, 2004, we will publish a timely withdrawal in the **Federal Register** to notify the public that the direct final approval will not take effect and we will address the comments in a subsequent final action based on the proposal. If we do not receive timely adverse comments, the direct final approval will be effective without further notice on February 10, 2004. This will incorporate this rule into the federally enforceable SIP and will terminate all CAA section 179 and 110(c) sanction and FIP implications associated with our limited disapproval action on a previous version of this rule.

III. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other

required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by February 10, 2004. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: November 20, 2003.

Laura Yoshii,

Deputy Regional Administrator, Region IX.

■ Part 52, Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

■ 1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart F—California

■ 2. Section 52.220 is amended by adding paragraphs (c)(319) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(319) Amended regulation for the following APCD was submitted on November 14, 2003, by the Governor's designee.

(i) Incorporation by reference.

(A) South Coast Air Quality Management District.

(*1*) Rule 1168, amended on October 3, 2003.

* * * * *

[FR Doc. 03–30774 Filed 12–11–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–2003–0311; FRL–7337–7]

Vinclozolin; Time-Limited Pesticide Tolerances Technical Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; technical correction.

SUMMARY: EPA issued a final rule in the **Federal Register** of September 30, 2003, concerning time-limited tolerances established for the fungicide, vinclozolin. This document is being issued to correct a typographical error in the regulatory text.

DATES: This technical correction is effective on December 12, 2003.

FOR FURTHER INFORMATION CONTACT: Mary L. Waller, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–9354; e-mail address: *waller.mary@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

The Agency included in the final rule a list of those who may be potentially affected by this action. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number OPP–2003–0311. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr/*. A frequently updated electronic version of 40 CFR part 180 is available at *http://www.access.gpo.gov/nara/cfr/cfrhtml_00/Title_ 40/40cfr180_00.html*, a beta site currently under development.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the appropriate docket ID number.

II. What Does this Correction Do?

In the **Federal Register** of September 30, 2003 (68 FR 56184) (FRL–7327–6) published a final rule extending time-limited tolerances established for the fungicide, vinclozolin. This document is being issued to correct a typographical error in the regulatory text.

III. Why is this Correction Issued as a Final Rule?

Section 553 of the Administrative Procedure Act (APA), 5 U.S.C. 553(b)(B), provides that, when an Agency for good cause finds that notice and public procedure are impracticable, unnecessary or contrary to the public interest, the agency may issue a final rule without providing notice and an opportunity for public comment. EPA has determined that there is good cause for making today's technical correction final without prior proposal and opportunity for comment, because EPA is merely inserting language that was inadvertently omitted from the previously published final rule. EPA finds that this constitutes good cause under 5 U.S.C. 553(b)(B).

IV. Do Any of the Statutory and Executive Order Reviews Apply to this Action?

This final rule implements a technical correction to the CFR, and it does not otherwise impose or amend any requirements. As such, the Office of Management and Budget (OMB) has determined that a technical correction is not a "significant regulatory action" subject to review by OMB under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Nor does this final rule contain any information collection requirements that require review and approval by OMB pursuant to the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501 *et seq.*). Since the Agency has made a "good cause" finding that this action is not subject to notice-and-comment requirements under the APA or any other statute (see Unit III.), this action is not subject to provisions of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), or to sections 202 and 205 of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). In addition, this action does not significantly or uniquely affect small governments or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). This final rule will not have substantial direct effects on the States or on one or more Indian tribes, on the relationship between the national government and the States or one or more Indian tribes, or on the distribution of power and responsibilities among the various levels of government or between the Federal government and Indian tribes. As such, this action does not have any "federalism implications" as described in Executive Order 13132, entitled Federalism (64 FR 43255, August 10, 1999), or any "tribal implications" as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Since this direct final rule is not a "significant regulatory action" as defined by Executive Order 12866, it does not require OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997), and is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001). This action does not involve any technical standards that require the Agency's consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). This action will not result in environmental justice related issues and does not, therefore, require special consideration under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994) or Executive Order 12630, entitled *Governmental Actions and Interference with Constitutionally Protected Property Rights* (53 FR 8859, March 15, 1988). In issuing this final rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct, as required by section 3 of Executive Order 12988, entitled *Civil Justice Reform* (61 FR 4729, February 7, 1996).

V. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this final rule in the **Federal Register**. This final rule is not a "major rule " as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

■ Therefore, 40 CFR part 180 is corrected as follows:

PART 180—[AMENDED]

■ 1. The authority citation for part 180 continues to read as follows:

Authority: 21 U. S. C. 321 (q), 346 (a) and 371.

§ 180.380 [Corrected]

■ 2. In FR Doc. 03–24782, appearing on page 56189, in § 180.380, in the amendment to the table in paragraph (a), the commodity "Poultry" should have read "Poultry, fat."

Dated: November 26, 2003.

Peter Caulkins,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 03–30708 Filed 12–12–03; 8:45 am]

BILLING CODE 6560–50–S

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 65

Changes in Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA), Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Final rule.

SUMMARY: Modified Base (1% annual-chance) Flood Elevations (BFEs) are finalized for the communities listed below. These modified elevations will be used to calculate flood insurance premium rates for new buildings and their contents.

EFFECTIVE DATES: The effective dates for these modified BFEs are indicated on the following table and revise the Flood Insurance Rate Maps (FIRMs) in effect for the listed communities prior to this date.

ADDRESSES: The modified BFEs for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

FOR FURTHER INFORMATION CONTACT: Doug Bellomo, P.E., Hazard Identification Section, Mitigation Division, Emergency Preparedness and Response Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–2903.

SUPPLEMENTARY INFORMATION: Federal Emergency Management Agency makes the final determinations listed below of the modified BFEs for each community listed. These modified elevations have been published in newspapers of local 2 circulation and ninety (90) days have elapsed since that publication. The Mitigation Division Director of the Emergency Preparedness and Response Directorate has resolved any appeals resulting from this notification.

The modified BFEs are not listed for each community in this notice. However, this rule includes the address of the Chief Executive Officer of the community where the modified BFEs determinations are available for inspection.

The modifications are made pursuant to Section 206 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National

Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.*, and with 44 CFR part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The modified BFEs are the basis for the floodplain management measures that the community is required to either adopt or to show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program (NFIP).

These modified elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State, or regional entities.

These modified elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

The changes in BFEs are in accordance with 44 CFR 65.4.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Mitigation Division Director of the Emergency Preparedness and Response Directorate certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because modified BFEs are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are required to maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

Regulatory Classification

This final rule is not a significant regulatory action under the criteria of Section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism

This rule involves no policies that have federalism implication under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of Section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains, Reporting and Recordkeeping requirements.

■ Accordingly, 44 CFR Part 65 is amended to read as follows:

PART 65—[AMENDED]

■ 1. The authority citation for Part 65 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p.376.

§ 65.4 [Amended]

■ 2. The tables published under the authority of § 65.4 are amended as follows:

State and county	Location and case No.	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community number
Arizona:					
Gila (FEMA Docket No.: B–7438).	City of Globe (03–09–0187P).	June 18, 2003; June 25, 2003; *Arizona Silver Belt.*	The Honorable Stanley Gibson, Mayor, City of Globe, 150 North Pine Street, Globe, Arizona 85501.	September 24, 2003	040029
Gila (FEMA Docket No.: B–7438).	Unincorporated Areas (03–09–0187P).	June 18, 2003; June 25, 2003; *Arizona Silver Belt.*	The Honorable Cruz Salas, Chairman, Gila County Board of Supervisors, 1400 East Ash Street, Globe, Arizona 85501.	September 24, 2003	040028
Maricopa (FEMA Docket No.: B–7438).	City of Avondale (02–09–190P).	May 29, 2003; June 5, 2003; *Arizona Republic.*	The Honorable Ronald J. Drake, Mayor, City of Avondale, 525 North Central Avenue, Avondale, Arizona 85323.	May 22, 2003	040038
Maricopa (FEMA Docket No.: B–7438).	Town of Buckeye (03–09–0245P).	June 19, 2003; June 26, 2003; *Buckeye Valley News.*	The Honorable Dusty Hull, Mayor, Town of Buckeye, 100 North Apache Road, Suite A, Buckeye, Arizona 85326.	May 20, 2003	040039
Maricopa (FEMA Docket No.: B–7438).	City of Chandler (03–09–0353P).	May 29, 2003; June 5, 2003; *Arizona Business Gazette.*	The Honorable Boyd Dunn, Mayor, City of Chandler, 55 North Arizona Place, Suite 301, Chandler, Arizona 85225.	May 7, 2003	040040
Maricopa (FEMA Docket No.: B–7438).	City of El Mirage (02–09–945P).	May 22, 2003; May 29, 2003; *Arizona Republic.*	The Honorable Robert Robles, Mayor, City of El Mirage, P.O. Box 26, El Mirage, Arizona 85335.	August 28, 2003	040041
Maricopa (FEMA Docket No.: B–7438).	Town of Gila Bend (02–09–858P).	July 3, 2003; July 10, 2003; *Arizona Business Gazette.*	The Honorable Chuck Turner, Mayor, Town of Gila Bend, P.O. Box A, Gila Bend, Arizona 85337.	October 9, 2003	040043
Maricopa (FEMA Docket No.: B–7438).	City of Phoenix (03–09–0290P).	June 12, 2003; June 19, 2003; *Arizona Business Gazette.*	The Honorable Skip Rimsza, Mayor, City of Phoenix, 200 West Washington Street, 11th Floor, Phoenix, Arizona 85003–1611.	May 29, 2003	040051

State and county	Location and case No.	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community number
Maricopa (FEMA Docket No.: B–7438).	City of Surprise (02–09–945P).	May 22, 2003; May 29, 2003; *Arizona Republic.*	The Honorable Joan H. Shafer, Mayor, City of Surprise, 12425 West Bell Road, Suite D–100, Surprise, Arizona 85374.	August 28, 2003	040053
Maricopa (FEMA Docket No.: B–7438).	Unincorporated Areas (02–09–945P).	May 22, 2003; May 29, 2003; *Arizona Republic.*	The Honorable R. Fulton Brock, Chairman, Maricopa County Board of Supervisors, 301 West Jefferson, 10th Floor, Phoenix, Arizona 85003.	August 28, 2003	040037
Maricopa (FEMA Docket No.: B–7438).	Unincorporated Areas (02–09–858P).	July 3, 2003; July 10, 2003; *Arizona Business Gazette.*	The Honorable Don Stapley, Chairman, Maricopa County Board of Supervisors, 301 West Jefferson, 10th Floor, Phoenix, Arizona 85003.	October 9, 2003	040037
Maricopa (FEMA Docket No.: B–7438).	Town of Youngtown (03–09–1014X).	May 22, 2003; May 29, 2003; *Arizona Republic.*	The Honorable Bryan Hackbarth, Mayor, Town of Youngtown, 12030 Clubhouse Square, Youngtown, Arizona 85363.	August 28, 2003	040057
Pima (FEMA Docket No.: B–7438).	City of Tucson (02–09–873P).	July 17, 2003; July 24, 2003; *Daily Territorial.*	The Honorable Bob Walkup, Mayor, City of Tucson, City Hall, 255 West Alameda Street, Tucson, Arizona 85701.	October 23, 2003	040076
Pima (FEMA Docket No.: B–7438).	Unincorporated Areas (03–09–0541P).	June 19, 2003; June 26, 2003; *Arizona Daily Star.*	The Honorable Ray Carroll, Republican County Supervisor, Pima County District Four, 130 West Congress Street, 11th Floor, Tucson, Arizona 85701.	September 25, 2003	040073
California:					
Contra Costa (FEMA Docket No.: B–7438).	City of Clayton (03–09–0387P).	May 29, 2003; June 5, 2003; *Contra Costa Times.*	The Honorable Gregory J. Manning, Mayor, City of Clayton, City Hall, 6000 Heritage Trail, Clayton, California 94517.	May 9, 2003	060027
Los Angeles (FEMA Docket No.: B–7438).	Unincorporated Areas (02–09–404P).	May 22, 2003; May 29, 2003; *Los Angeles Times.*	The Honorable Yvonne B. Burke, Chair, Los Angeles County Board of Supervisors, 500 West Temple Street, Los Angeles, California 90012.	April 21, 2003	065043
Placer (FEMA Docket No.: B–7438).	City of Rocklin (02–09–810P).	May 7, 2003; May 14, 2003; *The Rocklin.*	The Honorable Kathy Lund, Mayor, City of Rocklin, 3970 Rocklin Road, Rocklin, California 95677–2720.	August 13, 2003	060242
Placer (FEMA Docket No.: B–7438).	Unincorporated Areas (02–09–810P).	May 7, 2003; May 14, 2003; *The Rocklin.*	The Honorable Rex Bloomfield, Chairman, Placer County Board of Supervisors, 175 Fulweiler Avenue, Auburn, California 95603.	August 13, 2003	060239
Sacramento (FEMA Docket No.: B–7438).	Unincorporated Areas (03–09–0080P).	May 8, 2003; May 15, 2003; *Daily Recorder.*	The Honorable Illa Collin, Chair, Sacramento County Board of Supervisors, 700 H Street, Room 2450, Sacramento, California 95814.	August 14, 2003	060262
San Diego (FEMA Docket No.: B–7438).	City of San Diego (03–09–0578P).	June 26, 2003; July 3, 2003; *San Diego Union-Tribune.*	The Honorable Richard M. Murphy, Mayor, City of San Diego, 202 C Street, 11th Floor, San Diego, California 92101.	June 9, 2003	060295
San Diego (FEMA Docket No.: B–7438).	San City of San Marcos (03–09–0123P).	April 24, 2003; May 1, 2003; *The Paper.*	The Honorable F.H. "Corky" Smith, Mayor, City of San Marcos, One Civic Center Drive, San Marcos, California 92069–2949.	July 31, 2003	060296
Santa Barbara (FEMA Docket No.: B–7438).	City of Solvang (02–09–1302P).	May 29, 2003; June 5, 2003 *Santa Barbara News Press.*	The Honorable Beverly Russ, Mayor, City of Solvang, P.O. Box 107, Solvang, California 93464–0107.	May 7, 2003	060756
Santa Barbara (FEMA Docket No.: B–7438).	Unincorporated Areas (02–09–179P).	July 3, 2003; July 10, 2003; *Santa Barbara News Press.*	The Honorable Naomi Schwartz, Chair, Santa Barbara County Board of Supervisors, 105 East Anapamu Street, Santa Barbara, California 93101.	October 9, 2003	060331
Santa Cruz (FEMA Docket No.: B–7438).	Unincorporated Areas (03–09–0475P).	May 8, 2003; May 15, 2003; *Register-Pajaronian.*	The Honorable Ellen Pirie, Chair, Santa Cruz County Board of Supervisors, 701 Ocean Street, Room 500, Santa Cruz, California 95060.	August 14, 2003	060353

State and county	Location and case No.	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community number
Santa Cruz (FEMA Docket No.: B–7438).	City of Watsonville (03–09–0475P).	May 8, 2003; May 15, 2003; *Register-Pajaronian.*	The Honorable Richard de la Paz, Jr., Mayor, City of Watsonville, Administration Building, Second Floor, 215 Union Street, Watsonville, California 95076.	August 14, 2003	060357
Colorado:					
Adams (FEMA Docket No.: B–7438).	Unincorporated Areas (03–08–0104P).	May 14, 2003; May 21, 2003; *Brighton Standard-Blade.*	The Honorable Elaine T. Valente, Chairman, Adams County Board of Commissioners, 450 South Fourth Avenue, Brighton, Colorado 80601.	August 20, 2003	080001
Arapahoe (FEMA Docket No.: B–7438).	City of Littleton (03–08–0030P).	May 22, 2003; May 29, 2003; *Littleton Independent.*	The Honorable Susan M. Thornton, Mayor, City of Littleton, 2255 West Berry Avenue, Littleton, Colorado 80165.	August 28, 2003	080017
Broomfield (FEMA Docket No.: B–7438).	City and County of Broomfield (03–08–0061P).	June 19, 2003; June 26, 2003; *Boulder Daily Camera.*	The Honorable Karen Stuart, Mayor, City and County of Broomfield, One DesCombes Drive, Broomfield, Colorado 80020.	September 25, 2003	085073
Broomfield (FEMA Docket No.: B–7438).	City and County of Broomfield (03–08–0270P).	July 16, 2003; July 23, 2003; *Broomfield Enterprise.*	The Honorable Karen Stuart, Mayor, City and County of Broomfield, One DesCombes Drive, Broomfield, Colorado 80020.	June 27, 2003	085073
Denver (FEMA Docket No.: B–7438).	City and County of Denver (03–08–0210P.	May 15, 2003; May 22, 2003; *Denver Post.*	The Honorable John W. Hickenlooper, Mayor, City and County of Denver, 1437 Bannock Street, Suite 350, Denver, Colorado 80202.	April 24, 2003	080046
Adams Arapahoe Denver (FEMA Docket No.: B–7438).	City of Aurora (03–08–0210P).	May 15, 2003; May 22, 2003; *Denver Post.*	The Honorable Paul E. Tauer, Mayor, City of Aurora, 15151 East Alameda Parkway, Fifth Floor, Aurora, Colorado 80012.	April 24, 2003	080002
Douglas (FEMA Docket No.: B–7438).	Town of Parker (02–08–186P).	April 23, 2003; April 30, 2003; *Douglas County News-Press.*	The Honorable Gary Lasater, Mayor, Town of Parker, 20120 East Main Street, Parker, Colorado 80138–7334.	July 30, 2003	080310
Douglas (FEMA Docket No.: B–7438).	Unincorporated Areas (02–08–186P).	April 23, 2003; April 30, 2003; *Douglas County News-Press.*	The Honorable James R. Sullivan, Chairman, Douglas County, Board of Commissioners, 100 Third Street, Castle Rock, Colorado 80104.	July 30, 2003	080049
Douglas (FEMA Docket No.: B–7438).	Unincorporated Areas (03–08–0096P).	April 23, 2003; April 30, 2003; *Douglas County News-Press.*	The Honorable James R. Sullivan, Chairman, Douglas County Board of Commissioners, 100 Third Street, Castle Rock, Colorado 80104.	July 30, 2003	080049
El Paso, (FEMA Docket No.: B–7438).	City of Colorado Springs (03–08–0223P).	June 5, 2003; June 12, 2003; *The Gazette.*	The Honorable Lionel Rivera, Mayor, City of Colorado Springs, P.O. Box 1575, Colorado Springs, Colorado 80901.	May 13, 2003	080060
Jefferson (FEMA Docket No.: B–7438).	Unincorporated Areas (03–08–0099P) (03–08–0456P).	March 19, 2003; March 26, 2003; *Canyon Courier.*	The Honorable Richard M. Sheehan, Chairman, Jefferson County Board of Commissioners, 100 Jefferson County Parkway, Golden, Colorado 80419.	June 26, 2003	080087
Hawaii:					
Hawaii (FEMA Docket No.: B–7438).	Hawaii County (02–09–368P).	July 10, 2003; July 17, 2003; *Hawaii Tribune Herald.*	The Honorable Harry Kim, Mayor, County of Hawaii, 25 Aupuni Street, Hilo, Hawaii 96720.	October 16, 2003	155166
Maui (FEMA Docket No.: B–7438).	Maui County (03–09–0116P).	May 29, 2003; June 5, 2003; *Maui News.*	The Honorable Alan M. Arakawa, Mayor, Maui County, 200 South High Street, Wailuku, Hawaii 96793.	May 6, 2003	150003
Maui (FEMA Docket No.: B–7438).	Maui County (03–09–0107P).	July 3, 2003; July 10, 2003; *Maui News.*	The Honorable Alan M. Arawaka, Mayor, Maui County, 200 South High Street, Wailuku, Hawaii 96793.	June 13, 2003	150003
Idaho:					
Bonneville (FEMA Docket No.: B–7438).	City of Ammon (03–10–0229P).	July 3, 2003; July 10, 2003; *Post Register.*	The Honorable Bruce Ard, Mayor, City of Ammon, 2135 South Ammon Road, Ammon, Idaho 83406.	June 13, 2003	160028
Bonneville (FEMA Docket No.: B–7438).	Unincorporated Areas (03–10–0229P).	July 3, 2003; July 10, 2003; *Post Register.*	The Honorable Lee Stake, Chairman, Bonneville County Board of Commissioners, 605 North Capital Avenue, Idaho Falls, Idaho 83402.	June 13, 2003	160027
Nevada:					
Independent City (FEMA Docket No.: B–7438).	City of Carson City (01–09–592P).	June 19, 2003; June 26, 2003; *Nevada Appeal.*	The Honorable Ray Masayko, Mayor, City of Carson City, 201 North Carson Street, Suite 2, Carson City, Nevada 89701.	May 29, 2003	320001
Clark (FEMA Docket No.: B–7438).	City of Henderson (03–09–0861X) (03–09–980X).	May 1, 2003; May 8, 2003; *Las Vegas Review-Journal.*	The Honorable James Gibson, Mayor, City of Henderson, 240 South Water Street, Henderson, Nevada 89015.	April 21, 2003	320005
Clark (FEMA Docket No.: B–7438).	Unincorporated Areas (02–09–1071P).	April 24, 2003; May 1, 2003; *Las Vegas Review-Journal.*	The Honorable Mary J. Kincaid-Chauncey, Chair, Clark County Board of Commissioners, 500 South Grand Central Parkway, Las Vegas, Nevada 89155.	July 31, 2003	320003
Clark (FEMA Docket No.: B–7438).	Unincorporated Areas (03–09–0861X) (03–09–980X).	May 1, 2003; May 8, 2003; *Las Vegas Review-Journal.*	The Honorable Mary J. Kincaid-Chauncey, Chair, Clark County Board of Commissioners, 500 South Grand Central Parkway, Las Vegas, Nevada 89155.	April 21, 2003	320003
Clark (FEMA Docket No.: B–7438).	Unincorporated Areas (02–09–718P).	July 10, 2003; July 17, 2003; *Las Vegas Review-Journal.*	The Honorable Mary J. Kincaid Chauncey, Chair, Clark County Board of Commissioners, 500 South Grand Central Parkway, Las Vegas, Nevada 89155.	June 19, 2003	320003
Texas:					
Dallas (FEMA Docket No.: B–7438).	City of Dallas (00–06–248P).	January 31, 2002; February 7, 2002; *Dallas Morning News.*	The Honorable Ron Kirk, Mayor, City of Dallas, 1500 Marilla Street, Dallas, Texas 75201.	November 8, 2000 ...	480171

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance.")

Dated: December 5, 2003.

Anthony S. Lowe,

Mitigation Division Director, Emergency Preparedness and Response Directorate.

[FR Doc. 03–30769 Filed 12–11–03; 8:45 am]

BILLING CODE 6718–04–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 03–3748, MM Docket No. 02–12; RM–10356, RM–10551, RM–10553, and RM–10554]

Radio Broadcasting Services; Ash Fork, AZ, Beaver, UT, Cedar City, UT, Dolan Springs, AZ, Fredonia, AZ, Moapa Valley, NV, Peach Springs, AZ and Tusayan, AZ

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In response to a Notice of Proposed Rule Making, 67 FR 5961 (February 8, 2002), this Report and Order allots Channel 267A to Ash Fork, Arizona, and allots Channel 285C3 to Peach Springs, Arizona as first local aural transmission services for those communities; allots Channel 278C1 to Fredonia, Arizona, as a second local service to Fredonia; reallots Channel 224C, Station KRRN(FM), from Dolan Springs, Arizona, to Moapa Valley, Nevada, as a second local service to Moapa Valley; substitutes Channel 221C for Channel 223C at Station KXFF(FM), Cedar City, Utah; substitutes Channel 222A for Channel 221A at Station KSGC(FM), Tusayan, Arizona; and allots Channel 246A to Beaver, Utah, as that community's first local aural transmission service. The coordinates for Channel 267A at Ash Fork, Arizona, are 35–16–13 NL and 112–32–31 WL, with a site restriction of 7.4 kilometers (4.6 miles) northwest of Ash Fork. The coordinates for Channel 285C3 at Peach Springs, Arizona, are 35–31–39 NL and 113–19–49 WL, with a site restriction of 8.6 kilometers (5.3 miles) east of Peach Springs. The coordinates for Channel 278C1 at Fredonia, Arizona, are 36–53–00 NL and 112–11–40 WL, with a site restriction of 29.5 kilometers (18.3 miles) east of Fredonia. The coordinates for Channel 224C, at Station KRRN(FM), Moapa Valley, Nevada, are 36–35–06 NL and 114–36–01 WL, with a site restriction of 11.7 kilometers (7.3 miles) west of Moapa Valley. The coordinates for Channel 221C at Station KXFF(FM), Cedar City, Utah are 37–38–41 NL and 113–22–28 WL, with a site restriction of 27.8 kilometers (17.3 miles) west of Cedar City. The coordinates for Channel 222A at Station KSGC(FM), Tusayan, Arizona, are 35–58–14 NL and 112–07–53 WL, with a site restriction of 0.6 kilometers (0.4 miles) southwest of Tusayan. The coordinates for Channel 246A at Beaver, Utah, are 38–16–37 NL and 112–38–25 WL.

DATES: Effective January 12, 2004.

FOR FURTHER INFORMATION CONTACT: R. Barthen Gorman, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report

and Order, MM Docket No. 02–12 adopted November 21, 2003, and released November 26, 2003. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center at Portals II, 445 12th Street, SW, Room CY–A257, Washington, DC, 20554. The document may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW, Room CY–B402, Washington, DC, 20554, telephone 202 863–2893, facsimile 202 863–2898, or via e-mail *qualexint@aol.com*.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

■ Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—RADIO BROADCAST SERVICES

■ 1. The authority citation for Part 73 reads as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

■ 2. Section 73.202(b), the Table of FM Allotments under Arizona, is amended by adding Ash Fork, Channel 267A, by removing Channel 224C at Dolan Springs, by adding Fredonia, Channel 278C1, by adding Peach Springs, Channel 285C3, by removing Channel 221A and by adding Channel 222A at Tusayan.

■ 3. Section 73.202(b), the Table of FM Allotments under Nevada, is amended by adding Channel 224C, Moapa Valley.

■ 4. Section 73.202(b), the Table of FM Allotments under Utah, is amended by adding Beaver, Channel 246A, by removing Channel 223C, and by adding Channel 221C at Cedar City.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 03–30767 Filed 12–11–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 03–3747; MB Docket No.03–195; RM–10745]

Radio Broadcasting Services; Dripping Springs & Marble Falls, TX

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 285A for Channel 285C2 at Marble Falls, Texas, reallots Channel 285A to Dripping Springs, Texas, and modifies the license for Station KXXS to specify operation Channel 285A at Dripping Springs in response to a petition filed by Amigo Radio, Ltd. See 68 FR 54878, September 19, 2003. The coordinates for Channel 285A at Dripping Springs are 30–11–54 and 98–00–46. Although Mexican concurrence has been requested for the allotment of Channel 285A at Dripping Springs, notification has not been received. Therefore, operation with the facilities specified for channel 285A at Dripping Springs is subject to modification, suspension, or termination without right to hearing, if found by the Commission to be necessary in order to conform to the 1992 USA-Mexico FM Broadcast Agreement or if specifically objected to by Mexico. With this action, this proceeding is terminated.

DATES: Effective January 12, 2004.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MB Docket No. 03–195, adopted November 21, 2003, and released November 26, 2003. The full text of this Commission decision is available for inspection and copying during regular business hours in the FCC's Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. The complete text of this decision may also be purchased from the Commission's duplicating contractor, Natek, Inc., Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 202–863–2893.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

■ Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—RADIO BROADCAST SERVICES

■ 1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

■ 2. Section 73.202(b), the Table of FM Allotments under Texas, is amended by removing Marble Falls, Channel 285C2 and by adding Dripping Springs, Channel 285A.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 03–30766 Filed 12–11–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 74

[ET Docket No. 01–75; FCC 03–246]

Revision of Broadcast Auxiliary Service

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document addresses petitions for reconsideration of the *Report and Order* in this proceeding, filed by Nassau County Police Department (NCPD) and the Society of Broadcast Engineers, Inc. (SBE). In the Report and Order, the Commission amended the rules in part 74, Broadcast Auxiliary Service (BAS), part 78, Cable Television Relay Service (CARS), and part 101, Fixed Microwave Service (FS) to permit stations in these services to use digital technology. It also made conforming amendments so that the stations in these services, which share frequency bands and use similar transmission technologies, will operate under consistent regulations.

DATES: Effective January 12, 2004.

FOR FURTHER INFORMATION CONTACT: Ted Ryder, Office of Engineering and Technology, (202) 418–2803.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Memorandum Opinion and Order*, ET Docket No. 01–75, FCC 03–246, adopted October 15, 2003, and released October 20, 2003. The full text of this document is available on the Commission's Internet site at *www.fcc.gov*. It is also available for inspection and copying during regular business hours in the FCC Reference Center (Room CY–A257), 445 12th St., SW, Washington, DC 20554. The full text of this document also may be purchased from the Commission's duplication contractor, Qualex International, Portals II, 445 12th St., SW., Room CY–B402, Washington, DC 20554; telephone (202) 863–2893; fax (202) 863–2898; e-mail *qualexint@aol.com*.

Summary of the Report and Order

1. In the *Memorandum Opinion and Order*, the Commission addressed petitions for reconsideration of the

Report and Order (*R&O*) in this proceeding, filed by Nassau County Police Department (NCPD) and the Society of Broadcast Engineers, Inc. (SBE). In the *R&O*, the Commission amended the rules in part 74, Broadcast Auxiliary Service (BAS), part 78, Cable Television Relay Service (CARS), and part 101, Fixed Microwave Service (FS) to permit stations in these services to use digital technology. It also made conforming amendments so that the stations in these services, which share frequency bands and use similar transmission technologies, will operate under consistent regulations. Specifically, the actions in the *R&O* permit BAS licensees to use digital modulation in all of the Aural and Television (TV) BAS bands; update and conform BAS and CARS rules with FS rules; simplify and streamline BAS processing via our licensing database, the Universal Licensing System (ULS); and allow the operation of Wireless Assist Video Devices (WAVDs) under part 74.

2. The Commission granted NCPD's petition to exclude WAVDs from the band 500–506 MHz (UHF–TV channel 19) in the New York/Northeast New Jersey (NY/NJ) area in order to protect incumbent public safety land mobile operations in that area. In addition we exclude, to a lesser extent, WAVD operation on adjacent bands 494–500 MHz (UHF–TV channel 18) and 506–512 MHz (UHF–TV channel 20) in that area. We also denied SBE's petition to treat composite, dual carrier analog/digital TV BAS emissions within a single channel as separate emissions.

3. On March 28, 2003, the NCPD filed a Petition for Reconsideration of the *R&O* asking that we exclude WAVDs from the band 500–506 MHz (UHF–TV channel 19) in the NY/NJ area. Additionally, on April 4, 2003, the SBE filed a Petition for Reconsideration asking that we: (1) Treat composite, dual carrier analog/digital TV BAS emissions within a single BAS channel as separate emissions; (2) accommodate elective registration of BAS Mobile TV Pick-up (TVPU) receive sites on the ULS; (3) confirm that multiple BAS emissions of reduced bandwidth are permissible on standard TV BAS channels; and (4) clarify that BAS RPUs may continue to operate with 20 and 25 kHz bandwidths in the 450/455 MHz RPU band.

A. Exclusion of WAVDs From UHF–TV Channel 19 in the NY/NJ Area

4. We agree with NCPD that WAVD operations should be excluded from the band 500–506 MHz (UHF–TV channel 19) in the NY/NJ area. First, we agree with NCPD that there is a need for public safety land mobile use of UHF–TV channel 19, as evidenced by numerous existing public safety operations authorized under waiver on this channel in the NY/NJ area. We find that deployment of WAVDs on this channel in accordance with the rules as adopted in the *R&O*, *i.e.*, absent an exclusion, could thus pose a risk of interference to those public safety land mobile operations. We therefore exclude WAVD operation UHF–TV channel 19 in the NY/NJ area. We also exclude WAVD operation on adjacent UHF–TV Channels 18 and 20 in the NY/NJ area, to a lesser extent, consistent with the approach in the WAVD rules adopted by the *R&O*. We note that, because WAVDs are authorized on all 42 assignable channels, they may use other channels in the NY/NJ area to satisfy their communications needs, and thus this exclusion will not overly constrain WAVD deployment in the NY/NJ area. We also note that no WAVDs have yet been applied for or licensed, and we thus find that no existing WAVD licensee would be affected by this new exclusion. Accordingly, we granted NCPD's Petition and amend § 74.870(c)(4) to exclude WAVD operation on the band 500–506 MHz (UHF–TV channel 19) for a radius of 200 km around the coordinates listed in section 90.303 for the NY/NJ area, and on the bands 494–500 MHz (lower adjacent UHF–TV channel 18) and 506–512 MHz (upper adjacent UHF–TV channel 20) for a radius of 128 km around those coordinates.

B. Treatment of Composite, Dual Carrier Analog/Digital Emissions

5. In the *R&O*, the Commission decided that hybrid TV BAS systems, where an analog signal and a digital signal are transmitted in a single channel, would be treated as a single, aggregate emission regarding emission mask, emission designator, and Equivalent Isotropically Radiated Power (EIRP) determinations in the equipment authorization and station licensing processes. This approach conforms with the treatment of similar equipment used by the FS under part 101 and best addresses how various emissions fit within a single BAS channel. The Commission also adopted a similar approach for TV BAS composite systems under part 74. The Commission observed that hybrid and composite systems will accommodate both existing analog and new digital TV signals simultaneously over a common TV BAS channel, which will ease the transition to DTV. These systems provide a migration mechanism from using an analog signal to a combination analog/digital signal, and eventually to only a digital signal. The Commission stated that conforming the treatment of these systems with existing rules for the FS under part 101 would simplify manufacturing processes, equipment authorization, and licensing.

6. We continue to believe that conforming the treatment of composite systems under part 74 with the aggregate treatment of hybrid systems under parts 74 and 101 would simplify equipment authorization and licensing for these systems without complicating or compromising frequency coordination. We note that, under the rules adopted in the *R&O*, manufacturers only need to ensure compliance with a single bandwidth, emission mask, and EIRP to obtain certification for their equipment, rather than conducting separate measurements for the analog and digital portions of their signal. Moreover, because TV BAS licenses in the 2 GHz band designate the upper and lower edges of the licensed channel, rather than the assigned center frequency, our approach provides licensees with flexibility to accommodate multiple signals within their assigned channel. Requiring separate emission designators, as requested by SBE, would reduce this flexibility because each emission must then be associated with a specific frequency. In addition, because such a change would entail a wholesale restructuring of the way TV BAS is licensed in the 2 GHz band, making the requested change would entail a restructuring of the ULS and a requirement for many licensees to modify their licenses to conform. With respect to frequency coordination, we reiterate that for specific composite systems, coordinators could determine individual technical and operational details and interference protection criteria via the manufacturer and model shown in the individual license record in the ULS or, when necessary, contact the licensee to obtain this information through the normal coordination process, as is appropriate wherever additional technical or operational details are needed. In response to SBE's concern regarding the determination of whether the analog or digital carrier is on the low or high side of the channel, we note that the licensee could similarly be contacted. Finally, because the need to accommodate analog emissions will likely decrease after transition to DTV, we believe that the utility of these transitional analog/digital systems, as well as any need to obtain additional technical details for frequency coordination, will be relatively short-

lived. Accordingly, we do not find that frequency coordination would be unnecessarily complicated by aggregate treatment of BAS emissions within a channel; and consequently deny SBE's Petition. We therefore find separate treatment of analog and digital emissions unnecessary.

C. Additional Requests

7. *Elective Registration of BAS TVPU Receive Sites:* In its Petition, SBE asks that we allow licensees to electively register fixed receive sites associated with BAS TVPU stations in the ULS. SBE states that this information would be used to protect TVPU receive sites, especially during frequency coordination along international borders. As noted by SBE, frequency coordination of BAS TVPU stations necessitates information on TVPU receive sites, and registration of such receive sites may offer some benefit to frequency coordination by facilitating their identification. However, we find that, because registration of BAS TVPU receive sites in the ULS was neither at issue nor addressed by the *R&O*, it is beyond the scope of the *Memorandum Opinion and Order*. At this time, we find that such elective registration is unnecessary. However if parties continue to believe that such a requirement would be beneficial they may file a petition for rulemaking seeking the imposition of TVPU receive site registration.

8. *Reduced Bandwidth on TV BAS Channels:* SBE seeks clarification of several issues related to the use of digital links in the TV BAS bands. First, SBE asks that the Commission clarify that the Commission will not routinely dismiss applications specifying narrowband digital emissions. SBE notes that only a wideband (25 MHz) channel plan currently exists for the 7 and 13 GHz bands, but some newer digital equipment operates with only 6.5 MHz bandwidths. Second, SBE asks that the Commission clarify that a narrowband channel may operate on a frequency offset from the channel center. Finally, SBE asks the Commission to clarify that licensees may stack multiple narrowband emissions within a channel.

9. As an initial matter, we note that the Commission does not routinely dismiss applications for underutilization of the spectrum. If no other deficiencies exist, an application for narrowband emissions within a wideband channel will not be routinely dismissed. In addition, we note that the Commission grants licenses for these bands by specifying a band of operation, not a specific operating frequency. Therefore, a licensee has flexibility to locate its emissions within a channel where it is most advantageous. Finally, to promote spectrum efficiency, we note that the rules allow licensees to multiplex multiple signals within a channel. Under this rule, licensees may provide information using multiple narrowband channels within the larger channel subject to the condition that the composite emissions meet the rules for out-of-band emissions. In these instances, we note that spectral efficiency will be further enhanced if the presence of systems operating on frequencies other than the channel center is accounted for in the frequency coordination process.

10. *RPU BAS with 20 kHz and 25 kHz Bandwidths:* Finally, in its Petition, SBE notes that the Commission, in the *R&O*, rechannelized the BAS RPU 450/455 MHz band into 6.25 kHz blocks, stackable to 50 kHz maximum channel bandwidth, and adopted certain Part 90 technical standards, including the § 90.210 emission mask requirements, for authorized bandwidths of 30 kHz or less. SBE, claiming that the part 90 technical standards only allow a maximum channel width of 12.5 kHz, requests that we clarify that licensees may continue to use channel widths up to 25 kHz. The rules adopted in the *R&O*, which permit narrowband channels to be stacked to form wider channels, have not changed and are not restricted by the part 90 limitations on channel bandwidth. Thus, licensees may continue to stack these channels as needed, up to a maximum channel bandwidth of 50 kHz. However, we encourage licensees to operate with spectrally efficient equipment and use the minimum bandwidth necessary for their operation.

Final Regulatory Flexibility Certification

11. The Regulatory Flexibility Act of 1980, as amended (RFA)[1] requires that a regulatory flexibility analysis be prepared for rulemaking proceedings, unless the agency certifies that "the rule will not have a significant economic impact on a substantial number of small entities."[2] The RFA generally defines "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."[3] In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.[4] A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).[5]

12. In the *Report and Order* in this proceeding, the Commission established Wireless Assist Video Devices (WAVDs), allowing them to operate on certain unused TV channels on a secondary basis to other services. To provide flexibility, WAVDs are authorized on 42 TV channels, which include TV channels 8–12, 14–36, and 38–51, with operation subject to certain separation rules to protect other services. In this connection, WAVD operation is excluded on four channels, TV channels 14–17, in the New York/NE New Jersey (NY/NJ) area, to protect incumbent land mobile operations. In the *Memorandum Opinion and Order*, the Commission excludes WAVD operation on three additional channels, TV channels 18–20, in the NY/NJ area, to protect incumbent public safety land mobile operations authorized pursuant to waivers of the Commission's rules.

13. We believe that these additional exclusions are necessary to protect incumbent public safety land mobile licensees and will have only minimal impact on prospective WAVD licensees. We note that public safety operations are extensive in this area on these frequencies and it is unlikely that perspective WAVD licensees could find the frequencies usable. We find that increasing the number of channels from which WAVD operation is excluded in the NY/NJ area from four to seven is insignificant given the total number of TV channels generally available to WAVD licensees. We also note that no WAVDs have yet been applied for or licensed, and we thus find that no existing WAVD licensee is affected by these new exclusions. Finally, we note that wherever WAVDs cannot be used, whether due to these exclusions, to other channel separations, or to conflicting frequency usage, cabled video assist devices would remain a viable option for WAVD licensees. We thus conclude that these additional exclusions will have only a minor effect on WAVD operations, and hence a minimal economic impact on WAVD licensees. Therefore, we certify that the requirements of the *Memorandum Opinion and Order* will not have a significant economic impact on a substantial number of small entities. The Commission will send a copy of the *Memorandum Opinion and Order*, including a copy of this final certification, in a report to Congress pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A). In addition, the *Memorandum Opinion and Order* and this certification will be sent to the Chief Counsel for Advocacy of the Small Business Administration.

Ordering Clauses

14. Pursuant to sections 1, 4(i), 302, 303(f), 303(r), and 332 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 302a, 303(f), 303(r), and 332, this Memorandum Opinion and Order *is adopted*.

15. Part 74 of the Commission's Rules is amended as specified in Rule Changes, effective January 12, 2004. This action is taken pursuant to sections 1, 4(i), 302, 303(f), 303(r), and 332 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 302a, 303(f), 303(r), and 332.

16. The petition for reconsideration of the *Report and Order* in this proceeding filed by Nassau County Police Department (NCPD) *is granted*, and the petition for reconsideration filed by the Society of Broadcast Engineers, Inc., *is granted in part and denied in part*, consistent with the terms of this Memorandum Opinion and Order.

17. The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of this Memorandum Opinion and Order, ET Docket No. 01–75, including the Final Regulatory Flexibility Certification, to the Chief Counsel for Advocacy of the Small Business Administration.

18. Finally, the proceeding in ET Docket No. 01–75 *is terminated*.

List of Subjects in 47 CFR Part 74

Communications equipment, Radio, Reporting and recordkeeping requirements, Television.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

Rule Changes

■ For the reasons set forth in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 74 as follows:

PART 74—EXPERIMENTAL RADIO, AUXILIARY, SPECIAL BROADCASTING, AND OTHER PROGRAM DISTRIBUTIONAL SERVICES

■ 1. The authority citation for part 74 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 307, 336(f), 336(h) and 554.

■ 2. Section 74.870 is amended by revising the entry for New York/NE New Jersey in the table of paragraph (c)(4) to read as follows:

§ 74.870 Wireless video assist devices.

* * * * *

(c) * * *

(4) * * *

Area	North latitude	West longitude	Excluded frequencies (MHz)	Excluded channels 200	128	52 km
. . . . .						
New York/NE New Jersey	40°45′	73°59′37.5″	470–476	14		
			476–482	15		
			482–488	16		
			488–494			17
			494–500			18
			500–506	19		
			506–512			20
. . . . .						

* * * * *

[FR Doc. 03–30749 Filed 12–11–03; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 600

[Docket No. 020424095–3252–02, I.D. 032801B]

RIN 0648–AP25

Fishing Capacity Reduction Program for the Crab Species Covered by the Fishery Management Plan for the Bering Sea/Aleutian Islands King and Tanner Crabs

AGENCY: National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Commerce.

ACTION: Final rule.

SUMMARY: This final rule establishes a fishing capacity reduction program in the fishery for the crab species managed under the Bering Sea/Aleutian Islands King and Tanner Crabs Fishery Management Plan (crab FMP). The program will reduce excess capacity and promote economic efficiency in the crab fishery. It is authorized under both special legislation and existing National Marine Fisheries Service (NMFS) regulations governing fishing capacity reduction programs. Its objectives include: increasing harvesting productivity for crab fishermen who remain after capacity reduction, helping conserve and manage fishery resources, and encouraging harvesting effort rationalization. Program participation is

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[1] The RFA, *see* 5 U.S.C. 601–612, has been amended by the Contract With America Advancement Act of 1996, Public Law 104–121, 110 Stat. 847 (1996) (CWAAA). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act (SBREFA).

[2] 5 U.S.C. 605(b).

[3] 5 U.S.C. 601(6).

[4] 5 U.S.C. 601(3) (incorporating by reference the definition of "small business concern" in Small Business Act, 15 U.S.C. 632). Pursuant to 5 U.S.C. 601(3), the statutory definition of a small business applies "unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the **Federal Register**."

[5] Small Business Act, 15 U.S.C. 632.

voluntary. Under the program, NMFS will pay participants for withdrawing vessels from fishing, relinquishing fishing licenses, and surrendering fishing histories. NMFS will finance the program's $100 million cost with a 30–year loan to be repaid by post-reduction fishermen.

DATES: The final rule is effective January 12, 2004.

ADDRESSES: Copies of the Environmental Assessment, Regulatory Impact Review, and Final Regulatory Flexibility Analysis are available from Michael L. Grable, Chief, Financial Services Division, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910–3282.

Written comments regarding the burden-hour estimates or other aspects of the collection of information requirements contained in this final rule may be submitted to Michael L. Grable at the above address and by e-mail to *David_Rostker@omb.eop.gov*, or fax to (202) 395–7285.

Anyone wishing to contact the NMFS Restricted Access Management Program (which issues crab species fishing licenses) may do so at this address: Restricted Access Management Program, National Marine Fisheries Service, P.O. Box 21668, Juneau, AK 99802–1668.

FOR FURTHER INFORMATION CONTACT: Michael L. Grable,(301)713–2390.

SUPPLEMENTARY INFORMATION:

Statutory and Regulatory Background

The Consolidated Appropriations Act of 2001 (Pub. L. 106–554, section 144) directed the Secretary of Commerce to establish a $100 million fishing capacity reduction program (crab program) in the Bering Sea/Aleutian Islands king and Tanner crab fishery (crab fishery). That law was subsequently amended twice (Pub. L. 107–20, section 2201; and Pub. L. 107–117, section 205) to clarify the vessels eligible to participate in the crab fishery and change the crab program's funding from a $50 million appropriation and a $50 million loan to a $100 million loan (reduction loan). The authority for making loans of this type is sections 1111 and 1112 of the Merchant Marine Act, 1936 (46 App. U.S.C. 1279f and 1279g)(MMA)(Title XI).

The North Pacific Fishery Management Council (Council) developed, and NMFS implemented, the crab FMP under the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*)(Magnuson-Stevens Act). The Council developed Amendment 5 to the crab FMP to establish a license limitation program (LLP) for the crab fishery (63 FR 52642). The Council also developed Amendment 10 to the crab FMP which further defined the eligibility criteria for crab LLP licenses (66 FR 48813). NMFS implemented Amendment 10 and later corrected the implementing regulation's eligibility criteria (68 FR 46117). Regulations implementing the crab FMP govern the fishery's management.

Subpart L to 50 CFR part 600, a framework rule promulgated pursuant to section 312 of the Magnuson-Stevens Act (16 U.S.C. 1861a(b)-(e)), governs fishing capacity reduction in general. NMFS publishes this rule as a new § 600.1018 appearing immediately after the framework rule's last existing section.

Primary Statutory Objective

Section 144 of Pub. L. 106–554 established the crab program's primary objective as reducing "the fishing capacity in the BSAI crab fisheries by permanently reducing the number of license limitation program crab licenses . . . ."

Summary of Proposed Rule and Response to Comments

On December 12, 2002, NMFS published proposed regulations to establish this crab program (67 FR 76329). The preamble to the proposed rule provides additional information on the program as it was proposed. NMFS extended and later reopened the proposed rule's public comment period.

NMFS received comments from 28 entities. Comments were evenly distributed among individuals and organizations representing the views of many parties. The comments generally supported the crab program, but some disagreed with proposed rule aspects. The following is a summary of the comments and NMFS' responses.

Comment 1: Three comments involve the definition of the term "reduction vessel". Two of these suggest redefining the term "reduction vessel" to mean the vessel currently designated on a crab reduction permit. The other suggests expanding the definition to include vessels which replaced other vessels under the Amendment 10 exceptions.

Response: NMFS structured the proposed rule to make the majority of crab LLP license holders eligible to participate in the crab program. The comments suggest, however, that the proposed rule might exclude some holders who either qualified for their LLP crab licenses under the Amendment 10 exceptions or transferred these licenses, after their issuance, to vessels other than those whose catch histories gave rise to the licenses. Accordingly, NMFS has revised the proposed rule to better accommodate license holders in these circumstances.

The proposed rule defined the term "reduction vessel" as the vessel whose crab fishing history during the FMP's three qualification periods gave rise to an LLP crab license. This was the reduction vessel for all crab program purposes (e.g., loss of fishing privileges, loss of crab fishing history, bid scoring, and reduction loan apportionment). The final rule, however, replaces the term "reduction vessel" with two separate terms, "reduction/privilege vessel" and "reduction/history vessel".

In the final rule, a reduction/privilege vessel is the vessel designated on a crab LLP license on the date of the final rule's publication in the **Federal Register** and a reduction/history vessel is the vessel whose catch history gave rise to the crab LLP license. In many cases, the reduction/privilege vessel and the reduction/history vessel will be the same vessel, but the distinction between these two reduction vessel functions will better accommodate license holders in the circumstances these comments involve. The reduction/privilege vessel no longer has any significance for any crab program purpose other than the loss of fishing privileges, and the reduction/history vessel is determinative for all other crab program purposes which involve fishing history.

Comment 2: One comment suggests redefining the term "crab reduction permit" to mean a bidder's non-interim crab LLP license plus all of its predecessor history.

Response: NMFS has resolved this issue by adding the terms "reduction/history vessel" and "reduction fishing history".

Comment 3: One comment suggests redefining "crab reduction history" as all crab fishing history giving rise to or accruing under a crab reduction permit.

Response: NMFS has resolved this issue by adding the term "reduction fishing history".

Comment 4: One comment suggests modifying the term "bid crab" to recognize that documented harvests of crab for crab program purposes may have been made from several different vessels.

Response: NMFS agrees and has appropriately revised the final rule.

Comment 5: Five comments involve the confidentiality of Alaska's fish ticket data.

Two of these suggest adding a final rule provision requiring bidders to waive confidentiality for the crab fishing history associated with their bids, primarily as a way of providing more accurate information to voters in the crab program referendum. Two others suggest a provision allowing the disclosure of crab fishing histories to potential bidders. The last suggests that NMFS and the State of Alaska resolve confidentiality issues affecting the crab program.

Response: Alaska law (AS 16.05.815) make the fish ticket data confidential. Neither NMFS nor State officials have authority to use the State's fish ticket data inconsistently with the State's law. Accordingly, NMFS cannot accommodate these comments.

Comment 6: One comment suggests that NMFS review Alaska's fish ticket data to ensure they reflect post-landing adjustments to landing data.

Response: The crab program must rely on the State's data, and NMFS cannot review them for this purpose.

Comment 7: Thirteen comments addressed the five-year period for determining "bid crab".

Ten of these agreed with the proposed rule's provision in this respect. Two disagreed with the proposed rule's provisions and suggested that a more appropriate period was the most recent five-years in which a bidder's reduction/history vessel actually harvested crab in each endorsement fishery (rather than the most recent five-year period during which each endorsement fishery was open for directed fishing). The last suggests the final rule provide for this period in some area/species endorsement fisheries to mirror certain years in the Council's proposed crab rationalization plan.

Response: The proposed rule defined the term "bid crab" as the documented harvest of crab during the most recent 5 years of a 10–year period, beginning on January 1, 1990, and ending on December 31, 1999, during which each of the reduction endorsement fisheries were open. NMFS believes this is the fairest approach most consistent with the crab program's authorizing legislation as well as the approach most closely resembling certain years in the Council's proposed crab rationalization plan. The crab program's authorizing statute specifies the beginning and ending date of the 10–year period, and NMFS has no authority to provide otherwise.

Comment 8: Ten comments discuss the stacking of more than one crab LLP license and associated crab fishing histories on a single reduction vessel. Nine of these suggest NMFS accommodate stacking for crab program bidding purposes. One asked how NMFS would provide for this if it were allowed.

Response: NMFS believes each crab program bid should include only one crab reduction permit and the crab fishing history which gave rise to it. Stacked crab LLP licenses and their future disposition is a matter for fisheries managers' resolution.

Comment 9: Three comments suggest the final rule provide the non-crab reduction permit component of a bid's reduction fishing interest be restricted to the reduction vessel's non-crab licenses and exclude any halibut/sablefish individual fishing quota (IFQ).

Response: NMFS believes the crab program's legislative authority requires bidders to relinquish all fishing licenses, permits, or other privileges they hold which were issued based on the fishing histories of the bids' reduction/history vessels. Consequently, each bidder holding halibut/sablefish IFQ on the date this final rule is published in the **Federal Register** must relinquish the IFQ if its issuance was based on the fishing history of the bidder's reduction/history vessel.

Comment 10: One comment suggests five specific technical clarifications. These include: inserting "Bering Sea and Aleutian Islands (BSAI)" before "crab species" in 50 CFR 600.1018(a); inserting "BSAI" before "crab" in 50 CFR 600.1018(b); striking paragraph "(h)" and inserting paragraph "(i)" in 50 CFR 600.1018(h)(2), (h)(4), and (h)(6); striking "and" at the end of 50 CFR 600.1018(h)(4); and striking paragraph "(i)(1)" and inserting paragraph "(j)(1)" in 50 CFR 600.1018(j)(2).

Response: NMFS agrees and has appropriately revised the final rule.

Comment 11: One comment suggests NMFS revise the final rule to clarify that co-bidders are not required for non-crab reduction permits.

Response: NMFS agrees and has appropriately revised the final rule. There are no co-bidders for non-crab reduction permits because non-crab reduction permits are restricted to those for which bidders were the holders of record on the date this final rule is published in the **Federal Register**.

Comment 12: One comment states that the proposed rule unfairly omits crab vessels under 32 feet (9.75 meters) as well as parties without crab LLP licenses.

Response: The authorizing statute established the crab program's eligibility criteria and does not allow NMFS to accommodate this comment.

Comment 13: One comment suggests the definition of "bid crab" does not include the crab fishing histories of vessels that were lost or destroyed and subsequently replaced by other vessels.

Response: NMFS intended the proposed rule's definition of "bid crab" to do so and has appropriately revised the proposed rule to remove any ambiguity about this.

Comment 14: Nine comments involve lost or destroyed vessels and their reduction fishing histories. Eight of these suggest bids involving lost or destroyed vessels require existing (i.e., neither lost nor destroyed) reduction vessels that lose their fishing privileges.

Response: NMFS agrees that each bid requires an existing reduction vessel that loses its fishing privileges. In the final rule, this is the reduction/privilege vessel. NMFS believes this is a matter of equity. Most bidders will have existing reduction/privilege vessels that will lose their fishing privileges. Allowing lost or destroyed vessels to be reduction/privilege vessels for this purpose would allow a minority of bidders to receive value for something which no longer has any value. Moreover, casualty insurance has in all likelihood already compensated most of those whose vessels were previously lost or destroyed.

Comment 15: Five comments suggest that the crab program make no exceptions beyond those provided in Amendment 10 for lost or destroyed vessels or crab LLP licenses acquired through fishing history transfers.

Response: NMFS agrees. Neither the proposed nor the final rule makes any such exceptions.

Comment 16: One comment requests that NMFS report crab program results by "region".

Response: NMFS will report crab program results only by reduction endorsement fishery and by the crab fishery as a whole.

Comment 17: One comment asks how the crab program accommodates the captain's share provisions of the Council's crab rationalization plan.

Response: The crab program does not accommodate this provision and makes no provision for captains' shares because NMFS has no statutory authority to do so.

Comment 18: One comment asks what constitutes the reduction loan borrower.

Response: After NMFS completes the crab program, all reduction fishery license holders under whose licenses vessels land crab and whose fees begin repaying the reduction loan are collectively the reduction loan borrower. Neither the reduction loan nor its collective borrower are conventional. The reduction loan and its repayment method are statutory. There are no promissory notes, mortgages, or other loan security documents. No individual is responsible

for repaying any specific loan portion. After the fees commence, the first ex-vessel purchasers of crab from the reduction fishery automatically deduct the fees from trip proceeds before paying the proceeds' balance to the parties otherwise entitled to them. No individual's assets secure the loan's repayment (although nonpayment, for whatever reason, of the fees could subject an individual's assets to enforced payment of any unpaid fees).

Comment 19: One comment suggests the final rule clarify whether Community Development Quota landings are subject to the reduction loan repayment fees.

Response: Community Development Quota landings are subject to the fees.

Comment 20: One comment objects both to the statutory method of collecting the reduction loan repayment fees and the capacity reduction framework regulation provisions to which collection of the fee is subject.

Response: NMFS has no alternative to using the statutory method and believes the framework provisions in this respect are reasonable and necessary.

Comment 21: One comment suggests the final rule provide that the crab program not result in crab catcher processors using a greater share of total allowable crab catches after reduction than they did before reduction due to the likelihood that most crab program bids will involve crab catcher vessel delivering ashore.

Response: This is a voluntary program, and NMFS makes no bidding distinction between crab catcher processors and crab vessels delivering their catches ashore. The Council is the proper forum for dealing with this issue.

Comment 22: One comment suggests that the final rule provide for crab catcher processors' relinquishing their processing histories.

Response: NMFS has no statutory authority to do this as part of the crab program.

Comment 23: One comment requests clarification of any second referendum's basis.

Response: A second referendum may occur, at NMFS' discretion, if the first referendum fails. The general basis would be the expectation that a second round of bids might result in lower bid amounts producing greater capacity reduction per dollar of reduction cost than the first round of bids and, consequently, might improve the likelihood of a second referendum success.

Comment 24: One comment suggests the final rule provide for paying creditors whose security includes vessels or licenses involved in the crab program.

Response: NMFS believes the proposed rule made adequate provision for public notice to secured creditors.

Comment 25: One comment suggests the final rule provide for including the holders of interim crab licenses in the crab program based on whatever portions of their fishing histories are undisputed.

Response: The authorizing statute restricts the crab program to non-interim crab LLP license holders, and NMFS has no authority to provide otherwise.

Comment 26: One comment suggests releasing, before conducting the fee referendum, aggregate data about bids involving affiliated fishing interests.

Response: NMFS does has no way of knowing which bidders may be affiliated with other bidders.

Comment 27: One comment suggests reduction vessels should not lose their fishing privileges in fisheries other than the reduction fishery.

Response: The authorizing statute requires that reduction/privilege vessels lose their worldwide fishing privileges, and NMFS has no discretion in this matter.

Comment 28: One comment suggests the reduction loan be prorated over the various crab area/species endorsement fisheries.

Response: The authorizing statute specifically provides for doing this, and the proposed rule provided for it in accordance with the statute.

Comment 29: One comment was concerned that the crab program might result in revoking crab fishing history other than the crab fishing history, which may be used as the basis of any future crab rationalization plan.

Response: The crab program will result in revoking the complete crab fishing history of each crab reduction/history vessel.

Comment 30: One comment suggests the crab program involve relinquishment of the worldwide fishing privileges of what, under the final rule, are reduction/privilege vessels.

Response: Both the proposed rule and the final rule so provide.

Changes to Proposed Rule

Although public comment about the proposed rule did not address the issue of when NMFS notifies crab program bidders whether NMFS accepted or rejected their bids, the final rule differs in this respect from the proposed rule. The proposed rule provided for this notification occurring before the referendum about the reduction loan repayment fee. Based on interim public comment during the Pacific Coast groundfish fishing capacity reduction program (68 FR 42613), however, NMFS now believes that postponing this notice until after the referendum has already occurred may help neutralize any potential which the proposed rule aspect might have had for biasing referendum results. If referendum voters know before they vote whose bids NMFS accepted and whose bid NMFS rejected, they may vote differently than they otherwise would have if they did not know whose bids NMFS accepted and whose bids NMFS rejected.

The following reflects the minor or clarifying revisions of the proposed rule which the final rule incorporates:

(1) NMFS revised the term "reduction vessel" by replacing it with two separate terms, "reduction/privilege vessel" and "reduction/history vessel". Consequently, the term "reduction vessel" does not appear anywhere in the final rule. The effect of this revision is that the vessel, for loss of fishing privileges purposes, will be the vessel designated on a crab LLP license at the time the final rule is published in the **Federal Register**; and the vessel, for loss of fishing history, bid scoring, and loan apportionment purposes, will be the vessel (or in some cases, vessels) whose fishing history gave rise to a crab LLP license. In most cases, the vessels will be the same for both purposes; in other cases, the vessels for each purpose will be different.

(2) NMFS included a new term, "reduction fishing history", in order to clarify that the fishing history component of each bidder's reduction fishing interest includes the complete documented harvest, upon any part of which NMFS based issuance of the crab LLP licence included as a crab reduction permit in the bid, plus such fishing history, after the issuance of such crab LLP license, of any other vessel upon which the bidder used such crab reduction permit;

(3) NMFS clarified that co-bidders are not required for non-crab reduction permits;

(4) NMFS eliminated any ambiguity about whether replacement vessels are, under appropriate Amendment 10 exceptions, reduction/history vessels;

(5) NMFS added a definition for the term "replacement vessel" in order to clarify certain aspects of multiple reduction/history vessels under the exceptions to Amendment 10; and

(6) NMFS revised the bidder acceptance/rejection notice provisions to postpone this notice until after the crab program's referendum.

Finally, NMFS herein clarifies that it has no direct authority to revoke worldwide fishing privileges. The U.S. Department of Transportation's Maritime Administration (MARAD) is responsible under section 9 of the Shipping Act of 1916, 46 App. U.S.C. 808, for approving transfers of vessels from the U.S. flag to a foreign flag. MARAD has the authority and already had a mechanism in the regulations to deny the approval to flag foreign fishing industry vessels over 1,000 gross tons. However, MARAD's regulations at 46 C.F.R. part 221.15 also included a general approval for transfers of fishing industry vessels under 1,000 gross tons. Upon learning of the crab program provision, MARAD amended the regulations to also address vessels under 1,000 gross tons that are subject to the crab program and to make it clear that any vessel that participates in the crab program will be ineligible for a section 9 approval to transfer the vessel to a foreign flag. Further, MARAD is planning to again amend its section 9 regulations to address the broader issue of fishing vessels that are subject to a capacity reduction program.

Key Steps

NMFS will, in the following chronological order, now implement the crab program by:

(1) Publishing the final regulations;

(2) Publishing in the **Federal Register** a notification listing all qualified bidders and all qualified voters;

(3) Publishing in the **Federal Register** an invitation to bid, along with a bidding form and terms of capacity reduction agreement;

(4) Issuing detailed bidding guidance to each qualifying bidder;

(5) Sending a crab program invitation to bid and a bidding form and terms of capacity reduction agreement to each qualifying bidder;

(6) Receiving bids during the period in which bidding remains open;

(7) Tallying the resulting bids;

(8) Accepting or rejective the bids (without notice to the bidders);

(9) Issuing detailed voting guidance to each qualifying voter;

(10) Sending a referendum ballot to each qualifying voter;

(11) Receiving referendum votes during the period in which voting remains open;

(12) Tallying the resulting votes;

(13) Notifying referendum voters of the referendum's results; and

(14) In the instance of a successful referendum:

(a) Notifying accepted bidders that their bids were accepted and that the resulting reduction contracts are unconditional,

(b) Publishing in the **Federal Register** a reduction payment tender notification,

(c) Tendering reduction payments,

(d) Disbursing reduction payment in accordance with accepted bidders written payment instructions,

(e) Accomplishing the necessary crab program revocations and restrictions, and

(f) Administering the payment and collecting reduction loan repayment fees.

Reading the Rule in Conjunction with the Framework Rule

This final rule establishes which framework rule provisions (this subpart's § 600.1000 through § 600.6017) do not apply to the crab program. Consequently, a comprehensive understanding of the crab program requires reading this final rule in conjunction with the remaining framework rule provisions that continue to apply to the crab program. NMFS recommends that all interested persons carefully read the former in close conjunction with the latter.

Summary of Crab Program Notices and Mailings

This table summarizes, in chronological order, key crab program actions that will involve providing notice to affected persons:

Notice Actions	Method		
	FEDERAL REGISTER	Mailing	Website
Final rule	X		X
Bidder and voter list	X	X	X
Invitation to bid, along with bidding form and terms of capacity reduction agreement	X	X	X
Referendum ballots		X	X
Referendum results		X	X
Bidder acceptance/reduction contracts unconditional		X	
Reduction payment tender notice	X		
Reduction payment tender		X	
Fee payment and collection		X	X

NMFS will also mail each of the following:

Action	NMFS will mail:
Bidder and voter notice	A notice to each crab license holder who is prospectively a qualifying bidder, voter, or both.
Bidder guidance	Detailed guidance to all qualifying bidders about the crab program, how to bid, and other bidding matters.
Invitation to bid	An invitation to bid and a bidding form and bidding terms and agreements to each crab license holder who is on our prospectively qualifying bidder list.
Voter guidance	Detailed guidance to all qualifying voters about how to vote and other referendum matters.
Referendum ballots	A referendum ballot and instructions to each crab license holder who is on NMFS prospectively qualifying voter list.
Referendum results	The results of the referendum to each crab license holder.
Bid Acceptance/ Reduction Contracts Unconditional	Notification, to each accepted bidder, that its bid was accepted and a successful referendum has fulfilled the one condition to performance of the reduction contracts.
Reduction payment tender	NMFS' tender of reduction payment to each accepted bidder (requesting the bidder's written reduction payment instructions).
Fee payment and collection notice	A notice to each fish seller and each fish buyer of the initial fee payment and collection requirement.

All website postings will be solely for the public's convenience and our failure or inability to post anything on a website does not affect the rights, privileges, duties, or obligations of any person involved.

Classification

The Assistant Administrator for Fisheries, National Marine Fisheries Service, determined that this final rule is consistent with the Consolidated Appropriations Act of 2001, as amended, the Magnuson-Stevens Fishery Conservation and Management Act, and other applicable laws.

In compliance with the National Environmental Policy Act, NMFS prepared an environmental assessment for this final rule. The assessment discusses the impact of this rule on the natural and human environment and integrates a Regulatory Impact Review and a Final Regulatory Flexibility Analysis. NMFS assessment has resulted in a finding of no significant impact. NMFS will send the assessment, the review and analysis to anyone who requests it (see **ADDRESSES**).

NMFS determined that this final rule is economically significant for purposes of Executive Order 12866. The rule may result in a reverse auction that could total up to $100 million worth of successful bids. These bids represent the compensation for the net present value of the total losses that the fishermen expect to bear from exiting the market. The expected costs of the rule would also include administrative costs that would be incurred by NMFS in facilitating this auction. The benefits of the rule would be the increase in producer and consumer surplus resulting from the lower costs of harvesting the same amount of crab. The benefits expected by the remaining fishermen should at least equal the cost of compensating the exiting fishermen since this auction is voluntarily undertaken.

In compliance with the Regulatory Flexibility Act, NMFS prepared an analysis that describes the economic impact this final rule may have on small entities. In this final rule's preamble, NMFS described the rule and its legal basis. NMFS intends the analysis to aid in considering all reasonable regulatory alternatives that can minimize the economic impact on affected small entities.

This final rule's effect on post-reduction crab harvesters will depend on the crab program's nature and size. Our assessment, review, and analysis considered:

(1) The effect of three alternatives:
(a) The status quo,
(b) Uniform reduction loan repayment fees, and
(c) Weighted reduction loan repayment fees; and

(2) Based on five potential magnitudes of revoked crab licenses and vessels:
(a) 30,
(b) 45,
(c) 60,
(d) 75, and
(e) 90.

The preferred alternative, weighted reduction loan repayment fees, provides the most equitable method for allocating reduction loan repayment, and this is the reduction loan repayment method section 144 of Pub. L. 106–554 requires.

The final rule's impact will be positive for both bidders whose bid offers NMFS accepts and post-reduction harvesters whose landing fees repay the reduction loan because the bidders and harvesters will assume the impact and fewer crab license holders after capacity reduction will be collectively able to catch more fish than if capacity had not been reduced:

(1) Bidders will volunteer to make bid offers at bid amounts of their own choice. Presumably, no bidder will volunteer to make a bid offer with a bid amount that is inconsistent with the bidder's interest; and

(2) Reduction loan repayment landing fees will be authorized, and NMFS can complete the crab program, only if at least two-thirds of crab license holders voting in a post-bidding fee referendum voted in favor of the fee. Presumably, crab license holders would not vote in favor of the fee unless they concluded that the crab program's prospective capacity reduction was sufficient to enable them to increase their post-reduction revenues enough to justify the fee.

Given the large levels of overcapacity existent in U.S. and other global fisheries, buyback vessels and permits should not be allowed to move into other fisheries. This cascade effect would only exacerbate the overcapacity problems that exist in those fisheries. For example, the sale of domestic vessels to overseas operators while reducing capacity in the U.S. would harm stocks of fish harvested globally. This would cause U.S. fishermen to compete with additional foreign fishermen; e.g. bluefin tuna, swordfish, sharks. This indirectly reduces net benefits to U.S. and global fishermen. Overall net benefit levels would be reduced in those fisheries in which capacity was transferred and indirectly in all related fisheries through continued or increased discarded bycatch levels, degradation of habitat, and other related problems.

NMFS believes that this action will affect neither authorized crab harvest levels nor crab harvesting practices.

NMFS has prepared a Regulatory Compliance Guide (RCG) for this final rule to comply with a requirement of the Small Business Administration. The RCG takes the form of questions and answers which explain the requirements for participation and other aspects of the program. It will be mailed by NMFS to all prospective bidders who may participate in the crab program.

This final rule contains information collection requirements subject to the Paperwork Reduction Act (PRA). The Office of Management and Budget (OMB) approved this information collection under OMB control number 0648–0376. NMFS estimates that the public reporting burden for this information collection will average 4 hours for bidding and 4 hours for voting in a referendum. Persons affected by this final rule will also be subject to other collection-of-information requirements referred to in the rule and also approved under OMB control number 0648–0376. These requirements and their associated response times are: completing and filing a fish ticket (10 minutes), submitting monthly fish buyer reports (2 hours), submitting annual fish buyer reports (4 hours), and fish buyer/fish seller reports when a person fails either to pay or to collect the loan repayment fee (2 hours).

This final rule also contains a new collection-of-information requirement that OMB has approved under the same OMB control number. The provision allows the public 30 days to advise us of any license or permit holder or vessel owner claims that conflict with accepted bidders' representations about holding, owning, or retaining any of the crab or non-crab reduction permits, the reduction/privilege and reduction/history vessels, or the crab or non-crab reduction fishing histories. Responses are voluntary, but NMFS estimates the public reporting burden for this collection of information will be 1 hour per response.

These response estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the information collection. Interested persons may send comments regarding this burden estimate, or any other aspect of this data collection, including suggestions for reducing the burden, to both NMFS and OMB (see **ADDRESSES**).

Notwithstanding any other provision of law, no person is required to respond to, and no person is subject to a penalty for failure to comply with, an information collection subject to the PRA requirements unless that information collection displays a currently valid OMB control number.

This action will not result in any adverse effects on endangered species or marine mammals.

List of Subjects in 50 CFR Part 600

Fisheries, Fishing capacity reduction, Fishing permits, Fishing vessels, Intergovernmental relations, Loan programs -business, Reporting and recordkeeping requirements.

Dated: December 8, 2003.

Rebecca Lent,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

■ For the reasons in the preamble, the National Marine Fisheries Service amends 50 CFR part 600 as follows:

PART 600—MAGNUSON-STEVENS ACT PROVISIONS

■ 1. The authority citation for part 600 is revised to read as follows:

Authority: 5 U.S.C. 561, 16 U.S.C. 1801 *et seq.*, 16 U.S.C. 1861a(b) through (e), 46 App. U.S.C. 1279f and 1279g, section 144(d) of Division B of Pub. L. 106–554, section 2201 of Pub. L. 107–20, and section 205 of Pub. L. 107–117.

■ 2. Section 600.1018 is added to Subpart L to read as follows:

§ 600.1018 Bering Sea and Aleutian Islands (BSAI) Crab species program.

(a) *Purpose.* This section's purpose is to implement the program that Section 144(d) of Division B of Pub. L. 106–554, as amended by section 2201 of Pub. L. 107–20 and section 205 of Pub. L. 107–117, enacted for BSAI crab species.

(b) *Terms.* Unless otherwise defined in this section, the terms defined in § 600.1000 expressly apply to the program for BSAI crab. Likewise, the terms defined in § 679.2 of this chapter also apply to terms not otherwise defined in either § 600.1000 or this section. The following terms used in this section have the following meanings for the purpose of this section:

Acceptance means NMFS' acceptance, on behalf of the United States, of a bid.

Bid means a bidder's irrevocable offer, in response to an invitation to bid under this section, to surrender, to have revoked, to have restricted, to relinquish, to have withdrawn, or to have extinguished by other means, in the manner this section requires, the bidder's reduction fishing interest.

Bid amount means the dollar amount of each bid.

Bidder means either a qualifying bidder bidding alone or a qualifying bidder and a co-bidder bidding together who at the time of bidding holds the reduction fishing interests specified at § 600.1018(e).

Bid crab means the crab that NMFS determines each bidder's reduction/history vessel (see definition) harvested, according to the State of Alaska's records of the documented harvest of crab, from each reduction endorsement fishery and from the Norton Sound fishery during the most recent 5 calendar years in which each reduction endorsement fishery was for any length of time open for directed crab fishing during a 10–calendar-year period beginning on January 1, 1990, and ending on December 31, 1999.

Bid score means the criterion by which NMFS decides in what order to accept bids in the reverse auction this section specifies.

Co-bidder means a person who is not a qualifying bidder, but who at the time of bidding owns the reduction/privilege vessel this section requires to be included in a bid and is bidding together with a qualifying bidder.

Crab means the crab species covered by the Fishery Management Plan for the Bering Sea/Aleutian Islands King and Tanner Crabs pursuant to § 679.2 of this chapter.

Crab license means a License Limitation Program license for crab issued pursuant to § 679.4(k)(5) of this chapter.

Crab reduction permit means a non-interim crab license endorsed for one or more reduction endorsement fisheries, regardless of whether it is also endorsed for the Norton Sound fishery.

FSD means NMFS' Financial Services Division, located in NMFS' Silver Spring, MD, headquarters office.

Non-crab reduction permit means a fishing license, including all of its predecessor history, for which a bidder is the holder of record on December 12, 2003 and which was issued based on the fishing history of the bidder's -reduction/history vessel.

Norton Sound fishery means the non-reduction fishery defined in § 679.2 of this chapter as the area/species endorsement for Norton Sound red king and Norton Sound blue king crab.

NVDC means the U.S. Coast Guard's National Vessel Documentation Center located in Falling Waters, WV.

Qualifying bidder means a person who at the time of bidding is the license holder of record of a crab reduction permit.

Qualifying voter means a person who at the time of voting in a referendum is the license holder of record either of an interim or a non-interim crab license, except a crab license whose sole area/species endorsement is for the Norton Sound fishery.

RAM Program means NMFS' Restricted Access Management Program located in NMFS' Juneau, AK, regional office.

Reduction endorsement fishery means any of the seven fisheries that § 679.2 of this chapter defines as area/species endorsements except the area/species endorsement for the Norton Sound fishery.

Reduction fishery means the fishery for all crab covered by the Bering Sea/Aleutian Islands King and Tanner Crabs Fishery Management Plan under all area/species endorsements that section 679.2 of the chapter defines, except the area/species endorsement for the Norton Sound fishery.

Reduction fishing history means, for each bid, the complete documented harvest of the bidder's reduction/history vessel, upon any part of which such harvest NMFS based issuance of the crab license included in the bid as a crab reduction permit, plus such fishing history, after the issuance of such crab license, of any other vessel upon which the bidder used such crab license.

Reduction fishing interest means, for each bid, the bidder's:

(1) Reduction fishing privilege (see definition);

(2) Crab reduction permit;

(3) Non-crab reduction permit;

(4) Reduction fishing history (see definition); and

(5) Any other claim that could in any way qualify the owner, holder, or retainer of any of the reduction components, or any person claiming under such owner, holder, or retainer, for any present or future limited access system fishing license or permit in any United States fishery (including, but not limited to, any harvesting privilege or quota allocation under any present or future individual fishing quota system).

Reduction fishing privilege means the worldwide fishing privileges of a bid's reduction/privilege vessel (see definition).

Reduction/history vessel means the vessel or vessels which generated the reduction fishing history.

Reduction loan sub-amount means the portion of the original principal amount of reduction loan this section specifies each reduction endorsement fishery must repay with interest.

Reduction/privilege vessel means the vessel designated on a crab license on December 12, 2003.

Referendum means a referendum under this section to determine whether voters approve the fee required to repay this program's reduction loan.

Replacement vessel means a reduction/history vessel which replaced the lost or destroyed one whose reduction fishing history qualified during the general qualification period and the endorsement qualification period and, which under the exceptions in Amendment 10, qualified during the recent participation period.

(c) *Relationship to this subpart*—(1) *Provisions that apply.* The provisions of § 600.1000 through § 600.1017 of this subpart apply to this program except as paragraph (c)(2) of this section provides; and

(2) *Provisions that do not apply.* The following sections, or portions of them, of this subpart do not apply to this program:

(i) All of:

(A) Section 600.1001,

(B) Section 600.1002,

(C) Section 600.1003,

(D) Section 600.1004,

(E) Section 600.1005,

(F) Section 600.1006, and

(G) Section 600.1007,

(ii) The portions of § 600.1008:

(A) Pertaining to an implementation plan,

(B) Pertaining to a 60–day comment period for a proposed implementation regulation,

(C) Pertaining to public hearings in each State that the this program affects,

(D) Pertaining to basing the implementation regulation on a business plan,

(E) Within paragraphs (d)(1)(ii) through (viii),

(F) Within paragraph (d)(2)(ii),

(G) Within paragraph (e), and

(H) Within paragraph (f) and pertaining to fishing capacity reduction specifications and a subsidized program,

(iii) The portions of § 600.1009:

(A) Pertaining to fishing capacity reduction specifications,

(B) Within paragraph (a)(4),

(C) Pertaining to a reduction amendment,

(D) Within paragraph (a)(5)(ii), to the extent that the paragraph is inconsistent with the requirements of this section,

(E) Within paragraph (b)(i), and

(F) Pertaining to an implementation plan,

(iv) The portions of § 600.1010:

(A) Within paragraph (b),

(B) Pertaining to fishing capacity reduction specifications,

(C) Within paragraph (d)(1), and

(D) Within paragraphs (d)(4))(iv) through (vii),

(v) The portions of § 600.1011:

(A) That comprise the last sentence of paragraph (a),

(B) Within paragraph (d), and

(C) Within paragraph (e)(2),

(vi) The portions of § 600.1012:

(A) Within paragraph (b)(3) following the word "subpart", and

(B) Within paragraph (b)(3), and

(vii) The last sentence of § 600.1014(f).

(d) *Reduction cost financing.* NMFS will use the proceeds of a reduction loan, authorized for this purpose, to finance 100 percent of the reduction cost. The original principal amount of the reduction loan will be the total of all reduction payments that NMFS makes under reduction contracts. This amount shall not exceed $100 million.

(e) *Who constitutes a bidder.* A bidder is a person or persons who is the:

(1) Holder of record and person otherwise fully and legally entitled to offer, in the manner this section requires, the bid's crab reduction permit and the bid's non-crab reduction permit;

(2) Reduction/privilege vessel owner, title holder of record, and person otherwise fully and legally entitled to offer, in the manner this section requires, the bid's reduction fishing privilege; and

(3) Retainer and person otherwise fully and legally entitled to offer, in the manner this section requires, the bid's reduction fishing history.

(f) *How crab licenses determine qualifying bidders and qualifying voters*—(1) *Non-interim crab licenses.* Each person who is the record holder of a non-interim crab license endorsed for one or more reduction endorsement fisheries is both a qualifying bidder and a qualifying voter and can both bid and vote;

(2) *Interim crab licenses.* Each person who is the record holder of an interim crab license endorsed for one or more reduction endorsement fisheries is a qualifying voter but not a qualifying bidder and can vote but not bid;

(3) *Crab licenses endorsed solely for the Norton Sound Fishery.* Each person who is the record holder of any crab license endorsed solely for the Norton Sound fishery is neither a qualifying bidder nor a qualifying voter and can neither bid nor vote; and

(4) *Time at which qualifying bidders and voters must hold required crab licenses.* A qualifying bidder must be the record holder of the required crab license at the time the qualifying bidder submits its bid. A qualifying voter must be the record holder of the required crab license at the time the qualifying voter submits its referendum ballot.

(g) *Qualifying bidders and co-bidders*—(1) *Qualifying bidders bidding alone.* There is no co-bidder when a qualifying bidder owns, holds, or retains all the required components of the reduction fishing interest;

(2) *Qualifying bidders bidding together with co-bidders.* When a qualifying bidder does not own the reduction/privilege vessel, the person who does may be the qualifying bidder's co-bidder; and

(3) *Minimum reduction components that qualifying bidders must hold or retain when bidding with co-bidders.* At a minimum, a qualifying bidder must hold the crab reduction permit and the non-crab reduction permit and retain

the reduction fishing history. The reduction/privilege vessel may, however, be owned by another person who is a co-bidder.

(h) *Reduction fishing interest*—(1) *General requirements.* Each bidder must:

(i) In its bid, offer to surrender, to have revoked, to have restricted, to relinquish, to have withdrawn, or to have extinguished by other means, in the manner that this section requires, the reduction fishing interest,

(ii) At the time of bidding, hold, own, or retain the reduction fishing interest and be fully and legally entitled to offer, in the manner that this section requires, the reduction fishing interest, and

(iii) Continuously thereafter hold, own, or retain the reduction fishing interest and remain fully and legally entitled to offer, in the manner that this section requires, the reduction fishing interest until:

(A) The bid expires without NMFS first having accepted the bid,

(B) NMFS notifies the bidder that NMFS rejects the bid,

(C) NMFS notifies the bidder that a reduction contract between the bidder and the United States no longer exists, or

(D) NMFS tenders reduction payment to the bidder;

(2) *Reduction/privilege vessel requirements.* The reduction/privilege vessel in each bid must be:

(i) The vessel designated, at the time this final rule is published in the **Federal Register**, on a crab license which becomes a bid's crab reduction permit, and

(ii) Be neither lost nor destroyed at the time of bidding;

(3) *Reduction fishing privilege requirements.* The reduction fishing privilege in each bid must be the reduction/privilege vessel's:

(i) Fisheries trade endorsement under the Merchant Marine Act, 1936 (46 U.S.C.A. 12108),

(ii) Qualification for any present or future U.S. Government approval under section (9)(c)(2) of the Shipping Act, 1916 (46 U.S.C. App. 808(c)(2)) for placement under foreign registry or operation under the authority of a foreign country, and

(iii) Any other privilege to ever fish anywhere in the world;

(4) *Crab reduction permit requirements.* (i) Except as otherwise provided in paragraph (i) of this section, the crab reduction permit must in each bid:

(A) Be the crab license that NMFS issued on the basis of the bidder's reduction fishing history,

(B) Be non-interim at the time each bidder submits its bid, and

(C) Include an area/species endorsement for any one or more reduction endorsement fisheries.

(ii) Although the Norton Sound fishery is not a reduction endorsement fishery, an area/species endorsement for the Norton Sound fishery occurring on a crab reduction permit must be surrendered and revoked (and all fishing history involving it relinquished) in the same manner as all other reduction endorsement fisheries occurring on the crab reduction permit;

(5) *Non-crab reduction permit requirements.* The non-crab reduction permit must in each bid be every license, permit, or other harvesting privilege that:

(i) NMFS issued on the basis of the fishing history of the bidder's reduction/history vessel, and

(ii) For which the bidder was the license holder of record on the effective date of this section; and

(6) *Reduction fishing history requirements.* Except as otherwise provided in paragraph (i) of this section, the reduction fishing history in each bid must that of a single reduction/history vessel.

(i) *Exceptions to the reduction fishing interest requirements*—(1) *Lost or destroyed vessel salvaged.* When a bidder has salvaged a lost or destroyed vessel and has made from the salvaged vessel the documented harvest of crab § 679.4(k)(5)(iii)(B)(*3*) of this chapter requires, the crab portion of the reduction fishing history is the salvaged vessel's documented harvest of crab; and

(2) *Lost or destroyed vessel not salvaged.* When a bidder has not salvaged the lost or destroyed vessel but has made from a replacement vessel the documented harvest of crab § 679.4(k)(5)(iii)(B)(*3*) of this chapter requires:

(i) The crab portion of the reduction fishing history is the total of the lost or destroyed vessel's documented harvest of crab through the date of such vessel's loss or destruction plus the replacement vessel's documented harvest of crab after such date, and

(ii) For the purposes of this program, the lost or destroyed vessel's documented harvest of crab merges with, and becomes a part of, the replacement vessel's documented harvest of crab; and

(3) *Acquired crab fishing history.* When a bidder, in the manner § 679.4(k)(5)(iv) of this chapter requires, has made a documented harvest of crab from one vessel and has acquired a replacement vessel's documented harvest of crab:

(i) The crab portion of the reduction fishing history is the total of the acquired documented harvest of crab through December 31, 1994, plus the documented harvest of crab after December 31, 1994, of the vessel from which the bidder made the documented crab harvest § 679.4(k)(5)(iv) of this chapter requires, and

(iii) For the purposes of this program, the acquired documented harvest of crab merges with, and becomes a part of, the non-acquired documented harvest of crab.

(j) *Determining value of reduction/history vessels' bid crab*—(1) *In each fishery.* NMFS will determine the dollar value of each reduction/history vessel's bid crab in each reduction endorsement fishery and in the Norton Sound Fishery by multiplying each reduction/history vessel's number of pounds of each species of bid crab by the average ex-vessel price per pound that the State of Alaska annually publishes for each crab species in the bid crab; and

(2) *In all fisheries.* NMFS will determine the dollar value of each reduction/history vessel's bid crab in all reduction endorsement fisheries and in the Norton Sound fishery by adding each of the products of the multiplications in paragraph (j)(1) of this section; and

(3) *Crab excluded from bid crab.* A reduction/history vessel's bid crab may not include, to the extent that NMFS has knowledge:

(i) Triangle tanner crab, grooved tanner crab, and any other crab not involved in the various area/species endorsements,

(ii) Discarded crab,

(iii) Crab caught for personal use,

(iv) Unspecified crab, and

(v) Any other crab for which the dollar value, crab fishery, landing date, or harvesting vessel NMFS cannot, for whatever reason, determine.

(k) *Determining bid score.* NMFS will determine each bid score by dividing each bid amount by the sum in paragraph (j)(2) of this section.

(l) *Determining reduction loan sub-amount*—(1) *Value of all bid crab in each fishery.* NMFS will add the dollar value of bid crab of all accepted bidders' reduction/history vessels in each reduction endorsement fishery;

(2) *Value of all bid crab in all fisheries.* NMFS will add the dollar value of bid crab of all accepted bidders' reduction/history vessels in all reduction endorsement fisheries plus the Norton Sound fishery;

(3) *Each fishery as a percentage of all fisheries.* NMFS will divide each of the sums in paragraph (l)(1) of this section by the sum in paragraph (l)(2) of this

section. The result of this calculation will be the dollar value of all bid crab in each reduction endorsement fishery as a percentage of the dollar value of all bid crab in all reduction endorsement fisheries plus the Norton Sound fishery;

(4) *Applying percentages to loan amount.* NMFS will multiply the reduction loan's full original principal amount by each of the yields in paragraph (l)(3) of this section; and

(5) *Loan sub-amount.* Each of the amounts resulting from the calculation in paragraph (l)(4) of this section will be the reduction loan subamount that a reduction endorsement fishery must repay.

(m) *Prospectively qualifying bidder and voter notification*—(1) *General.* At the appropriate point before issuing an invitation to bid, NMFS will publish a notification in the **Federal Register** listing all persons who at the time of publishing the notification prospectively are qualifying bidders and qualifying voters;

(2) *Qualifying bidder list.* The prospectively qualifying bidder list will include the names and addresses of record of each license holder of record for all non-interim crab licenses except only crab licenses whose sole area/species endorsement is for the Norton Sound fishery;

(3) Qualifying voter list. The prospectively qualifying voter list will include the names and addresses of record of each license holder of record for all non-interim and interim crab licenses except only crab licenses whose sole area/species endorsement is for the Norton Sound fishery;

(4) *Basis of lists.* NMFS will base both the lists on the RAM Program's license holder records for crab licenses meeting the requirements of § 679.4(k)(5) of this chapter as well as the requirements of this section;

(5) *Purpose.* The purpose of the notification is to provide the public notice of:

(i) The prospectively qualifying bidders, and

(ii) The prospectively qualifying voters; and

(6) *Public comment.* Any person who wants to comment about the notification has 30 days from the notification's publication date to do so. Persons should send their comments to both FSD and the RAM Program (at addresses that the notification will specify). Comments may address:

(i) Persons who appear on one or more lists but should not,

(ii) Persons who do not appear on one or more lists but should, and

(iii) Persons who believe their names and/or business mailing addresses appearing on one or more lists are incorrect.

(n) *Invitation to bid*—(1) *Notification.* At the appropriate point after issuing the notification in paragraph (m) of this section, NMFS will publish the invitation to bid in the **Federal Register** notification further specified in § 600.1009(c) of this subpart, along with a bidding form and terms of capacity reduction agreement. No person may, however, bid at this stage;

(2) *Notification contents.* The invitation to bid notification will state all applicable bid submission requirements and procedures (including, but not limited to, those included in this section). In particular, the invitation to bid notification will:

(i) State the date on which NMFS will invite bids by mailing an invitation to bid to each person on the prospectively qualifying bidder list,

(ii) State a bid opening date, before which a bidder may not bid, and a bid closing date, after which a bidder may not bid,

(iii) State a bid expiration date after which each bid expires unless, prior to that date, NMFS accepts the bid by mailing a written acceptance notice to the bidder at the bidder's address of record,

(iv) State the manner of bid submission and the information each bidder must submit for NMFS to deem a bid responsive,

(v) State any other information required for bid submission, and

(vi) Include a facsimile of the invitation to bid, along with a bidding form and terms of capacity reduction agreement comprising the entire terms and conditions of the reduction contract under which each bidder must bid and under which NMFS must accept a bid; and

(3) *Mailing.* On the date specified in this notification, NMFS will invite bids by mailing the invitation to bid and a bidding package, including a bidding form terms of capacity reduction agreement, to each person then on the prospectively qualifying bidder list. NMFS will not mail the invitation to bid to any potential co-bidder because NMFS will not then know which bids may include a co-bidder. Each qualifying bidder is solely responsible to have any required co-bidder properly complete the bid. No person may bid before receiving the invitation to bid and the bidding package that NMFS mailed to that person.

(o) *Bids*—(1) *Content.* Each invitation to bid that NMFS mails to a qualifying bidder will have a bid form requiring each bid to:

(i) Identify, by name, regular mail address, telephone number, and (if available) electronic mail address, the qualifying bidder and each co-bidder,

(ii) State the bid amount in U.S. dollars,

(iii) Identify, by crab license number, the qualifying bidder's crab reduction permit and include an exact copy of this crab license (which the RAM Program issued),

(iv) Identify, by vessel name and official number, the bidder's reduction/privilege vessel, and include an exact copy of this vessel's official document (which NVDC issued),

(v) Identify, by license or permit number, each of the bidder's non-crab reduction permits; and include an exact copy of each of these licenses or permits (which the RAM Program issued for licenses or permits involving species under the jurisdiction of NMFS' Alaska Region and which other NMFS offices issued for licenses or permits involving species under those offices' jurisdiction),

(vi) Identify, separately for crab and for each other species:

(A) The qualifying bidder's reduction fishing history, and

(B) The dates that each portion of the reduction fishing history encompasses; the name and official number of the reduction/history vessel or vessels which gave rise to it; and the dates during which the qualifying bidder owned such vessels or, if the qualifying bidder acquired any reduction fishing history from another person, the name of the person from which the qualifying bidder acquired such reduction fishing history and the manner in which and the date on which the qualifying bidder did so,

(vii) State, declare, and affirm that the qualifying bidder holds the crab reduction permit and retains the complete reduction fishing history, and is fully and legally entitled to offer both in the manner this section requires,

(viii) State, declare, and affirm that either the qualifying bidder or the co-bidder owns the reduction/privilege vessel and holds the non-crab reduction permit and is fully and legally entitled to offer both in the manner that this section requires, and

(ix) Provide any other information or materials that NMFS believes is necessary and appropriate; and

(2) *Rejection.* NMFS, regardless of bid scores, will reject any bid that NMFS believes is unresponsive to the invitation to bid. All bid rejections will constitute final agency action as of the date of rejection. Before rejection, NMFS may, however, contact any bidder to attempt to correct a bid deficiency if NMFS, in its discretion, believes the attempt warranted.

(p) *Acceptance*—(1) *Reverse auction.* NMFS will determine which responsive bids NMFS accepts by using a reverse auction in which NMFS first accepts the responsive bid with the lowest bid score and successively accepts each additional responsive bid with the next lowest bid score until either there are no more responsive bids to accept or acceptance of the last responsive bid with the next lowest bid score would cause the reduction cost to exceed $100 million. If two or more responsive bid scores are exactly the same, NMFS will first accept the bid that NMFS first received;

(2) *Notification.* NMFS will, after the conclusion of a successful referendum, notify accepted bidders that NMFS had, before the referendum, accepted their bids; and

(3) *Post-acceptance reduction permit transfer.* After NMFS has accepted bids, neither the RAM Program (nor any other NMFS office) will transfer to other persons any reduction permits that accepted bidders included in the bids unless and until FSD advises the RAM Program (or some other NMFS office) that the resulting reduction contracts are no longer in effect because a referendum failed to approve the fee that this section requires to repay this program's reduction loan.

(q) *Reduction contracts subject to successful post-bidding referendum condition.* Although this program involves no fishing capacity reduction specifications under this subpart, each bid, each acceptance, and each reduction contract is nevertheless subject to the successful post-bidding referendum condition that § 600.1009(a)(3) of this subpart specifies for bidding results that do not conform to the fishing capacity reduction specifications.

(r) *Post-bidding referendum*—(1) *Purpose.* NMFS will conduct a post-bidding referendum whose sole purpose is to determine whether, based on the bidding results, qualifying voters who cast referendum ballots in the manner that this section requires authorize the fee required to repay this program's reduction loan;

(2) *Manner of conducting.* NMFS will mail a referendum ballot to each person then on the prospectively qualifying voter list for each crab license that the person holds and otherwise conduct the referendum as specified in § 600.1010 of this subpart;

(3) *One vote per crab license.* Each qualifying voter may cast only one vote for each crab license that each qualifying voter holds;

(4) *Crab license numbers on ballots.* Each referendum ballot that NMFS mails will contain the license number of the prospectively qualifying voter's crab license to which the ballot relates;

(5) *Potential reduction results stated.* Each referendum ballot that NMFS mails will state the aggregate potential reduction results of all the bids that NMFS accepted, including:

(i) The amount of reduction that all accepted bids potentially effect, including:

(A) The number of crab reduction permits, together with each area/species endorsement for which each of these licenses is endorsed,

(B) The number of reduction/privilege vessels and reduction/history vessels, and

(C) The aggregate and average dollar value of bid crab (together with the number of pounds of bid crab upon which NMFS based the dollar value), in each reduction endorsement fishery and in the reduction fishery, for all reduction/history vessels during the period for which NMFS calculates the dollar value of bid crab,

(ii) The reduction loan sub-amount that each reduction endorsement fishery must repay if a referendum approves the fee, and

(iii) Any other useful information NMFS may then have about the potential sub-fee rate initially necessary in each reduction endorsement fishery to repay each reduction loan sub-amount; and

(6) *Notice that condition fulfilled.* If the referendum is successful, NMFS will notify accepted bidders, in the manner that § 600.1010(d)(6)(iii) of this subpart specifies, that a successful referendum has fulfilled the reduction contracts' successful post-bidding referendum condition specified in paragraph (q) of this section.

(s) *Reduction method.* In return for each reduction payment, NMFS will permanently:

(1) Revoke each crab reduction permit;

(2) Revoke each non-crab reduction permit;

(3) Revoke each reduction fishing privilege (which revocation will run with the reduction/privilege vessel's title in the manner § 600.1009(a)(5)(ii)(A) of this subpart requires and in accordance with 46 U.S.C. 12108(d));

(4) Effect relinquishment of each reduction fishing history for the purposes specified in this section by noting in the RAM Program records (or such other records as may be appropriate for reduction permits issued elsewhere) that the reduction fishing history has been relinquished under this section and will never again be available to anyone for any fisheries purpose; and

(5) Otherwise restrict in accordance with this subpart each reduction/privilege vessel and fully effect the surrender, revocation, restriction, relinquishment, withdrawal, or extinguishment by other means of all components of each reduction fishing interest.

(t) *Reduction payment tender and disbursement*—(1) *Fishing continues until tender.* Each accepted bidder may continue fishing as it otherwise would have absent the program until NMFS, after a successful referendum, tenders reduction payment to the accepted bidder;

(2) *Notification to the public.* After a successful referendum but before tendering reduction payment, NMFS will publish a notification in the **Federal Register** listing all proposed reduction payments and putting the public on notice:

(i) Of the crab reduction permits, the reduction/privilege vessels, the reduction fishing histories, and the non-crab reduction permits upon whose holding, owning, retaining, or other legal authority representations accepted bidders based their bids and NMFS based its acceptances, and

(ii) That NMFS intends, in accordance with the reduction contracts, to tender reduction payments in return for the actions specified in paragraph (s) of this section;

(3) *Public response.* The public has 30 days after the date on which NMFS publishes the reduction payment tender notification to advise NMFS in writing of any holding, owning, or retaining claims that conflict with the representations upon which the accepted bidders based their bids and on which NMFS based its acceptances;

(4) *Tender and disbursement parties.* NMFS will tender reduction payments only to accepted bidders, unless otherwise provided contrary written instructions by accepted bidders. Creditors or other parties with secured or other interests in reduction/privilege vessels or reduction permits are responsible to make their own arrangements with accepted bidders;

(5) *Time of tender.* At the end of the reduction payment tender notification period, NMFS will tender reduction payments to accepted bidders, unless NMFS then knows of a material dispute about an accepted bidder's authority to enter into the reduction contract with respect to any one or more components of the reduction fishing interest that warrants, in NMFS' discretion, an alternative course of action;

(6) *Method of tender and disbursement.* NMFS will tender reduction payment by requesting from each accepted bidder specific, written instructions for paying the reduction payments. Upon receipt of these payment instructions, NMFS will immediately disburse reduction payments in accordance with the payment instructions; and

(7) *Effect of tender.* Concurrently with NMFS' tender of reduction payment to each accepted bidder:

(i) All fishing activity for any species anywhere in the world in any way associated with each accepted bidder's reduction fishing interest must cease,

(ii) Each accepted bidder must retrieve all fixed fishing gear for whose deployment the accepted bidder's reduction/privilege vessel was responsible, and

(iii) NMFS will fully exercise its reduction contract rights with respect to the reduction fishing interest by taking the actions specified in paragraph (s) of this section.

(u) *Fee payment and collection*—(1) *Fish sellers who pay the fee.* Any person who harvests any crab, but whom ADF&G's fisheries reporting requirements do not require to record and submit an ADF&G fish ticket for that crab, is a fish seller for the purpose of paying any fee on that crab and otherwise complying with the requirements of § 600.1013 of this subpart;

(2) *Fish buyers who collect the fee.* Any person whom ADF&G's fisheries reporting requirements require to record and submit an ADF&G fish ticket for any crab that another person harvested is a fish buyer for the purpose of collecting the fee on that crab and otherwise complying with the requirements of § 600.1013 of this subpart; and

(3) *Persons who are both fish sellers and fish buyers and both pay and collect the fee.* Any person who harvests any crab, and whom ADF&G's fisheries reporting requirements require to record and submit an ADF&G fish ticket for that crab, is both a fish seller and a fish buyer for the purpose of paying and collecting the fee on that crab and otherwise complying with the requirements of § 600.1013 of this subpart.

(v) *Fishing prohibition and penalties*—(1) *General.* Fishing, for the purpose of this section, includes the full range of activities defined in the term "fishing" in the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801),

(2) *Prohibitions.* Concurrently with NMFS' tender of each reduction payment, and with the sole exception in paragraph (t)(7)(i) of this section, no person whatsoever may, and it is unlawful for any person to:

(i) Fish with or attempt to fish with, or allow others to fish with or attempt to fish with, the reduction/privilege vessel anywhere in the world for any species under any conditions and regardless of the reduction/privilege vessel's ownership or registry for so long as the reduction/privilege vessel exists. This prohibition includes, but is not limited to, fishing on the high seas or in the jurisdiction of any foreign country (to the extent prohibited by law) while operating under U.S. flag,

(ii) Place or attempt to place, or allow others to place or attempt to place, the reduction/privilege vessel under foreign flag or registry,

(iii) Operate or attempt to operate, or allow others to operate or attempt to operate, the reduction/privilege vessel under the authority of a foreign country to the extent prohibited by law,

(iv) Otherwise avoid or attempt to avoid, or allow others to avoid or attempt to avoid, the revocation of the reduction fishing privilege with respect to any reduction/privilege vessel, and

(v) Make any claim or attempt to make any claim, or allow others to claim or attempt to make any claim, for any present or future limited access fishing license or permit in any U.S. fishery (including, but not limited to, any quota allocation under any present or future individual quota allocation system) based in any way on any portion of a reduction fishing interest surrendered, revoked, restricted, relinquished, withdrawn, or extinguished by other means under this section; and

(3) *Penalties.* The activities that this paragraph prohibits are subject to the full penalties provided in § 600.1017 of this subpart, and immediate cause for NMFS to take action to, among other things:

(i) At the reduction/privilege vessel owner's expense, seize and scrap the reduction/privilege vessel, and

(ii) Pursue such other remedies and enforce such other penalties as may be applicable.

(w) *Program administration*—(1) *FSD responsibilities.* FSD is responsible for implementing and administering this program. FSD will:

(i) Issue all notifications and mailings that this section requires,

(ii) Prepare and issue the invitation to bid,

(iii) Receive bids,

(iv) Reject bids,

(v) Score bids,

(vi) Make acceptances,

(vii) Prepare and issue referendum ballots,

(viii) Receive referendum ballots,

(ix) Tally referendum ballots,

(x) Determine referendum success or failure,

(xi) Tender and disburse reduction payments,

(xii) Administer reduction contracts,

(xiii) Administer fees and reduction loan repayment, and

(xiv) Discharge all other management and administration functions that this section requires;

(2) *RAM Program responsibilities.* Upon FSD's advice, the RAM Program (for fishing licenses under the jurisdiction of NMFS's Alaska Region) and any other appropriate NMFS authority (for fishing licenses under the jurisdiction of any other NMFS office) will revoke reduction permits and effect the surrender of fishing histories in accordance with this section; and

(3) *NVDC and MARAD responsibilities.* FSD will advise NVDC, MARAD, such other agency or agencies as may be involved, or all of them to revoke reduction/privilege vessels' fisheries trade endorsements and otherwise restrict reduction/privilege vessels in accordance with this section.

(x) *Reduction loan and reduction loan sub-amounts.* [Reserved]

[FR Doc. 03–30795 Filed 12–11–03; 8:45 am]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register

Vol. 68, No. 239

Friday, December 12, 2003

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 929

[Docket Nos. AO–341–A6; FV02–929–1]

Cranberries Grown in the States of Massachusetts, et al.; Secretary's Decision and Referendum Order on Proposed Amendment of Marketing Agreement and Order No. 929

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule and referendum order.

SUMMARY: This decision proposes amendments to the marketing agreement and order for cranberries grown in Massachusetts, Rhode Island, Connecticut, New Jersey, Wisconsin, Michigan, Minnesota, Oregon, Washington, and Long Island in the State of New York, and provides growers and processors with the opportunity to vote in a referendum to determine if they favor the changes. The amendments are based on those proposed by the Cranberry Marketing Committee (Committee), which is responsible for local administration of the order and other interested parties representing cranberry growers and handlers. This action is a partial decision on six of the proposed amendments listed in the notice of hearing. It has been determined that these amendments need to be expedited. The amendments include increasing Committee membership and related amendments. The proposed amendments are intended to improve the operation and functioning of the cranberry marketing order program.

DATES: The referendum will be conducted from January 19 to January 30, 2004. The representative period for the purpose of the referendum is September 1, 2002, through August 31, 2003. Pursuant to the Paperwork Reduction Act, comments on information collection burden that would result from this proposal must be received by February 10, 2004.

ADDRESSES: Interested persons are invited to submit written comments concerning the information collection burden. Comments must be sent to the Docket Clerk, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250–0237; Fax: (202) 720–8938, or E-mail: *moab.docketclerk@usda.gov.* All comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours, or can be viewed at: *http://www.ams.usda.gov/fv/moab.html.*

FOR FURTHER INFORMATION CONTACT: Kathleen M. Finn, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, or Fax: (202) 720–8938. Small businesses may request information on compliance with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250–0237; telephone (202) 720–2491; Fax (202) 720–8938.

SUPPLEMENTARY INFORMATION: Prior documents in this proceeding: Notice of hearing issued on April 23, 2002, and published in the May 1, 2002, issue of the **Federal Register** (67 FR 21854).

This administrative action is governed by the provisions of sections 556 and 557 of title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Order 12866.

Preliminary Statement

The proposed amendments were formulated based on the record of a public hearing held in Plymouth, Massachusetts on May 20 and 21, 2002; in Bangor, Maine on May 23, 2002; in Wisconsin Rapids, Wisconsin on June 3 and 4, 2002; and in Portland, Oregon on June 6, 2002. The hearing was held to consider the proposed amendment of Marketing Agreement and Order No. 929, regulating the handling of cranberries grown in the States of Massachusetts, Rhode Island, Connecticut, New Jersey, Wisconsin, Michigan, Minnesota, Oregon, Washington, and Long Island in the State of New York, hereinafter referred to collectively as the "order." The hearing was held pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), hereinafter referred to as the "Act," and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR part 900). The notice of hearing contained numerous proposals submitted by the Committee, other interested parties and one proposed by the Agricultural Marketing Service (AMS). This action is a partial decision addressing a portion of the amendments listed in the notice of hearing that have been determined necessary to be expedited. Other proposed amendments listed in the notice of hearing will be addressed in a separate decision.

The proposed amendments included in this decision would: Increase Committee membership to 13 grower members, 1 public member, 9 grower alternate members and 1 public alternate member; incorporate a "swing" position whereby the group (either the major cooperative or growers representing other than the major cooperative) which handles more than 50 percent of the total volume produced is assigned an additional seat; revise nomination and selection provisions of the order, as well as quorum and voting requirements, to reflect the change in Committee membership; authorize tenure limitations to be restarted with the seating of the expanded Committee; re-establish districts and allocate the revised membership among those districts; allow the Committee to request tax identification numbers for voting purposes; authorize mail nominations for independent members; revise the alternate member provisions to reflect the change in Committee membership and for clarity purposes; and require Committee member nominee disclosure of non-regulated cranberry production.

The Fruit and Vegetable Programs of AMS proposed to allow such changes as may be necessary to the order, if any of the proposed amendments are adopted, so that all of the order's provisions conform to the effectuated amendments.

Thirty-two witnesses testified at the hearing. These witnesses represented

cranberry growers and handlers in the States currently covered by the order and in Maine. Some witnesses supported the proposed amendments, while others were opposed to the recommended changes or suggested modifications to them.

At the conclusion of the hearing, the Administrative Law Judge fixed August 9, 2002, as the final date for interested persons to file proposed findings and conclusions or written arguments and briefs based on the evidence received at the hearing on proposal numbers 1, 3, 7 and 13. The Administrative Law Judge fixed September 13, 2002, as the final date for interested persons to file proposed findings and conclusions or written arguments and briefs based on evidence received at the hearing on all other proposals. This briefing period was extended until September 20, 2002. A total of 17 briefs were filed, 16 of which addressed proposals in this decision.

Regarding the proposals being discussed in this decision, the Committee filed a brief in support of its proposed amendments. Linda and Paul Rinta and Stephen L. Lacey (attorney for Clement Pappas & Company and Cliffstar Corporation) filed briefs requesting that all proposals relating to Committee structure be considered together. The Cape Cod Cranberry Growers' Association (CCCGA) filed a brief opposing a portion of proposal on the Committee structure. Ranger Cranberry Co., LLC, a Wisconsin grower, filed a brief supporting a modification to the Committee structure. Nine of the 11 briefs recommended that growers from the major cooperative be required to vote independently for Committee representatives rather than the current method of nomination by the cooperative management. All discussions on briefs pertaining to the proposals being recommended in this decision have been considered.

Proposals Being Recommended in this Decision

The Committee's proposal to amend the Committee structure included: Increasing the membership; incorporating a member-at-large position; revising nomination and selection procedures, as well as quorum and voting requirements to reflect the increase in Committee membership; authorizing tenure limitations to be restarted with the seating of the expanded Committee; authorizing mail nominations; allowing the Committee to request tax identification numbers for voting purposes; and changing how alternates may fill positions on any member's absence. This proposal provided for amendments to §§ 929.20, 929.21, 929.22, 929.23, 929.27 and 929.32.

Two other interested parties submitted proposals relating to restructuring the Committee. Stephen L. Lacey on behalf of Clement Pappas and Company, Inc., and Cliffstar Corporation proposed an amendment to § 929.22 to alter the way nominations of cooperative members on the Committee are conducted by requiring cooperative nominees to be selected through an election process administered by the Committee. The Wisconsin Cranberry Cooperative proposed amendments to §§ 929.22 and 929.23 to allow for equitable representation for all cooperative marketing associations in the industry.

Stephen Lacey also proposed an amendment to § 929.20 to require Committee member disclosure of unregulated production.

Material Issues

The material issues in this decision presented on the record of the hearing are as follows:

1. Whether to increase Committee membership to 13 grower members, 1 public member, 9 grower alternate members and 1 public alternate member; incorporate a "swing" position whereby the entity (either the major cooperative or other than the major cooperative) which handles more than 50 percent of the total volume produced is assigned an additional seat; incorporate nomination and selection procedures to reflect the change in Committee membership; allow the Committee to request tax identification numbers for voting purposes; authorize mail nominations for independent members; modify the quorum and voting requirements to reflect the increased number of Committee members; restart tenure limitations to begin with the seating of the expanded Committee; and revise and clarify which alternates may fill positions in any member's absence.

2. Whether to require Committee member disclosure of non-regulated production.

3. Whether to expedite the decision on any or all of the proposals by omitting the recommended decision and proceeding directly to the Secretary's decision and referendum order.

Findings and Conclusions

The following findings and conclusions on the material issues are based on the record of the hearing.

Material Issue Number 1

Section 929.20 should be amended to increase Committee membership to 13 grower members, 1 public member, 9 grower alternate members and 1 public alternate member and to reestablish districts. This section should also be amended to incorporate a "member-at-large" position whereby the group (either growers representing the major cooperative or growers representing entities other than the major cooperative) that handles more than 50 percent of the total volume produced is assigned an additional seat.

Section 929.21 should be amended to restart tenure limitations with the seating of the expanded Committee and allow the initial members of the newly formed Committee to be seated for at least one term.

Section 929.22 should be amended to revise nomination procedures to reflect the change in Committee membership and to allow the reestablished Committee to be nominated as soon as possible.

Section 929.22 should be amended to allow the Committee to request tax identification numbers for voting purposes.

Section 929.22 should be amended to authorize mail nominations for growers who represent entities other than the major cooperative.

Section 929.27 should be amended to revise and clarify which alternate members can be seated in place of absent members.

Section 929.32 should be amended to incorporate quorum and voting requirements to reflect the increased number of Committee members.

Currently, the Committee is composed of 7 grower members, each with an alternate, and 1 public member and alternate. The public member position is not required. The production area is divided into 4 districts and at least 1 member and alternate represent each district. The term of office for members and alternate members is 2 years beginning on August 1 of each even-numbered year, and members are limited to 3 consecutive terms. Those members who serve 3 consecutive terms are not eligible to serve as either a member or alternate member on the Committee until they have been off the Committee for at least 1 full two-year term. There are no tenure requirements for alternate members.

Representation is divided among 4 districts. District 1 includes the States of Massachusetts, Rhode Island and Connecticut. District 2 includes the State of New Jersey and Long Island in the State of New York. District 3 includes the States of Wisconsin, Michigan and Minnesota. District 4 includes the States of Oregon and Washington.

Any cooperative marketing association that handles more than two-thirds of the total volume of cranberries produced during the fiscal period during which nominations are made, or affiliated growers, nominates 4 persons to serve as members and 4 persons to serve as alternate members. At least one nominee must be from Oregon or Washington (District 4). For growers not affiliated with the cooperative marketing association, the committee holds nomination meetings in Districts 1, 2 and 3 to select nominees for the remaining 3 positions. District 4 growers participate in the District 3 nomination procedure by mail ballot. Growers are entitled to cast one vote for the nominee in his or her respective district. USDA selects the members from the nominations made.

Five members constitute a quorum and any action of the Committee requires at least five concurring votes. If the public member is present and chooses to vote, six members constitute a quorum and any Committee actions require at least six concurring votes.

Section 929.27 sets forth that an alternate member shall act in the place and stead of his or her member. In the event both the member and alternate are absent, the Committee may designate any other alternate member to serve in the absent member and alternate's place. This provision also provides that no more than 4 cooperative members or alternates can serve as members at the same meeting and that the grower alternate cannot serve for a non-industry member.

For the 2002 selection process, no cooperative marketing association handled more than two-thirds of the volume of cranberries produced during the 2001–2002 year. The order does not specify how the Committee should be structured under this circumstance. The order provides that members and alternate members shall serve until their respective successors are selected and have been qualified. Therefore, the current cooperative members of the Committee representing the major cooperative, as previously selected, will remain seated until an amendment to the order, if any, is adopted to address this situation. Nominations and selections were made for the 3 independent member and alternate seats.

Increasing Committee Membership

The Committee proposed increasing Committee membership from 7 grower members and 7 grower alternates to 13 grower members and 9 grower alternates. As in the current order, there would be 1 public member and alternate, but the public member position would be required. Six members would represent the cooperative and six members would represent independent growers. The remaining grower position would represent the group (either the cooperative or independents) that handled more than 50 percent of the volume of cranberries produced in the prior crop year.

The Committee's proposal retains 4 marketing order districts but recommends that they be reestablished to accommodate the expanded production area States.

District 1 would include Massachusetts, Rhode Island, Connecticut, New York and Maine. Currently, District 1 includes Massachusetts, Rhode Island and Connecticut. District 2 would include New Jersey and Delaware. Currently, District 2 includes New Jersey and Long Island in the State of New York. District 3 would remain unchanged and include Wisconsin, Michigan and Minnesota. District 4 would remain unchanged and include Oregon and Washington. The expansion of the production area is not being considered in this document. Therefore, for purposes of discussion, the existing districts and production area are being used in this decision.

Under the Committee's proposal, there would be 2 cooperative members (with 1 alternate member) and 2 independent members (with 1 alternate member) each for Districts 1 and 3. There would be 1 cooperative member and alternate member and 1 independent member and alternate member each for Districts 2 and 4. The member-at-large position would be selected from any of the marketing order districts.

Record evidence indicated that the additional representation in Districts 1 and 3 is based, in large part, on the percentage of the production these two districts represent. During the 2000 crop year, production in District 1 represented 35 percent, District 2 represented 9 percent, District 3 represented 46 percent and District 4 represented 10 percent of total cranberry production.

The Committee manager testified that increasing grower membership would provide more opportunities for a larger and more diverse group of growers to actively participate in the Committee process. He further testified that expansion of the membership is very important to ensuring that the industry would benefit from new ideas, approaches, viewpoints, and perspectives brought to the complex environment facing the cranberry industry.

In support of increasing membership, a witness representing the major cooperative testified that the increased Committee size would allow for broader representation of growers from different producing areas while recognizing different volumes of cranberries being produced in different growing areas. He testified that without increasing the membership, it would be difficult to recognize the larger volume of cranberries produced in Wisconsin and Massachusetts without reducing representation from growing areas that produce lower volumes like New Jersey, Washington and Oregon.

The record revealed that the Committee appointed an amendment subcommittee in 1997 to deliberate on ways to improve the marketing order. On modifying Committee membership, many alternatives were discussed. Alternatives included leaving the membership at 8 and increasing the membership to 9, 11 or 13. The primary reason for agreeing on membership of 13 involved determining how to allocate membership among the districts. The subcommittee believed that it was important to recognize the larger growing areas by providing them with at least one additional member. Equally important was to provide opportunities for membership for smaller growing areas.

The subcommittee carefully considered increased costs. To compromise on this issue, the subcommittee recommended a lower number of alternates. In addition, discussions involved whether it was necessary for alternate members to attend every meeting. There were differing opinions on this, but most agreed that it was important for alternates to stay current with Committee activities so they are more prepared to serve as a member when needed.

Witnesses testified in opposition to the Committee's proposal. Two witnesses were opposed to the increase in Committee size. A Wisconsin grower/handler testified that the additional costs associated would be excessive. Another witness representing the views of the Wisconsin Cranberry Growers Association believed that increasing the number of Committee members could hinder the Committee's ability to make timely decisions and would increase program administrative costs, which are ultimately borne by the growers.

Other witnesses testified in opposition to the allocation of membership under the Committee's proposal. A Wisconsin grower/handler testified that this allocation was inequitable to independent growers in Wisconsin. He testified that membership should consistently be based on the volume of cranberries produced. This witness was primarily concerned that under the Committee's proposal, the State of Wisconsin would be grossly underrepresented on the Committee while other States would be significantly overrepresented. He offered alternatives that would provide the Wisconsin district with an additional seat by transferring a seat from one of the other districts.

Another alternative discussed suggested that the number of growers should also be considered in allocating membership. Under this scenario, the State of Massachusetts would be allocated an additional seat.

A witness representing the Wisconsin Cranberry Grower's Association, also agreed that membership should be modified to be proportional to production. He suggested 3 districts be established providing seats based on volume of cranberries produced and by association with independent and cooperative growers.

Another Wisconsin grower proposed retaining the current 8 member Committee. She proposed having 3 districts—East coast, Midwest and West coast. There would be no allocation between cooperative and independent growers. Two members would be allocated for each district, with 1 swing vote for the growers affiliated with the handler who handled more than 50 percent of the crop.

Record evidence supports modifying the Committee structure as proposed by the Committee. Increasing membership on the Committee should allow more growers to participate in the decision-making processes of the Committee. The benefits of increasing membership outweigh associated increased costs by providing more growers opportunities to have a voice on decisions that impact their livelihood. In addition, increasing membership will allow for more diverse membership and new and different ideas on the direction the Committee should follow in the future. Testimony indicated that a larger Committee would enable a larger number of growers to better understand how the marketing order works and the rationale behind the decisions. More growers becoming familiar with these complicated regulatory issues can only help to further disseminate information to even more industry members. Allowing more opportunities for growers to actively participate in this process will benefit the progress of the Committee.

Increasing membership will also allow larger representation of growing areas that produce the majority of the volume of cranberries and still recognize the importance of all producing areas, regardless of size.

Allocating the membership equally between the largest cooperative and the rest of the industry will provide an appropriate balance between representatives in the industry who may have different ideas on Committee determinations based on their affiliation. With this allocation, no group can impose their will on the other. Committee recommendations will need to have more than the votes of one group to pass. In addition, the member-at-large position will allow for the dominant group to be recognized by providing that group with an additional seat.

Having 2 members from the districts that represent Wisconsin and Massachusetts reasonably recognizes the fact that those districts have a great economic interest at stake when more significant actions, such as volume regulation, are considered by the Committee. It is important to take into account the significance of the smaller growing regions, while recognizing that the potential scale of the impact increases with the volume of cranberries produced and regulated. In this regard, the Committee's proposal improves the current structure of the Committee.

Allowing the smaller volume districts to have 1 member recognizes their significance to the industry. Using volume alone as a means of determining Committee membership does not take into consideration smaller growing regions. Although volume is certainly one criterion to be considered, opportunities must be provided for input by all segments of the industry.

The proponents of providing District 3 an additional independent member based on the State of Wisconsin's comparative volume produced based their opinion solely on volume of production. However, USDA concludes, based on the reasons mentioned above, that providing an additional seat for District 3 at the exclusion of membership from Districts 2 or 4 is not desirable.

Similar concerns would result with regard to the alternative proposed at the hearing to have 3 districts and no differentiation of membership based on cooperative or independent members. The proponent of this alternative was not concerned that it would be possible for the largest handler's growers to win all the seats. The chances for that happening would be real under this scenario and must be considered. Although the approach is simple and keeps the membership at its current level, this alternative could result in the undesirable result of one entity having every seat.

The increase in Committee membership will likely increase costs to the Committee with the additional members attending meetings. Currently, 16 representatives generally attend meetings, as all alternates are entitled to attend each meeting. With a 14 member Committee and 9 alternates, there is the potential that costs will increase to send an additional 7 persons to meetings if all alternates attend. However, the benefits of broadening the membership of the Committee and equitably allocating seats would outweigh these increased costs. Since the implementation of volume regulations, more growers are expressing interest in being a part of the Committee's recommendations. Expansion of the Committee will allow more growers the opportunity to be involved in the process. The Committee's recommendation to reduce the number of alternates will provide appropriate district coverage for members that cannot attend meetings, while taking costs into account.

By increasing the membership to 14 and establishing 4 districts as proposed by the Committee, regional representation will be maintained and additional representation to the largest growing districts will be provided. Committee and subcommittee deliberations on this issue were extensive and many alternatives were discussed. The Committee recommended the most equitable number and allocation of Committee membership while considering associated costs.

Regarding the public member and alternate position, the Committee proposed requiring that position to be a part of the administrative body as opposed to the current structure where that position is not required. There was no opposition testimony on this, and the record evidence is that the public member's views are an important aspect of the Committee's decision making and should therefore be required.

For the above reasons, it is recommended that § 929.20 be amended to increase Committee membership to 13 grower members, 1 public member, 9 grower alternates and 1 public alternate and to reestablish districts to accommodate the additional members. Included in the 13 grower members will be one member-at-large position (who will have an alternate), which will be discussed later in this decision. Of the remaining 12 grower members, 6 will represent the major cooperative and 6 will represent growers from groups other than the major cooperative. Four districts will be established as follows:

District 1 will represent the States of Massachusetts, Rhode Island and Connecticut. There will be 2 members from the major cooperative and 1 alternate member, and 2 members from other than the major cooperative and 1 alternate member.

District 2 will represent the State of New Jersey and Long Island in the State of New York. There will be 1 member from the major cooperative and 1 alternate member, and 1 member from other than the major cooperative and 1 alternate member.

District 3 will represent the States of Wisconsin, Michigan, and Minnesota. There will be 2 members from the major cooperative and 1 alternate member, 2 members from other than the major cooperative and 1 alternate member.

District 4 will represent the States of Oregon and Washington. There will be 1 member from the major cooperative and 1 alternate member, 1 member from other than the major cooperative and 1 alternate member.

The member-at-large position can be from any of the marketing order districts.

The order language should also provide that the Committee may establish, with USDA's approval, rules and regulations for the implementation and operation of this section. The Committee recommended this provision in the event a clarification or procedural change was needed in the future.

Nomination Procedures

With the recommended expansion of the Committee and the establishment of a member-at-large position, it is necessary to modify the nomination procedures to correspond to the new Committee structure.

Allocation of Membership

The Committee's proposed amendment to the nomination procedures allocates membership on the Committee based upon the expanded Committee.

As proposed by the Committee, if the cooperative marketing association handles more than 50 percent of the total volume of cranberries produced, USDA would select 6 cooperative producer members representing growers from each of the 4 districts, 1 member-at-large cooperative producer member from any of the marketing order districts, 6 independent producer members representing growers from each of the 4 districts, 1 public member, 4 cooperative alternate members representing each of the 4 districts, 4 independent alternate members representing each of the 4 districts, 1 cooperative alternate at large member from any district, and 1 public member alternate.

If the cooperative marketing association handles less than 50 percent of the total volume of cranberries produced, the Committee proposed that USDA would select 6 cooperative producer members representing growers from each of the 4 districts, 6 independent producer members representing growers from each of the 4 districts, 1 member-at-large independent producer member from any of the marketing order districts, 1 public member, 4 cooperative alternate members representing each of the 4 districts, 4 independent alternate members representing each of the 4 districts, 1 independent alternate at large member from any district, and 1 public member alternate.

The Committee proposed that the 2 independent producer nominees receiving the highest number of votes cast in Districts 1 and 3 would be declared the independent member nominees from each of those districts. The nominee receiving the third highest number of votes cast in Districts 1 and 3 would be declared the independent alternate member nominee from each of those districts. The independent producer nominee receiving the highest number of votes cast in Districts 2 and 4 would be declared the independent member nominee from each of those districts. The independent producer nominee receiving the second highest number of votes cast in Districts 2 and 4 would be declared the independent alternate member nominee from each of those districts.

If the independent growers are entitled to the member-at-large position, a separate election would be conducted. The producer receiving the highest number of votes would be declared the independent member-at-large and the producer receiving the second highest number of votes would be declared the independent alternate member-at-large.

Testimony revealed that the amendment subcommittee appointed by the Committee deliberated at length on the nomination procedures and, after consensus was reached, recommended the proposal to the full Committee.

The Committee's proposal does not modify the current order language that authorizes the cooperative or its growers to nominate qualified persons for the allotted member and alternate positions. Under the Committee's modified proposal, the group, either cooperative or independent, that handles more than 50 percent of the volume of cranberries handled, is awarded the member-at-large seat.

At the hearing, the Committee proposed modifying their amendment regarding the member-at-large position in two regards. First, there is currently more than one cooperative marketing association in the industry. The proposed amendment published in the notice of hearing did not take this into consideration. The Committee proposed amending this section by allowing the cooperative marketing association that handles the greatest volume of cranberries produced during the fiscal period in which nominations are made to nominate the cooperative members and alternates.

The second modification made by the Committee to the amendment published in the notice of hearing was to change the criteria used to determine which group is entitled to the member-at-large position from sales of cranberries to volume of cranberries handled. Testimony revealed that using handler sales could be problematic and administratively burdensome.

Witnesses opposed to combining the smaller cooperatives with the largest cooperative testified that if the volume handled by the two current cooperatives were combined to determine which group is awarded the additional seat, the largest cooperative could handle 49 percent of the crop and the smaller cooperative could handle 2 percent. Under that scenario, the major cooperative would be allocated the additional seat. Witnesses did not believe it would be equitable for the major cooperative to have less than 50 percent of the volume handled and be entitled to an additional seat. A witness for the smaller cooperative testified that if his cooperative cannot be represented in the group with the dominant cooperative, he believes his cooperative should be able to participate in the independent elections to provide more opportunities for his cooperative to be represented.

In addition, a brief filed on this issue on behalf of a handler states that the hearing record does not support establishing the threshold for determining which group is entitled to the member-at-large position as 50 percent. The brief states that the cooperative should be entitled to an additional seat only if it handles more than 66⅔ percent of the crop. In addition, the brief states that the Committee must demonstrate how conditions in the industry have changed

since the order was amended in 1962 and established a 66⅔ percent threshold to limit the cooperative to 4 seats.

At the time the order was promulgated, the major cooperative handled more than 80 percent of the cranberries produced. The threshold for membership established at that time had nothing to do with allocating additional seats to a dominant group based on volume handled. The purpose of allowing 4 seats to the cooperative handling more than two-thirds of the volume of cranberries handled was to ensure their membership was limited to 4 seats, rather than guaranteeing them a certain number of seats. Conditions in the industry have changed in that the major cooperative now handles approximately two-thirds of the volume of cranberries produced. The current order language does not address how the industry should be structured in the event the major cooperative's percentage of volume handled falls below the two-thirds threshold and the order should be amended to address this inadequacy.

With the Committee's recommendation of the member-at-large position, it is intended that the dominant group in the industry be awarded an additional seat on the Committee. The Committee recognized that the potential scale of the impact of Committee recommendations increases with the volume of cranberries produced and regulated. For this reason, the Committee recommended assigning an additional seat to the dominant group. It seems eminently reasonable to use a simple majority as a means of determining which group is entitled to an additional seat. Therefore, the threshold for determining the dominant group should be fifty percent.

It has been concluded previously in this decision that the committee should be expanded. Therefore, it is necessary to revise current nomination provisions to accommodate the increase in seats on the committee. Nomination procedures for the independent members based on the increased membership as proposed by the Committee are found to be reasonable and are being recommended for adoption. Based on record evidence, smaller cooperatives should be allowed similar opportunities to be represented on the Committee. In addition, because the large cooperative will continue to nominate its members to the Committee if it chooses, it is necessary to modify this section of the nomination provisions regarding the independent and small cooperative seats.

It is important that all growers are provided the opportunity for membership on the Committee and have a voice in who should represent their interests. Alternatives discussed included allowing the smaller cooperative to participate in the independent elections, as suggested by witnesses representing the small and large cooperative. Record evidence supports the notion that smaller cooperatives should not be combined with the dominant cooperative in the nomination process. They should be provided a greater opportunity to be represented on the Committee. Therefore, smaller cooperatives should be authorized to participate in the independent elections. It is expected that these growers can easily become a part of this nomination process, with minimal additional administrative expenses by the Committee. Although this process does not guarantee any smaller cooperatives membership on the Committee, it provides the same opportunities as those provided for the independent nominees.

In addition, it is reasonable that the threshold for determining which entity will be assigned the member-at-large position should be based on the volume handled by the major cooperative versus all others. This specifically addresses the concerns expressed at the hearing where the major cooperative could be assigned the member-at-large position while handling less than a majority of the crop. Only the major cooperative's volume handled will be counted to determine if they are the dominant group entitled to an additional seat on the Committee.

Since members of small cooperatives and independent growers will be participating in the same nomination process, it is necessary to modify the terminology used in defining the representation. In setting forth the nomination procedures and to determine which group is assigned the member-at-large position, the terminology will be changed from growers that represent "cooperatives" and "independents" to growers that represent the "major cooperative", which will be the dominant cooperative in the industry and growers that represent "other than the major cooperative".

For the above stated reasons, the Committee's proposal establishing nomination procedures for the expanded Committee is being recommended for adoption, with modifications as discussed.

Sales Versus Handle in Determining Member-at-Large Position

The Committee's proposal as set forth in the notice of hearing recommended using the percentage of handler sales of cranberries as opposed to the percentage of volume handled in determining which entity is entitled to the member-at-large position. At the hearing, the Committee modified this portion of the proposal to use volume handled in determining the member-at-large position. According to testimony, the Committee realized that using handler sales could be problematic and administratively burdensome.

According to testimony from a grower who was a member of the amendment subcommittee, the reason the subcommittee recommended sales was that some of the independent handlers believed that their sales were climbing faster than the major cooperative. In addition, the subcommittee thought sales would be a better choice since the threshold for determining the dominant group was being established to 50 percent. This subcommittee member stated that there was much discussion and controversy on determining what constituted a sale, but that the consensus was that the first sale would be the one that counted.

One of the reasons the Committee modified their proposal from handler sales back to volume handled was that it would be difficult to gain consensus on how sales would be allocated. In its brief, the Committee stated that even the proponents of the amendment found the terms "sale" and "sold" confusing when questions arose about the possibility of double accounting of cranberry inventories when interhandler transfers occur. The debate centered on which handler would be entitled to take credit for the sale. When a handler buys from another handler, it is a sale for the first handler. When the second handler resells the cranberries to its customer, it is also a sale.

The Committee does report sales in its inventory reports for information purposes based on handler reports. The reporting of this data is for informational purposes only.

It was determined by the Committee that due to these complexities and the possibility of an increased administrative burden associated with using handler sales as a basis for assigning the additional seat, the threshold should be based on volume handled. Under the order, "Handle" means to can, freeze, or dehydrate cranberries with the production area, or to sell, consign, deliver, or transport fresh cranberries in or out of the production area. Handlers are accustomed to reporting figures based on handling of cranberries, and the Committee has an internal mechanism in place to track interhandler transfers to ensure that double accounting does not take place.

This is not to be confused with grower sales which are used in establishing each grower's sales history. Grower deliveries (or sales) to handlers are easily tracked for the purposes of computing sales histories.

Record evidence does not support basing the member-at-large position on handler sales. The hearing record indicated there could be confusion and possible controversy in coming to consensus on determining what constitutes a sale. As stated in the record, handlers have been reporting volumes handled since the order was implemented. There have been very few problems associated with defining what is "handled". The Committee manager testified that there are safeguards in place that allow the Committee to crosscheck and assure that proper numbers are being reported.

Therefore, the member-at-large position should be determined by calculating the volume of cranberries handled.

Major Cooperative's Nomination of Members

Two proposed amendments submitted by industry representatives recommended altering the way the nominations of the major cooperative are currently authorized under the order by requiring cooperative nominees to be selected through an election process administered by the Committee.

The Committee's proposal did not modify the current order language that authorizes the cooperative, or its growers to nominate qualified persons for the allotted member and alternate positions.

Proponents of changing the nomination procedures for the cooperative testified that the major cooperative's growers should be provided the right to vote for a member on the Committee. It was testified that both groups should nominate members the same way.

A proponent testified that allowing the cooperative to nominate its members without direct input from its growers while independent members are nominated through a voting process has caused controversy in the industry and a lack of confidence in Committee activities. He testified that the cooperative nominees should be nominated in the same manner as independents, through an election process administered by the Committee.

The witness further testified that to allow the cooperative growers to elect their nominees would bolster industry confidence in the Committee, ensure better representation of the interests of growers, and more clearly demonstrate desires of industry to USDA and the public. He testified that there may be a slight increase in Committee expenses if the cooperative is required to nominate its members through an election process due to additional nomination procedures. The number of Committee meetings would remain the same so costs would not increase in that regard. He believed that any increase would be outweighed by benefits of ensuring that the Committee better represents the needs of producers while bolstering public confidence in the Committee.

Another proponent, representing a small cooperative, testified that the Committee's proposal for nomination procedures where the small cooperatives are combined with the large cooperative would provide no opportunity for his organization to be represented on the Committee. He believed his proposal would address this by allowing all cooperative growers to nominate and vote for the cooperative representatives on the Committee.

A witness in support of the proposals testified that under the process that independent members are selected, if a grower is unhappy with the way an independent member voted during a meeting, the grower's recourse is to try to ensure that that member does not get elected during the next election. He testified that the major cooperative's growers do not have that opportunity because their members are nominated by management.

A representative of the major cooperative testified in opposition to the proposals. He stated that the current nomination procedures for cooperative members on the Committee are consistent with the principles of cooperative governance. He testified that the board of the major cooperative is charged with the responsibility and authority to oversee the operation of the cooperative's business. Committee nominations being made by their cooperative helps assure that they carefully consider the collective voice growers provide through their cooperative.

The order currently authorizes the cooperative marketing organization, or the growers affiliated therewith, to nominate its members. The cooperative has two options under this provision and currently chooses to allow the board to make the nominations. It also has the option of conducting an election of its growers to nominate the seats to the Committee.

Congress recognized the importance of cooperatives as representative of the collective voice of many growers when the Act was enacted. It is not USDA's intent to regulate the internal operations of cooperative management through an amendment to the marketing order. The order authorizes the cooperative or its growers to nominate seats to the Committee. That discretion should remain with the cooperative.

Record evidence supports that the nomination by the cooperative for cooperative representatives to the Committee should remain unchanged in that the cooperative or the growers affiliated therewith, shall nominate its members. Therefore, the proposals to change the way the cooperative nominates its members are denied.

Tenure

The term of office for members and alternates on the Committee is currently 2 years. Committee members are limited to 3 consecutive terms. The Committee is proposing that the term limitations for the current members be reset. In its proposal, the Committee recommended that current Committee members who have not met the 3 consecutive term limitation and who are re-nominated and selected would be able to serve an additional 3 consecutive 2-year terms before becoming ineligible to serve on the Committee.

Testimony revealed that with the increase in Committee membership, a loss of a member solely due to term limitations could have an adverse impact on the Committee's decision-making abilities, particularly when there are new and inexperienced members selected for membership. Restarting term limitations when the expanded Committee is seated would ensure that experienced and knowledgeable members could remain on the Committee. There was no opposition testimony regarding resetting term limits at the hearing.

A grower/handler who is opposed to term limits in general testified that with the small turnout for nominations and limited growers to be nominated in some districts, there should not be term limits. He believed that term limits take away growers' rights to choose who they want to represent them. A suggestion was made to allow an exemption from term limits in the event another grower was not available to fill the position.

Since it is recommended that the Committee be re-structured by increasing membership, it is determined that term limitations should be reset to allow for a smooth transition of the new Committee. With the increase in membership, it is possible that there would be members that have never served on the Committee before. It is critical to maintain the experience and

expertise needed so that the Committee can continue its operations with a minimum of disruptions. Resetting the tenure limitations simultaneously with the seating of the expanded Committee would provide the experienced members opportunities to remain on the Committee and assist in transitioning the newer members as they become familiar with the regulatory process.

Regarding the testimony on the need for term limits, it is USDA's view that a limit on tenure for Committee members would improve representation on the Committee by allowing for different and more contemporary ideas, and that such a limit would be beneficial to the Committee's operations. However, the issue of the smaller districts not having enough growers who want to be on the Committee is a concern. If a district with 15 growers only had one or two growers interested in serving on the Committee, it would be detrimental to have a qualified member step down because of term limits and have no one willing to step in. It does not appear that this would be an issue in districts with many growers, like Districts 1 and 3.

In its brief, the Committee suggested a change to alleviate this situation. It proposed modifying the language in that provision to provide that members who have served 3 consecutive terms must leave the Committee for at least one full term before becoming eligible to serve again "unless specifically exempted by the Secretary." The Committee's reason for including this language is to allow the Committee to petition USDA to retain an incumbent member beyond term limits if it is unable to find a new member to serve. The Committee believes this would ensure that growers from specified districts would continue to have representation.

Because of the small number of growers in some districts, this situation could prove problematic in the future. For this reason, the phrase "unless specifically exempted by the Secretary" is being added to paragraph (c) of § 929.21. This addition should not discourage the continued search by the Committee for new and diverse membership.

The nomination provisions (§ 929.22) provided that nominations for the re-established Committee shall be held as soon as practicable after adoption of this amendment. Depending upon the timing of adoption of this amendment, new members could be nominated and selected to serve on the Committee close to the time of the next selection period.

Therefore, USDA has added a proviso under this provision that initial members of the re-established Committee shall be seated for a minimum of one full term. For example, if a change in Committee structure becomes effective in March of 2004, the nomination process would commence immediately. Members selected through this process would serve up to August 2004 and at least two years from August 2004. This would help provide continuity on the Committee. In addition, the tenure limits would not start until August 1 of the first even numbered year after seating of the new Committee so that term limits and tenure can be computed concurrently.

Therefore, § 929.21 is proposed to be amended to restart tenure limitations on August 1 of the first even numbered year the new members serve. If this proposal were adopted, any past time served would not be counted toward any member's tenure. The term of office for each member and alternate member of the Committee would be for 2 years, beginning on August 1 of each even-numbered year and ending on the second succeeding July 31. Tenure limits would start on August 1 of the first even numbered year served.

Exceptions are possible if deemed necessary by USDA. Term limits do not apply to alternates.

Quorum and Voting Requirements

An increase in membership necessitates a proportionate increase to the number of members necessary to constitute a quorum and the number of concurring votes necessary to approve actions of the Committee. The Committee's proposal included such modifications.

Specifically, the Committee recommended that 10 members must be present to constitute a quorum which expands to 11 if the public member is present. The Committee also proposed that the concurring votes necessary to pass any action be 10 if the public member is absent or abstains from voting and 11 if the public member votes.

Adoption of this proposal would retain the super majority requirement for passing Committee actions that is in the current order. Concerns were raised at the hearing that these requirements were too stringent but testimony revealed that having stringent voting requirements ensures that consensus is reached among Committee members prior to any action being passed. Also, this proposal maintains the same requirements that are in the current order.

Therefore, based on the above discussion, § 929.32 is to be modified as proposed by the Committee. Implementation of this amendment, if adopted, would correspond to the establishment of the new Committee.

Mail Nominations

Currently, the Committee is required to hold meetings in Districts 1, 2, and 3 to elect independent nominees for member and alternate member positions on the Committee. District 4 growers who participate with District 3 in nominations are authorized to participate by mail.

The Committee proposes eliminating the requirement for holding meetings of independent growers within each of the districts to nominate nominees for independent member and alternate members and authorizing all nominations to be conducted by mail. The record revealed that this proposal will allow growers greater opportunities to participate in Committee activities. The Committee would recommend procedures to USDA, wherein nominations could be made through a call for nominations mailed to each eligible independent producer. Such notification could contain a deadline for eligible, independent producers to submit the name of eligible, independent nominees. The Committee would prepare and mail a ballot to each grower. The ballots would be tallied and the nominations made in accordance with the nomination procedures.

Following the end of the voting period, ballots received by the deadline would be separated by district and tallied in accordance with the nomination procedures for independent members.

If the group other than the major cooperative were entitled to the member-at-large position, it is the Committee's intent that the member-at-large position and independent nominations would take place simultaneously. This could cause confusion among growers interested in either position. To address this issue, testimony indicated that the Committee would need to develop and recommend procedures in the event the group other than the major cooperative is entitled to this seat. Section 929.22(i) provides authority for the Committee, with the approval of the Secretary, to issue rules and regulations to carry out the provisions of this section. The Committee may recommend regulations to clarify and implement this section, especially if there is any confusion in conducting nominations for the member-at-large position in the instance where it is assigned to the group representing growers from other than the major cooperative.

The Committee expects that costs in conducting nominations under this proposal would be decreased by not having to travel to hold meetings within the marketing order districts. There was no opposition testimony on authorizing mail balloting.

It is determined that adoption of this proposal would have a positive impact by allowing more producers greater opportunity to participate in Committee activities. It should also provide for greater participation in the voting process as well as reduce costs associated with holding nomination meetings. Therefore, this proposal is recommended for adoption.

Selection

The Committee proposed modifying this section to conform to the proposed increase in Committee structure. This section authorizes USDA to select the members and alternates on the Committee based on the nominees appointed in accordance with § 929.22. This section has been modified to correspond with the nomination procedures as discussed previously.

Using Tax Identification Numbers

The Committee proposed that a grower's tax identification number be used in the independent voting process to ensure that only eligible independent growers qualify for nomination and voting procedures. The Committee testified that using the tax identification number would assure that only eligible, independent producers qualify to nominate, be nominated and cast ballots in the independent nomination process.

Currently, the Committee uses a "grower identification number" or "farm unit." The unit is based on growers' acreage and ownership of the property as reported to the Committee. Although this method has been mostly efficient, there are incidences where growers subdivide their acreage so they can track production from each bog/marsh. In these instances, growers are qualified to obtain separate grower numbers for each subdivided parcel and thereby, would have one vote for each grower number assigned.

A grower/handler testified in opposition to this proposal because he believes it provides incentives for abuse. He advised that using tax identification numbers would make it possible for his company to break up its properties and receive 100 tax identification numbers. The witness supports the current method of identifying properties as farm units.

In its brief, the Committee stated that if the proposal to authorize mail balloting is approved, a mechanism should be in place to discourage growers to subdivide their acreage in order to gain the ability to cast multiple ballots on behalf of a nominee. The Committee believes that growers who subdivide their bogs/marshes do so for a variety of reasons unrelated to the nomination process.

Requiring one tax identification number for one nomination vote more appropriately clarifies the voting procedure. Growers may have reasons other than nomination voting to apply for multiple tax identification numbers as well as for subdividing their properties. However, tax identification numbers are considered more cumbersome to obtain than grower identification numbers and it would be less likely that growers would do so merely to obtain multiple votes in the nomination procedures.

One grower testified that it would be unlikely that she would get another tax identification number because it would be too cumbersome. She supported the use of tax identification numbers as being a consistent way to keep track of properties. It is agreed that this would be a more efficient method of ensuring that growers are eligible to be nominated and vote in Committee member elections. Therefore, it is recommended that the order be amended to authorize the use of tax identification numbers in the voting process for growers that represent other than the major cooperative.

Alternates Authorized To Fill Member Positions

The Committee proposal would also clarify which alternates could be seated in place of absent members. This change is needed to conform to the proposed change in Committee structure. The current language in this section states that not more than 4 members from each group can serve as members at the same meeting. Since there would be a minimum of 6 members from each group in the proposed Committee, this language must be changed to reflect the change in Committee structure. This proposal would also be beneficial for clarity because the proposed change in Committee structure would have only 9 alternates selected to accommodate 14 members.

As proposed, alternate members representing cooperative marketing organizations cannot be seated to serve in the place of either an independent or public member. Alternates representing independents cannot be seated to serve in the place of either cooperative marketing organizations or the public member, and the alternate public member cannot be seated to serve in the place of either the cooperative marketing organizations or independent members. There was no opposition testimony on this proposal.

The Committee's proposal designates the groups of representatives on the Committee as cooperatives and independents. This decision modifies those designations as growers representing the major cooperative and growers representing other than the major cooperative. Because of this change, it is necessary to modify the language in the proposal to conform to this proposed amendment.

Therefore, the amendatory text is being modified to provide that an alternate member representing the major cooperative cannot serve for a member representing other than the major cooperative or the public member. Likewise, an alternate member representing other than the major cooperative cannot serve for a member representing the major cooperative or the public member. The public alternate member cannot serve in place of any industry members.

This proposed change is necessary to reflect the proposed change in Committee structure. In addition, because the proposal would provide fewer alternates than members, this clarification would be beneficial as it more specifically designates which member seat each alternate can replace in the member's absence. Therefore, record evidence herein supports amending § 929.27, with modifications.

The record supports these proposed amendments to §§ 929.20, 929.21, 929.22, 929.23, 929.27 and 929.32, with modifications.

Material Issue Number 2

Section 929.20 should be amended to require Committee industry member and alternate member nominees' disclosure of non-regulated cranberry production. Currently, nominees for member and alternate member positions on the Committee are required to complete a qualification form providing information on the nominee's relation to the cranberry industry. This information includes how long the grower has been in the cranberry business, its associated handler, and involvement in cranberry associations. The information collected is used to determine whether nominees are eligible to serve in the positions for which they were nominated. Currently, there is no reporting requirement for members or alternate members regarding non-regulated production.

A proposal was made by an attorney representing a cranberry handler and recommended that Committee members also be required to submit information regarding their interest in foreign cranberry production. He testified that

foreign countries and States not regulated under the order are starting to emerge as significant producers of cranberries. Many producers in the production area are involved in this production. The proponent testified that when nominees for Committee representatives have a financial interest in the production of cranberries that are not subject to the order's regulations, it could be perceived as a conflict of interest, especially when these members are voting on issues as critical as volume regulation.

This proposal would require Committee grower nominees and alternate grower nominees to disclose any financial interest in non-regulated production at the time of their nomination. The proponent believes it would be fair for growers to be informed of nominees' interests in production that would not be subject to order requirements.

The proponent testified that this proposal would help maintain the integrity of the Committee and its actions by providing assurance that the Committee is acting in the best interest of production area producers. He suggested this information could be disclosed at meetings held for election of nominees or it could be required information on the qualifications statement currently required by nominees. He testified that this would ensure that growers are informed of this information prior to casting their vote to nominate a representative. He explained that it is not the intent of the proposal to bar potential members from serving on the Committee, as these producers are valuable members of the industry whose extensive knowledge can benefit the Committee.

The proponent testified that the proposal is not intended to require disclosure of information such as the number of acres, financial information, or the nature of the business relationship as that level of detail could be proprietary in nature. The intent is to merely require the nominees to acknowledge the interest without divulging proprietary information. He further testified that the producers should only be required to report their individual interest in non-regulated production and not that of their handler.

Although there was no opposition to the concept of requiring this information, questions arose at the hearing regarding what the term "financial interest" would entail. For example, testimony indicated that the selling of vines, irrigation equipment, fertilizer, and etc. to foreign cranberry interests would not constitute financial interest.

Testimony indicated that the disclosure would not need to include detailed financial information but instead be limited to only a general acknowledgement as to the nature of the financial interests, such as part and majority ownership.

The record supports adding the requirement under § 929.20 that nominees be required to acknowledge financial interest in non-regulated production. Because mail nominations are being authorized with this action, this information cannot be collected at nomination meetings. The collection of this information shall be added to the qualification statement required to be completed by nominees prior to selection. The information required would be an acknowledgement of financial interest in non-regulated production. In the event there is confusion in determining the nature or extent of information necessary for this proposed amendment, the committee may establish, with the approval of USDA, rules and regulations for the implementation and operation of this section in accordance with paragraph (e) of § 929.20.

Record evidence supports amending § 929.20 by adding a requirement that grower nominees and alternate grower nominees of the Committee shall disclose annually any financial interest in the production of cranberries that are not subject to regulation by this part.

Material Issue Number 3

The Committee requested expedited rulemaking on all of their proposals. This document sets forth a decision on Committee proposals 1 (Committee structure); 19 (Committee member disclosure of non-regulated production) and 20 (Committee nomination procedures) filed by Stephen Lacey on behalf of Clement Pappas & Company, Inc. and Cliffstar Corporation; and 23 (Committee nomination procedures) and 24 (Committee selection procedures) filed by the Wisconsin Cranberry Cooperative.

Evidence presented at the hearing established that the proposals relating to changing the Committee's administrative body need to be expedited. All other proposals will be addressed in a separate decision.

The order currently states that any cooperative marketing organization that handled more than two-thirds of the total volume of cranberries produced during the fiscal period during which nominations for membership on the Committee are made, or the growers affiliated therewith, shall nominate four or more qualified persons for members and four or more qualified persons for alternate members. There is currently no cooperative marketing organization that handles more than two-thirds of the total volume of cranberries produced. Because the current order does not specify how the Committee should be structured in this event, the order should be amended as soon as possible to address this inadequacy. Consequently, it is determined that emergency conditions exist and the issuance of a recommended decision is therefore being omitted. In accordance with the rules of practice (7 CFR part 900), it is found and determined that the record establishes a basis as noted above for proceeding directly to a Secretary's decision and referendum order. The proposed expedited amendments are to §§ 929.20, 929.21, 929.22, and 929.23.

The proposal clarifying how alternates may fill positions in any member's absence must be expedited as well. This proposal modifies § 929.27. The current order language states that not more than four members and alternate members selected from the large cooperative shall serve as members at the same meeting. Since the Committee is being expanded, there will be a minimum of six members and three alternates serving at the same meeting. Therefore, this provision should be changed at the same time the Committee structure is expanded.

As stated above, for the proposals recommending altering the Committee structure and clarifying how alternates fill absent member positions, the recommended decision is being omitted. These proposals were listed in the notice of hearing as proposal numbers 1, 2, 20, 23, and 24. Proposal number 19, submitted by Stephen Lacey, recommended adding a paragraph to § 929.20, which would require Committee member disclosure of unregulated production. This proposal is being included to simplify the amendment of this section. The remaining proposals will be resolved in a separate decision.

Small Business Considerations

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA), AMS has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this interim regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions so that small businesses will not be unduly or disproportionately burdened. Marketing orders and amendments thereto are unique in that they are normally brought about through group action of essentially small entities for their own benefit. Thus, both the RFA and the Act are compatible with respect to small entities.

Small agricultural producers have been defined by the Small Business Administration (SBA) (13 CFR 121.201) as those having annual receipts of less than $750,000. Small agricultural service firms, which include handlers regulated under the order, are defined as those with annual receipts of less than $5,000,000.

Interested persons were invited to present evidence at the hearing on the probable regulatory and informational impact of the proposed amendments on small businesses. The record indicates that these amendments would not result in additional regulatory requirements being imposed on some cranberry growers and handlers.

There are about 20 handlers currently regulated under Marketing Order No. 929. In addition, the record indicates that there are about 1,250 producers of cranberries in the current production area.

Based on recent years' price and sales levels, AMS finds that nearly all of the cranberry producers and some of the handlers are considered small under the SBA definition. In 2001, a total of 34,300 acres were harvested with an average U.S. yield per acre of 156.2 barrels. Grower prices in 2001 averaged $22.90 per barrel. Average total annual grower receipts for 2001 are estimated at $153,375 per grower. However, there are some growers whose estimated sales would exceed the $750,000 threshold. Thus, these proposed amendments will apply almost exclusively to small entities.

Five handlers handle over 97 percent of the cranberry crop. Using Committee data on volumes handled, AMS has determined that none of these handlers qualify as small businesses under SBA's definition. The remainder of the crop is marketed by about a dozen grower-handlers who handle their own crops. Dividing the remaining 3 percent of the crop by these grower-handlers, all would be considered small businesses.

This decision proposes that the order be amended: (1) To increase Committee membership to 13 members, 1 public member, 9 grower alternate members, 1 public alternate member; to incorporate a "swing" position whereby the entity (either the major cooperative or the group representing other than the major cooperative) which handles more than 50 percent of the total volume of cranberries produced is assigned an additional seat; incorporate nomination and selection procedures to reflect the change in Committee membership; establish districts to reflect the change in Committee membership and to include additional States; allow the Committee to request tax identification numbers for voting purposes and authorize mail nominations for independent members; revise and clarify the provisions for alternates to reflect the change in Committee structure; and (2) require Committee member disclosure of non-regulated cranberry production.

The proposed amendment to increase Committee membership to 13 members, 1 public member, 9 grower alternate members, 1 public alternate member would increase the Committee's size by 6 members and 1 alternate member. This would likely increase costs to the Committee with the additional members attending meetings. If alternate members are not required to attend all meetings, costs could be reduced. However, the record evidence supports increasing the Committee. The benefits of broadening the membership of the Committee and equitably allocating seats would outweigh increased costs. Since the implementation of volume regulations, more growers are expressing interest in being a part of the Committee's processes. Expansion of the Committee would allow more growers the opportunity to be involved in the process. The Committee's recommendation to not have one alternate for each member would provide appropriate district coverage for members that cannot attend meetings while taking costs into account. By increasing the membership to 14 and establishing 4 districts, regional representation would be maintained and additional representation to the largest growing regions would be provided.

The proposal to include a member-at-large position on the Committee to the entity (either the major cooperative or the group representing other than the major cooperative) that handles more than 50 percent of the total volume of cranberries produced would provide an additional member and alternate to the dominant group. This allows for recognition that the scale of the impact increases with the volume of cranberries produced and regulated.

The proposed amendment to reset term limitations for the current members would help maintain the experience and expertise needed so that the Committee can continue its operations with a minimum of disruptions.

The proposed amendment to allow nominations to be conducted by mail would allow more growers greater opportunity to participate on the Committee and provide for greater participation in the voting process. Administrative Committee costs associated with holding nomination meetings would decrease.

The proposed amendment to use growers' tax identification numbers in the voting process for the group representing other than the major cooperative would help ensure that only eligible growers qualify for nomination and the voting process.

The proposed amendment to revise and clarify which alternates can be seated in place of absent members is necessary to conform to the proposed change in Committee structure. In addition, it would be beneficial as it more specifically designates which member seats each alternate can replace in the member's absence.

The proposed amendment to require Committee member disclosure of non-regulated cranberry production would ensure that growers are informed of this information prior to casting their vote to nominate a representative on the Committee.

All of these changes are designed to enhance the administration and functioning of the marketing agreement and order to the benefit of the industry. Accordingly, it is determined that the benefits of implementing the proposed revisions of the order would outweigh any associated costs. Costs are not anticipated to be significant.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), this notice announces that AMS is seeking approval from the Office of Management and Budget (OMB) for a new information collection request for Cranberries grown in 10 States, Marketing Order No. 929.

Title: Cranberries grown in the States of Massachusetts, *et al.*, Marketing Order No. 929.

OMB Number: 0581–NEW.

Type of Request: New collection.

Abstract: The information collection requirements in this request are essential to carry out the intent of the Act, to provide the respondents the type of service they request, and to administer the cranberry marketing order program, which has been operating since 1962.

Specifically, if the membership on the Committee is increased, the overall burden of completion of Committee generated forms and reports relative to Committee membership would increase due to additional membership. In addition, if the proposed amendment to require Committee member disclosure of non-regulated production is authorized, the qualification statement would have to be modified to include

this information. Total burden hours for completion of qualification forms for grower members and alternates is .58 hours. The additional membership and information required would increase this amount by .375 hours, or a total of .955 hours. There would be no increase in the non-regulated disclosure proposal since that would only entail an acknowledgement as to whether the member has a financial interest in non-regulated production.

If the proposed amendment to authorize mail nominations is approved, a nomination form and ballot would be necessary to conduct mail nominations. It is estimated that there are approximately 500 growers who would be entitled to vote by mail ballot once every two years. The estimated time to complete the nomination form would be approximately 5 minutes for an annual increase in burden hours of 20.75. The estimated time to complete the ballot would be approximately 5 minutes for an annual increase in burden hours of 20.75.

If the proposed amendment to require growers to submit a tax identification number is approved, this information will be added to the grower sales and acreage report form (Form No. CMC–GSAR–1) currently approved under OMB. With minimal amount of time needed to add this number on the form, there will be no increase in burden for growers to complete this form.

The information collection would be used only by authorized representatives of USDA, including AMS, Fruit and Vegetable Programs' regional and headquarters staff, and authorized Committee employees. Authorized Committee employees will be the primary users of the information and AMS is the secondary user.

The request for approval for the new information collection under the order is as follows:

Cranberry Marketing Order Member and Alternate Member Nomination Form

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 5 minutes per response.

Respondents: Cranberry growers.

Estimated Number of Respondents: 500.

Estimated Number of Responses per Respondent: .50.

Estimated Total Annual Burden on Respondents: 20.75 hours.

Cranberry Marketing Order Member and Alternate Member Ballot

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 5 minutes per response.

Respondents: Cranberry growers.

Estimated Number of Respondents: 500.

Estimated Number of Responses per Respondent: .50.

Estimated Total Annual Burden on Respondents: 20.75 hours.

Comments: Comments are invited on: (1) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments should reference OMB No. 0581–NEW and the Cranberry marketing order, and be sent to USDA in care of the Docket Clerk at the previously mentioned address. All comments received will be available for public inspection during regular business hours at the same address.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will become a matter of public record.

As mentioned before, AMS is seeking approval from OMB for the additional burden imposed by the *Cranberry Marketing Order Member and Alternate Member Nomination Form and Cranberry Marketing Order Member and Alternate Member Ballot*. Upon OMB approval, the additional burden will be merged into the information collection currently approved under OMB No. 0581–0189, Generic OMB Fruit Crops.

In addition to the information collection burden, a 60-day comment period is invited to allow interested persons to respond to this proposal. All written comments timely received will be considered prior to finalization of this decision.

These provisions and any additional provisions modifying reporting and recordkeeping burdens that generate from these proposed amendments would not be effective until receiving OMB approval. Current information collection requirements for part 929, including referendum ballots, are approved by OMB under OMB number 0581–0189.

As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

The Department has not identified any relevant Federal rules that duplicate, overlap or conflict with this proposed rule. These amendments are designed to enhance the administration and functioning of the marketing order to the benefit of the industry.

Committee meetings regarding these proposals as well as the hearing dates were widely publicized throughout the cranberry industry, and all interested persons were invited to attend the meetings and the hearing and participate in Committee deliberations on all issues. All Committee meetings and the hearing were public forums and all entities, both large and small, were able to express views on these issues.

Civil Justice Reform

The amendments proposed herein have been reviewed under Executive Order 12988, Civil Justice Reform. They are not intended to have retroactive effect. If adopted, the proposed amendments would not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with the amendments.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review the Secretary's ruling on the petition, provided an action is filed not later than 20 days after date of the entry of the ruling.

Rulings on Briefs of Interested Persons

Briefs, and the evidence in the record were considered in making the findings and conclusions set forth in this decision. To the extent that the suggested findings and conclusions filed by interested persons are inconsistent with the findings and conclusions of this decision, the requests to make such conclusions are denied.

Annexed hereto and made a part hereof is the document entitled "Order Amending the Order Regulating the Handling of Cranberries Grown in the States of Massachusetts, Rhode Island, Connecticut, New Jersey, Wisconsin, Michigan, Minnesota, Oregon, Washington, and Long Island in the State of New York." This document has been decided upon as the detailed and appropriate means of effectuating the foregoing findings and conclusions.

It is hereby ordered, that this entire decision be published in the **Federal Register**.

Referendum Order

It is hereby directed that a referendum be conducted in accordance with the procedure for the conduct of referenda (7 CFR part 900.400 *et seq.*) to determine whether the issuance of the annexed order amending the order regulating the handling of cranberries grown in the States of Massachusetts, Rhode Island, Connecticut, New Jersey, Wisconsin, Michigan, Minnesota, Oregon, Washington, and Long Island in the State of New York is approved or favored by growers and processors, as defined under the terms of the order, who during the representative period were engaged in the production or processing of cranberries in the production area.

The representative period for the conduct of such referendum is hereby determined to be September 1, 2002, through August 31, 2003.

The agent of the Secretary to conduct such referendum is hereby designated to be Kenneth G. Johnson, Regional Manager, DC Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 4700 River Road, Unit 155, Suite 2A04, Riverdale, Maryland 20737; telephone (301) 734–5243.

List of Subjects in 7 CFR Part 929

Cranberries, Marketing agreements, Reporting and recordkeeping requirements.

Dated: December 4, 2003.

A. J. Yates,

Administrator, Agricultural Marketing Service.

Order Amending the Order Regulating the Handling of Cranberries Grown in the States of Massachusetts, Rhode Island, Connecticut, New Jersey, Wisconsin, Michigan, Minnesota, Oregon, Washington, and Long Island in the State of New York [1]

Findings and Determinations

The findings and determinations hereinafter set forth are supplementary and in addition to the findings and determinations previously made in connection with the issuance of the order; and all of said previous findings and determinations are hereby ratified and affirmed, except insofar as such findings and determinations may be in conflict with the findings and determinations set forth herein.

(a) *Findings and Determinations Upon the Basis of the Hearing Record.*

Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), and the applicable rules of practice and procedure effective thereunder (7 CFR part 900), a public hearing was held upon the proposed amendments to the Marketing Agreement and Order No. 929 (7 CFR part 929), regulating the handling of cranberries grown in the States of Massachusetts, Rhode Island, Connecticut, New Jersey, Wisconsin, Michigan, Minnesota, Oregon, Washington, and Long Island in the State of New York.

Upon the basis of the evidence introduced at such hearing and the record thereof, it is found that:

(1) The marketing agreement and order, as amended, and as hereby proposed to be further amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(2) The marketing agreement and order, as amended, and as hereby proposed to be further amended, regulate the handling of cranberries grown in the production area in the same manner as, and is applicable only to persons in the respective classes of commercial and industrial activity specified in the marketing order upon which hearings have been held;

(3) The marketing agreement and order, as amended, and as hereby proposed to be further amended, are limited in application to the smallest regional production area which is practicable, consistent with carrying out the declared policy of the Act, and the issuance of several orders applicable to subdivisions of the production area would not effectively carry out the declared policy of the Act;

(4) The marketing agreement and order, as amended and as hereby proposed to be further amended, prescribe, insofar as practicable, such different terms applicable to different parts of the production area as are necessary to give due recognition to the differences in the production and marketing of cranberries grown in the production area; and

(5) All handling of cranberries grown in the production area as defined in the marketing agreement and order, as amended, and as hereby proposed to be further amended, is in the current of interstate or foreign commerce or directly burdens, obstructs, or affects such commerce.

Order Relative to Handling

It is therefore ordered, that on and after the effective date hereof, all handling of cranberries grown in the States of Massachusetts, Rhode Island, Connecticut, New Jersey, Wisconsin, Michigan, Minnesota, Oregon, Washington, and Long Island in the State of New York, shall be in conformity to, and in compliance with, the terms and conditions of the said order as hereby proposed to be amended as follows:

The provisions of the proposed marketing agreement and the order amending the order will be and are the terms and provisions of this order amending the order and are set forth in full herein.

PART 929—CRANBERRIES GROWN IN THE STATES OF MASSACHUSETTS, RHODE ISLAND, CONNECTICUT, NEW JERSEY, WISCONSIN, MICHIGAN, MINNESOTA, OREGON, WASHINGTON, AND LONG ISLAND IN THE STATE OF NEW YORK

1. The authority citation for 7 CFR part 929 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. Revise "929.20 to read as follows:

929.20 Establishment and membership.

(a) There is hereby established a Cranberry Marketing Committee consisting of 13 grower members, and 9 grower alternate members. Except as hereafter provided, members and alternate members shall be growers or

[1] This order shall not become effective unless and until the requirements of § 900.14 of the rules of practice and procedure governing proceedings to formulate marketing agreements and marketing orders have been met.

employees, agents, or duly authorized representatives of growers.

(b) The committee shall include one public member and one public alternate member nominated by the committee and selected by the Secretary. The public member and public alternate member shall not be a cranberry grower, processor, handler, or have a financial interest in the production, sales, marketing or distribution of cranberries or cranberry products. The committee, with the approval of the Secretary, shall prescribe qualifications and procedures for nominating the public member and public alternate member.

(c) Members shall represent each of the following subdivisions of the production areas in the number specified in Table 1. Members shall reside in the designated district of the production area from which they are nominated and selected. Provided, that there shall also be one member-at-large who may be nominated from any of the marketing order districts.

(1) District 1: The States of Massachusetts, Rhode Island and Connecticut;

(2) District 2: The State of New Jersey and Long Island in the State of New York.

(3) District 3: The States of Wisconsin, Michigan, and Minnesota.

(4) District 4: The States of Oregon and Washington.

TABLE 1

Districts	Major cooperative members	Major cooperative alternates	Other than major cooperative members	Other than major cooperative alternates
1	2	1	2	1
2	1	1	1	1
3	2	1	2	1
4	1	1	1	1
Any		1 member-at-large		

(d) *Disclosure of unregulated production.* All grower nominees and alternate grower nominees of the committee shall disclose any financial interest in the production of cranberries that are not subject to regulation by this part.

(e) The committee may establish, with the approval of the Secretary, rules and regulations for the implementation and operation of this section.

3. Revise § 929.21 to read as follows:

§ 929.21 Term of office.

(a) The term of office for each member and alternate member of the committee shall be for two years, beginning on August 1 of each even-numbered year and ending on the second succeeding July 31. *Provided:* That following adoption of this amendment, the term of office for the initial members and alternates shall also include any time served prior to August 1 of the first even numbered year served. Members and alternate members shall serve the term of office for which they are selected and have been qualified or until their respective successors are selected and have been qualified.

(b) Beginning on August 1 of the even-numbered year following the adoption of this amendment, committee members shall be limited to three consecutive terms. This limitation on tenure shall not include service on the committee prior to the adoption of this amendment or service on the committee by the initial members prior to August 1 of the first even-numbered year served and shall not apply to alternate members.

(c) Members who have served three consecutive terms must leave the committee for at least one full term before becoming eligible to serve again unless specifically exempted by the Secretary. The consecutive terms of office for alternate members shall not be so limited.

4. Revise § 929.22 to read as follows:

§ 929.22 Nomination.

(a) *Initial members.* As soon as practicable after adoption of this amendment, the committee shall hold nominations in accordance with this section. The names and addresses of all nominees shall be submitted to the Secretary for selection as soon as the nomination process is complete. Nominees selected for the initial Committee, following adoption of this amendment, shall serve a minimum of one two-year term beginning on August 1 of the first even numbered year served.

(b) *Successor members.* Beginning on June 1 of the even-numbered year following the adoption of this amendment, the committee shall hold nominations in accordance with this section.

(c) Whenever any cooperative marketing organization handles more than fifty percent of the total volume of cranberries produced during the fiscal period in which nominations for membership on the committee are made, such cooperative or growers affiliated therewith shall nominate:

(1) Six qualified persons for members and four qualified persons for alternate members of the committee. These members and alternate members shall be referred to as the major cooperative members and alternate members. Nominee(s) for major cooperative member and major cooperative alternate member shall represent growers from each of the marketing order districts designated in § 929.20.

(2) A seventh major cooperative member shall be referred to as the major cooperative member-at-large. The major cooperative member-at-large may be nominated from any of the marketing order districts.

(3) Six qualified persons for members and four qualified persons for alternate members of the committee shall be nominated by those growers who market their cranberries through entities other than the major cooperative marketing organization. Nominees for member and alternate member representing entities other than the major cooperative marketing organization shall represent growers from each of the marketing order districts as designated in § 929.20(c).

(d) Whenever any major cooperative marketing organization handles 50 percent or less of the total volume of cranberries produced during the fiscal period in which nominations for membership on the committee are made, the major cooperative or growers affiliated therewith, shall nominate:

(1) Six qualified persons for major cooperative members and four qualified persons for major cooperative alternate members of the committee. Nominees for member and alternate member shall represent growers from each of the marketing order districts as designated in § 929.20(c).

(2) Six qualified persons for members and four qualified persons for alternate members of the committee shall be nominated by those growers who market their cranberries through entities other than the major cooperative marketing organization. Nominees for member and alternate member shall represent growers from each of the marketing order districts as designated in § 929.20(c).

(3) A seventh member nominee shall be referred to as the member-at-large representing entities other than the major cooperative marketing organization. The member-at-large may be nominated from any of the marketing order districts.

(e) Nominations of qualified member nominees representing entities other than the major cooperative marketing organization shall be made through a call for nominations sent to all eligible growers residing within each of the marketing order districts. The call for such nominations shall be by such means as are recommended by the committee and approved by the Secretary.

(1) The names of all eligible nominees from each district received by the committee, by such date and in such form as recommended by the committee and approved by the Secretary, will appear on the nomination ballot for that district.

(2) Election of the member nominees and alternate member nominees shall be conducted by mail ballot.

(3) Eligible growers shall participate in the election of nominees from the district in which they reside.

(4) When voting for member nominees, each eligible grower shall be entitled to cast one vote on behalf of him/herself.

(5) The nominee receiving the highest number of votes cast in districts two and four shall be the member nominee representing entities other than the major cooperative marketing organization from that district. The nominee receiving the second highest number of votes cast in districts two and four shall be the alternate member representing entities other than the major cooperative marketing organization from that district.

(6) The nominees receiving the highest and second highest number of votes cast in districts one and three shall be the member nominees representing entities other than the major cooperative marketing organization from that district. The nominee receiving the third highest number of votes cast in districts one and three shall be the alternate member representing entities other than the major cooperative marketing organization from that district.

(f) Nominations for the member-at-large representing entities other than the major cooperative marketing organization shall be made through a call for nominations sent to all eligible growers residing within the marketing order districts. The call for such nominations shall be by such means as recommended by the committee and approved by the Secretary.

(1) Election of the member-at-large shall be held by mail ballot sent to all eligible growers in the marketing order districts by such date and in such form as recommended by the committee and approved by the Secretary.

(2) Eligible growers casting ballots may vote for a member-at-large nominee from marketing order districts other than where they produce cranberries.

(3) When voting for the member-at-large nominee, each eligible grower shall be entitled to cast one vote on behalf of him/herself.

(4) The nominee receiving the highest number of votes cast shall be designated the member-at-large nominee representing entities other than the major cooperative marketing organization. The nominee receiving the second highest number of votes cast shall be declared the alternate member-at-large nominee representing entities other than the major cooperative marketing organization.

(g) The committee may request that growers provide their federal tax identification number(s) in order to determine voting eligibility.

(h) The names and addresses of all successor member nominees shall be submitted to the Secretary for selection no later than July 1 of each even-numbered year.

(i) The committee, with the approval of the Secretary, may issue rules and regulations to carry out the provisions or to change the procedures of this section.

5. Revise § 929.23 to read as follows:

§ 929.23 Selection.

(a) From nominations made pursuant to § 929.22(b), the Secretary shall select members and alternate members to the committee on the basis of the representation provided for in § 929.20 and in paragraph (b) or (c) of this section.

(b) Whenever any cooperative marketing organization handles more than 50 percent of the total volume of cranberries produced during the fiscal year in which nominations for membership on the committee are made, the Secretary shall select:

(1) Six major cooperative members and four major cooperative alternate members from nominations made pursuant to § 929.22(c)(1).

(2) One major cooperative member-at-large from nominations made pursuant to § 929.22(c)(2), and

(3) Six members and four alternate members from growers who market their cranberries through other than the major cooperative marketing organization made pursuant to § 929.22(c)(3).

(c) Whenever any major cooperative marketing organization handles 50 percent or less of the total volume of cranberries produced during the fiscal year in which nominations for membership on the committee are made, the Secretary shall select:

(1) Six major cooperative members and four major cooperative alternate members from nominations made pursuant to § 929.22(d)(1).

(2) Six members and four alternate members from nominations made pursuant to § 929.22(d)(2).

(3) One member-at-large representing entities other than the major cooperative marketing organization from nominations made pursuant to § 929.22(d)(3).

6. Revise § 929.27 to read as follows:

§ 929.27 Alternate members.

An alternate member of the committee, shall act in the place and stead of a member during the absence of such member, and may perform such other duties as assigned. In the event of the death, removal, resignation, or disqualification of a member, an alternate shall act for him/her until a successor for such member is selected and has qualified. In the event both a member and alternate member from the same marketing order district are unable to attend a committee meeting, the committee may designate any other alternate member to serve in such member's place and stead at that meeting provided that:

(a) An alternate member representing the major cooperative shall not serve in place of a member representing other than the major cooperative or the public member.

(b) An alternate member representing other than the major cooperative shall not serve in place of a major cooperative member or the public member.

(c) A public alternate member shall not serve in place of any industry member.

7. Revise § 929.32 to read as follows:

§ 929.32 Procedure.

(a) Ten members of the committee, or alternates acting for members, shall

constitute a quorum. All actions of the committee shall require at least ten concurring votes: Provided, if the public member or the public alternate member acting in the place and stead of the public member, is present at a meeting, then eleven members shall constitute a quorum. Any action of the committee on which the public member votes shall require eleven concurring votes. If the public member abstains from voting on any particular matter, ten concurring votes shall be required for an action of the committee.

(b) The committee may vote by mail, telephone, fax, telegraph, or other electronic means: Provided that any votes cast by telephone shall be confirmed promptly in writing. Voting by proxy, mail, telephone, fax, telegraph, or other electronic means shall not be permitted at any assembled meeting of the committee.

(c) All assembled meetings of the committee shall be open to growers and handlers. The committee shall publish notice of all meetings in such manner as it deems appropriate.

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DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR Part 7

RIN 1024–AC97

Lake Meredith National Recreation Area, Personal Watercraft Use

AGENCY: National Park Service, Interior.

ACTION: Proposed rule.

SUMMARY: The National Park Service (NPS) is proposing to designate areas where personal watercraft (PWC) may be used in Lake Meredith National Recreation Area, Texas. This proposed rule implements the provisions of the NPS general regulations authorizing a park unit to allow the use of PWC by promulgating a special regulation. The NPS *Management Policies 2001* directs individual parks to determine whether PWC use is appropriate for a specific park unit based on an evaluation of that park's enabling legislation, resources and values, other visitor uses, and overall management objectives.

DATES: Comments must be received by February 10, 2004.

ADDRESSES: Comments on the proposed rule should be sent to the Superintendent, Lake Meredith National Recreation Area, P.O. Box 1460, Fritch, TX 79036–1460. Fax: (806) 857–2319, e-mail: *LAMR_Superintendent@nps.gov*. If you comment by e-mail, please include "PWC rule" in the subject line and your name and return address in the body of your Internet message. Also, you may hand deliver comments to the Superintendent, Lake Meredith National Recreation Area, 419 East Broadway, Fritch, Texas.

For additional information see "Public Participation" under **SUPPLEMENTARY INFORMATION** below.

FOR FURTHER INFORMATION CONTACT: Judy Shafer, Office of Policy and Regulations, National Park Service, 1849 C Street, NW., Room 7250, Washington, DC 20240. Phone: (202) 208–7068. E-mail: *Judy_Shafer@nps.gov*.

SUPPLEMENTARY INFORMATION:

Background

Additional Alternatives

This proposed rule would implement portions of the preferred alternative in the Environmental Assessment published March 10, 2003. The public should be aware that two other alternatives were presented in the EA, including a no-PWC alternative, and those alternatives should also be reviewed and considered when making comments on this proposed rule.

Personal Watercraft Regulation

On March 21, 2000, the National Park Service published a regulation (36 CFR 3.24) on the management of personal watercraft (PWC) use within all units of the National Park System (65 FR 15077). This regulation prohibits PWC use in all national park units unless the NPS determines that this type of water-based recreational activity is appropriate for the specific park unit based on the legislation establishing that park, the park's resources and values, other visitor uses of the area, and overall management objectives. The regulation banned PWC use in all park units effective April 20, 2000, except 21 park units. The regulation established a 2-year grace period following the final rule publication to provide these 21 park units time to consider whether PWC use should be allowed.

Description of Lake Meredith National Recreation Area

Lake Meredith National Recreation Area is near Fritch, Texas, in the center of the Texas Panhandle, about 40 miles northeast of Amarillo, Texas. The reservoir was formed in the 1960s when the U.S. Bureau of Reclamation constructed Sanford Dam on the Canadian River. The dam was built to supply water to 11 communities in the Panhandle by means of 322 miles of pipeline. The National Recreation Area consists of about 45,000 acres; the historic average reservoir pool covers about 10,000 acres.

Lake Meredith is a major site of water-based recreation in the Panhandle, averaging more than 1.5 million visits per year from 1992 to 1999. There are no comparable large bodies of water or land that provide such recreational diversity in the Panhandle area. The largest nearby recreation area is Palo Duro Canyon State Park, a beautiful scenic and historic area, but lacks the water resources of Lake Meredith.

The lands and waters of Lake Meredith National Recreation Area support a major sport fishery and contain facilities for camping, picnicking, and boating. Lake Meredith is the only public land in a radius of approximately 50 miles that permits the hunting of deer, quail, ducks, and other migratory birds.

Congress created Lake Meredith National Recreation Area on November 28, 1990. Public Law 101–628 states this National Park System unit is "to provide for public outdoor recreation use and enjoyment of the lands and waters associated with Lake Meredith in the State of Texas, and to protect the scenic, scientific, cultural, and other values contributing to the public enjoyment of such lands and waters" (16 U.S.C. 460eee). By making Lake Meredith part of the National Park System, Congress emphasized the importance of protecting and interpreting the natural and cultural resources of the park. The legislation codified the long-standing administrative arrangements between the Bureau of Reclamation and the NPS.

Purpose of Lake Meredith National Recreation Area

The purpose of the park is addressed in the following statements excerpted from the park's *Strategic Plan*.

1. Provide for the safe public use, understanding, and enjoyment of the diverse recreational opportunities.
2. Educate the public to instill an understanding and sense of stewardship of the cultural, natural, historic, scenic and recreational resources of the park.
3. Provide opportunities for scientific study of natural and cultural resources.

Significance of Lake Meredith National Recreation Area

The following park resources and values define the significance of Lake Meredith:

1. The impounding of the Canadian River in 1965 created a man-made lake that fulfills outdoor recreational needs such as sport fishing, hunting, boating, horseback riding, hiking, scuba diving, and bird watching for the five-state region of the Texas Panhandle Plains.
2. The Lake, located on the windswept, arid plains of the Texas Panhandle Plains, is the largest body of water within a 200-mile radius and provides the main water source for three-quarters of a million people in 11 cities.
3. The scenic, colorful Canadian River breaks contain the evidence of over 12,000 years of human occupation and use.
4. The lake, wetlands, and High Plains prairie provide premier habitat for migratory waterfowl and endangered species, including but not limited to, bald eagle, Arkansas River shiner, and the state-listed Texas horned lizard.
5. The park protects a portion of the significant High Plains ecosystem, including the imperiled Texas cottonwood/tall grass community.
6. The park contains special geological features, such as "filled chimneys," agatized Alibates dolomite, and the Canadian River cut, which exposes more than 250 million years of geologic history and divides the High Plains to the north from the Llano Estacado (Staked Plains) to the south.

Authority and Jurisdiction

Under the National Park Service's Organic Act of 1916 (Organic Act) (16 U.S.C. 1 *et seq.*) Congress granted the NPS broad authority to regulate the use of the Federal areas known as national parks. In addition, the Organic Act (16 U.S.C. 3) allows the NPS, through the Secretary of the Interior, to "make and publish such rules and regulations as he may deem necessary or proper for the use and management of the parks * * *"

16 U.S.C. 1a–1 states, "The authorization of activities shall be conducted in light of the high public value and integrity of the National Park System and shall not be exercised in derogation of the values and purposes for which these various areas have been established * * *".

As with the United States Coast Guard, NPS's regulatory authority over waters subject to the jurisdiction of the United States, including navigable waters and areas within their ordinary reach, is based upon the Property and Commerce Clauses of the U.S. Constitution. In regard to the NPS, Congress in 1976 directed the NPS to "promulgate and enforce regulations concerning boating and other activities on or relating to waters within areas of the National Park System, including waters subject to the jurisdiction of the United States * * *" (16 U.S.C. 1a–2(h)). In 1996 the NPS published a final rule (61 FR 35136, July 5, 1996) amending 36 CFR 1.2(a)(3) to clarify its authority to regulate activities within the National Park System boundaries occurring on waters subject to the jurisdiction of the United States.

PWC Use at Lake Meredith National Recreation Area

All different types of vessels can be found on Lake Meredith on any given day. These vessels include canoes, rowboats, PWC, runabouts, day cruisers, ski boats, sailboats , and houseboats. Activities on the lake associated with boating include sightseeing, water skiing, fishing, hunting, scuba diving, swimming, camping, racing, and sailing. Boaters mainly come from communities in and around the Panhandle, but also from Kansas, Colorado, and New Mexico.

Boaters launch vessels at any of the five developed launch ramps or at other designated primitive launch sites or campground sites, depending on the lake level. Due to sedimentation and low river volume, only rafts and canoes are able to access the river upstream from the lake proper when water levels are high enough. Also a lot of boaters who camp at shoreline campgrounds dock their boats near their campsite.

Vessel and other watercraft use in Lake Meredith have occurred since the reservoir was opened for recreational use in 1965. PWC use began to appear on the lake during the late 1970s, when PWC were first manufactured, and their use has steadily increased. NPS estimates that PWC comprise approximately 20% of the vessels use on Lake Meredith. The primary use season is May through September (estimate 3,500 PWC visitor-days) with the off-season October through March (estimate 575 PWC visitor-days).

Most PWC users gain access to the reservoir from campgrounds and they operate wherever the lake is navigable. They do not commonly operate in the intermittent flowing Canadian River because it is normally too shallow, contains dense vegetation and a heavy load of suspended sediment. Access to streambeds in side canyons of the reservoir is also limited because of dense vegetation and shallow water levels.

Boating Accidents and Violation Notices

When PWC's are involved in accidents there is a potential for greater damage and injury. PWCs are designed for speeds up to seventy miles per hour and for stunt-like maneuvers. Therefore, accidents between PWCs and fixed objects typically result in more serious damage and personal injuries. Industry representatives report that PWC accidents decreased in some states in the late 1990s. The National Transportation Safety Board reported that in 1996 personal watercraft represented 7.5% of state-registered recreational vessels but accounted for 36% of recreational boating accidents (NTSB 1998). From 1997 to 2001, thirteen boating incidents occurred on Lake Meredith. Of the thirteen boating incidents, seven had minor damage and six had extensive damage. During the same time period, there were six incidents involving PWCs. Of the six incidents involving PWCs, five had minor damage and one had extensive damage. Between 1997 and 2001, 41 search and rescue missions were reported for vessels and five search and rescue missions for PWCs.

Boating regulations are enforced by NPS law enforcement staff and Texas Parks and Wildlife Department officers. Between 1997 and 2001, NPS rangers issued 393 written violation notices to all watercraft operators on Lake Meredith, with 271 violations to boats and 122 violations to PWC operators. The majority of violations for vessels were due to failing to pay the recreation fee, violating no-wake zones, towing without an observer, and riding on gunwales or bows.

Resource Protection and Public Use Issues

Lake Meredith National Recreation Area Environmental Assessment

The National Park Service has prepared a draft Environmental Assessment (EA). The EA was available for public review and comment from March 10 to April 9, 2003. During this rule making a copy of the EA will remain on the park's Web site at *www.nps.gov/lamr*.

The purpose of the environmental assessment was to evaluate a range of alternatives and strategies for the management of PWC use, ensuring the protection of park resources and values, and offering recreational opportunities as provided for in the National Recreation Area's enabling legislation, purpose, mission, and goals. The analysis assumed an alternative would be implemented beginning in 2002 and considered a 10-year use period, from 2002 to 2012.

The Environmental Assessment evaluated three alternatives concerning the use of PWC at Lake Meredith National Recreation Area. Two of the alternatives considered in the Environmental Assessment would permit PWC use in the park under certain conditions. Alternative A allows

PWC use under a special regulation that includes certain current provisions of the Superintendent's Compendium. The Superintendent's Compendium is terminology the NPS uses to describe the authority provided to the Superintendent under 36 CFR 1.5 and 1.7. It allows for local, park-specific regulations for a variety of issues and under certain criteria. Alternative A is also the baseline for proposing the impact analysis. However, the economic analysis discussed later in this document uses the no-action alternative as a baseline. The provisions of the Superintendent's Compendium include the following closures: the stilling basin below Sanford Dam, the waters of the Canadian River, and within 750' of the intake tower. The stilling basin was closed because it is a designated swim beach, while the prohibition on vessels within 750 feet of the intake tower enhances safety and prevents any accidental contamination of the municipal water system. During times of heightened homeland security the park would institute a 75 foot buffer around the Dam structure itself to all vessels. Since this is a sporadic closure, it is not included in the text of the regulatory language. Waters of the Canadian River are typically too low to safely operate a vessel. The launching of boats at areas other than at a designated launch site is also prohibited.

Under alternative B Lake Meredith National Recreation Area would adopt a special regulation that would allow continued PWC operation similar to alternative A, but use would be further restricted to reduce conflicts between fishermen and PWC operators in lake areas and to protect water resources by designating and marking "Flat Wake" zones in a number of the canyons. These lake arms and back coves include: North Turkey Creek, Bugbee Canyon, North Canyon, North Cove, South Canyon, Sexy Canyon, Amphitheater Canyon, the coves between day markers 9 and 11, Fritch Canyon, Short Creek, Evans Canyon and Canal Canyon. In addition, the special regulation would prohibit PWC fueling on the lake except at the marina fuel dock, with an attendant providing the fuel service. PWC fueling by operators would be allowed only when the PWC is out of the water. In addition, the carrying of extra fuel onboard PWC would be prohibited.

In addition to these two alternatives for allowing restricted PWC use, a no-action alternative was considered that would continue the prohibition of all PWC use within the National Recreation Area. All three alternatives were evaluated with respect to PWC impacts on water quality, air quality, soundscapes, wildlife and wildlife habitat, threatened, endangered, or special concern species, shoreline vegetation, visitor experience, visitor conflict and safety, and cultural resources.

Based on the environmental analysis, NPS determined that Alternative B is the park's preferred alternative for managing PWC use. Alternative B is also considered the environmentally preferred alternative because it would best fulfill park responsibilities as steward of this sensitive habitat; ensure safe, healthful, productive, and aesthetically and culturally pleasing surroundings; and attain a wider range of beneficial uses of the environment without degradation, risk to health or safety, or other undesirable and unintended consequences.

This document proposes regulations to implement Alternative B at Lake Meredith National Recreation Area. The NPS will consider the comments received on this proposed rule, as well as the comments received on the Environmental Assessment. The public should review and consider the other alternatives contained in the Environmental Assessment when making comments on this proposed rule. A copy of the Environmental Assessment is available by contacting the Superintendent, Lake Meredith National Recreation Area, P.O. Box 1460, Fritch, Texas, 79036, or by downloading the document from the park's Web site at *www.nps.gov/lamr*.

The park will begin planning efforts and public outreach for a new General Management Plan in the near future. During that planning process the environmental impacts of vessels other than PWCs will be evaluated. At that time, all vessels will be brought into alignment with regulations for PWCs and rule making proposed where needed for consistency.

The following summarizes the predominant resource protection and public use issues associated with PWC use at Lake Meredith Recreation Area. Each of these issues is analyzed in the *Lake Meredith Recreation Area, Personal Watercraft Use Environmental Assessment.*

Water Quality

Conventional two-stroke, carbureted engines today power the vast majority of PWC in use, which discharge as much as 30% of their fuel unburned directly into the water. Hydrocarbons, including benzene, toluene, ethyl benzene, and xylene (BTEX) and polyaromatic hydrocarbons (PAHs), are released. These discharges have potential adverse effects on water quality. The issue over two stroke engines operating at Lake Meredith Recreation Area will in time become a non-issue. In 1996, the Environmental Protection Agency (EPA) promulgated a rule to control exhaust emissions from new marine engines, including outboards and PWC. Emission controls provide for increasingly stricter standards beginning in model year 2006 (EPA 1996a). As a result of the rule, the EPA expects a 50% reduction in hydrocarbon emissions from marine engines from present levels by 2020 and a 75% reduction in hydrocarbon emissions by 2025. Impacts from the use of two stroke engines will diminish as this new technology replaces older two stroke engines.

Under this proposed rule PWC use would continue within the reservoir, but flat wake zones would be established in 12 coves and lake arms: North Turkey Creek, Bugbee Canyon, North Canyon, South Canyon, Sexy Canyon, Amphitheater Cove, the coves between day markers 9 and 11, North Cove, Fritch Canyon, Short Creek, Evans Canyon and Canal Canyon. It is assumed that PWC operating in the flat wake zones under this proposal would discharge gasoline and its constituents at one-quarter the rate expected at full throttle in the open-water portion of the lake. For the purpose of evaluating impacts to water quality, it was assumed that the flat wake zones were established in 2002. Area 1 is defined as Lake Meredith minus the flat wake zones and area 2 is defined as the flat wake zones.

Overall numbers and distribution of PWC would remain the same in both 2002 and 2012. In 2012 emission rates for PWC (as well as outboard motorboats) were assumed to decrease by 50%, in accordance with the U.S. Environmental Protection Agency manufacturing requirement. Also, under this proposal the PWC user education program would be enhanced to include materials describing the advantages of the U.S. EPA emission reduction programs and the anticipated benefits to water and air quality.

The environmental analysis determined that impacts from continued PWC use with management restrictions would result in short- and long-term, negligible, adverse effects on water quality based on ecotoxicological and human health benchmarks, similar to the current limits (*i.e.*, use levels before the park closed on November 7, 2002). All threshold volumes needed to dilute PWC emissions in area 2 (the 12 flat wake zones) would be smaller under this proposal than under the current limits because of the additional management restrictions (specific flat wake zones for PWC). Prohibiting PWC fueling on the lake would further reduce the potential for accidental spills and associated impacts on water quality.

The environmental analysis determined that cumulative impacts in 2002 from PWC and motorboat use would range from negligible to moderate under this proposal. Impacts from benzene in 2002 would be moderate in area 1 and minor in area 2. Focused water quality monitoring would be needed immediately following a high-use day to confirm these impact estimates. By 2012 all threshold volumes would be substantially reduced as a result of improved emission controls and park instituted flat wake zones and PWC user education program. All cumulative impacts based on ecotoxicological and human health benchmarks would be negligible. (For an explanation of terms such as "negligible" and "adverse," *see* page 66 of the Environmental Assessment.) Therefore, this proposal would not result in an impairment of water resources.

Air Quality

PWC emit various compounds that pollute the air. In the two-stroke engines commonly used in PWC, the lubricating oil is used once and is expelled as part of the exhaust; and the combustion process results in emissions of air pollutants such as volatile organic compounds (VOC), nitrogen oxides (NO_X), particulate matter (PM), and carbon monoxide (CO). PWC also emit fuel components such as benzene that are known to cause adverse health effects. Even though PWC engine exhaust is usually routed below the waterline, a portion of the exhaust gases go into the air. These air pollutants may adversely impact park visitor and employee health, as well as sensitive park resources.

For example, in the presence of sunlight VOC and NO_X emissions combine to form ozone. Ozone causes respiratory problems in humans, including cough, airway irritation, and chest pain during inhalation. Ozone is also toxic to sensitive species of vegetation. It causes visible foliar injury, decreases plant growth, and increases plant susceptibility to insects and disease. Carbon monoxide can affect humans as well. It interferes with the oxygen carrying capacity of blood, resulting in lack of oxygen to tissues. NO_X and PM emissions associated with PWC use can also degrade visibility. NO_X can also contribute to acid deposition effects on plants, water, and soil. However, because emission estimates show that NO_X from PWC are minimal (less than 5 tons per year), acid deposition effects attributable to PWC use are expected to be minimal.

Continuing PWC use at Lake Meredith would result in minor adverse impacts from CO and negligible impacts from VOC, PM_{10}, and NO_X, in 2002 and 2012, although emissions would be reduced slightly compared to the current circumstances.

Cumulative emission levels in 2002 and 2012 would be moderate for CO and negligible for PM_{10} and NO_X. Emission levels for VOC would be minor in 2002, decreasing to negligible in 2012 as a result of improved engine technology. Overall, PWC emissions of HC and VOC are estimated to be 25% to 38% of the cumulative boating emissions in 2002 and would be reduced to below 20% by 2012 with technology improvements. Therefore, this proposal would not result in an impairment of air quality.

Under this proposal there would be a negligible impact on visibility from PWC in both 2002 and 2012 and a minor adverse impact from ozone exposure in 2002 and 2012.

On a cumulative basis there would be negligible impact levels on visibility from all motorized watercraft in both 2002 and 2012, although $PM_{2.5}$ emissions would be reduced slightly. The impact level on ozone exposure in 2002 and 2012 is expected to remain moderate. Ozone monitoring data indicate that Lake Meredith is influenced by the transport of ozone and its precursor pollutants from south and east Texas. This proposal would not impair air quality related values.

Soundscapes

Noise impacts from PWC use are caused by a number of factors. Noise from human sources, including PWC, can intrude on natural soundscapes, masking the natural sounds that are an intrinsic part of the environment. This can be especially true in quiet places, such as in secluded lakes, coves, river corridors, and backwater areas. Also, PWC use in areas where there are nonmotorized users (such as canoeists, sailors, people fishing or picnicking, and kayakers) can disrupt the "passive" experience of park resources and values.

The biggest difference between noise from PWC and that from motorboats is that the former repeatedly leave the water, which magnifies noise in two ways. Without the muffling effect of water, the engine noise is typically 15 dBA louder and the smacking of the craft against the water surface results in a loud "whoop" or series of them. With the rapid maneuvering and frequent speed changes, the impeller has no constant "throughput" and no consistent load on the engine. Consequently, the engine speed rises and falls, resulting in a variable pitch. This constantly changing noise is often perceived as more disturbing than the constant noise from motorboats.

PWC users tend to operate close to shore, to operate in confined areas, and to travel in groups, making noise more noticeable to other recreationists. Motorboats traveling back and forth in one area at open throttle or spinning around in small inlets also generate complaints about noise levels; however, most motorboats tend to operate away from shore and to navigate in a straight line, thus being less noticeable to other recreationists.

The environmental analysis determined that impacts from noise from PWC use would have temporary, minor, adverse impacts at most locations at Lake Meredith Recreation Area over the short and long term. However, there would be beneficial impacts on the back coves where flat wake restrictions would be in effect under this proposed rule. Impact levels would be related to the number of PWC operators, as well as the sensitivity of other visitors. Over the long term PWC noise levels would be reduced with the introduction of newer engine technologies.

Cumulative noise impacts from PWC and motorboat use, as well as other visitor activities, would be temporary, minor, and adverse over the short and long term, with these sounds heard occasionally throughout the day. Under this proposed rule there will be a beneficial impact on the back coves since these areas would be designated as flat wake zones. For the most part, natural sounds would still predominate at most locations within the recreation area. The highest concentration of sound impacts would occur near the boat launches and marinas. Therefore, this proposal would not impair soundscapes.

Wildlife and Wildlife Habitat

This proposed rule intends to protect birds and waterfowl from the effects of PWC-generated noise, especially during nesting seasons, protect fish and wildlife species and their habitat from PWC disturbances, and protect fish and wildlife from the adverse effects of bioaccumulation of contaminants from PWC emissions.

Under this proposal there would be a reduction in overall impacts caused by PWC use because of flat wake zones and water quality would be improved due to PWC fueling restrictions on the lake. Impacts on wildlife and wildlife habitat would be short term, negligible, and

adverse at most locations. All Texas and federal watercraft laws and regulations apply to PWC operators, including regulations that address reckless or negligent operation, excessive speed, hazardous wakes or washes, hours of operation, age of operator, access to the shore at flat wake speeds, distance between vessels and prohibition on operating a vessel at greater than flat wake speed less than 50 feet from the shoreline. The park enforces Texas Parks and Wildlife Department regulations through 36 CFR 3.1 and the park's concurrent jurisdiction authority. The designation of flat wake zones will restrict vessel speeds in the back coves and lake arms, which will have beneficial impact to species in back coves and lake arms. There are an estimated 60 species of mammals that occur in the Lake Meredith National Recreation Area. Common mammals include mule deer, coyote, porcupines, raccoons, foxes, squirrels, rabbits, a few bats, and several varieties of rats and mice. Larger predators include mountain lions and bobcats. Over 200 species of birds are present including wild turkey, bobwhite, scaled quail; mourning dove, roadrunner, great blue herons and red-winged blackbird. The most common of the 15 species of fish present include walleye, catfish, largemouth and sand bass, crappie, bluegill and carp. Eleven amphibian species and 32 reptile species are also found at Lake Meredith including two poisonous snakes (prairie rattlesnake and diamondback rattlesnake). Since these are generally land mammals, little wildlife uses the open water, where PWC speeds are higher.

On a cumulative basis, all visitor activities would continue to have short-term, negligible to minor, adverse effects on wildlife and wildlife habitat. All wildlife impacts would be temporary. Therefore, this proposed regulation would not impair wildlife or wildlife habitat.

Threatened, Endangered, or Special Concern Species

This proposed regulation aims to protect threatened or endangered species, or species of special concern, and their habitats from PWC disturbances. The Endangered Species Act (16 U.S.C 1531 *et seq.*) mandates that all federal agencies consider the potential effects of their actions on species listed as threatened or endangered. If the National Park Service determines that an action may adversely affect a federally listed species, consultation with the U.S. Fish and Wildlife Service is required to ensure that the action will not jeopardize the species' continued existence or result in the destruction or adverse modification of critical habitat. State and federally listed species were identified through discussions with park staff, informal consultation with the U.S. Fish and Wildlife Service, and project review by the Texas Parks and Wildlife Department. The U.S. Fish and Wildlife Service was contacted regarding federal threatened, endangered, and special concern species, as was the Texas Parks and Wildlife Department regarding state species. At Lake Meredith National Recreation Area it has been determined that none of the alternatives would *adversely* affect any of the listed species. However, the species at Lake Meredith that have the *potential* to be affected by proposed PWC management alternatives include the federally listed bald eagle and the Arkansas River shiner.

Continued, restricted PWC use at Lake Meredith National Recreation Area would have no impact on endangered, threatened or sensitive species. Bald Eagles are present only in the winter season when PWCs are generally not in use. Additionally, there is no known summer nesting of Bald Eagles in the park. There is designated critical habitat for the Arkansas River shiner within park boundaries in the Canadian River however, the map identifying critical habitat area is likely to change. (As part of a recent court decision, the U.S. Fish and Wildlife Service agreed to jettison its policy outlining a habitat area for the minnow and draft a new one.) The park is proposing to close that section of the river to protect this critical habitat. Therefore, there would be no perceptible changes in concerned species' populations or their habitat community structure. All impacts on these species and habitat due to PWC use would be temporary and short term. The intensity and duration of impacts are expected to remain constant over the next 10 years, since PWC numbers are anticipated to remain steady. Also, cumulative effects from all park visitor activities would not likely adversely affect these species since the identified species are not present or are not accessible during the course of normal visitor activities on Lake Meredith.

Therefore, this proposal would not result in an impairment of threatened, endangered, or special concern species.

Shoreline Vegetation

Wind and wave action erodes areas along the steeper to more moderately inclined shorelines and a sometimes cause landslides that slip into the reservoir. Vegetation is relatively sparse below the historic high water level within the steeper to moderately inclined slopes. Recent growth is present in the more shallow backwater areas with less, or relatively flat, relief. These shallow areas are frequently filled with dense vegetation growth including invasive species; they are occasionally inundated killing off adjacent disturbed day land and shallow water plants. Vegetation upon slopes offers little resistance to land or mudslides and erosion by waves and erosion is accelerated as a result of fluctuating water levels.

PWC use would have negligible adverse impacts over the short and long term because there would be no perceptible changes to plant community size, integrity or continuity now or in the future. The proposed PWC flat wake restrictions in back coves would result in beneficial impacts to shoreline vegetation from reduced wave action/erosion.

On a cumulative basis other visitor activities are more prevalent than PWC use. However, no obvious impacts currently exist, and impacts to shoreline vegetation would continue to be negligible. There would be no perceptible changes to plant community size, integrity, or continuity now or in the future. Therefore, this proposal would not impair shoreline vegetation.

Visitor Experience

In proposing this regulation for Lake Meredith, NPS aims to ease potential conflicts between PWC users and other park visitors.

To determine impacts, the current level of PWC use was calculated for areas of the recreation area. Other recreational activities and visitor experiences that are occurring in these locations were also identified. Visitor surveys and staff observations were evaluated to determine visitor attitudes and satisfaction in areas where PWC are used. Visitor survey data gathered at Lake Meredith National Recreation Area before the closure took effect suggests that the majority of visitors are satisfied with their current experiences. The potential for change in visitor experience was evaluated by identifying projected increases or decreases in both PWC and other visitor uses, and determining whether these projected changes would affect the desired visitor experience and result in greater safety concerns or additional user conflicts.

Under this proposed rule flat wake zones would be established and marked with buoys in lake arms and back coves (North Turkey Creek, Bugbee Canyon, North Canyon, North Cove, South Canyon, Sexy Canyon, Amphitheater Cove, the coves between day markers 9 and 11, Fritch Canyon, Short Creek, Evans Canyon and Canal Canyon), and visitor education would be enhanced. PWC operators would be prohibited from fueling on the lake (except at the marina fuel dock) and from carrying extra fuel onboard. A map of the lake will be developed to identify these flat-wake zones and launching of vessels would be permitted at areas with designated concrete vessel ramps (Cedar Canyon Launch Ramp, Fritch Fortress Launch Ramp, Harbor Bay Launch Ramp, Blue West Launch Ramp, and Sanford-Yake Marina) and designated camping areas and primitive areas. Primitive or undeveloped launch sites may be opened or closed depending on lake levels. Maps will be posted at the park, on the park's web site, and informational pamphlets would be made available to the public.

Impacts on PWC Users. Flat wake restrictions established under this proposed rule would be limited only to the arms of the lake and back coves. Other flat wake restriction are imposed by 36 CFR part 3 and the Texas Water Safety Act . The State of Texas prohibits other than flat wake speeds within 50 feet of another PWC, vessel, platform, person, object or shoreline. Because PWC operators often prefer large bodies of open water, these restrictions would have a negligible adverse effect on PWC users. Fueling watercraft away from the water surface would result in a minor inconvenience.

Impacts on Other Boaters. Impacts to other boaters would be similar to those under the previous circumstance because restrictions under this proposed rule would not affect areas or hours of operation or the number of users permitted on the lake. However, anglers who fish from boats would experience a beneficial impact due to PWC flat wake restrictions in lake arms and coves, as would canoeists and kayakers who may prefer these areas. Impacts to other boaters would continue to be negligible to minor, long term, and adverse.

Impacts on Other Visitors. Impacts to other shoreline users would be similar to those under the current management. Other visitors, particularly swimmers, might notice a beneficial impact due to PWC operators refueling their watercraft out of the water and away from the shoreline. Anglers, particularly those who fish in back coves or from shorelines where such fishing is permitted, would experience beneficial impacts due to PWC speed and flat wake restrictions. Other visitors would continue to experience negligible to minor adverse impacts.

When related to other visitor activities, PWC use would not appreciably limit the visitor experience. Cumulative impacts would be moderate for PWC users but negligible over the short and long term for most other visitors because there would be little noticeable change in visitor experiences.

Visitor Conflict and Safety

Under the proposed rule Lake Meredith aims to minimize or reduce the potential for PWC user accidents, minimize or reduce the potential for safety conflicts between PWC users and other water recreationists, and provide a safe and healthful environment for park visitors.

Between 1997 and 2001 Lake Meredith park staff issued 122 written violation notices to PWC users, conducted 5 search-and-rescue operations for PWC, and towed 12 disabled PWC. In the same time period six PWC-related accidents occurred, although the only PWC-related injury recorded by park staff happened when one operator attempted to jump-start another craft. Proactive boat patrols in the past five years have resulted in increased safety—prior to 1997, there were two water-related deaths at the park every year for 30 years (although the types of watercraft involved were not documented). NPS rangers and Texas Parks and Wildlife Department officers enforce boating regulations. The Coast Guard Auxiliary also helps with boat patrols. NPS law enforcement staff focus 75% of their time on land activities and 25% on water activities.

PWC speeds, wakes, and operations near other users can pose hazards and conflicts, especially to canoeists and kayakers. Sailboaters are the primary nonmotorized vessels used in the national recreation area, and conflicts could occur with PWC. To date, few conflicts have been reported between PWC and nonmotorized boaters.

Under this proposed rule flat wake zones would be established in lake arms and back coves, and PWC user education would be enhanced.

PWC User/Swimmer Conflicts. Impacts would be similar to the current situation since the number of PWC operating within the recreation area is expected to remain constant. Flat wake zones in lake arms could have a beneficial impact on swimmers, since many popular swimming locations occur in such areas. Enhanced PWC education could benefit all visitors by decreasing the potential for conflicts. Overall, PWC use would continue to have negligible to minor adverse impacts on most swimmers at Lake Meredith National Recreation Area.

PWC Users/Other Vessel Conflicts. Impacts would be similar to previous conditions. Flat wake zones would benefit nonmotorized vessels and anglers who fish from boats. Therefore, PWC use would continue to have minor adverse impacts on other motorized boaters and negligible adverse impacts to nonmotorized vessels at Lake Meredith.

PWC Users/Other Visitor Conflicts. Establishing flat wake zones in back coves will benefit anglers who have complained about speed violations in these areas. Even though Texas boating regulations require flat wake speeds within 50 feet of the shoreline, some PWC users could be unaware of the regulations. Enhanced PWC education under this alternative would help remedy this situation. PWC use would have negligible adverse impacts to other visitors.

Continued PWC use would have short- and long-term, minor, adverse impacts on visitor conflicts and safety due to the number of visitors and boats present on high use days. Establishing flat wake zones in back coves could benefit anglers who have complained about conflicts with PWC in these areas.

Cumulative impacts related to visitor conflicts and safety would be minor for all user groups in the short and long term.

Cultural Resources

This proposed regulation aims to control PWC use and access to protect cultural resources, including sacred sites important to Native Americans. Archeological sites are common in Lake Meredith National Recreation Area. A shoreline survey was completed in 1981, and 44 prehistoric and 8 historic sites were located between the high and low waterlines. Sites along the shoreline are most threatened by natural erosion due to fluctuating reservoir water levels and wind-driven wave action. Wave action from vessels and PWC is a minor problem compared to wind-driven waves that hit the shoreline. In recent years, there have been no reports of people taking artifacts from shoreline sites.

Uncontrolled access to cultural sites remains a problem at Lake Meredith. Both PWC users and boaters can access sites along and near the shoreline. The park does not have sufficient staff to enforce regulations throughout the year.

Native American sacred sites that are listed on, or may be eligible for listing on, the National Register of Historic Places may be affected by erosion along shorelines, or by uncontrolled visitor access since riders are able to access areas less accessible to most motorcraft. Previous consultations were held with Native American tribes concerning the

exposure of human remains found eroding from the lakeshore.

PWC use within the recreation area could have minor adverse impacts on archeological sites and submerged cultural resources from possible illegal collection and vandalism. However, under this proposal a user education program and flat wake zone could limit these effects. Cumulative impacts on archeological and submerged cultural resources that are readily accessible would be minor to moderately adverse. Therefore this proposal would not impair any archeological or submerged cultural resources.

PWC-related intrusions during the use of ethnographic resources would result in short-term, minor to moderate adverse impacts. The introduction of a user education program and the expansion of flat wake zones could further limit some of these effects. Over the long term PWC noise levels could be reduced as a result of newer engine technologies.

On a cumulative basis all visitor activities could result in minor to moderate adverse impacts on those resources that are readily accessible, due to possible short-term interruptions in their use. All impacts would continue at existing levels.

This alternative would not impair any ethnographic resources.

The Proposed Rule

As established by the April 2000 National Park Service rule (36 CFR 3.24), PWC use is prohibited in all National Park System areas unless determined appropriate. The process used to identify appropriate PWC use at Lake Meredith National Recreation Area considered the known and potential effects of PWC on park natural resources, traditional uses, public health and safety. The proposed rule is designed to manage PWC use within the National Recreation Area in a manner that achieves the legislated purposes for which the park was established including providing reasonable access to the park by PWC.

NPS proposes that PWCs continue to be allowed on Lake Meredith as they have been throughout the history of the lake. Under the special regulation in 36 CFR 7.57 pertaining to Lake Meredith National Recreation Area, PWC use would continue under the same conditions that existed prior to the closure in November 2002. The following areas will be closed to all boating: the stilling basin below Sanford Dam and within 750′ feet of the intake tower (as mandated by Bureau of Reclamation for safety reasons) and the waters of the Canadian River (because of low water levels and wildlife habitat). Also, operating a vessel in excess of 5 mph or creating a wake is prohibited in all marked "Flat Wake" areas on the lake. Launching of vessels is permitted only at designated concrete vessel ramps and designated camping and primitive areas that also provide other types of designated launch areas. All nonconflicting Texas and federal watercraft laws and regulations would apply to PWC operators, excessive speed, hazardous wakes or washes, hours of operation, age of driver, and distance between vessels.

In addition to the previous provisions, the most significant change NPS proposes is to establish and mark with buoys flat wake zones in twelve lake arms and back coves. This modification is in response to complaints from fishermen in the park that PWCs have disrupted their fishing in some of the back coves of the lake. The objective of this proposal is to reduce or eliminate the PWC/fishermen conflict by reducing PWC speeds in these back coves. Because of the extensive fluctuation in water levels in the reservoir, the NPS proposes to place "flat wake" or similarly marked buoys in the water to delineate the areas where all vessels must travel at flat wake speeds within those coves identified in this proposed rule. However, should water levels drop significantly, some coves may not be accessible at all and the buoys would be removed for safekeeping until the water level(s) return to a depth that would sustain safe vessel use. At that time the buoys would be returned to the water and flat wake speed use would again be authorized.

The following would be adopted if this regulation is implemented:

1. Twelve lake arms and back coves on the lake are designated as flat-wake zones. A map of the lake would be developed to identify these flat-wake zones, and they would be clearly marked with buoys when water levels support safe vessel use. Maps would be posted at the park, on the park's web site and informational pamphlets would be made available to the public.

2. Enhance PWC user education through interpretive talks, onsite bulletins, and brochures for PWC registrants and visitors who rent personal watercraft.

3. Educate PWC users about the advantages of using watercraft with cleaner burning engines.

4. Require PWC fueling by operators onshore and out of the water. PWC fueling could continue to occur on the lake at the marina fuel dock, with an attendant providing the fuel service.

5. Prohibit carrying of extra fuel on personal watercraft.

6. Continue to monitor water quality on Lake Meredith through testing services available from other agencies.

7. Launching of PWCs would be limited to designated launch sites including concrete vessel ramps and other types of designated launch sites.

Compliance With Other Laws

Regulatory Planning and Review (Executive Order 12866)

This document is not a significant rule and has not been reviewed by the Office of Management and Budget under Executive Order 12866.

(1) This rule will not have an effect of $100 million or more on the economy. It will not adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities. The National Park Service has completed the report "Economic Analysis of Personal Watercraft Regulations in Lake Meredith National Recreation Area" (LAW Engineering and Environmental Sciences, Inc.) dated September 2002.

(2) This rule will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency. Actions taken under this rule will not interfere with other agencies or local government plans, policies or controls. This rule is an agency specific rule.

(3) This rule does not alter the budgetary effects of entitlements, grants, user fees, or loan programs or the rights or obligations of their recipients. This rule will have no effects on entitlements, grants, user fees, or loan programs or the rights or obligations of their recipients. No grants or other forms of monetary supplements are involved.

(4) This rule does not raise novel legal or policy issues. This rule is one of the special regulations being issued for managing PWC use in National Park Units. The National Park Service published general regulations (36 CFR 3.24) in March 2000, requiring individual park areas to adopt special regulations to authorize PWC use. The implementation of the requirement of the general regulation continues to generate interest from the public concerning the overall effect of authorizing PWC use and National Park Service policy and park management but is not a significant controversy for this park.

Regulatory Flexibility Act

The Department of the Interior certifies that this rulemaking will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This certification is based on a report entitled "Economic Analysis of Personal Watercraft Regulations in Lake Meredith National Recreation Area" (LAW Engineering and Environmental Services, Inc. September 2002). The focus of this study was to document the impact of this rule on ten PWC related businesses in the vicinity of Lake Meredith that may be affected by any restriction of PWC use, including PWC dealerships, a PWC rental shop, and convenience stores offering PWC storage and other boating related services. This report found that the potential loss for these businesses as a result of this rule would be minimal, as PWC users account for a very small fraction of economic activity in the region.

Small Business Regulatory Enforcement Fairness Act (SBREFA)

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This proposed rule:

a. Does not have an annual effect on the economy of $100 million or more.

b. Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions.

c. Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

Unfunded Mandates Reform Act

This rule does not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than $100 million per year. The rule does not have a significant or unique effect on State, local or tribal governments or the private sector. This rule is an agency specific rule and does not impose any other requirements on other agencies, governments, or the private sector.

Takings (Executive Order 12630)

In accordance with Executive Order 12630, the rule does not have significant takings implications. A taking implication assessment is not required. No taking of personal property will occur as a result of this rule.

Federalism (Executive Order 13132)

In accordance with Executive Order 13132, the rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. This proposed rule only affects use of NPS administered lands and waters. It has no outside effects on other areas by allowing PWC use in specific areas of the park.

Civil Justice Reform (Executive Order 12988)

In accordance with Executive Order 12988, the Office of the Solicitor has determined that this rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order.

Paperwork Reduction Act

This regulation does not require an information collection from 10 or more parties and a submission under the Paperwork Reduction Act is not required. An OMB Form 83–I is not required.

National Environmental Policy Act

The National Park Service has analyzed this rule in accordance with the criteria of the National Environmental Policy Act and has prepared an Environmental Assessment (EA). The EA was available for public review and comment March 10 to April 9, 2003. The EA will continue to be available at the park's office and on the park's Web site—*http://www.nps.gov/lamr*. A copy of the EA is available by contacting the Superintendent, Lake Meredith National Recreation Area, P.O. Box 1460, Fritch, TX 79036, or by downloading it from the Internet at *http://www.nps.gov/lamr*.

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, "Government to Government Relations with Native American Tribal Governments" (59 FR 22951) and 512 DM 2 have evaluated potential effects on federally recognized Indian tribes and have determined that there are no potential effects.

During the consultation process in late 2002, the NPS consulted with the tribes that claim some affiliation with Lake Meredith National Recreation Area, in writing about the development of this proposed rule and the supporting Environmental Assessment. Those Tribes include the Wichita and Affiliated Tribes; Kiowa Indian Tribe of Oklahoma; Comanche Indian Tribe, Oklahoma; Cheyenne-Arapaho Tribe, Oklahoma; Caddo Indian Tribe of Oklahoma; Jicarilla Apache Tribe, NM; Mescalero Apache Tribe, NM; Apache Tribe of Oklahoma; and, the Fort Sill Apache Tribe of Oklahoma. To date no comments have been received from any of the Native American Tribes.

Clarity of Rule

Executive Order 12866 requires each agency to write regulations that are easy to understand. We invite your comments on how to make this rule easier to understand, including answers to questions such as the following: (1) Are the requirements in the rule clearly stated? (2) Does the rule contain technical language or jargon that interferes with its clarity? (3) Does the format of the rule (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity? (4) Would the rule be easier to read if it were divided into more (but shorter) sections? (A "section" appears in bold type and is preceded by the symbol "§" and a numbered heading; for example § 7.57 Lake Meredith National Recreation Area. (5) Is the description of the rule in the **SUPPLEMENTARY INFORMATION** section of the preamble helpful in understanding the proposed rule? What else could we do to make the rule easier to understand?

Send a copy of any comments that concern how we could make this rule easier to understand to: Office of Regulatory Affairs, Department of the Interior, Room 7229, 1849 C Street, NW., Washington, DC 20240. You may also email the comments to this address: *Exsec@ios.doi.gov*.

Drafting Information: The primary authors of this regulation are: Bill Briggs, Chief Ranger; Jim Rancier, Chief of Resource Management; Paul Eubank, Environmental Protection Specialist; Sarah Bransom, Environmental Quality Division; and Judy Shafer, Office of Policy and Regulations.

Public Participation

If you wish to comment, you may submit your comments by any one of several methods. You may mail comments to the Superintendent, Lake Meredith National Recreation Area, P.O. Box 1460, Fritch, Texas 79036. You may also comment via the Internet to *LAMR_Superintendent@nps.gov*. Please also include "PWC Rule" in the subject line and your name and return address in the body of your Internet message. Finally, you may hand deliver comments to the Superintendent, Lake Meredith National Recreation Area, 419 East Broadway, Fritch, Texas 79036–1460.

Our practice is to make comments, including names and addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the rulemaking record, which we will honor to the extent allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials or organizations or businesses, available for public inspection in their entirety.

List of Subjects in 36 CFR Part 7

National Parks, Reporting and recordkeeping requirements.

In consideration of the foregoing, the National Park Service proposes to amend 36 CFR part 7 as follows:

PART 7—SPECIAL REGULATIONS, AREAS OF THE NATIONAL PARK SYSTEM

1. The authority citation for part 7 continues to read as follows:

Authority: 16 U.S.C. 1, 3, 9a, 460(q), 462(k); Sec. 7.96 also issued under DC Code 8–137(1981) and DC Code 40–721 (1981).

2. Section 7.57 is amended by revising the section heading and adding paragraph (h) to read as follows:

§ 7.57 Lake Meredith National Recreation Area.

* * * * *

(h) *Personal watercraft (PWC).* (1) PWC may operate on Lake Meredith except in the following closed areas: stilling basin below Sanford Dam, within 750 feet of the Sanford Dam intake tower, and on the waters of the Canadian River.

(2) PWC may operate on Lake Meredith under the following conditions:

(i) Fueling of PWC is prohibited on the lake, except at the marina fuel dock with an attendant providing the fuel service, or onshore and out of the water.

(ii) Carrying of fuel in an external or portable container onboard a PWC is prohibited.

(iii) PWC may only be launched at designated launch sites established by the Superintendent in accordance with 36 CFR 1.5 and 1.7.

(iv) PWC may not operate at greater than flat wake speed in the following designated areas: North Turkey Creek, Bugbee Canyon, North Canyon, North Cove, South Canyon, Sexy Canyon, Amphitheater Canyon, the coves between day markers 9 and 11, Fritch Canyon, Short Creek, Evans Canyon and Canal Canyon. Flat wake areas are designated by buoys marked with "flat wake" or other similar markings. The location of those buoys may be adjusted by the Superintendent based on reservoir water levels.

(3) The Superintendent may temporarily limit, restrict or terminate access to the areas designated for PWC use after taking into consideration public health and safety, natural and cultural resource protection, and other management activities and objectives.

Dated: November 28, 2003.

Craig Manson,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 03–30556 Filed 12–11–03; 8:45 am]

BILLING CODE 4310–3A–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 296–0427b; FRL–7594–1]

Revisions to the California State Implementation Plan, South Coast Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve revisions to the South Coast Air Quality Management District (SCAQMD) portion of the California State Implementation Plan (SIP). These revisions concern volatile organic compound (VOC) emissions from adhesives and sealants. We are proposing to approve a local rule to regulate these emission sources under the Clean Air Act as amended in 1990 (CAA or the Act).

DATES: Any comments on this proposal must arrive by January 12, 2004.

ADDRESSES: Send comments to Andy Steckel, Rulemaking Office Chief (AIR–4), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901 or e-mail to *steckel.andrew@epa.gov*, or submit comments at *http://www.regulations.gov*.

You can inspect copies of the submitted SIP revisions, EPA's technical support document (TSD), and public comments at our Region IX office during normal business hours by appointment.

You may also see copies of the submitted SIP revisions by appointment at the following locations:

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 1001 "I" Street, Sacramento, CA 95814.

South Coast Air Quality Management District, 21865 E. Copley Drive, Diamond Bar, CA 91765.

A copy of the rule may also be available via the Internet at *http://www.arb.ca.gov/drdb/drdbltxt.htm*. Please be advised that this is not an EPA website and may not contain the same version of the rule that was submitted to EPA.

FOR FURTHER INFORMATION CONTACT: Yvonne Fong, EPA Region IX, (415) 947–4117, *fong.yvonnew@epa.gov*.

SUPPLEMENTARY INFORMATION: This proposal addresses the following local rule: SCAQMD 1168. In the Rules and Regulations section of this **Federal Register**, we are approving this local rule in a direct final action without prior proposal because we believe these SIP revisions are not controversial. If we receive adverse comments, however, we will publish a timely withdrawal of the direct final rule and address the comments in subsequent action based on this proposed rule.

We do not plan to open a second comment period, so anyone interested in commenting should do so at this time. If we do not receive adverse comments, no further activity is planned. For further information, please see the direct final action.

Dated: November 20, 2003.

Laura Yoshii,

Deputy Regional Administrator, Region IX.

[FR Doc. 03–30775 Filed 12–11–03; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Inspector General

42 CFR Part 1001

Solicitation of New Safe Harbors and Special Fraud Alerts

AGENCY: Office of Inspector General (OIG), HHS.

ACTION: Notice of intent to develop regulations.

SUMMARY: In accordance with section 205 of the Health Insurance Portability and Accountability Act (HIPAA) of 1996, this annual notice solicits proposals and recommendations for developing new and modifying existing safe harbor provisions under the Federal and State health care programs' anti-kickback statute (section 1128B(b) of the Social Security Act), as well as developing new OIG Special Fraud Alerts.

DATES: To assure consideration, public comments must be delivered to the address provided below by no later than 5 p.m. on February 10, 2004.

ADDRESSES: Please mail or deliver your written comments to the following address: Office of Inspector General, Department of Health and Human Services, Attention: OIG–81–N, Room 5246, Cohen Building, 330 Independence Avenue, SW., Washington, DC 20201.

We do not accept comments by facsimile (FAX) transmission. In commenting, please refer to file code OIG–81–N. Comments received timely will be available for public inspection as they are received, generally beginning approximately three weeks after publication of a document, in Room 5541 of the Office of Inspector General at 330 Independence Avenue, SW., Washington, DC, on Monday through Friday of each week from 8 a.m. to 4:30 p.m.

FOR FURTHER INFORMATION CONTACT: Joel Schaer, (202) 619–0089, OIG Regulations Officer.

SUPPLEMENTARY INFORMATION:

I. Background

A. The OIG Safe Harbor Provisions

Section 1128B(b) of the Social Security Act (the Act) (42 U.S.C. 1320a–7b(b)) provides criminal penalties for individuals or entities that knowingly and willfully offer, pay, solicit or receive remuneration in order to induce or reward business reimbursable under the Federal health care programs. The offense is classified as a felony and is punishable by fines of up to $25,000 and imprisonment for up to 5 years. The OIG may also impose civil money penalties, in accordance with section 1128A(a)(7) of the Act (42 U.S.C. 1320a–7(a)(7)), or from the Federal health care programs, in accordance with section 1128(b)(7) of the Act (42 U.S.C. 1320a–7(b)(7)).

Since the statute on its face is so broad, concern has been expressed for many years that some relatively innocuous commercial arrangements may be subject to criminal prosecution or administrative sanction. In response to the above concern, the Medicare and Medicaid Patient and Program Protection Act of 1987, section 14 of Public Law 100–93, specifically required the development and promulgation of regulations, the so-called "safe harbor" provisions, specifying various payment and business practices which, although potentially capable of inducing referrals of business reimbursable under the Federal health care programs, would not be treated as criminal offenses under the anti-kickback statute and would not serve as a basis for administrative sanctions. The OIG safe harbor provisions have been developed "to limit the reach of the statute somewhat by permitting certain non-abusive arrangements, while encouraging beneficial and innocuous arrangements" (56 FR 35952, July 29, 1991). Health care providers and others may voluntarily seek to comply with these provisions so that they have the assurance that their business practices will not be subject to any enforcement action under the anti-kickback statute or related administrative authorities.

To date, the OIG has developed and codified in 42 CFR 1001.952 a total of 22 final safe harbors that describe practices that are sheltered from liability.

B. OIG Special Fraud Alerts

The OIG has also periodically issued Special Fraud Alerts to give continuing guidance to health care providers with respect to practices the OIG finds potentially fraudulent or abusive. The Special Fraud Alerts encourage industry compliance by giving providers guidance that can be applied to their own practices. The OIG Special Fraud Alerts are intended for extensive distribution directly to the health care provider community, as well as those charged with administering the Federal health care programs.

In developing these Special Fraud Alerts, the OIG has relied on a number of sources and has consulted directly with experts in the subject field, including those within the OIG, other agencies of the Department, other Federal and State agencies, and those in the health care industry. To date, the OIG has issued 12 individual Special Fraud Alerts.

C. Section 205 of Public Law 104–191

Section 205 of Public Law 104–191 requires the Department to develop and publish an annual notice in the **Federal Register** formally soliciting proposals for modifying existing safe harbors to the anti-kickback statute and for developing new safe harbors and Special Fraud Alerts.

In developing safe harbors for a criminal statute, the OIG is required to engage in a thorough review of the range of factual circumstances that may fall within the proposed safe harbor subject area so as to uncover potential opportunities for fraud and abuse. Only then can the OIG determine, in consultation with the Department of Justice, whether it can effectively develop regulatory limitations and controls that will permit beneficial and innocuous arrangements within a subject area while, at the same time, protecting the Federal health care programs and their beneficiaries from abusive practices.

II. Solicitation of Additional New Recommendations and Proposals

In accordance with the requirements of section 205 of Public Law 104–191, the OIG last published a **Federal Register** solicitation notice for developing new safe harbors and Special Fraud Alerts on December 9, 2002 (67 FR 72894). As required under section 205, a status report of the public comments received in response to that notice is set forth in appendix G to the OIG's Semiannual Report covering the period April 1, 2003 through September 30, 2003.[1] The OIG is not seeking additional public comment on the proposals listed in appendix G at this time. Rather, this notice seeks additional recommendations regarding the development of proposed or modified safe harbor regulations and new Special Fraud Alerts beyond those summarized in appendix G to the OIG Semiannual Report referenced above.

Criteria for Modifying and Establishing Safe Harbor Provisions

In accordance with section 205 of HIPAA, we will consider a number of factors in reviewing proposals for new or modified safe harbor provisions, such as the extent to which the proposals would affect an increase or decrease in—

- Access to health care services;
- The quality of services;
- Patient freedom of choice among health care providers;
- Competition among health care providers;
- The cost to Federal health care programs;
- The potential overutilization of the health care services; and
- The ability of health care facilities to provide services in medically underserved areas or to medically underserved populations.

In addition, we will also take into consideration other factors, including, for example, the existence (or nonexistence) of any potential financial benefit to health care professionals or providers that may vary based on their

[1] The OIG Semiannual Report can be accessed through the OIG Web site at *http://oig.hhs.gov/publications/semiannual.html*.

decisions whether to (1) order a health care item or service, or (2) arrange for a referral of health care items or services to a particular practitioner or provider.

Criteria for Developing Special Fraud Alerts

In determining whether to issue additional Special Fraud Alerts, we will also consider whether, and to what extent, the practices that would be identified in a new Special Fraud Alert may result in any of the consequences set forth above, as well as the volume and frequency of the conduct that would be identified in the Special Fraud Alert.

A detailed explanation of justifications for, or empirical data supporting, a suggestion for a safe harbor or Special Fraud Alert would be helpful and should, if possible, be included in any response to this solicitation.

Dated: November 26, 2003.

Dara Corrigan,

Acting Principal Deputy Inspector General.

[FR Doc. 03–30803 Filed 12–11–03; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 192 and 195

[Docket Number RSPA–97–3001]

RIN 2137–AC54

Pipeline Safety: Periodic Underwater Inspections

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed rule would amend the pipeline safety regulations to require operators of gas and hazardous liquid pipelines to have procedures for periodic inspections of pipeline facilities in offshore waters less than 15 feet deep or crossing under a navigable waterway. These inspections would ensure that the pipeline is not exposed or a hazard to navigation.

DATES: Interested persons are invited to submit written comments by February 10, 2004. Late-filed comments will be considered to the extent practicable.

ADDRESSES:

Filing Information

You may submit written comments by mail or delivery to the Dockets Facility, U.S. Department of Transportation, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590–0001. It is open from 10 a.m. to 5 p.m., Monday through Friday, except Federal holidays. All written comments should identify the docket and notice numbers stated in the heading of this notice. Anyone desiring confirmation of mailed comments must include a self-addressed stamped postcard.

Privacy Act Statement

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; pages 19477–78), or you may visit *http://dms.dot.gov.*

Electronic Access

You may also submit written comments to the docket electronically. To submit comments electronically, log onto the following Internet Web address: *http://dms.dot.gov.* Click on "Help & Information" for instructions on how to file a document electronically.

General Information

You may contact the Dockets Facility by phone at (202) 366–9329, for copies of this proposed rule or other material in the docket. All materials in this docket may be accessed electronically at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: L.E. Herrick by phone at (202) 366–5523, by fax at (202) 366–4566, or by e-mail at *le.herrick@rspa.dot.gov,* regarding the subject matter of this proposed rule. General information about RSPA's Office of Pipeline Safety (OPS) programs may be obtained by accessing OPS's Internet page at *http://ops.dot.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

RSPA/OPS Pipeline Safety Mission

RSPA/OPS has responsibility for ensuring safety and environmental protection against risks posed by the nation's approximately two million miles of gas and hazardous liquid pipelines. RSPA/OPS shares responsibility for inspecting and overseeing the nation's pipelines with State pipeline safety offices.

The Need for Periodic Underwater Inspections

On July 24, 1987, the fishing vessel Sea Chief struck and ruptured an 8 inch submerged natural gas liquids pipeline in the Gulf of Mexico. The escaping gas ignited and exploded, killing two crew members. A similar accident occurred on October 3, 1989, when the fishing vessel Northumberland struck and ruptured a 16 inch submerged gas pipeline, killing 11 crew members.

The National Transportation Safety Board (NSTB) investigated the Northumberland accident and found that the probable cause of the accident was the failure of the pipeline operator to maintain the pipeline at the burial depth to which it was initially installed. NTSB also found that the failure of RSPA/OPS to require pipeline operators to inspect and maintain submerged pipelines in a protected condition contributed to the accident. The NTSB subsequently issued Safety Recommendation P–90–29, which directed RSPA/OPS to "develop and implement with the assistance of the Mineral Management Service (MMS), the United States Coast Guard (USCG), and the United States Army Corp of Engineers (USACE), effective methods and requirements to bury, protect, inspect the burial depth of and maintain all submerged pipelines in areas subject to damage by surface vessels and their operations."

Joint Task Force Report on Offshore Pipelines

In response to this recommendation a multi-agency task force on offshore pipelines was formed to study the issue. The task force consisted of representatives from RSPA/OPS, USCG, Department of the Interior, MMS, Department of Commerce, National Oceanic and Atmospheric Administration/National Oceans Service, Department of Defense/USACE, Louisiana Office of Conservation, and the Texas Railroad Commission.

The task force reviewed information, views, and concerns provided by the government and the marine and pipeline industries. The assessment focused on the extent and adequacy of federal regulations, the technology for determining pipeline location and cover, the extent and availability of maps and charts depicting the location of pipelines, and possible government initiatives to enhance safety.

The task force concluded that exposed pipelines pose a potential risk to navigation safety, especially for mariners operating in the shallow, near-shore waters. The task force also concluded that underwater inspections for depth of burial of those pipelines were not being performed despite a requirement to place pipelines below the sea floor in shallow water. To reduce the likelihood of further casualties, the task force recommended that operators inspect these pipelines at regular intervals and rebury exposed pipelines.

The task force further concluded that safety problems with submerged pipelines are not confined to the offshore areas of the Gulf of Mexico. Although the Gulf contains many submerged pipelines and has sea bottoms most prone to erosion, pipelines under a river, shipping channel, or other body of water are also susceptible to being exposed and damaged or ruptured by a vessel. The task force recommended periodic depth of burial inspections for all submerged pipelines that could pose a hazard to navigation. A copy of the report is available in the docket for this rulemaking.

Legislative Amendments

In November 1990, Congress addressed this safety issue in amendments to the Hazardous Liquid Pipeline Safety Act of 1979 and the Natural Gas Pipeline Safety Act of 1968 (Pub. L. 101–599). These amendments, in part, required the operators of offshore pipeline facilities in the Gulf of Mexico and its inlets to conduct an underwater depth-of-burial inspection of the pipeline facility and to report any exposed portion or any portion of the pipeline facility which posed a hazard to navigation to the Secretary of Transportation. The 1990 amendments also required the Secretary of Transportation to establish a mandatory, systematic, and, where appropriate, periodic pipeline inspection and reburial program for all shallow water submerged pipelines in the Gulf of Mexico and its inlets.

On December 5, 1991, RSPA/OPS published regulations requiring underwater inspections (56 FR 63764). Over 1,560 miles of pipeline in the Gulf of Mexico were inspected. Approximately 25 miles, less than two percent of the inspected pipeline was reported to be exposed or to be a hazard to navigation. In 1992, Congress expanded the requirement to include all offshore pipelines, (including over 600 miles of pipelines off California and Alaska), underwater abandoned pipeline facilities, and all other pipeline facilities which cross under, over, or through navigable waters, if the location could pose a hazard to navigation (Pub. L. 102–508).

National Research Council Report

To gain a perspective on risks to be addressed by the Congressionally mandated inspections, RSPA/OPS, in conjunction with other Federal agencies, requested that the Marine Board of the National Research Council conduct an interdisciplinary review and assessment of the many technical, regulatory, and jurisdictional issues that affect the safety of the marine pipelines in the United States' offshore waters. The Committee on the Safety of Marine Pipelines reviewed the causes of past pipeline failures, the potential for future failures, and the means of preventing or mitigating these failures. In 1994, the Marine Board issued a report, *Improving the Safety of Marine Pipelines.* A copy of this report is available for review in the docket for this rulemaking.

The committee determined that the marine pipeline network does not present an extraordinary threat to human life. Pipeline accidents involving deaths or injuries are rare. The most widespread risks are due to oil pollution, mainly from pipelines damaged by vessels and their gear. The report noted that "[d]amage from vessels (and especially from anchors and groundings) is dramatically more significant than corrosion as a source of pollution. Ninety-five percent of the pipeline related pollution on the Outer Continental Shelf (OCS) was due to such incidents. Anchor damage alone accounted for 90 percent of the pipeline related pollution." The committee concluded that the risks generally could be managed with currently available technology and without major new regulations if enforcement of some current regulations is improved. Better coordination among operators and regulators in gathering safety data, assessing risks, and planning and implementing risk management programs was cited as a fundamental safety requirement. The committee noted that "[i]n shallow water the best protection against the interference of vessels and pipelines, generally, is burial of the pipelines, with enough weight coating to keep it in place * * * [a]chieving and maintaining adequate burial requires care and vigilance." The committee recommended that operators inspect the depth of burial of underwater pipelines at intervals determined by analysis of the probabilities of risks. A detailed approach is outlined in the report.

High risk areas are zones of high density of pipelines; high density of vessel traffic; shallow waters; the immediate vicinity of platforms; areas of severe erosion or shift of the sea floor and high potential for flooding; and areas affected by hurricanes or severe storms. According to the Marine Board Report, surveys of pipelines could be scheduled in accordance with the relatively predictable behavior of sediment and shoreline erosion. Surveys could also be performed after the passage of major storms.

The Marine Board report identified the characteristics of the Gulf of Mexico shoreline and seabed dynamics and identified the pipeline safety issues and inspection needs associated with those dynamics as follows:

Region	Shoreline	Seabed	Pipeline safety issue
Nondeltaic	Localized retreat	Stable	Occasional exposure at shoreline deposition on seabed.
Chenier plain	Rapid and generalized retreat	Very dynamic top layer of unconsolidated muds.	Storm-induced cover loss; gradual cover loss.
Barrier Islands	Active dynamics primarily on the island and shoals.	Rapid to gradual generalized siltation; localized erosion and seabed shifting.	Rapidly changing shorelines and island/shoal crossing; storm-induced changes.
River mouth	Very rapid change; some retreat, some advance.	Slumping	Storm induced slides.

Depth of Cover inspection needs for different shorelines and seabed regimes:

Region	Without occurrence of storm	With occurrence of storm
Nondeltaic	Periodic monitoring of shoreline crossing. Monitored visually with biweekly route survey, but no less frequently than every three months.	Post storm inspection of shoreline crossing, if shoreline changes, then investigate near shore depth-of-cover. Post storm inspection of depth-of-cover is not necessary.
Chenier plain and barrier islands	Periodic monitoring of shoreline crossing. Monitored visually with biweekly route survey, but no less frequently than every three months. Periodic inspections of depth of cover. If shoreline changes, then investigate near shore depth of cover.	Post storm inspection of shoreline crossing and depth of cover.
River mouth	Periodic monitoring of shoreline crossing. Monitored visually with biweekly route survey, but no less frequently than every three months. If shoreline changes, then investigate near shore depth of cover. Periodic inspection of depth of cover is not necessary.	Post storm inspection of shoreline crossing and pipeline (in mudslide areas only).

Analysis of Pipeline Burial Surveys in the Gulf of Mexico.

In June 1997, a comprehensive study was completed by the Texas Transportation Institute to determine the need for inspections of pipeline burial depth in the Gulf of Mexico for pipelines subject to federal pipeline safety regulation. The study made several recommendations addressing administrative, depth of cover, and survey requirements. Comments on these recommendations are invited. A copy of the study is available in the docket for this rulemaking.

The study recommended that natural gas and hazardous liquid pipelines be regulated identically under the periodic depth of burial inspection regulation because the higher risk to persons or property posed by natural gas pipeline facilities is balanced by the higher risk to the environment posed by hazardous liquid pipeline facilities. The study further recommended that all pipeline facilities in waters less than 15 feet deep should be maintained 3 feet below the natural bottom and that the natural bottom should be defined in order to establish a reference point for measurement in the very soft, silty bottoms.

A risk based analysis model for the pipeline burial inspections is included as an appendix to the document.

Proposed Requirements

RSPA/OPS proposes that owners and operators of these underwater pipeline facilities be required to develop procedures to conduct periodic underwater depth of burial inspections of their submerged pipelines. The procedures would assess the risk of a pipeline becoming exposed or a hazard to navigation by taking into account the particular dynamics of the water bottom, including the probability of flotation, scour, erosion, and the impacts of major storms. The operator should also establish a timetable for inspection of underwater pipelines based on their risks.

II. Comments Requested

RSPA/OPS requests comments from industry and the public on the following topics:

A. Performance Versus Prescriptive

Pipelines found exposed by inspections conducted under the initial inspection program ranged in age from 10 years to 46 years. They were in areas that experienced a variety of erosion levels and storms. Analysis of this information was not persuasive in eliminating any of the potentially affected pipeline from an underwater inspection requirement.

This proposed rulemaking is performance based. It would require an operator to determine the optimal inspection intervals for each of their pipeline facilities. A directionally bored crossing 25 feet beneath a stable river would have dramatically different inspection requirements than a pipeline in a soft, silty bottom prone to erosion or tidal scour.

A prescriptive requirement would mandate a specific inspection interval and protocol. These intervals would be the maximum allowable. Inspections would also be required following a major storm, earthquake, or period of increased or substantial erosion. Comments are solicited on the relative merits of these approaches.

B. Hazard to Navigation

Under the current regulations for offshore inspections in the Gulf of Mexico, "Navigational Hazard" is defined as a pipeline that is buried less than 12 inches below the sea bed in waters less than 15 feet deep, as measured from the mean low water (49 CFR 195.2). This proposed rule would increase the cover requirement to 24 inches and revise the definition to include inland navigable waterways. The increased depth of cover requirement is necessary because a vessel's hull or anchor can easily penetrate below 12 inches, especially in soft, silty bottoms.

Current regulations currently in effect for hazardous liquid pipelines require a burial depth of 48 inches for normal excavations or 24 inches in rock for deepwater port safety zones; 36 inches for normal excavation or 18 inches in rock for all other offshore areas underwater less than 12 feet deep as measured from the mean low tide; and 48 inches for normal excavation or 18 inches in rock for all crossings of inland bodies of water with a width of at least 100 feet from high water mark to high water mark (49 CFR 195.248).

C. Navigable Waters

The phrase "Navigable waters of the United States" (33 CFR 329.4) describes the Federal jurisdiction and can include water where there is little likelihood that vessels could be damaged by pipelines. Under this proposed rule, the affected navigable waterways are those waterways with a substantial likelihood of commercial navigation.

Oak Ridge National Laboratory and Vanderbilt University have created a geographic database of navigable waterways in and around the United States. The database, called the National Waterways Network, was created with input from the National Waterway GIS Design Committee, which is composed of representatives of the USACE, DOT's Bureau of Transportation Statistics (BTS), Volpe National Transportation Systems Center; Maritime Administration; Military Traffic Management Command; Tennessee Valley Authority; U.S. Environmental Protection Agency; U.S. Census Bureau; USCG; and DOT's Federal Railroad Administration. The database includes commercially navigable waterways and non-commercially navigable waterways. The database can be downloaded from BTS' Web site at *http://www.bts.gov/gis/ntatlas/networks.html*. Pipeline operators will be able to determine which areas of their pipeline intersect these designated commercially navigable waterways.

D. Reporting Requirements

The Act requires the Secretary to establish requirements for the operators to report potential or existing navigational hazards to the Secretary of Transportation through the appropriate USCG office. Current regulations at 49 CFR 192.612 and 195.413 on depth of burial inspection and reburial programs require pipeline operators to report to the USCG Regional Response Center the location of any hazard to navigation within 24 hours of discovery. The operator is also required to file a project report with RSPA/OPS within 60 days after the completion of the inspection. This proposed rule would maintain these requirements. Comments are specifically requested regarding the burden this reporting requirement may place upon operators.

E. Marking Exposed Pipelines Pending their Reburial

The Act specifies that "[t]he operator shall mark the location of the hazardous part with a Coast Guard approved marine buoy or marker." This proposed rule would maintain the depth of burial inspection and reburial program required by 49 CFR 192.612 and 195.413. The location of the reported hazard to navigation would be marked with USCG approved markers, placed at the ends of the pipeline segment and at intervals of not over 500 yards, except that a pipeline segment of less than 200 yards need only be marked at the center.

F. Reburial Requirements

MMS issues rights-of-way permits for pipelines on the OCS and requires that all newly constructed pipelines be buried to a depth of 36 inches in water less than 200 feet (30 CFR 250.153). OPS construction standards require that all newly constructed gas and hazardous liquid pipelines in offshore waters less than 12 feet deep must have a minimum of 36 inches of cover or 18 inches of cover in consolidated rock. Newly constructed gas and hazardous liquid pipeline in offshore waters from 12 feet to 200 feet deep must be installed so that the top of the pipeline is below the sea bed (49 CFR 192.327, 192.248, 192.319, and 192.246). This proposed rule would require that the exposed pipelines or pipelines which are a hazard to navigation be reburied to meet these requirements.

G. Abandoned Pipelines

The Act mandated that "pipeline facility" include underwater abandoned pipeline facilities and that if the abandoned facility had no operator, then the most recent operator of the facility was to be deemed the operator of the facility. On September 8, 2000, OPS issued a final rule requiring the last operator of an abandoned pipeline, offshore or crossing under, over, or through commercially navigable waterways, to submit a report of the abandonment to the Secretary of Transportation. Because it does not appear that these abandoned lines pose a hazard to navigation, this proposal would not apply to abandoned lines. Information collected under 49 CFR 192.727 and 195.59 will be considered to assess the danger posed by abandoned lines. Any requirements found to be necessary for abandon lines will be considered in a separate rulemaking.

H. Exposed Pipeline

Under current regulations in 49 CFR parts 192 and 195, "Exposed pipeline" means a pipeline where the top of the pipe is protruding above the seabed in water less than 15 feet (4.6 meters) deep, as measured from the mean low water level. This proposed rule would revise that definition to read "exposed underwater pipeline" to clarify that a pipeline can also be exposed onshore.

I. Gulf of Mexico and Its Inlets

Under current regulations "Gulf of Mexico and its inlets" means the waters from the mean high water mark on the coast of the Gulf of Mexico and its inlets open to the sea (excluding rivers, tidal marshes, lakes, and canals) seaward to include the territorial sea and OCS to a depth of 15 feet (4.6 meters), as measured from the mean low water level. This proposed rule would amend this definition to acknowledge that the Gulf of Mexico extends beyond a depth of 15 feet.

J. Underwater Natural Bottom

The Marine Board of the National Research Council recommended that the underwater natural bottom be defined to reduce confusion regarding the reference point for measuring cover. This proposed rule would establish this point as the surface which reflects a 50 kHz fathometer signal.

III. Advisory Committees

The Technical Hazardous Liquid Pipeline Safety Standards Committee is a Federal advisory committee established under section 204 of the Hazardous Liquid Pipeline Safety Act of 1974 (HLPSA) (49 App. U.S.C. 2003). The Technical Pipeline Safety Standards Committee is a Federal advisory committee established under section 4 of the Natural Gas Pipeline Safety Act of 1968 (NGPSA). These committees advise DOT on the feasibility, reasonableness, and practicability of standards imposed under HLPSA and NGPSA. RSPA/OPS will submit this proposal to the advisory committees and report on their recommendations prior to the issuance of a final rule.

IV. Regulatory Analyses and Notices

A. Paperwork Reduction Act

A copy of the Paperwork Reduction Analysis for this proposal has been put in the public docket for this rule. The following is a summary of the highlights of this analysis. Approximately 125 pipeline operators are potentially subject to this new requirement. It will take approximately 500 hours to develop and implement a program to determine the need for periodic inspection. The total industry time to develop this program is 62,500 hours.

Comments are invited on: (a) The need for the proposed collection of information for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques.

B. Executive Order 12866 and DOT Policies and Procedures

A regulatory evaluation for this proposed rule has been prepared and placed in the public docket for review and comment. Below is a summary of the findings of the regulatory evaluation. This proposed rule is a response to Congressional requirements that pipelines offshore and that cross under navigable waterways be periodically inspected and reburied if it is exposed or a hazard to navigation. The Congressional requirements come

in response to two accidents in 1980 in which fishing vessels hit underwater pipelines, resulting in multiple fatalities.

Approximately 125 companies operate underwater pipelines offshore and in navigable waterways. Under this proposal, each of these companies will be required to have formal written procedures for periodically inspecting their underwater pipeline facilities in waters less than 15 feet of depth.

A survey conducted by RSPA/OPS in 1992 determined that less than two percent of all underwater pipeline in waters of less than 15 feet were exposed or a hazard to navigation. Based on the above, RSPA/OPS believes that at most 10% of the affected underwater pipeline may need to be reinspected periodically. RSPA/OPS estimates that the initial cost of this proposal is $6.25 million with annual reinspection costs of approximately $200,000 per year. More details of the costs and benefits of this proposed rule can be found in the public docket.

C. Regulatory Flexibility Act

Based on the facts available about the anticipated impact of this rulemaking, I certify, pursuant to section 605 of the Regulatory Flexibility Act (5 U.S.C. 605), that this action will not have a significant economic impact on a substantial number of small entities. Few small entities operate pipelines subject to this proposed rule.

D. Environmental Assessment

A preliminary draft Environmental Assessment was conducted and is available in the docket. The inspection and reburial of the pipelines should not have a significant impact on the environment. Previous inspections of underwater pipelines in the Gulf of Mexico found less than two percent of the affected pipelines required reburial. This proposal only considers pipelines in less than 15 feet of water offshore and pipelines in navigable waterways. Because very little pipeline will actually require reburial this proposal will not have a significant impact on the human environment. If you disagree with the preliminary draft environmental assessment please submit your comments to the public docket.

E. Executive Order 12612—Federalism

RSPA/OPS has analyzed this action in accordance with the principles and criteria contained in Executive Order 12612 (52 FR 41685). RSPA/OPS has determined that the action does not have substantial direct effects on the States, on the relationship between the Federal government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore this rulemaking does not have sufficient federalism implications to warrant preparation of a federalism assessment.

List of Subjects

49 CFR Part 192

Administrative practice and procedure, Gas, Natural gas, Pipeline safety, Reports, Transportation.

49 CFR Part 195

Administrative practice and procedure, Hazardous liquid, Oil, Petroleum, Pipeline safety reports, Transportation.

In consideration of the foregoing, OPS proposes to amend parts 192 and 195 of title 49 of the Code of Federal Regulations as follows:

PART 192—TRANSPORTATION OF NATURAL AND OTHER GAS BY PIPELINE: MINIMUM FEDERAL SAFETY STANDARDS

1. The authority citation for part 192 would continue to read as follows:

Authority: 49 U.S.C. 5103, 60102, 60103, 60104, 60108, 60117, 60118, 60124; and 49 CFR 1.53.

2. Section 192.3 would be amended by removing the definition of "exposed pipeline"; revising the definitions of "Gulf of Mexico and its inlets" and "Hazard to navigation"; and adding definitions for "exposed underwater pipeline" and "underwater natural bottom" to read as follows:

§ 192.3 Definitions.

* * * * *

Exposed underwater pipeline means an underwater pipeline where the top of the pipe protrudes above the bottom.

* * * * *

Gulf of Mexico and its inlets means the waters from the mean high water mark of the coast of the Gulf of Mexico and its inlets open to the sea (excluding rivers, tidal marshes, lakes, and canals) seaward to include the territorial sea and OCS.

Hazard to navigation means for the purpose of this part, a pipeline where the top of the pipe is less than 24 inches (610 millimeters) below the seabed in water less than 15 feet (4.6 meters) deep, as measured from the mean low water level.

* * * * *

Underwater natural bottom means a surface that reflects a 50 kHz fathometer signal.

3. Section 192.612 would be amended by revising paragraph (a) to read as follows:

§ 192.612 Underwater inspection and reburial of pipelines.

(a) Each operator shall prepare and follow a procedure to conduct periodic underwater inspections of its offshore pipeline facilities and those crossing under navigable waterways in waters less than 15 feet deep to ensure that the pipeline is not exposed or a hazard to navigation. The procedures must be in effect one year from the publication date of the Final Rule.

* * * * *

PART 195—TRANSPORTATION OF HAZARDOUS LIQUIDS BY PIPELINE

1. The authority citation for part 195 would continue to read as follows:

Authority: 49 U.S.C. 5103, 60102, 60104, 60108, 60109, 60118; and 49 CFR 1.53.

2. Section 195.2 would be amended by removing the definition of "exposed pipeline"; revising the definitions of "Gulf of Mexico and its inlets"; and "hazard to navigation"; and adding definitions for "exposed underwater pipeline" and "underwater natural bottom" to read as follows:

§ 195.2 Definitions.

* * * * *

Exposed underwater pipeline means an underwater pipeline where the top of the pipe protrudes above the bottom.

Gulf of Mexico and its inlets means the waters from the mean high water mark of the coast of the Gulf of Mexico and its inlets open to the sea (excluding rivers, tidal marshes, lakes, and canals) seaward to include the territorial sea and the OCS.

Hazard to navigation means for the purpose of this part, a pipeline where the top of the pipe is less than 24 inches (610 millimeters) below the seabed in water less than 15 feet (4.6 meters) deep, as measured from the mean low water level.

* * * * *

Underwater natural bottom means the surface that reflects a 50 kHz fathometer signal.

3. Section 195.413 would be amended by revising paragraph (a) to read as follows:

§ 195.413 Underwater inspection and reburial of pipelines.

(a) Except for gathering lines of 4½-inch (114 mm) nominal outside diameter or smaller, each operator shall prepare and follow a procedure to conduct periodic underwater inspections of its offshore pipeline facilities and those crossing under navigable waterways in waters less than 15 feet deep to ensure that the pipeline is not exposed or a hazard to navigation.

The procedures must be in effect one year from the publication date of the Final Rule.

* * * * *

Issued in Washington, DC, on December 4, 2003.

Stacey L. Gerard,

Associate Administrator for Pipeline Safety.

[FR Doc. 03–30655 Filed 12–11–03; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 031126296–3296–01; I.D. 111903B]

RIN 0648–AQ84

Fisheries of the Northeastern United States; Atlantic Herring Fishery

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed 2004 specifications for the Atlantic herring fishery; request for comments.

SUMMARY: NOAA Fisheries proposes specifications for the 2004 Atlantic herring fishery. The regulations for the Atlantic herring fishery require NMFS to publish specifications for the upcoming year and to provide an opportunity for public comment. The intent of the specifications is to conserve and manage the Atlantic herring resource and provide for a sustainable fishery.

DATES: Comments must be received no later than 5 p.m., Eastern Standard Time, on January 12, 2004.

ADDRESSES: Copies of supporting documents, including the Environmental Assessment, Regulatory Impact Review, Initial Regulatory Flexibility Analysis (EA/RIR/IRFA), Essential Fish Habitat Assessment, and the Stock Assessment and Fishery Evaluation (SAFE) Report for the 2001 Atlantic Herring Fishing Year are available from Paul J. Howard, Executive Director, New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950. The EA/RIR/IRFA is accessible via the Internet at http://www.nero.nmfs.gov/ro/doc/nero.html.

Written comments on the proposed specifications should be sent to Patricia A. Kurkul, Regional Administrator, National Marine Fisheries Service, 1 Blackburn Drive, Gloucester, MA 01930. Mark on the outside of the envelope: "Comments--2004 Herring Specifications." Comments may also be sent via facsimile (fax) to (978) 281–9135. Comments will not be accepted if submitted via e-mail or the Internet.

FOR FURTHER INFORMATION CONTACT: Eric Jay Dolin, Fishery Policy Analyst, (978) 281–9259, e-mail at eric.dolin@noaa.gov, fax at (978) 281–9135.

SUPPLEMENTARY INFORMATION:

Regulations implementing the Atlantic Herring Fishery Management Plan (FMP) require the New England Fishery Management Council's (Council) Atlantic Herring Plan Development Team (PDT) to meet at least annually, no later than July each year, with the Atlantic States Marine Fisheries Commission's (Commission) Atlantic Herring Plan Review Team (PRT) to develop and recommend the following specifications for consideration by the Council's Atlantic Herring Oversight Committee: Allowable biological catch (ABC), optimum yield (OY), domestic annual harvest (DAH), domestic annual processing (DAP), total foreign processing (JVPt), joint venture processing (JVP), internal waters processing (IWP), U.S. at-sea processing (USAP), border transfer (BT), total allowable level of foreign fishing (TALFF), and reserve (if any). The PDT and PRT also recommend the total allowable catch (TAC) for each management area and subarea identified in the FMP. As the basis for its recommendations, the PDT reviews available data pertaining to: Commercial and recreational catch; current estimates of fishing mortality; stock status; recent estimates of recruitment; virtual population analysis results and other estimates of stock size; sea sampling and trawl survey data or, if sea sampling data are unavailable, length frequency information from trawl surveys; impact of other fisheries on herring mortality; and any other relevant information. Recommended specifications are presented to the Council for adoption and recommendation to NMFS.

Proposed 2004 Specifications

Taking into account existing scientific data and the ongoing activity to develop Amendment 1 to the Atlantic Herring Fishery Management Plan, the Council recommended at its May 2003 meeting that the 2003 specifications should be maintained for 2004, consistent with the PDT's recommendation. Based on the Council's recommendations, NMFS proposes the specifications and Area TACs contained in the following table.

SPECIFICATIONS AND AREA TACS FOR THE 2004 ATLANTIC HERRING FISHERY

Specification	Proposed Allocation (mt)
ABC	300,000
OY	250,000
DAH	250,000
DAP	226,000
JVPt	20,000
JVP	10,000 (Area 2 and 3 only)
IWP	10,000
USAP	20,000 (Area 2 and 3 only)
BT	4,000
TALFF	0
Reserve	0
TAC - Area 1A	60,000 (January 1 May 31, landings cannot exceed 6,000)
TAC - Area 1B	10,000
TAC - Area 2	50,000 (TAC reserve: 70,000)
TAC - Area 3	60,000

Maintaining the 2003 specifications for the 2004 fishing year is prudent and is unlikely to have significant biological consequences to the herring stock or its subcomponents in the short term. The Transboundary Resource Assessment Committee (TRAC) met in St. Andrew's, New Brunswick, from February 10–14, 2003. Both a U.S. and a Canadian assessment of the herring resource were presented and reviewed at the meeting. The two assessments diverged greatly and no consensus was reached regarding which assessment was more accurate or how the two could be reconciled. Because of this discrepancy, the TRAC information cannot be utilized at this time to support the development of different specifications for the 2004 fishing year. The expectation is that the analysis and evaluation of the TRAC results will continue and that the resulting information will inform the development of Amendment 1.

Classification

This proposed rule has been determined to be exempt from review under E.O. 12866.

The Council and NMFS prepared an initial regulatory flexibility analysis (IRFA) as required under section 603 of the Regulatory Flexibility Act. The IRFA describes the economic impact that this proposed rule, if adopted, would have on small entities. A summary of the analysis follows:

A description of the reasons why this action is being considered, and the objectives of this proposed rule can be found in the preamble to this proposed rule and are not repeated here. This action does not contain any collection-

of-information, reporting, or recordkeeping requirements. It would not duplicate, overlap, or conflict with any other Federal rules.

All of the affected businesses (fishing vessels) are considered small entities under the standards described in NOAA Fisheries guidelines because they have gross receipts that do not exceed $3.5 million annually. Based on 2002 data, there are an estimated 140 vessels prosecuting the fishery, 37 of which average more than 2000 lb of herring per trip. In assessing economic impacts for the 2004 specifications, landings from the 2002 fishery were used as a proxy for 2003 landings since 2002 was the last year in which a complete set of data was available. In addition, landings in the 2002 fishery are utilized as a baseline to determine impacts of the 2004 fishery. This presumes no significant change in production between the 2002 and 2003 fisheries. Since vessel level data are not readily available, changes in revenue are viewed as a proxy for changes in vessel profitability.

The specification of 250,000 mt for OY and DAH was approved for the 2003 fishery and is recommended for the 2004 fishery. At this level, there could be an increase of up to 158,169 mt in herring landings or $22,618,167 in revenue based on a market price of $143/mt, thus, allowing individual vessels to increase their profitability under the 2004 specifications. For the 2003 specifications, the Council also considered OY alternatives of 300,000 and ≤1,000,000 mt. At these OY level there would be increased potential revenues to a greater extent than the proposed 2004 alternative of 250,000 mt. In addition, at these levels there could be risks to the health of the herring stock. An additional alternative for DAH of 230,000 mt would also increase potential profits for the herring fleet although not to the extent of the proposed DAH.

Based on the proposed 2004 DAP specification of 226,000 mt, there could be an increase of up to 134,169 mt in herring landings or $19,186,167 in revenue based on $143/mt as compared to 2002 actual landings and revenue. Revenues to the fleet would also increase under the Council's proposed 2003 DAP alternatives of 236,000 mt and 176,000 mt. This would be true of any alternative greater than 91,831 mt, the total harvest for the 2002 fishery. However, the magnitude of economic impact of the DAP will rely on the processing sector's ability to expand markets and increase capacity to handle larger amounts of herring in 2004.

Overall, if the full amount of the JVP (10,000 mt) is harvested, revenues to the participating U.S. vessels would be approximately $1.4 million, based on an average price of $143/mt. However, little of the 10,000 mt JVP allocation was utilized in 2002, and the JVP allocation in 2003 is not expected to be fully utilized. As of June 2003, no JVP activity for herring has occurred during the 2003 fishing year. There is no indication at this time that demand for the JVP allocation will increase in 2004. As a result, no substantial economic impacts are expected in 2004 from continuing the 2003 specification of 10,000 mt for JVP. The Council also considered a JVP alternative of 5,000 mt for the 2003 specifications. This specification could yield an increase in revenue to participating US vessels since the specification is greater than what was actually harvested in the 2002 fishery. However, potential benefits would be far less than those estimated for a 10,000 mt JVP.

Approximately 6,132 mt of the 10,000 mt allocation of IWP was utilized in 2002. There is no indication at this time that demand for the IWP allocation will increase in 2004. As a result, no significant economic impacts are expected in 2004 from continuing the 2003 specifications for IWP.

The rollover of 2003 specifications should allow vessels to continue to expand into Areas 2 and 3, resulting in economic gains for individual vessels. The Area 1A and 1B TACs of 60,000 and 10,000 mt, respectively, have remained unchanged since the 2000 fishery. In 2002, the Area 1A TAC for the directed herring fishery was fully utilized and is expected to be fully utilized for the 2004 fishery. Therefore, no change is expected in profitability of vessels from the 2004 Area 1A specification, all other things being equal. Since only 7,416 mt of herring were harvested in Area 1B in 2002, the proposed 2004 specification of 10,000 mt should allow for increased economic benefits to individual vessels prosecuting the 2004 specification. Since the allocation of 20,000 mt to USAP has never been utilized, continuing to keep it at 20,000 mt in 2004 (or to keep it as a separate category) will not result in economic impacts in the short-term. The long-term implication of keeping USAP as a separate specification that gets an allocation, even though the allocation has never been utilized, is that it discourages investment in a form of processing that may be better able to respond to changing market and stock conditions, and it may have encouraged investment in more permanent onshore processing capacity.

The Council, in its 2003 EA/RIR/IRFA document, considered a Committee recommendation to reduce USAP by 5,000 mt, but rejected it based on comments that a vessel may enter the fishery in 2003 that could fully utilize the 20,000 mt specification. The reduction of the specification to 15,000 mt would reduce potential profits of USAP operations when compared to the status quo specification of 20,000 mt, although as yet, no part of USAP has been utilized.

Dated: December 8, 2003.

Rebecca Lent,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

[FR Doc. 03–30796 Filed 12–11–03; 8:45 am]

BILLING CODE 3510–22–S

Notices

Federal Register

Vol. 68, No. 239

Friday, December 12, 2003

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Additions

AGENCY: Committee for Purchase from People Who Are Blind or Severely Disabled.

ACTION: Proposed additions to Procurement List.

SUMMARY: The Committee is proposing to add to the Procurement List products and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

DATES: Comments must be received on or before: January 11, 2004.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia, 22202–3259.

FOR FURTHER INFORMATION CONTACT: Sheryl D. Kennerly, (703) 603–7740.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments of the proposed actions. If the Committee approves the proposed additions, the entities of the Federal government identified in the notice for each product or service will be required to procure the products and services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. If approved, the action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the products and services to the government.

2. If approved, the action will result in authorizing small entities to furnish the products and services to the government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the products and services proposed for addition to the Procurement List. Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

End of Certification

The following products and services are proposed for addition to Procurement List for production by the nonprofit agencies listed:

Products

Product/NSN: CD
7045–00–NIB–0191 (25 PK SPINDLE 700 MB 80 Min. 48 X CDR)
7045–00–NIB–0192 (50 PK SPINDLE 700 MB 80 Min. 48 X CDR)
7045–00–NIB–0194 (30 PK SPINDLE 700 MB 4X–10X 80 min. CDRW)
Product/NSN: DVD
7045–00–NIB–0196 (5 PK DVD+R IMATION 4.7 GB)
7045–00–NIB–0197 (25 PK DVD+R SPINDLE 4.7 GB)
7045–00–NIB–0198 (5 PK DVD–R IMATION 4.7 GB)
7045–00–NIB–0199 (25 PK DVD–R SPINDLE 4.7 GB)
7045–00–NIB–0200 (5 PK DVD+RW IMATION 4.7 GB)
7045–00–NIB–0201 (25 PK DVD+RW SPINDLE 4.7 GB)
NPA: North Central Sight Services, Inc., Williamsport, Pennsylvania
Contract Activity: Office Supplies & Paper Products Acquisition Center, New York, New York

Services

Service Type/Location: Custodial Services Dan E. Russell Federal Building, Gulfport, Mississippi
NPA: Mississippi Goodworks; Inc., Gulfport, Mississippi
Contract Activity: GSA, Property Management Center (4PMB), Atlanta, Georgia
Service Type/Location: Installation Support Services
Naval Surface Warfare Detachment, White Sands Missile Range, White Sands, New Mexico
NPA: Tresco, Inc., Las Cruces, New Mexico
Contract Activity: Army Contracting Agency, White Sands Directorate, White Sands, NM

Sheryl D. Kennerly,

Director, Information Management.

[FR Doc. 03–30782 Filed 12–11–03; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Additions

AGENCY: Committee for Purchase from People Who Are Blind or Severely Disabled.

ACTION: Additions to Procurement List.

SUMMARY: This action adds to the Procurement List products and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

EFFECTIVE DATE: January 11, 2004.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202–3259.

FOR FURTHER INFORMATION CONTACT: Sheryl D. Kennerly, (703) 603–7740.

SUPPLEMENTARY INFORMATION: On October 10, and October 17, 2003, the Committee for Purchase From People Who Are Blind or Severely Disabled published notice (68 FR 58651, and 59775/58776) of proposed additions to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the products and services and impact of the additions on the current or most recent contractors, the Committee has determined that the products and services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the products and services to the government.

2. The action will result in authorizing small entities to furnish the products and services to the government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the products and services proposed for addition to the Procurement List.

End of Certification

Accordingly, the following products and services are added to the Procurement List:

Products

Product/NSN: SKILCRAFT SAVVY
BK–1260 General Purpose Disinfectant Detergent—32 oz./7930–00–NIB–0176
BK–1260 General Purpose Disinfectant Detergent—1 Gallon/7930–00–NIB–0177
BK–1260 General Purpose Disinfectant Detergent—5 Gallon/7930–00–NIB–0178
BK–1260 General Purpose Disinfectant Detergent—55 Gallon/7930–00–NIB–0179
BK–14 Heavy Duty Degreasing Detergent—32 oz./7930–00–NIB–0144
BK–14 Heavy Duty Degreasing Detergent—1 Gallon/7930–00–NIB–0145
BK–14 Heavy Duty Degreasing Detergent—5 Gallon/7930–00–NIB–0146
BK–14 Heavy Duty Degreasing Detergent—55 Gallon/7930–00–NIB–0147
TR–43 Commercial Vehicle Cleaner—1 Gallon/7930–00–NIB–0127
TR–43 Commercial Vehicle Cleaner—5 Gallon/7930–00–NIB–0142
TR–43 Commercial Vehicle Cleaner—55 Gallon/7930–00–NIB–0143
NPA: Susquehanna Association for the Blind and Visually Impaired, Lancaster, Pennsylvania.
Contract Activity: Office Supplies & Paper Products Acquisition Center, New York, New York.

Services

Service Type/Location: Grounds Maintenance Newport Research Facilities, Newport, New York
NPA: Herkimer County Chapter, NYSARC, Inc., Herkimer, New York
Contract Activity: Air Force Research Laboratory/IFKO, Rome, New York
Service Type/Location: Janitorial/Custodial Eugene Outpatient Clinic, Department of Veteran Affairs, Eugene, Oregon
NPA: Garten Services, Inc., Salem, Oregon
Contract Activity: VA Medical Center, Roseburg, Oregon
Service Type/Location: Janitorial/Custodial Finger Lakes National Forest, Hector District Ranger Office, Hector, New York
NPA: Schuyler County Chapter, NYSARC, Inc., Watkins Glen, New York
Contract Activity: USDA, Forest Service, Rutland, Vermont
Service Type/Location: Janitorial/Custodial Robert J. Dole U.S. Courthouse, Kansas City, Kansas
NPA: Independence and Blue Springs Industries, Inc., Independence, Missouri
Contract Activity: GSA, Service Contracts (6PEF–C), Kansas City, Missouri
Service Type/Location: Switchboard Operation
Greater Los Angeles Health Care System, Los Angeles, California
At the following locations:
Los Angeles Ambulatory Care Center
Sepulveda Ambulatory Care Center
VA Medical Center, West Los Angeles
NPA: Lighthouse for the Blind of Houston, Houston, Texas
Contract Activity: VA Network Business Center, Long Beach, California
Service Type/Location: Switchboard Operation
Veterans Affairs Medical Center, Salem, Virginia
NPA: Virginia Industries for the Blind, Charlottesville, Virginia
Contract Activity: VA Medical Center, Hampton, Virginia

This action does not affect current contracts awarded prior to the effective date of this addition or options that may be exercised under those contracts.

Sheryl D. Kennerly,

Director, Information Management.

[FR Doc. 03–30783 Filed 12–11–03; 8:45 am]

BILLING CODE 6353–01–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Material Technical Advisory Committee; Notice of Partially Closed Meeting

The Materials Technical Advisory Committee will meet on January 15, 2004, 10:30 a.m., Herbert C. Hoover Building, Room 3884, 14th Street between Constitution and Pennsylvania Avenues, NW., Washington, DC. The Committee advises the Office of the Assistant Secretary for Export Administration with respect to technical questions that affect the level of export controls applicable to materials and related technology.

Agenda

Public Session

1. Opening remarks and introductions.
2. Presentation of papers and comments by the public.
3. Reports on status of recent Australia Group (AG) proposals.
4. Introduction or new U.S. proposals for AG controls.

Closed Session

5. Discussion of matters properly classified under Executive Order 12958, dealing with U.S. export control programs and strategic criteria related thereto.

A limited number of seats will be available during the public session of the meeting. Reservations are not accepted. To the extent time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting. However, to facilitate distribution of public presentation materials to Committee members, the materials should be forwarded prior to the meeting to the address below: Ms. Lee Ann Carpenter, BIS MS: 1099D, U.S. Department of Commerce, 14th St., and Constitution Ave., NW., Washington, DC 20230.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on February 6, 2003, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, that the series of meetings or portions of meetings of the Committee and of any Subcommittee thereof dealing with the classified materials listed in 5 U.S.C. 552(c)(1) shall be exempt from the provisions relating to public meetings found in section 10(a)(1) and (a)(3) of the Federal Advisory Committee Act. The remaining series of meetings or portions thereof will be open to the public.

For more information, call Lee Ann Carpenter at (202) 482–2583.

Dated: December 8, 2003.

Lee Ann Carpenter,

Committee Liaison Officer.

[FR Doc. 03–30760 Filed 12–11–03; 8:45 am]

BILLING CODE 3510–JT–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A-570–881]

Antidumping Duty Order: Certain Malleable Iron Pipe Fittings From the People's Republic of China

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Antidumping Duty Order.

EFFECTIVE DATE: December 12, 2003.

FOR FURTHER INFORMATION CONTACT: Anya Naschak, Helen Kramer, or Ann Barnett-Dahl at (202) 482–6375, (202) 482–0405, or (202) 482–3833, respectively; Antidumping and Countervailing Duty Enforcement Group III, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Scope of Order

For purposes of this order, the products covered are certain malleable iron pipe fittings, cast, other than grooved fittings, from the People's Republic of China. The merchandise is classified under item numbers 7307.19.90.30, 7307.19.90.60 and 7307.19.90.80 of the Harmonized Tariff Schedule (HTSUS). Excluded from the scope of this order are metal compression couplings, which are imported under HTSUS number 7307.19.90.80. A metal compression coupling consists of a coupling body, two gaskets, and two compression nuts. These products range in diameter from 1/2 inch to 2 inches and are carried only in galvanized finish. Although HTSUS subheadings are provided for convenience and U.S. Customs and Border Protection (CBP) purposes, the Department's written description of the scope of this proceeding is dispositive.

Antidumping Duty Order

In accordance with section 735(a) of the Act, the Department made its final determination that malleable iron pipe fittings (MPF) from the People's Republic of China (the PRC) is being sold at less-than-fair-value (LTFV). *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Malleable Iron Pipe Fittings from the PRC*, 68 FR 61395 (October 28, 2003). Subsequently, the Department amended its final determination of the antidumping duty investigation of MPF from the PRC to correct certain ministerial errors in the final margin calculation. *See Notice of Amended Final Determination of Sales at Less Than Fair Value: Certain Malleable Iron Pipe Fittings from the People's Republic of China*, 68 FR 65873 (November 24, 2003). On December 3, 2003, the International Trade Commission (ITC) notified the Department of Commerce (the Department) of its final determination, pursuant to section 735(b)(1)(A)(ii) of the Tariff Act of 1930, as amended (the Act), that the industry in the United States producing MPF is threatened with material injury by reason of import of the subject merchandise from the PRC. In accordance with section 736(a)(1) of the Act, the Department will direct CBP to assess, upon further advice by the administering authority, antidumping duties equal to the amount by which the normal value of the merchandise exceeds the U.S. price of the merchandise for all relevant entries of MPF from the PRC.

Section 736(b)(2) of the Act provides that duties shall be assessed on subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of the ITC's notice of final determination if that determination is based on the threat of material injury and is not accompanied by a finding that injury would have resulted but for the imposition of suspension of liquidation of entries since the Department's preliminary determination. In addition, section 736(b)(2) of the Act requires CBP to refund any cash deposits or bonds of estimated antidumping duties posted since the Department's preliminary antidumping determination if the ITC's final determination is based on a threat of material injury.

Because the ITC's final determination in this case is based on the threat of material injury and is not accompanied by a finding that injury would have resulted but for the imposition of suspension of liquidation of entries since the Department's preliminary determination, section 736(b)(2) of the Act is applicable to this order. Therefore, the Department will direct CBP to assess, upon further advice, antidumping duties on all unliquidated entries of MPF from the PRC entered, or withdrawn from warehouse, for consumption on or after the date of publication of the ITC's notice of final determination of threat of material injury in the **Federal Register** and terminate the suspension of liquidation for entries of MPF from the PRC entered, or withdrawn from warehouse, for consumption prior to that date. The Department will also instruct CBP to refund any cash deposits made, or bonds posted, between the period 90 days prior to the publication date of the Department's preliminary antidumping determination and the publication of the ITC's final determination.

On or after the date of publication of this notice in the **Federal Register**, CBP must require, at the same time as importers would normally deposit estimated duties on this merchandise, a cash deposit equal to the estimated weighted-average antidumping duty margins noted below:

Exporter/Manufacturer	Margin (percent)
Jinan Meide Casting Co., Ltd.	11.31
Beijing Sai Lin Ke Hardware Co. Ltd.	15.92
Langfang Pannext Pipe Fitting Co., Ltd.	7.35
Chengde Malleable Iron General Factory	11.18
SCE Co., Ltd.	11.18
PRC-Wide	111.36

The "PRC-wide" rate applies to all exporters in the PRC of subject merchandise not specifically listed above.

This notice constitutes the antidumping duty order with respect to MPF from the PRC, pursuant to section 736(a) of the Act. Interested parties may contact the Department's Central Records Unit, room B-099 of the main Commerce building, for copies of an updated list of the antidumping duty orders currently in effect.

This order is published in accordance with section 736(a) of the Act, and 19 CFR 351.211(b).

Dated: December 5, 2003.

James J. Jochum,

Assistant Secretary for Import Administration.

[FR Doc. E3–00548 Filed 12–11–03; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

Interntational Trade Administration

[A–570–855]

Certain Non-Frozen Apple Juice Concentrate from the People's Republic of China: Notice of Court Decision and Suspension of Liquidation

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On November 20, 2003, in *Yantai Oriental Juice Co., et al.* v. United States and Coloma Frozen Foods, Inc., et al., Court No. 00–00309, Slip Op. 03–150, the Court of International Trade ("CIT") affirmed the Department of Commerce's ("the Department's") remand determinations and entered a judgment order. This litigation related to the Department's *Notice of Final Determination of Sales at Less Than Fair Value: Certain Non-Frozen Apple Juice Concentrate From the People's Republic of China*, 65 FR 19873 (April 13, 2000) and accompanying Issues and Decision Memorandum (April 6, 2000) ("*Issues and Decision Memorandum*"), and

Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Certain Non-Frozen Apple Juice Concentrate from the People's Republic of China, 65 FR 35606 (June 5, 2000) (collectively, "*Final Determination*").

In its remand determinations, the Department reviewed the record evidence regarding the selection of a surrogate country; the valuation of juice apples, steam coal, and ocean freight; and the calculation of selling, general and administrative ("SG&A") expenses, overhead, and profit. The Department found that Turkey, rather than India was the appropriate surrogate country. Juice apples, SG&A, overhead and profit were valued using surrogate value information from Turkey. Steam coal was valued using a domestic Indian price and the ocean freight rate was revised to include a rate for Detroit.

As the remand determinations resulted in changes to calculated company-specific margins, the Department also recalculated the separate rate margin it applied to producers/exporters that responded to the Department's separate rate ("Section A") questionnaire but were not selected to respond ("separate-rate companies"). The calculated antidumping rate for Xian Yang Fuan Juice Co., Ltd. ("Fuan"), Xian Asia Qin Fruit Co., Ltd. ("Asia"), Changsha Industrial Products & Minerals Import & Export Corporation ("Changsha Industrial"), and Shandong Foodstuffs Import & Export Corporation ("Shandong Foodstuffs") (collectively "separate-rate companies") is 3.83 percent.

The remand determinations also resulted in weighted average margins of zero percent for Yantai Oriental Juice Co. ("Oriental"), Qingdao Nannan Foods Co. ("Nannan"), Sanmenxia Lakeside Fruit Juice Co. Ltd. ("Lakeside"), Shaanxi Haisheng Fresh Fruit Juice Co. ("Haisheng"), and SDIC Zhonglu Juice Group Co. ("Zhonglu"). Therefore, these companies will be excluded from the antidumping duty order on certain non-frozen apple juice concentrate ("AJC") from the People's Republic of China ("PRC").

The PRC-wide rate of 51.74 percent is unchanged from our final determination in the investigation.

Consistent with the decision of the U.S. Court of Appeals for the Federal Circuit in *Timken Co. v. United States*, 893 F.2d 337 (Fed. Cir. 1990) ("Timken"), the Department will continue to order the suspension of liquidation of the subject merchandise until there is a "conclusive" decision in this case. If the case is not appealed, or if it is affirmed on appeal, the Department will instruct U.S. Customs and Border Protection to terminate the suspension of liquidation for Oriental, Nannan, Lakeside, Haisheng, and Zhonglu and revise the cash deposit rate from the investigation for Fuan, Asia, Changsha Industrial, and Shandong Foodstuffs.

EFFECTIVE DATE: December 12, 2003.

FOR FURTHER INFORMATION CONTACT: Audrey Twyman or John Brinkmann, AD/CVD Enforcement Group I, Office 1, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–3534 or (202) 482–4126, respectively.

SUPPLEMENTARY INFORMATION:

Background

Following publication of the *Final Determination*, Oriental, Nannan, Lakeside, Haisheng, Zhonglu, Fuan, Asia, Changsha Industrial and Shandong Foodstuffs (collectively the "respondents"), filed lawsuits with the CIT challenging the Department's *Final Determination*.

In the underlying investigation, the Department was required to choose a surrogate country based on "significant production" of "comparable merchandise" and "economic comparability" to the PRC. The Department selected India because it is economically comparable to the PRC, and a significant producer of apples and single strength apple juice, products the Department found to be comparable to AJC. The Department then valued the juice apples, SG&A, overhead, profit, steam coal and other factors of production in India. In calculating ocean freight rates, the Department included freight rates to Detroit in its calculation of an East Coast freight rate.

The Court remanded five issues to the Department.

First, the Court questioned the Department's reliance on a market study included in the petition and an annual report for an Indian company as the basis for determining that India was a significant producer of comparable merchandise. In particular, the Court found the Department had not corroborated the market study, nor had it explained the connection between the market study and the annual report, and the Department's conclusion that India was a significant producer of AJC. The Court similarly rejected the Department's determination that India's status as a significant producer of apples was relevant to the Department's treatment of India as a significant producer of comparable merchandise.

The Court directed the Department to develop sufficient evidence from the record of India's suitability as the surrogate market economy country for AJC production, or, if it could not, to select another suitable country.

Second, the Court instructed the Department to provide an explanation of why the distortions caused by the Government of India's market intervention scheme did not disturb the fair market value of Indian apples. The Court also directed the Department to explain why it treated government subsidies that enabled producers to lower their prices as market distorting, but did not apply the same treatment to such subsidies that raise prices. Furthermore, the Court requested that the Department explain why the price paid by Himachal Pradesh Horticultural Produce Marketing & Processing Corp., a government-controlled entity, should be considered a market-derived price.

Third, for steam coal valuation, the Department used Indian import statistics data because it found that the value was contemporaneous with the period of investigation and because there was no evidence to suggest that the data was aberrational or unreliable. The Court instructed the Department either to recalculate normal value using Indian domestic prices for steam coal, or explain why the use of domestic prices for steam coal was not appropriate during the period of investigation.

Fourth, the Court argued that the Department's use of data from the *Reserve Bank of India Bulletin*, rather than data from an Indian producer to value SG&A and overhead was not supported by substantial evidence on the record and instructed the Department to either recalculate these values using the financial statement of an Indian producer, or fully explain why the Department felt that the *Reserve Bank of India Bulletin* gave better financial data.

Finally, the Court instructed the Department to explain its reasoning for not calculating a separate Detroit freight rate and to explain why the Department did not weigh its calculation to reflect accurately the volume of merchandise actually shipped to each destination.

To assist it in complying with the Court's instructions, the Department opened the record and requested new information concerning possible surrogate countries. The petitioners submitted data supporting the use of Poland, while the respondents pointed to Turkish data that they had placed on the record in the investigation.

The "Draft Results Pursuant to Court Remand" ("*First Draft Results*") was released to the parties on November 6, 2002. In its First Draft Results, pursuant to the analysis followed by the Court, the Department concluded that the record did not support its determination in the investigation that India was a significant producer of AJC. Instead, the Department determined that Turkey was a more appropriate surrogate country for the PRC because it was the country most economically comparable to the PRC that was also a significant producer of AJC.

Accordingly, the Department amended its calculations using Turkish data to value juice apples, SG&A expenses, overhead, and profit. The Department also changed its valuations of steam coal and East Coast freight. Because the Department's recalculated company-specific margins were all zero percent, the Department also recalculated the margin for the separate-rate companies by weighting the calculated margins of zero with the PRC-wide rate of 51.74%, resulting in a separate rates margin of 28.33%.

Comments on the *First Draft Results* were received from all parties on November 12, 2002. On November 15, 2002, the Department responded to the Court's Order by filing its "Redetermination Pursuant to Court Remand." ("*First Redetermination*"). The Department's *First Redetermination* was similar to the *First Draft Results* except for the inclusion of the Department's response to comments submitted by the petitioners and respondents. The final margins in the *First Redetermination* were identical to the *First Draft Results*.

The CIT affirmed, in part, the Department's *First Redetermination* on March 21, 2003. *See Yantai Oriental Juice Co., et al. v. United States and Coloma Frozen Foods, Inc., et al.* Court No. 00–00309, Slip Op. 03–33 (March 21, 2003). The Court affirmed the Department's calculation of company-specific margins but remanded the calculation of the antidumping margin for the separate-rate companies because the Court found that the Department's methodology, weight-averaging the PRC-wide rate and the zero margins, was not supported by substantial evidence on the record.

Accordingly, the "Draft Redetermination Pursuant to Court Remand" ("*Second Draft Results*") was released to the parties on April 18, 2003. In its *Second Draft Results*, the Department reviewed the record evidence and, based on information on the record, calculated a normal value and export price for the separate rate companies. Using this information, the Department calculated estimated margins for the separate rate companies and weight-averaged these margins with the zero margins for the fully-investigated companies and derived a separate rate of 4.91 percent.

Comments on the *Second Draft Results* were received on April 23, 2003. On May 5, 2003, the Department responded to the Court's Order of Remand by filing its "Redetermination Pursuant to Court Remand." ("*Second Redetermination*"). The Department's *Second Redetermination* differed from the *Second Draft Results* in that in calculating export price, we removed the fully-investigated companies' constructed export price sales, and adjusted our calculations to reflect the different terms of sale. These changes resulted in a weighted-average separate-rate margin of 3.83%.

The CIT affirmed the Department's *Second Redetermination* on November 20, 2003. *See Yantai Oriental Juice Co., et al. v. United States and Coloma Frozen Foods, Inc., et al.* Court No. 00–00309, Slip Op. 03–150 (November 20, 2003).

Suspension of Liquidation

The U.S. Court of Appeals for the Federal Circuit, in *Timken*, held that the Department must publish notice of a decision of the CIT or the Federal Circuit which is not "in harmony" with the Department's *Final Determination*. Publication of this notice fulfills that obligation. The Federal Circuit also held that the Department must suspend liquidation of the subject merchandise until there is a "conclusive" decision in the case. Therefore, pursuant to *Timken*, the Department must continue to suspend liquidation pending the expiration of the period to appeal the CIT's November 20, 2003, decision or, if that decision is appealed, pending a final decision by the Federal Circuit. In the event that the CIT's ruling is not appealed, or if appealed and upheld by the Court of Appeals for the Federal Circuit, the Department will instruct U.S. Customs and Border Protection to revise cash deposit rates and liquidate relevant entries covering the subject merchandise effective the date of publication of this notice in the **Federal Register**.

Dated: December 5, 2003.

James J. Jochum,

Assistant Secretary for Import Administration.

[FR Doc. E3–00550 Filed 12–11–03; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–427–814]

Notice of Final Results of Antidumping Duty Administrative Review: Stainless Steel Sheet and Strip in Coils From France

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Final Results of Antidumping Duty Administrative Review of Stainless Steel Sheet and Strip in Coils from France.

SUMMARY: On August 7, 2003, the Department of Commerce ("Department") published the preliminary results of the administrative review of the antidumping duty order on stainless steel sheet and strip in coils from France. The merchandise covered by the order is stainless steel sheet and strip in coils ("SSSS") as described in the "Scope of the Review" section of the Federal Register notice. This review covers imports of subject merchandise from Ugine, S.A ("Ugine"). The period of review ("POR") is July 1, 2001, through June 30, 2002.

Based on our analysis of the comments received, we have made changes in the margin calculation. Therefore, the final results differ from the preliminary results of review. The final weighted-average dumping margin for Ugine is listed below in the section entitled "Final Results of the Review."

EFFECTIVE DATE: December 12, 2003.

FOR FURTHER INFORMATION CONTACT: Cheryl Werner, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–2667.

SUPPLEMENTARY INFORMATION:

Background

On August 7, 2003, the Department published the *Preliminary Results of Antidumping Duty Administrative Review: Stainless Steel Sheet and Strip in Coils from France*, 68 FR 47049 (August 7, 2003) ("*Preliminary Results*"). In accordance with 19 CFR 351.309(c)(ii), we invited parties to comment on our *Preliminary Results*. On September 8, 2003, Ugine and the Petitioners filed comments. On September 15, 2003, Ugine and the Petitioners[1] filed rebuttal comments. We

[1] The Petitioners in this case are Allegheny Ludlum, AK Steel Corporation, North American Stainless, Butler-Armco Independent Union.

Continued

have now completed the administrative review in accordance with section 751 of the Act.

Scope of the Review

For purposes of this administrative review, the products covered are certain stainless steel sheet and strip in coils. Stainless steel is an alloy steel containing, by weight, 1.2 percent or less of carbon and 10.5 percent or more of chromium, with or without other elements. The subject sheet and strip is a flat-rolled product in coils that is greater than 9.5 mm in width and less than 4.75 mm in thickness, and that is annealed or otherwise heat treated and pickled or otherwise descaled. The subject sheet and strip may also be further processed (*e.g.*, cold-rolled, polished, aluminized, coated, *etc.*) provided that it maintains the specific dimensions of sheet and strip following such processing.

The merchandise subject to this order is currently classifiable in the *Harmonized Tariff Schedule of the United States* ("HTS") at subheadings: 7219.13.0031, 7219.13.0051, 7219.13.0071, 7219.1300.81[2], 7219.14.0030, 7219.14.0065, 7219.14.0090, 7219.32.0005, 7219.32.0020, 7219.32.0025, 7219.32.0035, 7219.32.0036, 7219.32.0038, 7219.32.0042, 7219.32.0044, 7219.33.0005, 7219.33.0020, 7219.33.0025, 7219.33.0035, 7219.33.0036, 7219.33.0038, 7219.33.0042, 7219.33.0044, 7219.34.0005, 7219.34.0020, 7219.34.0025, 7219.34.0030, 7219.34.0035, 7219.35.0005, 7219.35.0015, 7219.35.0030, 7219.35.0035, 7219.90.0010, 7219.90.0020, 7219.90.0025, 7219.90.0060, 7219.90.0080, 7220.12.1000, 7220.12.5000, 7220.20.1010, 7220.20.1015, 7220.20.1060, 7220.20.1080, 7220.20.6005, 7220.20.6010, 7220.20.6015, 7220.20.6060, 7220.20.6080, 7220.20.7005, 7220.20.7010, 7220.20.7015, 7220.20.7060, 7220.20.7080, 7220.20.8000, 7220.20.9030, 7220.20.9060, 7220.90.0010, 7220.90.0015, 7220.90.0060, and 7220.90.0080. Although the HTS subheadings are provided for convenience and customs purposes, the Department's written description of the merchandise under review is dispositive.

Excluded from the review of this order are the following: (1) sheet and strip that is not annealed or otherwise heat treated and pickled or otherwise descaled, (2) sheet and strip that is cut to length, (3) plate (*i.e.*, flat-rolled stainless steel products of a thickness of 4.75 mm or more), (4) flat wire (*i.e.*, cold-rolled sections, with a prepared edge, rectangular in shape, of a width of not more than 9.5 mm), and (5) razor blade steel. Razor blade steel is a flat-rolled product of stainless steel, not further worked than cold-rolled (cold-reduced), in coils, of a width of not more than 23 mm and a thickness of 0.266 mm or less, containing, by weight, 12.5 to 14.5 percent chromium, and certified at the time of entry to be used in the manufacture of razor blades. *See* chapter 72 of the HTS, "Additional U.S. Note" 1(d).

Flapper valve steel is also excluded from the scope of the order. This product is defined as stainless steel strip in coils containing, by weight, between 0.37 and 0.43 percent carbon, between 1.15 and 1.35 percent molybdenum, and between 0.20 and 0.80 percent manganese. This steel also contains, by weight, phosphorus of 0.025 percent or less, silicon of between 0.20 and 0.50 percent, and sulfur of 0.020 percent or less. The product is manufactured by means of vacuum arc remelting, with inclusion controls for sulphide of no more than 0.04 percent and for oxide of no more than 0.05 percent. Flapper valve steel has a tensile strength of between 210 and 300 ksi, yield strength of between 170 and 270 ksi, plus or minus 8 ksi, and a hardness (Hv) of between 460 and 590. Flapper valve steel is most commonly used to produce specialty flapper valves in compressors.

Also excluded is a product referred to as suspension foil, a specialty steel product used in the manufacture of suspension assemblies for computer disk drives. Suspension foil is described as 302/304 grade or 202 grade stainless steel of a thickness between 14 and 127 microns, with a thickness tolerance of plus-or-minus 2.01 microns, and surface glossiness of 200 to 700 percent Gs. Suspension foil must be supplied in coil widths of not more than 407 mm, and with a mass of 225 kg or less. Roll marks may only be visible on one side, with no scratches of measurable depth. The material must exhibit residual stresses of 2 mm maximum deflection, and flatness of 1.6 mm over 685 mm length.

Certain stainless steel foil for automotive catalytic converters is also excluded from the scope of this order. This stainless steel strip in coils is a specialty foil with a thickness of between 20 and 110 microns used to produce a metallic substrate with a honeycomb structure for use in automotive catalytic converters. The steel contains, by weight, carbon of no more than 0.030 percent, silicon of no more than 1.0 percent, manganese of no more than 1.0 percent, chromium of between 19 and 22 percent, aluminum of no less than 5.0 percent, phosphorus of no more than 0.045 percent, sulfur of no more than 0.03 percent, lanthanum of less than 0.002 or greater than 0.05 percent, and total rare earth elements of more than 0.06 percent, with the balance iron.

Permanent magnet iron-chromium-cobalt alloy stainless strip is also excluded from the scope of this order. This ductile stainless steel strip contains, by weight, 26 to 30 percent chromium, and 7 to 10 percent cobalt, with the remainder of iron, in widths 228.6 mm or less, and a thickness between 0.127 and 1.270 mm. It exhibits magnetic remanence between 9,000 and 12,000 gauss, and a coercivity of between 50 and 300 oersteds. This product is most commonly used in electronic sensors and is currently available under proprietary trade names such as "Arnokrome III."[3]

Certain electrical resistance alloy steel is also excluded from the scope of this order. This product is defined as a non-magnetic stainless steel manufactured to American Society of Testing and Materials (ASTM) specification B344 and containing, by weight, 36 percent nickel, 18 percent chromium, and 46 percent iron, and is most notable for its resistance to high temperature corrosion. It has a melting point of 1390 degrees Celsius and displays a creep rupture limit of 4 kilograms per square millimeter at 1000 degrees Celsius. This steel is most commonly used in the production of heating ribbons for circuit breakers and industrial furnaces, and in rheostats for railway locomotives. The product is currently available under proprietary trade names such as "Gilphy 36."[4]

Certain martensitic precipitation-hardenable stainless steel is also excluded from the scope of this order. This high-strength, ductile stainless steel product is designated under the Unified Numbering System (UNS) as S45500-grade steel, and contains, by weight, 11 to 13 percent chromium, and 7 to 10 percent nickel. Carbon, manganese, silicon and molybdenum each comprise, by weight, 0.05 percent or less, with phosphorus and sulfur each comprising, by weight, 0.03 percent or less. This steel has copper, niobium, and titanium added to achieve aging, and will exhibit yield strengths as high as 1700 Mpa and ultimate tensile strengths as high as 1750 Mpa after aging, with elongation percentages of 3 percent or less in 50 mm. It is generally provided in thicknesses between 0.635 and 0.787 mm, and in widths of 25.4 mm. This product is most commonly used in the manufacture of television tubes and is currently available under proprietary trade names such as "Durphynox 17."[5]

Finally, three specialty stainless steels typically used in certain industrial blades and surgical and medical instruments are also excluded from the scope of this order. These include stainless steel strip in coils used in the production of textile cutting tools (*e.g.*, carpet knives).[6] This steel is similar to AISI grade 420 but containing, by weight, 0.5 to 0.7 percent of molybdenum. The steel also contains, by weight, carbon of between 1.0 and 1.1 percent, sulfur of 0.020 percent or less, and includes between 0.20 and 0.30 percent copper and between 0.20 and 0.50 percent cobalt. This steel is sold under proprietary names such as "GIN4 Mo." The second excluded stainless steel strip in coils is similar to AISI 420-J2 and contains, by weight, carbon of between 0.62 and 0.70 percent, silicon of between 0.20 and 0.50 percent, manganese of between 0.45 and 0.80 percent, phosphorus of no more than 0.025 percent and sulfur of no more than 0.020 percent. This steel has a carbide density on average of 100 carbide particles per 100 square microns. An example of this product is "GIN5" steel. The third specialty steel has a chemical composition similar to AISI 420 F, with carbon of between 0.37 and 0.43 percent, molybdenum of between 1.15 and 1.35 percent, but lower manganese of between 0.20 and 0.80 percent, phosphorus of no more than 0.025 percent, silicon of between 0.20 and 0.50 percent, and sulfur of no more than 0.020 percent. This product is supplied with a hardness of more than Hv 500 guaranteed after customer processing, and is supplied as, for example, "GIN6".[7]

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this administrative review are addressed in the "Issues and Decision Memorandum" ("*Decision Memorandum*") from Joseph A. Spetrini, Deputy Assistant Secretary for Import Administration, Group III, to James J. Jochum, Assistant Secretary for Import Administration, dated December 5, 2003, which is hereby adopted by this notice. A list of the issues which parties raised, and to which we have responded, all of which are in the *Decision Memorandum*, is attached to this notice as an Appendix. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in this public memorandum which is on file in the Central Records Unit, Room B-099 of the main Department building. In addition, a complete version of the *Decision Memorandum* can be accessed directly on the Web at *http://ia.ita.doc.gov/*. The paper copy and electronic version of the *Decision Memorandum* are identical in content.

Changes Since the Preliminary Results

Based on our analysis of comments received, we have made changes in the margin calculation. The changes to the margin calculations include the following: (1) we corrected the double-counting of warranty expenses in the total cost of production calculation; (2) we removed imputed interest expenses from the total cost of production calculation; (3) we deducted commission expenses from the net price used in the arm's-length test; (4) we revised the offset for sales where the commission amount on the matched U.S. sale was zero.

Successorship

We determine Ugine & ALZ France to be the successor to Ugine for purposes of determining antidumping duty liability. For a complete discussion of the basis for this decision see the *Preliminary Results* (68 FR 47051, 47052). No parties have commented on our finding in the *Preliminary Results*. Therefore, Ugine & ALZ France shall be assigned the antidumping duty deposit rate in these *Final Results*.

Final Results of Review

We determine that the following percentage margin exists for the period July 1, 2001, through June 30, 2002:

STAINLESS STEEL SHEET AND STRIP IN COILS FROM FRANCE

Manufacturer/exporter/reseller	Weighted-Average Margin (percent)
Ugine & ALZ France	2.93

The Department shall determine, and U.S. Customs and Border Protection shall assess, antidumping duties on all appropriate entries. The Department will issue appraisement instructions directly to U.S. Customs and Border Protection. For duty-assessment purposes, we calculated importer-specific assessment rates by dividing the dumping margins calculated for each importer by the total entered value of sales for each importer during the period of review.

Cash Deposit Requirements

The following deposit requirements will be effective upon publication of this notice of final results of administrative review for all shipments of stainless steel sheet and strip in coils from France entered, or withdrawn from warehouse, for consumption on or after the date of publication, as provided by section 751(a)(1) of the Act: (1) The cash deposit rate for Ugine & ALZ France will be the rate shown above; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original less-than-fair-value (LTFV) investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered in these or any previous reviews conducted by the Department, the cash deposit rate will be the "all others" rate, which is 9.38 percent.

These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

Reimbursement of Duties

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties or countervailing duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that

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Zanesville Armco Independent Organization Inc., and the United Steelworkers of America, AFL-CIO/CLC

[2] Due to changes to the HTS numbers in 2001, 7219.13.0030, 7219.13.0050, 7219.13.0070, and 7219.13.0080 are now 7219.13.0031, 7219.13.0051, 7219.13.0071, and 7219.13.0081, respectively.

[3] "Arnokrome III" is a trademark of the Arnold Engineering Company.

[4] "Gilphy 36" is a trademark of Imphy, S.A.

[5] "Durphynox 17" is a trademark of Imphy, S.A.

[6] This list of uses is illustrative and provided for descriptive purposes only.

[7] "GIN4 Mo," "GIN5" and "GIN6" are the proprietary grades of Hitachi Metals America, Ltd.

reimbursement of the antidumping duties or countervailing duties occurred and the subsequent assessment of double antidumping duties or countervailing duties.

Notification of Interested Parties

This notice also serves as a reminder to parties subject to administrative protective orders ("APOs") of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305, which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

We are issuing and publishing this determination and notice in accordance with sections 751(a)(1) of the Act.

Dated: December 5, 2003.

James J. Jochum,

Assistant Secretary for Import Administration.

APPENDIX 1—ISSUES IN THE DECISION MEMORANDUM

1. Date of Sale
2. U.S. Sales Database
3. Affiliated Freight-Forwarder Expenses
4. U.S. Inventory Carrying Costs
5. Home Market Credit Expenses
6. Home Market Inland Freight Expenses
7. Home Market Rebate
8. Affiliated Inland Freight Carrier Expenses
9. Ugine France Service Commissions
10. Indirect Selling Expenses
11. Gross-to-Net Adjustment
12. Constructed Export Price Offset
13. Negative Dumping Margins
14. Home Market Warranty Expenses
15. Interest Expenses
16. Commission Expenses in Arm's-Length Test
17. Home Market Commissions

[FR Doc. E3–00547 Filed 12–11–03; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–475–824]

Stainless Steel Sheet and Strip in Coils from Italy: Final Results of Antidumping Administrative Review

AGENCY: Import Administration, International Trade Administration, U.S. Department of Commerce.

ACTION: Notice of Final Results in the Antidumping Duty Administrative Review of Stainless Steel Sheet and Strip in Coils from Italy.

SUMMARY: On August 7, 2003, the U.S. Department of Commerce ("Department") published in the **Federal Register** the preliminary results of its administrative review of the antidumping duty order on stainless steel sheet and strip in coils from Italy. *See Preliminary Results of Antidumping Duty Administrative Review: Stainless Steel Sheet and Strip in Coils from Italy*, 68 FR 47032 (August 7, 2003) ("*Preliminary Results*"). This review covers imports of subject merchandise from ThyssenKrupp Acciai Speciali Terni S.p.A ("TKAST") and ThyssenKrupp AST USA, Inc.("TKAST USA"). The period of review ("POR") is July 1, 2001, through June 30, 2002.

Based on our analysis of the comments received, we have made changes to our analysis from the preliminary results of review. Therefore, the final results differ from the preliminary results. The final weighted-average dumping margin for the reviewed firm is listed below in the section entitled "Final Results of the Review."

EFFECTIVE DATE: December 12, 2003.

FOR FURTHER INFORMATION CONTACT: Catherine Bertrand or Robert Bolling, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: 202–482–3207 or 202–482–3434, respectively.

SUPPLEMENTARY INFORMATION:

Background

On August 7, 2003, the Department published in the Federal Register the preliminary results of its administrative review of the antidumping duty order on stainless steel sheet and strip in coils from Italy. **SEE PRELIMINARY RESULTS.** We invited parties to comment on our preliminary results of review. We received written comments on September 29, 2003, from petitioners[1] and respondents. On October 6, 2003, we received rebuttal comments from respondents and on October 7, 2003, we received rebuttal comments from petitioners.

[1] Petitioners in this case are Allegheny Ludlum Corporation, AK Steel Corporation, J&L Specialty Steel, Inc., North American Stainless, United Steelworkers of America, AFL-CIO/CLC, Butler Armco Independent Union and Zanesville Armco Independent Organization, Inc.

Scope of Review

For purposes of this administrative review, the products covered are certain stainless steel sheet and strip in coils. Stainless steel is an alloy steel containing, by weight, 1.2 percent or less of carbon and 10.5 percent or more of chromium, with or without other elements. The subject sheet and strip is a flat-rolled product in coils that is greater than 9.5 mm in width and less than 4.75 mm in thickness, and that is annealed or otherwise heat treated and pickled or otherwise descaled. The subject sheet and strip may also be further processed (*e.g.*, cold-rolled, polished, aluminized, coated, *etc.*) provided that it maintains the specific dimensions of sheet and strip following such processing.

The merchandise subject to this review is currently classifiable in the Harmonized Tariff Schedule of the United States (≥HTUS") at subheadings: 7219.13.0031, 7219.13.0051, 7219.13.0071, 7219.1300.81,[2] 7219.14.0030, 7219.14.0065, 7219.14.0090, 7219.32.0005, 7219.32.0020, 7219.32.0025, 7219.32.0035, 7219.32.0036, 7219.32.0038, 7219.32.0042, 7219.32.0044, 7219.33.0005, 7219.33.0020, 7219.33.0025, 7219.33.0035, 7219.33.0036, 7219.33.0038, 7219.33.0042, 7219.33.0044, 7219.34.0005, 7219.34.0020, 7219.34.0025, 7219.34.0030, 7219.34.0035, 7219.35.0005, 7219.35.0015, 7219.35.0030, 7219.35.0035, 7219.90.0010, 7219.90.0020, 7219.90.0025, 7219.90.0060, 7219.90.0080, 7220.12.1000, 7220.12.5000, 7220.20.1010, 7220.20.1015, 7220.20.1060, 7220.20.1080, 7220.20.6005, 7220.20.6010, 7220.20.6015, 7220.20.6060, 7220.20.6080, 7220.20.7005, 7220.20.7010, 7220.20.7015, 7220.20.7060, 7220.20.7080, 7220.20.8000, 7220.20.9030, 7220.20.9060, 7220.90.0010, 7220.90.0015, 7220.90.0060, and 7220.90.0080. Although the HTUS subheadings are provided for convenience and Customs purposes, the Department's written description of the merchandise under review is dispositive.

Excluded from the scope of this review are the following: (1) sheet and strip that is not annealed or otherwise heat treated and pickled or otherwise descaled, (2) sheet and strip that is cut

[2] Due to changes to the HTUS numbers in 2001, 7219.13.0030, 7219.13.0050, 7219.13.0070, and 7219.13.0080 are now 7219.13.0031, 7219.13.0051, 7219.13.0071, and 7219.13.0081, respectively.

to length, (3) plate (*i.e.*, flat-rolled stainless steel products of a thickness of 4.75 mm or more), (4) flat wire (*i.e.*, cold-rolled sections, with a prepared edge, rectangular in shape, of a width of not more than 9.5 mm), and (5) razor blade steel. Razor blade steel is a flat-rolled product of stainless steel, not further worked than cold-rolled (cold-reduced), in coils, of a width of not more than 23 mm and a thickness of 0.266 mm or less, containing, by weight, 12.5 to 14.5 percent chromium, and certified at the time of entry to be used in the manufacture of razor blades. *See* chapter 72 of the HTUS, "Additional U.S. Note" 1(d).

Flapper valve steel is also excluded from the scope of this review. This product is defined as stainless steel strip in coils containing, by weight, between 0.37 and 0.43 percent carbon, between 1.15 and 1.35 percent molybdenum, and between 0.20 and 0.80 percent manganese. This steel also contains, by weight, phosphorus of 0.025 percent or less, silicon of between 0.20 and 0.50 percent, and sulfur of 0.020 percent or less. The product is manufactured by means of vacuum arc remelting, with inclusion controls for sulphide of no more than 0.04 percent and for oxide of, no more than 0.05 percent. Flapper valve steel has a tensile strength of between 210 and 300 ksi, yield strength of between 170 and 270 ksi, plus or minus 8 ksi, and a hardness (Hv) of between 460 and 590. Flapper valve steel is most commonly used to produce specialty flapper valves in compressors.

Also excluded is a product referred to as suspension foil, a specialty steel product used in the manufacture of suspension assemblies for computer disk drives. Suspension foil is described as 302/304 grade or 202 grade stainless steel of a thickness between 14 and 127 microns, with a thickness tolerance of plus-or-minus 2.01 microns, and surface glossiness of 200 to 700 percent Gs. Suspension foil must be supplied in coil widths of not more than 407 mm, and with a mass of 225 kg or less. Roll marks may only be visible on one side, with no scratches of measurable depth. The material must exhibit residual stresses of 2 mm maximum deflection, and flatness of 1.6 mm over 685 mm length.

Certain stainless steel foil for automotive catalytic converters is also excluded from the scope of this review. This stainless steel strip in coils is a specialty foil with a thickness of between 20 and 110 microns used to produce a metallic substrate with a honeycomb structure for use in automotive catalytic converters. The steel contains, by weight, carbon of no more than 0.030 percent, silicon of no more than 1.0 percent, manganese of no more than 1.0 percent, chromium of between 19 and 22 percent, aluminum of no less than 5.0 percent, phosphorus of no more than 0.045 percent, sulfur of no more than 0.03 percent, lanthanum of less than 0.002 or greater than 0.05 percent, and total rare earth elements of more than 0.06 percent, with the balance iron.

Permanent magnet iron-chromium-cobalt alloy stainless strip is also excluded from the scope of this order. This ductile stainless steel strip contains, by weight, 26 to 30 percent chromium, and 7 to 10 percent cobalt, with the remainder of iron, in widths 228.6 mm or less, and a thickness between 0.127 and 1.270 mm. It exhibits magnetic remanence between 9,000 and 12,000 gauss, and a coercivity of between 50 and 300 oersteds. This product is most commonly used in electronic sensors and is currently available under proprietary trade names such as "Arnokrome III."[3]

Certain electrical resistance alloy steel is also excluded from the scope of this review. This product is defined as a non-magnetic stainless steel manufactured to American Society of Testing and Materials ("ASTM") specification B344 and containing, by weight, 36 percent nickel, 18 percent chromium, and 46 percent iron, and is most notable for its resistance to high temperature corrosion. It has a melting point of 1390 degrees Celsius and displays a creep rupture limit of 4 kilograms per square millimeter at 1000 degrees Celsius. This steel is most commonly used in the production of heating ribbons for circuit breakers and industrial furnaces, and in rheostats for railway locomotives. The product is currently available under proprietary trade names such as "Gilphy 36."[4]

Certain martensitic precipitation-hardenable stainless steel is also excluded from the scope of this order. This high-strength, ductile stainless steel product is designated under the Unified Numbering System ("UNS") as S45500-grade steel, and contains, by weight, 11 to 13 percent chromium, and 7 to 10 percent nickel. Carbon, manganese, silicon and molybdenum each comprise, by weight, 0.05 percent or less, with phosphorus and sulfur each comprising, by weight, 0.03 percent or less. This steel has copper, niobium, and titanium added to achieve aging, and will exhibit yield strengths as high as 1700 Mpa and ultimate tensile strengths as high as 1750 Mpa after aging, with elongation percentages of 3 percent or less in 50 mm. It is generally provided in thicknesses between 0.635 and 0.787 mm, and in widths of 25.4 mm. This product is most commonly used in the manufacture of television tubes and is currently available under proprietary trade names such as "Durphynox 17."[5]

Also excluded are three specialty stainless steels typically used in certain industrial blades and surgical and medical instruments. These include stainless steel strip in coils used in the production of textile cutting tools (*e.g.*, carpet knives).[6] This steel is similar to AISI grade 420 but containing, by weight, 0.5 to 0.7 percent of molybdenum. The steel also contains, by weight, carbon of between 1.0 and 1.1 percent, sulfur of 0.020 percent or less, and includes between 0.20 and 0.30 percent copper and between 0.20 and 0.50 percent cobalt. This steel is sold under proprietary names such as "GIN4 Mo."[7] The second excluded stainless steel strip in coils is similar to AISI 420-J2 and contains, by weight, carbon of between 0.62 and 0.70 percent, silicon of between 0.20 and 0.50 percent, manganese of between 0.45 and 0.80 percent, phosphorus of no more than 0.025 percent and sulfur of no more than 0.020 percent. This steel has a carbide density on average of 100 carbide particles per 100 square microns. An example of this product is "GIN5"[8] steel. The third specialty steel has a chemical composition similar to AISI 420 F, with carbon of between 0.37 and 0.43 percent, molybdenum of between 1.15 and 1.35 percent, but lower manganese of between 0.20 and 0.80 percent, phosphorus of no more than 0.025 percent, silicon of between 0.20 and 0.50 percent, and sulfur of no more than 0.020 percent. This product is supplied with a hardness of more than Hv 500 guaranteed after customer processing, and is supplied as, for example, "GIN6."[9]

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this administrative review are addressed in the "Issues and Decision Memorandum" ("*Decision Memorandum*") from Joseph A. Spetrini, Deputy Assistant Secretary, Import Administration, to James J.

[3] "Arnokrome III" is a trademark of the Arnold Engineering Company.

[4] "Gilphy 36" is a trademark of Imphy, S.A.

[5] "Durphynox 17" is a trademark of Imphy, S.A.

[6] This list of uses is illustrative and provided for descriptive purposes only.

[7] "GIN4 Mo" is the proprietary grade of Hitachi Metals America, Ltd

[8] "GIN5" is the proprietary grade of Hitachi Metals America, Ltd.

[9] "GIN6" is the proprietary grade of Hitachi Metals America, Ltd.

Jochum, Assistant Secretary for Import Administration, dated December 5, 2003, which is hereby adopted by this notice. A list of the issues which parties have raised and to which we have responded are attached to this notice as an Appendix. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in the *Decision Memorandum* which is on file in the Central Records Unit, Room B-099 of the main Department building. In addition, a complete version of the *Decision Memorandum* can be accessed directly on the Web at *http://ia.ita.doc.gov/*. The paper copy and electronic version of the *Decision Memorandum* are identical in content.

Sales Below Cost

We disregarded sales below cost for TKAST during the course of this review.

Changes Since the Preliminary Results

Based on our analysis of comments received, we have made changes in the margin calculations for TKAST. *See Analysis for the Final Results of Review of Stainless Steel Sheet and Strip in Coils from Italy*, ("*Final Analysis Memorandum*"), dated December 5, 2003. The changes to the margin calculation include the following: (1) we recalculated inventory carrying costs for the U.S. market, *see* Comment 3 of the *Decision Memorandum*; (2) we removed bad debt from indirect U.S. selling expenses and reallocated it to direct U.S. selling expenses, see Comment 4 of the *Decision Memorandum*.

Final Results of Review

We determine that the following percentage margin exists for the period July 1, 2001, through June 30, 2002:

Producer/Manufacturer/ Exporter	Weighted-Average Margin
ThyssenKrupp Acciai Speciali Terni S.p.A.	1.62%

Assessment Rates

The Department will determine, and the U.S. Customs and Border Protection ("CBP") shall assess, antidumping duties on all appropriate entries. In accordance with 19 CFR 351.212(b)(1), we have calculated an importer-specific assessment rate for merchandise subject to this review. The Department will issue appropriate assessment instructions directly to the CBP within 15 days of publication of these final results of review. We will direct the CBP to assess the resulting assessment rates against the entered customs values for the subject merchandise on each of the importer's entries during the review period. For duty assessment purposes, we will calculate importer-specific assessment rates by dividing the dumping margins calculated for each importer by the total entered value of sales for each importer during the POR.

Cash Deposit Requirements

The following deposit requirements will be effective upon publication of this notice of final results of administrative review for all shipments of stainless steel sheet and strip in coils from Italy entered, or withdrawn from warehouse, for consumption on or after the date of publication, as provided by section 751(a)(1) of the Act: (1) The cash deposit rate for TKAST will be the rate shown above; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original less-than-fair-value (LTFV) investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered in these or any previous reviews conducted by the Department, the cash deposit rate will be the "all others" rate, which is 11.23 percent.

These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

Notification of Interested Parties

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of the antidumping duties or countervailing duties occurred and the subsequent assessment of double antidumping duties or countervailing duties.

This notice also serves as a reminder to parties subject to administrative protective orders ("APOs") of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305, which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

We are issuing and publishing this determination and notice in accordance with sections 751(a)(1) and 771(i) (1) of the Act.

Dated: December 5, 2003.

James J. Jochum,

Assistant Secretary for Import Administration.

APPENDIX—ISSUES IN THE DECISION MEMORANDUM

1. Whether the Department should Allow TKAST's Constructed Export Price Offset Adjustment
2. Whether the Department Properly Calculated Home Market Credit Expenses
3. Whether the Department should Correct TKAST's Understatement of the Inventory Holding Period for U.S. Sales
4. Whether the Department should Account for TKAST's Loss on its Unpaid U.S. Sales
5. Whether the Department should Set Negative Margins to Zero in Calculating the Aggregate Margin

[FR Doc. E3–00549 Filed 12–11–03; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

C–122–841

Carbon and Certain Alloy Steel Wire Rod from Canada: Preliminary Results of Countervailing Duty Changed Circumstances Review and Intent to Revoke Order

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Preliminary Results of Changed Circumstances Review of the Countervailing Duty Order and Intent To Revoke Order, in Whole.

SUMMARY: On November 3, 2003, in response to a request by domestic producers of the subject merchandise, the Department of Commerce ("the Department") published a notice of initiation of a changed circumstances review of the countervailing duty order on carbon and certain alloy steel wire rod, as described below. *See Carbon and Certain Alloy Steel Wire Rod from Canada: Initiation of Countervailing Duty Changed Circumstances Review*, 68 FR 62282 (November 3, 2003) ("*Initiation Notice*").

In the *Initiation Notice*, we invited interested parties to comment on the Department's initiation and the proposed revocation of the countervailing duty order on carbon and certain alloy steel wire rod from Canada. We did not receive any comments. Absent any comments, we preliminarily conclude that producers accounting for substantially all of the production of the domestic like product to which this order pertains lack interest in the relief provided by the order. Unless the Department receives opposition from domestic producers whose production totals more than 15 percent of the domestic like product, the Department will revoke the order on carbon and certain alloy steel wire rod in the final results of this review. Therefore, we preliminarily revoke this order, in whole, with respect to products entered, or withdrawn from warehouse, for consumption on or after February 8, 2002, *i.e.*, the publication date of the Department's preliminary determination (*see Preliminary Affirmative Countervailing Duty Determination: Carbon and Certain Alloy Steel Wire Rod from Canada*, 67 FR 5984), because domestic parties have expressed no interest in the continuation of the order.

EFFECTIVE DATE: December 12, 2003.

FOR FURTHER INFORMATION CONTACT: S. Anthony Grasso, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–3853.

SUPPLEMENTARY INFORMATION:

Background

The Department published the countervailing duty ("CVD") order on steel wire rod from Canada on October 22, 2002. *See Notice of Countervailing Duty Orders: Carbon and Certain Alloy Steel Wire Rod from Brazil and Canada*, 67 FR 64871 (October 22, 2002). On October 1, 2003, the Department received a request from Georgetown Steel Company (formerly GS Industries), Gerdau Ameristeel US Inc. (formerly Co-Steel Raritan), Keystone Consolidated Industries, Inc., and North Star Steel Texeas, Inc., the petitioners in the original investigation, that the Department initiate a changed circumstances review for purposes of revoking the CVD order. The basis for the petitioners' request is that they are no longer interested in maintaining the countervailing duty order or in the imposition of CVD duties on the subject merchandise.

On November 3, 2003, the Department published a notice of initiation of a changed circumstances review of the countervailing duty order on carbon and certain alloy steel wire rod products from Canada. *See Initiation Notice*, 68 FR 62282. In the *Initiation Notice*, we indicated interested parties could submit comments for consideration in the Department's preliminary results not later than 14 days after publication of the initiation of the review, and submit responses to those comments not later than 5 days following the submission of comments. No comments were received. On November 18, 2003, a respondent to the original proceeding, Ispat Sidbec, Inc. ("Ispat"), submitted a letter to the Department stating that "all three parties wish to advise the Department that they agree to the outcome of the review and, further, request that, pursuant to 19 CFR § 351.216(e), the Department render its final results of review within 45 days of initiation of the review or sooner." Ispat claimed its letter represented the position of the only parties to the proceeding, namely, Ispat, the Government of Quebec, and the U.S. producers that filed the original petition.

Scope of the Order

The merchandise covered by this order is certain hot-rolled products of carbon steel and alloy steel, in coils, of approximately round cross section, 5.00 mm or more, but less than 19.00 mm, in solid cross-sectional diameter.[1]

Specifically excluded are steel products possessing the above-noted physical characteristics and meeting the *Harmonized Tariff Schedule of the United States* ("HTSUS") definitions for (a) stainless steel; (b) tool steel; (c) high nickel steel; (d) ball bearing steel; and (e) concrete reinforcing bars and rods. Also excluded are (f) free machining steel products (*i.e.*, products that contain by weight one or more of the following elements: 0.03 percent or more of lead, 0.05 percent or more of bismuth, 0.08 percent or more of sulfur, more than 0.04 percent of phosphorus, more than 0.05 percent of selenium, or more than 0.01 percent of tellurium).

Also excluded from the scope are 1080 grade tire cord quality wire rod and 1080 grade tire bead quality wire rod. Grade 1080 tire cord quality rod is defined as: (i) Grade 1080 tire cord quality wire rod measuring 5.0 mm or more but not more than 6.0 mm in cross-sectional diameter; (ii) with an average partial decarburization of no more than 70 microns in depth (maximum individual 200 microns); (iii) having no inclusions greater than 20 microns; (iv) having a carbon segregation per heat average of 3.0 or better using European Method NFA 04–114; (v) having a surface quality with no surface defects of a length greater than 0.15 mm; (vi) capable of being drawn to a diameter of 0.30 mm or less with 3 or fewer breaks per ton, and (vii) containing by weight the following elements in the proportions shown: (1) 0.78 percent or more of carbon, (2) less than 0.01 percent of aluminum, (3) 0.040 percent or less, in the aggregate, of phosphorus and sulfur, (4) 0.006 percent or less of nitrogen, and (5) not more than 0.15 percent, in the aggregate, of copper, nickel and chromium.

Grade 1080 tire bead quality rod is defined as: (i) Grade 1080 tire bead quality wire rod measuring 5.5 mm or more but not more than 7.0 mm in cross-sectional diameter; (ii) with an average partial decarburization of no more than 70 microns in depth (maximum individual 200 microns); (iii) having no inclusions greater than 20 microns; (iv) having a carbon segregation per heat average of 3.0 or better using European Method NFA 04–114; (v) having a surface quality with no surface defects of a length greater than 0.2 mm; (vi) capable of being drawn to a diameter of 0.78 mm or larger with 0.5 or fewer breaks per ton; and (vii) containing by weight the following elements in the proportions shown: (1) 0.78 percent or more of carbon, (2) less than 0.01 percent of soluble aluminum, (3) 0.040 percent or less, in the aggregate, of phosphorus and sulfur, (4) 0.008 percent or less of nitrogen, and (5) either not more than 0.15 percent, in the aggregate, of copper, nickel and chromium (if chromium is not specified), or not more than 0.10 percent in the aggregate of copper and nickel and a chromium content of 0.24 to 0.30 percent (if chromium is specified).

The designation of the products as "tire cord quality" or "tire bead quality" indicates the acceptability of the product for use in the production of tire cord, tire bead, or wire for use in other rubber reinforcement applications such as hose wire. These quality designations are presumed to indicate that these products are being used in tire cord, tire

[1] On November 12, 2003, the Department published the final results of a changed circumstances review modifying the scope to exclude certain grade 1080 tire cord quality wire rod and grade 1080 tire bead quality wire rod. This modification is for all entries of subject merchandise entered, or withdrawn from warehouse, for consumption on or after July 24, 2003. We note that for the purposes of this changed circumstances review, the revocation of the order would be based on the original scope. *See Carbon and Certain Alloy Steel Wire Rod from Brazil, Canada, Indonesia, Mexico, Moldova, Trinidad and Tobago, and Ukraine: Final Results of Changed Circumstances Review*, 68 FR 64079 (November 12, 2003).

bead, and other rubber reinforcement applications, and such merchandise intended for the tire cord, tire bead, or other rubber reinforcement applications is not included in the scope. However, should petitioners or other interested parties provide a reasonable basis to believe or suspect that there exists a pattern of importation of such products for other than those applications, end-use certification for the importation of such products may be required. Under such circumstances, only the importers of record would normally be required to certify the end use of the imported merchandise.

All products meeting the physical description of subject merchandise that are not specifically excluded are included in this scope.

The products under investigation are currently classifiable under subheadings 7213.91.3010, 7213.91.3090, 7213.91.4510, 7213.91.4590, 7213.91.6010, 7213.91.6090, 7213.99.0031, 7213.99.0038, 7213.99.0090, 7227.20.0010, 7227.20.0020, 7227.20.0090, 7227.20.0095, 7227.90.6051, 7227.90.6053, 7227.90.6058, and 7227.90.6059 of the HTSUS. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this proceeding is dispositive.

Preliminary Results of Review and Intent to Revoke in Whole the Countervailing Duty Order

Pursuant to section 751(d)(1) of the 1930 Tariff Act, as amended ("the Act"), and 19 CFR § 351.222(g), the Department may revoke an antidumping or countervailing duty order, in whole or in part, based on a review under section 751(b) of the Act (*i.e.*, a changed circumstances review). Section 751(b)(1) of the Act requires a changed circumstances review to be conducted upon receipt of a request which shows changed circumstances sufficient to warrant a review. Section 782(h)(1) of the Act gives the Department the authority to revoke an order if producers accounting for substantially all of the production of the domestic like product have expressed a lack of interest in the continuation of the order. Section 351.222(g) of the Department's regulations provides that the Department will conduct a changed circumstances administrative review under 19 CFR § 351.216, and may revoke an order (in whole or in part), if it concludes that (i) producers accounting for substantially all of the production of the domestic like product to which the order pertains have expressed a lack of interest in the relief provided by the order, in whole or in part, or (ii) if other changed circumstances sufficient to warrant revocation exist. The Department has interpreted "substantially all" production normally to mean at least 85 percent of domestic production of the like product. *See Certain Tin Mill Products From Japan: Final Results of Changed Circumstances Review*, 66 FR 52109 (October 12, 2001); see also, 19 CFR § 351.208(c).

As noted above and in the *Initiation Notice*, the petitioners requested this changed circumstances review on the basis that they are no longer interested in maintaining the countervailing duty order or in the imposition of CVD duties on the subject merchandise. Because the Department did not receive any comments during the comment period opposing initiation of this changed circumstances review, we preliminarily conclude that producers accounting for substantially all of the production of the domestic like product to which this order pertains lack interest in the relief provided by the order. In accordance with 19 CFR § 351.222(g), the Department preliminarily determines that there is a reasonable basis to believe that changed circumstances exist sufficient to warrant revocation of the order. Therefore, the Department is preliminarily revoking the order on carbon and certain alloy steel wire rod from Canada, in whole. Unless the Department receives opposition within the time limit set forth below from domestic producers whose production totals more than 15 percent of the domestic like product, the Department will revoke the order on carbon and certain alloy steel wire rod in its final results of review.

If, as a result of this review, we revoke the order, we intend to instruct U.S. Customs and Border Protection ("CBP") to liquidate without regard to applicable countervailing duties, and refund any estimated countervailing duties collected on, all unliquidated entries of the merchandise subject to the order, as described above under the "Scope of the Order" section, entered, or withdrawn from warehouse, for consumption on or after February 8, 2002, *i.e.*, the publication date of the Department's preliminary determination (*see Preliminary Affirmative Countervailing Duty Determination: Carbon and Certain Alloy Steel Wire Rod from Canada*, 67 FR 5984). We will also instruct CBP to pay interest on such refunds with respect to the subject merchandise entered, or withdrawn from warehouse, for consumption on or after October 22, 2002, in accordance with section 778 of the Act. The current requirement for a cash deposit of estimated countervailing duties on the subject merchandise will continue unless, and until, we publish a final determination to revoke in whole.

Public Comment

Interested parties may submit case briefs not later than 14 days after the date of publication of this notice. *See* 19 CFR § 351.309(c)(ii). Rebuttal briefs, which must be limited to issues raised in such case briefs, may be filed not later than 19 days after the date of publication of this notice. *See* 19 CFR § 351.309(d). Parties who submit arguments are requested to submit with the argument (1) a statement of the issue, (2) a brief summary of the argument, and (3) a table of authorities. Any interested party may request a hearing within 14 days of publication of this notice. *See* 19 CFR § 351.310(c). Any hearing, if requested, may be held 22 days after the date of publication of this notice, or the first working day thereafter, as practicable.

Consistent with section 351.216(e) of the Department's regulations, we will issue the final results of this changed circumstances review not later than 270 days after the date on which this review was initiated.

This notice is published in accordance with section 751(b)(1) of the Act and sections 351.216 and 351.222 of the Department's regulations.

Dated: December 5, 2003.

James J. Jochum,

Assistant Secretary for Import Administration.

[FR Doc. E3–00546 Filed 12–11–03; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 112003C]

Endangered and Threatened Species; Take of Anadromous Fish

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration, Commerce.

ACTION: Issuance of three scientific research permit modifications (1140, 1335, 1369).

SUMMARY: Between June 30, 2003 and September 24, 2003, NMFS' Northwest Region issued three permit modifications allowing endangered and threatened species of Pacific salmon and steelhead to be taken for scientific research purposes under the Endangered Species Act of 1973 (ESA). The research actions and the species they affect are listed in the "Supplementary Information" section below.

ADDRESSES: The permits, permit applications, and related documents are available for review during business hours by appointment at NMFS' Protected Resources Division, 525 NE Oregon Street, Suite 500, Portland, OR 97232–2737 (phone: 503–230–5400, fascimile: 503–230–5435).

FOR FURTHER INFORMATION CONTACT: Garth Griffin, Portland, OR (phone: 503–231–2005, fascimile: 503–230–5435, e-mail: *Garth.Griffin@noaa.gov*).

SUPPLEMENTARY INFORMATION:

Authority

The ESA requires that permit modifications be issued based on findings that such actions: (1) Are applied for in good faith; (2) would not operate to the disadvantage of the listed species that are the subject of the actions; and (3) are consistent with the purposes and policies set forth in section 2 of the ESA. Authority to take listed species is subject to conditions set forth in the permits. Permits, modifications, and amendments are issued in accordance with, and are subject to, the ESA and NMFS' regulations governing listed fish and wildlife permits (50 CFR parts 222–226).

Species Covered in this Notice

The listed species/evolutionarily significant units (ESUs) covered by this notice are threatened Puget Sound (PS) chinook salmon (*Oncorhynchus tshawytscha*), threatened Snake River (SnR) chinook salmon, threatened Upper Willamette River (UWR) chinook salmon, threatened Lower Columbia River (LCR) chinook salmon, and threatened Oregon Coast (OC) Coho (*O. kisutch*).

Dated: December 8, 2003.

Phil Williams,

Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 03–30797 Filed 12–11–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D.112003B]

Endangered and Threatened Species; Take of Anadromous Fish

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration, Commerce

ACTION: Notice of decision and availability of decision documents on the issuance of Permit 1347 for incidental takes of endangered species.

SUMMARY: Notice is hereby given that an artificial propagation permit to the Washington Department of Fish and Wildlife (WDFW), the Public Utility District No. 1 of Chelan County (Chelan PUD); and the Public Utility District No. 1 of Douglas County (Douglas PUD), pursuant to section 10(a)(1)(B) of the Endangered Species Act of 1973 (ESA), has been issued and that the decision documents are available upon request.

DATES: Permit 1347 was issued on October 22, 2003, subject to certain conditions set forth therein. Permit 1347 expires on October 22, 2013.

ADDRESSES: Requests for copies of the decision documents or any of the other associated documents should be directed to the Salmon Recovery Division, National Marine Fisheries Service, 525 NE Oregon Street, Suite 510, Portland, OR 97232.

FOR FURTHER INFORMATION CONTACT: Kristine Petersen, Portland, OR, at phone number: (503) 230–5409, e-mail: Kristine.Petersen@noaa.gov

SUPPLEMENTARY INFORMATION: This notice is relevant to the following Evolutionarily Significant Units (ESUs):

Steelhead (*Oncorhynchus mykiss*): endangered Upper Columbia River.

Chinook salmon (*O. tshawytscha*): endangered Upper Columbia River spring run.

Notice of receipt of application for the proposed actions was published on October 16, 2001 (66 FR-52567) relative to the WDFW Hatchery Genetic Management Plans, and on June 25, 2002 (67 FR 42755), relative to the three Habitat Conservation Plan agreements. The permit authorizes the WDFW, Chelan PUD, and Douglas PUD, to implement artificial propagation programs for summer chinook salmon, fall chinook salmon, and sockeye salmon. Permit 1347 authorizes activities to carry out the artificial propagation programs in the upper Columbia River. After evaluating the potential effects of this permit on listed salmon and steelhead in the Upper Columbia River ESUs and the environmental consequences, NMFS issued the permit with conditions authorizing incidental takes of the ESA-listed anadromous fish species. NMFS' conditions will ensure that the incidental takes of ESA-listed anadromous fish will not appreciably reduce the likelihood of the survival and recovery of the species in the wild. The permit expires on October 22, 2013.

Dated: December 8, 2003.

Phil Williams,

Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 03–30798 Filed 12–11–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 112003A]

Endangered and Threatened Species; Take of Anadromous Fish

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration, Commerce

ACTION: Issuance of Endangered Species Enhancement Permits 1395, 1396, and 1412

SUMMARY: This notice advises the public that three enhancement permits pursuant to the Endangered Species Act of 1973 (ESA), have been issued and that the decision documents are available upon request. Permit 1395 was issued jointly to the Washington Department of Fish and Wildlife (WDFW),the Public Utility District No. 1 of Chelan County (Chelan PUD), and the Public Utility District No. 1 of Douglas County (Douglas PUD). Permit 1396 was issued to the U.S. Fish and Wildlife Service (USFWS). Permit 1412 was issued to the Confederated Tribes of the Colville Reservation (Colville Tribes).

DATES: Permits 1395, 1396, and 1412 were issued on October 2, 2003, subject to certain conditions set forth therein. Permit 1395 expires October 2, 2013, and permits 1396 and 1412 expire October 2, 2008.

ADDRESSES: Requests for copies of the decision documents or any of the other associated documents should be directed to the Salmon Recovery Division, NMFS, 525 NE Oregon Street, Suite 510, Portland, Oregon, 97232.

FOR FURTHER INFORMATION CONTACT: Kristine Petersen, Portland, OR, at phone number: (503) 230–5409, e-mail: Kristine.Petersen@noaa.gov

SUPPLEMENTARY INFORMATION: The following species and evolutionarily significant units (ESUs) are covered in the permit:

Steelhead (*Oncorhynchus mykiss*): endangered Upper Columbia River.

Chinook salmon (*O. tshawytscha*): endangered Upper Columbia River spring run.

Notice of the proposed actions addressed in permit 1395 was published on August 1, 2002 (67 FR 49906). A public meeting was held in Wenatchee, WA, on August 27, 2002. Permit 1395 authorizes the WDFW, the Chelan PUD, and the Douglas PUD to carry out artificial propagation programs for the enhancement of listed upper Columbia River steelhead. The enhancement programs authorized under permit 1395 are designed to supplement the natural spawning populations of upper Columbia River steelhead in the Wenatchee River, Methow River, and Okanogan River basins and compenstate for inundation and unavoidable fish passage losses at Rock Island, Rocky Reach and Wells dams on the mainstem Columbia River as provided in three Habitat Conservation Plans.

Additionally, it authorizes the WDFW to manage adult hatchery steelhead returns that are surplus to recovery and broodstock needs. After evaluating the potential effects of issuing this permit on listed salmon and steelhead in the Upper Columbia River ESUs and the environmental consequences, NMFS issued the permit with conditions authorizing takes of the ESA-listed anadromous fish species. NMFS' conditions will ensure that the takes of ESA-listed anadromous fish will not appreciably reduce the likelihood of the survival and recovery of the species in the wild. The permit expires October 2, 2013.

Notice of the proposed actions addressed in permit 1396 was published on August 1, 2002 (67 FR 49906). A public meeting was held in Wenatchee, WA on August 27, 2002. Permit 1396 authorizes the USFWS to carry out artificial propagation programs for the enhancement of listed upper Columbia River steelhead in the Methow River basin. The enhancement program authorized under permit 1396 is intended to mitigate for fish losses due to Grand Coulee Dam construction and supplement the natural spawning population in the Methow River. After evaluating the potential effects of issuing this permit on listed salmon and steelhead in the Upper Columbia River ESUs and the environmental consequences, NMFS issued the permit with conditions authorizing takes of the ESA-listed anadromous fish species. NMFS' conditions will ensure that the takes of ESA-listed anadromous fish will not appreciably reduce the likelihood of the survival and recovery of the species in the wild. The permit expires October 2, 2008.

Notice of proposed actions addressed in permit 1412 was published on January 14, 2003 (68 FR 1826). Permit 1412 authorizes the Colville Tribes to carry out artificial propagation programs for the enhancement of listed upper Columbia River steelhead in the Okanogan River basin. The enhancement program authorized under permit 1412 is designed to supplement and restore natural spawning of steelhead in Omak Creek, in the Okanogan River basin. After evaluating the potential effects of issuing this permit on listed salmon and steelhead in the Upper Columbia River ESUs and the environmental consequences, NMFS issued the permit with conditions authorizing takes of the ESA-listed anadromous fish species. NMFS' conditions will ensure that the takes of ESA-listed anadromous fish will not appreciably reduce the likelihood of the survival and recovery of the species in the wild. The permit expires October 2, 2003.

Issuance of these permits, as required by the ESA, was based on a finding that the permits: (1) were applied for in good faith; (2) will not operate to the disadvantage of the listed species which are the subject of the permit; and (3) is consistent with the purposes and policies set forth in section 2 of the ESA. These permits were issued in accordance with, and are subject to, 50 CFR part 222, the NMFS regulations governing listed species permits.

Dated: December 8, 2003.

Phil Williams,

Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 03–30799 Filed 12–11–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 120103E]

Endangered Species; File No. 1375

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Receipt of application for modification

SUMMARY: Notice is hereby given that Dr. Thomas J. Kwak, U.S. Geological Survey, North Carolina Cooperative Fish and Wildlife Research Unit, Box 7617, 201 David Clark Labs, North Carolina State University, Raleigh, North Carolina 27695–7617, has requested a modification to scientific research permit no. 1375.

DATES: Written or telefaxed comments must be received on or before January 12, 2004.

ADDRESSES: The modification request and related documents are available for review upon written request or by appointment in the following office(s):

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301)713–2289; fax (301)713–0376; and

Southeast Region, NMFS, 9721 Executive Center Drive North, St. Petersburg, FL 33702–2432; phone (727)570–5301; fax (727)570–5320.

Written comments or requests for a public hearing on this request should be submitted to the Chief, Permits, Conservation and Education Division, F/PR1, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular modification request would be appropriate.

Comments may also be submitted by facsimile at (301)713–0376, provided the facsimile is confirmed by hard copy submitted by mail and postmarked no later than the closing date of the comment period.

FOR FURTHER INFORMATION CONTACT: Jennifer Jefferies or Ruth Johnson, (301) 713–2289.

SUPPLEMENTARY INFORMATION: The subject modification to Permit No. 1375, issued on March 27, 2003 (68 FR 16002) is requested under the authority of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*) and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR parts 222–226).

Permit No. 1375 authorized the permit holder to deploy 1,000 hatchery-reared juvenile shortnose sturgeon (*Acipenser brevirostrum*) in cages at 10 test sites within the Roanoke/Albemarle River system for 28 days. The fish were then supposed to be euthanized and their tissue analyzed for contaminants. The results of this study would have provided needed information to determine if water quality is a limiting factor of the ecological success of shortnose sturgeon in this river system. When the initial study was conducted, however, high water temperatures and low dissolved oxygen contributed to a shortened experiment time. Although the results obtained were useful, the permit holder wants to repeat the experiment and requests authorization to obtain an additional 1000 fish for that purpose.

Dated: December 8, 2003.

Stephen L. Leathery,

Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 03–30800 Filed 12–11–03; 8:45 am]

BILLING CODE 3510–22–S

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act, Meeting

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: 68 FR 68875.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 1 p.m., Wednesday, December 17, 2003.

CHANGES IN THE MEETING: The open hearing to receive testimony from industry participants relating to the Commission's consideration of the application of U.S. Futures Exchange, LLC, for contract market designation has been cancelled.

FOR FURTHER INFORMATION CONTACT: Jean A. Webb, (202) 418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 03–30915 Filed 12–10–03; 8:45 am]

BILLING CODE 6351–01–M

DEPARTMENT OF DEFENSE

Department of the Army

Performance Review Board Membership

AGENCY: Department of the Army, DoD.

ACTION: Notice.

SUMMARY: Notice is given of the names of members of a Performance Review Board for the Department of the Army.

EFFECTIVE DATE: December 8, 2003.

FOR FURTHER INFORMATION CONTACT: Marilyn Ervin, U.S. Army Senior Executive Service Office, Assistant Secretary of the Army, Manpower & Reserve Affairs, 111 Army Pentagon, Washington, DC 20310–0111.

SUPPLEMENTARY INFORMATION: Section 4314(c)(1) through (5) of Title 5, U.S.C., requires each agency to establish, in accordance with regulations, one or more Senior Executive Service performance review boards. The boards shall review and evaluate the initial appraisal of senior executives' performance by supervisors and make recommendations to the appointing authority or rating official relative to the performance of these executives.

The members of the Performance Review Board for the U.S. Army Aviation and Missile Command, U.S. Army Materiel Command are:

1. Ms. L. Marlene Cruze (Chair), Executive Director, Acquisition Center, U.S. Army Aviation and Missile Command.
2. Mr. Michael C. Schexnayder, Associate Director for Systems Missiles, Aviation and Missile Research, Development, and Engineering Center.
3. Mr. John R. Chapman, Executive Director, Integrated Materiel Management Center, U.S. Army Aviation and Missile Command.
4. Mr. Paul Bogosian, Deputy Program Executive Officer, Aviation, Army Acquisition Executive.
5. Mr. William C. Reeves, Jr., Director, Integration/Interoperability for Missile Defense and Assistant to the Deputy Commanding General for Research, Development and Acquisition, U.S. Army Space and Missile Defense Command.
6. Dr. Robin B. Buckelew (Alternate), Director, Missile Guidance. Directorate, Aviation and Missile Research, Development, and Engineering Center.

The members of the Performance Review Board for the U.S. Army Research Laboratory, U.S. Army Materiel Command are:

1. Mr. Michael C. Schexnayder (Chair), Associate Director for Systems Missiles, Aviation and Missile Research, Development, and Engineering Center.
2. Dr. Chine I. Chang, Director, Army Research Office.
3. Dr. Grace M. Bochenek, Vice President for Research, Tank-Automotive Research, Development and Engineering Center.
4. Dr. John A. Parmentola (Alternate), Director for Research and Laboratory Management, Office of the Assistant Secretary of the Army (Acquisition, Logistics and Technology).
5. Dr. James D. Gannt (Alternate), Deputy Director, Computational and Information Sciences Directorate, U.S. Army Research Laboratory.
6. Mrs. Barbara A. Leiby (Alternate), Deputy Chief of Staff for Resource Management, Headquarters, U.S. Army Materiel Command.

The members of the Performance Review Board for the U.S. Army Tank-automotive Command, U.S. Army Materiel Command are:

1. Dr. Richard E. McClelland (Chair), President/Director, U.S. Army Tank-Automotive Research, Development and Engineering Center.
2. Mr. John F. Hedderich, III, Associate Technical Director (Systems Concepts and Technology), Armament Research, Development and Engineering Center.
3. Mr. Michael C. Schexnayder, Associate Director for Systems Missiles, Aviation and Missile Research, Development, and Engineering Center.
4. Mr. Anthony B. Sconyers, Chief Counsel, Procurement and Readiness, U.S. Army Operations Support Command.

The members of the Performance Review Board for the North Atlantic Treaty Organization, Army element are:

1. Mr. Alfred G. Volkman, Director, International Cooperation, Office of the Under Secretary of Defense, Acquisition, Technology and Logistics.
2. Mr. Barry Pavel, Principal Director, Office of the Secretary of Defense.
3. Mr. James Q. Roberts, Principal Director, Special Operations and Combating Terrorism, Office of the Secretary of Defense.
4. Mr. James J. Townsend, Principal Director for European and North Atlantic Treaty Organization Policy.

Luz D. Ortiz,

Army Federal Register Liaison Officer.

[FR Doc. 03–30801 Filed 12–11–03; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Intent To Prepare a Draft Environmental Impact Statement for a Proposed Reservoir Operating Plan in Conjunction With the Reservoir Operating Plan Evaluation Study for the Mississippi Headwaters

AGENCY: Department of the Army, U.S. Army Corps of Engineers, DoD.

ACTION: Notice of intent.

SUMMARY: The headwaters region of the Mississippi River, located in north-central Minnesota, contains a number of reservoirs operated by various private and public entities, including the Corps of Engineers (Corps) and the U.S. Forest Service (Forest Service). The current operating plans for the Corps and Forest Service reservoirs were developed over 40 years ago and are in need of revision

because of changes in environmental, social, and economic conditions in the region. It is unlikely that the current operating plans provide the greatest net benefit to the resources of the whole system. Furthermore, the operations of the non-Federal (State and privately owned) reservoirs are not coordinated with the Federal reservoir operations. This hinders system-wide objectives such as flood damage reduction for properties adjacent to and downstream of the reservoirs.

The proposed action is to develop a coordinated system-wide operational plan for implementation by the Corps and the Forest Service with recommendations for the operations of the non-Federal dams. The goal of this proposed action is to optimize the system benefits for all affected resources. Some resources may be adversely affected as a result of the proposed action. It is possible that other projects, such as dam modifications and habitat improvement projects, may be recommended under the Reservoir Operating Plan Evaluation (ROPE); however, the implementation of such projects may require additional planning and National Environmental Policy Act (NEPA) processes.

FOR FURTHER INFORMATION CONTACT: Questions about the proposed action and Draft Environmental Impact Statement (DEIS) can be directed to: Colonel Robert L. Ball, District Engineer, St. Paul District, Corps of Engineers, ATTN: Mr. Terry J. Birkenstock, Chief, Environmental and Economic Analysis Branch, 190 Fifth Street East, St. Paul, MN 55101–1638, telephone: (651) 290–5264.

SUPPLEMENTARY INFORMATION: The ROPE Study focuses on the Mississippi River between St. Paul and Bemidji, Minnesota. The headwaters region of the Mississippi River, located in north-central Minnesota, contains a number of reservoirs operated by various public and private entities. For example, the Corps operates dams on the following waterbodies: Leech Lake, Lake Winnibigoshish, Big Sandy Lake, Pine River (Whitefish Lake Chain), Pokegama Lake, and Gull Lake. Knutson Dam on Cass Lake is operated by the Forest Service. The Stump Lake Dam controls the Lake Bemidji lake chain and is operated by Otttail Power Company. Similarly, Minnesota Power operates a power dam on the Prairie River upstream of Aitkin, Minnesota. Mud Lake Dam, located downstream from Leech Lake, is operated by the Minnesota Department of Natural Resources, primarily for fish and wildlife purposes.

The original authorized purpose for the Corps dams was to provide low flow augmentation for navigation on the Mississippi River as far south as the Twin Cities of St. Paul and Minneapolis. However, flood control, recreation, hydropower, water supply, and enhanced fish and wildlife production have subsequently been added as authorized project purposes. Knutson Dam is operated by the Forest Service primarily to maintain lake levels for recreational navigation and environmental purposes.

The ROPE Study and its associated NEPA documentation will be prepared by the Corps and the Forest Service. The Corps will act as the lead agency and the Forest Service will act as a cooperating agency. The primary focus of the ROPE Study will be the operation of the Federal dams in the study area; however, system-wide planning and coordination with the operators of the non-Federal dams will be included as a part of the study effort to the extent that cooperation and resources permit.

A number of general operational changes have been identified that, individually or in combination, will be considered study alternatives. These include changes to current reservoir levels, minimum flow requirements, outflow rates-of-change (ramping), and the timing of and need for reservoir drawdowns. This study will evaluate an alternative plan for dam operation to more closely mimic natural hydrology, and a no-action alternative with no changes to the current operating plans.

Significant resources and issues to be addressed in the DEIS will be determined through coordination with Federal agencies, State agencies, tribal governments, local governments, the general public, interested private organizations, and industry. Anyone who has an interest in participating in the development of the DEIS is invited to contact the St. Paul District, Corps of Engineers.

To date, the following areas of discussion have been identified for inclusion in the DEIS:

1. Navigation (to the extent it is still a Federal project purpose for the headwaters reservoirs).
2. Treaty rights, tribal trust resources, and other areas of special tribal interest such as wild ricing, fishing, and hunting.
3. Flood damage reduction (around the lakes and along the receiving rivers).
4. Fish and wildlife (with an emphasis on enhancement, restoration, and preservation of lake, river, and floodplain habitats).
5. Recreation and related tourism.
6. Water quality (contaminants, nutrients, dissolved oxygen, *etc.*) and water quantity (including low flow augmentation, drought reduction, waste assimilation, and water supply).
7. Erosion and sedimentation (lake and riverine damage).
8. Hydropower.
9. Archeological, cultural, and historic resources.

Additional areas of interest may be identified through the scoping process, which will include public and agency meetings. A notice of these meetings will be provided to interested parties and to local news media.

The Corps has determined that the selection of a combined operating plan for the federally operated headwaters reservoirs has the potential to significantly affect the quality of the human environment. Therefore, the Corps and the Forest Service have jointly determined that the preparation of an Environmental Impact Statement is appropriate.

An environmental review will be conducted under the NEPA of 1969 and other applicable laws and regulations. It is anticipated that the DEIS will be available for public review in the winter of 2004–2005.

Dated: September 8, 2003.

Robert L. Ball,

Colonel, Corps of Engineers, District Engineer.

[FR Doc. 03–30802 Filed 12–11–03; 8:45 am]

BILLING CODE 3710–CY–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–301–100]

ANR Pipeline Company; Notice of Negotiated Rate Filing

December 5, 2003.

Take notice that on December 2, 2003, ANR Pipeline Company (ANR) tendered for filing and approval two amendments to an existing negotiated rate service agreement between ANR and Madison Gas & Electric Company.

ANR requests that the Commission accept and approve the two subject negotiated rate agreement amendments to be effective on November 1, 2003 and December 1, 2003, respectively.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the e-Filing link.

Magalie R. Salas,

Secretary.

[FR Doc. E3–00533 Filed 12–11–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–301–098]

ANR Pipeline Company; Notice of Negotiated Rate Filing

December 5, 2003.

Take notice that, on December 1, 2003, ANR Pipeline Company (ANR) tendered for filing and approval three (3) amendments to existing negotiated rate service agreements between ANR and NJR Energy Services Company.

ANR requests that the Commission accept and approve the subject negotiated rate agreement amendments to be effective December 1, 2003.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with § 385.214 or § 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with § 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the e-Filing link.

Magalie R. Salas,

Secretary.

[FR Doc. E3–00544 Filed 12–11–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–92–000]

Georgia Public Service Commission; Notice of Declaratory Order

December 5, 2003.

Take notice that on November 19, 2003, Georgia Public Service Commission (GPSC) tendered for filing a petition for a Declaratory Order in Docket No. RP04–92–000, requesting that the Commission declare:

Whether the FERC would preempt the Georgia Commission if the Georgia Commission adopted a plan that provided for the permanent assignment of the interstate capacity assets currently held by Atlanta Gas Light Company to certificated natural gas marketers and placed conditions upon that assignment of the interstate capacity assets.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before the date as indicated below. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the e-Filing link.

Comment Date: December 26, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. E3–00541 Filed 12–11–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–102–000]

Pinnacle Pipeline Company; Notice of Tariff Filing

December 5, 2003.

Take notice that on December 3, 2003, Pinnacle Pipeline Company (Pinnacle) tendered for filing as part its proposed FERC Gas Tariff, Original Volume 1, the tariff sheets in Appendix A to the filing.

Pinnacle states that its proposed tariff sheets are being submitted in compliance with the October 8, 2003 Certificate Order issued by the Commission in Docket No. CP03-323-000, *et al.*, which authorized Pinnacle to operate and expand an existing pipeline lateral facility in the State of New Mexico, known as the Hobbs Lateral.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-

free at (866) 208-3676, or TTY, contact (202) 502-8659. The Commission strongly encourages electronic filings. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the e-Filing link.

Magalie R. Salas,

Secretary.

[FR Doc. E3-00540 Filed 12-11-03; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04-100-000]

Puget Sound Energy, Inc.; Notice of Tariff Filing

December 5, 2003.

Take notice that on December 3, 2003, Puget Sound Energy, Inc. (Puget) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the following tariff sheets, to be effective January 3, 2004:

Second Revised Sheet No. 1
Original Sheet Nos. 95 through 111

Puget states that the purpose of this filing is to incorporate amendments dated May 31, 2002, February 28, 2003 and July 23, 2003 to the Jackson Prairie Gas Storage Project Agreement dated January 15, 1998, in order to reflect the administrative and operational procedures pertaining to implementation of the phased storage capacity expansion of Jackson Prairie Gas Storage Project approved in Docket No. CP02-384-000 and to reflect the interim storage capacity and storage service rights resulting from the completion of the first phase of the authorized storage capacity expansion.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "eLibrary". Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208-3676, or TTY, contact (202) 502-8659. The Commission strongly encourages electronic filings. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Magalie R. Salas,

Secretary.

[FR Doc. E3-00538 Filed 12-11-03; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96-312-133]

Tennessee Gas Pipeline Company; Notice of Negotiated Rate

December 5, 2003.

Take notice that on December 2, 2003, Tennessee Gas Pipeline Company (Tennessee), tendered for filing its Negotiated Rates and Nonconforming Agreements Tariff Filing.

Tennessee's filing requests that the Commission approve a negotiated rate arrangement between Tennessee and Magnum Hunter Production Inc. and Tennessee and Remington Oil and Gas Company. Tennessee requests that the Commission grant such approval effective December 2, 2003.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with § 385.214 or § 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with § 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208-3676, or TTY, contact (202) 502-8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the e-Filing link.

Magalie R. Salas,

Secretary.

[FR Doc. E3-00543 Filed 12-11-03; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04-101-000]

Transcontinental Gas Pipe Line Corporation; Notice of Tariff Filing

December 5, 2003.

Take notice that on December 3, 2003, Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing to its FERC Gas Tariff, Third Revised Volume No.1, TwentyFourth Revised Sheet No. 28, with an effective date of December 1, 2003.

Transco states that the purpose of the instant filing is to track rate changes attributable to storage service purchased from Texas Eastern Transmission Corporation (TETCO) under its Rate Schedule X-28, the costs of which are included in the rates and charges payable under Transco's Rate Schedule S-2.

Transco states that this filing is being made pursuant to tracking provisions under section 26 of the General Terms and Conditions of Transco's Third revised Volume No. 1 Tariff. Transco further states that included in Appendix A attached to the filing is the explanation of the rate changes and details regarding the computation of the revised S-2 rates.

Transco states that copies of the filing are being mailed to affected customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the

Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208-3676, or TTY, contact (202) 502-8659. The Commission strongly encourages electronic filings. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the e-Filing link.

Magalie R. Salas,

Secretary.

[FR Doc. E3-00539 Filed 12-11-03; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2659-016]

PacifiCorp, Oregon; Notice of Availability of Environmental Assessment

December 5, 2003.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission) regulations, 18 CFR part 380 (Order No. 486, 52 FR 47897), the Office of Energy Projects has reviewed the application for surrender of license for the Powerdale Hydroelectric Project. The project is located on the Hood River, in Hood River County, Oregon. There are no federal lands within the project boundary although the lower half of the bypassed reach and the powerhouse are located within the Columbia River Gorge National Scenic Area. The Commission staff has prepared an Environmental Assessment (EA) on the license surrender.

The EA contains the staff's analysis of the potential environmental impacts of decommissioning the project and removing most of the project facilities. In the EA, staff concludes that surrendering the license, with appropriate environmental protection measures, would not constitute a major federal action that would significantly affect the quality of the human environment.

A copy of the EA is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's website at http://www.ferc.gov using the "eLibrary" link. Enter the docket number, excluding the last three digits in the docket number field, to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1-866-208-3676, or for TTY, (202) 502-8659.

You may also register online at *http://www.ferc.gov/esubscribenow.htm* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

Please file any comments (an original and 8 copies) within 45 days from the date of this notice. The comments should be addressed to Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426. Please affix the Project No. 2659-016 to all comments. Comments may be filed electronically via the internet in lieu of paper (see 18 CFR 385.2001(a)(1)(iii)). Instructions for electronic filing are available on the Commission's Web site at *http://www.ferc.gov* under the "e-filing" link. The Commission strongly encourages electronic filings.

For Further Information Contact: Bob Easton at (202) 502-6045.

Magalie R. Salas,

Secretary.

[FR Doc. E3-00537 Filed 12-11-03; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application for Amendment of License and Soliciting Comments, Motions To Intervene, and Protests and Adoption of Environmental Impact Statement

December 5, 2003.

Take notice that the following applications have been filed with the Commission and are available for public inspection:

a. *Application Type:* (1) Application for Approval of the Rock Island Anadromous Fish Agreement and Habitat Conservation Plan and Adoption as an Amendment of License; (2) Application for Approval of the Rocky Reach Anadromous Fish Agreement and Habitat Conservation Plan as an Offer of Settlement and Adoption as an Amendment of License; and (3) Application for Approval of the Wells Anadromous Fish Agreement and Habitat Conservation Plan and Adoption as an Amendment of License.

In accordance with the Commission's procedures for complying with the National Environmental Policy Act (NEPA), and consistent with the regulations of the Council on Environmental Quality (CEQ) for implementing NEPA at 40 CFR1506.3, the Commission, as a cooperating agency, has decided to adopt an environmental impact statement (EIS) produced by the U.S. Department of Commerce, National Oceanic and Atmospheric Administration's National Marine Fisheries Service. The EIS is titled: "Anadromous Fish Agreements and Habitat Conservation Plans. Final Environmental Impact Statement for the Wells, Rocky Reach, and Rock Island Hydroelectric Projects." The FERC staff has independently reviewed the EIS, and agrees with its analyses and conclusions. The staff, therefore, finds that the EIS meets the standards for an adequate environmental analysis under NEPA, and can be adopted.

b. *Project Numbers*: P-2149-106, P-2145-057, and P-943-083.

c. *Date Filed*: November 24, 2003.

d. *Applicants*: Public Utility District No. 1 of Chelan County, Washington (P-943 and P-2145) and Public Utility District No. 1 of Douglas County, Washington (P-2149).

e. *Name of Projects*: Wells Project (FERC No. P-2149), Rocky Reach Project (FERC No. P-2145), and Rock Island Project (FERC No. P-943).

f. *Location*: The projects are located on the main stem Columbia River.

g. *Filed Pursuant to*: Federal Power Act, 16 U.S.C. 791 (a) 825(r) and 799 and 801.

h. *Applicant Contacts*: Tracy Yount, Public Utility District No. 1 of Chelan County, Washington, P.O. Box 1231, Wenatchee, WA 98807-1231, phone: (509) 663-8121.

Robert W. Clubb, Public Utility District No. 1 of Douglas County, Washington, 1151 Valley Mall Parkway, East Wenatchee, WA 98802-4497, phone: (509) 884-7191.

i. *FERC Contact*: Any questions on this notice should be addressed to Mr. Robert Fletcher at (202) 502-8901, or e-mail address: *robert.fletcher@ferc.gov*.

j. *Deadline for filing comments and or motions*: January 9, 2004.

k. *Description of Request*: The licensees for each of these three projects request Commission approval of their Anadromous Fish Agreements and project-specific Habitat Conservation Plans. The objectives of these agreements and plans are to achieve no net impact for each anadromous fish species and their habitat affected by each project. Further, the licensees request the Commission to amend the license of each project to incorporate the

plans into the respective licenses with articles that read as follows:

Article X. The licensee will carry out its obligations set forth in the Anadromous Fish Agreement and Habitat Conservation Plan for the specified project (HCP Agreement). Further, the licensee will file with the Commission: (1) The final annual and comprehensive progress reports developed pursuant to the HCP Agreement; and (2) the final results of all studies and testing pursuant to the HCP Agreement.

Article Y. The licensee will file design drawings prior to implementation of any substantial modification or addition to project works that is necessary to implement the HCP Agreement. The licensee will file such design drawings for Commission approval at least 90 days prior to the start of construction or modification. The licensee will file as-built drawings with the Commission within 6 months after completion of construction or modification.

l. *Locations of the Application*: A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, call 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov*, for TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item (h) above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", OR "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers (p–2149–106, p–2145–057, and/or p–943–083). All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street NE.; Washington DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

p. Agency Comments—Federal, State, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

q. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov* under the "e-Filing" link.

Magalie R. Salas,

Secretary.

[FR Doc. E3–00535 Filed 12–11–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing, and Soliciting Comments, Motions To Intervene, and Protests

December 5, 2003.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application*: License amendment for non-project use of project lands and waters.

b. *Project No.*: 1951–114.

c. *Date Filed*: September 3, 2003.

d. *Applicant*: Georgia Power.

e. *Name of Project*: Sinclair Project.

f. *Location*: Sinclair Project reservoir on the Oconee River, in Baldwin and Putnam Counties, Georgia.

g. *Filed Pursuant to*: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact*: Mr. Scott Hendricks, Georgia Power, 241 Ralph McGill Blvd., Atlanta, GA 30308–3374, (404) 506–2392.

i. *FERC Contact*: Ms. Monica Maynard, (202) 502–6013.

j. *Deadline for filing motions to intervene, protests and comments*: January 5, 2004. The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Proposed Action*: The Applicant seeks to allow the Amherst County Service Agency (ACSA) withdraw up to 2 MGD from the James River within the Reusens Project boundary during drought emergencies. The Applicant would allow the ACSA to temporarily install a pump and screened intake pipe to move water from the project reservoir into pipe leading to its water drinking water supply system during drought emergency conditions.

l. The filings are available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov*. For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the addresses in item h.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified

comment date for the particular application.

o. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", OR "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

p. Agency Comments—Federal, State, and local agencies are invited to file comments on the described applications. A copy of the applications may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

q. Comments, protests, and interventions may be filed electronically in the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See* CFR 18 385.2001(a)(l)(iii) and the instructions on the Commission's Web site, *http://ferc.gov* under the "e-filing" link.

Magalie R. Salas,

Secretary.

[FR Doc. E3–00534 Filed 12–11–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application for Modification of Project Recreation Plan and Soliciting Comments, Motions To Intervene, and Protests

December 5, 2003.

Take notice that the following application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Request to modify the recreation plan to afford more public access at Moran Road while protecting threatened species.

b. *Project No:* 2246–046.

c. *Date Filed:* June 11, 2003, and supplemented November 12, 2003.

d. *Applicant:* Yuba County Water Agency.

e. *Name of Project:* Yuba River Project.

f. *Location:* Moran Road on west side of New Bullards Bar Reservoir near Little Oregon Creek in Yuba County, California (about 25 miles northeast of Marysville, CA).

g. *Filed Pursuant to:* 18 CFR 4.200.

h. *Applicant Contact:* Curt Aikens, General Manager, YCWA, 1402 D St., Marysville, CA 95901–4226.

i. *FERC Contact:* Antonia Lattin, *antonia.lattin@ferc.gov*, (415)–369–3334

j. *Deadline for Filing Comments, Motions to Intervene and Protest:* January 9, 2004.

The Commission's rules of practice and procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Application:* The licensee is requesting a modification of the approved project recreation plan to allow seasonal access at the Moran Road area of New Bullards Bar Reservoir. The existing recreation plan filed February 26, 1993, approved August 19, 1993, and amended July 18, 2003, and September 30, 2003, specifies reconstruction of ½ mile of the unpaved Moran Road, enlarging a turnaround area to accommodate about six cars, and closing Moran Road beyond the turnaround. The proposed modification as supplemented in the November 12, 2003, filing proposes that the Moran Road gate be closed from October 15 to May 1 to protect the federally threatened California red-legged frog (Rana aurora draytonii), the federally threatened bald eagle (Haliaeetus leucocephalus), and to assure public safety. The gate would remain open for the summer recreation season from May 2 to October 14.

The licensee consulted with the Tahoe National Forest and the U.S. Fish and Wildlife Service. The U.S. Fish and Wildlife Service concurred with the Forest Service finding that the action is not likely to adversely affect the threatened species as long as the mitigation measures listed in the Forest Service Decision Memo dated August 26, 2003, are implemented. The licensee has also held meetings with members of the public and tried to accommodate the request for as much public access as possible at the Moran Road site.

l. The filings are available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "eLibrary" link. Select "General Search" and enter a "P-" plus the docket number excluding the last three digits to access the document. Click on "Image" when the listing appears to view the text of the filing. For assistance, call toll-free 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov*. For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the addresses in item h.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene*— Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of rules of practice and procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", OR "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing an original and eight copies to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Comments, protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

p. *Agency Comments*— Federal, State, and local agencies are invited to file comments on the described applications. A copy of the applications

may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Magalie R. Salas,

Secretary.

[FR Doc. E3–00536 Filed 12–11–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Comments, Motions to Intervene, and Protests

December 5, 2003.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No:* 12472–000.

c. *Date Filed:* September 25, 2003.

d. *Applicant:* Eastern Kentucky Hydro.

e. *Name of Project:* Cave Run Lake Project.

f. *Location:* The proposed project would be located at the U.S. Army Corps of Engineers' (Corps) existing Cave Run Lake Dam on the Licking River in Bath and Rowan County, Kentucky.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r:

h. *Applicant Contact:* Mr. David Brown Kinloch, Eastern Kentucky Hydro, 414 S. Wenzel Street, Louisville, KY 40204, (502) 589–0975.

i. *FERC Contact:* Any questions on this notice should be addressed to Mr. Lynn R. Miles, Sr. at (202) 502–8763.

j. *Deadline for filing motions to intervene, protests and comments:* 60 days from the issuance date of this notice.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Project:* The proposed run-of-river project using the existing Corps dam would consist of: (1) Five 4-foot-diameter, 1200-foot-long steel penstocks, (2) a proposed containing 15 new axial flow propeller turbines, each directly connected to a 330 kilowatt induction generator, having a total installed capacity of 4.95 megawatts, (3) an existing three-phase transmission line and (4) appurtenant facilities. The project would have an annual generation of 18 gigawatt-hours.

l. *Locations of Applications:* A copy of the application is available for inspection and reproduction at the Commission in the Public Reference Room, located at 888 First Street NE, Room 2A, Washington DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov*. For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h. above.

m. Individuals desiring to be included on the Commission(s mailing list should so indicate by writing to the Secretary of the Commission.

n. *Competing Preliminary Permit:* Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

o. *Competing Development Application:* Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

p. *Notice of Intent:* A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

q. *Proposed Scope of Studies under Permit:* A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

r. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

s. *Filing and Service of Responsive Documents:* Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", or "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Comments, protests and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

t. *Agency Comments* Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Magalie R. Salas,

Secretary.

[FR Doc. E3–00545 Filed 12–11–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RP96–200–092, RP96–200–097, RP96–200–101, RP96–200–102, RP96–200–103, RP96–200–104, RP96–200–105, RP96–200–106, RP96–200–107, RP96–200–108, RP96–200–110, RP96–200–111, RP96–200–113, and RP96–200–114]

CenterPoint Energy Gas Transmission Company; Notice of Technical Conference

December 5, 2003.

The Commission staff will hold a technical conference in the captioned subdockets on December 12, 2003, beginning at 9 a.m. at the Commission's headquarters at 888 First St. NE., Washington, DC, in a room to be established. The technical conference will further discuss issues raised by the September 15, 2003 Order in Docket Nos. RP96–200–092, *et al.*, (104 FERC ¶ 61,280), which directed CenterPoint Energy Transmission Company (CEGT) to file certain tariff provisions and to modify certain non-conforming gas transportation agreements.

The issues in the enumerated Docket No. RP96–200 subdockets are closely related. Therefore, Commission staff believes that the discussion of these issues at a public technical conference, which would be open only to Commission staff and interested parties that have intervened in these subdockets, will assist in an efficient resolution of these matters. Interested parties desiring further information should contact John M. Robinson of the advisory staff at 202–502–6808.

Magalie R. Salas,

Secretary.

[FR Doc. E3–00542 Filed 12–11–03; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[SFUND–2000–0009, FRL–7598–9]

Agency Information Collection Activities: Proposed Collection; Comment Request; Notification of Episodic Releases of Oil and Hazardous Substances, EPA ICR Number 1049.10, OMB Control Number 2050–0046

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit a continuing Information Collection Request (ICR) to the Office of Management and Budget (OMB). This is a request to renew an existing approved collection. This ICR is scheduled to expire on April 30, 2004. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before February 10, 2004.

ADDRESSES: Submit your comments, referencing docket ID number SFUND–2000–0009, to EPA online using EDOCKET (our preferred method), by email to *superfund.docket@epa.gov*, or by mail to: EPA Docket Center, Environmental Protection Agency, Superfund Docket Office, Mail Code 5202T, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Lynn M. Beasley, Office of Solid Waste and Emergency Response, Office of Emergency Prevention, Preparedness, and Response, Emergency Response Staff, 5204G, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 603–9086; fax number: (703) 603–9104; e-mail address: *beasley.lynn@epa.gov*.

SUPPLEMENTARY INFORMATION: EPA has established a public docket for this ICR under Docket ID number SFUND–2000–0009, which is available for public viewing at the Superfund Docket in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Ave., NW, Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Superfund Docket is (202) 566–0276. An electronic version of the public docket is available through EPA Dockets (EDOCKET) at *http://www.epa.gov/edocket*. Use EDOCKET to obtain a copy of the draft collection of information, submit or view public comments, access the index listing of the contents of the public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the docket ID number identified above.

Any comments related to this ICR should be submitted to EPA within 60 days of this notice. EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EDOCKET as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose public disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EDOCKET. The entire printed comment, including the copyrighted material, will be available in the public docket. Although identified as an item in the official docket, information claimed as CBI, or whose disclosure is otherwise restricted by statute, is not included in the official public docket, and will not be available for public viewing in EDOCKET. For further information about the electronic docket, see EPA's **Federal Register** notice describing the electronic docket at 67 FR 38102 (May 31, 2002), or go to *http://www.epa.gov./edocket*.

Affected entities: Entities potentially affected by this action are facilities or vessels that manufacture, process, transport, or otherwise use certain specified hazardous substances and oil.

Title: Notification of Episodic Releases of Oil and Hazardous Substances.

Abstract: Section 103(a) of CERCLA, as amended, requires the person in charge of a facility or vessel to immediately notify the National Response Center (NRC) of a hazardous substance release into the environment if the amount of the release equals or exceeds the substance's reportable quantity (RQ) limit. The RQ of every

hazardous substance can be found in Table 302.4 of 40 CFR 302.4.

Section 311 of the CWA, as amended, requires the person in charge of a vessel to immediately notify the NRC of an oil spill into U.S. navigable waters if the spill causes a sheen, violates applicable water quality standards, or causes a sludge or emulsion to be deposited beneath the surface of the water or upon adjoining shorelines.

The reporting of a hazardous substance release that is above the substance's RQ allows the Federal Government to determine whether a Federal response action is required to control or mitigate any potential adverse effects to public health or welfare or the environment. Likewise, the reporting of oil spills allows the Federal government to determine whether cleaning up the oil spill is necessary to mitigate or prevent damage to public health or welfare or the environment.

The hazardous substance and oil release information collected under CERCLA section 103(a) and CWA section 311 also is available to EPA program offices and other Federal agencies who use the information to evaluate the potential need for additional regulations, new permitting requirements for specific substances or sources, or improved emergency response planning. Release notification information, which is stored in the national Emergency Response Notification System (ERNS) data base, is available to State and local government authorities as well as the general public. State and local government authorities and the regulated community use release information for purposes of local emergency response planning. Members of the general public, who have access to release information through the Freedom of Information Act, may request release information for purposes of maintaining an awareness of what types of releases are occurring in different localities and what actions, if any, are being taken to protect public health and welfare and the environment. ERNS fact sheets, which provide summary and statistical information about hazardous substance and oil release notifications, also are available to the public. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9.

The EPA would like to solicit comments to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(ii) Evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Burden Statement:

Estimated total number of reportable releases of hazardous substances and oil per year: 24,082.

Frequency of response: When a reportable release occurs.

Estimated total annual burden hours: 98,736 hours.

Estimated total annual burden costs: $7,230,537.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Dated: November 10, 2003.

Deborah Y. Dietrich,

Director, Office of Emergency Prevention, Preparedness, and Response.

[FR Doc. 03–30776 Filed 12–11–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2003–0383; FRL–7337–2]

Pesticide Program Dialogue Committee Notice of Charter Renewal

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: As required by the Federal Advisory Committee Act, EPA's Office of Pesticide Programs (OPP) is giving notice of the renewal of the Pesticide Program Dialogue Committee (PPDC) and its Charter.

DATES: The PPDC Charter, which was filed with Congress on November 7, 2003, will be in effect for 2 years, until November 7, 2005.

FOR FURTHER INFORMATION CONTACT: Margie Fehrenbach, Designated Federal Officer for PPDC, Office of Pesticide Programs, 7501C, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: 703–308–4775; fax number: 703–308–4776; e-mail address: *Fehrenbach.Margie@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general; however, persons may be interested who work in agricultural settings or persons who are concerned about implementation of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA); the Federal Food, Drug, and Cosmetic Act (FFDCA); and the amendments to both of these major pesticide laws by the Food Quality Protection Act (FQPA), (Public Law 104–170) of 1996. Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number OPP–2003–0383. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the **Federal Register** listings at *http://www.epa.gov/fedrgstr/*.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select "search," then key in the appropriate docket ID number.

II. Background

The Office of Pesticide Programs is entrusted with the responsibility of ensuring the safety of the American food supply, the protection and education of those who apply or are exposed to pesticides occupationally or through use of products from unreasonable risk, and general protection of the environment and special ecosystems from potential risks posed by pesticides.

The Pesticide Program Dialogue Committee (PPDC) was established under the Federal Advisory Committee Act (FACA), Public Law 92–463 in September 1995, for a 2–year term and renewed every 2 years since that time. EPA has renewed the PPDC Charter for another 2–year term, from November 7, 2003 to November 7, 2005. PPDC provides advice and recommendations to the Office of Pesticide Programs on a broad range of pesticide regulatory, policy and program implementation issues that are associated with evaluating and reducing risks from use of pesticides. The following sectors are represented on the PPDC: Pesticide industry and trade associations; environmental/public interest and consumer groups; farm worker organizations; pesticide user, grower, and commodity groups; Federal and State/local/Tribal governments; the general public; academia; and public health organizations. It is determined that PPDC is in the public interest in connection with the performance of duties imposed on the Agency by law.

Copies of the PPDC charter are filed with appropriate committees of Congress and the Library of Congress and are available upon request.

List of Subjects

Environmental protection, Agriculture, Agricultural workers, Chemicals, Pesticides, Pests, Public health, Risk assessment, Tolerance reassessment.

Dated: December 2, 2003.

James Jones,

Director, Office of Pesticide Programs.

[FR Doc. 03–30778 Filed 12–11–03; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6646–5]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 564–7146. An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 04, 2003 (68 FR 16511).

Draft EISs

ERP No. D–AFS–K65260–AZ Rating EC2, Rodeo-Chediski Fire Salvage Project, Timber Harvest of Merchantable Dead Trees as Sawtimber and Products other than Lumber (POL), Implementation, Apache-Sitgreaves and Tonto National Forest, Apache, Coconino and Navajo Counties, AZ.

Summary: EPA expressed environmental concerns with potential adverse impacts to water quality and wildlife. The preferred alternative requires harvesting on steep slopes with highly erosive soils which may further impact 303(d) listed streams, aquatic resources and habitat for the Western Spotted Owl.

ERP No. D–AFS–L65428–ID Rating NS, Twin Creek Timber Sale Project, Proposal to Cut and Remove Lodgepole Pine Sawtimber and Road Construction/Reconstruction, Montpelier Ranger District, Caribou National Forest, U.S. Army Corps of Engineers Permit, Bear Lake County, ID.

Summary: Region 10 has used a screening tool to conduct a limited review of this action. Based upon this screen, EPA does not foresee having any environmental objections to the proposed project.

ERP No. D–AFS–L65435–ID Rating EC2, Mission Brush Project, Proposes Vegetation, Wildlife Habitat, Recreation and Aquatic Improvement Treatments, Idaho Panhandle National Forests, Bonners Ferry Ranger District, Bounty County, ID.

Summary: EPA expressed environmental concerns regarding potential adverse impacts to water quality, invasive species, biodiversity, and cumulative impacts.

ERP No. D–HHS–D81034–MD Rating EC2, Integrated Research Facility (IRF) at Fort Detrick Construction and Operation, Adjacent to Existing U.S. Army Medical Research Institute of Infectious Diseases Facilities, City of Frederick, Frederick County, MD.

Summary: EPA expressed concerns regarding the Laboratory Sewer System's (LSS) possible contamination from biological warfare liquid wastes and radioactive materials to the proposed integrated Research Facility (IRF). EPA requested the FEIS specify the degree of contamination and remedial efforts to mitigate contamination from the LSS and indicate the U.S. Army's commitment to provide follow-up studies on post IRF activities.

ERP No. DA–FTA–K40237–CA Rating LO, Orange County Centerline Project, Transportation Improvements, Updated Information concerning Four New Alternatives and Re-examining an Updated New No Build Alternative, City of Santa Ana through the City of Casta Mesa to the City of Irvine, Funding, Orange County, CA.

Summary: EPA has no objections regarding the environmental impacts of the proposed project.

Final EISs

ERP No. F–AFS–E65087–AL Forest Health and Restoration Project, Proposal to Determine the Desired Future Conditions of all Existing Loblolly Pine Stands, National Forests in Alabama, Bankhead National Forest, Winston, Lawrence and Franklin Counties, AL.

Summary: EPA has no objections to this project, provided mitigation measures and monitoring programs described in the final EIS are implemented.

ERP No. F–AFS–L65409–AK, Licking Creek Timber Sale, Timber Harvest, Implementation, Tongass National Forest, Ketchikan Misty Fiords Ranger District, Revillagigedo Island, Ketchikan, AK.

Summary: No formal comment letter was sent to the preparing agency.

ERP No. F–AFS–L65419–ID, Upper and Lower East Fork Cattle and Horse Allotment Management Plans, Updating

the Allotment Plans to Allow Permitted Livestock Grazing, National Forest System Lands, Sawthooth and Challis National Forests, Custer County, ID.

Summary: No formal comment letter was sent to the preparing agency.

ERP No. F–AFS–L65424–ID, North End Sheep Allotment Management Plan (AMP) Revision, Proposal to Authorize Continued Livestock Use, Caribou-Targhee National Forest, Soda Springs Ranger District, Caribou and Bonneville Counties, ID.

Summary: No formal comment letter was sent to the preparing agency.

ERP No. F–FHW–L40202–WA, I–5 Toutle Park Road to Maytown Transportation Improvements, Funding, U.S. Army COE section 404 Permit, U.S. Coast Guard Permit and NPDES Permit Issuance, Cowlitz, Lewis and Thurston Counties, WA.

Summary: EPA has environmental concerns with the proposed project regarding the cumulative affects analyses in that many of the conclusions were either not presented clearly or did not appear to be supported by technical information. EPA recommends the use of the information in the cumulative effects analyses be augmented, as appropriate, in the further development and evaluation of projects that would tier from this EIS.

ERP No. F–FTA–G40170–TX, Northwest Corridor Light Rail Transit (LRT) Line to Farmers Branch and Carrollton, Construction and Operation, NPDES and U.S. Army COE section 404 Permits Issuance, Dallas Area Rapid Transit, Dallas and Denton Counties, TX.

Summary: No formal comment letter was sent to the preparing agency.

ERP No. F–FTA–G54006–TX, Southeast Corridor Light Rail Transit Project, Construction and Operation, Funding, NPDES Permit and U.S. Army COE section 404 Permit Issuance and, Mobility 2025 Plan Update, Dallas Area Rapid Transit (DART), City of Dallas, Dallas County, TX.

Summary: No formal comment letter was sent to the preparing agency.

ERP No. F–SFW–K99032–CA, Western Riverside County Multiple Species Habitat Conservation Plan (MSHCP), Implementation, Incidental Take Permits Issuance, Riverside and Orange County, CA.

Summary: EPA has continuing environmental concerns and recommended that the following issues be addressed in the Record of Decision: (1) Once the Section 7 evaluation is concluded, the findings should be incorporated to verify which species will be covered within the MSHCP; (2) The ROD should include a timeline for executing legal agreements with public/quasi-public land owners; and (3) U.S. Fish and Wildlife Service should provide criteria to prioritize land acquisitions to ensure key areas are incorporated into the Reserve.

ERP No. FS–FHW–L50009–WA, Elliott Bridge No. 3166 Replacement, Updated and Reevaluated Information concerning Replacement of the 149th Avenue SE Crossing over the Cedar River, Funding, U.S. CGD Bridge Permit and U.S. Army COE section 404 Permit Issuance, City of Renton, King County, WA.

Summary: No formal comment letter was sent to the preparing agency.

Dated: December 9, 2003.

B. Katherine Biggs,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 03–30779 Filed 12–11–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[6646–4]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–7167 or *http://www.epa.gov/compliance/nepa/.*

Weekly receipt of Environmental Impact Statements

Filed December 1, 2003 Through December 5, 2003

Pursuant to 40 CFR 1506.9.

EIS No. 030546, Draft EIS, AFS, PA, Sugar Run Project Area (SRPA), To Achieve and Maintain the Desired Conditions as stated in Forest Plan, Allegheny National Forest, Bradford Ranger District, McKean County, PA, Due: January 26, 2004, Contact: Heather Whittier (814) 362–4713.

EIS No. 030547, Final EIS, COE, AK, King Cove Access Project, Provision of a Transportation System between the City of King Cove and the Cold Bay Airport, U.S. Army COE Section 10 and 404 Permits Issuance, Aleutians East Borough (AEB), Alaska Peninsula, AK, Due: January 12, 2004, Contact: G. Leroy Phillips (907) 753–2712. This document is available on the Internet at: *http://www.kingcoveaccesseis.com.*

EIS No. 030548, Final EIS, BLM, AZ, Dos Pobres/San Juan Mining Plan and Land Exchange, Implementation of two Open Pit Copper Mines and one Central Ore Facility, NPDES and COE Section 404 Permits, Graham County, AZ, Due: January 12, 2004, Contact: Scott Evans (928) 348–4400.

EIS No. 030549, Draft EIS, NRC, IL, Dresden Nuclear Power Staten, Unit 2 and 3, Supplement 17, NUREG 1437, Renewal of a Nuclear Power Plant Operating License, Grundy County, IL, Due: February 24, 2004, Contact: Louis L. Wheeler (301) 415–1444. This document is available on the Internet at: *http://www.nrc.gov/reading-rm.htm/*

EIS No. 030550, Draft EIS, COE, MS, Enhanced Evaluation of Cumulative Effects Associated with U.S. Army Corps of Engineers Permitting Activity for Large-Scale Development in Coastal Mississippi, Mississippi, Hancock, Harrison and Jackson Counties, MS, Due: February 14, 2004, Contact: Dr. Susan I. Rees (251) 694–4141.

EIS No. 030551, Draft EIS, FHW, NC, U.S. 74 Improvements Corridor, between U.S. 601, North of Monroein Union County and I–485 (Charlotte Outer Loop), U.S. Army COE Section 404 Permit, Mecklenburg and Union Counties, NC, Due: January 26, 2004, Contact: Clarence Coleman (919) 856–4350.

EIS No. 030552, Final EIS, AFS, NM, Magdalena Ridge Observatory Project, Construct and Operate an Observatory in the Magdalena Mountains, Cibola National Forest, Magdalena Ranger District, Socorro County, NM, Due: January 12, 2004, Contact: Laura Hudnell (505) 854–2281.

EIS No. 030553, Final EIS, AFS, MT, Programmatic EIS—Winter Motorized Recreation Amendment 24, Proposal to Change the Flathead National Land and Resource Management Plan, Flathead National Forest, Flathead, Lake and Lincoln Counties, MT, Due: January 12, 2004, Contact: Kimberly Smolt (406) 758–5332. This document is available on the Internet at: *http://www.fs.fed.us/r1/flathead/*

Dated: December 9, 2003.

B. Katherine Biggs,

Associate Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 03–30780 Filed 12–11–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2003–0322; FRL–7328–2]

Intent to Suspend Certain Pesticide Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of issuance of notice of intent to suspend.

SUMMARY: This Notice, pursuant to section 6(f)(2) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. 136 *et seq.*, announces that EPA issued Notices of Intent to Suspend pursuant to section 3(c)(2)(B) of FIFRA. The Notices of Intent to Suspend were issued following issuance of Data Call-In Notices (DCI). The DCIs required registrants of products containing captan and DCPA used as an active ingredient to develop and submit certain data. These data were determined to be necessary to maintain the continued registration of affected products. Failure to comply with the data requirements of a DCI is a basis for suspension under section 3(c)(2)(B) of FIFRA. This Notice includes the text of the Notices of Intent to Suspend issued to Riverdale Chemical Company and Voluntary Purchasing Group. As required by section 6(f)(2), the Notices of Intent to Suspend were sent by certified mail, return receipt requested to each affected registrant at its address of record.

FOR FURTHER INFORMATION CONTACT: Harold Day, Agriculture Division, 2225A, Office of Enforcement and Compliance Assurance, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: 202–564–4133; fax number: 202–564–0029; e–mail address: *day.harold@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you hold EPA registrations for products that contain captan or DCPA. Potentially affected entities may include, but are not limited to, pesticide registrants. Other types of entities not listed in this unit could also be affected. To determine whether you or your business may be affected by this action, you should carefully examine the applicability provisions in the above-mentioned Data Call–Ins and FIFRA, specifically section 3(c)(2)(B). If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number OPP–2003–0322. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr/.*

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select "search," then key in the appropriate docket ID number.

II. What Action is the Agency Taking?

This Notice, pursuant to section 6(f)(2) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. 136 *et seq.*, announces that EPA issued Notices of Intent to Suspend pursuant to section 3(c)(2)(B) of FIFRA to Riverdale Chemical Company and Voluntary Purchasing Group. The Notices of Intent to Suspend were issued on September 25, 2003.

III. Text of the Notice to Suspend

The text of the Notices of Intent to Suspend absent specific chemical, product, or factual information issued to Riverdale Chemical Company and Voluntary Purchasing Group follows:

United States Environmental Protection Agency
Office of Prevention, Pesticides and Toxic Substances
Washington, DC 20460

September 25, 2003

Certified Mail
Return Receipt Requested

SUBJECT: Suspension of Registration of Pesticide Product(s) Containing _____ for Failure to Comply with the _____ Section 4 Phase 5 Reregistration Eligibility Document Data Call-In Notice Issued

Dear Sir/Madam:

This letter gives you notice that the pesticide product registration(s) listed in Attachment I will be suspended 30 days from your receipt of this letter unless you take steps within that time to prevent this Notice from automatically becoming a final and effective order of suspension. The Agency's authority for suspending the registrations of your products is section 3(c)(2)(B) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). Upon becoming a final and effective order of suspension, any violation of the order will be an unlawful act under section 12(a)(2)(J) of FIFRA.

You are receiving this Notice of Intent to Suspend because you have failed to comply with the terms of the 3(c)(2)(B) Data Call–In Notice. The specific basis for issuance of this Notice is stated in the Explanatory Appendix (Attachment III) to this Notice. The affected product(s) and the requirement(s) which you failed to satisfy are listed and described in the following three attachments:

Attachment I Suspension Report – Product List

Attachment II Suspension Report – Requirement List

Attachment III Suspension Report – Explanatory Appendix

The suspension of the registration of each product listed in Attachment I will become final unless at least one of the following actions is completed.

1. You may avoid suspension under this Notice if you or another person adversely affected by this Notice properly request a hearing within 30 days of your receipt of this Notice. If you request a hearing, it will be conducted in accordance with the requirements of section 6(d) of FIFRA and the Agency's Procedural Regulations in 40 CFR part 164.

Section 3(c)(2)(B), however, provides that the only allowable issues which may be addressed at the hearing are whether you have failed to take the actions which are the bases of this Notice and whether the Agency's decision regarding the disposition of existing stocks is consistent with FIFRA. Therefore, no substantive allegation or legal argument concerning other issues, including but not limited to the Agency's original decision to require the submission of data or other information, the need for or utility of any of the required data or other information or deadlines imposed, any allegations of errors or unfairness in any proceedings before an arbitrator, and the risks and benefits associated with continued registration of the affected product, may be considered in the proceeding. The Administrative Law Judge shall by order dismiss any objections which have no bearing on the allowable issues which may be considered in the proceeding.

Section 3(c)(2)(B)(iv) of FIFRA provides that any hearing must be held and a determination issued within 75 days after receipt of a hearing request. This 75–day period may not be extended unless all parties in the proceeding stipulate to such an extension. If a hearing is properly requested, the Agency will issue a final order at the

conclusion of the hearing governing the suspension of your product(s).

A request for a hearing pursuant to this Notice must: (1) include specific objections which pertain to the allowable issues which may be heard at the hearing, (2) identify the registrations for which a hearing is requested, and (3) set forth all necessary supporting facts pertaining to any of the objections which you have identified in your request for a hearing. If a hearing is requested by any person other than the registrant, that person must also state specifically why he asserts that he would be adversely affected by the suspension action described in this Notice. Three copies of the request must be submitted to:

Hearing Clerk, 1900
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20460

An additional copy should be sent to the signatory listed below. The request must be received by the Hearing Clerk by the 30th day from your receipt of this Notice in order to be legally effective. The 30–day time limit is established by FIFRA and cannot be extended for any reason. Failure to meet the 30–day time limit will result in automatic suspension of your registration(s) by operation of law and, under such circumstances, the suspension of the registration for your affected product(s) will be final and effective at the close of business 30 days after your receipt of this Notice and will not be subject to further administrative review.

The Agency's Rules of Practice at 40 CFR 164.7 forbid anyone who may take part in deciding this case, at any stage of the proceeding, from discussing the merits of the proceeding ex parte with any party or with any person who has been connected with the preparation or presentation of the proceeding as an advocate or in any investigative or expert capacity, or with any of their representatives. Accordingly, the following EPA offices, and the staffs thereof, are designated as judicial staff to perform the judicial function of EPA in any administrative hearings on this Notice of Intent to Suspend: the Office of the Administrative Law Judges, the Office of the Environmental Appeals Board, the Administrator, the Deputy Administrator, and the members of the staff in the immediate offices of the Administrator and Deputy Administrator. None of the persons designated as the judicial staff shall have any ex parte communication with trial staff or any other interested person not employed by EPA on the merits of any of the issues involved in this proceeding, without fully complying with the applicable regulations.

2. You may also avoid suspension if, within 30 days of your receipt of this Notice, the Agency determines that you have taken appropriate steps to comply with the section 3(c)(2)(B) Data Call–In Notice. In order to avoid suspension under this option, you must satisfactorily comply with Attachment II, Requirement List, for each product by submitting all required supporting data/information described in Attachment II and in the Explanatory Appendix (Attachment III) to the following address (preferably by certified mail):

Office of Compliance (2225A)
Agriculture Division
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20460

For you to avoid automatic suspension under this Notice, the Agency must also determine within the applicable 30–day period that you have satisfied the requirements that are the bases of this Notice and so notify you in writing. You should submit the necessary data/information as quickly as possible for there to be any chance the Agency will be able to make the necessary determination in time to avoid suspension of your product(s).

The suspension of the registration(s) of your company's product(s) pursuant to this Notice will be rescinded when the Agency determines you have complied fully with the requirements which were the bases of this Notice. Such compliance may only be achieved by submission of the data/information described in the attachments to the signatory below.

Your product will remain suspended, however, until the Agency determines you are in compliance with the requirements which are the bases of this Notice and so informs you in writing.

After the suspension becomes final and effective, the registrant subject to this Notice, including all supplemental registrants of product(s) listed in Attachment I, may not legally distribute, sell, use, offer for sale, hold for sale, ship, deliver for shipment, or receive and (having so received) deliver or offer to deliver, to any person, the product(s) listed in Attachment I.

Persons other than the registrant subject to this Notice, as defined in the preceding sentence, may continue to distribute, sell, use, offer for sale, hold for sale, ship, deliver for shipment, or receive and (having so received) deliver or offer to deliver, to any person, the product(s) listed in Attachment I.

Nothing in this Notice authorizes any person to distribute, sell, use, offer for sale, hold for sale, ship, deliver for shipment, or receive and (having so received) deliver or offer to deliver, to any person, the product(s) listed in Attachment I in any manner which would have been unlawful prior to the suspension.

If the registration(s) for your product(s) listed in Attachment I are currently suspended as a result of failure to comply with another section 3(c)(2)(B) Data Call–In Notice or Section 4 Data Requirements Notice, this Notice, when it becomes a final and effective order of suspension, will be in addition to any existing suspension, i.e., all requirements which are the bases of the suspension must be satisfied before the registration will be reinstated.

You are reminded that it is your responsibility as the basic registrant to notify all supplementary registered distributors of your basic registered product that this suspension action also applies to their supplementary registered products and that you may be held liable for violations committed by your distributors.

If you have any questions about the requirements and procedures set forth in this suspension notice or in the subject section 3(c)(2)(B) Data Call–In Notice, please contact Frances Liem at (202) 564–2365.

Sincerely yours,

Director, Agriculture Division, Office of Compliance.

Attachment I Suspension Report – Product List
Attachment II Suspension Report – Requirement List
Attachment III Suspension Report – Explanatory Appendix

IV. Registrants Receiving and Affected by the Notices of Intent to Suspend

The following is a list of products for which a Notice of Intent to Suspend been sent:

TABLE A.—PRODUCT LIST

Registrant Affected	EPA Registration Number	Active Ingredient	Product Name	Date DCI Issued
Riverdale Chemical Company	228–99	DCPA	Riversale 10% Dacthal Granules	11/25/98
	228–157	DCPA	Riverdale Crabgrass Control and Fertilizer	11/25/98
	228–222	DCPA	Riverdale 25% Dacthal Dust	11/25/98
Voluntary Purchasing Group	7401–438	Captan	Ferti-Lome Liquid Fruit Tree Spray	11/2/99

V. Basis for Issuance of Notice of Intent; Requirement List

The following companies failed to submit the following required data or information:

TABLE B.—REQUIREMENT LIST

Company	Active Ingredient	Guideline Reference Number	Requirement Name	Due Date
Riverdale Chemical Company	DCPA	---	30–Day response	7/12/01
		---	4–Month response	10/12/01
		61–1	Product identity and composition	10/12/01
		61–2(a)	Description of starting materials	10/12/01
		61–2(b)	Discussion of impurity formation	10/12/01
		62–1	Preliminary analysis	10/12/01
		62–2	Certification of limits	10/12/01
		62–3	Analytical method	10/12/01
		63–2	Color	10/12/01
		63–3	Physical state	10/12/01
		63–4	Odor	10/12/01
		63–7	Density	10/12/01
		63–12	pH	10/12/01
		63–14	Oxidation/reduction	10/12/01
		63–15	Flammability	10/12/01
		63–16	Explodability	10/12/01
		63–17	Storage Stability	10/12/01
		63–18	Viscosity	10/12/01
		63–19	Miscibility	10/12/01
		63–20	Corrosion characteristics	10/12/01
		81–1	Acute oral toxicity	10/12/01
		81–2	Acute dermal toxicity	10/12/01
		81–3	Acute inhalation toxicity	10/12/01
		81–4	Primary eye irritation	10/12/01
		81–5	Primary dermal irritation	10/12/01
		81–6	Skin sensitization	10/12/01
Voluntary Purchasing Group	Captan	830.1750	Certification of limits	04/12/03
		830.1800	Enforcement analytical method	04/12/03
		830.6317	Storage stability	04/12/03
		830.6320	Corrosion characteristics	04/12/03
		---	Revised Confidential Statements of Formula	04/12/03

VI. Attachment III Suspension Report–Explanatory Appendix

The Explanatory Appendix provides a discussion of the basis for the Notice of Intent to Suspend issued herewith.

A. Captan

On November 2, 1999, the Agency issued the Phase 5 Reregistration Eligibility Document Data Call-In Notice pursuant to sections 4(g)(2)(B) and 3(c)(2)(B) of FIFRA which required the registrants of products containing captan used as an active ingredient to develop and submit certain data. These data/information were determined to be necessary to satisfy reregistration requirements of section 4(g). Failure to comply with the requirements of a Phase 5 Reregistration Eligibility Document Data Call-In Notice is a basis for suspension under section 3(c)(2)(B) of FIFRA.

Voluntary Purchasing Group, Inc. received the Captan Reregistration Eligibility Document (RED) on November 20, 1999, as evidenced by a U.S. Postal Service domestic return receipt card. Therefore, the 90–day response was due on February 20, 2000, and the 8–month response was due on July 20, 2000. The company's 90–day response, dated April 18, 2000 was received by the Agency on April 18, 2000. The company agreed to satisfy the data requirements by developing and submitting the data to the Agency. It stated that the studies would be initiated within 2 weeks and it estimated that the studies would take approximately 5 months to complete.

By a letter dated February 8, 2001, the Agency informed Mr. Michael Jackson (Brazos Associates, Inc., Agent for Voluntary Purchasing Group) that Voluntary Purchasing Group's 8–month response was overdue. In a letter dated March 7, 2001, Brazos Associates, Inc. requested a time extension of an additional 4 months for submission of the product chemistry and acute toxicity studies. Additionally, the registrant asked for more time to submit the storage stability/corrosion data. The rationale for the time extension requests was based on problems that Brazos stated were being encountered with the test material and analytical procedures employed by Stillmeadow, Inc. (Laboratory). Brazos stated that these problems had delayed the development of studies, particularly the storage - stability and corrosion characteristics studies. The Agency agreed to place these latter two studies on hold until Stillmeadow resolved problems with the analytical procedures. The registrant agreed to provide quarterly progress reports. The 4–month time extension was granted in an Agency letter dated March 21, 2001.

The Agency received the 8–month response on November 16, 2001. Product specific data purporting to address product chemistry and acute toxicity guidelines were received. In the transmittal letter dated November 14, 2001, Brazos Associates noted that Stillmeadow was still experiencing problems with the test material for storage stability, corrosion characteristics, and enforcement analytical method studies. Therefore, Brazos Associates initiated a second set of these studies with Product Safety Labs to determine if it was a laboratory/company problem or actual problem with the analytical methods being utilized.

On January 31, 2003, the Agency completed the review of the product chemistry data submitted to support the reregistration of Voluntary Purchasing Group's captan product and found remaining deficiencies in the data that prevented the requirements from being satisfied. An Agency letter to Brazos Associates dated March 12, 2003 outlined the product chemistry deficiencies. Voluntary Purchasing Group was required to submit revised Confidential Statements of Formula, and product chemistry data for Guidelines 830.1750 Certified Limits, and 830.1800 Enforcement Analytical Method. Additionally, Voluntary Purchasing Group was also required to notify the Agency within 30 days of their receipt of the letter whether the storage stability and corrosion characteristics studies have been initiated and their expected completion dates. Brazos received the letter on behalf of Voluntary Purchasing Group on March 17, 2003.

On July 8, 2003, Ms. Karen Jones contacted Brazos Associates to determine if Voluntary Purchasing Group planned to submit the outstanding product chemistry data. Mr. Jackson of Brazos Associates indicated that Voluntary Purchasing Group did not plan to submit a response or data. Ms. Jones informed Mr. Jackson that the Agency would issue a Notice of Intent to Suspend (NOIS) for Voluntary Purchasing Group's failure to respond to the Agency's letter dated March 12, 2003 and to adequately satisfy the data requirements imposed by the Captan RED DCI.

To date, the Agency has not received required product chemistry data for Certification of Limits, Enforcement Analytical Method, or a Revised Confidential Statement of Formula. Additionally, the Agency has not received the required Storage Stability and Corrosion Characteristics product chemistry data, nor required progress reports.

Because the registrant has not supplied the required data to support its captan product registration, this Notice of Intent to Suspend is being issued.

B. DCPA

On November 25, 1998, the Agency issued the Phase 5 Reregistration Eligibility Document (RED) Data Call-In Notice pursuant to sections 4(g)(2)(B) and 3(c)(2)(B) of FIFRA which required the registrants of products containing DCPA used as an active ingredient to develop and submit certain data. These data/information were determined to be necessary to satisfy reregistration requirements of section 4(g). Failure to comply with the requirements of a Phase 5 Reregistration Eligibility Document Data Call-In Notice (DCI) is a basis for suspension under section 3(c)(2)(B) of FIFRA.

An Agency letter dated June 4, 2001, was sent to all DCPA registrants. The letter modified the DCI and established new time frames for submitting the generic and product specific data required in the DCPA RED. Riverdale Chemical Company received the letter modifying the deadlines imposed by the DCPA RED on June 12, 2001, as evidenced by a U.S. Postal Service Domestic return receipt card. Therefore, Riverdale's 30–day response was due on July 12, 2001, and the 4–month response was due on October 12, 2001.

On August 15, 2001, Ms. Venus Eagle on behalf of the Agency contacted Mr. Sawyer, the Regulatory Affairs Manager at Riverdale Chemical Company, to inquire why Riverdale had not responded to the June 4, 2001 letter which Riverdale received on June 12, 2001. Riverdale was required to respond 30 days after its receipt of the letter, that is, by July 12, 2001. Mr. Sawyer stated that his colleagues had not decided whether they wanted to support the DCPA end-use products or not. Ms. Eagle stated he had in effect already had 30 additional days since the deadline of July 12, 2001 to inform the Agency of its decision. Mr. Sawyer then responded that the Agency could issue a NOIS in lieu of waiting for Riverdale's answer.

On September 7, 2001, three letters (dated September 6, 2001) were received (for EPA Registration Nos. 228–99, 228–157, and 228–222) stating that Riverdale planned to "respond positively to the reregistration" of the subject products and that it "will be sending in the necessary documentation to continue" the registrations. However, by the deadline of October 12, 2001, no product specific data had been submitted for any of Riverdale's affected products. On March 11, 2002, Ms. Eagle spoke with Mr. Sawyer about the overdue product specific data. Mr. Sawyer responded that the samples got lost in December 2001, and they were just starting the data. Ms. Eagle told him that the Agency would have to issue a NOIS. Mr. Sawyer stated "go ahead then."

Since the required product chemistry and acute toxicity data have not been submitted for EPA Registration Nos. 228–99, 228–157, and 228–222, this Notice of Intent to Suspend is being issued.

V. What is the Agency's Authority for Taking this Action?

The Agency's authority for taking this action is section 6(f)(2) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. 136 *et seq.*

List of Subjects

Environmental protection.

Dated: November 6, 2003.

Richard Colbert,

Director, Agriculture Division, Office of Compliance, Office of Enforcement and Compliance Assurance.

[FR Doc. 03–30777 Filed 12–11–03; 8:45 am]

BILLING CODE 6560–50–S

EXPORT-IMPORT BANK OF THE UNITED STATES

Sunshine Act Meeting

ACTION: Notice of a partially open meeting of the Board of Directors of the Export-Import Bank of the United States.

TIME AND PLACE: Wednesday, December 17, 2003 at 9:30 a.m. The meeting will be held at Ex-Im Bank in Room 1143, 811 Vermont Avenue, NW., Washington, DC 20571.

OPEN AGENDA ITEM: Ex-Im Bank Advisory Committee Members for 2004.

PUBLIC PARTICIPATION: The meeting will be open to public participation for Item No. 1 only. Attendees that are not employees of the Executive Branch will be required to sign in prior to the meeting.

FOR FURTHER INFORMATION CONTACT: Office of the Secretary, 811 Vermont Avenue, NW., Washington, DC 20571 (Telephone No. (202) 565–3957).

Peter B. Saba,

General Counsel.

[FR Doc. 03–30883 Filed 12–10–03; 12:19 pm]

BILLING CODE 6690–01–M

FEDERAL HOUSING FINANCE BOARD

[No. 2003–N–09]

Proposed Collection; Comment Request

AGENCY: Federal Housing Finance Board.

ACTION: Notice.

SUMMARY: In accordance with the requirements of the Paperwork Reduction Act of 1995, the Federal Housing Finance Board (Finance Board) hereby gives notice that it is seeking public comments concerning a three-year extension by the Office of Management and Budget (OMB) of the information collection entitled "Federal Home Loan Bank Acquired Member Assets, Core Mission Activities, Investments and Advances."

DATES: Interested persons may submit comments on or before February 10, 2004.

ADDRESSES: Send comments by electronic mail to *comments@fhfb.gov*, by facsimile to 202/408–2580, or by regular mail to the Federal Housing Finance Board, 1777 F Street, NW., Washington, DC 20006 ATTN: Public Comments.

FOR FURTHER INFORMATION CONTACT: David Roderer, Financial Analyst, Office of Supervision, by electronic mail at *rodererd@fhfb.gov*, by telephone at 202/408–2540, or by regular mail at the Federal Housing Finance Board, 1777 F Street, NW., Washington, DC 20006.

SUPPLEMENTARY INFORMATION:

A. Need For and Use of the Information Collection

The Finance Board has authorized the Federal Home Loan Banks (FHLBanks) to acquire mortgage loans and other assets from their members or housing associates under certain circumstances. 12 CFR part 955. The regulation refers to these assets as acquired member assets or AMA. As part of this regulatory authorization, each FHLBank that acquires residential mortgage loans must provide to the Finance Board certain loan-level data elements on a quarterly basis. While the FHLBanks provide this data directly to the Finance Board, each FHLBank initially must collect the information from the private-sector member or housing associate from which the FHLBank acquires the mortgage loan.

FHLBank members and housing associates already collect the vast majority of the data elements the Finance Board rule requires as part of their customary and usual business practices. They must collect this data in order to do business with the Federal National Mortgage Association (Fannie Mae) and the Federal Home Loan Mortgage Corporation (Freddie Mac) under regulatory requirements issued by the Department of Housing and Urban Development (HUD) and pursuant to the information collection requirements under the Home Mortgage Disclosure Act (HMDA). Thus, this information collection imposes only a minor incremental additional burden on FHLBank members and housing associates.

The primary duty of the Finance Board is to ensure that the FHLBanks operate in a safe and sound manner. 12 U.S.C. 1422a(a)(3)(A). To the extent consistent with the safety and soundness charge, the Finance Board also ensures that the FHLBanks carry out their housing finance mission. 12 U.S.C. 1422a(a)(3)(B). The Finance Board believes that the information collection is essential in order to monitor the safety and soundness of the FHLBanks. The Finance Board also believes that the information collection is necessary to monitor the extent to which the FHLBanks are fulfilling their statutory housing finance mission through their acquired member asset programs.

The OMB number for the information collection is 3069–0058. The OMB clearance for the information collection expires on February 29, 2004.

The likely respondents are institutions that sell acquired member assets to the FHLBanks.

B. Burden Estimate

The Finance Board estimates the total annual average number of respondents at 600, with 12 responses per respondent. The estimate for the average hours per response is 8 hours. The estimate for the total annual hour burden is 57,600 hours (600 respondents × 12 responses per respondent × 8 hours).

C. Comment Request

The Finance Board requests written comments on the following: (1) Whether the collection of information is necessary for the proper performance of Finance Board functions, including whether the information has practical utility; (2) the accuracy of the Finance

Board's estimates of the burdens of the collection of information; (3) ways to enhance the quality, utility and clarity of the information collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Dated: December 8, 2003.

By the Federal Housing Finance Board.

Donald Demitros,

Chief Information Officer.

[FR Doc. 03–30743 Filed 12–11–03; 8:45 am]

BILLING CODE 6725–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center Web site at *http://www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than January 5, 2004.

A. Federal Reserve Bank of Kansas City (James Hunter, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. UBT Bancshares, Inc., Marysville, Kansas; to become a bank holding company by acquiring 100 percent of the voting shares of United Bank & Trust, Marysville, Kansas (currently State Bank of Axtell, Axtell, Kansas).

B. Federal Reserve Bank of San Francisco (Tracy Basinger, Director, Regional and Community Bank Group) 101 Market Street, San Francisco, California 94105-1579:

1. First Commerce Bancorp, Encino, California; to become a bank holding company by acquiring 100 percent of First Commerce Bank, Encino, California.

Board of Governors of the Federal Reserve System, December 8, 2003.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E3–00532 Filed 12–11–03; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y (12 CFR part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act. Additional information on all bank holding companies may be obtained from the National Information Center Web site at *http://www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 26, 2003.

A. Federal Reserve Bank of Boston (Richard Walker, Community Affairs Officer) 600 Atlantic Avenue, Boston, Massachusetts 02106-2204:

1. Boston Private Financial Holdings, Inc., Boston, Massachusetts; to acquire 80 percent of the voting shares of Dalton, Greiner, Hartman, Maher & Co., LLC and thereby indirectly acquire DGHM Management LLC, both of New York, New York, and thereby engage in investment advisory services pursuant to section 225.28(b)(6)(i) of Regulation Y.

Board of Governors of the Federal Reserve System, December 8, 2003.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E3–00531 Filed 12–11–03; 8:45 am]

BILLING CODE 6210–01–S

GENERAL ACCOUNTING OFFICE

Opportunity to "Ride" Printing Order for Volume I of GAO's Principles of Federal Appropriations Law

AGENCY: General Accounting Office.

ACTION: Advance notice of publication.

SUMMARY: The third edition of Volume I of GAO's *Principles of Federal Appropriations Law* is being prepared for publication by the Government Printing Office (GPO). Government departments, agencies, and other federal organizations that normally require more than one copy must request them through their agencies' account representatives in order to receive the pre-publication rate.

DATES: Rider orders must be received by GPO no later than January 7, 2004.

FOR FURTHER INFORMATION CONTACT: Lydia Koeller, (202) 512–4498.

SUPPLEMENTARY INFORMATION: The General Accounting Office (GAO) will shortly publish Volume I of *Principles of Federal Appropriations Law*, third edition—also know as "The Red Book." This publication is part of a multi-volume set intended to present a basic reference work covering those areas of law in which the Comptroller General renders decisions. Our approach is to lay a foundation with text discussion, using specific legal authorities to illustrate the principles discussed, their application, and exceptions. These authorities include GAO decisions and opinions, judicial decisions, statutory provisions, and other relevant sources.

GAO will provide copies of this volume to the heads of federal agencies. Agencies may place advance (rider) orders for additional copies of this volume with their account representatives at the Government Printing Office (GPO).

This notice is not intended to solicit orders from the general public for single copies or small orders of this volume. This publication will be available for purchase from the Superintendent of Documents, United States Printing Office, Washington, DC 20402, at a later time.

Rider orders for Volume I should be placed on Standard Form #1 and should specify GAO Requisition No. 4–00051. Agency orders for Volume I must be received by GPO no later than January 7, 2004. GPO will not accept rider requisitions for Volume I after this date, and agencies will have to purchase additional copies from the Superintendent of Documents. All rider requisitions must be submitted to GPO through each agency's Washington, D.C. headquarters printing procurement office. In compiling an agency's total order, GAO suggests that the needs of legal offices, finance and accounting offices, contracting offices, law libraries, federal depositories, Inspector General and Chief Financial Officer offices, field and regional offices, and any other elements of an agency that might use this publication be considered.

As with the second edition of Principles, we are publishing the third edition in loose-leaf format. We plan four volumes with annual updates. The updates will only be published electronically. Users should retain copies of their five volumes of the second edition until each volume is revised. We will not revise Volume III of the second edition, which we issued in November 1994. Volume III addresses functions that the GAO Act of 1996 transferred to the Executive Branch.

(Authority: 31 U.S.C. 712, 717, 719, 3511, 3526–29.)

Susan Poling,

Associate General Counsel, General Accounting Office.

[FR Doc. 03–30794 Filed 12–11–03; 8:45 am]

BILLING CODE 1610–02–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

[Document Identifier: OS–0937–0200/OS–0990–0220]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Office of the Secretary, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Secretary, Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agencys functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

#1 Type of Information Collection Request: Extension of Currently Approved Collection;

Title of Information Collection: HHS Payment Management forms;

Form/OMB No.: OS–0937–0200;

Use: The PSC–270 is used to request advance or reimbursement payments to grantees. It serves in place of the SF–270. The PSC–272 is used to monitor cash advances made to grantees and the collect disbursement data. It serves in place of the SF–272.

Frequency: On occasion and quarterly;

Affected Public: State, local, or tribal governments, business or other for profit, non for profit institutions;

Annual Number of Respondents: 18,490;

Total Annual Responses: 73,560;

Average Burden Per Response: 15 minutes to 3 hours;

Total Annual Hours: 220,980.

#2 Type of Information Collection Request: Extension of a currently approved collection;

Title of Information Collection: Voluntary Industry Partner Surveys to Implement E.O. 12862;

Form/OMB No.: OS–0990–0220;

Use: DHHS will survey its partners and stakeholders to learn how they feel about departmental services. The information will be used to identify ways to improve the efficiency, quality, timeliness, and cost effective ways to provide services to the public.

Frequency: On occasion;

Affected Public: Business or other for profit, not for profit institutions, State, local, or tribal government;

Annual Number of Respondents: 4,680;

Total Annual Responses: 4680;

Average Burden Per Response: 15 hours;

Total Annual Hours: 902.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, or E-mail your request, including your address, phone number, OS document identifier, to *Naomi Cook@hhs.gov*, or call the Reports Clearance Office on (202) 690–5522. Written comments and recommendations for the proposed information collections must be mailed within 30 days of this notice directly to the OMB desk officer: OMB Human Resources and Housing Branch. Attention: (OMB #0937–0200/OS–0990–0220), New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: December 9, 2003.

John P. Burke, III,

Paperwork Reduction Act Reports Clearance Officer, Office of the Secretary, Department of Health and Human Services.

[FR Doc. 03–30771 Filed 12–11–03; 8:45 am]

BILLING CODE 4150–34–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

[Document Identifier: OS–0990–0150]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Office of the Secretary, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Secretary (OS), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

#1 Type of Information Collection Request: Extension of a currently approved collection;

Title of Information Collection; Uniform Relocation and Real Property Acquisition Under Federal and Federally Assisted Programs.

Form/OMB No.: OS–0990–0150;

Use: HHS has adopted standard government-wide regulations on acquisition of real property and

relocation of persons thereby displaced. Federal agencies and State and local government must maintain records of their displacement activities sufficient to demonstrate compliance.

Frequency: One time;

Affected Public: State, local, or tribal governments;

Annual Number of Respondents: 1;

Total Annual Responses: 1;

Average Burden Per Response: 1 hours;

Total Annual Hours: 1.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access the HHS Web site address at: *http://www.hhs.gov/oirm/infocollect/pending/* or e-mail your request, including your address, phone number, OMB number, and OS document identifier, to *Naomi.Cook@hhs.gov*, or call the Reports Clearance Office on (202) 690–5522. Written comments and recommendations for the proposed information collections must be mailed within 60 days of this notice directly to the OS.

Paperwork Clearance Officer designated at the following address: Department of Health and Human Services, Office of the Secretary, Assistant Secretary for Budget, Technology, and Finance, Office of Information and Resource Management, Attention: Naomi Cook (0990–0150), Room 531–H, 200 Independence Avenue, SW., Washington DC 20201.

Dated: December 9, 2003.

John P. Burke, III,

Office of the Secretary, Paperwork Reduction Act Reports Clearance Officer.

[FR Doc. 03–30772 Filed 12–11–03; 8:45 am]

BILLING CODE 4168–17–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Committee on Vital and Health Statistics: Meeting

Pursuant to the Federal Advisory Committee Act, the Department of Health and Human Services (HHS) announces the following advisory committee meeting.

Name: National Committee on Vital and Health Statistics (NCVHS), Workgroup on the National Health Information Infrastructure (NHII).

Time and Date: 9 a.m.–3 p.m., December 19, 2003.

Place: Hubert H. Humphrey Building, 200 Independence Avenue, SW., Room 705A, Washington, DC 20201.

Status: Open.

Purpose: The Workgroup will hear a status report on NHII activities from HHS and from the Department of Veterans Affairs. There will be an update on the Healthcare Information and Management Systems Society's NHII survey. The Workgroup will also discuss its plans and priorities for the future.

Contact Person for More Information: Substantive program information as well as summaries of meetings and a roster of committee members may be obtained from Mary Jo Deering, Lead Staff Person for the NCVHS Workgroup on the National Health Information Infrastructure, Office of the Assistant Secretary for Public Health and Science, DHHS, Room 738G, Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201, telephone (202) 260–2652, or Majorie S. Greenberg, Executive Secretary, NCVHS, National Center for Health Statistics, Centers for Disease Control and Prevention, 3311 Toledo Road, Room 2402, Hyattsville, Maryland 20782, telephone (301) 458–4245. Information also is available on the NCVHS home page of the HHS Web site: *http://www.ncvhs.hhs.gov/*, where an agenda for the meeting will be posted when available.

Should you require reasonable accommodation, please contact the CDC Office of Equal Employment Opportunity on (301) 458–3EEO (4336) as soon as possible.

Dated: December 4, 2003.

James Scanlon,

Acting Deputy Assistant Secretary for Science and Data Policy, Office of the Assistant Secretary for Planning and Evaluation.

[FR Doc. 03–30746 Filed 12–11–03; 8:45 am]

BILLING CODE 4151–04–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket Nos. 2002N–0276 and 2002N–0278]

Small Entity Compliance Guides on Registration of Food Facilities and Prior Notice of Imported Food; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of small entity compliance guides (SECGs) for the interim final rules on Registration of Food Facilities and Prior Notice of Imported Food issued under the Public Health Security and Bioterrorism Preparedness and Response Act of 2002 (the Bioterrorism Act). Both interim final rules published in the **Federal Register** of October 10, 2003. These SECGs are intended to help small businesses better understand the registration and prior notice regulations.

DATES: Submit written or electronic comments on the SECGs at any time.

ADDRESSES: Submit written comments concerning these SECGs to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments on the SECGs to *http://www.fda.gov/dockets/ecomments*.

Submit requests for single copies of one or both SECGs to the Prior Notice help desk by telephone at 1–800–216–7331 (within the United States) or 301–575–0156 (outside the United States), by FAX: 301–210–0247, or by e-mail: *furls@fda.gov*. See the **SUPPLEMENTARY INFORMATION** section for electronic access to these SECGs.

FOR FURTHER INFORMATION CONTACT: Deborah Ralston, Office of Regulatory Affairs, Office of Regional Operations, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–6230.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of October 10, 2003 (68 FR 58894 and 68 FR 58974), FDA issued two interim final rules to implement sections 305 (Registration of Food Facilities) and 307 (Prior Notice of Imported Food) of the Bioterrorism Act. The registration interim final rule requires domestic and foreign facilities that manufacture/process, pack, or hold food for human or animal consumption in the United States to register with FDA by December 12, 2003. The prior notice interim final rule requires the submission to FDA of prior notice of food, including animal feed, that is imported or offered for import into the United States beginning on December 12, 2003.

We examined the economic implications of these interim rules as required by the Regulatory Flexibility Act (5 U.S.C. 601–612) and determined that they would have a significant economic impact on a substantial number of small entities.

In compliance with section 212 of the Small Business Regulatory Enforcement Fairness Act (Public Law 104–121), we are making available these SECGs that explain the requirements of these regulations.

FDA is issuing these SECGs as level 2 guidance consistent with FDA's good guidance practices regulation (21 CFR 10.115(c)(2)). These SECGs restate, in simplified format and language, FDA's current requirements for Registration of Food Facilities and Prior Notice of Imported Food. As guidance, these documents are not binding on either FDA or the public. FDA notes, however, that the regulations that serve as the basis for these guidance documents establish requirements for all covered activities. For this reason, FDA strongly recommends that affected parties consult the regulations at 21 CFR part 1, subparts H and I, in addition to reading these SECGs.

II. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments regarding these SECGs. Submit a single copy of electronic comments or two paper copies of any mailed comments, except that individuals may submit one paper copy. Comments are to be identified with the applicable docket number(s) found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

III. Electronic Access

Persons with access to the Internet may obtain these SECGs at *http://www/cfsan.fda.gov/guidance.html*.

Dated: December 3, 2003.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 03–30738 Filed 12–11–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of a meeting of the President's Cancer Panel.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in section 552b(c)(9)(B), Title 5 U.S.C., as amended because the premature disclosure of other and the discussions would likely to significantly frustrate implementation of recommendations.

Name of Committee: President's Cancer Panel.

Date: January 5–6, 2004.

Open: January 5, 2004, 8 a.m. to 3:15 p.m.

Agenda: Living Beyond Cancer: Survivorship Issues and Challenges Among Older Adult Cancer Survivors.

Place: Lowes Philadelphia Hotel, 1200 Market Street, Philadelphia, PA 19107.

Open: January 5, 2004, 7 p.m. to 9 p.m.

Agenda: Town Hall Meeting.

Place: Lowes Philadelphia Hotel, 1200 Market Street, Philadelphia, PA 19107.

Closed: January 6, 2004, 9 a.m. to 12 p.m.

Agenda: To review and evaluate the Panel will supplement its public hearings with discussion of prepublication manuscripts on adult cancer survivorship.

Place: Lowes Philadelphia Hotel, 1200 Market Street, Philadelphia, PA 19107.

Contact Person: Maureen O. Wilson, PhD, Executive Secretary, National Cancer Institute, National Institutes of Health, 31 Center Drive, Building 31, Room 3A18, Bethesda, MD 20892, 301/496–1148.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

Information is also available on the Institute's/Center's home page: *http://www.deainfo.nci.nih.gov/advisory/pcp/pcp.htm*, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: December 8, 2003.

Anna P. Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–30818 Filed 12–11–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Heart, Lung, and Blood Initial Review Group, Clinical Trials Review Committee.

Date: February 23, 2004.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Ritz-Carlton Hotel at Pentagon City, 1250 South Hayes Street, Arlington, VA 22202.

Contact Person: Valerie L Prenger, PhD, MPH, Scientific Review Administrator, Review Branch, Room 7194, Division of Extramural Affairs, National Heart, Lung, and Blood Institute, National Institutes of Health, 6701 Rockledge Drive, MSC 7924, Bethesda, MD 20892–7924, (301) 435–0288.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: December 8, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–30816 Filed 12–11–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552(b)(c)(6), title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Aging Special Emphasis Panel, RD2 Success.

Date: December 16, 2003.

Time: 9 a.m. to 12 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institute on Aging, Gateway Bldg., Room 2C212, 7201 Wisconsin Avenue, Bethesda, MD 20892.

Contact Person: Mary Nekola, PHD, Chief of the Scientific Review Office, National Institute on Aging, Gateway Building, Room 2C212, 7201 Wisconsin Avenue, Bethesda, MD 20814–9692, 301–496–9666.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS.)

Dated: December 8, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–30814 Filed 12–11–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Aging Special Emphasis Panel, Nursing Homes.

Date: January 15, 2004.

Time: 11 a.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, 2C212, Bethesda, MD 20814, (Telephone Conference Call).

Contact Person: Alicja L. Markowska, PhD, DSC, Health Scientist Administrator, Scientific Review Office, National Institute on Aging, National Institutes of Health, Room 2C212, 7201 Wisconsin Avenue, Bethesda, MD 20814, 301–402–7703, *markowsa@nia.nih.gov.*

Name of Committee: National Institute on Aging Special Emphasis Panel, Aging and Oxidative Damage.

Date: March 3, 2004.

Time: 11 a.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, 2C212, Bethesda, MD 20814, (Telephone Conference Call).

Contact Person: Alicja L. Markowska, PhD, DSC, Health Scientist Administrator, Scientific Review Office, National Institute on Aging, National Institutes of Health, Room 2C212, 7201 Wisconsin Avenue, Bethesda, MD 20814, 301–402–7703, *markowsa@nia.nih.gov.*

Name of Committee: National Institute on Aging Special Emphasis Panel, Calcium in Brain Aging

Date: March 4–5, 2004.

Time: 5 p.m. to 7 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Louise L. Hsu, PhD, The Bethesda Gateway Building, 7201 Wisconsin Avenue/Suite 2C212, Bethesda, MD 20892, 301–496–7705.

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: December 8, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–30815 Filed 12–11–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Library of Medicine; Notice of Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of meetings of the Board of Regents of the National Library of Medicine.

The meetings will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Board of Regents of the National Library of Medicine, Extramural Programs Subcommittee.

Date: February 9, 2004.

Closed: 4 p.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: National Library of Medicine, Building 38A, HPCC B1N30, 8600 Rockville Pike, Bethesda, MD 20892.

Contact Person: Donald A.B. Lindberg, MD, Director, National Library of Medicine, National Institutes of Health, PHS, DHHS, Bldg 38, Room 2E17B, Bethesda, MD 20894.

Name of Committee: Board of Regents of the National Library of Medicine, Subcommittee on Outreach and Public Information.

Date: February 10, 2004.

Closed: 7:30 a.m. to 8:45 a.m.

Agenda: Outreach Activities for the National Library of Medicine.

Place: National Institutes of Health, Building 38, Conference Room B, 2nd Floor, 8600 Rockville Pike, Bethesda, MD 20892.

Contact Person: Donald A.B. Lindberg, MD, Director, National Library of Medicine, National Institutes of Health, PHS, DHHS, Bldg 38, Room 2E17B, Bethesda, MD 20894.

Name of Committee: Board of Regents of the National Library of Medicine.

Date: February 10–11, 2004.

Opened: February 10, 2004, 9 a.m. to 4:30 p.m.

Agenda: Administrative Reports and Program Discussion.

Place: National Library of Medicine, Building 38, Board Room, 2nd Floor, 8600 Rockville Pike, Bethesda, MD 20892.

Closed: February 10, 2004, 4:30 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Library of Medicine, Building 38, Board Room, 2nd Floor, 8600 Rockville Pike, Bethesda, MD 20892.

Opened: February 11, 2004, 9 a.m. to 12 p.m.

Agenda: Administrative Reports and Program Discussion.

Place: National Library of Medicine, Building 38, Board Room, 2nd Floor, 8600 Rockville Pike, Bethesda, MD 20892.

Contact Person: Donald A.B. Lindberg, MD, Director, National Library of Medicine, National Institutes of Health, PHS, DHHS, Bldg 38, Room 2E17B, Bethesda, MD 20894.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance into the building by non-government employees. Persons without a government I.D. will need to show a photo I.D. and sign-in at the security desk upon entering the building.

Information is also available on the Institute's/Center's home page: *www.nlm.gov/od/bor/bor.html,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.879, Medical Library Assistance, National Institutes of Health, HHS)

Dated: December 8, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–30817 Filed 12–11–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Office of the Assistant Secretary for Administration and Management, Program Support Center; Statement of Organization, Functions, and Delegations of Authority

Part A, Office of the Secretary (OS) of the Statement of Organization, Functions, and Delegations of Authority, Chapter (A), Office of the Assistant Secretary for Administration Management, for the Department of Health and Human Services, at Part P, Program Support Center, as last amended at 68 FR 8040, dated February 19, 2003, is being amended to reflect a realignment of its functions. The changes are as follows:

I. Under chapter PA, Office of the Deputy Assistant Secretary for Program Support, make the following changes:
   A. Delete the "Office of Budget and Management (PAB)," in its entirety.
   B. Delete the "Office of Information Technology (PAE)," in its entirety.

II. Under Chapter PE, Administrative Operations Service, make the following changes:
   A. Delete the "Division of Acquisitions Management (PEB)," and the "Division of Supply Management (PEG) in their entirety.
   B. Add the following components:
   1. *Division of PSC Business Operations (PEH)*—The Division of PSC Business Operations (DPBO) performs overall business and financial management activities for the PSC. DPBO (1) provides strategic and business planning; (2) conducts business process engineering; (3) manages costs and price reviews to keep PSC services competitive; (4) provides customer relations services; (5) prepares the PSC budget for presentation to and approval by the Board of Directors to the HHS Service and Supply fund; (6) executes approved PSC budgets, issuing allowances as approved by the Director, PSC, and consistent with funding levels approved by the Board; (7) coordinates arrangements of inter- and intra-agency funding for projects and functions; (8) develops, coordinates, and implements policies, standards, and procedures governing the establishment and maintenance of effective organizational structures and functional alignments within the PSC; and (9) coordinates the implementation of the Government Performance and Results Act within the PSC.
   2. *Division of Freedom of Information Act Operations (PEJ)*—This Division responds to all Freedom of Information Act (FOIA) requests for records generated by, and in the custody and control of, all components of the Office of Public Health and Science (OPHS), and the Program Support Center (PSC): (1) Responds to all requests for records that involve more than one of the PHS components and the PSC; (2) responds to all administrative appeals; (3) coordinates with the Office of the General Counsel (OGC) and the assigned AUSA to resolve the administrative appeals which result in litigation; and (4) provides FOIA training and consultation.

III. Establish a new Chapter PF, titled "Strategic Acquisitions Service," as follows:
   A. *Strategic Acquisitions Service (PF)*—This service is responsible for providing leadership, policy, guidance and supervision to the procurement operations of the Program Support Center. The service provides to HHS components and other Departments nationwide administrative and technical services which include: acquisition services; claims services for PHS components nationwide under specific statutory authorities; and pharmaceutical, medical, and dental supplies to Federal agencies and other related non-Federal customers.
   B. *Division of Strategic Sourcing (PFA)*—The Division of strategic Sourcing is responsible for the department-wide initiatives to: (1) Consolidate purchases of expendable commodities within one contract office, *i.e.,* Center of Procurement Excellence; (2) decrease duplicative contract offices within the Department and move common work into the Center of Procurement Excellence; and (3) investigates innovative government and industry procurement practices and brings these innovations into strategic planning, design and implementation phases as part of business delivery.
   C. *Acquisitions Management Division (PFB)*—The Acquisitions Management Division (AMD) provides acquisition services to HHS and other customers, and also (1) provides contracting services for ADP, program, and administrative requirements including information processing and telecommunications resources; (2) purchases supplies, equipment, and services from mandatory sources (Federal Supply Schedules and other Government agencies), open market, or by contract; (3) provides contract audit and financial review services; (4) provides acquisition policy development, oversight, procurement performance measurement and is responsible for the Department's Acquisition Supplement to the Federal Acquisition Regulation; (5) makes studies of procurement problems requiring creation of new policies or revision of existing policies; (6) provides analysis and evaluation services, develops procedures and recommends policy for administration of the acquisition program and works with the many Federal organizations to insure all laws and regulations are properly interpreted and implemented; and (7) carries out the authorities of the DHHS Claims Officer under the Federal Claims Collection Act, the Federal Tort Claims Act, and the Military Personnel and Civilian Employees' Claims Act.
   D. *Division of Supply Service Center (PFC)*—This Division operates the Supply Service Center at Perry Point, Maryland to support HHS health facilities and other organizations world-wide by providing pharmaceutical, medical, and dental supplies to Federal Agencies and other related customers: (1) Manages financial responsibilities associated with operating a large medical warehouse as authorized by the Federal Securities Appropriations Act of 1945 (Pub. L. 790–124); (2) oversees the Center's stock and the quality control of the manufacturing and repacking of pharmaceuticals under a license agreement with the Food and Drug Administration; and

(3) ensures that all internal controls are in place and oversees the security of all controlled substances under a license from the Drug Enforcement Administration.

IV. Under Chapter PG, Federal Occupational Health Service (FOHS), add the following new component:

Business Technology Support Division (PGF)—The Business Technology Support Division (BTSD): (1) develops, tests, installs, and operates business applications and related applications needed to support the provision of FOHS services under agreements with its customer federal agencies; and (2) develops content and updates the FOHS.

V. *Delegation of Authority:* All delegations and redelegations of authority made by officials and employees of affected organizational components will continue in them or their successors pending further redelegation, provided they are consistent with this reorganization.

Dated: December 4, 2003.

Ed Sontag,

Assistant Secretary for Administration and Management.

[FR Doc. 03–30747 Filed 12–11–03; 8:45 am]

BILLING CODE 4168–17–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities Under Emergency Review by the Office of Management and Budget

The Substance Abuse and Mental Health Services Administration (SAMHSA) has submitted the following request (see below) for emergency OMB review under the Paperwork Reduction Act (44 U.S.C. Chapter 35). OMB approval has been requested by December 26, 2003. A copy of the information collection plans may be obtained by calling the SAMHSA Reports Clearance Officer on (301) 443–7978.

Title: SAMHSA Application for Peer Grant Reviewers.

OMB Number: 0930-New.

Frequency: On-occasion.

Affected public: Individuals or households.

Section 501(h) of the Public Health Service (PHS) Act [42 U.S.C. 290aa] directs the Administrator of the Substance Abuse and Mental Health Services Administration (SAMHSA) to establish such peer review groups as are needed to carry out the requirements of Title V of the PHS Act. SAMHSA administers a large discretionary grants program under authorization of Title V, and for many years SAMHSA has funded grants to provide prevention and treatment services related to substance abuse and mental health.

SAMHSA efforts to make improvements in the grants process have been shown by the restructuring of discretionary award announcements. In support of these efforts, SAMHSA desires to expand the types of reviewers it uses on these grant review committees. To accomplish that end, SAMHSA has determined that it is important to proactively seek the inclusion of new and qualified representatives on its peer review groups, and accordingly SAMHSA has developed an application form for use by individuals who wish to apply to serve as peer reviewers.

The application form has been developed to capture the essential information about the individual applicants. Although consideration was given to requesting a resume from interested individuals, it is essential to have specific information from all applicants about their qualifications; the most consistent method to accomplish this is completion of a standard form by all interested persons. SAMHSA will use the information about knowledge, education and experience provided on the applications to identify appropriate peer grant reviewers. Depending on their experience and qualifications, applicants may be invited to serve as either grant reviewers or review group chairpersons.

The following table shows the response burden estimated for the first year.

Number of respondents	Responses/respondent	Burden/Response, (hrs)	Total burden hours
500	1	1.5	750

Emergency approval is being requested because of the importance of including representatives of faith-based and community organizations as peer reviewers of grant applications at the earliest possible time in the FY 2004 review cycle. Upon receipt of OMB approval for this submission, SAMHSA will place this form on its Web site at *http://www.samhsa.gov* and will widely publicize its availability.

Written comments and recommendations concerning the proposed information collection should be sent within two weeks of this notice to: Lauren Wittenberg, Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503; due to potential delays in OMB's receipt and processing of mail sent through the U.S. Postal Service, respondents are encouraged to submit comments by fax to: 202–395–6974.

Dated: December 8, 2003.

Anna Marsh,

Acting Executive Officer, SAMHSA.

[FR Doc. 03–30784 Filed 12–11–03; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOMELAND SECURITY

[DHS/ICE–CBP–001]

Privacy Act of 1974; System of Records

AGENCY: Department of Homeland Security (DHS).

ACTION: Notice of Privacy Act System of Records.

SUMMARY: This notice addresses the previously established ADIS system, a portion of which is the U.S. Visitor and Immigrant Status Indicator Technology (US–VISIT) program. This notice allows the ADIS system to collect biometric and biographic data for US–VISIT. US–VISIT has created a new business process that integrates and enhances the capabilities of existing systems, including the ADIS system.

DATES: Written comments must be submitted on or before January 12, 2004.

ADDRESSES: Please address your comments to the Privacy Office, U.S. Department of Homeland Security, Washington, DC 20528. You must identify the Docket Number DHS/ICE–CBP–001 at the beginning of your comments, and you should submit two copies of the comments. You may also submit comments via e-mail at *privacy@dhs.gov*. Please reference the Docket Number shown above in the subject line of the e-mail. If you wish to receive confirmation that DHS has received your comments, please include a self-addressed, stamped postcard with your request. DHS will make comments received available online at *http://www.dhs.gov*.

FOR FURTHER INFORMATION CONTACT: If you have any questions about this notice, please call Nuala O'Connor Kelly, Chief Privacy Officer, U.S. Department of Homeland Security, Washington, DC 20528, Phone: 202–282–8000; Fax 202–772–5036.

SUPPLEMENTARY INFORMATION: In accordance with the Privacy Act of 1974, as amended, 5 U.S.C. 552a, the DHS is publishing this notice regarding an existing system of records, known as the Arrival and Departure Information System (ADIS). This system is intended to provide biometric and biographic information for US–VISIT. The purpose of the amended system is to support US–VISIT to record information pertinent to the arrival and departure of immigrants and nonimmigrants to and from the United States.

The DHS intends to compile and maintain these records in a secure electronic database serviced and maintained by Federal agency and or contractor personnel who will be bound by the restrictions of the Privacy Act. The records will ultimately be under the general supervision of components of the DHS, with technical support from the DHS's Office of the Chief Information Officer.

System records will be subject to appropriate safeguards to prevent unauthorized disclosure or tampering.

DHS/ICE CBP–001–03

SYSTEM NAME:

Arrival and Departure Information System (ADIS).

SYSTEM LOCATION:

Department of Homeland Security (DHS) field offices for the U.S. Immigration and Customs Enforcement (ICE), Bureau of Customs and Border Protection (CBP), and the U.S. Citizenship and Immigration Services (USCIS); Service Centers; Border Patrol Sectors (including all offices under their jurisdiction); Ports of Entry; Asylum offices and other offices as detailed in DHS–DS–999, last published in the **Federal Register** on October 17, 2002 (67 FR 64136) and on the web page of each bureau (*i.e., http://www.bice.immigration.gov, http://www.bcbp.gov,* and *http://www.uscis.immigration.gov*); Office of National Risk Assessment (ONRA).

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

The ADIS database contains arrival/departure, biographic and biometric indicator information on immigrants and nonimmigrants entering and departing the United States. The ADIS database contains biographic arrival/departure information on legal permanent residents. Although this system primarily consists of immigrants, nonimmigrants and Lawful Permanent Residents, some of them may change status and become Lawful Permanent Residents and U.S. citizens. For the purposes of the U.S. Visitor Immigrant Status Indicator Technology (US–VISIT) program, non-U.S. citizens who present themselves for entry into and/or exit from the United States including individuals subject to the requirements and processes of US–VISIT are included in ADIS. Individuals covered under US–VISIT include those who are not U.S. citizens or Lawful Permanent Residents at the time of entry or exit or are U.S. citizens or Lawful Permanent Residents who have not identified themselves as such at the time of entry or exit.

CATEGORIES OF RECORDS IN THE SYSTEM:

The ADIS database is a centralized application designed to create, update and report immigrants' and nonimmigrants' arrivals and departures to and from the United States. The system also contains biographic, biometric indicator and address information.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

8 U.S.C. 1365a.

PURPOSE(S):

This system of records is established and maintained to enable DHS to carry out its assigned national security, law enforcement, immigration control, national security and other mission-related functions and to provide associated management reporting, planning and analysis. Specifically, the ADIS database is a system of records tracking immigrants, nonimmigrants and Lawful Permanent Residents arriving in and departing from the United States. It enables the Secretary of Homeland Security to identify, through on-line searching procedures, lawfully admitted nonimmigrants who remain in the United States beyond the period of authorized stay, and to analyze information gathered for the purpose of this and other DHS programs. In addition to arrival and departure information, each record also provides complete name, date of birth, nationality, gender, passport number and country of issuance, country of residence, U.S. visa number including date and place of issuance if applicable, alien registration number if applicable, immigration status, complete address while in the United States, and Fingerprint Identification Number System (FINS) number. The system assists the DHS in supporting immigration inspection at POEs by providing quick retrieval of biographic and biometric indicator data on individuals who may be inadmissible to the United States. Furthermore, the system interfaces with the Student and Exchange Visitor Information System (SEVIS), the Computer Linked Applications Information Management System (CLAIMS), the Passenger Processing Component of the Treasury Enforcement Communications System (TECS) and the Automated Fingerprint Identification System (IDENT). It facilitates the investigation process of individuals who may have violated their immigration status.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM INCLUDING CATEGORIES OF USERS AND PURPOSE OF SUCH USES:

Relevant information contained in this system of records may be disclosed as follows:

A. To appropriate government agencies or organizations(regardless of whether they are Federal, State, local, foreign, or tribal), lawfully engaged in collecting law enforcement intelligence information (whether civil or criminal) and/or charged with investigating, prosecuting, enforcing or implementing civil and/or criminal laws, related rules, regulations or orders, to enable these entities to carry out their law enforcement responsibilities.

B. To an attorney or representative who is acting on behalf of an individual covered by this system of records as defined in 8 CFR 1.1(j) in any proceeding before the Executive Office for Immigration Review.

C. In a proceeding before a court, grand jury, or adjudicative body when records are determined by the Department of Homeland Security to be arguably relevant to the proceeding where any of the following is a party: (1) The DHS, or any DHS component, or subdivision thereof; (2) any DHS employee in his of her official capacity; (3) any DHS employee in his or her individual capacity when the DHS has agreed to represent the employee or has authorized a private attorney to represent him or her; and (4) the United States, where the DHS or its components are likely to be affected.

D. To a member of Congress or staff acting on the Member's behalf when the Member or staff requests the information on behalf of and at the request of the individual who is the subject of the record.

E. To the General Service Administration and the National Archives and Records Administration (NARA) in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

F. To the news media and the public when there exists a legitimate public interest in the disclosure of the information or when disclosure is necessary to preserve confidence in the integrity of the Department or is necessary to demonstrate the accountability of the Department's officers, employees, or individuals covered by the system, except to the extent it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

G. To contractors, grantees, experts, consultants, students, and others performing or working on a contract, service, grant, cooperative agreement, or other assignment for the Federal government, when necessary to accomplish an agency function related to this system of records.

H. To a former employee of the Department for purposes of responding to an official inquiry by a Federal, State, or local government entity or professional licensing authority in accordance with applicable Department regulations, or facilitating communications with a former employee that may be necessary for personnel-related or other official purposes where the Department requires information and/or consultation assistance from the former employee regarding a matter within that person's former area of responsibility.

I. To a Federal, State, tribal, local or foreign government agency in response to its request, in connection with the hiring or retention by such agency of an employee, the issuance of a security clearance, the reporting of an investigation of such an employee, the letting of a contract, or the issuance of a license, grant, loan or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM

STORAGE:

These records are stored in a central computer database.

RETRIEVABILITY:

These records may be searched on a variety of data elements including name, place and date of entry or departure, country of citizenship, admission number, and FINS number used to track the particular fingerprints.

SAFEGUARDS:

The system is protected through a multi-layer security approach. The protective strategies are physical, technical, administrative and environmental in nature and provide access control to sensitive data, physical access control to DHS facilities, confidentiality of communications, authentication of sending parties, and personnel screening to ensure that all personnel with access to data are screened through background investigations commensurate with the level of access required to perform their duties.

RETENTION AND DISPOSAL:

Records will be retained for 100 years. This policy proposal for retention and disposal of records in the ADIS database is pending approval by the NARA.

SYSTEM MANAGER(S) AND ADDRESS:

Program Manager, ADIS Program Management Office, 1616 North Fort Myer Drive, Arlington, VA 22209.

NOTIFICATION PROCEDURE:

Address inquiries to the system manager identified above.

RECORDS ACCESS PROCEDURE:

Since the Privacy Act applies to only U.S. citizens and legal permanent residents, this notice covers only U.S. citizens and Lawful Permanent Residents whose information is contained in this system. Make all requests for access in writing and by mail to the system manager noted above. The envelope and letter shall be clearly marked Privacy Access Request. Include a description of the general subject matter, the related file number if known, and any other identifying information which may be of assistance in locating the record. To identify a record, the requester should provide his or her full name, date and place of birth, verification of identity in accordance with 8 CFR 103.21(b). The requester shall also provide a return address for transmitting the records to be released.

CONTESTING RECORDS PROCEDURES:

The following procedures cover only U.S. citizens and Lawful Permanent Residents whose information is contained in this system. U.S. citizens and Lawful Permanent Residents who wish to contest or seek amendment of their records should direct a written request to the system manager. The request should include the requestor's full name, current address and date of birth, a copy of the record in question, and a detailed explanation of the change sought. If the matter cannot be resolved by the system manager, further appeal for resolution may be made to the DHS Privacy Office.

RECORD SOURCE CATEGORIES:

Basic information is obtained from individuals, the individuals' attorney or representative, DHS and DOS officials, and other Federal, State, and local officials.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

The Secretary of Homeland Security has exempted this system from subsections (c)(3) and (4), (d), (e)(1), (2), and (3), (e)(4)(G) and (H), (e)(5) and (8), and (g) of the Privacy Act pursuant to 5 U.S.C. 552a(j)(2). In addition, the Secretary of Homeland Security has exempted portions of this system from subsections (c)(3), (d), (e)(1), (e)(4)(G) and (H) of the Privacy Act pursuant to 5 U.S.C. 552a(k)(2). These exemptions apply only to the extent that records in the system are subject to exemption pursuant to 5 U.S.C. 552a(j)(2) and (k)(2).

Dated: December 8, 2003.

Nuala O'Connor Kelly,

Chief Privacy Officer.

[FR Doc. 03–30761 Filed 12–9–03; 12:02 pm]

BILLING CODE 4410–10–P

DEPARTMENT OF HOMELAND SECURITY

[DHS/ICE–CBP–CIS–001]

Privacy Act of 1974; System of Records

AGENCY: Department of Homeland Security (DHS).

ACTION: Notice of privacy act system of records.

SUMMARY: This notice addresses the previously established ENFORCE/IDENT system, a portion of which is the U S. Visitor and Immigrant Status Indicator Technology (US–VISIT) program. This notice allows the ENFORCE/IDENT system to collect biometric and biographic data for US–VISIT, in addition to the data collected for DHS national security, law enforcement and other mission-related functions. US–VISIT has created a new business process that integrates and enhances the capabilities of existing systems including the ENFORCE/IDENT system.

DATES: Written comments must be submitted on or before January 12, 2004.

ADDRESSES: Please address your comments to the Privacy Office, U.S. Department of Homeland Security, Washington, DC 20528. You must identify the Docket Number DHS/ICE–CBP–CIS–001 at the beginning of your comments, and you should submit two copies of the comments. You may also submit comments via e-mail at *privacy@dhs.gov*. Please reference the Docket Number shown above in the subject line of the e-mail. If you wish to receive confirmation that DHS has received your comments, please include a self-addressed, stamped postcard with your request. DHS will make comments received available online at *http://www.dhs.gov*.

FOR FURTHER INFORMATION CONTACT: If you have any questions about this notice, please call Nuala O'Connor Kelly, Chief Privacy Officer, U.S. Department of Homeland Security, Washington, DC 20528, Phone: 202–282–8000; Fax 202–772–5036.

SUPPLEMENTARY INFORMATION: In accordance with the Privacy Act of 1974, 5 U.S.C. 552a, the DHS is publishing this notice regarding an existing system of records known as Enforcement Operational Immigration Records (ENFORCE/IDENT). This notice allows ENFORCE/IDENT to collect biometric and biographic data in support of US–VISIT. The purpose of the amended system is to support US–VISIT to record information pertinent to the arrival and departure of immigrants and nonimmigrants to and from the United States, in addition to the data collected for DHS national security, law enforcement and other mission-related functions.

DHS/ICE–CBP–CIS–001–03

SYSTEM NAME:

Enforcement Operational Immigration Records (ENFORCE/IDENT).

SYSTEM LOCATIONS:

Department of Homeland Security (DHS) field offices for the U.S. Immigration and Customs Enforcement (ICE), Bureau of Customs and Border Protection (CBP), and the U.S. Citizenship and Immigration Services (USCIS); Service Centers; Border Patrol Sectors (including all offices under their jurisdiction); Ports of Entry; Asylum offices and other offices as detailed in DHS–DS–999, last published in the **Federal Register** on October 17, 2002 (67 FR 64136) and on the Web page of each bureau (*i.e., www.bice.immigration.gov, www.bcbp.gov,* and *www.uscis.immigration.gov);* Office of National Risk Assessment (ONRA).

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Categories of individuals covered by this notice may include:

A. Individuals or entities who relate in any manner to investigations, inspections, apprehensions, detentions, patrols, removals, examinations, naturalizations, intelligence production, legal proceedings or other operations that implement and enforce the Immigration and Nationality Act (INA) (8 U.S.C. 1101 *et seq.*) and related treaties, statutes, orders and regulations. Individuals who are respondents, representatives, or witnesses in administrative, civil penalty, or forfeiture proceedings, or defendants, representatives or witnesses in criminal prosecution or extradition proceedings.

B. Individuals who are obligors or representatives of obligors of bonds posted.

C. Individuals in distress who are located during search and rescue operations, and other immigration operations.

D. Individuals wanted by other law enforcement agencies, including Federal, State, local, tribal, foreign and international or individuals who are the subject of inquiries, lookouts, or notices by another agency or a foreign government.

E. Individuals who apply for immigration benefits.

F. Non-U.S. citizens and Non-Lawful Permanent Residents who present themselves for entry into and/or exit from the United States including individuals subject to the requirements and processes of US–VISIT. Individuals covered under US–VISIT include those who are not U.S. citizens or Lawful Permanent Residents at the time of entry or exit or who are U.S. citizens or Lawful Permanent Residents who have not identified themselves as such at the time of entry or exit.

G. Nationals of countries that threaten to wage war, or are or were at war with the United States, and individuals required to register as agents of foreign governments in the United States.

CATEGORIES OF RECORDS IN THE SYSTEM:

These records may be paper, electronic and/or other record material (*e.g.*, video or audio tapes) and includes biographical data, including but not limited to name, aliases, date of birth, phone numbers, addresses, nationality; personal descriptive data; biometric identifiers, including but not limited to fingerprints and photographs; any materials, information or data related to the subject individual's case, including but not limited to immigration history, alien registration and other identification or record numbers, criminal history, employment history, leads, witness statements, identity documents, evidence, seized property and contraband; investigative and operational reports, and intelligence summaries.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

8 U.S.C. 1103; 8 U.S.C. 1225(d)(3); 8 U.S.C. 1324(b)(3); 8 U.S.C. 1357(a); and 8 U.S.C. 1360(b).

PURPOSE(S):

This system of records is established and maintained to enable DHS to carry out its assigned national security, law enforcement, immigration control, and other mission-related functions and to provide associated management reporting, planning and analysis. Specifically, this system of records assists in identifying, investigating, apprehending, and/or removing aliens unlawfully entering or present in the United States; preventing the entry of inadmissible aliens into the United States; facilitating the legal entry of individuals into the United States; recording the departure of individuals leaving the United States; maintaining immigration control; preventing aliens from obtaining benefits to which they are not entitled; analyzing information gathered for the purpose of this and other DHS programs; or identifying, investigating, apprehending and prosecuting, or imposing sanctions, fines or civil penalties against individuals or entities who are in violation of the Immigration and Nationality Act (INA), or other governing orders, treaties or regulations and assisting other Federal agencies to protect national security and carry out other Federal missions.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Relevant information contained in this system of records may be disclosed, within established confidentiality guidelines (*e.g.*, asylum) as follows:

A. To the appropriate agency/organization/task force, regardless of whether it is Federal, State, local, foreign, or tribal, charged with the

enforcement (*e.g.*, investigation and prosecution) of a law (criminal or civil), regulation, or treaty, of any record contained in this system of records which indicates either on its face, or in conjunction with other information, a violation or potential violation of that law, regulation, or treaty.

B. To other Federal, State, tribal, and local government law enforcement and regulatory agencies and foreign governments, and individuals and organizations during the course of an investigation or the processing of a matter, or during a proceeding within the purview of the immigration and nationality laws, to elicit information required by DHS to carry out its functions and statutory mandates.

C. To an appropriate Federal, State, local, tribal, international government agency in response to its request, in connection with the hiring or retention by such an agency of an employee, the issuance of a security clearance, the reporting of an investigation of such an employee, the letting a contract, or the issuance of a license, grant, loan, or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision in the matter.

D. To an actual or potential party or to his or her attorney for the purpose of negotiation or discussion on such matters as settlement of the case or matter, or discovery proceedings.

E. To a Federal, State, tribal or local government agency to assist such agencies in collecting the repayment or recovery of loans, benefits, grants, fines, bonds, civil penalties, judgments or other debts owed to them or to the United States Government, and/or to obtain information that may assist DHS in collecting debts owed to the United States government.

F. To the news media and the public when there exists a legitimate public interest in the disclosure of the information or when disclosure is necessary to preserve confidence in the integrity of the Department or is necessary to demonstrate the accountability of the Department's officers, employees, or individuals covered by the system, except to the extent it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

G. To a Member of Congress, or staff acting upon the Member's behalf when the Member or staff requests the information on behalf of and at the request of the individual who is the subject of the record.

H. To the General Services Administration (GSA) and National Archives and Records Administration (NARA) in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

I. To contractors, grantees, experts, consultants, students, and others performing or working on a contract, service, grant, cooperative agreement, or other assignment for the Federal Government, when necessary to accomplish an agency function related to this system of records.

J. To a former employee of the Department for purposes of: responding to an official inquiry by a federal, state, or local government entity or professional licensing authority, in accordance with applicable department regulations; or facilitating communications with a former employee that may be necessary for personnel-related or other official purposes where the Department requires information and/or consultation assistance from the former employee regarding a matter within that person's former area of responsibility.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Information can be stored in case file folders, cabinets, safes, or a variety of electronic or computer databases and storage media.

RETRIEVABILITY:

Records may be retrieved by name; identification numbers (including but not limited to alien number, fingerprint identification number, etc.); case related data and/or combination of other personal identifiers such as date of birth, nationality, etc.

SAFEGUARDS:

The system is protected through multi-layer security mechanisms. The protective strategies are physical, technical, administrative and environmental in nature and provide access control to sensitive data, physical access control to DHS facilities, confidentiality of communications, authentication of sending parties, and personnel screening to ensure that all personnel with access to data are screened through background investigations commensurate with the level of access required to perform their duties.

RETENTION AND DISPOSAL:

The following proposal for retention and disposal is pending approval with NARA:

Records that are stored in an individual's file will be purged according to the retention and disposition guidelines that relate to the individuals file (DHS/ICE/BCIS–001A). Electronic records for which the statute of limitations has expired for all criminal violations and that are older than 75 years will be purged. Fingerprint cards, created for the purpose of entering records in the database, will be destroyed after data entry. The I–877, and copies of supporting documentation, which are created for the purpose of special alien registration back-up procedures, will be destroyed after data entry. Work Measurement Reports and Statistical Reports will be maintained within the guidelines set forth in NCI–95–78–5/2 and NCI–85–78–1/2 respectively. Finally, user manuals are retained for the life of the system or until changes are made to the system, which ever comes first, and then destroyed.

SYSTEM MANAGER AND ADDRESS:

Program Manager, ENFORCE/IDENT Program Management Office, 1616 North Fort Myer Drive, Arlington, VA 22209.

NOTIFICATION PROCEDURE:

Inquiries should be addressed to the FOIA/PA officer at the office where the record is maintained or to the Chief, Information Disclosure Mission Support, Office of Investigations at 425 I Street, NW, Washington, DC 20536.

COMMENT TO DEPARTMENT'S PRIVACY OFFICE PROCEDURE:

Comments to the Department's Privacy Office should include the notice number as the subject line of email or letter and be addressed to *privacy@dhs.gov* or Privacy Office, DHS, Washington, DC 20528.

RECORD ACCESS PROCEDURE:

The major part of this system is exempted from this requirement pursuant to 5 U.S.C. 552a (j)(2) and (k)(2). To the extent that this system of records is not subject to exemption, it is subject to access. A determination as to the granting or denial of access shall be made at the time a request is received. Requests for access to records in this system must be in writing, and should be addressed to the System Manager noted above or to the appropriate FOIA/PA Officer. Such request may be submitted either by mail or in person. The envelope and letter shall be clearly marked "Privacy Access Request." To identify a record, the record subject should provide his or her full name, date and place of birth; if appropriate, the date and place of entry into or departure from the United States; verification of identity (in accordance with 8 CFR 103.21(b) and/or pursuant to 28 U.S.C. 1746, make a dated statement under penalty of perjury as a substitute for notarization), and any other identifying information that may be of assistance in locating the record. He or she shall also provide a return address for transmitting the records to be released.

CONTESTING RECORD PROCEDURES:

The major part of this system is exempted from this requirement pursuant to 5 U.S.C. 552a (j)(2) and (k)(2). To the extent that this system of records is not subject to exemption, it is subject to access and contest. A determination as to the granting or denial of a request shall be made at the time a request is received. An individual desiring to request amendment of records maintained in this system should direct his or her request to the System Manager of the appropriate office that maintains the record or (if unknown) to the appropriate FOIA/PA Officer at each bureau. The request should state clearly what information is being contested, the reasons for contesting it, and the proposed amendment to the information.

RECORD SOURCE CATEGORIES:

Basic information contained in this system is supplied by individuals covered by this system, and other Federal, state, local, tribal, or foreign governments; private citizens, public and private organizations.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

The Secretary of Homeland Security has exempted this system from subsections (c)(3) and (4), (d), (e)(1), (2), and (3), (e)(4)(G) and (H), (e)(5) and (8), and (g) of the Privacy Act pursuant to 5 U.S.C. 552a (j)(2). In addition, the Secretary of Homeland Security has exempted portions of this system from subsections (c)(3), (d), (e)(1), (e)(4)(G) and (H) of the Privacy Act pursuant to 5 U.S.C. 552a (k)(2). These exemptions apply only to the extent that records in the system are subject to exemption pursuant to 5 U.S.C. 552a (j)(2) and (k)(2).

Dated: December 8, 2003.

Nuala O'Connor Kelly,

Chief Privacy Officer.

[FR Doc. 03–30762 Filed 12–9–03; 12:02 pm]

BILLING CODE 4410–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, U.S. Department of Homeland Security.

ACTION: Notice and request for comments.

SUMMARY: The Federal Emergency Management Agency has submitted the following proposed information collection to the Office of Management and Budget for review and clearance in accordance with the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507).

Title: Hazard Mitigation Grant Program Application and Reporting.

Type of Information Collection: Extension of a currently approved collection.

OMB Number: 1660–0076.

Abstract: Grantees administer the Hazard Mitigation Grant Program, which is a post-disaster program that contributes funds toward the cost of hazard mitigation activities in order to reduce the risk of future damage, hardship, loss or suffering in any area affected by a major disaster. FEMA uses applications to provide financial assistance in the form of grant awards and, through grantee quarterly reporting, monitors grantee project activities and expenditure of funds.

Affected Public: State, local, tribal governments, and not-for-profit institutions.

Number of Respondents: 1,815.

Estimated Total Annual Burden Hours: 52,199.

Estimated Cost: $1,246,503.00. The total annual estimated costs to States and Indian tribal governments for information collections associated with the HMGP are $1,246,503. This calculation is based on the number of burden hours for the information collections and the estimated wage rates for those individuals responsible for collecting the information or completing the forms. States may use existing systems for submitting grant applications and reporting.

Frequency of Response: One-time.

Comments: Interested persons are invited to submit written comments on the proposed information collection to the OMB Desk Officer for the Federal Emergency Management Agency at e-mail address *Edward_H._Clarke@omb.eop.gov.* or facsimile number (202) 395–7285 within 30 days of the date of this notice.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be made to Muriel B. Anderson, Chief, Records Management Branch, Information Resources Management Division, Information Technology Services Directorate, Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security, 500 C Street, SW., Room 316, Washington, DC 20472, or facsimile number (202) 646–3347, or e-mail address *InformationCollections@fema.gov.*

Edward W. Kernan,

Division Director, Information Resources Management Division, Information Technology Services Directorate.

[FR Doc. 03–30770 Filed 12–11–03; 8:45 am]

BILLING CODE 9110–13–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4809–N–50]

Federal Property Suitable as Facilities to Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

FOR FURTHER INFORMATION CONTACT: Mark Johnston, room 7266, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410; telephone (202) 708–1234; TTY number for the hearing- and speech-impaired (202) 708–2565 (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1 (800)–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with 24 CFR part 581 and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing this notice to identify Federal buildings and other real property that HUD has reviewed for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled

by such agencies or by GSA regarding its inventory of excess or surplus Federal property. This notice is also published in order to comply with the December 12, 1988 Court Order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88–2503–OG (D.D.C.).

Properties reviewed are listed in this Notice according to the following categories: Suitable/available, suitable/unavailable, suitable/to be excess, and unsuitable. The properties listed in the three suitable categories have been reviewed by the landholding agencies, and each agency has transmitted to HUD: (1) Its intention to make the property available for use to assist the homeless, (2) its intention to declare the property excess to the agency's needs, or (3) a statement of the reasons that the property cannot be declared excess or made available for use as facilities to assist the homeless.

Properties listed as suitable/available will be available exclusively for homeless use for a period of 60 days from the date of this Notice. Where property is described as for "off-site use only" recipients of the property will be required to relocate the building to their own site at their own expense. Homeless assistance providers interested in any such property should send a written expression of interest to HHS, addressed to Shirley Kramer, Division of Property Management, Program Support Center, HHS, room 5B–41, 5600 Fishers Lane, Rockville, MD 20857; (301) 443–2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit their written expressions of interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 24 CFR part 581.

For properties listed as suitable/to be excess, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law, subject to screening for other Federal use. At the appropriate time, HUD will publish the property in a Notice showing it as either suitable/available or suitable/unavailable.

For properties listed as suitable/unavailable, the landholding agency has decided that the property cannot be declared excess or made available for use to assist the homeless, and the property will not be available.

Properties listed as unsuitable will not be made available for any other purpose for 20 days from the date of this notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call the toll free information line at 1–800–927–7588 for detailed instructions or write a letter to Mark Johnston at the address listed at the beginning of this notice. Included in the request for review should be the property address (including zip code), the date of publication in the **Federal Register**, the landholding agency, and the property number.

For more information regarding particular properties identified in this notice (*i.e.*, acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: GSA: Mr. Brian K. Polly, Assistant Commissioner, General Services Administration, Office of Property Disposal, 18th and F Streets, NW., Washington, DC 20405; (202) 501–0052; (These are not toll-free numbers).

Dated: December 4, 2003.

John D. Garrity,

Director, Office of Special Needs Assistance Programs.

TITLE V, FEDERAL SURPLUS PROPERTY PROGRAM FEDERAL REGISTER REPORT FOR 12/12/2003

Unsuitable Properties

Land (by State)

Kentucky

Site 12A.
Licking River Access Site.
Wilder Co: Campbell KY 41071.
Landholding Agency: GSA.
Property Number: 54200330010.
Status: Excess.
Reason: Floodway.
GSA Number: 4–D–KY–0613.

[FR Doc. 03–30505 Filed 12–11–03; 8:45 am]

BILLING CODE 4210–29–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Receipt of Applications for Permits and Re-opening of Comment Period

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of applications for permits and re-opening comment period for a marine mammal permit application.

SUMMARY: The public is invited to comment on the following applications to conduct certain activities with endangered species and marine mammals.

DATES: Written data, comments or requests must be received by January 12, 2004.

ADDRESSES: Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents within 30 days of the date of publication of this notice to: U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203; fax 703/358–2281.

FOR FURTHER INFORMATION CONTACT: Division of Management Authority, telephone 703/358–2104.

SUPPLEMENTARY INFORMATION:

Endangered Species

The public is invited to comment on the following applications for a permit to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, *as amended* (16 U.S.C. 1531, *et seq.*). Written data, comments, or requests for copies of these complete applications should be submitted to the Director (See **ADDRESSES** above).

Applicant: Todd King, Cheyenne, WY, PRT–080017.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Applicant: Alfredo Julian, Vancouver, WA, PRT–080046.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

George Carden Circus International, Inc, Springfield, MO, PRT–079868, 079870, 079871, and 079872.

The applicant requests permits to re-export and re-import four Asian elephants (*Elephas maximus*) to worldwide locations for the purpose of enhancement of the species through conservation education. The permit numbers and animals are: 079868—Vickie, 079870—Jenny, 079871—Judy, 079872—Cyd. This notification covers activities to be conducted by the applicant over a three-year period and the import of any potential progeny born while overseas.

Endangered Marine Mammals and Marine Mammals

The public is invited to comment on the following application for a permit to conduct certain activities with endangered marine mammals. The application was submitted to satisfy requirements of the Endangered Species Act of 1973, *as amended* (16 U.S.C. 1531, *et seq.*) and the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*), and the regulations governing endangered species (50 CFR part 17) and marine mammals (50 CFR part 18). Written data, comments, or requests for copies of the complete application or requests for a public hearing on this application should be submitted to the Director (See **ADDRESSES** above). Anyone requesting a hearing should give specific reasons why a hearing would be appropriate. The holding of such a hearing is at the discretion of the Director.

Applicant: Florida Atlantic University, Boca Raton, FL, PRT–063561.

The Service is re-opening the comment period for this application submitted by Edmund R. Gerstein requesting a permit to conduct a study to archive and evaluate Florida manatee (*Trichehus manatus latirostris*) responses to controlled approaches with boats equipped with propeller guards for the purpose of scientific research. Some of the approaches will incorporate a device to project an alerting signal designed to be within the manatees's hearing sensitivity. A notice of receipt of this application for a permit was published in the **Federal Register** on December 24, 2002 (67 FR 78504), and the comment period closed on January 23, 2003. On October 20, 2003, the applicant submitted additional information in support of his application. The re-opening of the comment period will allow all interested parties to review the new information and provide the Service with any additional comments regarding these applications. This notification covers activities to be conducted by the applicant over a three-year period.

Concurrent with the publication of this notice in the **Federal Register**, the Division of Management Authority is forwarding copies of the above applications to the Marine Mammal Commission and the Committee of Scientific Advisors for their review.

Dated: November 21, 2003.

Monica Farris,

Senior Permit Biologist, Branch of Permits, Division of Management Authority.

[FR Doc. 03–30785 Filed 12–11–03; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ040–03–7122–EX–5513; AZA–29640 & AZA–31133]

Notice of Availability of Final Environmental Impact Statement (FEIS) for the Dos Pobres/San Juan Project, Graham County, AZ

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Availability (NOA) of Final Environmental Impact Statement (FEIS).

SUMMARY: The Bureau of Land Management (BLM), Safford Field Office, Arizona, has prepared an FEIS analyzing the impacts on the human environment of a mining plan of operation proposed by the Phelps Dodge Mining Company, a division of the Phelps Dodge Corporation. The Dos Pobres/San Juan Project is located approximately 8 miles north of Safford, Arizona. The FEIS (1) assesses the environmental impacts of the project as described in the three mining plan alternatives (Proposed Action, Partial Backfill, and No Action) and two land exchange alternatives (Land Exchange and No Land Exchange); (2) determines if there are direct, indirect and cumulative impacts; and (3) identifies mitigative measures. The FEIS was prepared to comply with the Council on Environmental Quality's regulations (40 CFR part 1500–1508) for implementing the National Environmental Policy Act of 1969, 43 U.S.C. 1701, the Federal Land Exchange Facilitation Act of 1988, 43 U.S.C. 1716 and 1740, and BLM regulations governing land exchanges (43 CFR parts 2090 and 2200) and mining plans of operation (43 CFR parts 3715 and 3809).

DATES: The Record of Decision for this project will not be issued prior to 60-days following the Environmental Protection Agency (EPA) publication of its NOA of the Final Environmental Impact Statement for the Dos Pobres/San Juan Project, Graham County, AZ.

ADDRESSES: A limited number of copies of the FEIS are available and copies may also be reviewed at the Bureau of Land Management, Safford Field Office, 711 14th Avenue, Safford, Arizona 85546 or the Bureau of Land Management, Arizona State Office, 222 North Central Avenue, Phoenix, Arizona 85004.

FOR FURTHER INFORMATION CONTACT: Scott Evans, Project Manager, at BLM Safford Field Office, telephone number (928) 348–4414; or Tina Lee, Project Manager, at SWCA, Inc., telephone number (520) 325–9194.

SUPPLEMENTARY INFORMATION: The proposed Dos Pobres/San Juan Project is an integrated copper mining project using conventional open pit mining and solution extraction/electro winning technologies to meet a continuing demand for copper. The BLM's preferred alternative is the Land Exchange alternative (Alternative 2.2.2) in which Phelps Dodge acquires title to the selected lands and BLM acquires title to the offered private lands.

Chapter 7 of the FEIS summarizes public comments on the draft environmental impact statement (DEIS) and BLM responses to the comments.

The U.S. Army Corps of Engineers (COE), a cooperating agency on the Dos Pobres/San Juan Project EIS, has jurisdiction over the Project through its Clean Water Act permitting authority and will select as its preferred alternative the least environmentally damaging, practicable alternative from the Mining Plan Alternatives Set.

The EPA, also a cooperating agency, delegated authority for section 402 compliance to the Arizona Department of Environmental Quality (ADEQ) in December 2002; therefore ADEQ will be issuing the AZPDES permit for this project.

Dated: August 5, 2003.

Frank Rowley,

Acting Field Office Manager.

[FR Doc. 03–30765 Filed 12–11–03; 8:45 am]

BILLING CODE 4310–32–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of extension of two currently approved information collections (1010–0018 and 1010–0039).

SUMMARY: To comply with the Paperwork Reduction Act of 1995 (PRA), MMS is inviting comments on two collections of information that we will submit to the Office of Management and Budget (OMB) for review and approval. The information collection requests are titled "Form MMS–126,

Well Potential Test Report (WPT)" and "Form MMS–127, Sensitive Reservoir Information Report (SRI)."

DATES: Submit written comments by February 10, 2004.

ADDRESSES: Mail or hand carry comments to the Department of the Interior; Minerals Management Service; Attention: Rules Processing Team; Mail Stop 4024; 381 Elden Street; Herndon, Virginia 20170–4817. If you wish to email comments, the address is: *rules.comments@mms.gov*. Reference "Information Collection Form MMS–126" or "Form MMS–127" as appropriate in your email subject line and mark your message for return receipt. Include your name and return address in your message.

FOR FURTHER INFORMATION CONTACT: Arlene Bajusz, Rules Processing Team at (703) 787–1600. You may also contact Arlene Bajusz to obtain a copy, at no cost, of forms MMS–126 and MMS–127.

SUPPLEMENTARY INFORMATION:

Titles and OMB Control Numbers: Form MMS–126, Well Potential Test Report (WPT), 1010–0039; Form MMS–127, Sensitive Reservoir Information Report (SRI), 1010–0018.

Abstract: The Outer Continental Shelf (OCS) Lands Act, as amended (43 U.S.C. 1331 *et seq.* and 43 U.S.C. 1801 *et seq.*), authorizes the Secretary of the Interior (Secretary) to prescribe rules and regulations to administer leasing of the OCS. Such rules and regulations will apply to all operations conducted under a lease. Operations on the OCS must preserve, protect, and develop oil and natural gas resources in a manner that is consistent with the need to make such resources available to meet the Nation's energy needs as rapidly as possible; to balance orderly energy resource development with protection of human, marine, and coastal environments; to ensure the public a fair and equitable return on the resources of the OCS; and to preserve and maintain free enterprise competition.

Section 5(a) of the OCS Lands Act requires the Secretary to prescribe rules and regulations "to provide for the prevention of waste, and conservation of the natural resources of the Outer Continental Shelf, and the protection of correlative rights therein" and to include provisions "for the prompt and efficient exploration and development of a lease area."

This information collection request (ICR) concerns forms used to collect information required under 30 CFR part 250. Various sections of 30 CFR part 250, subpart K, require respondents to submit forms MMS–126 and MMS–127. MMS District and Regional Supervisors use the information on form MMS–126 for various environmental, reservoir, reserves, and conservation analyses, including the determination of maximum production rates (MPRs) when necessary for certain oil and gas completions. The form contains information concerning the conditions and results of a well potential test. This requirement implements the conservation provisions of the OCS Lands Act and 30 CFR part 250. The information obtained from the well potential test is essential to determine if an MPR is necessary for a well and to establish the appropriate rate. It is not possible to specify an MPR in the absence of information about the production rate capability (potential) of the well.

MMS District and Regional Supervisors use the information submitted on form MMS–127 to determine whether a rate-sensitive reservoir is being prudently developed. This represents an essential control mechanism that MMS uses to regulate production rates from each sensitive reservoir being actively produced. Occasionally, the information available on a reservoir early in its producing life may indicate it to be non-sensitive, while later and more complete information would establish the reservoir as being sensitive. Production from a well completed in the gas cap of a sensitive reservoir requires approval from the Regional Supervisor. The information submitted on form MMS–127 provides reservoir parameters that are revised at least annually or sooner if reservoir development results in a change in reservoir interpretation. The engineers and geologists use the information for rate control and reservoir studies.

MMS will protect information from respondents considered proprietary under the Freedom of Information Act (5 U.S.C. 552) and its implementing regulations (43 CFR part 2) and under regulations at 30 CFR 250.196, "Data and information to be made available to the public." No items of a sensitive nature are collected. Responses are mandatory.

Frequency: On occasion but not less than annually.

Estimated Number and Description of Respondents: Approximately 130 Federal OCS oil and gas or sulphur lessees.

Estimated Reporting and Recordkeeping "Hour" Burden: The currently approved "hour" burden for both forms is 1 hour each.

Estimated Reporting and Recordkeeping "Non-Hour Cost" Burden: MMS has identified no "non-hour cost" burden associated with either form MMS–126 or MMS–127.

Public Disclosure Statement: The PRA (44 U.S.C. 3501, *et seq.*) provides that an agency may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. Until OMB approves a collection of information, you are not obligated to respond.

Comments: Before submitting an ICR to OMB, PRA section 3506(c)(2)(A) requires each agency "* * * to provide notice * * * and otherwise consult with members of the public and affected agencies concerning each proposed collection of information * * *". Agencies must specifically solicit comments to: (a) Evaluate whether the proposed collection of information is necessary for the agency to perform its duties, including whether the information is useful; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) enhance the quality, usefulness, and clarity of the information to be collected; and (d) minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology.

Agencies must also estimate the "non-hour cost" burdens to respondents or recordkeepers resulting from the collection of information. Therefore, if you have costs to generate, maintain, and disclose this information, you should comment and provide your total capital and startup cost components or annual operation, maintenance, and purchase of service components. You should describe the methods you use to estimate major cost factors, including system and technology acquisition, expected useful life of capital equipment, discount rate(s), and the period over which you incur costs. Capital and startup costs include, among other items, computers and software you purchase to prepare for collecting information, monitoring, and record storage facilities. You should not include estimates for equipment or services purchased: (i) Before October 1, 1995; (ii) to comply with requirements not associated with the information collection; (iii) for reasons other than to provide information or keep records for the Government; or (iv) as part of customary and usual business or private practices.

MMS will summarize written responses to this notice and address them in the submission for OMB approval. As a result of your comments, MMS will make any necessary adjustments to the burden in the submission to OMB.

Public Comment Policy: MMS's practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. If you wish your name and/or address to be withheld, you must state this prominently at the beginning of your comment. MMS will honor this request to the extent allowable by law; however, anonymous comments will not be considered. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public inspection in their entirety.

MMS Federal Register Liaison Officer: Denise Johnson (202) 208–3976.

Dated: December 5, 2003.

E.P. Danenberger,

Chief, Engineering and Operations Division.

[FR Doc. 03–30793 Filed 12–11–03; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Central Valley Project Improvement Act, Water Management Plans

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of availability.

SUMMARY: The following Water Management Plans are available for review:

- Carpinteria Water District
- Kern Tulare Water District
- Montecito Water District
- Rag Gulch Water District

To meet the requirements of the Central Valley Project Improvement Act of 1992 (CVPIA) and the Reclamation Reform Act of 1982, the Bureau of Reclamation (Reclamation) developed and published the Criteria for Evaluating Water Management Plans (Criteria). Note: For the purpose of this announcement, Water Management Plans (Plans) are considered the same as Water Conservation Plans. The above entities have developed a Plan, which Reclamation has evaluated and preliminarily determined to meet the requirements of these Criteria. Reclamation is publishing this notice in order to allow the public to comment on the preliminary determinations. Public comment on Reclamation's preliminary (*i.e.*, draft) determination is invited at this time.

DATES: All public comments must be received by January 12, 2004.

ADDRESSES: Please mail comments to Bryce White, Bureau of Reclamation, 2800 Cottage Way, Sacramento, California 95825, or contact at (916) 978–5208 (TDD: 978–5608), or e-mail at *bwhite@mp.usbr.gov*.

FOR FURTHER INFORMATION CONTACT: To be placed on a mailing list for any subsequent information, please contact Bryce White at the e-mail address or telephone number above.

SUPPLEMENTARY INFORMATION: We are inviting the public to comment on our preliminary (*i.e.*, draft) determination of Plan adequacy. Section 3405(e) of the CVPIA (title 34 Pub. L. 102–575), requires the "Secretary of the Interior to establish and administer an office on Central Valley Project water conservation best management practices that shall * * * develop criteria for evaluating the adequacy of all water conservation plans developed by project contractors, including those plans required by section 210 of the Reclamation Reform Act of 1982." Also, according to section 3405(e)(1), these criteria must be developed "* * * with the purpose of promoting the highest level of water use efficiency reasonably achievable by project contractors using best available cost-effective technology and best management practices." These criteria state that all parties (Contractors) that contract with Reclamation for water supplies (municipal and industrial contracts over 2,000 acre-feet and agricultural contracts over 2,000 irrigable acres) must prepare Plans that contain the following information:

1. Description of the District
2. Inventory of Water Resources
3. Best Management Practices (BMPs) for Agricultural Contractors
4. BMPs for Urban Contractors
5. Plan Implementation
6. Exemption Process
7. Regional Criteria
8. Five-Year Revisions

Reclamation will evaluate Plans based on these criteria. A copy of these Plans will be available for review at Reclamation's Mid-Pacific (MP) Regional Office located in Sacramento, California, and the local area office. Our practice is to make comments, including names and home addresses of respondents, available for public review. Individual respondents may request that Reclamation withhold their home address from public disclosure, and we will honor such request to the extent allowable by law. There also may be circumstances in which Reclamation would elect to withhold a respondent's identity from public disclosure, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comments. We will make all submissions from organizations, businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses available for public disclosure in their entirety. If you wish to review a copy of these Plans, please contact Mr. White to find the office nearest you.

Dated: November 14, 2003.

Donna E. Tegelman,

Regional Resources Manager, Mid-Pacific Region, Bureau of Reclamation.

[FR Doc. 03–30751 Filed 12–11–03; 8:45 am]

BILLING CODE 4310–MN–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. TA–421–4]

Certain Ductile Iron Waterworks Fittings From China

Determination

On the basis of information developed in the subject investigation, the United States International Trade Commission determines, pursuant to section 421(b)(1) of the Trade Act of 1974,[1] that certain ductile iron waterworks fittings[2] from the People's Republic of China are being imported into the United States in such increased quantities or under such conditions as to cause market disruption to the domestic producers of like or directly competitive products.[3]

Background

Following receipt of a petition, on September 5, 2003, on behalf of McWane, Inc.,[4] Birmingham, AL, the Commission instituted investigation No. TA–421–4, *Certain Ductile Iron Waterworks Fittings from China*, under section 421(b) of the Act to determine

[1] 19 U.S.C. 2451(b)(1).

[2] The products subject to this investigation are cast pipe or tube fittings of ductile iron (containing 2.5 percent carbon and over 0.02 percent magnesium or magnesium and cerium, by weight) with mechanical, push-on (rubber compression) or flanged joints attached. Included within this definition are fittings of all nominal diameters and of both full-bodied and compact designs. The imported products are provided for in statistical reporting number 7307.19.3070 of the Harmonized Tariff Schedule of the United States (HTS).

[3] Commissioners Koplan and Lane determine that certain ductile iron waterworks fittings from China are being imported into the United States in such increased quantities as to cause market disruption to the domestic producers of like products.

[4] McWane operates three subsidiaries that produce the subject products including: Clow Water Systems Co., Coshocton, OH; Tyler Pipe Co., Tyler, TX; and Union Foundry Co., Anniston, AL.

whether certain ductile iron waterworks fittings from China are being imported into the United States in such increased quantities or under such conditions as to cause market disruption to the domestic producers of like or directly competitive products. The petition also alleged under section 421(i)(1)(A) of the Act, that critical circumstances exist with respect to imports of the subject product from China, and on October 20, 2003, the Commission made a negative determination [1] [2] with respect to whether delay in taking action under this section would cause damage to the relevant domestic industry which would be difficult to repair (68 FR 61013, October 24, 2003).

Notice of the institution of the Commission's investigation and of the scheduling of a public hearing to be held in connection therewith was given by posting a copy of the notice on the Commission's Web site (*http://www.usitc.gov*) and by publishing the notice in the **Federal Register** of September 15, 2003 (68 FR 54010). The hearing was held on November 6, 2003, in Washington, DC; all persons who requested the opportunity were permitted to appear in person or by counsel.

By order of the Commission.

Issued: December 8, 2003.

Marilyn R. Abbott,

Secretary.

[FR Doc. 03–30731 Filed 12–11–03; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993 Industrial Macromolecular Crystallography Association ("IMCA")

Notice is hereby given that, on November 17, 2003, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993 Industrial Macromolecular Crystallography Association (IMCA) has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Novartis Institute for Biomedical Research, Inc., Cambridge, MA has been added as a party to this venture. Also, The Procter and Gamble Distributing Company, Cincinnati, OH; Pharmacia Corporation, Peapack, NJ; Pharmacia and Upjohn Company, Peapack, NJ; and Glaxo Wellcome Inc., Research Triangle Park, NC have been dropped as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and IMCA intends to file additional written notification disclosing all changes in membership.

On October 23, 1990, IMCA filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on December 3, 1990 (55 FR 49953).

The last notification was filed with the Department on July 18, 2000. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on May 23, 2001 (66 FR 28546).

Dorothy B. Fountain,

Deputy Director of Operations Antitrust Division.

[FR Doc. 03–30735 Filed 12–11–03; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Nano-Engineered Thermal Interfaces Materials Enabling Next Generation Electronics

Notice is hereby given that, on October 2, 2003, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Nano-Engineered Thermal Interfaces Materials Enabling Next Generation Microelectronics has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Cabot Corporation, Albuquerque, NM has been added as a party to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and Nano-Engineered Thermal Interfaces Materials Enabling Next Generation Microelectronics intends to file additional written notification disclosing all changes in membership.

On October 2, 2003, Nano-Engineered Thermal Interfaces Enabling Next Generation Microelectronics filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in **Federal Register** pursuant to section 6(b) of the Act on December 1, 2003 (68 FR 67216).

Dorothy B. Fountain,

Deputy Director of Operations Antitrust Division.

[FR Doc. 03–30737 Filed 12–11–03; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice of Pursuant to the National Cooperative Research and Production Act of 1993—National Shipbuilding Research Program ("NSRP")

Notice is hereby given that, on October 29, 2003, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), National Shipbuilding Research Program ("NSRP") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, VT Halter Marine, Inc., Gulfport, MS, a subsidiary of Vision Technologies Systems, Inc., Alexandria, VA, a subsidiary of Singapore Technologies Engineering, Ltd., Singapore, Singapore, has been added as a party to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and NSRP intends to file additional written notification disclosing all changes in membership.

On Mary 13, 1998, NSRP filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on January 29, 1999 (64 FR 4708).

The last notification was filed with the Department on October 9, 2003. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on November 12, 2003 (68 FR 64125).

Dorothy B. Fountain,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 03–30732 Filed 12–11–03; 8:45 am]

BILLING CODE 4410–11–M

[1] Commissioner Lane made an affirmative critical circumstances determination

[2] Commissioner Pearson did not participate in the critical circumstances determination.

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Optical Switch Venture

Notice is hereby given that, on October 16, 2003, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Agiltron Incorporated has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties and (2) the nature and objectives of the venture. The notifications were filed for the purpose invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to section 6(a) of the Act, the identities of the parties are Agiltron Incorporated, Wilmington, MA, and AC Photonics Incorporated, Santa Clara, CA. The nature and objectives of the venture are to develop and demonstrate a new type of optical switch based on an optical MEMS platform.

Dorothy B. Fountain,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 03–30734 Filed 12–11–03; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Semiconductor Test Consortium, Inc.

Notice is hereby given that, on November 12, 2003, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Semiconductor Test Consortium, Inc. has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Tokyo Electron Ltd., Tokyo, Japan; Tokyo Seimitsu Co., Ltd., Tokyo, Japan; Port Orford Company, Rollingbay, WA have been added as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and Semiconductor Test Consortium, Inc. intends to file additional written notification disclosing all changes in membership.

On May 27, 2003, Semiconductor Test Consortium, Inc. filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act of June 17, 2003 (68 FR 35913).

This last notification was filed with the Department on August 18, 2003. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on September 8, 2003 (68 FR 52959).

Dorothy B. Fountain,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 03–30733 Filed 12–11–03; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—USB Flash Drive Alliance ("UFDA")

Notice is hereby given that, on November 12, 2003, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), USB Flash Drive Alliance ("UFDA") has filed written notifications simultaneously with Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to section 6(b) of the Act, the identities of the parties are Kingston Technologies, Fountain Valley, CA; Lexar Media, Inc., Fremont, CA; Samsung Semiconductor, Inc., San Jose, CA; SimpleTech, Inc., Santa Ana, CA; Microsoft Corporation, Redmond, WA; Viking Interworks, a Sanimna-SCI Company, Rancho Santa Margarita, CA; Crucial Technology, a division of Micron, Boise, ID; GenesysLogic, San Jose, CA; and PNY Technologies, Inc., Parsippany, NJ. The nature and objectives of the venture are to promote the advancement of the general use of USB flash drive devices through the creation of a generic industry recognized category (USB flash drives), and use this category to educate consumers about the benefits and uses of USB flash drives.

Dorothy B. Fountain,

Deputy Director of Operations Antitrust Division.

[FR Doc. 03–30736 Filed 12–11–03; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF LABOR

Employment Standards Administration

Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., Room S–3014, Washington, DC 20210.

Modification to General Wage Determination Decisions

The number of the decisions listed to the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume and State. Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

Rhode Island
RI030001 (Jun. 13, 2003)

Volume II

Pennsylvania
PA030001 (Jun. 13, 2003)
PA030002 (Jun. 13, 2003)
PA030003 (Jun. 13, 2003)
PA030004 (Jun. 13, 2003)
PA030005 (Jun. 13, 2003)
PA030006 (Jun. 13, 2003)
PA030007 (Jun. 13, 2003)
PA030008 (Jun. 13, 2003)
PA030009 (Jun. 13, 2003)
PA030010 (Jun. 13, 2003)
PA030011 (Jun. 13, 2003)
PA030012 (Jun. 13, 2003)
PA030013 (Jun. 13, 2003)
PA030014 (Jun. 13, 2003)
PA030015 (Jun. 13, 2003)
PA030018 (Jun. 13, 2003)
PA030019 (Jun. 13, 2003)
PA030020 (Jun. 13, 2003)
PA030021 (Jun. 13, 2003)
PA030023 (Jun. 13, 2003)
PA030024 (Jun. 13, 2003)
PA030025 (Jun. 13, 2003)
PA030026 (Jun. 13, 2003)
PA030027 (Jun. 13, 2003)
PA030028 (Jun. 13, 2003)
PA030030 (Jun. 13, 2003)
PA030031 (Jun. 13, 2003)
PA030032 (Jun. 13, 2003)
PA030035 (Jun. 13, 2003)
PA030038 (Jun. 13, 2003)
PA030040 (Jun. 13, 2003)
PA030042 (Jun. 13, 2003)
PA030052 (Jun. 13, 2003)
PA030054 (Jun. 13, 2003)
PA030059 (Jun. 13, 2003)
PA030060 (Jun. 13, 2003)
PA030061 (Jun. 13, 2003)
PA030065 (Jun. 13, 2003)
West Virginia
WV030001 (Jun. 13, 2003)
WV030002 (Jun. 13, 2003)
WV030003 (Jun. 13, 2003)
WV030005 (Jun. 13, 2003)
WV030006 (Jun. 13, 2003)
WV030009 (Jun. 13, 2003)
WV030010 (Jun. 13, 2003)
WV030011 (Jun. 13, 2003)

Volume III

Kentucky
KY030001 (Jun. 13, 2003)
KY030002 (Jun. 13, 2003)
KY030003 (Jun. 13, 2003)
KY030004 (Jun. 13, 2003)
KY030006 (Jun. 13, 2003)
KY030007 (Jun. 13, 2003)
KY030025 (Jun. 13, 2003)
KY030027 (Jun. 13, 2003)
KY030029 (Jun. 13, 2003)
KY030035 (Jun. 13, 2003)

Volume IV

None

Volume V

New Mexico
NM030001 (Jun. 13, 2003)

Volume VI

None

Volume VII

None

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and Related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country.

General wage determinations issued under the Davis-Bacon and Related Acts, are available at no cost on the Government Printing Office site at *http://www.access.gpo.gov/davisbacon*. They are also available electronically by subscription to the Davis-Bacon Online Service (*http://davisbacon.fedworld.gov*) of the National Technical Information Service (NTIS) of the U.S. Department of Commerce at 1–800–363–2068. This subscription offers value-added features such as electronic delivery of modified wage decisions directly to the user's desktop, the ability to access prior wage decisions issued during the year, extensive Help desk Support, etc.

Hard-copy subscriptions may be purchased from : Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 512–1800.

When ordering hard-copy subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the six separate Volumes, arranged by State. Subscriptions include an annual edition (issued in January or February) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed in Washington, DC, this 4th day of December, 2003.

Carl J. Poleskey,

Chief, Branch of Construction Wage Determinations.

[FR Doc. 03–30539 Filed 12–11–03; 8:45 am]

BILLING CODE 4510–27–M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. ICR–1218–0145 (2004)]

Formaldehyde Standard (29 CFR 1910.1048); Extension of the Office of Management and Budget's (OMB) Approval of Information Collection (Paperwork) Requirements

AGENCY: Occupational Safety and Health Administration (OSHA); Labor.

ACTION: Request for comment.

SUMMARY: OSHA solicits comments concerning its proposal to decrease the existing burden hour estimates, and to extend OMB approval of the information collection requirements of the Formaldehyde Standard (29 CFR 1910.1048). The standard protects employees from adverse health effects from occupational exposure to Formaldehyde.

DATES: Comments must be submitted by the following dates:

Hard Copy: Your comments must be submitted (postmarked or received) by February 10, 2004.

Facsimile and electronic transmission: Your comments must be sent by February 10, 2004.

ADDRESSES:

I. Submission of Comments

Regular mail, express delivery, hand-delivery, and messenger service: Submit your comments and attachments to the OSHA Docket Office, Docket No. ICR–1218–0145 (2004), Room N–2625, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. OSHA Docket Office and Department of Labor hours of operation are 8:15 a.m. to 4:15 p.m., e.s.t.

Facsimile: If your comments, including any attachments, are 10 pages or fewer, you may fax them to the OSHA Docket Office at (202) 693–1648. You must include the docket number, ICR–1218–0145 (2004), in your comments.

Electronic: You may submit comments, but not attachments, through the Internet at *http://ecomments.osha.gov*. (Please see the **SUPPLEMENTARY INFORMATION** below for additional information on submitting comments.)

You may submit comments in response to this document by (1) Hard copy, (2) FAX transmission (facsimile), or (3) electronically through the OSHA Web page. Please note you cannot attach materials such as studies or journal articles to electronic comments. If you have additional materials, you must submit three copies of them to the OSHA Docket Office at the address above. The additional materials must clearly identify your electronic comments by name, date, subject and docket number so we can attach them to your comments. Because of security-related problems there may be a significant delay in the receipt of comments by regular mail. Please contact the OSHA Docket Office at (202) 693–2350 for information about security procedures concerning the delivery of materials by express delivery, hand delivery and messenger service.

II. Obtaining Copies of the Supporting Statement for the Information Collection Request

The Supporting Statement for the Information Collection Request (ICR) is available for downloading from OSHA's Web site at *http://www.osha.gov*. The complete ICR, containing the OMB–83–I Form, Supporting Statement, and attachments, is available for inspection and copying in the OSHA Docket Office, at the address listed above. A printed copy of the ICR can be obtained by contacting Todd Owen at (202) 693–2222.

FOR FURTHER INFORMATION CONTACT: Todd Owen, Directorate of Standards and Guidance, OSHA, U.S. Department of Labor, Room N–3609, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693–2222.

SUPPLEMENTARY INFORMATION:

I. Background

The Department of Labor, as part of its continuing effort to reduce paperwork and respondent (*i.e.* employer) burden, conducts a preclearance consultation program to provide the public with an opportunity to comment on proposed and continuing information collection requirements in accordance with the Paperwork Reduction Act of 1995 (PRA–95) (44 U.S.C. 3506(c)(2)(A)). This program ensures that information is in the desired format, reporting burden (time and costs) is minimal, collection instruments are clearly understood, and OSHA's estimate of the information collection burden is correct. The Occupational Safety and Health Act of 1970 (the Act) authorizes information collection by employers as necessary or appropriate for enforcement of the Act or for developing information regarding the causes and prevention of occupational injuries, illnesses, and accidents (29 U.S.C. 657).

The information collection requirements specified in the Formaldehyde Standard protect employees from the adverse health effects that may result from their exposure to Formaldehyde. The major information collection requirements of the Formaldehyde Standard require employers to perform exposure monitoring to determine employees exposure to Formaldehyde, notifying employees of their Formaldehyde exposures, providing examining physicians with specific information, ensuring that employees receive a copy of their medical examination results, training, maintaining employees' exposure monitoring and medical records for specific periods, and providing access to these records by OSHA, the National Institute for Occupational Safety and Health, the affected employees, and their authorized representatives.

II. Special Issues for Comment

OSHA has a particular interest in comments of the following issues:

—Whether the information collection requirements are necessary for the proper performance of the Agency's functions, including whether the information is useful;

—The accuracy of the Agency's estimate of the burden (time and costs) of the information collection requirements, including the validity of the methodology and assumptions used;

—The quality, utility, and clarity of the information collected; and

—Ways to minimize the burden on employers who must comply; for example, by using automated or other technological information collection and transmission techniques.

III. Proposed Actions

OSHA proposes to extend the Office of Management and Budget's (OMB) approval of the collection of information requirements specified by the Standard on Formaldehyde (29 CFR 1910.1048). OSHA is lowering its burden hour estimate by 100.597 hours mainly as a result of lowering the estimated number of employee medical examinations. The Agency will summarize the comments submitted in response to this notice, and will include this summary in its request to OMB to extend the approval of these information collection requirements.

Type of Review: Extension of currently approved information collection requirements.

Title: Formaldehyde Standard (29 CFR 1910.1048).

OMB Number: 1218–0145.

Affected Public: Business or other for-profit organizations; Federal government; State, local, or tribal governments.

Number of Respondents: 133,196.

Frequency: On occasion.

Total Responses: 1,794,628.

Average Time per Response: Varies from 5 minutes for employers to maintain exposure monitoring and medical records for each employee to 1 hour for employees to receive a medical examination.

Estimated Total Burden Hours: 490,482 hours.

Estimated Cost (Operation and Maintenance): $52,058,424.

IV. Authority and Signature

John L. Henshaw, Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice. The authority for this notice is the Paperwork Reduction Act of 1995 (44 U.S.C. 3506) and Secretary of Labor's Order No. 5–2002 (67 FR 65008).

Signed at Washington, DC, on December 4, 2003.

John L. Henshaw,

Assistant Secretary of Labor.

[FR Doc. 03–30789 Filed 12–11–03; 8:45 am]

BILLING CODE 4510–26–M

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

Sunshine Act Meeting

December 5, 2003.

TIME AND DATE: 10 a.m., Wednesday, December 17, 2003.

PLACE: Hearing Room, 9th Floor, 601 New Jersey Avenue, NW., Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the following in open session:

Secretary of Labor v. *Cannelton Industries, Inc.*, Docket Nos. WEVA 2002–111–R and WEVA 2002–112–R. (Issues include whether the judge erred by permitting a "pumpers' examination" to be substituted for a preshift examination under 30 CFR 75.360.)

Any person attending this meeting who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs. Subject to 29 CFR 2706.150(a)(3) and § 2706.160(d).

FOR FURTHER INFORMATION CONTACT: Jean Ellen, (202) 434–9950/(202) 708–9300 for TDD Relay/1–800–877–8339 for toll free.

Jean H. Ellen,

Chief Docket Clerk.

[FR Doc. 03–30884 Filed 12–10–03; 12:19 pm]

BILLING CODE 6735–01–M

NATIONAL CREDIT UNION ADMINISTRATION

Community Development Revolving Loan Fund for Credit Unions

AGENCY: National Credit Union Administration.

ACTION: Notice of application period.

SUMMARY: The National Credit Union Administration (NCUA) will accept applications for participation in the Community Development Revolving Loan Fund's Loan Program throughout calendar year 2004, subject to availability of funds. Application procedures for qualified low-income credit unions are in NCUA Rules and Regulations.

ADDRESSES: Applications for participation may be obtained from and should be submitted to: NCUA, Office of Credit Union Development, 1775 Duke Street, Alexandria, VA 22314–3428.

Applications may be submitted throughout calendar year 2004.

FOR FURTHER INFORMATION CONTACT: Anthony LaCreta, Director, Office of Credit Union Development at the above address or telephone (703s) 518–6610.

SUPPLEMENTARY INFORMATION: Part 705 of the NCUA Rules and Regulations implements the Community Development Revolving Loan Fund (Fund) for Credit Unions. The purpose of the Fund is to assist officially designated "low-income" credit unions in providing basic financial services to residents in their communities that result in increased income, ownership and employment. The Fund makes available low interest loans in amounts up to $300,000 in the aggregate to qualified participating "low-income" designated credit unions. Interest rates are currently set at one percent. Fund participation is limited to existing credit unions with an official "low-income" designation. Student credit unions are not eligible to participate in this program.

This notice is published pursuant to Section 705.9 of the NCUA Rules and Regulations that states NCUA will provide notice in the **Federal Register** when funds in the program are available.

By the National Credit Union Administration Board on December 4, 2003.

Becky Baker,

Secretary, NCUA Board.

[FR Doc. 03–30752 Filed 12–11–03; 8:45 am]

BILLING CODE 7535–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 52–007]

Exelon Generation Company, LLC; Notice of Hearing and Opportunity To Petition for Leave To Intervene Early Site Permit for the Clinton ESP Site

Pursuant to the Atomic Energy Act of 1954, as amended (the Act), and the regulations in Title 10, Code of Federal Regulations, Part 50, Domestic Licensing of Production and Utilization Facilities, Part 52, Early Site Permits, Standard Design Certifications, and Combined Licenses for Nuclear Power Plants, and Part 2, Rules of Practice for Domestic Licensing Proceedings and Issuance of Orders, notice is hearby given that a hearing will be held, at a time and place to be set in the future by the Commission or designated Atomic Safety and Licensing Board (Board). The hearing will consider the application dated September 25, 2003 filed by Exelon Generation Company, LLC (Exelon) pursuant to Subpart A of 10 CFR Part 52 for an early site permit (ESP). The application requests approval of a site owned by AmerGen Energy Company, LLC (AmerGen is a joint venture of Exelon and British Energy), in DeWitt County, Illinois, approximately 6 miles east of Clinton, Illinois, between the cities of Bloomington and Decatur to the north and south, respectively, and Lincoln, and Champaign-Urbana to the west and east, respectively, as a location for one or more new nuclear reactors that would, if authorized for construction and operation in a separate licensing proceeding under Subpart C of 10 CFR Part 52 or under 10 CFR Part 50, have a capacity of no more than 6800 Megawatts (thermal) additional for the site. The docket number established for this application is 52–007.

The hearing will be conducted by a Board which will be designated by the Chairman of the Atomic Safety and Licensing Board Panel or by the Nuclear Regulatory Commission (NRC, the Commission). Notice as to the membership of the Board will be published in the **Federal Register** at a later date.

The NRC staff will complete a detailed technical review of the application and will document its findings in a safety evaluation report (SER) and an environmental impact statement (EIS). In addition, the Commission will refer a copy of the application to the Advisory Committee on Reactor Safeguards (ACRS) in accordance with 10 CFR 52.23, and the ACRS will report on those portions of the application that concern safety. Upon receipt of the ACRS report and completion of the NRC staff's SER and EIS, the Director, Office of Nuclear Reactor Regulation, NRC, will propose findings on the following issues:

Issues Pursuant to the Atomic Energy Act of 1954, as Amended:

(1) Whether the issuance of an ESP will be inimical to the common defense and security or to the health and safety of the public (Safety Issue 1); and, (2) whether, taking into consideration the site criteria contained in 10 CFR Part 100, a reactor, or reactors, having characteristics that fall within the parameters for the site, can be constructed and operated without undue risk to the health and safety of the public (Safety Issue 2).

Issue Pursuant to the National Environmental Policy Act (NEPA) of 1969, as Amended:

Whether, in accordance with the requirements of Subpart A of 10 CFR Part 51, the ESP should be issued as proposed.

The Board will conduct the hearing in accordance with Subpart G of 10 CFR Part 2. If the hearing is contested as defined by 10 CFR 2.4, the presiding officer will consider Safety Issues 1 and 2 and the issue pursuant to NEPA set forth above.

If the hearing is not a contested proceeding as defined by 10 CFR 2.4, the presiding officer will determine: Whether the application and the record of the proceeding contain sufficient information, and the review of the application by the Commission's staff has been adequate to support a negative finding on Safety Issue 1 above, and an affirmative finding on Safety Issue 2 above, as proposed to be made by the Director, Office of Nuclear Reactor Regulation; and whether the review conducted by the Commission pursuant to NEPA has been adequate.

Regardless of whether the proceeding is contested or uncontested, the presiding officer will: (1) Determine whether the requirements of Section 102(2) (A), (C), and (E) of NEPA and Subpart A of 10 CFR Part 51 have been complied with in the proceeding; (2) independently consider the final balance among the conflicting factors contained in the record of the proceeding with a view to determining the appropriate action to be taken; and (3) determine, after considering reasonable alternatives, whether the ESP should be issued, denied, or appropriately conditioned to protect environmental values.

In accordance with 10 CFR 2.714, any person whose interest may be affected by this proceeding and who desires to participate as a party shall file a written petition for leave to intervene. Petitions must set forth with particularity the interest of the petitioner in the proceeding, how that interest may be affected by the results of the proceeding, including the reasons why the petitioner should be permitted to intervene with particular reference to the factors set forth in 10 CFR 2.714(d)(1), and the specific aspect or aspects of the subject matter of the proceeding as to which the petitioner wishes to intervene.

The Commission, the presiding officer, or the Atomic Safety and Licensing Board designated to rule on petitions to intervene shall, in ruling on petitions to intervene, consider the following factors, among other things: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding, (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding, and (3) the possible effect of any order that may be entered in the proceeding on the petitioner's interest.

All such petitions must be filed no later than 30 days from the date of publication of this notice in the **Federal Register**. Nontimely filings will not be entertained absent a determination by the Commission, the presiding officer, or the Atomic Safety and Licensing Board designated to rule on the petition, that the petition should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v).

The Board will convene a special prehearing conference of the parties to the proceeding and persons who have filed petitions for leave to intervene, or their counsel, to be held at such times as may be appropriate, at a place to be set by the Board for the purpose of dealing with the matters specified in 10 CFR 2.751a. Notice of this special prehearing conference will be published in the **Federal Register**. The Board will convene a prehearing conference of the parties, or their counsel, to be held subsequent to any special prehearing conference, after discovery has been completed, or within such other time as may be appropriate, at a time and place to be set by the Board for the purpose of dealing with the matters specified in 10 CFR 2.752.

Not later than fifteen (15) days prior to the holding of the special prehearing conference pursuant to 2.751a, or if no special prehearing conference is held, fifteen (15) days prior to the holding of the first prehearing conference, the petitioner shall file a supplement to his or her petition to intervene that must include a list of the contentions which petitioner seeks to have litigated in the hearing. A petitioner who fails to file a supplement that satisfies the requirements of 10 CFR 2.714(b)(2) with respect to at least one contention will not be permitted to participate as a party. Additional time for filing the supplement may be granted based upon a balancing of the factors in 10 CFR 2.714(a)(1).

Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide the following information with respect to each contention: (1) A brief explanation of the basis of the contention, (2) a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing, together with references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion, and (3) sufficient information (which may include information pursuant to 10 CFR 2.714(b)(2) (i) and (ii)) to show that a genuine dispute exists with the applicant on a material issue of law or fact. This showing must include references to the specific portions of the application (including the applicant's environmental report and safety report) that the petitioner disputes and the supporting reasons for each dispute, or, if the petitioner believes that the application fails to contain information on a relevant matter as required by law, the identification of each failure and the supporting reasons for the petitioner's belief. On issues arising under NEPA, the petitioner shall file contentions based on the applicant's environmental report. The petitioner can amend those contentions or file new contentions if there are data or conclusions in the NRC draft or final EIS, or any supplements relating thereto, that differ significantly from the data or conclusions in the applicant's document.

The Commission, the presiding officer, or the Atomic Safety and Licensing Board designated to rule on petitions to intervene shall, in ruling on the admissibility of a contention, refuse to admit a contention if: (1) The contention and supporting material fail to satisfy the requirements of 10 CFR 2.714(b)(2); or (2) the contention, if

proven, would be of no consequence in the proceeding because it would not entitle petitioner to relief.

A person permitted to intervene becomes a party to the proceeding, subject to any limitations imposed pursuant to 10 CFR 2.714(f). Unless otherwise expressly provided in the order allowing intervention, the granting of a petition for leave to intervene does not change or enlarge the issues specified in the notice of hearing.

Petitions for leave to intervene may be filed by delivery to the NRC Public Document Room at One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852–2738, or by mail addressed to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff. Because of the continuing disruptions in delivery of mail to United States Government offices, it is also requested that petitions for leave to intervene be transmitted to the Secretary of the Commission either by facsimile transmission to 301–415–1101 or by e-mail to *hearingdocket@nrc.gov*. A copy of the petition should also be sent to the Assistant General Counsel for Reactor Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Thomas S. O'Neill, Associate General Counsel Exelon Nuclear, 4300 Winfield Road, Warrenville, IL 60555, and to Stephen Frantz, Esquire, Morgan, Lewis &-Bockius LLP, 1111 Pennsylvania Avenue, NW., Washington, DC 20004. All petitions must be accompanied by proof of service upon all parties to the proceeding or their attorneys of record.

A person who is not a party may, in the discretion of the presiding officer, be permitted to make a limited appearance by making an oral or written statement of his position on the issues at any session of the hearing or any prehearing conference within such limits and on such conditions as may be fixed by the presiding officer, but may not otherwise participate in the proceeding.

A copy of the Exelon ESP application is available for public inspection at the Commission's Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records are accessible from the Agencywide Documents Access and Management System (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html*. The accession number for the application is ML032721596. Persons who do not have access to ADAMS, or who encounter problems in accessing the documents located in ADAMS, should contact the NRC Public Document Room staff by telephone at 1–800–397–4209, 301–415–4737 or by e-mail to *pdr@nrc.gov*.

The application is also available to local residents at the Vespasian Warner Public Library in Clinton, Illinois, and it is available on the NRC Web page at *http://www.nrc.gov/reactors/new-licensing/license-reviews/esp.html*.

Dated at Rockville, Maryland, this 8th day of December, 2003.

For the Nuclear Regulatory Commission.

Annette Vietti-Cook,

Secretary of the Commission.

[FR Doc. 03–30759 Filed 12–11–03; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Policy Statement on the Treatment of Environmental Justice Matters in NRC Regulatory and Licensing Actions

AGENCY: Nuclear Regulatory Commission.

ACTION: Draft policy statement: Extension of comment period.

SUMMARY: On November 5, 2003 (68 FR 62642), the Nuclear Regulatory Commission (NRC) published for public comment a draft policy statement on the treatment of environmental justice matters in NRC regulatory and licensing actions. Several persons have subsequently requested an extension of time for submitting comments. In the interest of obtaining public comment from the broadest range of stakeholders, the comment period on the draft policy statement is being extended for an additional 30 days from the original January 5, 2004 deadline to February 4, 2004.

DATES: The comment period on this draft policy statement has been extended and now expires on February 4, 2004. Comments received after this date will be considered if it is practical to do so, but the Commission is able to ensure consideration only for comments received on or before this date.

ADDRESSES: Submit comments to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff. Deliver comments to: 11555 Rockville Pike, Rockville, Maryland, between 7:30 a.m. and 4:15 p.m., on Federal workdays. Because of continuing disruptions in the delivery of mail to United States Government offices, it is requested that comments also be transmitted to the Secretary of the Commission either by means of facsimile transmission to (301) 415–1101, or by e-mail to *SECY@nrc.gov*. You may also provide comments via NRC's interactive rulemaking Web site (*http://ruleforum.llnl.gov*). This site also provides the availability to upload comments as files if your Web browser supports that function. Comments received may be examined at the NRC Public Document Room, 11555 Rockville Pike, Rockville, Maryland, or at NRC's Public Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html*.

FOR FURTHER INFORMATION CONTACT: James Lieberman, Special Counsel, Office of General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC, 20555–0001. Telephone: (301) 415–2746; fax number: (301) 415–2036; e-mail: *jxl@nrc.gov*.

Dated at Rockville, Maryland, this 8th day of December 2003.

For the Nuclear Regulatory Commission.

Annette Vietti-Cook,

Secretary of the Commission.

[FR Doc. 03–30758 Filed 12–11–03; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act, Meeting

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: [68 FR 68126, December 5, 2003].

STATUS: Closed Meeting.

PLACE: 450 Fifth Street, NW., Washington, DC.

ANNOUNCEMENT OF ADDITIONAL MEETING: Additional Meeting.

A Closed Meeting will be held on Thursday, December 11, 2003 at 3 p.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the Closed Meeting. Certain staff members who have an interest in the matter may also be present.

Commissioner Campos, as duty officer, determined that no earlier notice thereof was possible.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c) (5), (7), (9), and (10) and 17 CFR 200.402(a) (5), (7), (9) and (10), permit consideration of the scheduled matters at the Closed Meeting.

Commissioner Campos, as duty officer, voted to consider the items listed for the closed meeting in a closed session.

The subject matter of the Closed Meeting to be held on Thursday, December 11, 2003 will be:

Institution of injunctive actions; and

Institution of administrative proceedings of an enforcement nature

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact the Office of the Secretary at (202) 942–7070.

Dated: December 10, 2003.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–30934 Filed 12–10–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act; Meetings

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meetings during the week of December 15, 2003:

A Closed Meeting will be held on Tuesday, December 16, 2003 at 2 p.m., and an Open Meeting will be held on Wednesday, December 17, 2003, at 10 a.m. in Room 1C30, the William O. Douglas Room.

Commissioner Campos, as duty officer, determined that no earlier notice thereof was possible.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the Closed Meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(5), (7), 9(B) and (10) and 17 CFR 200.402(a)(5), (7), (9)(ii) and (10), permit consideration of the scheduled matters at the Closed Meeting.

Commissioner Campos, as duty officer, voted to consider the items listed for the closed meeting in closed session.

The subject matter of the Closed Meeting scheduled for Tuesday, December 16, 2003 will be:

Formal orders of investigation;

Institution and settlement of administrative proceedings of an enforcement nature;

Institution and settlement of injunctive actions; and

Adjudicatory matter.

The subject matter of the Open Meeting scheduled for Wednesday, December 17, 2003 will be:

1. The Commission will consider whether to approve a proposed rule change by the New York Stock Exchange to amend and restate its Constitution to reform the governance and management architecture of the Exchange.

For further information, please contact Rebekah Liu, at (202) 942–0133.

2. The Commission will consider whether to propose amendments to Form N–1A under the Securities Act of 1933 and the Investment Company Act of 1940 that would require an open-end management investment company to provide enhanced prospectus disclosure regarding breakpoint discounts on front-end sales loads.

For further information, please contact Christian L. Broadbent at (202) 942–0721.

3. The Commission will consider whether to issue a concept release on mutual fund transaction costs. The release would seek public comment on whether mutual funds should be required to quantify and disclose to investors as a separate line item the amount of transaction costs they incur; include transaction costs in their expense ratios and fee tables; provide other quantitative measures or additional disclosure that would provide investors an indication of the level of the investment company's transaction costs; or some combination of the above. The release also would seek comment on whether mutual funds should be required to record transaction costs or the portion of those costs that represent soft dollar benefits (*i.e.*, the non-execution portion) as an expense in their financial statements.

For further information contact: Paul Goldman at (202) 942–0510.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

The Office of the Secretary at (202) 942–7070.

Dated: December 10, 2003.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–30935 Filed 12–10–03; 8:45 am]

BILLING CODE 8010–01–P

DEPARTMENT OF STATE

[Public Notice 4555]

Culturally Significant Objects Imported for Exhibition Determinations: "Byzantium: Faith and Power (1261–1557)"

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236 of October 19, 1999, as amended, and Delegation of Authority No. 257 of April 15, 2003 (68 FR 19875), I hereby determine that the objects to be included in the exhibition "Byzantium: Faith and Power (1261–1557)," imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners. I also determine that the exhibition or display of the exhibit objects at the Metropolitan Museum of Art, New York, NY, from on or about March 15, 2004, to on or about July 4, 2004, and at possible additional venues yet to be determined, is in the national interest. Public notice of these determinations is ordered to be published in the **Federal Register**. Additionally, notice is hereby given that one object for which determinations were previously made, and published in the **Federal Register** on July 30, 2003, are included in this exhibition.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact Julianne Simpson, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State, (telephone: (202) 619–6529). The address is U.S. Department of State, SA–44, 301 4th Street, SW., Room 700, Washington, DC 20547–0001.

Dated: December 8, 2003.

C. Miller Crouch,

Principal Deputy Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. 03–30788 Filed 12–11–03; 8:45 am]

BILLING CODE 4710–08–P

DEPARTMENT OF STATE

[Public Notice 4654]

United States Climate Change Science Program

ACTION: Request U.S. nomination of experts for consideration as coordinating lead authors, lead authors, contributing authors, expert reviewers, and review editors for the Fourth Assessment Report (AR4) of the Intergovernmental Panel on Climate Change (IPCC).

SUMMARY: The role of the IPCC is to assess on a comprehensive, objective, open and transparent basis, the scientific, technical, and socio-economic information relevant to understanding the scientific basis of risk of human-induced climate change, its potential impacts, and options for adaptation and mitigation. The IPCC has three working groups: Working Group I assesses the scientific aspects of the climate system and climate change; Working Group II assesses the vulnerability of socio-economic and natural systems to climate change, negative and positive consequences of climate change, and options for adapting to it; and Working Group III assesses options for limiting greenhouse gas emissions and otherwise mitigating climate change. The IPCC provides scientific, technical, and socio-economic advice to the world community, and in particular to the parties to the United Nations Framework Convention on Climate Change (UNFCCC) through its periodic assessment reports and special reports. The IPCC has decided to continue to prepare comprehensive assessment reports and agreed to complete its Fourth Assessment Report in 2007.

The U.S. Government has received a request from the IPCC to nominate experts for consideration as coordinating lead authors, lead authors, contributing authors, expert reviewers, and review editors for the different chapters and volumes of the Fourth Assessment Report. Further information on this request—such as the IPCC request for nominations, the approved outlines of the three IPCC working groups for the AR4, a description of the roles responsibilities associated with them, and a nomination form that must be completed for each nominee—may be found at either the IPCC Secretariat (*http://www.ipcc.ch/ar4/nominations/nominations.htm*) or CCSP (*http://www.climatescience.gov/Library/ipcc/default.htm*) Web sites.

DATES: Completed nomination forms for each nominee should be returned to the Climate Change Science Program Office (*ipcc_nominations@usgcrp.gov*) by noon Monday, January 5, 2004.

FOR FURTHER INFORMATION CONTACT: David Allen, U.S. Climate Change Science Program, Suite 250, 1717 Pennsylvania Ave, NW., Washington, DC 20006. (Phone: 202–419–3468, Fax: 202–223–3065, Email: *dallen@usgcrp.gov*); or visit the CCSP Web site at *http://www.climatescience.gov*.

Dated: December 8, 2003.

Roberta L. Chew,

Office Director, Acting, Office of Global Change, Bureau of Oceans and International Environmental and Scientific Affairs, U.S. Department of State.

[FR Doc. 03–30787 Filed 12–11–03; 8:45 am]

BILLING CODE 4710–09–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Harmonization of Most Favored Nation Tariff Rates for the United States, Canada, and Mexico; Liberalization of the Rules of Origin Applicable Under Provisions of the North American Free Trade Agreement

AGENCY: Office of the United States Trade Representative.

ACTION: Notification of an opportunity to submit proposals to consider tariff harmonization and/or liberalization of the rules of origin under the North American Free Trade Agreement.

SUMMARY: Section 202(q)(2) of the North American Free Trade Agreement Implementation Act ("the Act") (19 USC 3331(b)) authorizes the President to proclaim modifications to the NAFTA rules of origin set forth in the Harmonized Tariff Schedule of the United States (HTS), subject to the consultation and layover provisions of section 103 of the Act. This notice is intended to inform the public of the opportunity to submit proposals to request the liberalization of the rules of origin under the NAFTA. In addition, this notice seeks proposals to request the harmonization of the most-favored-nation (MFN) tariff rates of the United States, Canada, and Mexico.

DATES: Public comments are due at USTR by noon, Friday, February 6, 2004.

ADDRESSES: Submission by electronic mail: *nafta2004@ustr.gov*. Submissions by facsimile: Kent Shigetomi, Director, Mexico and NAFTA Affairs, at (202) 395–9675. The public is strongly encouraged to submit documents electronically rather than by facsimile. See requirements for submissions below.

FOR FURTHER INFORMATION CONTACT: Kent Shigetomi, Director, Mexico and NAFTA Affairs, Office of Western Hemisphere Affairs, Office of the United States Trade Representative, Room 523, 600 17th Street, NW., Washington, DC 20508; telephone: (202) 395–3412; fax: (202) 395–9675. E-mail to *nafta2004@ustr.gov*.

SUPPLEMENTARY INFORMATION: On October 7, 2003, the Free Trade Commission ("FTC" or "the Commission"), the body responsible for the implementation of the NAFTA, agreed to pursue further liberalization of the NAFTA rules of origin. The Commission also agreed to commence a study of the MFN tariffs of each of the Parties. (In the case of the United States these are the general or normal trade relations (NTR) rates referenced in general note 3(a)(ii) of the HTS.) The study is to determine whether harmonizing these tariffs could further promote North American trade by reducing export-related transaction costs. Each of the Parties to the NAFTA agreed to initiate consultations with its respective domestic industries to determine which products could be covered by this exercise.

Rules of Origin

The NAFTA and the Act provide for preferential tariff and trade treatment of goods of U.S., Canadian, and Mexican origin. Goods qualify for preferential treatment when imported into the United States if they meet the requirements of the general NAFTA rules of origin set out in section 202 of the Act (19 U.S.C. 3332) and the specific rules incorporated into the HTS. The NAFTA provides that the NAFTA Parties can agree to amend the NAFTA's origin rules. Section 202(q)(2) of the Act authorizes the President to proclaim modifications to the NAFTA rules of origin set forth in the HTS, subject to the consultation and layover provisions of section 103 of the Act.

Since the NAFTA entered into force, the Parties have modified many of the rules of origin. Modifications were made in order to conform the rule of origin to tariff classification changes, to make them less restrictive, and to make them less burdensome to administer.

Tariff Harmonization

Beginning in 1994, the Parties have undertaken four separate tariff acceleration exercises, speeding the elimination of tariffs on several hundred line items, covering billions of dollars in trade. With virtually all tariffs between the countries now eliminated, the Parties are considering harmonizing their MFN tariffs. Under NAFTA Article 308, the three countries did harmonize at zero tariff rates for computers/computer parts, local area network equipment and semiconductors.

Tariff harmonization could eliminate the need for preferential rule of origin requirements. Currently, NAFTA rules of origin are designed to ensure that tariff free treatment applies to all goods that originate or are substantially modified in North America while enabling NAFTA Parties to apply their own tariff rates to products of third country origin. Harmonizing MFN tariff rates at zero could eliminate the need for preferential rules of origin since the origin determination would be made when a good first enters the NAFTA area, making it unnecessary to have additional origin requirements for intra-NAFTA trade.

Additional Information

No decisions have been made to pursue rule of origin changes or harmonization of MFN tariffs, or the scope or degree of such changes. A decision to do so will consider several factors including (1) The expected reduction in transaction and manufacturing costs in North America and increase in trade that could result from either action; (2) the feasibility of devising, implementing and monitoring new rules of origin or harmonized MFN tariffs; (3) the level and breadth of interest in such an exercise by manufacturers, processors, traders and consumers in North America.

The following factors are also being considered as part of a possible framework for such an initiative:

(1) Harmonization would occur as countries with the higher MFN duties reduce such duties to the level of the lowest current duty rate applied by a NAFTA country, or move to a rate lower than any currently applied.

(2) Harmonization at a zero rate of duty is the most attractive option, and is the only option that could eliminate the need for preferential rules of origin.

(3) As was the case for products covered under Article 308, harmonization of an entire sector or broad range of goods would provide more benefits and be easier to implement and enforce.

(4) The NAFTA governments expect to proceed on the basis of consensus; that is, proposed rule of origin changes or tariff harmonization would be broadly supported by interested parties within each country.

Requirements for Comments/Proposals

A. Governments encourage submissions that enjoy broad support. Submitters should indicate if they have discussed their proposals with representatives of the affected sector in the other NAFTA countries and, if so, the result of such discussions. if representatives of an affected sector in one of the other NAFTA countries supports the proposal and the similar organization in the third NAFTA country does not support the proposal, such information should be included. Governments encourage interested parties to explore submitting proposals from organizations in all three countries.

B. Scope and Coverage of Proposals. Governments encourage interested parties to review the broadest appropriate range of items and to submit proposals that reflect a consensus reached after such a broad-based review. A single proposal can thus include requests covering multiple tariff headings. Proposals should cover entire 8-digit tariff subheadings, and may also be submitted at the 6, 4, or 2 digit level where the intent is to cover all subsidiary duties.

Requirements for Submissions: In order to facilitate the prompt processing of submissions, the Office of the United States Trade Representative strongly urges and prefers electronic (e-mail) submissions to *nafta2004@ustr.gov* in response to this notice. Documents should be submitted as WordPerfect, Microsoft Word, or text (.TXT) files. In the event that an e-mail submission is impossible, submissions should be made by facsimile. Supporting documentation submitted in the form of spreadsheets is acceptable in Quattro Pro or Excel format. For any document containing business confidential information submitted electronically, the file name of the business confidential version should begin with the characters "BC-" and the file name of the public version should begin with the characters "P-." The P- or BC- should be followed by the name of the submitter. Persons who make submissions by e-mail should not provide separate cover letters; information that might appear in a cover letter should be included in the submission itself. Similarly, to the extent possible, any attachments to the submission should be included in the same file as the submission itself, and not as separate files. Written comments will be placed in a file open to public inspection pursuant to 15 CFR 2003.5, except confidential business information exempt from public inspection in accordance with 15 CFR 2003.6. Confidential business information submitted in accordance with 15 CFR 2003.6 must be clearly marked "BUSINESS CONFIDENTIAL" at the top of each page, including any cover letter or cover page, and must be accompanied by a nonconfidential summary of the confidential information. All public documents and nonconfidential summaries shall be available for public inspection in the USTR Reading Room. The USTR Reading Room is open to the public, by appointment only, from 10 a.m. to 12 noon and 1 p.m. to 4 p.m., Monday through Friday. An appointment to review the file may be made by calling (202) 395–6186. Appointments must be scheduled at least 48 hours in advance.

Regina K. Vargo,

Assistant United States Trade Representative for the Americas.

[FR Doc. 03–30786 Filed 12–11–03; 8:45 am]

BILLING CODE 3190–W3–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Aircraft Certification Policy Notice

AGENCY: Federal Aviation Administration (DOT).

ACTION: Notice of availability and request for public comment.

SUMMARY: This notice announces the availability of and requests comments on the issuance of a proposed Certification Policy Notice for approving Complex Supplemental Type Certificates (STC). The proposed Certification Policy Notice introduces a new classification of STCs, and instructs Aircraft Certification Office engineers, STC applicants, and STC installers how to manage STCs classified as complex.

DATES: Identify comments as Certification Policy Complex STC and they must arrive by February 12, 2004.

ADDRESSES: Send all comments on the proposed Certification Policy Notice to: Federal Aviation Administration, Aircraft Certification Service, Aircraft Engineering Division, Room 815, 800 Independence Avenue, SW., Washington, DC 20591. ATTN: Stephen (Steve) Flanagan, AIR–110. Or, deliver comments to: Federal Aviation Administration, Room 815, 800 Independence Avenue, SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: Stephen (Steve) Flanagan, Aerospace Engineer, Federal Aviation Administration, Aircraft Certification

Service, Aircraft Engineering Division, Certification Procedures Branch, AIR–110, Room 815, 800 Independence Avenue, SW., Washington, DC 20591, Telephone (202) 267–3549, FAX (202) 267–5340, E-mail *steve.flanagan@faa.gov*.

SUPPLEMENTARY INFORMATION:

Comments Invited

You may comment on the proposed Certification Policy Notice listed in this notice by sending such written data, views, or arguments to the above listed address. You may also examine comments received on the proposed Certification Policy Notice, before and after the comment closing date, in Room 815, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591, weekdays except Federal holidays, between 8:30 a.m. and 4:30 p.m. The Director of the Aircraft Certification Service will consider all communications received by the closing date before issuing the final Certification Policy Notice.

Background

We typically issue STCs that permit installation on any aircraft of a specific type and model designation. Aircraft compatibility is addressed by the following limitation: "The installer is responsible for determining the compatibility of this STC with other previously approved modifications." Nevertheless there have been installations made on inappropriate aircraft. These inappropriate installations could have been prevented if STC approvals were restricted to a specified baseline aircraft configuration that includes details of the STC physical and functional interfaces with the prototype aircraft.

Applicant's installation drawings or other installation instructions have not always been detailed enough for accurate replication of the design. This is especially true when follow-on STC installations occur at facilities other than that used by the STC holder for the prototype installation.

The STC certification process does not adequately address how to evaluate the compatibility of an STC with other previously installed STCs, major alterations or repairs. We need a more rigorous compatibility evaluation for certain STCs. This proposed policy ensures that the modified aircraft will be airworthy.

How To Get Copies

You may get a copy of the proposed Certification Policy Notice via the Internet at, *http://www.faa.gov/certification/aircraft/notice.htm*, or by contacting the person listed in the section titled **FOR FURTHER INFORMATION CONTACT**.

Issued in Washington, DC, on December 8, 2003.

David W. Hempe,

Manager, Aircraft Engineering Division, Aircraft Certification Service.

[FR Doc. 03–30742 Filed 12–11–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application 04–11–C–00–BNA To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Nashville International Airport, Nashville, TN

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposed to rule and invites public comment on the application to impose and use the revenue from a PFC at Nashville International Airport under the provisions of the 49 U.S.C. 40117 and part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before January 12, 2004.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Memphis Airports District Office, 2862 Business Park Drive, Building G, Memphis, Tennessee 38118–1555.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Doug Wolfe, Senior Vice-President and Chief Financial Officer of the Metropolitan Nashville Airport Authority at the following address One Terminal Drive, Suite 501, Nashville, Tennessee, 37214.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Metropolitan Nashville Airport Authority under section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Cynthia K. Wills, Program Manager, Memphis Airports District Office, 2862 Business Park Drive, Building G, Memphis, Tennessee 38118–1555, (901) 322–8190. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comments on the application to impose and use the revenue from a PFC at Nashville International Airport under the provisions of the 49 U.S.C. 40117 and Part 158 of the Federal Aviation Regulations (14 CFR part 158).

On December 4, 2003, the FAA determined that the application to impose and use the revenue from a PFC submitted by Metropolitan Nashville Airport Authority was substantially complete within the requirements of section 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than March 26, 2004.

The following is a brief overview of the application.

Proposed charge effective date: March 31, 2007.

Proposed charge expiration date: May 1, 2014.

Level of the proposed PFC: $3.00.

Total estimated PFC revenue: $81,526,000.

Brief description of proposed project(s): Airfield Construction, Develop GA Area, Engineering Study to Develop Land, PFC Eligible Project Reimbursement, Relocate Electrical Vault, Storm Water Treatment Facility Study, Widen TW Fillets.

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: Part 135, Air Taxi.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA regional Airports office located at: Southern Region Headquarters, 1701 Columbia Avenue, College Park, Georgia, 30337.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Metropolitan Nashville Airport Authority.

Issued in Memphis, Tennessee, on December 4, 2003.

LaVerne F. Reid,

Manager, Memphis Airports District Office, Southern Region.

[FR Doc. 03–30741 Filed 12–11–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket Nos. FMCSA–99–5748, FMCSA–99–6156]

Qualification of Drivers; Exemption Applications; Vision

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of renewal of exemption; request for comments.

SUMMARY: This notice publishes the FMCSA decision to renew the exemptions from the vision requirement in the Federal Motor Carrier Safety Regulations for 12 individuals. The FMCSA has statutory authority to exempt individuals from vision standards if the exemptions granted will not compromise safety. The agency has concluded that granting these exemptions will provide a level of safety that will be equivalent to, or greater than, the level of safety maintained without the exemptions for these commercial motor vehicle (CMV) drivers.

DATES: This decision is effective January 3, 2004. Comments from interested persons should be submitted by January 12, 2004.

ADDRESSES: You may submit comments identified by DOT DMS Docket Numbers FMCSA–99–5748 and FMCSA–99–6156 by any of the following methods:

- Web site: *http://dms.dot.gov*. Follow the instructions for submitting comments on the DOT electronic docket site.
- Fax: 1–202–493–2251.
- Mail: Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–0001.
- Hand Delivery: Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.
- Federal eRulemaking Portal: Go to *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.

Instructions: All submissions must include the agency name and docket numbers for this notice. For detailed instructions on submitting comments and additional information on the rulemaking process, see the Public Participation heading of the Supplementary Information section of this document. Note that all comments received will be posted without change to *http://dms.dot.gov*, including any personal information provided. Please see the Privacy Act heading under Regulatory Notices.

Docket: For access to the docket to read background documents or comments received, go to *http://dms.dot.gov* at any time or to Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

FOR FURTHER INFORMATION CONTACT: Ms. Sandra Zywokarte, Office of Bus and Truck Standards and Operations, (202) 366–2987, FMCSA, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590–0001. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Public Participation: The DMS is available 24 hours each day, 365 days each year. You can get electronic submission and retrieval help guidelines under the "help" section of the DMS Web site. If you want us to notify you that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments on-line.

Privacy Act: Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review the Department of Transportation's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit *http://dms.dot.gov*.

Exemption Decision

Under 49 U.S.C. 31315 and 31136(e), the FMCSA may renew an exemption from the vision requirement in 49 CFR 391.41(b)(10), which applies to drivers of CMVs in interstate commerce, for a 2-year period if it finds "such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption." The procedures for requesting an exemption (including renewals) are set out in 49 CFR Part 381. This notice addresses 12 individuals who have requested renewal of their exemptions in a timely manner. The FMCSA has evaluated these 12 applications for renewal on their merits and decided to extend each exemption for a renewable 2-year period. They are:

Woodrow E. Bohley
Curtis N. Fulbright
Martin Postma
Kenneth E. Bross
Richard L. Loeffelholz
Robert G. Rascicot
Charlie F. Cook
Herman C. Mash
Jon H. Wurtele
Russell W. Foster
Frank T. Miller
Walter M. Yohn, Jr.

These exemptions are extended subject to the following conditions: (1) That each individual have a physical exam every year (a) by an ophthalmologist or optometrist who attests that the vision in the better eye continues to meet the standard in 49 CFR 391.41(b)(10), and (b) by a medical examiner who attests that the individual is otherwise physically qualified under 49 CFR 391.41; (2) that each individual provide a copy of the ophthalmologist's or optometrist's report to the medical examiner at the time of the annual medical examination; and (3) that each individual provide a copy of the annual medical certification to the employer for retention in the driver's qualification file and retain a copy of the certification on his/her person while driving for presentation to a duly authorized Federal, State, or local enforcement official. Each exemption will be valid for 2 years unless rescinded earlier by the FMCSA. The exemption will be rescinded if: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31315 and 31136(e).

Basis for Renewing Exemptions

Under 49 U.S.C. 31315(b)(1), an exemption may be granted for no longer than 2 years from its approval date and may be renewed upon application for additional 2-year periods. In accordance with 49 U.S.C. 31315 and 31136(e), each of the 12 applicants has satisfied the entry conditions for obtaining an exemption from the vision requirements (64 FR 40404, 64 FR 66962, 66 FR 66969, 64 FR 54948, 65 FR 159). Each of these 12 applicants has requested timely renewal of the exemption and has submitted evidence showing that the vision in the better eye continues to meet the standard specified at 49 CFR 391.41(b)(10) and that the vision impairment is stable. In addition, a review of each record of safety while driving with the respective vision deficiencies over the past 2 years indicates each applicant continues to meet the vision exemption standards. These factors provide an adequate basis for predicting each driver's ability to continue to drive safely in interstate commerce. Therefore, the FMCSA concludes that extending the exemption for each renewal applicant for a period of 2 years is likely to achieve a level of

safety equal to that existing without the exemption.

Comments

The FMCSA will review comments received at any time concerning a particular driver's safety record and determine if the continuation of the exemption is consistent with the requirements at 49 U.S.C. 31315 and 31136(e). However, the FMCSA requests that interested parties with specific data concerning the safety records of these drivers submit comments by January 12, 2004.

In the past the FMCSA has received comments from Advocates for Highway and Auto Safety (Advocates) expressing continued opposition to the FMCSA's procedures for renewing exemptions from the vision requirement in 49 CFR 391.41(b)(10). Specifically, Advocates objects to the agency's extension of the exemptions without any opportunity for public comment prior to the decision to renew, and reliance on a summary statement of evidence to make its decision to extend the exemption of each driver.

The issues raised by Advocates were addressed at length in 66 FR 17994 (April 4, 2001). The FMCSA continues to find its exemption process appropriate to the statutory and regulatory requirements.

Issued on: December 8, 2003.

Rose A. McMurray,

Associate Administrator, Policy and Program Development.

[FR Doc. 03–30806 Filed 12–11–03; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2001–10578]

Qualification of Drivers; Exemption Applications; Vision

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of renewal of exemption; request for comments.

SUMMARY: This notice publishes the FMCSA decision to renew the exemptions from the vision requirement in the Federal Motor Carrier Safety Regulations for 27 individuals. The FMCSA has statutory authority to exempt individuals from vision standards if the exemptions granted will not compromise safety. The agency has concluded that granting these exemptions will provide a level of safety that will be equivalent to, or greater than, the level of safety maintained without the exemptions for these commercial motor vehicle (CMV) drivers.

DATES: This decision is effective December 27, 2003. Comments from interested persons should be submitted by January 12, 2004.

ADDRESSES: You may submit comments identified by DOT DMS Docket Number FMCSA–2001–10578 by any of the following methods:

- Web site: *http://dms.dot.gov.* Follow the instructions for submitting comments on the DOT electronic docket site.
- Fax: 1–202–493–2251.
- Mail: Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–0001.
- Hand Delivery: Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.
- Federal eRulemaking Portal: Go to *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.

Instructions: All submissions must include the agency name and docket numbers for this notice. For detailed instructions on submitting comments and additional information on the rulemaking process, see the Public Participation heading of the Supplementary Information section of this document. Note that all comments received will be posted without change to *http://dms.dot.gov,* including any personal information provided. Please see the Privacy Act heading under Regulatory Notices.

Docket: For access to the docket to read background documents or comments received, go to *http://dms.dot.gov* at any time or to Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

FOR FURTHER INFORMATION CONTACT: Ms. Sandra Zywokarte, Office of Bus and Truck Standards and Operations, (202) 366–2987, FMCSA, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590–0001. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Public Participation: The DMS is available 24 hours each day, 365 days each year. You can get electronic submission and retrieval help guidelines under the "help" section of the DMS web site. If you want us to notify you that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments on-line.

Privacy Act: Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review the Department of Transportation's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit *http://dms.dot.gov.*

Exemption Decision

Under 49 U.S.C. 31315 and 31136(e), the FMCSA may renew an exemption from the vision requirement in 49 CFR 391.41(b)(10), which applies to drivers of CMVs in interstate commerce, for a 2-year period if it finds "such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption." The procedures for requesting an exemption (including renewals) are set out in 49 CFR part 381. This notice addresses 27 individuals who have requested renewal of their exemptions in a timely manner. The FMCSA has evaluated these 27 applications for renewal on their merits and decided to extend each exemption for a renewable 2-year period. They are:

Anthony Brandano
Vernon J. Dohrn
Stanley E. Elliott
Elmer E. Gockley
Paul C. Gruenberg, Jr.
Glenn T. Hehner
Thomas M. Ingebretsen
Lonnie M. Jones
Martin D. Keough
Ricky J. Knutson
Randall B. Laminack
Norman R. Lamy
James A. Lenhart
Dennis L. Lockhart, Sr.
Jerry J. Lord
Raymond P. Madron
Ronald S. Mallory
Charles J. Morman
Eugene C. Murphy
Jack E. Potts, Jr.
John E. Rogstad
Jerry W. Russell
Stephen G. Sniffin
John R. Snyder
Rene R. Trachsel
John H. Voigts
Kendle F. Waggle, Jr.

These exemptions are extended subject to the following conditions: (1) That each individual have a physical exam every year (a) by an ophthalmologist or optometrist who attests that the vision in the better eye continues to meet the standard in 49 CFR 391.41(b)(10), and (b) by a medical examiner who attests that the individual is otherwise physically qualified under 49 CFR 391.41; (2) that each individual provide a copy of the ophthalmologist's or optometrist's report to the medical examiner at the time of the annual medical examination; and (3) that each individual provide a copy of the annual medical certification to the employer for retention in the driver's qualification file and retain a copy of the certification on his/her person while driving for presentation to a duly authorized Federal, State, or local enforcement official. Each exemption will be valid for 2 years unless rescinded earlier by the FMCSA. The exemption will be rescinded if: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31315 and 31136(e).

Basis for Renewing Exemptions

Under 49 U.S.C. 31315(b)(1), an exemption may be granted for no longer than 2 years from its approval date and may be renewed upon application for additional 2-year periods. In accordance with 49 U.S.C. 31315 and 31136(e), each of the 27 applicants has satisfied the entry conditions for obtaining an exemption from the vision requirements (66 FR 53826, 66 FR 66966). Each of these 27 applicants has requested timely renewal of the exemption and has submitted evidence showing that the vision in the better eye continues to meet the standard specified at 49 CFR 391.41(b)(10) and that the vision impairment is stable. In addition, a review of each record of safety while driving with the respective vision deficiencies over the past 2 years indicates each applicant continues to meet the vision exemption standards. These factors provide an adequate basis for predicting each driver's ability to continue to drive safely in interstate commerce. Therefore, the FMCSA concludes that extending the exemption for each renewal applicant for a period of 2 years is likely to achieve a level of safety equal to that existing without the exemption.

Comments

The FMCSA will review comments received at any time concerning a particular driver's safety record and determine if the continuation of the exemption is consistent with the requirements at 49 U.S.C. 31315 and 31136(e). However, the FMCSA requests that interested parties with specific data concerning the safety records of these drivers submit comments by January 12, 2004.

In the past the FMCSA has received comments from Advocates for Highway and Auto Safety (Advocates) expressing continued opposition to the FMCSA's procedures for renewing exemptions from the vision requirement in 49 CFR 391.41(b)(10). Specifically, Advocates objects to the agency's extension of the exemptions without any opportunity for public comment prior to the decision to renew, and reliance on a summary statement of evidence to make its decision to extend the exemption of each driver.

The issues raised by Advocates were addressed at length in 66 FR 17994 (April 4, 2001). The FMCSA continues to find its exemption process appropriate to the statutory and regulatory requirements.

Issued on: December 8, 2003.

Rose A. McMurray,

Associate Administrator, Policy and Program Development.

[FR Doc. 03–30805 Filed 12–11–03; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD 2003 16651]

Information Collection Available for Public Comments and Recommendations

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Maritime Administration's (MARAD's) intentions to request extension of approval for three years of a currently approved information collection.

DATES: Comments should be submitted on or before February 10, 2004.

FOR FURTHER INFORMATION CONTACT: Patricia Ann Thomas, Maritime Administration, MAR–630, 400 Seventh St., SW., Washington, DC 20590. Telephone: (202) 366–2646; FAX: (202) 493–2180; or e-mail: *patricia.thomas@marad.dot.gov.* Copies of this collection also can be obtained from that office.

SUPPLEMENTARY INFORMATION:

Title of Collection: Merchant Marine Medals and Awards.

Type of Request: Extension of currently approved information collection.

OMB Control Number: 2133–0506.

Form Numbers: None.

Expiration Date of Approval: Three years from date of approval by the Office of Management and Budget.

Summary of Collection of Information: This information collection provides a method of awarding merchant marine medals and decorations to masters, officers, and crew members of U.S. ships in recognition of their service in areas of danger during the operations by the Armed Forces of the United States in World War II, Korea, Vietnam, and Operation Desert Storm.

Need and Use of the Information: This information is used by MARAD personnel to process and verify requests for service awards.

Description of Respondents: Masters, officers and crew members of U.S. ships.

Annual Responses: 1200 responses.

Annual Burden: 1200 hours.

Comments: Comments should refer to the docket number that appears at the top of this document. Written comments may be submitted to the Docket Clerk, U.S. DOT Dockets, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590. Comments also may be submitted by electronic means via the Internet at *http://dms.dot.gov/submit.* Specifically address whether this information collection is necessary for proper performance of the functions of the agency and will have practical utility, accuracy of the burden estimates, ways to minimize this burden, and ways to enhance the quality, utility, and clarity of the information to be collected. All comments received will be available for examination at the above address between 10 a.m. and 5 p.m. EDT (or EST), Monday through Friday, except Federal Holidays. An electronic version of this document is available on the World Wide Web at *http://dms.dot.gov.*

Dated: December 9, 2003.

By Order of the Maritime Administrator,

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 03–30813 Filed 12–11–03; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number MARAD 2003 16610]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel BETELGEUSE II.

SUMMARY: As authorized by Pub. L. 105–383 and Pub. L. 107–295, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below. The complete application is given in DOT docket 2003–16610 at *http://dms.dot.gov*. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with Pub. L. 105–383 and MARAD's regulations at 46 CFR part 388 (68 FR 23084; April 30, 2003), that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

DATES: Submit comments on or before January 12, 2004.

ADDRESSES: Comments should refer to docket number MARAD–2003 16610. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW., Washington, DC 20590–0001. You may also send comments electronically via the Internet at *http://dmses.dot.gov/submit/*. All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except Federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Michael Hokana, U.S. Department of Transportation, Maritime Administration, MAR–830 Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone (202) 366–0760.

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel BETELGEUSE II is:

Intended Use: "Captained and bareboat charters daily and weekly."

Geographic Region: "Naples, Florida and Gulf of Mexico."

Dated: December 3, 2003.

By order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 03–30812 Filed 12–11–03; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number: MARAD 2003 16606]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel ENDURANCE.

SUMMARY: As authorized by Pub. L. 105–383 and Pub. L. 107–295, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below. The complete application is given in DOT docket 2003–16606 at *http://dms.dot.gov*. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with Pub. L. 105–383 and MARAD's regulations at 46 CFR part 388 (68 FR 23084; April 30, 2003), that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

DATES: Submit comments on or before January 12, 2004.

ADDRESSES: Comments should refer to docket number MARAD–2003 16606. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW., Washington, DC 20590–0001. You may also send comments electronically via the Internet at *http://dmses.dot.gov/submit/*. All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except Federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Michael Hokana, U.S. Department of Transportation, Maritime Administration, MAR–830 Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone (202) 366–0760.

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel ENDURANCE is:

Intended Use: "Charter of passengers for recreational purposes."

Geographic Region: "California, Oregon, Washington State."

Dated: December 2, 2003.

By order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 03–30811 Filed 12–11–03; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number MARAD 2003 16605]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel HOVER ONE.

SUMMARY: As authorized by Pub. L. 105–383 and Pub. L. 107–295, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below. The complete application is given in DOT docket 2003–16605 at *http://dms.dot.gov*. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with Pub. L. 105–383 and MARAD's regulations at 46 CFR part 388 (68 FR 23084; April 30, 2003), that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

DATES: Submit comments on or before January 12, 2004.

ADDRESSES: Comments should refer to docket number MARAD–2003 16605. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW., Washington, DC 20590–0001. You may also send comments electronically via the Internet at *http://dmses.dot.gov/submit/*. All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except Federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Michael Hokana, U.S. Department of Transportation, Maritime Administration, MAR–830 Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone (202) 366–0760.

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel HOVER ONE is:

Intended Use: "Passenger transportation between Sandusky, OH, and Kelly's Island, OH, primarily over the ice during winter months, when displacement vessels cannot operate."

Geographic Region: "Great Lakes."

Dated: December 2, 2003.

By order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 03–30807 Filed 12–11–03; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number MARAD 2003 16607]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel MONTAUK LIGHT.

SUMMARY: As authorized by Pub. L. 105–383 and Pub. L. 107–295, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below. The complete application is given in DOT docket 2003–16607 at *http://dms.dot.gov*. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with Pub. L. 105–383 and MARAD's regulations at 46 CFR part 388 (68 FR 23084; April 30, 2003), that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

DATES: Submit comments on or before January 12, 2004.

ADDRESSES: Comments should refer to docket number MARAD–2003 16607. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW., Washington, DC 20590–0001. You may also send comments electronically via the Internet at *http://dmses.dot.gov/submit/*. All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Michael Hokana, U.S. Department of Transportation, Maritime Administration, MAR–830 Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone (202) 366–0760.

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel MONTAUK LIGHT is:

Intended Use: "Carrying passengers for pleasure charters, day and overnight."

Geographic Region: "New York, Connecticut, Rhode Island, Massachusetts, Maine, New Hampshire, New Jersey, Maryland, Virginia, Florida."

Dated: December 2, 2003.

By order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 03–30810 Filed 12–11–03; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number MARAD 2003 16608]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel MYSTIQUE.

SUMMARY: As authorized by Pub. L. 105–383 and Pub. L. 107–295, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below. The complete application is given in DOT docket 2003–16608 at *http://dms.dot.gov*. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with Pub. L. 105–383 and MARAD's regulations at 46 CFR part 388 (68 FR 23084; April 30, 2003), that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to

properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

DATES: Submit comments on or before January 12, 2004.

ADDRESSES: Comments should refer to docket number MARAD–2003 16608. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW., Washington, DC 20590–0001. You may also send comments electronically via the Internet at *http://dmses.dot.gov/submit/*. All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except Federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Michael Hokana, U.S. Department of Transportation, Maritime Administration, MAR–830 Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone (202) 366–0760.

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel MYSTIQUE is:

Intended Use: "A for-profit business in charter for guests on a weekly basis throughout the calendar year."

Geographic Region: "East Coast and Gulf Coast of the United States including Chesapeake Bay."

Dated: December 2, 2003.

By order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 03–30809 Filed 12–11–03; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number MARAD 2003 16609]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel NICOLE MARIE.

SUMMARY: As authorized by Pub. L. 105–383 and Pub. L. 107–295, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below. The complete application is given in DOT docket 2003–16609 at *http://dms.dot.gov*. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with Pub. L. 105–383 and MARAD's regulations at 46 CFR part 388 (68 FR 23084; April 30, 2003), that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

DATES: Submit comments on or before January 12, 2004.

ADDRESSES: Comments should refer to docket number MARAD–2003 16609. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW., Washington, DC 20590–0001. You may also send comments electronically via the Internet at *http://dmses.dot.gov/submit/*. All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except Federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Michael Hokana, U.S. Department of Transportation, Maritime Administration, MAR–830 Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone 202–366–0760.

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel NICOLE MARIE:

Intended Use: "Bareboat Charter."

Geographic Region: "Alaska except for SE Alaska, Washington State based in Seattle, and Oregon."

Dated: December 2, 2003.

By order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 03–30808 Filed 12–11–03; 8:45 am]

BILLING CODE 4910–81–P

Corrections

Federal Register

Vol. 68, No. 239

Friday, December 12, 2003

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF DEFENSE

Department of the Army

Performance Review Board Membership for the Office of the Secretary of the Army

Correction

In notice document 03–30365 beginning on page 68359 in the issue of Monday, December 8, 2003, make the following corrections:

1. On page 68359, in the second column, in paragraph 23, in the first line "Mr. Mat Reres" should read "Mr. Matt Reres."

2. On the same page, in the third column, in paragraph 36, in the first line, "MG David F. Wherely, Jr." should read "MG David F. Wherley, Jr."

3. On the same page, in the same column, in paragraph 41, in the second line, "Coast Analysis" should read "Cost Analysis."

[FR Doc. C3–30365 Filed 12–11–03; 8:45 am]

BILLING CODE 1505–01–D

Federal Register

Friday,
December 12, 2003

Part II

Department of Commerce

Patent and Trademark Office

37 CFR Parts 1, 2, 10 and 11
Changes to Representation of Others Before the United States Patent and Trademark Office; Proposed Rule

DEPARTMENT OF COMMERCE

Patent and Trademark Office

37 CFR Parts 1, 2, 10 and 11

[Docket No.: 2002–C–005]

RIN 0651–AB55

Changes to Representation of Others Before the United States Patent and Trademark Office

AGENCY: United States Patent and Trademark Office, Commerce.

ACTION: Notice of proposed rulemaking.

SUMMARY: The United States Patent and Trademark Office (Office or USPTO) proposes to update the procedures regarding enrollment and discipline. The Office also proposes to replace the current USPTO Code of Professional Responsibility, which is based on the Model Code of Professional Responsibility of the American Bar Association, with new USPTO Rules of Professional Conduct, largely based on the Model Rules of Professional Conduct of the American Bar Association.

DATES: To be ensured of consideration, written comments must be received on or before February 10, 2004.

ADDRESSES: Comments should be sent by electronic mail over the Internet addressed to: *ethicsrules.comments@uspto.gov*. Comments may also be submitted by mail addressed to: Mail Stop OED-Ethics Rules, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, Virginia 22313–1450 or by facsimile to (703) 306–4134, marked to the attention of Harry I. Moatz. Although comments may be submitted by mail or facsimile, the Office prefers to receive comments via the Internet. If comments are submitted by mail, the Office would prefer that the comments be submitted on a DOS formatted 3½-inch disk accompanied by a paper copy. The comments will be available for public inspection at the Office of Enrollment and Discipline, located in Room 1103, Crystal Plaza 6, 2221 South Clark Street, Arlington, Virginia, and will be available through anonymous file transfer protocol (ftp) via the Internet (address: *http://www.uspto.gov*). Since comments will be made available for public inspection, information that is not desired to be made public, such as an address or telephone number, should not be included in the comments.

FOR FURTHER INFORMATION CONTACT: Harry I. Moatz ((703) 305–9145), Director of Enrollment and Discipline (OED Director), directly by phone, or by facsimile to (703) 305–4136, marked to the attention of Mr. Moatz, or by mail addressed to: Mail Stop OED-Ethics Rules, U.S. Patent and Trademark Office, P.O. Box 1450, Alexandria, Virginia 22313–1450.

SUPPLEMENTARY INFORMATION: At this time, nearly 28,000 individuals are registered as patent attorneys and agents, of whom about 80% have indicated that they are attorneys. The registered patent attorneys have offices located in all fifty States and the District of Columbia. More than 2,500 individuals applied for admission to the registration examination given on October 18, 2000. At the same time, the Martindale-Hubbell reports that there are more than 900,000 lawyers and law firms listed in its legal directory. More than 17,000 attorneys are members of the Intellectual Property Law Committee of the American Bar Association. Any attorney who is a member in good standing of the bar of the highest court of a State or the District of Columbia is eligible to practice before the Office in trademark and other non-patent matters. 5 U.S.C. 500(a). Forty-two of the bars have adopted the Model Rules of Professional Conduct of the American Bar Association or a modification thereof, and two have disciplinary rules which are a combination of the Model Code and the Model Rules of Professional Conduct of the American Bar Association. Adopting ethics rules that are largely based on the Model Rules of Professional Conduct of the American Bar Association would provide attorneys, as well as registered patent agents, with consistent ethical standards, and large bodies of both case law and ethics opinions.

This notice of proposed rule making sets out rules in three areas:

(1) Rules of general applicability, and rules governing the recognition of individuals to practice as attorneys and agents before the Office in patent, trademark, and other non-patent matters (§§ 11.1–11.18);

(2) Rules governing investigation and disciplinary proceedings for possible violations of the Office Rules of Professional Conduct (§§ 11.19–11.62). Disciplinary proceedings can result in reprimand, suspension or exclusion (disbarment) of individuals from practicing before the Office who, after notice and opportunity for a hearing, are found to have violated an imperative USPTO Rule of Professional Conduct; and

(3) Rules setting out the proposed Office Rules of Professional Conduct (§§ 11.100–11.806).

These changes are intended to improve the Office's processes for handling applications for registration, petitions, investigations, and disciplinary proceedings. The changes also are intended to bring standards of ethical practice before the Office into closer conformity with the Rules of Professional Conduct adopted by the majority of States, while addressing circumstances particular to practice before the Office. As these environments change (*e.g.*, by adoption of amendments to the Model Rules of Professional Conduct of the American Bar Association) the Office will consider whether to make further changes to the rules.

This proposed rule making is being conducted under the auspices of the General Counsel of the United States Patent and Trademark Office, James Toupin (703) 308–2000, and the supervision of the OED Director, Harry I. Moatz (703) 305–9145). They would appreciate feedback on the overall rule making process in addition to any comments on the merits of the proposed rules.

Table 1 shows the principal sources of the proposed rules relating to (1) admission to practice of attorneys and agents in patent matters, and (2) practice in trademark and non-patent matters.

Table 2 shows the principal sources of the rules proposed for disciplinary proceedings.

Table 3 shows the principal sources of the rules proposed for the Office Rules of Professional Conduct.

Discussion of Specific Rules:

Section 1.1 would be amended to add paragraph (4) to provide an address for correspondence for the Office of Enrollment and Discipline in enrollment, registration and investigation matters.

Section 1.4 would be amended to revise the references from §§ 10.18(b)(2), 10.18(c), and 10.23(c)(15) to §§ 11.18(b)(2), 11.18(c), and 11.804(c)(i)(15), respectively.

Section 1.21 would be amended to revise one paragraph into two distinct fees, add ten paragraphs to provide for ten new fees, as well as to reserve paragraph (3), redesignate another paragraph and change a section citation therein. These fees are intended to fund the costs of the registration examination process, disciplinary system, and maintain the roster of registered practitioners up-to-date. Bar disciplinary activities are generally regarded as being in the interest of maintaining the Bar's reputation for integrity and supporting the willingness of potential clients to engage the services of practitioners. The continual updating of the USPTO roster is also in the interest of assuring that registered practitioners are identified to the public they seek to serve. The cost is currently met by funds from application, issue, or maintenance fees. By adopting these fees to be paid by registered practitioners, the costs of these activities are not passed on to applicants. Thus, USPTO will recover the costs associated with these activities from the practitioners instead of the public in general. The funds would be directed to these activities and would not be diverted to support other proposals. The fees are based on the status of the registered practitioner.

The USPTO is revising the way in which its registration examination is administered. Currently, the examination is administered twice a year, using a unique set of questions each time. The USPTO is moving to a frequently administered computer-based examination using a slate of questions randomly selected from a large data bank of questions and answers that will be publicly available. This change will make the testing process more efficient and will benefit applicants by permitting instant notification of test results, eliminating the current approximately six weeks needed to report the results of a paper-based examination. The computer-based examination will also facilitate more frequent administration and permit the test to be given simultaneously in many locations, thus reducing delays and travel expenses for applicants. Paragraph 1.21(a)(1)(ii)(B) would increase the examination fee to $450 for the test administered by the USPTO in order to recover the full costs of the examination process. Paragraph 1.21(a)(1)(ii)(A) would introduce a reduced examination fee of $200 for the test administered by a private sector entity. The $200 fee would cover the costs of establishing and maintaining an up-to-date question and answer data bank to be used in the computerized delivery of the examination, but excludes the costs of actual test administration. This $200 fee will apply where administrative testing arrangements are made by a private sector entity. Applicants paying the $200 fee would schedule the test with the private sector entity, and pay a service fee, estimated to be $150, to the entity.

A registered practitioner in active status is one who is able to represent clients and conduct business before the USPTO in patent cases. To maintain active status, the practitioner would pay the annual fee required under §§ 1.21(a)(7)(i) and 11.8(d) and comply with the continuing legal education (CLE) requirements under §§ 11.12(a) and (e). With respect to the CLE requirement, an inactive or administratively suspended practitioner would have to contact the OED Director to be advised which CLE's to take.

A registered practitioner in inactive status would be prohibited from representing clients and continuing to practice before the Office in patent cases. Inactive status may be of an administrative nature where the status is inconsistent with the role of a practitioner, as in the cases of examiners working for the Office and judges. Inactive status also may be voluntary, as in the case of practitioners who have retired or are unable to continue their practice due to disability-related matters but still desire to maintain a recognized professional association with the USPTO. Practitioners with a disability may become inactive.

A registered practitioner under administrative inactive status is not responsible for payment of the annual fee, or complying with the CLE requirements while in this status, but will have to complete the continuing education requirements for restoration to active status. A registered practitioner under voluntary inactive status is responsible for paying a reduced annual fee and completing the CLE requirements during the period of inactivation. For the purposes of this section, the fee for a registered practitioner in voluntary inactive status is 25% of the fee for a registered practitioner in active status. If a condition occurs that automatically terminates a practitioner's administrative inactive status, *e.g.*, separation from the USPTO, it would be permissible for that practitioner to seek a voluntary inactive status where the practitioner does not intend to represent clients and practice before the Office, but still desires to maintain a professionally recognized association with the Office.

A registered practitioner who is administratively suspended is one who has failed to pay the annual fee required under § 11.8(d) or to comply with the continuing legal education requirements under §§ 11.12(a) and (e). Registered practitioners under active status can be administratively suspended under failure to comply with payment of the annual fee or failure to meet the CLE requirements. Registered practitioners under voluntary inactive status can only be administratively suspended for failure to comply with payment of the reduced annual fee.

Paragraph 1.21(a)(5)(i) would be added for a new fee for review of a decision by the OED Director. Paragraphs 1.21(a)(7) (i) and (ii) would be added for a new annual fee for registered patent attorneys and agents based on their active or inactive status. Paragraphs 1.21(a)(7) (iii) provides for a new fee due with a request from a practitioner seeking restoration to active status from inactive status. Paragraph 1.21(a)(7) (iv) would be added for payment of the balance due on the annual fee upon restoring active status to a registered practitioner in inactive status. Paragraph 1.21(a)(8) would be added for a new annual fee for individuals granted limited recognition. An individual granted limited recognition would not be eligible for voluntary inactive status. Paragraph 1.21(a)(9) would be added to set fees associated with the administrative suspension of a registered practitioner. Paragraph 1.21(a)(9)(i) would be added for a new fee for delinquency in payment of the annual fee or completing the required CLE requirements. Paragraph 1.21(a)(9)(ii) would be added for a new fee for reinstatement following administrative suspension. Paragraph 1.21(a)(5) has been redesignated (a)(5)(ii), and section citation of 10.2(c) would be changed to § 11.2(d). Redesignated (a)(5)(ii), and section citation of 10.2(c) would be changed to § 11.2(d). Paragraph 1.21(a)(10) would be added for a fee paid on application by a person for recognition or registration after disbarment, suspension, or resignation pending disciplinary proceedings in any other jurisdiction; on petition for reinstatement by a person excluded, suspended, or excluded on consent from practice before the Office; on application by a person for recognition or registration who is asserting rehabilitation from prior conduct that resulted in an adverse decision in the Office regarding the person's moral character; and on application by a person for recognition or registration after being convicted of a felony or crime involving moral turpitude or breach of fiduciary duty. Paragraph 1.21(a)(11) would be added for a paper version of the continuing training program and furnished narrative. Paragraph 1.21(a)(12) would be added for Application by Sponsor for Pre-approval of a Continuing Education Program.

Paragraph (a)(5) of § 1.21 would be revised to add two paragraphs. Paragraph (i) would introduce a fee for review by the OED Director of a decision by a staff member of the Office of Enrollment and Discipline. Section

1.21(a)(5) would be revised and redesignated (a)(5)(ii).

Paragraph (a)(6) of § 1.21 would be eventually revised by deleting the fee for regrade and reserve the omitted paragraph.

Paragraph (a)(7) of § 1.21 is proposed to be added to provide for a new annual fee paid by active and voluntary inactive registered patent attorneys and agents.

Paragraph (a)(8) of § 1.21(a)(8) is proposed to be added to provide for a new annual fee paid by individuals granted limited recognition to practice before the Office.

Paragraph (a)(9) of § 1.21 is proposed to be added to provide for new fees associated with delinquency resulting in administrative suspension of a registered practitioner, and reinstatement of the practitioner.

Paragraph (a)(12) of § 1.21 is proposed to be added to provide for a fee to be paid by a sponsor upon submitting to the OED Director all information called for by the "Application by Sponsor for Pre-approval of a Continuing Education Program."

Section 1.31 would be amended to revise the references from §§ 10.6 and 10.9 to §§ 11.6 and 11.9, respectively.

Section 1.33(c) would be amended to revise the references from §§ 10.5 and 10.11 to §§ 11.5 and 11.11, respectively.

Section 1.455 would be amended to revise the reference from § 10.10 to § 11.10.

Section 2.11 would be amended to revise the reference from § 10.14 to § 11.14.

Section 2.17(a) would be amended to revise the reference from §§ 10.1 and 10.14 to §§ 11.1 and 11.14, respectively.

Section 2.17(c) would be amended to revise the reference from § 10.1 to § 11.1.

Section 2.24 would be amended to revise the reference from § 10.14 to § 11.14.

Section 2.161(b)(3) would be amended to revise the reference from § 10.1 to § 11.1.

Section 11.1 would set out definitions of terms used in Part 11. The defined terms include: affidavit, application, attorney, belief, consent, consult, differing interests, employee of a tribunal, firm, fraud, full disclosure, giving information, hearing officer, knowingly, law clerk, legal counsel, legal profession, legal service, legal system, matter, OED Director, Office, partner, person, practitioner, proceeding before the Office, professional legal corporation, reasonable, reasonably should know, registration, respondent, secret, solicit, state, substantial, tribunal, and United States.

In the proposed rules, the word "individual" is used to mean a natural person, as opposed to a juristic entity. The definition of "person" is similar to the definition of "person" in 1 U.S.C. 1. "Attorney" is defined in the same manner as the term is used in 5 U.S.C. 500(b). The proposed definition includes an attorney who is a member of one bar in good standing, and "under an order of any court or Federal agency suspending, enjoining, restraining, disbarring or otherwise restricting" the attorney from practice before the bar of another state or Federal agency. The broad definition is believed necessary inasmuch as 5 U.S.C. 500(b) provides that "an individual who is a member in good standing of the bar of the highest court of a State may represent a person before an agency * * *." Though an attorney suspended in one state and a member in good standing in another state could represent a person before the Office, nevertheless the grounds for suspension in one state may give rise to grounds for suspending the attorney from practice before the Office, 5 U.S.C. 500(d)(2), after notice and opportunity for a hearing. See *Selling* v. *Radford*, 243 U.S. 46 (1917).

The phrase "full disclosure" is used to define the explanation a practitioner must give a client regarding potential and actual conflicts of interest. The explanation is based on discussions of full disclosure found in Opinion No. 1997–148, Standing Committee on Professional Responsibility and Conduct (California), and in *In re James*, 452 A.2d 163 (D.C. App. 1982).

Section 11.2, like current § 10.2, would continue to provide for the OED Director. The proposed rule sets out the duties of the OED Director, including receiving and acting upon applications, conducting investigations concerning the moral character and reputation of individuals seeking registration, conducting investigations of possible violations by practitioners of the Office Rules of Professional Conduct, initiating disciplinary proceedings, dismissing complaints or closing investigations, and filing with the Director of the United States Patent and Trademark Office ("USPTO Director") certificates of convictions of practitioners. Except as otherwise noted, any final decision of the OED Director refusing to register an individual, refund a fee, recognize an individual, or reinstate a suspended or excluded practitioner would be reviewable by the USPTO Director. A fee, set forth in 37 CFR 1.21(a)(5), would be charged.

Section 11.3 would provide for waiver of the rules and qualified immunity.

Paragraph (a) of § 11.3, like current § 10.170, would provide for suspension, except as provided in section (b), in an extraordinary situation, when justice requires, of any requirement of the regulations of this part which is not a requirement of the statutes.

Paragraph (b) of § 11.3 would prohibit waiver of any provision of the Office Rules of Professional Conduct, §§ 11.100 through 11.806; the disciplinary jurisdiction of the rules, § 11.19; or the procedures for interim suspension and disciplinary proceeding based on reciprocal discipline or conviction of a serious crime, § 11.24.

Paragraph (c) of § 11.3, like current § 10.170(b), would provide that a petition to waive a rule will not stay a disciplinary proceeding unless ordered by the USPTO Director or a hearing officer.

Paragraph (d) of § 11.3 would provide a qualified privilege for complaints submitted to the OED Director. This privilege should arise from the necessity to reduce to the extent possible any probability that an ethics complainant having honest cause to complain may be intimidated by a practitioner into not filing a complaint. Some states recognize that a complainant has absolute immunity for filing a complaint regardless of the outcome of the proceeding. *See Drummond* v. *Stahl*, 127 Ariz. 122, 618 P.2d 616 (Ct. App. Div 1 1980), *cert. denied*, 450 U.S. 967, 101 S.Ct. 1484, 67 L. Ed. 2d 616 (1981); *Katz* v. *Rosen*, 48 Cal. App. 3d 1032, 121 Cal. Rptr. 853 (1st. Dist. 1975); *Field* v. *Kearns*, 43 Conn. App. 265, 682 A.2d 148 (1996), *cert. denied*, 239 Conn. 942, 684 A.2d 711 (1996); *Jarvis* v. *Drake*, 250 Kan. 645,830 P.2d 23 (1992); *Kerpelman* v. *Bricker*, 23 Md. App. 628, 329 A.2d 423 (1974); *Netterville* v. *Lear Siegler, Inc.*, 397 So.2d 1109 (Miss. 1981); *Sinnett* v. *Albert*, 188 Neb. 176, 195 N.W.2d 506 (1972); *Weiner* v. *Weintraub*, 22 N.Y.2d 330, 292 N.Y.S.2d 667, 239 N.E.2d 540 (1968); *Elsass* v. *Tabler*, 131 Ohio App.3d 66, 721 N.E.2d 503 (1999); *McAfee* v. *Feller*, 452 S.W.2d 56 (Tex. Civ. App. Houston 14th Dist. 1970). Complaints filed with a state bar committee are absolutely privileged as communications made in a quasi-judicial proceeding. *E.g., Goldstein* v. *Serio*, 496 So.2d 412 (La. Ct. App. 4th Cir. 1986), writ denied, 501 So.2d 208, 209 (La. 1987).

Under English common law, the "absolute privilege" from defamation actions that attaches to all statements and testimony by witnesses, judges, and parties in the course of any judicial proceeding has been held to apply to testimony and statements made in the course of solicitor disciplinary proceedings. *See Addis* v. *Crocker*, 1 Q.B. 11, 2 All E.R. 629 CA. *See Halisbury's Laws of England*, Libel and Slander 28:98–101. Several states provide absolute privilege for complaints and testimony in ethics proceedings through statutes, court rules, or rules of attorney discipline. *See* Alaska Attorney Rules, Disciplinary Enforcement Rule 9 (Supp.1983); Ariz. Rules Regulating Conduct of Attorneys, Rule XII (Michie Supp. 1983); Cal. Art. 5.5 § 6094 (1984); Colo.R.C.P. Rule 259(C) (Michie Supp. 1983); *Stone* v. *Rosen*, 348 So. 2d 397 (Fla.Dist.Ct.App. 3 1977); Ga. Code App. to Title 9, Part IV, State Bar Rule 4–221(g); Hawaii S. Ct. Rule 16.7 (1992); La. Rev. Stat. Ann. § 37 ch. 4 App., Art. of Incorp. Of La. State Bar Ass'n., Art. 15 § 13 (West Supp. 1983); Minn. Rules of Law: Prof. Resp., Rule 21 (1977); Miss. Code Ann. § 73–3–345 (1992); N.J.S.Ct.Rule 1:20–11(b)(1984); *Sullivan* v. *Crisona*, 283 N.Y.S.2d 62 (Sup. Ct. 1967) (interpreting N.Y. Judiciary Law § 90); N.D. Cent. Code § 27–14–03 (1974); Okla. Ct. Rules Governing Disciplinary Proc., Chap. 1, App. 1–A, Rule 5, Sec.5.4 (1981); S.C. Rules on Disciplinary Procedure for Att'ys §§ 11, 26 (Lawyers Coop. Supp. 1983) (complaints may be subject to contempt sanctions and injunction against malicious filing, but privilege prevents lawsuits predicated on filing or testimony); S.D. Codified Laws Ann. § 16–19–30 (1994); W. Va. State Bar Bylaws Art. VI § 43 (1982); Wyo. Ct. Rules, Disciplinary Code for the Wyo. State Bar, Rule VI (1973).

Other jurisdictions provide qualified immunity or privilege. *See* Ind. S.Ct. Rules Part VI, Admission & Discipline Rule 23 § 20 (1983) (immunity in absence of malice); Kan.S.Ct.Rule 223 (same privilege as attaches in other judicial proceedings); Me. Bar Rule 7(f)(1) (1983) (immunity in absence of malice); Neb.S.Ct. Rule 106 (1983) (absolute privilege for good faith complainant); *In re Proposed Rules Relating to Grievance Pro.*, 341 A.2d 272 (N.H. 1975) (approving proposed rules effective July 25, 1975, Rule 10 providing immunity for statements made in good faith).

Communications made to licensing agencies in connection with an application for issuance, renewal, or revocation of a license have frequently been held to be entitled to absolute privilege. *Alagna* v. *New York & Cuba Mail S.S. Co.*, 155 Misc. 796 279 NYS 319 (1935) (complaint to Federal Communications Commission complaining of conduct of licensed radio operators held absolutely privileged). Communications to Federal agencies responsible for protecting the public are privileged. *See Holmes* v. *Eddy*, 341 F.2d 477 (CA 4 1965) (holding communication to the Securities and Exchange Commission did not amount to defamation since Commission had statutory duty to protect public from frauds through stock issues, and communication was treated as confidential and not disclosed until beginning of court action); *Riccobene* v. *Scales*, 19 F.Supp 2d 577 (N.D. W. Va. 1998) (statements by attorney, representing Army officer's wife, to officer's superior made in course of representing the wife, are absolutely privileged as they were intended to obtain Army's help in ending domestic abuse, and Army had clear interest in receiving reports of domestic violence committed by soldiers).

A person filing a complaint with the Office is proscribed from providing materially false written statements. Under 18 U.S.C 1001(a) criminal penalties are provided for whoever, in any matter within the jurisdiction of the Office "knowingly and willfully * * * (2) makes any materially false, fictitious, or fraudulent statement or representation; or (3) makes or uses any false writing or document knowing the same to contain any materially false, fictitious, or fraudulent statement or entry."

The Office is responsible for protecting the public from persons, agents and attorneys demonstrated to be "incompetent or disreputable, or guilty of gross misconduct, or who does not comply with the regulations established under section 2(b)(2)(D) of" the Patent Statute. 35 U.S.C. 2(b)(2)(D). The proposed rule provides potential complainants with appropriate notice of the qualified immunity while enabling the Office to fulfill its responsibility.

Recognition To Practice Before the USPTO

Section 11.4, like current § 10.3, would provide for a Committee on Enrollment, which will advise the OED Director in connection with the Director's duties under § 11.2(b)(2).

Section 11.5 would provide for keeping a register of attorneys and agents recognized to practice before the Office in patent matters, and a definition of practice before the Office.

Paragraph (a) of § 11.5, like current § 10.5, would continue to provide for maintaining a single register of attorneys and agents registered to practice before the Office. The proposed rule would conform to actual practice.

Paragraph (b) of § 11.5 would add a new concept for disciplinary and non-disciplinary matters. The paragraph introduces definitions for practice before the Office broadly, as well as practice before the Office in patent matters, and practice before the Office in trademark matters. The proposed broad definition of practice before the Office is similar to the definition of "practice" adopted by the Internal Revenue Service. 31 CFR 10.2(e). Practice before the Office would not include the physical or electronic delivery of documents to the Office.

The definition of practice before the Office in patent matters is derived from *Sperry* v. *Florida*, 373 U.S. 379, 137 USPQ 578 (1963). In *Sperry*, the Supreme Court found that "preparation and prosecution of patent applications for others constitutes the practice of law." The Court recognized that "[s]uch conduct inevitably requires the practitioner to consider and advise his clients as to the patentability of their inventions under the statutory criteria, 35 U.S.C. 101–103, 161, 171, as well as to consider the advisability of relying upon alternative forms of protection which may be available under state law. It also involves his participation in the drafting of the specification and claims of the patent application, 35 U.S.C. 112, which this Court long ago noted 'constitute[s] one of the most difficult legal instruments to draw with accuracy,' *Topliff* v. *Topliff*, 145 U.S. 156, 171. And upon rejection of the application, the practitioner may also assist in the preparation of amendments, 37 CFR 1.117–1.126,[1] which frequently requires written argument to establish the patentability of the claimed invention under the applicable rules of law and in light of the prior art. 37 CFR 1.119." Sperry, 373 U.S. at 383, 137 USPQ at 579.

Consistent with the foregoing, courts in several jurisdictions have held the preparation of patent applications by unregistered individuals to be the unauthorized practice of law. *See In re Amalgamated Development Co., Inc.*, 375 A.2d 494, 195 USPQ 192 (D.D.C. 1977), *cert. denied*, 434 U.S. 924 (1977); *People* v. *O'Brien*, 142 USPQ 239 (N.Y. 1964); *Cowgill* v. *Albright*, 307 N.E. 2d 191, 191 USPQ 103 (Ct. App. Ohio 1973); and *Virginia* v. *Blasius*, 2 USPQ2d 1320 (Va. Cir. Ct. 1987).

In Ohio, the preparation, filing and prosecution of patent applications before the Office has been recognized as the practice of law. Formal Opinion 91–25 (1991) of the Board of Commissioners on Grievances and Discipline of the Ohio Supreme Court.

[1] 37 CFR 1.117–1.119, and 1.122–1.124 no longer exist.

The definition of practice before the Office in trademark matters is derived in part from disciplinary cases concerning attorneys engaged to prepare and prosecute trademark matters. *See Attorney Grievance Commission of Maryland* v. *Harper*, 477 A.2d 756 (Md. 1984) (holding attorney neglected legal matter by failing to prosecute filed trademark application); *State of Nebraska* v. *Gregory*, 554 N.W.2d 422 (Neb. 1996) (holding attorney did not competently act or zealously represent a client by failing to file a trademark application); *Office of Disciplinary Counsel* v. *Freese*, 660 N.E.2d 1156 (Ohio 1996) (holding attorney neglected legal matter entrusted to him when he did not file applications for trademark registration). The definition is also derived from case law involving unauthorized practice of law wherein a layperson offered trademark registration services. *See Statewide Grievance Committee* v. *Goldstein*, 1996 Conn. Super. LEXIS 3430 (Conn. Super. 1996) (enjoining layperson from advertising, offering to complete, and completing blank legal documents for "areas commonly understood to be the practice of law including * *_* trademark and/or patent," soliciting information from customers and using the information "to select, prepare or complete legal documents," and "providing written and/or oral instructions to customers advising them what to do with their legal documents.").

The definition of practice before the Office also includes private conduct relating to good character and integrity essential for a practitioner in patent, trademark, or other non-patent law matters. The definition is derived from case law disciplining attorneys for misconduct not related to the practice of law. Any misbehavior, private or professional, that reveals a lack of good character and integrity essential for a person to practice as an attorney constitutes a basis for discipline. *Matter of Hasbrouck*, 657 A.2d 878 (N.J. 1995); *In re LaDuca*, 140, 299 A.2d 405 (N.J. 1973). That a person's activity does not arise from a lawyer-client relationship, that the behavior is not related to the practice of law or that the offense is not committed in the attorney's professional capacity is immaterial. *In re Suchanoff*, 460 A.2d 642 (N.J. 1983); *In re Franklin*, 365 A.2d 1361 (N.J. 1976).

Section 11.6, like current § 10.6, would provide for registration of individuals to practice before the Office in patent matters.

Paragraphs (a) and (b) of § 11.6 would provide for registration of attorneys and agents, respectively. Citizens of the United States could be registered regardless of their residence. The OED Director could register resident aliens, under appropriate circumstances. Registration of permanent resident aliens would be consistent with In re Griffiths, 413 U.S. 717 (1973) (permanent resident alien entitled to be admitted to Connecticut Bar notwithstanding status as alien). *See also Raffaelli* v. *Committee of Bar Examiners*, 496 P.2d 1264 (Cal. 1972) and *Application of Park*, 484 P.2d 1264 (Alas. 1971). The Office currently registers permanent resident aliens. *See In re Bhogaraju*, 178 USPQ 628 (Comm'r Pat. 1973); *In re Bramham*, 181 USPQ 723 (Comm'r Pat. 1974); and *In re Keen*, 187 USPQ 477 (Comm'r Pat. 1975).

The proposed rules would restrict circumstances under which an alien could be registered. Registration would be precluded if the practice of patent law before the Office is inconsistent with the terms of any visa under which the alien is admitted to and continues to reside in the United States. Registration would be precluded, for example, when the visa petition does not describe that the alien as being authorized to be employed in the capacity of representing patent applicants before the Office. *See In re Richardson*, 203 USPQ 959 (Comm'r Pat. 1979) (alien admitted to U.S. with H–3 visa for training could not practice patent law under terms of the visa), and *In re Mikhail*, 202 USPQ 71 (Comm'r Pat. 1976) (alien admitted to U.S. on B–1/B–2 visa and visiting the U.S. temporarily for business or pleasure could not practice under the terms of the visa). It is nevertheless appropriate for some aliens to be granted limited recognition under § 11.9. *See In re Messulam*, 185 USPQ 438 (Comm'r Pat. 1975) (granting limited recognition to alien admitted to U.S. on L–1 visa for purpose of rendering service to a single company for whom the alien had previously worked abroad and who would remain in the U.S. temporarily). *See also In re Gresset*, 189 USPQ 350 (Comm'r Pat. 1976).

Paragraph (c) of § 11.6, like current § 10.6(c), would continue to provide for registration of foreign patent agents on the basis of substantial reciprocity. Paragraph (c) would add procedures for removing a patent agent's name from the register if the patent agent is no longer registered in good standing before the patent office of the country in which he or she resides, or no longer resides in the foreign country. The procedures would avoid any necessity of going through an administrative proceeding.

Section 11.7, like current § 10.7, would set forth the requirements for registration.

Paragraphs (a)(1) and (a)(2) of § 11.7, like current § 10.7(a), would continue to require an individual to apply for registration, and establish possession of good moral character, as well as legal, scientific and technical qualifications, and competence to advise and assist patent applicants.

Paragraph (a)(3) of § 11.7 would explicitly place the burden of proof of good moral character and reputation on the applicant, and provide "clear and convincing" as the standard of proof.

Paragraph (b)(1) of § 11.7, like current § 10.7(b), would continue to require an individual to take and pass a registration examination in order to practice in patent matters before the Office.

Paragraph (b)(2) of § 11.7 would identify components of a complete registration application, give an individual submitting an incomplete application 60 days from the notice to file a complete application, and require individuals to update their applications wherever there is an addition to or change to information previously furnished with the application.

Paragraph (c) of § 11.7 would allow for a petition to the OED Director from any action refusing to register anindividual, refusing to admit an individual to the registration examination, refusing to reinstate an individual, or refusing to refund or defer any fee. The petition would be accompanied by the fee set forth in § 1.21(a)(5).

Paragraph (d) of § 11.7, like current § 10.7(b), would continue to provide for waiver of the examination for former patent examiners. Unlike § 10.7(b), waiver no longer would be available (except for a grandfathering provision) merely upon successfully serving in the patent examining corps for four years. Paragraph (d) would introduce new conditions for waiver of the registration examination for former patent examiners and expand the occasions for waiving the examination for other Office employees.

Currently, the requirement to take the examination may be waived in the case of any individual who has actively served for at least four years in the patent examining corps of the Office. The Office provides newly hired examiners with initial training. Thereafter, training provided by the Office is received on the job, or in more advanced formal training courses. Primary patent examiners are examiners who the Office has certified as having legal competence to act with a minimum of oversight. The Office also gives primary examiners a certificate granting authority to negotiate with

practitioners. Before an examiner is promoted to primary patent examiner, a group of patent applications that he or she has examined is reviewed for competence and compliance with rules and procedures. However, no test is administered to ascertain the examiner's knowledge of patent law, practice and procedure. After an examiner achieves primary status, there is no periodic testing/training to ensure that the individual maintains an expected level of competency in law, regulations and practice and procedures. Currently, subsequent training takes place in the form of lectures or memoranda following changes to the patent law and/or regulatory changes.

To ensure competence the Office is instituting a formal certification and recertification program for patent examiners, in keeping with its 21st Century Strategic Plan. The program will require examiners being promoted to grade GS–13 to pass a competency examination based on the examination taken by persons seeking to be registered as a patent practitioner.

Also, patent examiners, like licensed practitioners, would be required to receive training and pass recertification tests to update and maintain competence and proficiency in patent law, practices and procedures.

The proposed rule would provide for waiver of the registration examination for two groups of former patent examiners who were serving in the patent examining corps at the time of their separation.

Paragraph (d)(1) of § 11.7 would address former patent examiners who, by a date to be determined, had not actively served four years in the patent examining corps, and who were serving in the corps at the time of their separation. The registration examination would be waived for a former examiner if he or she met four conditions. The former examiner must have (i) actively served in the patent examining corps of the Office, (ii) received a certificate of legal competency and negotiation authority; (iii) been rated, after receiving the certificate of legal competency and negotiation authority, at least fully successful in each quality performance element of his or her performance plan for the last two complete fiscal years as a patent examiner, and (iv) not have been under an oral or written warning regarding the quality performance elements at the time of separation from the patent examining corps.

Paragraph (d)(2) of § 11.7 would address former patent examiners who, by a date to be determined, have actively served four years in the patent examining corps, and who were serving in the corps at the time of their separation. The examination would be waived for the former examiner if he or she meets three conditions. The former examiner must (i) have actively served for at least four years in the patent examining corps of the Office by the date to be determined, have been rated at least fully successful in each quality performance element of his or her performance plan for the last two complete fiscal years as a patent examiner in the Office; and (iii) not have been under an oral or written warning regarding the quality performance elements at the time of separation from the patent examining corps.

Requiring that an examiner be rated at least fully successful in the quality performance elements of his or her performance plan is in accord with prior practice. Former examiners, who upon separation from the Office, were rated unacceptable for quality performance elements have been required to take the registration examination. *Accord*, Commissioner's Decision, leg.01.pdf, posted on the Office Web site as *www.uspto.gov/web/offices/com/sol/foia/oed/legal/leg01.pdf*.

Paragraph (d)(3) of § 11.7 would address certain former Office employees who were not serving in the patent examining corps upon their separation from the Office. The examination would be waived for a former Office employee meeting four requirements. The former employee must demonstrate by petition that he or she possesses the necessary legal qualifications to render to patent applicants and others valuable service and assistance in the preparation and prosecution of their applications or other business before the Office by showing that (A) he or she has exhibited comprehensive knowledge of patent law equivalent to that shown by passing the registration examination as a result of having been in a position of responsibility in the Office in which he or she: (i) Provided substantial guidance on patent examination policy, including the development of rule or procedure changes, patent examination guidelines, changes to the Manual of Patent Examining Procedure, or development of training or testing materials for the patent examining corps; or (ii) represented the Office in patent cases before Federal courts; and (B) was rated at least fully successful in each quality performance element of his or her performance plan for the position for the last two complete rating periods in the Office, and was not under an oral warning regarding the quality performance elements at the time of separation from the Office.

Paragraph (d)(4) of § 11.7 would provide additional conditions for waiver of the examination for each individual covered in paragraphs (d)(1) through (d)(3). To be eligible for consideration for waiver, the individual must file a complete application within two years of separation from the Office, together with the fee required by § 1.21(a)(1)(i). All other individuals and former examiners filing an application or paying a fee more than two years after separation from the Office would be required to take and pass the examination in order to demonstrate competence to represent applicants before the Office. If the examination is not waived, the individual or former examiner also would have to pay the examination fee required by § 1.21(a)(1)(ii) within 30 days of notice.

Paragraph (e) of § 11.7 would eliminate the provision for regrade of an examination. The current rule requires the Office to treat each regrade request individually. Candidates requesting regrade seek, in effect, individualized regrading. Individualized regrading can promote the occurrence of arbitrary and capricious decisions.

The standard for review of the grading of the registration examination is "whether the officials of the Patent Office acted fairly and without discrimination in the grading of the plaintiff's examination, pursuant to a uniform standard." *See Cupples* v. *Marzall*, 101 F.Supp. 579, 583 (D.D.C. 1952). The Office uses a set of model answers in grading examination answers. The use of Office Model Answers to grade the examination satisfies the Cupples standard "because it provides a set of uniform standards by which all examinations can be fairly judged and is therefore not arbitrary and capricious." *Worley* v. *USPTO*, 2000 U.S. Dist. LEXIS 16992, 16997 (D.D.C. 2000). In contrast, "permitting individualized and subjective regrading upon request would promote, not reduce, the likelihood that the Office would make arbitrary and capricious decisions regarding who passes and fails the Patent Bar examination." *Worley*, at 16998. *See also Kyriazis* v. *Dickinson*, No. 99–2299, slip op. at 7 (D.D.C. Dec. 8, 2000) ("this Court rejects Plaintiff's argument that a regrade of question 16 of the examination should consist of an individual determination as to whether Mr. Kyriazis's explanation for his answer constitutes the correct interpretation of patent law, rather than a determination whether the grading conformed with the PTO's Model Answers").

To treat each regrade request individually requires dedication of

considerable resources. Further, such regrades require release of both the questions and Model Answers. In turn, release of the questions and answers necessitates preparation of new examinations twice each year. Producing new examinations twice each year requires dedication of considerable resources. The Office is already pressed for staff and time to provide these services. The Office intends to change the delivery of the registration examination. The examination would no longer be administered twice a year in a paper and pencil format. Instead, a private sector party would deliver the examination at computer terminals at that party's test sites. It is anticipated that the examination would be administered each business day. The examination would not be delivered to applicants on the Internet. The registration examination is and will continue to be a multiple choice examination. The Office intends to develop a databank of multiple choice questions in following years that can be reused in subsequent examinations. The source of the questions and answers would be the patent laws, rules and procedures as related in the Manual of Patent Examining Procedure (MPEP) and policy statements issued by the Office. The examination would be "open-book" in the sense that the MPEP and policies would be accessible at the same computer terminals where the examination is taken. Paper forms of the MPEP or policies could not be brought into the private sector party's test site. New questions would be introduced as MPEP revisions or policy statements introduce new policies, rules, procedures, or statutory law changes. The USPTO would announce when questions are added to the data base addressing revisions of the MPEP or new policy statements. Questions would be retired as necessary and consistent with the changes. Reuse of questions could reduce the time and resources needed to develop the examination each time it is given. To reuse questions and reduce pressure on the staff, it would be necessary to cease publication of the questions and the corresponding answers. This would preserve the fairness of the test for later applicants.

The Multistate Bar Examination (MBE), like the registration examination, is a multiple choice examination. Questions on the MBE are reused in later years. An individual may review on his own MBE examination papers under the guidelines established by the National Conference of Bar Examiners, *i.e.*, under supervision and without taking notes. *See Fields* v. *Kelly*, 986 F.2d 225, 227 (8th Cir 1993). Under proposed paragraph (g), an unsuccessful applicant would schedule an opportunity to review, *i.e.*, inspect the examination questions and answers he or she incorrectly answered under supervision without taking notes. The questions could not be copied. This would be the same as the guidelines established by the National Conference of Bar Examiners for inspection of the MBE.

Under proposed paragraph (e), an unsuccessful applicant satisfying the admission requirements would have a right to sit for future examinations. The due process clause of the Fourteenth Amendment does not require that unsuccessful applicants be given the opportunity for a regrade. The applicant is afforded due process by permitting him or her to sit for the examination again. *See Lucero* v. *Ogden*, 718 F.2d 355 (10th Cir. 1983), *cert. denied*, 465 U.S. 1035, 79 L. Ed. 2d 706, 104 S.Ct. 1308 (1984) ("Courts have consistently refrained from entering the arena of regrading bar examinations when an unqualified right of reexamination exists."); *Tyler* v. *Vickery*, 517 F.2d 1089, 1103 (5th Cir. 1975), *cert. denied*, 426 U.S. 940, 49 L. Ed. 2d 393, 96 S.Ct. 2660 (1976); *Poats* v. *Givan*, 651 F.2d 495, 497 (7th Cir. 1981); *Davidson* v. *State of Georgia*, 622 F.2d 895, 897 (5th Cir. 1980); *Sutton* v. *Lionel*, 585 F.2d 400, 403 (9th Cir. 1978); *Whitfield* v. *Illinois Board of Bar Examiners*, 504 F.2d 474, 478 (7th Cir. 1974) (Constitution does not require an unsuccessful applicant be permitted to see his examination papers and to compare them with model answers or answers of successful applicants); *Bailey* v. *Board of Law Examiners*, 508 F.Supp. 106, 110 (W.D. Tex. 1980); and *Singleton* v. *Louisiana State Bar Ass'n.*, 413 F.Supp. 1092, 1099–1100 (E.D. La. 1976).

Limiting access to the questions would not deny the unsuccessful applicant equal protection of the laws. Inasmuch as some of the questions appear in following years, the questions must be kept secret in order to preserve the fairness of the test for later applicants. *See Fields* v. *Kelly*, 986 F.2d at 227. An unsuccessful applicant also is not deprived of a property right without due process by limiting access to the questions. Providing an opportunity to review the examination under supervision without taking notes affords the applicant a hearing at the administrative level. *Id.* at 228.

The Administrative Procedures Act provides procedural protections in matters involving an "adjudication," which includes licensing. 5 U.S.C. 554. However, the Act also provides that these protections are not required where there is involved "proceedings in which decisions rest solely on inspections, tests, or elections * * *. "5 U.S.C. 554(a)(3). This subsection implicitly recognizes that "where examinations are available, further procedural protections are unnecessary. *See also* 1 K. Davis, Administrative Law Treatise § 7.09 (1958)." *Whitfield* v. *Illinois Board of Bar Examiners*, 504 F.2d 474, 478 (7th Cir. 1974).

Paragraph (f) of § 11.7 would continue the current practice in which applicants seeking reciprocal recognition under § 11.6(c) must file an application and pay the fee set forth in § 1.21(a)(6). It would introduce the practice of paying the application fee required by § 1.21(a)(1)(i).

Paragraph (g) of § 11.7 would continue the practice of soliciting information bearing on the moral character and reputation of individuals seeking recognition. If information from any source is received that tends to reflect adversely on the moral character or reputation of an individual seeking recognition, the OED Director would conduct an investigation into the individual's moral character and reputation.

The proposed regulation specifies that the information sought bearing on the moral character and reputation of individuals includes events regardless of whether the records have been expunged or sealed by a state court. In accordance with the supremacy clause of the United States Constitution, "a federal agency acting within the scope of its congressionally delegated authority may pre-empt state regulation." *Louisiana Public Service Comm'n.* v. *FCC*, 476 U.S. 355, 369, 90 L. Ed. 2d 369, 106 S.Ct. 1890 (1986). The pre-emptive force of a Federal agency's regulation does not depend on express Congressional authorization. Instead, the correct focus is on "the proper bounds of [the Federal agency's] lawful authority to undertake such action." *City of New York* v. *FCC*, 486 U.S. 57, 64, 100 L. Ed. 2d 48, 108 S.Ct. 1637 (1988).

Congress has authorized the USPTO Director to adopt regulations requiring individuals to demonstrate that they are of good moral character and reputation before being recognized. 35 U.S.C. 2(b)(2)(D). The statute does not mention expungement as a means for removing statutory disqualifications. Congress does not appear to have contemplated these expungements would limit the USPTO Director's authority under statute. Requiring disclosure of expunged offenses is a rational and reasonable method to promote licensing individuals presently possessing good moral character and reputation. In *Dickerson* v. *New Banner Institute, Inc.*, 460 U.S. 103, 103 S.Ct. 986, 74 L. Ed. 2d 845 (1983), the Supreme Court held that an Iowa expungement of a judgment did not remove disabilities imposed by the Federal Gun Control Act of 1968 on the basis of the state conviction, and that the expungement did not nullify the conviction. Information regarding expunged offenses is clearly relevant to, though not necessarily determinative of, an applicant's moral character. *See Wilson* v. *Wilson*, 416 F.Supp. 984 (D. Oregon 1976). Expungement, for example, does not signify that the person was innocent of the crime. Rather, expungement alleviates certain continuing effects of a conviction under various laws. State bar examiners consider the commission of any crime, including expunged offenses, in weighing an applicant's overall character and fitness to practice law. *See In re Leff*, 619 P.2d 232 (Ariz. 1980); *State Bar* v. *Langert*, 276 P.2d 596 (Calif. 1954); *Florida Board of Bar Examiners Re: Certified Question—Felony Convictions—Federal Youth Corrections Act*, 361 So.2d 424 (Fla. 1978); *In re Majorek*, 508 N.W.2d 275 (Neb. 1993); *In re McLaughlin*, 675 A.2d 1101 (N.J. 1995); and *In re Davis*, 403 N.E.2d 189 (Ohio 1980). Requiring disclosure of arrests, even if a state court has ordered expungement, does not violate a constitutional right to privacy. *See AFL–CIO* v. *HUD*, 118 F.3d 786 (D.D.C. 1997). The proposed rule would provide applicants with notice of the requirement for disclosure of expunged records.

The USPTO is seeking comments on the two alternatives proposed below for accepting a state bar's determination on the moral character of persons seeking to become registered practitioners who at the time of filing of their USPTO application, have been admitted as an attorney in a State Bar and continue to be in good standing.

One option is to require applicants who are attorneys to submit a certified copy of their State Bar application and moral character determination. The Office may accept the moral character determination as meeting the requirements set forth in § 11.7(g).

The second option is to require these applicants to submit a certified copy of their State Bar application and moral character determination and for the Office to accept the State Bar's character determination as meeting the requirements set forth in § 11.7(g) if, after review, the Office finds no substantial discrepancy between the information provided with their USPTO application and the State Bar application and moral character determination. In such a case, OED will accept the moral character determination of the State Bar as meeting the requirements set forth in § 11.7(g), so long as this acceptance is not inconsistent with other rules and the requirements of 35 U.S.C. 2(b)(2)(D). If the USPTO finds that there is substantial discrepancy or if OED obtains or receives other or new information, or if the determination of moral character conflicts with other rules or § 2(b)(2)(D), the USPTO reserves the right to make an independent decision.

The first option, accepting the state bar's determination on moral character without further review, is administratively convenient. However, it raises the issue of equal treatment between patent attorneys and patent agents as to standards applied. The nature of the patent application proceedings before the USPTO allows for registered practitioners to represent clients before the Office who may or may not be attorneys. In addition, "Congress placed the responsibility on Director to protect the public." 35 U.S.C. § 2(b)(2)(D).[2] Under 35 U.S.C. § 32, the USPTO is under an obligation to consider the moral character of all applicants seeking to become registered practitioners. The states and USPTO have concurrent authority to protect the public. *Kroll* v. *Finnerty*, 242 F.3d 1359 (Fed. Cir. 2001). Thus, the USPTO may not have authority to resolve all moral character questions of attorneys by deferral to the state determinations. Complete deference to a determination on moral character made by state bars is inconsistent with the USPTO's responsibility of protecting the public. Further, it is possible that state bars may be unaware of violations brought to the attention of the Office. The Office cannot circumvent its responsibility to protect the public. In tandem, it is not the Office's intent to place an unnecessary burden on state bars to make determinations on issues that can be equally addressed by both entities. Thus, while it is appropriate to consider the determination on moral character made by state bars as part of the application process at the USPTO, it is inconsistent with the statute to accept the state bar determination as dispositive of the issue for USPTO purposes.

Under the first option, the USPTO would give deference to the state bars if the Office allows patent attorneys to submit a copy of their state bar applications and moral character determinations. Under the second option, the USPTO would still give deference, but reserves the authority to look further into the issue of moral character if there is substantial discrepancy between the information provided in the USPTO application form and the state bar application or if new information is provided related to this matter. This is a satisfactory compromise that enables both the states and the USPTO to exercise their respective authorities to protect the public.

Paragraph (h) of § 11.7 would define moral character. The definition is derived from *Konigsberg* v. *State Bar of Cal.*, 353 U.S. 252, 77 S.Ct. 722, 1 L.Ed.2d 810 (1957); and *In re Matthews*, 462 A.2d 165 (NJ 1983). This paragraph also would provide a nonexclusive list of moral character factors considered by the OED Director. The list would be substantially the same as that considered by the Committee of Bar Examiners of the State Bar of California in "Statement on Moral Character Requirement For Admission to Practice Law in California," which is available at *www.calbar.org/shared/2admndx.htm*.

Paragraph (h)(1) of § 11.7 would provide not only that an applicant convicted of a felony or crime involving moral turpitude or breach of fiduciary duty is presumed not to be of good moral character, but also that the individual would be ineligible to apply for registration until two years after completion of any sentence and probation or parole. See In re Dortch, 687 A.2d 245 (Md. 1997); *Seide* v. *Committee of Bar Examiners (Calif.)*, 782 P.2d 602 (Cal. 1989). The individual would have to pay the fee required by § 1.21(a)(10) with the application for registration.

Paragraph (h)(4) of § 11.7 would provide that an attorney disbarred or suspended from the practice of law, or an attorney who resigns in lieu of discipline would not be eligible to apply for registration for a period of two years following completion of the discipline. The OED Director would have discretion to waive the two-year period only if the individual demonstrates that he or she has been reinstated to practice law in the State where he or she had been disbarred or suspended, or had resigned. The attorney would have to

[2] "[T]he primary responsibility for protection of the public from unqualified practitioners before the Patent [and Trademark] Office rests with the Commissioner of Patents [and Trademarks]." *Gager* v. *Ladd*, 212 F.Supp. 671, 673, 136 USPQ 627, 628 (D.D.C. 1963), (quoting with approval *Cupples* v. *Marzall*, 101 F.Supp. 579, 583, 92 USPQ 169, 172 (D.D.C. 1952), *aff'd*, 204 F.2d 58, 97 USPQ 1 (D.C. Cir. 1953)).

pay the fee required by § 1.21(a)(10) with the application for registration.

Paragraph (i) of § 11.7 would identify factors that may be taken into consideration when evaluating rehabilitation of an applicant seeking a moral character determination for registration.

Paragraph (j) of § 11.7 would provide procedures for the OED Director and Committee on Enrollment to hear cases arising if the OED Director believes that any evidence suggests that an individual lacks good moral character and reputation. The procedures are in accord with those recognized in *Willner v. Committee on Character and Fitness*, 373 U.S. 96, 83 S.Ct. 1175 (1963) as providing due process. When the evidence is information supplied or confirmed by the individual, or is of an undisputed documentary character, the hearing will be on the written record. When a person or source whose reliability or veracity is questioned supplies the evidence, the individual may choose to have a hearing on the written record, or have an oral hearing to confront and cross-examine the person or source providing the evidence. The expense of an oral hearing could be a serious burden on an individual who is both distant from the Office and without an established practice. The rule provides such an individual with an alternative to an oral hearing, *i.e.*, being heard on a written record with briefing. The procedures for an oral hearing are similar to those adopted by the District of Columbia Court of Appeals. Rule 46(f) and (g). An oral hearing will provide the Committee and OED Director with an opportunity to observe the individual's demeanor.

Paragraph (k) of § 11.7 would allow an individual whose application for registration has been rejected because of lack of good moral character and reputation to reapply for registration. The individual would be permitted to reapply five years after the ruling, unless otherwise provided. The individual would also be required to take and pass the registration examination. This provision follows the same time provisions of Rule 201.12 of the Rules Governing Admission to the Bar of the State of Colorado. The individual would have to pay the fee required by § 1.21(a)(10) with the application for registration.

Section 11.8 would continue the practice under current 37 CFR 10.8 of requiring an oath and payment of a fee prior to registration, and conform to the practice of filing a completed Data Sheet.

Paragraph (a) of § 11.8 would provide a two-year period within which an applicant who passes the registration examination may complete registration. In effect, a passing score would be good for two years. The Office would deem this period reasonable for individuals who have not been registered, and not completed their registration within two years. Their continued familiarity with the Patent Statute, Office practices and procedures, and changes thereto in the interim is not established, and they could not lawfully practice before the Office in patent matters in that period. The two-year period is similar to the time afforded District of Columbia Bar applicants, who may request acceptance of a prior Multistate Bar Examination or essay exam result provided, *inter alia*, the prior administration of the examination was within 25 months of the examination about to be administered. *See* Rules 46(b)(8)(A)(3) and 46(b)(8)(B)(3) of the Rules of the District of Columbia Court of Appeals.

Under paragraph (a) of § 11.8, limited recognition would no longer be granted to individuals while awaiting registration. The period candidates await registration is expected to be reduced by the Office's soliciting information tending to affect the eligibility of candidates based on their character on both the Office Web site as well as the Official Gazette. The names of the candidates receiving a passing score will be published. The public will be given 60 days from publication on the Web to provide the information.

Paragraph (b) of § 11.8 would add procedures for applicants seeking registration as a patent attorney or agent. An individual seeking registration as a patent attorney would have to demonstrate that he or she is a member in good standing with the bar of the highest court of a state.

Paragraph (c) of § 11.8 would codify a practice of requiring individuals to update the information and answers they provide on their applications based on events occurring between the date an individual signs an application, and the date he or she is registered or recognized to practice before the Office in patent matters. This would include not only changes of address, but also events that may reflect adversely on the individual's moral character. The latter would serve the integrity of the registration process to require the applicant to update information and answers, and show that the individual continues to satisfy the requirements of § 11.7(a)(2)(i).

Paragraph (d) of § 11.8 would introduce an annual fee to be paid by registered practitioners. The amount of the fee would be set forth in § 1.21(a)(7). The annual fee would be due in three-month intervals depending on the first initial of a practitioner's last name. The roster would be divided into four units. The payment period for last names beginning with A–E shall be every January 1 through March 31; the payment period for last names beginning with F–K shall be every April 1 through June 30; the payment period for last names beginning with L through R shall be every July 1 through September 30; and the payment period for last names beginning with S through Z shall be every October 1 through December 31.

In the past, the fees paid by applicants and patentees have supported the costs of the activities that maintain the patent practitioner's community reputation for integrity. The proposed annual fee is introduced pursuant to 35 U.S.C. 41(d). The annual fee is intended to fund the costs of the disciplinary system, and maintaining the roster of registered practitioners up-to-date by (i) annually surveying the practitioners for current address/telephone/e-mail information, and (ii) daily updating the roster with new changes of address. With an annual fee, the Office would be funding the disciplinary system as State Bars do, by dues from the bar members. Bar disciplinary activities are generally regarded as being in the interest of maintaining the Bar's reputation for integrity and supporting the willingness of potential clients to engage the services of practitioners. The continual updating of the USPTO roster is also in the interest of assuring that registered practitioners are identified to the public they seek to serve. The current cost of USPTO disciplinary and roster maintenance programs is a little in excess of $100 per year per registered practitioner. That cost is currently met by funds from application, issue, or maintenance fees. It is problematic to charge applicants for this activity, since many of the complaints concern applications that were not filed or were filed or prosecuted improperly or should not have been filed in the first place, or patentees, who have received the benefit of competent counsel. The anomaly is magnified by the need for disciplinary action concerning practitioners who have been convicted of felonies, or disciplined by state bars for matters other than practice before the Office. By adopting an annual fee to be paid by registered practitioners, the costs of these activities is not passed on to applicants. Thus, USPTO will recover the costs associated with these activities from the practitioners instead of the public in general. The funds received from the annual fee would be directed to these activities and would not be diverted to support other proposals. The annual fee would not be imposed on persons during the calendar year in which they are first registered to practice before the Office. Failure to comply with this rule would subject a registered practitioner to penalties set forth in § 11.11(b).

Section 11.9 would continue the same practice under current § 10.9 of providing limited recognition of individuals under the appropriate circumstances.

Paragraph (a) of § 11.9 would continue to provide for limited recognition of individuals to practice before the Office in a particular patent application or applications. The practice would be limited to individuals who are not attorneys representing the individual's close relative, such as a child, elderly parent.

Paragraph (b) of § 11.9 would provide for aliens, residing in the United States, to obtain limited recognition to practice before the Office in a particular patent application or applications if the Immigration and Naturalization Service or the Department of State has authorized the alien to be employed in the capacity of representing a patent applicant by preparing and prosecuting the applicant's U.S. patent application. Recognition may be granted if the applicant satisfies the provisions of § 11.7(a), (b), and (c) or (d). Consistent with current practice, limited recognition would be granted in maximum increments of one year, but would not be granted or extended to an alien residing abroad. Limited recognition also would not be granted to aliens admitted to the United States to be trained. Recognition to practice before the Office, like admission to practice law in any other jurisdiction, is not a training opportunity.

Paragraph (c) of § 11.9 would continue to provide for limited recognition of an individual not registered under § 11.6 to prosecute an international application only before the U.S. International Searching Authority and the U.S. International Preliminary Examining Authority.

Paragraph (d) of § 11.9 would provide for a limited recognition fee paid by an individual granted limited recognition under paragraphs (b) or (c) of § 11.9. The same individuals would also be required to pay an annual fee upon renewal or extension of the limited recognition previously granted. Failure to comply with the rule would subject the individual to loss of recognition.

Section 11.10 would set forth provisions regarding post-employment restrictions on practice before the Office. Paragraph (a) would permit only practitioners who are registered under § 11.6 or individuals given limited recognition under § 11.9 to prosecute patent applications of others before the Office.

Paragraph (b) of § 11.10 would parallel the provisions of 18 U.S.C. 207(a) and (b). The proposal would parallel the basic restrictions of § 207(a) on any registered former Office employee acting as representative, or intending to bring influence, in a particular matter in which he or she personally and substantially participated as an employee of the Office. The proposal also would parallel the basic two-year restriction of § 207(b) on any registered former Office employee acting as representative or with intent to influence as to a particular matter for which the employee had official responsibility. In addition, the proposal would proscribe the same conduct occurring behind the scenes by prohibiting conduct that "aids in any manner" the representation or communication with intent to influence. It is appropriate that the conduct proscribed by §§ 207(a) and (b) be extended to conduct occurring behind the scene. The conduct is proscribed by current § 10.10(b). A patent can be held unenforceable where a former patent examiner engaged in behind the scene efforts to obtain a reissue patent on a patent in which he or she personally and substantially participated as an examiner. *See Kearny & Trecker Corp. v. Giddings & Lewis, Inc.*, 452 F.2d 579 (7th Cir. 1971), *cert. denied*, 92 S.Ct. 1500 (1972).

Paragraph (c) of § 11.10 would introduce citation of the statutory and regulation provisions governing the post employment conduct of unregistered former employees. The provisions cover any unregistered former employees, who represent another person in an appearance or, by other communication, attempts to influence the Government, including the Office, concerning a particular matter in which he or she was involved. For example, a former patent examiner, whether or not he or she becomes a registered practitioner, may not appear as an expert witness against the Government in connection with a patent granted on an application he or she examined as a patent examiner.

Paragraph (d) of 11.10, like current § 10.10(c), would continue to proscribe an employee of the Office from prosecuting or aiding in any manner in the prosecution of a patent application for another.

Paragraph (e) of § 11.10 would continue the prohibition against conflicts of interest contained in current § 10.10(d). A number of statutory and regulatory provisions affect U.S. Government employees who are registered to practice before the Office. These provisions include 18 U.S.C. 203 and 205.

Section 205 is a criminal statute which "precludes an officer or employee of the Government from acting as an agent or attorney for anyone else before a department, agency or court in connection with any particular matter in which the United States is a party or has a direct and substantial interest." *Memorandum of Attorney General Robert F. Kennedy Regarding Conflict of Interest Provisions of Public Law 87–848*, Feb 1, 1963, 28 F.R. 985. In interpreting a predecessor statute to § 205, Acting Attorney General Peyton Ford determined that "the United States is a party or directly or indirectly interested" in proceedings involving the filing and prosecution before the Patent Office of an application for patent, and that the predecessor statute therefore "proscribe[d] the participation in such proceedings of Government employees for compensation on behalf of private parties." *Opinion of the Attorney General of the United States*, Vol. 41, Op. No. 4, 82 USPQ 165 (Atty. Gen. 1949). Under the current statute, "[s]ection 203 bars services rendered for compensation solicited or received, but not those rendered without such compensation; section 205 bars both kinds of services." *Memorandum of Attorney General Robert F. Kennedy Regarding Conflict of Interest Provisions of Public Law 87–848*, Feb 1, 1963, 28 F.R. 985. *Accord, OGE Informal Advisory Letter 91 X 11*, 1991 WL 521202 (O.G.E.). Sections 203 and 205 apply to full-time and part-time employees.

OGE Informal Advisory Letter 91 X 11, 1991 WL 521202 (O.G.E.) recognizes one exception. The prohibition does not apply if an executive branch employee is "a special employee" as defined in 18 U.S.C. 202(a). The OGE Informal Advisory Letter also recognizes that the exception does not apply to a special Government employee for those particular matters involving specific parties in which the employee participated as a Government employee and, if the employee served in the department more than sixty days, to those matters pending before the department where he or she is employed. A special Government employee is one who is "employed to perform * * * for a period not to exceed one hundred and thirty days during any period of three hundred and sixty five consecutive days, temporary duties either on a full-time or

intermittent basis * * * Status as a special Government employee is determined at the time of appointment." Section 202(a). The OGE Informal Advisory Letter also recognizes that individuals serving in the U.S. Military reserves as officers, are considered under the provisions of section 202(a) to be special Government employees unless they are called to active duty and serve for more than a specified threshold period. The OGE Informal Advisory Letter indicates that reservists in the enlisted ranks are not deemed subject to sections 203 or 205 when called to active duty.

In view of such provisions, the opinion of the Attorney General, and the OGE Informal Advisory Letter, the position of the Office would be that full-time and part-time U.S. Government employees other than special Government employees, may not solicit or accept private clients, or represent clients other than their agency before the Office. Accordingly, the Office of Enrollment and Discipline requires registered practitioners who are employed by the U.S. Government full-time or part-time to list their Government addresses as their official addresses of record.

Section 11.11 would continue the requirement under current § 10.11 that a registered practitioner notify OED of a change of address separately from any notice given in any patent applications.

Paragraph (a) of § 11.11, similarly to current § 10.11(a), would provide for requiring practitioners to notify the OED Director of their postal address and telephone number for his or her business, as well as every change thereto. Additionally, it would require practitioners to notify the OED Director of the e-mail address for their business and every change to the e-mail address. Notice of the change of address or telephone number would have to be given within thirty days of the date of the change. Practitioners will be encouraged to provide their business e-mail address to facilitate the Office's ability to communicate with the practitioners. A practitioner who is an attorney in good standing with the bar of the highest court of one or more states would also be required to provide the OED Director with the state bar identification number associated with each membership. This will enable the OED Director to distinguish between individual attorneys having the same or similar names. Further, the section identifies the information that the OED Director will routinely publish on the roster about each registered practitioner recognized to practice before the Office in patent cases.

Paragraph (b)(1) of § 11.11 would provide for administrative suspension for failure to comply with the payment of the annual fee required by § 11.8(d) or §§ 11.12(a) and (e). The OED Director would mail a notice to the practitioner advising of noncompliance, demanding compliance within sixty days, and payment of a delinquency fee for each rule violated.

Paragraph (b)(2) of § 11.11 would provide that upon failure to comply with the directive within the allowed time, the practitioner would be notified in writing that the practitioner has been administratively suspended and may no longer practice before the Office in patent matters, or hold himself or herself out as being registered or recognized to practice before the Office in patent matters. The OED Director would publish notice of the administrative suspension in the Official Gazette. The administrative suspension would not relieve the delinquent attorney or agent of his or her annual responsibility to pay his or her dues to the USPTO Director.

Paragraph (b)(4) of § 11.11 would provide that an administratively suspended attorney or agent would be responsible both for paying his or her annual fee required by § 11.8(d) and for completing the required continuing training programs.

Paragraph (b)(6) of § 11.11 would provide that administratively suspended practitioners cannot practice before the Office in patent cases while under administrative suspension.

Paragraph (c) of § 11.11 would provide for inactivation of a registered practitioner who becomes employed by the Office.

Paragraph (c)(1) of § 11.11 would provide that a registered practitioner, upon separating from the Office and seeking reactivation, must complete the required continuing training programs if the practitioner did not pass recertification tests required during the practitioner's employment at the Office and appropriate to practitioner's grade and position in the Office.

Paragraph (d) of § 11.11 would provide for voluntary inactivation of a registered practitioner. This section accommodates registered practitioners who are not active in representing clients before the USPTO, but still desire to maintain a recognized professional association with the USPTO. The USPTO will not inquire into reasons for seeking voluntary inactivation except that voluntary inactivation will be denied if the practitioner is delinquent on paying annual dues. Voluntary inactivation will not preclude the USPTO from inquiring or continuing to inquire into possible ethical violations by the practitioner. Reasons for seeking voluntary inactivation may include retirement, health condition of the practitioner (long-term illnesses), or a practitioner's decision to practice in another substantive area.

Paragraph (d)(1) of § 11.11 would provide that a registered practitioner may seek voluntary inactivation by filing a written request to be endorsed as inactive.

Paragraph (d)(2) of § 11.11 would provide that a registered practitioner whose status has been changed to a voluntary inactive status would be responsible both for paying his or her annual fee required by § 11.8(d) for such status and for completing the required continuing legal education programs while in such status. For purposes of this section, the annual fee for practitioners in inactive status is 25% of the fee for practitioners in active status.

Paragraph (d)(3) of § 11.11 would provide that a registered practitioner in inactive status is still subject to investigation or discipline for ethical violations during the period of inactivation.

Paragraph (d)(4) of § 11.11 would provide that a registered practitioner in arrears in dues or under administrative suspension for fee delinquency is ineligible to seek or enter into voluntary inactive status.

Paragraph (d)(5) of § 11.11 would provide that practitioners may not practice before the Office in patent cases while under inactive status.

Paragraph (d)(6) of § 11.11 would provide for restoration to active status of a registered practitioner who is in voluntary inactive status in accordance with § 11.11(d). The Office provides options for practitioners who are no longer attorneys in good standing at their state bars but seek active status before the USPTO. Since practitioners before the USPTO need not be attorneys, a practitioner who has ceased to be a member in good standing of the highest court of a state for reasons other than ethical grounds may still seek to represent clients before the USPTO as a patent agent. Generally, attorneys are held to the standard of ethics in effect at their respective state bars. It becomes necessary to ensure that attorneys who are no longer members in good standing in a state bar explain the basis of such status when seeking restoration to active status before the USPTO. This section seeks to avoid the possibility that an attorney under a disciplinary proceeding or investigation at his or her state bar does not circumvent the obligation of informing the USPTO of any matter that detrimentally impacts the determination of the practitioner's moral character.

Any registered practitioner who is voluntarily inactivated pursuant to paragraph (d) of this section and who is an attorney may comply with the submission of information and material pertaining to the practitioner's moral character on proof of being a member in good standing with the highest court of a state. If the registered practitioner is no longer a member in good standing at the state bar, the practitioner must submit a signed declaration or affidavit explaining the circumstances surrounding their status at the state bar to the satisfaction of the OED Director that the reason for not being a member in good standing is not predicated on moral character. If the statement submitted is not to the satisfaction of the OED Director, the OED Director may decline restoration to active status on grounds of present lack of good moral character as set forth in § 11.7. Any adverse decision by the OED Director is reviewable under § 11.2. This does not preclude the practitioner from submitting additional evidence to establish the requisite moral character.

Paragraph (e) of § 11.11 would allow for resignation from practice before the Office of a registered practitioner who is neither under investigation under § 11.22 for a possible violation of the Rules of Professional Conduct, nor subject to an adverse probable cause determination by a panel of the Committee on Discipline under § 11.23(b).

Paragraph (f) of § 11.11 would establish a procedure for reinstatement of a registered practitioner who has been administratively suspended pursuant to § 11.11(b) or § 11.12(e), or who has resigned pursuant to § 11.11(d).

Section 11.12 would introduce mandatory continuing education for practitioners licensed to practice in patent cases before the Office. Such continuing education would apply to all licensed practitioners, whether they are registered patent attorneys, patent agents, or persons granted limited recognition. With two exceptions, all licensed practitioners are currently required to pass the registration examination. The registration examination may be waived for former patent examiners who actively served for at least four years in the patent examining corps and separate from the Office without an legal competence issue. Also, by long-standing custom, foreign patent agents who are registered under 37 CFR 10.7(c) on the basis of reciprocity with their foreign patent office have not been required to take and pass the registration examination. A licensed practitioner has been qualified through passing the registration examination. However, there is no requirement for periodic education to ensure that individuals maintain an expected level of competency in law, regulations, practices and procedures.

It is in the interest of the practitioner community, applicants and the efficiency of the USPTO that practitioners keep their legal knowledge current. In recent years there have been numerous changes to the Patent Act, and in the regulations governing the filing and prosecution of patent applications. After significant court decisions and other events, the Office has issued memoranda describing new procedures and policy to be followed by Office employees as well as registered practitioners and those granted limited recognition. Though licensed practitioners are ethically prohibited from handling a legal matter without preparation adequate in the circumstances, this has not prevented members of the public from criticizing the competence of practitioners. Such lapses can reflect adversely on the integrity of the intellectual property system, as well as on the reliability of practitioners as a whole. The ethics rules have not compelled practitioners to promptly become and remain familiar with changes to patent application practices and procedures.

A licensed practitioner's lack of currency with practice requirements impedes the efficiency and quality of the application process under current conditions. Within the USPTO, there is an office devoted to handling petitions, often by practitioners, seeking relief from some "unintentional" events, as well as "unavoidable" events, such as occur when new procedures and policies are not followed. Some petitions seeking relief from mistakes reflect an unawareness of the requirements of new rules, practices and procedures, as well as some well-established practices and procedures. This continual need for rework is an obstacle to improving pendency. Other mistakes may not be similarly curable.

The trend toward continuing legal education requirements by state bars is not sufficient to maintain the currency of knowledge among licensed practitioners regarding patent practice before the Office. First, while some attorneys may be required to take continuing legal education as a matter of state bar requirements, such requirements do not apply to patent agents and are not specific to obtaining additional patent education. The Office's licensing of patent agents who are not attorneys effectively preempts the states' restrictions on practicing law without a license. Thus it is incumbent on the Office to assure that agents are required to be kept up-to-date on legal matters in ways equivalent to the requirements now imposed by forty state bars on lawyers. The foreign patent agents also are not subject to the restrictions and continuing legal education requirements imposed by states. Similarly, although one state is now considering special certification for patent lawyers, its proposal defers to the Office's authority over licensing patent practitioners and thus imposes no certification requirements based on Office practice. None of the states mandating continuing legal education (CLE) require registered patent attorneys to receive updated education in new Office practices and procedures.

To assure the public that licensed practitioners maintain their competence and proficiency, the Office proposes to deliver required education materials via the Internet and otherwise to practitioners and to certify their scrutiny of those materials through an interactive computer-delivered examination. Alternatively, the Office would accept mandatory continuing education given by a pre-approved sponsor. Section 11.12 would apply only to licensed practitioners, not to inventors applying *pro se*. The availability of the education, however, will make the patent process more accessible to inventors, while helping the quality and efficiency of prosecution.

Delivery of mandatory continuing education by the USPTO meets the need for equal availability of the program worldwide. The Office can provide this service at a minimal cost because we are building on a program we conduct for examiners. The Office is going to seek CLE credits for the program from state bars requiring attorneys to meet certain continuing legal education requirements. However, the Office is not sure all state bars with the requirements will recognize the mandatory education program offered by the Office. Therefore, the Office believes that regular continuing education sponsors should be able to offer the program content in alternative formats that are acceptable to state bars.

It is anticipated that the Office would publish on the Internet written material followed by self-administered questions and answers that would be linked to Office publications on Office's Web site that would provide the answers. The publications would include new rules, policy announcements, rule packages, question and answer memoranda, the

Manual of Patent Examining Procedure, narrative guidelines, and other narratives containing new information the Office wants to deliver. The function of the program would be to assure that licensed practitioners, like patent examiners, have read and absorbed key content of these publications. The USPTO is planning to institute similar education of patent examiners.

Unlike traditional continuing legal education courses that must be taken at particular times and places, because the self-assessment update program would be available on the Internet, it could be taken when and where the practitioner selects. Paper copies of the questions and narratives would be made available to practitioners lacking access to the Internet. A licensed practitioner could take the program and complete it, or take part and store it until he or she has more time to complete it. The practitioner also would have the option to take it repeatedly and as often as desired until all questions are correctly answered. It would not be necessary for practitioners to take courses, such as continuing legal education courses offered by other parties, in order to complete the program.

A practitioner would have the option of obtaining the education from a USPTO pre-approved sponsor. The practitioner would be responsible for paying any fees charged by the sponsor for the program. The sponsor or the practitioner taking the program from the sponsor would be responsible for obtaining continuing legal education credit from a state bar. The Office would not seek such credit for the sponsor or the practitioner taking a course given by a sponsor.

The self-assessment program offered by the Office would include multiple choice and/or true/false questions. Narrative material, such as a guideline or policy announcement, would either precede the question, or links to the narrative material would be embedded in the questions. To complete a required education program, all questions must be correctly answered. A licensed practitioner would have to complete the program within the dates set by the USPTO Director. Taking a USPTO pre-approved course that is offered by a USPTO pre-approved sponsor providing comparable education also could complete the required education program. Licensed practitioners failing to complete the program would be administratively suspended from practice before the Office. The results from the USPTO Web-based program would be instantly available, and electronically recorded in the Office.

The education program requirement would not be onerous, since the self-assessment program would be self-administered and available on the Internet, and it would either contain or be linked to USPTO publications on its Web site that would provide the answers. Currently, forty states provide for or require continuing legal education for attorneys licensed in their respective jurisdictions. The Office will be communicating with the appropriate authorities in each of the states in an effort to have them accept the USPTO's education program as meeting their respective continuing legal education requirements.

Paragraph (c) of § 11.12 would provide four exemptions from completing the education. One exemption would be for newly registered practitioners during the fiscal year he or she is first registered. Another exemption would be for a practitioner who becomes inactive as a result of being employed by the Office if, while so employed, the practitioner passes all recertification programs required for patent examiners during the practitioner's employment at the Office and appropriate to practitioner's grade and position in the Office.

The same paragraph permits completion of the education to be delayed for a specified time for "good cause shown." The cause may be shown in conjunction with illness, hospitalization, or such other matters as determined by the OED Director. Good cause would not be shown by representations that a medical condition makes attendance only difficult or uncomfortable, that a practitioner is outside the United States, that a practitioner finds it most difficult to complete the program, that the practitioner obtains education by observing other practitioners, or that a practitioner is in advanced years.

Paragraph (d)(1) of § 11.12 would provide that persons seeking reinstatement after they resigned pursuant to § 11.11(d), after their names were transferred to disability inactive status, or upon seeking reinstatement after being suspended or excluded must furnish the OED Director with proof that he or she has completed all education programs required by the USPTO Director during the fiscal year(s) the practitioner was inactive, suspended or excluded, or during the practitioner's resignation. Thereafter, the person would have the same education program requirement as other licensed practitioners.

Section 11.13 would provide procedures for sponsors to be approved as offering a pre-approved mandatory continuing education program, as well as for practitioners receiving credit for completing the pre-approved program offered by either the USPTO or by a USPTO pre-approved sponsor. Practitioners will not receive credit for completion of the required education by attending a program that is not pre-approved by the OED Director as providing the legal, procedural and policy subject matter identified by the USPTO Director as being required to satisfy the mandatory continuing education program.

Section 11.14, like current § 10.14, continues to set forth who may practice before the Office in trademark and other non-patent matters. The present procedure under § 10.14 would continue, except that the definition of attorney is changed. See the discussion above under § 11.1. The change in the definition of attorney is believed necessary in view of 5 U.S.C. 500(b), and the fact that an individual may be an attorney in good standing in a state even though suspended or disbarred in another state. In other non-patent matters, *e.g.*, disciplinary proceedings or *inter partes* or *ex partes* patent or trademark matters, a party could be represented only by an attorney.

Paragraph (a) of § 11.14(a) would contain a sentence making clear that registration as a patent attorney does not entitle an individual to practice before the Office in trademark matters. On occasion in the past, an attorney suspended or disbarred by the highest court of a state continued to practice before the Office in trademark matters. The sentence would provide such individuals with notice that they may not rely on registration as a patent attorney to practice in trademark matters.

Paragraph (f) of § 11.14 would provide that an individual seeking reciprocal recognition under paragraph (c) must apply in writing for the recognition, and pay the fees required by §§ 1.21(a)(1)(i) and (a)(6) of this subchapter.

Section 11.15 would provide that practitioners (individuals who practice before the Office in patent, trademark, or other non-patent matters) could be suspended or excluded. The USPTO Director has authority under 35 U.S.C. 32 to suspend or exclude practitioners registered to practice before the Office in patent matters. *See also* 5 U.S.C. 500(e). The USPTO Director also has authority to suspend or exclude practitioners who practice before the Office in trademark and other non-patent matters. *See* 5 U.S.C. 500(d)(2); *Herman* v. *Dulles*, 205 F.2d 715 (D.C. Cir. 1953); and Attorney General's

Manual on the Administrative Procedure Act, pp.65–66 (1947). *See also Harary* v. *Blumenthal*, 555 F.2d 1113 (2nd Cir. 1977) (certified public accountant disbarred from practice before IRS), and *Koden* v. *U.S. Department of Justice*, 564 F.2d 228 (7th Cir 1977) (suspending attorney from practice before INS).

Section 11.18, with one exception, would continue the provisions under current § 10.18 regarding who must sign documents filed in the Office, and responsibility for the content of documents filed in the Office. The exception is that the phrase "claims and other" found in § 10.18(b)(2)(ii) would not be carried forward into paragraph (b)(2)(ii) of § 11.18. The deletion is necessary inasmuch as § 11.18 is derived from Rule 11 of the Federal Rules of Civil Procedure, wherein a "claim" is not a patent claim. However, in the predecessor rule, § 10.18, it is possible to construe "claim" to be a patent claim. Clearly, a patent claim is not the same claim under the Rule 11 of the Federal Rules of Civil Procedure. The practice under § 11.18 is otherwise similar to that under Rule 11 of the Federal Rules of Civil Procedure.

Investigations and Disciplinary Proceedings

Section 11.19 would introduce a definition of the disciplinary jurisdiction of the Office.

Paragraph (a) of § 11.19 would provide that practitioners registered or recognized to practice before the Office, practitioners administratively suspended under § 11.11(b), practitioners disciplined by suspension or exclusion, as well as *pro se* patent applicants and any individual appearing in trademark or other non-patent case in his or her own behalf, are subject to the disciplinary jurisdiction of the Office. The inclusion of administratively suspended practitioners, and practitioners disciplined by suspension or exclusion would permit the Office to take further action where appropriate or necessary. Thus, for example, a suspended practitioner continuing to practice before the Office despite suspension may be further disciplined for unauthorized practice before the Office. Similarly, a practitioner continuing to practice before the Office despite removal of his or her name from the register should not be able to use administrative suspension as a shield to avoid discipline for misconduct occurring before or after removal of the practitioner's name from the register.

Paragraph (b) of § 11.19 would recognize the authority of state bars to discipline practitioners for misconduct involving or related to practice before the Office in any matter.

Paragraph (c)(1) of § 11.19 would set out grounds for disciplining a practitioner, or a suspended or excluded practitioner. Grounds would include conviction of a crime; discipline imposed in another jurisdiction; failure to comply with any order of a Court, the USPTO Director, or OED Director; or failure to respond to a written inquiry from a Court, the USPTO Director, or OED Director in the course of a disciplinary investigation or proceeding without asserting, in writing, the grounds for refusing to do so.

Paragraph (c)(2) of § 11.19 would set out grounds for disciplining a *pro se* applicant. Grounds include violation of §§ 11.303(a)(1), 11.304, 11.305(a), and 11.804. *Pro se* litigants in United States District Courts are subject to Rule 11 of the Federal Rules of Civil Procedure, which imposes sanctions for filing baseless or frivolous lawsuits wherein the pleadings are not well grounded in fact or in law, or in a good faith argument for extension, modification, or reversal of existing law, and had an improper purpose. By extension, comparable conduct before the Office would be subject to disciplinary action by the Office.

Paragraph (d) of § 11.19 would continue essentially the same procedure as current § 10.130(b) for handling petitions to disqualify a practitioner in *ex parte* or *inter partes* matters in the Office on a case-by-case basis. *See SEC* v. *Chenery Corp.*, 332 U.S. 194, 203 (1974).

Paragraph (e) of § 11.19 would make clear that the Office can refer unauthorized practice allegations and convictions to the jurisdiction(s) where the act(s) occur. This can apply to unregistered individuals, including unregistered attorneys practicing before the Office in patent matters by ghostwriting applications and/or replies to Office actions to be signed and filed by inventors.

Section 11.20 would continue the present procedure in current § 10.130(a) under which the USPTO Director imposes discipline. The statutory framework for practice before the Office in patent, trademark, and other non-patent law vests responsibility for discipline in the USPTO Director. 35 U.S.C. 2(b)(2)(c). The discipline imposed on practitioners includes reprimand, suspension or exclusion. Paragraph (a)(1) is based on 35 U.S.C. 32 and 5 U.S.C. 500(d). The term "exclude," rather than "disbar," is used throughout the proposed rules because "exclude" is used in 35 U.S.C. 32. Probation has been employed by OED pursuant to 35 U.S.C. 32 and 5 U.S.C. 500(d). *See Weiffenbach* v. *Lett*, 1101 Official Gazette 59 (April 25, 1989).

Paragraph (a)(2) of § 11.20 would permit sanctions to be imposed on patent applicants representing themselves or other applicants under § 1.31, a person or party representing themselves or others in a patent case pursuant to § 1.33(b)(4), or by a representative appearing in a trademark application pursuant to § 11.14(e). A variety of sanctions can be imposed on *pro se* litigants subject to Rule 11 of the Federal Rules of Civil Procedure. The sanctions usually imposed serve two main purposes: deterrence and compensation. Subsidiary goals include punishing prosecution/litigation abuse, and facilitating case management. *See Navarro-Ayala* v. *Nunez*, 968 F.2d 1421 (C.A. Puerto Rico 1992). Sanctions that may be imposed on *pro se* litigants may also be imposed on *pro se* applicants, including prohibition from commencing additional or continuing other proceedings before the Office without being represented by a licensed attorney or by leave of the Commissioner for Patents or the Commissioner for Trademarks to proceed *pro se*. *Accord, Schramek* v. *Jones*, 161 F.R.D. 119 (D.C. Fla. 1995); and *Ketchum* v. *Cruz*, 775 F. Supp. 1399 (D. Colo. 1991), *aff'd*, 961 F.2d 916 (1991).

Paragraph (b) of § 11.20 would provide for imposition of conditions with discipline as a condition of probation, to protect the public.

Section 11.21 would provide for issuing warnings alerting the practitioner that he or she could be subject to disciplinary action if corrective action is not taken to bring his or her conduct into conformity with the Office's Rules of Professional Conduct. 5 U.S.C. 558(c) authorizes warnings.

Section 11.22 would continue the OED Director's authority under current § 10.131(a) to investigate possible violations of Rules of Professional Conduct by practitioners. *See* § 11.2(b)(2).

Paragraph (b) of § 11.22 would continue the provisions of current § 10.131(a), under which a nonpractitioner can report to the OED Director a possible violation of Rules of Professional Conduct. The OED Director would be enabled to require that the report be presented in the form of an affidavit.

Paragraph (c) of § 11.22 would provide for initiating investigations upon complaint or information received from any source. The investigation would not be abated because of neglect by the complainant to prosecute a

charge, or in view of settlement, compromise, or restitution.

Paragraph (d) of § 11.22 would require a complaint alleging misconduct by a practitioner to be in writing and contain a brief statement of the facts upon which the complaint is based.

Paragraph (e) of § 11.22 would provide for screening complaints. Complaints would be docketed only if they are not unfounded on their face, if they contain allegations of conduct, that, if true, would constitute a violation of the practitioner's oath or the Rules of Professional Conduct that would merit discipline, and are within the jurisdiction of the Office.

Paragraph (f) of § 11.22 would provide for notifying the complainant when a complaint is not docketed, and giving the reasons therefor. This rule would provide that the OED Director's decision is not subject to review.

Paragraph (g) of § 11.22 would permit complainants to be advised of the docketing of the complaint.

Paragraph (h) of § 11.22 would provide for notifying a practitioner in writing when a formal investigation in the practitioner's conduct has been initiated.

Paragraph (i) of § 11.22 would provide for a practitioner to have 30 days to respond to an inquiry, and to allow only one 30-day extension of time. The response must set forth practitioner's position with respect to allegations contained in the complaint.

Paragraph (j) of § 11.22 would provide that the OED Director could request information from the complainant, practitioner, or any other person who may reasonably be expected to have information needed concerning the practitioner. A number of state bars were surveyed to identify whether a common practice existed on handling the issue of contacting a non-complaining client. Many states have no specific procedural rules but can and do contact the non-complaining client without the safeguards contained in proposed paragraph (j) of this section. For example, one state bar has no rule but contacts the attorney first, and then attempts to call the non-complaining client before the attorney communicates with the client. Another has no rule and does in fact contact the non-complaining client without first informing the attorney.

In the absence of a consistent practice among the various state bars, the USPTO is placing formal safeguards through Section 11.22(j). We recognize that such contact can create the possibility of conflicts with the attorney. At the same time, there are cases in which disciplinary action is most necessary and the non-complaining client is unknowingly being victimized. The USPTO needs the discretion to undertake the appropriate investigation without necessarily going through the attorney. The USPTO wants to be careful to balance the competing interests with the creation of a formal procedure that provides appropriate safeguards to the attorney-client relationship.

Paragraph (j) of § 11.22 would provide that the OED Director could request information from the complainant, practitioner, or any other person who may reasonably be expected to have information needed concerning the practitioner. The attorney will be contacted first unless there is good cause to believe that such contact would interfere with the gathering of relevant material from the client. If the OED Director believes that there is good cause for such interference or the attorney declines to consent, the OED Director will provide a showing including reasons to the USPTO Director for review and clearance.

Paragraph (k) of § 11.22 would permit the OED Director to examine financial books and records maintained by a practitioner reflecting his or her practice before the Office.

Paragraph (l) of § 11.22 would provide that a practitioner's failure to respond or evasive response to the OED Director's written inquiries during an investigation would permit the Committee on Discipline to enter an appropriate finding of probable cause.

Paragraph (m) of § 11.22 would allow the OED Director to dispose of investigations by closure without issuance of a warning, institution of formal charges, diversion, or exclusion on consent.

Paragraph (n) of § 11.22 would permit the OED Director to terminate an investigation and decline to refer a matter to the Committee on Discipline in a variety of circumstances, including where the complaint is unfounded, the matter is not within the jurisdiction of the Office, the questioned or alleged conduct does not constitute misconduct, the available evidence shows that the practitioner did not engage or willfully engage in the questioned or alleged misconduct, that there is no credible evidence to support any allegation of misconduct by the practitioner, or that the available evidence could not reasonably be expected to support any allegation of misconduct under a "clear and convincing" evidentiary standard.

Section 11.23 would continue the practice of current § 10.4 of providing for a Committee on Discipline.

Paragraph (a) of § 11.23 would describe the organization of the Committee on Discipline. The Committee would have two or more subcommittees having three members each to facilitate processing of the matters the OED Director refers to the Committee. The Committee would designate a Contact Member to review and approve or suggest modifications of recommendations by OED Director for dismissals, and warnings.

Paragraph (b) of § 11.23 would set forth the powers and duties of the Committee on Discipline. The Committee would designate a Contact Member to review, and approve or suggest modifications of, recommendations by OED Director of dismissals and warnings. The Committee would prepare and forward its own probable cause recommendations to the OED Director.

Paragraph (c) of § 11.23 would provide that no discovery could be had of deliberations of the Committee on Discipline. *See Morgan* v. *United States*, 313 U.S. 409, 422 (1941). Accordingly, under the proposed rules, a disciplinary proceeding would resolve whether a practitioner has or has not committed violations alleged in the complaint that the Committee authorized to be filed under § 11.26.

Section 11.24 would provide for interim suspension and discipline based on reciprocal discipline of a practitioner suspended or disbarred, or who resigns in lieu of discipline. The USPTO Director, upon being provided with a certified copy of a disciplinary court's record disciplining a practitioner, would suspend the practitioner in the interim. The practitioner would be provided with a forty-day period to show cause why reciprocal discipline should not be imposed. A certified copy of the record of suspension, disbarment, or resignation shall be conclusive evidence of the commission of professional misconduct. The practitioner may challenge imposition of reciprocal discipline on four specific grounds, *i.e.*, lack of notice or opportunity to be heard, infirmity of proof of establishing misconduct, grave injustice resulting from imposing the same discipline, or the misconduct warrants imposition of a different discipline.

Section 11.25 would provide for interim suspension and discipline of a practitioner convicted of committing a serious crime or other crime coupled with confinement or commitment to imprisonment. The USPTO Director, upon being provided with a certified copy of a court's record or docket entry, would suspend the practitioner from practice before the Office in the interim until the conviction becomes final. Practitioners would be disqualified from practicing before the Office if confined or committed to prison. Upon the conviction becoming final, the practitioner would be provided with a forty-day period to show cause why discipline should not be imposed. A practitioner convicted of a serious crime involving moral turpitude *per se*, or a crime wherein the underlying conduct involved moral turpitude, would be excluded. The practitioner may challenge imposition of discipline if material facts are in dispute.

Section 11.26 would provide a program for diversion from a disciplinary proceeding.

Paragraph (a) of § 11.26 would permit the OED Director to offer diversion to a practitioner under investigation, subject to limitations.

Paragraph (b) of § 11.26 would make diversion available in cases of alleged minor misconduct. However, diversion would not be available when the alleged misconduct resulted in, or is likely to result in, prejudice to a client or another person; discipline was previously imposed, a warning previously issued, or diversion was previously offered and accepted (unless exceptional circumstances justify waiver of this limitation); the alleged misconduct involves fraud, dishonesty, deceit, misappropriation or conversion of client funds or other things of value, or misrepresentation; or the alleged misconduct constitutes a criminal offense under applicable law.

Paragraph (c) of § 11.26 would set forth procedures for diversion.

Paragraph (d) of § 11.26 would provide a diversion program that is designed to remedy the alleged misconduct of the practitioner. It may include participation in formal courses of education sponsored by a voluntary bar organization, a law school, or another organization; completion of an individualized program of instruction specified in the agreement or supervised by another entity; or any other arrangement agreed to by the parties which is designed to improve the ability of the practitioner or other individual to practice in accordance with the Rules of Professional Conduct.

Paragraph (e) of § 11.26 would close an investigation if the practitioner completes the diversion program. If the practitioner does not successfully complete the diversion program, the OED Director would be able to take such other action as is authorized and prescribed under section 11.32.

Section 11.27 would provide for excluding a practitioner on consent. This would be the sole manner for settling any disciplinary matter.

Paragraph (a) of § 11.27 would provide that a practitioner under investigation or the subject of a pending proceeding may consent to exclusion, but only by delivering to the OED Director an affidavit declaring the practitioner's consent to exclusion. The affidavit would state, *inter alia*, that the consent is freely and voluntarily rendered, that the practitioner is aware that there is currently pending an investigation into, or a proceeding involving, allegations of misconduct, the nature of which shall be specifically set forth in the affidavit; that the practitioner acknowledges that the material facts upon which the allegations of misconduct are predicated are true; and that the practitioner submits the consent because the practitioner knows that if disciplinary proceedings based on the alleged misconduct were brought, the practitioner could not successfully defend against them.

Paragraph (b) of § 11.27 would provide that the affidavit and any related papers are submitted to the USPTO Director for review and approval. The USPTO Director would enter an order excluding the practitioner on consent.

Paragraph (c) of § 11.27 would provide for informing the hearing officer of receipt of the required affidavit, and for transfer of the disciplinary proceeding to the USPTO Director.

Paragraph (d) of § 11.27 would proscribe a practitioner excluded by consent from petitioning for reinstatement for five years, require compliance with the provisions of § 11.58, and require reinstatement be sought in accordance with § 11.60.

Section 11.28 would provide procedures for addressing four broad groups of practitioners. The first are those judicially declared to be "mentally incompetent" or "involuntarily committed to a mental hospital." The second are disabled practitioners who are mentally or physically infirm. The third are practitioners addicted to any chemical or having a psychological dependency upon intoxicants or drugs. The fourth are incapacitated practitioners who suffer from a disability or addiction of such nature as to cause the practitioner to be unfit to be entrusted with professional matters.

Definitions of "mentally incompetent," "involuntarily committed to a mental hospital," "disability," "addiction," "incapacitated," "significant evidence of rehabilitation," and "disability matter" would be found in § 11.1.

Paragraph (a) of § 11.28 would set forth the scope and purpose of disability proceedings. Such proceedings would determine whether a practitioner has been judicially declared to be mentally incompetent or involuntarily committed to a mental hospital as an inpatient; whether the hearing officer should apply to a court for an order requiring a practitioner to submit to an examination by qualified medical experts regarding an alleged disability or addiction; whether a practitioner is incapacitated from continuing to practice before the Office by reason of disability or addiction; whether the OED Director should hold in abeyance a disciplinary investigation, or a hearing officer should hold in abeyance a disciplinary proceeding, because of a practitioner's alleged disability or addiction; whether a practitioner (having previously been suspended solely on the basis of a judicial order declaring the practitioner to be mentally incompetent) has subsequently been judicially declared to be competent and is therefore entitled to have the prior suspension terminated; whether a practitioner (having previously been suspended solely on the basis of an involuntary commitment to a mental hospital as an inpatient) has subsequently been discharged from inpatient status and is therefore entitled to have the prior order of suspension terminated; and whether a practitioner (having previously acknowledged or having been found by the hearing officer or USPTO Director to have suffered from a prior disability or addiction sufficient to warrant suspension (whether or not any suspension has yet occurred)), has recovered to the extent, and for the period of time, sufficient to justify the conclusion that the practitioner is fit to resume or continue the practice before the Office and/or is fit to defend the alleged charges against the practitioner in a disciplinary investigation or disciplinary proceeding that has been held in abeyance pending such recovery.

Paragraph (b) of § 11.28 would provide that the hearing officer may authorize the OED Director to apply to a court of competent jurisdiction for an order appointing counsel to represent the practitioner whose disability or addiction is under consideration if it appears to the hearing officer's satisfaction, based on the practitioner's motion or notice of the OED Director, that otherwise the practitioner will appear *pro se* and may therefore be without adequate representation.

Paragraph (e) of § 11.28 would provide that all proceedings addressing disability matters before the hearing officer be initiated by motion. The motion would contain a brief statement of all material facts, a proposed petition and/or recommendation to be filed with the USPTO Director if the movant's request is granted by the hearing officer, and affidavits, medical reports, official records, or other documents setting forth or establishing any of the material facts on which the movant is relying. The non-moving party's reply would set forth all objections, an admission, denial or lack of knowledge with respect to each of the material facts in the movant's papers, and affidavits, medical reports, official records, or other documents setting forth facts on which the non-moving party intends to rely for purposes of disputing or denying any material fact set forth in the movant's papers.

Paragraph (d) of § 11.28 would provide a procedure addressing a practitioner judicially declared to be mentally incompetent or involuntarily committed to a mental hospital as an inpatient. The procedure would include action by the OED Director (paragraph (1)).

Paragraph (e) of § 11.28 would provide a procedure to address circumstances in which a practitioner is incapacitated from continuing to practice before the Office because of disability or addiction, but is nonetheless likely to offer or attempt to perform legal services while so incapacitated. The procedure would include action by the OED Director (paragraph (1)), and the required evidence (paragraph (2)).

Paragraph (f) of § 11.28 would locate in one paragraph the provision for further proceedings for paragraphs (d) and (e). The procedure would include action by the Committee on Discipline Panel (paragraph (1)), action by OED Director (paragraph (2)), response by Practitioner (paragraph (3)), initial decision by the hearing officer (paragraph (4)), appeal to the USPTO Director (paragraph (5)), and action by USPTO Director (paragraph (6)).

Paragraph (g) of § 11.28 would provide a procedure for the circumstance in which a practitioner files a motion requesting the hearing officer to enter an order holding a disciplinary proceeding in abeyance based on the contention that the practitioner is suffering from a disability or addiction that makes it impossible for the practitioner to adequately defend the charges in the disciplinary proceeding. The procedure would include the practitioner's motion (paragraph (1)), and disposition of the practitioner's motion (paragraph (2)).

Paragraph (h) of § 11.28 would provide a procedure for deciding allegations that a practitioner has recovered from a prior disability. This paragraph would apply to proceedings for reactivation as well as for resumption of disciplinary matters held in abeyance. Paragraphs (2) and (3) would pertain to reactivation, whereas paragraph (4) would apply to resumption of disciplinary proceedings held in abeyance. The regulation would limit an incapacitated practitioner suspended under this section to applying for reinstatement once a year, unless the USPTO Director orders shorter intervals. The practitioner may be required to undergo examination by a qualified medical expert, selected by the OED Director, at the practitioner's expense. The practitioner also may be required to establish his or her competence and learning in the law.

Paragraph (i) of § 11.28 would provide that a hearing officer may order resumption of a disciplinary proceeding against a practitioner upon determining that the practitioner is not incapacitated from defending himself or herself, or not incapacitated from practicing before the Office.

Section 11.32, like current § 10.132, would provide a procedure for initiating a disciplinary proceeding and for referring the proceeding to a hearing officer. Under paragraph (2) of § 11.32, when the OED Director is of the opinion that there is probable cause to believe that an imperative rule of the USPTO Rules of Professional Conduct has been violated, the OED Director would determine whether a practitioner should be given notice under 5 U.S.C. 558(c). Section 558(c) provides, in part, "Except in cases of willfulness or those in which public health, interest, or safety requires otherwise, the withdrawal, suspension, revocation, or annulment of a license is lawful only if, before the institution of agency proceedings therefor, the licensee has been given (1) notice by the agency in writing of the facts or conduct which may warrant the action; and (2) opportunity to demonstrate or achieve compliance with all lawful requirements." The provisions of 5 U.S.C. 558(c) would apply to a registered patent practitioner who is investigated for possible misconduct occurring in connection with either a patent or a trademark matter. However, the provisions of 5 U.S.C. 558(c) do not apply to disciplinary proceedings in the Office involving practitioners who are not registered inasmuch as the Office does not issue a license to such practitioners. Nevertheless, OED customarily provides unregistered practitioners with the opportunity to demonstrate or achieve compliance with all lawful requirements. Where a practitioner willfully violates an imperative rule of the USPTO Rules of Professional Conduct, notice and opportunity to demonstrate compliance would not be required. In certain cases, the public interest may require suspension of an incompetent practitioner or a practitioner who has been found guilty of a crime and committed to the custody of the Attorney General or has otherwise been incarcerated.

After giving notice under 5 U.S.C. 558(c), or if no notice is needed, the OED Director would call a meeting of a panel of the Committee on Discipline. The Committee panel consisting of three USPTO employees, would determine by a majority vote whether there is probable cause to believe that a practitioner has violated an Office Rule of Professional Conduct. If the Committee determines that a violation has occurred, the OED Director would institute a disciplinary proceeding by filing a "complaint" under § 11.34. Upon the filing of a complaint, an attorney under the Office of General Counsel designated to represent the OED Director would prosecute the disciplinary proceeding on behalf of the OED Director. Upon the filing of the complaint, the disciplinary proceedings will be referred to a hearing officer.

A hearing officer would be used in disciplinary proceedings brought under 35 U.S.C. 32. The hearing officer may be an employee of the Office appointed by the USPTO Director, or an Administrative Law Judge (ALJ). The use of a hearing officer is not required to suspend or exclude a practitioner in trademark or other non-patent matters. *See Herman* v. *Dulles*, 205 F.2d 715 (D.C. Cir. 1958). Nevertheless, a hearing officer is qualified to handle disciplinary proceedings. Accordingly, as a matter of policy the Office is and will continue to use ALJ's, and take the opportunity to use Office employees as hearing officers.

Section 11.34, like current § 10.134, would set out the requirements of a complaint. A complaint would be deemed sufficient if it fairly informs the respondent of any violation of an imperative rule of the USPTO Rules of Professional Conduct which form the basis of the disciplinary proceeding so that the respondent is able to answer. *See In re Ruffalo*, 390 U.S. 540 (1968).

Section 11.35, like current § 10.135, would provide alternative methods for serving a complaint. Service of complaints by certified or registered mail is not always available, because receipts are returned signed by individuals other than the respondent. Moreover, the Office may have to resort to proving who signed a particular receipt. Accordingly, § 11.35 provides that service may be accomplished by handing the complaint to the respondent. When service is by hand delivery, the party serving the respondent would file an affidavit with the OED Director. An alternative method for serving the complaint is to mail the complaint first-class mail or "Express Mail" to the last known address of the respondent. Although the proposed rule being considered does not so specify, under this rule the OED Director would probably attempt to contact the respondent shortly after mailing to determine whether the complaint had been received. A third method of service would be any method mutually agreeable to the OED Director and a respondent.

Paragraph (b) of § 11.35 would provide that if a complaint is returned by the Postal Service, a second complaint would be mailed. If the second complaint is returned, the respondent would be served by appropriate notice published in the Official Gazette for two consecutive weeks. Any time for answering would run from the second publication of the notice.

Section 11.36 would continue, in paragraphs (a) through (e), to provide the same procedure as in current § 10.136 for answering a complaint. For instance, under paragraph (a), an answer would be due within thirty days unless extended for up to no more than thirty additional days by the hearing officer. Paragraph (f) would provide procedures for giving notice of intent to raise an alleged disability in mitigation of the sanction that may be imposed. The regulation also would provide for appointment of monitor(s), and for suspension of respondent if the monitor reports violation of any terms or conditions under which the respondent continued to practice.

Section 11.37, like current § 10.137, would provide that false statements in an answer could be made the basis of supplemental charges.

Section 11.38, like current § 10.138, would provide that on filing of an answer, a disciplinary proceeding would become a contested case within the meaning of 35 U.S.C. 24. Evidence obtained by a subpoena issued under 35 U.S.C. 24 would not be admissible in evidence or considered unless leave to proceed under 35 U.S.C. 24 is first obtained from the hearing officer. Ordinarily, a subpoena under 35 U.S.C. 24 is needed when a witness will not voluntarily appear. Often, subpoenas are issued to be sure that a witness appears—particularly if both counsel and the hearing officer have to travel to hear the testimony of a witness. Approval by the hearing officer before a subpoena is issued is necessary. Initially, the hearing officer can determine whether the evidence is relevant and/or whether a third party should be subjected to the inconvenience of a subpoena. In this respect, if the hearing officer does not believe any proffered evidence is admissible, the hearing officer may refuse to permit any party to proceed under 35 U.S.C. 24. If a party nevertheless caused a subpoena to issue, a motion to quash the subpoena would lie in the District Court, which issued the subpoena. Moreover, evidence obtained by subpoena without leave of the hearing officer would not be admitted or considered in the disciplinary proceeding. The proposed rule would adopt the policy of *Sheehan* v. *Doyle*, 513 F.2d 895, 898, 185 USPQ 489, 492 (1st Cir.), *cert. denied*, 423 U.S. 874 (1975), and *Sheehan* v. *Doyle*, 529 F.2d 38, 40, 188 USPQ 545, 546 (1st Cir.), *cert. denied*, 429 U.S. 879 (1976), *rehearing denied*, 429 U.S. 987 (1976), while rejecting the policy announced in *Brown* v. *Braddick*, 595 F.2d 961, 967, 203 USPQ 95, 101–102 (5th Cir. 1979).

Section 11.39, like current § 10.139, would provide for an ALJ to conduct disciplinary proceedings. Additionally, a hearing officer appointed under 35 U.S.C. 32 also would be able to conduct the proceedings. Paragraph (b) of § 11.39 would set out the authority of the hearing officer.

Paragraph (2) of § 11.39(c) would provide for the hearing officer's ruling on motions. *See also* § 11.43. It should be noted that, under § 11.42(e), a hearing officer could require papers to be served by "Express Mail."

Paragraph (4) of § 11.39(c) would require the hearing officer to authorize the taking of depositions in lieu of personal appearance at a hearing. The hearing officer would have discretion to authorize the taking of depositions. If demeanor is an issue for a particular witness, the hearing officer could exercise discretion and deny a request to take a deposition in lieu of appearance. When the hearing officer would authorize a deposition, notice and taking of the deposition would be governed by § 11.51(a).

Paragraph (8) of § 11.39(c) would provide for the hearing officer adopting procedures for the orderly disposition of disciplinary proceedings. For example, the hearing officer could require the parties to file not only a pre-hearing exchange setting out the names of witnesses to be called, a summary of their expected testimony, and copies of exhibits to be used in their respective cases-in-chief; but also a pre-hearing brief discussing any disputed legal and factual issues.

Paragraph (d) of § 11.39 would provide for the hearing officer exercising such control over the disciplinary proceeding as to normally issue an initial decision within nine months from the filing of the complaint. The hearing officer, however, could issue an initial decision after nine months if in his or her opinion there exists unusual circumstances that preclude issuance of the initial decision within the nine-month period. The purpose of this provision would be to put parties on notice that the hearing officer has authority to complete his or her work within nine months, and that parties should plan to meet any time schedules set by the hearing officer. This paragraph would be designed to minimize delays. It is expected that the hearing officer would, as in the past, consult with the parties in setting times, and the nine-month provision will not set an undue hardship on either party.

Paragraphs (e) and (f) of § 11.39 would preclude interlocutory appeal by the OED Director or respondent from an order of the hearing officer except under limited circumstances. Under paragraph (d), the hearing officer could permit interlocutory review of his or her order when the interlocutory order involves a controlling question of procedure or law as to which there is a substantial ground for a difference of opinion and an immediate decision by the USPTO Director may materially advance the ultimate termination of the disciplinary proceeding or in an extraordinary situation where justice requires review. The standard would be the same as that of 28 U.S.C. 1292(b). Proceedings before the hearing officer would not be stayed for an interlocutory appeal unless the hearing officer or USPTO Director grants a stay. Under this section, stays would be granted only in the most compelling circumstances. The parties filing appeals or requests for review of interlocutory orders would not render the hearing officer ineffective.

Section 11.40, like current § 10.140, would provide for representation of respondent and the OED Director.

Section 11.41, like current § 10.141, would provide for the filing of papers. Under paragraph (a), the certificate of mailing practice under 37 CFR 1.8 and 1.10 is not applicable in disciplinary proceedings. Paragraph (b) would provide that papers filed after the

complaint and prior to entry of an initial decision would be filed with the hearing officer. The hearing officer would designate the address to which he or she would want papers mailed. The hearing officer, however, could require that papers be hand-delivered to his or her office. All papers filed after the initial decision would be filed with the OED Director, who would transmit to the USPTO Director any paper requiring action by the USPTO Director.

Section 11.42, like current § 10.142, would provide for the method of serving papers in disciplinary proceedings.

Section 11.43, like current § 10.143, would provide for filing of motions. No motion could be filed unless supported by a written statement that the moving party conferred with the opposing party for the purpose of resolving the issues raised by the motion and that agreement has not been reached. If the parties resolve the issue raised in the motion prior to a decision on the motion by the hearing officer, the parties would be required to notify the hearing officer.

Section 11.44, like current § 10.144, would provide for hearings before the hearing officer. Hearings would be transcribed and a copy of the transcript would be provided to the OED Director and the respondent at the expense of the Office. If the respondent fails to appear at the hearing, the hearing officer may proceed with the hearing in the absence of the respondent. Under paragraph (c), a hearing normally would not be open to the public. The need for closed hearings in matters involving patent applications is occasioned in part by 35 U.S.C. 122. Apart from the Office obligation to keep information concerning patent applications confidential, until a practitioner is disciplined, it is believed that opening hearings to the public would constitute a clearly unwarranted invasion of privacy. The closure of the hearing, however, would not preclude the OED Director and respondent from approaching witnesses and providing those witnesses with sufficient information to determine whether they can give relevant information.

Section 11.45, like current § 10.145, would provide a procedure for handling cases where there is variance between the allegations and in pleading and evidence. Any party would be given reasonable opportunity to meet any allegations in an amended complaint or answer. *See In re Ruffalo*, 390 U.S. 544 (1968). The section is modified to provide that the matter need not be referred back to the Committee on Discipline to amend the complaint.

Section 11.49, like current § 10.149, would provide that the OED Director would have the burden of proving a violation of the imperative USPTO Rules of Professional Conduct by clear and convincing evidence. The Respondent would have the burden of proving any affirmative defense by clear and convincing evidence.

It is reported that the USPTO is among a minority of agencies that apply the clear and convincing standard in their disciplinary proceedings. Agencies are not required to apply that standard to their disciplinary proceedings under the Administrative Procedure Act. *See Steadman* v. *SEC*, 450 U.S. 91 (1981); and *Checkosky* v. *SEC*, 23 F.3d 452, 475 (D.C. Cir. 1994). *See also* Rules Governing Misconduct by Attorneys or Party Representative, Final Rule, 61 Fed. Register 65323, 65328–29 (Dec 12, 1996). Comments are invited whether the USPTO should continue to use the "clear and convincing" standard, or adopt the preponderance of evidence standard established by the Administrative Procedure Act.

Section 11.50, like current § 10.150, would provide rules governing evidence. Under paragraph (a) of § 11.50, the rules of evidence prevailing in courts of law and equity would not be controlling. This provision is based on 5 U.S.C. 556(d), which provides, in part, that "[a]ny oral or documentary evidence may be received, but the agency as a matter of policy shall provide for the exclusion of irrelevant, immaterial, or unduly repetitious evidence." Thus, evidence in a disciplinary proceeding is not controlled by the Federal Rules of Evidence. *See Klinestiver* v. *Drug Enforcement Administration*, 606 F.2d 1128, 1130 (D.C. Cir. 1979). While most evidence admissible under the Federal Rules of Evidence would be admissible in a disciplinary proceeding, there is evidence that is not admissible under the Federal Rules of Evidence, but which may be admissible in a disciplinary proceeding. Paragraph (b) of § 11.50 would provide for admission into evidence of depositions taken under § 11.51. Any deposition under § 11.51(a) would have prior approval of the hearing officer. A deposition under § 11.51(b) would not have prior approval, but may or may not be admissible. Admissibility of the latter deposition is within the discretion of the hearing officer. Under paragraph (c) of § 11.50, Office documents, records, and papers would not have to be certified to be admissible. Under paragraph (e) of § 11.50, objections to evidence would be in short form, all objections and rulings would be part of the record, and no exception to the ruling would be necessary to preserve the rights of the parties.

Section 11.51, like current § 10.151, would provide for depositions. Under paragraph (a) of § 11.51, either the OED Director or the respondent may move for leave to take a deposition of a witness in lieu of personal appearance of the witness before the hearing officer. The hearing officer is authorized to grant leave to take the deposition upon a showing of good cause. The taking of depositions under paragraph (a) would not be for the purpose of discovery. A deposition would be taken only when it is not possible or desirable for the hearing officer to hear the witness in person. Under paragraph (b) of § 11.51, the OED Director and the respondent could agree to take a deposition. Often depositions are desirable during settlement. The testimony of a witness may be "locked-in" through a deposition. The Office has settled several disciplinary matters in the past. However, under paragraph (b) of § 11.51, the parties could not take depositions for use at a hearing without prior approval of the hearing officer. This provision is necessary for the hearing officer to maintain control over the proceeding.

Section 11.52, like current § 10.152, would provide for limited discovery. There are cases holding that discovery is not necessary in disciplinary proceedings. *See In re Murray*, 362 N.E.2d 128 (Ind. 1977); and *In re Wireman*, 367 N.E.2d 1368 (Ind. 1977). However, the USPTO proposes to limit some discovery while seeking to avoid delays frequently experienced in the discovery permitted by the Federal Rules of Civil Procedure. Under § 11.52, the hearing officer could require parties to file and serve, prior to any hearing, a pre-hearing statement listing all proposed exhibits to be used in connection with the party's case-in-chief, a list of proposed witnesses, the identity of any Government employee who investigated the case, and copies of memoranda reflecting respondent's own statements. This provision is patterned after *Silverman* v. *Commodities Futures Trading Commission*, 549 F.2d 28 (7th Cir. 1977). The hearing officer could determine when discovery authorized by paragraph (a) of § 11.52 should be made.

Paragraphs (a) and (b) of § 11.52 would limit discovery to exhibits that a party intends to use as part of his or her case-in-chief. Exhibits not used in a party's case-in-chief, but which might be used to impeach or cross-examine the other party's witnesses, would not have to be produced. If a document were to be used both in a case-in-chief and to impeach, it would have to be produced.

Paragraph (4) of § 11.52(e) would provide for identifying any Government witness who investigated the matter. Respondent could then call the Government witness. Paragraph (5) of § 11.52 would provide for producing copies of any statement made by the respondent.

Section 11.53, like current § 10.153, would afford the parties a reasonable opportunity to submit proposed findings and conclusions, and a post-hearing memorandum. *See* 5 U.S.C. 557(c).

Section 11.54, like current § 10.154, would provide for the hearing officer to file an "initial decision." It would be expected that the hearing officer would make appropriate reference to the administrative record in explaining an initial decision. *See, e.g., Food Marketing Institute* v. *Interstate Commerce Commission*, 587 F.2d 1285, 1292, n.20 (D.C. Cir. 1978). In the absence of an appeal to the USPTO Director under § 11.55, the decision of the hearing officer would become the final decision in the disciplinary proceeding. *See* 5 U.S.C. 557(b).

Paragraph (b) of 11.54 would require the hearing officer to explain the reason(s) for any penalty. Four factors would guide the hearing officer and the USPTO Director in setting and approving penalties. The factors are the public interest, the seriousness of the violation of the imperative USPTO Rules of Professional Conduct, the deterrent effects deemed necessary, and the integrity of the bar. These factors are derived from numerous cases, including *Silverman* v. *Commodities Futures Trading Commission*, 562 F.2d 432, 439 (7th Cir. 1977); and *In re Merritt*, 363 N.E.2d 961, 971 (Ind. 1977). *See also Florida Bar* v. *Murrell*, 74 So.2d 221 (Fla. 1954). Under the proposed rules, a sanction would be a matter within the discretion of the hearing officer, with ultimate discretion in the USPTO Director. The discipline in each disciplinary case would be tailored for the individual case. *See In re Wines*, 660 P.2d 454 (Ariz. 1983). Manifestly, absolute uniformity or perfection would not be expected. *Id.* Likewise, relitigation of penalties imposed in prior cases would not be permitted. *Id.*

Section 11.55, like current § 10.155, would provide for an appeal from an initial decision of the hearing officer to the USPTO Director. Under paragraph (a) of § 11.55, any appeal would have to be taken within thirty days after the initial decision of the hearing officer. A cross-appeal would have to be filed fourteen days after the date of service of the appeal or thirty days after the initial decision, whichever is later. Under paragraph (c) of § 11.55, the USPTO Director may order reopening of a disciplinary proceeding in accordance with the principles that govern the granting of new trials based on newly discovered evidence that could not have been discovered by due diligence. Under paragraph (d) of § 11.55, if an appeal is not taken, the initial decision of the hearing officer would become the decision of the USPTO Director. *See* § 11.54(a).

Section 11.56, like current § 10.156, would provide for a decision by the USPTO Director. The USPTO Director could affirm, reverse, or modify an initial decision of a hearing officer, or remand the proceeding to the hearing officer for such further proceedings as the USPTO Director may deem appropriate. Under paragraph (c) of § 11.56, a respondent could make a single request for reconsideration or modification.

Section 11.57, like current § 10.157, would set out how judicial review could be obtained from a final decision of the USPTO Director. Judicial review must occur in the United States District Court for the District of Columbia in accordance with 35 U.S.C. 32, and Local Rule LCvR 83.7 of the United States District Court for the District of Columbia.

Section 11.58, like current § 11.158, would set out conditions imposed on a practitioner suspended or excluded from the practice of law before the Office. Paragraph (a) of § 11.58 would make clear that a practitioner suspended or excluded under § 11.56 will not be automatically reinstated. For example, a suspended or excluded practitioner would be required, *inter alia*, to comply with the provisions of §§ 11.12 and 11.60 to be reinstated.

Paragraph (b) of § 11.58 sets out what a suspended or excluded practitioner would be required to do. Paragraph (1) of § 11.58(b) would require the practitioner take a number of actions within twenty days after the date of entry of the order of suspension or exclusion. The actions include filing notices of withdrawal in pending patent and trademark applications, reexamination and interference proceedings, and every other matter pending before the Office within twenty days after the entry of the order. The practitioner would be required to notify affiliated bars, and all clients having business before the Office, of the discipline imposed and inability to act; notify practitioners for all opposing parties having business before the Office; deliver to all clients having business before the Office any papers or other property to which the clients are entitled; and refund any part of any fees paid in advance and unearned. A practitioner also would be required to remove from any telephone, legal, or other directory any advertisement, statement, or representation which would reasonably suggest that the practitioner is authorized to or does practice before the Office.

Paragraph (2) of § 11.58(b) would require the practitioner within 30 days after entry of the order of exclusion or suspension to file with the OED Director an affidavit certifying that the practitioner has fully complied with the provisions of the order, and with the Rules of Professional Conduct. Appended to the affidavit would be documents showing compliance with the suspension or exclusion order. The documents would include a copy of each form of notice, the names and addressees of the clients, practitioners, courts, and agencies to which notices were sent, and all return receipts or returned mail received up to the date of the affidavit. Also appended would be a schedule of all accounts where the practitioner holds or held as of the entry date of the order any client, trust, or fiduciary funds regarding practice before the Office, proof of the proper distribution of the client, trust and fiduciary funds; a list of all jurisdictions to which the practitioner is admitted to practice, and the steps taken to remove any advertisement or representation suggesting that the practitioner is authorized to or does practice before the Office.

Paragraph (c) of § 11.58 would require that an order of exclusion or suspension be effective immediately after entry except as provided in §§ 11.24, 11.25, and 11.28, where the order would be effective immediately. The excluded or suspended practitioner, after entry of the order, would not accept any new retainer regarding immediate, pending, or prospective business before the Office, or engage as a practitioner for another in any new case or legal matter regarding practice before the Office. However, the practitioner would be granted limited recognition for thirty days to conclude other work on behalf of a client on any matters that were pending before the Office on the date of entry. If such work cannot be concluded, the practitioner would have to so advise the client so that the client could make other arrangements.

Paragraph (d) of § 11.58 would provide for an excluded or suspended practitioner to keep and maintain records of the various steps taken under this section, so that in any subsequent

proceeding, proof of compliance with this section and with the exclusion or suspension order will be available. Proof of compliance will be required as a condition precedent to reinstatement. These provisions were derived from District of Columbia Appellate Rule XI, section 14.

Paragraph (e) of § 11.58, like § 10.158(c), would provide conditions under which a suspended or excluded practitioner could aid another practitioner in the practice of law before the Office. These provisions were derived from the same cases considered when current § 10.158(c) was proposed, including *In re Christianson*, 215 N.W. 2d 920 (N.D. 1974); *In re Hawkins*, 503 P.2d 95 (Wash. 1972); *Florida Bar* v. *Thomson*, 354 So.2d 3000 (Fla. 1975); *In re Kraus*, 670 P.2d 1012 (Ore. 1983); *In re Easler*, 272 S.E.2d 32 (S.C. 1980); *Crawford* v. *State Bar of California*, 7 Cal. Rptr. 746 (Cal. 1960); and *Ohio State Bar Ass'n* v. *Hart*, 375 N.E.2d 1246 (Ohio 1978). Like a suspended or disbarred attorney, who "is not the same as a layman." *In re Christianson*, 215 N.W.2d at 925, the same would obtain for a practitioner suspended or excluded from practice before the Office. Thus, while a suspended or excluded practitioner would be permitted to be employed by a practitioner, the suspended or excluded practitioner would have to be a salaried employee of the practitioner for whom he or she works and could not share profits from practice before the Office. A suspended or excluded practitioner could not communicate directly with clients, render legal advice, or meet with witnesses regarding prospective or immediate business before the Office. A suspended or excluded practitioner could research the law, write patent or trademark applications (provided he or she did not interview clients or witnesses, the practitioner reviewed the application, and the practitioner signed the papers filed in the Office), or conduct patent or trademark searches. The provisions of § 11.58 are considered necessary if suspension or exclusion is to have any significance.

Paragraph (f) of § 11.58, like current § 10.158(d), would proscribe reinstatement of a suspended or excluded practitioner who has acted as paralegal or performed other services assisting another practitioner before the Office, unless an affidavit is filed explaining the nature of all paralegal and other services performed, and showing that the suspended or excluded practitioner complied with the provisions of this section and the imperative USPTO Rules of Professional Conduct.

Comment is invited whether the USPTO should delete the provisions of § 10.58(c) and (d), and not adopt proposed paragraphs (e) and (f) of § 11.58. Permitting the suspended or excluded practitioner to aid another practitioner places at least some suspended or excluded practitioners in conflict with state laws or court orders. For example, a number of states' disciplinary jurisdictions prohibit suspended or excluded attorneys from acting as paralegals. Also, permitting a suspended or excluded practitioner to aid another practitioner provides the former with an opportunity to continue serving the same clients from whose cases the practitioner was required to withdraw. This can be not only confusing for the clients, but also provides the suspended or excluded practitioner with an opportunity to maintain some appearance of a continued practice. Further, the USPTO is and will continue to reciprocally discipline attorneys suspended or disbarred by state disciplinary authorities. Permitting the practitioner reciprocally disciplined by the USPTO to engage in conduct proscribed by state laws or court orders, such as aiding a practitioner by preparing patent or trademark applications, leads to conflicting circumstances. The same conflicts can arise if a state disciplines an attorney following discipline imposed by the USPTO. Accordingly, the USPTO wishes to consider comments favoring or disagreeing with such a change to the current practice.

Section 11.59, like current § 10.159, would provide for notice of suspension or exclusion. Under paragraph (a) of § 11.59, upon issuance of an unfavorable final decision, the OED Director would give appropriate notice to employees of the Office, United States courts, the National Discipline Data Bank maintained by the American Bar Association Standing Committee on Professional Discipline and the appropriate authorities of any State in which a suspended or excluded practitioner is known to be a member of the bar. If a practitioner is registered under § 11.6(c), the OED Director would also notify the patent office of the country where the practitioner resides. Under paragraph (b) of § 11.59, the OED Director would publish an appropriate notice in the Official Gazette and the Office Web site. Under paragraph (c) of § 11.59, the OED Director would maintain records that would be available to the public concerning disciplinary proceedings. The files of most disciplinary proceedings resulting in imposition of a public reprimand, suspension, or exclusion are presently available to the public for inspection in the Office of Enrollment and Discipline. Public availability would continue under the proposed rules being considered subject to the removal of any information required by law to be maintained in confidence or secrecy. Under paragraph (e) of § 11.59, the order of exclusion when a practitioner is excluded on consent would be accessible, but the affidavit under paragraph (a) of § 11.27 would not be accessible except upon order of the USPTO Director or on consent of the practitioner.

Section 11.60, like current § 10.160, would provide for a petition for reinstatement. Under paragraph (a) of § 11.60 an excluded or suspended practitioner would not be permitted to resume practice of patent, trademark, or other non-patent law before the Office until reinstated by order of the OED Director or the USPTO Director. An excluded practitioner not otherwise ineligible for reinstatement may not apply for reinstatement until the expiration of at least five years from the effective date of the exclusion. Under paragraph (b) of § 11.60, a practitioner suspended indefinitely because of disability may seek reinstatement, but reinstatement would not be ordered except on a showing by clear and convincing evidence that the disability has ended, that the practitioner has complied with § 11.12, and that the practitioner is fit to resume the practice of law.

Paragraph (c) of § 11.60, like current §§ 10.160(a) and (d), would proscribe a suspended practitioner from being eligible for reinstatement until a period of the time equal to the period of suspension elapses following compliance with § 11.58, and an excluded practitioner would not be eligible for reinstatement until five years elapses following compliance with § 11.58.

Paragraph (d) of § 11.60 would require a petition for reinstatement to include proof of rehabilitation. If the practitioner is not eligible for reinstatement apart from rehabilitation, or the petition is insufficient or defective on its face, the OED Director may dismiss the petition. Otherwise the OED Director would consider a petitioner's attempted showing of rehabilitation. The practitioner would have the burden of proof by clear and convincing evidence. The proof would establish that the practitioner has the moral character qualifications, competency, and learning in law required under § 11.7 for readmission, and that resumption of practice before the Office would not be detrimental to the administration of justice, or subversive to the public interest.

Paragraph (e) of § 11.60 would provide that if the petitioner is found fit to resume practice before the Office, the OED Director will order reinstatement, which may be conditioned upon the making of partial or complete restitution to persons harmed by the misconduct that led to the suspension or exclusion, upon the payment of all or part of the costs of the disciplinary and reinstatement proceedings, or any combination thereof.

Paragraph (f) of § 11.60 would provide that if the petitioner is unfit to resume practice before the Office, the petitioner is provided an opportunity to show cause in writing why the petition should not be denied. If unpersuaded by the showing, the petition would be denied. The suspended or excluded practitioner may be required to take and pass an examination under § 11.7(b), ethics courses, and/or the Multistate Professional Responsibility Examination.

Paragraph (g) of § 11.60 would proscribe filing a further petition for reinstatement if the petition is denied until the expiration of at least one year following the denial unless the order of denial provides otherwise.

Paragraph (h) of § 11.60, like § 10.160(e), would open to the public proceedings on any petition for reinstatement.

Section 11.61 would have savings clauses.

Section 11.62 would express a policy that if a practitioner dies, disappears, or is suspended for incapacity or disability, and there is no partner, associate, or other responsible practitioner capable of conducting the practitioner's affairs, a court of competent jurisdiction may appoint a registered practitioner to make appropriate disposition of any patent application files. All other matters would be handled in accordance with the laws of the local jurisdiction.

Rules of Professional Conduct

The following comments contain several references to invention promotion companies (invention promoters). At the outset, the Office wishes to make clear that neither the current Disciplinary Rules nor the proposed Rules of Professional Conduct prohibit a practitioner from associating with an invention promoter. Moreover, neither the current Disciplinary Rules nor the proposed Rules of Professional Conduct prevent a practitioner from having an arrangement with an invention promoter, or from providing professional services in compliance with the rules. However, practitioners having arrangements with invention promoters face the same scrutiny that attorneys having arrangements with non-lawyer parties that market legal service (marketers) have faced. The arrangements with promoters have faced intense scrutiny throughout the country by ethics committees, courts, and disciplinary authorities. Decisions and opinions in other jurisdictions hold the arrangements unethical on a variety of bases. Practitioners should carefully examine their participation in any arrangement of this sort with a promoter.

There is reasonable cause to scrutinize the arrangements with invention promoters. For more than two decades, the Federal Trade Commission (FTC) has investigated, and absent a settlement, has sought injunctive and other equitable relief against invention promoters for violations of § 5 of the Federal Trade Commission Act, 15 U.S.C. 45. The FTC has investigated whether or alleged that in one manner or another a promoter has engaged in unfair or deceptive acts or practices, in or affecting commerce, with customers who contracted with the promoter for invention development services. *See Raymond Lee Organization, Inc.*, 92 F.T.C. 489 (1978), *aff'd sub nom. Raymond Lee* v. *FTC*, 679 F.2d 905 (D.C. Cir. 1980); *FTC* v. *Invention Submission Corp.*, 1991–1 Trade Cases § 69,338, 1991 WL 47104 (D.D.C 1991); *FTC* v. *American Institute for Research and Development*, 219 B.R. 639 (D Mass. 1998), *modified sub nom. FTC* v. *American Inventors Corporation*, 1996 WL 641642 (D. Mass 1996); and *FTC* v. *National Invention Services, Inc.*, 1997 WL 718492 (D.N.J. 1997). Each promoter offered the services of a registered patent attorney. A patent attorney associated with one promoter was indicted on five counts of conspiracy to commit mail fraud and mail fraud, and a warrant for his arrest was issued in 1999 by the U.S. Postal Inspection Service. Inasmuch as equitable relief was obtained in each instance, it would be appropriate for the Rules of Professional Conduct to address the conduct that practitioners must address upon agreeing to accept referrals from promoters.

Section 11.100 would provide guidance for interpreting the Office Rules of Professional Conduct. In interpreting these Rules, the specific would control the general in the sense that any rule that specifically addresses conduct would control the disposition of matters and the outcome of such matters would not turn upon the application of a more general rule that arguably also applies to the conduct in question. In a number of instances, there are specific rules that address specific types of conduct. The rule of interpretation expressed here is meant to make it clear that the general rule does not supplant, amend, enlarge, or extend the specific rule. So, for instance, the general terms of proposed rule 11.103 are not intended to govern conflicts of interest, which are particularly discussed in proposed rules 11.107, 11.108, and 11.109. Thus, conduct that is proper under the specific conflict rules is not improper under the more general rule of proposed rule 11.103. Except where the principle of priority is applicable, however, compliance with one rule does not generally excuse compliance with other rules. Accordingly, once a practitioner has analyzed the ethical considerations under a given rule, the practitioner must generally extend the analysis to ensure compliance with all other applicable rules.

Sections 11.100 through 11.901 are proposed to establish Office Rules of Professional Conduct. Presently, practitioners representing parties in patent, trademark and other non-patent matters are required to conform to the Code of Professional Responsibility set forth in 37 CFR 10.20 through 10.112. The Office believes that it would be more desirable to bring the Office disciplinary rules into greater conformity with the Rules of Professional Conduct followed by a majority of the states. Such conformity would provide not only consistency in practicing law before the Office as well as in the states, but also a body of precedent already developed in the states having ethics opinions and disciplinary results based on the Model Rules of Professional Conduct.

The proposed Office Rules of Professional Conduct, in large part, follow the Model Rules of Professional Conduct of the American Bar Association. The concordance between the rules is based on two factors. First, many registered patent attorneys are members of bars that have adopted the Model Rules or a modified version thereof. Accordingly, they already would be subject to substantially the same Model Rules for conduct in connection with their practice. Rule 8.5. Second, adopting USPTO Rules of Professional Conduct that follow, in many respects, the Model Rules of Professional Conduct adopted in more than 40 jurisdictions, facilitates both compliance with the rules, and the ability of practitioners to move between the employment by the Office, other

Government agencies, and the private sector.

Several of the proposed Office Rules of Professional Conduct do not conform to the Model Rules of Professional Conduct of the American Bar Association. For example, the Rules of Professional Conduct of the Bar of the District of Columbia would be the source of proposed §§ 1.101(b), 11.102(f), 11.104(c), 11.105(e)(2)–(4), 11.106(a)(2)–(3), 11.106(d)–(g), 11.601, and 11.701(b)(1)+(4) and (c). The Rules of Professional Responsibility of the Virginia State Bar would be the source of proposed §§ 11.115(a), and (c) through (g). The source of the provisions in proposed § 1.806 are the Court Rules of the New York Appellate Division, Second Department. Other proposed rules, addressing relations with invention promoters, would be original. Still other proposed rules would conform to disciplinary rules previously adopted by the USPTO or other Federal agencies, such as § 11.804(h). It is necessary to diverge from the Model Rules of Professional Conduct of the American Bar Association. The Rules of Professional Conduct of the District of Columbia tend to address responsibilities of Government attorneys in greater depth than the Model Rules of Professional Conduct of the American Bar Association, particularly in connection with "revolving door" issues. This is appropriate inasmuch as numerous registered practitioners are employees of the United States Government and are admitted to practice law in the District of Columbia. Upon practicing before the Office, they are subject to the USPTO Rules of Professional Conduct adopted by the Office, as well as the Rules of Professional Conduct of the Bar of the District of Columbia. A detailed concordance between the proposed rules and the divergent sources can be found in Table 3, "Principal Source of Sections 11.100 through 11.806," *infra*. Further, unlike the Model Rules that require consent of a client following consultation, the proposed rules would require the client give informed consent in writing after full disclosure. Compare, for example, Model Rule 1.6(a) with proposed rule 11.106(a). This departure is intended to provide both the client and practitioner with certainty regarding communication, and a stronger record.

Section 11.100 would provide interpretive guidance of the proposed Rules of Professional Conduct. Some of the Rules are imperatives, cast in the terms "shall" or "shall not." These define proper conduct for purposes of professional discipline. Other Rules, generally cast in the term "may," are permissive and define areas under the Rules in which the practitioner has professional discretion. No disciplinary action should be taken when the practitioner chooses not to act, or acts, within the bounds of such discretion. Inasmuch as the Rules of Professional Conduct in many jurisdictions have the same or similar Rules, it is appropriate for the Office to adopt the same standards where such acts or conduct, in practice before the Office, would not be inconsistent with the protection of the public interest.

Other Rules define the nature of relationships between the practitioner and others. The latter Rules are partly obligatory and disciplinary, and partly constitutive and descriptive in that they define a lawyer's professional role.

Inasmuch as the rules pertain to practice before the Office, they do not address criminal or domestic relations practices addressed in the Rules of Professional Conduct adopted by the states. A practitioner engaging in criminal or domestic relations practice is subject to the state ethics rules. A practitioner disqualified from practicing elsewhere for misconduct should not be trusted or permitted to practice before the Office. Misconduct elsewhere should also be misconduct for purposes of practicing before the Office. *See* §§ 11.25 and 11.803(f)(1). Practitioners have been disciplined by the Office for conduct arising in the practice of law other than intellectual property. For example, the USPTO Director excluded an attorney after disbarment in Virginia following a criminal conviction for conduct arising from representing a client in a domestic relations matter. *See In re Hodgson*, 1023 Off. Gaz. 13 (Oct. 12, 1982).

Section 11.101 would continue the present practice of 37 CFR 10.77(a) and (b) requiring a practitioner to provide competent representation to a client. Paragraph (a) of § 11.101 would specify that such competence requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation. The Office has disciplined practitioners lacking competence. *See In re Wyden*, 973 Off. Gaz. 40 (Aug. 22 1978) (suspending agent for general incompetence in handling patent applications); and *In re Paley*, 961 Off. Gaz. 48 (Aug. 30, 1977) (suspending agent for improper handling of application).

Legal knowledge and skill. In determining whether a practitioner employs the requisite knowledge and skill in a particular matter, relevant factors include the relative complexity and specialized nature of the matter, the practitioner's general experience, the practitioner's training and experience in the field in question, the preparation and study the practitioner is able to give the matter, and whether it is feasible to refer the matter to, or associate or consult with, a practitioner of established competence in the field in question. In some instances, the required proficiency is that of a general patent practitioner. Expertise in a particular field of patent law, science, engineering, or technology may be required in some circumstances. One such circumstance would be where the practitioner, by representations made to the client, has led the client reasonably to expect a special level of expertise in the matter undertaken by the practitioner.

A practitioner need not necessarily have special legal training or prior legal experience to handle legal problems of a type with which the practitioner is unfamiliar. However, basic training in scientific and technical matters is required for registration as a patent attorney or agent to provide a client with valuable service, advice and assistance in the presentation and prosecution of their patent applications before the Office. 35 U.S.C. 2(b)(2)(D). A newly admitted practitioner can be as competent as a practitioner with long experience. Some important legal skills, such as the analysis of precedent, the evaluation of evidence, and legal drafting, are required in all legal problems. Perhaps the most fundamental legal skill consists of determining what kind of legal problems a situation may involve, a skill that necessarily transcends any particular specialized knowledge. A practitioner can provide adequate representation in a wholly novel field through necessary study. Competent representation can also be provided through the association of a practitioner of established competence in the field in question.

In an emergency a practitioner may give advice or assistance in a matter in which the practitioner does not have the skill ordinarily required where referral to or consultation or association with another practitioner would be impractical. Even in an emergency, however, assistance should be limited to that reasonably necessary in the circumstances, for ill-considered action under emergency conditions could jeopardize the client's interest.

A practitioner may accept representation where the requisite level of competence can be achieved by reasonable preparation. A registered patent agent registered after January 1, 1957, who is not an attorney is not authorized to, and cannot accept representation in trademark and other non-patent law. This applies as well to a practitioner who is appointed as counsel for an unrepresented person. *See also* § 11.602.

Thoroughness and preparation. Competent handling of a particular patent, trademark, or other non-patent matter includes inquiry into and analysis of the factual and legal elements of the problem, and use of methods and procedures meeting the standards of competent practitioners. It also includes adequate preparation, and continuing attention to the needs of the representation to assure that there is no neglect of such needs. The required attention and preparation are determined in part by what is at stake; like major litigation, complex transactions or inventions ordinarily require more elaborate treatment than matters of lesser consequence.

Maintaining competence. To maintain the requisite knowledge and skill, a practitioner should engage in such continuing study and education as may be necessary to maintain competence, taking into account that the learning acquired through a practitioner's practical experience in actual representations may reduce or eliminate the need for special continuing study or education. If a system of peer review has been established, the practitioner should consider making use of it in appropriate circumstances.

Paragraph (c) of § 11.101 would define some, but not all, acts that would constitute violations of paragraphs (a) or (b) of this section. The USPTO believes that it would be helpful to practitioners if some specific prohibitions were set out in the rules. The prohibitions set out in paragraphs (1) through (8) of § 11.101(c) represent violations that have occurred in the past or that the Office specifically seeks to prevent. The specific acts set out in paragraph (c) would not constitute a complete description of all acts in violation of paragraphs (a) or (b).

Paragraph (1) of § 11.101(c) would include as misconduct knowingly withholding from the Office information identifying a patent or patent application of another from which one or more claims have been copied. *See* §§ 1.604(b) and 1.607(c) of this subpart.

Section 11.102 would address the scope of representation. Both practitioner and client have authority and responsibility in the objectives and means of representation. The client has ultimate authority to determine the purposes to be served by legal representation, within the limits imposed by law and the practitioner's professional obligations. Within those limits, a client also has a right to consult with the practitioner about the means to be used in pursuing those objectives. At the same time, a practitioner is not required to pursue objectives or employ certain means simply because the client may wish that a practitioner do so. A clear distinction between objectives and means sometimes cannot be drawn, and in many cases the client-practitioner (including client-lawyer or client-agent) relationship partakes of a joint undertaking. In questions of means, the practitioner should assume responsibility for technical and legal tactical issues, but should defer to the client regarding such questions as the expense to be incurred and concern for third persons who might be adversely affected. Law defining a lawyer's scope of authority in litigation varies among jurisdictions.

An agreement concerning the scope of representation must accord with the Rules of Professional Conduct and other law. Thus, the client may not be asked to agree to representation so limited in scope as to violate proposed § 11.101, to surrender the client's right to terminate the practitioner's services, or the client's right to settle litigation that the practitioner might wish to continue.

Unlike Rule 1.2(a) of the Model Rules of Professional Conduct, paragraph (a) of § 11.102 would not address an attorney's duty in a criminal case to abide by the client's decision. Inasmuch as practice before the Office does not involve criminal proceedings, the portion of Model Rule 1.2(a) addressing a criminal case is not being proposed. Nevertheless, an attorney who practices both before the Office and in criminal cases would be subject to both the Office and State professional conduct rules. If, in the course of a criminal proceeding, the attorney violates the state's professional conduct rules and is disciplined by the state authorities, the attorney could be subject to discipline under the proposed rules. *See* §§ 11.24 and 11.803(f)(5).

Paragraph (e) of § 11.102 would continue a practitioner's responsibility to give an honest opinion about the actual consequences that appear likely to result from a client's conduct. The fact that a client uses advice in a course of action that is criminal or fraudulent does not, of itself, make a practitioner a party to the course of action. However, as in current § 10.85(a)(8), a practitioner may not knowingly assist a client in criminal or fraudulent conduct. There is a critical distinction between presenting an analysis of legal aspects of questionable conduct, and recommending the means by which a crime or fraud might be committed with impunity.

When the client's course of action has already begun and is continuing, the practitioner's responsibility is especially delicate. The practitioner is not permitted to reveal the client's wrongdoing, except where permitted by proposed § 11.102(g) and proposed § 11.106. Moreover, the practitioner is required to avoid furthering the purpose, for example, by suggesting how it might be concealed. A practitioner may not continue assisting a client in conduct that the practitioner originally supposes is legally proper, but then discovers is criminal or fraudulent. Withdrawal from the representation, therefore, may be required.

Where the client is a fiduciary, the practitioner may be charged with special obligations in dealings with a beneficiary.

Paragraph (e) of § 11.102 would apply whether or not the defrauded party is a party to the transaction. Hence, a practitioner should not participate in a sham transaction; for example, a transaction to effectuate fraudulent acquisition of a patent or trademark. Paragraph (e) would not preclude undertaking a defense incident to a general retainer for legal services to a lawful enterprise. The last clause of paragraph (e) recognizes that determining the validity or interpretation of a statute or regulation may require a course of action involving disobedience of the statute or regulation or of the interpretation placed upon it by governmental authorities.

In a case in which the client appears to be suffering mental disability, the practitioner's duty to abide by the client's decisions is to be guided by reference to proposed rule 11.114.

Paragraph (b) of § 11.102 would provide that representing a client does not constitute approval of the client's views or activities. By the same token, legal representation should not be denied to people, including applicants, who are unable to afford legal services, or whose cause is controversial or the subject of popular disapproval. Unlike Rule 1.2(b) of the Model Rules of Professional Conduct, proposed § 11.102(b) would not provide for practitioner's being appointed to represent any party. Inasmuch as the Office does not appoint practitioners to represent persons having business before the Office, the provision is believed to be unwarranted.

Paragraph (c) of § 11.102, would provide that the objectives or scope of services provided by the practitioner may be limited by agreement with the

client or by terms under which the practitioner's services are made available to the client. For example, a retainer may be for a specifically defined purpose, such as a utility patent application for an article of manufacture. The terms upon which representation is undertaken may exclude specific objectives or means. Such limitations may exclude objectives or means that the practitioner regards as repugnant or imprudent, or which the practitioner is not competent to handle. For example, a patent agent who is not an attorney should exclude services beyond the scope authorized by registration as a patent agent, such as preparing and prosecuting trademark and copyright registrations, patent validity or infringement opinions, or drafting or selecting contracts, including assignments. Practitioners taking referrals from invention promoters must assure that the promoter has not limited or attempted to limit by agreement with the inventor-client the scope of services the practitioner provides, and that the agreement is in compliance with § 11.504(c). *See* § 11.804(a).

Paragraph (g) of § 11.102, like current § 10.85(b)(1), would require that a practitioner reveal to the Office a fraud that the client has perpetrated on the Office after calling upon the client to rectify the same, and the client refuses or is unable to do so.

Section 11.103 would require a practitioner to act with diligence and zeal. Paragraphs (a), (b), and (c) of § 11.103 would continue the policy in current § 10.84(a).

Paragraph (a) of § 11.103 would continue to recognize that a practitioner has a duty, to both the client and to the legal system, to represent the client before the Office zealously within the bounds of the law, including the proposed Office Rules of Professional Conduct and other enforceable professional regulations. This duty requires the practitioner to pursue a matter on behalf of a client despite opposition, obstruction, or personal inconvenience to the practitioner, and to take whatever lawful and ethical measures are required to vindicate a client's cause or endeavor. A practitioner should act with commitment and dedication to the interests of the client. However, a practitioner is not bound to press for every advantage that might be realized for a client. A practitioner has professional discretion in determining the means by which a matter should be pursued. See proposed § 11.102. A practitioner's workload should be controlled so that each matter can be handled adequately.

This duty derives from the practitioner's recognition to practice in a profession that has the duty of assisting members of the public to secure and protect available legal rights and benefits. In our government of laws and not of individuals, each member of our society is entitled to have such member's conduct judged and regulated in accordance with the law; to seek any lawful objective through legally permissible means; and to present for adjudication any lawful claim, issue, or defense.

Where the bounds of law are uncertain, the action of a practitioner may depend on whether the practitioner is serving as advocate or adviser. A practitioner may serve simultaneously as both advocate and adviser, but the two roles are essentially different. In asserting a position on behalf of a client, an advocate for the most part deals with past conduct and must take the facts as the advocate finds them. By contrast, a practitioner serving as adviser primarily assists the client in determining the course of future conduct and relationships. While serving as advocate, a practitioner should resolve in favor of the client doubts as to the bounds of the law, but even when acting as an advocate, a practitioner may not institute or defend a proceeding unless the positions taken are not frivolous. *See* proposed § 11.301. In serving a client as adviser, a practitioner, in appropriate circumstances, should give a practitioner's professional opinion as to what the ultimate decisions of the Office and courts would likely be as to the applicable law.

In the exercise of professional judgment, a practitioner should always act in a manner consistent with the best interests of the client. However, when an action in the best interests of the client seems to be unjust, a practitioner may ask the client for permission to forgo such action. If the practitioner knows that the client expects assistance that is not in accord with the proposed Rules of Professional Conduct or other law, the practitioner must inform the client of the pertinent limitations on the practitioner's conduct. *See* proposed §§ 11.102(e) and (f). This is believed to be entirely consistent with *Link* v. *Wabash R.R.*, 370 U.S. 626, 633–34 (1962); *Johnson* v. *Department of the Treasury*, 721 F.2d 361 (Fed Cir. 1983). Similarly, the practitioner's obligation not to prejudice the interests of the client is subject to the duty of candor toward the tribunal under proposed § 11.303 and the duty to expedite litigation under proposed § 11.302.

The duty of a practitioner to represent the client before the Office with zeal does not militate against the concurrent obligation to treat with consideration all persons involved in the legal process and to avoid the infliction of needless harm. Thus, the practitioner's duty to pursue a client's lawful objectives zealously does not prevent the practitioner from acceding to reasonable requests of opposing counsel, *e.g.*, in an interference or reexamination, that do not prejudice the client's rights, from being punctual in fulfilling all professional commitments, from avoiding offensive tactics, or from treating all persons involved in the legal process with courtesy and consideration.

Perhaps no professional shortcoming is more widely resented by clients than procrastination. A client's interests, including patent rights, often can be adversely affected by the passage of time or the change of conditions; in extreme instances, as when a practitioner overlooks a statute of limitations under 35 U.S.C. 102(b), the client's legal position may be destroyed. Even when the client's interests are not affected in substance, however, unreasonable delay can cause a client needless anxiety and undermine confidence in the practitioner's trustworthiness. Neglect of client matters is a serious violation of the obligation of diligence.

Unless the relationship is terminated as provided in proposed § 11.116, a practitioner should carry through to conclusion all matters undertaken for a client. If a practitioner's employment is limited to a specific matter, the relationship terminates when the matter has been resolved. If a practitioner has served a client over a substantial period in a variety of matters, the client sometimes may assume that the practitioner will continue to serve on a continuing basis unless the practitioner gives notice of withdrawal. Doubt about whether a client-practitioner relationship still exists should be eliminated by the practitioner, preferably in writing, so that the client will not mistakenly suppose the practitioner is looking after the client's affairs when the practitioner has ceased to do so. For example, if a practitioner has prosecuted a patent application that has become abandoned for failure to respond to an Office action having a final rejection, but the practitioner has not been specifically instructed concerning pursuit of an appeal, the practitioner should advise the client of the possibility of appeal before relinquishing responsibility for the matter.

Paragraph (c) of § 11.103 would define some, but not all, acts that would constitute violations of paragraphs (a) or (b) of this section. The USPTO believes that it would be helpful to practitioners if some specific prohibitions were set out in the rules. The prohibitions set out in paragraphs (1) through (3) of § 11.103(c) represent violations that have occurred in the past or that the Office specifically seeks to prevent. The specific acts set out in paragraph (c) would not constitute a complete description of all acts in violation of paragraphs (a) or (b).

Section 11.103 is a rule of general applicability, and it is not meant to enlarge or restrict any specific rule. In particular, § 11.103 is not meant to govern conflicts of interest, which are addressed by proposed §§ 11.107, 11.108, and 11.109.

Section 11.104 would provide in paragraph (a) that a practitioner shall communicate with a client regarding the status of a matter, respond to a client's reasonable requests for information, sufficiently explain matters to permit the client to make informed decisions, and inform the client of settlement offers.

The client should have sufficient information to participate intelligently in decisions concerning the objectives of the representation before the Office, and the means by which they are to be pursued, to the extent the client is willing and able to do so. For example, a practitioner prosecuting an application should provide the client with facts relevant to the matter, promptly inform the client of communications received from and sent to the Office and take other reasonable steps that permit the client to make a decision regarding the course of prosecution. Thus, a registered practitioner failing to timely communicate with one or more clients could be subject to discipline under this section. *See In re Barndt*, 27 USPQ2d 1749 (Comm'r Pat. 1993); *Weiffenbach* v. *Logan*, 27 USPQ2d 1870 (Comm'r Pat. 1993), *aff'd. sub nom., Logan* v. *Comer*, No. 93–0335 (D.D.C. 1994), *aff'd. sub nom., Logan* v. *Lehman*, No. 95–1216 (Fed. Cir. 1995). A practitioner who receives from opposing counsel an offer of settlement in an interference is required to inform the client promptly of its substance. *See* proposed rule 11.101(a). Even when a client delegates authority to the practitioner, the client should be kept advised of the status of the matter.

A client is entitled to whatever information the client wishes about all aspects of the subject matter of the representation unless the client expressly consents not to have certain information passed on. The practitioner must be particularly careful to ensure that decisions of the client are made only after the client has been informed of all relevant considerations. The practitioner must initiate and maintain the consultative and decision-making process if the client does not do so, and must ensure that the ongoing process is thorough and complete.

Adequacy of communication depends in part on the kind of advice or assistance involved. The guiding principle is that the practitioner should fulfill reasonable client expectations for information consistent with (1) the duty to act in the client's best interests, and (2) the client's overall requirements and objectives as to the character of representation.

Maintenance Fees, and Section 8 and Section 15 Affidavits. Some practitioners maintain a long-term docket and periodically send communications to parties they may view as being former clients, regarding possible need for further action regarding a completed matter, such as payment of maintenance fees for patents. Whether, absent a specific agreement, the practitioners continue to have an attorney-client or agent-client relationship with the parties depends on the facts, such as the reasonable expectations or intent of the putative clients, evidence of objective facts supporting the existence of the expectation or intent, and evidence placing the practitioner on notice of the putative client's expectation or intent. A formal agreement to pay fees is not necessary. A recipient of a periodic notice, absent any other facts, may well have the subjective belief, supported by objective evidence they are receiving legal advice from the practitioner, that the practitioner and recipient continue to be in an attorney-client or agent-client relationship. A practitioner desiring to terminate an attorney-client or agent-client relationship upon completion of legal services should make the termination clear to the client, *e.g.*, by sending a termination letter to the client upon issuance of a patent or registration of a mark, and advising the recipient of the notices, and that the communication is not for the offering of advice, but as a reminder. *See* Formal Opinion No. 1996–146, Legal Ethics Committee of the Oregon State Bar. The practitioner should also withdraw from representation in accordance with 37 CFR 1.36 and proposed rule 11.116.

Responsibility to a Former Client. Even though a practitioner may have terminated any attorney-client or agent-client relationship with a client, the practitioner nevertheless would continue to have certain obligations to a former client. The proposed rules would continue the practice of placing certain obligations on the practitioner. For example, a practitioner's obligation to preserve in confidence information relating to representation of a client would continue after termination of the practitioner's employment. Section 11.106(g). Under § 11.804(i)(8), practitioners would have a duty to inform a former client or timely notify the Office of an inability to notify a former client of certain correspondence received from the Office. The obligation is necessarily imposed for the proper conduct of proceedings before the Office, such as receipt of notices regarding maintenance fees, reexamination proceedings, and institution of inter partes patent and trademark proceedings.

Practitioners not wishing to receive notices regarding maintenance fees may file a change of correspondence address under 37 CFR 1.33 without filing a request to withdraw, or provide a fee address pursuant to 37 CFR 1.363 to which maintenance fee correspondence should be sent. Since § 1.33(c) requires that all notices, official letters, and other communications for the patent owner(s) in reexamination proceedings will be directed to the attorney or agent of record in a patent file, a request for permission to withdraw under §§ 1.36 and 11.116 would have to be filed if a practitioner does not wish to receive correspondence regarding reexaminations.

Invention promoters. A Commissioner published two notices in the Official Gazette, 1086 OG 457 (December 10, 1987), and 1091 OG 26 regarding the "Responsibilities of Practitioners Representing Clients in Proceedings Before The Patent and Trademark Office" (Notices). The Notices address agency relationships between practitioners and intermediaries. For example, the Notices, *inter alia*, address the use of corporate liaisons to obtain instructions. The notices do not specifically refer to invention promoters. Nevertheless, some practitioners associated with invention promoters have relied upon the Notices to accept the invention promoter as the inventor's agent, take instructions from the agent, and conduct all communications through the agent. There are numerous ethics opinions and cases where attorneys have been warned or found to have aided the unauthorized practice of law by permitting a marketer to communicate directly with the client. For example, Formal Opinion 87, Ethics Committee of the Colorado Bar Association (1995), advises that an attorney aids the unauthorized practice of law where a non-lawyer markets a

living trust, gathers information from a consumer, forwards the information to a "factory," where the lawyer may assist in preparing and reviewing living trust documents, and the non-lawyer delivers the documents to the consumer, but the attorney has no personal contact with the consumer. An attorney was found to have aided the unauthorized practice of law to process workmen's compensation claims by permitting a disbarred attorney to obtain clients' signatures on retainer agreements, gather factual information from clients, and have the clients execute medical authorization forms, and it was inferred that the disbarred attorney was called upon to explain the retainer agreement and other legal documents. *See In re Discipio*, 645 N.E.2d 906 (Ill. 1994). *See also Wayne County Bar Ass'n.* v. *Naumoff*, 660 N.E.2d (Ohio 1996); *Comm. On Professional Ethics & Conduct* v. *Baker*, 492 N.W.2d 695 (Iowa 1992); and *In re Komar*, 532 N.E.2d 801(Ill. 1988). The situations are analogous to invention promoters entering into agreements with inventors to engage a practitioner to prepare and prosecute a patent application for the inventor's invention, the promoter gathers information from the inventor for an application, then forwards the information and drawings to the practitioner to prepare an application, and thereafter secures the inventor's signature on the application. There is no direct communication between the practitioner and inventor.

Clearly, the Office does not desire to have practitioners aiding non-lawyers and non-practitioners in the unauthorized practice of law. Section 11.505 would proscribe a practitioner from aiding in the unauthorized practice of law. Accordingly, adoption of proposed rule § 11.104(a)(1) would require a practitioner, receiving clients from an invention promoter, to communicate directly with the client, and promptly report each Office action directly to the client.

Further, the Director found that the guidance in the second of the two Notices was not "intended to significantly extend the coverage of the first Notice to practitioners using invention developers as intermediaries, and concluded that the omission of invention developers from the Notices supports the inference that invention developers were not intended to be included as permissible intermediaries. *Moatz* v. *Colitz*, 2002 WL 32056607, (Com'r. Pat. & Trademarks Dec 03, 2002). With the adoption of the proposed rules, the Notices (Official Gazette, 1086 OG 457 (December 10, 1987), and 1091 OG 26 regarding the "Responsibilities of Practitioners Representing Clients in Proceedings Before The Patent and Trademark Office") would be withdrawn and superseded by these comments.

Practitioners Must Maintain a Direct Relationship With Their Clients. Some practitioners relied upon promoters to obtain from the inventor all information used to prepare the patent application. In obtaining information for preparation of patent applications, the promoter may be a barrier to a direct relationship between the practitioner and the client-inventor. The barrier arises, for example, where the promoter instructs the inventor to communicate with the promoter and suggests that the inventor may incur additional charges if the inventor communicates directly with the practitioner. The barrier also might arise where the promoter provides the practitioner with a description of the invention that differs from or alters the inventor's description of the invention. For example, the information and drawings furnished by some promoters to the practitioner change an invention to have one or more surface indicia or elements not described by the inventor. Some unsophisticated inventors first learn of the changes when they receive their applications for review and signature. The inventors, being cautioned by a promoter that the inventors may incur additional costs by communicating with the practitioner, direct their questions to the promoter about the changes. The promoters advise the inventors that the changes were provided to improve the invention's potential to succeed in the market, and that the inventors should sign the declaration.

A promoter also can interfere with communications when the practitioner relies on the promoter to convey communications, including the collection of Office fees. For example, some promoters have delayed or failed to forward to the inventor-clients copies of Office actions the promoter receives from the practitioner, or requests for funds. As a result of the delay or lack of communication with the inventor-client, if the Office action is reported to the inventor-client, it may not be reported until after the period of response has expired. The patent application may become abandoned in these circumstances. Alternatively, a promoter may interfere with communications by instructing the inventor-clients to make their checks for filing or issue fees payable to the USPTO Director, deposit the checks in the promoter's own account, and issue their own checks that are sometimes returned to the Office unpaid. In these situations, the patent application becomes abandoned. It is problematic whether the funds delivered to the promoter may be recoverable.

A practitioner receiving referrals from a promoter may be motivated to provide the shortest and least expensive reply to an Office action. Such practitioners can receive a relatively small, set fee from the promoter for a reply to the Office action, regardless of the length or complexity needed to respond. Minimizing communication with the inventor-client reduces overhead costs, and maximizes time available to produce responses for multiples of such clients. It also can avoid providing the inventor-client with an opportunity to suggest presentation of affidavit, *e.g.*, an antedating affidavit under 37 CFR 1.131, or comparative test results under 37 CFR 1.132. Accordingly, the practitioner may not report an Office action to the inventor-client until after a response has been prepared and filed. This deprives the unsophisticated inventor-client of the opportunity to contribute to the response.

Paragraph (1) of § 11.104(a) would require practitioners receiving clients from an invention promoter to communicate directly with the client, and promptly report Office actions and replies directly to the client.

Paragraph (2) of § 11.104(a) would provide that a practitioner accepting referrals from a foreign attorney or foreign agent located in a foreign country may, with the written consent of a client located in a foreign country, conduct said communications with the client through said foreign attorney or agent. It is common for instructions relating to the application of a foreign patent and trademark owner, who is the practitioner's client, to be given to the practitioner through a foreign attorney or foreign patent agent. The fact that a practitioner receives instructions from an invention or trademark owner through a foreign attorney or agent does not change the fact that the client is still the foreign invention or trademark owner. *See Strojirensti* v. *Toyoda*, 2 USPQ2d 1222 (Comm'r Pat. 1986), which at 1223 cited *Toulmin* v. *Becker*, 105 USPQ 511 (Ohio Ct. App. 1954) for the principle that "foreign patent agents or attorneys were not clients of U.S. patent attorney."

A practitioner would be permitted to communicate through, rely on instructions of, and accept payment from the foreign attorney or agent only if the practitioner has obtained the consent of the client after full disclosure in accordance with the provisions of §§ 11.106(a)(1) and (d), 11.107(a) and (b), and 11.108(f). An agreement between the client and the foreign attorney or agent may establish an agency relationship between the foreign attorney or agent and the client such that the practitioner may obtain instructions from the foreign attorney or agent, except if the instructions are adverse to the client's interests. For example, if the foreign attorney or agent instructs the practitioner to abandon the application because the client had not paid the foreign attorney or agent, the practitioner should consult with the client directly before acting on the instructions.

Ordinarily, the information to be provided is that appropriate for a client, who is a comprehending and responsible adult. This should obtain in all instances involving filing replies to Office actions. However, fully informing the client according to this standard may be impracticable, for example, where the client is a child or suffers from mental disability. *See* proposed rule 11.114. When the client is an organization or group, it is often impossible or inappropriate to inform every one of its members about its legal affairs; ordinarily, the practitioner should address communications to the appropriate officials of the organization. *See* proposed rule 11.113. Where many routine matters are involved, a system of limited or occasional reporting may be arranged with the client. Such communications as Office actions, notices of abandonment, and notices of allowance are not routine matters for a client. Practical exigency may also require a practitioner to act for a client without prior consultation. When the practitioner is attending an appeal hearing, for example, it is often not possible for the practitioner to consult with the client and obtain the client's acquiescence in tactical matters arising during the course of the hearing. It is sufficient if the practitioner consults with the client in advance of the hearing on significant issues that can be anticipated as arising during the course of the hearing, and consults after the hearing.

In rare circumstances, a practitioner may be justified for humanitarian reasons, in delaying or not conveying transmission of information, for example, where the information would merely be upsetting to a terminally ill client. A practitioner may not withhold information to serve the practitioner's own interest or convenience, *e.g.*, to conceal abandonment of an application. *See Weiffenbach* v. *Logan*, 27 USPQ2d 1870 (Comm'r Pat. 1993), *aff'd. sub nom., Logan* v. *Comer*, No. 93–0335 (D.D.C. 1994), *aff'd. sub nom., Logan* v. *Lehman*, 73 F.3d 379 (Fed. Cir. 1995). No Office rules governing practice before the Office justify withholding information from a client to serve a practitioner, or to keep the client uninformed about an Office action.

Paragraph (d) of § 11.104 would define some, but not all, acts that would constitute violations of paragraph (a) of this section. The USPTO believes that it would be helpful to practitioners if some specific prohibitions were set out in the rules. The prohibitions set out in paragraph (1) of § 11.104(d) represents violations that have occurred in the past or that the Office specifically seeks to prevent. The specific acts set out in paragraph (d) would not constitute a complete description of all acts in violation of paragraph (a).

Paragraph (1) of § 11.104(d) would address failure to inform a client or former client, or failure to timely notify the Office of an inability to notify a client or former client, of correspondence received from the Office or the client's or former client's opponent in an *inter partes* proceeding before the Office when the correspondence (i) could have a significant effect on a matter pending before the Office, (ii) is received by the practitioner on behalf of a client or former client and (iii) is correspondence of which a reasonable practitioner would believe under the circumstances the client or former client should be notified.

Section 11.105 would continue to require fees be reasonable, and would introduce a requirement for written fee agreements.

Basis or rate of fee. Paragraph (a) of § 11.105 would continue the present practice for determining reasonableness of basis or rate of fees. When a practitioner has regularly represented a client, they ordinarily will have evolved an understanding concerning the basis or rate of the fee. In a new client-practitioner relationship, however, an understanding as to the fee should be promptly established. It is not necessary to recite all the factors that underlie the basis of the fee, but only those that are directly involved in its computation. It is sufficient, for example, to state that the basic rate is an hourly charge or a fixed amount or an estimated amount, or to identify the factors that may be taken into account in finally fixing the fee. When developments occur during the representation that render an earlier estimate substantially inaccurate, a revised estimate should be provided to the client. A written statement concerning the fee reduces the possibility of misunderstanding. Furnishing the client with a simple memorandum or a copy of the practitioner's customary fee schedule is usually sufficient if the basis or rate of the fee is set forth.

Paragraph (b) of § 11.105(b) would introduce a new requirement. A written statement concerning the fee, required to be furnished in advance in most cases by this section, would reduce the possibility of misunderstanding. In circumstances in which paragraph (b) requires that the basis for the practitioner's fee be in writing, an individualized writing specific to the particular client and representation is generally not required. Unless there are unique aspects of the fee arrangement, the practitioner may utilize a standardized letter, memorandum, or pamphlet explaining the practitioner's fee practices, and indicating those practices applicable to the specific representation. Such publications would, for example, explain applicable hourly billing rates, if billing on an hourly rate basis is contemplated, and indicate what charges (such as filing fees, Office fees, transcript costs, duplicating costs, and long-distance telephone charges) are imposed in addition to hourly rate charges.

Where the services to be rendered are covered by a fixed-fee schedule that adequately informs the client of the charges to be imposed, a copy of such schedule may be utilized to satisfy the requirement for a writing. Such services as patentability opinions, for example, may be suitable for description in such a fixed-fee schedule.

Written fee agreement. If a practitioner has not regularly represented a client, *e.g.*, an inventor, the basis or hourly rate of the fee must be communicated directly to the client, in writing. The written communication must distinguish between the fees charged for preparing and filing a patent application, and the fee(s) for prosecuting a patent application. A clearly written communication regarding fees can avoid confusion regarding whether a fee for an application includes fees for prosecuting an application.

A practitioner may require advance payment of a fee, but would be obliged to return any unearned portion. *See* proposed rule 11.116(d). A practitioner may accept property in payment for services, such as an ownership interest in an enterprise. However, a fee paid in property instead of money may be subject to special scrutiny. For example, it involves questions concerning both the value of the services and the practitioner's special knowledge of the value of the property. *See* Formal Opinion 300, Legal Ethics Committee of the District of Columbia (2000) (addressing ethical considerations when

a practitioner is asked to accept stock in lieu of legal fees). Further, a fee paid in property, such as acquisition of ownership of a percentage of the rights to an invention, would require compliance with § 11.108. *See Rhodes v. Buechel*, 685 N.Y.S.2d 65, 1999 N.Y. App. Div. LEXIS 904 (1999), *appeal denied*, 711 N.E.2d 984, 689 N.Y.S.2d 708, 1999 N.Y. LEXIS 1206 (NY 1999).

An agreement would not be made whose terms might induce the practitioner improperly to curtail services for the client or perform them in a way contrary to the client's interest. For example, a practitioner should not enter into an agreement or arrangement with an invention promoter to provide limited services, such as only up to a stated amount, only for a particular type of patent application, such as a design application, only so long as a promoter pays the practitioner, or only for one application or one type of application when it is foreseeable that more extensive services or the continuation of services may be required, unless the situation is fully disclosed to and consent is obtained from the client. Otherwise, the client might have to bargain for further assistance in the midst of a proceeding before the Office. However, it is proper to define the extent of services in light of the client's ability to pay. A practitioner should not, by using wasteful procedures, exploit a fee arrangement based primarily on an hourly charge.

Paragraph (c) of § 11.105 would continue the current practice regarding contingent fees. Generally, contingent fees are permissible in all civil cases, including patent and trademark registration applications.

Under paragraph (c) of § 11.105, the contingent fee arrangement would be required to be in writing. This writing must explain the method by which the fee is to be computed. The practitioner must also provide the client with a written statement at the conclusion of a contingent fee matter, stating the outcome of the matter and explaining the computation of any remittance made to the client. Consistent with paragraph (a) of § 11.105, the contingent fee must be reasonable.

Paragraph (d) of § 11.105 would permit the practice of dividing a fee with another practitioner. A division of fee would be a single billing to a client covering the fee of two or more practitioners who are not in the same firm. A division of fee facilitates association of more than one practitioner in a matter in which neither alone could serve the client as well, and most often is used when the fee is contingent and the division is between a referring practitioner and a trial specialist.

Under paragraph (d) of § 11.105, the practitioners would be permitted to divide a fee either on the basis of the proportion of services they render or by agreement between the participating practitioners if all assume responsibility for the representation as a whole. Attorneys who are not registered as patent attorneys or agents are not authorized to render services in patent matters before the Office. Accordingly, before assuming responsibility for the representation as a whole, the attorneys would be advised to inquire of their insurance carrier regarding malpractice coverage in patent matters, and seek expert legal advice regarding whether the rendition of services in patent application matters involves unauthorized practice of law. Joint responsibility for the representation would entail the obligations stated in proposed rule 11.105 for purposes of the matter involved. Permitting a division on the basis of joint responsibility, rather than on the basis of services performed, would represent a change from the basis for fee divisions allowed under the prior Office Code of Professional Responsibility. The change is intended to encourage practitioners to affiliate other registered patent counsel, who are better equipped by reason of experience or specialized (scientific or technical) background, to serve the client's needs, rather than to retain sole responsibility for the representation in order to avoid losing the right to a fee.

The concept of joint responsibility would not, however, be merely a technicality or incantation. For example, the registered practitioner who refers the client to another registered practitioner, or affiliates another registered practitioner in the representation, would remain fully responsible to the client, and is accountable to the client for deficiencies in the discharge of the representation by the registered practitioner who has been brought into the representation. If a practitioner wishes to avoid such responsibility for the potential deficiencies of another practitioner, the matter must be referred to the other practitioner without retaining a right to participate in fees beyond those fees justified by services actually rendered.

The concept of joint responsibility would not require the referring practitioner to perform any minimum portion of the total legal services rendered. The referring practitioner may agree that the practitioner to whom the referral is made will perform substantially all of the services to be rendered in connection with the representation, without review by the referring practitioner. Thus, the referring practitioner would not be required to review replies to Office actions, appeal briefs, or other documents, attend hearings or depositions, or otherwise participate in a significant and continuing manner. The referring practitioner would not, however, by avoiding direct participation, escape the implications of joint responsibility.

When fee divisions are based on assumed joint responsibility, the requirement of paragraph (a) that the fee be reasonable would apply to the total fee charged for the representation by all participating practitioners.

Paragraph (d) of § 11.105 would require that the client be advised, in writing, of the fee division and states that the client must affirmatively consent to the proposed fee arrangement. This provision would not require disclosure to the client of the share that each practitioner is to receive but would require that the client be informed of the identity of the practitioners sharing the fee, their respective responsibilities in the representation, and the effect of the association of practitioners outside the firm on the fee charged.

Paragraph (e) of § 11.105 would provide a new policy for determining unreasonableness of a fee. If a state bar has established a procedure for resolution of fee disputes, such as an arbitration or mediation, the practitioner who is an attorney should conscientiously consider submitting to it. Law may prescribe a procedure for determining a practitioner's fee, for example, in representation of an executor or administrator of the estate of a deceased registered practitioner. The practitioner entitled to such a fee and a practitioner representing another party concerned with the fee should comply with the prescribed procedure. The Office does not provide facilities or proceedings for fee dispute resolution.

Section 11.106 would address a practitioner's responsibilities regarding information provided by a client. A practitioner practicing before the Office is a participant in a quasi-judicial and administration system, and as such is responsible for upholding the law. One of the practitioner's functions is to advise clients so that they avoid any violation of the law in the proper exercise of their rights.

Paragraph (a)(1) of § 11.106 would require that a practitioner not reveal information relating to representation of a client unless the client consents after consultation. There would be exceptions for disclosures that are

impliedly authorized in order to carry out the representation, and exceptions as stated in paragraph (b).

Under paragraph (a)(1) of § 11.106, practitioner-client confidentiality obtains upon commencement of the practitioner-client relationship. Principles of substantive law external to these proposed rules determining when an attorney-client or agent-client relationship exists also determines whether a client-practitioner relationship exists. Although most of the duties flowing from the practitioner-client relationship attach only after the client has requested the practitioner to render legal services and the practitioner has agreed to do so, the duty of confidentiality imposed by this section attaches when the practitioner agrees to consider whether an attorney-client or agent-client relationship shall be established. Thus, a practitioner may be subject to a duty of confidentiality with respect to information disclosed by a client to enable the practitioner to determine whether representation of the potential client would involve a prohibited conflict of interest under proposed rules 11.107, 11.108, or 11.109.

The observance of the ethical obligation of a practitioner to hold inviolate confidential information of the client not only facilitates the full development of facts essential to proper representation of the client but also encourages people to seek early legal assistance. Almost without exception, clients come to practitioners in order to determine what their rights are and what is, in the maze of laws and regulations, deemed to be legal and correct. The common law recognizes the client's confidences must be protected from disclosure. Based upon experience, practitioners know that almost all clients follow the advice given, and the law is upheld.

There would be a difference between § 11.106 and attorney-client evidentiary privilege and the work product doctrine. The principle of confidentiality is given effect in two related bodies of law: the attorney-client privilege and the work product doctrine in the law of evidence and the rule of confidentiality established in professional ethics. The attorney-client privilege and the work product doctrine apply in judicial and administrative proceedings in which a practitioner may be called as a witness or otherwise required to produce evidence concerning a client. Section 11.106 would not be intended to govern or affect judicial or administrative application of the attorney-client privilege or work product doctrine. The privilege and doctrine were developed to promote compliance with law and fairness in litigation. In reliance on the attorney-client privilege, clients are entitled to expect that communications within the scope of the privilege will be protected against compelled disclosure. The attorney-client privilege is that of the client and not of the practitioner. The fact that in exceptional situations the practitioner under § 11.106 would have limited discretion, and pursuant to § 1.56, a requirement, to disclose a client confidence does not vitiate the proposition that, as a general matter, the client has a reasonable expectation that information relating to the client will not be voluntarily disclosed and that disclosure of such information may be judicially compelled only in accordance with recognized exceptions to the attorney-client privilege and work product doctrine. The privilege is applicable in certain cases to communications between registered patent agents and their clients. *See, e.g., In re Ampicillin Antitrust Litigation*, 81 F.R.D. 377, 392–394 (D.D.C. 1978).

A fundamental principle in the client-lawyer or client-agent relationship is that the practitioner maintain confidentiality of information relating to the representation. The client is thereby encouraged to communicate fully and frankly with the lawyer even as to embarrassing or legally damaging subject matter. The principle of confidentiality is given effect in two related bodies of law, the attorney-client privilege in the law of evidence and the rule of confidentiality established in professional ethics. The attorney-client privilege applies in judicial and other proceedings in which a lawyer may be called as a witness or otherwise required to produce evidence concerning a client. The rule of client-lawyer confidentiality applies in situations other than those where evidence is sought from the lawyer through compulsion of law. The confidentiality rule applies not merely to matters communicated in confidence by the client but also to all information relating to the representation, whatever its source. A practitioner would not be permitted to disclose such information except as authorized or required by the Rules of Professional Conduct or other law.

In addition to prohibiting the disclosure of a client's confidences and secrets, paragraph (a)(2) provides that a practitioner may not use the client's confidences and secrets to the disadvantage of the client. For example, a practitioner who has learned of the abandonment or allowance of a client's patent application may not file a patent application in the practitioner's own name on a variation or an improvement of the client's invention if doing so may adversely affect the client's ability to market the invention or patent rights. Similarly, information acquired by the practitioner in the course of representing a client may not be used to the disadvantage of that client even after the termination of the practitioner's representation of the client. However, the fact that a practitioner has once served a client does not preclude the practitioner from using generally known information about the former client when later representing another client. Under proposed rules (a)(3) and (d)(2), a practitioner may use a client's confidences and secrets for the practitioner's own benefit or that of a third party only after the practitioner has made full disclosure to the client regarding the proposed use of the information and obtained the client's affirmative consent to the use in question.

Implied authorized disclosure. A practitioner is impliedly authorized to make disclosures about a client when appropriate in carrying out the representation, except to the extent that the client's instructions or special circumstances limit that authority. In patent prosecution, for example, a practitioner and applicant must disclose information material to the patentability of the pending claims. In another example, in litigation a practitioner may disclose information by admitting a fact that cannot properly be disputed, or in negotiation by making a disclosure that facilitates a satisfactory conclusion.

Practitioners in a firm may, in the course of the firm's practice, disclose to each other information relating to a client of the firm, unless the client has instructed that particular information be confined to specified practitioners.

Paragraph (b) of § 11.106 would provide for disclosures adverse to the client. The confidentiality rule is subject to limited exceptions. In becoming privy to information about a client, a practitioner may foresee that the client intends serious harm to another person.

However, to the extent a lawyer is required or permitted to disclose a client's purposes, the client will be inhibited from revealing facts which would enable the practitioner to counsel against a wrongful course of action. The public is better protected if full and open communication by the client is encouraged than if it is inhibited.

Several situations must be distinguished. First, the practitioner may not counsel or assist a client in conduct that is criminal or fraudulent. *See* proposed § 11.102(d). *See also Kingsland* v. *Dorsey*, 338 U.S. 318

(1949) (sustaining disbarment of attorney for deceiving Office as to real author of article presented in support of pending application, and misrepresenting that the article was the work of a "reluctant witness"). Similarly, a practitioner has a duty under proposed § 11.303(a)(4) not to use false evidence. *See* proposed §§ 11.303(a)(4) and (b). This duty is essentially a special instance of the duty prescribed in proposed § 11.102(d) to avoid assisting a client in criminal or fraudulent conduct.

Further, the practitioner may have been innocently involved in past conduct by the client that was criminal or fraudulent. In such a situation the practitioner has not violated proposed § 11.102(d), because to "counsel or assist" criminal or fraudulent conduct requires knowing that the conduct is of that character.

Still further, the practitioner may learn that a client intends prospective conduct that is criminal and likely to result in imminent death or substantial bodily harm. As stated in paragraph (b)(1), the practitioner has professional discretion to reveal information in order to prevent such consequences. The practitioner may make a disclosure in order to prevent homicide or serious bodily injury, which the practitioner reasonably believes is intended by a client.

It is very difficult for a practitioner to be certain when such a heinous purpose will actually be carried out, for the client may have a change of mind. The practitioner's exercise of discretion requires consideration of such factors as the nature of the practitioner's relationship with the client and with those who might be injured by the client, the practitioner's own involvement in the transaction and factors that may extenuate the conduct in question. Where practical, the practitioner should seek to persuade the client to take suitable action. In any case, a disclosure adverse to the client's interest should be no greater than the practitioner reasonably believes necessary to the purpose. A practitioner's decision not to take preventive action permitted by paragraph (b)(1) would not violate this Rule.

Withdrawal. If the practitioner's services will be used by a client in materially furthering a course of criminal or fraudulent conduct, the practitioner must withdraw, as stated in proposed § 11.116(a)(1).

After withdrawal the lawyer is required to refrain from disclosing the client's confidences, except as otherwise provided in §§ 11.106(c) and (d). Neither §§ 11.106(c) and (d), nor § 11.108(b), nor § 11.116(d) prevent the practitioner from giving notice of the fact of withdrawal, and the practitioner may also withdraw or disaffirm any opinion, document, affirmation, or the like. Giving notice of withdrawal, without elaboration, is not a disclosure of a client's confidences. Furthermore, a practitioner's statement to the Office that withdrawal is based upon "irreconcilable differences between the practitioner and the client" is not elaboration. Similarly, after withdrawal under either proposed § 11.116(a)(1) or proposed §§ 11.116(b)(1) or (2), the practitioner may retract or disaffirm any opinion, document, affirmation, or the like that contains a material misrepresentation by the practitioner that the practitioner reasonably believes will be relied upon by others to their detriment.

Where the client is an organization, the practitioner may be in doubt whether contemplated conduct will actually be carried out by the organization. Where necessary to guide conduct in connection with § 11.106, the practitioner may make inquiry within the organization as indicated in proposed § 11.113(b).

Dispute Concerning Lawyer's Conduct. Where a legal claim or disciplinary charge alleges complicity of the practitioner in a client's conduct or other misconduct of the practitioner involving representation of the client, the practitioner may respond to the extent the practitioner reasonably believes necessary to establish a defense. The same is true with respect to a claim involving the conduct or representation of a former client. The practitioner's right to respond arises when an assertion of such complicity has been made. Paragraph (b)(2) of § 11.106 does not require the practitioner to await the commencement of an action or proceeding that charges such complicity, so that the defense may be established by responding directly to a third party who has made such an assertion. The right to defend, of course, applies where a proceeding has been commenced. Where practicable and not prejudicial to the practitioner's ability to establish the defense, the practitioner should advise the client of the third party's assertion and request that the client respond appropriately. In any event, disclosure should be no greater than the practitioner reasonably believes is necessary to vindicate innocence, the disclosure should be made in a manner which limits access to the information to the tribunal or other persons having a need to know it, and appropriate protective orders or other arrangements should be sought by the practitioner to the fullest extent practicable.

If the practitioner is charged with wrongdoing in which the client's conduct is implicated, the rule of confidentiality should not prevent the practitioner from defending against the charge. Such a charge can arise in a civil, criminal or professional disciplinary proceeding, and can be based on a wrong allegedly committed by the practitioner against the client, or on a wrong alleged by a third person; for example, a person claiming to have been defrauded by the practitioner and client acting together. A practitioner entitled to a fee is permitted by paragraph (b)(2) of § 11.106 to prove the services rendered in an action to collect it. This aspect of the rule expresses the principle that the beneficiary of a fiduciary relationship may not exploit it to the detriment of the fiduciary. As stated above, the practitioner must make every effort practicable to avoid unnecessary disclosure of information relating to a representation, to limit disclosure to those having the need to know it, and to obtain protective orders or make other arrangements minimizing the risk of disclosure.

Paragraphs (c) and (d) of § 11.106—Disclosures otherwise required or authorized. The attorney-client or agent-client privilege is differently defined in various jurisdictions. If a practitioner is called as a witness to give testimony concerning a client, absent waiver by the client, paragraph (a) of § 11.106 requires the practitioner to invoke the privilege when it is applicable. The practitioner must comply with the final orders of a court or other tribunal of competent jurisdiction requiring the practitioner to give information about the client.

The proposed Office Rules of Professional Conduct in various circumstances permit or require a practitioner to disclose information relating to the representation. See proposed §§ 11.202, 11.203, 11.303, and 11.401.

In addition to these provisions, a practitioner may be obligated or permitted by other provisions of law to give information provided in confidence by the client. Paragraph (c) of § 11.106 would require disclosure necessary to comply with 37 CFR 1.56 requiring a practitioner to disclose information material to patentability of pending claims. The practitioner may learn that a client intends to engage in conduct or is involved in conduct constituting fraud on the Office. As stated in proposed § 11.106(d), the practitioner has professional duty to comply with

§ 1.56 by submitting all information known to be material to the patentability of any existing claim. The USPTO has disciplined practitioners for failing to reveal evidence required by law to be disclosed. *See In re Milmore*, 196 USPQ 628 (Comm'r Pat. 1977) (suspending practitioner for not calling a reference to the examiner's attention). To address situations wherein practitioners are found by a court of record to have engaged in inequitable conduct, the proposed rules would provide that such a finding is cause for concluding that the practitioner violated the Rules of Professional Conduct. *See* § 11.804(h)(7).

The obligation to protect confidences and secrets obviously does not preclude a practitioner from revealing information when the client consents after full disclosure, when necessary to perform the professional employment, when permitted or required by these proposed rules (*e.g.*, to comply with § 1.56), or when required by law. Unless the client otherwise directs, a practitioner may disclose the affairs of the client to partners or associates of the practitioner's firm.

It is a matter of common knowledge that the normal operation of a law office exposes confidential professional information to non-practitioner employees of the office, particularly secretaries and those having access to the files; and this obligates a practitioner to exercise care in selecting and training employees so that the sanctity of all confidences and secrets of clients may be preserved. If the obligation extends to two or more clients as to the same information, a practitioner should obtain the permission of all before revealing the information. A practitioner must always be sensitive to the rights and wishes of the client and act scrupulously in the making of decisions that may involve the disclosure of information obtained in the course of the professional relationship. Thus, in the absence of consent of the client after full disclosure, a practitioner should not associate another practitioner in the handling of a matter; nor should the practitioner, in the absence of consent, seek counsel from another practitioner if there is a reasonable possibility that the identity of the client or the client's confidences or secrets would be revealed to such practitioner. Proper concern for professional duty should cause a practitioner to shun indiscreet conversations concerning clients.

Invention promoter—Full Disclosure—Informed Consent. Likewise, a practitioner should not communicate a confidence from the inventor-client to an invention promoter without first obtaining the inventor-client's consent to disclose the confidences after full disclosure. Full disclosure is defined in § 11.1(n). Confidence can include patentability opinions, patent applications, Office actions, amendments, appeal briefs, and notices or allowance or abandonment. Information communicated between the practitioner and inventor-client through an invention promoter may not be privileged. *Denver Tramway Co.* v. *Owens*, 36 P. 848 (Colo. 1894) (information gathered from client in presence of third party is not privileged). Consent of an inventor-client would necessitate full disclosure that the client would be waiving any attorney-client or agent-client privilege attached to the confidence by permitting the confidence to be communicated to the promoter, as well as waiving confidential status for the information.

Paragraph (c)(3)(B) and paragraph (d) of § 11.106 would address the unique circumstances raised by attorney-client relationships within the Government.

Paragraph (c)(3)(B) of proposed § 11.106 would apply only to practitioners employed by the Government who are representing Government interests when appearing before the USPTO. It is designed to permit disclosures that are not required by law or court order under proposed § 11.106(c)(3)(A), but which the Government authorizes its attorneys to make in connection with their professional services on behalf of the Government. Such disclosures may be authorized or required by statute, executive order, or regulation, depending on the constitutional or statutory powers of the authorizing entity. If so authorized or required, paragraph (c)(3)(B) of proposed § 11.106 governs.

The term "agency" in paragraph (d) includes, *inter alia*, executive and independent departments and agencies, special commissions, committees of the legislature, agencies of the legislative branch such as the Office, General Accounting Office, and the courts to the extent that they employ practitioners (*e.g.*, staff counsel) to counsel them. The employing agency has been designated the client under this rule to provide a commonly understood and easily determinable point for identifying the Government client.

Government practitioners may also be assigned to provide an individual with counsel or representation in circumstances that make clear that an obligation of confidentiality runs directly to that individual and that paragraph (d)(2)(A), not (d)(2)(B), of proposed § 11.106 applies. It is, of course, acceptable in this circumstance for a Government practitioner to make disclosures about the individual representation to supervisors or others within the employing governmental agency so long as such disclosures are made in the context of, and consistent with, the agency's representation program. *See, e.g.*, 28 CFR 50.15 and 50.16. The relevant circumstances, including the agreement to represent the individual, may also indicate the extent to which the individual client to whom the Government practitioner is assigned will be deemed to have granted or denied consent to disclosures to the practitioner's employing agency. Examples of such representation include representation by a public defender, a Government practitioner representing a defendant sued for damages arising out of the performance of the defendant's Government employment, and a military practitioner representing a court-martial defendant.

Paragraph (g) of § 11.106 —Former client. The duty of confidentiality would continue after the client-lawyer or client-agent relationship has terminated.

Paragraph (h) of § 11.106. There are circumstances in which a person who ultimately becomes a practitioner provides assistance to a practitioner while serving in a nonpractitioner capacity. The typical situation is that of the law clerk or summer associate in a law firm or Government agency. Paragraph (h) of proposed § 11.106 would address the confidentiality obligations of such a person after becoming a member of a Bar or becoming registered; the same confidentiality obligations are imposed as would apply if the person had been a member of a Bar at the time confidences or secrets were received. For a related provision dealing with the imputation of disqualifications arising from prior participation as a law clerk, summer associate, or in a similar position, *see* proposed § 11.110(b).

Section 11.107 is intended to provide clear notice of circumstances that may constitute a conflict of interest. Loyalty to a client is an essential element in the practitioner's relationship to a client. An impermissible conflict of interest may exist before representation is undertaken, in which event the representation should be declined. The practitioner should adopt reasonable procedures, appropriate for the size and type of firm and practice, to determine in both litigation and non-litigation matters, including patent and trademark matters before the Office, the parties and issues involved and to determine

whether there are actual or potential conflicts of interest.

If such a conflict arises after representation has been undertaken, the practitioner should withdraw from the representation. *See* proposed § 11.116. Where more than one client is involved and the practitioner withdraws because a conflict arises after representation, whether the practitioner may continue to represent any of the clients is determined by proposed § 11.109. *See also* proposed § 11.202(c). As to whether a client-lawyer or client-agent relationship exists or, having once been established, is continuing, see the comments to proposed § 11.103

Paragraph (a) of § 11.107 would express the general rule that loyalty to a client prohibits undertaking representation directly adverse to that client without that client's consent. Thus, a practitioner ordinarily may not act as advocate against a person the practitioner represents in some other matter, even if it is wholly unrelated. On the other hand, simultaneous representation in unrelated matters of clients whose interests are only generally adverse, such as competing economic enterprises, does not require consent of the respective clients. Paragraph (a) applies only when the representation of one client would be directly adverse to the other.

The prohibition of paragraph (a) of § 11.107 would relate only to actual conflicts of positions, not to mere formalities. For example, a practitioner would not be absolutely forbidden to provide joint or simultaneous representation if the clients' positions are only nominally but not actually adverse. Joint representation is commonly provided to joint inventors, to incorporators of a business, to parties to a contract, in formulating estate plans for family members, and in other circumstances where the clients might be nominally adverse in some respect but have retained a practitioner to accomplish a common purpose. If no actual conflict of positions exists with respect to a matter, the absolute prohibition of paragraph (a) does not come into play.

Paragraph (b) of 11.107 would address situations where loyalty to a client can be impaired when a practitioner cannot consider, recommend or carry out an appropriate course of action for the client because of the practitioner's other responsibilities or interests. The conflict in effect forecloses alternatives that would otherwise be available to the client. Paragraph (b) addresses such situations. A possible conflict does not itself preclude the representation. The critical questions are the likelihood that a conflict will eventuate and, if it does, whether it will materially interfere with the practitioner's independent professional judgment in considering alternatives or foreclose courses of action that reasonably should be pursued on behalf of the client. Consideration should be given as to whether the client wishes to accommodate the other interest involved.

Full disclosure and consent. A client may consent to representation notwithstanding a conflict. However, as indicated in paragraph (a)(1) with respect to representation directly adverse to a client, and paragraph (b)(1) with respect to material limitations on representation of a client, when a disinterested practitioner would conclude that the client should not agree to the representation under the circumstances, the practitioner involved cannot properly ask for such agreement or provide representation on the basis of the client's consent. When more than one client is involved, the question of conflict would have to be resolved as to each client. Moreover, there may be circumstances where it is impossible to make the disclosure necessary to obtain consent. For example, when the practitioner represents different clients in related matters and one of the clients refuses to consent to the disclosure necessary to permit the other client to make an informed decision, the practitioner cannot properly ask the latter to consent.

Full Disclosure. Disclosure and consent are not mere formalities. Full disclosure is defined in § 11.1(n). As defined therein, full disclosure requires a clear explanation of the differing interests involved in a transaction, the advantages of seeking independent legal advice, and a detailed explanation of the risks and disadvantages to the client entailed in any agreement or arrangement, including not only any financial losses that will or may foreseeably occur to the client, but also any liabilities that will or may foreseeably accrue to the client.

Proposed § 11.107 would not require that disclosure be in writing or in any other particular form in all cases. Nevertheless, it should be recognized that the form of disclosure sufficient for more sophisticated business clients may not be sufficient to permit less sophisticated clients to provide fully informed consent. Moreover, it would be prudent for the practitioner to provide potential joint clients with at least a written summary of the considerations disclosed, and to request and receive a written consent. This can reduce the opportunity for dispute regarding the scope and content of the disclosure.

Consent. The term "consent" is defined in § 11.1(e). As indicated there, a client's consent must not be coerced either by the practitioner or by any other person. In particular, the practitioner should not use the client's investment in previous representation by the practitioner as leverage to obtain or maintain representation that may be contrary to the client's best interests. If a practitioner has reason to believe that undue influence has been used by anyone to obtain agreement to the representation, the practitioner should not undertake the representation.

When a practitioner has two clients, the clients might have potential conflicts. In circumstances having potential conflicts, the circumstances would trigger § 11.107(a) and (b). Potential conflicts between an inventor and invention promoter may arise from a contract between them providing for the promoter to obtain a practitioner to represent the inventor in obtaining a patent. The practitioner engaged by the promoter may have a lawyer-client or agent-client relationship with both the inventor and promoter. For example, if the contract provides for the promoter to pay the practitioner, the practitioner may regard the promoter as a client, while the practitioner obtains a power of attorney from the inventor to prosecute the latter's patent application. Another potential conflict may arise regarding funds advanced by the inventor for the practitioner's legal services. Normally, when a client advances legal fees, the funds are received by a practitioner, who places the funds in an escrow account. *See* § 11.115(a). In such circumstances, the client is entitled to a refund of unearned fees. *See* proposed §§ 11.115(d)(4), and 11.116(d). If, however, in accordance with the contract between the promoter and inventor, the inventor delivers the funds to the promoter, the promoter may place the funds in its own account(s). The funds are then subject to the promoter's control. The inventor may expect the practitioner to deliver legal services inasmuch as the funds have been advanced. There is a potential for the promoter going out of business, or the inventor being dissatisfied with the services from the promoter and practitioner. The client may desire to discharge the practitioner. In such circumstances, the inventor might be unable to recover the unearned advanced legal fees held by the promoter, and there is a potential conflict between the inventor and promoter regarding the advanced legal fees. In a variation on the same example, a potential conflict exists if the inventor, although permitted to discharge the practitioner, may view the situation as compelling him or her to remain with the practitioner selected by the promoter inasmuch as the promoter holds the inventor's funds. The circumstances and differing interests of an inventor-client and a promoter-client may create at least potential conflicts requiring consent under § 11.107(a). *Accord*, Formal Opinion 1997–148, Standing Committee on Professional Responsibility and Conduct (California).

Further, to the extent the practitioner's relationship with one client affects the practitioner's loyalty and independent judgment on behalf of the other client, an actual conflict of interest exists. This can occur when the practitioner receives conflicting instructions from the clients, or is called upon to advance inconsistent objectives of two clients. For example, if an inventor-client insists that the practitioner pursue a utility patent application, and the promoter client will pay for only a design patent application, the practitioner is receiving conflicting instructions and is being called upon to advance inconsistent objectives. Such circumstances require a practitioner to obtain further consent under § 11.107(b). *Accord*, Formal Opinion 1997–148, Standing Committee on Professional Responsibility and Conduct (California).

If joint representation of inventor and an invention promoter involves potential conflicts, it is necessary to obtain consent of both clients after full disclosure. This obtains if the clients have different objectives that are implicated by a decision made by the practitioner. For example, differing interests are implicated if an inventor-client expects the several thousand dollars paid to the promoter to be used to obtain the broadest patent protection available, and the invention promoter would be satisfied with any patent protection, including narrowest patent protection. A practitioner, receiving numerous referrals from the promoter and being paid a relatively low fee for each application, knowingly provides only narrow, even "picture" claims. The practitioner's action accommodates processing of the referrals, and facilitates continued receipt of referrals, whereas broader patent protection was available. The practitioner's action may be satisfactory for the promoter-client, whereas the inventor-client expects broad patent protection. There is at least a potential conflict of interest.

Also, where an inventor-client delivers to an invention promoter-client all funds advanced for legal fees to pay the practitioner, full disclosure of all risks and consent from both clients would be required by § 11.107(b). For example, the inventor must be fully informed of the consequences if the invention promoter goes out of business or declares bankruptcy, and does not pay the practitioner. The inventor may be unable to obtain from the promoter a refund of the unearned funds advanced for legal services, whereas the practitioner, if he or she had received the funds and declined to provide legal services, would be required to refund the unearned advanced funds. Moreover, there may be circumstances where it is impossible to make the disclosure necessary to obtain consent. For example, when the practitioner represents different clients in related matters and one of the clients refuses to consent to the disclosure necessary to permit the other client to make an informed decision, the practitioner cannot properly ask the latter to consent.

Practitioner's interests. The practitioner's own interests should not be permitted to have an adverse effect on representation of a client. For example, a practitioner's need for income should not lead the practitioner to undertake matters that cannot be handled competently and at a reasonable fee. *See* proposed §§ 11.101 and 11.105. If the probity of a practitioner's own conduct in a transaction is in serious question, it may be difficult or impossible for the practitioner to give a client detached advice. A practitioner may not allow related business interests to affect representation, for example, by referring clients to an enterprise in which the practitioner has an undisclosed interest.

There can be circumstances where an invention promoter refers inventors to a practitioner, and the practitioner has an attorney-client or agent-client relationship with the inventor-client, and a business or financial relationship exists between the practitioner and an invention promoter. When the promoter compensates the practitioner, they may have a business and financial relationship like a third-party payor relationship between an attorney and insurer. The practitioner and invention promoter also may have a business and financial relationship because the practitioner obtains employment (*e.g.*, referrals) through the promoter. For example, this can occur where the practitioner provides legal services at reduced fees, paid by the promoter, in expectation of receiving numerous referrals from the promoter. The volume of referrals and rapid production of patent applications may make up for the reduction in the fees. The inventor-client may expect the practitioner to provide extensive attentiveness to his or her needs, and zealous efforts to obtain the broadest patent protection at the least cost. If the practitioner regards the invention promoter as his or her client, the full disclosure requirements of § 11.107(b) are triggered. Even in the absence of any attorney-client or agent-client relationship between the practitioner and promoter, the existence of the business or financial relationship between them requires disclosure obligations by the practitioner under § 11.108(f). *Accord*, Formal Opinion 1997–148, Standing Committee on Professional Responsibility and Conduct (California). The business dealings between a lawyer and an invention promoter have been recognized as giving rise to conflicts between the lawyer's duty to furnish independent legal counsel to another client, and the business interests of the lawyer acting in the capacity of representing the invention promoter. *See* Informal Opinion 1482, American Bar Association (1982).

In another example, if a practitioner depends on receiving referrals from an organization the practitioner regards as the client, and not the individuals purchasing legal services (trusts, patent applications) offered by the organization and referred to the practitioner, representation of the individual implicates at least potential conflicts of interest in violation of § 11.107(b). *See In re R.W. Hodgson*, 721 Off. Gaz. 414 (Aug. 20, 1957) (rejecting patent agent's argument that invention promoter holding 10% interest in each application of numerous applications, as opposed to the patent applicant, was his client, and pointing out that Rule 32 (37 CFR 1.32) does not confer on an assignee of partial interest in an application the right to conduct the prosecution of an application); *People* v. *Volk*, 805 P.2d 1116, 1117 (Colo. 1991) (holding attorney suffered from conflict of interest for "consider[ing] the corporation to be her client, not the individual purchasers of the trusts"). Consent, after full disclosure, must be obtained to provide representation.

The foregoing situations are to be distinguished from those commonly experienced when an inventor, employed by a corporation to invent, is represented by a practitioner who is employed by the corporation. For example, the inventor has signed an employment contract that contains a provision whereby the inventor agrees to assign to the corporation all inventions conceived during

employment. The attorney is employed either in-house by the corporation, or is a member of a firm and is retained to represent the corporation. Following the inventor's discovery and disclosure to the corporation of a new and useful invention, the attorney prepares a patent application. The attorney's actual client is the corporation, and the attorney has not made any representations to the inventor that he or she represents the inventor or the inventor's interests. It would be prudent, before filing the application, to secure from the inventor, the inventor's signature on a combined declaration and power of attorney, as well as on assignment of the patent rights to the corporation. The attorney also would be acting prudently to clearly inform the inventor before signing the documents that the attorney represents only the corporation. Upon obtaining the signed combined declaration and power of attorney, and the assignment, these documents can be filed in the USPTO, and the assignment recorded. The corporation may then revoke all previous powers of attorney, and give its own power of attorney in favor of the attorney.

Conflicts in litigation and administrative proceedings. Paragraph (a) of § 11.107 would prohibit representation of opposing parties in litigation and administrative proceedings. Simultaneous representation of parties whose interests in litigation or an interference in the Office may conflict, such as coplaintiffs or codefendants, or opposing parties in an interference is governed by paragraph (b). An impermissible conflict may exist by reason of substantial discrepancy in the parties' testimony, or incompatibility in positions in relation to an opposing party in an interference. On the other hand, common representation of persons having similar interests, such as joint applicants, is proper if the risk of adverse effect is minimal and the requirements of paragraph (b) are met. Compare proposed § 11.202 involving intermediation between clients.

Ordinarily, a practitioner may not act as advocate against a client the practitioner represents in some other matter, even if the other matter is wholly unrelated. However, there are circumstances in which a practitioner may act as an advocate against a client. For example, a practitioner representing an enterprise with diverse operations may accept employment as an advocate against the enterprise in an unrelated matter if doing so will not adversely affect the practitioner's relationship with the enterprise or conduct of the suit and if both clients consent upon full disclosure. The propriety of concurrent representation can depend on the nature of the litigation. For example, a suit charging fraud entails conflict to a degree not involved in a suit for a declaratory judgment concerning statutory interpretation.

Interest of third person paying for a practitioner's service. A practitioner may be paid from a source other than the client, if the client consents after full disclosure and the arrangement does not compromise the practitioner's duty of loyalty to the client. *See* proposed § 11.108(f). Full disclosure is defined in § 11.1(n), and consent is defined in § 11.1(e). For example, when an invention promoter and inventor have conflicting interests in a matter arising from an invention marketing agreement, and the promoter is required to provide a patent practitioner to file and prosecute a patent application for the inventor, the arrangement should assure the practitioner professional independence. Thus, the arrangement should assure that the practitioner's professional independence permits him or her to zealously pursue the inventor's patent rights, including any necessary appeal or covering an interference.

Other Conflict Situations. Conflicts of interest in contexts other than litigation sometimes may be difficult to assess. Relevant factors in determining whether there is potential for adverse effect include the duration and intimacy of the practitioner's relationship with the client or clients involved, the functions being performed by the practitioner, the likelihood that actual conflict will arise and the likely prejudice to the client from the conflict if it does arise. The question is often one of proximity and degree.

For example, a practitioner may not represent multiple parties to a negotiation whose interests are fundamentally antagonistic to each other, but common representation is permissible where the clients are generally aligned in interest even though there is some difference of interest among them.

A practitioner for a corporation or other organization who is also a member of its board of directors should determine whether the responsibilities of the two roles may conflict. The lawyer may be called on to advise the corporation in matters involving actions of the directors. Consideration should be given to the frequency with which such situations may arise, the potential intensity of the conflict, the effect of the practitioner's resignation from the board and the possibility of the corporation's obtaining legal advice from another practitioner in such situations. If there is material risk that the dual role will compromise the practitioner's independence of professional judgment, the practitioner should not serve as a director.

Conflict charged by an opposing party. Resolving questions of conflict of interest is primarily the responsibility of the practitioner undertaking the representation. As in litigation, where a court may raise the question of conflicting interests when there is reason to infer that the practitioner has neglected the responsibility, the same may obtain in *inter parte* practice before the Office. Where the conflict is such as clearly to call in question the fair or efficient administration of justice, opposing counsel may properly raise the question. Such an objection should be viewed with caution, however, for it can be misused as a technique of harassment.

Withdrawal. It is much preferred that a representation that is likely to lead to a conflict be avoided before the representation begins, and a practitioner should bear this fact in mind in considering whether disclosure should be made and consent obtained at the outset. If, however, a conflict only arises after a representation has been undertaken, and the conflict falls within § 11.107(a), or if a conflict arises under § 11.107(b), then the practitioner should withdraw from the representation, complying with § 11.106. Where a conflict is not foreseeable at the outset of representation and arises only under § 11.107, a practitioner would have to seek consent to the conflict at the time that the actual conflict becomes evident. Where the conflict is such as clearly to call in question the fair or efficient administration of justice, opposing counsel may properly raise the question. Such an objection should be viewed with caution, however, because it can be misused as a technique of harassment. In determining whether a conflict is reasonably foreseeable, the test is an objective one, *i.e.*, that which a lawyer of reasonable prudence and competence would ascertain in regard to the matter in question. In determining the reasonableness of a practitioner's conduct, such factors as whether the practitioner (or practitioner's firm) has an adequate conflict-checking system in place, must be considered. Where more than one client is involved and the practitioner must withdraw because a conflict arises after representation has been undertaken, the question of whether the practitioner may continue to represent any of the clients would be determined by § 11.109.

Imputed Disqualification. All of the references in § 11.107 and this accompanying comment to the limitation upon a "practitioner" must be read in light of the imputed disqualification provisions of § 11.110, which affect practitioners practicing in a firm.

In the Government-practitioner context, § 11.107(b) is not intended to apply to conflicts between agencies or components of Government (Federal, state, or local) where the resolution of such conflicts has been entrusted by law, order, or regulation to a specific individual or entity.

Businesses Affiliated with a Practitioner or Firm. Practitioners, either alone or through firms, may have interests in enterprises that do not or would not be authorized to practice law but that, in some or all of their work, become involved with practitioners or their clients either by assisting the practitioner in providing legal services or by providing related services to the client. Examples of such enterprises are accounting firms, consultants, invention promoters, and the like. The existence of such interests would raise several questions under § 11.107. First, a practitioner's recommendation, as part of legal advice, that the client obtain the services of an enterprise with which the practitioner is affiliated implicates § 11.107(b)(4). The practitioner should not make such a recommendation unless able to conclude that the practitioner's professional judgment on behalf of the client will not be adversely affected. Even then, the practitioner should not make such a recommendation without full disclosure to the client so that the client can make a fully informed choice. Such disclosure should include the nature and substance of the practitioner's or the firm's interest in or relation with the enterprise, alternative sources for the non-legal services in question, and sufficient information so that the client understands that the related enterprise's services are not legal services, and the client's relationship to the enterprise will not be that of client to attorney. Second, such an affiliated enterprise may refer a potential client to the practitioner; the practitioner should take steps to assure that the related enterprise will inform the practitioner of all such referrals. The practitioner should not accept such a referral without full disclosure of the nature and substance of the practitioner's interest in the related enterprise, including the number of clients annually referred. *See also* § 11.701(b). Third, the practitioner should be aware that the relationship of the enterprise to its own customer may create a significant interest in the practitioner in the continuation of that relationship. The substantiality of such an interest may be enough to require the practitioner to decline a proffered client representation that would conflict with that interest; at least §§ 11.107(b)(4) and (c) may require the prospective client to be informed and to consent before the representation could be undertaken. Fourth, a practitioner's interest in an affiliated enterprise that may also serve the practitioner's clients would create a situation in which the practitioner must take unusual care to fashion the relationship among practitioner, client, and enterprise to assure that confidences and secrets are properly preserved pursuant to § 11.106 to the maximum extent possible. *See* § 11.503.

Section 11.108—Transactions Between Client and Practitioner. As a general principle, all transactions between client and practitioner should be fair and reasonable to the client. In such transactions a review by independent counsel on behalf of the client is often advisable. Section 11.108(a) does not, however, apply to standard commercial transactions between the practitioner and the client for products or services that the client generally markets to others; for example, banking or brokerage services, medical services, products manufactured or distributed by the client, and utility services. In such transactions, the practitioner has no advantage in dealing with the client, and the restrictions in § 11.108(a) are unnecessary and impracticable.

A practitioner may accept a gift from a client, if the transaction meets general standards of fairness. For example, a simple gift such as a present given at a holiday or as a token of appreciation is permitted. If effectuation of a substantial gift requires preparing a legal instrument such as a will or conveyance, however, the client should be advised by the practitioner to obtain the detached advice that another practitioner can provide. Section 11.108(c) recognizes an exception where the client is a relative of the donee or the gift is not substantial.

Proposed § 11.108 does not prevent a practitioner from entering into a contingent fee arrangement with a client in a civil case, if the arrangement satisfies all the requirements of § 11.105(c).

Literary Rights. An agreement by which a practitioner acquires literary or media rights concerning the conduct of the representation creates a conflict between the interests of the client and the personal interests of the practitioner. Measures that might otherwise be taken in the representation of the client may detract from the publication value of an account of the representation. Section 11.108(d) would not prohibit a practitioner representing a client in a transaction concerning literary property from agreeing that the practitioner's fee shall consist of a share in ownership in the property, if the arrangement conforms to § 11.105.

Patent Rights. An agreement whereby a practitioner acquires patent rights or an inventor assigns patent rights to an enterprise funded by the practitioner, but equally owned by the practitioner and the inventor, also creates a conflict between the interests of the client and the personal interests of the practitioner. A practitioner must do more than advise the client to seek the advice of independent counsel in the transaction. Full disclosure requires the practitioner to advise the client of all options or alternatives, including advising the client to consult with independent counsel, and potential conflicts between the practitioner and client. *See Monco* v. *Janus*, 583 N.E.2d 575 (Ill. 1991); *Rhodes* v. *Buechel*, 685 N.Y.S.2d 65, 1999 N.Y.App. Div. LEXIS 904 (1999), appeal denied, 711 N.E.2d 984, 689 N.Y.S.2d 708, 1999 N.Y. LEXIS 1206 (NY 1999). A practitioner should advise a client, before entering into an agreement, of the alternatives to assigning all patent rights to the enterprise. For example, one alternative is to lease the rights to the company. The conflict is evident when following a lack of success, the practitioner seeks to dissolve the enterprise due to a deadlock with client, and the client expects the practitioner to exercise professional judgment on the client's behalf.

Paying Certain Administrative Proceeding or Litigation Costs and Client Expenses. Historically, under the Code of Professional Responsibility, practitioners could only advance the costs of litigation. The client remained ultimately responsible, and was required to pay such costs even if the client lost the case. That rule was modified by the USPTO in 1985 by adoption of 37 CFR 10.64(b), that eliminated the requirement for the client to remain ultimately liable for all costs of patent prosecution by permitting the practitioner to advance any fee required to prevent or remedy abandonment by reason of an act or omission attributable to the practitioner. The provisions of § 11.108(e) would continue the provisions of current § 10.64(b), but go further by providing that a practitioner may also pay certain expenses of a client that are not patent prosecution or litigation expenses. Thus, under § 11.108(e), a practitioner may pay medical or living expenses of

a client to the extent necessary to permit the client to continue patent or trademark prosecution, or litigation. The payment of these additional expenses is limited to those strictly necessary to sustain the client during patent prosecution or the litigation, such as medical expenses and minimum living expenses. Permitting such payments would bring the proposed rules in conformity with the Rules of Professional Conduct adopted for many state bars. The purpose of permitting such payments is to avoid situations in which a client is compelled by exigent financial circumstances to continue patent prosecution, or settle a claim on unfavorable terms in order to receive the immediate proceeds of settlement. This provision does not permit practitioners to "bid" for clients by offering financial payments beyond those minimum payments necessary to sustain the client until the patent prosecution or litigation is completed. Regardless of the types of payments involved, assuming such payments are proper under § 11.108(e), client reimbursement of the practitioner is not required. However, no practitioner is required to pay litigation or other patent costs to a client. Section 11.108 would merely permit such payments to be made without requiring reimbursement by the client.

Paragraph (e)(3) of § 11.108 would continue the present practice of permitting a practitioner to advance any fee required to prevent or remedy an abandonment of a client's application by reason of an act or omission attributable to the practitioner and not to the client, whether or not the client is ultimately liable.

Paragraph (f) of § 11.108—Person Paying for Practitioner's Services. Section 11.108(f) would require full disclosure and client consent before the practitioner's services can be paid for by a third party. Such an arrangement would also have to conform to the requirements of § 11.106 concerning confidentiality and § 11.107 concerning conflict of interest and risks. Where the client is a class, consent may be obtained on behalf of the class by court-supervised procedure. The disclosure and consent must be in writing.

The only interest of some of third parties that offer a practitioner's legal service may be a financial one: closing the sale of a legal service, such as a living trust or patent application, to the individual. Such a party, *e.g.*, an invention promoter, facilitates the practitioner's access to such individuals. The practitioner may depend upon the promoter for employment, and even compensation in these circumstances. In such situations, the promoter can control the engagement of the practitioner. Potential conflicts may arise where the practitioner permits the third party, with whom the practitioner has a business or financial relationship, to perform the essential planning tasks, including fact-finding without supervision. The practitioner should be exercising independent professional judgment.

In order to create an appropriate patent application, relevant information must be ascertained from the inventor. The practitioner must, with the inventor's input, determine the proper type of patent application to prepare, the facts to be included, and the scope of protection to be sought. The practitioner must counsel an inventor regarding all of the options that are appropriate and the pros and cons of each option. After such counseling, the participant (*e.g.*, an inventor) must decide if a patent application, or some other arrangement should be the cornerstone of the intellectual property plan. If a practitioner permits an invention promoter to assume this function, the practitioner allows a third party to interfere with the practitioner's independence of professional judgment. *See* § 11.107(b). *Accord*, Formal Opinion No. 1997–148, Standing Committee on Professional Responsibility and Conduct (California).

Accordingly, in matters involving an invention promoter paying the practitioner, proposed paragraph (f) would require practitioners to fully disclose all involved conflicts of interest and risks. The duty of full disclosure includes informing the inventor of reasonably foreseeable adverse consequences if the inventor advances or has advanced legal fees or expenses to the promoter. Thus, the practitioner would have to inform the client of the full extent to which the advanced funds are or would be at risk of being lost by being placed with the promoter, as opposed to being delivered directly to the practitioner. The risks could include, but are not limited to, the loss of the funds if the promoter ceases doing business, declares bankruptcy, or is otherwise unable to obtain a refund of unearned advanced legal fees. In contrast, the client could obtain the refund if the funds are delivered to the practitioner. For example, if delivered to the practitioner, the advanced legal fees should be deposited in the practitioner's escrow account. *See* § 11.115. Unearned funds would be refundable to the client, even if the practitioner ceases to continue practicing, and may not be subject to bankruptcy. Another risk in the event the promoter ceases to do business, or declares bankruptcy is the possibility that the practitioner will refuse to provide legal services for the client unless the client again provides funds to pay for legal services for which the client previously paid.

Paragraph (f)(1)(ii) of § 11.108 would provide if the client is an inventor who advances legal fees and costs to an invention promoter, and the promoter compensates the practitioner, the practitioner has a duty to disclose to the client all conflicting interests and risks in writing.

Paragraph (2) of § 11.108(f) would require a practitioner to avoid interference with his or her independence of professional judgment if a third party is paying for the practitioner's services. Thus, a practitioner must avoid relying on a contract or other agreement between a client/inventor and an invention promoter as limiting his or her professional services rendered to a particular number of applications, *e.g.*, a provisional application, or to a particular type of invention for which an application will be filed, *e.g.*, a design patent application.

An invention promoter can interfere with the attorney-client or agent-client relationship between the practitioner and inventor-client in several ways. First, the promoter can interfere with the attorney-client or agent-client relationship between the practitioner and inventor. For example, this can occur if the promoter determines the legal protection that the practitioner will seek for the inventor. These situations obtain where a promoter enters into a contract with its patron, the inventor, using its standard contract form to provide only design patent protection, or only utility patent protection. If the practitioner permits the promoter's contract to control the extent to which legal services are provided for the fee paid by the inventor, the practitioner permits the promoter to direct or regulate the practitioner's professional judgment.

The invention promoter also may interfere with the relationship by collecting the legal fees to be paid for the practitioner's legal services. For example, if the promoter deposits the funds in its own bank account, and does not pay the practitioner, the promoter interferes with the relationship to the extent the practitioner refuses to provide legal services unless or until paid. A practitioner may be willing to continue representation only if the inventor-client again pays for the legal services, but only if legal fees are now paid directly to the practitioner. Inasmuch as the practitioner undertook to represent the client under the circumstances where the company collects the legal fees, it is believed that the practitioner should provide the legal services, and pursue his or her legal recourse against the company for recovery of the fees.

Similarly, invention promoters may interfere with the relationship if they go out of business. Practitioners employed by such promoters may leave the inventor-client's files behind the promoter's closed doors, and abandon the inventors to their own resources. Section 11.108(f)(2) would require a practitioner to avoid interference with his or her independence of professional judgment if third party payment for a practitioner's services is to be permitted.

Sections 11.108(f)(2) and 11.504(c) would proscribe a practitioner from permitting an invention promoter to direct or regulate the practitioner's professional judgment in rendering legal services.

Family Relationships Between Practitioners. Paragraph (i) of § 11.108 would apply to related practitioners who are in different firms. Related practitioners in the same firm would be governed by §§ 11.107, 11.109, and 11.110. Pursuant to the provisions of § 11.110, the disqualification stated in paragraph (i) is personal and is not imputed to members of firms with whom the practitioners are associated. Since each of the related practitioners is subject to § 11.110(i), the effect is to require the consent of all materially affected clients.

Practitioner's Liens. Paragraph (j) of § 11.108 would be substantially the same as the provisions of current § 10.64(a). The substantive law of each state and territory differs regarding whether practitioners are permitted to assert and enforce liens against the property of clients. In the District of Columbia, an attorney's lien is permitted. *See, e.g., Redevelopment Land Agency* v. *Dowdey*, 618 A.2d 153, 159–60 (D.C. 1992), and cases cited therein. *See also Beardsley* v. *Cockerell*, 240 F.Supp 845 (D.D.C. 1965) (attorney retaining lien applied to legal patent work, legal non-patent work, and other property for payment for services). Whether a practitioner may legally have a lien on money or property belonging to a client is generally a matter of substantive law. Exceptions to which the common law might otherwise permit are made with respect to contingent fees and retaining liens. *See*, respectively, § 11.105(c) and § 11.108(i). Exceptions regarding retention of papers relating to a client are addressed in § 11.116(d).

Paragraph (d) of § 11.116 would require a practitioner to surrender papers and property to which the client is entitled when representation of the client terminates. Section 11.108(j) would state a narrow exception to § 11.116(d): a practitioner may retain anything the law permits—including property—except for files. As to files, a practitioner may retain only the practitioner's own work product, and then only if the client has not paid for the work. However, if the client has paid for the work product, the client is entitled to receive it, even if the client has not previously seen or received a copy of the work product. Furthermore, the practitioner may not retain the work product for which the client has not paid, if the client has become unable to pay or if withholding the work product might irreparably harm the client's interest.

Under paragraph (d) of § 11.116, for example, it would require a practitioner to return all papers received from a client, such as birth certificates, invention disclosures, or invention prototypes. Section 11.116(d) would prohibit retention of such papers to secure payment of any fee due. Only the practitioner's own work product—results of factual investigations, legal research and analysis, and similar materials generated by the practitioner's own effort—could be retained (the term "work product" as used herein is limited to materials falling within the "work product doctrine," but includes any material generated by the practitioner that would be protected under that doctrine whether or not created in connection with pending or anticipated litigation). Office actions would not be considered work product. A practitioner could not, however, withhold all work product merely because a portion of the practitioner's fees had not been paid. *See* § 11.116(d).

There are situations in which withholding work product would not be permissible because of irreparable harm to the client. The possibility of involuntary incarceration or criminal conviction constitutes one category of irreparable harm. *See* Formal Opinion 1690, Legal Ethics Committee of the Virginia State Bar (1997). The realistic possibility that a client might irretrievably lose a significant right, *e.g.*, patent rights, or become subject to a significant liability because of the withholding of the work product constitutes another category of irreparable harm. On the other hand, the mere fact that the client who can afford to might have to pay another practitioner to replicate the work product does not, standing alone, constitute irreparable harm. These examples are merely indicative of the meaning of the term "irreparable harm," and are not exhaustive.

Taking an interest in a client's patent. Paragraph (j)(3) of § 11.108 would be substantially the same as the provisions of current § 10.64(a)(3), in permitting a practitioner to take an interest in a patent or in the proceeds from a patent as part of his or her fee. However, consistent with § 11.105(a), the fee obtained by the interest may not exceed an amount that is reasonable. The paragraph adds information that a practitioner who is or has been an officer or employee of the Office has an additional legal issue to consider. The latter practitioner is ineligible during the period of the practitioner's appointment and for one year thereafter from acquiring, directly or indirectly, except by inheritance or bequest, any right or interest in any patent, issued or to be issued by the Office. *See* 35 U.S.C. 4. In the year following separation from the Office, a practitioner who has been an officer or employee of the Office may acquire an interest in a client's patent only at such time and insofar as is permitted by § 4.

Paragraph (k) of 11.108 would address situations wherein a practitioner acquires access to inventor-clients through an invention promoter. A promoter's interests may be served merely if the inventor accepts a marketing plan. The plan often includes protection of the inventor-client's invention with a patent. However, the best interests of the inventor may mean that no patent is necessary, or both utility and design patents should be considered an integral part of the plan. The practitioner's duty to the participant includes educating the inventor as to the available options and not simply following the sole patent plan format offered by the promoter which all must use. The practitioner in these situations is attempting to serve two masters, the inventor and the invention promoter.

A lawyer-client or agent-client relationship can exist between the practitioner and the inventor at least when representation before the Office occurs. A business and professional relationship can exist between the practitioner and the invention promoter whereby the practitioner acquires inventor-clients through the promoter. The practitioner and the promoter have a business and financial relationship because the practitioner obtains employment or compensation through the promoter.

Paragraph (k) of § 11.108 would address situations in which a

practitioner's relationship with another party could interfere with a practitioner's loyalty and independent professional judgment on an inventor-client's behalf. The practitioner's relationship with the invention promoter here creates the possibility of a conflict of interest that warrants disclosure under the rule. The inventor-client and the promoter may have differing interests in the engagement. The best interests of the inventor may mean that a patent should not be an integral part of the marketing plan. The best interest of the promoter, however, is most often served only if the inventor's plan includes a patent. The practitioner's duty to the inventor-client includes educating the inventor as to the available options to protect the invention, including patent rights, and not simply presenting one patent format offered by the promoter which all must use. The practitioner's duty of loyalty flows from his other client.

Here, the practitioner's judgment may be influenced by the practitioner's relationship with the promoter, who is a "party" as the facilitator of the transaction, or perhaps as a partial assignee of the invention. This relationship would trigger § 11.108(k)(1). Additionally, the promoter profits from the sale of the marketing plan, and receives the opportunity to market other products or services to the inventor and this would trigger § 11.108(k)(2). Accordingly, under either paragraph (1) or (2) of § 11.108(k), the practitioner would be barred from representing the inventor unless the practitioner makes the required full written disclosure and receives the consent of the inventor. Section 11.1(n) defines "full disclosure" as a "clear explanation of the differing interests involved in a transaction, * * * and detailed explanation of the risks and disadvantages to the client entailed in any agreement or arrangement, including not only any financial loses that will or may foreseeably occur to the client, but also any liabilities that will or may foreseeably accrue to the client."

In this situation, a practitioner has a duty to inform the inventor-client in writing of the full extent of the practitioner's and client's differing interests. For example, the duty would require full disclosure of the practitioner's business and financial relationship with the promoter, and the differing interests of the practitioner, the promoter, and inventor in the transaction. The practitioner's duty of "full disclosure" includes informing the inventor-client of reasonably foreseeable adverse consequences and includes informing the inventor in writing about how these relationships could cause the practitioner to favor the interests of the promoter and influence the practitioner's advice to the client. *See* Opinion No. 1997–148, Standing Committee on Professional Responsibility and Conduct (California).

Section 11.109. After termination of a client-practitioner relationship, a practitioner may not represent another client except in conformity with proposed § 11.109. The principles in § 11.107 would determine whether the interests of the present and former client are adverse. Thus, a practitioner could not properly seek to rescind on behalf of a new client a contract drafted on behalf of the former client. So also a practitioner who prosecutes a patent application for joint inventors, and has an attorney-client relationship with each joint inventor could not properly represent one joint inventor in breach of contract suit against the other joint inventor while the patent application was pending where each joint inventor agreed to pay half of the legal fees, and the practitioner is aware that each applicant would benefit directly from successful prosecution of the application. *See Henry Filters, Inc.* v. *Peabody Barnes, Inc.*, 611 N.E.2d 873 (Ohio 1992).

The scope of a "matter" for purposes of § 11.109 may depend on the facts of a particular situation or transaction. The practitioner's involvement in a matter can also be a question of degree. For example, a practitioner previously and currently served as local counsel in several patent applications for a Czechoslovakian agency that acted as an inventor's foreign attorney in prosecution of U.S. patent applications and that serves as Czechoslovakian representative for all Czechoslovakian patent applicants. The practitioner represented a client from Japan in an interference with another client of the Czechoslovakian agency. The practitioner was found not to be disqualified from representing a client adverse to the Czechoslovakian agency's other client. No evidence was adduced showing that the practitioner represented the agency's other client, or that the subject matter in the patents of the agency's client or any other Czechoslovakian application handled by the practitioner was substantially related to the subject matter of the practitioner's client. *See Strojirenstvi* v. *Toyada*, 2 USPQ2d 1222 (Comm'r Pat. 1986). In another example, attorneys in a firm representing an accused patent infringer, as well as the firm, were disqualified where one of the firm's partners worked directly for the patent owner in a substantially related case, and the other firm partner, designated as the lead counsel for the accused infringer, was an associate in the firm that represented the patent owner in the prior related case. The two suits involved the same adversaries. In both suits, the accused infringer filed antitrust counterclaims alleging the same improper marketing practices. Both suits involve the same technology, and were found to be "substantially related" actions. *See W.L. Gore & Associates, Inc.* v. *International Medical Prosthetics Research Associates, Inc.*, 223 USPQ 884 (Fed. Cir. 1984). When a practitioner has been directly involved in a specific transaction, subsequent representation of other clients with materially adverse interests clearly is prohibited. On the other hand, a practitioner who recurrently handled a type of problem for a former client is not precluded from later representing another client in a wholly distinct problem of that type even though the subsequent representation involves a position adverse to the prior client. Similar considerations can apply to the reassignment of Government practitioners between defense and prosecution functions. The underlying question is whether the practitioner was so involved in the matter that the subsequent representation can be justly regarded as a changing of sides in the matter in question. Section 11.109 is intended to incorporate Federal case law defining the "substantial relationship" test. *See, e.g., T.C. Theatre Corp.* v. *Warner Brothers Pictures*, 113 F.Supp. 265 (S.D.N.Y. 1953), and its progeny; *see also Conflicts of Interest in the Legal Profession*, 94 Harv. L. Rev.1244, 1315–34 (1981).

Disqualification from subsequent representation is for the protection of clients and can be waived by them. A waiver is effective only if there is full disclosure of the circumstances, including the practitioner's intended role in behalf of the new client. The question of whether a practitioner is personally disqualified from representation in any matter on account of successive Government and private employment would be governed by proposed § 11.111 rather than by § 11.109.

With regard to an opposing party's raising a question of conflict of interest, see the comment to § 11.107. With regard to disqualification of a firm with which a practitioner is associated, see §§ 11.110 and 11.111.

Practitioners moving between firms. When practitioners have been associated within a firm but then end their association, the question of whether a practitioner should undertake representation is more complicated. There are several competing considerations. The client previously represented by the former firm must be reasonably assured that the principle of loyalty to the client is not compromised. The rule should not be so broadly cast as to preclude other persons from having reasonable choice of legal counsel. The rule also should not unreasonably hamper practitioners from forming new associations and taking on new clients after having left a previous association. In this connection, it should be recognized that today many practitioners practice in firms, that many practitioners to some degree limit their practice to one field or another, and that many move from one association to another several times in their careers. If the concept of imputation were applied with unqualified rigor, the result would be radical curtailment of the opportunity of practitioners to move from one practice setting to another and of the opportunity of clients to change counsel.

Reconciliation of these competing principles in the past has been attempted under two rubrics. One approach has been to seek *per se* rules of disqualification. For example, it has been held that a partner in a law firm is conclusively presumed to have access to all confidences concerning all clients of the firm. Under this analysis, if a practitioner has been a partner in one law firm and then becomes a partner in another law firm, there may be a presumption that all confidences known by the partner in the first firm are known to all partners in the second firm. This presumption might properly be applied in some circumstances, especially where the client has been extensively represented, but may be unrealistic where the client was represented only for limited purposes. Furthermore, such a rigid rule exaggerates the difference between a partner and an associate in modern law firms.

The other rubric formerly used for dealing with disqualification is the appearance of impropriety proscribed in Canon 9 of the ABA Model Code of Professional Responsibility. This rubric has a two-fold problem. First, the appearance of impropriety can be taken to include any new client-lawyer or agent-client relationship that might make a former client feel anxious. If that meaning were adopted, disqualification would become little more than a question of subjective judgment by the former client. Second, since "impropriety" is undefined, the term "appearance of impropriety" is question-begging. It therefore has to be recognized that the problem of disqualification cannot be properly resolved either by simple analogy to a practitioner practicing alone or by the very general concept of appearance of impropriety.

The standard that would be followed by the Office is addressed in the following paragraphs styled Confidentiality and Adverse positions.

Confidentiality. Preserving confidentiality is a question of access to information. Access to information, in turn, is essentially a question of fact in particular circumstances, aided by inferences, deductions or working presumptions that reasonably may be made about the way in which practitioners work together. A practitioner may have general access to files of all clients of a law firm and may regularly participate in discussions of their affairs; it should be inferred that such a practitioner in fact is privy to all information about all the firm's clients. In contrast, another practitioner may have access to the files of only a limited number of clients and participate in discussions of the affairs of no other clients; in the absence of information to the contrary, it should be inferred that such a practitioner in fact is privy to information about the clients actually served but not confidences of other clients.

Paragraph (b) of § 11.109. Application of paragraph (b) of § 11.109 would depend on a situation's particular facts. In such an inquiry the burden of proof should rest upon the firm whose disqualification is sought.

Paragraph (b) of § 11.109 would operate to disqualify the practitioner only when the practitioner involved has actual knowledge of information protected by §§ 11.106 and 11.109(b). Thus, if a practitioner while with one firm acquired no confidential knowledge or information relating to a particular client of the firm, and that practitioner later joined another firm, neither the practitioner individually nor the second firm is disqualified from representing another client in the same or a related matter even though the interests of the two clients conflict. *See* § 11.110(b) for the restrictions on a firm once a practitioner has terminated association with the firm.

Independent of the question of disqualification of a firm, a practitioner changing professional association has a continuing duty to preserve confidentiality of information about a client formerly represented. *See* §§ 11.106 and 11.109.

Adverse positions. The second aspect of loyalty to a client is the practitioner's obligation to decline subsequent representations involving positions adverse to a former client arising in substantially related matters. This obligation requires abstention from adverse representation by the individual practitioner involved, but does not properly entail abstention of other practitioners through imputed disqualification. Hence, this aspect of the problem is governed by § 11.109(a). Thus; if a practitioner left one firm for another, the new affiliation would not preclude the firms involved from continuing to represent clients with adverse interests in the same or related matters, so long as the conditions of paragraphs (b) and (c) concerning confidentiality have been met.

Confidential information acquired by the practitioner in the course of representing a client may not subsequently be used or revealed by the practitioner to the disadvantage of the client. However, the fact that a practitioner has once served a client does not preclude the practitioner from using generally known information about that client when later representing another client.

Disqualification from subsequent representation is for the protection of former clients and can be waived by them. A waiver is effective only if there is full disclosure of the circumstances, including the practitioner's intended role in behalf of the new client.

With regard to an opposing party's raising a question of conflict of interest, see comment to § 11.107. With regard to disqualification of a firm with which a practitioner is or was formerly associated, *see* § 11.110.

Section 11.110 would provide a general rule for disqualification. For purposes of the USPTO Rules of Professional Conduct, the term "firm" includes practitioners in a private firm, and practitioners employed in the legal department of a corporation or other organization, or in a legal services organization, but does not include a Government agency or other Government entity. Whether two or more practitioners constitute a firm within this definition can depend on the specific facts. For example, two practitioners who share office space and occasionally consult or assist each other ordinarily would not be regarded as constituting a firm. However, if they present themselves to the public in a way suggesting that they are a firm or conduct themselves as a firm, they should be regarded as a firm for purposes of the Rules. The terms of any formal agreement between associated practitioners are relevant in determining whether they are a firm, as is the fact

that they have mutual access to confidential information concerning the clients they serve. Furthermore, it is relevant in doubtful cases to consider the underlying purpose of the Rule that is involved. A group of practitioners could be regarded as a firm for purposes of the Rule that the same practitioner should not represent opposing parties in litigation, while it might not be so regarded for purposes of the Rule that information acquired by one practitioner is attributed to another.

With respect to the law department of an organization, there ordinarily would be no question that the members of the department constitute a firm within the meaning of the Rules of Professional Conduct. However, there can be uncertainty as to the identity of the client. For example, it may not be clear whether the law department of a corporation represents a subsidiary or an affiliated corporation, as well as the corporation by which the members of the department are directly employed. A similar question can arise concerning an unincorporated association and its local affiliates.

Similar questions can also arise with respect to practitioners in legal aid organizations. Practitioners employed in the same unit of a legal service organization constitute a firm, but not necessarily those employed in separate units. As in the case of independent practitioners, whether the practitioners should be treated as associated with each other can depend on the particular Rule that is involved, and on the specific facts of the situation.

Where a practitioner has joined a private firm after having represented the Government, the situation would be governed by § 11.111. The individual practitioner involved is bound by these rules generally, including §§ 11.106, 11.107, and 11.109.

Different provisions are thus made for movement of a practitioner from one private firm to another and for movement of a practitioner from the Government to a private firm. The Government is entitled to protection of its client confidences, and therefore to the protections provided in §§ 11.106 and 11.111. However, if the more extensive disqualification in § 11.110 were applied to former Government practitioners, *e.g.*, patent examiners, the potential effect on the Government would be unduly burdensome. The Government deals with all private citizens and organizations, and thus has a much wider circle of adverse legal interests than does any private law firm. In these circumstances, the Government's recruitment of practitioners would be seriously impaired if § 11.110 were applied to the Government. On balance, therefore, the Government, including the USPTO, is better served in the long run by the protections stated in § 11.111.

Paragraph (a) of § 11.110 would address principles of imputed disqualification. The rule of imputed disqualification stated in § 11.110(a) gives effect to the principle of loyalty to the client as it applies to practitioners who practice in a law firm. Such situations can be considered from the premise that a firm of practitioners is essentially one practitioner for purposes of the rules governing loyalty to the client, or from the premise that each practitioner is vicariously bound by the obligation of loyalty owed by each practitioner with whom the practitioner is associated. Section 11.110(a) would govern only among the practitioners currently associated in a firm. When a practitioner moves from one firm to another, the situation would be governed by §§ 11.109 and 11.110(b).

Paragraph (b) of § 11.110 would operate to permit a law firm, under certain circumstances, to represent a person with interests directly adverse to those of a client represented by a practitioner who formerly was associated with the firm. This section would apply regardless of when the formerly associated practitioner represented the client. However, the law firm may not represent a person with interests adverse to those of a present client of the firm, which would violate § 11.107. Moreover, the firm may not represent the person where the matter is the same or substantially related to that in which the formerly associated practitioner represented the client and any other practitioner currently in the firm has material information protected by §§ 11.106 and 11.109(c).

Section 11.111 would address practitioners who leave public office, such as resigning or retiring from the USPTO as a patent examiner, and enter other employment, *e.g.*, becoming a patent searcher, or registered practitioner. It applies to judges and their law clerks as well as to practitioners who have acted in other public capacities. It is a counterpart of § 11.110(b), which applies to practitioners moving from one firm to another.

This section would prohibit a practitioner from exploiting his or her former association with a public office for the advantage of a private client. It is a counterpart of § 11.110(b), which applies to practitioners moving from one firm to another.

A practitioner representing a Government agency or section within the agency, whether employed or specially retained by the Government, is subject to the Rules of Professional Conduct, including the prohibition against representing adverse interests stated in § 11.107 and the protections afforded former clients in § 11.109. In addition, such a practitioner is subject to this § 11.111 and to statutes and Government regulations concerning conflict of interest. In the metropolitan Washington, DC area, where there are so many practitioners for the Federal Government agencies, a number of whom are leaving Government and accepting other employment, particular heed must be paid to the Federal conflict-of-interest statutes. *See, e.g.*, 18 U.S.C. Chapter 11 and regulations and opinions thereunder. In applying § 11.111, the Office would continue to follow the principles announced in *AH JU Steel Co., Ltd.* v. *Armco, Inc.*, 680 F.2d 751 (CCPA 1982); *Sierra Vista Hospital, Inc.*, v. *United States*, 639 F.2d 749 (Ct.Cla.1981); *Armstrong* v. *McAlpin*, 625 F.2d 433 (2nd Cir. 1980) (*en banc*) *vacated*, 449 U.S. 1106 (1981); *General Electric Co.* v. *United States*, 215 Ct.Cl. 928 (1977); and *Kesselhaut* v. *United States*, 555 F.2d 791 (Ct.Cl. 1977).

Where the successive employment is a private client and a public agency, the risk exists that power or discretion vested in public authority might be used for the special benefit of a private client. A practitioner should not be in a position where benefit to a private client might affect performance of the lawyer's professional functions on behalf of public authority. Thus, a registered practitioner should not be in a position as a patent examiner to be influenced by any loyalty to a former client. Also, unfair advantage could accrue to the private client by reason of access to confidential Government information about the client's adversary obtainable only through the practitioner's Government service. However, the rules governing practitioners presently or formerly employed by a Government agency should not be so restrictive as to inhibit transfer of employment to and from the Government. The Government has a legitimate need to attract qualified practitioners as well as to maintain high ethical standards. The provisions for screening and waiver are necessary to prevent the disqualification rule from imposing too severe a deterrent against entering public service.

When the client is an agency of one Government, that agency should be treated as a private client for purposes of this section if the practitioner thereafter represents an agency of another Government, as when a lawyer represents a city and subsequently is employed by a Federal agency.

Paragraph (a) of § 11.111, like current § 10.111(b), flatly forbids a practitioner to accept other employment in a matter in which the practitioner participated personally and substantially as a public officer or employee; participation specifically includes acting on a matter in a judicial capacity. There is no provision for waiver of the individual practitioner's disqualification. The USPTO has disciplined a practitioner for accepting private employment in a matter in which he had personal responsibility while a public employee. *See Friedman* v. *Lehman*, 40 USPQ2d 1206 (D.D.C. 1996) (reprimanding attorney who, as an examiner signed a restriction requirement in a patent application, and in retirement gave expert testimony by deposition about the patent that issued on a continuation application of application wherein he signed the restriction requirement).

"Matter" is defined in § 11.1(w) so as to encompass only matters that are particular to a specific party or parties. The making of rules of general applicability and the establishment of general policy will ordinarily not be a "matter" within the meaning of § 11.111. When a practitioner is forbidden by paragraph (a) to accept private employment in a matter, the partners and associates of that practitioner are likewise forbidden, by paragraph (b), to accept the employment unless the screening and disclosure procedures described in paragraphs (c) through (f) are followed.

Section 11.111 forbids practitioners to accept other employment in connection with matters that are the same as or "substantially related" to matters in which they participated personally and substantially while serving as public officers or employees. The leading case defining "substantially related" matters in the context of former Government employment is *Brown* v. *District of Columbia Board of Zoning Adjustment*, 486 A.2d 37 (D.C. 1984) (*en banc*). There the D.C. Court of Appeals, en banc, held that in the "revolving door" context, a showing that a reasonable person could infer that, through participation in one matter as a public officer or employee, the former Government practitioner "may have had access to information legally relevant to, or otherwise useful in" a subsequent representation, is *prima facie* evidence that the two matters are substantially related. If this prima facie showing is made, the former Government practitioner must disprove any ethical impropriety by showing that the practitioner "could not have gained access to information during the first representation that might be useful in the later representation." *Id.* at 49–50. In *Brown*, the Court of Appeals announced the "substantially related" test after concluding that, under former DR 9–101(B), *see* "Revolving Door," 445 A.2d 615 (D.C. 1982) (*en banc*) (*per* curiam), the term "matter" was intended to embrace all matters "substantially related" to one another—a test that originated in "side-switching" litigation between private parties. *See* § 11.109; *Brown*, 486 A.2d at 39–40 n.1, 41–42 & n.4. Accordingly, the words "or substantially related to" in paragraph (a) are an express statement of the judicial gloss in *Brown* interpreting "matter."

Paragraph (a)'s absolute disqualification of a practitioner from matters in which the practitioner participated personally and substantially carries forward a policy of avoiding both actual impropriety and the appearance of impropriety that is expressed in the Federal conflict-of-interest statutes and was expressed in the former Code of Professional Responsibility.

Paragraph (c) requires the screening of a disqualified practitioner from such a matter as a condition to allowing any practitioners in the disqualified practitioner's firm to participate in it. This procedure is permitted in order to avoid imposing a serious deterrent to practitioners' entering public service. Governments have found that they benefit from having in their service younger persons who do not intend to devote their entire careers to public service, as well as more experienced practitioners. Some practitioners might not enter into short-term public service if they thought that, as a result of their active governmental practice, a firm would hesitate to hire them because of a concern that the entire firm would be disqualified from matters as a result.

There is no imputed disqualification and consequently no screening requirement in the case of a judicial law clerk. But such clerks are subject to a personal obligation not to participate in matters falling within paragraph (a) of § 11.111, since participation by a law clerk is within the term "judicial or other adjudicative capacity."

"Other employment," as used in paragraph (a) of § 11.111, would include the representation of a governmental body other than an agency of the Government by which the practitioner was employed as a public officer or employee. In the case of a move from one Government agency to another, however, the prohibition provided in paragraph (a) might be waived by the Government agency with which the practitioner was previously employed. As used in paragraph (a), it would not be "other employment" for a practitioner who has left the employment of a particular Government agency and taken employment with another Government agency (*e.g.*, the Department of Justice) or with a private law firm to continue or accept representation of the same Government agency with which the practitioner was previously employed.

Paragraph (c) of § 11.111 would permit a practitioner to receive a salary or partnership share established by prior independent agreement, while prohibiting the attorney's compensation from being directly related in any way to the fee in the matter in which the practitioner is disqualified.

Section 11.112 would extend the basic requirements of § 11.111(a) to privately employed arbitrators. Section 11.112(a) is substantially similar to § 11.111(a), except that it allows an arbitrator to represent someone in connection with a matter with which the practitioner was substantially involved while serving as an arbitrator if the parties to the arbitration consent. Section 11.112(b) makes it clear that the prohibition set forth in § 11.112(a) does not apply to partisan arbitrators serving on a multimember arbitration panel.

Section 11.113 would address situations where the client is an entity, as opposed to a person. An organizational client is a legal entity, which cannot act except through its officers, directors, employees, shareholders, and other constituents. The duties defined herein apply equally to corporations and unincorporated associations. "Other constituents" as used herein means the positions equivalent to officers, directors, employees, and shareholders held by persons acting for organizational clients that are not corporations. Customers of an organizational client are not constituents.

When one of the constituents of an organizational client communicates with the organization's practitioner in that person's organizational capacity, the communication is protected by § 11.106. Thus, by way of example, if an organizational client requests its attorney to investigate allegations of wrongdoing, interviews made in the course of that investigation between the attorney and the client's employees or other constituents are covered by § 11.106. This does not mean, however, that constituents of an organizational client are the clients of the practitioner. The practitioner may not disclose to such constituents information relating to the representation except for

disclosures explicitly or impliedly authorized by the organizational client in order to carry out the representation or as otherwise permitted by § 11.106.

When constituents of the organization make decisions for it, the practitioner ordinarily must accept the decisions even if their utility or prudence is doubtful. The organization's constituents make decisions concerning policy and operations, including ones entailing serious risk. However, different considerations arise when the practitioner knows that the organization may be substantially injured by tortuous or illegal conduct by a constituent member of an organization that reasonably might be imputed to the organization or that might result in substantial injury to the organization. In such a circumstance, it may be reasonably necessary for the practitioner to ask the constituent to reconsider the matter. If that fails, or if the matter is of sufficient seriousness and importance to the organization, it may be reasonably necessary for the practitioner to take steps to have the matter reviewed by a higher authority in the organization. Clear justification should exist for seeking review over the head of the constituent normally responsible for it. The stated policy of the organization may define circumstances and prescribe channels for such review, and a practitioner should encourage the formulation of such a policy. Even in the absence of organization policy, however, the practitioner may have an obligation to refer a matter to a higher authority, depending on the seriousness of the matter and whether the constituent in question has apparent motives to act at variance with the organization's interest. Review by the chief executive officer or by the board of directors may be required when the matter is of importance commensurate with their authority. At some point it may be useful or essential to obtain an independent legal opinion.

In an extreme case, it may be reasonably necessary for the practitioner to refer the matter to the organization's highest authority. Ordinarily, that is the board of directors or similar governing body. However, applicable law may prescribe that under certain conditions highest authority reposes elsewhere; for example, in the independent directors of a corporation.

Relation to Other Rules. Section 11.113 would not limit or expand the practitioner's responsibility under §§ 11.106, 11.108, 11.116, 11.303, and 11.401. If the practitioner's services are being used by an organization to further a crime or fraud by the organization, § 11.102(d) can be applicable.

Government Agency. Because the Government agency that employs the Government practitioner is the practitioner's client, the practitioner represents the agency or section within the agency acting through its duly authorized constituents. Any application of proposed § 11.113 to Government practitioners must, however, take into account the differences between Government agencies and other organizations. For example, statutes and regulation may define duties of lawyers employed by the Government or lawyers in military service. Therefore, defining precisely the identity of the client and prescribing the resulting obligations of such lawyers may be more difficult in the Government context. Although in some circumstances the client may be a specific agency, it is generally the Government as a whole. For example, if the action or failure to act involves the head of a bureau, either the department of which the bureau is a part or the Government as a whole may be the client for the purpose of this Rule. Moreover, in a matter involving the conduct of Government officials, a Government lawyer may have authority to question such conduct more extensively than that of a lawyer for a private organization in similar circumstances. This Rule does not limit that authority.

Clarifying the Practitioner's Role. There are times when the organization's interest may differ from those of one or more of its constituents. This can occur, for example, where a constituent believes, incorrectly, that a practitioner is representing the constituent's interests, whereas the practitioner represents the interests of the organization. In such circumstances the practitioner should advise any constituent whose interest the practitioner finds differs from that of the organization, of the conflict or potential conflict of interest, that the practitioner's representation is limited to the client cannot permit the practitioner to represent such constituent, and that the constituent may wish to obtain independent representation. Care must be taken to assure that the individual understands that, when there is such divergent interest, the practitioner for the organization cannot provide legal representation for that constituent individual, and that discussions between the practitioner for the organization and the individual may not be privileged.

Whether the practitioner for the organization prudently should give such a warning to any constituent individual will turn on the facts of each case.

Dual Representation. Paragraph (c) of § 11.113 recognizes that a practitioner for an organization may also represent a principal officer or major shareholder.

Derivative Actions. Under generally prevailing law, the shareholders or members of a corporation may bring suit to compel the directors to perform their legal obligations in the supervision of the organization. Members of unincorporated associations have essentially the same right. Such an action may be brought nominally by the organization, but usually is, in fact, a legal controversy over management of the organization.

The question can arise whether counsel for the organization may defend such an action. The proposition that the organization is the practitioner's client does not alone resolve the issue. Most derivative actions are a normal incident of an organization's affairs, to be defended by the organization's practitioner like any other suit. However, if the claim involves serious charges of wrongdoing by those in control of the organization, a conflict may arise between the practitioner's duty to the organization and the practitioner's relationship with the board. In those circumstances, § 11.107 governs whether practitioners who normally serve as counsel to the corporation can properly represent both the directors and the organization.

Section 11.114 would introduce rules to address circumstances when a client is under a disability. The normal client-practitioner relationship is based on the assumption that the client, when properly advised and assisted, is capable of making decisions about important matters. When the client is a minor or suffers from a mental disorder or disability, however, maintaining the ordinary client-practitioner relationship may not be possible in all respects. In particular, an incapacitated person may have no power to make legally binding decisions. Nevertheless, a client lacking legal competence often has the ability to understand, deliberate upon, and reach conclusions about matters affecting the client's own well-being. Furthermore, to an increasing extent the law recognizes intermediate degrees of competence. For example, the Patent Statute draws no distinction based on age as to entitlement to a patent. Also, children as young as five or six years of age, and certainly those of ten or twelve, have been regarded as having opinions that are entitled to weight in legal proceedings concerning their custody. Conversely, it is recognized that some persons of advanced age can be quite

capable of handling routine financial matters while needing special legal protection concerning major transactions.

The fact that a client suffers a disability does not diminish the practitioner's obligation to treat the client with attention and respect. If the person has no guardian or legal representative, the practitioner may need to act as de facto guardian. Even if the person does have a legal representative, the practitioner should as far as possible accord the represented person the status of client, particularly in maintaining communication.

If a legal representative has already been appointed for the client, the practitioner should ordinarily look to the representative for decisions on behalf of the client. If a legal representative has not been appointed, the practitioner should see to such an appointment where it would serve the client's best interests. Thus, if a disabled client has substantial property that should be sold for the client's benefit, effective completion of the transaction ordinarily requires appointment of a legal representative. In many circumstances, however, appointment of a legal representative may be expensive or traumatic for the client. Evaluation of these considerations is a matter of professional judgment on the practitioner's part.

Disclosure of the Client's Condition. Rules of procedure in litigation generally provide that a guardian or next friend shall represent minors or persons suffering mental disability if they do not have a general guardian. Practitioners occasionally file patent applications for child inventors whose parents act as general guardians. However, disclosure of a client's disability can adversely affect the client's interests. For example, raising the question of disability could, in some circumstances, lead to proceedings for involuntary commitment. The practitioner's position in such cases is an unavoidably difficult one. The practitioner may seek guidance from an appropriate diagnostician.

Section 11.115 would continue the policies regarding the safeguarding of a client's property. A practitioner should hold property of others with the care required of a professional fiduciary. Securities should be kept in a safe deposit box, except when some other form of safekeeping is warranted by special circumstances. All property that is the property of clients or third persons should be kept separate from the practitioner's business and personal property and, if monies, in one or more trust accounts. Separate trust accounts may be warranted when administering estate monies or acting in similar fiduciary capacities.

Paragraph (a) of § 11.115 would be substantially the same as current § 10.112(a). Separation of the funds of a client from those of the practitioner not only serves to protect the client but also avoids even the appearance of impropriety, and therefore commingling of such funds should be avoided.

Paragraph (b) of § 11.115 would address situations wherein a practitioner has an arrangement with an invention promoter to be paid for legal services, and the promoter collects advanced legal fees from a client. In these situations, the practitioner would be responsible for safeguarding the funds advanced by inventor-clients to the promoter. The practitioner's involvement might provide the arrangement between the promoter and inventor-client with a genre of legitimacy and security for the funds. Thus, the arrangement enables the promoter to receive and have the funds for the practitioner's legal services. It would be appropriate for the practitioner to be expected to safeguard the client's funds advanced for the practitioner's legal services. Thus, if the promoter kept the funds advanced by the client and ceases doing business, the practitioner would be responsible for continuing to provide the legal services, even if he or she did not safeguard the advanced funds.

Some invention promoters eventually cease doing business. The Federal Trade Commission acted to freeze the assets of two invention promoters, and a District Court froze the assets. *See Federal Trade Commission* v. *American Inventors Corporation*, 37 USPQ2d 1154, 1995 U.S. Dist. LEXIS 18854 (D.Mass. 1995). The companies ceased doing business, and unsuccessfully sought protection in bankruptcy. *See Federal Trade Commission* v. *American Institute for Research and Development*, 219 B.R. 639, 1998 U.S. Dist. LEXIS 4391 (D.Mass. 1998) (dismissing involuntary bankruptcy proceedings by company to avoid risk of abuse of bankruptcy system and in support of the court's interest in vindicating its remedial orders). The matter remains pending, and what the clients will recover, if anything, is uncertain. Under § 11.115(b), a practitioner would be responsible for safeguarding the funds advanced by the client. For example, a practitioner could arrange to have the promoter return the funds to the client, who might then advance the funds to the practitioner.

Paragraph (c) of § 11.115 would be substantially the same as current § 10.112(b)(2). In a variety of circumstances, practitioners receive funds from third parties from which the practitioner's fee will be paid. If there is risk that the client may divert the funds without paying the fee, the lawyer is not required to remit the portion from which the fee is to be paid. A practitioner is not required to remit the portion from which the fee is to be paid. However, a practitioner may not hold funds to coerce a client into accepting the practitioner's contention. The disputed portion of the funds should be kept in trust and the practitioner should suggest means for prompt resolution of the dispute, such as arbitration. The undisputed portion of the funds shall be promptly distributed.

Third parties, such as a client's creditors, may have just claims against funds or other property in a practitioner's custody. A practitioner may have a duty under applicable law to protect such third-party claims against wrongful interference by the client, and accordingly may refuse to surrender the property to the client. However, a practitioner should not unilaterally assume to arbitrate a dispute between the client and the third party.

The obligations of a practitioner under this section are independent of those arising from activity other than rendering legal services. For example, the applicable law relating to fiduciaries governs a practitioner who serves as an escrow agent even though the practitioner does not render legal services in the transaction.

Paragraph (d) of § 11.115 would be substantially identical to current § 10.112(c).

Paragraph (e) of § 11.115 would require funds, securities or other properties held by a practitioner as a fiduciary to be maintained in separate fiduciary accounts, and the practitioner would not be permitted to commingle the assets of such fiduciary accounts except as provided by state bar ethics rules.

Paragraph (f) of § 11.115 would require a practitioner to maintain books and records that establish compliance with paragraphs (a) and (d) of § 11.115 for a period of five years after termination of the representation. A member of the bar in the District of Columbia is required to maintain records for a five-year period. Further, the five-year period is consistent with the statute of limitation period within which formal action must be taken to discipline a practitioner. *See Johnson* v. *SEC*, 87 F.3d, 484 (D.C.Cir. 1996); *3M Company* v. *Browner*, 17 F.3d 1453 (D.C.Cir. 1994).

Paragraph (g) of § 11.115 would require a minimum accounting procedure that would be applicable to all escrow accounts subject to §§ 11.115(a) and (d).

The records §§ 11.115(f) and (g) would require a practitioner to keep are the same records the practitioner must currently maintain to comply with 37 CFR 10.112(c)(3). Section 10.112(c)(3) requires a practitioner to "maintain complete records of all funds, securities and other properties of a client coming into the possession of the practitioner." Section 10.112(c)(3) is substantially the same as DR 9–102(b)(3) of the Code of Professional Responsibility of the American Bar Association, which was adopted by numerous states. It has been long recognized that compliance with the Code's rule requires maintenance of, *inter alia*, a cash receipts journal, a cash disbursements journal, and a subsidiary ledger, as well as period trial balances, and insufficient fund check reporting. *See Wright* v. *Virginia State Bar*, 357 S.E.2d 518, 519 (Va. 1987); *In re Librizzi*, 569 A.2d 257, 258–259 (N.J. 1990); *In re Heffernan*, 351 N.W.2d 13, 14 (Minn. 1984); *In re* Austin, 333 N.W.2d 633, 634 (Minn. 1983); and *In re Kennedy*, 442 A.2d 79, 84–85 (Del. 1982). Thus, §§ 11.115(f) and (g) articulate recordkeeping requirements that currently obtain for all practitioners.

With respect to property that constitutes evidence, such as the instruments or proceeds of crime, *see* § 11.304(a).

Paragraph (h) of § 11.115 would provide for accepting, as complying with §§ 11.115(f) and (g), financial records maintained by an attorney that comply with his or her state bar's financial recordkeeping requirements if the attorney is a member in good standing of the bar of the highest court of that state, and the attorney's principal place of business is in that state. For patent agents employed by a law firm, substantial compliance with the USPTO recordkeeping requirements will be met if the law firm in a state employing the agent complies with the financial recordkeeping requirements of that state. Attorneys and patent agents outside United States, all attorneys not maintaining a financial account records in compliance with his or her state bar's recordkeeping requirements, and all other patent agents must comply with USPTO recordkeeping requirements detailed in § 11.115. The USPTO presumes that patent agents employed by law firms do not have control over how records are to be maintained and may not have a choice of what guidelines with which they must comply. Patent agents who are hired as contractors, on the other hand, and self-employed patent agents are presumed to have control and, thus, must comply with the provisions of §§ 11.115(f) and (g).

Section 11.116 would continue the current practice regarding withdrawal. A practitioner should not accept representation in a matter unless it can be performed competently, promptly, without improper conflict of interest, and to completion.

Paragraph (a) of § 11.116 would address mandatory withdrawal. A practitioner ordinarily must decline or withdraw from representation if the client demands that the practitioner engage in conduct that is illegal or violates the Rules of Professional Conduct or other law. The practitioner is not obliged to decline or withdraw simply because the client suggests such a course of conduct; a client may make such a suggestion in the hope that a practitioner will not be constrained by a professional obligation.

Difficulty may be encountered if withdrawal is based on the client's demand that the practitioner engage in unprofessional conduct, or failure to pay agreed-upon fees. The Office or court may wish an explanation for the withdrawal, while the practitioner may be bound to keep confidential the facts that would constitute such an explanation. The practitioner's statement that irreconcilable differences between the practitioner and client require termination of the representation ordinarily should be accepted as sufficient.

Paragraph (a) of § 11.116 would also address discharge of a practitioner. A client has a right to discharge a practitioner at any time, with or without cause, subject to liability for payment for the practitioner's services. Where future dispute about the withdrawal may be anticipated, it may be advisable to prepare a written statement reciting the circumstances. Whether an inventor, who is employed by a company and has signed a power of attorney to a practitioner retained by the company, can discharge the practitioner may depend on the facts and applicable law. In the absence of evidence that the company is the assignee of record of the entire interest, and that as assignee, the company has given a power of attorney to the practitioner, the inventor at least technically may revoke the power of attorney. Upon recording an assignment of the entire interest, the company may elect to revoke all previous powers of attorney and appoint the practitioner. 37 CFR 1.36. If an employee-inventor refuses to execute an assignment, and there is an agreement between the employee and employer for assignment of patent rights, the employer may be entitled under state law to specific performance of the agreement. *See In re RCA Corporation*, 209 USPQ 1114 (Comm'r Pat. 1981).

If a client is mentally incompetent, the client may lack the legal capacity to discharge the practitioner. The practitioner should make a special effort to help the client consider the consequences and, in an extreme case, may initiate proceedings for a conservatorship or similar protection of the client. *See* § 11.114.

Paragraph (b) of § 11.116 would address optional withdrawal. A practitioner may withdraw from representation in some circumstances. The practitioner has the option to withdraw if the withdrawal can be accomplished without material adverse effect on the client's interests. Withdrawal is also justified if the client persists in a course of action that the practitioner reasonably believes is criminal or fraudulent, for a practitioner is not required to be associated with such conduct even if the practitioner does not further it. *See* § 11.102(d) and (e). Withdrawal is also permitted if the practitioner's services were misused in the past even if that would materially prejudice the client.

A practitioner may withdraw if the client refuses to abide by the terms of an agreement relating to the representation, such as an agreement concerning the timely payment of the practitioner's fees, court costs or other out-of-pocket expenses of the representation, or an agreement limiting the objectives of the representation.

If the matter is not pending in court or before the Office, a practitioner will not have "other good cause for withdrawal" unless the practitioner is acting in good faith and the circumstances are exceptional enough to outweigh the material adverse effect on the interests of the client that withdrawal will cause.

Paragraph (b) of § 11.116 would address assisting the client upon withdrawal. Even if the client has unfairly discharged the practitioner, a practitioner would be required to take all reasonable steps to mitigate the consequences to the client. The practitioner may retain papers as security for a fee only to the extent permitted by § 11.108(i).

Paragraph (c) of § 11.116 would address compliance with requirements of a tribunal, *e.g.*, the Office. This paragraph would reflect that a practitioner may, by appearing before a tribunal, become subject to the

tribunal's power in some circumstances to prevent a withdrawal that would otherwise be proper. Section 11.116(c) would require the practitioner who is ordered to continue a representation before a tribunal to do so. However, § 11.116(c) is not intended to prevent the practitioner from challenging the tribunal's order as beyond its jurisdiction, arbitrary, or otherwise improper while, in the interim, continuing the representation.

Paragraph (d) of § 11.116 would address return of a client's property or money. This paragraph would require a practitioner to make timely return to the client of any property or money "to which the client is entitled." Where a practitioner holds property or money of a client at the termination of a representation and there is a dispute concerning the distribution of such property or money—whether such dispute is between the practitioner and a client, the practitioner and another practitioner who is owed a fee in the matter, or between either the practitioner or the client and a third party—the practitioner would have to segregate the disputed portion of such property or money, hold that property or money in trust as required by § 11.115, and promptly distribute any undisputed property and amounts. *See* § 11.115(c).

Notwithstanding the foregoing, where a practitioner has a valid lien covering undisputed amounts of property or money, the practitioner might continue to hold such property or money to the extent permitted by the substantive law governing the lien asserted. *See* generally §§ 11.108, and 11.115(c).

The ethical mandate "to protect a client's interests" is recognized as displacing the common law retaining lien. *See* Formal Opinion 1690, Legal Ethics Committee of the Virginia State Bar (1997). Therefore, the proposed rule would provide an exception regarding retention of any part of a client's patent and trademark application files that had been filed with the Office. For example, this would include application itself, as well as any amendment, or reply filed in the Office. Documents filed in the Office are not within the attorney work product exception. Once the documents are filed with the Office, they no longer constitute work product. *See* Formal Opinion 250, Legal Ethics Committee of the District of Columbia (1994) (Files containing copies of applications filed with the FCC and amendments and correspondence relating to those applications, also filed with the FCC, are not within the work product exception). Also excepted from retention is any patent or trademark application prosecution work product for which a practitioner has been paid. Further excepted is any prosecution-related paper whenever assertion of a retaining lien on the paper would prejudice or imperil the protection of the client's interests. *See* Formal Opinion 1690, Legal Ethics Committee of the Virginia State Bar (1997).

It is recognized that more is required to establish material prejudice with regard to attorney work product than to client-provided papers. In situations wherein a client is represented by a new practitioner, material prejudice does not occur simply because a new practitioner must create work product, such as research, drafting, and memoranda, that are contained in the original practitioner's file. Creating work product may be inconvenient and an expense to the client, but it does not rise to the level of material prejudice to a client's interest in subsequent representation. *Accord*, Formal Opinion 1690, Legal Ethics Committee of the Virginia State Bar (1997).

Section 11.117 would introduce rules regarding the sale of a practice before the Office involving patent matters. The practice of law is a profession, not merely a business. Clients are not commodities that can be purchased and sold at will. Pursuant to § 11.117, when a registered practitioner ceases to practice and another registered practitioner or firm of registered practitioners takes over the representation, the selling practitioner could obtain compensation for the reasonable value of the practice, as could withdrawing partners of law firms. *See* §§ 11.504 and 11.506.

Termination of practice by the seller. The requirement of § 11.117(b) that all of the private practice be sold would be satisfied if the seller in good faith makes the entire practice available for sale to the purchaser. The fact that a number of the seller's clients decide not to be represented by the purchaser but take their matters elsewhere, therefore, does not result in a violation. Neither does a return to private practice as a result of an unanticipated change in circumstances result in a violation. For example, a registered practitioner who has sold the practice to accept an appointment to judicial office would not violate the requirement that the sale be attendant to cessation of practice if the practitioner later resumes private practice upon being defeated in a contested or a retention election for the office.

The requirement that the seller cease to engage in the private practice of law, including practice before the Office in patent matters, does not prohibit employment of a registered patent attorney as a lawyer on the staff of a public agency or a legal services entity which provides legal services to the poor, or as in-house counsel to a business.

Section 11.117 would permit a sale attendant upon retirement from the private practice of law within the jurisdiction. Its provisions, therefore, would accommodate the registered practitioner who sells the practice upon the occasion of moving to another state. Some states are so large that a move from one locale therein to another is tantamount to leaving the jurisdiction in which the practitioner has engaged in the practice of law. To also accommodate registered practitioners so situated, the sale of the practice would be permitted when the registered practitioner leaves the geographic area rather than the entire state.

Single purchaser. Section 11.117 would require a single purchaser. A prohibition against piecemeal sale of a practice protects those clients whose matters are less lucrative and who might find it difficult to secure other counsel if a sale could be limited to substantial fee-generating matters. Inasmuch as the practice being sold involves patent applications pending before the Office, the purchaser would be required to be practitioner(s) which include registered practitioners willing to undertake all client pending patent matters in the practice, subject to client consent. If, however, the purchaser is unable to undertake all client matters because of a conflict of interest in a specific matter respecting which the purchaser is not permitted by § 11.107 or another rule to represent the client, the requirement that there be a single purchaser would be nevertheless satisfied.

Client confidences, consent, and notice. Negotiations between seller and prospective purchaser prior to disclosure of information relating to a specific representation of an identifiable client would no more violate the confidentiality provisions of proposed § 11.106 than do preliminary discussions concerning the possible association of another practitioner or mergers between firms, with respect to which client consent is not required. Providing the purchaser access to client-specific information relating to the representation and to the file, however, requires client consent. Section 11.117 would provide that before such information can be disclosed by the seller to the purchaser, the client must be given actual written notice of the contemplated sale, including the identity of the purchaser and any proposed change in the terms of future

representation, and must be told that the decision to consent or make other arrangements must be made within 90 days. If nothing is heard from the client within that time, consent to the sale is presumed.

A registered practitioner ceasing to practice cannot be required to remain in practice because some clients cannot be given actual notice of the proposed purchase. Since these clients cannot themselves consent to the purchase or direct any other disposition of their files, § 11.117 would permit an order from a court having jurisdiction authorizing their transfer or other disposition. The court can be expected to determine whether reasonable efforts to locate the client have been exhausted, and whether the absent client's legitimate interests will be served by authorizing the transfer of the file so that the purchaser may continue the representation. Preservation of client confidences requires that the petition for a court order be considered *in camera*.

All the elements of client autonomy, including the client's absolute right to discharge a practitioner and transfer the representation to another, survive the sale of the practice.

Fee arrangements between client and purchaser. A sale of a practice could not be financed by increases in fees charged the clients of the practice. The purchaser must honor existing agreements between the seller and the client as to fees and the scope of the work, unless the client consents after full disclosure. The purchaser would, however, advise the client that the purchaser will not undertake the representation unless the client consents to pay the higher fees the purchaser usually charges. To prevent client financing of the sale, the higher fee the purchaser may charge would not exceed the fees charged by the purchaser for substantially similar service rendered prior to the initiation of the purchase negotiations.

The purchaser could not intentionally fragment a practice that is the subject of the sale by charging significantly different fees in substantially similar matters. Doing so would make it possible for the purchaser to avoid the obligation to take over the entire practice by charging arbitrarily higher fees for less lucrative matters, thereby increasing the likelihood that those clients would not consent to the new representation.

Registered practitioners participating in the sale of a law practice are subject to the ethical standards applicable to involving another practitioner in the representation of a client. These include, for example, the seller's obligation to exercise competence in identifying a purchaser qualified to assume the practice and the purchaser's obligation to undertake the representation competently (*see* § 11.101); the obligation to avoid disqualifying conflicts, and to secure client consent after consultation for those conflicts which can be agreed to (*see* § 11.107); and the obligation to protect information relating to the representation (*see* §§ 11.106 and 11.109).

Applicability of § 11.117. Section 11.117 applies to the sale of a law practice by representatives of a deceased, disabled or disappeared registered practitioner. Thus, the seller may be represented by a non-lawyer representative not subject to these Rules. Since, however, no registered practitioner may participate in a sale of a law practice, which does not conform to the requirements of this Rule, the representatives of the seller as well as the purchasing practitioner can be expected to see to it that they are met.

Admission to or retirement from a law partnership or professional association, retirement plans and similar arrangements, and a sale of tangible assets of a law practice, would not constitute a sale or purchase governed by proposed § 11.117. Section 11.117 also would not apply to the transfers of legal representation between registered practitioners when such transfers are unrelated to the sale of a practice.

Section 11.201 would introduce a rule addressing the practitioner's role in providing advice to a client.

Section 11.201—Scope of Advice. A client is entitled to straightforward advice expressing the practitioner's honest assessment. Legal advice often involves unpleasant facts and alternatives that a client may be disinclined to confront. In presenting advice, a practitioner endeavors to sustain the client's morale and may put advice in as acceptable a form as honesty permits. However, a registered practitioner should not be deterred from giving candid advice, including advice as to patentability or unpatentability, by the prospect that the advice will be unpalatable to the client.

Advice couched in narrow legal terms may be of little value to a client, especially where practical considerations, such as cost or effects on other people, are predominant. Purely technical legal advice, therefore, can sometimes be inadequate. It is proper for a practitioner to refer to relevant moral and ethical considerations in giving advice. Although a practitioner is not a moral advisor *per se*, moral and ethical considerations impinge upon most legal questions and may decisively influence how the law will be applied.

A client may expressly or impliedly ask the practitioner for purely technical advice. When such a request is made by a client experienced in legal matters, the practitioner may accept it at face value. When such a request is made by a client inexperienced in legal matters, however, the practitioner's responsibility as advisor may include indicating that more may be involved than strictly legal considerations.

Matters that go beyond strictly legal questions may also be in the domain of another profession. Family matters can involve problems within the professional competence of psychiatry, clinical psychology, or social work; business matters can involve problems within the competence of the accounting profession or of financial specialists. Where consultation with a professional in another field is itself something a competent practitioner would recommend, the practitioner should make such a recommendation. At the same time, a practitioner's advice at its best often consists of recommending a course of action in the face of conflicting recommendations of experts.

Paragraph (a) of § 11.201—Offering Advice. Under paragraph (a) of § 11.201, in general, a practitioner would not be expected to give advice until asked by the client. However, when a practitioner knows that a client proposes a course of action that is likely to result in substantial adverse legal consequences to the client, duty to the client under § 11.104 could require that the practitioner act as if the client's course of action is related to the representation. A practitioner ordinarily has no duty to initiate investigation of a client's affairs or to give advice that the client has indicated is unwanted, but a practitioner might initiate advice to a client when doing so appears to be in the client's interest.

Paragraph (b) of § 11.201 would address a practitioner providing patentability opinions to clients referred by an invention promoter.

Section 11.202 would provide rules for a practitioner acting as intermediary between clients. A practitioner acts as intermediary when the practitioner represents two or more parties with potentially conflicting interests. For instance, representation of a client referred by an invention promoter may result in the practitioner having two clients, the inventor and invention promoter. A key factor in defining the relationship is whether the parties share responsibility for the practitioner's fee, but the common representation may be inferred from other circumstances. Because confusion can arise as to the practitioner's role where each party is not separately represented, it is important that the practitioner make clear the relationship. In addition, the existence of a document purporting to establish an agency relationship between the inventor and invention promoter would not vitiate the possibility that the practitioner might have two clients.

Because the potential for confusion is so great, § 11.202(c) would impose the requirement that an explanation of the risks of the common representation be furnished, in writing. The process of preparing the writing would cause the practitioner involved to focus specifically on those risks, a process that might suggest to the practitioner that the particular situation is not suited to the use of the practitioner as an intermediary. In any event, a written explanation would perform a valuable role in educating the client to such risks as may exist—risks that many clients may not otherwise comprehend. A client might not agree to waive the requirement for a written analysis of the risks. The "unusual circumstances" requirement might be met in rare situations where an assessment of risks is not feasible at the beginning of the intermediary role. In such circumstances, the writing would have to be provided as soon as it becomes feasible to assess the risks with reasonable clarity. The consent required by § 11.202(c) would have to be in writing, and would refer to the disclosure upon which it is based.

Section 11.202 would not apply to a practitioner acting as arbitrator or mediator between or among parties who are not clients of that practitioner, even where the practitioner has been appointed with the concurrence of the parties. In performing such a role, the practitioner may be subject to applicable codes of ethics, such as the Code of Ethics for Arbitration in Commercial Disputes prepared by the Joint Committee of the American Bar Association and the American Arbitration Association.

A practitioner acts as intermediary in seeking to establish or adjust a relationship between clients on an amicable and mutually advantageous basis; for example, in helping to organize a business in which two or more clients are entrepreneurs, working out the financial reorganization of an enterprise in which two or more clients have an interest, arranging a property distribution in settlement of an estate, or mediating a dispute between clients.

The practitioner seeks to resolve potentially conflicting interests by developing the parties' mutual interests. The alternative can be that each party may have to obtain separate representation, with the possibility in some situations of incurring additional cost, complication, or even litigation. Given these and other relevant factors, all the clients may prefer that the practitioner act as intermediary.

In considering whether to act as intermediary between clients, a practitioner should be mindful that if the intermediation fails, the result can be additional cost, embarrassment, and recrimination. In some situations the risk of failure is so great that intermediation is plainly impossible. For example, a practitioner cannot undertake common representation of clients between whom contentious litigation is imminent or who contemplate contentious negotiations. More generally, if the relationship between the parties has already assumed definite antagonism, the possibility that the clients' interests can be adjusted by intermediation ordinarily is not very good.

The appropriateness of intermediation can depend on its form. Forms of intermediation range from informal arbitration where each client's case is presented by the respective client and the practitioner decides the outcome, to mediation, to common representation where the clients' interests are substantially though not entirely compatible. One form may be appropriate in circumstances where another would not. Other relevant factors include whether the practitioner subsequently will represent both parties on a continuing basis and whether the situation involves creating a relationship between the parties or terminating one.

Because the practitioner is required to be impartial between commonly represented clients, intermediation would be improper when that impartiality cannot be maintained. For example, a practitioner who has represented one of the clients for a long period of time and in a variety of matters could have difficulty being impartial between that client and one to whom the practitioner has only recently been introduced. Another example would be a practitioner who represents a client, such as an invention promoter, that refers a number of its clients to the practitioner to prepare and prosecute patent applications for the clients, and the practitioner could have difficulty being impartial between the referring invention promoter and the referred clients.

Section 11.202 and Confidentiality and Privilege. A particularly important factor in determining the appropriateness of intermediation would be the effect on client-practitioner confidentiality and the attorney-client or patent agent-client privilege. In a common representation, the practitioner would still be required both to keep each client adequately informed and to maintain confidentiality of information relating to each of the representations. *See* §§ 11.104 and 11.106. Complying with both requirements while acting as intermediary requires a delicate balance. If the balance cannot be maintained, the common representation would be improper. With regard to the attorney-client or patent agent-client privilege, the prevailing rule is that as between commonly represented clients the privilege does not attach. Hence, it must be assumed that if litigation eventuates between the clients, the privilege will not protect any such communications, and the clients should be so advised.

For example, a practitioner, hired by A and B to prepare a patent application for A's invention, acts as an intermediary under § 11.202 when, upon instructions from A and B, the practitioner prepares an assignment transferring a one-half undivided interest in A's invention and any resulting patent to A and B, even if only B is to pay the legal fees. If A and B later dispute the validity of the assignment and each retains counsel of their own choice, the practitioner may communicate the information regarding the terms of the assignment to both counsel. The attorney-client or patent agent-client privilege does not attach. The practitioner may submit his legal bills to B for past services in accordance with the retainer agreement. *See* Opinion 93–76 (1993) of the Ethics Advisory Panel of the Rhode Island Supreme Court.

Section 11.202 and Full Disclosure. In acting as intermediary between clients, the practitioner would be required to make full disclosure to the clients on the implications of doing so, and proceed only upon consent based on such full disclosure. The practitioner would have to make clear that the practitioner's role is not that of partisanship normally expected in other circumstances.

Paragraph (d) of § 11.202 would apply the principle expressed in § 11.104. Where the practitioner is intermediary, the clients ordinarily would have to assume greater responsibility for decisions than when each client is independently represented.

Section 11.202 and Withdrawal. Common representation does not diminish the rights of each client in the client-practitioner relationship. Each has the right to loyal and diligent representation, the right to discharge the practitioner as stated in § 11.116, and the protection of § 11.109 concerning obligations to a former client.

Section 11.203 would articulate ethical standards for circumstances where a practitioner provides an evaluation of a matter affecting a client for the use of someone other than the client. An evaluation may be performed at the client's direction but for the primary purpose of establishing information for the benefit of third parties; for example, an opinion concerning the title of property rendered at the behest of a vendor for the information of a prospective purchaser, or at the behest of a borrower for the information of a prospective lender. Section 11.203 would not authorize conduct that otherwise would constitute aiding the unauthorized practice of law. Thus, providing a nonlawyer, who offers legal services to potential customers, with legal advice to pass on to the nonlawyer's customer(s) would continue to be viewed as aiding the unauthorized practice of law. *See* Formal Opinion 87, Ethics Committee of the Colorado Bar Association (1991).

A legal evaluation should be distinguished from an investigation of a person with whom the practitioner does not have a client-practitioner relationship. For example, a practitioner retained by a purchaser to analyze a vendor's title to property does not have a client-practitioner relationship with the vendor. Likewise, an investigation into a person's affairs by a Government practitioner, or by special counsel employed by the Government, is not an evaluation as that term is used in this section. The question is whether the practitioner is retained by the person whose affairs are being examined. When the practitioner is retained by that person, the general Rule of Professional Conduct concerning loyalty to client and preservation of confidences would apply, which is not the case if the practitioner is retained by someone else. For this reason, it is essential to identify the person by whom the practitioner is retained. This should be made clear not only to the person under examination, but also to others to whom the results are to be made available.

Section 11.203 and Duty to Third Person. When the evaluation is intended for the information or use of a third person, a legal duty to that person may or may not arise. That legal question is beyond the scope of § 11.203. However, because such an evaluation involves a departure from the normal client-practitioner relationship, careful analysis of the situation is required. The practitioner must be satisfied as a matter of professional judgment that making the evaluation is compatible with other functions undertaken in behalf of the client. For example, if the practitioner is acting as advocate in defending the client against charges of fraud, it would normally be incompatible with that responsibility for the practitioner to perform an evaluation for others concerning the same or a related transaction. Assuming no such impediment is apparent, however, the practitioner should advise the client of the implications of the evaluation, particularly the practitioner's responsibilities to third persons and the duty to disseminate the findings.

Section 11.203 and Access to and Disclosure of Information. The quality of an evaluation depends on the freedom and extent of the investigation upon which it is based. Ordinarily a practitioner should have whatever latitude of investigation seems necessary as a matter of professional judgment. Under some circumstances, however, the terms of the evaluation may be limited. For example, certain issues or sources may be categorically excluded, or the scope of search may be limited by time constraints or the non-cooperation of persons having relevant information. Any such limitations that are material to the evaluation should be described in a report giving the results of the investigation. If, after a practitioner has commenced an evaluation, the client refuses to comply with the terms upon which it was understood the evaluation was to have been made, the practitioner's obligations are determined by law, having reference to the terms of the client's agreement and the surrounding circumstances.

Section 11.203 and Financial Auditors' Requests for Information. When a question concerning the legal situation of a client arises at the instance of the client's financial auditor and the question is referred to the practitioner, the practitioner's response prudently might be made in accordance with procedures recognized in the legal profession. Such a procedure is set forth in the American Bar Association Statement of Policy Regarding Practitioners' Responses to Auditors' Requests for Information, adopted in 1975.

Section 11.301 would continue the requirement that a practitioner present well-grounded claims. The advocate has a duty to use legal procedure for the fullest benefit of the client's cause, but also a duty not to abuse legal procedure. The law, both procedurally and substantively, establishes the limits within which an advocate may proceed. However, the law is not always clear and never is static. Accordingly, in determining the proper scope of advocacy, account must be taken of the law's ambiguities and potential for change.

The filing of an action or defense or similar action taken for a client is not frivolous merely because the facts have not first been fully substantiated or because the practitioner expects to develop vital evidence only by discovery. Such action is not frivolous even though the practitioner believes that the client's position ultimately will not prevail. The action is frivolous if the practitioner is unable either to make a good-faith argument on the merits of the action taken or to support the action taken by a good-faith argument for an extension, modification, or reversal of existing law.

Section 11.302 would continue the requirement that practitioners diligently pursue litigation and Office proceedings. Dilatory practices bring the administration of justice into disrepute and may be contrary to the client's interest in patent prosecution. Delay should not be indulged merely for the convenience of the advocates, or for the purpose of frustrating an opposing party's attempt to obtain rightful redress or repose. It is not a justification that similar conduct is often tolerated by the bench and bar. The question is whether a competent practitioner acting in good faith would regard the course of action as having some substantial purpose other than delay. Realizing financial or other benefit from otherwise improper delay in litigation is not a legitimate interest of the client.

Section 11.303 would continue the duty of candor to a tribunal while specifying its application under different situations. Section 11.303 would define the duty of candor to the tribunal. In dealing with a tribunal, including the Office, the practitioner is also required to comply with the general requirements of § 11.102 (e) and (f). The advocate's responsibility is to endeavor to present the client's case with persuasive force. Performance of that duty, while maintaining confidences of the client, is qualified by the advocate's duty of candor to the tribunal. *See Lipman* v. *Dickinson*, 174 F.3d 1363, 50 USPQ2d 1490 (Fed. Cir. 1999).

While an advocate normally does not vouch for the evidence submitted in a cause—the tribunal is responsible for assessing its probative value—the same may not apply in practice before the Office. *See Kingsland* v. *Dorsey*, 338 U.S. 318 (1949) (sustaining attorney's exclusion where attorney authored the article that attorney introduced into evidence as an article written by another).

Paragraph (a) of § 11.303, like current § 10.89(b)(1), would require that a practitioner reveal to the Office known authority directly adverse to the position of the client unless the authority is cited by an opponent or employee of the Office. All decisions made by the Office in patent and trademark matters affect the public interest. *See Lear* v. *Adkins*, 395 U.S. 653 (1969). Many of the decisions made by the Office are made ex parte. Accordingly, practitioners must cite to the Office known authority that is contrary, *i.e.*, directly adverse, to the position being taken by the practitioner in good faith. The practitioner could argue that the cited authority should not be followed, or should be overruled or modified.

Section 11.303 and Representations by a Practitioner. An advocate is responsible for pleadings and other documents prepared for litigation or prosecution of patent and trademark applications. However, an advocate is usually not required to have personal knowledge of factual matters that are based on information furnished by a client asserted therein, because litigation or prosecution documents ordinarily present assertions by the client, or by someone on the client's behalf, and not assertions by the practitioner. Compare § 11.301. However, an assertion purporting to be based on the practitioner's own knowledge, such as an assertion made by the practitioner in an affidavit, petition, or reply to an Office action, like a statement in open court, may properly be made only when the practitioner knows the assertion is true or believes it to be true on the basis of a reasonably diligent inquiry. The Office has disciplined practitioners for making false statements of fact in an affidavit or declaration. *See In re Dubno*, 1959 Off. Gaz. 25 (June 21, 1977). There may be circumstances where failure to make a disclosure is the equivalent of an affirmative misrepresentation. *See Lipman* v. *Dickinson*, 174 F.3d 1363, 50 USPQ2d 1490 (Fed. Cir. 1999). The obligation prescribed in § 11.102(e) not to counsel a client to commit or assist the client in committing a fraud applies in litigation and proceedings before the Office, but would be subject to §§ 11.303(a)(4), (b) and (d). Regarding compliance with § 11.102(e), see the comment to that proposed section. *See also* the comment to proposed § 11.804(b).

Section 11.303 and Misleading Legal Argument. Legal argument based on a knowingly false representation of law constitutes dishonesty toward the tribunal. A practitioner is not required to make a disinterested exposition of the law, but must recognize the existence of pertinent legal authorities. Furthermore, as stated in § 11.303(a)(3), an advocate has a duty to disclose directly adverse authority in the controlling jurisdiction that has not been disclosed by the opposing party and that is dispositive of a question at issue. The underlying concept is that a legal argument is a discussion seeking to determine the legal premises properly applicable to the case.

Section 11.303 and False Evidence. When evidence that a practitioner knows to be false is provided by a person who is not the client, the practitioner must refuse to offer it regardless of the client's wishes.

When false evidence is offered by the client, however, a conflict may arise between the practitioner's duty to keep the client's disclosure confidential and the duty of candor to the tribunal. Upon ascertaining that material evidence is false, the practitioner should seek to persuade the client that the evidence should not be offered. If the material evidence has already been offered before the practitioner learns that it is false, its false character should immediately be disclosed to the tribunal. If the persuasion is ineffective, the practitioner must take reasonable remedial measures. In patent matters pending before the Office, if a practitioner comes to realize that evidence material to patentability offered before the Office in a patent case is false, the practitioner has a duty to disclose information regarding the falsity with respect to each pending claim until the claim is cancelled or withdrawn from consideration, or the application becomes abandoned. This is consistent with current § 1.56.

Except in the defense of a criminally accused, the rule generally recognized is that, if necessary to rectify the situation, an advocate must disclose the existence of the client's deception to the tribunal, Office, and/or to the other party. Such a disclosure can result in grave consequences to the client, including not only a sense of betrayal but also loss of the case and perhaps a prosecution for perjury. But the alternative is that the practitioner, contrary to current § 1.56 or proposed §§ 11.303 and 11.804(c), cooperate in deceiving the tribunal or Office, thereby subverting the truth-finding process, which the adversary system is designed to implement. *See* § 11.102(d). Furthermore, unless it is clearly understood that the practitioner will act upon the duty to disclose the existence of false evidence, the client can simply reject the practitioner's advice to reveal the false evidence and insist that the practitioner keep silent. Thus the client could in effect coerce the practitioner into being a party to fraud on the tribunal or Office.

Paragraph (d) of § 11.303 would provide that if a practitioner learns that a fraud or inequitable conduct has been perpetrated on the Office, the practitioner must reveal the same to the Office. Where notification would require disclosure to the Office of information not protected under §§ 1.56, or 11,106(a), the practitioner has a duty of disclosure to prevent the occurrence or furtherance of the fraud or inequitable conduct by commission or omission.

Paragraph (b) of § 11.303—Duration of obligation. A practical time limit on the obligation to rectify the presentation of false evidence has to be established. In the Model Code of Professional Responsibility, the American Bar Association has suggested that the conclusion of the proceeding, through all appeals, is a reasonably definite point for the termination of the obligation.

Patent matters are not necessarily concluded in a single proceeding before the Office with the issuance of a patent. The patent may be subject to examination again in a reissue application, as well as reexamination and interference proceedings. The procedures are available throughout the period for which the patent is granted. Accordingly, in patent matters before the Office, the duty of disclosure continues for the duration of the pendency of the patent application and the period for which the patent is granted.

Paragraph (c) of § 11.303—Refusing to offer proof believed to be false. Generally speaking, a practitioner has all authority to refuse to offer testimony or other proof that the practitioner believes is untrustworthy. Offering such proof may reflect adversely on the practitioner's ability to discriminate in the quality of evidence and thus impair the practitioner's effectiveness as an advocate.

Paragraph (d) of § 11.303—Ex parte proceedings. Ordinarily, an advocate has the limited responsibility of presenting one side of the matters that a tribunal should consider in reaching a decision; the conflicting position is

expected to be presented by the opposing party.

However, in any *ex parte* proceeding, such as prosecution of a patent application, or an application for a temporary restraining order, there is no balance of presentation by opposing advocates. The object of an *ex parte* proceeding is nevertheless to yield a substantially just result. The patent examiner or judge has an affirmative responsibility to accord the absent party just consideration. The practitioner for the represented party has the correlative duty to make disclosures of material facts known to the practitioner and that the practitioner reasonably believes are necessary to an informed decision. In an *ex parte* proceeding before the Office in a patent case, a practitioner's duty of disclosure would remain the same as in § 1.56. The practitioner would be required to inform the Office of all information material to patentability known to the practitioner in accordance with § 1.56, whether or not the facts are adverse.

Paragraph (e) of § 11.303 would define some, but not all, acts that would constitute violations of paragraphs (a) through (d) of this section. The USPTO believes that it would be helpful to practitioners if some specific prohibitions were set out in the rules. The prohibitions set out in paragraphs (1) through (5) of § 11.303(e) represent violations that have occurred in the past or that the Office specifically seeks to prevent. The specific acts set out in paragraph (e) would not constitute a complete description of all acts in violation of paragraphs (a) through (d).

Paragraph (1) of § 11.303(e) would put practitioners on notice that misconduct includes knowingly misusing a "Certificate of Mailing or Transmission" under § 1.8 of this subchapter. *See In re Dula*, 1030 Off. Gaz. 20 (May 17 1983); *In re Klein*, 6 USPQ2d 1547 (Comm'r Pat. 1987), *aff'd sub nom., Klein* v. *Peterson*, 696 F. Supp. 695, 8 USPQ2d 1434 (D.D.C. 1988), aff'd, 866 F.2d 412, 9 USPQ 2d 1558 (Fed. Cir. 1989); *Small* v. *Weiffenbach*, 10 USPQ 2d 1898 (Comm'r Pat. 1989).

Paragraph (2) of § 11.303(e) would include as misconduct knowingly violating or causing to be violated the duty of candor requirements of §§ 1.56 or 1.555. *See In re Milmore*, 196 USPQ 628 (Comm'r Pat. 1977); *Kingsland* v. *Dorsey*, 338 U.S. 318 (1949); *Hatch* v. *Ooms*, 72 USPQ 406 (D.D.C. 1947).

Paragraph (4) of § 11.303(e) would include as misconduct knowingly signing a paper filed in the Office in violation of the provisions of § 11.18 or making a scandalous or indecent statement in a paper filed in the Office. The provision is based on Rule 11 of the Federal Rules of Civil Procedure. *See Weiffenbach* v. *Gilden*, 1160 Off. Gaz. 39 (Mar. 8, 1994).

Section 11.304 would contemplate that the evidence in a case be marshaled fairly in *ex parte* and *inter partes* proceedings. Prohibitions against destruction or concealment of evidence, improperly influencing witnesses, obstructive tactics in discovery procedure, and the like secure fair competition in adversary and *ex parte* systems.

Paragraph (a) of § 11.304, like current § 10.85(a)(7), would prohibit a practitioner from obstructing another party's access to evidence, and from altering, destroying, or concealing evidence. Documents and other items of evidence are often essential to establish a claim or defense. Subject to evidentiary privileges, the right of an opposing party, including the Government, to obtain evidence through discovery or subpoena is an important procedural right. The exercise of that right can be frustrated if relevant material is altered, concealed, or destroyed. To the extent clients are involved in the effort to comply with discovery requests, the practitioner's obligations are to pursue reasonable efforts to assure that documents and other information subject to proper discovery requests are produced. Applicable law in many jurisdictions makes it an offense to destroy material for the purpose of impairing its availability in a pending proceeding or a proceeding whose commencement can be foreseen. Falsifying evidence is also generally a criminal offense. Section 11.304(a) applies to evidentiary material generally, including computerized information.

A practitioner should ascertain that the practitioner's handling of documents or other physical objects does not violate any other law. Federal criminal law may forbid the destruction of documents or other physical objects in circumstances not covered by the ethical rule set forth in § 11.304(a). *See, e.g.*, 18 U.S.C. 1503 (obstruction of justice); 18 U.S.C. 1505 (obstruction of proceedings before departments, agencies, and committees); 18 U.S.C. 1510 (obstruction of criminal investigations). Finally, some discovery rules having the force of law may prohibit the destruction of documents and other material even if litigation is not pending or imminent. Section 11.304 would not set forth the scope of a practitioner's responsibilities under all applicable laws. It would merely impose on the practitioner an ethical duty to make reasonable efforts to comply fully with those laws. The prohibitions of § 11.304(a) may overlap with criminal obstruction provisions and civil discovery rules, but they apply whether or not the prohibited conduct violates criminal provisions or court rules. Thus, the alteration of evidence by a practitioner, whether or not such conduct violates criminal law or court rules, constitutes a violation of § 11.304(a). *See Weiffenbach* v. *Logan*, 27 USPQ 2d 1870 (Comm'r Pat. 1993), *aff'd. sub nom., Logan* v. *Comer*, No. 93–0335 (D.D.C. 1994), *aff'd. sub nom., Logan* v. *Lehman*, No. 95–1216 (Fed. Cir. 1995).

Because of the duty of confidentiality under § 11.106, the practitioner would be generally forbidden to volunteer information about physical evidence received from a client without the client's consent after consultation. An exception would arise in the case of volunteering information required under § 1.56 to be disclosed.

If the evidence, not required to be disclosed under § 1.56, is received from the client and is subpoenaed or otherwise requested through the discovery process while held by the practitioner, the practitioner will be obligated to deliver the evidence directly to the appropriate persons, unless there is a basis for objecting to the discovery request or moving to quash the subpoena. A practitioner should, therefore, advise the client of the risk that evidence may be subject to subpoena or discovery, and of the practitioner's duty to turn the evidence over in that event, before accepting it from the client.

If the practitioner has received physical evidence belonging to the client and the evidence is not required to be disclosed under § 1.56, for purposes of examination or testing, the practitioner may later return the property to the client pursuant to § 11.115, provided that the evidence has not been requested by discovery or subpoenaed. The practitioner may not be justified in returning to a client physical evidence, the possession of which by the client would be *per se* illegal, such as certain drugs and weapons. And, if it is reasonably apparent that the evidence is not the client's property, the practitioner may not retain the evidence or return it to the client. Instead, the practitioner would, under § 11.304(a), have to make a good-faith effort to return the evidence to its owner.

Paragraph (b) of § 11.304 would provide that it is not improper to pay a witness's expenses or to compensate a witness for time taken in preparing to testify, in attending a proceeding, or in testifying in that proceeding.

Section 11.305 would proscribe forms of improper influence upon a tribunal. Such forms of improper influence are proscribed by criminal law. Others are specified in the ABA Model Code of Judicial Conduct, with which an advocate should be familiar. A practitioner is required to avoid contributing to a violation of such provisions. The advocate's function is to present evidence and argument so that the cause may be decided according to law. Refraining from abusive or obstreperous conduct is a corollary of the advocate's right to speak on behalf of litigants. A practitioner may stand firm against abuse by a judge but should avoid reciprocation; the judge's default is no justification for similar dereliction by an advocate. An advocate can present the cause, protect the record for subsequent review, and preserve professional integrity by patient firmness no less effectively than by belligerence or theatrics.

Section 11.306 is reserved. Rule 3.6 of the Model Rules of Professional Conduct contain "[g]uidance on trial publicity." It would be a conflict of interest for the Office to attempt to control communications to the public by attorneys representing a party in a suit against the Office. Accordingly, the provisions of Rule 3.6 are not being proposed. Nevertheless, an attorney in a civil action brought against the Office would be subject to the professional conduct rules of the state where the attorney is licensed to practice law. If, in the course of the trial, the attorney violates the state's professional conduct rules and is disciplined by the state authorities, the attorney could be subject to discipline under the proposed rules. *See* §§ 11.24 and 11.803(f)(5).

Section 11.307 would generally proscribe a practitioner from acting as advocate in a proceeding before the Office in which the practitioner is likely to be a necessary witness. Combining the roles of advocate and witness can prejudice the opposing party and can involve a conflict of interest between the practitioner and client. The opposing party has a right to object where the combination of roles may prejudice that party's rights in the litigation. A witness is required to testify on the basis of personal knowledge, while an advocate is expected to explain and comment on evidence given by others. It may not be clear whether a statement by an advocate-witness should be taken as proof or as an analysis of the proof.

A registered practitioner could normally testify in an interference proceeding when his or her diligence is an issue in the interference. The Office would continue to assess on a case-by-case basis the weight to be given testimony by a registered practitioner who also represents a party in the proceeding in which the registered practitioner gives testimony. *See Wilder* v. *Snyder*, 201 USPQ 927, 934 (Bd. Pat. Int. 1979).

Paragraph (a)(1) of § 11.307 would recognize that if the testimony will be uncontested, the ambiguities in the dual role are purely theoretical.

Paragraph (a)(2) of § 11.307 would recognize that permitting the practitioners to testify concerning the extent and value of legal services rendered in the action in which the testimony is offered on the subject, avoids the need for a second trial with new counsel to resolve that issue. Moreover, in such a situation, the judge has first-hand knowledge of the matter in issue; hence, there is less dependence on the adversary process to test the credibility of the testimony.

Paragraph (a)(3) of § 11.307 would recognize that a balancing is required between the interests of the client and those of the opposing party. Whether the opposing party is likely to suffer prejudice depends on the nature of the case, the importance and probable tenor of the practitioner's testimony, and the probability that the practitioner's testimony will conflict with that of other witnesses. Even if there is risk of such prejudice, in determining whether the practitioner should be disqualified, due regard must be given to the effect of disqualification on the practitioner's client. It is relevant that one or both parties could reasonably foresee that the practitioner would probably be a witness.

If the only reason for not permitting a practitioner to combine the roles of advocate and witness is possible prejudice to the opposing party, there is no reason to disqualify other practitioners in the testifying practitioner's firm from acting as advocates in that trial. In short, there is no general rule of imputed disqualification applicable to § 11.307. However, the combination of roles of advocate and witness might involve an improper conflict of interest between the practitioner and the client in addition to or apart from possible prejudice to the opposing party. Whether there is such a client conflict is determined by §§ 11.107 or 11.109. For example, if there is likely to be a significant conflict between the testimony of the client and that of the practitioner, the representation would be improper under the standard set forth in § 11.107(b) without regard to § 11.307(a). The problem could arise whether the practitioner is called as a witness on behalf of the client, or is called by the opposing party. Determining whether such a conflict exists is, in the first instance, the responsibility of the practitioner involved. *See* Comment to § 11.107. Section 11.307(b) would state that other practitioners in the testifying practitioner's firm are disqualified only when there is such a client conflict and the testifying practitioner therefore could not represent the client under §§ 11.107 or 11.109. The principles of client consent, embodied in §§ 11.107 and 11.109, also would apply to § 11.307(b). Thus, the reference to §§ 11.107 and 11.109 incorporates the client consent aspects of those Rules. Section 11.307(b) as proposed would provide the protection for the client, not rights of disqualification to the adversary. Subject to the disclosure and consultation requirements of §§ 11.107 and 11.109, the client may consent to the firm's continuing representation, despite the potential problems created by the nature of the testimony to be provided by a practitioner in the firm.

Even where a practitioner's testimony would not involve a conflict with the client's interests under §§ 11.107 or 11.109 and would not be precluded under § 11.307, the client's interests might nevertheless be harmed by the appearance as a witness of a practitioner in the firm that represents the client. For example, the practitioner's testimony would be vulnerable to impeachment on the grounds that the practitioner-witness is testifying to support the position of the practitioner's own firm. Similarly, a practitioner whose firm's colleague is testifying in the case should recognize the possibility that the practitioner might not scrutinize the testimony of the colleague carefully enough and that this could prejudice the client's interests, whether the colleague is testifying for or against the client. In such instances, the practitioner should inform the client of any possible adverse effects on the client's interests that might result from the practitioner's relationship with the colleague-witness, so that the client may make a meaningful choice whether to retain the practitioner for the representation in question.

Section 11.308 is reserved. Rule 3.8 of the Model Rules of Professional Conduct addresses the "Special Responsibilities of a Prosecutor" in the context of criminal proceedings. Inasmuch as practice before the Office does not involve criminal proceedings, the content of Model Rule 3.8 is not

being proposed. Nevertheless, an attorney who is both a practitioner before the Office and a criminal prosecutor would be subject to both the Office and State professional conduct rules. If, in the course of a criminal proceeding, the attorney violates the state's professional conduct rules and is disciplined by the state authorities, the attorney could be subject to discipline under the proposed rules. *See* §§ 11.24 and 11.803(f)(5).

Section 11.309 would introduce a practitioner's responsibility in a non-adjudicative role before an administrative agency, such as the Office. The proposed rule would provide conformity with Rule 3.9 of the Rules of Professional Conduct adopted by state bars. In representation before bodies such as legislatures, municipal councils, and executive and administrative agencies acting in a rule-making or policy-making capacity (including the USPTO), practitioners present facts, formulate issues, and advance argument in the matters under consideration. The decision-making body, like a court, should be able to rely on the integrity of the submissions made to it. A practitioner appearing before such a body should deal with it honestly and in conformity with applicable rules of procedure.

Practitioners have no exclusive right to appear before non-adjudicative bodies, as they do before a court. The requirements of § 11.309, therefore, may subject practitioners to regulations inapplicable to advocates, such as non-practitioner lobbyists. However, legislatures and administrative agencies have a right to expect practitioners to deal with them as they deal with courts.

Section 11.309 does not apply to representation of a client in a negotiation or other bilateral transaction with a Government agency, such as the Office; representation in such a transaction is governed by §§ 11.401 through 11.404.

Section 11.309 is closely related to §§ 11.303 through 11.305, which deal with conduct regarding tribunals. The term "tribunal," as defined in the terminology section of the proposed Rules, refers to adjudicative or quasi-adjudicative bodies, including the Office.

Section 11.401 would require a practitioner to be truthful when dealing with others on a client's behalf where the client has immediate or prospective business before the Office. However, the practitioner generally has no affirmative duty to inform an opposing party of relevant facts. A misrepresentation can occur if the practitioner incorporates or affirms a statement of another person that the practitioner knows is false. Misrepresentations can also occur by failure to act. The term "third person" as used in §§ 11.401(a) and (b) refers to any person or entity other than the practitioner's client.

Section 11.401(a)—Statements of Material Fact or Law. This Rule would refer to material statements of fact. Whether a particular statement should be regarded as material, and as one of fact, can depend on the circumstances. Under generally accepted conventions in negotiation, certain types of statements ordinarily are not taken as statements of material fact. Estimates of price or value placed on the subject of a transaction and a party's intentions as to an acceptable settlement of a claim are in this category, and so is the existence of an undisclosed principal except where nondisclosure of the principal would constitute fraud. There may be other analogous situations. In other circumstances, a particular factual statement may be material; for example, a statement to a client's potential licensor of an invention that an application for a patent on the invention is pending, when the practitioner knows the application has been abandoned for some time, and the client is unaware of its status.

Section 11.401(b) would recognize that substantive law may require a practitioner to disclose certain information to avoid being deemed to have assisted the client's crime or fraud. The requirement of disclosure created by this section is, however, subject to the obligations created by § 11.106.

Section 11.402 would provide a standard for communicating with a party represented by counsel in connection with representing a client having immediate or prospective business before the Office. This rule would not prohibit communication with a party, or an employee or agent of a party, concerning matters outside the representation. For example, the existence of a controversy between two organizations does not prohibit a practitioner for either organization from communicating with nonpractitioner representatives of the other organization regarding a separate matter. Also, parties to a matter may communicate directly with each other and a practitioner having independent justification for communicating with the other party is permitted to do so.

Section 11.402(b) would address the case of communicating with agents or employees of an organization that is a represented party concerning the subject of representation. Section 11.402(b) would prohibit communication by a practitioner for one party concerning the subject of the representation with persons having the power to bind the organization as to the particular representation to which the communication relates. If an agent or employee of the organization with authority to make binding decisions regarding the representation is represented in the matter by separate counsel, the consent by that agent's or employee's counsel to a communication will be sufficient for purposes of this section.

Section 11.402(a) would cover any person, whether or not a party to a formal proceeding, who is represented by counsel concerning the matter in question.

Section 11.402(a) would not apply to the situation in which a practitioner contacts employees of an organization for the purpose of obtaining information generally available to the public, or obtainable under the Freedom of Information Act, even if the information in question is related to the representation. For example, a practitioner for a plaintiff who has filed suit against an organization represented by a practitioner may telephone the organization to request a copy of a press release regarding the representation, without disclosing the practitioner's identity, obtaining the consent of the organization's practitioner, or otherwise acting as paragraphs (a) and (b) of this Rule would require.

Section 11.402(c) would recognize that special considerations come into play when a practitioner is seeking to redress grievances involving the Government, including the Office. It would permit communications with those in Government having the authority to redress such grievances (but not with any other Government personnel) without the prior consent of the practitioner representing the Government in such cases. However, a practitioner making such a communication without the prior consent of the practitioner representing the Government must make the kinds of disclosures that are required by § 11.402(b) in the case of communications with non-party employees.

Section 11.402(d) would not prohibit a practitioner from bypassing counsel representing the Government on every issue that may arise in the course of disputes with the Government. It is intended to provide practitioners access to decision makers in Government with respect to genuine grievances, such as to present the view that the Government's basic policy position with respect to a dispute is faulty, or that Government personnel are conducting themselves

improperly with respect to aspects of the dispute. It is not intended to provide direct access on routine disputes such as ordinary discovery disputes, extensions of time or other scheduling matters, or similar routine aspects of the resolution of disputes.

Section 11.402 is not intended to enlarge or restrict the law enforcement activities of the United States or the Office of Enrollment and Discipline, which are authorized and permissible under the Constitution and the law of the United States. The "authorized by law" proviso to § 11.402(a) is intended to permit Government conduct that is valid under this law. The proviso is not intended to freeze any particular substantive law, but is meant to accommodate substantive law as it may develop over time.

Section 11.403 would provide a standard for communicating with an unrepresented person, particularly one not experienced in dealing with legal matters. Such a person might assume that a practitioner will provide disinterested advice concerning the law even when the practitioner represents a client. In dealing personally with any unrepresented third party on behalf of the practitioner's client, a practitioner should not give advice to the unrepresented party other than the advice to obtain counsel.

Section 11.404 would require a practitioner to respect the rights of third parties. Responsibility to a client requires a practitioner to subordinate the interests of others to those of the client, but that responsibility does not imply that a practitioner may disregard the rights of third persons. It is impractical to catalogue all such rights, but they include legal restrictions on methods of obtaining evidence from third persons.

Section 11.501 would set forth the responsibilities of a partner or supervisory practitioner. Paragraphs (a) and (b) of § 11.501 would refer to practitioners having supervisory authority over the professional work of a firm, or unit of a Government agency. This includes members of a partnership and the shareholders in a law firm organized as a professional corporation; practitioners having supervisory authority in the law department of an enterprise or Government agency; and practitioners who have intermediate managerial responsibilities in a firm.

Under § 11.501(a), a partner or supervisory practitioner in a firm would be responsible for ensuring that the firm has in effect measures giving reasonable assurance that all practitioners in the firm conform to the Rules of Professional Conduct. Under § 11.501(b), a supervisory practitioner in a Government unit would be responsible for making reasonable efforts to ensure that any practitioner subject to supervision conforms to the Rules of Professional Conduct.

The measures required to fulfill the responsibility prescribed in §§ 11.501(a) and (b) would depend on the firm's or unit's structure and the nature of its practice. In a small firm, informal supervision and occasional admonition ordinarily might be sufficient. In a large firm, or in practice situations in which intensely difficult ethical problems frequently arise, more elaborate procedures may be necessary. Some firms, for example, have a procedure whereby junior practitioners can make confidential referral of ethical problems directly to a designated senior partner or special committee. *See* § 11.502. Firms, whether large or small, may also encourage their members to participate in continuing legal education in professional ethics if such education is not required. In any event, the ethical atmosphere of a firm can influence the conduct of all its members and a practitioner having authority over the work of another may not assume that the subordinate practitioner will inevitably conform to the Rules.

Paragraph (c) of § 11.501 would set forth general principles of imputed responsibility for the misconduct of others. Section 11.501(c)(1) would make any practitioner who orders or, with knowledge, ratifies misconduct responsible for that misconduct. *See also* § 11.804(a). Section 11.501(c)(2) would extend that responsibility to any practitioner who is a partner in the firm in which the misconduct takes place, or who has direct supervisory authority over the practitioner who engages in misconduct, when the practitioner knows or should reasonably know of the conduct and could intervene to ameliorate its consequences. Whether a practitioner has such supervisory authority in particular circumstances would be a question of fact. A practitioner with direct supervisory authority is a practitioner who has an actual supervisory role with respect to directing the conduct of other practitioners in a particular representation. A practitioner who is technically a "supervisor" in organizational terms, but is not involved in directing the effort of other practitioners in a particular representation, is not a supervising practitioner with respect to that representation.

The existence of actual knowledge is also a question of fact. Whether a practitioner should reasonably have known of misconduct by another practitioner in the same firm would be an objective standard based on evaluation of all the facts, including the size and organizational structure of the firm, the practitioner's position and responsibilities within the firm, the type and frequency of contacts between the various practitioners involved, the nature of the misconduct at issue, and the nature of the supervision or other direct responsibility (if any) actually exercised. The mere fact of partnership or a position as a principal in a firm would not be sufficient, without more, to satisfy this standard. Similarly, the fact that a practitioner holds a position on the management committee of a firm, or heads a department of the firm, would not be sufficient, standing alone, to satisfy this standard.

Appropriate remedial action would depend on the immediacy of the involvement and the seriousness of the misconduct. The supervisor would be required to intervene to prevent avoidable consequences of misconduct if the supervisor knows that the misconduct occurred. Thus, if a supervising practitioner knows that a subordinate misrepresented a matter to an opposing party in a negotiation, the supervisor as well as the subordinate would have a duty to correct the resulting misapprehension.

Professional misconduct by a practitioner under supervision could reveal a violation of § 11.501(b) on the part of the supervisory practitioner even though it would not entail a violation of § 11.501(c) because there was no direction, ratification, or knowledge of the violation.

Apart from §§ 11.501 and 11.804(a), a practitioner would not have disciplinary liability for the conduct of a partner, associate, or subordinate. Whether a practitioner may be liable civilly or criminally for another practitioner's conduct is a question of law beyond the scope of these Rules.

Section 11.502 would set forth the ethical responsibilities of a subordinate practitioner. Although a practitioner would not be relieved of responsibility for a violation by the fact that the practitioner acted at the direction of a supervisor, that fact may be relevant in determining whether a practitioner had the knowledge required to render conduct a violation of the Rules. For example, if a subordinate filed a frivolous pleading at the direction of a supervisor, the subordinate would not be guilty of a professional violation unless the subordinate knew of the document's frivolous character.

When practitioners in a supervisor-subordinate relationship encounter a

matter involving professional judgment as to ethical duty, the supervisor may assume responsibility for making the judgment. Otherwise a consistent course of action or position could not be taken. If the question can reasonably be answered only one way, the duty of both practitioners is clear and they would be equally responsible for fulfilling it. However, if the question is reasonably arguable, someone has to decide upon the course of action. That authority ordinarily reposes in the supervisor, and a subordinate may be guided accordingly. For example, if a question arises whether the interests of two clients conflict under § 11.107, the supervisor's reasonable resolution of the question should protect the subordinate professionally if the resolution is subsequently challenged.

Section 11.503 would set forth a practitioner's responsibilities regarding nonpractitioner assistants. Practitioners generally employ assistants in their practice, including secretaries, investigators, law student interns, and paraprofessionals. Such assistants, whether employees or independent contractors, act for the practitioner in rendition of the practitioner's professional services. A practitioner should give such assistants appropriate instruction and supervision concerning the ethical aspects of their employment, particularly regarding the obligation not to disclose information relating to representation of the client, and should be responsible for their work product. The measures employed in supervising nonpractitioners should take account of the fact that they do not have legal training and are not subject to professional discipline.

Just as practitioners in private practice may direct the conduct of investigators who may be independent contractors, prosecutors and other Government practitioners may effectively direct the conduct of police or other governmental investigative personnel, even though they may not have, strictly speaking, formal authority to order actions by such personnel, who report to the chief of police or the head of another enforcement agency. Such prosecutors or other Government practitioners have a responsibility for police or investigative personnel, whose conduct they effectively direct, equivalent to that of private practitioners with respect to investigators hired by private practitioners. *See also* the comments to § 11.501 in particular, the concept of what constitutes direct supervisory authority, and the significance of holding certain positions in a firm. Comments to § 11.501 apply as well to § 11.503.

Section 11.504 would provide for the professional independence of a practitioner. The provisions of § 11.504 would express traditional limitations on sharing fees with nonpractitioners. (On sharing fees among practitioners not in the same firm, *see* § 11.105(e).) These limitations would be to protect the practitioner's professional independence of judgment. Where someone other than the client pays the practitioner's fee or salary, or recommends employment of the practitioner, that arrangement does not modify the practitioner's obligation to the client. As stated in § 11.504(d), such arrangements should not interfere with the practitioner's professional judgment.

Giving anything of value in exchange for recommending or securing employment for the practitioner would be specifically barred. Thus, for example, under proposed § 11.504(a), a practitioner would not be able to receive payment from an inventor for legal services and then pay an invention promoter a share for finding the inventor-client and referring the inventor-client to the practitioner. Likewise, the prohibition against a practitioner splitting fees with a non-practitioner is directed at the risk posed by the possibility of control of legal matters by a non-practitioner interested more in personal profit than the client's welfare. *See In the Matter of Jones*, 2 Cal. State Bar Ct.Rptr. 411 (Review Dept. 1993). To the extent this policy is implicated, a practitioner should not be able to "sanitize" such impermissible fee-splitting by the simple expedient of having an invention promoter receive the funds, make the division, and distribute them to the practitioner. *Accord* Formal Opinion 1997–148, Standing Committee on Professional Responsibility and Conduct (California); Formal Opinion 87, Ethics Committee of the Colorado State Bar (1991). Under proposed § 11.504(b), such practices would be specifically proscribed in cases involving an invention promoter. Ethics opinions and court decisions in those jurisdictions finding violations of rules barring fee-splitting between lawyers and non-lawyers in the estate planning and living trust contexts do not turn upon whether the lawyer receives payment for the trust and divides it with the marketer, or vice versa.

Section 11.505 would proscribe engaging in or aiding the unauthorized practice of law. The definition of the practice of law is established by law and might vary from one jurisdiction to another. Whatever the definition, limiting the practice of patent law before the Office to those recognized to practice protects the public against rendition of legal services by unqualified persons or organizations. A patent application is recognized as being a legal document. *See Sperry* v. *Florida*, 373 U.S. 379, 137 USPQ 578 (1963). Thus, a corporation that is not authorized to practice law renders legal services, as opposed to clerical services where, upon request from a general practice attorney and for a fee, it causes a patent application to be prepared by a registered practitioner. *See Lefkowitz* v. *Napatco*, 415 N.E.2d 916, 212 USPQ 617 (NY 1980). There are numerous cases and ethics opinions wherein attorneys have been found to have aided lay organizations in the unauthorized practice of law by agreeing to accept referrals from a non-lawyer engaged in unauthorized practice of law. Some involve non-lawyers marketing estate planning packages. A registered practitioner accepting referrals from a non-lawyer engaged in unauthorized practice of law paralleling such marketing packages might be aiding the unauthorized practice of law. An attorney was found to have aided the unauthorized practice of law by permitting a non-attorney operating as a business to gather data from estate planning clients for preparation of legal documents, and forward the data to the attorney who thereafter prepared the documents (including a will, living trust, living will, and powers of attorney). The attorney, without having personally met or corresponded with the client, forwarded the documents to the non-attorney for the client to execute. *See Wayne County Bar Ass'n.* v. *Naumoff*, 660 N.E.2d 1177 (Ohio 1996). In another case, an attorney agreed to accept referrals from non-attorneys who marketed, through free seminars, living trusts as estate planning devices to avoid probate. At the conclusion of the seminars, the marketers gathered personal and asset information on a form from clients desiring consultations with the marketers. The marketers then discussed the living trust with the clients, and what could and could not be done. The marketers recommended the attorney, who accepted 100 referrals in a two year period. The information gathered by the marketers would then be forwarded to the attorney, either by the marketers or the clients, and the attorney then spoke with the clients by telephone to answer their questions. The attorney then prepared trust documents for the clients' review, and later met with the clients in person, went over the information and documents, and the clients signed the documents at the meeting. The attorney was found to have aided the unauthorized practice of law. *See Comm. on Professional Ethics & Conduct* v. *Baker*, 492 N.W.2d 695,597 (Iowa 1992). *See also People* v. *Laden*, 893 P.2d 771 (Colo. 1995), *People* v. *Macy*, 789 P.2d 188 (Colo. 1990), *People* v. *Boyles*, 591 P.2d 1315 (Colo. 1979); *In re Discipio*, 645 N.E.2d 906 (Ill. 1994); *In re Komar*, 532 N.E.2d 801 (Ill. 1988); Formal Opinion 705, Committee on Professional Ethics of the Illinois State Bar Association (1982); Formal Opinion 1977–148, Standing Committee on Professional Responsibility and Conduct; Formal Opinion 87, Ethics Committee of the Colorado State Bar (1991).

Paragraphs (b), (c), and (d) of § 11.505 would permit a practitioner to employ the services of paraprofessionals and delegate functions to them, so long as the practitioner supervises the delegated work and retains responsibility for their work. *See* § 11.503. Likewise, it would permit practitioners to provide professional advice and instruction to nonpractitioners whose employment requires knowledge of law; for example, claims adjusters, employees of financial or commercial institutions, social workers, accountants and persons employed in Government agencies. In addition, a practitioner may counsel nonpractitioners who wish to proceed *pro se*. Paragraph (d) of § 11.505, like § 10.47(b), makes it clear that a practitioner is prohibited from aiding a suspended or excluded practitioner in the practice of law before the Office.

Section 11.506, like current § 10.38, would prohibit agreements restricting rights to practice. An agreement restricting the right of partners or associates to practice after leaving a firm not only limits their professional autonomy, but also limits the freedom of clients to choose a practitioner. Section 11.506(a) would prohibit such agreements except for restrictions incident to provisions concerning retirement benefits for service with the firm.

Paragraph (b) of § 11.506 would prohibit a practitioner from agreeing not to represent other persons in connection with settling a claim on behalf of a client.

Section 11.507 would provide for a practitioner being subject to the Rules of Professional Conduct if the practitioner provides law-related services.

Section 11.601 would encourage a practitioner to provide *pro bono publico service*. This Rule would reflect the long-standing ethical principle underlying Canon 2 of the Code of Professional Responsibility that "A practitioner should assist the legal profession in fulfilling its duty to make legal counsel available." The Rule would incorporate the legal profession's historical commitment to the principle that all persons in our society should be able to obtain necessary legal services. The Rule would also recognize that the rights and responsibilities of individuals and groups in the United States are increasingly defined in legal terms and that, as a consequence, legal assistance in coping with the web of statutes, rules, and regulations is imperative for persons of modest and limited means, as well as for the relatively well-to-do. The Rule would also recognize that a practitioner's *pro bono* services are sometimes needed to assert or defend public rights belonging to the public generally where no individual or group can afford to pay for the services.

This Rule would carry forward the ethical precepts set forth in the Code. Specifically, the Rule would recognize that the basic responsibility for providing legal services for those unable to pay ultimately rests upon the individual practitioner, and that every practitioner, regardless of professional prominence or professional workload, should find time to participate in or otherwise support the provision of legal services to the disadvantaged.

The Rule also would acknowledge that while the provision of free legal services to those unable to pay reasonable fees continues to be an obligation of each practitioner as well as the profession generally, the efforts of individual practitioners are often not enough to meet the need. Thus, it has been necessary for the profession and Government to institute additional programs to provide legal services. Accordingly, legal aid offices, practitioner referral services, and other related programs have been developed, and others will be developed by the profession and Government. Every practitioner should support all proper efforts to meet this need for legal services. A practitioner also should not refuse a request from a court or bar association to undertake representation of a person unable to obtain counsel except for compelling reasons such as those listed in § 11.602.

Section 11.601 also would express the profession's traditional commitment to make legal counsel available, but it is not intended that the Rule be enforced through disciplinary process. Neither is it intended to place any obligation on a Government practitioner that is inconsistent with laws, such as 18 U.S.C. 203 and 205, limiting the scope of permissible employment or representational activities.

Section 11.602 would provide for a practitioner's accepting a tribunal's appointment to represent a client. The practitioner would not be obligated to accept appointment if the practitioner regards the client's character or cause as repugnant. All practitioners have a responsibility to assist in providing *pro bono publico* service. *See* section 11.601. An individual practitioner fulfills this responsibility by accepting a fair share of unpopular matters or indigent or unpopular clients. A practitioner may also be subject to appointment by a court to serve unpopular clients or persons unable to afford legal services. This rule should not be construed as empowering the Office, and the Office does not intend to use this rule, as a means to appoint a practitioner to represent any person or party before the Office in any matter.

Section 11.602 and Appointed Counsel. For good cause a practitioner may seek to decline an appointment to represent a person who cannot afford to retain counsel or whose cause is unpopular. Good cause exists if the practitioner could not handle the matter competently, see § 11.101, or if undertaking the representation would result in an improper conflict of interest; for example, when the client or the cause is so repugnant to the practitioner as to be likely to impair the client-practitioner relationship or the practitioner's ability to represent the client. A practitioner may also seek to decline an appointment if acceptance would be substantially and unreasonably burdensome, such as when it would impose a financial sacrifice so great as to be unjust.

An appointed practitioner would have the same obligations to the client as retained counsel, including the obligations of loyalty and confidentiality, and is subject to the same limitations on the client-practitioner relationship, such as the obligation to refrain from assisting the client in violation of the Rules.

Section 11.603 would provide for practitioners supporting and participating in legal service organizations. A practitioner who is an officer or a member of such an organization does not thereby have a client-practitioner relationship with persons served by the organization. However, there is potential conflict between the interests of such persons and the interests of the practitioner's clients. If the possibility of such conflict disqualified a practitioner from serving on the board of a legal services organization, the profession's

involvement in such organizations would be severely curtailed. It may be necessary in appropriate cases to reassure a client of the organization that the representation will not be affected by conflicting loyalties of a member of the board. Established, written policies in this respect can enhance the credibility of such assurances.

Section 11.604 would encourage the efforts of practitioners to maintain and improve our legal system. This system should function in a manner that commands public respect and fosters the use of legal remedies to achieve redress of grievances. By reason of education and experience, practitioners are especially qualified to recognize deficiencies in the legal system and to initiate corrective measures therein. Thus, they should participate in proposing and supporting legislation and programs to improve the system, without regard to the general interests or desires of clients or former clients. Rules of law are deficient if they are not just, understandable, and responsive to the needs of society. If a practitioner believes that the existence or absence of a rule of law, substantive or procedural, causes or contributes to an unjust result, the practitioner should endeavor by lawful means to obtain appropriate changes in the law. This Rule expresses the policy underlying Canon 8 of the Code of Professional Responsibility of the American Bar Association that "A practitioner should assist in improving the legal system" through legislation. Practitioners employed by the Government may be subject to limits on their personal ability to propose legislation regarding the department or agency where they are employed. Accordingly, it is not intended that this Rule be enforced through disciplinary process.

Practitioners involved in organizations seeking law reform generally do not have a client-practitioner relationship with the organization. Otherwise, it might follow that a practitioner could not be involved in a bar association law reform program that might indirectly affect a client. *See also* § 11.102(b). For example, a practitioner specializing in patent law prosecution or litigation might be regarded as disqualified from participating in drafting revisions of rules governing that subject. In determining the nature and scope of participation in such activities, a practitioner should be mindful of obligations to clients under other Rules, particularly § 11.107. A practitioner is professionally obligated to protect the integrity of the program by making an appropriate disclosure within the organization when the practitioner knows a private client might be materially benefited.

Section 11.701 would govern all communications about a practitioner's services, including advertising. It is especially important that statements about a practitioner or the practitioner's services be accurate, since many members of the public lack detailed knowledge of legal matters. Certain advertisements such as those that describe the amount of a damage award, the practitioner's record in obtaining favorable verdicts, or those containing client endorsements, unless suitably qualified, have a capacity to mislead by creating an unjustified expectation that similar results can be obtained for others. Advertisements comparing the practitioner's services with those of other practitioners are false or misleading if the claims made cannot be substantiated.

Section 11.701 and Advertising. To assist the public in obtaining legal services, practitioners should be allowed to make known their services not only through reputation but also through organized information campaigns in the form of advertising. Advertising involves an active quest for clients, contrary to the tradition that a practitioner should not seek clientele. However, the public's need to know about legal services can be fulfilled in part through advertising. This need is particularly acute in the case of persons of moderate means who have not made extensive use of legal services. The interest in expanding public information about legal services ought to prevail over considerations of tradition.

Section 11.701 would permit public dissemination of information concerning a practitioner's name or firm name, address, and telephone number; the kinds of services the practitioner will undertake; the basis on which the practitioner's fees are determined, including prices for specific services and payment and credit arrangements; a practitioner's foreign language ability; names of references and, with their consent, names of clients regularly represented; and other information that might invite the attention of those seeking legal assistance.

Questions of effectiveness and taste in advertising are matters of speculation and subjective judgment. Some state jurisdictions have had extensive prohibitions against television advertising, against advertising going beyond specific facts about a practitioner, or against "undignified" advertising. Television is now one of the most powerful media for getting information to the public, particularly persons of low and moderate income; prohibiting television advertising, therefore, would impede the flow of information about legal services to many sectors of the public. Limiting the information that may be advertised has a similar effect.

This proposal is based on the premise that there might be no significant distinction between disseminating information and soliciting clients through mass media or through individual personal contact. In-person solicitation can, however, create additional problems because of the particular circumstances in which the solicitation takes place. Section 11.701 prohibits in-person solicitation in circumstances or through means that are not conducive to intelligent, rational decisions.

Sections 11.701 and 11.702, and paying others to recommend a practitioner. A practitioner would be allowed to pay for advertising permitted by this section. *See* § 11.702(c). Section 11.702 also would permit a practitioner to pay a not-for-profit lawyer referral service or legal service organization for channeling professional work to the practitioner. Thus, such a service or organization, other than the practitioner may advertise or recommend the practitioner's services. Likewise, a practitioner may participate in practitioner referral programs and pay the usual fees charged by such programs. However, special concerns arise when a practitioner is making payments to intermediaries, such as invention promoters, to recommend the practitioner's services to others. These concerns are particularly significant when the payments are not being made to a recognized or established agency or organization, such as a bar-organized practitioner referral program. In employing intermediaries, such as invention promoters, the practitioner is bound by all of the provisions of § 11.701. However, paragraphs (b)(4), and (b)(5) of § 11.701 contain provisions specifically relating to the use of intermediaries.

Paragraph (b)(4) of § 11.701 imposes specific obligations on the practitioner who uses an intermediary to ensure that the potential client, who is the target of the solicitation, is informed of the consideration paid or to be paid by the practitioner to the intermediary, and any effect of the payment of such consideration on the total fee to be charged. The concept of payment, as incorporated in § 11.701(b)(4), includes giving anything of value to the recipient and is not limited to payments of money alone. For example, if an intermediary

were provided the free use of an automobile or free clerical services in return for soliciting clients on behalf of the practitioner, the obligations imposed by § 11.701(b)(4) would apply and impose the specified disclosure requirements.

Statements by an invention promoter in connection with the marketing of the patent applications and inventions, whether on the telephone, at a seminar, or oral or in writing, regarding a practitioner preparing the patent applications and the availability of that practitioner to respond to questions relating to the application, would be communications under § 11.701 since they concern the availability of a practitioner for professional employment, and are therefore subject to the requirements of § 11.701. Like the communications found violative in *Leoni* v. *State Bar, supra,* 39 Cal.3d 609 (Cal. 1985) and *People* v. *Morse,* 21 Cal.App.4th 259, fn. 13 (1993), affd. *In re Morse,* 11 Cal. A4th 184 (Cal. 1995) they have potential to mislead members of the public. In *Leoni* v. *State Bar,* the letters and brochures inaccurately suggested or intimated that all recipients needed a lawyer, that their property was subject to immediate attachment, that bankruptcy was appropriate for them, and the like. In *People* v. *Morse,* the advertisements made inaccurate suggestions and statements regarding the protections afforded recipients by the homestead laws. Statements which, by their generic, "one-size-fits-all" recommendation of patents for everyone, may similarly contain untrue statements, and omit facts—such as that patents may not be worth the cost or in the client's best interest in every case—necessary to make the communications not misleading.

Further, an invention promoter's statements on the telephone or at a meeting regarding the professional employment of the practitioner in connection with obtaining patent protection would constitute a prohibited in-person solicitation under §§ 11.703(a) and 11.703(b). Section 11.703(a) and (b) would proscribe a practitioner from seeking employment through an intermediary under circumstances involving false or misleading statements, undue influence, a potential client who is physically or mentally unable to exercise reasonable judgment, and the practitioner has not taken reasonable steps to ensure that the potential client is informed of the consideration paid to the intermediary as well as any possible effect the payment has on the total fee charged. These rules would apply because a significant motivation for the promotion of the practitioner's services for the inventor is pecuniary gain (rather than communication of general information regarding patents). *See FTC* v. *AIRD,* 219 B.R. 639 (D Mass. 1998). For purposes of § 11.703, it makes no difference whether the invention promoter or the practitioner seeks or receives payment from the participant, since the rule regulates employment motivated by pecuniary gain, without regard to whether a practitioner or one acting on his behalf seeks or obtains that gain. Since the solicitation is directed at obtaining prospective clients with whom the practitioner has no prior professional relationship, it would be prohibited by § 11.703(a). The use of the invention promoter to communicate with the inventor would not insulate the practitioner from § 11.703, which prohibits improper solicitations made by "an intermediary for the practitioner." In both the advertising and the solicitations, the invention promoter cannot do on the practitioner's behalf what the practitioner cannot do. The invention promoter simply becomes the agent of the practitioner. A practitioner cannot avoid the prohibition against in-person solicitation by associating with a non-practitioner who engages in such prohibited conduct on the lawyer's behalf. *Accord* Formal Opinion 1997–148, Standing Committee on Professional Responsibility and Conduct (California).

Paragraph (b)(5) of § 11.701 would impose specific obligations on the practitioner who uses an invention promoter as an intermediary to ensure that the potential client who is the target of the solicitation is accurately informed in every contract between the client and intermediary of all legal fees and expenses included in the funds the client delivers to the intermediary. The practitioner would also have to ensure that every communication to the client by the intermediary requesting funds accurately reflect all legal fees and expenses included in the funds sought, and that the potential client is informed of the discount in legal fees the practitioner gives or will give in consideration for the promoter referring a client.

Paragraph (d) of § 11.701 is based on 35 U.S.C. 32, and prohibits advertising that is specifically precluded by statute.

Paragraph (e) of § 11.701 is based on 5 U.S.C. 501, which prohibits the use of the name of a Member of Congress or of an individual in the service of the United States in advertising the practitioner's practice before the Office.

Section 11.702 would provide for advertising by practitioners. Paragraph (a) of § 11.702 would continue the requirements of current § 10.32(a) that provide for practitioners advertising their services through public media. Paragraph (b) of § 11.702 would introduce a requirement of keeping a copy of advertisements or communications (whether in printed or electronic media) for a period for two years. Paragraph (e) of § 11.702, like current § 10.32(c), would require any communication made pursuant to this rule to include the name of at least one practitioner responsible for its content

Section 11.703 would address the potential for abuse inherent in direct in-person or live telephone contact by a practitioner with a prospective client known to need legal services. These forms of contact between a practitioner and a prospective client subject the layperson to the private importuning of the trained advocate in a direct interpersonal encounter. The prospective client, who may already feel overwhelmed by the circumstances giving rise to the need for legal services, may find it difficult fully to evaluate all available alternatives with reasoned judgment and appropriate self-interest in the face of the practitioner's presence and insistence upon being retained immediately. The situation is filled with the possibility of undue influence, intimidation, and overreaching, as was recognized in *Ohralik* v. *Ohio State Bar Ass'n.,* 436 U.S. 447 (1978) (disciplining attorney for soliciting clients for pecuniary gain under circumstances evidencing undue influence, intimidation, or overreaching).

Paragraph (a) of § 11.703, like current § 10.33, would provide a general prohibition against in-person or live telephone contact to solicit professional employment from a prospective client with whom the practitioner has no family or prior professional relationship when a significant motive for the practitioner's doing so is the practitioner's pecuniary gain and the solicitation occurs under circumstances evidencing undue influence, intimidation, or overreaching. This potential for abuse inherent in direct in-person or live telephone solicitation of prospective clients justifies its prohibition, particularly since practitioner advertising and written and recorded communication permitted under § 11.702 offer alternative means of conveying necessary information to those who may be in need of legal services. Advertising and written and recorded communications which may be mailed or autodialed make it possible for a prospective client to be informed

about the need for legal services, and about the qualifications of available practitioners, without subjecting the prospective client to direct in-person or telephone persuasion that may overwhelm the client's judgment.

A practitioner may not circumvent the Rules of Professional Conduct through the acts of another. *See* § 11.804(a). Accordingly, the provisions of § 11.804(a) may be violated by any solicitation by an intermediary invention promoter involving in-person or live telephone contact to solicit professional employment for a practitioner from a prospective client with whom the practitioner has no family or prior professional relationship when a significant motive is the pecuniary.

Paragraph (c) of § 11.703 would require the words "Advertising Material" on the outside of the envelope, and at the beginning and end of any electronic or recorded communication. The use of general advertising and written and recorded communications to transmit information from practitioner to prospective client, including patent and trademark clients, rather than direct in-person or live telephone contact, will help to assure that the information flows clearly as well as freely. The contents of advertisements and communications permitted under § 11.702 are permanently recorded so that they cannot be disputed and may be shared with others who know the practitioner. This potential for informal review is itself likely to help guard against statements and claims that might constitute false and misleading communications, in violation of § 11.701. The contents of direct in-person or live telephone conversations between a practitioner to a prospective client can be disputed and are not subject to third-party scrutiny. Consequently, they are much more likely to approach (and occasionally cross) the dividing line between accurate representations and those that are false and misleading.

There is far less likelihood that a practitioner would engage in abusive practices against an individual with whom the practitioner has a prior personal or professional relationship or where the practitioner is motivated by considerations other than the practitioner's pecuniary gain. Consequently, the general prohibition in § 11.703(a) and the requirements of § 11.703(c) would not be applicable in those situations.

But even permitted forms of solicitation can be abused. Thus, any solicitation which contains information which is false or misleading within the meaning of § 11.701, which involves coercion, duress or harassment within the meaning of § 11.703(b)(2), or which involves contact with a prospective client who has made known to the practitioner a desire not to be solicited by the practitioner within the meaning of § 11.703(b)(1) would be prohibited. Further, if after sending a letter or other communication to a client as permitted by § 11.702 the practitioner receives no response, any further effort to communicate with the prospective client may violate the provisions of § 11.703(b). Likewise, if a solicitation on a practitioner's behalf by an intermediary contains false or misleading information within the meaning of § 11.701, the solicitation may violate the provisions of § 11.804(a). Similarly, any solicitation by an intermediary invention promoter involving follow-up telephone calls to prospective clients who have not responded to an initial solicitation may violate the provisions of § 11.804(a).

Section 11.703 is not intended to prohibit a practitioner from contacting representatives of inventor-run organizations or groups that may be interested in establishing a group or prepaid legal plan for their members, or insureds for the purpose of informing such entities of the availability of and details concerning the plan or arrangement which the practitioner or the practitioner's firm is willing to offer. This form of communication is not directed to a prospective client. Rather, it is usually addressed to an individual acting in a fiduciary capacity seeking a supplier of legal services for others who may, if they choose, become prospective clients of the practitioner. Under these circumstances, the activity which the practitioner undertakes in communicating with such representatives and the type of information transmitted to the individual are functionally similar to and serve the same purpose as advertising permitted under § 11.702.

The requirement in § 11.703(c) that certain communications be marked "Advertising Material" does not apply to communications sent in response to requests of potential clients or their spokespersons or sponsors. General announcements by practitioners, including changes in personnel or office location, do not constitute communications soliciting professional employment from a client known to be in need of legal services within the meaning of this section.

Paragraph (d) of § 11.703 would permit, in conformity with Rules of Professional Conduct adopted by state bars, a lawyer to participate with an organization which uses personal contact to solicit members for its group or prepaid legal service plan, provided that the personal contact is not undertaken by any practitioner who would be a provider of legal services through the plan. The organization referred to in paragraph (d) must not be owned by or directed (whether as manager or otherwise) by any practitioner or law firm that participates in the plan. For example, paragraph (d) would not permit a lawyer to create an organization controlled directly or indirectly by the practitioner and use the organization for the in-person or telephone solicitation of legal employment of the practitioner through memberships in the plan or otherwise. The communication permitted by these organizations also must not be directed to a person known to need legal services in a particular matter, but is to be designed to inform potential plan members generally of another means of affordable legal services. Practitioners who participate in a legal service plan must reasonably assure that the plan sponsors are in compliance with §§ 11.701, 11.702, and 11.703(b). *See* § 11.804(a).

Section 11.704 would permit a practitioner to indicate areas of practice in communications about the practitioner's services. If a practitioner practices only in certain fields, or will not accept matters except in a specified field or fields, the practitioner is permitted to so indicate. A practitioner is generally permitted to state that the practitioner is a "specialist," practices a "specialty," or "specializes in" particular fields, but such communications are subject to the "false and misleading" standard applied in § 11.701 to communications concerning a practitioner's services.

However, a practitioner may not communicate that the practitioner has been recognized or certified as a specialist in a particular field of law, except as provided by this section.

Paragraph (a) of § 11.704 would continue the provisions of current § 10.31(c) proscribing a non-lawyer, *e.g.*, a patent agent, from holding himself/herself out as an attorney, lawyer, or member of a bar; or as authorized to practice before the Office in trademark matters unless authorized by § 11.14(b).

Paragraph (b) of § 11.704 would continue the provisions of current § 10.34(b) permitting a registered practitioner who is an attorney to use the designation "Patents," "Patent Attorney," "Patent Lawyer," "Registered Patent Attorney," or a substantially similar designation.

Paragraph (c) of § 11.704 would continue the procedure of current § 10.34(c) permitting a registered patent agent who is not an attorney to use the designation "Patents," "Patent Agent," "Registered Patent Agent," or a substantially similar designation.

Section 11.705 would provide for firm names and letterheads. A firm may be designated by the names of all or some of its members, by the names of deceased members where there has been a continuing succession in the firm's identity, or by a trade name such as the ABC Legal Clinic. Although the United States Supreme Court has held that legislation may prohibit the use of trade names in professional practice, use of such names in law practice is acceptable so long as it is not misleading. For example, if a private firm uses a trade name that includes a geographical name such as Springfield Legal Clinic, an express disclaimer that it is a public legal aid agency may be required to avoid a misleading implication. It may be observed that any firm name including the name of a deceased partner is, strictly speaking, a trade name. The use of such names to designate law firms has proven a useful means of identification. However, it is misleading to use the name of a practitioner not associated with the firm or a predecessor of the firm.

Paragraph (d) of § 11.705 would provide that practitioners sharing office facilities, but who are not in fact partners, may not denominate themselves as, for example, Smith and Jones, for that title suggests partnership in the practice of law.

Section 11.801 would impose the same duty to persons seeking admission to a bar as well as to practitioners. Hence, if a person makes a material false statement in connection with an application for registration, it may be the basis for subsequent disciplinary action if the person is admitted, and in any event may be relevant in a subsequent admission application. The duty imposed by § 11.801 applies to a practitioner's own admission or discipline as well as that of others. Thus, it is a separate professional offense for a practitioner knowingly to make a misrepresentation or omission in connection with a disciplinary investigation of the practitioner's own conduct. Section 11.801 also requires affirmative clarification of any misunderstanding on the part of the admissions or disciplinary authority of which the person involved becomes aware.

Section 11.801 is subject to the provisions of the Fifth Amendment of the United States Constitution and corresponding provisions of state constitutions. A person relying on such a provision in response to a question, however, should do so openly and not use the right of nondisclosure as a justification for failure to comply with this rule.

A practitioner representing an applicant for registration, or representing another practitioner who is the subject of a disciplinary inquiry or proceeding, is governed by the Rules applicable to the client-practitioner relationship. For example, § 11.106 may prohibit disclosures, which would otherwise be required by a practitioner serving in such representative capacity. Practitioners representing an applicant or another practitioner must take steps to reasonably assure compliance with §§ 11.303(a)(1) and (2), and 11.804(c). *See Lipman* v. *Dickinson*, 174 F.3d 1363, 50 USPQ 2d 1490 (Fed. Cir. 1999).

Section 11.803 would require reporting a violation of the Rules of Professional Conduct. Self-regulation of the legal profession requires that members of the profession seek a disciplinary investigation when they know of a violation of the Rules of Professional Conduct. Practitioners have a similar obligation with respect to judicial misconduct. An apparently isolated violation may indicate a pattern of misconduct that only a disciplinary investigation can uncover. Reporting a violation is especially important where the victim is unlikely to discover the offense.

Consistent with the current rule, § 10.24(a), a report about misconduct is not required where it would involve violation of § 11.106. However, a practitioner should encourage a client to consent to disclosure where prosecution would not substantially prejudice the client's interests.

If a practitioner were obliged to report every violation of the Rules, the failure to report any violation would itself be a professional offense. Such a requirement existed in many jurisdictions but proved to be unenforceable. Section 11.803 would limit the reporting obligation to those offenses that a self-regulating profession must vigorously endeavor to prevent. A measure of judgment is, therefore, required in complying with the provisions of this section. The term "substantial" refers to the seriousness of the possible offense and not the quantum of evidence of which the practitioner is aware. A written communication describing the substantial misconduct should be made to the OED Director where the conduct is in connection with practice before the Office. Criminal convictions in state or Federal courts, and disciplinary actions other jurisdictions also should be communicated to the OED Director. A practitioner who believes that another practitioner has a significant problem of alcohol or other substance abuse affecting the latter practitioner's practice before the Office, in addition to reporting the matter to the OED Director, should also report the perceived situation to a counseling committee, operated by the state bar, which assists practitioners having such problems.

The duty to report professional misconduct does not apply to a practitioner retained to represent a practitioner whose professional conduct is in question. Such a situation is governed by the Rules applicable to the client-practitioner relationship.

Paragraph (b) of § 11.803 would provide for reporting knowledge that an employee of the Office has committed a violation of applicable Federal statute and rules adopted by the Office of Government Ethics (OGE). However, not all such violations are reportable to the Office of Enrollment and Discipline. For example, an Office employee who is not a practitioner could not be subject to the imperative USPTO Rules of Professional Conduct. Accordingly, violations of a Federal statute or OGE-adopted rules should be reported to the appropriate authorities, which do not include OED.

Paragraph (e) of § 11.803 would provide for disciplining a practitioner suspended or disbarred from practice as an attorney or agent on ethical grounds by any duly constituted authority of the United States (*e.g.*, a Federal court or another agency), a State (*e.g.*, a state supreme court), or a foreign authority in the case of a practitioner residing in a foreign country (*e.g.*, a foreign patent office). Practitioners have been suspended or excluded from practice before the Office following disbarment or suspension in a state. *See In re Davis*, 982 Off. Gaz. 2 (May 1, 1979), *aff'd sub nom.*, *Davis* v. *Commissioner*, No. 80–1036 (D.C. Cir. Mar. 31, 1981), *cert. denied*, 454 U.S. 1090 (1981) (attorney excluded by USPTO following disbarment in Minnesota for misconduct involving both patent and non-patent matters); *In re Hodgson*, 1023 Off. Gaz. 13 (Oct. 12, 1982) (attorney excluded by USPTO after disbarment in Virginia following criminal conviction); *In re Pattison*, 1023 Off. Gaz. 13 (Oct. 12, 1982) (attorney excluded by USPTO after disbarment in Maryland for misconduct involving patent and non-patent matters); *Attorney Grievance Commission (Maryland)* v. *Pattison*, 441 A.2d 328 (Md. 1982); *Nakamura* v.

Harper, 1062 Off. Gaz. 433 (Jan. 28, 1986) (attorney excluded by USPTO after disbarment in Maryland for misconduct in patent and non-patent matters addressed in *Attorney Grievance Commission (Maryland)* v. *Harper*, 477 A.2d 756 (Md. 1984)); and *In re Kraft*, 954 Off. Gaz. 550 (Jan. 11, 1977), *aff'd. sub nom., Kraft* v. *Commissioner*, No. 77–0087 (D.D.C. Nov. 3, 1977) (attorney excluded by USPTO following suspension in Idaho).

Paragraph (f) of § 11.803 would define some, but not all, acts that would constitute violations of paragraphs (a) through (e) of this section. The USPTO believes that it would be helpful to practitioners if some specific prohibitions were set out in the rules. The prohibitions set out in paragraphs (1) through (4) of § 11.803 represent violations that have occurred in the past or that the USPTO specifically seeks to prevent. The specific acts set out in paragraph (f) would not constitute a complete description of all acts in violation of paragraphs (a) through (e).

Section 11.804 would continue the practice of providing for discipline involving a variety of acts constituting misconduct.

Paragraph (b) of § 11.804 would address many kinds of illegal conduct reflecting adversely on fitness to practice law, such as offenses involving fraud and the offense of willful failure to file an income tax return. *See In re Milmore*, 196 USPQ 628 (Comm'r Pat. 1977) (fraud on the Office); *In re Donal E. McCarthy*, 922 Off. Gaz. 2 (May 17, 1974) (income tax evasion); *In re Edwin Crabtree*, 1023 Trademark Off. Gaz. 44 (Oct. 27 1987) (income tax evasion). However, some kinds of offenses carry no such implication. Traditionally, the distinction was drawn in terms of offenses involving "moral turpitude." A current regulation, 37 CFR 10.23(b)(3), proscribes "illegal conduct involving moral turpitude." That concept can be construed to include offenses concerning some matters of personal morality, such as adultery and comparable offenses, that have no specific connection to fitness for the practice of law. Although a practitioner is personally answerable to the entire criminal law, a practitioner should be professionally answerable only for offenses that indicate lack of those characteristics relevant to law practice. Offenses involving violence, dishonesty, breach of trust, or serious interference with the administration of justice are in that category. *See, e.g., In re Bernard Miller*, 688 Off. Gaz. 1 (Nov. 2, 1954) (excluding attorney from USPTO following conviction and incarceration, *Miller* v. *State (Oklahoma)*, 281 P.2d 441 (Crim. App. Okla. 1955)). A pattern of repeated offenses, even ones of minor significance when considered separately, can indicate indifference to legal obligation.

Paragraph (d) of § 11.804, like § 10.23(b)(5), would prohibit conduct that "is prejudicial to the administration of justice." There is extensive case law on this standard, as set forth below. Examples of these cases involve a practitioner's failure to cooperate with the OED Director or Bar Counsel during an investigation. A practitioner's failure to respond to investigative inquiries or Bar Counsel's subpoenas may constitute misconduct. *See Bovard* v. *Gould*, D96–02 *http://www.uspto.gov/web/offices/com/sol/foia/oed/disc/D02.pdf* (Comm'r Pat 1997); *In re Cope*, 455 A.2d 1357 (D.C. 1983); *In re Haupt*, 444 A.2d 317 (D.C. 1982); *In re Lieber*, 442 A.2d 153 (D.C. 1982); *In re Whitlock*, 441 A.2d 989 (D.C. 1982); *In re Russell*, 424 A.2d 1087 (D.C. 1980); *In re Willcher*, 404 A.2d 185 (D.C. 1979). Misconduct also may arise from the failure to abide by agreements made with Bar Counsel. *See In re Harmon*, M–79–81 (D.C. Dec. 14, 1981) (breaking promise to Bar Counsel to offer complainant refund of fee or vigorous representation constitutes conduct prejudicial to the administration of justice).

In the Office, a variety of conduct by practitioners has been found to constitute conduct prejudicial to the administration of justice. For example, such conduct includes a practitioner's destruction of a maintenance fee reminder, payment of Office fees with checks drawn on an overdrawn account, and settling a dispute with a former client by precluding disclosure of a grievance to the Office. *See Bovard* v. *Cole*, D95–01 (Comm'r Pat. 1995); *Weiffenbach* v. *Maxon*, D89–11 (Comm'r Pat. 1990); and *In re Johnson*, D2001–09, *http://www.uspto.gov/web/offices/com/sol/foia/oed/discD25.pdf* (Comm'r Pat. 2001). In other jurisdictions, a practitioner's failure to appear in court for a scheduled hearing is another common form of conduct deemed prejudicial to the administration of justice. *See In re Evans*, No. M–126–82 (D.C. Dec. 18, 1982); *In re Doud*, Bar Docket No. 442–80 (Sept. 23, 1982); *In re Bush* (Bush III), No. S–58–79/D/39/80 (D.C. Apr. 30, 1980); *In re Molovinsky*, No. M–31–79 (D.C. Aug. 23, 1979). Similarly, failure to obey court orders has been found to constitute misconduct under § 11.804(d). *See In re Whitlock*, 441 A.2d 989–91 (D.C. 1982); *In re Brown*, Bar Docket No. 222–78 (Aug. 4, 1978); and *In re Bush* (Bush I), No. DP–22–75 (D.C. July 26, 1977).

While the above categories—failure to cooperate with Bar Counsel and failure to obey court orders—encompass the major forms of misconduct proscribed by § 11.804(d), that provision would be interpreted flexibly and includes any improper behavior of an analogous nature. For example, the failure to turn over the assets of a conservatorship to the court or to the successor conservator has been held to be conduct "prejudicial to the administration of justice." *In re Burka*, 423 A.2d 181 (D.C. 1980). In *Russell*, 424 A.2d 1087 (D.C. 1980), the court found that failure to keep the Bar advised of respondent's changes of address, after being warned to do so, was also misconduct under that standard. And in *In re Schattman*, No. M–63–81 (D.C. June 2, 1981), it was held that a practitioner's giving a worthless check in settlement of a claim against the practitioner by a client was improper.

Paragraph (g) of § 11.804 is based on 35 U.S.C. 32, and would prohibit disreputable or gross misconduct. An example of a practitioner being excluded for gross misconduct is found in *In re Wedderburn*, 1897 Dec. Comm'r. Pat. 77 (Comm'r Pat. 1897), mandamus denied sub nom., *United States ex rel. Wedderburn* v. *Bliss*, 1897 Dec. Comm'r. Pat. 750 (Sup.Ct. D.C. 1897), aff'd. 12 App. D.C. 485, 1898 Dec. Comm'r Pat. 413 (D.C. Cir. 1898).

Paragraph (h) of § 11.804 would define some, but not all, acts that would constitute violations of paragraphs (a) through (g) of this section. The USPTO believes that it would be helpful to practitioners if some specific prohibitions were set out in the rules. The prohibitions set out in paragraphs (1) through (10) of § 11.804 represent conduct that has occurred in the past or which the USPTO specifically seeks to prevent. The specific acts set out in paragraph (h) would not constitute a complete description of all acts in violation of paragraphs (a) through (g).

Paragraph (h)(1) of § 11.804, for example, would proscribe knowingly giving false or misleading information or knowingly participating in a material way in giving false or misleading information, to a client in connection with any immediate, prospective, or pending business before the Office.

Paragraph (h)(2) of § 11.804 would include as misconduct representing before the Office in a patent case either a joint venture comprising an inventor and an invention promoter or an inventor referred to the registered practitioner by an invention promoter. One requirement for the misconduct to obtain is that the registered practitioner know, or be advised by the Office, that a formal complaint has been filed by a Federal or state agency, that the complaint is based on any violation of any law relating to securities, unfair methods of competition, unfair or deceptive acts or practices, mail fraud, or other civil or criminal conduct, and the complaint is pending before a Federal or state court or Federal or state agency, or has been resolved unfavorably by such court or agency, against the invention promoter in connection with invention development services. Another requirement is that the informed or advised registered practitioner fails to fully advise the inventor of the existence of the pending complaint or unfavorable resolution thereof prior to undertaking or continuing representation of the joint venture or inventor. The Federal Trade Commission, Securities and Exchange Commission, and the U.S. Department of Justice are Federal agencies empowered to investigate and file charges included within the scope of the proposed rule. *See Securities and Exchange Commission* v. *Lawrence Peska Associates, Inc.*, Civil Action 77–2436 (S.D. Fla., Filed: Aug. 8, 1977); *United States* v. *Beecroft*, 608 F.2d 753 (9th Cir. 1979) (upholding mail fraud convictions of defendant officers of a company which helped inventors promote and market their ideas).

Attorneys General in state agencies also can file charges arising from actions that may also constitute violations of consumer protection laws within the scope of the proposed rules. *See, e.g.*, Thomas, *Invention Development Service and Inventors: Recent Inroads on Caveat Inventors*, 60 J. Pat. Off. Soc'y. 355, 376 n. 75 (1978); Shemin, *Idea Promoter Control: The Time Has Come*, 60 J. Pat. Off. Soc'y. 261, 262 n.7 (1978); and *Illinois* v. *Lawrence Peska Associates, Inc.*, Civil Action No. 77CH 3771 (Cir.Ct. Cook Cty June 8, 1977). Similarly, a practitioner who represented an inventor referred by an invention promoter, and knew or should have known that the invention promoter was charged by the FTC with engaging in unfair or deceptive acts or practices, could be subject to disciplinary action under the proposed rule if the practitioner does not advise the inventor of the existence of the charges.

In using "invention promoter" and "invention marketing and promotion services," the proposed rule applies the definitions used in § 11.1.

Paragraph (h)(7) of § 11.804 would provide that a practitioner may not accept or use the assistance from an Office employee in the presentation or prosecution of an application except to the extent that the employee may lawfully participate in an official capacity. The proposed rule would cover not only situations where an Office employee, such as a patent examiner or other person, is paid for their assistance, but also where the employee is not paid for their assistance. Thus, where claims in an application are rejected over a reference that is in a foreign language, a practitioner may not engage a person, employed by the Office, to translate the reference and use the translation to traverse the rejection. Moreover, the proposed rule would not be limited to situations involving bribery, and would not require a conviction for bribery.

Paragraph (i) of § 11.804 would provide that a practitioner who acts with reckless indifference to whether a representation is true or false would be chargeable with knowledge of its falsity. Likewise, deceitful statements of half-truths or concealment of material facts shall be deemed actual fraud within the meaning of this part. *See, e.g., United States* v. *Beecroft*, 608 F.2d 753 (9th Cir. 1979).

Section 11.805 would provide a practitioner and other persons practicing before the Office with guidance that he or she would be subject to the disciplinary authority and rules of the USPTO. Paragraph (a) of § 11.805 restate long-standing law. The USPTO Director has statutory, 35 U.S.C. 2(b)(2)(D), and inherent authority to adopt rules regulating the practice of attorneys and other persons before the USPTO in patent, trademark, and non-patent law. The USPTO, like other Government agencies, has inherent authority to regulate who may practice before it as attorneys, including the authority to discipline attorneys. *See Goldsmith* v. *U.S. Board of Tax Appeals*, 270 U.S. 117 (1926); *Herman* v. *Dulles*, 205 F.2d 715 (D.C. Cir. 1953), and *Koden* v. *U.S. Department of Justice*, 564 F.2d 228 (7th Cir. 1977). Courts have affirmed that Congress, through the Administrative Procedure Act, 5 U.S.C. 500, did not limit the inherent power of agencies to discipline professionals who appear or practice before them. *See Polydoroff* v. *ICC*, 773 F.2d 372 (D.C. Cir. 1985); *Touche Ross, & Co.* v. *SEC*, 609 F.2d 570 (2d Cir. 1979).

A practitioner may be potentially subject to more than one set of rules of professional conduct which impose different obligations. The registered patent attorney would be licensed to practice in more than one jurisdiction, *i.e.*, the Office and at least one state. The rules of professional conduct may differ between these jurisdictions. A practitioner may be admitted to practice before a particular court with rules that differ from those of the Office or other jurisdictions in which the practitioner is licensed to practice. In the past, decisions have not developed clear or consistent guidance as to which rules apply in such circumstances.

Paragraph (b) of § 11.805 seeks to resolve such potential conflicts. Its premise would be that minimizing conflicts between rules, as well as uncertainty about which rules are applicable, is in the best interest of both clients and the profession (as well as the bodies having authority to regulate the profession). Accordingly, it takes the approach of (i) providing that any particular conduct of a practitioner shall be subject to only one set of rules of professional conduct, and (ii) making the determination of which set of rules applies to particular conduct as straightforward as possible, consistent with recognition of appropriate regulatory interests of relevant jurisdictions.

Paragraph (b)(1) of § 11.805 would provide that as to a practitioner's conduct relating to practice before the Office, where the practitioner is registered or recognized to practice (either generally or granted limited recognition), the practitioner would be subject to the rules of the Office Rules of Professional Conduct.

Paragraph (b)(2) of § 11.805 would provide that as to a practitioner's conduct relating to a proceeding in or before a court before which the practitioner is admitted to practice (either generally or pro hac vice), the practitioner would be subject only to the rules of professional conduct of that court. As to all other conduct, § 11.805(b) would provide that a practitioner recognized to practice before the Office would be subject to the rules of the Office in regard to conduct occurring in connection with practice before the Office. The rule also would provide that a practitioner recognized to practice before the Office practicing in multiple jurisdictions would be subject only to the rules of the jurisdiction where he or she (as an individual, not his or her firm) principally practices, but with one exception: if particular conduct clearly has its predominant effect in another admitting jurisdiction, then only the rules of that jurisdiction shall apply. The intention is for the latter exception to be a narrow one. It would be appropriately applied, for example, to a situation in which a practitioner admitted in, and principally practicing in, State A, but also admitted in State B, handled an acquisition by a company whose headquarters and operations were in State B of another,

similar to such company. The exception would not appropriately be applied, on the other hand, if the practitioner handled an acquisition by a company whose headquarters and operations were in State A of a company whose headquarters and main operations were in State A, but which also had some operations in State B.

If two admitting jurisdictions were to proceed against a practitioner for the same conduct, they should, applying this rule, identify the same governing ethics rules. They should take all appropriate steps to see that they do apply the same rule to the same conduct, and in all events should avoid proceeding against a practitioner on the basis of two inconsistent rules.

If an attorney admitted in State A also is a registered practitioner, the practitioner may view that he or she is subject to possibly different ethical obligations under State and Office rules regarding disclosure of prior art references. Typically, this obtains in patent matters where the practitioner is informed by the client of the existence of a prior reference that appears to the practitioner to be material to the patentability of the client's patent application, but the client believes the reference is not directly relevant to the invention, and does not want to disclose the reference to the Office. The practitioner is engaged in practicing before the Office. It would be appropriate to apply § 11.805(b) and follow the Office rules, §§ 1.56 and 11.106(c), requiring disclosure of information material to the patentability of a claimed invention. *See* Formal Opinion 96–12, Professional Guidance Committee of the Philadelphia Bar Association (1996).

The choice of law provision is not intended to apply to practice abroad.

Section 11.806 would address sexual relations with clients, employees, and third persons.

Paragraph (a) of § 11.806 would define "sexual relations" as intercourse or touching another person for the purpose of sexual arousal, sexual gratification, or sexual abuse. Paragraph (b)(1) of § 11.806 would proscribe a practitioner from requiring sexual relations with a client or third party incident to or as a condition of any professional representation. Paragraph (b)(2) of § 11.806 would proscribe sexual relations with an employee incident to or as a condition of employment. Under paragraph (b)(3) of § 11.806, use of coercion, intimidation, or undue influence in entering into sexual relations with a client, or employee is proscribed.

Paragraph (c) of § 11.806. Under paragraph (c) of § 11.806, the regulation would not apply to sexual relations between practitioners and their spouses or to ongoing consensual sexual relationships predating the practitioner-client relationship or practitioner-employee relationship.

Paragraph (d) of § 11.806. Under paragraph (d) of § 11.806, practitioners in the firm would not be subject to discipline solely because a practitioner in the firm has sexual relations with a client but the practitioner does not participate in the representation of that client.

TABLE 1.—PRINCIPAL SOURCE OF SECTIONS 11.1 THROUGH 11.18

Section	Source	Part 10 concordance
§ 11.1	37 CFR 10.1	§ 10.1
	MRPR	
§ 11.2	37 CFR 10.2	§ 10.2
	DC RULE XI, § 6	
§ 11.3	37 CFR 10.170	§ 10.170
§ 11.4	37 CFR 10.3	§ 10.3
§ 11.5	37 CFR 10.5	§ 10.5
§ 11.6	37 CFR 10.6	§ 10.6
§ 11.7(a)(b)	37 CFR 10.7(a)	§ 10.7(a)
§ 11.7(b)(1)	37 CFR 10.7(b)	§ 10.7(b)
§ 11.7(b)(2)	New	None
	37 CFR 1.8 and 1.10	None
§ 11.7(c)	Case law	None
	RDCCA 46(12)(ii), third sentence	
§ 11.7(d)	New	§ 10.7(b)
§ 11.7(e)	New	None
§ 11.7(f)	37 CFR 10.6(c)	§ 10.6(c)
	37 CFR 10.7(b)	§ 10.7(b)
§ 11.7(g)	37 CFR 10.7(a)	§ 10.7(a)
§ 11.7(h)	Case law	None
	California State Bar Policy	None
	FlaRSC 2–13	None
	GaSCR Part A, § 11	None
	MoSCR 8.05	None
§ 11.7(i)	California State Bar Policy	None
§ 11.7(j)	RDCCA 46(f)–(g)	None
	Willner v. *Comm. on Character & Fitness*, 373 U.S. 96 (1963)	
§ 11.7(k)	Colo. Rule 201.12	None
§ 11.8(a)	RDCCA 46(b)(10)	None
§ 11.8(b)–(c)	RDCCA 46(h)(2), (3)	None
§ 11.8(d)	OGVSB Rule 11	None
§ 11.9(a)–(c)	37 CFR 10.9(a)–(c)	§ 10.9
§ 11.10(a)	37 CFR 10.10(a)	§ 10.10
§ 11.10(b)	5 CFR 2637.201	§ 10.10(b)
	5 CFR 2637.202	§ 10.10(b)
§ 11.10(c)	5 CFR 2637.201	None
	5 CFR 2637.202	None
§ 11.10(d)–(e)	37 CFR 10.10(c)–(d)	§ 10.10(c)–(d)
§ 11.11(a)	37 CFR 10.11(a)	§ 10.11(a)

TABLE 1.—PRINCIPAL SOURCE OF SECTIONS 11.1 THROUGH 11.18—Continued

Section	Source	Part 10 concordance
§ 11.11(b)	OGVSB Rule 19	None
§ 11.11(c)	New	None
§ 11.11(d)	New	None
§ 11.11(e)–(f)	1064 Off.Gaz.12	None
§ 11.12(a)–(d)	OGVSB Rule 17	None
§ 11.12(e)	OGVSB Rule 19	None
§ 11.13	OGVSB Rule 17	None
§ 11.14	37 CFR 10.14	§ 10.14
§ 11.15	37 CFR 10.15	§ 10.15
§ 11.16	New	None
§ 11.17 [Reserved]		
§ 11.18	37 CFR 10.18	§ 10.18
	FRCP 11	

Abbreviations:
Colo. Rule means Rules Governing Admission to the Bar of the State of Colorado (March 23, 2000).
DC RULE XI means Rule XI of the Rules Governing the District of Columbia Bar.
FlaLRSC 2–13 means Rule 2–13 of the Florida Rules of the Supreme Court Relating to Admissions to the Bar.
GaSCR Part A, § 11 means Part A, Rule 11 of the Georgia Supreme Court Rules Governing Admission to the Practice of Law.
MoSCR 8.05 means Rule 8.05 of the Missouri Supreme Court Rules Governing Admission to the Bar in Missouri.
RDCCA means Rules of the District of Columbia Court of Appeals.
OGVSB means Organization & Government of the Virginia State Bar.

TABLE 2.—PRINCIPAL SOURCE OF SECTIONS 11.19 THROUGH 11.62

Section	Source	Part 10 concordance
§ 11.19	DC RULE XI	§ 10.1, 10.2
	37 CFR 10.130	§ 10.130
§ 11.20	DC RULE XI, § 3	None
§ 11.21	DC BPR Chap. 6	None
§ 11.22	DC BPR Chap. 2	None
§ 11.23	37 CFR 10.4	§ 10.4
§ 11.24	DC BPR Chap. 10	None
§ 11.25	DC BPR Chap. 8	None
	Calif. § 6102(d)	None
§ 11.26	DC BPR Chap.	None
§ 11.27	37 CFR 10.133	§ 10.133
	DC BPR Chap.15	
§ 11.28	DC BPR Chap. 14	None
	DC RULE XI, § 13	
§§ 11.29–11.31 [Reserved]		
§ 11.32	37 CFR 10.132	§ 10.132
§ 11.33 [Reserved]		
§ 11.34	37 CFR 10.134	§ 10.134
§ 11.35	37 CFR 10.135	§ 10.135
§ 11.36	37 CFR 10.136	§ 10.136
§ 11.37	37 CFR 10.137	§ 10.137
§ 11.38	37 CFR 10.138	§ 10.138
§ 11.39	37 CFR 10.139	§ 10.139
§ 11.40	37 CFR 10.140	§ 10.140
§ 11.41	37 CFR 10.141	§ 10.141
§ 11.42	37 CFR 10.142	§ 10.142
§ 11.43	37 CFR 10.143	§ 10.143
§ 11.44	37 CFR 10.144	§ 10.144
§ 11.45	37 CFR 10.145	§ 10.145
§§ 11.46–11.48 [Reserved]		
§ 11.49	37 CFR 10.149	§ 10.149
§ 11.50	37 CFR 10.150	§ 10.150
§ 11.51	37 CFR 10.151	§ 10.151
§ 11.52	37 CFR 10.152	§ 10.152
§ 11.53	37 CFR 10.153	§ 10.153
§ 11.54	37 CFR 10.154	§ 10.154
§ 11.55(a)	37 CFR 10.155(a)	§ 10.155(a)
	FRAP Rule 28	
§ 11.55(b)	FRAP Rule 28	None
	FRAP Rule 32(a)(4), and (7)	
	FRAP Rule 32(a)(4), (5) and (6)	
§ 11.55(c)–(e)	37 CFR 10.155(b)–(d)	§ 10.155(b)–(d)
§ 11.56	37 CFR 10.157	§ 10.157
§ 11.58	37 CFR 10.158	§ 10.158
	DC Rule XI, § 14	
	Calif. Rule 955	

TABLE 2.—PRINCIPAL SOURCE OF SECTIONS 11.19 THROUGH 11.62—Continued

Section	Source	Part 10 concordance
§ 11.59	37 CFR 10.159	§ 10.159
§ 11.60	37 CFR 10.160	§ 10.160
	DC RULE XI, § 16	
	DC BPR Chap. 9	
§ 11.61	37 CFR 10.161	§ 10.161
§ 11.62	New	

Abbreviations:
DC RULE XI means Rule XI of the Rules Governing the District of Columbia Bar (1999).
DC BPR means Rules of the District of Columbia Court of Appeals Board of Professional Conduct (1999).
Calif. Rule means California Bar Rule.
Calif § 6102(d) means Article 6, § 6102(d) of the California State Bar Act.
FRAP means Federal Rules of Appellate Procedure.

TABLE 3.—PRINCIPAL SOURCE OF SECTIONS 11.100 THROUGH 11.806

Section	Source	Part 10 concordance
Competence:		
§ 11.101(a)	MRPR 1.1	§ 10.77(a)
§ 11.101(b)	DCRPR 1.1b	None
§ 11.101(c)(1)	§ 10.23(c)(7)	§ 10.23(c)(7)
§ 11.101(c)(2)	§ 10.23(c)(13)	§ 10.23(c)(13)
§ 11.101(c)(3)	§ 10.23(c)(19)	§ 10.23(c)(19)
§ 11.101(c)(4)	§ 10.23(c)(20)	§ 10.23(c)(20)
Scope of Representation:		
§ 11.102(a)	MRPR 1.2(a)	§ 10.84(a)(1)
§ 11.102(b)	MRPR 1.2(b)	None
§ 11.102(c)	MRPR 1.2(c)	§ 10.84(b)
§ 11.102(d)	MRPR 1.2(d)	§ 10.85(a)(6)(7)(8)
		§ 10.89
§ 11.102(e)	MRPR 1.2(e)	§ 10.40(c)(1)(iii)
		§ 10.111(c)
§ 11.102(f)	DCRPR 1.2(d)	None
Diligence:		
§ 11.103(a)	MRPR 1.3	§ 10.77(c)
		§ 10.84(a)(1), (3)
§ 11.103(b)–(d)	New	§ 10.77(c)
		§ 10.84(a)(1), (3)
Communication:		
§ 11.104(a)	MRPR 1.4(a)	§ 10.77(c)
		§ 10.84(a)(1)(3)
§ 11.104(b)	MRPR 1.4(b)	None
§ 11.104(c)	DCRPR 1.4(c)	None
§ 11.104(d)(1)	10.23(c)(8)	§ 10.23(c)(8)
Fees:		
§ 11.105(a)	MRPR 1.5(a)	§ 10.36(a)(b)
§ 11.105(b)–(c)	MRPR 1.5(b)–(c)	None
§ 11.105(e)(1)	MRPR 1.5(e)(1)	§ 10.37(a)
§ 11.105(e)(2)–(4)	DCRPR 1.5(e)(2)–(4)	§ 10.37(a)
§ 11.105(f)	MRPR 1.5(f)	None
Confidentiality:		
§ 11.106(a)(1)	MRPR 1.6(a)	§ 10.57(a)(b)(c)
§ 11.106(a)(2)–(3)	DCRPR 1.6	§ 10.57(a)(b)(c)
§ 11.106(b)(1)	MRPR 1.6(b)(2)	§ 10.57(c)(4)
§ 11.106(b)(2)	MRPR 1.6(b)(2)	None
§ 11.106(c)	37 CFR 1.56	None
§ 11.106(d)–(h)	DCRPR 1.6	None
Conflicts of Interest:		
§ 11.107(a)	MRPR 1.7	§ 10.62(a)
		§ 10.66(a)(b)
		§ 10.68(b)
§ 11.107(b)&(b)(1)	MRPR 1.7	§ 10.62(a)(b)
		§ 10.63
		§ 10.65(a)
		§ 10.66(a)(b)(c)
		§ 10.68(a)
§ 11.107(b)(2)	MRPR 1.7	None
Prohibited Transactions:		
§ 11.108(a)	MRPR 1.8(a)	§ 10.65(a)
§ 11.108(b)	MRPR 1.8(b)	§ 10.57(b)
§ 11.108(c)	MRPR 1.8(c)	None
§ 11.108(d)	MRPR 1.8(d)	None

TABLE 3.—PRINCIPAL SOURCE OF SECTIONS 11.100 THROUGH 11.806—Continued

Section	Source	Part 10 concordance
§ 11.108(e)	MRPR 1.8(e)	§ 10.64(b)
§ 11.108(f)	MRPR 1.8(f)	§ 10.68(a)(b)
§ 11.108(f)(1)(ii)	New	None
§ 11.108(g)	MRPR 1.8(g)	§ 10.67(a)
§ 11.108(h)	MRPR 1.8(h)	§ 10.63(a)
§ 11.108(i)	MRPR 1.8(i)	None
§ 11.108(j)	MRPR 1.8(j)	§ 10.62(a)
		§ 10.64(a)
		35 U.S.C. 4
§ 11.108(k)	New	None
Former Client:		
§ 11.109(a)	MRPR 1.9(a)	§ 10.66(c)
§ 11.109 (b)	MRPR 1.9(b)	None
§ 11.109 (c)	MRPR 1.9(c)	None
Imputed Disqualification:		
§ 11.110(a)	MRPR 1.10(a)	§ 10.66(d)
§ 11.110(b)	MRPR 1.10(b)	§ 10.66(d)
§ 11.110(c)	MRPR 1.10(c)	§ 10.66(a)
Government/Private:		
§ 11.111(a)	MRPR 1.11(a)	§ 10.111(b)
§ 11.111(b)	MRPR 1.11(b)	None
§ 11.111(c)	MRPR 1.11(c)	None
§ 11.111(d)	MRPR 1.11(d)	None
§ 11.111(e)	MRPR 1.11(e)	None
Former Judge:		
§ 11.112(a)(b)	MRPR 1.12(a)(b)	§ 10.111(a)(b)
§ 11.112(c)	MRPR 1.12(c)	§ 10.66(d)
§ 11.112(d)	MRPR 1.12(d)	None
Organization as Client:		
§ 11.113(a)	MRPR 1.13(a)	None
§ 11.113(b)	MRPR 13(b)	§ 10.68(b)
§ 11.113(c)	MRPR 1.13(c)	§ 10.66(d)
		§ 10.68(b)
§ 11.113(d)	MRPR 1.13(d)	None
§ 11.113(e)	MRPR 13(e)	§ 10.66(b)(c)
Disabled Client:		
§ 11.114	MRPR 1.14	None
Safekeeping of Property:		
§ 11.115(a)	VRPC 1.15(a)	§ 10.112(a)
§ 11.115(b)	New	None
§ 11.115(c)	VRPC 1.15(b)	§ 10.112(b)(2)
§ 11.115(d)	VRPC 1.15(c)	§ 10.112(c)
§ 11.115(e)–(f)	VRPC 1.15(d)–(e)	§ 10.112(c)(3)
§ 11.115(g)	VRCP 1.15(f)	None
§ 11.115(h)–(i)	§ 10.23(c)(3)	§ 10.23(c)(3)
Declining/Terminating Representation:		
§ 11.116(a)(1)	MRPR 1.16(a)(1)	§ 10.39
		§ 10.40(b)(1)(2)
§ 11.116(a)(2)	MRPR 1.16(a)(2)	§ 10.40(b)(3)
		§ 10.40(c)(4)
§ 11.116(a)(3)	MRPR 1.16(a)(3)	§ 10.40(b)(4)
§ 11.116(b)(1)	MRPR 1.16(b)(1)	§ 10.40(c)(1)(ii)(iii)
		§ 10.40(c)(2)
§ 11.116(b)(2)	MRPR 1.16(b)(2)	§ 10.40(c)(1)(iv)
§ 11.116(b)(3)	MRPR 1.16(b)(3)	§ 10.40(c)(1)(vi)(ix)(x)
§ 11.116(b)(5)	MRPR 1.16(b)(5)	§ 10.40(c)(1)(iv)(v)
§ 11.116(b)(6)	MRPR 1.16(b)(6)	§ 10.40(c)(6)
§ 11.116(c)	MRPR 1.16(c)	§ 10.40(a)
§ 11.116(d)	MRPR 1.16(d)	§ 10.40(a)
Sale of Practice:		
§ 11.117	MRPR 1.17	None
§§ 11.118–11.200 [Reserved]		
Advisor:		
§ 11.201(a)	MRPR 2.1(a)	§ 10.68(b)
§ 11.201(b)	New	None
Intermediary:		
§ 11.202(a)(1)	MRPR 2.2(a)(1)	§ 10.66(a)(c)
§ 11.202(a)(2)	MRPR 2.2(a)(2)	§ 10.66(a)(c)
§ 11.202(a)(3)	MRPR 2.2(a)(3)	§ 10.66(a)(c)
§ 11.202(b)	New	None
§ 11.202(c)	MRPR 2.2(b)	None
§ 11.202(c)	MRPR 2.2(c)	§ 10.66(b)(c)

TABLE 3.—PRINCIPAL SOURCE OF SECTIONS 11.100 THROUGH 11.806—Continued

Section	Source	Part 10 concordance
Evaluation for Third Party:		
§ 11.203	MRPR 2.3	None
§§ 11.204–11.300 [Reserved]		
Meritorious Claim:		
§ 11.301	MRPR 3.1	§ 10.63(a)(b) § 10.39(a)(b) § 10.85(a)(1)(2)
Expediting Litigation:		
§ 11.302(a)	MRPR 3.2	§ 10.23(b)(5) § 10.84(a)(1)(2)
§ 11.302(b)	DCRPR 3.2(a)	None
Candor:		
§ 11.303(a)(1)	MRPR 3.3(a)(1)	§ 10.23(b)(4)(5) § 10.85(a)(4)(5)
§ 11.303(a)(2)	MRPR 3.3(a)(2)	§ 10.23(b)(4)(5) § 10.85(a)(3) § 10.85(b)(1) § 10.92(a)
§ 11.303(a)(3)	MRPR 3.3(a)(3)	§ 10.85(a)(5) § 10.89(b)(1)
§ 11.303(a)(4)	MRPR 3.3(a)(4)	§ 10.23(b)(4)(5) § 10.85(a)(7) § 10.85(b)(1)
§ 11.303(b)	MRPR 3.3(b)	§ 10.85(b)
§ 11.303(c)(d)	MRPR 3.3(c)(d)	None
§ 11.303(e)(1)	§ 10.23(c)(9)	§ 10.23(c)(9)
§ 11.303(e)(2)	§ 10.23(c)(10)	§ 10.23(c)(10)
§ 11.303(e)(3)	§ 10.23(c)(11)	§ 10.23(c)(11)
§ 11.303(e)(4)	§ 10.23(c)(15)	§ 10.23(c)(15)
§ 11.303(c)(5)	§ 10.23(c)(2)(ii)	§ 10.23(c)(2)(ii)
Fairness:		
§ 11.304(a)	MRPR 3.4(a)	§ 10.23(b)(4)(5) § 10.89(c)(6)
	MRPR 3.4(b)	§ 10.23(b)(4)(5)(6) § 10.85(a)(6)
§ 11.304(c)	MRPR 3.4(c)	§ 10.92(c) § 10.23(b)(5) § 10.89(a)
§ 11.304(d)	MRPR 3.4(d)	§ 10.89(c)(5)(7) § 10.23(b)(5) § 10.89(a)
§ 11.304(e)	MRPR 3.4(e)	§ 10.89(c)(6) § 10.23(b)(5) § 10.89(c)(1)(2)(3)(4)
Impartiality:		
§ 11.305(a)	MRPR 3.5(a)	§ 10.89 § 10.92 § 10.101(a)
§ 11.305(b)	MRPR 3.5(b)	None
§ 11.305(c)	MRPR 3.5(c)	§ 10.84(a) § 10.89(c)(5)
§ 11.305(d)(1)	§ 10.23(c)(4)	§ 10.23(c)(4)
Trial Publicity:		
§ 11.306 [Reserved]		
Practitioner as Witness:		
§ 11.307(a)	MRPR 3.7(a)	§ 10.62(b)(1)(2) § 10.63
§ 11.307(b)	MRPR 3.7(b)	§ 10.62(b) § 10.63
§ 11.308 [Reserved]		
Advocate on Nonjudicial Proceeding:		
§ 11.309	MRPR 3.9	§ 10.89(b)(2) § 10.111(c)
§§ 11.310–11.400 [Reserved]		
Truthfulness to Others:		
§ 11.401	MRPR 4.1	§ 10.85(a)(3)(4)(5)(7) § 10.85(b)
Communication between practitioner and opposing parties:		
§ 11.402(a)	MRPR 4.2(a)	§ 10.87(a)
§ 11.402(b)–(d)	DCRPR 4.2(b)–(d)	None
Dealing with unrepresented person:		

TABLE 3.—PRINCIPAL SOURCE OF SECTIONS 11.100 THROUGH 11.806—Continued

Section	Source	Part 10 concordance
§ 11.403	MRPR 4.3	§ 10.87(a)
Respect for rights of third persons:		
§ 11.404	MRPR 4.4	§ 10.84(a)(1) § 10.85(a)(1) § 10.89(c)(2)
§§ 11.405–11.500 [Reserved]		
Responsibilities of a partner or supervisory practitioner:		
§ 11.501(a)–(b)	MRPR 5.1(a)–(b)	§ 10.57(d)
§ 11.501(c)	MRPR 5.1(c)	§ 10.23(b)(2)
Responsibilities of a subordinate practitioner:		
§ 11.502	MRPR 5.2	None
Responsibilities regarding nonpractitioner assistants:		
§ 11.503(a)	MRPR 5.3(a)	§ 10.57(d)
§ 11.503(b)	MRPR 5.3(b)	§ 10.23(b)
§ 11.503(c)	MRPR 5.3(c)	None
Professional independence of a practitioner:		
§ 11.504(a)	MRPR 5.4(a)	§ 10.48(a)
§ 11.504(b)	MRPR 5.4(c)	§ 10.68(b)
§ 11.504(d)	MRPR 5.4(d)	§ 10.68(c)
Unauthorized practice of law:		
§ 11.505(a)	MRPR 5.5(a)	§ 10.47(a) § 10.14(d)
§ 11.505(b)	MRPR 5.5(b)	§ 10.47(a)
§ 11.505(c)	§ 10.47(a)	§ 10.47(a)
§ 11.505(d)	§ 10.47(b)	§ 10.47(b) § 10.23(c)(6)
§ 11.505(e)	New	§ 10.14(b)
§ 11.505(f)	§ 10.47(b)	§ 10.47(b)
Restrictions on right to practice:		
§ 11.506(a)–(b)	MRPR 5.6	§ 10.38
Responsibilities regarding law-related services:		
§ 11.507(a)(1)(2)	MRPR 5.7(a)(1)(2)	None
§ 11.507(a)(3)	New	None
§ 11.507(b)	MRPR 5.7(b)	None
§§ 11.508–11.600 [Reserved]		
Pro Bono Publico service:		
§ 11.601	DCRPR 6.1	None
Accepting appointments:		
§ 11.602	MRPR 6.2	None
Membership in legal services organization:		
§ 11.603	MRPR 6.3	None
§ 11.604		§ 10.32(a)
§§ 11.605–11.700 [Reserved]		
Law reform activities:		
§ 11.701(b)(1)–(4)	DCRPR 7.1(b)	§ 10.111(c)
§ 11.701(b)(5)	New	None
§ 11.701(c)	DCRPR 7.1(c)	§ 10.33
§ 11.701(d)–(e)	New	§ 10.31(a)–(b)
Advertising:		
§ 11.702(a)	MRPR 7.2(a)	§ 10.32(a)
§ 11.702(b)	MRPR 7.2(b)	None
§ 11.702(c)	MRPR 7.2(c)	§ 10.32(b)
§ 11.702(d)	MRPR 7.2(d)	None
§ 11.702(e)	New	§ 10.32(c)
Direct contact with prospective clients:		
§ 11.703(a)	MRPR 7.3(a)	§ 10.33
§ 11.703(b)–(d)	MRPR 7.3(b)–(d)	None
Communication of fields of practice and certification:		
§ 11.704	MRPR 7.4	None
§ 11.704(a)–(c)	§ 10.32(c)–(d)	§ 10.31(c)–(d)
	§ 10.34(a)–(b)	§ 10.34(a)–(b)
§ 11.704(d)	New	None
§ 11.704(e)	MRPR 7.4(b)	None
Firm names and letterheads:		
§ 11.705(a)	MRPR 7.5(a)	§ 10.35(a)
§ 11.705(b)	MRPR 7.5(b)	None
§ 11.705(c)	MRPR 7.5(c)	§ 10.31(b)
§ 11.705(d)	MRPR 7.5(d)	§ 10.35(b)
§§ 11.706–11.800 [Reserved]		
Bar admission and disciplinary matters:		
§ 11.801(a)	MRPR 8.1(a)	§ 10.22(a)(b)

TABLE 3:—PRINCIPAL SOURCE OF SECTIONS 11.100 THROUGH 11.806—Continued

Section	Source	Part 10 concordance
§ 11.801(b)	MRPR 8.1(b)	§ 10.23(b)(5)
		§ 10.24(b)
§ 11.801(c)	§ 10.23(c)(16)	§ 10.23(c)(16)
Judicial and legal officials:		
§ 11.802(a)	MRPR 8.2(a)	§ 10.102
§ 11.802(b)	MRPR 8.2(b)	§ 10.103
Reporting professional misconduct:		
§ 11.803(a)	MRPR 8.3(a)	§ 10.24(a)
§ 11.803(b)	MRPR 8.3(b)	§ 10.24(a)
§ 11.803(c)	MRPR 8.3(c)	None
§ 11.803(d)	New	None
§ 11.803(f)(1)	§ 10.23(c)(5)	§ 10.23(c)(5)
§ 11.803(f)(2)	§ 10.23(c)(14)	§ 10.23(c)(14)
§ 11.803(f)(3)	§ 10.23(c)(12)	§ 10.23(c)(12)
§ 11.803(f)(4)	§ 10.23(c)(18)	§ 10.23(c)(18)
Misconduct:		
§ 11.804(a)	MRPR 8.4(a)	§ 10.23(b)(1)(2)
§ 11.804(b)	MRPR 8.4(b)	§ 10.23(c)(1)
§ 11.804(d)	MRPR 8.4(d)	§ 10.23(b)(5)
§ 11.804(e)	MRPR 8.4(e)	§ 10.23(c)(5)
§ 11.804(f)	MRPR 8.4(f)	None
§ 11.804(g)	MRPR 8.4(g)	35 U.S.C. 32
		§ 10.23(a)
§ 11.804(h)(1)	§ 10.23(c)(2)	§ 10.23(c)(2)
§ 11.804(h)(2)	§ 10.23(c)(17)	§ 10.23(c)(17)
§ 11.804(h)(3)	§ 10.23(c)(17)	§ 10.23(c)(17)
§ 11.804(h)(4)	31 CFR 8.35(c)	None
§ 11.804(h)(5)	New	None
§ 11.804(h)(6)	31 CFR 8.36	None
§ 11.804(h)(7)	18 U.S.C. 205(a) and (b)	None
	18 U.S.C. 209(a)	
§ 11.804(h)(8)	18 U.S.C. 205	None
§ 11.804(h)(9)	New	None
§ 11.804(h)(10)	§ 10.23(c)(16)	§ 10.23(c)(16)
§ 11.804(i)	§ 10.23(d)	§ 10.23(d)
Disciplinary authority: Choice of law:		
§ 11.805	MRPR 8.5	None
Sexual relations with clients and third persons:		
§ 11.806	NYADSD 200.29–a	None
§§ 11.807–900 [Reserved]		

Abbreviations:
DCRPR means the District of Columbia Court of Appeals Rules of Professional Conduct (1999).
MRPR means the Model Rules of Professional Conduct of the American Bar Association (1999).
NYADSD means the Official Court Rules of the New York Appellate Division, Second Department (2000).
VRPC means Virginia Rules of Professional Conduct (1999).

Classification

Regulatory Flexibility Act

The Deputy General Counsel, United States Patent and Trademark Office certified to the Chief Counsel for Advocacy, Small Business Administration, that the changes in this notice of proposed rule making will not have a significant impact on a substantial number of small entities (Regulatory Flexibility Act, 5 U.S.C. 605(b)). The provisions of the Regulatory Flexibility Act relating to the preparation of an initial flexibility analysis are not applicable to this rulemaking because the rules will not have a significant economic impact on a substantial number of small entities. The primary purpose of the rule is to codify enrollment procedures and bring the USPTO's disciplinary rules for practitioners into line with the American Bar Association Model Rules, which have been adopted by most states. This will ease both the procedures for processing registration applications and practitioners' burden in learning and complying with USPTO regulations.

The rule establishes a new annual registration fee of $100 per year for practitioners. The average salary of a practitioner is over $100,000, and an annual fee of less than one tenth of one percent of that amount will not have a significant economic impact on a substantial number of practitioners. The rule also establishes a fee of $130 for petitions to the Director of the Office of Enrollment and Discipline. As with the annual fee, this fee is insignificant.

Further, the rule requires registered practitioners to complete a computer-based continuing legal education (CLE) program once every one to three years. The program, which will consist primarily of a review of recent changes to patent statutes, regulations and policies, will take one to two hours to complete. This dedication of a small amount of time for CLE every one to three years will not have a significant impact on practitioners. Further, the CLE will substitute for or reinforce practitioners' independent efforts to keep their knowledge of relevant provisions current and avoid time-consuming and costly errors.

The rule imposes a $1600 fee for a petition for reinstatement for a suspended or excluded practitioner and removes the $1500 cap on disciplinary proceeding costs that can be assessed against such a practitioner as a condition of reinstatement. Approximately 5 of the 28,000 practitioners petition for reinstatement each year, and approximately 2 of these petitions occur under circumstances where disciplinary proceeding costs may be assessed. These changes therefore will not affect a substantial number of practitioners.

Executive Order 13132

This notice of proposed rule making does not contain policies with federalism implications sufficient to warrant preparation of a Federalism Assessment under Executive Order 13132 (August 4, 1999).

Executive Order 12866

This notice of proposed rule making has been determined to be not significant for purposes of Executive Order 12866 (September 30, 1993).

Paperwork Reduction Act

This notice of proposed rule making involves information collection requirements which are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). This proposed rule introduces new information requirements and fees into collection 0651–0012. The United States Patent and Trademark Office is currently seeking renewal for information collection 0651–0012. Additional collection of information activities involved in this notice of proposed rule making have been reviewed and previously approved by OMB under OMB control number 0651–0017.

The title, description, and respondent description of the currently approved information collection 0651–0017 and the renewal of 0651–0012 are shown below with an estimate of the annual reporting burdens. Included in this estimate is the time for reviewing instructions, gathering and maintaining the data needed, and completing and reviewing the collection of information. The principal impact of the changes in this notice of proposed rule making is to registered practitioners.

OMB Number: 0651–0012.

Title: Admittance to Practice and Roster of Registered Patent Attorneys and Agents Admitted to Practice Before the Patent and Trademark Office.

Form Numbers: PTO–158, PTO158A, PTO–275, PTO–107A, PTO 1209, PTO 2126.

Affected Public: Individuals or households, business or other for-profit, Federal Government, and state, local or tribal government.

Estimated Number of Respondents: 64,142.

Estimated Time Per Response: The USPTO estimates that it takes the public 30 minutes to complete either an application for registration to practice before the USPTO, or an application for a foreign resident to practice before the USPTO and, depending upon the complexity of the situation, to gather, prepare and submit the application. It is estimated to take 20 minutes to complete undertakings under 37 CFR 10.10(b); 10 minutes to complete data sheets; 5 minutes to complete the oath or affirmation, and the request for a paper copy of the continuing training program and to furnish narrative; 45 minutes to complete the petition for waiver of regulations; and 90 minutes to complete the written request for reconsideration of disapproval notice of application and the petition for reinstatement to practice. It is estimated to take 2 hours and 10 minutes for the annual practitioner registration/continuing training program—ten minutes to fill out the form and an average of 2 hours to complete the continuing training program on-line. It is estimated to take 2 hours and 5 minutes for the paper-based version of the annual practitioner registration/continuing training program—five minutes to request the materials and 2 hours to complete the continuing training program on paper. These times include time to gather the necessary information, prepare and submit the forms and requirements in this collection.

Estimated Total Annual Burden Hours: 58,745.

Needs and Uses: The public uses the forms in this collection to apply for the examination for registration, to ensure that all of the necessary information is provided to the USPTO and to request inclusion on the Register of Patent Attorneys and Agents.

OMB Number: 0651–0017.

Title: Practitioner Records Maintenance and Disclosure Before the Patent and Trademark Office.

Form Numbers: None.

Affected Public: Individuals or households, businesses or other for-profit, not-for-profit institutions, Federal Government, and state, local, or tribal governments.

Estimated Number of Respondents: 330.

Estimated Time Per Response: 9 hours annually for practitioners to maintain client files; two hours to gather, prepare and submit a response to one violation report.

Estimated Total Annual Burden Hours: 2,270.

Needs and Uses: The information in this collection is necessary for the United States Patent and Trademark Office to comply with Federal regulations, 35 U.S.C. 6(a) and 35 U.S.C. 31. The Office of Enrollment and Discipline collects this information to insure compliance with the USPTO Code of Professional Responsibility, 37 CFR 10.20–10.112. This Code requires that registered practitioners maintain complete records of clients, including all funds, securities and other properties of clients coming into his/her possession, and render appropriate accounts to the client regarding such records, as well as report violations of the Code to the USPTO. The registered practitioners are mandated by the Code to maintain proper documentation so that they can fully cooperate with an investigation in the event of a report of an alleged violation and that violations are prosecuted as appropriate.

Comments are invited on: (1) Whether the collection of information is necessary for proper performance of the functions of the agency; (2) the accuracy of the agency's estimate of the burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information to respondents.

Interested persons are requested to send comments regarding these information collections, including suggestions for reducing this burden, to Harry I. Moatz, Director of Enrollment and Discipline, United States Patent and Trademark Office, PO Box 1450, Alexandria, Virginia 22313–1450, or to the Office of Information and Regulatory Affairs of OMB, New Executive Office Building, 725 17th Street, NW., Room 10235, Washington, DC 20503, Attention: Desk Officer for the United States Patent and Trademark Office.

Notwithstanding any other provision of law, no person is required to respond to nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a currently valid OMB control number.

List of Subjects

37 CFR Part 1

Administrative practice and procedure, Courts, Freedom of information, Inventions and patents, Reporting and recordkeeping requirements, Small businesses.

37 CFR Part 2

Administrative practice and procedure, Trademarks.

37 CFR Part 10

Administrative practice and procedure, Inventions and patents, Lawyers, Reporting and recordkeeping requirements.

37 CFR Part 11

Administrative practice and procedure, Inventions and patents, Lawyers, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, the United States Patent and Trademark Office proposes to amend 37 CFR Parts 1, 2, 10, and 11 as follows:

PART 1—RULES OF PRACTICE IN PATENT CASES

1. The authority citation for 37 CFR Part 1 continues to read as follows:

Authority: 35 U.S.C. 2(b)(2), unless otherwise noted.

2. Section 1.1 is amended by revising paragraph (a) introductory text and by adding paragraph (a)(4) to read as follows:

§ 1.1 Addresses for correspondence with the United States Patent and Trademark Office.

(a) *In general.* Except for paragraphs (a)(3)(i), (a)(3)(ii), and (d)(1) of this section, all correspondence intended for the United States Patent and Trademark Office must be addressed to either "Director of the United States Patent and Trademark Office, P.O. Box 1450, Alexandria, Virginia 22313–1450" or to specific areas within the Office as set out in paragraphs (a)(1), (a)(2), and (a)(3)(iii) of this section. When appropriate, correspondence should also be marked for the attention of a particular office or individual.

* * * * *

(4) *Office of Enrollment and Discipline correspondence.* All correspondence concerning enrollment, registration, and investigations should be addressed to the Mail Stop OED, Director of the United States Patent and Trademark Office, P.O. Box 1450, Alexandria, Virginia 22313–1450.

* * * * *

3. Section 1.4 is amended by revising paragraph (d)(2) to read as follows:

§ 1.4 Nature of correspondence and signature requirements.

* * * * *

(d) * * *

(2) The presentation to the Office (whether by signing, filing, submitting, or later advocating) of any paper by a party, whether a practitioner or non-practitioner, constitutes a certification under § 11.18(b) of this subchapter. Violations of § 11.18(b)(2) of this subchapter by a party, whether a practitioner or non-practitioner, may result in the imposition of sanctions under § 11.18(c) of this subchapter. Any practitioner violating § 11.18(b) of this subchapter may also be subject to disciplinary action. *See* §§ 11.18(d) and 11.804(i)(15) of this subchapter.

* * * * *

4. Section 1.8 is amended by revising paragraph (a)(2)(iii)(A) to read as follows:

§ 1.8 Certificate of mailing or transmission.

(a) * * *

(2) * * *

(iii) * * *

(A) Correspondence filed in connection with a disciplinary proceeding under part 11 of this chapter.

* * * * *

5. Section 1.21 is amended by revising paragraph (a) to read as follows:

§ 1.21 Miscellaneous fees and charges.

* * * * *

(a) Registration of attorneys and agents:

(1) For admission to examination for registration to practice:	
(i) Application Fee (non-refundable)	$40.00
(ii) Registration examination fee	
(A) For test administration by private sector entity	200.00
(B) For test administration by the USPTO	450.00
(2) On registration to practice or grant of limited recognition under §§ 11.9(b) or (c)	100.00
(3) [Reserved]	
(4) For certificate of good standing as an attorney or agent	10.00
Suitable for framing	20.00
(5) For review of decision:	
(i) by the Director of Enrollment and Discipline under § 11.2(c)	130.00
(ii) of the Director of Enrollment and Discipline under § 11.2(d)	130.00
(6) For requesting regrading of an examination under § 10.7(c):	
(i) Regrading of seven or fewer questions	230.00
(ii) Regrading of eight or more questions	460.00
(7) Annual fee for registered attorney or agent:	
(i) Active Status	100.00
(ii) Voluntary Inactive Status	25.00
(iii) Fee for requesting restoration to active status from voluntary inactive status	50.00
(iv) Balance due upon restoration to active status from voluntary inactive status	75.00
(8) Annual fee for individual granted limited recognition	100.00
(9)(i) Delinquency fee	50.00
(ii) Reinstatement fee	100.00
(10) On application by a person for recognition or registration after disbarment, suspension, or resignation pending disciplinary proceedings in any other jurisdiction; on petition for reinstatement by a person excluded, suspended, or excluded on consent from practice before the Office; on application by a person for recognition or registration who is asserting rehabilitation from prior conduct that resulted in an adverse decision in the Office regarding the person's moral character; and on application by a person for recognition or registration after being convicted of a felony or crime involving moral turpitude or breach of fiduciary duty	1,600.00
(11) Paper version of continuing training program and furnished narrative	75.00
(12) Application by Sponsor for Pre-approval of a Continuing Education Program	60.00

* * * * *

6. Section 1.31 is revised to read as follows:

§ 1.31 Applicants may be represented by a registered attorney or agent.

An applicant for patent may file and prosecute his or her own case, or he or she may be represented by a registered attorney, registered agent, or other individual authorized to practice before the United States Patent and Trademark Office in patent matters. *See* §§ 11.6 and 11.9 of this subchapter. The United States Patent and Trademark Office cannot aid in the selection of a registered attorney or agent.

7. In § 1.33, paragraph (c) is revised to read as follows:

§ 1.33 Correspondence respecting patent applications, reexamination proceedings, and other proceedings.

* * * * *

(c) All notices, official letters, and other communications for the patent owner or owners in a reexamination proceeding will be directed to the attorney or agent of record (*See* § 1.34(b)) in the patent file at the address listed on the register of patent attorneys and agents maintained pursuant to §§ 11.5 and 11.11 of this subchapter or, if no attorney or agent is of record, to the patent owner or owners at the address or addresses of record.

* * * * *

8. Section 1.455 is amended by revising the first sentence of paragraph (a) to read as follows:

§ 1.455 Representation in international applications.

(a) Applicants of international applications may be represented by attorneys or agents registered to practice before the Patent and Trademark Office or by an applicant appointed as a common representative (PCT Art. 49, Rules 4.8 and 90 and § 11.10). * * *

* * * * *

PART 2—RULES OF PRACTICE IN TRADEMARK CASES

9. The authority citation for 37 CFR Part 2 continues to read as follows:

Authority: 15 U.S.C. 1123, 35 U.S.C. 2(b)(2), unless otherwise noted.

10. Section 2.11 is revised to read as follows:

§ 2.11 Applicants may be represented by an attorney.

The owner of a trademark may file and prosecute his or her own application for registration of such trademark, or he or she may be represented by an attorney or other individual authorized to practice in trademark matters under § 11.14 of this subchapter. The United States Patent and Trademark Office cannot aid in the selection of an attorney or other representative.

11. Section 2.17 is amended by revising paragraphs (a) and (c) to read as follows:

§ 2.17 Recognition for representation.

(a) When an attorney as defined in § 11.1(c) of this subchapter acting in a representative capacity appears in person or signs a paper in practice before the United States Patent and Trademark Office in a trademark case, his or her personal appearance or signature shall constitute a representation to the United States Patent and Trademark Office that, under the provisions of § 11.14 of this subchapter and the law, he or she is authorized to represent the particular party in whose behalf he or she acts. Further proof of authority to act in a representative capacity may be required.

* * * * *

(c) To be recognized as a representative, an attorney as defined in § 11.1(c) of this subchapter may file a power of attorney, appear in person, or sign a paper on behalf of an applicant or registrant that is filed with the Office in a trademark case.

* * * * *

12. Section 2.24 is revised to read as follows:

§ 2.24 Designation of representative by foreign applicant.

If an applicant is not domiciled in the United States, the applicant must designate by a written document filed in the United States Patent and Trademark Office the name and address of some person resident in the United States on whom may be served notices or process in proceedings affecting the mark. If this document does not accompany or form part of the application, it will be required and registration refused unless it is supplied. Official communications of the United States Patent and Trademark Office will be addressed to the domestic representative unless the application is being prosecuted by an attorney at law or other qualified person duly authorized, in which event Official communications will be sent to the attorney at law or other qualified person duly authorized. The mere designation of a domestic representative does not authorize the person designated to prosecute the application unless qualified under paragraph (a), (b) or (c) of § 11.14 of this subchapter and authorized under § 2.17(b).

13. Section 2.33 is amended by revising paragraph (a)(3) to read as follows:

§ 2.33 Verified statement.

(a) * * *

(3) An attorney as defined in § 11.1(c) of this subchapter who has an actual or implied written or verbal power of attorney from the applicant.

* * * * *

14. Section 2.161 is amended by revising paragraph (b)(3) to read as follows:

§ 2.161 Requirements for a complete affidavit or declaration of continued use or excusable nonuse.

(b) * * *

(3) An attorney as defined in § 11.1(c) of this subchapter who has an actual or implied written or verbal power of attorney from the owner.

* * * * *

PART 10—[REMOVED]

15. Part 10 is removed.

16. Part 11 is added as follows:

PART 11—REPRESENTATION OF OTHERS BEFORE THE UNITED STATES PATENT AND TRADEMARK OFFICE

Subpart A—General Provisions

General Information

Sec.
11.1 Definitions.
11.2 Director of the Office of Enrollment and Discipline.
11.3 Suspension of rules, immunity.

Subpart B—Recognition To Practice Before the USPTO

Patents, Trademarks, and Other Non-Patent Law

11.4 Committee on Enrollment.
11.5 Register of attorneys and agents in patent matters; practice before the Office.
11.6 Registration of attorneys and agents.
11.7 Requirements for registration.
11.8 Oath and registration fee.
11.9 Limited recognition in patent matters.
11.10 Restrictions on practice in patent matters.
11.11 Removing names from the register.
11.12 Mandatory continuing training for licensed practitioners.
11.13 Eligible mandatory continuing education programs.
11.14 Individuals who may practice before the Office in trademark and other non-patent matters.
11.15 Refusal to recognize a practitioner.
11.16 Financial books and records.
11.17 [Reserved]
11.18 Signature and certificate for correspondence filed in the United States Trademark Office.

Subpart C—Investigations and Disciplinary Proceedings

Jurisdiction, Sanctions; Investigations, and Proceedings

11.19 Disciplinary jurisdiction.
11.20 Disciplinary sanctions.
11.21 Warnings.
11.22 Investigations.
11.23 Committee on Discipline.
11.24 Interim suspension and discipline based upon reciprocal discipline.
11.25 Interim suspension and discipline based upon conviction of committing a serious crime or other crime coupled with confinement or commitment to imprisonment.
11.26 Diversion.

11.27 Exclusion by consent.
11.28 Incompetent and incapacitated practitioners.
11.29–11.31 [Reserved]
11.32 Initiating a disciplinary proceeding; reference to a hearing officer.
11.34 Complaint.
11.35 Service of complaint.
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11.37 Supplemental complaint.
11.38 Contested case.
11.39 Hearing officer; appointment; responsibilities; review of interlocutory orders; stays.
11.40 Representative for OED Director or respondent.
11.41 Filing of papers.
11.42 Service of papers.
11.43 Motions.
11.44 Hearings.
11.45 Proof; variance; amendment of pleadings.
11.46–11.48 [Reserved]
11.49 Burden of proof.
11.50 Evidence.
11.51 Depositions.
11.52 Discovery.
11.53 Proposed findings and conclusions; post-hearing memorandum.
11.54 Initial decision of hearing officer.
11.55 Appeal to the USPTO Director.
11.56 Decision of the USPTO Director.
11.57 Review of final decision of the USPTO Director.
11.58 Suspended or excluded practitioner.
11.59 Notice of suspension or exclusion.
11.60 Petition for reinstatement.
11.61 Savings clause.
11.62 Protection of clients interests when practitioner becomes unavailable.

Subpart D—United States Patent and Trademark Office Rules of Professional Conduct

Rules of Professional Conduct

11.100 Interpretation of the USPTO Rules of Professional Conduct.

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11.101 Competence.
11.102 Scope of representation.
11.103 Diligence and zeal.
11.104 Communication.
11.105 Fees.
11.106 Confidentiality of information.
11.107 Conflict of interest: General rule.
11.108 Conflict of interest: Prohibited transactions.
11.109 Conflict of interest: Former client.
11.110 Imputed disqualification: General rule.
11.111 Successive Government and private employment.
11.112 Former arbitrator.
11.113 Organization as client.
11.114 Client under a disability.
11.115 Safekeeping property.
11.116 Declining or terminating representation.
11.117 Sale of practice.
11.118–11.200 [Reserved]

Counselor

11.201 Advisor.
11.202 Intermediary.
11.203 Evaluation for use by third persons.
11.204–11.300 [Reserved]

Advocate

11.301 Meritorious claims and contentions.
11.302 Expediting litigation and Office proceedings.
11.303 Candor toward the tribunal.
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11.308 [Reserved]
11.309 Advocate in nonadjudicative proceedings.
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11.401 Truthfulness in statements to others.
11.402 Communication between practitioner and opposing parties.
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11.504 Professional independence of a practitioner.
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11.506 Restrictions on right to practice.
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11.705 Firm names and letterheads.
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11.801 Bar admission and disciplinary matters.
11.802 Judicial and legal officials.
11.803 Reporting professional misconduct.
11.804 Misconduct.
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Authority: 5 U.S.C. 500, 15 U.S.C. 1123, 35 U.S.C. 2(b)(2)(D), 32.

Subpart A—General Provisions

General Information

§ 11.1 Definitions.

This part governs solely the practice of patent, trademark, and other law before the United States Patent and Trademark Office. Nothing in this part shall be construed to preempt the authority of each State to regulate the practice of law, except to the extent necessary for the United States Patent and Trademark Office to accomplish its Federal objectives. Unless otherwise clear from the context, the following definitions apply to this part:

Addiction means any chemical or psychological dependency upon intoxicants or drugs.

Affidavit means affidavit, declaration under 35 U.S.C. 25 (*see* §§ 1.68 and 2.20 of this subchapter), or statutory declaration under 28 U.S.C. 1746.

Appearing means an individual's attendance to a matter before the Office, and includes physical presence before the Office in a formal or informal setting, or conveyance of a communication, either electronically or in any other manner, with intent to influence an Office employee in any patent, trademark or other non-patent law matter.

Application means an application for a design, plant, or utility patent; a provisional application; a request for reexamination; an application to reissue any patent; a protest; an application to register a trademark; an appeal to the Board of Patent Appeals and Interferences or to the Trademark Trial and Appeal Board; an opposition, cancellation, or concurrent use in a trademark matter; and all written communications submitted to the Office in connection with the foregoing.

Attorney or lawyer means an individual who is a member in good standing of the highest court of any State, including an individual who is in good standing of the highest court of one State and under an order of any court or Federal agency suspending, enjoining, restraining, disbarring or otherwise restricting the attorney from practice before the bar of another State or Federal agency. A *non-lawyer* means a person who is not an attorney or lawyer.

Belief or *believes* means that the person involved actually supposed the fact in question to be true. A person's belief may be inferred from circumstances.

Consent means a client's uncoerced assent to a proposed course of action after consulting with the practitioner about the matter in question.

Consult or *consultation* means communication of information *reasonably* sufficient to permit the client to appreciate the significance of the matter in question.

Conviction or *convicted* means any confession to a crime; a verdict or judgment finding a person guilty of a crime; any entered plea, including *nolo contendre* or Alford plea, to a crime; or receipt of deferred adjudication (whether judgment or sentence has been entered or not) for an accused or pled crime.

Crime means any offense declared to be a felony by Federal or State law, or an attempt, solicitation or conspiracy to commit the same.

Data Sheet means a form used to collect name, address, and telephone information from individuals recognized to practice before the Office in patent matters.

Differing interests means every interest that may adversely affect either the judgment or the loyalty of a practitioner to a client, whether it be a conflicting, inconsistent, diverse, or other interest.

Disability means any mental or physical infirmity or illness.

Disability matter means any issue, question, proceeding or determination within the scope of this section.

Disciplinary Court means any court of record and any other agency or tribunal with authority to disbar, exclude, or suspend an attorney from the practice of law in said agency or tribunal.

Diversion means turning aside or altering a practitioner's practices or procedures through rehabilitation to achieve conformity with the USPTO Rules of Professional Conduct.

Employee of a tribunal means an employee of a court, the Office, or another adjudicatory body.

Exclusion means barred and not admitted to practice before the Office in patent, trademark and other non-patent law.

Firm or *law firm* means each and every practitioner in a private firm, each and every practitioner employed in the legal department of a corporation or other organization, and each and every practitioner employed in a legal services organization.

Fiscal year means the period of time from October 1st through the ensuing September 30th.

Fraud or *fraudulent* means conduct having a purpose to deceive and not merely negligent misrepresentation or failure to apprise another of relevant information.

Full disclosure means a clear explanation of the differing interests involved in a transaction, the advantages of seeking independent legal advice, and a detailed explanation of the risks and disadvantages to the client entailed in any agreement or arrangement, including not only any financial losses that will or may foreseeably occur to the client, but also any liabilities that will or may foreseeably accure to the client.

Giving information within the meaning of § 11.804(h)(1) means making a written statement or representation or an oral statement or representation.

Hearing officer means an attorney who is an officer or employee of the Office designated by the USPTO Director to conduct a hearing required by 35 U.S.C. 32 or a person appointed under 5 U.S.C. 3105.

Incapacitated means the state of suffering from a disability or addiction of such nature as to cause a practitioner to be unfit to be entrusted with professional matters, or to aid in the administration of justice as a practitioner.

Invention promoter means any person, or corporation and any of its agents, employees, officers, partners, or independent contractors thereof, who is neither a registered practitioner nor law firm, who (1) advertises in media of general circulation offering assistance to market and patent an invention, or (2) enters into a contract or other agreement with a customer to assist the customer in marketing and patenting an invention.

Knowingly, known, or *knows* means actual knowledge of the fact in question. A person's knowledge may be inferred from circumstances.

Law clerk means a person, typically a recent law school graduate, who acts, typically for a limited period, as a confidential assistant to a judge or judges of a court; to a hearing officer or a similar administrative hearing officer; or to the head of a governmental agency or to a member of a governmental commission, either of which has authority to adjudicate or to promulgate rules or regulations of general application.

Legal profession means those individuals who are lawfully engaged in practice of patent, trademark, and other law before the Office.

Legal service means any service that may lawfully be performed by a practitioner for any person having immediate, prospective, or pending business before the Office.

Matter means any litigation, administrative proceeding, lobbying activity, application, claim, investigation, controversy, arrest, charge, accusation, contract, a negotiation, estate or family relations practice issue, request for a ruling or other determination, or any other matter covered by the conflict of interest rules of the appropriate Government entity, except as expressly limited in a particular rule.

Mentally incompetent or *involuntarily committed to a mental hospital* means a judicial determination in a final order that declares a practitioner to be mentally incompetent or that commits a practitioner involuntarily to a mental hospital or similar institution as an inpatient.

OED Director means the Director of the Office of Enrollment and Discipline.

Office means the United States Patent and Trademark Office.

Partner means a member of a law partnership or a shareholder in a *law firm* organized as a professional corporation.

Person means an individual, a corporation, an association, a trust, a partnership, and any other organization or legal entity.

Practitioner means (1) an attorney or agent registered to practice before the Office in patent matters, (2) an individual authorized under 5 U.S.C. 500(b) or otherwise as provided by §§ 11.14(b), (c), and (e), to practice before the Office in trademark matters or other non-patent matters, or (3) an individual authorized to practice before the Office in a patent case or matters under §§ 11.9(a) or (b). A "suspended or excluded practitioner" means a practitioner who is suspended or excluded under § 11.47. A "non-practitioner" means an individual who is not a practitioner.

Proceeding before the Office means an application for patent, an application to register a trademark, an appeal, a petition, a reexamination, a protest, a public use matter, a patent interference, an inter partes trademark matter, correction of a patent, correction of inventorship, and any other matter that is pending before the Office.

Professional disciplinary action means public reprimand, suspension, disbarment, resignation from the bar of any State or Federal court while under investigation, and any other event resulting in the loss of a license to practice law on ethical grounds.

Professional legal corporation means a corporation authorized by state law to practice law for profit.

Reasonable or *reasonably* when used in relation to conduct by a practitioner means the conduct of a reasonably prudent and competent practitioner.

Reasonably should know when used in reference to a practitioner means that a practitioner of reasonable prudence

and competence would ascertain the matter in question.

Registration means registration to practice before the Office in patent proceedings.

Roster means a list of individuals who have been registered as either a patent attorney or patent agent.

Serious crime means (1) any criminal offense classified as a felony under the laws of the United States, or of any state, district, or territory of the United States, or of a foreign country where the crime occurred, and (2) any crime a necessary element of which, as determined by the statutory or common law definition of such crime in the jurisdiction where the crime occurred, that includes interference with the administration of justice, false swearing, misrepresentation, fraud, willful failure to file income tax returns, deceit, bribery, extortion, misappropriation, theft, or an attempt or a conspiracy or solicitation of another to commit a "serious crime."

Significant evidence of rehabilitation means clear and convincing evidence that is significantly more probable than not that there will be no reoccurrence in the foreseeable future of the practitioner's prior disability or addiction.

State means any of the 50 states of the United States of America, the District of Columbia, and other territories and possessions of the United States of America.

Substantial when used in reference to degree or extent means a material matter of clear and weighty importance.

Suspend or *suspension* means a temporary debarring from practice before the Office.

Tribunal means a court, the Office, a regulatory agency, commission, hearing officer, and any other body authorized by law to render decisions of a judicial or quasi-judicial nature, based on information presented before it, regardless of the degree of formality or informality of the proceedings.

United States means the United States of America, and the territories and possessions the United States of America.

USPTO Director means the Director of the United States Patent and Trademark Office, or an employee of the Office delegated authority to act for the Director of the United States Patent and Trademark Office in matters arising under this Part.

§ 11.2 Director of the Office of Enrollment and Discipline.

(a) *Appointment.* The USPTO Director shall appoint a Director of the Office of Enrollment and Discipline (OED Director). In the event of the absence of the OED Director or a vacancy in the office of the OED Director, the USPTO Director may designate an employee of the Office to serve as acting OED Director. The OED Director and any acting OED Director shall be an active member in good standing of the bar of a State.

(b) *Duties.* The OED Director shall:

(1) Supervise such staff as may be necessary for the performance of the OED Director's duties.

(2) Receive and act upon applications for registration, prepare and grade the examination provided for in § 10.7(b), maintain the register provided for in § 10.5, and perform such other duties in connection with enrollment and recognition of attorneys and agents as may be necessary.

(3) Conduct investigations into the moral character and reputation of any individual seeking to be registered as an attorney and agent, or of any individual seeking limited recognition, deny registration or recognition of individuals failing to demonstrate present possession of good moral character, and perform such other duties in connection with investigations and enrollment proceedings as may be necessary.

(4) Conduct investigations of all matters involving possible violations by practitioners and persons granted limited recognition of an imperative Rule of Professional Conduct coming to the attention of the OED Director as information or a complaint, whether from within or from outside the USPTO, where the apparent facts, if true, may warrant discipline. Conduct investigations of all matters involving possible violations of §§ 11.303(a)(1), 11.304, 11.305(a), or 11.804 by other individuals identified in § 11.19(a)(2) coming to the attention of the OED Director as information or a complaint, whether from within or from outside the USPTO, where the apparent facts, if true, may warrant discipline. Except in matters meriting summary dismissal because the complaint is clearly unfounded on its face or falls outside the disciplinary jurisdiction of the USPTO, no disposition shall be recommended or undertaken by the OED Director until the accused practitioner shall have been afforded an opportunity to respond to the information or complaint received by the OED Director.

(5) With the consent of three members of the Committee on Discipline, initiate disciplinary proceedings under § 11.32, and perform such other duties in connection with investigations and disciplinary proceedings as may be necessary.

(6) Without the prior approval of a member of the Committee on Discipline, dismiss a complaint or close an investigation without issuing a warning; and otherwise conclude an investigation as provided for in §§ 11.22(e) or (m)

(7) File with the USPTO Director certificates of convictions of practitioners or other individual practicing before the Office who have been convicted of crimes, and certified copies of disciplinary orders concerning attorneys issued in other jurisdictions.

(c) *Petition to OED Director.* Any petition from any action or requirement of the staff of OED reporting to the OED Director shall be taken to the OED Director. Any such petition not filed within 30 days from the action complained of may be dismissed as untimely. The filing of a petition will not stay the period for taking other action, including the timely filing of an application for registration, which may be running, or act as a stay of other proceedings. Any request for reconsideration waives a right to appeal by petition to the USPTO Director under paragraph (d) of this section, and if not filed within 30 days after the final decision of the OED Director may be dismissed as untimely.

(d) *Review of OED Director's decision.* An individual dissatisfied with a final decision of the OED Director, except for a decision dismissing a complaint pursuant to § 11.22(f) or closing an investigation under § 11.22(m)(1), may seek review of the decision upon petition to the USPTO Director accompanied by payment of the fee set forth in § 1.21(a)(5). A decision dismissing a complaint or closing an investigation is not subject to review by petition. Any such petition to the USPTO Director waives a right to seek reconsideration. Any petition not filed within 30 days after the final decision of the OED Director may be dismissed as untimely. Any petition shall be limited to the facts of record. Briefs or memoranda, if any, in support of the petition shall accompany or be embodied therein. The petition will be decided on the basis of the record made before the OED Director. The USPTO Director in deciding the petition will consider no new evidence. Copies of documents already of record before the OED Director shall not be submitted with the petition. No oral hearing on the petition will be held except when considered necessary by the USPTO Director. Any request for reconsideration of the decision of the USPTO Director may be dismissed as untimely if not filed within 30 days after the date of said decision.

(e) *Reconsideration of matters decided by a former OED Director or USPTO Director.* Matters which have been decided by one OED Director or USPTO Director will not be reconsidered by his or her successor except if a request for reconsideration of the decision is filed within the 30-day period permitted to request reconsideration of said decision provided for in paragraphs (c) and (d) of this section.

§ 11.3 Suspension of rules, qualified immunity.

(a) Except as provided in paragraph (b) of this section, in an extraordinary situation, when justice requires, any requirement of the regulations of this Part which is not a requirement of statute may be suspended or waived by the USPTO Director or the designee of the USPTO Director, *sua sponte* or on petition of any party, including the OED Director or the OED Director's representative, subject to such other requirements as may be imposed.

(b) No petition to waive any provision of §§ 11.19, 11.24, 11.100 through 11.901, or to waive the provision in this paragraph shall be granted for any reason.

(c) No petition under this section shall stay a disciplinary proceeding unless ordered by the USPTO Director or a hearing officer.

(d) Complaints submitted to the OED Director or any other official of the Office shall be qualifiedly privileged for the purpose that no claim or action in tort predicated thereon may be instituted or maintained. The OED Director, and all staff, assistants and employees of the Office of General Counsel, Solicitor's Office, the Office of Enrollment and Discipline, and the members of the Committee on Discipline, the Committee on Enrollment, the employees of the Office providing regrades of examinations, and employees of the Office developing questions for the registration examination shall be immune from disciplinary complaint under this Part for any conduct in the course of their official duties.

Subpart B—Recognition To Practice Before the USPTO

Patents, Trademarks, and Other Non-Patent Law

§ 11.4 Committee on Enrollment.

(a) The USPTO Director shall establish a Committee on Enrollment composed of one or more employees of the Office.

(b) The Committee on Enrollment shall, as necessary:

(1) Advise the OED Director in connection with the OED Director's duties under § 11.2(b)(1), and

(2) In circumstances provided for in § 11.7(j)(2), determine the moral character and reputation of an individual whom the OED Director does not accept as having good moral character and reputation.

§ 11.5 Register of attorneys and agents in patent matters; practice before the Office.

(a) *Register of attorneys and agents.* A register of attorneys and agents is kept in the Office on which are entered the names of all individuals recognized as entitled to represent applicants having prospective or immediate business before the Office in the preparation and prosecution of patent applications. Registration in the Office under the provisions of this Part shall entitle the individuals so registered to practice before the Office only in patent matters.

(b) *Practice before the Office.* Practice before the Office includes law-related service that comprehends all matters connected with the presentation to the Office or any of its officers or employees relating to a client's rights, privileges, duties, or responsibilities under the laws or regulations administered by the Office for the grant of a patent, registration of a trademark, or conduct of other non-patent law. Such presentations include preparing necessary documents, corresponding and communicating with the Office, and representing a client through documents or at interviews, hearings, and meetings, as well as communicating with and advising a client concerning matters pending or contemplated to be presented before the Office. Practice before the Office:

(1) In patent matters includes, but is not limited to, preparing and prosecuting any patent application, considering and advising a client as to the patentability of an invention under statutory criteria; considering the advisability of relying upon alternative forms of protection that may be available under State law; participating in drafting the specification or claims of a patent application; participation in drafting an amendment or reply to a communication from the Office that may require written argument to establish the patentability of a claimed invention; participating in drafting a reply to a communication from the Office regarding a patent application, and participating in the drafting of a communication for a public use, interference, or reexamination proceeding;

(2) In trademark matters includes, but is not limited to, preparing and prosecuting an application for trademark registration; preparing an amendment which may require written argument to establish the registrability of the mark; conducting an opposition, cancellation, or concurrent use proceeding; or an appeal to the Trademark Trial and Appeal Board; and

(3) In private as well as other professional matters includes conduct reflecting adversely on a person's fitness to practice law, such as, but not limited to, the good character and integrity essential for a practitioner in patent, trademark, or other non-patent law matters.

§ 11.6 Registration of attorneys and agents.

(a) *Attorneys.* Any citizen of the United States who is an attorney and who fulfills the requirements of this Part may be registered as a patent attorney to practice before the Office. When appropriate, any alien who is an attorney, who lawfully resides in the United States, and who fulfills the requirements of this Part may be registered as a patent attorney to practice before the Office, provided that such registration is not inconsistent with the terms upon which the alien was admitted to, and resides in, the United States and further provided that the alien may remain registered only:

(1) If the alien continues to lawfully reside in the United States and registration does not become inconsistent with the terms upon which the alien continues to lawfully reside in the United States, or

(2) If the alien ceases to reside in the United States, the alien is qualified to be registered under paragraph (c) of this section. *See also* § 11.9(b).

(b) *Agents.* Any citizen of the United States who is not an attorney and who fulfills the requirements of this Part may be registered as a patent agent to practice before the Office. When appropriate, any alien who is not an attorney, who lawfully resides in the United States, and who fulfills the requirements of this Part may be registered as a patent agent to practice before the Office, provided that such registration is not inconsistent with the terms upon which the alien was admitted to, and resides in, the United States, and further provided that the alien may remain registered only:

(1) If the alien continues to lawfully reside in the United States and registration does not become inconsistent with the terms upon which the alien continues to lawfully reside in the United States or

(2) If the alien ceases to reside in the United States, the alien is qualified to be

registered under paragraph (c) of this section. *See also* § 11.9(b).

(c) *Foreigners.* Any foreigner not a resident of the United States who shall file proof to the satisfaction of the OED Director that he or she is registered and in good standing before the patent office of the country in which he or she resides and practices, and who is possessed of the qualifications stated in § 11.7, may be registered as a patent agent to practice before the Office for the limited purpose of presenting and prosecuting patent applications of applicants located in such country, provided that the patent office of such country allows substantially reciprocal privileges to those admitted to practice before the Office. Registration as a patent agent under this paragraph shall continue only during the period that the conditions specified in this paragraph obtain. Upon notice by the patent office of such country that a patent agent registered under this section is no longer registered or no longer in good standing before the patent office of such country, and absent a showing of cause why his or her name should not be removed from the register, the OED Director shall promptly remove the name of the patent agent from the register and publish the fact of removal. Upon ceasing to reside in such country, the patent agent registered under this section is no longer qualified to be registered under this section, and the OED Director shall promptly remove the name of the patent agent from the register and publish the fact of removal.

(d) *Interference matters.* The Chief Administrative Patent Judge or Deputy Chief Administrative Patent Judge of the Board of Patent Appeals and Interferences shall determine whether and the circumstances under which an attorney who is not registered may take testimony for an interference under 35 U.S.C. 24, or under § 1.672 of this subchapter.

§ 11.7 Requirements for registration.

(a) No individual will be registered to practice before the Office unless he or she has:

(1) Applied to the USPTO Director in writing on a form supplied by the OED Director and furnished all requested information and material; and

(2) Established to the satisfaction of the OED Director that he or she is:

(i) Presently possessed of good moral character and reputation;

(ii) Possessed of the legal, scientific, and technical qualifications necessary to enable him or her to render applicants valuable service; and

(iii) Otherwise competent to advise and assist applicants for patents in the presentation and prosecution of their applications before the Office; and

(b)(1) In order that the OED Director may determine whether an individual seeking to have his or her name placed on the register has the qualifications specified in paragraph (a)(2) of this section, the individual shall:

(i) File a complete application for admission to each administration of the registration examination. A complete registration application includes:

(A) A form supplied by the OED Director wherein all requested information and supporting documents are furnished,

(B) Payment of the fees required by § 1.21(a)(1) of this subchapter,

(C) Satisfactory proof of sufficient basic training in scientific and technical matters, and

(D) For aliens, proof that recognition is not inconsistent with the terms of their visa or entry into the United States.

(2) An individual failing to file a complete application will not be admitted to the examination. Applications that are incomplete as originally submitted will be considered as filed only when they have been completed and received by OED within 60 days of notice of incompleteness. Thereafter, a new and complete application must be filed. Until an individual has been registered, that individual is under a continuing obligation to keep his or her application current and must update responses whenever there is an addition to or a change to information previously furnished the OED Director;

(3) Submit to the OED Director satisfactory proof of the individual's scientific and technical training;

(4) Pass the registration examination, unless the taking and passing of the examination is waived as provided in paragraph (d) of this section. Unless waived pursuant to paragraph (d) of this section, each individual seeking registration must take and pass the registration examination that is held from time-to-time to enable the OED Director to determine whether the individual possesses the legal and competence qualifications specified in paragraphs (a)(2)(ii) and (a)(2)(iii) of this section. The examination will not be administered as a mere academic exercise. An individual failing the examination may reapply no sooner than 30 days after the date of notice of failure is sent to the individual and may again take the examination no sooner than 60 days after the date of said notice. An individual reapplying shall:

(A) File the application form supplied by the OED Director wherein all requested information and supporting documents are furnished,

(B) Pay the fees required by § 1.21(a)(1) of this subchapter, and

(C) For aliens, proof that recognition continues to be not inconsistent with the terms of their visa or entry into the United States;

(5) If an individual first reapplies more than one year after said notice, that individual must again comply with paragraphs (b)(1)(i) and (b)(3) of this section; and

(6) Provide satisfactory proof of present possession of good moral character and reputation.

(c) *Petition to the OED Director.* An individual dissatisfied with any action by a member of the staff of OED refusing to register an individual, refusing to recognize an individual, refusing to admit an individual to the registration examination, refusing to reinstate an administratively suspended practitioner, refusing to refund or defer any fee, or any other action may seek review of the action upon petition to the OED Director and payment of the fee set forth in § 1.21(a)(5) of this subchapter. Any petition, even if accompanied by the required fee, but not filed within thirty days after the date of the action complained of may be dismissed as untimely. Any request for reconsideration of a decision by the OED Director on a petition not filed within thirty days after the decision may be dismissed as untimely.

(d)(1) *Former patent examiners who by [INSERT DATE 60 DAYS FOLLOWING PUBLICATION OF FINAL RULE] had not actively served four years in the patent examining corps, and were serving in the corps at the time of their separation.* The OED Director would waive the taking of a registration examination in the case of any individual meeting the requirements of paragraph (b)(3) of this section who is a former patent examiner who by *[INSERT DATE 60 DAYS FOLLOWING PUBLICATION OF FINAL RULE]* had not served four years in the patent examining corps, if the individual demonstrates that he or she:

(i) Actively served in the patent examining corps of the Office;

(ii) Received a certificate of legal competency and negotiation authority;

(iii) After receiving the certificate of legal competency and negotiation authority, was rated at least fully successful in each quality performance element of his or her performance plan for the last two complete fiscal years as a patent examiner; and

(iv) Was not under an oral or written warning regarding the quality performance elements at the time of separation from the patent examining corps.

(v) The OED Director may waive the taking of the examination for registration in the case of said individual who does not meet all the criteria of paragraphs (d)(1)(i), (d)(1)(ii), (d)(1)(iii) and (d)(1)(iv) of this section upon a showing of good cause.

(2) *Former patent examiners who [INSERT DATE 60 DAYS FOLLOWING PUBLICATION OF FINAL RULE] had actively served four years in the patent examining corps, and were serving in the corps at the time of their separation.* The OED Director would waive the taking of a registration examination in the case of any individual meeting the requirements of paragraph (b)(3) of this section who is a former patent examiner who by *[INSERT DATE 60 DAYS FOLLOWING PUBLICATION OF FINAL RULE]* had served four years in the patent examining corps, if the individual demonstrates that he or she:

(i) Actively served for at least four years in the patent examining corps of the Office by *[INSERT DATE 60 DAYS FOLLOWING PUBLICATION OF FINAL RULE];*

(ii) Was rated at least fully successful in each quality performance element of his or her performance plan for the last two complete fiscal years as a patent examiner in the Office; and

(iii) Was not under an oral or written warning regarding the quality performance elements at the time of separation from the patent examining corps.

(vi) The OED Director may waive the taking of the examination for registration in the case of said individual who does not meet all the criteria of paragraphs (d)(2)(i), (d)(2)(ii), and (d)(2)(iii) of this section upon a showing of good cause.

(3) *Certain former Office employees who were not serving in the patent examining corps upon their separation from the Office.* The OED Director would waive the taking of a registration examination in the case of a former Office employee meeting the requirements of paragraph (b)(3) of this section who by petition demonstrates possession of the necessary legal qualifications to render to patent applicants and others valuable service and assistance in the preparation and prosecution of their applications or other business before the Office by showing that:

(i) He or she has exhibited comprehensive knowledge of patent law equivalent to that shown by passing the registration examination as a result of having been in a position of responsibility in the Office in which he or she:

(A) Provided substantial guidance on patent examination policy, including the development of rule or procedure changes, patent examination guidelines, changes to the Manual of Patent Examining Procedure, or development of training or testing materials for the patent examining corps; or

(B) Represented the Office in patent cases before Federal courts; and

(ii) Was rated at least fully successful in each quality performance element of his or her performance plan for said position for the last two complete rating periods in the Office, and was not under an oral warning regarding performance elements relating to such activities at the time of separation from the Office.

(4) To be eligible for consideration for waiver, an individual within the scope of one of paragraphs (d)(1) through (d)(3) of this section must file a complete application and the fee required by § 1.21(a)(1)(i) of this subchapter within two years of the individual's separation from the Office. All other individuals, including former examiners, filing an application or fee more than two years after separation from the Office, are required to take and pass the examination to demonstrate competence to represent applicants before the Office. If the examination is not waived, the individual or former examiner must pay the examination fee required by § 1.21(a)(1)(ii) of this subchapter within 30 days after notice. Individuals employed by the Office but not meeting the requirements of any one of paragraphs (d)(1) through (d)(3) of this section must file a complete application, pay the fees required by § 1.21(a)(1) of this subchapter, and take and pass the registration examination to be registered.

(e) *Examination results.* Notification to an individual of passing or failing an examination is final. Within two months from the date an individual is notified that he or she failed an examination specified in paragraph (b) of this section, an unsuccessful individual is entitled to inspect, but not copy, the questions and answers he or she incorrectly answered under supervision and without taking notes. Substantive review of the answers or questions may not be pursued. An unsuccessful individual has the right to retake the examination an unlimited number of times upon payment of the fees required by §§ 1.21(a)(1)(i) and (ii) of this subchapter, and a fee charged by a private sector entity administering the examination.

(f) *Application for reciprocal recognition.* An individual seeking reciprocal recognition under § 11.6(c), in addition to satisfying the provisions of paragraphs (a) and (b) of this section, and the provisions of § 11.8(c), shall pay the application fee required by § 1.21(a)(1)(i) upon filing an application.

(g) *Investigation of moral character.*

(1) Every individual seeking recognition shall answer all questions; disclose all relevant facts, dates and information; and provide verified copies of documents relevant to their good moral character and reputation. The facts, information and documents include expunged or sealed records necessary for determining whether the individual presently possesses the good moral character and reputation required for registration.

(2) The OED Director shall cause names and business addresses of all individuals seeking registration or recognition who pass the examination or for whom the examination has been waived to be published on the Internet and in the Official Gazette to solicit relevant information bearing on their moral character and reputation.

(3) If the OED Director receives information from any source tending to reflect adversely on the moral character or reputation of an individual seeking registration or recognition, the OED Director shall conduct an investigation into the moral character and reputation of the individual. The investigation will be conducted after the individual has passed the registration examination, or after the registration examination has been waived for the individual, whichever is later. If the individual seeking registration or recognition is an attorney, the individual is not entitled to a disciplinary proceeding under §§ 11.32–11.57 in lieu of moral character proceedings under paragraphs (j) through (m) of this section. An individual failing to timely answer questions or respond to an inquiry by the OED Director shall be deemed to have withdrawn his or her application, and shall be required to reapply, pass the examination, and otherwise satisfy all the requirements of this section. No individual shall be certified for registration or recognition by the OED Director until the individual demonstrates present possession of good moral character and reputation. The OED Director shall refer to the Committee on Enrollment the application and all records of individuals not certified for registration or recognition following investigation whose applications have not been withdrawn.

(h) *Moral character and good reputation.* Moral character is the possession of honesty and truthfulness,

trustworthiness and reliability, and a professional commitment to the legal process and the administration of justice. Lack of moral character exists when evidence shows acts and conduct which would cause a reasonable person to have substantial doubts about an individual's honesty, fairness, and respect for the rights of others and the laws of states and nation. Evidence showing lack of moral character may include, but is not limited to, conviction of a violent felony, a crime involving moral turpitude, and a crime involving breach of fiduciary duty; drug and alcohol abuse and dependency problems; lack of candor; suspension or disbarment on ethical grounds from a State bar; and resignation from a State bar while under investigation. An individual for registration who has been convicted of a crime involving moral turpitude or which would clearly necessitate suspension or disbarment must have served his or her sentence, and must have been released from parole supervision or probation for the offense before an application for will be considered.

(1) *Conviction of felony or misdemeanor.* An individual who has been convicted in a court of record of a felony, or a crime involving moral turpitude or breach of trust, including, but not limited to, a misdemeanor involving interference with the administration of justice, false swearing, misrepresentation, fraud, deceit, bribery, extortion, misappropriation, or theft, or any misdemeanor involving an attempt, conspiracy or solicitation of another to commit any misdemeanor, is presumed not to be of good moral character in the absence of a pardon or a compelling showing of reform and rehabilitation. Any individual convicted in a court of record of a felony, or a crime involving moral turpitude or breach of trust shall file with an application for registration the fees required by §§ 1.21(a)(1)(ii) and (10) of this subchapter. The OED Director shall determine whether individuals convicted for said felony, or crime involving moral turpitude or breach of trust have produced compelling proof of reform and rehabilitation, including at a minimum a lengthy period of exemplary conduct.

(i) An individual who has been convicted in a court of record of a felony or any misdemeanor identified in paragraph (h)(1) of this section shall not be eligible for registration or to apply for registration during the time of any sentence (including confinement or commitment to imprisonment), deferred adjudication, and period of probation or parole as a result of the conviction and for a period of two years after the date of successful completion of said sentence, deferred adjudication, and probation or parole.

(ii) The following provisions apply to the determination of present good moral character of an individual convicted of said felony or misdemeanor:

(A) The court record or docket entry of conviction is conclusive evidence of guilt;

(B) An individual convicted of a felony or misdemeanor identified in paragraph (h)(l) of this section is conclusively deemed not to have present good moral character and shall not be eligible to apply for or be registered for a period of two years after completion of the sentence, deferred adjudication, and period of probation or parole, whichever is later; and

(C) The individual, upon applying for registration, shall prove by clear and convincing evidence that he or she is of present good moral character.

(iii) Upon proof that a conviction has been set aside or reversed, the individual shall be eligible to file an application and, upon passing the registration examination, have the OED Director determine, in accordance with paragraph (h)(1) of this section, whether, absent the conviction, the individual possesses present good moral character and reputation.

(2) *Moral character involving drug or alcohol abuse or dependency.* An individual's record is reviewed as a whole to see if there is a drug or alcohol abuse or dependency issue. An individual appearing to abuse drugs or alcohol, or being dependent on a drug or alcohol may be asked to undergo an evaluation, at the individual's expense, by a qualified professional selected by the OED Director. In instances where there is evidence of a present dependency or an individual has not established a record of recovery, the OED Director, in lieu of registration, may offer the individual the opportunity to place his or her application in abeyance for a specified period of time while agreed to conditions regarding treatment and recovery are initiated and confirmed.

(3) *Moral character involving lack of candor.* An individual's lack of candor in disclosing facts bearing on or relevant to issues concerning moral character when completing the application or any time thereafter may be found to be cause to deny registration on moral character grounds.

(4) *Moral character involving suspension, disbarment, or resignation from a State bar.* An individual who has been disbarred by a disciplinary court from practice of law or has resigned in lieu of a disciplinary proceeding (excluded or disbarred on consent) shall not be eligible to apply for registration for a period of five years from the date of disbarment or resignation. An individual who has been suspended by a disciplinary court on ethical grounds from the practice of law shall not be eligible to apply for registration until expiration of the period of suspension. An individual who was not only disbarred, suspended or resigned, but also convicted in a court of record of a felony, or a crime involving moral turpitude or breach of trust, shall be ineligible to apply for registration until the conditions both in paragraph (h)(1) of this section and this paragraph (h)(4) are fully satisfied. The OED Director may waive the two-year ineligibility period provided for in paragraph (h)(1)(A) of this section following conviction of a felony or crime only if the individual demonstrates that he or she has been reinstated to practice law in the State where he or she had been disbarred or suspended, or had resigned. An individual who has been disbarred or suspended, or who resigned in lieu of a disciplinary proceeding shall file with an application for registration the fees required by §§ 1.21(a)(1)(ii) and (10) of this subchapter; a full and complete copy of the proceedings in the disciplinary court that led to the disbarment, suspension, or resignation; and written proof that he or she has filed an application for reinstatement in the disciplining jurisdiction and obtained a final determination on that application. The following provisions shall govern the determination of present good moral character of an individual who has been licensed to practice law in any jurisdiction and has been disbarred or suspended on ethical grounds, or allowed to resign in lieu of discipline, in that jurisdiction.

(i) A copy of the record resulting in disbarment, suspension or resignation is *prima facie* evidence of the matters contained in said record, and the imposition of disbarment or suspension, or the acceptance of the resignation of the individual in question shall be deemed conclusive that the individual has committed professional misconduct.

(ii) An individual who has been disbarred or suspended, or who resigned in lieu of disciplinary action is ineligible for registration and is deemed not to have present good moral character during the period of such discipline imposed by the disciplinary court.

(iii) The individual who has been disbarred or suspended, or who resigned in lieu of disciplinary action, shall submit proof that he or she has filed an application for reinstatement in the disciplining jurisdiction and obtained a final determination on that application.

(iv) The only defenses available to the individual in question are set out below, and must be proven by the individual by clear and convincing evidence:

(A) The procedure in the disciplinary court was so lacking in notice or opportunity to be heard as to constitute a deprivation of due process;

(B) There was such infirmity of proof establishing the misconduct as to give rise to the clear conviction that the Office could not, consistently with its duty, accept as final the conclusion on that subject; or

(C) The finding of lack of present good moral character by the Office would result in grave injustice.

(v) The individual, upon applying for registration, shall prove by clear and convincing evidence that he or she is of present good moral character.

(i) *Factors that may be taken into consideration when evaluating rehabilitation of an applicant seeking a moral character determination.* When considering whether an applicant has the good moral character required for registration, the OED Director evaluates whether an applicant possesses the qualities of honesty, fairness, candor, trustworthiness, observance of fiduciary responsibility, respect for and obedience to the laws of the States and the nation, and respect for the rights of others and for the judicial process. Involvement in activity that constitutes an act of misconduct or an act of moral turpitude does not necessarily preclude an applicant from registration; however, an applicant who has committed such acts must demonstrate rehabilitation prior to registration. An act of misconduct may include, but is not limited to, behavior that results in a criminal conviction, a sustained accusation of fraud, or a sustained allegation of unauthorized practice of law, violation of a school's honor code that involves moral turpitude or results in expulsion, professional discipline, license revocation or disbarment, as well as material omissions from a moral character application, or misstatements in the registration application and misrepresentations during the application process.

(1) Individuals convicted of violent felonies, felonies involving moral turpitude and crimes involving a breach of fiduciary duty are presumed not to be of good moral character in the absence of a pardon or a showing of complete reform and rehabilitation. The OED Director shall exercise discretion to determine whether applicants convicted of violent felonies, felonies involving moral turpitude, and crimes involving a breach of fiduciary duty have produced overwhelming proof of reform and rehabilitation, including at a minimum, a lengthy period of not only unblemished, but exemplary conduct.

(2) The factors enumerated below are guidelines that may be taken into consideration when evaluating whether an applicant has demonstrated rehabilitation. Not all factors listed below will be applicable to every single case nor will each factor necessarily be given equal weight in evaluating the rehabilitation of an applicant. The factors, taken as a whole although not exclusive, assist the OED Director in determining whether an applicant has demonstrated rehabilitation from an act of misconduct or moral turpitude. The factors include:

(i) The nature of the act of misconduct, including whether it involved moral turpitude, whether there were aggravating or mitigating circumstances, and whether the activity was an isolated event or part of a pattern;

(ii) The age and education of the applicant at the time of the act of misconduct and the age and education of the applicant at the present time;

(iii) The length of time that has passed between the act of misconduct and the present, absent any involvement in any further acts of moral turpitude, the amount of time and the extent of rehabilitation being dependent upon the nature and seriousness of the act of misconduct under consideration;

(iv) Restitution by the applicant to any person who has suffered monetary losses through acts or omissions of the applicant;

(v) Expungement of a conviction;

(vi) Successful completion or early discharge from probation or parole;

(vii) Abstinence from the use of controlled substances or alcohol for not less than two years if the specific act of misconduct was attributable in part to the use of a controlled substance or alcohol, where abstinence may be demonstrated by, but is not necessarily limited to, enrolling in and complying with a self-help or professional treatment program;

(viii) Evidence of remission for not less than two years if the specific act of misconduct was attributable in part to a medically recognized mental disease, disorder or illness, where evidence of remission may include, but is not limited to, seeking professional assistance and complying with the treatment program prescribed by the professional and submission of letters from the psychiatrist/psychologist verifying that the medically recognized mental disease, disorder or illness is in remission;

(ix) Payment of the fine imposed in connection with any criminal conviction;

(x) Correction of behavior responsible in some degree for the act of misconduct;

(xi) Completion of, or sustained enrollment in, formal education or vocational training courses for economic self-improvement and thereby eliminating economics as a cause for unethical conduct;

(xii) Significant and conscientious involvement in community, church or privately sponsored programs designed to provide social benefits or to ameliorate social problems; and

(xiii) Change in attitude from that which existed at the time of the act of misconduct in question as evidenced by any or all of the following:

(A) Statements of the applicant;

(B) Statements from family members, friends or other persons familiar with the applicant's previous conduct and with subsequent attitudes and behavioral patterns;

(C) Statements from probation or parole officers or law enforcement officials as to the applicant's social adjustments; and

(D) Statements from persons competent to testify with regard to neuropsychiatry or emotional disturbances.

(j) *Hearing.* If, following investigation of moral character, the OED Director believes any evidence suggests lack of good moral character and reputation, the OED Director shall give the individual notice to show cause fairly apprising the individual of the OED Director's reasons for failing to be convinced of the individual's good character and reputation, and an opportunity to be heard before a final decision is issued. The notice shall also give the individual the choice of withdrawing the application. The individual shall be given no less than 10 days to reply. The notice shall be given by certified mail at the address appearing on the application if the address is in the United States, and by any other reasonable means if the address is outside the United States.

(1) *Evidence supplied or confirmed by individual.* When the evidence suggesting lack of good moral character and reputation is information supplied or confirmed by the individual, or the evidence is of an undisputed documentary character disclosed to the individual, the OED Director, with the concurrence of a majority of the

Committee on Enrollment, shall enter a decision based solely upon said information or documentary evidence. In determining an individual's moral character and reputation, the OED Director and Committee may act without requiring the individual to appear before it to be sworn and interrogated. If the OED Director and a majority of the Committee are of the opinion that an adverse decision should be made, the procedure set forth in paragraphs (j)(3) through (j)(5) of this section shall be followed.

(2) *Evidence supplied by person or source whose reliability or veracity is questioned.* When the evidence suggesting lack of good moral character and reputation depends on information supplied by a particular person whose reliability or veracity is brought into question by the individual, the individual shall be informed in the notice to show cause of the opportunity to confront and cross-examine the person in an oral hearing. If the individual does not request an oral hearing within the time fixed by the notice, the OED Director, with the concurrence of a majority of the Committee on Enrollment, shall enter a recommendation. If, within the fixed time, the individual requests an oral hearing, the Committee on Enrollment shall conduct the hearing under the following rules of procedure:

(i) The Committee shall give the individual no less than 10 days notice of:

(A) The date, time and place of an oral hearing;

(B) The individual's right to be represented by counsel;

(C) The individual's right at an oral hearing to examine and cross-examine witnesses;

(D) The individual's right at an oral hearing to adduce evidence bearing on the individual's moral character and fitness to practice before the Office. Testimony at an oral hearing shall be under oath and a complete stenographic record of the hearing shall be kept; and

(E) The OED Director and Committee may act without the individual agreeing to be sworn and interrogated.

(ii) A hearing shall be conducted in a formal manner according to the rights listed in paragraph (j)(2)(A) of this section; however, the Committee shall not be bound by formal rules of evidence. It may, in its discretion, take evidence in other than testimonial form and determine whether evidence to be taken in testimonial form shall be taken in person at the hearing or by deposition. The proceedings shall be recorded and the individual may order a transcript at the individual's expense.

If the OED Director and a majority of the Committee are of the opinion that an adverse decision should be made, the procedure set forth in paragraphs (j)(3) through (j)(5) of this section shall be followed.

(3) The recommendation shall include the findings and conclusions of the OED Director and Committee, and shall be served on the individual, or his or her attorney, a copy of the decision containing their findings and conclusions. The recommendation shall permit the individual, within 15 days of the date of the recommendation, to withdraw the application, or to appeal the recommendation. If the individual elects to withdraw the application, written notice thereof shall be given to the OED Director within the time fixed, and no further action will be necessary to close the matter.

(4) If the individual elects to appeal the recommendation, written notice thereof shall be given to the OED Director within the time fixed, and an appeal brief shall be filed within 30 days of the date of the recommendation. The individual's appeal brief shall show cause why registration should not be denied. The OED Director and Committee shall deliver to the USPTO Director their recommendation, together with the record in either paragraphs (j)(1) or (j)(2) of this section.

(5) The USPTO Director on the basis of the record shall determine whether the individual should be denied registration for lack of good moral character and reputation. The USPTO Director shall issue a decision on the basis of the record made in accordance with paragraphs (j)(1) or (j)(2) of this section. The USPTO Director will consider no new evidence. The individual shall not submit copies of documents already of record before the OED Director and Committee with any appeal to the USPTO Director.

(k) *Reapplication for admission.* An individual who has been refused registration for lack of present good moral character in a USPTO Director's decision, or in the absence of a USPTO Director's decision, in a recommendation of the OED Director and Committee on Enrollment, the individual may reapply for registration five years after the date of the decision, unless a shorter period is otherwise ordered by the USPTO Director. An individual under investigation for moral character may elect to withdraw his or her application, and may reapply for registration five years after the date of withdrawal. Upon reapplication, the individual shall pay the fees required by §§ 1.21(a)(1)(ii) and (10) of this subchapter, and have the burden of showing by clear and convincing evidence the individual's fitness to practice as prescribed in paragraph (b) of this section. Upon reapplication, the individual also shall complete successfully the examination prescribed in paragraph (b) of this section, even though the individual has previously passed a registration examination.

§ 11.8 Oath, registration fee, and annual fee.

(a) A passing grade on the registration examination may be a basis for registration for a period of no more than two years from the date notice thereof is sent to the individual. After an individual passes the examination, or the examination is waived for an individual, the OED Director shall promptly publish a solicitation for information concerning the individual's moral character and reputation. The solicitation shall include the individual's name, and business or communication postal address.

(b) An individual shall not be registered as an attorney under § 11.6(a), registered as an agent under §§ 11.6(b) or (c), or granted limited recognition under § 11.9(b) unless the individual files the following in OED within 2 years of the issuance of a notice of passing registration examination; a completed Data Sheet; a completed form to obtain the Office's authorization to use a digital signature; an oath or declaration prescribed by the USPTO Director; the registration fee set forth in § 1.21(a)(2) of this subchapter; and a certificate of good standing of the bar of the highest court of a State provided the certificate is no more than six months old.

(c) An individual, including a former patent examiner, is responsible for updating all information and answers submitted in or with his or her application based upon anything occurring between the date the application is signed by the individual, and the date he or she is registered or recognized to practice before the Office in patent matters. The update shall be filed within thirty days after the date of the occasion that necessitates the update.

(d) *Annual fee.* A registered patent attorney or agent shall annually pay to the USPTO Director a fee in the amount required by § 1.21(a)(7) of this subchapter. The payment period for registered patent attorneys and agents shall be based on the first initial of each individual's last name. The payment period for last names beginning with A–E shall be every January 1 through March 31; the payment period for last names beginning with F–K shall be every April 1 through June 30; the payment period for last names beginning with L through R shall be every July 1 through September 30; and the payment period for last names beginning with S through Z shall be every October 1 through December 31. Payment shall be for the following twelve months. Payment shall be due by the last day of the payment period. Persons newly registered to practice before the Office shall be permanently assigned to the appropriate payment period based on the first initial of their last name on the date of recognition. Persons newly registered shall not be liable for dues during the calendar year they are first registered. Failure to comply with the provisions of this paragraph (d) shall require the OED Director to subject a registered patent attorney or agent to a delinquency fee penalty set forth in § 11.11(b)(1), and further financial penalties and administrative suspension as set forth in § 11.11(b)(2).

§ 11.9 Limited recognition in patent matters.

(a) Any individual not registered under § 11.6 may, upon a showing of circumstances which render it necessary or justifiable, and that the individual is of good moral character and reputation, be given limited recognition by the OED Director to prosecute as attorney or agent a specified application or specified applications, but limited recognition under this paragraph shall not extend further than the application or applications specified. Limited recognition shall not be granted to individuals who have passed the examination or for whom the examination has been waived, and who are awaiting registration to practice before the Office in patent matters.

(b) When registration under paragraphs (a) or (b) of § 11.6(a) of an alien residing in the United States is not consistent with the terms on which the alien entered and remains in the United States, the resident alien may be given limited recognition under paragraph (a) of this section if:

(1) The Immigration and Naturalization Service or the Department of State has authorized the resident alien to be employed in the capacity of representing a patent applicant by preparing and prosecuting the applicant's patent application; and

(2) The resident alien fulfills the provisions of §§ 11.7(a), (b), and either § 11.7(c) or § 11.7(d). Limited recognition shall be granted in maximum increments of one year, fashioned to be consistent with the terms of authorized employment, and require the resident alien to be employed by or associated with a registered practitioner. Limited recognition shall not be granted or extended to an alien residing abroad. If granted, limited recognition shall automatically expire when the resident alien leaves the United States. Any person admitted to the United States to be trained in patent law shall not be admitted to the registration examination or granted recognition until completion of that training.

(c) An individual not registered under § 11.6 may, if appointed by applicant to do so, prosecute an international application only before the United States International Searching Authority and the United States International Preliminary Examining Authority, provided that the individual has the right to practice before the national office with which the international application is filed as provided in PCT Art. 49, Rule 90 and § 1.455, or before the International Bureau when the USPTO is acting as Receiving Office pursuant to PCT Rules 83.1 bis and 90.1.

(d) *Limited recognition fee and annual dues.* An individual, within 30 days after being notified of being granted limited recognition under paragraph (b) or (c) of this section, shall pay to the USPTO Director a fee set forth in § 1.21(a)(2) of this subchapter. The individual also shall pay annually a fee in the amount required by § 1.21(a)(8) of this subchapter upon extension, renewal, or new grant of limited recognition, provided that the individual granted limited recognition for the first time during a fiscal year shall not be liable for the annual fee during that calendar year. Failure to comply with the provisions of this paragraph (d) shall subject the individual to loss of recognition.

§ 11.10 Restrictions on practice in patent matters.

(a) Only practitioners who are registered under § 11.6 or individuals given limited recognition under § 11.9 are permitted to prosecute patent applications of others before the Office; or represent others in a reexamination proceeding, correction of a patent, correction of inventorship, protest, or other proceeding before the Office.

(b) *Undertaking for registration by former Office employee.* No individual not previously registered will be registered as an attorney or agent while employed by the Office. No individual who has served in the patent examining corps or elsewhere in the Office may practice before the Office after termination of his or her service, unless he or she signs the following written undertaking:

(1) To not knowingly act as agent or attorney for, or otherwise represent, or aid in any manner the representation of, any other person in any formal or informal appearance before the Office, or with the intent to influence, make or assist in any manner the making of any oral or written communication on behalf of any other person:

(i) To the United States,

(ii) In connection with any particular patent or patent application involving a specific party, or

(iii) In which said employee participated personally and substantially as an employee of the Office; and

(2) To not knowingly act within two years after terminating employment by the United States as agent or attorney for, otherwise represent or assist in any manner the representation of any other person in any formal or informal appearance before the Office, or with the intent to influence, make or aid in any manner the making of any oral or written communication on behalf of any other person:

(i) To the United States,

(ii) In connection with any particular patent or patent application matter involving a specific party, or

(iii) If such matter was actually pending under the employee's responsibility as an officer or employee within a period of one year prior to the termination of such responsibility.

(3) The words and phrases in paragraphs (b)(1) and (b)(2) of this section are construed as follows:

(i) *Represent* and *representation* means acting as patent attorney or patent agent or other representative in any appearance before the Office, or communicating with an employee of the Office with intent to influence.

(A) Patent attorneys and patent agents. This provision is directed to the former employee who participates in a particular matter, *e.g.*, patent application while employed by the Office and later either enters a "revolving door" by representing the applicant on the same matter, or "switches sides" by representing another person on the same matter. Note: The examples in this section do not incorporate the special statutory restrictions on "Senior Employees."

Example 1: An attorney in the Solicitor's Office personally works on an appeal in the United States Court of Appeals for the Federal Circuit with respect to a patent application owned by Company X. After leaving the Office, she is registered as a patent attorney, and asked by Company X to represent it in that case. She may not do so.

(B) *Assist in any manner* means aid or help another person on a particular matter involving representation. This provision is directed to the person who, as an employee, participates in a particular matter, *e.g.*, patent application, while employed by the Office and after separation from the Office, behind the scenes, either enters a "revolving door" by assisting the applicant on the same matter, or "switches sides" by assisting another person on the same matter.

Example 1: A primary patent examiner allows a patent application owned by Company X. After leaving the Office, he is registered as a patent agent, and is asked by Company X to assist its attorneys in filing and prosecuting a reissue patent application. He may neither participate in the drafting of claims to be included in the reissue application, nor advise Company X on tactics and procedure, including the form and content of the oath needed for the reissue application, nor participate in drafting amendments to be filed in the application, even if another registered practitioner signs the documents filed in the Office.

Example 2: A patent examiner, shortly before resigning from the Office, signs an Office action rejecting claims in an inventor's patent application. The inventor replies, and a new examiner sends the inventor another Office action containing a final rejection of claims in the application. After resigning, the former examiner becomes registered as a patent agent. The inventor asks the former examiner—now registered patent agent for advice in replying to the Office action and to ghostwrite a reply for the inventor to sign and file as the inventor's own reply to the Office action. The former examiner may not do so.

(C) A former Office employee is not prohibited from providing in-house assistance that does not involve representation, but is prohibited from providing in-house assistance involving representation of another person.

Example 1: An Office employee examined a patent application of Company X, and allowed the application, which matured into a patent. Upon separation from the Office, he is hired by Company X, and becomes registered as a patent attorney. He works on licensing the technology covered by the claims in the patent, but has no direct contact with the Office. At the request of a company vice president, he prepares a paper describing the persons at the Office who should be contacted regarding reexamination of the patent, and what they consider persuasive for a favorable reexamination ruling. He may do so.

Example 2: A patent examiner examined a patent application of Company Z, and allowed an original application, which matured into a patent. Upon separation from the Office, he is hired by Company Z, and becomes registered as a patent attorney. Company Z filed a continuation-in-part application based on the original application. Another registered practitioner is prosecuting the CIP application. A company vice president requests the former patent examiner to assist the other practitioner by preparing an amendment for the CIP application to overcome outstanding rejections or objections. The amendment is to be signed by the other registered practitioner, and the former examiner is to have no direct contact with the Office. This would be a communication with intent to influence. The former patent examiner may not do so.

(D) *Appearance* means that an individual is physically present before the Office in either a formal or informal setting, or the individual conveys material to the Office in connection with a formal proceeding or application; the appearance must occur in regard to a communication that is intended to influence. A communication is broader than an appearance and includes, for example, correspondence, or telephone calls.

Example 1: An appearance occurs when a former patent examiner, now a registered patent agent, meets with a current patent examiner or group director in either the Office or a restaurant to discuss a patent application; or when the former examiner submits a communication, *e.g.*, an amendment, appeal brief, or petition, bearing his or her name.

Example 2: A former patent examiner, now a registered patent agent, makes a telephone call to a present patent examiner to discuss an Office action in an application to reissue a patent which the former patent examiner examined; or ghostwrites an amendment to be signed and filed by an inventor. The former examiner is to have no direct contact with the Office. This would be a communication with intent to influence. The former patent examiner may not do so.

(E) Elements of "influence" and potential controversy are required. Communications that do not include an "intent to influence" are not prohibited. Moreover, a routine request not involving a potential controversy is not prohibited. For example, the following are not prohibited: inquiring into the status of a pending application being prosecuted by the practitioner's law firm; a request for publicly available documents; or a communication by a former examiner, not in regard to an adversarial proceeding, imparting purely factual information.

Example 1: A member of the Board of Patent Appeals and Interferences personally works on an interference between a patent application of Company X and a patent application of Company Y. After leaving the Office, he is registered as a patent attorney, and asked by Company X and Company Y to act as arbitrator between the parties regarding the same interfering applications. The arbitration award is filed with the Office, and necessarily has the intent to influence that it meets all requirements to be dispositive and acceptable to the Office. The former member of the Board, through the award, in effect, represents both parties. He may not do so.

(F) Project responses not included. In a context not involving a potential controversy involving the United States, no finding of "intent to influence" shall be based on whatever influential effect inheres in an attempt to formulate a meritorious proposal or program.

Example 1: The employee of Company X in the previous example is asked some ten years after being hired by the company to improve upon the claimed subject matter in the patent, which he does, and a patent application for the improvement is filed. This is not prohibited despite the fact that his improvement may be inherently influential on a question of patentability. However, he may not argue for its patentability.

(ii) "Particular patent or patent application involving a specific party or parties." (A) Particular patent or patent application. Like the prohibitions of sections (a) and (b) of 18 U.S.C. 207, the prohibitions of this section would be based on the former employee's, *e.g.*, patent examiner's or assistant solicitor's, prior participation in or responsibility for a "judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, investigation, charge, accusation, arrest, or other particular matter involving a specific party or parties" in which the United States is a party or has a direct and substantial interest. Such matters typically involve a specific proceeding affecting the legal rights of the parties or an isolatable transaction or related set of transactions between identifiable parties.

All patent issues, including the filing and prosecution of a patent application, are applications, claims, or other matters in which the United States is a directly or indirectly interested. For a patent examiner, a particular matter includes any patent application of a specific party, including a provisional, substitute, international, continuation, divisional, continuation-in-part, or reissue patent application, as well as any protest, reexamination, petition, appeal, or interference based on the patent application of a specific party. A "specific party" includes the applicant, owner, or assignee of the application.

Example 1: A patent examiner reviews and allows a particular patent application for an invention. After leaving the Office, and becoming registered as a patent agent, the former patent examiner may not represent the owner of the patent before the Office in an application for reissue of the patent, in a reexamination of the patent, in an interference involving the patent, in a divisional or continuation-in-part application, and the like.

Example 2: A patent examiner participates by recommending an interference between an application she examined and an application that she did not examine. After leaving the Office and becoming a registered patent attorney, she may not represent the owner of the application that she did not examine in the interference since her participation was by way of recommendation in a particular matter affecting a specific party or parties.

(B) Relationship of personal participation to specificity. In certain cases, whether a patent or patent application should be treated as a "particular patent or patent application matter involving specific parties" depends on the employee's own participation in events. Participation may result in particularity and specificity to the patent or patent application.

Example 1: A patent examiner without any signatory authority drafts the first Office action in an application filed by Company X. After drafting the Office action containing rejections of several claims over prior art, and a rejection of other claims under 35 U.S.C. 112, she submits it to her supervisor for review. The supervisor reviews the draft and suggests changes. On her last day of employment at the Office, the examiner does not have an opportunity to make the changes. The application and drafted action are later assigned to another examiner, who is taking over her art. After she separates from the Office, the other examiner prepares the Office action, including the rejections she had urged, and signs the Office action. Thereafter, the Office action is duly mailed. The former patent examiner is then registered as a patent agent, and is asked by Company X to represent it before the Office on the same patent application. She may not do so.

(C) The particular patent or patent application includes related patents and applications. The requirement of a "particular patent or patent application involving a specific party" applies both at the time that the Office employee acts in an official capacity and at the time in question after service in the Office. The same particular patent or application may continue in another form or in part. In determining whether two particular patents or applications are related, the Department of Commerce considers the extent to which the matters involve the same basic facts, related issues, the same or related parties, time elapsed, the same confidential information, and the continuing existence of an important Federal interest.

Example 1: A patent examiner was substantially involved in the granting of a patent to Z Company for the development of alternative energy sources. Six years after he terminates Office employment, the patent is still in effect, but much of the technology has changed as have many of the personnel. An employee of the Q Company has invented an improvement on the original patent. The former patent examiner, now a registered patent attorney, may represent Q Company in its patent application for the improvement, since Q Company's patent application is a different matter from the patent granted to Z Company. The former employee should first consult the Office and request a written determination before undertaking any representation in the matter.

Example 2: A patent examiner reviewed the claims in an initial patent application, and allowed the claims in the application. The prosecution in a divisional application of claims directed to subject matter disclosed but not originally sought to be claimed in the initial application must be regarded as part of the same particular matter as the initial application. The reason is that the validity of the patent may be put in issue, and many of the facts, *e.g.*, benefit of priority to antedate any intervening prior art, giving rise to the patent would be involved.

Example 3: An attorney in the Solicitor's Office personally works on an appeal in the Court of Appeals for the Federal Circuit of a patent application owned by Company X. A patent is later granted on the application. After leaving the Office, he is registered as a patent attorney, and asked by Company X to represent it in an infringement suit against an alleged infringer. He may not do so.

Example 4: A member of the Board of Patent Appeals and Interferences personally works on an appeal of a patent application of Company X. After leaving the Office, he is registered as a patent attorney, and asked by Company X to represent it in an interference proceeding before the Office between the patent granted on the application, and an application of another party. He may not do so. Other examples: *See* paragraph (b)(3)(i)(A) of this section, Example 1, and paragraph (b)(3)(ii)(A) of this section, Examples 1 and 2.

(D) United States must be a party or have an interest. The particular patent or patent application must be one in which the United States is a party, such as in a judicial or administrative proceeding or a contract, or in which it has a direct and substantial interest. The importance of the Federal interest in a matter can play a role in determining whether two matters are the same particular matter. All patent issues, including the filing and prosecution of a patent application, are matters in which the United States is directly or indirectly interested. The United States is not only interested in the grant of a patent. Its interest continues. The United States may bring suit to cancel patents obtained by fraud.

Example 1: A patent examiner participated in examining a patent application filed by the Z Company. After leaving the Office and becoming a registered patent attorney, she may not represent Z Company in a request for reexamination of the patent granted on the application, or assist other attorneys in drafting the request. The interest of the United States in preventing both inconsistent results and the appearance of impropriety in the same factual matter involving the same party, Z Company, is direct and substantial.

(iii) "Participate personally and substantially." (A) Basic requirements. The restrictions of section 207(a) apply only to those patents and applications in which a former patent examiner had "personal and substantial participation," exercised "through decision, approval, disapproval, recommendation, the rendering of advice, investigation or otherwise." To participate *personally* means directly, and includes the participation of a subordinate when actually directed by the former Office employee in the matter. *Substantially* means that the examiner's involvement must be of significance to the matter, or form a basis for a reasonable appearance of such significance. It requires more than official responsibility, knowledge, perfunctory involvement, or involvement on an administrative or peripheral issue. A finding of substantiality should be based not only on the effort devoted to a matter, but also on the importance of the effort. While a series of peripheral involvements may be insubstantial, the single act of approving or participation in a critical step may be substantial. It is essential that the participation be related to a "particular patent or patent application involving a specific party." (*See* paragraph (b)(3)(ii)(A) of this section.)

Example 1: A primary examiner is not in charge of patent applications assigned to another examiner having partial signatory authority. The primary examiner is asked by the supervisory patent examiner to be the acting supervisory patent examiner while the latter is on vacation. The primary examiner reviews and approves the second action final rejection in an Office action in a patent application (belonging to the Z Company) of the other examiner having partial signatory authority. Later, the other examiner, with the approval of the supervisory patent examiner, allows the application, and a patent is granted to the Z Company on the application. After retiring and being registered as a patent agent, the former primary examiner is asked by the Z Company to represent the patent owner in filing a reissue application to correct an error in the patent. The primary examiner, having personally and substantially participated by decision, or approval in the particular matter, may not do so.

Example 2: A primary examiner is not in charge of, nor has official responsibility for the patent applications of new patent examiners she is training. However, she is frequently consulted as to searches, interpreting the scope of the claims, and drafting Office actions for the applications. Such an individual, as well as the new patent examiners, has personally and substantially participated in the matters.

Example 3: A supervisory primary examiner signs a restriction requirement in an Office action prepared by a patent examiner having no signatory authority. The supervisory primary examiner and the patent examiner having no signatory authority have

each personally and substantially participated in the matter.

Example 4: A primary patent examiner, having concluded that all the claims in a first application are allowable, conducts an interference search and finds interfering subject matter being claimed in a second application. The examiner has personally and substantially participated in the first and second applications, whether the second application is assigned to and being examined by the same examiner or another patent examiner.

(B) Participation on ancillary matters. An Office employee's participation on subjects not directly involving the substantive merits of a matter may not be "substantial" even if it is time-consuming. An employee whose responsibility is the review of a matter solely for compliance with administrative control or budgetary considerations and who reviews a particular matter for such a purpose should not be regarded as having participated substantially in the matter, except when such considerations also are the subject of the employee's proposed representation. (*See* paragraph (b)(3)(i)(C) of this section). Such an employee could theoretically cause a halt in a program for noncompliance with standards under his or her jurisdiction, but lacks authority to initiate a program or to disapprove it on the basis of its substance.

Example 1: A primary examiner is asked to review the Office actions of another examiner having partial signatory authority for compliance with procedures to ascertain if the other examiner qualifies for full signatory authority. Such participation is not "substantial."

(C) Role of official responsibility in determining substantial participation. *Official responsibility* is defined in paragraph (b)(3)(v) of this section. "Personal and substantial participation" is different from "official responsibility." One's responsibility may, however, play a role in determining the "substantiality" of an Office employee's participation. For example, ordinarily a patent examiner's forbearance on a matter is not substantial participation. If, however, a primary patent examiner is charged with responsibility for review of a patent application assigned to him, and action cannot be undertaken over his objection, the result may be different. If the primary patent examiner reviews Office actions of a new examiner whose Office actions, after several months, are deemed reliable, and passes them on, his participation may be regarded as "substantial" even if he claims merely to have engaged in inaction.

(iv) Official responsibility in complex cases. In certain complex factual cases, the Office is likely to be in the best position to make a determination as to certain issues, for example, the identity or existence of a particular matter. Designated ethics officials at the Department of Commerce, in consultation with the Office when deemed beneficial, should provide advice promptly to former Office employees who make inquiry on any matter arising under these regulations.

(v) *Official responsibility* is defined in 18 U.S.C. 202 as, "the direct administrative or operating authority, whether intermediate or final, and either exercisable alone or with others, and either personally or through subordinates, to approve, disapprove, or otherwise direct Government actions."

(A) Determining official responsibility. Ordinarily, those areas assigned by statute, regulation, Executive Order, job description, or delegation of authority determine the scope of an employee's "official responsibility". All particular matters under consideration in the Office are under the "official responsibility" of the Director of the Office, and each is under that of any intermediate supervisor having responsibility for an employee who actually participates in the matter within the scope of his or her duties. A patent examiner would have "official responsibility" for the patent applications assigned to him or her.

Example 1: A patent examiner, to whom a new application is assigned, is officially responsible for reviewing the application for compliance with statutory, regulatory, and procedural requirements. Upon assignment of the application, the application became a particular matter for which the examiner is officially responsible.

(B) Ancillary matters and official responsibility. *Administrative* authority as used in the foregoing definition means authority for planning, organizing and controlling matters rather than authority to review or make decisions on ancillary aspects of a matter such as the regularity of budgeting procedures, public or community relations aspects, or equal employment opportunity considerations. Responsibility for such an ancillary consideration does not constitute responsibility for the particular matter, except when such a consideration is also the subject of the employee's proposed representation.

Example 1: A supervisory patent examiner would not have official responsibility for all patent applications in a technology center or the Office even though she must review the records of all the applications to locate a missing file.

Example 2: Within two years after terminating employment, a supervisory patent examiner, now a registered patent attorney, is asked to represent Q Company in a continuation patent application of an application which was pending during the last year of the supervisory patent examiner's tenure. The continuation application contains a rejection that was first imposed in the parent application by a primary examiner who reported to the supervisory patent examiner. The supervisory patent examiner did not review the Office actions prepared by the primary examiner for the application. She may not represent Q Company on this matter.

(C) Knowledge of matter pending required. In order for a former employee, *e.g.*, former patent examiner, to be barred from representing another as to a particular matter, he or she need not have known, while employed by the Office, that the matter was pending under his or her official responsibility. However, the former employee is not subject to the restriction unless at the time of the proposed representation of another, he or she knows or learns that the matter had been under his or her responsibility. Ordinarily, a former employee who is asked to represent another on a matter will become aware of facts sufficient to suggest the relationship of the prior matter to his or her former office, *e.g.*, technology center, group or art unit. If so, he or she is under a duty to make further inquiry, including direct contact with an agency's designated ethics official where the matter is in doubt. It would be prudent for a patent examiner to maintain a record of only application numbers of the applications actually acted upon by decision, recommendation, as well as those applications in the examiner's art which he or she has not acted upon.

(D) Self-disqualification. A former employee, *e.g.*, former patent examiner, cannot avoid the restrictions of this section on the ground by self-disqualification with respect to a matter for which he or she otherwise had official responsibility. However, as in § 207(a), self-disqualification is effective to eliminate the restrictions.

(vi) *Actually pending* means that the matter was in fact referred to or under consideration by persons within the employee's area of responsibility, not that it merely could have been.

Example 1: A staff lawyer in the Office of General Law is consulted by procurement officers on the correct resolution of a contractual matter involving Q Company. The lawyer renders an opinion resolving the question. The same legal question arises later in several contracts with other companies, but none of the disputes with such companies is referred to the Office of General Law. The Office of General Law has official responsibility for the determination of the Q Company matter. The other matters were never "actually pending" under that responsibility, although as a theoretical matter, such responsibility extended to all legal matters within the department.

(vii) Other essential requirements. All other requirements of the statute must be met before the restriction on representation applies. The same considerations apply in determining the existence of a "particular matter involving a specific party," a representation in an "appearance," or "intent to influence," and so forth as set forth under paragraph (b)(1) of this section.

Example 1: During her tenure as Director of the Office, the Director's subordinates undertook major changes in application of new rules for processing patent applications. Eighteen months after terminating employment, she is asked to represent before the Office Z Company, which believes it is being unfairly treated under the application of the rules. The Z Company matter first arose on patent applications filed after the Director terminated her employment. She may represent Z Company because the matter pending under her official responsibility was not one involving "a specific party." (Moreover, the time-period covered by 18 U.S.C. 207(c) has elapsed).

(viii) Measurement of two-year restriction period. The statutory two-year period is measured from the date when the employee's responsibility in a particular area ends, not from the termination of service in the Office, unless the two occur simultaneously. The prohibition applies to all particular matters subject to such responsibility in the one-year period before termination of such responsibility.

Example 1: A Group Director retires after 26 years of service and enters private industry as a consultant. He will be restricted for two years with respect to all matters that were actually pending under his official responsibility in the year before his retirement.

Example 2: A patent examiner transfers from a position in a first Group to a position in a second Group, and she leaves the Office for private employment nine months later. As a registered patent attorney or agent, after 15 months she will be free of restriction insofar as matters that were pending under her responsibility in the first Group in the year before her transfer. She will be restricted for two years in respect of the second Group matters that were pending in the year before her departure for private employment.

(c) *Former employees of the Office.* Former employees of the Office, whether they are or are not a practitioner, are subject to the post-employment provisions of 18 U.S.C. 207(a) and (b)(1), and the provisions of 5 CFR 2637.201 and 2637.202. A former employee who is a practitioner is subject to the provisions of § 11.111.

(d) A practitioner who becomes an employee of the Office may not prosecute or aid in any manner in the prosecution of any patent application before the Office. Noncompliance with this provision shall constitute misconduct under § 11.804(i)(19).

(e) Practice before the Office by Government employees is subject to any applicable conflict of interest laws, regulations or codes of professional responsibility. Noncompliance with said conflict of interest laws, regulations or codes of professional responsibility shall constitute misconduct under §§ 11.804(b) or 11.804(h)(8). A practitioner who is a Government employee must so inform the OED Director, and must provide his or her complete Government address as his or her business address in every communication to OED.

§ 11.11 Administrative suspension, inactivation, resignation, and readmission.

(a) Registered attorneys and agents must notify the OED Director of their postal address for his or her office, e-mail address for his or her business, and business telephone number, and of every change to any of said addresses, or telephone numbers within 30 days of the date of the change. A registered attorney or agent shall separately provide written notice to the OED Director in addition to any notice of change of address and telephone number filed in individual applications. A registered practitioner who is an attorney in good standing with the bar of the highest court of one or more states shall provide the OED Director with the state bar identification number associated with each membership. The OED Director shall publish from the roster a list containing the name, postal business addresses, business telephone number, registration number, and registration status as an attorney or agent of each registered practitioner recognized to practice before the Office in patent cases.

(b) *Administrative suspension.* (1) Whenever it appears that a registered patent attorney or agent has failed to comply with § 11.8(d) or §§ 11.12(a) and (e), the OED Director shall mail a notice to the attorney or agent advising of the noncompliance and demanding:

(i) Compliance within sixty days after the date of such notice, and

(ii) Payment of a delinquency fee set in § 1.21(a)(9)(i) of this subchapter for each rule violated. The notice shall be communicated to the attorney or agent by mail or e-mail, according to the manner by which the practitioner last communicated his or her business postal or e-mail address to the OED Director, or by other service for practitioners located out of the United States, its possessions or territory.

(2) In the event a registered patent attorney or agent fails to comply with the notice of paragraph (b)(1) of this section within the time allowed, the OED Director shall send notice in the manner provided for in paragraph (b)(1) of this section to the attorney or agent at the practitioner's most recent business postal or e-mail address on file advising:

(i) That his or her registration has been administratively suspended, and

(ii) That the attorney or agent may no longer practice before the Office in patent matters or in any way hold himself or herself out as being registered to practice before the Office in patent matters.

(iii) Following administrative suspension, the suspended practitioner may be reinstated only upon demonstrating to the OED Director satisfaction that the practitioner has complied with the rules relating to registration, and upon payment of a reinstatement fee set by § 1.21(a)(9)(ii) of this subchapter for each rule violated.

(3) Whenever the OED Director notifies an attorney or agent that his or her registration has been administratively suspended, the OED Director shall publish notice of the administrative suspension in the Official Gazette.

(4) An administratively suspended attorney or agent remains responsible for paying his or her annual fee required by § 11.8(d), and for completing the required continuing training programs.

(5) An administratively suspended attorney or agent is subject to investigation and discipline for his or her conduct prior to, during, or after the period his or her name was administratively suspended.

(6) An administratively suspended attorney or agent is prohibited from continuing to practice before the Office in patent cases while administratively suspended. Failure to comply with this rule will subject the attorney or agent to discipline.

(c) *Administrative Inactivation.* (1) Any registered practitioner who shall become employed by the Office shall comply with § 11.116 for withdrawal from the applications, patents, and trademark matters wherein he or she is an attorney or agent of record, and notify the OED Director in writing of said employment on the first day of said employment. The name of any registered practitioner employed by the Office shall be endorsed on the roster as administratively inactive. The practitioner shall not be responsible for

payments of the annual fee each complete fiscal year while in administratively inactive status. Upon separation from the Office, the practitioner may request reactivation by completing and filing an application, Data Sheet, signing a written undertaking required by § 11.10, paying the fee required by § 1.21(a)(1)(i) of this subchapter, and completing the required continuing training programs if the practitioner did not pass the recertification tests required for patent examiners during the practitioner's employment at the Office and appropriate to the practitioner's grade and position in the Office. Upon restoration to active status, the practitioner shall be responsible for the annual fee for the fiscal year in which he or she is restored to active status. An administratively inactive practitioner remains subject to the provisions of §§ 11.100–11.806, and to proceedings and sanctions under §§ 11.19–11.58 for conduct that violates a provision of §§ 11.100–11.806 prior to or during employment at the Office.

(2) Any registered practitioner who is a judge of a court of record, full time court commissioner, U.S. bankruptcy judge, U.S. magistrate judge, or a retired judge who is eligible for temporary judicial assignment and is not engaged in the practice of law should request, in writing, that his or her name be endorsed on the roster as administratively inactive. Upon acceptance of the request, the OED Director shall endorse the name as administratively inactive. The practitioner shall not be responsible for payment of the annual fee or completion of the required continuing training programs for each complete fiscal year the practitioner continues to be in administratively inactive status. Following separation from the bench, the practitioner may request restoration to active status by completing and filing an application, Data Sheet, signing a written undertaking required by § 11.10, and paying the fee required by § 1.21(a)(1)(i) of this subchapter. Upon restoration to active status, the practitioner shall be responsible for the annual fee and required continuing training for the fiscal year in which he or she is restored to active status.

(d) *Voluntary Inactivation.* (1) Except as provided in paragraph (d)(4) of this section, any registered practitioner may voluntarily enter inactive status by filing a request, in writing, that his or her name be endorsed on the roster as inactive. Upon acceptance of the request, the OED Director shall endorse the name as inactive.

(2) A practitioner in voluntary inactive status shall be responsible for payment of the annual fee for voluntary inactive status required by § 1.21(a)(7)(ii) of this subchapter, and for completing the required continuing training programs for each complete fiscal year the practitioner continues to be in voluntary inactive status.

(3) A practitioner who seeks or enters into voluntary inactive status is subject to investigation and discipline for his or her conduct prior to, during, or after the period of his or her inactivation.

(4) A practitioner who is in arrears in dues or under administrative suspension for fee delinquency is ineligible to seek or enter into voluntary inactive status.

(5) A practitioner in voluntary inactive status is prohibited from continuing to practice before the Office in patent cases while in inactive status. Failure to comply with the provisions of this paragraph (d)(5) will subject the practitioner to discipline.

(6) Any registered practitioner who has been voluntarily inactivated pursuant to paragraph (d) of this section and not under investigation, not subject to a disciplinary proceeding, not in arrears for annual fees or in arrears for complying with the continuing legal education requirements may be restored to active status to the register as may be appropriate provided that the practitioner files a written request for reinstatement, a completed application for registration on a form supplied by the OED Director furnishing all requested information and material, including information and material pertaining to the practitioner's moral character under §§ 11.7(a)(2)(i) and (iii) during the period of inactivation, evidence of completion of all continuing legal education programs required by the USPTO Director under § 11.12(a) for up to the past six years from the date of application for restoration to active status, a declaration or affidavit attesting to the fact that the practitioner has read the most recent revisions of the Patent Act and the rules of practice before the Office, and pays the fees set forth in §§ 1.21(a)(7)(iii) and (iv) of this subchapter.

(e) *Resignation.* A registered practitioner or a practitioner under § 11.14, who is neither under investigation under § 11.22 for a possible violation of the Rules of Professional Conduct, nor a practitioner against whom probable cause has been found by a panel of the Committee on Discipline under § 11.23(b), may resign by notifying the OED Director in writing that he or she desires to resign. Upon acceptance in writing by the OED Director of such notice, that registered practitioner or practitioner under § 11.14 shall no longer be eligible to practice before the Office, but shall continue to file a change of address for five years thereafter in order that he or she may be located in the event information regarding the practitioner's conduct comes to the attention of the OED Director, or any complaint is made about his or her conduct while he or she engaged in practice before the Office. The name of any registered practitioner whose resignation is accepted shall be removed from the register, endorsed as resigned, and notice thereof published in the Official Gazette. Upon acceptance of the resignation by the OED Director, the practitioner must comply with the provisions of § 11.116(d). A resigned practitioner may be again registered only in accordance with § 11.7. A resigned practitioner's willful failure to comply with the provisions of this rule or § 11.116(d) constitutes grounds for denying his or her application for registration until complete compliance with said rules is achieved.

(f) *Administrative reinstatement.* (1) Any registered practitioner who has been administratively suspended pursuant to paragraph (b) of this section or 11.12(e), or who has resigned pursuant to paragraph (d) of this section, may be reinstated on the register provided the practitioner has applied for reinstatement on an application form supplied by OED Director, demonstrated compliance with the provisions of §§ 11.7(a)(2)(i) and (iii), has completed the training programs required by the USPTO Director under § 11.12(a) since the Office's fiscal year the practitioner was last registered, and paid the fees set forth in §§ 1.21(a)(3), (a)(7), and (a)(9). Any reinstated practitioner is subject to investigation and discipline for his or her conduct that occurred prior to, during, or after the period of his or her administrative suspension or resignation.

(2) Any registered practitioner whose registration has been inactivated pursuant to paragraph (c) of this section may be reinstated to the register as may be appropriate provided that a request for reinstatement, a completed application for registration on a form supplied by the OED Director furnishing all requested information and material, and payment of the fees set forth in § 1.21(a)(3) of this subchapter are filed within two years after his or her employment with the Office or in a judicial capacity ceases. Any registered practitioner inactivated or reinstated is subject to investigation and discipline for his or her conduct before, during, or after the period of his or her inactivation.

§ 11.12 Mandatory continuing training for licensed practitioners.

(a) *Continuing education requirements.* (1) All practitioners licensed under §§ 11.6 or 11.9 to practice before the Office shall complete a continuing education program as required from time-to-time by the USPTO Director, except those registered practitioners expressly exempted in paragraph (b) of this section from the requirement of this regulation. The USPTO Director will announce each fiscal year whether an education program will be required, and the dates for the program. No more than one mandatory continuing education program would be required each fiscal year and the requirement may be as infrequent as once every three years. The fiscal year is October 1 through September 30.

(2) Only continuing education programs pre-approved by the OED Director as meeting the requirements set forth in § 11.13 will be deemed eligible to satisfy the requirements set forth in paragraph (a)(1) of this section. Eligible continuing education programs and the starting date for completing each program will be announced in the Official Gazette and on the OED Web site. Failure to consult the foregoing locations for said announcement will not excuse a practitioner from completing the mandatory continuing education program.

(3) Each practitioner shall be responsible for ascertaining whether the USPTO Director has required completion of a mandatory continuing education program during a fiscal year, and complying with the requirement.

(b) *Exemptions.* Each practitioner shall comply with the provisions of paragraphs (a) and (b) of this section except as follows:

(1) A newly registered practitioner shall be exempt from completing the mandatory continuing education program during the fiscal year he or she is first registered.

(2) A practitioner who becomes inactive in accordance with § 11.11(c)(1) shall be exempt from completing the mandatory continuing education program if, while qualifying for inactive status, the practitioner passed the recertification program for patent examiners required during the practitioner's employment in the Office and appropriate to practitioner's grade and position in the Office.

(3) A practitioner who becomes inactive in accordance with § 11.11(c)(2) shall be exempt from completing the continuing education program while qualifying for inactive status as a judge.

(4) A practitioner who has obtained a waiver of the deadline for completing a program for good cause shown. A practitioner dissatisfied with a final decision of the OED Director may seek review of the decision upon petition to the USPTO Director accompanied by payment of the fee set forth in § 1.21(a)(5). *See* § 11.2(d).

(c) *Reinstatement.* A person who, after having resigned in accordance with § 11.11(e), having been transferred to disability inactive status under § 11.28, or having been suspended or excluded from practice before the Office under §§ 11.24, 11.25, 11.27, 11.55, or 11.56, seeks to be reinstated shall arrange with the OED Director to complete the continuing education programs for currency in patent laws, practices, policies and procedures. Thereafter, the person shall have the same continuing education program requirement as is required of a registered practitioner.

(d) *Administrative suspension for failure to complete continued education program requirement.* Any practitioner in active status who fails to complete the requirement within the time allowed by paragraph (a) of this section shall be delinquent in meeting the requirement, and the practitioner shall be subject to the provisions of § 11.11(b) to overcome a delinquency. Failure to pass each continuing education program within the permitted sixty-day period set in § 11.11(b)(1) shall subject the practitioner to the fees required by § 1.21(a)(9) of this subchapter and administrative suspension in accordance with the procedure of § 11.11(b)(2).

§ 11.13 Eligible mandatory continuing education programs.

(a) *Eligibility.* (1) A continuing education program is eligible to satisfy the mandatory continuing education requirements of § 11.12(a)(1) if either:

(i) the Office provides the program via Web-delivery or, if Web-delivery is unavailable, via a traditional or other appropriate distance delivery method, or

(ii) a USPTO pre-approved sponsor offers a course pre-approved by the OED Director as providing the legal, procedural and policy subject matter identified by the USPTO Director as being required to satisfy the mandatory continuing education program.

(b) *USPTO-delivered program.* A continuing education program provided by the USPTO in accordance with paragraph (a)(1) of this section will include narrative material, such as notices, rule packages, or the Manual of Patent Examining Procedure, and questions regarding the material. A practitioner choosing this educational mode shall complete the program, including answering the questions, on the Internet unless the latter is unavailable to the practitioner. A practitioner completing the program by traditional or other appropriate distance delivery method shall obtain and pay the fee required by § 1.21(a)(12) of this subchapter for the program and furnished materials.

(c) *USPTO pre-approved sponsor of a mandatory continuing education program.* A continuing education program provided by a USPTO pre-approved sponsor in accordance with paragraph (a)(2) of this section shall include the topics and content required to satisfy the mandatory continuing education program, and shall complete presentation of the program.

(d) *Certificate of completion.* (1) Upon completion of a required continuing education program in accordance with paragraph (b)(2) of this section, the OED Director shall credit the practitioner with completing the program.

(2) Upon completion of a required continuing education program in accordance with paragraph (b)(2) of this section, the pre-approved program sponsor shall file with the OED Director a certificate of completion of the program for each practitioner attending and completing the mandatory continuing education program. Upon receipt of the certificate the OED Director shall credit the practitioner with completing the program.

(3) The OED Director will not give credit for completion by practitioners of programs which have not been pre-approved by the OED Director as providing the legal, procedural and policy subject matter identified by the USPTO Director as being required to satisfy the mandatory continuing education program.

(e) *Standards for approval of USPTO pre-approved sponsor-delivered mandatory continuing education programs.* (1) The OED Director shall review and approve the content of all sponsor-delivered education programs.

(2) A sponsor-delivered mandatory continuing education program is approved as eligible to satisfy the mandatory education requirements of § 11.12(a)(1) if the OED Director has specifically approved it.

(3) To be approved, the program must have significant intellectual or practical content and be directed to legal, procedural and policy subject matter identified by the USPTO Director as being required to satisfy the mandatory continuing education program. Its

primary objective must be to enhance the attendee's professional competence and skills as a patent practitioner, and to enhance the quality of legal services rendered to the public.

(4) All sponsor-delivered mandatory continuing education programs must be conducted in a setting physically suitable to the program. If not Web-delivered, a suitable writing surface should be provided.

(5) Where USPTO instructional material is available, a pre-approved sponsor will provide copies of the same or the equivalent thereof.

(f) *Procedure for approval of programs.* (1) A sponsor desiring approval of a delivered education program shall submit to the OED Director all information called for by the "Application by Sponsor for Pre-approval of a Continuing Education Program," and the fee required by § 1.21(a)(13) of this subchapter. The content of this application will be promulgated by the OED Director and may be changed from time-to-time.

(2) If the program proposed by a sponsor is approved, the OED Director also shall notify the requesting sponsor of the decision within 60 days after receipt of the completed application. The OED Director shall maintain and make available on the Office Web site a list of all approved programs for each completion period. Approval of a program is only effective for the completion period for which it is approved.

(3) The sponsor of a pre-approved continuing education program should include in its brochures or course descriptions the information contained in the following illustrative statement: "This course or program has been pre-approved by the United States Patent and Trademark Office for Mandatory Continuing Education Program." An announcement is permissible only after the program has been specifically approved pursuant to an application submitted directly by the sponsor.

(g) *Procedure for approval of sponsors.* (1) Any sponsor may apply for approval of individual courses by complying with the criteria of paragraphs (e) and (f) of this section.

(2) A USPTO-approved sponsor shall be subject to and governed by the applicable provisions of these regulations, including the quality standards of paragraph (f) of this section and the recordkeeping and reporting requirements. The OED Director may at any time review a USPTO-approved sponsor's program and reserves the right to withdraw approval when the standards for approval are not met or maintained. If the OED Director finds there is a basis for revocation of the approval granted, the OED Director shall send notice by certified mail to that sponsor of the revocation within thirty days of the OED Director's decision.

(3) A USPTO-approved sponsor must notify the OED Director at least two weeks in advance of a program of the name, date, and location of a particular continuing education program. The OED Director may request additional information regarding a program.

(4) Law firms, professional corporations, and corporate law departments are not eligible to become approved sponsors.

§ 11.14 Individuals who may practice before the Office in trademark and other non-patent matters.

(a) *Attorneys.* Any individual who is an attorney may represent others before the Office in trademark and other non-patent matters. An attorney is not required to apply for registration or recognition to practice before the Office in trademark and other non-patent matters. Registration as a patent attorney does not entitle an individual to practice before the Office in trademark matters.

(b) *Non-lawyers.* Individuals who are not attorneys are not recognized to practice before the Office in trademark and other non-patent matters, except that individuals not attorneys who were recognized to practice before the Office in trademark matters under this chapter prior to January 1, 1957, will be recognized as agents to continue practice before the Office in trademark matters.

(c) *Foreigners.* Any foreign attorney or agent not a resident of the United States who shall prove to the satisfaction of the OED Director that he or she is registered or in good standing before the patent or trademark office of the country in which he or she resides and practices, may be recognized for the limited purpose of representing parties located in such country before the Office in the presentation and prosecution of trademark matters, provided: the patent or trademark office of such country allows substantially reciprocal privileges to those permitted to practice in trademark matters before the Office. Recognition under this paragraph shall continue only during the period that the conditions specified in this paragraph obtain.

(d) Recognition of any individual under this section shall not be construed as sanctioning or authorizing the performance of any act regarded in the jurisdiction where performed as the unauthorized practice of law.

(e) No individual other than those specified in paragraphs (a), (b), and (c) of this section will be permitted to practice before the Office in trademark matters. Any individual may appear in a trademark or other non-patent matter in his or her own behalf. Any individual may appear in a trademark matter for:

(1) A firm of which he or she is a member,

(2) A partnership of which he or she is a partner, or

(3) A corporation or association of which he or she is an officer and which he or she is authorized to represent, if such firm, partnership, corporation, or association is a party to a trademark proceeding pending before the Office.

(f) *Application for reciprocal recognition.* An individual seeking reciprocal recognition under paragraph (c) of this section, in addition to providing evidence satisfying the provisions of paragraph (c) of this section, shall apply in writing to the OED Director for reciprocal recognition, and shall pay the application fee required by §§ 1.21(a)(1)(i) and (a)(6) of this subchapter.

§ 11.15 Refusal to recognize a practitioner.

Any practitioner authorized to appear before the Office may be suspended, excluded, or reprimanded in accordance with the provisions of this Part. Any practitioner who is suspended or excluded under this part or removed under § 11.11(b) shall not be entitled to practice before the Office in patent, trademark, or other non-patent matters.

§ 11.16 Financial books and records.

A practitioner, in return for being registered under § 11.6, granted limited recognition under § 11.9, or recognized to practice before the Office under § 11.14, agrees that the OED Director may examine financial books and records maintained by or for the practitioner for the practice before the Office, including, without limitation, any and all trust accounts, including any trust account that may not be in compliance with the Rules of Professional Conduct, fiduciary accounts, and operating accounts maintained by the practitioner or his or her law firm. The OED Director may also examine any trust account maintained by a practitioner whenever the OED Director reasonably believes that the trust account may not be in compliance with the Rules of Professional Conduct.

§ 11.17 [Reserved]

§ 11.18 Signature and certificate for correspondence filed in the Office.

(a) For all documents filed in the Office in patent, trademark, and other non-patent matters, and all documents filed with a hearing officer in a disciplinary proceeding, except for correspondence that is required to be signed by the applicant or party, each piece of correspondence filed by a practitioner in the Office must bear a signature, personally signed by such practitioner, in compliance with § 1.4(d)(1) of this subchapter.

(b) By presenting to the Office or hearing officer in a disciplinary proceeding (whether by signing, filing, submitting, or later advocating) any paper, the party presenting such paper, whether a practitioner or non-practitioner, is certifying that—

(1) All statements made therein of the party's own knowledge are true, all statements made therein on information and belief are believed to be true, and all statements made therein are made with the knowledge that whoever, in any matter within the jurisdiction of the Office, knowingly and willfully falsifies, conceals, or covers up by any trick, scheme, or device a material fact, or makes any false, fictitious or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry, shall be subject to the penalties set forth under 18 U.S.C. 1001, and violations of the provisions of this section may jeopardize the validity of the application or document, or the validity or enforceability of any patent, trademark registration, or certificate resulting therefrom; and

(2) To the best of the party's knowledge, information and belief, formed after an inquiry reasonable under the circumstances,

(i) The paper is not being presented for any improper purpose, such as to harass someone or to cause unnecessary delay or needless increase in the cost of prosecution before the Office;

(ii) The other legal contentions therein are warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law;

(iii) The allegations and other factual contentions have evidentiary support or, if specifically so identified, are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery; and

(iv) The denials of factual contentions are warranted on the evidence, or if specifically so identified, are reasonably based on a lack of information or belief.

(c) Violations of paragraph (b)(1) of this section by a practitioner or non-practitioner may jeopardize the validity of the application or document, or the validity or enforceability of any patent, trademark registration, or certificate resulting therefrom. Violations of any of paragraphs (b)(2)(i) through (iv) of this section are, after notice and reasonable opportunity to respond, subject to such sanctions as deemed appropriate by the USPTO Director, or hearing officer, which may include, but are not limited to, any combination of—

(1) Holding certain facts to have been established;

(2) Returning papers;

(3) Precluding a party from filing a paper, or presenting or contesting an issue;

(4) Imposing a monetary sanction;

(5) Requiring a terminal disclaimer for the period of the delay; or

(6) Terminating the proceedings in the Office.

(d) Any practitioner violating the provisions of this section may also be subject to disciplinary action. *See* § 11.303(e)(4).

Subpart C—Investigations and Disciplinary Proceedings

Jurisdiction, Sanctions, Investigations, and Proceedings

§ 11.19 Disciplinary jurisdiction.

(a) *Individuals subject to disciplinary jurisdiction.* The following individuals are subject to the disciplinary jurisdiction of the Office:

(1) *Practitioners.* All practitioners engaged in practice before the Office; all practitioners administratively suspended under § 11.11(b); all practitioners who have resigned under § 11.11(d); all practitioners inactivated under § 11.11(c); all practitioners authorized under § 11.6(d) to take testimony; and all practitioners reprimanded, suspended, or excluded from the practice of law by a duly constituted authority, including by the USPTO Director.

(2) *Other individuals.* An applicant for patent (§ 1.41(b) of this subchapter) representing himself, herself, or representing himself or herself and other individuals who are applicants pursuant to §§ 1.31 or 1.33(b)(4) of this subchapter; an individual who is an assignee as provided for under § 3.71(b) of this subchapter; and an individual appearing in a trademark or other non-patent matter pursuant to § 11.14(e), whether representing a firm, corporation, or association are subject to the disciplinary jurisdiction of the Office, including §§ 11.19(c)(2), (d) and (e); 11.20(a)(2), and (b); 11.21–11.23; 11.24; 11.25 –11.28, 11.32–11.45, and 11.49–11.60.

(b) *Jurisdiction of courts and voluntary bar associations.* Nothing in these rules shall be construed to deny to any State or Federal Court such powers as are necessary for that court to maintain control over proceedings conducted before it, such as the power of contempt. Further, nothing in these rules shall be construed to prohibit any State or Federal Court, or a voluntary or mandatory bar association from censuring, reprimanding, suspending, disbarring, or otherwise disciplining its members, including registered practitioners for conduct regarding practice before the Office in any matter.

(c) *Misconduct—grounds for discipline.* (1) *Practitioners.* Acts or omissions by a practitioner (including a suspended, excluded, or inactive practitioner), acting individually or in concert with any other person or persons constituting gross misconduct, violating the imperative USPTO Rules of Professional Conduct, or the oath taken by practitioner shall constitute misconduct and shall be grounds for discipline, whether or not the act or omission occurred in the course of providing legal services to a client, or in a matter pending before the Office. Grounds for discipline include:

(i) Conviction of a crime (*see* §§ 11.24, 11.803(d) and 11.804(b));

(ii) Discipline imposed in another jurisdiction (*see* §§ 11.24 and 11.803(e)(1) and (f)(4));

(iii) Failure to comply with any order of a Court disciplining a practitioner, or any order of the USPTO Director disciplining a practitioner;

(iv) Failure to respond to a written inquiry from OED Director in the course of an investigation into whether there has been a violation of the imperative USPTO Rules of Professional Conduct without asserting, in writing, the grounds for refusing to do so; or

(v) Violation of the imperative USPTO Rules of Professional Conduct. *See* § 11.100(a).

(2) *Other individuals.* Acts or omissions by applicants for patent (§ 1.41(b) of this subchapter) representing themselves, or an individual applicant representing himself or herself and other individuals who are applicants pursuant to §§ 1.31 or 1.34(b)(4) of this subchapter; an individual who an assignee as provided for under § 3.71(b) of this subchapter; and an individual appearing in a trademark or other non-patent matter pursuant to § 11.14(e), whether

representing a firm, corporation, or association who violate the provisions of §§ 11.303(a)(1), 11.304, 11.305(a), or 11.804 shall constitute misconduct and shall be grounds for discipline.

(d) Petitions to disqualify a practitioner in ex parte or inter partes matters in the Office are not governed by §§ 11.19 through 11.806 and will be handled on a case-by-case basis under such conditions as the USPTO Director deems appropriate.

(e) Unauthorized practice of law matters may be referred to the appropriate authority in the jurisdiction(s) where the act(s) occurred.

§ 11.20 Disciplinary sanctions.

(a) *Types of discipline.* (1) *For practitioners.* The USPTO Director, after notice and opportunity for a hearing, may impose on a practitioner shown to be incompetent or disreputable, who is guilty of gross misconduct, or who violates a Rule of Professional Conduct currently in effect in the Office, any of the following types of discipline:

(i) Exclusion from practice before the Office in patent, trademark or other non-patent law;

(ii) Suspension from practice before the Office in patent, trademark or other non-patent law for an indefinite period, or appropriate fixed period of time not to exceed five years. Any order of suspension may include a requirement stated in the order that the practitioner satisfy certain conditions prior to reinstatement, including furnishing proof of rehabilitation;

(iii) Reprimand, or

(iv) Probation for not more than three years. Probation may be imposed in lieu of or in addition to any other disciplinary sanction. Any conditions of probation shall be stated in writing in the order imposing probation. The order shall also state whether, and to what extent, the practitioner or other person shall be required to notify clients of the probation. The order shall establish procedures for the supervision of probation. Violation of any condition of probation shall make the practitioner subject to revocation of probation, and the disciplinary sanction stated in the order imposing probation.

(2) *For Other Individuals.* In regard to a patent applicant representing himself or herself, or representing himself or herself and other individual who are applicants under §§ 1.31 or 1.33(b)(4) of this subchapter; an individual who is an assignee as provided for under § 3.71(b) of this subchapter; an individual appearing in a trademark or other non-patent matter pursuant to § 11.14(e), whether representing a firm, corporation, or association, the USPTO Director, after notice and opportunity for a hearing, may impose on said applicant, assignee, person, or individual appearing in a trademark or other non-patent matter shown to have violated a provision of §§ 11.303(a)(1), 11.304, 11.305(a), or 11.804, may be appropriately sanctioned by, but not limited to, requiring the individual to be represented by counsel, striking the filing of any document, or dismissing the filing of an application with prejudice.

(b) *Conditions imposed with discipline.* When imposing discipline, the practitioner, or other individual may be required to make restitution either to persons financially injured by the practitioner's, or other individual's conduct or to an appropriate client's security trust fund, or both, as a condition of probation or of reinstatement. Any other reasonable condition may also be imposed, including a requirement that the practitioner or other individual take and pass a professional responsibility examination.

§ 11.21 Warnings.

Warning. A warning is not a disciplinary sanction. The OED Director, in consultation with and consent from a panel of the Committee on Discipline, may conclude an investigation with the issuance of a warning. The warning shall contain a brief statement of facts and relevant imperative USPTO Rules of Professional Conduct upon which the warning is based. The warning shall be final and not reviewable.

§ 11.22 Investigations.

(a) The OED Director is authorized to investigate possible violations of an imperative Rule of Professional Conduct by practitioners; or possible violations of §§ 11.303(a)(1), 11.304, 11.305(a), or 11.804 by other individuals identified in § 11.19(a)(2). *See* § 11.2(b)(2). The investigation may be based on information from any source whatsoever, or on a complaint where alleged or presented facts, if true, may warrant discipline. The information need not be in the form of a complaint.

(b) Any practitioner, other individual (*see* § 11.19(a)(2)), or nonpractitioner possessing knowledge or information concerning a possible violation of an imperative Rule of Professional Conduct currently in effect before the Office by a practitioner may report the violation to the OED Director. The OED Director may require that the report be presented in the form of an affidavit or declaration.

(c) *Initiation of investigations.* An investigation may be initiated upon complaint or information. A staff attorney under the supervision of the OED Director shall conduct all investigations. Neither unwillingness nor neglect by a complainant to prosecute a charge, nor settlement, compromise, or restitution, shall in itself justify abatement of an investigation.

(d)(1) *Complaints.* A complaint is a communication by a person outside the Office alleging or presenting facts of possible misconduct by a practitioner or other individual (*see* § 11.19(a)(2)). A complaint shall be in writing and shall contain a brief statement of the facts upon which the complaint is based. The complaint need not be a sworn statement.

(2) *Information.* Information is one or more written communications from any source alleging or containing facts that, if true, may warrant discipline for misconduct by a practitioner or other individual (*see* § 11.19(a)(2)). The information need not be a sworn statement.

(e) *Preliminary screening of complaints and information.* Under the supervision of the OED Director, a staff attorney shall examine all complaints and information. The staff attorney, after such preliminary inquiry as appears appropriate, shall determine whether the complaint or information is to be docketed. A complaint or information shall be docketed if it:

(1) Is not unfounded on its face;

(2) Contains allegations or information which, if true, would constitute a violation of the practitioner's oath or an imperative Rule of Professional Conduct currently in effect before the Office that would merit discipline; and

(3) Is within the jurisdiction of the Office.

(f) *Decision not to docket and notice to complainant.* If OED Director determines that a matter is not to be docketed, the OED Director shall so notify the complainant and the practitioner or other individual (*see* § 11.19(a)(2)), giving a brief statement of the reasons therefor. The OED Director's decision is final and not subject to review.

(g) *Docketing of complaint or information; notification to complainant.* A docketed complaint or information shall be assigned a docket number with the first two digits showing the fiscal year in which the complaint is docketed. Complainants shall be promptly advised in writing by the OED Director or a staff attorney of the docketing of the complaint.

(h) *Notification.* The OED Director or staff attorney shall promptly notify the practitioner or other individual (*see* § 11.19(a)(2)) in writing when a formal investigation into a practitioner's or other individual's conduct has been initiated. This notice shall include a copy of the complaint, information, or other relevant documents upon which the investigation is based, a request for a written response from the practitioner or other individual, and any questions reasonably likely to elicit answers, records, and information helpful in the conduct of the investigation.

(i) *Duty to reply; response.* A practitioner, or other individual (*see* § 11.19(a)(2)) under investigation has an obligation to reply to the OED Director's written inquiries in the conduct of an investigation. The reply shall set forth the position of the practitioner or other individual under investigation with respect to allegations contained in the complaint, facts contained in the information, and all inquiries by the OED Director. The reply shall be filed with the OED Director within thirty calendar days after the mailing date of the notice in paragraph (h) of this section. A single extension of time shall be granted to reply to an inquiry upon written request of the practitioner or other individual (*see* § 11.19(a)(2)), and in no case shall the extension of time exceed thirty days.

(j) *Request for information by OED Director.* (1) In the course of the investigation, the OED Director may request information concerning the practitioner's actions from:

(i) The complainant,

(ii) The practitioner,

(iii) Another individual as defined by § 11.19(a)(2), or

(iv) Any party who may reasonably be expected to have information.

(2) The OED Director, or staff attorney or other representative may also request information from a noncomplaining client after obtaining either the consent of the practitioner or, upon a written showing of good cause, the authorization of the Director (*see* § 11.23(a)). Neither a request for, nor disclosure of, information shall constitute a violation of any of the Rules of Professional Conduct contained in §§ 11.100 *et seq.*

(k) *Request for financial records by OED Director.* In the course of an investigation, the OED Director, alone or through a staff attorney, may examine financial books and records maintained by a practitioner for the practice before the Office, including, without limitation, any and all trust accounts, fiduciary accounts, and operating accounts maintained by the practitioner or his or her law firm. The OED Director, alone or through a staff attorney, may also examine any trust account maintained by a practitioner whenever the OED Director reasonably believes that the trust account may not be in compliance with the Rules of Professional Conduct. In the exercise of this authority, the OED Director or staff attorney may seek the assistance of State bar counsel to obtain such summons and subpoenas as he or she may reasonably deem necessary for the effective conduct of an investigation or an examination of a trust account. In every case in which the OED Director or staff attorney initiates examination of a trust account, or seeks any summons or subpoena in the conduct of an examination of or an investigation concerning said trust account, other than on the basis of a complaint against the practitioner, the OED Director or staff attorney shall file a written statement as part of the record in the case setting forth the reasons supporting the belief that the subject trust account may not be in compliance with the Rules of Professional Conduct. After State bar counsel agrees to seek such summons and subpoenas, a copy of the written statement shall be delivered to the practitioner whose trust account is the subject of the investigation.

(l) *Failure to reply to OED Director.* If a practitioner, or other individual (*see* § 11.19(a)(2)) fails to reply to the request for information sought under paragraph (j) of this section, fails to provide requested financial records sought under paragraph (k) of this section, or replies evasively in the conduct of an investigation, the OED Director may request the Committee on Discipline to enter an appropriate finding of probable cause of violating § 11.804(d).

(m) *Disposition of investigation.* Upon the consideration of an investigation, the OED Director may:

(1) Close the investigation with neither a warning, nor disciplinary action; or

(2) Issue a warning to the practitioner or other individual (*see* § 11.19(a)); or

(3) Institute formal charges with the prior approval of the Committee on Discipline; or

(4) Enter into a diversion agreement with the approval of the USPTO Director (*see* § 11.26).

(n) *Closing investigation with no warning.* The OED Director shall terminate an investigation and decline to refer a matter to the Committee on Discipline if the OED Director determines that:

(1) The complaint is unfounded; or

(2) The complaint is not within the jurisdiction of the Office; or

(3) As a matter of law, the conduct questioned or alleged does not constitute misconduct, even if the conduct may involve a legal dispute; or

(4) The available evidence shows that the practitioner, or other individual (*see* § 11.19(a)(2)) did not engage or did not willfully engage in the misconduct questioned or alleged; or

(5) There is no credible evidence to support any allegation of misconduct on the part of the practitioner, or other individual (*see* § 11.19(a)(2)), or

(6) The available evidence could not reasonably be expected to support any allegation of misconduct under a "clear and convincing" evidentiary standard.

§ 11.23 Committee on Discipline.

(a) The USPTO Director shall appoint a Committee on Discipline. The Committee on Discipline shall consist of at least three employees of the Office, plus at least three alternate members who also are employees of the Office. None of the Committee members or alternates shall report directly or indirectly to the OED Director or the General Counsel. Each Committee member and the alternates shall be a member in good standing of the bar of the highest court of a State. The Committee members and alternates shall select a Chairperson from among themselves. The Committee or its panels shall meet at regular intervals with the OED Director. Three Committee members or alternates so selected will constitute a panel of the Committee.

(b) *Powers and duties of the Committee on Discipline.* The Committee shall have the power and duty:

(1) To appoint two or more panels of its members and alternates, each consisting of at least three Committee members or alternates, who shall review information and evidence presented by the OED Director;

(2) To meet as a panel at the request of the OED Director and, after reviewing evidence presented by the OED Director, shall by majority vote, to determine whether there is probable cause to bring charges under § 11.32 against a practitioner or other individual (*see* § 11.19(a)(2)). When probable cause is found regarding a practitioner or other individual (*see* § 11.19(a)(2)), no Committee member or alternate on the panel, employee under the direction of the OED Director, or employee under the direction of the Deputy General Counsel for Intellectual Property shall participate in rendering a decision on any complaint filed against the practitioner or other individual;

(3) To assign a Contact Member to review and approve or suggest

modifications of recommendations by the OED Director for dismissals, and warnings; and

(4) To prepare and forward its own probable cause findings and recommendations to the OED Director.

(c) No discovery shall be authorized of, and no member of or alternate to the Committee on Discipline shall be required to testify about, deliberations of the Committee on Discipline or of any panel.

§ 11.24 Interim suspension and discipline based upon reciprocal discipline.

(a) *Notification.* A practitioner who has been disbarred (including disbarred or excluded on consent) or suspended by a disciplinary court, or who has resigned in lieu of a disciplinary proceeding before or while an investigation is pending shall notify the OED Director in writing of the same within ten days from the date he or she is so suspended, disbarred, excluded or disbarred on consent, or has resigned. Upon learning that a practitioner subject to the disciplinary jurisdiction of the Office has been disbarred, suspended or has resigned in lieu of disciplinary action, the OED Director shall obtain a certified copy of the record of the suspension, disbarment or resignation from the disciplinary court, and file the same with the USPTO Director and the hearing officer if a disciplinary proceeding is pending at the time. Every attorney who has been suspended, or disbarred, or who has resigned shall be disqualified from practicing before the Office in patent, trademark, and other non-patent cases, as a practitioner, during the time of suspension, disbarment, or resignation.

(b) *Notice to Show Cause and Interim Suspension.* (1) Following receipt of a certified copy of the record, the USPTO Director shall enter an order suspending the practitioner from practice before the Office and afford the practitioner an opportunity to show cause, within 40 days, why an order for identical disciplinary action should not be entered. Upon response, and any reply by the OED Director authorized by the USPTO Director, or if no response is timely filed, the USPTO Director will enter an appropriate order.

(2) After said notice and opportunity to show cause why identical disciplinary action should not be taken, and if one or more material facts set forth in paragraphs (c)(1) through (c)(4) of this section are in dispute, the USPTO Director may enter any appropriate disciplinary sanction upon any practitioner who is admitted to practice before the Office for failure to comply with the Rules of Professional Responsibility.

(3) The other provisions of this part providing a procedure for the discipline of a practitioner do not apply to proceedings pursuant to this section.

(c) *Proof of misconduct.* (1) In all proceedings under this section, a final adjudication in a disciplinary court shall establish conclusively the misconduct clearly disclosed on the face of the record upon which the discipline is predicated. A certified copy of the record of suspension, disbarment, or resignation shall be conclusive evidence of the commission of professional misconduct in any reciprocal disciplinary proceeding based thereon. However, nothing this paragraph (c) shall preclude the practitioner from demonstrating at the hearing provided for under paragraph (b) of this section by clear and convincing evidence the existence of one or more of material facts in paragraphs (c)(1)(i) through (c)(1)(iv) of this section as a reason for not imposing the identical discipline. The practitioner shall bear the burden of demonstrating, by clear and convincing evidence that the identical discipline should not be imposed because:

(i) The procedure elsewhere was so lacking in notice or opportunity to be heard as to constitute a deprivation of due process; or

(ii) There was such infirmity of proof establishing the misconduct as to give rise to the clear conviction that the Office could not, consistently with its duty, accept as final the conclusion on that subject; or

(iii) The imposition of the same discipline by the Office would result in grave injustice; or

(iv) The misconduct established warrants substantially different discipline in the Office.

(2) If the practitioner does not satisfy the practitioner's burden of showing the existence of one of material facts of paragraphs (c)(1)(i), (c)(1)(ii) or (c)(1)(iii) of this section, then a final determination by a disciplinary court that a practitioner has been guilty of professional misconduct shall conclusively establish the misconduct for the purpose of a reciprocal disciplinary proceeding in the Office.

(d) *Reciprocal discipline-action where practice has ceased.* (1) If the practitioner has promptly notified the OED Director of his or her discipline in another jurisdiction, and otherwise establishes to the satisfaction of the USPTO Director, by affidavit or otherwise, that the practitioner has voluntarily ceased all practice before the Office, and the OED Director confirms the same, the USPTO Director will favorably consider that the effective date of any suspension or disbarment be imposed *nunc pro tunc* to the date respondent voluntarily ceased all practice before the Office. The USPTO Director will not favorably consider retroactive effectiveness of a suspension or disbarment if the practitioner has not also complied with the provisions of § 11.58, as such section would apply if voluntary cessation from all practice before the Office were treated as a suspension ordered by the USPTO Director.

(2) *Action when reciprocal discipline is not recommended.* If the USPTO Director concludes that reciprocal discipline should not be imposed, the USPTO Director shall accept the facts found by the disciplinary court unless he or she makes a finding under paragraphs (c)(1)(i), (c)(1)(ii) or (c)(1)(iii) of this section. In the absence of such a finding, the USPTO Director shall enter an appropriate order.

(e) *Appropriate Order.* The USPTO Director may impose the identical discipline unless the practitioner demonstrates by clear and convincing evidence, or the USPTO Director finds said evidence on the face of the record on which the discipline is predicated, that one or more of the grounds set forth in paragraph (a) of this section exists. If the USPTO Director determines that the identical discipline should not be imposed, the USPTO Director shall enter an appropriate order, including entry of a different sanction on the practitioner, or referral of the matter to a hearing officer for further consideration and recommendation.

(f) *Reinstatement following discipline.* A practitioner may petition for reinstatement under conditions set forth in § 11.60 no sooner than after completion of the suspension, disbarment, or probation, and conditions for reinstatement to the bar of the highest court of the State where the practitioner was suspended or disbarred.

§ 11.25 Interim suspension and discipline based upon conviction of committing a serious crime or other crime coupled with confinement or commitment to imprisonment.

(a) *Serious crimes.* If the serious crime for which the practitioner was convicted involves moral turpitude *per se*, the practitioner shall be excluded, or if the conduct underlying the offense involved moral turpitude, the practitioner shall be excluded. A conviction shall be deemed a felony if the judgment was entered as a felony irrespective of any subsequent order suspending sentence or granting probation.

(b) *Other crime coupled with confinement or commitment to imprisonment.* Every practitioner convicted of a crime in a court of the United States, or of any state, district, territory of the United States, or of a foreign country shall be disqualified from practicing before the Office in patent, trademark or other non-patent law matters as attorney or patent agent during the actual time of confinement or commitment to imprisonment and during release from actual confinement on condition of probation or parole.

(c) *Notification.* A practitioner who has been convicted of a serious crime in a court of the United States, or of any state, district, territory of the United States, or of a foreign country, except as to misdemeanor traffic offenses or traffic ordinance violations, not including the use of alcohol or drugs, or a practitioner who is convicted of any other crime and is confined or committed to imprisonment shall inform the OED Director within ten days from the date of such conviction. Upon learning that a practitioner has been convicted of a serious crime or another crime coupled with confinement or commitment to imprisonment, the OED Director shall obtain a certified copy of the conviction or docket entry, and file the same with the USPTO Director.

(d) *Notice to show cause and interim suspension.* (1) Following receipt of a certified copy of the court record or docket entry of the conviction, the USPTO Director shall enter an order suspending the practitioner in the interim from practice before the Office until the time for appeal has elapsed, if no appeal has been taken, or until the judgment or conviction has been affirmed on appeal, or has otherwise become final, and until further order of the USPTO Director. The USPTO Director may, *sua sponte*, decline to impose or may set aside, the suspension when it appears to be in the interest of justice to do so, with due regard being given to maintaining the integrity of, and confidence in, the profession of law. Upon a conviction becoming final, or imposition of a sentence or probation, the USPTO Director shall afford the practitioner an opportunity to show cause, within 40 days, why an order disciplining the practitioner should not be entered. Upon response, or if no response is timely filed, the USPTO Director shall enter an appropriate order.

(2) After said opportunity to show cause why disciplinary action should not be taken, and if one or more material facts are in dispute, the USPTO Director may enter an order disciplining any practitioner recognized to practice before the Office for failure to comply with the Rules of Professional Responsibility.

(3) The other provisions of this Part providing a procedure for the discipline of a practitioner do not apply to proceedings pursuant to this section to discipline a practitioner convicted of a serious crime or a practitioner who is convicted of a crime and is confined or committed to imprisonment.

(e) *Proof of guilt.* A certified copy of the court record or docket entry of the conviction shall be conclusive evidence of the guilt of the crime of which the practitioner has been convicted, and of any imposed confinement or commitment to imprisonment. However, nothing this paragraph (e) shall preclude the practitioner from demonstrating in said hearing afforded by the USPTO Director, by clear and convincing evidence, material facts to be considered when determining if a serious crime was committed and whether a disciplinary sanction should be entered.

(f) If the USPTO Director finds that the offense involves moral turpitude *per se*, or that the conduct underlying the offense involves moral turpitude, the practitioner shall be excluded. If the USPTO Director finds that the practitioner was convicted of a crime and has been incarcerated, regardless of whether the offense involved moral turpitude, the practitioner shall be suspended or excluded and shall not be eligible for reinstatement during the time of confinement or commitment to imprisonment or release from actual confinement on conditions of probation or parole. If the USPTO Director finds that the practitioner has been convicted of a serious crime without being incarcerated, the USPTO Director may either continue the suspension or exclude the practitioner from practice before the Office. A copy of the USPTO Director's decision shall be served on the practitioner by certified mail, or any other available means, and upon the OED Director.

(g) *Crime determined not to be serious crime.* If the USPTO Director determines under paragraph (d) of this section not only that the crime is not a serious crime, but also that the practitioner has not been confined or committed to imprisonment, an order shall be entered reinstating the practitioner immediately. The proceeding shall continue (without referral of the matter to the Committee on Discipline under § 11.23) on a complaint pursuant to § 11.34 that the OED Director files within the time set by the order, and an answer pursuant to § 11.35 that the practitioner files within the time set by the order. A disciplinary proceeding may continue before the hearing officer, and the hearing officer may hold such hearings and receive such briefs and other documents under §§ 11.35 through 11.53, as the hearing officer deems appropriate. However, the proceeding before the hearing officer shall not be concluded until all direct appeals from conviction of the crime have been completed.

(h) *Reinstatement.*—(1) *Upon reversal, vacation or setting aside of conviction.* A practitioner suspended or excluded under this section may file with the USPTO Director, at any time, a certificate demonstrating that the conviction. for which interim suspension was imposed, has been reversed, vacated or set aside by a court having jurisdiction of the criminal matter. Upon the filing of the certificate, the USPTO Director shall promptly enter an order reinstating the practitioner, but the reinstatement shall not terminate any other disciplinary proceeding then pending against the practitioner, the disposition of which shall be determined by the USPTO Director or hearing officer before whom the matter is pending, on the basis of all available evidence.

(2) *Following conviction of a crime coupled with confinement or commitment to imprisonment.* Any practitioner convicted of a crime and confined or committed to imprisonment, and who is disciplined in whole or in part in regard thereto, may petition for reinstatement under conditions set forth in § 11.60 no sooner than five years following discharge after completion of service of his or her sentence, or after completion of service under probation or parole, whichever is later.

(i) *Other crimes not coupled with confinement or commitment to imprisonment.* Upon being notified by a practitioner or upon receipt of a certified copy of a court record demonstrating that a practitioner has been found convicted of a crime other than a serious crime, and that the practitioner has not been confined or committed to imprisonment, the OED Director shall investigate the matter under § 11.22 and proceed as appropriate under §§ 11.26, 11.27, 11.28, and/or 11.32.

§ 11.26 Diversion.

(a) *Availability of diversion.* Subject to the limitations in paragraph (b) of this section, the OED Director may offer diversion to a practitioner under investigation for a disciplinary violation.

(b) *Limitations on diversion.* Diversion shall be available in matters

of alleged minor misconduct, but shall not be available where:

(1) The alleged misconduct resulted in, or is likely to result in, prejudice to a client or another person; or

(2) Discipline previously has been imposed, diversion previously has been offered and accepted, or a warning was previously issued, unless the OED Director finds the presence of exceptional circumstances justifying a waiver of this limitation; or

(3) The alleged misconduct involves fraud, dishonesty, deceit, misappropriation or conversion of client funds or other things of value, or misrepresentation; or

(4) The alleged misconduct constitutes a criminal offense under applicable law.

(c) *Procedures for diversion.* At the conclusion of an investigation, the OED Director, at his or her sole discretion, may offer to a practitioner being investigated for misconduct the option of entering a diversion program in lieu of other procedures available to the OED Director. The OED Director shall be free to accept or reject a request by the practitioner for diversion. If the practitioner accepts diversion, a written diversion agreement shall be entered into by both parties including, *inter alia*, the time of commencement and completion of the diversion program, the content of the program, and the criteria by which successful completion of the program will be measured. The diversion agreement shall state that it is subject to review by the USPTO Director, to whom it shall be submitted for review and approval after execution by the OED Director and the practitioner.

(d) *Content of diversion program.* The diversion program shall be designed to rehabilitate the practitioner's practices or procedures leading to the alleged misconduct of the practitioner. It may include participation in formal courses of education sponsored by a voluntary bar organization, a law school, or another organization; completion of an individualized program of instruction specified in the agreement or supervised by another entity; or any other arrangement agreed to by the parties which is designed to improve the ability of the practitioner to practice in accordance with the Rules of Professional Conduct.

(e) *Proceedings after completion or termination of diversion program.* Except as provided in paragraph (b)(2) of this section, if the practitioner successfully completes a diversion program, the OED Director's investigation shall be closed. The practitioner shall have a record of the misconduct that was investigated, and the record may be considered in determining the discipline, if any, to be imposed based on other charges of misconduct brought against the practitioner in the future. If the practitioner does not successfully complete the diversion program, the OED Director shall take such other action as is authorized and prescribed under § 11.32.

§ 11.27 Exclusion by consent.

(a) *Required affidavit.* The OED Director may confer with a practitioner concerning possible violations by the practitioner of the Rules of Professional Conduct whether or not a disciplinary proceeding has been instituted. A practitioner who is the subject of an investigation or a pending disciplinary proceeding based on allegations of misconduct, and who desires to resign or settle the matter may only do so by consenting to exclusion and delivering to the OED Director an affidavit declaring the consent of the practitioner to exclusion and stating:

(1) That the consent is freely and voluntarily rendered, that the practitioner is not being subjected to coercion or duress, and that the practitioner is fully aware of the implication of consenting to exclusion;

(2) That the practitioner is aware that there is currently pending an investigation into, or a proceeding involving, allegations of misconduct, the nature of which shall be specifically set forth in the affidavit;

(3) That the practitioner submits the consent because the practitioner knows that if disciplinary proceedings based on the alleged misconduct were brought, the practitioner could not successfully defend against them; and

(4) That it may be conclusively presumed, for the purpose of determining any request for reinstatement under § 11.60, that the alleged facts on which the complaint was based are true and that the practitioner violated one or more Rules of Professional Conduct.

(b) *Action by the USPTO Director.* Upon receipt of the required affidavit, the OED Director shall file the affidavit and any related papers with the USPTO Director for review and approval. Upon such approval, the USPTO Director will enter an order excluding the practitioner on consent.

(c) When an affidavit under paragraph (a) of this section is received after a complaint under § 11.34 has been filed, the OED Director shall notify the hearing officer. The hearing officer shall enter an order transferring the disciplinary proceeding to the USPTO Director, who may enter an order excluding the practitioner on consent.

(d) *Reinstatement.* Any practitioner excluded by consent under this section cannot petition for reinstatement for five years. A practitioner excluded on consent who intends to reapply for admission to practice before the Office must comply with the provisions of § 11.58, and apply for reinstatement in accordance with § 11.60. Willful failure to comply with the provisions of § 11.58 constitutes grounds for denying an application for reinstatement.

§ 11.28 Incompetent and incapacitated practitioners.

(a) *Scope of disability proceedings.* This section applies to all disability matters, specifically including those to determine:

(1) Whether a practitioner has been judicially declared to be mentally incompetent or involuntarily committed to a mental hospital as an inpatient;

(2) Whether the hearing officer should apply to a Court for an order requiring a practitioner to submit to an examination by qualified medical experts regarding an alleged disability or addiction;

(3) Whether a practitioner is incapacitated from continuing to practice before the Office by reason of disability or addiction;

(4) Whether the OED Director should hold in abeyance a disciplinary investigation, or a hearing officer should hold in abeyance a disciplinary proceeding because of a practitioner's alleged disability or addiction;

(5) Whether a practitioner, having previously been suspended solely on the basis of a judicial order declaring the practitioner to be mentally incompetent, has subsequently been judicially declared to be competent and is therefore entitled to have the prior suspension terminated;

(6) Whether a practitioner, having previously been suspended solely on the basis of an involuntary commitment to a mental hospital as an inpatient, has subsequently been discharged from inpatient status and is therefore entitled to have the prior order of suspension terminated; and

(7) Whether a practitioner, having previously acknowledged or having been found by the hearing officer or USPTO Director to have suffered from a prior disability or addiction sufficient to warrant suspension (whether or not any suspension has yet occurred), has recovered to the extent, and for the period of time, sufficient to justify the conclusion that the practitioner is fit to resume or continue the practice before the Office and/or is fit to defend the

alleged charges against the practitioner in a disciplinary investigation or disciplinary proceeding that has been held in abeyance pending such recovery.

(b) *Appointment of counsel.* In a disability matter wherein the OED Director contends that the practitioner should be excluded or suspended from practice before the Office, subjected to probationary conditions, or required to submit to a medical examination, the hearing officer shall authorize the OED Director to apply to a court of competent jurisdiction for an order appointing counsel to represent the practitioner whose disability or addiction is under consideration if it appears to the hearing officer's satisfaction, based on the practitioner's motion or notice of the OED Director, that otherwise the practitioner will appear pro se and may therefore be without adequate representation.

(c) *Proceedings before the hearing officer.* (1) *Motions.* All proceedings addressing disability matters before a hearing officer shall be initiated by motion filed by the OED Director or practitioner. In addition to any other requirement of § 11.43, each such motion shall include or have attached thereto:

(i) A brief statement of all material facts;

(ii) A proposed petition and/or recommendation to be filed with the USPTO Director if the movant's motion is granted by the hearing officer; and

(iii) Affidavits, medical reports, official records, or other documents setting forth or establishing any of the material facts on which the movant is relying.

(2) *Response.* The non-moving party shall file a response to any motion hereunder setting forth the following:

(i) All objections, if any, to the actions requested in the motion;

(ii) An admission, denial or allegation of lack of knowledge with respect to each of the material facts in the movant's papers; and

(iii) Affidavits, medical reports, official records, or other documents setting forth facts on which the non-moving party intends to rely for purposes of disputing or denying any material fact set forth in the movant's papers.

(iv) Except as the hearing officer may otherwise order, the response shall be served and filed within fourteen (14) days after service of the motion unless such time is shortened or enlarged by the hearing officer for good cause shown.

(d) *Mentally disabled practitioners.* (1) *Action by OED Director.* The OED Director, upon obtaining proof that a practitioner has been judicially declared to be mentally incompetent or has been involuntarily committed to a mental hospital as an inpatient, shall either

(i) Promptly request authority from a panel of the Committee on Discipline to submit evidence (appropriate affidavits and/or other documentary proof) to a hearing officer seeking, pursuant to this section, an order from the USPTO Director directing that the practitioner's name be transferred to disability inactive status, and that the practitioner cease practicing before the Office effective immediately and for an indefinite period of time until further ordered by the USPTO Director; or

(ii) Notify a panel of the Committee on Discipline of the OED Director's intention not to file a petition under paragraph (d)(1)(i) of this section and the reasons therefor. All further proceedings shall be pursuant to paragraph (f) of this section.

(e) *Incapacitation due to disability or addiction.*—(1) *OED Director's request.* If the OED Director receives information providing reason to believe that a practitioner is incapacitated from continuing to practice before the Office because of disability or addiction and the practitioner is nonetheless likely to offer or attempt to perform legal services while so incapacitated, the OED Director may request a panel of the Committee on Discipline to find probable cause authorizing the OED Director to petition the USPTO Director for an order transferring the practitioner to disability inactive status effective immediately for an indefinite period until further ordered by the USPTO Director, or possibly imposing probationary conditions with or without a period of suspension. All further proceedings shall be pursuant to paragraph (f) of this section, unless the practitioner agrees to have his or her name transferred to disability inactive status, and to cease practicing before the Office effective immediately and for an indefinite period of time until further ordered by the USPTO Director.

(2) *Required evidence.* In the absence of unusual circumstances, probable cause sufficient to support the OED Director's request under paragraph (e)(1) of this section shall include, either a written acknowledgment of the practitioner or a report of an examination by one or more qualified medical experts confirming the existence of the alleged disability or addiction and otherwise indicating the practitioner to be incapacitated as alleged.

(f) *Further proceedings for matters in paragraphs (d) and (e) of this section.*—(1) *Action by Committee on Discipline panel.* A panel of the Committee on Discipline may issue a probable cause determination granting or denying the OED Director's request based on written acknowledgments, affidavits, and other documentary proof.

(2) *Action by OED Director.* Upon issuance of a finding of probable cause, the OED Director shall file a motion provided for in paragraph (c) of this section with the hearing officer. A copy of the motion shall be served on the practitioner in accordance with § 11.35, and upon the practitioner's guardian, if any and known.

(3) *Response by Practitioner.* The practitioner may respond with a motion in accordance with paragraph (c) of this section. The hearing officer will otherwise follow the procedures set forth in §§ 11.37 through 11.54.

(4) *Initial decision by the hearing officer.* The hearing officer shall urge a practitioner who is not represented by counsel to obtain counsel of his or her own choice to represent the practitioner if it is determined that the practitioner is without adequate representation. The hearing officer shall enter a recommendation to grant or deny the OED Director's motion based on the affidavits and other documentary proof of the parties, unless the hearing officer determines that there is a genuine issue concerning one or more of the material facts, and issues an order for an evidentiary hearing. A copy of the hearing officer's recommendation shall be served on the practitioner, the practitioner's guardian, if any, and the OED Director.

(5) *Appeal.* The OED Director or practitioner may, as a matter of right, appeal the hearing officer's recommendation in accordance with the provisions of § 11.55.

(6) *Action by USPTO Director.* When a practitioner has been judicially declared to be mentally incompetent or has been involuntarily committed to a mental hospital as an inpatient, the USPTO Director, upon proper proof of that fact, shall enter an order directing that the practitioner's name be transferred to disability inactive status, and that the practitioner cease practicing before the Office in patent, trademark, and other non-patent law effective immediately and for an indefinite period of time until further ordered by the USPTO Director. A copy of the order shall be served upon the practitioner's guardian or counsel, or in the absence thereof, upon the practitioner and the director of the mental hospital, if any, in such manner as the USPTO Director may direct. If at any time thereafter the practitioner is

judicially declared to be competent or discharged from inpatient status in the mental hospital, the USPTO Director may dispense with further evidence that the disability has ended and may direct the reinstatement of the practitioner's former recognition or registration upon such terms as is deemed appropriate. In a case of addiction to drugs or intoxicants, the USPTO Director alternatively may consider the possibility of probationary conditions.

(g) *Self-reported incapacitation due to disability or addiction; no intent to continue representation.*—(1) *OED Director's request.* If the OED Director receives from a practitioner or the practitioner's guardian either a written acknowledgment of the practitioner or guardian confirming the existence of the alleged disability or addiction, and otherwise showing the practitioner is incapacitated as alleged, or a report of an examination by one or more qualified medical experts providing reason to believe that a practitioner is incapacitated from continuing to practice before the Office because of disability or addiction, and the practitioner does not intend to offer or attempt to perform legal services while so incapacitated, the OED Director shall petition the USPTO Director for an order directing that the practitioner's name be transferred to disability inactive status, and that the practitioner cease practicing before the Office in patent, trademark, and other non-patent law effective immediately and for an indefinite period of time until further ordered by the USPTO Director. In the case of addiction to drugs or intoxicants, the OED Director may petition the USPTO Director to prohibit reinstatement absent satisfaction of specified conditions.

(2) *Action by the USPTO Director.* When a practitioner is incapacitated from continuing to practice before the Office because of disability or addiction, and reports the same to the OED Director, the USPTO Director, upon proper proof of that disability or addiction, shall enter an order directing that the practitioner's name be transferred to disability inactive status, and that the practitioner cease practicing before the Office in patent, trademark, and other non-patent law effective immediately and for an indefinite period of time until further ordered by the USPTO Director. A copy of the order shall be served upon the practitioner, and the practitioner's guardian, if any, in such manner as the USPTO Director may direct. In a case of addiction to drugs or intoxicants, the USPTO Director may prohibit reinstatement absent satisfaction of specified conditions.

(h) *Holding in abeyance a disciplinary proceeding because of disability or addiction.*—(1) *Practitioner's motion.* In the course of a disciplinary proceeding under § 11.32, but before an initial decision is mailed, the practitioner therein may file a motion requesting the hearing officer to enter an order holding such proceeding in abeyance based on the contention that the practitioner is suffering from a disability or addiction that makes it impossible for the practitioner to adequately defend the charges in the disciplinary proceeding. The practitioner's motion shall be accompanied by all pertinent medical records and in all cases must include a signed form acknowledging the alleged incapacity by reason of disability or addiction.

(2) *Disposition of practitioner's motion.* The hearing officer shall decide the motion and any response thereto. If the motion satisfies paragraph (h)(1) of this section, the hearing officer shall:

(i) Enter a temporary order holding the disciplinary proceeding in abeyance (but not any investigation instituted by the OED Director with respect to the practitioner);

(ii) Submit to the USPTO Director a report that includes a petition, prepared by the OED Director, seeking from the USPTO Director an order immediately transferring the practitioner to disability inactive status and otherwise precluding the practitioner from practice before the Office in patent, trademark and other non-patent law until a determination is made of the practitioner's capability to resume practice before the Office in a proceeding instituted by the practitioner under paragraph (h)(2)(i) of this section; and

(iii) If the OED Director raises a genuine issue as to any material fact concerning the practitioner's self-alleged disability or addiction, to enter an order referring such issue(s) to the hearing officer for an evidentiary hearing pursuant to paragraph (e) of this section. The temporary abeyance order shall remain in effect until a determination is made by the hearing officer that the practitioner is not incapacitated and that resumption of the matters held in abeyance would be proper and advisable.

(i) *Determination of practitioner's recovery and removal of disability or addiction.*—(1) *Scope of rule.* This section applies to disability matters involving allegations that a practitioner's prior disability or addiction has been removed, including proceedings for reactivation or for resumption of disciplinary matters being held in abeyance.

(2) *Reactivation.* Any practitioner transferred to disability inactive status for incapacity by reason of disability or addiction shall be entitled to file a motion for reactivation once a year beginning at any time not less than one year after the initial effective date of suspension, or once during any shorter interval provided by the USPTO Director's order of suspension or any modification thereof. In addition to complying with all applicable rules, such motion shall conform to the requirements of paragraph (f)(3) of this section, and include all alleged facts showing that the practitioner's disability or addiction has been removed and that the practitioner is fit to resume practice before the Office.

(3) *Contents of motion for reactivation.* A motion for reactivation alleging that a practitioner has recovered from a prior disability or addiction shall be accompanied by all available medical reports or similar documents relating thereto and shall also include allegations specifically addressing the following matters:

(i) The nature of the prior disability or addiction, including its beginning date and the most recent date (both dates approximate if necessary) on which the practitioner was still afflicted with the prior disability;

(ii) The relationship between the prior disability or addiction and the practitioner's incapacity to continue to practice before the Office during the period of such prior disability or addiction;

(iii) In the case of prior addiction, for an appropriate prior period (including the entire period following any suspension thereof), the dates or period (approximate if necessary) for each and every occasion on or during which the practitioner used any drugs or intoxicants having the potential to impair the practitioner's capacity to practice before the Office, whether or not such capacity was in fact impaired;

(iv) A brief description of the supporting medical evidence (including names of medical or other experts) that the practitioner expects to submit in support of the alleged recovery and rehabilitation;

(v) A written statement disclosing the name of every medical expert (such as psychiatrist, psychologist, or physician) or other expert and hospital by whom or in which the practitioner has been examined or treated during the period since the date of suspension for disability or addiction;

(vi) The practitioner's written consent, to be provided to each medical or other expert or hospital identified in paragraph (i)(3)(v) of this section, to divulge such information and records as may be required by any medical experts who are appointed by the hearing officer or who examine the practitioner pursuant to his or her consent at the OED Director's request; and

(vii) The practitioner's written consent (without further order from a hearing officer, the USPTO Director, or the OED Director) to submit to an examination of qualified medical experts (at the practitioner's expense) if so requested by the OED Director.

(4) *Resumption of disciplinary proceeding held in abeyance.* The OED Director may file a motion requesting the hearing officer to terminate a prior order holding in abeyance any pending proceeding because of the practitioner's disability or addiction. The hearing officer shall decide the matter presented by the OED Director motion hereunder based on the affidavits and other admissible evidence attached to the OED Director's motion or the practitioner's response. If there is any genuine issue as to one or more material facts, the hearing officer will hold an evidentiary hearing in which the following procedures shall apply:

(i) If the prior order of abeyance was based solely on the practitioner's self-alleged contention of disability or addiction, the OED Director's motion under paragraph (e)(1) of this section shall operate as a show cause order placing the burden on the practitioner to establish by a preponderance of the evidence that the prior self-alleged disability or addiction continues to make it impossible for the practitioner to defend himself/herself in the underlying proceeding being held in abeyance; and

(ii) If such prior order of abeyance was based on a finding supported by affirmative evidence of the practitioner's disability or addiction, the burden shall be on the OED Director to establish by a preponderance of the evidence that the prior evidence of disability or addiction was erroneous or that the practitioner's disability or addiction has been removed and full recovery therefrom has been achieved.

(j) *Action by the hearing officer when practitioner is not incapacitated.* If, in the course of a proceeding under this section or a disciplinary proceeding, the hearing officer determines that the practitioner is not incapacitated from defending himself/herself, or is not incapacitated from practicing before the Office, the hearing officer shall take such action as is deemed appropriate, including the entry of an order directing the resumption of the disciplinary proceeding against the practitioner.

§§ 11.29–11.31 [Reserved]

§ 11.32 Initiating a disciplinary proceeding; reference to a hearing officer.

If after conducting an investigation under § 11.22(a) the OED Director is of the opinion that a practitioner has violated an imperative USPTO Rule of Professional Conduct, or that an other individual (*see* § 11.19(a)(2)) has violated any of §§ 11.303(a)(1), 11.304, 11.305(a), or 11.804, the OED Director, except for complying with the provisions of §§ 27 or 28 for a practitioner, shall, after complying where necessary with the provisions of 5 U.S.C. 558(c), call a meeting of a panel of the Committee on Discipline. The panel of the Committee on Discipline shall then determine as specified in § 11.23(b) whether a disciplinary proceeding shall be instituted under paragraph (b) of this section. If the panel of the Committee on Discipline determines that probable cause exists to believe that a Rule of Professional Conduct has been violated, the OED Director shall institute a disciplinary proceeding by filing a complaint under § 11.34. The complaint shall be filed in the Office of the USPTO Director. A disciplinary proceeding may result in a reprimand, or suspension or exclusion of a practitioner from practice before the Office. Upon the filing of a complaint under § 11.34, the USPTO Director will refer the disciplinary proceeding to a hearing officer.

§ 11.33 [Reserved]

§ 11.34 Complaint.

(a) A complaint instituting a disciplinary proceeding shall:

(1) Name the practitioner or other individual (*see* § 11.19(a)(2)) who may then be referred to as the "respondent";

(2) Give a plain and concise description of the respondent's alleged violations of the imperative USPTO Rules of Professional Conduct;

(3) State the place and time, not less than thirty days from the date the complaint is filed, for filing an answer by the respondent;

(4) State that a decision by default may be entered if an answer is not timely filed by the respondent; and

(5) Be signed by the OED Director.

(b) A complaint will be deemed sufficient if it fairly informs the respondent of any violation of the imperative USPTO Rules of Professional Conduct that form the basis for the disciplinary proceeding so that the respondent is able to adequately prepare a defense. If supported by the facts presented to the Committee on Discipline, the complaint may include alleged violations even if the specific violations were not in the finding of the probable cause decision.

§ 11.35 Service of complaint.

(a) A complaint may be served on a respondent in any of the following methods:

(1) By delivering a copy of the complaint personally to the respondent, in which case the individual who gives the complaint to the respondent shall file an affidavit with the OED Director indicating the time and place the complaint was handed to the respondent.

(i) A respondent who is a registered practitioner at the address for which separate notice was last received by the OED Director, or

(ii) A respondent who is a nonregistered practitioner at the last address for the respondent known to the OED Director.

(3) By any method mutually agreeable to the OED Director and the respondent.

(4) In the case of a respondent who resides outside the United States, by sending a copy of the complaint by any delivery service that provides ability to electronically follow the progress of delivery or attempted delivery, to:

(i) A respondent who is a registered practitioner at the last address for which separate notice was last received by the OED Director; or

(ii) A respondent who is a nonregistered practitioner at the last address for the respondent known to the OED Director.

(5) In the case of a respondent being an other individual (*see* § 11.19(a)(2)) by sending a copy of the complaint by any delivery service providing tracking and delivery or attempted delivery records, including the U.S. Postal Service to:

(i) The last address for the other individual (*see* § 11.19(a)(2)) for which notice was last received by the Office in an application; or

(ii) At the last address for the other individual (*see* § 11.19(a)(2)) known to OED; or

(b) If a copy of the complaint cannot be delivered to the respondent through any one of the procedures in paragraph (a) of this section, the OED Director shall serve the respondent by causing an appropriate notice to be published in the Official Gazette for two consecutive weeks, in which case the time for filing an answer shall be thirty days from the second publication of the notice. Failure to timely file an answer will constitute an admission of the allegations in the complaint in accordance with paragraph

(d) of § 11.34, and the hearing officer may enter an initial decision on default.

(c) If the respondent is known to the OED Director to be represented by an attorney under § 11.40(a), a copy of the complaint shall also be served on the attorney in the manner provided for in paragraph (a) or (b) of this section, in addition to the complaint being served on respondent.

§ 11.36 Answer to complaint.

(a) *Time for answer.* An answer to a complaint shall be filed within the time set in the complaint that shall be not less than thirty days.

(b) *With whom filed.* The answer shall be filed in writing with the hearing officer. The hearing officer may extend the time for filing an answer once for a period of no more than thirty days upon a showing of good cause, provided a motion requesting an extension of time is filed within thirty days after the date the complaint is served on respondent. A copy of the answer shall be served on the OED Director.

(c) *Content.* The respondent shall include in the answer a statement of the facts that constitute the grounds of defense and shall specifically admit or deny each allegation set forth in the complaint. The respondent shall not deny a material allegation in the complaint that the respondent knows to be true or state that respondent is without sufficient information to form a belief as to the truth of an allegation when in fact the respondent possesses that information. The respondent shall also state affirmatively special matters of defense.

(d) *Failure to deny allegations in complaint.* Every allegation in the complaint that is not denied by a respondent in the answer shall be deemed to be admitted and may be considered proven. The hearing officer at any hearing need receive no further evidence in respect of that allegation. Failure to timely file an answer will constitute an admission of the allegations in the complaint, and may result in entry of default judgment.

(e) *Reply by the OED Director.* No reply to an answer is required by the OED Director unless ordered by the hearing officer, and any affirmative defense in the answer shall be deemed to be denied. The OED Director may, however, file a reply if he or she chooses.

(f) *Notice of intent to raise disability in mitigation.*—(1) *Respondent's notice.* If respondent intends to raise an alleged disability in mitigation pursuant to § 11.28, respondent shall file by delivery to the OED Director and hearing officer notice of said allegation no later than the date that the answer to the complaint is due. The notice shall specify the disability, its nexus to the misconduct, and the reason it provides mitigation. Failure to deliver the notice of intent to raise an alleged disability in mitigation shall operate as a waiver of the right to raise an alleged disability in mitigation, subject to the provisions of paragraph (f)(3) of this section.

(2) *Conditions of practice.* If a respondent files a notice pursuant to paragraph (f)(1) of this section, the hearing officer, after providing the OED Director with an opportunity to reply to said notice, shall forthwith issue an order providing for appropriate conditions under which the respondent shall practice before the Office. Said order may include the appointment of monitor(s) depending upon the particular circumstances of the case.

(i) *Monitors.* Should the hearing officer appoint monitors, the monitor(s) shall report to the hearing officer and OED Director on a periodic basis to be determined by the hearing officer. The monitoring shall remain in effect during the pendency of the disciplinary proceeding or until order of the USPTO Director. The monitor(s) shall respond to the OED Director's inquiries concerning such monitoring and may be called by the OED Director or respondent to testify regarding sanctions.

(ii) *Waiver.* The filing of the notice pursuant to paragraph (f)(1) of this section is deemed to constitute a waiver by respondent of any claim of the right to withhold from the OED Director information coming to the attention of a monitor.

(3) *Late-filed notice.*—(i) *Notice filed 30 or more days before scheduled hearing.* If respondent wishes to raise an alleged disability in mitigation after the date prescribed in paragraph (f)(1) of this section, but no later than 30 days before the date scheduled by the hearing officer for the hearing, respondent shall file a motion with the hearing officer, on notice to the OED Director, setting forth good cause why respondent should be allowed to raise a plea in mitigation out of time. The OED Director may consent in writing to the grant of the motion. The hearing officer may grant or deny the motion, with or without an evidentiary hearing. Leave to assert the plea in mitigation shall be freely granted when justice so requires, and in the absence of a showing of prejudice by the OED Director. An order by the hearing officer granting such a motion may include the provisions in paragraphs (f)(2), (f)(2)(i), and (f)(2)(ii) of this section, or, in circumstances where the hearing officer determines it to be just and appropriate, may be conditioned upon respondent's consent to an interim suspension pending disposition of the disciplinary proceeding.

(ii) *Notice filed within 30 days after scheduled hearing.* If a respondent wishes to raise an alleged disability in mitigation after the date prescribed in paragraph (f)(3)(i) of this section, respondent shall file a motion with the hearing officer, containing the showing prescribed in paragraph (f)(3)(i) of this section; however, such a motion will be granted only on the condition that respondent consent to an interim suspension pending disposition of the disciplinary proceeding.

(4) *Violations of conditions of practice.* If a monitor reports that respondent has violated a term or condition under which respondent is continuing to practice, the OED Director may request the hearing officer to schedule the matter for a hearing on the issue of whether the monitoring shall be lifted, and respondent suspended, pending final disposition of the disciplinary proceeding.

(5) *Motion to vacate or modify suspension.* A respondent suspended pursuant to paragraphs (f)(3)(i) or (f)(4) of this section may file a motion at any time with the hearing officer to vacate or modify the suspension. If respondent's motion presents a prima facie case that respondent is significantly rehabilitated from the alleged disability, the matter will be considered by the hearing officer at an evidentiary hearing on the issue of rehabilitation. Reinstatement pursuant to this paragraph shall be subject to monitoring and waiver provisions of paragraphs (f)(2), (f)(2)(i), and (f)(2)(ii) of this section. Respondent shall have the burden of proving, by clear and convincing evidence, significant rehabilitation from the alleged disability.

§ 11.37 Supplemental complaint.

False statements in an answer, motion, notice, or other filed communication may be made the basis of a supplemental complaint.

§ 11.38 Contested case.

Upon the filing of an answer by the respondent, a disciplinary proceeding shall be regarded as a contested case within the meaning of 35 U.S.C. 24. Evidence obtained by a subpoena issued under 35 U.S.C. 24 shall not be admitted into the record or considered unless leave to proceed under 35 U.S.C. 24 was previously authorized by the hearing officer.

§ 11.39 Hearing officer; appointment; responsibilities; review of interlocutory orders; stays.

(a) *Appointment.* A hearing officer, appointed by the USPTO Director under 5 U.S.C. 3105 or 35 U.S.C. 32, shall conduct disability or disciplinary proceedings as provided by this part.

(b) *Independence of the Hearing Officer.* (1) A hearing officer appointed in accordance with paragraph (a) of this section shall not be subject to first level and second level supervision, review or direction of the USPTO Director.

(2) A hearing officer appointed in accordance with paragraph (a)(1) of this section shall not be subject to supervision, review or direction of the person(s) investigating or prosecuting the case.

(3) A hearing officer appointed in accordance with paragraph (a)(1) of this section shall be impartial, shall not be an individual who has participated in any manner in the decision to initiate the proceedings, and shall not have been employed under the immediate supervision of the practitioner.

(4) A hearing officer appointed in accordance with paragraph (a) of this section shall be admitted to practice law and have suitable experience and training to conduct the hearing, reach a determination and render an initial decision in an equitable manner.

(c) *Responsibilities.* The hearing officer shall have authority, consistent with specific provisions of these regulations, to:

(1) Administer oaths and affirmations;

(2) Make rulings upon motions and other requests;

(3) Rule upon offers of proof, receive relevant evidence, and examine witnesses;

(4) Authorize the taking of a deposition of a witness in lieu of personal appearance of the witness before the hearing officer;

(5) Determine the time and place of any hearing and regulate its course and conduct;

(6) Hold or provide for the holding of conferences to settle or simplify the issues;

(7) Receive and consider oral or written arguments on facts or law;

(8) Adopt procedures and modify procedures from time-to-time as occasion requires for the orderly disposition of proceedings;

(9) Make initial decisions under §§ 11.24, 11.25, and 11.154;

(10) Engage in no ex parte discussions with any party on the merits of the complaint, beginning with appointment and until the final agency decision is issued; and

(11) Perform acts and take measures as necessary to promote the efficient, timely and impartial conduct of any disciplinary proceeding.

(d) *Time for making initial decision.* The hearing officer shall set times and exercise control over a disciplinary proceeding such that an initial decision under § 11.54 is normally issued within nine months of the date a complaint is filed. The hearing officer may, however, issue an initial decision more than nine months after a complaint is filed if in his or her opinion there exist unusual circumstances which preclude issuance of an initial decision within nine months of the filing of the complaint.

(e) *Review of interlocutory orders.* The USPTO Director will not review an interlocutory order of a hearing officer except:

(1) When the hearing officer shall be of the opinion:

(i) That the interlocutory order involves a controlling question of procedure or law as to which there is a substantial ground for a difference of opinion, and

(ii) That an immediate decision by the USPTO Director may materially advance the ultimate termination of the disciplinary proceeding, or

(2) In an extraordinary situation where the USPTO Director deems that justice requires review.

(f) *Stays pending review of interlocutory order.* If the OED Director or a respondent seeks review of an interlocutory order of a hearing officer under paragraph (b)(2) of this section, any time period set for taking action by the hearing officer shall not be stayed unless ordered by the USPTO Director or the hearing officer.

§ 11.40 Representative for OED Director or respondent.

(a) A respondent may represent himself or herself, or be represented by an attorney before the Office in connection with an investigation or disciplinary proceeding. The attorney shall file a written declaration that he or she is an attorney within the meaning of § 11.1(e) and shall state:

(1) The address to which the attorney wants correspondence related to the investigation or disciplinary proceeding sent, and

(2) A telephone number where the attorney may be reached during normal business hours.

(b) The USPTO Director shall designate at least two disciplinary attorneys under the aegis of the General Counsel to act as representatives for the OED Director. The disciplinary attorneys prosecuting disciplinary proceedings shall not consult with the General Counsel and the Deputy General Counsel for General Law regarding the proceeding. The General Counsel and the Deputy General Counsel for General Law shall remain insulated from the investigation and prosecution of all disciplinary proceedings in order that they shall be available as counsel to the USPTO Director in deciding disciplinary proceedings. However, the Deputy General Counsel for Intellectual Property Law and Solicitor shall not remain insulated from the investigation and prosecution of disciplinary proceedings, and thus shall not be available to counsel the USPTO Director in deciding such proceedings.

(c) Upon serving a complaint pursuant to § 11.34, the members of the Committee on Discipline, and the disciplinary attorneys prosecuting a disciplinary proceeding shall not participate in rendering a decision on the charges contained in the complaint.

§ 11.41 Filing of papers.

(a) The provisions of § 1.8 of this subchapter do not apply to disciplinary proceedings. All papers filed after the complaint and prior to entry of an initial decision by the hearing officer shall be filed with the hearing officer at an address or place designated by the hearing officer.

(b) All papers filed after entry of an initial decision by the hearing officer shall be filed with the USPTO Director. A copy of the paper shall be served on the OED Director. The hearing officer or the OED Director may provide for filing papers and other matters by hand, by "Express Mail," or by facsimile followed in a specified time by the original hard copy.

§ 11.42 Service of papers.

(a) All papers other than a complaint shall be served on a respondent who is represented by an attorney by:

(1) Delivering a copy of the paper to the office of the attorney; or

(2) Mailing a copy of the paper by first-class mail, "Express Mail," or other delivery service to the attorney at the address provided by the attorney under § 11.40(a)(1); or

(3) Any other method mutually agreeable to the attorney and a representative for the OED Director.

(b) All papers other than a complaint shall be served on a respondent who is not represented by an attorney by:

(1) Delivering a copy of the paper to the respondent; or

(2) Mailing a copy of the paper by first-class mail, "Express Mail," or other delivery service to the respondent at the address to which a complaint may be served or such other address as may be

designated in writing by the respondent; or

(3) Any other method mutually agreeable to the respondent and a representative of the OED Director.

(c) A respondent shall serve on the representative for the OED Director one copy of each paper filed with the hearing officer or the OED Director. A paper may be served on the representative for the OED Director by:

(1) Delivering a copy of the paper to the representative; or

(2) Mailing a copy of the paper by first-class mail, "Express Mail," or other delivery service to an address designated in writing by the representative; or

(3) Any other method mutually agreeable to the respondent and the representative.

(d) Each paper filed in a disciplinary proceeding shall contain therein a certificate of service indicating:

(1) The date of which service was made; and

(2) The method by which service was made.

(e) The hearing officer or the USPTO Director may require that a paper be served by hand or by "Express Mail."

(f) Service by mail is completed when the paper mailed in the United States is placed into the custody of the U.S. Postal Service.

§ 11.43 Motions.

Motions may be filed with the hearing officer. The hearing officer will determine on a case-by-case basis the time period for response to a motion and whether replies to responses will be authorized. No motion shall be filed with the hearing officer unless such motion is supported by a written statement by the moving party that the moving party or attorney for the moving party has conferred with the opposing party or attorney for the opposing party in an effort in good faith to resolve by agreement the issues raised by the motion and has been unable to reach agreement. If the parties prior to a decision on the motion resolve issues raised by a motion by the hearing officer, the parties shall promptly notify the hearing officer.

§ 11.44 Hearings.

(a) The hearing officer shall preside at hearings in disciplinary proceedings. The hearing officer shall set time and place for a hearing. In setting a time and place, the hearing officer shall normally give preference to a Federal facility in the district where the Office's principal office is located or Washington, DC, for all respondents recognized or registered to practice before the Office, and otherwise shall give due regard to the convenience and necessity of the parties or their representatives. In cases involving an incarcerated respondent, any necessary oral hearing may be held at the location of incarceration. Oral hearings will be stenographically recorded and transcribed, and the testimony of witnesses will be received under oath or affirmation. The hearing officer shall conduct hearings in accordance with 5 U.S.C. 556. A copy of the transcript of the hearing shall become part of the record. A copy of the transcript shall be provided to the OED Director and the respondent at the expense of the Office.

(b) If the respondent to a disciplinary proceeding fails to appear at the hearing after a notice of hearing has been given by the hearing officer, the hearing officer may deem the respondent to have waived the right to a hearing and may proceed with the hearing in the absence of the respondent.

(c) A hearing under this section will not be open to the public except that the hearing officer may grant a request by a respondent to open his or her hearing to the public and make the record of the disciplinary proceeding available for public inspection, provided, Agreement is reached in advance to exclude from public disclosure information which is privileged or confidential under applicable laws or regulations. If a disciplinary proceeding results in disciplinary action against a practitioner, and subject to § 11.59(c), the record of the entire disciplinary proceeding, including any settlement agreement, will be available for public inspection.

§ 11.45 Proof; variance; amendment of pleadings.

Whenever in the course of a hearing evidence is presented upon which another charge or charges against the respondent might be made, it shall not be necessary for the Committee on Discipline to find probable cause based on an additional charge or charges on the respondent, but with the consent of the hearing officer, the OED Director shall provide respondent with reasonable notice and an opportunity to be heard, and the hearing officer shall proceed to consider such additional charge or charges as if the same had been made and served at the time of the service of the original charge or charges. Any party who would otherwise be prejudiced by the amendment will be given reasonable opportunity to meet the allegations in the complaint, answer, or reply, as amended, and the hearing officer shall make findings on any issue presented by the complaint, answer, or reply as amended.

§§ 11.46–11.48 [Reserved]

§ 11.49 Burden of proof.

In a disciplinary proceeding, the OED Director shall have the burden of proving his or her case by clear and convincing evidence and a respondent shall have the burden of proving any affirmative defense by clear and convincing evidence.

§ 11.50 Evidence.

(a) *Rules of evidence.* The rules of evidence prevailing in courts of law and equity are not controlling in hearings in disciplinary proceedings. However, the hearing officer shall exclude evidence that is irrelevant, immaterial, or unduly repetitious.

(b) *Depositions.* Depositions of witnesses taken pursuant to Section 11.51 may be admitted as evidence.

(c) *Government documents.* Official documents, records, and papers of the Office, including all papers collected during the disciplinary investigation, are admissible without extrinsic evidence of authenticity. These documents, records, and papers may be evidenced by a copy certified as correct by an employee of the Office.

(d) *Exhibits.* If any document, record, or other paper is introduced in evidence as an exhibit, the hearing officer may authorize the withdrawal of the exhibit subject to any conditions the hearing officer deems appropriate.

(e) *Objections.* Objections to evidence will be in short form, stating the grounds of objection. Objections and rulings on objections will be a part of the record. No exception to the ruling is necessary to preserve the rights of the parties.

§ 11.51 Depositions.

(a) Depositions for use at the hearing in lieu of personal appearance of a witness before the hearing officer may be taken by respondent or the OED Director upon a showing of good cause and with the approval of, and under such conditions as may be deemed appropriate by, the hearing officer. Depositions may be taken upon oral or written questions, upon not less than ten days' written notice to the other party, before any officer authorized to administer an oath or affirmation in the place where the deposition is to be taken. The parties may waive the requirement of ten days' notice and depositions may then be taken of a witness at a time and place mutually agreed to by the parties. When a deposition is taken upon written questions, copies of the written questions will be served upon the other party with the notice and copies of any written cross-questions will be served by hand or "Express Mail" not less than five days before the date of the taking of the deposition unless the parties mutually agree otherwise. A party on whose behalf a deposition is taken shall file a copy of a transcript of the deposition signed by a court reporter with the hearing officer and shall serve one copy upon the opposing party. Expenses for a court reporter and preparing, serving, and filing depositions shall be borne by the party at whose instance the deposition is taken. Depositions may not be taken to obtain discovery.

(b) When the OED Director and the respondent agree in writing, a deposition of any witness who will appear voluntarily may be taken under such terms and conditions as may be mutually agreeable to the OED Director and the respondent. The deposition shall not be filed with the hearing officer and may not be admitted in evidence before the hearing officer unless he or she orders the deposition admitted in evidence. The admissibility of the deposition shall lie within the discretion of the hearing officer who may reject the deposition on any reasonable basis including the fact that demeanor is involved and that the witness should have been called to appear personally before the hearing officer.

§ 11.52 Discovery.

Discovery shall not be authorized except as follows.

(a) After an answer is filed under § 11.36 and when a party establishes in a clear and convincing manner that discovery is necessary and relevant, the hearing officer, under such conditions as he or she deems appropriate, may order an opposing party to:

(1) Answer a reasonable number of written requests for admission or interrogatories;

(2) Produce for inspection and copying a reasonable number of documents; and

(3) Produce for inspection a reasonable number of things other than documents.

(b) Discovery shall not be authorized under paragraph (a) of this section of any matter which:

(1) Will be used by another party solely for impeachment or cross-examination;

(2) Is not available to the party under 35 U.S.C. 122;

(3) Relates to any disciplinary proceeding commenced in the Office prior to March 8, 1985;

(4) Relates to experts except as the hearing officer may require under paragraph (e) of this section.

(5) Is privileged; or

(6) Relates to mental impressions, conclusions, opinions, or legal theories of any attorney or other representative of a party.

(c) The hearing officer may deny discovery requested under paragraph (a) of this section if the discovery sought:

(1) Will unduly delay the disciplinary proceeding;

(2) Will place an undue burden on the party required to produce the discovery sought; or

(3) Is available:

(i) Generally to the public;

(ii) Equally to the parties; or

(iii) To the party seeking the discovery through another source.

(d) Prior to authorizing discovery under paragraph (a) of this section, the hearing officer shall require the party seeking discovery to file a motion (§ 11.43) and explain in detail for each request made how the discovery sought is necessary and relevant to an issue actually raised in the complaint or the answer.

(e) The hearing officer may require parties to file and serve, prior to any hearing, a pre-hearing statement that contains:

(1) A list (together with a copy) of all proposed exhibits to be used in connection with a party's case-in-chief;

(2) A list of proposed witnesses;

(3) As to each proposed expert witness:

(i) An identification of the field in which the individual will be qualified as an expert;

(ii) A statement as to the subject matter on which the expert is expected to testify; and

(iii) A statement of the substance of the facts and opinions to which the expert is expected to testify;

(4) The identity of Government employees who have investigated the case; and

(5) Copies of memoranda reflecting respondent's own statements to administrative representatives.

(f) After a witness testifies for a party, if the opposing party requests, the party may be required to produce, prior to cross-examination, any written statement made by the witness.

§ 11.53 Proposed findings and conclusions; post-hearing memorandum.

Except in cases in which the respondent has failed to answer the complaint or amended complaint, the hearing officer, prior to making an initial decision, shall afford the parties a reasonable opportunity to submit proposed findings and conclusions and a post-hearing memorandum in support of the proposed findings and conclusions.

§ 11.54 Initial decision of hearing officer.

(a) The hearing officer shall make an initial decision in the case. The decision will include:

(1) A statement of findings and conclusions, as well as the reasons or basis therefor with appropriate references to the record, upon all the material issues of fact, law, or discretion presented on the record, and

(2) An order of suspension or exclusion from practice, an order of reprimand, or an order dismissing the complaint. The hearing officer shall transmit a copy of the decision to the OED Director and to the respondent. After issuing the decision, the hearing officer shall transmit the entire record to the OED Director. In the absence of an appeal to the USPTO Director, the decision of the hearing officer will, without further proceedings, become the decision of the USPTO Director thirty (30) days from the date of the decision of the hearing officer.

(b) The initial decision of the hearing officer shall explain the reason for any reprimand, suspension or exclusion. In determining any sanction, the following should normally be considered:

(1) The public interest;

(2) The seriousness of the violation of the imperative USPTO Rules of Professional Conduct;

(3) The deterrent effects deemed necessary;

(4) The integrity of the legal and patent professions; and

(5) Any extenuating circumstances.

§ 11.55 Appeal to the USPTO Director.

(a) Within thirty (30) days from the date of the initial decision of the hearing officer under §§ 11.28, or 11.54, either party may appeal to the USPTO Director. The appeal shall include the appellant's brief. If an appeal is taken, the time for filing a cross-appeal shall expire 14 days after the date of service of the appeal pursuant to § 11.42, or 30 days after the date of the initial decision of the hearing officer, whichever is later. The cross-appeal shall include the cross appellant's brief. An appeal or cross-appeal by the respondent will be filed with the USPTO Director and served on the OED Director, and will include exceptions to the decisions of the hearing officer and supporting reasons for those exceptions. All briefs must include a separate section containing a concise statement of the disputed facts and disputed points of law. Any issue not raised in the concise statement of

disputed facts and disputed points of law will be deemed to have been abandoned by the appellant and may be disregarded by the USPTO Director in reviewing the initial determination, unless the USPTO Director chooses to review the issue on his or her own initiative under § 11.56. If the OED Director, through his or her representative, files the appeal or cross-appeal, the OED Director shall serve on the other party a copy of the appeal or cross-appeal. The other party to an appeal or cross-appeal may file a reply brief. A copy of respondent's reply brief shall be served on the OED Director. The time for filing any reply brief expires thirty (30) days after the date of service pursuant to § 11.42 of an appeal, cross-appeal or copy thereof. If the OED Director files the reply brief, the OED Director shall serve on the other party a copy of the reply brief. Upon the filing of an appeal, cross-appeal, if any, and reply briefs, if any, the OED Director shall transmit the entire record to the USPTO Director. Unless the USPTO Director permits, no further briefs or motions shall be filed.

(b) An appellant's or cross-appellant's brief shall be no more than 30 pages in length on 8½ by 11-inch paper, and shall comply with Rule 28(A)(2), (3), and (5) through (10), and Rule 32(a)(4), (5), (6), and (7) of the Federal Rules of Appellate Procedure. An appellee's or cross appellee's reply brief shall be no more than 15 pages in length on 8½ by 11-inch paper, and shall comply with Rule 28(A)(2), (3), (8), and (9), and Rule 32(a)(4), (5), (6), and (7) of the Federal Rules of Appellate Procedure. If a cross-appeal is filed, the party who files an appeal first is the appellant for purposes of this rule. If appeals are filed on the same day, the respondent is the appellant. The USPTO Director may refuse entry of a nonconforming brief.

(c) The USPTO Director will decide the appeal on the record made before the hearing officer.

(d) The USPTO Director may order reopening of a disciplinary proceeding in accordance with the principles that govern the granting of new trials. Any request to reopen a disciplinary proceeding on the basis of newly discovered evidence must demonstrate that the newly discovered evidence could not have been discovered by due diligence.

(e) In the absence of an appeal by the OED Director, failure by the respondent to appeal under the provisions of this section shall be deemed to be both acceptance by the respondent of the initial decision and waiver by the respondent of the right to further administrative or judicial review.

§ 11.56 Decision of the USPTO Director.

(a) The USPTO Director shall decide an appeal from an initial decision of the hearing officer. The USPTO Director may affirm, reverse, or modify the initial decision or remand the matter to the hearing officer for such further proceedings as the USPTO Director may deem appropriate. In making a final decision, the USPTO Director shall review the record or the portions of the record designated by the parties. The USPTO Director shall transmit a copy of the final decision to the OED Director and to the respondent.

(b) A final decision of the USPTO Director may dismiss a disciplinary proceeding, reprimand a practitioner, or may suspend or exclude the practitioner from practice before the Office.

(c) The respondent or the OED Director may make a single request for reconsideration or modification of the decision by the USPTO Director if filed within 20 days from the date of entry of the decision. No request for reconsideration or modification shall be granted unless the request is based on newly discovered evidence, and the requestor must demonstrate that the newly discovered evidence could not have been discovered by due diligence. Such a request shall have the effect of staying the effective date of the order of discipline in the final decision. The decision by the USPTO Director is effective on its date of entry.

§ 11.57 Review of final decision of the USPTO Director.

(a) Review of the final decision by USPTO Director in a disciplinary case may be had, subject to § 11.55(d), by a petition filed in the United States District Court for the District of Columbia in accordance with the local rule of said court. 35 U.S.C. 32. The Respondent must serve the USPTO Director with the petition. Service upon the USPTO Director is effected (1) by delivering a copy of the petition by registered or certified mail or as otherwise authorized by law on the USPTO to: Director of the USPTO, Office of the General Counsel, United States Patent and Trademark Office, P.O. Box 15667, Arlington, VA 22215; or (2) by hand-delivering a copy of the petition during business hours to: Director of the USPTO, Office of the General Counsel, Crystal Park Two, Suite 905, 2121 Crystal Dr., Arlington, VA 22215.

(b) The USPTO Director may stay an order of discipline in the final decision pending review of the final decision of the USPTO Director.

§ 11.58 Suspended or excluded practitioner.

(a) A practitioner who is suspended or excluded under §§ 11.24, 11.25, 11.27, 11.55, or 11.56, or has resigned from practice before the Office under §§ 11.11(d) shall not engage in practice of patent, trademark and other non-patent law before the Office. No practitioner suspended or excluded under §§ 11.24, 11.25, 11.27, 11.55, or 11.56 will be automatically reinstated at the end of his or her period of suspension. A practitioner who is suspended or excluded, or who resigned under § 11.11(d) must comply with the provisions of this section and §§ 11.12 and 11.60 to be reinstated. Willful failure to comply with the provisions of this section constitutes grounds for denying a suspended or excluded practitioner's application for reinstatement or readmission. Willful failure to comply with the provisions of this section constitutes cause not only for denial of reinstatement, but also cause for further action, including seeking further exclusion, suspension, and for revocation of any pending probation.

(b) Unless otherwise ordered by the USPTO Director, any practitioner who is suspended or excluded from practice before the Office under §§ 11.24, 11.25, 11.55, or 11.56, who has been excluded on consent under provisions of § 11.27, or whose notice of resignation has been accepted under § 11.11(d) shall:

(1) Within 20 days after the date of entry of the order of suspension, exclusion, or exclusion by consent, or of acceptance of resignation:

(i) File a notice of withdrawal as of the effective date of the suspension, exclusion, or exclusion by consent, or acceptance of resignation in each pending patent and trademark application, each pending reexamination and interference proceeding, and every other matter pending in the Office, together with a copy of the notices sent pursuant to paragraphs (b) and (c) of this section;

(ii) Provide notice to all bars of which the practitioner is a member and all clients on retainer having immediate or prospective business before the Office in patent, trademark and other non-patent matters, all clients the practitioner represents before the Office, and all clients having immediate or prospective business before the Office in patent, trademark and other non-patent matters of the order of suspension, exclusion, exclusion by consent, or resignation and of the practitioner's consequent inability to act as a practitioner after the effective date of the order; and that, if not represented by another practitioner, the client should act promptly to substitute another practitioner, or to seek legal advice elsewhere, calling attention to any urgency arising from the circumstances of the case;

(iii) Provide notice to the practitioner(s) for all opposing parties (or, to the parties in the absence of a practitioner representing the parties) in matters pending before the Office that the practitioner has been excluded or suspended and, as a consequence, is disqualified from acting as a practitioner regarding matters before the Office after the effective date of the suspension, exclusion, exclusion by consent, or resignation, and state in the notice the mailing address of each client of the excluded or suspended attorney who is a party in the pending reexamination or interference matter;

(iv) Deliver to all clients having immediate or prospective business before the Office in patent, trademark or other non-patent matters any papers or other property to which the clients are entitled, or shall notify the clients and any co-practitioner of a suitable time when and place where the papers and other property may be obtained, calling attention to any urgency for obtaining the papers or other property;

(v) Refund any part of any fees paid in advance that has not been earned,

(vi) Close every client account, trust account, deposit account in the Office, or other fiduciary account to the extent the accounts have fees for practice before the Office, and properly disburse or otherwise transfer all client and fiduciary funds for practice before the Office in his or her possession, custody or control; and

(vii) Take any necessary and appropriate steps to remove from any telephone, legal, or other directory any advertisement, statement, or representation which would reasonably suggest that the practitioner is authorized to practice patent, trademark, or other non-patent law before the Office.

(viii) All notices required by paragraphs (b)(1)(i) through (b)(1)(vii) of this section shall be served by certified mail, return receipt requested, unless mailed abroad. If mailed abroad, all notices shall be served with a receipt to be signed and returned to the practitioner.

(2) Within 30 days after entry of the order of suspension, exclusion, or exclusion by consent, or of acceptance of resignation the practitioner shall file with the OED Director an affidavit certifying that the practitioner has fully complied with the provisions of the order, and with the imperative USPTO Rules of Professional Conduct. Appended to the affidavit of compliance shall be:

(i) A copy of each form of notice, the names and addressees of the clients, practitioners, courts, and agencies to which notices were sent, and all return receipts or returned mail received up to the date of the affidavit. Supplemental affidavits shall be filed covering subsequent return receipts and returned mail. Such names and addresses of clients shall remain confidential unless otherwise ordered by the USPTO Director;

(ii) A schedule showing the location, title and account number of every bank account designated as a client, trust, deposit account in the Office, or other fiduciary account, and of every account in which the practitioner holds or held as of the entry date of the order any client, trust, or fiduciary funds regarding practice before the Office;

(iii) A schedule describing the practitioner's disposition of all client and fiduciary funds in the practitioner's possession, custody or control as of the date of the order or thereafter;

(iv) Such proof of the proper distribution of said funds and the closing of such accounts as has been requested by the OED Director, including copies of checks and other instruments;

(v) A list of all other State, Federal, and administrative jurisdictions to which the practitioner is admitted to practice; and

(vi) An affidavit describing the precise nature of the steps taken to remove from any telephone, legal, or other directory any advertisement, statement, or representation which would reasonably suggest that the practitioner is authorized to practice patent, trademark, or other non-patent law before the Office. The affidavit shall also state the residence or other address of the practitioner to which communications may thereafter be directed, and list all State and Federal jurisdictions, and administrative agencies to which the practitioner is admitted to practice. The OED Director may require such additional proof as is deemed necessary. In addition, for five years following the effective date of the suspension, exclusion, exclusion by consent, a suspended, excluded, or excluded-on-consent practitioner shall continue to file a statement in accordance with § 11.11(a), regarding any change of residence or other address to which communications may thereafter be directed, so that the suspended, excluded, or excluded-on-consent practitioner may be located if a complaint is made about any conduct occurring before or after the exclusion or suspension. The practitioner shall retain copies of all notices sent and shall maintain complete records of the steps taken to comply with the notice requirements.

(3) Not hold himself or herself out as authorized to practice law before the Office.

(4) Not advertise the practitioner's availability or ability to perform or render legal services for any person having immediate or prospective business before the Office.

(5) Not render legal advice or services to any person having immediate or prospective business before the Office as to that business.

(6) Promptly take steps to change any sign identifying a practitioner's or the practitioner's firm's office and practitioner's or the practitioner's firm's stationery to delete therefrom any advertisement, statement, or representation which would reasonably suggest that the practitioner is authorized to practice law before the Office.

(c) *Effective date of discipline.* Except as provided in §§ 11.24, 11.25, and 11.28, an order of suspension, exclusion, or exclusion by consent shall be effective immediately upon entry unless the USPTO Director directs otherwise. The practitioner who is suspended, excluded, excluded-on-consent, or who has resigned, after entry of the order, shall not accept any new retainer regarding immediate, pending, or prospective business before the Office, or engage as a practitioner for another in any new case or legal matter regarding practice before the Office. The order shall grant limited recognition for a period of 30 days. During the 30-day period of limited recognition, the practitioner shall conclude other work on behalf of a client on any matters that were pending before the Office on the date of entry. If such work cannot be concluded, the practitioner shall so advise the client so that the client may make other arrangements.

(d) *Required records.* A practitioner who is suspended, excluded or excluded-on-consent, or who has resigned, other than a practitioner suspended under §§ 11.28 (c) or (d), shall keep and maintain records of the various steps taken under this section, so that in any subsequent proceeding proof of compliance with this section and with the exclusion or suspension order will be available. The OED Director will require the practitioner to submit such proof as a condition precedent to the granting of any petition for reinstatement. In the case of a practitioner suspended under §§ 11.28 (c) or (d), the USPTO Director shall

enter such order as may be required to compile and maintain all necessary records.

(e) A practitioner who is suspended, excluded, or excluded-on-consent, or who has resigned, and who aids another practitioner in any way in the other practitioner's practice of law before the Office, may, under the direct supervision of the other practitioner, act as a paralegal for the other practitioner or perform other services for the other practitioner which are normally performed by laypersons, provided:

(1) The practitioner who is suspended, excluded or excluded on consent, or who has resigned is:

(i) A salaried employee of:

(A) The other practitioner;

(B) The other practitioner's law firm; or

(C) A client-employer who employs the other practitioner as a salaried employee;

(2) The other practitioner assumes full professional responsibility to any client and the Office for any work performed by the practitioner who is suspended, excluded, or excluded-on-consent, or who has resigned for the other practitioner;

(3) The practitioner who is suspended, excluded, or excluded-on-consent, or who has resigned does not:

(i) Communicate directly in writing, orally, or otherwise with a client of the other practitioner in regard to any immediate, prospective, or pending business before the Office;

(ii) Render any legal advice or any legal services to a client of the other practitioner in regard to any immediate, prospective, or pending business before the Office; or

(iii) Meet in person or in the presence of the other practitioner in regard to any immediate, prospective, or pending business before the Office, with:

(A) Any Office official in connection with the prosecution of any patent, trademark, or other case;

(B) Any client of the other practitioner, the other practitioner's law firm, or the client-employer of the other practitioner; or

(C) Any witness or potential witness which the other practitioner, the other practitioner's law firm, or the other practitioner's client-employer may or intends to call as a witness in any proceeding before the Office. The term "witness" includes individuals who will testify orally in a proceeding before, or sign an affidavit or any other document to be filed in, the Office.

(f) When a practitioner who is suspended, excluded, or excluded-on-consent, or who has resigned, acts as a paralegal or performs services under paragraph (c) of this section, the practitioner shall not thereafter be reinstated to practice before the Office unless:

(1) The practitioner shall have filed with the OED Director an affidavit which:

(i) Explains in detail the precise nature of all paralegal or other services performed by the practitioner, and

(ii) Shows by clear and convincing evidence that the practitioner has complied with the provisions of this section and all imperative USPTO Rules of Professional Conduct; and

(2) The other practitioner shall have filed with the OED Director a written statement which

(i) Shows that the other practitioner has read the affidavit required by paragraph (d)(1) of this section and that the other practitioner believes every statement in the affidavit to be true, and

(ii) States why the other practitioner believes that the practitioner who is suspended, excluded, or excluded-on-consent, or who has resigned has complied with paragraph (c) of this section.

§ 11.59 Notice of suspension or exclusion.

(a) Upon issuance of an order reprimanding a practitioner or suspending, excluding, or excluding on consent a practitioner from practice before the Office, the OED Director shall give notice of the final decision to appropriate employees of the Office, to interested departments, agencies, and courts of the United States, and to the National Discipline Data Bank maintained by the American Bar Association Standing Committee on Professional Discipline. The OED Director shall also give notice to appropriate authorities of any State in which a practitioner is known to be a member of the bar and any appropriate bar association.

(b) *Publication of notices, orders, and decisions.* The OED Director shall cause to be published in the Official Gazette the name of every practitioner who is suspended, excluded, or excluded-on-consent, who resigns from practice, and who is transferred to disability inactive status. The order suspending, excluding, or excluding by consent a practitioner, or accepting resignation, and the decision by the USPTO Director, including an initial decision of a hearing officer under § 11.54(a) that becomes the decision of the USPTO Director, suspending or excluding a practitioner shall be published. Unless otherwise ordered by the USPTO Director, the OED Director shall publish in the Official Gazette the name of any practitioner reprimanded by the USPTO Director, as well as the order and any decision by the USPTO Director, including an initial decision of a hearing officer under § 11.54(a) that becomes the decision of the USPTO Director, reprimanding the practitioner.

(c) *Records available to the public.* Consistent with a retention schedule set for disciplinary records, the OED Director shall maintain records that shall be available for public inspection of every disciplinary proceeding where practitioner is reprimanded, suspended, or excluded, excluded-on-consent, or who resigns while under investigation, unless the USPTO Director orders that the proceeding or a portion of the record be kept confidential. The record of a proceeding that results in a practitioner being transferred to disability inactive status will not be available to the public.

(d) *Access to records of exclusion by consent.* The order excluding a practitioner on consent under § 11.27 shall be a matter of public record. However, the affidavit required under paragraph (a) of § 11.27 shall not be publicly disclosed or made available for use in any other proceeding except by order of the USPTO Director or upon written consent of the practitioner.

§ 11.60 Petition for reinstatement.

(a) *Restrictions on reinstatement.* A practitioner who is suspended, excluded, or excluded on consent is required to furnish proof of rehabilitation under paragraph (d) of this section, and shall not resume practice of patent, trademark, or other non-patent law before the Office until reinstated by order of the OED Director or the USPTO Director.

(b) *Reinstatement of practitioners transferred to disability inactive status.* A practitioner who has been transferred to disability inactive status under § 11.28 may move for reinstatement in accordance with that section, but reinstatement shall not be ordered except on a showing by clear and convincing evidence that the disability has ended, that the practitioner has complied with § 11.12, and that the practitioner is fit to resume the practice of law.

(c) *Petition for reinstatement of practitioners excluded or suspended on other grounds.* A suspended or excluded practitioner shall be eligible to apply for reinstatement only upon expiration of the period of suspension or exclusion and the practitioner's full compliance with § 11.58. A practitioner who is excluded or excluded on consent shall be eligible to apply for reinstatement no earlier than at least five years from the effective date of the exclusion.

(d) *Review of reinstatement petition.* A practitioner suspended, excluded, or excluded-on-consent shall file a petition for reinstatement accompanied by the fee required by § 1.21(a)(10) of this subchapter. The petition for reinstatement by a practitioner suspended, excluded, or excluded-on-consent for misconduct, must provide proof of rehabilitation and compliance with the provisions of § 11.11(d)(2), and it shall be filed with the OED Director. A suspended or excluded practitioner who has violated any provision of § 11.58 shall not be eligible for reinstatement until a continuous period of the time in compliance with § 11.58 that is equal to the period of suspension or exclusion has elapsed. If the suspended, excluded, or excluded-on-consent practitioner is not eligible for reinstatement, or if the OED Director determines that the petition is insufficient or defective on its face, the OED Director may dismiss the petition. Otherwise the OED Director shall consider the petition for reinstatement. The suspended, excluded, or excluded-on-consent practitioner seeking reinstatement shall have the burden of proof by clear and convincing evidence. Such proof shall be included in or accompany the petition, and shall establish:

(1) That the practitioner has the moral character qualifications, competency, and learning in law required under § 11.7 for admission;

(2) That the resumption of practice before the Office will not be detrimental to the administration of justice, or subversive to the public interest; and

(3) That the suspended practitioner has complied with the provisions of § 11.58 for the full period of suspension, or that the excluded or excluded-on-consent practitioner has complied with the provisions of § 11.58 for at least five continuous years.

(e) *Petitions for reinstatement—Action by the OED Director granting reinstatement.* (1) If the petitioner is found fit to resume the practice before the Office, the OED Director shall enter an order of reinstatement, which may be conditioned upon the making of partial or complete restitution to persons harmed by the misconduct which led to the suspension or exclusion, or upon the payment of all or part of the costs of the disciplinary proceedings, the reinstatement proceedings, or any combination thereof.

(2) *Payment of costs of disciplinary or reinstatement proceedings.* Upon petitioning for reinstatement, the practitioner shall pay the costs of the disciplinary proceeding, and costs for the reinstatement proceeding. The costs imposed pursuant to this section include all of the following:

(i) The actual expense incurred by the OED Director or the Office for the original and copies of any reporter's transcripts of the disciplinary proceedings or reinstatement proceedings, and any fee paid for the services of the reporter;

(ii) All expenses paid by the OED Director or the Office which would qualify as taxable costs recoverable in civil proceedings; and

(iii) The charges determined by the OED Director to be "reasonable costs" of investigation, hearing, and review. These amounts shall serve to defray the costs, other than fees for services of attorneys and experts, of the Office of Enrollment and Discipline in the preparation or hearing of disciplinary proceeding or reinstatement proceeding, and costs incurred in the administrative processing of the disciplinary proceeding or reinstatement proceeding.

(3) A suspended, excluded, or excluded-on-consent practitioner may be granted relief, in whole or in part, only from an order assessing costs under this section, or may be granted an extension of time to pay these costs, in the discretion of the OED Director, upon grounds of hardship, special circumstances, or other good cause.

(f) *Petitions for reinstatement—Action by the OED Director denying reinstatement.* If the petitioner is found unfit to resume the practice of patent law before the Office, the OED Director shall first provide the suspended, excluded, or excluded-on-consent practitioner with an opportunity to show cause in writing why the petition should not be denied. Failure to comply with § 11.12(d)(2) shall constitute unfitness. If unpersuaded by the showing, the OED Director shall deny the petition. The OED Director may require the suspended, excluded, or excluded-on-consent practitioner, in meeting the requirements of § 11.7, to take and pass an examination under § 11.7(b), ethics courses, and/or the Multistate Professional Responsibility Examination. The OED Director shall provide findings, together with the record. The findings shall include on the first page, immediately beneath the caption of the case, a separate section entitled "Prior Proceedings" which shall state the docket number of the original disciplinary proceeding in which the suspension, exclusion, or exclusion by consent was ordered.

(g) *Resubmission of petitions for reinstatement.* If a petition for reinstatement is denied, no further petition for reinstatement may be filed until the expiration of at least one year following the denial unless the order of denial provides otherwise.

(h) *Reinstatement proceedings open to public.* Proceedings on any petition for reinstatement shall be open to the public. Before reinstating any suspended, excluded, or excluded-on-consent practitioner, the OED Director shall publish in the Official Gazette a notice of the suspended, excluded, or excluded-on-consent practitioner's petition for reinstatement and shall permit the public a reasonable opportunity to comment or submit evidence with respect to the petition for reinstatement.

§ 11.61 Savings clause.

(a) A disciplinary proceeding based on conduct engaged in prior to the effective date of these regulations may be instituted subsequent to such effective date, if such conduct would continue to justify suspension or exclusion under the provisions of this Part.

(b) No practitioner shall be subject to a disciplinary proceeding under this Part based on conduct engaged in before the effective date hereof if such conduct would not have been subject to disciplinary action before such effective date.

§ 11.62 Protection of clients interests when practitioner becomes unavailable.

If a practitioner dies, disappears, or is suspended or transferred to inactive status for incapacity or disability, and there is no partner, associate, or other responsible practitioner capable of conducting the practitioner's affairs, a court of competent jurisdiction may appoint a registered practitioner to make appropriate disposition of any patent application files. All other matters should be handled in accordance with the laws of the local jurisdiction.

Subpart D—USPTO Rules of Professional Conduct

§ 11.100 Interpretation of the USPTO Rules of Professional Conduct.

(a) Rules in §§ 11.101 through 11.806 that are imperatives are cast in the terms "shall" or "shall not." These define proper conduct for purposes of professional discipline.

(b) Rules in §§ 11.101 through 11.806 that are permissive are cast in the term "may." These define areas under the Rules in which the practitioner has professional discretion. No disciplinary action should be taken when the practitioner chooses not to act or acts within the bounds of such discretion.

(c) Other rules in §§ 11.101 through 11.806 defining the nature of relationships between the practitioner

and others, are thus partly obligatory and disciplinary and partly constitutive and descriptive in that they define a practitioner's professional role.

Client-Practitioner Relationship

§ 11.101 Competence.

(a) A practitioner shall provide competent representation to a client having immediate or prospective business before the Office. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.

(b) A practitioner shall serve a client having immediate or prospective business before the Office with skill and care commensurate with that generally afforded to clients by other practitioners in similar matters.

(c) Conduct that constitutes a violation of paragraphs (a) or (b) of this section includes, but is not limited to:

(1) A practitioner handling a legal matter which the practitioner knows or should know that the practitioner, due to legal or scientific training, is not competent to handle, without associating with the practitioner, another practitioner, who is competent to handle the matter;

(2) A practitioner withholding from the Office information identifying a patent or patent application of another from which one or more claims have been copied. *See* §§ 1.604(b) and 1.607(c) of this subchapter;

(3) A practitioner employs one or more procedures that the Office no longer authorizes practitioners to use to present or prosecute a patent application; and

(4) A practitioner filing and/or prosecuting, or assisting in the filing and/or prosecuting an application claiming a frivolous invention; or submitting or assisting in the submission to the Office of a frivolous filing. An application claims a frivolous invention or a filing is frivolous where the claim of patentability or argument is known or should have been known by a reasonably prudent registered practitioner to be unwarranted under existing law, and said claim or argument cannot be supported by good faith argument for an extension, modification, or reversal of existing law.

§ 11.102 Scope of representation.

(a) A practitioner shall abide by a client's decisions concerning the objectives of representation in practice before the Office, subject to paragraphs (c), (d), (e), and (g) of this section, and shall consult with the client as to the means by which they are to be pursued. A practitioner shall abide by a client's decision whether to accept an offer of settlement of a matter.

(b) A practitioner's representation of a client having immediate or prospective business before the Office does not constitute an endorsement of the client's political, economic, social, or moral views or activities.

(c) A practitioner may limit the objectives of the representation if the client having immediate or prospective business before the Office consents in writing after full disclosure by the practitioner.

(d) When a practitioner knows that a client having immediate or prospective business before the Office expects assistance not permitted by the Rules of Professional Conduct or other law, including perpetrating a fraud, disregarding any provision of this Part, or disregarding a decision of the Office made in the course of a proceeding before the Office, the practitioner shall both consult with the client regarding the relevant limitations on the practitioner's conduct, and advise the client of the legal consequences of any proposed course of action.

(e) A practitioner shall not counsel a client having immediate or prospective business before the Office to engage, or assist said client, in conduct that the practitioner knows is criminal or fraudulent, but a practitioner may discuss the legal consequences of any proposed course of conduct with the client and may counsel or assist the client to make a good-faith effort to determine the validity, scope, meaning, or application of the law.

(f) The authority and control of a practitioner, employed by the Federal Government, over decisions concerning the representation may, by statute or regulation, be expanded beyond the limits imposed by paragraphs (a) and (c) of this section.

(g) A practitioner receiving information clearly establishing that the client has, in the course of the representation, perpetrated a fraud upon a person or tribunal in connection with practice before the Office shall promptly call upon the client to rectify the same, and if the client refuses or is unable to do so the practitioner shall reveal the fraud to the affected person or tribunal, except where the information is protected as a privileged communication.

§ 11.103 Diligence and zeal.

(a) A practitioner shall represent a client having immediate or prospective business before the Office zealously and diligently within the bounds of the law.

(b) A practitioner shall act with reasonable promptness in representing a client having immediate or prospective business before the Office.

(c) Conduct that constitutes a violation of paragraphs (a) or (b) of this section includes, but is not limited to,

(1) Neglecting an entrusted legal matter;

(2) Intentionally failing to seek the lawful objectives of a client through reasonably available means permitted by law and the imperative USPTO Rules of Professional Conduct; or

(3) Intentionally prejudicing or damaging a client during the course of the professional relationship.

§ 11.104 Communication.

(a) A practitioner shall keep a client having immediate or prospective business before the Office reasonably informed about the status of a matter, and promptly comply with reasonable requests for information. In particular:

(1) A practitioner who has been engaged to represent or counsel an inventor as a result of a referral from an invention promoter shall communicate directly with the inventor, and promptly report each Office action and communicate directly with the inventor; and

(2) A practitioner who has been engaged to represent or counsel an inventor or other client having immediate, prospective, or pending business before the Office as a result of a referral by a foreign attorney or foreign patent agent located in a foreign country may, with the written and informed consent of said inventor or other client, conduct said communications with the inventor or other client through said foreign attorney or foreign patent agent.

(b) A practitioner shall explain a matter to the extent reasonably necessary to permit the client having immediate or prospective business before the Office to enable the client to make informed decisions regarding the representation.

(c) A practitioner who receives an offer of settlement in an *inter partes* matter before the Office shall inform the client promptly of the substance of the communication.

(d) Conduct that constitutes a violation of paragraph (a) of this section includes, but is not limited to:

(1) Failing to inform a client or former client or failing to timely notify the Office of an inability to notify a client or former client of correspondence received from the Office or the client's or former client's opponent in an *inter partes* proceeding before the Office when the correspondence:

(i) Could have a significant effect on a matter pending before the Office;

(ii) Is received by the practitioner on behalf of a client or former client, and

(iii) Is correspondence of which a reasonable practitioner would believe under the circumstances the client or former client should be notified.

(2) [Reserved]

§ 11.105 Fees.

(a) A practitioner's fee shall be reasonable. The factors to be considered in determining the reasonableness of a fee include the following:

(1) The time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;

(2) The likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the practitioner;

(3) The fee customarily charged in the locality for similar legal services;

(4) The amount involved and the results obtained;

(5) The time limitations imposed by the client or by the circumstances;

(6) The nature and length of the professional relationship with the client;

(7) The experience, reputation, and ability of the practitioner or practitioners performing the service; and

(8) Whether the fee is fixed or contingent.

(b) When the practitioner has not regularly represented the client having immediate or prospective business before the Office, the basis or rate of the fee shall be communicated directly to the client, in writing, before or within a reasonable time after commencing the representation. The communication shall distinguish between and specify the basis or rate for preparation and filing an application in the Office, and for prosecution of the application (including replies to Office actions, petitions, affidavits, appeal briefs, and the like).

(c) A fee in regard to practice before the Office may be contingent on the outcome of the matter for which the service is rendered, except in a matter in which a contingent fee is prohibited by paragraph (d) of this section or other law. In accordance with paragraph (a) of this section, a contingent fee shall be reasonable. A contingent fee agreement shall be in writing and shall state the method by which the fee is to be determined, including the percentage or percentages that shall accrue to the practitioner in the event of grant of a patent, registration of a mark, settlement, hearing or appeal, litigation, and other expenses to be deducted from the recovery, and whether such expenses are to be deducted before or after the contingent fee is calculated. Upon conclusion of a contingent fee matter, the practitioner shall provide the client with a written statement stating the outcome of the matter and, if there is a recovery, showing the remittance to the client and the method of its determination.

(d) A division of a fee between practitioners who are not in the same firm may be made in regard to practice before the Office only if:

(1) The division is in proportion to the services performed by each practitioner or by written agreement with the client, each practitioner assumes joint responsibility for the representation;

(2) The client is advised, in writing, of the identity of the practitioners who will participate in the representation, of the contemplated division of responsibility, and of the effect of the association of practitioners outside the firm on the fee to be charged;

(3) The client gives informed consent in writing to the arrangement; and

(4) The total fee is reasonable.

(e) Any fee that is prohibited by law is per se unreasonable.

§ 11.106 Confidentiality of information.

(a) A practitioner, in regard to practice before the Office, shall not:

(1) Reveal information relating to representation of a client unless the client gives informed consent in writing after full disclosure by the practitioner, except for disclosures that are impliedly authorized in order to carry out the representation, and except as stated in paragraphs (b), (c), or (d) of this section;

(2) Knowingly use information relating to representation of a client to the disadvantage of the client; or

(3) Use a confidence or secret of the practitioner's client for the advantage of the practitioner or of a third person.

(b) A practitioner, in regard to practice before the Office, may reveal such information to the extent the practitioner reasonably believes necessary:

(1) To prevent the client from committing a criminal act that the practitioner believes is likely to result in imminent death or substantial bodily harm; or

(2) To establish a claim or defense on behalf of the practitioner in a controversy between the practitioner and the client, to establish a defense to a criminal charge or civil claim against the practitioner based upon conduct in which the client was involved, or to respond to allegations in any proceeding concerning the practitioner's representation of a client.

(c) A practitioner, in regard to practice before the Office, shall use or reveal information relating to representation of a client to comply with the provisions of § 1.56 of this subchapter in practice before the Office in patent matters (*see* 11.303(d));

(d) A practitioner, in regard to practice before the Office may use or reveal information relating to representation of a client to comply:

(1) With the informed consent in writing of the client affected, but only after full disclosure by the practitioner to the client;

(2) With rules, law or court order when permitted by these rules or required by law or court order; or

(3) With the law or regulations of the Office, when permitted or authorized by the law or regulations, in connection with representation before the Office, whether or not the practitioner is employed by the Federal Government.

(e) The client of practitioner employed by the Federal Government is the Department, agency, or commission that employs the practitioner unless appropriate law, regulation, or order expressly provides to the contrary.

(f) A practitioner shall exercise reasonable care to prevent the practitioner's employees, associates, and others whose services are utilized by the practitioner from disclosing or using such information of a client, except that such persons may reveal information permitted to be disclosed by paragraphs (c), (d), or (e) of this section.

(g) The practitioner's obligation to preserve in confidence such information continues after termination of the practitioner's employment, except as provided for in § 1.56.

(h) The obligation of a practitioner under paragraph (a) of this section also applies to such information learned prior to becoming a practitioner in the course of providing assistance to another practitioner.

§ 11.107 Conflict of interest: General rule.

(a) A practitioner shall not represent a client having immediate or prospective business before the Office if the representation of that client will be directly adverse to another client having immediate or prospective business before the Office, unless:

(1) The practitioner reasonably believes the representation will not adversely affect the relationship with the other client; and

(2) Each client gives informed consent in writing after full disclosure by the practitioner. When a practitioner has both an inventor and an invention promoter, who referred the inventor to

the practitioner, as clients the disclosure and consent shall be in writing.

(b) A practitioner shall not represent a client if the representation of that client may be materially limited by the practitioner's responsibilities to another client or to a third party, or by the practitioner's own interests, where any of the clients or third party have immediate or prospective business before the Office, unless:

(1) The practitioner reasonably believes the representation will not be adversely affected: and

(2) The client gives informed consent in writing after full disclosure, including implications of the common representation and the advantages and risks involved, by the practitioner.

(c) The requirements of paragraph (b) of this section apply when the third party is an invention promoter, or the practitioner's interests involve receiving payment from an invention promoter.

§ 11.108 Conflict of interest: Prohibited transactions.

(a) A practitioner shall not enter into a business transaction with a client having immediate or prospective business before the Office, or knowingly acquire an ownership, possessory, security, or other pecuniary interest adverse to a client having immediate or prospective business before the Office unless:

(1) The transaction and terms on which the practitioner acquires the interest are fair and reasonable to the client, and are fully disclosed and transmitted in writing by the practitioner to the client in a manner which can be reasonably understood by the client;

(2) The client is advised to and given a reasonable opportunity by the practitioner to seek the advice of independent counsel in the transaction; and

(3) The client gives informed consent in writing thereto after full disclosure by the practitioner.

(b) A practitioner shall not use information relating to representation of a client having immediate or prospective business before the Office to the disadvantage of the client unless the client gives informed consent in writing after full disclosure by the practitioner, except as permitted or required by §§ 11.106 or 11.303.

(c) A practitioner shall not prepare an instrument giving the practitioner or a person related to the practitioner as parent, child, sibling, or spouse any substantial gift from a client having immediate or prospective business before the Office, including a testamentary gift, except where the client is related to the donee.

(d) Prior to the conclusion of representation of a client having immediate or prospective business before the Office, a practitioner shall not make or negotiate an agreement giving the practitioner literary or media rights to a portrayal or account based in substantial part on information relating to the representation.

(e) A practitioner shall not provide financial assistance to a client in connection with pending or contemplated litigation or proceeding before the Office, except that:

(1) A practitioner may advance court costs and expenses of litigation, or a proceeding before the Office, the repayment of which may be contingent on the outcome of the matter;

(2) A practitioner representing an indigent client may pay court or Office costs and expenses of litigation or proceeding before the Office on behalf of the client; and

(3) A practitioner may advance or guarantee the expenses of going forward in a proceeding before the Office including fees required by law to be paid to the Office in connection with the prosecution of the matter, expenses of investigation, expenses of medical examination, and costs of obtaining and presenting evidence, provided the client remains ultimately liable for such expenses. A practitioner may, however, advance any fee required to prevent or remedy an abandonment of a client's application by reason of an act or omission attributable to the practitioner and not to the client, whether or not the client is ultimately liable for such fee.

(f) A practitioner shall not accept compensation for representing a client having immediate or prospective business before the Office from one other than the client unless:

(1) The client gives informed consent, confirmed in writing, after full disclosure by the practitioner;

(2) There is no actual or potential interference with the practitioner's independence of professional judgment or with the attorney-client or agent-client relationship; and

(3) Information relating to representation of a client is protected as required by § 11.106.

(g) A practitioner who represents two or more clients having immediate or prospective business before the Office shall not participate in making an aggregate settlement of the claims of or against the clients, unless each client gives informed consent, confirmed in writing, after full disclosure by the practitioner, including disclosure of the existence and nature of all the claims or pleas involved and of the participation of each person in the settlement.

(h) A practitioner, in regard to practice before the Office, shall not:

(1) Make an agreement prospectively limiting the practitioner's liability to a client or former client for malpractice unless permitted by law and the client is independently represented in making the agreement; or

(2) Settle a claim for such liability with an unrepresented client or former client without first advising that person in writing that independent representation is appropriate in connection therewith.

(i) A practitioner related to another practitioner as parent, child, sibling, or spouse shall not represent a client having immediate or prospective business before the Office in a representation directly adverse to a person who the practitioner knows is represented by the other practitioner except upon informed consent by the client, confirmed in writing, after full disclosure by the practitioner regarding the relationship.

(j) A practitioner shall not acquire a proprietary interest in papers received from a client having immediate or prospective business before the Office, or in a proceeding before the Office that the practitioner is conducting for a client, except that the practitioner may:

(1) Acquire a lien granted by law to secure the practitioner's fee or expenses except as provided in § 11.116(d); and

(2) Contract with a client for a reasonable contingent fee in a civil case or proceeding before the Office; or

(3) In a patent case, after complying with the provisions of paragraph (a) of this section, and, in the case of a practitioner who is or has been an officer or employee of the Office, only at such time and insofar as is permitted by 35 U.S.C. 4, take an interest in a patent or in the proceeds from a patent as part or all of his or her fee. However, the fee obtained by said interest may not exceed an amount that is reasonable. *See* § 11.105(a).

(k) If an invention promoter provides the practitioner with access to an inventor-client whom the practitioner undertakes to represent before the Office, the practitioner shall not accept or continue representation of the inventor-client without providing full disclosure of all conflicts in writing to the inventor-client where:

(1) The practitioner has a legal, business, financial, professional, or personal relationship with a company in the same matter; or

(2) The practitioner has or had a legal, business, financial, professional, or personal relationship with another person the practitioner knows or reasonably should know would be affected substantially by the representation or lack of representation of the inventor-client.

§ 11.109 Conflict of interest: Former client.

(a) A practitioner who, in practice before the Office, has formerly represented a client shall not thereafter represent another person in the same or a substantially related matter in which that person's interests are materially adverse to the interests of the former client unless the former client gives informed consent, confirmed in writing, after consultation.

(b) A practitioner, in regard to practice before the Office, shall not knowingly represent a person in the same or substantially related matter in which a firm or a member of the firm, with which the practitioner formerly was associated, had previously represented a client,

(1) Whose interests are materially adverse to that person; and

(2) About whom the practitioner has acquired information protected by §§ 11.106 and 11.109(c) that is material to the matter; unless the former client gives informed consent, confirmed in writing, after full disclosure by the practitioner;

(c) A practitioner who has formerly represented a client in a matter before the Office, or whose present or former firm, or a practitioner in the firm, has formerly represented a client in a matter before the Office shall not thereafter:

(1) Use information relating to the representation to the disadvantage of the former client except as §§ 11.106 or 11.303 would permit or require with respect to a client, or when the information has become generally known; or

(2) Reveal information relating to the representation except as §§ 11.106 or 11.303 would permit or require with respect to a client.

§ 11.110 Imputed disqualification: General rule.

(a) While practitioners are associated in a firm, or are associated on a continuing basis with an invention promoter, none of them shall knowingly represent a client having immediate or prospective business before the Office when any one of them practicing alone would be prohibited from doing so by §§ 11.107, 11.108(b), 11.109, or 11.202.

(b) In regard to practice before the Office, when a practitioner has terminated an association with a firm, the firm is not prohibited from thereafter representing a person with interests materially adverse to those of a client represented by the formerly associated practitioner, and not currently represented by the firm, unless:

(1) The matter is the same or substantially related to that in which the formerly associated practitioner represented the client; and

(2) Any practitioner remaining in the firm has information protected by §§ 11.106 and 11.109(c) that is material to the matter.

(c) A disqualification prescribed by this section may be waived by the affected client under the conditions stated in § 11.107.

§ 11.111 Successive Government and private employment.

(a) A practitioner shall not accept private employment in connection with a matter that is the same as, or substantially related to, a matter in which the practitioner participated personally and substantially as an employee of the Office. Such participation includes, but is not limited to, acting on the merits of a matter in an administrative or adjudicative capacity.

(b) If a practitioner is required to decline or to withdraw from employment under paragraph (a) of this section on account of personal and substantial participation in a matter, no partner or associate of that practitioner, or practitioner with an of counsel relationship to that practitioner, may accept or continue such employment except as provided in paragraph (c) of this section. The disqualification of such other practitioners does not apply if the sole form of participation was as a judicial or administrative law clerk, including a law clerk at the Board of Patent Appeals and Interferences, or at the Trademark Trial and Appeal Board.

(c) The prohibition stated in paragraph (b) of this section shall not apply if the personally disqualified practitioner is screened from any form of participation in the matter or representation as the case may be, and from sharing in any fees resulting therefrom, and if the requirements of paragraphs (d) and (e) of this section are satisfied.

(d) Except as law may otherwise expressly permit, a practitioner having information that the practitioner knows is confidential Government information about a person that was acquired when the practitioner was an employee of the Office, may not represent a private client whose interests are adverse to that person in a matter in which the information could be used to the material disadvantage of that person. A firm with which that practitioner is associated may undertake or continue representation in the matter only if the disqualified practitioner is screened from any participation in the matter and is apportioned no part of the fee therefrom.

(e) Except as law may otherwise expressly permit, a practitioner serving as an employee of the Office shall not:

(1) Participate in a matter in which the practitioner participated personally and substantially while in private practice or nongovernmental employment, unless under applicable law no one is, or by lawful delegation may be, authorized to act in the practitioner's stead in the matter; or

(2) Negotiate for private employment with any person who is involved as a party or as practitioner for a party in a matter in which the practitioner is participating personally or substantially, except:

(i) A practitioner serving as a law clerk to a judge, administrative law judge, administrative patent judge, or administrative trademark judge may negotiate for private employment as permitted by § 11.112(b) and subject to the conditions stated in § 11.112(b); and

(ii) A practitioner serving in the Office may negotiate for employment with a party or practitioner involved in a matter in which the practitioner is participating personally and substantially, but only after the practitioner has notified his or her supervisor, and the matter is withdrawn from the practitioner's scope of authority.

(f) A practitioner serving in the Office shall not in any manner assist his or her former client, or another practitioner in the presentation or prosecution of said former client's patent application before the Office, including, but not limited to, providing assistance regarding the presentation or amendment of the specification, claims, or drawings, a translation of any foreign document, or provision of funds.

(g) As used in this section, the terms *matter, participated, personally,* and *substantially* are described in § 11.10(b)(3).

(h) As used in this section, the term *confidential Government information* means information that has been obtained under governmental authority and which, at the time this section is applied, the Government is prohibited by law from disclosing to the public or has a legal privilege not to disclose, and which is not otherwise available to the public.

(i) Conduct that constitutes a violation of paragraph (a) of this section includes, but is not limited to:

(1) A practitioner preparing or prosecuting or providing assistance in

the preparation or prosecution of a patent application in violation of an undertaking signed under § 11.10(b), or knowingly aiding in any manner another practitioner in conduct violating an undertaking signed by the other practitioner under § 11.10(b).

§ 11.112 Former judge or arbitrator.

(a) Except as stated in paragraph (b) of this section, a practitioner shall not represent anyone in connection with a matter before the Office in which the practitioner participated personally and substantially as an arbitrator, unless all parties to the proceeding give informed consent, confirmed in writing, after disclosure by the practitioner.

(b) A practitioner shall not negotiate for employment with any person who is involved as a party or as practitioner for a party in a matter in which the practitioner is participating personally and substantially as a judge, administrative law judge, administrative patent judge, administrative trademark judge, or other adjudicative officer, or arbitrator. A practitioner serving as a law clerk to a judge, administrative patent judge, administrative trademark judge, other adjudicative officer or arbitrator may negotiate for employment with a party or practitioner involved in a matter in which the clerk is participating personally and substantially, but only after the practitioner has notified the judge, other adjudicative officer or arbitrator.

(c) If a practitioner is disqualified by paragraph (a) of this section, no practitioner in a firm with which that practitioner is associated may knowingly undertake or continue representation in the matter unless:

(1) The disqualified practitioner is screened from any participation in the matter and is apportioned no part of the fee therefrom; and

(2) Written notice is promptly given to the appropriate tribunal to enable it to ascertain compliance with the provisions of this section.

(d) An arbitrator selected as a partisan of a party in a multimember arbitration panel is not prohibited from subsequently representing that party.

§ 11.113 Organization as client.

(a) A practitioner employed or retained by an organization represents the organization, which acts through its duly authorized constituents.

(b) If a practitioner employed or retained by an organization having immediate or prospective business before the Office knows that an officer, employee or other person associated with the organization is engaged in action, intends to act or refuses to act in a matter related to the representation that is a violation of a legal obligation to the organization, or a violation of law which reasonably might be imputed to the organization, and is likely to result in substantial injury to the organization, the practitioner shall proceed as is reasonably necessary in the best interest of the organization. In determining how to proceed, the practitioner shall give due consideration to the seriousness of the violation and its consequences, the scope and nature of the practitioner's representation, the responsibility in the organization and the apparent motivation of the person involved, the policies of the organization concerning such matters and any other relevant considerations. Any measures taken shall be designed to minimize disruption of the organization and the risk of revealing information relating to the representation to persons outside the organization. Such measures may include among others:

(1) Asking reconsideration of the matter;

(2) Advising that a separate legal opinion on the matter be sought for presentation to appropriate authority in the organization; and

(3) Referring the matter to higher authority in the organization, including, if warranted by the seriousness of the matter, referral to the highest authority that can act in behalf of the organization as determined by applicable law.

(c) If, despite the practitioner's efforts in accordance with paragraph (b) of this section, the highest authority that can act on behalf of the organization insists upon acting, or a refusal to act, that is clearly a violation of law and is likely to result in substantial injury to the organization, the practitioner may resign in accordance with § 11.116.

(d) In dealing with an organization's directors, officers, employees, members, shareholders, or other constituents, a practitioner shall explain the identity of the client when it is apparent that the organization's interests may be adverse to those of the constituents with whom the practitioner is dealing.

(e) A practitioner representing an organization may also represent any of its directors, officers, employees, members, shareholders, or other constituents, subject to the provisions of § 11.107. If the organization's consent to the dual representation is required by § 11.107, the consent shall be confirmed in writing by an appropriate official of the organization other than the individual who is to be represented, or by the shareholders.

§ 11.114 Client under a disability.

(a) When the ability of a client who has immediate or prospective business before the Office, to make adequately considered decisions in connection with the representation is impaired, whether because of minority, mental disability, or for some other reason, the practitioner shall, as far as reasonably possible, maintain a normal attorney-client or agent-client relationship with the client.

(b) A practitioner may seek the appointment of a guardian or take other protective action with respect to a client having immediate or prospective business before the Office, only when the practitioner reasonably believes that the client cannot adequately act in the client's own interest.

§ 11.115 Safekeeping property.

(a) All funds received or held by a practitioner or law firm on behalf of a client having immediate or prospective business before the Office, other than reimbursement of advances for costs and expenses, shall be deposited in one or more identifiable escrow accounts maintained at a financial institution in the State, authorized by Federal or State law to do business in the jurisdiction where the practitioner or law firm is situated and which is a member of the Federal Deposit Insurance Corporation, or the Federal Savings and Loan Insurance Corporation, or successor agencies or, in the case of a practitioner having an office in a foreign country or registered under § 11.6(c), in said financial institution in the United States or in a comparable financial institution in a foreign country, and no funds belonging to the practitioner or law firm shall be deposited therein except as follows:

(1) Funds reasonably sufficient to pay service or other charges or fees imposed by the financial institution may be deposited therein; or

(2) Funds belonging in part to a client and in part presently or potentially to the practitioner or law firm must be deposited in said financial institution, and the portion belonging to the practitioner or law firm must be withdrawn promptly after it is due unless the right of the practitioner or law firm to receive it is disputed by the client, in which event the disputed portion shall not be withdrawn until the dispute is finally resolved.

(b) A practitioner having an arrangement with an invention promoter for payment of his or her legal fees for legal services rendered for a client referred to the practitioner by the promoter must ascertain upon accepting said referral whether the client advances

funds for legal services to the promoter, and must take all reasonable steps to safeguard the advanced funds.

(c) When in the course of representation before the Office a practitioner is in possession of property in which both the practitioner and another person claim interests, the practitioner shall keep the property separate until there is an accounting and severance of their interests. If a dispute arises concerning their respective interests, the practitioner shall keep the portion in dispute separate until the dispute is resolved.

(d) A practitioner, in connection with a client having immediate or prospective business before the Office, shall:

(1) Promptly notify a client of the receipt of the client's funds, securities, or other properties;

(2) Identify and label securities and properties of a client promptly upon receipt and place them in a safe deposit box or other place of safekeeping as soon as practicable;

(3) Maintain complete records of all funds, securities, and other properties of a client coming into the possession of the practitioner and render appropriate accounts to the client regarding them; and

(4) Promptly pay and deliver to the client or another as requested by such person the funds, securities, or other properties in the possession of the practitioner that such person is entitled to receive.

(e) *Funds, securities or other properties.* Funds, securities or other properties held by a practitioner or law firm as a fiduciary in connection with a client having immediate or prospective business before the Office shall be maintained in separate fiduciary accounts, and the practitioner or law firm shall not commingle the assets of such fiduciary accounts in a common account (including a book-entry custody account), except in the following cases:

(1) Funds may be maintained in a common escrow account subject to the provisions of paragraphs (a) and (c) of this section when authorized by professional conduct rules for lawyers in the jurisdiction where the practitioner or law firm is situated; or

(2) Funds, securities or other properties may be maintained in a common account when authorized by professional conduct rules for lawyers in the jurisdiction where the practitioner or law firm is situated.

(f) *Recordkeeping requirements, required books and records.* Every practitioner in regard to his or her practice before the Office shall maintain or cause to be maintained, on a current basis, books and records that establish compliance with paragraphs (a) and (d) of this section. Whether a practitioner or a law firm maintains computerized records or a manual accounting system, such system shall produce the records or information required by this section.

(1) In the case of funds held in an escrow account subject to this section, the required books and records include:

(i) A cash receipts journal or journals listing all funds received, the sources of the receipts and the date of receipts. Checkbook entries of receipts and deposits, if adequately detailed and bound, may constitute a journal for this purpose. If separate cash receipts journals are not maintained for escrow and non-escrow funds, then the consolidated cash receipts journal shall contain separate columns for escrow and non-escrow receipts;

(ii) A cash disbursements journal listing and identifying all disbursements from the escrow account. Checkbook entries of disbursements, if adequately detailed and bound, may constitute a journal for this purpose. If separate disbursements journals are not maintained for escrow and non-escrow disbursements then the consolidated disbursements journal shall contain separate columns for escrow and non-escrow disbursements;

(iii) A subsidiary ledger containing a separate account for each client and for every other person or entity from whom money has been received in escrow shall be maintained. The ledger account shall by separate columns or otherwise clearly identify escrow funds disbursed, and escrow funds balance on hand. The ledger account for a client or a separate subsidiary ledger account for a client shall clearly indicate all fees paid from trust accounts; and

(iv) Reconciliations and supporting records required under this section.

(2) The records required under paragraph (f)(1) of this section shall be preserved for at least five full calendar years following termination of the fiduciary relationship.

(3) In the case of funds or property held by a practitioner or law firm as a fiduciary subject to paragraph (c) of this section, the required books and records include:

(i) An annual summary of all receipts and disbursements and changes in assets comparable to an accounting that would be required of a court supervised fiduciary in the same similar capacity. Such annual summary shall be in sufficient detail as to allow a reasonable person to determine whether the practitioner is properly discharging the obligations of the fiduciary relationship; and

(ii) Original source documents sufficient to substantiate and, when necessary, to explain the annual summary required under paragraph (f)(2)(A) of this section.

(4) The records required under paragraph (f)(3) of this section shall be preserved for at least five full years following the termination of the fiduciary relationship.

(g) *Required escrow accounting procedures.* The following minimum accounting procedures are applicable to all escrow accounts subject to paragraphs (a) and (c) of this section by practitioners in regard to practice before the Office.

(1) Insufficient fund check reporting.

(i) *Clearly identified escrow accounts required.* A practitioner or law firm shall deposit all funds held in escrow in a clearly identified account, and shall inform the financial institution in writing of the purpose and identity of the account. Practitioner escrow accounts shall be maintained only in financial institutions authorized by these rules.

(ii) *Overdraft notification.* A financial institution may report to the Office of Enrollment and Discipline if any instrument which would be properly payable if sufficient funds were available, is presented against a practitioner escrow account containing insufficient funds, irrespective of whether or not the instrument is honored.

(iii) *Overdraft reports.* All reports made by a financial institution shall be in the following format:

(A) In the case of a dishonored instrument, the report shall be identical of the overdraft customarily forwarded to the depositor, and should include a copy of the dishonored instrument, if such a copy is normally provided to depositors;

(B) In the case of instruments that are presented against insufficient funds but which instruments are honored, the report shall identify the financial institution, the practitioner or law firm, the account name, the account number, the date of presentation for payment, and the date paid, as well as the amount of the overdraft created thereby; and

(C) Every practitioner or law firm shall be conclusively deemed to have consented to the reporting and production requirements mandated by this section.

(2) *Deposits.* All receipts of escrow money shall be deposited intact and a retained duplicate deposit slip or other such record shall be sufficiently

detailed to show the identity of each item.

(3) *Deposit of mixed escrow and non-escrow funds other than fees and retainers.* Mixed escrow and non-escrow funds shall be deposited intact to the escrow account. The non-escrow portion shall be withdrawn upon the clearing of the mixed fund deposit instrument.

(4) *Periodic trial balance.* A regular periodic trial balance of the subsidiary ledger shall be made at least quarterly, within 30 days after the close of the period and shall show the escrow account balance of the client or other period at the end of each period.

(A) The total of the trial balance must agree with the control figure computed by taking the beginning balance, adding the total monies received in escrow for the period and deducting the total escrow monies disbursed for the period; and

(B) The trial balance shall identify the preparer and be approved by the practitioner or one of the practitioners in the law firm.

(5) *Reconciliations.* (i) A monthly reconciliation shall be made at month end of the cash balance derived from the cash receipts journal and cash disbursements journal total, the escrow account checkbook balance, and the escrow account bank Statement balance;

(ii) A periodic reconciliation shall be made at least quarterly, within 30 days after the close of the period, reconciling cash balances to the subsidiary ledger trial balance;

(iii) Reconciliations shall identify the preparer and be approved by the practitioner or one of the practitioners in the law firm.

(6) *Receipts and disbursements explained.* The purpose of all receipts and disbursements of escrow funds reported in the escrow journals and subsidiary ledgers shall be explained and supported by adequate records.

(h) All financial accounts kept by a registered practitioner must comply with the provisions of paragraph (f) of this section, except that:

(1) *Attorneys:* The financial records maintained by a practitioner who is an attorney in good standing of a bar of the highest court in a state will be deemed to be in substantial compliance with the provisions of paragraphs (f) and (g) of this section if the attorney's principal place of business is in the United States, and the financial records are in compliance with the financial recordkeeping requirements of the state bar of which he or she is a member in good standing; or

(2) *Patent agents employed by a law firm:* The trust account records maintained by a law firm with regard to a patent agent employed by the law firm will be deemed to be in substantial compliance with the provisions of paragraphs (f) and (g) of this section for the patent agent if the principal place of business of the law firm and the patent agent are in the United States, the patent agent is employed by the law firm, and the financial records maintained by the law firm comply with the financial record-keeping requirements that apply to at least one attorney in the law firm at the principal place of business.

(i) Conduct that constitutes a violation of paragraph (a) of this section includes, but is not limited to misappropriation of, or failure to properly or timely remit, funds received by a practitioner or the practitioner's firm from a client having immediate or prospective business before the Office to pay a fee which the client is required by law to pay to the Office.

§ 11.116 Declining or terminating representation.

(a) Except as stated in paragraph (c) of this section, a practitioner shall not represent a client before the Office, or where representation has commenced, shall withdraw from the representation of a client before the Office if:

(1) The representation will result in violation of the Rules of Professional Conduct or other law;

(2) The practitioner's physical or mental condition materially impairs the practitioner's ability to represent the client;

(3) The practitioner is discharged; or

(4) The practitioner becomes an employee of the Office, and before becoming an employee the practitioner has a matter, including a patent application, in which the practitioner acts as attorney or agent for prosecuting a claim against the United States, or receives any gratuity, or any share of or interest in such claim, or acts as attorney or agent for anyone before the Office in which the United States is a party or has a substantial interest. In the latter instance, the practitioner shall withdraw before the first day of employment at the Office from every such matter.

(b) Except as stated in paragraph (c) of this section, a practitioner may withdraw from representing a client before the Office if withdrawal can be accomplished without material adverse effect on the interests of the client, or if:

(1) The client persists in a course of action involving the practitioner's services that the practitioner reasonably believes is criminal or fraudulent;

(2) The client has used the practitioner's services to perpetrate a crime or fraud;

(3) A client insists upon pursuing an objective that the lawyer considers repugnant or imprudent;

(4) The client fails substantially to fulfill an obligation to the practitioner regarding the practitioner's services and has been given reasonable warning that the practitioner will withdraw unless the obligation is fulfilled;

(5) The representation will result in an unreasonable financial burden on the practitioner or obdurate or vexatious conduct on the part of the client has rendered the representation unreasonably difficult; or

(6) Other good cause for withdrawal exists.

(c) When ordered to do so by the Office, a practitioner shall continue representation notwithstanding good cause for terminating the representation.

(d) Upon termination of representation before the Office, a practitioner shall take steps reasonably practicable to protect a client's interests, such as giving reasonable notice to the client, allowing time for employment of other counsel, surrendering papers and property to which the client is entitled, and refunding any advance payment of fee that has not been earned. The practitioner may retain papers relating to the client to the extent permitted by other law, § 11.108(j), but in regard to any proceeding before the Office a practitioner shall not retain:

(1) Any part of the client's files regarding the proceeding, including patent or trademark application files, that has been filed with the Office,

(2) Any work product regarding the proceeding for which the practitioner has been paid, or

(3) Any proceeding-related paper whenever assertion of a retaining lien on the paper would materially prejudice or imperil the protection of the client's interests.

§ 11.117 Sale of practice.

A practitioner may sell or purchase a law practice involving patent or trademark matters before the Office, including good will, if the following conditions are satisfied:

(a) The seller ceases to engage in the private practice before the Office;

(b) The practice, to the extent it involves patent proceedings, is sold as an entirety to another registered practitioner or firm comprising registered practitioners;

(c) Actual written notice is given to each of the seller's clients having immediate or prospective business before the Office regarding:

(1) The proposed sale;

(2) The terms of any proposed change in the fee arrangement authorized by paragraph (d) of this section;

(3) The client's right to retain other counsel or to take possession of the file; and

(4) The fact that the client's consent to the sale will be presumed if the client does not take any action or does not otherwise object within ninety (90) days after receipt of the notice. If a client cannot be given notice, the representation of that client may be transferred to the purchaser only upon entry of an order so authorizing by a court having jurisdiction. The seller may disclose to the court in camera information relating to the representation only to the extent necessary to obtain an order authorizing the transfer of a file.

(d) The fees charged clients having immediate or prospective business before the Office shall not be increased by reason of the sale. The purchaser may, however, refuse to undertake the representation unless the client gives informed consent, confirmed in writing, to pay the purchaser fees at a rate not exceeding the fees charged by the purchaser for rendering substantially similar services prior to the initiation of the purchase negotiations.

§§ 11.118–11.200 [Reserved]

Counselor

§ 11.201 Advisor.

(a) In representing a client having immediate or prospective business before the Office, a practitioner shall exercise independent professional judgment and render candid advice. In rendering advice, a practitioner may refer not only to law but also to other considerations such as moral, economic, social and political factors that may be relevant to the client's situation.

(b) In rendering patentability advice to a client referred by an invention promoter, a practitioner shall identify the element(s) of the references and invention considered, and specify the element or combination of elements of the invention that are believed to support a conclusion that the invention may be patentable.

§ 11.202 Intermediary.

(a) A practitioner may act as intermediary between clients, any one of which has immediate or prospective business before the Office, if:

(1) The practitioner consults with each client concerning the implications of the common representation, including the advantages and risks involved, and the effect on the attorney-client or agent-client privileges, and the practitioner obtains from each client informed consent, confirmed in writing, to the common representation;

(2) The practitioner reasonably believes that the matter can be resolved on terms compatible with the clients' best interests, that each client will be able to make adequately informed decisions in the matter, and that there is little risk of material prejudice to the interests of any of the clients if the contemplated resolution is unsuccessful; and

(3) The practitioner reasonably believes that the common representation can be undertaken impartially and without improper effect on other responsibilities the practitioner has to any of the clients.

(b) While acting as intermediary between clients, any one of which has immediate or prospective business before the Office, the practitioner shall consult with each client concerning the decisions to be made and the considerations relevant in making them, so that each client can make adequately informed decisions.

(c) A practitioner shall withdraw as intermediary between clients, any one of which has immediate or prospective business before the Office, if any of the clients so request, or if any of the conditions stated in paragraph (a) of this section are no longer satisfied. In connection with a proceeding pending before the Office, the practitioner shall submit a written request to withdraw to the USPTO Director. Upon withdrawal, the practitioner shall not continue to represent any of the clients in the matter that was the subject of the intermediation.

(d) Except in unusual circumstances that may make it infeasible, prior to undertaking intermediation in a matter between clients who are an inventor and an invention promoter, a practitioner shall provide both clients with full disclosure of all potential and actual conflicts of interest, and obtain from each client informed consent, confirmed in writing.

§ 11.203 Evaluation for use by third persons.

(a) A practitioner may undertake an evaluation of a matter affecting a client for the use of someone other than the client, where either the client or other person has immediate or prospective business before the Office, if:

(1) The practitioner reasonably believes that making the evaluation is compatible with other aspects of the practitioner's relationship with the client; and

(2) The client gives informed consent, confirmed in writing, after full disclosure by the practitioner.

(b) Except as disclosure is required in connection with a report of an evaluation regarding a patent, trademark or other non-patent law matter before the Office, information relating to the evaluation is otherwise protected by § 11.106.

(c) If a practitioner provides an evaluation regarding a patent, trademark or other non-patent matter before the Office to an invention promoter, which the invention promoter forwards in whole or in part to an inventor, and the evaluation includes any evaluation of patentability, the inventor shall constitute a client of the practitioner and provisions of §§ 11.104(a)(1), 11.107(a)(2), 11.107(b)(2), 11.108(f)(1), 11.201(b), 11.202(d), and 11.701(b), and the practitioner must satisfy the provisions of §§ 11.804(h)(2) or (h)(3) before the practitioner provides any evaluation. The evaluation may not disclose or be based upon knowledge or information that the inventor regards as confidential, and may not otherwise provide publication of the invention prior to the filing of an application for the inventor.

§§ 11.204–11.300 [Reserved]

Advocate

§ 11.301 Meritorious claims and contentions.

A practitioner shall not bring or defend a proceeding before the Office, or assert or controvert an issue therein, unless there is a basis for doing so that is not frivolous, which includes a good-faith argument for an extension, modification, or reversal of existing law.

§ 11.302 Expediting litigation and Office proceedings.

(a) A practitioner shall make reasonable efforts to expedite proceedings before the Office consistent with the interests of the client.

(b) In representing a client having immediate or prospective business before the Office, a practitioner shall not delay a proceeding when the practitioner knows or when it is obvious that such action would serve solely to harass or maliciously injure another.

§ 11.303 Candor toward the tribunal.

(a) A practitioner, in regard to practice before the Office, shall not knowingly:

(1) Make a false statement of material fact or law to a tribunal;

(2) Fail to disclose a material fact to the Office when disclosure is necessary to avoid assisting a criminal or fraudulent act by a client;

(3) Fail to disclose to the Office legal authority in the controlling jurisdiction known to the practitioner to be directly adverse to the position of the client and not disclosed by opposing counsel; or

(4) Offer evidence that the practitioner knows to be false or misleading. If a practitioner has offered material evidence and comes to know of its falsity or that it is misleading, the practitioner shall take reasonable remedial measures. If a practitioner has offered evidence in the Office material to patentability in regard to a patent or patent application, and comes to know of its falsity or that it is misleading, the practitioner shall disclose to the Office in writing information regarding the falsity or that it is misleading with respect to each pending claim until the claim is cancelled or withdrawn from consideration, or the application becomes abandoned.

(b) The duties stated in paragraph (a) of this section continue to the conclusion of the proceeding, and apply even if compliance requires disclosure of information otherwise protected by § 11.106.

(c) A practitioner, in regard to practice before the Office, may refuse to offer evidence that the practitioner reasonably believes is false or misleading.

(d) In a proceeding before the Office other than those involving the granting of a patent or registration of a mark, a practitioner shall inform the Office of all material facts known to the practitioner that will enable the Office to make an informed decision, whether or not the facts are adverse. In a patent proceeding before the Office, a practitioner shall inform the Office of all information material to patentability known to the practitioner in accordance with § 1.56, whether or not such information is adverse.

(e) Conduct that constitutes a violation of paragraphs (a) through (d) of this section includes, but is not limited to:

(1) Knowingly misusing a "Certificate of Mailing or Transmission" under § 1.8 of this subchapter;

(2) Knowingly violating or causing to be violated the requirements of §§ 1.56 or 1.555 of this subchapter;

(3) Except as permitted by § 1.52(c) of this subchapter, knowingly filing or causing to be filed a patent application containing any material alteration made in the application papers after the signing of the accompanying oath or declaration without identifying the alteration at the time of filing the application papers;

(4) Knowingly signing a paper filed in the Office in violation of the provisions of § 11.18 or making a scandalous statement in a paper filed in the Office; and

(5) Knowingly giving false or misleading information or knowingly participating in a material way in giving false or misleading information, to the Office or any employee of the Office.

§ 11.304 Fairness to opposing party, the Office, and counsel.

A practitioner, in regard to practice before the Office, shall not:

(a) Unlawfully obstruct another party's access to evidence or unlawfully alter, destroy or conceal documents or other material having potential evidentiary value. A practitioner shall not counsel or assist another person to do any such act;

(b) Falsify evidence, counsel or assist a witness to testify falsely, or offer an inducement to a witness that is prohibited by law;

(c) Knowingly disobey an obligation under the rules of the Office except for an open refusal based on an assertion that no valid obligation exists;

(d) In an *inter partes* proceeding before the Office, make a frivolous discovery request, or fail to make a reasonably diligent effort to comply with a legally proper discovery request by an opposing party;

(e) In a proceeding before the Office, allude to any matter that the practitioner does not reasonably believe is relevant or that will not be supported by admissible evidence, assert personal knowledge of facts in issue except when testifying as a witness, or state a personal opinion as to the justness of a cause, the credibility of a witness, the culpability of a civil litigant, or the guilt or innocence of an accused; or

(f) Request a person other than a client to refrain from voluntarily giving relevant information to another party unless:

(1) The person is a relative or an employee or other agent of a client; and

(2) The practitioner reasonably believes that the person's interests will not be adversely affected by refraining from giving such information.

§ 11.305 Impartiality and decorum of the tribunal.

A practitioner shall not:

(a) Seek to influence an administrative law judge, administrative patent judge, administrative trademark judge, hearing officer, tribunal, employee of a tribunal, or other official by means prohibited by law;

(b) Communicate ex parte with such a person except as permitted by law; or

(c) Engage in conduct intended to disrupt a tribunal.

(d) Conduct that constitutes a violation of paragraphs (a) through (c) of this section includes, but is not limited to:

(1) Directly or indirectly improperly influencing, attempting to improperly influence, offering or agreeing to improperly influence, or attempting to offer or agree to improperly influence an official action of any tribunal or employee of a tribunal by:

(i) Use of threats, false accusations, duress, or coercion;

(ii) An offer of any special inducement or promise of advantage, or

(iii) Improperly bestowing of any gift, favor, or thing of value.

§ 11.306 [Reserved]

§ 11.307 Practitioner as witness.

(a) A practitioner shall not act as advocate in a proceeding before the Office in which the practitioner is likely to be a necessary witness except where:

(1) The testimony relates to an uncontested issue;

(2) The testimony relates to the nature and value of legal services rendered in the case; or

(3) Disqualification of the practitioner would work substantial hardship on the client.

(b) A practitioner may act as advocate in a proceeding before the Office in which another practitioner in the practitioner's firm is likely to be called as a witness unless precluded from doing so by §§ 11.107 or 11.109. The provisions of this paragraph do not apply if the practitioner who is appearing as an advocate is employed by, and appears on behalf of, a Government agency.

§ 11.308 [Reserved]

§ 11.309 Advocate in nonadjudicative proceedings.

A practitioner representing a client before a legislative or administrative body in a nonadjudicative proceeding shall disclose that the appearance is in a representative capacity and shall conform to the provisions of §§ 11.303(a) through (c), 11.304(a) through (c), and 11.305.

§§ 11.310–11.400 [Reserved]

Transactions With Persons Other Than Clients

§ 11.401 Truthfulness in statements to others.

In the course of representing a client having immediate or prospective business before the Office, a practitioner shall not knowingly:

(a) Make a false statement of material fact or law to a third person; or

(b) Fail to disclose a material fact to a third person when disclosure is necessary to avoid assisting a criminal or fraudulent act by a client, unless disclosure is prohibited by § 11.106.

§ 11.402 Communication with person represented by counsel.

(a) In representing a client having immediate or prospective business before the Office a practitioner shall not communicate or cause another to communicate about the subject of the representation with a party the practitioner knows to be represented by another practitioner in the matter, unless the practitioner has the consent of the practitioner representing such other party or is authorized by law to do so.

(b) For purposes of this section, the term *party* includes any person, including an employee of a party organization, who has the authority to bind a party organization as to the representation to which the communication relates.

(c) This section does not prohibit communication by a practitioner with Government officials who have the authority to redress the grievances of the practitioner's client, whether or not those grievances or the practitioner's communications relate to matters that are the subject of the representation, provided that in the event of such communications the disclosures specified in paragraph (b) of this section are made to the Government official to whom the communication is made.

§ 11.403 Dealing with unrepresented person.

In dealing with a person who is not represented by counsel on behalf of a client having immediate or prospective business before the Office, a practitioner shall not state or imply to unrepresented persons that the practitioner is disinterested. When the practitioner knows or reasonably should know that the unrepresented person misunderstands the practitioner's role in the matter, the practitioner shall make reasonable efforts to correct the misunderstanding.

§ 11.404 Respect for rights of third persons.

In representing a client having immediate or prospective business before the Office, a practitioner shall not use means that have no substantial purpose other than to embarrass, delay, or burden a third person, or use methods of obtaining evidence that violate the legal rights of such a person.

§§ 11.405–11.500 [Reserved]

Law Firms and Associations

§ 11.501 Responsibilities of a partner or supervisory practitioner.

(a) A partner in a law firm shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that all practitioners in the firm conform to the Rules of Professional Conduct.

(b) A practitioner having direct supervisory authority over another practitioner shall make reasonable efforts to ensure that the other practitioner conforms to the Rules of Professional Conduct.

(c) A practitioner shall be responsible for another practitioner's violation of the Rules of Professional Conduct if:

(1) The practitioner orders or, with knowledge of the specific conduct, ratifies the conduct involved; or

(2) The practitioner is a partner in the law firm in which the other practitioner practices, or has direct supervisory authority over the other practitioner, and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.

§ 11.502 Responsibilities of a subordinate practitioner.

(a) A practitioner is bound by the Rules of Professional Conduct notwithstanding that the practitioner acted at the direction of another person.

(b) A subordinate practitioner does not violate the Rules of Professional Conduct if that practitioner acts in accordance with a supervisory practitioner's reasonable resolution of an arguable question of professional duty.

§ 11.503 Responsibilities regarding nonpractitioner assistants.

With respect to a nonpractitioner employed or retained by, or associated with a practitioner practicing before the Office:

(a) A partner in a law firm shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that the person's conduct is compatible with the professional obligations of the practitioner;

(b) A practitioner having direct supervisory authority over the nonpractitioner shall make reasonable efforts to ensure that the person's conduct is compatible with the professional obligations of the practitioner; and

(c) A practitioner shall be responsible for conduct of such a person that would be a violation of the Rules of Professional Conduct if engaged in by a practitioner if:

(1) The practitioner orders or, with the knowledge of the specific conduct, ratifies the conduct involved; or

(2) The practitioner is a partner in the law firm in which the person is employed or has direct supervisory authority over the person, and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.

§ 11.504 Professional independence of a practitioner.

(a) A practitioner or law firm, in regard to practice before the Office, shall not share legal fees with a nonpractitioner, except that:

(1) An agreement by a practitioner with the practitioner's firm, partner, or associate may provide for the payment of money, over a reasonable period of time after the practitioner's death, to the practitioner's estate or to one or more specified persons;

(2) A practitioner who purchases the practice of a deceased, disabled, or disappeared practitioner may, pursuant to the provisions of § 11.117, pay to the estate or other representative of that practitioner the agreed upon purchase price; and

(3) A practitioner or law firm may include nonpractitioner employees in a compensation or retirement plan, even though the plan is based in whole or in part on a profit-sharing arrangement.

(b) A practitioner accepting a client referred by an invention promoter shall not divide legal fees paid by the client with the promoter for legal services rendered in regard to practice before the Office, including by accepting payment from the promoter a portion of funds the promoter receives from the referred client, delivering to the promoter a portion of any funds the practitioner receives from the client: The proscribed delivery of funds includes any transfer of funds before or after services are rendered. The legal services include, but are not limited to, providing an opinion regarding the patentability of the client's invention, providing an opinion regarding the registrability of a mark, preparing a patent or trademark application, and prosecuting a patent or trademark application.

(c) A practitioner shall not form a partnership with a nonpractitioner if any of the activities of the partnership consist of the practice of law before the Office.

(d) A practitioner shall not permit a person who recommends, employs, or pays the practitioner to render legal services for another before the Office to direct or regulate the practitioner's

professional judgment in rendering such legal services.

(e) A practitioner shall not practice with or in the form of a professional corporation or association authorized to practice law for a profit in regard to practice before the Office, if:

(1) A nonpractitioner owns any interest therein, except that a fiduciary representative of the estate of a practitioner may hold the stock or interest of the practitioner for a reasonable time during administration;

(2) A nonpractitioner is a corporate director or officer thereof; or

(3) A nonpractitioner has the right to direct or control the professional judgment of a practitioner.

§ 11.505 Unauthorized practice of law.

A practitioner shall not:

(a) Practice law in a jurisdiction where doing so violates the regulation of the legal profession in that jurisdiction, except that a registered practitioner may practice before the Office in patent matters in any State;

(b) Assist a person who is not a member of the bar in the performance of activity that constitutes the unauthorized practice of law;

(c) Aid a nonpractitioner in the unauthorized practice of law before the Office;

(d) Aid a practitioner under suspension, exclusion, disbarment, or disbarment on consent, or who resigned during a pending investigation in the unauthorized practice of patent, trademark, or other non-patent law before the Office or aid a suspended or disbarred attorney in the unauthorized practice of law in any other jurisdiction;

(e) Practice before the Office in trademark matters if the practitioner was registered as a patent agent after January 1, 1957, and is not an attorney; or

(f) Practice before the Office in patent, trademark, or other non-patent law if suspended, excluded, or excluded on consent from practice by the USPTO Director under §§ 11.24, 11.25, 11.27, 11.28, or 11.56; if administratively suspended under § 11.11(b); or if in contravention of restrictions imposed on a practitioner under § 11.36(f).

§ 11.506 Restrictions on right to practice.

A practitioner, in regard to practice before the Office, shall not participate in offering or making:

(a) A partnership or employment agreement that restricts the rights of a practitioner to practice after termination of the relationship, except an agreement concerning benefits upon retirement; or

(b) An agreement in which a restriction on the practitioner's right to practice is part of the settlement of a controversy between parties.

§ 11.507 Responsibilities regarding law-related services.

(a) A practitioner shall be subject to the Rules of Professional Conduct with respect to the provision of law-related services before the Office, as defined in paragraph (b) of this section, if the law-related services are provided:

(1) By the practitioner in circumstances that are not distinct from the practitioner's provision of legal services to clients; or

(2) By a separate entity controlled by the practitioner individually or with others if the practitioner fails to take reasonable measures to assure that a person obtaining the law-related services knows that the services of the separate entity are not legal services and that the protections of the client-lawyer or client-agent relationship do not exist; or

(3) By a separate entity controlled by an invention promoter which refers legal services to the practitioner if the practitioner fails to take reasonable measures to assure that a person obtaining the law-related services knows that the services of the invention promoter are not legal services and that the protections of the client-lawyer or client-agent relationship do not exist.

(b) The term "law-related services" means services that might reasonably be performed in conjunction with and in substance are related to the provision of legal services in patent, trademark, or other non-patent law matters before the Office, and that are not prohibited as unauthorized practice of law when provided by a nonlawyer.

§§ 11.508–11.600 [Reserved]

Public Service

§ 11.601 *Pro Bono Publico* service.

A practitioner, in regard to practice before the Office, should participate in serving those persons, or groups of persons, who are unable to pay all or a portion of reasonable attorneys' fees or who are otherwise unable to obtain counsel. A practitioner may discharge this responsibility by providing professional services at no fee, or at a substantially reduced fee, to persons and groups who are unable to afford or obtain counsel, or by active participation in the work of organizations that provide legal services to them. When personal representation is not feasible, a practitioner may discharge this responsibility by providing financial support for organizations that provide legal representation to those unable to obtain counsel.

§ 11.602 Accepting appointments.

A practitioner, who is a lawyer, shall not seek to avoid appointment by a tribunal to represent a person except for good cause, such as:

(a) Representing the client is likely to result in violation of the Rules of Professional Conduct or other law;

(b) Representing the client is likely to result in an unreasonable financial burden on the practitioner; or

(c) The client or the cause is so repugnant to the practitioner as to be likely to impair the attorney-client or agent-client relationship or the practitioner's ability to represent the client.

§ 11.603 Membership in legal services organization.

A lawyer may serve as a director, officer, or member of a legal services organization, apart from the law firm in which the practitioner practices, notwithstanding that the organization serves persons having interests adverse to a client of the practitioner. The practitioner shall not knowingly participate in a decision or action of the organization:

(a) If participating in the decision would be incompatible with the practitioner's obligations to a client under § 11.107; or

(b) Where the decision could have a material adverse effect on the representation of a client of the organization whose interests are adverse to a client of the practitioner.

§ 11.604 Law reform activities.

A practitioner may serve as a director, officer, or member of an organization involved in reform of the law or its administration notwithstanding that the reform may affect the interests of a client of the practitioner. When the practitioner knows that the interests of a client may be materially benefited by a decision in which the practitioner participates, the practitioner shall disclose that fact but need not identify the client.

§§ 11.605–11.700 [Reserved]

Information About Legal Services

§ 11.701 Communications concerning a practitioner's services.

(a) A practitioner, or another on behalf the practitioner, shall not make a false or misleading communication about the practitioner or the practitioner's services for persons having immediate, prospective or pending business before the Office. A communication is false or misleading if it:

(1) Contains a material misrepresentation of fact or law, or omits a fact necessary to make the statement considered as a whole not materially misleading;

(2) Is likely to create an unjustified expectation about results the practitioner can achieve, or states or implies that the practitioner can achieve results by means that violate the Rules of Professional Conduct or other law; or

(3) Compares the practitioner's services with other practitioners' services, unless the comparison can be factually substantiated.

(b) A practitioner, or another on behalf of a practitioner, shall not seek by in-person contact, employment (or employment of a partner, associate, or other person or party) by a potential client having immediate or prospective business before the Office who has not sought the practitioner's advice regarding employment of a practitioner, if:

(1) The solicitation involves use of a statement or claim that is false or misleading, within the meaning of paragraph (a) of this section;

(2) The solicitation involves the use of undue influence;

(3) The potential client is apparently in a physical or mental condition which would make it unlikely that the potential client could exercise reasonable, considered judgment as to the selection of a practitioner;

(4) The solicitation involves the use of an intermediary and the practitioner has not taken all reasonable steps to ensure that the potential client is informed of:

(i) The consideration, if any, paid or to be paid by the practitioner to the intermediary; and

(ii) The effect, if any, of the payment to the intermediary on the total fee to be charged; or

(5) The solicitation involves the use of an invention promoter and the practitioner has not taken all reasonable steps to ensure that the potential client is informed:

(i) In every contract or other agreement between the potential client and invention promoter the specific amount of all legal fees and expenses included in funds the client delivers or is obligated to deliver to the promoter;

(ii) In every communication by the invention promoter requesting funds from the client the specific amount of all legal fees and expenses included in funds the client delivers or is obligated to deliver to the promoter; and

(iii) The discount (expressed as a percent) from the customary fee the practitioner gives or will give in the fees charged for legal services rendered for a client referred by the promoter.

(c) A practitioner shall not knowingly assist an organization that furnishes or pays for legal services to others having immediate or prospective business before the Office to promote the use of the practitioner's services or those of the practitioner's partner or associate, or any other practitioner affiliated with the practitioner or the practitioner's firm, as a private practitioner, if the promotional activity involves the use of coercion, duress, compulsion, intimidation, threats, or vexatious or harassing conduct.

(d) No practitioner shall personally, or through acts of another, with respect to any prospective business before the Office, by word, circular, letter, or advertising, with intent to defraud in any manner, deceive, mislead, or threaten any prospective applicant or other person having immediate or prospective business before the Office.

(e) A practitioner may not use the name of a Member of either House of Congress or of an individual in the service of the United States in advertising the practitioner's practice before the Office.

§ 11.702 Advertising.

(a) Subject to the requirements of §§ 11.701 and 11.703, a practitioner may advertise services regarding practice before the Office through public media, such as a telephone directory, legal directory, newspaper or other periodical, outdoor advertising, radio or television, through written or recorded communication, or through electronic media.

(b) A copy or recording of an advertisement or communication (whether in printed or electronic media) authorized by paragraph (a) of this section shall be kept for two years after its last dissemination along with a record of when and where it was used.

(c) A practitioner shall not give anything of value to a person or organization for recommending the practitioner's services in practice before the Office except that a practitioner may:

(1) Pay the reasonable costs of advertisements or communications permitted by this section; and

(2) Pay the usual charges of a not-for-profit lawyer referral service or legal service organization.

(d) A practitioner who is a lawyer may pay for a law practice in accordance with § 11.117.

(e) Any advertisement or communication to the public made pursuant to this section shall include the name of at least one practitioner responsible for its content.

§ 11.703 Direct contact with prospective clients

(a) A practitioner personally, or through the actions of another, shall not by in-person or telephone contact solicit professional employment from a prospective client having immediate or prospective business before the Office with whom the practitioner has no family or prior professional relationship when a significant motive for the practitioner's doing so is the practitioner's pecuniary gain under circumstances evidencing undue influence, intimidation, or overreaching.

(b) A practitioner personally, or through the actions of another, shall not solicit professional employment from a prospective client having immediate or prospective business before the Office by written or recorded communication or by in-person or telephone contact even when not otherwise prohibited by paragraph (a) of this section, if:

(1) The prospective client has made known to the practitioner a desire not to be solicited by the practitioner; or

(2) The solicitation involves false or misleading statements, undue influence, coercion, duress or harassment.

(c) Every written (including in print or electronic media) or recorded communication from or on behalf of a practitioner, soliciting professional employment from a prospective client known to be in need of legal services in a particular matter before the Office, and with whom the practitioner has no family or prior professional relationship, shall include the words "Advertising Material" on the outside envelope, and at the beginning and ending of any electronic or recorded communication.

(d) Notwithstanding the prohibitions in paragraph (a) of this section, a practitioner may participate with a prepaid or group legal service plan operated by an organization not owned or directed by the practitioner which uses in-person or telephone contact to solicit memberships or subscriptions for the plan from persons who are not known to need legal services in a particular matter covered by the plan.

§ 11.704 Communication of fields of practice and certification.

A practitioner may communicate the fact that the practitioner does or does not practice in particular fields of law. A practitioner shall not state or imply that the practitioner has been recognized or certified as a specialist in a particular field of law except as follows:

(a) Unless a practitioner is an attorney, the practitioner shall not hold himself or herself out to be an attorney, lawyer, or member of a bar, or as qualified or authorized to practice general law. Unless authorized by § 11.14(b), a non-lawyer shall not hold himself or herself out as being qualified or authorized to practice before the Office in trademark matters;

(b) A registered practitioner who is an attorney may use the designation "Patents," "Patent Attorney," "Patent Lawyer," "Registered Patent Attorney," or a substantially similar designation;

(c) A registered practitioner who is not an attorney may use the designation "Patents," "Patent Agent," "Registered Patent Agent," or a substantially similar designation;

(d) An individual granted limited recognition may use the designation "Limited Recognition"; and

(e) A lawyer engaged in Admiralty practice may use the designation "Admiralty," "Proctor in Admiralty" or a substantially similar designation.

§ 11.705 Firm names and letterheads.

(a) A practitioner shall not use a firm name, letterhead, or other professional designation that violates § 11.701. A practitioner in private practice may use a trade name if it does not imply a connection with a Government agency or with a public or charitable legal services organization and is not otherwise in violation of § 11.701.

(b) A law firm with offices in more than one jurisdiction may use the same name in each jurisdiction, but identification of the practitioners in an office of the firm shall indicate the jurisdictional limitations of those not licensed to practice in the jurisdiction where the office is located.

(c) The name of a practitioner holding a public office shall not be used in the name of a law firm, or in communications on its behalf, during any substantial period in which the practitioner is not actively and regularly practicing with the firm.

(d) Practitioners may state or imply that they practice in a partnership or other organization only when that is the fact.

§§ 11.706–11.800 [Reserved]

Maintaining the Integrity of the Profession

§ 11.801 Bar admission, registration, and disciplinary matters.

An applicant for registration, or a practitioner in connection with an application for registration, or a practitioner in connection with a disciplinary matter or reinstatement, shall not:

(a) Knowingly make a false statement of material fact, knowingly fail to disclose a material fact, or knowingly fail to update information regarding a material fact; or

(b) Fail to disclose a fact necessary to correct a misapprehension known by the practitioner or applicant to have arisen in the matter, or knowingly fail to respond reasonably to a lawful demand for information from an admissions or disciplinary authority, except that the provisions of this paragraph (b) do not require disclosure of information otherwise protected by § 11.106.

(c) Conduct that constitutes a violation of paragraphs (a) or (b) of this section includes, but is not limited to, willfully refusing to reveal or report knowledge or evidence to the OED Director contrary to paragraphs (a) or (b) of this section.

§ 11.802 Judicial and legal officials.

(a) A practitioner shall not make a statement that the practitioner knows to be false, or with reckless disregard as to its truth or falsity, concerning the qualifications or integrity of a judge, administrative law judge, administrative patent judge, administrative trademark judge, adjudicatory officer, or public legal officer, or of a candidate for election or appointment to judicial or legal office.

(b) A practitioner who is a candidate for judicial office shall comply with the applicable provisions of the Code of Judicial Conduct.

§ 11.803 Reporting professional misconduct.

(a) A practitioner having knowledge that another practitioner has committed a violation of the Rules of Professional Conduct that raises a substantial question as to that practitioner's honesty, trustworthiness, or fitness as a practitioner in other respects, shall inform the appropriate professional authority.

(b) A practitioner having knowledge that an employee of the Office has committed a violation of applicable Federal statutes, and rules adopted by the Office of Government Ethics that raises a substantial question as to the employee's fitness for office shall inform the appropriate authority. The Office of Enrollment and Discipline is not an appropriate authority for reporting under this section unless an imperative rule of the USPTO Rules of Professional Conduct is violated.

(c) The provisions of this section does not require disclosure of information otherwise protected by § 11.106, or information gained by a lawyer or judge, administrative law judge, administrative patent judge, or administrative trademark judge while serving as a member of an approved lawyers assistance program to the extent that such information would be confidential if it were communicated subject to the attorney-client privilege. The provisions of this section do not authorize the filing of frivolous complaints.

(d) A practitioner:

(1) Found guilty of a crime or who pleads guilty or *nolo contendre* or enters an Alford plea to a criminal charge in a court of a State, or of the United States, except as to misdemeanor traffic offenses or traffic ordinance violations, not including the use of alcohol or drugs, shall within ten days from the date of such finding or plea advise the OED Director in writing of the finding or plea and file with the OED Director a certified copy of the court record or conviction or docket entry of the finding or plea; or

(2) Found by a court of record or duly constituted authority of the United States to have engaged in inequitable conduct to obtain a patent shall within ten days from the date of such finding advise the OED Director of the finding and file with the OED Director a certified copy of the court record or finding.

(e) A practitioner:

(1) Reprimanded, suspended, disbarred as an attorney, or disbarred on consent from practice as an attorney on any ethical grounds (including ethical grounds not specified in this Part) by any duly constituted authority of a State, or the United States, or who resigns from the bar of any State, or Federal court while under investigation; shall within ten days from the date of such action advise the OED Director in writing of such action and file with the OED Director a certified copy of the order, finding or plea;

(2) Residing in a foreign country or registered under § 11.6(c), who is reprimanded, suspended, disbarred, disbarred on consent from practice as an attorney on any ethical grounds, by any duly constituted authority of a foreign country, including by any foreign patent or trademark office, or who resigns while under investigation by any duly constituted authority of a foreign country, shall within ten days from the date of such action advise the OED Director in writing of such action and file with the OED Director a certified copy of the order, finding or plea; or

(3) Who, as a result of any other event or change, would be precluded from continued registration under §§ 11.6(a), or 11.6(b), or 11.6(c), or as a result of any other event or change would be precluded from continued recognition under §§ 11.9 or 11.14, or any event or change that would be grounds for disciplinary action under § 11.25(c) shall within ten days from the date of such event or change advise the OED Director in writing of the event or change and file with the OED Director any records regarding the event or change.

(f) Conduct that constitutes a violation of paragraphs (a) through (e) of this section includes, but is not limited to:

(1) Failing to comply with the provisions of paragraphs (d) or (e) of this section;

(2) Willfully refusing to reveal or report knowledge or evidence to the OED Director contrary to §§ 11.24(a) or (b), or 10.25(b);

(3) In the absence of information sufficient to establish a reasonable belief that fraud or inequitable conduct has occurred, alleging before a tribunal that anyone has committed a fraud on the Office or engaged in inequitable conduct in a proceeding before the Office; or

(4) Being suspended, disbarred as an attorney, or disbarred on consent from practice as an attorney on any ethical grounds (including ethical grounds not specified in this part) by any duly constituted authority of a State, or the United States, or resigning from the bar of any State, or Federal court while under investigation.

§ 11.804 Misconduct.

It is professional misconduct for a practitioner to:

(a) Violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another;

(b) Commit a criminal act that reflects adversely on the practitioner's honesty, trustworthiness, or fitness as a practitioner in other respects, including crimes for which the practitioner is found guilty, pleads guilty or *nolo contendre*, and crimes to which the practitioner enters an Alford plea to a criminal charge in a court of a State, or of the United States, but does not include misdemeanor traffic offenses or traffic ordinance violations, not including the use of alcohol or drugs;

(c) Engage in conduct involving dishonesty, fraud, deceit, or misrepresentation;

(d) Engage in conduct that is prejudicial to the administration of justice;

(e) State or imply an ability to influence improperly a Government agency or official;

(f) Knowingly assist an administrative law judge, administrative patent judge, administrative trademark judge, patent examiner, other employee of the Office, or judicial officer in conduct that is a violation of applicable Federal statutes, rules adopted by the Office of Government Ethics, or other law; or

(g) Engage in disreputable or gross misconduct.

(h) Conduct that constitutes a violation of paragraphs (a) through (g) of this section includes, but is not limited to:

(1) Knowingly giving false or misleading information or knowingly participating in a material way in giving false or misleading information, to a client in connection with any immediate, prospective, or pending business before the Office;

(2) Representing before the Office in a patent matter either a joint venture comprising an inventor and an invention promoter, or an inventor referred to the registered practitioner by an invention promoter when:

(i) The registered practitioner knows, or has been advised by the Office, that a formal complaint filed by a Federal or State agency, alleging a violation of any law relating to securities, unfair methods of competition, unfair or deceptive acts or practices, mail fraud, or other civil or criminal conduct, is pending before a Federal or State court or Federal or State agency, or has been resolved unfavorably by such court or agency, against the invention promoter in connection with marketing an invention; and

(ii) The registered practitioner fails to fully advise the inventor of the existence of the pending complaint or unfavorable resolution thereof prior to undertaking or continuing representation of the joint venture or inventor;

(3) Accepting referral of a matter or inventor from an invention promoter wherein:

(i) A contract or other agreement for marketing and patenting an invention does not specify the total amount of funds constituting legal fees the inventor becomes obligated to pay the invention promoter,

(ii) A contract or other agreement for marketing and patenting an invention does not specify the total amount of funds constituting costs and expenses for legal services the inventor becomes obligated to pay the invention promoter,

(iii) The inventor delivers funds for legal fees, expenses or costs to the invention promoter,

(iv) A patentability opinion or patent search report by a registered practitioner is included in, accompanies, or is referenced in any report issued by the invention promoter,

(v) A contract or other agreement for marketing and patenting an invention provides for the preparation, drafting, or filing of a patent application for a design or a utility invention, or

(vi) The contract or other agreement for marketing and patenting an invention guarantees a patent;

(4) Accepting assistance in a specific matter from any former employee of the Office who participated personally and substantially in the matter as an employee of the Office;

(5) Representing, or permitting another party, including an invention promoter, to represent, that a fee for non-legal services is inclusive of any fee(s) for a practitioner's professional services without also separately stating in writing the full amount of the legal fees;

(6) Being a partner or associate of an employee of the Office, and representing anyone in any proceeding before the Office in which the employee of the Office participates or has participated personally and substantially as an employee of the Office, or which is subject to that employee's official responsibility;

(7) Accepting or using the assistance of an Office employee in the presentation or prosecution of an application, whether or not the employee is compensated, except to the extent that the employee may lawfully provide the assistance in an official capacity;

(8) Being a Federal employee and practicing before the Office while so employed in violation of applicable conflict of interest laws, regulations or codes of professional responsibility;

(9) Failing to report a change of address within thirty days of the change; or

(10) Knowingly filing, or causing to be filed, a frivolous complaint alleging that a practitioner violated an imperative USPTO Rule of Professional Conduct.

(i) A practitioner who acts with reckless indifference to whether a representation is true or false is chargeable with knowledge of its falsity. Deceitful statements of half-truths or concealment of material facts shall be deemed fraud within the meaning of this Part.

§ 11.805 Disciplinary authority: Choice of law.

(a) *Disciplinary authority.* A practitioner registered or recognized to practice or practicing before the Office in patent, trademark, or other non-patent law is subject to the disciplinary authority of the Office, regardless of

where the practitioner's conduct occurs. A practitioner may be subject to the disciplinary authority of both the Office and another jurisdiction where the practitioner is admitted to practice for the same conduct. An applicant for patent (§ 1.41(b) of this subchapter) representing himself, herself, or representing himself or herself and other individual applicants pursuant to §§ 1.31 and 1.33(b)(4) of this subchapter; an individual who is an assignee as provided for under § 3.71(b) of this subchapter; and an individual appearing in a trademark or other non-patent matter pursuant to § 11.14 is subject to the disciplinary authority of the Office for matters arising in connection with their practice before the Office.

(b) *Choice of law.* In any exercise of the disciplinary authority of the Office, the Rules of Professional Conduct to be applied shall be as follows:

(1) For conduct in connection with practice before the Office in patent, trademark, or other non-patent law a practitioner registered or recognized to practice (either generally or for purposes of that practice), the rules to be applied shall be the rules of the Office;

(2) For conduct in connection with a proceeding in a court before which a practitioner has been admitted to practice (either generally or for purposes of that proceeding), the rules to be applied shall be the rules of the jurisdiction in which the court sits, unless the rules of the court provide otherwise; and

(3) For any other conduct,

(i) If the practitioner is registered or recognized to practice only before the Office, the rules to be applied shall be the rules of the Office, and

(ii) If the practitioner is registered or recognized to practice before the Office, and is licensed to practice in another jurisdiction, the rules to be applied by the Office shall be the rules of the Office in regard to practice before the Office, and otherwise the rules applied shall be those of the admitting jurisdiction in which the practitioner principally practices; provided, however, that if particular conduct clearly has its predominant effect in another jurisdiction in which the practitioner is licensed to practice, the rules of that jurisdiction shall be applied to that conduct.

§ 11.806 Sexual relations with clients and third persons.

(a) *Sexual relations* means sexual intercourse or the touching of an intimate part of another person for the purpose of sexual arousal, sexual gratification, or sexual abuse.

(b) A practitioner shall not:

(1) Require or demand sexual relations with a client or third party incident to or as a condition of any professional representation;

(2) Require or demand sexual relations with an employee incident to or as a condition of employment; or

(3) Employ coercion, intimidation, or undue influence in entering into sexual relations with a client.

(c) Paragraph (b) of this section shall not apply to sexual relations between a practitioner and his or her spouse or significant other, or to ongoing consensual sexual relationships that predate the initiation of the practitioner-client relationship or practitioner-employee relationship.

(d) Where a practitioner in a firm has sexual relations with a client but does not participate in the representation of that client, the practitioners in the firm shall not be subject to discipline under this section solely because of the occurrence of such sexual relations.

§§ 11.807–11.900 [Reserved]

Dated: November 17, 2003.

James E. Rogan,

Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office.

[FR Doc. 03–29150 Filed 12–11–03; 8:45 am]

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Friday,
December 12, 2003

Part III

Department of Homeland Security

Coast Guard

46 CFR Parts 401 and 404

Rates for Pilotage on the Great Lakes; Interim Rule

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

46 CFR Parts 401 and 404

[USCG–2002–11288]

RIN 1625–AA38 (Formerly RIN 2115–AG30)

Rates for Pilotage on the Great Lakes

AGENCY: Coast Guard, DHS.

ACTION: Interim rule with request for comments.

SUMMARY: This interim rule provides a partial rate adjustment for pilotage on the Great Lakes. We last adjusted the rates for pilotage on the Great Lakes in July 2001. The partial rate adjustment is being implemented while the Coast Guard completes its evaluation of issues raised in response to the NPRM and calculates a full rate adjustment.

DATES: This interim rule is effective January 12, 2004. Comments and related material must reach the Docket Management Facility on or before February 10, 2004.

ADDRESSES: You may submit comments identified by Coast Guard docket number USCG–2002–11288 to the Docket Management Facility at the U.S. Department of Transportation. To avoid duplication, please use only one of the following methods:

(1) Web site: *http://dms.dot.gov.*

(2) Mail: Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590–0001.

(3) Fax: 202–493–2251.

(4) Delivery: Room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

(5) Federal eRulemaking Portal: *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call Paul Wasserman, Director, Office of Great Lakes Pilotage, (G-MW–1), Coast Guard, telephone 202–267–2856 or e-mail him at *Pwasserman@comdt.uscg.mil.* If you have questions on viewing or submitting material to the docket, call Andrea M. Jenkins, Program Manager, Docket Operations, telephone 202–366–0271.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted, without change, to *http://dms.dot.gov* and will include any personal information you have provided. We have an agreement with the Department of Transportation (DOT) to use the Docket Management Facility. Please see DOT's "Privacy Act" paragraph below.

Submitting comments: If you submit a comment, please include your name and address, identify the docket number for this rulemaking (USCG–2002–11288), indicate the specific section of this document to which each comment applies, and give the reason for each comment. You may submit your comments and material by electronic means, mail, fax, or delivery to the Docket Management Facility at the address under **ADDRESSES;** but please submit your comments and material by only one means. If you submit them by mail or delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this rule in view of them.

Viewing comments and documents: To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *http://dms.dot.gov* at any time and conduct a simple search using the docket number. You may also visit the Docket Management Facility in room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Privacy Act: Anyone can search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review the Department of Transportation's Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477), or you may visit *http://dms.dot.gov.*

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for one to the Docket Management Facility at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Regulatory History

On January 23, 2003, the Coast Guard published an NPRM in the **Federal Register** [68 FR 3202] proposing to set new rates for pilotage on the Great Lakes. A public meeting was held January 31, 2003, in Cleveland, OH.

On April 1, 2003, the Coast Guard published in the **Federal Register** [68 FR 15697] a correction to the NPRM and extended the NPRM comment period through May 1, 2003. This notice also announced another public meeting that was held April 14, 2003, in Washington, DC.

On May 14, 2003, the Coast Guard published in the **Federal Register** [68 FR 25899] a notice of availability and a request for public comment on a Review of Bridge-Hour Standards for American Pilots on the Great Lakes, dated March 4, 2003.

Program History

In 1996, we established the current methodology for setting rates for pilotage on the Great Lakes.

In July 2001, we last adjusted the rates for pilotage on the Great Lakes. A year later, as a result of litigation, we temporarily revised the rates in District Two, Area 5, until the current rulemaking is completed. That temporary rule expires on December 24, 2003, and this interim rule contains new rates for Area 5.

Discussion of Comments

General

During the comment periods, the Coast Guard received 149 comments mostly expressing concerns about the implementation of the proposed rates and the process used in determining the proposed rates. There were also a number of requests to extend the comment period. Comments were received from pilots, pilot associations, cruise ship and ferry operators, small businesses on the Great Lakes, port authorities from the U.S. and Canada, and domestic and foreign shipping corporations.

Some of these comments stated that a rate adjustment is long overdue. Some of these comments also asked that future rate reviews take place in a timely manner. Another comment stated that the Coast Guard has a legal and moral responsibility to move forward immediately on the 2003 rate adjustment.

One comment wanted more time to complete the Great Lakes Pilotage Advisory Committee's membership so that the committee could comment on the NPRM.

Schedule for Interim Rule Publication

Numerous comments stated that the Coast Guard should implement the proposed new rate immediately or at least by the start of the 2003 shipping season. Other comments stated if that was not possible, that the proposed rate should be implemented until corrections can be made.

Many other comments, however, expressed concern that our proposed interim rule publication date of February 14, 2003, was before the end of the comment period deadline. One stated because of the proximity of the NPRM's comment period deadline (March 10, 2003) to the planned IR publication date (February 14, 2003) that comments would not have been given full consideration. Several port authorities stated that implementing an interim rule would violate companies' "right to have their views fairly considered."

One comment stated that a "hasty implementation" of the proposed rate increases would violate the rulemaking provisions of the Administrative Procedures Act (APA; 5 U.S.C. 553) as well as the requirement that the Coast Guard consider the public's interest (46 U.S.C. 9303(f)).

One comment stated that the rush to institute an interim rule would result in significant defects in the ratemaking process.

Requests for Extension and Public Meetings. Some comments asked that the comment period be extended. One said the additional extension would provide time for ample scrutiny and the ability to make necessary adjustments before a final rate is established. Another comment stated that if the comment period is extended an interim rate is needed until the final rule is completed.

Another comment stated that placing the independent accountants' reports for Districts One, Two, and Three in the docket five days after the publication of the NPRM did not allow for an extensive review of those documents. Other comments stated that additional public meetings are needed to provide stakeholders sufficient time to analyze the rulemaking and to prepare and submit comments.

We understand the early concerns about not having enough time to respond to the NPRM. However, because two public meetings were held (January 31, 2003, and April 14, 2003), and the comment period was extended through May 1, 2003, the Coast Guard has provided an adequate opportunity for those wishing to respond to the NPRM and for those needing to review the independent accountant's reports. We do not plan on holding a public meeting on this interim rule.

Boundary Act Treaty

Several comments stated that the proposed rates violate the Boundary Act Treaty of 1910 that stipulates Canadian boundary waters are to be treated with fairness and equity. Comments from the Shipping Federation of Canada and the Thunder Bay Port Authority stated that the proposed rate violates the spirit of the Boundary Act Treaty of 1910. The Coast Guard disagrees. The treaty between Great Britain and the United States established boundaries and mandated free and open navigation for the vessels of both Canada and the U.S. The treaty further called upon national regulations to apply equally to the citizens and vessels of the other party. While the treaty was silent with respect to Great Lakes pilotage rates, the proposed rates, nonetheless, do not discriminate against Canadian vessels since they will apply equally across the board to all prospective carriers.

Beyond the Scope of the Rulemaking

Two comments asked that a surcharge be added as part of the final rule to allow pilots to recoup the portion of the rate that has been lost since the start of the 2003 shipping season.

One comment stated that pilotage should be returned to the auspices of the St. Lawrence Seaway Development Corporation (SLSDC).

One comment from a pilots' association stated that shipping companies should be required to open their books to give full and complete disclosure.

Two comments stated the delay in enacting the new rate before the start of the 2003 shipping season continues the "essential punishment" of Great Lakes pilots by denying them the compensation they are "justly" due.

All of these comments raise issues and concerns, resolution of which is beyond the scope of this rulemaking.

Classification of Rulemaking

Some comments questioned the appropriateness of the Coast Guard's characterizing this rulemaking as non-significant because the NPRM proposed to increase Great Lakes pilotage rates an average of 26 percent. Some comments claimed that the cost of pilotage could constitute over 30 percent of the total cost of a typical vessel transit into and out of the Great Lakes and thus, the Coast Guard's proposed rate increase was both significant and substantial. Other comments stated that the cost of pilotage is only 2 percent or less of the total cost of Great Lakes transits, and that pilotage fees are an insignificant portion of total vessel costs for operating in the Great Lakes. The Canadian Marine Pilots' Association commented that the cost of pilotage as a percentage cost of shipping in the Great Lakes is 2 percent or less.

One comment stated that the rulemaking should be a "significant action" under the regulatory procedures of DOT (now DHS) & OMB because it involves Canadian businesses and the Canadian government.

We disagree. This rulemaking is not "OMB" significant under Executive Order 12866 and is categorized as "non-significant/substantive". OMB and DHS have reviewed and agreed with the Coast Guard's determination that the rulemaking is substantive, but not significant.

Methodology Used in NPRM

Some comments suggested that the "significant increase" in the proposed rates was due to a change in the Coast Guard's interpretation of the ratemaking methodology. The Coast Guard's approach to conducting the rate review was consistent with that used in prior years and the proposed rate increase in the NPRM was not attributable to a change in application of the ratemaking methodology.

Difference in U.S. and Canadian Rates

Several comments suggested that the proposed 26 percent rate increase would further increase the difference between U.S. and Canadian pilotage rates and that the Memorandum of Arrangement (MOA) between the United States and Canada calls for identical rates.

The two countries are aware of the differences in pilotage rates and are working together to minimize and resolve these differences.

Economic Impact Analysis (EIA) of Great Lakes Pilotage

Some comments stated that the proposed increase in pilotage fees would "chase" vessels out of the Lakes. Another comment stated that the Coast Guard failed to examine how rate increases would affect users and the economy of the Great Lakes region. Several comments stated that a full regulatory evaluation should be done before issuing a rule.

The Coast Guard has contracted with Martin Associates to perform a full economic review of the Great Lakes basin. The report should be completed by February, 2004, and the results will be considered before we calculate the

full rate adjustment. When completed, a copy of this EIA will be made part of the public docket.

The EIA will provide an economic overview of the Great Lakes. It will explore the value of maritime commerce, generally, and, more specifically, look at the foreign trade shipping industry on both sides of the Great Lakes. It will develop a demand elasticity curve for pilotage services on board foreign-trade vessels on the Great Lakes. It will explore how, and at what point, an increase in pilotage rates might have a negative impact on shippers' decisions to send vessels into the Great Lakes system. This EIA will also address pilotage fees as a percentage of the total costs incurred by vessels operating in the Great Lakes.

Expenses Allowed

Legal fees. Numerous comments raised concerns about the amount of legal fees approved by the Coast Guard as part of the pilots' expense base. Some stated that the expenses incurred by the pilots pursuing judicial review of the Coast Guard's 2001 rates were neither reasonable nor necessary and were not directly related to pilotage.

Some comments questioned whether the Coast Guard had properly assessed the reasonableness of pilots' legal expenses. Some comments stated that a formula used in the 1999 rate review to judge the reasonableness of the legal expenses should have been used in the NPRM. The Coast Guard did not use an industry standard index to determine the reasonableness of the legal fees. The only time a standard was used was in the 1999 rate review. That standard is not sufficiently related to the pilotage industry or a similar regulated industry and was not used in calculating the proposed rates in the NPRM or the rates contained in this interim rule.

One comment stated that it was inappropriate for the Coast Guard to have approved for inclusion in the expense base legal fees paid by District Three in connection with a labor dispute. This comment stated that by allowing this expense the Office of Great Lakes Pilotage is publicly supporting a party in a labor dispute. The comment also disagrees with the decision to approve a percentage of the legal fees paid by District Three to Preston and Gates, because that percentage represented lobbying fees. The Coast Guard disagrees that allowing legal fees paid by a pilotage association to a law firm in connection with a litigation which involves a labor issue, represents support for a party in a labor dispute. The existing ratemaking methodology recognizes all reasonable and necessary legal fees with the exception of lobbying fees.

If the expense is necessary to conduct pilotage business and is reasonable in amount, the regulations allow its inclusion. The regulation does not distinguish between litigated matters involving a labor issue or union and other matter related to pilotage. With respect to the issue of whether all lobbyist fees were removed from the expense base, the Coast Guard will re-examine all of the legal fees in accordance with the regulatory requirements to ensure that only appropriate fees were allowed.

One comment suggested that all legal fees be removed from the rate calculation. To do that, the Coast Guard first would need to change the ratemaking regulations. The Coast Guard disagrees with the suggestion and, in any event, such a change is not within the scope of this rulemaking.

The Coast Guard reviewed all legal fees using the guidelines of necessity and reasonableness contained in 46 CFR 404.5. Only reasonable and necessary legal fees were approved as part of the expense base. No legal fees were allowed in connection with lobbying. Legal fees for litigation against the Government were allowed as long as there was no court proceeding in which there had been a finding of bad faith on the part of the pilot organizations.

Recovery of Legal Fees Under Equal Access to Justice Act (EAJA). Some comments stated that the pilots recovered a portion of their legal fees under the Equal Access to Justice Act (EAJA) and that recovery was not taken into consideration by the Coast Guard.

With respect to the comments regarding recovery of legal fees under the EAJA, only the pilots in District 1 have recovered fees under the EAJA. They recovered approximately $14,000 and the Coast Guard did not allow that amount to be included in their expense base.

Other Expenses

One comment stated that the non-recurring costs of leasing equipment paid by District Two to Erie Leasing, Inc., should be disallowed because the District Two Association terminated many of these leases at the end of the season. During 2001, District Two paid Erie Leasing $62,950 in lease costs for the rental of two pilot boats. Under 46 CFR 404.5(a)(3), lease costs for both operating and capital leases are recognized for ratemaking purposes to the extent that they conform to market rates. In the absence of a comparable market, lease costs are recognized for ratemaking purposes to the extent that they conform to depreciation plus an allowance for return on investment (computed as if the asset had been purchased with equity capital). The portion of lease costs that exceed these standards is not recognized for ratemaking purposes. In this case, with the cost of the pilot boats being $315,000, a market return of 7.04 percent, and a depreciation amount of $9,450, the result is an allowable lease expense of $31,626 ($315,000 × 7.04% = $22,176 + $9,450 = $31,626). District Two's expense base was thus reduced by the excessive lease fee amount of $28,124 ($59,750 rental fee − $31,626 allowable fee = $28,124). The Coast Guard will review the issue of recurring and non-recurring costs before calculating a full rate adjustment.

One comment stated that the $14,289 for health insurance for retired pilots included in the District Two expense base should be disallowed. The Coast Guard is reviewing this issue and will make a determination before calculating the full rate adjustment. Because of its de minimus impact on the rate it was left in the expense base for calculating the partial rate adjustment.

This same comment stated that the augmentation of the District Two and District Three expense bases to allow for employer contributions to employee 401(k) plans was not calculated correctly. This comment stated that the employer should have to contribute based upon daily compensation only that would include no contribution for overtime or extra work days. Under the 2001 American Maritime Officers Union (AMOU) contract, employers are required to make matching contributions to employee 401(k) plans in an amount equal to 50 percent of the employee's contribution, to a maximum of 5 percent of a participating employee's compensation. The Coast Guard will review this issue before calculating the full rate adjustment, but the District Two and Three expense bases have not been changed for calculation of the partial rate adjustment.

Another comment stated that the independent accountant made two mistakes in identifying and classifying expenses—misstating by $23,000 the total reimbursement for meal expenses allowed pilots in District Three, and subtracting the cost of the employer's portion of taxes from pilot compensation and adding them to operating expenses. The comment stated the actual amount adjusted in each case does not correlate with the current rates and limitations for the calculations of FICA and Medicare. The Coast Guard is reviewing these issues, and adjustments, if appropriate, will be made in calculating the full rate adjustment. However, we have not made any changes in calculating the partial rate adjustment.

Another comment stated that the Coast Guard should have disallowed any payments by District Two to Erie Leasing, Inc., because that company refused to open up its books for the Coast Guard. The Coast Guard disagrees. There is no basis to deny expenses based upon another company's refusal to open its books, even when the service entity (Erie Leasing) is directly or indirectly related by beneficial ownership to the pilot association.

Some comments expressed the opinion that there is an insufficiency of accountability for continuing education training funds in the three districts. They recommended that training programs submitted by a pilot association and approved by the Coast Guard should be published as a part of this docket so that industry can assure itself that this money is spent appropriately and that the training plan meets "certain criteria." They also suggested that a third party should hold the training funds instead of the pilot associations. The Coast Guard disagrees. The public docket used for this rulemaking is not an appropriate place for pilot associations to file their training plans. The Coast Guard does not see any benefit to placing the training funds in the hands of third parties, nor could such an action be properly included within the scope of this rulemaking.

Target Pilot Compensation Issues

With respect to determining target pilot compensation, several comments, including St. Lawrence Seaway Development Corporation, stated that the monthly multiplier should be reduced from its current level of 54 days to either 44 or 45 days to take into consideration vacation time actually taken by the pilots. They stated that pilots actually take vacation days and paying them for not doing so is a form of double dipping that makes a 44 or 45-day number more appropriate. For purposes of this interim rule, the Coast Guard has used a multiplier of 44 days. The Coast Guard is still reviewing this issue and a final determination on the appropriate multiplier will be made before we calculate the full rate adjustment. A proposed full rate adjustment will be subject to notice and comment in an SNPRM before implementation.

Numerous comments stated that the Coast Guard in the NPRM inappropriately increased the number of pilots needed. Some comments focused on the two pilots authorized for District One and the one pilot authorized for District Two. Another comment stated that the Coast Guard had made a mistake by rounding down the number of pilots in District Three, Area 7, to four pilots, and rounding down the total number of pilots required in the undesignated waters of Areas 6 and 8 to 17. The Coast Guard disagrees. The Coast Guard may increase or decrease the number of pilots authorized in the Districts as circumstances warrant. The number of pilots needed by each District is calculated each time the Coast Guard adjusts pilotage rates. The calculation shows the number of pilots needed in each Area to accommodate the projected vessel traffic. In the NPRM, where the calculated number was fractional, the Coast Guard rounded up or down to reflect "a whole person." For purposes of this interim rule, the Coast Guard has not rounded up or down, but has used the actual calculated number, even if that number is fractional. For purposes of the interim rule, and for the sake of precision and accuracy in the computation, the Coast Guard has not rounded the fractionalized number of pilots required. It is up to each Association to determine how many pilots to employ to meet the actual shipping demand.

The Coast Guard will continue to review this step in the calculation and when the Coast Guard's review of the Bridge Hour Study is completed, we should have clearer guidance on this calculation.

Revenue Issues

Accounts receivable. One comment stated that the calculation of revenue was incorrect because it did not include accounts receivable. Before calculating a full rate adjustment, the Coast Guard will address inclusion of accounts receivable as part of revenues.

Target Pilot Compensation

Several comments stated that the Coast Guard had miscalculated the target pilot compensation. These comments stated that the target pilot compensation should be calculated by first adding all pilot wages and benefits together and then multiplying by 1.5, which is the multiplier for pilots working in designated waters. The Coast Guard disagrees. The Coast Guard has always calculated target pilot compensation in the same manner. During the first ratemaking under this methodology, in response to comments which provided detailed and persuasive information, including W–2 tax information, showing that the most accurate way to approximate the total compensation package of a master on the Great Lakes, under the union contract, is to take wages and multiply by 1.5 and then add benefits. See Seaway Regulations and Rules: Great Lakes Pilotage Rates, 62 FR 5917, 5920 (February 10, 1997). This interpretation was recently upheld. See *Lake Pilots Assoc., Inc.* v. *United States Coast Guard*, Civil Action No. 01–1721 (RBW) (D.D.C. April 4, 2003).

Other comments stated that the Coast Guard does not take into consideration all of the benefits received when calculating the total compensation package. One area of particular concern is credit for vacation pay because it is paid on a 1 for 2 basis. The Coast Guard will address this issue when proposing its full rate adjustment, but has not changed the calculation for the partial rate adjustment.

A number of comments from District Two discussed the independent accountant's treatment of reimbursed expenses (workers' compensation dividends), unrecognized expenses (a portion of the pilot boat leases), donations, business promotion, misclassified expenses, undocumented expenses, target pilot compensation, benefits, determination of the number of pilots, and calculation of the investment base. The Coast Guard will review these issues before calculating the full rate adjustment, but has not changed the District Two figures for the calculation of the partial rate adjustment.

One comment from a labor union objected to the Coast Guard requesting information concerning rates charged by longshoremen. The comment stated that the Coast Guard intended to use this, and similar other information, in an attempt to charge shippers as much as the market would bear for pilotage services. The Coast Guard did request public comment on a number of costs included in the total cost of shipping, to use as a comparison with the costs of pilotage services. In addition, the Coast Guard has contracted for an economic impact analysis of pilotage rates on shipping and on the regional economy of the Great Lakes basin.

Delay and Detention

Some comments stated that delay and detention should be included as bridge hours when calculating the number of pilots needed. As discussed elsewhere in this preamble, the Coast Guard's Bridge Hour Study is currently under review. This study specifically examines the issue of whether delay and detention should be included as bridge hours.

One comment stated that just as Districts Two and Three are being allowed added expenses for contributions to employees' 401(k) plans, so should District One. In the NPRM, because District One does not administer a 401(k) or other retirement program as do Districts Two and Three, no allowance was permitted. The Coast Guard is reviewing this issue, but for this partial rate calculation, we used the same figures as in the NPRM.

This comment also stated that the adjustment for inflation should be approximately 5 to 6 percent instead of the 2 percent determined by the Coast Guard. The comment stated that because it will be almost two years from the measurement year (2001) before the rate goes into effect, the pilots should receive twice the inflation. The Coast Guard will calculate a new adjustment for inflation when it calculates the full rate adjustment.

The comment also stated that travel expenses for District One were incorrectly calculated. According to the comment, travel expenses were overstated by $25,380 for Area 1 and understated by $37,075 for Area 2. The Coast Guard will review the allocation of travel expenses before calculating the full rate adjustment.

The comment also stated that the Coast Guard's projection of bridge hours for 2003, which is similar to those of 2001, is too low. The Coast Guard disagrees. The economy has actually performed consistently with the projections in the NPRM.

Other Changes

This rule also corrects the equation used in step 6 of the methodology to compute Return on Investment. Currently in the CFR, the equation illustrating how to arrive at Return on Investment contains an error. The last step of the calculation "adds" the Investment Base to the Return Element to arrive at the Return on Investment. Adding would not produce the Return on Investment. To obtain the Return on Investment, it is necessary to divide the Return Element into the Investment Base. We have made the appropriate correction to the equation in this interim rule by removing the "+" and adding, in its place, the "÷".

Discussion of Interim Rule

This interim rule provides a partial rate adjustment using the methodology in 46 CFR part 404, the 2001 expenses and revenues, and the 2002 American Maritime Officers Union contract.

The Next Steps

Following the partial rate adjustment in this interim rule, the Coast Guard will resolve the remaining rate calculation issues raised by the January, 2003, NPRM. We will calculate a full rate adjustment using the methodology in 46 CFR Part 404.

We plan to publish a supplemental notice of proposed rulemaking (SNPRM) in February, 2004, with an opportunity to comment before effecting a proposed full permanent rate adjustment during the Spring, 2004.

In the full rate adjustment calculation, the Coast Guard is considering using the figures from the 2003 AMOU contract, to replace the 2002 AMOU contract figures that were used to determine the proposed rate in the NPRM. The calculations would also include the rate and revenue figures from each of the three districts for 2002. The Coast Guard specifically requests comments on whether we should use the newer figures to calculate the full rate adjustment.

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. It has not been reviewed by the Office of Management and Budget under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Homeland Security (DHS).

We expect the economic impact of this rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary.

Ratemaking Process and Methodology

This section is a description of the analyses performed, and the seven-step methodology followed, in the development of the interim partial rate adjustment. The first part summarizes the partial rate changes in this interim rule; the second part describes the ratemaking process, explaining the formulas that make up the methodology and the use of the numbers obtained from the report of the independent accountant for the year 2001 in the formulas to show how the partial rate adjustment was actually calculated; and the third part describes how the rate in this interim rule differs from the one proposed in the NPRM published in January, 2003.

Part 1: Pilotage Rate Charges—Summarized

The pilotage rates for federal pilots on the Great Lakes contained in 46 CFR 401.405, 401.407, and 401.410 have been adjusted in accordance with the methodology appearing at 46 CFR part 404. The partial rate adjustment results in an average increase across all districts of 5 percent as set out in Figure 1:

FIGURE 1

[Rate in percent]

If you require pilotage service in:	The rate will:
Area 1 (Designated waters)	Increase by 4
Area 2	Decrease by 5
Area 4	Increase by 21
Area 5 (Designated waters)	Decrease by 5
Area 6	Increase by 20
Area 7 (Designated waters)	Decrease by 17
Area 8	Increase by 19

Pilotage rates for "Cancellation, delay or interruption in rendering services" and "Basic rates and charges for carrying a U.S. pilot beyond [the] normal change point or for boarding at other than the normal boarding point," in 46 CFR 401.420 and 401.428, respectively, are increased by an average of 5 percent.

The seven-step calculation of the methodology is summarized in the table for each District. The actual calculations are then explained in more detail for each entry in the tables.

TABLE A.—DISTRICT ONE

	Area 1 St. Lawrence River	Area 2 Lake Ontario	Total District One
Step 1, Projection of operating expenses	$359,704	$239,802	$599,506
Step 2, Projection of target pilot compensation	785,279	352,726	1,138,005
Step 3, Projection of revenue	1,105,233	629,149	1,734,382
Step 4, Calculation of investment base	50,000	50,000	100,000

TABLE A.—DISTRICT ONE—Continued

	Area 1 St. Lawrence River	Area 2 Lake Ontario	Total District One
Step 5, Determination of target return on investment	7.04%	7.04%	7.04%
Step 6, Adjustment determination	3,520	3,520	7,040
Step 7, Adjustment of pilotage rates (Rate Multiplier)	1,148,503	596,048	1,744,551
	1.04 (+4%)	.95 (−5%)	1.01 (+1%)

TABLE B.—DISTRICT TWO

	Area 4 Lake Erie	Area 5 Southeast Shoal to Port Huron, MI	Total District Two
Step 1, Projection of operating expenses	$365,292	$446,468	$811,760
Step 2, Projection of target pilot compensation	477,218	930,701	1,407,919
Step 3, Projection of revenue	705,015	1,461,069	2,166,084
Step 4, Calculation of investment base	89,734	140,353	230,087
Step 5, Determination of target return on investment	7.04%	7.04%	7.04%
Step 6, Adjustment determination	6,317	9,881	16,198
Step 7, Adjustment of pilotage rates	854,237	1,392,460	2,246,697
	1.21 (+21)	.95 (−5%)	1.04 (+4%)

TABLE C.—DISTRICT THREE

	Area 6 Lakes Huron and Michigan	Area 7 St. Mary's River	Area 8 Lake Superior	Total District Three
Step 1, Projection of operating expenses	$739,550	$292,739	$508,441	$1,540,730
Step 2, Projection of target pilot compensation	1,099,676	625,315	715,827	2,440,818
Step 3, Projection of revenue	1,540,306	1,119,819	1,030,693	3,690,818
Step 4, Calculation of investment base	111,668	83,752	83,752	279,172
Step 5, Determination of target return on investment	7.04%	7.04%	7.04%	7.04%
Step 6, Adjustment determination	7,861	5,896	5,896	19,654
Step 7, Adjustment of pilotage rate	1,847,087	923,950	1,230,164	4,001,201
	1.20 (+20%)	.83 (−17%)	1.19 (+19%)	1.08 (+8%)

Part 2: Calculating the Rate Multiplier

The authority to establish pilotage rates on the Great Lakes derives from 46 U.S.C. 9303(f), which states, in pertinent part, that: "[t]he Secretary shall prescribe by regulation rates and charges for pilotage services, giving consideration to the public interest and the costs of providing the services." The pilotage regulations provide, at 46 CFR 404.1(b), that the pilotage rates "shall be reviewed annually in accordance with the procedures detailed in Appendix C" of the regulations and, "the Director shall complete a thorough audit of pilot association expenses and establish pilotage rates in accordance with the procedures detailed in § 404.10 of this part at least once every five years."

Appendix C to part 404 of title 46, CFR, provides the methodology used by the pilotage office in connection with annual reviews. The actual ratemaking methodology is contained in appendix A to part 404 of title 46, CFR, and is comprised of seven (7) steps. Those steps are:

(1) Projection of Operating Expenses;

(2) Projection of Target Pilot Compensation;

(3) Projection of Revenue;

(4) Calculation of Investment Base;

(5) Determination of Target Return on Investment;

(6) Adjustment Determination (Revenue Needed); and,

(7) Adjustment of the Rates.

The financial data used to calculate each of the seven steps comes from an independent accountant's review of the books and records of each association, which is provided the Coast Guard on an annual basis, and other documents and records provided to the Coast Guard by the pilotage associations. All documents and records relied upon in this ratemaking have been made part of the public record and may be found in the docket for this rulemaking.

The methodology is used to develop a multiplier to be used to adjust pilotage rates in each pilotage area. The following is an explanation of each step of the methodology and how the rate multiplier is derived.

Step 1: Projection of Operating Expenses

(1) The Coast Guard projects the amount of vessel traffic annually. Based upon that projection, the Coast Guard forecasts the amount of fair and reasonable operating expenses that pilotage rates should recover. This consists of the following phases:

(a) Submission of financial information from each association:

(b) Determination of recognizable expenses;

(c) Adjustment for inflation or deflation; and

(d) Final projection of operating expenses.

Step 1.A. Submission of Financial Information

(1) Each Association is responsible for providing detailed financial information to the Coast Guard, in accordance with part 403 of title 46, CFR. The information is collected and reviewed

by a Coast Guard-contracted independent accounting firm that compiles this information into financial reports for each District. The financial reports are reviewed by the Coast Guard in accordance with the requirements contained at Appendix C to Part 404, on an annual basis.

(2) Every five years, the Coast Guard is required by the regulations to complete a thorough audit of pilot association expenses and establish pilotage rates in accordance with the procedures detailed in § 404.10. Because we are issuing an interim rule that adjusts the current rate, we are following the methodology appearing at appendix A to part 404.

(3) All data used in this interim rule are taken from these reports. The reports reflect the period ending December 31, 2001. These reports may be found in the docket.

Step 1.B. Determination of Recognizable Expenses

(1) The Coast Guard determines which Association expenses will be recognized for ratemaking purposes, using the guidelines for the recognition of expenses contained in § 404.05.

(2) The following is a summary of the independent CPA's major findings and adjustments to the pilot associations' audited expenses, along with the Coast Guard's corresponding adjustments:

RECOGNIZED EXPENSES

	District One	District Two	District Three
Reported expenses for 2001	$687,591	$1,386,376	$1,336,710
Independent CPA Proposed Adjustments	*Equalization Between Districts*	*Equalization Between Districts*	*Equalization Between Districts*
	$10,120	None	$143,035
	$62,096		$152,535
	Reimbursed Expenses	Reimbursed Expenses	Reimbursed Expenses
	($13,000)	($83,376)	($163,207)
		($174,414)	
		($211,849)	
	Not Recognized or Allowed	Not Recognized or Allowed	Not Recognized or Allowed
	($782)	($74)	($995)
	($43,100)	($720)	($19,780)
		($28,124)	
	Misclassified Expenses	Misclassified Expenses	Misclassified Expenses
	($4,500)	(8,600)	($4,050)
	($11,740)	($20,470)	($23,100)
	($120,377)		
	Undocumented Expenses	Undocumented Expenses	Undocumented Expenses
	None	(125,559)	None
Total expenses 2001 +	$566,308	$733,190	$1,421,148
Inflation adjustment (2%)	$11,326	$14,664	$28,423
Coast Guard's Adjustments	$21,872	$20,500	$25,00
		$43,406	$66,159
Total projected expenses for 2003 pilotage season	$599,506	$811,760	$1,540,730

Step 1.C. Adjustment for Inflation or Deflation

(1) In making projections of future expenses, expenses that are subject to inflationary or deflationary pressures are adjusted. Costs not subject to inflation or deflation are not adjusted. Annual cost inflation or deflation will be projected to the succeeding navigation season, reflecting the gradual increase or decrease in costs throughout the year. The inflation adjustment is based on the year 2000 change in the Consumer Price Index for the North Central Region of the United States.

(2) Based upon the foregoing, a 2 percent inflation adjustment was made to the expense base. That adjustment appears in the table above.

Step 1.D. Projection of Operating Expenses

Once all adjustments are made to the recognized operating expenses, the Coast Guard projects these expenses for each pilotage area. In doing so, the Coast Guard takes into account foreseeable circumstances that could affect the accuracy of the projection. General and administrative expenses are apportioned to each area according to the number of pilots needed in that area. The results of Step 1.D for each district are displayed as follows:

DISTRICT ONE

	Area 1 St. Lawrence River	Area 2 Lake Ontario	Total District One
Projection of operating expenses	$359,704	$239,802	$599,506

DISTRICT TWO

	Area 4 Lake Erie	Area 5 Southeast Shoal to Port Huron, MI	Total District Two
Projection of operating expenses	$365,292	$446,468	$811,760

DISTRICT THREE

	Area 6 Lakes Huron and Michigan	Area 7 St Mary's River	Area 8 Lake Superior	Total District Three
Projection of operating expenses	$739,550	$292,739	$508,441	$1,540,730

Step 2: Projection of Target Pilot Compensation

(1) The second step in the ratemaking methodology is to project the amount of target pilot compensation that pilotage rates should provide in each area. This step consists of the following phases: a. Determination of the target rate of compensation; b. Determination of the number of pilots needed in each pilotage area; and

c. Multiplication of target compensation by the number of pilots needed to project target pilot compensation needed in each area. Each of these phases is detailed below.

Step 2.A. Determination of Target Rate of Compensation

(1) Target pilot compensation for pilots providing services in undesignated waters approximates the average annual compensation for first mates on U.S. Great Lakes vessels. The average annual compensation for first mates is determined based on the most current AMOU contract, and includes wages and benefits received by first mates.

(2) Target pilot compensation for pilots providing services in designated waters approximates the average annual compensation for masters on U.S. Great Lakes vessels. It is calculated as 150 percent of the compensation earned by first mates on U.S. Great Lakes vessels. Based on detailed information provided by commentators, the Great Lakes Pilotage Office has consistently calculated this by multiplying the first mates' salary by 150 percent and adding benefits since this is the best approximation of the average annual compensation for masters.

(3) The table below summarizes how total target pilot compensation is determined for undesignated and designated waters:

Monthly component	Monthly (First mate) pilots on undesignated waters	Monthly (master) pilots on designated waters
$207.70 (Daily Rate) × 44 (Days)	$9.139	N/A
$207.70 (Daily Rate) × 44 × 1.5	N/A	$13,709
Clerical	126	188
Health	1,748	1,748
Pension	513	513
Monthly total	11.526	16,158
Monthly total × 9 months	103,743	145,422

Step 2.B. Determination of Number of Pilots Needed

(1) The number of pilots needed in each area of designated waters is established by dividing the projected bridge hours for that area by 1,000. Bridge hours are the number of hours a pilot is aboard a vessel providing basic pilotage service.

(2) The number of pilots needed in each area of undesignated waters is established by dividing the projected bridge hours for that area by 1,800.

(3) In determining the number of pilots needed in each pilotage area, the Coast Guard is guided by the results of the calculations in steps 2.A. and 2.B. However, the Coast Guard may also find it necessary to make adjustments to these numbers to ensure uninterrupted pilotage service in each area, or for other reasonable circumstances that the Coast Guard determines are appropriate.

(4) Projected bridge hours are based on the vessel traffic that pilots are expected to serve. The Coast Guard projects that bridge hours for the 2003 season will be the same as or comparable to the totals of 2001. Dividing the projected annual number of bridge hours per area by the target number of bridge hours per pilot determines the number of pilots required in each area to service vessel traffic.

(5) The following table shows the calculation of pilots needed:

Pilotage area	Projected 2003 bridge hours	Divided by bridge-hour target	Pilots required
AREA 1	5,407	1,000	5.4
AREA 2	6,130	1,800	3.4

Pilotage area	Projected 2003 bridge hours	Divided by bridge-hour target	Pilots required
AREA 4	8,298	1,800	4.6
AREA 5	6,395	1,000	6.4
AREA 6	19,016	1,800	10.6
AREA 7	4,320	1,000	4.3
AREA 8	12,354	1,800	6.9

Step 2.C. Projection of Target Pilot Compensation

(1) The projection of target pilot compensation is determined separately for each pilotage area by multiplying the number of pilots needed in an area by the target pilot compensation for pilots working in that area (*i.e.*, 5.4 pilots are required in Area 1, target compensation for the designated waters of Area 1 is $145,422, 5.4 × $145,422 = $785,279).

(2) The results for each pilotage area are summarized below:

DISTRICT ONE

	Area 1 St. Lawrence River	Area 2 Lake Ontario	Total District One
Projection of target pilot compensation	$785,279	$352,726	$1,138,005

DISTRICT TWO

	Area 4 Lake Erie	Area 5 Southeast Shoal to Port Huron, MI	Total District Two
Projection of target pilot compensation	$477,218	$930,701	$1,407,919

DISTRICT THREE

	Area 6 Lakes Huron and Michigan	Area 7 St. Mary's River	Area 8 Lake Superior	Total District Three
Projection of target pilot compensation	$1,099,676	$625,315	$715,827	$2,440,818

Step 3: Projection of Revenue

(1) The third step in the ratemaking methodology is to project the revenue that would be received in each pilotage area if existing rates were left unchanged. This consists of a projection of both future vessel traffic and pilotage revenue.

Step 3.A. Projection of Revenue

(1) The Coast Guard projects the pilotage service that will be required by vessel traffic in each pilotage area. These projections are based on historical data and all other relevant data available. Projected demand for pilotage service is multiplied by the existing pilotage rates for that service, to arrive at the projection of revenue.

(2) The results of Step 3.A for each district are summarized below:

DISTRICT ONE

	Area 1 St. Lawrence River	Area 2 Lake Ontario	Total District One
Projection of revenue	$1,105,233	$629,149	$1,734,382

DISTRICT

	Area 4 Lake Erie	Area 5 Southeast Shoal to Port Huron, MI	Total District Two
Projection of revenue	$705,015	$1,461,069	$2,166,084

DISTRICT THREE

	Area 6 Lakes Huron and Michigan	Area 7 St. Mary's River	Area 8 Lake Superior	Total Distnct Three
Projection of revenue	$1,540,306	$1,119,819	$1,030,693	$3,690,818

Step 4: Calculation of Investment Base

(1) The fourth step in the ratemaking methodology is the calculation of the investment base of each Association. The investment base is the recognized capital investment in the assets employed by each Association required to support pilotage operations. In general, it is the sum of available cash and the net value of real assets, less the value of land. The investment base has been established through the use of the balance sheet accounts, as amended by material supplied in the notes to the independent accountant's financial statements, which are in the public docket, and adjustments taken by the Coast Guard after consulting with the accountant.

(2) The formula for determining the investment base appears at appendix B to part 404. The calculation appears in the independent accountant's reports for each district. The Investment Base is the Recognized Assets times the ratio of Recognized Sources of Funds to Total Sources of Funds. The investment base (Step 4) as calculated for each district is displayed below:

DISTRICT ONE

	Area 1 St. Lawrence River	Area 2 Lake Ontario	Total District One
Calculation of investment base	$50,000	$50,000	$100,000

DISTRICT TWO

	Area 4 Lake Erie	Area 5 Southeast Shoal to Port Huron, MI	Total District Two
Calculation of investment base	$89,734	$140,353	$230,087

DISTRICT THREE

	Area 6 Lakes Huron and Michigan	Area 7 St. Mary's River	Area 8 Lake Superior	Total District Three
Calculation of investment base	$111,660	$83,752	$83,752	$279,172

Step 5: Determination of Target Rate of Return on Investment

(1) The fifth step in the ratemaking methodology is to determine the Target Rate of Return on Investment. For each Association, a market-equivalent return-on-investment is allowed for the recognized net capital invested in the Association by its members.

(2) The allowed Return on Investment (ROI) is based on the preceding year's average annual rate of return for new issues of high-grade corporate securities.

(3) Assets subject to return on investment provisions must be reasonable in both purpose and amount. If an asset or other investment is not necessary for the provision of pilotage services, that portion of the return element is not allowed for ratemaking purposes.

(4) The target rate of return on investment for 2002 was set at 7.04 percent. This is based on the preceding year's (2001's) average annual rate of return of new issues of high-grade corporate securities (Moody's AAA rating, average return).

Step 6a: Adjustment Determination—Projected Return on Investment

(1) The next step in the ratemaking methodology is to insert the results from steps 1, 2, 3, and 4 into a formula that is based on a basic regulatory rate structure, and comparing the results to step 5. This basic regulatory rate structure takes into account revenues, expenses and return on investment, as set out below:

ADJUSTMENT DETERMINATION (PROJECTED RETURN ON INVESTMENT)

Line	Calculation
1	+ Revenue (from Step 3)
2	− Operating Expenses (from Step 1)
3	− Pilot Compensation (from Step 2)
4	= Operating Profit/Loss
5	− Interest Expense (from Audit reports)
6	= Earnings Before Tax
7	− Federal Tax Allowance
8	= Net Income
9	Return Element (Net Income + Interest)
10	+ Investment Base (from Step 4)
11	= Projected Return on Investment

TABLE A.—DISTRICT ONE—PROJECTED RETURN ON INVESTMENT

Step	Area 1	Area 2	Total District One
1	$1,105,233	$629,149	$1,734,382
2	($359,704)	($239,802)	($599,506)
3	($785,279)	($352,726)	($1,138,005)
4	($39,750)	$36,621	($3,129)
5	0	0	0
6	($39,750)	$36,621	($3,129)
7	0	0	0
8	($39,750)	$36,621	($3,129)
9	($39,750)	$36,621	($3,129)
10	$50,000	$50,000	$10,000
11	(0.795)	0.732	(0.031)

TABLE B.—DISTRICT TWO—ADJUSTMENT DETERMINATION

Step	Area 4	Area 5	Total District Two
1	$854,237	$1,392,460	$2,246,697
2	($365,292)	($446,468)	($811,760)
3	($477,218)	($930,701)	($1,407,919)
4	$11,727	$15,291	$37,018
5	($734)	($734)	($1,468)
6	$10,993	$14,557	$25,550
7	($5,410)	($5,410)	($10,820)
8	$5,583	$9,147	$14,730
9	$6,317	$9,881	$16,198
10	$89,734	$140,353	$230,087
11	.0704	.0704	.0704

TABLE C.—DISTRICT THREE—ADJUSTMENT DETERMINATION

Step	Area 6	Area 7	Area 8	Total District
1	$1,847,087	$923,950	$1,230,164	$4,001,202
2	($739,550)	($292,739)	($508,441)	($1,540,730)
3	($1,099,676)	($625,315)	($715,827)	($2,440,818)
4	$7,861	$5,896	$5,896	$19,654
5	($1,909)	($1,909)	($1,909)	($5,727)
6	$5,952	$3,987	$3,987	$13,927
7	0	0	0	0
8	$5,952	$3,987	$3,987	$13,927
9	$7,861	$5,896	$5,896	$19,654
10	$111,668	$83,752	$83,752	$279,172
11	.0704	.0704	.0704	.0704

(2) The Coast Guard compares the projected return on investment (as calculated using the formula in Step 6a) to the target return on investment (from Step 5), to determine whether an adjustment to the base pilotage rates is necessary. If the projected return on investment is significantly different from the target return on investment, the revenues that would be generated by the current pilotage rates are not equal to the revenues that would need to be recovered by the pilotage rates.

(3) It is clear from the table below that the difference between the projected and target Returns on Investment are significant, indicating that a rate adjustment is necessary.

TABLE D.—COMPARISON OF PROJECTED RETURNS ON INVESTMENT VERSUS TARGET RETURNS ON INVESTMENT

	Projected ROI	Target ROI
District 1	(0.031)	.0704
District 2	(0.280)	.0704
District 3	(1.041)	.0704

(4) The base pilotage revenues that are needed are calculated by determining what change in projected revenue will make the target return on investment equal to the projected return on investment. This projection of revenue needed is used in determining the basis for proposed adjustments to the base pilotage rates. The mechanism for adjusting the base pilotage rates is discussed in Step 7 below. The required return, tax, and interest elements may be considered additions to the operating expenses and pilot compensation components of the base pilotage rates.

Step 6b: Revenue Needed Determination

The same formula used in Step 6a, above, is used to calculate the Adjustment Determination. To find the proper adjustment determination, Projected Revenue as determined in Step 3, is adjusted in each area until the formula in Step 6a yields a Projected Return on Investment equal to the Target Return on Investment from Step 5. The following tables show the results of these calculations.

TABLE A.—DISTRICT ONE—ADJUSTMENT DETERMINATION

Step	Area 1	Area 2	Total District One
1	$1,148,503	$629,149	$1,744,551
2	($359,704)	($239,802)	($599,506)
3	($785,279)	($352,726)	($1,138,005)
4	$3,520	$3,520	$7,040
5	0	0	0
6	$3,520	$3,520	$7,040
7	0	0	0
8	$3,520	$3,520	$7,040
9	$3,520	$3,520	$7040
10	$50,000	$50,000	$100,000
11	.0704	.0704	.0704

TABLE B.—DISTRICT TWO ADJUSTMENT DETERMINATION

Step	Area 4	Area 5	Total District Two
1	$854,237	$1,392,460	$2,246,697
2	($365,292)	($446,468)	($811,760)
3	($477,218)	($930,701)	($1,407,919)
4	$11,727	$15,291	$37,018
5	($734)	($734)	($1,468)
6	$10,993	$14,557	$25,550
7	($5,410)	($5,410)	($10,820)
8	$5,583	$9,147	$14,730
9	$6,317	$9,881	$16,198
10	$89,734	$140,353	$230,087
11	.0704	.0704	.0704

TABLE C.—DISTRICT THREE ADJUSTMENT DETERMINATION

Step	Area 6	Area 7	Area 8	Total District
1	$1,847,087	$923,950	$1,230,164	$4,001,202
2	($739,550)	($292,739)	($508,441)	($1,540,730)
3	($1,099,676)	($625,315)	($715,827)	($2,440,818)
4	$7,861	$5,896	$5,896	$19,654
5	($1,909)	($1,909)	($1,909)	($5,727)
6	$5,952	$3,987	$3,987	$13,927
7	0	0	0	0
8	$5,952	$3,987	$3,987	$13,927
9	$7,861	$5,896	$5,896	$19,654
10	$111,668	$83,752	$83,752	$279,172
11	.0704	.0704	.0704	.0704

Step 7: Adjustment of Pilotage Rates

(1) As previously indicated, the final step in the ratemaking methodology is to adjust base pilotage rates if the calculations from Step 6 show that pilotage rates in a pilotage area should be adjusted, and if the Coast Guard determines that it is appropriate to go forward with a rate adjustment. Rate adjustments are calculated in accordance with the procedures found in this step.

(2) Pilotage rate adjustments are calculated for each area by multiplying the existing pilotage rates in each area by the rate multiplier. The rate multiplier is calculated by inserting the result from the steps detailed above into the following formula:

Line	Rate multiplier
1	Revenue Needed (from Step 6(C)).
2	÷ Projected Revenue (from Step 3).
3	= Rate multiplier

(1) Using the formula above, the following are the calculations for the rate multiplier by District and Area:

TABLE A.—DISTRICT 1—RATE MULTIPLIER

[Revenue Needed ÷ Projected Revenue = Rate Multiplier]

Area 1	$1,148,503 ÷ $1,105,233	1.04
Area 2	$596,048 ÷ $629,149	0.95
Total	$1,744,551 ÷ $1,734,382	1.01

TABLE B.—DISTRICT 2—RATE MULTIPLIER

[Revenue Needed ÷ Projected Revenue = Rate Multiplier]

Area 4	$854,237 ÷ $705,015	1.21
Area 5	$1,392,460 ÷ $1,461,069	0.95
Total	$2,246,697 ÷ $2,166,084	1.04

TABLE C.—DISTRICT 3—RATE MULTIPLIER

[Revenue Needed ÷ Projected Revenue = Rate Multiplier]

Area 6	$1,847,087 ÷ $1,540,306	1.20
Area 7	$923,950 ÷ $1,119,819	0.83
Area 8	$1,230,164 ÷ $1,030,693	1.19
Total	$4,001,202 ÷ $3,690,818	1.08

TOTAL ACROSS ALL DISTRICTS—RATE MULTIPLIER

[Revenue Needed ÷ Projected Revenue = Rate Multiplier]

All Districts	$7,992,450 ÷ $7,591,284	1.05

(2) The Coast Guard amends the pilotage rates for the waters treated in 46 CFR 401.405 through 46 CFR 401.410 by multiplying the current pilotage rates by the rate multiplier for each pilotage area. The following table shows the percentage changes in rates by Area.

If you require pilotage service in:	The rate will:
Area 1 (Designated waters).	Increase by 4%.
Area 2	Decrease by 5%.
Area 4	Increase by 21%.
Area 5 (Designated waters).	Decrease by 5%.
Area 6	Increase by 20%.
Area 7 (Designated waters).	Decrease by 17%.
Area 8	Increase by 19%.

The total change across all Districts is 5 percent.

Part 3: Differences Between This Interim Ratemaking Regulation and the NPRM Published in January 2003

(1) Pending an opportunity to finish reviewing certain comments that were received in connection with the NPRM published in the **Federal Register** on January 23, 2003 (68 FR 3202), the Coast Guard has concluded that while many of these comments raised important points to be further explored, it was also equally important to establish at least a partial rate adjustment pending that review. We adopted a number of suggestions raised by comments, which has had the effect of reducing the rates proposed in the NPRM.

(2) Calculations to determine pilot target compensation for undesignated and designated waters of the Great Lakes differs from the calculations published in the NPRM (68 FR 3202). Comments received in response to the NPRM stated that the Coast Guard should credit only 5 days a month as vacations days vice 15 days to determine pilots' target compensation. The Coast Guard, in previous rulemakings, has included 15 days a month in its calculation of pilots' target compensation. For purposes of this interim rule, the Coast Guard has used the figures of those favoring a 44-day multiplier over a 54-day multiplier. This change has decreased the rate proposed in the NPRM. The Coast Guard continues to review this issue and expects to make a determination before calculating the full rate adjustment for the supplemental notice of proposed rulemaking (SNPRM).

(3) Many comments suggested that the needs of pilotage on the Great Lakes could be met with fewer than the total number of pilots recommended in the NPRM. This season's decline in shipping indicates that for the near term the rounding up of pilotage numbers, which is frequently performed in the course of determining the number of pilots needed, is not necessary, pending a full economic review of the Great Lakes basin. This, too, has resulted in a reduction to rates proposed in the NPRM.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

There are no small entities that will be directly affected by this interim rule. The businesses directly affected will be owners and operators of vessels who generally are large companies or are affiliated with large companies. Indirectly affected entities, such as shippers of major commodities like steel, iron ore, and grain will be affected only to the extent that these changes cause owners and operators of vessels to adjust shipping charges.

Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule will have a significant economic impact on it, please submit a comment to the Docket Management Facility at the address under **ADDRESSES**. In your comment, explain why you think it qualifies and how and to what degree this rule will economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please call Paul Wasserman, Director, Office of Great Lakes Pilotage, (G-MWP–1), Coast Guard, telephone (202) 267–2856 or send him e-mail at *Pwasserman@comdt.uscg.mil*.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This interim rule calls for no new collection of information under the Paperwork Reduction Act of 1995 [44 U.S.C. 3501–3520].

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

We have analyzed this rule under Commandant Instruction M16475.ID, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (34)(a), of the Instruction, from further environmental documentation. An "Environmental Analysis Check List" and a "Categorical Exclusion Determination" are available in the docket where indicated under the section of this preamble on "Public Participation and Request for Comments". We will consider comments on this section before we make the final decision on whether this rule should be categorically excluded from further environmental review.

List of Subjects

46 CFR Part 401

Administrative practice and procedures, Great Lakes, Navigation (water), Penalties, Reporting and recordkeeping requirements, Seamen.

46 CFR Part 404

Great Lakes, Navigation (water), Seamen.

■ For the reasons discussed in the preamble, the Coast Guard amends 46 CFR parts 401 and 404 as follows:

PART 401—GREAT LAKES PILOTAGE REGULATIONS

■ 1. Revise the authority citation for part 401 to read as follows:

Authority: 46 U.S.C. 2104(a), 6101, 7701, 8105, 9303, 9304; Department of Homeland Security Delegation No. 0170.1; 46 CFR 401.105 also issued under the authority of 44 U.S.C. 3507.

■ 2. In § 401.405, revise paragraphs (a) and (b), to read as follows:

§ 401.405 Basic rates and charges on the St. Lawrence River and Lake Ontario.

* * * * *

(a) *Area 1 (Designated Waters):*

Service	St. Lawrence River
Basic Pilotage	$8 per kilometer or $15 per mile[1]
Each Lock Transited	[1]$185
Harbor Movage	[1]$607

[1] The minimum basic rate for assignment of a pilot in the St. Lawrence River is $405, and the maximum basic rate for a through trip is $1,777.

(b) *Area 2 (Undesignated Waters):*

Service	Lake Ontario
Six-Hour Period	$327
Docking or Undocking	$312

■ 3. In § 401.407, revise paragraphs (a) and (b) to read as follows:

§ 401.407 Basic rates and charges on Lake Erie and the navigable waters from Southeast Shoal to Port Huron, MI.

* * * * *

(a) *Area 4 (Undesignated Waters):*

Service	Lake Erie (East of southeast shoal)	Buffalo
Six-Hour Period	$405	$405
Docking or Undocking	$312	$312
Any Point on the Niagara River below the Black Rock Lock	N/A	$796

(b) *Area 5 (Designated Waters):*

Any point on or in	Southeast Shoal	Toledo or any Point on Lake Erie west of Southeast Shoal	Detroit River	Detroit Pilot Boat	St. Clair River
Toledo or any port on Lake Erie west of Southeast Shoal	$939	$554	$1,218	$939	N/A
Port Huron Change Point	[1] $1,634	[1] $1,893	$1,228	$955	$679
St. Clair River	[1] $1,634	N/A	$1,228	$1,228	$554
Detroit or Windsor or the Detroit River	$939	$1,218	$554	N/A	$1,228
Detroit Pilot Boat	$679	$939	N/A	N/A	$1,228

[1] When pilots are not changed at the Detroit Pilot Boat.

■ 4. In § 401.410, revise paragraphs (a), (b), and (c) to read as follows:

§ 401.410 Basic rates and charges on Lakes Huron, Michigan, and Superior, and the St Mary's River.

* * * * *

(a) *Area 6 (Undesignated Waters):*

Service	Lakes Huron and Michigan
Six-Hour Period	$336

Service	Lakes Huron and Michigan
Docking or Undocking	$319

(b) *Area 7 (Designated Waters):*

Area	Detour	Gros Cap	Any harbor
Gros Cap	$1,192	N/A	N/A
Algoma Steel Corporation Wharf at Sault Ste. Marie Ontario	$1,192	$449	N/A
Any point in Sault Ste. Marie, Ontario, except the Algoma Steel Corporation Wharf	$999	$449	N/A
Sault Ste. Marie, MI	$999	$449	N/A
Harbor Movage	N/A	N/A	$449

(c) *Area 8 (Undesignated Waters):*

Service	Lake Superior
Six-Hour Period	$311
Docking or Undocking	$296

§ 401.420 [Amended]

■ 5. In § 401.420—

■ a. In paragraph (a), remove the number "$53" and add, in its place, the number "$56"; and remove the number "$831" and add, in its place, the number "$873".

■ b. In paragraph (b), remove the number "$53" and add, in its place, the number "$56"; and remove the number "$831" and add, in its place, the number "$873".

■ c. In paragraph (c)(1), remove the number "$314" and add, in its place, the number "$330"; in paragraph (c)(3), remove the number "$53" and add, in its place, the number "$56"; and, also in paragraph (c)(3), remove the number "$831" and add, in its place, the number "$873".

§ 401.428 [Amended]

■ 6. In § 401.428, remove the number "$321" and add, in its place, the number "$337".

PART 404—GREAT LAKES PILOTAGE RATEMAKING

■ 7. Revise the authority citation for part 404 to read as follows:

Authority: 46 U.S.C. 2104(a), 8105, 9303, 9304; Department of Homeland Security Delegation No. 0170.1.

Appendix A to Part 404 [Amended]

■ 8. In Appendix A to part 404, in Step 6, paragraph 1, line 10 of the table, remove the symbol "+" and add, in its place, the symbol "+".

Dated: December 8, 2003.

T.H. Gilmour,

Rear Admiral, U.S. Coast Guard, Assistant Commandant for Marine Safety, Security and Environmental Protection.

[FR Doc. 03–30711 Filed 12–8–03; 4:37 pm]

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Part IV

Department of Housing and Urban Development

24 CFR Part 570

Modification of the Community Development Block Grant Definition for Metropolitan City and Other Conforming Amendments; Interim Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 570

[Docket No. FR–4872–I–01]

RIN 2506–AC15

Modification of the Community Development Block Grant Definition for Metropolitan City and Other Conforming Amendments

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Interim rule.

SUMMARY: This interim rule revises the Community Development Block Grant (CDBG) program regulations by replacing the obsolete term "central city" with a new term "principal city" in the definition of "metropolitan city" and other CDBG regulations referencing "central city." The revisions are necessary because of the recent changes to the Office of Management and Budget's (OMB) Standards for Defining Metropolitan and Micropolitan Statistical Areas (MSAs) and the announcement in 2003 of new definitions for those areas using Census 2000 data. The rule updates the affected CDBG program regulations so that the terminology used by HUD is consistent with OMB standards and the purposes of the Housing and Community Development Act of 1974.

DATES: *Effective Date:* January 12, 2004.

Comments Due Date: February 10, 2004.

ADDRESSES: Interested persons are invited to submit comments regarding this interim rule to the Regulations Division, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–0500. Comments should refer to the above docket number and title. A copy of each comment submitted will be available for public inspection and copying during weekdays between 8 a.m. and 5 p.m. at the above address. Facsimile (FAX) comments are not acceptable.

FOR FURTHER INFORMATION CONTACT: Sue Miller, Director, Entitlement Communities Division, Office of Block Grant Assistance, Office of Community Planning and Development, Room 7282, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–7000; telephone (202) 708–1577 (this is not a toll-free number). Hearing- or speech-impaired individuals may access the telephone number listed in this section through TTY by calling the toll-free Federal Information Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION:

I. Statutory Background

Title I of the Housing and Community Development Act of 1974 (42 U.S.C. 5301–5320) (the Act) establishes the statutory framework for the CDBG program. HUD's regulations implementing the CDBG program are located at 24 CFR part 570 (entitled "Community Development Block Grants").

Section 102(a)(4) of the Act defines the term "metropolitan city" as "(A) a city within a metropolitan area which is the central city of such area, as defined and used by the Office of Management and Budget, or (B) any other city, within a metropolitan area, which has a population of fifty thousand or more. . . ." The term "metropolitan area" is defined in section 102(a)(3) of the Act as "a standard metropolitan statistical area as established by the Office of Management and Budget." Section 102(b) of the Act provides that the Secretary may, by regulation, change or otherwise modify the meaning of the terms defined in section 102(a) in order to reflect any technical change or modification made by the United States Bureau of the Census or OMB.

II. Regulatory Background

The CDBG program regulations at § 570.3 define "metropolitan city" as having the meaning provided in section 102(a)(4) of the Act. The term "metropolitan city" is defined in section 102(a)(4) of the Act as a city within a metropolitan area which is the central city of such area, as defined and used by OMB, or any other city within a metropolitan area, which has a population of 50,000 or more. OMB has defined "central city" and "principal city" in its **Federal Register** publications on standards for metropolitan statistical areas. OMB published standards at 55 FR 12154 on March 30, 1990, which included the definition of "central city" currently in use (the 1990 standards) in the CDBG program regulations. On December 27, 2000, OMB published at 65 FR 82228 new Standards for Defining Metropolitan and Micropolitan Statistical Areas, collectively called Core Based Statistical Areas (CBSAs) (the December 27, 2000, standards). These new standards replace the previous standards adopted in 1990 for defining metropolitan areas, and also replace "central cities" with the new concept of "principal cities."

Under the 1990 standards, the term "central city" was defined as: (A) The city with the largest population in a Metropolitan Statistical Area (MSA); (B) each additional city with a population of at least 250,000 or with at least 100,000 persons working within its limits; (C) each additional city with a population of at least 25,000, an employment/residence ratio (the number of persons working in the city divided by the number of resident workers with place of work reported) of at least 0.75, and at least 40 percent of its employed residents working in the city; (D) each city of 15,000 to 24,999 population that is at least one-third as large as the largest central city, has an employment/residence ratio of at least 0.75, and at least 40 percent of its employed residents working in the city; (E) the largest city in a secondary noncontiguous urbanized area (an additional urbanized area within an MSA that has no common boundary of more than a mile with the main urbanized area around which the MSA is defined), provided it has at least 15,000 population, an employment/residence ratio of at least 0.75, and at least 40 percent of its employed residents working in the city; and (F) each additional city in a secondary noncontiguous urbanized area that is at least one-third as large as the largest central city of that urbanized area, that has at least 15,000 population and an employment/residence ratio of at least 0.75, and that has at least 40 percent of its employed residents working in the city (55 FR 12155).

Under the 1990 standards, the term "metropolitan area" was a collective term that referred to MSAs, Primary Metropolitan Statistical Areas, and Consolidated Metropolitan Statistical Areas (55 FR 12155). In accordance with the requirements of the Act, the CDBG program has utilized the 1990 standards and Census data to determine entitlement eligibility and allocation of CDBG Entitlement program funds to eligible communities.

The December 27, 2000, standards use the new term "principal city" instead of "central city." A "principal city" is defined in relation to a CBSA rather than an MSA. The principal city (or cities) of a CBSA includes: (A) The largest incorporated place in the CBSA with a Census 2000 population of at least 10,000 or, if no such place exists, the largest incorporated place or census designated place in the CBSA; (B) any additional incorporated place or census designated place with a Census 2000 population of at least 250,000 or in which 100,000 or more persons work; (C) any additional incorporated place or census designated place with a Census 2000 population of at least 50,000, but less than 250,000, and in which the number of jobs meets or exceeds the number of employed residents; and (D) any additional incorporated place or census designated place with a Census 2000 population of at least 10,000, but less than 50,000, and one-third the population size of the largest place, and in which the number of jobs meets or exceeds the number of employed residents (65 FR 82236).

The terms "central city" and "principal city" have slightly different meanings based on their respective standards. In the CDBG program, however, the term "principal city" will serve the same purpose as the now obsolete "central city" in determining CDBG entitlement eligibility.

III. This Interim Rule

This interim rule revises the CDBG program regulations (24 CFR part 570) at §§ 570.3, 570.4(c) and 570.307(e) to conform these sections to OMB's new definitions for CBSAs, and particularly for "principal cities." The rule amends the regulatory definition of "Metropolitan City" in 24 CFR 570.3 to include the term "principal city," and makes conforming changes to certain other sections of the CDBG regulations.

IV. Findings and Certifications

Justification for Interim Rulemaking

It is HUD's policy to publish rules for public comment before their issuance for effect, in accordance with 24 CFR part 10. Part 10 provides, however, that prior public procedure will be omitted if HUD determines that it is "impracticable, unnecessary, or contrary to the public interest" (24 CFR 10.0). HUD finds that good cause exists to publish this rule for effect without first soliciting public comment, in that prior public procedure is unnecessary and would be contrary to the public interest. Public procedure is unnecessary because this rule simply makes technical amendments that conform the CDBG regulations to new terminology adopted by OMB, in accordance with statutory authority. Delayed effectiveness pending public comment would be contrary to the public interest because potentially eligible cities would be deprived from receiving CDBG entitlement funds due to a change in nomenclature and other CDBG regulations may become misleading by referencing an obsolete term. HUD recognizes that adding principal cities may, depending on appropriations from Congress and the increased number of entitlement communities, result in reduced funding for current entitlement communities. The exact impact of this rule cannot be quantified; some number of the newly qualified communities that meet OMB's designation criteria would have also met OMB's previous "central city" criterion. Additionally, a number of entitlement communities that qualify under the existing central city definition and that would not meet the definition of "principal city" will qualify for continued entitlement status because they meet section 102(a)(4) of the Act which provides that "any city that was classified as a metropolitan city for at least two years * * * shall remain classified as a metropolitan city." Although HUD believes issuing this interim rule for immediate effect will benefit the public overall, HUD will consider public comments on this issue prior to the publication of a final rule.

Executive Order 12866

The Office of Management and Budget (OMB) reviewed this rule under Executive Order 12866, *Regulatory Planning and Review*. OMB determined that this rule is a "significant regulatory action" (but not economically significant) as defined in section 3(f) of the Order. Any changes made in this rule subsequent to its submission to OMB are identified in the docket file. The docket file is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC.

Environmental Impact

This rule simply revises existing HUD regulations by replacing "central city" or "central cities" with "principal city" or "principal cities," where applicable, in order to be consistent with OMB standards. This rule does not direct, provide for assistance or loan or mortgage insurance for, or otherwise govern or regulate, real property acquisition, disposition, leasing, rehabilitation, alteration, demolition or new construction, nor does it establish, revise, or provide for standards for construction, construction materials, manufactured housing, or occupancy. This rule revises an existing document where the existing document as a whole would not fall under a categorical exclusion but the amendment by itself does so. Pursuant to 24 CFR 50.19(c)(1) and (c)(2), these revisions are categorically excluded from the environmental assessment required by the National Environmental Policy Act of 1969 (42 U.S.C. 4332).

Impact on Small Entities

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this rule before publication and by approving it certifies that this rule does not have a significant economic impact on a substantial number of small entities. There are no anti-competitive discriminatory aspects of the rule with regard to small entities and there are not any unusual procedures that need to be complied with by small entities. Although HUD has determined that this interim rule does not have a significant economic impact on a substantial number of small entities, HUD invites comments regarding any less burdensome alternatives to this rule that will meet HUD's objectives as described in this preamble.

Executive Order 13132, Federalism

Executive Order 13132 (entitled "Federalism") prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial direct compliance costs on state and local governments and is not required by statute, or the rule preempts state law, unless the agency meets the consultation and funding requirements of section 6 of the executive order. This interim rule does not have federalism implications and does not impose substantial direct compliance costs on state and local governments or preempt state law within the meaning of the executive order.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1532) establishes requirements for federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments and the private sector. This interim rule does not impose a federal mandate that will result in the expenditure by state, local, or tribal governments, in the aggregate, or the private sector, of $100 million or more in any one year.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance (CFDA) program number is 14.218.

List of Subjects in 24 CFR Part 570

Administrative practice and procedure, Community development block grant, Grant programs—education, Grant programs, housing and community development, Indians, insular areas, Lead poisoning, Loan programs—housing and community development, Low- and moderate-income housing, New communities,

Pockets of poverty, Puerto Rico, Reporting and recordkeeping requirements, Small cities, Student aid.

■ Accordingly, for the reasons discussed in the preamble, HUD amends 24 CFR part 570 as follows:

PART 570—COMMUNITY DEVELOPMENT BLOCK GRANTS

■ 1. The authority citation for part 570 continues to read as follows:

Authority: 42 U.S.C. 3535(d) and 5301–5320.

■ 2. Amend § 570.3 by revising the definition of "metropolitan city" to read as follows:

§ 570.3 Definitions.

* * * * *

Metropolitan city shall have the meaning provided in section 102(a)(4) of the Act except that the term "central city" is replaced by "principal city."

* * * * *

■ 3. Amend § 570.4 by revising the introductory text of paragraphs (c) and (c)(3) to read as follows:

§ 570.4 Allocation of funds.

* * * * *

(c) In determining eligibility for entitlement and in allocating funds under section 106 of the Act for any federal fiscal year, HUD will recognize corporate status and geographical boundaries and the status of metropolitan areas and principal cities effective as of July 1 preceding such federal fiscal year, subject to the following limitations:

* * * * *

(3) With respect to the status of Metropolitan Statistical Areas and principal cities, as officially designated by the Office of Management and Budget as of such date.

* * * * *

■ 4. Amend § 570.307 by revising the first sentence of paragraph (e)(1) to read as follows:

§ 570.307 Urban counties.

* * * * *

(e) *Grant ineligibility of included units of general local government.* (1) An included unit of general local government cannot become eligible for an entitlement grant as a metropolitan city during the period of qualification of the urban county (even if it becomes a principal city of a metropolitan area or its population surpasses 50,000 during that period). * * *

* * * * *

Dated: November 17, 2003.

Roy A. Bernardi,

Assistant Secretary for Community Planning and Development.

[FR Doc. 03–30748 Filed 12–11–03; 8:45 am]

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H.R. 3348/P.L. 108–174

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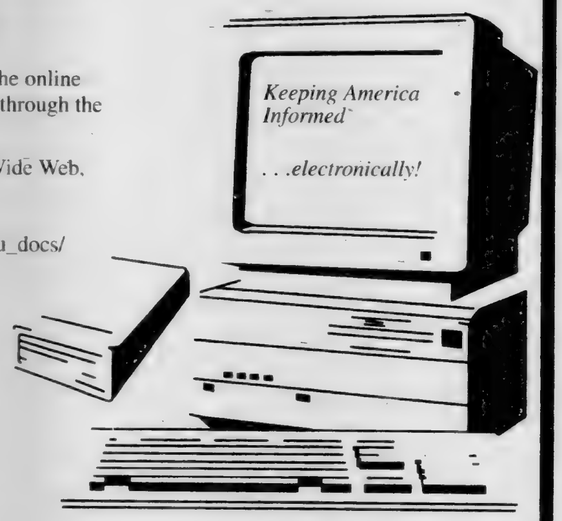
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FEDERAL ELECTION COMMISSION

11 CFR Parts 100, 106, 114, 9004, and 9034

[Notice 2003–24]

Travel on Behalf of Candidates and Political Committees

AGENCY: Federal Election Commission.

ACTION: Final rules and transmittal of regulations to Congress.

SUMMARY: The Federal Election Commission is promulgating new and revised rules regarding the proper rates and timing for payment for travel on behalf of political committees and candidates on means of transportation that are not offered for commercial passenger service, including government conveyances. The final rules provide more comprehensive guidance than the previous regulations by establishing a single, uniform valuation scheme for campaign travel that does not depend on whether the service provider is a corporation, labor organization, individual, partnership, limited liability company or other entity. The final rules apply to all Federal candidates, including publicly funded presidential candidates as well as other individuals traveling on behalf of candidates, party committees, and other political committees where the travel is in connection with Federal elections. Further information is provided in the supplementary information that follows.

EFFECTIVE DATE: The effective date for the revisions to 11 CFR parts 100, 106, 114 and 9034 is January 14, 2004. Further action on revisions to 11 CFR part 9004, including the publication of a document in the **Federal Register** announcing an effective date, will be taken after these regulations have been before Congress for 30 legislative days pursuant to 26 U.S.C. 9009(c).

FOR FURTHER INFORMATION CONTACT: Mr. John C. Vergelli, Acting Assistant General Counsel, or Mr. Richard T. Ewell, Attorney, 999 E Street NW., Washington, DC 20463, (202) 694–1650 or (800) 424–9530.

SUPPLEMENTARY INFORMATION: The Commission is implementing several changes to its rules governing travel in connection with a Federal election. These final rules establish a simple, uniform payment scheme covering all Federal election travel on either government or private aircraft and other conveyances. The previous regulation at 11 CFR 114.9(e) established the amount and timing for reimbursement by a candidate to a corporation or labor organization for the use of a private airplane or other means of transportation, but did not address means of travel furnished by individuals, partnerships, and other entities. The previous rules in section 114.9(e) also were not fully consistent with the Commission's treatment of similar travel by presidential and vice-presidential candidates using government-provided transportation under 11 CFR 9004.7 and 9034.7. Nor did the previous rules in 11 CFR 114.9(e) establish specific guidance for those traveling on behalf of party committees or other unauthorized committees.

The Notice of Proposed Rulemaking ("NRPM") on which these final rules are based was published in the **Federal Register** on August 21, 2003. 68 FR 50,481 (August 21, 2003). The comment period was originally set to close on September 19, 2003, but the Commission extended the comment period until September 29, 2003. The Commission received nine comments from ten commenters,[1] and held a public hearing on this and two other rulemakings on October 1, 2003. Seven witnesses testified during the hearing. Transcripts of the hearing are available at *http://www.fec.gov/register.htm*. Please note that, for purposes of this document, the terms "commenter" and "comment" apply to both written comments and oral testimony at the public hearing.

Under the Administrative Procedures Act, 5 U.S.C. 553(d), and the Congressional Review of Agency Rulemaking Act, 5 U.S.C. 801(a)(1), agencies must submit final rules to the Speaker of the House of Representatives and the President of the Senate, and publish them in the **Federal Register** at least 30 calendar days before they take effect. In addition, 26 U.S.C. 9009(c) requires that any rules or regulations prescribed by the Commission to carry out the provisions of the Presidential Election Campaign Fund Act be transmitted to the Speaker of the House of Representatives and the President of the Senate 30 legislative days before they are finally promulgated. The final rules that follow were transmitted to Congress on December 10, 2003.

[1] The Commission received written comments from: Perkins, Coie LLP; The Campaign Legal Center; FEC Watch; the Center for Responsive Politics; National Republican Senatorial Committee; National Republican Congressional Committee; National Business Aviation Association, Inc.; Nancy J. Lally; attorneys Lyn Utrecht, Eric Kleinfeld, Pat Fiori, and James Lamb of Ryan, Phillips, Utrecht & MacKinnon; and the Internal Revenue Service.

Explanation and Justification

I. 11 CFR 100.93 Travel by Airplane or Other Means of Transportation

A. Introduction

The Commission's previous candidate travel rules in 11 CFR 114.9(e) focused only on means of travel owned or leased by corporations or labor organizations. In the NPRM, the Commission proposed broadening the rules to include airplanes and other means of travel owned by other persons. The NPRM proposed the addition of new section 11 CFR 100.93, based on the previous 11 CFR 114.9(e) with the organizational and substantive changes described in the NPRM and below. New § 100.93 is one of the enumerated exceptions to the definition of "contribution" in 11 CFR part 100, subpart C, and identifies circumstances in which the use of a private means of transportation not owned or leased by candidates, their authorized committees, or other political committees would *not* be contributions.

B. 11 CFR 100.93(a) Scope and Definitions

1. Paragraph (a)(1) Means of Transportation Within the Scope of 11 CFR 100.93

(i) Paragraph (a)(1)(i)—Airplanes not licensed by the FAA to operate for compensation or hire under 14 CFR parts 121, 129, or 135.

Previous 11 CFR 114.9(e)(1) focused on the use of airplanes owned by

corporations or labor organizations not "licensed to offer commercial services for travel in connection with a Federal election." Thus, the previous rule distinguished between the use of airplanes owned or leased by a corporation or labor organization licensed to offer commercial services for travel, and airplanes owned by other corporations or labor organizations not normally engaged in commercial air passenger service. This distinction required an examination of the plane's ownership or lease structure to determine the proper reimbursement timing and amount.

One district court found the wording "licensed to offer commercial services for travel in connection with a Federal election" to be ambiguous. *See Federal Election Commission* v. *Arlen Specter '96*, 150 F. Supp. 2d 797, 804 and 808 (E.D. Pa. 2001). In that case, a presidential candidate claimed that 11 CFR 114.9(e) applied to all travel on airplanes except airplanes owned or leased by a corporation or labor organization possessing a license for travel in connection with a Federal election. The final rules are intended, in part, to remedy this ambiguity. The Court noted that no such license existed and ultimately deferred to the Commission's longstanding position that 11 CFR 114.9(e) applied only to airplanes owned by corporations or labor organizations not engaged in the business of providing commercial air service generally, without regard to providing service specifically in connection with a Federal election. *Id.* at 812.

In the NPRM, the Commission proposed the normal use of the airplane as the criterion for the applicability of section 100.93. Specifically, if the plane was normally operated for passenger service for a fee, 11 CFR 100.52 would apply, and if it was not, then section 100.93 would apply. Under section 100.52, "the provision of any goods or services without charge or at a charge that is less than the usual and normal charge for such goods or services" is an "in-kind contribution." 11 CFR 100.52(d). Thus, a candidate or other campaign traveler receives an in-kind contribution when he or she is provided commercial transportation without charge or at a charge that is less than the usual and normal charge for that transportation.

The Commission received four comments addressing the scope of section 100.93. Three of the commenters supported the elimination of 11 CFR 114.9(e). Two commenters expressed support for the proposed distinction based on whether the airplane is "normally operated for commercial passenger service." A different commenter, however, recommended that the rule focus on whether the person providing the service normally provides the service as a commercial service, rather than whether a particular airplane is normally operated for commercial passenger service. This commenter asserted that "when a commercial provider of transportation services leases an airplane specifically for the purpose of providing services to a campaign, the Commission should treat the commercial provider the same as if it owned the airplane. The fact that the airplane had never previously been used as a commercial aircraft would be irrelevant."

Likewise, another commenter urged the Commission to "focus on the provider of the air transportation and the primary business of that provider rather than the 'normal use' of a particular aircraft." This commenter asserted that it would be too difficult to determine the "normal use" of an aircraft in light of the varied ownership structures and shared users and uses of a single plane. The commenter argued that a rule focusing on the "normal use" of an aircraft would require significant clarification, including an explanation of whether the "normal use" pertained only to use by the usual operator or whether it would also apply to use by other persons leasing the aircraft for particular flights or for a longer period of time. This commenter recommended basing the distinction instead on the "FAA's long established primary business test." Under that test, the commenter stated, any aircraft offered to a candidate or other campaign traveler would be covered by 11 CFR 100.93 so long as air transportation is not the primary business of the provider. This approach is similar to an alternative proposed in the NPRM, which would delineate the airplanes covered by this new section based on whether the service provider is a "commercial vendor," as defined in 11 CFR 116.1(c), of air transportation services.

These comments raise a number of concerns about the difficulties inherent in basing a rule on "normal use" of an airplane. The approaches suggested by the commenters would be, to the extent they require a determination of the ownership structure or consideration of the prior use of the airplane, subject to manipulation and would perpetuate the difficulties presented by the previous rule. The Commission rejects the "commercial vendor" standard and the commenter's suggested "primary business test," because each would require analysis of the service provider's structure and business practices. One impetus for this rulemaking is to avoid an ownership-dependent analysis in establishing the proper valuation of election-related travel where the value of that travel is not readily ascertainable from a normal and usual charge. The purpose of new § 100.93 is to provide clear guidance to campaign travelers, not to describe the business practices of service providers.

The Commission concludes that the legal operating authority for the airplane, rather than the ownership or leasing arrangement, is the relevant determinant because it indicates the applicability of 11 CFR 100.52(d) or new § 100.93. The service provider's business practice is relevant only to the extent that it discloses the operating authority of the airplane. Because the commenters are correct that a determination of the "normal use" of an airplane could be complex, the final rule relies on the classifications already established by the Federal Aviation Administration ("FAA").

The new rules in § 100.93 apply to all airplanes not licensed by the FAA to operate for compensation or hire under 14 CFR parts 121, 129, or 135.[2] 11 CFR 100.93(a)(1). This phrase eliminates any potential ambiguity in the current language at 11 CFR 114.9(e) and provides a readily discernible bright line based on existing FAA regulations. Paragraph (a) further clarifies that new section 100.93 also applies to airplanes operated by a Federal, State or local government in the United States.

The NPRM indicated that the proposed regulations in 11 CFR 100.93 were intended to apply only to airplanes not authorized by the FAA to conduct operations in air transportation as a common carrier, while the current regulations at 11 CFR 100.52 would apply to all airplanes operated pursuant to other certifications that do permit carriage of passengers for compensation. The final rules in § 100.93(a)(1)(i) differ from the proposed rules by including a specific reference to the operating authority for the planes. Most operators offering passenger service for compensation or hire, such as air carriers or commercial operators, must receive special certification under 14 CFR parts 121, 129, or 135 in order to hold out the use of the airplane to the general public. A usual and normal charge will ordinarily be apparent for the use of these airplanes, so there is no need to apply new § 100.93 to the use of these airplanes. Rather, section 100.93 applies to private jets and other airplanes that are not normally held out to the public, such as airplanes operated exclusively under 14 CFR parts 91 or 125.[3] The pilot of an airplane is usually aware of the operating authority in order to comply with the safety requirements and other duties required for that each different type of operating certification. The status of the airplane can be quickly determined by reference to the operations specifications for that airplane, which will identify the rule part that governs the operator.

New section 100.93 applies to airplanes owned by any "person," as defined at 11 CFR 100.10, as well as airplanes owned by the Federal government or a State or local government. This is intended to remedy whatever confusion might have previously resulted from the fact that previous 11 CFR 114.9(e) covered only corporate and labor organization aircraft.

(ii) Paragraph (a)(1)(ii)—Other means of transportation.

Because most conveyances other than airplanes are not operated subject to FAA authority, new § 100.93 applies to "other means of transportation not operated for commercial passenger service." 11 CFR 100.93(a)(1). The Commission believes that a determination of the normal use of a car, bus, or similar conveyances, while requiring some examination of its normal operation, does not raise the unique complexities presented by the ownership structures, expenses, and uses of airplanes. Without any external regulatory structure to parallel the FAA regulations of airplanes, the Commission concludes that this approach provides the most accurate means of identifying when the usual and normal charge for a conveyance can be readily ascertained for compliance with 11 CFR 100.52(d), and when it cannot.

(iii) Paragraph (a)(1)(iii)—Government conveyances.

Because the scope of the final rules is tied to FAA certification, the Commission is adding new paragraph (a)(1)(iii) to clarify that election-related travel aboard a Federal, State, or local government conveyance is within the scope of new 11 CFR 100.93.

2. Paragraph (a)(2) Means of Transportation Outside the Scope of 11 CFR 100.93

New paragraph (a)(2) of section 100.93 provides that 11 CFR 100.52(a) and (d) continue to apply to travel by means of transportation operated for commercial passenger service. However, for campaign travelers using means of transportation not operated for commercial passenger service where the normal and usual charge may not be obvious, as opposed to commercial airlines or charter or taxi services normally offered for a fee, § 100.93 establishes a substitute for the normal and usual rate for that means of travel.

3. Paragraph (a)(3) Definitions

(i) Paragraph (a)(3)(i)—Campaign traveler.

Paragraph (a)(3) defines several terms used in new section 100.93. In the NPRM, the Commission proposed defining the term "campaign traveler" to provide a succinct term covering the candidate, candidate's agent, or other individual traveling on behalf of a candidate or a candidate's authorized committee. One commenter suggested that 11 CFR 100.93 be expanded to include payment for travel by persons traveling on behalf of political parties and other political committees, essentially inviting the Commission to expand the definition of "campaign traveler" to these other travelers. The Commission is implementing the suggestion to provide guidance to these other travelers who, if not permitted to rely on this valuation of travel as set forth in this new section, would be left without specific guidance as to the proper rate of reimbursement. By establishing a single rate for travel reimbursement, the new rules will promote greater uniformity among all individuals traveling in connection with a Federal election on behalf of a political committee.

The final rules at 11 CFR 100.93(a)(3)(i)(A) define a new term, "campaign traveler," to include any individual traveling in connection with a Federal election on behalf of a candidate, a political party committee, or any other political committee. In addition, because the news media sometimes accompany Federal candidates on government conveyances and other means of transportation at the candidate's discretion, the final rules address the proper amount of payment for their travel. Section 100.93(a)(3)(i)(B) specifies that members of the news media are included in the definition of "campaign traveler" when traveling with a candidate. This definition applies whether or not such candidates are running for President or Vice President or are receiving public funding. It is consistent with the provisions in former 11 CFR 9004.7(b)(5)(i)(C) and 9034.7(b)(5)(i)(C) that required the inclusion of members of the media in calculating the cost of comparable transportation. Once a service provider makes an airplane or other conveyance available for the use of a candidate and the accompanying news media, the service provider must be reimbursed for the value of that travel in order to avoid a contribution from the service provider to the candidate's campaign. Therefore, either the candidate's authorized committee, other political committee responsible for payment of travel expenses for the candidate, or the media travelers, must pay the travel costs, at the same rate, for the members of the media who accompany the candidate(s). *See* 11 CFR 100.93(b), discussed below. The news media may elect to pay the service provider directly, or to reimburse the political committee in accordance with this section and 11 CFR 9004.6 and 9034.6.

(ii) Paragraph (a)(3)(ii)—Service provider.

Given the complex ownership and leasing arrangements often associated with airplanes and other means of transportation, a person providing transportation to a campaign traveler may be either the owner of the conveyance, or may be a different person who is leasing the conveyance from the owner and making it available for the campaign traveler's use. The NPRM proposed to define "service provider" as the owner or lessee of an airplane or other conveyance who uses the airplane or other conveyance to provide transportation to a campaign traveler. One commenter expressed concern that this definition would not allow sufficient flexibility for aircraft owners and lessees to provide

[2] The FAA requires airplane operators who hold their service out to the public as willing to transport persons or property to be certificated under 14 CFR part 119 to conduct operations in accordance with 14 CFR part 121 or part 135, as applicable, depending primarily on the size of the aircraft used. Operators must notify the FAA of the specific aircraft they intend on using in the part 121 or 135 operation. Foreign aircraft held out to the public within the United States must comply with the requirements of 14 CFR part 129. Operators conducting operations for compensation or hire that are not common carriage, or operators that are private carriage in large aircraft must be certificated by the FAA to operate under part 125. *See* 14 CFR 125.1(a) (applies to aircraft with a seating capacity of 20 or more persons, but only where common carriage is not involved). Operators conducting flights in small private aircraft not for compensation or hire are regulated by the FAA under 14 CFR part 91. Although aircraft operating under 14 CFR part 91 certification are not usually permitted to accept any form of payment or reimbursement from passengers, a special FAA exception permits Federal candidates to reimburse the owners of such aircraft for the use of planes pursuant to the Commission's regulations. *See* 14 CFR 91.321. Aircraft operating under 14 CFR part 125 certification are similarly prohibited from operating as common carriers, but there is no similar general prohibition on the acceptance of payment from passengers to warrant an identical exception.

[3] Aircraft operating pursuant to 14 CFR parts 91 or 125 are not permitted to operate as common carriers.

alternative transportation when their aircraft becomes unavailable and they are forced to charter different aircraft in order to fulfill their transportation commitments. Presumably, the commenter is concerned that in such instances the service provider would be the owner of the substitute aircraft. A different commenter recommended that the Commission address similar situations in which the owner or lessor of an airplane makes the airplane available to a major client, independent contractor, or other person outside the corporation or labor organization. This commenter urged that in such situations the service provider should be the "person who has been given the right to use the aircraft," rather than the owner or lessor. Likewise, one commenter suggested that the Commission specifically address situations where multiple persons or entities share access to an airplane, such as through a joint ownership or time-sharing agreement. This commenter stated that in such instances the service provider should be the person who makes the airplane available to the candidate.

The final rules at 11 CFR 100.93(a)(3)(ii) clarify that the "service provider" is the person making the airplane or other conveyance available to the campaign traveler or otherwise providing the transportation to the campaign traveler. Thus, a service provider may be the owner, a person leasing the airplane or other conveyance from the owner, or another person with a legal right to offer the use of the airplane or other conveyance to the campaign traveler.

(iii) Paragraph (a)(3)(iii)—Unreimbursed value.

The proposed rules at paragraph (a)(2) sought to define the term "unreimbursed value" as the portion of the value provided to the campaign traveler, calculated according to the rules in this section, that is not reimbursed by the candidate's authorized committee. The proposed definition specified that a late payment would not qualify as a reimbursement under this section, meaning that the value of the service provided would be an in-kind contribution to the candidate. By contrast, a service provider would not make an in-kind contribution if the candidate's authorized committee provides payment within the time specified in paragraphs (c) or (d).

One commenter argued that the rule would unfairly penalize "absentminded campaign schedulers or late reimbursers" by treating late payments as contributions, suggesting that the rule as proposed in the NPRM would remove the incentive for *sua sponte* payments outside the permitted time frames. The timing requirements in 11 CFR 100.93 are integral components of the regulatory scheme. The definition of "unreimbursed value" in the final rule, which is located in paragraph (a)(3)(iii), is therefore substantially the same as proposed in the NPRM. The Commission does not agree that the definition of "unreimbursed value" will discourage *sua sponte* payments after the deadlines because it does not believe those acting in good faith would be deterred from taking corrective, mitigating actions.

C. 11 CFR 100.93(b) General Rule

Section 100.93(b) sets forth the general rule for when the providing of travel does not constitute a contribution to a candidate or political committee, as well as when and to what extent the unreimbursed value of such travel *is* an in-kind contribution. Under paragraph (b)(1), as proposed in the NPRM, a candidate's authorized committee would not receive or accept a contribution if the authorized committee pays the service provider the full value of the transportation within the specified time. One commenter stated that the proposed rule was "sound and consistent" with the Act and Commission's treatment of in-kind contributions.

The Commission is implementing the final rule as proposed in the NPRM, with additional clarifications described below and the conforming changes needed to account for payment by members of the news media and for persons traveling on behalf of political party committees and other political committees. Paragraph (b)(1) sets out the rule for most campaign travelers, generally requiring that the candidate's authorized committee, in order to avoid receiving or accepting a contribution, pay the service provider for campaign travelers traveling on behalf of that candidate. Likewise, other political committees (*i.e.*, other than authorized committees) must pay the service provider for other campaign travelers who are traveling on behalf of such committees. For example, if a Federal candidate attending a fundraiser for her own campaign flies on the same private airplane with a government official traveling to appear on behalf of a non-connected political committee in connection with a Federal election, the candidate's authorized committee would pay for the candidate's travel and the non-connected political committee would pay for the government official's travel.

While the authorized committee or other political committee will generally make the reimbursement payment, paragraph (b)(1)(ii) permits a campaign traveler to pay the service provider directly for his or her own travel. However, such payment constitutes an in-kind contribution by the campaign traveler to the candidate or political committee to the extent that it does not qualify for the transportation expense exception set forth in 11 CFR 100.79.[4] In the example above, an individual working for a Federal candidate could choose to pay up to $1,000 from her own pocket for campaign travel without the payment constituting an in-kind contribution, assuming that she had not already made other payments for travel with respect to that election.

Paragraph (b)(1)(iii) similarly specifies that a member of the news media traveling with a candidate may choose to reimburse the service provider directly at the rate not less than the amount set forth in paragraphs (c) or (d) of section 100.93. If a member of the news media elects to have the candidate's authorized committee pay for the media's travel rather than paying the service provider directly, he or she may do so and the candidate's authorized committee is permitted to seek reimbursement from the media. Ultimately it is the candidate's responsibility to ensure that the service provider is reimbursed for the value of the transportation provided to all persons traveling with the candidate.

In light of the fact that the previous rules at 11 CFR 114.9(e) were limited to airplanes owned by corporations or labor organizations, payment was required because the unpaid use of such airplanes is a contribution in violation of 2 U.S.C. 441b. In contrast, the new rule also encompasses airplanes owned or leased by individuals, partnerships, and certain other persons who are permitted to make in-kind contributions to candidates up to the amounts set forth in 2 U.S.C. 441a. Thus, under the new rules, a candidate or political committee may elect to receive an in-kind contribution from the service provider rather than reimbursing that

[4] 11 CFR 100.79(a) permits an individual traveling on behalf of any candidate or political party committee to incur up to $1,000 in transportation expenses with respect to a single election, and up to $2,000 on behalf of all political committees of each political party within a calendar year, without reimbursement and without making a contribution to a candidate or political party committee. Under 11 CFR 100.79(b), volunteers may use personal funds for usual and normal subsistence expenses incidental to volunteer activity. A substantively identical exception to the definition of "expenditure" is provided at 11 CFR 100.139.

service provider, so long as the service provider is permitted to make an in-kind contribution and the amount of the contribution does not exceed the limitations of the Act. New 11 CFR 100.93(b)(2) addresses this situation by stating when a service provider makes an in-kind contribution. A candidate's authorized committee or other political committee paying for the travel must comply with the payment conditions in 11 CFR 100.93 to avoid receiving a contribution in the amount of the unreimbursed value. If these conditions are not met, then the provision of the value of the travel would be a prohibited in-kind contribution if the service provider is a corporation or labor organization, or an excessive in-kind contribution if the value of the service would, when added to other contributions to the same candidate or political committee by the service provider, exceed that service provider's contribution limit. *See* 11 CFR 100.93(b)(2). The value of the in-kind contribution is determined in the same manner as the amount of the reimbursement would normally be determined under paragraphs (c), (d) or (e) of new section 100.93.

The Commission recognizes that this approach may, in some cases, require the same type of ownership analysis that is discussed above. This analysis, however, is not a necessary step in every circumstance because it must be employed only where the service's provider elects not to seek full or partial reimbursement from the political committee, or when the political committee fails to pay the service provider. The Commission sought comments on whether reimbursement should always be required, regardless of the ownership, or whether the possibility of an in-kind contribution from a permissible source should be addressed in some other fashion. One commenter stated that it is not important for the Commission to preserve the option of making an in-kind contribution because the value of the transportation will often exceed the contribution limits. While the commenter makes a valid point, there are still some circumstances in which an in-kind contribution is otherwise permissible under the Act. The Commission is therefore preserving the option of an in-kind contribution as described above.

D. 11 CFR 100.93(c) Travel by Airplane

Under the previous rules at 11 CFR 114.9(e)(1), when a candidate or other campaign passenger used an airplane owned by corporation or labor organization not in the business of providing commercial air travel, the rate of reimbursement was either the first-class airfare or the normal charter rate, depending on whether the destination city was served by regularly scheduled commercial air service. The charter rate, which in many cases is considerably higher than first-class airfare to a city in the same area, better represents the actual cost that a political committee would incur, but for the use of the corporate or labor organization airplane, to reach a particular destination by air when that destination is not served by commercial air service. Nevertheless, the NPRM recognized that candidates who campaign in major metropolitan areas that have regularly scheduled commercial airline service will generally be able to use a private plane and reimburse only the equivalent of a first-class airfare, whereas candidates who campaign in more rural areas that have little, if any, commercial air service would be required to reimburse the equivalent charter rate. Consequently, the NPRM expressed concern that the reimbursement scheme in 11 CFR 114.9(e)(1) may have been unnecessarily complex and unfairly affected campaigning in rural areas.

1. Three Alternatives in NPRM

To address these concerns, the NPRM sought comments on three alternative reimbursement rules in proposed 11 CFR 100.93(c), as well as any other appropriate payment systems. The Commission also sought comments on whether and how it should further simplify the rules and address other inequities, if any, arising from the previous application of 11 CFR 114.9(e) or the changes proposed for section 100.93.

Alternative A proposed setting the payment rate at the amount of the lowest unrestricted and non-discounted first-class airfare to the closest airport that has such service. For an airport served by regularly scheduled coach airline service but not regularly scheduled first-class airline service, Alternative A proposed setting the payment at the lowest unrestricted and non-discounted commercial coach rate to that destination.

Alternative B proposed two different payment rates, following closely the travel valuation rules set forth in the ethics rules for the House of Representatives and the United States Senate.[5] The first rate, the normal cost of first-class airfare between the cities, would have applied to previously scheduled flights, as opposed to flights specifically scheduled for a campaign traveler, between cities with regularly scheduled air service. Like Alternative A, Alternative B would also have permitted payment at the unrestricted and non-discounted commercial coach rate where coach service is regularly scheduled on the same route in cases where only coach service is available. The second rate under Alternative B, the normal charter rate for a similar airplane, would have applied to flights specifically scheduled for a campaign traveler and flights where the origin or destination city is not served by regularly scheduled commercial air service.

Alternative C would have established a uniform rule by requiring the payment amount to be the normal and usual cost of chartering a plane of sufficient size to accommodate all campaign travelers plus the news media and security personnel where applicable. This payment rate would depend on the rate for chartering the entire plane, rather than a per-passenger cost, and would not vary based on whether the destination airport is served by regularly scheduled commercial air service of any particular class.

2. Comments on Proposed Alternatives A, B, and C

The Commission received eight comments regarding proposed alternatives A, B, and C, reflecting a lack of consensus. One commenter submitted general recommendations encouraging the Commission to adopt a "clear, uniform format.".

Two of the comments criticized the previous rules at 11 CFR 114.9(e) for undervaluing the travel service provided by permitting, in some instances, candidates to pay for charter services at the lower first-class airfare rates. This undervaluation of travel services, these commenters asserted, constitutes a prohibited contribution where the service is provided by a corporation or labor organization. These commenters urged the Commission to adopt Alternative C as the most accurate reflection of the actual cost of the travel service provided, as well as the easiest of the alternatives to administer. These commenters opposed Alternative A as permitting an even greater amount of in-kind contributions than allowed under the previous 11 CFR 114.9(e). Furthermore, they stated Alternative B

[5] *See* Select Committee on Ethics, U.S. Senate, Senate Ethics Manual, S. Pub. No. 108–1 (2003), "Private Air Travel" at p. 60; Committee on Standards of Official Conduct, U.S. House of Representatives, Rules of the U.S House of Representatives on Gifts and Travel (2001), "Use of Private Aircraft for Travel" available at *http://www.house.gov/ethics/Gifts_and_Travel_Chapter.htm#_Toc476623633.*

would be preferable to Alternative A because it would mandate the charter rate in some cases. These commenters, however, were skeptical that a standard dependent upon whether a flight was "scheduled specifically for the use of a campaign traveler" could be enforced effectively. A different commenter, however, urged the Commission to adopt Alternative B as an effective compromise between the approaches in A and C.

In contrast, the other five commenters specifically advocated the implementation of Alternative A. These commenters stressed the simplicity of the rate structure and some expressed support for the reasons in the NPRM for Alternative A. 68 FR at 50,484. One commenter stated that Alternative A would eliminate an "arbitrary focus on the destination city" and the need to refer to the FAA's classification of whether an airport offers "commercial air service." The same commenter criticized the previous rule at 11 CFR 114.9(e) for failing to address geographic realities and benefiting "well-entrenched incumbents to the detriment of candidates running in either an open seat or challenging a well-entrenched incumbent" because the higher cost of travel would impair the ability of challengers to attract a "high ranking leader" and "other luminaries" to events in their State or district. Three of these five commenters criticized Alternatives B and C as furthering the inequities of the previous rule and causing campaign travel to be more complicated and expensive. Several commenters specifically advocated the replacement of the advance payment requirement with the seven-day post-travel repayment period.

3. Selection of a Combination of First-Class Airfare, Coach Airfare, and Charter Rates in the Final Rules

After considering the written comments and hearing testimony, the Commission concludes that a combination of first-class airfare, coach airfare, and charter rates presents the most workable and accurate approach to the valuation of campaign travel. Accordingly, new 11 CFR 100.93(c) reflects the basic structure of the previous 11 CFR 114.9(e)(1), with the addition of several clarifications described below.

The new rules continue to focus on travel between cities, rather than between particular airports, to account for the various geographic considerations discussed in Advisory Opinion ("AO") 1999–13,[6] which remains in effect. One commenter recommended a supplementary approach incorporating the standard metropolitan statistical areas ("SMSAs"), a unit of population measurement administered by the Office of Management and Budget. While the Commission views the SMSA approach as overly complicated and unnecessary, it offers the following explanation of the new valuation rule for clarification.

New 11 CFR 100.93(c) provides three valuation methods that apply in different situations: (1) The lowest unrestricted and non-discounted *first-class* airfare available for the dates traveled or within seven calendar days thereof; (2) the lowest unrestricted and non-discounted *coach* airfare available for the dates traveled or within seven calendar days thereof; or (3) the charter rate for a comparable commercial airplane of sufficient size to accommodate all of the campaign travelers, including members of the news media, and security personnel, if applicable.

(i) Paragraph (c)(1)—Travel between cities served by regularly scheduled first-class commercial airline service.

New 11 CFR 100.93(c)(1) requires payment of at least the lowest unrestricted and non-discounted first-class rate for travel between two cities with regularly scheduled first-class airline service. As qualified by new paragraph 100.93(f), discussed below, the rate must be available to the general public for the dates traveled or within seven calendar days thereof. For travel between two cities that each have regularly scheduled first-class airline service, but no regularly scheduled direct flight between the two cities, the required rate is the lowest unrestricted and non-discounted first-class rate for an indirect flight with the same departure city and final destination city.

(ii) Paragraph (c)(2)—Travel between cities served by regularly scheduled coach, but not first-class, commercial airline service.

The final rules also provide a limited allowance for commercial coach service rates to reflect airline industry trends. Paragraph (c)(2) permits the use of the lower coach rate for travel between cities served by regularly scheduled coach airline service but not regularly scheduled first-class airline service. 11 CFR 100.93(c)(2). This rate is based on the previous rules governing publicly-funded presidential candidates' payments for the use of government aircraft. *See* former 11 CFR 9004.7(b)(5)(i)(B) and former 9034.7(b)(5)(i)(B). Paragraph (c)(2) also permits the use of the coach rate where the travel is between one city served by coach commercial airline service, but not first-class commercial airline service, and a second city served by coach commercial airline service, regardless of whether or not the second city is also served by first-class commercial airline service.

(iii) Paragraph (c)(3)—Travel to or from a city not served by regularly scheduled commercial airline service.

Paragraph (c)(3), like paragraph (e)(1) of current section 114.9, requires payment at the normal and usual charter rate for all other flights except certain flights on government planes (*see* discussion of paragraph (e), below.) Thus, the charter rate must be used for travel between two cities not served by regularly scheduled first-class or coach airline service, or between such a city and a different city with regularly scheduled first-class or coach commercial airline service. The charter rate must be calculated at the rate for a charter flight between the same departure and destination cities used for the actual travel. 11 CFR 100.93(c)(3). This rate must also be equivalent to the publicly available rate for a comparable commercial airplane capable of accommodating the same number of campaign travelers, including members of the news media, plus the Secret Service and other security personnel accompanying a candidate. *Id.* This rate is consistent with the previous rules governing publicly funded presidential candidates' payments for the use of government aircraft. *See* 11 CFR 9004.7(b)(5)(i)(B) and 9034.7(b)(5)(i)(B). To the extent that the candidate in Advisory Opinion 1984–48 was not required to include security personnel or news media in the calculation of the sufficient size of the comparable aircraft, that advisory opinion is hereby superseded to promote uniformity in the treatment of all candidate travel.

A "comparable commercial airplane" means an airplane of similar make and model as the airplane that actually makes the trip, and with the same amenities as that airplane. For example, in Advisory Opinion 1984–48, the Commission interpreted a comparable airplane as being "of the same type (*e.g.*, jet aircraft versus prop plane) and services offered (*e.g.*, plane with dining service or lavatory versus one without)" as the plane actually used. The Commission further explained that when a candidate used a twin engine prop jet, a single engine, prop aircraft would not be a comparable aircraft. The term "comparable commercial airplane" is intended to require these distinctions as well as other differences such as when a plane is chartered with a crew or without, or with or without fuel.

[6] In AO 1999–13, the Commission recognized that particular destination cities might be served by several airports in the surrounding region. In that advisory opinion, the Commission determined that an airport need not be within the corporate limits of a city in order for that city to be considered "served by regularly scheduled commercial air service." The Commission further agreed that it was reasonable for the requestor to determine whether a city is served by a particular airport through reference to published sources such as an FAA directory or a corporate directory regarded at the time as the charter industry's standard reference for airports. To the extent that the advisory opinion contemplates advance payment for air travel and does not recognize that commercial coach rates may be appropriate in other situations, the opinion is superseded.

4. Multi-Stop Travel

One commenter asked the Commission to address multi-stop travel. In response, the Commission is adding the following clarification to 11 CFR 100.93(c) in the final rule. For the purposes of § 100.93 only, the payment for campaign travel must be calculated for each leg of travel. For example: a candidate traveling entirely for the purposes of her own election (and not for a mixed-purpose trip addressed in 11 CFR 106.3) departs from a city in Maryland without any regularly scheduled commercial air service and flies to a city in Illinois that is also without any commercial airline service. After several hours at a campaign rally in the Illinois city, the candidate travels from Illinois to New York City for a campaign fundraising event before returning to Washington, DC. Because there is first class commercial airline service between New York City and Washington, DC, the proper payment for the entire trip would be the amount of the lowest unrestricted and non-discounted first-class airfare from one of the airports serving New York City to one of the airports serving Washington, DC, plus the equivalent charter rate for the flights from the city in Maryland to the city in Illinois, and from Illinois to New York City.

In addition, the Commission is adding language to paragraph (c) in the final rule to clarify payment for travel where several candidates and their entourages travel together aboard the same airplane not operated for commercial passenger service. In such cases, each campaign committee is expected to pay the same first-class rate for each of its campaign travelers or to pay its pro-rata share of the equivalent rate for chartering a comparable airplane of sufficient size to accommodate all campaign travelers, including members of the news media traveling with its candidate, and security personnel, if applicable. One candidate's committee is not permitted to pay more or less than the other campaign committees with respect to each traveler on the same flight because the value each campaign traveler derives from the provision of the travel service is identical. But for the provision of the private airplane, it would presumably have been necessary for each campaign traveler to pay for a first-class or coach ticket or arrange for a charter flight to reach the same location on the same date.

5. Advance Payment Not Required

The NPRM sought comment on whether campaign travelers should be required to pay the service provider in advance for the value of travel, as they were required to do under previous 11 CFR 114.9(e)(1). Alternatives A and B proposed eliminating the previous advance payment requirement in 11 CFR 114.9(e)(1). In its place, there would be a fixed period of seven calendar days for payment after travel has begun. Under Alternative C, the Commission would have continued to require advance payment for the use of all airplanes not normally used for commercial passenger service.

The Commission recognized that the removal of the advance payment rule could be perceived as a departure from the previous approach under which corporations are prohibited from extending credit outside the ordinary course of their business. *See* 11 CFR part 116. The Commission sought comments on the potential consequences of the rule as proposed, particularly with respect to the use of an airplane owned by a corporation or labor organization where payment does not occur in advance. Several commenters argued for the inclusion of the seven-day rule as a necessary accommodation to the unavoidable constraints of campaign scheduling and last-minute changes in travel plans. One commenter insisted that the advance-payment requirement in the previous rule should be retained, asserting a potential inconsistency with 11 CFR part 116 and arguing that it would be more difficult for the campaign traveler to calculate the necessary amounts as much as the seven days after the departure date.

The Commission disagrees with this latter commenter and is permitting the seven-day post-travel window for payment because of the unique nature of campaign travel cited by the other commenters. The Commission also notes that the previous rule at 11 CFR 114.9(e)(2) had permitted payment for travel other than by airplane within a "commercially reasonable time," thereby allowing for some post-travel payments. Other provisions in 11 CFR 114.9 also contemplate after-the-fact reimbursement for certain goods or services provided by corporations. For example, certain uses of a corporation's or labor organization's facilities under section 114.9(a) through (d) are permissible if reimbursed within a commercially reasonable time.

New 11 CFR 100.93(c) does not require a campaign traveler to pay in advance of travel, but it does establish a strict deadline of payment within seven calendar days of the departure of the flight. For multi-stop travel over a period of more than one day, a campaign traveler may elect to pay for separate flights at different times by calculating the separate seven-day periods for each flight departing on a different day.

The seven-day airplane travel repayment period permitted in paragraph (c) of section 100.93 is shorter than the thirty/sixty day period used for other forms of transportation (*see* discussion of 11 CFR 100.93(d), below) because the political committee has complete control over the timing of the reimbursement as all the necessary passenger information and costs will be determinable at the time the airplane departs. Thus, it will be possible for the candidate's authorized committee, or another political committee, to calculate the proper reimbursement rate for airplane travel without a billing or invoice process to cause delay. In addition, each leg of travel by airplane is very unlikely to last more than one day and can usually be calculated separately, whereas the charter or rental rate for travel on a bus tour or by other means of travel may be based on the total miles traveled or otherwise calculable only at the completion of travel, which may not conclude until several days or weeks after it begins.

6. "Deadhead Miles" Not Considered Separately

The NPRM requested comment regarding how, if at all, to account for the expenses associated with the positioning of the airplane, known as "deadhead miles." Two commenters asserted that these costs are normally incorporated into the rates offered for commercial service, so there is no need for the Commission to address them separately. One of these commenters argued that those costs are beyond the control of the traveler. The Commission generally agrees with this reasoning and is not requiring any additional payment for these costs when campaign travelers use private airplanes. To promote uniformity between the treatment of publicly funded candidates and all

other candidates, the Commission is removing 11 CFR 9004.7(b)(5)(ii) and 9034.7(b)(5)(ii).

E. 11 CFR 100.93(d) Other Means of Transportation

For other means of travel, such as limousines, other automobiles, trains, helicopters, and buses, a political committee must pay the service provider an amount equivalent to the normal and usual fare or rental charge for a comparable commercial conveyance that is capable of accommodating the same number of campaign travelers, including members of the news media, plus security personnel, if applicable. 11 CFR 100.93(d). This rate is consistent with the previous rules governing publicly funded presidential candidates' payments for the use of government conveyances other than airplanes. *See* 11 CFR 9004.7(b)(5)(iii) and 9034.7(b)(5)(iii). A "comparable commercial conveyance" is one that approximates the same class and type of the conveyance actually used, with similar features and amenities. For example, when a campaign traveler uses a private bus, a "comparable commercial conveyance" would be a similar type of motor vehicle with similar amenities and features. As with payment for travel by airplane, the rate must be available to the general public for the dates traveled or within seven calendar days thereof. *See* new 11 CFR 100.93(f).

Just as the Commission is no longer requiring advance payment for travel by airplane, the Commission is also setting a post-travel period of time for payment for travel by means other than by airplane: thirty calendar days from the receipt of the invoice, but no more than sixty calendar days following the date the travel commenced. *See* 11 CFR 100.93(d). One commenter urged the Commission to fix the sixty-day time period from the date the travel ends, rather than when the travel commenced, to accommodate longer trips, invoice delays, and the resolution of any disputes between the campaign traveler and the service provider. The same commenter further cautioned against finding that a contribution occurs where a political committee fails to pay within the required time period if it has made a good faith effort to obtain or reasonably disputes an invoice. The Commission is cognizant of the potential tension between this thirty/sixty-day allowance and the general prohibitions on extension of credit outside the ordinary course of business. *See* 11 CFR part 116, discussed above. The Commission is permitting the limited thirty/sixty-day provision with the expectation that the invoice will be sent within the ordinary course of business and payment will be made promptly. It therefore does not agree with the commenter's suggestion that the time period should be extended indefinitely so long as the campaign traveler continues to travel. The Commission notes that a political committee need not wait until the end of the travel to submit payment for the travel service. A political committee faced with an invoice delay or involved in a payment dispute with a service provider may, in the rare instance where the matter cannot be resolved within the sixty-day period, pay an approximate amount and seek reimbursement from the service provider. A political committee also may treat the matter as a disputed debt under 11 CFR 116.10.

This fixed deadline in new 11 CFR 100.93(d) adds greater clarity and certainty than the reference in the previous 11 CFR 114.9(e)(2) to a "commercially reasonable" period while retaining the flexibility necessary to account for costs that cannot be calculated until the completion of travel or shortly thereafter. The sixty-day cutoff will help to ensure that the invoice will be rendered to the political committee promptly. Any extensions of credit resulting from payments not being made within the sixty-day period are considered in-kind contributions to the candidate or other political committee responsible for payment of the travel, and thus violate the Act and Commission regulations where such contributions are prohibited or excessive. As set forth in new paragraph (f), the payment rate is set at the usual and normal fare or rental charge available to the general public for the dates traveled or within seven calendar days thereof.

F. 11 CFR 100.93(e) Government Conveyances

Paragraph (e) of 11 CFR 100.93 provides the required amount of payment for travel using any means of transportation, including an airplane, that is owned or leased by the Federal government or any State or local government. The required amount of payment for travel by a campaign traveler on government airplanes is the amount of payment set forth in paragraph (c) of § 100.93: A political committee must pay the first-class, coach, or charter rate in accordance with 11 CFR 100.93(c) and (f). 11 CFR 100.93(e)(1)(ii).

Under paragraph (c), however, Air Force One and many other military airplanes would be required to use a comparable charter rate in some instances because their travel would be between military bases and not between cities served by regularly scheduled first-class commercial airline service. Because it would be difficult to find a charter airplane comparable to Air Force One and other military airplanes, new paragraph (e)(1)(i) provides a special rule for government airplanes traveling to or from a military base. When such travel occurs, the political committee may pay the lowest unrestricted and non-discounted first-class airfare to or from the city with regularly scheduled first-class service that is geographically closest to the military base actually used.

The required amount of payment for use of other means of travel owned or leased by a Federal, State, or local government is the amount of payment set forth in paragraph (d): The usual fare or rental charge available to the general public on the same travel date for a comparable vehicle that is capable of accommodating the same number of campaign travelers, including members of the news media, plus the Secret Service and other security personnel accompanying a candidate. A political committee paying for the use of government travel by airplane or other conveyance must also comply with the time limitations in paragraphs (c) and (d), respectively.

Note that paragraph (e), like all of section 100.93, is limited to travel in connection with a Federal election. Individuals traveling on official government business are not required to reimburse the service provider under this section. A significant portion of travel on government conveyances is paid for using funds authorized and appropriated by the Federal Government. The use of Federal funds is governed by general appropriations law and is subject to Congressional oversight. The prohibitions and limitations of the Act apply to a contribution or expenditure by a "person," as defined in 2 U.S.C. 431(11) and 11 CFR 100.10. *See* FEC Interpretation of Allocation of Candidate Travel Expenses, 67 FR 5,445 (Feb. 6, 2002). The statutory definition of the term "person" expressly excludes the Federal Government and any authority thereof.[7] The Commission has previously concluded that the travel allocation and reporting regulations at 11 CFR 106.3(b) are not applicable to

[7] 2 U.S.C. 431(11) provides: "The term 'person' includes an individual, partnership, committee, association, corporation, labor organization, or any other organization or group of persons, but such term does not include the Federal Government or any authority of the Federal Government."

the extent that a candidate pays for travel expenses using funds authorized and appropriated by the Federal Government. 67 FR 5,445.

G. 11 CFR 100.93(f) Date and Public Availability of Payment Rate

Because airfares vary based on the date and time of travel, the Commission sought comments on how precisely the payment rate should correspond to the actual date of travel. For example, some airlines or charter companies may set a base rate for tickets purchased over a month in advance of the travel date that is different than the price of the same ticket when purchased on the date of travel. One commenter urged the Commission to permit the normal advance ticket price when calculating the comparable rate as required in proposed section 100.93. Another commenter indicated that a search for first-class rates with a travel agency should be sufficient, but asserted that Internet fares were "too volatile" to use in determining the proper rate. A different commenter argued that the phrase "lowest unrestricted and non-discounted first-class airfare available for time traveled" is adequately specific, so there is no need to specify "some mandated artificial purchase time-frame, such as within seven days of the travel date."

The final rules in section 100.93 include a new paragraph (f), which specifies that the payment amount must be an unrestricted non-discounted rate available to the general public for the dates traveled or within seven calendar days thereof.[8] New paragraph (f) applies to all of the payment rates set forth in paragraphs (c), (d) and (e) of 11 CFR 100.93. The Commission agrees that special discounted fares are inappropriate for the purposes of this rule and is therefore foreclosing reliance on "e-savers" and other special fares, such as non-refundable fares or fares dependent on advance purchase, that do not approximate the normal and usual "walk-up" charge for the travel route. Paragraph (f) specifies that the rate must be available to the general public. Candidates and other campaign travelers may not, for example, use a "government rate" or membership discount to establish the proper amount of payment. The rate must approximate the amount that a campaign traveler would have to pay if he or she actually scheduled an equivalent flight at an unrestricted non-discounted fare aboard a commercial airplane or, for non-airplane travel, the unrestricted non-discounted rental charge or fare for an equivalent trip aboard a comparable commercial conveyance.

In light of the comments and additional clarifications, the Commission is not prescribing a set period of time during which comparable rates must be ascertained, except that the rate must be determined by the time the payment is due.

H. 11 CFR 100.93(g) Preemption

The rates required by section 100.93 generally establish a floor, rather than a ceiling, on the amount of reimbursement payment required to avoid a contribution. With the exception of payment for campaign travel by publicly funded presidential and vice-presidential candidates and individuals traveling on their behalf, candidates and other campaign travelers may pay a higher amount than called for by section 100.93, such as when the service provider seeks a higher rate of payment for the use of the conveyance.

In some cases, there may be State or local laws governing the use of State or local government conveyances. In other cases, State or local laws may require certain officeholders or public employees to pay a higher rate for travel. State or local laws may also require payment in advance, or within a shorter period than the seven-day window permitted by 11 CFR 100.93(c) or the thirty-day window permitted under 11 CFR 100.93(d). A new paragraph (g) in the final rules therefore clarifies that applicable State or local laws are preempted to the extent that they purport to supplant the rates or timing requirements of 11 CFR 100.93. State or local officeholders may choose to comply with State or local laws requiring higher payment rates or more stringent requirements on the time of payment, but they cannot be *required* to comply with those laws.

I. 11 CFR 100.93(h) Reporting

The NPRM proposed requiring political committees to report the value of unreimbursed travel by campaign travelers as well as the actual date of travel. Two commenters opposed the proposed reporting requirements, arguing that they would impose unnecessary burdens and questioning whether significant violations could be exposed using the additional information reported. One of these commenters asserted that "[s]omeone intent on violating the law simply would not report the travel." Another commenter argued that the proposed reporting requirements would go further than existing requirements, and would exceed the scope of 2 U.S.C. 434(b)(5) if it required specific dates of travel. This commenter stated that there is currently no requirement that an authorized committee must disclose the date of a fundraiser, the range of dates that a poll was taken, or the date of a mailing. Another commenter expressed a concern that the report of campaign travel payment might disclose sensitive campaign information. In contrast, a different commenter supported the proposed approach, stating that "candidate committees always are, or ought to be, aware of receiving transportation from third parties."

The Commission disagrees with the commenters who characterize the reporting requirements as overly burdensome and of minimal value. No reports other than regularly scheduled committee disclosure reports are required. Moreover, the disbursement by the political committee for the travel payment must already be reported, along with its purpose, like all other disbursements, under 11 CFR 104.1 and 104.3(b)(3) or (4). The Commission views the reporting of the date of travel to be entirely consistent with the disclosure purposes of the Act. It seems unlikely that reporting the date of travel would force the disclosure of sensitive campaign information, particularly in light of the fact that the payment and reporting of such payment will occur after the travel has been completed in most cases and in light of the fact that many campaign events are covered by the news media. For these reasons, the Commission is adopting the final rules on reporting that generally follow the proposed rules.

Paragraph (h)(1) of 11 CFR 100.93 refers the reader to the existing reporting requirements for the receipt of an in-kind contribution. Under 11 CFR 104.13, a candidate's authorized committee and other political committees must report the amount of unreimbursed value for travel services as both the receipt of a contribution from the service provider and an expenditure by the political committee.

In addition, the political committee on whose behalf the travel was undertaken must report the travel dates on the report disclosing the reimbursement for the travel service. Under new paragraph (h)(2) of section 100.93, the political committee must report the actual date of travel in the "purpose of disbursement" field corresponding to the disbursement.

J. 11 CFR 100.93(i) Recordkeeping

Presidential and vice-presidential candidates receiving public funds have

[8] The seven-day period is permitted to account for cities that may have commercial airline service on certain days of the week, but no commercial service on other days.

been required to maintain records documenting the rates used in calculating their travel reimbursements. *See* former 11 CFR 9004.7(b)(5)(v) and former 9034.7(b)(5)(v). To standardize the treatment of campaign travel, the Commission in the NPRM proposed extending these recordkeeping requirements to all candidates and moving them to new 11 CFR 100.93(i). Of the two commenters addressing this subject, one opposed it as a burden unwarranted by evidence of widespread abuse. The other commenter expressed support for the proposed recordkeeping requirements.

The final rules implement the recordkeeping requirements proposed in the NPRM and incorporate several other documentation requirements from 11 CFR 9004.7(b)(5)(v) and 9034.7(b)(5)(v) to standardize recordkeeping for candidate travel, to ensure accuracy in reporting, and to enhance the disclosure of disbursements for travel. These recordkeeping provisions have worked well, in practice, for presidential committees. Most of this information must be acquired regardless of any recordkeeping duty so that the campaign traveler can ensure that the political committee is paying the appropriate amount to the service provider. In addition, the final rules require that the political committee document the tail number of the airplane actually used. For military airplanes without tail numbers, some other unique identifier for that airplane will suffice. This documentation is needed to ensure accurate reporting and disclosure in light of the broadened scope of the new rules and the importance of the operating license of each aircraft.

The recordkeeping requirements for airplanes in the final rules vary slightly depending on whether the rate of payment is based on 11 CFR 100.93(c)(1) or (2) (*i.e.*, whether the actual travel was between two cities served by regularly scheduled first-class commercial airline service or not.) For travel paid for under paragraph (c)(1) or (c)(2), the political committee must maintain a record of the name of the service provider, the tail number of the airplane used, an itinerary for the trip that lists the total numbers of passengers and specifies the campaign travelers, and the information on which the first-class payment is based. 11 CFR 100.93(i)(1). For travel on a government aircraft to or from a military base (see 11 CFR 100.93(e)(1)(i)), the payment rate is also tied to the first-class rate between two cities served by regularly scheduled first-class commercial airline service so the recordkeeping requirements are the same as for travel paid for under paragraph (c)(1). 11 CFR 100.93(i)(1).

For all other travel by airplane, payment is based on a charter or rental rate for a comparable charter airplane, so a record of the size, model, and make of the airplane used must be maintained in addition to the other information described above. 11 CFR 100.93(i)(2)(i). The itinerary for the trip must lists the total numbers of passengers and specify the number of security personnel as well as campaign travelers. 11 CFR 100.93(i)(2)(ii). The political committee must document the rate for a comparable charter airplane by listing the name of the company offering that service to the public and the dates of the comparison rates. 11 CFR 100.93(i)(2)(iii). For travel other than by airplane, payment is based on a charter or rental rate for a comparable conveyance, so a record of the size, model, and make of the conveyance used must be maintained in addition to the other itinerary and service provider information described above. 11 CFR 100.93(i)(3).

II. 11 CFR 106.3 Allocation of Expenses Between Campaign and Non-Campaign Related Travel

The final rules make only one change to 11 CFR 106.3. Candidates who use government conveyance or accommodations for campaign-related travel are currently required to report an expenditure in the amount equivalent to the "rate for comparable commercial conveyance or accommodation." 11 CFR 106.3(e). To eliminate disparities between campaign-related travel on private planes and travel on government planes, the Commission is revising 11 CFR 106.3 by replacing the reference to the "rate of comparable commercial conveyance" with a reference to the applicable rates for travel reimbursement set forth in 11 CFR 100.93(c),(d) and (e). Both the reimbursement rates and the payment due dates in 11 CFR 100.93 would be applicable to travel by airplane and other means of travel, whether owned by an individual, corporation, labor organization, partnership, the Federal government, a State government, or any other person. The Commission sought comment on this approach in the NPRM, but received none.

III. 11 CFR 114.9 Use of Corporate or Labor Organization Facilities

Previously, paragraph (e) of section 114.9 established the proper reimbursement rate for a candidate's use of a means of travel owned or leased by corporations or labor organizations. The Commission recognized in the NPRM that in most cases the means of travel used for campaign trips is likely to be owned or leased by a corporation or labor organization, but not in all cases. Individuals or partnerships own some airplanes and other means of travel. To accommodate more uniform and comprehensive travel reimbursement rules, the Commission proposed replacing 11 CFR 114.9(e) with new section 11 CFR 100.93. Both of the commenters who addressed this issue expressed support for the broadened scope and new location of the rule.

For the reasons explained above, the Commission is removing and reserving paragraph (e) of section 114.9. The subject matter previously addressed in 11 CFR 114.9(e) is addressed in new 11 CFR 100.93. In addition, the heading of section 114.9, previously "Use of corporate and labor organization facilities and means of transportation," is revised to remove the reference to means of transportation because the rules governing corporate and labor organization means of transportation are now located in 11 CFR 100.93.

IV. 11 CFR 9004.6 Expenditures for Transportation and Services Made Available to Media Personnel; Reimbursements

As described below, the Commission is replacing the separate reimbursement rates for general election campaign travel by presidential and vice-presidential candidates with a reference to the rates required by new 11 CFR 100.93. A technical revision to 11 CFR 9004.6(b)(2) is necessary to conform the previous reference to paragraph (C) of 9004.7(b)(5)(i), which is removed.

V. 11 CFR 9004.7 Allocation of Travel Expenditures

The regulations at 11 CFR 9004.7(b) govern travel on government conveyances by general election presidential and vice-presidential candidates receiving federal funding. This rule requires the presidential or vice-presidential candidate to pay the appropriate government entity at one of several specified rates. These rates are established in largely the same manner as the reimbursement rates set forth in the previous 11 CFR 114.9(e).

In the NPRM, the Commission proposed revising 11 CFR 9004.7(b)(5)(i) and (b)(8) to replace the parallel rate determinations in this rule with a reference to the reimbursement rates set forth in 11 CFR 100.93. The Commission did not receive any comments on this proposal.

In the final rules, § 9004.7(b)(5)(i) provides that the reimbursement rates in 11 CFR 100.93 serve as the applicable valuation of travel by presidential and vice-presidential candidates aboard government conveyances. The final rules therefore do not include previous paragraphs (A), (B), and (C) of 11 CFR 9004.7(b)(5)(i), which had set out the proper valuation rates for the use of a government airplane for campaign-related travel. For the reasons stated in the above discussion of "deadhead miles" in the Explanation and Justification for 11 CFR 100.93, the Commission is also removing and reserving 9004.7(b)(5)(ii). The final rules also include a technical revision to 11 CFR 9004.7(b)(5)(iii) to replace the specified rate for use of a government conveyance with a reference to the rate in 11 CFR 100.93(d). In addition, the recordkeeping provisions of former 11 CFR 9004.7(b)(5)(v) are being moved to new 11 CFR 100.93(i) and cross references to the latter section are being added in paragraph (b)(5)(v) of section 9004.7.

The NPRM proposed minor changes to the wording in paragraphs (b)(5)(i) through (iv) in sections 9004.7 and 9034.7 to set the required reimbursement rate as a floor, not a ceiling on how much the candidate may reimburse, in order to permit a candidate to pay at a higher rate. Such a ceiling is necessary, however, to ensure the conservation of public funds. The final rules therefore do not include these proposed changes. However, the cross reference to new 11 CFR 100.93 in 11 CFR 9004.7(b)(8) does include a revision specifying that section 100.93 governs airplanes not licensed by the FAA to operate for compensation or hire under 14 CFR part 121, 129, or 135, and government conveyances, thereby mirroring the revision to the scope of section 100.93.

VI. 11 CFR 9034.6 Expenditures for Transportation and Services Made Available to Media Personnel; Reimbursements

As with the changes to 11 CFR 9004.7, the Commission is replacing in 11 CFR 9034.7 the separate reimbursement rates for primary election campaign travel by presidential candidates with a reference to the rates required by new 11 CFR 100.93. A conforming revision to 11 CFR 9034.6(b)(2) is therefore necessary to replace the previous reference to paragraph (C) of section 9034.7(b)(5)(i), which is removed.

VII. 11 CFR 9034.7 Allocation of Travel Expenditures

The regulations at 11 CFR 9034.7(b) are substantively identical to the regulations at 11 CFR 9007.4(b), except that section 9034.7 governs travel on government conveyance by *primary* election presidential candidates receiving public funds. The changes being made to 11 CFR 9034.7(b) follow the changes made to 11 CFR 9004.7(b) for the reasons stated above in the explanation and justification for that section.

Certification of No Effect Pursuant to 5 U.S.C. 605(b) [Regulatory Flexibility Act]

The Commission certifies that the attached rules will not have a significant economic impact on a substantial number of small entities. The basis for this certification is that few, if any, small entities would be affected by these final rules, which impose obligations only on Federal candidates, their campaign committees, other individuals traveling in connection with a Federal election, and the political committees on whose behalf this travel is conducted. Federal candidates, their campaign committees, and most other political party committees and other political committees entitled to rely on these rules are not small entities. These rules generally relieve existing restrictions on the timing of reimbursement for certain travel and are largely intended to simplify the process of determining reimbursement rates. The rules do not impose compliance costs on any service providers (as defined in the rules) that are small entities so as to cause a significant economic impact. With respect to the determination of the amount of reimbursement for travel, the new rules merely reflect an extension of existing similar rules. To the extent that operators of air-taxi services or on-demand air charter services are small entities indirectly impacted by these rules, any economic effects would result from the travel choices of individual candidates or other travelers rather than Commission requirements and, in any event, are likely to be less than $100,000,000 per year.

List of Subjects

11 CFR Part 100

Elections.

11 CFR Part 106

Campaign funds, political committees and parties, political candidates.

11 CFR Part 114

Business and industry, elections, labor.

11 CFR Part 9004

Campaign funds.

11 CFR Part 9034

Campaign funds, reporting and recordkeeping requirements.

■ For the reasons set out in the preamble, the Federal Election Commission is amending subchapters A, E, and F of chapter 1 of title 11 of the *Code of Federal Regulations* as follows:

PART 100—SCOPE AND DEFINITIONS (2 U.S.C. 431)

■ 1. The authority citation for part 100 continues to read as follows:

Authority: 2 U.S.C. 431, 434, and 438(a)(8).

■ 2. Section 100.93 is added to subpart C of part 100 to read as follows:

§ 100.93 Travel by airplane or other means of transportation.

(a) *Scope and definitions.*

(1) This section applies to all campaign travelers who use:

(i) An airplane not licensed by the Federal Aviation Administration to operate for compensation or hire under 14 CFR part 121, 129, or 135;

(ii) Other means of transportation not operated for commercial passenger service; or

(iii) An airplane or other means of transportation operated by a Federal, State, or local government.

(2) Campaign travelers who use an airplane that is licensed by the Federal Aviation Administration to operate for compensation or hire under 14 CFR part 121, 129, or 135, or other means of transportation that is operated for commercial passenger service, such as a commercial airline flight, charter flight, taxi, or an automobile provided by a rental company, are governed by 11 CFR 100.52(a) and (d), not this section.

(3) For the purposes of this section:

(i) *Campaign traveler* means

(A) Any individual traveling in connection with an election for Federal office on behalf of a candidate or political committee; or

(B) Any member of the news media traveling with a candidate.

(ii) *Service provider* means the owner of an airplane or other conveyance, or a person who leases an airplane or other conveyance from the owner or otherwise obtains a legal right to the use of an airplane or other conveyance, and who uses the airplane or other conveyance to provide transportation to a campaign traveler. For a jointly owned or leased airplane or other conveyance, the service provider is the person who makes the airplane or other conveyance available to the campaign traveler.

(iii) *Unreimbursed value* means the difference between the value of the transportation service provided, as set

forth in this section, and the amount of payment for that transportation service by the political committee or campaign traveler to the service provider within the time limits set forth in this section.

(b) *General rule.*

(1) No contribution is made by a service provider to a candidate or political committee if:

(i) Every candidate's authorized committee or other political committee on behalf of which the travel is conducted pays the service provider, within the required time, for the full value of the transportation, as determined in accordance with paragraphs (c), (d) or (e) of this section, provided to all campaign travelers who are traveling on behalf of that candidate or political committee; or

(ii) Every campaign traveler for whom payment is not made under paragraph (b)(1)(i) of this section pays the service provider for the full value of the transportation provided to that campaign traveler as determined in accordance with paragraphs (c), (d) or (e) of this section. *See* 11 CFR 100.79 and 100.139 for treatment of certain unreimbursed transportation expenses incurred by individuals traveling on behalf of candidates, authorized committees, and political committees of political parties; and

(iii) Every member of the news media traveling with a candidate for whom payment is not made under paragraph (b)(1)(i) of this section pays the service provider for the full value of his or her transportation as determined in accordance with paragraphs (c), (d) or (e) of this section.

(2) Except as provided in 11 CFR 100.79, the unreimbursed value of transportation provided to any campaign traveler, as determined in accordance with paragraphs (c), (d) or (e) of this section, is an in-kind contribution from the service provider to the candidate or political committee on whose behalf, or with whom, the campaign traveler traveled.

(c) *Travel by airplane.* If a campaign traveler uses an airplane not licensed by the Federal Aviation Administration to operate for compensation or hire under 14 CFR parts 121, 129, or 135, the campaign traveler, or the political committee on whose behalf the travel is conducted, must pay the service provider, no later than seven (7) calendar days after the date the flight began, for each such campaign traveler no less than the following amount for each leg of the trip:

(1) In the case of travel between cities served by regularly scheduled first-class commercial airline service, the lowest unrestricted and non-discounted first-class airfare;

(2) In the case of travel between a city served by regularly scheduled coach commercial airline service, but not regularly scheduled first-class commercial airline service, and a city served by regularly scheduled coach commercial airline service (with or without first-class commercial airline service), the lowest unrestricted and non-discounted coach airfare; or

(3) In the case of travel to or from a city not served by regularly scheduled commercial airline service, the normal and usual charter fare or rental charge for a comparable commercial airplane of sufficient size to accommodate all campaign travelers, including members of the news media traveling with a candidate, and security personnel, if applicable.

(d) *Other means of transportation.* If a campaign traveler uses any other means of transportation, including an automobile, train, or helicopter, the campaign traveler, or the political committee on whose behalf the travel is conducted, must pay the service provider within thirty (30) calendar days after the date of receipt of the invoice for such travel, but not later than sixty (60) calendar days after the date the travel began, at the normal and usual fare or rental charge for a comparable commercial conveyance of sufficient size to accommodate all campaign travelers, including members of the news media traveling with a candidate, and security personnel, if applicable.

(e) *Government conveyances.*

(1) If a campaign traveler uses an airplane that is provided by the Federal government, or by a State or local government, the campaign traveler, or the political committee on whose behalf the travel is conducted, must pay the governmental entity:

(i) For travel to or from a military airbase or other location not accessible to the general public, the lowest unrestricted and non-discounted first-class airfare to or from the city with regularly scheduled first-class commercial airline service that is geographically closest to the military airbase or other location actually used; or

(ii) For all other travel, in accordance with paragraph (c) of this section.

(2) If a campaign traveler uses a conveyance, other than an airplane, that is provided by the Federal Government, or by a State or local government, the campaign traveler, or the political committee on whose behalf the travel is conducted, must pay the government entity in accordance with paragraph (d) of this section.

(f) *Date and public availability of payment rate.* For purposes of paragraphs (c), (d) and (e) of this section, the payment rate must be the rate available to the general public for the dates traveled or within seven (7) calendar days thereof. The payment rate must be determined by the time the payment is due under paragraph (c) or (d) of this section.

(g) *Preemption.* In all respects, State or local laws are preempted with respect to travel in connection with a Federal election to the extent they purport to supplant the rates or timing requirements of 11 CFR 100.93.

(h) *Reporting.*

(1) In accordance with 11 CFR 104.13, a political committee on whose behalf the unreimbursed travel is conducted must report the receipt of an in-kind contribution and the making of an expenditure under paragraph (b)(2) of this section.

(2) When reporting a disbursement for travel services in accordance with this section, a political committee on whose behalf the travel is conducted must report the actual dates of travel for which the disbursement is made in the "purpose of disbursement" field.

(i) *Recordkeeping.*

(1) For travel by airplane between cities served by regularly scheduled first-class or coach commercial airline service, or for travel to or from a military base on a government airplane, the political committee on whose behalf the travel is conducted shall maintain documentation of:

(i) The service provider and tail number (or other unique identifier for military airplanes) of the airplane used;

(ii) An itinerary showing the departure and arrival cities and the date(s) of departure and arrival, a list of all passengers on such trip, along with a designation of which passengers are and which are not campaign travelers; and

(iii) The lowest unrestricted non-discounted airfare available in accordance with paragraphs (c), (e) and (f) of this section, including the airline offering that fare, flight number, travel service, if any, providing that fare, and the dates on which the rates are based.

(2) For travel by airplane to or from a city not served by regularly scheduled commercial airline service, the political committee on whose behalf the travel is conducted shall maintain documentation of:

(i) The service provider and the size, model, make and tail number (or other unique identifier for military airplanes) of the airplane used;

(ii) An itinerary showing the departure and arrival cities and the date(s) of departure and arrival, a list of all passengers on such trip, along with a designation of which passengers are and which are not campaign travelers or security personnel; and

(iii) The rate for the comparable charter airplane available in accordance with paragraph (c), (e) and (f) of this section, including the airline, charter or air taxi operator, and travel service, if any, offering that fare to the public, and the dates on which the rates are based.

(3) For travel by other conveyances, the political committee on whose behalf the travel is conducted shall maintain documentation of:

(i) The service provider and the size, model and make of the conveyance used;

(ii) An itinerary showing the departure and destination locations and the date(s) of departure and arrival, a list of all passengers on such trip, along with a designation of which passengers are and which are not campaign travelers or security personnel; and

(iii) The commercial fare or rental charge available in accordance with paragraph (d) and (f) of this section for a comparable commercial conveyance of sufficient size to accommodate all campaign travelers including members of the news media traveling with a candidate, and security personnel, if applicable.

PART 106—ALLOCATIONS OF CANDIDATE AND COMMITTEE ACTIVITIES

■ 3. The authority citation for part 106 continues to read as follows:

Authority: 2 U.S.C. 438(a)(8), 441a(b), 441a(g).

■ 4. Section 106.3 is amended by revising paragraph (e) to read as follows:

§ 106.3 Allocation of expenses between campaign and non-campaign related travel.

* * * * *

(e) Notwithstanding paragraphs (b) and (c) of this section, the reportable expenditure for a candidate who uses government accommodations for travel that is campaign-related is the rate for comparable accommodations. The reportable expenditure for a candidate who uses a government conveyance for travel that is campaign-related is the applicable rate for a comparable commercial conveyance set forth in 11 CFR 100.93(e). In the case of a candidate authorized by law or required by national security to be accompanied by staff and equipment, the allocable expenditures are the costs of facilities sufficient to accommodate the party, less authorized or required personnel and equipment. If such a trip includes both campaign and noncampaign stops, equivalent costs are calculated in accordance with paragraphs (b) and (c) of this section.

PART 114—CORPORATE AND LABOR ORGANIZATION ACTIVITY

■ 5. The authority citation for part 114 continues to read as follows:

Authority: 2 U.S.C. 431(8)(B), 431(9)(B), 432, 434, 437d(a)(8), 438(a)(8), and 441b.

■ 6. Section 114.9 is amended by revising the section title and removing and reserving paragraph (e) to read as follows:

§ 114.9 Use of corporate or labor organization facilities.

* * * * *

(e) [Reserved]

PART 9004—ENTITLEMENT OF ELIGIBLE CANDIDATES TO PAYMENTS; USE OF PAYMENTS

■ 7. The authority citation for part 9004 continues to read as follows:

Authority: 26 U.S.C. 9004 and 9009(b).

■ 8. Section 9004.6 is amended by revising paragraph (b)(2) to read as follows:

§ 9004.6 Expenditures for transportation and services made available to media personnel; reimbursements.

* * * * *

(b) * * *

(2) For the purposes of this section, a media representative's pro rata share shall be calculated by dividing the total actual cost of the transportation and services provided by the total number of individuals to whom such transportation and services are made available. For purposes of this calculation, the total number of individuals shall include committee staff, media personnel, Secret Service personnel, national security staff and any other individuals to whom such transportation and services are made available, except that, when seeking reimbursement for transportation costs paid by the committee under 11 CFR 9004.7(b)(5)(i), the total number of individuals shall not include national security staff.

* * * * *

■ 9. Section 9004.7 is amended by revising paragraphs (b)(5) and (b)(8) to read as follows:

§ 9004.7 Allocation of travel expenditures.

* * * * *

(b) * * *

(5)(i) If any individual, including a candidate, uses a government airplane for campaign-related travel, the candidate's authorized committee shall pay the appropriate government entity an amount equal to the applicable rate set forth in 11 CFR 100.93(e).

(ii) [Reserved]

(iii) If any individual, including a candidate, uses a government conveyance, other than an airplane, for campaign-related travel, the candidate's authorized committee shall pay the appropriate government entity an amount equal to the amount required under 11 CFR 100.93(d).

(iv) If any individual, including a candidate, uses accommodations, including lodging and meeting rooms, during campaign-related travel, and the accommodations are paid for by a government entity, the candidate's authorized committee shall pay the appropriate government entity an amount equal to the usual and normal charge for the accommodations, and shall maintain documentation supporting the amount paid.

(v) For travel by airplane, the committee shall maintain documentation of the lowest unrestricted nondiscounted airfare as required by 11 CFR 100.93(i)(1) or (2) in addition to any other documentation required in this section. For travel by other conveyances, the committee shall maintain documentation of the commercial rental rate as required by 11 CFR 100.93(i)(3) in addition to any other documentation required in this section.

* * * * *

(8) Travel on airplanes not licensed by the Federal Aviation Administration to operate for compensation or hire under 14 CFR parts 121, 129, or 135, government conveyances, and other means of transportation not operated for commercial passenger service is governed by 11 CFR 100.93.

PART 9034—ENTITLEMENTS

■ 10. The authority citation for part 9034 continues to read as follows:

Authority: 26 U.S.C. 9034 and 9039(b).

■ 11. Section 9034.6 is amended by revising paragraph (b)(2) to read as follows:

§ 9034.6 Expenditures for transportation and services made available to media personnel; reimbursements.

* * * * *

(b) * * *

(2) For the purposes of this section, a media representative's pro rata share shall be calculated by dividing the total actual cost of the transportation and services provided by the total number of

individuals to whom such transportation and services are made available. For purposes of this calculation, the total number of individuals shall include committee staff, media personnel, Secret Service personnel, national security staff and any other individuals to whom such transportation and services are made available, except that, when seeking reimbursement for transportation costs paid by the committee under 11 CFR 100.93 and 9034.7(b)(5)(i), the total number of individuals shall not include national security staff.

* * * * *

■ 12. Section 9034.7 is amended by revising paragraphs (b)(5) and (b)(8) to read as follows:

§ 9034.7 Allocation of travel expenditures.

* * * * *

(b) * * *

(5) (i) If any individual, including a candidate, uses a government airplane for campaign-related travel, the candidate's authorized committee shall pay the appropriate government entity an amount not less than the applicable rate set forth in 11 CFR 100.93(e).

(ii) [Reserved]

(iii) If any individual, including a candidate, uses a government conveyance, other than an airplane, for campaign-related travel, the candidate's authorized committee shall pay the appropriate government entity an amount equal to the amount required under 11 CFR 100.93(d).

(iv) If any individual, including a candidate, uses accommodations, including lodging and meeting rooms, during campaign-related travel, and the accommodations are paid for by a government entity, the candidate's authorized committee shall pay the appropriate government entity an amount equal to the usual and normal charge for the accommodations, and shall maintain documentation supporting the amount paid.

(v) For travel by airplane, the committee shall maintain documentation of the lowest unrestricted nondiscounted airfare as required by 11 CFR 100.93(i)(1) or (2) in addition to any other documentation required in this section. For travel by other conveyances, the committee shall maintain documentation of the commercial rental rate as required by 11 CFR 100.93(i)(3) in addition to any other documentation required in this section.

* * * * *

(8) Travel on airplanes not licensed by the Federal Aviation Administration to operate for compensation or hire under 14 CFR parts 121, 129, or 135, government conveyances, and other means of transportation not operated for commercial passenger service is governed by 11 CFR 100.93.

Dated: December 10, 2003.

Ellen L. Weintraub,

Chair, Federal Election Commission.

[FR Doc. 03–30872 Filed 12–12–03; 8:45 am]

BILLING CODE 6715–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–SW–15–AD; Amendment 39–13384; AD 2003–25–01]

RIN 2120–AA64

Airworthiness Directives; Eurocopter France Model AS332C, C1, L, L1, AS350B, BA, B1, B2, B3 and D, and AS355E, F, F1, F2 and N Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) for the specified Eurocopter France (Eurocopter) model helicopters with a Breeze 300-pound electric hoist (hoist) installed that requires modifying and re-identifying the hoist operator control unit and replacing certain fuses. This amendment is prompted by a test of a hoist that revealed an anomaly in the electrical control circuit. The actions specified by this AD are intended to prevent failure of the hoist pyrotechnic squib electrical control unit, lack of adequate current to activate the hoist pyrotechnic squib, an inability of the pilot to cut the rescue hoist cable in the event of cable entanglement or other emergency, and subsequent loss of control of the helicopter.

DATES: Effective January 20, 2004.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of January 20, 2004.

ADDRESSES: The service information referenced in this AD may be obtained from American Eurocopter Corporation, 2701 Forum Drive, Grand Prairie, Texas 75053–4005, telephone (972) 641–3460, fax (972) 641–3527. This information may be examined at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Carroll Wright, Aviation Safety Engineer, FAA, Rotorcraft Directorate, Regulations and Guidance Group, Fort Worth, Texas 76193–0111, telephone (817) 222–5120, fax (817) 222–5961.

SUPPLEMENTARY INFORMATION: A proposal to amend 14 CFR part 39 to include an AD for the specified model helicopters was published in the **Federal Register** on August 22, 2003 (68 FR 50731). That action proposed to require, within 100 hours time-in-service (TIS) or 2 months, whichever comes first, modifying and re-identifying the hoist operator control unit and replacing certain fuses.

The Direction Generale De L'Aviation Civile (DGAC), the airworthiness authority for France, notified the FAA that an unsafe condition may exist on Eurocopter Model AS332C, C1, L, L1, Model AS350B, BA, BB, B1, B2, B3 and D, and Model AS355E, F, F1, F2 and N helicopters. The DGAC advises of the discovery of a case of failure of a rescue hoist emergency release control system to operate due to an anomaly in the electrical control circuit.

Eurocopter has issued Alert Service Bulletin (ASB) No. 25.00.71, for Model AS355E, F, F1, F2, and N helicopters; and ASB No. 25.00.79, for Model AS350B, BA, BB, B1, B2, B3, and D helicopters. Both ASBs are dated November 12, 2002, and specify embodiment of MOD 07 3190 on helicopters equipped with the fixed parts for the hoist. MOD 07 3190 consists of (1) eliminating resistor 27M in the hoist operator's control unit 26M and (2) replacing the 25A quick-response fuses on the Honeywell unit at 31 alpha or 21 delta for the Model AS350 or on the distribution panel 10 alpha for the Model 355 helicopters. Eurocopter has also issued Alert Service Bulletin No. 25.01.18, dated November 12, 2002, for Model AS332C, C1, L, and L1 helicopters. Modification 332PCS 78 288 consists of eliminating resistor 81M in hoist box 91M and re-identifying the hoist box as 332P67–2894–01, –02, –03, or –04, depending on which electrical wiring assembly is installed in the helicopter. The DGAC has classified these ASBs as mandatory and issued AD 2002–585(A) and AD 2002–584(A), both dated November 27, 2002, to ensure the continued airworthiness of these helicopters in France.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposal or the FAA's determination of the cost to the public. The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

The FAA estimates that this AD will affect 58 helicopters of U.S. registry (50 Model AS350 helicopters and 8 Model AS355 helicopters, and no Model AS332 helicopters) and the required actions will take approximately 3.5 work hours per helicopter to accomplish at an average labor rate of $60 per work hour. Required parts will cost approximately $10 for a time-delay fuse for Model AS350 series helicopters, or $20 for two time-delay fuses for Model AS355 series helicopters. Based on these figures, we estimate the total cost impact of the AD on U.S. operators will be $12,840 to modify each hoist in the entire fleet.

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

■ Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

2003–25–01 Eurocopter France: Amendment 39–13384. Docket No. 2003–SW–15–AD.

Applicability: Model AS332C, C1, L, and L1, AS350B, BA, B1, B2, B3 and D, and AS355E, F, F1, F2 and N helicopters with a Breeze 300-pound electric hoist (hoist) and hoist operator control unit 26M, part number (P/N) 350A63–1136–00 or 350A63–1136–01, and hoist electric box 91M, P/N 332A67–2875–00, installed, certificated in any category.

Compliance: Required within 100 hours time-in-service or within 2 months, whichever occurs first, unless accomplished previously.

To prevent failure of the hoist pyrotechnic squib electrical control unit, lack of adequate current to activate the hoist pyrotechnic squib, an inability of the pilot to cut the rescue hoist cable in the event of cable entanglement or other emergency, and subsequent loss of control of the helicopter, accomplish the following:

(a) Modify and re-identify the hoist operator control unit; replace the fuses; and functionally test the hoist operation and the emergency jettison controls in accordance with the Accomplishment Instructions, paragraph 2B, Operational Procedure, of Eurocopter Alert Service Bulletin (ASB) No. 25.00.71 for Model AS355E, F, F1, F2, and N helicopters; ASB No. 25.00.79 for Model AS350B, BA, B1, B2, B3, and D helicopters; and ASB No. 25.01.18 for Model AS332 C, C1, L, and L1 helicopters, all dated November 12, 2002, as applicable.

(b) To request a different method of compliance or a different compliance time for this AD, follow the procedures in 14 CFR 39.19. Contact the Safety Management Group, Rotorcraft Directorate, FAA, for information about previously approved alternative methods of compliance.

(c) The actions required by this AD shall be done using Eurocopter Alert Service Bulletin (ASB) No. 25.00.71 for Model AS355E, F, F1, F2, and N helicopters; ASB No. 25.00.79 for Model AS350B, BA, B1, B2, B3, and D helicopters; and ASB No. 25.01.18 for Model AS332 C, C1, L, and L1 helicopters, all dated November 12, 2002. The Director of the Federal Register approved this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from American Eurocopter Corporation, 2701 Forum Drive, Grand Prairie, Texas 75053–4005, telephone (972) 641–3460, fax (972) 641–3527. Copies may be inspected at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(d) This amendment becomes effective on January 20, 2004.

Note: The subject of this AD is addressed in Direction Generale De L'Aviation Civile (France) AD 2002–584(A) and AD 2002–585(A), both dated November 27, 2002.

Issued in Fort Worth, Texas, on December 4, 2003.

David A. Downey,

Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 03–30688 Filed 12–12–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2003–16075; Airspace Docket No. 03–AAL–18]

Establishment of Class E Airspace; Mentasta Lake/Mountains Area, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class E airspace in the Mentasta Lake/Mountains Area, AK. A need was identified to operate via Instrument Flight Rules (IFR) from Tok, AK off-airways, to/from Anchorage, AK. Class E airspace did not exist below 14,500 feet in the Mentasta Lake/Mountains Area, AK to allow Anchorage ARTCC to provide IFR enroute services. This rule results in new Class E airspace upward from 1,200 feet (ft.) above the surface in the Mentasta Lake/Mountains Area, AK.

EFFECTIVE DATE: 0901 UTC, February 19, 2004.

FOR FURTHER INFORMATION CONTACT: Jesse Patterson, AAL–538G, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587; telephone number (907) 271–5898; fax: (907) 271–2850; e-mail: *Jesse.CTR.Patterson@faa.gov*. Internet address: *http://www.alaska.faa.gov/at*.

SUPPLEMENTARY INFORMATION:

History

On Monday, September 22, 2003, the FAA proposed to revise part 71 of the Federal Aviation Regulations (14 CFR part 71) to create new Class E airspace upward from 1,200ft. above the surface in the Mentasta Lake/Mountains Area, AK (68 FR 55013). A commercial flight operator (part 135) identified a need for more direct routings to/from Tok, AK. The action establishes Class E airspace sufficient to contain aircraft proceeding to and from Tok, AK direct to join the Federal airways in the vicinity of Gulkana, AK. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No public comments have been

received, thus, the rule is adopted as proposed.

The area will be depicted on aeronautical charts for pilot reference. The coordinates for this airspace docket are based on North American Datum 83. The Class E airspace areas designated as 700/1200 foot transition areas are published in paragraph 6006 of FAA Order 7400.9L, *Airspace Designations and Reporting Points*, dated September 2, 2003, and effective September 16, 2003, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be revoked and revised subsequently in the Order.

The Rule

This revision to 14 CFR part 71 establishes Class E airspace at Mentasta Lake/Mountains Area, Alaska. This additional Class E airspace was created to accommodate aircraft operating (IFR) from Tok, AK off-airways, to/from Anchorage, AK and will be depicted on aeronautical charts for pilot reference. The intended effect of this rule is to provide adequate controlled airspace for IFR operations in the Mentasta Lake/Mountains Area, Alaska.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

■ In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

■ 1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9L, *Airspace Designations and Reporting Points*, dated September 2, 2003, and effective September 16, 2003, is amended as follows:

* * * * *

Paragraph 6006 Class E airspace extending upward from 1,200 feet or more above the surface of the earth.

* * * * *

AAL AK E6 Mentasta Lake/Mountains Area, AK [New]

That airspace extending upward from 1,200 feet bounded on the north by V–444, on the south by G–8 and on the west by V–515, excluding the Fairbanks Class E Airspace and that airspace designated for federal airways.

* * * * *

Issued in Anchorage, AK, on December 3, 2003.

Trent S. Cummings,

Manager, Air Traffic Division, Alaskan Region.

[FR Doc. 03–30907 Filed 12–12–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2003–16083; Airspace Docket No. 03–AAL–19]

Establishment of Class E Airspace; Manokotak, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final Rule.

SUMMARY: This action establishes Class E airspace at Manokotak, AK to provide adequate controlled airspace to contain aircraft executing a new Standard Instrument Approach Procedure (SIAP) and a Textual Departure Procedure. This Rule results in new Class E airspace upward from 700 feet (ft.) above the surface at Manokotak, AK.

EFFECTIVE DATE: 0901 UTC, February 19, 2004.

FOR FURTHER INFORMATION CONTACT: Jesse Patterson, AAL–538G, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587; telephone number (907) 271–5898; fax: (907) 271–2850; e-mail: *Jesse.CTR.Patterson@faa.gov*. Internet address: *http://www.alaska.faa.gov/at*.

SUPPLEMENTARY INFORMATION:

History

On Monday, September 22, 2003, the FAA proposed to revise part 71 of the Federal Aviation Regulations (14 CFR part 71) to create new Class E airspace upward from 700ft. above the surface at Manokotak, AK (68 FR 55012). The action was proposed in order to add Class E airspace sufficient in size to contain aircraft while executing a new SIAP for the Manokotak/New Airport. The new approach is Area Navigation-Global Positioning System (RNAV GPS) A, original. New Class E controlled airspace extending upward from 700 feet above the surface within a 6.2 mile radius of the Manokotak/New Airport is established by this action. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No public comments have been received, thus, the rule is adopted as proposed.

The area will be depicted on aeronautical charts for pilot reference. The coordinates for this airspace docket are based on North American Datum 83. The Class E airspace areas designated as 700/1200 foot transition areas are published in paragraph 6005 of FAA Order 7400.9L, *Airspace Designations and Reporting Points*, dated September 2, 2003, and effective September 16, 2003, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be revoked and revised subsequently in the Order.

The Rule

This revision to 14 CFR part 71 establishes Class E airspace at Manokotak, Alaska. This additional Class E airspace was created to accommodate aircraft executing new SIAPs and will be depicted on aeronautical charts for pilot reference. The intended effect of this rule is to provide adequate controlled airspace for IFR operations at Manokotak/New Airport, Manokotak, Alaska.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated

impact is so minimal. Since this a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

■ In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

■ 1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9L, *Airspace Designations and Reporting Points*, dated September 2, 2003, and effective September 16, 2003, is amended as follows:

* * * * *

Paragraph 6005 Class E airspace extending upward from 700 feet or more above the surface of the earth.

* * * * *

AAL AK E5 Manokotak, AK [New]

Manokotak/New Airport, AK
(Lat. 58°59′25″ N., long. 159°03′00″ W.)
That airspace extending upward from 700 feet above the surface within a 6.2-mile radius of the Manokotak/New Airport.

* * * * *

Issued in Anchorage, AK, on December 3, 2003.

Trent S. Cummings,

Manager, Air Traffic Division, Alaskan Region.

[FR Doc. 03–30908 Filed 12–12–03; 8:45 am

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2003–16503; Airspace Docket No. 03–ACE–87]

Modification of Class E Airspace; Winterset, IA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments; correction.

SUMMARY: This action corrects a direct final rule; request for comments that was published in the **Federal Register** on Wednesday, December 3, 2003, (68 FR 67590) [FR Doc. 03–30013]. It corrects an error in the Winterset-Madison County Airport airport reference point used in the Winterset, IA Class E airspace area legal description.

DATES: This direct final rule is effective on 0901 UTC, April 15, 2004.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C, DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (816) 329–2525.

SUPPLEMENTARY INFORMATION:

History

Federal Register document 03–30013, published on Wednesday, December 3, 2003, (68 FR 67590) modified Class E airspace at Winterset, IA. The modification enlarged the controlled airspace area around Winterset-Madison County Airport to provide proper protection for diverse departures and to bring the Winterset, IA Class E airspace area legal description into compliance with FAA Order 7400.2E, Procedures for Handling Airspace Matters. However, the Winterset-Madison County Airport airport reference point used in the legal description was published incorrectly.

■ Accordingly, pursuant to the authority delegated to me, the Winterset, IA Class E airspace, as published in the **Federal Register** on Wednesday, December 3, 2003, (68 FR 67590) [FR Doc. 03–30013] is corrected as follows:

§71.1 [Corrected]

■ On page 67591, Column 3, paragraph headed "ACE IA E5 Winterset, IA," second line, change "long.92°01′16" to read "long.94°01′16."

Issued in Kansas City, MO, on December 4, 2003.

Paul J. Sheridan,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 03–30910 Filed 12–12–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 35

[Docket No. RM02–1–000]

Standardization of Generator Interconnection Agreements and Procedures; Notice of Extension of Time

September 26, 2003.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Final rule: notice of extension of time.

SUMMARY: On July 24, 2003, the Commission issued a final rule (Order No. 2003) addressing the standardization of generator interconnection agreements and procedures (68 FR 49846, August 19, 2003). The date for complying with the extensive filing requirements of Commission's Order No. 2003 is being extended at the request of various regional transmission organizations and independent system operators.

DATES: Compliance filing deadline: January 20, 2004.

FOR FURTHER INFORMATION CONTACT: Michael G. Henry (Legal Information), Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502–8532.

SUPPLEMENTARY INFORMATION:

Notice of Extension of Time

September 26, 2003.

On September 9, 12, 16, 22, and September 24, 2003, respective Motions for an Extension of Time to comply with Commission Order No. 2003 were filed in the above-captioned proceeding on behalf of the Midwest Independent Transmission System Operator, Inc., the New York Independent System Operator, Inc., PJM Interconnection, L.L.C., the New England Power Pool Participants Committee and ISO New England, Inc., the New England Transmission Owners, the California Independent System Operator Corporation and its Jurisdictional Participating Transmission Owners and

the New York Transmission Owners (Movants). The motions state that additional time is needed for Regional Transmission Organization and Independent System Operators to review the extensive filing requirements of Order No. 2003, to pursue discussions with stakeholders and various working groups, to study potential regional variances related to the Final Rule and to address time-consuming implementation issues. On September 16, 2003, Arizona Public Service Company and American Transmission L.L.C. filed answers in support of MISO's September 9th filing in this docket.

Upon consideration, notice is hereby given that Regional Transmission Organizations and Independent System Operators are granted an extension of time to comply with Commission Order No. 2003 until the close of business on January 20, 2004, as requested by the Movants.

Magalie R. Salas,

Secretary.

[FR Doc. 03–30993 Filed 12–12–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF STATE

22 CFR Part 89

[Public Notice 4556]

RIN 1400–AA34

Foreign Prohibitions on Longshore Work by U.S. Nationals

AGENCY: Department of State.

ACTION: Final rule.

SUMMARY: In accordance with the Immigration and Nationality Act of 1952, as amended, the Department of State is updating the list of countries in which performance of one or more specified activities of longshore work by crewmembers aboard United States vessels is prohibited by law, regulation, or in practice in the country.

EFFECTIVE DATE: This rule is effective January 14, 2004.

FOR FURTHER INFORMATION CONTACT: Stephen M. Miller, Office of Transportation Policy (EB/TRA/OTP/MA), Room 5828, Department of State, Washington DC 20851–5816, who may be reached at (202) 647–9992.

SUPPLEMENTARY INFORMATION: Section 258 of the Immigration and Nationality Act of 1952 (the "Act"), 8 U.S.C. 1288, as added by the Immigration Act of 1990, Pub. L. No. 101–649, and subsequently amended, has the effect that alien crewmen may not perform longshore work in the United States. Longshore work is defined to include "any activity relating to the loading or unloading of cargo, the operation of cargo-related equipment (whether or not integral to the vessel), and the handling of mooring lines on the dock when the vessel is made fast or let go, in the United States or the coastal waters thereof." The Act goes on, however, to define a number of exceptions to the general prohibition on such work.

Among certain other exceptions, section 258(e), entitled the "Reciprocity exception," allows the performance of activities constituting longshore work by alien crewmen aboard vessels flagged and owned in countries where such activities are permitted by crews aboard U.S. ships. The Secretary of State (hereinafter, "the Secretary") is directed to compile and annually maintain a list, of longshore work by particular activity, of countries where performance of such a particular activity by crewmembers aboard United States vessels is prohibited by law, regulation, or in practice in the country. The Attorney General will use the list to determine whether to permit an alien crewmember to perform an activity constituting longshore work in the United States or its coastal waters, in accordance with the conditions set forth in the Act.

The Department bases the list on reports from U.S. diplomatic posts abroad and submissions from interested parties in response to the notice-and-comment process. On the basis of this information, the Department is hereby issuing an amended list. The list includes 24 countries not previously listed: Albania, Antigua, Barbados, Brunei, Chile, Cook Islands, Grenada, Kazakhstan, Latvia, Lebanon, Macau, Namibia, Nigeria, Oman, Russia, St. Christopher and Nevis, Singapore, Sudan, Syria, Tonga, Turkey, Tuvalu, United Arab Emirates and Vietnam. Two countries were dropped from the list because the most recent information indicates that they do not restrict longshore activities by crewmembers of U.S. vessels: Estonia and Micronesia.

On February 12, 2002, the Department published for comments a Notice of Proposed Rulemaking (67 FR 6447) updating the list of countries ineligible for the reciprocity exception. The comment period closed on March 12, 2002. In response, the Department received one comment from the Lake Carriers' Association ("Association"). Writing as the representative of 12 U.S. corporations operating 58 U.S.-flag vessels on the Great Lakes, the Association confirmed that the crews of its members' vessels do perform certain longshore activities in Canadian ports, including operation of self-unloading equipment, line handling, opening and closing of cargo hold hatches, and shifting the vessel under the loading rigs. The Association believes that it is proper for the Department to continue granting Canada a reciprocity exception and to allow crewmembers on Canadian-flag vessels to perform those duties in U.S. Great Lakes ports.

Regulatory Findings

Administrative Procedure Act

The Department is publishing this rule as a final rule after it was published as a proposed rule on February 12, 2002 in public notice 3843 (*see* **SUPPLEMENTARY INFORMATION**).

Regulatory Flexibility Act

The Department of State, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation and, by approving it, certifies that this rule will not have a significant economic impact on a substantial number of small entities.

Unfunded Mandates Act of 1995

This rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538).

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 804(2)). This rule will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign based companies in domestic and import markets.

Executive Order 12866

The Department of State does not consider this rule to be a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review. In addition, the Department is exempt from Executive Order 12866 except to the extent that it is promulgating regulations in conjunction with a domestic agency and they are significant regulatory actions.

The Department has nevertheless reviewed the regulation to ensure its consistency with the regulatory philosophy and principles set forth in that Executive Order.

Executive Order 13132

This regulation will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with section 6 of Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to require consultations or warrant the preparation of a federalism summary impact statement.

Paperwork Reduction Act

This rule does not impose any new reporting or record-keeping requirements subject to the Paperwork Reduction Act, 44 U.S.C. Chapter 35.

List of Subjects in 22 CFR Part 89

Aliens, Crewmembers, Immigration, Labor, Longshore work.

■ For the reasons set out in the preamble, 22 CFR chapter I is amended as follows:

PART 89—PROHIBITIONS ON LONGSHORE WORK BY U.S. NATIONALS

■ 1. The authority for part 89 continues to read as follows:

Authority: 8 U.S.C. 1288, Public Law 101–649, Stat.4878.

■ 2. Part 89 is amended by revising § 89.1 to read as follows:

§ 89.1 Prohibitions on Longshore work by U.S. nationals; listing by country.

The Secretary of State has determined that, in the following countries, longshore work by crewmembers aboard United States vessels is prohibited by law, regulation, or in practice, with respect to the particular activities noted:

Albania

(a) Cargo loading and discharge.
(b) Exceptions:
(1) Operation of cargo related equipment,
(2) Opening and closing of hatches, and
(3) Rigging of ship's gear.

Algeria

(a) All longshore activities.
(b) Exception: Opening and closing of hatches.

Angola

(a) All longshore activities.
(b) Exceptions:
(1) Opening and closing of hatches,
(2) Rigging of ship's gear, and
(3) Loading and discharge of cargo on board the ship if local labor is paid as if had done the work.

Antigua

(a) All longshore activities.
(b) Exceptions: activities on board ship.

Argentina

(a) All longshore activities.
(b) Exceptions: activities on board ship.

Australia (including Norfolk and Christmas Islands)

(a) All longshore activities.
(b) Exceptions:
(1) When shore labor cannot be obtained at rates prescribed by collective bargaining agreements,
(2) Operation of cargo-related equipment and opening and closing of hatches in small ports where there is insufficient shore labor, and
(3) Rigging of ship's gear.

Bahamas

(a) Longshore activities on the pier.

Bangladesh

(a) All longshore activities.
(b) Exceptions:
(1) Operation of cargo related equipment integral to the vessel when there is a shortage of port workers able to operate the equipment and with the permission of the port authority, and
(2) Opening and closing of hatches.

Barbados

(a) All longshore activities.
(b) Exceptions:
(1) Operation of cargo related equipment,
(2) Opening and closing of hatches,
(3) Rigging of ship's gear, and
(4) Loading and discharge of cargo of less than 10 tons.

Belgium

(a) All longshore activities.
(b) Exception: Rigging of ship's gear.

Belize

(a) All longshore activities.
(b) Exceptions:
(1) Operation of cargo related equipment,
(2) Opening and closing of hatches, and
(3) Rigging of ship's gear.

Benin

(a) All longshore activities.
(b) Exceptions:
(1) Opening and closing of hatches, and
(2) Rigging of ship's gear.

Bermuda

(a) All longshore activities.
(b) Exceptions:
(1) Opening and closing of hatches, and
(2) Rigging of ship's gear.

Brazil

(a) Cargo handling,
(b) Operation of cargo-related equipment,
(c) Watchmen,
(d) Handling of mooring lines on the pier, and
(e) Other longshore activities on the pier.
(f) Exceptions:
(1) Opening and closing of hatches, and
(2) Rigging of ship's gear.

Brunei

(a) All longshore activities.
(b) Exceptions: Longshore activities on board ship.

Bulgaria

(a) All longshore activities.
(b) Exceptions:
(1) Opening and closing of hatches,
(2) Mooring and line handling on board ship, and
(3) Loading and discharge of supplies for the crew's own needs, spare parts for small repairs and other non-commercial longshore activities.

Burma

(a) All longshore activities.
(b) Exceptions:
(1) Opening and closing of hatches, and
(2) Rigging of ship's gear.

Cameroon

(a) All longshore activities.
(b) Exceptions:
(1) Opening and closing of hatches, and
(2) Rigging of ship's gear.

Canada

(a) All longshore activities.
(b) Exceptions:
(1) Operation of specialized self-loading/unloading log carriers on the Pacific Coast,
(2) Operation of self-loading/unloading equipment and line handling by the crews of bulk vessels calling at private terminals,
(3) Opening and closing of hatches,
(4) Cleaning of holds and tanks,
(5) Loading of ship's stores,
(6) Operation of onboard rented equipment,
(7) Ballasting and deballasting, and

(8) Rigging of ship's gear.
(c) Exceptions in connection with bulk cargo at Great Lakes ports only:
(1) Handling of mooring lines on the pier when the vessel is made fast or let go.
(2) Moving the vessel to place it under shoreside loading and unloading equipment.
(3) Moving the vessel in position to unload the vessel onto specific cargo piles, hoppers or conveyor belt systems, and
(4) Operation of cargo related equipment integral to the vessel.

Cape Verde

(a) All longshore activities.

Chile

(a) Longshore activities on shore.
(b) Transfer of cargo to or from ship.

China

(a) Longshore activities on shore.

Colombia

(a) All longshore activities.
(b) Exceptions: When local workers are unable or unavailable to provide longshore services.

Comoros

(a) All longshore activities.
(b) Exceptions:
(1) Operation of cargo related equipment, and
(2) Opening and closing of hatches.

Congo, Democratic Republic of

(a) All longshore activities.
(b) Exception: Operation of cargo-related equipment, when authorized by the Port Authority.

Cook Islands

(a) Longshore activities.
(b) Exceptions:
(1) Operation of cargo related equipment,
(2) Opening and closing of hatches, and
(3) Rigging of ship's gear.

Costa Rica

(a) All longshore activities.
(b) Exceptions:
(1) Operation of cargo related equipment,
(2) Opening and closing of hatches and
(3) Rigging of ship's gear.

Cote d'Ivoire

(a) All longshore activities.

Croatia

(a) All longshore activities.

Cyprus

(a) All longshore activities.
(b) Exceptions:
(1) Opening and closing of hatches, and
(2) Rigging of ship's gear.

Djibouti

(a) All longshore activities.
(b) Exceptions:
(1) Opening and closing of hatches, and
(2) Rigging of ship's gear.

Dominica

(a) All longshore activities.
(b) Exceptions:
(1) Operation of cargo related equipment,
(2) Opening and closing of hatches, and
(3) Rigging of ship's gear.

Dominican Republic

(a) Local longshore workers get paid if crewmembers operate loading and unloading equipment.

Ecuador

(a) All longshore activities.
(b) Exceptions:
(1) Operation of cargo related equipment,
(2) Opening and closing of hatches, and
(3) Rigging of ship's gear,

Egypt

(a) All longshore activities.
(b) Exceptions:
(1) Operation of cargo related equipment integral to the ship except to load and discharge cargo,
(2) Opening and closing of hatches,
(3) Rigging of ship's gear, and
(4) Handling of mooring lines on the ship.

El Salvador

(a) All longshore activities.
(b) Exceptions:
(1) Operation of cargo related equipment belonging to the vessel,
(2) Opening and closing of hatches,
(3) Rigging of ship's gear, and
(4) Special operations requiring special expertise, provided that local port workers are paid.

Eritrea

(a) All longshore activities.
(b) Exceptions:
(1) Operation of cargo-related equipment,
(2) Opening and closing of hatches,
(3) Rigging of ship's gear, and
(4) Longshore activities for LASH vessels.

Fiji

(a) All longshore activities.
(b) Exceptions:
(1) Operation of cargo related equipment,
(2) Opening and closing of hatches,
(3) Rigging of ship's gear, and
(4) Operation of computerized off-loading equipment when local expertise is not available.

Finland

(a) All longshore activities.
(b) Exceptions:
(1) Opening and closing of hatches, and
(2) Rigging of ship's gear.

France (including the French Antilles, French Guiana, French Polynesia, Mayotte, New Caledonia, Reunion, St. Pierre and Miquelon and Wallis and Fortuna)

(a) All longshore activities.
(b) Exceptions:
(1) Loading and discharge of the ship's own material and provisions if done by the ship's own equipment or by the owner of the merchandise using his own personnel,
(2) Opening and closing of hatches,
(3) Rigging of ship's gear,
(4) Operation of cargo-related equipment to shift cargo internally,
(5) Handling operations connected with shipbuilding and refitting, and
(6) Offloading fish by the crew or personnel for the shipowner.

Gabon

(a) All longshore activities.
(b) Exception: All longshore activities if local workers are paid as if they had done the work.

Gambia

(a) All longshore activities.
(b) Exceptions:
(1) Operation of cargo related equipment,
(2) Opening and closing of hatches, and
(3) Rigging of ship's gear,

Georgia

(a) All longshore activities.
(b) Exception: All longshore activities if local workers are paid as if they had done the work.

Germany

(a) All longshore activities.
(b) Exceptions:
(1) Opening and closing of hatches, and
(2) Rigging of ship's gear.

Ghana

(a) All longshore activities.
(b) Exceptions:
(1) Operation of cargo related equipment,
(2) Opening and closing of hatches, and
(3) Rigging of ship's gear.

Greece

(a) Operation of shore-based equipment to load/unload a vessel.

Grenada

(a) All longshore activities.
(b) Exceptions:
(1) Operation of cargo related equipment,
(2) Opening and closing of hatches, and
(3) Rigging of ship's gear.

Guatemala

(a) All longshore activities.
(1) Operation of cargo related equipment,
(2) Opening and closing of hatches, and
(3) Rigging of ship's gear.

Guinea

(a) All longshore activities.
(b) Exceptions:
(1) Operation of cargo related equipment aboard ship,
(2) Opening and closing of hatches,
(3) Rigging of ship's gear, and
(4) Other activities with the prior approval of the port authority.

Guyana

(a) All longshore activities.
(b) Exceptions:
(1) Operation of cargo related equipment aboard ship except to load or discharge cargo,
(2) Opening and closing of hatches, and
(3) Rigging of ship's gear.

Haiti

(a) All longshore activities.
(b) Exceptions:
(1) Opening and closing of hatches, and
(2) Rigging of ship's gear.

Honduras

(a) All longshore activities.
(b) Exceptions:
(1) Operation of cargo related equipment,
(2) Opening and closing of hatches, and
(3) Rigging of ship's gear.

Hong Kong

(a) Operation of equipment on the pier.

Iceland

(a) All longshore activities.
(b) Exceptions:
(1) Opening and closing of hatches,
(2) Rigging of ship's gear, and
(3) Longshore activities in smaller harbors where there are no local port workers.

India

(a) All longshore activities.
(b) Exception: Operation of shipboard equipment that local port workers cannot operate.

Indonesia

(a) All longshore activities.
(b) Exceptions:
(1) With the permission of the port administrator, when no local port workers with requisite skills are available, and
(2) In the event of an emergency.

Ireland

(a) All longshore activities on pier or on land at port.

Israel

(a) All longshore activities.
(b) Exceptions, other than for loading or discharging cargoes to and from the pier:
(1) Operation of cargo-related equipment,
(2) Opening and closing of hatches, and
(3) Rigging of ship's gear.

Italy

(a) All longshore activities.
(b) Exceptions: Cargo loading, discharge, and transfer upon presentation of the following information:
(1) Documentation listing the vessel's mechanical apparatus for cargo handling,
(2) A list of crewmembers who will perform the longshore activities,
(3) An insurance policy guaranteeing recovery for damages to persons or property in relation to the longshore activities.

Jamaica

(a) All longshore activities.
(b) Exceptions:
(1) Opening and closing of unusual hatches,
(2) Rigging of unusual ship's gear, and
(3) Longshore activities on foreign government vessels or ships engaged on a community development or humanitarian project.

Japan

(a) All longshore activities.

Jordan

(a) All longshore activities.

Kazakhstan

(a) All longshore activities.

Kenya

(a) All longshore activities.
(b) Exceptions:
(1) Opening and closing of hatches,
(2) Rigging of ship's gear,
(3) In an emergency declared by the port authority, and
(4) Direct transfer of cargo from one ship to another.

Korea

(a) All longshore activities.
(b) Exceptions, when done in relation to ship safety, ship operation, or supervisory work to ensure that stevedoring is done correctly:
(1) Operation of cargo related equipment,
(2) Opening and closing of hatches, and
(3) Rigging of ship's gear.

Kuwait

(a) Longshore activities on shore.

Latvia

(a) All longshore activities.
(b) Exceptions: activities on board the vessel.

Lebanon

(a) Longshore activities on shore.

Liberia

(a) Longshore activities on shore.

Lithuania

(a) All longshore activities.

Macau

(a) Longshore activities on the pier.

Madagascar

(a) All longshore activities.
(b) Exceptions:
(1) Opening and closing of hatches, and
(2) Rigging of ship's gear.

Malaysia

(a) All longshore activities.
(b) Exceptions:
(1) Operation of cargo related equipment,
(2) Opening and closing of hatches,
(3) Rigging of ship's gear, and
(4) Loading and discharge of hazardous materials.

Maldive Islands

(a) All longshore activities on shore.

Malta

(a) All longshore activities.
(b) Exceptions:
(1) Opening and closing of hatches, and
(2) Rigging of ship's gear.

Maurítania

(a) Loading and discharge of cargo.

(b) Exceptions:
(1) Operation of cargo-related equipment,
(2) Opening and closing of hatches, and
(3) Rigging of ship's gear.

Mauritius

(a) All longshore activities.
(b) Exceptions, other than for normal cargo handling activities:
(1) Operation of cargo-related equipment,
(2) Opening and closing of hatches, and
(3) Rigging of ship's gear.

Mexico

(a) All longshore activities.
(b) Exception: Preparation of cargo handling equipment to be operated by local port workers.

Morocco

(a) Loading and discharge of merchandise,
(b) Rigging of ship from dockside, and
(c) Other longshore activities not onboard vessel.
(d) Exceptions:
(1) Operation of onboard cargo related equipment, and
(2) Rigging of ship's gear onboard the ship, in coordination with local port workers.

Mozambique

(a) Loading and discharge of cargo.
(b) Exceptions:
(1) Operation of cargo-related equipment,
(2) Opening and closing of hatches, and
(3) Rigging of ship's gear.

Namibia

(a) Longshore activities on shore.
(b) Exceptions:
(1) Operation of cargo-related equipment,
(2) Opening and closing of hatches, and
(3) Rigging of ship's gear.

Nauru

(a) All longshore activities.
(b) Exceptions, with the authorization of the Harbor Master,
(1) Operation of cargo-related equipment,
(2) Opening and closing of hatches, and
(3) Rigging of ship's gear.

Netherlands

(a) All longshore activities.
(b) Exception: Regular crew activities on board ship, including operation of cargo-related equipment, opening and closing of hatches, and rigging of ship's gear.

Netherlands Antilles

(a) All longshore activities.
(b) Exceptions:
(1) Operation of ship's gear,
(2) Opening and closing of hatches, and
(3) Rigging of ship's gear.

New Zealand

(a) All longshore activities that take longer than 28 days of arriving in territorial waters.

Nicaragua

(a) All longshore activities.
(b) Exception: Opening and closing of hatches and rigging of ship's gear if local workers are paid as if they had done the work.

Nigeria

(a) All longshore activities.
(b) Exceptions:
(1) Operation of ship's gear,
(2) Opening and closing of hatches,
(3) Rigging of ship's gear, and
(4) Instructing local employees on equipment.

Oman

(a) All longshore activities.
(b) Exceptions:
(1) Assisting in the operation of cargo related equipment if required,
(2) Opening and closing of hatches, and
(3) Rigging of ship's gear.

Pakistan

(a) Longshore activities on shore, and
(b) Handling of mooring lines.
(c) Exception: Operation of equipment which pier workers are not capable of operating.

Panama

(a) All longshore activities.
(b) Exceptions:
(1) Operation of cargo related equipment,
(2) Opening and closing of hatches, and
(3) Rigging of ship's gear.

Papua New Guinea

(a) All longshore activities.
(b) Exceptions:
(1) Opening and closing of hatches, and
(2) Rigging of ship's gear.

Peru

(a) All longshore activities.
(b) Exceptions:
(1) Operation of sophisticated cargo-related equipment on container vessels,
(2) First opening and last closing of hatches and holds, and
(3) Cleaning of holds.

Philippines

(a) All longshore activities.
(b) Exceptions:
(1) Opening and closing of hatches, if not related to cargo handling,
(2) Rigging of ship's gear, if not related to cargo handling,
(3) Longshore activities for hazardous or polluting cargoes, and
(4) Longshore activities on government vessels.

Poland

(a) All longshore activities.
(b) Exceptions:
(1) Operation of cargo-related equipment,
(2) Opening and closing of hatches, and
(3) Rigging of ship's gear.

Portugal (including Azores and Madeira)

(a) All longshore activities.
(b) Exceptions:
(1) Military operations,
(2) Operations in an emergency, when under the supervision of the maritime authorities,
(3) Security or inspection operations,
(4) Loading and discharge of supplies for the vessel and its crew,
(5) Loading and discharge of fuel and petroleum products at special terminals,
(6) Loading and discharge of chemical products if required for safety reasons,
(7) Placing of trailers and similar material in parking areas when done before loading or after discharge,
(8) Cleaning of the vessel,
(9) Loading, discharge, and disposal of merchandise in other boats, and
(10) Opening and closing hatches.

Qatar

(a) All longshore activities.

Romania

(a) All longshore activities.
(b) Exceptions:
(1) Operation of specialized shipboard equipment, and
(2) Loading and discharge of cargo requiring special operations.

Russia

(a) All longshore activities performed with local port equipment.
(b) Exceptions:
(1) Operation of cargo related equipment,
(2) Opening and closing of hatches, and
(3) Rigging of ship's gear.

St. Christopher and Nevis

(a) All longshore activities.

(b) Exceptions:
(1) Operation of cargo related equipment,
(2) Opening and closing of hatches, and
(3) Rigging of ship's gear.

St. Lucia

(a) Loading, discharge and handling of general cargo.
(b) Exceptions: activities on board the ship.

St. Vincent and the Grenadines

(a) All longshore activities.
(b) Exceptions: activities on board the ship.

Saudi Arabia

(a) All longshore activities on shore.

Senegal

(a) All longshore activities.
(b) Exceptions:
(1) Opening and closing of hatches,
(2) Rigging of ship's gear, and
(3) Cargo handling when necessary to ensure the safety or stability of the vessel.

Seychelles

(a) All longshore activities.
(b) Exceptions:
(1) Opening and closing of hatches, and
(2) Rigging of ship's gear.

Sierra Leone

(a) All longshore activities.

Singapore

(a) All longshore activities.
(b) Exceptions:
(1) Operation of cargo-related equipment,
(2) Opening and closing of hatches, and
(3) Rigging of ships gear.

Slovenia

(a) All longshore activities.
(b) Exceptions:
(1) Opening and closing of hatches, and
(2) Rigging of ship's gear.

Solomon Islands

(a) All longshore activities.
(b) Exceptions:
(1) Operation of cargo related equipment,
(2) Opening and closing of hatches, and
(3) Rigging of ship's gear.

South Africa

(a) All longshore activities.
(b) Exceptions:
(1) Opening and closing of hatches, and
(2) Rigging of ship's gear.

Spain

(a) All longshore activities.

Sri Lanka

(a) Longshore activities on shore, and
(b) Operation of cargo related equipment to load and discharge cargo.

Sweden

(a) All longshore activities.

Sudan

(a) All longshore activities.

Syria

(a) All longshore activities on shore.

Taiwan

(a) All longshore activities.
(b) Exceptions:
(1) Opening and closing of hatches operated automatically, and
(2) Raising and lowering of ship's gear.

Tanzania

(a) All longshore activities.
(b) Exceptions:
(1) Operation of cargo related equipment,
(2) Opening and closing of hatches, and
(3) Rigging of ship's gear.

Thailand

(a) Longshore activities on shore.

Togo

(a) Loading and discharge of cargo.
(b) Exceptions:
(1) Operation of cargo-related equipment on board the ship,
(2) Opening and closing of hatches, and
(3) Rigging of ships gear.

Tonga

(a) All longshore activities.
(b) Exceptions:
(1) Operation of cargo-related equipment,
(2) Opening and closing of hatches, and
(3) Rigging of ship's gear.

Trinidad and Tobago

(a) All longshore activities on shore.

Tunisia

(a) All longshore activities.
(b) Exception: Operation of specialized equipment that local port workers cannot operate.

Turkey

(a) All longshore activities.
(b) Exceptions:
(1) Operation of cargo-related equipment,
(2) Opening and closing of hatches, and
(3) Rigging of ship's gear.

Tuvalu

(a) Longshore activities on shore.

United Arab Emirates

(a) All longshore activities on shore.

Uruguay

(a) All longshore activities.
(b) Exceptions:
(1) Operation of on-board cranes requiring expert operation or at the master's request,
(2) Opening and closing of hatches, and
(3) Rigging of ship's gear.

Vanuatu

(a) All longshore activities.
(b) Exceptions:
(1) Opening and closing of hatches, and
(2) Rigging of ship's gear.

Venezuela

(a) Longshore activities on shore, at the discretion of the companies leasing and operating port facilities.

Vietnam

(a) All longshore activities.
(b) Exceptions:
(1) Operation of cargo-related equipment,
(2) Opening and closing of hatches,
(3) Rigging of ship's gear, and
(4) Loading and discharge of cargo with on-board equipment when the port of call does not have the necessary equipment.

Western Samoa

(a) All longshore activities.
(b) Exceptions:
(1) Opening and closing of hatches, and
(2) Rigging of ship's gear.

Yemen

(a) Longshore activities on shore.

Dated: November 18, 2003.

E. Anthony Wayne,

Assistant Secretary, Bureau of Economic and Business Affairs, Department of State.

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PENSION BENEFIT GUARANTY CORPORATION

29 CFR Parts 4022 and 4044

Benefits Payable in Terminated Single-Employer Plans; Allocation of Assets in Single-Employer Plans; Interest Assumptions for Valuing and Paying Benefits

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: The Pension Benefit Guaranty Corporation's regulations on Benefits Payable in Terminated Single-Employer Plans and Allocation of Assets in Single-Employer Plans prescribe interest assumptions for valuing and paying benefits under terminating single-employer plans. This final rule amends the regulations to adopt interest assumptions for plans with valuation dates in January 2004. Interest assumptions are also published on the PBGC's Web site (*http://www.pbgc.gov*).

EFFECTIVE DATE: January 1, 2004.

FOR FURTHER INFORMATION CONTACT: Harold J. Ashner, Assistant General Counsel, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005, 202–326–4024. (TTY/TDD users may call the Federal relay service toll-free at 1–800–877–8339 and ask to be connected to 202–326–4024.)

SUPPLEMENTARY INFORMATION: The PBGC's regulations prescribe actuarial assumptions—including interest assumptions—for valuing and paying plan benefits of terminating single-employer plans covered by title IV of the Employee Retirement Income Security Act of 1974. The interest assumptions are intended to reflect current conditions in the financial and annuity markets.

Three sets of interest assumptions are prescribed: (1) A set for the valuation of benefits for allocation purposes under section 4044 (found in appendix B to part 4044), (2) a set for the PBGC to use to determine whether a benefit is payable as a lump sum and to determine lump-sum amounts to be paid by the PBGC (found in appendix B to part 4022), and (3) a set for private-sector pension practitioners to refer to if they wish to use lump-sum interest rates determined using the PBGC's historical methodology (found in appendix C to part 4022).

Accordingly, this amendment (1) adds to appendix B to part 4044 the interest assumptions for valuing benefits for allocation purposes in plans with valuation dates during January 2004, (2) adds to appendix B to part 4022 the interest assumptions for the PBGC to use for its own lump-sum payments in plans with valuation dates during January 2004, and (3) adds to appendix C to part 4022 the interest assumptions for private-sector pension practitioners to refer to if they wish to use lump-sum interest rates determined using the PBGC's historical methodology for valuation dates during January 2004.

For valuation of benefits for allocation purposes, the interest assumptions that the PBGC will use (set forth in appendix B to part 4044) will be 4.20 percent for the first 20 years following the valuation date and 5.00 percent thereafter. These interest assumptions represent a decrease (from those in effect for December 2003) of 0.50 percent for the first 20 years following the valuation date and of 0.25 percent thereafter.

The interest assumptions that the PBGC will use for its own lump-sum payments (set forth in appendix B to part 4022) will be 3.25 percent for the period during which a benefit is in pay status and 4.00 percent during any years preceding the benefit's placement in pay status. These interest assumptions are unchanged from those in effect for December 2003.

For private-sector payments, the interest assumptions (set forth in appendix C to part 4022) will be the same as those used by the PBGC for determining and paying lump sums (set forth in appendix B to part 4022).

The PBGC has determined that notice and public comment on this amendment are impracticable and contrary to the public interest. This finding is based on the need to determine and issue new interest assumptions promptly so that the assumptions can reflect, as accurately as possible, current market conditions.

Because of the need to provide immediate guidance for the valuation and payment of benefits in plans with valuation dates during January 2004, the PBGC finds that good cause exists for making the assumptions set forth in this amendment effective less than 30 days after publication.

The PBGC has determined that this action is not a "significant regulatory action" under the criteria set forth in Executive Order 12866.

Because no general notice of proposed rulemaking is required for this amendment, the Regulatory Flexibility Act of 1980 does not apply. *See* 5 U.S.C. 601(2).

List of Subjects

29 CFR Part 4022

Employee benefit plans, Pension insurance, Pensions, Reporting and recordkeeping requirements.

29 CFR Part 4044

Employee benefit plans, Pension insurance, Pensions.

■ In consideration of the foregoing, 29 CFR parts 4022 and 4044 are amended as follows:

PART 4022—BENEFITS PAYABLE IN TERMINATED SINGLE-EMPLOYER PLANS

■ 1. The authority citation for part 4022 continues to read as follows:

Authority: 29 U.S.C. 1302, 1322, 1322b, 1341(c)(3)(D), and 1344.

■ 2. In appendix B to part 4022, Rate Set 123, as set forth below, is added to the table. (The introductory text of the table is omitted.)

Appendix B to Part 4022—Lump Sum Interest Rates for PBGC Payments

* * * * *

Rate set	For plans with a valuation date		Immediate annuity rate (percent)	Deferred annuities (percent)				
	On or after	Before		i_1	i_2	i_3	n_1	n_2
123	1–1–04	2–1–04	3.25	4.00	4.00	4.00	7	8

■ 3. In appendix C to part 4022, Rate Set 123, as set forth below, is added to the table. (The introductory text of the table is omitted.)

Appendix C to Part 4022—Lump Sum Interest Rates for Private-Sector Payments

* * * * *

Rate set	For plans with a valuation date		Immediate annuity rate (percent)	Deferred annuities (percent)				
	On or after	Before		i_1	i_2	i_3	n_1	n_2
123	1–1–04	2–1–04	3.25	4.00	4.00	4.00	7	8

PART 4044—ALLOCATION OF ASSETS IN SINGLE-EMPLOYER PLANS

■ 4. The authority citation for part 4044 continues to read as follows:

Authority: 29 U.S.C. 1301(a), 1302(b)(3), 1341, 1344, 1362.

■ 5. In appendix B to part 4044, a new entry, as set forth below, is added to the table. (The introductory text of the table is omitted.)

Appendix B to Part 4044—Interest Rates Used to Value Benefits

* * * * *

For valuation dates occurring in the month—	The values of i_t are:					
	i_t	for t =	i_t	for t =	i_t	for t =
January 2004	.0420	1–20	.0500	>20	N/A	N/A

Issued in Washington, DC, on this 10th day of December, 2003.

Joseph H. Grant,

Deputy Executive Director and Chief Operating Officer, Pension Benefit Guaranty Corporation.

[FR Doc. 03–30947 Filed 12–12–03; 8:45 am]

BILLING CODE 7708–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[CGD08–03–030]

RIN 1625–AA09

Drawbridge Operation Regulations; Inner Harbor Navigation Canal, New Orleans, LA

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is changing the regulation governing the operation of the SR 46 (St. Claude Avenue) bridge, mile 0.5 (Gulf Intracoastal Water Way (GIWW) mile 6.2 East of Harvey Lock), the SR 39 (Judge Seeber/Claiborne Avenue) bridge, mile 0.9 (GIWW mile 6.7 East of Harvey Lock), and the Florida Avenue bridge, mile 1.7 (GIWW mile 7.5 East of Harvey Lock), across the Inner Harbor Navigation Canal in New Orleans, Orleans Parish, Louisiana. New traffic studies indicate that rush hour vehicular traffic has increased congestion across all three bridges. This rule increases the time that the bridges will be closed to vessel traffic by 15 minutes in the morning and afternoon and begin the afternoon closure one hour and 15 minutes earlier.

DATES: This rule is effective January 14, 2004.

ADDRESSES: Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket CGD8–03–030 and are available for inspection or copying at 501 Magazine Street, Room 1313, New Orleans, Louisiana 70130–3396 between 7 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The Commander, Eighth Coast Guard District, Bridge Administration Branch maintains the public docket for this rulemaking.

FOR FURTHER INFORMATION CONTACT: Ms. Kay Wade, Bridge Administration Branch, 504–589–2965.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On August 18, 2003, a notice of proposed rulemaking (NPRM) entitled Drawbridge Operation Regulations; Inner Harbor Navigation Canal, New Orleans, LA was published in the **Federal Register** (68 FR 49393). We received no letters commenting on the proposed rule. No public meeting was requested, and none was held.

Background and Purpose

The Coast Guard, at the request of a state representative and the owner of two of the three bridges crossing the Inner Harbor Navigation Canal in New Orleans, Orleans Parish, Louisiana, issued a Notice of Proposed Rule Making in the **Federal Register** on August 18, 2003 to change the times of the existing drawbridge operation regulation. Currently, all three bridges remain closed to navigation and open to vehicular traffic during the morning and afternoon commuter rush hours. The SR 46 (St. Claude Avenue) bascule span highway bridge at mile 0.5, the SR 39 (Judge Seeber/Claiborne Avenue) vertical lift span highway bridge at mile 0.9, and the Florida Avenue bascule span highway and railroad bridge at mile 1.7 are governed by 33 CFR 117.458, which states that the draw of these three bridges shall open on signal; except that, from 6:45 a.m. to 8:30 a.m. and from 4:45 p.m. to 6:45 p.m., Monday through Friday, except federal holidays, the draws need not open for the passage of vessels. The draws shall open at any time for a vessel in distress.

In an effort to reassess and accurately determine the needs of the commuters who cross these three bridges in the morning and afternoon en route to and from work in the Lower Ninth Ward area of New Orleans and in St. Bernard Parish, the Port of New Orleans hired

Urban Systems to perform a new traffic study. The March 2003 traffic study revealed the average peak periods for vehicular traffic crossing the SR 46 (St. Claude Avenue) and the Florida Avenue bridges are from 6:30 a.m. to 8:30 a.m. and from 3:30 p.m. to 5:45 p.m. This marks a shift from the peak traffic times currently reflected in the regulation that was based on a traffic study completed in October 1999.

Traffic counts for the SR 39 (Judge Seeber/Claiborne Avenue) bridge were not conducted. However, the Claiborne Avenue bridge is located in close proximity to the other two bridges and is expected to exhibit similar traffic patterns. The Claiborne Avenue bridge provides a vertical clearance of 40 feet above Mean High Water in the closed to navigation position and is therefore expected to have less impact on vessel traffic than the other two bridges.

A review of the bridge tender logs revealed that adjusting the marine traffic closures to coordinate with vehicular rush hour traffic should not significantly impact the flow of marine traffic.

Allowing the bridges to remain closed to marine traffic during times that coincide with the heaviest vehicular traffic counts would help to relieve the morning and afternoon rush hour commuter traffic congestion across the bridges while having minimal impact on vessel traffic.

Discussion of Comments and Changes

There were no comments received regarding the proposed change; therefore, no changes to the proposal were made and no changes have been incorporated into the Final Rule.

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Homeland Security (DHS).

We expect the economic impact of this rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary.

This rule adds 15 minutes to the existing drawbridge operating regulation and shifts the afternoon closure time up by one hour and 15 minutes. A review of the bridge logs for these three bridges indicates that minimal requests to open the bridges during these periods have been made in the past, and there is no indication that there will be a future increase.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process. No requests for assistance were received pursuant to this rule change.

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not affect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that might disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

We have analyzed this rule under Commandant Instruction M16475.lD, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (32)(e) of the Instruction, from further environmental documentation. Paragraph (32)(e) excludes the promulgation of operating regulations or procedures for drawbridges from the environmental documentation requirements of NEPA. Since this rule will alter the normal operating conditions of the drawbridges, it falls within this exclusion. A final "Environmental Analysis Check List" and a final "Categorical Exclusion Determination" are available in the docket where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

■ 1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; Department of Homeland Security Delegation No. 0170.1; 33 CFR 1.05–1(g); section 117.255 also issued under the authority of P.L. 102–587, 106 Stat. 5039.

■ 2. In § 117.458, paragraph (a) is revised to read as follows:

§ 117.458 Inner Harbor Navigation Canal, New Orleans.

(a) The draws of the SR 46 (St. Claude Avenue) bridge, mile 0.5 (GIWW mile 6.2 East of Harvey Lock), the SR 39 (Judge Seeber/Claiborne Avenue) bridge, mile 0.9 (GIWW mile 6.7 East of Harvey Lock), and the Florida Avenue bridge, mile 1.7 (GIWW mile 7.5 East of Harvey Lock), shall open on signal; except that, from 6:30 a.m. to 8:30 a.m. and from 3:30 p.m. to 5:45 p.m., Monday through Friday, except federal holidays, the draws need not open for the passage of vessels. The draws shall open at any time for a vessel in distress.

* * * * *

Dated: December 5, 2003.

R.F. Duncan,

Rear Admiral, U.S. Coast Guard, Commander, Eighth Coast Guard District.

[FR Doc. 03–30905 Filed 12–12–03; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[CGD05–03–199]

RIN 1625–AA00

Safety Zone; Lockwood Folly Inlet, NC

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone in the Atlantic Intra-Coastal Waterway (AICW) in the vicinity of Lockwood Folly Inlet, NC. This action is necessary to ensure public safety. This rule prohibits vessels with a draft greater than 3 feet from entering the safety zone unless specifically exempt under the provisions in this rule or granted specific permission from the Coast Guard Captain of the Port Wilmington.

DATES: This rule is effective from 3:30 p.m. on December 3, 2003 through 3:30 p.m. May 8, 2004.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket CGD05–03–199 and are available for inspection or copying at Coast Guard Marine Safety Office Wilmington, 721 Medical Center Drive, Wilmington, NC 28401 between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: LCDR Chuck Roskam, Chief, Port Operations, USCG Marine Safety Office Wilmington, telephone number (910) 772–2207.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B) and 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for not publishing an NPRM and for making this rule effective less than 30 days after publication in the **Federal Register**. Publishing an NPRM and delaying the effective date of this rule would be contrary to the public interest. Immediate action is necessary to minimize potential danger to the public and is required to ensure the safety of persons and vessels operating on the AICW in this area during the period specified.

The shoaling in the AICW at Lockwood Folly Inlet poses a unique and serious risk to any vessel transiting this area with a draft greater than 3 feet. Any grounding of a vessel poses a significant risk of injury to people onboard these vessels. There have been and continue to be groundings in this location and prompt action is required to prevent these incidents from continuing.

Background and Purpose

An area of severe shoaling has been identified in the Atlantic Intracoastal Waterway in the vicinity of Lockwood Folly Inlet and a survey of this area indicates a water depth of 3.5 feet at mean low water. The Captain of the Port is restricting entry of vessels with a draft of greater than 3 feet from transiting this safety zone until dredging has been completed.

Discussion of Rule

The safety zone will cover the AICW extending from Cape Fear River-Little River Buoy 47 (LLNR 40225) to Cape Fear River-Little River Buoy 48 (LLNR 40235). This safety zone will be in effect to ensure the safety of persons and vessels operating on the AICW in this area. Entry into this safety zone by vessels with a draft greater than 3 feet is prohibited at or near low tide unless authorized by the Captain of the Port or his or her designated representative.

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Homeland Security (DHS). The operational restrictions of the safety zone are tailored to provide the maximum safety of mariners and vessels. Further, this Safety Zone is temporary in nature and vessels and persons can appeal to the Captain of the Port for a waiver of the requirements of the Safety Zone. Any hardships experienced by persons or vessels are outweighed by the interest in protecting the public, vessels, and vessel crews.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and

governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule will affect the following entities, some of which may be small entities: the owners or operators of vessels intending to transit or anchor in a portion of the AICW from 3:30 p.m. on December 03, 2003 through 3:30 p.m. May 8, 2004. The Coast Guard expects minimal economic impact on a substantial number of small entities due to this rule because little commercial traffic transits this area of the AICW and vessels with compelling interests that outweigh the port's safety needs may be granted waivers from the requirements of the Safety Zone.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process. Small Entities requesting guidance or exemption from this rule may contact LCDR Chuck Roskam, Chief, Port Operations, USCG Marine Safety Office Wilmington at (910) 772–2207.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule will not result in such expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not affect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

We have analyzed this rule under Commandant Instruction M16475.lD, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA)(42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction, from further environmental documentation. A final "Environmental Analysis Check List" and a final "Categorical Exclusion Determination" are available in the docket where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 165

Harbors, Marine Safety, Navigation (water), Reporting and record keeping requirements, Security measures, Waterways.

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701; 50 U.S.C. 191, 195; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1

■ 2. Add temporary § 165.T05–199 to read as follows:

§ 165.T05–199 Safety Zone: Atlantic Intra-Coastal Waterway, Lockwood Folly Inlet, NC.

(a) *Location.* The following area is a safety zone: the Atlantic Intra-Coastal Waterway from Cape Fear River-Little River Buoy 47 (LLNR 40225) west to Cape Fear River-Little River Buoy 48 (LLNR 40235). These points are found on Nautical Chart 11534-Intracoastal Waterway, Myrtle Grove Sound and Cape Fear River to Casino Creek.

(b) *Definition.* As used in this section—

Captain of the Port means the Commanding Officer of the Marine Safety Office Wilmington, North Carolina, or any Coast Guard Commissioned, Warrant, or Petty Officer who has been authorized by the Captain of the Port to act on his or her behalf.

(c) *Regulations.* (1) In accordance with the general regulations in § 165.23 of this part, entry of vessels with a draft greater than 3 feet into the safety zone in paragraph (a) of this section is prohibited unless authorized by the Captain of the Port. Movement of vessels with a draft greater than 3 feet within the safety zone will be prohibited except as specifically authorized by the Captain of the Port. The general requirements of § 165.23 also apply to this section.

(2) The Captain of the Port may waive any of the requirements of this section for any person, vessel or class of vessel upon finding that circumstances are such that application of the safety zone is unnecessary for port safety. The Captain of the Port can be contacted at telephone number (800) 325–4965.

(3) The Captain of the Port will notify the public of changes in the status of this safety zone by Marine Safety Radio Broadcast on VHF Marine Band Radio, Channel 22 (157.1 MHz).

(d) *Effective period.* The safety zone in paragraph (a) of this section will be effective from 3:30 p.m., December 3, 2003 through May 8, 2004.

Dated: December 03, 2003.

Jane M. Hartley,

Captain, U.S. Coast Guard, Captain of the Port, Wilmington, NC.

[FR Doc. 03–30906 Filed 12–12–03; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[NV 050–0073A; FRL–7595–3]

Approval and Promulgation of Implementation Plans; State of Nevada; Designation of Areas for Air Quality Planning Purposes; Lake Tahoe Nevada Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: On October 27, 2003, the State of Nevada requested EPA to redesignate the Lake Tahoe Nevada "not classified" carbon monoxide (CO) nonattainment area to attainment for the CO National Ambient Air Quality Standards (NAAQS) and submitted a CO maintenance plan for the area as a revision to the Nevada State Implementation Plan (SIP). In this action, EPA is approving the maintenance plan and redesignating the Lake Tahoe Nevada nonattainment area to attainment. EPA is also determining that the maintenance plan is adequate for transportation conformity purposes under the limited maintenance plan policy for CO.

DATES: This direct final rule is effective February 13, 2004, without further notice, unless we receive adverse comments by January 14, 2004. Elsewhere in this **Federal Register**, we are proposing approval and soliciting written comment on this action. If adverse written comments are received, we will withdraw the direct final rule and address the comments received in a new final rule; otherwise no further rulemaking will occur on this approval action.

ADDRESSES: Please address your comments to Eleanor Kaplan, Air Planning Office (AIR–2), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901 or e-mail to *kaplan.eleanor@epa.gov*, or submit comments at *http://www.regulations.gov*. A copy of the State's submittal is available for public inspection during normal business hours at EPA's Region IX office. Please contact Eleanor Kaplan if you wish to schedule a visit. A copy of the submittal is also available at the Nevada Department of Conservation and Natural Resources, Division of Environmental Protection, 333 West Nye Lane, Carson City, Nevada 89706.

FOR FURTHER INFORMATION CONTACT: Eleanor Kaplan, EPA Region IX at (415) 947–4147 or *kaplan.eleanor@epa.gov*

SUPPLEMENTARY INFORMATION: Throughout this document, "we," "us," and "our" refer to EPA. This supplementary information is organized as follows.

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I. What Is the Purpose of This Action?

EPA is redesignating the Lake Tahoe, Nevada "not classified" CO nonattainment area from nonattainment to attainment and approving the maintenance plan that will keep the area in attainment for the next ten years.

We originally designated the Lake Tahoe Basin as nonattainment for CO under the provisions of the Clean Air Act (CAA or "Act"), as amended in 1977. See 43 FR 8962 (March 3, 1978). The Lake Tahoe Basin nonattainment area ("Lake Tahoe Nevada area") is defined by State hydrographic area 90, which includes the southwestern corner of Washoe County and the western-most portions of Carson City and Douglas counties.

On November 15, 1990, the Clean Air Act Amendments of 1990 were enacted.[1] Under section 107(d)(1)(C) of the Act, as amended in 1990, the Lake Tahoe Nevada area was designated nonattainment for CO by operation of law because the area had been designated as nonattainment before November 15, 1990. Later, we categorized the Lake Tahoe Nevada area as an unclassified, or "not classified", CO nonattainment area because there were no violations of the CO standard during the two calendar years immediately preceding enactment of the 1990 Clean Air Act Amendments. See 56 FR 56694, at 56798 (November 6, 1991), codified at 40 CFR 81.329.

Nonattainment areas can be redesignated to attainment after the area has measured air quality data showing it has attained the NAAQS and when certain planning requirements are met. Section 107(d)(3)(E) of the CAA provides the requirements for redesignation. These are:

(i) EPA determines that the area has attained the NAAQS;

(ii) EPA has fully approved the applicable implementation plan for the area under section 110(k) of the Act;

(iii) EPA determines that the improvement in air quality is due to

[1] Public Law 101–549, 104 Stat. 2399, codified at 42 U.S.C. 7401–7671q.

permanent and enforceable reductions in emissions resulting from implementation of the applicable implementation plan, applicable Federal air pollution control regulations, and other permanent and enforceable reductions;

(iv) EPA has fully approved a maintenance plan for the area as meeting the requirements of CAA section 175A; and

(v) The State containing the area has met all requirements applicable to the area under section 110 and part D of the CAA.

Before an area can be redesignated to attainment, all applicable State Implementation Plan (SIP) elements must be fully approved.

II. What Is the State's Process To Submit These Materials to EPA?

The CAA requires States to follow certain procedural requirements for submitting SIP revisions to EPA. Section 110(a)(2) of the CAA requires that each SIP revision be adopted by the State after reasonable notice and public hearing.

The Nevada Division of Environmental Protection (NDEP), which is the designated air planning agency for the Lake Tahoe Nevada area, developed the CO maintenance plan. On September 18, 2003, the State Environmental Commission, which acts on regulatory initiatives proposed by NDEP, held a public hearing "video conference" that was accessible from NDEP offices in Reno and Las Vegas. On September 18, 2003, the State Environmental Commission adopted the Carbon Monoxide Redesignation Request and Limited Maintenance Plan for the Nevada Side of the Lake Tahoe Basin. On October 27, 2003, NDEP submitted the maintenance plan and redesignation request to EPA. EPA has determined that the State met the requirements for reasonable notice and public hearing under section 110(a)(2) of the CAA.

III. EPA's Evaluation of the Redesignation Request and Maintenance Plan

EPA has reviewed the State's maintenance plan and redesignation request and is approving the maintenance plan as a revision to the Nevada SIP and is approving the request to redesignate the area to attainment consistent with the requirements of CAA section 107(d)(3)(E). The following is a summary of EPA's evaluation and a description of how each requirement is met.

A. The Area Must Have Attained the Carbon Monoxide NAAQS

Section 107(d)(3)(E)(i) requires that EPA determine that the area has attained the applicable NAAQS as a prerequisite to redesignating an area to attainment. The primary NAAQS for CO is 9 parts per million (ppm)(10 milligrams per cubic meter) for an 8 hour average concentration not to be exceeded more than once per year as determined at each monitoring site in the area. See 40 CFR 50.8 and 40 CFR part 50, appendix C. EPA considers an area as attaining the CO NAAQS when all of the CO monitors in the area have an exceedance rate of 1.0 or less each calendar year over a two-calendar year period. EPA's interpretation of this requirement is that an area seeking redesignation to attainment must show attainment of the CO NAAQS for at least two consecutive years (see September 4, 1992, John Calcagni policy memorandum "Procedures for Processing Requests to Redesignate Areas to Attainment" ("Calcagni Memorandum")). In addition, the area must continue to show attainment through the date that EPA promulgates redesignation to attainment in the **Federal Register**.

Nevada's redesignation request for the Lake Tahoe Nevada area is based on valid ambient air quality data. Ambient air quality monitoring data for calendar years 2001 through 2002 show a measured exceedance rate of the CO NAAQS of 1.0 or less per year at all monitoring sites. These data were collected and analyzed as required by EPA (*see* 40 CFR 50.8 and 40 CFR part 50, appendix C) and have been stored in EPA's Air Quality System (AQS) database, formerly referred to as the Aerometric Information Retrieval System (AIRS). These data have met minimum quality assurance requirements and have been certified by the State as being valid before being included in AQS.

Ambient air quality monitoring data at the area's two monitors for past years, at Stateline for the years 2001 through 2002 and at Incline Village for the years 2000 and 2001, are shown in Tables 1 and 2 below. Table 1 shows no violations of the 8 hour CO NAAQS at the Stateline site for the years 2001 and 2002 and a design value of 6.1 ppm. Table 2 shows no violations of the CO NAAQS at the Incline Village monitor for the years 2000 and 2001 and a design value of 1.6 ppm. Additionally, based on data retrieved from AQS, there have been no exceedances of the CO standard from 2002 to the present.

TABLE 1.—CO DESIGN VALUE FOR THE LAKE TAHOE NEVADA AREA FOR 2001 AND 2002 FROM DATA COLLECTED AT STATELINE MONITOR AT HARVEY'S RESORT HOTEL

Year	1st High	2nd High	Federal exceedances
2001	3.7	3.6	0
2002	8.8	6.1	0

TABLE 2.—CO DESIGN VALUE FOR THE LAKE TAHOE NEVADA AREA FOR 2000 AND 2001 FROM DATA COLLECTED AT INCLINE VILLAGE

Year	1st High	2nd High	Federal exceedances
2000	1.1	1.0	0
2001	1.8	1.6	0

Because the area has complete quality assured data showing no exceedance of the standard over at least two consecutive years (2001 and 2002), and has not violated the standard since that time, the area has met the first statutory criterion for designating a nonattainment area to attainment.

B. The Area Must Have Met All Applicable Requirements Under Section 110 and Part D

Section 107(d)(3)(E)(v) requires that an area must meet all applicable requirements under section 110 and part D of the CAA. EPA interprets this requirement to mean the State must meet all requirements that applied to the area prior to, or at the time of, the submission of a complete redesignation request.

1. Section 110 Requirements

Section 110(a)(2) of the Act contains the general requirements for State Implementation Plans (SIPs) (*i.e.*, enforceable emission limits, ambient monitoring, permitting of new sources, adequate funding, etc.) Over the years we have approved Nevada's SIP as meeting the basic requirements of CAA section 110(a)(2).

2. Part D Requirements

Part D (of title I of the Act) contains general provisions that apply to all nonattainment plans and certain sections that apply to specific pollutants. Before the Lake Tahoe Nevada "not classified" CO nonattainment area may be redesignated to attainment, the State must have fulfilled the applicable requirements of part D of the Act.

Under part D, an area's classification indicates the requirements to which it is subject. Subpart 1 to part D sets forth the basic nonattainment requirements applicable to all nonattainment areas, classified as well as not classified. However, the Act did not specify how the requirements of subpart 1 of part D (specifically, those under section 172(c) of the Act) apply to "not classified" nonattainment areas for CO. EPA has interpreted the requirements for those areas in the General Preamble to Title I of the Clean Air Act Amendments of 1990. *See* 57 FR 13498 at 13535 (April 16, 1992). According to this guidance, requirements for Lake Tahoe Nevada as a "not classified" nonattainment area for CO include the preparation and submittal of an emissions inventory as a SIP revision, adoption of New Source Review (NSR) programs meeting the requirements of section 173 as amended, and programs meeting the applicable monitoring requirements of section 110. The General Preamble also states that certain reasonably available control measures (RACM) beyond what may already be required in the SIP, reasonable further progress (RFP) and attainment demonstration requirements are not applicable to "not classified" CO nonattainment areas. *See* 57 FR 13498 at 13535 (April 16, 1992). Also, we interpret subpart 3 of part D, which contains specific requirements for moderate and above CO nonattainment areas, to be inapplicable to "not classified" CO nonattainment areas. *See* 57 FR 13498 at 13535 (April 16, 1992).

The remaining applicable requirements of section 172 are discussed below.

(a) Section 172(c)(3)—Emissions Inventory

Section 172(c)(3) of the CAA requires a comprehensive, accurate, current inventory of all actual emissions from all sources. Nevada included a CO emission inventory for the Lake Tahoe Nevada area in the submitted maintenance plan for calendar year 2001. This year corresponds to the year used in calculating the design value contained in the SIP and represents emissions that contributed to the design value in the plan. The design value shows that the area attains the CO standard. Therefore, the emissions are at a level that would maintain the standard.

The emissions inventory prepared by NDEP for the redesignation request and maintenance plan estimates actual emissions during the peak CO season (specifically, the month of January) from mobile sources, including on-road and non-road vehicles. Stationary and area sources were not included in the inventory but are considered *de minimis* considering the lack of industrial activity in the area and the small residential population. Consistent with EPA guidance, NDEP used EPA's MOBILE6 on-road motor vehicle emissions factor model and the most recent planning assumptions for the transportation network, including vehicle miles traveled and vehicle speed, to estimate emissions from on-road sources. NDEP used EPA's emissions model, NONROAD, for nonroad sources. NDEP has provided sufficient documentation for these emissions estimates in appendices A and B of the redesignation request and maintenance plan.

We believe the inventory is comprehensive, accurate and current and meets the requirements of section 172(c)(3) of the CAA.

(b) Section 172(c)(5)—New Source Review (NSR)

The Federal requirements for new source review (NSR) in nonattainment areas are contained in section 172(c)(5). Consistent with EPA guidance,[3] EPA is not requiring as a prerequisite to redesignation to attainment EPA's full approval of a part D NSR program by Nevada for the Lake Tahoe Nevada area. Under this guidance, nonattainment areas may be redesignated to attainment notwithstanding the lack of a fully-approved part D NSR program, so long as the program is not relied upon for maintenance. There are no major stationary sources in the Lake Tahoe Nevada area nor is the predominant basis for the economy (recreation and tourism) expected to change over the foreseeable future. Therefore, the area will not need a part D NSR program for CO sources to maintain the CO NAAQS.

EPA guidance indicates that the requirements of a part D NSR program will be replaced by the prevention of significant deterioration (PSD) program when an area has reached attainment and been redesignated, provided there are assurances that PSD will become fully effective immediately upon redesignation. As explained below, the Federal PSD regulation will become fully effective in the Lake Tahoe Nevada area immediately upon redesignation.

In the Lake Tahoe Nevada area, NDEP administers the stationary source permitting program in the Carson City and Douglas counties portion of the area, and the Washoe County Health Department (WCDHD) administers the stationary source permitting program in the Washoe County portion of the area. We delegated PSD permitting authority to NDEP on May 27, 1983 and to WCDHD on April 5, 1985. NDEP and WCDHD administered the Federal PSD program in their respective jurisdictions under delegation agreements with EPA until March 3, 2003. On that date, EPA withdrew delegations of authority to issue Federal PSD permits from these two agencies as well as many other State and local air pollution control agencies in response to significant changes in the Federal PSD regulations published on December 31, 2002 (67 FR 80186) and the necessity for them to adopt conforming revisions in state and local laws and regulations. See 68 FR 19371 (April 21, 2003). However, EPA has taken action recently to implement a partial delegation of authority for PSD back to NDEP (*see* 68 FR 52837, September 8, 2003) and anticipates doing the same for WCDHD in the near future. Because the Lake Tahoe Nevada area is being redesignated to attainment by this action, the Federal PSD regulations, as administered by EPA and/or NDEP and WCDHD, will be applicable to any new or modified major sources of CO in the area.

(c) Section 172(c)(7)—Compliance With CAA Section 110(a)(2): Air Quality Monitoring Requirements

EPA interprets section 172(c)(7) to require "not classified" CO nonattainment areas to meet the "applicable" air quality monitoring requirements of section 110(a)(2) of the CAA. *See* 57 FR 14498 at 13535 (April 16, 1992).

The State of Nevada currently operates one SLAMS monitor for the 8 hour CO NAAQS at the southern edge of Lake Tahoe at Stateline, Nevada. That monitor was located at the Horizon Casino Resort in Stateline for the years 1989 through June 1999 when it was moved to a site at Harvey's Resort Hotel also in Stateline. The State also operated a monitor at Incline Village but that site was shut down in March, 2002 because the values it recorded were very low.

The State of Nevada operates a monitoring network (including the CO monitoring station at Stateline but also including numerous other monitoring stations located outside the Lake Tahoe Nevada area) in accordance with 40 CFR part 58. The State has committed to continue to maintain that network.

[2] As noted above, the Lake Tahoe Nevada area consists of parts of three counties: Carson City, Douglas and Washoe Counties. With respect to air pollution control, Carson City and Douglas Counties are under NDEP's jurisdiction; Washoe County is under the jurisdiction of the Washoe County District Health Department (WCDHD). The WCDHD, in a letter to NDEP dated July 31, 2003, has asked NDEP to integrate their request for redesignation with NDEP's.

[3] Memorandum from Mary D. Nichols entitled "Part D New Source Review (Part D NSR) Requirements for Areas Requesting Redesignation to Attainment," October 14, 1994.

The requirements of section 172(c)(7) are met.

C. The Area Must Have a Fully Approved SIP Under Section 110(k) of the CAA

Section 107(d)(3)(E)(ii) requires that EPA determine that the area has a fully approved SIP under section 110(k) of the Act. As described below, we have concluded that the Lake Tahoe Nevada area has a fully approved SIP.

On April 30, 1971 (36 FR 8186), pursuant to section 109 of the Clean Air Act, as amended in 1970, EPA promulgated NAAQS for various pollutants, including CO. Within 9 months thereafter, each State was required by section 110 of the Act to adopt and submit to EPA a plan which provides for the implementation, maintenance, and enforcement of the NAAQS within each State. Nevada's original SIP was submitted on January 28, 1972. EPA approved this original SIP submittal later that year. *See* 37 FR 10842 (May 31, 1972).

Generally, SIPs were to provide for attainment of the NAAQS within 3 years after EPA approval of the plan. However, many areas of the country did not attain the NAAQS within the statutory period. In response, Congress amended the Act in 1977 to establish a new approach, based on area designations, for attaining the NAAQS, and on March 3, 1978 (43 FR 8962), under paragraph 107(d)(2) of the Act, EPA promulgated attainment status designations for all States. EPA designated the Lake Tahoe Nevada area nonattainment for CO at that time.

The Act, as amended in 1977, required States to revise their SIPs by January 1979 for all designated nonattainment areas. In response, on July 24, 1979, the State of Nevada submitted the Lake Tahoe Basin Nonattainment Area Plan ("1979 NAP") to EPA as a revision to the SIP. The 1979 NAP was intended to meet the requirements of part D (plan requirements for nonattainment areas) of the Act, as amended in 1977. The 1979 NAP identified a number of measures for adoption, including a motor vehicle inspection and maintenance program, traffic flow improvements, driver advisories, and bike and pedestrian facilities.

In 1980, EPA proposed to fully approve some elements of the 1979 NAP into the Nevada SIP, such as the emissions inventories and the demonstration of reasonable further progress (RFP), but to conditionally approve other elements of the plan, such as the modeling, emission reduction estimates, attainment provision, and legally adopted measures. See 45 FR 59591 (September 10, 1980). In 1982, EPA took final action consistent with the 1980 proposal. See 47 FR 27065 (June 23, 1982). EPA's 1982 action is codified at 40 CFR 52.1470(c)(16)(vii).

On December 9, 1982, December 16, 1982, January 28, 1983, and May 5, 1983, NDEP submitted various supplemental materials intended to satisfy the conditions placed on the approval of the 1979 NAP. Based on those four submittals, EPA proposed to revoke the earlier conditions and to approve these four submittals as revisions to the Nevada SIP. See 48 FR 52093 (November 16, 1983). In 1984, we took final action consistent with this proposal. *See* 49 FR 6897 (February 24, 1984). EPA's 1984 action is codified at 40 CFR 52.1470(c)(27); 40 CFR 52.1470(c)(28), 40 CFR 52.1470(c)(29), and 40 CFR 52.1470(c)(30).

Therefore, based on the approval into the SIP of provisions under the Act as amended prior to 1990, our approval described below of a maintenance plan submitted under the Act as amended in 1990, and our approval of the State's commitment to maintain an adequate monitoring network, EPA has determined that, at the date of this action, Nevada has a fully approved SIP under section 110(k) for the Lake Tahoe Nevada nonattainment area.

D. The Area Must Show the Improvement in Air Quality Is Due to Permanent and Enforceable Emissions Reductions

Section 107(d)(3)(E)(iii) requires that EPA determine that the improvement in air quality is due to permanent and enforceable reductions in emissions resulting from implementation of the applicable implementation plan and applicable Federal air pollution control regulations and other permanent and enforceable reductions. As described below, we have concluded that the improvement in CO levels in the Lake Tahoe Nevada area is due to permanent and enforceable reductions in CO emissions.

The improvement in air quality in the Lake Tahoe Nevada area is due to implementation of measures contained in the 1979 NAP and to implementation of the Federal Motor Vehicle Control Program. The two control measures that comprised the attainment strategy for the Lake Tahoe Nevada area in the 1979 NAP included traffic flow improvements and improved pedestrian facilities, and in removing the conditions placed on our 1982 approval of the 1979 NAP, we determined that these two measures had been fully implemented. *See* the related proposed rule, 48 FR 52093 (November 16, 1983) and final rule, 49 FR 6897 (February 24, 1984).

The Federal Motor Vehicle Control Program (40 CFR part 86) has contributed to improved air quality through the gradual, continued turnover and replacement of older vehicle models with newer models manufactured to meet increasingly stringent Federal tailpipe emissions standards. In addition, the motor vehicle emission control program enacted by California benefits Nevada as well since the two states converge in the Lake Tahoe Basin. With these measures and programs, we have concluded that actual enforceable emission reductions are responsible for the air quality improvement and that the CO concentrations in the base year (used to document attainment) are not artificially low due to local economic downturn.

E. The Area Must Have a Fully Approved Maintenance Plan Under CAA Section 175A

Section 107(d)(3)(E)(iv) requires that EPA fully approve a maintenance plan for the area as meeting the requirements of section 175A of the Act as a prerequisite to redesignation. As described below, we are approving the maintenance plan for the Lake Tahoe Nevada area in this action.

Section 175A of the CAA sets forth the elements of a maintenance plan for areas seeking redesignation from nonattainment to attainment. We have interpreted this section of the Act to require, in general, the following core provisions in maintenance plans: attainment inventory, maintenance demonstration, monitoring network, verification of continued attainment, and contingency plan. See Calcagni Memorandum, September 4, 1992. The purpose of a maintenance plan is to provide for the maintenance of the applicable NAAQS for at least 10 years after redesignation.

For areas such as Lake Tahoe Nevada that are utilizing EPA's limited maintenance plan approach, as detailed in the EPA guidance memorandum, "Limited Maintenance Plan Option for Nonclassifiable CO Nonattainment Areas" from Joseph Paisie, Group Leader, Integrated Policy and Strategies Group, Office of Air Quality and Planning Standards (OAQPS), dated October 6, 1995 ("Paisie Memorandum"), the maintenance demonstration is considered to be satisfied for "not classified" areas if the monitoring data show the design value is at or below 7.65 ppm, or 85 percent of the level of the 8-hour CO NAAQS.

The design value must be based on the 8 consecutive quarters of data. For such areas, there is no requirement to project emissions of air quality over the maintenance period. EPA believes if the area begins the maintenance period at, or below, 85% of the CO 8 hour NAAQS, the applicability of PSD requirements, the control measures already in the SIP, and Federal measures, should provide adequate assurance of maintenance over the initial 10-year maintenance period. In addition, the design value for the area must continue to be at or below 7.65 ppm until the time of final EPA action on the redesignation. The method for calculating the design value is presented in the June 18, 1990, EPA guidance memorandum entitled "Ozone and Carbon Monoxide Design Value Calculations", from William G. Laxton, Director of the OAQPS Technical Support Division, to Regional Air Directors.

Eight years after the redesignation, the State must submit a revised maintenance plan which demonstrates continued maintenance of the CO NAAQS for an additional 10 years following the initial ten-year maintenance period. To address the possibility of future NAAQS violations, the maintenance plan must contain contingency measures, with a schedule for implementation adequate to assure prompt correction of any air quality problems. The Lake Tahoe Nevada redesignation request and maintenance plan addressed these core provisions, and our evaluation of these provisions follows:

1. Emissions Inventory—Attainment Year

The plan must contain an attainment year emissions inventory to identify a level of emissions in the area which is sufficient to attain the CO NAAQS. This inventory is to be consistent with EPA's most recent guidance on emissions inventories for nonattainment areas available at the time and should represent emissions during the time period associated with the monitoring data showing attainment.

As discussed above in connection with section 172(c)(3), the Lake Tahoe Nevada redesignation request and maintenance plan contains an accurate, current, and comprehensive emission inventory for calendar year 2001.

2. Demonstration of Maintenance

As described in the Paisie Memorandum, the maintenance demonstration requirement is considered to be satisfied for "not classified" CO areas if the design value for the area is equal to, or less than 7.65 ppm. The CO design value for the Lake Tahoe Nevada is 6.1 ppm.

As assurance of maintenance, the NDEP, in an addendum to their SIP submittal letter dated October 27, 2003 has provided projections of CO emissions in tons per day (tpd) from on-road mobile sources for the years 2006, 2011 and 2016 during the peak annual CO season for each forecast year, compared to the baseline year of 2001, as shown in the following table.

TABLE 3.—PROJECTED CO EMISSIONS FROM ON-ROAD MOBILE SOURCES COMPARED TO 2001 BASELINE INVENTORY

[tpd]

Baseline year 2001	Projected 2006	Projected 2011	Projected 2016
17.72	13.00	11.41	10.25

The projections were calculated using EPA model MOBILE6.0, and separate emission factors for the two roadway facility types present in the Lake Tahoe Basin, arterial collector roads and local roads, which is the same approach that was used in calculating the 2001 base year inventory. The emission factors were then multiplied by future VMT estimates for both the arterial/collector and local roadway facilities. Based on these projections, CO emissions from on-road mobile sources show a marked decline from 2001 to 2016 and consequently we find that the NDEP has presented adequate evidence that the Lake Tahoe Nevada area will continue to maintain the CO NAAQS during the maintenance period.

3. Monitoring Network and Verification of Continued Attainment

Continued ambient monitoring of an area is required over the maintenance period. In the maintenance plan (see page 15 of the maintenance plan), NDEP indicates its intention to continue to operate an air quality monitoring network consistent with 40 CFR 58 and to maintain operation of the current CO monitor at Stateline, located at Harvey's Resort Hotel on Highway 50. NDEP also intends to continue to download monitoring data to EPA's AQS database.

4. Contingency Plan

Section 175A(d) of the Act requires that a maintenance plan include contingency provisions, as necessary, to promptly correct any violation of the NAAQS that occurs after redesignation of the area. Under section 175A(d), contingency measures do not have to be fully adopted at the time of redesignation. However, the contingency plan is considered to be an enforceable part of the SIP and should ensure that the contingency measures are adopted expeditiously once they are triggered by a specified event.

The redesignation request and maintenance plan includes a contingency plan. The contingency plan implementation process for the Lake Tahoe Nevada area takes into consideration the fact that while jurisdiction over the Lake Tahoe Basin is divided between California and Nevada, the air quality on one side of the Lake tends to parallel the air quality on the other side. However, the implementation of the control measures for each side of the Basin is the responsibility of either California or Nevada, whichever is relevant.

The Lake Tahoe Nevada contingency plan therefore has several phases. First, the contingency plan provides for a triggering mechanism through which NDEP will determine when a pre-violation action level is reached. Second, the contingency plan spells out the procedures that will be followed if the pre-violation action level is reached, including recommendations for action, and third, the contingency plan contains commitments from NDEP and the local jurisdictions in the Lake Tahoe Nevada [4] area to implement expeditiously any and all measures necessary to achieve

[4] The following local jurisdictions have passed resolutions promising to adhere to the provisions of the contingency plan in the 2003 Lake Tahoe Nevada Limited Maintenance Plan: the Tahoe Metropolitan Planning Organization, the Washoe County District Health Department and the State of Nevada Department of Transportation, which is a participant in the Interagency Consultation Procedures established by the Tahoe Metropolitan Planning Organization. See appendix C of the maintenance plan.

the level of CO emissions reductions needed to maintain the CO NAAQS.

The NDEP has selected two verified 8-hour average concentrations in excess of 85% of the CO NAAQS at any one monitor site in the Lake Tahoe Basin in any CO season (November through February) as the pre-violation action level.

The procedures for addressing a pre-violation action level are bi-state and multi-jurisdictional in nature. If the pre-violation action level is reached at any one monitor in the entire Lake Tahoe Basin (*i.e.*, including monitors located in California as well as the monitor at Stateline, Nevada) during the CO season, NDEP will notify the Tahoe Regional Planning Area (TRPA) which will in turn activate the Conformity Task Force, which consists of all of the air quality planning agencies in the Basin, regional planning agencies, state Departments of Transportation (DOTs) and federal agencies.

Under the direction of this Task Force, NDEP will analyze historic and current monitoring data from the Stateline site and California's Sandy Way site in South Lake Tahoe and will conduct studies to determine whether the event is confined to a local hot spot or if it is an area wide phenomenon. The Task Force will review the most recent microscale modeling at known hot-spot locations and conduct field studies at hot spot locations most likely to have high CO concentrations. If it is determined that the event is confined to a local hot spot and local transportation system improvements at that location can be implemented promptly and will fully mitigate the problem, the Task Force will recommend that action to the appropriate jurisdiction. If the problem is area wide, the Task Force will examine, prioritize and recommend general control measures, such as cleaner burning fuel, employer-based trip reduction, non-work trip reduction, parking supply and pricing management, high occupancy vehicle system or transit improvements.

The implementation of the recommended contingency measures for the Lake Tahoe Nevada area will be the responsibility of the NDEP and/or the appropriate local jurisdiction. Both in the transmittal letter (dated October 27, 2003) and in the plan itself, the NDEP has committed to track CO concentrations and to adopt, submit as a SIP revision, and implement expeditiously any and all measures to achieve the level of CO emissions reductions needed to maintain the CO NAAQS in the event of an exceedance of the CO NAAQS. In addition, NDEP has committed to work with the involved jurisdictions to ensure that sufficient measures are adopted and implemented in a timely fashion to cure the violation.

EPA finds that the contingency plan provided in the maintenance plan is adequate to ensure prompt correction of a violation and thereby complies with section 175A(d) of the Act.

IV. Conformity

A. How Is Transportation Conformity Demonstrated to a Limited Maintenance Plan?

Section 176(c) of the Act defines transportation conformity as conformity to the SIP's purpose of eliminating or reducing the severity and number of violations of the NAAQS and achieving expeditious attainment of such standards. The Act further defines transportation conformity to mean that no Federal transportation activity will: (1) Cause or contribute to any new violation of any standard in any area, (2) increase the frequency or severity of any existing violation of any standard in any area, or (3) delay timely attainment of any standard or any required interim emission reductions or other milestones in any area.

The Federal Transportation Conformity Rule, 40 CFR part 93 subpart A, sets forth the criteria and procedures for demonstrating and assuring conformity of transportation plans, programs and projects which are developed, funded or approved by the U.S. Department of Transportation, and by metropolitan planning organizations or other recipients of funds under title 23 U.S.C. or the Federal Transit Laws (49 U.S.C. Chapter 53). The transportation conformity rule applies within all nonattainment and maintenance areas. As prescribed by the transportation conformity rule, once an area has an applicable state implementation plan with motor vehicle emissions budgets, the expected emissions from planned transportation activities must be consistent with ("conform to") such established budgets for that area.

In the case of the Lake Tahoe Nevada CO limited maintenance plan, however, the emissions budgets may be treated as essentially not constraining for the length of the initial maintenance period because there is no reason to expect that Lake Tahoe Nevada will experience so much growth in that period that a violation of the CO air quality standard would result. In other words, emissions from on-road transportation sources need not be capped for the maintenance period because it is unreasonable to believe that emissions from such sources would increase to a level that would threaten the air quality in this area for the duration of this maintenance period. Therefore, for the Lake Tahoe Nevada CO maintenance area all federally funded and approved transportation actions that require conformity determinations under the transportation conformity rule can already be considered to satisfy the regional emissions analysis and "budget test" requirements in 40 CFR 93.118 of the rule.

However, since Lake Tahoe Nevada is still a maintenance area, transportation conformity determinations are still required for transportation plans, programs and projects. Specifically, for such determinations, transportation plans, transportation improvement programs, and projects must still demonstrate that they are fiscally constrained (40 CFR part 108) and must meet the criteria for consultation and Transportation Control Measure (TCM) implementation in the conformity rule (40 CFR 93.112 and 40 CFR 93.113, respectively). In addition, projects in Lake Tahoe Nevada area will still be required to meet the criteria for CO hot spot analyses (40 CFR 93.116 and 40 CFR 93.123) that must incorporate the latest planning assumptions and models that are available.

B. What Is the Adequacy Status of This Limited Maintenance Plan?

On March 2, 1999, the United States Court of Appeals for the District of Columbia Circuit issued a decision on EPA's third set of transportation conformity revisions in response to a case brought by the Environmental Defense Fund. This decision stated that a conformity determination cannot be made using a submitted motor vehicle emission budget until EPA makes a positive determination that the submitted budget is adequate. In response to the court's decision, EPA issued guidance on our adequacy process on May 14, 1999.

In accordance with our guidance and the court decision, the Lake Tahoe Nevada maintenance plan was posted for adequacy review of the motor vehicle emissions budget on November 10, 2003 on EPA's conformity Web site: *http://www.epa.gov/otaq/traq*, (once there, click on the "Conformity" button, then look for "Adequacy Review of SIP Submissions for Conformity"). As a general rule, however, limited maintenance plans, such as the Lake Tahoe Nevada maintenance plan, do not include budgets. Instead, for those areas that qualify under our limited maintenance plan policy for CO, we have concluded that the area will continue to maintain the CO NAAQS regardless of the quantity of emissions from the on-road transportation sector, and thus there is no need to cap emissions from the on-road transportation sector for the maintenance period.

Therefore, EPA's adequacy review of the Lake Tahoe Nevada maintenance plan primarily focuses on whether the area qualifies for the applicable limited maintenance plan policy for CO. From our review, EPA has concluded that Lake Tahoe Nevada does meet the criteria for a limited maintenance plan, and therefore, finds the Lake Tahoe Nevada maintenance plan adequate for conformity purposes under our limited maintenance plan policy.

C. Are the Requirements for General Conformity Altered Under This Limited Maintenance Plan?

No. Although the requirements to perform a regional emissions analysis and budget test under the transportation conformity rule are altered under a limited maintenance plan, the requirements for general conformity are not changed. Upon today's approval of the Lake Tahoe Nevada limited maintenance plan, the criteria and procedures set forth in 40 CFR part 93, subpart B (Determining Conformity of General Federal Actions to State or Federal Implementation Plans) for those federal actions that are not covered under the transportation conformity rule still apply.

V. Final Action

Under section 110(k)(3) of the Clean Air Act, EPA is approving the Lake Tahoe Nevada CO maintenance plan, and under section 107(d)(3)(E) of the Clean Air Act, EPA is redesignating the Lake Tahoe Nevada area to attainment for the CO NAAQS. As a result, the chart in 40 CFR 81.329 entitled "Nevada—Carbon Monoxide" is being modified to change the designation for the Lake Tahoe Nevada area from "Nonattainment" to "Attainment," and to delete the "Not Classified" classification of the area, effective February 13, 2004. EPA is also determining that the maintenance plan is adequate for conformity purposes under the limited maintenance plan policy for CO.

EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial revision and anticipates no adverse comments. However, in the "Proposed Rules" section of today's **Federal Register**, we are publishing a separate document that will serve as the proposal to approve the SIP revision should adverse comments be filed. This rule will be effective February 13, 2004 without further notice unless the Agency receives adverse comments by January 14, 2004.

If EPA receives such comments, then we will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period on this rule. Any parties interested in commenting on this rule should do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

VI. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by February 13, 2004. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time

within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental regulations, Reporting and recordkeeping requirements.

40 CFR Part 81

Air pollution control, National parks, Wilderness areas.

Authority: 42 U.S.C. 7401–7671q.

Dated: November 20, 2003.

Laura Yoshii,

Acting Regional Administrator, Region IX.

■ Parts 52 and 81, chapter I, title 40 of the Code of Federal Regulations are amended as follows:

PART 52—[AMENDED]

■ 1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart DD—Nevada

■ 2. Section 52.1470 is amended by adding paragraph (c)(45) to read as follows:

§ 52.1470 Identification of plan.

* * * * *

(c) * * *

(45) The following plan was submitted on October 27, 2003, by the Governor's designee.

(i) Incorporation by reference.

A. Carbon Monoxide Redesignation Request and Limited Maintenance Plan for the Nevada Side of the Lake Tahoe Basin, dated October 2003, adopted by the State Environmental Commission on September 18, 2003.

(1) Attainment year (2001) emissions inventory, monitoring network and verification of continued attainment, and contingency plan, including commitments to follow maintenance plan contingency procedures by the Nevada Division of Environmental Protection, the Tahoe Metropolitan Planning Organization, the Nevada Department of Transportation, and the Washoe County District Health Department.

B. Letter of October 27, 2003, from the Nevada Division of Environmental Protection, transmitting the redesignation request and maintenance plan for the Lake Tahoe Nevada CO nonattainment area and including a State commitment to track CO concentrations and to adopt, submit as a SIP revision, and implement expeditiously any and all measures to achieve the level of CO emissions reductions needed to maintain the CO NAAQS in the event that an exceedance of the CO NAAQS is monitored, and to work with the involved jurisdictions to ensure that sufficient measures are adopted and implemented in a timely fashion to prevent a violation.

C. Additional material—Addendum to the October 27, 2003 letter of transmittal of the redesignation request and maintenance plan: emissions projections for on-road motor vehicles through 2016.

■ Part 81 of chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 81—[AMENDED]

■ 1. The authority citation for part 81 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart C—Section 107 Attainment Status Designations

■ 2. In § 81.329 the carbon monoxide table is amended by revising the entry for the Lake Tahoe Nevada Area to read as follows:

§ 81.329 Nevada.

* * * * *

NEVADA—CARBON MONOXIDE

Designated area	Designation		Classification	
	Date [1]	Type	Date [1]	Type
Lake Tahoe Nevada Area Hydrographic Area 90 Carson City County (part) Douglas County (part) Washoe County (part).	February 13, 2004	Attainment		

[1] This date is November 15, 1990, unless otherwise noted.

* * * * *

[FR Doc. 03–30369 Filed 12–12–03; 8:45 am]

BILLING CODE 6560–50–P

GENERAL SERVICES ADMINISTRATION

41 CFR Part 301–10

[FTR Amendment 2003–06; FTR Case 2003–308]

RIN 3090–AH89

Federal Travel Regulation; Privately Owned Vehicle Mileage Reimbursement

AGENCY: Office of Governmentwide Policy, General Services Administration (GSA).

ACTION: Final rule.

SUMMARY: This final rule amends the mileage reimbursement rate for use of a privately owned vehicle (POV) on official travel to reflect current costs of operation as determined in cost studies conducted by the General Services Administration (GSA). The governing regulation is revised to increase the mileage allowance for advantageous use of a privately owned airplane from 95.5 to 99.5 cents per mile, the cost of operating a privately owned automobile from 36.0 to 37.5 cents per mile, and the cost of operating a privately owned motorcycle from 27.5 to 28.5 cents per mile.

DATES: *Effective Date:* January 1, 2004.

Applicability Date: This final rule applies to travel performed on or after January 1, 2004.

FOR FURTHER INFORMATION CONTACT: The Regulatory Secretariat, Room 4035, GS Building, Washington, DC, 20405, (202) 208–7312, for information pertaining to status or publication schedules. For clarification of content, contact Devoanna R. Reels, Program Analyst, Office of Governmentwide Policy, Travel Management Policy, at (202) 501–3781. Please cite FTR Amendment 2003–06, FTR case 2003–308.

SUPPLEMENTARY INFORMATION:

A. Background

Pursuant to 5 U.S.C. 5707(b), the Administrator of General Services has the responsibility to establish the privately owned vehicle (POV) mileage reimbursement rates. Separate rates are set for airplanes, automobiles (including trucks), and motorcycles. In order to set these rates, GSA is required to conduct periodic investigations, in consultation with the Secretaries of Defense and Transportation, and representatives of Government employee organizations, of the cost of travel and the operation of POVs to employees while engaged on official business. As required, GSA conducted an investigation of the costs of operating a POV and is reporting the cost per mile determination. The results of the investigation have been reported to Congress, and a copy of the report appears as an attachment to this document. GSA's cost studies show the Administrator of General Services has determined the per-mile operating costs of a POV to be 99.5 cents for airplanes, 37.5 cents for automobiles, and 28.5 cents for motorcycles. As provided in 5 U.S.C. 5704(a)(1), the automobile reimbursement rate cannot exceed the single standard mileage rate established by the Internal Revenue Service (IRS). The IRS has announced a new single standard mileage rate for automobiles of 37.5 cents effective January 1, 2004. Additionally, based on updated data for the two-tiered reimbursement rates reflecting costs to an agency of operating a Government-furnished vehicle (GFV), the current reimbursement rate for use of a POV when a GFV is authorized decreased from 28.5 cents per mile to 27.0 cents per mile. The current reimbursement rate of 10.5 cents per mile for use of a POV by an employee when committed to use a Government automobile will remain the same.

B. Executive Order 12866

This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

C. Regulatory Flexibility Act

This final rule is not required to be published in the **Federal Register** for notice and comment; therefore, the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, does not apply.

D. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FTR do not impose recordkeeping or information collection requirements, or the collection of information from offerors, contractors, or members of the public that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

E. Small Business Regulatory Enforcement Fairness Act

This final rule is also exempt from congressional review prescribed under 5 U.S.C. 801 since it relates solely to agency management and personnel.

List of Subjects in 41 CFR Part 301–10

Government employees, Travel and transportation expenses.

Dated: December 8, 2003.

Stephen A. Perry,

Administrator of General Services.

■ For the reasons set forth in the preamble, under 5 U.S.C. 5701–5709, GSA amends 41 CFR part 301–10 as set forth below:

PART 301–10—TRANSPORTATION EXPENSES

■ 1. The authority citation for 41 CFR part 301–10 is revised to read as follows:

Authority: 5 U.S.C. 5707; 40 U.S.C. 121(c); 49 U.S.C. 40118.

■ 2. In § 301–10.303 revise the last three entries in the table to read as follows:

§ 301–10.303 What am I reimbursed when use of a POV is determined by my agency to be advantageous to the Government?

For use of a	Your reimbursement is
Privately owned airplane	[1] 99.5
Privately owned automobile	[1] 37.5
Privately owned motorcycle	[1] 28.5

[1] Cents per mile.

■ 3. Amend § 301–10.310 in paragraph (a) by removing "28.5" and adding "27.0" in its place.

Attachment to Preamble—Report to Congress on the Costs of Operating Privately Owned Vehicle Mileage Reimbursement

Paragraph (b)(1)(A) of section 5707 of Title 5, United States Code, requires that the Administrator of General Services, in consultation with the Secretaries of Defense and Transportation, and representatives of Government employee organizations, conduct periodic investigations of the cost of travel and the operation of privately owned vehicles (POVs) (airplanes, automobiles, and motorcycles) to Government employees while on official business and report the results to Congress at least once a year. Paragraph (b)(2)(B) of section 5707 of Title 5, United States Code, further requires that the Administrator of General Services determine the average, actual cost per mile for the use of each type of POV based on the results of the cost investigation. Such figures must be reported to Congress within 5 working days after the cost determination has been made in accordance with 5 U.S.C. 5707(b)(2)(C).

Pursuant to the requirements of paragraph (b)(1)(A) of section 5707 of Title 5, United States Code, the General Services Administration (GSA), in consultation with the Secretaries of Defense and Transportation, and representatives of Government employee organizations, conducted an investigation of the cost of operating a privately owned automobile. As provided in 5 U.S.C. 5704(a)(1), the automobile reimbursement rate cannot exceed the single standard mileage rate established by the Internal Revenue Service (IRS). The IRS has announced a new single standard mileage rate for automobiles of 37.5 cents effective January 1, 2004.

As required, GSA is reporting the results of the investigation and the cost per mile determination. Based on cost studies conducted by GSA, I have determined the per-mile operating costs of a POV to be 99.5 cents for airplanes, 37.5 cents for automobiles, and 28.5 cents for motorcycles.

I will issue a regulation to increase the current 95.5 to 99.5 cents for privately owned airplanes, 36.0 to 37.5 cents for privately owned automobiles, and 27.5 to 28.5 cents for privately owned motorcycles. This report to Congress on the cost of operating POVs will be published in the **Federal Register**.

[FR Doc. 03–30849 Filed 12–12–03; 8:45 am]

BILLING CODE 6820–14–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

42 CFR Part 52a

RIN 0925–AA24

National Institutes of Health Center Grants

AGENCY: National Institutes of Health, Department of Health and Human Services.

ACTION: Final rule.

SUMMARY: The National Institutes of Health (NIH) is amending its regulations

governing center grants to reflect their applicability to several new grant programs, including research on autism, Alzheimer's disease, fragile X disease, and minority health disparities and other types of health disparities.

EFFECTIVE DATE: This final rule is effective 30 days from the date of publication.

FOR FURTHER INFORMATION CONTACT: Jerry Moore, NIH Regulations Officer, NIH, Office of Management Assessment, 6011 Executive Boulevard, Room 601, MSC 7669, Rockville MD, 20892, by e-mail (*jm40z@nih.gov*), by fax 301–402–0169, or by telephone 301–496–4607 (not a toll-free number).

SUPPLEMENTARY INFORMATION: On October 17, 2000, the United States Congress enacted the Children's Health Act of 2000 (Public Law 106–310). Section 101 of Public Law 106–310 amended the PHS Act by adding a new section 409C (42 U.S.C. 284g) concerning research on autism. Section 409C authorizes the Director of the National Institutes of Health, through the Director of the National Institute of Mental Health, to make awards of grants and contracts to public or nonprofit private entities to pay all or part of the costs of planning, establishing, improving, and providing basic operating support for centers of excellence regarding research on autism.

On November 13, 2002, the United States Congress enacted the Public Health Improvement Act (Public Law 106–505). Section 801 of Public Law 106–505 amended the PHS Act by adding a new section 445I (42 U.S.C. 285e–10a) concerning Alzheimer's clinical research and training awards. More specifically, section 445I authorizes the Director of the National Institute on Aging to establish and maintain a program to enhance and promote the translation of new scientific knowledge into clinical practice related to the diagnosis, care, and treatment of individuals with Alzheimer's disease. Amounts made available under the program must be directed to the support of promising clinicians through awards for research, study, and practice at centers of excellence in Alzheimer's disease research and treatment in environments of demonstrated excellence in neuroscience, neurobiology, geriatric medicine, and psychiatry.

Additionally, section 201 of Public Law 106–310 amended the PHS Act by adding a new section 452E (42 U.S.C. 285g–9) concerning research on the disease known as fragile X. Section 452E authorizes the Director of the National Institute of Child Health and Human Development to make grants or enter into contracts for the development and operation of centers to conduct research for the purposes of improving the diagnosis and treatment of, and finding the cure for, fragile X.

On November 22, 2000, the United States Congress enacted the Minority Health and Health Disparities Research and Education Act of 2000 (Public Law 106–525). Section 102 of Public Law 106–525 amended the PHS Act by adding a new section 485F (42 U.S.C. 287c–32) concerning centers for minority health and health disparities related-research, education, and training. Section 485F authorizes the Director of the National Center on Minority Health and Health Disparities to make awards of grants or contracts to designated biomedical and behavioral research institutions or consortia for the purpose of assisting the institutions in supporting programs of excellence in biomedical and behavioral research training for individuals who are members of minority health disparity populations or other health disparity populations. The grants must be expended to train members of minority health disparity populations or other health disparity populations as professionals in the area of biomedical or behavioral research or both; or to expand, remodel, renovate, or alter existing research facilities or construct new research facilities for the purpose of conducting minority health disparities research and other health disparities research.

We are amending § 52a.1, § 52a.2, and § 52a.3 of the regulations governing NIH center grants to reflect these new authorities. Additionally, we are amending § 52a.8 to update the organizational reference for the Public Health Service Policy on Humane Care and Use of Laboratory Animals.

We announced our plans to amend the current regulations in a notice of proposed rulemaking (NPRM) published in the **Federal Register**, November 12, 2002 (67 FR 68548–68551). The NPRM provided for a sixty-day comment period. We received no comments. Consequently, except for various editorial changes, the final rule is the same as the proposed rule published in November 2002.

We provide the following information for the public.

Executive Order 12866

Executive Order 12866, Regulatory Planning and Review, requires that all regulatory actions reflect consideration of the costs and benefits they generate, and that they meet certain standards, such as avoiding the imposition of unnecessary burdens on the affected public. If a regulatory action is deemed to fall within the scope of the definition of the term "significant regulatory action" contained in section 3(f) of the Order, review by the Office of Management and Budget's (OMB) Office of Information and Regulatory Affairs (OIRA) prior to publication is necessary. The OIRA reviewed this rule under Executive Order 12866 and deemed it not significant.

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. chapter 6) requires that regulatory proposals be analyzed to determine whether they create a significant impact on a substantial number of small entities. The Secretary certifies that this rule will not have any such impact.

Executive Order 13132

Executive Order 13132, Federalism, requires that Federal agencies consult with State and local government officials in the development of regulatory policies with federalism implications. The NIH Director reviewed this rule as required under the Order and determined that it does not have any federalism implications. The Secretary certifies that the rule will not have an effect on the States or on the distribution of power and responsibilities among various levels of government.

Paperwork Reduction Act

This rule does not contain any information collection requirements that are subject to OMB approval under the Paperwork Reduction Act of 1995, as amended (44 U.S.C. chapter 35).

Catalogue of Federal Domestic Assistance

The Catalogue of Federal Domestic Assistance (CFDA) numbered programs affected by this rule are:

93.173 Multipurpose Deafness and Other Communication Disorders Centers
93.242 Mental Health Research Grants
93.279 Drug Abuse Research Programs
93.397 Cancer Centers Support
93.837 Heart and Vascular Diseases Research
93.838 Lung Diseases Research
93.839 Blood Diseases and Resources Research
93.846 Arthritis, Musculoskeletal, and Skin Diseases Research
93.847 Diabetes, Endocrinology, and Metabolism Research
93.848 Digestive Diseases and Nutrition Research
93.849 Kidney Diseases, Urology and Hematology Research
93.855 Allergy, Immunology and Transplantation Research
93.856 Microbiology and Infectious Diseases Research
93.864 Population Research
93.865 Research for Mothers and Children
93.866 Aging Research
93.981 Alcohol Research Center Grants

List of Subjects

42 CFR Part 52a

Grant programs—health; Medical research.

Dated: May 9, 2003.

Elias A. Zerhouni,

Director, National Institutes of Health.

Approved: September 16, 2003:

Tommy G. Thompson,

Secretary.

■ For the reasons set forth in the preamble, subchapter D, chapter 1 of title 42 of the Code of Federal Regulations is amended as set forth below.

PART 52a—NATIONAL INSTITUTES OF HEALTH CENTER GRANTS

■ 1. The authority citation of part 52a is revised to read as follows:

Authority: 42 U.S.C. 216, 284g, 285a–6(c)(1)(E), 285a–7(c)(1)(G), 285b–4, 285c–5, 285c–8, 285d–6, 285e–2, 285e–3, 285e–10a, 285f–1, 285g–5, 285g–7, 285g–9, 285m–3, 285o–2, 286a–7(c)(1)(G), 287c–32(c), 300cc–16.

■ 2. Section 52a.1 is amended by revising paragraph (a) to read as follows:

§ 52a.1 To which programs do these regulations apply?

(a) The regulations of this part apply to grants by the National Institutes of Health and its organizational components to support the planning, establishment, expansion, and operation of research and demonstration and/or multipurpose centers in health fields described in this paragraph. Specifically, these regulations apply to:

(1) National Institute of Mental Health centers of excellence with respect to research on autism, as authorized by section 409C of the Act (42 U.S.C. 284g);

(2) National cancer research and demonstration centers (including payments for construction), as authorized by section 414 of the Act (42 U.S.C. 285a–3);

(3) National cancer research and demonstration centers with respect to breast cancer, as authorized by section 417 of the Act (42 U.S.C. 285a–6);

(4) National cancer and demonstration centers with respect to prostate cancer, as authorized by section 417A of the Act (42 U.S.C. 285a–7);

(5) National research and demonstration centers for heart, blood vessel, lung, and blood diseases, sickle cell anemia, blood resources, and pediatric cardiovascular diseases (including payments for construction), as authorized by section 422 of the Act (42 U.S.C. 285b–4);

(6) Research and training centers (including diabetes mellitus, and digestive, endocrine, metabolic, kidney and urologic diseases), as authorized by section 431 of the Act (42 U.S.C. 285c–5);

(7) Research and training centers regarding nutritional disorders, as authorized by section 434 of the Act (42 U.S.C. 285c–8);

(8) Multipurpose arthritis and musculoskeletal diseases centers (including payments for alteration, but not construction), as authorized by section 441 of the Act (42 U.S.C. 285d–6);

(9) Alzheimer's disease centers, as authorized by section 445 of the Act (42 U.S.C. 285e–2);

(10) Claude D. Peppers Older Americans Independence Centers, as authorized by section 445A of the Act (42 U.S.C. 285e–3);

(11) Centers of excellence in Alzheimer's disease research and treatment, as authorized by section 445I of the Act (42 U.S.C. 285e–10a);

(12) Research centers regarding chronic fatigue syndrome, as authorized by section 447 of the Act (42 U.S.C. 285f–1);

(13) Research centers with respect to contraception and infertility, as authorized by section 452A of the Act (42 U.S.C. 285g–5);

(14) Child health research centers, as authorized by section 452C of the Act (42 U.S.C. 285g–7);

(15) Fragile X research centers, as authorized by 452E of the Act (42 U.S.C. 285g–9);

(16) Multipurpose deafness and other communication disorders centers, as authorized by section 464C of the Act (42 U.S.C. 285m–3);

(17) National drug abuse research centers, as authorized by section 464N of the Act (42 U.S.C. 285o–2);

(18) Centers of excellence in biomedical and behavioral research training for individuals who are members of minority health disparity populations or other health disparity populations, as authorized by section 485F of the Act (42 U.S.C. 287c–32); and

(19) Centers for acquired immunodeficiency syndrome (AIDS) research, as authorized by section 2316 of the Act (42 U.S.C. 300cc–16).

* * * * *

3. Section 52a.2 is amended by revising the definition of "Center" to read as follows:

§ 52a.2 Definitions.

As used in this part:

* * * * *

Center means:

(a) For purposes of grants authorized by section 409C of the Act, a public or nonprofit private entity which provides for planning and conducting basic and clinical research into the cause, diagnosis, early detection, prevention, control, and treatment of autism, including the fields of developmental neurobiology, genetics, and psychopharmacology;

(b) For purposes of grants authorized by section 414 of the Act, an agency or institution which provides for planning and conducting basic and clinical research into, training in, and demonstration of advanced diagnostic, control, prevention and treatment methods for cancer;

(c) For purposes of grants authorized by section 417 of the Act, an agency or institution which provides for planning and conducting basic, clinical, epidemiological, psychological, prevention and treatment research and related activities on breast cancer;

(d) For purposes of grants authorized by section 417A of the Act, an agency or institution which provides for planning and conducting basic, clinical, and epidemiological, psychosocial, prevention and control, treatment, research, and related activities on prostate cancer;

(e) For purposes of grants authorized by section 422 of the Act, an agency or institution which provides for planning and basic and clinical research into, training in, and demonstration of, management of blood resources and advanced diagnostic, prevention, and treatment methods (including emergency services) for heart, blood vessel, lung, or blood diseases including sickle cell anemia;

(f) For purposes of grants authorized by section 431 of the Act, a single institution or a consortium of cooperating institutions, which conducts research, training, information programs, epidemiological studies, data collection activities and development of model programs in diabetes mellitus and related endocrine and metabolic diseases;

(g) For purposes of grants authorized by section 434 of the Act, a single institution or a consortium of cooperating institutions which conducts basic and clinical research, training, and information programs in nutritional disorders, including obesity;

(h) For purposes of grants authorized by section 441 of the Act, a facility which conducts basic and clinical

research into arthritis and musculoskeletal diseases; and orthopedic procedures, training, and information programs for the health community and the general public;

(i) For purposes of grants authorized by section 445 of the Act, a public or private nonprofit entity (including university medical centers) which conducts basic and clinical research (including multidisciplinary research) into, training in, and demonstration of advanced diagnostic, prevention, and treatment methods for Alzheimer's disease;

(j) For purposes of grants authorized by section 445A of the Act, a single public or private nonprofit institution or entity or a consortium of cooperating institutions or entities which conducts research into the aging processes and into the diagnosis and treatment of diseases, disorders, and complications related to aging, including menopause, which research includes research on such treatments, and on medical devices and other medical interventions regarding such diseases, disorders, and complications, that can assist individuals in avoiding institutionalization and prolonged hospitalization and in otherwise increasing the independence of the individuals.

(k) For the purposes of section 445I of the Act, a single institution or consortium of cooperating institutions which conducts basic and clinical research on Alzheimer's disease.

(l) For purposes of grants authorized by section 447 of the Act, a single institution or consortium of cooperating institutions which conducts basic and clinical research on chronic fatigue syndrome;

(m) For purposes of grants authorized by section 452A of the Act, a single institution or consortium of cooperating institutions which conducts clinical and other applied research, training programs, continuing education programs, and information programs with respect to methods of contraception, and infertility;

(n) For purposes of grants authorized by section 452C of the Act, an agency or institution which conducts research with respect to child health, and gives priority to the expeditious transfer of advances from basic science to clinical applications and improving the care of infants and children;

(o) For purposes of grants authorized by section 452E of the Act, a single institution or a consortium of cooperating institutions which conducts research for the purposes of improving the diagnosis and treatment of, and finding the cure for, fragile X;

(p) For purposes of grants authorized by section 464C of the Act, a single institution or a consortium of cooperating institutions which conducts basic and clinical research into, training in, information and continuing education programs for the health community and the general public about, and demonstration of, advanced diagnostic, prevention, and treatment methods for disorders of hearing and other communication processes and complications resulting from these disorders;

(q) For purposes of grants authorized by section 464N of the Act, institutions designated as National Drug Abuse Research Centers for interdisciplinary research relating to drug abuse and other biomedical, behavioral, and social issues related to drug abuse;

(r) For purposes of grants authorized by section 485F of the Act, a biomedical or behavioral research institution or consortia that:

(1) Have a significant number of members of minority health disparity populations or other health disparity populations enrolled as students in the institution (including individuals accepted for enrollment in the institution);

(2) Have been effective in assisting such students of the institution to complete the program of education or training and receive the degree involved;

(3) Have made significant efforts to recruit minority students to enroll in and graduate from the institution, which may include providing means-tested scholarships and other financial assistance as appropriate; and

(4) Have made significant recruitment efforts to increase the number of minority or other members of health disparity populations serving in faculty or administrative positions at the institution; or

(s) For the purposes of grants authorized in section 2316 of the Act, an entity for basic and clinical research into, and training in, advanced diagnostic, prevention, and treatment methods for acquired immunodeficiency syndrome (AIDS).

■ 4. Section 52a.3 is amended by revising paragraphs (a) and (b) to read as follows:

§ 52a.3 Who is eligible to apply?

(a) Any public or private nonprofit agency, institution, or consortium of agencies is eligible to apply for a grant under sections 409C, 414, 417, 417A, 422, 445, 445A, 445I, 447, 452A, and 2316 of the Act.

(b) Any public or private nonprofit or for-profit agency, institution, or consortium of agencies is eligible to apply for a grant under sections 428, 431, 434, 441, 452C, 452E, 464C, 464J, 464N, and 485F of the Act.

* * * * *

■ 5. Section 52a.8 is amended by revising unnumbered paragraphs 21 and 22 to read as follows:

§ 52a.8 Other HHS regulations and policies that apply.

* * * * *

Public Health Service Policy on Humane Care and Use of Laboratory Animals; Office of Laboratory Animal Welfare, Office of Extramural Research, NIH (Revised September 1986).

Note: This policy is subject to change, and interested persons should contact the Office of Laboratory Animal Welfare, Office of Extramural Research, NIH, Rockledge 1, 6705 Rockledge Drive, Bethesda, Maryland 20817, telephone 301–594–2382 (not a toll-free number) to obtain references to the current version and any amendments.

[FR Doc. 03–30757 Filed 12–12–03; 8:45 am]
BILLING CODE 4140–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 54

[CC Docket No. 96–45; FCC 03–249]

Federal-State Joint Board on Universal Service

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, in response to the decision of the United States Court of Appeals for the Tenth Circuit and the recommendations of the Federal-State Joint Board on Universal Service, the Commission modifies the high-cost universal service support mechanism for non-rural carriers and adopts measures to induce states to ensure reasonable comparability of rural and urban rates in areas served by non-rural carriers.

DATES: Effective January 14, 2004, except for §§ 54.316(a) and 54.316(c) which contain information collection requirements that have not been approved by the Office of Management Budget (OMB). The Commission will publish a document in the **Federal Register** announcing the effective date of those sections.

FOR FURTHER INFORMATION CONTACT: Jennifer Schneider, Attorney, Wireline Competition Bureau, Telecommunications Access Policy Division, (202) 418–7400.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Order on Remand and Memorandum Opinion and Order in CC Docket No. 96–45 released on October 27, 2003. There was also a Companion Further Notice of Proposed Rulemaking released in CC Docket No. 96–45 on October 27, 2003. The full text of this document is available for public inspection during regular business hours in the FCC Reference Center, Room CY–A257, 445 Twelfth Street, SW., Washington, DC, 20554 or at *www.fcc.gov/wcb/universal_service/highcost.html*.

I. Introduction

1. In this Order, in response to the decision of the United States Court of Appeals for the Tenth Circuit and the recommendations of the Federal-State Joint Board on Universal Service (Joint Board), we modify the high-cost universal service support mechanism for non-rural carriers and adopt measures to induce States to ensure reasonable comparability of rural and urban rates in areas served by non-rural carriers. We will continue to determine non-rural support by comparing statewide average costs to a national cost benchmark, but we establish a new cost benchmark at two standard deviations above the national average cost. Our action today ties the cost benchmark more closely to the data in the record, consistent with the court's directive, but does not substantially alter the level of non-rural support. Based on analysis of the relevant data, we explain why the modified non-rural mechanism will be sufficient to achieve the statutory principle of making rural and urban rates for non-rural carrier customers reasonably comparable.

2. In addition, we will implement a rate review, through an expanded annual certification process, to induce States to achieve reasonably comparable rates and to assess how successfully the non-rural high-cost support mechanism ensures reasonably comparable rural and urban rates. Consistent with the Joint Board recommendation, States will be required to certify that the basic service rates in their rural, high-cost areas served by non-rural carriers are reasonably comparable to a national urban rate benchmark or explain why they are not. This process will add a dynamic element to the non-rural high-cost support mechanism. By requiring States to review their rates in rural, high-cost areas served by non-rural carriers annually in comparison to a national urban rate benchmark, the Commission will be able to determine whether Federal and State universal service mechanisms are resulting in reasonably comparable rural and urban rates as competition develops and erodes implicit support mechanisms.

II. Executive Summary

1. In this Order, we take the following actions to modify the non-rural high-cost support mechanism and to induce States to ensure reasonably comparable rural and urban rates in areas served by non-rural carriers:

- Consistent with the Joint Board's recommendations, we reaffirm that comparing statewide average costs to a nationwide cost benchmark reflects the appropriate Federal and State roles in determining Federal non-rural high-cost support. We find no evidence in the record either for radically altering the current non-rural mechanism or for establishing a substantially larger Federal subsidy to lower local telephone service rates, as some commenters advocate.
- In response to the Tenth Circuit's remand, we define the relevant statutory terms "sufficient" and "reasonably comparable" more precisely for purposes of the non-rural mechanism. As recommended by the Joint Board, we define "sufficient" in terms of the statutory principle in section 254(b)(3), as enough Federal support to enable States to achieve reasonable comparability of rural and urban rates in high-cost areas served by non-rural carriers. We also agree with the Joint Board that the principle of sufficiency means that non-rural support should be only as large as necessary to achieve the statutory goal. We define "reasonably comparable" in terms of a national urban rate benchmark recommended by the Joint Board. As part of the rate review process discussed below, the rate benchmark will be used in determining whether a State's local rates in rural, high-cost areas served by non-rural carriers are reasonably comparable to urban rates nationwide.
- We modify the non-rural mechanism by basing the cost benchmark, which is used to determine the amount of non-rural high-cost support, on two standard deviations above the national average cost per line. Modifying the cost benchmark ties it more directly to the relevant data, consistent with the court's directive, but does not alter the level of non-rural support in a major way. We agree with the Joint Board that the current level of non-rural support is supported by data from a General Accounting Office (GAO) Report indicating that rural and urban rates generally are reasonably comparable today.
- To induce States to achieve reasonably comparable rates, we adopt with minor changes the rate review and expanded certification process recommended by the Joint Board. Each State will be required to review its rates in rural, high-cost areas served by non-rural carriers annually to assess their comparability to urban rates nationwide, and then to file a certification with the Commission stating whether its rural rates are reasonably comparable to urban rates nationwide or explaining why they are not.
- For purposes of the rate review process, we adopt the Joint Board's recommendation that we establish an annually-adjusted nationwide rate benchmark based on the most recent urban residential rates in the *Reference Book*, the Wireline Competition Bureau's annual rate survey. Specifically, we adopt a rate benchmark of two standard deviations above the average urban rate, which, based on the most recent *Reference Book* survey, is $32.28 or 138 percent of the average urban rate. The rate benchmark will establish a "safe harbor," that is, a presumption that rates in rural, high-cost areas that are below the rate benchmark are reasonably comparable to urban rates nationwide. States with rural rates below the rate benchmark may certify that their rates are reasonably comparable without providing additional information, or rebut the presumption by demonstrating that factors other than basic service rates affect the comparability of their rates.
- For purposes of the rate review process, we also establish a basic service rate template for states to use in comparing rates in rural, high-cost areas served by non-rural carriers to the nationwide urban rate benchmark. In addition, we adopt, with slight modifications, the definition of "rural area" already contained in § 54.5 of the Commission's rules for purposes of the rate review process.
- We adopt the Joint Board's recommendation to permit States to request further Federal action, if necessary, based on a demonstration that the State's rates in rural, high-cost areas served by non-rural carriers are not reasonably comparable to urban rates nationwide and that the State has taken all reasonable steps to achieve reasonable comparability through State action and existing Federal support.
- In response to the Tenth Circuit's remand, we review and explain our comprehensive plan for supporting universal service in high-cost areas.

III. Procedural Matters

A. Final Regulatory Flexibility Analysis

4. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the *Remand Notice*, 67 FR 10846, March 11, 2002. The Commission sought written public comment on the proposals in the *Remand Notice*, including comment on the IRFA. This Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.

1. Need for, and Objectives of, the Report and Order

5. This Order is necessary to respond to the remand by the United States Court of Appeals for the Tenth Circuit of the *Ninth Report and Order*, 64 FR 67416, December 12, 1999, and also to respond to the Joint Board's *Recommended Decision*. Along with fulfilling the court's remand requirements, the objectives of this Order are to implement a non-rural high-cost support mechanism that fulfills the relevant principles in section 254(b) of the Act. The rules we adopt in this Order reflect the Commission's careful and considered determination to implement the mechanism consistently with section 254(b) and with the Joint Board's recommendations.

6. In this Order, we take the following actions in response to the Tenth Circuit's remand and the Joint Board's recommendations to modify the non-rural high-cost support mechanism and to induce States to ensure reasonably comparable rural and urban rates in areas served by non-rural carriers:

- Consistent with the Joint Board's recommendations, we reaffirm that comparing statewide average costs to a nationwide cost benchmark reflects the appropriate Federal and State roles in determining Federal non-rural high-cost support. We find no evidence in the record either for radically altering the current non-rural mechanism or for establishing a substantially larger Federal subsidy to lower local telephone service rates, as some commenters advocate.
- In response to the Tenth Circuit's remand, we define the relevant statutory terms "sufficient" and "reasonably comparable" more precisely for purposes of the non-rural mechanism. As recommended by the Joint Board, we define "sufficient" in terms of the statutory principle in section 254(b)(3), as enough Federal support to enable States to achieve reasonable comparability of rural and urban rates in high-cost areas served by non-rural carriers. We also agree with the Joint Board that the principle of sufficiency means that non-rural support should be only as large as necessary to achieve the statutory goals. We define "reasonably comparable" in terms of a national urban rate benchmark recommended by the Joint Board. As part of the rate review process discussed, the rate benchmark will be used in determining whether a State's local rates in rural, high-cost areas served by non-rural carriers are reasonably comparable to urban rates nationwide.
- We modify the non-rural mechanism by basing the cost benchmark, which is used to determine the amount of non-rural high-cost support, on two standard deviations above the national average cost per line. Modifying the cost benchmark ties it more directly to the relevant data, consistent with the court's directive, but does not alter the level of non-rural support in a major way. We agree with the Joint Board that the current level of non-rural support is supported by data from the GAO Report indicating that rural and urban rates generally are reasonably comparable today.
- To induce States to achieve reasonably comparable rates, we adopt with minor changes the rate review and expanded certification process recommended by the Joint Board. Each State will be required to review its rates in rural, high-cost areas served by non-rural carriers annually to assess their comparability to urban rates nationwide, and then to file a certification with the Commission stating whether its rural rates are reasonably comparable to urban rates nationwide or explaining why they are not.
- For purposes of the rate review process, we adopt the Joint Board's recommendation that we establish an annually-adjusted nationwide rate benchmark based on the most recent urban residential rates in the Reference Book, the Wireline Competition Bureau's annual rate survey. Specifically, we adopt a rate benchmark of two standard deviations above the average urban rate, which, based on the most recent Reference Book survey, is $32.28 or 138 percent of the average urban rate. The rate benchmark will establish a "safe harbor," that is, a presumption that rates in rural, high-cost areas that are below the rate benchmark are reasonably comparable to urban rates nationwide. States with rural rates below the rate benchmark may certify that their rates are reasonably comparable without providing additional information, or rebut the presumption by demonstrating that factors other than basic service rates affect the comparability of their rates.
- For purposes of the rate review process, we also establish a basic service rate template for States to use in comparing rates in rural, high-cost areas served by non-rural carriers to the nationwide urban rate benchmark. In addition, we adopt, with slight modifications, the definition of "rural area" already contained in § 54.5 of the Commission's rules for purposes of the rate review process.
- We adopt the Joint Board's recommendation to permit States to request further Federal action, if necessary, based on a demonstration that the State's rates in rural, high-cost areas served by non-rural carriers are not reasonably comparable to urban rates nationwide and that the State has taken all reasonable steps to achieve reasonable comparability through State action and existing Federal support.
- In response to the Tenth Circuit's remand, we review and explain our comprehensive plan for supporting universal service in high-cost areas.

2. Summary of Significant Issues Raised by Public Comments in Response to the IRFA

7. The Commission received no comments specifically addressing the IRFA. Nonetheless, the Commission considered the potential impact of the adopted rules on small entities and, based on analysis of the relevant data, determined that the compliance burden for small entities directly impacted will not be significant.

8. We note that the Commission did receive some general small entity-related comments not specifically addressing the rules and policies presented in the IRFA. Some commenters suggested that eligible communications carriers (ETCs) should be treated differently than the incumbent non-rural carriers. CUSC stated that the certification process should apply only to the incumbent non-rural carriers. RICA stated that ETCs and incumbent non-rural carriers should receive support through separate mechanisms. In making the determination reflected in the Order, we have considered the impact of our actions on these small entities. We have determined that any impact on small entities will be negligible.

9. Other small-entity related comments concerned the rural high-cost support mechanism and were not relevant to this Order, which modifies the non-rural high-cost support mechanism only. The Federal non-rural high-cost support mechanism, revised and implemented by this Order,

calculates and distributes Federal support to non-rural carriers providing service in high-cost areas. For purposes of the mechanism, "non-rural carriers" are those that do not meet the statutory definition of a rural telephone company. As stated, the rural and non-rural high-cost support mechanisms are separate.

3. Description and Estimate of the Number of Small Entities to Which Rules Will Apply

10. The RFA directs agencies to provide a description of, and, where feasible, an estimate of the number of small entities that will be directly affected by the rules adopted herein. The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction." In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act, unless the Commission has developed one or more definitions that are appropriate to its activities. Under the Small Business Act, a "small business concern" is one that: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) meets any additional criteria established by the Small Business Administration (SBA).

11. The Commission has determined that the group of small entities directly affected by the rules adopted in this Order are eligible telecommunications carriers (ETCs) providing service in areas served by non-rural carriers. Within the category of ETCs we find competitive local exchange carriers (CLECs), which are all wired telecommunications carriers, and wireless carriers. Further descriptions of these entities are provided.

12. *Wired Telecommunications Carriers.* The SBA has developed a small business size standard for Wired Telecommunications Carriers, which consists of all such companies having 1,500 or fewer employees. According to Census Bureau data for 1997, there were 2,225 firms in this category, total, that operated for the entire year. Of this total, 2,201 firms had employment of 999 or fewer employees, and an additional 24 firms had employment of 1,000 or more. Thus, under this size standard, the great majority of firms can be considered small.

13. *Competitive Local Exchange Carriers (CLECs), Competitive Access Providers (CAPs) and "Other Local Exchange Carriers."* Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to providers of competitive exchange services or to competitive access providers or to "Other Local Exchange Carriers." The closest applicable size standard under SBA rules is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 532 companies reported that they were engaged in the provision of either competitive access provider services or competitive local exchange carrier services. Of these 532 companies, an estimated 411 have 1,500 or fewer employees and 121 have more than 1,500 employees. In addition, 55 carriers reported that they were "*Other Local Exchange Carriers.*" Of the 55 "*Other Local Exchange Carriers,*" an estimated 53 have 1,500 or fewer employees and two have more than 1,500 employees. Consequently, the Commission estimates that most providers of competitive local exchange service, competitive access providers, and "*Other Local Exchange Carriers*" are small entities that may be affected by the rules and policies adopted herein.

14. *Cellular and Other Wireless Telecommunications Carriers.* The SBA has developed a small size standard for Cellular and Other Wireless Telecommunications Carriers which consists of all such companies having 1,500 or fewer employees. According to the Commission's most recent data, 1,761 companies reported that they were engaged in the provision of wireless service. Of these, 1,761 companies, and estimated 1,175 have 1,500 or fewer employees and 586 have more than 1,500 employees. Consequently, the Commission estimates that most wireless service providers are small entities that may be affected by the rules and policies adopted herein.

15. *Eligible Telecommunications Carriers (ETCs) that Provide Service in Areas Serviced by Non-Rural Carriers.* Neither the SBA nor the Commission has developed a definition of small entities specifically applicable to ETCs. ETC designation allows a carrier to receive universal service support in accordance with section 254 of the Act. An entity is designated as an ETC by a State commission or, if there is no State jurisdiction, by the Commission upon meeting the requirements of section 214(e) of the Act. Any entity offering services supported by Federal universal service mechanisms that uses its own facilities or a combination of its own facilities and resale of another carrier's services and advertises such charges and rates can seek designation as an ETC. ETCs are competitive carriers that are not dominant in the field. The group of ETCs providing service in areas served by non-rural carriers is composed of mostly competitive local exchange carriers (CLECs) and wireless carriers. We have indicated above that, pursuant to SBA standards, ETCs are CLECs or wireless carriers. In addition, we note that the only ETCs affected by this Order are those that provide service in areas served by non-rural carriers. If we had no further information concerning the specific ETCs affected by this rulemaking, we would estimate that numerous ETCs, which are either CLECs or wireless service providers that provide service in areas served by non-rural carriers, are small businesses that may be affected by the rules adopted herein.

16. At this time, however, the Commission is aware of approximately 30 ETCs providing service in areas served by non-rural carriers. We have determined that at least 9 of these ETCs are subsidiaries of public companies—not independently owned and operated—and, therefore, not small businesses under the Small Business Act. We do not have data specifying whether the remaining ETCs, or other ETCs not accounted for, are independently owned and operated, and therefore we are unable to estimate with greater precision the number of these carriers that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are 20 or fewer small entities that may be affected directly by the proposed rules herein adopted.

4. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

17. This Order does not impose directly any change in projected reporting, record keeping or other compliance requirements on small entities. No changes have been made to the reporting or recordkeeping requirements of carriers receiving Federal non-rural high-cost support.

5. Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

18. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): "(1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of

compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities."

19. In this Order, in response to the Tenth Circuit's remand and the Joint Board's *Recommended Decision*, we modify the high-cost universal service support mechanism for non-rural carriers and adopt measures to induce states to ensure reasonable comparability of rural and urban rates in areas served by non-rural carriers. Our actions may affect the amount of support distributed to non-rural carriers and ETCs providing service in areas served by non-rural carriers. Based on our analysis of the relevant data, the Commission believes that there will be minimal, if any, economic impact on small entities in adopting modifications to the Federal non-rural high-cost support mechanism and rate review and expanded certification process. The modifications to the current Federal non-rural high-cost support mechanism, as adopted in the Order, should maintain or increase the current level of non-rural high-cost support to carriers receiving such support. As such, based on the relevant data, we anticipate little, if any, negative economic effects on any small businesses directly affected by the modifications to the non-rural high-cost mechanism implemented by this Order.

6. Report to Congress

20. The Commission will send a copy of the Order, including the FRFA, in a report to be sent to Congress pursuant to the Congressional Review Act. In addition, the Commission will send a copy of the Order, including this FRFA, to the Chief Counsel for Advocacy of the Small Business Administration. A copy of this Order and FRFA (or summaries thereof) will also be published in the **Federal Register**.

B. Paperwork Reduction Act Analysis

21. The action contained herein has been analyzed with respect to the Paperwork Reduction Act of 1995 and found to impose new or modified reporting and recordkeeping requirements or burdens on the public. Implementation of these new or modified reported and recordkeeping requirements will be subject to approval by the Office of Management and Budget (OMB) as prescribed by the Act, and will go into effect upon announcement in the **Federal Register** of OMB approval.

IV. Ordering Clauses

22. Pursuant to the authority contained in sections 1, 4(i), 4(j), 201–205, 214, 218–220, 254, 403 and 405 of the Communications Act of 1934, as amended, this Order on Remand is hereby adopted.

23. Part 54 of the Commission's rules is amended as set forth attached hereto, effective January 14, 2004, except for §§ 54.316(a) and 54.316(c) which contain information collection requirements that have not been approved by the Office of Management Budget (OMB). The Commission will publish a document in the **Federal Register** announcing the effective date of those sections.

24. Pursuant to § 1.106(j) of the Commission's rules, the Petitions for Reconsideration of the Ninth Report and Order and Eighteenth Order on Reconsideration filed by AT&T Corp., Personal Communications Industry Association, Puerto Rico Telephone Company, and the Wyoming Public Service Commission on January 3, 2000, are denied, and the Petition for Reconsideration of the Ninth Report and Order and Eighteenth Order on Reconsideration filed by SBC Communications Inc. on January 3, 2000, is denied in part and dismissed as moot in part.

25. Pursuant to section 4(i) of the Communications Act of 1934, as amended, and § 1.3 of the Commission's rules, the Petition for Waiver of § 36.631 of the Commission's Rules Governing the Universal Service Fund, filed by the Vermont Department of Public Service and the Vermont Public Service Board, September 21, 1993, AAD 93–103, is dismissed as moot.

26. The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, shall send a copy of this Order on Remand and Memorandum Opinion and Order, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 54

Reporting and recordkeeping requirements, Telecommunications, Telephone.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

Final Rules

■ For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 54 as follows:

PART 54—UNIVERSAL SERVICE

■ 1. The authority citations continue to read as follows:

Authority: 47 U.S.C. 1, 4(i), 201, 205, 214, and 254 unless otherwise noted.

■ 2. Amend § 54.309 by revising paragraph (a)(3) to read as follows:

§ 54.309 Calculation and distribution of forward-looking support for non-rural carriers.

(a) * * *

(3) The national cost benchmark shall equal two weighted standard deviations above the national average FLEC per line.

* * * * *

■ 3. Add § 54.316 to subpart D to read as follows:

§ 54.316 Rate comparability review and certification for areas served by non-rural carriers.

(a) *Certification.* Each state will be required annually to review the comparability of residential rates in rural areas of the state served by non-rural incumbent local exchange carriers to urban rates nationwide, and to certify to the Commission and the Administrator as to whether the rates are reasonably comparable, for purposes of section 254(b)(3) of the Telecommunications Act of 1996. If a state does not rely on the safe harbor described in paragraph (b) of this section, or certifies that the rates are not reasonably comparable, the state must fully explain its rate comparability analysis and provide data supporting its certification, including but not limited to residential rate data for rural areas within the state served by non-rural incumbent local exchange carriers. If a state certifies that the rates are not reasonably comparable, it must also explain why the rates are not reasonably comparable and explain what action it intends to take to achieve rate comparability.

(b) *Safe harbor.* For the purposes of its certification, a state may presume that the residential rates in rural areas served by non-rural incumbent local exchange carriers are reasonably comparable to urban rates nationwide if the rates are below the nationwide urban rate benchmark. The nationwide urban rate benchmark shall equal the most recent average urban rate plus two weighted standard deviations. The benchmark shall be calculated using the average urban rate and standard deviation shown in the most recent annual *Reference Book of Rates, Price Indices, and Expenditures for Telephone Service* published by the Wireline Competition Bureau. To the extent that a state relies on the safe harbor, the rates that it compares to the nationwide urban rate benchmark shall include the access charges and other mandatory monthly rates included in the rate survey published in the most recent annual *Reference Book of Rates, Price Indices, and Expenditures for Telephone Service*. The *Reference Book of Rates, Price Indices, and Expenditures for Telephone Service* is available for public inspection at the Commission's Reference Center at 445 12th Street, S.W., Washington, D.C. 20554 and on the Commission Web site at *www.fcc.gov/wcb/iatd/lec.html*.

(c) *Definition of "rural area."* For the purposes of this section, a "rural area" is a non-metropolitan county or county equivalent, as defined in the Office of Management and Budget's (OMB) Revised Standards for Defining Metropolitan Areas in the 1990s and identifiable from the most recent Metropolitan Statistical Area (MSA) list released by OMB. At a state's discretion, a "rural area" may also include any wire center designated by the state as rural for the purposes of this section. In the event that a state designates a wire center as rural, it must provide an explanation supporting such designation in its certification pursuant to paragraph (a) of this section.

(d) *Schedule for certification.* Annual certifications are required on the schedule set forth in § 54.313(d)(3), beginning October 1, 2004. Certifications due on October 1 of each year shall pertain to rates as of the prior July 1. Certifications filed during the remainder of the schedule set forth in § 54.313(d)(3) shall pertain to the same date as if they had been filed on October 1.

(e) *Effect of failure to certify.* In the event that a state fails to certify, no eligible telecommunications carrier in the state shall receive support pursuant to § 54.309.

[FR Doc. 03–30826 Filed 12–12–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 03–3853, MB Docket No. 03–97, RM–10683]

Digital Television Broadcast Service; Juneau, AK

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Capital Community Broadcasting, Inc., substitutes DTV channel *10 for DTV channel *6 at Juneau, Alaska. *See* 68 FR 19486, April 21, 2003. DTV channel *10 can be allotted to Juneau, Alaska, in compliance with the principle community coverage requirements of section 73.625(a) at reference coordinates 58–18–04 N. and 134–25–21 W. with a power of 0.748, HAAT of -320.3 meters and with a DTV service population of thousand 26. Since the community of Juneau is located within 400 kilometers of the U.S.-Canadian border, concurrence from the Canadian government was obtained for this allotment. With this action, this proceeding is terminated.

DATES: Effective January 20, 2004.

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Media Bureau, (202) 418–1600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MB Docket No. 03–97, adopted December 2, 2003, and released December 5, 2003. The full text of this document is available for public inspection and copying during regular business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC. This document may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC, 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com*.

List of Subjects in 47 CFR Part 73

Digital television broadcasting, Television.

■ Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

■ 1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.622 [Amended]

■ 2. Section 73.622(b), the Table of Digital Television Allotments under Alaska, is amended by removing DTV channel *6 and adding DTV channel *10 at Juneau.

Federal Communications Commission.

Barbara A. Kreisman,

Chief, Video Division, Media Bureau.

[FR Doc. 03–30880 Filed 12–12–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 03–3852, MM Docket No. 00–198, RM–9980]

Digital Television Broadcast Service; Corpus Christi, TX

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of KVOA Communications, Inc., substitutes DTV channel 13 for DTV channel 50 at Corpus Christi, Texas. *See* 65 FR 61299, October 17, 2000. DTV channel 13 can be allotted to Corpus Christi, Texas, in compliance with the principle community coverage requirements of Section 73.625(a) at reference coordinates 27–44–28 N. and 97–36–08 W. with a power of 160, HAAT of 291 meters and with a DTV service population of 501 thousand. Since the community of Corpus Christi is located within 275 kilometers of the U.S.-Mexican border, concurrence from the Mexican government has been obtained for this allotment. With this action, this proceeding is terminated.

DATES: Effective January 20, 2004.

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Media Bureau, (202) 418–1600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 00–198, adopted December 2, 2003, and released December 5, 2003. The full text of this document is available for public inspection and copying during regular business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC. This document may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., CY–B402, Washington, DC, 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com*.

List of Subjects in 47 CFR Part 73

Digital television broadcasting, Television.

■ Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

■ 1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.622 [Amended]

■ 2. Section 73.622(b), the Table of Digital Television Allotments under Texas, is amended by removing DTV channel 50 and adding DTV channel 13 at Corpus Christi.

Federal Communications Commission.

Barbara A. Kreisman,

Chief, Video Division, Media Bureau.

[FR Doc. 03–30862 Filed 12–12–03; 8:45 am]

BILLING CODE 6712–01–U

DEPARTMENT OF DEFENSE

48 CFR Parts 232 and 252

[DFARS Case 2002–D001]

Defense Federal Acquisition Regulation Supplement; Electronic Submission and Processing of Payment Requests

AGENCY: Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD has adopted as final, with changes, an interim rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement Section 1008 of the National Defense Authorization Act for Fiscal Year 2001. Section 1008 requires contractors to submit, and DoD to process, payment requests in electronic form.

EFFECTIVE DATE: December 15, 2003.

FOR FURTHER INFORMATION CONTACT: Mr. Thaddeus Godlewski, Defense Acquisition Regulations Council, OUSD (AT&L) DPAP (DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301–3062. Telephone (703) 602–2022; facsimile (703) 602–0350. Please cite DFARS Case 2002–D001.

SUPPLEMENTARY INFORMATION:

A. Background

DoD published an interim rule at 68 FR 8450 on February 21, 2003, to implement Section 1008 of the National Defense Authorization Act for Fiscal Year 2001 (Public Law 106–398). Section 1008 requires contractors to submit, and DoD to process, payment requests in electronic form. Seventeen sources submitted comments on the interim rule. A discussion of the comments is provided below. Differences between the interim and final rules are discussed in the DoD response to Comment 9 below. In addition, DoD has revised the language at 232.7002(a)(6)(ii) and 252.232–7003(c) to further address the involvement of the contract administration office in decisions to permit exceptions to the rule.

1. *Comment:* The rule should permit agencies to implement procedures identifying criteria for exemptions, incorporation of the DFARS clause in existing contracts, and the method for documenting an alternate payment method between the contracting officer, the Defense Finance and Accounting Service (DFAS), and the vendor when the vendor cannot comply with the DFARS policy.

DoD Response: Concur in part. The DFARS rule does not preclude agencies from providing guidance to contracting officers to address the particular situations of the agency that may warrant an exemption from the policy. DoD believes the language at DFARS 232.7002(a)(1) through (6) provides sufficient flexibility for agencies to implement this policy without needing specific additional exemption authority.

As for existing contracts, DoD does not believe it is necessary to specify whether the clause applies retroactively. Policy on the applicability of DFARS changes is provided in DFARS 201.304(6), which states, "* * * Unless guidance accompanying a change states otherwise, contracting officers must include any new or revised clauses, provisions, or forms in solicitations issued on or after the effective date of the change." This rule does not deviate from the policy in DFARS 201.304(6) and, therefore, requires no additional instructions regarding applicability.

2. *Comment:* The rule should provide leeway to exclude classified procurement systems from any mandated changes implemented.

DoD Response: Concur. Classified invoices are exempt from the electronic submission requirement in accordance with DFARS 232.7002(a)(3).

3. *Comment:* How will DoD know that contracting offices are fully functional? Comments were submitted in response to the proposed rule published on May 31, 2002, which expressed concerns regarding the ability of agency software to comply with the electronic submission requirements.

DoD Response: In response to a comment received on the proposed rule published at 67 FR 38057 on May 31, 2002, DFARS 232.7002(a)(6) was added to the interim rule. This paragraph permits the contracting officer to authorize a contractor to submit a payment request in other than electronic form until such time as the agency is able to process payments electronically. Knowing which contracting offices are fully functional is an internal DoD implementation issue, which is outside the scope of this case. DoD anticipates that agencies will implement internal controls to monitor progress in complying with this policy.

4. *Comment:* One company indicated that it was not set up to send electronic invoices or accept electronic purchase orders. The company does not accept e-mail or FAX orders, and does not accept credit cards. Changing to all electronic payments would be a hardship to a small company such as itself that does limited Government business.

DoD Response: DoD believes this situation is adequately addressed at DFARS 232.7002(a)(6), which permits an exception to the policy if the contractor is unable to submit a payment request in electronic form.

5. *Comment:* There is a concern that one DoD payment office may be implementing a policy stating that, once it begins paying under contract via Wide Area WorkFlow-Receipt and Acceptance (WAWF–RA), there shall be no invoices on that contract that will be paid manually.

DoD Response: DoD believes it should be a rare instance where manual payments are needed after payment has been made electronically under a contract. However, DoD believes this situation is adequately addressed at DFARS 232.7002(a)(6), which permits submission of a payment request in other than electronic form if the contractor is unable to submit or DoD is unable to receive a payment request in electronic form, and the parties (contracting officer, payment office, contract administration office, and contractor) agree on an alternative method. While a particular payment office may have a general policy such as the one described by the respondent, DoD anticipates that such a policy would be flexible enough to accommodate unique circumstances that may arise during contract performance.

6. *Comment:* How will vendors know what DFAS payment systems are available to accept invoicing through WAWF–RA and whether there will be staff available for testing of different payment systems for electronic invoicing? In addition, will purchasing agencies have all the required information to give vendors for electronic invoicing when orders are called in for supplies?

DoD Response: Information regarding DFAS and electronic payment is available at *www.dfas.mil/ecedi*. If the required information is not available on that web site, the cognizant contracting officer should be able to assist the contractor.

7. *Comment:* There should be a 6-month grace period during which paper invoices will continue to be acceptable after a new electronic submission has been added.

DoD Response: Do not concur. DoD believes the language at DFARS 232.7002(a)(6) provides sufficient flexibility to address implementation concerns. This policy permits submission of a payment request in other than electronic form if the contractor is unable to submit or DoD is unable to receive a payment request in electronic form, and the parties agree on an alternative method.

8. *Comment:* The rule should consider that not every company or Government representative is located in an area with relatively inexpensive high-speed broadband internet access.

DoD Response: Concur in principle. DoD agrees that not every company or Government agency currently has high-speed broadband internet access. However, DoD believes this is adequately addressed at DFARS 232.7002(a)(6), which permits exceptions to the policy if the contractor is unable to submit or DoD is unable to receive a payment request in electronic form.

9. *Comment:* The second sentence of 252.232–7003(a)(2) should be revised to state that scanned documents are acceptable. Many contractors scan their data into a file and then attach it to the WAWF–RA program, which is part of the system.

DoD Response: Concur. The language at 252.232–7003(a)(2) was included in the interim rule to address a concern that scanned documents, by themselves, are not acceptable electronic forms for submission of payment requests. However, DoD recognizes that this may be misinterpreted to preclude scanning documents and then including them within the WAWF–RA program. Therefore, the language at 252.232–7003(a)(2) has been revised to state that scanned documents are not acceptable unless they are part of a submission using one of the forms of acceptable electronic transmission. Currently, neither ANSI X12 nor WInS can accept attachments. These are electronic data interchanges (EDI), so the only information flowing is data.

The language at 232.7002(b) has also been revised to specify that scanned documents are acceptable electronic forms for processing supporting documentation. DoD believes this change is necessary to clarify what constitutes electronic form for the processing of supporting documentation, and to be consistent with the language at 252.232–7003(a)(2).

10. *Comment:* Everyone should use WAWF–RA to electronically process invoices.

DoD Response: Do not concur. The rule identifies three acceptable electronic forms for transmission of payment requests, including but not limited to WAWF–RA. DoD does not believe it would be beneficial to limit transmission to WAWF–RA only.

11. *Comment:* It should be made explicit that it is the contracting officer's responsibility to approve an exemption as part of payment administration.

DoD Response: Concur in part. This responsibility is addressed at DFARS 232.7003(b), which states, "If the payment office and the contract administration office concur, the contracting officer may authorize a contractor to submit a payment request using an electronic form other than those listed.* * *"

12. *Comment:* One company stated that it was set up to receive orders/releases through EDI, but was unsure if this would be sufficient to satisfy the requirements of the new DFARS policy.

DoD Response: As stated in DFARS 252.232–7003(b), EDI format is an acceptable form of electronic submission. However, the respondent should ensure that the submission is in one of the American National Standards Institute (ANSI) formats, in accordance with the DFARS policy. If the respondent is not using an ANSI format, it may adopt one of the ANSI formats or may request that its current electronic form be authorized by the contracting officer.

13. *Comment:* The clause at DFARS 252.232–7003 should be clarified, because some DoD officials and contractors believe the clause requires the contractor to electronically submit receiving reports.

DoD Response: Do not concur. DFARS 252.232–7003 requires contractors to submit payment requests electronically. Unless a contractor submits a receiving report as a payment request, the requirements of DFARS 252.232–7003 do not apply. DoD believes that the clause clearly limits the electronic submission requirement to payment requests.

14. *Comment:* DFARS 252.246–7000, Material Inspection and Receiving Report, should be clarified if contractors are required to distribute material inspection and receiving reports submitted in WAWF–RA to non-active WAWF–RA users by some other means.

DoD Response: Concur in part. DoD agrees that, if contractors were required to distribute these documents to non-active WAWF–RA users, the rule would need to specifically state this requirement. However, DoD does not believe the rule should have such a requirement, because such additional distribution would be redundant and costly to both DoD and industry. The policy does not require contractors to otherwise distribute material inspection and receiving reports submitted in WAWF–RA, because the distribution recipients have access to WAWF–RA.

15. *Comment:* There is not adequate training for vendors as to the type of invoicing document they are required to submit for payment. In the paper world, payment offices pay off of any type of document, e.g., commercial invoice, public voucher, 2-in-1.

DoD Response: Do not concur. Whether submitting an invoice electronically or by paper, the vendor must submit the proper document. For example, a commercial invoice submitted under a contract that requires submission of public vouchers will not constitute an acceptable submission, regardless of whether that submission is made electronically or non-electronically.

Training is readily available for contractors and DoD personnel from numerous Internet sources, including the WAWF–RA site at *http://www.wawftraining.com;* for DCMA at *www.dcma.mil* (click on Electronic Invoicing); for DFAS at *www.dfas.mil/ecedi;* and for DISA at *www.disa.mil/acq/wawf/index.html* and *https://wawf-ra.slidell.disa.mil*.

16. *Comment:* Detailed guidance and training should be provided to all DoD payment staff regarding the payment request types for which payment invoicing is permitted.

DoD Response: Concur in principle. DoD believes adequate training is available, as discussed in the response to Comment 15 above.

17. *Comment:* While the training information is available on the Internet and by the military departments and defense agencies, there remains an urgent need to inform the contracting community about the requirement to invoice electronically.

DoD Response: Concur. To ensure the widest dissemination possible, an information release will be issued informing the public when the final rule is published.

18. *Comment:* The final rule should be clear with regard to the applicability date for the policy.

DoD Response: The interim rule became effective on March 1, 2003, and the final rule will become effective on the date of publication in the **Federal Register**. The DFARS changes in these rules apply to solicitations issued on or after the effective date of the change. (Also see the DoD response to Comment 1 above.)

19. *Comment:* One respondent was interested in the outcome of interfaces from the WAWF–RA Program Office referred to in Comment #36 of the February 21, 2003, **Federal Register** publication.

DoD Response: This comment is outside the scope of this case.

20. *Comment:* WAWF–RA does not currently accommodate third parties providing DD Form 250 processing as a service to contractors. An interface with a third party should be built into the WAWF–RA application.

DoD Response: While this recommendation is outside the scope of this case, the WAWF–RA Program Office has indicated that a future version of WAWF–RA will accommodate third parties providing DD Form 250 processing.

21. *Comment:* All options for electronic submission should include both the FTP and EDI batch solution to accommodate contractors that have high transaction counts and a simple web solution for contractors with low transaction counts.

DoD Response: While this recommendation is outside the scope of this case, the WAWF–RA Program Office has indicated that WAWF–RA does allow electronic submission in both FTP and EDI batch solution.

22. *Comment:* DoD should maintain a detailed schedule of electronic solutions available. The schedule should include a list of available solutions by invoice type, payment system, and payment office. The schedule should also show all system limitations, invoice types for which paper submission is acceptable, and the date when compliance with electronic submission for newly deployed solutions is required.

DoD Response: This comment is outside the scope of this case.

23. *Comment:* In migrating to one common electronic commerce system, existing electronic commerce solutions permitted by statute should be remapped into the specification required by the common system rather than requiring contractors to incur the significant cost of remapping.

DoD Response: This comment is outside the scope of this case.

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

B. Regulatory Flexibility Act

DoD certifies that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because any start-up costs that contractors will incur to comply with the rule are expected to be minimal, and should be offset by the reduced administrative costs that are expected to result from the electronic submission and processing of invoices. In addition, the rule provides for exceptions to electronic submission requirements in cases where the contractor is unable to submit a payment request in electronic form.

C. Paperwork Reduction Act

This rule does not impose any additional information collection requirements that require approval of the Office of Management and Budget (OMB) under 44 U.S.C. 3501, *et seq.* The information collection requirements for contractors to provide non-electronic payment requests already have been approved by OMB as indicated below:

FAR clause number	FAR clause title	OMB control number	Expiration date
52.216–7	Allowable cost and payment	9000–0069	12/31/2005
52.232–7	Payments under time-and-materials and labor-hour contracts	9000–0070	7/31/2005
52.232–12	Advance payments	9000–0073	7/31/2005
52.232–16	Progress payments	9000–0010	9/30/2005
52.232–29	Terms for financing of purchases of commercial items	9000–0138	9/30/2004
52.232–30	Installment payments for commercial items	9000–0138	9/30/2004
52.232–32	Performance-based payments	9000–0138	9/30/2004

List of Subjects in 48 CFR Parts 232 and 252

Government procurement.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

■ Accordingly, the interim rule amending 48 CFR parts 232 and 252 which was published at 68 FR 8450 on February 21, 2003, is adopted as a final rule with the following changes:

■ 1. The authority citation for 48 CFR parts 232 and 252 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

PART 232—CONTRACT FINANCING

■ 2. Section 232.7002 is amended by revising paragraphs (a)(6)(ii) and (b) to read as follows:

232.7002 Policy.

(a) * * *

(6) * * *

(ii) The contracting officer, the payment office, the contract administration office, and the contractor mutually agree to an alternative method.

(b) DoD officials receiving payment requests in electronic form shall process the payment requests in electronic form. Any supporting documentation necessary for payment, such as receiving reports, contracts, contract modifications, and required certifications, also shall be processed in electronic form. Scanned documents are acceptable forms for processing supporting documentation.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

252.212–7001 [Amended]

■ 3. Section 252.212–7001 is amended as follows:

■ a. By revising the clause date to read "(DEC 2003)"; and

■ b. In entry "252.232–7003", by removing "(MAR 2003)" and adding in its place "(DEC 2003)".

■ 4. Section 252.232–7003 is amended by revising the clause date and paragraphs (a)(2) and (c) to read as follows:

252.232–7003 Electronic Submission of Payment Requests.

* * * * *

ELECTRONIC SUBMISSION OF PAYMENT REQUESTS (DEC 2003)

(a) * * *

(2) *Electronic form* means any automated system that transmits information electronically from the initiating system to all affected systems. Facsimile, e-mail, and scanned documents are not acceptable electronic forms for submission of payment requests. However, scanned documents are acceptable when they are part of a submission of a payment request made using one of the electronic forms provided for in paragraph (b) of this clause.

* * * * *

(c) If the Contractor is unable to submit a payment request in electronic form, or DoD is unable to receive a payment request in electronic form, the Contractor shall submit the payment request using a method mutually agreed to by the Contractor, the Contracting Officer, the contract administration office, and the payment office.

* * * * *

[FR Doc. 03–30764 Filed 12–12–03; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF DEFENSE

48 CFR Parts 232 and 252

[DFARS Case 2002–D017]

Defense Federal Acquisition Regulation Supplement; Payment Withholding

AGENCY: Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD has issued a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to provide additional flexibility when determining the need to withhold payments under time-and-materials and labor-hour contracts. The rule clarifies that normally there should be no need to withhold payment for a contractor with a record of timely submittal of a release discharging the Government from all liabilities, obligations, and claims under a contract.

EFFECTIVE DATE: December 15, 2003.

FOR FURTHER INFORMATION CONTACT: Mr. Thaddeus Godlewski, Defense Acquisition Regulations Council, OUSD(AT&L)DPAP(DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301–3062. Telephone (703) 602–2022; facsimile (703) 602–0350. Please cite DFARS Case 2002–D017.

SUPPLEMENTARY INFORMATION:

A. Background

Federal Acquisition Regulation (FAR) 52.232–7, Payments under Time-and-Materials and Labor-Hour Contracts, requires the contracting officer to withhold 5 percent of the amounts due, up to a maximum of $50,000, unless otherwise specified in the contract Schedule. The Government retains the withheld amount until the contractor executes and delivers, at the time of final payment, a release discharging the Government from all liabilities, obligations, and claims arising under the contract. This rule adds DFARS 232.111(b) and DFARS 252.232–7006, Alternate A, to specify that, normally, there should be no need to withhold payment for a contractor with a record of timely submittal of such a release.

DoD published a proposed rule at 68 FR 9627 on February 28, 2003. Five sources submitted comments on the proposed rule. A discussion of the comments is provided below. Differences between the proposed and final rules are addressed in the DoD Response to Comments 5, 6, 7, and 8 below.

1. *Comment:* The rule should specify whether the clause applies retroactively or from a specific date forward to all time-and-materials and labor-hour contracts.

DoD Response: Do not concur. Policy on the applicability of DFARS changes is provided in DFARS 201.304(6), which states, "* * * Unless guidance accompanying a change states otherwise, contracting officers must include any new or revised clauses, provisions, or forms in solicitations issued on or after the effective date of the change." This rule does not deviate from the policy in DFARS 201.304(6) and, therefore, requires no additional instructions regarding applicability.

2. *Comment:* FAR 52.232–7(a)(2) should be eliminated. If it is not eliminated, there should be a graduated scale for the rate of withholding and the total to be withheld. For instance, the ceiling amount for very small businesses should be reduced to $5,000 and the withholding rate should be reduced to 2 percent so that the effects are spread over a longer time.

DoD Response: Do not concur. DoD believes the withhold is an important tool for the Government to use when the contractor does not have a record of timely submittal of the release discharging the Government from all liabilities, obligations, and claims. The withhold protects the Government in these circumstances while also providing the contractor with an incentive to submit the discharges in a timely manner.

3. *Comment:* In addition to continuing forward with this DFARS revision, the FAR should be revised at the earliest possible date to make withholding optional.

DoD Response: The Defense Acquisition Regulations Council is presently working with the Civilian Agency Acquisition Council to incorporate similar policy into the FAR.

4. *Comment:* The language at 232.111(b)(ii) should be revised to indicate that timely submittal of release is only one example where there is no need to withhold payment. There are other circumstances when the withholding may not be necessary, such as when the contractor has demonstrated a satisfactory accounting and billing system and is determined to be eligible for direct billings by the Defense Contract Audit Agency.

DoD Response: Do not concur. A satisfactory accounting and billing system and eligibility for direct billings indicate that the contractor has the necessary internal controls to address periodic billings during contract performance. However, they are not determinative as to whether the contractor submits timely releases discharging the Government from all liabilities, obligations, and claims upon completion of the contract. If the contractor does not have a record of submitting these discharge documents in a timely manner, the fact that the accounting and billing systems are adequate is not sufficient to warrant removing the withhold requirement.

5. *Comment:* The language at 232.111(b)(iii) should be revised to refer to the withholding as "five percent up to a maximum of $50,000" of the amounts due until a sufficient reserve is established. This maximum amount of coverage is addressed properly in the contract clause. In addition, 232.111(b)(iii) should be amended to authorize the ACO to establish an administrative mechanism for holding contractor funds that does not require the withholding of funds on each invoice so as to reduce the administrative burden on both the Government and the contractor.

DoD Response: Partially concur. DoD agrees that the $50,000 maximum withhold amount should be stated in 232.111(b)(iii) and, accordingly, has replaced "until a sufficient reserve is set aside" with "up to a maximum of $50,000."

As to the suggestion to provide for alternative mechanisms, DoD believes that determining whether alternative administrative mechanisms are feasible and/or practical is beyond the scope of this case.

6. *Comment:* The rule should instruct the contractor to forward all vouchers to the Defense Finance and Accounting Service (DFAS) through the ACO for approval, until such time that the ACO considers sufficient reserves to be set aside to adequately protect the Government interests. The ACO must inform DFAS when funds will be withheld from a contract, and there must be a process to link the modification with the vouchers being submitted to DFAS for payment. The modification should specify the percentage of the amounts due up to a maximum dollar amount.

DoD Response: Partially concur. DoD recognizes the need for coordination among all parties in the payment process to ensure that withholds are

appropriately made without significantly impacting the payment process. However, DoD does not believe requiring ACO approval of each voucher is the proper solution for this issue. Requiring the contractor to submit all vouchers requiring withholds through the ACO for approval would place an unnecessary administrative burden on the ACO and could impact the timeliness of payment.

DoD agrees that the ACO should ensure that the contract specifies the percentage and total amount of the withhold, and accordingly, has added the following language to DFARS 232.111(b)(iii): "The ACO shall ensure that the modification specifies the percentage and total amount of the withhold."

DoD also agrees that the ACO should provide DFAS with written payment instructions regarding if and when withholds are needed. However, DoD does not believe these instructions should be included as part of this DFARS rule.

7. *Comment:* There is a concern that the rule shifts responsibility for withholding from the Government to the contractor. It is important that this responsibility remain with the Government.

DoD Response: Partially concur. While there was no intent to shift the burden to the contractor, DoD recognizes that the proposed language could be misinterpreted. Therefore, 232.111(b)(iii) and 252.232–7006 have been revised to clarify that the ACO must issue a modification requiring the contractor to withhold amounts from its billings.

8. *Comment:* The language 232.111(b)(iii) should be amended to state "If the ACO determines that it is necessary to withhold payment to protect the Government's interests, written direction should be issued to the contractor by modification of the contract directing the withholding of 5 percent of amounts due until a sufficient reserve is set aside." This revised language would be consistent with the language in Defense Contract Management Agency Information Memorandum 03–121 issued on January 14, 2003. Requiring withholds to protect the interests of the Government alters the contract terms and conditions and, therefore, should be documented through a contract modification.

DoD Response: Concur in principle. The language at 232.111(b)(iii) has been revised to state that the ACO must issue a modification requiring the contractor to withhold the amounts due.

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

B. Regulatory Flexibility Act

DoD certifies that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule applies only to time-and-materials and labor-hour contracts. Most contracts awarded to small entities use simplified acquisition procedures or are awarded on a competitive, fixed-price basis.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the rule does not impose any information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 232 and 252

Government procurement.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

■ Therefore, 48 CFR parts 232 and 252 are amended as follows:

■ 1. The authority citation for 48 CFR parts 232 and 252 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

PART 232—CONTRACT FINANCING

■ 2. Section 232.111 is added to read as follows:

232.111 Contract clauses for non-commercial purchases.

(b) Use the clause at FAR 52.232–7, Payments under Time-and-Materials and Labor-Hour Contracts, with 252.232–7006, Alternate A, in solicitations and contracts when a time-and-materials or labor-hour contract is contemplated.

(i) Alternate A permits the administrative contracting officer (ACO) to withhold 5 percent of the amounts due until a reserve is set aside in an amount the ACO considers to be necessary, but not to exceed $50,000, to protect the Government's interests.

(ii) Normally, there should be no need to withhold payment for a contractor with a record of timely submittal of the release discharging the Government from all liabilities, obligations, and claims.

(iii) If the ACO determines that it is necessary to withhold payment to protect the Government's interests, the ACO shall unilaterally issue a modification requiring the contractor to withhold 5 percent of amounts due, up to a maximum of $50,000. The ACO shall ensure that the modification specifies the percentage and total amount of the withhold.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 3. Section 252.232–7006 is added to read as follows:

252.232–7006 Alternate A.

Alternate A (Dec 2003)

As prescribed in 232.111(b), substitute the following paragraph (a)(2) for paragraph (a)(2) of the clause at FAR 52.232–7:

(a)(2) The Administrative Contracting Officer (ACO) may unilaterally issue a contract modification requiring the Contractor to withhold amounts from its billings until a reserve is set aside in an amount that the ACO considers necessary to protect the Government's interests. The ACO may withhold 5 percent of the amounts due under this paragraph (a), but the total amount withheld shall not exceed $50,000. The amounts withheld shall be retained until the Contractor executes and delivers the release required by paragraph (f) of this clause.

[FR Doc. 03–30763 Filed 12–12–03; 8:45 am]

BILLING CODE 5001–08–P

Proposed Rules

Federal Register

Vol. 68, No. 240

Monday, December 15, 2003

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–NE–51–AD]

RIN 2120–AA64

Airworthiness Directives; Rolls-Royce Deutschland Ltd. & Co KG, Models Spey 555–15, 555–15H, 555–15N, and 555–15P Turbojet Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for Rolls-Royce Deutschland Ltd. & Co KG (RRD), models Spey 555–15, 555–15H, 555–15N, and 555–15P turbojet engines, with magnesium split low pressure (LP) compressor case, part number (P/N) EU.73418A installed. This proposed AD would require replacement of the magnesium split LP compressor case with a serviceable compressor case that is a combination of a steel front LP compressor case and a shortened split compressor case. This proposed AD results from several reports of bird ingestion and LP stage 1 rotor blade failures that have resulted in penetration of the magnesium LP compressor case, and damage to the airplane. We are proposing this AD to prevent possible uncontained LP stage 1 rotor blade failures that could result in damage to the airplane.

DATES: We must receive any comments on this proposed AD by February 13, 2004.

ADDRESSES: Use one of the following addresses to submit comments on this proposed AD:

- By mail: Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 2003–NE–51–AD, 12 New England Executive Park, Burlington, MA 01803–5299.
- By fax: (781) 238–7055.
- By e-mail: *9-ane-adcomment@faa.gov.*

You can get the service information identified in this proposed AD from Rolls-Royce Deutschland Ltd & Co KG, Eschenweg 11, D–15827 Dahlewitz, Germany, telephone +49 (0) 33–7086–1768; fax +49 (0) 33–7086–3356.

You may examine the AD docket, by appointment, at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA.

FOR FURTHER INFORMATION CONTACT: James Lawrence, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7176; fax (781) 238–7199.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to submit any written relevant data, views, or arguments regarding this proposal. Send your comments to an address listed under **ADDRESSES.** Include "AD Docket No. 2003–NE–51–AD" in the subject line of your comments. If you want us to acknowledge receipt of your mailed comments, send us a self-addressed, stamped postcard with the docket number written on it; we will date-stamp your postcard and mail it back to you. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. If a person contacts us verbally, and that contact relates to a substantive part of this proposed AD, we will summarize the contact and place the summary in the docket. We will consider all comments received by the closing date and may amend the proposed AD in light of those comments.

We are reviewing the writing style we currently use in regulatory documents. We are interested in your comments on whether the style of this document is clear, and your suggestions to improve the clarity of our communications that affect you. You may get more information about plain language at *http://www.faa.gov/language* and *http://www.plainlanguage.gov.*

Examining the AD Docket

You may examine the AD Docket (including any comments and service information), by appointment, between 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. *See* **ADDRESSES** for the location.

Discussion

The Luftfahrt-Bundesamt (LBA), which is the airworthiness authority for Germany, recently notified the FAA that an unsafe condition may exist on RRD models Spey 555–15, 555–15H, 555–15N, and 555–15P turbojet engines. The LBA advises that several reports of bird ingestion and LP stage 1 rotor blade failures have resulted in penetration of the current design magnesium split LP compressor case, and damage to the airplane.

Relevant Service Information

Rolls-Royce Deutschland Service Bulletin (SB) No. Sp72–893, Revision 3, dated August 25, 2003, describes procedures for replacing the magnesium split LP compressor case, P/N EU.73418A, by reworking the front bearing housing and reworking certain affected brackets necessary, and installing Modification Kit Spey 5515. The kit contains a new design steel front case and shortened split compressor case.

FAA's Determination and Requirements of the Proposed AD

These RRD models Spey 555–15, 555–15H, 555–15N, and 555–15P turbojet engines, manufactured in Germany, are type-certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the LBA has kept us informed of the situation described above. We have examined the LBA's findings, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States. Therefore, we are proposing this AD, which would require replacing the current design magnesium split LP compressor case with a serviceable compressor case that is a combination of a steel front case and a shortened split case, within 60 months after the effective date of the AD. The AD compliance time is based on comprehensive Rolls-Royce

investigation and risk assessment results.

Changes to 14 CFR Part 39—Effect on the Proposed AD

On July 10, 2002, we issued a new version of 14 CFR part 39 (67 FR 47998, July 22, 2002), which governs the FAA's AD system. This regulation now includes material that relates to altered products, special flight permits, and alternative methods of compliance. This material previously was included in each individual AD. Since this material is included in 14 CFR part 39, we will not include it in future AD actions.

Costs of Compliance

There are about 184 RRD models Spey 555–15, 555–15H, 555–15N, and 555–15P turbojet engines of the affected design in the worldwide fleet. We estimate that 34 engines installed on airplanes of U.S. registry would be affected by this proposed AD. We also estimate that it would take about 6 work hours per engine to perform the proposed actions, and that the average labor rate is $65 per work hour. Required parts would cost about $37,000 per engine. Based on these figures, we estimate the total cost of the proposed AD to U.S. operators to be $1,271,260.

Regulatory Findings

We have determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that the proposed regulation:

1. Is not a "significant regulatory action" under Executive Order 12866;

2. Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and

3. Would not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a summary of the costs to comply with this proposal and placed it in the AD Docket. You may get a copy of this summary by sending a request to us at the address listed under **ADDRESSES**. Include "AD Docket No. 2003–NE–51–AD" in your request.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. The FAA amends § 39.13 by adding the following new airworthiness directive:

Rolls-Royce Deutschland Ltd. & Co KG: Docket No. 2003–NE–51–AD.

Comments Due Date

(a) The FAA must receive comments on this airworthiness directive (AD) action by February 13, 2004.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Rolls-Royce Deutschland Ltd. & Co KG (RRD), models Spey 555–15, 555–15H, 555–15N, and 555–15P turbojet engines, with magnesium split low pressure (LP) compressor case, part number (P/N) EU.73418A installed. These engines are installed on, but not limited to, Fokker F.28 Mark 1000, Mark 2000, Mark 3000, and Mark 4000 series airplanes.

Unsafe Condition

(d) This AD is prompted by several reports of bird ingestion and LP stage 1 rotor blade failures that have resulted in penetration of the magnesium split LP compressor case and damage to the airplane. We are issuing this AD to prevent possible uncontained LP stage 1 rotor blade failures that could result in damage to the airplane.

Compliance

(e) You are responsible for having the actions required by this AD performed within 60 months after the effective date of this AD, unless the actions have already been done.

Replacement of Magnesium Split LP Compressor Case With a Serviceable Compressor Case

(f) Remove the magnesium split LP compressor case, P/N EU.73418A, from the engine and install a serviceable compressor case. Information on removing and replacing this P/N case can be found in RRD Service Bulletin (SB) No. Sp72–893, Revision 3, dated August 25, 2003.

Alternative Methods of Compliance

(g) The Manager, Engine Certification Office, has the authority to approve alternative methods of compliance for this AD if requested using the procedures found in 14 CFR 39.19.

Material Incorporated by Reference

(h) None.

Related Information

(i) LBA airworthiness directive 2003–261, dated August 25, 2003, also addresses the subject of this AD.

Issued in Burlington, Massachusetts, on December 5, 2003.

Jay J. Pardee,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 03–30851 Filed 12–12–03; 8:45 am]

BILLING CODE 4910–13–P

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 143

Collection of Claims Owed the United States Arising From Activities Under the Commission's Jurisdiction

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Commodity Futures Trading Commission (Commission) proposes to revise its regulations governing the collection of claims owed to the United States arising from activities under the Commission's jurisdiction. The proposed revision implements the administrative wage garnishment provisions of the Debt Collection Improvement Act of 1996 (DCIA). The DCIA authorizes Federal agencies to collect money from a debtor's disposable income by means of administrative wage garnishment. Prior to enactment of the DCIA, a court order was required for an agency to garnish a debtor's wages. In accordance with the requirements of the DCIA, the procedures being proposed by the Commission to garnish wages administratively are based upon, and consistent with, implementing regulations issued by the Department of the Treasury.

DATES: Comments must be received by January 14, 2004.

ADDRESSES: Comments should refer to "Proposed Administrative Wage Garnishment Rules" and be submitted to the Office of the Secretariat, Commodity Futures Trading Commission, Three Lafayette Center, 1155 21st Street, NW., Washington, DC 20581.

FOR FURTHER INFORMATION CONTACT: Stephen Mihans, Esq., Office of General Counsel, Commodity Futures Trading Commission, at (202) 418–5399 or *smihans@cftc.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

Part 143 of the Commission's regulations, 17 CFR part 143, sets forth the Commission's policies and procedures for collecting debts owed to the United States arising from activities under the Commission's jurisdiction. At present, the part 143 rules, which apply to debts owed by persons not employed by the Federal government, authorize collection by (1) administrative offset against obligations owed to the debtor by the United States, (2) compromise (if the debt owed is not more than $100,000), or (3) referral to the Department of Justice for litigation.[1] The part 143 rules were first published in 1985 (50 FR 5383) to implement the Federal Claims Collection Act of 1966, as amended by the Debt Collection Act of 1982, 31 U.S.C. 3701, *et seq.* They were amended in 1992 (57 FR 61291) to increase the maximum dollar amount of claims that the Commission itself may settle, and again in 1996 (61 FR 55564) and 2000 (65 FR 45709) to adjust for inflation the maximum dollar amount of civil penalties assessable for violations of the Commodity Exchange Act and the Commission's regulations and orders.[2]

As a result of the Department of the Treasury's issuance of regulations implementing the administrative wage garnishment provisions of the DCIA, the Commission is proposing to further amend its part 143 rules. Under the DCIA, the head of a Federal agency administering a program that gives rise to a delinquent non-tax debt owed to the United States by an individual may garnish the individual's disposable pay to collect the amount owed. *See* 31 U.S.C. 3720D. On May 6, 1998, the Financial Management Service (FMS),[3] a bureau of the Department of the Treasury, promulgated regulations (63 FR 23156) establishing rules and procedures governing administrative wage garnishment by Federal agencies. *See* 31 CFR 285.11. Agencies that wish to use administrative wage garnishment to collect delinquent debts must comply with all of the requirements set forth in 31 CFR 285.11. They are permitted, however, to prescribe their own rules for the conduct of administrative wage garnishment hearings, so long as the rules are consistent with criteria set forth in 31 CFR 285.11(f).

The Commission's proposal would revise existing Rule 143.1 by adding administrative wage garnishment to the list of available debt collection procedures. Existing Rules 143.2 through 143.8, which address the collection of delinquent debt through administrative offset, compromise, or referral to the Department of Justice for litigation, would be grouped together as subpart A, "General Provisions." To address the collection of delinquent debt through garnishment of the debtor's wages, a new subpart B, "Administrative Wage Garnishment," would be added to part 143. In addition to these changes, the Commission's proposal would correct citations in part 143 to the Federal Claims Collections Standards to reflect their transfer from part 4 to part 31 of the Code of Federal Regulations and make other editorial changes of a non-substantive nature.

II. Overview of Proposed Wage Garnishment Procedures

Under proposed Rule 143.9, administrative wage garnishment proceedings initiated by the Commission would be governed by the FMS regulations codified at 31 CFR 285.11.[4] Those regulations allow the Commission to garnish the disposable pay of any individual, other than an employee of the Federal government, who owes a delinquent non-tax debt to the United States arising from an activity within the Commission's jurisdiction. 31 CFR 285.11(d). At least 30 days before a garnishment proceeding is initiated, the Commission (or FMS, acting on the Commission's behalf) will send the debtor written notice informing him or her of the nature and amount of the debt and the Commission's intention to collect it through deductions from the debtor's pay, and explaining the debtor's rights with respect to the proposed action. 31 CFR 285.11(e)(1).

The debtor will be given an opportunity to inspect and copy Commission records related to his or her debt, to enter into a written repayment agreement on terms acceptable to the Commission, and to request a hearing concerning the existence or amount of the debt or the terms of the repayment schedule. 31 CFR 285.11(e)(2). If a hearing request is received within 15 business days after the Commission's notice is mailed to the debtor, a hearing must be held before a garnishment order can be issued. 31 CFR 285.11(f)(4). For hearing requests not received within 15 business days, the Commission need not delay the issuance of the garnishment order prior to conducting a hearing. 31 CFR 285.11(f)(5). The Commission may not garnish the pay of a delinquent debtor who has been involuntarily separated from employment until he or she has been reemployed continuously for at least 12 months. 31 CFR 295.11(j). The debtor bears the burden of informing the Commission of the circumstances surrounding an involuntary separation from employment.

Within 30 days after a delinquent debtor fails to make a timely request for a hearing or, if a timely request is received, within 30 days after a final decision is made to proceed with garnishment, the Commission (or FMS, acting on the Commission's behalf) will mail a wage garnishment order, in a form prescribed by the Department of the Treasury, to the debtor's employer. 31 CFR 285.11(g). The order will direct that the employer pay a specified portion of the debtor's wages to the Federal government. Along with the order, the Commission (or FMS, acting on the Commission's behalf) will send a certification form, to be executed by the employer, addressing such matters as the debtor's current employment status and the amount of disposable income available for garnishment. 31 CFR 285.11(h). Although the employer must promptly pay all amounts that are required to be withheld from the debtor's pay, the employer will not be required to alter its normal pay cycle in order to do so.

As provided by the DCIA, no more than 15 percent of a delinquent debtor's disposable income may be garnished for each pay period. A debtor may, at any time, seek review by the Commission of the amount being withheld under an administrative wage garnishment order, based on materially changed circumstances (such as disability, divorce, or catastrophic illness) which result in financial hardship. The DCIA makes it unlawful for an employer to take disciplinary action against an employee based on the fact that the employee's pay is subject to administrative wage garnishment. In addition, it authorizes the Commission to sue an employer for amounts that are

[1] The collection of debts owed to the Commission by its current employees or by the employees of other Federal agencies, and of debts owed to other Federal agencies by current Commission employees, is separately governed by part 141 of the Commission's regulations, 17 CFR part 141.

[2] The 1996 and 2000 amendments to the Commission's part 143 rules implemented the Federal Civil Penalties Inflation Adjustment Act of 1990 (FCPIAA), as amended by the DCIA. The FCPIAA and the relevant amendments made to the FCPIAA by the DCIA, are codified at 28 U.S.C. 2461 note.

[3] On August 27, 1999, the Commission entered into a cross-servicing agreement with the FMS, which allows the FMS to undertake debt collection activities on behalf of the Commission. It is anticipated that, pursuant to that agreement, the FMS also will assist the Commission in collecting delinquent debts through administrative wage garnishment.

[4] The Commission's use of other debt-collection measures set forth in subpart A of the part 143 rules would not preclude it from initiating an administrative wage garnishment proceeding against a delinquent debtor.

not withheld under a garnishment order.

III. Administrative Wage Garnishment Hearings

If a delinquent debtor requests a hearing concerning the existence or amount of his or her debt or the terms of repayment set forth in the garnishment order, the hearing will be conducted by the Commission in accordance with the requirements of 31 CFR 285.11(f). Under proposed Rule 143.10, the Commission would authorize its Executive Director (or any Commission employee designated by the Executive Director) to decide whether the hearing will be oral or in writing, and to select a qualified and impartial employee of the Commission to conduct the hearing and render a decision. Consistent with the requirements of 31 CFR 285.11(f)(10), the Commission's proposed rules require that a decision be issued within 60 days after the Commission's receipt of the debtor's request for a hearing. The hearing official's decision would be the final agency action for purposes of judicial review under the Administrative Procedure Act, 7 U.S.C. 701, *et seq.*

The proposed rules state that, at the hearing, the Commission has the burden of going forward to prove the existence and amount of the debt. Depending on his or her claims, the debtor then would have to establish, by a preponderance of the evidence, that no debt exists or the amount of the debt is incorrect, that the terms of the repayment schedule are either unlawful or would cause a financial hardship to the debtor, or that collection of the debt may not be pursued due to the operation of law. Although the FMS regulations require only that a "summary record" of the hearing be maintained, proposed Rule 143.10 would require that all testimony adduced at an oral hearing be transcribed on the record and under oath or affirmation, and that all documents presented for consideration by the hearing official be marked as exhibits and retained in the record.

IV. Related Matters

A. Administrative Procedure Act

The proposed amendments to the Commission's part 143 rules governing debt collection relate solely to agency organization, procedure, and practice. Therefore, the provisions of the Administrative Procedure Act, 5 U.S.C. 553, generally requiring notice of proposed rulemaking and opportunity for public comment, are not applicable. Moreover, because the rules implement a definitive statutory scheme established by the DCIA, notice and an opportunity for public comment are not required. However, since the proposed amendments represent an additional tool in the Commission's debt-collection efforts, the Commission has determined that it would be useful to receive comments from any interested members of the public before proceeding to final rulemaking.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act ("RFA"), 5 U.S.C. 601–611, requires that, in proposing rules, agencies consider the impact of those rules on small businesses. Since the proposed rules are not being effected pursuant to 5 U.S.C. 553, the analysis and certification process mandated by the RFA do not apply. In any event, the Chairman, on behalf of the Commission, certifies that the proposed rules will not have a significant economic impact on a substantial number of small businesses. Although an employer of a delinquent debtor will have to certify certain information about the debtor, such as the debtor's employment status and current earnings, this information is already contained in the employer's payroll records. Moreover, an employer would not be required to vary its normal payroll cycle to accommodate an administrative wage garnishment order.

C. Paperwork Reduction Act

The proposed part 143 rules do not impose a burden within the meaning and intent of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501, *et seq.*

D. Cost-Benefit Analysis

Section 15(a) of the Commodity Exchange Act, 7 U.S.C. 19(a), requires the Commission to consider the costs and benefits of its action before issuing a new regulation. The Commission understands that, by its terms, section 15(a) does not require the Commission to quantify the costs and benefits of a new regulation or to determine whether the benefits of the proposed regulation outweigh its costs. Nor does it require that each proposed rule be analyzed in isolation when that rule is a component of a larger package of rules or rule revisions. Rather, section 15(a) simply requires the Commission to "consider the costs and benefits" of its action.

Section 15(a) further specifies that costs and benefits shall be evaluated in light of five broad areas of market and public concern: Protection of market participants and the public; efficiency, competitiveness, and financial integrity of futures markets; price discovery; sound risk management practices; and other public interest considerations. Accordingly, the Commission can, in its discretion, give greater weight to any one of the five enumerated areas of concern and can, in its discretion, determine that notwithstanding its costs, a particular rule is necessary or appropriate to protect the public interest or to effectuate any of the provisions, or accomplish any of the purposes, of the Commodity Exchange Act.

The proposed administrative wage garnishment rules are not related to the marketplace and thus should not affect the protection of market participants; the efficiency, competitiveness, and financial integrity of futures markets; price discovery; or sound risk management practices. These proposed rules, however, do address other public interest considerations, namely, the collection of debts owed to the United States arising from activities under the Commission's jurisdiction. The costs associated with implementing administrative wage garnishment, which are mandated by the DCIA and 31 CFR 285.11, will be small. On the other hand, the benefits include providing an additional means to prevent persons who have been found liable for violating the Commodity Exchange Act or the Commission's regulations or orders from avoiding payment of monetary sanctions lawfully imposed on them.

List of Subjects in 17 CFR Part 143

Civil monetary penalty, Claims.

In consideration of the foregoing, the Commission proposes to amend chapter 1 of title 17 of the Code of Federal Regulations as follows:

PART 143—COLLECTION OF CLAIMS OWED THE UNITED STATES ARISING FROM ACTIVITIES UNDER THE COMMISSION'S JURISDICTION

1. The authority citation for part 143 is revised to read as follows:

Authority: 7 U.S.C. 9 and 15, 9a, 12a(5), 13a, 13a-1(d), and 13(a); 31 U.S.C. 3701–3720E; 28 U.S.C. 2461 note.

2. Section 143.1 is revised to read as follows:

§ 143.1 Purpose.

This part provides procedures that the Commission will use to collect debts owed the United States arising from activities under the Commission's jurisdiction. As applicable, these procedures are based upon, and conform to, the Federal Claims Collection Act, as amended, 31 U.S.C. 3701–3720E; the Federal Claims Collection Standards, 31 CFR parts 900–905, issued by the Department of the Treasury and the Department of Justice; administrative wage garnishment regulations issued by the Department of the Treasury, 31 CFR 285.11; and other laws applicable to the collection of non-tax debts owed to the United States arising from activities under the Commission's jurisdiction. Subpart A describes procedures for collection by offset against obligations of the United States to the debtor, by compromise, and by referral to the Department of Justice for litigation. It also sets forth the Commission's policy on collecting interest on unpaid claims, the method used in calculating such interest, and the maximum inflation-adjusted civil monetary penalties that may be assessed and enforced for each violation of the Commodity Exchange Act or regulations or orders of the Commission promulgated thereunder. Subpart B describes procedures for collection by administrative garnishment of the debtor's wages.

3. Sections 143.2 through 143.8 are designated as subpart A of part 143, and a new heading, "Subpart A—General Provisions," is added above section 143.2 to read as follows:

Subpart A—General Provisions

4. Section 143.2 is amended by revising paragraph (c) to read as follows:

§ 143.2 Notice of claim.

* * * * *

(c) If no response or an unsatisfactory response is received by the date indicated in the notice, the Commission may take further action as appropriate under the Commodity Exchange Act or regulations thereunder, or under 31 CFR parts 900–905 or the Federal Claims Collection Act, as amended, 31 U.S.C. 3701–3720E.

5. Section 143.7 is amended by revising paragraph (a) to read as follows:

§ 143.7 Delegation of authority to the Executive Director.

(a) The Commission hereby delegates, until such time as the Commission orders otherwise, to the Executive Director or to any Commission employee under the Executive Director's supervision as he or she may designate, authority to take action to carry out subpart A and subpart B of this Part and the requirements of 31 CFR parts 900–905 and 31 CFR 285.11.

* * * * *

6. A new subpart B consisting of §§143.9 and 143.10 is added to part 143, to read as follows:

Subpart B—Administrative wage garnishment

§ 143.9 Administrative wage garnishment orders.

Whenever an individual owes the United States a delinquent non-tax debt arising from activities under the Commission's jurisdiction, the Commission, or another federal agency collecting the debt on behalf of the Commission, may initiate administrative proceedings to garnish the disposable income of the delinquent debtor in accordance with the requirements of, and the procedures set forth in, 31 CFR 285.11. The Commission's use of other debt-collection measures set forth in subpart A of this part does not preclude the initiation of an administrative wage garnishment proceeding against a delinquent debtor.

§ 143.10 Garnishment hearings.

Any oral or written hearing required to establish the Commission's right to collect a delinquent debt through administrative wage garnishment will be presided over by a hearing official designated by the Executive Director. Any qualified and impartial employee of the Commission designated by the Executive Director may serve as a hearing official. All documents presented to the hearing official for his or her consideration shall be marked as exhibits and retained in the record. All testimony given at an oral hearing, either in person or by telephone, shall be under oath or affirmation. A transcript of the hearing shall be prepared and made part of the record.

Issued in Washington, DC, on December 9, 2003, by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 03–30877 Filed 12–12–03; 8:45 am]

BILLING CODE 6351–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[Region II Docket No. NJ65–269, FRL–7599–1]

Approval and Promulgation of Implementation Plans; New Jersey; Motor Vehicle Enhanced Inspection and Maintenance Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rulemaking.

SUMMARY: The EPA is proposing to approve a revision to the State Implementation Plan (SIP) for New Jersey's enhanced inspection and maintenance (I/M) program. New Jersey has made several amendments to its I/M rules to comply with EPA regulations and to improve performance of the program and has requested that the SIP be revised to include these changes. Chief among the amendments EPA is proposing to approve is New Jersey's On-Board Diagnostic (OBD) program. EPA is proposing to approve New Jersey's latest I/M rule changes. The intended effect of this action is to maintain consistency between the State-adopted rules and the federally approved SIP.

DATES: Comments must be received on or before January 14, 2004. Public comments on this action are requested and will be considered before taking final action.

ADDRESSES: Submit your comments, identified by Docket No. NJ65–269, by email to *Werner.Raymond@epa.gov*, online at *http://www.regulations.gov*, which is an alternative method for submitting electronic comments to EPA; mailed to Raymond Werner, Chief, Air Programs Branch, Environmental Protection Agency, Region II Office, 290 Broadway, 25th Floor, New York, New York 10007–1866; or by hand delivery or courier to the same address.

Copies of the state submittal(s) are available at the following address for inspection during normal business hours:

Environmental Protection Agency, Region II Office, Air Programs Branch, 290 Broadway, 25th Floor, New York, New York 10007–1866, and

New Jersey Department of Environmental Protection, Bureau of Air Quality Planning, 401 East State Street, CN027, Trenton, New Jersey 08625.

FOR FURTHER INFORMATION CONTACT: Reema Persaud, Air Programs Branch, Environmental Protection Agency, 290 Broadway, 25th Floor, New York, New York 10007–1866, (212) 637–4249, *persaud.reema@epa.gov*.

SUPPLEMENTARY INFORMATION: If you submit an electronic comment, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment and with any disk or CD-ROM you submit. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. Any identifying or contact information

provided in the body of a comment will be included as part of the comment that is made available to the public. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

If you send an electronic mail (e-mail) comment to the EPA e-mail address for this rulemaking, *Werner.Raymond@epa.gov*, your e-mail address is automatically captured and included as part of the comment that is made available to the public. Regulations.gov is an alternative method of submitting electronic comments to EPA. In contrast to EPA's e-mail system, Regulations.gov is an "anonymous access" system, which mean EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

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1. Background

The Clean Air Act (CAA) requires certain states to implement an enhanced inspection and maintenance (I/M) program to detect gasoline-fueled motor vehicles which exhibit excessive emissions of certain air pollutants. The enhanced I/M program is intended to help states meet federal health-based national ambient air quality standards (NAAQS) for ozone and carbon monoxide by requiring vehicles with excess emissions to have their emissions control systems repaired. New Jersey is required to have an enhanced I/M program pursuant to the CAA, and consequently has adopted, and has been implementing an enhanced I/M program statewide since December 13, 1999. In the January 22, 2002 **Federal Register** (67 FR 2811), EPA fully approved New Jersey's enhanced I/M program, including the State's performance standard modeling, as meeting the applicable requirements of the CAA. Additional information on EPA's final approval of New Jersey's enhanced I/M program can be found in EPA's January 22, 2002 final approval notice.

On April 5, 2001, EPA's revised I/M program requirements rule was published in the **Federal Register** (Amendments to Vehicle Inspection and Maintenance Program Requirements Incorporating the On-Board Diagnostics Check; Final Rule (66 FR 18156)). The revised I/M rule requires that electronic checks of the On-Board Diagnostics (OBD) system of applicable 1996-and-newer motor vehicles be conducted as part of states' motor vehicle I/M programs. OBD is part of the sophisticated vehicle powertrain management system and is designed to detect engine and transmission problems that might cause the vehicle emissions to exceed allowable limits. The OBD system is also designed to fully evaluate the vehicle emissions control system. If the OBD system detects a problem that may cause vehicle emissions to exceed 1.5 times the Federal Test Procedure (FTP) standards, then the Malfunction Indicator Light (MIL) is illuminated. By turning on the MIL, the OBD system notifies the vehicle operator that an emission-related fault has been detected, and the vehicle should be repaired as soon as possible thus reducing the harmful emissions contributed by that vehicle.

This revised OBD I/M rule applies only to those areas required to implement an I/M program under the CAA. This rule established a deadline of January 1, 2002 for states to begin performing OBD checks on 1996-and-newer model OBD-equipped vehicles, and to require repairs to be performed on those vehicles with malfunctions identified by the OBD check.

The revised I/M rule also provided several options to states to delay implementation of OBD testing, under certain circumstances. An extension of the deadline for states to begin conducting mandatory OBD checks is permissible provided the state making the request can show just cause to EPA for a delay and that the revised implementation date represents "the best the state can reasonably do." EPA's final rule identifies factors that may serve as a possible justification for states considering making a request to the EPA to delay implementation of OBD I/M program checks beyond the January 2002 deadline. Potential factors justifying such a delay request that are listed in EPA's rule include: contractual impediments, hardware or software deficiencies, data management software deficiencies, the need for additional training for the testing and repair industries, and the need for public education or outreach.

On April 24, 2002, New Jersey submitted a SIP revision to formally request an extension of the OBD I/M test deadline, per EPA's I/M requirement rule. New Jersey's SIP revision lists many of the same factors that are listed in EPA's I/M rule in order to justify the State's request for extension of the OBD testing deadline. These include the hybrid nature of the inspection network in New Jersey of both centralized and decentralized inspection facilities. The hybrid network system makes the software upgrades and programmatic changes more complicated. It requires the modification of two distinct software applications while assuring compatibility with a common vehicle inspection database (VID). All upgrades are required to conform with State specifications and pass stringent acceptance testing protocols before installation in testing facilities. Based on these and other reasons listed by New Jersey, EPA believes that the State's delayed implementation is justified.

2. What Action Is EPA Taking Today?

The EPA is proposing approval of several submittals by the State of New Jersey pertaining to its enhanced I/M SIP. The content of those SIP submittals is described below and summarized in Table 1.

TABLE 1.—SUMMARY OF SUBMITTALS RELEVANT TO TODAY'S ACTION

Date	Content
April 22, 2002	Request to delay implementation of OBD testing.
February, 10, 2003	(1) Implementation of On-board Diagnostic Inspections and Schedule. (2) Continuation of "Initial" Standards for the ASM5015 Exhaust Emission Test. (3) Removal of the Requirements for "Final" Standards for the ASM5015 Exhaust emission test. (4) Removal of the requirements for the evaporative pressure and purge tests.
May 28, 2003	(1) Requirements for issuance of temporary inspection decals. (2) Exemption of gasoline-fueled school buses. (3) Allowance of an on-road inspection to substitute for a biennial Inspection.

TABLE 1.—SUMMARY OF SUBMITTALS RELEVANT TO TODAY'S ACTION—Continued

Date	Content
August 4, 2003	NJMVC [1] adopted regulations for OBD inspections.

[1] New Jersey Motor Vehicle Commission (NJMVC) formerly New Jersey Department of Motor Vehicles.

A. What Are the OBD Requirements and How Does New Jersey's Program Address Them?

The OBD program requires scan tool equipment to read the vehicle's built-in computer sensors in model year 1996 and newer vehicles. The OBD-I/M check consists of two types of examination: A visual check of the dashboard display function and status and an electronic examination of the OBD computer itself. The failure criteria for OBD testing is any Diagnostic Trouble Code (DTC) or combination of DTCs that results in the Malfunction Indicator Light (MIL) to be commanded on. A DTC is a code that indicates an emission control system or component which may cause emissions to increase to 1.5 times the limit due to malfunction. New Jersey has incorporated this OBD component into the I/M program.

If the OBD scan reveals DTCs that have not commanded the MIL on, the motorist should be advised of the issue, but the vehicle should not be failed unless other non-DTC-based failure criteria has been met. Vehicles may fail inspection if the vehicle connector is missing, tampered with or otherwise inoperable, if the MIL is commanded on and is not visually illuminated, and if the MIL is commanded on for 1 or more DTCs as defined in Society of Automotive Engineering (SAE) J2012 guidance document.

Vehicles are rejected from testing if the scan of the OBD system reveals a "not ready" code for any OBD component. The States have the flexibility to permit model year 1996 to 2000 vehicles with 2 or fewer unset readiness codes, and model year 2001 and newer with 1 unset readiness code to complete OBD-I/M inspection without being rejected. Vehicles would still fail if the MIL was commanded on or if other failure criteria were met, or be rejected if 3 or more unset readiness codes were encountered. If the MIL is not commanded to be illuminated the vehicle shall pass the OBD inspection even if DTCs are present.

There are several reasons why a vehicle may arrive for testing without the required readiness codes set. These reasons include the following: (1) Failure to operate the vehicle under the conditions necessary to evaluate the monitors in question; (2) a recent resetting of the OBD system due to battery disconnection or replacement, or routine maintenance immediately prior to testing; (3) a unique, vehicle-specific OBD system failure; (4) an as-of-yet undefined system design anomaly; or (5) a fraudulent attempt to avoid I/M program requirements by clearing OBD codes just prior to OBD-I/M testing. Once the cause for rejection has been corrected, the vehicle must return for reinspection. New Jersey has incorporated these OBD program factors into its I/M program.

The EPA believes that for an OBD-I/M test program to be most effective, whether centralized or decentralized, it should be designed to allow for: (1) Real-time data link connection to a centralized testing database; (2) quality-controlled input of vehicle and owner identification information; and (3) automated generation of test reports. New Jersey has incorporated these OBD program elements into its I/M program.

New Jersey has structured its On-Board Diagnostic (OBD) program to be implemented as outlined by EPA. New Jersey outlined the procedure for its OBD inspection program at N.J.A.C. 7:27B–5.7. The State requires that the procedures required to implement the OBD program should be performed in accordance with the procedures set forth by EPA. For this reason, and as detailed above, EPA is proposing that New Jersey's OBD program meets federal requirements and is approvable.

New Jersey has gone through the phase-in period of Beta testing, and all the systems have been updated with the appropriate software and hardware. The inspectors at both centralized and decentralized inspection facilities have been trained and licensed to operate the OBD scan tools and recognize the basis for failure or rejection. New Jersey has also taken steps to limit potential inspection fraud at centralized and decentralized inspection stations. A motor vehicle emission inspector license may be suspended or revoked if any fraudulent vehicle emission inspection is conducted. Also, no person licensed as an emission inspector shall own or be employed by any motor vehicle repair facility while employed by a centralized inspection facility. An emission inspector may be employed by a private inspection facility only if the facility is licensed by the Division in accordance with N.J.A.C 13:20–44.

B. What Are the Additional I/M Changes Being Incorporated?

In addition to the OBD programs, this proposal addresses a number of submissions from the New Jersey Department of Environmental Protection (NJDEP) concerning revisions to the I/M SIP for New Jersey. The State believes following the proposed revisions are necessary to enhance New Jersey's I/M program, and these elements of the program are approvable by EPA. The content of those submissions is described below.

The State requested a revision to its SIP to exempt new cars from inspection for four years, as opposed to two years, and to include a change in the minimum cost expenditure value for the issuance of a waiver, from $200 to $450. Subsequent to the first inspection, the inspection cycle is biennial (every two years). The EPA approved the State's new motor vehicle four-year exemption SIP revision on February 18, 2003 (68 FR 7704). New Jersey conducted I/M performance standard modeling using MOBILE6 to model emissions related to a 4 year exemption from inspection of new vehicles. The modeling also included other program details reflective of the State's current I/M program, for example, the removal of evaporative purge and pressure tests, and modifications listed below. The results of the MOBILE6 modeling indicated that the emission levels were still below the levels of emissions when EPA defaults are assumed.

The April 2002 submittal requested the exemption from dynamometer testing any motor vehicle "with a chassis height that has been modified so as to make its operation on a dynamometer either impractical or hazardous, as will be determined by the discretion of the Director of the New Jersey Motor Vehicle Commission (NJMVC)."

On February 10, 2003, a letter was transmitted by New Jersey requesting approval of the following revisions. A request was made for the end date of "initial" emission standards for ASM5015 exhaust emission tests to be eliminated in order to allow for continued use of these standards, and for the "final" emission standards for

the ASM5015 exhaust emission test to be removed. EPA received a request for the removal of all references to the evaporative pressure and purge test, while retaining the evaporative fuel cap leak test.

On May 28, 2003, EPA received a request from New Jersey to allow the substitution of an on-road inspection certification for the biennial inspection. The on-road inspection must comply with the testing that is required for the motor vehicle as part of a regular inspection, and must be within the two-month period prior to its regularly scheduled biennial inspection.

This letter also requested the exemption of OBD-eligible gasoline-fueled and bi-fueled school buses from I/M enhanced inspection purposes. All school buses must meet the Department emission standards and be inspected biannually using a 2,500 RPM test, not with an ASM5015 test, (*see* 34 N.J.R. 829(a) February 19, 2002). The school buses will be inspected under the MVC School Bus Inspection Unit regulation in accordance with N.J.S.A. 39:3B–18 et seq. The State also requested that leasing companies and out-of-state dealerships be allowed to issue temporary inspection decals, which would permit the motorist to present the vehicle at the exit of any centralized inspection facility and be issued a valid inspection decal.

In addition to restructuring the rule, amendments were made to: clarify the meaning of vehicles primarily operated in the area; clarify existing definitions and include new definitions; clarify fleet vehicle testing requirements, set fee payment methods, station testing procedures, emission test standards and waiver requirements; clarify the vehicle test report requirement for vehicles that fail the OBD test, reinspection, the clean screening test report requirements and the fleet vehicle reporting requirements; clarify the issuance of inspection certificates of approval or rejection; clarify the test methods for the OBD and the visual test methods, and clarify licensing of inspection agents and definitions of fraud. All of the factors of New Jersey's I/M program detailed above are approvable by the EPA.

3. Summary of Conclusions and Proposed Action

EPA's review of the materials submitted indicates that New Jersey has revised the I/M program in accordance with the requirements of the Clean Air Act (CAA), and all of EPA's technical requirements for an approvable OBD program. The CAA gives States the discretion in program planning to implement programs of the State's choosing as long as necessary emission reductions are met. EPA is approving the proposed actions and revisions in addition to adding the OBD program described earlier, because New Jersey has successfully demonstrated through performance standard modeling that these modifications would not adversely affect emission reductions that the State is counting on from the program. The performance standard modeling, which reflects the State's enhanced I/M program as it is currently implemented, shows that the State's program meets the low enhanced performance standard. EPA's authority to approve New Jersey's enhanced I/M program is set forth at section 110 and 182 of the CAA.

4. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this proposed action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This proposed action merely proposes to approve state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule proposes to approve pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4).

This proposed rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely proposes to approve a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This proposed rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This proposed rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Authority: 42 U.S.C. 7401 et seq.

Dated: November 25, 2003.

Jane M. Kenny,

Regional Administrator, Region 2.

[FR Doc. 03–30887 Filed 12–12–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[NV 050–0073B; FRL–7595–4]

Approval and Promulgation of Implementation Plans; State of Nevada; Designation of Areas for Air Quality Planning Purposes; Lake Tahoe Nevada Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: On October 27, 2003, the State of Nevada requested EPA to redesignate the Lake Tahoe Nevada "not classified" carbon monoxide (CO) nonattainment area to attainment for the CO National Ambient Air Quality Standards (NAAQS) and submitted a CO maintenance plan for the area as a revision to the Nevada State Implementation Plan (SIP). In this action, EPA is proposing to approve the redesignation request and the maintenance plan. EPA is also proposing to find that the maintenance plan is adequate for conformity purposes under the limited maintenance plan policy. In the "Rules and Regulations" section of this **Federal Register**, EPA is approving the State's redesignation request and SIP revision, involving the maintenance plan, as a direct final rule without prior proposal because the Agency views the redesignation and SIP revision as noncontroversial and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this proposed rule, no further activity is contemplated in relation to this rule. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time.

DATES: Comments on this proposed rule must be received in writing by January 14, 2004.

ADDRESSES: Please address your comments to Eleanor Kaplan, Air Planning Office (AIR–2), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901 or e-mail to *kaplan.eleanor@epa.gov*, or submit comments at *http://www.regulations.gov*. A copy of the State's submittal is available for public inspection during normal business hours at EPA's Region IX office. Please contact Eleanor Kaplan if you wish to schedule a visit. A copy of the submittal is also available at the Nevada Department of Conservation and Natural Resources, Division of Environmental Protection, 333 West Nye Lane, Carson City, Nevada 89706.

FOR FURTHER INFORMATION CONTACT: Eleanor Kaplan, EPA Region IX at (415) 947–4147 or *kaplan.eleanor@epa.gov*.

SUPPLEMENTARY INFORMATION: For further information see the direct final rule, of the same day, published in the "Rules and Regulations" section of this **Federal Register**.

Dated: November 20, 2003.

Laura Yoshii,

Acting Regional Administrator, Region IX.

[FR Doc. 03–30370 Filed 12–12–03; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 54

[CC Docket No. 96–45; FCC 03–249]

Federal-State Joint Board on Universal Service

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In this document, the Commission seeks comment to further develop the record on specific issues that relate to the rate review and expanded State certification process recommended by the Joint Board. The Commission also seeks comment on a proposal to further encourage States to preserve and advance universal service by making available additional targeted Federal support for high-cost wire centers in states that implement explicit universal service mechanisms.

DATES: Comments are due on or before January 14, 2004. Reply comments are due on or before February 13, 2004. Written comments on the proposed information collection(s) must be submitted by the public, Office of Management and Budget OMB), and other interested parties on or before February 13, 2004.

ADDRESSES: All filings must be sent to the Commission's Secretary, Marlene H. Dortch, Office of the Secretary, Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554. In addition to filing comments with the Secretary, a copy of any Paperwork Reduction Act (PRA) comments on the information collection(s) contained herein should be submitted to Judith B. Herman, Federal Communications Commission, Room 1–C804, 445 12th Street, SW., Washington, DC 20554, or via the Internet to *Judith-B.Herman@fcc.gov*, and to Kim A. Johnson, OMB Desk Officer, Room 10236 NEOB, 725 17th Street, NW., Washington, DC 20503, or via the Internet to *Kim_A._Johnson@omb.eop.gov* or by fax to 202–395–5167. Parties should also send three paper copies of their filings to Sheryl Todd, Telecommunications Access Policy Division, Wireline Competition Bureau, Federal Communications Commission, 445 Twelfth Street, SW., Room 5–B540, Washington, DC 20554. *See* **SUPPLEMENTARY INFORMATION** for further filing instructions.

FOR FURTHER INFORMATION CONTACT: Jennifer Schneider, Attorney, Wireline Competition Bureau, Telecommunications Access Policy Division, (202) 418–7400. For additional information concerning the information collection(s) contained in this document, contact Judith B. Herman at 202–418–0214, or via the Internet at *Judith-B.Heman@fc.gov*.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Further Notice of Proposed Rulemaking in CC Docket No. 96–45 released on October 27, 2003. A companion Order on Remand and Memorandum Opinion and Order was also released in CC Docket No. 96–45 on October 27, 2003. The full text of this document is available for public inspection during regular business hours in the FCC Reference Center, Room CY–A257, 445 Twelfth Street, SW., Washington, DC 20554 or at *www.fcc.gov/wcb/universal_service/highcost.html*.

This Further Notice of Proposed Rulemaking (FNPRM) contains proposed information collection(s) subject to the Paperwork Reduction Act of 1995 (PRA). It has been submitted to the Office of Management and Budget (OMB) for review under the PRA. OMB, the general public, and other Federal agencies are invited to comment on the proposed information collections contained in this proceeding.

Paperwork Reduction Act

The FNPRM contained proposed information collections. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the information collection(s) contained in this FNPRM, as required by the Paperwork Reduction Act (PRA) of 1995, Public Law 104–13. Public and agency comments on the proposed information collections discussed in this Further Notice of Proposed Rulemaking are due on or before February 13, 2004. PRA comments should address: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and

clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

OMB Control Number: 3060–XXXX.

Title: Certification Letter Accounting for Receipt of Federal Support—CC Docket Nos. 96–45 and 96–262.

Form No.: N/A.

Type of Review: New collection.

Respondents: Business or other for-profit; not for profit institutions.

Title	Number of respondents	Frequency of response	Total annual burden
1. Collection of Additional Rate Data	52	1	52
Total Annual Burden: 52			
Total Annual Costs: $0			
2. Procedures for Filing And Processing any State Requests for further Federal Action	1	4	1
Total Annual Burden: 4			
Total Annual Costs: $0			

Grand Total Annual Burden: 52 + 4 = 56.

Needs and Uses: In the Further Notice of Proposed Rulemaking, we seek further comment on issues related to the rate review and expanded certification process that we adopt in the Companion Remand Order. The Commission seeks comment on whether it should require States to file, in connection with their reasonable comparability certifications, additional data that might enhance the Commission's ability to assess the non-rural mechanism and State actions to achieve comparability of urban and rural rates, including business rate data, rate data for non-rural areas served by non-rural carriers, and rate data from States that would not otherwise be required to file data under the rules we adopt in the Companion Remand Order. The Commission also seeks comment on how to treat any State requests for further Federal action, including procedures for States to submit any such requests, required showings by requesting States, and how to calculate any additional targeted Federal support. The additional rate data, along with the expanded certifications filed by all States, will aid the Commission in its review of rate comparability nationwide. Further, the information that State commissions will file to support requests for further Federal action will enable the Commission to determine if action is necessary.

I. Further Notice of Proposed Rulemaking

1. In this Further Notice of Proposed Rulemaking (FNPRM), we seek further comment on issues related to the rate review and expanded certification process that we adopt in the Companion Remand Order. First, we seek comment on whether we should require States to file, in connection with their reasonable comparability certifications, additional data that might enhance the Commission's ability to assess the non-rural mechanism and State actions to achieve comparability of urban and rural rates, including business rate data, rate data for non-rural areas served by non-rural carriers, and rate data from States that would not otherwise be required to file data under the rules we adopt in the Companion Remand Order. Second, we seek comment on the role of calling scopes in the rate review process. Third, we seek comment on how to treat any State requests for further Federal action, including procedures for States to submit any such requests, required showings by requesting States, and how to calculate any additional targeted Federal support. In addition, we propose a method for calculating additional targeted Federal support on a wire-center basis using forward-looking model cost estimates. Finally, we seek comment on a proposal to further encourage States to advance the Act's universal service goals by making available additional targeted Federal support to States that implement explicit universal service mechanisms, without regard to their achievement of rate comparability.

A. Collection of Additional Rate Data

2. We seek comment on whether all States should submit rate data to the Commission in connection with the rate review and expanded certification process, in order to establish a more complete picture of State efforts to achieve rate comparability. In the Companion Remand Order, we adopt rules that require a State to file, in connection with its expanded certification, rate data for rural areas served by non-rural carriers only if its rural rates exceed the nationwide urban rate benchmark or if it certifies that its rural rates are not reasonably comparable to urban rates nationwide, despite being within the safe harbor established by the nationwide urban rate benchmark. These data, along with the expanded certifications filed by all States, will aid the Commission in its review of the reasonable comparability of rural and urban rates nationwide. We seek comment on whether collecting additional rate data from a larger number of States, either on a mandatory or voluntary basis, would provide the Commission with a better basis for its review. To what extent would collecting additional rate data from all States improve the Commission's ability to assess the reasonable comparability of rural and urban rates nationwide through the rate review and expanded certification process? To what extent would the availability of this additional rate data improve the ability of each State to analyze its own rate comparability issues? To what extent would the availability of this additional rate data improve the ability of other interested parties to monitor the reasonable comparability of rural and urban rates nationwide? We anticipate that each State will have assembled much of the additional data in the course of performing its rate review. Would it be unduly burdensome if all States were to file such data?

3. We seek comment on whether we should require States to file data related to business rates, in addition to residential rates. A meaningful comparison of rates across different States may necessarily include business rates in addition to residential rates. For example, because Wyoming, unlike many other States, has rebalanced its single-line business rates to levels equivalent to residential rates, Wyoming's residential rates no longer rely on implicit support flows from its business rates, and its business customers pay lower rates than they would in a State that relied on such implicit support flows. Collecting data only on residential rates, therefore, may not permit the Commission to identify the specific nature of any problems with reasonable comparability. Would collecting data on business rates provide the Commission with a more useful picture of the local rates charged in rural areas? Would requiring States to file business rate data unduly increase the administrative burdens on States associated with the rate review and expanded certification process? Is there any reason why the Commission should or should not concentrate solely on residential rates in assessing the state of rate comparability nationwide?

4. We also seek comment on whether we should collect data related to rates in non-rural areas served by non-rural carriers. While the rules we adopt today will result in the collection of some data regarding the rates in rural areas served by non-rural carriers, collecting non-rural rate data would provide the Commission with more complete data. To what extent would collecting rate information for non-rural areas in addition to rural areas provide the Commission with useful data to assess the reasonable comparability of rural and non-rural rates nationwide? To what extent would the collection of such data permit the Commission to assess the reason for high rural rates? For example, if a State's rates in areas other than rural areas were also above the benchmark, would it indicate that an adjustment to the Federal support mechanism was warranted? To what extent would collecting non-rural rate information aid the Commission in assessing whether States are fulfilling their obligations to promote the Act's goals? To what extent would requiring States to file non-rural rate data unduly increase the administrative burdens on the States associated with the rate review process?

5. With additional rate data, should states be required to file information annually related to their efforts to advance universal service by adopting explicit universal service mechanisms, such as the establishment of explicit State universal service funds? To what extent would such information aid the Commission in assessing the sources of any problems with rate comparability to determine whether additional actions are necessary at the Federal level? If we conclude that such information should be collected, what specific information should each State be required to file? For example, should each State be required to file data related to the existence and size of any explicit universal service support mechanisms established in the State? Should States be required to identify implicit support flows in the rate structure, including implicit support flowing from business line rates to residential line rates, from geographically averaged rates, and from intrastate access charges? Commenters should identify any other information related to the establishment of explicit universal service policies that would assist the Commission in refining our comprehensive plan for supporting universal service in high-cost areas over time.

B. Calling Scopes

6. We seek comment on the role of calling scopes in the rate review process. The foregoing Order permits a State to consider the calling scopes available in rural areas served by non-rural carriers when reviewing whether rates in those areas are comparable to urban rates nationwide. Calling scopes are not included in the rate template, however, and States need not consider them if they choose to certify based on the safe harbor. To what extent should States be encouraged to consider the calling scopes available in rural areas served by non-rural carriers in assessing rate comparability? Should the Commission incorporate calling scopes into the safe harbor? If so, how would the Commission do so? To what extent would consideration of calling scopes increase the burdens associated with the rate review process? Commenters should describe in detail any proposed methodologies for normalizing the impact of calling scopes on rates. Alternatively, should the Commission provide States with additional guidance as to how calling scopes may be factored into their rate comparability analyses, if States decide that this is appropriate? What data would be useful for analyzing the calling scopes available in rural and urban areas?

C. Procedures for Filing and Processing Any State Requests for Further Federal Action

7. Consistent with the Joint Board's recommendation, we recognize that the procedures for filing and reviewing State requests for further Federal action should be as specific and predictable as possible, while also providing the necessary flexibility for each State to demonstrate the unique circumstances involved in its request. We also note that the Joint Board did not recommend a specific method for calculating any additional targeted Federal support, if necessary, and the present record does not provide an adequate basis for us to determine an appropriate method. Accordingly, we seek comment below on several interrelated issues. First, we seek comment on the timing of State requests for further Federal action. Second, we seek comment on the showing that a State should be required to make in order to demonstrate a need for further Federal action. Third, we seek comment on the types of further Federal action that may be provided to requesting States if the Commission determines that further Federal action is necessary in a particular instance, including possible methods of calculating any additional targeted Federal support.

1. Timing of Requests for Further Federal Action

8. The Joint Board recommended that the Commission develop exact procedures to be used in the filing and processing of requests for further Federal action. We propose that a State should be permitted to make a request for further Federal action only concurrently with the filing of its expanded certification regarding the comparability of its rural rates in areas served by non-rural carriers. We anticipate that any State request for further Federal action will arise from the State rate review process and the expanded certification, and any State requests for further Federal action are likely to rely on the same data. Therefore, we believe that requiring the filing of any State requests at the time of the expanded certification will promote administrative simplicity. We seek comment on this proposal.

9. We also seek comment on how frequently a State should be required to seek further Federal action if the State's request is granted the first time. Should a State be required to seek further Federal action every year? Should further Federal action be provided for a specified period of years? If so, should that period be dependent on the specific circumstances of a particular request?

2. Required Showings

10. We seek comment on the showings that a State should be required to make in support of a request for further Federal action, in the interest of making the process as specific and predictable as possible. The Joint Board's *Recommended Decision* suggests that two showings should be required: (1) A demonstration that rural rates in non-rural carrier service areas in the State are not reasonably comparable to urban rates nationwide, including an analysis of the rates in the basic service template and other relevant factors; and (2) a demonstration that the State has taken all reasonable actions to achieve reasonable comparability of its rural rates to urban rates nationwide, including an explanation of how the requesting State has used any Federal support currently received to achieve comparable rates and whether it has implemented a State universal service fund. We propose that these showings

should be required in support of a State's request for further Federal action. We further propose that each State should bear the responsibility of fully explaining the basis for each element of its showing. As discussed in the Companion Remand Order, each State has rate-setting jurisdiction and primary responsibility for ensuring rate comparability within its border and, therefore, is in the best position to explain any problems it may have in achieving rate comparability and the actions it has taken to address those problems. In addition to these showings, are there any additional types of showings that a State should be required to make in support of a request for further Federal action? Should different showings be required for different types of further Federal action (*e.g.*, Commission action to address calling areas or quality of service where the State lacks jurisdiction)?

11. We also seek comment on what a State should be required to show to satisfy the first element of the Joint Board's recommended test, a demonstration that rural rates within the State are not reasonably comparable to urban rates nationwide. In making the required showing, to what extent should a State be permitted to rely on the presumption created by the nationwide urban rate benchmark? Should the Commission consider residential and business rates or only residential rates? What weight, relative to the presumption created by the rate benchmark, should the Commission accord additional non-rate factors that the State contends are relevant in determining whether rural rates in a State are reasonably comparable to urban rates nationwide?

12. Consistent with the Joint Board's recommendation, we also seek comment on what State actions should be considered reasonable and, therefore, necessary to support a request for further Federal action for purposes of the second element of the Joint Board's recommended showing. In particular, we seek comment on the extent to which States must reform their universal service support mechanisms in order to be able to demonstrate that they have taken all reasonably possible actions to achieve rate comparability. In this regard, we note that the Act strongly favors explicit support mechanisms, which are less vulnerable to erosion in competitive markets than implicit support mechanisms. Although States are not required to adopt explicit mechanisms to support universal service, we propose that a State that has not done so cannot be deemed to have taken all reasonably possible steps to support rate comparability within the State, the requirement recommended by the Joint Board. We seek comment on this proposal.

13. We further propose that, in order to enable the Commission to determine whether a State has made its universal service mechanisms explicit, a State requesting further Federal action should be required to explain the extent to which it has made its universal service mechanisms explicit, and file supporting data, including rate data for residential and business lines in rural and urban areas served by non-rural carriers. We seek comment on these proposals. We also seek comment on the extent of reform that should be required for further Federal action. Some commenters argue that it is necessary for States to rebalance their residential and business rates in order to eliminate implicit support flows. For example, Wyoming has rebalanced its residential and business rates, while other States have not rebalanced rates. As a result, Wyoming's residential rates presumably will be higher than a State with comparable resources that has chosen to maintain implicit support flows through higher business rates. Should the rebalancing of residential and business rates be required in support of a request for further Federal action?

3. Types of Further Federal Action

14. We seek comment on the types of further Federal action that should be available to a requesting State if the Commission determines that further Federal action is appropriate. The Joint Board recommended that further Federal action could include additional targeted Federal support, as well as Commission action to address scope of local calling areas or quality of service where the State commission lacked the authority to do so. Are there any other types of further Federal action that the Commission should consider in addition to the Joint Board's recommendations? Should the Commission specify in advance all possible forms of further Federal action, or, in light of the Joint Board's recommendation that the Commission provide maximum flexibility for States, should the Commission retain the ability to develop additional types of further Federal action in response to the specific circumstances underlying a particular State's request? Are there any reasons that the Commission should not consider making certain types of Federal action available on request?

15. We propose that any additional targeted Federal support should equal a set percentage of estimated forward-looking wire-center costs in excess of two standard deviations above the average cost per line. We believe that a method for calculating any additional targeted Federal support based on forward-looking wire-center cost estimates would be specific and predictable, and provide consistency with the non-rural support mechanism, which also uses model cost estimates to calculate and target support. We also believe that such a method would provide a fair and equitable means of determining any additional targeted Federal support and avoid inappropriate incentives that might be created if we were to base any additional targeted Federal support on rate levels in a particular area. Furthermore, a forward-looking cost estimate-based method would permit any additional support to be targeted specifically to high-cost wire-centers, consistent with the Joint Board's recommendation. We seek comments on this proposal. Is there another proposed method that, based on some measure other than forward-looking cost estimates, would provide a more appropriate basis for calculating any additional targeted Federal support? If so, a commenter should describe the method with specificity and provide any relevant supporting data. If any commenters contend that a rate-based method would be more appropriate, they should support their contentions with a detailed explanation of how rate-based support would be calculated under their proposal and any relevant supporting data.

16. To determine any additional targeted Federal support based on forward-looking cost estimates, we propose that any additional Federal support should be provided to wire centers in qualifying States with costs per line exceeding a benchmark of two standard deviations from the average cost per line among all non-rural carrier wire centers nationwide. Based on recent forward-looking high-cost model results, a wire center with per-line costs that are two standard deviations above the average wire center would have an average cost per line of $40.85, or 189 percent of the nationwide average cost per line. Wire centers with costs per line exceeding the proposed nationwide average cost per loop would be very high cost wire centers in which it is likely to be more difficult to achieve rate comparability, despite otherwise sufficient State resources and Federal support. Because most States have wire centers that exceed two standard deviations from the national average wire center cost per line, we believe that this benchmark would provide an effective means of calculating any additional targeted Federal support for any qualifying State in a specific, predictable and consistent manner. We seek comment on this proposed method for calculating additional targeted Federal support. Is two standard deviations an appropriate threshold for this purpose?

17. We also propose that any additional targeted Federal support for eligible wire centers in qualifying States should be calculated as a set percentage of costs in excess of the benchmark. For example, if the Commission were to set the percentage at 5 percent of costs in excess of two standard deviations above the average and Wyoming were to qualify for additional targeted Federal support, it would be eligible for approximately $546,000. If the Commission were to set the percentage at 25 percent of costs in excess of two standard deviations above the average and Wyoming were to qualify, it would be eligible for approximately $2,731,000 in additional targeted Federal support.

18. We believe that this proposal is consistent with the current and past methodologies for determining high-cost support for non-rural carriers and would provide meaningful support to assist States in resolving any rate comparability issues that combined Federal and State action have failed to resolve. Under the non-rural support mechanism, a non-rural carrier in a State with an average cost per loop for areas served by non-rural carriers that exceeds the cost benchmark of two standard deviations above the average is eligible for support for 76 percent of its costs in excess of the benchmark. This percentage represents an estimate of the costs above the benchmark that are assigned to the intrastate jurisdiction. Because any additional targeted Federal support would supplement the non-rural support mechanism in order to address exceptional problems, we do not believe that it would be necessary that such support be provided for the same percentage of costs in excess of the benchmark as covered by the non-rural support mechanism. We seek comment on what percentage of costs in excess of the benchmark should be supported for purposes of additional targeted Federal support. Is there another proposed method of calculating any additional targeted Federal support based on forward-looking cost estimates that would better address the purpose for which the support would be intended?

D. Additional Inducements for State Action

19. Finally, we seek comment on whether we should make additional targeted Federal support available for high-cost wire centers in States that implement explicit universal service mechanisms. The purpose of this proposal is to create a positive incentive for States to reform their implicit universal service mechanisms. Under this proposal, as discussed below, any additional targeted Federal support would be determined using a methodology similar to that proposed above in connection with State requests for further Federal action. Unlike State requests for further Federal action, States would not be required to demonstrate that combined State and Federal efforts had failed to achieve rate comparability.

20. As discussed, section 254 states a clear preference for explicit, rather than implicit, support, but the 1996 Act does not require States to adopt explicit universal service support mechanisms. In the foregoing Order, therefore, we decline to adopt measures to require or induce all States to immediately remove implicit subsidies from intrastate rates through substantial increases in Federal support. Nevertheless, we agree with commenters that States should be encouraged to replace implicit support with explicit support mechanisms that will be sustainable in a competitive environment. To what extent should the Commission encourage States to replace their implicit universal service support mechanisms with explicit mechanisms? We seek comment on whether the Commission has an interest, other than the aspirational provisions of the Act, in States' decisions to adopt explicit mechanisms or to rely on implicit support flows. How do State universal service mechanisms, explicit and implicit, interact with the Federal universal service support mechanisms? We note that some States have made progress in making explicit their universal service support mechanisms. Can we expect States to adopt, in advance of or concurrently with the local development of competition, reforms that will reduce the vulnerability of the States' universal service mechanisms to competition? If States have not yet taken action to adopt explicit universal service mechanisms, can we assume that they will do so?

21. We seek comment on whether providing additional targeted Federal support to States that replace implicit universal service mechanisms with explicit universal service mechanisms would be an appropriate means of inducing reforms of State universal service support mechanisms. The availability of additional targeted Federal support would provide each State with a direct incentive to make its universal service support mechanisms explicit, rather than implicit. This method of inducement would pose less risk to our universal service goals than conditioning receipt of existing non-rural high-cost support on State action. Moreover, providing States that implement universal service reforms with additional targeted Federal support might mitigate possible transitional issues associated with the replacement of implicit support with explicit support and encourage States to adopt a long-term approach to universal service. To what extent are there transitional issues associated with moving from implicit support mechanisms to explicit support mechanisms? If such transitional issues are a significant deterrent to State adoption of universal service reforms, should any additional targeted Federal support be limited for the period of time during which the transition takes place? If commenters contend that another form of inducement would be better suited for achieving the Commission's goals, the commenters should provide a detailed explanation of their inducement.

22. We further propose that any additional targeted Federal support that is provided to induce States to adopt explicit universal service mechanisms should be based on forward-looking wire-center cost estimates. Basing any additional targeted Federal support on forward-looking cost estimates will make such support specific and predictable, consistent with the Act, and would target the support to high-cost areas, which may ease a State's implementation of explicit universal service mechanisms. Similar to the additional targeted Federal support proposed above with respect to State requests for further Federal action to achieve rate comparability, we propose that any additional targeted Federal support provided for inducement purposes should be calculated based on a percentage of forward-looking costs in excess of a particular threshold for high-cost wire centers.

23. Specifically, we propose that, if a State meets the necessary conditions, it should receive additional targeted Federal support equal to a specific percentage of costs in excess of two standard deviations above the average cost wire center. We seek comment on this proposed method of calculating additional targeted Federal support for inducement purposes. We specifically seek comment on the appropriate percentage of costs in excess of the threshold that we should support with additional targeted Federal support. We note that 48 States and Puerto Rico would have at least one wire center with costs per loop above the benchmark of

the average cost per loop plus two standard deviations. We estimate that if the support amount were set at 10 percent of costs exceeding the proposed high-cost wire center benchmark, the 48 States and Puerto Rico would be eligible to receive a total of approximately $116 million if they met the conditions for additional targeted Federal support, in addition to the support provided under the rules we adopt today.

24. Would the proposed methodology provide significant inducement to each State to reform its universal service mechanisms? Would the benefits of inducing State action to reform State universal service mechanisms outweigh the cost of the additional contributions to the universal service fund that this additional targeted Federal support could entail? Commenters should address how this proposal relates to the Act's requirement that universal service should be sufficient to achieve the Act's goals and, specifically, that sufficiency requires that support should not exceed the amount necessary to achieve the Act's goals.

25. We also seek comment on what showings a State should be required to make in order to receive any additional targeted Federal support, if such an inducement mechanism were adopted. Above, we seek comment on what showings a State must make in support of a request for further Federal action, in addition to showing the failure to achieve rate comparability. To what extent should the showings that a State is required to make in order to receive additional targeted Federal support for inducement purposes differ from the showings the State should be required to make in order to demonstrate that it has taken all reasonably possible actions to achieve rate comparability? Should a State be required to show that it has established an explicit support mechanism of a particular size relative to the number of lines in the State or some other measure? Should a State be required to demonstrate that it has rebalanced its residential and business rates? Should a State be required to demonstrate that it has eliminated geographic rate averaging through implicit support flows? Are there any specific actions reasonably calculated to eliminate or reduce implicit support in intrastate rates that a State should be required to show?

II. Procedural Matters

A. Initial Regulatory Flexibility Act Analysis

26. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities of policies and rules proposed in this Further Notice of Proposed Rulemaking. Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the FNPRM. The Commission will send a copy of this FNPRM, including this IRFA, to the Chief Counsel of Advocacy of the Small Business Administration (SBA). In addition, the FNPRM and IRFA (or summaries thereof) will be published in the **Federal Register**.

1. Need for and Objectives of the Proposed Rules

27. Consistent with the Tenth Circuit's remand of the *Ninth Report and Order*, 64 FR 67416, December 1, 1999, and the recommendations of the Federal-State Joint Board on Universal Service (Joint Board), we modify the high-cost universal service support mechanism for non-rural carriers and adopt measures to induce States to ensure reasonable comparability of rural and urban rates in areas served by non-rural carriers in the Companion Remand Order. As discussed, the FNPRM is necessary to develop the record on specific issues that relate to the rate review and expanded State certification process recommended by the Joint Board. The rate review and expanded State certification process will fulfill the requirement of the Tenth Circuit remand by inducing State action to ensure that rates in rural and high-cost areas served by non-rural carriers are reasonably comparable to urban rates nationwide in compliance with section 254(b) of the Act.

28. First, in this FNPRM, we seek comment on whether we should require States to file, in connection with their reasonable comparability certifications, additional data that might enhance the Commission's ability to assess the non-rural mechanism and State actions to achieve comparability of urban and rural rates, including business rate data, urban rate data, and rate data from States that would not otherwise be required to file data under the rules we adopt. Second, we seek comment on the role of calling scopes in the rate review process. Third, we seek comment on how to treat any State requests for further Federal action, including procedures for States to submit any such requests; how to review required showings by requesting States; and how to calculate any additional targeted Federal support. In addition, we propose a method for calculating additional targeted Federal support on a wire-center basis using forward-looking model cost estimates. Finally, we also seek comment on a proposal to further encourage States to advance the Act's universal service goals by making available additional targeted Federal support to States that implement explicit universal service mechanisms, without regard to their achievement of rate comparability.

2. Legal Basis

29. The legal basis as proposed for this *FNPRM* is contained in sections 4(i), 4(j), 201–205, 218–220, 254, 403 and 410 of the Communications Act of 1934, as amended.

3. Description and Estimate of the Number of Small Entities To Which the Proposed Rules Will Apply

30. The RFA directs agencies to provide a description of, and, where feasible, an estimate of the number of small entities that may be affected by the rules adopted herein. The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction." In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act, unless the Commission has developed one or more definitions that are appropriate to its activities. Under the Small Business Act, a "small business concern" is one that: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) meets any additional criteria established by the Small Business Administration (SBA).

31. We have described in detail, in the Companion Order in the Final Regulatory Flexibility Analysis, the categories of entities that may be directly affected by any rules or proposals adopted in our efforts to reform the universal service contribution system. For this Initial Regulatory Flexibility Analysis, we hereby incorporate those entity descriptions by reference.

4. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

32. Should the Commission decide that modifications must be made to the rate review and expanded certification process implemented, the associated rule changes will only modify the reporting requirements of the State commissions. Based on our review of the process, such State reporting requirements have no direct effect on the Federal reporting and recordkeeping requirements of telecommunications service providers regulated under the Communications Act, including any small business entities directly affected by the Order. No questions posed in the FNPRM consider any changes to the rules that would directly impose additional reporting, recordkeeping, and other compliance requirements on small business entities.

5. Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

33. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.

34. The Commission does not foresee that any modifications to the rate review and expanded certification process resulting from this FNPRM will have a direct impact on any small business entities. Furthermore, based on the current data, we do not believe that the result in any area of the proposals under consideration will have a differential impact on small entities. In this FNPRM, however, the commenters may present the Commission with various proposals that may have varying impacts on small businesses. We seek comment on whether any proposals, if implemented, may result in an unfair burden. If there is such an unfair burden, we seek comment on how best to mitigate or eliminate it, as appropriate.

6. Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rules

35. None.

B. Initial Paperwork Reduction Act of 1995 Analysis

36. This *FNPRM* contained proposed information collections. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the information collections contained in this FNPRM, as required by the Paperwork Reduction Act (PRA) of 1995, Public Law 104–13. Public and agency comments are due February 13, 2004. It will be submitted to the Office of Management and Budget (OMB) for review under the PRA. PRA comments should address: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

C. Comment Filing Procedures

37. We invite comment on the issues and questions set forth in the FNPRM and Initial Regulatory Flexibility Analysis contained herein. Pursuant to applicable procedures set forth in §§ 1.415 and 1.419 of the Commission's rules, interested parties may file comments on or before January 14, 2004, and reply comments on or before February 13, 2004. All filings should refer to CC Docket No. 96–45. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies.

38. Comments filed through the ECFS can be sent as an electronic file via the Internet to *http://www.fcc.gov/e-file/ecfs.html*. Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to *ecfs@fcc.gov*, and should include the following words in the body of the message, "get form <your e-mail address>." A sample form and directions will be sent in reply.

39. Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, commenters must submit two additional copies for each additional docket or rulemaking number. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Natek, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW., Washington, DC 20554. All filings must be addressed to the Commission's Secretary, Marlene H. Dortch, Office of the Secretary, Federal Communications Commission.

40. Parties also must send three paper copies of their filing to Sheryl Todd, Telecommunications Access Policy Division, Wireline Competition Bureau, Federal Communications Commission, 445 12th Street, SW., Room 5–B540, Washington, DC 20554. In addition, commenters must send diskette copies to the Commission's copy contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20054.

III. Ordering Clauses

41. Pursuant to the authority contained in sections 1, 4(i), 4(j), 201–205, 214, 218–220, 254, and 403 of the Communications Act of 1934, as amended, this Further Notice of Proposed Rulemaking is adopted.

42. The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, shall send a copy of this Further Notice of Proposed Rulemaking, including the Final Regulatory Flexibility Analysis and Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 54

Reporting and recordkeeping requirements, Telecommunications, Telephone.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 03–30827 Filed 12–12–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 03–3854, MB Docket No. 02–222, RM–10491]

Digital Television Broadcast Service; Spokane, WA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission, by this document, dismisses a petition for rule making filed by KSKN Television, Inc., requesting the substitution of DTV channel 48 for station KSKN–TV's assigned DTV channel 36. *See* 67 FR 52923, August 14, 2002. With this action, this proceeding is terminated.

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Media Bureau, (202) 418–1600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MB Docket No. 02–222, adopted December 2, 2003, and released December 8, 2003. The full text of this document is available for public inspection and copying during regular business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC. This document may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., CY–B402, Washington, DC, 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com*.

List of Subjects in 47 CFR Part 73

Digital television broadcasting, Television.

Federal Communications Commission.

Barbara A. Kreisman,

Chief, Video Division, Media Bureau.

[FR Doc. 03–30881 Filed 12–12–03; 8:45 am]

BILLING CODE 6712–01–U

Notices

Federal Register

Vol. 68, No. 240

Monday, December 15, 2003

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Ketchikan Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Ketchikan Resource Advisory Committee will meet in Ketchikan, Alaska, January 22, 2004 and March 25, 2004. The purpose of these meetings is to discuss potential projects under the Secure Rural Schools and Community Self-Determination Act of 2000.

DATES: The meetings will be held January 22, 2004 and March 25, 2004.

ADDRESSES: The meetings will be held at the Southeast Alaska Discovery Center Learning Center (back entrance), 50 Main Street, Ketchikan, Alaska. Send written comments to Ketchikan Resource Advisory Committee, c/o District Ranger, USDA Forest Service, 3031 Tongass Ave., Ketchikan, AK 99901, or electronically to *jingersoll@fs.fed.us*.

FOR FURTHER INFORMATION CONTACT: Jerry Ingersoll, District Ranger, Ketchikan-Misty Fiords Ranger District, Tongass National Forest, (907) 228–4100.

SUPPLEMENTARY INFORMATION: The meetings are open to the public. Committee discussion is limited to Forest Service staff and Committee members. However, public input opportunity will be provided and individuals will have the opportunity to address the Committee at that time.

Dated: December 6, 2003.

Forrest Cole,

Forest Supervisor.

[FR Doc. 03–30850 Filed 12–12–03; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Rural Housing Service

Notice of Funds Availability (NOFA) Inviting Applications for the Rural Cooperative Home-Based Health Care Demonstration Program

AGENCY: Rural Housing Service, USDA.

ACTION: Notice.

SUMMARY: This Notice announces the availability of $1 million of grant funds through the Rural Community Development Initiative (RCDI) Home-Based Health Care Demonstration Program through the Rural Housing Service (RHS), herein referred to as the Agency, USDA. These grant funds are split into two forms: Pre-development grants and revolving loan grants. The pre-development grants will not exceed $50,000 each and will be made to qualified public bodies or nonprofit organizations to establish a home health care cooperative. The revolving loan grants will be made to qualified nonprofit or public organizations that will provide start-up funds and technical assistance to pre-planning grant recipients and home health care cooperatives established through this program. The intermediary recipients for the revolving loan funds will be required to provide matching funds at least equal to the grant funds awarded. This is a demonstration project intended to result in the establishment and operation of home-based health care cooperatives. As such, pre-development grants will be linked with a revolving loan grant, to the same community, in order that the full operation of the cooperative will occur. This Notice lists the information needed to submit an application for these funds.

DATES: The deadline for receipt of an application is 4 p.m. e.s.t. on February 13, 2004. The application date and hour are firm. The Agency will not consider any application received after the deadline.

ADDRESSES: Entities wishing to apply for assistance may download the application requirements delineated in this notice from the RCDI Web site at *www.rurdev.usda.gov/rhs/rcdi/index.htm*. Applicants may also request application packages from: Stephen Wetherbee, Rural Housing Service, 1400 Independence Avenue, SW., STOP 0787, Washington, DC 20250–0787, Telephone: (202) 720–1503, E-mail: *stephen.wetherbee@usda.gov*.

FOR FURTHER INFORMATION CONTACT: Stephen Wetherbee, Senior Loan Specialist, Community Programs, RHS, USDA, STOP 0787, 1400 Independence Avenue, SW., Washington, DC 20250–0787, Telephone: (202) 720–1503, Facsimile (202) 690–0471, E-mail: *stephen.wetherbee@usda.gov*. You may also obtain information from the RCDI Web site at *www.rurdev.usda.gov/rhs/rcdi/index.htm*.

SUPPLEMENTARY INFORMATION:

Programs Affected

This program is listed in the Catalog of Federal Domestic Assistance under Number 10.446. This program is not subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials.

Paperwork Reduction Act

Under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, OMB must approve all "collection of information" by the Rural Housing Service. The Act defines "collection of information: as a requirement for "answers to * * * identical reporting or recordkeeping requirements imposed on ten or more persons * * *." (44 U.S.C. 3502(3)(A).) Because this NOFA will receive less than 10 respondents, the Paperwork Reduction Act does not apply.

Background

Congress created the Rural Community Development Initiative (RCDI) Rural Cooperative Home-Based Health Care demonstration project in fiscal year 2003 with an appropriation of $1 million under the Rural Community Advancement Program. These funds are to be used solely to develop and establish home-based health care cooperatives. Pre-development grants, not to exceed $50,000 each, will be made available to qualified public bodies or nonprofit-based community development organizations. Revolving loan grants will be made available to qualified public or nonprofit intermediary organizations (including tribal) proposing to carry out a program of financial and technical assistance.

National Environmental Policy Act (NEPA)

This program has been reviewed under the agency's environmental regulations. It has been determined that the provision of financial assistance for these types of grants are properly designated as categorical exclusions, which require no further documentation. This is based upon the finding that the purposes of these grants do not individually or cumulatively have a significant effect upon the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Definitions for RCDI Purposes

Agency—the Rural Housing Service (RHS) or its successor.

Beneficiary—home-based health care cooperatives that receive benefits from assistance provided by the recipient.

Capacity—the ability of a recipient organization to provide pre-development planning services, manage revolving loan funds, or provide technical assistance towards establishing home-based health care cooperatives.

Cooperative—incorporated associations, at least 51 percent of whose members are rural residents having one vote each, that conduct such operations as producing, purchasing, marketing, processing, or other activities aimed at improving the income of their members as producers or their purchasing power as consumers.

Federally recognized tribes—tribal entities recognized and eligible for funding and services from the Bureau of Indian Affairs, based on the notice in the **Federal Register** published on March 13, 2000, volume 65, number 49, page 13298.

Financial assistance—funds used by the recipient to pay for the start-up cost of the home-based health care cooperative. Funds that the recipient lends to the beneficiary home-based health care cooperative for eligible home-based health care cooperative demonstration project purposes.

Fund—the Home-Based Health Care Demonstration Program grant.

Intermediary—a qualified private nonprofit or public (including tribal) organization recipient for the revolving loan grant that provides technical assistance to the pre-planning grant recipient. The intermediary will also provide financial and technical assistance to the home-based health care cooperative(s) formed through this program.

Matching Funds—cash or confirmed funding commitments. Matching funds must be at least equal to the grant amount. These funds can only be used for eligible home-based health care cooperative demonstration grant purposes. In-kind contributions cannot be used as matching funds. Matching funds must be committed prior to release of RCDI Rural Cooperative Home-Based Health Care grant funds to the revolving loan grant recipient.

Nonprofit organization—a private, community-based development entity with a valid letter from the Internal Revenue Service (IRS) designating their tax exempt status.

Recipient—a public or community development based nonprofit organization receiving pre-development grant funds or a public or private non-profit intermediary organization receiving revolving loan grant funds for the establishment of a home-based health care cooperative.

Revolved funds—the cash portion of a revolving loan fund that is not composed of Agency revolving loan grant funds, including funds that are repayments of loans to the home-based health care cooperatives from the revolving loan grant funds, including fees and interest collected on such loans. Revolved funds shall not be considered Federal funds.

Revolving fund—a group of assets obtained through, or related to, an Agency revolving loan grant and recorded by the recipient in a bookkeeping account, or set of accounts, and accounted for, along with related liabilities, revenues, and expenses, as an entity or enterprise separate from the recipient's other assets or financial activities.

Rural and rural area—a city, town, or unincorporated area that has a population of 50,000 inhabitants or less, other than urbanized areas immediately adjacent to a city, town, or unincorporated area that has a population in excess of 50,000 inhabitants. Urbanized area data will be based on the 2000 census.

Technical assistance—skilled help in improving the beneficiary's abilities in the areas of establishment and operation of a cooperative and home-based health care service. The Agency will determine whether a specific activity qualifies as technical assistance.

Eligibility Requirements

1. The recipient for the pre-planning grant and the beneficiary cooperative, but not the revolving loan grant recipient, must be located in an eligible rural area. The applicable Rural Development State Office can assist in determining the eligibility of an area. A listing of Rural Development State Offices is included in this notice.

2. The recipient for the pre-development grants must be a nonprofit community development based organization, or qualified public bodies. The recipient for the revolving loan grant funds must be nonprofit organizations or public bodies, including federally recognized tribes, based on the RCDI definitions of these groups.

3. Documentation must be submitted to verify recipient eligibility. Acceptable documentation varies depending on the type of recipient. A letter from the IRS verifying tax exempt status, or valid evidence that the entity is a public body, is required for nonprofit recipients. For federally recognized tribes, the Agency requires the page listing their name from the current **Federal Register** list of tribal entities recognized and eligible for funding services (*see* the definition of federally recognized tribes for details on this list).

4. Individuals cannot be recipients.

5. The revolving loan grant recipient must provide a program of technical assistance to the pre-planning grant recipient and financial and technical assistance to the beneficiary cooperative.

6. The intermediary must provide matching funds at least equal to the amount of the grant.

7. The revolving loan grant recipient organization must have at least 3 years prior experience working with cooperatives.

8. Proposals must be structured to utilize the grant funds within 1 year from the date of the award (this time requirement can be extended with the concurrence of the agency).

9. The recipient for the pre-development grant cannot be the same as the recipient for the revolving loan grant. Pre-development grants must be made to local public bodies or nonprofit groups located in the community to be served by the home-based health care cooperative. Revolving loan grants can be made to nonprofit or public bodies that are not located in the community where the cooperative is located, but who have the capacity to provide the required financial and technical services locally.

10. A nonprofit entity must already have a determination of tax-exempt status letter from the IRS when the recipient applies for the RCDI Rural Cooperative Home-Based Health Care Demonstration Program grant. Organizations with pending requests for this designation are not considered eligible.

Eligible Fund Uses

Fund uses must be consistent with the RCDI Home-Based Health Care Cooperative Demonstration Program purpose (see "Background" section of this notice). Pre-planning grant funds will be used to retain a demonstration project organizer to accomplish the following:

1. Provide outreach to home-based health care providers, and assess worker needs.

2. Work with local level human service providers,

3. Build community support among those who have contact with the elderly (social workers, physicians, pharmacists, clergy, hospitals, hospice, meals on wheels, etc.),

4. Select and train membership for the steering committee,

5. Conduct a survey of potential members,

6. Analyze market for home-based health care services,

7. Prepare a business plan,

8. Assist in the incorporation of the cooperative,

9. Assist the cooperative in the preparation and adoption of bylaws and the election of a board of directors, and

10. Hire a local cooperative service administrator and set up office.

At the conclusion of the work by the organizer, all planning elements should be in place for the formal creation of a home-based health care cooperative.

Revolving loan grant funds will be used by the recipient organization to:

1. Fund and administer a revolving loan program to provide start-up and operating funds to newly created home-based health care cooperatives.

2. Provide technical assistance to pre-planning grant recipients and the home-based health care cooperatives, including development of financial plans for the cooperative, establishing the cooperative's financial records process, and providing follow-up as the cooperative progresses from implementation to full operation. A maximum of ten percent of the grant funds and matching funds may be used by the revolving loan grant recipient to provide technical assistance to the pre-planning grant recipient and the newly formed home based health care cooperative.

Ineligible Fund Uses

1. Construction (in any form).

2. Funding illegal activities.

3. Funding a grant where there may be a conflict of interest, or an appearance of a conflict of interest, involving any action by the Agency.

4. Paying obligations incurred before the beginning date, or after the ending date, of the grant agreement.

5. Improvement or renovation of the recipient's office space or for the repair or maintenance of privately owned vehicles.

6. Payment of the recipient's administrative costs or expenses.

7. Any other purpose prohibited in 7 CFR parts 3015, 3016, and 3019, as applicable.

8. Funds cannot be used for recipient's general operating costs.

Interest Rates

Interest rates charged by the recipient to the beneficiary cooperative on loans made from the revolving loan fund shall be negotiated by the recipient and the beneficiary cooperative. The rate should be the lowest rate sufficient to cover the loan's proportional share of the revolving fund's debt service and administrative costs. Rural Development reserves the right to review the interest rate being charged.

Any cash in the revolving fund from any source that is not needed for servicing or administrative costs must be available for additional loans to beneficiary home health care cooperatives.

Application Selection Process

Rating and ranking. Applications will be rated and ranked by a review panel based on the "Evaluation Criteria and Weights" contained in this Notice. If there is a tied score after the applications have been rated and ranked, the tie will be resolved by reviewing the scores for "Capacity." The applicant with the highest score in that category will receive a higher ranking. If the scores for Capacity are the same, the scores will be compared for the next criterion, in sequential order, until one highest score can be determined.

Initial screening. The Agency will screen each application to determine eligibility during the period immediately following the application deadline. Listed below are many of the reasons for rejection to help prospective applicants prepare a better application. The following reasons for rejection are not all inclusive; however, they represent the majority of the applications previously rejected by the RCDI program.

1. Applicants for the pre-planning grants are not located in eligible rural areas based on the definition in this Notice.

2. Applicants failed to provide required evidence of recipient's status, *i.e.*, documentation supporting nonprofit designation.

3. Applicants are individuals.

4. Applicants failed to address the Evaluation Criteria and were unable to compete.

5. The purpose of the proposal did not qualify as an eligible RCDI project purpose.

6. Funds are intended to be used for construction.

7. Financial and technical assistance is being provided directly to individuals.

The State Office will review their copy of the application and provide the State Director's written comments and recommendations to the National Office.

Evaluation Criteria and Weights—Pre-Planning Grant

This information should be presented in narrative form. Documentation must be limited to three pages per criterion.

1. Capacity—Maximum 60 Points

The applicant for the pre-development planning grant must demonstrate how they will accomplish the required goals for the grant, including their experience in establishing a new organization, experience with the function and organization of cooperatives, experience in the community where the home-based health care cooperative will be established, experience in the health care services industry, and experience in working with diverse organizations in establishing set goals. All applications will be competitively ranked. The applications providing the most comprehensive information about establishing a new home-based health care cooperative will be ranked the highest.

2. Soundness of Approach—Maximum 50 Points

The applicant can receive up to 50 points for soundness of approach. The overall proposal will be considered under this criterion.

a. Has the applicant demonstrated their ability to provide the proposed financial and technical assistance based on prior accomplishments?

b. A description that the basic elements for the establishment of a home health care cooperative are already available in the community where the services will be provided, *i.e.*, a pool of home health care workers already in the area, demonstrated demand for these services, and the possible availability of a source of reliable income for the new cooperative.

c. The proposed financial and technical assistance program is clearly stated and the applicant has defined

how this proposal will be implemented. The plan for implementation is viable.

d. Cost effectiveness will be evaluated based on the budget in the application. The proposed grant amount should be utilized to maximize the capacity to establish home-based health care cooperatives.

e. How closely the proposal fits the objectives for which applications were invited.

3. Innovative Approach—Maximum 20 Points

The applicant must demonstrate that they have developed an innovative approach that can be used by other organizations as a model. To be considered innovative, the approach must propose an easily replicated new or useful service or method of providing home-based health care services. Points will be awarded to applications that have the highest score on the following factors:

a. Ease of replication by home-based health care cooperatives,

b. Uniqueness of proposal.

Evaluation Criteria and Weights—Revolving Loan Grant

This information should be presented in narrative form. Documentation must be limited to three pages per criterion.

1. Capacity—Maximum 60 Points

The applicant for the revolving loan grant must demonstrate their capacity to provide technical assistance to the pre-development planning grant recipient organizations and the newly established home-based health care cooperative in the areas of organizing a cooperative, financial planning, financial management, recordkeeping, establishment of payroll systems, and determination of employee benefits. The applicant must also demonstrate the capacity to set up, administer, and maintain a revolving loan grant program. The applications will be competitively ranked with the applications providing the most comprehensive information about providing technical, financial, and revolving loan services being ranked the highest.

2. Soundness of Approach—Maximum 50 Points

The overall proposal will be considered under this criterion.

a. Has the applicant demonstrated their ability to provide the proposed financial and technical assistance based on prior accomplishments?

b. The proposed financial and technical assistance program is clearly stated and the applicant has defined how this proposal will be implemented. The plan for implementation is viable.

c. Cost effectiveness will be evaluated based on the budget in the application. The proposed grant amount should be utilized to maximize the capacity to establish home-based health care cooperatives.

d. How closely the proposal fits the objectives for which applications were invited.

3. Experience With Cooperatives

The applicant must document demonstrated expertise in understanding the unique structure of cooperatives, and provide indications of the organization's capability to assist a cooperative during the organizational and the critical start-up phase of their organization.

Program Requirements

1. A Civil Rights Impact Analysis Certification must be completed by the Agency prior to grant approval.

2. A pre-award compliance review will be conducted by the Agency prior to closing the grant.

3. The recipient must comply with Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, Age Discrimination Act of 1975, Equal Credit Opportunity Act (ECOA) and Executive Order 12250.

4. The grantee must comply with the applicable requirements of 7 CFR part 3015, "Uniform Federal Assistance Regulations"; part 3016, "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments"; and part 3019, "Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and other Nonprofit Organizations."

Program Restrictions

Meeting expenses. In accordance with 31 U.S.C. 1345, "Expenses of Meetings," appropriations may not be used for travel, transportation, and subsistence expenses for a meeting. RCDI Home-Based Health Care Cooperative Demonstration Program grant funds cannot be used for these meeting-related expenses. RCDI funds may be used to pay for a speaker as part of a program, equipment to facilitate the program, and the actual room that will house the meeting. RCDI Home-Based Health Care Cooperative Demonstration Program funds can be used for travel, transportation, or subsistence expenses for training and technical assistance purposes. Any meeting or training not delineated in the application must be approved by the Agency to verify compliance with 31 U.S.C. 1345. Travel and per diem expenses will be similar to those paid to Agency employees. Rates are based upon location. Rate information can be accessed on the Internet at *http://policyworks.gov/perdiem*. Grantees and recipients will be restricted to traveling coach class on common carrier airlines. Grantees and recipients may exceed the Government rate for lodging by a maximum of 20 percent. Meals and incidental expenses will be reimbursed at the same rate used by Agency employees. Mileage and gas reimbursement will be the same rate used by Agency employees. The current mileage and gas reimbursement rate is 36.5 cents per mile.

Grantee Requirements

Grantees will be required to do the following:

1. Execute an RCDI Grant Agreement Rural Cooperative Home-Based Health Care Program Pre-Planning Grant Agreement or RCDI Community Development Initiative Grant Agreement Rural Cooperative Home-Based Health Care Demonstration Program Revolving Loan Grant Agreement (depending on which grant is being requested). Copies of these agreements are published at the end of this NOFA.

2. Execute Form RD 1940–1, "Request for Obligation of Funds."

3. Use Form SF 270, "Request for Advance or Reimbursement," to request reimbursements.

4. Provide financial status and project performance reports on a quarterly basis starting with the first full quarter after the grant award.

5. Maintain a financial management system that is acceptable to the Agency.

6. Ensure that records are maintained to document all activities and expenditures utilizing RCDI Home-Based Health Care Cooperative Demonstration Program grant funds and matching funds. Receipts for expenditures will be included in this documentation.

7. Provide annual audits or management reports on Forms RD 442–2, "Statement of Budget, Income, and Equity," and 442–3, "Balance Sheet," or other similar financial reporting documents, that utilize generally accepted accounting practices, depending on the amount of Federal funds expended and the outstanding balance.

8. Collect and maintain data provided by recipients on race, sex, and national origin, and ensure that their recipients collect and maintain the same data on their beneficiaries.

9. Provide a final project performance report.

10. Identify and report any association or relationship with Rural Development employees on a form provided by the Agency.

11. Verify a Dun and Bradstreet Data Universal Numbering System (DUNS) number. A DUNS number may be received by calling the dedicated toll-free request line at 866–705–5711.

Contents of Application Package

A complete application for RCDI Home-Based Health Care Cooperative Demonstration Program funds must include the following:

1. A summary page listing the following items: (This information should be double-spaced between items and not in narrative form.)

a. Applicant's name,

b. Applicant's address,

c. Applicant's telephone number,

d. Name of applicant's contact person, telephone number, and e-mail address

e. Applicant's fax number,

f. County where applicant is located,

g. Congressional district number where applicant is located,

h. Amount of grant request,

i. Number of recipients, and

j. DUNS number.

2. A detailed Table of Contents containing page numbers for each component of the application.

3. Each of the Evaluation Criteria must be addressed specifically and individually by category. Present these criteria in narrative form. Documentation must be limited to three pages per criterion.

4. A detailed project budget that includes the RCDI Home-Based Health Care Cooperative Demonstration Program grant amount and matching funds when applicable for the duration of the grant. This should be a line-item budget by category. Categories such as salaries, administrative, other, and indirect costs must be clearly defined. Supporting documentation listing the components of these categories must be included.

5. Form SF–424, "Application for Federal Assistance." (Do not complete Form SF–424A, "Budget Information." A separate line-item budget should be presented as described in No. 4 of this section.)

6. Form SF–424B, "Assurances—Non-Construction Programs."

7. Form AD–1047, "Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions."

8. Form AD–1048, "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions."

9. Form AD–1049, "Certification Regarding Drug-Free Workplace Requirements."

10. Certification of Non-Lobbying Activities.

11. Standard Form LLL, "Disclosure of Lobbying Activities," if applicable.

12. Form RD 400–1, "Equal Opportunity Agreement," for the applicant and each recipient.

13. Form RD 400–4, "Assurance Agreement," for the applicant and each recipient.

14. Identify and report any association or relationship with Rural Development employees.

The required forms and certifications can be downloaded from the RCDI Web site at *www.rurdev.usda.gov/rhs/rcdi/index.htm*.

What and Where to Submit

The original application package must be submitted to: Stephen Wetherbee, Rural Housing Service, STOP 0787, 1400 Independence Avenue, SW., Washington, DC 20250–0787. A copy of the application must be submitted to the Rural Development State Office where the applicant is located. A listing of Rural Development State Offices is included in this notice. Applications sent electronically or by facsimile will not be accepted.

When to Submit

The deadline for receipt of an application is 4 p.m. eastern time on February 13, 2004. The application date and hour deadlines are firm and apply to submission of the original application to the National Office in Washington, DC. The Agency will not consider any application received after the deadline. A listing of Rural Development State Offices, their addresses, telephone numbers, and person to contact follows:

Note: Telephone numbers listed are not toll-free.

Alabama State Office, Suite 601, Sterling Centre, 4121 Carmichael Road, Montgomery, AL 36106–3683, (334) 279–3400, TDD (334) 279–3495, James B. Harris.

Alaska State Office, 800 West Evergreen, suite 201, Palmer, AK 99645, (907) 761–7705, TDD (907) 761–8905, Dean Stewart.

Arizona State Office, Phoenix Corporate Center, 3003 N. Central Ave., Suite 900, Phoenix, AZ 85012–2906, (602) 280–8700, TDD (602) 280–8705, Leonard Gradillas.

Arkansas State Office, 700 W. Capitol Ave., rm. 3416, Little Rock, AR 72201–3225, (501) 301–3200, TDD (501) 301–3279, Jesse Sharp.

California State Office, 430 G Street, Agency 4169, Davis, CA 95616–4169, (530) 792–5800, TDD (530) 792–5848, Janice Waddell.

Colorado State Office, 655 Parfet Street, room E100, Lakewood, CO 80215, (720) 544–2903, TDD (720) 544–2976, Leroy W. Cruz.

Connecticut, Served by Massachusetts State Office.

Delaware and Maryland State Office, 4607 South Dupont Highway, P.O. Box 400, Camden, DE 19934–0400, (302) 697–4300, TDD (302) 697–4303, James E. Waters.

Florida & Virgin Islands State Office, 4440 NW. 25th Place, P.O. Box 147010, Gainesville, FL 32614–7010, (352) 338–3400, TDD (352) 338–3499, Janet Droz (Acting).

Georgia State Office, Stephens Federal Building, 355 E. Hancock Avenue, Athens, GA 30601–2768, (706) 546–2162, TDD (706) 546–2034, Jerry M. Thomas.

Guam, Served by Hawaii State Office.

Hawaii, Guam, & Western Pacific Territories State Office, Room 311, Federal Building, 154 Waianuenue Avenue, Hilo, HI 96720, (808) 933–8309, TDD (808) 933–8380, Thao Khamoui.

Idaho State Office, 9173 West Barnes Drive, Suite A1, Boise, ID 83709, (208) 378–5600, TDD (208) 378–5644, Daniel H. Fraser.

Illinois State Office, 2118 West Park Court, Suite A, Champaign, IL 61821, (217) 403–6200, TDD (217) 403–6240, Gerald A. Townsend.

Indiana State Office, 5975 Lakeside Boulevard, Indianapolis, IN 46278, (317) 290–3100, TDD (317) 290–3343, Gregg Delp.

Iowa State Office, 873 Federal Building, 210 Walnut Street, Des Moines, IA 50309, (515) 284–4663, TDD (515) 284–4858, Dorman Otte.

Kansas State Office, 1303 SW First American Place, suite 100, Topeka, KS 66604–4040, (785) 271–2700, TDD (785) 271–2767, Gary L. Smith.

Kentucky State Office, 771 Corporate Drive, suite 200, Lexington, KY 40503, (859) 224–7300, TDD (606) 224–7422, Vernon Brown.

Louisiana State Office, 3727 Government Street, Alexandria, LA 71302, (318) 473–7920, TDD (318) 473–7655, Danny H. Magee.

Maine State Office, 967 Illinois Ave., suite 4, PO Box 405, Bangor, ME 04402–0405, (207) 990–9106, TDD (207) 942–7331, Alan C. Daigle.

Maryland, Served by Delaware State Office.

Massachusetts, Connecticut, & Rhode Island State Office, 451 West Street, Amherst, MA 01002, (413) 253–4300, TDD (413) 253–7068, Daniel R. Beaudette.

Michigan State Office, 3001 Coolidge Road, Suite 200, East Lansing, MI 48823, (517) 324–5100, TDD (517) 337–6795, Philip H. Wolak.

Minnesota State Office, 410 AgriBank Building, 375 Jackson Street, St. Paul, MN 55101–1853, (651) 602–7800, TDD (651) 602–3799.

Mississippi State Office, Federal Building, suite 831, 100 W. Capitol Street, Jackson, MS 39269, (601) 965–4316, TDD (601) 965–5850, Darnella Smith-Murray.

Missouri State Office, 601 Business Loop 70 West, Parkade Center, suite 235, Columbia, MO 65203, (573) 876–0976, TDD (573) 876–9480, D. Clark Thomas.

Montana State Office, 900 Technology Blvd., suite B, Bozeman, MT 59715, (406) 585–2530, TDD (406) 585–2562, Deborah Chorlton.

Nebraska State Office, Federal Building, Room 152, 100 Centennial Mall N., Lincoln, NE 68508, (402) 437–5551, TDD (402) 437–5093, Denise Brosius-Meeks.

Nevada State Office, 1390 South Curry Street, Carson City, NV 89703–9910, (775) 887–1222, TDD (775) 885–0633, Mike Holm.

New Hampshire State Office, Concord Center, suite 218, Box 317, 10 Ferry Street, Concord, NH 03301–5004, (603) 223–6037, TDD (603) 223–6083, William W. Konrad.

New Jersey State Office, 8000 Midlantic Drive, 5th Floor North, suite 500, Mt. Laurel, NJ 08054, (856) 787–7700, Michael P. Kelsey.

New Mexico State Office, 6200 Jefferson St., NE., room 255, Albuquerque, NM 87109, (505) 761–4950, TDD (505) 761–4938, Clyde F. Hudson.

New York State Office, The Galleries of Syracuse, 441 S. Salina Street, suite 357, Syracuse, NY 13202–2541, (315) 477–6400, TDD (315) 477–6447, Gail Giannotta.

North Carolina State Office, 4405 Bland Road, suite 260, Raleigh, NC 27609, (919) 873–2000, TDD (919) 873–2003, Phyllis Godbold.

North Dakota State Office, Federal Building, room 208, 220 East Rosser, P.O. Box 1737, Bismarck, ND 58502, (701) 530–2037, TDD (701) 530–2113, Donald Warren.

Ohio State Office, Federal Building, room 507, 200 North High Street, Columbus, OH 43215–2418, (614) 255–2400, TDD (614) 255–2554, David M. Douglas.

Oklahoma State Office, 100 USDA, suite 108, Stillwater, OK 74074–2654, (405) 742–1000, TDD (405) 742–1007, Michael W. Schrammel.

Oregon State Office, 101 SW., Main, suite 1410, Portland, OR 97204–3222, (503) 414–3300, TDD (503) 414–3387, Joe Sahlfeld (Acting).

Pennsylvania State Office, One Credit Union Place, suite 330, Harrisburg, PA 17110–2996, (717) 237–2299, TDD (717) 237–2261, Gary Rothrock.

Puerto Rico State Office, IBM Building—suite 601, 654 Munos Rivera Avenue, Hato Rey, PR 00918–6106, (787) 766–5095, TDD (787) 766–5332, Pedro Gomez.

Rhode Island, served by Massachusetts State Office.

South Carolina State Office, Strom Thurmond Federal Building, 1835 Assembly Street, room 1007, Columbia, SC 29201, (803) 765–5163, TDD (803) 765–5697, Larry D. Floyd.

South Dakota State Office, Federal Building, room 210, 200 Fourth Street, SW., Huron, SD 57350, (605) 352–1100, TDD (605) 352–1147, Roger Hazuka.

Tennessee State Office, suite 300, 3322 West End Avenue, Nashville, TN 37203–1084, (615) 783–1300, TDD (615) 783–1397, Keith Head.

Texas State Office, Federal Building, suite 102, 101 South Main, Temple, TX 76501, (254) 742–9700, TDD (254) 742–9712, Francesco Valentin.

Utah State Office, Wallace F. Bennett Federal Building, P.O. Box 11350, 125 S. State Street, room 4311, Salt Lake City, UT 84147–0350, (801) 524–4320, TDD (801) 524–3309, Bonnie Carrig.

Vermont State Office, City Center, 3rd Floor, 89 Main Street, Montpelier, VT 05602, (802) 828–6000, TDD (802) 223–6365, Rhonda Shippee.

Virgin Islands, served by Florida State Office.

Virginia State Office, Culpeper Building, suite 238, 1606 Santa Rosa Road, Richmond, VA 23229, (804) 287–1550, TDD (804) 287–1753, Carrie Schmidt.

Washington State Office, suite B, 1835 Black Lake Boulevard, SW., Olympia, WA 98512–5715, (360) 704–7740, TDD (360) 704–7760, Sandi Boughton.

Western Pacific Territories, served by Hawaii State Office.

West Virginia State Office, Federal Building, 75 High Street, room 320, Morgantown, WV 26505–7500, (304) 284–4860, TDD (304) 284–4836, Dianne Crysler.

Wisconsin State Office, 4949 Kirschling Court, Stevens Point, WI 54481, (715) 345–7600, TDD (715) 345–7614, Mark Brodziski.

Wyoming State Office, 100 East B, Federal Building, room 1005, P.O. Box 820, Casper, WY 82602, (307) 261–6300, TDD (307) 261–6333, Jack Hyde.

Dated: December 1, 2003.

Arthur A. Garcia,

Administrator, Rural Housing Service.

United States Department of Agriculture

Rural Housing Service

Rural Community Development Initiative Grant Agreement

Rural Cooperative Home-Based Health Care Demonstration Program

Pre-Planning Grant

THIS GRANT AGREEMENT (Agreement), effective the date the Agency official signs the document, is a contract for receipt of grant funds under the Rural Community Development Initiative (RCDI). BETWEEN _____

a private or public or tribal organization, (Grantee or Intermediary) and the United States of America acting through the Rural Housing Service (the Agency), Department of Agriculture, (Grantor), for the benefit of recipients listed in Grantee's application for the grant.

WITNESSETH:

The principal amount of the grant is $_____(Grant Funds). The Grantee and Grantor will execute Form RD 1940–1, "Request for Obligation of Funds." Grantee will provide a program of organizational, and technical assistance to organize a home health care cooperative.

NOW, THEREFORE, in consideration of said grant; According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is 0575–0180. The time required to complete this information collection is estimated to average 30 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and reviewing the collection of information.

Grantee agrees that Grantee will:

A. Provide the initial organizing effort and technical assistance in establishing a home health care cooperative in accordance with the proposal outlined in the application, (*see* Attachment A), the terms of which are incorporated with this NOFA and Agreement and must be adhered to. Any changes to the approved program of financial technical assistance must be approved in writing by the Grantor;

B. Use Grant Funds only for the purposes and activities specified in the application package approved by the Agency, including the approved budget. Any uses not provided for in the approved budget must be approved in writing by the Agency in advance;

C. Charge expenses for travel and per diem that will not exceed the rates paid Agency employees for similar expenses. Grantees and recipients will be restricted to traveling coach class on common carrier airlines. Lodging rates may exceed the Government rate by a maximum of 20 percent. Meals and incidental expenses will be reimbursed at the same rate used by Agency employees, which is based upon location. Mileage and gas will be reimbursed at the existing Government rate. Rates can be accessed on the Internet at http://policyworks.gov/perdiem;

D. Charge meeting expenses in accordance with 31 U.S.C. 1345. Grant funds may not be used for travel, transportation, and subsistence expenses for a meeting. Any meeting or training not delineated in the application must be approved by the Agency to verify compliance with 31 U.S.C. 1345.

E. Request quarterly reimbursement for grant activities during the previous quarter. Reimbursement will be made on a pro rata basis with matching funds. Form SF 270, "Request for Advance or Reimbursement," will be used to request reimbursement. A project performance report, in narrative form, and a financial report, reflecting the activities conducted, must accompany the request for reimbursement.

F. Provide periodic reports as required by the Grantor. A financial status report and a project performance report will be required on a quarterly basis (due 15 working days after each calendar quarter). The financial status report must show how grant funds and matching funds have been used to date. A final report may serve as the last quarterly report. Grantees shall constantly monitor performance to ensure that time schedules are being met and projected goals by time periods are being accomplished. The project performance reports shall include, but are not limited to, the following:

1. Describe the activities that the funds reflected in the financial status report were used for;

2. A comparison of actual accomplishments to the objectives for that period;

3. Reasons why established objectives were not met, if applicable;

4. Problems, delays, or adverse conditions which will affect attainment of overall program objectives, prevent meeting time schedules or objectives, or preclude the attainment of particular objectives during established time periods. This disclosure shall be accomplished by a statement of the action taken or planned to resolve the situation;

5. Objectives and timetables established for the next reporting period;

6. A summary of the race, sex, and national origin of the recipients and a summary from the recipients of the race, sex, and national origin of the beneficiaries; and

7. The final report will also address the following:

(a) What have been the most challenging or unexpected aspects of this program?

(b) What advice would you give to other organizations planning a similar program? Please include strengths and limitations of the program. If you had the opportunity, what would you have done differently?

(c) Are there any post-grant plans for this project? If yes, how will they be financed?

(d) If an innovative approach was used successfully, the grantee must describe their program in detail for replication by other organizations and communities.

G. Consider potential recipients without discrimination as to race, color, religion, sex, national origin, age, marital status, or physical or mental disability;

H. Ensure that any services or training offered by the recipient, as a result of the financial and technical assistance received, will be made available to all persons in the recipient's service area without discrimination as to race, color, religion, sex, national origin, age, marital status, or physical or mental disability at reasonable rates, including assessments, taxes, or fees. Programs and activities must be delivered from accessible locations. The recipient must ensure that where there are non-English speaking populations that materials are provided in the language that is spoken;

I. Ensure recipients are required to place nondiscrimination statements in advertisements, notices, pamphlets, and brochures making the public aware of their services. The Grantee and recipient are required to provide widespread outreach and public notification in promoting any type of training or services that are available through grant funds;

J. The Grantee must collect and maintain data on recipients by race, sex, and national origin. The grantee must ensure their recipients also collect and maintain data on beneficiaries by race, sex, and national origin as required by Title VI of the Civil Rights Act of 1964 and must be provided to the Agency for compliance review purposes;

K. Upon any default under its representations or agreements contained in this instrument, Grantee, at the option and demand of Grantor, will immediately repay to Grantor the Grant Funds with any legally permitted interest from the date of the default. Default by the Grantee will constitute termination of the grant thereby causing cancellation of Federal assistance under the grant. The provisions of this Agreement may be enforced by Grantor, at its option and without regard to prior waivers of this Agreement or by such other proceedings in law or equity, in either Federal or State courts as may be deemed necessary by Grantor to ensure compliance with the provisions of this Agreement and the laws and regulations under which this grant is made;

L. Provide Financial Management Systems that will include:

1. Accurate, current, and complete disclosure of the financial results of each grant. Financial reporting will be on an accrual basis;

2. Records that identify adequately the source and application of funds for grant-supported activities. Those records shall contain information pertaining to grant awards and authorizations, obligations, unobligated balances, assets, liabilities, outlays, and income related to Grant Funds and matching funds;

3. Effective control over and accountability for all funds, property, and other assets. Grantees shall adequately safeguard all such assets and shall ensure that they are used solely for authorized purposes;

4. Accounting records supported by source documentation.

M. Retain financial records, supporting documents, statistical records, and all other records pertinent to the grant for a period of at least 3 years after grant closing except that the records shall be retained beyond the 3-year period if audit findings have not been resolved. Microfilm or photocopies or similar methods may be substituted in lieu of original records. The Grantor and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers, and records of the Grantee's that are pertinent to the specific grant program for the purpose of making audits, examinations, excerpts, and transcripts;

N. Agree to account for and to return to Grantor interest earned on grant funds pending their disbursement for program purposes when the Grantee is a unit of local government. States and agencies or instrumentalities of a State

are not held accountable for interest earned on grant funds pending their disbursement;

O. Not encumber, transfer, or dispose of the equipment or any part thereof, acquired wholly or in part with Grantor funds without the written consent of the Grantor; and

P. Not duplicate other program activities for which monies have been received, are committed, or are applied to from other sources (public or private).

Grantor agrees that:

A. It will make available to Grantee for the purpose of this Agreement funds in an amount not to exceed the Grant Funds.

B. At its sole discretion and, at any time, may give any consent, deferment, subordination, release, satisfaction, or termination of any or all of Grantee's grant obligations, with or without valuable consideration, upon such terms and conditions as Grantor may determine to be:

1. Advisable to further the purpose of the grant or to protect Grantor's financial interest therein; and

2. Consistent with both the statutory purposes of the grant and the limitations of the statutory authority under which it is made.

Both Parties Agree:

A. Extensions of this grant agreement may be approved by the Agency, in writing, provided in the Agency's sole discretion the extension is justified and there is a likelihood that the grantee can accomplish the goals set out and approved in the application package during the extension period;

B. The Grantor must approve any changes in recipient or recipient composition;

C. The Grantor has agreed to give the Grantee the Grant Funds, subject to the terms and conditions established by the Grantor: Provided, however, That any Grant Funds actually disbursed and not needed for grant purposes be returned immediately to the Grantor. This agreement shall terminate 3 years from this date unless extended or unless terminated beforehand due to default on the part of the Grantee or for convenience of the Grantor and Grantee. The Grantor may terminate the grant in whole, or in part, at any time before the date of completion whenever it is determined that the Grantee has failed to comply with the conditions of this Agreement or the applicable regulations;

D. As a condition of the Agreement, the Grantee certifies that it is in compliance with and will comply in the course of the Agreement with all applicable laws, regulations, Executive Orders, and other generally applicable requirements, including those contained in 7 CFR 3015.205(b), which are incorporated into this agreement by reference, and such other statutory provisions as are specifically contained herein. The Grantee will comply with Title VI of the Civil Rights Act of 1964, section 504 of the Rehabilitation Act of 1973, Age Discrimination Act of 1975, Equal Credit Opportunity Act (ECOA) and Executive Order 12250;

E. The Grantee will ensure that the recipients comply with title VI of the Civil Rights Act of 1964, section 504 of the Rehabilitation Act of 1973, Age Discrimination Act of 1975, Equal Credit Opportunity Act (ECOA) and Executive Order 12250. Each recipient must sign Form RD 400–1, "Equal Opportunity Agreement" and Form RD 400–4, "Assurance Agreement";

F. The provisions of 7 CFR part 3015, "Uniform Federal Assistance Regulations," part 3016, "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments," or part 3019, "Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-profit Organizations," and the fiscal year 2003 "Notice of Funds Availability (NOFA) Inviting Applications for the Rural Community Development Initiative (RCDI)" are incorporated herein and made a part hereof by reference; and

G. This Agreement may be terminated for cause in the event of default on the part of the Grantee or for convenience of the Grantor and Grantee prior to the date of completion of the grant purpose. Termination for convenience will occur when both the Grantee and Grantor agree that the continuation of the program will not produce beneficial results commensurate with the further expenditure of funds.

IN WITNESS WHEREOF, Grantee has this day authorized and caused this Agreement to be executed by

_____

Attest

By _____

(Grantee)

(Title) _____

Date

UNITED STATES OF AMERICA

RURAL HOUSING SERVICE

By _____

(Grantor) (Name) (Title)

Date _____

ATTACHMENT A

[Application proposal submitted by grantee.]

United States Department of Agriculture

Rural Housing Service

Rural Community Development Initiative Grant Agreement

Rural Cooperative Home-Based Health Care Demonstration Program

Revolving Loan Grant

THIS GRANT AGREEMENT (Agreement), effective the date the Agency official signs the document, is a contract for receipt of grant funds under the Rural Community Development Initiative (RCDI). BETWEEN _____

a private or public or tribal organization, (Grantee or Intermediary) and the United States of America acting through the Rural Housing Service (the Agency), Department of Agriculture, (Grantor), for the benefit of recipients listed in Grantee's application for the grant.

WITNESSETH:

The principal amount of the grant is $_____ (Grant Funds). Matching funds, in an amount equal to the grant funds, will be provided by Grantee. The Grantee and Grantor will execute Form RD 1940–1, "Request for Obligation of Funds."

WHEREAS,

Grantee will provide a program of financial and technical assistance to develop the capacity and ability of home health care cooperative organizations,

NOW, THEREFORE, in consideration of said grant;

According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is 0575–0180. The time required to complete this information collection is estimated to average 30 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and reviewing the collection of information.

Grantee agrees that Grantee will:

Q. Provide a program of financial and/or technical assistance in accordance with the proposal outlined in the application, (see Attachment A), the terms of which are incorporated with this NOFA and Agreement and must be adhered to. Any changes to the approved program of financial technical assistance must be approved in writing by the Grantor;

R. Use Grant Funds only for the purposes and activities specified in the application package approved by the Agency, including the approved budget. Any uses not provided for in the approved budget must be approved in writing by the Agency in advance;

S. Charge expenses for travel and per diem that will not exceed the rates paid Agency employees for similar expenses. Grantees and recipients will be restricted to traveling coach class on common carrier airlines. Lodging rates may exceed the Government rate by a maximum of 20 percent. Meals and incidental expenses will be reimbursed at the same rate used by Agency employees, which is based upon location. Mileage and gas will be reimbursed at the existing Government rate. Rates can be accessed on the Internet at *www.http://policyworks.gov/perdiem;*

T. Charge meeting expenses in accordance with 31 U.S.C. 1345. Grant funds may not be used for travel, transportation, and subsistence expenses for a meeting. Any meeting or training not delineated in the application must be approved by the Agency to verify compliance with 31 U.S.C. 1345.

U. Request quarterly reimbursement for grant activities during the previous quarter. Reimbursement will be made on a pro rata basis with matching funds. Form SF-270, "Request for Advance or Reimbursement," will be used to request reimbursement. A project performance report, in narrative form, and a financial report, reflecting the activities conducted, must accompany the request for reimbursement.

V. Provide periodic reports as required by the Grantor. A financial status report and a project performance report will be required on a quarterly basis (due 15 working days after each calendar quarter). The financial status report must show how grant funds and matching funds have been used to date. A final report may serve as the last quarterly report. Grantees shall constantly monitor performance to ensure that time schedules are being met and projected goals by time periods are being accomplished. The project performance reports shall include, but are not limited to, the following:

7. Describe the activities that the funds reflected in the financial status report were used for;

8. A comparison of actual accomplishments to the objectives for that period;

9. Reasons why established objectives were not met, if applicable;

10. Problems, delays, or adverse conditions that will affect attainment of overall program objectives, prevent meeting time schedules or objectives, or preclude the attainment of particular objectives during established time periods. This disclosure shall be accomplished by a statement of the action taken or planned to resolve the situation;

11. Objectives and timetables established for the next reporting period;

12. A summary of the race, sex, and national origin of the recipients and a summary from the recipients of the race, sex, and national origin of the beneficiaries; and

7. The final report will also address the following:

(e) What have been the most challenging or unexpected aspects of this program?

(f) What advice would you give to other organizations planning a similar program? Please include strengths and limitations of the program. If you had the opportunity, what would you have done differently?

(g) Are there any post-grant plans for this project? If yes, how will they be financed?

(h) If an innovative approach was used successfully, the grantee must describe their program in detail for replication by other organizations and communities.

W. Consider potential recipients without discrimination as to race, color, religion, sex, national origin, age, marital status, or physical or mental disability;

X. Ensure that any services or training offered by the recipient, as a result of the financial and technical assistance received, will be made available to all persons in the recipient's service area without discrimination as to race, color, religion, sex, national origin, age, marital status, or physical or mental disability at reasonable rates, including assessments, taxes, or fees. Programs and activities must be delivered from accessible locations. The recipient must ensure that where there are non-English speaking populations that materials are provided in the language that is spoken;

Y. Ensure recipients are required to place nondiscrimination statements in advertisements, notices, pamphlets, and brochures making the public aware of their services. The Grantee and recipient are required to provide widespread outreach and public notification in promoting any type of training or services that are available through grant funds;

Z. The Grantee must collect and maintain data on recipients by race, sex, and national origin. The grantee must ensure that their recipients also collect and maintain data on beneficiaries by race, sex, and national origin as required by title VI of the Civil Rights Act of 1964 and must be provided to the Agency for compliance review purposes;

AA. Upon any default under its representations or agreements contained in this instrument, Grantee, at the option and demand of Grantor, will immediately repay to Grantor the Grant Funds with any legally permitted interest from the date of the default. Default by the Grantee will constitute termination of the grant thereby causing cancellation of Federal assistance under the grant. The provisions of this Agreement may be enforced by Grantor, at its option and without regard to prior waivers of this Agreement or by such other proceedings in law or equity, in either Federal or State courts as may be deemed necessary by Grantor to ensure compliance with the provisions of this Agreement and the laws and regulations under which this grant is made;

BB. Provide Financial Management Systems that will include:

4. Accurate, current, and complete disclosure of the financial results of each grant. Financial reporting will be on an accrual basis;

5. Records that identify adequately the source and application of funds for grant-supported activities. Those records shall contain information pertaining to grant awards and authorizations, obligations, unobligated balances, assets, liabilities, outlays, and income related to Grant Funds and matching funds;

6. Effective control over and accountability for all funds, property, and other assets. Grantees shall adequately safeguard all such assets and shall ensure that they are used solely for authorized purposes;

4. Accounting records supported by source documentation.

CC. Retain financial records, supporting documents, statistical records, and all other records pertinent to the grant for a period of at least 3 years after grant closing, except that the records shall be retained beyond the 3-year period if audit findings have not been resolved. Microfilm or photocopies or similar methods may be substituted in lieu of original records. The Grantor and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers, and records of the Grantee's that are pertinent to the specific grant program for the purpose of making audits, examinations, excerpts, and transcripts;

DD. Provide an A–133 audit report if $300,000 or more of Federal funds are expended in a 1-year period. If Federal funds expended during a 1-year period are less than $300,000, and there is an

outstanding loan balance of $300,000 or more, an audit in accordance with generally accepted government auditing standards is required. If Federal funds expended during a 1-year period are less than $300,000, and there is an outstanding loan balance of less than $300,000, a management report may be submitted on Forms RD 442–2, "Statement of Budget, Income and Equity," and 442–3, "Balance Sheet";

EE. Agree to account for and to return to Grantor interest earned on grant funds pending their disbursement for program purposes when the Grantee is a unit of local government. States and agencies or instrumentalities of a State are not held accountable for interest earned on grant funds pending their disbursement;

FF. Not encumber, transfer, or dispose of the equipment or any part thereof, acquired wholly or in part with Grantor funds without the written consent of the Grantor; and

GG. Not duplicate other program activities for which monies have been received, are committed, or are applied to from other sources (public or private).

Grantor agrees that:

C. It will make available to Grantee for the purpose of this Agreement funds in an amount not to exceed the Grant Funds.

D. At its sole discretion, and at any time, may give any consent, deferment, subordination, release, satisfaction, or termination of any or all of Grantee's grant obligations, with or without valuable consideration, upon such terms and conditions as Grantor may determine to be:

3. Advisable to further the purpose of the grant or to protect Grantor's financial interest therein; and

4. Consistent with both the statutory purposes of the grant and the limitations of the statutory authority under which it is made.

Both Parties Agree:

H. Extensions of this grant agreement may be approved by the Agency, in writing, provided the Agency's sole discretion the extension is justified and there is a likelihood that the grantee can accomplish the goals set out and approved in the application package during the extension period;

I. The Grantor must approve any changes in recipient or recipient composition;

J. The Grantor has agreed to give the Grantee the Grant Funds, subject to the terms and conditions established by the Grantor: PROVIDED, HOWEVER, That any Grant Funds actually disbursed and not needed for grant purposes be returned immediately to the Grantor. This agreement shall terminate 3 years from this date unless extended or unless terminated beforehand due to default on the part of the Grantee or for convenience of the Grantor and Grantee. The Grantor may terminate the grant in whole, or in part, at any time before the date of completion whenever it is determined that the Grantee has failed to comply with the conditions of this Agreement or the applicable regulations;

K. As a condition of the Agreement, the Grantee certifies that it is in compliance with and will comply in the course of the Agreement with all applicable laws, regulations, Executive Orders, and other generally applicable requirements, including those contained in 7 CFR 3015.205(b), which are incorporated into this agreement by reference, and such other statutory provisions as are specifically contained herein. The Grantee will comply with Title VI of the Civil Rights Act of 1964, section 504 of the Rehabilitation Act of 1973, Age Discrimination Act of 1975, Equal Credit Opportunity Act (ECOA) and Executive Order 12250;

L. The Grantee will ensure that the recipients comply with Title VI of the Civil Rights Act of 1964, section 504 of the Rehabilitation Act of 1973, Age Discrimination Act of 1975, Equal Credit Opportunity Act (ECOA) and Executive Order 12250. Each recipient must sign Form RD 400–1, "Equal Opportunity Agreement" and Form RD 400–4, "Assurance Agreement";

M. The provisions of 7 CFR part 3015, "Uniform Federal Assistance Regulations," part 3016, "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments," or part 3019, "Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-profit Organizations," and the fiscal year 2003 "Notice of Funds Availability (NOFA) Inviting Applications for the Rural Community Development Initiative (RCDI)" are incorporated herein and made a part hereof by reference; and

N. This Agreement may be terminated for cause in the event of default on the part of the Grantee or for convenience of the Grantor and Grantee prior to the date of completion of the grant purpose. Termination for convenience will occur when both the Grantee and Grantor agree that the continuation of the program will not produce beneficial results commensurate with the further expenditure of funds.

IN WITNESS WHEREOF, Grantee has this day authorized and caused this Agreement to be executed by

Attest

By _____
(Grantee)

Date

UNITED STATES OF AMERICA

RURAL HOUSING SERVICE

By _____
(Grantor) (Name) (Title)

Date

ATTACHMENT A

[Application proposal submitted by grantee.]

[FR Doc. 03–30862 Filed 12–12–03; 8:45 am]

BILLING CODE 3410–XV–P

DEPARTMENT OF COMMERCE

Bureau of Economic Analysis

BEA Customer Satisfaction Survey

ACTION: Proposed information collection; comment request.

SUMMARY: The U.S. Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Interested persons are invited to submit comments on or before February 13, 2004.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Forms Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to: Vanessa Clark, U.S. Department of Commerce, Bureau of Economic Analysis, BE–53, Washington, DC 20230, or by telephone at 202–606–9697.

SUPPLEMENTARY INFORMATION:

I. Abstract

As one of the nation's leading statistical agencies, the Bureau of Economic Analysis (BEA) provides reliable and consistent measures of economic activity that are essential to intelligent decision making of business people and policy makers and to the efficient operations of financial markets.

The purpose of the BEA Customer Satisfaction Survey will be to obtain feedback from customers on the quality of BEA products and services. The results of the information collected will serve to assist BEA in improving the quality of its data products and its methods of dissemination.

II. Method of Collection

The survey and a cover letter with instructions on how to complete the survey will be mailed to about 5,000 potential respondents. BEA will request that responses be returned 30 days after the mailing. It will also reside on BEA's Web site for 2,000 potential respondents. The survey will be designed so that all responses are anonymous and therefore eliminates the necessity for record keeping of respondents.

III. Data

OMB Number: 0691–0001.

Type of Review: Reinstatement, without change of a previously approved collection.

Affected Public: Individuals from profit and non-profit organizations and individuals from other Federal, State, and local government agencies.

Estimated Number of Respondents: 500.

Estimated Response Time: 15 minutes.

Estimated Total Annual Burden Hours: 125.

Estimated Total Annual Cost: The only cost to the respondents is that of their time.

Legal Authority: Executive Order 12862, section 1(b), of September 11, 1993.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will be come a matter of public record.

Dated: December 9, 2003.

Madeleine Clayton,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 03–30845 Filed 12–12–03; 8:45 am]

BILLING CODE 3510–06–P

DEPARTMENT OF COMMERCE

International Trade Administration

Applications for Duty-Free Entry of Scientific Instruments

Pursuant to section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89–651; 80 Stat. 897; 15 CFR part 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with 15 CFR 301.5(a)(3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, DC 20230. Applications may be examined between 8:30 a.m. and 5 p.m. in Suite 4100W, U.S. Department of Commerce, Franklin Court Building, 1099 14th Street, NW., Washington, DC.

Docket Number: 03–051. *Applicant:* National Renewable Energy Laboratory, 1617 Cole Boulevard, Golden, CO 80401. *Instrument:* Electron Microscope, Model Tecnai G^2 20 TWIN. *Manufacturer:* FEI Company, the Netherlands. *Intended Use:* The instrument is intended to be used to study the structure and physical chemistry of biomass samples. The goal of these investigations is to better understand the structural and chemical properties and relate them to the susceptibility of biomass to enzyme digestion, and to characterize a variety of nano-structured materials such as quantum dot protein conjugates and polymeric supports for syngas conversion. *Application accepted by Commissioner of Customs:* November 13, 2003.

Docket Number: 03–052. *Applicant:* National Institute of Standards and Technology, 100 Bureau Drive, Gaithersburg, MD 20899. *Instrument:* Dual Beam Scanning Electron and Focused Ion Beam Microscope System, Model Nova 600 NanoLab. *Manufacturer:* FEI Company, the Netherlands. *Intended Use:* The instrument is intended to be used to study solid state materials and devices researched, used and produced by the microelectronics industry and emerging nanotechnology. The research objectives are to accurately measure small-size structures and to develop research and calibration methods. *Application accepted by Commissioner of Customs:* November 20, 2003.

Gerald A. Zerdy,

Program Manager, Statutory Import Programs Staff.

[FR Doc. 03–30900 Filed 12–12–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Whitehead Institute for Biomedical Research, et al.; Notice of Consolidated Decision on Applications for Duty-Free Entry of Electron Microscopes

This is a decision consolidated pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 a.m. and 5 p.m. in Suite 4100W, Franklin Court Building, U.S. Department of Commerce, 1099 14th Street, NW., Washington, DC.

Docket Number: 03–048. *Applicant:* Whitehead Institute for Biomedical Research, Cambridge, MA 02142. *Instrument:* Electron Microscope, Model JEM–2200FS. *Manufacturer:* JEOL Ltd., Japan. *Intended Use:* See notice at 68 FR 61189, October 27, 2003. *Order Date:* May 17, 1999.

Docket Number: 03–049. *Applicant:* National Institutes of Health, Bethesda, MD 20892–8008. *Instrument:* Electron Microscope, Model Tecnai G^2 Polara. *Manufacturer:* FEI Company, The Netherlands. *Intended Use:* See notice at 68 FR 61189, October 27, 2003. *Order Date:* June 18, 2003.

Comments: None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as these instruments are intended to be used, was being manufactured in the United States at the time the instruments were ordered. *Reasons:* Each foreign instrument is a conventional transmission electron microscope (CTEM) and is intended for research or scientific educational uses requiring a CTEM. We know of no CTEM, or any other instrument suited to these purposes, which was being manufactured in the United States either at the time of order of each instrument OR at the time of receipt of

application by the U.S. Customs Service.

Gerald A. Zerdy,

Program Manager, Statutory Import Programs Staff.

[FR Doc. 03–30901 Filed 12–12–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–357–813]

Honey From Argentina: Preliminary Results of Countervailing Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (the Department) is conducting an administrative review of the countervailing duty order on honey from Argentina for the period January 1, 2001 through December 31, 2002. If the final results remain the same as the preliminary results of this review, we will instruct the U.S. Customs and Border Protection (CBP) to assess countervailing duties as detailed in the "Preliminary Results of Administrative Review" section of this notice. Interested parties are invited to comment on the preliminary results of this administrative review. (*See* the "Public Comment" section of this notice).

EFFECTIVE DATE: December 15, 2003.

FOR FURTHER INFORMATION CONTACT: Thomas Gilgunn or Addilyn Chams-Eddine, Office of AD/CVD Enforcement VII, Import Administration, U.S. Department of Commerce, Room 4012, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–4236 or (202) 482–0648, respectively.

SUPPLEMENTARY INFORMATION:

Background

On December 10, 2001, the Department published in the **Federal Register** the countervailing duty order on honey from Argentina. *See Notice of Countervailing Duty Order: Honey From Argentina*, 66 FR 63673. In response to requests for an administrative review of the countervailing duty (CVD) order on honey from Argentina from the Government of Argentina (GOA) and the American Honey Producers Association and Sioux Honey Association (petitioners), the Department initiated an administrative review for the period January 1, 2001 through December 31, 2001. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 68 FR 3009 (January 22, 2003) (*Initiation Notice*).

In its request for review, the GOA requested "that the period of review be extended to include calendar year 2002." In the *Initiation Notice*, the Department stated that it was considering the GOA's request. On January 24, 2002, the Department solicited comments from the parties regarding the GOA's request. On February 3, 2003, the GOA submitted comments in support of its request to extend the POR to include calendar year 2002. On February 6, 2003, the petitioners submitted comments arguing against the GOA's request for extension. On February 10, 2003, the GOA submitted additional comments. In addition, on February 10, 2003, the Department offered a final opportunity for both parties to submit final comments on this issue by February 14, 2003. (*See* memorandum to file from Barbara E. Tillman regarding "Countervailing Duty Order on Honey from Argentina; Telephone Calls to Petitioner and Respondent Concerning Comments on the Period of Review Issue in the first Administrative Review," dated February 13, 2003.) No additional comments were received from either party.

Based on our analysis of the GOA's request and of the comments received on this issue from both the petitioners and the GOA, the Department expanded the POR to include 2002. As such, the instant review covers calendar years, January 1, 2001 through December 31, 2001 and January 1, 2002 through December 31, 2002.[1] (*See* memorandum from Thomas Gilgunn to Joseph A Spetrini "Honey from Argentina: Expansion of the Period of Review in the First Administrative Review of the Countervailing Duty Order," dated February 21, 2003.)

On February 21, 2003, we issued a questionnaire to the GOA. On April 14, 2003, the GOA submitted its questionnaire response. On June 10, 2003 and August 15, 2003, the Department issued supplemental questionnaires to the GOA. The GOA submitted responses to those supplemental questionnaires on July 14, 2003 and September 22, 2003, respectively. The GOA also submitted additional information regarding certain provincial programs on August 20, 2003 and September 11, 2003. On July 23, 2003, we extended the period for the completion of the preliminary results pursuant to section 751(a)(2)(B)(iv) of the Tariff Act of 1930, as amended (the Act). *See Notice of Extension of Time Limit for the Preliminary Results of Countervailing Duty Administrative Review: Honey from Argentina*, 68 FR 43492 (July 23, 2003).

[1] For the purposes of these preliminary results, we have analyzed data for the period January 1, 2001 through December 31, 2001 to determine the countervailable subsidy rate for exports of subject merchandise made during the periods in 2001 when liquidation of entries was suspended. In addition, we have analyzed data for the period January 1, 2002 through December 31, 2002 to determine the countervailable subsidy rate for exports during that period and to establish the cash deposit rate for subsequent exports of subject merchandise.

Verification

As provided in section 782(i) of the Act, the Department conducted on-site verification of the GOA's questionnaire responses from October 14 through October 21, 2003. The Department's findings at verification are detailed in two reports: "First Administrative Review of Honey from Argentina: Verification Report for the Argentine Internal Tax Reimbursement/ Rebate Program (Reintegro); Honey Production, and Export Data," dated November 13, 2003 (*Reintegro Verification Report*); and "First Administrative Review of Honey from Argentina: Verification Report for the Government of Argentina," dated November 20, 2003 (*Honey Verification Report*). Public versions of both reports are on file in the Central Records Unit (CRU) located in room B–099 of the Main Commerce Building.

Scope of the Order

The merchandise covered by this order is artificial honey containing more than 50 percent natural honeys by weight, preparations of natural honey containing more than 50 percent natural honeys by weight, and flavored honey. The subject merchandise includes all grades and colors of honey whether in liquid, creamed, combs, cut comb, or chunk form, and whether packaged for retail or in bulk form.

The merchandise subject to this order is currently classifiable under subheadings 0409.00.00, 1702.90, and 2106.90.99 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheadings are provided for convenience and Bureau of Customs and Border Protection (CBP) purposes, the Department's written description of the merchandise covered by this order is dispositive.

Subsidies Valuation Information

A. Aggregation

Under section 777A(e)(2)(B) of the Act, the Department may calculate a single country-wide rate applicable to all exporters if the Department determines it is not practicable to determine individual countervailable subsidy rates due to the large number of exporters or producers involved in the investigation or review.

In the countervailing duty investigation of honey from Argentina, the Department solicited information from the GOA on an aggregate or industry-wide basis in accordance with section 777A(e)(2)(B) of the Act, rather than from individual producers and exporters, due to the large number of producers and exporters of honey in Argentina. *See* Memorandum to the File, Countervailing Duty Investigation of Honey from Argentina: Conducting the Investigation on an Aggregate Basis, dated November 22, 2000. As noted above, in accordance with 19 CFR § 351.213(b)(2), both the GOA and the petitioners requested an administrative review of this countervailing duty order. (*See Initiation Notice.*) No individual exporters requested the review pursuant to 19 CFR § 351.213(b). Accordingly, the Department has conducted this review of the order on an aggregate basis and will calculate a single country-wide subsidy rate for 2001 and 2002 to be applied to all exports of the subject merchandise. *See* Section 777A(e)(2)(B) of the Act.

Allocation Period

In the underlying investigation, we identified the allocation period in accordance with 19 CFR § 351.524(d)(2) which directs us to rely on the average useful life (AUL) of renewable physical assets for the industry concerned, as listed in the Internal Revenue Service's (IRS) 1977 Class Life Asset Depreciation Range System, as updated by the Department of Treasury. No parties provided information or argument about the AUL issue. Therefore, we will continue to use the 10-year AUL as reported in the IRS tables to allocate any non-recurring subsidies under review.

Benchmark Interest Rates and Discount Rates

In selecting benchmark interest rates for use in calculating the benefits conferred by the various loan programs under review, we would normally look for the interest rate a borrower had received on a comparable commercial loan. *See* 19 CFR 351.505(a)(3)(i). However, since we are conducting this review on the aggregate level, and we are not examining individual companies, we have sought information on the national average interest rates for comparable commercial loans. *See* 19 CFR 351.505(a)(3)(ii). The GOA provided information compiled by the Central Bank of Argentina showing the national average interest rates for various types of financing: long-term, fixed-rate, denominated in Argentine Peso and in foreign currency. For each loan program found to be countervailable, we have selected a benchmark from the information provided depending upon the terms and characteristics of the particular loan program.

We are directed by 19 CFR 351.524(d)(3) regarding the selection of a discount rate for the purposes of allocating non-recurring subsidies over time. Since we are conducting this investigation on an aggregate basis under section 777A(e)(2)(B) of the Act, we are using, as the discount rate, the average cost of long-term fixed-rate loans in Argentina as reported by the GOA. *See* 19 CFR 351.524(d)(3)(i)(B).

Denominator Issues

The GOA has provided information for 2001 and 2002 relating to the total volume of honey produced in Argentina, the volume and value in U.S. Dollars, of total honey exports, and the volume and value in U.S. Dollars, of exports of honey to the United States. The GOA has also broken down, where possible, the export volumes and values according to the province in which the honey was produced. However, the GOA was unable to provide information relating to total domestic sales of honey for 2001 and 2002. As a proxy for total sales information, the GOA provided data showing the volume of honey production by province during 2001 and 2002. However, the GOA stated that it could not provide the value of production for 2001 and 2002. Consistent with the investigation, we calculated a proxy for the value of the total production reported by the GOA using the volume and value data provided for exports to the United States. *See Notice of Final Affirmative Countervailing Duty Determination: Honey from Argentina*, 66 FR 50613 (October 4, 2001) (*Honey Final Determination*), and the accompanying Issues and Decision Memorandum (*Honey Issues Memo*), at "Denominators." We divided the value of Argentine honey exports to the United States by the volume of those exports to calculate a per kilogram value in U.S. Dollars. We then multiplied this per kilogram value by the provincial production data provided to arrive at the value of total Argentine honey production during 2001 and 2002. We have used this total production value as our denominator when calculating the subsidy from domestic subsidy programs provided by the GOA, and we have used the relevant provincial production value as our denominator when calculating the subsidy from domestic subsidies provided at the provincial level. We have used the total or provincial export values, as appropriate, as our denominators when calculating the subsidy from programs we have determined to be export subsidies.

To determine the final subsidy from each provincial program that is attributable to exports of honey to the United States, we applied the following methodologies: (1) For provinces for which we have reported data on the volume and value of honey production that was exported, we weight-averaged the subsidies from each provincial program by multiplying each subsidy by the province's share of total honey exports, by value, to the United States during the POR; and (2) for provincial domestic subsidy programs in provinces that do not have reported exports of honey to the United States during the POR, but do have reported honey production during the POR, and for which the GOA did not specifically report that the province had no exports to the United States, we divided the benefits by the value of total value of Argentine honey production during the POR.

As noted above, Argentine honey production and exports have been valued in U.S. Dollars. As detailed below, certain Argentine Peso-denominated loan programs provided benefits to Argentine honey producers and exporters in Argentine Pesos. In such instances, we converted those Argentine Peso-denominated benefits into U.S. Dollars using the official exchange rate data provided by the GOA.

Analysis of Programs

I. Programs Preliminarily Determined to be Countervailable

A. Federal Programs

1. Argentine Internal Tax Reimbursement/Rebate Program (Reintegro)

The Reintegro program entitles Argentine exporters to a rebate of many internal domestic taxes levied during the production, distribution, and sales process on many exported products. The Reintegro program provides a cumulative stage tax rebate paid upon export, calculated as a percentage of the "free on board" (FOB) invoice price of an exported product.

In the underlying investigation, the Department found the Reintegro to be

countervailable. (*See Honey Issues Memo*, at "Argentine Internal Tax Reimbursement/Rebate Program (Reintegro)).")

In its April 14, 2003, questionnaire response, the GOA stated that it did not "intend to provide a full defense of the reintegro program in this review." Rather, the GOA stated that Resolution 220/2001, enacted on June 18, 2001, reduced the Reintegro rate for all products by 7 percent thereby lowering the reintegro on bulk honey to zero and for processed honey to 5.4 percent. The GOA also maintains that Resolution 470/2001, enacted on September 17, 2001, specifically set the Reintegro rate for processed honey to zero. The GOA further noted that the Reintegro level for both bulk and processed honey "has remained at zero since this time, including the remainder of the 2001 and the entire 2002 POR."

Since the GOA did not provide new information regarding the countervailability of the Reintegro, we continue to find the entire amount of the Reintegro for bulk and processed honey to confer a countervailable benefit. *See* 19 CFR § 351.518(a)(4). However, we did verify that in June 2001, the Reintegro rate applicable to bulk honey was set to zero while the rate for processed honey was decreased to 5 percent. We further verified that the Reintegro rate for processed honey was then set to zero in September 2001. As such, for the purposes of establishing the countervailable subsidy rate for 2001, we weight-averaged the Reintegro rates in effect during that year (5.4 percent for bulk honey and 12 percent for processed honey through June 18, 2001 and 5 percent for processed honey from June 18, 2001 through September 16, 2001) by the FOB value of exports of bulk and processed honey to the United States during these distinct periods in 2001. Therefore, the countervailable subsidy rate for 2001 exports to the United States applicable to this program is 5.352 percent *ad valorem*.

We verified the Reintegro rate was zero throughout 2002 for both bulk and processed honey. Thus, both the countervailable subsidy rate for 2002 and the cash deposit rate applicable to this program are zero.

2. Factor de Convergencia (Convergence Factor)

After the completion of verifications in both the instant review and the concurrent antidumping duty administrative review, we learned that on the record of the administrative review of the antidumping duty order, there was verified information relating to a GOA program called the *factor de convergencia* (Convergence Factor). Under this program, as described in public information provided by several of the respondents in the antidumping duty administrative review, exporters could claim a payment from the GOA for a percentage of the FOB value of the exports. According to this public information on the record, the rate of payment was determined according to a formula accounting for the exchange rate between the U.S. Dollar and the Euro. *See* memorandum to the file placing public information regarding the Convergence Factor from the antidumping review on the record of this review dated December 8, 2003 (*CF Public Information Memo*).

Our review of the record in the countervailing duty administrative review shows that the GOA did not report the existence of this program. The public information in the antidumping review identified a resolution which addressed the operational interaction between the Reintegro and the Convergence Factor. Resolution 470/2001, dated September 17, 2001, had been submitted, in Spanish, as Exhibit 8 to the GOA's April 14, 2003 countervailing duty questionnaire response. Resolution 470/2001 consists of numerous articles: one directly addressing the Reintegro rates for honey; another addressing the interaction between Reintegro and the Convergence Factor. However, the only article for which a translation was provided and discussed in the questionnaire response was the article pertaining directly to the Reintegro rates for honey.

In addition, the GOA provided no information about this program in response either to questions regarding changes in Reintegro or to questions regarding "any other forms of assistance to producers and exporters of subject merchandise." *See* the GOA's April 14, 2003 questionnaire response. Furthermore, in response to questions at verification regarding whether the GOA implemented any additional forms of assistance for exporters in lieu of Reintegro payments at the time of or since the reduction of the Reintegro rates, officials of the Production Ministry indicated that the GOA had implemented no such measures. (*See Reintegro Verification Report*.)

On November 14, 2003, we requested that the GOA provide an explanation of why it did not report the Convergence Factor to the Department either in the questionnaire responses or at verification. On November 20, 2003, the GOA stated that the Convergence Factor was not a government subsidy program but an exchange rate mechanism that applied to all foreign trade, both imports and exports. The GOA cited earlier cases in which the Department made clear that exchange rate policies that apply equally to imports and exports are not countervailable (citing to *Certain Electrical Conductor Aluminum Redraw Rod from Venezuela; Final Affirmative Countervailing Duty Determination*, 53 FR 24763 (June 30, 1988); *Carbon Steel Wire Rod from Czechoslovakia; Preliminary Negative Countervailing Duty Determination*, 49 FR 6773 (February 23, 1984); and *Carbon Steel Wire Rod from Poland; Preliminary Negative Countervailing Duty Determination*, 49 FR 6768 (February 23, 1984)). Moreover, the GOA maintained that since the Convergence Factor had nothing to do with the concept of rebating indirect taxes, the Convergence Factor cannot reasonably be understood to be a replacement for the Reintegro program. As such, given that the Convergence Factor operated as an exchange rate mechanism for imports and exports wholly unrelated to the rebate of indirect taxes, the GOA maintained that it did not report the Convergence Factor to the Department because it had no reason to believe that the Department might consider the Convergence Factor to be a subsidy program much less a replacement of the Reintegro program.

In addition to stating that the Convergence Factor should not be considered a subsidy program, the GOA stated that it was willing to answer any additional questions that the Department had regarding the operation of the Convergence Factor. The GOA argued that it would rather the Department request specific information regarding the Convergence Factor than have the Department draw any adverse inferences from a perceived lack of response. The GOA contended that the Department's general questions seeking information on new subsidy programs or replacement programs for the reintegro could not reasonably have been interpreted by the GOA to be seeking information on an exchange rate mechanism like the Convergence Factor. Moreover, the GOA argued that it would be unreasonable for the Department to draw any adverse inferences from the record with regard to the Convergence Factor without providing the GOA with an opportunity to respond to specific questions regarding the Convergence Factor.

On December 2, 2003, the petitioners submitted comments and information regarding the GOA's November 20, 2003 letter. On December 8, 2003, the GOA submitted additional comments regarding the petitioner's December 2, 2003 letter. These comments and information were submitted too late for consideration in these preliminary results.

Sections 776(a)(2)(A) and 776(a)(2)(B) of the Act provide for the use of facts otherwise available when an interested party withholds information that has been requested by the Department, or when an interested party fails to provide the information requested in a timely manner and in the form required.

The GOA provided no information about the Convergence Factor in response either to questions regarding changes in the Reintegro or questions regarding any other forms of assistance provided to producers and exporters of subject merchandise. (*See* the GOA's April 14, 2003 response to the Department's initial questionnaire.) Moreover, the record also shows that when questioned at verification regarding whether the GOA implemented any additional forms of assistance for exporters in lieu of Reintegro payments at the time of or since the reduction of the Reintegro rates, GOA officials stated that there were no such measures. (*See* the *Reintegro Verification Report*.) Therefore, because the GOA failed to provide information on the Convergence Factor, the Department must resort to facts otherwise available.

Section 776(b) of the Act provides that, in selecting from among the facts available, the Department may use an inference that is adverse to the interests of a respondent, if it determines that a party has failed to cooperate to the best of its ability.

The GOA's stated position for not providing information on the Convergence Factor appears to be the following: (1) The Convergence Factor was an exchange rate mechanism that was not an additional subsidy which provided assistance to exporters; (2) exchange rate mechanisms have nothing to do with the Reintegro; and (3) the Department has found exchange rate policies which apply to imports and exports to be not countervailable.

We disagree with the GOA's contention that it could not reasonably be expected to provide information regarding the Convergence Factor in response to the Department's question regarding any other forms of assistance provided to producers and exporters of subject merchandise. Clearly, the Convergence Factor is a form of assistance that was provided to exporters of the subject merchandise during the POR. (*See CF Public Information Memo*.) As such, it is reasonable to conclude that the GOA was obligated to provide information regarding the Convergence Factor in response to questions regarding other forms of assistance provided to exporters of the subject merchandise. Moreover, it is reasonable to conclude that the GOA was aware of its obligation to provide information regarding the Convergence Factor in response to questions regarding other forms of assistance provided to exporters of the subject merchandise.

We note that, in response to the Department's question regarding any other forms of assistance provided to producers and exporters of subject merchandise, the GOA did provide information regarding a provincial loan program called "Convenio Programa MIPyMES Agropecuarios Bonaerenses 2000" which the GOA maintained was not countervailable. (*See* "Program Preliminarily Determined to be Not Countervailable," below.) Since the GOA did report information on one program which it believed to be not countervailable, the Department can reasonably conclude that the GOA was aware of its obligation to report programs like the Convergence Factor even though it may believe that the Department should find a program such as the Convergence Factor to be not countervailable.

We also disagree with the GOA's contention that it could not reasonably be expected to provide information regarding the Convergence Factor in response to the Department's questions regarding possible replacements to the Reintegro program. In response to questions regarding the Reintegro program, the GOA provided a Spanish version of Resolution 470/2001 with a translation of Article 6 which set the reintegro rate for processed honey to zero. In response to the Department's November 14, 2003 letter which mentioned Article 2 of Resolution 470/2001, the GOA stated that Article 2 provides that "companies accruing a credit from the difference in exchange rates would receive less of a reintegro rebate." Based even on this partial translation of Resolution 470/2001, it is clear that the operation of the Convergence Factor and the Reintegro were interrelated.

Moreover, a more complete translation of Article 2 shows that in cases where the Convergence Factor is larger than the corresponding Reintegro, only the Convergence Factor should be paid in lieu of the Reintegro. (*See Memorandum placing translation of Resolution 470/2001, Article 2 on the record of this review*, dated December 8, 2003.) As such, the record shows that both the Convergence Factor and the Reintegro program provided credits to exporters and the amount of credits provided by the Convergence Factor and the Reintegro program were limited by Article 2 of Resolution 470/2001. Since the GOA enacted Resolution 470/2001, and Article 2 of said resolution governed the interrelationship of the Convergence Factor and the Reintegro, it is reasonable to conclude that the GOA was obligated to provide information regarding the Convergence Factor in response to questions regarding possible replacements to the Reintegro.

Finally, we disagree with the GOA's contention that the existence of the cases it cited shows that the Department will not find a multiple exchange rate countervailable. There are several administrative cases where the Department has found multiple exchange rates countervailable. (*See, e.g., Final Affirmative Countervailing Duty Determination; Certain Electrical Conductor Aluminum Redraw Rod From Venezuela*, 53 FR 24763 (June 30, 1988).) The Department's decisions regarding multiple exchange rates like the Convergence Factor are fact specific. Since the GOA failed to provide information on the Convergence Factor, we must resort to facts otherwise available to make our decision regarding the countervailability of the Convergence Factor.

The GOA was aware of its obligation to report information regarding the Convergence Factor and had the ability to report its own program. Therefore, the Department preliminarily concludes that the GOA failed to cooperate to the best of its ability. Accordingly, in applying the facts otherwise available, the Department finds that an adverse inference is warranted, pursuant to section 776(b) of the Act.

An analysis of the public information from the companion antidumping duty review shows the following. On June 19, 2001, GOA Decree 803/2001 modified the relationship between the Argentine Peso and the U.S. Dollar, as applied to import/export transactions. The Central Bank established a "factor de convergencia" or convergence factor (CF) for import/export transactions. The CF did not affect the convertibility plan for other types of U.S. Dollar transactions. The CF mechanism acted as an export promotion instrument. Concurrent with implementation of the CF, the GOA reduced the Reintegro for all products by seven percent. GOA Decree 191/2002 apparently suspended the CF on January 29, 2002. (*See CF Public Information Memo*.)

Public information from the companion antidumping duty review indicates the GOA calculated the CF for

exporters on a daily basis using a formula accounting for the exchange rate between the U.S. Dollar and the Euro (*i.e.*, exporters exchanged their U.S. Dollars into Argentine Pesos at a rate of one Peso equals 1 U.S. Dollar ÷ (1 U.S. Dollar + 1 Euro)/2). (*See CF Public Information Memo.*) As such, Argentine exporters ultimately converted their U.S. Dollar payments to Argentine Pesos at a rate more advantageous than the one-to-one parity established by the Convertibility Law. In making CF claims, exporters apparently applied the officially published CF from the date of their export declaration to the FOB value of the goods exported. The GOA then paid the CF proceeds directly to the exporter.

The CF program provides a payment to exporters, calculated as a percentage of the "free on board" (FOB) invoice price of an exported product. These CF payments are issued by the GOA directly to exporters and therefore, constitute a financial contribution to recipients under section 771(5)(D)(I) of the Act. The CF program also provides a benefit because the exchange rate established through this program allowed exporters to convert U.S. Dollars to Argentine Pesos at a rate more advantageous than the official one-to-one exchange rate mandated by the GOA's Convertibility Law. Further, since receipt of CF payments is contingent upon export performance, CF payments are specific under section 771(5A)(D) of the Act.

In order to calculate the countervailable subsidy for the CF program applicable to honey exports from June 19, 2001 through December 31, 2001, we obtained the official daily CF data through a search of GOA websites, and we calculated an average CF for the period.[2] We then multiplied that average CF by the FOB value of honey exports to the United States for the same period and divided that total by the total FOB value of honey exports to the United States in 2001. As such, the countervailable subsidy rate for the CF program applicable to 2001 is 0.060 percent *ad valorem*.

For the purposes of establishing the countervailable subsidy rate for 2002 and the cash deposit rate of estimated countervailing duties, we obtained the official daily CF data for the period January 1, 2002 through January 29, 2002 (the date on which Resolution 191/2002 apparently suspended the Convergence Factor) and calculated an average CF for that period. We then applied that average CF to the total FOB value of honey exports to the United States for the same period. We estimated the total FOB value of honey exports to the United States for the period January 1, 2002 through January 29, 2002 by dividing the total FOB value of honey exports to the United States in 2002 by 365 days and multiplying the daily FOB value by 29 days. We then divided the total CF accrued during 2002 by the total FOB value of honey exports to the United States in 2002. Therefore, we preliminarily determine that the countervailable subsidy rate applicable to exports in 2002 and the rate of cash deposit of estimated countervailing duties applicable to this program is 0.477 percent *ad valorem*.

Section 776(c) of the Act provides that when the Department relies on the facts otherwise available and relies on "secondary information," the Department shall, to the extent practicable, corroborate that information from independent sources reasonably at the Department's disposal. The *Statement of Administrative Action*, H.R. Doc. 103–316 (SAA), states that "corroborate" means to determine that the information used has probative value. *See* SAA at 870. To corroborate secondary information, the Department will, to the extent practicable, examine the reliability and relevance of the information to be used.

In the instant review, we have relied on verified public information from the companion antidumping duty review to calculate countervailable subsidy and cash deposit rate applicable to the CF. Since this public information obtained from the companion antidumping duty proceeding was contemporaneous to the instant review and verified in the context of the companion antidumping duty review we consider it to be reliable and to have probative value. (*See CF Public Information Memo.*) We also used public information obtained from a GOA Web site: *http://www.afip.gov.ar/*. Because this is information issued by the GOA independent of this administrative review, we consider it to be reliable and to have probative value.

3. Regional Productive Revitalization Program

The GOA established the "Regional Productive Revitalization: National Program for the Promotion and Development of Local Productive Initiative" (Regional Productive Revitalization Program) to strengthen the economies of small and medium-sized towns in the Argentine interior. The program was established in 1995 with funds from the national treasury allocated for use by the provinces. Although the program was administered at the national government level, its objective was to address financial emergencies and regional economic devastation in the provinces. The program discontinued granting new credits in the beginning of 1999. However, it remains operational as long as the loans granted are outstanding and continue to be serviced. The Regional Productive Revitalization Program provided credit for the acquisition of capital goods, technology, working capital, training needs, and technical assistance. During the time the program was fully operational, two Argentine Peso-denominated loans were made to honey producers. Those loans were outstanding during both 2001 and 2002. The GOA reported that under Resolution 0324, dated September 16, 2002, borrowers were permitted to refinance their loans under this program at terms which differed for companies that had remained current in their payment of interest and principal and for companies which had not remained current with their loan repayment obligations.

In the *Honey Final Determination*, we determined that the Regional Productive Revitalization Program was countervailable as a regional subsidy. *See Honey Issues Memo*, at "Regional Productive Revitalization: National Program for the Promotion and Development of Local Productive Initiative." There is no new information or evidence of changed circumstances which would warrant reconsidering this finding.

Consistent with our approach in the *Honey Final Determination*, we are treating these two loans differently for the purposes of calculating the benefit. For the first loan, we calculated the Argentine Peso-denominated benefit for the loan by multiplying the average loan balance outstanding during 2001and 2002 by the difference between the loan interest rate charged and the benchmark interest rate. For our benchmark interest rate, we selected from the information provided by the Central Bank of Argentina, a rate for the type of loans that most closely resembled the terms of this program. *See* "Benchmark Interest Rates and Discount Rates" above.

For the second loan, in the *Honey Final Determination*, we considered that this loan had been forgiven during 1999, the period of investigation POI, and treated the amount of debt forgiven as a grant conferred in that year. *See* 19 CFR § 351.508. There is no new information or evidence of changed circumstances which would warrant treating this loan differently for purposes of these preliminary results of review. Therefore, we continue to treat this loan as debt forgiven in 1999. To calculate the benefit, we have allocated the resulting Argentine Peso-denominated grant amount over the AUL of 10 years. See section entitled "Allocation Period" above. We have used an appropriate discount rate, as discussed in the "Benchmark Interest Rates and Discount Rates" section, above. Separately for 2001 and 2002 we summed the Argentine Peso-denominated benefit amounts attributable to each loan and converted the benefit amounts to U.S. Dollars using the official exchange rate data provided by the GOA. We then divided the U.S. Dollar-denominated benefits by the U.S. Dollar-denominated value of honey produced in Argentina during 2001 and 2002, as appropriate, to calculate a countervailable subsidy rate of 0.089 percent *ad valorem* for 2001 and 0.005 percent *ad valorem* for 2002. The cash deposit rate of estimated countervailing duties for this program is 0.005 percent *ad valorem*.

4. BNA Financing for the Acquisition of Goods of Argentine Origin

The financing for the Acquisition of Goods of Argentine origin program was established by the Banco de la Nación Argentina (BNA), a bank owned by the GOA, pursuant to Annex B to the BNA Circular No. 10715/I. This line of credit is offered by BNA to companies purchasing capital equipment manufactured in Argentina (defined as having a maximum foreign component of 40 percent). Financing is provided for up to five years, in an amount equal to 80 percent of the purchase price of the equipment not to exceed US$500,000. There was one loan under this program to a honey producer or exporter which was outstanding during 2001 and 2002.

A program that is "contingent upon the use of domestic goods over imported goods, alone, or as 1 of 2 or more conditions," is an import substitution subsidy under section 771(5A)(c) of the Act. Because this financing is available only for the purchase of Argentine origin goods, the BNA Financing for the Acquisition of Goods of Argentine Origin is specific as an import substitution subsidy under section 771(5A)(c) of the Act.

Loans under this program provide a financial contribution under section 771(5)(D) of the Act in the form of a transfer of funds. To determine whether there is a benefit, we compared the interest rate charged on the loan provided under this program to the commercial interest rate for loans that most closely resemble loans under this program. (*See* "Benchmark Interest Rates and Discount Rates" above.) Based on this comparison, the amount that the recipient pays is less than the amount the recipient would have paid on a comparable commercial loan that could actually be obtained on the market. Thus, this line of credit provides a benefit under section 771(5)(E) of the Act.

The Republic of Argentina followed a currency board system under its Convertibility Law of maintaining parity between the Argentine peso and the U.S. dollar until January 2002. Thus, the exchange rate for the year 2001 was one Argentine Peso to one U.S. dollar. On January 6, 2002, Emergency Law No. 25,561 (Law 25,561) ended the one Argentine peso-one U.S. dollar relationship. In addition, Article 6, paragraph 2 of Law 25,561 and Decree 214/2002 established the mandatory restructuring of foreign currency-denominated debts[3] at a relationship of one U.S. Dollar-one Argentine Peso. This loan was converted from U.S. Dollars to Argentine Pesos under Law 25,567 and Decree 214/2002.

Because this is a long-term fixed-rate loan, the benefit is calculated by multiplying the average outstanding loan balance during 2001 by the difference between the interest rate charged under the program and the benchmark interest rate in accordance with 19 CFR § 351.505(c). We then divided this benefit amount by the U.S. Dollar value of total honey production in Argentina during 2001. Thus, for 2001, we preliminarily determine that the value of any countervailable benefits to honey producers or exporters under this program would have no measurable impact on the overall subsidy rate (*i.e.*, the rate is less than 0.001 percent ad valorem).

Because this loan was converted from U.S. Dollars to Argentine Pesos on January 29, 2002 pursuant to Law 25,567 and Decree 214/2002, we consider that there was, in effect, a new long-term fixed rate Argentine Peso-denominated loan made in 2002. We calculated the countervailable subsidy for 2002 in five steps: (1) We multiplied the average U.S. Dollar-denominated outstanding loan balance which existed from January 1, 2002 through January 28, 2002 by the difference between the interest rate for loans charged under the program and the benchmark interest rate for U.S. Dollar-denominated loans; (2) we multiplied the average Argentine Peso-denominated outstanding loan balance which existed from January 29, 2002 through December 31, 2002 by the difference between the interest rate charged under the program and the appropriate benchmark interest rate for Argentine Peso-denominated loans made during 2002; (3) we converted the 2002 Argentine Peso-denominated benefit into U.S. Dollars using the official annual average exchange rate data provided by the GOA; (4) we summed the two U.S. Dollar-denominated benefits from the two periods in 2002; and (5) we divided this U.S. Dollar-denominated amount by the U.S. Dollar value of total honey production in Argentina during 2002. We thus preliminarily find the countervailable subsidy from this program to be 0.001 percent *ad valorem* for 2002. The cash deposit rate of estimated countervailing duties is 0.001 percent *ad valorem*.

B. Provincial Programs

1. Province of San Luis Honey Development Program

The San Luis Honey Development Program (SLHDP) promoted honey production to supplement the income of disadvantaged people in underdeveloped areas in the province of San Luis through credit lines. These long-term, fixed rate, and Argentine Peso-denominated loans were made as part of a series of annual campaigns which took place from 1994 through 1999.

In the underlying investigation, the Department found the Province of San Luis Honey Development Program to be countervailable. *See Honey Issues Memo*, at "Province of San Luis Honey Development Program." There is no new information or evidence of changed circumstances which would warrant reconsideration of this finding.

In the underlying investigation we treated loans made under this program as loans that had been forgiven during the 1999, the POI. *See* 19 CFR 351.508(a). In the instant review, the GOA reported that the Province of San Luis had undertaken significant efforts to collect payment on these loans. We verified that the Province of San Luis had collected a few, very small payments in 2001 and 2002. However, the amount collected was so small that it would have no impact on the countervailable subsidy rate. As such, we need not address whether it is appropriate to consider these payments as repayments of the subsidy. Therefore, consistent with our methodology in the investigation, we have summed the amounts disbursed through the program for the years 1994 through 1999, plus the accrued interest through 1999, when

[2] The official CF data is available from the following GOA website: *http://www.afip.gov.ar/factor/inter_consulta.asp*.

[3] Law 25,567 and Decree 214/2002 converted all foreign currency-denominated debts except those directly related to the financing of exports.

the loans were effectively forgiven. We summed those amounts and added the leasing amount for 1999 and then allocated this sum over the 10-year average useful life of assets (AUL) used in the honey industry. We used the 1999 annual average of long-term fixed Peso-denominated interest rates as our discount rate. *See* "Benchmark Interest Rates and Discount Rates," and "Allocation Period" sections, above.

For the purposes of establishing the countervailable subsidy rate for 2001, we converted the Argentine Peso-denominated benefit attributable to 2001 into U.S. Dollars using the official exchange rates provided by the GOA. We then divided this amount by the U.S. Dollar value of honey production in the Province of San Luis during 2001. We then determined the countervailable subsidy attributable to subject merchandise from this program by multiplying the calculated subsidy rate by the percentage that honey from San Luis represents of total honey exports to the United States during 2001. Thus, the countervailable subsidy rate attributable to this program for 2001 is 0.141 percent *ad valorem*.

For the purposes of establishing the countervailable subsidy rate for 2002, and the cash deposit rate, we converted the Argentine Peso-denominated benefit attributable to 2002 into U.S. Dollars using the official annual average exchange rate provided by the GOA. We then divided this amount by the U.S. Dollar value of honey production in the Province of San Luis during 2002. We then determined the subsidy attributable to subject merchandise from this program by multiplying the calculated subsidy rate by the percentage that honey from San Luis represents of total honey exports to the United States during 2002. Thus, the countervailable subsidy rate for 2002 and cash deposit rate applicable to this program are 0.024 percent *ad valorem*.

2. Province of Chaco Line of Credit Earmarked for the Honey Sector

The Chaco government's Line of Credit Earmarked for the Honey Sector funded efforts to increase honey production in the province. The Chaco government offered long-term, fixed rate, Argentine Peso-denominated loans to purchase hives as well as loans to improve access to new bee breeds and for honey extraction rooms. These loans were made as part of a series of annual campaigns which took place in 1995, 1997, and 1999.

In the *Honey Final Determination*, we determined that the leasing component of the Honey Program was countervailable. *See Honey Issues Memo*, at "Province of Chaco Line of Credit Earmarked for the Honey Sector." There is no new information or evidence of changed circumstances which would warrant reconsideration of this finding.

However, in the instant review, based on the results of verification, we find it appropriate to make one change to the calculation of the benefit arising from this program. We calculated outstanding balances for these loans to include outstanding interest which accrued on these loans. In order to determine whether a benefit existed, we compared the interest rate charged on loans provided under this program to the commercial interest rates for loans that most closely resemble loans under this program. Because these are long-term, fixed rate, Argentine Peso-denominated loans, we selected from information provided by the GOA a long-term benchmark from: 1995 to apply to the 1995 tranche; 1997 to apply to the 1997 tranche; and 1999 to apply to the 1999 tranche. Based on this comparison, there is a difference in the amount the recipient of the loan pays on the loan and the amount the recipient would have paid on a comparable commercial loan that the recipient could have actually obtained on the market. Thus, this line of credit is providing a benefit, under section 771(5)(E) (ii)of the Act.

We calculated the amount of the benefit for 2001 in the following steps: (1) We multiplied the average outstanding Argentine Peso-denominated loan balances for 2001 by the interest rate differential; (2) we converted the resulting the resulting Argentine Peso-denominated benefit into U.S. Dollars using the official annual average exchange rates provided by the GOA; (3) we divided this U.S. Dollar-denominated benefit by the U.S. Dollar value of honey production in the Province of Chaco during 2001: (4) we then determined the subsidy attributable to subject merchandise from this program by multiplying the calculated subsidy rate by the percentage that honey from the Province of Chaco represents of total honey exports to the United States during 2001. We find the countervailable subsidy from this line of credit to be 0.084 percent *ad valorem* for 2001.

For the purposes of establishing the countervailable subsidy rate for 2002 and the cash deposit rate of estimated countervailing duties, we calculated the amount of the benefit for 2002 in the following steps: (1) We multiplied the average outstanding Argentine Peso-denominated loan balances for 2002 by the interest rate differential; (2) we converted the resulting Argentine Peso-denominated benefit into U.S. Dollars using the official exchange rates provided by the GOA; (3) because the GOA was unable to demonstrate that no honey produced in Chaco was exported to the United States in 2002, we divided this U.S. Dollar-denominated benefit by the U.S. Dollar value of honey production in Argentina during 2002. Thus, the countervailable subsidy rate for 2002 and cash deposit rate applicable to this program are 0.019 percent *ad valorem*.

3. Buenos Aires Honey Program

In 1996, the Province of Buenos Aires created the Buenos Aires Honey Development Program (BAHP) to increase provincial honey production, and improve production efficiency and quality. Through the program, the Banco de la Provincia de Buenos Aires (Banco Provincia or BAPRO), a bank owned by the government of the Province of Buenos Aires, provides two types of credit lines to honey producers in the province: the Line of Credit for Working Capital; and the Line of Credit for the Acquisition of Capital Goods. Eligibility for both credit lines requires honey producers to enroll in the Province's Registry of Honey Producers. In addition, the Province of Buenos Aires provided Technical Assistance at no charge to honey producers.

In the underlying investigation, we found all three elements of the BAHP to provide countervailable subsidies. *See Honey Issues Memo*, at "Buenos Aires Honey Program." There is no new information or evidence of changed circumstances which would warrant reconsideration of this finding. However, the GOA reported, and we verified, that no Technical Assistance was provided under the BAHP during the POR.

A. The Line of Credit for Working Capital

The Line of Credit for Working Capital enables beekeepers to finance their operating expenses. Beekeepers applying for this loan must have a minimum of fifteen beehives. This line offers US$15.00 per active producing beehive with no limit on the number of beehives. The maximum term for repayment of the loan may not exceed 180 days from the date of the loan.

The Banco Provincia offered two different rates under this line of credit: (i) For products that will be exported, the applicable interest rate is the market rate applied by Banco Provincia under its line of credit for the pre-financing of exports: (ii) for all other cases, the applicable interest rate is the market rate that Banco Provincia charges under all other credit facilities. There were no loans for the prefinancing of exports under this line of credit with outstanding balances in 2001 or 2002.

To calculate the 2001 benefit we multiplied the average U.S. Dollar-denominated loan balance outstanding during 2001 by the difference between the interest rate charged by this program and the benchmark for short-term, U.S. Dollar-denominated loans (*See* "Benchmark Interest Rates and Discount Rates" section above).

Because loans made under this program were converted from U.S. Dollars to Argentine Pesos on January 29, 2002 pursuant to Law 25,567 and Decree 214/2002, we consider this conversion to constitute, in effect, a new loan made in 2002. To calculate the benefit for 2002 we did the following: (1) We multipled the U.S. Dollar-denominated outstanding loan balances which existed from January 1, 2002 through January 29, 2002 by the difference between the interest rate for loans charged under the program and the appropriate benchmark interest rate for U.S. Dollar-denominated loans; (2) we then multiplied the-averaged Argentine Peso-denominated outstanding loan balance which existed from January 29, 2002 through December 31, 2002 by the difference between the interest rate charged under the program and the appropriate benchmark interest rate for short-term, Argentine Peso-denominated loans made during 2002; and (3) we converted the 2002 Argentine Peso-denominated benefit into U.S. Dollars using the official exchange rate data provide by the GOA.

B. The Line of Credit for the Acquisition of Capital Goods

The Line of Credit for the Acquisition of Capital Goods under the BAHP was implemented by the Banco Provincia through Circular "A" No. 13,854 in July 1997, pursuant to an agreement between the Banco Provincia and Banco de Inversion y Comercio Exterior S.A. (BICE), and utilizes funding provided through the BICE Norms 006 and 006/1. The BICE is a GOA entity, which functions as a "second tier" bank, lending money to other banks (both commercial and other government-owned or controlled banks) for the purpose of implementing government lending programs.

Under this line of credit, beekeepers are eligible to receive long-term financing for the acquisition of capital goods including beehives, new nuclei, inert material, and extraction and processing material, among other goods. Financing for this line of credit carries a maximum repayment term of five years. Interest rates are based on LIBOR, plus a spread added by the BICE, and a spread added by the Banco Provincia. The spreads given by both the BICE and Banco Provincia vary depending upon the repayment schedule of the loan. All of the loans that had outstanding loan balances during the POR were originally provided in U.S. Dollars; but these balances were converted to Argentine Pesos on January 29, 2002 in accordance with Law 25,567 and Decree 214/2002.

To calculate the 2001 benefit we multiplied the average U.S. Dollar-denominated balance outstanding during 2001 by the difference between the interest rate charged by this program and the benchmark for long-term U.S. Dollar-denominated loans (*See* "Benchmark Interest Rates and Discount Rates" section above).

As discussed above, loans made under this program were converted from U.S. Dollars to Argentine Pesos pursuant to Law 25,567 and Decree 214/2002. As such, we consider that this conversion constitutes, in effect, the provision of new loans made in 2002. We calculated the benefit for 2002 in the following steps: (1) We multiplied the average U.S. Dollar-denominated outstanding loan balances which existed from January 1, 2002 through January 28, 2002 by the difference between the interest rate for loans charged under the program and the appropriate benchmark interest rate for U.S. Dollar-denominated loans; (2) we multiplied the average Argentine Peso-denominated outstanding loan balance which existed from January 29, 2002 through December 31, 2002 by the difference between the interest rate charged under the program and the appropriate benchmark interest rate for long-term, Argentine Peso-denominated loans made during 2002; and (3) we converted the 2002 Argentine Peso-denominated benefit into U.S. Dollars using the official exchange rate data provide by the GOA.

Total Countervailable Subsidy From the Buenos Aires Honey Program

To calculate the total countervailable subsidy for 2001 from the Buenos Aires Honey program, we did the following: (1) We summed all dollar-denominated benefits arising from Loans for Working Capital and Loans for the Acquisition of Capital Goods; (2) we divided this total 2001 benefit by the value of honey production in the Province of Buenos Aires during the 2001; (3) we then determined the subsidy attributable to subject merchandise from this program by multiplying the calculated subsidy rate by the percentage that honey from the Province of Buenos Aires represents of total honey exports to the United States during 2001. See section entitled "Denominator Issues" above. Thus, we preliminarily determine the countervailable subsidy rate from the Buenos Aires Honey Program for 2001 is 0.047 percent *ad valorem*.

To calculate the total countervailable subsidy for 2002 from the Buenos Aires Honey program, we did the following: (1) We summed all dollar-denominated benefits arising from Loans for Working Capital and Loans for the Acquisition of Capital Goods; (2) we divided this total 2002 benefit by the value of honey production in the Province of Buenos Aires during the 2002; (3) we then determined the subsidy attributable to subject merchandise from this program by multiplying the calculated subsidy rate by the percentage that honey from the Province of Buenos Aires represents of total honey exports to the United States during 2002. *See* section entitled "Denominator Issues" above. Thus, we preliminarily determine the countervailable subsidy rate from the Buenos Aires Honey Program for 2002 and the rate of cash deposit of estimated countervailing duties applicable to this program is 0.045 percent *ad valorem*.

II. Program Preliminarily Determined To Be Not Countervailable

Provincial Program

Buenos Aires Micro-, Small- and Medium-Sized Businesses (MIPyMEs) Agreement for 2000 and the Buenos Aires Agricultural MIPyMEs Agreement for 2000

The Province of Buenos Aires provided information on two agreements: the "Convenio Programa MIPyMEs Bonarenses 2000" and the "Convenio Programa MIPyMEs Agropecarias Bonarense 2000," which together comprise the MIPyMEs Agreement. This program is administered by the Banco de la Provincia de Buenos Aires (Banco Provincia or BAPRO) and its goal is to preserve and assist in the development of small businesses. MIPyMEs is the acronym for Micros, Pequeñas y Medianas Empresas (micro- small-, and medium sized businesses). Information about these programs was provided in response to the Department's question regarding whether the GOA, or entities owned directly, in whole or in part, by the government, provide, directly or indirectly, any other forms of assistance to producers or exporters of the subject merchandise.

Under the MIPyMEs Agreement, the government of the Province of Buenos Aires, through Banco Provincia,

allocated US$ 50,000 for each of the agreements made under the Special Programs of Support of Economic Activities of the Province of Buenos Aires for the year 2000. The programs are to offset up to 7 annual percentage points for loans issued by Banco Provincia during the year 2000 to micro-, small-, and medium-sized companies in the agricultural, industrial, commercial, and services sectors within the Province of Buenos Aires. In general, under the MIPyMEs Agreement, loans are granted for purposes of working capital and investment. The terms (length) of the loans varied and were based on the nature of the borrower. For the honey sector, loans can be given up to US$ 20,000 and have an interest rate for non-export transactions [4] in foreign currency. The Province can defray the interest on these loans up to four percent annually.

While eligibility for this program is limited to micro-, small- and medium-sized businesses involved in agricultural, industrial, commercial, and services sectors within the Province of Buenos Aires, in accordance with 19 CFR § 351.502(e), a subsidy is not specific solely because the subsidy is limited to small firms or small- and medium-sized firms. As such, we preliminarily determine that this program is not *de jure* specific. We have analyzed whether the actual use of these credit loans give rise to *de facto* specificity under section 71(5A)(D)(iii) of the Act. Based on information examined at verification, these loans were provided to a broad range of borrowers within numerous industries in agriculture, industry, and services. Honey producers received significantly less than one percent of the loans, by value, under the MIPyMEs Agreement. Thus, there is no basis for concluding that benefits under this program are *de facto* specific to an enterprise or industry or group of industries within the meaning of section 771(5A)(D)(iii) of the Act. Moreover, we found no evidence to indicate that these loans were provided to finance exports or import substitution.

As a result, we preliminarily determine that the loans offered under the MIPyMEs Agreement are not countervailable subsidies within the meaning of the Act.

[4] According to the questionnaire response, dated April 14, 2003, this rate typically exceeds the rate associated with loans that pertain to foreign trade, due to the perceived higher level of risk associated with the transactions.

III. Programs Preliminarily Determined To Be Not Used

We preliminarily determine that Argentine producers and exporters of honey to the United States did not apply for or receive benefits under the following programs during the POR.

A. Federal Programs

1. BICE Norm 001: Financing of Production of Goods Destined for Export
2. BICE Norm 007: Line of Credit Offered to Finance Industrial Investment Projects to Restructure and Modernize the Argentine Industry
3. BNA Line of Credit to the Agricultural Producers of the Patagonia
4. BNA Pre-Financing of Exports Regime for the Agricultural Sector
5. Production Pole Program for Honey Producers
6. Enterprise Restructuring Program
7. SGRs—Government Backed Loans Guarantees
8. Fundacion Export *AR
9. PROAPI

B. Provincial Programs

1. Province of Entre Rios Honey Program
2. Province of Chabut: Province of Chabut Law No. 4430/98
3. Province of Santiago del Estero Creditos de Confinanzas (Trust Credits)

Preliminary Results of Administrative Review

In accordance with section 777A(e)(2)(B) of the Act, we have calculated CVD rates on an aggregate or industry-wide basis for exports of subject merchandise in this administrative review. We have calculated separate rates for 2001 and for 2002. We preliminarily determine the total net countervailable subsidy rate is 5.77 percent *ad valorem* for 2001 and 0.57 percent *ad valorem* for 2002.

If the final results of this administrative review remain the same as the preliminary results, the Department will instruct CBP to liquidate shipments of honey from Argentina entered, or withdrawn from warehouse, for consumption from January 1, 2001 through December 31, 2001 at 5.77 percent *ad valorem* and shipments of honey from Argentina entered, or withdrawn from warehouse, for consumption from January 1, 2002 through December 31, 2002 at 0.57 percent *ad valorem*. Also, the rate of cash deposits of estimated countervailing duties will be set at 0.57 percent *ad valorem* for all shipments of honey from Argentina entered, or withdrawn from warehouse, for consumption on or after the publication of the final results of this administrative review. The Department will issue appropriate assessment instructions directly to the CBP within 15 days of publication of the final results of this review.

Public Comment

Pursuant to 19 CFR § 351.224(b), the Department will disclose to parties to the proceeding any calculations performed in connection with these preliminary results within five days after the date of publication of this notice. Pursuant to 19 CFR § 351.309, interested parties may submit written comments in response to these preliminary results. Unless otherwise extended, case briefs must be submitted within 30 days after the date of publication of this notice, and rebuttal briefs, limited to arguments raised in case briefs, must be submitted no later than five days after the time limit for filing case briefs. Parties who submit argument in this proceeding are requested to submit with the argument: (1) A statement of the issue, and (2) a brief summary of the argument. Case and rebuttal briefs must be served on interested parties in accordance with 19 CFR 351.303(f). Also, pursuant to 19 CFR 351.310, within 30 days of the date of publication of this notice, interested parties may request a public hearing on arguments to be raised in the case and rebuttal briefs. Unless the Secretary specifies otherwise, the hearing, if requested, will be held two days after the date of submission of rebuttal briefs, that is, thirty-seven days after the date of publication of these preliminary results.

Representatives of parties to the proceeding may request disclosure of proprietary information under administrative protective order no later than 10 days after the representative's client or employer becomes a party to the proceeding, but in no event later than the date the case briefs, under 19 CFR 351.309(c)(ii), are due. The Department will publish the final results of this administrative review, including the results of its analysis of issues raised in any case or rebuttal brief.

This administrative review and notice are issued and published in accordance with section 751(a)(1) and 777(i)(1) of the Act (19 U.S.C. 1675(a)(1) and 19 U.S.C. 1677f(1)).

Dated: December 8, 2003.

James J. Jochum,

Assistant Secretary for Import Administration.

[FR Doc. 03–30902 Filed 12–12–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 120903C]

Mid-Atlantic Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Trawl Survey Advisory Committee, composed of representatives from the Northeast Fisheries Science Center (NEFSC), the Mid-Atlantic Fishery Management Council (MAFMC), the New England Fishery Management Council (NEFMC), and several independent scientific researchers, will hold a public meeting.

DATES: The meeting will be held on Tuesday, January 6, 2004, from 10 a.m. to 5 p.m. and Wednesday, January 7, 2004, from 9 a.m. to 2 p.m.

ADDRESSES: The meeting will be held at the Sheraton Providence Airport Hotel, 1850 Post Road, Warwick, RI; telephone: (401) 738–4000.

Council address: Mid-Atlantic Fishery Management Council, 300 S. New Street, Room 2115, Dover, DE 19904.

FOR FURTHER INFORMATION CONTACT: Daniel T. Furlong, Executive Director, Mid-Atlantic Fishery Management Council; telephone: (302) 674–2331, ext. 19.

SUPPLEMENTARY INFORMATION: The purpose of this meeting is to assist the NEFSC in developing effective and consistent trawl survey protocols and practices for the trawl surveys. The Committee will be describing what they envision the scientific sampling gear should do in terms of the sampling focus and performance. They will be making recommendations on the size of the trawl doors.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Joanna Davis at the Mid-Atlantic Council Office (see **ADDRESSES**) at least five days prior to the meeting date.

Dated: December 10, 2003.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. E3–00553 Filed 12–12–03; 8:45 am]

BILLING CODE 3510–22–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Restraint Limits for Certain Wool Textile Products Produced or Manufactured in the Slovak Republic

December 10, 2003.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner, Bureau of Customs and Border Protection establishing limits.

EFFECTIVE DATE: January 1, 2004.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the Bureau of Customs and Border Protection website at *http://www.customs.gov*. For information on embargoes and quota re-openings, refer to the Office of Textiles and Apparel Web site at *http://otexa.ita.doc.gov*.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The import restraint limits for textile products, produced or manufactured in the Slovak Republic and exported during the period January 1, 2004 through December 31, 2004 are based on limits notified to the Textiles Monitoring Body pursuant to the Uruguay Round Agreement on Textiles and Clothing (ATC).

These limits are subject to adjustment pursuant to the provisions of the ATC and administrative arrangements notified to the Textiles Monitoring Body. However, as the ATC and all restrictions thereunder will terminate on January 1, 2005, no adjustment for carryforward (borrowing from next year's limits for use in the current year) will be available.

In the letter published below, the Chairman of CITA directs the Commissioner, Bureau of Customs and Border Protection to establish the 2004 limits.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 68 FR 1599, published on January 13, 2003). Information regarding the availability of the 2004 CORRELATION will be published in the **Federal Register** at a later date.

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

December 10, 2003.

Commissioner,

Bureau of Customs and Border Protection, Washington, DC 20229.

Dear Commissioner: Pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended; and the Uruguay Round Agreement on Textiles and Clothing (ATC), you are directed to prohibit, effective on January 1, 2004, entry into the United States for consumption and withdrawal from warehouse for consumption of wool textile products in the following categories, produced or manufactured in the Slovak Republic and exported during the twelve-month period beginning on January 1, 2004 and extending through December 31 2004 in excess of the following limits:

Category	Twelve-month restraint limit
410	462,435 square meters.
433	12,915 dozen.
435	19,509 dozen.
443	107,901 numbers.

The limits set forth above are subject to adjustment pursuant to the provisions of the ATC and administrative arrangements notified to the Textiles Monitoring Body.

Products in the above categories exported during 2003 shall be charged to the applicable category limits for that year (see directive dated November 1, 2002) to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such products shall be charged to the limits set forth in this directive.

In carrying out the above directions, the Commissioner, Bureau of Customs and Border Protection should construe entry into the United States for consumption to include

entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

James C. Leonard III.

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. E3–00554 Filed 12–12–03; 8:45 am]

BILLING CODE 3510–DR–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Restraint Limits for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in the Republic of Turkey

December 10, 2003.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner, Bureau of Customs and Border Protection establishing limits.

EFFECTIVE DATE: January 1, 2004.

FOR FURTHER INFORMATION CONTACT: Roy Unger, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the Bureau of Customs and Border Protection Web site at *http://www.customs.gov*. For information on embargoes and quota re-openings, refer to the Office of Textiles and Apparel Web site at *http://otexa.ita.doc.gov*.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The import restraint limits for textile products, produced or manufactured in Turkey and exported during the period January 1, 2004 through December 31, 2004 are based on limits notified to the Textiles Monitoring Body pursuant to the Uruguay Round Agreement on Textiles and Clothing (ATC).

In the letter published below, the Chairman of CITA directs the Commissioner, Bureau of Customs and Border Protection to establish the 2004 limits. Carryforward used thus far in 2003 is being deducted from the 2004 limits.

These limits are subject to adjustment pursuant to the provisions of the ATC and administrative arrangements notified to the Textiles Monitoring Body. However, as the ATC and all restrictions thereunder will terminate on January 1, 2005, no adjustment for carryforward (borrowing from next year's limits for use in the current year) will be available.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 68 FR 1599, published on January 13, 2003). Information regarding the 2004 CORRELATION will be published in the **Federal Register** at a later date.

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

December 10, 2003.

Commissioner,

Bureau of Customs and Border Protection, Washington, DC 20229.

Dear Commissioner: Pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended; and the Uruguay Round Agreement on Textiles and Clothing (ATC), you are directed to prohibit, effective on January 1, 2004, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool and man-made fiber textile products in the following categories, produced or manufactured in Turkey and exported during the period January 1, 2004 through December 31, 2004, in excess of the following levels of restraint:

Category	Restraint limit
Fabric Group	
219, 313–O[1], 314–O[2], 315–O[3], 317–O[4], 326–O[5], 617, 625/626/627/628/629, as a group.	309,290,723 square meters of which not more than 70,679,236 square meters shall be in Category 219; not more than 86,385,732 square meters shall be in Category 313–O; not more than 50,260,790 square meters shall be in Category 314–O; not more than 67,537,941 square meters shall be in Category 315–O; not more than 70,679,236 square meters shall be in Category 317–O; not more than 7,853,246 square meters shall be in Category 326–O, and not more than 47,119,494 square meters shall be in Category 617.
Sublevel in Fabric Group	
625/626/627/628/629	31,817,441 square meters of which not more than 12,726,974 square meters shall be in Category 625; not more than 12,726,974 square meters shall be in Category 626; not more than 12,726,974 square meters shall be in Category 627; not more than 12,726,974 square meters shall be in Category 628; and not more than 12,726,974 square meters shall be in Category 629.
Limits not in a group	
200	2,982,231 kilograms.
300/301	14,520,268 kilograms.
335	626,940 dozen.
336/636	1,476,793 dozen.
338/339/638/639	8,698,313 dozen of which not more than 7,828,484 dozen shall be in Categories 338–S/339–S/638–S/639–S[6].
340/640	2,298,447 dozen of which not more than 653,708 dozen shall be in Categories 340–Y/640–Y[7].
341/641	2,269,824 dozen of which not more than 794,439 dozen shall be in Categories 341–Y/641–Y[8].
342/642	1,643,978 dozen.
347/348	8,944,353 dozen of which not more than 2,943,132 dozen shall be in Categories 347–T/348–T[9].
351/651	1,410,182 dozen.

Category	Restraint limit
361	2,965,335 numbers.
369–S[10]	3,240,687 kilograms.
410/624	1,217,232 square meters of which not more than 852,063 square meters shall be in Category 410.
448	39,306 dozen.
604	3,538,593 kilograms.
611	93,580,701 square meters.

[1] Category 313–O: all HTS numbers except 5208.52.3035, 5208.52.4035 and 5209.51.6032.
[2] Category 314–O: all HTS numbers except 5209.51.6015.
[3] Category 315–O: all HTS numbers except 5208.52.4055.
[4] Category 317–O: all HTS numbers except 5208.59.2085.
[5] Category 326–O: all HTS numbers except 5208.59.2015, 5209.59.0015 and 5211.59.0015.
[6] Category 338–S: only HTS numbers 6103.22.0050, 6105.10.0010, 6105.10.0030, 6105.90.8010, 6109.10.0027, 6110.20.1025, 6110.20.2040, 6110.20.2065, 6110.90.9068, 6112.11.0030 and 6114.20.0005; Category 339–S: only HTS numbers 6104.22.0060, 6104.29.2049, 6106.10.0010, 6106.10.0030, 6106.90.2510, 6106.90.3010, 6109.10.0070, 6110.20.1030, 6110.20.2045, 6110.20.2075, 6110.90.9070, 6112.11.0040, 6114.20.0010 and 6117.90.9020; Category 638–S: all HTS numbers except 6109.90.1007, 6109.90.1009, 6109.90.1013 and 6109.90.1025; Category 639–S: all HTS numbers except 6109.90.1050, 6109.90.1060, 6109.90.1065 and 6109.90.1070.
[7] Category 340–Y: only HTS numbers 6205.20.2015, 6205.20.2020, 6205.20.2046, 6205.20.2050 and 6205.20.2060; Category 640–Y: only HTS numbers 6205.30.2010, 6205.30.2020, 6205.30.2050 and 6205.30.2060.
[8] Category 341–Y: only HTS numbers 6204.22.3060, 6206.30.3010, 6206.30.3030 and 6211.42.0054; Category 641–Y: only HTS numbers 6204.23.0050, 6204.29.2030, 6206.40.3010 and 6206.40.3025.
[9] Category 347–T: only HTS numbers 6103.19.2015, 6103.19.9020, 6103.22.0030, 6103.42.1020, 6103.42.1040, 6103.49.8010, 6112.11.0050, 6113.00.9038, 6203.19.1020, 6203.19.9020, 6203.22.3020, 6203.42.4005, 6203.42.4010, 6203.42.4015, 6203.42.4025, 6203.42.4035, 6203.42.4045, 6203.49.8020, 6210.40.9033, 6211.20.1520, 6211.20.3810 and 6211.32.0040; Category 348–T: only HTS numbers 6104.12.0030, 6104.19.8030, 6104.22.0040, 6104.29.2034, 6104.62.2006, 6104.62.2011, 6104.62.2026, 6104.62.2028, 6104.69.8022, 6112.11.0060, 6113.00.9042, 6117.90.9060, 6204.12.0030, 6204.19.8030, 6204.22.3040, 6204.29.4034, 6204.62.3000, 6204.62.4005, 6204.62.4010, 6204.62.4020, 6204.62.4030, 6204.62.4040, 6204.62.4050, 6204.69.6010, 6204.69.9010, 6210.50.9060, 6211.20.1550, 6211.20.6810, 6211.42.0030 and 6217.90.9050.
[10] Category 369–S: only HTS number 6307.10.2005.

The limits set forth above are subject to adjustment pursuant to the provisions of the ATC and administrative arrangements notified to the Textiles Monitoring Body.

Products in the above categories exported during 2003 shall be charged to the applicable category limits for that year (see directive dated September 3, 2002) to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such products shall be charged to the limits set forth in this directive.

In carrying out the above directions, the Commissioner, Bureau of Customs and Border Protection should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. E3–00556 Filed 12–12–03; 8:45 am]

BILLING CODE 3510–DR–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Restraint Limits for Certain Wool Textile Products Produced or Manufactured in Ukraine

December 10, 2003.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner, Bureau of Customs and Border Protection establishing limits.

EFFECTIVE DATE: January 1, 2004.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the Bureau of Customs and Border Protection website at http://www.customs.gov. For information on embargoes and quota re-openings, refer to the Office of Textiles and Apparel Web site at *http://otexa.ita.doc.gov*.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The Bilateral Textile Agreement of July 22, 1998, as amended and extended by exchange of notes on September 19, 2000 and January 15, 2001, between the Governments of the United States and Ukraine establishes limits for certain wool textile products, produced or manufactured in Ukraine and exported during the period beginning on January 1, 2004 and extending through December 31, 2004.

In the letter published below, the Chairman of CITA directs the Commissioner, Bureau of Customs and Border Protection to establish the 2004 limits.

These limits may be revised if Ukraine becomes a member of the World Trade Organization (WTO) and the United States applies the WTO agreement to Ukraine.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 68 FR 1599, published on January 13, 2003). Information regarding the availability of the 2004 CORRELATION will be published in the **Federal Register** at a later date.

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

December 10, 2003.

Commissioner,

Bureau of Customs and Border Protection,

Washington, DC 20229.

Dear Commissioner: Pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended; and the Bilateral Textile Agreement of July 22, 1998, as amended and extended by exchange of notes on September 19, 2000 and January 15, 2001, between the Governments of the United States and Ukraine, you are directed to prohibit, effective on January 1, 2004, entry into the United States for consumption and withdrawal from warehouse for consumption of wool textile products in the following categories, produced or manufactured in Ukraine and exported during the twelve-month period beginning on January 1, 2004 and extending through December 31, 2004, in excess of the following levels of restraint:

Category	Twelve-month limit
435	101,468 dozen.
442	16,892 dozen.
444	73,201 numbers.
448	73,201 dozen.

The limits set forth above are subject to adjustment pursuant to the current bilateral agreement between the Governments of the United States and Ukraine.

These limits may be revised if Ukraine becomes a member of the World Trade Organization (WTO) and the United States applies the WTO agreement to Ukraine.

Products in the above categories exported during 2003 shall be charged to the applicable category limits for that year (see directive dated October 9, 2002) to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such products shall be charged to the limits set forth in this directive.

In carrying out the above directions, the Commissioner, Bureau of Customs and Border Protection should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. E3–00557 Filed 12–12–03; 8:45 am]

BILLING CODE 3510–DR–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Restraint Limits for Certain Cotton and Wool Textile Products Produced or Manufactured in the Republic of Uruguay

December 10, 2003.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner, Bureau of Customs and Border Protection establishing limits.

EFFECTIVE DATE: January 1, 2004.

FOR FURTHER INFORMATION CONTACT: Roy Unger, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the Bureau of Customs and Border Protection Web site at *http://www.customs.gov*. For information on embargoes and quota re-openings, refer to the Office of Textiles and Apparel Web site at *http://otexa.ita.doc.gov*.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The import restraint limits for textile products, produced or manufactured in Uruguay and exported during the period January 1, 2004 through December 31, 2004 are based on limits notified to the Textiles Monitoring Body pursuant to the Uruguay Round Agreement on Textiles and Clothing (ATC).

In the letter published below, the Chairman of CITA directs the Commissioner, Bureau of Customs and Border Protection to establish the 2004 limits.

These limits are subject to adjustment pursuant to the provisions of the ATC and administrative arrangements notified to the Textiles Monitoring Body. However, as the ATC and all restrictions thereunder will terminate on January 1, 2005, no adjustment for carryforward (borrowing from next year's limits for use in the current year) will be available.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 68 FR 1599, published on January 13, 2003). Information regarding the 2004 CORRELATION will be published in the **Federal Register** at a later date.

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

December 10, 2003.

Commissioner of Customs,

Bureau of Customs and Border Protection, Washington, DC 20229.

Dear Commissioner: Pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended; and the Uruguay Round Agreement on Textiles and Clothing (ATC), you are directed to prohibit, effective on January 1, 2004, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton and wool textile products in the following categories, produced or manufactured in Uruguay and exported during the twelve-month period beginning on January 1, 2004 and extending through December 31, 2004, in excess of the following levels of restraint:

Category	Twelve-month restraint limit
334	286,340 dozen.
335	246,497 dozen.
410	3,232,862 square meters of which not more than 1,847,352 square meters shall be in Category 410–A [1] and not more than 2,976,284 square meters shall be in Category 410–B [2].
433	19,305 dozen.
434	28,799 dozen.
435	58,162 dozen.
442	41,144 dozen.

[1] Category 410–A: only HTS numbers 5111.11.3000, 5111.11.7030, 5111.11.7060, 5111.19.2000, 5111.19.6020, 5111.19.6040, 5111.19.6060, 5111.19.6080, 5111.20.9000, 5111.30.9000, 5111.90.3000, 5111.90.9000, 5212.11.1010, 5212.12.1010, 5212.13.1010, 5212.14.1010, 5212.15.1010, 5212.21.1010, 5212.22.1010, 5212.23.1010, 5212.24.1010, 5212.25.1010, 5311.00.2000, 5407.91.0510, 5407.92.0510, 5407.93.0510, 5407.94.0510, 5408.31.0510, 5408.32.0510, 5408.33.0510, 5408.34.0510, 5515.13.0510, 5515.22.0510, 5515.92.0510, 5516.31.0510, 5516.32.0510, 5516.33.0510, 5516.34.0510 and 6301.20.0020.

[2] Category 410–B: only HTS numbers 5007.10.6030, 5007.90.6030, 5112.11.3030, 5112.11.3060, 5112.11.6030, 5112.11.6060, 5112.19.6010, 5112.19.6020, 5112.19.6030, 5112.19.6040, 5112.19.6050, 5112.19.6060, 5112.19.9510, 5112.19.9520, 5112.19.9530, 5112.19.9540, 5112.19.9550, 5112.19.9560, 5112.20.3000, 5112.30.3000, 5112.90.3000, 5112.90.9010, 5112.90.9090, 5212.11.1020, 5212.12.1020, 5212.13.1020, 5212.14.1020, 5212.15.1020, 5212.21.1020, 5212.22.1020, 5212.23.1020, 5212.24.1020, 5212.25.1020, 5309.21.2000, 5309.29.2000, 5407.91.0520, 5407.92.0520, 5407.93.0520, 5407.94.0520, 5408.31.0520, 5408.32.0520, 5408.33.0520, 5408.34.0520, 5515.13.0520, 5515.22.0520, 5515.92.0520, 5516.31.0520, 5516.32.0520, 5516.33.0520 and 5516.34.0520.

The limits set forth above are subject to adjustment pursuant to the provisions of the ATC and administrative arrangements notified to the Textiles Monitoring Body.

Products in the above categories exported during 2003 shall be charged to the applicable category limits for that year (see directive dated October 8, 2002) to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such products shall be charged to the limits set forth in this directive.

In carrying out the above directions, the Commissioner, Bureau of Customs and Border Protection should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. E3–00558 Filed 12–12–03; 8:45 am]

BILLING CODE 3510–DR–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Establishment of Import Limits for Certain Cotton, Wool and Man-Made Fiber Textiles and Textile Products Produced or Manufactured in the Socialist Republic of Vietnam

December 10, 2003.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner, Bureau of Customs and Border Protection establishing limits

EFFECTIVE DATE: January 1, 2004.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the Bureau of Customs and Border Protection Web site at *http://www.customs.gov*. For information on embargoes and quota re-openings, refer to the Office of Textiles and Apparel Web site at *http://otexa.ita.doc.gov*.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The Bilateral Textile Agreement of July 17, 2000 between the Governments of the United States and the Socialist Republic of Vietnam, establishes limits for certain cotton, wool and man-made fiber textiles and textile products, produced or manufactured in the Socialist Republic of Vietnam and exported during the period January 1, 2004 through December 31, 2004.

Carryforward applied to the 2003 limits has been deducted from all categories. Any categories which did not use all carryforward in 2003 will be re-credited back the unused amount later in 2004.

In the letter published below, the Chairman of CITA directs the Commissioner, Bureau of Customs and Border Protection to establish the 2004 limits.

These limits may be revised if Vietnam becomes a member of the World Trade Organization (WTO) and the United States applies the WTO agreement to Vietnam.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 68 FR 1599, published on January 13, 2003). Information regarding the 2004 CORRELATION will be published in the **Federal Register** at a later date.

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

December 10, 2003.

Commissioner,

Bureau of Customs and Border Protection, Washington, DC 20229.

Dear Commissioner: Pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); and Executive Order 11651 of March 3, 1972, as amended, and the bilateral textile agreement of July 17, 2003, between the Governments of the United States and the Socialist Republic of Vietnam, you are directed to prohibit, effective on January 1, 2004, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool and man-made fiber textiles and textile products in the following categories, produced or manufactured in Vietnam and exported during the twelve-month period beginning on January 1, 2004 and extending through December 31, 2004 in excess of the following levels of restraint:

Category	Restraint limit
200	309,000 kilograms.
301	700,400 kilograms.
332	1,030,000 dozen pairs.
333	37,080 dozen.
334/335	695,250 dozen.
338/339	14,233,333 dozen.
340/640	2,060,000 dozen.
341/641	785,579 dozen.
342/642	571,325 dozen.
345	309,000 dozen.
347/348	7,116,667 dozen.
351/651	496,460 dozen.
352/652	1,905,500 dozen.
359–C/659–C [1]	334,750 kilograms.
359-S/659-S [2]	540,750 kilograms.
434	15,876 dozen.
435	39,200 dozen.
440	2,450 dozen.
447	50,960 dozen.
448	31,360 dozen.
620	6,554,920 square meters.
632	515,000 dozen pairs.
638/639	1,309,130 dozen.
645/646	206,000 dozen.
647/648	2,032,517 dozen.

[1] Category 359-C: only HTS numbers 6103.42.2025, 6103.49.8034, 6104.62.1020, 6104.69.8010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025 and 6211.42.0010; Category 659-C: only HTS numbers 6103.23.0055, 6103.43.2020, 6103.43.2025, 6103.49.2000, 6103.49.8038, 6104.63.1020, 6104.63.1030, 6104.69.1000, 6104.69.8014, 6114.30.3044, 6114.30.3054, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.9010, 6211.33.0010, 6211.33.0017 and 6211.43.0010.

[2] Category 359-S: only HTS numbers 6112.39.0010, 6112.49.0010, 6211.11.8010, 6211.11.8020, 6211.12.8010 and 6211.12.8020; Category 659-S: only HTS numbers 6112.31.0010, 6112.31.0020, 6112.41.0010, 6112.41.0020, 6112.41.0030, 6112.41.0040, 6211.11.1010, 6211.11.1020, 6211.12.1010 and 6211.12.1020.

The limits set forth above are subject to adjustment pursuant to the current bilateral agreement between the Governments of the United States and the Socialist Republic of Vietnam.

Products in the above categories exported during 2003 shall be charged to the applicable category limits for that year (see directive dated May 12, 2003) to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such products shall be charged to the limits set forth in this directive.

These limits may be revised if Vietnam becomes a member of the World Trade

Organization (WTO) and the United States applies the WTO agreement to Vietnam.

In carrying out the above directions, the Commissioner of Customs and Border Protection should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. E3–00859 Filed 12–12–03; 8:45 am]

BILLING CODE 3510–DR–S

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Proposed Information Collection; Comment Request

AGENCY: Corporation for National and Community Service.

ACTION: Notice.

SUMMARY: The Corporation for National and Community Service (hereinafter the "Corporation"), as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) (44 U.S.C. 3506(c)(2)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirement on respondents can be properly assessed. This form is available in alternate formats. Individuals who use a telecommunications device for the deaf (TTY/TDD) may call (202) 606–5256 between the hours of 9 a.m. and 4:30 p.m. Eastern time, Monday through Friday.

Currently, the Corporation is soliciting comments concerning a new information collection activity, the Performance Surveys for Senior Corps Programs. This request for new data collection reflects the Corporation's intent to conduct Performance Surveys for its three Senior Corps programs: the Foster Grandparent Program, the Senior Companion Program, and the Retired and Senior Volunteer Program. Copies of the information collection request can be obtained by contacting the office listed below in the **ADDRESSES** section of this notice.

DATES: Written comments must be submitted to the office listed in the **ADDRESSES** section by February 13, 2004.

ADDRESSES: You may submit comments, identified by the title of the information collection activity, by any of the following methods:

(1) By mail sent to: Corporation for National and Community Service, Department of Research and Policy Development; Attention Mr. Nathan Dietz, Research Associate/Statistician; Room 8105, 1201 New York Avenue, NW., Washington, DC, 20525.

(2) By hand delivery or by courier to the Corporation's mailroom at Room 6010 at the mail address given in paragraph (1) above, between 9 a.m. and 4 p.m. Monday through Friday, except Federal holidays.

(3) By fax to: (202) 565–2785, Attention Mr. Nathan Dietz, Research Associate/Statistician.

(4) Electronically through the Corporation's e-mail address system: *ndietz@cns.gov.*

FOR FURTHER INFORMATION CONTACT: Nathan Dietz, (202) 606–5000, ext. 287, or by e-mail at *ndietz@cns.gov.*

The Corporation is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Corporation, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility and clarity of the information to be collected; and,
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

SUPPLEMENTARY INFORMATION: The Corporation is requesting comments on plans to conduct Performance Surveys for the three major Senior Corps programs, Foster Grandparent Program, Senior Companion Program, and Retired and Senior Volunteer Program. This study is being conducted under contract with Westat, Inc. (#CNCSHQC03003, Task Order #WES03T001) to collect information about local project volunteer outputs and outcomes. This information is to be used by CNCS to prepare Annual Performance Reports, to share with grantees as a means to quantify and describe the services of Senior Corps volunteers, to help program managers to improve the quality of services provided, and to aid the Corporation in responding to *ad hoc* requests from Congress and other interested parties.

The Performance Surveys for Senior Corps Programs will be distributed to the universe of grantees for each program, samples of volunteer work stations for each program, samples of volunteers for each program, and samples of end beneficiaries for each program.

Type of Review: New collection.

Agency: Corporation for National and Community Service.

Title: Performance Surveys of Senior Corps Programs.

OMB Number: None.

Agency Number: None.

Affected Public: Foster Grandparent, Senior Companion, and Retired and Senior Volunteer grantees; staff of agencies and organizations serving as volunteer work stations for volunteers from those programs; Senior Corps volunteers, and end beneficiaries of volunteer activities.

Total Respondents: 6,000.

Frequency: One time.

Average Time Per Response: 15 minutes.

Estimated Total Burden Hours: 1500 hours.

Total Burden Cost (capital/startup): None.

Total Burden Cost (operating/maintenance): None.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: December 9, 2003.

David A. Reingold,

Director, Research and Policy Development.

[FR Doc. 03–30893 Filed 12–12–03; 8:45 am]

BILLING CODE 6050–$$–P

DEPARTMENT OF DEFENSE

Department of the Army

Notice of Intent To Prepare an Environmental Impact Statement for the Transformation of the 56th Brigade, Pennsylvania Army National Guard (PAARNG), Into a Stryker Brigade Combat Team (SBCT)

AGENCY: National Guard Bureau (NGB), Department of the Army (DA), DoD.

ACTION: Notice of intent.

SUMMARY: It is the intent of the National Guard Bureau and the Pennsylvania Army National Guard to prepare an Environmental Impact Statement addressing the proposed action of the transformation of the PAARNG's 56th Brigade into an SBCT. The purpose is to evaluate the environmental impacts associated with the action.

ADDRESSES: Interested parties can direct inquiries or furnish written comments or materials to Captain Patricia Rickard, SBCT Transformation EIS Project Officer, Environmental Section, 1119 Utility Road, Annville, Pennsylvania 17003–5002; phone: (717) 861–2580; or to Lieutenant Colonel Christopher Cleaver, NGTC–FTIG Public Affairs Officer, PADMVA Headquarters, Building 0–47, Annville, Pennsylvania 17003–5002; phone: (717) 861–8468.

FOR FURTHER INFORMATION CONTACT: Major Amy Calder, NEPA Team Leader, National Guard Bureau, Environmental Programs Division, 111 South George Mason Drive, Arlington VA 22204; phone: (703) 607–7971.

SUPPLEMENTARY INFORMATION: On July 12, 2001, the Secretary of the Army identified the 56th Brigade as one of six brigades designated for conversion to an SBCT. The purpose of this action is to enable the 56th Brigade to transform to achieve the force characteristics associated with the Army Transformation Plan. The requirement for change within the U.S. Army associated with the SBCT is based on the need to address the emerging security challenges of the 21st century. Chief among these challenges is the need to be able to respond more rapidly to different types of operations requiring military actions, including the ability to put a combat force anywhere in the world within 96 hours. World-wide deployment would utilize the C–130 transport aircraft, or aircraft with similar transport capabilities, to achieve this rapid deployment objective. The transformed force would rely on improved ground mobility and dramatically increased intelligence information and command and control capabilities. To support the increased mobility, the SBCT initiative incorporates the Stryker Interim Armored Vehicle (IAV) to transport troops over a variety of terrain and bring to the battlefield an assortment of equipment and armaments. Proficiency training for members of the 56th brigade will require the use of training facilities and ranges to maintain readiness levels as an SBCT. These facilities include such elements as electronic and training facilities for computer equipment, weapons firing ranges, and troop and vehicle maneuver areas. This proficiency training will occur under Inactive Duty Training (IDT) that consists of weekend drills and a multi-week Annual Training (AT) period. Readiness Centers (*i.e.*, Armories) are spread across the State of Pennsylvania and support local IDT events. The National Guard Training Center-Fort Indiantown Gap (NGTC–FTIG) in Annville, Pennsylvania, has historically been used to provide training for members of the 56th Brigade and offers an assortment of firing ranges and other types of facilities that can be used for IDT events and certain limited AT applications. Fort Pickett, Virginia, has historically been used for AT events. Other U.S. Army installations which could be used to support IDT or AT events include Fort A P Hill, Virginia; Fort Dix, New Jersey; Fort Drum, New York; and Ravenna Training and Logistic Site, Ohio.

Alternatives that will be analyzed in the EIS include:

(1) The preferred project alternative under which transformation of the 56th Brigade into an SBCT would be implemented and would include six critical elements. These elements are administrative reorganization of the 56th Brigade into an SBCT; upgrades to information technology infrastructure to support digital training needs of the SBCT; initial equipment and soldier training at existing facilities; fielding of the Stryker IAV and associated new equipment; improvements to and consolidation of Statewide facilities (*i.e.*, Readiness Centers, Organizational Maintenance Shops); and construction of new ranges and training facilities to support IDT and AT events at NGTC–FTIG and Fort Pickett.

(2) The no action alternative under which the 56th Brigade would not transform into an SBCT unit and would not be responsive to the Secretary of the Army's directive. The 56th Brigade would retain its current mission, unit structure, and training approach.

Any other viable alternatives that become evident as a result of public input and environmental analysis of the proposals within the plan will be developed and included in the EIS. Other alternatives may consist of alternative locations for specific projects, partial implementation of specific projects, or other modifications of specific projects.

Public scoping meetings will be held at three locations: (1) State Capitol in Harrisburg, Pennsylvania, (2) the vicinity of NGTC–FTIG, and (3) the vicinity of Fort Pickett, Virginia, to facilitate input to the EIS process by citizens and organizations. Dates, times and exact locations for these meetings will be announced through letters, public notices, display advertisements, and legal advertisements and will be released to newspapers of general circulation a minimum of 15 days prior to the meetings. Those wishing to provide information or data relevant to the environmental analysis of the proposed action or potential alternatives are encouraged to do so at the public scoping meetings.

Dated: December 9, 2003.

Raymond J. Fatz,

Deputy Assistant Secretary of the Army, (Environment, Safety and Occupational Health)

[FR Doc. 03–30821 Filed 12–12–03; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Availability of Government-Owned Inventions; Available for Licensing

AGENCY: Department of the Navy, DOD.

ACTION: Notice.

SUMMARY: The inventions listed below are assigned to the United States Government as represented by the Secretary of the Navy and are available for licensing by the Department of the Navy. Navy Case No. 82,405, entitled "Surface Coating for Particle Based Bioanalytical Techniques" and U.S. Patent Application Serial No. 10/457,705, entitled "Fluidic Force Discrimination", Navy Case No. 84,529.

ADDRESSES: Requests for information about the inventions cited should be directed to the Naval Research Laboratory, Code 1004, 4555 Overlook Avenue, SW., Washington, DC 20375–5320, and must include the Navy Case number.

FOR FURTHER INFORMATION CONTACT: Jane Kuhl, Technology Transfer Office, NRL Code 1004, 4555 Overlook Avenue, SW., Washington, DC 20375–5320, telephone (202) 767–7230. Due to temporary U.S.

Postal Service delays, please fax (202) 404–7920. E-Mail: *kuhl@nrl.navy.mil* or use courier delivery to expedite response.

(Authority: 35 U.S.C. 207, 37 CFR part 404.)

Dated: December 9, 2003.

S.K. Melancon,

Paralegal Specialist, Office of the Judge Advocate General, Alternate Federal Register Liaison Officer.

[FR Doc. 03–30853 Filed 12–12–03; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Intent To Grant Exclusive Patent License; CorActive High Tech, Inc.

AGENCY: Department of the Navy, DOD.

ACTION: Notice.

SUMMARY: The Department of the Navy hereby gives notice of its intent to grant to CorActive High Tech, Inc., a revocable, nonassignable, exclusive license to practice in the field of chalcogenide optical fibers in the United States and certain foreign countries, the Government-owned inventions described in U.S. Patent No. 5,735,927: Method for Producing Core/Cladding Glass Optical Fiber Preforms Using Hot Isostatic Pressing; Navy Case No. 76,989//U.S. Patent No. 5,778,125: Optical Fiber Terminations, Navy Case No. 77,790//U.S. Patent No. 5,779,757: Process for Removing Hydrogen and Carbon Impurities from Glasses by Adding a Tellurium Halide, Navy Case No. 77,216//U.S. Patent No. 5,879,426: Process for Making Optical Fibers from Core and Cladding Glass Rods, Navy Case No. 77,577//U.S. Patent No. 5,900,036: Multi-Cylinder Apparatus for Making Optical Fibers, Process and Product, Navy Case No. 76,981//U.S. Patent No. 5,953,478: Metal-Coated IR-transmitting Chalcogenide Glass Fibers, Navy Case No. 77,806//U.S. Patent No. 6,021,649: Apparatus for Making Optical Fibers from Core and Cladding Glass Rods with Two Coaxial Molten Glass Flows, Navy Case No. 79,632// U.S. Patent No. 6,175,678: Infrared Fiber Imager, Navy Case No. 79,823//U.S. Patent No. 6,526,782: Multi-Heating Zone Apparatus and Process for Making Core/Clad Glass Fibers, Navy Case No. 82,941// U.S. Patent Application Serial No. 10/632,210: Hollow Core Photonic Band Gap (HCPBG) Infrared Fiber Sensors, Navy Case No. 84,395.

DATES: Anyone wishing to object to the grant of this license must file written objections along with supporting evidence, if any, not later than December 30, 2003.

ADDRESSES: Written objections are to be filed with the Naval Research Laboratory, Code 1004, 4555 Overlook Avenue, SW., Washington, DC 20375–5320.

FOR FURTHER INFORMATION CONTACT: Ms. Jane F. Kuhl, Technology Transfer Office, NRL Code 1004, 4555 Overlook Avenue, SW., Washington, DC 20375–5320, telephone (202) 767–7230. Due to U.S. Postal delays, please fax (202) 404–7920, E-Mail: *kuhl@nrl.navy.mil* or use courier delivery to expedite response.

(Authority: 35 U.S.C. 207, 37 CFR Part 404.)

Dated: December 9, 2003.

S. K. Melancon,

Paralegal Specialist, Office of the Judge Advocate General, Alternate Federal Register Liaison Officer.

[FR Doc. 03–30852 Filed 12–12–03; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER04–220–000, et al.]

NEO California Power LLC, et al.; Electric Rate and Corporate Filings

December 5, 2003.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. NEO California Power LLC

[Docket No. ER04–220–000]

Take notice that on November 21, 2003, NEO California Power LLC (NEO California) tendered for filing Schedule A (Contract Service Limits for the 2004 Contract Year), associated with a Must-Run Service Agreement (RMR Agreement) between NEO California and the California Independent System Operator Corporation.

Comment Date: December 12, 2003.

2. CPV Milford, LLC

[Docket No. ER04–222–001]

Take notice that on December 3, 2003, CPV Milford, LLC tendered for filing an amendment to its application for authorization to sell energy, capacity, and ancillary services and to provide asset management services at market-based rates pursuant to Section 205 of the Federal Power Act.

Comment Date: December 15, 2003.

Standard Paragraph

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov*, using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number filed to access the document. For assistance, call (202) 502–8222 or TTY, (202) 502–8659. Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Magalie R. Salas,

Secretary.

[FR Doc. E3–00551 Filed 12–12–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL04–31–000, et al.]

Quest Energy, L.L.C., et al.; Electric Rate and Corporate Filings

December 4, 2003.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. Quest Energy, L.L.C. v. The Detroit Edison Company

[Docket No. EL04–31–000]

Take notice that on December 2, 2003, Quest Energy, L.L.C. filed a Complaint against The Detroit Edison Company (DTE), seeking compensation for Imbalance Services provided pursuant to the DTE Open Access Transmission Tariff.

Comment Date: December 22, 2003.

2. Exelon Fore River Development, LLC; Exelon Mystic Development, LLC; Exelon Edgar LLC; Exelon New Boston LLC, Exelon Framingham LLC, Exelon West Medway LLC; Exelon Wyman LLC; and Exelon New England Power Marketing, L.P.

[Docket Nos. ER01–41–004; ER02–42–005; ER01–513–005; and ER99–2404–004]

Take notice that on November 28, 2003, the nine subsidiaries of Exelon Generation Company L.L.C. (Exelon) listed in the above caption (collectively, Applicants), tendered for filing an updated market power study pursuant to the Commission's various orders granting those entities market-based rate authority. Applicants state that the submission demonstrates that Exelon and its subsidiaries continue to satisfy the Commission's requirements for authority to sell power at market-based rates. Applicants further state that they also tendered for filing new tariff provisions committing to abide by the Market Behavior Rules recently set forth by the Commission in Investigation of Terms and Conditions of Public Utility Market-Based Rate Authorizations, 105 FERC ¶ 61,128 (Nov. 17, 2003).

Comment Date: December 19, 2003

3. New England Power Pool

[Docket No. ER04–239–000]

Take notice that on December 1, 2003, the New England Power Pool (NEPOOL) Participants Committee filed for acceptance materials to permit NEPOOL to terminate the membership of El Cap II, LLC (El Cap), Leonard LaPorta, Jr. (LaPorta), and Marc Schaefer (Schaefer). The Participants Committee requests a November 1, 2003 effective date for the termination of El Cap and LaPorta, and a December 1, 2003 effective date for the termination of Schaefer.

The Participants Committee states that copies of these materials were sent to the New England state governors and regulatory commissions and the Participants in NEPOOL.

Comment Date: December 19, 2003.

4. Ameren Services Company

[Docket No. ER04–240–000]

Take notice that on November 28, 2003, Ameren Services Company (ASC) tendered for filing a revised Network Integration Transmission Service Agreement between ASC and City of Owensville, Missouri. ASC asserts that the purpose of the filing is to replace the executed Agreement in Docket No. ER02–931–000 with the revised executed Agreement.

Comment Date: December 19, 2003.

5. American Electric Power Service Corporation

[Docket No. ER04–241–000]

Take notice that on November 28, 2003, American Electric Power Service Corporation (AEPSC) as agent for Central and South West Services, Inc. (CSW) tendered for filing pursuant to Section 35.15 of the Federal Energy Regulatory Commission's regulations, 18 CFR 35.15, a Notice of Cancellation of Service Agreements under CSW FERC Electric Tariff, Original Volume No. 8.

AEPSC requests an effective date of November 1, 2003 for the cancellation.

AEPSC states it has served copies of the filing upon the parties listed in Exhibit 1 and the affected state regulatory commissions.

Comment Date: December 19, 2003.

6. Pacific Gas and Electric Company

[Docket No. ER04–242–000]

Take notice that on November 28, 2003, Pacific Gas and Electric Company (PG&E) tendered for filing a revised Grid Management Charge Pass-Through Tariff (PTT). PG&E states that this filing seeks to recover the costs proposed in the California Independent System Operator Corporation's (California ISO) GMC filing in Docket No. ER04–115–000 on October 31, 2003. PG&E requests an effective date of January 1, 2004.

PG&E states that copies of this filing have been served upon the California Public Utilities Commission, all affected customers and the California ISO.

Comment Date: December 19, 2003.

7. Orange and Rockland Utilities, Inc.

[Docket No. ES04–7–000]

Take notice that on November 24, 2003, Orange and Rockland Utilities, Inc. (O&R) submitted an application pursuant to Section 204 of the Federal Power Act seeking authorization to issue short-term debt in amount not to exceed $150 million.

Comment Date: December 15, 2003.

8. Consolidated Edison Company of New York, Inc.

[Docket No. ES04–8–000]

Take notice that on November 24, 2003, Consolidated Edison Company of New York, Inc. submitted an application pursuant to Section 204 of the Federal Power Act seeking authorization to issue short-term debt in amount not to exceed $1 billion.

Comment Date: December 15, 2003.

Standard Paragraph

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov*, using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number filed to access the document. For assistance, call (202) 502–8222 or TTY, (202) 502–8659. Protests and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Magalie R. Salas,

Secretary.

[FR Doc. E3–00552 Filed 12–12–03; 8:45 am]

BILLING CODE 6717–01

ENVIRONMENTAL PROTECTION AGENCY

[OPPT–2003–0065; FRL–7335–8]

Pre-Manufacture Review Reporting and Exemption Requirements for New Chemical Substances and Significant New Use Reporting Requirements for Chemical Substances; Request for Comment on Renewal of Information Collection Activities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*) EPA is seeking public comment and information on the following Information Collection Request (ICR): Pre-Manufacture Review Reporting and Exemption Requirements for New Chemical Substances and Significant New Use Reporting Requirements for Chemical Substances (EPA ICR No. 0574.12, OMB Control No. 2070–0012). This ICR involves a collection activity that is currently approved and scheduled to expire on July 31, 2004. The information collected

under this ICR helps EPA evaluate the health and environmental effects of new chemical substances before manufacture or importation of such substances begin. The ICR describes the nature of the information collection activity and its expected burden and costs. Before submitting this ICR to the Office of Management and Budget (OMB) for review and approval under the PRA, EPA is soliciting comments on specific aspects of the collection.

DATES: Written comments, identified by the docket ID number OPPT–2003–0065, must be received on or before February 13, 2004.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: *For general information contact*: Barbara Cunningham, Director, Environmental Assistance Division (7408M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 554–1404; e-mail address: *TSCA-Hotline@epa.gov*.

For technical information contact: Jim Alwood, Chemical Control Division (7405M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 564–8974; fax number: (202) 564–4745; e-mail address:*alwood.jim@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you manufacture, process or import chemical substances. Potentially affected entities may include, but are not limited to:

- Petroleum and coal products manufacturing (NAICS 324), e.g., Petroleum refineries, asphalt paving, roofing, saturated materials manufacturing, asphalt shingle and coating materials manufacturing, petroleum lubricating oil, and grease manufacturing.
- Chemical manufacturing (NAICS 325), e.g., Basic chemical manufacturing, resin, synthetic rubber, artificial and synthetic fibers and filaments manufacturing, paint, coating, adhesive manufacturing and other chemical product, and preparation manufacturing.

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket*. EPA has established an official public docket for this action under docket identification (ID) number OPPT–2003–0065. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the EPA Docket Center, Rm. B102-Reading Room, EPA West, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The EPA Docket Center Reading Room telephone number is (202) 566–1744 and the telephone number for the OPPT Docket, which is located in EPA Docket Center, is (202) 566–0280.

2. *Electronic access*. You may access this **Federal Register** document electronically through the EPA Internet under the **Federal Register** listings at *http://www.epa.gov/fedrgstr/*.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select "search," then key in the appropriate docket ID number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

C. How and to Whom Do I Submit the Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit I.D. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically*. If you submit an electronic comment as prescribed in this unit, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets*. Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket/*, and follow the online instructions for submitting comments. Once in the system, select "search," and then key in docket ID number OPPT–2003–0065. The system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail*. Comments may be sent by e-mail to *oppt.ncic@epa.gov*, Attention: Docket ID Number OPPT–2003–0065. In contrast to EPA's electronic public docket, EPA's e-mail system is not an "anonymous access" system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM*. You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Unit I.C.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By mail*. Send your comments to: Document Control Office (7407M), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

3. *By hand delivery or courier*. Deliver your comments to: OPPT Document Control Office (DCO) in EPA East Bldg., Rm. 6428, 1201 Constitution Ave., NW., Washington, DC. Attention: Docket ID Number OPPT–2003–0065 The DCO is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the DCO is (202) 564–8930.

D. How Should I Submit CBI to the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

E. What Should I Consider when I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Offer alternative ways to improve the collection activity.

7. Make sure to submit your comments by the deadline in this notice.

8. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

F. What Information is EPA Particularly Interested in?

Pursuant to section 3506(c)(2)(A) of PRA, EPA specifically solicits comments and information to enable it to:

1. Evaluate whether the proposed collections of information are necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility.

2. Evaluate the accuracy of the Agency's estimates of the burdens of the proposed collections of information.

3. Enhance the quality, utility, and clarity of the information to be collected.

4. Minimize the burden of the collections of information on those who are to respond, including through the use of appropriate automated or electronic collection technologies or other forms of information technology, e.g., permitting electronic submission of responses.

II. What Information Collection Activity or ICR Does this Action Apply to?

EPA is seeking comments on the following ICR:

Title: Pre-Manufacture Review Reporting and Exemption Requirements for New Chemical Substances and Significant New Use Reporting Requirements for Chemical Substances.

ICR numbers: EPA ICR No. 0574.12, OMB Control No. 2070–0012.

ICR status: This ICR is currently scheduled to expire on July 31, 2004 An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR,

after appearing in the **Federal Register**, are listed in 40 CFR part 9, and included on the related collection instrument or form, if applicable.

Abstract: Section 5 of the Toxic Substances Control Act (TSCA) requires manufacturers and importers of new chemical substances to submit to EPA notice of intent to manufacture or import a new chemical substance 90 days before manufacture or import begins. EPA reviews the information contained in the notice to evaluate the health and environmental effects of the new chemical substance. On the basis of the review, EPA may take further regulatory action under TSCA, if warranted. If EPA takes no action within 90 days, the submitter is free to manufacture or import the new chemical substance without restriction.

TSCA section 5 also authorizes EPA to issue Significant New Use Rules (SNURs). EPA uses this authority to take follow-up action on new or existing chemicals that may present an unreasonable risk to human health or the environment if used in a manner that may result in different and/or higher exposures of a chemical to humans or the environment. Once a use is determined to be a significant new use, persons must submit a notice to EPA 90 days before beginning manufacture, processing, or importation of a chemical substance for that use. Such a notice allows EPA to receive and review information on such a use and, if necessary, regulate the use before it occurs.

Finally, TSCA section 5 also permits applications for exemption from section 5 review under certain circumstances. An applicant must provide information sufficient for EPA to make a determination that the circumstances in question qualify for an exemption. In granting an exemption, EPA may impose appropriate restrictions.

Responses to the collection of information are mandatory (see 40 CFR parts 700, 720, 721, 723, and 725). Respondents may claim all or part of a document confidential. EPA will disclose information that is covered by a claim of confidentiality only to the extent permitted by, and in accordance with, the procedures in TSCA section 14 and 40 CFR part 2.

III. What are EPA's Burden and Cost Estimates for this ICR?

. Under PRA, "burden" means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal Agency. For this collection it includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

The ICR provides a detailed explanation of this estimate, which is only briefly summarized in this notice. The annual public burden for this collection of information is estimated to average 102.1 hours per response and to require 3.4 hours of recordkeeping per response. The following is a summary of the estimates taken from the ICR:

Respondents/affected entities: 443.

Estimated total number of potential respondents: Unknown.

Frequency of response: On occasion.

Estimated average number of responses for each respondent: 3.

Estimated total annual burden hours: 163,791 hours.

Estimated total annual burden costs: $34,348,733.

IV. Are There Changes in the Estimates from the Last Approval?

This request reflects a decrease of 62,756 hours (from 226,547 hours to 163,791 hours) in the total estimated respondent burden from that currently in the OMB inventory. This decrease represents an adjustment in the number of annual submissions to reflect EPA's experiences since the most recent ICR. The decrease in the number of submissions per year is largely associated with the polymer and other exemptions implemented under the 1995 amendments.

V. What is the Next Step in the Process for this ICR?

EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval pursuant to 5 CFR 1320.12. EPA will issue another **Federal Register** notice pursuant to 5 CFR 1320.5(a)(1)(iv) to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB. If you have any questions about this ICR or the approval process, please contact the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

List of Subjects

Environmental protection, Reporting and recordkeeping requirements.

Dated: December 4, 2003.

William H. Sanders III,

Acting Assistant Administrator, Office of Prevention, Pesticides and Toxic Substances.

[FR Doc. 03–30885 Filed 12–12–03; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPPT–2003–0066; FRL–7336–6]

Chemical-Specific Rules, Toxic Substances Control Act Section 8(a); Request for Comment on Renewal of Information Collection Activities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*) EPA is seeking public comment and information on the following Information Collection Request (ICR): Chemical-Specific Rules, Toxic Substances Control Act (TSCA) Section 8(a) (EPA ICR No. 1198.07, OMB Control No. 2070–0067). This ICR involves a collection activity that is currently approved and scheduled to expire on April 30, 2004. The information collected under this ICR helps EPA evaluate the potential for adverse human health and environmental effects caused by the manufacture, importation, processing, use or disposal of identified chemical substances and mixtures. The ICR describes the nature of the information collection activity and its expected burden and costs. Before submitting this ICR to the Office of Management and Budget (OMB) for review and approval under the PRA, EPA is soliciting comments on specific aspects of the collection.

DATES: Written comments, identified by the docket ID number OPPT–2003–0066, must be received on or before February 13, 2004.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: *For general information contact*: Barbara Cunningham, Director, Environmental Assistance Division (7408M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 554–1404; e-mail address: *TSCA-Hotline@epa.gov*.

For technical information contact: Keith Cronin, Chemical Control Division (7405M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 564–8102; fax number: (202) 564–4775; e-mail address: *cronin.keith@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you manufacture, process, or import, or propose to manufacture, process, or import, chemical substances and mixtures. Potentially affected entities may include, but are not limited to:

- Chemical manufacturing (NAICS 325), e.g., Basic chemical manufacturing, resin, synthetic rubber and artificial and synthetic fibers, filaments manufacturing, paint, coating, adhesive manufacturing and other chemical product, and preparation manufacturing.
- Petroleum refineries (NAICS 324110), e.g., Crude petroleum refineries, diesel fuels manufacturing, fuel oils manufacturing, oil refineries, and petroleum distillation.

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket*. EPA has established an official public docket for this action under docket identification (ID) number OPPT–2003–0066. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the EPA Docket Center, Rm. B102-Reading Room, EPA West, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The EPA Docket Center Reading Room telephone number is (202) 566–1744 and the telephone number for the OPPT Docket, which is located in EPA Docket Center, is (202) 566–0280.

2. *Electronic access*. You may access this **Federal Register** document electronically through the EPA Internet under the **Federal Register** listings at *http://www.epa.gov/fedrgstr/*.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select "search," then key in the appropriate docket ID number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

C. How and to Whom Do I Submit the Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit I.D. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically*. If you submit an electronic comment as prescribed in this unit, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that

is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets.* Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket/*, and follow the online instructions for submitting comments. Once in the system, select "search," and then key in docket ID number OPPT–2003–0066. The system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail.* Comments may be sent by e-mail to *oppt.ncic@epa.gov*, Attention: Docket ID Number OPPT–2003–0066. In contrast to EPA's electronic public docket, EPA's e-mail system is not an "anonymous access" system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM.* You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Unit I.C.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By mail.* Send your comments to: Document Control Office (7407M), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

3. *By hand delivery or courier.* Deliver your comments to: OPPT Document Control Office (DCO) in EPA East Bldg., Rm. 6428, 1201 Constitution Ave., NW., Washington, DC. Attention: Docket ID Number OPPT–2003–0066. The DCO is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the DCO is (202) 564–8930.

D. How Should I Submit CBI to the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

E. What Should I Consider when I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Offer alternative ways to improve the collection activity.

7. Make sure to submit your comments by the deadline in this notice.

8. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

F. What Information is EPA Particularly Interested in?

Pursuant to section 3506(c)(2)(A) of PRA, EPA specifically solicits comments and information to enable it to:

1. Evaluate whether the proposed collections of information are necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility.

2. Evaluate the accuracy of the Agency's estimates of the burdens of the proposed collections of information.

3. Enhance the quality, utility, and clarity of the information to be collected.

4. Minimize the burden of the collections of information on those who are to respond, including through the use of appropriate automated or electronic collection technologies or other forms of information technology, e.g., permitting electronic submission of responses.

II. What Information Collection Activity or ICR Does this Action Apply to?

EPA is seeking comments on the following ICR:

Title: Chemical-Specific Rules, Toxic Substances Control Act (TSCA) Section 8(a).

ICR numbers: EPA ICR No. 1198.07, OMB Control No. 2070–0067.

ICR status: This ICR is currently scheduled to expire on April 30, 2004. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register**, are listed in 40 CFR part 9, and included on the related collection instrument or form, if applicable.

Abstract: TSCA section 8(a) authorizes the Administrator of EPA to promulgate rules that require persons who manufacture, import, or process chemical substances and mixtures, or who propose to manufacture, import, or process chemical substances and mixtures, to maintain such records and submit such reports to EPA as may be reasonably required. Any chemical covered by TSCA for which EPA or another Federal Agency has a reasonable need for information, which cannot be satisfied via other sources, is a proper potential subject for a chemical-specific TSCA section 8(a) rulemaking. Information that may be collected under TSCA section 8(a) includes, but is not limited to, chemical names, categories of use, production volume, byproducts of chemical production, existing data on deaths and environmental effects, exposure data, and disposal information. Generally, EPA uses chemical-specific information under TSCA section 8(a) to evaluate the potential for adverse human health and environmental effects caused by the manufacture, importation, processing, use or disposal of identified chemical substances and mixtures. Additionally, EPA may use TSCA section 8(a) information to assess the need or set priorities for testing and/or further regulatory action. To the extent that reported information is not considered confidential, environmental groups, environmental justice advocates, state and local government entities, and other members of the public will also have access to this information for their own use.

Responses to the collection of information are mandatory (see 40 CFR part 704). Respondents may claim all or part of a notice confidential. EPA will disclose information that is covered by a claim of confidentiality only to the extent permitted by, and in accordance with, the procedures in TSCA section 14 and 40 CFR part 2.

III. What are EPA's Burden and Cost Estimates for this ICR?

Under PRA, "burden" means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal Agency. For this collection it includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

The ICR provides a detailed explanation of this estimate, which is only briefly summarized in this notice. The annual public burden for this collection of information is estimated to average 68.8 hours. The following is a summary of the estimates taken from the ICR:

Respondents/affected entities: 4.

Estimated total number of potential respondents: Unknown.

Frequency of response: On occasion.

Estimated total/average number of responses for each respondent: 1.

Estimated total annual burden hours: 275 hours.

Estimated total annual burden costs: $11,702.

IV. Are There Changes in the Estimates from the Last Approval?

There are no changes in the burden estimates from the last approval.

V. What is the Next Step in the Process for this ICR?

EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval pursuant to 5 CFR 1320.12. EPA will issue another **Federal Register** notice pursuant to 5 CFR 1320.5(a)(1)(iv) to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB. If you have any questions about this ICR or the approval process, please contact the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

List of Subjects

Environmental protection, Reporting and recordkeeping requirements.

Dated: December 4, 2003.

William H. Sanders III,

Acting Assistant Administrator, Office of Prevention, Pesticides and Toxic Substances.

[FR Doc. 03–30886 Filed 12–12–03; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2003–0003; FRL–7599–2]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; Recordkeeping Requirements for Certified Applicators Using 1080 Collars for Livestock Protection; EPA ICR No. 1249.07, OMB Control No. 2070–0074

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. This ICR is scheduled to expire on December 31, 2003. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. This ICR describes the nature of the information collection and its estimated burden and cost.

DATES: Additional comments may be submitted on or before January 14, 2004.

ADDRESSES: Submit your comments, referencing docket ID number OPP–2003–0003, to (1) EPA online using EDOCKET (our preferred method), by e-mail to *http://www.epa.gov/edocket*, or by mail to: EPA, Office of Pesticide Programs, Public Information and Records Integrity Branch, 1200 Pennsylvania Ave., NW., Washington, DC 20460, and (2) OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Nancy Vogel, Field and External Affairs Division, 7506C, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: 703–305–6475; fax number: 703–305–5884; e-mail address: *vogel.nancy@epa.gov*.

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On February 19, 2003, (68 FR 8013), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA has addressed the comments received in the ICR.

EPA has established a public docket for this ICR under Docket ID No. OPP–2003–0003, which is available for public viewing at the Pesticides Docket, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

An electronic version of the public docket is available through EPA Dockets (EDOCKET) at *http://www.epa.gov/edocket*. Use EDOCKET to submit or view public comments, access the index listing of the contents of the public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the docket ID number identified above.

Any comments related to this ICR should be submitted to EPA and OMB within 30 days of this notice. EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EDOCKET as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose public disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EDOCKET. The entire printed comment, including the copyrighted material, will

be available in the public docket. Although identified as an item in the official docket, information claimed as CBI, or whose disclosure is otherwise restricted by statute, is not included in the official public docket, and will not be available for public viewing in EDOCKET. For further information about the electronic docket, see EPA's **Federal Register** notice describing the electronic docket at 67 FR 38102 (May 31, 2002), or go to *http://www.epa.gov/edocket*.

Title: Recordkeeping Requirements for Certified Applicators Using 1080 Collars for Livestock Protection.

Abstract: This information collection activity will enable EPA to obtain the information needed to track the use of registered 1080 collars and the record keeping requirements imposed by an administrative judge in October 1982 and confirmed by the Agency in 1983. This ICR affects the States of Montana, New Mexico, South Dakota, and Wyoming that monitor the program plus one additional registrant. Applicators who are certified to apply Livestock Protection Collars must keep records of: (a) Number of collars purchased; (b) number of collars placed on livestock; (c) number of collars punctured or ruptured; (d) apparent cause of puncture or rupture; (e) number of collars lost or unrecovered; (f) number of collars in use and in storage; and (g) location and species data on each animal poisoned as an apparent result of the toxic collar. This ICR pertains to monitoring activities associated with collar use and to the preparation and submission of an annual monitoring report to EPA that are over and above requirements that are either conditions of registration or obligations associated with the handling and regulation of any restricted use pesticide product.

Applicators maintain records, and the registrants/lead agencies do monitoring studies and submit the reports. These records are monitored by either the State lead agencies or registrants. EPA receives annual monitoring reports from registrants or State lead agencies.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average about 40 hours per certified applicator, 77 hours per State, and 9 hours per registrant. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Pesticide applicators using 1080 collars for livestock protection; three state agencies; one pesticide registrant.

Estimated Number of Respondents: 40

Frequency of Response: Annual

Estimated Total Annual Hour Burden: 1,753

Estimated Total Annual Cost: $30,460.

Changes in the Estimates: The total annual respondent burden is decreased by 1,600 hours. This change reflects a burden adjustment and is explained in the ICR.

Dated: December 4, 2003.

Doreen Sterling,

Acting Director, Collection Strategies Division.

[FR Doc. 03–30888 Filed 12–12–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7596–8]

Interagency Project To Clean Up Open Dumps on Tribal Lands: Request for Proposals

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability.

SUMMARY: The Tribal Solid Waste Interagency Workgroup (Workgroup) is soliciting proposals for its sixth year of the Tribal Open Dump Cleanup Project (Cleanup Project). Since FY99, the Workgroup has funded approximately $9 million in projects. In FY03, the Interagency Workgroup made approximately $2.1 million available to fully or partially fund 26 selected projects. A similar amount of funding is projected for FY04. The Cleanup Project is part of a federal effort to help tribes comprehensively address their solid waste needs. The purpose of the Cleanup Project is to assist with closing or upgrading tribal high-threat waste disposal sites and providing alternative disposal and integrated solid waste management.

The Workgroup was established in April 1998 to coordinate federal assistance to tribes in bringing their waste disposal sites into compliance with the municipal solid waste landfill criteria (40 CFR part 258). Current Workgroup members include representatives from the U.S. Environmental Protection Agency; the Bureau of Indian Affairs (BIA); the Indian Health Service (IHS); the Bureau of Land Management; the departments of Agriculture, Defense, and Housing and Urban Development.

DATES: For consideration, proposals must be received by close of business on January 30, 2004. Proposals postmarked on or before but not received by the closing date will not be considered. Please do not rely solely on overnight mail to meet the deadlines.

ADDRESSES: If sending the proposal by the U.S. Postal Service, please send to: U.S. Environmental Protection Agency, Tribal Solid Waste Interagency Workgroup, Attn: Christopher Dege, Office of Solid Waste (MC–5306W), 1200 Pennsylvania Avenue, NW., Washington, DC 20460.

If sending the proposal using a commercial delivery service (Federal Express, UPS, DHL, etc.), please use the following address: U.S. Environmental Protection Agency, Tribal Solid Waste Interagency Workgroup, Attn: Christopher Dege, Office of Solid Waste, 2800 Crystal Drive, 8th Floor, Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT: Copies of the Request for Proposals package may be downloaded from the Internet at *http://www.epa.gov/tribalmsw* by clicking on "Funding." Copies may also be obtained by contacting EPA, IHS or BIA regional or area offices or one of the following Workgroup representatives:

EPA—Christopher Dege, 703–308–2392

IHS—Steve Aoyama, 301–443–1046

BIA—Debbie McBride, 202–208–3606

SUPPLEMENTARY INFORMATION: *Criteria:* Eligible recipients of assistance under The Open Dump Cleanup Project include federally recognized tribes and intertribal consortiums. A full explanation of the submittal process, the qualifying requirements, and the criteria that will be used to evaluate proposals for this project may be found in the Request for Proposals package.

Dated: November 14, 2003.

Robert Springer,

Director, Office of Solid Waste.

[FR Doc. 03–30889 Filed 12–12–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7599–3]

Federal Agency Hazardous Waste Compliance Docket

AGENCY: Environmental Protection Agency.

ACTION: Notice of eighteenth update of the Federal Agency Hazardous Waste Compliance Docket, pursuant to CERCLA section 120(c).

SUMMARY: Section 120(c) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended by the Superfund Amendments and Reauthorization Act of 1986 (SARA), requires the Environmental Protection Agency (EPA) to establish a Federal Agency Hazardous Waste Compliance Docket. The docket is to contain certain information about Federal facilities that manage hazardous waste or from which hazardous substances have been or may be released. (As defined by CERCLA section 101(22), a release is any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment.) CERCLA requires that the docket be updated every six months, as new facilities are reported to EPA by Federal agencies. The following list identifies the Federal facilities to be included in this eighteenth update of the docket and includes facilities not previously listed on the docket and reported to EPA since the last update of the docket, 68 FR 107, January 2, 2003, which was current as of February 4, 2003. SARA, as amended by the Defense Authorization Act of 1997, specifies that, for each Federal facility that is included on the docket during an update, evaluation shall be completed in accordance with a reasonable schedule. Such site evaluation activities will help determine whether the facility should be included on the National Priorities List (NPL) and will provide EPA and the public with valuable information about the facility. In addition to the list of additions to the docket, this notice includes a section that comprises revisions (that is, corrections and deletions) of the previous docket list. This update contains 3 additions and 0 deletions since the previous update, as well as numerous other corrections to the docket list. At the time of publication of this notice, the new total number of Federal facilities listed on the docket is 2,257.

DATES: This list is current as of August 14, 2003.

FOR FURTHER INFORMATION CONTACT: Electronic versions of the docket may be obtained at *http://epa.gov/compliance/cleanup/federal/index.html*.

SUPPLEMENTARY INFORMATION:

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1.0 Introduction
2.0 Revisions of the Previous Docket
3.0 Process for Compiling the Updated Docket
4.0 Facilities Not Included
5.0 Facility Status Reporting
6.0 Information Contained on Docket Listing

1.0 Introduction

Section 120(c) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), 42 United States Code (U.S.C.) 9620(c), as amended by the Superfund Amendments and Reauthorization Act of 1986 (SARA), required the establishment of the Federal Agency Hazardous Waste Compliance Docket. The docket contains information on Federal facilities that is submitted by Federal agencies to the U.S. Environmental Protection Agency (EPA) under sections 3005, 3010, and 3016 of the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. 6925, 6930, and 6937, and under section 103 of CERCLA, 42 U.S.C. 9603. Specifically, RCRA section 3005 establishes a permitting system for certain hazardous waste treatment, storage, and disposal (TSD) facilities; RCRA section 3010 requires waste generators and transporters and TSD facilities to notify EPA of their hazardous waste activities; and RCRA section 3016 requires Federal agencies to submit biennially to EPA an inventory of hazardous waste sites that the Federal agencies own or operate. CERCLA section 103(a) requires that the National Response Center (NRC) be notified of a release. CERCLA section 103(c) requires reporting to EPA the existence of a facility at which hazardous substances are or have been stored, treated, or disposed of and the existence of known or suspected releases of hazardous substances at such facilities.

The docket serves three major purposes: (1) To identify all Federal facilities that must be evaluated to determine whether they pose a risk to human health and the environment sufficient to warrant inclusion on the National Priorities List (NPL); (2) to compile and maintain the information submitted to EPA on such facilities under the provisions listed in section 120(c) of CERCLA; and (3) to provide a mechanism to make the information available to the public.

The initial list of Federal facilities to be included on the docket was published on February 12, 1988 (53 FR 4280). Updates of the docket have been published on November 16, 1988 (54 FR 46364); December 15, 1989 (54 FR 51472); August 22, 1990 (55 FR 34492); September 27, 1991 (56 FR 49328); December 12, 1991 (56 FR 64898); July 17, 1992 (57 FR 31758); February 5, 1993 (58 FR 7298); November 10, 1993 (58 FR 59790); April 11, 1995 (60 FR 18474); June 27, 1997 (62 FR 34779); November 23, 1998 (63 FR 64806); June 12, 2000 (65 FR 36994); December 29, 2000 (65 FR 83222), October 2, 2001 (66 FR 50185), July 1, 2002 (67 FR 44200), and January 2, 2003 (68 FR 107). This notice constitutes the eighteenth update of the docket.

Today's notice is divided into three sections: (1) Additions, (2) deletions, and (3) corrections. The additions section lists newly identified facilities that have been reported to EPA since the last update and that now are being included on the docket. The deletions section lists facilities that EPA is deleting from the docket. The corrections section lists changes in information about facilities already listed on the docket.

The information submitted to EPA on each Federal facility is maintained in the docket repository located in the EPA Regional office of the Region in which the facility is located (see 53 FR 4280 (February 12, 1988) for a description of the information required under those provisions). Each repository contains the documents submitted to EPA under the reporting provisions and correspondence relevant to the reporting provisions for each facility. Contact the following docket coordinators for information on Regional docket repositories:

Gerardo Millán-Ramos (HBS), US EPA Region 1, #1 Congress St., Suite 1100, Boston, MA 02114–2023, (617) 918–1377

Helen Shannon (ERRD), US EPA Region 2, 290 Broadway, 18th Floor, New York, NY 10007–1866, (212) 637–4260

Alida Karas (ERRD), US EPA Region 2, 290 Broadway, New York, NY 10007–1866, (212) 637–4276

Cesar Lée (3HS50), US EPA Region 3, 1650 Arch Street, Philadelphia, PA 19107, (215) 814–3205

Gena Townsend (4WD–FFB), US EPA Region 4, 61 Forsyth St., SW., Atlanta, GA 30303, (404) 562–8538

Laura Ripley (SE–5J), US EPA Region 5, 77 W. Jackson Blvd., Chicago, IL 60604, (312) 886–6040

Philip Ofosu (6SF–RA), US EPA Region 6, 1445 Ross Avenue, Dallas, TX 75202–2733, (214) 665–3178
D. Karla Asberry (FFSC), US EPA Region 7, 901 N. Fifth Street, Kansas City, KS 66101, (913) 551–7595
Stan Zawistowski (EPR–F), US EPA Region 8, 999 18th Street, Suite 500, Denver, CO 80202–2466, (303) 312–6255
Philip Armstrong (SFD–9–1), US EPA Region 9, 75 Hawthorne Street, San Francisco, CA 94105, (415) 972–3098
Ken Marcy (ECL–115), US EPA Region 10, 1200 Sixth Avenue, Seattle, WA 98101, (206) 553–2782
Monica Linderman (ECL, SACU2), US EPA Region 10, 1200 Sixth Avenue, Seattle, WA 98101, (206) 553–5113

2.0 Revisions of the Previous Docket

Following is a discussion of the revisions of the previous docket, including additions, deletions, and corrections.

2.1 Additions

Today, 3 facilities are being added to the docket, primarily because of new information obtained by EPA (for example, recent reporting of a facility pursuant to RCRA sections 3005, 3010, or 3016 or CERCLA section 103). SARA, as amended by the Defense Authorization Act of 1997, specifies that, for each Federal facility that is included on the docket during an update, evaluation shall be completed in accordance with a reasonable schedule.

Of the 3 facilities being added to the docket, none are facilities that have reported to the NRC the release of a reportable quantity (RQ) of a hazardous substance. Under section 103(a) of CERCLA, a facility is required to report to the NRC the release of a hazardous substance in a quantity that equals or exceeds the established RQ. Reports of releases received by the NRC, the U.S. Coast Guard (USCG), and EPA are transmitted electronically to the Transportation Systems Center at the U.S. Department of Transportation (DOT), where they become part of the Emergency Response Notification System (ERNS) database. ERNS is a national computer database and retrieval system that stores information on releases of oil and hazardous substances. Facilities being added to the docket and facilities already listed on the docket for which an ERNS report has been filed are identified by the notation "103(a)" in the "Reporting Mechanism" column.

It is EPA's policy generally not to list on the docket facilities that are small-quantity generators (SQG) and that have never generated more than 1,000 kilograms (kg) of hazardous waste in any single month. If a facility has generated more than 1,000 kg of hazardous waste in any single month (that is, if the facility is an episodic generator), it will be added to the docket. In addition, facilities that are SQGs and have reported releases under CERCLA section 103 or hazardous waste activities pursuant to RCRA section 3016 will be listed on the docket and will undergo site evaluation activities, such as a PA and, when appropriate, an SI. All such facilities will be listed on the docket, whether or not they are SQGs pursuant to RCRA. As a result, some of the facilities that EPA is adding to the docket today are SQGs that had not been listed on the docket but that have reported releases or hazardous waste activities to EPA under another reporting provision.

In the process of compiling the documents for the Regional repositories, EPA identified a number of facilities that had previously submitted PA reports, SI reports, Department of Defense (DoD) Installation Restoration Program (IRP) reports, or reports under another Federal agency environmental restoration program, but do not appear to have notified EPA under CERCLA section 103. Section 120(c)(3) of CERCLA requires that EPA include on the docket, among other things, information submitted under section 103. In general, section 103 requires persons in charge of a facility to provide notice of certain releases of hazardous substances. The reports under various Federal agency environmental restoration programs may contain information regarding releases of hazardous substances similar to that provided pursuant to section 103. EPA believes that CERCLA section 120(c) authorizes the agency to include on the docket a facility that has provided information to EPA through documents such as a report under a Federal agency environmental restoration program, regardless of the absence of section 103 reporting. Therefore, some of the facilities that EPA is adding today are being placed on the docket because they have submitted the documents described above that contain reports of releases of hazardous substances.

EPA also includes privately owned, government-operated (POGO) facilities on the docket. CERCLA section 120(c) requires that the docket contain information submitted under RCRA sections 3005, 3010, and 3016 and CERCLA section 103, all of which impose duties on operators as well as owners of facilities. In addition, other subsections of CERCLA section 120 refer to facilities "owned or operated" by an agency or other instrumentality of the Federal government. That terminology clearly includes facilities that are operated by the Federal government, even if they are not owned by it. Specifically, CERCLA section 120(e), which sets forth the duties of the Federal agencies after a facility has been listed on the NPL, refers to the Federal agency that "owns or operates" the facility. In addition, the primary basis for assigning responsibility for conducting PAs and SIs, as required when a facility is listed on the docket, is Executive Order 12580, which assigns that responsibility to the Federal agency having "jurisdiction, custody, or control" over a facility. An operator may be deemed to have jurisdiction, custody, or control over a facility.

2.2 Deletions

Today, 0 facilities are being deleted from the docket. When facilities are deleted from the docket, it is for reasons such as incorrect reporting of hazardous waste activity, change in ownership, and exemption as an SQG under RCRA (40 CFR 262.44). Facilities being deleted no longer will be subject to the requirements of CERCLA section 120(d).

2.3 Corrections

Changes necessary to correct the previous docket were identified by both EPA and Federal agencies. The changes needed varied from simple changes in addresses or spelling to corrections of the recorded name and ownership of a facility. In addition, some changes in the names of facilities were made to establish consistency in the docket. Many new entries are simply corrections of typographical errors. For each facility for which a correction has been entered, the original entry (designated by an "O"), as it appeared in the February 12, 1988 notice or subsequent updates, is shown directly below the corrected entry (designated by a "C") for easy comparison.

3.0 Process for Compiling the Updated Docket

In compiling the newly reported facilities for the update being published today, EPA extracted the names, addresses, and identification numbers of facilities from four EPA databases—ERNS, the Biennial Inventory of Federal Agency Hazardous Waste Activities, the Resource Conservation and Recovery Information System (RCRAInfo), and the Comprehensive Environmental Response, Compensation, and Liability Information System (CERCLIS)—that contain information about Federal facilities submitted under the four

provisions listed in CERCLA section 120(c).

Extensive computer checks compared the current docket list with the information obtained from the databases identified above to determine which facilities were, in fact, newly reported and qualified for inclusion on the update. In spite of the quality assurance efforts EPA has undertaken, state-owned or privately owned facilities that are not operated by the Federal government may have been included. Such problems are caused by procedures historically used to report and track data on Federal facilities; EPA is working to resolve them. Representatives of Federal agencies are asked to write to EPA's docket coordinator at the following address if revisions of this update information are necessary: Augusta K. Wills, Federal Agency Hazardous Waste Compliance Docket Coordinator, Federal Facilities Enforcement Office (Mail Code 2261A), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue NW., Washington, DC 20004.

4.0 Facilities Not Included

As explained in the preamble to the original docket (53 FR 4280), the docket does not include the following categories of facilities (note, however, that any of these types of facilities may, when appropriate, be listed on the NPL):

- Facilities formerly owned by a Federal agency and now privately owned will not be listed on the docket. However, facilities that are now owned by another Federal agency will remain on the docket and the responsibility for conducting PAs and SIs will rest with the current owner.
- SQGs that have never produced more than 1,000 kg of hazardous waste in any single month and that have not reported releases under CERCLA section 103 or hazardous waste activities under RCRA section 3016 will not be listed on the docket.
- Facilities that are solely transporters, as reported under RCRA section 3010, will not be listed on the docket.

5.0 Facility Status Reporting

EPA has expanded the docket database to include information on the NFRAP status of listed facilities. Indicating NFRAP status allows easy identification of facilities that, after submitting all necessary site assessment information, were found to warrant no further involvement on the part of EPA at the time of the status change. Accordingly, the docket database includes the following facility status codes:

U=Undetermined

N=No further remedial action planned (NFRAP)

NFRAP is a term used in the Superfund site assessment program to identify facilities for which EPA has found that currently available information indicates that listing on the NPL is not likely and further assessment is not appropriate at the time. NFRAP status does not represent an EPA determination that no environmental threats are present at the facility or that no further environmental response action of any kind is necessary. NFRAP status means only that the facility does not appear, from the information available to EPA at this time, to warrant listing on the NPL and that, therefore, EPA anticipates no further involvement by EPA in site assessment or cleanup at the facility. However, additional CERCLA response actions by the Federal agency that owns or operates the facility, whether remedial or removal actions, may be necessary at a facility that has NFRAP status. The status information contained in the docket database is the result of Regional evaluation of information taken directly from CERCLIS. (CERCLIS is a database that helps EPA Headquarters and Regional personnel manage sites, programs, and projects. It contains the official inventory of all CERCLA (NPL and non-NPL) sites and supports all site planning and tracking functions. It also integrates financial data from preremedial, remedial, removal and enforcement programs.) The status information was taken from CERCLIS and sent to the Regional docket coordinators for review. The results of those reviews were incorporated into the status field in the docket database. Subsequently, an updated list of facilities having NFRAP status (those for which an "N" appears in the status field) was generated; the list of updates since the previous publication of the docket is being published today.

Important limitations apply to the list of facilities that have NFRAP status. First, the information is accurate only as of August 14, 2003. Second, a facility's status may change at any time because of any number of factors, including new site information or changing EPA policies. Finally, the list of facilities that have NFRAP status is based on Regional review of CERCLIS data, is provided for information purposes only, and should not be considered binding upon either the Federal agency responsible for the facility or EPA.

The status information in the docket database will be reviewed and a new list of facilities classified as NFRAP will be published at each docket update.

6.0 Information Contained on Docket Listing

As discussed above, the update information below is divided into three separate sections. The first section is a list of new facilities that are being added to the docket. The second section is a list of facilities that are being deleted from the docket. The third section comprises corrections of information included on the docket. Each facility listed for the update has been assigned a code(s) that indicates a more specific reason(s) for the addition, deletion, or correction. The code key precedes the lists.

SARA, as amended by the Defense Authorization Act of 1997, specifies that, for each Federal facility that is included on the docket during an update, evaluation shall be completed in accordance with a reasonable schedule. Therefore, all facilities on the additions list to this fifteenth docket update must submit a PA and, if warranted, an SI to EPA. The PA must include existing information about a site and its surrounding environment, including a thorough examination of human, food-chain, and environmental targets, potential waste sources, and migration pathways. From information in the PA or other information coming to EPA's attention, EPA will determine whether a follow-up SI is required. An SI augments the data collected in a PA. An SI may reflect sampling and other field data that are used to determine whether further action or investigation is appropriate. This policy includes any facility for which there is a change in the identity of the responsible Federal agency. The reports should be submitted to the Federal facilities coordinator in the appropriate EPA Regional office.

The facilities listed in each section are organized by state and then grouped alphabetically within each state by the Federal agency responsible for the facility. Under each state heading is listed the name and address of the facility, the Federal agency responsible for the facility, the statutory provision(s) under which the facility was reported to EPA, and the correction code(s).

The statutory provisions under which a facility reported are listed in a column titled "Reporting Mechanism." Applicable mechanisms are listed for each facility: For example 3010, 3016, and 103(c).

The complete list of Federal facilities that now make up the docket and the complete list of facilities classified as no further remedial action planned (NFRAP) are not being published today. However, the lists are available to interested parties and can be obtained at

http://www.epa.gov/compliance/cleanup/federal/index.html or by calling the HQ Docket Coordinator at (202) 564–2468. As of today, the total number of Federal facilities that appear on the docket is 2,257.

Dated: December 8, 2003.

David J. Kling,

Director, Federal Facilities Enforcement Office.

Docket Revisions

Categories of Revisions for Docket Update by Correction Code

Categories for Deletion of Facilities

(1) Small-Quantity Generator
(2) Not Federally Owned
(3) Formerly Federally Owned
(4) No Hazardous Waste Generated
(5) (This correction code is no longer used.)
(6) Redundant Listing/Site on Facility
(7) Combining Sites Into One Facility/Entries Combined
(8) Does Not Fit Facility Definition
(9) (This correction code is no longer used.)
(10) (This correction code is no longer used.)
(11) (This correction code is no longer used.)
(12) (This correction code is no longer used.)
(13) (This correction code is no longer used.)
(14) (This correction code is no longer used.)

Categories for Addition of Facilities

(15) Small-Quantity Generator With Either a RCRA 3016 or CERCLA 103 Reporting Mechanism
(16) One Entry Being Split Into Two/Federal Agency Responsibility Being Split
(17) New Information Obtained Showing That Facility Should Be Included
(18) Facility Was a Site on a Facility That Was Disbanded; Now a Separate Facility
(19) Sites Were Combined Into One Facility
(19A) New Facility

Categories for Corrections of Information About Facilities

(20) Reporting Provisions Change
(20A) Typo Correction/Name Change/Address Change
(21) Changing Responsible Federal Agency (New Responsible Federal Agency Must Submit proof of previously performed PA, which is subject to approval by EPA)
(22) Changing Responsible Federal Agency and Facility Name (New Responsible Must Submit proof of previously performed PA, which is subject to approval by EPA)
(23) New Reporting Mechanism Added at Update
(24) Reporting Mechanism Determined To Be Not Applicable After Review of Regional Files

Note: Further information on definitions of categories can be obtained by calling Augusta K. Wills, the HQ Docket Coordinator at (202) 564–2468.

FEDERAL AGENCY HAZARDOUS WASTE COMPLIANCE DOCKET #18–ADDITIONS

Facility name	Address	City	State	Zip code	Agency	Reporting mechanism	Code
FWS-Grays Lake National Wildlife Refuge.	74 Grays Lake Rd 30 Mi N of Soda Springs.	Wayan	ID	83285	3010	Interior	19A.
FS-Ochoco NF: Amity Mine	FS Rd 42 & FS Rd 152 T14S R20E S15, W.M.	Prineville	OR	97754	103c	Agriculture	19A.
FS-Ochoco NF: Blue Ridge Mine.	FS Rd 42 & FS Rd 200 T14S R20E S15, W.M.	Prineville	OR	97754	103c	Agriculture	19A.

FEDERAL AGENCY HAZARDOUS WASTE COMPLIANCE DOCKET UPDATE #18—CORRECTIONS

	Facility name	Address	City	State	Zip code	Agency	Reporting mechanism	Code
c	CG—Point Spencer Dump Site.	Port Clarence—60 Mi NW of Cy.	Nome	AK	99762	Homeland Security	103c 3010	21
o	CG—Point Spencer Dump Site.	Port Clarence—60 Mi NW of Cy.	Nome	AK	99762	Transportation	103c 3010.	
c	CG—Loran Station on Sitkinak.	Sitkinak Island.	Old Harbor	AK	99643	Homeland Security	103c	21
o	CG—Loran Station on Sitkinak.	Sitkinak Island.	Old Harbor	AK	99643	Transportation	103c.	
c	CG—St. Paul Island Loran Station.	Saint Paul Airport, 1.5 Mi from Runway #2.	Saint Paul Island	AK	99660	Homeland Security	3010 103c	21
o	CG—St. Paul Island Loran Station.	Saint Paul Airport, 1.5 Mi from Runway #2.	Saint Paul Island	AK	99660	Transportation	3010 103c.	
c	CG—Edna Bay Entrance Light.	Edna Bay, 32 Mi NW of City.	Craig	AK	99921	Homeland Security	3010 103c	21

FEDERAL AGENCY HAZARDOUS WASTE COMPLIANCE DOCKET UPDATE #18—CORRECTIONS—Continued

	Facility name	Address	City	State	Zip code	Agency	Reporting mechanism	Code
o	CG—Edna Bay Entrance Light.	Edna Bay, 32 Mi NW of City.	Craig	AK	99921	Transportation	3010 103c.	
c	CG—Ketchikan Base.	Tongass Hwy 1 Mi S of Ketchikan.	Ketchikan	AK	99901	Homeland Security	3010 103c 3005.	21
o	CG—Ketchikan Base.	Tongass Hwy 1 Mi S of Ketchikan.	Ketchikan	AK	99901	Transportation	3010 103c 3005.	
c	CG—Kodiak Support Center.	Womans Bay Kodiak Isl.	Kodiak	AK	99619	Homeland Security	3010 103c 3016 3005.	21
o	CG—Kodiak Support Center.	Womans Bay Kodiak Isl.	Kodiak	AK	99619	Transportation	3010 103c 3016 3005.	
c	CG—Cape Sarichef.	Unimak Island, W Coast.	Unimak	AK	99685	Homeland Security	103c	21
o	CG—Cape Sarichef.	Unimak Island, W Coast.	Unimak	AK	99685	Transportation	103c.	
c	Mobile Coast Guard Base.	South Broad St.	Mobile	AL	36615	Homeland Security	3010 103a 103c.	21
o	Mobile Coast Guard Base.	South Broad St.	Mobile	AL	36615	Transportation	3010 103a 103c.	
c	W.G. Huxtable Pumping Plant.	On The St. Francis River—10 Miles E on Hwy. 121/Hwy 79.	Marianna	AR	72360	Corps of Engineers, Civil	3010 103c	20A, 23
o	Huxtable Pumping.	Highway 79 8M N.	Marianna	AR	72360	Corps of Engineers, Civil	3010.	
c	Hassayampa/Lynx Creek Abandoned Mines.	5 Miles SE Prescott-Prescott Natl Forest.	Prescott	AZ	86301	Agriculture	103c 3016 103a.	20A
o	Prescott NF: Upper Hassayampa Creek Mines.		Prescott	AZ	86303	Agriculture	103c 3016 103a.	
c	National Guard Camp Navajo.	1002 Hale Dr I–40 Ex 185.	Bellemont	AZ	86015–9999	Army	3005 3010 3016 103c.	20A
o	Navajo Army Depot.	I–40	Flagstaff	AZ	86001	Army	3005 3010 3016 103c.	
c	Yuma Border Patrol Sector.	350 First St	Yuma	AZ	85364	Homeland Security	3010	21
o	Yuma Border Patrol Sector.	350 First St	Yuma	AZ	85364	Justice	3010.	
c	Edwards Air Force Base.	AFFTC Edwards AFB.	Edwards AFB	CA	93524	Air Force	3005 3010 3016 103c.	20A
o	Edwards Air Force Base.	P.O. Box 458	Edwards	CA	93523	Air Force	3005 3010 3016 103c.	
c	Mendocino NF: Eel River Work Center Waste Sump.	T.23 N., R. 11 W., NE¼ of Section 28.	Willits	CA	95490	Agriculture	103a 103c	20A, 23

FEDERAL AGENCY HAZARDOUS WASTE COMPLIANCE DOCKET UPDATE #18—CORRECTIONS—Continued

	Facility name	Address	City	State	Zip code	Agency	Reporting mechanism	Code
o	Mendocino NF: Eel River Work Center Waste Sump.	T23N R11W S28 NE¼.	Covelo	CA		Agriculture	103a.	
c	Alameda Coast Guard Support Center.	Coast Guard Government Island.	Alameda	CA	94501	Homeland Security	3010 103c	21
o	Alameda Coast Guard Support Center.	Coast Guard Government Island.	Alameda	CA	94501	Transportation	3010 103c.	
c	San Francisco CAMSPAC.	525 Mesa Road.	Bolinas	CA	94956	Homeland Security	3010 103c	21
c	San Francisco CAMSPAC.	525 Mesa Road.	Bolinas	CA	94956	Transportation	3010 103c.	
c	U.S. Border Patrol Station.	225 Kenney	El Cajon	CA	92020	Homeland Security	103c	21
c	U.S. Border Patrol Station.	225 Kenney	El Cajon	CA	92020	Justice	103c.	
c	Middletown Coast Guard Loran C Station.	Loran C Station.	Middletown	CA	95461	Homeland Security	103c	21
o	Middletown Coast Guard Loran C Station.	Loran C Station.	Middletown	CA	95461	Transportation	103c.	
c	San Francisco Coast Guard Base.	Yerba Buena Island.	San Francisco	CA	94130	Homeland Security	3010 103c	21
o	San Francisco Coast Guard Base.	Yerba Buena Island.	San Francisco	CA	94130	Transportation	3010 103c.	
c	Fort MacArthur.	Pacific Avenue.	San Pedro	CA	90731	Homeland Security	103c	21
o	Fort MacArthur.	Pacific Avenue.	San Pedro	CA	90731	Transportation	103c.	
c	San Pedro Coast Guard Support Center.	1801 Seaside Ave.	San Pedro	CA	90731	Homeland Security	3010 103c	21
o	San Pedro Coast Guard Support Center.	1801 Seaside Ave.	San Pedro	CA	90731	Transportation	3010 103c.	
c	San Ysidro Border Patrol.	3752 Beyer Blvd.	San Ysidro	CA	92073	Homeland Security	3010	21
o	San Ysidro Border Patrol.	3752 Beyer Blvd.	San Ysidro	CA	92073	Justice	3010.	
c	Former NAVSTA Long Beach.	Navy Mole Pier.	Long Beach	CA	90822	Navy	3010 103c 103a.	20A
o	Long Beach Naval Station.	Seaside Ave	Long Beach	CA	90822	Navy	3010 103c 103a.	

FEDERAL AGENCY HAZARDOUS WASTE COMPLIANCE DOCKET UPDATE #18—CORRECTIONS—Continued

	Facility name	Address	City	State	Zip code	Agency	Reporting mechanism	Code
c	Former NTC San Diego.	Rosencranz & Nimitz Blvds.	San Diego	CA	92133	Navy	3010 103c 3016.	20A
o	San Diego Naval Training Center.	Rosencranz & Nimitz Blvds.	San Diego	CA	92133	Navy	3010 103c 3016.	
c	USAF Academy.	8120 Edgerton Dr.	Colorado Springs	CO	80840–2400	Air Force	3010 103c	20A
o	Colorado Springs Academy.	AFA/DE	Colorado Springs	CO	80840	Air Force	3010 103c.	
c	BLM—Town of Mesa Landfill.	T10S, R96W, Sec22.	Molina	CO	81646	Interior	103c	20A
o	BLM—Town of Mesa Landfill.	T10S, R96W, Sec22.	Molina	CO		Interior	103c.	
c	Long Island Sound Coast Guard Group.	120 Woodward Ave.	New Haven	CT	06512	Homeland Security	3010 103c	21
o	Long Island Sound Coast Guard Group.	120 Woodward Ave.	New Haven	CT	06512	Transportation	3010 103c.	
c	U.S. Coast Guard Academy.	Mohegan Ave	New London	CT	06320	Homeland Security	3005 3010	21
o	U.S. Coast Guard Academy.	Mohegan Ave	New London	CT	06320	Transportation	3005 3010.	
c	CG—Cape Canaveral Light.	9235 Grouper Rd.	Cape Canaveral	FL	33131	Homeland Security	3010	21
o	CG—Cape Canaveral Light.	9235 Grouper Rd.	Cape Canaveral	FL	33131	Transportation	3010.	
c	CG—Crooked River Light.	Rt 98	Carrabelle	FL	33131	Homeland Security	3010	21
o	CG—Crooked River Light.	Rt 98	Carrabelle	FL	33131	Transportation	3010.	
c	CG—Sand Key Light.	CG Group Key W Trumbo Pt Annex.	Key West	FL	33131	Homeland Security	3010	21
o	CG—Sand Key Light.	CG Group Key W Trumbo Pt Annex.	Key West	FL	33131	Transportation	3010.	
c	Key West Coast Guard Station.		Key West	FL	33040	Homeland Security	3010 103c	21
o	Key West Coast Guard Station.		Key West	FL	33040	Transportation	3010 103c.	
c	Mayport Coast Guard Base.	PO Box 385	Mayport	FL	32267	Homeland Security	3010 103c 103a.	21
o	Mayport Coast Guard Base.	PO Box 385	Mayport	FL	32267	Transportation	3010 103c 103a.	

FEDERAL AGENCY HAZARDOUS WASTE COMPLIANCE DOCKET UPDATE #18—CORRECTIONS—Continued

	Facility name	Address	City	State	Zip code	Agency	Reporting mechanism	Code
c	CG—Carysfort Reef Light.	100 Mac-Arthur Causeway.	Miami Beach	FL	33131	Homeland Security	3010	21
o	CG—Carysfort Reef Light.	100 Mac-Arthur Causeway.	Miami Beach	FL	33131	Transportation	3010.	
c	Miami Beach Coast Guard Base.	100 Mac-Arthur Cswy.	Miami Beach	FL	33139	Homeland Security	3005 3010 103c.	21
o	Miami Beach Coast Guard Base.	100 Mac-Arthur Cswy.	Miami Beach	FL	33139	Transportation	3005 3010 103c.	
c	Miami Coast Guard Air Station.	Opa Locka Airport.	Opa Locka	FL	33054	Homeland Security	103c 3010	21
o	Miami Coast Guard Air Station.	Opa Locka Airport.	Opa Locka	FL	33054	Transportation	103c 3010.	
c	CG—Hillsboro Light.	Hillsboro Inlet	Pompano Beach	FL	33131	Homeland Security	3010	21
o	CG—Hillsboro Light.	Hillsboro Inlet	Pompano Beach	FL	33131	Transportation	3010.	
c	St. Petersburg Coast Guard Station.	600 8th Ave SE.	St Petersburg	FL	33701	Homeland Security	3010 103c	21
o	St. Petersburg Coast Guard Station.	600 8th Ave SE.	St Petersburg	FL	33701	Transportation	3010 103c.	
c	Federal Law Enforcement Training Center.	GA State Rd 303.	Glynco	GA	31524	Homeland Security	3005 3010 3016.	21
o	Federal Law Enforcement Training Center.	GA State Rd 303.	Glynco	GA	31524	Treasury	3005 3010 3016.	
c	CG—Kure Atoll.	300 Ala Moana Blvd, Ste 8122.	Honolulu	HI	96850	Homeland Security	103c	21
o	CG—Kure Atoll.	300 Ala Moana Blvd, Ste 8122.	Honolulu	HI	96850	Transportation	103c.	
c	CG—Honolulu Coast Guard Base.	Sand Island ..	Honolulu	HI	96819	Homeland Security	3010 103c	21
o	CG-Honolulu Coast Guard Base.	Sand Island ..	Honolulu	HI	96819	Transportation	3010 103c.	
c	Kanehoe Coast Guard Omega Station.	Haiku Valley	Kaneohe	HI	96744	Homeland Security	103c	21
o	Kanehoe Coast Guard Omega Station.	Haiku Valley	Kaneohe	HI	96744	Transportation	103c.	

FEDERAL AGENCY HAZARDOUS WASTE COMPLIANCE DOCKET UPDATE #18—CORRECTIONS—Continued

	Facility name	Address	City	State	Zip code	Agency	Reporting mechanism	Code
c	Cedar Rapids (EX) National Guard Target.	4 Miles N of Iowa City, 19 Miles S/SW of Cedar Rapids.	Cedar Rapids	IA	52401	Corps of Engineers, Civil	103c	20A
o	Cedar Rapids (EX) National Guard Target.	4 Miles N of Iowa City, 19 Miles S/SW of Cedar Rapids.	Cedar Rapids	IA	52401	Corps of Engineers, Civil	103c.	
c	Saylorville Reservoir and Recreation Area.	5600 NW 78th Ave.	Johnston	IA	50131	Corps of Engineers, Civil	103c	20A
o	Saylorville Reservoir and Recreation Area.		Johnston	IA		Corps of Engineers, Civil	103c.	
c	Palzo Mine Site-Shawnee.	Springhill Church Road.	Stonefort	IL	62987	Agriculture	103c	20A
o	National Forest Palzo Mine.	Shawnee National Forest.	Harrisburg	IL	62946	Agriculture	103c.	
c	Michigan City East Pier Head Light.	Washington Park Site B Pier.	Michigan City	IN	46360	Homeland Security	3010	21
o	Michigan City East Pier Head Light.	Washington Park Site B Pier.	Michigan City	IN	46360	Transportation	3010.	
c	New Orleans Coast Guard Base.	4640 Urquhart Street.	New Orleans	LA	70117	Homeland Security	3010 103c	21
o	New Orleans Coast Guard Base.	4640 Urquhart Street.	New Orleans	LA	70117	Transportation	3010 103c.	
c	U.S. Coast Guard Support.	427 Commercial St.	Boston	MA	02109	Homeland Security	3010	21
o	U.S. Coast Guard Support.	427 Commercial St.	Boston	MA	02109	Transportation	3010.	
c	Woods Hole Coast Guard Base.	Little Harbor Road.	Falmouth	MA	02543	Homeland Security	3010 103c	21
o	Woods Hole Coast Guard Base.	Little Harbor Road.	Falmouth	MA	02543	Transportation	3010 103c.	
c	U.S. Coast Guard Buoy Depot South Weymouth.	Trotter Road	South Weymouth	MA	02190	Homeland Security	3005 3010 103c.	21
o	U.S. Coast Guard Buoy Depot South Weymouth.	Trotter Road	South Weymouth	MA	02190	Transportation	3005 3010 103c.	
c	Fort George G. Meade.	MD Rt 175	Odenton	MD	21113	Army	3005 3010 3016 103c.	20A
o	Fort George G. Meade.	MD Rt 175	Odenton	MD	20755	Army	3005 3010 3016 103c.	
c	Curtis Bay Coast Guard Yard.	2401 Hawkins Point Rd.	Baltimore	MD	21226	Homeland Security	3010 103c	20A, 21

FEDERAL AGENCY HAZARDOUS WASTE COMPLIANCE DOCKET UPDATE #18—CORRECTIONS—Continued

	Facility name	Address	City	State	Zip code	Agency	Reporting mechanism	Code
o	U.S. Coast Guard Yard.	Hawkins Point Rd.	Baltimore	MD	21226	Transportation	3010 103c.	
c	Back Creek Rear Range Coast Guard Structure.	25 Ft Square Position.	Chesapeake City	MD	21915	Homeland Security	103c	21
o	Back Creek Rear Range Coast Guard Structure.	25 Ft Square Position.	Chesapeake City	MD	21915	Transportation	103c.	
c	U.S. Coast Guard Base South Portland.	259 High St	South Portland	ME	04106	Homeland Security	3010 103c	21
o	U.S. Coast Guard Base South Portland.	259 High St	South Portland	ME	04106	Transportation	3010 103c	
c	Charlevoix Coast Guard Station.	220 Coast-guard Road.	Charlevoix	MI	49720	Homeland Security	3010 103c	21
o	Charlevoix Coast Guard Station.	220 Coast-guard Road.	Charlevoix	MI	49720	Transportation	3010 103c	
c	Saulte Ste Marie Coast Guard Group.	Water St	Sault St Marie	MI	49783	Homeland Security	3010	21
o	Saulte Ste Marie Coast Guard Group.	Water St	Sault St Marie	MI	49783	Transportation	3010	
c	St. Joseph North Pier Head Light.	18535 Lite List.	St. Joseph	MI	49417	Homeland Security	3010	21
o	St. Joseph North Pier Head Light.	18535 Lite List.	St. Joseph	MI	49417	Transportation	3010	
c	Traverse City Coast Guard Air Station (Ave "E" Groundwater.	Airport Road	Traverse City	MI	45685	Homeland Security	3010 103c	21
o	Traverse City Coast Guard Air Station (Ave "E" Groundwater.	Airport Road	Traverse City	MI	45685	Transportation	3010 103c	
c	Duluth Coast Guard Station.	1201 Minnesota Ave.	Duluth	MN	55802	Homeland Security	3010 3016 103c.	21
o	Duluth Coast Guard Station.	1201 Minnesota Ave.	Duluth	MN	55802	Transportation	3010 3016 103c.	
c	Fort Macon Coast Guard Station.	PO Box 237	Atlantic Beach	NC	28512	Homeland Security	3010 103c	21

FEDERAL AGENCY HAZARDOUS WASTE COMPLIANCE DOCKET UPDATE #18—CORRECTIONS—Continued

	Facility name	Address	City	State	Zip code	Agency	Reporting mechanism	Code
o	Fort Macon Coast Guard Station.	PO Box 237	Atlantic Beach	NC	28512	Transportation	3010 103c	
c	Elizabeth City Coast Guard Support Center.	Hwy 34 S/4 Mi. S Elizabeth City.	Elizabeth City	NC	27909	Homeland Security	3005 3010 3016 103c.	21
o	Elizabeth City Coast Guard Support Center.	Hwy 34 S/4 Mi. S Elizabeth City.	Elizabeth	NC	27909	Transportation	3005 3010 3016 103c.	
c	Stanley R Mickelson Safeguard Complex.	One Half Mile North of Nekoma.	Nekoma	ND	58355	Air Force	103c	20A
o	Stanley R. Mickelson Safeguard Complex.		Nekoma	ND		Air Force	103c	20A
c	Nebraska National Forest Site #2.	5.5 Mi S of Hwy 2.	Halsey	NE	69142	Agriculture	3016 103c	16
o	Nebraska National Forest.	State Rt 2 West Spur 868 PO Box 38.	Halsey	NE	69142	Agriculture	3016 103c	
c	Nebraska National Forest Site #1.	State Rt 2 W	Halsey	NE	69142	Agriculture	3016 103c	16
o	Nebraska National Forest.	State Rt 2 West Spur 868 PO Box 38.	Halsey	NE	69142	Agriculture	3016 103c	
c	Sandy Hook Coast Guard Station.	Hartshorne Drive.	Highlands	NJ	07732	Homeland Security	3010 103c	21
o	Sandy Hook Coast Guard Station.	Hartshorne Drive.	Highlands	NJ	07732	Transportation	3010 103c	
c	Plum Island Animal Disease Center.	Route 25	Orient Point	NY	11957	Homeland Security	3016 103c 3010.	21
o	Plum Island Animal Disease Center.	Route 25	Orient Point	NY	11957	Agriculture	3016 103c 3010.	21
c	Moriches Coast Guard Group.	100 Moriches Island Rd.	East Moriches	NY	11940	Homeland Security	3010 103c	21
o	Moriches Coast Guard Group.	100 Moriches Island Rd.	East Moriches	NY	11940	Transportation	3010 103c	
c	Support Center Governor's Island.	C/O U.S. Coast Guard Group.	Governor's Island	NY	10004	Homeland Security	3010 103c	21
o	Support Center Governor's Island.	C/O U.S. Coast Guard Group.	Governor's Island	NY	10004	Transportation	3010 103c	
c	Shinnecock Coast Guard Station.	Shinnecock Station.	Hampton Bays	NY	11946	Homeland Security	3010 103c	21

FEDERAL AGENCY HAZARDOUS WASTE COMPLIANCE DOCKET UPDATE #18—CORRECTIONS—Continued

	Facility name	Address	City	State	Zip code	Agency	Reporting mechanism	Code
o	Shinnecock Coast Guard Station.	Shinnecock Station.	Hampton Bays	NY	11946	Transportation	3010 103c	
c	Aids to Navigation Team.	7063 Lighthouse Drive.	Saugerties	NY	12477	Homeland Security	3010 103c	21
o	Aids to Navigation Team.	7063 Lighthouse Drive.	Saugerties	NY	12477	Transportation	3010 103c.	
c	CG—Astoria Coast Guard Base.	Hwy 30 at Tongue Point.	Astoria	OR	97103	Homeland Security	3010 103c	20A, 21
o	Astoria Coast Guard Base.	Hwy 30 at Tongue Point.	Astoria	OR	97103	Transportation	3010 103c.	
c	CG—Coos Bay Ant.	4333 Boat Basin Rd.	Charleston	OR	97420	Homeland Security	3010 103c	21
o	CG—Coos Bay Ant.	4333 Boat Basin Rd.	Charleston	OR	97420	Transportation	3010 103c.	
c	CG—Portland Marine Safety Coast Guard.	6767 N Basin	Portland	OR	97217	Homeland Security	3010 103c	20A, 21
o	Portland Marine Safety Coast Guard Station.	6767 N Basin	Portland	OR	97217	Transportation	3010 103c.	
c	Fort Dix Tacony Warehouse.	5100 Princeton Ave.	Philadelphia	PA	19135	Army	103c	20A
o	Fort Dix Tacony Warehouse.	1500 Princeton Ave.	Philadelphia	PA	19124	Army	103c.	
c	Borinquen Coast Guard Air Station.	Ramey Air Force Base.	Aquadilla	PR	00604	Homeland Security	3010 103c	21
o	Borinquen Coast Guard Air Station.	Ramey Air Force Base.	Aquadilla	PR	00604	Transportation	3010 103c.	
c	USAF Poinsett Electronic Combat Range.	5 Miles South of Wedgefield.	Sumter	SC	29168	Air Force	3010 3016 103c.	23
o	Shaw AFB Poinsett Range.	SC Hwy 261 4 Miles of.	Wedgefield	SC	29167	Air Force	3016 103c.	
c	Charleston Coast Guard Group.	196 Tradd St	Charleston	SC	29401	Homeland Security	3010	21
o	Charleston Coast Guard Group.	196 Tradd St	Charleston	SC	29401	Transportation	3010.	
c	101st Airborne Division (Air Assault).	West of U.S. 41A; at TN–KY Border.	Border	TN	3700	Army	3005 3010	20A
o	101st Airborne Division (Air Assault).	West of U.S. 41 at Border.		TN	3700	Army	3005 3010.	

FEDERAL AGENCY HAZARDOUS WASTE COMPLIANCE DOCKET UPDATE #18—CORRECTIONS—Continued

	Facility name	Address	City	State	Zip code	Agency	Reporting mechanism	Code
c	U.S. Coast Guard Shore Side Detachment Par.	700 Coast Guard Rd.	Buchanan	TN	38222	Homeland Security	3010	21
o	U.S. Coast Guard Shore Side Detachment Par.	700 Coast Guard Rd.	Buchanan	TN	38222	Transportation	3010.	
c	U.S. Coast Guard (Ouachita) Shoreside.	3551 Old Harrison Pike.	Chattanooga	TN	37416–2825	Homeland Security	3010	21
o	U.S. Coast Guard (Ouachita) Shoreside.	3551 Old Harrison Pike.	Chattanooga	TN	37416–2825	Transportation	3010.	
c	Cotton Insects Research Lab.	414 Ringold Rd.	Brownsville	TX	78520	Agriculture	103c	20A
o	Cotton Insects Research Lab.		Brownsville	TX	78520	Agriculture	103c.	
c	Lake Lavon-North Gully-Site 1.	2½ Mi SE of Hwy 380.	Lewisville	TX	75077	Corps of Engineers, Civil	3016 103c	20A
o	Lake Lavon-North Gully-Site 1.	Highway 380	Wylie	TX	75077	Corps of Engineers, Civil	3016 103c.	
c	Corpus Christi Coast Guard Depot.	1201 Navigation Blvd.	Corpus Christi	TX	78407	Homeland Security	3010 103c	21
o	Corpus Christi Coast Guard Depot.	1201 Navigation Blvd.	Corpus Christi	TX	78407	Transportation	3010 103c.	
c	Galveston Coast Guard Base.	Ferry Road ...	Galveston	TX	77550	Homeland Security	3010 103c	21
o	Galveston Coast Guard Base.	Ferry Road ...	Galveston	TX	77550	Transportation	3010 103c.	
c	Customs—Millington Addition.	4 Bl East of FM 170.	Presidio	TX	79845	Homeland Security	103c	21
o	Customs—Millington Addition.	4 Bl East of FM 170.	Presidio	TX	79845	Transportation	103c.	
c	Virginia Ordnance Works.	Callis Mines Road.	Glen Wilton	VA	24438	Agriculture	103c	20A
o	Virginia Ordnance Works.	Mines Street	Glen Wilton	VA	24438	Agriculture	103c.	
c	Portsmouth Coast Guard Support Center.	4000 Coast Guard Blvd.	Portsmouth	VA	23703	Homeland Security	3010 103c	21
o	Portsmouth Coast Guard Support Center.	4000 Coast Guard Blvd.	Portsmouth	VA	23703	Transportation	3010 103c.	
c	Yorktown Reserve Training Center.	Route 238 SE Corner of York Co.	Yorktown	VA	23690	Homeland Security	3010	21

FEDERAL AGENCY HAZARDOUS WASTE COMPLIANCE DOCKET UPDATE #18—CORRECTIONS—Continued

	Facility name	Address	City	State	Zip code	Agency	Reporting mechanism	Code
o	Yorktown Reserve Training Center.	Route 238 SE Corner of York Co.	Yorktown	VA	23690	Transportation	3010.	
c	NAVSTA Norfolk.	1530 Gilbert St Ste 2000.	Norfolk	VA	23511	Navy	3005 3010 3016 103c.	20A
o	Sewells Point Naval Complex.	US 64 at VA 564.	Norfolk	VA	23511	Navy	3005 3010 3016 103c.	
c	Flamingo Bay Army Test Areas—Former Fort.	Water Island	St. Thomas	VI	00802	Interior	103c	20A
o	Flamingo Bay Army Test Areas Former Ft. Segarra.	Water Island	St. Thomas	VI		Interior		103c
c	Seattle Coast Guard Support Center.	1519 Alaskan Way S.	Seattle	WA	98134	Homeland Security	3010 3016 103c.	21
o	Seattle Coast Guard Support Center.	1519 Alaskan Way S.	Seattle	WA	98134	Transportation	3010 3016 103c.	
c	Seattle Coast Guard Support Center Annex.	2700 W Commodore Way.	Seattle	WA	98119	Homeland Security	3010 103c	21
o	Seattle Coast Guard Support Center Annex.	2700 W Commodore Way.	Seattle	WA	98119	Transportation	3010 103c.	
c	Milwaukee Coast Guard Group Base.	2420 Lincoln Memorial Dr.	Milwaukee	WI	53207	Homeland Security	3010 103c	21
o	Milwaukee Coast Guard Group Base.	2420 Lincoln Memorial Dr.	Milwaukee	WI	53207	Transportation	3010 103c.	
c	BLM—Baroil Landfill.	T26NR 90WSec26.	Baroil	WY	82322	Interior	103c	20A
o	BLM—Baroil Landfill.	T26NR 90WSec26.	Baroil	WY		Interior	103c.	
c	BLM—Indian Creek Drums.	I–90 & Indian Creek Road.	Near Buffalo	WY	82834	Interior	103c	20A
o	BLM—Indian Creek Drums.		Near Buffalo	WY	82834	Interior	103c.	
c	Wyoming Air National Guard.	Cheyenne Municipal Airport.	Cheyenne	WY	82003	Air Force	103c 3010	20A
o	Cheyenne Air National Guard.	Cheyenne Municipal Airport.	Cheyenne	WY	82003	Air Force	103c 3010.	

FEDERAL AGENCY HAZARDOUS WASTE COMPLIANCE DOCKET UPDATE #18–NFRAP STATUS CHANGES

Facility name	Address	City	State	Zip code	Agency	Reporting mechanism
W.G. Huxtable Pumping Plant.	On the St. Francis River—10 Miles E on Hwy. 121/Hwy 79.	Marinna	AR	72360	Corps of Engineers, Civil	103c 3010.
Former NTC San Diego	Rosencranz & Nimitz Blvds.	San Diego	CA	92133	Navy	3010 103c 3016.

FEDERAL AGENCY HAZARDOUS WASTE COMPLIANCE DOCKET UPDATE #18–NFRAP STATUS CHANGES—Continued

Facility name	Address	City	State	Zip code	Agency	Reporting mechanism
Nebraska National Forest Site #2.	5.5 Mi S of Hwy 2	Halsey	NE	69142	Agriculture	3016 103c.
Sante Fe NF: Pecos Campground.	1220 St. Francis Drive	Santa Fe	NM	87504	Agriculture	103c 3016.
Farmingdale Organizational Maintenance Shop #43.	25 Baiting Place Road	Farmingdale	NV	11735	Army	3010 103c.
BLM-Nevada Barth Corporation.	T31NR51ESEC7, 8	Palisade	NV	89822	Interior	103c.
Fort Allen	Route 1	Juana Diaz	PR	00665	Army	103c 3010 3016.
Lake Lavon-St Paul Site 2.	S End Rolling Meadows St.	Wylie	TX	75098	Corps of Engineers, Civil	103c 3010.
West Virginia Air National Guard.	Off Coonskin Park Drive	Charleston	WV	25301	Defense	103c 3010.

[FR Doc. 03–30890 Filed 12–12–03; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Sunshine Act Meeting; Open Commission Meeting; Wednesday, December 17, 2003

December 10, 2003.

The Federal Communications Commission will hold an Open Meeting on the subjects listed below on Wednesday, December 17, 2003, which is scheduled to commence at 9:30 a.m. in Room TW–C305, at 445 12th Street, SW., Washington, DC.

Item No.	Bureau	Subject
1	Office of Engineering and Technology.	*Title:* Facilitating Opportunities for Flexible, Efficient, and Reliable Spectrum Use Employing Cognitive Radio Technologies (ET Docket No. 03–108); and Authorization and Use of Software Defined Radios (ET Docket No. 00–47). *Summary:* The Commission will consider a Notice of Proposed Rulemaking and Order concerning the use of cognitive radio technologies to facilitate opportunities for more flexible, efficient and reliable spectrum use.
2	Wireline Competition	*Title:* Schools and Libraries Universal Service Support Mechanism (CC Docket No. 02–6). *Summary:* The Commission will consider a Third Report and Order and Second Further Notice of Proposed Rulemaking concerning the administration of the schools and libraries universal service mechanism.
3	Wireless Tele-Communications	*Title:* Amendment of the Commission's Rules Regarding Dedicated Short-Range Communication Services in the 5.850–5.925 GHz Band (5.9 GHz Band) (WT Docket No. 01–90); and Amendment of Parts 2 and 90 of the Commission's Rules to Allocate the 5.850–5.925 GHz Band to the Mobile Service for Dedicated Short Range Communications of Intelligent Transportation Services (ET Docket No. 98–95, RM–9096). *Summary:* The Commission will consider a Report and Order concerning licensing and service rules for the Dedicated Short Range Communications (DSRC) Service in the Intelligent Transportation Systems (ITS) Radio Service in the 5.850–5.925 GHz band (5.9 GHz band).

Additional information concerning this meeting may be obtained from Audrey Spivack or David Fiske, Office of Media Relations, (202) 418–0500; TTY 1–888–835–5322.

Audio/Video coverage of the meeting will be broadcast live over the Internet from the FCC's Audio/Video Events Web page at *http://www.fcc.gov/realaudio.*

For a fee this meeting can be viewed live over George Mason University's Capitol Connection. The Capitol Connection also will carry the meeting live via the Internet. To purchase these services call (703) 993–3100 or go to *http://www.capitolconnection.gmu.edu.* Audio and video tapes of this meeting can be purchased from CACI Productions, 341 Victory Drive, Herndon, VA 20170, (703) 834–1470, Ext. 19; Fax (703) 834–0111.

Copies of materials adopted at this meeting can be purchased from the FCC's duplicating contractor, Qualex International (202) 863–2893; Fax (202) 863–2898; TTY (202) 863–2897. These copies are available in paper format and alternative media, including large print/type; digital disk; and audio tape.

Qualex International may be reached by e-mail at *Qualexint@aol.com*.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 03–31014 Filed 12–11–03; 2:02 pm]

BILLING CODE 6712–01–P

FEDERAL RESERVE SYSTEM

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Board of Governors of the Federal Reserve System.

SUMMARY: On June 15, 1984, the Office of Management and Budget (OMB) delegated to the Board of Governors of the Federal Reserve System (Board) its approval authority under the Paperwork Reduction Act, as per 5 CFR 1320.16, to approve of and assign OMB control numbers to collection of information requests and requirements conducted or sponsored by the Board under conditions set forth in 5 CFR 1320 Appendix A.1. Board–approved collections of information are incorporated into the official OMB inventory of currently approved collections of information. Copies of the OMB 83–I's and supporting statements and approved collection of information instruments are placed into OMB's public docket files. The Federal Reserve may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

Request for comment on information collection proposal.

The following information collection, which is being handled under this delegated authority, has received initial Board approval and is hereby published for comment. At the end of the comment period, the proposed information collection, along with an analysis of comments and recommendations received, will be submitted to the Board for final approval under OMB delegated authority. Comments are invited on the following:

a. whether the proposed collection of information is necessary for the proper performance of the Federal Reserve's functions; including whether the information has practical utility;

b. the accuracy of the Federal Reserve's estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used;

c. ways to enhance the quality, utility, and clarity of the information to be collected; and

d. ways to minimize the burden of information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Comments must be submitted on or before February 13, 2004.

ADDRESSES: Comments may be mailed to Ms. Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551. However, because paper mail in the Washington area and at the Board of Governors is subject to delay, please consider submitting your comments by e–mail to *regs.comments@federalreserve.gov*, or faxing them to the Office of the Secretary at 202–452–3819 or 202–452–3102. Comments addressed to Ms. Johnson may also be delivered to the Board's mail facility in the West Courtyard between 8:45 a.m. and 5:15 p.m., located on 21st Street between Constitution Avenue and C Street, NW. Members of the public may inspect comments in Room MP–500 between 9 a.m. and 5 p.m. on weekdays pursuant to 261.12, except as provided in 261.14, of the Board's Rules Regarding Availability of Information, 12 CFR 261.12 and 261.14.

A copy of the comments may also be submitted to the OMB desk officer for the Board: Joseph Lackey, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: A copy of the proposed form and instructions, the Paperwork Reduction Act Submission (OMB 83–I), supporting statement, and other documents that will be placed into OMB's public docket files once approved may be requested from the agency clearance officer, whose name appears below.

Cindy Ayouch, Federal Reserve Board Clearance Officer (202–452–3829), Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551. Telecommunications Device for the Deaf (TDD) users may contact (202–263–4869), Board of Governors of the Federal Reserve System, Washington, DC 20551.

Proposal to approve under OMB delegated authority the revision, without extension, of the following reports:

Report title: Financial Statements for Bank Holding Companies.

Agency form numbers: FR Y–9C, FR Y–9LP, FR Y–9SP, FR Y–9CS, and FR Y–9ES.

OMB control number: 7100–0128.

Frequency: Quarterly, semiannually, and annually.

Reporters: Bank holding companies (BHCs).

Annual reporting hours: 369,113.

Estimated average hours per response: FR Y–9C: 34.80 hours, FR Y–9LP: 4.75 hours, FR Y–9SP: 4.09 hours, FR Y–9CS: 30 minutes, FR Y–9ES: 30 minutes.

Number of respondents: FR Y–9C: 2,113, FR Y–9LP: 2,455, FR Y–9SP: 3,312, FR Y–9CS: 600; FR Y–9ES: 92.

General description of report: This information collection is mandatory (12 U.S.C. 1844(c)). Confidential treatment is not routinely given to the data in these reports. However, confidential treatment for the reporting information, in whole or in part, can be requested in accordance with the instructions to the form.

Abstract: The FR Y–9C consists of standardized consolidated financial statements similar to the Federal Financial Institutions Examination Council (FFIEC) Consolidated Reports of Condition and Income (Call Reports) (FFIEC 031 & 041; OMB No.7100–0036). The FR Y–9C is filed quarterly by top–tier BHCs that have total assets of $150 million or more and by lower–tier BHCs that have total consolidated assets of $1 billion or more. In addition, multibank holding companies with total consolidated assets of less than $150 million with debt outstanding to the general public or engaged in certain nonbank activities must file the FR–Y9C.

The FR Y–9LP includes standardized financial statements filed quarterly on a parent company only basis from each BHC that files the FR Y–9C. In addition, for tiered BHCs, a separate FR Y–9LP must be filed for each lower tier BHC.

The FR Y–9SP is a parent company only financial statement filed semiannually by one–bank holding companies with total consolidated assets of less than $150 million, and multibank holding companies with total consolidated assets of less than $150 million that meet certain other criteria. This report, an abbreviated version of the more extensive FR Y–9LP, is designed to obtain basic balance sheet and income statement information for the parent company, information on intangible assets, and information on intercompany transactions.

The FR Y–9CS is a free form supplement that may be utilized to collect any additional information deemed to be critical and needed in an expedited manner. It is intended to supplement the FR Y–9C and FR Y–9SP reports.

The FR Y–9ES is filed annually by BHCs that are Employee Stock Ownership Plans (ESOPs).

Current Actions: A detailed description of the proposed changes follows.

Proposed Revisions Effective March 31, 2004.

Voluntary Advance Collection of Summary FR Y–9C Data from the Largest BHCs.

The Federal Reserve proposes to incorporate into the FR Y–9C information collection the advance collection of key FR Y–9C summary items from selected institutions of up to fifty of the largest BHCs. These data would be collected in advance of the regular FR Y–9C filing deadline on a voluntary, as–needed basis. The Federal Reserve relies primarily on the quarterly earnings press releases published by these institutions to perform analysis of the largest BHCs – individually and in aggregate – weeks before FR Y–9C filings become available. However, pronounced and sustained differences have appeared between aspects of these published results and the FR Y–9C data at many of these institutions. The nature of these differences appears to be specific to each institution, related to the manner in which the institution chooses to present its results. The presence of such differences impairs the Federal Reserve's ability to analyze aggregates and make meaningful comparisons across institutions.

The Federal Reserve has addressed these differences by obtaining preliminary or estimated FR Y–9C information from affected institutions on a voluntary basis through informal dialog after the press releases have been issued. These cases were highly individualized, in which selected institutions were generally asked to provide preliminary information on a variety of FR Y–9C items. However, over the past year a growing range of items with differences has emerged at a significantly larger set of these institutions, and indeed for some items (*e.g.*, earning assets) there have been significant differences for a major share of these largest institutions.

Obtaining these selected, institution–specific preliminary data allows the Federal Reserve to evaluate meaningfully the financial condition and performance of the largest banking institutions, to discern and monitor emerging trends and issues (such as credit quality) in the banking industry, and to analyze these data in a timely manner. The Federal Reserve is willing to accept preliminary or estimated data from the institution in the interest of minimizing burden. In general, the data requested are supplemental to those published in press releases and are routinely contained in a firm's management information systems.

The items requested are primarily summary items such as total noninterest expense or total loans, and a few individual line items such as total trading revenue. The number of items collected varies from respondent to respondent according to the nature of the item, its relevance to the institution, and the basis of presentation used in the BHC's press release. However, any changes to this information collection would not exceed the estimated average burden of 30 minutes per respondent.

The advance information is collected by the Federal Reserve in the manner most convenient to the institution, mainly through electronic mail, telephone, or facsimile transmission. Reporting instructions would not be required because the requested financial items are defined in the FR Y–9C instructions. The advance information collected would be used only within the Federal Reserve System and would not be made available to the public.

Cover Pages

The Federal Reserve proposes to modify the contact information on the cover page of the FR Y–9C, FR Y–9LP, and FR Y–9SP reports to include the email address of the person to whom questions about this report should be directed. Collection of the email address would enhance communications between the Federal Reserve Bank staff and the respondent.

Schedule HC – Balance Sheet

The Federal Reserve proposes to modify the definition of Schedule HC, Balance Sheet, item 20, "Other liabilities," and Schedule HC–G, Other Liabilities, item 4, "Other," to include information on trust preferred securities. This information would no longer be included in Schedule HC, item 22, "Minority interest in consolidated subsidiaries and similar items." The proposed reporting change would be consistent with the manner in which trust preferred securities are presented for other public reporting purposes. In addition a footnote would be added to the form for item 20 stating that this item "Includes guaranteed preferred beneficial interests in the bank holding company's junior subordinated debt securities (trust preferred securities)." The footnote would clarify that trust preferred securities information included in other liabilities is comparable to information reported under this caption in other public financial reports, such as the Securities and Exchange Commission (SEC) Form 10–K.

This proposed reporting change does not represent any change to the risk–based capital treatment for trust preferred securities. Consistent with guidance previously provided in Federal Reserve Supervisory Letter SR 03–13 of July 2, 2003, BHCs should continue to include eligible trust preferred securities in their tier 1 capital for regulatory capital purposes. The amounts qualifying for inclusion in tier 1 capital should be reported in Schedule HC–R, item 6, in accordance with the reporting instructions. The Federal Reserve will review the regulatory implications of any accounting treatment changes affecting trust preferred securities and, if necessary or warranted, will provide further appropriate guidance.

Schedule HC—Memoranda

In order to promote public awareness of risk disclosures, and to enhance the ability of the public to readily access this information, the Federal Reserve proposes to add to Schedule HC–M, a new Memorandum item 22, "URL for the reporting bank holding company's web page that displays risk disclosures, including those about credit and market risk." This item would be updated on a quarterly basis, if applicable. The Federal Reserve has long supported greater market discipline and enhanced risk disclosures by banking organizations to achieve that objective. The Federal Reserve Board, in cooperation with the U.S. Securities and Exchange Commission (SEC) and the Office of the Comptroller of the Currency, sponsored the Working Group on Public Disclosure (the Working Group) in April 2000, which was asked to provide recommendations for improved public disclosures. The Working Group issued six recommendations in January 2001 for enhanced disclosure of market and credit risk and the Federal Reserve issued an SR letter that strongly encouraged large banking organizations to adopt these recommendations. Some large banking organizations have since adopted them. Because the Working Group recommendations focus on large banking organizations, the Federal Reserve proposes to collect the URL from large banking organizations with total assets of $30 billion or more that provide risk disclosures on their web site. The Federal Reserve would provide to the public the web address, which would link directly to the risk disclosure information on the large banking organization's web site or to a table that cross–references to the location of the disclosures. For example,

this information would likely be found in the risk management disclosure in management's discussion and analysis (MD&A) of large BHCs Form 10–K and Form 10–Q filed with the SEC and usually available on the BHC's website.

Schedule HC—Regulatory Capital

The Federal Reserve proposes to make the following changes to Schedule HC–R, Regulatory Capital.

1. Remove the caption for memoranda item 3.a, "Perpetual preferred stock eligible for inclusion in Tier 1 capital:" and modify the caption for memoranda item 3 to read "Preferred stock (including related surplus) eligible for inclusion in Tier 1 capital:."

2. Renumber memoranda item 3.a(1) as item 3.a and modify the caption to include a clarifying parenthetical note. The caption would read "Noncumulative perpetual preferred stock (included and reported in "Total equity capital," on Schedule HC)."

3. Renumber memoranda item 3.a(2) as item 3.b and modify the caption to include a clarifying parenthetical note. The caption would read "Cumulative perpetual preferred stock (included and reported in "Total equity capital," on Schedule HC)."

4. Modify current memoranda item 3.b, "Cumulative preferred stock (*e.g.*, trust preferred securities) included and reported in "Minority interest in consolidated subsidiaries and similar items,"on Schedule HC" and renumber as 3.d. The revised caption would read "Other cumulative preferred stock eligible for inclusion in Tier 1 capital (*e.g.*, trust preferred securities) (included in Schedule HC, items 20 or 22)." This item would include trust preferred stock eligible for Tier 1 capital that is issued out of a special purpose subsidiary for which the bank holding company is the sole common shareholder, and that is reflected in Schedule HC, item 20, "Other liabilities." This item would also include any other cumulative preferred stock included in Schedule HC, item 22, "Minority interest in consolidated subsidiaries and similar items."

5. Add a new memoranda item 3.c, "Other noncumulative preferred stock eligible for inclusion in Tier 1 capital (*e.g.*, REIT preferred securities) (included in Schedule HC, item 22)."

The Federal Reserve proposes the first three changes to clarify existing items and proposes the fourth change for consistency with the proposed changes to Schedule HC, Balance Sheet, on trust preferred securities. The Federal Reserve proposes the fifth change, the addition of new memoranda item 3.c, to collect information on real estate investment trust (REIT) preferred securities. REIT preferred securities are a type of innovative capital instrument typically issued from a special purpose subsidiary at the bank level. Qualifying REIT preferred securities may be included in bank Tier 1 capital with a limit of up to 25 percent of Tier 1. Currently no data are collected for REIT instruments on financial reports at either the bank or BHC level. Therefore the Federal Reserve does not have comprehensive information on the amount of these instruments in banks' or BHCs' capital structures. The Federal Reserve has learned through available anecdotal information that a number of large banking organizations have made issuances of over $500 million. This item would also include any other noncumulative preferred stock included in Schedule HC, item 22, "Minority interest in consolidated subsidiaries and similar items."

Instructions

Instructional revisions and clarifications will be made to FR Y–9C, FR Y–9LP, FR Y–9SP, and FR Y–9ES, as necessary, in an attempt to achieve greater consistency in reporting by respondents.

Proposed Revisions Effective September 30, 2004 and December 31, 2004

Editing of Data by Respondents

The Federal Reserve proposes to require data validation checks to be performed by respondents as a condition for the accepted filing of the FR Y–9 reports (except for the FR Y–9CS). Implementation of this requirement is targeted as of the September 30, 2004, reporting date for FR Y–9C and FR Y–9LP respondents, and as of the December 31, 2004, reporting date for FR Y–9SP and FR Y–9ES respondents. The proposed changes are also consistent with the proposed data validation process for the Call Report, also targeted for September 2004.

Currently, after the Federal Reserve receives a bank holding company (BHC) report, it is subjected to edit checks to assess the accuracy and reasonableness of the data submitted. "Validity" edits verify the accuracy of reported data, for example, whether the individual items in a report schedule add up to the reported total or whether an item reported in one schedule agrees with the amount reported for an equivalent item in another schedule. Validity edits include mathematical and logical tests. "Quality" edits test the reasonableness of data and include tests using historical data and other relational tests, for example, whether the amount reported for a year"to"date item is greater than or equal to the amount reported for the same item in the previous quarter or whether the fair value reported for a category of securities falls within a specified range of the amortized cost reported for these securities. Also certain quality or "interseries" edits compare data reported on parent"only statements (FR Y–9LP) and data reported on the consolidated bank holding company statements (FR Y–9C).[1]

If this validation process identifies any edit exceptions in a BHC's report, a Federal Reserve analyst may contact the BHC and explain the edit exceptions detected in the BHC"s report. The BHC then reviews the reported data associated with these edit exceptions and provides the Federal Reserve analyst with any necessary corrections or describes the underlying facts and circumstances that explain why the data are correct as reported.

Under this proposal, the validation process will take place in conjunction with a BHC's submission of its FR Y–9 reports. The Federal Reserve's internet"based data collection system will subject a respondent's electronic data submission, whether by data entry or by file transfer, to published validity and quality edit checks and transmit the results of such checks to the respondent.[2] Companies that offer computer software to aid in the preparation of FR –9 reports or BHCs that have developed their own reporting software may also choose to incorporate validity and quality edit checks into their software. Thus edit exceptions will be identified while a BHC is preparing its report or during the submission process. The BHC will then be expected to correct its report data to eliminate any validity edit exceptions. The BHC will also be provided a method for supplying explanatory comments concerning quality edit exceptions. The Federal Reserve would not accept any submission as fulfilling reporting requirements or meeting the filing deadline that fails any validity edits or lacks explanatory comments concerning any quality edit exceptions.[3]

Because a BHC will be made aware of any edit exceptions while its staff is completing its FR Y–9 report, the BHC will respond to these exceptions immediately rather than after"the"fact as it is under the Federal Reserve's current method. Although BHCs will still have to provide explanations to support data that trigger quality edit exceptions, this change should reduce subsequent questions from the Federal Reserve about these edits. The Federal Reserve will continue to treat BHCs explanatory comments that address any quality exceptions as confidential. Overall the proposed requirements are expected to improve the timeliness and quality of BHC data, enhance market discipline through faster access by the public, and utilize technological advances in an efficient manner.

[1] A list of validity and quality edits (including interseries edits) is located at the end of the instructions to the FR Y–9 reports (except for the FR Y–9CS), and validity edits are currently distributed to respondents in the form of a Reports Monitoring Checklist.

[2] Note that due to interseries comparisons between the FR Y–9LP and the FR Y–9C, the FR Y–9LP cannot be processed until the FR Y–9C is accepted.

[3] The data collection system will provide for acceptance of data that in rare situations may fail a validity edit due to unusual circumstances but have been identified as accurate.

Board of Governors of the Federal Reserve System, December 9, 2003.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. E3–00561 Filed 12–12–03; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL TRADE COMMISSION

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register.**

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period.

Trans #	Acquiring	Acquired	Entities
Transactions Granted Early Termination—11/03/2003			
20040009	Barry Diller	Hotwire, Inc	Barry Diller. Hotwire, Inc.
Transactions Granted Early Termination—11/04/2003			
20040050	Triad Hospitals, Inc	Tenet Healthcare Corporation	Central Arkansas Hospital, Inc. Central Care, Inc. Dedicated Health PHO, Inc. Garland Managed Care Organization, Inc. Jonesboro Health Services, L.L.C. National Park Medical Center, Inc. NPMC Healthcenter—Physician Services, Inc. StarCare of Jonesboro, Inc. St. Mary's Medical Group, Inc. St. Mary's Regional Medical Center, Inc. Tenet Healthcare Corporation. Tenet HealthSystem medical, Inc. Triad Hospitals, Inc.
20040054	American Industrial Partners Capital Fund III, L.P.	Alcoa, Inc	Advanced Technology and Equipment, Inc. Alcoa, Inc. American Industrial Partners Capital Fund III, L.P. Stolle Machiner, Inc.
20040055	Littlejohn Fund III, LP	General Electric Company	General Electric Canada, Inc. General Electric Company. General Electric Plastics France (SNC). General Electric South Africa (Proprietary) Ltd. GEP Italia SRL. GE Plastics Hong Kong Ltd. GE Plastics Ltd. GE Polymerland Korea Ltd. GEP South America LTDA. GE Superabrasives Europe GmbH. GE Superabrasives, Inc. GE Surperabrasives US, Inc. Littlejohn Fund II, LP.
20040060	U.S. Commercial Corp., S.A. de C.V.	Good Guys, Inc	Good Guys, Inc. U.S. Commercial Corp., S.A. de C.V.
20040064	Peter M. Brant	Enron Corp. (Debtor-in-Possession).	Enron Corp. (Debtor-in-Possession). Papiers Stadacona Ltee. Peter M. Brant. St. Aurelie Timberlands, Co., Ltd.
20040066	Gryphon Partners II, L.P	The Great Atlantic & Pacific Tea Company, Inc.	Gryphon Partners II, L.P. The Great Atlantic & Pacific Tea Company, Inc.
20040069	CCG Investments (BVI), L.P	Concertro Software, Inc.	CCG Investments (BVI), L.P.

Trans #	Acquiring	Acquired	Entities
			Concertro Software, Inc.
	Transactions Granted Early Termination—11/07/2003		
20040023	Schlumberger Limited	Atos Origin SA	Atos Origin SA. Schlumberger Limited.
20040041	Allergan, Inc	Oculex Pharmaceuticals, Inc	Allergan, Inc. Oculex Pharmaceuticals, Inc.
20040059	The BISYS Group, Inc	Richard P. Love, Jr	Richard P. Love, Jr. The BISYS Group, Inc. USA Insuracne Group, Inc.
20040067	ValueClick, Inc	Commission Junction, Inc	Commission Junction, Inc. Value Click, Inc.
20040079	The TJX Companies, Inc	Bob's Stores, Inc	Bob's H.C., Inc Bob's Inc. Bob's Non-Connecticut Operating Co. Bob's Stores Center, Inc. Bob's Stores, Inc. The TJX Companies, Inc.
20040082	Apollo Investment Fund V, L.P	ConAgra Foods, Inc	2326396 Canada, Inc. Apollo Investment Fund V. ConAgra Foods, Inc. United Agri Products Canada Inc. United Agri Products, Inc.
20040084	Apollo Investment Fund V, L.P	UAP Holding Corp	Apollo Investment Fund V, L.P. UAP Holding Corp.
20040085	Macromedia, Inc	eHelp Corporation	eHelp Corporation. Macromedia, Inc.
20040090	Lions Gate Entertainment Corp	Audax Enterainment, L.P	Audax Entertainment, L.P. Film Holdings Co. Lions Gate Enterainment Corp.
	Transactions Granted Early Termination—11/10/2003		
20040068	Sabre Holdings Corporation	My Travel Group plc	My Travel Group plc. Sabre Holdings Corporation. Travel Services International, Inc. TTC Holdings, Inc. World Choice Travel, Inc.
20040071	The Goldman Sachs Group, Inc	Cogentrix Energy, Inc	Congentrix Energy, Inc. The Goldman Sachs Group, Inc.
20040091	Avaya Inc	NorthWestern Corporation	Avaya Inc. Expanets, Inc. NorthWestern Corporation.
	Transactions Granted Early Termination—11/13/2003		
20040058	Merit Partners, L.P	Royal Dutch Petroleum Company	Merit Partners, L.P. Midstream Capital Corp. Royal Dutch Petroleum Company. Shell Michigan Pipeline Company. Shell Onshore Ventures Inc. SWEPI LP.
20040061	National Leisure Group, Inc	MyTravel Group plc	Blue Sea Partners, Inc. MyTravel Group plc. National Leisure Group, Inc.
20040074	Digital Insight Corporation	Magnet Communications, Inc	Digital Insight Corporation. Magnet Communications, Inc.
20040075	Manulife Financial Corporation	John Hancock Financial Services, Inc.	John Hancock Financial Services, Inc. Manulife Financial Corporation.
20040089	Clipper Group Trust	Lasco Shipping Co	Clipper Group Trust. Lasco Shipping Co.
20040095	Jeld-Wen Holdings, Inc	Windowmaster Products	Jeld-Wen Holdings, Inc. Windowmaster Products.
	Transactions Granted Early Termination—11/17/2003		
20040015	Vestar Capital Partners IV, L.P	Terrance Johnson	Mayer-Johnson, Inc. Terrance Johnson. Vestar Capital Partners IV, L.P.
20040053	dj Orthopedics, Inc	OrthoLogic Corp	dj Orthopedics, Inc. OrthoLogic Corp.
20040062	aaiPharma Inc	Elan Corporation plc	aaiPharma Inc.

Trans #	Acquiring	Acquired	Entities
20040100	O. Bruton Smith	Michele F. Salta	Elan Corporation plc. Elan Pharmaceuticals, Inc. CL Motors, LLC. CTM, LLC. Michele F. Salta O. Bruton Smith.
20040102	MetLife, Inc	Allianz Aktiengesellschaft	Allianz Aktiengesellschaft. Allianz Life Insurance company of North America. MetLife, Inc.
20040106	Veeco Instruments Inc	Lauren D. Lackey and Barbara Lackey.	Advanced Imaging, Inc. Lauren D. Lackey and Barbara Lackey. Veeco Instruments Inc.
	Transactions Granted Early Termination—11/18/2003		
20040110	Scottish Re Group Limited	General Electric Company	ERC Life Reinsurance Corporation. General Electric Company. Scottish Re Group Limited.
	Transactions Granted Early Termination—11/20/2003		
20040087	Apollo Investment Fund V, L.P	Royal Numico, N.V	Apollo Investment Fund V, L.P. General Nutrition Companies, Inc. GNC Franchising Canada, Ltd. GNC Franchising Nutrition Commpanies, Inc. Royal Numico, N.V.
20040108	Estate of Burk Zanft, c/o Deutsche Bank.	Heritage Fund I, L.P	Estate of Burk Zanft, c/o Deutsche Bank. Heritage Fund I, L.P.
20040109	Wellspring Capital Partners III, L.P	Walter Industries, Inc	New England Pottery Co., Inc. JW Aluminum Company. Walter Industries, Inc. Wellspring Capital Partners III, L.P.
20040115	Quovadx, Inc	Rogue Wave Software, Inc	Quovadx, Inc. Rogue Wave Software, Inc.
20040118	Dycom Industries, Inc	Willian T. Stover	Dycom Industries, Inc. First South Utility Construction, Inc. William T. Stover.
	Transactions Granted Early Termination—11/24/2003		
200440072	Marquette Financial Companies	KBK Capital Corporation	KBK Capital Corporation. Marquette Financial Companies.
20040093	Lehman Brothers Holdings Inc	Hunter Fan Holdings, Inc	Hunter Fan Holdings, Inc. Lehman Brothers Holdings Inc.
20040135	Mitsubishi Chemical Corporation	Mitsubishi Chemical Corporation	Mitsubishi Chemical Corporation. Mitsubishi Pharma Corporation.
	Transactions Granted Early Termination—11/25/2003		
20031016	Symantec Corporation	PowerQuest Corporation	PowerQuest Corporation. Symantec Corporation.
20040107	drugstore.com, Inc	Ian and Louise Mummery	drugstore.com, Inc. Ian and Louise Mummery. International Vision Direct Corp.
20040121	TA IX L.P	Logistics Health, Inc	Logistics Health, Inc. TA IX L.P.
20040123	Ephesos Vermogensverwaltung GmbH.	Sirona Dental Systems S.a.r.l	Ephesos Vermogensverwaltung GmbH. SIRONA Beteiligungs—und Verwaltungsgesellschaft. Sirona Dental Systems S.a.r.l.
20040125	J.W. Childs Equity Partners III, L.P	John T. Walton	John T. Walton. J.W. Childs Equity Partners III, LP. Xyron, Inc.
20040127	Liz Claiborne, Inc	Cerberus SBI Investor L.P	Cerberus SBI Investor L.P. Enyce Holding LLC Liz Claiborne, Inc.
20040129	Maple Leaf Foods Inc	Smithfield Foods, Inc	Maple Leaf Foods Inc. Smithfield Canada Limited. Smithfield Foods, Inc.
20040134	Heritage Propane Partners, L.P	LaGrange Energy, L.P	ETC Oasis GP, LLC. Five Dawaco, Inc.

Trans #	Acquiring	Acquired	Entities
			Heritage Propane Partners, L.P.
			LA GP, LLC.
			La Grange Acquisition, L.P.
			La Grange Energy, L.P.
			LGM, LLC.
			LG PL, LLC.
20040138	Siegwerk GmbH & Co. KG	Color Converting Industries Co	Color Converting Industries Co.
			Color Converting, LLC.
			Siegwerk GmbH & Co. KG.
20040145	Orbitz, Inc	Orbitz, LLC	Orbitz, Inc.
			Orbitz, LLC.
20040147	Sun Microsystems, Inc	Waveset Technologies, Inc	Sun Microsystems, Inc.
			Waveset Technologies, Inc.
20040150	Lawrence F. Flick, IV	Fox & Roach/Trident, G.P	Fox & Roach/Trident, G.P.
			Lawrence F. Flick, IV.
20040154	Littlejohn Fund II, L.P	LTS Holdings, Inc	Littlejohn Fund II, L.P.
			LTS Holdings, Inc.
	Transactions Granted Early Termination—11/28/2003		
2004076	L–3 Communications Holdings, Inc	The Veritas Capital Fund L.P	L–3 Communications Holdings, Inc.
			The Veritas Capital Fund L.P.
			Vertex Aerospace LLC.
2004081	Computershare Limited	Geogeson Shareholder Coimmunications, Inc.	Computershare Limited.
			Geogeson Shareholder Communications Inc.
20040101	KAT Holdings, L.P	General Electric Company	Atrium Corporation.
			General Electric Company.
			KAT Holdings, L.P.
20040119	Reliant Pharmaceuticals, LLC	Abbott Laboratories	Abbott Laboratories.
			Reliant Pharmaceuticals, LLC.
20040130	The Home Depot, Inc	RMA Home Services, Inc	RMA Home Services, Inc.
			The Home Depot, Inc.
20040131	Bain Capital Fund VII, L.P	Bombardier Inc	Bain Capital Fund VII, L.P.
			Bombardier Inc.
			Bombardier Motor Corporation of America.
20040132	Ralcorp Holdings, Inc	Wind Point Partners III, L.P	Ralcorp Holdings, Inc.
			Value Added Bakery Holding Company.
			Wind Point Partners III, L.P.
20040133	Unilin Holding N.V	Fritz Homann	Fritz Homann.
			Homanit USA, Inc.
			Unilin Holding N.V.
20040136	Rural Cellular Corporation	AT&T Wireless Services, Inc	ABC Wireless, LLC
			AirCom PCS, Inc.
			AMT Cellular, LLC
			AT&T Wireless PCS, LLC.
			AT&T Wireless Services, Inc.
			Comet Wireless, Inc.
			QuinCom, Inc.
			Rural Cellular Corporation.
			Tritel A/B Holding Corp.
			Tritel C/F Holding Corp.
20040137	AT&T Wireless Services, Inc	Rural Cellular Corporation	AT&T Wireless Services, Inc.
			RCC Holdings, Inc.
			RCC Minnesota, Inc.
			Rural Cellular Corporation.
20040142	BB&T Corporation	McGriff, Seibels & Williams, Inc	BB&T Corporation.
			McGriff, Seibels & Williams, Inc.
20040151	Aetna Inc	Frederick H. Chicos	Aetna Inc.
			Chickering Benefit Planning Insurance Agency, Inc.
			Chickering Claims Administrators, Inc.
			Frederick H. Chicos.
20040155	Copperweld Acquisition Corporation.	The LTV Corporation (Debtor-in-Possession).	Copperweld Acquisition Corporation.
			Copperweld Canada, Inc.
			Copperweld Corporation.
			LTV Copperweld Bimetallics UK (Holdings) Ltd.
			The LTV Corporation (Debtor-in-Possession).
20040161	Aetna Inc	Kenneth Chicos	Aetna Inc.
			Chickering Benefit Planning Insurance Agency, Inc.
			Kenneth Chicos.

For Further Information Contact: Sandra M. Peay; Contact Representative, or Renee Hallman, Legal Technician. Federal Trade Commission, Premerger Notification Office, Bureau of Competition, Room H–303, Washington, DC 20580. (202) 326–3100.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 03–30861 Filed 12–12–03; 8:45 am]

BILLING CODE 6750–01–M

GENERAL SERVICES ADMINISTRATION

Office of Governmentwide Policy

Cancellation of an Optional Form by the Department of State

AGENCY: Office of Governmentwide Policy, GSA.

ACTION: Notice.

SUMMARY: The Department of State cancelled the following Optional Form: OF 137, Designation of Beneficiary (12/77).

This form is now a State Department form. You can request copies from: Department of State, A/RPS/DIR, SA–22, 18th and G Streets, NW.; Suite 2400, Washington, DC 20520–2201, 202–312–9605.

FOR FURTHER INFORMATION CONTACT: Mr. Charles Cunningham, Department of State, 202–312–9605.

DATES: Effective December 15,2003.

Dated: December 5, 2003.

Barbara M. Williams,

Deputy Standard and Optional Forms Management Officer, General Services Administration.

[FR Doc. 03–30891 Filed 12–12–03; 8:45 am]

BILLING CODE 6820–34–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–1370–N]

Medicare Program; The Practicing Physicians Advisory Council's Request for Nominations

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Notice.

SUMMARY: This notice invites all organizations representing physicians to submit nominees for membership on the Council. There will be several vacancies on the Council as of February 28, 2004.

DATES: Nominations will be considered if received at the appropriate address, no later than 5 p.m. (EST) December 26, 2003.

ADDRESSES: Mail or deliver nominations to the following address: Centers for Medicare & Medicaid Services, Center for Medicare Management, Division of Provider Relations and Evaluations, Attention: Cheryl L. Slay, Designated Federal Official, Practicing Physicians Advisory Council, 7500 Security Boulevard, Mail Stop C4–11–27, Baltimore, MD 21244–1850.

FOR FURTHER INFORMATION CONTACT: Kenneth Simon, M.D., Executive Director, Practicing Physicians Advisory Council, 7500 Security Boulevard, Mail Stop C4–10–07, Baltimore, MD 21244–1850, (410) 786–3377. Please refer to the CMS Advisory Committees Information Line: (1–877–449–5659 toll free)/(410–786–9379 local) or the Internet at *http://www.cms.hhs.gov/faca/ppac/default.asp* for additional information and updates on committee activities. News media representatives must contact the CMS Press Office, (202) 690–6145.

SUPPLEMENTARY INFORMATION: The Secretary of the Department of Health and Human Services (the Secretary) is mandated by section 1868 of the Social Security Act (the Act) to appoint a Practicing Physicians Advisory Council (the Council) based on nominations submitted by medical organizations representing physicians. The Council meets quarterly to discuss certain proposed changes in regulations and carrier manual instructions related to physicians' services, as identified by the Secretary. To the extent feasible and consistent with statutory deadlines, the consultation must occur before publication of the proposed changes. The Council submits an annual report on its recommendations to the Secretary and the Administrator of the Centers for Medicare & Medicaid Services not later than December 31 of each year.

The Council consists of 15 physicians, each of whom has submitted at least 250 claims for physicians' services under Medicare in the previous year. Members of the Council include both participating and nonparticipating physicians, and physicians practicing in rural and underserved urban areas. At least 11 members of the Council must be physicians described in section 1861(r)(1) of the Act; that is, State-licensed doctors of medicine or osteopathy. The remaining 4 members may include dentists, podiatrists, optometrists, and chiropractors. Members serve for overlapping 4-year terms; terms of more than 2 years are contingent upon the renewal of the Council by appropriate action before its termination. Section 1868(a) of the Act provides that nominations to the Secretary for Council membership must be made by medical organizations representing physicians.

The Council held its first meeting on May 11, 1992. The current members are: James Bergeron, M.D.; Ronald Castallanos, M.D.; Rebecca Gaughan, M.D.; Carlos R. Hamilton, M.D.; Joseph Heyman, M.D.; Dennis K. Iglar, M.D.; Christopher Leggett, M.D.; Joe Johnson, D.O.; Barbara McAneny, M.D.; Angelyn L. Moultrie-Lizana, D.O.; Laura B. Powers, M.D.; Michael T. Rapp, M.D.; Amilu Rothhammer, M.D.; Robert L. Urata, M.D.; and Douglas L. Wood, M.D.

This notice serves as an invitation to all organizations representing physicians to submit nominees for membership on the Council. Each nomination must state that the nominee has expressed a willingness to serve as a Council member and must be accompanied by a short résumé or description of the nominee's experience. To permit an evaluation of possible sources of conflicts of interest, potential candidates will be asked to provide detailed information concerning financial holdings, consultant positions, research grants, and contracts. Section 1868(b) of the Act provides that the Council meet quarterly to discuss certain proposed changes in regulations and manual issuances that relate to physicians' services, as identified by the Secretary. Council members are expected to participate in all meetings. Section 1868(c) of the Act provides for payment of expenses and a per diem allowance for Council members at a rate equal to payment provided members of other advisory committees. In addition to making these payments, the Department of Health and Human Services/Centers for Medicare & Medicaid Services provides management and support services to the Council. The Secretary will appoint new members to the Council from among those candidates determined to have the expertise required to meet specific agency needs and in a manner to ensure appropriate balance of the Council's membership.

Authority: (Section 1868 of the Social Security Act (42 U.S.C. 1395ee) and section 10(a) of Public Law 92–463 (5 U.S.C. App. 2, sections 10(a) and 14)

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: December 8, 2003.

Thomas A. Scully,

Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. 03–30791 Filed 12–12–03; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

SES Performance Review Board

ACTION: Notice.

SUMMARY: Notice is hereby given of the appointment of members of the CMS Senior Executive Service (SES) Performance Review Board.

EFFECTIVE DATE: December 8, 2003.

FOR FURTHER INFORMATION CONTACT: Donna Mueller, Executive Resources Management Team, Office of Operations Management, Centers for Medicare and Medicaid Services, C2–12–16, 7500 Security Boulevard, Baltimore, MD 21244–1850, (410) 786–5554.

SUPPLEMENTARY INFORMATION: Section 4314(c) (1) through (5) of Title 5, U.S.C., requires each agency to establish, in accordance with regulations prescribed by the Office of Personnel Management, one or more SES performance review boards. The purpose of the board is to provide fair and impartial review of the initial appraisal prepared by the senior executive's immediate supervisor; to make recommendations to the appointing authority regarding the performance of the senior executive; and to make recommendations for monetary performance awards. Composition of the specific PRB will be determined on an ad hoc basis from among the individuals listed below:

Gale Arden, Director, Private Health Insurance Group
Gary Bailey, Deputy Director for Health Plans, Center for Beneficiary Choices
Dara Bendavid, Deputy Director, Office of Financial Management
Judith Berek, Senior Advisor on National Policy Implementation
Charlene Brown, Deputy Director, Center for Medicaid and State Operations
Gregory Carson, Director, Medicare Contractor Management
Rose Crum-Johnson, Atlanta Regional Administrator
James R. Farris, Dallas Regional Administrator
Jeffrey Flick, San Francisco Regional Administrator
Robert Foreman, Director, Office of Legislation
Richard Foster, Chief Actuary/Director Office of the Actuary
Wallace Fung, Deputy Director (Technology)
Jacqueline Garner, Chicago Regional Administrator
Thomas L. Grissom, Director, Center for Medicare Management
Thomas Gustafson, Deputy Director, Center for Medicare Management
Stuart Guterman, Director, Office of Research, Development and Information
Thomas Hamilton, Director, Office of Survey and Certification
Timothy B. Hill, Director, Office of Financial Management
Gary Kavanagh, Director, Business Systems Operations Group
Carmen Keller, Director, Office of Medicare Adjudication
James Kerr, New York Regional Administrator
Thomas Kickham, Director, Partnership and Promotion Group
Mary Laureno, Director, Beneficiary Information Services Group
Timothy Love, Director, Office of Information Services
Sonia A. Madison, Philadelphia Regional Administrator
Gail McGrath, Director, Center for Beneficiary Choices
Michael McMullan, Deputy Director, Center for Beneficiary Choices
Regina McPhillips, Director, Beneficiary Education and Analysis Group
Solomon Mussey, Director, Office of Medicare and Medicaid Cost Estimates Group
Leslie V. Norwalk, Acting Deputy Administrator, Chair
Elizabeth Richter, Director, Hospital and Ambulatory Policy Group
Jean Sheil, Director, Family and Children's Health Program Group
Dennis Smith, Director, Center for Medicaid and State Operations
Robert A. Streimer, Deputy Director, Office of Clinical Standards and Quality
Stewart Streimer, Director, Provider Billing Group
Dallas Sweezy, Director, Public Affairs Office
Deborah Taylor, Deputy Director, Office of Financial Management
Joe Tilghman, Kansas City Regional Administrator
Alexander Trujillo, Denver Regional Administrator
Sean Tunis, Director, Office of Clinical Standards and Quality
Jacqueline White, Director, Office of Strategic Operations and Regulatory Affairs
Laurence Wilson, Director, Chronic Care Policy Group
Charlotte Yeh, Boston, Regional Administrator

Dated: December 2, 2003.

Leslie V. Norwalk,

Acting Deputy Administrator and Chief Operating Officer, Centers for Medicare & Medicaid Services.

[FR Doc. 03–30792 Filed 12–12–03; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2003D–0554]

Compliance Policy Guide Sec. 110.310—"Prior Notice of Imported Food Under the Public Health Security and Bioterrorism Preparedness and Response Act of 2002"; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a Compliance Policy Guide (CPG) Sec. 110.310 entitled "Prior Notice of Imported Food Under the Public Health Security and Bioterrorism Preparedness and Response Act of 2002." The CPG provides written guidance to FDA's and Customs and Border Protection's (CBP's) staff on enforcement of section 307 of the Public Health Security and Bioterrorism Preparedness and Response Act of 2002 (the Bioterrorism Act) and the agency's implementing regulations, which require, beginning on December 12, 2003, prior notice for all food imported or offered for import into the United States.

DATES: This guidance is final upon the date of publication. However, you may submit written or electronic comments at any time.

ADDRESSES: Submit written requests for single copies of the guidance to the Division of Compliance Policy (HFC–230), Office of Enforcement, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857. Send one self-addressed adhesive label to assist that office in processing your request or include a fax number to which the guidance may be sent.

Submit written comments on the guidance to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.fda.gov/dockets/ecomments*. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

FOR FURTHER INFORMATION CONTACT: Joe McCallion, Office of Regulatory Affairs, Food and Drug Administration, (301) 443–6553 or Ted Poplawski, Office of Regulatory Affairs, Food and Drug Administration, (301) 443–6553.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of CPG Sec. 110.310 entitled "Prior Notice of Imported Food Under the Public Health Security and Bioterrorism Preparedness and Response Act of 2002." This guidance is issued jointly with CBP and explains to FDA and CBP staff the FDA and CBP policies on enforcement of section 307 of the Bioterrorism Act and its implementing regulations, which require, beginning on December 12, 2003, prior notice to FDA of all food imported or offered for import into the United States. (68 FR 58974 (Oct. 10, 2003) (to be codified at 21 CFR 1.276–1.285).)

FDA is issuing this document as level 1 guidance consistent with FDA's good guidance practices regulation (21 CFR 10.115). The CPG Sec. 110.310 is being implemented immediately without prior public comment, under § 10.115(g)(2), because the agency has determined that prior public participation is not feasible or appropriate. Under section 307 of the Bioterrorism Act, the prior notice requirements are effective December 12, 2003, making it urgent that the agencies explain how they intend to enforce those requirements.

II. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments on the guidance document. Submit two copies of written comments, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The guidance and received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

III. Electronic Access

An electronic version of this guidance is available on the Internet at *http://www.fda.gov/ora* under "Compliance References."

Dated: December 10, 2003.

John M. Taylor, III,

Associate Commissioner for Regulatory Affairs, Food and Drug Administration.

Jayson P. Ahern,

Assistant Commissioner, Office of Field Operations, U.S. Customs and Border Protection.

[FR Doc. 03–30920 Filed 12–11–03; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Recruitment of Sites for Assignment of Corps Personnel

AGENCY: Health Resources and Services Administration (HRSA), HHS.

ACTION: General notice.

SUMMARY: The Health Resources and Services Administration (HRSA) announces that the listing of entities, and their Health Professional Shortage Area (HPSA) scores, that will receive priority for the assignment of National Health Service Corps (NHSC) personnel (Corps Personnel) for the period July 1, 2003, through June 30, 2004, is posted on the NHSC Web site at *http://nhsc.bhpr.hrsa.gov/resources/fedreg-hpol/*. This list specifies which entities are eligible to receive assignment of Corps members who are participating in the NHSC Scholarship Program; the NHSC Loan Repayment Program; and Corps members who have become Corps members other than pursuant to contractual obligations under the Scholarship or Loan Repayment Programs. Please note that not all vacancies associated with sites on this list will be for Corps members, but could be for individuals serving an obligation to the NHSC through the Private Practice Option.

Eligible HPSAs and Entities

To be eligible to receive assignment of Corps personnel, entities must: (1) Have a current HPSA designation by the Shortage Designation Branch in the National Center for Workforce Analysis, Bureau of Health Professions, Health Resources and Services Administration; (2) enter into an agreement with the State agency that administers Medicaid, accept payment under Medicare and the State Children's Health Insurance Program, see all patients regardless of their ability to pay, and use and post a discounted fee plan; and (3) be determined by the Secretary to have (a) a need and demand for health manpower in the area; (b) appropriately and efficiently used Corps members assigned to the entity; (c) general community support for the assignment of Corps members; (d) made unsuccessful efforts to recruit; and (e) a reasonable prospect for sound fiscal management by the entity with respect to Corps members assigned there. Priority in approving applications for assignment of Corps members goes to sites that (1) provide primary, mental or oral health services to a HPSA of greatest shortage; (2) are part of a system of care that provides a continuum of services, including comprehensive primary health care and appropriate referrals or arrangements for secondary and tertiary care; (3) have a documented record of sound fiscal management; and (4) will experience a negative impact on its capacity to provide primary health services if a Corps members is not assigned to the entity.

Entities that receive assignment of Corps personnel must assure that (1) the vacancy will permit the full scope of practice and that the clinician meets the credentialing requirements of the State and site; and (2) the Corps member assigned to the entity is engaged in full-time clinical practice for a minimum of 40 hours per week with at least 32 hours in the ambulatory care setting. Obstetricians/gynecologists and certified nurse midwives (CNMs) are required to engage in a minimum of 21 hours per week of outpatient clinical practice. The remaining hours, making up the 40-hour per week total, include delivery and other clinical hospital-based duties. Time spent on-call does not count toward the 40 hours per week. In addition, sites receiving assignment of Corps personnel are expected to (1) report to the NHSC all absences in excess of the authorized number of days (up to 35 days or 280 hours); (2) report to the NHSC any change in the status of an NHSC clinician at the site; (3) provide the time and leave records, schedules, and any related personnel documents (including documentation, if applicable, of the reason(s) for the termination of an NHSC clinician's employment at the site prior to his or her obligated service end date); and (4) submit a Uniform Data System (UDS) report. This system allows the site to assess the age, sex, race/ethnicity and provider encounter records for its user population. The UDS reports are site specific. Providers fulfilling NHSC commitments are assigned to a specific site or, in some cases, more than one site. The scope of activity to be reported in UDS includes all activity at the site(s) to which the Corps member is assigned.

Evaluation and Selection Process

In approving applications for the assignment of Corps members, the Secretary shall give priority to any such application that is made regarding the provision of primary health services to a health professional shortage area with the greatest such shortage. For the program year July 1, 2003—June 30, 2004, HPSAs of greatest shortage for determination of priority for assignment of Corps personnel will be defined as follows: (1) Primary care HPSAs with a score of 14 and above are authorized for the assignment of Corps members who are family nurse practitioners or primary care physicians participating in the Scholarship Program; (2) mental health HPSAs with a score of 18 and above are authorized for the assignment of Corps members who are physician psychiatrists participating in the Scholarship Program; (3) dental HPSAs with a score of 18 and above are authorized for the assignment of Corps members who are dentists participating in the Scholarship Program; (4) all primary care HPSAs are authorized for the assignment of Corps members who are physician assistants (PAs) or CNMs participating in the Scholarship Program; and (5) HPSAs (appropriate to each discipline) with scores of 14 and above will receive authorization for the assignment of Corps members who are participating in the Loan Repayment Program. HPSAs with scores below 14 will be eligible to receive assignment of Corps personnel participating in the Loan Repayment Program only after assignments are made of those Corps members matching to those HPSAs receiving the priority for placement of Corps members through the Loan Repayment Program. Placements made through the Loan Repayment Program in HPSAs with scores 13 or below will be made by decreasing HPSA score, only to the extent funding remains available. All sites on the list are eligible sites for individuals wishing to serve in an underserved area but who are not contractually obligated under the Scholarship or Loan Repayment Program. A listing of HPSAs and their scores is posted at *http://belize.hrsa.gov/newhpsa/newhpsa.cfm.*

Sites qualifying for an automatic HPSA designation are currently unscored. A methodology to score these automatic HPSAs is currently being developed. Sites on the list with an unscored HPSA designation are authorized for the assignment of Corps personnel who are PAs or CNMs participating in the Scholarship Program. Unscored HPSAs are eligible to receive assignment of Corps personnel participating in the Loan Repayment Program only after assignments are made of those Corps members matching to scored HPSAs. When automatic HPSAs receive scores, these sites will then be authorized to receive assignment of Corps members if they meet the criteria outlined above and their newly assigned scores are above the stated cutoffs.

The number of new NHSC placements through the Scholarship and Loan Repayment programs allowed at any one site are limited to the following:

(1) Primary Health Care

(a) *Loan Repayment Program*—no more than 2 physicians (MD or DO); and no more than a combined total of 2 nurse practitioners (NPs), PAs, or CNMs.

(b) *Scholarship Program*—no more than 2 physicians (MD or DO); and no more than a combined total of 5 NPs, PAs or CNMS.

(2) Dental

(a) *Loan Repayment Program*—no more than 2 dentists and 2 dental hygienists.

(b) *Scholarship Program*—no more than 1 dentist.

(3) Mental Health

(a) *Loan Repayment Program*—no more than 2 psychiatrists (MD or DO); and no more than a combined total of 2 clinical or counseling psychologists; licensed clinical social workers, licensed professional counselors, marriage and family therapists, or psychiatric nurse specialists.

(b) *Scholarship Program*—no more than 2 psychiatrists.

Application Requests, Dates and Address

The list of HPSAs and entities that are eligible to receive priority for the placement of Corps personnel may be updated periodically. Entities that no longer meet eligibility criteria, including HPSA score, will be removed from the priority listing. Entities interested in being added to the high priority list must submit an NHSC Recruitment and Retention Assistance Application to: National Health Service Corps, 5600 Fishers Lane, Room 8A–55, Rockville, MD 20857, fax 301–594–2721. These applications must be submitted on or before the deadline date of March 26, 2004. Applications submitted after this deadline date will be considered for placement on the priority placement list in the following program year. Any changes to this deadline will be posted on the NHSC Web site at *http://nhsc.bhpr.hrsa.gov.*

Additional Information

Entities interested in receiving application materials may do so by calling the NHSC call center at 1–800–221–9393. They may also get information and download application materials from: *http://nhsc.bhpr.hrsa.gov/applications/rraa.cfm.*

Entities wishing to provide additional data and information in support of their inclusion on the high priority placement list, must do so in writing no later than January 14, 2004. This information should be submitted to the National Health Service Corps, 5600 Fishers Lane, Room 8A–55, Rockville, MD 20857. This information will be considered in preparing the final list of HPSAs and entities eligible to receive priority for the assignment of Corps personnel.

Paperwork Reduction Act: The Recruitment & Retention Assistance Application has been approved by the Office of Management and Budget under the Paperwork Reduction Act. The OMB clearance number is 0915–0230.

The program is not subject to the provision of Executive Order 12372, Intergovernmental Review of Federal Programs (as implemented through 45 CFR part 100).

Dated: December 9, 2003.

Elizabeth M. Duke,

Administrator.

[FR Doc. 03–30820 Filed 12–12–03; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[USCG–2003–16675]

Random Drug-Testing Rate for Covered Crewmembers; Calendar Year 2004

AGENCY: Coast Guard, DHS.

ACTION: Notice of minimum random drug-testing rate.

SUMMARY: The Coast Guard has set the calendar year 2004 minimum random chemical drug-testing rate at 50 percent of covered crewmembers. An evaluation of the 2002 Management Information System (MIS) data collection forms submitted by marine employers showed that random drug testing on covered crewmembers for the calendar year 2002 resulted in positive test results 1.63 percent of the time. Therefore, we will maintain the minimum random drug-testing rate at 50 percent of covered crewmembers for the calendar year 2004.

DATES: The minimum random drug-testing rate is effective January 1, 2004 through December 31, 2004. You must submit your 2003 MIS reports by March 15, 2004.

ADDRESSES: The annual MIS report may be submitted in writing to Commandant (G–MOA), U.S. Coast Guard Headquarters, 2100 Second Street SW., Room 2404, Washington, DC 20593–0001 or by electronic submission to the following Internet address: *http://www.uscg.mil/hq/g-m/moa/dapip.htm.*

FOR FURTHER INFORMATION CONTACT: For questions about this notice, please contact Mr. Robert C. Schoening, Drug and Alcohol Program Manager, Office of Investigations and Analysis (G–MOA), U.S. Coast Guard Headquarters, telephone (202) 267–0684. If you have questions on viewing the docket, call Andrea M. Jenkins, Program Manager, Dockets Operations, Department of Transportation, telephone (202) 366–0271.

SUPPLEMENTARY INFORMATION: Under 46 CFR 16.230, the Coast Guard requires marine employers to establish random drug testing programs for covered crewmembers on inspected and uninspected vessels. Marine employers are required to collect and maintain a record of drug testing program data for each calendar year, January 1 through December 31 and must submit this data by March 15 of the following year to the Coast Guard in an annual MIS report. You may either submit your own MIS report or have a consortium or other employer representative submit the data in a consolidated MIS report. The Coast Guard uses the chemical drug testing data to develop its policies for deterring and detecting illegal drug use in the maritime industry.

Because 2002 MIS data shows that the positive results from random testing are greater than one percent industry-wide (1.63 percent), the Coast Guard's minimum random drug testing rate will remain at 50 percent of covered employees for the period of January 1, 2004, through December 31, 2004, in accordance with 46 CFR 16.230(e).

Each year we will publish a notice reporting the results of the previous calendar year's MIS data and the minimum annual percentage rate for random chemical drug testing for the next calendar year.

Dated: December 4, 2003.

Howard L. Hime,

Acting Director of Standards.

[FR Doc. 03–30904 Filed 12–12–03; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1498–DR]

California; Amendment No. 3 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of California (FEMA–1498–DR), dated October 27, 2003, and related determinations.

EFFECTIVE DATE: December 2, 2003.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this disaster is closed effective December 2, 2003.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individual and Household Housing; 97.049, Individual and Household Disaster Housing Operations; 97.050 Individual and Household Program—Other Needs, 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.

[FR Doc. 03–30863 Filed 12–12–03; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1501–DR]

Puerto Rico; Amendment No. 2 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the Commonwealth of Puerto Rico (FEMA–1501–DR), dated November 21, 2003, and related determinations.

EFFECTIVE DATE: November 23, 2003.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this disaster is closed effective November 23, 2003.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individual and Household Housing; 97.049, Individual and Household Disaster Housing Operations; 97.050 Individual and Household Program—Other Needs, 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.

[FR Doc. 03–30867 Filed 12–12–03; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1501–DR]

Puerto Rico; Amendment No. 4 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the Commonwealth of Puerto Rico (FEMA–1501–DR), dated November 21, 2003, and related determinations.

EFFECTIVE DATE: December 4, 2003.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the Commonwealth of Puerto Rico is hereby amended to include the Public Assistance program for the following areas among those areas determined to

have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of November 21, 2003:

The municipalities of Cayey, Ceiba, Coamo, Juncos, Sabana Grande, San German, San Lorenzo, and Utuado for Public Assistance.

The municipalities of Guanica, Guayama, Lajas, Luquillo, Maunabo, Naguabo, Patillas, Salinas, Yabucoa, and Yauco for Public Assistance (already designated for Individual Assistance.)

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individual and Household Housing; 97.049, Individual and Household Disaster Housing Operations; 97.050 Individual and Household Program-Other Needs, 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.

[FR Doc. 03–30868 Filed 12–12–03; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1500–DR]

West Virginia; Amendment No. 3 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of West Virginia (FEMA–1500–DR), dated November 21, 2003, and related determinations.

EFFECTIVE DATE: December 1, 2003.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of West Virginia is hereby amended to include the following area among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of November 21, 2003:

Harrison County for Individual Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individual and Household Housing; 97.049, Individual and Household Disaster Housing Operations; 97.050 Individual and Household Program-Other Needs, 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.

[FR Doc. 03–30864 Filed 12–12–03; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1500–DR]

West Virginia; Amendment No. 4 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of West Virginia (FEMA–1500–DR), dated November 21, 2003, and related determinations.

EFFECTIVE DATE: December 1, 2003.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of West Virginia is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of November 21, 2003:

Calhoun, Fayette, Gilmer, Greenbrier, Marion, McDowell, Mercer, Monroe, Nicholas, Putnam, Raleigh, Summers, Webster, Wetzel, and Wyoming Counties for Public Assistance (already designated for Individual Assistance).

Barbour, Braxton, Doddridge, Lewis, Marshall, Pendleton, Pocahontas, Ritchie, Taylor, and Upshur Counties for Public Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance, 97.048, Individual and Household Housing; 97.049, Individual and Household Disaster Housing Operations; 97.050, Individual and Household Program—Other Needs 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.

[FR Doc. 03–30865 Filed 12–12–03; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1500–DR]

West Virginia; Amendment No. 5 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of West Virginia (FEMA–1500–DR), dated November 21, 2003, and related determinations.

EFFECTIVE DATE: November 30, 2003.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this disaster is closed effective November 30, 2003.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individual and Household Housing; 97.049, Individual and Household Disaster Housing Operations; 97.050, Individual and Household Program—Other Needs; 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.

[FR Doc. 03–30866 Filed 12–12–03; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Immigration and Customs Enforcement

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: 30-day notice of information collection under review: application—Alternative Inspection Services; Forms I–823 and I–823F.

The Department of Homeland Security (DHS), U.S. Immigration and Customs Enforcement (ICE), has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection was previously published in the **Federal Register** on October 2, 2003 at 68 FR 56848. The notice allowed for a 60-day public comment period. No public comments were received by the ICE on the extension of this proposed information collection.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until January 14, 2004. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Department of Homeland Security Desk Officer, 725—17th Street, NW., Room 10235, Washington, DC 20530.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection of techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Application—Alternative Inspection Services and FAST Commercial Driver Application.

(2) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Forms I–823 and 823F. U.S. Immigration and Customs Enforcement, Department of Homeland Security.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individual or households. The information collected on these forms will be used by the DHS to determine eligibility for automated inspections programs and to secure those data elements necessary to confirm enrollment at the time of application for admission to the United States.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 250,000 Form I–823 responses at 70 minutes (1.166 hours) per response; and 25,000 Form 823F responses at 30 minutes (.50 hours) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 304,000 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan (202) 514–3291, Director, Regulations and Forms Services Division, Department of Homeland Security, Room 4304, 425 I Street, NW., Washington, DC 20536. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

If additional information is required contact: Mr. Steve Cooper, PRA Clearance Officer, Department of Homeland Security, Office of the Chief Information Officer, Regional Office Building 3, 7th and D Streets, SW., Suite 4636–26, Washington, DC 20202.

Dated: December 9, 2003.

Richard A. Sloan,

Department Clearance Officer, Department of Homeland Security, U.S. Immigration and Customs Enforcement.

[FR Doc. 03–30869 Filed 12–12–03; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF HOMELAND SECURITY

Immigration and Customs Enforcement

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: 30-Day Notice of Information Collection Under Review: Arrival Record, Form I–94AOT.

The Department of Homeland Security, U.S. Immigration and Customs Enforcement (ICE) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection was previously published in the **Federal Register** on September 25, 2003 at 68 FR 55408, allowing for a 60-day public comment period. No comments were received by the ICE on this proposed information collection.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until January 14, 2004. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Department of Homeland Security Desk Officer, 725–17th Street NW., Room 10235, Washington, DC 20530.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Arrival Record.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form I–94AOT, U.S. Immigration and Customs Enforcement.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or Households. The information collected is captured electronically as part of a pilot program established by the legacy Immigration and Naturalization Service in cooperation with two participating carriers to streamline document handling and data processing. The information collected will be used by the DHS to document an alien's arrival and departure to and from the United States and may be evidence of registration under certain provisions of the Immigration and Nationality Act.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 25,000 responses at 3 minutes (.05 hours) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 1,250 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan (202) 514–3291, Director, Regulations and Forms Services Division, Department of Homeland Security, Room 4034, 425 I Street NW., Washington, DC 20536. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

If additional information is required contact: Mr. Steve Cooper, PRA Clearance Officer, Department of Homeland Security, Office of Chief Information Officer, Regional Office Building 3, 7th and D Streets SW, Suite 44636–26, Washington, DC 20202.

Dated: December 9, 2003.

Richard A. Sloan,

Department Clearance Officer, Department of Homeland Security, U.S. Immigration and Customs Enforcement.

[FR Doc. 03–30870 Filed 12–12–03; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4820–N–49]

Notice of Proposed Information Collection: Comment Request; Application Submission Requirements—Section 202 Supportive Housing for the Elderly

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: Comments Due Date: February 13, 2004.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Wayne Eddins, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410, telephone (202) 708–3000 (this is not a toll free number) for copies of the proposed forms and other available information.

SUPPLEMENTARY INFORMATION: The Department is submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including the use of appropriate automated collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Application Submission Requirements—Section 202 Supportive Housing for the Elderly.

OMB Control Number, if applicable: 2502–0267.

Description of the need for the information and proposed use: The collection of this information is necessary to the Department to assist HUD in determining applicant eligibility and ability to develop housing for the elderly within statutory and program criteria. A thorough evaluation of an applicant's submission is necessary to protect the Government's financial interest.

Agency form numbers, if applicable: HUD–92015–CA, HUD–424, SF LLL, HUD–50071, HUD–424–B, HUD–2880, HUD–2991,HUD–92041, HUD–92042, HUD–2990, HUD–2530.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: The estimated total number of burden hours needed to prepare the information collection is 16,456; the number of respondents is 400 generating approximately 400 annual responses; the frequency of response is on occasion; and the estimated time needed to prepare the response varies from 6 minutes to 22 hours.

Status of the proposed information collection: Extension of a currently approved collection.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C., Chapter 35, as amended.

Dated: December 10, 2003.

Sean G. Cassidy,

General Deputy Assistant Secretary for Housing-Deputy Federal Housing Commissioner.

[FR Doc. 03–30842 Filed 12–12–03; 8:45 am]

BILLING CODE 4210–27–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4820–N–50]

Notice of Proposed Information Collection; Comment Request; Mortgage Insurance Termination; Application for Premium Refund or Distributive Share Payment

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* February 13, 2004.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Wayne Eddins, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, SW., L'Enfant Plaza Building, Room 8003, Washington, DC 20410 or *Wayne_Eddins@hud.gov.*

FOR FURTHER INFORMATION CONTACT: For information concerning Mortgage Insurance Termination contact Silas C. Vaughn, Jr., Chief, Data Quality Section; Single Family Insurance Operations Division (SFIOD), telephone (202) 708–1994 x3545 (this is not a toll free number) or for information concerning Form HUD–27050–B, Application for Premium Refund or Distributive Share, contact Lillie M. Watson, Chief, Disbursements Branch, SFIOD, telephone (202) 708–1233 x3305 (this is not a toll-free number) Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410.

SUPPLEMENTARY INFORMATION: The Department is submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of collection of information on those who are to respond; including the use of appropriate automated collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses. This notice also lists the following information:

Title of Proposal: Mortgage Insurance Termination; Application for Premium Refund or Distributive Share Payment.

OMB Control Number, if applicable: 2502–0414.

Description of the need for the information and proposed use: The information collection for the Mortgage Insurance Termination is used by Federal Housing Administration (FHA) approved mortgages to comply with HUD requirements fro reporting the termination of FHA mortgage insurance on single family dwellings (24 CFR 203.318). The form HUD–27050–A is now obsolete. However, the information collection is still in effect and is collected electronically through Electronic Data Interchange and via FHA Connection. The Application for Premium Refund or Distributive Share Payment is used by former FHA mortgagors to apply for homeowner refunds of the unearned portion of the mortgage insurance premium or a distributive share payment (24 CFR 203.423, 24 CFR 203.283, and 24 CFR 203.284).

Agency form numbers, if applicable: HUD–27050–A (Submitted electronically) and HUD–27050–B (System generated).

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response:

Information collection	Respondents	Total annual responses	Hours per response	Total annual hours
Mortgage Insurance Termination	6,000	1,570,001	.08	125,600
HUD–27050–B	1,500,000	1,500,000	.25	375,000
Totals	1,506,000	3,070,001		500,600

Status of the proposed information collection: Extension of a currently approved collection.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C. chapter 35, as amended.

Dated: December 10, 2003.

Sean G. Cassidy,

General Deputy Assistant Secretary for Housing-Deputy Federal Housing Commissioner.

[FR Doc. 03–30843 Filed 12–12–03; 8:45 am]

BILLING CODE 4210–27–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4800–FA–10]

Notice of Funding Awards; Mainstream Housing Opportunities for Persons With Disabilities (Mainstream Program) for Fiscal Year 2003

AGENCY: Office of Public and Indian Housing, HUD.

ACTION: Announcement of funding awards.

SUMMARY: In accordance with Section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, this announcement notifies the public of funding decisions made by the Department for funding under the Notice of Funding Availability (NOFA) for the Mainstream Program for Fiscal Year (FY) 2003. This announcement contains the consolidated names and addresses of those award recipients selected for funding based on the rating and ranking of all applications and the allocation of funding available for each state.

FOR FURTHER INFORMATION CONTACT: For questions concerning the FY2003 Mainstream awards, contact the Office of Public and Indian Housing's Grant

Management Center, Director, Iredia Hutchinson, Department of Housing and Urban Development, Washington, DC 20410–5000, telephone (202) 358–0221. For the hearing- or speech-impaired, these numbers may be accessed via TTY (text telephone) by calling the Federal Information Relay Service at 1 (800) 877–8339. (Other than the "800" TTY number, these telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION: The authority for the $53.6 million in five-year budget authority and approximately 1,800 vouchers for use in the housing of elderly and non-elderly disabled families is found in the Departments of Veteran Affairs and Housing and Urban Development and Independent Agencies Appropriations Act, FY 2003 (Pub. L. 108). The allocation of housing assistance budget authority is pursuant to the provisions of 24 CFR part 791, subpart D, implementing section 213(d) of the Housing and Community Development Act of 1974, as amended.

This program is intended to provide vouchers under the Housing Choice Voucher Program to enable people with disabilities (elderly and non-elderly) to access affordable private money. The FY 2003 awards announced in this notice were selected for funding in a competition announced in a **Federal Register** NOFA published on April 25, 2003 (68 FR 21905). Applications were scored based on the selection criteria in that notice and funding selections made based on the rating and ranking of applications within each state.

In accordance with Section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989 (103 Stat. 1987, 42 U.S.C. 3545), the Department is publishing the names, addresses, and amounts of the 771 awards made under the Mainstream Program competitions.

Dated: December 3, 2003.

Michael Liu,

Assistant Secretary for Public and Indian Housing.

LIST OF AWARDEES FOR FUNDING AWARDS FOR THE HOUSING CHOICE VOUCHERS MAINSTREAM PROGRAM

[Fiscal Year 2003]

Applicant name	Address	Vouchers	Amount (dollars)
Jefferson County Housing Authority	3700 Industrial Parkway, Birmingham, Alabama 35217	50	$1,372,170
Arizona Behavioral Health Corporation	1406 North Second Street, Phoenix, Arizona 85004	50	1,562,070
Anaheim Housing Authority	201 S. Anaheim Boulevard, Second Floor, Anaheim, California 92805.	50	2,200,680
Housing Authority of the City of Fresno	1331 Fulton Mall, P.O. Box 11985, Fresno, California 93776–1985.	42	1,063,717
Housing Authority of the County of San Diego	c/o Michael Dececchi, 3989 Ruffin Road, San Diego, California 92123.	50	2,072,490
Colorado Department of Human Services	4131 S. Julian Way, Denver, Colorado 80236	50	1,483,290
Colorado Division of Housing	1313 Sherman Street, Room 518, Denver, Colorado 80203	50	1,776,930
Boley Centers for Behavioral Health Care, Inc.	455 31st Street N., St. Petersburg, Florida 33713	31	917,519
Broward County Housing Authority	3810 Inverrary Blvd., Suite 405, Lauderhill, Florida 33319	50	2,237,310
Carrfour Supportive Housing	155 South Miami Avenue, #1150, Miami, Florida 33131	50	2,188,150
Housing Authority of the City of Atlanta	230 John Wesley Dobbs Avenue, NE, Atlanta, Georgia 30303–2429.	50	2,130,000
Chicago Housing Authority	626 W. Jackson Boulevard, Chicago, Illinois 60661	50	2,035,080
Housing Authority of the Village of Oak Park	21 South Boulevard, Oak Park, Illinois 60302	50	1,954,770
American Training, Inc.	102 Glenn Street, Lawrence, Massachusetts 01843	50	2,674,000
Brockton Area Multi-Services, Inc.	500 Belmont Street, Suite 230, Brockton,Massachusetts 02301.	14	625,400
Greater Lynn Mental Health and Retardation	37 Friend Street, P.O. Box 408, Lynn, Massachusetts,01903	50	2,049,750 408
Community Enterprises Corporation, Inc.	11 Spring Street, Freehold, New Jersey 07728	50	1,988,430
Jersey City Episcopal Community Development Corporation.	118 Summit Avenue, Jersey City, New Jersey 07304–3008	50	2,003,560
Family and Children Association	100 East Old Country Road, Mineola, New York 11501	50	2,636,170
Cuyahoga Metropolitan Housing Authority	1441 West 25th Street, Cleveland, Ohio 44113	50	1,715,490
Emerald Development & Economic Network (EDEN), Inc..	7812 Madison Ave., Cleveland, Ohio 44102	50	1,740,490
1260 Housing Development Corporation	2042–48 Arch Street, 2nd Floor, Philadelphia, Pennsylvania 19103.	50	1,963,240
Allegheny County Housing Authority	625 Stanwix Street, Pittsburgh, Pennsylvania 15222	49	1,220,100
Philadelphia Housing Authority	12 South 23rd Street, Philadelphia, Pennsylvania 19103	50	1,938,240
Tennessee Housing Development Agency	404 James Robertson Parkway, Suite 1114, Nashville, Tennessee 37243–0900.	50	1,222,110
Housing Authority of the City of Houston	P.O. Box 2971, Houston, Texas 77252–2971	50	1,773,210
The Housing Authority of the City of Dallas, Texas.	3939 N. Hampton Road, Dallas, Texas 75212	50	2,216,160
King County Housing Authority	600 Andover Park West, Seattle, Washington 98188	50	2,223,090

[FR Doc. 03–30903 Filed 12–12–03; 8:45 am]
BILLING CODE 4210–33–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–921–04–1320–EL; COC 66514]

Notice of Coal Lease Offering by Sealed Bid; COC 66514

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of competitive coal lease sale.

SUMMARY: Bureau of Land Management, Colorado State Office, Lakewood, Colorado, hereby gives notice that certain coal resources in the lands hereinafter described in Garfield County, Colorado, will be offered for competitive lease by sealed bid in accordance with the provisions of the Mineral Leasing Act of 1920, as amended (30 U.S.C. 181 *et seq.*).

DATES: The lease sale will be held at 11 a.m., Tuesday, January 6, 2004. Sealed bids must be submitted no later than 10 a.m., Tuesday, January 6, 2004.

ADDRESSES: The lease sale will be held in the Conference Room, Fourth Floor, Colorado State Office, 2850 Youngfield Street, Lakewood, Colorado. Sealed bids must be submitted to the Cashier, Colorado State Office, 2850 Youngfield Street, Lakewood, Colorado 80215.

FOR FURTHER INFORMATION CONTACT: Karen Purvis at (303) 239–3795.

SUPPLEMENTARY INFORMATION: The tract will be leased to the qualified bidder submitting the highest offer that meets or exceeds the BLM's pre-sale appraisal of fair market value. The minimum bid for this tract is $100 per acre, or fraction thereof. No bid less than $100 per acre or fraction thereof will be considered. The minimum bid is not intended to represent fair market value.

Sealed bids received after the time specified above will not be considered.

In the event identical high sealed bids are received, the tying high bidders will be requested to submit follow-up bids until a high bid is received. All tie-breaking sealed bids must be submitted within 15 minutes following the Sale Official's announcement at the sale that identical high bids have been received.

The offer that is officially accepted by the BLM will be the fair market value of record for this tract.

Coal Offered: The coal resource offered is limited to coal recoverable by underground mining methods on the Spink Canyon Tract in the following lands:

T. 7 S., R. 102 W., 6th P.M.
sec. 3, lots 22, 24, & Tract. 45, lots 21, & 23;
sec. 4, lots 9, 11, 13 & Tract. 45, lots 10, 12, & 14, S½NE¼, SE¼NW¼, SW¼, and NW¼SE¼;
sec. 5, SE¼SE¼;
sec. 8, E½E½;
sec. 9, lots 2, 4, 5, 7, 10, 12, 13, 16, 17, 19, 22, & Tr. 45, lots 1, 3, 9, & 11, Tr. 37, lots 6, 8, 14, 15, 18, 20, & 21, N½NW¼, SW¼NW¼, NW¼SW¼, and E½SE¼;
sec. 10, lot 1, & Tract. 45, lot 2; SW¼NW¼, and W½SW¼.

Containing approximately 1,520.24 acres.

The total recoverable coal reserve is estimated to be 8,365,000 tons. The coal is ranked as high volatile C bituminous coal with an as-received quality of:

Btu—10,767 Btu/lb.
Moisture—8.16%
Sulfur Content—0.48%
Ash Content—13.81%

Rental and Royalty: The lease, if issued, will require payment of an annual rental of $3.00 per acre, or fraction thereof, and a royalty payable to the United States in an amount equal to 8 percent of the value of coal, as determined in accordance with 30 CFR 206, for all coal mined by underground mining methods. The value of the coal will be determined in accordance with 30 CFR 206.

Notice of Availability: Bidding instructions for the offered tract are included in the Detailed Statement of Coal Lease Sale. You may request a copy of the Detailed Statement of Coal Lease Sale, and the proposed coal lease, either in person or by mail from the BLM Colorado State Office at the address given above. The case file for the Federal coal lease tract is available for public inspection in the Public Room, BLM Colorado State Office, during normal business hours at the address given above.

Dated: November 5, 2003.

Karen Purvis,

Solid Minerals Staff, Division of Energy, Lands and Minerals.

[FR Doc. 03–30879 Filed 12–12–03; 8:45 am]
BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ES–020–03–1310–EI]

Notice of Intent To Prepare Planning Analyze/Environmental Assessments

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Notice of intent to prepare a Planning Analysis/Environmental Assessment.

SUMMARY: This document provides notice that the Bureau of Land Management (BLM), Jackson Field Office, Eastern States intends to prepare Planning Analysis/Environmental Assessment (PA/EA) to consider leasing one tract of Federal mineral estate for oil and gas exploration and development. The PA/EA will fulfill the needs and obligations set forth by the National Environmental Policy Act (NEPA), the Federal Land Policy and Management Act (FLPMA), and BLM management policies. The BLM will work collaboratively with interested parties to identify the management decisions that are best suited to local, regional, and national needs and concerns.

DATES: This notice initiatives the public scoping process. Comments on issues and planning criteria can be submitted in writing to the address listed below. Due to the limited scope of this PA/EA process, public meetings are not scheduled. BLM will, however, consider requests for one or more public meetings.

ADDRESSES: Send comments to: Bureau of Land Management, Jackson Field Office, 411 Briarwood Drive, Suite 404, Jackson, MS 39206.

FOR FURTHER INFORMATION CONTACT: John Reiss, Lead for PA/EA, Jackson Field Office, (601–977–5400).

SUPPLEMENTARY INFORMATION: The BLM has responsibility to consider nominations to lease Federal mineral estate for oil and gas exploration and development. An interdisciplinary team will be used in the preparation of the PA/EA. The preliminary issues associated with issuance of the lease for Federal Oil and Gas, as identified below, are subject to change as a result of public input. The issues are: (1) Potential impacts of oil and gas leasing and the resulting exploration and development on the surface resources as a result of leasing the federal minerals and (2) consideration of proposed restrictions (lease stipulations), involving future development of this lease (lease rights, surface use, and protection of surface resources). One PA/EA will be prepared for this tract. Tract location, along with acreage, is listed below.

Mississippi, Monroe County, Huntsville Meridian

T14S, R19W: Sec 15, 320 acres; Tract 113, Lots 2, 3, 4 and 5.

Consideration is being given to the request to lease Federal Minerals under this Tract. The Corp Of Engineers is the surface management agency and is requiring a "No Surface Occupancy Stipulation", as a condition of consent

to lease. Operations could be allowed to directionally drill a well under the tract, but will not result in surface disturbance on the tract. However, surface disturbance could occur on lands adjacent to this proposed lease.

Bruce Dawson,

Field Manager, Jackson Field Office.

[FR Doc. 03–30878 Filed 12–12–03; 8:45 am]

BILLING CODE 4310–GJ–M

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Glen Canyon Dam Adaptive Management Work Group (AMWG), Notice of Meeting

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of conference call.

SUMMARY: The Adaptive Management Program (AMP) was implemented as a result of the Record of Decision on the Operation of Glen Canyon Dam Final Environmental Impact Statement to comply with consultation requirements of the Grand Canyon Protection Act (P.L. 102–575) of 1992. The AMP provides an organization and process to ensure the use of scientific information in decision making concerning Glen Canyon Dam operations and protection of the affected resources consistent with the Grand Canyon Protection Act. The AMP has been organized and includes a federal advisory committee (AMWG), a technical work group (TWG), a monitoring and research center, and independent review panels. The TWG is a subcommittee of the AMWG and provides technical advice and information for the AMWG to act upon.

DATES: The AMWG will conduct the following conference call:

Wednesday, December 17, 2003. The conference call will begin at 1 p.m. and conclude at 3 p.m. MOUNTAIN TIME.

Agenda: The purpose of the conference call will be to discuss how to improve interactions between the Glen Canyon Dam Adaptive Management Program and the Grand Canyon Monitoring and Research Center's science advisors.

To register for the conference call, please contact Linda Whetton at (801) 524–3880 at least two (2) days prior to the call. You will be given the phone number and password at that time.

To allow full consideration of information by the AMWG members, written notice must be provided to Dennis Kubly, Bureau of Reclamation, Upper Colorado Regional Office, 125 South State Street, Room 6107, Salt Lake City, Utah, 84138; telephone (801) 524–3715; faxogram (801) 524–3858; e-mail at *dkubly@uc.usbr.gov* (5) days prior to the meeting. Any written comments received will be provided to the AMWG and TWG members prior to the meeting.

Due to difficulties caused by holidays and leave schedules in setting up this conference call, this notice may be published in a shorter time than normally required by the Federal Advisory Committee Act. However, an e-mail message will be sent by Reclamation to those persons who have expressed interest in the Glen Canyon Dam Adaptive Management Program to allow them full participation on the conference call.

FOR FURTHER INFORMATION CONTACT: Dennis Kubly, telephone (801) 524–3715; faxogram (801) 524–3858; or via e-mail at *dkubly@uc.usbr.gov.*

Dated: November 26, 2003.

Dennis Kubly,

Chief, Adaptive Management Group, Environmental Resources Division, Upper Colorado Regional Office, Salt Lake City, Utah.

[FR Doc. 03–30848 Filed 12–12–03; 8:45 am]

BILLING CODE 4310–MN–P

INTERNATIONAL TRADE COMMISSION

Sanction for Breach of Commission Administrative Protective Order

AGENCY: International Trade Commission.

ACTION: Sanction for breach of Commission administrative protective order.

SUMMARY: Notice is hereby given of the sanction imposed by the Commission for a breach of the administrative protective order ("APO") issued in *Hot Rolled Steel Products from Argentina, China, Indonesia, Kazakstan, the Netherlands, Romania, South Africa, Taiwan, Thailand, and Ukraine (Hot Rolled Steel Products),* Inv. Nos. 701–TA–404–408 and 731–TA–898–908 (Final). The Commission determined that attorney Bruce Aitken breached the APO in the *Hot Rolled Steel Products* investigations by failing to provide adequate supervision over another attorney who had little experience in the bracketing of business proprietary information ("BPI") and who prepared a public version of a brief containing BPI and served the brief on other parties to the investigations, some of whom were not signatories to the APO. This public reprimand is being issued because the aforementioned breach is the fourth breach for Mr. Aitken occurring within a three-year, one-month period. On November 14, 2001, the Commission had previously publicly reprimanded Mr. Aitken for the second and third of the four breaches. 66 FR 57110 (November 14, 2001).

FOR FURTHER INFORMATION CONTACT: Carol McCue Verratti, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 202–205–3088. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal at 202–205–1810. General information concerning the Commission can also be obtained by accessing its Internet server (*http://www.usitc.gov*).

SUPPLEMENTARY INFORMATION: In connection with the *Hot Rolled Steel Products* investigations, Bruce Aitken filed an application for access to APO information with the Commission. In that application, he swore (i) not to disclose without written permission any of the information obtained under the APO except to certain enumerated categories of approved persons, (ii) to serve all materials containing BPI disclosed under the APO as directed by the Secretary, and (iii) to otherwise comply with the terms of the APO and the Commission's regulations regarding access to BPI. He also acknowledged in the APO that violation of the APO could subject him, and his firm, to disbarment from practice before the Commission, referral to the U.S. Attorney or appropriate professional association, or "[s]uch other administrative sanctions as the Commission determines to be appropriate * * *." 19 CFR 207.7(d). The Commission granted his application.

The firm with which Mr. Aitken is affiliated, Aitken Irvin Berlin & Vrooman, LLP, is very experienced in Commission practice as is Mr. Aitken, the senior name partner. Mr. Aitken appears frequently before the Commission and has sought access to APO information on a regular basis. He has been found to have previously breached an APO in recent prior investigations. None of these prior breaches was egregious enough to warrant a public reprimand when considered separately, but by the third breach the Commission determined that a public reprimand was warranted for the series of breaches. The Commission found that the series of breaches resulting in the previous public reprimand demonstrated a disturbing and unacceptable pattern of overall failure to safeguard information released under APO. In spite of the public reprimand at that time, Mr. Aitken substantially participated in the *Hot Rolled Steel Products* investigations with a lawyer who was inexperienced in Commission title VII investigations, but who, despite his inexperience with Commission investigations, was named lead attorney and APO Compliance Officer for the firm. Although Mr. Aitken participated in the drafting of the confidential version of the brief, he did not participate in the preparation of the public version of the brief where historically his firm has committed most of its APO breaches. The Commission found that as the senior name partner in the firm with many years of experience in title VII investigations, Mr. Aitken failed in his obligations under the APO by not participating in the preparation of the public brief and/or supervising the other attorney more closely to prevent the next in a lengthy series of APO breaches that has been caused by various members of Mr. Aitken's firm.

Business proprietary information received from private parties plays an important role in Commission investigations. The Commission's ability to obtain such information depends on the confidence of the submitting parties that their proprietary information will be protected.

Bruce Aitken is reprimanded for breaching the APO in the *Hot Rolled Steel Products* investigations as stated above and for committing multiple APO breaches over a relatively short period of time.

The Commission determined to suspend Mr. Aitken's access to APO information for a period of six months from the date of publication of this notice in the **Federal Register**. In addition, the Commission directs the law firm of Aitken Irvin Berlin & Vrooman, LLP to have at least two attorneys review all documents to be filed with the Commission for APO compliance, to so certify to the Commission on an annual basis, and to continue that practice for five years commencing with the date of the publication of this notice in the **Federal Register**.

The authority for this action is conferred by section 207.7(d) of the Commission's rules of practice and procedure (19 CFR 207.7(d)).

By order of the Commission.

Issued: December 9, 2003.

Marilyn R. Abbott,

Secretary.

[FR Doc. 03–30833 Filed 12–12–03; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–481]

In the Matter of Certain Display Controllers With Upscaling Functionality and Products Containing Same; Notice of Commission Decision to Review in Part A Final Initial Determination Finding No Violation of Section 337; Schedule for Filing Written Submissions on the Issues Under Review and on Remedy, the Public Interest, and Bonding

AGENCY: International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to review in part the final initial determination ("ID") issued by the presiding administrative law judge (ALJ) on October 20, 2003, finding no violation of section 337 of the Tariff Act of 1930, 19 U.S.C. 1337, in the above-captioned investigation.

FOR FURTHER INFORMATION CONTACT: Michael Liberman, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–3115. Copies of the ALJ's ID and all other nonconfidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–2000. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on October 18, 2002, based on a complaint filed by Genesis Microchip (Delaware) Inc. ("Genesis") of Alviso, California, against Media Reality Technologies, Inc. of Sunnyvale, California; Trumpion Microelectronics, Inc. of Taipei, Taiwan; and SmartASIC, Inc. ("SmartASIC") of San Jose, California. 67 FR 64411 (October 18, 2002). The complaint alleges violations of section 337 of the Tariff Act of 1930 in the importation and sale of certain display controllers with upscaling functionality and products containing same by reason of infringement of certain claims of U.S. Patent No. 5,738,867 ("'867 patent").

On January 14, 2003, the ALJ issued an ID (Order No. 6) terminating respondent SmartASIC from the investigation on the basis of a settlement agreement. On February 12, 2003, the Commission issued a notice of its decision not to review that ID (Order No. 6).

The evidentiary hearing in this investigation was held from July 14, 2003, through July 25, 2003. On October 20, 2003, the ALJ issued his final ID in which he found that there was no violation of section 337. All the parties to the investigation, including the Commission investigative attorneys filed timely petitions for review of various portions of the final ID, and all of them filed timely responses to the petitions.

Having examined the record in this investigation, including the ALJ's final ID, the petitions for review, and the responses thereto, the Commission has determined to review:

(1) The ALJ's construction of the claim term "pixel data";

(2) The ALJ's construction of the "wherein" clause;

(3) The ALJ's construction of the claim limitation "receiving means";

(4) All of the ALJ's non-infringement findings;

(5) The ALJ's finding that complainant Genesis does not practice any claims of the '867 patent;

(6) The ALJ's finding that the Spartan reference does not anticipate (*i.e.*, invalidate) the asserted claims of the '867 patent; and

(7) The ALJ's finding that the ACUITY Application Note does not anticipate the asserted claims of the '867 patent.

The Commission has determined not to review the remainder of the final ID.

On review, the Commission requests briefing, based on the evidentiary record, on the issues under review, and is particularly interested in receiving answers to the following questions:

1. What intrinsic and, to the extent it is applicable, extrinsic evidence supports your position on the issue of whether "the time to provide said plurality of destination pixel data" in the "wherein" clause includes the time to provide inactive pixels in a destination image frame?

2. What intrinsic and, to the extent it is applicable, extrinsic evidence supports your position on the issue of whether "a period to receive said source pixel data" in the "wherein" clause

includes a period to receive inactive pixels in a source image frame?

3. What intrinsic and, to the extent it is applicable, extrinsic evidence supports your position on the issue of whether the analog-to-digital converter depicted in Figure 13 is a structure that corresponds to the "receiving means" in claim 12?

In connection with the final disposition of this investigation, the Commission may issue (1) an order that could result in the exclusion of the subject articles from entry into the United States, and/or (2) one or more cease and desist orders that could result in respondents being required to cease and desist from engaging in unfair action in the importation and sale of such articles. Accordingly, the Commission is interested in receiving written submissions that address the form of remedy, if any, that should be ordered. If a party seeks exclusion of an article from entry into the United States for purposes other than entry for consumption, the party should so indicate and provide information establishing that activities involving other types of entry that either are adversely affecting it or likely to do so. For background, *see In the Matter of Certain Devices for Connecting Computers via Telephone Lines*, Inv. No. 337–TA–360, USITC Pub. No. 2843 (December 1994) (Commission Opinion).

If the Commission contemplates some form of remedy, it must consider the effects of that remedy upon the public interest. The factors the Commission will consider include the effect that an exclusion order and/or cease and desist orders would have on (1) the public health and welfare, (2) competitive conditions in the U.S. economy, (3) U.S. production of articles that are like or directly competitive with those that are subject to investigation, and (4) U.S. consumers. The Commission is therefore interested in receiving written submissions that address the aforementioned public interest factors in the context of this investigation.

If the Commission orders some form of remedy, the President has 60 days to approve or disapprove the Commission's action. During this period, the subject articles would be entitled to enter the United States under a bond, in an amount determined by the Commission and prescribed by the Secretary of the Treasury. The Commission is therefore interested in receiving submissions concerning the amount of the bond that should be imposed.

Written Submissions: The parties to the investigation are requested to file written submissions on the issues under review. The submission should be concise and thoroughly referenced to the record in this investigation. Parties to the investigation, interested government agencies, and any other interested persons are encouraged to file written submissions on the issues of remedy, the public interest, and bonding. Such submissions should address the October 20, 2003, recommended determination by the ALJ on remedy and bonding. Complainant and the Commission investigative attorneys are also requested to submit proposed remedial orders for the Commission's consideration. The written submissions and proposed remedial orders must be filed no later than close of business on December 19, 2003. Reply submissions must be filed no later than the close of business on December 26, 2003. No further submissions on these issues will be permitted unless otherwise ordered by the Commission.

Persons filing written submissions must file with the Office of the Secretary the original document and 14 true copies thereof on or before the deadlines stated above. Any person desiring to submit a document (or portion thereof) to the Commission in confidence must request confidential treatment unless the information has already been granted such treatment during the proceedings. All such requests should be directed to the Secretary of the Commission and must include a full statement of the reasons why the Commission should grant such treatment. See section 201.6 of the Commission's rules of practice and procedure, 19 CFR 201.6. Documents for which confidential treatment by the Commission is sought will be treated accordingly. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in sections 210.42–210.45 of the Commission's rules of practice and procedure (19 CFR 210.42–210.45).

By order of the Commission.

Issued: December 9, 2003.

Marilyn R. Abbott,

Secretary.

[FR Doc. 03–30832 Filed 12–12–03; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[DEA #249E]

Controlled Substances: Established Initial Aggregate Production Quotas for 2004

AGENCY: Drug Enforcement Administration (DEA), Justice.

ACTION: Notice of aggregate production quotas for 2004.

SUMMARY: This notice establishes initial 2004 aggregate production quotas for controlled substances in Schedules I and II of the Controlled Substances Act (CSA).

EFFECTIVE DATE: December 15, 2004.

FOR FURTHER INFORMATION CONTACT: Christine A. Sannerud, Ph.D., Chief, Drug & Chemical Evaluation Section, Drug Enforcement Administration, Washington, DC 20537, Telephone: (202) 307–7183.

SUPPLEMENTARY INFORMATION: Section 306 of the CSA (21 U.S.C. 826) requires that the Attorney General establish aggregate production quotas for each basic class of controlled substance listed in Schedules I and II. This responsibility has been delegated to the Administrator of the DEA by section 0.100 of title 28 of the Code of Federal Regulations. The Administrator, in turn, has redelegated this function to the Deputy Administrator, pursuant to section 0.104 of title 28 of the Code of Federal Regulations.

The 2004 aggregate production quotas represent those quantities of controlled substances that may be produced in the United States in 2004 to provide adequate supplies of each substance for: The estimated medical, scientific, research and industrial needs of the United States; lawful export requirements; and the establishment and maintenance of reserve stocks (21 U.S.C. 826(a) and 21 CFR 1303.11). These quotas do not include imports of controlled substances for use in industrial processes.

On November 4, 2003, a notice of the proposed initial 2004 aggregate production quotas for certain controlled substances in Schedules I and II was published in the **Federal Register** (68 FR 62474). All interested persons were invited to comment on or object to these proposed aggregate production quotas on or before November 25, 2003.

Five companies commented on a total of 27 Schedules I and II controlled substances within the published comment period. The companies commented that the proposed aggregate production quotas for alfentanil, amphetamine, codeine (for conversion), codeine-N-oxide, dextropropoxyphene, dihydrocodeine, dihydromorphine, fentanyl, hydrocodone (for sale), hydromorphone, levorphanol, meperidine, methadone (for sale), methadone intermediate, methamphetamine (for conversion), methylphenidate, morphine (for sale), morphine-N-oxide, noroxymorphone (for sale), noroxymorphone (for conversion), oxycodone (for sale), oxycodone (for conversion), oxymorphone, phenylacetone, sufentanil, tetrahydrocannabinols and thebaine were insufficient to provide for the estimated medical, scientific, research and industrial needs of the United States, for export requirements and for the establishment and maintenance of reserve stocks.

DEA has taken into consideration the above comments along with the relevant 2003 manufacturing quotas, current 2003 sales and inventories, 2004 export requirements and research and product development requirements. Based on this information, the DEA has adjusted the initial aggregate production quotas for 2,5-dimethoxy-4-n-propylthiophenethylamine (2C-T-7), 5-methoxy-N,N-diisopropyltryptamine (5-MeO-DIPT), alfentanil, alpha-methyltryptamine (AMT), codeine (for conversion), codeine-N-oxide, dihydrocodeine, levomethorphan, methadone intermediate, morphine (for sale), morphine-N-oxide, noroxymorphone (for conversion), oxycodone (for sale), oxycodone (for conversion), oxymorphone, phencyclidine, phenylacetone, racemethorphan, sufentanil and thebaine to meet the legitimate needs of the United States.

Regarding amphetamine, dextropropoxyphene, dihydromorphine, fentanyl, hydrocodone (for sale), hydromorphone, levorphanol, meperidine, methadone (for sale), methamphetamine (for conversion), methylphenidate, noroxymorphone (for sale), and tetrahydrocannabinols, the DEA has determined that the proposed initial 2004 aggregate production quotas are sufficient to meet the current 2004 estimated medical, scientific, research and industrial needs of the United States.

Pursuant to part 1303 of title 21 of the Code of Federal Regulations, the Acting Deputy Administrator of the DEA will, in early 2004, adjust aggregate production quotas and individual manufacturing quotas allocated for the year based upon 2003 year-end inventory and actual 2003 disposition data supplied by quota recipients for each basic class of Schedule I or II controlled substance.

Therefore, under the authority vested in the Attorney General by section 306 of the Controlled Substances Act of 1970 (21 U.S.C. 826), and delegated to the Administrator of the DEA by section 0.100 of title 28 of the Code of Federal Regulations, and redelegated to the Deputy Administrator pursuant to section 0.104 of title 28 of the Code of Federal Regulations, the Acting Deputy Administrator hereby orders that the 2004 initial aggregate production quotas for the following controlled substances, expressed in grams of anhydrous acid or base, be established as follows:

Basic class	Established initial 2004 quotas
Schedule I	
2,5-Dimethoxyamphetamine	3,501,000
2,5-Dimethoxy-4-ethylamphetamine (DOET)	2
2,5-Dimethoxy-4-n-propylthiophenethylamine (2C-T–7)	10
3-Methylfentanyl	2
3-Methylthiofentanyl	2
3,4-Methylenedioxyamphetamine (MDA)	11
3,4-Methylenedioxy-N-ethylamphetamine (MDEA)	5
3,4-Methylenedioxymethamphetamine (MDMA)	16
3,4,5-Trimethoxyamphetamine	2
4-Bromo-2,5-Dimethoxyamphetamine (DOB)	2
4-Bromo-2,5-Dimethoxyphenethylamine (2-CB)	2
4-Methoxyamphetamine	2
4-Methylaminorex	2
4-Methyl-2,5-Dimethoxyamphetamine (DOM)	2
5-Methoxy-3,4-Methylenedioxyamphetamine	2
5-Methoxy-N,N-diisopropyltryptamine (5-MeO-DIPT)	10
Acetyl-alpha-methylfentanyl	2
Acetyldihydrocodeine	2
Acetylmethadol	2
Allylprodine	4
Alphacetylmethadol	2
Alpha-ethyltryptamine	2
Alphameprodine	2
Alphamethadol	3
Alpha-methyltryptamine (AMT)	10
Alpha-methylfentanyl	2
Alpha-methylthiofentanyl	2
Aminorex	2
Benzylmorphine	2
Betacetylmethadol	2
Beta-hydroxy-3-methylfentanyl	2
Beta-hydroxyfentanyl	2
Betameprodine	2
Betamethadol	2
Betaprodine	2
Bufotenine	2
Cathinone	2

Basic class	Established initial 2004 quotas
Codeine-N-oxide	502
Diethyltryptamine	2
Difenoxin	9,000
Dihydromorphine	1,101,000
Dimethyltryptamine	3
Gamma-hydroxybutyric acid	10,000,000
Heroin	5
Hydromorphinol	2
Hydroxypethidine	2
Lysergic acid diethylamide (LSD)	61
Marihuana	840,000
Mescaline	2
Methaqualone	5
Methcathinone	4
Methyldihydromorphine	2
Morphine-N-oxide	502
N,N-Dimethylamphetamine	2
N-Ethyl-1-Phenylcyclohexylamine (PCE)	5
N-Ethylamphetamine	7
N-Hydroxy-3,4-Methylenedioxyamphetamine	2
Noracymethadol	2
Norlevorphanol	52
Normethadone	2
Normorphine	12
Para-fluorofentanyl	2
Phenomorphan	2
Pholcodine	2
Propiram	210,000
Psilocybin	2
Psilocyn	2
Tetrahydrocannabinols	176,000
Thiofentanyl	2
Trimeperidine	2
Schedule II	
1-Phenylcyclohexylamine	2
1-Piperidinocyclohexanecarbonitrile (PCC)	10
Alfentanil	2,000
Alphaprodine	2
Amobarbital	3
Amphetamine	10,987,000
Cocaine	186,000
Codeine (for sale)	41,341,000
Codeine (for conversion)	43,559,000
Dextropropoxyphene	167,365,000
Dihydrocodeine	776,000
Diphenoxylate	716,000
Ecgonine	38,000
Ethylmorphine	2
Fentanyl	970,000
Glutethimide	2
Hydrocodone (for sale)	30,622,000
Hydrocodone (for conversion)	1,500,000
Hydromorphone	1,651,000
Isomethadone	2
Levo-alphacetylmethadol (LAAM)	2
Levomethorphan	2
Levorphanol	15,000
Meperidine	9,753,000
Metazocine	1
Methadone (for sale)	14,057,000
Methadone Intermediate	18,296,000
Methamphetamine	2,275,000
825,000 grams of levo-desoxyephedrine for use in a non-controlled, non-prescription product; 1,420,000 grams for methamphetamine for conversion to a Schedule III product; and 30,000 grams for methamphetamine (for sale)	
Methylphenidate	23,726,000
Morphine (for sale)	21,800,000
Morphine (for conversion)	110,774,000
Nabilone	2
Noroxymorphone (for sale)	99,000
Noroxymorphone (for conversion)	3,800,000

Basic class	Established initial 2004 quotas
Opium	1,000,000
Oxycodone (for sale)	41,606,000
Oxycodone (for conversion)	920,000
Oxymorphone	534,000
Pentobarbital	18,251,000
Phencyclidine	2,060
Phenmetrazine	3
Phenylacetone	11,000,000
Racemethorphan	2
Secobarbital	1,000
Sufentanil	4,000
Thebaine	59,437,000

The Acting Deputy Administrator further orders that aggregate production quotas for all other Schedules I and II controlled substances included in sections 1308.11 and 1308.12 of title 21 of the Code of Federal Regulations be established at zero.

The Office of Management and Budget has determined that notices of aggregate production quotas are not subject to centralized review under Executive Order 12866.

This action does not preempt or modify any provision of State law; nor does it impose enforcement responsibilities on any State; nor does it diminish the power of any State to enforce its own laws. Accordingly, this action does not have federalism implications warranting the application of Executive Order 13132.

The Acting Deputy Administrator hereby certifies that this action will have no significant impact upon small entities whose interests must be considered under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq*. The establishment of aggregate production quotas for Schedules I and II controlled substances is mandated by law and by international treaty obligations. The quotas are necessary to provide for the estimated medical, scientific, research and industrial needs of the United States, for export requirements and the establishment and maintenance of reserve stocks. While aggregate production quotas are of primary importance to large manufacturers, their impact upon small entities is neither negative nor beneficial. Accordingly, the Acting Deputy Administrator has determined that this action does not require a regulatory flexibility analysis.

This action meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988 Civil Justice Reform.

This action will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more in any one year, and will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

This action is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This action will not result in an annual effect on the economy of $100,000,000 or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

The Drug Enforcement Administration makes every effort to write clearly. If you have suggestions as to how to improve the clarity of this regulation, call or write Christine A. Sannerud, Ph.D., Chief, Drug & Chemical Evaluation Section, Office of Diversion Control, Drug Enforcement Administration, Washington, DC 20537, Telephone: (202) 307–7183.

Dated: December 8, 2003.

Michele M. Leonhart,

Acting Deputy Administrator.

[FR Doc. 03–30834 Filed 12–12–03; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF LABOR

Office of the Assistant Secretary for Administration and Management

Agency Information Collection Activities: Proposed Collection; Comment request; Applicant Background Questionnaire

AGENCY: Office of the Assistant Secretary for Administration and Management (OASAM), Department of Labor.

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Department of Labor is soliciting comments concerning the proposed extension of the Applicant Background Questionnaire'. A copy of the proposed information collection request (ICR) can be obtained by contacting the office listed below in the addressee section of this notice.

DATES: Written comments must be submitted to the office listed in the addressee section below on or before February 13, 2004.

ADDRESSEE: Anderson Glasgow, U.S. Department of Labor, Human Resource Services Center, 200 Constitution Ave. NW., Room N–5464, Washington, DC 20210; Phone: (202) 693–7738; Written comments limited to 10 pages or fewer may also be transmitted by facsimile to: (202)693–7631; Internet: *glasgow.william@dol.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

The Department of Labor, as part of its obligation to provide equal employment opportunities, is charged with ensuring that qualified individuals in groups that are under-represented in various occupations, are included in applicant

pools for the Department's positions. *See* 5 U.S.C. 7201(c); 29 U.S.C. 791; 29 U.S.C. 2000e–16; 5 CFR 720.204; 29 CFR 1614.101(a). To achieve this goal, DOL employment offices have conducted targeted outreach to a variety of sources, including educational institutions, professional organizations, newspapers and magazines. DOL has also participated in career fairs and conferences that reach high concentrations of Hispanics, African Americans, Native Americans, Asians, and persons with disabilities.

Without the data provided by this collection, DOL does not have the ability to evaluate the effectiveness of any of these targeted recruiting strategies because collection of racial and national origin information only occurs at the point of hiring. DOL needs to collect data on the pools of applicants which result from the various targeted recruitment strategies listed above. After the certification and selection process has been completed, it is necessary to cross-reference the data collected with the outcome of the qualifications review in order to evaluate the quality of applicants from various recruitment sources. With the information from this collection, DOL can adjust and redirect its targeted recruitment to achieve the best result. DOL will also be able to respond to requests for information received from the Office of Personnel Management (OPM) in the course of OPM's evaluation and oversight activities.

II. Desired Focus of Comments

The Department of Labor is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, for example, through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

III. Current Actions

This notice requests an extension of the current Office of Management and Budget approval of the Applicant Background Questionnaire. Extension is necessary to continue to evaluate the effectiveness of agency recruitment programs in attracting applicants from under-represented sectors of the population.

Type of Review: Extension of a currently approved collection.
Agency: U.S. Department of Labor.
Title: Applicant Background Questionnaire.
OMB Number: 1225–0072.
Affected Public: Applicants for positions recruited in the Department of Labor.
Total Respondents: 3000.
Frequency: One time per respondent.
Total Responses: 3000.
Average Time per Response: 5 minutes.
Estimated Total Burden Hours: 250 hours.
Total Burden Cost (capital/startup): $0.
Total Burden Cost (operating/maintaining): $0.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: December 5, 2003.

Daliza Salas,

Director of Human Resources.

[FR Doc. 03–30855 Filed 12–12–03; 8:45 am]

BILLING CODE 4510–23–P

DEPARTMENT OF LABOR

Employment and Training Administration

Proposed Extension of the Information Collection Request Submitted for Public Comment and Recommendations; Unemployment Insurance (UI) Benefit Accuracy Measurement (BAM) Program

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995(PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format; reporting burden (time and financial resources) is minimized; collection instruments are clearly understood; and the impact of collection requirements on respondents can be properly assessed.

DATES: Submit comments on or before February 13, 2004.

ADDRESSES: Send comments to Kari M. Baumann, Office of Workforce Security, Employment and Training Administration, U.S. Department of Labor, Room S–4522, 200 Constitution Avenue, NW., Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Kari M. Baumann, telephone: 202–693–3286 (this is not a toll-free number); fax: 202–693–3975; e-mail: *baumann.kari@dol.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Since 1987, all State Workforce Agencies (SWAs) except in the U.S. Virgin Islands have been required by regulation at 20 CFR Part 602 to operate BAM programs to assess the accuracy of their UI benefit payments in three programs: State UI, Unemployment Compensation for Federal Employees (UCFE), and Unemployment Compensation for Ex-servicemembers (UCX).

The Benefit Accuracy Measurement seeks to reduce waste, fraud, and abuse in the UI system. By investigating small representative weekly samples of both paid and denied UI claims, it enables each state to estimate reliably the number and dollar value of proper and improper payments and denials of UI benefits; the rates of occurrence of these proper and improper payments and denials; and the error types, error causes, and the parties that are responsible for the errors within its system.

The BAM program consists of two comprehensive reviews of a statewide probability sample of UI payments and denials to determine the precise nature of improper payments. States use the same population edit and sample selection software programs to select the weekly samples. This software uses a systematic random sampling algorithm. The survey population excludes supplemental payments, waiting weeks, and extended benefits.

Paid Claims Accuracy. Each week a random sample is selected of both intrastate and interstate original payments (including combined wage claims) made for a week of UI benefits under the State UI, UCX or UCFE programs. A sample of 360 cases per year is pulled in the ten states with the smallest UI program workloads and 480 cases per year in the other states. State BAM staff audit each selected claim, examining all aspects of a claimant's eligibility to receive UI benefits during the sampled week. In an investigation, staff verify wages used to establish monetary entitlements, the claimant's reason for being unemployed, efforts to find work during the week, and any other factors which would have affected the claimant's entitlement to a UI benefit payment during the sampled week or the amount of the benefit paid. The findings are then numerically coded and entered into an automated database that is maintained on a computer located in each state.

Denied Claims Accuracy. On a weekly basis, states select systematic random samples from three separate sampling frames constructed from the universes of UI claims for which eligibility was denied for monetary, separation and nonseparation reasons. All states sample a minimum of 150 cases of each denial type in each calendar year. State BAM staff review agency records and contact claimants, employer(s), and all other relevant parties to verify information in agency records or obtain additional information pertinent to the determination that denies UI benefit eligibility. Unlike the investigation of paid claims, in which all prior determinations affecting claimant eligibility for the compensated week selected for the sample are evaluated, the investigation of denied claims is limited to the issue upon which the denial determination is based. The findings are then numerically coded and entered into an automated database that is maintained on a computer located in each state. Like the investigation of paid claims, states have the flexibility to conduct the investigation of denied claims by in-person interview, telephone, mail, e-mail or fax, as they deem appropriate.

The Department relies heavily on BAM data for information on states' UI operations (*e.g.*, the percent of claims taken by telephone and other remote methods) and performance. These data are reported annually in a data summary report and as part of the UI PERFORMS Annual Report. Further, BAM data are used as part of a overpayment detection measure under the Government Performance and Results Act (GPRA).

II. Desired Focus of Comments

The Employment and Training Administration is soliciting comments concerning the proposed extension of the collection of the UI BAM program data (OMB control number 1205–0245) now authorized through March 31, 2004. The Department is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

A copy of the information collection handbook (ETA Handbook 395) can be obtained by contacting the employee listed above in the contact section of this notice.

III. Current Actions

Type of Review: Extension.
Agency: Employment and Training Administration.
Title: Unemployment Insurance Benefit Accuracy Measurement Program.
OMB Number: 1205–0245.
Recordkeeping: States are required to follow their state laws regarding public record retention in retaining BAM paid and denied claims records.
Affected Public: Individuals; businesses; other for-profit/not-for-profit institutions; farms; Federal, State, local or tribal governments.
Frequency: Annually.
Total Respondents and Responses: 188,984 per year (52 SWAs/3,634 per state; includes claimants, employers, third parties, and SWA BAM program staff).
Estimated Time Per Case: Paid claims: claimant—0.5 hours; employers—0.85 hours; work search contacts—0.55 hours; third parties—0.05 hours; and SWA BAM staff—8.27 hours. Denied claims: claimant—0.5 hours; employers and third parties—0.5 hours; and SWA BAM staff—6.66 hours (average).
Estimated Total Burden Hours: 423,243 annually (8,139 hours per state).
Total Burden Cost (capital/startup): $0.
Total Burden Cost (operating/maintaining): $12,544,372.73 annually (approximately $241,237.94 per state).

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: December 9, 2003.

Cheryl Atkinson,

Administrator, Office of Workforce Security.

[FR Doc. 03–30856 Filed 12–12–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

Labor Certification Process for Temporary Agricultural Employment of Nonimmigrant Workers in the United States (H–2A Workers); On-line Application Processing System; Formal Briefings

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

SUMMARY: As the result of the General Accounting Office (GAO) recommendation to the Secretary of Labor on ways to improve the H–2A program, the Department of Labor (DOL) has designed an H–2A case management system to improve data tracking and reporting capabilities. The system will also provide a user-friendly platform for the Regional Office staff and the regulated community to enter application data. The Division of Foreign Labor Certification, Employment and Training Administration (ETA), Department of Labor, announces two formal briefings to demonstrate to agricultural employers and other interested parties the new On-Line Application Processing System. The briefings will allow ETA to demonstrate to the regulated community, *i.e.*, employers, attorneys, agents and associations, the benefits of the on-line application completion module.

DATES: The briefing dates are:

Thursday, January 15, 2004, 9:30 a.m. to 4 p.m., Boxborough, MA

Thursday, January 22, 2004, 9:30 a.m. to 4 p.m., Nashville, TN.

Notices of intention to appear at the briefings must be postmarked no later than December 29, 2003.

ADDRESSES: The briefing locations are:

Holiday Inn Boxborough, 242 Adams Place, Boxborough, MA 01719

Double Tree Hotel, 315 Fourth Avenue, N., Nashville, TN 37219

Send notices of intention to appear to: Charlene Giles, U.S. Department of Labor, 200 Constitution Avenue, NW., Room C–4318, Washington, DC 20210. Notices also may be faxed to Charlene Giles at 202–693–2769 (this is not a toll-free number), or submitted by e-mail at *dflc.onp@dol.gov*.

FOR FURTHER INFORMATION CONTACT: Charlene Giles; telephone 202–693–2950. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: The formal public briefings will be chaired by a senior official of the Employment and Training Administration. Persons appearing at the briefings will be allowed a hands on experience with the system and to pose questions to Department staff.

Signed at Washington, DC, this 8th day of December, 2003.

Emily Stover DeRocco,

Assistant Secretary for Employment and Training.

[FR Doc. 03–30857 Filed 12–12–03; 8:45 am]

BILLING CODE 4510–30–P

NATIONAL CREDIT UNION ADMINISTRATION

Notice of Meeting

TIME AND DATE: 10 a.m., Thursday, December 18, 2003.

PLACE: Board Room, 7th Floor, Room 7047, 1775 Duke Street, Alexandria, VA 22314–3428.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Requests from three (3) Federal Credit Union to Convert to Community Charters.
2. Request from a Federal Credit Union to Expand its Community Charter.
3. Advance Notice of Proposed Rulemaking: Interagency Proposal to Consider Alternative Forms of Privacy Notices.
4. Final Rule: Part 745 of NCUA's Rules and Regulations, Share Insurance.
5. Final Rule: Section 701.22 of NCUA's Rules and Regulations, Loan Participation.
6. National Credit Union Share Insurance Fund (NCUSIF) Operating Level for 2004.

RECESS: 11:15 a.m.

TIME AND DATE: 11:30 a.m., Thursday, December 18, 2003

PLACE: Board Room 7th Floor, Room 7047, 1775 Duke Street, Alexandria, VA 22314–3428.

STATUS: Closed.

MATTERS TO BE CONSIDERED: 1. Field of Membership Appeal. Closed pursuant to exemption (4).

FOR FURTHER INFORMATION CONTACT: Becky Baker, Secretary of the Board, Telephone: (703) 518–6304

Becky Baker,

Secretary of the Board.

[FR Doc. 03–31037 Filed 12–11–03; 3:29 pm]

BILLING CODE 7535–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–416]

Entergy Operations, Inc., System Energy Resources, Inc., South Mississippi Electric Power Association, and Entergy Mississippi, Inc.; Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF–29 issued to Entergy Operations, Inc., System Energy Resources, Inc., South Mississippi Electric Power Association, and Entergy Mississippi, Inc. (Entergy) for operation of the Grand Gulf Nuclear Station, Unit 1 (GGNS), located in Claiborne County, Mississippi.

By letter dated December 5, 2003, Entergy submitted a revised application for amendment to GGNS Technical Specification (TS) 3.3.6.1, "Primary Containment and Drywell Isolation Instrumentation," to add a provision to the applicability function that will eliminate the requirement that the Residual Heat Removal (RHR) System Isolation, Reactor Vessel Water Level-Low, Level 3, be operable under certain conditions during refueling outages. Specifically, the proposed change requested in the original application dated May 12, 2003, would remove the requirement for this isolation function, specified in Table 3.3.6.1–1, when the upper containment reactor cavity is at the High Water Level (HWL) condition specified in TS 3.5.2, "Emergency Core Cooling Systems (ECCS) Shutdown." The revised application adds a new surveillance requirement (SR) (SR 3.3.6.1.9) to verify the water level in the upper containment pool is ≥ 22 feet 8 inches above the reactor pressure vessel flange every four hours, and adds a footnote to Table 3.3.6.1–1, Item 5.b, for MODE 5 that states that the function is not required when the upper containment reactor cavity and transfer canal gates are removed and SR 3.3.6.1.9 is met. The proposed SR and footnote are only applicable in MODE 5. The May 12, 2003, application was previously noticed in the **Federal Register** on June 10, 2003 (68 FR 34665).

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in Title 10 of the Code of Federal Regulations (10 CFR), section 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change revises the applicability requirement for the Residual Heat Removal (RHR) System Isolation function of the Primary Containment and Drywell Isolation Instrumentation during MODE 5 and adds a surveillance requirement that is invoked when specific conditions exist. The proposed surveillance requirement only enhances the ability of operating personnel to detect inventory loss associated with a draindown event. The change removes the requirement that the instrumentation be operable during certain conditions (high water level) during refueling outages. The isolation function is intended to mitigate reactor vessel draindown events by isolating the residual heat removal flow path at low reactor water level. Although draindown events during refueling operations are not specifically evaluated in the Updated Final Safety Analysis Report (UFSAR), these events were evaluated in support of licensing actions for the Alternate Decay Heat Removal System. An additional evaluation supporting this change established that the RHR system automatic isolation was not needed to mitigate a draindown event given the possible drain paths and the time available for operators to terminate the draindown event. The probability that a draindown event will be initiated is unrelated to operability requirement for this instrumentation, the associated isolation valves or the proposed surveillance. The evaluation determined that mitigating actions can be taken to identify and terminate all postulated draindown events prior to fuel uncovery. As a result, the probability of draindown events causing fuel uncovery and the potential for radiological releases has not significantly increased. The operation or failure of the shutdown cooling suction isolation does not contribute to the occurrence of an accident. No active or passive failure mechanisms that could lead to an accident are affected by the proposed change.

The consequences of a vessel drainage event are not significantly increased by the proposed change. Entergy has evaluated various draindown and pumpdown events through the shutdown cooling flow path and determined that adequate time is available for operations personnel to identify and take action to mitigate such events such that adequate core cooling is maintained and a radiological release does not occur.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

Entergy has evaluated various draindown events through the shutdown cooling flow path and determined that adequate time is available for operations personnel to identify and take action to mitigate any events such that adequate core cooling is maintained. The proposed surveillance requirement only enhances the ability of operating personnel to detect inventory loss associated with a draindown event. With the containment refueling cavity flooded, sufficient inventory is available to allow operator action to terminate the inventory loss prior to reaching a low water level in the reactor. Installed equipment is not operated in a new or different manner; no new or different system interactions are created, and no new processes are introduced. No new failures have been created by the proposed changes.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The proposed changes do not introduce any new setpoints at which protective or mitigative actions are initiated. No current setpoints are altered by this change. The design and functioning of the containment and drywell isolation function is also unchanged. The change simply modifies the applicability of the TS by removing the requirement that the RHR system isolation on low reactor vessel level be operable with the upper containment cavity flooded in MODE 5. During MODE 5, the RHR system isolation mitigates postulated draindown events through the RHR system. The proposed surveillance requirement only enhances the ability of operating personnel to detect inventory loss associated with a draindown event and does not impact a margin of safety. Entergy has evaluated various draindown events through this flow path and determined that adequate time is available for operations personnel to identify and take action to mitigate such events such that adequate core cooling is maintained.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

This notification is based on the revised license amendment request dated December 5, 2003, and supercedes the original notification based on the request dated May 12, 2003, published in the **Federal Register** on June 10, 2003 (68 FR 34665).

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D59, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays.

Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room, located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By January 14, 2004, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714, which is available at the Commission's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, or electronically on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/doc-collections/cfr/*. If there are problems in accessing the document, contact the Public Document Room Reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr@nrc.gov*. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for

leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, or may be delivered to the Commission's Public Document Room (PDR), located at One White Flint North, Public File Area O1F21, 11555 Rockville Pike (first floor), Rockville, Maryland, by the above date. Because of the continuing disruptions in delivery of mail to United States Government offices, it is requested that petitions for leave to intervene and requests for hearing be transmitted to the Secretary of the Commission either by means of facsimile transmission to 301–415–1101 or by e-mail to *hearingdocket@nrc.gov*. A copy of the petition for leave to intervene and request for hearing should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and because of continuing disruptions in delivery of mail to United States Government offices, it is requested that copies be transmitted either by means of facsimile transmission to 301–415–3725 or by e-mail to *OGCMailCenter@nrc.gov*. A copy of the request for hearing and petition for leave to intervene should also be sent to [insert attorney name and address], attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated May 12, 2003, as supplemented by letter dated December 5, 2003, which is available for public inspection at the Commission's PDR, located at One White Flint North, File Public Area O1F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html*. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff by telephone at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr@nrc.gov*.

Dated at Rockville, Maryland, this 10th day of December, 2003.

For the Nuclear Regulatory Commission.

Bhalchandra K. Vaidya,

Project Manager, Section 1, Project Directorate IV, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 03–30961 Filed 12–12–03; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–335]

Florida Power and Light Company; St. Lucie Plant, Unit No. 1, Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of an exemption from Title 10 of the Code of Federal Regulations (10 CFR) Part 50, Appendix R, Section III.G.2.d for Facility Operating License No. DPR–67, issued to Florida Power and Light Company (the licensee), for operation of the St. Lucie Plant, Unit No. 1, located in St. Lucie County, Florida. Therefore, as required by 10 CFR 51.21, the NRC is issuing this environmental assessment and finding of no significant impact.

Environmental Assessment

Identification of the Proposed Action

Pursuant to 10 CFR Part 50, Appendix R, Section III.G.2.d, cables and equipment and associated nonsafety circuits of redundant trains located inside noninerted containments are required to be separated by a horizontal distance of more than 20 feet with no intervening combustibles or fire hazards. The proposed action would allow a minimum horizontal separation of 7 feet between redundant cable trays with no intervening combustibles in the containment annular region between column lines 2 and 6.

The proposed action is in accordance with the licensee's application dated October 4, 2000, as supplemented by letters dated June 28, 2001, November 29, 2001, May 15, 2002 and October 22, 2002.

The Need for the Proposed Action

On February 21, 1985, the NRC staff approved an exemption from 10 CFR part 50, Appendix R, Section III.G.2.d, to allow cables of redundant trains inside the St. Lucie Unit 1 containment building to be located less than 20 feet apart horizontally. On March 5, 1987, the NRC staff approved a revision to this exemption to allow minimal intermittent combustibles between the redundant trains. The staff approved the exemptions based, in part, on the redundant trains being separated by more than 7 feet horizontally and 25 feet vertically. The licensee subsequently determined that the assumption of 25 feet vertical separation was incorrect. The proposed action would revise the exemption to eliminate the vertical separation assumption. The licensee provided a fire hazard assessment utilizing a detailed fire model to demonstrate that, with the existing vertical separation and a minimum of 7 feet horizontal separation, a fire in one train will not damage the redundant train. The revised request limits the exemption to the cable trays in the containment annular region between radial column lines 2 and 6 and permits no intervening combustibles.

In summary, the exemption would be revised to allow separation of cables of redundant trains by a horizontal distance of at least 7 feet with no intervening combustibles inside containment in the annular region between radial column lines 2 and 6.

Environmental Impacts of the Proposed Action

The NRC has completed its evaluation and concludes, as set forth below, that there are no significant environmental impacts associated with the proposed exemption. The details of the staff's safety evaluation will be provided with the exemption when it is issued by the NRC.

The proposed action will not significantly increase the probability or consequences of accidents, there are no significant changes in the types or significant increase in the quantities of effluents that may be released offsite, and there is no significant increase in occupational or public radiation exposure.

With regard to potential nonradiological impacts, the proposed action does not have a potential to affect any historic sites. It does not affect nonradiological plant effluents and has no other environmental impact. Therefore, there are no significant nonradiological environmental impacts associated with the proposed action.

Accordingly, the NRC concludes that there are no significant environmental impacts associated with the proposed action.

Environmental Impacts of the Alternatives to the Proposed Action

As an alternative to the proposed action, the staff considered denial of the proposed action (*i.e.*, the "no-action" alternative). Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

The action does not involve the use of any different resources than those previously considered in the Final Environmental Statement related to the St. Lucie Plant Unit 1, dated June 1973 and Supplement 11 to NUREG–1437, "Generic Environmental Impact Statement for License Renewal of Nuclear Plants Regarding St. Lucie, Units 1 and 2," dated May 2003.

Agencies and Persons Consulted

On November 3, 2003, the staff consulted with the Florida State official, Mr. William Passetti of the Department of Health, Bureau of Radiation Control, regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

On the basis of the environmental assessment, the NRC concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the NRC has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated October 23, 2002, as supplemented on August 28, 2003. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, Public File Area O1F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management System (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html*. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS should contact the NRC PDR Reference staff at 1–800–397–4209, or 301–415–4737, or by e-mail to *pdr@nrc.gov*.

Dated at Rockville, Maryland, this 9th day of December 2003

For the Nuclear Regulatory Commission.

Allen G. Howe,

Chief, Section 2, Project Directorate II, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 03–30860 Filed 12–12–03; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 030–00842]

Notice of Availability of Environmental Assessment and Finding of No Significant Impact for License Amendment for the University of Minnesota and Release of its Facility in Minneapolis, MN

ACTION: Notice of availability of Environmental Assessment and Finding of No Significant Impact for license amendment.

FOR FURTHER INFORMATION CONTACT: Dr. Peter J. Lee, Division of Nuclear Materials Safety, U.S. Nuclear Regulatory Commission, Region III, 801 Warrenville Road, Lisle, Illinois 60532–4351; telephone (630) 829–9870 or by e-mail at *pjl2@nrc.gov*.

SUPPLEMENTARY INFORMATION:

I. Introduction

The U.S. Nuclear Regulatory Commission (NRC) is issuing an amendment to University of Minnesota Byproduct Material License No. 22–00187–46, to remove authorization to use radioactive materials from its license for Stone Lab I and II Buildings located at 410 Church Street SE. in Minneapolis, Minnesota, and release the facilities for unrestricted use.

The NRC staff has prepared an Environmental Assessment (EA) in support of this licensing action in accordance with the requirements of 10 CFR Part 51. Based on the EA, the NRC has concluded that a Finding of No Significant Impact (FONSI) is appropriate. The amendment will be issued following publication of this Notice.

II. EA Summary

The purpose of the proposed action is to allow for the release of the licensee's Stone Lab I and II Buildings located on Minneapolis campus for unrestricted use. The University of Minnesota was authorized by the NRC to use radioactive materials for medical diagnosis, therapy, and research utilizing labeled compounds, such as H–3, C–14, P–32, etc. On September 11, 2003, the University of Minnesota requested that NRC release the facilities

for unrestricted use. The University of Minnesota has conducted surveys of the facilities and provided information to the NRC to demonstrate that the site meets the license criteria in Subpart E of 10 CFR Part 20 for unrestricted release.

The staff has prepared an EA in support of the proposed licensing action. The staff examined the University of Minnesota's request and the information that the licensee has provided in support of its request, including the surveys performed by University of Minnesota to demonstrate compliance with 10 CFR 20.1402, "Radiological Criteria for Unrestricted Use," to ensure that the NRC's decision is protective of the public health and safety and the environment. Based on its review, the staff has determined that the affected environment and the environmental impacts associated with the unrestricted use of the University of Minnesota's facilities are bounded by the impacts evaluated by the "Generic Environmental Impact Statement in Support of Rulemaking on Radiological Criteria for License Termination of NRC-Licensed Nuclear Facilities" (NUREG–1496). Additionally, no non-radiological impacts were identified.

III. Finding of No Significant Impact

On the basis of the EA, summarized above, the staff has concluded that there are no significant environmental impacts from the proposed action. Accordingly, the staff has determined that a FONSI is appropriate, and has determined that the preparation of an environmental impact statement is not warranted.

IV. Further Information

In accordance with 10 CFR 2.790 of the NRC's "Rules of Practice," University of Minnesota's request, the EA summarized above, and the documents related to this proposed action are available electronically for public inspection and copying from the Publicly Available Records (PARS) component of NRC's document system (ADAMS). ADAMS is accessible from the NRC Web site at *http://www.nrc.gov/reading-rm/adams.html*. These documents include University of Minnesota's letter dated September 11, 2003, with enclosures (Accession No. ML033230183); and the EA summarized above (Accession No. ML033280741).

Dated at Lisle, Illinois, this 2nd day of December 2003.

Christopher G. Miller,

Chief, Decommissioning Branch, Division of Nuclear Materials Safety, RIII.

[FR Doc. 03–30858 Filed 12–12–03; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Draft Criteria for Determining Feasibility of Manual Actions To Achieve Post-Fire Safe Shutdown

AGENCY: Nuclear Regulatory Commission.

ACTION: Extension of opportunity for public comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is considering a revision to the fire protection regulations in 10 CFR Part 50, Appendix R, Paragraph III.G.2 to allow the use of manual actions by nuclear power plant operators to achieve hot shutdown conditions in the event of fires in certain areas provided the actions are evaluated against specific criteria and determined to be acceptable. For complying with the requirements of Appendix R, Paragraph III.G.2, licensees who rely on operator manual actions which have not been reviewed and approved by the NRC are generally considered to be in non-compliance. However, the NRC believes that manual actions relied upon by licensees are safe and effective if they meet appropriate acceptance criteria. Accordingly, until the fire protection regulations are revised, the NRC is planning to issue an interim enforcement policy to exercise enforcement discretion for non-compliant licensees if their manual actions meet the NRC's interim acceptance criteria. The NRC is seeking public comments on the adequacy and clarity of draft interim acceptance criteria. On November 26, 2003 (68 FR 66501), the NRC published its draft interim acceptance criteria in the **Federal Register**. The 30 day comment period established for these criteria was to have expired on December 26, 2003. In letters dated November 26 and December 2, 2003, the Nuclear Information and Resource Service and the Union of Concerned Scientists requested a 30 day extension to the comment period. The letters noted that the comment period included two major holidays and stated that the additional time was needed to research the issues and provide meaningful comments. Similar requests were made by many other members of the public. In view of the importance of meaningful stakeholder input on these criteria, the NRC has decided to extend the comment period by 30 days.

DATES: The comment period has been extended and now expires on January 26, 2004.

ADDRESSES: Submit written comments to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Mail Stop T6–D59, Washington, DC 20555–0001. Comments may be submitted by e-mail to *nrcrep@nrc.gov*. Comments may be delivered to the NRC's headquarters at Two White Flint North, 11545 Rockville Pike, Rockville, Maryland 20852.

FOR FURTHER INFORMATION CONTACT: Richard Dudley, Office of Nuclear Reactor Regulation, Washington, DC 20555–0001, telephone (301) 415–1116, e-mail *rfd@nrc.gov* or Ray Gallucci, telephone (301) 415–1255, e-mail *rhg@nrc.gov*.

Dated at Rockville, Maryland, this 9th day of December, 2003.

For the Nuclear Regulatory Commission.

Catherine Haney,

Program Director, Policy and Rulemaking Program, Division of Regulatory Improvement Programs, Office of Nuclear Reactor Regulation.

[FR Doc. 03–30859 Filed 12–12–03; 8:45 am]

BILLING CODE 7590–01–P

PENSION BENEFIT GUARANTY CORPORATION

Required Interest Rate Assumption for Determining Variable-Rate Premium; Interest Assumptions for Multiemployer Plan Valuations Following Mass Withdrawal

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of interest rates and assumptions.

SUMMARY: This notice informs the public of the interest rates and assumptions to be used under certain Pension Benefit Guaranty Corporation regulations. These rates and assumptions are published elsewhere (or can be derived from rates published elsewhere), but are collected and published in this notice for the convenience of the public. Interest rates are also published on the PBGC's Web site (*http://www.pbgc.gov*).

DATES: The required interest rate for determining the variable-rate premium under part 4006 applies to premium payment years beginning in December 2003. The interest assumptions for performing multiemployer plan valuations following mass withdrawal under part 4281 apply to valuation dates occurring in January 2004.

FOR FURTHER INFORMATION CONTACT: Harold J. Ashner, Assistant General Counsel, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005, 202–326–4024. (TTY/TDD users may call the Federal relay service toll-free at 1–800–877–8339 and ask to be connected to 202–326–4024.)

SUPPLEMENTARY INFORMATION:

Variable-Rate Premiums

Section 4006(a)(3)(E)(iii)(II) of the Employee Retirement Income Security Act of 1974 (ERISA) and § 4006.4(b)(1) of the PBGC's regulation on Premium Rates (29 CFR part 4006) prescribe use of an assumed interest rate (the "required interest rate") in determining a single-employer plan's variable-rate premium. The required interest rate is the "applicable percentage" (currently 100 percent) of the annual yield on 30-year Treasury securities for the month preceding the beginning of the plan year for which premiums are being paid (the "premium payment year"). (Although the Treasury Department has ceased issuing 30-year securities, the Internal Revenue Service announces a surrogate yield figure each month—based on the 30-year Treasury bond maturing in February 2031—which the PBGC uses to determine the required interest rate.)

The required interest rate to be used in determining variable-rate premiums for premium payment years beginning in December 2003 is 5.12 percent.

The following table lists the required interest rates to be used in determining variable-rate premiums for premium payment years beginning between January 2003 and December 2003.

For premium payment years beginning in:	The required interest rate is:
January 2003	4.92
February 2003	4.94
March 2003	4.81
April 2003	4.80
May 2003	4.90
June 2003	4.53
July 2003	4.37
August 2003	4.93
September 2003	5.31
October 2003	5.14
November 2003	5.16
December 2003	5.12

Multiemployer Plan Valuations Following Mass Withdrawal

The PBGC's regulation on Duties of Plan Sponsor Following Mass Withdrawal (29 CFR part 4281) prescribes the use of interest assumptions under the PBGC's regulation on Allocation of Assets in Single-Employer Plans (29 CFR part 4044). The interest assumptions applicable to valuation dates in January 2004 under part 4044 are contained in an amendment to part 4044 published elsewhere in today's **Federal Register**. Tables showing the assumptions applicable to prior periods are codified in appendix B to 29 CFR part 4044.

Issued in Washington, DC, on this 10th day of December, 2003.

Joseph H. Grant,

Deputy Executive Director and Chief Operating Officer, Pension Benefit Guaranty Corporation.

[FR Doc. 03–30948 Filed 12–12–03; 8:45 am]

BILLING CODE 7708–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48882; File No. S7–24–89]

Joint Industry Plan; Order Extending for One Year the Operation of the Reporting Plan for Nasdaq-Listed Securities Traded on Exchanges on an Unlisted Trading Privilege Basis, Submitted by the National Association of Securities Dealers, Inc., the Boston Stock Exchange, Inc., the Chicago Stock Exchange, Inc., the Cincinnati Stock Exchange, Inc., the Pacific Exchange, Inc., the American Stock Exchange LLC, and the Philadelphia Stock Exchange, Inc.

December 4, 2003.

I. Introduction and Description

On August 8, 2003, the Cincinnati Stock Exchange, Inc. ("CSE") on behalf of itself and the National Association of Securities Dealers, Inc. ("NASD"), the American Stock Exchange LLC ("Amex"), the Boston Stock Exchange, Inc. ("BSE"), the Chicago Stock Exchange, Inc. ("CHX"), the Pacific Exchange, Inc. ("PCX"), and the Philadelphia Stock Exchange, Inc. ("PHLX") (hereinafter referred to collectively as "Participants"),[1] as members of the operating committee ("Operating Committee" or "Committee") of the Plan submitted to the Securities and Exchange Commission ("SEC" or "Commission") a request to extend the operation of the Plan and also to extend certain exemptive relief as described below.[2] On August 12, 2003, the Commission issued a notice for comment and simultaneously granted summary effectiveness to the request to extend the operation of the Plan and certain exemptive relief.[3] No comments were received in response to the publication of this notice.

The Nasdaq UTP Plan governs the collection, processing, and dissemination on a consolidated basis of quotation and last sale information for each of its Participants. This consolidated information informs investors of the current quotation and recent trade prices of Nasdaq Stock Market, Inc. ("Nasdaq") securities. It enables investors to ascertain from one data source the current prices in all the markets trading Nasdaq securities. The Plan serves as the required transaction reporting plan for its Participants, which is a prerequisite for their trading Nasdaq securities. Currently, the Plan is scheduled to expire on December 16, 2003.

This order approves, pursuant to Rule 11Aa3–2(c)(2) under the Securities Exchange Act of 1934 ("Act"),[4] the request to extend operation of the Plan and the request to extend certain exemptive relief ("Date Extension") for a one-year period[5] expiring one year from the date of publication in the **Federal Register**.

II. Exemptive Relief

While both Nasdaq and the NASD operate under the umbrella of a single

[1] The CSE was elected chair of the Operating Committee for the Joint Self-Regulatory Organization Plan Governing the Collection, Consolidation and Dissemination of Quotation and Transaction Information for Nasdaq-Listed Securities Traded on Exchanges on an Unlisted Trading Privilege Basis ("Nasdaq UTP Plan" or "Plan") by the Participants.

[2] *See* letter from Jeffrey T. Brown, Chairman, Plan Operating Committee, to Jonathan G. Katz, Secretary, Commission, dated August 8, 2003.

[3] *See* Securities Exchange Act Release No. 48318, 68 FR 49534 (August 18, 2003)

[4] 17 CFR 240.11Aa3–2(c)(2).

[5] As discussed in the order granting partial temporary approval of Amendment No. 13 to the Plan, *see* Securities Exchange Act Release No. 46729 (October 25, 2002), 67 FR 66685 (November 1, 2002) ("Partial Approval"), proposed amendments to the Plan had been segregated into four categories: (1) Category 1, "Effective Upon Nasdaq's Exchange Registration;" (2) Category 2, "Effective Upon Launch of the Internal SIP;" (3) Category 3, "Effective Upon End of Parallel Period—Elimination of the Legacy SIP;" and (4) Category 4, "Timing Not An Issue." Through the Partial Approval, the Commission approved the Category 2, 3, and 4 amendments on a pliot basis, but did not approve the Category 1 amendments. Therefore, the Plan the Commission extends today is the Plan, as modified, by all changes previously approved. In the Partial Approval, the Commission explicitly noted its intention to address the Category 1 amendments through separate action when the Commission acts on the Nasdaq exchange registration application. This order does not approve the Category 1 amendments and the Commission reiterates its intent to act upon the Category 1 amendments through separate action in conjunction with the Nasdaq exchange registration application.

Plan Participant, the submission of two distinct best bids and offers ("BBOs") could be deemed inconsistent with Section VI.C.1 of the Plan.[6] Pursuant to the 13th Amendment of the Plan and Rule 11Aa3–2(a),[7] Nasdaq cannot be granted Plan Participant status until it is registered as a national securities exchange. While Nasdaq submits a distinct BBO from the NASD and until Nasdaq is registered as a national securities exchange, the NASD will submit quotes to the Plan's Securities Information Processor ("SIP") in a manner different than specified in Section VI.C.1 of the Plan and, thus, in conflict with Commission Rule 11Aa3–2(d).[8]

As discussed at length in the notice of the 13th Amendment,[9] the Commission had determined to relieve the potential conflict among the SuperMontage approval order,[10] Rule 11Aa3–2,[11] and the Plan, by granting the NASD an exemption under Rule 11Aa3–2(f)[12] from compliance with Section VI.C.1. of the Plan as required by Rule 11Aa3–2(d)[13] until such time as Nasdaq is registered as a national securities exchange. The Plan Participants have requested an extension of such exemptive relief.

III. Discussion

The Commission finds that extending the operation of the Plan is consistent with the requirements of the Act and the rules and regulations thereunder, and, in particular, Section 12(f)[14] and Section 11A(a)(1)[15] of the Act and Rules 11Aa3–1 and 11Aa3–2 thereunder.[16]

Section 11A of the Act directs the Commission to facilitate the development of a national market system for securities, "having due regard for the public interest, the protection of investors, and the maintenance of fair and orderly markets," and cites as an objective of that system the "fair competition * * * between exchange markets and markets other than exchange markets."[17] When the Commission first approved of the Plan on a pilot basis, it found that the Plan "should enhance market efficiency and fair competition, avoid investor confusion, and facilitate surveillance of concurrent exchange and OTC trading."[18] The Plan has been in existence since 1990 and Participants have been trading Nasdaq securities under the Plan since 1993.

The Commission finds that extending the operation of the Plan for a year furthers the goals described above by preventing the lapsing of the sole effective transaction reporting plan for Nasdaq securities traded by exchanges pursuant to unlisted trading privileges. The Commission believes that the Plan is currently a critical component of the national market system and that the Plan's expiration would have a serious, detrimental impact on the further development of the national market system.

The Commission also finds that it is appropriate to extend the exemption under Rule 11Aa3–2(f)[19] from compliance with Section VI.C.1. of the Plan as required by Rule 11Aa3–2(d).[20] The Commission believes that the Plan is a critical component of the national market system and that the requested exemptive relief is necessary to assure the effective operation of the Plan. The Commission believes that the requested exemptive relief extension is consistent with the Act, the Rules thereunder, and, specifically, with the objectives set forth in Sections 12(f) and 11A of the Act[21] and Rules 11Aa3–1 and 11Aa3–2 thereunder.[22]

IV. Conclusion

It is therefore ordered, pursuant to sections 12(f) and 11A of the Act[23] and paragraph (c)(4) of Rule 11Aa3–2[24] thereunder, that the operation of the Plan be, and hereby is, extended and that certain exemptive relief also be extended until December 15, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[25]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–30839 Filed 12–12–03; 8:45 am]

BILLING CODE 8010–01–P

[6] Section VI.C.1 of the Plan, as approved by the Operating Committee in the 13th Amendment, states that "[t]he Processor shall disseminate on the UTP Quote Data Feed the best bid and offer information supplied by each Participant, including the NASD. * * *"

[7] 17 CFR 240.11Aa3–2(a).

[8] 17 CFR 240.11Aa3–2(d). Commission Rule 11Aa3–2(d) requires a self-regulatory organization participant of national market system plan to comply with the terms of that plan.

[9] *See* Securities Exchange Act Release No. 46139 (June 28, 2001 [sic]), 67 FR 44888 (July 5, 2002).

[10] *See* Securities Exchange Act Release No. 43863 (January 19, 2001), 66 FR 8020 (January 26, 2001).

[11] 17 CFR 240.11Aa3–2.

[12] 17 CFR 240.11Aa3–2(f).

[13] 17 CFR 240.11Aa3–2(d).

[14] 15 U.S.C. 78l(f). The Commission finds that extending the Plan is consistent with fair and orderly markets, the protection of investors and the public interest, and otherwise in furtherance of the purposes of the Act. The Commission has taken into account the public trading activity in securities traded pursuant to the Plan, the character of the trading, the impact of the trading of such securities on existing markets, and the desirability of removing impediments to, and the progress that has been made toward the development of a national market system.

[15] 15 U.S.C. 78k–1(a)(1).

[16] 17 CFR 240.11Aa3–1 and 17 CFR 240.11Aa3–2.

[17] 15 U.S.C. 78k–1(a).

[18] *See* Securities Exchange Act Release No. 28146 (June 26, 1990), 55 FR 27917 (July 6, 1990).

[19] 17 CFR 240.11Aa3–2(f).

[20] 17 CFR 240.11Aa3–2(d).

[21] 15 U.S.C. 78l(f) and 15 U.S.C. 78k–1.

[22] 17 CFR 240.11Aa3–1 and 11Aa3–2.

[23] 15 U.S.C. 78l(f) and 15 U.S.C. 78k–1.

[24] 17 CFR 240.11Aa3–2(c)(4).

[25] 17 CFR 200.30–3(a)(27).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48890; File No. SR–NASD–2003–174]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc. To Amend the Fee Schedule for the Nasdaq National Market Execution System With Respect to Executions Across Multiple MPIDs of the Same Member

December 8, 2003.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b-4 thereunder,[2] notice is hereby given that on November 26, 2003, the National Association of Securities Dealers, Inc. ("NASD"), through its subsidiary, The Nasdaq Stock Market, Inc. ("Nasdaq"), filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by Nasdaq. Nasdaq has designated this proposal as one establishing or changing a due, fee or other charge imposed by the self-regulatory organization under Section 19(b)(3)(A)(ii) of the Act[3] and Rule 19b-4(f)(2) thereunder,[4] which renders the rule immediately effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

Nasdaq proposes to amend NASD Rule 7010(i) to modify the fee charged when Quotes/Orders submitted by the same member under different market participant identifiers ("MPIDs") match and execute against each other in the Nasdaq National Market Execution System ("NNMS" or "SuperMontage").[5] Nasdaq implemented the revised fee schedule on December 1, 2003. The text of the proposed rule change appears below. New text is italicized.

* * * * *

7000. CHARGES FOR SERVICES AND EQUIPMENT

7010. System Services

(a)–(h) No change.

(i) Nasdaq National Market Execution System (SuperMontage)

The following charges shall apply to the use of the Nasdaq National Market Execution System (commonly known as SuperMontage) by members:

Order Entry:	
Non-Directed Orders (excluding Preferenced Orders)	No charge.
Preferenced Orders:	
Preferenced Orders that access a Quote/Order of the member that entered the Preferenced Order).	No charge.
Other Preferenced Orders	$0.02 per order entry.
Directed Orders	$0.10 per order entry.
Order Execution:	
Non-Directed or Preferenced Order that accesses the Quote/Order of a market participant that does not charge an access fee to market participants accessing its Quotes/Orders through the NNMS:	
Charge to member entering order	$0.003 per share executed (but no more than $120 per trade for trades in securities executed at $1.00 or less per share).
Credit to member providing liquidity	$0.002 per share executed (but no more than $80 per trade for trades in securities executed at $1.00 or less per share).
Non-Directed or Preferenced Order that accesses the Quote/Order of a market participant that charges an access fee to market participants accessing its Quotes/Orders through the NNMS.	$0.001 per share executed (but no more than $40 per trade for trades in securities executed at $1.00 or less per share).
Directed Order	$0.003 per share executed.
Non-Directed or Preferenced Order entered by a member that accesses its own Quote/Order *submitted under the same or a different market participant identifier of the member.*	No charge.
Order Cancellation:	
Non-Directed and Preferenced Orders	No charge.
Directed Orders	$0.10 per order cancelled.

(j)–(s) No change.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Nasdaq proposes to amend NASD Rule 7010(i) to modify the fee charged when multiple Quotes/Orders submitted by the same member under different MPIDs match and execute against each other in SuperMontage. Currently, Nasdaq does not charge a fee when a member executes a trade against itself in SuperMontage and the Quotes/Orders are submitted under the same MPID ("single MPID execution"). However, when the same scenario occurs but the Quotes/Orders are submitted by a member under different MPIDs ("multiple MPID execution"), Nasdaq charges the standard SuperMontage execution fee that applies when trading interest of different members matches and executes.

Nasdaq proposes to amend NASD Rule 7010(i) so single MPID executions and multiple MPID executions are treated the same—there will be no charge. Therefore, Nasdaq proposes, beginning on December 1, 2003, that there will be no charge when a Non-Directed Order or Preferenced Order submitted under one MPID of a member accesses the member's own Quote/Order submitted under a different MPID.[6] Nasdaq states that its policy for not charging a fee when Quotes/Orders submitted by a member match and execute in SuperMontage is based on an expectation that, in its absence, members would internalize a greater percentage of orders through their own proprietary systems, rather than exposing them to the full market.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 15A of the Act,[7] in general and with Section 15A(b)(5) of the Act,[8] in particular, in that it provides for the equitable allocation of reasonable fees among members. Nasdaq believes the proposal harmonizes its fee structure for trades that are "internalized" by members through SuperMontage, irrespective of whether the trade is the result of a single MPID execution or multiple MPID execution.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b-4.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 17 CFR 240.19b-4(f)(2).

[5] "Quotes/Orders" is defined under NASD Rule 4701(bb).

[6] 6 Non-Directed Order and Preferenced Order are defined under NASD Rule 4701(p) and (aa), respectively.

[7] 15 U.S.C. 78*o*-3.

[8] 15 U.S.C. 78*o*-3(5).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act[9] and Rule 19b-4(f)(2) thereunder[10] because it establishes or changes a due, fee or other charge. At any time within 60 days after filing of this proposed rule change, the Commission may summarily abrogate the rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549–0609. Comments should be submitted electronically at the following e-mail address: rule-comments@sec.gov. All comment letters should refer to File No. SR–NASD–2003–174. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, comments should be sent in hard copy or by e-mail but not by both methods. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to file number SR–NASD–2003–174 should be submitted by January 5, 2004.

[9] 15 U.S.C. 78s(b)(3)(A)(ii).

[10] 17 CFR 240.19b-4(f)(2).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–30836 Filed 12–12–03; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48880; File No. SR–NASD–2003–145]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment Nos. 1 and 2 Thereto To Give Authority to a 3-Member Subcommittee of NASD's Market Regulation Committee to Review Alternative Display Facility System Outage and Denial of Excused Withdrawal Determinations

December 4, 2003.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 25, 2003, the National Association of Securities Dealers, Inc. ("NASD") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by NASD. On November 24, 2003, and December 2, 2003, NASD filed Amendment Nos. 1[3] and 2[4] to the proposed rule change, respectively. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NASD is proposing to amend NASD Rules 4300A and 4619A(g) to give jurisdiction to a 3-member subcommittee of NASD's Market Regulation Committee ("MRC") to review system outage determinations under Rule 4300A(f) and excused withdrawal denials under Rule 4619A, respectively.

The proposed rule change would apply during the time that the NASD Alternative Display Facility operates on a pilot basis. The Commission previously approved the ADF as a nine-month pilot to quote and trade only Nasdaq-listed securities.[5] The Commission subsequently approved an extension of the pilot until January 26, 2004.[6] The text of the proposed rule is set forth below. Proposed new language is italicized; proposed deletions are in brackets.

* * * * *

4300A. Quote and Order Access Requirements.

(a) through (e) No change.

(f) Procedures for Reviewing System Outages

(1) through (4) No change.

(5) A Market Participant may appeal a determination made under paragraph (e)(3) to *a three-member subcommittee comprised of current or former industry members of* NASD's *Market Regulation* [Alternative Display Facility Market Operations Review] Committee in writing, via facsimile or otherwise, by the close of business on the day a determination is rendered pursuant to paragraph (e)(3). An appeal to the *subcommittee* [Committee] shall operate as a stay of the determination made pursuant paragraph (e)(3). Once a written appeal has been received, the Market Participant may submit any additional supporting written documentation, via facsimile or otherwise, up until the time the appeal is considered by the *subcommittee* [Committee]. The *subcommittee* [Committee] shall render a determination by the close of business following the day a notice of appeal is received. The *subcommittee's* [Committee's] determination shall be final and binding.

* * * * *

4619A. Withdrawal of Quotations and Passive Market Making

(a) through (f) No Change.

(g) *A three-member subcommittee comprised of current or former industry members of* NASD's [Alternative Display Facility Operations Review] *Market Regulation* Committee shall have jurisdiction over proceedings brought by market makers seeking review of a denial of an excused withdrawal

[11] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] NASD filed a new Form 19b–4, which replaces and supersedes the original filing in its entirety.

[4] Letter from Philip A. Shaikun, Office of General Counsel, Regulatory Policy and Oversight, NASD, to Katherine A. England, Assistant Director, Division of Market Regulation, Commission, dated December 2, 2003 ("Amendment No. 2"). Amendment No. 2 deletes the following sentence from Exhibit 1 to the Form 19b–4: "NASD has designated the proposed rule change as concerned solely with administration of the self-regulatory organization under Section 19(b)(3)(A)(iii) of the Act and Rule 19b–4(f)(3) thereunder, which renders the proposal effective upon receipt of this filing by the Commission."

[5] Securities Exchange Act Release No. 46249 (July 24, 2002), 67 FR 49822 (July 31, 2002).

[6] Securities Exchange Act Release No. 47633 (April 10, 2003), 68 FR 19043 (April 17, 2003).

pursuant to this Rule, or the conditions imposed on their reentry.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NASD has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Background. On July 24, 2002, the Commission approved SR-NASD 2002–97, which authorizes NASD to operate the ADF on a pilot basis in Nasdaq securities for nine months, pending the anticipated approval of SR–NASD–2001–90, which proposes to operate the ADF on a permanent basis.[7] On April 10, 2003, the Commission approved SR–NASD–2003–53, authorizing extension of the ADF pilot period until January 26, 2004.[8] As described in detail in SR–NASD–2001–90, the ADF is a quotation collection, trade comparison, and trade reporting facility developed by NASD in accordance with the Commission's SuperMontage Approval Order[9] and in conjunction with Nasdaq's anticipated registration as a national securities exchange.[10]

For the duration of the pilot period, ADF will provide ADF market participants (market makers and ECNs) the ability to post quotations in Nasdaq securities and will provide all members that participate in the ADF the ability to view quotations and report transactions in Nasdaq securities to the Exclusive Securities Information Processor ("SIP") for Nasdaq-listed issues [11] for consolidation and dissemination of data to vendors and ADF market participants. The facility also will provide for trade comparison through the Trade Reporting and Comparison Service ("TRACS"). The facility further will provide for real-time data delivery to NASD for regulatory purposes, including enforcement of firm quote and related rules. It is anticipated that the ADF will operate on a pilot basis until the effective date of SR–NASD–2001–90, the approval of which would provide for the operation of the ADF on a permanent basis and an expansion of ADF-eligible securities to include all exchange-listed securities.

Order Access Rule. The ADF does not provide an order routing capability. Instead, NASD pilot Rule 4300A requires market participants to provide direct electronic access to other market participants and to provide to all other NASD members direct electronic access or allow for indirect electronic access to the individual market participant's quote. This rule provides the means for ADF market participants and other broker/dealers to access ADF quotes and, among other things, to meet the firm quote and locked and crossed quotation requirements.

System Outage Determinations. Pursuant to NASD Rule 4300A(e)(2), NASD may suspend a market participant from quoting for 20 business days if the market participant experiences three unexcused, confirmed system outages during any period of five business days. The Rule defines system outages as (1) an inability to quote or (2) an inability to respond to orders. The Rule gives officers of NASD authority to review an outage and determine whether the outage should be excused. An officer may deem a system outage excused based on the specific facts and circumstances surrounding the outage. Most significant consideration is given to whether the system outage resulted from circumstances beyond the market participant's control and whether the market participant voluntarily brought the matter to the attention of NASD before it otherwise learned of the outage. Other factors that may be considered include, but are not limited to, the extent and duration of the system problem.

Rule 4300A provides for a review and appeal process of a determination of whether an outage is excused or unexcused. Currently, Rule 4300A(f)(5) gives authority for such reviews to NASD's Alternative Display Facility Market Operations Review Committee. The proposed rule change would amend that provision to give review authority to a three-member subcommittee comprised of current or former industry members of NASD's MRC to take advantage of that committee's expertise. It would be NASD's intention to draw first from current MRC members and resort to former members only when conflicts or availability problems exist with current members.

Denial of Excused Withdrawals. NASD Rule 4619A generally provides that NASD Alternative Display Facility Operations may, under certain circumstances, grant excused withdrawal status to an ADF Market Maker that withdraws its quotations from a security. Rule 4619A(g) provides for review of a denial of an excused withdrawal and gives authority for such reviews to NASD's Alternative Display Facility Market Operations Review Committee. The proposed rule change would amend that provision to give review authority to a three-member subcommittee comprised of current or former industry members of the MRC, as would be the case for system outage proceedings described above.

2. Basis

NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[12] which requires, among other things, that NASD rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. NASD believes that the MRC is the appropriate committee to review ADF system outage and excused withdrawal determinations.

B. Self-Regulatory Organization's Statement on Burden on Competition

NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or

[7] Securities Exchange Act Release No. 46249 (July 24, 2002), 67 FR 49822 (July 31, 2002).

[8] Securities Exchange Act Release No. 47633 (April 10, 2003), 68 FR 19043 (April 17, 2003)

[9] Securities Exchange Act Release No. 43863 (January 19, 2001), 66 FR 8020 (January 26, 2001).

[10] Securities Exchange Act Release No. 44396 (June 7, 2001), 66 FR 31952 (June 13, 2001).

[11] Nasdaq initially will be the designated SIP for all transactions and quotations in Nasdaq securities. During the pilot period, the SIP will distribute individual quotations for both ADF and Nasdaq market makers and ECNs.

[12] 15 U.S.C. 78o–3(b)(6).

(ii) as to which NASD consents, the Commission will:

(A) by order approve such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Comments may also be submitted electronically at the following e-mail address: *rule-comments@sec.gov*. All comment letters should refer to File No. SR–NASD–2003–145. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, comments should be sent in hardcopy or by e-mail but not by both methods.

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD.

All submissions should refer to File No. NASD–2003–145 and should be submitted by January 5, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–30841 Filed 12–12–03; 8:45 am]

BILLING CODE 8010–01–P

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48889; File No. SR–NASD–2003–178]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the National Association of Securities Dealers, Inc. To Modify Certain Listing Fees for Foreign Issuers and To Make a Technical Change to the Rule Pertaining to Recordkeeping Fees for Issuers Listed on The Nasdaq SmallCap Market

December 5, 2003.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 3, 2003, the National Association of Securities Dealers, Inc. ("NASD"), through its subsidiary, The Nasdaq Stock Market, Inc. ("Nasdaq"), filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Nasdaq. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

Nasdaq has filed with the Commission a proposed rule change to modify certain listing fees for foreign issuers and to make a technical change to the rule pertaining to recordkeeping fees for issuers listed on The Nasdaq SmallCap Market.

The text of the proposed rule change is below. Proposed new language is in *italics;* proposed deletions are in brackets.

* * * * *

4500. ISSUER LISTING FEES

4510. The Nasdaq National Market

(a) Entry Fee.

(1) A*n* [domestic] issuer[, or foreign issuer raising capital in conjunction with its Nasdaq listing,] that submits an application for inclusion of any class of its securities (not otherwise identified in this Rule 4500 series) in The Nasdaq National Market, shall pay to The Nasdaq Stock Market, Inc. a fee calculated on total shares outstanding, according to the following schedule. This fee will be assessed on the date of entry in The Nasdaq National Market, except for $5,000, which represents a non-refundable, application fee, and which must be submitted with the issuer's application.

Up to 30 million shares—$100,000
30+ to 50 million shares—$125,000
Over 50 million shares—$150,000

[(2) A foreign issuer not raising capital in conjunction with its Nasdaq listing, including American Depositary Receipts (ADRs), that submits an application for inclusion of any class of its securities (not otherwise identified in this Rule 4500 series) in The Nasdaq National Market, shall pay to The Nasdaq Stock Market, Inc. a fee calculated on total shares outstanding, according to the following schedule. This fee will be assessed on the date of entry in The Nasdaq National Market, except for $5,000, which represents a non-refundable, application fee, and which must be submitted with the issuer's application.

Up to 3 million shares—$50,000
3+ to 5 million shares—$75,000
5+ to 30 million shares—$100,000
30+ to 50 million shares—$125,000
Over 50 million shares—$150,000]

Current (3)–(6) Renumbered as (2)–(5).

(b)–(c) No change.

(d) Annual Fee—American Depositary Receipts (ADRs).

(1) The issuer of each class of securities that is an ADR listed in The Nasdaq National Market shall pay to The Nasdaq Stock Market, Inc. an annual fee calculated on ADRs outstanding according to the following schedule not to exceed $30,000 per issuer:

Up to 10 million ADRs—*$21,225* [$10,000]
10+ to 25 million ADRs—*$26,500* [$15,000]
25+ to 50 million ADRs—*$29,820* [$20,000]
[50+ to 75 million ADRs—$22,500
75+ to 100 million ADRs—$25,000]
Over *50* [100] million ADRs—$30,000

(2)–(4) No change.

4520. The Nasdaq SmallCap Market

(a)–(c) No change.

[(e)]*(d)* Recordkeeping Fee.

An issuer that makes a change such as a change to its name, the par value or title of its security, or its symbol shall pay a fee of $2,500 to The Nasdaq Stock Market, Inc.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Nasdaq states that the purpose of the proposed rule change is to revise certain fees for foreign issuers listed on The Nasdaq National Market in order to eliminate or reduce the disparity in the amount of fees paid by issuers.[3] Specifically, Nasdaq proposes to revise the entry fees for foreign issuers not raising capital in conjunction with their listing on Nasdaq and the annual fees applicable to American Depositary Receipts (ADRs), beginning on January 1, 2004. Nasdaq also proposes to make a technical change to the rule pertaining to recordkeeping fees for issuers listed on The Nasdaq SmallCap Market.

Nasdaq proposes to revise the entry fees for foreign National Market issuers not raising capital in conjunction with their listing. Nasdaq rules currently provide two separate entry fee schedules for foreign issuers. The fee schedule set forth in Rule 4510(a)(1) applies to foreign issuers that raise capital in conjunction with their listing on Nasdaq (as well as to all domestic issuers), and the fee schedule in Rule 4510(a)(2) applies to those issuers that do not raise capital in conjunction with listing on Nasdaq. These two fee schedules are the same except for foreign issuers that do not raise capital in conjunction with their listing and that list less than 5 million shares. These issuers pay a lower fee than they would if they were raising capital in conjunction with their listing, in recognition of the fact that these listings are non-capital raising and generally represent secondary market listings. Nasdaq proposes to eliminate the reduced fees for these issuers and to adopt a single entry fee schedule for all domestic and foreign issuers.

Nasdaq also proposes to revise the annual fee schedule for ADRs listed on the National Market. The current fee schedule for ADRs, which is set forth in Rule 4510(d), provides for lower fees than those applicable to U.S. issuers and foreign issuers that list ordinary shares. In order to more closely align the fees paid by issuers that list ADRs with those paid by other issuers, Nasdaq proposes to raise the fees for ADRs while maintaining the current annual cap of $30,000 per issuer. Under this proposal, issuers that list up to 50 million ADRs will pay the same annual fee as U.S. issuers and foreign issuers that list ordinary shares. Those issuers that list more than 50 million ADRs will pay the maximum annual fee of $30,000.

Lastly, Nasdaq proposes to make a technical change to the rule pertaining to recordkeeping fees for issuers listed on The Nasdaq SmallCap Market. Specifically, Nasdaq proposes to renumber Rule 4520(e) as Rule 4520(d) in order to avoid any potential confusion regarding the fees for SmallCap issuers.[4]

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 15A of the Act,[5] in general, and with Section 15A(b)(5) of the Act,[6] in particular, in that the proposal provides for the equitable allocation of reasonable dues, fees, and other charges among members and issuers and other persons using any facility or system which the NASD operates or controls. Specifically, the revised fee schedules will eliminate or reduce the disparity in the entry and annual fees paid by Nasdaq issuers.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because non-member issuers affected by the proposed rule change should be afforded the notice and comment periods under Section 19(b)(2) of the Act,[7] the Commission does not find good cause to accelerate approval of this proposal, as Nasdaq requested to "minimize potential uncertainty or administrative difficulties." Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determinate whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change in consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Comments should be submitted electronically at the following e-mail address: *rule-comments@sec.gov*. All comment letters should refer to File No. SR–NASD–2003–174. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, comments should be sent in hard copy or by e-mail but not by both methods. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to file number SR–NASD–2003–178 and should be submitted by January 5, 2004.

[3] The Commission notes that the net effect of Nasdaq's proposal is to raise entry fees for foreign issuers not raising capital and raise annual fees for issuers of ADRs.

[4] The recordkeeping fee for SmallCap issuers was established pursuant to SR–NASD–2003–127. This fee, however, was erroneously numbered as Rule 4520(e) in the rule filing and should have been numbered as Rule 4520(d) in order to maintain continuity in Rule 4520.

[5] 15 U.S.C. 78*o*–3.

[6] 15 U.S.C. 78*o*–3(b)(5).

[7] 15 U.S.C. 78s(2).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. 03–30984 Filed 12–12–03; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48891; File No. SR–CSE–2003–14]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by National Stock Exchange To Extend Its Liquidity Provider Fee and Rebate Pilot Program

December 8, 2003

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b-4 thereunder,[2] notice is hereby given that on December 3, 2003, National Stock Exchange ("Exchange")[3] filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange filed this proposal pursuant to Section 19(b)(3)(A) of the Act[4] and Rule 19b-4(f)(6)[5] thereunder, which renders the proposal effective upon filing with the Commission.[6] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange has a Liquidity Provider Fee and Rebate Program ("Program"), which was originally proposed in SR–CSE–2002–16,[7] that is currently in effect and is set to expire on December 31, 2003.[8] Through this proposed rule change the Exchange seeks to extend the Program through June 30, 2004. The Exchange proposes no other substantive changes to the Program at this time. The text of the proposed rule change is available at the Exchange and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On October 22, 2002, the Exchange filed SR–CSE–2002–16,[9] which proposed to establish a pilot transaction credit for liquidity providers that is paid by liquidity takers on each intra-Exchange execution [10] in Nasdaq securities. Under the Program, the Exchange amended its Rule 11.10A(g)(1) by adding subparagraph (B) to charge the liquidity taker, *i.e.*, the party executing against a previously displayed quote/order, $0.004 per share. The Exchange then passes on to the liquidity provider, *i.e.*, the party providing the displayed quote/order, $0.003 per share with the exchange retaining $0.001 per share. With this proposed rule change, the Exchange is extending the Program through June 30, 2004.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6(b) of the Act,[11] in general, and Section 6(b)(5) of the Act,[12] in particular, in that it is designed to promote just and equitable principles of trade and to remove impediments to and perfect the mechanism of a free and open market and a national market system and, generally, in that it protects investors and the public interest. The Exchange believes that the proposed rule change is also consistent with Section 6(b)(4) of the Act,[13] in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among Exchange members by crediting members on a pro rata basis.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received in connection with the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not:

(i) Significantly affect the protection of investors or the public interest;

(ii) impose any significant burden on competition; and

(iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act [14] and Rule 19b–4(f)(6)[15] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

The Exchange has requested that the Commission waive the 30-day operative delay. The Commission believes that such waiver is consistent with the protection of investors and the public interest, for it will allow the Program to continue without interruption. For these reasons, the Commission designates the proposal to be effective and operative upon filing with the Commission.[16]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Comments may also be submitted electronically at the following e-mail address: *rule-comments@sec.gov*. All comment letters should refer to File No. SR–CSE–2003–14. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, comments should be sent in hardcopy or by e-mail but not by both methods. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to file number SR–CSE–2003–14 and should be submitted by January 5, 2004.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[17]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–30835 Filed 12–11–03; 8:45 am]

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[8] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Exchange was formerly known as The Cincinnati Stock Exchange. *See* Securities Exchange Act Release No. 48774 (November 12, 2003), 68 FR 65332 (November 19, 2003)(SR–CSE–2003–12).

[4] 15 U.S.C. 78s(b)(3)(A).

[5] 17 CFR 240.19b–4(f)(6).

[6] The Exchange gave the Commission written notice of its intention to file the proposed rule change on November 21, 2003. The Exchange asked the Commission to waive the 30-day operative delay. 17 CFR 240.19b-4(f)(6).

[7] Securities Exchange Act Release No. 46848 (November 19, 2002, 67 FR 70793 (November 26, 2002)("Original Pilot").

[8] The Program, which was originally set to expire on March 31, 2003, was subsequently extended until September 30, 2003, and extended again until December 31, 2003. Securities Exchange Act Release Nos. 47596 (March 28, 2003), 68 FR 16594 (April 4, 2003)(SR–CSE–2003–03)(extending the Program until September 30, 2003) and 48584 (October 2, 2003), 68 FR 58368 (October 9, 2003)(SR–CSE–2003–13)(extending the Program until December 31, 2003).

[9] *See* Original Pilot, *supra* note 7.

[10] An "intra-Exchange execution" (referred to in the Original Pilot as an "intra-CSE execution") is any transaction that is executed on the Exchange for which the executing member on the buy-side of the transaction differs from the executing member on the sell-side of the transaction. *Id.* at 70793.

[11] 15 U.S.C. 78f(b).

[12] 15 U.S.C. 78f(b)(5).

[13] 15 U.S.C. 78f(b)(4).

[14] 15 U.S.C. 78s(b)(3)(A).

[15] 17 CFR 240.19b–4(f)(6).

[16] For purposes only of accelerating the operative date of the proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[17] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48881; File No. SR–NYSE–2003–39]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the New York Stock Exchange, Inc. Relating to the Listing and Trading of iShares Lehman U.S. Aggregate Bond Fund and iShares Lehman TIPS Bond Fund

December 4, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on November 25, 2003 the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. On December 3, 2003, the NYSE filed Amendment No. 1 to the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons and is approving the proposal, as amended, on an accelerated basis.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to trade pursuant to unlisted trading privileges ("UTP") iShares Lehman U.S. Aggregate Bond Fund (the "Aggregate Bond Fund") and to list and trade the iShares Lehman TIPS Bond Fund [4] (the "TIPS Fund") and together with the Aggregate Bond Fund, (the "ETFs" or the "Funds"), each a series of iShares Trust (the "Trust"), an exchange traded fund which is a type of Investment Company Unit.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NYSE included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in item III below. The NYSE has prepared summaries, set forth in Sections A, B, and C below of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

Section 703.16 of the NYSE Listed Company Manual provides standards for listing and trading Investment Company Units ("ICUs"), which are securities issued by an open-end management company.[5] The Commission previously approved amendments to section 703.16 of the NYSE Listed Company Manual to accommodate the listing and trading of ICUs based on an index of fixed income securities, but such standards are not generic listing standards. Hence, the NYSE has filed NYSE–2003–39 to accommodate the trading pursuant to UTP of the Aggregate Bond Fund and the listing and trading of the TIPS Fund under section 703.16 of the Listed Company Manual. The Funds have been approved for listing on the Amex.[6]

As set forth in detail below, the Funds will hold certain fixed income securities (the "Component Securities") selected to correspond generally to the performance of the relevant Underlying Index (the "Underlying Index") and, in the case of the Aggregate Bond Fund will also invest in mortgage pass-through securities through TBA

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Darla Stuckey, Corporate Secretary, NYSE, to Florence Harmon, Senior Special Counsel, Division of Market Regulation ("Division"), Commission, dated December 3, 2003 ("Amendment No. 1"). Amendment No. 1 provides for certain technical changes and clarification to the original proposal, particularly settlement and clearance procedures for TIPS Fund

[4] Telephone conversation between Janet Kissane, Milbank, Tweed, Hadley & McCloy LLP, Counsel for NYSE, and Florence Harmon, Senior Special Counsel, Division, Commission dated December 4, 2003.

[5] In 1996, the Commission approved Section 703.16 of the Listed Company Manual (the "Company Manual"), which sets forth the rules related to the listing of ICUs. *See* Securities Exchange Act Release No. 36923 (March 5, 1996), 61 FR 10410 (March 13, 1996). In 2000, the Commission also approved the Exchange's generic listing standards for listing and trading, or the trading pursuant to UTP, of ICUs under Section 703.16 of the Company Manual and NYSE Rule 1100. *See* Securities Exchange Act Release No. 43679 (December 5, 2000), 65 FR 77949 (December 13, 2000). In 2002, the Commission approved amendments to Section 703.16 of the Company Manual to accommodate the listing of ICUs based on an index of fixed income securities. *See* Securities Exchange Act Release No 46306 (August 2, 2002), 67 FR 51916 (August 9, 2002).

[6] *See* Securities Exchange Act Release No. 48534 (September 24, 2003), 68 FR 56353 (September 30, 2003).

transactions, in each instance as described in *Exhibit A* to NYSE–2003–39. The ETFs intend to qualify as a "regulated investment company" (the "RIC") under the Internal Revenue Code (the "Code").

Barclays Global Fund Advisors (the "Advisor" or the "BGFA") is the investment advisor to the ETFs. The Advisor is registered under the Investment Advisers Act of 1940 (the "Advisers Act"). The Advisor is the wholly owned subsidiary of Barclays Global Investors, N.A. (the "BGI"), a national banking association. BGI is an indirect subsidiary of Barclays Bank PLC of the United Kingdom.

SEI Investments Distribution Co. (the "Distributor"), a Pennsylvania corporation and broker-dealer registered under the Act, is the principal underwriter and distributor of Creation Unit Aggregations of iShares. The Distributor is not affiliated with the Exchange or the Advisor.

Administrator/Custodian/Fund Accountant/Transfer Agent/Dividend Disbursing Agent. The Trust has appointed Investors Bank & Trust Co. (the "IBT") to act as administrator (the "Administrator"), custodian, fund accountant, transfer agent, and dividend disbursing agent for the ETFs. The performance of their duties and obligations will be conducted within the provisions of the Advisers Act and the rules thereunder. There is no affiliation between IBT and the Trust, the Advisor or the Distributor.

a. *Operation of the ETFs.* The investment objective of each ETF will be to provide investment results that correspond generally to the performance of its Underlying Index. In seeking to achieve its investment objective, the ETFs will utilize "passive" indexing investment strategies. Each ETF may fully replicate is Underlying Index, but currently intends to use a "representative sampling" strategy to track its Underlying Index. A Fund utilizing a representative sampling strategy generally will hold a basket of the component securities (the "Component Securities") of its Underlying Index, but it may not hold all of the Component Securities of its Underlying Index (as compared to an ETF that uses a replication strategy which invests in substantially all of the Component Securities in its Underlying Index in the same appropriate proportions as in the Underlying Index).[7] The representative sampling techniques that will be used by the Advisor to manage the Aggregate Bond Fund and the TIPS do not differ from the representative sampling techniques it uses to manage the Funds that were the subject of the Commission's June 25, 2002 order under the 1940 Act relating to other series of the iShares Trust indexes of fixed income securities.[8]

When using a representative sampling strategy, the Advisor attempts to match the risk and return characteristics of an ETFs portfolio to the risk and return characteristics of the Underlying Index. As part of this process, the Advisor subdivides each Underlying Index into smaller, more homogenous pieces. These subdivisions are sometimes referred to as "cells." A cell will contain securities with similar characteristics. For fixed income indices, the Advisor generally divides the index according to the five parameters that determine a bond's risk and expected return: (1) Duration, (2) Sector, (3) Credit Rating, (4) Coupon, and (5) the presence of embedded options. When completed, all bonds in the index will have been assigned a cell. The Advisor then begins to construct the portfolio by selecting representative bonds from these cells. The representative sample of bonds chosen from each cell is designed to closely correlate to the duration, sector, credit rating, coupon and embedded option characteristics of each cell. The characteristics of each cell when combined are, in turn, designed to closely correlate to the duration, sector, credit rating, coupon and embedded option characteristics of the Underlying Index as a whole. The Advisor may exclude less liquid bonds in order to create a more tradable portfolio and improve arbitrage opportunities.

According to the Original Application, the representative sampling techniques used by the Advisor to manage fixed income funds do not materially differ from the representative sampling techniques it uses to manage equity funds. Due to the differences between bonds and equities, the Advisor analyzes different information, (*e.g.*, coupon rates instead of dividend payments).

According to the Original Application, the ETFs' use of the representative sampling strategy is beneficial for a number of reasons. First, the Advisor can avoid bonds that are "expensive names" (*i.e.*, bonds that trade at perceived higher prices or lower yields because they are in short supply) but have the same essential risk, value, duration and other characteristics as less expensive names. Second, the use of representative sampling techniques permits the Advisor to exclude bonds that it believes will soon be deleted from the Underlying Index. Third, the Advisor can avoid holding bonds it deems less liquid than other bonds with similar characteristics. Fourth, the Advisor can develop a basket that is easier to construct and cheaper to trade, thereby potentially improving arbitrage opportunities.

From time to time, adjustments may be made in the portfolio of each ETF in accordance with changes in the composition of the Underlying Index or to maintain compliance with requirements applicable to a RIC under the Code. For example, if at the end of a calendar quarter an ETF would not comply with the RIC diversification tests, the Advisor would make adjustments to the portfolio to ensure continued RIC status. The Exchange represents that the Advisor[9] expects that each Fund will have a tracking error relative to the performance of its respective Underlying Index of no more than five percent (5%). Each ETF's investment objectives, policies and investment strategies will be fully disclosed in its prospectus ("Prospectus") and statement of additional information ("SAI"). The TIPS Fund will invest at least 90% of its assets in Component Securities of its Underlying Index. The TIPS Fund may also invest up to 10% of its assets in bonds not included in its Underlying Index, but which the Advisor believes will help the TIPS Fund track its Underlying Index, as well as in certain futures, options and swap contracts, cash and cash equivalents. For example, the TIPS Fund may invest in securities not included in the Underlying Index in order to reflect prospective changes in the Underlying Index (such as future corporate actions and index

[7] The Trust, Advisor and Distributor (the "Applicants") have filed with the Commission an Application for an Amended Order (the "Application") under sections 6(c) and 17(b) of the Investment Company Act of 1940 ("1940") for the purpose of exempting the ETFs from various provisions of the 1940 Act. (File No. 812–13003). A notice of Application was issued in Investment Company Act Release No. 26151, August 5, 2003. The information provided herein relating to the Funds is based on information regarding the Trust and the Finds/ *See* Investment Company Act Release No. 25622 (June 25, 2002) for the approval of the initial Application for additional series of the iShares Trust based on indexes of fixed income securities (the "Original Application").

[8] Telephone conversation between Janet Kissane, Milbank, Tweed, Hadley & McCloy LLP, Counsel for NYSE, and Florence Harmon, Senior Special Counsel, Division, Commission dated December 2, 2003. *See* in the Matter of iShares Trust, et al., Investment Company Act Release; No. 25622 (June 25, 2002) (relating to the iShares 1–3 Year Treasury Index Fund, 7–10 Year Treasury Index Fund, 20+Year Treasury Index Fund, Treasury Index Fund, Government/Credit Index Fund, Lehman Corporate Bond Fund and GS$InvesTop Corporate Bond Fund).

[9] *See supra* note 3.

reconstitutions, additions and deletions).

However, additional portfolio flexibility would benefit the Aggregate Bond Fund, while at the same time permitting it to closely track the performance of its Underlying Index. The Aggregate Bond Fund will: (1) Seek to track the performance of that portion of its Underlying Index comprised of U.S. Treasury securities, U.S. agency securities, corporate bonds, non-corporate bonds (*e.g.*, bonds issued by supra-national entities such as the International Monetary Fund), asset-backed securities, and commercial mortgage-backed securities (approximately 65% of the Underlying Index as of December 3, 2003) by investing a corresponding percentage of its net assets (*i.e.*, approximately 65%) in the Component Securities of its Underlying Index; [10] and (2) seek to track the performance of that portion of its Underlying Index invested in U.S. agency mortgage pass-through securities (approximately 35% of the Underlying Index as of December 3, 2003) by investing a corresponding percentage of its net assets (*i.e.*, approximately 35%) [11] through TBA transactions (as described below) on U.S. agency mortgage pass-through securities. Through the Aggregate Bond Fund's direct investments in Component Securities of its Underlying Index and its investment in mortgage pass-through securities through TBA transactions, the Aggregate Bond Fund will have at least 90% of its net assets invested (i) in Component Securities of its Underlying Index and (ii) and investments that have economic characteristics that are substantially identical to the economic characteristics of the Component Securities of its Underlying Index (*i.e.*, TBA transactions).

According to the Application, the Aggregate Bond Fund needs the investment flexibility to engage in TBA transactions as described above primarily because approximately 35% of the securities in the Aggregate Bond Fund's Underlying Index are expected to be pools of U.S. agency mortgage pass-through securities.[12] As discussed below, it is easier to trade and obtain intra-day prices of TBAs than it is to trade and obtain intra-day prices of specific pools of mortgage pass-through securities. The readily available information about intra-day pricing of TBAs and the ease with which they can be traded should make it easier to create and redeem Creation Unit Aggregations and help maintain the efficiency of the Aggregate Bond Fund's arbitrage mechanism.

The Application states that, although the market or mortgage pass-through securities is extremely deep and liquid, it is impractical to trade mortgage pass-through securities on a pool-by-pool basis, particularly when large dollar amounts are involved. For this reason, the vast majority of mortgage pools are traded using "to-be-announced" or "TBA" transactions. A TBA transaction is essentially a purchase or sale of a pass-through security for future settlement at an agreed upon date.[13] It has been estimated that 90% of mortgage pass-through securities (as measured by total dollar volume) are executed as TBA trades.[14] TBA transactions increase the liquidity and pricing efficiency of transactions in mortgage pass-through securities since they permit similar mortgage pass-through securities to be traded interchangeably pursuant to commonly observed settlement and delivery requirements.

The Aggregate Bond Fund intends to use TBA transactions to acquire and maintain exposure to that portion of the Underlying Index comprised of pools of mortgage pass-through securities in either of two ways. First, and more commonly, the Aggregate Bond Fund will enter into TBA agreements and "roll over" such agreements prior to the settlement date stipulated in such agreements. This type of TBA transaction is commonly known as a "TBA roll." In a "TBA roll" the Aggregate Bond Fund generally will sell the obligation to purchase the pools stipulated in the TBA agreement prior to the stipulated settlement date and will enter into a new TBA agreement for future delivery of pools of mortgage pass-through securities. Second, and less frequently, the Aggregate Bond Fund will enter into TBA agreements and settle such transactions on the stipulated settlement date by actual receipt or delivery of the pools of mortgage pass-through securities stipulated in the TBA agreement. Since intra-day-prices of TBA agreements are more readily available than intra-day prices on specific mortgage pools and because mortgage pools tend to be less liquid than TBA agreements, the use of TBA agreements should help maintain the efficiency of the Aggregate Bond Fund's arbitrage mechanism. The Aggregate Bond Fund will accept actual delivery of mortgage pools only when the Advisor believes it is in the best interests of the Aggregate Bond Fund and its shareholders to do so. In determining whether to accept actual delivery of mortgage pools, the Advisor will consider, among other things, the potential impact of such acceptance on the efficiency of the Aggregate Bond Fund's arbitrage mechanism and the Aggregate Bond Fund's ability to track its Underlying Index. For these reasons, the Advisor believes that the ability to invest a significant portion of the Aggregate Bond Fund's assets through TBA transactions and to maintain such exposure through the use of TBA rolls would increase the liquidity and pricing efficiency of the Aggregate Bond Fund's portfolio. In addition, since holding a TBA position exposes the holder to

[10] With respect to this portion of its portfolio, the Aggregate Bond Fund may invest up to 10% of its portfolio in bonds not included in its Underlying Index, but which the Advisor believes will help the Aggregate Bond Fund track its Underlying Index, as well as in certain futures, options and swap contracts, cash and cash equivalents.

[11] Telephone conversation between Janet Kissane, Milbank, Tweed, Hadley & McCloy LLP, Counsel for NYSE, and Florence Harmon, Senior Special Counsel, Division, Commission dated December 4, 2003.

[12] As used herein, the term "U.S. agency mortgage pass-through security" or "mortgage pass-through security" refers to a category of pass-through securities backed by pools of mortgages and issued by one of several U.S. Government-sponsored enterprises: the Government National Mortgage Association ("GNMA"), Federal National Mortgage Association ("FNMA") or Federal Home Loan Mortgage Corporation ("FHLMC"). In the basic pass-through structure, mortgages with similar issuer, term and coupon characteristics are collected and aggregated into a pool. The pool is assigned a CUSIP number and undivided interests in the pool are traded and sold as pass-through securities. The holder of the security is entitled to a pro rata share of principal and interest payments (including unscheduled prepayments) from the pool of mortgage loans. The portion of the Underlying Index representing the mortgage pass-through segment of the U.S. investment grade bond market is comprised of multiple pools of mortgage pass-through securities.

[13] "TBA" refers to a mechanism for the forward settlement of agency mortgage pass-through securities, and not to a separate type of mortgage-backed security. TBA trades generally are conducted in accordance with widely-accepted "Good Delivery" guidelines published by The Bond Market Association ("TBMA"). The Good Delivery guidelines facilitate transactions in mortgage pass-through securities by establishing commonly observed terms and conditions for execution, settlement, and delivery. In a TBA trade, the buyer and seller decide on general trade parameters, such as agency, coupon, term to maturity, settlement date, par amount, and price. The actual pools delivered are determined two days prior to settlement date. TBA transactions promote efficient pricing because the Goog Delivery guidelines permit only a small variance between the face amount of the pools actually delivered and the nominal agreed upon amount. Intra-day and end-of-day pricing of TBAs is available from multiple pricing sources, such as Bloomberg L.P. ("Bloomberg") and Trade Web. TBMA publishes standard notification and settlement dates for TBA trades specifying uniform settlement dates for specific classes of securities. The most active trading market for TBA trades is usually for next-month settlement. *See* generally *TBAs: To-Be-Announced Mortgage Securities Transactions*, TBMA (1999).

[14] *Id.* at 3

substantially identical market and economic risks as holding a position in a corresponding pool of mortgage pass-through securities, the Advisor believes that the use of TBA transactions as described herein should permit the Aggregate Bond Fund to closely track the performance of its Underlying Index.

The use of TBA transactions is not intended to help the Aggregate Bond Fund ETF outperform its Underlying Index, but rather to increase pricing efficiency while at the same time maintaining the Aggregate Bond Fund's exposure to its Underlying Index.

b. *Issuance of Creation Unit Aggregations.*

1. *In General.* The issuance of Creation Unit Aggregations will operate, except as noted below, in a manner identical to that of the ETFs described in the Original Application.[15] Shares of each ETF (the "iShares") will be issued on a continuous offering basis in groups of 50,000 or more. These "groups" of shares are called "Creation Unit Aggregations."[16] The ETFs will issue and redeem iShares only in Creation Unit Aggregations.[16] As with other open-end investment companies, iShares will be issued at the net asset value ("NAV") per share next determined after an order in proper form is received. The anticipated price at which both Funds will initially trade on the NYSE is approximately $100. The NYSE represents that the Aggregate Bond Fund is currently trading at $100.82 on the Amex as of December 3, 2003.[17]

The NAV per share of each ETF is determined as of the close of the regular trading session on the NYSE on each day that the NYSE is open. The Trust sells Creation Unit Aggregations of each ETF only on business days at the next determined NAV of each ETF.

Creation Unit Aggregations will be issued by each ETF in exchange for the in-kind deposit of portfolio securities designated by the Advisor to correspond generally to the price and yield performance of the ETF's Underlying Index (the "Deposit Securities"). Purchasers will generally be required to deposit a specified cash payment in the manner more fully described in the Application. Creation Unit Aggregations will be redeemed by each ETF in exchange for portfolio securities of the applicable ETF (the "Fund Securities") and a specified cash payment in the manner more fully described herein. Fund Securities received on redemption may not be identical to Deposit Securities deposited in connection with creations of Creation Unit Aggregations for the same day.

The Distributor will act on an agency basis and will be the Trust's principal underwriter for the iShares in Creation Unit Aggregations of each ETF. All orders to purchase iShares in Creation Unit Aggregations must be placed with the Distributor by or through an authorized participant (the "Authorized Participant"). Authorized Participants, which are required to be Depository Trust Company ("DTC") participants, must enter into a participant agreement with the Distributor. The Distributor will transmit such orders to the applicable ETF and furnish to those placing orders confirmation that the orders have been accepted. The Distributor may reject any order that is not submitted in proper form. The Distributor will be responsible for delivering the Prospectus to those persons creating iShares in Creation Unit Aggregations and for maintaining records of both the orders placed with it and the confirmations of acceptance furnished by it. In addition, the Distributor will maintain a record of the instructions given to the Trust to implement the delivery of iShares.

2. *In-Kind Deposit of Portfolio Securities.* Payment for Creation Unit Aggregations placed through the Distributor will be made by the purchasers generally by an in-kind deposit with the ETF of the Deposit Securities together with an amount of cash (the "Balancing Amount") specified by the Advisor in the manner described below. The Balancing Amount is an amount equal to the difference between (1) the NAV (per Creation Unit Aggregation) of the ETF and (2) the total aggregate market value (per Creation Unit Aggregation) of the Deposit Securities (such value referred to herein as the "Deposit Amount"). The Balancing Amount serves the function of compensating for differences, if any, between the NAV per Creation Unit Aggregation and that of the Deposit Amount. The deposit of the requisite Deposit Securities and the Balancing Amount are collectively referred to herein as a "Portfolio Deposit."

The Advisor will make available to the market through the National Securities Clearing Corporation (the "NSCC") on each Business Day, prior to the opening of trading on the Exchange (currently 9:30 a.m. eastern time), the list of the names and the required number of shares of each Deposit Security in the current Portfolio Deposit (based on information at the end of the previous Business Day) for the relevant Fund. The Portfolio Deposit will be applicable to an ETF (subject to any adjustments to the Balancing Amount, as described below) in order to effect purchases of Creation Unit Aggregations of the ETF until such time as the next-announced Portfolio Deposit composition is made available.

The identity and number of shares of the Deposit Securities required for the Portfolio Deposit for each ETF will change from time to time. The composition of the Deposit Securities may change in response to adjustments to the weighting or composition of the Component Securities in the relevant Underlying Index. These adjustments will reflect changes, known to the Advisor to be in effect by the time of determination of the Deposit Securities, in the composition of the Underlying Index being tracked by the relevant ETF, or resulting from rebalance or additions or deletions to the relevant Underlying Index. In addition, the Trust reserves the right with respect to each ETF to permit or require the substitution of an amount of cash (*i.e.*, a "cash in lieu" amount) to be added to the Balancing Amount to replace any Deposit Security: (1) that may be unavailable or not available in sufficient quantity for delivery to the Trust upon the purchase of iShares in Creation Unit Aggregations, or (2) that may not be eligible for trading by an Authorized Participant or the investor on whose behalf the Authorized Participant is acting.

The Aggregate Bond Fund may invest in and hold mortgage pass-through securities on a TBA basis. Since a TBA transaction is essentially an agreement for future settlement of a mortgage security, it is not possible to accept TBAs as part of the Portfolio Deposit. Instead, the Aggregate Bond Fund will designate the mortgage pass-through TBAs to be included in a Portfolio Deposit just as it would any other Deposit Securities of a Portfolio Deposit, and will accept "cash in lieu" of delivery of the designated mortgage pass-through TBAs. The Aggregate Bond Fund will then enter into TBA agreements included as Deposit Securities in the Portfolio Deposit.[18]

According to the Application, this will substantially minimize the Aggregate Bond Fund's transaction costs, enhance operational efficiencies and otherwise reduce any operational issues which the acceptance of pools of mortgage pass-through securities might otherwise present.[19]

c. *Availability of Information Regarding iShares and Underlying Indices.* On each Business Day, the list of names and amount of each treasury security, government security or corporate bond constituting the current Deposit Securities of the Portfolio Deposit and the Balancing Amount effective as of the previous Business Day will be made available. An amount per iShare representing the sum of the estimated Balancing Amount effective through and including the previous Business Day, plus the current value of the Deposit Securities, on a per iShare basis (the "Intra-day Optimized Portfolio Value" or the "IOPV") will be calculated by independent third parties (such as Bloomberg) every 15 seconds during the NYSE's regular trading hours and disseminated by the NYSE every 15 seconds on the Consolidated Tape.[20] The IOPV will be updated throughout the day to reflect changing bond prices, as well as TBA prices, using multiple prices from independent third party pricing sources. Information about the intra-day prices for the Deposit Securities of the each Fund is readily available to the marketplace.[21] Applicants represent that (1) IOPV will be calculated by an independent third party; (2) IOPV will be calculated using prices obtained from multiple independent third-party pricing sources (such as broker-dealers) throughout the day; and (3) IOPV will be calculated in accordance with pre-determined criteria and set parameters so that an individual bond "price" based on an analysis of multiple pricing sources is obtained for each security in the Portfolio Deposit.[22] Closing prices of the ETFs' Deposit Securities are readily available from published or other public sources, such as the NYSE's Automated Bond System (ABS®), the Trace Reporting and Compliance Engine ("TRACE"), or on-line client-based information services provided by Credit Suisse First Boston, Goldman Sachs, Lehman Brothers, IDC, Merrill Lynch, Bridge, Bloomberg, TradeWeb and other pricing services commonly used by bond mutual funds.[23]

The Indices underlying the Aggregate Bond Fund will not be calculated or disseminated intra-day because Lehman Brothers does not calculate or disseminate intra-day values for these indices. The value and return of the underlying Lehman Index is calculated and disseminated each business day, at the end of the day, by Lehman Brothers.[24]

Each Fund will make available through NSCC on a daily basis the names and required number of shares of each of the Deposit Securities in a Creation Unit Aggregation, as well as information regarding the Balancing Amount. The NAV for each Fund will be calculated and disseminated daily. There will also be disseminated a variety of data with respect to each Fund on a daily basis by means of CTA and CQ High Speed Lines; information with respect to recent NAV, shares outstanding, estimated cash amount and total cash amount per Creation Unit Aggregation will be made available prior to the opening of the Exchange. In addition, the website for the Trust, which will be publicly accessible at no charge, will contain the following information, on a per iShare basis, for each Fund: (a) The prior Business Day's NAV and the mid-point of the bid-ask price[25] at the time of calculation of such NAV ("Bid/Ask Price"), and a calculation of the premium or discount of such price against such NAV; and (b) data in chart format displaying the frequency distribution of discounts and premiums of the Bid/Ask Price against the NAV, within appropriate ranges, for each of the four previous calendar quarters.[26]

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[15] *See* Investment Company Act Release No. 25622 (June 25, 2002). Telephone conversation between Janet Kissane, Milbank, Tweed, Hadley & McCloy LLP, Counsel for NYSE, and Florence Harmon, Senior Special Counsel, Division, Commission dated December 2, 2003.

[16] Each Creation Unit Aggregation will consist of 50,000 or more iShares and the estimated initial value per Creation Unit Aggregation will be approximately $5 million.

[17] Telephone conversation between Janet Kissane, Milbank, Tweed, Hadley & McCloy LLP, Counsel for NYSE, and Florence Harmon, Senior Special Counsel, Division, Commission dated December 4, 2003.

[18] Prior to settlement of such TBA transactions, the "cash in lieu" portion of the Portfolio Deposit will be invested in cash equivalents, including money market mutual funds, and such investments, along with cash and other liquid assets identified by BGFA, will be segregated on the books and records of the Aggregate Bond Fund or its Custodian in accordance with Section 18 of the 1940 Act and Investment Company Act Release No. 10666. Since the price of a TBA transaction includes an assumed rate of return on the cash held in anticipation of settlement, the Aggregate Bond Fund's investment in cash equivalents prior to settlement is not expected to have a material impact on potential tracking error or the Aggregate Bond Fund's ability to track its Underlying Index. In addition, since the interest or dividends that the Aggregate Bond Fund accrues on a daily basis on its investment in cash equivalents will be relatively small and will be included as part of the Cash Component published on a daily basis according to the procedures currently used for the ICUs, Applicants expect that such dividends and interest will be reflected in the secondary market trading price of iShares of the Aggregate Bond Fund. The Commission's order relating to the Original Application permits acceptance of a "cash in lieu" amount to replace Deposit Securities that are unavailable for delivery or for other reasons. In addition, prior iShares orders expressly permit "cash-only purchases of Creation Unit Aggregations" where the Advisor believes such transactions would "substantially minimize * * * transaction costs or would enhance * * * operational efficiencies." *See* Investment Company Act Release No. 24452 (May 12, 2000).

[19] Intra-day and end-of-day pricing of TBAs is available from multiple pricing sources, such as Bloomberg and TradeWeb. In addition, the fungible nature of TBAs and commonly observed execution and settlement procedures create significant pricing efficiencies and market liquidity for TBAs. TBAs typically trade at very narrow spreads on transactions of up to $300 million or more. Since intra-day pricing of TBAs is readily available and the market for mortgage pass-through TBAs is extremely liquid, the designation of TBAs in the Portfolio Deposit and their inclusion as Fund Securities should make pricing of the Aggregate Bond Fund and the Deposit Amount more efficient and transparent, thus increasing arbitrage efficiency.

[20] Telephone conversation between Janet Kissane, Milbank, Tweed, Hadley & McCloy LLP, Counsel for NYSE, and Florence Harmon, Senior Special Counsel, Division, Commission dated December 4, 2003.

[21] Authorized Participants and other market participants have a variety of ways to access the intra-day security prices that form the basis of the ETF's IOPV calculation. For example, intra-day prices for treasury securities, agency securities and TBAs are available from Bloomberg, TradeWeb, ABS® and TRACE. Intra-day prices for inflation protected public obligations of the U.S. Treasury are available from Bloomberg and TradeWeb. Intra-day prices of callable agency securities are available from TradeWeb. Intra-day prices of corporate bonds are available from ABS® and TRACE. In addition, intra-day prices for each of these securities are available by subscription or otherwise to Authorized Participants and clients of major U.S. broker-dealers (such as Credit Suisse First Boston, Goldman Sachs and Lehman Brothers). *See supra* note 6.

[22] For example, Bloomberg Generic Prices could be used. Bloomberg Generic Prices are current prices on individual bonds as determined by Bloomberg using a proprietary automated pricing program that analyzes multiple bond prices contributed to Bloomberg by third-party price contributors (such as broker-dealers).

[23] The Exchange understands that Credit Suisse First Boston, Goldman Sachs, Lehman Brothers, Merrill Lynch, IDC, Bridge and Bloomberg provide prices for each type of Deposit Security. TradeWeb provides prices for each type of Deposit Security except mortgage backed securities and corporate bonds. ABS® and TRACE provide prices for corporate bonds. Telephone conversation between Janet Kissane, Milbank, Tweed, Hadley & McCloy LLP, Counsel for NYSE, and Florence Harmon, Senior Special Counsel, Division, Commission dated December 4, 2003.

[24] Telephone conversation between Janet Kissane, Milbank, Tweed, Hadley & McCloy, LLP, Counsel for NYSE, and Florence Harmon, Senior Special Counsel, Division, Commission dated December 4, 2003.

[25] The Bid-Ask Price of each ETF is determined using the highest bid and lowest offer on the Exchange as of the time of calculation of each ETF's NAV.

[26] The secondary market for Treasury securities is a highly organized over-the-counter market. Many dealers, and particularly the primary dealers, make markets in Treasury securities. Trading activity takes place between primary dealers, non-primary dealers, and customers of these dealers, including financial institutions, non-financial institutions and individuals. Increasingly, trading in Treasury securities occurs through automated trading systems. *See*, "eCommerce in the Fixed-Income Markets: The 2001 Review of Electronic Transaction Systems," December 2001. This survey of electronic trading systems in the bond market was prepared by the staff of The Bond Market Association and is available through the Association's Web site: *www.bondmarkets.com*.

The primary dealers are among the most active participants in the secondary market for Treasury

Continued

d. *Redemption of iShares.* Creation Unit Aggregations of each fund will be redeemable at the NAV next determined after receipt of a request for redemption. Creation Unit Aggregations of each Fund will be redeemed principally in-kind, together with a balancing cash payment (although, as described below, Creation Unit Aggregations may sometimes be redeemed for cash). The value of each Fund's redemption payments on a Creation Unit Aggregation basis will equal the NAV per the appropriate number of iShares of such Fund. Owners of iShares may sell their iShares in the secondary market, but must accumulate enough iShares to constitute a Creation Unit Aggregation in order to redeem through the Fund. Redemption orders must be placed by or through an Authorized Participant.

Creation Unit Aggregations of any Fund generally will be redeemable on any Business Day in exchange for Fund Securities and the Cash Redemption Payment (defined below) in effect on the date a request for redemption is made. The Advisor will publish daily through NSCC the list of securities which a creator of Creation Unit Aggregations must deliver to the Fund (the "Creation List") and which a redeemer will receive from the Fund (the "Redemption List"). The Creation List is identical to the list of the names and the required numbers of shares of each Deposit Security included in the current Portfolio Deposit.[27]

In addition, just as the Balancing Amount is delivered by the purchaser of Creation Unit Aggregations to the Fund, the Trust will also deliver to the redeeming Beneficial Owner in cash the "Cash Redemption Payment." The Cash Redemption Payment on any given Business Day will be an amount calculated in the same manner as that for the Balancing Amount, although the actual amounts may differ if the Fund Securities received upon redemption are not identical to the Deposit Securities applicable for creations on the same day. To the extent that the Fund Securities have a value greater than the NAV of iShares being redeemed, a cash payment equal to the differential is required to be paid by the redeeming Beneficial Owner to the Fund. The Trust may also make redemptions in cash in lieu of transferring one or more Fund Securities to a redeemer if the Trust determines, in its discretion, that such method is warranted due to unusual circumstances. An unusual circumstance could arise, for example, when a redeeming entity is restrained by regulation or policy from transacting in certain Fund Securities, such as the presence of such Fund Securities, on a redeeming investment banking firm's restricted list.

e. *Clearance and Settlement.*[28] In order to simplify the creation and redemption process and align the settlement of iShares of the Fund with the settlement of the Deposit Securities and Fund Securities (*i.e.*, the underlying U.S. Government securities, corporate and other bonds) contributed or received in connection with creation and redemption transactions, Applicants plan to settle transactions in Deposit Securities and Fund Securities and iShares on the same settlement cycle. (For the sake of clarity, the Exchange notes that transactions in iShares in the secondary market will generally settle on T + 3).[29] The Deposit Securities and Fund Securities of each fund will settle via free delivery through the Federal Reserve System for U.S. government securities and the DTC for corporate securities and non-corporate (other than U.S. government securities). The iShares will settle through the DTC. The Custodian will monitor the movement of the Deposit Securities and will instruct the movement of the iShares only upon validation that the Deposit Securities have settled correctly or that required collateral is in place.

As with the settlement of domestic ETF transactions outside of the NSCC Continuous Net Settlement System (the "CNS System"), (i) iShares of the Funds and corporate and non-corporate securities (other than U.S. government securities) will clear and settle through DTC, and (ii) U.S. government securities and cash will clear and settle through the Federal Reserve system. More specifically, creation transactions will settle as follows. On settlement date (generally T + 3 for the Aggregate Bond Fund and T + 1 for the TIPS Fund), an Authorized Participant will transfer Deposit Securities that are corporate and non-corporate bonds (other than U.S. government securities) through DTC to a DTC account maintained by the Funds' Custodian, and Deposit Securities that are U.S. government securities, together with any Balancing Amount, to the Custodian through the Federal Reserve system. Once the Custodian has verified the receipt of all of the Deposit Securities (or in the case of failed delivery of one or more bonds, collateral in the amount of 105% or more of the missing Deposit Securities) and the receipt of any Balancing Amount, the Custodian will notify the Distributor and the Advisor. Each Fund will issue Creation Unit Aggregations of iShares and the Custodian will deliver the iShares to the Authorized Participant through DTC. DTC will then credit the Authorized Participant's DTC account. The clearance and settlement of redemption transactions essentially reverses the process described above. After the Trust has received a redemption request in proper form and the Authorized Participant transfers Creation Unit Aggregations of iShares to the Fund's Custodian through DTC, the trust will cause the Custodian to initiate procedures to transfer the requisite Fund Securities and any Cash Redemption Payment. On settlement

securities. The primary dealers and other large market participants frequently trade with each other, and most of these transactions occur through an interdealer broker (*e.g.*, BrokerTec Global, Cantor Fitzgerald, Garban-Intercapital, and Liberty Brokerage). The interdealer brokers provide primary dealers and other large participants in the Treasury market with electronic screens that display the bid and offer prices among dealers and allow trades to be consummated.

Quote and trade information regarding Treasury securities is widely available to market participants from a variety of sources. The electronic trade and quote systems of the dealers and interdealer brokers are one such source. Groups of dealers and interdealer brokers also furnish trade and quote information to vendors such as Bloomberg, Reuters, Bridge, Moneyline Telerate, and CQG. GovPX, for example, is a consortium of leading government securities dealers and subscribers that provides market data from leading government securities dealers and interdealer brokers to market data vendors and subscribers. TradeWeb, another example, is a consortium of 18 primary dealers that, in addition to providing a trading platform, also provides market data direct to subscribers or to other market data vendors.

Real-time price quotes for corporate and non-corporate debt securities are available to institutional investors via proprietary systems such as Bloomberg, Reuters and Dow Jones Telerate. Additional analytical data and pricing information may also be obtained through vendors such as Bridge Information Systems, Muller Data, Capital Management Sciences, Interactive Data Corporation and Barra.

Retail investors do have access to free intra-day bellwether quotes. Corporate prices are available at 20-minute intervals from Capital Management Services at *http://www.bondvu.com/quotmenu.htm*. TBMA provides links to price and other bond information sources on its investors Web site at *http://www.investinginbonds.com*. In addition, transaction prices and volume data for the most actively-traded bonds on the exchanges are published daily in newspapers and on a variety of financial Web sites.

Closing corporate and non-corporate bond prices are also available through subscription services (*e.g.*, IDC, Bridge) that provide aggregate pricing information based on prices from several dealers, as well as subscription services from broker-dealers with a large bond trading operation, such as Lehman Brothers and Goldman, Sachs & Co.

[27] Investors redeeming Creation Unit Aggregations of the Aggregate Bond Fund will receive cash for any Component Securities that are mortgage pass-through TBAs.

[28] *See supra* note 3.

[29] Telephone conversation between Janet Kissane, Milbank, Tweed, Hadley & McCloy LLP, Counsel for NYSE, and Florence Harmon, Senior Special Counsel, Division, Commission dated December 4, 2003.

date, assuming the Custodian has verified receipt of the Creation Unit Aggregations, the Custodian will transfer Fund Securities that are corporate and non-corporate bonds to the Authorized Participant through DTC and Fund Securities that are U.S. government securities, together with any Cash Redemption Payment, through the Federal Reserve system.

iShares of the Funds will be debited or credited by the Custodian directly to the DTC accounts of the Authorized Participants. With respect to domestic equity-based ETFs using the CNS System, Creation Unit Aggregations of iShares are deposited or charged to the Authorized Participants' DTC accounts through the CNS System. Since creation/redemption transactions for iShares of the Funds will not clear and settle through the CNS System, the failed delivery of one or more Deposit Securities (on a create) or one or more Fund Securities (on a redemption) will not be facilitated by the CNS System. Therefore, Authorized Participants will be required to provide collateral to cover the failed delivery of Deposit Securities in connection with an "in-kind" creation of iShares. In case of a failed delivery of one or more Deposit Securities, the Funds will hold the collateral until the delivery of such Deposit Security. The Funds will be protected from failure to receive the Deposit Securities because the Custodian will not effect the Fund's side of the transaction (the issuance of iShares) until the Custodian has received confirmation of receipt of the Authorized Participant's incoming Deposit Securities (or collateral for failed Deposit Securities) and Balancing Amount. In the case of redemption transactions, the Funds will be protected from failure to receive Creations Unit Aggregations of iShares because the Custodian will not new effect the Funds's side of the transaction (the delivery of Fund Securities and the Cash Redemption Payment) until the Transfer Agent has received confirmation of receipt of the Authorized Participant's incoming Creation Unit Aggregations.

The Exchange represents that according to the Application and the Advisor, the clearance and settlement process will not affect the arbitrage of iShares of the Funds.

f. *Dividends and Distributions.* Dividends from net investment income will be declared and paid to Beneficial Owners of record at least annually by each Fund. Certain of the Funds may pay dividends, if any, on a quarterly or more frequent basis. Distributions of realized securities gains, if any, generally will be declared and paid once a year, but each Fund may make distributions on a more frequent basis to comply with the distribution requirements of the Code and consistent with the 1940 Act.

Dividends and other distributions on iShares of each Fund will be distributed on a pro rata basis to Beneficial Owners of such iShares. Dividend payments will be made through the Depository and the DTC Participants to Beneficial Owners then of record with amounts received from each Fund.

The Trust will not make the DTC book-entry Dividend Reinvestment Service (the "Service") available for use by Beneficial Owners for reinvestment of their cash proceeds, but certain individual brokers my make the Service available to their clients. The SAI will inform investors of this fact and direct interested investors to contact such investor's broker to ascertain the availability and a description of the Service through such broker. The SAI will also caution interested Beneficial Owners that they should note that each broker may require investors to adhere to specific procedures and timetables in order to participate in the Service and such investors should ascertain from their broker such necessary details. iShares acquired pursuant to the Service will be held by the Beneficial Owners in the same manner, and subject to the same terms and conditions, as for original ownership of iShares.

g. *Other Issues.*

1. *Criteria for Initial and Continued Listing.* iShares are subject to the criteria for initial and continued listing of Investment Company Units in Section 703.16 of the Manual. It is anticipated that a minimum of two Creation Units (100,000 iShares) will be required to be outstanding at the start of trading on the NYSE. This minimum number of iShares required to be outstanding at the start of trading will be comparable to requirements that have been applied to previously traded series of investment Company Units.

The NYSE believes that the proposed minimum number of iShares outstanding at the start of trading is sufficient to provide market liquidity and to further the Trust's objective to seek to provide investment results that correspond generally to the price and yield performance of the Underlying Index.

2. *Original and Annual Listing Fees.* The NYSE's original listing fees that would be applicable to each Fund if listed on the Exchange is $5,000, and the continuing fees would be $2,000. The TIPS Fund will list on the NYSE.

3. *Stop and Stop Limit Orders.* Commentary .30 to NYSE Rule 13 provides that stop and stop limit orders in an Investment Company Unit shall be elected by a quotation, but specifies that if the electing bid on an offer is more that 0.10 points away from the list sale and is for the specialist's dealer account, prior Floor Official approval is required for the election to be effective. This rule applies to Investment Company Units generally, including fixed income ETFs.

4. *NYSE Rule 460.10.* NYSE Rule 460.10 generally precludes certain business relationships between an issuer and specialist in the issuer's securities. Exceptions in the Rule permit specialists in ETF shares, including fixed income ETFs, to enter into Creation Unit transactions through the Distributor to facilitate the maintenance of a fair and orderly market. A specialist Creation Unit transaction may only be effected on the same terms and conditions as any other investor and only at the net asset value of the ETF shares. A specialist may acquire a position in excess of 10% of the outstanding issue of the ETF shares; provided, however, that a specialist registered in a security issued by an investment company may purchase and redeem the investment company unit, or securities that can be subdivided or converted into such unit, from the investment company as appropriate to facilitate the maintenance of a fair and orderly market in the subject security.

5. *Prospectus Delivery.* The Commission has granted the Trust an exemption from certain prospectus delivery requirements under section 24(d) of the 1940 Act.[30] Any product description used in reliance on a section 24(d) exemptive order will comply with all representations made therein and all conditions thereto. The NYSE, in an Information Circular to Exchange members and member organizations, will inform members and member organizations, prior to commencement of trading, of the prospectus or product description delivery requirements applicable to the Funds.

6. *Trading Halts.* In order to halt the trading of an ETF, the Exchange may consider, among other things, factors such as the extent to which trading is not occurring in underlying security(s) and whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. In addition, trading in ETF shares is subject to trading halts caused by extraordinary market volatility pursuant to NYSE Rule 80B.

[30] *See* Investment Company Act Release No. 25623 (June 25, 2002).

7. *Suitability*. Pursuant to NYSE Rule 405, before a member, member organization, allied member or employee of such member organization undertakes to recommend a transaction in ETF shares, including fixed income ETFs, such member or member organization should make a determination that such shares are suitable for such customer. If any recommendation is made with respect to such shares, the person making the recommendation should have a reasonable basis for believing at the time of making the recommendation, that the customer has such knowledge and experience in financial matters that he or she may reasonably be expected to be capable of evaluating the risks and any special characteristics of the recommended transaction, and is financially able to bear the risks of the recommended transaction. In the Exchange's Information Circular references above, the Exchange will inform members and member organizations of the requirements of NYSE Rule 405.[31]

8. *Purchases and Redemptions in Creation Unit Size*. In the Information Circular referenced above, members and member organizations will be informed that procedures for purchases and redemptions of iShares in Creation Unit Size are described in the relevant Fund Prospectus and SAI, and that iShares are not individually redeemable but are redeemable only in Creation Unit Size aggregations or multiples thereof.

9. *Surveillance*. Exchange surveillance procedures applicable to trading in the proposed iShares are comparable to those applicable to other Investment Company Units currently trading on the Exchange. The Exchange represents that its surveillance procedures are adequate to properly monitor the trading of the Funds. The Exchange's current trading surveillances focus on detecting securities trading outside their normal patterns. When such situations are detected, surveillance analysis follows and investigations are opened, where appropriate, to review the behavior of all relevant parties for all relevant trading violations. Through its member organizations and otherwise through its membership in the Intermarket Surveillance Group, the Exchange is able to obtain information regarding trading on any U.S. market in both the Funds and the Component Securities.

If a broker-dealer is responsible for maintaining (or has a role in maintaining), or calculating the underlying index, it would be required to erect and maintain a "Fire Wall" designed to prevent the flow of information regarding the underlying index from the index production personnel and index calculation personnel to the sales and trading personnel. In the course of member organization examinations,[32] the Exchange will examine and test the broker-dealer's "Fire Wall" procedures to determine whether they are reasonably designed to prevent the misuse of material non-public information by sales and trading personnel that originates from index production personnel and calculation personnel.

10. *Hours of Trading/Minimum Price Variation*. The Fund will trade on the Exchange until 4:15 p.m. (eastern time). The minimum price variation for quoting will be $.01.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act,[33] in general, and furthers the objectives of section 6(b)(5) of the Act,[34] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transaction in securities, and, in general to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549–0609. Comments may also be submitted electronically at the following e-mail address: *rule-comments@sec.gov*. All comment letters should refer to File No. NYSE–2003–39. The file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, comments should be sent in hardcopy or by e-mail but not by both methods. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commisson and any person, other than those that may be witheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to the File No. SR–NYSE–2003–39 and should be submitted by January 5, 2004.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

After careful review, the Commission finds that implementation of the proposed rule change is consistent with the requirements of section 6 of the Act[35] and the rules and regulations thereunder applicable to a national securities exchange.[36] Specifically, the Commission believes that the proposal is consistent with section 6(b)(5) of the Act.[37] The Commission believes that the availability of the Funds will provide an instrument for investors to achieve desired investment results that correspond generally to the price and yield performance of the underlying fixed income indices. The investment objective of each Fund will be to provide investment results that correspond generally to the price and yield performance of the underlying index based on fixed income securities.

Accordingly, the Commission finds that the Exchange's proposal will facilitate transactions in securities, remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, protect investors and the public interest, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.[38]

The Commission has granted the Funds appropriate relief under various Sections of the 1940 Act, including sections 6(c) and 17(b), so that each Fund may register under the 1940 Act as an open-end fund and issue shares that are redeemable in Creation Units. shares of the Funds may trade in the secondary market at negotiated prices, and certain persons affiliated with a Fund by reason of owning 5% or more, and in some cases more than 25%, of its outstanding securities may do in-kind purchases and redemptions of Creation Units.[39]

The Commission notes that the Funds will operate in substantially the same manner as the funds that were the subject of the Previous Approval Order. The Commission notes one difference is that with respect to the Aggregate Bond Fund, approximately 35% of its assets will be invested in TBA transactions, which is a purchase or sale of a pass-through security for future settlement at an agreed upon date. The Exchange represented that the use of TBA transactions is not intended to help the Aggregate Bond Fund outperform its Underlying Index, but rather to increase pricing efficiency while at the same time maintaining the Aggregate Bond Fund's exposure to its Underlying Index. Since the intra-day prices of TBA agreements are more readily available than intra-day prices on specific mortgage pools and because mortgage pools tend to be less liquid that TBA agreements, the Commission agrees that the use of TBA agreements should help maintain the efficiency of the Aggregate Bond Fund's arbitrage mechanism.

For the reasons stated in the Notice, above, the Commission finds that adequate rules and procedures exist to govern the trading of ICUs, including the Funds. For the reasons stated in the Notice, above, the Commission finds that because of the nature of the particular fixed income securities to be included in the portfolios of the Funds (*i.e.*, U.S. Government securities, investment grade corporate bonds, and TBA transactions), the pricing information should be available. However, the Commission notes that differences in the degree of price transparency in the debt and equity markets could lead to larger discounts and premiums for the Funds than have been experienced by Equity ETFs because arbitrators may wait for greater premiums or discounts to develop in the market price of the ETF shares before engaging in arbitrage transactions. The Commission expects the Exchange to contact Commission staff if the tracking error for these Funds exceeds the represented 5%.

The Commission has also granted the issuer, Barclays, exemptive relief from Section 24(d) of the 1940 Act so that dealers may effect secondary market transaction in ETF shares without delivery a prospectus to the purchaser.[40] Instead, under the exemption and under NYSE's listing standards, sales in the secondary market must be accompanied by a "product description," describing the ETF and its shares.[41] The Commission believes a product description, which not only highlights the basic characteristics of the product and the manner in which the ETF shares trade in the secondary market, but also highlights the differences of the Funds from existing equity ETFs and notes the unique characteristics and risks of this product, should provide market participants with adequate notice of the salient features of the product.

The Commission also notes that upon the initial listing of any EFT under section 703.16 of the NYSE Listed Company Manual the Exchange issues a circular to its members explaining the unique characteristics and risks of the security; in this instance, fixed income ETFs. In particular, the circular should include, among other things, a discussion of the risks that may be associated with the Funds, in addition to details on the composition of the fixed income indices upon which they are based and how each Fund would use a representative sampling strategy to track its index. The circular also should note Exchange members' responsibilities under Exchange Rule 405 ("know your customer rule") regarding transactions in such fixed income ETFs. Exchange Rule 405 generally requires that members use due diligence to learn the essential facts relative to every customer when a transaction in the Fund shares is recommended and determine that such shares are suitable for such customer.[42] The circular also will address members' prospectus delivery requirements as well as highlight the characteristics of purchases in Funds, including that they only are redeemable in Creation Unit size aggregations. Based on these factors, the Commission finds that the proposal to trade the Funds is consistent with section 6(b)(5) of the Act.[43]

The Commission also notes that certain concerns are raised when a broker-dealer, such as Lehman, is involved in the development, maintenance, and calculation of an index upon which an ETF is based. Lehman has represented that it has procedures in place to prevent the misuse of material, non-public information relating to the index.[44] The Commission believes that these provisions should help to address concerns raised by Lehman's involvement in the management of the indices. The Commission believes that this should act to further minimize the possibility of manipulation.

The Commission also believes that the NYSE has appropriate surveillance procedures in place to detect and deter potential manipulation for similar index-linked products. By applying these procedures to Funds, the Commission believes that the potential for manipulation should be minimized, while protecting investors and the public interest.

NYSE has requested that the Commission find good cause for approving the proposed rule change, as amended, prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**. The Funds will trade on the Exchange in the same manner as the funds that were the subject of the Previous Approval Order and the proposed rule change. The proposed rule change raises no novel issues. Based on the above, the Commission finds good cause to accelerate approval of the proposed rule change.

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[31] *See supra* note 3.

[32] The Exchange will examine the member organization's procedures for the first two years after the listing of the ETF and thereafter periodically based on its assessment of risk in planning the annual examination.

[33] 15 U.S.C. 78f(b).

[34] 15 U.S.C. 78f(b)(5).

[35] 15 U.S.C. 78f.

[36] In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[37] *Id.*

[38] Pursuant to section 6(b)(5) of the Act, the Commission must predicate approval of exchange trading for new products upon a finding that the introduction of the product is in the public interest. Such a finding would be difficult with respect to a product that served no investment, hedging or other economic functions, because any benefits that might be derived by market participants would likely be outweighed by the potential for manipulation, diminished public confidence in the integrity of the markets, and other valid regulatory concerns.

[39] Investment Company Act Release No. 25622 (June 25, 2002).

[40] *See* Investment Company Act Release Nos. 25595 (May 29, 2002) (notice) and 25623 (June 25, 2002) (order).

[41] Nasdaq listing standards for ETFs clarify that NASD members trading equity ETFs through electronic communication networks ("ECNs") would be subject to NASD Rules 4420(i)(2) and 4420(j)(2) requiring the delivery of product descriptions in connection with sales of ETF shares. *See* Securities Exchange Act Release No. 45920 (May 13, 2002), 67 FR 35605 (May 20, 2002). The Commission expects NASD members to observe the same standards for the secondary market trading of Funds.

[42] NYSE Rule 405

[43] 15 U.S.C. 78f(b)(f).

[44] The Commission expects that the procedures implemented by Lehman will monitor and prevent the misuse of material, non-public information as it relates to the development, maintenance and calculation of the indices.

It is Therefore ordered, pursuant to section 19(b)(2) of the Act[45] that the proposed rule change (SR–NYSE–2003–39) is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[46]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–30840 Filed 12–12–03; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48883; File No. SR–PCX–2003–24]

Self-Regulatory Organizations; Pacific Exchange, Inc.; Order Approving Proposed Rule Change and Amendments No. 1 and 2 and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 3 Relating to the Implementation of a Closing Auction for the Archipelago Exchange and the Establishment of Market-on-Close and Limit-on-Close Order Types

December 4, 2003.

I. Introduction

On June 2, 2003, the Pacific Exchange, Inc. ("PCX") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to establish a Closing Auction and create Market-on-Close ("MOC") and Limit-on-Close ("LOC") order types. On October 7, 2003, the PCX submitted Amendment No. 1 to the proposed rule change.[3] On October 15, 2003, the PCX submitted Amendment No. 2 to the proposed rule change.[4] The proposed rule change, as amended, was published for comment in the **Federal Register** on October 22, 2003.[5] On December 2, 2003 the PCX submitted Amendment No. 3 to the proposed rule change.[6]

The Commission received no comments on the proposal. This order approves the proposed rule change, as amended by Amendment No. 1 and Amendment No. 2, and issues notice of, and grants accelerated approval to, Amendment No. 3.

The text of the proposed rule change, as amended, is below. Proposed additions are in *italics*, and proposed deletions are in [brackets].

* * * * *

Text of the Proposed Rule Change: PCX Equities, Inc.

Rule 1 Definitions.

Rule 1.1 (a)–(p)—(No change.)

Imbalance

(q) For the purposes of the Opening Auction, the Market Order Auction, *the Closing Auction* and the Trading Halt Auction, as the case may be,

(1) the term "Imbalance" shall mean the number of buy or sell shares that cannot be matched with other shares at the Indicative Match Price at any given time.

(A) the term "Total Imbalance" shall mean the net Imbalance of buy (sell) orders at the Indicative Match Price for all orders that are eligible for execution during the applicable auction.

(B) the term "Market Imbalance" shall mean:

(i) as it relates to the Market Order Auction, the imbalance of any remaining buy (sell) Market Orders that are not matched for execution during the applicable auction.

(ii) as it relates to the Closing Auction, the imbalance of any remaining buy (sell) Market-on-Close Orders that are not matched for execution during the applicable auction.

Indicative Match Price

(r) For the purposes of the Opening Auction, the Market Order Auction, *the Closing Auction* and the Trading Halt Auction, as the case may be, the term "Indicative Match Price" shall mean for each security (1) the price at which the maximum volume of shares are executable; or (2) if there are two or more prices at which the maximum volume of shares are executable, the price that is closest to the closing price of the previous trading day's normal market hours (or, in the case of a *Closing Auction or a* Trading Halt Auction, the last sale during normal market hours), as determined by the [C]consolidated [T]tape will establish the opening price *(or the closing price in the case of a Closing Auction)*, provided that if such price would trade through an eligible Limited Price Order designated for such auction, then the opening price will occur at the best price level available where no trade through occurs.

(s) The term "Limited Price Order" shall mean any order with a specified price or prices (e.g., limit orders, *Limit-on-Close Orders*, and Working Orders), other than Stop Orders.

(t)–(aaa)—(No change.)

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Rule 7 Equities Trading—Orders and Modifiers

Rule 7.31 (a)–(cc)—(No change.)

(dd) Market-on-Close Order ("MOC"). A Market Order that is to be executed only during the Closing Auction.

(ee) Limit-on-Close Order ("LOC"). A Limited Price Order that is to be executed only during the Closing Auction.

* * * * *

Trading Sessions

Rule 7.34 (a)–(c)—No change.

(d) Orders Permitted in Each Session.

(1)—(No change.)

(A)–(H)—(No change.)

(2) During the Core Trading Session[,]: *(A) M*[m]*arket O*[o]rders, Stop Orders, NOW Orders, PNP Orders and orders eligible for the Directed Order, Display Order, Working Order and Tracking Order Processes are eligible for entry into and execution on the Archipelago Exchange.

(B) Users may enter Market-on-Close Orders, Limit-on-Close Orders, and Limited Price Orders beginning at 4:30 am (Pacific Time) and concluding at 1:00 pm (Pacific Time) for inclusion in the Closing Auction, except as provided in Rule 7.35(e)(2). Market-on-Close Orders and Limit-on-Close Orders are eligible for execution only during the Closing Auction. Market Orders are not eligible for execution in the Closing Auction.

(C) Market-on-Close Orders and Limit-on-Close Orders that are not executed during the Closing Auction shall be cancelled. Timed Orders designated as good from 1:00 pm (Pacific Time) shall not be eligible to participate in the Closing Auction.

(3)—(No change.)

(e)–(f)—No change.

[Opening Session] Auctions

Rule 7.35 (a)–(c)—No change.

[(d) Re-Opening After Trading Halts. To re-open trading in a security following a trading halt in that security, the Archipelago Exchange shall conduct a Trading Halt Auction, as described below:]

[(1) Re-Opening Time. After trading in a security has been halted, the Corporation shall disseminate the estimated time at which trading in that security will re-open (the "Re-Opening Time").]

[(2) Publication of Indicative Match Price and Imbalances]

[(A) Immediately after trading is halted in a security, and various times thereafter as determined from time to time by the Corporation, the Indicative Match Price of the Trading Halt Auction and the volume available to trade at such price, shall be published via electronic means as determined from time to time by the Corporation. If such a price does not exist (i.e., there is an Imbalance of market orders), the Archipelago Exchange shall indicate via electronic means that an Indicative Match Price does not exist.]

[(B) Immediately after trading is halted in a security, and various times thereafter as determined from time to time by the Corporation, the market order Imbalance associated with the Trading Halt Auction, if any, shall be published via electronic means as determined from time to time by the Corporation.]

[(C) If the difference between the Indicative Match Price and the last price prior to the trading halt, as determined by the Consolidated Tape, is equal to or greater than a pre-determined amount, as determined from time to time by the Corporation, the Archipelago Exchange will assign a "SIG" designator to such Indicative Match Price and publish such designator via electronic means as determined from time to time by the Corporation.]

[(3) Reduction of Imbalances]

[(A) Any Imbalance in the Trading Halt Auction may be reduced by new orders, entered on the side of the market opposite the Imbalance, pursuant to the following priority:]

[(i) Market orders;]

[(ii) Limited Price Orders; and]

[(iii) Auction-Only Limit Orders.]

[(B) Primary Only Orders may be submitted to the Archipelago Exchange during a trading halt. Cleanup Orders are not eligible for execution in the Trading Halt Auction.]

[(C) The Corporation, if it deems such action necessary, will disseminate the time, prior to the time that orders are matched pursuant to the Trading Halt Auction, at which orders may no longer be cancelled.]

[(D) Interaction with ITS]

[(i) If a pre-opening indication is required pursuant to the ITS Plan, the Corporation will disseminate three minutes prior to the Re-Opening Time the applicable price range, consisting of the Indicative Match Price as one end of the price range and the Indicative Match Price plus an amount determined by the Corporation for the higher end of the price range.]

[(ii) The Archipelago Exchange will treat any responses to a pre-opening indication as an Auction-Only Limit Order.]

[(E) Other market centers may use private communication connections to enter Auction-Only Limit Orders for a Trading Halt Auction.]

[(4) Determination of Trading Halt Auction Price]

[(A) For exchange-listed securities:]

[(i) If there is no Imbalance and no other market center has re-opened trading in the security, orders will be executed in the Trading Halt Auction at the Indicative Match Price as of the Re-Opening Time.]

[(ii) If an Imbalance exists, or if an equilibrium exists between buy market orders and sell market orders, or if another market center has re-opened trading in the security, as many buy market orders and sell market orders as possible shall be matched, on a time priority basis, at the midpoint of the first uncrossed, unlocked NBBO, once an NBBO is available.]

[(B) For A Nasdaq Security:]

[(i) If there is no Imbalance, orders will be executed in the Trading Halt Auction at the Indicative Match Price as of the Re-Opening Time.]

[(ii) If an Imbalance exists, or if an equilibrium exists between buy market orders and sell market orders, as many buy market orders and sell market orders as possible shall be matched, on a time priority basis, once an NBBO is available.]

[(a) at the midpoint of the NBBO at the Re-Opening Time, provided that the NBBO is not crossed; or]

[(b) at the midpoint of the first uncrossed NBBO after the Re-Opening Time, in the case in which the NBBO is crossed, but one side of the BBO is not crossed by the NBBO; or]

[(c) at the midpoint of the first uncrossed NBBO after the Re-Opening Time, in the case in] [which the NBBO is crossed and where both sides of the BBO are crossed by the NBBO; or]

[(d) at the bid (offer) of the BBO that was crossed prior to the Re-Opening Time, in the case in which the BBO is crossed by a market participant; or]

[(C) For those issues for which the Corporation is the primary market: Orders will be executed at the Indicative Match Price at the Re-Opening Time. If equilibrium exists between buy and sell market orders, the match price shall be at the last Corporation sale price in the security regardless of the trading session; however, if the last Corporation sale price is lower than the BBO, the match price shall be the displayed bid in the security, or if the last Corporation sale price is higher than the BBO, the match price will be the displayed offer in the security.]

[(5) If any orders are not executed in their entirety during the Trading Halt Auction, then such orders shall be executed in accordance with Rule 7.37 after the completion of the Trading Halt Auction.]

[(6) After the completion of the Trading Halt Auction, the Archipelago Exchange will re-open for trading the previously halted security in accordance with Rule 7.]

(d) Transition to Core Trading Session.

(1) Limited Price Orders entered before 6:28 am (Pacific Time) shall participate in the Market Order Auction. Limited Price Orders designated for the Core Trading Session entered after 6:28 am (Pacific Time) shall become eligible for execution at 6:30 am (Pacific Time) or at the conclusion of the Market Order Auction, whichever is later.

(2) Market Orders entered after 6:28 am (Pacific Time) and before 6:30 am (Pacific Time), which are eligible for either the Market Order Auction or the Core Trading Session, shall become eligible for execution at 6:30 am (Pacific Time) or at the conclusion of the Market Order Auction, whichever is later, unless otherwise provided in Rule 7.35(c)(2)(C).

(3) Stop Orders entered before or during the Opening Session become

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[45] 15 U.S.C. 78s(b)(2).

[46] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Peter D. Bloom, Managing Director, Regulatory Policy, PCX, to Nancy J. Sanow, Assistant Director, Division of Market Regulation, Commission, dated October 6, 2003 ("Amendment No. 1"). In Amendment No. 1, the PCX submitted a new Form 19b–4, which replaced the original filing in its entirety.

[4] *See* letter from Peter D. Bloom, Managing Director, Regulatory Policy, PCX, to Timothy Fox, Attorney, Division of Market Regulation, Commission, dated October 14, 2003 ("Amendment No. 2"). In Amendment No. 2, the PCX amended proposed PCXE Rule 7.35(g)(1) to clarify that Halt Auctions would be conducted pursuant to proposed PCXE Rules 7.35(g)(2) to (g)(6), and not pursuant to PCXE Rules 7.35(b) and (c), as previously cross-referenced. In addition, the PCX added the phrase "and an Indicative Match Price does not exist" to proposed PCXE Rule 7.35(g)(4)(A)(ii) for clarity, and to a related description contained Item 3 and Exhibit 1 to the filing. The PCX added a reference to the Closing Auction in Item 3 and Exhibit 1 for clarity. The PCX also made technical corrections to PCXE Rule 7.35(d)(1) and proposed PCXE Rule 7.35(g)(6).

[5] Securities Exchange Act Release No. 48630 (October 15, 2003), 68 FR 60432.

[6] *See* letter from Mai Shiver, Acting Director, Regulatory Policy, PCX, to Timothy Fox, Division of Market Regulation, Commission, dated December 1, 2003 ("Amendment No. 3"). In Amendment No. 3, the PCX withdrew the Amendment No. 3 that it filed with the Commission on November 19, 2003 and provided that this revised Amendment No. 3 and Exhibit A thereto, replace the original rule text, as amended by Amendments No. 1 and 2. Further, the PCX proposed to incorporate rule text relating to the publication of the Total Imbalance and Market Imbalance that the Commission recently approved. *See* Securities Exchange Act Release No. 48767 (November 10, 2003), 68 FR 65337 (November 19, 2003) (SR–PCX–2003–48). In addition, Amendment No. 3 clarifies that PCX will publish MOC orders that are not matched for execution as the Market Imbalance prior to the Closing Auction. The PCX also proposed to move the Closing Auction from the Late Trading Session to the Core Session, and to change the Closing Auction's start time from 1:02 pm Pacific Time to 1:00 Pacific time. Further, the Amendment clarified that MOC and LOC orders are eligible for execution during the Closing Auction.

eligible for execution at 6:30 am (Pacific Time) or at the conclusion of the Market Order Auction, whichever is later.

[(e) Transition to Core Trading Session.]

[(1) Limited Price Orders entered before 6:28 am (Pacific Time) shall participate in the Market Order Auction. Limited Price Orders designated for the Core Trading Session entered after 6:28 am (Pacific Time) shall become eligible for execution at 6:30 am (Pacific Time) or at the conclusion of the Market Order Auction, whichever is later.]

[(2) Market orders entered after 6:28 am (Pacific Time) and before 6:30 am (Pacific Time), which are eligible for either the Market Order Auction or the Core Trading Session, shall become eligible for execution at 6:30 am (Pacific Time) or at the conclusion of the Market Order Auction, whichever is later, unless otherwise provided in Rule 7.35(c)(2)(C).]

[(3) Stop Orders entered before or during the Opening Session become eligible for execution at 6:30 am (Pacific Time) or at the conclusion of the Market Order Auction, whichever is later.]

(e) Closing Auction

(1) Publication of Indicative Match Price and Imbalances

(A) Beginning at 12:00 pm (Pacific Time), and updated real-time thereafter, the Indicative Match Price of the Closing Auction and the volume available to trade at such price, and the Imbalance associated with the Closing Auction, if any, will be, shall be published via electronic means. The Imbalance shall include both the Total Imbalance and Market Imbalance.

Example 1: (1) Limit-on-Close Order to buy 1000 shares at 50;

(2) Limit-on-Close Order to sell 5000 shares at 40; and

(3) Market-on-Close Order to sell 2000 shares.

The Archipelago Exchange will publish an Indicative Match Price of 40, a match volume of 1000 shares, a Market Imbalance of 1,000 shares and a Total Imbalance of 6,000 shares.

Example 2: (1) Market-on-Close Order to buy 3000 shares;

(2) Market-on-Close Order to sell 1000 shares;

(3) Limit Order to sell 1000 shares at 41; and

(4) Limit Order to sell 1000 shares at 41.25.

The Consolidated Tape last sale was 41.25. The Archipelago Exchange will publish an Indicative Match Price of 41.25 and a match volume of 3000 shares and will not publish an Imbalance.

(B) If an Indicative Match Price does not exist, the Archipelago Exchange shall indicate via electronic means that an Indicative Match Price does not exist.

(C) If the difference between the Indicative Match Price and the last sale during normal market hours, as determined by the consolidated tape, is equal to or greater than a pre-determined amount, as determined from time to time by the Corporation, the Archipelago Exchange will assign a "SIG" designator to such Indicative Match Price and publish such designator via electronic means.

(2) Reduction of Imbalances

(A) Any Imbalance in the Closing Auction may be reduced by new orders, entered on the side of the market opposite the Imbalance, pursuant to the following priority:

(i) Market-on-Close Orders;

(ii) Limit orders entered prior to the Closing Auction; and

(iii) Limit-on-Close Orders.

(B) Between 12:58 pm (Pacific Time) and the conclusion of the Closing Auction, Limited Price Orders may be cancelled, but Market-on-Close Orders and Limit-on-Close Orders may not be cancelled.

(C) Between 12:58 pm (Pacific Time) and the conclusion of the Closing Auction, Market-on-Close Orders and Limit-on-Close Orders may not be entered on the same side as the Imbalance. Market-on-Close Orders and Limit-on-Close Orders that reduce the Imbalance may be entered on the opposite side of the Imbalance, however, any time before the Closing Auction. Market-on-Close Orders and Limit-on-Close Orders that create equilibrium and thereafter convert the Imbalance from a buy to a sell (or convert the Imbalance from a sell to a buy) Imbalance will be rejected.

Example: (1) Limit-on-Close Order to buy 1000 shares; (2) Limit-on-Close Order to sell 1500 shares, creating an Imbalance of 500 shares on the sell side. A Market-on-Close Order or Limit-on-Close Order to buy 500 shares would be permitted because it achieves equilibrium. However, a Market-on-Close Order or Limit-on-Close Order to buy 1000 shares would not be permitted as it would inverse the Imbalance of 500 shares on the sell side to an Imbalance of 500 shares on the buy side.

(3) Determination of Closing Auction Price

(A) If there is no Imbalance, orders will be executed in the Closing Auction at the Indicative Match Price as of 1:00 p.m. (Pacific Time).

(B) If an Imbalance exists, or if equilibrium exists between buy Market-on-Close Orders and sell Market-on-Close Orders and an Indicative Match Price does not exist, as many buy Market-on-Close Orders and sell Market-on-Close Orders as possible shall be matched, on a time priority basis as follows:

(i) At the midpoint of the NBBO at 1:00 pm (Pacific Time), provided that the NBBO of the market centers that are still open is not locked or crossed; or

(ii) At the locked price if the NBBO is locked at 1:00 pm (Pacific Time); or

(iii) if the NBBO is crossed at 1:00 pm (Pacific Time) and the Archipelago Exchange is a party to the crossed market, at the bid (offer) side of the BBO which is crossed with the NBBO; or

(iv) if the NBBO is crossed at 1:00 pm (Pacific Time) and the Archipelago Exchange is not a party to the crossed market, at the last sale during the regular market hours as determined by the consolidated tape.

Such executions shall be designated with a modifier to identify them as Closing Auction trades. The Market-on-Close Orders that are eligible for, but not executed in, the Closing Auction shall be cancelled immediately upon conclusion of the Closing Auction.

[f] [Whenever in the judgment of the Corporation the interests of a fair and orderly market so require, the Corporation may adjust the timing of the auctions set forth in this Rule.]

(f) Re-Opening After Trading Halts. To re-open trading in a security following a trading halt in that security, the Archipelago Exchange shall conduct a Trading Halt Auction, as described below:

(1) Re-Opening Time. After trading in a security has been halted, the Archipelago Exchange shall disseminate the estimated time at which trading in that security will re-open (the "Re-Opening Time").

(A) For Nasdaq securities and securities that are dually listed on both Nasdaq and listed on the Corporation whereby trading in a security is halted and thereafter scheduled to reopen prior to 12:55 pm (Pacific Time), the Archipelago Exchange will conduct a Halt Auction pursuant to the applicable procedures set forth in subsection (f)(2) through (6) of this Rule.

(B) For Nasdaq securities and securities that are dually listed on both Nasdaq and listed on the Corporation whereby trading in a security is halted and thereafter scheduled to reopen at 12:55 pm (Pacific Time) or later, no Closing Auction will occur for that security. Instead, the Archipelago Exchange will conduct a Halt Auction pursuant to the applicable procedures set forth in subsection (f)(2) through (6) of this Rule.

(2) Publication of Indicative Match Price and Imbalances

(A) Immediately after trading is halted in a security, and updated real-time thereafter, the Indicative Match Price of the Trading Halt Auction and the volume available to trade at such price, shall be published via electronic means. If such a price does not exist, the Archipelago Exchange shall indicate via electronic means that an Indicative Match Price does not exist.

(B) Immediately after trading is halted in a security, and updated real-time thereafter, the Market Imbalance and Total Imbalance associated with the Trading Halt Auction, if any, shall be published via electronic means.

(C) If the difference between the Indicative Match Price and the last price prior to the trading halt, as determined by the Consolidated Tape, is equal to or greater than a pre-determined amount, as determined from time to time by the Corporation, the Archipelago Exchange will assign a "SIG" designator to such Indicative Match Price and publish such designator via electronic means.

(3) Reduction of Imbalances

(A) Any Imbalance in the Trading Halt Auction may be reduced by new orders, entered on the side of the market opposite the Imbalance, pursuant to the following priority:

(i) Market Orders; and

(ii) Limited Price Orders.

(B) Primary Only Orders may be submitted to the Archipelago Exchange during a trading halt. Cleanup Orders are not eligible for execution in the Trading Halt Auction.

(C) The Corporation, if it deems such action necessary, will disseminate the time, prior to the time that orders are matched pursuant to the Trading Halt Auction, at which orders may no longer be cancelled.

(D) Interaction with ITS

(i) If a pre-opening indication is required pursuant to the ITS Plan, the Corporation will disseminate three minutes prior to the Re-Opening Time the applicable price range, consisting of the Indicative Match Price as one end of the price range and the Indicative Match Price plus an amount determined by the Corporation for the higher end of the price range.

(ii) The Archipelago Exchange will treat any responses to a pre-opening indication as an Auction-Only Limit Order.

(E) Other market centers may use private communication connections to enter Auction-Only Limit Orders for a Trading Halt Auction.

(4) Determination of Trading Halt Auction Price

(A) For exchange-listed securities:

(i) If there is no Imbalance and no other market center has re-opened trading in the security, orders will be executed in the Trading Halt Auction at the Indicative Match Price as of the Re-Opening Time.

(ii) If an Imbalance exists, or if an equilibrium exists between buy market orders and sell market orders and an Indicative Match Price does not exist, or if another market center has re-opened trading in the security, as many buy market orders and sell market orders as possible shall be matched, on a time priority basis, at the midpoint of the first uncrossed, unlocked NBBO, once an NBBO is available.

(B) For Nasdaq securities:

(i) If there is no Imbalance, orders will be executed in the Trading Halt Auction at the Indicative Match Price as of the Re-Opening Time.

(ii) If an Imbalance exists, or if equilibrium exists between buy market orders and sell market orders, as many buy market orders and sell market orders as possible shall be matched, on a time priority basis, once an NBBO is available,

(a) at the midpoint of the NBBO at the Re-Opening Time, provided that the NBBO is not crossed; or

(b) at the midpoint of the first uncrossed NBBO after the Re-Opening Time, in the case in which the NBBO is crossed, but one side of the BBO is not crossed by the NBBO; or

(c) at the midpoint of the first uncrossed NBBO after the Re-Opening Time, in the case in which the NBBO is crossed and where both sides of the BBO are crossed by the NBBO; or

(d) at the bid (offer) of the BBO that was crossed prior to the Re-Opening Time, in the case in which the BBO is crossed by a market participant; or

(C) For those issues for which the Corporation is the primary market: Orders will be executed at the Indicative Match Price at the Re-Opening Time. If equilibrium exists between buy and sell Market Orders, the match price shall be at the last Corporation sale price in the security regardless of the trading session; however, if the last Corporation sale price is lower than the BBO, the match price shall be the displayed bid in the security, or if the last Corporation sale price is higher than the BBO, the match price will be the displayed offer in the security.

(5) If any orders are not executed in their entirety during the Trading Halt Auction, then such orders shall be executed in accordance with Rule 7.37 after the completion of the Trading Halt Auction.

(6) After the completion of the Trading Halt Auction, the Archipelago Exchange will re-open for trading the previously halted security in accordance with Rule 7.

(g) Whenever in the judgment of the Corporation the interests of a fair and orderly market so require, the Corporation may adjust the timing of the auctions set forth in this Rule.

* * * * *

II. Description of the Proposed Rule Change

The PCX, through its wholly-owned subsidiary PCXE, proposes to introduce the Closing Auction, which would apply to both Nasdaq and exchange-listed securities traded on ArcaEx. The Closing Auction would take place at the end of the Core Trading Session. As originally proposed, the Closing Auction would occur at 1:02 pm (Pacific Time). In Amendment No. 3, the PCX proposes to change the Closing Auction Time to 1:00 pm (Pacific Time). The PCX also proposes to implement two new order types, designated as a MOC Order[7] and a LOC Order,[8] which would be eligible for execution only during the Closing Auction. In Amendment No. 3, the PCX clarified that these two order types would occur during the Core Trading Session.

Before the start of the Closing Auction, ArcaEx would publish the Indicative Match Price,[9] the volume of MOC and LOC orders that have been matched for execution, as well as the Market Imbalance and Total Imbalance relative to the Closing Auction.[10] In Amendment No. 3, the PCX amended the definition of "Market Imbalance" to clarify that MOC order that are not yet matched for execution would be published as the "Market Imbalance" during the time leading up to the Closing Auction. Accordingly, beginning at 12:00 pm (Pacific Time), and updated on real-time basis thereafter, the Indicative Match Price of the Closing Auction and the volume available to trade at such price, along with the Market Imbalance and Total Imbalance associated with the Closing Auction, if any, would be published via electronic means by ArcaEx.

If the difference between the Indicative Match Price and the last sale during normal market hours, as determined by the consolidated tape,

[7] *See* proposed PCXE Rule 7.31(dd) (definition of MOC Order).

[8] *See* proposed PCXE Rule 7.31(ee) (definition of LOC Order).

[9] *See* PCXE Rule 1.1(r). Pursuant to this current proposed rule change, the definition of "Indicative Match Price" in PCXE Rule 1.1(r) would be changed to reflect the inclusion of the Closing Auction.

[10] The proposed rule change also provides for the publication of the Indicative Match Price and Imbalance following a trading halt.

were equal to or greater than a predetermined amount, as determined from time to time by the PCXE. ArcaEx would assign a designator to identify it as significant ("SIG") to the Indicative Match Price and publish the designator via electronic means as determined by the PCXE.

Any Imbalance in the Closing Auction would be reduced by new orders, entered on the side of the market opposite the Imbalance, pursuant to the following priority: (1) MOC Orders; (2) Limited Priced Orders entered prior to the Closing Auction; and (3) LOC Orders.

Between 12:58 pm (Pacific Time) and the conclusion of the Closing Auction, Limited Price Orders eligible for the Late Trading Session may be cancelled, but MOC Orders and LOC Orders may not be cancelled.[11] In addition, between 12:58 pm (Pacific Time) and the conclusion of the Closing Auction, MOC Orders and LOC Orders that reduce the Imbalance may be entered on the opposite side of the Imbalance.[12] However, any time before the Closing Auction, MOC Orders and LOC Orders that create equilibrium and thereafter increase the Imbalance would be rejected.[13] ArcaEx would determine the price of the Closing Auction as follows: if there is no Imbalance, orders would be executed in the Closing Auction at the Indicative Match Price as of 1:00 pm (Pacific Time).[14] Conversely, if an Imbalance exists, or if equilibrium exists between buy MOC Orders and sell MOC Orders and an Indicative Match Price does not exist, as many buy MOC Orders and sell MOC Orders as possible would be matched, on a time priority basis, as follows: (1) At the midpoint of the national best bid or offer ("NBBO")[15] at 1:00 pm (Pacific Time), provided that the NBBO of the market centers that are still open is not locked or crossed; or (2) at the locked price if the NBBO is locked at 1:00 pm (Pacific Time); or (3) if the NBBO is crossed at 1:00 pm (Pacific Time) and ArcaEx is a party to the crossed market, at the bid (offer) side of the best bid or offer ("BBO")[16] which is crossed with the NBBO; or (4) if the NBBO is crossed at 1:00 pm (Pacific Time) and ArcaEx is not a party to the crossed market, at the last regular sale during market hours as determined by the consolidated tape.[17] Such executions would be designated with a modifier to identify them as Closing Auction trades. The MOC Orders that are eligible for but not executed in the Closing Auction would be cancelled immediately upon conclusion of the Closing Auction.

Finally, the PCX proposes that in the event that trading in a stock is halted and scheduled to re-open prior to 12:55 pm (Pacific Time), a Halt Auction and Closing Auction would be conducted. However, in the event that trading in a stock is halted and is thereafter scheduled to re-open at 12:55 pm (Pacific Time) or later, no Closing Auction would occur for that security. Instead, only a Halt Auction would be conducted.[18]

III. Discussion

The Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange[19] and, in particular, the requirements of Section 6(b) of the Act[20] and the rules and regulations thereunder. The Commission finds that the rule change, as amended, is consistent with Section 6(b)(5) of the Act,[21] which requires, among other things, that the rules of the PCX be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulation, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Commission believes that this proposed rule change should provide ArcaEx Users with an order type that is already available on a number of other exchanges.[22] The Commission further believes that publishing the Match Volume, Indicative Match Price, the Market Imbalance and Total Imbalance may provide market participants with an additional source of closing price information for Nasdaq and exchange-listed securities in addition to the information disseminated by markets, which should enhance intermarket competition by enabling market participants to assess and compare pricing among different markets. In addition, the Commission believes, based upon experience of other exchanges such as the NYSE and Amex, that publishing this information before the Closing Auction should reduce the volatility that may arise from the liquidation of stock positions at the end of the day, particularly on the days when some stock index options, stock index futures, and options on stock index futures expire or settle concurrently.[23] The Commission further believes that publishing a Total Imbalance and Market Imbalance following a Trading Halt in a given security will increase the information available to Users when making investment decisions.

The Commission finds good cause, pursuant to Section 19(b)(2) of the Act, for approving Amendment No. 3 prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**. In Amendment No. 3, the PCX proposed to incorporate rule text relating to Total Imbalance and Market Imbalance publications that the Commission recently approved.[24] In addition, Amendment No. 3 clarified that PCX would publish MOC orders that are not matched for execution as the Market Imbalance prior to the Closing Auction, move the Closing Auction from the Late Trading Session to the Core Session, and change its start time from 1:02 pm Pacific Time to 1:00 Pacific time. The Amendment further clarified that MOC and LOC orders are eligible for execution during the Closing Auction. The Commission believes that Amendment No. 3 does not raise any new regulatory issues. Further, the Commission notes that the original proposal, which was published for the full comment period, elicited no public comment. Accordingly, the Commission believes that there is good cause, consistent with Section 19(b)(2) of the Act,[25] to approve Amendment No. 3 to the PCX's proposed rule change on an accelerated basis.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment No. 3, including whether Amendment No. 3 is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Comments may also be submitted electronically at the following e-mail address: *rule-comments@sec.gov*. All comment letters should refer to File No. SR–PCX–2003–24. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, comments should be sent in hardcopy or by e-mail but not by both methods. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the PCX. All submissions should refer to File No. SR–PCX–2003–24 and should be submitted by [insert date 21 days from date of publication].

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[26] that the proposed rule change, (File No. SR–PCX–2003–24), as amended by Amendments No. 1 and 2, is approved, and Amendment No. 3 is approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[27]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–30838 Filed 12–12–03; 8:45 am]

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[11] In Amendment No. 3, the PCX changed the relevant time from 1:00 pm (Pacific Time) to 12:58 pm (Pacific Time).

[12] *Id.*

[13] MOC Orders and LOC Orders that are of a size to "flip" the Imbalance from a buy to a sell would be rejected. For example, assume: (1) LOC Order to buy 1000 shares; (2) LOC Order to sell 1500 shares, creating an Imbalance of 500 shares on the sell side. A MOC Order or LOC Order to buy 500 shares would be permitted because it achieves equilibrium. However, a MOC Order or LOC Order to buy 1000 shares would not be permitted as it would invert the Imbalance of 500 shares on the sell side to an Imbalance of 500 shares on the buy side.

[14] In Amendment No. 3, the PCX changed the relevant time from 1:02 pm (Pacific Time) to 1:00 pm (Pacific Time).

[15] *See* PCXE Rule 1.1(dd) (definition of NBBO).

[16] *See* PCXE Rule 1.1(h) (definition of BBO).

[17] *See* supra note 14.

[18] *See* proposed PCXE Rule 7.35(f)(1).

[19] In approving this proposed rule change the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[20] 15 U.S.C. 78f(b).

[21] 15 U.S.C. 78f(b)(5).

[22] *See* American Stock Exchange ("Amex") Rule 131(e), Boston Stock Exchange Ch. II, Section 22, Chicago Stock Exchange Article XX, Rule 44, and New York Stock Exchange ("NYSE") Rule 123C.

[23] *See* Securities Exchange Act Release No. 40094 (June 15, 1998), 63 FR 33975 (June 22, 1998) (SR–NYSE–97–36) (Order approving a revision to the NYSE's policy for entry of MOC and LOC orders and publication of imbalances); Securities Exchange Act Release No. 40123 (June 24, 1998), 63 FR 38230 (July 15, 1998) (SR-Amex-98–10) (Order approving the establishment of LOC orders on the Amex).

[24] *See* Securities Exchange Act Release No. 48767 (November 10, 2003), 68 FR 65337 (November 19, 2003) (SR–PCX–2003–48).

[25] 15 U.S.C. 78s(b)(2).

[26] *Id.*

[27] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48884; File No. SR–PHLX–2003–66]

Self-Regulatory Organizations; Order Approving Proposed Rule Change and Amendment Nos. 1 and 2 and Notice of Filing Order Granting Accelerated Approval to Amendment No. 3 by the Philadelphia Stock Exchange, Inc., Relating to the Listing and Trading of Options on the Nasdaq Composite Index®

December 5, 2003.

I. Introduction

On September 29, 2003, the Philadelphia Stock Exchange, Inc. ("PHLX" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposal to list and trade cash-settled, European-style options on the Nasdaq Composite Index® (the "Nasdaq Composite Index" or "Index"), a capitalization-weighted, A.M.-settled index comprised of approximately 3,400 stocks listed and traded on The Nasdaq Stock Market, Inc. ("Nasdaq"). The PHLX filed Amendment Nos. 1 and 2 to the proposal on October 17, 2003,[3] and filed Amendment No. 3 to the proposal on November 13, 2003.[4]

The proposed rule change and Amendment Nos. 1 and 2 were published for comment in the **Federal Register** on October 24, 2003.[5] The Commission received two comment letters regarding the proposal.[6] On November 21, 2003, the PHLX submitted a letter responding to the issues raised in the comment letters.[7] This order approves the proposed rule change, as amended. In addition, the Commission is publishing notice to solicit comments on and is simultaneously approving, on an accelerated basis, Amendment No. 3.

II. Description of the Proposal

The PHLX proposes to list and trade cash-settled options on the Index: In addition trading full-size options on the Index ("Full-Size Index Options"), the PHLX proposes to trade mini Index options that are 1/10th the size of Full-Size Index Options ("Mini Index Options"), Flexible Exchange Index ("FLEX®") options on the Index ("FLEX Index Options"), and mini-FLEX Index Options ("Mini-Flex Index Options") (the Full-Size Index Options, Mini Index Options, FLEX Index Options, and Mini-Flex Index Options may be referred to, collectively, as the "Index Options").[8] The PHLX will trade the Index Options pursuant to current PHLX rules governing the trading of index options.[9] The PHLX's current rules applicable to the trading of FLEX index options, including the requirement that the minimum size of a Request-for-Quote ("RFQ") be $10

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Mark I. Salvacion, Director and Counsel, PHLX, to Kelly Riley, Senior Special Counsel, Division of Market Regulation ("Division"), Commission, dated October 17, 2003 ("Amendment No. 1"); and letter from Mark I. Salvacion, Director and Counsel, PHLX, to Yvonne Fraticelli, Special Counsel, Division, Commission, dated October 17, 2003 ("Amendment No. 2"). In Amendments No. 1, the PHLX revises the position and exercise limits for the proposed options. In Amendments No. 2, the PHLX proposes to list mini-FLEX options on the Nasdaq Composite Index and provides an example of how the proposed mini-FLEX options could be used.

[4] *See* letter from Mark I. Salvacion, Director and Counsel, PHLX, to Kelly Riley, Senior Special Counsel, Division, Commission, dated November 12, 2003 ("Amendment No. 3"). In Amendment No. 3, the PHLX represents that the PHLX will notify the staff of the Commission if: (1) Less than 80% of the weight of the Index is options eligible; (2) 10% of the weight of the Index is represented by stocks trading less than 20,000 shares per day; or (3) the largest component of the Index comprises 15% of the weight of the Index, or the top five components comprise 50% of the weight of the Index.

[5] *See* Securities Exchange Act Release No. 48663 (October 20, 2003), 68 FR 61029.

[6] *See* letter from Kathryn L. Beck, Senior Vice President, General Counsel, Corporate Secretary, and Chief Regulatory Officer, Pacific Exchange, Inc ("PCX"), to Margaret H. McFarland, Deputy Secretary, Commission, dated October 24, 2003 ("PCX Letter"); and letter from Michael J. Simon, Senior Vice President and Secretary, International Securities Exchange, Inc. ("ISE"), to Jonathan G. Katz, Secretary, Commission, dated November 10, 2003 ("ISE Letter").

[7] *See* letter from Mark Salvacion, Director and Counsel, PHLX, to Kelly Riley, Senior Special Counsel, Division, Commission, dated November 21, 2003 ("PHLX Letter").

[8] The Full-Size Index Options and the Mini Index Options will feature European-style exercise. The FLEX Index Options and the Mini-Flex Index Options may feature American-style exercise or European-style exercise. *See* PHLX Rule 1079(a)(5).

[9] *See*, particularly, PHLX Rules 1000A through 1102A (Rules Applicable to Trading of Options on Indices) and, generally, PHLX Rules 1000 through 1090 (Options Rules of the PHLX).

million, will apply to Mini-Flex Index Options.[10]

Composition of the Index

The Index is a capitalization-weighted index comprised of approximately 3,400 stocks listed and traded on Nasdaq. The Index includes Nasdaq National Market and Nasdaq SmallCap Market securities. To be eligible for inclusion in the Index, a security must be listed on Nasdaq and must be one of the following types of securities: an American Depositary Receipt ("ADR"), common stock, ordinary share, real estate investment trust ("REIT"), share of beneficial interest, of tracking stock. The Index is comprised of all of the foreign and domestic ADRs, common stocks, ordinary shares, REITs, shares of beneficial interest, and tracking stocks listed on Nasdaq. Convertible debentures, preferred stocks, rights, warrants, units, closed-end funds, exchange-traded funds ("ETFs"), and derivative securities are not included in the Index.

The Index includes most of the stocks listed and traded on the Nasdaq SmallCap Market. Nasdaq SmallCap Market securities are "reported securities" for purposes of Rule 11Aa3–1 under the Act.[11] According to the PHLX, Nasdaq SmallCap Market stocks comprised 1.3% of the capitalization of the Index as of July 31, 2003.

The Index includes ten industry groups. As of July 31, 2003, the top five industry groups and their weights in the Index were: (1) computer software and hardware, 52%; (2) healthcare, 14%; (3) financials, 11%; (4) consumer discretionary, 8%; and (5) telecommunications and media, 6%.

As of July 31, 2003, the capitalization of the Index's components ranged from $284 billion to $55,000,[12] and the market capitalization of the Index totaled $2.6 trillion. The largest Index component accounted for 11.12% of the weight of the Index and the smallest component accounted for less than 1% of the weight of the Index. The median capitalization of the Index's components was $110 million.

During the period from January 1, 2003, through July 31, 2003, the average daily trading volume of the component securities representing 95% of the weight of the Index was 850,000 shares, and the average daily trading volume for all of the Index's components was 485,000 shares. The top 100 components accounted for 64% of the weight of the Index and the bottom 100 stocks accounted for 0.01% of the weight of the Index. The prices of the Index's components ranged from $0.11 per share to $780.00 per share. The average share price was $14.15. The share outstanding for each of the Index's components ranged from 10,000 shares to 11 billion shares, with an average of 43 million shares outstanding. According to the PHLX, options eligible securities represented 95% of the weight of the Index.

Calculation of the Index

The value of the Index equals the aggregate value of the Total Shares Outstanding ("TSO") of each Index component security multiplied by each security's respective price on Nasdaq, divided by the Adjusted Base Period Market ("ABPMV"), and multiplied by the Base Value. The Index began on February 5, 1971, at a Base Value of 100.00.

The Index is disseminated every 15 seconds through the Nasdaq Index Dissemination Services SM ("NIDS") during normal Nasdaq trading hours (9:30 a.m. to 4:00 p.m. ET).[13] According to the PHLX, all major market data vendors carry the NIDS data feed.

The Index is calculated using Nasdaq prices (not consolidated) during the day and the Nasdaq Official Closing Price ("NOCP") for the close.[14] Although the Index is calculated until 4:00 p.m. ET, the Index's closing value may change up until 5:15 p.m. ET due to changes or corrections to the last sale in the Index's component securities.

Maintenance

Nasdaq will maintain the Index, and the PHLX represented that it will not influence any Nasdaq decisions concerning maintenance of the Index.

An Index-eligible security (either an initial public offering or a seasoned security) is added to the Index on the business day immediately after a last sale is established (usually day two of listing on Nasdaq). A component security that is no longer traded on Nasdaq or no longer meets the security-type eligibility criteria is removed from the Index. The Index is updated on a daily basis and there is no periodic rebalancing of Index components.

Changes in the number of shares outstanding driven by corporate events, including stock dividends, splits, and certain spin-offs and rights issuances are adjusted on the ex-date. A change in the TSO arising from other corporate actions including secondary offerings, stock repurchases, conversions, and acquisitions is ordinarily made to the Index on the evening prior to the effective date of the corporate action or as soon as practicable thereafter. Changes are made after the market close and are reflected on *http://www.nasdaqtrader.com/asp/nasdaqcomp.asp* the following morning.

To ensure that there is no discontinuity in the value of the Index, Nasdaq ordinarily adjusts the ABPMV when there is a change in a component security's TSO, a component addition or deletion, or changes due to certain spin-offs and rights offerings.

Although the PHLX is not involved in the maintenance of the Index, it has represented that it will monitor the Index on a semi-annual basis and will notify Commission staff if and when: (1) 10% of the capitalization of the Index comprises securities with a market capitalization of less than $100 million; (2) 10% of the capitalization of the Index is made up of components with an average daily trading volume of less than 10,000 shares over the previous six months; (3) less than 80% of the weight of the Index is options eligible; (4) 10% of the weight of the Index is represented by stocks trading less than 20,000 shares per day; or (5) the largest component of the Index comprises 15%, of the weight of the Index, or the top five components comprise 50% of the weight of the Index.[15] According to the PHLX, as of July 31, 2003, component securities representing 2.56% of the capitalization of the Index had market capitalizations of less than $100 million, and securities representing 2.19% of the capitalization of the Index had average daily trading volumes of less than 10,000 shares over the previous six months.

Index Option Trading

As noted above, the Exchange proposes to trade Full-Size Index Options, Mini Index Options, FLEX Index Options, and Mini-Flex Index Options. The contract multiplier for Full-Size Index Options will be $100 and the contract multiplier for Mini Index Options will be $10. Each contract will trade under separate ticker symbols and will not be fungible with the other. The size of the underlying Index will remain the same for each contract (*i.e.*, Mini Index Options will not overlie a separate index calculation reduced by 1/10th) and the PHLX represents that it will list similar strikes for each and the settlement values will be uniform.

The Exchange will list strike prices in $5.00 intervals for the Index Options. The minimum tick size for series quoted below $3.00 (*i.e.*, $300 in premium after factoring in the $100 contract multiplier for Full-Size Index Options and $30 in premium after factoring in the $10 contract multiplier for Mini Index Options) will be $.05 (*i.e.*, $5.00 for Full-Size Index Options, and $.50 for Mini Index Options), and for the series quoted above $3.00 the minimum tick size will be $.10 (*i.e.* $10.00 for Full-Size Index Options and $1.00 for Mini Index Options).

The PHLX represents that it has adequate system capacity to trade the Index Options.[16] In addition, the PHLX represents that the Options Price Reporting Authority ("OPRA") informed the Exchange that trading in the Index Options will have minimal impact on OPRA's current quoting capacity.[17]

Settlement of Index Options

The Full-Size Index Options and Mini Index Options will expire on the Saturday following the third Friday of the expiration month.[18] Trading in the expiring contract month will normally cease at 4:15 p.m. ET on the immediately preceding Thursday. Nasdaq will calculate the exercise settlement value of the Index at option expiration based on the volume-weighted opening price ("Nasdaq VWOP") of the component securities in the first four minutes of trading (the "Extraction Period") on the business day prior to expiration, which normally will be a Friday. Each Index component will have a trade extraction history independently maintained beginning with the receipt of the first day's trade in that issue and continuing for four continuous minutes. Nasdaq will record and reflect trade adjustments during the Extraction Period for each component until the four-minute window for the last component stock closes or 10:30 a.m., whichever is sooner. Nasdaq will then calculate the Nasdaq VWOP for each security based on the extracted trades and aggregate the Nasdaq VWOPs of the Index's components to calculate the Index settlement value. If a stock fails to open for trading, the last available price on the stock will be used to calculate the Index, as is done for currently listed indexes. A stock will be deemed to have failed to open for trading when it does not open for trading prior to 10:30 a.m. on such trading day.

Surveillance

To monitor trading in the Index Options, the Exchange will use the same surveillance procedures it uses currently for the Exchange's sector index options. These procedures include complete access to trading activity in the underlying securities. The Intermarket Surveillance Group ("ISG") Agreement, dated July 14, 1983, as amended, will be applicable to the trading of the Index Options. According to the PHLX, as of July 31, 2003, 315 Index components representing 3.27% of the weight of the Index are the securities of entities incorporated outside the United States. Of those securities, only 125, or 0.64% of the capitalization of the Index, are the securities of companies incorporated in countries whose domestic equity exchange is not a member of ISG.

Position Limits

The PHLX proposes to amend PHLX Rule 1001A, "Position Limits," to establish position limits of 50,000 contracts for Full-Size Index Options, with 30,000 contracts in the nearest expiration month, and 500,000 contracts for Mini Index Options on either side of the market, with 300,000 contracts total in the nearest expiration month. Exercise limits will be set at the same level as position limits. The proposed amendment to PHLX Rule 1001A will require that the position limits in Full-Size Index Options and Mini Index Options be aggregated for the purpose of determining compliance with position and exercise limits. The PHLX proposes to establish the position limit of the index hedge exemption at 150,000 contracts for Full-Size Index Options and 1,500,000 contracts for Mini Index Options.

The Exchange proposes to amend PHLX Rule 1079, "FLEX Index and Equity Options," to establish a separate position limit of 50,000 contracts on the same side of the market for FLEX Index Options, with 30,000 contracts on the same side of the market in the nearest expiration month. For Mini-Flex Index Options, the PHLX proposes to establish a position limit of 500,000 contracts on the same side of the market, with 300,000 contracts on the same side of the market in the nearest expiration month.

III. Summary of Comments

The Commission received two comment letters[19] regarding the proposal, which raise several concerns with respect to the exclusive licensing agreement PHLX entered into with Nasdaq, the Index licensor, to list and trade the Index Options.[20] The commenters maintain that the PHLX's proposal fails to explain why, in light of the exclusive licensing agreement, the proposal does not impose a burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act as required in Form 19b–4. One commenter also expresses concern that the terms of the exclusive licensing agreement could create a conflict between the PHLX's financial interests and its obligation to fairly monitor trading in the Index Options, because, according to the commenter, the licensing agreement might impose financial penalties on the PHLX if trading in the Index Options fails to meet specified volume thresholds.[21] In addition, the commenter asserts that the exclusive licensing agreement could lead to order routing biases.[22]

In response, the PHLX argues that its exclusive licensing agreement with Nasdaq will not inhibit competition.[23] Specifically, the PHLX maintains that the Index Options will compete with other index options and other investment products, such as equity options and options on ETFs. Further,

[10] Telephone conversation between Kelly Riley, Senior Special Counsel, Division, Commission, and Mark Salvacion, Director and Counsel, PHLX, on November 25, 2003.

[11] *See* 17 CFR 240.11Aa3–1. A "reported security" is defined in Rule 11Aa3–1(a)(4) under the Act as "any listed equity security or Nasdaq security for which transaction reports are required to be made on a real-time basis pursuant to an effective transaction reporting plan." In 2001, the Commission approved the extension of the Joint Self-Regulatory Organization Plan Governing the Collection, Consolidation and Dissemination of Quotation and Transaction Information for Nasdaq Listed Securities Traded on Exchanges on an Unlisted Trading Privileges Basis ("Nasdaq UTP Plan") to include Nasdaq SmallCap Market securities. Accordingly, Nasdaq SmallCap Market securities became securities reported pursuant to an effective transaction reporting plan approved by the Commission.

[12] For companies that list American Depositary Shares, these values represent only the value of the outstanding American Depositary Shares and not the global market capitalization of the issuer, which is the basis for listing on Nasdaq. Nasdaq's minimum listing and maintenance standard for global market capitalization is $50 million.

[13] NIDS is a Nasdaq data feed carrying intra-day index values and valuation data for ETFs listed on Nasdaq.

[14] *See* Securities Exchange Act Release No. 47517 (March 18, 2003), 68 FR 14446 (March 25, 2003) (File No. SR–NASD–2002–158) (approving the establishment of the NOCP).

[15] *See* Amendment No. 3, note 4 *supra*.

[16] *See* letter from Thomas A. Wittman, Senior Vice President, Trading Floor Development, PHLX, to Yvonne Fraticelli, Division, Commission, dated October 7, 2003.

[17] *See* letter from Joseph P. Corrigan, Executive Director, OPRA, to Matthew Holm, Director, PHLX, dated September 16, 2003.

[18] Under PHLX Rule 1079(a)(6), a FLEX option on the Index may not expire on any day that falls on or within two business days prior to or subsequent to an expiration day for a non-FLEX option on the Index.

[19] *See* note 6 *supra*.

[20] The Commission notes that ISE specifically stated that it did not object to the PHLX's proposal to trade the Index Options. *See* ISE Letter, note 6 *supra*.

[21] *See* PCX Letter, note 6, *supra*.

[22] *See* PCX Letter, note 6, *supra*.

[23] *See* PHLX Letter, note 7, *supra*.

PHLX argued that the Commission should consider comments relating to its exclusive licensing agreement in light of other similar investment products, such as the Nasdaq 100 Index Tracking Stock, Nasdaq 100 Index Tracking Stock options, and the Fidelity Nasdaq Composite Index Tracking Stock. PHLX believes that the existence of these similar competing products negates the argument that the exclusive licensing agreement imposes a burden on competition. In addition, the PHLX states that Nasdaq and the PHLX have limited the term of exclusively to three years, thereby preserving the PHLX's incentives to promote and facilitate the sale of the Index Options while allowing Nasdaq to seek other promoters of its intellectual property if the PHLX's performance fails to meet expectations. The PHLX believes that its exclusive licensing agreement with Nasdaq increases the PHLX's incentive to promote the Index Options, which should enhance competition.

In response to the commenter's concerns about potential conflicts of interest, the PHLX argues that the Exchange has no conflict of interest because it intends to pass on the licensing fees it pays Nasdaq to the specialist to whom the PHLX allocates the Index Options.[24] Because the PHLX will pass on the licensing fees to the specialist, the PHLX will not experience any financial penalty as a result of a disappointing performance in the licensed product. In addition, the PHLX maintains that its executive licensing agreement with Nasdaq eliminates any conflict of interest between the PHLX's regulatory and financial obligations because the agreement imposes no financial penalties of the PHLX if it fails to reach certain volume thresholds. The PHLX also states that the exclusing licensing agreement provides no incentive for the PHLX to inflate trading volumes artificially.

IV. Discussion

After careful review, the Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, the requirements of Section 6(b)(5) of the Act.[25] The Commission finds that the trading of Full-Size Index Options, Mini Index Options, FLEX Index Options, and Mini-Flex Options will permit investors to participate in the price movements of the securities listed and traded on Nasdaq. The Commission also believes that the trading of the Index Options will allow investors holding positions in some or all of the securities underlying the Index to hedge the risks associated with their portfolios, and that the trading of FLEX Index Options and Mini-Flex Index Options will provide investors with additional flexiblity in hedging the risks associated with holding some or all of the Index's component securities.[26] Accordingly, the Commission believes that Index Options will provide investors with an important trading and hedging mechanism. By broadening the hedging and investment opportunities of investors, the Commission believes that the trading of Index Options will serve to protect investors, promote the public interest, and contribute to the maintenance of fair and orderly markets.[27]

The trading of Index Options, however, raises several issues, including issues related to index design, customer protection, surveillance, and market impact. For the reasons discussed below, the Commission believes that the PHLX has adequately addressed these issues.

A. Index Design and Structure

The Commission finds that it is appropriate and consistent with the Act to classify the Index as broad-based for purposes of index option trading, and therefore appropriate to permit PHLIX rules applicable to the trading of broad-based options to apply to the Index Options. Specifically, the Commission believes that the Index is broad-based because it reflects a substantial segement of the U.S. equities market. First, as described more fully above, the Index is comprised of approximately 3,400 securities and includes all of the foreign and domestic ADRs, common stocks, ordinary shares, REITs, shares of beneficial interest, and tracking stocks listed and traded on Nasdaq. According to the PHLX, as of July 31, 2003, component securities representing 95% of the weight of the Index were options eligible.[28] Second, the Index includes ten industry groups, with the top five industry groups weighted in the Index as of July 31, 2003, as follows: (1) computer software and hardware, 52%; (2) healthcare, 14%; (3) financials, 11%; (4) consumer discretionary, 8%; and (5) telecommunications and media, 6%. Third, as of July 31, 2003, the total capitalization of the Index was $2.6 trillion, the capitalization of the Index's components ranged from $284 billion to $55,000,[29] and the medium capitalization of the Index's components was $110 million. As of July 31, 2003, the largest Index component accounted for 11.12% of the weight of the Index, and the five highest weighted securities accounted for 29.76% of the weight of the Index. Fourth, the selection and maintenance criteria for the Index's components should serve to ensure that the Index maintains its broad representative sample of stocks.

The Commission also believes that the general broad diversification, capitalizations, liquidity, and relative weighting of the Index's component securities minimize the potential for manipulation of the Index. First, the Index is comprised of approximately 3,400 securities listed and traded on Nasdaq, and no single security dominates the Index. Second, as of July 31, 2003, the total Index capitalization was $2.6 trillion, the median capitalization of the Index's components was $110 million, the capitalizations of the Index's ten most heavily weighted components (representing 37.68% of the weight of the Index) ranged from approximately $32 billion to approximately $284 billion, and only 2.56% of the capitalization of the Index was comprised of securities with a market capitalization of less than $100 million. Third, during the period from January 1, 2003, through July 31, 2003, the average daily trading volume of the component securities representing 95% of the weight of the Index was 850,000 shares and only 2.19% of the capitalization of the Index was comprised of components with an average daily trading volume of less than 10,000 shares. Fourth, as of July 31, 2003, component securities representing 95% of the weight of the Index were options eligible.[30] Fifth, the PHLX has represented that it will monitor the Index on a semi-annual basis and will notify Commission staff if and when: (1) 10% of the capitalization of the Index comprises securities with a market capitalization of less than $100 million; (2) 10% of the capitalization of the Index is made up of components with an average daily trading volume of less than 10,000 shares over the previous six months; (3) less than 80% of the weight of the Index is options eligible; (4) 10% of the weight of the index is represented by securities trading less than 20,000 shares per day; or (5) the largest component of the Index comprises 15% of the weight of the Index, or the top five components comprise 50% of the weight of the Index.[31] In the event the Index fails to satisfy any of these criteria, the PHLX will notify the Commission to determine the appropriate regulatory response.[32]

The Commission believes that these factors minimize the potential for manipulation because it is unlikely that attempted manipulations of the prices of the Index's components would affect significantly the Index's value. Moreover, the surveillance procedures discussed below should detect as well as deter potential manipulations and other trading abuses.

Finally, the Commission believes that the position and exercise limits for the Index Options are designed to minimize the potential for manipulation and other market impact concerns. The position and exercise limits for the Index Options are comparable to the position and exercise limits approved for other broad-based index options.[33]

B. Customer Protection

The Commission believes that a regulatory system designed to protect public customers must be in place before the trading of sophisticated financial instruments, such as the Index Options, can commence on a national securities exchange. The Commission notes that the trading of standardized, exchange-traded options occurs in an environment that is designed to ensure, among other things, that: (1) the special risks of options are disclosed to public customers; (2) only investors capable of evaluating and bearing the risks of options trading are engaged in such trading; and (3) special compliance procedures are applicable to options accounts. Accordingly, because the Index Options, including FLEX Index Options and Mini-Flex Index Options, will be subject to the same regulatory regime as the other standardized options traded currently on the PHLX, the Commission believes that adequate safeguards are in place to ensure the protection of investors in Index Options.[34]

The Commission generally believes that a surveillance sharing agreement between an exchange proposing to list a stock index derivative product and the market(s) trading the stocks underlying the derivative product is an important measure for the surveillance of the derivative and underlying securities markets. Such agreements ensure the availability of information necessary to detect and deter potential manipulations and other trading abuses, thereby making the stock index product less readily susceptible to manipulation. In this regard, the PHLX and the National Association of Securities Dealers, Inc. ("NASD") are members of the ISG and the ISG Agreement will apply to the trading of Index Options.[35] In addition, the PHLX will apply to the Index Options the same surveillance procedures it uses currently for existing index options trading on the PHLX.

D. Market Impact

The Commission believes that the listing and trading of Index Options will not adversely impact the underlying securities markets.[36] First, the Index is broad-based and comprised of approximately 3,400 securities, no one of which dominates the Index. Second, as described above, the Index components representing a significant portion of the weight of the Index are highly capitalized and actively traded. Third, the position and exercise limits should serve to minimize potential manipulation and market impact concerns. Fourth, the risk to investors of contra-party non-performance will be minimized because the Index Options, like other standardized options traded in the U.S., will be issued and guaranteed by the Options Clearing Corporation ("OCC"). Fifth, existing PHLX index options rules and surveillance procedures will apply to the Index Options.

The Commission also believes that settling expiring Full-Size Options and Mini Index Options based on the opening prices of component securities is reasonable and consistent with the Act. As noted in other contexts, valuing options for exercise settlement on expiration based on opening prices rather than on closing prices may help to reduce adverse effects on markets for securities underlying Full-Size Index Options and Mini Index Options.[37]

E. FLEX Index Options and Mini-Flex Index Options

The Commission believes that the listing and trading of FLEX Index Options and Mini-Flex Index Options

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[24] *See* PHLX Rule 511(b)(ii). According to PHLX, it may condition the allocation of an options book on the specialist's undertaking to pay the Exchange and/or any third party any amounts related to the licensing of the product or any amounts related to the use of intellectual property.

[25] 15 U.S.C. 78f(b)(5). In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[26] The Commission previously has approved the listing and trading by the PHLX of FLEX equity and index options. *See* Securities Exchange Act Release No. 39549 (January 14, 1998), 63 FR 3601 (January 23, 1998) (order approving File No. SR–PHLX–96–38) ("January 23, 1998") (order approving File No. SR–PHLX–96–38) ("FLEX Order"). The Commission's findings and discussion in the FLEX Order with respect to FLEX index options are incorporated by reference herein.

[27] Pursuant to Section 6(b)(5) of the Act, the Commission must predicate approval of any new option or warrant proposal upon a finding that the introduction of such new derivative instrument is in the public interest. Such a finding would be difficult for a derivative instrument that served no hedging or other economic function, because any benefits that might be derived by market participants likely would be outweighted by the potential for manipulation, diminished public confidence in the integrity of the markets, and other valid regulatory concerns. In this regard, the trading of Index Options will provide investors with a hedging vehicle that should reflect the overall movement of the Nasdaq market. The Commission also believes that the Index Options will provide investors with a means by which to make investment decisions in the Nasdaq market, allowing them to establish positions or increase positions in Nasdaq market stocks in a cost effective manner.

[28] The option listing standards, which are uniform among the U.S. options exchanges, provide that a security underlying an option must, among other things, meet the following requirements: (1) the public float must be at least 7 million shares; (2) there must be a minimum of 2,000 holders of the underlying security; (3) trading volume must have been at least 2.4 million shares over the preceding 12 months; and (4) the market price per share must meet specified levels. *See, e.g.*, PHLX Rule 1009, "Criteria for Underlying Securities," Commentary .01.

[29] For companies that list American Depository Shares, these values represent only the value of the outstanding American Depository Shares and not the global market capitalization of the issuer, which is the basis for listing on Nasdaq. Nasdaq's minimum listing and maintenance standard for global market capitalization is $50 million. *See* note 12 *supra*.

[30] *See* note 28 *supra* for a description of the PHLX's options eligibility standards.

[31] *See* Amendment No. 3, note 4 *supra*.

[32] If the composition of the Index's underlying securities were to change substantially, the Commission's decision regarding the appropriateness of the Index's current maintenance standards would be reevaluated, and additional approval under Section 19(b) of the Act might be necessary to continue to trade the Index Options.

[33] *See, e.g.*, Securities Exchange Act Release No. 48591 (October 2, 2003), 68 FR 58728 (October 10, 2003) (File No. SR–CBOE–2003–17) (approving options on 11 broad-based Russell Indexes, with position limits for each index option of 50,000 contracts on either side of the market and no more than 30,000 contracts in the series in the nearest expiration month).

[34] The Commission previously has designated FLEX index options as standardized options for the purposes of the options disclosure framework established under Rule 9b–1 of the Act. *See* Securities Exchange Act Release No. 31910 (February 23, 1993), 58 FR 12056 (March 2, 1993) (File Nos. SR–CBOE–92–17; SR–OCC–92–33; ODD–93–1).

[35] The ISG was formed on July 14, 1983, to, among other things, coordinate more effectively surveillance and investigative information sharing arrangements in the stock and options markets. All of the registered national securities exchanges and the NASD are members of the ISG. In addition, futures exchanges and non-U.S. exchanges and associations are affiliate members of ISG. As noted above, the PHLX represents that Index component securities comprising only 0.64% of the weight of the Index are incorporated in countries where the domestic equity exchange is not a member of the ISG.

[36] As noted above, both the PHLX and OPRA have represented that they have the necessary systems capacity to support the new series of index options that would result from the introduction of the Index Options. *See* notes 16 and 17, *supra*, and accompanying text.

[37] *See, e.g.*, Securities Exchange Act Release No. 30944 (July 21, 1992), 57 FR 33376 (July 28, 1992) (order approving File No. SR–CBOE–92–09) ("1992 Order")

should provide investors with more tailored options on the Index and extend to investors the benefits of a listed, exchange market in customized index options.[38] The benefits of the PHLX's options market include, but are not limited to, a centralized market center, an auction market with posted transparent market quotations and transaction reporting, parameters and procedures for clearance and settlement, and the guarantee of OCC for all contracts traded on the PHLX. In addition, the Commission believes that the proposal to list and trade FLEX Index Options and Mini-Flex Index Options could help the PHLX to compete with the over-the-counter ("OTC") market in customized index options and help the PHLX to meet the demands of portfolio managers and other institutional investors who may use the OTC market to meet their hedging needs. The Commission notes that the PHLX rules governing the trading of FLEX index options, including the minimum size requirement for an RFQ, will apply to Mini-Flex Index Options.[39]

Under the PHLX's rules, FLEX Index Options and Mini-Flex Index Options can be constructed with expiration exercise settlement based on the closing values of the Index's component securities, which potentially could result in adverse effects for the markets in these securities.[40] Although the Commission continues to believe that basing the settlement of index products on opening as opposed to closing prices on Expiration Friday helps to alleviate stock market volatility,[41] these market impact concerns are reduced in the case of FLEX Index Options and Mini-Flex Index Options because the expiration of these options will not correspond to the normal expiration of any non-FLEX options (including options overlying the Index), stock index futures, and options on stock index futures. In particular, FLEX options may never expire on any "Expiration Friday" because under the PHLX's rules the expiration date of a FLEX option may not occur on a day that is on, or within, two business days of the expiration date of a non-FLEX option.[42] The Commission believes that this should reduce the possibility that the exercise of FLEX Index Options or Mini-Flex Index Options at expiration will cause any additional pressure on the market for the underlying securities at the same time non-FLEX Index Options expire.

F. Exclusive Licensing Agreement

As noted above, both commenters raised concerns about the PHLX's exclusive licensing agreement with Nasdaq to trade the Index Options. The Commission notes that the ISE has filed a petition for rulemaking to amend Rule 19c–5 under the Act[43] to prohibit options exchanges from entering into exclusive licensing agreements with respect to index option products.[44] The Commission believes that the issues raised by the commenters and by ISE in its petition for rulemaking regarding the exclusive licensing of index option products should be considered comprehensively rather than on an *ad hoc* basis in the context of a particular index option product or products, such as the Index Options. In addition, the Commission believes that investors will benefit from the availability of the Index Options because, as described above, they will provide investors with additional hedging and trading vehicles. Accordingly, the Commission believes that it is appropriate in the public interest to approve the current proposal in order to make the Index Options available to investors while the Commission considers the issues presented by the exclusive licensing of index option products in the context of the ISE's petition for rulemaking.

G. Accelerated Approval of Amendment No. 3

The Commission finds good cause to approve Amendment No. 3 prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. Amendment No. 3 strengthens the proposal by representing that the PHLX will notify the Commission staff upon the occurrence of certain changes in the Index. Accordingly, the Commission believes that there is good cause, consistent with Sections 6(b)(5) and 19(b)(2) of the Act,[45] to approve Amendment 3 on an accelerated basis.

V. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment No. 3, including whether Amendment No. 3 is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549–0609. Comments may also be submitted electronically at the following e-mail address: *rule-comments@sec.gov*. All comment letters should refer to File No. SR–PHLX–2003–66. This file number should be included on the subject line if e-mail is used. To help the Commission process and review comments more efficiently, your comments should be sent in hardcopy or by e-mail but not by both methods. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the PHLX. All submissions should refer to File No. SR–PHLX–2003–66 and should be submitted by January 5, 2004.

VI. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[46] that Amendment No. 3 be approved on an accelerated basis and that the proposed rule change (SR–PHLX–2003–66), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[47]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–30837 Filed 12–12–03; 8:45 am]

BILLING CODE 8010–01–M

[38] FLEX options allow investors to customize certain terms, including size, term to expiration, exercise style, exercise price, and exercise settlement value.

[39] *See* note 10 *supra* and accompanying text.

[40] *See* 1992 Order.

[41] *See* 1992 Order.

[42] *See* PHLX Rule 1079(a)(6).

[43] 17 CFR 240.19c–5

[44] *See* letter from David Krell, President and Chief Executive Officer, ISE, to Jonathan Katz, Secretary, Commission, dated November 1, 2002.

[45] 15 U.S.C. 78f(b)(5) and 78s(b)(2).

[46] 15 U.S.C. 78s(b)(2).

[47] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3555, Amdt. 3]

State of California

In accordance with a notice received from the Department of Homeland Security—Federal Emergency Management Agency, effective December 2, 2003, the above numbered declaration is hereby amended to establish the incident period for this disaster as beginning October 21, 2003 and continuing through December 2, 2003.

All other information remains the same, *i.e.*, the deadline for filing applications for physical damage is January 9, 2004, and for economic injury the deadline is July 27, 2004.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: December 8, 2003.

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. 03–30847 Filed 12–12–03; 8:45 am]

BILLING CODE 8025–01–P

SOCIAL SECURITY ADMINISTRATION

Agency Information Collection Activities: Proposed Request and Comment Request

The Social Security Administration (SSA) publishes a list of information collection packages that will require clearance by the Office of Management and Budget (OMB) in compliance with P.L. 104–13, the Paperwork Reduction Act of 1995, effective October 1, 1995. The information collection packages that may be included in this notice are for new information collections, approval of existing information collections, revisions to OMB-approved information collections, and extensions (no change) of OMB-approved information collections.

SSA is soliciting comments on the accuracy of the agency's burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility, and clarity; and on ways to minimize burden on respondents, including the use of automated collection techniques or other forms of information technology. Written comments and recommendations regarding the information collection(s) should be submitted to the OMB Desk Officer and the SSA Reports Clearance Officer. The information can be mailed and/or faxed to the individuals at the addresses and fax numbers listed below: (OMB), Office of Management and Budget, Attn: Desk Officer for SSA, New Executive Building, Room 10235, 725 17th St., NW., Washington, DC 20503, Fax: 202–395–6974.

(SSA), Social Security Administration, DCFAM, Attn: Reports Clearance Officer, 1338 Annex Building, 6401 Security Blvd., Baltimore, MD 21235, Fax: 410–965–6400.

I. The information collections listed below are pending at SSA and will be submitted to OMB within 60 days from the date of this notice. Therefore, your comments should be submitted to SSA within 60 days from the date of this publication. You can obtain copies of the collection instruments by calling the SSA Reports Clearance Officer at 410–965–0454 or by writing to the address listed above.

1. Questionnaire About Employment or Self-Employment Outside the United States—20 CFR 404.401(b)(1), 404.415, and 404.417—0960–0050. The information collected on form SSA–7163 is used by SSA to determine whether work performed by beneficiaries outside the United States (U.S.) is cause for deductions from their monthly benefits; to determine which of two work tests, foreign or regular, is applicable; and to determine the months, if any, for which deductions should be imposed. The respondents are beneficiaries living and working outside the U.S.

Type of Request: Extension of an OMB-approved information collection.

Number of Respondents: 20,000.

Frequency of Response: 1.

Average Burden Per Response: 12 minutes.

Estimated Annual Burden: 4,000 hours.

2. Beneficiary Interview and Auditor's Observation Form—0960–0630. The Beneficiary Interview and Auditor's Observations form, form SSA–322, collects information that will be used by the SSA's Office of Inspector General to interview beneficiaries and/or their caregivers and to determine whether representative payees are complying with their duties and responsibilities. Respondents to this collection are randomly selected Supplemental Security Income (SSI) recipients and Social Security beneficiaries who have representative payees.

Type of Request: Extension of an OMB-approved information collection.

Number of Respondents: 200.

Frequency of Response: 1.

Average Burden Per Response: 15 minutes.

Estimated Annual Burden: 50 hours.

3. Site Review Questionnaire for Volume Payees (SSA–637); Site Review Questionnaire for Fee-for-Service Payees (SSA–638); Site Review Beneficiary Interview Form (SSA–639)—20 CFR 404.2035, 404.2065, 416.665, 416.701, and 416.708—0960–0633. In situations where a Social Security beneficiary is incompetent or physically unable to take care of his or her own affairs, SSA may make payment of Social Security and SSI benefits to a relative, other person, or organization when the best interest of the beneficiary will be served. In certain situations, SSA conducts site reviews in order to ensure that payees are carrying out their responsibilities in accordance with representative payment policies and procedures. This enables SSA to identify poor payee performance, to uncover misuse, and to initiate corrective action. Triennial site reviews are conducted for fee-for-service payees and all volume payees (*i.e.*, organizations serving 100 or more beneficiaries and individuals serving 20 or more beneficiaries). The reviews include a face-to-face meeting with the payee (and appropriate staff), examination/verification of a sample of beneficiary records and supporting documentation, and usually include beneficiary (if competent adult) or custodian (if different from payee) interviews. Forms SSA–637, SSA–638, and SSA–639 are used to record the information collected during these interviews. The respondents are certain representative payees and competent Social Security beneficiaries.

Type of Request: Extension of an OMB-approved collection.

Type of respondent	Number of respondents	Frequency of response	Average burden per response minutes	Estimated annual burden hours
Volume and Fee-for-Service Payees	680	1	60	680
Beneficiaries	2,040	1	10	340
Total	2,720			1,020

II. The information collections listed below have been submitted to OMB for clearance. Your comments on the information collections would be most useful if received by OMB and SSA within 30 days from the date of this publication. You can obtain a copy of the OMB clearance packages by calling the SSA Reports Clearance Officer at

410–965–0454, or by writing to the address listed above.

1. Representative Payee Report of Benefits and Dedicated Account—20 CFR 416.546, 416.635, 416.640, and 416.665—0960–0576. Form SSA–6233 is used to ensure that the representative payee is using the benefits received for the beneficiary's current maintenance and personal needs and that the expenditures of funds from the dedicated account are in compliance with the law. The respondents are individuals and organizational representative payees who are required by law to establish a separate ("dedicated") account in a financial institution for certain past-due SSI benefits.

Type of Request: Extension of an OMB-approved information collection.

Number of Respondents: 30,000.

Frequency of Response: 1.

Average Burden Per Response: 20 minutes.

Estimated Annual Burden: 10,000 hours.

2. Employment Relationship Questionnaire—20 CFR 404.1007—0960–0040. SSA uses the information collected on Form SSA–7160 to determine whether the Social Security number-holder is self-employed or is an employee. The respondents are applicants for Social Security benefits and/or their employers.

Type of Request: Extension of an OMB-approved information collection.

Number of Respondents: 47,500.

Frequency of Response: 1.

Average Burden Per Response: 25 minutes.

Estimated Annual Burden: 19,792 hours.

3. Continuation of Full Benefit Standard for Persons Institutionalized—20 CFR 416.212—0960–0516. SSA is required by law to establish procedures for collecting information on whether an SSI recipient who becomes institutionalized (e.g. hospital, nursing home) is eligible for continued benefits, based on the full federal rate, if a physician certifies that he expects the period of medical confinement to last no more than 90 days. The individual, or someone acting on his behalf, must demonstrate that he needs to pay some or all of the expenses of maintaining the home to which he expects to return. The respondents are applicants for SSI benefits.

Type of Request: Extension of an OMB-approved information collection.

Number of Respondents: 60,000.

Frequency of Response: 1.

Average Burden Per Response: 5 minutes.

Estimated Average Burden: 5,000 hours.

Dated: December 8, 2003.

Elizabeth A. Davidson,

Reports Clearance Officer, Social Security Administration.

[FR Doc. 03–30825 Filed 12–12–03; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Noise Exposure Map Notice; Receipt of Noise Compatibility Program Update and Request for Review, Louisville International Airport, Louisville, KY

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its determination that the noise exposure maps submitted by Regional Airport Authority of Louisville and Jefferson County, Kentucky for Louisville International Airport under the provisions of 49 U.S.C. 47501 *et seq.* (Aviation Safety and Noise Abatement Act) and 14 CFR part 150 are in compliance with applicable requirements. The FAA also announces that it is reviewing a proposed noise compatibility program that was submitted for Louisville International Airport under part 150 in conjunction with the noise exposure map, and that this program will be approved or disapproved on or before May 16, 2004.

EFFECTIVE DATE: The effective date of the FAA's determination on the noise exposure maps and of the start of its review of the associated noise compatibility program is November 18, 2003. The public comment period ends February 3, 2004.

FOR FURTHER INFORMATION CONTACT: Jerry O. Bowers, Airports District Office, 2862 Airport Business Park Drive, Bldg. G, Memphis, Tennessee 38118; 901–322–8184. Comments on the proposed noise compatibility program should also be submitted to the above office.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA finds that the noise exposure maps submitted for Louisville International Airport are in compliance with applicable requirements of part 150, effective November 18, 2003. Further, FAA is reviewing a proposed noise compatibility program for that airport which will be approved or disapproved on or before May 16, 2004. This notice also announces the availability of this program for public review and comment.

Under 49 U.S.C. 47503 (the Aviation Safety and Noise Abatement Act, hereinafter referred to as "the Act"), an airport operator may submit to the FAA noise exposure maps which meet applicable regulations and which depict non-compatible land uses as of the date of submission of such maps, a description of projected aircraft operations, and the ways in which such operations will affect such maps. The Act requires such maps to be developed in consultation with interested and affected parties in the local community, government agencies, and persons using the airport.

An airport operator who has submitted noise exposure maps that are found by FAA to be in compliance with the requirements of Federal Aviation Regulations (FAR) part 150, promulgated pursuant to the Act, may submit a noise compatibility program for FAA approval which sets forth the measures the operator has taken or proposes to take to reduce existing non-compatible uses and prevent the introduction of additional non-compatible uses.

The Regional Airport Authority of Louisville and Jefferson County, Kentucky, submitted to the FAA on February 12, 2003, noise exposure maps, descriptions and other documentation that were produced during the FAR part 150 Noise Study Update, dated January 30, 2003. It was requested that the FA review this material as the noise exposure maps, as described in section 47503 of the Act, and that the noise mitigation measures, to be implemented jointly by the airport and surrounding communities, be approved as a noise compatibility program under section 47504 of the Act.

The FAA has completed its review of the nose exposure maps and related descriptions submitted by the Regional Airport Authority of Louisville and Jefferson County, Kentucky. The specific documentation determined to constitute the noise exposure maps includes:

Existing Noise Exposure Map, 2003, Figure 10–1;

Future Noise Exposure Map, 2008, Figure 10–2;

Noise Monitoring Sites, appendix E, part 2 of volume 2 and accompanying Figure 6;

Flight Tracks for the existing condition, 2003, and 5-year, 2008 are depicted in Figures 6–3 through 6–6 and Figures 10–1 and 10–2;

Table 6–1 provides the Aviation Forecast and appendices D and G

updates and justifies the forecast, the forecast is consistent and reasonable;

Existing Land Use depicted by Figures 5–1; Future Land Use depicted by Figures 5–2 and 5–2, Noise Exposure Map 2003 Impacts are tabulated in Table 10–3 and Noise Exposure Map 2008 Impacts are tabulated in Table 10–5;

Consultation Methodology and Program are presented in appendix A.

National Register of Historic Places described, section 5.3 at pages 5–7 through 5–9, Figure 5–4, Table 5–1 and appendix C.

The FAA has determined that these maps for Louisville International Airport are in compliance with applicable requirements. This determination is effective on November 18, 2003. FAA's determination on an airport opertor's noise exposure maps is limited to a finding that the maps were developed in accordance with the procedures contained in appendix A of FAR part 150. Such determination does not constitute approval of the applicant's data, information or plans, or constitute a commitment to approve a noise compatibility program or to fund the implementation of that program.

If questions arise concerning the precise relationship of specific properties to noise exposure contours depicted on a noise exposure map submitted under section 47503 of the Act, it should be noted that the FAA is not involved in any way in determining the relative locations of specific properties with regard to the depicted noise contours, or in interpreting the noise exposure maps to resolve questions concerning, for example, which properites should be covered by the provisions of section 47506 of the Act. These functions are inseparable from the ultimate land use control and planning responsibilities of local government. These local responsibilities are not changed in any way under part 150 or through FAA's review of noise exposure maps. Therefore, the responsibility for the detailed overlaying of noise exposure contours onto the map depicting properties on the surface rests exclusively with the airport operator that submitted those maps, or with those public agencies and planning agencies with which consultation is required under section 47503 of the Act. The FAA has relied on the certification by the airport operator, under section 150.21 of FAR part 150, that the statutorily required consultation has been accomplished.

The FAA has formally received the noise compatiblity program for Louisville International Airport, also effective on November 18, 2003.

Preliminary review of the submitted material indicates that it conforms to the requirements for the submittal of noise compatibility programs, but that further review will be necessary prior to approval or disapproval of the program. The formal review period, limited by law to a maximum of 180 days, will be completed on or before May 16, 2004.

The FAA's detailed evaluation will be conducted under the provisions of 14 CFR part 150, section 150.33. The primary considerations in the evaluation process are whether the proposed measures may reduce the level of aviation safety, create an undue burden of interstate or foreign commerce, or be reasonably consistent with obtaining the goal of reducing existing non-compatible land uses and preventing the introduction of additional non-compatible land uses.

Interested persons are invited to comment on the proposed program with specific reference to these factors. All comments, other than those properly addressed to local land use authorities, will be considered by the FAA to the extent practicable. Copies of these noise exposure maps, the FAA's evaluation of the maps, and the proposed noise compatibility program are available for examination at the following locations:

Federal Aviation Administration, 800 Independence Avenue, SW., Room 621, Washington, DC 20591.

Federal Aviation Administration, Airports District Office, 2862 Business Park, Bldg G, Memphis, Tennessee 38118-1555.

Regional Airport Authority of Louisville and Jefferson County, P.O. Box 9129, Louisville, Kentucky 40209–0129.

Questions may be directed to the individual named above under the heading **FOR FURTHER INFORMATION CONTACT.**

Issued in Memphis Airports District Office, Memphis, Tennessee, November 18, 2003.

LaVerne F. Reid,

Manager, Memphis Airports District Office.

[FR Doc. 03–30911 Filed 12–12–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2003–74]

Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption part 11 of title 14, Code of Federal Regulations (14 CFR), this notice contains a summary of certain dispositions of certain petitions previously received. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities.

FOR FURTHER INFORMATION CONTACT: Tim Adams (202) 267–8033, Sandy Buchanan-Sumter (202) 267–7271, or Denise Emrick (202) 267–5174, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85 and 11.91.

Issued in Washington, DC on December 10, 2003.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Dispositions of Petitions

Docket No.: FAA–2003–15749.

Petitioner: Qantas Airways, Ltd.

Section of 14 CFR Affected: 14 CFR 145.45(f).

Description of Relief Sought/Disposition: To permit Qantas Airways, Ltd., to make its inspection procedures manual available to its supervisory, inspection, and other relevant personnel rather than give an individual copy to each of its supervisory and inspection personnel. *Grant, 11/12/2003, Exemption No. 8173.*

Docket No.: FAA–2003–16532.

Petitioner: Avigate, LLC.

Section of 14 CFR Affected: 14 CFR 135.143(c)(2).

Description of Relief Sought/Disposition: To permit Avigate, LLC, to operate certain aircraft under part 135 without a TSO–C112 (Mode S) transponder installed in those aircraft. *Grant, 11/21/2003, Exemption No.8179.*

Docket No.: FAA–2003–16486.

Petitioner: CJPJ Associates, Inc.

Section of 14 CFR Affected: 14 CFR 135.143(c)(2).

Description of Relief Sought/Disposition: To permit CJPJ Associates, Inc., to operate certain aircraft under part 135 without a TSO–C112 (Mode S) transponder installed in those aircraft. *Grant, 11/21/2003, Exemption No. 8178.*

Docket No.: FAA–2002–12137.

Petitioner: Rockwell Collins, Inc.

Section of 14 CFR Affected: 14 CFR 21.327(a).

Description of Relief Sought/Disposition: To permit Rockwell

Collins, Inc., to use a printout from its Order Management System for a Class II product instead of the Application for Export Certificate of Airworthiness. *Grant, 11/20/2003, Exemption No. 6604D.*

Docket No.: FAA–2001–9142.
Petitioner: Honeywell International, Inc., Engines, Systems, and Services.
Section of 14 CFR Affected: 14 CFR 21.325(b)(3).
Description of Relief Sought/ Disposition: To permit Honeywell International, Inc., Engines, Systems, and Services to issue export airworthiness approval tags for class II and class III products manufactured at Honeywell's Singapore facility. *Grant, 11/17/2003, Exemption No. 7075C.*

Docket No.: FAA–2003–16196.
Petitioner: Alaska Air Carriers Association.
Section of 14 CFR Affected: 14 CFR 43.3(g), 121.709(b)(3), and 135.443(b)(3).
Description of Relief Sought/ Disposition: To permit certificated and appropriately trained pilots employed by an Alaska Air Carriers Association-member airline to remove and reinstall passenger seats in aircraft type certificated for 10 to 19 passengers. *Grant, 11/12/2003, Exemption No. 8176.*

Docket No.: FAA–2003–16403.
Petitioner: PSA Airlines, Inc.
Section of 14 CFR Affected: 14 CFR 121.434(c)(1)(ii).
Description of Relief Sought/ Disposition: To permit PSA Airlines, Inc., to substitute a qualified and authorized check airman in place of an FAA inspector to observe a qualifying pilot in command while that pilot in command is performing prescribed duties during at least one flight leg that includes a takeoff and landing when completing or upgrading training as specified in § 121.424. *Grant, 11/14/2003, Exemption No. 8175.*

Docket No.: FAA–2003–16435.
Petitioner: Quest Aviation, Inc.
Section of 14 CFR Affected: 14 CFR 135.143(c)(2).
Description of Relief Sought/ Disposition: To permit Quest Aviation, Inc., to operate certain aircraft under part 135 without a TSO-C112 (Mode S) transponder installed in those aircraft. *Grant, 11/13/2003, Exemption No. 8172.*

Docket No.: FAA–2001–9441.
Petitioner: Bombardier Services Corporation.
Section of 14 CFR Affected: 14 CFR 145.45(f).
Description of Relief Sought/ Disposition: To permit Bombardier Services Corporation to assign copies of its inspection procedures manual (IPM) to key individuals within departments and to strategically place an adequate number of IPMs for access by all employees, rather than giving a copy of the IPM to all supervisory and inspection personnel. *Grant, 11/12/2003, Exemption No. 8171.*

Docket No.: FAA–2001–10169.
Petitioner: The Boeing Company.
Section of 14 CFR Affected: 14 CFR 145.45(f).
Description of Relief Sought/ Disposition: To permit the Boeing Company to give copies of its inspection procedures manual (IPM) to key individuals and make the IPM available electronically to all other employees, rather than give a paper copy of the IPM to each of its supervisory and inspection personnel. *Grant, 11/12/2003, Exemption No. 7065B.*

Docket No.: FAA–2003–15806.
Petitioner: Ameristar Air Cargo, Inc.
Section of 14 CFR Affected: 14 CFR 47.49 and 91.203(a) and (b).
Description of Relief Sought/ Disposition: To permit Ameristar Air Cargo, Inc., to operate its U.S.-registered aircraft in domestic operations temporarily following the incidental loss or mutilation of that aircraft's airworthiness certificate or registration certificate, or both. *Grant, 9/4/2003, Exemption No. 8127.*

Docket No.: FAA–2003–15862.
Petitioner: John Drew Atkin, IV.
Section of 14 CFR Affected: 14 CFR 91.109(a).
Description of Relief Sought/ Disposition: To permit John Drew Atkin, IV, to conduct certain flight training in certain Beechcraft Bonanza/Debonair airplanes that are equipped with a functioning throw-over control wheel. *Grant, 9/4/2003, Exemption No. 8126.*

Docket No.: FAA–2003–16009.
Petitioner: Richard E. Druschel.
Section of 14 CFR Affected: 14 CFR 91.109(a) and (b)(3).
Description of Relief Sought/ Disposition: To permit Richard E. Druschel to conduct certain flight training and to provide simulated instrument experience in certain Beech airplanes that are equipped with a functioning throw-over control wheel. *Grant, 9/4/2003, Exemption No.8125.*

Docket No.: FAA–2001–11253.
Petitioner: TykeTube Industries, Inc.
Section of 14 CFR Affected: 14 CFR 91.107(a)(3)(i), (iii)(B), and (iii)(C)(3), 121.311(b)(1), (b)(2)(ii), (b)(2)(iii)(C), and (c), 125.211(b)(1), (b)(2)(ii), (b)(2)(iii)(C), and (c), and 135.128(a)(1), (a)(2)(ii), (a)(2)(iii)(C), and (b).
Description of Relief Sought/ Disposition: To permit any person who operates any aircraft, and any person aboard any U.S.-registered civil aircraft to use TykeTube's onboard child restraint system that is not manufactured to U.S. standards, does not conform to all applicable Federal motor vehicle safety standards, and is not certified for use in motor vehicles and aircraft; and has not been accepted by the FAA during all phases of flight, including critical phase of flight. *Denial, 9/5/2003, Exemption No.8130.*

Docket No.: FAA–2001–10798.
Petitioner: Michelin Aircraft Tire Corporation.
Section of 14 CFR Affected: 14 CFR 21.325(b)(3).
Description of Relief Sought/ Disposition: To permit the Michelin Aircraft Tire Corporation to issue U.S. export airworthiness approvals for aircraft tires manufactured and located at their Nong Khae, Thailand facility. *Grant, 9/8/2003, Exemption No.7099D.*

Docket No.: FAA–2001–10918.
Petitioner: The Goodyear Tire and Rubber Company.
Section of 14 CFR Affected: 14 CFR 21.325(b)(3).
Description of Relief Sought/ Disposition: To permit the Goodyear Tire and Rubber Company to issue export airworthiness approvals for aircraft tires manufactured and located at their Thailand facility under Technical Standard Order TSO–C62D. *Grant, 9/8/2003, Exemption No. 6682F.*

Docket No.: FAA–2003–15175.
Petitioner: TACA International Airlines, S.A.
Section of 14 CFR Affected: 14 CFR 61.58(b) and (c).
Description of Relief Sought/ Disposition: To permit TACA International Airlines, S.A., to rely upon completion of International Civil Aviation Organization-approved proficiency checks to satisfy FAA requirements. Additionally it would allow U.S.-licensed pilots in command to be included under § 61.58(b) and (c). *Denial, 9/10/2003, Exemption No.8129.*

Docket No.: FAA–2002–11286.
Petitioner: Vintage Flying Museum.
Section of 14 CFR Affected: 14 CFR 91.315, 119.21(a), and 119.5(g).
Description of Relief Sought/ Disposition: To permit the Vintage Flying Museum to operate its Boeing B–17G for the purpose of carrying passengers for compensation or hire on local flights for educational and historical purposes. *Grant, 9/12/52003, Exemption No. 7411B.*

Docket No.: FAA–2000–8468.
Petitioner: Yankee Air Force, Inc.
Section of 14 CFR Affected: 14 CFR 91.315, 119.5(g), and 119.21(a).
Description of Relief Sought/ Disposition: To permit the Yankee Air Force to operate its B–25 and Boeing B–17 for the purpose of carrying passengers for compensation or hire on local flights for educational and historical purposes. *Grant, 9/12/2003, Exemption No. 6631E.*

Docket No.: FAA–2001–12484.
Petitioner: Dynamic Aviation.
Section of 14 CFR Affected: 14 CFR 137.53(c)(2).
Description of Relief Sought/ Disposition: To permit pilots employed by Dynamic Aviation to conduct aerial applications of insecticides or pheromones from aircraft not equipped with a load jettisoning system. *Grant, 9/15/2003, Exemption No. 7827C.*

Docket No.: FAA–2002–11965.
Petitioner: Executive Jet Management, Inc.
Section of 14 CFR Affected: 14 CFR 61.3(a) and (c).
Description of Relief Sought/ Disposition: To permit Executive Jet Management, Inc., pilots to operate aircraft, on a temporary basis, without their pilot and medical certificates in their physical possession or readily accessible in the aircraft. *Denial, 9/15/2003, Exemption No. 8131.*

Docket No.: FAA–2003–15251.
Petitioner: The North American Powered Parachute Association, Inc.
Section of 14 CFR Affected: 14 CFR 61.3(a) and 61.31(c) and (d)(1).
Description of Relief Sought/ Disposition: To provide a means to establish training and pilot certification requirements for powered parachutes and would permit persons to operate and provide training in an FAA-certificated powered parachute without a pilot certificate or rating for that aircraft. *Denial, 9/17/2003, Exemption No. 8132.*

Docket No.: FAA–2001–10283.
Petitioner: TBM, Inc., and Butler Aircraft Company.
Section of 14 CFR Affected: 14 CFR 91.529(a)(1).
Description of Relief Sought/ Disposition: To permit the Butler Aircraft Company to operate its McDonnell Douglas DC–6 and DC–7 airplanes without a flight engineer during flightcrew training, ferry operations, and test flights that are conducted to prepare for firefighting operations carried out under part 137. *Grant, 9/17/2003, Exemption No. 2989L.*

Docket No.: FAA–2003–16068.
Petitioner: Intricate Bay Air Services.
Section of 14 CFR Affected: 14 CFR 135.143(c)(2).
Description of Relief Sought/ Disposition: To permit Intricate Bay Air Services to operate certain aircraft under part 135 without a TSO–C112 (Mode S) transponder installed in those aircraft. *Grant, 9/22/2003, Exemption No. 8134.*

Docket No.: FAA–2003–16067.
Petitioner: Corporate Air.
Section of 14 CFR Affected: 14 CFR 135.143(c)(2).
Description of Relief Sought/ Disposition: To permit Corporate Air to operate certain aircraft under part 135 without a TSO–C112 (Mode S) transponder installed in those aircraft. *Grant, 9/22/2003, Exemption No. 8133*

Docket No.: FAA–2001–10364.
Petitioner: Grand Aire Operations, Inc.
Section of 14 CFR Affected: 14 CFR 135.143(c)(2).
Description of Relief Sought/ Disposition: To permit Grand Aire Operations, Inc., to operate certain aircraft under part 135 without a TSO–C112 (Mode S) transponder installed in those aircraft. *Grant, 9/22/2003, Exemption No. 6723C.*

Docket No.: FAA–2001–11177.
Petitioner: Hawaiian Airlines.
Section of 14 CFR Affected: 14 CFR 121.433(c)(1)(iii), 121.441(a)(1) and (b)(1), and appendix F to part 121.
Description of Relief Sought/ Disposition: To permit Hawaiian Airlines to conduct an annual single-visit training program for its pilots. *Grant, 9/25/2003, Exemption No. 7108B.*

Docket No.: FAA–2003–16242.
Petitioner: Albuquerque International Balloon Fiesta, Inc.
Section of 14 CFR Affected: 14 CFR 61.56.
Description of Relief Sought/ Disposition: To permit foreign pilots to act as pilot in command without accomplishing a flight review, given in an aircraft for which that pilot is rated, by an authorized instructor during the Albuquerque International Balloon Fiesta. Grant, 9/26/2003, *Exemption No. 8135.*

Docket No.: FAA–2003–16242.
Petitioner: Albuquerque International Balloon Fiesta, Inc.
Section of 14 CFR Affected: 14 CFR 61.56.
Description of Relief Sought/ Disposition: To permit foreign pilots to act as pilot in command without accomplishing a flight review, given in an aircraft for which that pilot is rated, by an authorized instructor during the Albuquerque International Balloon Fiesta. *Grant, 9/29/2003, Exemption No. 8135A.*

Docket No.: FAA–2001–10289.
Petitioner: EVA Airways Corporation.
Section of 14 CFR Affected: 14 CFR 61.77(a) and (b), and 63.23(a) and (b).
Description of Relief Sought/ Disposition: To permit the issuance of U.S. special purpose pilot authorizations and U.S. special purpose flight engineer certificates to airmen employed by EVA Airways Corporation without those airmen meeting the requirements to hold a current foreign certificate or license issued by a foreign contracting State to the Convention on International Civil Aviation, provided the airmen hold appropriate certificates issued by Taiwan's Civil Aeronautics Administration. *Grant, 9/30/2003, Exemption No. 6689D.*

Docket No.: FAA–2003–14955.
Petitioner: Leading Edge Aviation, Inc.
Section of 14 CFR Affected: 14 CFR 135.143(c)(2).
Description of Relief Sought/ Disposition: To permit Leading Edge Aviation, Inc., to operate certain aircraft under part 135 without a TSO–C112 (Mode S) transponder installed in those aircraft. *Grant, 9/30/2003, Exemption No.8138.*

Docket No.: FAA–2003–14637.
Petitioner: Goodrich Corporation.
Section of 14 CFR Affected: 14 CFR 145.45(f).
Description of Relief Sought/ Disposition: To permit the Goodrich Corporation to assign its inspection procedures manual (IPM) to fixed locations in its repair station and make the IPM available electronically to all personnel rather than a paper copy of the IPM to each supervisory and inspection personnel. *Grant, 10/1/2003, Exemption No. 8026A.*

Docket No.: FAA–2001–8805.
Petitioner: NetJets Sales, Inc.
Section of 14 CFR Affected: 14 CFR 145.45(f).
Description of Relief Sought/ Disposition: To permit NetJets Sales, Inc., to place and maintain its inspection procedures manual (IPM) in strategic locations throughout its repair station facility, rather than give a copy of its IPM to each of its supervisory and inspection personnel. *Grant, 10/1/2003, Exemption No. 8117A.*

Docket No.: FAA–2001–10410.
Petitioner: Columbia Helicopters, Inc.
Section of 14 CFR Affected: 14 CFR 145.45(f).
Description of Relief Sought/ Disposition: To permit Columbia Helicopters, Inc., to make its inspection procedures manual (IPM) available electronically or in paper format in fixed locations, rather than give a copy to each of its supervisory and inspection personnel. *Grant, 10/1/2003, Exemption No. 7622B.*

Docket No.: FAA–2001–10555.
Petitioner: ASTAR Air Cargo, Inc.

Section of 14 CFR Affected: 14 CFR 121.433(c)(1)(iii), 121.441(a)(1) and (b)(1), and appendix F to part 121.

Description of Relief Sought/ Disposition: To permit ASTAR Air Cargo, Inc. (ASTAR), to combine recurrent flight and ground training and proficiency checks for ASTAR's flight crewmembers into a single annual training and proficiency evaluation program. *Grant, 10/3/2003, Exemption No. 6727C.*

Docket No.: FAA–2002–12501.
Petitioner: Butler, Dallas E. *et al.*
Section of 14 CFR Affected: 14 CFR 121.383(c).

Description of Relief Sought/ Disposition: To permit the petitioners to act as pilots in operations conducted under part 121 after reaching their 60th birthdays. *Denial, 10/6/2003, Exemption No. 8141.*

Docket No.: FAA–2001–10609.
Petitioner: Tulsa Technology Center.
Section of 14 CFR Affected: 14 CFR 65.17(a), 65.19(b), and 65.75(a) and (b).

Description of Relief Sought/ Disposition: To permit Tulsa Technology Center (TTC) to administer the FAA oral and practical tests to students at times and places identified in TTC's operations handbook; approve students for retesting within 30 days after failure without requiring a signed statement certifying additional instruction has been given in the failed area; administer the aviation mechanic general written test to students immediately following successful completion of the general curriculum, before they meet the experience requirements of § 65.77; and conduct oral and practical tests as an integral part of the education process rather than conducting the tests on students' successful completion of the written tests. *Grant, 10/9/2003, Exemption No. 6569D.*

Docket No.: FAA–2002–12931.
Petitioner: Saudi Arabian Airlines Corporation.
Section of 14 CFR Affected: 14 CFR 63.2.

Description of Relief Sought/ Disposition: To permit Saudi Arabian Airlines Corporation to be examined for and issued U.S. airmen certificates and rating required to operate its fleet as if Saudi Arabian Airlines Corporation were a certificated U.S. air carrier. *Grant, 10/8/2003, Exemption No. 8150.*

Docket No.: FAA–2003–15528.
Petitioner: Honeywell International, Inc.
Section of 14 CFR Affected: 14 CFR 21.603(a) and 21.607(d).

Description of Relief Sought/ Disposition: To permit Honeywell International Inc., to continue production and support of products for which it has not been granted a Technical Standard Order Authorization (TSOA) during the TSOA application process. *Denial, 10/10/2003, Exemption No. 8148.*

Docket No.: FAA–2003–14780.
Petitioner: Ronald DiGiovanni.
Section of 14 CFR Affected: 14 CFR 61.113(c).

Description of Relief Sought/ Disposition: To permit members of Ronald DiGiovanni's family to cover all of his operating expenses when being carried as passengers on an airplane that he is operating as pilot in command under his private pilot certificate. *Denial, 10/10/2003, Exemption No. 8149.*

Docket No.: FAA–2003–16111.
Petitioner: Clayton P. Janosek.
Section of 14 CFR Affected: 14 CFR 61.83.

Description of Relief Sought/ Disposition: To permit Clayton P. Janosek to obtain a student pilot certificate for operation of an aircraft other than a glider or balloon. *Denial, 10/9/2003, Exemption No. 8143.*

Docket No.: FAA–2003–16112.
Petitioner: Logan E. Hoff.
Section of 14 CFR Affected: 14 CFR 61.83.

Description of Relief Sought/ Disposition: To permit Logan E. Hoff to obtain a student pilot certificate for operation of an aircraft other than a glider or balloon. *Denial, 10/9/2003, Exemption No. 8144.*

Docket No.: FAA–2003–16129.
Petitioner: Nord Aviation, Inc.
Section of 14 CFR Affected: 14 CFR 135.143(c)(2).

Description of Relief Sought/ Disposition: To permit Nord Aviation, Inc., to operate certain aircraft under part 135 without a TSO–C112 (Mode S) transponder installed in those aircraft. *Grant, 10/9/2003, Exemption No. 8146.*

Docket No.: FAA–2003–16254.
Petitioner: Sunset Aviation, Inc.
Section of 14 CFR Affected: 14 CFR 135.143(c)(2).

Description of Relief Sought/ Disposition: To permit Sunset Aviation, Inc., to operate certain aircraft under part 135 without a TSO–C112 (Mode S) transponder installed in those aircraft. *Grant, 10/9/2003, Exemption No. 8147.*

Docket No.: FAA–2003–16004.
Petitioner: PACE Airlines.
Section of 14 CFR Affected: 14 CFR 91.513(b)(4), and 121.309(b)(4).

Description of Relief Sought/ Disposition: To permit PACE Airlines to operate its aircraft with emergency and floatation equipment listed in §§ 121.309, 121.310, 121.339, and 121.340 that are not marked as to the date of last inspection. *Denial, 10/9/2003, Exemption No. 8145.*

Docket No.: FAA–2001–9371.
Petitioner: Sunrise Airlines, Inc.
Section of 14 CFR Affected: 14 CFR 135.143(c)(2).

Description of Relief Sought/ Disposition: To permit Sunrise Airlines, Inc., to operate certain aircraft under part 135 without a TSO–112C (Mode S) transponder installed in those aircraft. *Grant, 10/9/2003, Exemption No. 7061B.*

Docket No.: FAA–2003–14582.
Petitioner: Brainerd Helicopters, Inc.
Section of 14 CFR Affected: 14 CFR 133.33(d) and (e), and 133.45(d).

Description of Relief Sought/ Disposition: To permit Brainerd Helicopters, Inc. to operate its Sikorsky S70C helicopters, a restricted-category helicopter, in external-load operations. *Denial, 10/9/2003, Exemption No. 8137.*

Docket No.: FAA–2001–10446.
Petitioner: Homestead Helicopters, Inc.
Section of 14 CFR Affected: 14 CFR 135.143(c)(2).

Description of Relief Sought/ Disposition: To permit Homestead Helicopters, Inc., to operate certain aircraft under part 135 without a TSO–C112 (Mode S) transponder installed in those aircraft. *Grant, 10/14/2003, Exemption No. 6733C.*

Docket No.: FAA–2002–11655.
Petitioner: IHC Life Flight.
Section of 14 CFR Affected: 14 CFR 133.45(e)(1).

Description of Relief Sought/ Disposition: To permit IHC Life Flight to conduct Class D rotorcraft-load combination rescue operations with an Augusta A 109K–2 helicopter certificated in the normal category under part 27. *Grant, 10/14/2003, Exemption No. 7118B.*

Docket No.: FAA–2003–15925.
Petitioner: AirTran Airways, Inc.
Section of 14 CFR Affected: 14 CFR 93.123.

Description of Relief Sought/ Disposition: To permit AirTran Airways, Inc. to conduct 10 operations at LaGuardia Airport without the required slots. *Denial, 10/3/2003, Exemption No. 8139.*

Docket No.: FAA–2001–9581.
Petitioner: Goodrich Aviation Technical Services, Inc.
Section of 14 CFR Affected: 14 CFR 145.45(f).

Description of Relief Sought/ Disposition: To permit Goodrich Aviation Technical Services, Inc., to make its inspection procedures manual (IPM) available to its supervisory and inspection personnel in lieu of giving a copy of the IPM to each supervisory and inspection personnel. *Grant, 10/14/2003, Exemption No. 7024B.*

Docket No.: FAA–2003–16270.
Petitioner: Evergreen Helicopters International, Inc.
Section of 14 CFR Affected: 14 CFR 135.143(c)(2).

Description of Relief Sought/ Disposition: To permit Evergreen Helicopters International, Inc., to operate certain aircraft under part 135 without a TSO–C112 (Mode S) transponder installed in those aircraft. *Grant, 10/16/2003, Exemption No. 8155.*

Docket No.: FAA–2001–10831.
Petitioner: Pomona Valley Pilots Association.
Section of 14 CFR Affected: 14 CFR 135.251, 135.255, and 135.353, and appendices I and J to part 121.

Description of Relief Sought/ Disposition: To permit the Pomona Valley Pilots Association to conduct local sightseeing flights at Cable Airport, Upland, California, on January 10 and 11, 2004, for compensation or hire, without complying with certain anti-drug and alcohol misuse prevention requirements of part 135. *Grant, 10/16/2003, Exemption No. 8154.*

Docket No.: FAA–2002–12010.
Petitioner: Taunton Airport Association, Inc.
Section of 14 CFR Affected: 14 CFR 135.251, 135.255, and 135.353, and appendices I and J to part 121.

Description of Relief Sought/ Disposition: To permit the Taunton Airport Association, Inc., to conduct local sight seeing flights at the Taunton Municipal Airport, for its annual charity fundraising event on October 25, 2003, with a rain date of October 26, 2003, for compensation or hire, without complying with certain anti-drug and alcohol misuse prevention requirements of part 135. *Grant, 10/16/2003, Exemption No. 8152.*

Docket No.: FAA–2002–13888.
Petitioner: Western North Carolina Pilots Association.
Section of 14 CFR Affected: 14 CFR 135.251, 135.255, and 135.353, and appendices I and J to part 121.

Description of Relief Sought/ Disposition: To permit the Western North Carolina Pilots Association to conduct local sightseeing flights at the Asheville Regional Airport, Asheville, North Carolina, on October 25, 2003, and October 26, 2003, for compensation or hire, without complying with certain anti-drug an alcohol misuse prevention requirements of part 135. *Grant, 10/16/2003, Exemption No. 8153.*

Docket No.: FAA–2001–9457.
Petitioner: Century Aviation.
Section of 14 CFR Affected: 14 CFR 135.143(c)(2).

Description of Relief Sought/ Disposition: To permit Century Aviation to operate certain aircraft under part 135 without a TSO–C112 (Mode S) transponder installed in those aircraft. *Grant, 10/17/2003, Exemption No. 8156.*

Docket No.: FAA–2002–11494.
Petitioner: Segrave Aviation, Inc.
Section of 14 CFR Affected: 14 CFR 135.143(c)(2).

Description of Relief Sought/ Disposition: To permit Segrave Aviation, Inc., to operate certain aircraft under part 135 without a TSO–C112 (Mode S) transponder installed in those aircraft. *Grant, 10/21/2003, Exemption No. 7723A.*

Docket No.: FAA–2003–14960.
Petitioner: Mark Gunther.
Section of 14 CFR Affected: 14 CFR 65.77.

Description of Relief Sought/ Disposition: To permit Mark Gunther to apply for the FAA mechanic certificate with airframe rating without the required graduation certificate or completion from a certificated Aviation Maintenance Technician School. *Denial, 10/14/2003, Exemption No. 8158.*

Docket No.: FAA–2001–10469.
Petitioner: United Air Lines, Inc.
Section of 14 CFR Affected: 14 CFR 145.45(f).

Description of Relief Sought/ Disposition: To permit United Airlines, Inc., to make one copy of its inspection procedures manual (IPM) available to its supervisory and inspection personnel rather than give a copy of the IPM to each of its supervisory and inspection personnel. *Grant, 10/20/2003, Exemption No. 6393D.*

Docket No.: FAA–2003–16215.
Petitioner: Arkansas Aviation Technologies Center.
Section of 14 CFR Affected: 14 CFR 65.17(a), 65.19(b), and 65.75(a).

Description of Relief Sought/ Disposition: To permit the Arkansas Aviation Technologies Center, under contract to The Aviation Tech Center (TATC) to administer the FAA oral and practical mechanic examinations to students at times and places identified in TATC's FAA-approved operations manual; conduct oral and practical mechanic examinations as an integral part of the education process rather than conducting the tests upon students' successful completion of the mechanic written examinations; allow applicant to apply for retesting within 30 days after failure without presenting a signed statement certifying that additional instruction has been given in the failed area; and administer the Aviation Mechanic General written test to students immediately following successful completion of the general curriculum, prior to meeting the experience requirements of § 65.77. *Grant, 10/27/2003, Exemption No. 8162.*

Docket No.: FAA–2003–16331.
Petitioner: Minuteman Aviation, Inc.
Section of 14 CFR Affected: 14 CFR 135.143(c)(2).

Description of Relief Sought/ Disposition: To permit Minuteman Aviation, Inc., to operate certain aircraft under part 135 without a TSO–C112 (Mode S) transponder installed in those aircraft. *Grant, 10/30/2003, Exemption No. 8163.*

[FR Doc. 03–30909 Filed 12–12–03; 8:45 am]
BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2003–16629]

Notice of Receipt of Petition for Decision That Nonconforming 2000 Ford F150 Pickup Trucks Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition for decision that nonconforming 2000 Ford F150 pickup trucks are eligible for importation.

SUMMARY: This document announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a decision that 2000 Ford F150 pickup trucks that were not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because (1) They are substantially similar to vehicles that were originally manufactured for sale in the United States and that were certified by their manufacturer as complying with the safety standards, and (2) they are capable of being readily altered to conform to the standards.

DATE: The closing date for comments on the petition is January 14, 2004.

ADDRESSES: Comments should refer to the docket number and notice number, and be submitted to: Docket Management, Room PL–401, 400 Seventh St., SW., Washington, DC 20590. [Docket hours are from 9 a.m. to

5 p.m.]. Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Coleman Sachs, Office of Vehicle Safety Compliance, NHTSA (202–366–3151).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for sale in the United States, certified under 49 U.S.C. 30115, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR Part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

Automobile Concepts, Inc. of North Miami, Florida ("AMC") (Registered Importer 01–278) has petitioned NHTSA to decide whether 2000 Ford F150 pickup trucks manufactured in the United States for export to foreign markets are eligible for importation into the United States. The vehicles which AMC believes are substantially similar are 2000 Ford F150 pickup trucks that were manufactured for sale in the United States and certified by their manufacturer as conforming to all applicable Federal motor vehicle safety standards.

The petitioner claims that it carefully compared non-U.S. certified 2000 Ford F150 pickup trucks to their U.S.-certified counterparts, and found the vehicles to be substantially similar with respect to compliance with most Federal motor vehicle safety standards.

AMC submitted information with its petition intended to demonstrate that non-U.S. certified 2000 Ford F150 pickup trucks, as originally manufactured, conform to many Federal motor vehicle safety standards in the same manner as their U.S. certified counterparts, or are capable of being readily altered to conform to those standards.

Specifically, the petitioner claims that non-U.S. certified 2000 Ford F150 pickup trucks are identical to their U.S. certified counterparts with respect to compliance with Standard Nos. 102 *Transmission Shift Lever Sequence*, 103 *Defrosting and Defogging Systems*, 104 *Windshield Wiping and Washing Systems*, 105 *Hydraulic and Electric Brake Systems*, 106 *Brake Hoses*, 108 *Lamps, Reflective Devices and Associated Equipment*, 113 *Hood Latch Systems*, 114 *Theft Protection*, 116 *Brake Fluid*, 118 *Power Window Systems*, 119 *New Pneumatic Tires for Vehicles other than Passenger Cars*, 124 *Accelerator Control Systems*, 201 *Occupant Protection in Interior Impact*, 202 *Head Restraints*, 204 *Steering Control Rearward Displacement*, 205 *Glazing Materials*, 206 *Door Locks and Door Retention Components*, 207 *Seating Systems*, 209 *Seat Belt Assemblies*, 210 *Seat Belt Assembly Anchorages*, 212 *Windshield Retention*, 214 *Side Impact Protection*, 216 *Roof Crush Resistance*, 219 *Windshield Zone Intrusion*, 301 *Fuel System Integrity*, and 302 *Flammability of Interior Materials*.

The petitioner also contends that the vehicles are capable of being readily altered to meet the following standards, in the manner indicated:

Standard No. 101 Controls and Displays: replacement of the instrument cluster with a U.S.-model component so that the speedometer reads in miles per hour.

Standard No. 120 Tire Selection and Rims: installation of a tire information placard.

Standard No. 208 Occupant Crash Protection: inspection of all vehicles and replacement of any seat belts, air bag control units, air bags, and knee bolsters with U.S.-model components on vehicles that are not already so equipped. Petitioner states that the vehicle should be equipped with an automatic restraint system consisting of driver's and passenger's air bags and knee bolsters, air bag crash sensors; and an air bag control unit. Petitioner also states that the vehicle should be equipped with combination lap and shoulder belts that are self-tensioning and that release by means of a single red pushbutton. Petitioner further states that the vehicle is equipped with a seat belt warning lamp identical to that on the vehicle's U.S.-certified counterpart.

The petitioner also states that a vehicle identification plate must be affixed to the vehicle near the left windshield post and a reference and certification label must be affixed to the edge of the driver's side door or to the latch post nearest the driver to meet the requirements of 49 CFR Part 565. In addition, a certification label must be affixed to the driver's side doorjamb to meet the requirements of 49 CFR Part 567.

Interested persons are invited to submit comments on the petition described above. Comments should refer to the docket number and be submitted to: Docket Management, Room PL–401, 400 Seventh St., SW., Washington, DC 20590. [Docket hours are from 9 a.m. to 5 p.m.]. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Authority: 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: December 9, 2003.

Kenneth N. Weinstein,

Associate Administrator for Enforcement.

[FR Doc. 03–30830 Filed 12–12–03; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2003–16672]

Notice of Receipt of Petition for Decision That Nonconforming 2003 Saab 9.3 Passenger Cars Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition for decision that nonconforming 2003 Saab 9.3 passenger cars are eligible for importation.

SUMMARY: This document announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a decision that 2003 Saab 9.3 passenger cars that were not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because (1) They are substantially similar to vehicles that were originally manufactured for importation into and sale in the United States and that were certified by their manufacturer as complying with the safety standards, and (2) they are capable of being readily altered to conform to the standards.

DATES: The closing date for comments on the petition is January 14, 2004.

ADDRESSES: Comments should refer to the docket number and notice number, and be submitted to: Docket Management, Room PL–401, 400 Seventh St., SW., Washington, DC 20590. [Docket hours are from 9 a.m. to 5 p.m.]. Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the Federal Register published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Coleman Sachs, Office of Vehicle Safety Compliance, NHTSA (202–366–3151).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR Part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

J.K. Technologies of Baltimore, Maryland ("J.K.") (Registered Importer 90–006) has petitioned NHTSA to decide whether 2003 Saab 9.3 passenger cars are eligible for importation into the United States. The vehicles which J.K. believes are substantially similar are 2003 Saab 9.3 passenger cars that were manufactured for importation into, and sale in, the United States and certified by their manufacturer as conforming to all applicable Federal motor vehicle safety standards.

The petitioner claims that it carefully compared non-U.S. certified 2003 Saab 9.3 passenger cars to their U.S.-certified counterparts, and found the vehicles to be substantially similar with respect to compliance with most Federal motor vehicle safety standards.

J.K. submitted information with its petition intended to demonstrate that non-U.S. certified 2003 Saab 9.3 passenger cars, as originally manufactured, conform to many Federal motor vehicle safety standards in the same manner as their U.S. certified counterparts, or are capable of being readily altered to conform to those standards.

Specifically, the petitioner claims that non-U.S. certified 2003 Saab 9.3 passenger cars are identical to their U.S. certified counterparts with respect to compliance with Standard Nos. 102 *Transmission Shift Lever Sequence*, 103 *Defrosting and Defogging Systems*, 104 *Windshield Wiping and Washing Systems*, 105 *Hydraulic Brake Systems*, 106 *Brake Hoses*, 109 *New Pneumatic Tires*, 113 *Hood Latch Systems*, 114 *Theft Protection*, 116 *Brake Fluid*, 118 *Power-Operated Window Systems*, 124 *Accelerator Control Systems*, 201 *Occupant Protection in Interior Impact*, 202 *Head Restraints*, 204 *Steering Control Rearward Displacement*, 205 *Glazing Materials*, 206 *Door Locks and Door Retention Components*, 207 *Seating Systems*, 209 *Seat Belt Assemblies*, 210 *Seat Belt Assembly Anchorages*, 212 *Windshield Retention*, 214 *Side Impact Protection*, 216 *Roof Crush Resistance*, 219 *Windshield Zone Intrusion*, 225 *Child Restraint Anchorage Systems*, 301 *Fuel System Integrity*, 302 *Flammability of Interior Materials*, and 401 *Interior Trunk Release*.

Petitioner states that the vehicles also comply with the Bumper Standard found at 49 CFR part 581.

Petitioner also contends that the vehicles are capable of being readily altered to meet the following standards, in the manner indicated:

Standard No. 101 Controls and Displays: reprogramming of the instrument cluster to comply with the requirements of this standard.

Standard No. 108 Lamps, Reflective Devices and Associated Equipment: installation of U.S.-model front sidemarker lamps.

Standard No. 110 Tire Selection and Rims: installation of a tire information placard.

Standard No. 111 Rearview Mirror: inscription of the required warning statement on the passenger side rearview mirror, or replacement of that mirror with a U.S.-model component.

Standard No. 208 Occupant Crash Protection: inspection of all vehicles to ensure that the front and rear seat belts are U.S.-model components and installation of those components in vehicles that are not already so equipped. The petitioner states that the vehicles comply with the standard in all other respects.

The petitioner states that all vehicles must be inspected to ensure compliance with the Theft Prevention Standard at 49 CFR part 541, and that anti-theft markings must be added to vehicles that are not already so marked.

The petitioner also states that a vehicle identification plate must be affixed to the vehicles near the left windshield post and a reference and certification label must be affixed in the area of the left front door post to meet the requirements of 49 CFR Part 565.

Interested persons are invited to submit comments on the petition described above. Comments should refer to the docket number and be submitted to: Docket Management, Room PL–401, 400 Seventh St., SW., Washington, DC 20590. [Docket hours are from 9 a.m. to 5 p.m.]. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Authority: 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: December 9, 2003.

Kenneth N. Weinstein,

Associate Administrator for Enforcement.

[FR Doc. 03–30831 Filed 12–12–03; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2003–16656; Notice 1]

Hyundai America Technical Center, Inc., Receipt of Petition for Decision of Inconsequential Noncompliance

Hyundai America Technical Center, Inc. (Hyundai), has determined that the rims on certain vehicles that it produced in 2000 through 2003 do not comply with S5.2(a) and S5.2(c) of 49 CFR 571.120, Federal Motor Vehicle Safety Standard (FMVSS) No. 120, "Tire selection and rims for motor vehicles other than passenger cars." Hyundai has filed an appropriate report pursuant to 49 CFR Part 573, "Defect and Noncompliance Reports."

Pursuant to 49 U.S.C. 30118(d) and 30120(h), Hyundai has petitioned for an exemption from the notification and remedy requirements of 49 U.S.C. Chapter 301 on the basis that this noncompliance is inconsequential to motor vehicle safety.

This notice of receipt of Hyundai's petition is published under 49 U.S.C. 30118 and 30120 and does not represent any agency decision or other exercise of judgment concerning the merits of the petition.

Affected are a total of approximately 250,348 model year 2001, 2002, 2003 and 2004 Hyundai Santa Fe 4-door multipurpose passenger vehicles produced between March 31, 2000 and October 1, 2003. S5.2 of FMVSS 120, rim marking, requires that each rim be marked with certain information on the weather side, including:

S5.2(a) A designation which indicates the source of the rim's published nominal dimensions, and S5.2(c) The symbol DOT.

The rims installed on the affected vehicles do not contain the markings required by S5.2(a) or S5.2(c).

Hyundai believes that the noncompliance is inconsequential to motor vehicle safety, and that no corrective action is warranted. Hyundai states that the affected rims are 6.5J x 16″ aluminum alloy, which are commonly available and utilized in the United States. They are a correct specification for mounting the P225/70R16 tires specified for all Santa Fe models, and are capable of carrying the GVWR of the vehicle. Hyundai first became aware of this noncompliance of Santa Fe vehicles during a regulatory compliance review during August 2003.

Hyundai states that no accidents or injuries have occurred, and no customer complaints have been received related to the lack of the markings or any problem that may have resulted from the lack of the markings. Hyundai further states that the missing markings do not affect the performance of the wheels or the tire and wheel assemblies.

The rims are marked in compliance with S5.2(b), rim size designation; S5.2(d), manufacturer identification; and S5.2(e), month, day and year or month and year of manufacture. The rims are also marked with the Hyundai part number.

The tire size is marked on the tire sidewalls, and the owner's manual and tire inflation pressure label contain the appropriate tire size to be installed on the original equipment rims. Therefore, Hyundai does not believe there is a possibility of a tire and rim mismatch as a result of the missing rim markings.

Interested persons are invited to submit written data, views, and arguments on the application described above. Comments must refer to the docket and notice number cited at the beginning of this notice and be submitted by any of the following methods. Mail: Docket Management Facility; U.S. Department of Transportation, Nassif Building, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590–0001. Hand Delivery: Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC. It is requested, but not required, that two copies of the comments be provided. The Docket Section is open on weekdays from 10 a.m. to 5 p.m. except Federal holidays. Comments may be submitted electronically by logging onto the Docket Management System website at *http://dms.dot.gov*. Click on "Help" to obtain instructions for filing the document electronically. Comments may be faxed to 1–202–493–2251, or may be submitted to the Federal eRulemaking Portal: Go to *http://www.regulations.gov*. Follow the online instructions for submitting comments.

The application, supporting materials, and all comments received before the close of business on the closing date indicated below will be filed and will be considered. All comments and supporting materials received after the closing date will also be filed and will be considered to the extent possible. When the application is granted or denied, notice of the decision will be published in the **Federal Register** pursuant to the authority indicated below.

Comment closing date: January 14, 2004.

Authority: (49 U.S.C. 301118, 301120: delegations of authority at CFR 1.50 and 501.8)

Kenneth N. Weinstein,

Associate Administrator for Enforcement.

[FR Doc. 03–30912 Filed 12–12–03; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Notice 97–64

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Notice 97–64, Temporary Regulations To Be Issued Under Section 1(h) of the Internal Revenue Code (Applying Section 1(h) to Capital Gain Dividends of RICs and REITs).

DATES: Written comments should be received on or before February 13, 2004 to be assured of consideration.

ADDRESSES: Direct all written comments to R. Joseph Durbala, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of notice should be directed to Carol Savage at Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224, or at (202) 622–3945, or through the Internet at *CAROL.A.SAVAGE@irs.gov*.

SUPPLEMENTARY INFORMATION:

Title: Temporary Regulations To Be Issued Under Section 1(h) of the Internal Revenue Code (Applying Section 1(h) to Capital Gain Dividends of RICs and REITs).

OMB Number: 1545–1565.

Notice Number: Notice 97–64.

Abstract: Notice 97–64 describes temporary regulations that will permit Regulated Investment Companies (RICs) and Real Estate Investment Trusts (REITs) to distribute multiple classes of capital gain dividends.

Current Actions: There are no changes being made to the notice at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations, and individuals.

The burden for the collection of information in sections 9 and 10 of Notice 97–64 is reflected in the burden for Form 1099–DIV and Form 2439.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: December 8, 2003.

R. Joseph Durbala,

IRS Reports Clearance Officer.

[FR Doc. 03–30822 Filed 12–12–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Announcement 97–122

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Announcement 97–122, Interim Guidance for Roth Individual Retirement Accounts.

DATES: Written comments should be received on or before February 13, 2004 to be assured of consideration.

ADDRESSES: Direct all written comments to R. Joseph Durbala, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the announcement should be directed to Carol Savage at Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224, or at (202) 622–3945, or through the Internet at *CAROL.A.SAVAGE@irs.gov*.

SUPPLEMENTARY INFORMATION:

Title: Interim Guidance for Roth Individual Retirement Accounts.

OMB Number: 1545–1568.

Announcement Number: Announcement 97–122.

Abstract: Announcement 97–122 provides interim guidance concerning the establishment of Roth Individual Retirement Accounts (described in section 408A of the Internal Revenue Code as added by section 302 of the Taxpayer Relief Act of 1997). The guidance is directed mainly at banks, etc., that will market prototype Roth IRAs to the public.

Current Actions: There are no changes being made to the announcement at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations, and not-for-profit institutions.

Estimated Number of Respondents: 4,000.

Estimated Time Per Respondent: 2 hours.

Estimated Total Annual Burden Hours: 8,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

December 8, 2003.

R. Joseph Durbala,

IRS Reports Clearance Officer.

[FR Doc. 03–30823 Filed 12–11–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Notice 2003–75

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Notice 2003–75, Registered Retirement Savings Plans (RRSP) and Registered Retirement Income Funds (RRIF) Information Reporting.

DATES: Written comments should be received on or before February 13, 2004 to be assured of consideration.

ADDRESSES: Direct all written comments to R. Joseph Durbala, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of notice should be directed to Carol Savage at Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224, or at (202) 622–3945, or through the internet at *CAROL.A.SAVAGE@irs.gov*.

SUPPLEMENTARY INFORMATION:

Title: Registered Retirement Savings Plans (RRSP) and Registered Retirement Income Funds (RRIF).

OMB Number: 1545–1865.

Notice Number: Notice 2003–75.

Abstract: Notice 2003–75 announces an alternative, simplified reporting regime for the owners of certain Canadian Individual retirement plans that have been subject to reporting on Forms 3520 and 3520–A, and it describes the interim reporting rules that taxpayers must follow until a new form is available.

Current Actions: There are no changes being made to the notice at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals.

Estimated Number of Respondents: 750,000.

Estimated Time Per Respondent: 2 hours.

Estimated Total Annual Burden Hours: 1,500,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: December 8, 2003.

R. Joseph Durbala,

IRS Reports Clearance Officer.

[FR Doc. 03–30824 Filed 12–12–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[EE–178–78]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, EE–178–78 (TD 7898), Employers' Qualified Educational Assistance Programs (section 1.127–2).

DATES: Written comments should be received on or before February 13, 2004 to be assured of consideration.

ADDRESSES: Direct all written comments to R. Joseph Durbala, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulation should be directed to Larnice Mack at (202) 622–3179, or *Larnice.Mack@irs.gov*, or Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Employers' Qualified Educational Assistance Programs.

OMB Number: 1545–0768.

Regulation Project Number: EE–178–78.

Abstract: Internal Revenue Code section 127(a) provides that the gross income of an employee does not include amounts paid or expenses incurred by an employer if furnished to the employee pursuant to a qualified educational assistance program. This regulation requires that a qualified educational assistance program must be a separate written plan of the employer and that employees must be notified of the availability and terms of the program. Also, substantiation may be required to verify that employees are entitled to exclude from their gross income amounts paid or expenses incurred by the employer.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations, and individuals or households.

Estimated Number of Respondents: 5,200.

Estimated Time Per Respondent: 7 minutes.

Estimated Total Annual Burden Hours: 615.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: December 4, 2003.

R. Joseph Durbala,

IRS Reports Clearance Officer.

[FR Doc. 03–30895 Filed 12–12–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[LR–58–83]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, LR–58–83 (TD 7959), Related Group Election With Respect to Qualified Investments in Foreign Base Company Shipping Operations (§§ 1.955A–2, and 1.955A–3).

DATES: Written comments should be received on or before February 13, 2004 to be assured of consideration.

ADDRESSES: Direct all written comments to R. Joseph Durbala, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulation should be directed to Larnice Mack at (202) 622–3179, or *Larnice.Mack@irs.gov*, or Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Related Group Election With Respect to Qualified Investments in Foreign Base Company Shipping Operations.

OMB Number: 1545–0755.

Regulation Project Number: LR–58–83.

Abstract: This regulation concerns the election made by a related group of controlled foreign corporations to determine foreign base company shipping income and qualified investments in foreign base company shipping operations on a related group basis. The information required is necessary to assure that the U.S. shareholder correctly reports any shipping income of its controlled foreign corporations which is taxable to the shareholder.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 100.

Estimated Time Per Respondent: 2 hours, 3 minutes.

Estimated Total Annual Burden Hours: 205.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: December 4, 2003.

R. Joseph Durbala,

IRS Reports Clearance Officer.

[FR Doc. 03–30896 Filed 12–12–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[REG–115795–97]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, REG–115795–97 (TD 8870), General Rules for Making and Maintaining Qualified Electing Fund Elections (§§ 1.1295–1 and 1.1295–3).

DATES: Written comments should be received on or before February 13, 2004 to be assured of consideration.

ADDRESSES: Direct all written comments to R. Joseph Durbala, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulation should be directed to Larnice Mack (202) 622–3179, or through the Internet (*Larnice.Mack@irs.gov*), Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: General Rules for Making and Maintaining Qualified Electing Fund Elections.

OMB Number: 1545–1555.

Regulation Project Number: REG–115795–97.

Abstract: This regulation provides guidance to a passive foreign investment company (PFIC) shareholder that makes the election under Code section 1295 to treat the PFIC as a qualified electing fund (QEF), and for PFIC shareholders that wish to make a section 1295 election that will apply on a retroactive basis. Guidance is also provided on revoking such elections.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households, business or other for-profit

organization, and not-for-profit institutions.

Estimated Number of Respondents: 1,290.

Estimated Time Per Respondent: 29 minutes.

Estimated Total Annual Burden Hours: 623.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: December 4, 2003.

R. Joseph Durbala,

IRS Reports Clearance Officer.

[FR Doc. 03–30897 Filed 12–12–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Area 7 Taxpayer Advocacy Panel (Including the State of California)

AGENCY: Internal Revenue Service (IRS) Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Area 7 committee of the Taxpayer Advocacy Panel will be conducted (via teleconference). The Taxpayer Advocacy Panel (TAP) is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service. The TAP will use citizen input to make recommendations to the Internal Revenue Service.

DATES: The meeting will be held Tuesday, January 6, 2004.

FOR FURTHER INFORMATION CONTACT: Mary Peterson O'Brien at 1–888–912–1227, or 206–220–6096.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Area 7 Taxpayer Advocacy Panel will be held Tuesday, January 6, 2004 from 9 a.m. Pacific Time to 10 a.m. Pacific Time via a telephone conference call. The public is invited to make oral comments. Individual comments will be limited to 5 minutes. If you would like to have the TAP consider a written statement, please call 1–888–912–1227 or 206–220–6096, or write to Mary Peterson O'Brien, TAP Office, 915 2nd Avenue, MS W–406, Seattle, WA 98174. Due to limited conference lines, notification of intent to participate in the telephone conference call meeting must be made with Mary Peterson O'Brien. Ms. O'Brien can be reached at 1–888–912–1227 or 206–220–6096.

The agenda will include the following: Various IRS issues.

Dated: December 10, 2003.

Bernard Coston,

Director, Taxpayer Advocacy Panel.

[FR Doc. 03–30898 Filed 12–12–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Small Business/Self Employed—Payroll Committee of the Taxpayer Advocacy Panel

AGENCY: Internal Revenue Service (IRS) Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Small Business/Self Employed—Payroll Committee of the Taxpayer Advocacy Panel will be conducted (via teleconference). The TAP will be discussing issues pertaining to increasing compliance and lessoning the burden for Small Business/Self Employed individuals. Recommendations for IRS systemic changes will be developed.

DATES: The meeting will be held Thursday, January 8, 2004.

FOR FURTHER INFORMATION CONTACT: Mary O'Brien at 1–888–912–1227, or 206 220–6096.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Small Business/Self Employed—Payroll Committee of the Taxpayer Advocacy Panel will be held Thursday, January 8, 2004 from 3 p.m. EDT to 4:30 p.m. EDT via a telephone conference call. If you would like to have the TAP consider a written statement, please call 1–888–912–1227 or 206–220–6096, or write to Mary O'Brien, TAP Office, 915 2nd Avenue, MS W–406, Seattle, WA 98174. Due to limited conference lines, notification of intent to participate in the telephone conference call meeting must be made with Mary O'Brien. Ms O'Brien can be reached at 1–888–912–1227 or 206–220–6096.

The agenda will include the following: Various IRS issues.

Dated: December 10, 2003.

Bernard Coston,

Director, Taxpayer Advocacy Panel.

[FR Doc. 03–30899 Filed 12–12–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–New (NVVLS)]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Health Administration, Department of Veterans Affairs

ACTION: Notice

SUMMARY: The Veterans Health Administration (VHA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments for information needed to follow-up on the National Vietnam Veterans Readjustment Study conducted in 1986 through 1987.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before February 13, 2004.

ADDRESSES: Submit written comments on the collection of information to Ann W. Bickoff, Veterans Health Administration (19E1), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or e-mail *ann.bickoff@mail.va.gov*. Please refer to "OMB Control No. 2900–New (NVVLS) in any correspondence.

FOR FURTHER INFORMATION CONTACT: Ann W. Bickoff, (202) 273–8310 or FAX (202) 273–9386. These are not toll-free numbers.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–21), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VHA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VHA's functions, including whether the information will have practical utility; (2) the accuracy of VHA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Titles: a. National Vietnam Veterans Longitudinal Study, (all components), VA Form 10–21064a.

b. National Vietnam Veterans Longitudinal Study, (all components with the exception of psychological testing), VA Form 10–21064b.

c. National Vietnam Veterans Longitudinal Study, Non-Response Telephone Interview, VA Form 10–21064c.

OMB Control Number: 2900–New (NVVLS).

Type of Review: New collection.

Abstract: The National Vietnam Veterans Longitudinal Study (NVVLS) is a follow-up to the National Vietnam Veterans Readjustment Study (NVVRS) conducted in 1986 through 1987 to sample veterans who served in the U.S. Army, Navy, Air Force, or Marines between August 5, 1964, and May 7, 1975. The NVVRS found that 15.2 percent of the men and 8.5 percent of the women who had served in Vietnam were current cases of posttraumatic stress disorder (PTSD). The rates of PTSD for those veterans exposed to high levels of war-zone stress were dramatically higher than the rates for those with low/moderate levels of war-zone stress exposure. Because of the high rates of PTSD, the strong evidence for the persistence of this syndrome, and the strength of its association with war-zone stress exposure, it is imperative that the VA has information about the current functioning of the participants in the original study. To address the important need for followup data and for an understanding of the current functioning of Vietnam veterans, the VA has contracted with Research Triangle Institute to conduct the NVVLS, follow-up study of the original cohort from the NVVRS. This follow-up of the NVVRS sample will be unique in the field and will enhance and supplement the original findings. The specific aims of this study are to assess:

a. Current prevalence of PTSD, with particular attention to changes in caseness from initial assessment and to variables that might be associated with such changes;

b. Current prevalence of cardiovascular disorders and their precursors and risk factors, with particular attention to their relationship to war-zone stress exposure and PTSD;

c. Current prevalence of other psychiatric disorders and other postwar readjustment problems, with particular attention to their relationship to chronic disease outcomes; and

d. Healthcare utilization patterns, with particular attention to sociodemographic and other variable that moderate service use.

Affected Public: Individuals or households.

Estimated Annual Burden: 4,426 hours.

a. National Vietnam Veterans Longitudinal Study (all components), VA Form 10–21064a—3,261.

b. National Vietnam Veterans Longitudinal Study, (all components with the exception of psychological testing) VA Form 10–21064b—1,154.

c. National Vietnam Veterans Longitudinal Study, Non-Response Telephone Interview, VA Form 10–21064c—11.

Estimated Average Burden Per Respondent: a. National Vietnam Veterans Longitudinal Study (all components), VA Form 10–21064a—11.50 hours.

b. National Vietnam Veterans Longitudinal Study, (all components with the exception of psychological testing) VA Form 10–21064b—6.75 hours.

c. National Vietnam Veterans Longitudinal Study, Non-Response Telephone Interview, VA Form 10–21064c—20 minutes.

Frequency of Response: One time.

Estimated Number of Respondents: 1,605.

a. National Vietnam Veterans Longitudinal Study (all components), VA Form 10–21064a—650.

b. National Vietnam Veterans Longitudinal Study, (all components with the exception of psychological testing) VA Form 10–21064b—855.

c. National Vietnam Veterans Longitudinal Study, Non-Response Telephone Interview, VA Form 10–21064c—100.

Dated: December 8, 2003.

By direction of the Secretary.

Jacqueline Parks,

IT Specialist, Records Management Service.

[FR Doc. 03–30873 Filed 12–12–03; 8:45 am]

BILLING CODE 8320–01–U

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0118]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection and allow 60 days for public comment in response to the notice. This notice solicits comments on the information needed to determine whether an eligible person who enrolled in a program at one school is entitled to receive education benefits for enrollment at a second school.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before February 13, 2004.

ADDRESSES: Submit written comments on the collection of information to Nancy J. Kessinger, Veterans Benefits Administration (20M35), Department of Veterans Affairs, 810 Vermont Avenue,

NW., Washington, DC 20420 or e-mail comments to: *nancy.kessinger.VBAVACO @mail.va.gov*. Please refer to "OMB Control No. 2900–0118" in any correspondence.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 273–7079 or FAX (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C., 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Transfer of Scholastic Credit (Schools), VA Form Letter 22–315.

OMB Control Number: 2900–0118.

Type of Review: Extension of a currently approved collection.

Abstract: When a student receiving VA education benefits is enrolled at two training institutions, the institution at which the student pursues his or her approved program of education must verify that courses pursued at a second or supplemental institution will be accepted at full credit toward the student's course objective. Educational payment for courses pursued at the second institution is not payable until evidence is received verifying that the student is pursuing his or her approved program while enrolled in these courses. VA Form Letter 22–315 serves as this certification of acceptance. VA claims examiner send the form letter to the student to have the certifying official of his or her primary institution to list the course or courses pursued at the second institution for which the primary institution will give full credit. Without this information, benefits cannot be authorized for any courses pursued at other than the primary institution.

Affected Public: Not-for-profit institutions, and State, Local or Tribal Government.

Estimated Annual Burden: 3,550 hours.

Estimated Average Burden Per Respondent: 10 minutes.

Frequency of Response: Occasion.

Estimated Number of Respondents: 21,300.

Dated: December 3, 2003.

By direction of the Secretary.

Jacqueline Parks,

IT Specialist, Records Management Service.

[FR Doc. 03–30874 Filed 12–12–03; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0021]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the Federal Register concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments for information needed to justify the extension of forbearance to the veteran-borrower as opposed to foreclosure.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before February 13, 2004.

ADDRESSES: Submit written comments on the collection of information to Nancy J. Kessinger, Veterans Benefits Administration (20M35), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420. Please refer to "OMB Control No. 2900–0021" in any correspondence.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 273–7079 or FAX (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Titles:

a. Notice of Default, VA Form 26–6850.

b. Notice of Default and Intention to Foreclose, VA Form 26–6850a.

c. Notice of Intention to Foreclose, VA Form 26–6851.

OMB Control Number: 2900–0021.

Type of Review: Extension of a currently approved collection.

Abstract: Holders of guaranteed loans are required to notify VA within 45 days of a loan default due to nonpayment of any installment for a period of 60 days from the date of the first uncured default. Holders are also required to notify VA of their intention to foreclose. After delivery of such notice to VA and 30 days has passed, the holder can begin court proceedings, give notice of sale under power of sale, or otherwise take steps to terminate the debtor's rights in the security.

VA Forms 26–6850 and 26–6851 require that servicing efforts are fully explained so that VA can determine whether supplemental servicing could develop further information to justify the extension of forbearance to the veterans-borrower as opposed to foreclosure. The information provided is used to coordinate the actions of VA and the holder to ensure that all legal requirements regarding foreclosure and claim payment are met. VA Form 26–6850a is filed by holders when defaults are determined insoluble by holders at the time the notice of default is filed with VA. This form provides both notice of default and intent to foreclosure together on one form.

Affected Public: Individuals or households, and Business or other for profit.

Estimated Annual Burden: 66,166

a. VA Form 26–6850–20,166 hours.
b. VA Form 26–6850a–26,000 hours.
c. VA Form 26–6851–20,000 hours.

Estimated Average Burden Per Respondent:

a. VA Form 26–6850–10 minutes.
b. VA Form 26–6850a–20 minutes.
c. VA Form 26–6851–15 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 279,000 hours.

a. VA Form 26–6850–121,000 hours.
b. VA Form 26–6850a–78,000 hours.
c. VA Form 26–6851–80,000 hours.

Dated: December 3, 2003.

By direction of the Acting Secretary.

Jacqueline Parks,

IT Specialist, Records Management Service.

[FR Doc. 03–30875 Filed 12–12–03; 8:45 am]

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Part II

Department of Transportation

Research and Special Programs Administration

49 CFR Part 192

Pipeline Safety: Pipeline Integrity Management in High Consequence Areas (Gas Transmission Pipelines); Final Rule

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Part 192

[Docket No. RSPA–00–7666; Amendment 192–95]

RIN 2137–AD54

Pipeline Safety: Pipeline Integrity Management in High Consequence Areas (Gas Transmission Pipelines)

AGENCY: Office of Pipeline Safety (OPS), Research and Special Programs Administration (RSPA), DOT.

ACTION: Final rule.

SUMMARY: This final rule requires operators to develop integrity management programs for gas transmission pipelines located where a leak or rupture could do the most harm, *i.e.*, could impact high consequence areas (HCAs). The rule requires gas transmission pipeline operators to perform ongoing assessments of pipeline integrity, to improve data collection, integration, and analysis, to repair and remediate the pipeline as necessary, and to implement preventive and mitigative actions. RSPA/OPS has also modified the definition of HCAs in response to a petition for reconsideration from industry associations. This final rule comprehensively addresses statutory mandates, safety recommendations, and conclusions from accident analyses, all of which indicate that coordinated risk control measures are needed to improve pipeline safety.

DATES: This final rule takes effect January 14, 2004. The incorporation by reference of certain publications in this rule is approved by the Director of the Federal Register as of January 14, 2004.

Privacy Act Information: You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70, Pages 19477–78) or you may visit the Dockets Management System (DMS) Web site at *http://dms.dot.gov*. You may search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, *etc.*).

General Information: You may contact the Dockets Facility by phone at (202) 366–9329 for copies of this final rule or other material in the docket. All materials in this docket may be accessed electronically at *http://dms.dot.gov/search*. Once you access this address, type in the last four digits of the docket number shown at the beginning of this notice (7666), and click on search. You will then be able to read and download comments and other documents related to this final rule.

FOR FURTHER INFORMATION CONTACT: Mike Israni by phone at (202) 366–4571, by fax at (202) 366–4566, or by e-mail at *mike.israni@rspa.dot.gov*, regarding the subject matter of this final rule. General information about the RSPA/OPS programs may be obtained by accessing RSPA's Internet page at *http://RSPA.dot.gov*.

SUPPLEMENTARY INFORMATION: RSPA/OPS believes it can ensure the integrity of gas transmission pipelines by requiring each operator to: (a) Develop and implement a comprehensive integrity management program for pipeline segments where a failure would have the greatest impact on the public or property; (b) identify and characterize applicable threats to pipeline segments that could impact a high consequence area; (c) conduct a baseline assessment and periodic reassessments of these pipeline segments; (d) mitigate significant defects discovered from the assessment; and (e) continually monitor the effectiveness of its integrity program and modify the program as needed to improve its effectiveness. This final rule does not apply to gas gathering or to gas distribution pipelines.

This final rule satisfies Congressional mandates that require RSPA/OPS to prescribe standards that establish criteria for identifying each gas pipeline facility located in a high-density population area and to prescribe standards requiring the periodic inspection of pipelines located in these areas, including the circumstances under which an inspection can be conducted using an instrumented internal inspection device (smart pig) or an equally effective alternative inspection method. The final rule also incorporates the required elements for gas integrity management programs mandated in the Pipeline Safety Improvement Act of 2002, which was signed into law on December 17, 2002, and codified at 49 U.S.C. 60109.

Background

Notice of Proposed Rulemaking

On January 28, 2003, RSPA/OPS published a Notice of Proposed Rulemaking (68 FR 4278) that proposed pipeline integrity management requirements for gas transmission pipelines. In the preamble to that Notice, RSPA/OPS explained in great detail the history of the proposed rule and how the proposal addressed statutory mandates, National Transportation Safety Board (NTSB) recommendations, and safety conclusions drawn from accident analyses. RSPA/OPS had finalized the definition of HCAs for gas transmission pipelines in a prior rulemaking on August 6, 2002 (67 FR 50824).

The American Gas Association (AGA), the American Public Gas Association (APGA), the Interstate Natural Gas Association of America (INGAA), and the New York Gas Group (NYGAS) filed a petition for reconsideration of the HCA final rule. Issues raised in the petition are discussed in the section titled, *Petition for Reconsideration of the final rule on the definition of High Consequence Areas*. RSPA/OPS addressed certain aspects of the petition in the published notice of proposed rulemaking on gas transmission pipeline integrity management program requirements (68 FR 4278; January 28, 2003). The remaining issues were addressed in two notices published on July 17, 2003—*Response to Petition for Reconsideration* (68 FR 42456) and *Issuance of Advisory Bulletin* (68 FR 42458).

Pipeline Safety Improvement Act of 2002

On November 15, 2002, Congress passed the Pipeline Safety Improvement Act of 2002, which was signed into law on December 17, 2002, and codified at 49 U.S.C. 60109. This law requires RSPA/OPS to "issue regulations prescribing standards to direct an operator's conduct of a risk analysis and adoption and implementation of an integrity management program" no later than 12 months after December 17, 2002. The statute sets forth minimum requirements for integrity management programs for gas pipelines located in HCAs. These requirements have been incorporated into this final rule. Statutory requirements for an integrity program include conducting baseline and reassessment testing of each covered transmission pipeline segment at specified intervals, conducting an integrated data analysis on a continuing basis, taking actions to address integrity concerns, addressing issues raised by RSPA/OPS and by state and local authorities under an interstate agent agreement, conducting testing in an environmentally appropriate manner, providing notification of changes to a program, and permitting a State interstate agent access to the risk analysis and integrity management program.

Petition for Reconsideration of the Final Rule on the Definition of High Consequence Areas

RSPA/OPS issued a final rule defining HCAs for gas transmission pipelines on August 6, 2002 (67 FR 50824). On September 5, 2002, the American Gas Association (AGA), the American Public Gas Association (APGA), the Interstate Natural Gas Association of America (INGAA), and the New York Gas Group (NYGAS) filed a petition for the reconsideration of the final rule defining HCAs for gas transmission pipelines. This petition is in the docket. The petition raised the following issues:

(1) The splitting of the gas integrity rule into two rulemakings—the definition and the integrity requirements—causes confusion, particularly, since the *Potential Impact Zone* concept was not included in the definition.

(2) The high consequence area definition should clarify that it applies to gas transmission pipelines that have the potential to impact high population density areas and does not apply to distribution pipelines.

(3) The "identified site" component of the definition (buildings and outside areas) is overly broad. The definition should instead use the current language in § 192.5 for Class 3 outside areas.

When this petition was received, RSPA/OPS was in the final stages of developing the NPRM on pipeline integrity management for gas transmission pipelines in HCAs. In addition to the proposed substantive requirements, the NPRM proposed an expanded definition of HCAs and proposed to include a definition of a Potential Impact Zone, the area likely to be affected by a failure. In the NPRM, RSPA/OPS discussed the issues raised in the petition for reconsideration and its belief that the proposal, and the final rule to follow, would address the more significant of the issues (68 FR 4278, 4295–4296; January 28, 2003). RSPA/OPS requested comments on several aspects of the final definition, particularly with respect to the "identified sites" component. In two notices published on July 17, 2003—*Response to Petition for Reconsideration* (68 FR 42458) and *Issuance of Advisory Bulletin* (68 FR 42456)—RSPA/OPS addressed the remainder of issues raised by the petitioners, and provided guidance to operators of gas transmission pipelines on how to identify HCAs.

Comments received in response to the NPRM on integrity management programs, comments at the public meetings following issuance of the NPRM, and advice from the Technical Pipeline Safety Standards Committee (TPSSC or Committee), the statutory gas pipeline advisory committee, indicated the need for greater clarification of how operators are to implement the "identified sites" aspect of the HCA definition. The advisory bulletin published on July 17, 2003 (68 FR 42456) provides guidance to gas transmission operators on the steps RSPA/OPS expects them to take to determine "identified sites" along their pipelines. "Identified sites" include buildings housing people who are confined and of limited mobility who would be difficult to evacuate, and outside areas and buildings where people gather. The guidance allows operators to identify these sites for purposes of planning integrity management programs. RSPA has agreed that the intent of the regulation will be satisfied if an operator follows the guidance. The guidance has been incorporated into this final rule.

Public Meetings Following the NPRM

On January 28, 2003 (68 FR 4278), RSPA/OPS proposed integrity management program requirements for gas transmission pipelines in HCAs. The comment period for this proposal was scheduled to close on March 31, 2003, but RSPA/OPS extended this comment period to April 30, 2003. Because the proposal was complex, a series of public meetings were held to educate the industry and public about the proposed requirements and to listen to comments and concerns.

On February 20–21, 2003, RSPA/OPS participated in a public workshop sponsored by the INGAA and AGA in Houston, and on February 26, 2003, in an audio conference jointly sponsored by AGA, APGA, and other pipeline trade associations, to give an overview of the proposed rule and clarify certain proposed requirements. On March 19, 2003, RSPA/OPS held a public meeting in Washington, DC, to address issues raised at the INGAA/AGA workshop and to better explain the proposed rule. Participants included representatives from the National Association of Pipeline Safety Representatives (NAPSR), INGAA, AGA, APGA, and other Federal government agencies. Summaries of these meetings are in the docket.

On March 25, 2003, RSPA/OPS briefed the TPSSC members about issues raised in the public meetings and heard additional briefings on integrity management issues, including the HCA definition. On May 28–29, 2003, the TPSSC met to vote on the proposed gas integrity management rule and the recommend changes.

On April 25, 2003, RSPA/OPS held another public meeting to discuss possible courses of action on issues that had been raised during the previous meetings. Participants included State pipeline safety representatives, industry representatives, and the general public.

The comments at the public meetings closely tracked the comments received to the docket and the discussions by the TPSSC at its May 2003 meeting. These issues and the advisory committee's recommendations are discussed in the section titled, *Gas Advisory Committee Considerations*. The 12 issues addressed in the comments to the docket are discussed below in *Comments to NPRM*.

Gas Advisory Committee Considerations

The Technical Pipeline Safety Standards Committee is the Federal advisory committee charged with responsibility for advising on the technical feasibility, reasonableness, cost-effectiveness, and practicability of proposed gas pipeline safety standards. The 15-member Committee is comprised of individuals from industry, government, and the general public.

On May 28–30, 2003, the TPSSC met to review the proposed gas pipeline integrity management rule and the associated cost-benefit analysis. The Committee voted unanimously to accept the proposed integrity management rule as technically reasonable, feasible, and practicable, subject to the recommended changes identified during committee discussion. The Committee decided that before it could vote to accept the cost-benefit analysis, RSPA/OPS must revise it in compliance with the recommendations at the May 28–30 meeting. RSPA/OPS sent a revised cost-benefit analysis to the committee. On July 31, 2003, the Committee voted to accept the revised cost-benefit analysis. The transcripts from both meetings are in the docket.

Discussion on the HCA Definition and Proposed Rule

The TPSSC made the following recommendations during the May 28–30 meeting with respect to the HCA definition and the language in the proposed integrity management program rule. RSPA/OPS discusses how it addressed each recommendation in the final rule.

The Committee discussed how to best identify those segments of a pipeline that present the greatest potential hazard to people so that operators could focus integrity management efforts on those segments. The Committee considered the bifurcated approach

INGAA had presented in its comments. The Committee discussed whether rural buildings, such as rural churches, should be designated as Moderate Risk Areas. Much of the meeting was spent on the industry's petition for reconsideration. The Committee held an extensive discussion on the "identified sites" component of the HCA definition, focusing on places where people congregate and on buildings containing persons of limited mobility. The TPSSC made the following recommendations with respect to the definition of and identification of HCAs:

Allow a bifurcated option for building count as part of the definition of HCAs.

RSPA adopted this recommendation into the final rule and modified § 192.903 to allow two methods of identifying HCAs. This is discussed below in section 3 of *Comments to NPRM.*

Address rural buildings in the same manner as any HCA.

RSPA has adopted this recommendation by modifying the "identified sites" component of the HCA definition as it relates to outside areas where people gather. The definition now differentiates between outside areas, open structures, and rural buildings, which provide more protection. This is discussed below in *Comments to NPRM.*

In the HCA definition, substitute "public safety officials, emergency response officials, or local emergency planning committees" for "local officials."

RSPA accepted this recommendation and modified the "identified sites" component of the high consequence area definition to incorporate this change.

Define an identified site as any of the following within a Potential Impact Circle:

1. A facility housing persons of limited mobility that is known to public safety officials, emergency response officials, or local emergency planning committee, and which meets one of the following three criteria: (a) Is visibly marked, (b) is licensed or registered by a Federal, state, or local agency, or (c) is listed on a map maintained by or available from a Federal, State, or local agency, or

2. An outdoor area where people congregate that is known to public safety officials, emergency response officials or local emergency planning committee and which is occupied by 20 or more people on at least 50 days per year, or

3. A building occupied by 20 or more people 5 days per week, 10 weeks in any 12-month period (the days and weeks need not be consecutive).

RSPA accepted this recommendation and modified the "identified site" component of the HCA area definition. This revision is consistent with the Class 3 definition of outside area in § 192.5.

The Committee discussed whether the criterion for determining the population density component of a high consequence area should be 10 or 20 buildings intended for human occupancy within the impact circle. The Committee recommended that RSPA/OPS:

Use 20 buildings intended for human occupancy occurring within a Potential Impact Circle as a criterion for determining high consequence areas.

RSPA adopted this recommendation and modified the definition of HCA.

The TPSSC discussed whether an additional safety margin should be applied to the Potential Impact Circle radius calculated using the C–FER model and recommended that:

To define an HCA use the C–FER radius without additional safety margin to define the Potential Impact Circle, and extend by one additional radius on either side of the segment that could potentially impact an HCA.

RSPA adopted this recommendation and modified the definition of HCA to incorporate this additional length of pipeline.

The TPSSC discussed whether the rule should allow an operator to use data regarding the number of buildings within 660 feet of the pipeline (available now to operators because of the existing definition of Class Locations at § 192.5) to extrapolate the building density in Potential Impact Circles larger than 660 feet, and what the interim period should be for operator to collect the additional data on buildings beyond 660 feet. The Committee voted that the rule should:

Allow a three-year period for operators to use existing house count data out to 660 feet to infer the number of houses in impact circles exceeding 660 feet in radius.

RSPA accepted this recommendation and intends to allow operators three years to collect actual data and to revise the HCA to reflect this data.

The Committee discussed what assessment requirements should be applicable to plastic transmission pipelines and recommended that the rule should:

Allow operators to conduct a reliability analysis as a baseline assessment for plastic pipeline, and require appropriate preventive and mitigative measures.

RSPA revised the final rule to require additional preventive and mitigative measures for plastic transmission pipelines.

The Committee discussed the assessment methods and intervals that should be required for low-stress pipelines and then voted for RSPA/OPS to:

Use the approach suggested by AGA as described on pages 6 and 7 of its April 30, 2003 letter, "Amendment to Low-Stress Pipeline Requirements."

RSPA adopted this recommendation and created a new section in the gas rule (§ 192.941) on low-stress reassessment for pipelines operating below 30% of specified minimum yield strength (SMYS). This recommendation provides for additional analysis focused on third-party damage and increases the frequency of leak surveys as an alternative form of reassessment. This is discussed below in section 7 of *Comments to NPRM.*

The TPSSC discussed whether a requirement to pressure test a pipeline to verify its integrity against material and construction defects be limited to pipeline segments for which information suggests a potential vulnerability. The Committee recommended that RSPA/OPS:

Incorporate into the rule the concepts of B31.8S pertaining to material and construction defects and increased operating pressure.

RSPA has incorporated ASME/ANSI B31.8S–2001, *Managing System Integrity of Gas Pipelines,* into the regulation.

The TPSSC discussed the proposed direct assessment requirements and ways to ensure that the method provides an understanding of pipeline integrity comparable to that provided by other assessment methods. In particular the discussion focused on whether it should be allowed as a primary assessment method only to address certain threats, and whether the assessment intervals should be the same as those allowed for the other assessment methods. The TPSSC recommended that the rule:

Allow direct assessment as a primary assessment method contingent only on applicability to the threats and have assessment intervals the same as those for other methods, subject to clarification on how confirmatory direct assessment fits into the process and relates to the NACE Recommended Practice.

RSPA/OPS has accepted this recommendation and revised the final rule to allow direct assessment as a primary assessment method for certain threats and to have the same assessment intervals as the other assessment methods. This is discussed below in section 4 of *Comments to NPRM.*

The Committee discussed some of the proposed requirements for remediation of anomalies found during an assessment, including whether repair criteria for dents located on the bottom of the pipeline should be different from those for top dents and whether the presence of stress risers or metal loss should affect this decision. The Committee voted that RSPA/OPS:

Modify the proposal to require remediation of dents without stress risers in one year to allow treating bottom-side dents as monitored conditions if the operator runs the necessary tools to perform strain calculations, meets B31.8 strain criteria, and [ensures] that the dent involves no corrosion or stress riser.

RSPA accepted this recommendation and revised § 192.933 to address remediation requirements.

A member of the Committee noted that the proposed waiver language did not exactly track the language in the statue. The Committee recommended that RSPA/OPS:

Revise the proposed waiver language to be consistent with the language in the statute.

RSPA/OPS revised the waiver language in § 192.943 to track the language in the statute. This is discussed below in section 5 of Comments to NPRM.

The TPSSC discussed how to cost-effectively protect against delayed failures from third-party damage and whether additional third-party damage prevention methods should be used instead of assessments for third-party damage. The Committee recommended that RSPA/OPS:

Use the language proposed by INGAA, in its April 17, 2003, letter (as modified by Committee comments) as the basis for requiring additional preventive and mitigative measures to address third-party damage.

RSPA accepted this recommendation and revised the third-party damage requirements.

The Committee discussed how to clarify the requirements for an operator to look beyond the HCA segment to address segments outside the HCA that are likely to have similar integrity concerns. After discussion the Committee voted that the rule should:

Require that operators use the risk assessment process as described in ASME B31.8S as the basis for deciding when actions need to be taken for pipeline segments not in HCAs.

RSPA incorporated this recommendation into the final rule.

The TPSSC discussed at what frequency and by what means operators should report performance measures. The recommendation was to:

Require operators to submit performance measures electronically (instead of merely maintaining the information) on a semi-annual frequency.

RSPA revised § 192.945 to incorporate this recommendation.

The Committee discussed the proposed rule's treatment of earlier integrity assessments to allow only assessments conducted after December 17, 1997, to be used as a baseline assessment. The TPSSC recommend that the rule:

Allow, without a time limit, an assessment conducted prior to the rule as a baseline assessment as long as the prior assessment substantially meets the requirements of the rule, and provide that the reassessment for such a segment not be required until December 17, 2009 to the extent allowed by law.

For the reasons discussed below in section 4 of *Program Requirements,* RSPA/OPS is allowing as a baseline assessment any prior assessment conducted in accordance with the requirements of the subpart on integrity management. RSPA/OPS has further revised the rule to specify that the reassessment on a covered segment for which a prior assessment is credited as a baseline be completed by December 17, 2009.

Discussion on Cost-Benefit Analysis

The TPSSC met via conference telephone call on July 31, 2003, to discuss the draft cost-benefit analysis prepared in support of the final rule. RSPA/OPS presented a summary of the benefits and costs of the rule. Because of the integrity requirements in the Pipeline Safety Improvement Act of 2002 (49 U.S.C. 60109), this rule does not impose integrity management requirements from a baseline condition in which no such requirements exist. The law required pipeline companies to develop and follow integrity management programs. This rule takes advantage of the implementation flexibility allowed in the law to focus integrity management efforts on the highest risk areas.

RSPA/OPS estimates that implementing the requirements in the law, without any additional flexibility, would cost approximately $11 billion over 20 years. Using the same basic assumptions, implementing the provisions of this rule is estimated to cost $4.7 billion over 20 years, which is $6.2 billion less than implementation of the law without a regulation. The $6.2 billion savings represents a benefit of the rule, since the requirements of the law would have to be implemented in the absence of regulatory action. RSPA/OPS informed the Committee that:

- Changes in the definition of HCAs focuses pipeline operator resources on areas of high consequence. Class 3 areas that are sparsely populated have been deleted.
- Confirmatory direct assessment (CDA) is allowed to perform assessments at the seven-year intervals specified in the Act. This method is not among those listed in the law.
- The rule explicitly recognizes the scientific conclusion that low-pressure pipelines are more likely to leak than to rupture. Outside force damage is therefore a relatively more important threat for low-pressure pipelines. The rule provides for assessments and actions that emphasize damage protection, leak surveys, and electrical surveys to better address the relevant integrity threats.

The direct safety benefits of the rule will be realized in reduced consequences of accidents, including deaths, serious injuries, and property damage. RSPA/OPS has estimated the value of this benefit at $800 million over 20 years. There are a number of other potential benefits of the rule as described to the TPSSC:

- Improved ability to site new pipelines in certain high-volume markets because of the improvements in public confidence. RSPA/OPS informed the Committee that this benefit is difficult to quantify, and would be qualitatively described in the final regulatory analysis.
- Averting accidents with larger consequences than any experienced to date. The quantitative estimate of this safety benefit is based on the historical accident record. Population growth along some transmission pipelines puts more people at risk and exposes the pipelines to increased chances of third-party damage. Therefore, it is possible that accidents larger than any in the historical record could occur. This rule will act to significantly reduce the likelihood of such accidents, because it is focused on precisely the high population areas in which they could occur. RSPA/OPS informed the Committee that this benefit would be analyzed further and quantified in the final regulatory analysis.
- The final rule exceeds the requirements of the law in ways that will avert accidents. This includes the requirement that consensus standards be used, and that a threat-by-threat analysis be performed to ascertain needed protections.

• Avoiding the economic impact of unexpected supply interruptions. The Federal Energy Regulatory Commission (FERC) has estimated the impact of the 2000 Carlsbad, New Mexico accident on California spot gas prices. RSPA/OPS has used this estimate to calculate that the increase in gas prices resulted in an economic impact to California of approximately $17.25 million per day.

• The rule will provide a better technical justification for increasing operating pressure in pipelines to alleviate future supply crises.

• The rule will provide a better technical justification to support waivers from existing requirements that mandate replacement of pipeline when population increases cause a change in class location. Experience may lead to future changes in the existing requirements. For now, estimation of the value of this benefit will be based on the use of waivers to eliminate pipe replacement after a class location change where there is adequate safety justification.

The TPSSC suggested that a reduction in the time required to return pipelines to service after accidents or regulatory shutdowns is another benefit of the rule. The premise is that implementation of the rule will provide better information about the pipeline. When pipelines are ordered shutdown, much of the time is used to gather additional information about the pipeline's integrity to support a return to service. Implementation of this rule will make more information readily available and will lead to less shutdown time. We expect shutdown times to be reduced by 50%.

The TPSSC agreed that the cost estimates presented by RSPA/OPS were reasonable. The committee commented that it is reasonable to assume that the benefits from implementing the law and the final rule would be similar, but that they are also very uncertain.

The TPSSC commented that the Pipeline Safety Improvement Act of 2002 imposes restrictions on what can be done within this rule. The Committee concluded that RSPA/OPS had reasonably exercised the authority it was afforded under the Act. The Committee also recommended that provisions in the Act that impose the most hardships—requirements to perform assessments at seven-year intervals and to perform reassessments before baseline assessments—be revisited in discussions with Congress.

The TPSSC unanimously approved the draft cost-benefit analysis, subject to the comments noted above.

Comments to NPRM

We received over 700 comments from 90 different sources in response to the NPRM. Some commenters submitted several comments, each comment addressing a different topic in the proposed rule. The commenters were as follows:

Seven (7) Trade associations with members affected by this rulemaking: American Gas Association (AGA), American Public Gas Association (APGA), Association of Texas Intrastate Natural Gas Pipelines, Energy Association of Pennsylvania, Interstate Natural Gas Association of America (INGAA), Inline Inspection Association (IIA), and Northeast Gas Association (NEGA).

50 U.S. pipeline operators: AGL Resources, Air Products and Chemicals, Inc., Arkansas Oklahoma Gas Corporation, Atmos Energy Corp., Baltimore Gas and Electric Company, ChevronTexaco, CMS Panhandle Eastern Pipe Line Company, CMS Sea Robin Pipeline Company, CMS Trunkline Gas Company, Consolidated Edison Company of New York, Consumers Energy, Dominion Delivery, Duke Energy Gas Transmission Corporation, El Paso Pipeline Group, Enbridge Energy Company, Enron Transportation Services, Equitable Gas Company and Equitrans LP, Houston Pipe Line Company, Intermountain Gas Company, Kansas Gas Service, Kern River Gas Transmission Company, Laclede Gas Company, Metropolitan Utilities District, MidAmerican Energy Company, National Fuel Gas Supply Corporation, New Jersey Natural Gas Company, Nicor Gas, NiSource Corporate Services, North Shore Gas Company, Northern Natural Gas Company, Oklahoma Natural Gas, ONEOK, Paiute Pipeline Company, PECO Energy, Peoples Gas Light and Coke Company, PG&E Corporation, Piedmont Natural Gas, PSNC Energy, Public Service Electric and Gas Company, Puget Sound Energy, Questar Regulated Services, Sempra Energy Utilities, South Carolina Pipeline Corporation, Southwest Gas Corporation, TXU Gas Company, Vectren Utility Holdings, Inc. Williams Gas Pipeline, Williston Basin Interstate Pipeline Company, and Xcel Energy.

One (1) Canadian pipeline operator: TransCanada Pipelines Limited.

Five (5) state agencies: Florida Department of Environmental Protection, Iowa Utilities Board New York State Department of Public Service, State of Connecticut Department of Public Utility Control, Washington Utilities and Transportation Commission.

Three (3) advocacy groups: Citizens for Safe Pipelines, Cook Inlet Keeper, and Washington State Citizens Advisory Committee on Pipeline Safety.

Three (3) consensus standards organizations: Gas Piping Technology Committee (GPTC), NACE International, and Standards-Developing Organizations Coordinating Council (SDOCC).

One (1) Federal agency: National Transportation Safety Board (NTSB).

One (1) city/county: Washington City and County Pipeline Safety Consortium.

Two (2) consultant/contractors: Accufacts, and Oleska & Associates.

Three (3) businesses: Advanced Technology Corporation, Controlotron, and Kaempen Pipe Corporation.

One (1) private citizen: Carol M. Parker.

General Comments

Most commenters supported the need for integrity management program requirements, and provided comments to the proposed rule that focused on specific details and language. Most commenters asserted that the proposed rule was too complicated and, to ensure safety and ease of compliance, should be simplified and clarified.

Some of the broader comments included one from a private citizen, Carol Parker, who asserted that the new pipeline safety law was written to ensure "adequate protection against risks to life and property posed by pipeline transportation" and that RSPA should use this new law as a guide to ensure adequate protection. Similarly, the Washington State Advisory Committee commented that the new rule should not sacrifice rule credibility and enforceability for timeliness, and recommended that RSPA slow down the process to ensure proper rule development. The NTSB stated that it generally supported the elements of the proposed rule including the baseline assessments, threat risk assessments, determination of assessment methods, and remediation and reassessment provisions. More specific comments are discussed under the applicable topic.

We have organized the comments into the following twelve groups, and will summarize both the comments and our responses on an individual basis.

1. Need for Clarity and Specificity
2. Applicability (Coverage) of the Rule
3. High Consequence Areas
4. Program Requirements and Implementation, including Integrity Assessment Time Frames, Assessment Methods and Criteria
5. Review, Notification and Enforcement Processes
6. Consensus Standard on Pipeline Integrity
7. Low-Stress Pipelines
8. Remedial Actions
9. Additional Preventive and Mitigative Measures, including, Leak Detection Devices and Automatic Shut-off and Remote Control Valves
10. Methods to Measure Program Effectiveness
11. Information for Local Officials and the Public
12. Cost-Benefit Analysis

1. Need for Clarity and Specificity

Several commenters, including the Public Service Electric and Gas Company (PSE&G), maintained that the formatting of the proposed rule makes it difficult to follow, which could lead to a lower level of understanding and less compliance. PSE&G suggested that the final rule be simplified and reformatted, with clearly numbered sections and an index. Piedmont Natural Gas recommended the use of several sections to present the regulations because the proposed cross-references and formatting make the proposed rule difficult to read and understand.

Some commenters, including Peoples Energy, suggested that we better define terms that are subjective and possibly vague. Some of those terms included: state-of-the-art, comprehensive additional preventive measures, expected future corrosion conditions, critical stage, and additional extensive inspection and maintenance programs.

Numerous other commenters, including Northeast Gas Association, Puget Sound Energy, and the Iowa Utilities Board, suggested rewriting the rule as a separate subpart of part 192 in a clearer, more simplified form.

Response: RSPA/OPS agrees that the proposed rule was complicated and often difficult to follow. There are a large number of interrelated requirements. Including all of those requirements under a single section of part 192, as was done in the proposed rule, required use of many sub-paragraphs and divisions. RSPA/OPS has adopted the suggestion that the final rule be rewritten as a separate subpart of part 192.

The final rule has been recast as new Subpart O, *Pipeline Integrity Management*, of part 192, in which we have consolidated all of the requirements applicable to gas transmission pipeline integrity management programs. The definition of HCAs, previously § 192.761, has been relocated to the new subpart (with changes as described below). This revised structure allows each of the major elements of the rule to be described in a separate, numbered section. The use of subparagraphs and divisions in the final rule is very limited. RSPA/OPS believes that the structure of the final rule makes it much easier to follow and understand, and will better support compliance by operators.

The rule has also been revised to improve its clarity and specificity. For example, we deleted terms such as "state-of-the-art." And we specify which "comprehensive additional preventive measures" an operator must implement. We eliminated the section containing the phrase "expected future corrosion conditions" in favor of referencing an applicable consensus standard. At the time we proposed the rule, relevant industry consensus standards were under development. These standards have since been finalized and we have incorporated them into the rule.

This rule uses, as did the corresponding rule for hazardous liquid pipelines, a mix of performance-based and prescriptive requirements. As described in the final rule on integrity management programs for hazardous liquid pipelines (65 FR 73832), RSPA/OPS believes that performance-based regulation will result in effective integrity management programs that are sufficiently flexible to reflect pipeline-specific conditions and risks. Pipeline conditions vary. It is impractical to specify requirements that will address all circumstances. In some cases, they would impose unnecessary burdens. In others, they might not achieve the desired level of safety. Including performance-based requirements is the best means to ensure that each pipeline develops and implements effective integrity management programs that address the risks of each pipeline segment.

2. Applicability (Coverage) of the Rule—§ 192.901 (Formerly § 192.763(a)(b))

The proposed integrity management program requirements were intended to apply to all gas transmission pipelines. Other gas pipelines were not included in the scope of the proposed rule.

NTSB commented that gathering pipelines in populated areas should be included. The New York State Department of Public Service maintained that only those gathering pipelines in HCAs and operating above 20% of SMYS should be included.

At the public meetings and advisory committee meeting, participants noted that the NPRM and pipeline safety statute did not address plastic gas transmission pipelines. At the advisory committee meeting, a representative of APGA prepared a handout on plastic transmission pipelines. The handout included recommendations from Southwest Gas that RSPA/OPS should exclude plastic pipelines from the integrity management regulation or, as an alternative, exclude these pipelines from the assessment requirements because the assessment methods are not applicable to plastic. In addition, the handout noted that the proposed additional preventive and mitigative measures for corrosion are not applicable to plastic pipe because it is not subject to corrosion. The handout suggested that third-party excavation damage is the primary threat to plastic pipe.

Both Cook Inlet Keeper and the Washington Utilities and Transportation Commission (WUTC) commended OPS's goal to promote safety throughout pipeline systems. They recommended that the proposed rule require that lessons learned from assessments on pipeline segments in HCAs be applied to all segments of pipeline and all operators. Although INGAA agreed with the concept of applying lessons learned to pipeline segments outside the scope of the proposal, it recommended modifying the requirement to clarify how data and information developed from covered segments will be applied to non-covered segments. INGAA suggested an approach for applying this concept using the framework of standard ASME/ANSI B31.8S. Several industry commenters agreed with INGAA, but numerous commenters asserted that expanding the requirements of the rule to entire pipelines is inappropriate. NiSource contended that an expansion conflicts with the intent of Congress to focus resources on high risk areas. NiSource also suggested that the final rule should incorporate ASME/ANSI B31.8S as it relates to collection, review, and integration of data to update risk assessments.

Response: The final rule prescribes minimum requirements for integrity management programs on any gas transmission pipeline subject to Part 192. The requirements do not apply to gas gathering or distribution pipelines. Although some requirements are of broad applicability, they apply mainly to segments of gas transmission pipelines in HCAs. RSPA/OPS agrees with Cook Inlet Keeper and WUTC that lessons learned in developing and applying the integrity management program in HCAs should be applied to other portions of the pipeline. It would not be prudent to fail to address known problems that could challenge the integrity of a pipeline simply because they did not occur in HCA pipeline segments. The rule requires that all operators evaluate and remediate non-

covered segments of their pipelines that have similar characteristics to covered sections on which corrosion is found (§ 192.917(e)(5) and § 192.927(c)(3)(iii)). The rule further requires that operators who qualify for the performance-based option have a procedure for applying lessons learned from assessment of covered pipe segments to pipe segments not covered. (§ 192.913(b)(1)(iv).)

The rule does not require integrity assessment, but it does require evaluation of risk associated with non-covered segments and appropriate actions to address those risks. Such a requirement would divert resources away from pipeline segments that pose the most risk (*i.e.*, those located in HCAs) to those which pose lesser risks. ASME/ANSI B31.8S, the consensus standard on *Managing System Integrity of Gas Pipelines*, provides a method by which operators can perform these evaluations.

Although it is necessary to apply lessons learned on covered segments to non-covered segments of pipeline, it is equally appropriate that knowledge gained in segments of pipeline that cannot affect HCAs be used in the evaluation of covered segments. The rule requires this as part of an operator's data gathering and integration activities (§ 192.917(b)). The operators must, at a minimum, evaluate the set of data specified in ASME/ANSI B31.8S.

When RSPA/OPS proposed the integrity management program requirements for gas transmission pipelines, it had not considered plastic transmission pipelines. The statute does not allow an exemption for such pipelines. However, based on the information developed after issuance of the NPRM, we recognize that these pipelines typically operate at very low pressures and are not subject to corrosion. Internal inspection tools are not useful for evaluating the condition of these pipelines. Corrosion protection measures are not required because plastic does not corrode. Therefore, in the final rule we have recognized that these pipelines cannot be assessed by the methods allowed for metallic transmission pipelines. An operator of a plastic transmission pipeline will have to conduct, on a continual basis, a threat analysis to evaluate the threats unique to the integrity of plastic pipe. If the analysis shows that the pipeline is susceptible to failure from a cause other than third-party damage, the operator must conduct a baseline assessment by a method demonstrated to characterize the risks, and must apply additional preventive and mitigative measures as necessary.

A government/industry Plastic Pipe Database Committee (PPDC) has been formed to develop and maintain a voluntary plastic pipe data collection process to support the analysis of the frequency and causes of in-service plastic pipe material failures. The PPDC monitors failure experience to characterize any failure trends in older plastic pipe materials. Thorough analysis of data on plastic pipelines having similar fabrication, construction, and operational characteristics will alert operators of these pipelines to integrity threats other than third-party damage.

3. High Consequence Areas—§ 192.903 (Formerly § 192.761)

The definition of HCAs for gas transmission pipelines was set forth in a final rule on August 6, 2002. The definition included Class 3 and 4 locations, and "identified sites", *i.e.*, buildings housing people who have limited mobility or are difficult to evacuate and outside areas where there is sufficient evidence of people congregating. The rule listed ways for an operator to identify these sites, including visible marking, licensure or registration by a Federal, State, or local agency, knowledge of public safety officials, or a list or map maintained by or available from a Federal, State, or local agency.

The definition generated numerous comments. And, as discussed elsewhere in this document, industry trade associations filed a petition for reconsideration of the definition. At the public meetings following the issuance of the integrity management NPRM, meeting participants commented in great detail about problems with the definition. At the TPSSC meeting, members discussed the definition and issues raised in the petition for reconsideration.

Comments on the proposed definition of HCAs for gas transmission pipelines addressed the complexity of the definition and difficulty in identifying HCAs; additional areas to be included; the role of public officials in "identified sites;" numbers of people congregating in outside areas and in "identified site" buildings; C–FER model; Threshold Radius; system considerations; and calculation of Moderate Risk Areas, Potential Impact Circle (PIC), Potential Impact Radius (PIR), and Potential Impact Zone (PIZ). The comments on each of these topics are discussed below.

The Definition's Complexity and Difficulty in Identifying HCAs

The high consequence area definition included Class 3 and 4 areas because these areas are currently defined in the gas pipeline safety regulations. The definition also included "identified sites" and a list of methods for identifying them. These sites included facilities with people who are confined, of limited mobility or would be difficult to evacuate, and outside areas and buildings where there is evidence that at least 20 or more people congregate on at least 50 days in any 12-month period.

In the NPRM for integrity management program, RSPA/OPS proposed to add another area to the definition—a circle of Threshold Radius 1,000 feet or larger that has a cluster of 20 or more buildings intended for human occupancy.

In their petition for reconsideration of the HCA definition, the petitioners argued that RSPA should clarify the definition, particularly with regard to "identified sites," because the definition is so broad and vague as to make compliance impractical. Comments at the post-NPRM public meetings also suggested that the definition needed to be clarified.

Many commenters noted the complexity of the proposed expanded definition and asked that it be simplified. Baltimore Gas and Electric (BG&E) asserted that the number of variables and data requirements related to the definition make it unworkable. BG&E explained that distribution system operators maintain data on population and buildings near their pipelines, but would have difficulty identifying facilities with persons who are confined or of limited mobility and areas where people congregate. The company recommended that the definition only reference verifiable criteria in determining areas to be covered under the integrity management requirements. Northeast Gas Association requested clarification on whether the proposed expanded definition only applied to large diameter, high pressure pipe.

Dominion supported the use of current Class designations to define HCAs because it believes smaller pipeline companies do not have access to sophisticated geographic information systems (GIS). The State of New York also supported the use of the current Class designations, supplemented by the use of the C–FER model to identify HCAs outside of Class 3 and 4 areas.

INGAA argued that the proposed addition to the HCA definition added complexity and additional practices that would not improve pipeline safety. INGAA proposed a bifurcated option, which would allow the operator some flexibility in determining its cumulative HCA sites. Under this proposal, an operator could choose from two approaches to determine HCAs. Both approaches would require that an operator identify potential HCAs for certain "identified sites" located within a Potential Impact Circle. In addition to the "identified sites," the operator would either identify the remaining HCAs by selecting all Class 3 and 4 areas or by determining all Potential Impact Circles containing 20 or more buildings intended for human occupancy. Potential Impact Circles would be based on the C–FER model. When the size of the pipeline requires that the radius is greater than 660 feet, INGAA's proposal would allow prorating the number of buildings in the circle based on an increased circle size. INGAA's proposed proration scheme would allow operators additional time to collect the expanded population data—until as late as 2007.

AGA supported this approach because it is simpler, allows operators to use existing data from house count surveys, and provides safety benefits to unsheltered areas. At least 30 other commenters endorsed this alternative approach.

Response: RSPA/OPS has adopted a bifurcated definition, as suggested by INGAA. It gives an operator two options to define HCAs. In both options "identified sites" are treated the same. However, an operator will now be allowed to identify the HCAs associated with high population density either by including all Class 3 and 4 areas or by counting the residences within a potential impact circle to determine whether the threshold number is present. Changes made to the "identified sites" definition are described further below. We agree that this approach is less complex, allows flexibility to operators (particularly local distribution companies who may wish to designate all Class 3 and 4 areas), and better focuses on areas where people could be most affected by pipeline ruptures, fires, and explosions.

RSPA/OPS has decided to allow operators to prorate the number of buildings in Potential Impact Circles larger than 660 feet in radius for a period of three years. We believe that the recommended five-year period for proration is too long, but acknowledge that collecting all of the additional data in one year would be an unreasonable resource burden. Operators now have data on the number of buildings located within 660 feet from their pipelines because they have needed this information for identifying Class Location areas pursuant to § 192.5. The three-year period is adequate for operators to gather additional information for the large-diameter, high-pressure pipelines for which Potential Impact Circle(s) will exceed 660 feet.

RSPA/OPS expects that many, perhaps most, operators will follow the Potential Impact Circle option for defining HCAs. Under this approach, an operator would calculate the heat affected zones along its pipeline that would result from a pipeline rupture. An operator would determine the radius of the Potential Impact Circle for the pipeline, identify segments of pipeline within a Potential Impact Radius of "identified sites," and identify segments of pipeline having 20 or more residences within a Potential Impact Circle. Such segments would be HCAs, and the length of pipeline included in the HCA would be the pipe within the HCA plus the length of pipe extending one Potential Impact Radius in both directions beyond the HCA.

For transmission pipelines operating at low pressures, like much of the pipeline operated by distribution companies, the radius of the Potential Impact Circle calculated with the C–FER model will be small. For example, the radius for a 6-inch diameter pipeline operating at 150 psi would be 50 feet. It is unlikely that 20 buildings intended for human occupancy could be found in circles of such small radius. It is also less likely that "identified sites" will be found within the circles as the radius decreases. As a result, using the Potential Impact Circle option will tend to exclude much low-pressure pipeline from the assessment requirements of this rule. Because accidents along these pipelines in developed areas can affect people and property, the rule requires an operator of a low-stress pipeline in these developed area to take additional preventive and mitigative actions.

Additional Areas

Several commenters suggested adding other sites as HCAs. The Florida State Clearinghouse, the Washington City and County Safety Consortium, and the New York State Department of Public Service all asserted that certain critical infrastructure facilities be included as HCAs. These included, but were not limited to, interstate interchanges, bridges, tunnels, certain railway facilities, electric transmission substations, drinking water plants, and sewer facilities. They asserted that impacts to these types of facilities could detrimentally impact a wide range of people. The Washington City and County Safety Consortium further contended that environmentally sensitive areas, particularly those critical to endangered species, should be included as well.

Response: RSPA/OPS has not included these additional areas in the final rule. We addressed comments such as this in the rulemaking on high consequences areas. Other than the issues that had been raised in the petition for reconsideration, and the areas in the NPRM for integrity management program requirements we proposed to add, or requested comment, we did not open the final definition up for changes. When we issued the final rule defining these areas, we agreed that impacts to critical infrastructure could have detrimental impact but that such impacts would not likely include death or serious injury. A major purpose of the integrity management rule is to focus the highest level of operator attention on those portions of its pipeline that can have the most severe safety consequences, *i.e.*, can cause death and injury.

However, to protect vital infrastructure, the rule provides for applying lessons learned through integrity management to areas outside HCAs. The ASME/ANSI B31.8S process provides that operators use their risk assessments to guide them in applying these lessons. Proper risk assessments will identify portions of pipeline that have a higher likelihood of failure.

Similarly, as we explained when we finalized the definition of HCAs (67 FR 50824), we did not include environmentally sensitive areas in the definition. The impact of gas pipeline accidents on such areas is expected to be significantly less than a similar accident involving a hazardous liquid pipeline because of the different nature of gas and hazardous liquids.

Public Officials and Identified Sites

For the "identified sites" component of the high consequence area definition, the definition listed various means by which an operator could identify these areas. The list included a site being visibly marked, being licensed or registered by a Federal, State, or local agency, being known to public safety officials or being on a list or map maintained by or available from a Federal, State, or local agency. In the preamble to the NPRM, RSPA/OPS invited comment on whether we should use the term public safety officials and/or emergency response officials instead of public officials (68 FR 4278, 4295).

In the petition for reconsideration of the high consequence area definition, petitioners objected to relying on public safety officials for identifying these sites because these officials might not be able to convey accurate information.

PECO, PG&E, and Peoples Energy all concurred that the phrase "public safety

officials and/or emergency response officials" was preferable to "public officials." PG&E maintained the term "public officials" was too broad and provided too much variance for interpretation.

Both the Washington State Advisory Committee on Pipeline Safety and the Washington City and County Pipeline Safety Consortium suggested that operators work with local cities or municipalities to identify additional HCAs within their territories. They asserted that the cities and municipalities have the best information on facilities and on growth trends in their areas and would be in the best position to identify HCAs.

The Association of Texas Intrastate Natural Gas Pipelines and several other commenters asserted that the requirement to identify a site under the HCA definition by reference to commercially available databases is not reasonable. Kern River suggested that the rule needs to be expanded to define the exact process to follow to identify locations of people with limited mobility. Kansas Gas Service commented that the methods to identify these sites are unduly burdensome and impractical.

Several commenters sought more specificity in the procedure to identify outdoor areas and buildings requiring consideration as "identified sites," and recommended that local public safety officials be relied upon in making these identifications.

Discussion at the public meetings and the May 2003 meeting of the advisory committee further highlighted industry concerns about locating buildings housing populations of limited mobility and areas where people congregate. The TPSSC recommended that local emergency planning committees (LEPC) be considered in addition to public safety and emergency response officials and that local public safety and emergency response officials or LEPCs be relied on as a principal source of information in identifying buildings containing populations of limited mobility. The TPSSC recommended that the focus for such buildings be those known to these local safety officials and meeting one of the tests: Be visibly marked, be licensed or registered, or be listed on a government map.

Response: RSPA/OPS agrees that specifying public safety officials, emergency response officials, or local emergency planning committees is clearer than the term "public officials" for purposes of this rule. These are the officials and agencies charged with protecting the health and safety of the community, and they are most likely to have information relevant to identifying and protecting areas where people could be affected by pipeline accidents. Other employees of local governments, who might be considered "public officials," would be less likely to know the relevant information. The final rule has been revised to use this more focused terminology, and to make these officials a principal source of information regarding places where people congregate and buildings housing populations of limited mobility. RSPA/OPS is working to inform local emergency responders about the need to be knowledgeable about the "identified sites." This change is consistent with the advisory bulletin RSPA/OPS issued on July 17, 2003.

The "identified sites" component of the definition included a list of methods operators could use to identify facilities with persons of limited mobility. However, the definition caused consternation because many operators saw it as an exclusive list. To address this concern, in the advisory bulletin issued on July 17, 2003 (68 FR 42458) we explained that it was never intended that operators perform an exhaustive search of every possible source of information. Rather, operators who consult public safety or emergency response or planning officials who indicate that they have knowledge of the "identified sites" need not do more (68 FR 42458, 42460).

In the final definition, we have clarified that local safety officials are the principal source of information on places where people congregate and buildings housing populations of limited mobility. This change is consistent with the guidance in the advisory bulletin issued on July 17, 2003. If these officials do not have the information to identify these sites, then an operator must use at least one of the other methods, such as visible marking or registration lists to identify the sites. These methods are explained in the new § 192.905 on how an operator is to identify a high consequence area. Rather than include these methods in the high consequence area definition in § 192.903, we moved them to the new section that explains the methods for identifying these sites. For outdoor areas, the final rule also relies on the knowledge of local safety officials to identify these areas.

People in Outside Areas and in Identified Site Buildings—§ 192.903 (Formerly § 192.763(i))

In the petition for reconsideration of the high consequence area definition, petitioners argued that RSPA should clarify the definition, particularly with regard to "identified sites," because the definition is so broad and vague as to make compliance impractical. Petitioners noted that the definition references two standards for identifying places as HCAs because people congregate at those places. Petitioners requested that for consistency the same standard be used as the one used in the Class 3 definition, *i.e.*, 20 or more persons on at least 5 days a week for 10 weeks in any 12-month period.

We had included rural churches in the example of outside areas under the HCA definition. In the petition for reconsideration, petitioners contended that the definition would pick up isolated and infrequently occupied buildings. In the Preamble to the NPRM on integrity management program requirements, RSPA/OPS acknowledged it did not know how many rural buildings would be covered and requested comment on whether to include these buildings, instead, as Moderate Risk Areas. The definition did not require a minimum number of confined or mobility-impaired people needed to occupy a facility. The definition did require that for outside gathering areas, there be 20 or more persons on at least 50 days in any 12-month period. The NPRM did not propose a new threshold for the number of persons needed to occupy an identified site. Nonetheless, we received a variety of comments on the number that had been included in the final definition.

Citizens for Safe Pipelines was adamant that Congress intended to protect sites similar to the Carlsbad accident site and, as support, referenced statements made by members of Congress. Citizens for Safe Pipelines contended that the definition is under-inclusive of places where pipelines should be inspected. Cook Inlet Keeper, along with the Washington City and County Pipeline Safety Consortium commented that the threshold for persons in outside areas of congregation should be 10 instead of 20. Accufacts supported having the outside area threshold as 10 instead of 20, but keeping the building threshold at 20. Most of industry sided with INGAA which supported 20 or more persons in outside areas of congregation with a much stricter frequency of 5 days a week, 10 weeks a year.

INGAA also proposed that we change the "identified sites" component to differentiate between rural buildings and outside areas, and to use different occupancy rates. The definition had grouped rural buildings and outside areas together, subject to a minimum use by 20 persons on at least 50 days in any 12-month period. INGAA proposed changing the HCA definition to define an identified site as a building occupied by 50 or more persons at least 5 days a week, 10 weeks a year with the days and weeks not necessarily consecutive, and as an outside area that is small, well-defined and occupied by 20 or more persons at least 5 days a week, 10 weeks a year with the days and weeks not necessarily consecutive.

Industry generally shared INGAA's position that the building should be occupied by 50 or more persons at least 5 days a week 10 weeks a year and the buildings would not be limited to those containing persons of limited mobility. Both Accufacts and Cook Inlet Keeper said the threshold number of persons should be no less than what was specified in the HCA definition.

Response: When RSPA/OPS defined the number of people needed to gather in an outside area, we intended that areas, like the camping area in Carlsbad, would be covered. The number of people and the frequency of use was intended to pick up areas used for recreation on weekends. We did not open for discussion the threshold number of people needed to occupy a building with persons of limited mobility or to gather in an outside rural gathering area or building. The definition did not specify an occupancy rate for buildings with persons who would be hard to evacuate, and specified 20 persons for a rural building or outside area. Nor did we open for comment the specified frequency in an outside area (50 days in any 12-month period). We have not changed the occupancy threshold in these outside gathering areas.

However, we reopened the issue of how to treat rural buildings. In the final rule, we have modified the definition of outside gathering areas to address the rural building issue. The identified site definition in the final rule includes an outside area or open structure that is occupied by twenty (20) or more persons on at least 50 days in any twelve (12)-month period. The days need not be consecutive. Examples of these areas would be beaches, playgrounds, recreational facilities, camping grounds, outdoor theaters, stadiums, recreational areas near a body of water, or areas outside a rural building such as a religious facility where 20 or more people congregate regularly for bazaars or civic activities at least 50 days a year.

We did not change the occupancy threshold for these outside areas and open structures. A threshold of 10, as recommended by several commenters, is too low to be practical and would lose the focus on higher consequence areas. Current regulations for protecting outdoor areas in which people congregate (*i.e.*, by designating them as Class 3 areas) use a threshold of 20 persons, and this threshold is consistent with that practice. The high consequence area definition differs from current practice in using a criterion of 50 days per year, which need not be consecutive, rather than 5 days per week and 10 weeks per year. This recognizes the patterns by which people congregate, including weekend use of outdoor areas. This frequency is intended to pick up areas similar to the camping area where the Carlsbad accident occurred, where local officials know that people gather regularly.

To further address the rural building issue, the identified site definition in the final rule has been revised to differentiate between outside open structures and rural buildings. The definition in the final rule includes buildings housing 50 or more people 5 days per week and 10 weeks per year (the days and weeks need not be consecutive). This modification is intended to pick up buildings outside populated areas where people gather during the week, or on weekends for recreational activities. Because buildings provide some protection from the effects of a pipeline accident, RSPA/OPS finds it appropriate that the threshold be based on a higher number of people and occupancy criteria consistent with current class location regulations. This will allow operators to make maximum use of the data they already have regarding buildings containing concentrations of people, and further reduce the burden of implementing this rule.

The identified site component also included buildings housing people who would be difficult to evacuate or are of limited mobility. The definition did not include an occupancy threshold for those buildings. We have not modified that component of the definition, rather we are relying on the knowledge of local emergency officials.

C–FER Model, Potential Impact Circle (PIC), Potential Impact Radius (PIR), and Potential Impact Zone (PIZ) Calculations, and Threshold Radius

Many comments related to the proposed use of the C–FER model and the various other calculation methods referenced in the NPRM. The high consequence area definition had been based on the heat affected zone from a rupture calculated using the C–FER model, with an added margin of safety—thresholds of 300 feet for small-diameter, low-pressure pipelines, and 1,000 feet for higher-pressure, larger-diameter pipelines. The NPRM further proposed to add populated areas at distances greater than 660 feet from large-diameter, high-pressure pipelines. The C–FER model used a heat flux of 5,000 Btu/hr/ft^2. RSPA/OPS has questioned whether a more conservative heat flux rate of 4,000 Btu/hr/ft^2, the heat flux rate used in the liquefied natural gas regulations (Part 193), should be used instead.

The proposed regulations also included calculations for determining the Potential Impact Radius of a covered segment, for determining the Threshold Radius associated with the Potential Impact Radius, and for identifying the Potential Impact Circle(s) and Potential Impact Zone(s) for the pipeline.

A number of commenters, such as Consolidated Edison and the Iowa Utilities Board, suggested that calculations should be based on the maximum operating pressure and not on the Maximum Allowable Operating Pressure (MAOP).

Several commenters noted that the term, "diameter," should be clarified as inside diameter, outside diameter, or nominal diameter and pressure should be clarified as gage or absolute. Consolidated Edison suggested that the PIR formula for natural gas should be simplified to $r = 0.69d\sqrt{p}$. Air Products suggested operators be allowed to rederive the C–FER model considering product, size of pipeline, and operation of emergency flow restricting devices (EFRDs).

Several commenters supported the use of the C–FER model. Williston Basin asserted the model was reliable and should be used over the full spectrum of pipeline conditions.

Northeast Gas Association, Gas Piping Technology Committee, Peoples Energy and several other commenters contended that there was no justifiable reason to impose an additional safety margin on top of the C–FER calculation. In contrast, NTSB argued that an adequate and uniform safety margin should be applied for all pipelines and noted that the farthest building burned from the Edison, NJ rupture would be within the 1,000 foot threshold. NTSB further suggested that RSPA/OPS consider the effects of horizontal jetting along the pipeline as demonstrated at the Carlsbad, New Mexico rupture site.

Panhandle Eastern, Williams, and other commenters contended that utilizing 5,000 BTUs in the equation was appropriate and there was no technical basis for utilizing 4,000 BTUs. The State of New York alleged that 5,000 BTUs is too high and the value should be an appropriate value to

eliminate the possibility of fatality and ignition of protective wooden structures.

A large number of commenters were opposed to the use of a Threshold Radius, and asserted that its use is unjustified and with no technical basis. Northeast Gas Association commented that the wording is confusing and asked for clarification as to whether the Threshold Radius becomes 1,000 feet when the PIR exceeds 660 feet and when the diameter is also 36 inches and the pressure is 1,000 psig or greater. The Iowa Utilities Board concurred that the PIC and Threshold Radius should be based on the distance of the actual hazard and not on arbitrary distances that include areas outside of the Potential Impact Radius. The Iowa Utilities Board further contended that burdens on small pipelines and operators should be minimized. PECO asked for additional clarification as to whether the radius of all Class 3 and 4 locations is effectively 1,000 feet.

AGA and several operators, including Baltimore Gas and Electric, suggested that operators of pipelines operating below 30% SMYS should not be required to go beyond the actual impact zone calculations in their identification of HCA areas. Laclede Gas stated that there should be no margin above the C–FER calculation, especially for pipelines operating below 30% SMYS.

Response: The appropriateness of the C–FER model was the subject of considerable discussion at the public meetings held during the comment period on the proposed rule. As a result of these discussions and comments to the docket, RSPA/OPS has concluded that the C–FER model is sufficiently conservative for use in the screening process to identify HCAs. RSPA/OPS believes the model adequately reflects the distance, lateral to the pipeline, at which significant effects of accidents will occur. In the final rule, we have adopted the model as the basis for calculating Potential Impact Circles under the bifurcated option for defining HCAs (discussed in prior section) with the addition of the one radius at either end (discussed below).

Discussion at the public meetings and with the advisory committee, and analysis of recent pipeline accidents, also identified that pipeline accidents have sometimes affected an elliptical area, with the long axis of the ellipse along the pipeline. The NTSB noted that this likely results from horizontal jetting in the direction of the pipeline. The elliptical nature of the burn pattern means that the C–FER radius is not always conservative in identifying the maximum distance from a potential pipe rupture, measured along the pipeline, at which the effects from the rupture will be felt. Following careful analysis of the burn patterns near pipeline ruptures, RSPA/OPS determined that it is appropriate to add an additional length of pipeline equal to the C–FER radius on either side of a high consequence area, *i.e.*, increase its extent along the pipeline, rather than increase the lateral distance. INGAA concurred with this approach. We have incorporated this this approach into the final rule. Where Potential Impact Circle(s) are used to define HCAs, the pipeline segment in the high consequence area extends from the outermost edge of the first circle to the outermost edge of the last contiguous circle. This is illustrated in Appendix, Figure E.I.A to the final rule. Under the proposed rule, the segment would have been limited to the pipe between the centers of these circles.

The concept of Threshold Radius has been eliminated from the final rule. This concept was intended to apply some margin to C–FER calculations and to simplify the identification of HCAs. As described above, RSPA/OPS is convinced that the C–FER model is conservative enough for this purpose. We are also convinced by the comments that the use of Threshold Radius complicated, rather than simplified, the identification of HCAs. With the elimination of this approach, pipeline segments are included or not included on the basis of the calculated distance of the actual hazard, as recommended by many commenters.

RSPA/OPS has not adopted the suggestion that maximum operating pressure, instead of MAOP, be used in C–FER calculations. MAOP reflects the pressure at which the pipeline can be operated, and thus the hazard that could be experienced. This is an inherent conservatism in the C–FER model, and has likely contributed to the successful validation of the equation against accident experience.

The final rule specifies that nominal pipeline diameter is to be used in C–FER calculations. It also provides, as did the proposed rule, that a different constant factor must be used when making the calculation for gases other than natural gas, and refers to ASME/ANSI B31.8S for this determination. RSPA/OPS does not agree that further derivation of a unique equation for other gases is necessary.

System Considerations

Numerous operators, including Peoples Energy, Houston Pipeline and Puget Sound, asked for clarification on the need to do additional studies or calculations if and when they deem their entire systems to be HCAs. They asserted there would be no need for the additional effort if all parts of their system were designated as HCAs and any additional effort would be a waste of company resources and time. Oleska and Associates shared this sentiment and recommended allowing operators to classify pipelines as being in an HCA without going through any analysis.

The Iowa Utilities Board commented that the rule should allow a pipeline operator to exclude its own facilities when determining if pipeline is in a high consequence area.

Response: RSPA/OPS agrees that further analysis to identify HCAs is not necessary if an operator elects to treat its entire system as a high consequence area. The final rule requires that identification of HCAs include documentation of the Potential Impact Radius "when utilized."

The high consequence area definition, as modified by this rule, focuses on identifying areas where large numbers of people could be at risk from a pipeline rupture. RSPA/OPS expects that pipeline operator facilities should be treated the same way as other facilities. The only operator facilities that could affect the determination are facilities in which more than 20 operator employees gather for the number of days appropriate to the type of gathering place (*i.e.*, at least 50 days per year if outdoors, 5 days per week in at least 10 weeks per year if indoor). The number of such facilities is expected to be small. Where they exist, however, RSPA/OPS believes it is appropriate to provide consideration of those gatherings in the same manner as for gatherings of non-operator personnel.

Moderate Risk Areas (MRAs)

The NPRM proposed to include Moderate Risk Areas, areas located within a Class 3 or 4 location but not within the Potential Impact Zone. These areas would require less frequent assessment or enhanced preventive and mitigative measures. In the preamble to the NPRM, RSPA/OPS requested comment on two issues related to these areas:

- Comments on designating rural buildings, such as rural churches, as Moderate Risk Areas instead of as High Consequence Areas (68 FR 4278, 4296).
- Comments and cost information on an option to not require an assessment of a segment located within a Moderate Risk Area, but, rather, to require enhanced preventive and mitigative measures on the segment (68 FR 4278, 4284). The premise was that if houses are mostly clustered in one area of a Class 3 rectangle, a pipeline failure in an area beyond the cluster may have little, if any, impact on the area with the cluster of homes.

Comments on MRAs ranged from urging elimination to full support for their use. Williston Basin and National Fuel recommended eliminating MRAs because they require significant resources and provide few safety benefits. Both the Northeast Gas Association and Kern River saw potential value in MRAs but suggested their use and implementation should be optional. PECO recommended that the MRA definition be clarified because it was unclear when buildings should or should not be designated as MRAs when they are located in HCAs.

Northeast Gas Association responded that rural buildings, such as churches, in Class 3 and 4 areas, should be designated as MRAs whether or not they fall within an impact circle and that such areas should be subjected to less frequent assessment and lesser mitigation requirements. Several other industry commenters concurred, including Southwest Gas and Paiute. PG&E would not support the inclusion of churches in the examples of outside areas.

Taking the opposite position, the Washington City and County Pipeline Safety Consortium commented that if such facilities incorporate outside areas that are HCAs fall under the definition of an HCA, then such rural churches should be captured in the HCA definition.

Vectren and PG&E noted that areas outside the Potential Impact Zones have little probability of being affected by a failure and concurred with the suggested option. Northeast Gas Association, Southwest Gas Corporation, and other commenters maintained that if MRAs remain in the regulation, these areas should be subject only to enhanced preventive and mitigative measures.

Response: The concept of Moderate Risk Areas is not included in the final rule. This concept was intended to address areas that met the definition as HCAs, but because the areas were more remote and less populated, the potential risk of an accident was less than in other HCAs. The likelihood of this occurring has been reduced, or eliminated, by the changes made in the definition of HCAs. These areas are defined in the final rule based on the calculated hazard for operators using the Potential Impact Circle option. Additional margin, in the form of threshold radii, designation of all Class 3 and 4 areas, or an arbitrary margin applied to C–FER calculations, has been eliminated. Accordingly, all areas meeting the definition of HCAs require treatment as such, and no category of reduced actions is needed.

As explained in the section on "identified sites," we have modified the definition of HCAs to clarify the differences between outside open structures and rural buildings. In both cases the occupancy threshold is 20 people. For rural buildings, people must congregate five days a week for at least ten weeks in year as in the current class location 3 definition. For open structures and outside gathering areas, people must congregate at least fifty days in a year.

4. Program Requirements and Implementation, Including Integrity Assessment Time Frames, Assessment Methods, and Criteria

The topics covered in this section encompass the majority of the comments that addressed the requirements for and implementation of an integrity management program. We have grouped in this subsection comments addressing general program requirements and compliance time frames, baseline assessments and their quality, the use of prior assessments, the requirements associated with using Direct Assessment, Confirmatory Direct Assessment, and Internal Corrosion Direct Assessment, reassessment intervals and overlap, pressure testing requirements, cyclic loading, ERW pipe seam issues, and training requirements.

Time Frame for compliance. The proposed rule required operators to identify all covered segments within one year from the rule's effective date. Northeast Gas Association asked that operators be allowed two years after the final rule to identify all pipeline segments and conduct a risk analysis.

Response: The statute requires that RSPA/OPS issue regulations prescribing integrity management program standards. These regulations must require operators to conduct a risk analysis and adopt an integrity management program no later than 24 months after the date of enactment, *i.e.*, by December 17, 2004. Therefore, RSPA/OPS does not have the flexibility to allow operators two years to complete the segment identification. RSPA/OPS has tried to accommodate concerns about the time frame for developing a program through use of the framework concept.

Framework: The proposed rule required an operator to develop and follow a written integrity management program within one year from the effective date of a final rule. However, the proposal allowed the operator to begin with a framework addressing each of the required program elements. Puget Sound Energy suggested that the requirement for a framework should be deleted. The company commented that a framework is either an additional document above and beyond the integrity management plan or is telling the operator how to develop a plan. The company noted that the term is used in ASME/ANSI B31.8S as an umbrella for the elements of a plan and not to describe a separate document. The Northeast Gas Association requested that a rule have enough flexibility to allow operators the time necessary to develop a thorough and effective plan. The Association further commented that it may not be possible for operators to develop a plan within the time frame specified in the proposed rule.

Response: The intent of allowing a framework was to acknowledge that an operator cannot develop a complete, fully mature integrity management plan in a year. Nevertheless, it is important that an operator have thought through how the various elements of its plan relate to each other early in the development of its plan. The framework serves this purpose. Each operator is required to develop a framework within one year that describes the process for implementing each program element, how relevant decisions will be made and by whom, and a time line for completing the work to implement the program element. It need not be fully developed or at the level of detail expected of final integrity management plans. The framework is an initial document that evolves into a more detailed and comprehensive program. A separate document is not necessary. For some operators (*e.g.*, those with only a few miles of covered pipeline) it may be possible to prepare a fully-developed integrity management plan within a year. In that case, no separate framework is required. The discussion of the framework in the final rule has been modified to reflect these expectations.

Communications Plan: One of the proposed elements of an integrity management program was a communications plan that includes the elements from ASME/ANSI B31.8S. Northeast Gas Association questioned the need for a communications plan requirement because a consensus standard on a Recommended Practice for Pipeline Public Awareness Programs is now being developed under the auspices of the American Petroleum Institute (API).

Response: This rule requires that integrity management plans include communications plans that follow the

guidelines in ASME/ANSI B31.8S, a standard that has been incorporated by reference into the final rule. Industry and government representatives working on the API standard are aware of the ASME/ANSI B31.8S guidelines, and RSPA/OPS expects that the final API standard will not conflict with them. RSPA/OPS will consider adoption of the API standard, for public awareness, not IMP communications, including whether changes to the communication provisions in this rule are appropriate, when that standard is approved.

Best Practices. Northeast Gas Association commented on proposed requirements that operators adopt "best practices." The Association noted that the best practices for one company are not always applicable to other companies, because of the variability in system configurations, physical pipeline attributes, and business perspectives. Northeast Gas recommended elimination of all references to incorporation of best practices.

Response: RSPA/OPS recognizes that practices applicable at one operator might not be as useful or effective at another. Nevertheless, RSPA/OPS believes that it is important that operators learn from the experience of the industry at large. The standards development process is a means of combining industry experience to identify lessons that should be applied to other operators. RSPA/OPS has modified the final rule to rely on that process. The rule requires that practices in ASME/ANSI B31.8S be used. The consensus process of gathering, reviewing, and publishing best practices in a manner suitable for use at all operators should resolve the applicability questions.

Baseline and Prior Assessments. The proposed rule allowed an assessment conducted up to five years before the date of enactment of the Pipeline Safety Improvement Act of 2002 as a baseline assessment. The Act was signed into law on December 17, 2002. The proposed rule established time periods for the baseline assessment. If the assessment were done by pressure test or internal inspection, the operator would have to complete the baseline by December 17, 2012, with 50% of the highest risk pipe being done by December 17, 2007. However, if the segment were in a Moderate Risk Area, the assessment would have to be done by December 17, 2015. If the operator used direct assessment, the baseline would have to be done by December 17, 2009, with 50% of the highest risk segments assessed by December 17, 2006, or by December 17, 2012 if it was in a Moderate Risk Area.

Southwest Gas Corporation and Paiute Pipeline noted there was no provision to incorporate new pipelines into an integrity management plan and recommended that for pipelines installed after December 17, 2002, the installation pressure test be accepted as the baseline inspection. Northeast Gas Association supported the proposed requirement that 50% of the facilities posing the highest risk be baseline-assessed during the first half of the assessment cycle. Dominion commented that the proposed language is not clear about when a baseline assessment is complete. It suggested the baseline assessment start when the first inspection tool is run and that the start of the reassessment interval would be when the company runs the final assessment tool, analyzes the data from the final tool report, and remediates all immediate indications for the baseline assessment.

Several commenters noted that the date for prior assessments was incorrectly listed as 2007 rather than1997. El Paso asserted there is no technical basis for the five-year limit on a previous assessment and argued that an assessment conducted before December 17, 2002 should be allowed as a baseline if it substantially meets the requirements of the rule and referenced standards. Dominion concurred with El Paso and added that the proposed rule penalizes operators for using prior assessments because it requires an operator to reassess immediately or within the next 2 years. Instead, Dominion suggested that the reassessment interval of seven years should start after the baseline assessment information is realigned and analyzed based on the operator's current program. INGAA took exception to the proposed 1997 cutoff date and argued that RSPA/OPS was judging the applicability of earlier assessment technology without providing technical rationale. INGAA commented that RSPA/OPS should allow operators to use prior assessment data to encourage them to use the performance-based option.

Response: Commenters are correct that the date listed for prior assessments was incorrect and should have been listed as December 17, 1997 in the NPRM. However, that date is no longer relevant because the final rule has been revised to allow an assessment conducted any time prior to the date the Pipeline Safety Improvement Act was signed into law, December 17, 2002, as a baseline assessment if the prior assessment satisfies the requirements of Subpart O. There is no longer a five-year cut-off date for prior assessments.

The final rule also allows prior assessments as part of the qualification basis for the performance-based option. For this option, an operator must demonstrate that the prior assessments effectively addressed the identified threats to the covered segment. Although these assessments may not meet all the requirements for a baseline, because the performance-based option sets additional and more stringent requirements, RSPA/OPS believes it could allow some flexibility in relying on prior assessments.

RSPA/OPS has clarified the language concerning the time period for conducting the baseline assessment. The final rule no longer requires the baseline period to depend on the assessment technique used. The period is now the same, no matter the assessment method. Furthermore, as discussed earlier in this document, RSPA/OPS has eliminated the concept of Moderate Risk Areas. An operator must complete the baseline assessment of all covered segments by December 17, 2012, and assess at least 50% of the covered segments, beginning with the highest risk segments, by December 17, 2007. Consistent with the advisory committee's recommendation, we have revised the final rule to require that the first reassessment for a pipeline segment on which a prior assessment is credited as baseline must occur by December 17, 2009, seven years after enactment of the Pipeline Safety Improvement Act of 2002.

Any new pipeline that is installed in a high consequence area would be subject to the requirements of the rule. The final rule has been revised to require that newly-installed pipeline be included in the integrity management plan, and that the baseline assessments on any high consequence area segment be completed within ten years of installation. The rule provides that the installation pressure test, conducted in accordance with subpart J of part 192, would satisfy the requirements of a baseline assessment. Intervals for reassessment would be measured from the date of the baseline assessment, as for any other covered pipeline segment.

RSPA/OPS has not specified in the rule what constitutes completion of an assessment on a covered segment, and therefore the date from which future assessment requirements toll. Such details were not included in the integrity management rule for hazardous liquid pipelines, but rather were addressed through additional guidance for implementing the rule. That guidance specifies that the end of field activities, *e.g.*, completion of the final

tool run or completion of a hydrostatic test, is considered the end of an assessment. RSPA/OPS will issue similar guidance for this rule.

Pressure Testing. We received comments on the proposal to allow pressure testing as an assessment method and that to address manufacturing and construction defects, a pressure test be conducted at least once in the life of the segment.

NTSB noted that although defining HCAs can help to set priorities, risk management programs should ensure that pipelines are appropriately tested at all locations where there is public exposure and cited Carlsbad as an example. Advanced Technology Corporation asserted that there are other fracture mechanics assessment methods which would be preferable to pressure testing, which can cause crack growth.

The majority of comments centered on the proposal to pressure test all segments once in the life of the pipeline. INGAA asserted, with numerous commenters echoing INGAA's comments, that experience has shown manufacturing and construction threats to be stable unless activated through a change in operations or the environment. The Association of Texas Intrastate Natural Gas Pipelines commented that once-in-a-lifetime pressure testing should be eliminated and that testing conducted upon installation (post 1971) or based upon historical operation, provides adequate evidence of safety. Several commenters, including INGAA, suggested that the rule should be aligned with ASME/ANSI B31.8S.

Response: Pressure testing has long been considered the definitive method of testing pipeline integrity. RSPA/OPS has received no information that would challenge this historical practice, and pressure testing remains an acceptable assessment method in the final rule. RSPA/OPS has been convinced by the public comments, including discussions at the public meetings, that it is not necessary to require a once-in-a-lifetime pressure test to address the threat of material and construction defects. Historical safe operation, which in many cases involves several decades, provides confidence that latent defects will not result in pipeline failure as long as operating conditions remain unchanged. The final rule requires that an assessment be performed if operating pressure is increased above the historic level or if operating conditions change in a manner that would promote cyclic fatigue.

Direct Assessment. There were numerous comments about the proposed requirements for using Direct Assessment (DA). In the proposed rule, direct assessment was allowed to address the threats of external corrosion, internal corrosion or stress corrosion cracking, and then only if certain preconditions were met. The proposed assessment intervals using this method were shorter than the ones proposed using the other assessment methods.

In the NPRM, RSPA/OPS also requested comments on:

- Whether it should allow an operator using Direct Assessment on a pipeline operating at less than 30% SMYS a maximum ten-year reassessment interval regardless of whether the operator excavates and remediates all anomalies on that pipeline, or at least remediates the highest risk anomalies. (68 FR 4278, 4281) .
- Whether the benefits of the proposed requirements for External Corrosion Direct Assessment, which were more extensive than the NACE Recommended Practices under development, were worth the cost. (68 FR 4278, 4282)

Several commenters expressed serious concerns. Carol Parker commented that the method needs further study before being approved and Cook Inlet Keeper maintained that more stringent criteria are needed as compared to other assessment methods. Accufacts supported the proposed shorter assessment period for DA because it is a developing and unproven technology and further asserted that the related ICDA approaches are seriously deficient.

In contrast, at least 125 comments, primarily from the pipeline industry, supported the use of Direct Assessment. For example, Northeast Gas Association supported using DA in the integrity management process because its research had showed that DA has a high degree of reliability. Numerous commenters asked that we incorporate the new NACE DA standard into the rule rather than duplicate the requirements. Most of the same commenters argued that DA should be considered equal to inline inspections and hydrostatic tests as an assessment method. Laclede Gas, along with other operators, asserted that DA is the only practical option for many local distribution companies and is better than inline inspection at finding coating damage that has not yet resulted in corrosion with wall loss. Other commenters maintained that DA should be explicitly identified as a technique for detecting potential third-party damage, and that the proposed treatment of DA is so prescriptive as to effectively eliminate it as an option.

Commenters, including Southwest Gas, Paiute, Peoples Energy, PG&E, Kansas Gas Service, and Puget Sound commented that the proposed additional requirements were unnecessary, and were not beneficial. More than 20 commenters recommended incorporating by reference the NACE DA standard.

Nine commenters agreed with the proposal to allow low-stress pipelines a ten-year reassessment interval. Over 30 commenters maintained that DA should be allowed the same schedules as those for inline inspections and hydrostatic tests. Other commenters, such as Sempra and the Iowa Utilities Board, supported less stringent rules for pipelines operating below 30% SMYS because of the lesser hazard posed by failure of such pipelines.

Response: The process of Direct Assessment for evaluating the integrity of pipelines is new. Therefore, the proposed rule included restrictions on use of DA, including shorter baseline and reassessment intervals, because of concerns about the efficacy of the process. The NACE DA standard was still being developed when the proposed rule was issued.

Although the process is new, the techniques involved in DA are not new. There are no new and untested technologies involved. Pipeline operators have used indirect examination tools in DA for many years, and there is a wealth of experience. Although exposing a pipeline for direct observation and evaluation of potential problems is the most reliable means of understanding pipeline condition, it is not practical to excavate and examine entire pipelines. The DA process is a method that involves structured use of the time-tested indirect examination tools, and integration of the information gained from use of those tools with other information about the pipeline, to determine where it is necessary to excavate and examine the pipe.

A group of operators coordinated by Battelle and Gas Technology Institute, and co-funded by RSPA/OPS, conducted and documented additional research and validation of direct assessment after the proposed rule was published. RSPA/OPS personnel reviewed the results of this research, recognized the importance of careful inspections to ensure effective application of direct assessment, and recommended focused training of RSPA/OPS inspectors in the characteristics of an effective DA program. In addition, RSPA/OPS has included qualification requirements in the final rule for individuals that carry

out DA for those that interpret the results.

Early results from the research have underlined the importance of operator vigilance in applying DA and of continuous incorporation of lessons learned in implementation procedures. The results of this research were discussed at the public meetings held during the comment period. These efforts have significantly improved RSPA/OPS's confidence in this method for assessing pipelines. RSPA/OPS has additionally been persuaded that many distribution companies operating transmission pipelines will need to rely heavily on this method. These companies' transmission pipelines are closely integrated with their distribution systems, are generally not amenable to inline inspection, and are often impractical to remove from service for pressure testing. Most also operate at low pressures, presenting relatively smaller risks than other transmission pipelines. Placing more restrictive requirements on use of DA would increase the burden, and costs, for operators of these low-risk pipelines without commensurate benefits.

For all of these reasons, RSPA/OPS has concluded that it is unnecessary to place significant restrictions on the use of direct assessment. The final rule has been revised to make the required baseline and reassessment periods the same for DA as for other assessment methods. Conditions on the use of DA as a primary assessment method have been eliminated. These changes have rendered moot the question of whether a ten-year reassessment interval should be allowed for low-pressure pipelines even if all anomalies are not excavated.

In the proposed section on using direct assessment to address external corrosion, we had drawn from a draft of the NACE standard on external corrosion that was close to completion. Since the proposed rule was published, NACE issued its recommended practice on external corrosion direct assessment (NACE Recommended Practice RP–0502–2002). RSPA/OPS has reviewed the recommended practice and concluded it has all the necessary requirements and safeguards to ensure the efficacy of the process.

The NACE ECDA recommended practice (RP) has been incorporated into the final rule in the section addressing requirements for external corrosion direct assessment. The existence of NACE RP has allowed us to eliminate constraints on use of DA that were the subject of the questions in the preamble. Incorporating the standard is responsive to public comments, contributes to simplifying the rule, and is consistent with our overall practice of referencing consensus standards where they are available and meet regulatory needs. In addition, the rule specifies requirements beyond those in the NACE RP. Requirements in the rule that go beyond the NACE recommended practice address documentation criteria used in making decisions in implementing direct assessment. This documentation is needed to support oversight by RSPA/OPS and state pipeline safety authorities.

NACE has not completed development of recommended practices for internal corrosion and stress corrosion cracking. The final rule references requirements in ASME/ANSI B31.8S applicable to these methods and includes additional requirements. RSPA/OPS will consider incorporating NACE standards for these techniques when those standards have been completed.

Confirmatory Direct Assessment (CDA). The NPRM proposed allowing an operator to use Confirmatory Direct Assessment (CDA) as an assessment method at seven-year intervals if the operator established a longer reassessment interval using one of the other assessment methods. CDA is a more focused application of DA to address known threats in a pipeline segment.

Industry generally embraced the concept of CDA. Dominion recommended allowing CDA as the first reassessment following a baseline assessment conducted after December 17, 2002. Houston Pipeline maintained that CDA should also be available for use on all pipelines previously assessed, not just those assessed using pressure testing or inline inspection. Sempra supported the use of CDA and suggested utilizing Section 5.10 of NACE RP0502 to determine the number and locations of excavations and direct examinations to be made if ECDA was used for the previous assessment.

Although Northeast Gas Association supported the CDA concept, it suggested basing the CDA process on a technical industry standard, and streamlining the process so that only one dig in each segment is required as per the NACE standard instead of the proposed two digs. Peoples North Shore Gas stated that the proposed process only provides minimal relief as compared to full DA, echoed the need for streamlining, and provided several streamlining suggestions.

Opposing the use of CDA, Cook Inlet Keeper maintained that CDA is not as effective as internal inspection or pressure testing. Cook Inlet suggested OPS compare the results for pipelines using CDA for reassessment to the results for pipelines using internal inspection or pressure testing for reassessment, and should CDA prove less effective than the latter two methods, reevaluate allowing its use.

Response: CDA is a more focused version of Direct Assessment. The additional research and validation conducted in a project managed by the Gas Technology Institute, carried out by several operators working with Battelle, and funded by RSPA/OPS and the industry has increased RSPA/OPS's confidence in DA (as described above), as well as our confidence in CDA. The research had overview and partial funding by RSPA/OPS. It included comparison of results from various above-ground assessment tools with internal inspection runs completed on the same segments. The results are compelling enough to allow RSPA/OPS to support use of the technology under very careful oversight and with the assumption of continuing development and validation. The final rule requires that the baseline assessment on all covered segments must be by internal inspection, pressure testing, Direct Assessment, or other equivalent technology (with prior notice to RSPA/OPS) and that the reassessment must be by one of these methods at intervals specified in the rule and in ASME/ANSI B31.8S. CDA is an interim assessment technique designed for use when the reassessment interval by one of these methods exceeds seven years.

The rule provides that CDA for external corrosion can be conducted using only one indirect measurement tool, rather than two complementary tools as required for Direct Assessment. The rule also provides for a more limited number of excavations, requiring excavation of only one scheduled indication in each ECDA region. Any "immediate indications" that are identified must also be excavated. The final rule also provides that additional assessment, using one of the other methods, must be performed if the CDA results do not confirm the integrity of the pipeline.

Internal Corrosion Direct Assessment (ICDA). The NPRM proposed requirements for the use of Direct Assessment to address internal corrosion in a pipeline segment.

Numerous commenters noted problems with the proposed ICDA language used in some of the requirements. Suggestions included: Rewording to clarify that internal corrosion can result from more than upset conditions, deleting references to chlorides, replacing "moisture" with "electrolytes," replacing "MIC" with "microorganisms," allowing the use of other measurement techniques that may be developed, referencing Graph E.III.1 when it is not a complete flow model, and replacing the word fluids with liquids, because gas is also a fluid.

Both Paiute Pipeline and Southwest Gas asserted that ASME/ANSI B31.8S should be exclusively referenced rather than writing a procedure for ICDA within Part 192. The Northeast Gas Association questioned the need to excavate additional locations if, upon excavation of the first location most likely to corrode, no internal corrosion was found.

NTSB commented that its investigation of the Carlsbad pipeline accident revealed areas where cleaning pigs had not been used that were likely locations for internal corrosion. NTSB suggested that RSPA/OPS highlight the increased corrosion potential of pipeline sections not subject to the periodic use of cleaning pigs.

Response: NACE is developing recommended practices for ICDA, but none has yet been finalized. Discussion of ICDA in ASME/ANSI B31.8S is limited, but the final rule does reference the requirements in Appendix B2 of that standard. The final rule includes basic requirements consistent with the recommended practices now under development. These recommended practices, when completed, will provide additional guidance for implementing these requirements. The requirements provide for a minimum of two excavations in each ICDA region. RSPA/OPS has concluded that more than one excavation is needed, because predicting the locations at which internal corrosion could occur is not an exact science. There are different types of locations in which such corrosion can occur. Multiple excavations, and direct examination of potentially affected pipe, are necessary to ensure that internal corrosion will be found.

RSPA/OPS has revised the language in the final rule to incorporate many of the suggested editorial comments. The final rule has also been revised to highlight the potential for increased corrosion of locations not subject to periodic use of cleaning pigs or in which cleaning pigs could deposit collected liquids.

Reassessment Intervals: RSPA/OPS proposed that the reassessment interval begin when the baseline assessment of a covered segment was completed. This had been proposed consistent with the statutory requirement in 49 U.S.C. 60109(c)(3)(A) that an integrity management program include "[a] baseline integrity assessment of each of the operator's facilities * * *." The length of the proposed reassessment intervals depended on the assessment method, although some form of reassessment would have to be done by the seventh year of the interval. If an operator used pressure testing or internal inspection, the maximum reassessment interval proposed was ten years for a pipeline operating at or above 50% SMYS and 15 years if operating below 50% SMYS. If an operator established the maximum interval, the notice proposed that a Confirmatory Direct Assessment would have to be done in the seventh and fourteenth years. If an operator used DA, the notice proposed a five-year interval if examining and remediating defects by sampling, or ten years if directly examining and remediating all anomalies. Again, if the ten-year interval were established, the notice proposed a CDA be conducted by the seventh year.

In the NPRM, OPS requested comment on whether a rule should allow a maximum 20-year reassessment interval on pipelines operating at less than 30% SMYS, and reassessment by CDA method every seven years, without the need for reassessment by some other method, for pipelines operating below 20% SMYS (68 FR 4278, 4281). RSPA/OPS also sought comment on whether the rule should allow a maximum ten-year reassessment interval when DA is used on a pipeline operating at less than 30% SMYS.

Cook Inlet Keeper supported the proposal to reassess a covered segment every seven years, rather than to begin the reassessment interval only after the baseline assessment of all covered segments in a transmission system was complete. Cook Inlet maintained the proposal was consistent with the Congressional intent to ensure covered segments are reassessed every seven years. Cook Inlet argued that without such an interpretation, a segment assessed early during the baseline assessment period might be assessed late during the reassessment period, resulting in over 16 years between assessments.

Contrary to Cook Inlet's position, the vast majority of commenters argued that reassessment intervals should begin after the initial ten-year baseline period, *i.e.*, the reassessment interval should not begin until all segments have been initially assessed. INGAA requested that the rule clarify that the initiation of the first reassessment is not mandatory until completion of the baseline period for the system. INGAA asserted that without this change, operators will be conducting reassessments on their systems in HCAs at the same time as they are conducting baseline assessments, resulting in a potential for significant gas price spikes caused by outages on multiple pipeline systems occurring at the same time. INGAA claimed this would conflict with the intent of the legislation and preclude the ability to adjust priorities based on prior findings. Numerous commenters echoed INGAA's comments.

Expanding on INGAA's position, NiSource asserted that without the change, outages in overlap years are likely to make it difficult to refill storage during summer months and lead to shortages and price spikes the following winters. Kansas Gas Service maintained that if the overlap were not eliminated, a bubble of demand for assessment services much greater than any other year would be created during the overlap years and would not be sustained beyond the bubble, resulting in operators facing difficulty obtaining services and experiencing supply interruptions. PSNC Energy also recommended eliminating the overlap because it would cause economic and labor-related hardships and lead to shortcomings from cutbacks in remaining baseline assessments. Northeast Gas Association and several other commenters noted that the reassessment intervals should be the same as identified in ASME/ANSI B31.8S.

AGA proposed that the rule incorporate the maximum interval set for pipelines operating below 30% SMYS in the ASME/ANSI B31.8 standard, with interim preventive and mitigative measure being applied every seven years. Ten commenters, including Vectren, Dominion, and Northeast Gas Association, supported AGA's proposal that the rule allow a maximum 20-year reassessment period for pipelines operating under 30% SMYS. Northeast Gas Association also recommended the 20-year interval also apply for Direct Assessment. Sempra, the Iowa Utilities Board, and other commenters supported less stringent requirements for pipelines operating below 30% SMYS because of the lesser hazard posed by failure of these low-stress pipelines.

There were many comments on the proposed shorter reassessment intervals for operators using Direct Assessment. American Public Gas Association, American Gas Association, and several other commenters argued that DA reassessment intervals should be the same as for other methods. Williams Gas Pipeline maintained that having shorter DA intervals is not justified and Panhandle Eastern suggested that the reassessment intervals should be based on ASME/ANSI B31.8S. PG&E

supported a ten-year DA interval on pipelines operating at less than 30% SMYS, which would be consistent with ASME/ANSI B31.8S. Sempra asserted that accelerating DA assessment schedules could result in assessment on some higher risk pipelines being deferred and suggested basing assessments on risk ranking of the various pipeline segments independent of the assessment method. The Association of Texas Intrastate Natural Gas Pipelines contended that Congress treated DA as equivalent to other methods of assessment and that RSPA cannot do differently. The Energy Association of Pennsylvania claimed the proposed seven-year interval is not consistent with the statute or Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.*

In contrast, the New York Department of Public Service contended that extending the DA reassessment interval from five to ten years is unreasonable because external corrosion direct assessment is an immature process. New York asserted that although the Northeast Gas demonstration on the ECDA process showed that the process was reliable in identifying locations of current or potential corrosion activity, more experience is needed to characterize uncertainties and increase confidence that serious anomalies will be detected.

With respect to the proposed CDA reassessment intervals, the State of New York asserted that CDA should not be considered a reliable assessment method and that full DA should be required every seven years. In contrast, Duke Energy opined that CDA should count as a valid reassessment and that a subsequent follow-up reassessment to CDA should not be scheduled for another seven years. Duke Energy recommended changing the rule to reflect that CDA is a valid reassessment technique on its own.

Response: Congress required "[a] baseline integrity assessment of each of the operator's facilities in areas identified pursuant to subsection (a)(1) [*i.e.*, high consequence areas]," and "periodic reassessment of the facility, at a minimum of once every 7 years" (49 U.S.C. 60109).

Industry commenters argued that this language can, and should, be read to require reassessments within seven years *after* the ten-year period in which baseline assessment of all covered segments had been completed. RSPA/OPS finds that the plain language of the statute precludes this interpretation. Industry suggests that the meaning of the word "facility" is key, and RSPA/OPS agrees. Elsewhere in the section requiring baseline assessments within 10 years of enactment, the statute states, "At least 50 percent of such *facilities* shall be assessed not later than 5 years after such date of enactment. The operator shall prioritize such *facilities* for assessment based on all risk factors * * *" (emphasis added). In contrast, the language requiring reassessment refers to periodic reassessment of the facility. Congress differentiated between individual pipeline segments and an operator's entire pipeline system. The statutory language is clear that an assessment of each covered segment is required at least every seven years.

RSPA/OPS acknowledges that the requirements of the final rule will require that some reassessments be conducted before all baseline assessments have been completed. The rule has been written, however, in a manner intended to minimize the impact of this overlap to the extent practicable.

The rule allows different methods for reassessment, and the maximum reassessment interval depends on the method used and the operating pressure of the pipeline. However, the reassessment required at seven-year interval, the interval required by law, can be by Confirmatory Direct Assessment. CDA provides for much less potential disruption of pipeline operations than other assessment methods. No shut-down or curtailment of operation is needed to perform the indirect surveys that are a part of this method. Operators will likely reduce pressure when conducting excavations to protect personnel involved in that work, but the number of excavations required for CDA is less than for DA.

Reassessment intervals for DA have been revised to be the same as those required for other assessment methods. This reduces the amount of pipeline that must be assessed each year when compared to the five-year reassessment requirement in the proposed rule.

For pipelines operating below 30% SMYS, the final rule provides that the seven-year reassessment requirement can be met by a low-stress reassessment that includes indirect examinations, leak surveys, and other measures. The requirements for low-stress pipelines are discussed in item 7 of *Comments to NPRM.* This provision recognizes the relatively low risk posed by these pipelines and the likelihood that failures will result in leakage rather than rupture. Operators who implement this low-stress reassessment option also have the option of performing CDA. Reassessment for these low-pressure pipelines by the other methods allowed by the rule (*i.e.*, pressure test, internal inspection, direct assessment) are required only every 20 years, the maximum interval allowed by ASME/ANSI B31.8S.

ERW Pipe. Several comments concerned ERW pipe. The Gas Piping Technology Committee (GPTC) commented that the only way to assess seam issues is to conduct both an internal inspection and a pressure test, but such a requirement would not be practical. GPTC further commented that there are economic and technical barriers related to both Transverse Flux Inspection (TFI) and Ultrasonic tools. GPTC suggested the rule require that if an operator selects one of the multiple possible methods for assessment, it must consider the other method for reassessment. Sempra maintained the language on ERW pipe is unclear and that assessment should only be performed when a pipeline is subject to internal corrosion or when operating conditions could result in propagation of seam imperfections by fatigue.

Response: If a covered pipeline segment contains low frequency electric resistance welded pipe (ERW) or lap welded pipe with a history of seam failure, an operator is required to select an assessment technology or technologies with a proven application capable of assessing seam integrity and of detecting seam corrosion anomalies. The operator is required to prioritize the covered segment as a high risk segment in its data integration and risk evaluation model.

Training. Duke Energy argued that the appropriate place for the training requirements is under the existing operator qualification requirements of Subpart N and not within the integrity management requirements. Oleska and Associates contended that the proposed training requirements for supervisors are too broad and that understanding should be commensurate with job responsibilities and relationship to the program.

Response: It is critical that personnel involved in integrity management programs and in conducting assessments have the appropriate training and qualifications for their functions. These functions are not, generally, within the scope of those covered by the Operator Qualification rule, because they are not tasks performed "on the pipeline." In the final rule, RSPA/OPS has clarified the requirements for training, but continues to believe they are a necessary part of the rule.

Other comments about program requirements. We received a number of miscellaneous comments on some of the proposed integrity management program requirements. Cook Inlet Keeper requested that OPS review its database to ascertain whether there are additional threats to pipeline integrity, such as human error, maintenance problems, and valve and patch failures.

Peoples Energy opined that the proposal to consider cyclic loading is specious because it requires operators to assume "deep dents" are present and further to determine if the loading conditions will lead to failure of the assumed "deep dents."

Advanced Technology Corporation suggested redefining "toughness" as "fracture toughness" for older pipe materials to calculate the "critical defect size" and to ensure the proper use of relevant information.

Response: A systematic search of recorded incidents to identify threats to pipelines was conducted while developing the standard on integrity management, ASME/ANSI B31.8S. The rule is structured around evaluating susceptibility to these threats and protecting against them. RSPA/OPS believes that the best way to address threats associated with human errors is through training and qualification, since failures from this cause usually occur immediately.

With respect to cyclic loading, it is important that a realistic analysis of the condition be conducted to ascertain the susceptibility of pipelines to failure from this cause. Such analyses require the postulation of some flaw, because the effect of cyclic loading is to propagate existing flaws. Flawless pipe can generally withstand significant cyclic loading, but little pipe is completely without flaws. The final rule requires an operator to use the results from the evaluation together with the criteria used to evaluate the significance of this threat to the covered segment to prioritize the next integrity assessment.

In the final rule, we have substituted the term "fracture toughness" for "toughness."

5. Review, Notification and Enforcement Processes

There were several comments related to review, approval, and enforcement processes but the majority related to the use of and practicality of waivers. RSPA/OPS had proposed to allow a waiver of a reassessment interval greater than seven years in two limited instances: Lack of internal inspection tools and to maintain local product supply. The statute limits a waiver to these two instances.

The proposal included prior notification requirements to OPS in several instances: When using other technology as an assessment method (180 days), When making a significant change to the integrity management program (30 days), and when seeking a longer reassessment period (180 days before the end of the required period).

Sempra commented that the potential impact on customers is greater than perceived primarily because of the impact to numerous large customers served by a single source pipeline, and therefore the need for waivers may have been greatly underestimated. Panhandle Eastern asserted that waiting 180 days for a decision on a waiver is excessive. The Washington Utilities and Transportation Commission suggested that we include provisions that would require RSPA/OPS to approve or disapprove of an operator's request for waiver.

Enron was concerned about the proposed program change requirements and asserted that the terms "significantly" and "substantially" are vague and subject to varying interpretations. Enron further argued that requiring separate, subjectively determined notifications is not productive or useful when changes could be effectively reviewed during regular pipeline program reviews.

Several commenters, including Advanced Technology Corporation, suggested that RSPA/OPS better define the process by which new technologies are approved. Both PECO and El Paso objected to the 180-day notification prior to the use of new technology and El Paso suggested that the notification period be reduced to 90 days, which would be consistent with § 195.452. El Paso also suggested that provision be made for the ongoing use of other technology via a single notification.

Sempra encouraged RSPA/OPS to address the coordination of environmental review and the permit process for pipeline repairs and for retrofitting and inspection of pipelines per Section 16 of the Pipeline Safety Improvement Act of 2002.

Response: RSPA/OPS acknowledges that the number of waivers likely to be sought by operators is not known at this time. Nevertheless, 49 U.S.C. 60109 requires that an assessment be performed on a pipeline segment in a high consequence area at seven-year intervals and further provides that operators may seek waivers only under two circumstances. The waiver requirements in this rule follow the statute. Because of the statutory limitations, RSPA/OPS cannot make other changes in anticipation of a large number of waivers possibly being submitted many years hence. RSPA/OPS believes that careful planning can help avoid the need for waivers. Careful planning also will identify the need for waivers in sufficient time to allow operators and RSPA/OPS to conduct careful reviews. RSPA/OPS is working on expediting the waiver process to prevent potential supply shortfalls. RSPA/OPS expects that a requirement to apply for a waiver 180 days before the end of the required reassessment interval is reasonable, except when local product supply issues may make that period impractical. In such an instance, an operator would need to apply for the waiver as soon as the need for the waiver becomes known. The waiver process is governed by 49 U.S.C. 60118, the Federal pipeline safety law. Currently, a waiver must be published for public comment. Therefore, 180 days is a reasonable period to allow for publication in the **Federal Register** and to address public comments on the a proposed waiver.

To address the TPSSC's recommendation we have revised the language in the final rule to include the exact language of the statute pertaining to waivers. Therefore, a waiver may be sought to maintain local product supply or because of unavailability of internal inspection devices. In either case, RSPA/OPS must determine that a waiver would not be inconsistent with pipeline safety.

The Pipeline Safety Improvement Act of 2002 also requires that operators notify RSPA/OPS when they make changes to their integrity management programs. RSPA/OPS cannot eliminate this requirement from the rule. The requirement has been conditioned to require notification only of changes that may substantially affect the program's implementation or may significantly modify the program or schedule for carrying out the program elements. These qualifiers are intended to preclude notifications for minor, even editorial, changes.

We have revised this requirement, however, to require an operator to notify, in addition to OPS, a State or local pipeline safety authority when a covered segment is located in a State where OPS has an interstate agent agreement, and a State or local pipeline safety authority that regulates a covered pipeline segment within that State. These changes were made to address comments from advisory committee members and State pipeline safety authorities.

RSPA/OPS continues to believe that 180-day notice before an operator uses "other technology" is a reasonable notification period. There are reasons why the corresponding period in the rule for hazardous liquid pipelines is 90

days. The reassessment period for hazardous liquid pipelines is five years, a period about 70 percent of the shortest reassessment period in this rule. Therefore, planning decisions must be made for liquid reassessments on a shorter time frame. In addition, the "other technology" most likely to be used by hazardous liquid operators is direct assessment, an assessment method specifically allowed in the gas integrity management rule but not in the liquid rule. Because there is now an industry standard and more information about the process is known, the review of the notification is likely to be shorter. "Other technologies" that gas transmission pipeline operators may use are expected to involve methods and techniques that are more developmental and about which less information is known. This will require that RSPA/OPS take more time in reviewing these notifications before the "other technology" is implemented.

Section 16 of the Pipeline Safety Improvement Act of 2002 (49 U.S.C. 60133) requires the establishment of an interagency coordinating committee and that this committee take actions to help ensure that pipeline operators will be able to obtain permits when required to perform required repairs. The interagency committee has been established. RSPA/OPS is participating on the committee. Those actions are related to, but independent of this rule, and will not be described here in detail. It is important to note, however, that the rule provides a mechanism for operators to address situations in which repairs cannot be made due to inability to obtain permits. The rule provides that operators can reduce operating pressure or take other action to ensure the integrity of the pipeline. If neither can be done, the operator is required to notify RSPA/OPS. RSPA/OPS expects that operators will exercise due diligence in seeking permits for repairs.

6. Consensus Standard on Pipeline Integrity

The Standards-Developing Organizations Coordinating Council (SDOCC) urged RSPA/OPS to incorporate industry standards by reference in their entirety into the regulations. The Council asserted this will help avoid misinterpretations that can result from parts of standards being used out of context, or from text taken from standards being used in regulations without reference to the source. Similarly, both New Jersey Natural Gas and Advanced Technology Corporation suggested that inline inspection consensus standards must both be developed and then supported by OPS.

Many commenters wrote to request that OPS utilize performance-based options that are both measurable and achievable, and suggested using the ASME/ANSI B31.8S consensus standard to achieve those ends. Northeast Gas Association recommended that the rule refer to ASME/ANSI B31.8S for performance versus prescriptive requirements. El Paso went further and asserted that the proposed requirements for the performance-based option are not measurable or achievable and should be revised to allow the ASME/ANSI B31.8S standard to provide the structure and framework. Cook Inlet Keeper recommended that RSPA/OPS review the ASME/ANSI B31.8S standard to ensure that the standard is enforceable and where necessary provide clarification in the final rule.

Response: The final rule incorporates ASME/ANSI B31.8S—2001, *Managing System Integrity of Gas Pipelines*, and uses that standard for many of the rule's requirements, including those for the performance-based option. RSPA/OPS has reviewed ASME/ANSI B31.8S to ensure it is enforceable. The rule has been written to ensure that the requirements are enforceable.

7. Low-Stress Pipelines

The proposed rule did not differentiate requirements for low-stress pipelines. However, as discussed in previous sections of this document, RSPA/OPS sought comment on less stringent requirements for these pipelines, particularly with respect to—

- Whether to allow an operator using direct assessment on a pipeline operating at less than 30% SMYS a maximum ten-year reassessment interval regardless of whether the operator excavates and remediates all anomalies on that pipeline, or at least remediates the highest risk anomalies. (68 FR 4278, 4281)
- Whether to allow a maximum 20-year reassessment interval on pipelines operating at less than 30% SMYS, and reassessment by confirmatory direct assessment method every seven years (without the need for reassessment by some other method) for pipelines operating below 20% SMYS. (68 FR 4278, 4281)

Several commenters suggested that the assessment requirements proposed for low-stress pipelines (*i.e.*, pipelines operating at below 30 percent SMYS) were unnecessary and overly burdensome. Many industry commenters pointed out that low-stress pipelines tend to fail by leakage rather than by rupture and, therefore, pose considerably less risk than pipelines operating at higher stresses. The commenters proposed various alternatives, including use of the inspection intervals in ASME/ANSI B31.8S (which calls for inspections at 20-year intervals for low-stress pipelines), allowing use of confirmatory direct assessment for baseline assessments, implementation of preventive and mitigative measures in lieu of assessment requirements, and changing the definition of transmission pipeline to exclude pipelines operating at less than 20% SMYS. National Fuel contended that pipelines that operate at less than 20% SMYS cannot create high consequences and, therefore, the high consequence area definition should exclude such pipelines. National Fuel recommended that, if RSPA/OPS must include these pipelines by statute, enhanced preventive and mitigative measures should be allowed for the baseline assessment and reassessment.

AGA recommended that the intervals in ASME/ANSI B31.8S be used. AGA provided suggested preventive and mitigative measures for all pipeline in Class 3 and 4 areas and numerous commenters supported AGA's comments. AGA also proposed, at public meetings held during the comment period, that pipelines operating at less than 20% SMYS be subject to requirements for baseline assessments and for reassessment at the intervals specified in ASME/ANSI B31.8S. The AGA recommendations included electrical surveys, which would inspect for cathodic protection problems that would precede corrosion damage, and leak surveys, which would inspect for the failure mechanism most likely on low-stress pipelines, as a reassessment method suitable to meet the statutory seven-year requirement.

AGA further proposed a set of preventive and mitigative measures as alternate assessment methods for reassessment of pipelines inside HCAs. The additional measures targeted external and internal corrosion and third-party damage. Other commenters supported this alternative, including TXU Gas, National Fuel, and the New York State Department of Public Service.

The Iowa Utilities Board agreed that less stringent requirements should be applied to pipelines operating below 30% SMYS. New York Department of Public Service suggested that 20 years was too long an interval between assessments, and pointed out that although a low-stress pipeline is likely to fail by leakage, these pipelines are located in highly populated areas.

Response: Pipelines that operate at less than 20% SMYS are transmission pipelines if they meet the functional definition in § 192.3. The statute (49 U.S.C. 60109) does not except low-stress pipelines from the integrity management program requirements, including the requirement for reassessment at seven-year intervals. RSPA/OPS has revised the requirements, however, in recognition of the relatively low risk posed by pipelines operating at less than 30% SMYS. First, the rule allows two methods to define a high consequence area, so that an operator of a low-stress pipeline can rely on data it has already collected to identify the areas.

Second, the rule allows an alternative method of reassessment that focuses on the type of risk posed by these low-stress pipelines. RSPA/OPS agrees with AGA that these pipelines should be assessed initially and at the 20-year interval by the methods being used to assess higher stress pipelines, and has so required in the rule. During the 20-year interval, a low-stress line must be reassessed at seven year intervals by a low-stress reassessment, which is described below, or by confirmatory direct assessment. The rule incorporates confirmatory direct assessment (CDA) as a focused method of performing these interim assessments for pipelines operating at higher pressure. However, for low-stress pipelines, RSPA/OPS agrees that even CDA could be unduly burdensome. Therefore, the final rule adopts AGA's suggestion that electrical surveys are appropriate for conducting these interim low-stress reassessments between the assessments performed by methods being used to assess higher stress pipelines.

The rule allows operators of low-stress pipelines an option. They can perform CDA on seven-year intervals or they can conduct a low-stress reassessment that focuses on the types of threats these pipelines experience. A low-stress reassessment includes an electrical survey at least every seven years. For cathodically unprotected pipeline or areas where electrical surveys are impractical, increased leak surveys are required at a rate twice the current requirement. The additional measures also include provisions to protect against internal corrosion and third-party damage. RSPA/OPS has concluded that these measures provide appropriate interim protection for low-pressure pipelines, where the failure mode is predominantly leakage instead of rupture.

RSPA/OPS has also adopted AGA's suggestion that enhanced preventive and mitigative measures be required for low-stress pipelines located in Class 3 and 4 areas. These measures protect against third-party damage, the type of threat most likely to result in a significant failure on these pipelines.

8. Remedial Actions—§ 192.931 (Formerly § 192.763(i))

There were numerous comments about the proposed remediation requirements particularly with respect to the proposed time periods for discovery, pressure reduction and remediation, and the proposed repair criteria in general and for dents.

The proposed requirements for scheduling remediation of anomalous conditions found during an assessment provided for immediate repair conditions, 180-day conditions, and conditions where remediation would take longer than 180 days. The 180-day conditions included certain dents. The proposed rule also referenced B31.8S as the basis for making repairs.

Industry commenters generally supported INGAA's suggestion that the repair criteria should be based on the industry standards, ASME/ANSI B31.8 and B31.8S. INGAA further suggested that the proposed 180-day time frame for evaluation and remediation of certain conditions should be changed to one year. INGAA explained that the 180-day limit would require remediation during winter months when the demand for gas is high. One year would allow operators one complete operating cycle in which to complete the work. Industry commenters supported this suggestion. INGAA also submitted recommended rule language that allowed time frames of one-year, more than one-year and monitored conditions, *i.e.*, conditions that would not have to be scheduled for remediation.

INGAA, and other industry commenters such as El Paso and Panhandle Eastern, contended that the requirement to remediate dents should be reconsidered and should be revised to distinguish between bottom-side and top-side dents. These commenters explained that constrained dents are not a threat. Depressions or dents in the bottom of the pipe are constrained; dents on the top of the pipe that are relatively unconstrained. Commenters recommended that the distinction be made by specifying remediation for dents between the 8 and 4 positions and on monitoring dents that do not need to be remediated.

The proposed remediation requirements provided that a pressure reduction could not exceed 365 days unless the operator took further remedial action to ensure the safety of the pipeline. Many commenters, including the Gas Piping Technology Committee and Nicor Gas, argued that there is no basis for the proposed 365-day limit on pressure reduction and that operators should be allowed to use long-term pressure reduction if it provides equal or better safety. Public Service Electric and Gas Company asserted that the 365-day limit is not supported by any data analysis or risk assessment and should be removed. El Paso argued that pressure reductions should not be based on the pressure at the time of discovery but based possibly on either the MAOP or the highest pressure in the last 30 days. Sempra suggested we use technical information from a Pipeline Research Council International report that stated a pressure reduction in these circumstances may be determined using the highest pressure survived by the flaw since the time that it occurred.

The proposed discovery requirements were also a concern to many operators. The proposed rule provided that discovery occurs when an operator had adequate information about the condition to determine that the condition presents a potential threat to the integrity of the pipeline, and that discovery could occur no later than 180 days after conducting an integrity assessment unless the 180-day period is impracticable. Dominion contended the proposed language is confusing and suggested that discovery be tied to a time when the operator has adequate information concerning the conditions to determine that an indication requires a response as defined in ASME/ANSI B31.8S. INGAA and many other industry comments suggested that the proposed 180-day requirement associated with the discovery date be extended to one year to be consistent with ASME/ANSI B31.8S.

Response: We have revised the remediation requirements in the final rule. The rule provides that an operator be able to demonstrate that the remediation of the condition will ensure that the condition is unlikely to pose a threat to the integrity of the pipeline until the next reassessment of the covered segment. We thought this language more definite than being able to demonstrate a remediation will ensure the condition does not pose a threat to the long-term integrity of the pipeline. The final rule continues to provide that discovery occurs when an operator has adequate information about the condition to determine that the condition presents a potential threat to the integrity of the pipeline. Adequate information to make this determination would include information that the condition is one included in ASME/

ANSI B31.8S as needing a response. The rule also continues to specify that this must occur within 180 days after conducting the assessment, unless the operator demonstrates the 180-day period is impracticable. This is the same period used for the corresponding requirement for hazardous liquid pipelines. RSPA/OPS considers that identified anomalies should be dealt with promptly, and that delaying the requirement for discovery to occur until one year after an assessment is not consistent with that need.

The basis on which RSPA has accepted the recommendation to change the time allowed for evaluation and remediation of certain defects from 180 days to one year is that gas pipelines typically do not operate with pressure fluctuations sufficient to cause cyclic fatigue. Therefore, the subject defects can be allowed to remain for up to one year. In addition, this position is consistent with provisions of ASME/ANSI B31.8S.

The remediation requirements associated with dents have been revised in response to the comments to distinguish between bottom-side and top-side dents. The rule now provides that dents greater than 6% of the pipe diameter in depth in the top two-thirds of the pipe (*i.e.*, 8 o'clock to 4 o'clock), or greater than 2% and affecting curvature at a weld, must be remediated in one year. The rule allows such dents to be treated as monitored conditions if an operator obtains information and performs engineering analyses to demonstrate that critical strain levels have not been exceeded. An operator must also monitor dents on the bottom-third of the pipeline. The rule now also differentiates between smooth and abrupt dents because abrupt dents need to be prioritized for evaluation before smooth dents.

We have revised the requirement for pressure reduction. If an operator is unable to respond within the required time limits for certain conditions, the operator must temporarily reduce the operating pressure of the pipeline or take other action that ensures the safety of the covered segment. Thus, a pressure reduction is not automatic. If the operator reduces pressure, the reduction cannot exceed 365 days without an operator providing a technical justification that the continued pressure restriction will not jeopardize the integrity of the pipeline. The requirement that a pressure reduction cannot last more than 365 days without further action is identical to a requirement in the integrity management rule for hazardous liquid pipelines. The reduction provides an increased margin of safety in the interim, while repair can be planned and implemented.

9. Additional Preventive and Mitigative Measures, Including, Leak Detection Devices and Automatic Shut-Off and Remote Control Valves—§ 192.933 (Formerly § 192.763(j))

We received a large number of comments on the proposed additional preventive and mitigative measures.

INGAA asserted that excavation damage is the primary cause of 28% of reportable incidents and that the proposed rule focuses primarily on previously damaged pipe which is associated with only 4% of reportable incidents. INGAA proposed additional requirements be incorporated for the prevention of third-party damage and that the assessment for previously damaged pipe be integrated into the assessment processes for other failure causes. Dominion suggested eliminating the proposed requirement to conduct an internal inspection looking for third-party damage because it is ineffective. Equitable opposed pressure testing for third-party damage detection asserting there is no technical justification. These and many other commenters opposed the proposal to utilize an assessment tool to identify third-party damage. Commenters agreed that direct assessment is the number one tool for assessing third-party damage. Numerous commenters, including Enron and the Northeast Gas Association, argued that prevention is the best approach and urged RSPA/OPS to champion efforts to eliminate exemptions to the various state one-call programs.

AGA proposed a set of additional preventive and mitigative measures as assessment methods for addressing external and internal corrosion and third-party damage for pipelines operating below 30% SMYS and not in HCAs but in Class 3 and 4 locations. Again, numerous commenters supported these additional preventive and mitigative measures including NiSource, Laclede Gas, and the Association of Texas Intrastate Natural Gas Pipelines.

Several comments related to the proposal to install automatic shut-off valves and remote control valves as potential risk mitigative measures. None of those commenters supported their use. PSE&G asserted there is no technical justification for their use and Enron asserted that it has been demonstrated that these valves provide no additional safety benefit. Panhandle Eastern referenced a Gas Research Institute Report which, according to Panhandle Eastern, concludes that the cost of installing the valves is not justified by the limited benefit.

One company commented that its leak detection system would be effective on gas pipeline systems and asked that RSPA review the system for potential use on natural gas pipelines to better monitor leaks.

Response: The final rule incorporates additional requirements to help prevent accidents caused by third-party damage, including requiring participation by pipeline operators in one-call systems. We have not included the proposed requirement to conduct assessments specifically to evaluate possible third-party damage.

The rule also incorporates additional prevention and mitigation requirements for low-stress pipelines that are located in Class 3 and 4 areas but not HCAs. This was not an issue in the proposed rule, because all Class 3 and 4 areas would have been defined as HCAs. The revised definition for HCAs included in the final rule will mean that some pipeline in populated areas (*i.e.*, Class 3 and 4) will not be determined to be in HCAs. RSPA/OPS agrees with AGA that it is appropriate that additional measures be implemented in these populated areas to protect the pipeline. The final rule incorporates the provisions recommended by AGA.

With respect to automatic and remotely-operated shut-off valves, RSPA/OPS acknowledges generic work, some sponsored by RSPA/OPS that concluded that installation of such valves is usually not cost-beneficial. The conclusions of those studies were based, however, on generic, average conditions. It is possible that conditions particular to individual pipeline segments in HCAs may change this conclusion, making it appropriate to install or modify valves. The rule requires operators to make this determination and to install a valve if it would be an efficient means of adding protection to a high consequence area in the event of a gas release. RSPA/OPS does not expect that operators will perform detailed technical analyses that duplicate the work done in the generic studies. Instead, operators will use the generic work as a starting point and then evaluate whether the generic conclusions are applicable to their high consequence area pipeline segments. The results of this evaluation must be documented for review during RSPA/OPS inspections.

As for the leak detection system the commenter described, RSPA/OPS does not require that operators install particular safety systems, nor does it endorse them. Vendors who believe their systems will allow companies to meet requirements of this rule in a cost-effective manner should approach pipeline operators directly.

10. Methods To Measure Program Effectiveness—§ 192.941 (Formerly §§ 192.763(c)(5) and 192.763(l))

Reporting requirements associated with the proposed rule generated a number of comments, most in opposition to the proposed requirements. Proposed requirements included an operator making accessible in real time the four overall performance measures and the additional performance measures, if trying to qualify for exceptional performance under the performance-based option.

New Jersey Natural Gas Company and New York State Department of Public Service commented that a rule will need to clarify "real time." Northeast Gas Association also requested a definition and clarification of what is meant by "real time" and suggested that we use the performance measures identified in Section 9.4 of ASME/ANSI B31.8S instead of those in the proposed rule.

Many commenters, including Nicor Gas, Kern River, and Consumers Energy, opposed the use of "real time" accessibility to performance data and suggested alternatives ranging from quarterly to annually. El Paso suggested a web-based reporting system and PECO was concerned about security of database systems housing this data.

Numerous commenters supported INGAA's proposal about how to make the collection of data on performance measures more efficient and reflective of the effectiveness of an integrity management program. INGAA proposed that real time mean on a quarterly basis for reporting the number of miles assessed and the number of repairs. In addition INGAA recommended that information fields be added to the Annual report form submitted by gas transmission operators to track and compare the number of leaks eliminated or repaired in HCAs with those not in HCAs.

Response: RSPA/OPS has eliminated the requirement for operators to post performance measures in a manner that would allow regulators to access them electronically in real time. Instead, the general performance measures (which are those specified in Section 9.4 of ASME/ANSI B31.8S) must be submitted to OPS semi-annually. This periodicity results from discussions at the public meetings held during the comment period and with the Technical Pipeline Safety Standards Committee, and is consistent with the recommendation adopted by the committee. RSPA/OPS will compile this information and make it available electronically to other pipeline safety officials and to the public.

Other suggestions by INGAA concerned forms that were not part of the rulemaking. We will consider these suggestions and if the forms should be revised to incorporate fields for the data.

11. Information for Local Officials and the Public

The proposed rule did not propose that operators provide information to the public. The proposed rule proposed that an operator have a means to provide a copy of its integrity management program to a State with which OPS has an interstate agent agreement and a communications plan that included a process for addressing safety concerns raised by OPS or an interstate agent. These requirements were mandated by statute. The notice further proposed that the performance measures be provided in real time to state pipeline safety officials.

At the advisory committee meeting, the Committee noted that State authorities need to be aware of these reports for intrastate pipelines, and for interstate pipelines in states in which the State acts as an interstate agent.

Carol Parker suggested that a requirement should be included to notify people who frequent areas where pipelines are not inspected.

Cook Inlet Keeper commented that the four overall performance measures that OPS proposed an operator maintain (*i.e.*, the measures in Section 9.4 of ASME/ANSI B31.8S standard), should be made available to the public in a web-based analyzable format. In addition, Cook Inlet suggested providing other information such as the primary threats to covered segments, the assessment tools and their schedules, along with other non security-related data.

Similarly, the Inline Inspection Association suggested that operators should be required to report to OPS certain information from their plans, including segments to be inspected, diameters, potential threats, and planned assessment methods. OPS should then make this information available to the public to allow the inline inspection industry to develop and procure the appropriate tools and train personnel to provide the needed services.

Accufacts asserted that a rule should include "Right-to-Know" provisions, to include reporting specific information to RSPA/OPS such as mileage in HCAs and total mileage by Class area. Accufacts further commented that high consequence area information should be reported to state and local governmental agencies when requested.

As previously discussed, both the Washington State Advisory Committee on Pipeline Safety and the Washington City and County Pipeline Safety Consortium suggested that operators work with local cities or municipalities to identify additional HCAs within their territories. They asserted that cities and municipalities have the best information on facilities and on growth trends for their areas which would be beneficial in identifying HCAs.

The Iowa Utilities Board commented that the proposed rule appears to reserve all reporting and oversight for RSPA/OPS, with no recognition of the role played by the states. Iowa opined that the proposed rule recognizes only interstate pipelines, when by including all gas transmission pipelines within the scope of the rule, large numbers of transmission pipelines belonging to intrastate operators will be affected. Iowa suggested that the rule recognize the traditional role of state pipeline safety programs and their oversight of intrastate pipeline operators.

Industry commenters had many concerns about the security of providing information to the public. Consolidated Edison requested that OPS clarify how security will be maintained if the detailed information submitted by operators is made available to the public. Duke Energy contended that implementation of the proposed integrity management regulations have implications for national security that have not been considered or addressed. Duke Energy noted that at the public meeting in Houston, RSPA/OPS had agreed to look into how to control access to this information.

Response: RSPA/OPS agrees that information concerning gas transmission pipeline integrity management should be made available to the public. At the same time, RSPA/OPS agrees that there are issues, including security concerns, regarding how much information is provided. RSPA/OPS recognizes that not every state has laws to protect the release of proprietary or sensitive information. In the final rule, RSPA/OPS has tried to balance the need to know against the need to keep certain critical information secure. RSPA/OPS believes that the four performance measures an operator is required to include in its program (as specified in Section 9.4 of ASME/ANSI B31.8S) provide the appropriate level of information for members of the public to see how pipeline operators are doing in their integrity management program. The rule provides that operators submit this information to OPS semi-annually.

OPS will assemble this information and will make it available, on the internet, to the public and to state safety agencies.

RSPA/OPS does not consider it appropriate to collect additional information relevant to integrity management for public dissemination. RSPA/OPS will implement an inspection program to evaluate operator implementation of this rule. Those inspections will ensure that operators have proper commitment to integrity management, that they are scheduling and conducting their assessments as required, that they are using appropriate assessment methods, and that they are adequately integrating data. Regulators will take enforcement action when appropriate, and records of such enforcement will be available to the public as they are now.

The pipeline safety statute (49 U.S.C. 60109) requires that an operator provide a copy of its risk assessment and integrity management program to an interstate agent. Although we recognize an operator's security concerns with providing this information, we must include the requirement with respect to interstate agents. We recognize the role of State pipeline safety authorities with respect to intrastate transmission pipeline. But because of the comments and concerns about security and protecting this information, we do not want to require that operators also provide the States this information on intrastate pipelines. Each State's laws vary and a State may not be able to protect this information from public release. We will look into a means of how RSPA/OPS can share this information with a state pipeline safety authority while ensuring the information is protected. However, the rule does provide that when a State regulates a covered pipeline segment within that State, an operator provide the State notice about changes made to the operator's integrity management program and when making a repair, the operator cannot meet the required schedule for repair and cannot temporarily reduce pressure or take other action to ensure the integrity of the pipeline.

As discussed above, RSPA/OPS agrees that local safety officials are key elements in the identification of HCAs, and has revised the final rule to so specify. OPS expects that the regular interaction between pipeline operators and those officials will also serve to increase local officials' level of knowledge regarding the operators' integrity management efforts.

It would be inappropriate to include requirements in a safety rule simply to elicit information that a vendor can use to develop its business.

12. Cost-Benefit Analysis

In the preamble of the proposed rule RSPA/OPS stated that it has never received comments from small gas transmission operators concerning the burdens of its regulations and that RSPA/OPS believed that the costs of its proposal would be proportionate to the amount of mileage the pipeline company operates. RSPA/OPS requested public input on any potential undue impact that this proposal would have on any small entities. (68 FR 4278, 4313.)

Very few commenters specifically addressed this question. Vectren stated there would be significant undue impacts associated with this new rule and provided estimated information relative to Vectren through 2013. Vectren's estimates showed in excess of 11% per year reductions in annual income through 2012. Similarly, the Iowa Utilities Board commented that burdens on small pipelines and operators should be minimized.

Carol Parker suggested that RSPA/OPS use the impact on the California economy in dollars to support the cost-benefit analysis of required inspection programs. Taking a somewhat opposing view, the Iowa Utilities Board asserted that the proposed requirements for pressure testing do not adequately recognize the tremendous social and economic consequences of interrupting service from the majority of intrastate pipelines. The Association of Intrastate Natural Gas Pipelines contended that the supply interruptions that may be caused by the rule have been understated, particularly during the period of any overlap. Questar asserted that RSPA/OPS has understated the true costs and this will be problematic if rate regulators adopt the RSPA/OPS analysis as a benchmark. New Jersey Natural Gas Company was concerned that the cost estimates for retrofitting are not accurate. INGAA provided a series of alternatives to the proposed regulations and provided their own estimates of savings associated with those changes.

The Energy Association of Pennsylvania estimated that over $2,341,000,000 will be saved if the baseline overlap is eliminated.

AGA estimated that over $1,100,000,000 will be saved if preventive and mitigative measures are used to perform reassessments along with the lengthened reassessment intervals provided in ASME/ANSI B31.8S.

Response: RSPA/OPS has made significant changes to the cost-benefit analysis. Included in these changes is full consideration of the impact of the Pipeline Safety Improvement Act of 2002. The Act significantly changed the regulatory environment in which the new rule will be implemented. The Act requires that gas transmission pipeline operators develop integrity management plans, perform risk analyses, and perform certain tests, including retests at specified intervals. These requirements forever change the regulatory landscape. The notice of proposed rulemaking was issued in January, only one month after the Act was signed into law. RSPA/OPS modified the notice to acknowledge that the law was passed and that it imposed some requirements, but RSPA/OPS had not taken time to analyze thoroughly the impacts the Act would have.

RSPA/OPS has since performed extensive analyses to consider the impacts of the Act and to evaluate ways to make the rule more cost-beneficial. RSPA/OPS has estimated the costs to implement the requirements in the Act, without modification, to be approximately $11 billion over 20 years. By comparison, we conclude the cost of implementing this rule will be $4.7 billion over the same period. The difference reflects changes made in this rule in the definition of HCAs (which will have the effect of reducing the amount of pipeline mileage that must be tested) and provisions for limited scope reassessments every seven years. The Act requires that pipelines be assessed every seven years. The Act further requires that these assessments be performed using one of three specified assessment methods or "an alternative method that the Secretary [of Transportation] determines would provide an equal or greater level of safety." The alternative methods included in this rule will reduce costs significantly over the cost of performing periodic assessments using only the methods specified in the Act. There is therefore a benefit in adopting this rule of approximately $6.2 billion in cost reduction for assuring pipeline integrity.

Benefits will also accrue in improved ability to site pipelines in certain critical markets. It is difficult to quantify this benefit, but RSPA/OPS believes it is real. Inability to site future pipelines could affect the Nation's ability to use the increased quantities of natural gas that the Energy Information Administration estimates will be needed to fuel our economy over the next 20 years.

The rule will significantly reduce the likelihood of pipeline accidents that result in deaths and serious injuries. Based on the historical record, RSPA/OPS has estimated this benefit to be on the order of $800 million over 20 years. It is quite likely, though, that future accidents could be worse than the historical experience. Population near pipelines is growing. This places more people at risk than in the past. While some historical accidents have resulted in several deaths and serious injuries, and significant property damage, accidents with even greater consequences could occur. RSPA/OPS has analyzed the likelihood that an accident could occur in an area along the pipeline that is more densely populated. Even though the amount of pipeline mileage along which such high population densities might be found is small (RSPA/OPS estimated 0.1% of total mileage for this analysis) the consequences of an accident are potentially large enough that the averted costs are still high. RSPA/OPS estimates that an additional $277 million is realized by avoiding the likelihood of this more significant accident.

The rule will also result in avoiding significant costs associated with unexpected interruptions in natural gas supply. The Carlsbad accident in 2000 resulted in curtailment of supply of natural gas to California. RSPA/OPS estimates that this resulted in an impact on the California economy of $17.25 million per day. The total benefit afforded by this rule in avoiding future economic impacts of this type is estimated to be $1 billion over the next 20 years.

Another benefit to be realized from implementing this rule is reduced cost to the pipeline industry for assuring safety in areas along pipelines with relatively more population. The improved knowledge of pipeline integrity that will result from implementing this rule will provide a technical basis for providing relief to operators from current requirements to reduce operating stresses in pipelines when population near them increases. Regulations currently require that pipelines with higher local population density operate at lower pressures. This is intended to provide an extra safety margin in those areas. Operators typically replace pipeline when population increases, because reducing pressure to reduce stresses reduces the ability of the pipeline to carry gas. Areas with population growth typically require more, not less, gas. Replacing pipeline, however, is very costly. Providing safety assurance in another manner, such as by implementing this rule, could allow RSPA/OPS to waive some pipe replacement. RSPA/OPS estimates that such waivers could result in a reduction in costs to industry of $1 billion over the next 20 years, with no reduction in public safety.

A more detailed discussion of how public comments were addressed in the revised cost-benefit analysis can be found in the final regulatory analysis.

The Final Rule

RSPA/OPS has created a new Subpart O in Part 192 for Pipeline Integrity Management and reformatted the rule into sections analogous to existing Part 192 rules. RSPA/OPS recognizes that a simple format and clarity are important features to assist pipeline operators in using and complying with each requirement.

Section 192.901 What Do the Regulations in This Subpart Cover?

The new Subpart O prescribes minimum requirements for an integrity management program on gas transmission pipelines that could affect an HCA. HCAs are defined in § 192.903, and § 192.905 describes how an operator identifies these areas. Section 192.905 is based on the recent guidance RSPA/OPS issued on how to identify these areas. The definitions of *gas* and *transmission pipeline* are found in § 192.3. This final rule does not apply to gas gathering pipelines or to gas distribution pipelines. Because most of the requirements are applicable to metal pipelines, not plastic, only certain requirements apply to plastic gas transmission pipelines. Requirements for a continuing threat analysis (§§ 192.917, 192.937), a baseline assessment if a threat other than third-party damage is identified (§ 192.921), and additional preventive and mitigative measures (§ 192.935) apply to plastic gas transmission pipelines.

Section 192.903 What Definitions Apply to This Subpart?

In the final rule RSPA/OPS has made changes to the definitions in the new § 192.903 based on the petition for reconsideration, written comments in the docket, comments received at post-NPRM public meetings and the recommendations given by the gas advisory committee. The proposed definitions *Potential Impact Zone, Threshold Radius,* and *Moderate Risk Areas* have been deleted. New definitions of *Assessment, Covered pipeline segment, Identified site,* and *Remediation* have been added.

The *High consequence area* definition was modified to allow an operator two methods to identify the areas.

In method (a) high consequence areas are—

1. Current Class 3 location;
2. Current Class 4 location;
3. Any areas areas outside a Class 3 or 4 location where the Potential Impact Radius is greater than 660 feet (200 meters), and the area within a Potential Impact Circle contains 20 or more buildings intended for human occupancy. However, if the radius of the Potential Impact Circle is greater than 660 feet (200 meters), the operator may identify a high consequence area based on a prorated number of buildings intended for human occupancy within a distance 660 feet (200 meters) from the centerline of the pipeline until December 17, 2006. If an operator chooses this approach, the operator must prorate the number of buildings intended for human occupancy based on the ratio of an area with a radius of 660 feet (200 meters) to the area of the Potential Impact Circle (*i.e.*, the prorated number of buildings intended for human occupancy is equal to [20 × (660 feet [or 200 meters]/Potential Impact Radius in feet [or meters])^2]).
4. The area within a Potential Impact Circle containing an identified site.

In method (b) high consequence areas are—

1. The area within a Potential Impact Circle containing 20 or more buildings intended for human occupancy, (unless the exception described above in method (a) applies);
2. The area within a Potential Impact Circle containing an identified site.

When a Potential Impact Circle is calculated under either of the methods to establish a high consequence area, the length of the high consequence area extends axially along the length of the pipeline from the outermost edge of the first Potential Impact Circle that contains an identified site or 20 or more buildings intended for human occupancy to the outermost edge of the last contiguous Potential Impact Circle that contains either an identified site or 20 or more buildings intended for human occupancy. Appendix E, Figure E.I.A gives a graphic representation.

The identified site component of the high consequence area definition was also modified to distinguish between rural buildings and outside open areas and to simplify the identification process. An identified site is an area meeting one of three criteria—

1. An outside area or open structure that is occupied by twenty (20) or more persons on at least 50 days in any twelve (12) month period (the days need not be consecutive). Examples included in the definition are beaches, playgrounds, recreational facilities, camping grounds, outdoor theaters, stadiums, recreational areas near a body of water, or areas outside a rural building such as a religious facility, or

2. A building that is occupied by twenty (20) or more persons on at least five (5) days a week for ten (10) weeks in any twelve (12) month period (the days and weeks need not be consecutive). Examples included in the definition are religious facilities, office buildings, community centers, general stores, 4–H facilities, and roller rinks.

3. A facility occupied by persons who are confined, are of impaired mobility, or would be difficult to evacuate. Examples included in the definition are hospitals, prisons, schools, day-care facilities, retirement facility and assisted-living facilities.

Section 192.905 How Does an Operator Identify a High Consequence Area?

An operator is required to select method (a) or method (b) from the definition in § 192.903 to identify a high consequence area. One method may be applied to an entire pipeline system, or the methods may be applied individually to portions of the pipeline system. An operator has to describe in its integrity management program which method is applicable for each portion of the operator's system, and show the Potential Impact Radius when utilized for each covered segment. The rule also includes guidance in Appendix E.I. on identifying HCAs.

This section also prescribes how an operator must identify HCAs that include "identified sites." The rule is consistent with the advisory bulletin RSPA/OPS recently issued (68 FR 42458). An operator identifies an identified site from information the operator has obtained from routine operation and maintenance activities and from public officials with safety or emergency response or planning responsibilities who indicate to the operator that they know of locations that meet the identified site criteria. These public officials could include officials on a local emergency planning commission or relevant Native American tribal officials.

The rule further provides that if a public official with safety or emergency response or planning responsibilities informs an operator that she/he does not have the information to identify an identified site, the operator is required to use one of several listed sources, as appropriate, to identify these sites. The listed sources include—

1. Visible marking (*e.g.*, a sign); or

2. The site is licensed or registered by a Federal, State, or local government agency; or

3. The site is on a list (including a list on an Internet Web site) or map maintained by or available from a Federal, State, or local government agency and available to the general public.

The rule provides requirements for identifying new HCAs. When an operator has information that the area around a pipeline segment not previously identified as a high consequence area could satisfy any of the definitions of a high consequence area (as defined in § 192.903), the operator must complete the evaluation using identification method (1) or (2). If the segment is determined to meet the definition as a high consequence area, then it must be incorporated into the operator's baseline assessment plan as a high consequence area within one year from the date the area is identified.

Section 192.907 What Must an Operator Do To Implement This Subpart?

The rule requires that no later than December 17, 2004, an operator must develop and follow a written integrity management program that contains all the elements described in § 192.911 and that addresses the risks on each covered transmission pipeline segment. The one-year time frame is based on the statutory requirement to issue regulations requiring an operator to conduct a risk analysis and adopt an integrity management program no later than December 17, 2004. Initially, the integrity management program can consist of a framework that describes the process for implementing each program element, how relevant decisions will be made and by whom, a time line for completing the work to implement the program element, and how information gained from experience will be continuously incorporated into the program. The framework will evolve into a more detailed and comprehensive program. An operator must make continual improvements to the program.

The rule requires an operator to follow ASME/ANSI B31.8S, and its appendices, where specified, as well as the requirements in Subpart O in implementing its integrity management program. ASME/ANSI B31.8S, the Supplement to ASME/ANSI B31.8, is an industry consensus standard that specifically addresses system integrity of gas pipelines. The rule allows an operator to follow an equivalent standard or practice only when the operator demonstrates the alternative standard or practice provides an equivalent level of safety to the public and property. The rule clarifies that in the event of a conflict between Subpart O and ASME/ANSI B31.8S, the requirements in Subpart O control.

Section 192.909 How Can an Operator Change Its Integrity Management Program?

The rule requires that prior to implementing any change to its program, an operator must document the change and the reasons for the change, and notify OPS within 30 days after the operator adopts the change into its program. The notification is required for any change to the program that—

- May substantially affect the program's implementation; or
- May significantly modify the program or schedule for carrying out the program elements.

An operator must also notify a State or local pipeline safety authority when a covered segment is located in a State where OPS has an interstate agent agreement and a State or local pipeline safety authority that regulates a covered pipeline segment within that State.

Section 192.911 What Are the Elements of an Integrity Management Program?

The rule requires an operator to include certain minimum elements in its integrity management program. Minimum elements are those listed in the rule and when referenced in the rule those in the ASME/ANSI B31.8S standard. The Supplement to ASME/ANSI B31.8 is an industry standard that specifically addresses system integrity of gas pipelines. The required program elements include:

- An identification of all high consequence areas.
- A baseline assessment plan. Requirements governing these plans are in § 192.919 and § 192.921.
- An identification of threats to each covered pipeline segment, which must include data integration and a risk assessment to evaluate the failure likelihood of each covered segment. An operator must use the threat identification and risk assessment to prioritize covered segments for assessment (§ 192.917) and to evaluate the merits of additional preventive and mitigative measures (§ 192.935) for each covered segment.
- A direct assessment plan, if the operator is going to use direct assessment. The plan must comply with § 192.923, and depending on the threat assessed, with § 192.925 (external corrosion), § 192.927 (internal corrosion), or § 192.929 (stress corrosion cracking).
- Provisions for remediating conditions found during an integrity assessment. (§ 192.933.)
- A process for continual evaluation and assessment. (§ 192.937.)

- A plan for confirmatory direct assessment (§ 192.931) if the operator plans to use this method for reassessment.
- Provisions for adding preventive and mitigative measures to protect the high consequence area. (§ 192.935.)
- A performance plan as outlined in Section 9 of ASME/ANSI B31.8S that includes the required performance measures in § 192.943.
- Record keeping provisions (§ 192.947).
- A management of change process as outlined in Section 11 of ASME/ANSI B31.8S.
- A quality assurance process as outlined in Section 12 of ASME/ANSI B31.8S.
- A communication plan that includes the elements of Section 10 of ASME/ANSI B31.8S, and that includes procedures for addressing safety concerns raised by (1) OPS; and (2) a State or local pipeline safety authority when a covered segment is located in a State where OPS has an interstate agent agreement. This process for addressing safety concerns raised by interstate agents is a requirement imposed by statute.
- Procedures for providing (when requested), by electronic or other means, a copy of the operator's risk analysis or integrity management program to OPS or to a State or local pipeline safety authority when a covered segment is located in a State where OPS has an interstate agent agreement. This requirement to provide the information to an interstate agent is imposed by statute.
- Procedures for ensuring that each integrity assessment is being conducted in a manner that minimizes environmental and safety risks.
- A process for identification and assessment of newly-identified high consequence areas.(§ 192.905 and § 192.921)

Section 192.913 When May an Operator Deviate Its Program From Certain Requirements of This Subpart and Use a Performance-Based Option?

ASME/ANSI B31.8S allows an operator to deviate from some specific provisions of the standard if the operator has a mature integrity management program that addresses the intent of those provisions in a different manner. This is called a performance-based program, as compared to a prescriptive program (*i.e.*, one meeting the literal provisions of the standard). The rule describes the essential features of a performance-based or a prescriptive integrity management program. The rule allows an operator to deviate from certain integrity management program requirements if it has a performance-based program that has demonstrated exceptional performance.

To qualify for exceptional performance an operator must—

- Have completed at least two integrity assessments of all covered pipeline segments.
- Be able to demonstrate that each assessment effectively addressed the identified threats on the covered segments.
- Remediate all anomalies identified in the more recent assessment according to the remediation requirements in the rule. The remediation requirements are set forth in § 192.933.
- Incorporate the results and lessons learned from the more recent assessment into the operator's data integration and risk assessment.
- Have a performance-based integrity management program that meets or exceeds the performance-based requirements of ASME/ANSI B31.8S, and includes certain minimum elements. The minimum elements are: (1) A comprehensive process for risk analysis; (2) all risk factor data used to support the program; (3) A comprehensive data integration process; (4) A procedure for applying lessons learned from assessment of covered pipeline segments to non covered pipeline segments. A covered segment is one within the scope of Subpart O; (5) A procedure for evaluating incidents within the operator's sector of the pipeline industry for implications both to the operator's pipeline system and to the operator's integrity management program; (6) A performance matrix that demonstrates the program has been effective in ensuring the integrity of the covered segments by controlling the identified threats to the covered segments; (7) Semi-annual performance measures beyond those required in § 192.943 that are part of the operator's performance plan (see § 192.911(i)); and (8) An analysis that supports the desired integrity reassessment interval and the remediation methods to be used for all covered segments.

Once an operator has demonstrated that it has satisfied the requirements for exceptional performance, the operator may deviate from the prescriptive requirements of ASME/ANSI B31.8S and of Subpart O in two instances:

- The time frame for reassessment as provided in § 192.939 except that reassessment by an allowable method (*e.g.*, confirmatory direct assessment) must be carried out at intervals no longer than seven years; and
- The time frame for remediation as provided in § 192.933, as long as the operator demonstrates that the revised time frame will not jeopardize the safety of the covered segment.

Section 192.915 What Knowledge and Training Must Personnel Have To Carry Out an Integrity Management Program?

The rule has requirements for supervisory personnel and for other personnel with integrity management program functions. These requirements apply to both personnel employed by the operator and contractor personnel used to perform integrity management program functions.

For supervisory personnel, the integrity management program must provide that each supervisor whose responsibilities relate to the integrity management program possesses and maintains a thorough knowledge of the integrity management program and of the elements for which he or she is responsible. The program must provide that any person who qualifies as a supervisor for the integrity management program has appropriate training or experience in the area for which the person is responsible.

The integrity management program must provide criteria for the qualification of any person

- Who conducts assessments;
- Who reviews and analyzes the results from an integrity assessment; or
- Who makes decisions on actions to be taken based on these assessments.

The program must also include criteria for the qualification of persons

- Who implement preventive and mitigative measures to carry out the requirements of the rule, including the marking and locating of buried structures; or
- Who directly supervise excavation work carried out in conjunction with an integrity assessment.

Section 192.917 How Does an Operator Identify Potential Threats to Pipeline Integrity and Use the Threat Identification in Its Integrity Program?

The rule requires that an operator's integrity management program begin with an identification of the potential threats to which the pipeline is subjected. The program then is constructed to deal with those threats.

Threat identification. The rule requires an operator to identify and evaluate all potential threats to each covered pipeline segment. These potential threats include, but are not limited to:

- The threats listed in Section 2 of ASME/ANSI B31.8S and
- Time dependent threats such as internal corrosion, external corrosion, and stress corrosion cracking;

- Static or resident threats, such as fabrication or construction defects;
- Time independent threats such as third-party damage and outside force damage; and
- Human error.

Data gathering and integration. The rule requires that to identify and evaluate the potential threats to a covered pipeline segment, an operator must gather and integrate data and information concerning the entire pipeline that could be relevant to the covered segment. Section 4 of ASME/ANSI B31.8S provides requirements for performing this data gathering and integration, and the operator must follow those requirements. At a minimum, an operator has to gather and evaluate the set of data specified in Appendix A to ASME/ANSI B31.8S, and consider both on the covered segment and similar non-covered segments, past incident history, corrosion control records, continuing surveillance records, patrolling records, maintenance history, internal inspection records and all other conditions specific to each pipeline.

Risk assessment. The rule requires an operator to conduct a risk assessment that follows Section 5 of ASME/ANSI B31.8S and considers the identified threats for each covered segment, and then use the risk assessment to prioritize the covered segments for the baseline and continual reassessments (§§ 192.919, 192.921, 192.937), and to determine what additional preventive and mitigative measures are needed (§ 192.935).

On a plastic transmission pipeline, an operator has to conduct a threat analysis to the covered segments by using data on threats unique to plastic pipe, and information in Sections 4 and 5 of ASME/ANSI B31.8S. A good source of data information may be found in plastic pipe database collection (PPDC) with AGA.

Particular threats. The rule requires that an operator take specific actions to address particular threats the operator has identified. Those threats, and the required actions, are for third-party damage, cyclic fatigue, manufacturing and construction defects, ERW or lap welded pipe, and corrosion. These threats have been identified for specific action because of their significance to pipeline integrity and because the unique operational characteristics of gas transmission pipelines dictate that they be treated uniquely. The primary difference in the operation of gas transmission pipeline related to these defects is the absence of significant pressure cycling and the associated absence of the cyclic fatigue driving force for crack growth. The absence of significant cyclic fatigue implies that the failure of pipelines from these threats has unique causes that need to be addressed in an integrity management program for gas transmission pipelines.

An operator must utilize the required data integration and Appendix A7 of ASME/ANSI B31.8S to determine the susceptibility of each covered segment to the threat of third-party damage. If an operator identifies the threat of third-party damage, the operator—

- Must implement comprehensive additional preventive measures in accordance with § 192.935 and monitor the effectiveness of the preventive measures.
- If, in conducting a baseline assessment under § 191.921 or a reassessment under § 192.937, an operator uses an internal inspection tool, such as a caliper, geometry or magnetic flux leakage tool to address other identified threats on the covered segment, the operator must integrate data from these tool runs with data related to any encroachment or foreign pipeline crossing on the covered segment, to define where potential indications of third-party damage may exist in the covered segment.
- Have a procedure in its integrity management program addressing actions it will take in response to findings from this data integration.

The rule requires an operator to evaluate whether cyclic fatigue or other loading conditions (including ground movement, suspension bridge condition) could lead to a failure of a deformation, including a dent or gouge, or other defect in the covered segment. The evaluation must include an assumption that there are threats in the covered segment that could be exacerbated by cyclic fatigue. An operator must use the results from the evaluation together with the criteria used to evaluate the significance of this threat to the covered segment and to prioritize the integrity assessment.

The rule requires that if an operator identifies the threat of manufacturing and construction defects (including seam defects) in the covered segment, the operator must analyze the covered segment to determine the risk of failure from these mechanisms. Manufacturing and construction related defects are considered to be stable defects if the operating conditions have not significantly changed since December 17, 1998, since successful operation demonstrates that the defects do not threaten pipeline integrity. Changes in operating conditions, such as a significant increase in pressure, could cause latent defects to grow. Therefore, if the pipeline operating conditions change such that operating pressure will be above the historic operating pressure, if MAOP increases, or if stresses that could lead to cyclic fatigue increase, the operator must treat the covered segment as a high-risk segment.

If a covered pipeline segment contains low frequency electric resistance welded pipe (ERW) or lap welded pipe that satisfies the conditions specified in Appendix A4.3 and A4.4 of ASME/ANSI B31.8 S, the rule requires an operator to select an assessment technology or technologies capable of assessing seam integrity and of detecting seam corrosion anomalies. The operator must prioritize the covered segment as a high risk segment for the baseline assessment or reassessment. If an operator finds corrosion on a covered pipeline segment that could adversely affect the integrity of the pipeline; the operator has to evaluate and remediate, as necessary, all pipeline segments (both covered and non-covered) where similar corrosion might be found (*i.e.*, with similar material coating and environmental characteristics). The evaluation and remediation, if remediation is needed, must be completed in a time frame consistent with the operator's operation and maintenance procedures under part 192 for required testing and repair.

Section 192.919 What Must Be in the Baseline Assessment Plan?

Each operator's integrity management program must contain a baseline assessment plan that has certain elements. These elements are—

(a) Identification of the potential threats to each covered pipeline segment and the information supporting the threat identification. Requirements are in § 192.917.

(b) The methods selected to assess the integrity of the line pipe, including an explanation of why the assessment method was selected to address the identified threats affecting each covered segment. The methods allowed are listed in § 192.921 and include internal inspection, pressure test, direct assessment or alternative equivalent technology. More than one method may be required to address all the threats to the covered pipeline segment;

(c) A schedule for completing the integrity assessment of all covered segments, including the risk factors considered in establishing the assessment schedule;

(d) If an operator plans to use direct assessment, a direct assessment plan that complies with the requirements in § 192.923, and depending on the threat for which direct assessment is used, § 192.925 (external corrosion), § 192.927 (internal corrosion), or § 192.929 (stress corrosion cracking).

(e) A procedure to ensure that the baseline assessment is conducted in a manner that minimizes environmental and safety risks.

Section 192.921 How Is the Baseline Assessment To Be Conducted?

The rule requires an operator assess the integrity of the line pipe in each covered segment by using one or more of the allowable assessment methods. An operator has to select the method or methods best suited to address the threats identified for each covered segment. Threat identification requirements are in § 192.917. The methods the rule allows are:

(1) Internal inspection tool or tools capable of detecting corrosion, and any other threats to which the covered segment is susceptible. An operator must follow Section 6.2 of ASME/ANSI B31.8S in selecting the appropriate internal inspection tools for the covered segment.

(2) Pressure test conducted in accordance with Subpart J of 49 CFR Part 192;

(3) Direct assessment for the threats of external corrosion, internal corrosion, and stress corrosion cracking. An operator must conduct the direct assessment in accordance with the requirements listed in § 192.923 and with, as applicable, the requirements specified in §§ 192.925, 192.927 or 192.929. Requirements depend on the threat the operator is using direct assessment to address.

(4) Other technology that an operator demonstrates can provide an equivalent understanding of the condition of the line pipe. An operator intending to use other technology must notify the Office of Pipeline Safety (OPS) in accordance with the notification requirements in § 192.949, 180 days before conducting the assessment, so that OPS has an opportunity to review those intentions.

The rule requires an operator to prioritize the covered pipeline segments for the baseline assessment according to a risk analysis that considers the potential threats identified for each covered segment. The risk analysis must comply with the requirements in § 192.917. To choose an assessment method for the baseline assessment of each covered segment, an operator must take the actions required to address particular threats that it has identified. These actions are set forth in § 192.917.

The rule sets time periods for the baseline assessment. These time periods were set by statute. The statute requires that the baseline be completed not later than ten years after date of enactment (December 17, 2002) and at least 50% of the facilities assessed no later than five years after date of enactment. Thus, the rule requires an operator to assess at least 50% of the covered segments beginning with the highest risk segments, by December 17, 2007, and complete the baseline assessment of all covered segments by December 17, 2012.

The rule allows prior assessments conducted before the date the act mandating integrity management programs for gas operators was signed into law (December 17, 2002) to be used as baseline assessments. An operator may use a prior integrity assessment as a baseline assessment for the covered segment, if the integrity assessment meets the baseline requirements in Subpart O and the operator has taken subsequent remedial actions to address the conditions that are listed in § 192.933. However, if an operator uses this prior assessment as its baseline assessment, the operator must reassess the line pipe in the covered segment according to the reassessment requirements of §§ 192.937and 192.939. The reassessment of the covered segment must be done no later than December 17, 2009.

The rule requires that when an operator identifies a new high consequence area, the baseline assessment of the line pipe in that area be completed within 10 years from the date the area is identified.

On newly-installed pipe, a baseline assessment has to be done within ten years from the date the pipe is installed. If a post-installation pressure test has been conducted on the new pipe in accordance with Subpart J, that pressure test satisfies the baseline assessment requirement.

For plastic transmission pipelines an operator has to conduct a baseline assessment of a covered segment if the operator has identified a threat, other than third-party damage to the segment. The operator will have to justify the assessment method the operator intends to use.

Section 192.923 How Is Direct Assessment Used and for What Threats?

The rule allows an operator to use direct assessment either as a primary assessment method or as a supplement to the other assessment methods allowed under this subpart. If used as the primary assessment method, it can only be used to address the identified threats of external corrosion (ECDA), internal corrosion (ICDA), or stress corrosion cracking (SCCDA).

The rule requires an operator to have a direct assessment plan. The requirements for the plan depend on the threat being addressed. If addressing external corrosion, the plan must comply with the requirements in Section 6.4 of ASME/ANSI B31.8S: NACE RP0502–2002; and § 192.925. If addressing internal corrosion, the plan must comply with Section 6.4 and Appendix B2 of ASME/ANSI B31.8S, and § 192.927. And if direct assessment is used to address stress corrosion cracking, the plan must comply with Appendix A3 of ASME/ANSI B31.8S, and § 192.929.

If direct assessment is used as a supplemental assessment method the plan must follow the requirements for confirmatory direct assessment in § 192.931.

Section 192.925 What Are the Requirements for Using External Corrosion Direct Assessment (ECDA)?

This section specifies requirements an operator must follow in using External Corrosion Direct Assessment (ECDA). The rule defines ECDA as a four-step process that combines preassessment, indirect inspections, direct examination, and post assessment to evaluate the impact of external corrosion on the integrity of a pipeline.

The rule requires the operator to follow Section 6.4 of ASME/ANSI B31.8S, and NACE RP 0502–2002. The Supplement to ASME/ANSI B31.8 is an industry standard that specifically addresses system integrity of gas pipelines. The NACE standard is an industry recommended practice that addresses methodology for a pipeline external corrosion direct assessment. The rule requires an operator's direct assessment plan to have procedures addressing preassessment, indirect inspections, direct examination, and post-assessment. For all four steps, the procedures must provide for applying more restrictive criteria when conducting ECDA for the first time on a covered segment.

The preassessment procedures must follow the requirements in Section 6.4 of ASME/ANSI B31.8S and Section 3 of NACE RP 0502–2002, and also include the basis on which the operator selects at least two different, but complementary indirect assessment tools to assess each ECDA Region. If an operator utilizes an indirect inspection method that is not discussed in Appendix A of NACE RP0502–2002, the operator must demonstrate the applicability, validation basis, equipment used, application procedure and utilization of data for the inspection method.

The plans procedures for indirect examination must follow the requirements in Section 6.4 of ASME/ANSI B31.8S and Section 4 of NACE RP0502–2002, and include criteria for:

- Identifying and documenting those indications that must be considered for excavation and direct examination;
- For defining the urgency of excavation and direct examination of each indication identified during the direct examination; and
- For scheduling excavation of indications for each urgency level.

The procedures for direct examination must follow the requirements in Section 6.4 of ASME/ANSI B31.8S and Section 5 of NACE RP0502–2002, and include criteria for:

- Deciding what action should be taken if either corrosion defects are discovered that exceed allowable limits (Section 5.5.2.2 of NACE RP0502–2002), or root cause analysis reveals conditions for which ECDA is not suitable (Section 5.6.2 of NACE RP0502–2002);
- For any changes in the ECDA Plan, including changes that affect the severity classification, the priority of direct examination, and the time frame for direct examination of indications; and
- That describe how and on what basis an operator will relax any of the criteria that NACE RP0502–2002 specifies can be relaxed.

The plan's procedures for post assessment of the effectiveness of the ECDA process must follow the requirements in Section 6.4 of ASME/ANSI B31.8S and Section 6 of NACE RP0502–2002, and also include measures for evaluating the long-term effectiveness of ECDA in addressing external corrosion in covered segments and criteria for evaluating whether conditions discovered by direct examination of indications in each ECDA region indicate a need for reassessment of the covered segment at an interval less than that specified in § 192.939. (Appendix D of NACE RP0502–2002 provides guidance for performing this evaluation).

Section 192.927 What Are Requirements for Using Internal Corrosion Direct Assessment (ICDA)?

This section specifies requirements an operator must follow in using Internal Corrosion Direct Assessment (ICDA). An operator must follow the requirements in Section 6.4 and Appendix B2 of ASME/ANSI B31.8S, as well as those listed in this section. The ICDA process described in this rule applies only for a segment of pipe transporting nominally dry natural gas and not for a segment with electrolyte nominally present in the gas stream. If an operator uses ICDA to assess a covered segment operating with electrolyte present in the gas stream, the operator must develop a plan that demonstrates how it will conduct ICDA in the segment to effectively address internal corrosion.

The rule defines ICDA as a process an operator can use to identify areas along the pipeline where fluid or other electrolyte that might be introduced during normal operation or by an upset condition may reside. ICDA then focuses direct examination on the locations in each area where internal corrosion is most likely to exist. The process identifies the potential for internal corrosion caused by microorganisms, or fluid with CO_2, O_2, hydrogen sulfide or other contaminants present in the gas.

The rule requires that an operator's ICDA plan must provide for preassessment, identification of ICDA regions and excavation locations, detailed examination of pipe at excavation locations, and post-assessment evaluation and monitoring.

In the preassessment stage, an operator must gather and integrate data and information needed to evaluate the feasibility of ICDA for the covered segment, to identify the locations in the covered segment where electrolyte may accumulate, to identify ICDA regions within the covered segment, and to support the use of a model to identify areas within the covered segment where liquids may potentially be entrained. This data and information includes, but is not limited to—

- All data elements listed in Appendix A2 of ASME/ANSI B31.8S.
- Information needed to support use of a model that an operator must use to identify areas along the pipeline where internal corrosion is most likely to occur. This information, includes, but is not limited to, location of all gas input and withdrawal points on the pipeline; location of all low points on covered segments such as sags, drips, inclines, valves, manifolds, dead-legs, and traps; the elevation profile of the pipeline in sufficient detail that angles of inclination can be calculated for all pipe segments; and the diameter of the pipeline, and the range of expected gas velocities in the pipeline.
- Operating experience data that would indicate historic upsets in gas conditions, locations where these upsets have occurred, and potential damage resulting from these upset conditions.
- Identification of covered segments where cleaning pigs may not have been used or where cleaning pigs may deposit electrolytes.

The plan must define all ICDA Regions within each covered pipeline segment. An ICDA region extends from the location where liquid may first enter the pipeline and encompasses the entire area along the pipeline where internal corrosion may occur and where further evaluation is needed. In the identification process, an operator must use the model in GRI 02–0057 "Internal Corrosion Direct Assessment of Gas Transmission Pipelines—Methodology" or an equivalent model if the operator demonstrates it is equivalent to the GRI model. A model must consider changes in pipe diameter, locations where gas enters a pipeline (potential to introduce liquid) and locations downstream of gas draw-offs (where gas velocity is reduced) to define the critical pipe angle of inclination above which water film cannot be transported by the gas.

An operator's plan must identify the locations where internal corrosion is most likely in each ICDA region. In the location identification process, an operator must identify a minimum of two locations for excavation within each ICDA Region and must perform a direct examination for internal corrosion at each location, using ultrasonic thickness measurements, radiography, or other generally accepted measurement techniques. One location must be the low point (*e.g.*, sags, drips, valves, manifolds, dead-legs, traps) nearest to the beginning of the ICDA Region, and the second must be at the upstream end of the pipe containing a covered segment, having a slope not exceeding the critical angle of inclination nearest the end of the ICDA Region. If corrosion exists at either location, the operator must evaluate the severity of the defect (remaining strength) and remediate the defect in accordance with § 192.933; as part of the operator's current integrity assessment either perform additional excavations in covered segments within the ICDA region or use an alternative allowed assessment method to assess the line pipe in the covered segment for internal corrosion; and evaluate the potential for internal corrosion in all pipeline segments (both covered and non-covered) in the operator's pipeline system with similar characteristics to the covered segment in which the corrosion was found, and as appropriate, remediate the conditions the operator finds in accordance with § 192.933.

An operator's plan must provide for evaluating the effectiveness of the ICDA process and continued monitoring of covered segments where internal corrosion has been identified. The evaluation and monitoring process includes:

- Evaluating the effectiveness of ICDA as an assessment method for addressing internal corrosion and determining whether a covered segment should be reassessed at more frequent intervals than those specified in § 192.939. This evaluation must be carried out in the same year in which ICDA used.
- Continually monitoring each covered segment where internal corrosion has been identified using techniques such as coupons, UT sensors or electronic probes, periodically drawing off liquids at low points and chemically analyzing the liquids for the presence of corrosion products. An operator must base the frequency of the monitoring and liquid analysis on results from all integrity assessments that have been conducted in accordance with the integrity management program rule, and risk factors specific to the covered segment. If an operator finds any evidence of corrosion products in the covered segment, the operator must take one of two required actions and remediate the conditions the operator finds in accordance with § 192.933. These actions are to conduct excavations of covered segments at locations downstream from where the electrolyte might have entered the pipe, or to assess the covered segment using another integrity assessment method allowed by this subpart.

The ICDA plan must also include criteria an operator will apply in making key decisions (*e.g.*, ICDA feasibility, definition of ICDA Regions, conditions requiring excavation) in implementing each stage of the ICDA process, and provisions for applying more restrictive criteria when conducting ICDA for the first time on a covered segment and that become less stringent as the operator gains experience and for carrying out an analysis on the entire pipeline in which covered segments are present, but limiting excavation and remediation to the covered segments.

Section 192.929 What Are the Requirements for Using Direct Assessment for Stress Corrosion Cracking (SCCDA)?

This section specifies requirements an operator must follow in using direct assessment for stress corrosion cracking (SCCDA) which is defined as a process to assess a covered pipe segment for the presence of SCC primarily by systematically gathering and analyzing excavation data for pipe having similar operational characteristics and residing in a similar physical environment.

The rule provides that an operator's direct assessment plan to identify this threat must at least provide for a systematic process to collect and evaluate data for all covered segments to identify whether the conditions for SCC are present and to prioritize the covered segments for assessment. This process must include gathering and evaluating data related to SCC at all excavated sites during conduct of its operation where the criteria in Appendix A3.3 of ASME/ANSI B31.8S indicate the potential for SCC. This data includes at minimum, the data specified in Appendix A3 of ASME/ANSI B31.8S. The plan must further provide that if conditions for SCC are identified in a covered segment, the operator must assess the covered segment using an integrity assessment method specified in Appendix A3 of ASME/ANSI B31.8S, and remediate the threat in accordance with Appendix A3.4 of ASME/ANSI B31.8S.

Section 192.931 How May Confirmatory Direct Assessment (CDA) Be Used?

Confirmatory direct assessment (CDA) is used where external or internal corrosion is the threat of concern to the covered segment. An operator is allowed to use CDA as a method to reassess the line pipe in a covered segment at seven-year intervals. The rule provides that an operator's CDA plan for identifying external corrosion must comply with the requirements for external corrosion direct assessment in § 192.925 with the following exceptions.

- The procedures for indirect examination may allow for use of only one indirect examination tool suitable for the application.
- The procedures for direct examination and remediation must provide that all immediate action indications must be excavated for each ECDA region and that at least one high risk indication that meets the criteria of scheduled action must be excavated in each ECDA region.

An operator's CDA plan identifying internal corrosion must comply with the requirements for internal corrosion direct assessment in § 197.927 except that the plan's procedures for identifying locations for excavation may require excavation of only one high risk location in each ICDA region.

The premise behind CDA is that it is used to confirm the acceptable integrity of a pipeline, already ensured by assessments in accordance with ASME/ANSI B31.8S. If confirmation is not successful, *i.e.*, if problems are found, then an operator needs to take additional actions. If an assessment carried out using CDA reveals defects requiring remediation prior to the next scheduled assessment, the operator must schedule the next assessment at a time defined by the requirements in Section 6.2 and 6.3 of NACE RP 0502–2002. If the defect requires immediate remediation, then the operator must reduce pressure consistent with § 192.933 until it has completed reassessment using one of the assessment techniques allowed in § 192.937.

Section 192.933 What Actions Must Be Taken To Address Integrity Issues?

The rule requires an operator to take prompt action to address all anomalous conditions that the operator discovers through the integrity assessment. In addressing all conditions, an operator must evaluate all anomalous conditions and must remediate those that could reduce a pipeline's integrity. An operator must be able to demonstrate that the remediation of the condition will ensure that the condition is unlikely to pose a threat to the integrity of the pipeline until the next reassessment of the covered segment. The rule gives an operator an option if it is unable to respond within the specified time limits for certain conditions. The operator can either temporarily reduce the operating pressure of the pipeline or take other action that ensures the safety of the covered segment. If pressure is reduced, an operator must determine the temporary reduction in operating pressure of the pipeline using ASME/ANSI B31G or RSTRENG or the operator must reduce the operating pressure to a level not exceeding 80% of the level at the time the condition was discovered. A reduction in operating pressure cannot exceed 365 days without an operator providing a technical justification that the continued pressure restriction will not jeopardize the integrity of the pipeline.

Discovery of condition. It is important to know when a condition has been "discovered", because the time periods for remediation begin upon discovery. The rule provides that discovery of a condition occurs when an operator has adequate information about the condition to determine that it presents a potential threat to the integrity of the pipeline. An operator must promptly, but no later than 180 days after conducting an integrity assessment, obtain sufficient information about a condition to make that determination, unless the operator demonstrates that the 180-day period is impracticable.

Schedule for evaluation and remediation. The rule provides that an operator complete remediation of a condition according to a schedule that prioritizes the conditions for evaluation and remediation. Unless a special

requirement for remediating certain conditions applies (these are listed in the rule as immediate repair, one-year and monitored conditions), an operator must follow the schedule in Section 7, Figure 4 of ASME/ANSI B31.8S. If an operator cannot meet the schedule for any condition, the operator must justify the reasons why it cannot meet the schedule and that the changed schedule will not jeopardize public safety. An operator must notify OPS if it cannot meet the schedule and cannot provide safety through a temporary reduction in operating pressure or other action. An operator must also notify a State or local pipeline safety authority when a covered segment is located in a State where OPS has an interstate agent agreement, and a State or local pipeline safety authority that regulates a covered pipeline segment within that State.

Special requirements for scheduling remediation. The rule lists immediate repair conditions, one-year conditions and monitored conditions. If a condition is an immediate repair condition, the operator must either temporarily reduce operating pressure or shut down the pipeline until the repair is completed. The one-year period begins from when the condition is discovered. Certain dents on the top of the pipe are listed as one-year conditions. Monitored conditions are those that an operator must record and monitor during subsequent risk assessments and integrity assessments for any change that may require remediation.

Section 192.935 What Additional Preventive and Mitigative Measures Must An Operator Take To Protect the High Consequence Area?

The requirements in this section apply to all gas transmission pipelines, including plastic gas transmission pipelines. The rule requires an operator to take additional measures beyond those already required in Part 192 to prevent a pipeline failure and to mitigate the consequences of a pipeline failure in a high consequence area. An operator must base the additional measures on the threats the operator has identified to each pipeline segment. (Threat identification is in § 192.917.) The rule requires an operator to conduct, in accordance with one of the risk assessment approaches in Section 5 of ASME/ANSI B31.8S, a risk analysis of its pipeline to identify additional measures to protect the high consequence area and enhance public safety. Examples of additional measures listed in the rule are: installing Automatic Shut-off Valves or Remote Control Valves, installing computerized monitoring and leak detection systems, replacing pipe segments with pipe of heavier wall thickness, providing additional training to personnel on response procedures, conducting drills with local emergency responders and implementing additional inspection and maintenance programs. These are not the only measures an operator should consider or use.

The rule requires an operator to enhance its current damage prevention program required under § 192.614 with respect to a covered segment to prevent and minimize the consequences of a release due to third-party or outside force damage. The rule lists examples of enhanced damage prevention program measures. These are the minimum actions an operator can take to enhance its current program.

- Using qualified personnel for work an operator is conducting that could adversely affect the integrity of a covered segment, such as marking, locating, and direct supervision of known excavation work.
- Collecting in a central database information that is location specific on excavation damage that occurs in covered and non-covered segments in the transmission system and the root cause analysis to support identification of targeted additional preventative and mitigative measures in the high consequence areas. This information must include recognized damage that is not required to be reported as an incident under Part 191.
- Participating in one-call systems in locations where covered segments are present.
- Monitoring of excavations conducted on covered pipeline segments by pipeline personnel. When there is physical evidence of encroachment involving excavation near a covered segment, an operator must either excavate the area near the encroachment or conduct an above ground survey using methods defined in NACE RP–0502–2002. An operator must excavate, and remediate, in accordance with ASME/ANSI B31.8S and § 192.933 any indication of coating holidays or discontinuity warranting direct examination.

If an operator determines that outside force, such as earth movement, floods, or an unstable suspension bridge, is a threat to the integrity of a covered segment, the rule requires the operator to take measures to minimize the consequences to covered segments from outside force damage. The minimum measures an operator can take are: increasing the frequency of aerial, foot or other methods of patrols, adding external protection, reducing external stress, and relocating the pipeline.

The requirements for third-party damage and outside force damage also apply to plastic transmission pipelines.

The rule allows that there may be limited instances in which an operator will determine that installing an automatic shut off or remote control valve is necessary. The rule provides that if an operator determines, based on a risk analysis, that such a valve would be an efficient means of adding protection to a high consequence area in the event of a gas release, an operator must install the valve. In making that determination, an operator must, at least, consider the swiftness of leak detection and pipe shutdown capabilities, the type of gas being transported, operating pressure, the rate of potential release, pipeline profile, the potential for ignition, and location of nearest response personnel.

Because under the revised definition of a high consequence area, some low-stress pipelines may not be in a high consequence area, although the pipeline is in a populated area, the rule adds additional requirements for these pipelines. Thus, if a transmission pipeline operates below 30% SMYS and is located in a Class 3 or 4 area but not in a high consequence area, an operator must apply the enhanced third-party damage prevention requirements for using qualified personnel and participating on one-call centers to the pipeline and either monitor excavations near the pipeline, or conduct patrols of the pipeline at bi-monthly intervals. If an operator finds any indication of unreported construction activity, the operator must conduct a follow up investigation to determine if mechanical damage has occurred.

Section 192.937 What Is a Continual Process of Evaluation and Assessment To Maintain a Pipeline's Integrity?

After completing the baseline integrity assessment of a covered segment, the rule provides that an operator must continue to assess the line pipe of that segment at specified intervals (in § 192.939) and to periodically evaluate the integrity of each covered pipeline segment. If an operator had used a prior assessment as the baseline assessment, the reassessment must be done by no later than December 17, 2009. If a prior assessment is not used as the baseline, a reassessment of a covered segment must be done by no later than seven years after the baseline assessment of that covered segment unless the periodic evaluation indicates earlier reassessment.

The rule requires a periodic evaluation as frequently as needed to

ensure the integrity of each covered segment. The periodic evaluation must be based on a data integration and risk assessment of the entire pipeline. The data integration and risk assessment requirements are in § 192.917. For plastic transmission pipelines, the periodic evaluation is based on the threat analysis specified in § 192.917(d) considering the data on unique threats to a plastic pipeline. For all other transmission pipelines, the evaluation must consider the past and present integrity assessment results, data integration and risk assessment information, and decisions about remediation (§ 192.933) and additional preventive and mitigative actions (§ 192.935). An operator must use the results from this evaluation to identify the threats specific to each covered segment and the risk represented by these threats.

The rule allows several assessment methods for a reassessment. In conducting the integrity reassessment, an operator must assess the integrity of the line pipe in the covered segment by any of the following methods as appropriate for the threats to which the covered segment is susceptible (*see* § 192.917), or by confirmatory direct assessment under the conditions specified in § 192.931. The methods allowed for reassessment are—

- Internal inspection tool or tools capable of detecting corrosion, and any other threats to which the covered segment is susceptible. An operator must follow Section 6.2 of ASME/ANSI B31.8S in selecting the appropriate internal inspection tools for the covered segment.
- Pressure test conducted in accordance with Subpart J;
- Direct assessment to address threats of external corrosion and internal corrosion or stress corrosion cracking. An operator must conduct the direct assessment in accordance with the requirements listed in § 192.923 and with as applicable, the requirements specified in §§ 192.925 (external corrosion), 192.927 (internal corrosion) or 192.929 (stress corrosion cracking);
- Other technology that an operator demonstrates can provide an equivalent understanding of the condition of the line pipe. An operator choosing this option must notify the Office of Pipeline Safety (OPS) 180 days before conducting the assessment.
- Confirmatory direct assessment when used on a covered segment that is scheduled for reassessment at a period longer than seven years. An operator using this reassessment method must comply with § 192.931.

Section 192.939 What Are the Required Reassessment Intervals?

The required reassessment interval depends on the assessment method and the operating pressure of the pipeline. Some form of reassessment must be done at least every seven years.

For pipelines operating at or above 30% SMYS, the rule allows reassessment by—

1. Pressure test or internal inspection, or other equivalent technology. An operator that uses pressure testing or internal inspection as an assessment method must establish the reassessment interval for a covered pipeline segment by—
   - Basing the intervals on the identified threats for the segment as listed in § 192.915 of this section and in Section 8, Tables 6 and 7 of ASME/ANSI B31.8S, and on the analysis of the results from the last integrity assessment and from the data integration and risk assessment required by § 192.911; or
   - Using the intervals for different stress levels of pipeline specified in Table 3, Section 5 of ASME/ANSI B31.8S.
2. External Corrosion Direct assessment. An operator that uses external corrosion direct assessment must determine the reassessment interval according to the requirements in paragraphs 6.2 and 6.3 of NACE RP0502–2002.
3. Internal Corrosion or SCC Direct Assessment. An operator that uses ICDA or SCCDA must determine the reassessment interval by determining the largest defect most likely to remain in the covered segment and the corrosion rate appropriate for the pipe, soil and protection conditions, taking the largest remaining defect as the size of the largest defect discovered in the SCC or ICDA segment and estimating the reassessment interval as half the time required for the largest defect to grow to a critical size. However, the reassessment interval cannot exceed those specified for direct assessment in Table 3, Section 5 of ASME/ANSI B31.8S.

If using one of these allowable methods, an operator establishes a reassessment interval that is greater than seven years, the operator must within the seven-year period, conduct a confirmatory direct assessment on the covered segment, and then conduct the follow-up reassessment at the interval the operator has established. A reassessment done by confirmatory direct assessment must follow the requirements in § 192.931.

For pipelines operating below 30% SMYS the rule allows reassessment by—

1. Pressure test, internal inspection or other equivalent technology following the requirements for pipelines operating above 30% SMYS, except that the stress level would be adjusted to reflect the low operating stress level. If an established interval is more than seven years, the operator must conduct by the seventh year of the interval either a confirmatory direct assessment in accordance with § 192.931, or a low-stress reassessment in accordance with § 192.941.
2. External Corrosion Direct assessment following the requirements described for pipelines operating above 30% SMYS.
3. Internal Corrosion or SCC Direct Assessment following the requirements described for higher stress pipelines.
4. Confirmatory direct assessment at seven-year intervals in accordance with § 192.931, with reassessment by one of the other allowed methods (pressure test, internal inspection or direct assessment) by year 20 of the interval.
5. Low-stress assessment method at seven-year intervals in accordance with § 192.941 with reassessment by one of the other allowed methods (pressure test, internal inspection or direct assessment) by year 20 of the interval.

Section 192.941 What Is a Low-Stress Reassessment?

The rule provides for a low-stress reassessment for transmission pipelines that operate below 30% SMYS. This reassessment addresses the threats that are more common to these low-stress pipelines. The low-stress method only applies to a reassessment.

To address the threat of external corrosion on cathodically protected pipe in a covered segment, an operator must—

- Perform an electrical survey (*i.e.*, indirect examination tool/method) at least every seven years on the covered segment.
- Use the results of each survey as part of an overall evaluation of the cathodic protection and corrosion threat for the covered segment. This evaluation must consider, at minimum, the leak repair and inspection records, corrosion monitoring records, exposed pipe inspection records, and the pipeline environment.

If an electrical survey is impractical on the covered segment an operator must instead

- Conduct leakage surveys at 4-month intervals; and
- Every 1½ years, identify and remediate areas of active corrosion by evaluating leak repair and inspection records, corrosion monitoring records,

exposed pipe inspection records, and the pipeline environment.

To address the threat of internal corrosion on a covered segment, an operator must—

- Conduct a gas analysis for corrosive agents at least once each calendar year;
- Conduct periodic testing of fluids removed from the segment. At least once each calendar year test the fluids removed from each storage field that may affect a covered segment; and
- At least every seven years, integrate data from this analysis and testing with applicable internal corrosion leak records, incident reports, safety-related condition reports, repair records, patrol records, exposed pipe reports, and test records, and define and implement appropriate remediation actions.

Section 192.943 When Can an Operator Deviate From These Reassessment Intervals?

The rule provides for a waiver from the reassessment intervals in two limited instances. In either instance the waiver has to be done in accordance with 49 U.S.C. 60118(c), which requires public notice and comment, and OPS has to find that the waiver would not be inconsistent with pipeline safety. The rule requires an operator to apply for a waiver at least 180 days before the end of the required reassessment interval, unless local product supply issues make that period impractical. The two instances when an operator may apply for a waiver are—

1. Lack of internal inspection tools.

In this instance an operator who uses internal inspection as an assessment method may be able to justify a longer assessment period for a covered segment if internal inspection tools are not available to assess the line pipe. To justify this, the operator must demonstrate that it cannot obtain the internal inspection tools within the required assessment period and that the actions the operator is taking in the interim ensure the integrity of the covered segment.

2. To maintain product supply.

An operator may be able to justify a longer reassessment period for a covered segment if the operator demonstrates that it cannot maintain local product supply if it conducts the reassessment within the required interval.

Section 192.945 What Methods Must an Operator Use To Measure Program Effectiveness?

The rule requires an operator have performance measures to measure, on a semi-annual basis, whether the program is effective in assessing and evaluating the integrity of each pipeline segment and in protecting the HCAs. These measures must include the four overall performance measures specified in Section 9.4 of ASME/ANSI B31.8S and the specific measures for each identified threat specified in Appendix A of ASME/ANSI B31.8S. An operator must submit the four overall performance measures electronically on a semi-annual frequency to OPS.

In addition to the general requirements for performance measures the rule requires that if an operator uses direct assessment to assess the external corrosion threat, the operator must also must define and monitor measures to determine the effectiveness of the ECDA process. These measures must meet the external corrosion direct assessment requirements in § 192.925.

Section 192.947 What Records Must an Operator Keep?

The rule provides that an operator must maintain, for the useful life of the pipeline, records that demonstrate compliance with the requirements of the integrity management program rule. This section lists the minimum records an operator has to maintain for review during an inspection.

Section 192.949 How Does an Operator Notify OPS?

For any of the required notification, the rule allows an operator to submit the notification by one of three methods.

- Sending the notification by mail to the Information Resources Manager, Office of Pipeline Safety, Research and Special Programs Administration, U.S. Department of Transportation, Room 7128, 400 Seventh Street, SW, Washington DC 20590;
- Sending the notification by facsimile to (202) 366–7128; or
- Entering the information directly on the Integrity Management Database (IMDB) Web site at *http://primis.rspa.dot.gov/gasimp/*.

Section 192.951 Where Does an Operator File a Report?

The rule has certain reporting requirements. An operator must send these reports to OPS by one of three methods.

- By mail to the Office of Pipeline Safety, Research and Special Programs Administration, U.S. Department of Transportation, Room 7128, 400 Seventh Street, SW, Washington, DC 20590;
- Via facsimile to (202) 366–7128; or
- Through the online reporting system provided by OPS for electronic reporting available at the OPS Home Page at *http://ops.dot.gov*.

This rule also adds a new Appendix E to Part 192, Guidance on Determining High Consequence Areas, and on carrying out requirements in the Integrity Management Rule. The guidance in the appendix describes the process an operator must use to determine whether a pipeline segment is in a high consequence area.

The new Appendix also provides guidance on alternative assessment methods for transmission pipeline operating at below 30% SMYS. That guidance is provided in the form of three tables:

—Table E.II.1 gives guidance to help an operator implement requirements on assessment methods for addressing time dependent and independent threats, for transmission pipelines operating below 30% SMYS *not* in HCAs (*i.e.*, outside of Potential Impact Circles) but located within Class 3 and 4 locations.

—Table E.II.2 gives guidance to help an operator implement requirements on assessment methods for addressing time dependent and independent threats, for transmission pipelines operating below 30% SMYS in HCAs.

—Table E.II.3 gives guidance on preventative & mitigative measures addressing time dependent and independent threats for transmission pipelines that operate below 30% SMYS, in HCAs.

Regulatory Analyses and Notices

Executive Order 12866 and DOT Regulatory Policies and Procedures

The Department of Transportation (DOT) considers this action to be a significant regulatory action under section 3(f) of Executive Order 12866 (58 FR 51735; October 4,1993). Therefore, it was forwarded to the Office of Management and Budget. This final rule is significant under DOT's regulatory policies and procedures (44 FR 11034; February 26, 1979) because of its significant public and government interest.

A regulatory evaluation of this final rule on Integrity Management for gas transmission pipelines has been prepared and placed in the docket.

Cost-Benefit Analysis

A copy of the final regulatory evaluation has been placed in the docket for this final rule. The following section summarizes the regulatory evaluation's findings.

Natural and other gas pipeline ruptures can adversely affect human health and property. However, the magnitude of this impact differs from area to area. There are some areas in which the impact of an accident will be more significant than it would be in others due to greater concentrations of people who could be affected. Because of the potential for dire consequences of pipeline failures in certain areas, these areas merit a higher level of protection. RSPA/OPS is requiring this regulation to afford the necessary additional protection to these HCAs.

Numerous investigations by RSPA/OPS and NTSB have highlighted the importance of protecting the public from pipeline failures. NTSB has made several recommendations to ensure the integrity of pipelines near populated areas. These recommendations included requiring periodic testing and inspection to identify corrosion and other damage, establishing criteria to determine appropriate intervals for inspections and tests, determining hazards to public safety from electric resistance welded pipe and requiring installation of automatic or remotely-operated mainline valves on high-pressure pipelines to provide for rapid shutdown of failed pipelines.

Congress also directed RSPA/OPS to undertake additional safety measures in areas that are densely populated. These statutory requirements included having RSPA/OPS prescribe standards for identifying pipelines in high density population areas and issue standards requiring periodic inspections. The Pipeline Safety Improvement Act of 2002 requires that RSPA/OPS adopt regulations requiring operators of gas transmission pipelines in HCAs to adopt integrity management plans.

This final rulemaking addresses the target problem described above, and is a comprehensive approach to certain NTSB recommendations and Congressional mandates, as well as pipeline safety and environmental issues raised over the years.

This final rule focuses on a systematic approach to integrity management to reduce the potential for natural and other gas transmission pipeline failures that could affect populated areas. This final rulemaking requires pipeline operators to develop and follow an integrity management program that continually assesses, through internal inspection, pressure testing, direct assessment or equivalent alternative technology, the integrity of those pipeline segments that could affect areas we have defined as HCAs, *i.e.*, areas with specified population densities, buildings containing populations of limited mobility, and areas where people gather, that occur along the route of the pipeline. The program must also evaluate the segments through comprehensive information analysis, remediate integrity problems and provide additional protection through preventive and mitigative measures.

This final rule (the fourth in a series of integrity management program regulations) covers operators of transmission pipelines for natural and other gases. RSPA/OPS chose to start the series with hazardous liquid pipeline operators because the pipelines they operate have the greatest potential to adversely affect the environment. This final rule completes the application of integrity management to all interstate (and many intrastate) pipelines.

Benefits

RSPA/OPS has made significant changes to the cost-benefit analysis since the analysis prepared to support the proposed rule. Included in these changes is full consideration of the impact of the Pipeline Safety Improvement Act of 2002. The Act significantly changed the regulatory environment in which the new rule will be implemented. The Act requires that gas transmission pipeline operators develop integrity management plans, perform risk analyses, and perform certain tests, including tests at specified intervals. These requirements forever change the regulatory landscape. The notice of proposed rulemaking was issued in January, only one month after the Act was signed into law. RSPA/OPS modified the notice to acknowledge that the law was passed and that it imposed some requirements, but RSPA/OPS had not taken time to analyze thoroughly the impacts the Act would have.

RSPA/OPS has since performed extensive analyses to consider the impacts of the Act and to evaluate ways to make the rule more cost-beneficial. RSPA/OPS has estimated the costs to implement the requirements in the Act, without modification, to be approximately $11 billion over 20 years. By comparison, we conclude the cost of implementing this rule will be $4.7 billion over the same period. The difference reflects changes made in this rule in the definition of HCAs (which will have the effect of reducing the amount of pipeline mileage that must be tested) and provisions for limited scope reassessments every seven years. The Act requires that pipelines be assessed every seven years. The Act further requires that these assessments be performed using one of three specified assessment methods or "an alternative method that the Secretary [of Transportation] determines would provide an equal or greater level of safety." The alternative methods included in this rule will reduce costs significantly over the cost of performing periodic assessments using only the methods specified in the Act. There is therefore a benefit in adopting this rule of approximately $6.2 billion in cost reduction for assuring pipeline integrity.

Benefits will also accrue in improved ability to site pipelines in certain critical markets. It is difficult to quantify this benefit, but RSPA/OPS believes it is real. Inability to site future pipelines could affect the Nation's ability to use the increased quantities of natural gas that the Energy Information Administration estimates will be needed to fuel our economy over the next 20 years.

The Energy Information Administration (EIA), in its Annual Energy Outlook 2003, estimates that total consumption of natural gas in the United States was 22.64 trillion cubic feet in 2001. EIA's Outlook projects, in its reference case, that this figure will grow to 32.14 trillion cubic feet by 2020. The EIA projection is for consumption of 34.59 trillion cubic feet by 2020 for its high economic growth scenario. These figures represent an increase of 42 and 53 percent from total 2001 consumption. Additional transmission pipeline capacity is likely to be needed to support these estimates, and to deliver the gas that the American economy will need in 2020. The increased public confidence in pipeline safety that will result from this rule will make it easier to site and construct this additional pipeline capacity. The ability to build to support the need of the U.S. economy is a principal benefit of this rule.

The rule will significantly reduce the likelihood of pipeline accidents that result in deaths and serious injuries. Based on the historical record, RSPA/OPS has estimated this benefit to be on the order of $800 million over 20 years. It is quite likely, though, that future accidents could be worse than the historical experience. Population near pipelines is growing. This places more people at risk than in the past. While some historical accidents have resulted in several deaths and serious injuries, and significant property damage, accidents with even greater consequences could occur. RSPA/OPS has analyzed the likelihood that an accident could occur in an area along the pipeline that is more densely populated. Even though the amount of pipeline mileage along which such high population densities might be found is small (RSPA/OPS estimated 0.1% of total mileage for this analysis) the consequences of an accident are potentially large enough that the averted costs are still high. RSPA/OPS estimates

that an additional $277 million is realized by avoiding the likelihood of this more significant accident.

The rule will also result in avoiding significant costs associated with unexpected interruptions in natural gas supply. The 2000 Carlsbad accident resulted in curtailment of supply of natural gas to California. RSPA/OPS estimates that this resulted in an impact on the California economy of $17.25 million per day. The total benefit afforded by this rule in avoiding future economic impacts of this type is estimated to be $1 billion over the next 20 years.

Another benefit to be realized from implementing this rule is reduced cost to the pipeline industry for assuring safety in areas along pipelines with relatively more population. The improved knowledge of pipeline integrity that will result from implementing this rule will provide a technical basis for providing relief to operators from current requirements to reduce operating stresses in pipelines when population near them increases. Regulations currently require that pipelines with higher local population density operate at lower pressures. This is intended to provide an extra safety margin in those areas. Operators typically replace pipeline when population increases, because reducing pressure to reduce stresses reduces the ability of the pipeline to carry gas. Areas with population growth typically require more, not less, gas. Replacing pipeline, however, is very costly. Providing safety assurance in another manner, such as by implementing this rule, could allow RSPA/OPS to waive some pipe replacement. RSPA/OPS estimates that such waivers could result in a reduction in costs to industry of $1 billion over the next 20 years, with no reduction in public safety.

Costs

Comments submitted in response to the draft regulatory analysis pointed out that the costs to do much work associated with pipeline integrity assessments, *e.g.*, excavating pipe for direct examination, are much higher in urban areas than they are in rural locations. The comments suggested that use of a single set of unit costs (*i.e.*, costs per-mile) to represent all pipeline was unreasonable. RSPA/OPS accepts that work in urban areas is more costly. In the final regulatory analysis, RSPA/OPS has used different unit costs for work on long-distance pipelines, traversing largely rural areas, and for shorter transmission pipelines owned by gas distribution companies, which are generally in urban areas. RSPA/OPS has relied on comments submitted by INGAA, whose members consist of operators of long-distance pipelines, and the American Gas Association (AGA) and American Public Gas Association (APGA), whose members are gas distribution companies, for the unit costs used in the final regulatory analysis.

RSPA/OPS analyzed two scenarios in the draft regulatory analysis, varying the amount of pipeline that operators are expected to modify to accommodate in-line inspection. This approach was taken, because of industry comments that significant amounts of pipeline would likely be modified and the costs for that work. Some pipe already can accommodate in-line inspection tools. Some can be modified to accommodate the in-line inspection tools with relatively simple modifications. Others require much more extensive retrofits. RSPA/OPS was uncertain whether operators would incur the significant costs to modify this "hard-to-pig" pipeline or, instead, rely on direct assessment for those pipeline segments. One of the analyzed scenarios assumed that only the piping that can easily be modified would be changed. The other scenario was based on the assumption that a portion of the pipe requiring more extensive changes would also be modified.

Comments submitted in response to the draft regulatory analysis strongly supported the premise that operators will modify much hard-to-pig pipeline. Discussions at public meetings and at the Technical Pipeline Safety Standards Committee indicated a strong preference for pigging, and a full intent, on the part of the industry, to pursue that approach in most cases. This is, in part, because pigging provides an operator with much more information about the pipeline. Faced with these comments, RSPA/OPS believes it would be unreasonable to continue to analyze a scenario in which no hard-to-pig pipe is changed. As demonstrated by the two scenarios considered in the draft regulatory analysis, costs are much higher during the baseline assessment period when hard-to-pig pipe is assumed to be modified.

Initial experience with direct assessment, however, indicates higher costs for using this method than originally estimated, making reassessment costs lower if a larger proportion of affected pipeline is pigged. This adds an economic incentive to modify pipeline for pigging and further supports eliminating the "Limited Modification" scenario.

We have estimated the cost for operators to identify pipeline segments that can affect HCAs at approximately $15.05 million, the cost to develop the necessary programs at approximately $104.13 million and an annual cost for program upkeep and reporting of $12.91 million. An operator's program begins with a baseline assessment plan and a framework that addresses each required program element. The framework indicates how decisions will be made to implement each element. As decisions are made and operators evaluate the effectiveness of the program in protecting HCAs, the program will be updated and improved, as needed.

The final rule requires a baseline assessment of covered pipeline segments through internal inspection, pressure test, direct assessment or use of other technology capable of equivalent performance. The baseline assessment must be completed within ten years after December 17, 2002 (the date the Pipeline Safety Improvement Act of 2002 was signed into law), with at least 50% of covered segments being assessed within five years.

After this baseline assessment, the rule further requires that an operator periodically reassess and evaluate the pipeline segment to ensure its integrity. The interval in which reassessments must be performed varies with the operating stress levels in the pipe. Pipelines operating at greater than 50 percent of specified minimum yield strength (SMYS) must be reassessed at least every 10 years. Pipelines operating between 30 and 50 percent SMYS must be reassessed every fifteen-years. Pipelines operating below 30 percent SMYS require reassessment on a twenty-year interval.

RSPA/OPS believes that the higher the operating pressure of a pipeline, the greater the potential risk the pipeline poses to the general public. That is because a failure of a pipeline operating at a higher pressure will result in a larger impact area and potentially more significant consequences. It is under this assumption that RSPA/OPS has established the shortest assessments intervals for pipelines that operate at or above pressures of 50 percent of SMYS. By basing the assessment interval according to pipeline pressure, operators will have to focus their safety resources on pipelines that pose the greatest danger. RSPA/OPS believes that varying the assessment interval according to the risk provides the greatest safety reward per dollar operators will expend.

The Pipeline Safety Improvement Act of 2002 requires reassessment of all pipelines in HCAs every seven years. To meet this requirement an operator must conduct some-assessment at that

frequency. The final rule provides a means to fulfill this requirement at reduced burden, and lower financial impact. If an operator takes advantage of the longer reassessment intervals provided in this final rule, the rule requires that the operator conduct an interim reassessment at least every seven years using a more focused direct assessment (Confirmatory Direct Assessment) method.

Confirmatory direct assessment is a more focused application of the principles and techniques of direct assessment, that is concentrated on identifying critical segments of suspected corrosion and third-party damage. RSPA/OPS has structured the requirements for confirmatory direct assessment in a manner intended to allow maximum flexibility for operators. Indirect examinations may be performed using only one, rather than two, tools. Corrosion regions may be larger than for regular direct assessments. The number of excavations required per region is less. These changes will allow operators to plan and conduct confirmatory direct assessments in a manner that is most cost-effective, *i.e.*, identifies areas of concern at lowest cost.

RSPA/OPS estimates that the cost of periodic reassessment will generally not occur until the eighth year, unless the baseline assessment indicates significant defects that would require earlier reassessment. Operators must begin CDA interim assessments in the eighth year. Additionally, some operators of higher-pressure pipelines, who must perform regular reassessments in ten years, may elect to perform those assessments at seven-year intervals instead of using CDA. The cost-benefit analysis assumes that half of the affected pipeline operating above 50 percent SMYS will be assessed using the higher-cost methods every seven years.

The analysis of costs RSPA/OPS expects operators to incur in implementing the rule results in an estimated annual cost of $262.1 million to conduct baseline testing. This includes the cost to modify pipelines. All necessary modifications will be completed during the baseline period, making annual costs for reassessments considerably lower. Our analysis estimates that annual reassessment costs will be approximately $50 million, varying slightly in different years depending on which pipeline is due for reassessment.

Integrating information related to the pipeline's integrity is a key element of the integrity management program. Costs will be incurred to recover historical data about the pipeline and incorporate it in modern data management systems that will allow it to be used more readily. RSPA/OPS estimates that most of these costs will be incurred in the first year after the effective date of the rule. Operators will incur annual costs thereafter to incorporate new data, including the results from assessments, and for integration and analysis by knowledgeable pipeline safety professionals. RSPA/OPS estimated in the draft regulatory analysis that the total costs for the information integration requirements would be $31.5 million in the first year and $15.75 million annually thereafter. Comments indicated that these estimates, particularly for the first year, were very low. The Interstate Natural Gas Association of America (INGAA) pointed out that costs to gather old data, much of which is in paper records and not easily retrieved, would be much higher. INGAA estimated that operators would incur costs of $1,359 per mile for the initial data gathering and setup and $113 per mile for annual updates and analysis. RSPA/OPS accepts that costs to retrieve old data will be high, and that estimating these costs on a per-mile basis is reasonable. RSPA/OPS has adopted the INGAA-provided unit costs. Applying them results in an estimated total cost for data integration of $387.3 million in the first year and $32.21 million annually thereafter.

The final rule also requires operators to evaluate the risk of pipeline segments that can affect HCAs to determine if additional preventive or mitigative measures that would enhance public safety should be implemented. One of the additional preventive or mitigative actions that an operator can take is to install automatic shutoff valves or remotely controlled valves. RSPA/OPS could not estimate the total cost of installing such valves in response to this rule, because there are too many factors that would have to be analyzed in order to produce a valid estimate of how many operators will install them. RSPA/OPS completed a generic study in 1999, however, in which we concluded that conversion of existing sectional block valves to remote operation was not economically feasible in most cases. Operator- and location-specific factors could change this conclusion for individual valves but RSPA/OPS could not analyze these specific factors for individual block valves and therefore, did not estimate the total cost for installing remote valves. RSPA/OPS presumes that operators will analyze valve-specific factors and will not replace valves unless that action is cost-beneficial. RSPA/OPS estimates that the cost to operators to perform the required risk analyses will be approximately $11.5 million.

Consideration by Advisory Committee

RSPA/OPS discussed the final regulatory analysis with the Technical Pipeline Safety Standards Committee (TPSSC) in a public teleconference on July 31, 2003. The TPSSC, composed equally of representatives of industry, government, and groups representative of public involvement in pipeline safety issues, agreed that the analysis provides a basis to justify proceeding with this rulemaking. The committee unanimously concluded that the expected benefit in terms of improved public confidence in pipeline safety is substantial and justifies the expected costs.

Conclusions

RSPA/OPS concludes that the benefits are about the same as the costs. Quantified benefits total $4.7 billion over the 20 years analyzed. Costs over this same period are estimated to be $4.7 billion. There are additional benefits for which it was difficult to estimate monetary values. These include an improved basis for public confidence in pipeline safety, with attendant improvements in the ability to site new pipelines; reduced consequential damages from an unexpected interruption of gas service, providing a technical basis that will allow increases in pressure, and thus in delivery of gas, during future energy emergencies; and providing incentives to foster additional improvements in pipeline testing technology.

The estimated costs for implementing this rule are significant. They need to be considered in the context of the size of the overall U.S. market for natural gas. Energy Information Administration figures show that total U.S. consumption of natural gas in 2001 amounted to 20,477,009 million cubic feet. Residential consumption was 4,716,186 million cubic feet. When the total estimated first-year costs for implementing this rule are divided over these quantities, they result in an increase in cost of 3.6 cents per thousand cubic feet. An average residential consumer would see an increase of $3.07 per year if these costs were passed on. This would mean an increase of 26 cents on an average monthly bill, or a 0.39 percent rise.

RSPA/OPS considers these costs reasonable to realize the benefits associated with this rule. Additionally, promulgating this rule will result in savings of approximately $6.2 billion

over the expected costs to industry of complying with legislative requirements absent this rule. Publishing this final rule, and requiring that gas transmission pipeline operators comply, is clearly the appropriate course of action.

Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, RSPA/OPS must consider whether this rulemaking would have a significant impact on a substantial number of small entities. RSPA/OPS in its draft regulatory analysis used an estimate of 668 gas transmission operators that could potentially be impacted by the gas integrity management proposed rule. For the final regulatory evaluation RSPA/OPS performed an extensive computer search of gas transmission operators and found that many operators were in fact subsidiaries of large gas transmission companies and that there are 275 gas transmission operators that could potentially be impacted by this final rulemaking. A pipeline company would be impacted if its pipeline could affect a high consequence area (HCA). HCA's are located primarily urban areas but include rural areas where more than 20 people congregate.

Of these 275 companies, approximately 35 could be considered small companies. About 25 of these are municipally operated gas distribution companies who also operate a transmission pipeline. The Small Business Administration (SBA) had concerns with the regulatory flexibility certification performed for the proposed gas integrity management regulation. In discussions with SBA OPS suggested that it would contact the American Public Gas Association (APGA) which is the trade organization which represents municipal gas distribution companies which make up the majority of the small entities among gas pipeline operators. OPS has asked that APGA help to disseminate information on rulemakings that could impact small pipeline operators. APGA has agreed to perform this function. While OPS has in the past solicited comments from small pipeline operators concerning potential impacts of pipeline safety regulations few if any small pipeline operators have ever submitted comments.

The Interstate Natural Gas Association of America (INGAA) estimates that its members account for 80% of the gas pipeline transmission mileage in the United States. INGAA has only 24 members however, 3 of these members are not U.S. gas transmission operators. Therefore, approximately 21 companies account for 80% of the U.S. gas transmission pipeline mileage. The remainder of the pipeline companies in this industry share only 20% of the total pipeline mileage.

The majority of the remaining 20% of transmission pipelines belong to large gas distribution companies and large industrial companies. The approximately 35 small entities own and operate very little mileage. Because they operate such little mileage (in most cases less than 30 miles of pipeline), the compliance costs to these small entities if they are impacted by this rule will be significantly lower than those operators thousands of miles of pipeline as the costs of inspection and planning should be considerably lower. Specifically, OPS has estimated that the program planning and paperwork costs to operators with 30 miles or less of pipeline will be considerably less than for long distance pipeline operators. If a small pipeline operator has for example only 30 miles of pipeline it is likely that they will have only a few miles of pipeline that will fall under this rule. If they choose to perform direct assessment which the APGA has said is the likely choice of their members the cost to inspect this will likely fall under $100,000. On the other hand a large transmission operator performing internal inspection on more than a thousand miles of pipeline is likely to cost that operator several million dollars. RSPA/OPS believes that this rule does not unduly burden small entities. Nevertheless, RSPA/OPS stands ready to provide special help to any small operators to assist them in complying with this final rule. Conversations with some small transmission companies indicates that state pipeline offices have been particularly effective in assisting small entities. Based on the above discussion I certify that this final rule will not have a significant impact on a substantial number of small entities.

Paperwork Reduction Act

This final rule contains information collection requirements. As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the Department of Transportation has submitted a copy of the Paperwork Reduction Act analysis to the Office of Management and Budget for its review. The name of the information collection is "Pipeline Integrity Management in HCAs Gas Transmission Pipeline Operators. OMB Control Number 2137–0610" The purpose of this information collection is designed to require operators of gas transmission pipelines to develop a program to provide direct integrity testing and evaluation of gas transmission pipelines in HCAs.

The following is a summary of the highlights of the paperwork reduction act analysis. The complete analysis can be found in the public docket. The costs and hour burden is based on 275 companies with a loaded labor cost of $60 per hour.

In the first year of promulgating this rule operators will have to identify which segments are in HCAs. This will take 167 hours per company plus 5 hours per impact circle. Impact circle is a measure of how wide the HCAs will be. The total hours for the entire industry will be 25,083 hours in the first year only.

The development of the integrity management plan will take 8333 hours for an operator with more than 30 miles of pipelines and 2,083 for operators with less than 30 miles of pipeline in the first year. The time to update the plans annually will be 833 hours for operators with more than 30 miles and 417 for operators with less than 30 miles.

The one time requirement to examine the need for remotely controlled valves is estimated to take operators with more than 30 miles of pipeline 833 hours and 417 hours for operators with less than 30 miles of pipeline.

Additionally, all the operators will be required to integrate the new data they collect into their current management systems. The time to integrate the data the first year will be 22⅓ hours per mile and 1.9 hours per mile annually thereafter.

Additional paperwork and recordkeeping beyond those already discussed, will add 833 hours in the first year for companies with more than 30 miles of pipeline and 417 hours for operators with less than 30 miles of pipeline. In subsequent years this should add 83 hours of paperwork burden for all operators.

The total initial time to perform all paperwork is 8,818,500 million hours at a cost of $529.1 million. The subsequent annual time to update the paperwork is 752,000 hours costing $45.1 million dollars. Comments concerning this information collection should include the docket number of this rule. They should be sent within 30 days of the publication of this notice directly to the Office of Management and Budget, Office of Information and Regulatory Affairs, 726 Jackson Place, NW., Washington, DC 20503, ATTN: Desk Officer for the Department of Transportation (DOT).

Comments are specifically requested concerning:

- Whether the collection is necessary for the proper performance of the functions of the Department, including whether the information would have a practical use;
- The accuracy of the Department's estimate of the burden of collection of information including the validity of assumptions used;
- The quality, usefulness and clarity of the information to be collected; and minimizing the burden of collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology e.g., permitting electronic submission of responses.

According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless a valid OMB control number is displayed. The valid OMB control number for this information collection will be published in the **Federal Register** after it is approved by the OMB. For details see, the complete Paperwork Reduction analysis available for copying and review in the public docket.

Executive Order 13084

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13084 ("Consultation and Coordination with Indian Tribal Governments"). Because this final rule does not significantly or uniquely affect the communities of the Indian tribal governments and does not impose substantial direct compliance costs, the funding and consultation requirements of Executive Order 13084 do not apply.

Executive Order 13132

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13132 ("Federalism"). This final rule does not have any requirement that:

(1) Has substantial direct effects on the States, the relationship between the national government and the States, or the distribution of power and responsibilities among the various levels of government;

(2) Imposes substantial direct compliance costs on States and local governments; or

(3) Preempts state law.

Therefore, the consultation and funding requirements of Executive Order 13132 (64 FR 43255; August 10, 1999) do not apply. Nevertheless, in November 18–19, 1999, and in February 12–14, 2001 public meetings, RSPA/OPS invited National Association of Pipeline Safety Representatives (NAPSR), which includes State pipeline safety regulators, to participate in a general discussion on pipeline integrity. Since then, RSPA/OPS has held conference calls with NAPSR, to receive their input before proposing an HCA definition and integrity management rule. RSPA/OPS has invited NAPSR representatives to all the public meetings held subsequent to the publication of the pipeline integrity management NPRM.

Executive Order 13211

This rulemaking is not a "significant energy action" within the meaning of Executive Order 13211 ("Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use"). It is a significant regulatory action under Executive Order 12866 because of its significant public and government interest. As concluded from our Energy Impact Statement discussed in the following section, the rulemaking is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Further, this rulemaking has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action.

Summary of the Energy Impact Statement

(For the detailed Energy Impact Statement, refer to Docket RSPA–00–7666)

The Research and Special Program Administration's Office of Pipeline Safety (RSPA/OPS) is currently promulgating regulations to assess, evaluate, remediate, and validate the integrity of natural gas transmission pipelines through comprehensive analysis and inspection of pipeline systems. The current rule applies to all gas transmission pipelines, including pipelines transporting petroleum gas, hydrogen, and other gas products covered under 49 CFR Part 192.

In compliance with the Executive Order 13211 (66 FR 28355), the RSPA/OPS has evaluated the effects of the natural gas IMP rule on energy supply, distribution, or use. The RSPA/OPS has determined that this regulatory action would not have significant adverse effects on energy supply, distribution, or use nationally, however there may be some regional effect on natural gas distribution.

The current rule will not have any significant impact on the wellhead production capacity or prices. The rule affects natural gas transmission pipelines in HCAs and has no effect on the wellhead production capacity or prices. The rule does not impact gas gathering pipelines and offshore gas transmission pipelines, and has limited effect on the onshore gas transmission lines that are not located in the HCAs. Therefore, the rule will have no significant impact on natural gas production or wellhead prices. The RSPA/OPS estimates that about 22,000 miles of gas transmission pipelines are located in the HCAs in a network of 300,000 miles of gas transmission pipelines, as well as 900,000 miles of gas distribution pipelines. Therefore, a relatively small proportion of pipelines, less than 1 percent of the total gas transmission pipelines, are located in the HCAs.

This rule may affect the movement of natural gas in certain areas during integrity inspection. Inspection requirements may temporarily affect transportation capacity in some pipelines, but not in all pipelines. Built-in redundancies, such as loop lines, multiple lines, storage facilities, are part of natural gas transportation infrastructures. The intricate interconnections between pipelines, the availability of storage at the market centers, and a well-developed capacity release market all contribute towards meeting natural gas demand with efficient movement of supply. Therefore, inspections can be conducted without any significant disruption of throughput especially during off-peak seasons.

This rule may not have any significant price effects on end-use consumers. In general, inter-fuel competition and gas-storage availability play significant roles in short-term price determination in U.S. because of extensive fuel switching capability in industry and power generation and the existence of a sizable storage capacity. Weather is the other significant player determining the spot market prices. Transportation cost only accounts for a small proportion of the cost paid by the end-users. The pipeline capacity reduction due to the integrity rule would be pre-planned and the market would have time to adjust for the reduction, minimizing shortages and avoiding short-term price increases. The RSPA/OPS recognizes that there may be some temporary and regional natural gas price impact due to the increased assessment and inspection requirements of the rule. While RSPA/OPS did not estimate the size of such temporary impacts, it could lead to small changes in natural gas prices for certain areas on the spot market if the inspection coincides with peak season and there is no other pipeline (no parallel, lateral, or loop lines) serving that particular area. Recognizing the possibility of temporary spot price fluctuations at the regional level, RSPA/OPS believes this regulation will not significantly impact

the overall energy supply, distribution, and use.

Unfunded Mandates

This final rule does impose unfunded mandates under the Unfunded Mandates Reform Act of 1995, because it may result in the expenditure by the private sector of 100 million or more in any one year. The cost-benefit analysis estimating yearly cost for operators to meet the final rule requirements has been placed in the docket. State pipeline safety programs will share inspection and enforcement responsibilities for the integrity management regulation. State regulators have participated in our meetings with the industry and research institutions on various integrity management issue discussions and have provided recommendations during our meetings and conference calls. State pipeline safety officials have expressed concern that the rule is to be sufficiently clear to enable them to enforce it and that there needs to be training for state inspectors. The final rule has been significantly modified to improve its clarity and enforceability and specific state comments on these areas have been addressed in sections discussing the changes. RSPA/OPS has planned an approach to enforcement that includes the extensive use of protocols for inspectors (both Federal and State) to use for compliance inspections and for training in the use of these protocols. RSPA/OPS has included funding for training inspectors within the budget for implementation of integrity management program. RSPA/OPS does not charge states tuition for pipeline safety training. In addition, 50 percent of a state's incidental costs of attending training is reimbursable through the grants program. Similar training is already underway regarding the integrity rule for hazardous liquid pipelines. Local public safety officials will be asked, but not required, to assist in identifying HCAs for the additional protections. In addition, industry associations are planning workshops in the development process to assist in identification of HCAs. We believe there are no disproportionate budgetary effects upon any particular region of the nation. We believe it is the least burdensome alternative that achieves the objective of the rule, because it gives options to industry on how to implement the rule.

National Environmental Policy Act

We have evaluated the final rule for purposes of the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*) and have concluded that this action would not significantly affect the quality of the environment. The Environmental Assessment determined that the combined impacts of the baseline assessment (pressure testing, internal inspection, or direct assessment), the periodic reassessments, and the additional preventive and mitigative measures that may be implemented for gas pipeline segments that could affect HCAs will result in positive environmental impacts. The number of incidents and the environmental damage from failures near HCAs is likely to be reduced. However, from a national perspective, the impact is not expected to be significant.

Although the effects of the final rule will likely lead to fewer incidents, gas pipeline leaks that lead to adverse environmental impacts are rare under current conditions. Although the damage from failures could be reduced, the environmental damage resulting from gas pipeline failures is usually minor under current conditions. The effects are typically negligible, but can consist of localized, temporary damage to the environment in the immediate vicinity of the failure location on the pipeline.

Some operators covered by the final rule already have integrity assessment programs. These operators typically consider the pipeline's proximity to populated areas when making decisions about where and when to inspect and test pipelines. As a result, some pipeline segments that could impact high consequence areas have already been recently assessed, and others would be assessed in the next several years without the provisions of the final rule. The primary effect of the final rule—accelerating integrity assessment in some high consequence areas—shifts increased integrity assurance forward for a few years for some segments that could affect high consequence areas. Because pipeline failure rates are low, shifting the time at which these segments are assessed forward by a few years has only a small effect on the likelihood of pipeline failure in these locations.

The final rule does require operators to conduct an integrated assessment of the potential threats to pipeline integrity, and to consider additional preventive and mitigative risk control measures to provide enhanced protection. If there is a vulnerability to a particular failure cause, these assessments should result in additional risk controls to address these threats. However, without knowing the specific high consequence area locations, the specific risks present at these locations, and the existing operator risk controls (including those that surpass the current minimum regulatory requirements), it is difficult to determine the impact of this requirement.

Some gas pipeline operators already perform integrity evaluations or risk assessments that consider the environmental impacts. These evaluations have already led to additional risk controls beyond existing requirements to improve protection for these locations. For many segments, it is probable that operators will determine that the existing preventive and mitigative activities provide adequate protection to high consequence areas, and that the small additional risk reduction benefits of additional risk controls are not justified.

The primary benefit of the final rule will be to establish requirements for conducting integrity assessments and periodic evaluations of integrity of segments that could impact high consequence areas. This will codify the integrity management programs and assessments operators are currently implementing. It will also require other operators, who have little, or no, integrity assessment and evaluation programs to raise their level of performance. Thus, the final rule is expected to ensure a more consistent, and overall higher level of protection for high consequence areas across the industry.

The Environmental Assessment of this final rule is available for review in the docket.

List of Subjects in 49 CFR Part 192

High consequence areas, Incorporation by reference, Integrity management, Pipeline safety, Potential impact areas, Reporting and recordkeeping requirements.

■ In consideration of the foregoing, RSPA/OPS is amending part 192 of title 49 of the Code of Federal Regulations as follows:

PART 192—[AMENDED]

■ 1. The authority citation for part 192 continues to read as follows:

Authority: 49 U.S.C. 5103, 60102, 60104, 60108, 60109, 60110, 60113, and 60118; and 49 CFR 1.53.

§ 192.761 [Removed]

■ 2. Section 192.761 is removed.

■ 3. In part 192, under the heading of Pipeline Integrity Management, a new subpart O is added to read as follows:

Subpart O—Pipeline Integrity Management

Sec.

192.901 What do the regulations in this subpart cover?
192.903 What definitions apply to this subpart?
192.905 How does an operator identify a high consequence area?
192.907 What must an operator do to implement this subpart?
192.909 How can an operator change its integrity management program?
192.911 What are the elements of an integrity management program?
192.913 When may an operator deviate its program from certain requirements of this subpart?
192.915 What knowledge and training must personnel have to carry out an integrity management program?
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Subpart O—Pipeline Integrity Management

§ 192.901 What do the regulations in this subpart cover?

This subpart prescribes minimum requirements for an integrity management program on any gas transmission pipeline covered under this part. For gas transmission pipelines constructed of plastic, only the requirements in §§ 192.917, 192.921, 192.935 and 192.937 apply.

§ 192.903 What definitions apply to this subpart?

The following definitions apply to this subpart:

Assessment is the use of nondestructive testing techniques as allowed in this subpart to ascertain the condition of a covered pipeline segment.

Confirmatory direct assessment is an assessment method using more focused application of the principles and techniques of direct assessment to identify internal and external corrosion in a covered transmission pipeline segment.

Covered segment or covered pipeline segment means a segment of gas transmission pipeline located in a high consequence area. The terms gas and transmission line are defined in § 192.3.

Direct assessment is an integrity assessment method that utilizes a process to evaluate certain threats (*i.e.*, external corrosion, internal corrosion and stress corrosion cracking) to a covered pipeline segment's integrity. The process includes the gathering and integration of risk factor data, indirect examination or analysis to identify areas of suspected corrosion, direct examination of the pipeline in these areas, and post assessment evaluation.

High consequence area means an area established by one of the methods described in paragraphs (1) or (2) as follows:

(1) An area defined as—

(i) A Class 3 location under § 192.5; or

(ii) A Class 4 location under § 192.5; or

(iii) Any area outside a Class 3 or Class 4 location where the potential impact radius is greater than 660 feet (200 meters), and the area within a potential impact circle contains 20 or more buildings intended for human occupancy; or

(iv) The area within a potential impact circle containing an identified site.

(2) The area within a potential impact circle containing

(i) 20 or more buildings intended for human occupancy, unless the exception in paragraph (d) applies; or

(ii) An identified site.

(3) Where a potential impact circle is calculated under either method (1) or (2) to establish a high consequence area, the length of the high consequence area extends axially along the length of the pipeline from the outermost edge of the first potential impact circle that contains either an identified site or 20 or more buildings intended for human occupancy to the outermost edge of the last contiguous potential impact circle that contains either an identified site or 20 or more buildings intended for human occupancy. (*See* Figure E.I.A. in appendix E.)

(4) If in identifying a high consequence area under paragraph (1)(iii) of this definition or paragraph (2)(i) of this definition, the radius of the potential impact circle is greater than 660 feet (200 meters), the operator may identify a high consequence area based on a prorated number of buildings intended for human occupancy within a distance 660 feet (200 meters) from the centerline of the pipeline until December17, 2006. If an operator chooses this approach, the operator must prorate the number of buildings intended for human occupancy based on the ratio of an area with a radius of 660 feet (200 meters) to the area of the potential impact circle (*i.e.*, the prorated number of buildings intended for human occupancy is equal to [20 × (660 feet [or 200 meters]/ potential impact radius in feet [or meters]) ^{2}]).

Identified site means each of the following areas:

(a) An outside area or open structure that is occupied by twenty (20) or more persons on at least 50 days in any twelve (12)-month period. (The days need not be consecutive.) Examples include but are not limited to, beaches, playgrounds, recreational facilities, camping grounds, outdoor theaters, stadiums, recreational areas near a body of water, or areas outside a rural building such as a religious facility); or

(b) A building that is occupied by twenty (20) or more persons on at least five (5) days a week for ten (10) weeks in any twelve (12)-month period. (The days and weeks need not be consecutive.) Examples include, but are not limited to, religious facilities, office buildings, community centers, general stores, 4-H facilities, or roller skating rinks); or

(c) A facility occupied by persons who are confined, are of impaired mobility, or would be difficult to evacuate. Examples include but are not limited to hospitals, prisons, schools, day-care facilities, retirement facilities or assisted-living facilities.

Potential impact circle is a circle of radius equal to the potential impact radius (PIR).

Potential impact radius (PIR) means the radius of a circle within which the potential failure of a pipeline could have significant impact on people or property. PIR is determined by the formula $r = 0.69 * (\text{square root of } (p * d^2))$, where 'r' is the radius of a circular area in feet surrounding the

point of failure; 'p' is the maximum allowable operating pressure (MAOP) in the pipeline segment in pounds per square inch and 'd' is the nominal diameter of the pipeline in inches.

Note: 0.69 is the factor for natural gas. This number will vary for other gases depending upon their heat of combustion. An operator transporting gas other than natural gas must use section 3.2 of ASME/ANSI B31.8S–2001 (Supplement to ASME B31.8; ibr, see § 192.7) to calculate the impact radius formula.

Remediation is a repair or mitigation activity an operator takes on a covered segment to limit or reduce the probability of an undesired event occurring or the expected consequences from the event.

§ 192.905 How does an operator identify a high consequence area?

(a) *General.* To determine which segments of an operator's transmission pipeline system are covered by this subpart, an operator must identify the high consequence areas. An operator must use method (1) or (2) from the definition in § 192.903 to identify a high consequence area. An operator may apply one method to its entire pipeline system, or an operator may apply one method to individual portions of the pipeline system. An operator must describe in its integrity management program which method it is applying to each portion of the operator's pipeline system. The description must include the potential impact radius when utilized to establish a high consequence area. (*See* appendix E.I. for guidance on identifying high consequence areas.)

(b)(1) *Identified sites.* An operator must identify an identified site, for purposes of this subpart, from information the operator has obtained from routine operation and maintenance activities and from public officials with safety or emergency response or planning responsibilities who indicate to the operator that they know of locations that meet the identified site criteria. These public officials could include officials on a local emergency planning commission or relevant Native American tribal officials.

(2) If a public official with safety or emergency response or planning responsibilities informs an operator that it does not have the information to identify an identified site, the operator must use one of the following sources, as appropriate, to identify these sites.

(i) Visible marking (*e.g.*, a sign); or

(ii) The site is licensed or registered by a Federal, State, or local government agency; or

(iii) The site is on a list (including a list on an internet web site) or map maintained by or available from a Federal, State, or local government agency and available to the general public.

(c) *Newly identified areas.* When an operator has information that the area around a pipeline segment not previously identified as a high consequence area could satisfy any of the definitions in § 192.903, the operator must complete the evaluation using method (1) or (2). If the segment is determined to meet the definition as a high consequence area, it must be incorporated into the operator's baseline assessment plan as a high consequence area within one year from the date the area is identified.

§ 192.907 What must an operator do to implement this subpart?

(a) *General.* No later than December 17, 2004, an operator of a covered pipeline segment must develop and follow a written integrity management program that contains all the elements described in § 192.911 and that addresses the risks on each covered transmission pipeline segment. The initial integrity management program must consist, at a minimum, of a framework that describes the process for implementing each program element, how relevant decisions will be made and by whom, a time line for completing the work to implement the program element, and how information gained from experience will be continuously incorporated into the program. The framework will evolve into a more detailed and comprehensive program. An operator must make continual improvements to the program.

(b) *Implementation Standards.* In carrying out this subpart, an operator must follow the requirements of this subpart and of ASME/ANSI B31.8S (ibr, *see* § 192.7) and its appendices, where specified. An operator may follow an equivalent standard or practice only when the operator demonstrates the alternative standard or practice provides an equivalent level of safety to the public and property. In the event of a conflict between this subpart and ASME/ANSI B31.8S, the requirements in this subpart control.

§ 192.909 How can an operator change its integrity management program?

(a) *General.* An operator must document any change to its program and the reasons for the change before implementing the change.

(b) *Notification.* An operator must notify OPS, in accordance with § 192.949, of any change to the program that may substantially affect the program's implementation or may significantly modify the program or schedule for carrying out the program elements. An operator must also notify a State or local pipeline safety authority when a covered segment is located in a State where OPS has an interstate agent agreement, and a State or local pipeline safety authority that regulates a covered pipeline segment within that State. An operator must provide the notification within 30 days after adopting this type of change into its program.

§ 192.911 What are the elements of an integrity management program?

An operator's initial integrity management program begins with a framework (*see* § 192.907) and evolves into a more detailed and comprehensive integrity management program, as information is gained and incorporated into the program. An operator must make continual improvements to its program. The initial program framework and subsequent program must, at minimum, contain the following elements. (When indicated, refer to ASME/ANSI B31.8S (ibr, *see* § 192.7) for more detailed information on the listed element.)

(a) An identification of all high consequence areas, in accordance with § 192.905.

(b) A baseline assessment plan meeting the requirements of § 192.919 and § 192.921.

(c) An identification of threats to each covered pipeline segment, which must include data integration and a risk assessment. An operator must use the threat identification and risk assessment to prioritize covered segments for assessment (§ 192.917) and to evaluate the merits of additional preventive and mitigative measures (§ 192.935) for each covered segment.

(d) A direct assessment plan, if applicable, meeting the requirements of § 192.923, and depending on the threat assessed, of §§ 192.925, 192.927, or 192.929.

(e) Provisions meeting the requirements of § 192.933 for remediating conditions found during an integrity assessment.

(f) A process for continual evaluation and assessment meeting the requirements of § 192.937.

(g) If applicable, a plan for confirmatory direct assessment meeting the requirements of § 192.931.

(h) Provisions meeting the requirements of § 192.935 for adding preventive and mitigative measures to protect the high consequence area.

(i) A performance plan as outlined in ASME/ANSI B31.8S, section 9 that includes performance measures meeting the requirements of § 192.943.

(j) Record keeping provisions meeting the requirements of § 192.947.

(k) A management of change process as outlined in ASME/ANSI B31.8S, section 11.

(l) A quality assurance process as outlined in ASME/ANSI B31.8S, section 12.

(m) A communication plan that includes the elements of ASME/ANSI B31.8S, section 10, and that includes procedures for addressing safety concerns raised by—

(1) OPS; and

(2) A State or local pipeline safety authority when a covered segment is located in a State where OPS has an interstate agent agreement.

(n) Procedures for providing (when requested), by electronic or other means, a copy of the operator's risk analysis or integrity management program to—

(1) OPS; and

(2) A State or local pipeline safety authority when a covered segment is located in a State where OPS has an interstate agent agreement.

(o) Procedures for ensuring that each integrity assessment is being conducted in a manner that minimizes environmental and safety risks.

(p) A process for identification and assessment of newly-identified high consequence areas. (*See* § 192.905 and § 192.921.)

§ 192.913 When may an operator deviate its program from certain requirements of this subpart?

(a) *General.* ASME/ANSI B31.8S (ibr, *see* § 192.7) provides the essential features of a performance-based or a prescriptive integrity management program. An operator that uses a performance-based approach that satisfies the requirements for exceptional performance in paragraph (b) of this section may deviate from certain requirements in this subpart, as provided in paragraph (c) of this section.

(b) *Exceptional performance.* An operator must be able to demonstrate the exceptional performance of its integrity management program through the following actions.

(1) To deviate from any of the requirements set forth in paragraph (c) of this section, an operator must have a performance-based integrity management program that meets or exceed the performance-based requirements of ASME/ANSI B31.8S and includes, at a minimum, the following elements—

(i) A comprehensive process for risk analysis;

(ii) All risk factor data used to support the program;

(iii) A comprehensive data integration process;

(iv) A procedure for applying lessons learned from assessment of covered pipeline segments to pipeline segments not covered by this subpart;

(v) A procedure for evaluating every incident, including its cause, within the operator's sector of the pipeline industry for implications both to the operator's pipeline system and to the operator's integrity management program;

(vi) A performance matrix that demonstrates the program has been effective in ensuring the integrity of the covered segments by controlling the identified threats to the covered segments;

(vii) Semi-annual performance measures beyond those required in § 192.943 that are part of the operator's performance plan. (*See* § 192.911(i).) An operator must submit these measures, by electronic or other means, on a semi-annual frequency to OPS in accordance with § 192.951; and

(viii) An analysis that supports the desired integrity reassessment interval and the remediation methods to be used for all covered segments.

(2) In addition to the requirements for the performance-based plan, an operator must—

(i) Have completed at least two integrity assessments of all covered pipeline segments, and be able to demonstrate that each assessment effectively addressed the identified threats on the covered segments.

(ii) Remediate all anomalies identified in the more recent assessment according to the requirements in § 192.933, and incorporate the results and lessons learned from the more recent assessment into the operator's data integration and risk assessment.

(c) *Deviation.* Once an operator has demonstrated that it has satisfied the requirements of paragraph (b) of this section, the operator may deviate from the prescriptive requirements of ASME/ANSI B31.8S and of this subpart only in the following instances.

(1) The time frame for reassessment as provided in § 192.939 except that reassessment by some method allowed under this subpart (*e.g.*, confirmatory direct assessment) must be carried out at intervals no longer than seven years;

(2) The time frame for remediation as provided in § 192.933 if the operator demonstrates the time frame will not jeopardize the safety of the covered segment.

§ 192.915 What knowledge and training must personnel have to carry out an integrity management program?

(a) *Supervisory personnel.* The integrity management program must provide that each supervisor whose responsibilities relate to the integrity management program possesses and maintains a thorough knowledge of the integrity management program and of the elements for which the supervisor is responsible. The program must provide that any person who qualifies as a supervisor for the integrity management program has appropriate training or experience in the area for which the person is responsible.

(b) *Persons who carry out assessments and evaluate assessment results.* The integrity management program must provide criteria for the qualification of any person—

(1) Who conducts an integrity assessment allowed under this subpart; or

(2) Who reviews and analyzes the results from an integrity assessment and evaluation; or

(3) Who makes decisions on actions to be taken based on these assessments.

(c) *Persons responsible for preventive and mitigative measures.* The integrity management program must provide criteria for the qualification of any person—

(1) Who implements preventive and mitigative measures to carry out this subpart, including the marking and locating of buried structures; or

(2) Who directly supervises excavation work carried out in conjunction with an integrity assessment.

§ 192.917 How does an operator identify potential threats to pipeline integrity and use the threat identification in its integrity program?

(a) *Threat identification.* An operator must identify and evaluate all potential threats to each covered pipeline segment. Potential threats that an operator must consider include, but are not limited to, the threats listed in ASME/ANSI B31.8S (ibr, *see* § 192.7), section 2 and the following:

(1) Time dependent threats such as internal corrosion, external corrosion, and stress corrosion cracking;

(2) Static or resident threats, such as fabrication or construction defects;

(3) Time independent threats such as third party damage and outside force damage; and

(4) Human error.

(b) *Data gathering and integration.* To identify and evaluate the potential threats to a covered pipeline segment, an operator must gather and integrate

data and information on the entire pipeline that could be relevant to the covered segment. In performing this data gathering and integration, an operator must follow the requirements in ASME/ANSI B31.8S, section 4. At a minimum, an operator must gather and evaluate the set of data specified in appendix A to ASME/ANSI B31.8S, and consider both on the covered segment and similar non-covered segments, past incident history, corrosion control records, continuing surveillance records, patrolling records, maintenance history, internal inspection records and all other conditions specific to each pipeline.

(c) *Risk assessment.* An operator must conduct a risk assessment that follows ASME/ANSI B31.8S, section 5, and considers the identified threats for each covered segment. An operator must use the risk assessment to prioritize the covered segments for the baseline and continual reassessments (§§ 192.919, 192.921, 192.937), and to determine what additional preventive and mitigative measures are needed (§ 192.935) for the covered segment.

(d) *Plastic transmission pipeline.* An operator of a plastic transmission pipeline must assess the threats to each covered segment using the information in sections 4 and 5 of ASME B31.8S, and consider any threats unique to the integrity of plastic pipe.

(e) *Actions to address particular threats.* If an operator identifies any of the following threats, the operator must take the following actions to address the threat.

(1) *Third party damage.* An operator must utilize the data integration required in paragraph (b) of this section and ASME/ANSI B31.8S, appendix A7 to determine the susceptibility of each covered segment to the threat of third party damage. If an operator identifies the threat of third party damage, the operator must implement comprehensive additional preventive measures in accordance with § 192.935 and monitor the effectiveness of the preventive measures. If, in conducting a baseline assessment under § 192.921, or a reassessment under § 192.937, an operator uses an internal inspection tool, such as a caliper, geometry or magnetic flux leakage tool, to address other identified threats on the covered segment, the operator must integrate data from these tool runs with data related to any encroachment or foreign line crossing on the covered segment, to define where potential indications of third party damage may exist in the covered segment. An operator must also have procedures in its integrity management program addressing actions it will take to respond to findings from this data integration.

(2) *Cyclic fatigue.* An operator must evaluate whether cyclic fatigue or other loading condition (including ground movement, suspension bridge condition) could lead to a failure of a deformation, including a dent or gouge, or other defect in the covered segment. An evaluation must assume the presence of threats in the covered segment that could be exacerbated by cyclic fatigue. An operator must use the results from the evaluation together with the criteria used to evaluate the significance of this threat to the covered segment to prioritize the integrity baseline assessment or reassessment.

(3) *Manufacturing and construction defects.* If an operator identifies the threat of manufacturing and construction defects (including seam defects) in the covered segment, an operator must analyze the covered segment to determine the risk of failure from these defects. An operator may consider manufacturing and construction related defects to be stable defects if the operating conditions on the covered segment have not significantly changed since December 17, 1998. If any of the following changes occur in the covered segment, an operator must prioritize the covered segment as a high risk segment for the baseline assessment or a subsequent reassessment.

(i) Operating pressure increases above the historic operating pressure (*i.e.* the highest pressure recorded since December 17, 1998);

(ii) MAOP increases; or

(iii) The stresses leading to cyclic fatigue increase.

(4) *ERW pipe.* If a covered pipeline segment contains low frequency electric resistance welded pipe (ERW) or lap welded pipe that satisfies the conditions specified in ASME/ANSI B31.8 S, appendix A4.3 and A4.4, an operator must select an assessment technology or technologies with a proven application capable of assessing seam integrity and of detecting seam corrosion anomalies. The operator must prioritize the covered segment as a high risk segment for the baseline assessment or a subsequent reassessment.

(5) *Corrosion.* If an operator identifies corrosion on a covered pipeline segment that could adversely affect the integrity of the line (conditions specified in § 192.931), the operator must evaluate and remediate, as necessary, all pipeline segments (both covered and non-covered) with similar material coating and environmental characteristics. An operator must establish a schedule for evaluating and remediating, as necessary, the similar segments that is consistent with the operator's established operating and maintenance procedures under part 192 for testing and repair.

§ 192.919 What must be in the baseline assessment plan?

An operator must include each of the following elements in its written baseline assessment plan:

(a) Identification of the potential threats to each covered pipeline segment and the information supporting the threat identification. (*See* § 192.917.);

(b) The methods selected to assess the integrity of the line pipe, including an explanation of why the assessment method was selected to address the identified threats to each covered segment. The integrity assessment method an operator uses must be based on the threats identified to the covered segment. (*See* § 192.917.) More than one method may be required to address all the threats to the covered pipeline segment;

(c) A schedule for completing the integrity assessment of all covered segments, including risk factors considered in establishing the assessment schedule;

(d) If applicable, a direct assessment plan that meets the requirements of §§ 192.923, and depending on the threat to be addressed, of § 192.925, § 192.927, or § 192.929; and

(e) A procedure to ensure that the baseline assessment is being conducted in a manner that minimizes environmental and safety risks.

§ 192.921 How is the baseline assessment to be conducted?

(a) *Assessment methods.* An operator must assess the integrity of the line pipe in each covered segment by applying one or more of the following methods depending on the threats to which the covered segment is susceptible. An operator must select the method or methods best suited to address the threats identified to the covered segment (*See* § 192.917).

(1) Internal inspection tool or tools capable of detecting corrosion, and any other threats to which the covered segment is susceptible. An operator must follow ASME/ANSI B31.8S (ibr, see § 192.7), section 6.2 in selecting the appropriate internal inspection tools for the covered segment.

(2) Pressure test conducted in accordance with subpart J of this part;

(3) Direct assessment to address threats of external corrosion, internal corrosion, and stress corrosion cracking. An operator must conduct the direct assessment in accordance with the requirements listed in § 192.923 and with, as applicable, the requirements specified in §§ 192.925, 192.927 or 192.929;

(4) Other technology that an operator demonstrates can provide an equivalent understanding of the condition of the line pipe. An operator choosing this option must notify the Office of Pipeline Safety (OPS) 180 days before conducting the assessment, in accordance with § 192.949.

(b) *Prioritizing segments.* An operator must prioritize the covered pipeline segments for the baseline assessment according to a risk analysis that considers the potential threats to each covered segment. The risk analysis must comply with the requirements in § 192.917.

(c) *Assessment for particular threats.* In choosing an assessment method for the baseline assessment of each covered segment, an operator must take the actions required in § 192.917(d) to address particular threats that it has identified.

(d) *Time period.* An operator must prioritize all the covered segments for assessment in accordance with § 192.917 (c) and paragraph (b) of this section. An operator must assess at least 50% of the covered segments beginning with the highest risk segments, by December 17, 2007. An operator must complete the baseline assessment of all covered segments by December 17, 2012.

(e) *Prior assessment.* An operator may use a prior integrity assessment conducted before December 17, 2002 as a baseline assessment for the covered segment, if the integrity assessment meets the baseline requirements in this subpart and subsequent remedial actions to address the conditions listed in § 192.933 have been carried out. In addition, if an operator uses this prior assessment as its baseline assessment, the operator must reassess the line pipe in the covered segment according to the requirements of § 192.937 and § 192.939.

(f) *Newly identified areas.* When an operator identifies a new high consequence area (*see* § 192.205), an operator must complete the baseline assessment of the line pipe in the newly identified high consequence area within ten (10) years from the date the area is identified.

(g) *Newly installed pipe.* An operator must complete the baseline assessment of a newly installed segment of pipe covered by this subpart within ten (10) years from the date the pipe is installed. An operator may conduct a post-installation pressure test, in accordance with subpart J of part 192, to satisfy the requirement for a baseline assessment.

(h) *Plastic transmission pipeline.* If the threat analysis required in § 192.917(d) on a plastic transmission pipeline indicates that a covered segment is susceptible to failure from causes other than third-party damage, an operator must conduct a baseline assessment of the segment in accordance with the requirements of this section and of § 192.917. The operator must justify the use of an alternative assessment method that will address the identified threats to the covered segment.

§ 192.923 How is direct assessment used and for what threats?

(a) *General.* An operator may use direct assessment either as a primary assessment method or as a supplement to the other assessment methods allowed under this subpart. An operator may only use direct assessment as the primary assessment method to address the identified threats of external corrosion (ECDA), internal corrosion (ICDA), and stress corrosion cracking (SCCDA).

(b) *Primary method.* An operator using direct assessment as a primary assessment method must have a plan that complies with the requirements in—

(1) ASME/ANSI B31.8S (ibr, *see* § 192.7), section 6.4; NACE RP0502–2002 (ibr, *see* § 192.7); and § 192.925 if addressing external corrosion (ECDA).

(2) ASME/ANSI B31.8S, section 6.4 and appendix B2, and § 192.927 if addressing internal corrosion (ICDA).

(3) ASME/ANSI B31.8S, appendix A3, and § 192.929 if addressing stress corrosion cracking (SCCDA).

(c) *Supplemental method.* An operator using direct assessment as a supplemental assessment method for any applicable threat must have a plan that follows the requirements for confirmatory direct assessment in § 192.931.

§ 192.925 What are the requirements for using External Corrosion Direct Assessment (ECDA)?

(a) *Definition.* ECDA is a four-step process that combines preassessment, indirect inspection, direct examination, and post assessment to evaluate the threat of external corrosion to the integrity of a pipeline.

(b) *General requirements.* An operator that uses direct assessment to assess the threat of external corrosion must follow the requirements in this section, in ASME/ANSI B31.8S (ibr, *see* § 192.7), section 6.4, and NACE RP 0502–2002 (ibr, *see* § 192.7). An operator must develop and implement a direct assessment plan that has procedures addressing preassessment, indirect inspections, direct examination, and post-assessment.

(1) *Preassessment.* In addition to the requirements in ASME/ANSI B31.8S section 6.4 and NACE RP 0502–2002, section 3, the plan's procedures for preassessment must include—

(i) Provisions for applying more restrictive criteria when conducting ECDA for the first time on a covered segment; and

(ii) The basis on which an operator selects at least two different, but complementary indirect assessment tools to assess each ECDA Region. If an operator utilizes an indirect inspection method that is not discussed in appendix A of NACE RP0502–2002, the operator must demonstrate the applicability, validation basis, equipment used, application procedure, and utilization of data for the inspection method.

(2) *Indirect Examination.* In addition to the requirements in ASME/ANSI B31.8S section 6.4 and NACE RP 0502–2002, section 4, the plan's procedures for indirect examination of the ECDA regions must include—

(i) Provisions for applying more restrictive criteria when conducting ECDA for the first time on a covered segment;

(ii) Criteria for identifying and documenting those indications that must be considered for excavation and direct examination. Minimum identification criteria include the known sensitivities of assessment tools, the procedures for using each tool, and the approach to be used for decreasing the physical spacing of indirect assessment tool readings when the presence of a defect is suspected;

(iii) Criteria for defining the urgency of excavation and direct examination of each indication identified during the indirect examination. These criteria must specify how an operator will define the urgency of excavating the indication as immediate, scheduled or monitored; and

(iv) Criteria for scheduling excavation of indications for each urgency level.

(3) *Direct examination.* In addition to the requirements in ASME/ANSI B31.8S section 6.4 and NACE RP 0502–2002, section 5, the plan's procedures for direct examination of indications from the indirect examination must include—

(i) Provisions for applying more restrictive criteria when conducting ECDA for the first time on a covered segment;

(ii) Criteria for deciding what action should be taken if either (a) corrosion

defects are discovered that exceed allowable limits (section 5.5.2.2 of NACE RP0502–2002), or

(b) root cause analysis reveals conditions for which ECDA is not suitable (section 5.6.2 of NACE RP0502–2002);

(iii) Criteria and notification procedures for any changes in the ECDA Plan, including changes that affect the severity classification, the priority of direct examination, and the time frame for direct examination of indications; and

(iv) Criteria that describe how and on what basis an operator will reclassify and reprioritize any of the provisions that are specified in section 5.9 of NACE RP0502–2002.

(4) *Post assessment and continuing evaluation.* In addition to the requirements in ASME/ANSI B31.8S section 6.4 and NACE RP 0502–2002, section 6, the plan's procedures for post assessment of the effectiveness of the ECDA process must include—

(i) Measures for evaluating the long-term effectiveness of ECDA in addressing external corrosion in covered segments; and

(ii) Criteria for evaluating whether conditions discovered by direct examination of indications in each ECDA region indicate a need for reassessment of the covered segment at an interval less than that specified in § 192.939. (*See* appendix D of NACE RP0502–2002.)

§ 192.927 What are the requirements for using Internal Corrosion Direct Assessment (ICDA)?

(a) *Definition.* Internal Corrosion Direct Assessment (ICDA) is a process an operator uses to identify areas along the pipeline where fluid or other electrolyte introduced during normal operation or by an upset condition may reside, and then focuses direct examination on the locations in covered segments where internal corrosion is most likely to exist. The process identifies the potential for internal corrosion caused by microorganisms, or fluid with CO_2, O_2, hydrogen sulfide or other contaminants present in the gas.

(b) *General requirements.* An operator using direct assessment as an assessment method to address internal corrosion in a covered pipeline segment must follow the requirements in this section and in ASME/ANSI B31.8S (ibr, *see* § 192.7), section 6.4 and appendix B2. The ICDA process described in this section applies only for a segment of pipe transporting nominally dry natural gas, and not for a segment with electrolyte nominally present in the gas stream. If an operator uses ICDA to assess a covered segment operating with electrolyte present in the gas stream, the operator must develop a plan that demonstrates how it will conduct ICDA in the segment to effectively address internal corrosion.

(c) *The ICDA plan.* An operator must develop and follow an ICDA plan that provides for preassessment, identification of ICDA regions and excavation locations, detailed examination of pipe at excavation locations, and post-assessment evaluation and monitoring.

(1) *Preassessment.* In the preassessment stage, an operator must gather and integrate data and information needed to evaluate the feasibility of ICDA for the covered segment, and to support use of a model to identify the locations along the pipe segment where electrolyte may accumulate, to identify ICDA regions, and to identify areas within the covered segment where liquids may potentially be entrained. This data and information includes, but is not limited to—

(i) All data elements listed in appendix A2 of ASME/ANSI B31.8S;

(ii) Information needed to support use of a model that an operator must use to identify areas along the pipeline where internal corrosion is most likely to occur. (*See* paragraph (a) of this section.) This information, includes, but is not limited to, location of all gas input and withdrawal points on the line; location of all low points on covered segments such as sags, drips, inclines, valves, manifolds, dead-legs, and traps; the elevation profile of the pipeline in sufficient detail that angles of inclination can be calculated for all pipe segments; and the diameter of the pipeline, and the range of expected gas velocities in the pipeline;

(iii) Operating experience data that would indicate historic upsets in gas conditions, locations where these upsets have occurred, and potential damage resulting from these upset conditions; and

(iv) Information on covered segments where cleaning pigs may not have been used or where cleaning pigs may deposit electrolytes.

(2) *ICDA region identification.* An operator's plan must identify where all ICDA Regions are located in the transmission system, in which covered segments are located. An ICDA Region extends from the location where liquid may first enter the pipeline and encompasses the entire area along the pipeline where internal corrosion may occur and where further evaluation is needed. An ICDA Region may encompass one or more covered segments. In the identification process, an operator must use the model in GRI 02–0057, "Internal Corrosion Direct Assessment of Gas Transmission Pipelines—Methodology," (ibr, *see* § 192.7). An operator may use another model if the operator demonstrates it is equivalent to the one shown in GRI 02–0057. A model must consider changes in pipe diameter, locations where gas enters a line (potential to introduce liquid) and locations down stream of gas draw-offs (where gas velocity is reduced) to define the critical pipe angle of inclination above which water film cannot be transported by the gas.

(3) *Identification of locations for excavation and direct examination.* An operator's plan must identify the locations where internal corrosion is most likely in each ICDA region. In the location identification process, an operator must identify a minimum of two locations for excavation within each ICDA Region within a covered segment and must perform a direct examination for internal corrosion at each location, using ultrasonic thickness measurements, radiography, or other generally accepted measurement technique. One location must be the low point (*e.g.*, sags, drips, valves, manifolds, dead-legs, traps) within the covered segment nearest to the beginning of the ICDA Region. The second location must be at the upstream end of the pipe containing a covered segment, having a slope not exceeding the critical angle of inclination nearest the end of the ICDA Region. If corrosion exists at either location, the operator must—

(i) Evaluate the severity of the defect (remaining strength) and remediate the defect in accordance with § 192.933;

(ii) As part of the operator's current integrity assessment either perform additional excavations in each covered segment within the ICDA region, or use an alternative assessment method allowed by this subpart to assess the line pipe in each covered segment within the ICDA region for internal corrosion; and

(iii) Evaluate the potential for internal corrosion in all pipeline segments (both covered and non-covered) in the operator's pipeline system with similar characteristics to the ICDA region containing the covered segment in which the corrosion was found, and as appropriate, remediate the conditions the operator finds in accordance with § 192.933.

(4) *Post-assessment evaluation and monitoring.* An operator's plan must provide for evaluating the effectiveness of the ICDA process and continued monitoring of covered segments where internal corrosion has been identified.

The evaluation and monitoring process includes—

(i) Evaluating the effectiveness of ICDA as an assessment method for addressing internal corrosion and determining whether a covered segment should be reassessed at more frequent intervals than those specified in § 192.939. This evaluation must be carried out in the same year in which ICDA is used; and

(ii) Continually monitoring each covered segment where internal corrosion has been identified using techniques such as coupons, UT sensors or electronic probes, periodically drawing off liquids at low points and chemically analyzing the liquids for the presence of corrosion products. An operator must base the frequency of the monitoring and liquid analysis on results from all integrity assessments that have been conducted in accordance with the requirements of this subpart, and risk factors specific to the covered segment. If an operator finds any evidence of corrosion products in the covered segment, the operator must take prompt action in accordance with one of the two following required actions and remediate the conditions the operator finds in accordance with § 192.933.

(A) Conduct excavations of covered segments at locations downstream from where the electrolyte might have entered the pipe; or

(B) Assess the covered segment using another integrity assessment method allowed by this subpart.

(5) *Other requirements.* The ICDA plan must also include—

(i) Criteria an operator will apply in making key decisions (*e.g.*, ICDA feasibility, definition of ICDA Regions, conditions requiring excavation) in implementing each stage of the ICDA process;

(ii) Provisions for applying more restrictive criteria when conducting ICDA for the first time on a covered segment and that become less stringent as the operator gains experience; and

(iii) Provisions that analysis be carried out on the entire pipeline in which covered segments are present, except that application of the remediation criteria of § 192.933 may be limited to covered segments.

§ 192.929 What are the requirements for using Direct Assessment for Stress Corrosion Cracking (SCCDA)?

(a) *Definition.* Stress Corrosion Direct Assessment (SCCDA) is a process to assess a covered pipe segment for the presence of SCC primarily by systematically gathering and analyzing excavation data for pipe having similar operational characteristics and residing in a similar physical environment.

(b) *General requirements.* An operator using direct assessment as an integrity assessment method to address stress corrosion cracking in a covered pipeline segment must have a plan that provides, at minimum, for—

(1) *Data gathering and integration.* An operator's plan must provide for a systematic process to collect and evaluate data for all covered segments to identify whether the conditions for SCC are present and to prioritize the covered segments for assessment. This process must include gathering and evaluating data related to SCC at all sites an operator excavates during the conduct of its pipeline operations where the criteria in ASME/ANSI B31.8S (ibr, *see* § 192.7), appendix A3.3 indicate the potential for SCC. This data includes at minimum, the data specified in ASME/ANSI B31.8S, appendix A3.

(2) *Assessment method.* The plan must provide that if conditions for SCC are identified in a covered segment, an operator must assess the covered segment using an integrity assessment method specified in ASME/ANSI B31.8S, appendix A3, and remediate the threat in accordance with ASME/ANSI B31.8S, appendix A3, section A3.4.

§ 192.931 How may Confirmatory Direct Assessment (CDA) be used?

An operator using the confirmatory direct assessment (CDA) method as allowed in § 192.937 must have a plan that meets the requirements of this section and of §§ 192.925 (ECDA) and § 192.927 (ICDA).

(a) *Threats.* An operator may only use CDA on a covered segment to identify damage resulting from external corrosion or internal corrosion.

(b) *External corrosion plan.* An operator's CDA plan for identifying external corrosion must comply with § 192.925 with the following exceptions.

(1) The procedures for indirect examination may allow use of only one indirect examination tool suitable for the application.

(2) The procedures for direct examination and remediation must provide that—

(i) All immediate action indications must be excavated for each ECDA region; and

(ii) At least one high risk indication that meets the criteria of scheduled action must be excavated in each ECDA region.

(c) *Internal corrosion plan.* An operator's CDA plan for identifying internal corrosion must comply with § 192.927 except that the plan's procedures for identifying locations for excavation may require excavation of only one high risk location in each ICDA region.

(d) *Defects requiring near-term remediation.* If an assessment carried out under paragraph (b) or (c) of this section reveals any defect requiring remediation prior to the next scheduled assessment, the operator must schedule the next assessment in accordance with NACE RP 0502–2002 (ibr, *see* § 192.7), section 6.2 and 6.3. If the defect requires immediate remediation, then the operator must reduce pressure consistent with § 192.933 until the operator has completed reassessment using one of the assessment techniques allowed in § 192.937.

§ 192.933 What actions must be taken to address integrity issues?

(a) *General requirements.* An operator must take prompt action to address all anomalous conditions that the operator discovers through the integrity assessment. In addressing all conditions, an operator must evaluate all anomalous conditions and remediate those that could reduce a pipeline's integrity. An operator must be able to demonstrate that the remediation of the condition will ensure that the condition is unlikely to pose a threat to the integrity of the pipeline until the next reassessment of the covered segment. If an operator is unable to respond within the time limits for certain conditions specified in this section, the operator must temporarily reduce the operating pressure of the pipeline or take other action that ensures the safety of the covered segment. If pressure is reduced, an operator must determine the temporary reduction in operating pressure using ASME/ANSI B31G (ibr, *see* § 192.7) or AGA Pipeline Research Committee Project PR–3–805 ("RSTRENG"; ibr, *see* § 192.7) or reduce the operating pressure to a level not exceeding 80% of the level at the time the condition was discovered. (*See* appendix A to this part 192 for information on availability of incorporation by reference information). A reduction in operating pressure cannot exceed 365 days without an operator providing a technical justification that the continued pressure restriction will not jeopardize the integrity of the pipeline.

(b) *Discovery of condition.* Discovery of a condition occurs when an operator has adequate information about the condition to determine that the condition presents a potential threat to the integrity of the pipeline. An operator must promptly, but no later than 180 days after conducting an integrity assessment, obtain sufficient

information about a condition to make that determination, unless the operator demonstrates that the 180-day period is impracticable.

(c) *Schedule for evaluation and remediation.* An operator must complete remediation of a condition according to a schedule that prioritizes the conditions for evaluation and remediation. Unless a special requirement for remediating certain conditions applies, as provided in paragraph (d) of this section, an operator must follow the schedule in ASME/ANSI B31.8S (ibr, *see* § 192.7), section 7, Figure 4. If an operator cannot meet the schedule for any condition, the operator must justify the reasons why it cannot meet the schedule and that the changed schedule will not jeopardize public safety. An operator must notify OPS in accordance with § 192.949 if it cannot meet the schedule and cannot provide safety through a temporary reduction in operating pressure or other action. An operator must also notify a State or local pipeline safety authority when a covered segment is located in a State where OPS has an interstate agent agreement, and a State or local pipeline safety authority that regulates a covered pipeline segment within that State.

(d) *Special requirements for scheduling remediation.*—(1) *Immediate repair conditions.* An operator's evaluation and remediation schedule must follow ASME/ANSI B31.8S, section 7 in providing for immediate repair conditions. To maintain safety, an operator must temporarily reduce operating pressure in accordance with paragraph (a) of this section or shut down the pipeline until the operator completes the repair of these conditions: An operator must treat the following conditions as immediate repair conditions:

(i) A calculation of the remaining strength of the pipe shows a predicted failure pressure less than or equal to 1.1 times the maximum allowable operating pressure at the location of the anomaly. Suitable remaining strength calculation methods include, ASME/ANSI B31G; RSTRENG; or an alternative equivalent method of remaining strength calculation. These documents are incorporated by reference and available at the addresses listed in appendix A to part 192.

(ii) A dent that has any indication of metal loss, cracking or a stress riser.

(iii) An anomaly that in the judgment of the person designated by the operator to evaluate the assessment results requires immediate action.

(2) *One-year conditions.* Except for conditions listed in paragraph (d)(1) and (d)(3) of this section, an operator must remediate any of the following within one year of discovery of the condition:

(i) A smooth dent located between the 8 o'clock and 4 o'clock positions (upper ⅔ of the pipe) with a depth greater than 6% of the pipeline diameter (greater than 0.50 inches in depth for a pipeline diameter less than Nominal Pipe Size (NPS) 12).

(ii) A dent with a depth greater than 2% of the pipeline's diameter (0.250 inches in depth for a pipeline diameter less than NPS 12) that affects pipe curvature at a girth weld or at a longitudinal seam weld.

(3) *Monitored conditions.* An operator does not have to schedule the following conditions for remediation, but must record and monitor the conditions during subsequent risk assessments and integrity assessments for any change that may require remediation:

(i) A dent with a depth greater than 6% of the pipeline diameter (greater than 0.50 inches in depth for a pipeline diameter less than NPS 12) located between the 4 o'clock position and the 8 o'clock position (bottom ⅓ of the pipe).

(ii) A dent located between the 8 o'clock and 4 o'clock positions (upper ⅔ of the pipe) with a depth greater than 6% of the pipeline diameter (greater than 0.50 inches in depth for a pipeline diameter less than Nominal Pipe Size (NPS) 12), and engineering analyses of the dent demonstrate critical strain levels are not exceeded.

(iii) A dent with a depth greater than 2% of the pipeline's diameter (0.250 inches in depth for a pipeline diameter less than NPS 12) that affects pipe curvature at a girth weld or a longitudinal seam weld, and engineering analyses of the dent and girth or seam weld demonstrate critical strain levels are not exceeded. These analyses must consider weld properties.

§ 192.935 What additional preventive and mitigative measures must an operator take to protect the high consequence area?

(a) *General requirements.* An operator must take additional measures beyond those already required by Part 192 to prevent a pipeline failure and to mitigate the consequences of a pipeline failure in a high consequence area. An operator must base the additional measures on the threats the operator has identified to each pipeline segment. (*See* § 192.917) An operator must conduct, in accordance with one of the risk assessment approaches in ASME/ANSI B31.8S (ibr, *see* § 192.7), section 5, a risk analysis of its pipeline to identify additional measures to protect the high consequence area and enhance public safety. Such additional measures include, but are not limited to, installing Automatic Shut-off Valves or Remote Control Valves, installing computerized monitoring and leak detection systems, replacing pipe segments with pipe of heavier wall thickness, providing additional training to personnel on response procedures, conducting drills with local emergency responders and implementing additional inspection and maintenance programs.

(b) *Third party damage and outside force damage.*—(1) *Third party damage.* An operator must enhance its damage prevention program, as required under § 192.614 of this part, with respect to a covered segment to prevent and minimize the consequences of a release due to third party or outside force damage. Enhanced measures to an existing damage prevention program include, at a minimum—

(i) Using qualified personnel (*see* § 192.915) for work an operator is conducting that could adversely affect the integrity of a covered segment, such as marking, locating, and direct supervision of known excavation work.

(ii) Collecting in a central database information that is location specific on excavation damage that occurs in on covered and noncovered segments in the transmission system and the root cause analysis to support identification of targeted additional preventative and mitigative measures in the high consequence areas. This information must include recognized damage that is not required to be reported as an incident under part 191.

(iii) Participating in one-call systems in locations where covered segments are present.

(iv) Monitoring of excavations conducted on covered pipeline segments by pipeline personnel. When there is physical evidence of encroachment involving excavation near a covered segment, an operator must either excavate the area near the encroachment or conduct an above ground survey using methods defined in NACE RP–0502–2002 (ibr, *see* § 192.7). An operator must excavate, and remediate, in accordance with ANSI/ASME B31.8S and § 192.933 any indication of coating holidays or discontinuity warranting direct examination.

(2) *Outside force damage.* If an operator determines that outside force (*e.g.*, earth movement, floods, unstable suspension bridge) is a threat to the integrity of a covered segment, the operator must take measures to minimize the consequences to the covered segment from outside force damage. These measures include, but are not limited to, increasing the frequency of aerial, foot or other methods of patrols, adding external protection, reducing external stress, and relocating the line.

(c) *Automatic shut-off valves (ASV) or Remote control valves (RCV).* If an operator determines, based on a risk analysis, that an ASV or RCV would be an efficient means of adding protection to a high consequence area in the event of a gas release, an operator must install the ASV or RCV. In making that determination, an operator must, at least, consider the following factors—swiftness of leak detection and pipe shutdown capabilities, the type of gas being transported, operating pressure, the rate of potential release, pipeline profile, the potential for ignition, and location of nearest response personnel.

(d) *Pipelines operating below 30% SMYS.* With respect to a transmission pipeline operating below 30% SMYS located in a class 3 or 4 area but not in a high consequence area, an operator must—

(1) Apply the requirements in paragraphs (b)(1)(i) and (b)(1)(iii) of this section to the pipeline; and

(2) Either monitor excavations near the pipeline, or conduct patrols as required by § 192.705 of the pipeline at bi-monthly intervals. If an operator finds any indication of unreported construction activity, the operator must conduct a follow up investigation to determine if mechanical damage has occurred.

(e) *Plastic transmission pipeline.* An operator of a plastic transmission pipeline must apply the requirements in paragraphs (b)(1)(i), (b)(1)(iii) and (b)(1)(iv) of this section to the covered segments of the pipeline.

§ 192.937 What is a continual process of evaluation and assessment to maintain a pipeline's integrity?

(a) *General.* After completing the baseline integrity assessment of a covered segment, an operator must continue to assess the line pipe of that segment at the intervals specified in § 192.939 and periodically evaluate the integrity of each covered pipeline segment as provided in paragraph (b) of this section. An operator must reassess a covered segment on which a prior assessment is credited as a baseline under § 192.921(e) by no later than December 17, 2009. An operator must reassess a covered segment on which a baseline assessment is conducted during the baseline period specified in § 192.921(d) by no later than seven years after the baseline assessment of that covered segment unless the evaluation under paragraph (b) of this section indicates earlier reassessment.

(b) *Evaluation.* An operator must conduct a periodic evaluation as frequently as needed to assure the integrity of each covered segment. The periodic evaluation must be based on a data integration and risk assessment of the entire pipeline as specified in § 192.917. For plastic transmission pipelines, the periodic evaluation is based on the threat analysis specified in 192.917(d). For all other transmission pipelines, the evaluation must consider the past and present integrity assessment results, data integration and risk assessment information (§ 192.917), and decisions about remediation (§ 192.933) and additional preventive and mitigative actions (§ 192.935). An operator must use the results from this evaluation to identify the threats specific to each covered segment and the risk represented by these threats.

(c) *Assessment methods.* In conducting the integrity reassessment, an operator must assess the integrity of the line pipe in the covered segment by any of the following methods as appropriate for the threats to which the covered segment is susceptible (*see* § 192.917), or by confirmatory direct assessment under the conditions specified in § 192.931.

(1) Internal inspection tool or tools capable of detecting corrosion, and any other threats to which the covered segment is susceptible. An operator must follow ASME/ANSI B31.8S (ibr, *see* § 192.7), section 6.2 in selecting the appropriate internal inspection tools for the covered segment.

(2) Pressure test conducted in accordance with subpart J of this part;

(3) Direct assessment to address threats of external corrosion, internal corrosion, or stress corrosion cracking. An operator must conduct the direct assessment in accordance with the requirements listed in § 192.923 and with as applicable, the requirements specified in §§ 192.925, 192.927 or 192.929;

(4) Other technology that an operator demonstrates can provide an equivalent understanding of the condition of the line pipe. An operator choosing this option must notify the Office of Pipeline Safety (OPS) 180 days before conducting the assessment, in accordance with § 192.949.

(5) Confirmatory direct assessment when used on a covered segment that is scheduled for reassessment at a period longer than seven years. An operator using this reassessment method must comply with § 192.931.

§ 192.939 What are the required reassessment intervals?

An operator must comply with the following requirements in establishing the reassessment interval for the operator's covered pipeline segments.

(a) *Pipelines operating at or above 30% SMYS.* An operator must establish a reassessment interval for each covered segment operating at or above 30% SMYS in accordance with the requirements of this section. The minimum reassessment interval by an allowable reassessment method is seven years. If an operator establishes a reassessment interval that is greater than seven years, the operator must, within the seven-year period, conduct a confirmatory direct assessment on the covered segment, and then conduct the follow-up reassessment at the interval the operator has established. A reassessment carried out using confirmatory direct assessment must be done in accordance with § 192.931. (For ease of reference, the table that follows this section sets forth the required reassessment intervals.)

(1) *Pressure test or internal inspection or other equivalent technology.* An operator that uses pressure testing or internal inspection as an assessment method must establish the reassessment interval for a covered pipeline segment by—

(i) Basing the interval on the identified threats for the segment as listed in § 192.917 of this section and in ASME/ANSI B31.8S (ibr, *see* § 192.7), section 9, Tables 6 and 7, and on the analysis of the results from the last integrity assessment and from the data integration and risk assessment required by § 192.911; or

(ii) Using the intervals specified for different stress levels of pipeline (operating at or above 30% SMYS) listed in ASME/ANSI B31.8S, section 5, Table 3.

(2) *External Corrosion Direct Assessment.* An operator that uses ECDA that meets the requirements of this subpart must determine the reassessment interval according to the requirements in paragraphs 6.2 and 6.3 of NACE RP0502–2002 (ibr, *see* § 192.7).

(3) *Internal Corrosion or SCC Direct Assessment.* An operator that uses ICDA or SCCDA in accordance with the requirements of this subpart must determine the reassessment interval according to the following calculation. However, the reassessment interval cannot exceed those specified for direct assessment in ASME/ANSI B31.8S, section 5, Table 3.

(i) Determine the largest defect most likely to remain in the covered segment

and the corrosion rate appropriate for the pipe, soil and protection conditions;

(ii) Use the largest remaining defect as the size of the largest defect discovered in the SCC or ICDA segment; and

(iii) Estimate the reassessment interval as half the time required for the largest defect to grow to a critical size.

(b) *Pipelines Operating Below 30% SMYS.* An operator must establish a reassessment interval for each covered segment operating below 30% SMYS in accordance with the requirements of this section. The minimum reassessment interval by an allowable reassessment method is seven years. An operator must establish reassessment by at least one of the following—

(1) Reassessment by pressure test, internal inspection or other equivalent technology following the requirements in paragraph (a)(1) of this section except that the stress level referenced in paragraph (a)(1)(ii) of this section would be adjusted to reflect the lower operating stress level. If an established interval is more than seven years, the operator must conduct by the seventh year of the interval either a confirmatory direct assessment in accordance with § 192.931, or a low stress reassessment in accordance with § 192.941.

(2) Reassessment by ECDA following the requirements in paragraph (a)(2) of this section.

(3) Reassessment by ICDA or SCCDA following the requirements in paragraph (a)(3) of this section.

(4) Reassessment by confirmatory direct assessment at 7-year intervals in accordance with § 192.931, with reassessment by one of the methods listed in paragraphs (b)(1) through (b)(3) of this section by year 20 of the interval.

(5) Reassessment by the low stress assessment method at 7-year intervals in accordance with § 192.941 with reassessment by one of the methods listed in paragraphs (b)(1) through (b)(3) of this section by year 20 of the interval.

For ease of reference, the following table sets forth the required reassessment intervals. Also refer to appendix E.II for guidance on Assessment Methods and Assessment schedule for Transmission Pipelines Operating Below 30% SMYS. In case of conflict between the rule and the guidance in the appendix, the requirements of the rule control.

An operator must comply with the following requirements in establishing a reassessment interval for a covered segment:

MAXIMUM REASSESSMENT INTERVAL

Assessment method	Pipeline operating at or above 50% SMYS	Pipeline operating at or above 30% SMYS, up to 50% SMYS	Pipeline operating below 30% SMYS
Internal Inspection Tool, Pressure Test or Direct Assessment.	10 years (*)	15 years (*)	20 years.(**)
Confirmatory Direct Assessment	7 years	7 years	7 years.
Low Stress Reassessment	Not applicable	Not applicable	7 years + ongoing actions specified in § 192.941.

(*) A Confirmatory direct assessment as described in § 192.931 must be conducted by year 7 in a 10-year interval and years 7 and 14 of a 15-year interval.

(**) A low stress reassessment or Confirmatory direct assessment must be conducted by years 7 and 14 of the interval.

§ 192.941 What is a low stress reassessment?

(a) *General.* An operator of a transmission line that operates below 30% SMYS may use the following method to reassess a covered segment in accordance with § 192.939. This method of reassessment addresses the threats of external and internal corrosion. The operator must have conducted a baseline assessment of the covered segment in accordance with the requirements of §§ 192.919 and 192.921.

(b) *External corrosion.* An operator must take one of the following actions to address external corrosion on the low stress covered segment.

(1) *Cathodically protected pipe.* To address the threat of external corrosion on cathodically protected pipe in a covered segment, an operator must perform an electrical survey (*i.e.* indirect examination tool/method) at least every 7 years on the covered segment. An operator must use the results of each survey as part of an overall evaluation of the cathodic protection and corrosion threat for the covered segment. This evaluation must consider, at minimum, the leak repair and inspection records, corrosion monitoring records, exposed pipe inspection records, and the pipeline environment.

(2) *Unprotected pipe or cathodically protected pipe where electrical surveys are impractical.* If an electrical survey is impractical on the covered segment an operator must—

(i) Conduct leakage surveys as required by § 192.706 at 4-month intervals; and

(ii) Every 1½ years, identify and remediate areas of active corrosion by evaluating leak repair and inspection records, corrosion monitoring records, exposed pipe inspection records, and the pipeline environment.

(c) *Internal corrosion.* To address the threat of internal corrosion on a covered segment, an operator must—

(1) Conduct a gas analysis for corrosive agents at least once each calendar year;

(2) Conduct periodic testing of fluids removed from the segment. At least once each calendar year test the fluids removed from each storage field that may affect a covered segment; and

(3) At least every seven (7) years, integrate data from the analysis and testing required by paragraphs (c)(1)–(c)(2) with applicable internal corrosion leak records, incident reports, safety-related condition reports, repair records, patrol records, exposed pipe reports, and test records, and define and implement appropriate remediation actions.

§ 192.943 When can an operator deviate from these reassessment intervals?

(a) *Waiver from reassessment interval in limited situations.* In the following limited instances, OPS may allow a waiver from a reassessment interval required by § 192.939 if OPS finds a waiver would not be inconsistent with pipeline safety.

(1) *Lack of internal inspection tools.* An operator who uses internal inspection as an assessment method may be able to justify a longer assessment period for a covered segment if internal inspection tools are not available to assess the line pipe. To justify this, the operator must demonstrate that it cannot obtain the internal inspection tools within the required assessment period and that the actions the operator is taking in the interim ensure the integrity of the covered segment.

(2) *Maintain product supply.* An operator may be able to justify a longer reassessment period for a covered segment if the operator demonstrates that it cannot maintain local product supply if it conducts the reassessment within the required interval.

(b) *How to apply.* If one of the conditions specified in paragraph (a) (1) or (a) (2) of this section applies, an operator may seek a waiver of the required reassessment interval. An operator must apply for a waiver in accordance with 49 U.S.C. 60118(c), at least 180 days before the end of the required reassessment interval, unless local product supply issues make the period impractical. If local product supply issues make the period impractical, an operator must apply for the waiver as soon as the need for the waiver becomes known.

§ 192.945 What methods must an operator use to measure program effectiveness?

(a) *General.* An operator must include in its integrity management program methods to measure, on a semi-annual basis, whether the program is effective in assessing and evaluating the integrity of each covered pipeline segment and in protecting the high consequence areas. These measures must include the four overall performance measures specified in ASME/ANSI B31.8S (ibr, *see* § 192.7), section 9.4, and the specific measures for each identified threat specified in ASME/ANSI B31.8S, appendix A. An operator must submit these measures, by electronic or other means, on a semi-annual frequency to OPS in accordance with § 192.951.

(b) *External Corrosion Direct assessment.* In addition to the general requirements for performance measures in paragraph (a) of this section, an operator using direct assessment to assess the external corrosion threat must define and monitor measures to determine the effectiveness of the ECDA process. These measures must meet the requirements of § 192.925. An operator must submit these measures, by electronic or other means, on a semi-annual frequency to OPS in accordance with § 192.951.

§ 192.947 What records must an operator keep?

An operator must maintain, for the useful life of the pipeline, records that demonstrate compliance with the requirements of this subpart. At minium, an operator must maintain the following records for review during an inspection.

(a) A written integrity management program in accordance with § 192.907;

(b) Documents supporting the threat identification and risk assessment in accordance with § 192.917;

(c) A written baseline assessment plan in accordance with § 192.919;

(d) Documents to support any decision, analysis and process developed and used to implement and evaluate each element of the baseline assessment plan and integrity management program. Documents include those developed and used in support of any identification, calculation, amendment, modification, justification, deviation and determination made, and any action taken to implement and evaluate any of the program elements;

(e) Documents that demonstrate personnel have the required training, including a description of the training program, in accordance with § 192.915;

(f) Schedule required by § 192.933 that prioritizes the conditions found during an assessment for evaluation and remediation, including technical justifications for the schedule.

(g) Documents to carry out the requirements in §§ 192.923 through 192.929 for a direct assessment plan;

(h) Documents to carry out the requirements in § 192.931 for confirmatory direct assessment;

(i) Verification that an operator has provided any documentation or notification required by this subpart to be provided to OPS, and when applicable, a State authority with which OPS has an interstate agent agreement, and a State or local pipeline safety authority that regulates a covered pipeline segment within that State.

§ 192.949 How does an operator notify OPS?

An operator must provide any notification required by this subpart by—

(1) Sending the notification to the Information Resources Manager, Office of Pipeline Safety, Research and Special Programs Administration, U.S. Department of Transportation, Room 7128, 400 Seventh Street, SW., Washington, DC 20590;

(2) Sending the notification to the Information Resources Manager by facsimile to (202) 366–7128; or

(3) Entering the information directly on the Integrity Management Database (IMDB) Web site at *http://primis.rspa.dot.gov/gasimp/.*

§ 192.951 Where does an operator file a report?

An operator must send any performance report required by this subpart to the Information Resources Manager—

(1) By mail to the Office of Pipeline Safety, Research and Special Programs Administration, U.S. Department of Transportation, Room 7128, 400 Seventh Street SW., Washington, DC 20590;

(2) Via facsimile to (202) 366–7128; or

(3) Through the online reporting system provided by OPS for electronic reporting available at the OPS Home Page at *http://ops.dot.gov.*

■ 3. Appendix A to part 192 is amended by adding paragraph (9) to section II.D, and by adding new sections II.F and II.G to read as follows:

Appendix A to Part 192—Incorporated by Reference

* * * * *

II. * * *

D. * * *

(9) ASME/ANSI B31.8S–2001 (Supplement to B31.8), "Managing System Integrity of Gas Pipelines," July 19, 2002.

E. * * *

F. NACE International

(1) NACE RP–0502–2002 "Pipeline External Corrosion Direct Assessment Methodology," 2002.

G. Gas Research Institute

(1) GRI 02–0057, "Internal Corrosion Direct Assessment of Gas Transmission Pipelines—Methodology," April 1, 2002.

■ 4. A new Appendix E to Part 192 is added to part 192 to read as follows:

Appendix E to Part 192—Guidance on Determining High Consequence Areas and on Carrying Out Requirements in the Integrity Management Rule

I. Guidance on Determining a High Consequence Area

To determine which segments of an operator's transmission pipeline system are covered for purposes of the integrity management program requirements, an operator must identify the high consequence areas. An operator must use method (1) or (2) from the definition in § 192.903 to identify a high consequence area. An operator may apply one method to its entire pipeline system, or an operator may apply one method to individual portions of the pipeline system. (Refer to figure E.I.A for a diagram of a high consequence area)

(a) If an operator selects method (1), then:

(1) All pipeline in class 3 and class 4 locations is considered to be in a high consequence area.

(2) The operator is to calculate potential impact circles, as defined in § 192.903, centered on the centerline of the pipeline for:

(i) Any areas of its pipeline system that are not in class 3 or class 4 locations which could include an identified site as defined in § 192.903, and

(ii) Any pipeline in class 3 and class 4 locations for which the potential impact radius would be greater than 660 feet (200 meters) and for which an identified site may exist in the area more than 660 feet (200 meters) but less than the potential impact radius from the pipeline.

(3) The operator is to evaluate the potential impact circles to determine if they contain

identified sites, as defined in § 192.903, in accordance with paragraph (c) of the same section.

(4) The operator is to complete identification of high consequence areas by December 17, 2004.

(b) If an operator selects method (2) then:

(1) The operator is to calculate potential impact circles, as defined in § 192.903, centered on the centerline of the pipeline for all areas of its pipeline where the circles could contain 20 buildings intended for human occupancy or an identified site.

(2) The operator is to evaluate the potential impact circles to determine if they contain 20 buildings intended for human occupancy. Each separate dwelling unit in a multiple dwelling unit building is counted as a separate building intended for human occupancy.

(i) If the radius of the potential impact circle is greater than 660 feet (200 meters), the operator may identify a high consequence area based on a prorated number of buildings intended for human occupancy until December 17, 2006. If an operator chooses this approach, the operator must prorate the number of buildings intended for human occupancy based on the ratio of an area with a radius of 660 feet (200 meters) to the area of the potential impact circle (i.e., the prorated number of buildings intended for human occupancy is equal to [20 × (660 feet [or 200 meters]/ potential impact radius in feet [or meters])^2]).

(3) The operator is to evaluate the potential impact circles to determine if they contain identified sites, as defined in § 192.903, in accordance with paragraph (c) of this section.

(4) The operator is to complete identification of high consequence areas by December 17, 2004.

(c) Operators are to identify sites meeting the criteria of identified sites, as defined in § 192.903. The process for identification is in § 192.905. Further guidance was provided in (68 FR 42456; July 17, 2003) titled *issuance of advisory bulletin*. Operators must document, and retain for review during inspections, their rationale for selecting the source(s) used, including why it/they are appropriate for use.

(d) Requirements for incorporating newly identified high consequence areas into an integrity management program are in § 192.905.

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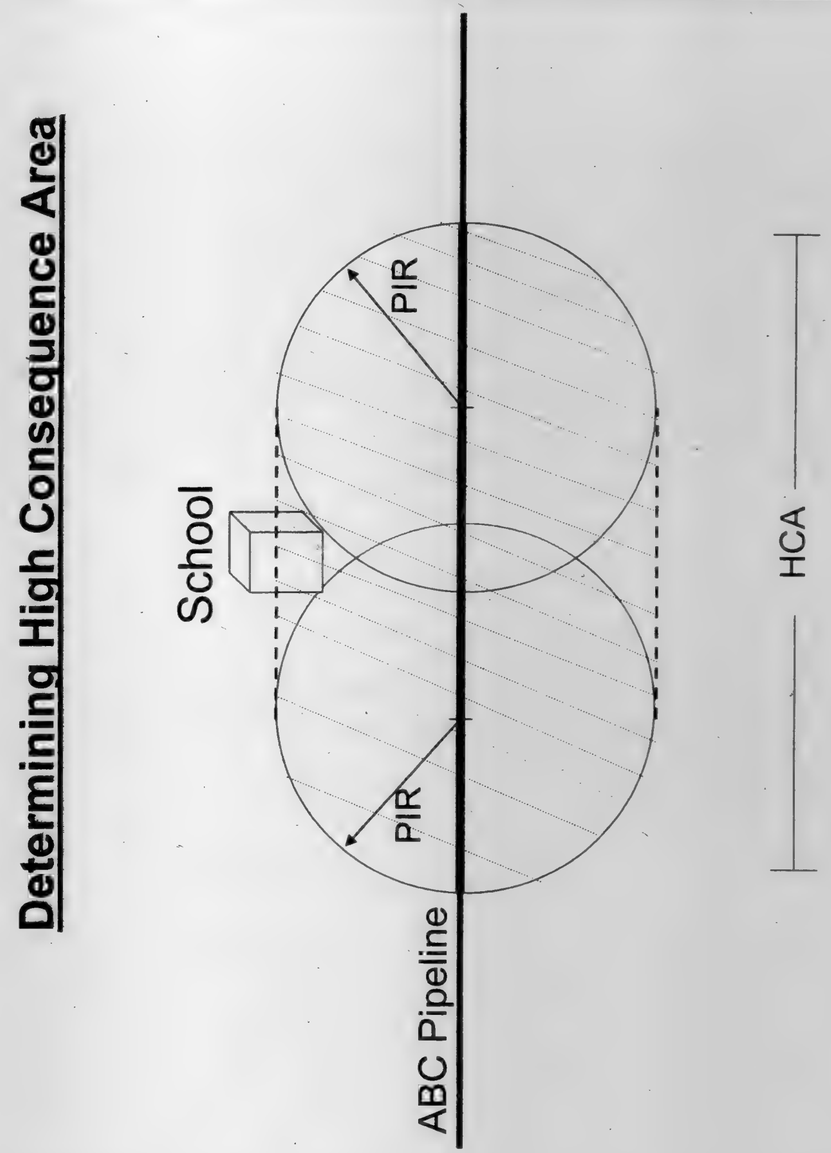


Figure E.I.A

II. Guidance on Assessment Methods for Transmission Pipelines Operating Below 30% SMYS

(a) Table E.II.1 gives guidance to help an operator implement requirements on assessment methods for addressing time dependent and independent threats, for transmission pipelines operating below 30% SMYS *not* in HCAs (*i.e.* outside of potential impact circle) but located within Class 3 and 4 Locations.

(b) Table E.II.2 gives guidance to help an operator implement requirements on assessment methods for addressing time dependent and independent threats, for transmission pipelines operating below 30% SMYS in HCAs.

(c) Table E.II.3 gives guidance on preventative & mitigative measures addressing time dependent and independent

threats for transmission pipelines that operate below 30% SMYS, in HCAs.

Table E.II.1: Assessment Methods for Transmission Pipelines Operating Below 30% SMYS not in HCAs but in Class 3 and 4 Locations

(Column 1) Threat	Existing 192 Requirements		(Column 4) Additional(to 192 requirements)Assessments
	(Column 2) Primary	(Column 3) Secondary	
External Corrosion	455-(Gen. Post 1971), 457-(Gen. Pre-1971) 459-(Examination), 461-(Ext. coating) 463-(CP), 465-(Monitoring) 467-(Elect isolation), 469-Test stations) 471-(Test leads), 473-(Interference) 479-(Atmospheric), 481-(Atmospheric) 485-(Remedial), 705-(Patrol) 706-(Leak survey), 711 (Repair – gen.) 717-(Repair – perm.)	603-(Gen Oper'n) 613-(Surveillance)	For Cathodically Protected Transmission Pipeline: • Perform semi-annual leak surveys. For Unprotected Transmission Pipelines or for Cathodically Protected Pipe where Electrical Surveys are Impractical: • Perform quarterly leak surveys

Table E.II.1: Assessment Methods for Transmission Pipelines Operating Below 30% SMYS not in HCAs but in Class 3 and 4 Locations

Internal Corrosion	475-(Gen IC), 477-(IC monitoring) 485-(Remedial), 705-(Patrol) 706-(Leak survey), 711 (Repair – gen.) 717-(Repair – perm.)	53(a)-(Materials) 603-(Gen Oper'n) 613-(Surveillance)	• Perform semi-annual leak surveys.
3rd Party Damage	103-(Gen. Design), 111-(Design factor) 317-(Hazard prot), 327-(Cover) 614-(Dam. Prevent), 616-(Public education) 705-(Patrol), 707-(Line markers) 711 (Repair – gen.), 717-(Repair – perm.)	615–(Emerg. Plan)	• Participation in state one-call system, • Use of qualified operator employees and contractors to perform marking and locating of buried structures and in direct supervision of excavation work, AND • Either monitoring of excavations near operator's transmission pipelines, or bi-monthly patrol of transmission pipelines in class 3 and 4 locations. Any indications of unreported construction activity would require a follow up investigation to determine if mechanical damage occurred.

Table E.II.2 Assessment Requirements for Transmission Pipelines in HCAs (Re-assessment intervals are maximum allowed)

	Re-Assessment Requirements (see Note 3)					
	At or above 50% SMYS		At or above 30% SMYS up to 50% SMYS		Below 30% SMYS	
Baseline Assessment Method (see Note 3)	Max Re-Assessment Interval	Assessment Method	Max Re-Assessment Interval	Assessment Method	Max Re-Assessment Interval	Assessment Method
Pressure Testing	7	CDA	7	CDA	Ongoing	Preventative & Mitigative (P&M) Measures (see Table E.II.3), (see Note 2)
	10	Pressure Test or ILI or DA				
		Repeat inspection cycle every 10 years	15(see Note 1)	Pressure Test or ILI or DA (see Note 1)		
				Repeat inspection cycle every 15 years	20	Pressure Test or ILI or DA
						Repeat inspection cycle every 20 years
In-Line Inspection	7	CDA	7	CDA	Ongoing	Preventative & Mitigative (P&M) Measures (see Table E.II.3), (see Note 2)
	10	ILI or DA or Pressure Test				
		Repeat inspection cycle every 10 years	15(see Note 1)	ILI or DA or Pressure Test (see Note 1)		
				Repeat inspection cycle every 15 years	20	ILI or DA or Pressure Test
						Repeat inspection cycle every 20 years
Direct Assessment	7	CDA	7	CDA	Ongoing	Preventative & Mitigative (P&M) Measures (see Table E.II.3), (see Note 2)
	10	DA or ILI or Pressure Test				
		Repeat inspection cycle every 10 years	15(see Note 1)	DA or ILI or Pressure Test (see Note 1)		
				Repeat inspection cycle every 15 years	20	DA or ILI or Pressure Test
						Repeat inspection cycle every 20 years

Note 1: Operator may choose to utilize CDA at year 14, then utilize ILI, Pressure Test, or DA at year 15 as allowed under ASME B31.8S

Note 2: Operator may choose to utilize CDA at year 7 and 14 in lieu of P&M

Note 3: Operator may utilize "other technology that an operator demonstrates can provide an equivalent understanding of the condition of line pipe"

Table E.II.3

Preventative & Mitigative Measures addressing Time Dependent and Independent Threats for Transmission Pipelines that Operate Below 30% SMYS , in HCAs

Threat	Existing 192 Requirements		Additional (to 192 requirements) Preventive & Mitigative Measures
	Primary	Secondary	
External Corrosion	455-(Gen. Post 1971) 457-(Gen. Pre-1971) 459-(Examination) 461-(Ext. coating) 463-(CP) 465-(Monitoring) 467-(Elect isolation)	603-(Gen Oper) 613-(Surveil)	For Cathodically Protected Trmn. Pipelines • Perform an electrical survey (i.e. indirect examination tool/method) at least every 7 years. Results are to be utilized as part of an overall evaluation of the CP system and corrosion threat for the covered segment. Evaluation shall include consideration of leak repair and inspection records, corrosion monitoring records, exposed pipe inspection records, and the pipeline environment.

Table E.II.3

Preventative & Mitigative Measures addressing Time Dependent and Independent Threats for Transmission Pipelines that Operate Below 30% SMYS , in HCAs

External Corrosion	469-Test stations) 471-(Test leads) 473-(Interference) 479-(Atmospheric) 481-(Atmospheric) 485-(Remedial) 705-(Patrol) 706-(Leak survey) 711 (Repair – gen.) 717-(Repair – perm.)		For Unprotected Trmn. Pipelines or for Cathodically Protected Pipe where Electrical Surveys are Impracticable • Conduct quarterly leak surveys AND • Every 1-1/2 years, determine areas of active corrosion by evaluation of leak repair and inspection records, corrosion monitoring records, exposed pipe inspection records, and the pipeline environment.
Internal Corrosion	475-(Gen IC) 477-(IC monitoring) 485-(Remedial) 705-(Patrol) 706-(Leak survey) 711 (Repair – gen.) 717-(Repair – perm.)	53(a)-(Materials) 603-(Gen Oper) 613-(Surveil)	• Obtain and review gas analysis data each calendar year for corrosive agents from transmission pipelines in HCAs, • Periodic testing of fluid removed from pipelines. Specifically, once each calendar year from each storage field that may affect transmission pipelines in HCAs, AND • At least every 7 years, integrate data obtained with applicable internal corrosion leak records, incident reports, safety related condition reports, repair records, patrol records, exposed pipe reports, and test records.

Table E.II.3

Preventative & Mitigative Measures addressing Time Dependent and Independent Threats for Transmission Pipelines that Operate Below 30% SMYS, in HCAs

3rd Party Damage	103-(Gen. Design) 111-(Design factor) 317-(Hazard prot) 327-(Cover) 614-(Dam. Prevent) 616-(Public educat) 705-(Patrol) 707-(Line markers) 711 (Repair – gen.) 717-(Repair – perm.)	615 –(Emerg Plan)

- Participation in state one-call system,
- Use of qualified operator employees and contractors to perform marking and locating of buried structures and in direct supervision of excavation work, AND
- Either monitoring of excavations near operator's transmission pipelines, or bi-monthly patrol of transmission pipelines in HCAs or class 3 and 4 locations. Any indications of unreported construction activity would require a follow up investigation to determine if mechanical damage occurred.

Issued in Washington, DC, on December 2, 2003.

Samuel G. Bonasso,

Deputy Administrator.

[FR Doc. 03–30280 Filed 12–12–03; 8:45 am]

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Federal Register

Monday,
December 15, 2003

Part III

Department of Health and Human Services

Centers for Medicare & Medicaid Services

42 CFR Parts 403 and 408

Medicare Program; Medicare Prescription Drug Discount Card; Interim Rule and Notice

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Parts 403 and 408

[CMS–4063–IFC]

RIN 0938–AM71

Medicare Program; Medicare Prescription Drug Discount Card

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Interim final rule with comment period.

SUMMARY: Section 101, subpart 4 of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003, codified in section 1860D–31 of the Social Security Act, provides for a voluntary prescription drug discount card program for Medicare beneficiaries entitled to benefits, or enrolled, under Part A or enrolled under Part B, excluding beneficiaries entitled to medical assistance for outpatient prescription drugs under Medicaid, including section 1115 waiver demonstrations. Eligible beneficiaries may access negotiated prices on prescription drugs by enrolling in drug discount card programs offered by Medicare-endorsed sponsors.

Eligible beneficiaries may enroll in the Medicare drug discount card program beginning no later than 6 months after the date of enactment of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 and ending December 31, 2005. After December 31, 2005, beneficiaries enrolled in the program may continue to use their drug discount card during a short transition period beginning January 1, 2006 and ending upon the effective date of a beneficiary's outpatient drug coverage under Medicare Part D, but no later than the last day of the initial open enrollment period under Part D.

Beneficiaries with incomes no more than 135 percent of the poverty line applicable to their family size who do not have outpatient prescription drug coverage under certain programs—Medicaid, certain health insurance coverage or group health insurance (such as retiree coverage), TRICARE, and Federal Employees Health Benefits Program (FEHBP)—also are eligible for transitional assistance, or payment of $600 in 2004 and up to $600 in 2005 of the cost of covered discount card drugs obtained under the program. In most cases, any transitional assistance remaining available to a beneficiary on December 31, 2004 may be rolled over to 2005 and applied toward the cost of covered discount card drugs obtained under the program during 2005. Similarly, in most cases, any transitional assistance remaining available to a beneficiary on December 31, 2005 may be applied toward the cost of covered discount card drugs obtained under the program during the transition period.

The Centers for Medicare & Medicaid Services will solicit applications from entities seeking to offer beneficiaries negotiated prices on covered discount card drugs. Those meeting the requirements described in the authorizing statute and this rule, including administration of transitional assistance, will be permitted to offer a Medicare-endorsed drug discount card program to eligible beneficiaries. Endorsed sponsors may charge beneficiaries enrolling in their endorsed programs an annual enrollment fee for 2004 and 2005 of no more than $30; CMS will pay this fee on behalf of enrollees entitled to transitional assistance.

To ensure that eligible Medicare beneficiaries take full advantage of the Medicare drug discount card program and make informed choices, CMS will educate beneficiaries about the existence and features of the program and the availability of transitional assistance for certain low-income beneficiaries; and publicize information that will allow Medicare beneficiaries to compare the various Medicare-endorsed drug discount card programs.

DATES: *Effective Date:* The provisions of this interim final rule with comment period are effective December 15, 2003.

Comment date: Comments will be considered if we receive them no later than 5 p.m. on January 14, 2004, at the appropriate address, as provided below.

ADDRESSES: In commenting, please refer to file code CMS–4063–IFC. Because of staff and resource limitations, we cannot accept comments by facsimile (FAX) transmission.

Mail written comments (1 original and 3 copies) to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–4063–FC, P.O. Box 8013, Baltimore, MD 21244–8013.

Please allow sufficient time for mailed comments to be timely received in the event of delivery delays.

If you prefer, you may deliver (by hand or courier) your written comments (1 original and 3 copies) to one of the following addresses: Room 445–G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201, or Room C5–14–03, 7500 Security Boulevard, Baltimore, MD 21244–1850.

(Because access to the interior of the Hubert H. Humphrey Building is not readily available to persons without Federal Government identification, commenters are encouraged to leave their comments in the CMS drop slots located in the main lobby of the building. A stamp-in clock is available for commenters wishing to retain a proof of filing by stamping in and retaining an extra copy of the comments being filed.)

Comments mailed to the addresses indicated as appropriate for hand or courier delivery may be delayed and could be considered late.

For information on viewing public comments, see the beginning of the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Teresa DeCaro, (410) 786–6604.

SUPPLEMENTARY INFORMATION: Copies: To order copies of the **Federal Register** containing this document, send your request to: New Orders, Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250–7954. Specify the date of the issue requested and enclose a check or money order payable to the Superintendent of Documents, or enclose your Visa or Master Card number and expiration date. Credit card orders can also be placed by calling the order desk at (202) 512–1800 (or toll free at 1–888–293–6498) or by faxing to (202) 512–2250. The cost for each copy is $10. As an alternative, you can view and photocopy the **Federal Register** document at most libraries designated as Federal Depository Libraries and at many other public and academic libraries throughout the country that receive the **Federal Register**. This **Federal Register** document is also available from the **Federal Register** online database through GPO Access, a service of the U.S. Government Printing Office. The Web site address is: *http://www.access.gpo.gov/nara/index.html*.

Inspection of Public Comments: Comments received timely will be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, at the headquarters of the Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, Maryland 21244, Monday through Friday of each week from 8:30 a.m. to 4 p.m. To schedule an appointment to view public comments, please call: (410) 786–7197.

To assist readers in referencing sections contained in this document, we are providing the following Table of Contents of the preamble.

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III. Regulatory Impact Analysis and Regulatory Flexibility Act Analysis Regulation Text

I. Background

A. Statutory Basis for the Program

The purpose of this interim final rule is to establish requirements for the Medicare Prescription Drug Discount Card and Transitional Assistance Program (hereafter referred to as the "Medicare drug discount card program"). This program was established by section 101, subpart 4, of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003, and is codified in section 1860D–31 of the Social Security Act (the "Act").

Section 1860D–31(a)(2)(A) of the Act requires us to ensure that eligible Medicare beneficiaries have access to negotiated prices for prescription drugs and transitional assistance under the Medicare discount card program within 6 months of the date of enactment of the program's authorizing statute. To enable us to meet this implementation deadline, the statute authorizes us to issue this interim final rule, which is effective immediately on an interim basis, as of the date of publication. Although the rule will be effective prior to receipt of public comments, we will accept comments on this interim final rule during a 30-day comment period and may, at a future date, revise this regulation based on the comments we receive. In addition, we will continue to monitor the implementation of this program during its operation. If we become aware of operational difficulties in the program, or of activities resulting in fraud, waste, or abuse we may revise the policies announced in this rule using appropriate procedures.

Section 105(c) of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 provides for expedited implementation by—

- Exempting the Medicare drug discount card program from the requirements of the Paperwork Reduction Act, including the public comment and Federal clearance processes associated with it;
- Exempting the drug discount card program from the requirement in the Congressional Review Act for a 60-day delayed effective date for major rules (5 U.S.C. 801(a)(3)(A)), and from the requirement under the Administrative Procedure Act (5 U.S.C. 553(d)) that regulations not become effective until 30 days after their publication.
- Allowing the Secretary of the Department of Health and Human Services (hereinafter the "Secretary") to enter into contracts without regard to provisions of law or regulation governing the performance, amendment, or modification of contracts that may be inconsistent with furthering the Medicare drug discount card program.
- As provided under sections 105(c)(4)(A) and (B) of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003, prohibiting judicial review of a CMS determination not to endorse a sponsor applicant and providing that, in the event any provision of section 1860D–31 of the Act is enjoined, the order will not affect the remaining provisions of section 1860D–31.

To meet the six-month implementation deadline, we will pursue a compressed timeframe for soliciting and reviewing endorsed sponsor applications.

B. Purpose of the Program

Congress intended for the Medicare drug discount card program to serve as a transitional program providing Medicare beneficiaries with immediate assistance with prescription drug costs during calendar year (CY) 2004 and CY 2005 while preparations are made for implementation of the Medicare drug benefit under Medicare part D in 2006. Medicare currently does not cover the

cost of outpatient drugs, with a few exceptions. In directing us to establish the Medicare drug discount card program, Congress sought to provide Medicare beneficiaries—particularly those lacking outpatient drug coverage—with access to negotiated prices on prescription drugs through enrollment in Medicare-endorsed drug discount card programs operated by endorsed sponsors. In addition, to help low-income beneficiaries meet their drug costs, Congress authorized up to $600 of annual transitional assistance that eligible beneficiaries may apply toward the cost of covered discount card drugs purchased under the program.

The Medicare drug discount card program is designed to increase beneficiaries' access to low-cost prescription drugs by building upon best practices in the private drug benefit market today.

C. Relationship to Medicare-Endorsed Prescription Drug Card Assistance Initiative

On September 4, 2002, we published a final rule (67 FR 56618) establishing the Medicare-Endorsed Prescription Drug Card Assistance Initiative based primarily on the educational and assistance authority in section 4359 of the Omnibus Budget Reconciliation Act of 1990 (OBRA) (Pub. L. 101–508). Similar to the Medicare drug discount card program, this initiative called for us to endorse private sector prescription drug card programs that met certain criteria, including offering Medicare beneficiaries discounted drug prices through retail pharmacy networks that met our access standards. On January 8, 2003, we posted a solicitation of application.

On January 23, 2003, the Federal Court for the District of Columbia enjoined us from proceeding with the initiative. In accordance with the court order, we withdrew the solicitation, ceased all work on the initiative, and neither received any applications nor made any endorsements on the basis of the September 4, 2002 rule.

The Medicare drug discount card program described in this rule is based on entirely different statutory authority—the Medicare Prescription Drug, Improvement, and Modernization Act of 2003—than the 2002 initiative and has significantly different features than the earlier initiative, most notably the provision of transitional assistance to eligible beneficiaries. Therefore, parties interested in the implementation and operation of the Medicare drug discount card program should not refer to the September 4, 2002 final rule or the January 8, 2003 solicitation for guidance on the program that we will implement under the Medicare Prescription Drug, Improvement, and Modernization Act of 2003. Also, by publishing this interim final rule with comment under the authority of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003, we hereby withdraw the regulation and solicitation published September 4, 2002 and January 8, 2003, respectively.

II. Provisions of the Interim Final Rule With Comment Period

A. Eligibility and Enrollment

Sections 1860D–31(b)(1) and (2) of the Act establish the eligibility criteria for the Medicare drug discount card program and for transitional assistance, which we have incorporated into § 403.810(a) and § 403.810(b) of our regulations. Section 1860D–31(f)(1)(A) of the Act directs the Secretary to specify the procedures for determining a beneficiary's eligibility for the Medicare drug discount card program or transitional assistance and section 1860D–31(c)(1) directs the Secretary to establish a process for eligible beneficiaries enrolling in, and disenrolling from, an endorsed program. Sections 403.810 and 403.811 of our regulations set forth these procedures. The obligations of endorsed sponsors related to eligibility determinations and enrollment are discussed in section II.C.6 of this document.

1. Eligibility for the Medicare Prescription Drug Discount Card and Transitional Assistance Program

In accordance with section 1860D–31(b)(1) of the Act, a Medicare beneficiary is eligible for the Medicare drug discount card if the beneficiary is entitled to benefits, or enrolled, under Medicare Part A or enrolled under Medicare Part B, and does not already receive drug coverage through a State medical assistance plan under either a Title XIX program or under a demonstration program that is approved by us under sections 1115(a)(1) and (2) of the Act, hereinafter referred to as a "section 1115 waiver demonstration."

The benefit package available to beneficiaries enrolled in section 1115 waiver demonstrations varies, with some demonstrations offering comprehensive outpatient prescription drug coverage and others offering more limited or no outpatient drug coverage. Section 1860D–31(b)(1)(B) of the Act provides that beneficiaries entitled to "any" medical assistance for outpatient prescribed drugs under a section 1115 waiver demonstration are ineligible for the Medicare drug discount card program. We interpret this section as rendering ineligible for the program all beneficiaries enrolled in a section 1115 waiver demonstration program with some outpatient drug coverage, even if limited coverage. Beneficiaries enrolled in a section 1115 waiver demonstration that does not provide outpatient drug coverage are eligible for the program provided they meet all other eligibility criteria. Similarly, beneficiaries enrolled in Medicaid under title XIX of the Act who do not receive outpatient drug coverage may be eligible for the program.

We have the authority to establish procedures for eligibility determinations under section 1860D–31(f)(1)(A) of the Act. Under this authority and in the interest of promoting efficient administration of the program, we specify in § 403.810(d) of our regulations that beneficiaries determined eligible for the program will remain eligible for the entire period of their enrollment. We therefore provide in section 403.810(a) of the regulations that a beneficiary is eligible for the Medicare drug discount card program if he or she satisfies the above requirements at the time of applying to enroll in the program. Consequently, once a beneficiary has been determined eligible for the Medicare drug discount card program, he or she will remain eligible for the duration of the program unless he or she disenrolls from an endorsed program and is ineligible for a special election period that would allow the individual to enroll in another program in accordance with § 403.811(b)(2) of the regulations, as discussed below in section II.A.6, or if involuntarily disenrolled as provided in § 403.811(b)(6). If, after such a disenrollment from the Medicare drug discount card program in 2004, a beneficiary wishes to later re-enroll in the program, he or she must re-apply and re-qualify for the program for 2005.

Section 1860D–31(b)(4) directs the Secretary to issue appropriate rules addressing the eligibility of medically needy beneficiaries, as described in section 1902(a)(10)(C) of the Act, for the Medicare drug discount card program. Medically needy beneficiaries will be treated the same as all other beneficiaries applying for the program and therefore will be eligible for the program if at the time of applying for the program they meet the eligibility criteria set forth in § 403.810(a) of the regulations.

Medicare beneficiaries residing in the U.S. territories, which include American Samoa, Commonwealth of the Northern Mariana Islands, Guam, Puerto Rico, and Virgin Islands, are eligible to enroll in an endorsed program. Whereas Medicare beneficiaries residing in the 50 States and the District of Columbia are ineligible for the Medicare drug discount card program if they have outpatient prescription drug coverage under Medicaid or a section 1115 waiver demonstration, as provided in § 403.817(d) of our regulations and as discussed in section II.J. of this document, Medicare beneficiaries residing in the territories who also receive outpatient prescription drug coverage under Medicaid or a Medicaid section 1115 waiver are eligible for the Medicare drug discount card program.

2. Eligibility for Transitional Assistance

Under section 1860D–31(b)(2) of the Act, and as provided in § 403.810(b) of our regulations, a beneficiary is eligible to receive transitional assistance if the beneficiary is eligible for the Medicare drug discount card program and meets the following requirements:

(1) The beneficiary resides in one of the 50 States or the District of Columbia;

(2) The beneficiary's income is not more than 135 percent of the poverty line applicable to the beneficiary's family size; and

(3) The beneficiary does not have coverage for covered discount card drugs under one or more of the following sources: (a) TRICARE coverage under chapter 55 of title 10, (b) a Federal Employee's Health benefit plan under chapter 89 of title 5, or (c) a group health plan or health insurance coverage, as those terms are defined under section 2791 of the Public Health Service Act (42 U.S.C. 300gg–91), other than a plan under Medicare Part C or a group health plan or health insurance coverage consisting solely of excepted benefits, as that term is defined under section 2791 of the Public Health Service Act (42 U.S.C. 300gg–91(c)).

The poverty line is defined in section 673(2) of the Community Services Block Grant Act, 42 U.S.C. 9902(2), and is revised annually by the Secretary. Excepted benefits include, but are not limited to, medical supplemental insurance (Medigap insurance), limited scope dental or vision benefits, liability insurance (for example, automobile insurance), coverage for a specific disease or illness, and workers' compensation insurance.

Under section 1860D–31(f)(2)(B) of the Act, beneficiaries who have been verified as eligible for transitional assistance will be considered so eligible for the entire period of their enrollment in any endorsed program. We therefore provide in § 403.810(b) of the regulations that a beneficiary is eligible for transitional assistance if he or she satisfies the above requirements at the time of applying for transitional assistance. Thus, we specify in 403.810(d) that once a beneficiary has been determined eligible for transitional assistance, he or she will remain eligible for transitional assistance for the duration of the beneficiary's enrollment in the Medicare drug discount card program. A beneficiary will no longer be eligible for transitional assistance if he or she disenrolls from the program; specifically, if he or she disenrolls from an endorsed program and is ineligible for a special election period that would allow the individual to enroll in another endorsed program in accordance with § 403.811(b)(2) of the regulations, as discussed below in section II.A.6.

Although beneficiaries with outpatient drug coverage under a group health plan or health insurance coverage generally are ineligible for transitional assistance, as noted above, the statutory definition of transitional assistance eligible beneficiaries carves out from this exclusion outpatient drug coverage under a Part C plan described in section 1851(a)(2) of the Act or a policy consisting solely of excepted benefits. Consequently, provided that they meet all other eligibility criteria, beneficiaries with outpatient drug coverage under a Part C plan or a policy consisting solely of excepted benefits, such as Medigap, are still eligible for transitional assistance even if their employer pays all or a portion of the premium for such plans or policies.

Section 1860D–31(f)(1)(B) of the Act gives the Secretary the authority to define "income" and "family size" as it pertains to determinations of a beneficiary's eligibility for transitional assistance. Income refers to the amount, type, and ownership of income that will be counted in determining whether an applicant's income is no more than 135 percent of the poverty line for the beneficiary's family size. For purposes of the Medicare drug discount card program, we have defined "income" as including the components of adjusted gross income, as defined under 26 U.S.C. 62, and, to the extent not included in the components of AGI retirement and disability benefits, or, if the beneficiary is married, the sum of such income for both the beneficiary and his or her spouse.

Family size means the number of beneficiaries by which 135 percent of the poverty line must be adjusted to determine the income threshold the beneficiary's income may not exceed in order to be eligible for transitional assistance. For purposes of this program, we have defined "family size" as one for unmarried individuals and two for individuals who are married. This definition is based on the rules of the Supplemental Security Income (SSI) program established under title XVI of the Act. While the SSI program does not actually define "family" or "family size," it makes eligibility determinations based in part on whether a beneficiary is single or married. The income definition above is not based on the SSI definition because the systems-based process we intend to use to determine eligibility for transitional assistance is different from the interview determination process used to determine eligibility for SSI, and from the process we will use under Part D. For this short-term program, the statute directs us to determine eligibility based on self-certification, with CMS to perform eligibility verifications via computer matching of Federal databases, as discussed below. We will not use an individual determination process as SSI uses; hence we have chosen a simpler definition than the elaborate definition SSI uses.

In section 1860D–31(f) of the Act, the statute directs us to determine eligibility based on self-certification, with CMS to verify self-certified eligibility through data matching. We have developed an information system for verifying beneficiaries' eligibility for the Medicare drug discount card program. Among other functions, this system will verify, to the extent possible, that the income of beneficiaries applying for transitional assistance does not exceed 135 percent of the poverty line for their family size. As provided in section 1860D–31(f)(3) of the Act, this system relies on income and retirement benefit information provided by the Internal Revenue Service (IRS) and the Social Security Administration, and may include additional data sources as they become available.

As part of the standard enrollment form, a beneficiary must certify, under penalty of perjury that, to the best of the beneficiary's knowledge, the information about his or her current income status and outpatient prescription drug coverage, as provided on the form, is accurate. If we are unable to conclusively verify whether an individual's income is no more than 135 percent of the poverty line for his or her family size, we may request that the beneficiary provide us with additional financial information. In § 403.810(f)(2) of our regulations, we reserve the right to make the provision of this additional information a condition of receiving transitional assistance.

Section 1860D–31(f)(3)(C)(i) of the Act gives the Secretary the authority to find

that Medicare beneficiaries eligible under title XIX as Qualified Medicare Beneficiaries (QMBs), Specified Low-Income Medicare Beneficiaries (SLMBs), or as Qualifying Individuals (QIs) satisfy the income threshold requirement for eligibility for transitional assistance. Therefore, § 403.810(c) of our regulations specifies that these individuals by definition will be deemed to have met the income threshold requirement for transitional assistance. However, these individuals must meet the other eligibility criteria set forth in § 403.810(b) of our regulations to be determined eligible for transitional assistance.

Section 1860D–31(b)(4) directs the Secretary to issue appropriate rules addressing the eligibility of medically needy beneficiaries, as described in section 1902(a)(10)(C) of the Act, for transitional assistance. Medically needy beneficiaries will be treated the same as all other beneficiaries applying for transitional assistance and therefore will be eligible for transitional assistance if at the time of applying for transitional assistance they meet the eligibility criteria set forth in § 403.810(b) of the regulations. An individual who is already enrolled in an endorsed discount card program and subsequently qualifies for outpatient drug coverage under Medicaid as a medically needy beneficiary, will not be disenrolled or denied transitional assistance solely because he or she is now receiving outpatient drug coverage under Medicaid.

Under § 403.810(b)(2) of our regulations, residents of the territories are not eligible for transitional assistance under the Medicare drug discount card program. However, under section 1860D–31(j)(2) of the Act, and as provided in § 403.817(e) of our regulations, a territory may establish its own transitional assistance plan. As discussed in section II.J. of this document, a territory choosing to establish its own transitional assistance plan may offer transitional assistance to any individual entitled to benefits, or enrolled, under Medicare Part A or enrolled under Medicare Part B, whose income is no more than 135 percent of the poverty line for the individual's family size, regardless of whether that individual receives outpatient drug coverage under Medicaid or a section 1115 waiver demonstration.

As specified in section 1860D–31(g)(6) of the Act and provided in § 403.810(e) of our regulations, any benefits received under the Medicare drug discount card program will not be taken into account in determining a beneficiary's eligibility for, or the amount of benefits under, any other Federal program.

3. Enrollment in an Endorsed Program

Section 1860D–31(c)(1) of the Act requires the Secretary to establish a process through which beneficiaries enroll in endorsed programs. Section 403.811(a) of our regulations specifies the programmatic requirements of this process.

We anticipate that endorsed sponsors will begin enrolling eligible beneficiaries in their endorsed programs no later than six months after enactment of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003.

Throughout this document, when we refer to a beneficiary, enrollee, or individual in the context of taking action regarding the Medicare drug discount card program, such as applying for the discount card, transitional assistance, or reconsideration, we also mean the individual's authorized representative. This representative can complete an enrollment form on a individual's behalf, certify the accuracy of its content, authorize CMS to verify the individual's eligibility information, conduct other enrollment and disenrollment transactions, and otherwise represent the individual with regard to this program. Our regulations at § 403.806(l) specify the way endorsed sponsors must treat authorized representatives.

Under the authority in section 1860D–31(c)(1)(A) of the Act, we provide in § 403.811(a)(5) of our regulations, that an individual who is not currently enrolled in an endorsed card program can enroll in any endorsed program serving residents of their State at any time during the enrollment period. As provided in section 1860D–31(c)(1) of the Act and § 403.811(a)(6) of our regulations, an individual may only enroll in one endorsed program at a time. Relying on the authority in section 1860D–31(c)(1) of the Act, we provide in § 403.811(a)(7) of our regulations that an individual can enroll in one endorsed program per year during the enrollment period. Finally, § 403.811(a)(9) of our regulations specifies that no new enrollment or changing of endorsed card election can occur during the transition period.

Under section 1860D–31(c)(1)(A) of the Act, and as provided in § 403.811(a)(10) of our regulations, a discount card eligible individual not already enrolled in an endorsed program may enroll in any endorsed program serving residents of the State in which the beneficiary resides, with the exception of beneficiaries enrolled in certain Part C or reasonable cost reimbursement plans offering "exclusive card programs." (A Part C organization as described in section 1851(a)(2)(A) of the Act that offers enrollment in a coordinated care plan or an organization that offers enrollment under a reasonable cost reimbursement plan described in section 1876(h) of the Act are hereinafter referred to as "Medicare managed care organizations" and the plans they offer, "Medicare managed care plans," respectively.) An "exclusive card sponsor" is a Medicare managed care organization that offers an endorsed program with enrollment limited to members of one or more of its Medicare managed care plan(s). Under section 1860D–31(c)(1)(E) of the Act, members of Medicare managed care plans offered by exclusive card sponsors that include access to an exclusive card program as part of the plan's benefit package, may only enroll in such exclusive card programs. Medicare managed care organizations as card sponsors, including exclusive card sponsors, are discussed in section II.G. of this document.

As part of our verification system, we will verify whether each beneficiary seeking enrollment receives outpatient drug coverage under Medicaid or a section 1115 waiver demonstration, is enrolled in another endorsed program, or is a member of a Medicare managed care plan offering an exclusive card program. This system will include files provided to us by the State Medicaid programs and a database for tracking beneficiaries' enrollment and disenrollment from endorsed programs.

If a beneficiary wishes to apply for transitional assistance when he or she applies to enroll in an endorsed program, the endorsed sponsor may not enroll the beneficiary in its endorsed program until the beneficiary is determined eligible for transitional assistance. If the beneficiary is determined ineligible for transitional assistance and still wishes to enroll in the endorsed sponsor's endorsed program, the sponsor must provide the beneficiary with an opportunity to actively choose to enroll in the drug card only through enrollment processes as specified by the Secretary and permitted by the endorsed sponsor. This requirement is specified in § 403.811(a)(3) of our regulations. We create this requirement because we believe a beneficiary's eligibility or ineligibility for transitional assistance may influence his or her decision to enroll in the Medicare drug discount card program and which endorsed program he or she selects.

Section 1860D–31(c)(2) of the Act provides that endorsed sponsors may charge an annual enrollment fee up to, but no more than, $30 per year. Discount card enrollees, other than transitional assistance enrollees, must pay this fee to their endorsed sponsors. We discuss enrollment fees in greater detail in section II.C.6. of the document.

A discount card enrollee will remain enrolled in the same endorsed program for CYs 2004 and 2005 and the transition period unless the beneficiary changes endorsed programs following the annual coordinated election period, the beneficiary disenrolls, or the endorsed card program terminates, as provided in § 403.811(a)(8) of our regulations. This means that a beneficiary remaining enrolled in an endorsed program with an annual enrollment fee from CYs 2004 to 2005 is responsible for paying any new annual enrollment fee for 2005.

Section 1860D–31(c)(4) of the Act gives the Secretary the discretion to establish the date upon which access to an endorsed program's negotiated prices will take effect. We specify in § 403.811(a)(11) of our regulations that the date upon which the beneficiary can access negotiated prices is the date when a beneficiary's enrollment in an endorsed program becomes effective.

Under the Secretary's authority to develop an enrollment process under section 1860D–31(c)(1) of the Act, and as stated in § 403.814(b)(5) of the regulations, if a Medicare managed care organization limits enrollment in an exclusive card program to members of one or more of its Medicare managed care plans, we will permit the Medicare managed care organization to automatically enroll, or group enroll, into its exclusive card program eligible individuals enrolled in the Medicare managed care plan(s), unless such beneficiaries affirmatively notify the Medicare managed care organization of their desire not to enroll in its exclusive card program. Prior to group enrolling such beneficiaries in its exclusive card program, the Medicare managed care organization must notify its eligible members of its intent to do so and inform them of their right not to enroll. As provided in § 403.814(b)(6) of our regulations, a member affirmatively electing not to enroll in the exclusive card program offered as part of the benefit package available through his or her Medicare managed care plan is ineligible to enroll in any other endorsed program.

We believe our permitting group enrollment will not limit the voluntary nature of this program because section 1860D–31(c)(1)(E) of the Act restricts members of a Medicare managed care plan offering an exclusive card program to enrollment in the exclusive card program. In addition, group enrollment will not impose on these beneficiaries any unwanted cost without consent since they will have the opportunity to decline enrollment in the exclusive card program.

4. Applying for Transitional Assistance

As provided in § 403.811(a)(12) of our regulations, beneficiaries may apply for transitional assistance at the same time that they apply for enrollment in the Medicare drug discount card program, or after they have already enrolled in the program. We permit beneficiaries to apply for transitional assistance at any time because discount card enrollees may, following their enrollment in the program, have a change in their economic circumstances or outpatient drug coverage that would qualify them for transitional assistance.

Beneficiaries wishing to receive transitional assistance must complete the standard enrollment form for transitional assistance, which is described in greater detail in section II.C.6. of this document. The standard enrollment form will require the beneficiary to indicate all elements necessary to determine eligibility, including, but not limited to, the amount of the beneficiary's income (or, for married individuals, the beneficiary and spouse's combined income), the beneficiary's family size, and whether the beneficiary has outpatient prescription drug coverage under certain sources.

As required by section 1860D–31(f)(2)(A) of the Act, a beneficiary applying for transitional assistance must certify, on the standard enrollment form, under penalty of perjury or similar sanction for false statements, that to the best of the beneficiary's knowledge the information he or she provides is accurate. We therefore require in § 403.810(b)(5) of our regulations that beneficiaries wishing to receive transitional assistance sign the enrollment form. This signature represents the beneficiary's certification that the information provided on the form is accurate to the best of the beneficiary's knowledge, as well as his or her consent to our verifying the accuracy of the information provided, including verification of the beneficiary's income using Federal sources of income data. Consequently, beneficiaries wishing to apply for transitional assistance must submit to the endorsed sponsor a dated and signed enrollment form by mail or, at the endorsed sponsor's discretion, by facsimile.

a. Coinsurance

Under section 1860D–31(g)(1)(B) of the Act and as provided in § 403.808(e) of our regulations, a transitional assistance enrollee is entitled to have payment made of 90 or 95 percent, depending on the beneficiary's income, of the charges incurred for covered discount card drugs obtained through the Medicare drug discount card program, up to the total amount of transitional assistance available to that beneficiary. Transitional assistance enrollees with incomes greater than 100 percent but no more than 135 percent of the poverty line applicable to their family size are responsible for paying 10 percent of the charge for covered discount card drugs obtained under the program. Transitional assistance enrollees with income not greater than 100 percent of the poverty line applicable to their family size are responsible for paying 5 percent of the charge for a covered discount card drug.

b. Proration

Section 1860D–31(g)(2)(A) of the Act provides that transitional assistance beneficiaries may receive up to $600 each year in transitional assistance. However, section 1860D–31(g)(2)(B) of the Act permits us to prorate the amount of transitional assistance available to beneficiaries applying for transitional assistance. We do not intend to prorate transitional assistance amounts in 2004 in recognition that it may take time for our education campaign to reach all beneficiaries and that beneficiaries need sufficient opportunity to learn about the Medicare drug discount card program without penalty. As provided in § 403.808(b) of our regulations, we will prorate the transitional assistance available to eligible enrollees applying for transitional assistance in 2005 based on the beneficiary application date according to the schedule set forth in Table 1. The beneficiary application date is the date upon which the endorsed sponsor receives from the beneficiary the complete enrollment form for transitional assistance. Beneficiaries disenrolling from an endorsed program for reasons that warrant a special election period, however, are not considered to have left the transitional assistance program and are not subject to proration should they elect another endorsed program during CY 2005.

We elect to prorate transitional assistance in 2005 because we believe that, by 2005, beneficiaries will have had ample time to learn about the

Medicare drug discount card program. In addition, prorating transitional assistance encourages transitional assistance eligible beneficiaries to enroll in the Medicare drug discount card program as early as possible in order to maximize their transitional assistance amount, which in turn will increase the volume of covered discount card drugs obtained under an endorsed program and enhance an endorsed sponsor's ability to negotiate deeper discounts for discount card enrollees. We will calculate the amount of transitional assistance a transitional assistance enrollee may receive and notify endorsed sponsors of this amount.

TABLE 1.—2005 PRORATION SCHEDULE

Beneficiary application date	Amount payable
January 1–March 31, 2005	$600
April 1–June 30, 2005	450
July 1–September 30, 2005	300
October 1–December 31, 2005	150

In accordance with section 1860D–31(g)(2)(A)(ii)(II) of the Act, and as provided in § 403.808(f) of our regulations, any transitional assistance remaining available to a transitional assistance enrollee on December 31, 2004 may be rolled over to 2005 and applied toward the cost of covered discount card drugs obtained under the Medicare drug discount card program during 2005. As provided in § 403.811(b)(5) of our regulations, transitional assistance enrollees who disenroll from the Medicare drug discount card program in 2004 and who are not eligible for a special election period as provided in § 403.811(b)(2) of our regulations, however, may not rollover any unused transitional assistance if they re-enroll in the program in 2005. Any transitional assistance remaining available to a transitional assistance enrollee on December 31, 2005 may be applied toward the cost of covered discount card drugs obtained under the program during the transition period provided the transitional assistance enrollee remains enrolled in the program through the end of 2005 and during the transition period.

As required by section 1860D–31(c)(2)(E) of the Act and as provided for in § 403.808(c) of our regulations, CMS will pay to an endorsed sponsor the annual enrollment fee, if any, for its transitional assistance enrollees.

Section 1860D–31(c)(4) of the Act gives the Secretary the discretion to establish the date upon which access to transitional assistance through an endorsed program will take effect. As specified in § 403.811(a)(11) of our regulations, transitional assistance will be made available to beneficiaries determined eligible for transitional assistance beginning on the effective date of their enrollment in the transitional assistance program specified in their transitional assistance eligibility determination notice.

5. Reconsideration of Eligibility

As discussed above, section 1860D–31(f) of the Act also provides for an eligibility determination process consisting of self-certification and, at the discretion of the Secretary, verification through data matching. For beneficiaries applying for the Medicare drug discount card program, we will verify their eligibility for the program by reviewing State data, for example, on beneficiaries with outpatient drug coverage under Medicaid or a section 1115 waiver demonstration. For beneficiaries applying for transitional assistance, we will verify their income by reviewing our data on their income and other retirement and disability benefits.

Section 1860D–31(f)(4) of the Act requires the Secretary to establish a reconsideration process for beneficiaries initially determined ineligible for transitional assistance. Under our authority to establish procedures for determining beneficiaries' eligibility for the Medicare drug discount card program, as provided for in section 1860D–31(f)(1)(A) of the Act, we also will establish a reconsideration process for beneficiaries initially determined ineligible for the program. Accordingly, as provided in § 403.810(g)(1) of our regulations, every beneficiary determined ineligible for the program and/or transitional assistance can request that we reconsider this determination.

A beneficiary will be given specific instructions on how to request reconsideration when he or she is notified of our negative eligibility determination. We will provide standardized language for this notice in the information and outreach materials that will accompany the solicitation, as discussed in section II.C.7. of this document. As provided in § 403.810(g)(2) of our regulations, reconsideration requests must be filed within 60 days from date of notice of a negative eligibility determination, unless the individual can demonstrate good cause for why the 60-day time frame should be extended.

Section 1860D–31(f)(4)(B) of the Act authorizes the Secretary, and § 403.810(g)(4) of our regulations provides that the Secretary will enter into a contract for the performance of reconsiderations. We will contract with an independent entity to conduct reconsiderations on our behalf. Finally, § 403.810(g)(3) of our regulations provides that beneficiaries requesting reconsideration may provide, in writing, to our reconsideration contractor additional documentary evidence or an explanation about his or her eligibility. The reconsideration contractor will provide the beneficiary a written final eligibility determination.

6. Disenrollment and Enrollment in Another Endorsed Program

In accordance with section 1860D–31(c)(1)(D)(i) of the Act, § 403.811(b)(1) of our regulations provide that a discount card enrollee may voluntarily disenroll from an endorsed program at any time; however, such a beneficiary may only enroll in another endorsed program without having to re-apply and re-qualify under two conditions—during the annual coordinated election period or during a special election period, as described below.

Section 1860D–31(c)(1)(C)(ii) of the Act and § 403.811(a)(7) of our regulations provide that beneficiaries enrolled in an endorsed program in 2004 may elect to change endorsed programs during the annual coordinated election period from November 15 through December 31, 2004. The effective date of an enrollment election made during the annual coordinated election period will be January 1, 2005.

Under section 1860D–31(c)(1)(C)(i) of the Act, and as provided in § 403.811(a)(7) of the regulations, discount card eligible individuals generally may enroll in only one endorsed program during a calendar year. Beneficiaries voluntarily disenrolling from an endorsed program during the enrollment period, and not changing programs during the annual coordinated election period, may immediately enroll in another endorsed program during the enrollment period only under limited circumstances. Section 1860D–31(c)(1)(C)(iii) of the Act authorizes the Secretary to establish exceptions to the limitation of enrolling in only one endorsed card program per year. As specifically permitted by section 1860D–31(c)(1)(C)(iii) of the Act and as set forth in § 403.811(b)(2) of our regulations, a beneficiary disenrolling from an endorsed program for any of the following reasons is awarded a special election period and may enroll in another endorsed program at any time in the enrollment period.

(1) The beneficiary moved outside his or her endorsed program's service area;

(2) The beneficiary changed his or her residence to or from a long-term care facility;

(3) The beneficiary enrolled in or disenrolled from a Part C plan or a Medicare cost plan; or

(4) Other exceptional circumstances as determined by the Secretary.

In addition, we will permit beneficiaries to enroll in new endorsed programs if their prior endorsed program terminates or they enroll in or disenroll from a reasonable cost reimbursement plan.

We consider a discount card enrollee who disenrolls for reasons other than those provided above to have left the Medicare Drug Discount Card program entirely, as provided in § 403.810(d) of our regulations. As permitted under sections 1860D–31(c)(1)(D)(i) and (f)(2)(B) of the Act and as provided in our regulations at § 403.811(b)(4), beneficiaries voluntarily disenrolling from an endorsed program in 2004 other than for one of the above reasons, or who are involuntarily disenrolled, must re-apply as if they were new to the program for the Medicare Drug Discount Card Program for 2005 if they wish to enroll in another endorsed program. The earliest an individual may re-apply for the Medicare Prescription Drug Discount Card is during the annual coordinated election period. Because an individual may only enroll in one endorsed card program in each calendar year, as provided in § 403.811(a)(7) of our regulations, beneficiaries voluntarily disenrolling from an endorsed program in 2005, other than for one of the above reasons, or who are involuntarily disenrolled, cannot reenroll in an endorsed card program. Individuals disenrolling for any reason during the transition period cannot re-enroll.

With respect to beneficiaries enrolling in or disenrolling from a Part C plan or reasonable cost reimbursement plan, section 1860D–31(c)(1)(C)(iii) of the Act permits but does not mandate that we allow these beneficiaries to disenroll from their current endorsed program and enroll in another endorsed program during a special election period. Beneficiaries enrolling in or disenrolling from a Medicare managed care plan offering an exclusive card program will be automatically disenrolled from their endorsed programs, as they will no longer be eligible for such endorsed programs under § 403.814(b)(6)(i) of our regulations. We believe that Medicare beneficiaries entering and leaving a Part C plan or a Medicare cost plan without an exclusive card program will wish to choose an endorsed program based on the benefit package under their current health coverage, including other Part C plans and Medicare cost plans, and that this benefit package may change when beneficiaries enroll in or disenroll from a Part C plan or Medicare cost plan. To promote beneficiaries' coordination of their health benefits, we will allow beneficiaries enrolling in or disenrolling from any Part C plan or a Medicare cost plan to disenroll from their current endorsed program and enroll in another endorsed program during a special election period.

We will automatically disenroll beneficiaries from an endorsed program if their endorsed program terminates, the beneficiary enrolls in or disenrolls from a Medicare managed care plan offering an exclusive card program, or the beneficiary elects another endorsed program during the Annual coordinated election period. All other beneficiaries wishing to disenroll from their endorsed program must notify their endorsed sponsor of their intent, and, if they wish to enroll in another endorsed program during a special election period, provide the endorsed sponsor their reason for disenrollment.

As required in section 1860D–31(c)(1)(D)(ii) of the Act, and as specified in § 403.811(b)(6) of our regulations, an endorsed sponsor may involuntarily disenroll any discount card enrollee, other than a transitional assistance enrollee, if the discount card enrollee fails to pay any annual enrollment fee charged by the endorsed sponsor.

As provided in § 403.811(b)(7) of our regulations and as discussed under section II.C.6 of this document, a discount card enrollee who changes endorsed programs during a special election period may be charged a separate annual enrollment fee by the endorsed sponsor operating the newly selected endorsed program.

Under section 1860D–31(g)(2)(E) of the Act and § 403.811(b)(5) of our regulations, transitional assistance enrollees who disenroll from their endorsed programs generally will forfeit any transitional assistance remaining available to them at the time of their disenrollment. Transitional assistance enrollees who disenroll during the first year of the program and are ineligible for a special election period must re-apply and re-qualify for transitional assistance for the second year of the program should they wish to receive additional transitional assistance. The earliest an individual may re-apply for the Transitional Assistance Program for 2005 is through their re-enrollment in an endorsed card program during the annual coordinated election period. Any transitional assistance provided to these individuals during the second year of the program may be prorated depending on when they re-apply for transitional assistance in accordance with § 403.808(b) of our regulations.

Section 1860D–31(g)(2)(E) of the Act gives the Secretary the discretion to identify exceptions to this policy. As specified in § 403.808(f) of our regulations, we will permit transitional assistance enrollees who change their endorsed program during the annual coordinated election period or who enroll in another endorsed program during a special election period to carryover to their newly selected endorsed program any transitional assistance remaining available to them at the time of their disenrollment from their former endorsed program.

B. General Rules About Solicitation, Application, and Medicare Endorsement Period

We will solicit applications from entities seeking to offer beneficiaries negotiated prices on covered discount card drugs. We will endorse applicants' drug discount card programs that meet the requirements discussed below, and will permit successful applicants to market and label their programs as "Medicare-approved."

Although under section 1860D–31(h)(2)(D)(ii) of the Act we have the discretion to limit the number of endorsed sponsors in a State to two, we will endorse all applicants that, together with their subcontractors and other entities with which they have entered into a legal arrangement to operate an endorsed program (hereinafter collectively referred to as "subcontractors"), meet or exceed the requirements for endorsement and sign our endorsed sponsor contract. We will also select a limited number of applicants for special endorsement. Endorsed sponsors receiving special endorsement are, for the purpose of fulfilling their responsibilities as special endorsed sponsors, exempt from meeting certain conditions of endorsement provided they agree to:

• Apply transitional assistance toward the cost of covered discount card drugs obtained from pharmacies serving residents of skilled nursing facilities and nursing facilities (hereafter referred to as "long-term care pharmacies") and/or pharmacies serving American Indians or Alaska Natives (AI/ANs) operated by the Indian Health Service, Indian tribe and tribal organizations, or urban Indian organizations (hereinafter referred to as "I/T/U pharmacies"); and/or

- Offer an endorsed program in all the U.S. territories.

We will select applicants for special endorsement based on a competitive process, with consideration given to which applicants can best serve these populations. Applicants seeking special endorsement also must apply and, except in specified circumstances, meet the requirements for basic endorsement; however sponsors seeking special endorsement may request waivers of requirements, allowing, for example, an applicant to apply for special endorsement solely for the purpose of long-term care pharmacy business to the exclusion of all other types of pharmacies. The requirements and procedures related to special endorsements are discussed in further detail in sections II.I. and II.J. of this document.

Except as provided in section 403.804 (c)(2) of our regulations and discussed below in section II. O.2.C. of the preamble, we anticipate that endorsed sponsors may begin information and outreach activities, as well as enrollment activities as early as Spring 2004, and expect that these activities will begin no later than 6 months from the date of enactment of the Act; we reserve the right to terminate an endorsed sponsor's endorsement if the endorsed sponsor is not ready to fully operate its endorsed program and begin information and outreach activities by the 6 month deadline. The date upon which we will permit an endorsed sponsor to begin these activities will depend on its satisfaction of certain conditions, including—

- Finalizing pharmacy network contracts;
- Negotiating manufacturer rebates or discounts;
- Entering into an endorsed sponsor contract with us;
- Operationalizing call centers;
- Entering into all subcontracts necessary to ensure full compliance with the conditions of endorsement;
- Obtaining our approval of all information and outreach materials; and
- Establishing and obtaining CMS approval of a system for conducting electronic transactions with us (or our subcontractor), including successful testing of such system.

As stated above, we expect these requirements to be met within 6 months of enactment, and may terminate an endorsed sponsor's endorsement if the requirements are not met by this time. These requirements are discussed in greater detail below.

A solicitation for applications for Medicare endorsement under the Medicare drug discount card program will follow publication of this interim final rule. We expect to publish the solicitation on or near the date of publication of this rule. Following publication of the solicitation, potential applicants seeking clarification on the application process and requirements for endorsement may submit questions to us. In addition, we will hold a pre-application conference for potential applicants approximately 2 weeks after publication of the solicitation.

In order to ensure that we successfully implement the Medicare drug discount card program no later than 6 months after enactment of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003, we anticipate that applicants will first need to submit completed applications to CMS within 45 days after the publication date of the solicitation. Applicants must certify that based on best knowledge, information, and belief, the reported information is accurate, complete, truthful, and supportable.

We will require applicants to provide with their applications certain information and test files, as specified in the solicitation. Such information and files will be used by us to expedite our implementation of the data systems necessary to support enrollment in the Medicare drug discount card program, determinations of beneficiaries' eligibility for transitional assistance, and comparison of endorsed programs negotiated prices.

Medicare endorsement of a sponsor's drug discount card will be valid for the duration of the Medicare drug discount card program, which in accordance with section 1860D–31(a)(2)(C)(i)(I) of the Act will terminate on December 31, 2005. Section 1860D–31(a)(2)(C)(ii) of the Act authorizes the Secretary to issue rules governing the transition period, including rules ensuring that the balance of any transitional assistance remaining available to a transitional assistance enrollee on January 1, 2006 remain available during the transition period. Under this authority we require endorsed sponsors to continue operating their endorsed program during the transition period, including ensuring that their card enrollees have access to negotiated prices and that transitional assistance enrollees can apply any transitional assistance remaining available to them toward the cost of covered discount card drugs obtained under the program during the transition period.

See section II.F. of this document for a discussion of termination of an endorsed sponsor's endorsement.

Section 403.804(d) of our regulations specifies that as a condition of endorsement, an endorsed sponsor must sign a contract. The contract signature will certify that the endorsed sponsor will comply with all requirements set forth in the contract, will implement its endorsed program in accordance with the program description contained in its application, and will operate its endorsed program consistent with the requirements set forth in the Act, this rule, and all other applicable Federal and State laws, including administering transitional assistance for eligible enrollees and conducting information and outreach activities consistent with our guidelines.

C. Sponsor Requirements for Eligibility for Endorsement Under the Medicare Drug Discount Card and Transitional Assistance Program

Section 1860D–31(a)(1)(A) of the Act requires the Secretary to endorse qualified applicants seeking to offer endorsed discount card programs to Medicare beneficiaries. Section 1860D–31 of the Act sets forth specific requirements that applicants must satisfy to be eligible for endorsement and that endorsed sponsors must meet to retain their endorsement. In addition, section 1860D–31(h)(8) of the Act authorizes the Secretary to prescribe additional requirements of endorsement that the Secretary concludes protect and promote the interests of beneficiaries. Accordingly, we require applicants seeking endorsement under the Medicare drug discount card program to demonstrate that they meet a series of requirements related to—

- Organizational structure and experience;
- Service area;
- Pharmacy network access;
- Administering transitional assistance;
- Prescription drug offering;
- Eligibility and enrollment processes;
- Customer service, including information and outreach;
- Grievance processes;
- HIPAA administrative simplification provisions and other marketing and security provisions;
- Document retention; and
- Data reporting to CMS.

In this section of the document we describe these conditions for endorsement.

Special rules govern Medicare managed care organizations wishing to limit enrollment in their endorsed programs to members of one or more of their Medicare managed care plans.

Rules governing these exclusive card programs are discussed in section II.G. of this document.

Applicants seeking special endorsement—that is, applicants wishing to offer an endorsed program in the U.S. territories and/or applicants willing to include within their pharmacy networks' long-term care and/or I/T/U pharmacies—also are subject to special rules, as set forth in § 403.816 and § 403.817 of our regulations and discussed in sections II.I and II.J of this document.

1. Applicant Structure and Experience

Under section 1860D–31(h)(1)(A) of the Act, the Secretary is authorized to designate the type of non-governmental entities that are appropriate to act as endorsed sponsors, which may include pharmacy benefit management companies, wholesale or retail pharmacy delivery systems, insurers (including insurers offering Medicare supplemental policies), and Part C plans. Although we have the authority to limit the types of entities that may act as endorsed sponsors, the only specific structural requirement for a sponsor is that it be a non-governmental, single legal entity doing business in the United States. We choose not to impose other structural requirements at this time because our conditions for endorsement ensure that applicants, either individually or through subcontracts, will have the necessary experience and integrity to act as endorsed sponsors. Thus, as long as an applicant can meet our conditions for endorsement through subcontracting, except as stated above, we do not mandate the legal form of the endorsed sponsor.

Although only one legal entity may act as the applicant, our regulations at § 403.804(c)(1) permit applicants to combine their capabilities with other entities in order to meet the requirements for endorsement. As further discussed below, applicants must include documentation related to their legal arrangements with subcontractors.

As specified in section 1860D–31(h)(1)(B) of the Act, an applicant is eligible for endorsement under the Medicare drug discount card program if the applicant, together with its subcontractors, has demonstrated experience and expertise in operating a drug discount card or similar program and meets certain requirements related to business stability and integrity. We interpret this provision to mean that applicants, together with their subcontractors, must: (1) Demonstrate 3 years of private sector experience in pharmacy benefit management; (2) currently serve at least 1 million covered lives; and (3) demonstrate fiscal stability and business integrity, as provided in § 403.806(a) and § 403.806(b) of our regulations. Medicare managed care organizations offering exclusive card programs, while required to comply with most of the conditions related to applicant structure, are subject to alternative requirements, as discussed in greater detail in section II.G. of this document.

a. 3 Years of Private Sector Experience

Section 403.806(a)(2) of the regulations provides that each applicant, together with its subcontractors, must have 3 years of private sector experience within the United States in the following:

- Adjudication and processing of claims at the point of sale;
- Negotiating with prescription drug manufacturers and others for rebates and discounts on prescription drugs; and
- Administration and tracking of an individual subsidy or benefit in real time.

We require that this experience must have occurred in the United States to ensure that the applicant, together with its subcontractors, is familiar with applicable Federal laws, including those enforced by the Food and Drug Administration. We believe requiring 3 years prior experience will ensure that endorsed sponsors are able to quickly establish their endorsed programs, thereby promoting implementation of the Medicare drug discount card program within 6 months of enactment of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003. In addition, the 3 years prior experience requirement ensures that endorsed sponsors have the necessary experience and capacity to offer card enrollees quality discounts and customer service. Moreover, given the relative newness of the drug card industry and high market turnover, we believe requiring less than 3 years experience would create an untenable risk of having the Medicare name associated with less than stable and reputable organizations.

b. 1 Million Covered Lives

In addition to requiring 3 years of relevant experience, our regulations at § 403.806(a)(3) require that a single entity which is either the applicant or a subcontractor operate a pharmacy benefit program, a drug discount card, a low-income drug assistance program, or a similar program that serves at least 1 million covered lives.

We interpret covered lives to mean discrete individuals who have signed enrollment agreements with or paid (or have paid on their behalf) an enrollment fee or insurance premium to the applicant (or its subcontractors), or some comparable documentation. An applicant must include in its application documentation demonstrating that the applicant meets this requirement. If an applicant contracts with other entities for purposes of administering an endorsed program, the entity satisfying the 1 million covered lives requirement need not be the same entities satisfying the 3 years experience requirement. We choose not to link the 1 million covered lives requirement with the 3-year experience requirement in order to provide entities the flexibility to combine their capabilities. For example, an entity with the requisite experience may not have the enrollment capacity, but may acquire this capacity by contracting with another entity for purposes of administering the endorsed program. (A single entity, however, must meet the 1-million covered lives requirement. Therefore, an entity with 600,000 covered lives could not combine with an entity with 400,000 covered lives and meet the conditions for endorsement.)

As discussed in the impact analysis, we estimate that during the first year of the Medicare drug discount card program, over 7 million beneficiaries may wish to enroll in the program, and anticipate that endorsed sponsors should have the capacity to accept between 1 to 10 percent of this volume. This influx of Medicare beneficiaries—100,000 to several hundred thousand beneficiaries—enrolling in an endorsed program would represent a sizable expansion over most card programs' current operations. Our 6-month implementation timeline requires that endorsed sponsors be able to quickly accommodate this potentially large influx of enrollees over a relatively short period of time. Current levels of covered lives provides evidence of an applicant's immediate capacity to do so.

In examining our data on the number of covered lives served by a variety of organizations, we found that a standard of 1 million lives strikes a balance between ensuring a competitive marketplace with a number of different endorsed programs available to Medicare beneficiaries and ensuring that endorsed sponsors have the capacity to handle a large influx of card enrollees.

c. Demonstration of Financial Stability and Business Integrity

As required by section 1860D–31(h)(1)(B) of the Act, and as provided for in § 403.806(b)(1) of our regulations, an applicant must demonstrate the financial stability and business integrity of itself, and any of its subcontractors on which the applicant relies to—

(1) Develop the pharmacy network;

(2) Handle the negotiation of drug rebates or discounts;

(3) Administer enrollment, including transitional assistance eligibility determinations;

(4) Administer transitional assistance; or

(5) Meet the 3-years of experience and/or covered lives requirements.

The application should include the following documents or information for the applicant and each of these subcontractors:

- A summary of the entity's history, structure, and ownership, including a chart showing the structure of ownership, subsidiaries, and business affiliations;
- The most recent audited financial statements (balance sheet, income statement, statement of cash flow along with auditor's opinions, and related footnotes), which must demonstrate that the entity's total assets are greater than total unsubordinated liabilities and that the entity has sufficient cash flow to meet its obligations as they come due;
- Financial ratings, if any, for the past 3 years; and
- Listing of past or pending investigations (if known to the entity) and legal actions brought against the entity (and its parent entities, if applicable) by any financial institution, government agency (local, State, or Federal), or private organization over the past 3 years on matters relating to health care and prescription drug services and/or allegations of fraud, misconduct, or malfeasance. The application should include a brief explanation of each action, including the following: (1) Circumstances giving rise to the action; (2) the action's status (pending or closed); and (3) if closed, details as to resolution of the action and any monetary damages.

Additionally, we plan to conduct an independent investigation of each entity, with respect to the above factors, which will include a review of Federal databases available to us that may contain information pertaining to legal issues involving the entity.

In deciding whether to endorse an applicant with a record of legal actions brought against it, we will evaluate that record based on factors that include: (1) Whether the action is a pending investigation or has resulted in a settlement or judgment against the applicant, (2) whether the settlement or judgment has been issued recently (for example, within the past 3 years), (3) whether the conduct on which the judgment or settlement was based involved allegations of fraud or abuse, (4) whether the conduct was related to reimbursement for health care services or products, and (5) whether the applicant is currently operating under a corporate integrity agreement with the DHHS Office of the Inspector General.

We require the applicant to demonstrate the business stability and integrity of the applicant and these subcontractors to ensure that we endorse only those endorsed sponsors that will be reliable, stable, and operate with integrity. We believe the specific requirements are an appropriate method for determining the business integrity and financial stability of an applicant and its subcontractors. For example, by requiring that assets exceed liabilities, we increase the likelihood that an endorsed sponsor will remain in the Medicare drug discount card program for the life of the program. Similarly, reviewing financial ratings and past or pending investigations allows us to represent to our beneficiaries that we have endorsed applicants that are financially sound and committed to a high level of business integrity.

As discussed elsewhere in this document, an applicant that is a Medicare managed care organization offering an exclusive card program will be deemed to have met these business stability and integrity requirements through its compliance with § 422.400, if a Part C plan, or §§ 417.120 and 417.122, if a Medicare cost plan.

Following its receipt of endorsement, as provided in § 403.806(b)(2) of our regulations, an endorsed sponsor (including both the applicant and its subcontractors) must continue to operate with fiscal stability and business integrity, in accordance with the same standards applicable to the applicant. Also, we require at § 403.806(c) that endorsed sponsors comply with all applicable Federal and State laws, including the Federal anti-kickback statute, section 1128B(b) of the Act (42 U.S.C. 1320a–7b(b)). As provided in § 403.806(b)(3) of our regulations, Medicare endorsement of a discount card program shall not be construed to express or imply any opinion that an endorsed sponsor or any subcontractor is in compliance with or not liable under the False Claims Act, Federal anti-kickback statute, or other laws, regulations, or policies regarding improper billing, claims submission, or related conduct.

d. Contracts With Subcontractors and Pharmacies

Although only one legal entity may act as the applicant, our regulations at § 403.804(c)(1) permit applicants to combine their capabilities with other entities in order to meet the requirements for Medicare endorsement. As will be further described in the solicitation, applicants must include documentation, including contracts or signed letters of agreement, related to their legal arrangements with these subcontractors if the applicant has combined with such entities to meet the following requirements—

- Years of experience and/or covered lives;
- Establishing a pharmacy network or home delivery through mail order;
- Negotiating manufacturer discounts or rebates;
- Conducting enrollment and transitional assistance eligibility;
- Administering transitional assistance;
- Operating the customer service call center;
- Administering a grievance process; and
- Developing information and outreach materials.

The contracts or signed letters of agreement must—

- Clearly identify the parties to the contract;
- Describe the functions to be performed by the subcontractor;
- Contain language indicating that the subcontractor has agreed to participate in the Medicare drug discount card program (except for a network pharmacy if the existing contract would allow participation in this program);
- Describe any payment the subcontractor will receive under the contract;
- Extend for the lifetime of the Medicare drug discount card program;
- Be signed and executed by representatives of each party with legal authority to bind the party;
- Require the subcontractor to comply with State and Federal privacy and security requirements applicable to the endorsed sponsor or the subcontractor, and our marketing and document retention requirements, including the requirements provided in § 403.812 and § 403.813 of our regulations and discussed in section II.C.9. of this document.

In addition, as will be further explained in the solicitation, an endorsed sponsor also must include in its contracts with pharmacies participating in its network such terms and conditions as necessary to ensure that the endorsed sponsor meets all requirements for endorsement. This includes the requirement that subcontractors comply with all applicable Federal and State laws (including the anti-kickback law). Each application for endorsement must include one sample copy of every customized contract or letter of agreement used across the entire network. That is, we are asking to see every version of the contracts/letters of agreement across the network.

If the applicant is unable to provide with its application final versions or templates of letters of agreement or contracts that represent the exact terms and conditions under the program with each of its subcontractors and pharmacies satisfactory to CMS, the applicant may submit revised documentation following receipt of the Medicare endorsement. We expect the applicant, however, to provide such documentation no later than 6 months after the date of enactment of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003, and we reserve the right to revoke endorsement if the materials are submitted later. In addition, an applicant may not commence outreach and enrollment activities prior to our receipt of such documentation and our determination that such documentation meets our requirements. The 6-month deadline and prohibition on outreach and enrollment activities may be waived for endorsed sponsors receiving special endorsement for the purpose of fulfilling obligations related to special endorsement provided such sponsors make a good faith effort to meet these documentation requirements as soon as possible, as provided in § 403.816 and § 403.817.

2. Service Area

As provided in section 1860D–31(h)(3) of the Act, if an endorsed program enrolls beneficiaries residing in any part of a State, the program must permit any discount card eligible beneficiary residing in any portion of the State to also enroll in its endorsed program. We interpret this to mean, and provide in § 403.806(f)(1) of our regulations, that a State is the smallest service area permitted under the Medicare drug discount card program. Accordingly, an endorsed program may not limit enrollment to only a portion of a State, with the exception of exclusive card programs, which, as discussed in section II.G. of this document, may limit their service area to the service area of the Medicare managed care plan(s) whose members may enroll in the exclusive card program (which may include part of a State). Further, an endorsed program's service area could be regional, meaning it operates in more than one State (contiguous or not). In addition, we define "national" endorsed programs as endorsed programs operating in each of the 50 States and the District of Columbia; an endorsed program that does not operate in each of the 50 States and the District of Columbia may not describe itself as a "national" endorsed program. Finally, an endorsed program may not operate outside of the 50 States and the District of Columbia, with the exception of sponsors receiving special endorsement permitting them to operate in the territories, as discussed in section II.J of this document.

3. Pharmacy Network Access

As provided in section 1860D–31(e)(1)(B) of the Act, an endorsed discount card sponsor must ensure that its card enrollees have convenient access to covered discount card drugs at negotiated prices by securing the participation in its network of a sufficient number of pharmacies that dispense drugs (other than solely by mail order) directly to card enrollees. Specifically, consistent with the statement of work of solicitation #MDA906–03–R–0002 of the Department of Defense under the TRICARE Retail Pharmacy (TRRx) as of March 13, 2003, we are requiring in § 403.806(f)(3) of our regulations that, at all times during the program, beginning upon the date an endorsed sponsor initiates its outreach and enrollment activities—

- In urban areas served by the endorsed program, at least 90 percent of Medicare beneficiaries, on average, live within 2 miles of a pharmacy participating in the endorsed program's network;
- In suburban areas served by the endorsed program, at least 90 percent of Medicare beneficiaries, on average, live within 5 miles of a pharmacy participating in the endorsed program's network; and
- In rural areas served by the endorsed program, at least 70 percent of Medicare beneficiaries live, on average, within 15 miles of a pharmacy participating in the endorsed program's network.

For the purposes of meeting these access standards, as also defined in the statement of work of solicitation #MDA906–03–R–0002 of the Department of Defense—

- Urban is defined as a five-digit ZIP Code in which the population density is greater than 3,000 persons per square mile;
- Suburban is defined as a five-digit ZIP Code in which the population density is between 1,000 and 3,000 persons per square mile; and
- Rural is defined as a five-digit ZIP Code in which the population density is less than 1,000 persons per square mile.

The endorsed sponsor must meet or exceed these access standards at the endorsed program level, that is, across the entire geographic region serviced by the endorsed program. Only pharmacies that are under contract and are not mail order can be included in the count.

As we will explain further in the solicitation, applicants must demonstrate their capacity to satisfy the pharmacy network access standard using mapping software, provided by us, which will compute beneficiaries' access to the pharmacies participating in the applicant's network using one hundred percent of beneficiary counts (that is, the entire beneficiary population) by zip code. These data and the population density information will be provided by CMS on request. Tables generated by the mapping software must be included with the application and must include the urban, suburban, and rural areas in each of the States covered under the applicant's drug discount card program.

As discussed in greater detail in II.J. of this document, endorsed programs receiving special endorsement to operate in the territories may exclude the territories from the calculation as to whether the endorsed sponsor meets the above pharmacy access standard.

Exclusive card programs are not required to meet these same pharmacy access standards; rather, as discussed in greater detail in section II.G. of this document, exclusive card programs will be subject to an alternative access standard.

In accordance with section 1860D–31(e)(1)(B) of the Act, § 403.806(f)(4) of the regulations provides that endorsed sponsors will not be permitted to offer a mail order only option to their card enrollees. However, because some card enrollees may prefer to obtain their drugs from mail order pharmacies, endorsed programs will be allowed to offer a home delivery option via a mail order pharmacy, in addition to including their retail pharmacy in their networks. As discussed in greater detail in II.J. of this document, we may waive this requirement to allow mail order only in the territories for endorsed programs receiving special endorsement to operate in the territories.

4. Prescription Drug Offering

a. Covered Discount Card Drugs

Endorsed sponsors must offer their card enrollees discounts on covered discount card drugs. Section 1860D–31(a)(4)(A) of the Act states that the term "covered discount card drug" has the same meaning given the term "covered Part D drug" in section 1860D–2(e) of the Act. Section 1860D–2(e), in turn, is based on sections 1927(k)(2)(A)(i), (A)(ii), and (A)(iii) of the Act. This definition is incorporated into § 403.802 of our regulations under the definition of "covered discount card drug." The definition applies only to the following types of prescription drugs:

(1) FDA-approved drugs;

(2) Drugs used or sold prior to the enactment of the Drug Amendments of 1962 (Pub. L. 87–781); and

(3) Drugs described in section 107(c)(3) of the Drug Amendments of 1962 and any drug for which the Secretary has determined there is a compelling justification for its medical need.

If the Secretary has determined, in the context of the Medicaid program, that there is a compelling justification for the medical need of a drug, such drug will be incorporated into our definition of "covered discount card drug" for purposes of this program.

Section 1860D–2(e) of the Act also includes in the definition of "covered discount card drug" a biological product which (1) may only be dispensed upon prescription, (2) is licensed under section 351 of the Public Health Service Act (42 U.S.C. 262) and (3) is produced at an establishment licensed under each section to produce that product. Vaccines licensed under section 351 of the Public Health Service Act also are "covered discount card drugs." Finally, section 1860D–2(e) of the Act includes insulin in the definition of covered discount card drug.

Necessary medical supplies associated with the injection of insulin are also included in this definition. We interpret necessary medical supplies for this purpose to include syringes, needles, alcohol swabs, and gauze. We do not consider test strips or lancets to be supplies associated with injection since these supplies are more directly related to testing.

The definition of covered discount card drug includes drugs when they are used for a medically accepted indication. The term "medically accepted indication" is defined in section 1927(k)(6) of the Act and generally means any use of a covered drug which is approved under the Federal Food, Drug, and Cosmetic Act, or the use of which is supported by one or more citations included or approved for inclusion in any of the following compendia: American Hospital Formulary Service Drug Information; United States Pharmacopoeia-Drug Information; the DRUGDEX Information System; and American Medical Association Drug Evaluations. While we do not expect endorsed sponsors to collect diagnosis information to confirm diagnoses associated with every dispensed drug, endorsed sponsors should make an effort to responsibly comply with this provision.

Section 1860D–2(e)(2)(A) of the Act categorically excludes from the definition of "covered discount card drug" the following drugs or classes of drugs, or their medical uses, and we have no authority to alter this Congressional exclusion:

- Agents when used for anorexia, weight loss, or weight gain.
- Agents when used to promote fertility.
- Agents when used for cosmetic purposes or hair growth.
- Agents when used for the symptomatic relief of cough and colds.
- Prescription vitamins and mineral products, except prenatal vitamins and fluoride preparations.
- Nonprescription drugs.
- Outpatient drugs for which the manufacturer seeks to require associated tests or monitoring services be purchased exclusively from the manufacturer or its designee as a condition of sale.
- Barbiturates.
- Benzodiazepines.

Additionally, as provided in section 1860D–2(e)(2)(B) of the Act, a drug prescribed for a card enrollee that would otherwise be a covered discount card drug will not be considered a covered discount card drug if payment for that drug, as prescribed and dispensed or administered to the card enrollee, is available under Part A or Part B of Medicare (or would be available except for application of a deductible). That is, for prescribed drugs that may be payable under Medicare Part A or Part B, Medicare participating pharmacies should bill Medicare for the drug, and not the card enrollee or, in the case of transitional assistance enrollees, the endorsed sponsor, and non-Medicare participating pharmacies should refer the beneficiary to a Medicare participating pharmacy. When a pharmacy submits a claim under Medicare Part B, the rules applicable to pharmacies' claims adjudication under Part B will apply. Only after denial of a claim submitted under Part B may a pharmacy adjudicate a claim under the Medicare drug discount card program.

Furthermore, endorsed discount card sponsors should not reconcile any claims under the Medicare drug discount card program previously rejected under Medicare Part A or Part B when the covered discount card drug was purchased by a non-pharmacy provider to provide to the card enrollee. For example, if a physician provides a drug to a card enrollee incident to an office visit that is not covered by Medicare Part B, then endorsed sponsors may not apply transitional assistance toward the cost of such drug.

b. Formulary and Minimum Prescription Drug Offerings

Studies performed for the Department of Health and Human Services (BoozAllenHamilton, *Pharmaceutical Industry Scan*, August 6, 2002) have shown that one of the primary methods pharmacy benefit management companies and insurers negotiate drug discounts is through the establishment of a formulary. Through formularies that are properly structured, pharmacy benefit management companies, in consultation with a panel of physicians, pharmacists, and other health care professionals, establish clinically appropriate, safe, and cost-effective lists of covered prescription drugs. While clinical appropriateness must be foremost in the development of a formulary, a properly designed formulary can also promote lower costs for beneficiaries as pharmaceutical manufacturers compete, using, among other things, rebates, volume discounts, and generic drugs to supply the drugs that meet the formulary requirements at the lowest price. Therefore, in § 403.806(d)(1) of our regulations, we allow endorsed sponsors to establish formularies, whereby endorsed sponsors limit the set of drugs for which a discount is offered. However, even if an endorsed sponsor uses a formulary, it must permit transitional assistance enrollees to apply transitional assistance toward the cost of any covered discount card drug, including those not on the endorsed sponsor's formulary, offered by a pharmacy contracted by the sponsor for the endorsed discount card program's network. Our past research demonstrates that allowing sponsors to use a formulary will result in deeper discounts for card enrollees, and enhanced use of generic drugs, and we therefore have the authority to permit such formularies under section 1860D–31(h)(8) of the Act, as larger discounts and reduced prescription drug costs promote the interests of card enrollees.

While we recognize the useful role of formularies in providing discounts to beneficiaries, we also want to insure that sponsors, in constructing their formularies, include, at a minimum, the types of drugs commonly needed by beneficiaries. In establishing a minimum requirement, it is not our intention to build the operating framework of a sponsor's formulary, but rather to present a floor, as we believe a minimum requirement is better than none at all. As provided in § 403.806(d)(2) of our regulations and consistent with promoting and protecting beneficiaries as specified in section 1860D–31(h)(8) of the Act, each endorsed discount card program will be required to provide a negotiated price for at least one drug in each of the lowest level categories under each of the therapeutic groupings (hereafter, collectively referred to as "categories") representing the drugs commonly needed by Medicare beneficiaries as listed in Table 2. This minimum requirement in no way precludes sponsors from adding additional categories or differentiating the categories we provide as they construct their formularies. In fact, we anticipate that sponsors would do that through their usual process involving a pharmacy and therapeutics committee. The categories in Table 2 were structured to ensure that beneficiaries enrolling in Medicare-endorsed discount card programs will be offered discounts on many of the types of drugs most commonly needed by the Medicare population. There are a total of 209 categories (represented in italics within the table) for which card sponsors are required to offer a drug at a negotiated price. As some drugs can be classified into more than one category, a drug can be used only once to satisfy the criterion of providing a negotiated price for a drug in a category.

Moreover, under the rationale that discounts on commonly used generic drugs are also typically made available under current industry practice, and that offering discounts on generics improves beneficiary understanding of sources of prescription drug discounts, we are requiring that endorsed sponsors provide discounts on a range of generic drugs. Specifically, sponsors must provide at least one generic drug for a negotiated price in at least 55 percent of the required categories (italicized in Table 2). Fifty-five percent represents about 95 percent of those categories that include a Class A generic drug according to the FDA's Orange Book.

We believe it is important that the Medicare name be associated only with endorsed programs that offer at least the types of drugs commonly needed by Medicare beneficiaries, while still maintaining the ability to negotiate discounts. Thus, we believe that requiring at least one drug per category, including generic drugs, strikes the proper balance between achieving drug discounts for card enrollees and offering some assurance that discounts will be available for the drugs Medicare enrollees most commonly need.

It is important to note that endorsed sponsors have the flexibility to provide negotiated prices on as many drugs as they choose beyond the minimum number and types needed to satisfy this endorsement qualification criterion, and we expect that many endorsed sponsors will choose to do so in order to make their discount cards attractive to beneficiaries.

We employed a contractor to provide technical assistance to develop the list of categories in Table 2.[1] The following set of principles served to guide a comprehensive approach to develop the list of categories:

- The category list is based on covered discount card drugs, as defined in section 1860D–2(e) of the Act, and also represents the types of drugs commonly needed by Medicare beneficiaries, as determined through analyses of survey data from the 2000 Medicare Current Beneficiary Survey, 2002–2003 Scott Levin-Verispan pharmacy data, and Food and Drug Administration information.
- One category list will set minimum requirements for discount card offerings, regardless of whether an enrollee has access to transitional assistance funds. Importantly, provided that the drug is offered at the pharmacy, enrollees with transitional assistance can use these funds to purchase covered discount card drugs for which no discount is provided.
- A given category could not contain only a single drug.
- The list is intended to wrap around rather than represent existing Medicare Part B outpatient drug coverage.[2] As such, drugs, biologicals, and vaccines administered in physician offices, hospital outpatient departments, dialysis centers, or provided outside of retail pharmacies were not reviewed unless they also can generally be obtained through retail pharmacies and appeared in data sources used to identify drugs commonly used by Medicare beneficiaries.
- In compliance with section 1860D–2(e) of the Act, non-covered discount card drugs were excluded from review.

To develop the listing of therapeutic categories of drugs most commonly needed by Medicare beneficiaries, we first analyzed drug utilization and expenditure data from the 2000 Medicare Current Beneficiary Survey (MCBS), a CMS-sponsored continuous, multipurpose survey of a nationally representative sample of aged, disabled, and institutionalized Medicare beneficiaries, to produce lists of the top 200 drugs used based on number of prescriptions and the top 200 drugs used based on expenditures. Separate lists were compiled for elderly enrollees and disabled enrollees to ensure that important drugs for both populations were captured.

We supplemented the list of commonly used drugs derived from the Medicare Current Beneficiary Survey by analyzing commercial datasets (Scott-Levin/Verispan Source Prescription Audit (SPA) and Physician Drug & Diagnosis Audit (PDDA)) for other commonly used drugs in the elderly populations. These data provide a comprehensive overview of the national performance of all prescription drugs dispensed by retail pharmacies for the 12-month period ending in May 2003. Utilization share percentages for people age 65 and over were applied to the data. Out of this data set, we obtained the top 200 drugs used based on number of prescriptions and the top 200 drugs used based on expenditures for the age 65 and over group. Prescription data is electronically collected on a monthly basis from approximately 35,000 U.S. retail pharmacies, including chains, independents, mass merchandisers, and food stores. It is estimated that SPA data cover approximately 70 percent of all dispensed prescriptions in the U.S. The Scott-Levin PDDA database includes data from approximately 365,000 office-based physicians in 29 specialties. Finally, to ensure that our list of commonly used drugs included new drugs and excluded retired and over-the-counter drugs (where over-the-counter drug is defined in our regulations at § 403.802 to mean non-prescription drug), we consulted current Food and Drug Administration (FDA) materials, including the FDA's "Additions/Deletions for Prescription and OTC Drug Product Lists" for June 2002 through July 2003.

After the list of drugs commonly needed by Medicare beneficiaries was

[1] Contract 500–02–0024 Modification #3, AMS, subcontracted to Navigant Consulting and Independent Pharmaceutical Consultants, Inc. *Identification of Baseline Therapeutic Categories for the Medicare Drug Discount Card Program* December 5, 2003

[2] Medicare coverage of outpatient drugs under Part B is principally for certain drugs and biologicals used in dialysis, cancer treatment, organ transplantation, certain vaccines and drugs used with DME such as infusion pumps and nebulizers

finalized, we assigned therapeutic class codes and sorted each drug into therapeutic classes. We accomplished this by using an enhanced classification tool made available from First DataBank. The First DataBank Enhanced Therapeutic Classification System (ETC)[3] provides a method for classifying drugs and drug products into classes and sub-classes using a parent-to-child relationship hierarchy. Using a combination of identifiers and formulation-based and name-based drug concepts, the system provides for maximum flexibility and allows for categorization of drugs into more than one therapeutic classification as necessary. The drugs were assigned to therapeutic categories and sub-categories based on National Drug Code and/or drug short name. The classification tool was then used to sort the listing of commonly used drugs according to therapeutic categories and sub-categories. The category list then underwent the following steps:

- It was reviewed for major therapeutic classes that did not appear in the listing. In addition, non-covered discount card drugs were eliminated and drugs covered under Part B were flagged.
- The revised draft classification and sub-classification system was reviewed by a pharmacy team, external to CMS, consisting of 5 PhD and clinical pharmacists, and two geriatricians/internists, to determine the level of specificity required to ensure that the types of medications required by Medicare beneficiaries are represented. The category list was also compared with several commercial formulary categorization schemes.
- Several non-CMS internal medicine physicians with specialties in geriatrics and several non-CMS specialists with expertise in serving Medicare beneficiaries, reviewed the specifications and drugs listed to ensure that the category list represents types of drugs that are commonly needed by the Medicare population, and to provide the guidance concerning the drugs they routinely prescribe to Medicare beneficiaries in their areas of specialization, for the consideration of sponsors in their development of formularies for the Medicare drug discount card program. A total of 11 physicians took part in this review process.
- CMS clinicians, including 2 pharmacists and a physician, conducted a final review of the categories. We then finalized the categories based on this input.

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[3] According to First DataBank, the following sources were used in the compilation of data for the ETC: American Hospital Formulary Service (AHFS) Drug Information, Pharmacotherapy: A Pathophysiologic Approach, Martindale: The Extra Pharmacopeia, Applied Therapeutics: The Clinical Use of Drugs, Goodman and Gilman's The Pharmacological Basis of Therapeutics, Harrison's Principals of Internal Medicine, The Merck Manual of Diagnosis and Therapy, Current Medical Diagnosis and Treatment, The Merck Index, and manufacturer package inserts.

Table 2 Therapeutic Classes and Subclasses/Groups for Medications Frequently Used by Medicare Beneficiaries

- **Analgesic, Anti-inflammatory or Antipyretic**
  - Analgesic, Anti-inflammatory or Antipyretic - Non-Narcotic
    - NSAID's
      - *Cyclooxygenase Inhibitors Non-Selective and Combinations*
      - *Cyclooxygenase-2 (COX-2) Selective Inhibitors and Combinations*
    - *Salicylates and Salicylate Combinations*
    - *Analgesic or Antipyretic Non-Narcotic and Combinations*
    - *Disease Modifying Anti-Rheumatoid Drugs (DMARD)*
  - Analgesics - Narcotic
    - Analgesic Narcotic Agonists and Combinations
      - *Analgesic Narcotic Agonists*
      - *Analgesic Narcotic Agonist Combinations*
      - *Analgesic Narcotic Partial/Mixed Agonists and Combinations*
- **Anorectal Preparations**
  - *Anorectal - Glucocorticoids*
  - *Rectal/Lower Bowel- Glucocorticoids*
- **Anti-Infective Agents**
  - Antibacterial Agents
    - *Aminoglycosides*
    - *Antibacterial Folate Antagonists*
    - *Antibacterial Nitrofuran Derivatives and Combinations*
    - Antimycobacterial Agents
      - *Antitubercular Agents*
      - *Antileprotic Agents*
    - BetaLactam Antibiotics
      - *Penicillins*
      - *Cephalosporins*
    - *Glycopeptide Antibiotics (Vancomycin)*
    - *Lincosamides*
    - *Macrolides and Combinations*
    - Quinolones
      - *Fluoroquinolones and Combinations*
    - Tetracyclines and Combinations
      - *Tetracyclines*
  - Antifungals
    - *Antifungal - Amphoteric Polyene Macrolides*
    - *Antifungal - Azole Agents*
    - *Antifungal Other*
  - Antivirals
    - *Antiretrovirals*
    - *CMV Agents*
    - Hepatitis Agents
      - *Hepatitis B Treatment Agents*
      - *Hepatitis C Treatment Agents*
    - *Herpes Agents*
  - Antiparasitics
    - *Antiprotozoal*

Antiprotozoal/Antibacterial Agents
Antiprotozoal/Antibacterial - Nitroimidazole Derivatives
Antineoplastics
Alkylating Agents
Antimetabolites
Antimetabolite - Folic Acid Analogs
Antimetabolite - Purine Analogs
Antimetabolite - Pyrimidine Analogs
Antimetabolite - Urea Derivatives
Antineoplastic - Hormone/Hormone Antagonist Agents
Antineoplastic - Antiandrogens
Antineoplastic - Aromatase Inhibitors
Antineoplastic - Selective Estrogen Receptor Modulators (SERMs)
Antineoplastic - Progestins
Chemotherapy Rescue/Antidote Agents
Cardiovascular Therapy Agents
Angina Therapy
Antianginal - Coronary Vasodilators (Nitrates) and Combinations
Antiarrhythmics
Antiarrhythmic - Class I
Antiarrhythmic - Class I-A
Antiarrhythmic - Class I-C
Antiarrhythmic - Class II
Antiarrhythmic - Class III
Antiarrhythmic - Class IV
Antihyperlipidemics
Antihyperlipidemic - Bile Acid Sequestrants
Antihyperlipidemic - Fibric Acid Derivatives
Antihyperlipidemic - HMG CoA Reductase Inhibitors
Antihyperlipidemic - Nicotinic Acid Derivatives
Antihyperlipidemic Agents Other (including ZETIA)
Beta Adrenergic Blockers
Beta Blockers Cardiac Selective, All
Beta Blockers Non-Cardiac Selective, All
Alpha-Beta Blockers
Calcium Channel Blockers
Calcium Channel Blockers - Benzothiazepines
Calcium Channel Blockers - Dihydropyridines
Calcium Channel Blockers - Phenylakylamines
Cardiac Inotropes
Diuretics
Diuretic - Loop and Combinations
Diuretic - Potassium Sparing Diuretics and Combinations
Diuretic - Potassium Sparing (Single Agent), All
Diuretic - Potassium Sparing in Combination
Diuretic - Thiazides and Related, and Combinations
Antihypertensive Therapy Agents
ACE Inhibitors
Angiotensin II Receptor Blockers (ARBs)
Antihypertensive Therapy Combinations
Central Alpha-2 Receptor Agonists
Peripheral Alpha-1 Receptor Blockers

Pulmonary Antihypertensive Agents
Vasodilators
Direct Acting Vasodilators
Central Nervous System Agents
Attention Deficit-Hyperact Disorder (ADHD) Therapy
Attention Deficit-Hyperactivity (ADHD) Therapy, Stimulant-Type
Antianxiety Agents
Antianxiety Agent - Antihistamine Type
Antianxiety Agent - Non-Benzodiazepine
Anticonvulsant
Anticonvulsant - Carboxylic Acid Derivatives
Anticonvulsant - Hydantoins
Anticonvulsant - Iminostilbene Derivatives
Anticonvulsant Others
Antidepressants
Antidepressant - Alpha-2 Receptor Antagonists (NaSSA)
Antidepressant - Monamine Oxidase (MAO) Inhibitors
Antidepressant - Norepinephrine & Dopamine Reuptake Inhibitors (NDRIs)
Antidepressant - Serotonin-2 Antagonist/Reuptake Inhibitors (SARIs)
(1) *Antidepressant - Selective Serotonin & Norepinephrine Reuptake Inhibitors (SSRIs & SNRIs)*
Antidepressant - Tricyclics & Related (Non-Select Reuptake Inhibitors)
Antidepressant Combinations
Antimanic Agents
Antiparkinson Therapy
Antiparkinson Therapy - Anticholinergic Agents
Antiparkinson Therapy - Dopaminergic
Antiparkinson's Adjuvants
Antiparkinson Combination Agents
Antipsychotics
Antipsychotic - Dopamine Antagonists
Antipsychotic - Dopamine/Serotonin Antagonists
Antipsychotic - Atypical Agents, General
Migraine Therapy
Migraine Therapy - Serotonin Agonists
Migraine Therapy - Carboxylic Acid Derivatives
Sedative/Hypnotics
Chemical Dependency, Agents to Treat
Smoking Deterrents and Combinations
Cognitive Disorder Therapy
Cognitive Disorder Therapy - Antidementia
Antidementia - Cholinomimetics (ACHE Inhibitors)
Dermatological
Acne Therapy
Acne Therapy Topical
Dermatological - Anti-infectives
Dermatological - Antibacterials
Dermatological - Antifungals
Dermatological - Anti-infective Combinations
Dermatological - Antineoplastic or Premalignant Lesions
Dermatological - Antipruritics
Dermatological - Antiseborrheic Products and Combinations
Dermatological - Burn Products

Dermatological - Emollients and Combinations
Dermatological - Glucocorticoids and Combinations
Dermatological - Keratolytics/Antimitotics
Dermatological - Protectants and Combinations
Dermatological - Rosacea Therapy, Topical
Electrolyte Balance/Nutritional Products
Prenatal Vitamins and Combinations
Endocrine
Corticosteroids
Glucocorticoids and Combinations
Androgen-Anabolic
Anabolic Steroids
Estrogens and Combinations
Estrogens
Estrogen Combinations
Progestins
Diabetic Therapy
Insulin
Insulin - Human and Combinations
Oral Antidiabetic Agents
Alpha-Glucosidase Inhibitors
Oral Antidiabetic - Biguanides
Oral Antidiabetic - Insulin-Release Stimulant Type
Insulin Response Enhancers
Oral Antidiabetic Combinations
Hyperglycemic Agents and Combinations
Thyroid Therapy
Thyroid Hormones and Combinations
Anterior Pituitary Hormones and Hormone Antagonists
Calcium & Bone Metabolism Regulators
Posterior Pituitary Hormones
Antidiuretic and Vasopressor Hormones
Prolactin Inhibitors
Gastrointestinal Therapy Agents
Gastrointestinal Antispasmodics
GI Antispasmodic - Belladonna Alkaloids
GI Antispasmodic - Quaternary Ammonium Compounds
GI Antispasmodic - Synthetic Tertiary Amines
GI Antispasmodic Combinations
Peptic Ulcer Therapy
Peptic Ulcer - Antisecretory Agents
Peptic Ulcer - H-2 Antagonists
Peptic Ulcer - Proton Pump Inhibitors
Peptic Ulcer - Cytoprotectives
Peptic Ulcer - Prostaglandin Analogues
Peptic Ulcer Therapy Combinations
Antacids and Combinations
Antidiarrheals
Laxatives
Laxative - Saline and Osmotic
Laxative - Surfactant
Laxative Combinations

Antiemetics
Antiemetic - Antihistamines and Antihistamine Combinations
Antiemetic - Phenothiazines
Antiemetic - Selective Serotonin 5-HT3 Antagonists
Gastrointestinal Prokinetic Agents
Gallstone Solubilizing Agents and Combinations
Colonic Acidifier (Ammonia Inhibitor)
Inflammatory Bowel Agents
Phosphate Binders
Digestive Aids
Genitourinary Therapy
Urinary Anti-infectives
Urinary Antibacterials
Urinary Antibacterial - Quinolones
Urinary Antibacterial - Nitrofuran Derivatives
Urinary Antispasmodics
Urinary Antispasmodic - Anticholinergics
Urinary Antispasmodic - Smooth Muscle Relaxants
Urinary Antispasmodic Combinations
Urinary Ph Modifiers
Urinary Ph Modifier - Alkalinizers
Urinary Analgesics
Prostatic Hypertrophy Agents
Prostatic Hypertrophy Agent - 5-Alpha Reductase Inhibitors
Gout and Hyperuricemia Therapy
Gout - Acute Therapy
Hyperuricemia Therapy
Gout and Hyperuricemia Combination Drugs
Hematological Agents
Anticoagulants
Hematopoietic Agents
Hematopoietic Agents - Hematopoietic Growth Factors
Erythropoietins
Granulocyte Colony-Stimulating Factor (G-CSF)
Granulocyte/Macrophage Colony-Stimulating Factor (GM-CSF)
Hematorheologic Agents
Platelet Aggregation Inhibitors & Combinations
Immunosuppressive Agents

Impotence Agents

Locomotor System
Musculoskeletal Therapy Agents
Skeletal Muscle Relaxants
Skeletal Muscle Relaxant - Central Muscle Relaxants
Skeletal Muscle Relaxant Combinations
Neuromuscular Therapy Agents
Neuromuscular Therapy Agents - ALS Agents
Mouth/Throat/Dental - Preparations
Mouth and Throat - Anti-infectives
Mouth and Throat - Antifungals
Mouth and Throat - Glucocorticoids

Multiple Sclerosis Agents

Ophthalmic Agents
Ophthalmic - Anti-infectives
Ophthalmic Antibacterial
Ophthalmic - Fluoroquinolones
Ophthalmic - Macrolides
Ophthalmic - Steroidal Antibiotics
Ophthalmic Anti-infective Combinations
Ophthalmic - Anti-inflammatory
Ophthalmic - Anti-Inflammatory, Glucocorticoids
Ophthalmic - Anti-Inflammatory, NSAIDs
Ophthalmic - Antiallergy
Ophthalmic - Antihistamines
Ophthalmic - Mast Cell Stabilizers
Ophthalmic - Intraocular Pressure Reducing Agents
Ophthalmic - Selective Alpha Adrenergic Agonists
Ophthalmic - Beta-blockers
Ophthalmic - Prostaglandin Analogs
Ophthalmic - Miotics
Ophthalmic - Carbonic Anhydrase Inhibitors
Ophthalmic - Intraocular Pressure Reducing Combinations
Ophthalmic - Mydriatics and Cycloplegics
Ophthalmic - Anticholinergics
Ophthalmic Combinations
Ophthalmic - Anti-infective/Anti-inflammatory Combinations
Otic
Otic Combinations
Otic - Anti-infective/Glucocorticoid Combinations
Respiratory Therapy Agents
Antihistamines
Antihistamines - 1st Generation
Antihistamines - 2nd Generation
Asthma Therapy Agents
Asthma Therapy - Anticholinergics
Asthma Therapy - Beta Adrenergic Agents
Asthma Therapy - Glucocorticoids
Asthma Therapy - Leukotriene Modulators
Asthma Therapy - Xanthines
Asthma Therapy Combinations
Nasal Preparations
Nasal Anti-infectives
Nasal Antiallergy
Nasal Anticholinergics
Nasal Corticosteroids
Vaginal Products
Vaginal Anti-infectives
Vaginal Antifungals
Vaginal Estrogens

Footnotes:

(1) Combined category, not part of First DataBank therapeutic classification system.

Notes:
Non-italicized categories represent therapeutic class titles or headings. Endorsed sponsors will not be required to provide drugs in these categories.

Italicized categories represent those categories where an endorsed sponsor must provide at least one prescription drug at a discount within the category.

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In the interest of protecting beneficiaries' health, we believe there are several issues applicants should consider in developing their formularies, if they plan to use one. First, there are several medications that are not widely recommended for use in the elderly population based on their potential to cause adverse outcomes (Beers MH. Explicit criteria for determining potentially inappropriate medication use by the elderly. *Arch Intern Med.* 1997; 157:1531–1536). However, under certain clinical conditions, some of these medications may be appropriate for use in the elderly population. Endorsed sponsors should evaluate whether or not to include these drugs on their formularies, as well as ways in which to help reduce the potential for adverse drug reactions, described further in section II.C.7. of this document.

Second, another key area for consideration by endorsed sponsors is the importance of ensuring that negotiated prices are available to special populations. Certain groups, such as beneficiaries who are HIV positive, beneficiaries with a mental illness, and beneficiaries with cancer may require treatment with a variety of specific medication combinations, which may not be easily substitutable. The medical treatment of these beneficiaries and other special populations may be significantly compromised if discounts are not made available on particular medications that they require.

Finally, we believe endorsed sponsors should consider ensuring that there are appropriate selections and dosage forms of drugs within each class or subclass as needed (for example, long-acting versus short-acting). In some cases, this might require more than one drug to satisfy a single subclass or group. Specifically, there are several therapeutic classes that contain both short-acting and long-acting medications. These medications commonly come in both standard oral dosage forms and time-release dosage forms.

We are requesting that applicants address these issues in their applications if they will use a formulary so that we may have a fuller understanding of how drug discount card programs will address the needs of Medicare beneficiaries.

c. Pricing

As provided in sections 1860D–31(e)(1)(A) and 1860D–31(h)(4) of the Act, and cited in § 403.806(d)(1) of our regulations, each endorsed sponsor will be required to provide card enrollees access to negotiated prices on covered discount card drugs. Section 1860D–31(e)(1)(A)(ii) of the Act defines negotiated prices as taking into account negotiated price concessions (such as discounts, direct or indirect subsidies, rebates, and direct or indirect remunerations) for covered discount card drugs, and includes any dispensing fees for such drugs. Thus, as a general matter, to the extent discounts, rebates, subsidies or other price concessions are obtained by endorsed sponsors, the negotiated prices must take these concessions into account and some of the concessions should be shared with beneficiaries in the form of lower prices.

In addition, section 1860D–31(i) of the Act specifically requires that endorsed sponsors disclose to us the percentage of manufacturer price concessions or rebates passed on to Medicare beneficiaries, with section 1860D–31(h)(4) of the Act requiring endorsed sponsors to pass these savings on to card enrollees. We interpret these provisions as reflecting Congressional intent that endorsed sponsors meet the threshold of obtaining some level of manufacturer rebates, discounts, or other price concessions on some covered discount card drugs. In addition, we believe requiring endorsed sponsors to obtain manufacturer rebates, discounts, or other price concessions on some covered discount card drugs will promote and protect the interests of Medicare beneficiaries.

Therefore, as stated in § 403.806(d)(6) of our regulations, as a condition of endorsement, endorsed sponsors must obtain manufacturer rebates, discounts, or other price concessions on at least some covered discount card drugs.

In requiring endorsed sponsors to disclose to us the extent to which they pass through to card enrollees manufacturer discounts, rebates or other remunerations or price concessions, section 1860D–31(i) of the Act anticipates that endorsed sponsors might not pass through to card enrollees 100 percent of such manufacturer price concessions. We therefore interpret section 1860D–31(h)(4) of the Act as requiring endorsed sponsors to pass through to card enrollees some, but not necessarily all, of these price concessions. Rather than establish minimum quantitative requirements for either the level of manufacturer rebates, discounts, or other price concessions endorsed sponsors must obtain or the share of such price concessions that must be passed through to card enrollees, we will allow endorsed sponsors to determine this in light of their understanding of consumer preferences and the impact of market forces on their business model. Research conducted for us has shown that pharmacy benefit managers frequently obtain and pass through substantial manufacturer rebates for their commercial populations (BoozAllenHamilton, *Pharmaceutical Industry Scan,* August 6, 2002). In addition, we believe that market competition will encourage endorsed sponsors to pass through to enrollees a high percentage of the rebates, discounts, or other remuneration or price concessions. In particular, our price comparison Web site, discussed in greater detail in section II.E. of this document, will promote competition by allowing beneficiaries to compare maximum negotiated prices for drugs under different endorsed programs. Further, as described below, endorsed sponsors' negotiated prices for covered discount card drugs will not be taken into account for the purposes of establishing the best price under section 1927(c)(1)(C) of the Act. We therefore anticipate that endorsed sponsors will pass a substantial share of manufacturer price concessions through to beneficiaries in the form of negotiated prices at the point of sale. We have chosen not to establish minimum threshold levels for manufacturer price concessions because doing so could have the unintended effect of undercutting market competition as endorsed sponsors might cluster their drug price offering around that threshold.

We believe this approach provides endorsed sponsors with maximum flexibility within the basic program requirement in designing their endorsed program and negotiating price concessions with a broad range of manufacturers at levels that are commensurate with the structure of their endorsed programs.

In recognition of current industry practice, we anticipate that the level of discount offered to card enrollees will vary across the full complement of covered discount card drugs offered at negotiated prices. Moreover, as provided in § 403.806(d)(4) of our regulations, prices may vary across pharmacy contracts. We believe it is necessary to permit such price variation in order to provide endorsed sponsors sufficient flexibility to accommodate local market conditions and competition. As part of our educational efforts, we will explain to beneficiaries the possibility of price variation by pharmacy, and expect endorsed sponsors to do the same.

Additionally, we will allow endorsed sponsors to vary prices and formularies by enrollee characteristics, such as transitional assistance eligibility status, to offer lower negotiated prices to low-

income card enrollees, or card enrollees with a particular disease. We believe this flexibility promotes the objective of improving beneficiaries' access to prescription drug discounts by allowing card sponsors to structure formularies and prices for these populations for whom prescription drug expenses are a significant burden. An endorsed sponsor choosing to incorporate this flexibility into its endorsed program must ensure that its alternative offerings do not restrict any card enrollee's access to its basic option should the card enrollee not wish to participate in the alternative offering.

Further, CMS recognizes that endorsed sponsors may change their negotiated prices over time for legitimate business purposes. However, because beneficiaries are generally locked into the endorsed program of their choice for a calendar year, we would not want beneficiaries to enroll in cards with unrealistically low advertised prices, only to see those prices arbitrarily increase in subsequent weeks or months. Therefore, as provided in § 403.806(d)(9) of our regulations, we require that, except during the week of November 15, 2004, (which coincides with the beginning of the annual coordinated election period), endorsed sponsors must ensure that any increase in the negotiated price does not exceed an amount proportionate to the change in the drug's average wholesale price (AWP), and/or an amount proportionate to the changes in the endorsed sponsor's cost structure, including material changes to any discounts, rebates, or other price concessions the endorsed sponsor receives from a pharmaceutical manufacturer or pharmacy. We will monitor whether negotiated prices decline in proportion to decreases in AWP.

As discussed in section II.C.7. of the document, an endorsed sponsor must make available to its card enrollees, over its customer service telephone line, upon request, information about negotiated prices.

Under section 1860D–31(h)(8) of the Act, and as provided in § 403.806(d)(7) of our regulations, endorsed sponsors must ensure that card enrollees are charged at the point of sale the lower of the negotiated price or the pharmacy's usual and customary price for a covered discount card drug. We expect an endorsed sponsor to arrange with its network and mail order pharmacies that if, at time of purchase, a drug's usual and customary price is lower than the negotiated price under the endorsed sponsor's endorsed program, the pharmacy will make available to card enrollees the lower usual and customary price.

Additionally, as provided in section 1860D–31(d)(3) of the Act and stated in § 403.806(d)(8) of our regulations, endorsed sponsors are required to ensure that pharmacies inform card enrollees of any differential between the price of the covered discount card drug to the card enrollee and the price of the lowest priced generic drug that is therapeutically equivalent and bioequivalent and available at that pharmacy. This information must be provided at the time the card enrollee purchases the drug, or in the case of drugs purchased by mail order, at the time of delivery of that drug. As permitted under sections 1860D–31(d)(3)(B) and 1860D–31(g)(5) of the Act, for the reasons discussed in section II.I. of this document, we exempt from this requirement covered discount card drugs obtained from long-term care pharmacies or I/T/U pharmacies.

As provided in section 1860D–31(e)(1)(D) of the Act, the prices negotiated for covered discount card drugs under an endorsed discount card program (notwithstanding any other provision of law) will not be taken into account for the purposes of establishing the best price under section 1927(c)(1)(C) of the Act. Section 103(e) of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 amends section 1927(c)(1)(C)(i) of the Act by adding a new subparagraph (V) to exclude from best price any negotiated prices charged under an endorsed program. This exemption applies only to prices obtained from a drug manufacturer for the ingredient cost of the drug under the Medicare drug discount card program; prices negotiated for discount cards that are not Medicare endorsed programs would not meet the criteria of the exemption. Furthermore, since this rule relates to the Medicare drug discount card program, the rule does not address application of the best price rules to non-endorsed drug discount cards. We will not codify into regulation the statutory exemption from best price for negotiated prices under endorsed programs because we do not currently have regulations implementing section 1927(c)(1) of the Act.

d. Transitional Assistance

As discussed under section II.A. of this document, certain low-income Medicare beneficiaries enrolled in the Medicare drug discount card program will be eligible to receive transitional assistance of up to $600 per year, which may be applied toward the cost of covered discount card drugs obtained under the program.

Section 1860D–31(h)(1)(C) of the Act requires endorsed sponsors to administer the transitional assistance on our behalf and to demonstrate to the Secretary that they have satisfactory arrangements that account for the transitional assistance provided to transitional assistance enrollees. Therefore, as stated in § 403.806(e) of our regulations, endorsed sponsors must:

- Establish accounting procedures to manage the transitional assistance funds;
- Ensure that transitional assistance is applied toward the lower of a covered discount card drug's negotiated price (if any) or usual and customary price;
- Permit transitional assistance enrollees to apply transitional assistance toward the cost of any covered discount card drug obtained under the endorsed sponsor's endorsed program, regardless of whether that drug is on the endorsed sponsor's formulary (if any) or whether a discount has been negotiated for that drug.
- As required under section 1860D–31(d)(2)(C) of the Act, make available electronically or by telephone at the point-of-sale of covered discount card drugs the amount of transitional assistance remaining available to the transitional assistance enrollee; and
- As required under section 1860D–31(d)(2)(B) of the Act and discussed in section II.C.7. of this document, endorsed sponsors should inform transitional assistance enrollees of the endorsed sponsor's toll-free telephone number where they can obtain information on the amount of transitional assistance available to them.

In tracking the amount of transitional assistance available to transitional assistance enrollees, endorsed sponsors must take into account that any transitional assistance remaining available to a beneficiary on December 31, 2004 should be rolled over to 2005 and applied toward the cost of covered discount card drugs obtained under the program during 2005, and any transitional assistance remaining available to a beneficiary on December 31, 2005 may be applied toward the cost of covered discount card drugs obtained under the program during the transition period.

Endorsed sponsors must maintain a real-time claims adjudication system that, among other capabilities, will—

- Communicate to pharmacies the applicable coinsurance rates— 5 percent or 10 percent;
- Ensure that transitional assistance is applied only toward the cost of covered discount card drugs obtained under the program; and
- Track the amount of transitional assistance available to each transitional assistance enrollee.

We understand that in some circumstances real-time claims adjudication may not be possible, for instance, due to coordination of benefits issues. To accommodate these circumstances, endorsed sponsors must have the capacity to process claims off-line for transitional assistance.

As discussed below in section II.G. of this document, exclusive card sponsors may permit their transitional assistance enrollees to apply transitional assistance toward any copayments, coinsurance, and deductible amounts for covered discount drug cards obtained under their Medicare managed care plan outpatient drug benefit. Medicare managed care organizations seeking to offer an exclusive card program must indicate in their applications their intent to permit transitional assistance enrollees to apply transitional assistance toward the cost of covered discount card drugs obtained under their Medicare managed care plan and explain their process for doing so.

Applicants must include in their applications details on their proposed methods for managing and accounting for transitional assistance.

As discussed in section II.C.6. of this document, endorsed sponsors will not be permitted to charge their transitional assistance enrollees any annual enrollment fee; rather, we will pay any enrollment fee on their behalf.

Endorsed sponsors will be required to establish procedures for applying transitional assistance toward the cost of covered discount card drugs obtained by transitional assistance enrollees under the Medicare drug discount card program. Such procedures must include applying the coinsurance rules set forth in section 1860D–31(g)(1)(B) of the Act, as stated in § 403.808(e) of our regulations and discussed in section II.A.4.a. of this document. Further, as stated in § 403.806(e)(6) of our regulations, endorsed sponsors must ensure that transitional assistance is not applied to cover the portion of the negotiated price that transitional assistance enrollees are responsible for paying under the coinsurance rules. That is, endorsed sponsors must ensure that the amount of transitional assistance applied toward the cost of covered discount card drugs obtained by transitional assistance enrollees is the negotiated price (or usual and customary price, if lower) minus the coinsurance. For example, if a beneficiary has a $600 transitional assistance balance and he or she obtains a covered discount card drug under the Medicare drug discount card program with a negotiated price of $100, the beneficiary would pay, depending on his or her income, a coinsurance of 5 percent or 10 percent ($5 or $10), the endorsed sponsor would pay the negotiated price minus the coinsurance amount ($95 or $90), and following the transaction, the amount of transitional assistance remaining available to the transitional assistance enrollee would be $505 or $510. In their applications, applicants must describe their approach for applying the coinsurance rules.

Section 101(e)(2) of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 exempts from the prohibition under section 1128B(b)(3) of the Act pharmacies who waive or reduce coinsurance for enrollees with transitional assistance provided such waiver or reduction meets the conditions in clauses (i) through (iii) of section 1128A(i)(6)(A). Thus, pharmacies participating in an endorsed program's network could not be criminally prosecuted under section 1128B(b)(3) of the Act for waiving or reducing coinsurance under the Medicare drug discount card program provided the pharmacies comply with the provisions of clauses (i) through (iii) of section 1128A(i)(6)(A) of the Act, which include the following—

- The waiver is not to be advertised;
- The coinsurance is not routinely waived; and
- The coinsurance is waived only after determining (in good faith) that—
- The eligible beneficiary is in financial need; or
- The pharmacy has made reasonable collection efforts but still failed to collect the coinsurance due.

Pharmacies and endorsed sponsors seeking further guidance regarding waivers or reduction of coinsurance may request advisory opinions from the Office of the Inspector General. To request an advisory opinion, entities should submit an original and 2 copies of a written request that contains certain specified information to the following address:

Chief, Industry Guidance Branch, U. S. Department of Health and Human Services, Office of Inspector General, Office of Counsel to the Inspector General, Room 5527, Cohen Building, 330 Independence Avenue, SW., Washington, DC 20201.

For more information on the advisory opinion process and the information included in the request, please refer to *www.oig.hhs.gov/fraud/advisoryopinions.html*.

In addition, as discussed under section II.H. of this document, States may establish arrangements to pay directly to endorsed sponsors some or all of the coinsurance on behalf of transitional assistance enrollees in their State. If a pharmacy waives or reduces a transitional assistance enrollee's coinsurance amount or if the State pays some or all of the coinsurance, the endorsed sponsor must ensure that no more than 90 or 95 percent, as applicable, of the negotiated price is paid using transitional assistance funds.

5. Products and Services Inside and Outside the Scope of the Endorsement

Section 1860D–31(e)(1)(C) of the Act prohibits an endorsed discount card sponsor (and any pharmacy included in the endorsed sponsor's network) from charging card enrollees any amount, other than the annual enrollment fee and negotiated prices (which include dispensing fees), for any items and services required to be provided by the endorsed sponsor under the Medicare drug discount card program. Therefore, our regulations at § 403.806(h)(2) prohibit endorsed sponsors (and their network pharmacies) from charging any amount for required services other than the enrollment fee and negotiated prices. Required services include, for example—

- Conducting enrollment;
- Offering negotiated prices on covered discount card drugs;
- Ensuring convenient pharmacy access;
- Reducing the likelihood of medication errors and adverse drug interactions;
- Providing customer service and information and outreach materials;
- Providing a grievance mechanism; and
- Administering transitional assistance.

Section 1860D–31(h)(7)(A) of the Act allows endorsed sponsors to provide certain non-required services under their endorsements as well, but only if such products or services are directly related to a covered discount card drug, or are discounts for over-the-counter drugs (that is, non-prescription drugs). Thus, endorsed sponsors may voluntarily choose to provide under their Medicare endorsement discounts on over-the-counter drugs, and products or services that are related to covered discount card drugs but which are not required services under the Medicare drug discount card program. For example, an endorsed sponsor might offer discounts on durable medical equipment that is related to a covered

discount card drug. Any product or service that is either not related to a covered discount card drug, or is not a discount for an over-the-counter drug, could not be provided under the endorsement and would be considered outside the scope of a sponsor's Medicare endorsement.

Although an endorsed sponsor (and pharmacies participating in their networks) may provide products and services related to covered discount card drugs and may offer discounts on over-the-counter drugs, our regulations provide at § 403.806(h)(1) that endorsed sponsors (and pharmacies participating in their networks) may not offer any such product or service for an additional fee (nor may any of their subcontractors or pharmacies in the network charge an additional fee for services offered under the endorsement). Endorsed sponsors therefore must fund all such products and services (whether optional or required) through the enrollment fee, and, if necessary, through rebates, discounts, and other price concessions garnered from manufacturers and pharmacies. We believe that we have the authority to recognize as outside the scope of endorsement those products and services offered for an additional fee. Section 1860D–31(h)(8) of the Act charges us with protecting and promoting the interests of Medicare beneficiaries. Were we to allow endorsed sponsors to charge additional fees, we believe beneficiaries might, in effect, be charged annual enrollment fees higher than the $30 limit mandated by section 1860D–31(c)(2)(B) of the Act, especially if endorsed sponsors were to condition enrollment in their endorsed programs on beneficiaries paying these additional fees. In addition, beneficiaries may be unable to access negotiated prices and transitional assistance, as intended by Congress, if endorsed sponsors require that they pay additional fees for optional products and services. Further, we believe permitting endorsed sponsors to charge additional fees could be confusing to beneficiaries. For example, beneficiaries may find it confusing and frustrating that endorsed sponsors can charge a diabetic an additional fee to access discounts on durable medical equipment related to drugs for diabetics when they cannot charge a case management fee related to helping the beneficiary manage his or her diabetes. Our beneficiary research has demonstrated that beneficiaries expect a discount card program to be simple to understand and easy to use (Bearing Point and Sutton Group. CMS Formative Research on Prescription Drug Shopping Habits: Round 1 Findings, Final. April 8, 2003). We believe that the most straightforward and easily understood structure for an endorsed program is one that provides all products and services related to covered discount card drugs and discounts on over-the-counter drugs for the single enrollment fee.

We clarify that we do not intend to prohibit pharmacies from charging beneficiaries for drugs; rather, this policy concerns not the price of a drug itself, but products or services directly related to the drug and access to discounts on over-the-counter drugs. Pharmacies and endorsed sponsors therefore may charge beneficiaries negotiated prices for covered discount card drugs and discounted prices for over-the-counter drugs.

In accordance with section 1860D–31(h)(7)(B) of the Act, our regulations at § 403.813(a) and § 403.806(g)(5)(iv) provide that an endorsed sponsor's information and outreach materials may describe only those products or services within the scope of the Medicare endorsement; the information and outreach materials may not include descriptions of products or services offered by the endorsed sponsor outside the scope of the endorsement. Because only products and services that are both (1) related to a covered discount card drug or are discounts for over-the-counter drugs and (2) offered for no fee (other than the enrollment fee or negotiated prices) are considered within the scope of the Medicare endorsement, an endorsed sponsor's information and outreach materials may not include information on products or services offered for an additional fee. We interpret this to mean that endorsed sponsors may not commingle communications about endorsed sponsors' products or services offered outside the scope of endorsement with information and outreach materials describing products and services within the scope of endorsement. In addition, if endorsed sponsors offer for no additional fee non-required products and services related to covered discount card drugs or they offer discounts on over-the-counter drugs, the endorsed sponsor must describe these products and services in its information and outreach materials, which are subject to our review as described in section II.C.7. of this document.

Finally, as provided in § 403.813(a)(1) and (2) and discussed in section II.C.9. of this document, an endorsed sponsor may not use or disclose a card enrollee's individually identifiable health information created, collected, or maintained under the Medicare drug discount card program for the purpose of marketing products or services offered outside the scope of endorsement.

6. Eligibility and Enrollment Responsibilities

Sections 1860D–31(f)(1)(A) and (c)(1) of the Act direct the Secretary to establish procedures for determining beneficiaries' eligibility for the Medicare drug discount card program and transitional assistance and for enrolling eligible beneficiaries in endorsed programs. Sections 403.810 and 403.811 of our regulations set forth these procedures, which are discussed in part in section II.A. of this document. Endorsed sponsors are expected to implement these requirements as provided in § 403.806(k) of the regulations. This section discusses the obligations of endorsed sponsors related to eligibility determinations and enrollment. Section 1860D–31(c)(1)(B) of the Act also requires endorsed sponsors to use a standard enrollment form, and section 1860D–31(c)(2) of the Act permits endorsed sponsors to charge an annual enrollment fee up to, but no more than, $30 per year. This section also discusses our rules pertaining to the standard enrollment form and annual enrollment fee.

a. Eligibility and Enrollment Process

An endorsed sponsor may enroll a Medicare beneficiary in its endorsed program only after we verify the beneficiary's eligibility. We require endorsed sponsors to interact with CMS's enrollment systems to ensure that only eligible beneficiaries enroll in the Medicare drug discount card program; that beneficiaries enroll in only one endorsed program at a time and with few exceptions, in only one endorsed card program per year, as required under section 1860D–31(c)(1)(C)(i) of the Act and § 403.811(a)(6) and (a)(7) of our regulations; and that members of a Medicare managed care plan offering an exclusive card program do not enroll in other endorsed programs.

Medicare beneficiaries seeking to enroll in an endorsed sponsor's program must submit information to the endorsed sponsor by completing the standard enrollment form or by providing the necessary information to the sponsor via other means (for example, telephone, internet, or facsimile), as specified by CMS and permitted by the endorsed sponsor. Beneficiaries who wish to receive transitional assistance must complete the standard enrollment form for transitional assistance and submit this

form to their endorsed sponsor. We expect endorsed sponsors to promptly transmit to us all standard data elements captured on a beneficiary's completed enrollment form.

Prior to transmitting to us any standard data elements, we expect that the endorsed sponsor will ensure that the beneficiary's enrollment form is complete. If a beneficiary's enrollment form is incomplete, the endorsed sponsor must promptly contact the beneficiary or return the beneficiary's incomplete application to him or her to obtain the missing information.

In addition to reviewing an enrollment form for completeness, endorsed sponsors are expected to review whether an enrollment form on its face indicates that the beneficiary is ineligible for the Medicare drug discount card program or, if applicable, transitional assistance. Specifically, if the beneficiary is applying to enroll in the endorsed sponsor's endorsed program, the endorsed sponsor should review the enrollment form to determine whether:

- The beneficiary resides within the endorsed program's service area; and
- The beneficiary has any outpatient drug coverage under a State Medicaid plan (including a 1115 waiver).

If the beneficiary is applying for transitional assistance, the endorsed sponsor must review the enrollment form to determine whether:

- The beneficiary has signed the form;
- The beneficiary's income as listed on the enrollment form exceeds 135 percent of the poverty line applicable to the beneficiary's family size;
- The beneficiary has coverage for outpatient covered discount card drugs under one or more of the following sources: (a) TRICARE, (b) a Federal Employee's Health benefit plan, or (c) a group health plan or health insurance coverage other than a Part C plan or a group health plan consisting solely of excepted benefits, such as Medigap; and
- The beneficiary does not reside in one of the 50 States or the District of Columbia.

We also expect endorsed sponsors to determine the appropriate coinsurance level for each transitional assistance enrollee based on the income information he or she provides on the standard enrollment form.

If the endorsed sponsor determines that the beneficiary is ineligible for its endorsed program or, if applicable, transitional assistance, the endorsed sponsor should promptly notify the beneficiary that he or she is not eligible. The endorsed sponsor may wish to discuss with the beneficiary whether the individual wishes to make any changes to his or her enrollment form. Otherwise, the endorsed sponsor is expected to issue a notice of negative eligibility determination, as discussed in greater detail below.

As discussed in section II.A.3. of this document, if a beneficiary applies for transitional assistance when he or she applies for an endorsed program, the endorsed sponsor may not enroll the beneficiary in their endorsed program if the beneficiary is determined ineligible for transitional assistance. This requirement is specified in § 403.811(a)(3) of our regulations.

We will inform an endorsed sponsor of beneficiaries' eligibility for the sponsor's endorsed program and, if applicable, transitional assistance. If a beneficiary is determined ineligible for the endorsed sponsor's program and/or transitional assistance, we will inform the endorsed sponsor of the reasons for the negative determination. We expect endorsed sponsors to promptly notify a beneficiary in writing of any negative eligibility determination made either as a result of the endorsed sponsor's initial review of an individual's complete enrollment form (or information submitted as part of the enrollment process) or of CMS' verification process. If the beneficiary has been determined ineligible for the sponsor's endorsed program and/or transitional assistance, the notice must communicate to the beneficiary—

- The reason for the negative eligibility determination;
- The beneficiary's right to request reconsideration of the eligibility determination and the process for doing so; and
- If not determined eligible for transitional assistance, the beneficiary's option of enrolling in the endorsed program without access to transitional assistance.

The model information and outreach materials that will accompany information and outreach guidelines referenced in section II.C.7. of this document will include model language for these notices, as discussed under section II.C.7. of this document. Our reconsideration process is discussed in greater detail under section II.A.5. of this document.

The determination process for this program relies on self-certification and verification. As discussed above in section II.A.2. of this document, if, as part of our verification process for transitional assistance , we are unable to verify a beneficiary's ability to meet the income threshold specified in § 403.810(b)(3) of our regulations, we may direct endorsed sponsors to request that the beneficiary submit additional income information. Section 403.810(f)(2) of our regulations provides that CMS can require such beneficiaries to fulfill this request as one condition of eligibility for transitional assistance.

Under section 1860D–31(c)(1)(A)(i) of the Act, and as provided in § 403.811(a)(10) of our regulations, a discount card eligible individual may enroll only in an endorsed program serving residents of the State in which he or she resides. Therefore, an endorsed sponsor may only enroll in its endorsed program beneficiaries that are residents of a State within the endorsed program's service area. We expect the endorsed sponsor to advise beneficiaries that those who change their address to an address outside the endorsed program's service area during the year must disenroll from the endorsed program and request a special election period if they wish to enroll in a new card program whose service area includes their new address. The model information and outreach materials to be provided with the information and outreach guidelines will include model language addressing this issue. We also plan to educate beneficiaries that any discount card eligible individual planning to change residence during the year should enroll in a national endorsed program.

As discussed under sections II.A.3. and II.G. of this document, Medicare managed care organizations may group enroll, into their exclusive card programs, eligible beneficiaries enrolled in those Medicare managed care plans that include access to an exclusive card program as part of the plan's benefit package. Prior to doing so, these organizations must notify affected plan members of their intent to enroll eligible beneficiaries as a group into their exclusive card program and grant beneficiaries ample opportunity to decline enrollment in the exclusive card program. We encourage organizations offering exclusive card programs to inform affected plan members that, if they decline enrollment in the exclusive card program, they will not be permitted to enroll in any other endorsed program.

Under § 403.814(b)(5)(iii) of our regulations, we permit exclusive endorsed sponsors electing to group enroll their plan members into their exclusive card program to use a modified version of the standard enrollment form provided such form has been submitted and approved by us along with the exclusive endorsed sponsor's other information and outreach materials. If a Medicare managed care organization group enrolls its plan members into its exclusive card

program, any transitional assistance eligible beneficiary must be afforded the opportunity to apply for transitional assistance.

Section 1860D–31(c)(3) of the Act requires that endorsed sponsors issue a discount card to all of its discount card enrollees for use as proof of enrollment and to facilitate identification of the discount card enrollee and the appropriate endorsed program at the point of sale. Section 1860D–31(c)(3) of the Act gives the Secretary the discretion to specify a standard format for the discount cards. We require in § 403.806(g)(4) of our regulations that all discount cards follow a standard format that complies with National Council for Prescription Drug Programs standards. We will further discuss this format in our information and outreach guidelines.

b. Standard Enrollment Form

Section 1860D–31(c)(1)(B) of the Act requires endorsed sponsors to use a "standard" enrollment form that is specified by the Secretary. The standard enrollment form will collect eligibility data elements in a standard format for use by the endorsed sponsor and CMS in determining the beneficiary's eligibility for the Medicare drug discount card program and, if applicable, transitional assistance. We interpret the requirement for a standard enrollment form to mean that, although such forms do not have to be identical, an endorsed sponsor's enrollment form must contain certain data elements and language. These data elements will be specified in the information and outreach materials that accompany the solicitation, but will include:

- Information on eligibility criteria for the Medicare drug discount card program and transitional assistance;
- Documentation of a beneficiary's request for a determination of his or her eligibility for the Medicare drug discount card program and enrollment in the endorsed sponsor's endorsed program;
- Documentation (in the form of a signature) of a beneficiary's request for a determination of his or her eligibility for transitional assistance and request for enrollment assuming eligibility determination is positive;
- Beneficiary's income level and family size;
- Authorization to verify the information reported on the enrollment form, including the beneficiary's income, if applicable; and
- Certification of whether the beneficiary has outpatient prescription drug coverage under one or more of the following sources: (a) TRICARE, (b) a Federal Employee's Health benefit plan, or (c) a group health plan or health insurance coverage other than a Part C plan or a group health plan consisting solely of excepted benefits, such as Medigap.

We have developed a standard enrollment form that is as easy to understand as possible. Endorsed sponsors may customize the layout, graphics, and language of their enrollment form so long as the form conforms to the requirements of this section and the information and outreach guidelines referenced in section II.C.7. of this document. An endorsed sponsor must submit to us its enrollment form along with its other information and outreach materials for our review and approval.

As specified in § 403.814(b)(5)(iii) of our regulations, a Medicare managed care organization offering an exclusive card program that wishes to group enroll its plan members into its exclusive card program may use a modified version of the standard form. Any such modifications must conform to the requirements we will specify in the information and outreach guidelines (see § 403.806(g)(5)(i) of our regulations).

c. Transition Period

As discussed in section II.B.2. of this document, we require endorsed sponsors to continue operating their endorsed program during the transition period, including providing its discount card enrollees access to negotiated prices during this period. In accordance with section 1860D–31(a)(2)(C)(ii)(II) of the Act, § 403.811(c)(6) of our regulations specifies that endorsed sponsors may not charge an annual enrollment fee during the transition period. In addition, as provided in § 403.808(f), endorsed sponsors must permit transitional assistance enrollees to apply any transitional assistance remaining available to them on December 31, 2005 toward the cost of covered discount card drugs obtained under the program during the transition period. Endorsed sponsors may not enroll any beneficiaries in their endorsed programs during the transition period.

d. Enrollment Fee

Section 1860D–31(c)(2) of the Act provides that endorsed sponsors may charge an annual enrollment fee up to, but no more than, $30 per year.

Section 1860D–31(c)(2)(c) of the Act requires that an endorsed sponsor charge all beneficiaries residing in the same State the same enrollment fee. As specified in § 403.811(c)(4) of our regulations, for endorsed programs with service areas larger than a State, the endorsed sponsor may charge a different annual enrollment fee in each State of up to, but not more than, $30.

Section 1860D–31(c)(2)(G) provides that the Secretary may establish special rules with respect to payment of any annual enrollment by discount card enrollees who enroll in a new endorsed program during a calendar year. As provided in § 403.811(b)(7) of our regulations, when a discount card enrollee enrolls in a new endorsed program during a special election period, the endorsed sponsor of the new endorsed program may charge the discount card enrollee its annual enrollment fee. We allow the new endorsed sponsors to charge their annual enrollment fee because we believe that much of the enrollment fee covers the start-up costs of enrolling a beneficiary into an endorsed program.

Section 1860D–31(c)(2)(G) of the Act allows the Secretary to provide special rules regarding payment of the enrollment fee for discount card eligible individuals, which include transitional assistance enrollees who enroll in a new endorsed program during the calendar year. For transitional assistance enrollees who change endorsed programs during a special election period, we will pay any annual enrollment fee charged by the new endorsed program. Further, section 1860D–31(c)(2)(C) of the statute and § 403.811(c)(4) of the regulations provides for a uniform enrollment fee for all discount card enrollees. The requirement means that the Secretary will pay the same enrollment fee (if any) for individuals receiving transitional assistance that the endorsed sponsor is charging those not receiving transitional assistance and residing in the same State.

Section 1860D–31(c)(2)(A) of the Act, as reflected in § 403.811(c)(3) of our regulations, prohibits an endorsed sponsor from prorating its annual enrollment fee for portions of a calendar year. Accordingly, an endorsed sponsor that charges an enrollment fee must charge its discount card enrollees the same enrollment fee in a given calendar year, regardless of when during the calendar year the discount card enrollee enrolls in the endorsed sponsor's endorsed program.

Section 403.811(a)(2) of our regulations provides that if the beneficiary indicates on the enrollment form that he or she only seeks to enroll in the endorsed sponsor's endorsed program and is not seeking transitional assistance, the endorsed sponsor may charge the beneficiary an annual enrollment fee in a form and manner determined by the endorsed sponsor.

As discussed above in section II.A.3. of this document, and provided in § 403.811 (a)(3) of our regulations, beneficiaries may not enroll in an endorsed sponsor's endorsed program when they also apply for transitional assistance, unless they are determined eligible for transitional assistance at the time of application. To ensure that a beneficiary does not pay any enrollment fee prior to a determination of his or her eligibility for transitional assistance, § 403.811(c)(2) of our regulations provides that endorsed sponsors may not charge beneficiaries applying for transitional assistance any annual enrollment fee at the time of application. Should a beneficiary be determined eligible for transitional assistance and enrolled in the endorsed program, the endorsed sponsor may then charge CMS any enrollment fee. Beneficiaries determined ineligible for transitional assistance may apply for enrollment in an endorsed drug discount card program and, if found eligible to enroll in the endorsed program, must pay the annual enrollment fee (if any) in a form and manner determined by the endorsed sponsor.

As required in section 1860D–31(c)(2)(E) of the Act, and specified in § 403.808(c) of our regulations, we will pay any annual enrollment fee on behalf of transitional assistance enrollees. Should a discount card enrollee be determined eligible for transitional assistance after already enrolling in an endorsed program, we will pay the annual enrollment fee and the endorsed sponsor must immediately refund to the discount card enrollee, or any State that has paid the enrollment fee on behalf of the card enrollee, any annual enrollment fee for the calendar year previously paid by the discount card enrollee or State. If the discount card enrollee is first determined eligible for transitional assistance in 2005, we will not pay any enrollment fee for 2004 and the endorsed sponsor will not be required to refund to the discount card enrollee any enrollment fee paid by him or her in 2004. This policy is incorporated into § 403.811(c)(5) of our regulations.

As discussed in greater detail in section II.H.2. of this document, under section 1860D–31(c)(2)(F) of the Act and § 403.815(a) of our regulations, a State may pay some or all of any enrollment fee for some or all discount card enrollees (other than transitional assistance enrollees) residing in the State. As specified in § 403.815(a)(1) of our regulations, these payment arrangements should be negotiated directly between the State and the endorsed sponsor.

e. Disenrollment

Section 1860D–31(c)(1)(D)(ii) of the Act and § 403.811(b)(6) of our regulations permit an endorsed sponsor to involuntarily disenroll any discount card enrollee, other than a transitional assistance enrollee, who fails to pay the annual enrollment fee charged by the endorsed sponsor. We expect endorsed sponsors to provide discount card enrollees prior written notice before involuntarily disenrolling them for failure to pay the enrollment fee.

Under section 1860D–31(c)(1)(D)(i) of the Act, a discount card enrollee also may voluntarily disenroll from an endorsed program at any time. Discount card enrollees generally must notify an endorsed sponsor of their desire to disenroll from the endorsed sponsor's endorsed program. We expect endorsed sponsors to promptly submit to CMS all disenrollment requests they receive. In addition, if an endorsed sponsor involuntarily disenrolls one of its discount card enrollees for failure to pay any enrollment fee, we expect the endorsed sponsor to promptly notify us of such disenrollment. As discussed above in section II.A.6. of this document, discount card enrollees who disenroll from a Medicare managed care plan offering an exclusive card program are no longer eligible for that exclusive card program. The exclusive endorsed sponsor must disenroll these beneficiaries from its exclusive card program.

If a discount card enrollee contacts the endorsed sponsor in order to disenroll from an endorsed program, the endorsed sponsor is responsible for—

- Disenrolling the discount card enrollee from its endorsed program and promptly notifying us of such disenrollment;
- Determining whether the discount card enrollee is eligible for a special election period based on the reason provided for the disenrollment, if any; and
- If the endorsed sponsor determines that a discount card enrollee is eligible for a special election period, promptly notifying us of this determination.

7. Information and Outreach, and Other Customer Service

a. Information and Outreach

Section 1860D–31(d)(2)(A) of the Act requires that each prescription drug card endorsed sponsor that offers an endorsed discount card program will make available to eligible beneficiaries for the discount card program (through the Internet and otherwise) information that the Secretary identifies as being necessary to promote informed choice among endorsed discount card programs including information on enrollment fees and negotiated prices for covered discount card drugs. Furthermore, section 1860D–31(h)(7)(A) of the Act limits drug card endorsed sponsors to providing under their endorsements only (1) products and services directly related to covered discount card drugs, or (2) discounts on over-the-counter drugs. Section 1860D–31(h)(7)(B) then prohibits endorsed sponsors from marketing—under their endorsements—any products and services other than those described in section 1860D–31(h)(7)(A).

Under the above authority, we have drafted regulations which condition endorsement on card sponsors providing information and outreach according to our rules. To further explain these regulations and provide guidance to endorsed sponsors, we plan to publish information and outreach guidelines on our Web site at the same time we release the solicitation for applications. These information and outreach guidelines will provide further interpretations of our regulations and will contain the procedures endorsed sponsors can use to apply for and receive approval of their information and outreach materials.

Our regulations at § 403.806(g) contain our requirements for the information to be included in materials. Endorsed sponsors must provide to Medicare beneficiaries in their service area(s) information and outreach materials on the endorsed program, including discounts on over-the-counter drugs, if offered. Our regulations also incorporate the statutory requirement that information and outreach materials promote informed choice and contain information on enrollment fee and negotiated prices.

As we will explain further in the information and outreach guidelines, we will implement and interpret these statutory and regulatory requirements by requiring endorsed sponsors to disclose to Medicare beneficiaries (prior to enrollment, after enrollment, and upon request) the following information at a minimum—

(1) A detailed description of the program that includes information on how to become enrolled in a program, eligibility qualifications for transitional assistance, and how transitional assistance works;

(2) A description of the services the sponsor provides for no additional fee,

such as drug interaction counseling or allergy alerts;

(3) The availability of a grievance process and how it works;

(4) If applicable, any special rules for beneficiaries in long term care facilities, American Indians/Alaska Natives who use I/T/U pharmacies, as well as residents of the U.S territories;

(5) The toll-free telephone numbers described in § 403.806(g)(6) of our regulations;

(6) A list of contracted pharmacies and prescription drugs offered for a negotiated price, how coinsurance works, and a guarantee that contracted pharmacies will provide the lower of the negotiated price or the usual and customary price;

(7) Enrollment fees (if any);

(8) A notice that drugs and prices may change or vary and a description of how the enrollee can obtain information regarding those changes and variations;

(9) A clear description of the service area in which the endorsed program is available;

(10) A privacy notice for protected health information. Further guidance will be provided in the information and outreach guidelines on the notice of privacy practices for protected health information; and

(11) A description of any circumstances and special procedures that relate to potential transitional assistance enrollee liabilities stemming from procedures endorsed sponsors have in place to manage transitional assistance against an enrollee's cap or transitional assistance balance transfer to a newly elected endorsed program.

Endorsed sponsors must also make available, upon request, the negotiated prices for prescription drugs.

In addition to the above information, section 1860D–31(d)(2)(B) of the Act provides that an individual's transitional assistance balance must be available and provided as requested by toll-free line. Because this provision also requires that the toll-free line is publicized, we will require in the information and outreach guidelines that the toll-free number be included in all media through which the sponsor communicates with beneficiaries (for example, magazines, television, newspapers, billboards, radio, pre-enrollment, or post-enrollment materials).

Section 1860D–31(d)(2)(C) of the Act requires endorsed sponsors to make available, at the point of sale, information on the remaining balance of transitional assistance. Endorsed sponsors, therefore, must explain in their information and outreach materials that, at the point of sale, enrollees can request that network pharmacies determine—either electronically or by telephone—how much of the enrollee's transitional assistance remains. Endorsed sponsors must also include information in the member handbook or summary of program features on how an enrollee can obtain his or her transitional assistance balance.

Additionally, in accordance with section 1860D–31(d)(3) of the Act, information and outreach materials must explain how enrollees will be informed of the differential between the price of the drug to the enrollee and the price of the lowest priced therapeutically equivalent and bioequivalent generic covered discount card drug available at that pharmacy. Our forthcoming information and outreach guidelines will provide further detail on the method for communicating this information to beneficiaries, including to beneficiaries who purchase drugs through mail order.

All information required to be included in information and outreach materials, must, as required under section 1860D–31(d)(2)(A) of the Act, be provided both through the Internet and through some tangible medium, such as mailings (see § 403.806(g)(1) of our regulations). For information provided on the Internet, endorsed sponsors must establish a process for informing members when the web page was last updated, for example, by putting a date and disclaimer on the web page to promote beneficiary understanding that the information could be dated. In their applications, we require endorsed sponsors to demonstrate how they will maintain Web sites that provide information and outreach.

In II.C.5. of this document, we discuss products and services considered inside and outside the scope of endorsement, and explain that products or services outside the endorsement may not be offered or marketed under the endorsement. We further explain in section II.C.9. of this document that marketing related to non-endorsed services will be prohibited, even if the endorsed sponsor obtains beneficiary consent to receive such marketing. In keeping with these rules, our information and outreach provisions provide that any communication provided by sponsors that would concern services outside the endorsement may not be co-mingled with information and outreach materials relating to endorsed items or services. Therefore, when endorsed sponsors are acting in their capacity as endorsed sponsors, and are using data or information they collected through the operation of their endorsed program, they may not co-mingle information and outreach materials on endorsed features with any materials on non-endorsed features. This, however, would not prohibit entities, when they are not acting in their capacity as endorsed sponsors, from publicizing their endorsed programs or providing information about such programs. Thus, for example, an exclusive card sponsor could describe its endorsed program in its Medicare managed care plan marketing materials if those materials are CMS-approved, but it could not describe its Medicare managed care plan general features in materials which are directed solely toward its endorsed program enrollee population.

Our forthcoming information and outreach guidelines also will provide certain rules regarding the proper procedures for conducting information and outreach. For example, the guidelines will provide that, in conducting information and outreach, endorsed discount card sponsors may not engage in activities that could mislead or confuse beneficiaries or provide cash or other monetary rebates (for example, coupons or discounts on pharmacy products and services) as an incentive for enrollment.

Section 1860D–31(c)(3) of the Act provides that each endorsed sponsor must issue to each enrollee a card in a standard format specified by the Secretary that establishes proof of enrollment and that can be used in a coordinated manner to identify the endorsed sponsor, program, and beneficiary (*see also* § 403.806(g)(4) of our regulations). We will, in the information and outreach guidelines, provide guidance according to the requirements of the National Council for Prescription Drug Programs (NCPDP) for pharmacy identification cards. NCPDP is recognized as the industry standard for current prescription drug programs. We will review and approve pharmacy identification cards.

Our information and outreach guidelines will also include standards for use of a Medicare endorsement emblem. Use of the emblem may occur only after written notification of endorsement. Endorsed discount card sponsors may use the emblem on information and outreach materials such as newsletters, discount cards, stationery, and other promotional items designed to inform Medicare beneficiaries about the program.

Finally, as a condition of endorsement, we will require endorsed sponsors to file with us all information and outreach materials (*See also* § 403.806(g)(5)). These materials will require our review and approval (within the time period discussed below) prior to the endorsed sponsor being able to disseminate them. We believe there is sufficient authority in section 1860D–31 of the Act for us to require prior submission and review of information and outreach materials. For example, section 1860D–31(d)(2) of the Act gives the Secretary the authority to identify the information necessary to be included in information and outreach materials to "promote informed choice among endorsed discount card programs." In order to ensure that information and outreach materials are, in fact, promoting informed choice, we believe prior filing and review is necessary. Additionally, section 1860D–31(h)(8) of the Act authorizes us to craft conditions for endorsement that we believe would "protect and promote the interests of Medicare beneficiaries." We believe that ensuring that marketing materials contain the necessary information, adequately reflect the drug discount card program, and do not violate any of our conditions for endorsement will protect Medicare beneficiaries. Our review of these materials will ensure that beneficiaries are not misled or confused about the services offered by drug discount card programs, that beneficiaries receive the information necessary to make informed choices in their selection of a drug discount card program, and that the Medicare name is not misused—for example, to advertise services unrelated to this program.

Therefore, we require in § 403.806(g)(5) of our regulations that information and outreach materials must have our review and approval (within the time period discussed in § 403.806(g)(5)(iii)) in order for them to be disseminated. We define information and outreach materials to include the same kinds of materials described in 42 CFR § 422.80(b) as well as enrollment forms, eligibility determination forms, membership cards, Web site content and any information on over-the-counter drugs (*see also* § 403.806(g)(5)(v) of our regulations). Examples of information and outreach materials that will be reviewed include, but are not limited to—

- General audience materials;
- Telephone or sales scripts for presentations;
- Presentation materials and slides;
- Membership communications, such as member handbooks and letters regarding contractual changes in benefits, procedures, or enrollment fee;
- Enrollment forms, eligibility determination forms, and membership cards;
- Information regarding over-the-counter drugs offered for a discount; and
- All forms of advertising, including television, radio, print, and Internet.

In order for us to conduct our review, our regulations provide that all information and outreach materials must be submitted to us for approval 30 days before dissemination. We will include model language in our guidelines, and materials that use that model language will receive a streamlined review process and will be approved in fewer than 30 days. Our guidelines will also include a File and Use Program, which will be another approach for streamlining the review process. Further guidance will be provided in the information and outreach guidelines regarding the criteria for the File and Use Program.

The endorsed sponsor may disseminate the information and outreach materials if we do not disapprove the initial submission of these materials by the end of the 30-day period. This rule applies only to the initial submission of materials. Resubmission of materials (that is, submissions made after receiving comments or questions on the initial submission) will not be subject to the deemed approval rule in § 403.806(g)(5)(iii) of our regulations.

Exclusive card sponsors will have a modified review process that will facilitate the coordination of their information and outreach materials with the Medicare managed care plan marketing materials. Further details on the review process will be provided in the Information and Outreach Guidelines, the solicitation, and also in the pre-application conference that will be announced in the solicitation.

b. Call Center

As stated in section 1860D–31(d)(2)(B) of the Act, each endorsed sponsor must have a mechanism (including a toll-free telephone number) for providing, upon request, specific information (such as negotiated prices and the amount of transitional assistance remaining available through the program) to their enrollees. Therefore, in § 403.806(g)(6), we are requiring that, as a condition of endorsement, each endorsed card endorsed sponsor must maintain a toll-free customer call center to assist beneficiaries in understanding the drug discount card program offered. The call center must be open during regular business hours and must provide customer telephone service in accordance with standard business practices. We interpret this to mean that the call center will be available at least Monday through Friday from 8 a.m. to 4:30 p.m. Eastern to Pacific Standard times for those zones in which the discount card program will operate. We also interpret the requirement that the call center will be operated in accordance with standard business practices to mean that—

- 70 percent of customer service representatives' time while on the job will be spent answering telephones and responding to enrollee inquiries;
- 80 percent of all incoming customer calls will be answered within 30 seconds;
- The abandonment rate for all incoming customer calls will not exceed 5 percent; and
- There will be an explicit process for handling customer complaints.

These standards are required or exceeded by the 1–800 Medicare call center contractors.

As stated earlier and included in § 403.806(e)(5) of our regulations endorsed sponsors are required to provide through their toll-free numbers information on the amount of available transitional assistance (section 1860D–31(d)(2)(B) of the Act).

Endorsed sponsors must also have in place a reliable means for accommodating pharmacy inquiries regarding the endorsed sponsor's program. We believe this requirement promotes and protects beneficiaries by ensuring that pharmacists can have their questions answered about the card program's drug offering on behalf of the beneficiary. Endorsed sponsors could, for example, accommodate pharmacist inquiries by incorporating a specific number in the Interactive Voice Response (IVR) for the pharmacist to select so that hold times will be minimized (many pharmacies use this already for ease of access for physicians). We are aware that endorsed sponsors, as part of their current business operations, generally have some established mechanism for responding to pharmacy inquiries. However, we do not intend to mandate a specific approach because we do not want to inadvertently force a higher cost solution. Instead, we will permit individual endorsed sponsors to decide on methods for effectively addressing pharmacy inquiries.

Endorsed discount card programs may establish additional mechanisms for communicating with enrollees and pharmacies, such as e-mail or fax.

c. Reduction of Medication Errors and Adverse Drug Reactions

In our regulations at § 403.806(g)(7), we require that each endorsed discount

card program must provide a system to reduce the likelihood of medication errors and adverse drug interactions and to improve medication use (section 1860D–31(e)(2) of the Act). Endorsed sponsors have flexibility to design their own individual systems to accomplish these goals. We will require applicants to describe their systems and discuss how these goals will be accomplished. Published scientific and clinical literature should support the proposed approaches. If applicants have experience using their proposed systems to accomplish these goals, applications should describe past achievements in reducing medication errors and adverse drug interactions and in improving medication use.

8. Grievance Process

Section 1860D–31(h)(5) of the Act specifies that endorsed sponsors must establish and maintain a grievance process to track and address in a timely manner enrollees' complaints about any aspect of the endorsed sponsor's operations. The grievance process does not include the reconsideration process, described in section 1860D–31(f)(4) of the Act and discussed in section II.A.5. of this document, which affords beneficiaries an opportunity to seek review of an initial determination that they are ineligible to receive transitional assistance or enroll in an endorsed program.

A grievance is any card enrollee's complaint or dispute expressing dissatisfaction with the manner in which he or she has received services under an endorsed program. The subjects of a grievance may include the timeliness, appropriateness, access to, and/or setting of services provided by the endorsed sponsor, such as waiting times, demeanor of pharmacy or customer service staff, or disrespect shown a card enrollee. A grievance may also include a dispute concerning the endorsed sponsor's failure to offer discounts on particular covered discount card drugs, ensure its pharmacies charge a certain price for covered discount card drugs, apply transitional assistance toward the cost of a covered discount card drug obtained by a transitional assistance enrollee under the program, or correctly calculate the correct coinsurance amount for a covered discount card drug obtained by a transitional assistance enrollee.

In § 403.806(j) of our regulations, we require endorsed sponsors to maintain meaningful procedures for timely review and resolution of their card enrollees' grievances. We will publish more specific guidelines on grievance procedures in our solicitation. These guidelines will include the following features—

(1) Endorsed sponsor's ability to collect information concerning the grievance;

(2) Timely transmission of grievances to appropriate decision-making levels within the endorsed sponsor's organization, including to any subcontractors;

(3) Taking prompt and appropriate action to address a grievance, including conducting a full investigation of the grievance if warranted; and

(4) Communication of the results of an investigation to all concerned parties, consistent with applicable State law.

9. HIPAA Administrative Simplification Provisions and Other Marketing and Security Provisions

a. General

Section 1860D–31(h)(6)(A) of the Act provides that for the purpose of the Medicare drug discount card program, the operations of an endorsed program are covered functions and an endorsed sponsor is a covered entity for purposes of applying Part C of title XI and all regulatory provisions promulgated thereunder, including regulations (relating to privacy) adopted pursuant to the authority of the Secretary under section 264(c) of the Health Insurance Portability and Accountability Act of 1996 (HIPAA). We therefore provide in § 403.812(a) of our regulations that endorsed sponsors are covered entities and must comply with the standards, implementation specifications, and requirements in 45 CFR parts 160, 162, and 164 as set forth in § 403.812 of our regulations. Section 403.812(a) of our regulations also provides that those functions of an endorsed sponsor the performance of which are necessary or directly related to the operations of the endorsed discount card program are covered functions for purposes of applying to endorsed sponsors the standards, implementation specifications, and requirements in 45 CFR parts 160, 162, and 164.

Section 1860D–31(h)(7)(B) of the Act provides that an endorsed sponsor only may market those products and services under its endorsed program that are directly related to a covered discount card drug, or discounts on non-prescription drugs to the extent such marketing is otherwise permitted under the Medicare discount drug card program, and the use of beneficiary information for such communications is permitted by the HIPAA Privacy Rule.

b. Overview of HIPAA Administrative Simplification Regulations

The HIPAA Administrative Simplification Regulations are a suite of regulations that provide for the standardization of certain electronic financial and administrative health care transactions, as well as for the privacy and security of individually identifiable health information.[4] The regulations apply to three types of entities, which collectively are termed "covered entities"—health care providers who transmit protected health information in electronic form in connection with a transaction for which the Secretary has adopted a standard, health plans, and health care clearinghouses. Section 1860D–31(h)(6)(A) of the Act essentially specifies a fourth type of covered entity, the endorsed sponsors. Therefore, as a condition of endorsement, endorsed sponsors must comply with the HIPAA Administrative Simplification regulations in the manner described in § 403.812 of our regulations.

Section 1860D–31(h)(6)(A) of the Act provides that only the endorsed sponsor's operations of an endorsed program are covered functions. Consequently, activities performed by an endorsed sponsor outside of the scope of its endorsement under the Medicare drug discount card program are not made covered functions by the Act. However, if these other activities would make the endorsed sponsor a health plan, covered health care provider, or health care clearinghouse, as currently defined by HIPAA, then the endorsed sponsor may otherwise be a covered entity that is subject to the Administrative Simplification regulations. An endorsed sponsor performing non-covered functions may declare itself a hybrid entity in accordance with 45 CFR 164.105, with its health care component including any component performing operations that make the entity an endorsed sponsor.

As provided in § 403.812(f) of our regulations, nothing in this discussion or § 403.812 of our regulations should be considered a modification of the HIPAA Administrative Simplification regulations or as otherwise affecting the applicability of the Administrative Simplification regulations to covered entities other than endorsed sponsors. Moreover, as provided in § 403.812(f) of our regulations, if an endorsed sponsor is also a health plan, covered health care provider, or health care clearinghouse, the Administrative Simplification

[4] The suite includes regulations for the electronic health care transactions and code sets, unique health identifiers for health plans, health care providers, and employers, and security and privacy.

regulations as set forth in parts 160, 162, and 164 will still govern the performance of those functions which make it a health plan, health care clearinghouse, or covered health care provider.

c. HIPAA Privacy Rule

As covered entities, endorsed sponsors are responsible for complying with the HIPAA Privacy Rule. The Privacy Rule limits the uses and disclosures a covered entity may make with individually identifiable health information (known as protected health information), requires that safeguards be applied to the information to protect it, and gives individuals rights with respect to the protected health information about them, including rights to access and correct the information. Thus, endorsed sponsors are responsible for safeguarding the protected health information of beneficiaries of the program, and must limit the uses and disclosures made with the information to only those permitted by the Privacy Rule and these regulations. In addition, under the program, beneficiaries have certain rights to be informed of the uses and disclosures the endorsed sponsor is permitted or required to make with their protected health information, to access their records, and to have corrections made to their records, among other rights. *See* 45 CFR part 160 and subparts A and E of part 164 for the full set of standards, implementation specifications, and requirements of the Privacy Rule.

1. Endorsed Sponsors To Be Treated in Same Manner as Health Plans

The standards, implementation specifications, and requirements in the HIPAA privacy regulations do not apply uniformly to all covered entities; rather, certain provisions apply only to one or two of the different types of covered entities. We believe we have the discretion to prescribe the manner in which the regulations will apply to endorsed sponsors, as section 1860D–31(h)(6)(A) is silent on this issue. Although endorsed sponsors are not by definition health plans under HIPAA, we believe that the HIPAA privacy regulations should apply to endorsed sponsors in the same manner as applicable to health plans because endorsed sponsors' operations more closely resemble those of health plans than health care clearinghouses or providers.

Health plans are organizations that provide, or pay the cost of, "medical care," which is defined in section 2791(a)(2) of the Public Health Service Act (42 U.S.C. 300gg–91(a)(2)) as amounts paid for (1) the diagnosis, cure, mitigation, treatment, or prevention of disease, or amounts paid for the purpose of affecting any structure or function of the body; (2) amounts paid for transportation primarily for and essential to such medical care; or (3) amounts paid for insurance covering such medical care or transportation. As endorsed sponsors do not themselves provide or pay the cost of medical care, they are not by this definition health plans under HIPAA. However, endorsed sponsors resemble health plans in several respects.

Whereas health plans typically negotiate discount rates for health care products and services, endorsed sponsors similarly will negotiate discounted prices for covered discount card drugs. In addition, health plans coordinate health care for its enrollees, in part by assessing the interaction of various modalities of treatment, which endorsed sponsors also provide albeit on a more limited basis by assessing and avoiding adverse drug interactions and providing educational activities that resemble some of a health plan's care coordination activities. Endorsed sponsors' processing payment for covered discount card drugs provided to transitional assistance enrollees is also somewhat similar to a health plan's payment infrastructure and processes, although unlike health plans, generally speaking, endorsed sponsors would not be bearing capitated risk under this program.

In contrast, the functions performed by endorsed sponsors do not resemble the functions performed by health care providers or health care clearinghouses. A health care provider means a provider of services (as defined in section 1861(u) of the Act, 42 U.S.C. 1395x(u)), a provider of medical or health services (as defined in section 1861(s) of the Act, 42 U.S.C. 1395x(s)), or any other person or organization who furnishes, bills, or is paid for health care in the normal course of business. Under the Medicare discount drug card program, endorsed sponsors will not provide medical or health services to beneficiaries, but instead will arrange for discount card enrollees to have access to negotiated prices and related products and services. A health care clearinghouse is a public or private entity that processes or facilitates the processing of health information received from another entity in a nonstandard format or containing nonstandard data content into standard data elements or a standard transaction or receives a standard transaction from another entity and processes or facilitates the processing of health information into nonstandard format or nonstandard data content for the receiving entity. Endorsed sponsors, however, will not be required to perform such services. Accordingly, except as otherwise provided and discussed below, § 403.812(b) of our regulations provide that the HIPAA privacy regulations will apply to endorsed sponsors in the same manner as they apply to health plans.

2. Waiver by the Secretary

Section 1860D–31(h)(6)(B) provides that, in order to promote participation of endorsed sponsors in the Medicare drug discount card program, the Secretary may waive portions of the HIPAA Privacy Rule for a limited period of time as the Secretary deems appropriate. While the Secretary expects endorsed sponsors to be able to comply with the Privacy Rule and, therefore, does not at this time anticipate a need to exercise his waiver authority, the Secretary reserves the right to do so at a later time, if such waiver is deemed necessary to promote participation of endorsed sponsors in the Medicare drug discount card program.

3. Administering the Drug Card Program

The Privacy Rule permits covered entities to use or disclose protected health information without individual authorization for health care treatment and payment activities, as well as for certain legal, financial, and administrative functions—known as health care operations—that support treatment and payment activities. To carry out their obligations under the Medicare drug discount card program, endorsed sponsors will have to conduct a number of activities pertaining to products and services offered under the endorsement that may involve the use or disclosure of beneficiary information. These activities and services will include processing beneficiary applications and enrollment in the program, reducing the likelihood of medication errors and adverse drug interactions, providing customer service and information and outreach materials, and administering transitional assistance. (For a description of the services required as part of the endorsement, see section II.C.5 of this document.) The use or disclosure of beneficiary protected health information for these activities are encompassed within the Privacy Rule's definition's of "payment" and "health care operations" and, thus, may be conducted without beneficiary authorization.

4. Special Marketing Restrictions for Endorsed Sponsors

Under the Medicare drug discount card program, as explained above, endorsed sponsors will be required to provide information and outreach about products and services offered under the endorsement. Section 1860D–31(h)(7)(B) of the Act provides that an endorsed sponsor may only market those products and services directly related to a covered discount card drug, or discounts for non-prescription drugs to the extent such marketing is otherwise permitted under the Medicare drug discount drug card program and the Privacy Rule. Accordingly, § 403.813(a)(1) provides that an endorsed sponsor may only market those products and services offered within the scope of its endorsement, that is, products and services directly related to a covered discount card drug, and discounts for non-prescription drugs. Thus, only products and services offered by an endorsed sponsor within the scope of its endorsement may be included in an endorsed sponsor's information and outreach materials.

As discussed in section II.C.5. of this document, products or services offered by an endorsed sponsor following termination of its endorsement or termination of the Medicare drug discount card program are considered outside the scope of endorsement. Therefore, § 403.813(b)(4) of our regulations provides that individually identifiable health information created, collected or maintained by an endorsed sponsor may not be used to market any product or service following termination of an endorsed sponsor's endorsement or the program.

Under the Privacy Rule, most uses or disclosures of protected health information to make marketing communications require individual authorization. The Privacy Rule at 45 CFR 164.501, however, defines the term "marketing" to mean the making of a communication about a product or service that encourages the recipient of the communication to purchase or use the product or service, with the exception of communications that—

(1) Describe a health-related product or service (or payment for such product or service) that is provided by, or included in a plan of benefits of, the covered entity making the communication;

(2) Are for treatment of the individual; or

(3) Are for case management or care coordination, or to direct or recommend alternative treatments, therapies, health care providers, or settings of care to the individual.

Since information and outreach under the Medicare drug discount program is limited to communicating about products and services offered within the scope of endorsement, these activities fall within the exception to the definition of marketing under the Privacy Rule for describing health-related products or services provided by the covered entity. Thus, using or disclosing beneficiary protected health information to provide information and outreach is not marketing under the Privacy Rule, but rather, as described above, is permitted without beneficiary authorization as part of the endorsed sponsor's health care operations.

To use or disclose protected health information to make communications that do not fall within the exceptions to the definition of "marketing" under the Privacy Rule at 45 CFR 164.501, a covered entity must obtain individual authorization in accordance with 45 CFR 164.508(a)(3). However, section 1860D–31(h)(7)(B) of the Act limits the marketing that may be conducted by endorsed sponsors to only that which pertains to products and services offered under the Medicare drug discount program or discounts on over-the-counter drugs. For purposes of this marketing prohibition, we will consider a communication to be marketing if the communication is about a product or service and encourages recipients of the communication to purchase or use the product or service. Thus, a sponsor may not market if the marketing involves products or services falling outside the endorsed sponsor's endorsement, that is, services that do not directly relate to a covered discount card drug, or to discounts for a non-prescription drug. Section 403.813(a)(2) of our regulations expressly provides that an endorsed sponsor may not request of a drug card applicant or enrollee the use or disclosure of protected health information to market any products or services not offered under the program. Thus, endorsed sponsors may not market such products or services under § 403.806(d)(3) of our regulations even if they obtain authorization from discount card enrollees to do so, as permitted by the Privacy Rule. Due to this prohibition, endorsed sponsors are not permitted, at the time of enrollment or any other time, to ask beneficiaries if they would be interested in receiving marketing materials related to products and services offered outside the program. Similarly, endorsed sponsors may not commingle any information and outreach materials that describe their endorsed program with any marketing materials related to products and services offered outside the program.

This prohibition applies regardless of whether the marketing of products or services outside the program involves the use or disclosure of protected health information of discount card enrollees. Accordingly, marketing of a product or service outside the program that does not involve the use of discount card enrollees' protected health information, such as advertising for contact lenses or travel on an endorsed sponsor's Web site, is not permitted under the Medicare drug discount card program, even though such marketing would not involve the use of protected health information.

Many entities that sponsor an endorsed program also may engage in activities outside the Medicare drug discount card program. For example, a Part C organization may be both a sponsor of an endorsed program and operate a Part C plan. The marketing prohibition set forth under section 1860D–31(h)(7)(B) of the Act only applies to entities when acting in their capacity as an endorsed sponsor. Accordingly, although an entity in its endorsed sponsor capacity may not commingle with other marketing materials any information and outreach materials related to products and services offered under its endorsed program, it may commingle such materials when acting in another capacity, to the extent otherwise permitted under law. For example, a Part C organization which sponsors an endorsed program may, in its role as a Part C plan, commingle information and outreach materials describing its endorsed program with Part C plan marketing materials to the extent permitted under the Privacy Rule and the Part C marketing rules under Medicare Part C. We will deem an entity as acting in its capacity as an endorsed sponsor when it either (1) uses beneficiaries' information created, collected or maintained under its endorsed program to conduct marketing, or (2) targets its marketing to all or a subset of its discount card enrollees (or potential discount card enrollees). We will deem an entity as acting in another capacity when it (1) does not use beneficiaries' information created, collected or maintained under its endorsed program to conduct marketing, and (2) does not target its marketing to all or a subset of its discount card enrollees (or potential discount card enrollees). For example, we will consider a Part C organization as acting in its endorsed sponsor capacity if it targets its marketing to members of its Part C plan who are also enrolled in its endorsed program, to the exclusion of other plan members. In contrast, we will consider a Part C organization as acting in its capacity as a Part C plan if it directs its marketing to all or a subset of its Part C plan membership, including those not enrolled in its endorsed program, and, to the extent it uses individual information, such information was not collected or maintained under the Part C organization's endorsed program. Similarly, we will consider an organization's Web site listing its full range of products and services, including but not limited to its endorsed program, as targeted to the public at-large; however, we will consider its web pages specifically describing its endorsed program as targeting potential discount card enrollees, and therefore such web pages may not include information related to products and services offered outside the scope of endorsement.

Section 403.813(a) of our regulations is not enforceable under HIPAA but will be enforced by CMS under the Medicare drug discount card program.

5. Other Uses and Disclosures Without Authorization

Under 1860D–31(i)(1) of the Act and as discussed in section II.A., II.C., and II.F. of this document, endorsed sponsors are required to disclose to the Secretary certain information, some of which may contain protected health information. The Privacy Rule at 45 CFR 164.512(a) permits covered entities to use or disclose protected health information without individual authorization where the use or disclosure is required by other law. Thus, the Privacy Rule permits endorsed sponsors to make the required disclosures to the Secretary without beneficiary authorization. Similarly, the Privacy Rule at 45 CFR 164.512(d) permits covered entities to use or disclose protected health information without individual authorization to a health oversight agency for oversight activities that are authorized by law. Both of these provisions would permit endorsed sponsors to provide CMS with the information needed for the Secretary's oversight and reporting requirements.

6. Uses and Disclosures Requiring an Authorization

For uses and disclosures of protected health information that are not otherwise permitted under the Privacy Rule, an endorsed sponsor must obtain a beneficiary's written authorization for such uses or disclosures in accordance with 45 CFR 164.508. For example, a Medicare beneficiary may authorize the endorsed sponsor to disclose his/her protected health information to a third party, such as an employer. However, as explained above and provided for in § 403.813(a)(2) of our regulations, an endorsed sponsor may not market products or services outside the scope of its endorsement under the Medicare drug discount card program even if it obtains from discount card enrollees authorization to do so. Additional information about this marketing prohibition can be found above in this section and also in section II.C.5 of this document.

7. Notice of Privacy Practices

In accordance with the Privacy Rule at 45 CFR 164.520, prior to enrolling a beneficiary in its endorsed program, or at the time of enrollment, an endorsed sponsor must notify each beneficiary as to how the endorsed sponsor is permitted or required to use and disclose the beneficiary's protected health information, as well as of the beneficiary's rights and the endorsed sponsor's duties with respect to that information. The notice must be in plain language and clearly explain these rights and the uses and disclosures permitted or required under this rule and other applicable law, including that the endorsed sponsor may use or disclose protected health information to communicate about products and services offered by an endorsed sponsor inside, and only inside, the scope of its endorsement. The notice may be combined with other information and outreach materials, provided that the content requirements of the Privacy Rule are fully met.

8. Endorsed Sponsors as Business Associates

As defined in the Privacy Rule, a business associate is a person or entity that performs or assists in the performance of certain functions or activities on behalf of, or provides certain services to, a covered entity, that involve the use or disclosure of individually identifiable health information. The Privacy Rule requires that the covered entity obtain satisfactory assurances, usually in the form of a written contract, from the business associate that the business associate will appropriately safeguard the protected health information it creates or receives on behalf of the covered entity. The contract or other written arrangement between the covered entity and its business associate must meet the requirements at 45 CFR 164.504(e).

For purposes of administering transitional assistance, endorsed sponsors are business associates of CMS under the Privacy Rule. Transitional assistance will be a benefit offered and paid for by the Medicare program, a health plan, with CMS contracting with endorsed sponsors to administer transitional assistance on behalf of CMS in conjunction with their other responsibilities under the Medicare drug discount card program. As such, the contract between CMS and endorsed sponsors will include the terms necessary to satisfy the requirements of the Privacy Rule at 45 CFR 164.504(e).

The application of the Privacy Rule to endorsed sponsors under our regulations does not affect business associate arrangements or requirements between the endorsed sponsor and one or more covered entities for activities that are outside of the endorsed drug card program. However, because an endorsed sponsor is also a covered entity, when an endorsed sponsor is acting as a business associate of another covered entity, the endorsed sponsor will violate the Privacy Rule if it violates its business associate contract with the other covered entity (*see* 45 CFR 164.502(e)(1)(iii)).

9. Enforcement by the HHS Office for Civil Rights

The HHS Office for Civil Rights (OCR) is responsible for implementing and enforcing the HIPAA Privacy Rule. OCR has authority to investigate complaints and to conduct compliance reviews, and may impose civil money penalties on covered entities for violations where appropriate. Thus, any violations by an endorsed sponsor with respect to its obligations under the Privacy Rule as a covered entity are subject to such enforcement by OCR. OCR maintains a Web site with Frequently Asked Questions and other compliance guidance at *http://hhs.gov/ocr/hipaa*.

OCR's enforcement authority pertains only to the HIPAA Privacy Rule. Thus, any violations with respect to compliance with the other HIPAA Administrative Simplification Rules or proper operation of an endorsed program will be enforced by CMS. In addition, if an endorsed sponsor's actions also violate the requirements of the Medicare drug discount card program, such actions also may be sanctioned under § 403.820(a) of our regulations. See section II.F. of this document for further information about CMS oversight and monitoring of endorsed sponsors.

d. Administrative Data Standards

As covered entities, endorsed sponsors must comply with any applicable standards, implementation specifications, and requirements set forth in 45 CFR part 162, subparts I *et seq.*, when conducting a transaction (as that term is defined under section 1173 (a) of the Act and 45 CFR 160.103) as of the compliance date of a final rule issued under that Part. In addition, such sponsors are business associates of the Medicare program (a health plan covered entity), as they perform certain administrative functions related to transitional assistance on our behalf. We will, therefore, require in our contracts with endorsed sponsors that, when conducting all or part of a transaction on our behalf, they comply with, and require their agents and subcontractors to comply with, all requirements under 45 CFR part 162 applicable to CMS as a covered entity.

e. National Identifiers

As covered entities, endorsed sponsors must comply with the standards, implementation specifications, and requirements of 45 CFR parts 160 and 162, relating to the use of national identifiers, as of the compliance date of any final rule issued under part 162.

f. Security

As covered entities, endorsed sponsors must comply with the standards, implementation specifications, and requirements of the HIPAA Security Rule ("Security Rule") set forth in 45 CFR parts 160 and 164, subparts A and C to ensure the confidentiality, integrity, and availability of all electronic protected health information they create, receive, maintain or transmit as of the compliance date of the final Security Rule (April 15, 2005). In addition, endorsed sponsors as covered entities must have appropriate administrative, technical and physical safeguards in place to protect the privacy of beneficiary information under 45 CFR 164.530(c) of the Privacy Rule. An applicant must include in its application the following:

- An attestation that as of the date upon which it will begin enrollment activities, appropriate administrative, technical and physical safeguards will be in place to protect the privacy of protected health information in accordance with 45 CFR 164.530(c); and
- An attestation that it will meet the standards, requirements, and implementation specifications as set forth in the Security Rule as of the date it begins enrolling beneficiaries in its endorsed programs, or, if the endorsed sponsor will be unable to provide this attestation, the applicant's plan for coming into compliance with the specifications as set forth in the Security Rule as of the compliance date for the Security Rule.

Endorsed sponsors are encouraged, but not required, to use Information Security Program references as provided by the National Institute of Standards and Technology (NIST), in documenting their efforts to implement reasonable security measures.

We believe these attestation requirements are critical to beneficiary confidence in the Medicare drug discount card program and their decision to enroll in an endorsed program. Furthermore, as endorsed sponsors are using the Medicare name and acting on our behalf in administering transitional assistance, we believe these requirements are important to promoting the continued confidence of beneficiaries in the Medicare program. We specifically require that applicants attest that they will be in compliance with the Security Rule as of their initiation of enrollment activities, or provide their plan for coming into compliance as of the compliance date. This approach will allow us to evaluate whether their information security measures will comply with the Privacy Rule standard under 45 CFR 164.530(c) and whether they will adequately protect the confidentiality, integrity, and availability of discount card enrollees' electronic protected health information.

10. Document Retention

Section 403.813(b) of our regulations requires endorsed sponsors to retain records that they or their subcontractors create, collect, or maintain while participating in the Medicare drug discount card program for at least six years following termination of the transition period. This retention period may be extended by the Secretary if an endorsed sponsor's records relate to an ongoing investigation, litigation, or negotiation by the Secretary, the OIG, the Department of Justice, or a State, or such documents otherwise relate to suspicions of fraud and abuse or violations of Federal or State law.

We recognize that under the Privacy Rule, CMS, as a covered entity, must require its business associates, upon termination of the contract, to return or destroy protected health information created or received in their capacity as business associates, or if such return or destruction is not feasible, to extend the contract protections to the retained information and limit further uses and disclosures to the purposes that made the return or destruction infeasible. Our record retention policy will make it infeasible for endorsed sponsors to return or destroy protected health information, as they will be required to retain all program information for at least six years after termination of the program. Therefore, as required by the Privacy Rule, the business associate contract protections for the retained information will continue to be applied and any further use or disclosure of the information will be limited to health care operations and health oversight activities that made return or destruction of the information infeasible, as well as other uses or disclosures that may be required by law.

In addition, our record retention policy will require endorsed sponsors to continue to apply security and privacy protections to the record and the information contained therein to the same extent endorsed sponsors are required to do so prior to termination. We establish this requirement under the authority granted the Secretary under section 1860D–31(h)(8) of the Act to protect and promote the interests of beneficiaries. The interests of beneficiaries are furthered by continuing to protect the confidentiality, integrity, and availability of their protected health information for so long as these records are retained by an endorsed sponsor.

We believe our retention policy is necessary to preserve our ability and that of other Federal and State agencies to exercise appropriate oversight over endorsed sponsors and protect the interests of beneficiaries. We believe six years represents an appropriate time period for this requirement because there is a six year statute of limitations on bringing actions for civil monetary damages under section 1860D–31(i)(3) of the Act against endorsed sponsors that knowingly engage in conduct that violates the requirements of section 1860D–31 or our regulations. Our record retention policy is subject to enforcement under § 403.820(a) of our regulations.

11. Endorsed Sponsor Reporting

Section 1860D–31(h)(4) of the Act provides that endorsed sponsors shall pass on negotiated prices to discount card enrollees, including discounts with pharmacies and manufacturers, to the extent disclosed to the Secretary. Further, section 1860D–31(i)(1) of the Act provides that endorsed sponsors shall disclose to the Secretary (in a manner specified by the Secretary) information relating to program

performance, use of prescription drugs by discount card enrollees, the extent to which discounts, rebates or other remunerations or price concessions made available to the endorsed sponsor by a manufacturer are passed through to discount card enrollees through pharmacies or otherwise, and such other information as the Secretary may specify. As provided under these authorities and in order to promote and protect the interests of beneficiaries, endorsed sponsors are required to maintain for auditing purposes, data and other information that will accomplish oversight objectives.

Additionally, we will collect information as part of our education and outreach efforts described in Section II.E, to provide beneficiaries comparative prices on covered discount card drugs across all endorsed programs.

To meet these objectives, we specifically require in § 403.806(i) of our regulations that endorsed sponsors report certain types of information. Examples include:

- Savings obtained through rebates, discounts, and other price concessions from pharmacies and manufacturers;
- Savings shared with discount card enrollees by manufacturer, by all retail pharmacies, by all mail order pharmacies, and by all brand name and generic covered discount card drugs;
- Dispensing fees;
- Certified (by the chief financial officer) financial accounting records on transitional assistance used by the transitional assistance enrollees in each month;
- Participant utilization and spending statements;
- Performance on customer service metrics such as call center performance;
- Grievance logs;
- Compliance with the pharmacy network access standards; and
- Notice of, and the rationale for, negotiated price increases, except for increases during the week of November 15, 2004, due to reasons other than changes in average wholesale price (AWP), including submission of an attestation that, based on best knowledge, information, and belief, the rationale for the price increase is accurate, complete, truthful, and supportable.

In addition, to support our education and outreach efforts endorsed sponsors must report the following—

- Customer service hours,
- Customer service contact information,
- Endorsed program Web site address,
- Annual enrollment fee, and
- Negotiated prices (including any applicable dispensing fee) for every covered discount card drug included in the endorsed program's offering.

This is not an exhaustive list of the types of card program performance we will monitor and evaluate, as we will, as described in section II.F. of the preamble, also conduct activities independent of this information to, for example, monitor whether marketing materials are properly used; evaluate beneficiary experience under the endorsed programs; and conduct program integrity activities.

The data and information that endorsed sponsors will be required to report consist of performance measures and indicators typically provided by third party administrators of pharmacy benefits in the current drug industry. Endorsed sponsors must certify the validity and completeness of the data and other information they report.

Further, during the endorsement period, endorsed sponsors will be required to notify us of any material modifications to their endorsed programs if the modification could put them at risk of no longer meeting any of the terms of the endorsement.

Section 1860D–31(i)(1) of the Act provides that section 1927(b)(3)(D) of the Act, which guides the protection of proprietary pricing information under the Medicaid program, shall also apply to the drug pricing data (other than aggregated data) under the Medicare drug discount card program. Consistent with the requirements of 1927(b)(3)(D) of the Act, we will handle any non-aggregated pricing information in a manner that ensures that the non-aggregated discounts or rebates or other remuneration or price concessions from manufacturers to endorsed sponsors, and reported by the endorsed sponsors, will not be made available in a format that discloses the identity of particular drugs, manufacturers, or wholesalers. However, the information may be disclosed in the circumstances described in section 1927(b)(3)(D)—

(1) As the Secretary deems necessary to carry out section 1860D–31 of the Act;

(2) To permit the Comptroller General to review the information provided; and

(3) To permit the Director of the Congressional Budget Office to review the information provided.

We will provide a reporting tool to ensure consistent and comparable reporting by endorsed sponsors. In developing the tool, we will make an effort to minimize the reporting burden on endorsed sponsors.

D. CMS Reimbursement of Transitional Assistance

All endorsed sponsors must enter into an agreement with CMS that will provide for reimbursement from CMS to endorsed sponsors for any transitional assistance applied toward the cost of covered discount card drugs obtained by transitional assistance enrollees in accordance with section 1860D–31(g)(3) of the Act. Under the contract, sponsors will submit requests to debit each enrollee's transitional assistance balance via the Department of Health and Human Services' Payment Management System. These amounts will be reported to CMS and used to reconcile payments, as provided in § 403.822(c) of our regulations.

Endorsed sponsors will be required to submit monthly reports detailing the total amount of transitional assistance applied toward the cost of covered discount card drugs obtained by transitional assistance enrollees. These reports will be reconciled against transitional assistance balance reports used to authorize payments to endorsed sponsors.

Endorsed sponsors will only be reimbursed for transitional assistance applied toward the cost of covered discount card drugs for claims that are fully adjudicated for payment; we will not reimburse endorsed sponsors for pending claims. Further, as provided in § 403.822(e) of our regulations, Federal funding in excess of the amount of the balance included in CMS' systems is not permitted.

We also expect endorsed sponsors to establish a process for holding pharmacies harmless, that is reimbursing pharmacies for their costs if the endorsed sponsor erroneously informs the pharmacy that the amount of transitional assistance remaining available to a transitional assistance enrollee is more than the amount actually available to the transitional assistance enrollee.

As discussed above in section II.C.6. of this document, should a discount card enrollee be determined eligible for transitional assistance after already enrolling in an endorsed program, we will pay the annual enrollment fee and the endorsed sponsor must immediately refund to the card enrollee, or any State that has paid the enrollment fee on behalf of the discount card enrollee, any annual enrollment fee for the calendar year previously paid by the discount card enrollee or State. The endorsed sponsor would include this payment in its report to us for our reimbursement.

Endorsed sponsors will be required to have a process for managing payment

against an individual's transitional assistance cap to ensure that not more than the amount of transitional assistance available is provided to the individual. Additionally, endorsed sponsors will need to have a process for managing transitional assistance in the event a transitional assistance enrollee switches endorsed discount card programs with a transitional assistance balance remaining. In this case, the endorsed sponsor must ensure that the amount of transitional assistance reported to CMS as remaining available for transfer to the new endorsed program is a final number; that is, CMS will not adjust the number at a later date to account for outstanding claims at the time the amount was reported, nor will CMS provide additional reimbursement to the endorsed sponsor to make up any difference. In their applications, applicants must describe their processes for (1) managing payment against transitional assistance caps, and (2) managing payment such that remaining transitional assistance balances reported to CMS at the time of an enrollee's disenrollment represent final amounts. If processes that endorsed sponsors put in place to manage payment in these cases could create a financial liability for a transitional assistance enrollee, endorsed sponsors will be required to inform these enrollees of such circumstances and any special procedures.

Our procedures for reimbursing endorsed sponsors for transitional assistance will be discussed in further detail in the solicitation and pre-application conference.

E. CMS-Provided Beneficiary Education

1. General

In accordance with section 1860D–31(d)(1) of the Act, we plan to disseminate to beneficiaries eligible for the discount card general information about the availability of the program and general program features, such as the limitation of enrollment to only one discount card at a time, the initial enrollment date, and the potential use of formularies containing the drugs on which discounts are available. We also plan to disseminate general information about the availability of transitional assistance and the qualifying standards for the assistance. In addition to the general information, we plan to disseminate specific comparison information to promote informed consumer choice among endorsed discount card programs, including—

- Enrollment fee;
- Customer service hours;
- Contact information;
- Program Web site; and
- Negotiated prices, to include the dispensing fee.

Finally, we plan to develop messages that are understandable and meaningful for beneficiaries to support specific information about the program in order to increase beneficiary knowledge about and motivation to consider this program.

Section 1860D–31(d)(1)(C) of the Act states that both the general information and the specific comparative information should, "to the extent practicable," be disseminated so that "discount card eligible individuals are provided such information at least 30 days prior to the initial enrollment date." We will make available general program information and a subset of comparison information for each card program 30 days before the initial enrollment date and will coordinate later information dissemination activities with our annual coordinated education campaign on Medicare options. The provided comparison information will not contain negotiated prices. Provision of "price comparison" information to the public requires populating a database with data files from each endorsed sponsor, with a standard format and terminology, of negotiated prices, to include dispensing fee information for each covered discount card drug. To ensure the accuracy of prices on the Web site, endorsed sponsors must be allowed to validate their submitted price information. These activities cannot be completed before the start of the initial enrollment date. In the 30 days prior to the initial enrollment date, discount card eligible individuals will be able to access specific prices by contacting endorsed sponsors through the contact information we will provide.

2. Medicare Web site and Toll-free Information Line

Both general and comparison information will be made available to Medicare beneficiaries on our Web site, *http://www.medicare.gov*, as well as through the toll-free Medicare information line (1–800–MEDICARE), which is available 24 hours per day, 7 days a week. To generate awareness about the program and resources available to answer consumer questions, we plan to use paid advertising, including television, to reach the general audience and the Hispanic market. We also expect a Medicare publication describing program features will be available on *http://www.medicare.gov* and through 1–800 Medicare 30 days prior to the initial enrollment date. We also expect to include an overview of this program in the 2005 *Medicare & You* handbook, which will reach beneficiaries in time to elect a new drug card for 2005. In addition, we will strive to disseminate information to community level organizations, State Health Insurance Assistance Programs, and our other partners that represent the needs and the interests of the diverse Medicare beneficiary population.

To report on negotiated prices, as requested in section 1860D–31(d)(1)(B)(i) of the Act, we will provide, through *http://www.medicare.gov*, a price comparison Web site that will include maximum, and possibly ranges of, negotiated prices, including the dispensing fee, in actual dollars for the purpose of comparing across endorsed discount card programs. These prices will reflect an estimate of the maximum price charged at the point of sale. This Web site should also include information about generic substitutes. All of this comparative information will assist beneficiaries in deciding which Medicare discount card will offer them the greatest financial advantage. We will provide education that drugs and prices may vary over time.

As described in § 403.806(i)(4)(v), to support the price comparison Web site, drug card sponsors may submit updated data files on a weekly basis to include information on customer service hours, contact information, program Web site, enrollment fee, and negotiated prices, including the dispensing fee. We will specify a standard file format and timing for submitting these data elements to us in the solicitation for endorsed sponsors. At a minimum, each file will include the maximum negotiated price for every covered discount card drug under the card program. As required in § 403.806(d)(5) of our regulations, maximum negotiated prices available under the endorsed discount card program must match those reported on the price comparison Web site. We believe that a weekly update of information is frequent enough to allow endorsed sponsors to adjust to fluctuating supply prices, but also ensures that accurate price information is available to discount card eligible individuals and card enrollees at all times. The effort to allow more frequent updates is not practical because we must coordinate creating a new database of prices from all endorsed sponsors.

As discussed in section II.C.7. of this document, in order to communicate the Secretary's endorsement of a prescription drug discount card program, as required in section 1860D–31(a)(1)(A) of the Act, we will create and authorize the use of a Medicare-Endorsed Prescription Drug Card emblem. This emblem will be used to communicate that Medicare has endorsed a stable and reputable drug card. We will develop standards for use of the emblem to be included in the Information and Outreach Guidelines.

In addition to answering beneficiary questions about the drug discount card program, the 1–800 MEDICARE call center will also log and help triage discount card members' complaints for resolution through the complaints tracking process discussed in greater detail under section II.F. of this document.

Physicians and pharmacists are an important source of information for discount card eligible beneficiaries. Although not required by the legislation, we also plan to conduct provider outreach activities through a variety of channels to make physicians and pharmacists aware of this program and to educate them about the specific features. We hope that increased physician and pharmacist awareness will bolster beneficiary awareness and improve the quality of their card choice and their ultimate cost-savings. We also believe that physician and pharmacist promotion of the program will encourage low-income individuals to enroll and access the available transitional assistance.

F. CMS Oversight and Monitoring

1. General

Consistent with section 1860D–31(i)(2) of the Act, we will develop a drug discount card program oversight system to ensure compliance with program requirements.

We will develop and operate a complaint (also referred to as "grievance") tracking system to monitor and manage complaints that are not satisfactorily resolved through the endorsed sponsors' customer complaints process. In accordance with section 1860D–31(d)(1)(D) of the Act, we will develop a system for collecting beneficiary complaints through our 1–800–MEDICARE toll-free telephone number. This system will likely be augmented by a system for gathering and responding to complaints acquired through the *http://www.medicare.gov* Web site as well as through Congressional and other types of correspondence. We will also analyze the reports provided by endorsed sponsors on their program performance. In addition, we plan to conduct mystery shopping and a beneficiary satisfaction survey. We plan to use these various sources of information to observe possible trends that indicate less than satisfactory performance, significant departures from the marketed card program offering, or fraud or other violations of State and Federal laws. We anticipate tracking complaints related to—

- Deceptive marketing and enrollment practices;
- Violations of the confidentiality provisions;
- Persistent inconsistencies in formulary or pricing information compared to those available at the point of sale;
- Inadequate endorsed sponsor customer service;
- Persistent problems with pharmacy network services or providers;
- Denying transitional assistance to qualified beneficiaries;
- Arbitrary variations in negotiated prices offered; and
- Any additional changes that put the endorsed sponsor at risk of failing to continue to meet the endorsement requirements.

We will also refer complaints to Federal and State authorities when violations of laws under the jurisdictions of these agencies are in question.

a. Marketing and Enrollment Policies

We will also review information from our own enrollment systems for data that may indicate endorsed sponsors' failure to comply with the program's marketing or enrollment policies. We will examine claims and pricing data reported by endorsed sponsors to determine whether enrollees are receiving the savings promised through their discount cards. Finally, we will review the grievance logs submitted by each of the endorsed sponsors to examine trends in types of complaints and to ascertain whether endorsed sponsors are responding appropriately to enrollee service complaints.

b. Transitional Assistance Payments

We will also monitor the allocation and tracking of the annual transitional assistance payments for eligible enrollees. As a qualification for endorsement, under section 1860D–31(h)(1)(C) of the Act, endorsed sponsors are required to have satisfactory arrangements to account for the transitional assistance. To ensure that transitional assistance is made available on behalf of the proper beneficiaries and that it is used only to purchase covered discount card drugs, we will contract with auditors to analyze select claims and other information maintained by the sponsors related to the payment and tracking of the transitional assistance. As necessary, we will exercise our authority, under section 1860D–31(i)(2) of the Act, to conduct audits and to inspect the records of endorsed sponsors related to the operation of the drug discount card program.

2. Intermediate Sanctions

Under section 1860D–31(i)(3) of the Act, we may impose intermediate sanctions against endorsed sponsors in the form of suspended marketing and enrollment activities in a manner similar to the sanctioning process under Part C. In § 403.820(a)(3), we have identified the following bases related to significant performance requirements for the imposition of intermediate sanctions—

(1) Substantial failure to maintain an adequate contracted retail pharmacy network;

(2) Substantial failure to comply with our information and outreach guidelines;

(3) Substantial failure to provide enrollees with negotiated prices consistent with information provided on our price comparison Web site and/or reported by the sponsor;

(4) Except during the week of November 15, 2004 (which coincides with the beginning of the annual coordinated election period), substantial failure to ensure that the negotiated price for a covered discount card drug does not exceed an amount proportionately greater than the change in the drug's average wholesale price (AWP), and/or an amount proportionate to changes in the endorsed sponsor's cost structure (including material changes to any discounts, rebates, or other price concessions the endorsed sponsor receives from a pharmaceutical manufacturer or pharmacy);

(5) Charging card program enrollees additional fees beyond the $30 enrollment fee;

(6) Charging transitional assistance enrollees any enrollment fee;

(7) Charging a coinsurance rate higher than 10 percent for those above 100 percent of the poverty line and up to 135 percent of the poverty line, or charging a coinsurance rate higher than 5 percent for those at or below 100 percent of the poverty line;

(8) Substantial failure to properly administer the transitional assistance funding for transitional assistance enrollees;

(9) Substantial failure to provide us or our designees with requested information related to the endorsed sponsor's drug card operations;

(10) Substantial failure to comply with the requirements of the

endorsement, including failing to perform the operational requirements of this program, or the failure to submit an acceptable plan of correction within the time frame specified by CMS; and

Upon determining that at least one basis exists for imposing an intermediate sanction, our regulations at § 403.820(a)(4) provide that we will notify the non-compliant endorsed sponsor of our intent to impose sanctions. The endorsed sponsor will have 15 days to challenge the accuracy of our finding. If the endorsed sponsor does not challenge the finding, the sanctions will go into effect 15 days after the endorsed sponsor received the sanction notice from us. If the endorsed sponsor does challenge the finding, we will notify the sponsor of the effective date in the reconsideration determination notice that we will send to the endorsed sponsor. Once intermediate sanctions are imposed, the endorsed sponsor will be required to demonstrate to us that it has come into compliance with card program requirements before the sanctions are lifted.

3. Civil Monetary Penalties

Section 1860D–31(i)(3) of the Act authorizes the imposition of civil monetary penalties (CMP) against endorsed sponsors that knowingly engage in conduct that violates the requirements of section 1860D–31 of the Act or engage in false or misleading marketing practices. In § 403.820(b) of our regulations, we interpret this to mean that those endorsed sponsors that knowingly engage in conduct that violates the conditions of their endorsement agreement with us or that constitutes false or misleading marketing practices may be subject to CMPs.

We have divided the sanction authority between CMS and the Department of Health and Human Services Office of the Inspector General (OIG). As in Part C, where CMP authority is shared between these two agencies, we have assigned sanction authority to OIG for those violations that concern misleading or defrauding a beneficiary. We have also assigned sanction authority to the OIG for misuse of transitional assistance funds. On the other hand, we will have the authority to impose CMPs in those instances where the endorsed sponsor's conduct constitutes non-compliance with an operational requirement not directly related to beneficiary protection. Accordingly, as provided in § 403.820(b)(1) of our regulations, OIG will have the authority to impose CMPs against an endorsed sponsor whom it determines has knowingly—

(1) Misrepresented or falsified information in information and outreach or comparable material provided to a program enrollee or other persons;

(2) Charged a program enrollee in violation of the terms of the endorsement contract; or

(3) Used transitional assistance funds in any manner that is inconsistent with the purpose of the transitional assistance program.

As provided in § 403.820(b)(2) of our regulations, we will have the authority to impose CMPs for an endorsed sponsor's—

(1) Substantial failure to maintain an adequate retail pharmacy network;

(2) Substantial failure to comply with our information and outreach guidelines;

(3) Substantial failure to provide us or our designees with requested information related to the endorsed sponsor's drug card operations;

(4) Substantial failure to provide enrollees with levels of discounts or prices consistent with information provided in its marketing materials;

(5) Charging card program enrollees additional fees beyond an enrollment fee, charging transitional assistance-qualified enrollees any enrollment fee, charging a co-payment higher than 10 percent for those above 100 percent of the poverty line and up to 135 percent of the poverty line, or charging a co-payment higher than 5 percent for those at or below 100 percent of the poverty line;

(6) Substantial failure to administer properly the transitional assistance, including the charging of coinsurance, for the endorsed sponsor's eligible enrollees;

(7) Except during the week of November 15, 2004 (which coincides with the beginning of the annual coordinated election period), substantial failure to ensure that the negotiated price for a covered discount card drug does not exceed an amount proportionate to the change in the drug's average wholesale price (AWP) and/or an amount proportionate to the changes in the endorsed sponsor's cost structure (including materials changes to any discounts, rebates, or other price concessions the sponsor receives from a pharmaceutical manufacturer or pharmacy); or

(8) Any other failure to substantially comply with the requirements of the endorsement, or the failure to submit an acceptable plan of correction within the timeframe specified by CMS.

The CMS and the OIG may impose CMPs of up to $10,000 per violation. We will impose CMPs and afford endorsed sponsor appeal rights according to the procedures stated in 42 CFR parts 1003 and 1005.

We note that in addition to the sanctions described above, a card sponsor's misuse of the Medicare name or emblem may subject them to the penalties stated at 42 U.S.C. 1320b-10, which prohibits the misuse of the Medicare name or emblem. In general, the statute authorizes the OIG to impose penalties on any person who misuses the term, "Medicare," or other names associated with DHHS in a manner which the person knows or should know gives the false impression that it is approved, endorsed, or authorized by DHHS. Offenders are subject to fines of up to $5000 per violation or, in the case of a broadcast or telecast violation, $25,000.

4. Termination by CMS

Pursuant to section 1860D–31(i)(3) of the Act, and as provided in § 403.820(c) we may terminate the contract of any endorsed sponsor upon a determination that the sponsor no longer meets the requirements for participation in the Medicare drug discount card program or that the sponsor has engaged in false or misleading marketing practices (for example, use of non-CMS-approved marketing materials, marketing outside the approved service area, use of beneficiary information to market services not directly related to the endorsed sponsor's Medicare card program). The bases stated above for the imposition of intermediate sanctions also serve as the bases for termination for failure to meet the requirements for participation in the Medicare drug discount card program. Prior to terminating a contract, we will afford the endorsed sponsor an opportunity to develop and execute a CMS-approved corrective action plan.

We will afford an endorsed sponsor the opportunity to appeal our decision to terminate an endorsement contract as well as our decision not to enter into a contract with an entity that applied for endorsement. In each case, we will provide notice to the endorsed sponsor stating the reasons for terminating the contract or failing to endorse the program. These sponsors will have 15 days from the date of the notice to file a request in writing for reconsideration to us. We will then designate a hearing officer who is impartial and has no interest in the matter pending for decision. CMS and the sponsor will have the opportunity to submit evidence and participate in a hearing convened by the hearing officer. The hearing officer will issue a decision as soon as practicable after the hearing. This decision is final and binding on the parties and, as provided in § 403.820(f)(11) of our regulations, is not subject to judicial review.

Endorsed sponsors whose endorsement we terminate must notify all of their card program enrollees in writing within 10 days of receiving our notice of termination.

5. Termination by Endorsed Sponsor

An endorsed sponsor may terminate its contract with us in the event that we substantially fail to perform our obligations related to this program, as provided in § 403.820(d). These obligations would include, but are not limited to, our operation of the drug card enrollment system, price comparison Web site, and reimbursement for transitional assistance, as well as payment of enrollment fees for beneficiaries eligible for transitional assistance and timely review of marketing materials. An endorsed sponsor entering into a contract with us has a reasonable business expectation that we will adequately support the operation of the discount card program and that it will not be held to the contract in the event that we are in significant breach of that contract. Accordingly, we are adopting this termination provision to promote the efficient administration of the Medicare drug discount card program, consistent with section 1102 of the Act.

The endorsed sponsor will be required to provide a notice of termination to us 90 days prior to its intended effective date and to its enrollees by mail 60 days prior to the same date. The notice will provide affected enrollees with a description of remaining endorsed discount card programs available in its own area and the process for enrolling in a new endorsed discount card program.

6. Termination by Mutual Consent

As provided in § 403.820(e) of our regulations, CMS and an endorsed sponsor may agree to terminate or modify an existing contract. If a contract is terminated by mutual consent, the endorsed sponsor must follow the enrollee notice procedures as required in the case of a termination of the contract by an endorsed sponsor. We have adopted the provision, as specified in § 403.820(e), for mutual modification or termination to address those circumstances when both parties may agree that a contract termination is in the best interests of the endorsed sponsor, taxpayers, Medicare beneficiaries, and the Medicare program, allowing us to terminate an endorsed sponsor's endorsement contract before its term expires. This is also a contracting provision that we are adopting to promote the efficient administration of the Medicare drug discount card program, consistent with section 1102 of the Act.

G. Special Rules Concerning Medicare Managed Care Organizations

1. General Requirements for Medicare Managed Care Organizations

As discussed in section II.C.1 of this document and codified in §§ 403.804(b) and 403.804(c) of our regulations, section 1860D–31(h)(1)(A)(iv) of the Act provides that a Part C organization is eligible to be an endorsed sponsor if it meets the requirements for endorsement either individually or in combination with one or more other entities. Sections 403.804(b) and 403.804(c) of our regulations also make reasonable cost reimbursement plans eligible to be endorsed sponsors provided they meet the requirements for endorsement. Medicare managed care organizations—organizations offering coordinated care plans as described in section 1851(a)(2)(A) of the Act and reasonable cost reimbursement plans under section 1876(h) of the Act—qualifying for endorsement may offer their endorsed program to all discount card eligible individuals residing in their service area(s) or only to those discount card eligible individuals enrolled in one or more of the Medicare managed care organization's plan(s). All other Part C organizations qualifying for endorsement must offer their endorsed program to all discount card eligible individuals residing in their service area(s). Part C organizations and reasonable cost reimbursement contracts that offer an endorsed program to all discount card eligible individuals must meet the requirements for endorsement applicable to all other applicants endorsed sponsors. However, as discussed below in section II.G.2.a of this document, special rules apply to Medicare managed care organizations that limit enrollment in their endorsed program to members of one or more of their Medicare managed care plans.

Under section 1860D–31(g)(7) of the Act, any nonuniformity in benefits offered by a Part C organization to its Part C plan members resulting from implementation of the Medicare drug discount card program, including payment or waiver of any enrollment fee for an endorsed program and limiting transitional assistance to transitional assistance enrollees, will not be taken into account in applying the requirement, set forth in section 1854(f)(1)(D) of the Act that any additional benefits offered by a Part C organization be provided uniformly to all Part C plan members. Accordingly, as provided in § 403.814(c) of our regulations, a Part C organization will not be violation of this uniformity of benefits rule if it:

- Pays the annual enrollment fee, if any, for its Part C plan members choosing to enroll in an endorsed program—whether operated by the Part C organization or another endorsed sponsor—provided that any such benefit is reflected in the Part C plan's Adjusted Community Rate (ACR) filing;
- Waives the annual enrollment fee for its Part C plan members enrolling in its endorsed program, provided that any such benefit is reflected in the Part C plan's Adjusted Community Rate (ACR) filing;
- Provides transitional assistance to transitional assistance enrollees.

Although section 1860D–31 of the Act does not explicitly state that it is creating an exception to the uniform premium rule under section 1854(c) of the Act and 42 CFR 422.100(d)(2), it authorized Part C plans to offer non-uniform benefits that would be inconsistent with the rule. For the reasons set forth below, we believe that in doing so, Congress created a new implicit statutory exception to the uniform premium rule. Under the uniform premium rule, as implemented in regulations, a Part C organization must offer its Part C plan at a uniform premium, with uniform benefits and cost-sharing levels throughout the plan's service area (or segment of the plan's service area as provided in 42 CFR 422.304(b)(2)). Absent an exception to this rule, a Part C organization offering its endorsed program to members of its Part C plan as an optional supplemental benefit would be required to offer the benefit to all of its members within the plan's service area (or segment of the service area), and charge them the same annual enrollment fee. However, as discussed above in section G.1. of this document, a Part C organization is prohibited by statute from offering its endorsed program to members of its Part C plan(s) that are not eligible for the Medicare drug discount card program. Similarly, a Part C organization offering an endorsed program may not collect an annual enrollment fee from transitional assistance enrollees, but instead must collect this fee from CMS. Consequently, a Part C organization offering an endorsed program to members of its Part C plan(s) cannot comply with the requirements of section 1860D–31 without violating the uniform premium rule.

As discussed in Norman J. Singer's *Statutes and Statutory Construction* (6th ed.), where two statutory provisions irreconcilably conflict, courts generally hold that the more recently enacted statutory provision prevails. Applying this principle, we believe that in enacting the Medicare Prescription Drug, Improvement, and Modernization Act of 2003, Congress intended implicitly to except from the uniform premium rule under Part C any non-uniformity resulting from a Part C organization's implementation of its endorsed program. We further note that in section 1860D–31(g)(7) of the Act Congress clearly indicated its intent to allow non-uniformity in benefits among a Part C plan's members as a result of a Part C organization's implementation of its endorsed program. Accordingly, as provided in § 403.814(c) of our regulations, a Part C organization would not be violation of the uniform premium rules under section 1854(c) of the Act and 42 CFR 422.100(d)(2) if it:

- Offers its endorsed program to members of its Part C plan who are discount card eligible individuals, to the exclusion of those members who are not discount card eligible individuals; or
- Collects an annual enrollment fee only from discount card enrollees who are not eligible for transitional assistance.

Section 1860D–31(a)(3) provides that discount card eligible individuals cannot be required to enroll in an endorsed program. In keeping with the voluntary nature of the Medicare discount drug card program, and as specified in § 403.814(a) of our regulations, a Part C organization or reasonable cost reimbursement plan may not require enrollment in any endorsed program, whether operated by the organization or another entity, as a condition of enrollment in any of its Part C or reasonable cost reimbursement plans.

In addition, a Part C or reasonable cost reimbursement organization may not require transitional assistance enrollees enrolled in its Part C or reasonable cost reimbursement plan to exhaust their transitional assistance prior to obtaining covered discount card drugs under any drug benefit offered by its Part C or reasonable cost reimbursement plan. We believe this policy is consistent with the Part C rules under 42 CFR 422.100(d)(2) and section 1876(g)(2) of the Act which require that any additional benefit offered by a Part C or reasonable cost reimbursement plan must be offered uniformly to all plan members. Requiring transitional assistance enrollees to utilize their transitional assistance prior to obtaining covered discount card drugs under their Part C or reasonable cost reimbursement plan drug benefit would violate these uniformity of benefits rules because non-transitional assistance enrollees would be entitled to obtain covered discount card drugs under the Part C or reasonable cost reimbursement plan drug benefit while transitional assistance enrollees would be prohibited from doing so until they exhaust their transitional assistance. In other words, non-transitional assistance enrollees would receive more generous drug coverage under the Part C or reasonable cost reimbursement plan than transitional assistance enrollees. (Section 1860D–31(g)(7) of the Act waives the uniformity of benefits rule under Part C only for purposes of implementing the Medicare drug card program; that is, when non-uniformity directly results from implementation of the drug card statutory provisions. Because any requirement that transitional assistance enrollees first exhaust their transitional assistance would stem not from implementation of the Medicare drug discount card program but from the benefits package offered under a Part C plan, the uniformity of benefits waiver under section 1860D–31(g)(7) of the Act would not apply.) We also note that our prohibiting Part C organizations from requiring their transitional assistance enrollees to first exhaust their transitional assistance prior to utilizing their drug benefit under their Part C plan means Part C plans will not need to take transitional assistance into account in their annual ACR filings.

As discussed in II.A.6. of this document and provided in our regulations at § 403.811(b)(2)(iii), discount card enrollees may disenroll from their endorsed program and enroll in a new endorsed program during a special election period when enrolling in or disenrolling from a Part C or reasonable cost reimbursement plan offering an endorsed program, irrespective of whether the Part C or reasonable cost reimbursement plan offers an endorsed program of any kind. We will automatically disenroll card enrollees from their endorsed program when they enroll in or disenroll from a Medicare manage care plan offering an exclusive card program. Further, in accordance with our regulations at § 403.808(f)(3), any transitional assistance remaining available to a transitional assistance enrollee electing to switch to a new endorsed program following his or her enrollment in or disenrollment from a Part C or reasonable cost reimbursement plan offering an endorsed program will follow the transitional assistance enrollee to his or her new endorsed program.

2. Special Rules for Applicants Seeking To Offer Exclusive Card Programs

a. Endorsement Requirements for Applicants Seeking To Offer Exclusive Card Programs

Applicants seeking to offer an exclusive card program must indicate their intent to do so on their applications. For Medicare managed care organizations seeking to offer an exclusive card program, if the Medicare managed care organization combines with one or more other entities eligible to meet the requirements of endorsement, the Medicare managed care organization must be the applicant, as required under § 403.814(b)(1) of our regulations. We require this because we want to ensure that our endorsed sponsor contract—and, ultimately, accountability for an endorsed program—is with the Medicare managed care organization itself, and not with any of the entities with which it combines to offer an endorsed program. If a Medicare managed care organization will not offer an exclusive card program, we will permit another entity with which the Medicare managed care organization combines to be the applicant.

We will not require Medicare managed care organizations operating more than one Medicare managed care plan to offer its exclusive card program to members of all of its Medicare managed care plans; rather, the Medicare managed care organization may limit enrollment in its exclusive card program to members of only certain Medicare managed care plans it operates. Members of the organization's other Medicare managed care plans are free to enroll in any other endorsed program, including any non-exclusive endorsed program offered by the Medicare managed care organization, provided they meet the eligibility criteria for the program.

Section 1860D–31(h)(9)(B) of the Act exempts exclusive card sponsors from certain requirements generally applicable to endorsed sponsors, including: (1) The requirement set forth in section 1860D–31(h)(3) of the Act and § 403.806(f)(1) and § 403.806(f)(2) of our regulations concerning minimum service areas; and (2) the pharmacy access standard under section 1860D–31(e)(1)(B) of the Act and § 403.806(f)(3) of our regulations.

Although a Medicare managed care organization may limit enrollment in its exclusive card program to members of one or more of its Medicare managed care plans that include the exclusive card program as part of the plans' benefit package, the Medicare managed care organization must offer its exclusive card program to all discount card eligible individuals enrolled in those specific Medicare managed care plan(s). A Medicare managed care organization may not limit enrollment in its exclusive card program to only some discount card eligible individuals enrolled in those Medicare managed care plan(s) to the exclusion of other discount card eligible individuals because this would violate the uniformity of benefits provisions under section 1854(f)(1)(D) of the Act and 42 CFR 422.100(d)(2).

We also implement the exception from pharmacy access standards in section 1860D–31(h)(9)(B)(ii) of the Act and § 403.814(b)(3)(i) of our regulations by deeming exclusive card sponsors as having met such standards if—

- The network is not limited to mail-order pharmacies; and
- The network is equivalent to the pharmacy network under any outpatient drug benefit offered under the Medicare managed care organization's Medicare managed care plan which was previously approved by us under the Medicare Part C or Section 1876 rules.

If the Medicare managed care organization does not offer a drug benefit under its Medicare managed care plan, we will evaluate whether the network provides sufficient access to covered discount card drugs at negotiated prices for discount card enrollees using the same considerations we currently use to evaluate Medicare managed care plans' other provider networks under 42 CFR 422.112.

We are not applying the standards of § 403.806(f)(3) of our regulation because these standards may be impracticable for exclusive card sponsors. Medicare managed care organizations currently do not have to follow these standards in establishing their pharmacy networks. We presume that many exclusive card sponsors will wish to use the same pharmacy networks under their endorsed program as they currently use to provide prescription drugs under any prescription drug benefit they may offer to their Medicare managed care plan members. Moreover, given the size of exclusive card sponsors' service areas relative to the statewide service areas of other sponsors, the pharmacy access standards contained in § 403.806(f)(3) of our regulation may be too restrictive. In addition, Medicare managed care organizations that use plan-owned pharmacy networks would have a difficult time meeting these access standards.

In addition to the requirements Congress specifically waived in section 1860D–31(h)(9)(B) of the Act, section 1860D–31(h)(9)(B)(iii) authorizes the Secretary to waive other endorsed sponsor requirements if those requirements are duplicative of or conflict with requirements applicable to Medicare managed care organizations under Part C (and the regulations promulgated thereunder) or section 1876 (and the regulations promulgated thereunder), as the case might be, or if waiver of the requirements would improve coordination of the benefits available under the Medicare drug discount card program and Medicare managed care plan programs. We believe the following requirements, discussed in section II.C of this document, are duplicative of, or conflict with, requirements applicable to Medicare managed care organizations under Medicare managed care plan programs, or that waiver of such requirements would improve coordination of the Medicare drug discount card program with Medicare managed care plan benefits—

(1) The covered lives requirement in § 403.806(a)(3) of the regulations;

(2) The requirement set forth in § 403.806(e)(2) of our regulations that transitional assistance be applied only toward costs incurred for covered discount card drugs obtained through the Medicare drug discount card program. Instead, we also permit transitional assistance to be used to pay for coinsurance, copayments, or other cost-sharing charged under a Medicare managed care plan drug benefit when beneficiaries purchase covered discount card drugs.

In addition, although applicants seeking to offer an exclusive card program must meet the business integrity and financial stability requirements in § 403.806(b) of our regulations, we will not require their applications to include the documentation we generally require of applicants to demonstrate compliance with this requirement, as described in section II.C.1. of this document, because such documentation would be duplicative of what these organizations already must demonstrate to us under the provisions of Part C and section 1876 of the Act.

We believe it is appropriate to waive the 1 million covered lives requirement for exclusive card programs because 1 million covered lives is more than most Medicare managed care organizations currently enroll in their Medicare managed care plans and is far higher than the minimum enrollment requirements for Medicare managed care organizations under 42 CFR 422.514 and 42 CFR 417.413(b). Moreover, the service area for exclusive card programs will be limited to the affiliated Medicare managed care plan service area, which could be as low as several thousand individuals for some plans. Therefore, the 1 million covered lives standard potentially would conflict with the minimum enrollment requirements for Medicare managed care plans and pose challenges for certain Medicare managed care organizations seeking to coordinate benefits under their Medicare managed care plans and newly created endorsed programs. Our failure to waive the 1 million covered lives requirement for exclusive card programs likely would have the effect of excluding from the Medicare drug discount card program small Medicare managed care organizations that might otherwise meet the endorsement requirements.

We believe it is appropriate to waive the transitional assistance requirements in § 403.806(e)(2) of our regulations. We believe exclusive card sponsors should be permitted to apply transitional assistance toward any copay, coinsurance, and deductible amounts incurred by transitional assistance enrollees for covered discount card drugs obtained under their Medicare managed care plan's outpatient drug benefit in order to improve coordination between the benefits provided under their endorsed programs and Medicare managed care plans. Because of differences between the cost-sharing structure under a Medicare managed care plan's outpatient prescription drug benefit and the coinsurance requirements under the Medicare drug discount card program, as required under section 1860D–31(g)(1)(B) of the Act, transitional assistance enrollees could be responsible for a larger portion of a drug's costs if obtained under the Medicare managed care plan drug benefit than under the Medicare drug discount card program. Allowing transitional assistance enrollees to apply transitional assistance toward any cost-sharing amounts incurred for covered discount card drugs obtained under their Medicare managed care plan drug benefit would address this problem while allowing for more seamless drug coverage.

Although applicants seeking to offer an exclusive card program must meet the business integrity and financial stability requirements under § 403.806(b) of our regulations, we believe the process for demonstrating compliance with this requirement, as

described in section II.C.1 of this document, is duplicative of aspects of the qualification process that already exists under Part C and section 1876 of the Act. Medicare managed care organizations are currently required, under 42 CFR 422.400 or 42 CFR 417.120 and 42 CFR 417.122, to be licensed under State law as risk-bearing entities or, alternatively, to obtain certification from a State that they meet the financial solvency and other standards that the State may require for the entity to operate as a managed care plan. Under these licensure or certification requirements, Medicare managed care organizations must demonstrate a level of business stability and integrity that generally exceeds our standards for endorsed program applicants. Because exclusive card sponsors already demonstrate business stability and integrity through alternative processes, neither they nor their subcontractors will be required to present documentation demonstrating they meet the business stability and financial stability requirement set forth in § 403.806(b) of our regulations.

In addition to the aforementioned waivers, we will allow applicants seeking to offer exclusive card programs to request in their applications for endorsement that we waive or modify additional requirements applicable to endorsed sponsors. Applicants making such requests must demonstrate that the requirements at issue are duplicative of, or conflict with, requirements applicable to Medicare managed care organizations under Part C, or that they interfere with coordination of the benefits offered under the Medicare drug discount card program with benefits provided under Part C. If we determine that waiver of any additional requirements applicable to endorsed sponsors would be appropriate with respect to exclusive card sponsors, the waivers will apply to all similarly situated exclusive card sponsors.

We are considering providing a streamlined application process for applicants seeking to offer exclusive card programs that parallel the discount cards currently offered under their Medicare managed care plans. We will provide further guidance on this issue in the solicitation.

b. Enrollment and Enrollment Fees in Exclusive Card Programs

As discussed in section II.A.3 of this document, and under section 1860D–31(c)(1)(E) of the Act, discount card eligible individuals enrolled in a Medicare managed care plan offering an exclusive card program may *only* enroll in the exclusive card program and may not enroll in another endorsed sponsor's endorsed program. Discount card eligible individuals enrolled in Medicare managed care plans that *do not* offer an exclusive card program may enroll in any endorsed program available in their service area.

As discussed above in section II.A.3 of this document and as described in § 403.814(b)(5) our regulations, we will allow Medicare managed care organizations offering exclusive card programs to group enroll their eligible Medicare managed care plan members into their exclusive card programs—defined as simultaneous enrollment of all or many members of a Medicare managed care plan into an exclusive card program. However, prior to doing so, an exclusive card sponsor must disclose to its Medicare managed care plan members its intent to group enroll them into its exclusive card program and provide them the opportunity to actively decline such enrollment.

c. Application Process

Section 403.804(a) of our regulations provides that only those applicants submitting their applications for endorsement of their prescription drug discount card programs by the deadline announced in the solicitation will be eligible for endorsement. However, in recognition of the advantages to members of Medicare managed care plans from improved coordination between the benefits available under the Medicare drug discount card program and their Medicare managed care plans, we will permit certain Medicare managed care organizations to apply for endorsement of their prescription drug card programs after the official application deadline.

As discussed above, section 1860D–31(h)(9)(B)(iii) of the Act authorizes the Secretary to waive requirements applicable to endorsed sponsors for exclusive card sponsors if such waiver would improve coordination of the benefits available under the Medicare drug discount card program and Medicare managed care plan programs. One of the major features of the Medicare discount drug card program is that it allows Part C organizations to offer members in their plans a prescription drug plan that integrates access to negotiated prices and transitional assistance available under a drug card with the unique package of benefits available in that Part C plan, including any prescription drug benefit. Beneficiaries who choose to enroll in a new Medicare managed care plan should have the same access to these coordinated discount card programs as members of existing Part C plans. Therefore, as provided under § 403.804(a)(2) of our regulations, we will permit an entity that is applying to enter into a new contract with CMS under Part C to offer a new coordinated care plan or plans, as described in section 1851(a)(2)(A) of the Act, to simultaneously apply to offer an exclusive card program. We will approve such organization's application to offer an exclusive card program provided we approve its Part C application, the Part C organization demonstrates to CMS that it meets all applicable requirements for endorsement, and the Part C organization is ready to initiate enrollment in and fully operate its exclusive card program upon approval of its Part C and endorsement applications.

H. Special Rules Concerning States

1. State Pharmacy Assistance Programs

As described above in section II.A.1. of this document, under section 1860D–31(b)(1)(A)(ii) of the Act and § 403.810(a)(2) of this regulation, beneficiaries with outpatient prescription drug coverage under Title XIX (Medicaid) or a section 1115 waiver demonstration are ineligible for the Medicare drug discount card program. Conversely, beneficiaries with outpatient prescription drug coverage under certain other sources may be eligible for the program provided they meet all other eligibility criteria. For example, many State and local governments provide outpatient prescription drug coverage to individuals through State pharmacy assistance programs (SPAP). Because these programs are operated separately from Title XIX and section 1115 waiver demonstrations and are funded in whole or in part by the State or local governments, without any Federal financial participation, individuals enrolled in these programs still may be eligible for the Medicare drug discount card program. The SPAPs have flexibility in deciding how to work in partnership with endorsed programs. For example, if a State has an SPAP operated by an entity that meets the requirements for endorsement under § 403.800 through § 403.822 of our regulations, that entity could apply to become an endorsed sponsor. However, the entity would be required to meet all requirements for endorsement, including the requirement that an endorsed sponsor offer its endorsed program to all discount card eligible individuals residing in the endorsed program's service area, which may include individuals not eligible for the SPAP. Should this or any other requirement for endorsement conflict with the endorsed sponsor's arrangement with the State under its SPAP, the endorsed sponsor and State would have to resolve this conflict. Alternatively, a State could coordinate its SPAP with the Medicare drug discount card program by contracting with an endorsed sponsor to administer the SPAP and designing the SPAP benefits so as to wrap around the benefits offered under the Medicare drug discount card program, provided that the endorsed sponsor complies with all applicable requirements of section 1860D–31 of the Act and our regulations. Coordination between a SPAP and an endorsed program could promote their offering a seamless outpatient drug benefit to beneficiaries enrolled in both the SPAP and Medicare drug discount card program.

2. Optional State Payment of Enrollment Fee

Section 1860D–31(c)(2)(F)(i) of the Act specifies that the Secretary will establish an arrangement under which a State voluntarily may provide for payment of some or all of the enrollment fee for some or all discount card enrollees in the State who are not transitional assistance enrollees. The portion of the enrollment fee paid by the State and the category of discount card enrollees (other than transitional assistance enrollees) entitled to State payment of all or some of their enrollment fees is left to a State's discretion. Any enrollment fee paid in whole or part by a State must be paid directly to the endorsed sponsor. We want to provide States flexibility in designing these arrangements to address circumstances particular to that State. Therefore, rather than prescribe a single, specific method for States to work in partnership with endorsed sponsors to pay the enrollment fee on behalf of discount card enrollees, we simply provide at § 403.815(a)(1) of our regulations that States may enter into payment arrangements with endorsed sponsors to provide payment of some or all of the enrollment fee for discount card enrollees, provided the enrollment fee is paid directly by the State to the endorsed sponsor.

Section 1860D–31(c)(2)(F)(ii) of the Act specifies that Federal matching payments will not be available under titles XIX and XXI for State expenditures for enrollment fees under the Medicare drug discount card program. To implement this requirement, we are setting forth a new provision at § 403.815(a)(2) of our regulations that mirrors the statutory provision.

3. Optional State Payment of Coinsurance

As discussed above, under section 1860D–31(g)(1)(B) of the Act, available transitional assistance may be applied toward 90 or 95 percent of the cost of a covered discount card drug obtained under the Medicare drug discount card program, with the transitional assistance enrollees responsible for a 5 or 10 percent coinsurance amount, depending on their income, unless the pharmacy waives those coinsurance amounts. Section 1860D–31(g)(4)(B)(i) of the Act specifies that the Secretary must establish an arrangement under which a State may provide for payment of some or all of these coinsurance amounts for some or all transitional assistance enrollees residing in the State. If a State will pay all or some of these coinsurance amounts, the payment must be paid directly by the State to the pharmacy involved. We want to allow States flexibility in the design of these arrangements to address circumstances particular to that State. Therefore, rather than prescribe a single, specific method for States to work in partnership with pharmacies to pay coinsurance on behalf of transitional assistance enrollees, we are providing at § 403.815(b)(1) of our regulation that States may enter into payment arrangements with pharmacies to provide payment of some or all of the coinsurance for transitional assistance-enrollees, provided the coinsurance is paid directly by the State to the pharmacy involved. We leave it to the State's discretion whether it will pay all or a portion of these coinsurance amounts, as well as the category of transitional assistance enrollees entitled to State payment of all or some of their coinsurance.

Under section 1902(a)(10)(E)(i) of the Act, States are required to pay the coinsurance obligations (as defined in section 1905(p)(3)(B) of the Act) for certain Medicare beneficiaries, with the Federal government, in turn, reimbursing States for a portion of these payment amounts. However, section 1860D–31(g)(4)(B)(ii) of the Act provides that any State expenditures for the coinsurance of transitional assistance enrollees will not be considered State expenditures for which Federal matching payments are available under titles XIX and XXI. To implement this requirement, we are setting forth a provision at § 403.815(b)(2) of our regulations that mirrors the statutory provision.

Section 1860D–31(g)(4)(B)(iii) of the Act provides that the coinsurance liability of transitional assistance enrollees is not a cost-sharing obligation set forth in section 1905(p)(3)(B) of the Act. This means that States are not required to pay the coinsurance liability incurred by transitional assistance enrollees who are also Qualified Medicare Beneficiaries (QMBs) (as defined in section 1905(p)(1) of the Act) under the Medicaid program. To implement this requirement, we are setting forth a provision at § 403.815(c) of our regulations that mirrors the statutory provision.

4. State Data

As discussed in section II.A.1. of this document, under section 1860D–31(b)(1) of the Act and § 403.810(a)(2) of our regulations, beneficiaries residing in the 50 States or the District of Columbia with outpatient prescription drug coverage under Title XIX (Medicaid) or a section 1115 waiver demonstration are ineligible for the Medicare drug discount card program. As discussed in section II.A.2 of this document, we will verify beneficiaries' eligibility for the program. To perform this function, we require data from the 50 States and the District of Columbia that will allow us to identify those Medicare beneficiaries eligible under Medicaid or a section 1115 waiver demonstration for outpatient drug coverage. Section 1860D–31(f)(3)(C)(ii) of the Act provides the 50 States and the District of Columbia must provide to us information relating to our verification process under the program, in the manner specified by us, as a condition of the provision of Federal financial participation to a State under Title XIX. Section 1935(a)(1) of the Act similarly conditions receipt of Federal financial assistance under Title XIX upon a State's provision this data. Finally, section 1902(a)(66) of the Act provides that a State plan under Title XIX must provide for making eligibility determinations under section 1935(a) of the Act, which as previously noted includes the provision of eligibility data to us. We will specify the data we require and the manner in which states should provide us the data in a future communication to the State Medicaid directors.

Section 1935(a)(3) of the Act provides that amounts expended by a State in carrying out 1935(a) of the Act, including the provision of data related to our eligibility process, are State expenditures reimbursable under the "appropriate paragraph" of section 1903(a) of the Act, which sets forth the Federal share of State expenditures

under a State plan under Title XIX. As States' expenditures related to the provision of this data do not fall within the activities covered under sections 1903(a)(1) through (6) of the Act, we believe the only paragraph under section 1903(a) of the Act that would capture these expenditures is section 1903(a)(7) of the Act. Section 1903(a)(7) of the Act provides for a federal share of 50 percent for State expenditures "found necessary by the Secretary for the proper and efficient administration of the State plan" that are not already covered under sections 1903(a)(1) through (6) of the Act. Because States are required to provide us the eligibility data under their State plan, we believe related State expenditures are necessary for the proper administration of the State plan. Section 403.815(d)(2) of our regulations therefore provides that expenditures made by a State in connection with providing us eligibility data will be treated as State expenditures for which Federal matching payments are available under section 1903(a)(7) of the Act. Accordingly, States will be reimbursed 50 percent of these expenditures.

I. Special Rules Concerning Pharmacies Serving Long Term Care Residents or Operated by the Indian Health Service, Indian Tribes and Tribal Organizations, and Urban Indian Organizations

Section 1860D–31(g)(5)(A) of the Act provides that the Secretary shall establish procedures and may waive requirements as necessary to negotiate arrangements with sponsors to provide arrangements with pharmacies that support long term care facilities in order to ensure access to transitional assistance for transitional assistance eligible individuals who reside in long term care facilities.

Further, section 1860D–31(g)(5)(B) provides that the Secretary shall establish procedures and may waive requirements to ensure that, for purposes of providing transitional assistance, Indian Health Service, Indian Tribe and Tribal Organization, and Urban Indian Organization (I/T/U) pharmacies have the opportunity to participate in the pharmacy networks of at least two endorsed discount card programs in each of the 50 States and the District of Columbia where such a pharmacy operates.

In the United States, there are approximately 16,380 Medicare and Medicaid certified skilled nursing facilities and nursing facilities (source: On-Line Survey and Certification and Reporting (OSCAR) System, August, 2003). About 1.3 million Medicare beneficiaries are residents of extended-stay skilled nursing facilities and nursing facilities (Source: 2001 Medicare Current Beneficiary Survey). Among the 1.3 million, the vast majority of these individuals (72 percent) are enrolled in both Medicare and Medicaid, and therefore will be ineligible for the Medicare endorsed discount card program if they have drug coverage through Medicaid. Of the remaining approximately 400,000 Medicare nursing home residents, some portion—perhaps as many as 200,000—may be eligible for transitional assistance under this program. Approximately 3,000 pharmacies support these facilities (source: American Society of Consultant Pharmacists, verbal communication, August 2003.).

Generally speaking, long term care pharmacies provide access to prescription drugs to residents of skilled nursing facilities and nursing facilities through medical benefits that are coordinated by the long term care facilities in cooperation with the long term care pharmacies. Further, the medications provided are often specially packaged to provide quality control. These, among other circumstances, contribute to such pharmacies not being well integrated into the private networks maintained by the pharmacy benefit management industry. The provisions of section 1860D–31(g)(5)(A) of the Act provide an opportunity for long term care pharmacies to provide prescriptions to residents of long term care facilities through the usual distribution channels established by these facilities, while offsetting the cost borne by such residents when their medical coverage either does not apply or has been exhausted.

We estimate that there are approximately 87,000 AI/ANs over the age of 65 who use the services of the Indian Health Service, and another 20,000 or so such individuals who are under the age of 65 years and eligible for Medicare by virtue of a disability (source: Indian Health Service). Of the total, about 36,000 are covered by Medicaid and we estimate that a total of about 18,000 may be eligible for transitional assistance. There are 201 I/T/U pharmacies in 27 States, with 152 operating in ambulatory settings and 49 operating in hospitals. Table 3 depicts the number of these pharmacies by State.

Generally speaking, I/T/U pharmacies provide access to prescription drugs off of the Federal Supply Schedule to AI/ANs, and these pharmacies are not well integrated into the private networks maintained by the pharmacy benefit management industry. The provisions of section 1860D–31(g)(5)(B) of the Act provide an opportunity for I/T/U pharmacies to provide prescriptions to AI/ANs at the low Federal Supply Schedule rate, whereby coverage of the cost of such drugs would in Part Come from transitional assistance funds, and in part from Indian Health Service funds.

To meet the requirements of section 1860D–31(g)(5) of the Act, we are strongly encouraging endorsed sponsors to offer a plan in their application for endorsement to include long term care and/or I/T/U pharmacies in their networks for the purpose of administering transitional assistance. As will be provided in greater detail in the solicitation, CMS intends to employ a competitive process to select for "special endorsement," among interested applicants, in each of the 50 States and the District of Columbia, at least two applicants that, in accordance with § 403.816(b)(2) of our regulations, agree to contract with any willing long term care pharmacy provider in the endorsed sponsors' service areas seeking to participate in their pharmacy networks. Similarly, CMS intends to select at least two applicants for "special endorsement" in each of the 50 States and the District of Columbia where I/T/U pharmacies operate, in accordance with § 403.816(d)(2) of our regulations, to contract with any I/T/U pharmacy in the endorsed sponsors' service areas seeking to participate in their networks.

Selection criteria will be further discussed in the solicitation and will include understanding and accommodation of, as well as prior experience with, the unique circumstances of these special pharmacies, the percent of all long term care and/or I/T/U pharmacies within the proposed service areas to be provided contracts, the expansiveness of the proposed service area, completeness and feasibility of the plan for favorable access, and timeliness of implementation. The selected applicants, also called special endorsed sponsors, will provide for terms in these special pharmacy contracts to accommodate certain unique attributes of these pharmacies, described below, which are intended to improve access to needed prescription drugs and transitional assistance by long term care residents and AI/ANs. Also, as described below, we will work closely with interested applicants and special endorsed sponsors to provide technical assistance and other incentives.

As described above, the Secretary must ensure that transitional assistance-eligible residents of long term care facilities have access to transitional assistance. Additionally, the Secretary must ensure that I/T/U pharmacies utilized by AI/ANs have the opportunity to participate in the pharmacy networks of at least two discount cards for the purpose of providing transitional assistance. We believe the best way to ensure that AI/ANs and residents of long term care facilities have the opportunity to receive transitional assistance is to promote a competition for "special endorsement" to serve these beneficiaries. We believe a competition among interested sponsors will encourage better, more thoughtful plans for access to a market generally untapped by the pharmacy benefit management industry.

As discussed previously, pharmacies supporting long term care facilities and AI/ANs are not generally included in the traditional pharmacy networks of the pharmacy benefit management industry, thus representing potentially new lines of business for some applicants, or possibly leveraging an existing niche market for some pharmacy benefit management organizations. The competition will guarantee to the special endorsed sponsors additional covered lives, an opportune business strategy to grow enrolled lives and subsequent utilization, leading to additional revenues. A "guaranteed" volume of new covered lives would be needed to cover the fixed costs associated with starting up the special provisions of these special pharmacy contracts. We believe that the promise of a guaranteed volume for the winning applicant will be a critical factor in whether the applicant decides to submit a plan that covers long term care and/or I/T/U pharmacies. Without the competition, we think that there is a high risk of drug discount card program applicants not offering a plan. Literally speaking, we believe the competition is necessary to assure these populations will have access to any endorsed card program. Further, the competition will provide to the special endorsed sponsors a "special endorsement" they can market.

An added benefit of the competition to beneficiaries is that the negotiations between these pharmacies and special endorsed sponsors to accommodate these pharmacies' special circumstances, along with technical assistance provided by CMS, can be accomplished relatively quickly compared to the process necessary if all endorsed sponsors had to accommodate these special circumstances. This will lead to a timely implementation of these special provisions, improving access to prescription drugs. In the case of long term care pharmacies, if interested pharmacy benefit management organizations with niche expertise in this area are able to meet our requirements and compete successfully for the special endorsement, then participation may also improve the timeliness of implementation and access to transitional assistance for long term care residents.

The applicants selected for special endorsement will receive assistance and support from CMS in setting up special contracting arrangements with these pharmacies as needed. We intend to hold a special break out session at the pre-application conference and, to the extent that this would be useful to interested applicants and, if feasible, CMS would arrange for the participation of the long term care pharmacy industry and the Indian Health Service, to the extent possible, provide a list of all pharmacies that support long term care facilities and I/T/U pharmacies; provide for an expedited marketing review to the extent possible; and provide special recognition for these special endorsed sponsors on the CMS Web site that describes their programs.

Additionally, as discussed in section II.C.1. of this document, endorsed sponsors must provide us with sample copies of their contracts with pharmacies participating in their network prior to commencing outreach and enrollment activities. Because the arrangements between special endorsed sponsors and long-term care and I/T/U pharmacies will present unique challenges and represent new types of arrangements for most special endorsed sponsors, special endorsed sponsors must only make a good faith effort to finalize these arrangements as soon as practicable; we will not require that these arrangements be finalized and approved by us prior to the start of the special endorsed sponsor's commencement of outreach and enrollment activities under its general endorsement, if applicable.

One of the goals of the technical assistance will be to help special endorsed sponsors understand the operations of these pharmacies which may require that special contracting provisions be included in the contracts between the special endorsed sponsors and these pharmacies. Both types of pharmacies have a number of unique characteristics that distinguish them from other retail pharmacies that will be participating in the drug discount card program. For instance, I/T/U pharmacies purchase drugs off the Federal supply schedule; generally can only serve AI/ANs; are required by law to waive copayments; and generally stock a more limited range of drugs compared to other retail pharmacies. Further, a few may not have point of sale technology.

Long term care pharmacies generally provide the drugs directly to the skilled nursing facilities and nursing facilities where the patient resides, not directly to the patient, under a medical benefit. They also engage in a significant coordination of benefits effort that would require at least some claims processed against the transitional assistance to be processed off-line, not in real time.

Thus, as cited in § 403.816 of our regulations, we may require of special endorsed sponsors certain contracting provisions. First, we will require that these sponsors contract with any willing provider of these types in their service areas (§ 403.816(b)(2) and § 403.816 (d)(2) of our regulations). Other likely special provisions in the contracts between special endorsed sponsors and these pharmacies include (§ 403.816(b)(4) and § 403.816(d)(3) of our regulations):

- For long term care: Long term care pharmacies are permitted to provide covered discount card drugs only to transitional assistance enrollees of the special endorsed sponsor's endorsed program who reside in long term care facilities served by the pharmacy; special endorsed sponsor may need to process special transaction type depending on whether the pharmacy is recognized under HIPAA as a retail pharmacy (that is, X12 versus NCPDP); and the special endorsed sponsor must agree to process "late" claims without penalty as payer of last resort after other insurance has been processed first.
- For I/T/U pharmacies: the pharmacy generally can only serve AI/ANs (special endorsed sponsor must structure network and educate enrollees so that non-AI/ANs understand these pharmacies generally are not available to them); and pharmacy is not required to stock all drugs.

An additional requirement, as provided in § 403.816(b)(3) of the regulation, special endorsed sponsors for long term care residents will be required to process claims from any out-of-network long term care pharmacies that supply covered discount card drugs to long term care facility residents enrolled in the drug discount card program when such beneficiaries have a transitional assistance balance remaining. As residents in skilled nursing facilities and nursing facilities are generally required by these entities to use the facility's selected long term care pharmacy, this provision will

accommodate long term care pharmacies in the event they do not decide to join the special endorsed sponsor's network.

Section 1860D–31(g)(5) of the Act grants the Secretary the authority to waive requirements of the Medicare drug discount card program as necessary to ensure that transitional assistance may be applied toward covered discount card drugs obtained from long-term care and I/T/U pharmacies. In recognition of the unique challenges facing special endorsed sponsors who agree to include these pharmacies in their pharmacy networks, we will waive application of certain requirements if doing so is necessary to: (1) Ensure that a sufficient number of applicants seek special endorsement; (2) enable the Medicare drug discount program to start within 6 months of enactment of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003; and (3) accommodate the unique needs of long-term care and I/T/U pharmacies.

Section 403.806(e)(4) of our regulations require endorsed sponsors to ensure that their pharmacies make available to transitional assistance enrollees at the point of sale, either electronically or by telephone, the amount of transitional assistance remaining available to them. Because long-term care pharmacies may process claims off-line due to coordination of benefit issues, there may be a lag in updating the transitional assistance amount to reflect recent transactions involving transitional assistance funds. Consequently, transitional assistance enrollees could be informed that they have more transitional assistance available to them than actually available if prior claims are still pending. Because I/T/U pharmacies do not charge AI/ANs for drugs obtained by them, AI/ANs obtaining drugs from these pharmacies will not have any out-of-pocket expenditures, and therefore their drug purchasing decisions will not be influenced by the amount of transitional assistance remaining available to them. Therefore, as provided in § 403.816(c)(ii) and § 403.816(e)(ii) of our regulations, special endorsed sponsors are not required to ensure that their long-term care and I/T/U pharmacies make available to transitional assistance enrollees at the point of sale the amount of transitional assistance remaining available to them.

In addition, section 1860D–31(g)(5) requires the availability of transitional assistance to long-term care residents and those using I/T/U pharmacies, but it does not discuss negotiated prices. Therefore, under §§ 403.816(c) and 403.816 (e) of our regulations, we provide that special endorsed sponsors will not be required to provide card enrollees access to negotiated prices at long-term care and I/T/U pharmacies. Special endorsed sponsors will be required to provide AI/ANs access to negotiated prices through non-I/T/U pharmacies included in the endorsed sponsor's network. We believe that waiving this provision is consistent with the statute as provided in section 1860D–31(g)(5) of the Act, and the resultant reduction in administrative burden is necessary so that applicants will be more likely to apply to become a special endorsed sponsor.

As permitted under section 1860D–31(g)(5) of the Act, we will allow applicants seeking special endorsement to request that we waive application of one or more of the other requirements of the Medicare drug discount card program. For instance, an applicant that intends to solely contract with long term care pharmacies for the purpose of administering transitional assistance through special endorsement, but who is not interested in otherwise becoming an endorsed sponsor under the Medicare drug discount card program, might request general waivers of certain requirements pertaining to endorsement. In its application, the applicant must cite the statutory or regulatory provision(s) it wishes us to waive, and explain why: (1) Such waiver is necessary to enable the applicant to either initiate enrollment activities within six months of enactment of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 or accommodate the unique needs of long-term care and/or I/T/U pharmacies; or (2) compliance with the requirement(s) in question would be impracticable or inefficient. Applicants also must provide an assessment of the impact of waiving the requirement(s) in question on long-term care residents and/or AI/ANs. If we grant the waiver, we will waive the applicable requirement(s) for all similarly situated applicants seeking special endorsement.

TABLE 3.—I/T/U PHARMACIES BY STATE

Alaska	14
Alabama	1
Arizona	21
California	11
Colorado	2
Connecticut	1
Idaho	3
Kansas	3
Maine	3
Michigan	5
Minnesota	5
Mississippi	1
Montana	13
North Carolina	1
North Dakota	5
Nebraska	3
New Mexico	20
Nevada	8
New York	3
Oklahoma	37
Oregon	7
South Dakota	11
Texas	1
Utah	1
Washington	11
Wisconsin	6
Wyoming	2
Total	201

J. Special Rules Concerning Territories

1. Background

As discussed above in section II.A. of this document, Medicare beneficiaries residing in the territories may be eligible for the Medicare drug discount card program, but are not eligible for transitional assistance under the program. However, as provided for under section 1860D–31(j)(2) of the Act, the territories may establish their own programs providing transitional assistance to low-income beneficiaries. This section first discusses special rules for applicants seeking to offer endorsed programs in the territories, followed by a discussion of the transitional assistance available to beneficiaries residing in the territories under programs established by the territories. As background, Table 4 provides the total number of Medicare beneficiaries in each of the U.S. Territories.

TABLE 4.—MEDICARE BENEFICIARIES BY U.S. TERRITORY

Territory	Total Medicare beneficiaries as of 07/01/2003
American Samoa	2,977
Commonwealth of the Northern Mariana Islands	1,257
Guam	9,372
Puerto Rico	573,468
Virgin Islands	11,797

Source: Medicare Enrollment Database

2. Discount Card

Medicare beneficiaries residing in the U.S. territories, which include American Samoa, Commonwealth of the Northern Mariana Islands, Guam, Puerto Rico, and Virgin Islands, are eligible to enroll in the Medicare drug discount card program. Whereas Medicare beneficiaries residing in the 50 States or the District of Columbia are ineligible for the program if they have outpatient prescription drug coverage under Medicaid or a section 1115 waiver demonstration, section 1860D–31(j)(1) of the Act grants the Secretary the discretion to find Medicare beneficiaries residing in the territories eligible for the program even if they receive outpatient prescription drug coverage under Medicaid or a section 1115 waiver demonstration. As provided in § 403.817(d) of our regulations, beneficiaries residing in the territories who have outpatient prescription drug coverage under these sources will be eligible for the program.

To ensure that eligible individuals residing in the territories have access to endorsed programs offering negotiated prices, we will select for special endorsement at least one applicant to provide discounts for covered drugs in the territories. In accordance with § 403.817(a) of our regulations, these applicants must agree to offer endorsed programs to residents of all the territories. Section 1860D–31(j)(1) of the Act allows us to waive the requirement for two endorsed sponsors per State in section 1860D–31(h)(2)(D) of the Act, if necessary to secure access to negotiated prices for beneficiaries in the territories. Therefore, we will elect to limit the number of special endorsed sponsors operating in each of the territories to at least one in order to assure that a sufficient number of beneficiaries will enroll in special endorsed sponsors' endorsed programs in the territories, thereby justifying from a business perspective their offering such programs. We believe these volume considerations will be a critical factor in whether an applicant seeks special endorsement in the territories.

We are concerned that in the absence of a competitive process for special endorsement in the territories, an insufficient number of applicants will seek to offer endorsed programs in the territories and we therefore will be unable to ensure that residents of the territories have access to negotiated prices.

Selection criteria for special endorsement in the territories will include understanding, as well as prior experience with, the unique challenges of providing a drug discount card in the territories, the extensiveness of an applicant's pharmacy network in the territories, the feasibility of the applicant's plan for offering an endorsed program in the territories, and timeliness of implementation of its plan. We will further discuss the selection criteria and the competitive process for special endorsement in the solicitation.

As permitted by section 1860D–31(j)(1) of the Act, we will waive certain sponsor requirements of the Medicare drug discount card program in the territories if doing so is necessary to: (1) Ensure that a sufficient number of applicants seek special endorsement in the territories; (2) enable the Medicare drug discount card program to start within six months of enactment of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003; and (3) accommodate the unique challenges faced by special endorsed sponsors in the territories.

As provided in § 403.817(c)(2) of our regulations, special endorsed sponsors in the territories will not be required to meet the pharmacy network access standard set forth in § 403.806(f) of our regulations and as explained in section II.C.3 of this document. In addition, special endorsed sponsors are not required to maintain a service area covering an entire territory if it proves impracticable to do so, as otherwise required in § 403.806(f)(2) of our regulations. The pharmacy access standard provides that the pharmacies included in an endorsed sponsor's network may not dispense drugs solely by mail-order and must be located within certain distances of most beneficiaries. We waive the distance requirement because in some territories there are few retail pharmacies, and relative to pharmacies in the 50 States and the District of Columbia, these pharmacies generally are less inclined to participate in pharmacy networks established by pharmacy benefit managers, discount drug cards, and similar programs. Special endorsed sponsors therefore may be unable to secure the participation of a sufficient number of pharmacies in the territories to meet our pharmacy access standard. For this reason, if after a good faith effort a special endorsed sponsor in the territories is unable to secure the participation of a retail pharmacy in a particular locale, they may offer a mail-order only pharmacy in that locale. Because it may be impracticable to provide drugs by mail to residents in more remote areas within a territory, we do not require special endorsed sponsors to provide residents of these particular areas with access to mail-order pharmacies, but the special endorsed sponsor must demonstrate that a good faith effort has been made to provide residents of these remote areas with discounts through retail pharmacies, and must explain the reason why mail order is impracticable. Provided endorsed sponsors make a good faith effort to secure the participation in their networks of retail and mail-order pharmacies throughout a territory, we will deem the service area requirement set forth in § 403.806(f)(2) and the network access requirement set forth in § 403.806(f)(3) of our regulations to be met, as provided in § 403.817(c)(2) of our regulations.

In recognition of the special challenges involved in delivering mail-order drugs to residents of the territories, special endorsed sponsors will need to educate their card enrollees in the territories about any considerations they need to take into account to assure that they receive safe and timely access to their prescription drugs, such as the need to order their drugs in advance of their need for such drugs. We recognize that in some cases special packaging needs (for example, refrigeration) for particular covered discount card drugs may make it impracticable to ship specific medications to the territories. Card enrollees should be made aware of these limitations.

As provided in § 403.817(c)(1)(ii) of our regulations, special endorsed sponsors in the territories will not be required to comply with § 403.806(d)(8) of our regulations requiring that retail pharmacies inform card enrollees of any differential between the price of the drug to the card enrollee under their endorsed program and the price to the card enrollee of the lowest priced generic covered discount card drug that is therapeutically equivalent and bioequivalent under the program. In recognition that few discount drug cards currently have contractual relationships with retail pharmacies in the territories, we are waiving this requirement to reduce the administrative complexity of special endorsed sponsors' contracts with participating retail pharmacies in the territories, which we believe we will enhance applicants' willingness to apply for special endorsement in the territories. However, mail-order drugs sent to residents in the territories should include this price differential information in the same manner such information is provided to card enrollees in the 50 States and District of Columbia who obtain mail-order drugs under the program.

Because the arrangements between special sponsors and pharmacies in the territories represent new types of arrangements for most special endorsed sponsors, as with special endorsed sponsors agreeing to include long-term care and for I/T/U pharmacies in their networks, we only require that special endorsed sponsors in the territories make a good faith effort to finalize these arrangements as soon as practicable; we

will not require that these arrangements be finalized and approved by us within 6 months after the date of enactment of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003.

As permitted under section 1860D–31(j)(1) of the Act, we will allow applicants seeking special endorsement in the territories to request that we waive application of one or more of the other requirements of the Medicare drug discount card program. In its application the applicant must cite the statutory or regulatory provision(s) it wishes us to waive, and explain why: (1) Such waiver is necessary to enable the applicant to either initiate enrollment activities in the territories within six months of enactment of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 or accommodate the unique needs of pharmacies in the territories; or (2) compliance with the requirement(s) in question would be impracticable or inefficient. Applicants also must provide an assessment of the impact of waiving the requirement(s) in question on beneficiaries residing in the territories. If we grant the waiver, we will waive the applicable requirement(s) for all similarly situated applicants seeking special endorsement.

We will provide technical assistance to applicants seeking to offer endorsed programs in the territories, including holding a special break-out session at the pre-application conference. In addition, as additional incentives to encourage applicants to offer endorsed programs in the territories, we will, to the extent possible, provide expedited marketing review of special endorsed sponsors' information and outreach materials, and provide special recognition for these sponsors on the Medicare drug discount card Web site.

Applicants should note that special endorsed sponsors in the territories will not be asked to administer transitional assistance on behalf of CMS; rather, transitional assistance provided to residents in the territories will be a separate program independently operated by each territory, as described below.

3. Transitional Assistance

Section 1860D–31(j)(2)(A) of the Act provides that a territory may provide transitional assistance to some or all individuals residing in the territory who are entitled to benefits under part A or enrolled under part B with incomes no more than 135 percent of the poverty line for their family size, regardless of whether the individual receives an outpatient drug benefit under Medicaid or any other coverage sources (such as FEHBP, Tricare, or employer-sponsored health insurance). In accordance with section 1860D–31(j)(2)(B) of the Act, a territory wishing to provide transitional assistance to eligible beneficiaries must submit to CMS for our approval a plan describing its proposed transitional assistance program, including:

- The territory's criteria and process for determining beneficiaries' eligibility for transitional assistance (including its definition of income and family size) for individuals who reside in the territories, who are entitled to benefits under Medicare Part A or enrolled under Medicare Part B, and who have income at or below 135 percent of the poverty line for the contiguous United States; and
- The process for ensuring that allotment provided to the territory under section 1860D–31(j)(2) of the Act will be used only to provided covered discount card drugs to those individuals determined eligible for transitional assistance; and
- The territory's assurance that it will operate its transitional assistance plan as approved.

Section 1860D–31(j)(2)(C) of the Act provides that territories with approved transitional assistance plans will receive in the aggregate $35 million for the duration of the Medicare drug discount card program, which will be allocated among such territories in the manner described below. Territories must submit their plans to CMS within 90 days of the publication of this rule so as to allow us adequate time to review and approve their plans and determine each territory's allocated share of the $35 million.

CMS may request reports or information to substantiate that the territories have administered the program consistent with the territory's approved transitional assistance plan.

Section 1860D–31(j)(2)(D) of the Act provides that the Secretary shall calculate the portion of the $35 million allocated to a territory with an approved plan for transitional assistance by multiplying $35,000,000 by the ratio of—

(1) The number of individuals who are entitled to benefits under part A or enrolled under part B and who reside in the territory (as determined by the Secretary as of July 1, 2003), to

(2) The sum of such number for all territories with an approved plan under this program.

Section 1860D–31(j)(2)(D) provides that amounts made available to a territory for transitional assistance which are not used to provide transitional assistance will be added to the amount available to that territory for purposes of carrying out the Medicare Part D drug benefit.

K. Special Rules and Part B Premium and Appropriations

1860D–31(k)(2)(B) states that amounts payable from the Transitional Assistance Account shall not be taken into account in computing the actuarial rates or premium amounts under section 1839 of the Act. Similarly, section 105(a) amends section 1839(g) of the Act by ensuring that any estimations used to calculate the Part B monthly premium rate shall exclude estimates attributable to the Medicare prescription drug discount card and transitional assistance program under section 1860D–31 of the Act. We have accordingly made changes to the regulations in 42 CFR 408.20 to reflect these statutory provisions.

IV. Regulatory Impact Analysis and Regulatory Flexibility Act Analysis

A. Overall Impact

We have examined the impacts of this rule under Executive Order 12866 (September 1993, Regulatory Planning and Review), the Regulatory Flexibility Act (RFA) (September 16, 1980, Pub. L. 96–354), section 1102(b) of the Social Security Act, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), and Executive Order 13132.

Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects ($100 million or more annually). While the ultimate impact of this program will depend upon the final designs of endorsed discount card sponsors' programs, our estimate is that this rule is economically significant as measured by the $100 million standard. The savings to beneficiaries from discount card activities, including negotiated prices on prescription drugs and education about generic substitution by endorsed sponsors, will represent an economic impact ranging from $1.4 billion to $1.8 billion in the last nine months of 2004 (assuming for the purposes of this impact analysis implementation beginning second quarter 2004), $2.0 billion to $2.7 billion in 2005, and $0.4 billion to $0.6 billion in the first four and one-half months of 2006. This impact would not affect the Federal budget, but would be a transfer of money due to a decrease in the revenues of entities providing the supply of drugs to consumers. This represents at most 1.18 percent of projected total retail prescription drug spending during the respective periods of 2004 ($153.5 billion for the last nine months of the year), 2005 ($228.6 billion), and 2006 ($95.3 billion for the first four and one-half months of the year), based on the most recent published National Health Expenditures projections (released in February 2003).

In addition to savings from discount card activities, a subset of discount card enrollees—those who qualify for transitional assistance—are projected to save an additional $2.4 billion in 2004, $2.6 billion in 2005, and up to $0.1 billion in 2006 due to the annual $600 transitional assistance. Beneficiary savings from transitional assistance are funded through the Federal budget, so these savings are a transfer from budget revenue to beneficiaries.

This rule also generates costs and benefits for drug sponsors in the new market created by the Medicare-endorsed drug discount card programs. Net benefits in this new market are generally projected to be positive but small relative to the savings generated for beneficiaries. The net present value benefits range from near zero to approximately $10 million.

This rule is a major rule as defined in Title 5, United States Code, section 804(2). Accordingly, we have prepared an impact analysis for this rule.

B. Unfunded Mandates Reform Act

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) requires that agencies assess anticipated costs and benefits and take certain other actions before issuing a rule that may result in expenditure in any one year by State, local, or tribal governments, in the aggregate, or by the private sector, of $110 million. The UMRA stipulates that this is a requirement before an agency promulgates a notice of proposed rulemaking or promulgates a final rule for which a notice of proposed rulemaking had previously been issued. Since Congress specifically authorized us to dispense with a notice of proposed rulemaking, we believe that the UMRA requirements do not apply to this rule. Regardless, we do not anticipate that this rule would impose costs approaching the $110 million UMRA threshold.

While this rule does include a data reporting requirement for States, the State costs associated with this activity are expected to be relatively small. As discussed in this document, States will be required to provide data to CMS that will allow us to identify those beneficiaries who would be ineligible for the Medicare prescription drug discount card program due to the receipt of drug coverage through Medicaid or a section 1115 waiver demonstration. Aggregate State costs associated with this data reporting, including expenses related to data transmissions, quality assurance, and any needed systems changes, are expected to be substantially less than the $110 million UMRA threshold. Furthermore, as discussed in this document, States will receive Federal reimbursement for a share of these expenditures at the Federal matching rate for administrative expenses under 1903(a)(7).

In terms of territories and tribal governments, this rule imposes no mandatory requirements for these entities, while offering them an additional source of funding that they can elect to take advantage of. As discussed in this document, funds are available for a territory to provide prescription drug assistance to eligible low-income beneficiaries in the territory, if they elect to do so and submit a plan to CMS about how they intend to do it. For tribal governments (specifically pharmacies operated by Indian Tribes and Tribal Organizations, and Urban Indian Organizations (as defined in section 4 of the Indian Health Care Improvement Act)), the rule makes special provisions for these pharmacies to have the opportunity to participate in the networks of at least two endorsed programs in each of the 50 States and the District of Columbia where such pharmacies operate.

In addition, we have determined that this rule would not be an unfunded mandate related to the private sector as defined by the UMRA. In particular, section 101 of the UMRA only requires estimation of direct costs to comply with the definition of a private sector unfunded mandate. While the rule will have an impact on the private sector, we do not expect that this will require direct costs or outlays approaching UMRA's $110 million threshold.

C. Federalism

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a rule that imposes substantial direct requirement costs on State and local governments, preempts State law, or otherwise has Federalism implications. As noted earlier in this document, a State may choose, on a voluntary basis, to partner with private drug card sponsors to coordinate its State Pharmacy Assistance Program with the Medicare prescription drug discount card program. States also have the option of paying for some or all of the enrollment fee for some or all non-transitional assistance eligible beneficiaries and the option of paying for some or all of the beneficiary coinsurance liability for some or all transitional assistance enrollees in a State. In addition, some States may decide to educate beneficiaries, particularly dual eligibles who would qualify for transitional assistance (that is, QMBs, SLMBs, & QIs without Medicaid drug coverage) and beneficiaries in State Pharmacy Assistance Programs, about benefits available through the Medicare prescription drug discount card program. All of these are voluntary opportunities for States, and have no Federalism implications. In addition, States with State Pharmacy Assistance Programs may realize savings related to the Medicare prescription drug discount card program to the extent that they provide for coordination of their program with the new Medicare program.

We have also determined that this rule would not impose substantial direct requirement costs on State and local governments. As discussed above, States would likely incur some costs related to data submission activities, but these costs are expected to be small and substantially less than the $110 million UMRA threshold. Furthermore, CMS has taken a number of steps to minimize the costs related to this program for States. CMS has consulted with State Medicaid Directors on the data submissions process and what mechanisms would be least burdensome and costly to States. In addition, CMS has already held and plans to hold additional information sessions for State officials to help them anticipate and prepare for implementation of this program. Further, we are taking measures to ensure that States are provided with training materials and beneficiary resources so that States can have ready access to materials that they can use if they receive questions from beneficiaries about the program.

D. Limitations of Our Analyses

The following analyses present projected effects of this rule on Medicare beneficiaries, the Medicare program, total national retail prescription drug spending, small entities, and endorsed sponsors. This section discusses limitations of the analyses conducted in especially sections E and I of this regulatory impact analysis.

Because this will be the first year of the Medicare prescription drug discount card program, we do not have the benefit of the experience of prior years. Therefore, we present a range rather than a single estimate for the amount of beneficiary savings resulting from negotiated prices obtained by endorsed sponsors. Another limitation of this particular analysis is that our most recent available data on beneficiary use of prescription drugs come from self-reported survey data from the 2000 Medicare Current Beneficiary Survey (MCBS). The MCBS is a continuous multipurpose survey of a representative sample of the Medicare population. We have adjusted the data for projected growth in drug spending and for under reporting.

Another limitation of our analysis is that we make no adjustments to the savings estimates to take into account that some beneficiaries who enroll in this program already receive sizable discounts on drugs, and thus the savings potential from this program may be overstated for these individuals. For example, estimated savings from discount card activities may be overstated for beneficiaries enrolled in Medicare managed care organizations and beneficiaries participating in manufacturer discount card programs, since both are likely to already receive significant discounts.

As we discuss later in this document, other limitations to our analysis include that we have made no adjustments to take into account: possible effects of the program on beneficiary drug utilization and possible changes in the type of outlets through which beneficiaries purchase prescription drugs. We did not believe that we had adequate data to inform assumptions concerning these issues.

Additional limitations of the analysis relate to our estimate of the number of beneficiaries who enroll in the Medicare prescription drug discount card program. First, our estimate of the number of beneficiaries with standardized Medigap drug coverage who will enroll in the Medicare prescription drug discount card program may be somewhat imprecise. As discussed in more detail later in the analysis, we believe some beneficiaries who have drug coverage through standardized Medigap policies are likely to enroll in the Medicare prescription drug discount card program. The MCBS provides data on the number of beneficiaries with "individually purchased" insurance policies, which includes but is not limited to the standardized Medigap policies. Using data on beneficiaries who have drug coverage through individually purchased insurance policies, we developed a rough estimate of the number of beneficiaries with Medigap standardized drug coverage by excluding from this group individuals who appeared unlikely to have standardized Medigap drug coverage. In particular, we excluded individuals whose out-of-pocket drug spending was less than $250 and whose individually purchased insurance plan covered some drug costs, since this is inconsistent with the benefit structure of the standardized Medigap plans. However, some beneficiaries with individually purchased policies that are not the standardized Medigap drug coverage policies are still likely to be included in our estimates. In addition, some beneficiaries have multiple sources of coverage, for example, some beneficiaries are enrolled in Medicare+Choice (M+C) but also report having individually purchased supplemental insurance. Therefore, we also excluded from the estimate of the number of beneficiaries with Medigap drug coverage anyone who was also enrolled in M+C during at least one month of the year since we believe that the drug coverage was more likely to come from a M+C plan than from a Medigap plan.

Second, our enrollment estimates do not factor in the possibility that some Medicare managed care plans that are exclusive card sponsors may decide to group enroll all of their members into an endorsed discount card program that they are sponsoring. If this occurs, overall enrollment in the Medicare prescription drug discount card program may be somewhat higher than we have estimated. However, given that we are uncertain about the frequency with which this might occur, we have taken a conservative approach and used the same assumptions concerning enrollment rates for beneficiaries in M+C and Medicare Fee-For-Service. Savings estimates from discount card activities are unlikely to be affected by group enrollment since beneficiaries who might be recipients of group enrollment into an endorsed discount card program by a Medicare managed care organization are likely to have already been obtaining discounts on prescription drugs through their plan, so this would not represent new savings for these beneficiaries. However, it is possible that estimated savings from the $600 transitional assistance may be slightly understated due to this issue.

Third, while we are able to exclude most beneficiaries who have drug coverage through Medicaid from our enrollment estimates (since these beneficiaries are ineligible for the drug card), difficulties with identifying those beneficiaries who have drug coverage through Medicaid via 1115 Pharmacy Plus Waivers means that some of these beneficiaries may not have been excluded from our enrollment estimates. Similarly, difficulties with precisely identifying in the data the source of a beneficiary's drug coverage, particularly TRICARE and employer-sponsored individually purchased Medigap coverage, means that some beneficiaries not eligible for transitional assistance (that is, those with TRICARE drug coverage) may not have been fully excluded from transitional assistance enrollment estimates, while some beneficiaries eligible for transitional assistance (that is, those with employer-sponsored individually purchased Medigap drug coverage) may not have been fully incorporated into the transitional assistance enrollment estimates.

Finally, as discussed later in this document, we did not make any differential assumptions concerning program uptake for beneficiaries currently enrolled in manufacturer discount card programs—that is, we assumed beneficiaries currently participating in manufacturer card programs will enroll in the Medicare prescription drug discount card program at the same rate as other beneficiaries. It is difficult to predict how both manufacturer card programs and beneficiaries currently enrolled in those programs will behave in terms of participation in the Medicare prescription drug discount card program. Consequently, it is possible that our enrollment estimates for this group of beneficiaries could be overstated or understated. Furthermore, as noted previously in this document, for beneficiaries currently enrolled in manufacturer card programs there are not likely to be significant additional savings beyond what they currently obtain; thus we may be overstating savings on their behalf to some extent. However, it should be noted that the manufacturer card programs generally cover a limited set of drugs, and the Medicare prescription drug discount card program may offer these beneficiaries discounts on a wider set of drugs.

E. Anticipated Effects on Medicare Beneficiaries

1. Enrollment Assumptions

Although the Medicare prescription drug discount card program will be available to all Medicare beneficiaries except for those with drug coverage through Medicaid, we anticipate that the discount card will have the highest uptake among those eligible for transitional assistance. As discussed in this document, beneficiaries are eligible for transitional assistance if their income does not exceed 135 percent of the official poverty line and they do not have drug coverage through Medicaid, employer sponsored insurance (except for employer purchased coverage under a Part C plan or employer purchased individual Medigap policies), the U.S. Office of Personnel Management, or TRICARE. Based on data on drug coverage and income from the MCBS and the Current Population Survey, we estimates that there will be about 7.2 million beneficiaries eligible for transitional assistance in 2004. Of the 7.2 million, we assume that 65 percent, or 4.7 million, would enroll in an endorsed discount card program in 2004. This uptake assumption was developed considering a variety of factors including: uptake rates in similar means-tested programs, the nature and duration of this program, and the eligibility and enrollment processes involved in this program.

Among those beneficiaries not eligible for transitional assistance, we anticipate that those most likely to benefit from the program will be those without drug coverage. There are projected to be about 6.1 million beneficiaries with incomes greater than 135 percent of the official poverty line and without drug coverage in 2004. We anticipate that the rate at which these beneficiaries enroll in the Medicare prescription drug discount card program will vary by their level of drug spending. In addition, we expect that the maximum $30 annual enrollment fee and the interim nature of this program (with implementation of a Medicare drug benefit scheduled to occur in less than 2 years) will factor into these beneficiaries' enrollment decision.

In Table 5, we show the specific assumptions regarding the percentage of these beneficiaries enrolling in an endorsed discount card program. We assume that beneficiaries without drug coverage who have relatively higher drug spending will be more likely to enroll than those with generally very low or no spending. For example, we assume a 5 percent enrollment rate among beneficiaries with spending not exceeding $200—the point at which the maximum $30 annual enrollment fee could be recouped assuming 15 percent savings. For beneficiaries with the highest levels of drug spending—more than $600—we assume a 50 percent enrollment rate. Based on the assumptions in Table 5 and the distribution of drug spending among these beneficiaries without drug coverage, we estimate that about 35 percent of them will enroll in the Medicare prescription drug discount card program.

Another group of beneficiaries likely to benefit from the Medicare prescription drug discount card program will be those with Medigap drug coverage. The standardized Medigap plans that offer prescription drug coverage (standardized plans H, I, and J) are designed with a cap on the amount of drug spending covered by the plan. The drug benefit in standardized plans has a $250 deductible, 50 percent coinsurance, and a benefit cap of $1,250 (plans H and I) or $3,000 (plan J). Because many Medigap plans do not actively negotiate discounts for enrollees, we believe that Medicare beneficiaries with standardized Medigap drug coverage will benefit from a discount card program, particularly for spending above the benefit cap.

We project that there will be about 2.1 million beneficiaries who have incomes greater than 135 percent of the official poverty line and have drug coverage from a Medigap policy in 2004. Table 6 shows the assumptions regarding the percentage of these beneficiaries enrolling in an endorsed discount card program. Similar to the enrollment assumptions for beneficiaries without drug coverage, we assume that the enrollment rate for these beneficiaries with Medigap drug coverage varies by the level of drug spending. For beneficiaries with the highest levels of drug spending, we assumed a slightly higher uptake rate (60 percent) among those with Medigap drug coverage than among those without drug coverage (50 percent). We believe that beneficiaries with Medigap coverage for prescription drugs will be more risk averse than the average beneficiary and will therefore have a somewhat higher propensity to enroll.

We assume that beneficiaries with Medigap drug coverage would use the drug card for spending exceeding the Medigap benefit cap. Thus, the table shows enrollment rate assumptions by the level of drug spending involved in the Medicare prescription drug discount card program (not by the level of total drug spending). Based on the assumptions in Table 6 and the distribution of drug spending for these beneficiaries, we estimate that about 24 percent of these beneficiaries will enroll in the Medicare prescription drug discount card program. The 24 percent average enrollment rate stems from the fact that most beneficiaries with Medigap drug coverage have low levels of spending above the Medigap benefit cap, and thus we assume a low uptake rate for these individuals for this time limited program with an annual enrollment fee of up to $30.

These estimates of Medicare beneficiary enrollment in the Medicare prescription drug discount card program are one of the elements in our estimates of the impact of the program.

TABLE 5—ESTIMATED ENROLLMENT RATE OF MEDICARE BENEFICIARIES WITH NO DRUG COVERAGE AND WITH INCOME GREATER THAN 135 PERCENT OF THE OFFICIAL POVERTY LINE 2004 TO 2005

Annual drug spending	Percent enrolling
0–200.00	5
200.01–300.00	10
300.01–400.00	20
400.01–500.00	30
500.01–600.00	40
600.01+	50

TABLE 6—ESTIMATED ENROLLMENT RATE OF MEDICARE BENEFICIARIES WITH MEDIGAP DRUG COVERAGE AND WITH INCOME GREATER THAN 135 PERCENT OF THE OFFICIAL POVERTY LINE 2004 TO 2005

Annual drug spending subject to the Medicare drug discount card	Percent enrolling
$0–200.00	5
200.01–300.00	10
300.01–400.00	20
400.01–500.00	30
500.01–600.00	40
600.01–700.00	50
700.01+	60

As discussed previously in this document, we assume the same uptake rate in the Medicare prescription drug discount card program for beneficiaries currently participating in manufacturer discount card programs as for other beneficiaries. During the first half of 2002, several drug manufacturers established drug card programs that offer low-income Medicare beneficiaries without drug coverage significant discounts or low copayments on drugs they manufacture. Eli Lilly, Novartis, and Pfizer have each established co-pay cards. Eight drug manufacturers (Abbott Laboratories, AstraZeneca, Aventis, Bristol-Myers Squibb Company, GlaxoSmithKline, Janssen Pharmaceutical Products, L.P., Novartis, and Ortho-McNeil Pharmaceutical, Inc.) have established Together Rx, a discount card. In addition,

GlaxoSmithKline—one of the participants in Together Rx—also operates a separate discount card program. The income limits of the manufacturer cards vary, ranging from $18,000 to $30,000 for individuals and from $24,000 to $40,000 for couples. In terms of enrollment, Together Rx is the largest of these programs, reporting more than 1 million enrollees (as of September 2003). Enrollment for the other manufacturer card programs is reported to be more than 355,000 in the Pfizer card (as of May 2003), about 100,000 in the Eli Lilly card (as of October 2002), about 100,000 in the GlaxoSmithKline card (as of November 2002), and about 15,000 in the Novartis card (as of April 2002).

Many beneficiaries who might benefit from the Medicare prescription drug discount card program may currently be enrolled in or eligible for manufacturer card programs. We use the same uptake assumptions for these beneficiaries as for the general beneficiary population, since it is difficult to predict how both manufacturer card programs and beneficiaries currently enrolled in those programs will behave in terms of participation in the Medicare prescription drug discount card program. For example, it is unknown whether the manufacturer card programs will seek Medicare endorsement. If these programs do seek and obtain Medicare endorsement, their enrollees will be included in the enrollment count for the Medicare prescription drug discount card program. On the other hand, if manufacturer card programs do not seek Medicare endorsement, some beneficiaries may opt to enroll in both the manufacturer cards and a Medicare endorsed discount card program. For example, we would expect that many low-income beneficiaries currently enrolled in manufacturer card programs would likely also enroll in an endorsed discount card program to take advantage of the $600 transitional assistance. In addition, since the manufacturer cards provide savings only on specific drugs and endorsed programs have a low annual enrollment fee, we believe that some beneficiaries, depending on the mix of prescription drugs they use and their income levels, may find it beneficial to enroll in both types of programs as well.

While we expect there will be a phase-in of beneficiary enrollment in the Medicare prescription drug discount card program, we believe that because of the recognition and acceptance of the Medicare name, the educational efforts undertaken, and the proration policy for the $600 transitional assistance discussed in this document, beneficiaries wishing to enroll will do so over a relatively short period of time. For the purposes of this impact analysis, we assume that the program is implemented beginning second quarter (April) 2004 and that all beneficiaries expected to enroll in 2004 do so at the program outset. For beneficiaries who become eligible for Medicare between April 2004 and December 2005, we assume enrollment at the time they become Medicare eligible.

2. Beneficiary Savings Assumptions

The Medicare prescription drug discount card program will generate two types of savings from the perspective of beneficiaries. First, beneficiaries enrolled in an endorsed discount card program will derive savings from discount card activities undertaken by endorsed sponsors, such as negotiating lower prices on prescription drugs and educating beneficiaries about generic equivalents. Second, for the subset of Medicare prescription drug discount card enrollees who qualify for the transitional assistance, they will also derive savings from the government funded $600 transitional assistance. For ease of reference in the remainder of the regulatory impact analysis, we will refer to these two different types of savings as "savings from discount card activities" and "savings from transitional assistance," respectively.

a. Savings From Discount Card Activities

An April 2000 study prepared by HHS entitled, "A Report to the President: Prescription Drug Coverage, Spending, Utilization and Prices," indicated a significant price differential between individuals paying cash for prescriptions at a retail pharmacy versus individuals with insurance. This was true for both the Medicare and non-Medicare populations. According to the study, in 1999 the price paid by cash customers was nearly 15 percent more than the total price paid under prescription drug insurance, including the enrollee cost sharing. For 25 percent of the most commonly prescribed drugs, this price difference was higher—over 20 percent. Thus, in today's market, individual Medicare beneficiaries without drug coverage and the related market purchasing leverage, not only face having to pay the full cost for medications from their own pockets, but ironically are also charged the highest prices. Furthermore, the HHS study did not include the effect of rebates on total prices paid. It did, however, note industry experts as indicating that insurers and employers typically receive 70 to 90 percent of the rebates negotiated for their enrollees. While currently, rebates in insured products may not necessarily reduce prices paid at the retail point of sale, the rebates do lower the per-prescription cost for plan sponsors, and thus tend to lower premiums or program costs for insured beneficiaries.

A March 2003 study by the Brandeis University Schneider Institute for Health Policy, entitled "PBM-Administered Prescription Drug Discount Cards: Savings for Uninsured Seniors," examined administrative data on eight national drug discount card programs operated by 3 PBMs to analyze the level of discounts available through these types of discount programs. Looking at drugs most commonly used among individuals age 65 and over, the study found that on average the card programs provided discounts (over and above any other discounts uninsured individuals received at retail pharmacies) of 14 percent for brand drugs, 26 percent for generic drugs, and 15 percent overall.

We anticipate that the estimated savings for Medicare beneficiaries from discount card activities, such as negotiated prices and education about generic substitution, under the Medicare drug discount card program will be a first step toward the savings that could be achieved under an insurance product. Based on information on savings from insurance products and information on the current discount card market, we assumed that beneficiaries enrolling in the endorsed programs will save as a result of discount card activities, on average, between 10 and 15 percent of their total drug costs compared to their spending in the absence of this program. While savings of 10 to 15 percent are anticipated on total drug expenditures, the discounts on individual drugs will vary and may be substantially higher for certain products, particularly generics, due to their lower prices. If endorsed discount card programs rely heavily on the use of formularies, we expect that manufacturer rebates or discounts will be greater in response.

The beneficiary savings from discount card activities will be attributable to the combination of lower prices paid at the point of sale as a result of manufacturer and pharmacy discounts, as well as the effects of beneficiary education leading to greater use of generic drugs and more effective management of prescription drug expenses by beneficiaries. Because pharmacy discounts are increasingly available to beneficiaries through existing voluntary card programs, we expect that manufacturer rebates or discounts and savings from a better understanding of generic alternatives and managing prescription drug expenses will be important sources of savings in this program. For purposes of estimating beneficiary savings from discount card activities, we assume average overall savings of 15 percent off of drug spending. These estimates do not take into account the possible increased use of prescription drugs by Medicare beneficiaries resulting from paying reduced out-of-pocket amounts due to savings from discount card activities. They also do not take into account the likelihood that use of prescription drugs will increase somewhat in response to the $600 transitional assistance.

In a December 2001 report from the General Accounting Office (GAO) entitled "Prescription Drugs: Prices Available Through Discount Cards and From Other Sources," the GAO collected specific price data on 12 brand name and 5 generic commonly used prescription drugs from one regional and four large discount card programs, as well as pharmacies' prices for the same prescription drugs in four selected geographic areas. In September 2003, GAO issued another report entitled "Prescription Drug Discount Cards: Savings Depend on Pharmacy and Type of Card Used." For 9 drugs (7 brand and 2 generic) commonly used by Medicare beneficiaries, the report provided the median price for each drug across five PBM-administered discount card programs and comparison data on the median retail pharmacy price for each drug in 3 geographic areas. In these studies, pharmacy prices were inclusive of senior discounts for those pharmacies that offered them. The GAO simply reported prices on each drug; they did not calculate average discount card savings. The average discounts that could be calculated from the GAO reported data are difficult to compare to our estimate of roughly 10 to 15 percent savings off total beneficiary drug spending for several reasons.

First, savings for the program are not estimated on a per-prescription basis. For certain drugs for which manufacturer rebates or discounts are secured, we expect to see, under this program, drug-specific discounts comparable to insured products, which are often 25 to 30 percent, or sometimes more, per prescription.

Second, the price data collected by the GAO do not include all drugs or indicate the relative market share that each drug represents; that is, they are not weighted. Savings estimates calculated by simply averaging selected drug prices do not account for the differences in utilization, and thus, market share.

Finally, the Medicare prescription drug discount card program requires that endorsed discount card sponsors obtain manufacturer rebates or discounts and pass a share of the rebates or discounts through to beneficiaries in the form of lower prices. We believe that this differs from the practices of some of the discount card programs in the GAO studies. Two of the five programs in the 2003 GAO study reported that the pharmacy is not paid for any of the difference between the pharmacies' usual price and the price the cardholder pays.

Because the endorsed discount card programs will be modeled after insured products in terms of enrollment and the use of formularies, combined with the competitive model and the requirement of manufacturer rebates or discounts, we expect that the endorsed programs will achieve new beneficiary savings from manufacturer rebates or discounts. The share of savings will vary depending on the drug, but savings from manufacturers are expected to be substantially greater than those available through existing voluntary cards. According to the HHS study, industry experts report that private insurance plans garner rebates on individual brand name drugs ranging from 2 to 35 percent. To the extent that endorsed discount card sponsors design formularies to mimic those of insured products, the ability to garner manufacturer rebates or discounts will increase.

For purposes of estimating beneficiary savings, it is necessary to make some assumptions concerning the portion of spending that will be affected by discount card activities by endorsed sponsors such as negotiating lower prices and promoting generic substitution. The requirements for endorsement include provision of a discount on one brand name or generic drug in each therapeutic grouping commonly used by Medicare beneficiaries. However, we expect that endorsed programs probably will provide discounts on more than one drug per grouping and be highly likely to provide discounts on commonly used drugs.

We have estimated the percent of total drug spending accounted for by the most commonly used drugs among Medicare beneficiaries based on analysis of the top drugs in terms of both utilization and spending using the 2000 MCBS data (including a special analysis related to disabled beneficiaries). As of 2000, the drugs most commonly used or having the greatest spending by Medicare beneficiaries accounted for approximately 72 percent of total drug spending for beneficiaries without drug coverage.

The drug classification listing in Table 2, for which endorsed sponsors must include at least one drug, is more extensive than the specific top drug list that was used to estimate 72 percent. In addition, we assume that many endorsed sponsors will choose to include more than one drug for the required drug grouping. Consequently, we set our lower bound estimate of the share of drug card enrollees' total drug spending that will be affected by the program at 75 percent.

We also assume that it is possible that endorsed programs will include a discount on all drugs. To calculate this upper bound, we assume that all beneficiary drug expenditures will be affected by the Medicare prescription drug discount card program. We note, however, that we have made no adjustment to take into account that some beneficiaries currently receive discounts and that some of the savings to beneficiaries will come from generic substitution and not just price reductions.

b. Savings From Transitional Assistance

Those drug card enrollees who qualify for transitional savings will realize savings from the annual $600 transitional assistance. The aggregate amount of savings from the transitional assistance depends in part on the level of drug spending among these beneficiaries. Many of these beneficiaries will exhaust the $600 transitional assistance each year; however, those who do not will be allowed to roll over any unspent funds from one year to the next. While those beneficiaries with transitional assistance dollars remaining at the end of 2005 will be able to roll over the funds through the first four and one-half months of 2006 or up to the point that they enroll in Medicare Part D (whichever is earlier), it is likely that a small portion will not exhaust the transitional assistance dollars fully by the end of the program. Our estimates of total transitional assistance savings in each year take into account both this roll-over phenomenon and the likelihood that a small portion of beneficiaries will not exhaust the full transitional assistance by the end of the program. In estimating savings from the transitional assistance, we also factor in the proration policy and the tiered coinsurance.

3. Projection Assumptions

Since our data on Medicare beneficiary prescription drug spending are based on 2000 MCBS data, it is necessary to make several adjustments in order to prepare 2004 estimates. In order to trend 2000 spending to 2004 dollars, we use prescription drug spending projections based on per capita drug expenditure growth from the National Health Expenditure (NHE) Projections 2002 to 2012. These projections can be found on our Web site at: *http://www.cms.hhs.gov/statistics/nhe/projections-2002/t11.asp*.

MCBS data on prescription drug utilization are self-reported by beneficiaries, and consequently are subject to under reporting. We are studying this under reporting in order to develop adjustment factors to be used for estimating purposes. For purposes of the estimates in this rule, the spending data from the MCBS has been increased by 20.5 percent to adjust for under reporting that has been identified through our research thus far. It is also necessary to adjust for future growth in the Medicare beneficiary population. The adjustments are made based on the assumptions about growth in the overall Medicare population from the 2003 Medicare Trustees Reports and assumptions about growth in the dual eligible population (that is, the group of beneficiaries not eligible for the program).

These assumptions are detailed in Table 7, which shows the projected increase in Medicare enrollment and per capita drug expenditures from 2000 to 2004, and annually from 2004 to 2006, using 2000 as the base year for the projections. As discussed in more detail in later sections of the impact analysis, the table also shows projections for total national aggregate retail drug expenditures, drug expenditures involved in the program, beneficiary savings from discount card activities (both upper bound and lower bound estimates), the impact of beneficiary savings from discount card activities as a percent of total national aggregate retail drug sales, and estimated total beneficiary savings resulting from the transitional assistance.

To estimate the impact of the program on national retail prescription drug sales, we use the Office of the Actuary's National Health Expenditures projections of retail prescription drug sales, which are part of the National Health Accounts. To prepare the estimates, OACT obtains data on prescription drug sales from a variety of sources, including the National Prescription Audit conducted by IMS Health. OACT has data on retail prescription drug spending through 2001, and prepares 10-year projections. OACT adjusts the data from the National Prescription Audit to take into account a number of factors. The major factors involved in these adjustments include: benchmarking to the Economic Census, subtracting prescription drug sales to nursing homes (which are accounted for in nursing home spending), and adjusting the data to subtract an estimate of manufacturer rebates provided to health insurers related to insurance coverage for prescription drugs. Thus, in some respects, the National Health Accounts estimate of prescription drug spending reflects a sales level that is somewhat lower than the revenue actually received by pharmacies, drug stores, and other retail business outlets selling prescription drugs.

Consequently, when National Health Accounts figures are used as the denominator in calculating the percentage impact on revenues (as we do later in this impact analysis), the result is somewhat larger than is actually the case. Nevertheless, we believe that these projections for prescription drug spending are the most appropriate to use for analysis of the impact of this program on prescription drug revenues. These estimates are specific to the prescription drug market, and the National Health Accounts are recognized as a public source of data on health care spending.

TABLE 7.—ESTIMATED IMPACT

	2000 (Baseline)	2004 (Apr–Dec)	2005 (Jan–May)	2006 (Jan–Dec)
Increase in Medicare Enrollment		4.6%*	1.4%	1.3%
Increase in Per Capita Drug Expenditures		62.7%*	10.8%	10.2%
Total National Aggregate Retail Drug Expenditures ($ billions)	$121.5	$153.5	$228.6	$95.3
Discount Card Enrollees Who Qualify for Transitional Assistance				
Projected Number of Enrollees (millions)		4.7	4.7	4.7
Projected Prescription Drug Spending Under the Drug Discount Card Programs (billions)	6.2	8.0	11.9	2.5
Lower & Upper Bound Beneficiary Savings from Discount Card Activities (billions)		0.9–1.2	1.3–1.8	0.3–0.4
Estimated Beneficiary Savings From Transitional Assistance (billions)		2.4	2.6	0.1
Discount Card Enrollees Who Do Not Qualify for Transitional Assistance				
Projected Number of Enrollees (millions)		2.6	2.7	2.7
Projected Prescription Drug Spending Under the Drug Discount Card Programs (billions)	3.2	4.1	6.1	1.3
Lower & Upper Bound Beneficiary Savings from Discount Card Activities (billions)**		0.5–0.6	0.7–0.9	0.1–0.2
Total—All Discount Card Enrollees				
Projected Number of Enrollees (millions)		7.3	7.4	7.4
Projected Prescription Drug Spending Under the Drug Discount Card Programs (billions)	9.4	12.0	18.0	3.7
Lower & Upper Bound Estimated Beneficiary Savings from Discount Card Activities (not including savings from $600 transitional assistance) (billions)**		1.4–1.8	2.0–2.7	0.4–0.6

TABLE 7.—ESTIMATED IMPACT—Continued

	2000 (Baseline)	2004 (Apr–Dec)	2005 (Jan–May)	2006 (Jan–Dec)
Lower & Upper Bound Impact of Beneficiary Savings from Discount Card Activities as a Percent of National Aggregate Retail Drug Expenditures		0.88%–1.18%	0.89%–1.18%	0.44%–0.59%

* For 2004, the increase in Medicare enrollment and per capita drug expenditures shown in the table reflect the percent change between 2000 and 2004.

** These savings estimates do not take into account the costs associated with beneficiary enrollment fees. Beneficiary savings may be up to $0.08 billion lower in 2004 and 2005 due to the maximum annual enrollment fees of $30 that card sponsors may charge enrollees in those years who do not qualify for transitional assistance.

Note: Numbers may not sum due to rounding.

4. Impact Estimates

We estimate that 7.3 million Medicare beneficiaries will be enrolled in endorsed discount card programs in the last nine months of 2004 and 7.4 million in 2005. In addition, depending on when beneficiaries choose to enroll in Medicare Part D, it is possible that up to 7.4 million beneficiaries may be enrolled in endorsed discount card programs during at least some portion of the first four and one-half months of 2006. For 2006, we assume that enrollees remain in the Medicare prescription drug discount card program on average for two and one-quarter months in 2006. Of the 7.3 million beneficiaries estimated to enroll in the Medicare prescription drug discount card program, an estimated 4.7 million would qualify for transitional assistance (as well as discount card savings) while an estimated 2.6 million would receive standard discount card services only.

As discussed previously, we assume that Medicare beneficiaries enrolled in an endorsed discount card program will save between 10 and 15 percent of their total drug costs as a result of savings from discount card activities (with 15 percent savings being assumed in the impact estimates). However, this will vary by the mix of drugs beneficiaries use, and as noted previously, may be even higher depending on the ultimate program design used by endorsed sponsors. It is also possible, as discussed previously in this document, that savings from discount card activities could be lower for some beneficiaries. For example, beneficiaries who currently may receive a sizeable discounts under manufacturer discount card programs may not experience additional discounts for those same drugs under the Medicare prescription drug discount card program.

As shown in Table 7, for the estimated 7.3 million beneficiaries who will be enrolled in an endorsed discount card program in the last nine months of 2004 and the 7.4 million who are estimated to be enrolled in 2005 and the first part of 2006, the base for total drug expenditures involved in the Medicare prescription drug discount card program is projected to be $12.0 billion in the last nine months of 2004, $18.0 billion in 2005, and $3.7 billion in the transition period in 2006 before the savings achieved through the program. Total estimated savings for these beneficiaries from discount card activities range from $1.4 billion to $1.8 billion in the last nine months of 2004, $2.0 billion to $2.7 billion in 2005, and $0.4 billion to $0.6 billion in the transition period in 2006. Furthermore, the subset of enrolled beneficiaries (an estimated 4.7 million) who qualify for transitional assistance are estimated to save an additional $2.4 billion in 2004 (last nine months), $2.6 billion in 2005, and $0.1 billion in 2006 (first four and one-half months) from the annual $600 transitional assistance. Savings from transitional assistance in 2006 are very small because they only reflect carryover spending for beneficiaries with low drug spending who do not exhaust the full transitional assistance during 2005.

Beneficiaries may be required to pay an annual enrollment fee of up to $30 to join an endorsed discount card program. The Federal government pays the enrollment fee for beneficiaries who qualify for transitional assistance. If all of the non-transitional assistance eligible Medicare beneficiaries who are projected to enroll in the Medicare prescription drug discount card program (2.6 million beneficiaries in 2004 and 2.7 million in 2005) pay the maximum $30 annual enrollment fee, the total beneficiary savings overall and specifically for this group of beneficiaries will be reduced by roughly $78 million in 2004 and $81 million in 2005.

Regardless of whether or not endorsed sponsors charge the full $30 enrollment fee, this is a voluntary program. Beneficiaries have a choice of which program to enroll in, or not to join a program at all. Therefore, beneficiaries will only join a program if their expected gain is greater than the enrollment fee. In addition, those who choose to enroll in an endorsed program will still be free to buy a drug at any price outside of the program, so they can only be helped by the estimated savings and educational efforts from the program.

F. Anticipated Effects on the Medicare Program

Beneficiary savings from transitional assistance are funded through the Federal budget, while beneficiary savings from discount activities do not affect the Federal budget. We estimate that Medicare program spending will increase by $2.5 billion in calendar year (CY) 2004, $2.7 billion in CY 2005, and $0.1 billion in CY 2006, due to the transitional assistance. The vast majority of this spending is for the $600 transitional assistance ($2.4 billion in 2004, $2.6 billion in 2005, and 0.1 billion in 2006), with the remaining spending, $0.14 billion in 2004 and 2005, for payment of the enrollment fee for transitional assistance eligible beneficiaries. In addition, we estimate that CMS' administrative expenses to implement this program will be $134 million.

We also expect that the Medicare prescription drug discount card program will have several positive effects on the Medicare program. While not quantifiable, a positive impact of the rebate and discount-reporting requirements of the program will be to provide us with experience in understanding issues in the pharmaceutical industry before implementation of a Medicare drug benefit. We will increase our knowledge concerning pricing and payment issues, information technology requirements, and increasing the effectiveness of pharmacy quality improvement programs. The pharmaceutical industry will also gain more experience in working with the Medicare population before implementation of a drug benefit. We expect that this experience will make the transition to a Medicare

prescription drug benefit faster and more efficient.

G. Anticipated Effects on National Retail Prescription Drug Spending

Total national retail spending (spending for the total population, not just Medicare beneficiaries) on prescription drugs is projected to be $153.5 billion in 2004 (last nine months), $228.6 billion in 2005, and $95.3 billion in 2006 (first four-and-one-half months). *(http://www.cms.hhs.gov/statistics/nhe/projections-2002/t11.asp).*

In the last nine months of 2004, the total economic impact of savings from discount card activities under the Medicare prescription drug discount card program is estimated to range from $1.4 billion to $1.8 billion, representing 0.88 percent to 1.18 percent of total national aggregate retail prescription drug expenditures during that period. In 2005, the total impact is estimated to range from $2.0 billion to $2.7 billion, or 0.89 percent to 1.18 percent of total national aggregate retail expenditures for prescription drugs. In the first four-and-one-half months of 2006, we estimate the total impact to range from $0.4 to $0.6 billion, or 0.44 percent to 0.59 percent of total national aggregate retail drug expenditures during that period. Thus, the economic impact is estimated to be at most 1.18 percent of total retail prescription drug spending.

One of the factors underlying these estimates of economic impact is our assumptions concerning enrollment in this program. While we believe that our uptake assumptions are reasonable estimates of the likely level of enrollment in this program, we have conducted an additional analysis to provide a sense of how these impact estimates would change if actual program uptake differed somewhat from the assumed levels. In the first 9 months of 2004, if program uptake was anywhere between 15 percent below to 15 percent above the assumed levels, estimated savings from discount card activities would range from $1.2 billion to $2.1 billion (assuming capita spending among enrollees remained unchanged), with these savings representing between 0.75 percent to 1.35 percent of national retail prescription drug sales in 2004.

We expect that the various sectors involved in the prescription drug industry will adjust to the impact of this program without significant disruption, just as the industry adjusted to discounts being extended to the privately insured population during the 1990s. The 1990s saw a significant increase in reliance on pharmacy benefit management and the tools commonly used to manage pharmaceutical benefit costs.

For example, evidence of market adjustment can be seen in the changes in pharmacies' acquisition costs during the 1990s. In the August 2001 HHS Office of Inspector General (OIG) Report entitled "Medicaid Pharmacy—Actual Acquisition Cost of Brand Name Prescription Drug Products," the OIG reports on changes in pharmacy acquisition costs for both single source and multi-source brand name drugs. The OIG uses the common industry pricing metric of average wholesale price (AWP). The findings from the OIG study indicate that the acquisition prices pharmacies face for a broad spectrum of brand name drugs have been declining as a percentage of AWP during the period 1994 to 1999. Based on 1994 pricing data, the OIG estimates that pharmacies acquired brand name drugs (both single source and multi-source) at a discount of 18.30 percent below AWP. For 1999 pricing data, the OIG estimates a discount of 21.84 below AWP. The OIG reports that this represents an increase of 19.3 percent in the average discount below AWP for which pharmacies were able to purchase a mixture of single source and multi-source brand name drugs. The OIG conducted a similar analysis on the pharmacy acquisition costs related to generic drugs. The OIG March 2002 report "Medicaid Pharmacy—Actual Acquisition Cost of Generic Prescription Drug Products" reported that for generic drugs there was an increase of over 55 percent in the average discount below AWP from 1994 to 1999 at which pharmacies were able to acquire generic drugs (from 42.45 percent below AWP in 1994 to 65.93 percent below AWP in 1999). Thus, during the 1990s, as more customers secured discounts on the purchase of prescription drugs, pharmacies acquired drugs at larger discounts from AWP.

The acquisition costs reported by the OIG are similar to those reported in the PricewaterhouseCoopers (PWC) study conducted for us entitled "A Study of Pharmaceutical Benefit Management," June 2001. That study reported that pharmacies generally now acquire brand name drugs at AWP minus 20 to 25 percent. According to the PWC report, absent a discount arrangement (such as a pharmacy-sponsored senior discount), pharmacies, on average, sell to the uninsured population at full retail price, roughly AWP plus a dispensing fee (generally $2 to $3).

We also believe that the Medicare prescription drug discount card program will accelerate the use of generic drugs. The HHS study reports that, generally, pharmacies earn higher margins on generic drugs. In addition, PWC found that generic manufacturers sometimes provide pricing incentives to pharmacies based on generic volume or market share. These are other examples of adjustments that take place related to the market place in pharmaceuticals.

It is also possible that the requirements of price publication and the establishment of a large number of competing discount cards will lead to greater manufacturer discounts. We expect that access to modern competitive tools will assist in controlling prescription drug costs and improving the quality and efficiency of prescription drug services. We also expect that this program will somewhat level the playing field between the insured and uninsured, and the current differential in pricing between populations with drug coverage and Medicare beneficiaries without drug coverage will be ameliorated.

Further, we do not expect that this program will have any impact on the number of Medicare beneficiaries with drug coverage through employer-sponsored health insurance. Since this program is short-term and it provides $600 transitional assistance only to a subset of beneficiaries (those with incomes that do not exceed 135 percent of the official poverty line), we do not anticipate that employers will alter their drug coverage in response to this program.

H. Analysis of Effects on Small Entities

The Regulatory Flexibility Act (RFA) requires agencies to determine whether a rule will have a significant economic impact on a substantial number of small entities. If a rule is expected to have a significant economic impact on a substantial number of small entities, the RFA requires that a regulatory flexibility analysis be performed. However, the RFA stipulates that these requirements are applicable to a notice of proposed rulemaking or a rule for which an agency has published a notice of proposed rulemaking. Since Congress specifically authorized us to dispense with a notice of proposed rulemaking, we believe that a regulatory flexibility analysis is not required for this rule. Nevertheless, a regulatory flexibility analysis follows.

The Medicare prescription drug discount card program may involve some impact on a substantial number of small businesses. The current market for delivery of pharmaceutical products, by its nature involves small businesses, similar to other professional health care services such as physician services. The current health insurance market

demonstrates that insurance companies, pharmaceutical benefit managers, and others such as health maintenance organizations (HMOs) have been able to enter into arrangements similar to those in this program involving the participation of large and small pharmacy and drug store firms. These arrangements have resulted in lower prescription drug prices being made available to consumers who have insurance coverage for prescription drugs. There is evidence that both large and small pharmacies and drug stores participate in these arrangements with pharmaceutical benefit managers, and that pharmaceutical benefit managers are able to offer (employer) clients pharmacy networks containing the majority of retail pharmacy outlets. In addition, many pharmacies, including small pharmacies, offer senior discounts, and doing so in the context of this Medicare program may not be significantly different than current practice for some pharmacies.

The role of individual pharmacies, including small pharmacies, in this program is a critical one: they will be an integral part of the pharmacy networks of endorsed discount card programs, serving Medicare beneficiaries at the point of retail sale. The objectives of the program and the related design requirements will preclude an individual pharmacy or drug store from operating the full scale of contemplated activities that will be necessary to obtain an endorsement. Individual pharmacies could participate in the program by voluntarily entering into a drug card program's network with other pharmacies. Individual pharmacies are not in a market position to meet the requirements for endorsement, including the ability to serve a large number of enrollees and to garner manufacturer rebates. Retail pharmacy chains could possibly be organized to meet the requirements of Medicare endorsement explained elsewhere in this rule because of their size, type of experience and infrastructure.

Convenient access to retail pharmacies, regardless of size or ownership, by Medicare beneficiaries will be an important feature of the program. As discussed elsewhere in this rule, a discount card sponsor will have to have a contracted pharmacy network of sufficient size to demonstrate that at least 90 percent of Medicare beneficiaries in urban areas served by the program live within 2 miles of a contracted pharmacy (90/2), at least 90 percent of Medicare beneficiaries in suburban areas served by the program live within 5 miles of a contracted pharmacy (90/5), and at least 70 percent of Medicare beneficiaries in rural areas served by the program live within 15 miles of a contracted pharmacy (70/15). These access ratio requirements, which are based on the Department of Defense TRICARE Retail Pharmacy (TRRx) program, are similar to the access standards in many commercial insured products and we believe they will require endorsed sponsors to support an extremely broad network of retail pharmacies.

Given the access ratio requirements and the provision that endorsed programs will not be allowed to offer a mail order only option, we believe that most pharmacies and drug stores (both chain and independent) will be invited and encouraged to participate in endorsed programs' networks, particularly small pharmacies in rural areas. This is generally the case in the current insured market and the TRRx program, and we do not anticipate significantly narrower networks in the endorsed programs. There are over 55,000 retail pharmacies in the United States. According to a report prepared for us by PricewaterhouseCoopers (PWC) ("Study of the Pharmaceutical Benefit Management Industry," June 2001), pharmacy benefit managers (PBMs) offer, as a general practice, standard national pharmacy networks, with 42,000 pharmacies in the typical network. Similarly, the Department of Defense reports that the TRRx program has more than 40,000 pharmacies in its network (as of June 2003). Furthermore, the PWC study reports that one leading PBM has 50,000 pharmacies in its more restricted network. Also, according to PWC, two large national PBMs have 98 percent of all pharmacies in the United States in their standard networks.

The inclusive access standard required for Medicare endorsement, coupled with the industry norm for broad pharmacy networks, lead us to believe that a very large number of small pharmacies and drug stores will be included in the networks of endorsed discount card programs. Further, we believe that small entities in rural areas especially will be included in order to meet the rural 70/15 standard for endorsement.

1. Estimated Impact on Small Entities

HHS uses as its measure of significant economic impact on a substantial number of small entities a change in revenues of more than 3 to 5 percent. To assess whether the Medicare prescription drug discount card program meets these HHS criteria, we estimated the number of small entities affected and the average percentage impact on revenues. We also conducted a sensitivity analysis to estimate the impact on revenues for pharmacies with a higher than average rate of customer participation in the Medicare prescription drug discount card program. These analyses found that while the program is expected to have some impact on a substantial number of small entities, it is not expected to have a significant economic impact. Based on these analyses, we certify that the Medicare prescription drug discount card program does not have a significant economic impact on a substantial number of small entities.

As a result, even if the RFA applied to this rule (which as discussed previously, we believe it does not) we would still not be required to perform a regulatory flexibility analysis. Nevertheless, due to the possibility that concerns may be voiced by some about the potential effects of the rule on small businesses, we have included in this section or in other sections of this document the various issues that are to be included in a regulatory flexibility analysis. To avoid repetition, we have not duplicated each of them here. In preceding sections of this document, we have included a description of the program and its objectives. In this and subsequent sections of this document, we include an estimate of the number of small entities affected; an estimate of the economic impact on small pharmacies including a sensitivity analysis assessing the potential for differential distributional effects on small pharmacies; a discussion of reporting, recordkeeping, and other compliance requirements; and a description of the alternatives considered to minimize the economic impact on small pharmacies.

2. Number of Small Entities Affected

For purposes of the RFA, small entities include small businesses, nonprofit organizations, and small governmental jurisdictions. Individuals and States are not included in the definition of a small entity. The Small Business Administration (SBA), on its Web site (*http://www.sba.gov/size/naicstb2-ret.html*), provides a size standard for pharmacies and drug stores (NAICS code 446110 or SIC code 5912) of revenues of $6 million or less annually for the purpose of determining whether entities are small businesses. The revenue standard for small pharmacies and drug stores was recently increased from $5 million to $6 million in February 2002 to account for inflation.

To assess the number of small entities affected by this program, and the amount of revenue involved for these

entities, we analyzed data from several sources. We examined data from the U.S. Census Bureau's 1997 Economic Census (Table 4 on Retail Trade—Subject Series), which provides data on the number of pharmacies and drug stores by level of revenue. To identify small pharmacies and drug stores, we looked at firms with less than $5 million in revenues. Although SBA's revenue standard for small pharmacies and drug stores was increased to $6 million in 2002 to account for inflation, we use $5 million as the standard in our analysis because we are working with 1997 data so an inflation adjustment is not needed. According to the Census Bureau data, there were a total of 20,815 business firms that were pharmacies and drug stores that operated for the entire year in 1997. Those 20,815 firms operated 41,228 establishments (some entities selling prescription drug products are not included in this count, including supermarkets and mass merchants). Of the total firms, 20,126 (or 96.7 percent) were firms that had sales of less than $5 million, and these same firms operated 21,226 establishments or 51.5 percent of the pharmacies and drug store class of trade in the Census Bureau data.

In addition to traditional pharmacies and drug stores, prescription drugs are sold through supermarkets and mass merchants. The National Association of Chain Drug Stores (NACDS) offers data that include these outlets, so we examined this data source as well. The NACDS analyzes industry data from a variety of sources, including IMS Health, the National Council of Prescription Drug Programs, and American Business Information, and reports industry statistics on their Web site (*http://www.nacds.org*). For 1997, NACDS reports a total of 51,170 community retail pharmacy outlets, of which 20,844 were independent and 19,119 were chain drug stores (for a total of 39,963)—a number very similar to the Census Bureau's 1997 count of 41,228 pharmacy and drug store establishments. We assume that there is a great deal of overlap between the 21,226 establishments that the Census Bureau identifies as those with sales of less than $5 million and the NACDS report of 20,844 independent pharmacies in 1997. For 2002, NACDS reports 55,200 community retail pharmacy outlets, of which 19,749 are identified as independent drug stores.

In addition to the number of outlets, we examined revenues. The Census Bureau data indicate that, in 1997, total pharmacy and drug store sales for firms operating the entire year were $97.47 billion, of which firms with $5 million or less in sales accounted for 25.5 percent ($24.82 billion). However, these sales include more than just prescription drugs, as most pharmacies and drug stores sell other products. Since firms may differ in the proportion of revenues obtained from prescription drugs, we think that the analysis should focus, to the extent possible, on revenues from prescription drugs, rather than the broader set of sales occurring through pharmacies and drug stores, so we also examined IMS' National Prescription Audit data obtained by our Office of the Actuary (OACT). It is important to note that focusing only on prescription drug sales, rather than all sales through this class of trade, yields an estimated impact that is larger than the actual impact on total sales.

From the data obtained by OACT, it is possible to estimate the portion of sales occurring through independent and chain pharmacies. The data do not permit analysis by firm size. However, these data are specific to prescription drug sales for a more recent time period. Furthermore, we believe that there is a great deal of overlap between the firms identified as independent pharmacies and the small pharmacy and drug store firms identified in the Census data. Consequently, we think that the data from the Prescription Drug Audit are an appropriate source for analysis.

For 1997, those data indicate that 29.2 percent of sales were through independent drug stores—a figure slightly higher than the share (25.5 percent) indicated by the Census data. For 2002, the data indicate that 23.5 percent of sales were through independent pharmacies. For purposes of calculating the share of revenues from prescription drug sales through small firms, we think it is reasonable to use the more recent estimate of prescription drug sales through independent pharmacies obtained from analysis of the Prescription Drug Audit for 2002.

The Census Bureau data contain information on supermarkets (NAICS code 445110) and mass merchants (discount or mass merchandising department stores—NAICS code 4521102, and warehouse clubs and superstores—NAICS code 45291). We assume that for both supermarkets and the mass merchants, prescription drug sales comprise a small share of sales, and consequently have not included them in this small business analysis. This assumption is supported by data from the Census Bureau, Prescription Drug Audit, and NACDS Web site. The 1997 Census data indicate that total supermarket product sales were $351.4 billion. Analysis of 1997 data from the Prescription Drug Audit indicates that $8.8 billion in prescription drug sales occurred through food stores, or 2.5 percent of total product sales. Similarly, the 1997 Census data indicate that total product sales for the two categories of mass merchants, as defined by NAICS, were $208 billion. Since data from the Prescription Drug Audit include mass merchants with other chain stores, we used prescription drug sales data from the NACDS Web site. The NACDS Web site indicates that prescription drug sales through the mass merchant category were $9.6 billion in 1997, or 4.6 percent of total product sales. Furthermore, the fact that businesses are identified as supermarkets and mass merchandisers seems to indicate that prescription drugs are not their major line of trade.

3. Average Estimated Economic Impact on Small Pharmacies

As indicated previously, HHS uses as its measure of significant economic impact on a substantial number of small entities a change in revenues of more than 3 to 5 percent. To develop an estimate of the impact of the program on prescription drug retail sales associated with small pharmacies and drug stores, we take our national estimates in Table 7 and make assumptions about the percent of total retail prescription drug sales through small pharmacies. In addition, we make assumptions about the distribution across large and small pharmacies and drug stores of prescription drug sales to endorsed discount card program enrollees.

Assuming that 23.5 percent of total retail pharmacy sales are through small pharmacies (based on analysis of data from IMS' Prescription Drug Audit on the share of total retail sales through independent pharmacies in 2002), the share of total national prescription drug sales through small pharmacies and drug stores will be $36.1 billion in the last nine months of 2004, $53.7 billion in 2005, and $22.4 billion in the first four and one-half months of 2006. If we assume that the population most likely to enroll in the Medicare prescription drug discount card program splits its purchases between large and small pharmacies in the same proportion as the total population, then the estimated sales involved in the Medicare prescription drug discount card program through small pharmacies and drug stores will be $2.8 billion in the last nine months of 2004, $4.2 billion in 2005, and $0.9 billion in the first four and one-half months of 2006, accounting for less than 8 percent of prescription drug sales through small pharmacies. Consequently, the portion of the estimated beneficiary savings from discount card activities occurring through sales in small pharmacies and drug stores ranges from: $0.32 to $0.42 billion in 2004 (last nine months), $0.48 to $0.64 billion in 2005, and from $0.10 billion to $0.13 billion in 2006 (first four and one-half months). These amounts, as a share of the national retail prescription drug sales occurring through small pharmacies and drug stores, represent a range of 0.88 percent to 1.18 percent in 2004, from 0.89 to 1.18 percent in 2005, and from 0.44 to 0.59 percent in 2006.

This is likely to be an overestimate of the economic impact on small pharmacies and drug stores, as this economic impact will not be borne entirely by pharmacies. Endorsed sponsors will be required to obtain manufacturer rebates or discounts that will defray the cost to pharmacies of providing discounts on retail drug prices. In addition, to the extent that the endorsed programs achieve larger savings from drug manufacturers than are reflected in our estimate, the additional beneficiary savings could come from drug manufacturers and not local pharmacies. In addition, because of the educational aspects of the program, some of the savings to beneficiaries will come as a result of increased use of generic drugs.

Other caveats to consider are the following: Our spending estimates assume no effects of the Medicare prescription drug discount card program on beneficiary drug use. It is likely that the transitional assistance will lead to somewhat greater use of prescription drugs, resulting in a smaller impact on pharmacy revenues. In addition, it is possible that lower drug prices may lead to greater use of prescription drugs, possibly further reducing the impact on pharmacy revenues. On the other hand, it is possible that pharmacy services associated with the card will lead to some drug substitution, simplification of drug regimens, or avoidance of complications that require further drug therapy, leading to a somewhat greater impact on pharmacy revenues.

4. Sensitivity Analysis

In order to assess the potential for differing distributional impacts among pharmacies, we conducted a sensitivity analysis. We estimate that the total prescription drug spending involved in the Medicare prescription drug discount card program will comprise, on average, less than 8 percent of revenues, with the economic impact of the discount card activities on total revenues related to prescription drugs estimated to be at most 1.18 percent. For purposes of a sensitivity analysis, we estimate that in order to reach the HHS measure of significant economic impact of 3 to 5 percent of revenues, it will be necessary to have prescription drug revenues resulting from the program account for at least 20 percent of a business's revenues. In the sensitivity analysis, we developed a hypothetical geographic locality skewed to contain a large Medicare beneficiary population with a large share of the beneficiary population having characteristics making them likely to enroll in this program. Under this highly skewed assumption, we estimated a maximum share of 15.7 percent of a business's total prescription drug revenues would be associated with the Medicare prescription drug discount card program, with the program having an economic impact of 2.36 percent of prescription drug sales.

As noted previously, this economic impact will not be borne entirely by pharmacies, because endorsed sponsors will be required to obtain manufacturer rebates or discounts that will defray the cost of pharmacies providing discounts on retail drug prices. In addition, part of the savings to beneficiaries also comes from increased use of generic drugs. Nevertheless, the sensitivity analysis still yielded an impact level below the 3 to 5 percent of revenues used by HHS to measure significant economic impact. The following discussion describes the assumptions and supporting data used in the sensitivity analysis.

In order to prepare the sensitivity analysis, we identified key variables that could change the market share of revenues accounted for by enrollees in this program and the consequent impact resulting from the Medicare prescription drug discount card program. One key variable is the Medicare population as a portion of a pharmacy's geographic locality customer base. We assume that a pharmacy's customer base is derived in large part from the population in close geographic proximity to its business location. Therefore, we examined the variation in the geographic distribution of the Medicare population. On average nationally, Medicare beneficiaries were 13.8 percent of the total population as of July 2000. Using several States with the highest Medicare population rates, we examined, at the county level, the percent of the population over age 65 based on Census Bureau data. For counties with high elderly population compositions, we obtained the actual counts of Medicare enrollment (aged and disabled) and calculated Medicare enrollment as a percentage of the counties' populations. Based on this analysis at the county level, we estimate in a high-end scenario that Medicare beneficiaries could potentially comprise up to approximately 36 percent of a geographic area's population.

A second key variable that we assume could alter the revenues being impacted is the percent of the Medicare population in an area that may enroll in Medicare prescription drug discount card programs. As discussed previously, we think that the beneficiaries most likely to enroll in the program will be those beneficiaries with income less than or equal to 135 percent of the official poverty line who are eligible for the $600 transitional assistance, beneficiaries not eligible for transitional assistance who do not have insurance coverage for prescription drugs (including those with supplemental insurance coverage that does not include prescription drugs), and beneficiaries not eligible for transitional assistance who have Medigap drug coverage. To develop upper bound estimates for the percent of Medicare beneficiaries in an area who might fall into one of these three groups of potential enrollees, we use the prevalence rates of beneficiaries with these characteristics in non-metropolitan areas. Based on analysis of MCBS data for non-metropolitan areas, we assume that 21 percent of beneficiaries in the hypothetical geographic area were eligible for the $600 transitional assistance (compared with 18 percent nationally). We also assume that among beneficiaries in the hypothetical area, 20 percent had no drug coverage and were ineligible for the transitional assistance (compared with 15 percent nationally), while another 8 percent had Medigap drug coverage and were ineligible for the transitional assistance (compared with 5 percent nationally).

Nationally, we estimate that more than 7 million Medicare beneficiaries will enroll in Medicare prescription drug discount card programs in 2004, accounting for an estimated 2.5 percent of the total U.S. population. Adjusting the data, using the population and drug coverage weighting factors for the sensitivity analysis and using the overall uptake assumptions (65 percent uptake among transitional assistance eligible beneficiaries, 35 percent uptake among beneficiaries not eligible for transitional assistance who do not have drug coverage, and 24 percent uptake among beneficiaries not eligible for transitional assistance who have Medigap drug coverage), results in the hypothetical area having approximately 8.15 percent of its total population participating in the Medicare prescription drug discount card program. Therefore, about 91.85 percent

of the total hypothetical area's population will not participate in the program, including both Medicare beneficiaries and non-Medicare beneficiaries.

To estimate the impact of the program on prescription drug revenues in the hypothetical locality, we estimated the per capita drug spending for program participants and non-participants in the hypothetical area. We estimated per capita drug spending to be $2187 for participants and $1039 for non-participants in the hypothetical locality in 2004. These figures differ from per capita estimates for participants and non-participants at the national level due to the skewed demographic composition of the hypothetical area (which would have a large Medicare population and have beneficiaries with Medigap drug coverage comprising a slightly greater share of drug discount card program participants than at the national level). The per capita spending estimates for both participants and non-participants include individuals without drug expenditures.

For participants in the Medicare prescription drug discount card program, the per capita value consists of the estimated total spending for enrolled transitional assistance eligible beneficiaries, plus estimated total spending for enrolled beneficiaries not eligible for transitional assistance who do not have drug coverage, plus the share of spending for the Medigap enrollees that is purchased through the program, divided by the total number of participants.

For purposes of calculating the per capita spending for non-participants in the Medicare prescription drug discount card program, we used prescription drug spending data from the National Health Accounts and estimates from the MCBS to develop per capita drug spending estimates for the non-Medicare population and for the Medicare population not participating in the program. These two per capita values for non-participants were then weighted relative to the population distribution they represented in the hypothetical area's non-participant population to create a per capita drug spending estimate for non-card participants.

We then adjusted per capita drug spending for non-participants to include participants' drug spending that was not purchased through the Medicare prescription drug discount card program (that is, the portion of drug spending covered by Medigap plans) to yield an estimate of total drug spending outside of the program. Consequently, this inclusion of the Medigap covered drug spending means that the per capita drug spending figure for non-participants is this adjusted per capita (including the Medigap related spending) for the hypothetical area rather than the actual per capita for the non-participant population in the hypothetical area. For purposes of the sensitivity analysis calculation of the impact of the program, we used the upper bound figure of all drug spending being effected by the program as a high-end assumption.

The results of the sensitivity analysis are shown in Table 8. For the hypothetical area that is skewed to have a large Medicare beneficiary population with a large share of that beneficiary population having characteristics making them likely to enroll in this program, the negative impact on prescription drug revenues reached 2.36 percent, still below the HHS measure for significant economic impact of 3 to 5 percent of revenues. Furthermore, as noted above, not all of the 2.36 percent will be borne by the pharmacy, since discount card sponsors will be required to obtain manufacturer rebates or discounts and pass those through to beneficiaries and pharmacies in order to receive Medicare endorsement. In addition, part of the savings also comes as a result of beneficiary use of lower cost generic drugs. Similar to the additional analyses performed earlier in this document looking at how varying the uptake assumptions by 15 percent would affect the impact on national retail prescription drug spending, we performed additional analyses here further skewing enrollment in this hypothetical area to assume 15 percent higher uptake rates among beneficiaries. Even under those assumptions, the economic impact on prescription drug revenues in the hypothetical area would still be below the HHS standard for significant impact of 3 to 5 percent of revenues.

We recognize that reliance of the sensitivity analysis on nationally calculated per capita averages weighted for different demographic compositions has limitations, and pharmacies may have customer populations with per capita drug spending levels that differ from the population specific averages calculated at a national level. However, lacking such pharmacy level data, this sensitivity analysis represents our best estimate of the maximum potential effect of the program on small pharmacies and drug stores in a hypothetical area with substantially higher than average program enrollment.

TABLE 8.—NATIONAL AVERAGE VERSUS SENSITIVITY ANALYSIS—HYPOTHETICAL EXAMPLE

2004	Discount card participants (percent)	Discount card Non-participants (percent)	Total population (percent)
National Average for Comparison Purposes:			
Percent of Total Population	2.49	97.51	100.00
Percent of Total Prescription Drug Sales	7.84	92.16	100.00
Estimated Beneficiary Savings From Discount Card Activities as a Percent of Drug Sales	15.00	0.00	1.18
Hypothetical Example:			
Percent of Total Population	8.15	91.85	100.00
Percent of Total Prescription Drug Sales	15.73	84.27	100.00
Estimated Beneficiary Savings From Discount Card Activities as a Percent of Drug Sales	15.00	0.00	2.36

5. Reporting, Recordkeeping, and Other Compliance Requirements for Small Pharmacies

Requirements related to reporting, recordkeeping, and other compliance activities for small pharmacies under this program are minimal. There are only two requirements of this type for pharmacies that participate in an endorsed discount card sponsor's network. Pharmacies are required to notify the beneficiary at the point of sale of the differential between the price of the drug to the beneficiary and the lowest priced generic covered drug under the program that is therapeutically equivalent and bioequivalent and available at the pharmacy. While it is possible that this requirement could represent some burden, we anticipate that the burden would be at most marginal. The pharmacy community routinely indicates that it is common practice for pharmacies to promote the use of generic drugs. Thus, this requirement is unlikely to represent a change in current practice for most pharmacies. The costs of the systems infrastructure required to furnish this pricing information will be borne by endorsed sponsors. The only cost to pharmacies would be the time involved in conveying the information to the beneficiary, which we anticipated would be small.

Pharmacies are also required upon request from the beneficiary to determine—either electronically or by telephone—how much of the beneficiary's transitional assistance dollars remain. The costs associated with this activity for pharmacies are expected to be small for several reasons. First, we anticipate that the costs associated with the development of the infrastructure for providing the balance of the transitional assistance dollars at the point of sale will be borne by endorsed sponsors, not network pharmacies. Second, we expect that the time involved in pharmacies determining the balance either electronically or by phone will be small. Finally, providing to beneficiaries the transitional assistance balance is not required to occur at the point of every sale, only at the beneficiary's request. Beneficiaries will have other options for accessing their card balances outside of the retail pharmacy, including through the endorsed sponsor's toll free line, which is likely to lessen the extent to which beneficiaries request balance determinations by pharmacies.

6. Small Rural Hospitals

Section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 100 beds. This rule will not affect small rural hospitals since the program will be directed at outpatient prescription drugs, not drugs provided during a hospital stay. Prescription drugs provided during hospital stays are covered under Medicare as part of Medicare payments to hospitals. Therefore, we are not providing an analysis.

7. Alternatives Considered for, Especially, Small Pharmacies

In developing this program, we recognized that the statute already provided for a number of major program features that act to mitigate the potential effects of this program on retail pharmacies, including small pharmacies. First, we interpret the statute as reflecting Congressional intent that endorsed sponsors obtain manufacturer rebates, discounts, or other price concessions on some covered discount card drugs and that endorsed sponsors pass through some of these price concessions to enrollees in the form of lower prices. In addition, as discussed elsewhere in this rule, prices under this program will not be taken into account for the purposes of establishing "best price." Together, these program features relieve pressure from pharmacies, by ensuring that manufacturer rebates and discounts will be an important component of savings in this program and that endorsed sponsors will not rely solely on pharmacy discounts to compete for customers.

Second, the statute prohibits a mail order-only option. Mail order programs have some popularity and may be a convenient option for some beneficiaries. However, the prohibition of mail order only programs ensures that strong access to retail pharmacies will be an important feature of this program.

Finally, the program includes broad network access requirements that ensure that convenient access to retail pharmacies, including small pharmacies, will be a critical component of this program. Endorsed sponsors are required to have a pharmacy network of sufficient size to demonstrate that at least 90 percent of beneficiaries in urban areas served by the program live within 2 miles of a network pharmacy, at least 90 percent of beneficiaries in suburban areas served by the program live within 5 miles of a network pharmacy, and at least 70 percent of beneficiaries in rural areas served by the program live within 15 miles of a network pharmacy. Given these network access requirements, coupled with the industry norm for broad pharmacy networks, and the prohibition of a mail order only option, we anticipate that a very large number of small pharmacies and drug stores will be included in the networks of endorsed sponsors.

In addition to these statutory-related features of the program that mitigate its potential effects on pharmacies, we considered whether or not to require that endorsed sponsors negotiate discounts on all drugs. We decided to only require that endorsed sponsors offer a discount on at least one drug in the therapeutic categories representing the drugs most commonly needed by beneficiaries. Since endorsed sponsors are less likely to negotiate manufacturer discounts on every drug dispensed, we believe our decision not to require discounts on every drug relieves pressure on pharmacies to provide discounts.

I. Estimated Administrative Costs and Anticipated Revenues of Endorsed Card Sponsors

1. Introduction

The statutory requirement that this program be provided by private, endorsed card sponsors places program success in providing savings and transitional assistance to Medicare beneficiaries on the participation of potential card sponsors. In light of this, we estimated the administrative costs and revenues faced by potential card sponsors to assess the willingness of private organizations to participate in the Medicare prescription drug discount card program. There are several incentives for organizations with pharmacy benefit management experience to choose to participate as endorsed card sponsors. We know that Medicare beneficiaries trust the Medicare name and are more confident about product offerings when they are Medicare approved or backed by the Medicare name. Receiving a Medicare endorsement will give potential card sponsors credibility with Medicare beneficiaries. In light of this, we believe that Medicare's endorsement of a discount program, and especially the availability of transitional assistance, will result in much greater enrollment with these organizations than the same entities might achieve if they decided to offer a discount program on their own. Greater enrollment means revenue from enrollment fees and more lives with which to negotiate manufacturer rebates. In addition, participation in the Medicare prescription drug discount card program may offer organizations the opportunity to gain experience working with Medicare beneficiaries and contracting with CMS prior to implementation of Medicare Part D.

The following cost and benefit analysis reflects the estimated major administrative costs and benefits incurred by an endorsed sponsor to implement the Medicare prescription drug discount card program. The administrative costs include start-up and program implementation activities, the production and distribution of

information and outreach materials, eligibility determination and enrollment processing of beneficiaries, processing claims for retail and mail-order prescriptions, operation of a customer service call center, account maintenance, and logging and responding to beneficiary complaints and grievances. This analysis provides a range for each cost component, from low to high, that reflect possible endorsed sponsor differences in the level of technical efficiency and business investment decisions for offering the discussed initiative. For purposes of this analysis, estimated benefits are limited to the legislated enrollment fee, a maximum of $30 per year in 2004 and 2005. This analysis demonstrates that a maximum annual enrollment fee of $30 can cover all or almost all administrative costs over the life of the program. Finally, we believe that the low costs estimated in this analysis maybe more accurate because CMS received many applications from potential card sponsors during our previous attempts to enact a fairly comparable program, suggesting that these organizations believed expected returns to be positive.

2. Sources of Administrative Cost Estimates

We used several sources in estimating administrative costs for this analysis. First, CMS has extensive experience pricing and contracting for some of the activities we require of endorsed sponsors, specifically call center operations for the Medicare population and producing and mailing printed information and outreach materials. We thoroughly explored internal sources to estimate costs for information and outreach, and for call center and customer service activities.

Early this year, 2003, as the President's plan for Medicare reform was being considered by Congress, CMS contracted for research of discount drug card call center operations to better inform our understanding of endorsed sponsor customer service and possible impacts on 1–800 Medicare.[5]

Other administrative costs of this program, such as account management and claims processing costs for pharmacy benefit management services, are not publicly available in a standardized format. In part, this is due to a general lack of transparency in the financial reporting of the pharmacy benefit management industry. Administrative cost information is considered proprietary by the industry and is not clearly itemized in financial reports.

Of the information that is available, most is not standardized, and therefore, not readily compared across discount card programs. A pharmacy benefit management firm's administrative costs are unique to its business structure. The structure of pharmacy benefit management contracts also reduces the standardization of cost information. When bidding on a Request for Proposal by an employer or health insurer to provide pharmacy benefit management services, pharmacy benefit management firms typically offer a package of administrative costs, negotiated pricing for reimbursing drug costs, and rebate-sharing arrangements. The package approach often includes a comprehensive administrative fee that covers many bundled services, the content of which vary by organization and proposal. The multifarious rebate-sharing arrangements unique to each pharmacy benefit management firm and other revenue flows mask the cost of some activities, contributing even more to reduced comparability. In short, payments for costs taken from multiple pharmacy benefit manager contracts cannot be readily compared. For example, a recent investor report by Credit Suisse First Boston demonstrates the impact of rebate-sharing arrangements on administrative costs. The authors cite variation in per claim processing costs paid by purchasers of $0.0 to $0.70.[6]

In order to best estimate these administrative costs, CMS contracted with an independent, management-consulting firm to provide technical support in developing estimates of administrative costs.[7] For each of the major activities required to implement the Medicare prescription drug discount card program, we identified seven categories of economic costs that potential endorsed sponsors might incur in implementing this program. These costs are discussed in detail later in this analysis and presented in Table 9.

The consulting firm's analysis is based on interviews with officials representing State senior discount card programs and commercial organizations representing various categories of firms that provide drug card program administration, throughout the United States. These organizations include pharmacy benefit management firms (independent and owned by managed care organizations) and other commercial discount card program operators. In addition to conducting interviews, the consulting firm also consulted industry experts on purchasing pharmacy benefit management services.

The consulting firm interpolated costs from more generalized cost information gathered in interviews about required labor and resources, in some instances, in order to estimate specific, comparable costs for all activities. This was necessary, in part, because commercial organizations were cautious about sharing costs and uncertain about the programmatic requirements of this regulation, which were not publicly available at the time that these interviews were conducted. Also, States and other purchasers did not always have the specific costs of components included in bundled administrative fees.

3. General Assumptions, Limitations, and Scope

This program has two full operational years beginning in April 2004 and ending mid-May 2006. Although the program does not start in January, we estimate costs for each calendar year of operation because calendar years correspond to the source of revenue, the annual enrollment fee, and to the coordination of the enrollment process with the Annual Coordinated Election Period for Medicare. We refer to the first nine months of 2004 as Year One, to 2005 as Year Two, and to the first four and one-half months of 2006 as the Transition Period. For Year One estimates, we adjust the costs associated with ongoing program operations, including claims processing, account maintenance, and responding to discount card enrollee complaints and grievances, to reflect the nine-month operating period.

The four and one-half month transition period is a carryover period during the initial open enrollment period for the new Medicare Part D prescription drug benefit. During this period, no new enrollment is allowed in the Medicare prescription drug discount card program, no new transitional assistance is available, and endorsed sponsors may not charge an annual enrollment fee. Current discount card enrollees retain access to negotiated prices and transitional assistance enrollees may, in most instances, use the balance of transitional assistance funds not expended in Year Two to assist with covering the costs of their covered discount card drugs obtained during the transition period. Therefore the costs reflected for this period include claims processing, account maintenance, customer service and call center operations, and responding to discount card enrollee complaints and grievances. We adjust all costs incurred in this period for an average enrollment length of two and one-quarter months, which is the same assumption made earlier in the beneficiary impact estimates to reflect declining enrollment in the Medicare prescription drug discount card program as individuals move to Part D.

We assume that all endorsed sponsors, or at least one of their contractors, are experienced in pharmacy benefit management and have the infrastructure in place to implement this program. The applicant, or one of its subcontractors, at the time of application for endorsement must have three years experience in adjudicating and processing claims at the point of sale, negotiating with prescription drug manufacturers and others for rebates and discounts on prescriptions drugs, and administering an individual enrollee health care subsidy or benefit in real time. Further, the applicant, or at least one of its subcontractors, must serve at least 1 million covered lives. For this reason, some requirements of this program are part of standard business practices for administering a prescription drug benefit or assistance program and are associated with negligible additional costs.

Activities already conducted as standard business practice include creating typical reports on discounts, pricing, and utilization for the client, providing counseling on generic substitution, establishing a pharmacy network, reimbursing network pharmacies for drugs covered by transitional assistance, drug utilization review, formulary management, and negotiating manufacturer and retail rebates. We assume marginal cost incurred for these activities, if any, will be captured in our estimates for account maintenance. Further, we believe that endorsed sponsors will be compliant with HIPAA because their other lines of business require such compliance. Regarding the HIPAA security rule, which is not enforceable until 2005, based on our discussions with potential endorsed sponsors, we assume they are already in compliance with these provisions under the privacy rule and are preparing to complete compliance with the security rule 2005 deadline for their other lines of business.

We assume that total program enrollment is equal to 100 percent of the number of beneficiaries that the impact analysis estimates will be enrolled in each year of operation: 7.3 million in Year One, and 7.4 million in Year Two and the Transition Period. We used a growth estimate of 1.4 percent to estimate enrollment in Year Two, which is the estimate for growth in Medicare Part B enrollment. Part E of this section discusses estimated program enrollment in greater detail. For some of our enrollment application, and information and outreach estimates, we assume that new enrollment in Year Two consists of those individuals the impact analysis anticipates enrolling in the program in Year Two and those individuals switching card programs. With regard to the latter, we assume that roughly 10 percent of enrollees will disenroll during Year One. As a simplifying assumption, we also assume that this same number re-enrolls in a different card in Year Two. We chose 10 percent as a modification of the 2001 Medicare managed care disenrollment rate of 13 percent because the rate reflects a continuous open enrollment policy. Our regulations limit enrollment to one endorsed program each year, with the option to elect another endorsed programs during the Annual Coordinated Election Period.

Exclusive card sponsors are Medicare managed care organizations that limit their card program membership to their health plan membership. We have chosen not to present separate cost estimates for exclusive card sponsors for two reasons. First, we assume that we will largely be endorsing existing card programs already in operation by these organizations for their Medicare enrollees. Second, we believe that the costs for exclusive card sponsors will be lower than those incurred by other endorsed sponsors. Exclusive card sponsors can group enroll their Medicare managed care organization enrollees, a known population. They also will have lower costs for information and outreach since they already engage in marketing activities for their plan and can achieve efficiencies by including their discount card information with other outreach efforts. Since the costs of enrollment, and information and outreach are some of the highest cost components in Year One, we expect exclusive endorsed sponsors will have costs substantially lower than the maximum $30 enrollment fee.

We estimate that 812,637 individuals will be enrolled in a discount drug card offered by an exclusive card sponsor in 2004, and 824,201 individuals will be enrolled in an exclusive card program in Year 2005 and the Transition Period. We derived this estimate by applying the proportion of individuals enrolled in a Medicare managed care plan (that is, Section 1876 cost plans, M+C plans, and preferred provider and most other managed care demonstrations) in the Medicare population, 12 percent, to the number of individuals estimated to enroll in this initiative who are not enrolled in Medigap, 6.8 million in 2004 and 6.9 million in 2005. Because we are not estimating costs for endorsed sponsors that are also managed care organizations, we removed these individuals from all enrollment assumptions made in this analysis.

Throughout the discussion of individual costs, we present estimated costs for the whole program, by discount card enrollee, and for the average fee-for-service (FFS) endorsed sponsor (meaning a endorsed sponsor whose enrollment is made up mostly of beneficiaries in the original Medicare program) whose average enrollment is based on the total enrollment level calculated above divided by the number of FFS programs we expect will apply and meet the requirements for endorsement, as described below. In part, this is because our research on administrative costs suggests that experienced administrators of prescription drug benefits have comparable per discount card enrollee and per prescription variable costs for programs of different sizes that meet minimum endorsement requirements. However, endorsed sponsors have the option of proposing a program for a service area as small as a State.

The remainder of this analysis examines the impact on endorsed sponsors that must comply with all components of this regulation and serve primarily beneficiaries in fee-for-service. This includes the few organizations that we expect may choose to offer a card for all Medicare beneficiaries rather than limit enrollment to their health plan membership. Only the latter are exclusive endorsed sponsors. Having removed individuals in exclusive card programs, we estimate per endorsed sponsor costs based on an average endorsed sponsor enrollment of 431,865 in Year One and 438,010 in Year Two and the Transition Period. We derived these numbers by dividing estimated enrollment less our estimates for exclusive card program enrollment by 15, or 6,477,973 divided by 15 in Year One, and 6,570,150 divided by 15 in Year Two. In 2001, we received 28 applications, with approximately one-half appearing to meet all of the

[5] The Health Strategies Consultancy LLC. Call Center Parameters and Regulatory Authority for Drug Discount Cards. May 20, 2003.

[6] Berg, Kevin and Noah Yosha. July 14, 2003. *Pharmacy Benefit Managers and Specialty Pharmacies*. Credit Suisse Equity Research for First Boston: 5.

[7] Booze, Allen, and Hamilton. December 2003. *Discount Card Administrative Costs to Support the Medicare Drug Discount Card Program*. CMS contract number 500–97–0437, Task Order 2006.

endorsement criteria to operate a discount card program.[8]

This analysis estimates a range of high and low annual costs per discount card enrollee, per endorsed sponsor, and for the whole program, for each type of administrative cost incurred to implement this program. The ranges serve to illustrate the sensitivity of differences in possible administrative costs that are the result of various levels of industry experience and technological efficiency, and of business decisions about the level of investment for discretionary activities, such as information and outreach. For example, efficient pharmacy benefit management organizations with modern information systems that are currently operating a card program and that selectively target their marketing efforts are anticipated to have much lower costs than organizations that must program older mainframe systems, have less experience with direct enrollment, and make greater investments in information and outreach materials. Further, some organizations other than pharmacy benefit management firms that could qualify to be endorsed sponsors may have less experience in some areas of pharmacy management or may choose to outsource or partner with another organization for some activities, resulting in alternative, and possibly higher, cost structures.

The following estimates were made in 2003 dollars and have been updated by 1.041 percent in Year One to reflect 2004 dollars, 1.085 percent in Year Two to reflect 2005 dollars, and 1.132 percent to reflect 2006 dollars during the transition period. All dollar figures discussed in greater detail in the next section and presented in Table 9 reflect the inflated rate for that identified year. Inflation estimates are based on those for labor in the general population from table III.A.1 of the 2003 Annual Report of the Board of Trustees, *see http://www.cms.hhs.gov/publications/trusteesreport/2003/.*

TABLE 9.—ADMINISTRATIVE COSTS AND BENEFITS BY PERIOD

[Year one (nine months) administrative costs in 2004 dollars]

	Costs per endorsed sponsor (431,865 enrolled)		Dollars per discount card enrollee	
	Low	High	Low	High
Program Implementatioon	$1,561,500	$3,123,000	$3.62	$7.23
Information and Outreach	1,807,771	4,300,194	4.19	9.96
Eligibility Determination and Enrollment Processing	2,261,793	2,945,591	5.24	6.82
Customer Service Operations	2,899,735	4,366,461	6.71	10.11
Claims Processing and Claims Adjudication	541,677	1,764,862	1.25	4.09
Account Maintenance	1,294,765	1,348,714	3.00	3.12
Logging and Responding to Grievances	30,346	40,461	0.07	0.09
Total Administrative Costs	10,397,588	17,889,284	24.08	41.42
Maximum Revenue Stream from Enrollment Fee	12,955,945	12,955,945	30.00	30.00
Net Benefits	2,558,357	(4,933,339)	5.92	(11.42)

[Year two administrative costs in 2005 dollars]

	Costs per endorsed sponsor (438,010 enrolled)		Dollars per discount card enrollee	
	Low	High	Low	High
Program Implementation	$0	$0	$0.00	$0.00
Information and Outreach	858,543	1,513,041	1.96	3.45
Eligibility Determination and Enrollment Processing	302,577	393,446	0.69	0.90
Customer Service Operations	574,370	864,894	1.31	1.97
Claims Processing and Claims Adjudication	763,474	2,173,771	1.74	4.96
Account Maintenance	1,824,925	1,900,963	4.17	4.34
Logging and Responding to Grievances	42,772	57,029	0.10	0.13
Total Administrative Costs	4,366,661	6,903,144	9.97	15.76
Maximum Revenue Stream from Enrollment Fee	13,140,301	13,140,301	30.00	30.00
Net Benefits	8,773,640	6,237,156	20.03	14.24

[8] On November 9, 2001, the Federal Court for the District of Columbia preliminarily enjoined CMS from proceeding with the administration's proposal for a Medicare-Endorsed Prescription Drug Discount Card program. In accordance with the court order, we withdrew the solicitation, all work on the initiative ceased. CMS did not make any Medicare endorsements on the basis of applications received. However, we had, at that time, completed our review of all applications and knew how many proposed programs would have been endorsed.

[Transition period (five and one-half months) administrative costs in 2006 dollars*]

	Costs per endorsed sponsor (438,010 enrolled)		Dollars per discount card enrollee	
	Low	High	Low	High
Program Implementation	$0	$0	$0.00	$0.00
Information and Outreach	0	0	0.00	0.00
Eligibility Determination and Enrollment Processing	0	0	0.00	0.00
Customer Service Operations	107,694	162,168	0.25	0.37
Claims Processing and Claims Adjudication	149,352	305,325	0.34	0.70
Account Maintenance	356,996	371,871	0.82	0.85
Logging and Responding to Grievances	8,367	11,156	0.02	0.03
Total Administrative Costs	622,410	850,519	1.42	1.94
Maximum Revenue Stream from Enrollment Fee	0	0	0.00	0.00
Net Benefits	(622,410)	(850,519)	(1.42)	(1.94)

*Costs assume an average of 2.25 months enrollment to match assumptions in section on beneficiary impact analysis.

4. Specific Assumptions For Administrative Cost Estimates

In the following paragraphs, we discuss our assumptions for the estimates provided in Table 9 for the 7 major types of administrative costs anticipated for this program.

(a) Start-up, program implementation costs for infrastructure enhancements, including software and hardware upgrades, programming for many operations, and systems integration;

(b) Information and outreach activities, for example the production and distribution of pre-enrollment application materials and a post-enrollment welcome kit with a discount card;

(c) Eligibility determination and enrollment processing;

(d) Call center and customer service operations, including handling calls asking for information and outreach materials and enrolling, where applicable;

(e) Claims processing for administrating and adjudicating claims transactions;

(f) Account maintenance, including staff time to run the program and updates to various systems, to provide typical industry data reports, including providing data to support the price comparison Web site; and

(g) Logging and responding to beneficiary complaints and grievances for reasons other than eligibility.

a. Program Implementation

Program implementation costs are those associated with setting up the necessary infrastructure, mostly information systems, to run the Medicare prescription drug discount card program.

We do not believe that endorsed sponsors will need to purchase entirely new hardware or software. We believe that those organizations, with their subcontractors, that will be eligible for the endorsement already maintain the information system infrastructure, including hardware and software, necessary to house the information systems needed for this program. This infrastructure includes enrollment databases, claims processing and adjudication, third-party reimbursement, and call center operations. One exception is our requirement that endorsed sponsors pay to install CMS software and test connect with CMS data systems for exchanging eligibility and enrollment information. However, CMS will pay for the program sponsor T1-connection and provide the "connection software". For this software, we estimate installation costs of no more than $1,500 per endorsed sponsor, or less than $0.01 per discount card enrollee, in 2003 dollars.

Endorsed sponsors will incur program implementation costs for programming or enhancing current software systems and conducting the systems integration necessary to accommodate the specific parameters of this program. Impacted software systems include current enrollment systems, drug price database, formulary management, pharmacy network database, call center software, accounting systems to track expenditures by beneficiary for the transitional assistance program, updates to claims processing to provide rebates at the point-of-sale, and setting up other data files associated with CMS reporting requirements.

One representative of the pharmacy benefit management industry interviewed for CMS, anticipated information system enhancement costs, including upgrading and programming call center software, for a Medicare prescription discount card program, to between $4 million and $6 million for a program of 500,000 enrollees. Using our estimates of 431,865 enrolled per endorsed sponsor, these fixed costs become an estimated per discount card enrollee annual cost between $9.26 and $13.89 dollars. These estimates reflect costs known to this organization as well as additional dollars to account for the uncertainty of making estimates without programmatic specifics.

Interviews with other State and commercial discount card programs, provided estimates of labor type and time required to program software systems. Using the information, the consulting firm estimated start-up program implementation costs for information systems between $54.5 and $250 thousand in 2003 dollars. As an annual per discount card enrollee cost for the average endorsed sponsor, this program implementation estimate is negligible, ranging from $0.13 to $0.58. This program has unique aspects whose costs are not fully known. So as to accommodate for this and the limited experience that some types of firms may have with programming specific software systems and new programming, such as tracking beneficiary expenditure of transitional assistance, CMS has chosen to estimate program implementation costs that are a compromise of the higher cost estimates for program implementation anticipated by one organization and the lower costs estimated by the consulting firm. Specifically, we have chosen a per endorsed sponsor range between 1.5 million and $3 million dollars for program implementation for Year One in 2003 dollars. We reduced the lowest industry number of $2 million by a rough $500 thousand for upgrading call center software, as the estimates for that

cost per call is reflected in section (d). We estimate that the aggregate program implementation cost across all endorsed sponsors in Year One is between $23 million and $47 million in 2004 dollars, with a per endorsed sponsor cost between $1.6 million and $3.1 million. This translates into a per discount card enrollee cost between $3.62 and $7.23. There are no program implementation costs for Year Two or the Transition Period.

b. Information and Outreach

Under this initiative, there will be costs associated with information and outreach materials for each new discount card enrollee in Year One and costs associated with distribution of program materials to current discount card enrollees as well as to a small percentage of new discount card enrollees and disenrollees choosing to reenroll in Year Two. There are no information and outreach costs for the Transition Period as no new enrollment is allowed after December 31, 2005. We assume that individuals will be notified that the Medicare prescription drug discount card program will end in 2006 through the annual notice of change mailed at the end of 2005.

We develop a range of estimates that reflect the production and mailing of five types of information and outreach materials: a pre-enrollment application kit with the standard enrollment form, a post-enrollment welcome kit with the drug card, an annual notice of change, an eligibility determination, and mailing back incomplete applications that cannot be processed. These estimates do not include costs for information and outreach through mass media as this is not a requirement for endorsement.

Information and outreach is an area where endorsed sponsors can choose to spend an extensive amount of money, depending on their long-term business interests and plans. In their interviews with potential endorsed sponsors and comparable State programs, the consulting firm found large differences in information and outreach expenditures. For example, expenditure for mass media advertising quickly increases costs beyond those discussed here. The decision to invest in mass media advertising is ultimately that of the endorsed sponsor.

CMS intends to assist endorsed sponsor information and outreach efforts by launching an education campaign about the new Medicare prescription drug discount card program. We plan on both television and print advertising. Further, we expect 1–800 MEDICARE to serve as the first source of information about the program. 1–800 MEDICARE provides interested individuals with decision support, helping them identify the programs that they are eligible to join. 1–800 MEDICARE also will mail interested individuals a booklet describing the Medicare prescription drug discount card program, transitional assistance, and how to enroll. For these reasons, we expect that at least some of the financial burden of generating awareness and educating Medicare beneficiaries about the program will not fall on endorsed sponsors, reducing costs for information and outreach.

For low estimates, we used production costs based on prices from Federal contractors available through the General Services Administration and in-house mail estimates. We priced simple, low-end, serviceable materials with some color and limited design. For the high estimates, we substituted the costs quoted for application kits (overview materials and standard enrollment form) and welcome kits (member handbook and drug card) by organizations interviewed for CMS, for our in-house estimates. We assume these materials to be higher-end commercial products. Both low and high estimates include postage and use our in-house estimates for producing and mailing the other information and outreach materials: mailing eligibility determination notices, mailing back incomplete applications, and an annual notice of program changes for each year.

Low and high estimates for producing and mailing a welcome kit to a new member were $1.20, the Government's estimate, and $2.00, which was based on costs reported by organizations interviewed for CMS. Organization estimates for providing a welcome kit ranged from $0.12 to $2.70 in 2003 dollars. However, most reported costs hovered between $1.00 and $1.50. The $2.70 cost was for a kit compiled on demand with few economies of scale, an approach we do not expect nor require endorsed sponsors to take. We chose an estimate of $2.00 because it was higher than most reported commercial costs but low enough to reflect the expected requirements of this program. We also believe that we have reduced the time endorsed sponsors may need to spend drafting marketing materials by providing model information and outreach materials with the solicitation.

We used the same approach in our low and high estimates of application kits. Our government sources reported a cost of $0.65 to produce and mail an application kit to interested individuals. Commercial and State estimates for providing an application kit to interested individuals ranged from a low of $0.45 to $2.12. We chose a high estimate for the application kit of $2.00.

We have assumed that the total number of pre-enrollment application kits mailed by endorsed sponsors will be three and one-half times the number of new beneficiaries enrolling in the program each year. This estimate is based on the midpoint of estimates gathered during interviews by the consulting firm. The firm found that card programs mailed applications to between two and five times the number of individuals enrolled in their program. For Year Two, this number is three and one-half times the number of individuals who are newly eligible for Medicare and the individuals reenrolling in Year Two after disenrolling in Year One.

Because the standard enrollment form in the application kit has several required elements and because the Medicare population has lower literacy levels and greater cognitive difficulties than some populations, individuals may not properly complete the form for their first submission. The regulation requires endorsed sponsors to ensure the completeness of submitted applications. We have assumed information and outreach costs also include an estimate for mailing back 30 percent of applications.

We assume that 100 percent of beneficiaries who would actually enroll in each year will receive a post-enrollment welcome kit. And, we assume that 100 percent of enrolled beneficiaries will receive an annual notice of change prior to the Annual Coordinated Election Period in each year. In 2005, this notice will inform discount card enrollees that the program is ending and direct them to information on Part D.

We assume that 30 percent of all individuals will request an eligibility determination for transitional assistance and will not immediately enroll in an endorsed card program because they are not determined eligible for transitional assistance. This regulation requires that endorsed card sponsors not immediately enroll individuals who request transitional assistance at the time of enrollment if they are not determined eligible for such assistance. We chose 30 percent to capture a proportion of individuals ultimately choosing to enroll in the discount card after finding that they are not eligible for transitional assistance and a proportion of those never enrolling in the program who request transitional assistance, but are determined ineligible. In Year Two, we estimate that 30 percent of new discount card enrollees will request an eligibility determination, and we estimate an additional five percent of those currently enrolled and not receiving transitional assistance will request an eligibility determination because their financial circumstances have changed during the year. For this 30 percent of individuals, this regulation requires endorsed sponsors to mail them a negative eligibility determination, and to inform them of access to the reconsideration process.

We estimate a total information and outreach cost in Year One between $27 million and $65 million. We estimate a per endorsed program cost between $1.8 million and $4.3 million, and we estimate a per discount card enrollee cost between $4.19 and $9.96. These cost ranges are comparable to those estimated by the consulting firm for all marketing activities except mass media, between $0.84 and $7.02 per new member.

We estimate a total Year Two cost for information and outreach between $12.9 and $22.7 million. We estimate a cost per endorsed sponsor between $0.86 million and $1.5 million, and a per discount card enrollee cost between $1.96 and $3.45. Reduced costs for information and outreach in Year Two reflect information and outreach to a more limited pool of individuals, those changing plans or becoming eligible for the Medicare program, spread across the entire enrollment of the endorsed program. Information and outreach activities are not required during the Transition Period.

c. Eligibility Determination and Enrollment Processing

Endorsed discount endorsed sponsors will incur costs in administering the eligibility determination and enrollment processes as outlined in this regulation, but CMS has significantly reduced their potential role by assuming much of the burden of these activities. Specifically, we will develop an on-line enrollment and eligibility system against which endorsed sponsors can check the eligibility of individuals and enroll them in their endorsed programs. We also will handle any grievances about eligibility determinations and address requests for reconsideration of eligibility.

As our own eligibility determination process for transitional assistance is means-tested, we believe that means-tested State senior discount card programs are the best source of information about the costs of conducting eligibility determination activities. The interviews of several State programs and their contracted pharmacy benefit management firms gathered actual cost information and/or labor time to estimate costs of eligibility and enrollment.

To assess the sensitivity of our estimates, the consulting firm interviewed State programs that differed in the amount of documentation they required for an eligibility determination and in the level of verification activity required. Enrollment and eligibility activities for means-tested programs generally require some manual entry of information from an application or manual correction of scanned enrollment forms. Verification occurs either electronically or through manual review of multiple sources of income, family size, State residence, and health insurance. Some States require multiple forms of income documentation and manual review, while others accept the applicant's verbal certification that they meet income requirements. Sometimes States conduct these activities, and sometimes this activity is delegated to a private contractor providing pharmacy benefit management services.

Endorsed sponsor responsibilities will include reviewing applications, ensuring that applications are complete, screening initial applications for transitional assistance, entering eligibility information into a database, electronically requesting a determination on eligibility and enrollment for an individual through CMS systems, maintaining an enrollment database, and issuing eligibility determination notices that refer individuals to the reconsideration process as appropriate. We assume that endorsed sponsors will ensure that submitted applications are complete, either by recontacting individuals submitting incomplete applications, or by mailing incomplete applications back to the applicant. We have accounted for these mailing and telephone costs under estimates for information and outreach, and for customer service.

For those individuals applying for transitional assistance, we will require endorsed sponsors to first review applications for an individual's prescription drug coverage and the income level that the individual has certified as accurate, and identify individuals that need to be checked against CMS' eligibility and enrollment databases. The endorsed sponsor then will submit batch jobs of eligibility and enrollment requests through a telecommunications data connection with CMS, update their enrollment database with the results, and issue notices of eligibility determination and enrollment. The costs of mailing these notices are included in marketing estimates.

We assume that endorsed sponsors will process a total of 8.34 million applications in Year One. This application pool reflects 100 percent of program enrollment (6.4 million), plus an estimated additional 30 percent of enrollment to capture costs for processing reapplications to enroll in the discount card after receiving a negative eligibility determination for transitional assistance. We use the same 30 percent assumption when we estimate the number of eligibility determination notices that endorsed sponsors will mail. We chose 30 percent to capture a proportion of individuals ultimately choosing to enroll in the discount card program after finding that they are not eligible for transitional assistance and a proportion of those never enrolling in the program who request transitional assistance, but are determined ineligible. We assume that endorsed sponsors will process a total 1.6 million applications in Year Two. This application pool consists of 100 percent of individuals choosing to disenroll in Year One and all newly eligible enrollees in Year Two, plus an additional 30 percent of this total for reapplications and individuals choosing not to enroll. We also assume an additional 5 percent of discount card enrollees who are not receiving transitional assistance will request an eligibility determination because their financial status changed during the previous year.

From their interviews with State programs, the independent consulting firm estimates the cost of eligibility processing costs for a new application ranges from $3.87 to $16.68 in 2003 dollars. The low cost is from a State program that has self-certification of income and age, does not require review of any documentation for eligibility, and requires reporting of limited data elements on its enrollment form. The high cost is from a program that has a very complex eligibility process including requiring a breakdown of income and assets into categories, prospective adjustment of income for the coming year, and review of multiple documents demonstrating income, residency, health insurance, and age.

We chose to use $3.87 as our low estimate of conducting eligibility determination and processing enrollment for a new application, because the process CMS has created does not require labor-intensive processes such as review of documents verifying income or family size or prospective adjustment of income, however, it is not a simple attestation process. We chose $5.04 as our high estimate because our requirements on

endorsed sponsors are significantly less burdensome than the manual processing implied by the $16.68 estimate and because the estimate of $5.04 reflects the proportion of the high cost that accounts for data entry and eligibility determination activities that CMS would require of endorsed card sponsors.

We use the same cost estimate to approximate processing eligibility and enrollment requests for individuals applying for transitional assistance and those only applying to enroll in an endorsed program. We believe the amount of effort required to process applications for both populations is fairly comparable. If anything, we have slightly overestimated the cost of processing enrollment for individuals not applying for transitional assistance.

Combining our assumptions about the number of applications in each year with our estimates of the costs to process a new application, we estimate an aggregate eligibility determination and enrollment processing cost across all sponsors for Year One between $34 million and $44 million. We estimate a per endorsed sponsor cost for Year One between $2.3 million and $3 million. This translates to a per discount card enrollee cost between $5.24 and $6.82. In Year Two, we estimate an aggregate program eligibility cost between $4.6 million and $5.9 million, with a per endorsed sponsor cost between $303 thousand and $393 thousand. This translates to a per discount card enrollee cost between $0.69 and $0.90. As with other cost elements, Year Two costs are less because the cost to enroll the limited number of new discount card enrollees is spread across total program enrollees. We assume that there are no costs for eligibility determination and enrollment in the Transition Period.

d. Customer Service Call Center

The following estimates reflect costs for both an interactive voice-response system and access to live customer service representatives by telephone. To accurately represent an endorsed sponsor's call center costs, we rely on interviews conducted for CMS by the independent consulting firm as well as the research on discount drug card call center operations that CMS sponsored earlier this year. We also rely on literature reflecting call volume within similar program offerings.

We expect that Medicare beneficiaries will call an endorsed sponsor's customer service center for a variety of reasons. First, we believe that the majority of Medicare beneficiaries will call to gather additional information about the program and with questions about completing the enrollment form, especially those applying for transitional assistance. Our research on discount drug card call center operations also suggest that a small proportion of discount card enrollees call for more mundane reasons, including locating a network pharmacy, ordering a replacement card, and asking how to use the card when purchasing drugs. In addition to these reasons, we also expect that discount card enrollees will call to check drug prices, to disenroll, to file a grievance, and for those receiving transitional assistance, to check the balance of remaining funds.

With regard to call volume, we assume that endorsed sponsors will receive calls equal to 1.5 times new enrollment in Year One. We believe that the majority of call volume will be the result of initial enrollment activities. Our research indicates that endorsed sponsors expect Medicare beneficiaries who are considering enrolling in a card to call around for price information prior to enrolling. The recent report on the Pfizer Share Card program indicates call volume of roughly 6 times total enrollment during the first year of operation. Although this call volume includes income eligibility pre-screening for all applicants.[9] Further, both the independent consulting firm, Pfizer, and our own experience with 1–800 Medicare indicate that call volume increases after publicity and after information and outreach activities. We assume that endorsed sponsors will have call volume greater than enrollment but less than that documented by Pfizer for the following reasons.

First, we assume that CMS' education efforts and the availability of 1–800 Medicare and *http://www.Medicare.gov* will help reduce call volume to endorsed sponsors. Specifically, we believe that the availability of pre-screening tools through *http://www.Medicare.gov* and through 1–800 Medicare will attract calls requesting pre-screening for information and eligibility that might otherwise be addressed to individual endorsed sponsors. We also believe CMS' provision of a price comparison Web site will reduce call volume to endorsed sponsors because it will help individuals to check prices before they choose a card and, after they are enrolled, to check for changes in discounted prices.

We also assume that endorsed sponsors will take proactive measures to manage inquiries by discount card enrollees and others through communication channels other than the telephone. Our research on discount card call center operations suggests that endorsed sponsors can take several steps to preempt calls, including repetitive messaging, newsletters, Web sites, direct mail, and extensive FAQs (frequently asked questions) in information and outreach materials.

In Year Two, we assume call volume will be 1.5 times new enrollment. We also assume that 30 percent of those receiving transitional assistance will call for reasons other than enrollment and that 20 percent of those enrolled only in the discount card will call for reasons other than enrollment. Research on drug card call centers conducted for CMS indicate much lower call volume, less than 10 percent of membership, from individuals enrolled in a discount drug card than call volume in a funded benefit, roughly 30 percent of membership.

We assume that the endorsed sponsor's 1–800 customer service line will include an interactive voice-response system (IVR). An IVR system achieves call-savings by providing standard information without using the more expensive resources of a live customer service representative. If properly utilized, an IVR connected to various back office systems for immediate automated information retrieval, may help reduce significant call center costs to the sponsor. This allows for a good customer service tool, by giving callers responses to simple questions and easy access to various information. Many of the questions received by drug discount cards are questions that can be handled in the IVR, including requesting basic information about the program and enrollment, services, ordering replacement cards, checking for a network pharmacy, checking the discounted price of a specific drug, and checking account balances. We believe that the IVR will not be able to handle complex eligibility questions, questions regarding the balance of transitional assistance, and a range of other questions, such as a request for disenrollment.

We assume that an endorsed sponsor's IVR system can handle 50 percent of all incoming calls. We base this assumption on several sources. First, it has been CMS experience with 1–800 MEDICARE that traditionally 32 percent of all calls are handled in the IVR. Because 1–800 Medicare handles a range of questions about the Medicare program, these calls are more likely, on average, to be time consuming as 1–800 MEDICARE customer service

[9] Pfizer U.S. Pharmaceuticals. *Report to America.* September 2003.

representatives support beneficiaries in understanding their options among endorsed cards and other pharmacy assistance alternatives. In addition, the research conducted for CMS on discount drug card call centers provides some information on the percentage of calls moving from the IVR to a customer service representative. Two large call centers reported that 30 and 60 percent of calls were handled in their IVR respectively.[10] We believe 50 percent of calls reflects the simplicity of calls, other than those related to eligibility and transitional assistance, that endorsed sponsors will receive. We assume 50 percent of calls are handled in the IVR for both years.

We estimate the cost of a completed call in the IVR to range between $0.10 and $.35 cents. These estimates reflect a range of differences in IVR structure and time.[11] The independent consulting firm also estimated completed calls in the IVR to cost between $0.22 and $0.30. These estimates are fully loaded and reflect the marginal cost of each additional call, as we assume that each endorsed sponsor or its subcontractor will already have the basic call center infrastructure for IVR in place.

Using call volume assumptions and IVR cost information, we estimate aggregate interactive voice-response system costs to range between $1 million to 3.5 million dollars, with a per endorsed sponsor cost of $67 thousand to $236 thousand dollars. The estimated per new discount card enrollee cost is between $0.16 and $0.55 dollars.

For Year Two, we estimate aggregate interactive voice-response system costs range between $200 thousand and $701 thousand dollars, with a per endorsed sponsor cost of $13 thousand to $47 thousand dollars. The estimated per discount card enrollee cost is between $0.03 and $0.11 dollars.

We assume that calls to a customer service representative will average seven minutes in length. Interviews conducted by the independent consulting firm suggests that average talk-time for the senior population ranges from six to eight minutes. Our own internal experience with 1–800 Medicare confirms this analysis. Based on our assumptions about calls handled in the IVR, above, we assume that 50 percent of all calls are passed through. In Year One, this represents a total of approximately 4.9 million calls, across all card programs. In Year Two, applying 50 percent to our total call volume estimates suggests that 924 thousand calls will be passed through to a customer service representative. As mentioned earlier, we assume that most of the first calls made by individuals will come into the Medicare 1–800, thereby reducing the call volume and thus costs to the endorsed sponsors.

We estimate the fully loaded cost of a call to a live customer service agent per minute to range between $1.20 and $1.75. These estimates reflect a range of differences in IVR structure and time as well as CMS' experience contracting with call centers.[12] These costs include the costs of overhead and labor for conducting call center operations. We assume these costs also include start-up costs, such as programming call center software, increasing seat licenses, computers, phones, phone lines and training customer service representatives. To avoid double counting, we do not include costs for setting up call-center operations in our estimates of program implementation.

The estimated Year One customer service representative costs across all endorsed sponsors is between $42 million to $62 million dollars with a per endorsed sponsor cost of $2.8 million to $4.1 million dollars. This translates to a per discount card enrollee cost of $6.56 to $9.56 dollars. The estimated Year Two cost across all sponsors will be $8.4 million to $12.3 million dollars, with a per endorsed sponsor cost of $561 thousand to $818 thousand dollars. This translates to per discount card enrollee costs between $1.28 and $1.87 dollars.

The total IVR and customer representative service costs for Year One are between $44 million and $66 million across all sponsors, $2.9 million to $4.4 million per endorsed sponsor, and $6.71 to $10.11 per discount card enrollee. This range of costs is slightly higher than the per member estimates captured by the consulting firm in their interviews with comparable drug card programs. They estimated between $1.44 and $8.04 per member. The total IVR and customer representative service costs for Year Two are between $8.6 million and $13 million across all endorsed sponsors, $574 to $865 thousand, and $1.31 to $1.97 per discount card enrollee. For the Transition Period, the total IVR and customer representative service costs are estimated between $1.6 million and $2.4 million across all endorsed sponsors, $108 thousand to $162 thousand per endorsed sponsor, and $0.25 to $0.37 per discount card enrollee.

e. Claims Processing

The following estimates reflect costs for claims processing by the endorsed sponsors. Claims processing is the process performed by an endorsed sponsor to adjudicate a claim. It includes checking an eligibility database for program information, such as balance of transitional assistance; verifying prices; and conducting Drug Utilization Review (DUR). Consumer purchasing at a retail pharmacy is almost always an automated process, with adjudication happening at the point of sale. We anticipate that endorsed sponsors will use their computerized management information systems to perform claims processing. For purposes of this analysis, we assume that claims-processing costs apply to processing all transactions, whether providing a discount or processing an actual claim against transitional assistance. Although processing a discount is generally less burdensome because it does not require financial reimbursement and associated reconciliation against third party payor funds, we have not reduced our transaction estimates to account for this difference. Research conducted for us concluded that the cost difference between these two types of claims would be negligible.

Costs for processing claims in the literature range from $0.00 to $.70.[13] But, as already noted, these costs are not the true economic cost of processing claims because they include the cost of other services, such as account maintenance, and rebate-sharing arrangements. Estimates of the cost of claims processing obtained through the interviews conducted for CMS revealed true costs ranging from $0.05 to $0.14 for electronic processing of a prescription in 2003 dollars. We used this same range for our estimates of processing electronic claims. Lastly, endorsed sponsors may choose to promote mail prescription services for their enrollees. Some mail prescription fulfillments may be as high as a 90-day supply and thus utilize one prescription. This results in one prescription processing cost, instead of three claims being processed, at a 30-day supply each, thereby substantially reducing the overall cost component on the endorsed sponsor's expense

[10] The Health Strategies Consultancy LLC. Call Center Parameters and Regulatory Authority for Drug Discount Cards. May 20, 2003.

[11] Personal communication with Elizabeth Herrell, Vice President, Customer Experience, Forrester Research. October 29, 2003.

[12] Personal communication with Elizabeth Herrell, Vice President, Customer Experience, Forrester Research. October 29, 2003.

[13] Berg, Kevin and Noah Yosha. July 14, 2003. *Pharmacy Benefit Managers and Specialty Pharmacies.* Credit Suisse Equity Research for First Boston.

structure. We do not figure this into pricing the claims processing cost described here.

Some claims may be submitted on paper. Approximately one percent of all claims processed for a funded benefit are paper claims.[14] In our estimates, we assume that any one endorsed sponsor will have to process one percent of their claims manually for their endorsed program. To process a paper claim, the endorsed sponsor must manually enter the information into the claims processing system. Cost estimates for processing paper claims range from $1.00 to $1.50 per claim.[15] We used this same range of costs for our estimates of processing paper claims.

Section 1860D–31(g)(5) of the Act requires that transitional assistance through the endorsed sponsor be made available to beneficiaries who qualify for transitional assistance and reside in skilled nursing facilities and nursing facilities. These claims will be more difficult to process than electronic claims because they are likely to be submitted by pharmacies that are not in the endorsed sponsor's pharmacy network and with whom the endorsed sponsor may not have a formal relationship or electronic data exchange. We make this assumption because we believe that pharmacies in long-term care and skilled nursing facilities may not participate in an endorsed discount card program; institution-based pharmacies have less incentive than those in the community to join a discount card network.

To address the specific structure of the long-term care pharmacy market, this regulation provides for CMS to award a "special endorsement" to endorsed sponsors competing for the opportunity to process claims from long-term care pharmacies. This competition limits the processing of claims from pharmacies serving long-term care and skilled nursing facilities to a few endorsed sponsors who have experience processing such claims and who can garner economies of scale. We expect that endorsed sponsors receiving a special endorsement will have some pharmacies serving long-term care and skilled nursing facilities in their pharmacy network. For purposes of this analysis, we assume that two of the anticipated fifteen endorsed sponsors receive a special endorsement from CMS. For each of these two "special endorsed sponsors," we assume that they continue to enroll the average number of enrollees in a card program: 431,865 in Year One, and 438,010 in Year Two and Transition Period, but that a sizable proportion of those enrollees is institutionalized.

We estimate that roughly 200 thousand institutionalized individuals will qualify for transitional assistance and use that transitional assistance at the pharmacy in their facility. This estimate is derived from the Medicare Current Beneficiary Survey (MCBS) and is used earlier in this document. We also estimate that this enrollment is split across the two special endorsed sponsors, thereby allocating 100 thousand enrollees to each special endorsed sponsor. This means that, roughly, one-quarter of the 430 thousand enrollees in a special card program are institutionalized. With regard to cost, we estimate that each of the special endorsed sponsors will receive about one-third of their claims for the institutionalized from long-term care pharmacies in their networks and that the cost per claim will be the same as processing any electronic in-network claim. Also, we assume that each card sponsor will achieve efficiencies in processing out-of-network claims from long-term care pharmacies. Without better estimates of the burden of processing out-of-network claims, we assume that the cost of processing such claims is similar to that for processing paper claims, between $1.00 to $1.50 per claim. In light of our assumption about available economies of scale, we assume a cost estimate of $1.00 for processing claims from out-of-network long-term care pharmacies.

We make a base assumption that beneficiaries using a discount card will fill 27 prescriptions a year. We base this assumption on findings from CMS Office of the Actuary, which obtains data on prescription drug sales and prescription utilization from a variety of sources, including the National Prescription Audit conducted by IMS Health. These are the same numbers used in the Impact Analysis. In light of the nine-month operating period for Year One, we assume that discount card enrollees will fill an average of 20 prescriptions using their discount card in Year One. We assume they will fill all 27 prescriptions during Year Two and fill 5 prescriptions during the Transition Period.

For the purpose of claims submitted against transitional assistance for beneficiaries in skilled nursing facilities and nursing facilities, we estimate that institutionalized individuals will fill an average of nine prescriptions for Year One and eight prescriptions for Year Two. This assumes that their long-term care pharmacy will only process claims against the balance of available transitional assistance. When the balance of transitional assistance becomes depleted for the year, we assume claims processing through the card program will cease. We derived nine and eight prescriptions by dividing $600 by an average prescription cost of $66 and $72, which is an average total prescription price of $46.99 (derived from self-reported beneficiary expenditures in MCBS 2000), adjusted to 2004 and 2005 dollars. We assume that institutionalized enrollees will not use their card during the Transition Period because they will have expended all of their transitional assistance in Year Two.

Twenty prescriptions for each non-institutionalized enrollee and nine prescriptions for each institutionalized care enrollee translates to a total of 129 million prescriptions in Year One, with each of the 13 endorsed sponsors processing 8.7 million prescriptions and each of the two special endorsed sponsors processing 7.6 million prescriptions. In Year Two, twenty-seven prescriptions per non-institutionalized enrollee and eight for institutionalized enrollees means a total of 174 million prescription across all beneficiaries, with each of the 13 endorsed sponsors processing 11.8 million prescriptions and each of the two special endorsed sponsors processing 10-million prescriptions. Five prescriptions for non-institutionalized enrollees in the Transition Period means a total of 32 million prescriptions for all enrollees will be processed, with each of the 13 endorsed sponsors processing 2.2 million prescriptions and each of the two special endorsed sponsors processing 1.7 million prescriptions.

We used the cost and prescription utilization estimates listed above to estimate costs for each of the 13 endorsed sponsors not processing claims from long-term care pharmacies. We assume that these endorsed sponsors only process in-network claims, both paper and electronic. For Year One, we estimate a per endorsed sponsor cost between $542 thousand and $1.4 million and a per enrollee cost between $1.25 and $3.24. For Year Two, we estimate a per endorsed sponsor cost between $763 thousand and $2 million and a per enrollee cost between $1.74 and $4.50. For the Transition Period, we estimate a per endorsed sponsor cost between $149 thousand and $386 thousand and a per enrollee cost between $0.34 and $0.88.

We used the costs and prescription utilization estimates discussed above to estimate costs for each of the two special endorsed sponsors. We assume that these special endorsed sponsors process in-network claims, both paper and electronic, and process out-of-network claims for two-thirds of their institutionalized enrollees. For Year One, we estimate a per endorsed sponsor cost between $1 million and $1.8 million and a per enrollee cost between $2.48 and $4.09. For Year Two, we estimate a per endorsed sponsor cost between $1.2 million and $2.2 million and a per enrollee cost between $2.75 and $4.96. For the Transition Period, we estimate a per endorsed sponsor cost between $120 thousand and $305 thousand and a per enrollee cost between $0.28 and $0.70.

To accurately represent the full range of possible costs faced by an endorsed sponsor, for our final estimates of claims processing, we use the lowest per sponsor cost estimate, the low costs faced by each of the 13 endorsed sponsors, as our low estimate. Similarly, we used the highest per endorsed sponsor cost estimate, the high costs faced by each of the two special endorsed sponsors, as our high estimate of claims processing costs.

We estimate the total claims processing costs, including claims from pharmacies in long-term care facilities and paper claims, across all sponsors for Year One to be between $8 million and $22 million dollars, with a per endorsed sponsor cost between $542 thousand and $1.8 million dollars. This translates to a per discount card enrollee cost between $1.25 and $4.09 dollars. For Year Two, the total program cost is between $11.5 million and $30 million dollars, with a per endorsed sponsor cost between $763 thousand and $2.2 million dollars. This translates to a per discount card enrollee cost between $1.74 and $4.96 dollars. For the Transition Period, we estimate the total cost across all sponsors to be between $2.2 million and $5.6 million dollars, with a per endorsed sponsor cost between $149 thousand and $305 thousand dollars. This translates to a per discount card enrollee cost between $0.34 and $0.70 dollars.

f. Account Maintenance

Endorsed programs generally require ongoing account maintenance to maintain and update eligibility databases, input changes to the formulary database, provide technology support, provide typical industry data reports, and manage customer service for the purchaser. Account maintenance does not include call center or information and outreach activities. The cost of account maintenance is fairly minimal and is often rolled into other costs, such as a claims-processing fee. This clarifies, in part, the higher observed claims processing costs observed in the literature than we are using in this analysis.

The independent consulting firm gathered estimates of current account maintenance costs across commercial and State programs ranging from $2.28 per discount card enrollee per year to $3.84 per discount card enrollee per year in 2003 dollars. One firm that the consulting firm interviewed believed account maintenance costs for this program would be closer to $4.00 per discount card enrollee per year in 2003 dollars. For purposes of these estimates, we used $3.84 per discount card enrollee for our low estimate and $4.00 per discount card enrollee as our high estimate.

We believe these estimates capture the costs of producing data files for price comparison and the type of reporting that CMS requires to support monitoring. Further, the consulting firm found that most data related reports provided by sponsors to their clients, based on their clients' business needs, are negligible in cost. An example provided by the consulting firm includes a data file of all claims for a week long period. They Stated that the cost of such a report would be between $100 to $200 and would include the retail purchase price actually paid, the coded name and address of the store, and the name of the drug. The consulting firm indicated that some of the types of reporting likely to be required by CMS under the Medicare prescription drug discount card program would, in the private sector, be treated as a revenue generating product offering by sponsors. As such, sponsors would typically charge their clients according to the value, not cost that this data provides. In cases where the owner/producer of the data is providing the data reports as a subcontractor to a client of CMS, then whether the subcontractor chooses to charge the sponsor, at cost or profit, is a business and contract decision for these two entities, where, for example, the subcontractor is competing among other possible subcontractors for the volume of business that the name of the front organization may provide.

Adjusting account maintenance for the nine-month operating period in Year One and for inflation, we estimate a per discount card enrollee cost for Year One ranging from $3.00 to $3.12. This translates to a total cost between $19.4 million and $20.2 million dollars for all endorsed sponsors in Year One, with a per endorsed sponsor cost between $1.3 million and $1.4 million. In Year Two, an aggregate account maintenance cost is between $27 million and $29 million dollars with a per endorsed sponsor cost between $1.8 million and $1.9 million dollars. This translates to a per discount card enrollee cost between $4.17 and $4.34 for Year Two. For the Transition Period, we estimate a total program cost between $5.4 million and 5.6 million dollars, with a per endorsed sponsor cost between $357 thousand and $372 thousand dollars and a per discount card enrollee cost between $0.82 and $0.85 dollars.

g. Grievances

We anticipate that endorsed sponsors will incur minimal costs providing an internal grievance mechanism to document and address discount card enrollee complaints. Our endorsement criteria require that endorsed sponsors maintain a grievance process dedicated to complaints by discount card enrollees only about program operations, not about requests for reconsideration of a negative eligibility determination. Within a traditional benefit, medical-related grievances are usually related to prior approval, medical necessity, or a previous complaint. In means-tested prescription assistance programs, appeals for negative eligibility determinations are also a common source of complaints.

For this discount card program, discount drug endorsed sponsors will not need to address the traditional appeals of a funded benefit, those related to medical necessity determinations, or to address appeals for means-tested programs, those of eligibility determination. We expect grievances to be limited to programmatic issues such as pharmacy participation and the size of discounts. These issues are not complex and are straightforward to address.

The consulting firm gathered estimates of grievance processing in State programs and reports and estimated that costs were less than $0.01 per discount card enrollee per month. In light of this information, we estimate a low of $0.09 and a high of $0.12 per discount card enrollee per year in 2003 dollars.

For the nine-month operating period in Year One, we estimate a range of total program costs between $455 thousand and $606 thousand dollars. We estimate a per endorsed sponsor cost for grievances in Year One between $30 thousand and $40 thousand and a per discount card enrollee cost between $0.07 and $0.09. In Year Two, we estimate a total costs between $642 thousand and $855 thousand, a per

[14] Price Waterhouse Coopers. June 2001. *Study of Pharmaceutical Benefit Management*. CMS contract number 500–97–0399 Task Order 0097: 76.

[15] Ibid.

endorsed sponsor costs between $43 thousand and $57 thousand, and a per discount card enrollee cost between $0.10 and $0.13. For the Transition Period, we estimate a total cost between $126 thousand and $167 thousand, a per endorsed sponsor cost between $8 and $11 thousand, and a per discount card enrollee cost between $0.02 and $0.03.

TABLE 10.—NET PRESENT VALUE ANALYSIS BY AVERAGE ENDORSED SPONSOR

	Net present value	Year 1	Year 2	Transition period
Low.				
Net Benefits from Table 9 in 2003 dollars	NA	$2,457,596	$8,086,304	($549,832)
Discounted by 3%	9,790,107	2,457,596	7,850,781	(518,269)
Discounted by 7%	9,534,645	2,457,596	7,557,293	(480,244)
High.				
Net Benefits from Table 9 in 2003 dollars	NA	(4,739,038)	5,748,531	(751,342)
Discounted by 3%	133,848	(4,739,038)	5,581,098	(708,212)
Discounted by 7%	(22,830)	(4,739,038)	5,372,459	(656,251)

TABLE 11.—COST BENEFIT RATIOS BY ENDORSED SPONSOR

	Year 1	Year 2	Transition period
Benefits.			
From Table 9 in 2003 Dollars	$12,445,673	$12,110,876	$0
Discounted by 3%	$12,445,673	$11,758,132	$0
Discounted by 7%	$12,445,673	$11,318,576	$0
Costs.			
Low.			
Cost Stream from Table 9 in 2003 Dollars	9,988,077	4,024,572	549,832
Discounted by 3%	9,988,077	3,907,352	518,269
Discounted by 7%	9,988,077	3,761,282	480,244
High.			
Cost Stream from Table 9 in 2003 Dollars	17,184,711	6,362,345	751,342
Discounted by 3%	17,184,711	6,177,034	708,212
Discounted by 7%	17,184,711	5,946,117	656,251
Present Value Benefit/Cost Ratios.			
Low—3%	1.68		
Low—7%	1.67		
High—3%	1.01		
High—7%	1.00		

Table 9, which appears earlier in this document at the beginning of the discussion about individual administrative cost categories, presents cost estimates for endorsed sponsors for each cost component in nominal dollars, at both the program and per discount card enrollee levels, relative to the maximum annual enrollment fee of $30. The total low cost range represents the costs to a card sponsor incurring all low administrative costs, and the total high cost range represents the costs to a card sponsor incurring the highest administrative costs, including those associated with claims-processing for special endorsed sponsors. We use the maximum annual enrollment fee as the only source of revenue for endorsed sponsors in this analysis to demonstrate that endorsed sponsors can cover their administrative costs with enrollment fee revenue. These estimates do not account for any costs of producing services that are not required for endorsement, but which could be offered to distinguish a drug card offering, such as disease-specific counseling or using mass media for information and outreach.

In Year One, we estimate that endorsed sponsors with low costs can easily cover their costs if they charge the maximum annual enrollment fee of $30. An average endorsed sponsor with 431,865 beneficiaries enrolling and participating for nine-months, and low administrative costs could collect revenue of $12,955,945 and incur costs of $10,397,588 resulting in a profit of $2,558,357. We estimate that endorsed sponsors with high administrative costs and an average of 431,865 beneficiaries enrolling and participating for nine-months could collect revenue of $12,955,945 and incur administrative costs of $17,889,284, resulting in a net loss of $4,933,339. Costs are higher than revenue for these endorsed sponsors because the costs associated with information and outreach, enrollment, and program implementation activities are loaded into Year One.

In Year Two, we estimate that all endorsed sponsors will cover their administrative costs. We estimate that endorsed sponsors with low costs and an average of 438,010 enrolled could earn revenue of $13,140,301, if they charge the maximum annual enrollment fee, and will incur administrative costs of $4,336,661. This results in net revenue of $8,773,640. For the same year, we estimate that endorsed sponsors with high costs and an average of 438,010 enrolled could earn revenue of $13,140,301, if they charge the maximum annual enrollment fee, and will incur administrative expenses of $6,903,144. This results in net revenue of $6,237,156. For the Transition Period, we estimate that endorsed sponsors with low costs and 438,010 enrolled for an average of 2.25 months will lose $622,410 and that endorsed sponsors with high costs and 438,010 enrolled for an average of 2.25 months will lose $850,519. Endorsed sponsors cannot charge an annual enrollment fee during the Transition Period.

A present value calculation is appropriate when costs and benefits are realized in different years in order to standardize costs and benefits for the time-value of money. Table 2 calculates the net present value (NPV) of these streams of net benefits (provided in Table 9), over the life of the program. In their circular A–4, the Office of Management and Budget requires all benefit-cost analyses to use a 7 percent discount rate (r), which is the rate used to adjust cost and benefit streams for the time-value of money.[16] We also calculated net benefits using a 3 percent discount rate. The Office of Management and Budget has indicated that a 3 percent discount rate better approximates the individual rate of time preference.

As noted in the introduction to this analysis, we believe that potential card sponsors will find it profitable to participate in this program. The cost of capital to a private firm choosing to implement this program is the interest rate of a corporate bond. Lehman Brothers estimate that AAA and A average corporate bond yields to maturity are 2.89 percent and 3.93 percent respectively.[17] These low rates also reflect the return on capital for such a short investment. The program will last roughly 24 months. In order to avoid the influence of inflation on nominal interest rates, in Tables 10 and 11 we have removed all inflation adjustments from cost estimates, adjusted the nominal benefit stream of enrollment fee revenue for inflation in 2004 and 2005, and calculated present values in 2003 dollars. Net present value in Table 10 is calculated:

NPV=Year1Net+[Year2Net/(1+r)]+
[Transition PeriodNet/(1+r)^2]

As shown in Table 10, a positive net present value exists for both the low and high cost estimates when discounted by 3 percent. A positive net present value exists for the low cost estimate when discounted by 7 percent, and a slightly negative net present value exists for the high cost estimate when discounted by 7 percent. Endorsed sponsors with modern information systems and experience administering pharmacy benefits, who also selectively target their information and outreach efforts will realize a large economic profit if they choose to charge the maximum enrollment fee of $30. We estimate that these endorsed sponsors could, in total, realize a net present value of approximately $9.5 million to $9.8 million over the life of the program. At a endorsed sponsor's option, to distinguish its endorsed program's offering, these profits could be channeled to deeper discounts on drugs or to additional drug-related products and services to benefit discount card enrollees.

[16] Office of Management and Budget, Circular A–4, September 17, 2003.

[17] Lehman Brothers Credit Index, Yield by Quality, September 30, 2003.

Endorsed sponsors using older mainframe systems, or who have less experience with direct enrollment, and who make greater investments in information and outreach materials, and who have chosen to be a special endorsed sponsor, can cover all or almost all of their costs if they choose to charge the maximum annual enrollment fee of $30. We stated earlier that we believe 3 percent to be an appropriate discount rate for this program. Using a 3 percent discount rate, we estimate that endorsed sponsors with the highest administrative costs could realize a net present value of $134 thousand with an annual enrollment fee of $30. However, using the higher discount rate of 7 percent results in a slight loss for endorsed card sponsors with the highest costs. Such a finding does not preclude these potential card sponsors from participating because they can choose to cover their administrative costs by passing less rebate and other price concession revenues on to their discount card enrollees in the form of higher negotiated prices.

The highest cost estimates are for sponsors who receive a special endorsement to process claims for long-term care pharmacies. Sponsors with high administrative costs, excluding the effect of claims processing for LTC pharmacies, and dealing only with non-institutionalized enrollees could easily cover their costs, realizing a net present value of $442 thousand to $601 thousand with an annual enrollment fee of $30. We also believe that endorsed sponsors stand to further benefit from the amortization of certain cost components, thereby yielding a more attractive net present value in both the low and high ranges.

Calculating Benefit-Cost ratios is another means of assessing the profitability of a program. In Table 11 we estimate present value benefit-cost ratios. These are calculated by discounting costs and benefits for each year, summing over the years of the program and setting total present value benefits over total present value costs. As with the net present value calculations, we removed the effect of inflation from these estimates and calculate benefit-cost ratios in 2003 dollars. For endorsed sponsors with low administrative costs, we estimate a benefit-cost ratio of approximately 1.68 for the 3 percent discount rate and 1.67 for the 7 percent discount rate, and for endorsed sponsors with high administrative costs, we estimate a benefit-cost ratio of 1.01 and 1.00 respectively. In both instances, the benefit-cost ratio equals or exceeds one, demonstrating the feasibility of programs offered by each type of endorsed sponsor relative to anticipated revenue.

We have estimated costs for an average endorsed sponsor of 430 thousand enrolled individuals. Realistically, enrollment may not be evenly distributed when this program is implemented. We expect that some national endorsed programs will garner a large proportion of discount card enrollees, and that their participation will fulfill the geographic requirement that discount card eligible individuals have access to at least 2 programs. We also expect that other endorsed programs will enroll the remainder. The benefit-cost ratio for high estimated costs at 430 thousand enrolled equals or exceeds one, indicating that profitability for a endorsed sponsor with very high administrative costs will depend on enrolling all anticipated enrollment. There is very little room to absorb the impact of reduced enrollment through enrollment fees alone. This is not because fixed costs are large, the endorsement criteria require endorsed sponsors to already have most of the infrastructure needed to offer a drug discount card. Rather it is because very high variable costs leave little room to spread these minimal fixed costs across a reduced level of enrollment.

On the other hand, the benefit-cost ratios for low estimated costs, 1.67 and 1.68, clearly demonstrates enough room to absorb the costs of reduced enrollment. We believe that efficient endorsed sponsors can easily reach profitability with a moderate level of enrollment. Efficiencies are not necessarily due to economies of scale and can be achieved through new technology and smarter business practices. Finally, if, for some reason, endorsed sponsors enroll fewer individuals than anticipated, costs could be recouped through rebate and other price concessions.

This analysis has demonstrated that the maximum enrollment fee of $30 in Years One and Two gives endorsed sponsors with very different operating environments, levels of commitment, technological efficiency, and business investment strategies the flexibility to recoup their costs through enrollment revenue. Endorsed sponsors with the highest administrative costs can collect sufficient enrollment revenue to cover all or almost all of their expenditures. Card sponsors experiencing any minimal net loss can cover these costs with earnings from rebate dollars. Endorsed sponsors with lower administrative costs can easily collect sufficient enrollment revenue to cover

their administrative expenses and may be able to charge a lower enrollment fee or pass greater savings onto their discount card enrollees.

J. Conclusion to Impact Analysis

In summary, more than 7 million Medicare beneficiaries are projected to enroll in the Medicare prescription drug discount card program. Savings to these beneficiaries from discount card activities are estimated to range from $1.4 billion to $1.8 billion in the last nine months of 2004, $2.0 billion to $2.7 billion in 2005, and $0.4 billion to $0.6 billion in the transition period in 2006. About 4.7 million of these beneficiaries are also expected to be enrolled in the transitional assistance program, with savings realized by these beneficiaries from transitional assistance estimated to be about $2.4 billion in 2004, $2.6 billion in 2005, and $0.1 billion in the transition period in 2006.

The Medicare prescription drug discount card program is not expected to have a significant economic impact on a substantial number of small pharmacies and drug stores. On average, estimated savings from discount card activities represent at most 1.18 percent of retail prescription drug revenues. Results from the sensitivity analysis found that even in a hypothetical geographic area with a larger than average proportion of residents likely to enroll in the Medicare prescription drug discount card program, savings from discount card activities represented less than 3 percent (2.36 percent) of total retail prescription drug sales.

Furthermore, this economic impact will not be borne entirely by pharmacies, because endorsed sponsors will be required to obtain manufacturer rebates or discounts that will defray the cost of pharmacies providing discounts on retail drug prices.

Finally, the analysis of administrative costs and revenue demonstrated that endorsed discount card sponsors with varied levels of administrative costs, ranging from low to high, would be able to recoup all or almost all of their costs through enrollment revenue (a maximum $30 enrollment fee in Years One and Two) alone. Furthermore, this analysis found that endorsed sponsors with lower administrative costs can easily collect sufficient enrollment revenue to cover their administrative expenses, and as a result may be able to charge a lower enrollment fee or pass greater savings onto their enrollees.

K. Alternatives Considered

Most of the provisions related to the Medicare prescription drug discount card program are statutorily specified; however, there were a few policy areas where the Secretary was provided discretion and we considered alternatives to the proposed features. A number of the areas where we considered alternatives relate to applicant qualifications. The statute specifies that the Secretary may determine the types of non-governmental entities that are appropriate to act as endorsed sponsors, and these entities may include pharmacy benefit management companies, wholesale or retail pharmacy delivery systems, insurers (including insurers offering Medicare supplemental policies), and Part C plans. Although we have the authority to limit the types of entities that may act as endorsed sponsors, the only specific structural requirement for a sponsor is that it be a non-governmental, single legal entity doing business in the United States. We chose not to impose other structural requirements at this time because we believe our other conditions for endorsement ensure that applicants, either individually or through subcontracts, will have the necessary experience and integrity to act as endorsed sponsors. We did this to provide flexibility for a wider variety of applicants using combined capabilities to become card sponsors than are specifically identified in the statute.

Another provision of the statute related to applicant qualifications is that an applicant is eligible for endorsement under the Medicare prescription drug discount card program if the applicant by itself, or together with subcontractors, demonstrates experience and expertise in operating a drug discount card or similar program and meets certain requirements related to business stability and integrity. We considered alternatives for how to interpret this provision. As discussed earlier in this document, we decided to interpret this provision to mean that applicants, together with their subcontractors, must have certain qualifications. First, is the qualification of demonstrating 3 years of private sector experience in pharmacy benefit management, including adjudication and processing of claims at the point of sale, negotiating with prescription drug manufacturers and others for rebates and discounts on prescription drugs, and administration and tracking of an individual subsidy or benefit in real time. All of these administrative functions are features that must be performed as part of this program. We did consider both shorter and longer periods of experience. We believe, however, that the 3 years prior experience strikes an appropriate balance to ensure that endorsed sponsors are able to quickly establish their endorsed programs, thereby promoting the statutory mandate to implement the Medicare drug discount card program within 6 months of enactment of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003. In addition, the 3 years prior experience requirement ensures that endorsed sponsors have the necessary experience and capacity to offer card enrollees quality discounts and customer service. Moreover, given the relative newness of the drug card industry and high market turnover, we believe requiring less than 3 years experience would create an untenable risk of having the Medicare name associated with less than stable and reputable organizations. Alternatively, requiring more than 3 years experience might be too limiting in terms of an applicant pool.

In addition to requiring 3 years of relevant experience, we decided to require that a single entity which is either the applicant or a subcontractor operate a pharmacy benefit program, a drug discount card, a low-income drug assistance program, or a similar program that serves at least 1 million covered lives. We decided not to link the 1 million covered lives requirement with the 3-year experience requirement in order to provide entities the flexibility to combine their capabilities. For example, an entity with the requisite experience may not have the enrollment capacity, but may acquire this capacity by contracting with another entity for purposes of administering the endorsed program. As discussed previously in this document, given the potential level of enrollment in this program, we believe it is necessary that endorsed sponsors have the capacity to accept a large volume of enrollees. Furthermore, our 6-month statutorily mandated implementation timeline necessitates that endorsed sponsors be able to quickly accommodate a potentially large influx of enrollees over a relatively short period of time. Current levels of covered lives provides evidence of an applicant's immediate capacity to do so. In examining our data on the number of covered lives served by a variety of organizations, we found that a standard of 1 million lives strikes a balance between ensuring a competitive marketplace with a number of different endorsed programs available to Medicare beneficiaries and ensuring that endorsed sponsors have the capacity to handle a large influx of card enrollees.

Another area where we considered alternatives relates to proration of the $600 transitional assistance. Section 1860D–31(g)(2)(A) of the Act provides that transitional assistance beneficiaries may receive up to $600 each year in transitional assistance. However, section 1860D–31(g)(2)(B) of the Act permits us to prorate the amount of transitional assistance available to beneficiaries applying for transitional assistance. We considered whether or not to exercise this authority. We decided not to prorate transitional assistance amounts in 2004 in recognition that it may take time for our education campaign to reach all beneficiaries and that beneficiaries need sufficient opportunity to learn about the Medicare prescription drug discount card program without penalty. We did, however, decide to prorate the transitional assistance available to eligible enrollees applying for transitional assistance in 2005. We decided to prorate transitional assistance in 2005 because we believe that, by 2005, beneficiaries will have had ample time to learn about the Medicare prescription drug discount card program. In addition, prorating transitional assistance encourages transitional assistance eligible beneficiaries to enroll in the Medicare prescription drug discount card program as early as possible in order to maximize their transitional assistance amount, which in turn will increase the volume of covered discount card drugs obtained under an endorsed program and enhance an endorsed sponsor's ability to negotiate deeper discounts for discount card enrollees.

We also considered alternatives related to the requirements for the Secretary to establish procedures and negotiate arrangements with sponsors regarding pharmacies that support long term care facilities and I/T/U pharmacies. We considered whether to require all card sponsors to integrate pharmacies that support long term care facilities and, for sponsors serving the relevant states, I/T/U pharmacies into their networks. As discussed in greater detail previously in this document, we decided the best way to ensure that AI/ANs and residents of long term care facilities have the opportunity to receive transitional assistance is to promote a competition for "special endorsement" to serve these beneficiaries and to select at least two of the best plans for including each type of pharmacy, one type associated with long term care facilities, and the other being I/T/U pharmacies. We believe a competition among interested sponsors will encourage better, more thoughtful plans for access to a market generally untapped by the pharmacy benefit management industry. Pharmacies supporting long term care facilities and AI/ANs are not generally included in the traditional pharmacy networks of the pharmacy benefit management industry. To require that all sponsors provide for their inclusion would represent a significant new burden and could undermine the business case for participation by some potential applicants considering participation in the broader program. A similar set of considerations also applied to how to deal with the territories and our decision to limit the number of special endorsed sponsors operating in each of the territories to at least one in order to assure that a sufficient number of beneficiaries will enroll in special endorsed sponsors' endorsed programs in the territories. We were concerned that in the absence of this decision, an insufficient number of applicants would seek to offer endorsed programs in the territories and we therefore would be unable to ensure that residents of the territories have access to negotiated prices.

List of Subjects

42 CFR Part 403

Grant programs-health, Health insurance, Hospitals, Intergovernmental relations, Medicare, Reporting and recordkeeping requirements.

42 CFR Part 408

Medicare.

■ For the reasons set forth in the preamble, the Centers for Medicare & Medicaid Services amends 42 CFR chapter IV, as follows:

PART 403—SPECIAL PROGRAMS AND PROJECTS

■ 1. The authority citation for part 403 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

■ 2. Subpart H is revised to read as follows:

Subpart H—Medicare Prescription Drug Discount Card and Transitional Assistance Program

Sec.

403.800 Basis and scope.
403.802 Definitions.
403.804 General rules for solicitation, application and Medicare endorsement period.
403.806 Sponsor requirements for eligibility for endorsement.
403.808 Use of transitional assistance funds.
403.810 Eligibility and reconsiderations.
403.811 Enrollment, disenrollment, and associated endorsed sponsor requirements.
403.812 HIPAA privacy, security, administrative data standards, and national identifiers.
403.813 Marketing limitations and record retention requirements.
403.814 Special rules concerning Part C organizations and Medicare cost plans and their enrollees.
403.815 Special rules concerning States.
403.816 Special rules concerning long-term care and I/T/U pharmacies.
403.817 Special rules concerning the territories.
403.820 Sanctions, penalties, and termination.
403.822 Reimbursement of transitional assistance and associated sponsor requirements.

Subpart H—Medicare Prescription Drug Discount Card and Transitional Assistance Program

§ 403.800 Basis and scope.

(a) *Basis.* This subpart is based on section 1860D–31 of the Social Security Act (the Act).

(b) *Scope.* This subpart sets forth the standards and procedures CMS uses to implement the Medicare Prescription Drug Discount Card and Transitional Assistance Program.

§ 403.802 Definitions.

For purposes of this subpart, the following definitions apply:

Annual coordinated election period means the period beginning on November 15, 2004 and ending on December 31, 2004, during which a discount card enrollee may elect to disenroll from their current endorsed discount card program and elect enrollment in another endorsed discount card program effective January 1, 2005.

Applicant means the non-governmental, single legal organization or entity doing business in the United States that is applying for Medicare endorsement of its prescription drug discount card program, as described in its application, to be operated by itself or in coordination with subcontractors.

Application means the document submitted to CMS by an applicant that seeks to demonstrate the applicant's compliance with the requirements specified in this subpart in order to obtain Medicare endorsement of the applicant's prescription drug discount card program.

Authorized representative means a person with legal authority to act on behalf of an individual in making decisions related to the individual's health care or the individual's

enrollment in, disenrollment from, and access to negotiated prices and transitional assistance under the Medicare Prescription Drug Discount Card and Transitional Assistance Program.

Covered discount card drug means any of the following: a drug that may be dispensed only upon a prescription and that is described in sections 1927(k)(2)(A)(i) through (iii) of the Act; a biological product described in sections 1927(k)(2)(B)(i) through (iii) of the Act; insulin described in section 1927(k)(2)(C) of the Act; the following medical supplies associated with the injection of insulin: syringes, needles, alcohol swabs, and gauze; a vaccine licensed under section 351 of the Public Health Service Act; or any use of a covered discount card drug for a medically accepted indication (as defined in section 1927(k)(6) of the Act). The definition of covered discount card drug excludes the following: agents when used for anorexia, weight loss, or weight gain; agents when used to promote fertility; agents when used for cosmetic purposes or hair growth; agents when used for the symptomatic relief of cough and colds; prescription vitamins and mineral products, except prenatal vitamins and fluoride preparations; nonprescription drugs; outpatient drugs for which the manufacturer seeks to require that associated tests or monitoring services be purchased exclusively from the manufacturer or its designee as a condition of sale; barbiturates; and benzodiazepines.

Discount card enrollee or enrollee or card enrollee means an individual described in § 403.810(a) who elects to enroll in a Medicare-endorsed prescription drug discount card program.

Effective date means the date on which an enrollment or disenrollment transaction becomes effective.

Enrollment period means the period beginning on the initial enrollment date and ending on December 31, 2005.

Exclusive card program means an endorsed discount card program that is offered by an exclusive card sponsor.

Exclusive card sponsor means an endorsed sponsor that also operates one or more Medicare managed care plans and limits enrollment in its endorsed discount card program to individuals described in § 403.810(a) who are enrollees in one of the Medicare managed care plans it offers.

Family size means one for individuals who are single, and two for individuals who are married.

Federal Employee's Health Benefits Program plan means a plan under chapter 89 of title 5 of the United States Code including the Retired Federal Employee's Health Benefits Program.

Formulary means the list of specific drugs from among covered discount card drugs for which an endorsed sponsor offers negotiated prices to Medicare beneficiaries enrolled in its Medicare-endorsed prescription drug discount card program.

Group enrollment means simultaneous enrollment of all or some of the individuals described in sectioin 403.810(a) who are members of a Medicare managed care plan into the exclusive card program offered by the Medicare managed care organization.

HIPAA means the Health Insurance Portability and Accountability Act of 1996, 42 U.S.C. 1320d and section 264 of Public Law 104–191.

Income means the components of an individual's adjusted gross income (AGI), as defined under 26 U.S.C. section 62, and, to the extent not included in the components of AGI, retirement and disability benefits, or, if he or she is married, the sum of such income for the individual and his or her spouse.

Initial enrollment date means the date established by the Secretary on which endorsed sponsors may begin accepting beneficiaries' standard enrollment forms.

Initial enrollment year means the period beginning on the initial enrollment date and ending on December 31, 2004.

I/T/U pharmacy means a pharmacy operated by the Indian Health Service, an Indian tribe or tribal organization, or an urban Indian organization, all of which are defined in section 4 of the Indian Health Care Improvement Act, 25 U.S.C. 1603.

Long-term care facility means a skilled nursing facility, as defined in section 1819(a) of the Act, or nursing facility, as defined in section 1919(a) of the Act.

Long-term care pharmacy means a pharmacy owned by or under contract with a long-term care facility to provide prescription drugs to the facility's residents.

Medicare cost plan means an organization that offers enrollment under a reasonable cost reimbursement contract under section 1876(h) of the Act.

Medicare managed care organization means a Part C organization offering a Part C plan described in section 1851(a)(2)(A) of the Act or a Medicare cost plan.

Medicare managed care plan means a plan described in section 1851(a)(2)(A) of the Act offered by a Part C organization or a Medicare cost plan.

Medicare Prescription Drug Discount Card and Transitional Assistance Program or Medicare Drug Discount Card Program means the program established under section 1860D–31 of the Act.

Medicare-endorsed prescription drug discount card program, or endorsed program, or endorsed discount card program means any prescription drug discount card program that has received Medicare endorsement and whose endorsed sponsor has entered into a contract with CMS.

Medicare-endorsed prescription drug discount card sponsor, or endorsed sponsor, or endorsed discount card sponsor means any applicant that has received endorsement from Medicare and entered into a contract with CMS to operate an approved Medicare-endorsed discount card program.

Negotiated price means the discounted price for a covered discount card drug offered by an endorsed sponsor, including any dispensing fee, which takes into account negotiated price concessions, such as discounts, direct or indirect subsidies, rebates, and direct or indirect remunerations.

Network pharmacy means a licensed pharmacy that is not a mail order pharmacy and that is under contract with an endorsed sponsor to provide negotiated prices to its card enrollees and accept transitional assistance as payment for covered discount card drugs provided to its transitional assistance enrollees.

New Medicare managed care organization means an entity applying for approval to enter into a new contract with CMS to offer a new, coordinated care plan or plans as described in section 1851(a)(2)(A) of the Act under Medicare Part C and an exclusive card program under the Medicare Drug Discount Card Program.

Over-the-counter drug means a non-prescription drug.

Part C organization means an organization offering a Part C plan.

Part C plan means a plan described in section 1859(b)(1) of the Act.

Pharmacy network means the group of network pharmacies under contract with an endorsed sponsor.

Poverty line means the income level defined in section 673(2) of the Community Services Block Grant Act, 42 U.S.C. 9902(2), including any revision required by such section, applicable to the family size involved.

Rural means a five-digit zip code in which the population density is less than 1000 persons per square mile.

Second enrollment year means the period beginning on January 1, 2005 and ending on December 31, 2005.

Solicitation means the application materials identified in the notice CMS publishes in the **Federal Register** announcing its intention to accept and consider applications from applicants seeking Medicare endorsement for their prescription drug discount card programs.

Special election period means the period beginning the day after the effective date of an individual's disenrollment from an endorsed discount card program for one of the reasons listed in § 403.811(b)(2). The length of any given election period will be specified by CMS in a form and manner that supports the goals of the Medicare Drug Discount Card Program.

Special endorsed sponsor means an endorsed sponsor who has received special endorsement by CMS.

Special endorsement means an endorsement granted under § 403.816 or § 403.817.

Standard enrollment form means an enrollment form or other approved process for enrolling individuals into an endorsed program that incorporates the standard elements provided by CMS.

Subcontractor means an organization or entity doing business in the United States with which an applicant or endorsed sponsor enters into a contract or other legal arrangement in connection with the operation of a prescription drug discount card program.

Suburban means a five-digit zip code in which the population density is between 1000 and 3000 persons per square mile.

Transition period means the period beginning on January 1, 2006 and ending, for individuals enrolled for coverage under Part D, on the effective date of the individual's coverage, and for individuals not so enrolled, on the last day of the initial Part D open enrollment period.

Transitional assistance means a subsidy that transitional assistance enrollees may apply toward the cost of covered discount card drugs in the manner described in § 403.808(d).

Transitional assistance effective date means the date on which a transitional assistance enrollee can access transitional assistance.

Transitional assistance enrollee means an individual described in § 403.810(b) who has applied for and been determined eligible for transitional assistance and has enrolled in a discount card program.

Urban means a five-digit zip code in which the population density is greater than 3000 persons per square mile.

§ 403.804 General rules for solicitation, application and Medicare endorsement period.

(a) *Application.* (1) Except as provided in paragraph (a)(2) of this section, an applicant must submit an application to CMS by the deadline announced in the solicitation to be eligible for Medicare endorsement of its prescription drug discount card program. The applicant must certify that based on best knowledge, information, and belief, the reported information is accurate, complete, truthful, and supportable.

(2) A new Medicare managed care organization may simultaneously apply to offer a new Part C plan or plans and an exclusive card program after the deadline announced in the solicitation. New Medicare managed care organizations seeking endorsement of their prescription drug discount card programs must submit an application to CMS at the time that they submit their Part C applications. New Medicare managed care organizations will be eligible for endorsement provided CMS approves their Part C application, the new Medicare managed care organizations demonstrate to CMS that they meet the criteria under paragraph (b) of this section, and the new Medicare managed care organizations demonstrate that they will meet the requirements of paragraph (e)(2) of this section.

(b) *Eligibility to receive endorsement.* Except as specified in §§ 403.814, 403.816 and 403.817, an applicant will be eligible for endorsement if its application demonstrates to CMS's satisfaction that the applicant meets the requirements of § 403.806(a) and § 403.806(b)(1) and that it would operate its endorsed program in a manner consistent with the requirements of § 403.806(b)(2) and (b)(3) through § 403.806(m). An applicant that submits a complete application that meets all of the requirements of this subpart will be eligible to enter into a contract with CMS to operate a Medicare-endorsed prescription drug discount card program. Following the receipt of its Medicare endorsement, an endorsed sponsor must comply with the requirements of § 403.806(b)(2) and (b)(3) through § 403.806(m) through the end of the transition period.

(c) *Ability to subcontract with other organizations and entities.* (1) An applicant for endorsement may demonstrate that it meets the requirements of this subpart by combining with subcontractors.

(2) Any subcontracts must be in final form satisfactory to CMS, signed by all applicable parties, and filed with CMS before an endorsed sponsor will be permitted to engage in any enrollment or information and outreach.

(3) Once endorsed, an endorsed sponsor must ensure that its subcontractors comply with all applicable requirements of this subpart.

(d) *Period of endorsement.* An applicant eligible to receive endorsement will be required to sign a contract with CMS agreeing to operate its approved Medicare-endorsed prescription drug discount card program(s) until the end of the transition period.

(e)(1) Except as provided in paragraph (e)(2) of this section, we expect an endorsed sponsor to be ready by June 8, 2004, to initiate enrollment and fully operate its endorsed program in compliance with the requirements of § 403.806(b)(2) and (b)(3) through § 403.806(m).

(2) A new Medicare managed care organization must be ready to initiate enrollment and fully operate its exclusive card program in compliance with the requirements of §§ 403.806(b)(2) and (b)(3) through § 403.806(m) upon approval of its Part C application and application for Medicare endorsement of its prescription drug discount card program.

§ 403.806 Sponsor requirements for eligibility for endorsement.

Except as specified in § 403.814, § 403.816, and § 403.817, an endorsed sponsor must meet the following requirements:

(a) *Applicant experience.* (1) An applicant must be a non-governmental, single legal entity doing business in the United States.

(2) An applicant must have 3 years of private sector experience in the United States in pharmacy benefit management, which is defined to mean—

(i) Adjudicating and processing claims for drugs at the point of sale;

(ii) Negotiating with prescription drug manufacturers and others for discounts, rebates, and/or other price concessions on prescription drugs; and

(iii) Administering and tracking individuals' subsidies or benefits in real time.

(3) A single legal entity which is either the applicant or a subcontractor must, at the time of application for Medicare endorsement, operate a pharmacy benefit program, a prescription drug discount card program, a low-income drug assistance program, or a similar program that serves at least 1 million covered lives.

(b) *Financial stability and business integrity.* (1) An applicant must

demonstrate a satisfactory record of the financial stability and business integrity of itself, any subcontractors on whom the applicant relies to satisfy the 3 years experience requirement in paragraph (a)(2) of this section and the 1 million covered lives requirement in paragraph (a)(3) of this section, and any subcontractors engaged by the applicant to perform the following activities: develop the pharmacy network; negotiate with manufacturers or pharmacies for rebates, discounts, or other price concessions; handle eligibility for or enrollment in the endorsed sponsor's endorsed discount card program and/or transitional assistance; and administer transitional assistance.

(2) An endorsed sponsor and any subcontractors described in paragraph (b)(1) of this section must maintain a satisfactory record of financial stability and business integrity during the term of the endorsed program.

(3) Medicare endorsement of a discount card program shall not be construed to express or imply any opinion that an endorsed sponsor or any subcontractor of an endorsed sponsor is in compliance with or not liable under the False Claims Act, anti-kickback statute (section 1128B(b) of the Act), or other legal authorities for any improper billing, claims submission, or related conduct.

(c) *Compliance with applicable law.* An endorsed sponsor must comply with all applicable Federal and State laws, including the Federal anti-kickback statute (section 1128B(b) of the Act).

(d) *Prescription drug offering.* An endorsed sponsor must comply with the following discount, rebate, and formulary requirements:

(1) Offer all of its discount card enrollees negotiated prices on covered discount card drugs, which may be limited to those covered discount card drugs included on the endorsed sponsor's formulary.

(2) If the endorsed sponsor uses a formulary, offer a negotiated price on at least one covered discount card drug in each of the lowest level categories for each of the therapeutic groups representing the drugs most commonly needed by Medicare beneficiaries as determined by CMS. A specific covered discount card drug may not be used to fulfill this requirement for more than one category.

(3) Offer a negotiated price on a generic drug in at least 55 percent of the lowest level categories in each of the therapeutic groups representing the drugs most commonly needed by Medicare beneficiaries as determined by CMS.

(4) In setting negotiated prices under this section, an endorsed sponsor may vary its prices and the drugs included on the formulary by pharmacy contract and enrollee characteristics, such as transitional assistance eligibility status.

(5) Synchronize changes in the list of, and negotiated prices for, covered discount card drugs included in the endorsed sponsor's formulary with formulary and negotiated prices published on a price comparison Web site, as described in paragraph (i)(4)(v) of this section.

(6) Obtain rebates, discounts, or other price concessions from manufacturers on covered discount card drugs and pass a share of such concessions to enrollees through negotiated prices.

(7) Guarantee that network and mail order pharmacies provide the lower of the negotiated price or usual and customary price when a covered discount card drug for a negotiated price is available at the point of sale.

(8) Guarantee that a network pharmacy, at the point of sale, inform a discount card enrollee of any differential between the price of a prescribed drug (if it is a covered discount card drug) and the price of the lowest priced generic covered discount card drug that is therapeutically equivalent and bioequivalent and available at such pharmacy. Mail order pharmacies are to provide this information at the time of delivery of the drug.

(9) Except during the week of November 15, 2004 (which coincides with the beginning of the annual coordinated election period), ensure that any increase in the negotiated price for a covered discount card drug does not exceed an amount proportionate to the change in the drug's average wholesale price (AWP), and/or an amount proportionate to the changes in the endorsed sponsor's cost structure, including material changes to any discounts, rebates, or other price concessions the endorsed sponsor receives from a pharmaceutical manufacturer or pharmacy.

(e) *Transitional assistance administration.* An endorsed sponsor must administer transitional assistance funds, including any roll-over funds as described in § 403.808(f), for transitional assistance enrollees, through the following procedures:

(1) Establish accounting procedures to manage the transitional assistance funds for each transitional assistance enrollee.

(2) Ensure that transitional assistance funds are applicable to, and only to, all covered discount card drugs available at the endorsed sponsors' network and mail order pharmacies, regardless of formulary.

(3) Ensure that, at network and mail order pharmacies, transitional assistance funds are applied at the lower of negotiated price (if any) and the pharmacy's usual and customary price.

(4) Ensure that network pharmacies make available to the transitional assistance enrollee, electronically or by telephone, at the point-of-sale of covered discount card drugs, the amount of transitional assistance remaining available to the transitional assistance enrollee. Mail order pharmacies are to make this information available by telephone.

(5) Maintain a toll-free telephone number that discount card enrollees may use to determine their transitional assistance balances.

(6) Enforce coinsurance requirements described in § 403.808(e) and ensure that the portion of the price paid through coinsurance is not deducted from the total transitional assistance funds available to the discount card enrollee.

(f) *Service area and pharmacy access.* An endorsed sponsor must meet the following requirements for its service area and its pharmacy network:

(1) The service area must cover one or more States.

(2) The endorsed sponsor's discount card program must be available to all eligible individuals residing in each State in the endorsed sponsor's service area and may not be offered to individuals residing outside of the United States.

(3) The endorsed sponsor must have a contracted pharmacy network, consisting of pharmacies other than mail-order pharmacies, sufficient to ensure that for beneficiaries residing in the endorsed sponsor's service area the following requirements are satisfied:

(i) At least 90 percent of Medicare beneficiaries, on average, in urban areas served by the endorsed program, live within 2 miles of a network pharmacy;

(ii) At least 90 percent of Medicare beneficiaries, on average, in suburban areas served by the endorsed program, live within 5 miles of a network pharmacy; and

(iii) At least 70 percent of Medicare beneficiaries, on average, in rural areas served by the endorsed program, live within 15 miles of a network pharmacy.

(4) The endorsed sponsor's pharmacy network may be supplemented by pharmacies offering home delivery via mail-order, provided the requirements of paragraph (f)(3) of this section are met.

(g) *Information and outreach and customer service.* (1) An endorsed sponsor must provide through the Internet and some other tangible medium (such as a mailing) to Medicare beneficiaries information and outreach materials describing its endorsed drug card program, including the following information—

(i) The enrollment fee;

(ii) Negotiated prices offered for covered discount card drugs;

(iii) If offered, discounts on over-the-counter drugs;

(iv) Any other products or services offered under the endorsement; and

(v) Any other information that CMS determines is necessary for a full description of the endorsed discount drug card program.

(2) An endorsed sponsor must include on a Web site the following:

(i) Information regarding when the Web site was last updated; and

(ii) A disclaimer that the information on the Web site may not be current.

(3) An endorsed sponsor must use the following forms which incorporate standard elements provided by CMS:

(i) An enrollment form (except as may be modified for an exclusive card sponsor as discussed in § 403.814(b)(5)(iii); and

(ii) An eligibility determination notice.

(4) An endorsed sponsor must provide to each enrollee a card that complies with National Council for Prescription Drug Programs standards.

(5) An endorsed sponsor must meet the following requirements for the review and approval of information and outreach materials:

(i) Comply with the Information and Outreach Guidelines published by CMS; and

(ii) Except as provided in paragraph (g)(5)(iii) of this section, not distribute any information and outreach materials until or unless they are approved by CMS.

(iii) If CMS does not disapprove the initial submission of information and outreach materials within 30 days of receipt of these materials, then the materials will be deemed approved under paragraph (g)(5)(ii) of this section.

(iv) Information and outreach materials may discuss only products or services inside the scope of endorsement, as described in paragraph (h) of this section.

(v) Information and outreach materials include the same kinds of materials described in 42 CFR 422.80(b), as well as the enrollment form, eligibility determination form, and membership card described in paragraphs (g)(3) and (g)(4) of this section, Web site content, and information regarding discounts for over-the-counter drugs.

(6) An endorsed sponsor must maintain a toll-free customer call center that is open during usual business hours and that provides customer telephone service, including to pharmacists, in accordance with standard business practices. The endorsed sponsor must inform enrollees that the toll-free telephone number provides information on the amount of remaining transitional assistance, in accordance with paragraph (e)(5) of this section.

(7) An endorsed sponsor must provide a system to reduce the likelihood of medical errors and adverse drug interactions and to improve medication use.

(h) *Products and services inside and outside the scope of the endorsement.* (1) An endorsed sponsor may provide, under the endorsement, only those products and services inside the scope of the endorsement, including conducting enrollment. An endorsed sponsor must ensure that discount card enrollees are not charged any additional fee (other than the enrollment fee allowed under § 403.811(c)) for products or services inside the scope of the endorsement.

(2) Products and services inside the scope of the endorsement are limited to—

(i) Products or services offered for no additional fee, other than the enrollment fee allowed under § 403.811(c), that are directly related to a covered discount card drug; or

(ii) A discounted price for an over-the-counter drug.

(i) *Reporting.* (1) An endorsed sponsor must report to CMS on a periodic basis information on the major features of the endorsed sponsor's programs that correspond to the qualifications for endorsement, including, but not limited to, information concerning—

(i) Savings from pharmacies and manufacturers obtained through rebates, discounts, and other price concessions;

(ii) Savings shared with discount card enrollees by manufacturer, by all retail pharmacies, by all mail order pharmacies, and by all brand name and all generic covered discount card drugs;

(iii) Dispensing fees;

(iv) Certified (by the chief financial officer) financial accounting records on transitional assistance used by the transitional assistance enrollees in each month;

(v) Participant utilization and spending statements;

(vi) Utilization and spending for selected drugs;

(vii) Performance on customer service metrics such as call center performance;

(viii) Grievance logs; and

(ix) Endorsed sponsor's compliance with the pharmacy network access standards.

(2) An endorsed sponsor must provide notice of, and the rationale for, negotiated price increases, except for increases during the week of November 15, 2004, due to reasons other than changes in average wholesale price (AWP).

(3) An endorsed sponsor must certify that based on best knowledge, information, and belief, the reported information is accurate, complete, truthful, and supportable.

(4) Through a price comparison Web site, an endorsed sponsor must report the following information:

(i) Customer service hours;

(ii) Customer service contact information;

(iii) Endorsed program Web site address;

(iv) Annual enrollment fee; and

(v) Negotiated prices (including any applicable dispensing fee), for every covered discount card drug included in the discount card program's offering.

(5) CMS may require endorsed sponsors to submit, in standard terminology, descriptions of other discount card related services they provide, such as pharmacist services.

(j) *Grievance process.* An endorsed sponsor must establish and maintain a grievance process. This process must be designed to track and appropriately address in a timely manner enrollees' complaints about any aspect of their endorsed program for which the endorsed sponsor is responsible.

(k) *Eligibility, enrollment, and disenrollment.* (1) An endorsed sponsor must make preliminary eligibility determinations in accordance with § 403.810 and conduct enrollment and disenrollment in accordance with § 403.811.

(l) *Authorized representative.* An endorsed sponsor must treat an individual's authorized representative as the individual, if under applicable law, the authorized representative has the legal authority to act on behalf of the individual with respect to the action at issue.

(m) *Other.* An endorsed sponsor must meet the requirements of §§ 403.812, 403.813, and 403.822 of this subpart.

§ 403.808 Use of transitional assistance funds.

(a) *Individuals determined eligible for transitional assistance in 2004.* Subject to paragraph (d) of this section, an individual who, in calendar year 2004, is determined eligible for transitional assistance under § 403.810(b) is entitled to the following:

(1) $600 in calendar year 2004; and
(2) $600 in calendar year 2005.

(b) *Individuals determined eligible for transitional assistance in 2005.* Subject to paragraph (d) of this section, an individual who, in calendar year 2005, is determined eligible for transitional assistance under § 403.810(b) is entitled to one of the following amounts for calendar year 2005:

(1) If the complete application for the individual's transitional assistance eligibility is received on or after January 1, 2005 and before April 1, 2005, $600.

(2) If the complete application for the individual's transitional assistance eligibility is received on or after April 1, 2005 and before July 1, 2005, $450.

(3) If the complete application for the individual's transitional assistance eligibility is received on or after July 1, 2005 and before October 1, 2005, $300.

(4) If the complete application for the individual's transitional assistance eligibility is received on or after October 1, 2005 and on or before December 31, 2005, $150.

(c) *Payment of enrollment fee.* An individual found eligible for transitional assistance is entitled to have CMS pay the annual enrollment fee to the endorsed sponsor on his or her behalf.

(d) *Conditions on use of transitional assistance.* A transitional assistance enrollee may access the transitional assistance described in paragraphs (a) and (b) of this section only if the following conditions are met:

(1) Except as provided in § 403.814(b)(3)(v), the transitional assistance funds are applied toward the cost of a covered discount card drug obtained under the Medicare Prescription Drug Discount Card and Transitional Assistance Program;

(2) The individual pays a coinsurance amount in accordance with § 403.808(e);

(3) The individual purchases the covered discount card drug on or after the individual's transitional assistance effective date; and

(4) The individual is enrolled in the Medicare Prescription Drug Discount Card and Transitional Assistance Program on the date the individual's claim for the covered discount card drug is adjudicated.

(e) *Coinsurance.* If sufficient transitional assistance funds are available, transitional assistance funds must be expended in accordance with the following:

(1) For beneficiaries with incomes at or below 100 percent of the poverty line, 95 percent of the price of a covered discount card drug must be paid from the available transitional assistance funds.

(2) For beneficiaries with incomes greater than 100 percent but at or below 135 percent of the poverty line, 90 percent of the price of a covered discount card drug must be paid from the available transitional assistance funds.

(f) *Rollover.* An individual with transitional assistance retains access to any balance of transitional assistance not expended in a calendar year during the next calendar year, up to and including the transition period, if the individual—

(1) Remains in his or her current endorsed discount card program;

(2) Elects a new endorsed program in an Annual Coordinated Election Period; or

(3) Is eligible for a Special Election Period under § 403.811(b)(2) and elects a new endorsed discount card program during such Special Election Period.

§ 403.810 Eligibility and reconsiderations.

(a) *Eligibility for an endorsed discount card program.* An individual is eligible to enroll in an endorsed discount card program only if such individual meets the following conditions:

(1) The individual is entitled to benefits, or enrolled, under Medicare Part A or enrolled under Medicare Part B; and

(2) The individual, at the time of applying to enroll in an endorsed discount card program, is not enrolled in a State medical assistance program under Title XIX of the Act or under a waiver pursuant to section 1115 of the Act, under which the individual is entitled to any medical assistance for outpatient prescribed drugs as described in section 1905(a)(12) of the Act, except as allowed in § 403.817(d).

(b) *Eligibility for transitional assistance.* An individual is eligible to receive transitional assistance if, at the time of applying for transitional assistance, the individual meets the following conditions:

(1) The individual meets the conditions in paragraph (a) of this section;

(2) The individual resides in one of the 50 States or the District of Columbia;

(3) The individual's income is not more than 135 percent of the poverty line applicable to the individual's family size;

(4) The individual does not have coverage for covered discount card drugs under one or more of the following sources:

(i) A group health plan or health insurance coverage, as these terms are defined under section 2791 of the Public Health Service Act, other than a Part C plan or a group health plan consisting solely of excepted benefits (such as a Medigap plan) as the term is defined under section 2791 of the Public Health Service Act;

(ii) Coverage provided under Chapter 55 of Title 10, United States Code, including TRICARE; or

(iii) A Federal Employee's Health Benefits Program plan; and

(5) The individual (or the individual's authorized representative) completes a standard enrollment form and signs and dates the form in accordance with § 403.811(a)(4). By signing the form, the individual (or the individual's authorized representative) certifies, under penalty of perjury, that, to the best of the individual's knowledge, the information he or she provides on the form is accurate.

(c) *Special rule for QMBs, SLMBs and QIs.* An individual is deemed to meet the income requirements in paragraph (b)(3) of this section if the individual is enrolled under Title XIX of the Act as a—

(1) Qualified Medicare Beneficiary (QMB);

(2) Specified Low-Income Medicare Beneficiary (SLMB); or

(3) Qualified Individual (QI).

(d) *Duration of eligibility determinations.* An individual determined eligible for the Medicare Prescription Drug Discount Card and Transitional Assistance Program and, in the case of transitional assistance enrollees, for transitional assistance, shall remain eligible for the Medicare Prescription Drug Discount Card and Transitional Assistance Program and, in the case of transitional assistance enrollees, for transitional assistance for the duration of the individual's enrollment in the Medicare Prescription Drug Discount Card and Transitional Assistance Program.

(e) *Drug card and transitional assistance benefits not treated as benefits under other Federal programs.* Any benefits received under the Medicare Prescription Drug Discount Card and Transitional Assistance Program must not be taken into account in determining an individual's eligibility for, or the amount of benefits under, any other Federal program.

(f) *Verification of eligibility.* (1) CMS will verify eligibility to enroll in an endorsed discount card program or to receive transitional assistance.

(2) If CMS is unable to verify an individual's eligibility or ineligibility for transitional assistance, CMS can require the individual to provide additional income information in a form and manner specified by CMS as one condition of eligibility for transitional assistance.

(g) *Reconsideration.* (1) If an individual is determined ineligible to enroll in an endorsed discount card program under paragraph (a) of this section or determined ineligible to receive transitional assistance under paragraph (b) of this section, the individual (or the individual's authorized representative) has a right to request that an independent review entity under contract with CMS reconsider the determination.

(2) Reconsideration requests must be filed within 60 days from date of notice of an ineligibility determination, unless the individual (or the individual's authorized representative) can demonstrate good cause for why the 60-day time frame should be extended.

(3) An individual (or the individual's authorized representative) may submit additional documentary evidence or an explanation about his or her eligibility in writing to the independent review entity, as part of the reconsideration process.

(4) Reconsideration decisions shall be issued by the independent review entity in writing and contain an explanation of the reasoning of the decision.

§ 403.811 Enrollment and disenrollment and associated endorsed sponsor requirements.

(a) *Enrollment process.* (1) An individual (or an individual's authorized representative) applying to enroll in an endorsed discount card program must complete a standard enrollment form or other method allowed by CMS and provide such information to the endorsed discount card program in which the individual wishes to enroll.

(2) An individual electing to join an endorsed discount card program that charges an annual enrollment fee, and who is not applying for transitional assistance, must agree to pay the annual enrollment fee, if any, in a form and manner determined by the endorsed card sponsor.

(3) An individual applying for transitional assistance at the time that they apply for enrollment in an endorsed discount card program may only enroll in the endorsed discount card program at that time if CMS determines that the individual is eligible for transitional assistance. Individuals not found eligible for transitional assistance may enroll in an endorsed discount card program without applying for transitional assistance after being notified of their ineligibility for transitional assistance.

(4) An individual applying for transitional assistance must complete a standard enrollment form and sign and date the form, certifying, under penalty of perjury or similar sanction for false statements, as to the accuracy of the information provided on the standard enrollment form.

(5) Except as provided in § 403.811(b)(4), an individual who is not currently enrolled in an endorsed card program seeking to enroll in the Medicare Prescription Drug Discount Card and Transitional Assistance Program may do so at any time during the enrollment period.

(6) An individual may not be enrolled in more than one endorsed discount card program at a time.

(7) An individual may enroll in only one endorsed discount card program per year during the enrollment period. An individual enrolling during the initial enrollment year, with the exception of the circumstances under paragraph (b)(2) of this section, may change election for the second enrollment year during the annual coordinated election period. During the second enrollment year, an individual may enroll in only one endorsed discount card program, unless the individual meets the circumstances described in paragraph (b)(2) of this section.

(8) An individual remains enrolled in an endorsed discount card program elected unless—

(i) The individual is disenrolled under paragraph (b) of this section;

(ii) The individual elects a new program during the Annual Coordinated Election Period; or

(iii) The endorsed sponsor terminates its endorsed discount card program, or is terminated.

(9) No new enrollment in an endorsed discount card program or changing election of an endorsed discount card program is allowed during the transition period.

(10) Except as specified in § 403.814(b)(6)(i), an individual may enroll in any endorsed discount card program, and only those endorsed discount card programs, offered in the individual's State of residence.

(11) In order to access negotiated prices or transitional assistance, if applicable, an individual must be enrolled in an endorsed discount card program. Access to negotiated prices begins with the effective date of enrollment and ends with disenrollment. Access to transitional assistance begins with the transitional assistance effective date and ends for claims finalized on the date of disenrollment.

(12) Except as provided in paragraph (b)(5) of this section, an individual may apply for transitional assistance at any time during the enrollment period.

(b) *Disenrollment process.* (1) An enrollee may voluntarily disenroll at any time by notifying (or by having his authorized representative notify) the endorsed sponsor.

(2) An enrolled individual who disenrolls during the enrollment period under the following circumstances is granted a Special Election Period in which the individual may enroll in another endorsed discount card program during the enrollment period:

(i) A move of residence outside the service area of the current program;

(ii) A change in residence to or from a long-term care facility;

(iii) Enrollment in or disenrollment from a Part C plan or Medicare cost plan;

(iv) An individual's current endorsed discount card program is terminated or terminates; or

(v) Other exceptional circumstances, as defined by the Secretary.

(3) Notification in order to effect a disenrollment is not required for an individual disenrolling from a terminating endorsed discount card program or enrolling in or disenrolling from a Medicare managed care plan offering an exclusive card program, or for individuals changing endorsed discount card programs during the Annual Coordinated Election Period.

(4) A drug discount card enrollee who disenrolls from an endorsed discount card program other than for one of the reasons listed in paragraph (b)(2) of this section will no longer be determined eligible for the Medicare Prescription Drug Discount Card and Transitional Assistance Program and, if he or she disenrolls in 2004, must re-apply for the Medicare Prescription Drug Discount Card and Transitional Assistance Program should he or she wish to enroll in another endorsed discount card program for the second enrollment year.

(5) An individual receiving transitional assistance who voluntarily disenrolls from an endorsed discount card program other than for one of the reasons listed in paragraph (b)(2) of this section will forfeit any transitional assistance remaining available to the individual on the date of disenrollment, and, if he or she disenrolls in 2004, must re-apply for transitional assistance for 2005 in order to receive transitional assistance in 2005.

(6) A discount card enrollee other than a transitional assistance enrollee may be involuntarily disenrolled from his or her endorsed discount card program for failure to pay the annual enrollment fee on a timely basis.

(7) A discount drug card enrollee other than a transitional assistance enrollee may be charged another annual

enrollment fee each time the individual disenrolls from one endorsed discount card program and enrolls in another endorsed discount card program during the calendar year.

(c) *Enrollment fees.* (1) An endorsed sponsor may charge an annual enrollment fee of no more than $30 to each individual enrolled in its endorsed discount card program.

(2) An endorsed sponsor may not collect an enrollment fee from any individual applying for or receiving transitional assistance.

(3) The annual enrollment fee must not be prorated for portions of the year.

(4) An endorsed sponsor must charge a uniform enrollment fee to every discount card eligible individual, or to the Secretary in the case of individuals receiving transitional assistance, residing in a State.

(5) An endorsed sponsor must refund any enrollment fee collected from a discount card enrollee, or any State that has paid the enrollment fee on behalf of the discount card enrollee, during the calendar year during which the individual is determined eligible to receive transitional assistance.

(6) An endorsed sponsor may not charge an annual enrollment fee during the transition period.

§ 403.812 HIPAA privacy, security, administrative data standards, and national identifiers.

(a) *HIPAA covered entities.* An endorsed sponsor is a HIPAA covered entity and must comply with the standards, implementation specifications, and requirements in 45 CFR parts 160, 162, and 164 as set forth in this section. Those functions of a endorsed sponsor the performance of which are necessary or directly related to the operations of the endorsed discount card program are covered functions for purposes of applying to endorsed sponsors the standards, implementation specifications, and requirements in 45 CFR parts 160, 162, and 164.

(b) *HIPAA privacy requirements.* An endorsed sponsor must comply with the standards, implementation specifications, and requirements in the Standards for Privacy of Individually Identifiable Health Information, 45 CFR parts 160 and 164, subparts A and E, in the same manner as a health plan, except to the extent such requirements are temporarily waived by the Secretary.

(c) *Security requirements.* (1) *Standard.* An endorsed sponsor must comply with the applicable standards, implementation specifications, and requirements in the HIPAA Security Rule, 45 CFR parts 160 and 164, subparts A and C, in the same manner as other covered entities as of the compliance date of such Rule.

(2) *Attestation.* An applicant in its application shall—

(i) Attest that, as of the initial enrollment date, it will have in place appropriate administrative, technical, and physical safeguards to protect the privacy of protected health information in accordance with 45 CFR 164.530(c); and

(ii) Attest that its information security measures will meet the standards, implementation specifications, and requirements of 45 CFR part 164 subparts A and C as of the initial enrollment date, or, if unable to make this attestation, provide a plan for coming into compliance with these requirements by the compliance date of the Security Rule set forth in 45 CFR part 164, subpart C.

(d) *Administrative data standards.* An endorsed sponsor must comply with any applicable standards, implementation specifications, and requirements in the Standards for Electronic Transactions under 45 CFR parts 160 and 162 subparts I through R.

(e) *Unique identifiers.* An endorsed sponsor must comply with any applicable standards, implementation specifications, and requirements regarding standard unique identifiers under 45 CFR parts 160 and 162 as of the compliance date of any final rule for standard unique identifiers.

(f) *Applicability of other regulations.* Nothing in this paragraph or in § 403.813 shall be deemed a modification of parts 160, 162 and 164 of title 45, Code of Federal Regulations or otherwise modify the applicability of such regulations to other organizations or covered entities independently subject to the mandates of HIPAA. If an endorsed sponsor is also a health plan, health care provider, or health care clearinghouse, nothing is this paragraph shall impair or otherwise affect the application of HIPAA or parts 160, 162 and 164 of title 45, Code of Federal Regulations to such entity and its performance of those functions which make such entity a health plan, health care provider, or health care clearinghouse.

§ 403.813 Marketing limitations and record retention requirements.

(a) *Marketing limitations.* (1) An endorsed sponsor may only market those products and services offered under its endorsed program that are inside the scope of endorsement as defined in § 403.806(h) and permitted under § 403.812(b).

(2) An endorsed sponsor may not request that a drug card enrollee or an individual seeking to enroll in its endorsed discount card program authorize the endorsed sponsor to use or disclose individually identifiable health information for purposes of marketing any product or service not allowed under paragraph (a)(1) of this section.

(3) An endorsed sponsor may not co-mingle any materials related to the marketing of products and services allowed under paragraph (a)(1) of this section with other marketing materials.

(4) Following termination of an endorsed sponsor's endorsement under §§ 403.820(c), (d) or (e) or termination of the Medicare Drug Discount Card and Transitional Assistance Program, a drug card enrollee's individually identifiable health information collected or maintained by an endorsed sponsor may not be used or disclosed for purposes of marketing any product or service.

(b) *Record retention standard.* (1) An endorsed sponsor must retain records that it creates, collects, or maintains while participating in the Medicare Drug Discount Card and Transitional Assistance Program as part of its operations of an endorsed program for at least 6 years following termination of such program, or, in the event the endorsed sponsor's endorsement is terminated under § 420.820(c), (d), or (e) of this chapter at least 6 years following termination of such endorsement. The Secretary may extend the six-year retention period if an endorsed sponsor's records relate to an ongoing investigation, litigation, or negotiation by the Secretary, the Department of Health and Human Services Office of Inspector General, the Department of Justice, or a State, or such documents otherwise relate to suspicions of fraud and abuse or violations of Federal or State law.

(2) For the period during which an endorsed sponsor retains records as specified in paragraph (b)(1) of this section, an endorsed sponsor must continue to apply security and privacy protections to such records and the information contained therein to the same extent endorsed sponsors are required to do so under § 403.812(b) and § 403.812(c)(1) prior to termination.

§ 403.814 Special rules concerning Part C organizations and Medicare cost plans and their enrollees.

(a) *General requirements.* (1) A Part C organization and Medicare cost plan may not require enrollment in an endorsed discount card program as a condition for enrollment in its Part C plan or Medicare cost plan.

(2) A Part C organization may subsidize the enrollment fee for an endorsed discount card program, whether operated by the Part C organization or another endorsed sponsor, for individuals described in § 403.810(a), provided that any such benefit is reflected in the Part C organization's Adjusted Community Rate filing.

(b) *Exclusive card sponsors.* (1) A Medicare managed care organization may elect to become an exclusive card sponsor by limiting enrollment in its endorsed discount card program to individuals described in § 403.810(a) who are enrolled in any of its Medicare managed care plans. The Medicare managed care organization must be the applicant for endorsement in order to offer an exclusive card program. Such an election must be made at the time of application for endorsement.

(2) Except as noted in paragraphs (b)(3) and (b)(4) of this section, an exclusive card sponsor must comply with all requirements for endorsed sponsors noted in § 403.804 and § 403.806.

(3) An exclusive card sponsor is deemed to meet or is exempt from certain specific requirements listed in § 403.806 as follows:

(i) An exclusive card sponsor is deemed to meet the pharmacy network requirement in § 403.806(f)(3) if its pharmacy network is not limited to mail-order pharmacies and is equivalent to the pharmacy network used in its Medicare managed care plan and such pharmacy network has been approved by the Secretary, or, if its Medicare managed care plan does not use a pharmacy network, the Secretary determines that the pharmacy network provides sufficient access to covered discount card drugs at negotiated prices for discount card enrollees under the standard set forth under 42 CFR 422.112 for a Part C organization described in section 1851(a)(2)(A) of the Act, or under 42 CFR 417.416(e) for a Medicare cost plan.

(ii) An exclusive card sponsor is deemed to meet the service area requirements in § 403.806(f)(1) and (f)(2) if it operates in a service area equivalent to its Medicare managed care plan's service area.

(iii) An exclusive card sponsor is deemed to meet the requirement for financial stability and business integrity in § 403.806(b) through compliance with § 422.400 of this chapter (if a Part C organization described in section 1851(a)(2)(A) of the Act) or compliance with § 417.120 and § 417.122 of this chapter (if a Medicare cost plan).

(iv) An exclusive card sponsor is deemed to meet the covered lives requirement in § 403.806(a)(3).

(v) An exclusive card sponsor is deemed to meet the requirements of § 403.806(e)(2) if it ensures that transitional assistance funds are applied to, and only to, the cost to transitional assistance enrollees of any covered discount card drugs obtained from a network or mail order pharmacy included in the exclusive card sponsor's pharmacy network, and at the option of the exclusive card sponsor, any covered discount card drug obtained under an outpatient prescription drug benefit offered under the affiliated Medicare managed care plan, including any deductibles, co-payments, coinsurance, and other cost-sharing amounts for which transitional assistance enrollees are responsible under the Medicare managed care plan's outpatient prescription drug benefit.

(4) As the Secretary determines appropriate on a case-by-case basis, any additional requirements discussed in § 403.804 and § 403.806, except for the requirements in § 403.812 and § 403.813, may be waived or modified on behalf of an exclusive card sponsor if:

(i) The requirements are duplicative of or conflict with the requirements that a Medicare managed care organization must meet either under Part C or under section 1876 of Title XVIII of the Act; or

(ii) The waiver or modification is necessary to improve coordination between benefits under the Medicare Prescription Drug Discount Card and Transitional Assistance Program and the benefits either under Part C or under section 1876 of Title XVIII of the Act.

(iii) The applicant seeking to become an exclusive card sponsor requests such waivers or modifications in writing in a manner required by the Secretary.

(5) An exclusive card sponsor may conduct group enrollment according to the following rules:

(i) The exclusive card sponsor must seek CMS verification that its Medicare managed care members are individuals described in § 403.810(a) and enroll such individuals as a group into its exclusive card program.

(ii) The exclusive card sponsor must give all individuals it is enrolling as a group the opportunity to decline enrollment, and the opportunity to apply for transitional assistance.

(iii) The exclusive card sponsor may use a modified version of the standard enrollment form described in § 403.806(g)(3) or other CMS-approved process for group enrollment in its endorsed discount card program.

(6) An individual enrolled in a Medicare managed care plan offered by a Medicare managed care organization offering an exclusive card program to individuals enrolled in such Medicare managed care plan is subject to the following requirements:

(i) The individual may enroll only in the endorsed discount card program offered by his or her Medicare managed care organization.

(ii) If the exclusive card sponsor group elects to group enroll into an exclusive card program members of the Medicare managed plan, the individual must actively decline enrollment to avoid enrollment in the exclusive card program.

(c) *Non-uniformity of Benefits.* Implementation of the Medicare Prescription Drug Discount Card and Transitional Assistance Program, including the provision of transitional assistance and the payment or waiver of any enrollment fee by a Part C organization, will not be taken into account in applying the uniform premium and uniform benefits requirement in sections 1854(c) and 1854(f)(1)(D) of the Act and 42 CFR 422.100(d)(2) and 42 CFR 422.312(b)(2).

§ 403.815 Special rules concerning States.

(a) *Optional State payment of enrollment fee.* (1) A State may enter into payment arrangements with endorsed sponsors to provide payment of some or all of endorsed discount card programs' enrollment fees for some or all of the State's individuals described in § 403.810(a) who are not transitional assistance enrollees, provided the enrollment fees are paid directly by the State to the endorsed sponsor.

(2) Expenditures made by a State for enrollment fees described in paragraph (a)(1) of this section must not be treated as State expenditures for which Federal matching payments are available under titles XIX or XXI of the Act.

(b) *Optional State payment of coinsurance.* (1) A State may enter into payment arrangements with pharmacies to provide payment of some or all of coinsurance amounts described in § 403.808(e) for some or all of the State's transitional assistance enrollees, provided the coinsurance amounts are paid directly by the State to the pharmacy.

(2) Expenditures made by a State for coinsurance described in paragraph (b)(1) of this section must not be treated as State expenditures for which Federal matching payments are available under titles XIX or XXI of the Act.

(c) *Coinsurance for Qualified Medicare Beneficiaries.* For transitional assistance enrollees who are qualified

Medicare beneficiaries, any coinsurance liability under § 403.808(e) must not be treated as Medicare cost-sharing coinsurance, under section 1905(p)(3)(B) of the Act, for which a State would otherwise be required to pay.

(d) *State data.* (1) A State must provide data on a monthly basis in an electronic format as determined necessary by the Secretary to effectuate the verification of beneficiary eligibility for the Medicare Prescription Drug Discount Card and Transitional Assistance Program.

(2) Expenditures made by a State in complying with the requirements of paragraph (d)(1) of this section will be treated as State expenditures for which Federal matching payments are available under section 1903(a)(7) of the Act.

§ 403.816 Special rules concerning long-term care and I/T/U pharmacies.

(a) *In general.* (1) An applicant for endorsement may submit an application to become a special endorsed sponsor for long-term care and/or for I/T/U pharmacies.

(2) Of qualified applicants, the Secretary will select at least two of the best-qualified applicants for special endorsement for long-term care and at least two of the best-qualified applicants for special endorsement for I/T/U pharmacies.

(3) Applicants for special endorsement for long-term care must demonstrate in their applications that they meet the requirements in paragraph (b) of this section.

(4) Applicants for special endorsement for I/T/U pharmacies must demonstrate in their applications that they meet the requirements in paragraph (d) of this section.

(b) *Long-term care.* A special endorsed sponsor for long-term care must—

(1) Apply transitional assistance toward the cost of covered discount card drugs obtained by transitional assistance enrollees who reside in long-term care facilities and who receive such prescription drugs through long-term care pharmacies;

(2) Offer contractual arrangements to any long-term care pharmacy seeking reimbursement from transitional assistance for covered discount card drugs provided by such pharmacy to transitional assistance enrollees who reside in long-term care facilities;

(3) Process any submitted claims from network pharmacies and out-of-network long-term care pharmacies that supply covered discount card drugs to transitional assistance enrollees who reside in long-term care facilities, when such enrollees have unspent transitional assistance remaining;

(4) Include special terms and conditions in its contracts with network pharmacies that are long-term care pharmacies to facilitate access to and the administration of transitional assistance to transitional assistance enrollees residing in long-term care facilities, including, but not limited to the following—

(i) Waiving penalties against long-term care pharmacies for submitting late claims to the special endorsed sponsor due to the pharmacy's coordination of benefits activities; and

(ii) Permitting a long-term care pharmacy to limit its services to only transitional assistance enrollees who reside in a long-term care facility served by the long-term care pharmacy.

(5) Except as noted in paragraph (c) of this section, comply with all requirements for endorsed sponsors noted in §§ 403.804 and 403.806.

(c) *Waiver of requirements.* (1) The following requirements will not apply to or will be waived for special endorsed sponsors providing transitional assistance to long-term care residents:

(i) Section 403.806(d) (relating to the prescription drug offering) shall not apply to long-term care pharmacies in the special endorsed sponsor's network; and

(ii) Section 403.806(e)(4) (requiring information about the amount of transitional assistance remaining) shall not apply to long-term care pharmacies in the special endorsed sponsor's network.

(2)(i) As the Secretary determines appropriate on a case-by-case basis, any additional requirements discussed in §§ 403.804 and 403.806, except for the requirements in §§ 403.812 and 403.813, may be waived or modified on behalf of a special endorsed sponsor for long-term care if the waiver or modification is—

(A) Necessary to enable the applicant to either initiate enrollment activities under the special endorsement within 6 months of enactment of section 1860D–31 of the Act, or accommodate the unique needs of long-term care pharmacies; or

(B) Compliance with the requirement(s) in question would be impracticable or inefficient.

(ii) Applicants to become special endorsed sponsors for long-term care must request such waivers or modifications in writing in a manner required by the Secretary.

(d) *I/T/U pharmacies.* A special endorsed sponsor for I/T/U pharmacies must—

(1) Apply transitional assistance toward the cost of covered discount card drugs obtained by transitional assistance enrollees who are American Indians and Alaska Natives and who receive prescription drugs through I/T/U pharmacies as allowed under paragraph (d)(2) of this section;

(2) Offer contractual arrangements to any I/T/U pharmacy that is in the special endorsed sponsor's service area and seeking reimbursement from transitional assistance for covered discount card drugs provided by such pharmacy to transitional assistance enrollees who are also American Indians/Alaska Natives;

(3) Include special terms and conditions in its contracts with network I/T/U pharmacies to facilitate access to and the administration of transitional assistance for transitional assistance enrollees who are American Indians/Alaska Natives, including, but not limited to the following:

(i) Permitting an I/T/U pharmacy to limit its services to only those transitional assistance enrollees who are American Indians/Alaska Natives, and

(ii) Allowing an I/T/U pharmacy to select which drugs to stock, which may be a more limited set than other retail pharmacies.

(4) Except as noted in paragraph (e) of this section, comply with all requirements for endorsed sponsors noted in §§ 403.804 and 403.806.

(e) *Waiver of requirements.* (1) The following requirements will not apply to or will be waived for special endorsed sponsors providing transitional assistance through I/T/U pharmacies:

(i) Section 403.806(d) (relating to the prescription drug offering) shall not apply to I/T/U pharmacies in the special endorsed sponsor's network; and

(ii) Section 403.806(e)(4) (requiring information about the amount of transitional assistance remaining) shall not apply to I/T/U pharmacies in the special endorsed sponsor's network.

(2)(i) As the Secretary determines appropriate on a case-by-case basis, any additional requirements discussed in §§ 403.804 and 403.806, except for the requirements in §§ 403.812 and 403.813, may be waived or modified on behalf of a special endorsed sponsor for I/T/U pharmacies if the waiver or modification is—

(A) Necessary to enable the applicant to either initiate enrollment activities under the special endorsement within 6 months of enactment of section 1860D–31 of the Act, or accommodate the unique needs of I/T/U pharmacies; or

(B) Compliance with the requirement(s) in question would be impracticable or inefficient.

(ii) Applicants to become special endorsed sponsors for I/T/U pharmacies must request such waivers or modifications in writing in a manner required by the Secretary.

§ 403.817 Special rules concerning the territories.

(a) *In general.* (1) An applicant for endorsement may submit an application to become a special endorsed sponsor for all of the territories.

(2) Of qualified applicants, the Secretary will select at least one of the best-qualified applicants to receive a special endorsement for the territories.

(3) Applicants for special endorsement for the territories must demonstrate in their applications that they meet the requirements in paragraph (b) of this section.

(b) *Requirements.* (1) *Negotiated prices.* A special endorsed sponsor for residents of the territories must provide access to negotiated prices in the territories.

(2) *Transitional assistance.* Any transitional assistance in the territories must be in accordance with paragraph (e) of this section.

(3) *Requirements, exception.* Except as specified in paragraph (c) of this section, a special endorsed sponsor for the territories must meet the requirements of §§ 403.804 and 403.806.

(c) *Waiver of requirements and alternative requirements.* (1) Section 403.806(d)(8) (requiring information about price differentials) shall not apply to pharmacies located in the territories and which are in the special endorsed sponsor's pharmacy network.

(2) Sections 403.806(f)(2) and (f)(3) will be deemed met if the special endorsed sponsor makes a good faith effort to secure the participation of retail and mail order pharmacies throughout a territory.

(3)(i) As the Secretary determines appropriate on a case-by-case basis, any additional requirements discussed in §§ 403.804 and 403.806, except for the requirements in §§ 403.812 and 403.813, may be waived or modified on behalf of a special endorsed sponsor for the territories if—

(A) Such waiver is necessary to enable the applicant to either initiate enrollment activities under the special endorsement within 6 months of enactment of section 1860D–31 of the Act, or accommodate the unique needs of pharmacies in the territories; or

(B) Compliance with the requirement(s) in question would be impracticable or inefficient.

(ii) Applicants to become special endorsed sponsors for the territories must request such waivers or modifications in writing in a manner required by the Secretary.

(d) *Other exceptions.* A special endorsed sponsor for the territories may enroll in its endorsed discount card program Medicaid enrollees with coverage for outpatient prescription drugs, as described in § 403.810(a)(2).

(e) *Transitional assistance provided by Territories.* (1) Transitional assistance in the territories may be administered only according to a plan submitted by a territory and approved by CMS.

(2) Territories choosing to provide transitional assistance must submit a plan to CMS within 90 days of the publication of this regulation. The plan must—

(i) Describe how funds allocated to the territory are to be used to cover the cost of covered discount card drugs obtained by individuals who reside in the territory, who are entitled to benefits under Medicare Part A or enrolled under Medicare Part B, and who have income at or below 135 percent of the poverty line for the contiguous United States; and

(ii) Describe how the territory will ensure that amounts received under the allotment are to be used only to provide covered discount card drugs to those individuals determined eligible for transitional assistance, as described in paragraph (e)(2)(i) of this section, and

(iii) Provide such written assurance for the requirements in paragraph (e)(2)(ii) of this section.

(3) CMS will review and approve plans submitted and make allotments to territories with approved plans.

(4) CMS may request reports or information to substantiate that the territories have administered the program consistent with the territory's approved transitional assistance plan.

§ 403.820 Sanctions, penalties, and termination.

(a) *Intermediate sanctions.* (1) For the violations listed in paragraph (a)(3) of this section, the following intermediate sanctions may be imposed on any endorsed sponsor:

(i) Suspension of enrollment of Medicare beneficiaries.

(ii) Suspension of information and outreach activities to Medicare beneficiaries.

(2) *Duration of sanctions.* The intermediate sanctions continue in effect until CMS is satisfied that the deficiency on which the determination was based has been corrected and is not likely to recur.

(3) *Sanctionable violations.* The violations for which intermediate sanctions may be imposed are as follows:

(i) Substantial failure to maintain a contracted retail pharmacy network meeting the requirements of § 403.806(f);

(ii) Substantial failure to comply with CMS Information and Outreach Guidelines;

(iii) Substantial failure to provide discount card enrollees with negotiated prices consistent with information reported to CMS for the price comparison Web site and/or reported by the endorsed sponsor;

(iv) Except during the week of November 15, 2004 (which coincides with the beginning of the annual coordinated election period), substantial failure to ensure that the negotiated price for a covered discount card drug does not exceed an amount proportionate to the change in the drug's average wholesale price (AWP), and/or an amount proportionate to changes in the card sponsor's cost structure (including material changes to any discounts, rebates, or other price concessions the sponsor receives from a pharmaceutical manufacturer or pharmacy);

(v) Charging drug card enrollees additional fees beyond a $30 enrollment fee;

(vi) Charging transitional assistance enrollees any enrollment fee;

(vii) Charging a coinsurance more than 5 percent for those at or below 100 percent of the poverty line, or 10 percent for those above 100 percent but at or below 135 percent of the poverty line;

(viii) Substantial failure to administer properly the transitional assistance funding for transitional assistance enrollees;

(ix) Substantial failure to provide CMS or its designees with requested information related to the endorsed sponsor's endorsed discount card operations; or

(x) Failure to otherwise substantially comply with the requirements of this subpart, including failing to perform the operational requirements of this program or the failure to submit an acceptable plan of correction within the timeframe specified by CMS.

(4) *Written notice of proposed sanctions.*

(i) Prior to imposing sanctions, CMS will send a written notice to the endorsed sponsor stating the nature and basis of the proposed sanction.

(ii) CMS will send a copy of the notice in paragraph (a)(4)(i) of this section to the Office of the Inspector General.

(iii) CMS will allow the endorsed sponsor 15 days from the receipt of notice to provide evidence that it has not committed an act or omission that

may fairly be characterized as a basis for sanction.

(iv) Should an endorsed sponsor present evidence described in paragraph (a)(4)(iii) of this section and by the time limit described in that paragraph, a CMS official not involved in the original sanction determination shall review the evidence and provide the endorsed sponsor a concise written decision setting forth the factual and legal basis for the decision that affirms or rescinds the original determination.

(5) *Effective date of sanction.*

(i) A sanction is effective 15 days after the date that the endorsed sponsor is notified of the sanction or, if the endorsed sponsor timely seeks reconsideration of that sanction decision, on the date specified in the notice of CMS's reconsideration determination.

(ii) The sanction remains in effect until CMS notifies the endorsed sponsor that CMS is satisfied that the basis for imposing the sanction has been corrected and is not likely to recur.

(b) *Civil monetary penalties.* (1) *OIG penalties.* The Office of the Inspector General (OIG) may impose civil monetary penalties in accordance with 42 CFR parts 1003 and 1005 in addition to, or in place of, sanctions that CMS may impose, as described in paragraph (a) of this section, against an endorsed sponsor whom it determines has knowingly—

(i) Misrepresented or falsified information in information and outreach or comparable material provided to program enrollee or other persons;

(ii) Charged a program enrollee in violation of the terms of the endorsement contract; or

(iii) Used transitional assistance funds in any manner that is inconsistent with the purpose of the transitional assistance program.

(2) *CMS penalties.* If CMS determines that an endorsed sponsor has engaged in conduct that it knows or should know constitutes a violation as described in paragraph (a)(3) of this section, where the failure to perform involves the operational requirements of the program, CMS may impose civil monetary penalties in accordance with 42 CFR parts 1003 and 1005 in addition to, or in place of, the sanctions that CMS may impose, as described in paragraph (a) of this section.

(3) CMS or the OIG may impose civil monetary penalties of no more than $10,000 for each violation.

(c) *Termination of endorsement by CMS.* (1) CMS may terminate the endorsement contract at any time with notice on the following bases:

(i) Any of the bases for the imposition of intermediate sanctions as stated in paragraph (a)(3) of this section; or

(ii) The endorsed sponsor engaged in false or misleading information and outreach practices; or

(iii) The endorsed sponsor fails to comply with the requirement of § 403.804(e).

(2) CMS shall provide the endorsed sponsor written notice of termination 30 days prior to the CMS-determined effective date of the termination at which time the endorsed sponsor must do the following:

(i) Provide its discount card enrollees notice of the termination within 10 days of receiving notice from CMS;

(ii) Continue to provide services to its discount card enrollees for 90 days after the discount card enrollees were sent the notice of termination from the endorsed sponsor; and

(iii) Suspend all information and outreach and enrollment activities once enrollees have received the notice of termination.

(3) *Corrective action plan.* Before terminating a contract, CMS shall provide the endorsed sponsor with reasonable opportunity to develop and receive CMS approval of a corrective action plan to correct the deficiencies that are the basis of the proposed termination.

(d) *Termination by endorsed sponsor*—(1) *Cause for termination.* The endorsed sponsor may terminate its endorsement contract if CMS fails substantially to carry out the terms of the contract.

(2) *Card sponsor notice.* The endorsed sponsor must give advance notice as follows:

(i) To CMS, at least 90 days prior to the intended date of termination. This notice must specify the reasons why the endorsed sponsor is requesting contract termination; and

(ii) To its discount card enrollees, by mail, at least 60 days prior to the termination effective date. This notice must include a written description of alternative endorsed discount card programs that serve the discount card enrollee's address.

(3) *Effective date of termination.* The effective date of the termination is determined by CMS and is at least 90 days after the date CMS receives the endorsed sponsor's notice of intent to terminate.

(e) *Termination by mutual consent.* (1) A contract may be modified or terminated at any time by written mutual consent.

(2) If the contract is terminated by mutual consent, the endorsed sponsor must provide notice to its discount card enrollees as provided in paragraph (d)(2) of this section.

(3) If the contract is modified by mutual consent, the endorsed sponsor must provide notice to its discount card enrollees of any changes that CMS determines are appropriate for notification within timeframes specified by CMS.

(f) *Appeal of contract determinations.* (1) *Scope.* This section establishes the procedures for reviewing the following contract determinations:

(i) A determination that an applicant is not qualified to enter into a contract with CMS under section 1860D–31 of the Act; and

(i) A determination to terminate a contract with an endorsed sponsor in accordance with paragraph (c) of this section.

(2) *Notice of determination.* When CMS makes an initial contract determination, it gives the endorsed sponsor or applicant written notice specifying—

(i) The reasons for the determination; and

(ii) The endorsed sponsor's or applicant's right to request reconsideration.

(3) *Effect of contract determination.* The contract determination is final and binding unless a timely request for a reconsideration hearing is filed under this section.

(4) *Right to reconsideration.* An endorsed sponsor whose contract is terminated or an applicant denied endorsement may request a hearing for reconsideration of the CMS contract determination.

(5) *Method and place for filing a request.* A request for a reconsideration hearing must be made in writing and filed with the CMS Central Office.

(6) *Time for filing a request.* The request for a reconsideration hearing must be filed within 15 days from the date of the notice of the initial determination.

(7) *Appointment of hearing officer.* CMS shall appoint a hearing officer to conduct the reconsideration. The hearing officer shall be a representative of the Administrator and not otherwise a party to the contract determination.

(8) *Conduct of hearing.* The endorsed sponsor or applicant may be represented by counsel and may present evidence and examine witnesses. A complete recording of the proceedings will be made and transcribed.

(9) *Reconsideration determination.* A reconsideration determination is a new determination that—

(i) Is based on a review of the contract determination, the evidence and findings upon which it was based, and any other written evidence submitted before notice of the reconsidered determination is mailed, including facts relating to the status of the endorsed sponsor subsequent to the contract determination; and

(ii) Affirms, reverses, or modifies the initial contract determination.

(10) *Notice of reconsidered determination.* As soon as practicable after the close of the hearing, the hearing officer issues a written reconsideration determination that contains the following:

(i) Findings with respect to the applicant's qualifications to enter into or an endorsed sponsor's qualifications to remain under a contract with CMS under section 1860D–31 of the Act;

(ii) A statement of the specific reasons for the reconsidered determination.

(11) *Effect of reconsidered determination.* A reconsidered determination is final and binding on the parties and is not subject to judicial review.

(g) *Compliance with HIPAA.* Failure of an endorsed sponsor to comply with HIPAA and/or the standards, implementation specifications, and requirements in 45 CFR parts 160, 162, and 164, as established in § 403.812, shall be a violation of HIPAA and may be enforced under sections 1176 and 1177 of the Act.

§ 403.822 Reimbursement of transitional assistance and associated sponsor requirements.

(a) A Transitional Assistance Account is created within the Federal Supplementary Medical Insurance Trust Fund and kept separate from all other funds within that fund.

(b) The Managing Trustee of the Transitional Assistance Account shall pay on a monthly basis from the Account the amounts certified by CMS as necessary to make payments for transitional assistance as allowed in § 403.808.

(c) Endorsed sponsors must routinely account to CMS for the transitional assistance provided to the transitional assistance enrollees for finalized (not pending, or denied) claims up to the allowed balance provided by CMS to the sponsor.

(d) Payment transactions will be audited by the Secretary or his agent.

(e) Federal funding in excess of the amount of the balance included in CMS's system is not permitted.

PART 408—PREMIUMS FOR SUPPLEMENTARY MEDICAL INSURANCE

■ 1. The authority citation for part 408 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

■ 2. Amend 408.20 to add new paragraphs (a)(5) and (b)(4) to read as follows:

§ 408.20 Monthly premiums.

(a) * * *

(5) The law was further amended in 2003 to ensure that amounts payable from the Transitional Assistance Account described in § 403.822 of this chapter shall not be taken into account in computing actuarial rates or premium amounts.

(b) * * *

(4) In no case shall payment made for transitional assistance costs under part 403, subpart H of this chapter be included in the formula used to calculate actuarial rates or standard monthly premiums.

* * * * *

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: December 8, 2003.

Thomas A. Scully,

Administrator, Centers for Medicare & Medicaid Services.

Approved: December 8, 2003.

Tommy G. Thompson,

Secretary.

[FR Doc. 03–30753 Filed 12–10–03; 1:00 pm]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–4063–N]

Medicare Program; Medicare Prescription Drug Discount Card

AGENCY: Centers for Medicare and Medicaid Services (CMS), HHS.

ACTION: Notice.

SUMMARY: This notice announces our intention to solicit applications from entities seeking a Medicare endorsement of their prescription drug discount card programs under the Prescription Drug and Medicare Improvement Act of 2003. Private sector entities that do business in the United States and meet all of the qualifications provided by CMS may receive a Medicare endorsement to operate a prescription drug discount card program, including the administration of up to $600 in transitional assistance for eligible Medicare beneficiaries. Additionally, Medicare Part C organizations that offer coordinated care plans, and Medicare reasonable cost reimbursement contractors, may qualify for a Medicare endorsement to provide such a discount card program with transitional assistance exclusively to members of one or more of its Medicare managed care plans. The requirements for these endorsements are stated in supplemental packages—solicitations for applications—that will be posted on the CMS Web site in December 2003. *See* **ADDRESSES** for CMS Web site address.

We anticipate that all applicants whose discount card programs meet the requirements stated in the supplemental package will receive the Medicare endorsement.

Who May Apply: Non-governmental entities that do business in the United States may apply.

DATES: Applications are due to CMS in early 2004, and CMS expects to announce endorsements shortly thereafter. Entities applying in 2004 to enter into a new contract with CMS as a Part C organization offering a coordinated care plan, or plans, will have an additional opportunity to apply for endorsement in 2004.

Deadline for Letter of Intent to Apply: Interested entities are encouraged to immediately submit a letter of intent to the attention of Scott Nelson by e-mail to *snelson2@cms.hhs.gov,* or by FAX, to 410–786–8933, to apply for an endorsement. Submission of a letter of intent is optional and will not affect the approval of an application.

Date of Pre-Application Conference: We will hold a pre-application conference shortly after the supplemental packages are posted on the CMS Web site and will post on our Web site the date and time of the conference, as well as instructions for registering to attend the conference.

Deadline for Application Submission: Applications for endorsement are due 45 days after the solicitations are posted.

ADDRESSES: Application instructions and materials are available in the solicitations from the Web site at *www.cms.hhs.gov/discountdrugs/.*

FOR FURTHER INFORMATION CONTACT: Questions about the solicitation may be directed to: Scott Nelson, Health Insurance Specialist, Center for Beneficiary Choices, Centers for Medicare and Medicaid Services at *snelson2@cms.hhs.gov.* Responses to the questions will be addressed at the conference and posted on the CMS Web site.

Approval of Collection of Information: The Secretary is authorized under section 105(e) of the Prescription Drug and Medicare Improvement Act of 2003 to conduct the collection of information requested in this solicitation without regard to the requirements of the Paperwork Reduction Act, chapter 35, title 44, United States Code.

Authority: Section 105 of the Prescription Drug and Medicare Improvement Act of 2003.

Dated: December 8, 2003.

Thomas A. Scully,

Administrator, Centers for Medicare & Medicaid Services.

Approved: December 8, 2003.

Tommy G. Thompson,

Secretary.

[FR Doc. 03–30754 Filed 12–12–03; 8:45 am]

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Federal Register

Monday,
December 15, 2003

Part IV

Department of Labor

Employment Standards Administration

20 CFR Parts 718 and 725

Regulations Implementing the Federal Coal Mine Health and Safety Act of 1969, as Amended; Final Rule

DEPARTMENT OF LABOR

Employment Standards Administration

20 CFR Parts 718 and 725

RIN 1215–AB40

Regulations Implementing the Federal Coal Mine Health and Safety Act of 1969, as Amended

AGENCY: Employment Standards Administration, Labor.

ACTION: Final rule.

SUMMARY: This final rule implements the decision of the United States Court of Appeals for the District of Columbia Circuit resolving a broad challenge to numerous provisions of a final rule, promulgated by the Department of Labor on December 20, 2000, amending the regulations implementing the Black Lung Benefits Act. In its June 14, 2002 opinion, the court reviewed both the substance of many provisions of the rule and the applicability of numerous provisions. It upheld the substance of all but one provision, and held that several other provisions were inapplicable to certain claims. The court therefore affirmed in part the district court's decision upholding the rule in its entirety, reversed in part, and remanded the case for further proceedings consistent with its opinion. The district court, in turn, remanded the case to the Department for further proceedings in accordance with the D.C. Circuit's opinion. This final rule implements the D.C. Circuit's opinion. It makes no other changes.

DATES: Effective December 15, 2003.

FOR FURTHER INFORMATION CONTACT: James L. DeMarce, (202) 693–0046

SUPPLEMENTARY INFORMATION:

I. Regulatory History

On January 22, 1997, the Department issued a proposed rule to amend the regulations implementing the Black Lung Benefits Act. 62 FR 3338–3435 (Jan. 22, 1997). The Department received almost 200 written submissions from interested persons and organizations, and it held two hearings at which over 50 people testified. After carefully reviewing the comments and testimony, the Department issued a second notice of proposed rulemaking. 64 FR 54966–55072 (Oct. 8, 1999). The second notice proposed changing several important provisions in the initial proposal, and explained the Department's decision not to change other regulations. The Department received 37 written submissions during the ensuing 90-day comment period. After carefully reviewing these comments, the Department issued its final rule on December 20, 2000. 65 FR 79920–80107 (Dec. 20, 2000).

The National Mining Association and several other plaintiffs filed suit against the Department in the United States District Court for the District of Columbia, challenging a substantial number of the provisions in the final rule. The court upheld the validity of each of the challenged provisions and rejected the plaintiffs' argument that certain regulations should not apply to claims pending on the rule's effective date. *National Mining Ass'n* v. *Chao*, 160 F.Supp.2d 47 (D.D.C. 2001). It also rejected a challenge to the procedural adequacy of the Department's rulemaking proceeding, holding that the rulemaking record met the procedural requirements of the Administrative Procedure Act. 160 F.Supp.2d at 87–88. The plaintiffs appealed to the D.C. Circuit.

II. D.C. Circuit's Review of the Final Rule

Substantive Challenges

In *National Mining Ass'n* v. *Dep't of Labor*, 292 F.3d 849 (D.C. Cir. 2002), the court upheld the validity of all of the challenged provisions except one. The court upheld the following regulations: 20 CFR 718.104(d), 718.201(a)(2) and (c), 718.204(a), 718.205(c)(5), 725.101(a)(6), 725.309(d), 725.310(b), 725.366(b), 725.408, 725.414, 725.456, 725.457(d), 725.458, 725.495(c), 725.701(e). The court invalidated one provision, however, holding that the Department lacked the specific statutory authorization necessary to shift the cost of cross-examination of an indigent claimant's witness to other parties in the absence of a successfully prosecuted claim. 292 F.3d at 875 (discussion of § 725.459). The Department's revision to § 725.459 is explained in detail under III, Explanation of Changes.

The court upheld the substance of other provisions based upon the plain language of the rules, the preamble explanation of their intended application, the rulemaking record and the government's representations made in the course of briefing and oral argument. The decision outlines the substance and intended application of the challenged rules, as described below.

Treating Physicians' Opinions—20 CFR 718.104(d)

Section 718.104(d) requires the adjudicator to give consideration to the relationship between the miner and any treating physician whose report is admitted into the record, and provides that, in appropriate cases, the relationship between the miner and his treating physician may constitute substantial evidence in support of the adjudicator's decision to give that physician's opinion controlling weight. In upholding the substance of the provision, the court recognized that the rule permits, but does not mandate, that the adjudicator give controlling weight to a treating physician's opinion. A decision to give a treating physician's opinion controlling weight must be "based on the credibility of the physician's opinion in light of its reasoning and documentation, other relevant evidence and the record as a whole." 292 F.3d at 870 (quoting 20 CFR 718.104(d)(5)). Just as the Department had explained in the preamble to the final rule (65 FR at 79933–79934, ¶ (h) (Dec. 20, 2000)), the court stated that the provision is not a presumption that "relieves claimants of the burden of proving both pneumoconiosis and the credibility of the doctor's opinion." 292 F.3d at 870. Indeed, the court stated specifically that neither the regulation's plain language nor the Secretary's interpretation relieves claimants of the burden of proof. *Id.*

Definition of "Pneumoconiosis"—20 CFR 718.201

Section 718.201(a) defines pneumoconiosis as "a chronic dust disease of the lung and its sequelae, including respiratory and pulmonary impairments, arising out of coal mine employment." It further provides that "this definition includes both medical, or 'clinical', pneumoconiosis and statutory, or 'legal', pneumoconiosis." *Id.* Section 718.201(a)(2) provides that the definition includes "any chronic restrictive or obstructive pulmonary disease arising out of coal mine employment." Section 718.201(c) provides that pneumoconiosis "is recognized as a latent and progressive disease which may first become detectable only after the cessation of coal mine dust exposure."

The court upheld § 718.201(a), stating that, by recognizing both "clinical" and "legal" pneumoconiosis, the regulation "merely adopts a distinction embraced by all six circuits to have considered the issue," and "neither 'expand[s]' nor 'redefine[s]' the meaning of pneumoconiosis beyond its statutory definition." 292 F.3d at 869. The court also noted that even if the regulation could be read to change the definition, the Black Lung Benefits Act gives the Secretary the authority to supplement

statutory terms. *Id.* The court upheld § 718.201(c), holding it had sufficient support in the rulemaking record. The court cited scientific evidence in the rulemaking record indicating that pneumoconiosis can be latent and progressive. The court cited two studies, one "indicating that pneumoconiosis is latent and progressive in—at most—eight percent of cases," and the other "indicating that pneumoconiosis is latent and progressive as much as 24% of the time." 292 F.3d at 869. Consistent with the Department's argument, the court therefore interpreted the regulation to mean that pneumoconiosis can be a latent and progressive disease, not that pneumoconiosis is always or typically a latent and progressive disease. *Id.* There is no irrebuttable presumption that each miner's pneumoconiosis is latent or progressive. The burden of proving the presence of pneumoconiosis is always on the miner. As the Department explained in the preamble to the final rule, "the miner continues to bear the burden of establishing all of the statutory elements of entitlement." 65 FR at 79972 (Dec. 20, 2000).

Total Disability Rule—20 CFR 718.204(a)

Section 718.204(a) provides, in part, that "any nonpulmonary or nonrespiratory condition or disease, which causes an independent disability unrelated to the miner's pulmonary or respiratory disability, shall not be considered in determining whether a miner is totally disabled due to pneumoconiosis." In upholding this provision, the court stated that there is "an obvious rational basis for the rule: the statute only pertains to whether a miner is disabled 'due to pneumoconiosis,' and evidence of nonpulmonary conditions has no relevance to that inquiry." 292 F.3d at 873. Recognizing that the rule is consistent with the holdings of three circuits and abrogates the holding of another, *see* 65 FR 79947, ¶ (c) (Dec. 20, 2000), the court explained that "regulations promulgated to clarify disputed interpretations of a regulation are to be encouraged. Tidying-up a conflict in the circuits with a clarifying regulation permits a nationally uniform rule without the need for the Supreme Court to essay the meaning of every debatable regulation.'" 292 F.3d at 873 (quoting *Pope* v. *Shalala*, 998 F.2d 473, 486 (7th Cir. 1993)).

Establishing Death Due to Pneumoconiosis—20 CFR 718.205(c)

Section 718.205(c)(2) provides, in part, that for the purpose of adjudicating survivors' claims filed on or after January 1, 1982, death will be considered due to pneumoconiosis "[w]here pneumoconiosis was a substantially contributing cause or factor leading to the miner's death. * * *" Section 718.205(c)(5), in turn, provides that "[p]neumoconiosis is a 'substantially contributing cause' of a miner's death if it hastens the miner's death." In upholding this provision, the court noted that the rulemaking record supported the Department's conclusion that "pneumoconiosis [can] weaken the body's defenses to infections and increase susceptibility to other disease processes." 292 F.3d at 871 (quoting 65 FR 79950 (Dec. 20, 2000)). The court recognized that the provision "nowhere mandates the conclusion that pneumoconiosis be regarded as a hastening cause of death," and that it "expressly requires claimants to prove that pneumoconiosis is the hastening cause" of death. 292 F.3d at 871. As the Department explained in the preamble to the final rule: (1) the survivor must "submit credible medical evidence establishing a detectable hastening of the miner's death on account of pneumoconiosis," 65 FR 79949, ¶ (b) (Dec. 20, 2000); and (2) "the burden of persuasion remains with the survivor to prove that the miner's death was due to pneumoconiosis." 65 FR 79951, ¶ (f) (Dec. 20, 2000).

Definition of "Benefits"—20 CFR 725.101(a)(6)

Section 725.101(a)(6) includes in the definition of "benefits" the "expenses related to the medical examination and testing authorized by the district director pursuant to § 725.406." The costs of such medical examination and testing are paid by the Black Lung Disability Trust Fund and are reimbursed by the employer only if benefits are ultimately awarded. *See* 20 CFR 725.406(e); 292 F.3d at 865–866. In upholding the substance of this provision, the court noted "the Black Lung Benefits Act's express authorization to '[t]he Secretary * * * to charge the cost of examination * * * to the employer.'" 292 F.3d at 875 (quoting 33 U.S.C. 907(e), as incorporated by 30 U.S.C. 932(a)).

Subsequent Claims—20 CFR 725.309(d)

Section 725.309(d) provides, in part, that a subsequent claim "shall be denied unless the claimant demonstrates that one of the applicable conditions of entitlement * * * has changed since the date upon which the order denying the prior claim became final." A subsequent or additional claim is a claim filed more than one year after the denial of a claim previously filed by the same claimant. The court upheld this provision because: (1) The regulatory language squarely places the burden of proving a change in a condition of entitlement on the claimant; and (2) § 725.309(d) does not violate res judicata or traditional notions of finality because proof of the change must be based on evidence of the claimant's current condition. 292 F.3d at 870. *See also* 65 FR 79973, ¶ (d) (Dec. 20, 2000) (explaining that "new evidence establish[ing] that [a miner's] condition has worsened" is required to establish the necessary change). The claimant's condition at the time the previous claim was denied is not relevant to proving a change in a condition of entitlement. 292 F.3d at 870. Moreover, even after establishing a change in one condition of entitlement, the miner still bears the burden of proving the remaining conditions of entitlement. 292 F.3d at 861.

Attorneys' Fees—20 CFR 725.366(b)

Section 725.366(b) provides that in calculating an award of an attorney's fees, the ALJ "shall take into account" a number of factors, including "the quality of the representation, the qualifications of the representative, [and] the complexity of the legal issues involved." The court upheld this provision, noting it required consideration of no factors not already included in the calculation of shifted attorneys' fees by the Supreme Court. In response to the argument that the rule would result in the "double counting" of some factors, the court stated that "the factors identified in § 725.366(b) do not supplant the 'lodestar' method of calculating reasonable fees, or enhance the lodestar fee once it is calculated." 292 F.3d at 875 (quoting government's brief).

Evidence Limitations—20 CFR 725.310(b), .414, .456, .457(d), .458

Sections 725.310(b), 725.414, 725.456, 725.457(d), and 725.458 place various limits on the amount and timing of evidence admissible in claims proceedings. The court upheld all of these provisions, stating that the Administrative Procedure Act and the Black Lung Benefits Act authorize them. In holding that the new evidentiary limits are not at all "artificial," the court quoted the Department's explanation for these limitations: they "will enable ALJs to focus their attention 'on the quality of the medical evidence in the record before [them].'" 292 F.3d at 874 (quoting 64 FR 54994 (Oct. 8, 1999)).

Criteria for Determining a Responsible Operator—20 CFR 725.408, .495(c)

Section 725.408 establishes a deadline for a coal mine operator named a "potentially liable operator" in a specific claim to submit evidence regarding its financial status and employment of the miner if it disagrees with its identification. Upholding the validity of this provision, the court stated that the section shifted only the burden of production, not the burden of proof, and that "it requires nothing more than that operators must submit evidence rebutting an assertion of liability within a given period of time." 292 F.3d at 871 ("[T]he evidence required by § 725.408 is limited to evidence relevant to the notified operator's own employment of the miner and that operator's financial status." 65 FR at 79986, ¶ (e) (Dec. 20, 2000)).

Section 725.495(c) provides that once an operator has been designated as the "responsible operator" (the operator responsible for a specific claim) from among the companies named potentially liable operators, it may be relieved of liability only if it proves either that it is financially incapable of assuming liability or that another potentially liable operator more recently employed the miner and is capable of assuming liability. The court upheld this provision, recognizing that it shifted the burden of proof, because it applies only after the operator has been designated as the responsible operator. 292 F.3d at 872. *See also* 65 FR 80009, ¶ (e) (Dec. 20, 2000); 64 FR at 54973 (Oct. 8, 1999); 62 FR at 3365 (Jan. 22, 1997). In seeking to be excused from liability in such circumstances, the court noted "the operator becomes the 'proponent' of a remedial order of the ALJ and, therefore, the party to which [the APA] assigns the burden of proof." 292 F.3d at 872 (quoting 160 F.Supp.2d at 71). Given that the provision "affords a mine operator liable for a claimant's black lung disease the opportunity to shift liability to another party, it is hardly irrational to require the operator to bear the burden of proving that the other party is in fact liable." 292 F.3d at 872.

Medical Benefits Presumption—20 CFR 725.701(e)

Section 725.701(e) provides that if a miner who is totally disabled due to pneumoconiosis receives treatment for a pulmonary disorder, there is a rebuttable presumption that the disorder is caused or aggravated by the miner's pneumoconiosis. If the presumption is not rebutted, the cost of the treatment is compensable. The court upheld this provision, noting that the Department explained in the preamble to the final rule that the provision "shifts only the burden of *production* to operators to produce evidence that the treated disease was unrelated to the miner's pneumoconiosis; the ultimate burden of proof remains on claimants at all times." 292 F.3d at 872 (citing 65 FR 80022 (Dec. 20, 2000)). The court also agreed with the Department's preamble explanation, stating that "there is a clear rational relationship between the fact proved (that a miner suffered from totally disabling pneumoconiosis in the past) and the fact presumed (that the miner's treated pulmonary disorder is related to that pneumoconiosis)." 292 F.3d at 873 (citing 65 FR 80023 (Dec. 20, 2000)). The court concluded that this rational relationship "suffices for purposes of our review." 292 F.3d at 873.

Retroactivity Challenges

The court also addressed the contention that some of the new provisions were impermissibly retroactive, that is, could not be applied to claims for benefits pending on January 19, 2001, the effective date of the final rule. The court agreed with this contention as to eight provisions—the second sentence of § 718.204(a), as well as §§ 725.101(a)(31), 725.204, 725.212(b), 725.213(c), 725.214(d), 725.219(d), and 725.701(e). The court noted, as had the Department in the preamble to the initial notice of proposed rulemaking (*see* 62 FR at 3347 (Jan. 22, 1997)), that the Department is not authorized to promulgate retroactive black lung benefits regulations. The court explained that application of a regulation to a claim pending on the regulation's effective date would be impermissibly retroactive if the regulation "change[d] the legal landscape." 292 F.3d at 859. The court determined that the eight provisions listed above did change the legal landscape, and that application of these provisions to claims pending on the effective date of the final rule was therefore improper. 292 F.3d at 864–868. The Department's revisions to effectuate the court's holdings are found at 20 CFR 718.2 and 725.2(c), and are explained in detail under III, Explanation of Changes.

In rejecting challenges to the applicability of 20 CFR 718.104(d), 718.201(a)(2) and (c), 725.101(a)(6), and 725.309(d), the court reasoned as follows:

Treating Physicians' Opinions—20 CFR 718.104(d)

In holding that the treating physician rule, § 718.104(d), is not impermissibly retroactive, the court explained that the rule "codifies judicial precedent and does not work a substantive change in the law." 292 F.3d at 861.

Definition of "Pneumoconiosis"—20 CFR 718.201

Holding that § 718.201(a)(2)—which includes "chronic restrictive or obstructive pulmonary disease arising out of coal mine employment" in the definition of "pneumoconiosis"—is not impermissibly retroactive, the court concluded that the provision "does not alter the requirement that individual miners must demonstrate that their obstructive lung disease arose out of their work in the mines." 292 F.3d at 863 (citing 65 FR 79938 (Dec. 20, 2000)). The court noted that the rulemaking record supports the premise that obstructive lung disease may be caused by coal mining exposure, and that this provision "does no more than reflect this reality." 292 F.3d at 862. It rejected the argument that the provision creates a presumption that a miner's obstructive lung disease is caused by exposure to coal dust. It held, consistent with the Department's preamble explanation, that the provision requires "that each miner bear the burden of proving that his obstructive lung disease did in fact arise out of his coal mine employment." 65 FR at 79938 (Dec. 20, 2000). *See* 292 F.3d at 862–863. The court also rejected as "meritless" the contention that the regulation permits an adjudicator to "ignore a medical report if the reporting doctor concludes that a miner's obstructive lung disease was caused by smoking, rather than mining." 292 F.3d at 863. "The regulation's plain text in no way indicates that medical reports will be excluded if they conclude that a particular miner's obstructive disease was caused by smoking, rather than mining." *Id.*

Section 718.201(c) provides that pneumoconiosis is "recognized as a latent and progressive disease which may first become detectable only after the cessation of coal mine dust exposure." Holding that this regulation is not impermissibly retroactive, the court rejected the argument that the rule assumes that all pneumoconiosis is latent and progressive as "based on a false reading of the rule." 292 F.3d at 863. The court explained that "[t]he rule simply prevents operators from claiming that pneumoconiosis is never latent and progressive. The medical literature makes it clear that pneumoconiosis may be latent and progressive. * * *" *Id.*

Definition of "Benefits"—20 CFR 725.101(a)(6)

In holding that § 725.101(a)(6)—which defines "benefits" to include "any expenses related to the medical examination and testing authorized by the district director pursuant to § 725.406"—is not impermissibly retroactive, the court stated that the operators "have not pointed to anything in the new definition that departs from the system already in place under the old § 725.406(c). Thus, the new definition changes nothing and is not impermissibly retroactive." 292 F.3d at 866.

Subsequent Claims—20 CFR 725.309(d)

Holding that the subsequent claims rule, § 725.309(d), is not impermissibly retroactive, the court stated that the regulation "applies only to claims filed after the regulations' effective date" and, in any event, is not substantively new and therefore "does not change the legal landscape." 292 F.3d at 863–864.

III. Explanation of Changes

In order to conform to the D.C. Circuit's holding invalidating the witness-fee-shifting provision in § 725.459, the Department must revise that regulation. Similarly, to conform the regulations to the court's retroactivity holdings, the Department must revise both § 718.2 and § 725.2(c). Those sections address the applicability of the regulations in Parts 718 and 725. Since the court ruled that one provision in Part 718 and several regulations in Part 725 were impermissibly retroactive if applied to claims pending on January 19, 2001, both § 718.2 and § 725.2(c) must be revised.

20 CFR 718.2

(a) In the final rule promulgated on December 20, 2000, the Department revised § 718.204(a) by adding the following sentence: "For purposes of this section, any nonpulmonary or nonrespiratory condition or disease, which causes an independent disability unrelated to the miner's pulmonary or respiratory disability, shall not be considered in determining whether a miner is totally disabled due to pneumoconiosis." This revision clarified that non-respiratory/pulmonary impairments are not relevant to the total disability determination; thus, a miner who suffers from disabling pneumoconiosis is totally disabled for purposes of the Black Lung Benefits Act notwithstanding the existence of any independently disabling non-respiratory/pulmonary impairments. The change codified the holdings in *Cross Mountain Coal Co.* v. *Ward*, 93 F.3d 211, 216–217 (6th Cir. 1996); *Youghiogheny & Ohio Coal Co.* v. *McAngues*, 996 F.2d 130, 134–135 (6th Cir. 1993), *cert. den.* 510 U.S. 1040 (1994); *Twin Pines Coal Co.* v. *U.S. Dept. of Labor*, 854 F.2d 1212, 1215 (10th Cir. 1988); and *Peabody Coal Co.* v. *Director, OWCP* [*Huber*], 778 F.2d 358, 363 (7th Cir. 1985), and emphasized the Department's disagreement with *Peabody Coal Co.* v. *Vigna*, 22 F.3d 1388, 1394–1395 (7th Cir. 1994) (holding claimant's entitlement precluded by disabling stroke which was unrelated to coal mine employment and occurred before evidence of disability due to pneumoconiosis). *See* 62 FR at 3344–3345 (Jan. 22, 1997); 64 FR at 54979, ¶ (b) (Oct. 8, 1999); 65 FR at 79947, ¶ (c) (Dec. 20, 2000). By virtue of § 718.2, this provision, located in the second sentence of § 718.204(a), applied to the adjudication of all claims filed after March 31, 1980, including those pending on January 19, 2001. 20 CFR 718.2 ("This part is applicable to the adjudication of all claims filed after March 31, 1980. * * *").

(b) Because the second sentence of § 718.204(a) is a departure from the Seventh Circuit's *Vigna* decision, the D.C. Circuit held the rule impermissibly retroactive as applied to claims pending on January 19, 2001, the regulation's effective date. 292 F.3d at 864–865. The court stressed, however, that it did not "intend to affect the law in circuits that have adopted or might adopt positions that conform with the Secretary's interpretation. * * * Instead, the effect of our ruling is to leave the state of the law on this question exactly as it was prior to the regulations' promulgation" for pending cases. *Id.* The court otherwise upheld the substance of the regulation, holding that the "regulation has a rational basis and is consistent with the APA." 292 F.3d at 873.

(c) The Department has revised § 718.2 to reflect the D.C. Circuit's conclusion that the second sentence of § 718.204(a) may not be applied to claims pending on the effective date of the regulations: January 19, 2001.

20 CFR 725.2(c)

(a)(i) In the final rule issued on December 20, 2000, the Department amended the definition of "workers' compensation law" (previously codified at 20 CFR 725.101(a)(4) (2000)) in § 725.101(a)(31) to clarify its longstanding interpretation of the statute that payments made from a state's general revenues are not workers' compensation benefits subject to offset under the Black Lung Benefits Act. 62 FR 3348–3349 (Jan. 22, 1997); 64 FR 54982–54983, ¶ (e) (Oct. 8, 1999); 65 FR 79958–79959, ¶ (e) (Dec. 20, 2000). The revision responded to a Third Circuit decision rejecting the Department's position as inconsistent with the language of the prior implementing regulation. *Director, OWCP* v. *Eastern Associated Coal Co.* [*O'Brockta*], 54 F.3d 141, 148–150 (3d Cir. 1995). Despite its holding, the Third Circuit agreed that the Department's position reflected a permissible interpretation of the statute, and noted that the Department "has the means and obligation to amend its regulations to provide for" its interpretation. 54 F.3d at 150. (ii) Because the Third Circuit had rejected the Department's position under the prior regulations, the D.C. Circuit held the revised rule impermissibly retroactive when applied "to claims that were already pending when the new regulation took effect" or to "adjust payments being made on settled or resolved claims." 292 F.3d at 866. The court emphasized that "other circuits remain free to apply the Secretary's longstanding interpretation of the prior regulation to pending claims." *Id.* (iii) To reflect the D.C. Circuit's decision, the Department has revised § 725.2(c) in two ways. First, the Department has included § 725.101(a)(31) in the list of regulations that do not apply to claims pending on January 19, 2001. Second, the Department has revised the first two sentences of the subsection to clarify that the regulations included in the list do not apply to benefit payments made on claims pending on January 19, 2001, even where the benefit payments are made after January 19, 2001. Thus, § 725.101(a)(31) applies only to claims filed after January 19, 2001.

(b)(i) In the final rule issued on December 20, 2000, the Department revised a number of provisions relating to the criteria for determining the relationship and dependency of a miner's dependents and survivors, including §§ 725.204, 725.212(b), 725.213(c), 725.214(d), 725.219(d). These revisions were necessary to reflect certain amendments to the underlying incorporated Social Security Act provisions and to the Black Lung Benefits Act, and to clarify the Department's policy with regard to the issues involved. 62 FR 3349–3351 (Jan. 22, 1997); 65 FR 79963–79967 (Dec. 20, 2000). (ii) The D.C. Circuit concluded that these revisions are impermissibly retroactive "as applied to claims other than those filed after the regulations'

effective date" because they "expand the scope of coverage by making more dependents and survivors eligible for benefits." 292 F.3d at 866–867. The court recognized that the Department's regulations also contemplated application of these revisions to "all benefits payments made" after January 19, 2001, even payments made on claims finally adjudicated prior to that time. The court rejected the Department's approach and reiterated that "it would be unlawfully retroactive to apply the definitions to any claims other than those filed on or after the regulations' effective date." 292 F.3d at 867. (iii) To reflect the D.C. Circuit's decision, the Department has revised § 725.2(c) in two ways. First, the Department has included §§ 725.204, 725.212(b), 725.213(c), 725.214(d), and 725.219(d) in the list of regulations that do not apply to claims pending on January 19, 2001. Second, the Department has revised the first two sentences of the subsection to clarify that the regulations included in the list do not apply to benefits payments made on claims pending on January 19, 2001, even where the benefit payments are made after January 19, 2001. Through these two revisions, the Department has ensured that the regulations deemed impermissibly retroactive by the D.C. Circuit will not be applied either to claims filed before the effective date of the regulations or to any benefits paid on those claims. Under the plain language of the revised regulation, the regulations that are not listed will continue to apply to all benefits payments made, including those paid pursuant to claims filed prior to the effective date of the regulations. The regulations listed in § 725.2(c) apply only to claims filed after January 19, 2001.

(c) The court mentioned both § 725.209 and § 725.219(c) in the course of discussing whether revisions made to the criteria for determining the relationship and dependency of a miner's dependents and survivors found in Part 725, Subpart B could be applied to pending claims, but did not hold that either regulation is impermissibly retroactive. 292 F.3d at 867. Neither of these regulations was revised in any substantive way in the final rule issued on December 20, 2000. Although the Department initially proposed substantive changes to § 725.209, finally-revised § 725.209 contains only one revision, which eliminated unnecessary words. *Compare* 20 CFR 725.209(a)(2)(ii) (1999) *with* 20 CFR 725.209(a)(2)(ii) (2002); *Compare* 62 FR at 3350 (Jan. 22, 1997) *with* 65 FR at 79963 (Dec. 20, 2000). And § 725.219(c) was not revised at all. *Compare* 20 CFR 725.219(c) (1999) *with* 20 CFR 725.219(c) (2002). Accordingly, the Department has not added either of these regulations to the list set forth in § 725.2(c), and both regulations apply to claims pending on January 19, 2001.

(d)(i) In the final rule issued on December 20, 2000, the Department added § 725.701(e) to establish a rebuttable presumption of medical benefits coverage for the treatment of any pulmonary disorder suffered by a miner totally disabled due to pneumoconiosis arising out of coal mine employment. This presumption is derived from a judicially-created presumption first announced by the Fourth Circuit in *Doris Coal Co.* v. *Director, OWCP*, 938 F.2d 492 (4th Cir. 1991), and later refined by that court in *Gulf & Western Indus.* v. *Ling*, 176 F.3d 226 (4th Cir. 1999), and *General Trucking Corp.* v. *Salyers*, 175 F.3d 322 (4th Cir. 1999). 65 FR at 80021–80022 (Dec. 20, 2000). The Department also recognized the Sixth Circuit had held in *Glen Coal Co.* v. *Seals*, 147 F.3d 502 (6th Cir. 1998), that the administrative law judge and the Benefits Review Board erred in applying the *Doris Coal* presumption to a miner whose coal mine employment took place within the jurisdiction of the Sixth Circuit. 65 FR at 80021–80022, ¶ (a) (Dec. 20, 2000). (ii) Because the D.C. Circuit found the rebuttable presumption established by § 725.701(e) contradicted by the Sixth Circuit's decision in *Seals*, it held that the rule is impermissibly retroactive when applied to pending claims. The court explained that its holding was "not intended to affect the law in the Fourth Circuit or any other circuit that would have embraced the *Doris Coal* presumption. The judicial presumption remains the law in the circuits that adopt it." 292 F.3d at 865. (iii) To reflect the D.C. Circuit's decision, the Department has revised § 725.2(c) to include § 725.701(e) in the list of regulations that do not apply to claims pending on January 19, 2001.

20 CFR 725.459

(a) In the final rule issued on December 20, 2000, the Department revised § 725.459(b) to include a provision relieving an indigent claimant of the cost of producing his or her witnesses for cross-examination, regardless of whether such indigent claimant ultimately prevailed: "If the claimant is the proponent of the witness whose cross-examination is sought, and demonstrates, within time limits established by the administrative law judge, that he would be deprived of ordinary and necessary living expenses if required to pay the witness fee and mileage necessary to produce that witness for cross-examination, the administrative law judge shall apportion the costs of such cross-examination among the parties to the case." The Department also added a new subsection (d) adopting certain criteria for determining indigency in this context. See 64 FR at 54996–54997 (Oct. 8, 1999); 65 FR at 80003, ¶ (a) (Dec. 20, 2000).

(b) The D.C. Circuit held these provisions in § 725.459 invalid under *West Virginia University Hospitals, Inc.* v. *Casey*, 499 U.S. 83, 97–100 (1991), because the court found no specific statutory authority for shifting this cost to an employer in the absence of a successfully prosecuted claim. 292 F.3d at 875.

(c) To reflect the D.C. Circuit's decision, the Department has revised § 725.459 to eliminate the fourth sentence and the beginning of the fifth sentence of paragraph (b). The Department has also eliminated paragraph (d). Thus, "the proponent of [a] witness [called for cross-examination] shall pay the witness' fee," 20 CFR 725.459(b). This rule applies to all parties, including the claimant.

IV. Rulemaking Analyses

Administrative Procedure Act

Section 553 of the Administrative Procedure Act, 5 U.S.C. 553(b)(B), provides that, when an agency for good cause finds that notice and public procedure are impracticable, unnecessary, or contrary to the public interest, the agency may issue a rule without providing notice and an opportunity for public comment. The Department has determined that there is good cause to conclude that notice and public procedure are unnecessary because this action is taken merely to conform the regulations to the D.C. Circuit's decision. Because this action does not change the law, but merely reflects the state of the law as determined by the D.C. Circuit, there is good cause, within the meaning of 5 U.S.C. 553(d)(3), to make the action effective upon publication.

Regulatory Flexibility Act

Because the Department has found good cause to conclude that this action is not subject to notice and public procedure under the Administrative Procedure Act, it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

Unfunded Mandates Reform Act

This action is not subject to sections 202 or 205 of the Unfunded Mandates Reform Act (UMRA, Pub. L. 104–4) because the Department has made a good cause finding the action is not subject to notice and public procedure under the Administrative Procedure Act. In addition, this action does not significantly or uniquely affect small governments or impose a significant intergovernmental mandate as described in sections 203 and 204 of UMRA.

Paperwork Reduction Act

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Executive Order 12866

This action is not a "significant regulatory action" and is therefore not subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735 (Oct. 4, 1993)).

Executive Order 13132

This action will not have substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as described in Executive Order 13132 (64 FR 43255 (Aug. 10, 1999)).

List of Subjects in 20 CFR Parts 718 and 725

Black lung benefits, Claims, Health care, Lung diseases, Miners, Mines, Workers' compensation, X-rays.

For the reasons set forth in the preamble, title 20, Chapter VI, Subchapter B of the Code of Federal Regulations is amended as set forth below:

Signed at Washington, DC, this 26th day of November, 2003.

Victoria Lipnic,

Assistant Secretary for Employment Standards.

PART 718—STANDARDS FOR DETERMINING COAL MINERS' TOTAL DISABILITY OR DEATH DUE TO PNEUMOCONIOSIS

■ 1. The authority citation for Part 718 continues to read as follows:

Authority: 5 U.S.C. 301, Reorganization Plan No. 6 of 1950, 15 FR 3174, 30 U.S.C. 901 *et seq.*, 902(f), 934, 936, 945, 33 U.S.C. 901 *et seq.*, 42 U.S.C. 405, Secretary's Order 7–87, 52 FR 48466, Employment Standards Order No. 90–02.

■ 2. Section 718.2 is revised to read as follows:

§ 718.2 Applicability of this part.

With the exception of the second sentence of § 718.204(a), this part is applicable to the adjudication of all claims filed after March 31, 1980, and considered by the Secretary of Labor under section 422 of the Act and part 725 of this subchapter. The second sentence of § 718.204(a) is applicable to the adjudication of all claims filed after January 19, 2001. If a claim subject to the provisions of section 435 of the Act and subpart C of part 727 of this subchapter (see 20 CFR 725.4(d)) cannot be approved under that subpart, such claim may be approved, if appropriate, under the provisions contained in this part. The provisions of this part shall, to the extent appropriate, be construed together in the adjudication of all claims.

PART 725—CLAIMS FOR BENEFITS UNDER PART C OF TITLE IV OF THE FEDERAL MINE SAFETY AND HEALTH ACT, AS AMENDED

■ 1. The authority citation for Part 725 continues to read as follows:

Authority: 5 U.S.C. 301, Reorganization Plan No. 6 of 1950, 15 FR 3174, 30 U.S.C. 901 *et seq.*, 921, 932, 936; 33 U.S.C. 901 *et seq.*, Secretary's Order 7–87, 52 FR 48466, Employment Standards Order No. 90–02.

■ 2. Section 725.2 is amended by revising paragraph (c) to read as follows:

§ 725.2 Purpose and applicability of this part.

* * * * *

(c) The provisions of this part reflect revisions that became effective on January 19, 2001. This part applies to all claims filed after January 19, 2001 and all benefits payments made on such claims. With the exception of the following sections, this part shall also apply to the adjudication of claims that were pending on January 19, 2001 and all benefits payments made on such claims: §§ 725.101(a)(31), 725.204, 725.212(b), 725.213(c), 725.214(d), 725.219(d), 725.309, 725.310, 725.351, 725.360, 725.367, 725.406, 725.407, 725.408, 725.409, 725.410, 725.411, 725.412, 725.414, 725.415, 725.416, 725.417, 725.418, 725.421(b), 725.423, 725.454, 725.456, 725.457, 725.458, 725.459, 725.465, 725.491, 725.492, 725.493, 725.494, 725.495, 725.547, 725.701(e). The version of those sections set forth in 20 CFR, parts 500 to end, edition revised as of April 1, 1999, apply to the adjudications of claims that were pending on January 19, 2001. For purposes of construing the provisions of this section, a claim shall be considered pending on January 19, 2001 if it was not finally denied more than one year prior to that date.

■ 3. Section 725.459 is amended by revising paragraph (b), and by removing paragraph (d), to read as follows:

§ 725.459 Witness fees

* * * * *

(b) If the witness' proponent does not intend to call the witness to appear at a hearing or deposition, any other party may subpoena the witness for cross-examination. The administrative law judge (ALJ) shall authorize the least intrusive and expensive means of cross-examination as the ALJ deems appropriate and necessary to the full and true disclosure of the facts. If such witness is required to attend the hearing, give a deposition or respond to interrogatories for cross-examination purposes, the proponent of the witness shall pay the witness' fee. The fund shall remain liable for any costs associated with the cross-examination of the physician who performed the complete pulmonary evaluation pursuant to § 725.406.

(c) * * *

[FR Doc. 03–30854 Filed 12–12–03; 8:45 am]

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Federal Register

Monday,
December 15, 2003

Part V

The President

Proclamation 7744—Human Rights Day, Bill of Rights Day, and Human Rights Week, 2003

Federal Register
Vol. 68, No. 240
Monday, December 15, 2003

Presidential Documents

Title 3—

The President

Proclamation 7744 of December 10, 2003

Human Rights Day, Bill of Rights Day, and Human Rights Week, 2003

By the President of the United States of America

A Proclamation

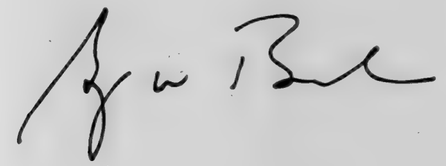
America's founders dedicated this country to life, liberty, and the pursuit of happiness. During Human Rights Day, Bill of Rights Day, and Human Rights Week, we recognize the advances we have made expanding freedom, democracy, and individual rights in this country and around the world.

America has helped bring liberty to Afghanistan and Iraq. In countries like Belarus, Cuba, and Zimbabwe, we continue to stand with those who struggle for democracy. We will continue to call on Burma's ruling junta to release political prisoners and engage in an inclusive dialogue with the democratic opposition to bring democracy to Burma. We also look forward to the day when the men and women of North Korea can live in a free society.

Freedom is the right of mankind and the future of every nation. It is not America's gift to the world; it is God's gift to every man and woman who lives in this world.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim December 10, 2003, as Human Rights Day; December 15, 2003, as Bill of Rights Day; and the week beginning December 10, 2003, as Human Rights Week. I call upon the people of the United States to mark these observances with appropriate ceremonies and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this tenth day of December, in the year of our Lord two thousand three, and of the Independence of the United States of America the two hundred and twenty-eighth.



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[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

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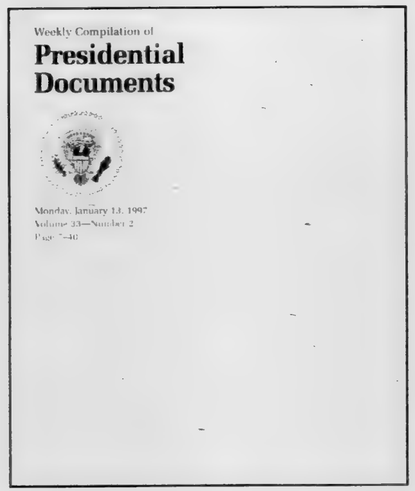
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The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 51

[Docket Number FV–03–301]

RIN 0581–AB63

Revision of Fees for the Fresh Fruit and Vegetable Terminal Market Inspection Services

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule revises the regulations governing the inspection and certification for fresh fruits, vegetables and other products by increasing by approximately 15 percent certain fees charged for the inspection of these products at destination markets. The fees for inspecting multiple lots of the same product during inspections will be increased from $14.00 to $45.00, and the per package fees for dock-side inspections will be changed from a three interval schedule, based on weight, to a two interval schedule based on different weight thresholds. These revisions are necessary in order to recover, as nearly as practicable, the costs of performing inspection services at destination markets under the Agricultural Marketing Act of 1946 (AMA of 1946). The fees charged to persons required to have inspections on imported commodities in accordance with the Agricultural Marketing Agreement Act of 1937 and for imported peanuts under section 1308 of the Farm Security and Rural Investigation Act of 2002.

EFFECTIVE DATE: January 15, 2004.

FOR FURTHER INFORMATION CONTACT: Rita Bibbs-Booth, USDA, 1400 Independence Ave., SW., Room 0640–S, Washington, DC 20250–0295, or call (202) 720–0391.

SUPPLEMENTARY INFORMATION:

Executive Order 12866 and Regulatory Flexibility Act

This rule has been determined to be "non-significant" for the purposes of Executive Order 12866. Therefore, it has not been reviewed by the Office of Management and Budget.

Also, pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA), AMS has considered the economic impact of this action on small entities. Accordingly, AMS has proposed this final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions in order that small businesses will not be unduly or disproportionately burdened. The action described herein is being taken for several reasons, including that additional user fee revenues are needed to cover the costs of: (1) Providing current program operations and services; (2) improving the timeliness with which inspection services are provided; and (3) improving the work environment.

AMS regularly reviews its user-fee financed programs to determine if the fees are adequate. The Fresh Products Branch (FPB) has and will continue to seek out cost saving opportunities and implement appropriate changes to reduce its costs. Such actions can provide alternatives to fee increases. However, even with these efforts, FPB's existing fee schedule will not generate sufficient revenues to cover program costs while maintaining the Agency mandated reserve balance. Current revenue projections for FPB's destination market inspection work during FY–03 are $12.0 million with costs projected at $18.3 million and an end-of-year reserve of $14.8 million. However, this reserve balance is due to appropriated funding received in October 2001, for infrastructure, workplace, and technological improvements. FPB's costs of operating the destination market program are expected to increase to approximately $18.9 million during FY–04 and to approximately $19.4 million during FY–05. The current fee structure with the infusion of the appropriated funding is expected to fund the terminal market inspection services until FY–2006, when FPB will fall below the Agency's mandated four-month reserve level.

This fee increase should result in an estimated $1.8 million in additional revenues per year (effective in FY 04, if the fees are implemented by October 1, 2003). This will not cover all of FPB's costs. FPB will need to continue to increase fees bi-yearly in order to cover the program's operating cost and maintain the required reserve balance. FPB believes that increasing fees incrementally is appropriate at this time. Additional fee increases beyond FY–2004 will be needed to sustain the program in the future.

Employee salaries and benefits are major program costs that account for approximately 80 percent of FPB's total operating budget. A general and locality salary increase for Federal employees, ranging from 4.02 to 4.87 percent depending on locality, effective January 2003, has significantly increased program costs. This salary adjustment will increase FPB's costs by over $700,000 per year. Increases in health and life insurance premiums, along with workers compensation will also increase program costs. Since FPB's last fee increase, many employees have converted to or were hired under the Federal Employees Retirement System (FERS), which has also contributed to the increase in program costs. In addition, inflation also impacts FPB's non-salary costs. These factors have increased FPB's costs of operating this program by over $600,000 per year.

Additional funds of approximately $155,000 are necessary in order for FPB to continue to cover the costs associated with additional staff and to maintain office space and equipment. Additional revenues are also necessary to improve the work environment by providing training and purchasing needed equipment. In addition, FPB began in 2001, developing (with appropriated funds) an automated system recently named the Fresh Electronic Inspection Reporting/Resource System (FEIRS) to replace its manual paper and pen inspection reporting process. Approximately $200,000 in additional funds are needed to complete the development and deployment of FEIRS, and it will take approximately $10,000 per month to maintain the system. This system has been put in place to enhance FPB's fruit and vegetable inspection processes.

This rule should increase user fee revenue generated under the destination

market program by approximately $1.8 million or 15 percent. While most of the fees will increase by approximately 15 percent, the fee for inspections of multiple lots of the same product during inspections, commonly referred to as "sublots," would be increased from $14 to $45 because FPB's current fee does not nearly cover the costs of performing these inspections (between 30 to 35 percent of the destination market inspections conducted by FPB involve sublots). In addition, the per package rates for dock-side inspections would be increased and changed from a three interval schedule (based on package weight) to a two interval schedule (based on different weight thresholds). The two interval schedule would be simpler to administer and more appropriate given current packaging trends. This action is authorized under the Agricultural Marketing Act of 1946 (AMA of 1946) (*see* 7 U.S.C. 1622(h)), which provides that the Secretary of Agriculture may assess and collect "such fees as will be reasonable and as nearly as may be to cover the costs of services rendered * * *." There are more than 2,000 users of FPB's destination market grading services (including applicants who must meet import requirements[1]— inspections which amount to under 2.5 percent of all lot inspections performed). A small portion of these users are small entities under the criteria established by the Small Business Administration (13 CFR 121.201). There would be no additional reporting, recordkeeping, or other compliance requirements imposed upon small entities as a result of this rule. In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the information collection and recordkeeping requirements in part 51 have been approved previously by OMB and assigned OMB No. 0581–0125. FPB has not identified any other Federal rules which may duplicate, overlap or conflict with this rule.

The destination market grading services are voluntary (except when required for imported commodities) and the fees charged to users of these services vary with usage. However, the impact on all businesses, including small entities, is very similar. Further, even though fees will be raised, the increase is not excessive and should not significantly affect these entities. Finally, except for those persons who are required to obtain inspections, most of these businesses are typically under no obligation to use these inspection services, and, therefore, any decision on their part to discontinue the use of the services should not prevent them from marketing their products.

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This action is not intended to have retroactive effect. This rule will not preempt any state or local laws, regulations or policies, unless they present an irreconcilable conflict with this rule. There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of this rule.

Action

The AMA of 1946 authorizes official inspection, grading, and certification, on a user-fee basis, of fresh fruits, vegetables and other products such as raw nuts, Christmas trees and flowers. The AMA of 1946 provides that reasonable fees be collected from the users of the services to cover, as nearly as practicable, the costs of the services rendered. This rule would amend the schedule for fees and charges for inspection services rendered to the fresh fruit and vegetable industry to reflect the costs necessary to operate the program.

The Agricultural Marketing Service (AMS) regularly reviews its user-fee programs to determine if the fees are adequate. While the Fresh Products Branch (FPB) of the Fruit and Vegetable Programs, AMS, continues to search for opportunities to reduce its costs, the existing fee schedule will not generate sufficient revenues to cover program costs while maintaining the Agency mandated reserve balance. Current revenue projections for destination market inspection work during FY–03 are $12.0 million with costs projected at $18.3 million and an end-of-year reserve of $14.8 million. However, this reserve balance is due to appropriated funding received from Congress in October of 2001. These funds were established to build up the terminal market inspection reserve fund and for infrastructure improvements including development and maintenance of the inspector training center, workplace and technological improvements, including digital imaging and automation of the inspection process. However, by FY–07, without increasing fees, FPB's trust fund balance for this program will be below the agency mandated four-months of operating reserve (approximately $4.6 million) deemed necessary to provide an adequate reserve balance in light of increasing program costs. Further, FPB's costs of operating the destination market program are expected to increase to approximately $18.9 million during FY–04 and to approximately $19.4 million during FY 05. These cost increases (which are outlined below) will result from inflationary increases with regard to current FPB operations and services (primarily salaries and benefits), increased inspection demands, and the acquisition and maintenance of computer technology (*i.e.*, FEIRS).

This rule should increase user fee revenue generated under the destination market program by approximately $1.8 million or 15 percent per year. While most of the fees will increase by approximately 15 percent, the fee for inspections of multiple lots of the same product during inspections, commonly referred to as "sublots," would be increased from $14 to $45 because FPB's current fee does not nearly cover the costs of performing these inspections (between 30 to 35 percent of the destination market inspections conducted by FPB involve sublots). In addition, the per package rates for dock-side inspections would be increased and changed from a three interval schedule (based on package weight) to a two interval schedule (based on different weight thresholds). The two interval schedule would be simpler to administer and more appropriate given current packaging trends.

Employee salaries and benefits are major program costs that account for approximately 80 percent of FPB's total operating budget. A general and locality salary increase for Federal employees, ranging from 4.02 to 4.87 percent depending on locality, effective January 2003, has significantly increased program costs. This salary adjustment will increase FPB's costs by over $700,000 per year. Increases in health and life insurance premiums, along with workers compensation will also increase program costs. Since FPB's last fee increase, many employees have converted to or were hired under the Federal Employees Retirement System (FERS), which has also contributed to the increase in program costs. In addition, inflation also impacts FPB's non-salary costs. These factors have increased FPB's costs of operating this program by over $600,000 per year.

Additional revenues (approximately $155,000) are necessary in order for FPB to continue to cover the costs associated with additional staff and to maintain office space and equipment. Additional revenues are also necessary to continue to improve the work environment by providing training and purchasing needed equipment. In addition, FPB began in 2001, developing (with appropriated funds) an automated system recently named the Fresh Electronic Inspection Reporting/Resource System (FEIRS) to replace its manual paper and pen inspection reporting process. Approximately $200,000 in additional revenue is needed to complete the development and deployment of FEIRS, and it will take approximately $10,000 per month to maintain the system. This system has been put in place to enhance FPB's fruit and vegetable inspection processes.

Based on the aforementioned analysis of this program's increasing costs, AMS to increase the fees for destination market inspection services. The following table compares current fees and charges with the fees and charges for fresh fruit and vegetable inspection as found in 7 CFR 51.38. This table also reflects the change to the per package fees for dock-side inspections that are currently on a three interval schedule based on weight, to a two interval schedule based on different weight thresholds. Unless otherwise provided for by regulation or written agreement between the applicant and the Administrator, the charges in the schedule of fees as found in § 51.38 are:

Service	Current	Proposed
Quality and condition inspections of products each in quantities of 51 or more packages and unloaded from the same land or air conveyance:		
—Over a half carlot equivalent of each product	$86.00	$99.00
—Half carlot equivalent or less of each product	$72.00	$83.00
—For each additional lot of the same product*	$14.00	$45.00
Condition only inspections of products each in quantities of 51 or more packages and unloaded from the same land or air conveyance:		
—Over a half carlot equivalent of each product	$72.00	$83.00
—Half carlot equivalent or less of each product	$66.00	$76.00
—For each additional lot of the same product*	$14.00	$45.00
Quality and condition and condition only inspections of products each in quantities of 50 or less packages unloaded from the same land or air conveyance:		
—For each product	$43.00	$45.00
—For each additional lot of any of the same product*	$14.00	$45.00
—Lots in excess of carlot equivalents will be charged proportionally by the quarter carlot		
Dock side inspections of an individual product unloaded directly from the same ship:		
—For each package weighing N/A less than 15 pounds	1.1 cent	N/A
—For each package weighing less than 30 pounds (previously 15–29 pounds)	2.2 cents	2.5 cents.
—For each package weighing 30 or more pounds	3.3 cents	3.8 cents.
—Minimum charge per individual product	$86.00	$99.00
—Minimum charge for each additional lot of the same product	$14.00	$45.00
Hourly rate for inspections performed for other purposes during the grader's regularly scheduled work week.	$43.00	$49.00
—Hourly rate for other work performed during the graders regular scheduled work week will be charged at a reasonable rate		
Overtime or holiday premium rate (per hour additional) for all inspections performed outside the grader's regularly scheduled work week.	$21.50	$25.00
Hourly rate for inspections performed under 40 hour contracts during the grader's regularly scheduled work week*.	$40.00	$49.00
Rate for billable mileage	$1.00	$1.00

A notice of proposed rulemaking was published in the **Federal Register** on September 8, 2003 (7 CFR part 51). The workplan for the proposed FPB fee increase was classified as non-significant and approved by OMB on June 10, 2003. The comment period ended on October 8, 2003, and FPB received two comments during this period.

The first comment was received from the Washington State Potato Commission (WSPC) opposed raising inspection fees at this time. WSPC asked "is it necessary to raise salaries" and the answer is yes. General and locality salary increases for Federal employees are mandated by Federal law. WSPC also recommended that FPB use its reserve funds. FPB is indeed utilizing its reserve fund to sustain the Federal market inspection program. However, if fees are not increased, the reserve fund would become depleted. The market inspection program reserve level is set by the Agency. A fee increase is necessary in order to prevent falling below the mandated four-month reserve level in FY–2007.

The second comment received from the California Grape and Tree Fruit League (CGTFL) did not oppose the proposed fee increase. CGTFL recommended that FPB make every effort to minimize costs and maximize the efficiency of the program, to maintain training programs for inspections and oversight, to make more inspection data available to the industry, and to seek input from the produce industry. FPB has been and remains committed to such recommendations. Further, FPB has and will continue to seek out cost saving opportunities within the program. Accordingly, in light of the continuing need to maintain the inspection program on a financially sound basis, the Agency has decided to proceed with the fee increase as set forth in the proposal.

List of Subjects in 7 CFR Part 51

Agricultural commodities, Food grades and standards, Fruits, Nuts, Reporting and recordkeeping requirements, Trees, Vegetables.

■ For the reasons set forth in the preamble, 7 CFR part 51 is amended as follows:

[1] Section 8e of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), requires that whenever the Secretary of Agriculture issues grade, size, quality or maturity regulations under domestic marketing orders for certain commodities, the same or comparable regulations on imports of those commodities must be issued. Import regulations apply during those periods when domestic marketing order regulations are in effect. Section 1308 of the Farm Security and Rural Investment Act of 2002 (Public Law 107–171), 7 U.S.C. 7958, required USDA among other things to develop new peanut quality and handling standards for imported peanuts marketed in the United States.

Currently, there are 14 commodities subject to 8e import regulations: Avocados, dates (other than dates for processing), filberts, grapefruit, kiwi fruit, olives (other than Spanish-style green olives), onions, oranges, potatoes, prunes, raisins, table grapes, tomatoes and walnuts. A current listing of the regulated commodities can be found under 7 CFR parts 944, 980, 996, and 999.

PART 51—[AMENDED]

■ 1. The authority citation for 7 CFR part 51 continues to read as follows:

Authority: 7 U.S.C. 1621–1627.

■ 2. Section 51.38 is revised to read as follows:

§ 51.38 Basis for fees and rates.

(a) When performing inspections of product unloaded directly from land or air transportation, the charges shall be determined on the following basis:

(1) Quality and condition inspections of products in quantities of 51 or more packages and unloaded from the same land or air conveyance:

(i) $99 for over a half carlot equivalent of an individual product;

(ii) $83 for a half carlot equivalent or less of an individual product;

(iii) $45 for each additional lot of the same product.

(2) Condition only inspection of products each in quantities of 51 or more packages and unloaded from the same land or air conveyance:

(i) $83 for over a half carlot equivalent of an individual product;

(ii) $76 for a half carlot equivalent or less of an individual product;

(iii) $45 for each additional lot of the same product.

(3) For quality and condition inspection and condition only inspection of products in quantities of 50 or less packages unloaded from the same conveyance:

(i) $45 for each individual product;

(ii) $45 for each additional lot of any of the same product. Lots in excess of carlot equivalents will be charged proportionally by the quarter carlot.

(b) When performing inspections of palletized products unloaded directly from sea transportation or when palletized product is first offered for inspection before being transported from the dock-side facility, charges shall be determined on the following basis:

(1) Dock side inspections of an individual product unloaded directly from the same ship:

(i) 2.5 cents per package weighing less than 30 pounds;

(ii) 3.8 cents per package weighing 30 or more pounds;

(iii) Minimum charge of $99 per individual product;

(iv) Minimum charge of $45 for each additional lot of the same product.

(2) [Reserved]

(c) When performing inspections of products from sea containers unloaded directly from sea transportation or when palletized products unloaded directly from sea transportation are not offered for inspection at dock-side, the carlot fees in paragraph (a) of this section shall apply.

(d) When performing inspections for Government agencies, or for purposes other than those prescribed in paragraphs (a) through (c) of this section, including weight-only and freezing-only inspections, fees for inspection shall be based on the time consumed by the grader in connection with such inspections, computed at a rate of $49 an hour: *Provided*, That:

(1) Charges for time shall be rounded to the nearest half hour;

(2) The minimum fee shall be two hours for weight-only inspections, and one-half hour for other inspections;

(3) When weight certification is provided in addition to quality and/or condition inspection, a one-hour charge shall be added to the carlot fee;

(4) When inspections are performed to certify product compliance for Defense Personnel Support Centers, the daily or weekly charge shall be determined by multiplying the total hours consumed to conduct inspections by the hourly rate. The daily or weekly charge shall be prorated among applicants by multiplying the daily or weekly charge by the percentage of product passed and/or failed for each applicant during that day or week. Waiting time and overtime charges shall be charged directly to the applicant responsible for their incurrence.

(e) When performing inspections at the request of the applicant during periods which are outside the grader's regularly scheduled work week, a charge for overtime or holiday work shall be made at the rate of $25.00 per hour or portion thereof in addition to the carlot equivalent fee, package charge, or hourly charge specified in this subpart. Overtime or holiday charges for time shall be rounded to the nearest half hour.

(f) When an inspection is delayed because product is not available or readily accessible, a charge for waiting time shall be made at the prevailing hourly rate in addition to the carlot equivalent fee, package charge, or hourly charge specified in this subpart. Waiting time shall be rounded to the nearest half hour.

Dated: December 9, 2003.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 03–30999 Filed 12–15–03; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 91 and 96

[Docket Number ST02–03]

RIN 0581–AC18

Removal of Cottonseed Chemist Licensing Program, Updating of Commodity Laboratory and Office Addresses, and Adoption of Information Symbols

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule amends the Agricultural Marketing Service (AMS) regulations by removing the cottonseed chemist licensing program and the related official cottonseed grading program. This regulation will update various commodity testing laboratory addresses and will adopt two information symbols in the form of approved AMS shields to indicate that products have been tested by AMS.

EFFECTIVE DATE: This rule is effective January 15, 2004.

FOR FURTHER INFORMATION CONTACT: James V. Falk, Docket Manager, USDA, AMS, Science and Technology, 1400 Independence Avenue, SW., Room 3521 South Agriculture Building, Mail Stop 0272, Washington, DC 20250–0272; telephone (202) 690–4089; fax (202) 720–4631, or e-mail: *James.falk@usda.gov.*

SUPPLEMENTARY INFORMATION: On August 13, 2003, AMS published in the **Federal Register** (68 FR 48322–48326) a proposed rule with a 30-day comment period to provide an opportunity for interested individuals to comment on the removal of 7 CFR part 96, the 67-year-old USDA cottonseed chemist licensing program and the related official cottonseed grading program. The programs have been inoperative since June 3, 1999. Two information symbols in the form of approved AMS shields to indicate that products have been tested by AMS were also proposed. No comments were received. Therefore, AMS is adopting the proposed as a final rule, without change.

Executive Order 12866 and Executive Order 12988

This rule has been determined to be not significant for the purposes of Executive Order 12866, and therefore, has not been reviewed by the Office of Management and Budget (OMB).

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have retroactive effect. This rule does not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule. There are no administrative procedures which must be exhausted prior to any judicial challenge to this rule or the application of its provisions.

Regulatory Flexibility Act

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. Even though an official cottonseed grading certificate has not been issued since June 3, 1999, there are some potential users available that may use the cottonseed chemist licensing program services. Such possible users of program services include 35 oil mills, 1,400 U.S. cottonseed gins, 11 private laboratories, and exporters. Many of these users are small entities under the criteria established by the Small Business Administration (13 CFR 121.201).

USDA licensed cottonseed chemist program service and official cottonseed grade determinations are provided to all businesses on a voluntary basis and user fees to administer the program are listed in 7 CFR part 96. Any decision to discontinue the use of the official cottonseed grading services (with a unit certificate fee) at private laboratories and obtain new contracts with their customers based upon unofficial grade of seed (without a fee) would not hinder the cottonseed industry members from marketing their products. Monthly published Marketing News reports for cottonseed are based entirely on summary information of the quality and quantity factors and grades obtained from all official certificates issued by licensed chemists. There has been no official cottonseed grade certificate issued from a licensed chemist since June 3, 1999. All cottonseed business since that date has been based on an unofficial cottonseed grade. User fee costs to entities would be proportional to their use of program services, so that costs are shared equitably by all users.

The last fee increases for the USDA Cottonseed Chemist Licensing Program services became effective on May 4, 1998 (63 FR 16370–16375). Since June 1999, no revenue has been available to administer the program and there has been a yearly increase in cost of living for the Federal employee salaries and benefits ($47,786) that comprise 72 percent of total program expenses. No program revenue is generated because there has been a shift in usage patterns on the part of the cottonseed industry for testing and grading services by chemists. The industry is now relying entirely on an unofficial cottonseed grade certification for their purchase and trade decisions.

Other miscellaneous and unsubstantial changes which would be made by the rule will not adversely affect users of the program services. The addition of two information symbols in the form of approved AMS shields and their inclusion in the regulations will not add further costs to users of the variety of AMS Science and Technology laboratory testing services.

Accordingly, the Agricultural Marketing Service has determined that this rule will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

This rule does not contain any new information collection or record keeping requirements that are subject to the Office of Management and Budget (OMB) approval under the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35).

Background Information

On August 9, 1993, AMS published a rule in the **Federal Register** (58 FR 42408–42448) to combine AMS regulations concerning laboratory services. The goal was to consolidate and to transfer existing laboratory testing programs operating independently under the various commodity programs into the Science and Technology (S&T) program, formerly the Science Division and the Science and Technology Division (S&TD). All divisions in the Agricultural Marketing Service (AMS) were designated as programs by the Administrator on September 18, 1997.

The description of examination and licensure services provided in § 91.4 will be broadened to include other laboratory and testing licenses provided by the Science & Technology programs. In addition, since this final rule removes the Cottonseed Chemist Licensing Program then the limited description of services will no longer be applicable. Science & Technology Program laboratories and facilities have undergone modernization and consolidation since May 1998. In many instances the addresses of the locations changed in § 91.5. A major change was the October 2002 opening of the National Science Laboratory in Gastonia, North Carolina which now has biotechnology testing facilities.

On November 1, 1999 the USDA Office of Communications approved two information symbols in the form of AMS shields to be added to the USDA/AMS inventory and they are acceptable for use with AMS materials. The two approved AMS shields with the words "USDA AMS TESTED" and "USDA LABORATORY TESTED FOR EXPORT" will be added to the regulations in 7 CFR part 91. A major role of the Science and Technology program for the Agency is to perform analytical testing services of commodities. The approved AMS shields are designed to enhance the acceptance of AMS tested agricultural commodities on a national or international basis.

The licensed cottonseed chemist program and official grade certification are voluntary, user fee-funded services, conducted under the authority of the Agricultural Marketing Act of 1946, as amended (7 U.S.C. 1622, 1624). Under the current USDA program, chemists in private laboratories are licensed to analyze cottonseed in order to certify its quality, to access its lot potential for oil yield at seed crushing mills, and to determine the grade of official samples of cottonseed produced at cotton gins according to the rules, regulations and By-Laws of the National Cottonseed Products Association (NCPA). A representative lot of cottonseed for official grade determination is generally limited to a maximum of 150 tons for quality concerns. An official certificate is issued by the licensed chemist for each official cottonseed sample at a present unit fee of $3.18 to cover the costs of the USDA program.

The USDA licensed cottonseed chemist program originated on July 31, 1937 when a Bureau of the United States Department of Agriculture published a rule in the **Federal Register** (2 FR 1348–1353) and provided the details for the program. On August 14, 1937 the first user fee increase for the program occurred when the issuance cost for each certificate of the official grade of cottonseed increased from 10 cents to 25 cents (2 FR 1400).

The regulations in 7 CFR part 96 include in subpart A the details of the USDA cottonseed chemist licensing program (under the AMS Cotton Division's supervision for the last time in 1988) and the applicable user fees. In subpart B the method used to calculate official cottonseed grade was provided.

The current fees have been in effect since May 4, 1998 (63 FR 16370–16375). The fees include $1,166 for a chemist's license examination, $292 for a chemist's license renewal, a $3.18 fee per official cottonseed grade certificate issued, and a $60 fee for the review of the grading of an official lot of cottonseed. The number of official

cottonseed grade certificates issued by licensed chemists dropped from 36,565 in fiscal year 1998 to 5,718 in early fiscal year 1999, and zero official grade certificates thereafter. The large decline in official cottonseed grade certificates was due to the 40 percent divergence of cottonseed usage from human food to dairy animal feed. In addition, many large oil mills have set up their own laboratories to perform cottonseed quality testing and have established trade relations with their customers based on an unofficial grade of cottonseed.

The S&T programs are mainly voluntary, user fee services conducted under the authority of the Agricultural Marketing Act of 1946, as amended. The Act authorizes the Department to provide analytical testing services that facilitate marketing and allow commodity products to obtain grade designations or meet marketing standards. In addition, the laboratory tests establish quality standards for the agricultural commodities. The Act also requires that reasonable and reimbursable fees be collected from users of the program services to cover, as nearly as practicable, the costs of the services rendered to maintain the program. At a May 1999 annual meeting, the National Cottonseed Products Association was provided an analysis of the services the Agency provides for the official cottonseed grade determination, and the revisions of fees that are needed to continue services to the extent commensurate with the actual costs. The industry expressed strong resistance to paying the increased costs needed to provide the official cottonseed grading service that includes official sampling expenses. It was their recommendation to eliminate the cottonseed chemist licensing program. In June 1999 the last official cottonseed grade certificate was issued and no revenue has been obtained from the USDA cottonseed chemist licensing program since that time to the present. The program has become a financial burden to AMS. The total obligatory cost to Science and Technology to carry the program forward to the full completion of fiscal year (FY) 2004 would be $65,939. This cost consists of $47,786 for salaries and benefits, $2,480 for USDA blind check sample preparation, $7,101 for travel, $3,575 for rent/utilities/communications, and $4,997 for administrative overhead. The Agency has no projected revenue to continue the program operation using the current user fee schedule. Hence, this rule will terminate the cottonseed chemist licensing program and will remove related official cottonseed grading from the regulations and associated fees. This rule removes 7 CFR part 96 in its entirety. Private or non-government laboratories will no longer be allowed to hold USDA cottonseed chemist licenses. There will be no need for persons to possess cottonseed sampler licenses or similar designations. All such former chemist and sampler licensees will be instructed and will be required to return their licenses to offices at AMS headquarters. Marketing News for official cottonseed grade will no longer be available.

This rule will also update various commodity testing laboratory addresses and will adopt approved AMS shields to indicate that products have been tested by AMS. The new shields will be placed in a new subpart together with appropriate definitions.

List of Subjects

7 CFR Part 91

Administrative practice and procedure, Agricultural commodities, Laboratories, Reporting and recordkeeping requirements.

7 CFR Part 96

Administrative practice and procedure, Agricultural commodities, Laboratories, Reporting and recordkeeping requirements.

■ For the reasons set forth in the preamble, 7 CFR parts 91 and 96 are amended as follows:

PART 91—[AMENDED]

■ 1. The authority citation for part 91 continues to read as follows:

Authority: 7 U.S.C. 1622, 1624.

■ 2. In § 91.4, paragraph (b) is revised to read as follows:

§ 91.4 Kinds of services.

* * * * *

(b) *Examination and licensure.* The manager of a particular Science and Technology program administers examinations and licenses analysts in laboratories for competency in performing commodity testing services.

* * * * *

■ 3. Section 91.5 is revised to read as follows:

§ 91.5 Where services are offered.

(a) Services are offered to applicants at the Science and Technology field service laboratories and facilities in the following list:

(1) *Science and Technology regional laboratory.* A variety of tests and laboratory analyses are available in one regional multi-disciplinary Science and Technology (S&T) laboratory, and is located as follows: USDA, AMS, Science and Technology, National Science Laboratory, 801 Summit Crossing Place, Suite B, Gastonia, NC 28054–2193.

(2) *Science and Technology (S&T) satellite laboratories.* The specialty laboratories performing mycotoxin and other chemical testing on peanuts, peanut products, dried fruits, grains, edible seeds, tree nuts, shelled corn products, oilseed products and other commodities as well as proximate analyses on foods are:

(i) USDA, AMS, Science & Technology, 959 North Main Street, Blakely, GA 39823–2030.

(ii) USDA, AMS, Science & Technology, 107 South Fourth Street, Madill, OK 73446–3431.

(iii) USDA, AMS, Science & Technology, c/o Golden Peanut Company LLC (Mail: P.O. Box 272; Dawson, GA 31742–0272), 715 Martin Luther King Jr. Drive, Dawson, GA 39842–1002.

(iv) USDA, AMS, S&T, Mail: P.O. Box 1130, 308 Culloden Street, Suffolk, VA 23434–4706.

(3) *Citrus laboratory.* The Science and Technology's citrus laboratory specializes in testing citrus juices and other citrus products and is located as follows: USDA, AMS, Science & Technology Citrus Laboratory, 98 Third Street, SW., Winter Haven, FL 33880–2905.

(4) *Program laboratories.* Laboratory services are available in all areas covered by cooperative agreements providing for this laboratory work and entered into on behalf of the Department with cooperating Federal or State laboratory agencies pursuant to authority contained in Act(s) of Congress. Also, services may be provided in other areas not covered by a cooperative agreement if the Administrator determines that it is possible to provide such laboratory services.

(5) *Other alternative laboratories.* Laboratory analyses may be conducted at alternative Science and Technology laboratories and can be reached from any commodity market in which a laboratory facility is located to the extent laboratory personnel are available.

(6) *Science and Technology headquarters offices.* The examination, licensure, quality assurance reviews, laboratory accreditation/certification and consultation services are provided by headquarters staff located in Washington, DC. The main headquarters office is located as follow: USDA, AMS, Science and Technology, Office of the Deputy Administrator, Room 3507 South Agriculture Bldg., Mail Stop 0270, 1400 Independence Ave., SW., Washington, DC 20250–0270.

(7) *The Information Technology (IT) Group.* The IT office of the Science and Technology programs is headed by the Associate Deputy Administrator for Technology/Chief Information Officer and provides information technology services and management systems to the Agency and other agencies within the USDA. The main IT office is located as follow: USDA, AMS, Science and Technology, Office of the Associate Deputy Administrator for Technology, 1752 South Agriculture Bldg., Mail Stop 0204, 1400 Independence Ave., SW., Washington, DC 20250–0204.

(8) *Statistics Branch Office.* The Statistics Branch office of Science and Technology (S&T) provides statistical services to the Agency and other agencies within the USDA. In addition, the Statistics Branch office generates sample plans and performs consulting services for research studies in joint efforts with or in a leading role with other program areas of AMS or of the USDA. The Statistics Branch office is located as follows: USDA, AMS, S&T Statistics Branch, 0603 South Agriculture Bldg., Mail Stop 0223, 1400 Independence Ave., SW., Washington, DC 20250–0223.

(9) *Technical Services Branch Office.* The Technical Services Branch office of Science and Technology (S&T) provides technical support services to all Agency programs and other agencies within the USDA. In addition, the Technical Services Branch office provides certification and accreditation services of private and State government laboratories as well as oversees quality assurance programs; import and export certification of laboratory tested commodities. The Technical Services Branch office is located as follows: USDA, AMS, S&T Technical Services Branch, 3521 South Agriculture Bldg., Mail Stop 0272, 1400 Independence Ave., SW., Washington, DC 20250–0272.

(10) *Monitoring Programs Office.* Services afforded by the Pesticide Data Program (PDP) and Microbiological Data Program (MDP) are provided by USDA, AMS, Science and technology Monitoring Programs Office (MDP and PDP), 8609 Sudley Road, Suite 206, Manassas, VA 20119–8411.

(11) *Federal Pesticide Record Keeping Program Office.* Services afforded by the Federal Pesticide Record Keeping Program for restricted-use pesticides by private certified applicators are provided by USDA, AMS, Science and Technology, Pesticide Records Branch, 8609 Sudley Road, Suite 203, Manassas, VA 20110–8411.

(b) The addresses of the various laboratories and offices appear in the pertinent parts of this subchapter. A prospective applicant may obtain a current listing of addresses and telephone numbers of Science and Technology laboratories, offices, and facilities by addressing an inquiry to the Administrative Officer, Science and Technology, Agricultural Marketing Service, United States Department of Agriculture (USDA), 1400 Independence Ave., SW., Room 0725 South Agriculture Building, Mail Stop 0271, Washington, DC 20250–0271.

■ 4. A new subpart J is added to read as follows:

Subpart J—Designation of Approved Symbols for Identification of Commodities Officially Tested By AMS

Sec.
91.100 Scope.
91.101 Definitions.
91.102 Form of official identification symbols.

§ 91.100 Scope.

Two approved information symbols in the form of AMS shields are available to indicate official testing by an AMS laboratory. The two approved AMS shields with the words "USDA AMS TESTED" and "USDA LABORATORY TESTED FOR EXPORT" are added to the USDA symbol inventory to enhance the acceptance of AMS tested agricultural commodities on a national or international basis.

§ 91.101 Definitions.

Words used in the regulations in this part in the singular form will import the plural, and vice versa, as the case may demand. As used throughout the regulations in this part, unless the context requires otherwise, the following terms will be construed to mean:

AMS. The abbreviation for the Agricultural Marketing Service (AMS) agency of the United States Department of Agriculture.

Export. To send or transport a product originally created or manufactured in the United States of America to another country in the course of trade.

Laboratory. An AMS Science and Technology (S&T) laboratory listed in § 91.5 that performs the official analyses.

Test. To perform chemical, microbiological, or physical analyses on a sample to determine presence and levels or amounts of a substance or living organism of interest.

USDA. The abbreviation for the United States Department of Agriculture.

§ 91.102 Form of official identification symbols.

Two information symbols in the form of AMS shields indicate commodity testing at an AMS laboratory listed in § 91.5 of this part. The AMS shield set forth in figure 1 of this section, containing the words "USDA AMS TESTED", and the shield set forth in figure 2, containing the words "USDA LABORATORY TESTED FOR EXPORT" have been approved by the USDA Office of Communications to be added to the USDA/AMS inventory of symbols. Each example of an AMS shield has a black and white background; however the standard red, white and blue colors are approved for the shields. They are approved for use with AMS materials. Shields with the same wording that are similar in form and design to the examples in figures 1 and 2 of this section may also be used.



Figure 1.



Figure 2.

PART 96—[REMOVED AND RESERVED]

■ 4a. Under the authority of 7 U.S.C. 1622 and 1624, part 96 is removed and reserved.

Dated: December 9, 2003

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 03–30996 Filed 12–15–03; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Farm Service Agency

Rural Housing Service

Rural Business-Cooperative Service

Rural Utilities Service

7 CFR Parts 772, 1901, and 1951

RIN 0560–AG67

Servicing Minor Program Loans

AGENCY: Farm Service Agency, USDA.

ACTION: Final rule.

SUMMARY: This rule consolidates, clarifies and revises the servicing regulations for the Minor Programs currently administered by the Farm Service Agency, Farm Loan Programs (FSA). Minor Program loans involve existing loans only since there is no longer funding for new loans in these programs. FSA Minor Programs consist of the following loan types: Grazing Association loans and Irrigation and Drainage Association loans previously administered by the U.S. Department of Agriculture's Rural Development (RD) mission area, and Non-Farm Enterprise and Recreation Loans made to individuals previously administered by FSA. Recreation loans to associations will continue to be serviced by the RD mission area.

EFFECTIVE DATE: January 15, 2004.

FOR FURTHER INFORMATION CONTACT: Mel Thompson, Senior Loan Officer, Farm Service Agency; telephone: (202) 720–7862; Facsimile: (202) 690–1196; e-mail: *mel_thompson@wdc.usda.gov*. Persons with disabilities who require alternative means for communication (Braille, large print, audio tape, *etc.*) should contact the USDA Target Center at (202) 720–2600 (voice and TDD).

SUPPLEMENTARY INFORMATION:

Discussion of the Final Rule

This rule consolidates and clarifies the servicing policies of the Farm Service Agency's Minor Loan Programs. The Minor Programs were administered by the former Farmers Home Administration (FmHA). Under the discretionary authority of the Department of Agriculture Reorganization Act of 1994, Public Law 103–354, on October 20, 1994, the Individual-type loans (Non-Farm Enterprise and Recreation loans) were assigned to FSA. The Association-type loans (Grazing Associations and Irrigation and Drainage loans) were assigned to the RD mission area. Regulations for servicing the Association-type loans of these programs were found at 7 CFR part 1901, subpart E for civil rights compliance; 7 CFR part 1951, subpart E for servicing; 7 CFR part 1951, subpart F for graduation; 7 CFR part 1956, subpart C for debt settlement; and 7 CFR part 1962 subpart A for bankruptcy. Individual-type Minor Program loans are the Non-Farm Enterprise loans defined in 7 CFR 1941.4 and 1943.4 and which are a subgroup of FSA, Farm Operating and Farm Ownership loans; and Recreation loans, which are defined as Farm Loan Program (FLP) loans under 7 CFR 1951.906. Although these loans are no longer made by FSA, they are serviced as FLP loans in accordance with 7 CFR part 1951, subpart S.

Because the current delegation of these similar loan programs between the FSA and RD mission area is inefficient, this rule removes parts of regulations that are currently shared by FSA and the agencies of the RD mission area and establishes a consolidated FSA regulation governing these programs. Information not specific to the Minor Programs has been eliminated and language has been improved for readability.

On April 9, 2003, the Farm Service Agency published a proposed rule (68 FR 17320) requesting comments regarding proposed consolidation and revision of the rules affecting the FSA Minor Programs. A comment was received from an Agency employee regarding servicing violations of non-compliance with civil rights laws by Minor Program borrowers. The commentor suggested that the Agency provide notices and try to correct the violation rather than going right into liquidation.

The Agency is adopting the comment. The Agency has clarified its civil rights compliance standards contained in § 772.3(a) and (d) since FSA's civil rights compliance procedures contained in Departmental regulations at 7 CFR 15.8 and internal Departmental Memorandum 4330–002, March 3, 1999, available on the Departmental website, also apply. The comment pertains only to association type loans (AMP) which are Federal financial assistance because the borrowers are the recipients of the Federal funding but are not the ultimate beneficiary of the program. *See* 7 CFR 15.2 for the definition of these terms in a civil rights context. In this situation FSA acts as an enforcement agent of civil rights laws, and no violations of civil rights laws by FSA have been alleged. Departmental Memorandum 4330–002, ¶ 9 establishes a detailed compliance procedure, which provides notice and the opportunity to correct the violation before enforcement proceedings are undertaken. Moreover, 7 CFR part 15, subpart A provides an informal and formal means of disputing compliance issues through a fact finding process. Since these additional authorities already apply to civil rights compliance reviews, FSA has referenced these standards in § 772.3.

In addition, the Agency is clarifying its liquidation policy. Section 772.16 is revised to state that for Association-Type loans (AMP), the notice of acceleration will include appeal rights. For Individual-Type loans (IMP), § 772.16 states that all appeals must be exhausted before the notice of acceleration is issued; however, the notice of acceleration itself is not appealable. Thus, for both types of Minor Program loans, borrowers can dispute factual issues before liquidation. FSA has maintained the different timing for appealing adverse Agency decisions. AMP loans were previously serviced by the RD mission area under regulations providing for appeals in the notice of acceleration. IMP loans serviced by FSA before this rule are still considered Farm Loan Program (FLP) loans which by regulation require that all appeals precede acceleration.

Executive Order 12866

This rule has been determined under Executive Order 12866 to be not significant and was not reviewed by the Office of Management and Budget.

Regulatory Flexibility Act

In accordance with the Regulatory Flexibility Act, 5 U.S.C. 601, the Agency has determined that there will not be a significant economic impact on a substantial number of small entities. All Farm Service Agency direct loan borrowers and all entities affected by this rule are small businesses according to the North American Industry Classification System, and the United States Small Business Administration. There is no diversity in size of the entities affected by this rule and the costs to comply with it are the same for all entities. FSA stated its finding in the proposed rule at 68 FR 17320, April 9, 2003, that the rule will not have a significant economic impact on a substantial number of small entities, and received no comments on this finding.

There are currently 346 Minor Loan Program borrowers including 61 Grazing Associations, 39 Irrigation and Drainage Associations, 218 Non-Farm Enterprise loans, and 28 Recreations loans to individuals which total less than $22,000,000 in outstanding indebtedness. This rule consolidates the regulations governing these programs, but it contains no new requirements nor does it eliminate any provision in previous regulations. This rule does not limit options available to program participants, or change any aspect of the program that would have a significant effect on the business of these associations. Therefore, the costs of compliance resulting from this rule are deemed not significant. Accordingly, pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Agency certifies that this rule will not have a significant economic impact on a substantial number of small entities.

Environmental Evaluation

The environmental impacts of this rule have been considered in accordance with the provisions of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321 *et seq.*, the regulations of the Council on Environmental Quality (40 CFR parts 1500–1508), and the FSA regulations for compliance with NEPA, 7 CFR parts 799 and 1940, subpart G. FSA completed an environmental evaluation and concluded that the rule requires no further environmental review because no new loans are authorized. Servicing existing loans in accordance with previously published rules containing environmental requirements is not a major Federal action significantly affecting the quality of the human environment. No extraordinary circumstances or other unforeseeable factors exist which required preparation of an environmental assessment or environmental impact statement.

Executive Order 12988

This rule has been reviewed in accordance with E.O. 12988, Civil Justice Reform. In accordance with that Executive Order: (1) All State and local laws and regulations that are in conflict with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings in accordance with 7 CFR part 11 must be exhausted before requesting judicial review.

Executive Order 12372

As stated in the Notice related to 7 CFR part 3015, subpart V (48 FR 29115, June 24, 1983) the programs and activities within this rule do not require consultation with state and local officials under the scope of Executive Order 12372.

Unfunded Mandates

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, requires Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments or the private sector. This rule contains no Federal mandates, as defined by title II of the UMRA; therefore, this rule is not subject to sections 202 and 205 of the UMRA.

Executive Order 13132

The policies contained in this rule do not have any substantial direct effect on states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Nor does this rule impose any new significant loan servicing criteria on state and local governments. The rule revises the citation references and consolidates the servicing regulations to streamline loan servicing criteria applicable to Minor Programs. Therefore, consultation with the states is not required.

Paperwork Reduction Act

The amendments to 7 CFR parts 772, 1901, subpart E, and 1951, subparts E and F, contained in this rule only delete requirements and propose no new collections nor do they significantly affect the aggregate information collection burden of the Agencies. Still, this rule transfers some of the information collections that were approved under OMB control numbers 0575–0118, 0575–0093, and 0575–0066, to part 772, which has been approved by OMB and assigned control number 0560–0230.

Federal Assistance Program

These changes affect no programs listed in the Catalog of Federal Domestic Assistance.

List of Subjects in 7 CFR

Part 772

Agriculture, Credit, Rural areas.

Part 1901

Civil rights, Compliance reviews, Minority groups.

Part 1951

Account servicing, Grant programs—housing and community development, Reporting requirements, Rural areas.

■ Accordingly, for the reasons stated in the preamble, 7 CFR part 772 is added and parts 1901 and 1951 are revised as follows:

■ 1. Add part 772 to read as follows:

PART 772—SERVICING MINOR PROGRAM LOANS

Sec.

772.1 Policy.
772.2 Abbreviations and definitions.
772.3 Compliance.
772.4 Environmental requirements.
772.5 Security maintenance.
772.6 Subordination of security.
772.7 Leasing minor program loan security.
772.8 Sale or exchange of security property.
772.9 Releases.
772.10 Transfer and assumption—AMP loans.
772.11 Transfer and assumption—IMP loans.
772.12 Graduation.
772.13 Delinquent account servicing.
772.14 Reamortization of AMP loans.
772.15 Protective advances.
772.16 Liquidation.
772.17 Equal Opportunity and non-discrimination requirements.
772.18 Exception authority.

Authority: 5 U.S.C. 301, 7 U.S.C. 1989, 25 U.S.C. 490.

§ 772.1 Policy.

(a) *Purpose.* This part contains the Agency's policies and procedures for servicing Minor Program loans which include: Grazing Association loans, Irrigation and Drainage Association loans, and Non-Farm Enterprise and Recreation loans to individuals.

(b) *Appeals.* The regulations at 7 CFR parts 11 and 780 apply to decisions made under this part.

§ 772.2 Abbreviations and Definitions.

(a) *Abbreviations.*

AMP Association-Type Minor Program loan;
CFR Code of Federal Regulations;
FO Farm Ownership Loan;
FSA Farm Service Agency;
IMP. Individual-Type Minor Program loan;
OL Operating Loan;
USDA United States Department of Agriculture.

(b) *Definitions.*

Association-Type Minor Program loans (AMP): Loans to Grazing Associations and Irrigation and Drainage Associations.

Entity: Cooperative, corporation, partnership, joint operation, trust, or limited liability company.

Graduation: The requirement contained in loan documents that borrowers pay their FSA loan in full with funds received from a commercial lending source as a result of improvement in their financial condition.

Individual-type Minor Program loans (IMP): Non-Farm Enterprise or Recreation loans to individuals.

Member: Any individual who has an ownership interest in the entity which has received the Minor Program loan.

Minor Program: Non-Farm Enterprise, Individual Recreation, Grazing Association, or Irrigation and Drainage loan programs administered or to be administered by FSA

Review official: An agency employee, contractor or designee who is authorized to conduct a compliance review of a Minor Program borrower under this part.

§ 772.3 Compliance.

(a) *Requirements.* No Minor Program borrower shall directly, or through contractual or other arrangement, subject any person or cause any person to be subjected to discrimination on the basis of race, color, national origin, or disability. Borrowers must eomply with all applicable Federal laws and regulations regarding equal opportunity in hiring, procurement, and related matters. AMP borrowers are subject to the nondiscrimination provisions applicable to Federally assisted programs contained in 7 CFR part 15, subparts A and C, and part 15b. IMP loans are subject to the nondiscrimination provisions applicable to federally conducted programs contained in 7 CFR parts 15d and 15e.

(b) *Reviews.* In accordance with Title VI of the Civil Rights Act of 1964, the Agency will conduct a compliance review of all Minor Program borrowers, to determine if a borrower has directly, or through contractual or other arrangement, subjected any person or caused any person to be subjected to discrimination on the basis of race, color, or national origin. The borrower must allow the review official access to their premises and all records necessary to carry out the compliance review as determined by the review official.

(c) *Frequency and timing.* Compliance reviews will be conducted no later than October 31 of every third year until the Minor Program loan is paid in full or otherwise satisfied.

(d) *Violations.* If a borrower refuses to provide information or access to their premises as requested by a review official during a compliance review, or is determined by the Agency to be not in compliance in accordance with this section or Departmental regulations and procedures, the Agency will service the loan in accordance with the provisions of § 772.16 of this part.

§ 772.4 Environmental requirements.

Servicing activities such as transfers, assumptions, subordinations, sale or exchange of security property, and leasing of security will be reviewed for compliance with 7 CFR part 1940, subpart G and the exhibits to that subpart and 7 CFR part 799.

§ 772.5 Security maintenance.

(a) *General.* Borrowers are responsible for maintaining the collateral that is serving as security for their Minor Program loan in accordance with their lien instruments, security agreement and promissory note.

(b) *Security inspection.* The Agency will inspect real estate that is security for a Minor Program loan at least once every 3 years, and chattel security at least annually. More frequent security inspections may be made as determined necessary by the Agency. Borrowers will allow representatives of the Agency, or any agency of the U.S. Government, in accordance with statutes and regulations, such access to the security property as the agency determines is necessary to document compliance with the requirements of this section.

(c) *Violations.* If the Agency determines that the borrower has failed to adequately maintain security, made unapproved dispositions of security, or otherwise has placed the repayment of the Minor Program loan in jeopardy, the Agency will:

(1) For chattel security, service the account according to 7 part 1962, subpart A. If any normal income security as defined in that subpart secures a Minor Program loan, the reporting, approval and release provisions in that subpart shall apply.

(2) For real estate security for AMP loans, contact the Regional Office of General Counsel for advice on the appropriate servicing including liquidation if warranted.

(3) For real estate security for IMP loans, service the account according to 7 CFR part 1965, subpart A.

§ 772.6 Subordination of security.

(a) *Eligibility.* The Agency shall grant a subordination of Minor Program loan security when the transaction will further the purposes for which the loan was made, and all of the following are met:

(1) The loan will still be adequately secured after the subordination, or the value of the loan security will be increased by the amount of advances to be made under the terms of the subordination.

(2) The borrower can document the ability to pay all debts including the new loan.

(3) The action does not change the nature of the borrower's activities to the extent that they would no longer be eligible for a Minor Program loan.

(4) The subordination is for a specific amount.

(5) The borrower is unable, as determined by the Agency, to refinance its loan and graduate in accordance with this subpart.

(6) The loan funds will not be used in such a way that will contribute to erosion of highly erodible land or conversion of wetlands for the production of an agricultural commodity according to 7 CFR part 1940, subpart G.

(7) The borrower has not been convicted of planting, cultivating, growing, producing, harvesting or storing a controlled substance under Federal or state law. "Borrower," for purposes of this subparagraph, specifically includes an individual or entity borrower and any member of an entity borrower. "Controlled substance," for the purpose of this subparagraph, is defined at 21 CFR part 1308. The borrower will be ineligible for a subordination for the crop year in which the conviction occurred and the four succeeding crop years. An applicant must attest on the Agency application form that it, and its members if an entity, have not been convicted of such a crime.

(b) *Application.* To request a subordination, a Minor Program borrower must make the request in writing and provide the following:

(1) The specific amount of debt for which a subordination is needed;

(2) An appraisal prepared in accordance with § 761.7 of this chapter, if the request is for a subordination of more than $10,000, unless a sufficient appraisal report, as determined by the Agency, that is less than one year old, is on file with the Agency; and

(3) Consent and subordination, as necessary, of all other creditors' security interests.

§ 772.7 Leasing minor program loan security.

(a) *Eligibility.* The Agency may consent to the borrower leasing all or a portion of security property for Minor Program loans to a third party when:

(1) Leasing is the only feasible way to continue to operate the enterprise and is a customary practice;

(2) The lease will not interfere with the purpose for which the loan was made;

(3) The borrower retains ultimate responsibility for the operation, maintenance and management of the facility or service for its continued availability and use at reasonable rates and terms;

(4) The lease prohibits amendments to the lease or subleasing arrangements without prior written approval from the Agency;

(5) The lease terms provide that the Agency is a lienholder on the subject property and, as such, the lease is subordinate to the rights and claims of the Agency as lienholder; and

(6) The lease is for less than 3 years and does not constitute a lease/purchase arrangement, unless the transfer and assumption provisions of this subpart are met.

(b) *Application.* The borrower must submit a written request for Agency consent to lease the property.

§ 772.8 Sale or exchange of security property.

(a) For AMP loans.

(1) Sale of all or a portion of the security property may be approved when all of the following conditions are met:

(i) The property is sold for market value based on a current appraisal prepared in accordance with § 761.7 of this chapter.

(ii) The sale will not prevent carrying out the original purpose of the loan. The borrower must execute an Assurance Agreement as prescribed by the Agency. The covenant involved will remain in effect as long as the property continues to be used for the same or similar purposes for which the loan was made. The instrument of conveyance will contain the nondiscrimination covenants contained in 7 CFR 1951.204.

(iii) The remaining security for the loan is adequate or will not change after the transaction.

(iv) Sale proceeds remaining after paying any reasonable and necessary selling expenses are applied to the Minor Program loan according to lien priority.

(2) Exchange of all or a portion of security property for an AMP loan may be approved when:

(i) The Agency will obtain a lien on the property acquired in the exchange;

(ii) Property more suited to the borrower's needs related to the purposes of the loan is to be acquired in the exchange;

(iii) The AMP loan will be as adequately secured after the transaction as before; and

(iv) It is necessary to develop or enlarge the facility, improve the borrower's debt-paying ability, place the operation on a more sound financial basis or otherwise further the loan objectives and purposes, as determined by the Agency.

(b) For IMP loans.

(1) A sale or exchange of chattel that is serving as security is governed by 7 CFR part 1962, subpart A.

(2) A sale or exchange of real estate that is serving as security for an IMP loan is governed by 7 CFR part 1965, subpart A.

§ 772.9 Releases.

(a) *Security.* Minor Program liens may be released when:

(1) The debt is paid in full;

(2) Security property is sold for market value and sale proceeds are received and applied to the borrower's creditors according to lien priority; or

(3) An exchange in accordance with § 772.7(b) has been concluded.

(b) *Borrower liability.* The Agency may release a borrower from liability when the Minor Program loan, plus all administrative collection costs and charges are paid in full. IMP borrowers who have had previous debt forgiveness on a farm loan program loan as defined in 7 CFR 1951.906, however, cannot be released from liability by FSA until the previous loss to the Agency has been repaid with interest from the date of debt forgiveness. An AMP borrower may also be released in accordance with § 772.10 in conjunction with a transfer and assumption.

(c) *Servicing of debt not satisfied through liquidation.* Balances remaining after sale or liquidation of the security will be subject to administrative offset in accordance with 7 CFR part 3, Department of Treasury Offset Program (TOP) and Treasury Cross-Servicing regulations at 31 CFR part 285 and Federal Claims Collections Standards at 31 CFR parts 900–904. Thereafter the debt settlement provisions in 7 CFR part 1956, subpart B of chapter XVIII of the Code of Federal Regulations or successor regulation apply.

§ 772.10 Transfer and assumption—AMP loans.

(a) *Eligibility.* The Agency may approve transfers and assumptions of AMP loans when:

(1) The present borrower is unable or unwilling to accomplish the objectives of the loan;

(2) The transfer will not harm the Government or adversely affect the Agency's security position;

(3) The transferee will continue with the original purpose of the loan;

(4) The transferee will assume an amount at least equal to the present market value of the loan security;

(5) The transferee documents the ability to pay the AMP loan debt as provided in the assumption agreement and has the legal capacity to enter into the contract;

(6) If there is a lien or judgment against the Agency security being transferred, the transferee is subject to such claims. The transferee must document the ability to repay the claims against the land; and

(7) If the transfer is to one or more members of the borrower's organization and there is no new member, there must not be a loss to the Government.

(b) *Withdrawal.* Withdrawal of a member and transfer of the withdrawing member's interest in the Association to a new eligible member may be approved by the Agency if all of the following conditions are met:

(1) The entire unpaid balance of the withdrawing member's share of the AMP loan must be assumed by the new member;

(2) In accordance with the Association's governing articles, the required number of remaining members must agree to accept any new member; and

(3) The transfer will not adversely affect collection of the AMP loan.

(c) *Requesting a transfer and assumption.* The transferor/borrower and transferee/applicant must submit:

(1) The written consent of any other lienholder, if applicable.

(2) A current balance sheet and cash flow statement.

(d) *Terms.* The interest rate and term of the assumed AMP loan will not be changed. Any delinquent principal and interest of the AMP loan must be paid current before the transfer and assumption will be approved by the Agency.

(e) *Release of liability.* Transferors may be released from liability with respect to an AMP loan by the Agency when:

(1) The full amount of the loan is assumed; or

(2) Less than the full amount of the debt is assumed, and the balance remaining will be serviced in accordance with § 772.9(c).

§ 772.11 Transfer and assumption—IMP loans.

Transfers and assumptions for IMP loans are processed in accordance with 7 CFR part 1962, subpart A, for chattel secured loans and 7 CFR part 1965, subpart A, for real estate secured loans. Any remaining transferor liability will be serviced in accordance with § 772.9(c) of this subpart.

§ 772.12 Graduation.

(a) *General.* This section only applies to Minor Program borrowers with promissory notes which contain provisions requiring graduation.

(b) *Graduation reviews.* Borrowers shall provide current financial information when requested by the Agency or its representatives to conduct graduation reviews.

(1) AMP loans shall be reviewed at least every two years. In the year to be reviewed, each borrower must submit, at a minimum, a year-end balance sheet and cash flow projection for the current year.

(2) All IMP borrowers classified as "commercial" or "standard" in accordance with 7 CFR part 1951, subpart F, shall be reviewed at least every 2 years. In the year to be reviewed, each borrower must submit a year-end balance sheet, actual financial performance for the most recent year, and a projected budget for the current year.

(c) *Criteria.* Borrowers must graduate from the Minor Programs as follows:

(1) Borrowers with IMP loans that are classified as "commercial" or "standard" must apply for private financing within 30 days from the date the borrower is notified of lender interest, if an application is required by the lender. For good cause, the Agency may grant the borrower a reasonable amount of additional time to apply for refinancing.

(2) Borrowers with AMP loans will be considered for graduation at least every two years or more frequently if the Agency determines that the borrower's financial condition has significantly improved.

§ 772.13 Delinquent account servicing.

(a) *AMP loans.* If the borrower does not make arrangements to cure the default after notice by the Agency and is not eligible for reamortization in accordance with § 772.14, the Agency will liquidate the account according to § 772.16.

(b) *IMP loans.* Delinquent IMP borrowers will be serviced according to 7 CFR part 1951, subpart S, and parts 3 and 1951, subpart C, concerning internal agency offset and referral to the Department of Treasury Offset Program and Treasury Cross-Servicing (or successor regulations).

§ 772.14 Reamortization of AMP loans.

The Agency may approve reamortization of AMP loans provided:

(a) There is no extension of the final maturity date of the loan;

(b) No intervening lien exists on the security for the loan which would jeopardize the Government's security position;

(c) If the account is delinquent, it cannot be brought current within one year and the borrower has presented a cash flow budget which demonstrates the ability to meet the proposed new payment schedule; and

(d) If the account is current, the borrower will be unable to meet the annual loan payments due to circumstances beyond the borrower's control.

§ 772.15 Protective advances.

(a) The Agency may approve, without regard to any loan or total indebtedness limitation, vouchers to pay costs, including insurance and real estate taxes, to preserve and protect the security, the lien, or the priority of the lien securing the debt owed to the Agency if the debt instrument provides that the Agency may voucher the account to protect its lien or security.

(b) The Agency may pay protective advances only when it determines it to be in the Government's best financial interest.

(c) Protective advances are immediately due and payable.

§ 772.16 Liquidation.

When the Agency determines that continued servicing will not accomplish the objectives of the loan and the delinquency or financial distress cannot be cured by the options in § 772.13, or the loan is in non-monetary default, the borrower will be encouraged to dispose of the Agency security voluntarily through sale or transfer and assumption in accordance with this part. If such a transfer or voluntary sale is not carried out, the loan will be liquidated according to 7 CFR part 1955, subpart A. For AMP loans, appeal rights under 7 CFR part 11 are provided in the notice of acceleration. For IMP loans, appeal rights must be exhausted before acceleration, and the notice of acceleration is not appealable.

§ 772.17 Equal opportunity and non-discrimination requirements.

With respect to any aspect of a credit transaction, the Agency will comply with the requirements of the Equal Credit Opportunity Act as implemented in 7 CFR 1910.2, and the Department's civil rights policy in 7 CFR part 15d.

§ 772.18 Exception authority.

Exceptions to any requirement in this subpart can be approved in individual cases by the Administrator if application of any requirement or failure to take action would adversely affect the Government's financial interest. Any exception must be consistent with the authorizing statute and other applicable laws.

PART 1901—PROGRAM-RELATED INSTRUCTIONS

Subpart E—Civil Rights Compliance Requirements

■ 2. The authority citation for part 1901 is revised to read as follows:

Authority: 5 U.S.C. 301; 7 U.S.C. 1989; 42 U.S.C. 1480.

§ 1901.204 [Amended]

■ 3. Amend § 1901.204 by:

■ a. Removing paragraphs (a)(1), (2), (4), and (10);

■ b. Redesignating paragraph (a)(3) as paragraph (a)(1);

■ c. Redesignating paragraphs (a)(5) through (9) as paragraphs (a)(2) through (6); and

■ d. Redesignating paragraphs (a)(11) through (28) as paragraphs (a)(7) through (24).

PART 1951—SERVICING AND COLLECTIONS

■ 4. The authority citation for part 1951 continues to read as follows:

Authority: 5 U.S.C. 301; 7 U.S.C. 1932 note; 7 U.S.C. 1989; 42 U.S.C. 1480.

Subpart E—Servicing of Community and Direct Business Programs Loans and Grants

§ 1951.201 [Amended]

■ 5. Amend 1951.201 by removing the words: "loans for Grazing and other shift-in-land-use projects;" and "Association Irrigation and Drainage loans."

§ 1951.221 [Amended]

■ 6. Amend § 1951.221 in paragraph (b) heading by removing the words "Grazing Association Loans, Irrigation and Drainage and other".

Signed in Washington, DC, on December 10, 2003.

Floyd D. Gaibler,

Acting Under Secretary for Farm and Foreign Agricultural Services.

[FR Doc. 03–31001 Filed 12–15–03; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1220

[Doc. No. LS–02–14]

Amendment to the Soybean Promotion and Research Rules and Regulations

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule amends the Soybean Promotion and Research Rules and Regulations (Rules and Regulations) established under the Soybean Promotion, Research, and Consumer Information Act (Act) by requiring first purchasers of soybeans and producers marketing processed soybeans or soybean products of a producer's own production in the States or regions of Delaware, Louisiana, South Carolina, Texas, Eastern Region, and the Western Region, to remit and report assessments on a quarterly basis rather than a monthly basis. This change reduces the administrative costs of monthly reporting imposed on these smaller soybean producing States and regions.

EFFECTIVE DATE: April 1, 2004.

FOR FURTHER INFORMATION CONTACT: Kenneth R. Payne, Chief; Marketing Programs Branch; Livestock and Seed Program; Agricultural Marketing Service (AMS), USDA, Room 2638–S; STOP 0251; 1400 Independence Avenue, SW., Washington, DC 20250–0251; telephone 202/720–1115.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

The Office of Management and Budget (OMB) has waived the review process required by Executive Order 12866 for this action.

Executive Order 12988

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have a retroactive effect.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under § 1971 of the Act, a person subject to the Soybean Promotion and Research Order (Order) may file a petition with the Department of Agriculture (Department) stating that the Order, any provision of the Order, or any obligation imposed in connection with the Order, is not in accordance with law and requesting a modification of the Order or an exemption from the Order. The petitioner is afforded the opportunity for a hearing on the petition. After a hearing, the Department would rule on the petition. The Act provides that the district courts of the United States in any district in which such person is an inhabitant, or has their principal place of business, has jurisdiction to review the Department's ruling on the petition, if a complaint for this purpose is filed within 20 days after the date of the entry of the ruling. Further, section 1974 of the Act provides, with certain exceptions, that nothing in the Act may be construed to preempt or supersede any other program relating to soybean promotion, research, consumer information, or industry information organized and operated under the laws of the United States or any State. One exception in the Act concerns assessments collected by Qualified State Soybean Boards (QSSBs). The exception provides that to ensure adequate funding of the operations of QSSBs under the Act, no State law or regulation may limit or have the effect of limiting the full amount of assessments that a QSSB in that State may collect, and which is authorized to be credited under the Act. Another exception concerns certain referenda conducted during specified periods by a State relating to the continuation or termination of a QSSB or State soybean assessment.

Regulatory Flexibility Act

AMS has determined that this final rule will not have a significant impact on a substantial number of small entities as defined by the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), because it only revises the remittance of assessments and reports from a monthly basis to a quarterly basis for certain States or regions. The States or regions of Delaware, Louisiana, South Carolina, Texas, Eastern Region, and the Western Region are being changed from monthly remitting States or regions to quarterly remitting States or regions to reduce administrative costs. Because of the minimal number of first purchasers, producers, and total remittances from these States and regions, allowing the States or regions to remit and report assessments on a quarterly basis will benefit QSSBs, the States and regions, and the United Soybean Board (Board) by reducing the administrative costs of remitting and reporting assessments on a monthly basis. This action will likely reduce administrative costs by approximately $10,000. As such, these changes will not have a significant impact on a substantial number of small entities. There are an estimated 30,000 soybean producers who pay assessments and an estimated 150 first purchasers who collect assessments in the four affected States and two regions. There are six QSSBs that will be affected under this rule. Most of these entities would be considered small entities under the criteria established by the Small Business Administration (13 CFR 121.201).

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1990 (44 U.S.C. chapter 35), the reporting and recordkeeping requirements included in 7 CFR part 1220 were previously approved by OMB and were assigned OMB control number 0581–0093. The purpose of this rule is to change the remitting and reporting of assessments to a quarterly basis from a monthly basis in four soybean producing States and two regions. There are a minimal number of first purchasers and producers in these four States and two regions. This change will not substantially impact the overall total burden hours. As a result, no change to the previously submitted burden estimate is necessary.

Background

The Act (7 U.S.C. 6301–6311) provides for the establishment of a coordinated program of promotion and research designed to strengthen the soybean industry's position in the marketplace, and to maintain and expand domestic and foreign markets and uses for soybeans and soybean products. The program is financed by an assessment of 0.5 of 1 percent of the net market price of soybeans sold by producers. The final Order establishing a soybean promotion, research, and consumer information program was published in the July 9, 1991, issue of the **Federal Register** (56 FR 31043) and assessments began on September 1, 1991.

The Soybean Promotion and Research Rules and Regulations, 7 CFR part 1220, published in the **Federal Register** on July 2, 1992 (57 FR 29436), specify in § 1220.312(b) that first purchasers and producers responsible for remitting assessments shall remit assessments and reports on a monthly or quarterly basis depending upon the State or region in which they are located. This rule will change the States or regions of Delaware, Louisiana, South Carolina, Texas, Eastern Region, and the Western Region from remitting and reporting assessments on a monthly basis to a quarterly basis. Currently, 15 States and 2 regions report on a monthly basis and 14 States report on a quarterly basis.

The Board, in conjunction with the affected States and regions,

recommended to AMS to change the period for remitting and reporting assessments for the following States or regions from a monthly basis to quarterly basis: Delaware, Louisiana, South Carolina, Texas, Eastern Region, and the Western Region.

This rule will assist these smaller soybean producing States and regions (listed above) in reporting and remitting their assessments to the Board. The Board has decided that the current requirement to remit and report assessments on a monthly basis is no longer necessary given the minimal number of first purchasers and total remitters from these smaller soybean producing States and regions. Allowing these States and regions to become quarterly remitters would reduce their administrative costs. It is estimated that administrative costs will be reduced by approximately $10,000 if first purchasers of soybeans and producers marketing processed soybeans and soybean products of a producer's own production in the States and regions of Delaware, Louisiana, South Carolina, Texas, the Eastern Region, and the Western Region remit and report assessments on a quarterly basis. Producers that market soybeans to first purchasers will continue to pay the assessment at the time of settlement. Due to the minimal number of first purchasers and total remittances in these States and regions, allowing the States or regions to remit quarterly will be beneficial to the States, regions, and the Board by reducing the administrative costs of collecting assessments.

Comments

On June 18, 2003, the Department published in the **Federal Register** (68 FR 36498) for comment a proposed rule to amend the Rules and Regulations established under the Act. The proposed rule provided first purchasers of soybeans and producers marketing processed soybeans or soybean products of a producer's own production in the States or regions of Delaware, Louisiana, South Carolina, Texas, Eastern Region, and the Western Region, to remit and report assessments on a quarterly basis rather than a monthly basis.

The proposed rule was published with a request for comments to be submitted by July 18, 2003. The Department received one comment, in a timely manner, from an individual who did not support the program in general. This commenter further questioned the impact of the proposal on assessments. In the proposal, we noted that the rule would assist smaller soybean producing States and regions in reporting and remitting their assessments to the Board. We concluded that allowing the States or regions to remit quarterly would be beneficial to the States, regions, and the Board by reducing the administrative costs of collecting assessments. As such this action should impact assessments favorably.

Based on the Board's recommendation, in conjunction with the affected States and regions, and no substantive comments, AMS is changing the period for remitting and reporting assessments for the following States or regions from a monthly basis to a quarterly basis: Delaware, Louisiana, South Carolina, Texas, Eastern Region, and the Western Region.

This rule will become effective April 1, 2004.

List of Subjects in 7 CFR Part 1220

Administrative practice and procedure, Advertising, Agricultural research, Marketing agreements, Soybeans and soybean products, Reporting and recordkeeping requirements.

■ For the reasons set forth in the preamble, Title 7, part 1220 is amended as follows:

PART 1220—SOYBEAN PROMOTION, RESEARCH, AND CONSUMER INFORMATION

■ 1. The authority citation for 7 CFR part 1220 continues to read as follows:

Authority: 7 U.S.C. 6301–6311.

■ 2. In § 1220.312, the table in paragraph (b) is revised to read as follows:

§ 1220.312 Remittance of assessments and submission of reports to United Soybean Board or Qualified State Soybean Board.

* * * * *

(b) * * *

Monthly	Quarterly
Arkansas	Alabama
Iowa	Delaware
Kansas	Florida
Kentucky	Georgia
Michigan	Illinois
Minnesota	Indiana
Missouri	Louisiana
Mississippi	Maryland
North Carolina	North Dakota
Tennessee	Nebraska
Wisconsin	New Jersey
	Ohio
	Oklahoma
	Pennsylvania
	South Carolina
	South Dakota
	Texas
	Virginia
	Eastern Region
	Western Region

* * * * *

Dated: December 9, 2003.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 03–31000 Filed 12–15–03; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Rural Housing Service

Rural Business-Cooperative Service

Rural Utilities Service

Farm Service Agency

7 CFR Part 1951

RIN 0560–AG56

Prompt Disaster Set-Aside - Consideration and Primary Loan Servicing Facilitation

AGENCY: Farm Service Agency, USDA.

ACTION: Final rule; correction.

SUMMARY: This document corrects a final rule published September 25, 2003, which provided disaster set-aside more quickly to those who can most benefit from the program. This document is necessary to correct an editorial mistake relating to the amount which may be set aside.

DATE: This rule is effective on December 16, 2003.

FOR FURTHER INFORMATION CONTACT: Michael Cumpton, Farm Loan Programs, Loan Servicing and Property Management Division, United States Department of Agriculture, Farm Service Agency, STOP 0523, 1400 Independence Avenue, SW., Washington, DC 20250–0523, telephone (202) 690–4014; electronic mail: *mike_cumpton@wdc.usda.gov*.

SUPPLEMENTARY INFORMATION: This document corrects a final rule which amended 7 CFR part 1951 published in the **Federal Register** on September 25, 2003 (68 FR 55299–55304). Section 1951.954(b)(3), as promulgated incorrectly states, "The installment that may be set aside is limited to the first or second scheduled annual installment due after the disaster occurred and the amount may not exceed the installment set aside." This document removes the words, "and the amount may not exceed the installment set aside" as extraneous. The maximum set-aside amount is covered by paragraph (b)(4). This correction will make the regulation more clear.

■ For the reason set forth above, the final rule published on September 25, 2003 (68 FR 55299–55304), FR Doc. 03–24177, is corrected as follows:

■ 1. On page 55303, in the third column, revise § 1951.954(b)(3) to read as follows:

§ 1951.954 Eligibility and loan limitation requirements.

* * * * *

(b) * * *

(3) The amount set-aside may not exceed the amount of the first or second scheduled annual installment due after the disaster occurred.

* * * * *

Signed in Washington, DC, on December 10, 2003.

Floyd D. Gaibler,

Under Secretary for Farm and Foreign Agricultural Services.

[FR Doc. 03–31002 Filed 12–15–03; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF COMMERCE

Bureau of Economic Analysis

15 CFR Part 801

[Docket No. 030815201–3306–02]

RIN 0691–AA50

International Services Surveys: BE–85, Quarterly Survey of Financial Services Transactions Between U.S. Financial Services Providers and Unaffiliated Foreign Persons

AGENCY: Bureau of Economic Analysis, Commerce.

ACTION: Final rule.

SUMMARY: This final rule amends 15 CFR 801.9 to set forth the reporting requirements for the BE–85, Quarterly Survey of Financial Services Transactions Between U.S. Financial Services Providers and Unaffiliated Foreign Persons.

The BE–85 survey will be conducted by the Bureau of Economic Analysis (BEA), U.S. Department of Commerce, under the International Investment and Trade in Services Survey Act, and under Section 5408 of the Omnibus Trade and Competitiveness Act of 1988. The first survey conducted under this rule will cover transactions in the first quarter of 2004. Data from the BE–85 survey are needed to monitor trade in financial services, analyze its impact on the U.S. and foreign economies, compile and improve the U.S. economic accounts, support U.S. commercial policy on financial services, conduct trade promotion, improve the ability of U.S. businesses to identify and evaluate market opportunities, and for other Government uses.

The survey will cover the same financial services presently covered by the BE–82, Annual Survey of Financial Services Transactions Between U.S. Financial Services Providers and Unaffiliated Foreign Persons, which the BE–85 survey would replace, following a final annual data collection for 2003.

EFFECTIVE DATE: This final rule will be effective January 15, 2004.

FOR FURTHER INFORMATION CONTACT: Obie G. Whichard, Chief, International Investment Division (BE–50), Bureau of Economic Analysis, U.S. Department of Commerce, Washington, DC 20230; or via the Internet at *obie.whichard@bea.gov* (Telephone (202) 606–9890).

SUPPLEMENTARY INFORMATION: In the August 29, 2003, **Federal Register**, (68 FR 51939–51941), BEA published a notice of proposed rulemaking setting forth reporting requirements for the BE–85, Quarterly Survey of Financial Services Transactions Between U.S. Financial Services Providers and Unaffiliated Foreign Persons. No comments on the proposed rule were received. Thus, the proposed rule is adopted without change.

The Bureau of Economic Analysis (BEA), U.S. Department of Commerce, will conduct the survey under the International Investment and Trade in Services Survey Act (22 U.S.C. 3101–3108), and under Section 5408 of the Omnibus Trade and Competitiveness Act of 1988 (15 U.S.C. 4908). Section 4(a) of the Act (22 U.S.C. 3103(a)) provides that the President shall, to the extent he deems necessary and feasible, conduct a regular data collection program to secure current information related to international investment and trade in services and publish for the use of the general public and United States Government agencies periodic, regular, and comprehensive statistical information collected pursuant to this subsection. In Section 3 of Executive Order 11961, as amended by Executive Order 12518, the President delegated authority granted under the Act as concerns international trade in services to the Secretary of Commerce, who has redelegated that authority to BEA.

The major purposes of the survey are to monitor trade in financial services, analyze its impact on the U.S. and foreign economies, compile and improve the U.S. economic accounts, support U.S. commercial policy on financial services, conduct trade promotion, and improve the ability of U.S. businesses to identify and evaluate market opportunities.

BEA will conduct the BE–85 survey on a quarterly basis beginning with the first quarter of 2004. BEA will send the survey to potential respondents in March of 2004. Responses will be due by May 15, 2004. The survey will update the data provided on the universe of financial services transactions between U.S. financial services providers and unaffiliated foreign persons. Reporting is required from U.S. financial services providers whose sales of covered services to unaffiliated foreign persons exceeded $20 million for the previous fiscal year or that expect such sales to exceed that amount during the current fiscal year, or whose purchases of covered services from unaffiliated foreign persons exceeded $15 million for the previous fiscal year or that expect such purchases to exceed that amount during the current fiscal year. Financial services providers meeting any of these criteria must supply data on the amount of their sales or purchases for each covered type of service, disaggregated by country. U.S. financial services providers that do not meet the mandatory reporting requirements are requested to provide voluntary estimates of their total sales or purchases of each type of financial service.

Executive Order 12866

This final rule is not significant for purposes of E.O. 12866.

Executive Order 13132

This final rule does not contain policies with Federalism implications as that term is defined in E.O. 13132.

Paperwork Reduction Act

The collection of information required in this final rule has been approved by the Office of Management and Budget under the Paperwork Reduction Act.

Notwithstanding any other provisions of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection displays a currently valid OMB Control Number; such a Control Number (0608–0065) will be displayed.

The BE–85 survey is expected to result in the filing of reports containing mandatory data from about 55 respondents on a quarterly basis, or 220 responses annually. The average burden for completing the BE–85 is estimated to be 10 hours. Thus, the total respondent burden of the survey is estimated at 2,200 hours (220 responses times 10 hours average burden). The actual burden will vary from reporter to

reporter, depending upon the number and variety of their financial services transactions and the ease of assembling the data. Thus, for each quarter it may range from 4 hours for a reporter that has a small number and variety of transactions and easily accessible data to 100 hours for a very large reporter that engages in a large number and variety of financial services transactions and has difficulty in locating and assembling the required data. This estimate includes time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Comments are requested concerning: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology. Comments should be addressed to: Director, Bureau of Economic Analysis (BE–1), U.S. Department of Commerce, Washington, DC 20230; or faxed (202–395–7245) or e-mailed (*pbugg@omb.eop.gov*) to the Office of Management and Budget, O.I.R.A., (Attention PRA Desk Officer for BEA).

Regulatory Flexibility Act

The Chief Counsel for Regulation, Department of Commerce, has certified to the Chief Counsel for Advocacy, Small Business Administration, under provisions of the Regulatory Flexibility Act (5 U.S.C. 605(b)), that the proposed rule would not have a significant economic impact on a substantial number of small entities. A summary of the factual basis for this cert was published in the proposed rule and is not repeated here. No comments were received on the economic impact of the rule. As a result, no final regulation flexibility analysis was prepared.

List of Subjects in 15 CFR Part 801

Economic statistics, Foreign trade, International transactions, Penalties, Reporting and recordkeeping requirements.

Dated: November 24, 2003.

J. Steven Landefeld,

Director, Bureau of Economic Analysis.

■ For the reasons set forth in the preamble, BEA amends 15 CFR part 801, as follows:

PART 801—SURVEY OF INTERNATIONAL TRADE IN SERVICES BETWEEN U.S. AND FOREIGN PERSONS

■ 1. The authority citation for 15 CFR part 801 continues to read as follows:

Authority: 5 U.S.C. 301; 15 U.S.C. 4908; 22 U.S.C. 3101–3108; E.O. 11961, 3 CFR, 1977 Comp., p. 86 as amended by E.O. 12013, 3 CFR, 1977 Comp., p. 147, E.O. 12318, 3 CFR, 1981 Comp., p. 173, and E.O. 12518, 3 CFR, 1985 Comp., p. 348.

■ 2. Section 801.9 is amended by adding new paragraph (c)(4) to read as follows:

§ 801.9 Reports required.

* * * * *

(c) *Quarterly surveys.* * * *

(4) BE–85, Quarterly Survey of Financial Services Transactions Between U.S. Financial Services Providers and Unaffiliated Foreign Persons:

(i) A BE–85, Quarterly Survey of Financial Services Transactions Between U.S. Financial Services Providers and Unaffiliated Foreign Persons, will be conducted covering the first quarter of the 2004 calendar year and every quarter thereafter.

(A) *Who must report—(1) Mandatory reporting.* Reports are required from each U.S. person who is a financial services provider or intermediary, or whose consolidated U.S. enterprise includes a separately organized subsidiary or part that is a financial services provider or intermediary, and that had sales of covered services to unaffiliated foreign persons that exceeded $20 million for the previous fiscal year or expects sales to exceed that amount during the current fiscal year, or had purchases of covered services from unaffiliated foreign persons that exceeded $15 million for the previous fiscal year or expects purchases to exceed that amount during the current fiscal year. These thresholds should be applied to financial services transactions with unaffiliated foreign persons by all parts of the consolidated U.S. enterprise combined that are financial services providers or intermediaries. Because the thresholds are applied separately to sales and purchases, the mandatory reporting requirement may apply only to sales, only to purchases, or to both sales and purchases.

(*i*) The determination of whether a U.S. financial services provider or intermediary is subject to this mandatory reporting requirement may be based on the judgement of knowledgeable persons in a company who can identify reportable transactions on a recall basis, with a reasonable degree of certainty, without conducting a detailed manual records search.

(*ii*) Reporters who file pursuant to this mandatory reporting requirement must provide data on total sales and/or purchases of each of the covered types of financial services transactions and must disaggregate the totals by country.

(*2*) *Voluntary reporting.* If a financial services provider or intermediary, or all of a firm's subsidiaries or parts combined that are financial services providers or intermediaries, had covered sales of $20 million or less, or covered purchases of $15 million or less during the previous fiscal year, and if covered sales or purchases are not expected to exceed these amounts in the current fiscal year, a person is requested to provide an estimate of the total for each type of service for the most recent quarter. Provision of this information is voluntary. The estimates may be based on the reasoned judgement of the reporting entity. Because these thresholds apply separately to sales and purchases, voluntary reporting may apply only to sales, only to purchases, or to both.

(B) *BE–85 definition of financial services provider.* The definition of financial services provider used for this survey is identical in coverage to Sector 52—Finance and Insurance—of the North American Industry Classification System, United States, 2002. For example, companies and/or subsidiaries and other separable parts of companies in the following industries are defined as financial services providers: Depository credit intermediation and related activities (including commercial banking, holding companies, savings institutions, check cashing, and debit card issuing); nondepository credit intermediation (including credit card issuing, sales financing, and consumer lending); securities, commodity contracts, and other financial investments and related activities (including security and commodity futures brokers, dealers, exchanges, traders, underwriters, investment bankers, and providers of securities custody services); insurance carriers and related activities (including agents, brokers, and services providers); investment advisors and managers and funds, trusts, and other financial vehicles (including mutual funds, pension funds, real estate investment trusts, investors, stock quotation services, etc.).

(C) *Covered types of services.* The BE–85 survey covers the following types of financial services transactions (purchases and/or sales) between U.S. financial services providers and unaffiliated foreign persons: Brokerage services, including foreign exchange brokerage services; underwriting and private placement services; financial management services; credit-related services, except credit card services; credit card services; financial advisory and custody services; security lending services; electronic funds transfers; and other financial services.

(ii) [Reserved]

* * * * *

[FR Doc. 03–30936 Filed 12–15–03; 8:45 am]

BILLING CODE 3510–06–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 4 and 5

[Docket No. RM02–16–000]

Hydroelectric Licensing Under the Federal Power Act; Correction

AGENCY: Federal Energy Regulatory Commission.

ACTION: Final rule; correction.

SUMMARY: The Federal Energy Regulatory Commission is correcting the final rule concerning the process for hydroelectric licensing under the Federal Power Act that was published on August 25, 2003.

EFFECTIVE DATE: October 24, 2003.

FOR FURTHER INFORMATION CONTACT: John Clements, 202–502–8070.

SUPPLEMENTARY INFORMATION: The final rule published on August 25, 2003, at 68 FR 51070 is corrected as follows:

PART 4—LICENSES, PERMITS, EXEMPTIONS, AND DETERMINATION OF PROJECT COSTS

§ 4.41 [Corrected]

■ 1. On page 51120, in the first column, the text of § 4.41(h), is corrected as follows: In the eighth sentence, remove the phrase "or each" and add in its place the phrase "of each."

PART 5—INTEGRATED LICENSE APPLICATION PROCESS

§ 5.1 [Corrected]

■ 2. On page 51121, in the second column, in the text of § 5.1(b), remove the words "parte" and "part" and add in their place the word "chapter".

§ 5.5 [Corrected]

■ 3. On page 51123, in the third column, in the text of § 5.5(b), introductory sentence, remove the phrase "a letter" and add in its place the phrase "an original and eight copies of a letter".

■ 4. On page 51123, in the third column, in the text of § 5.5(c), remove the phrase "tribes, and" and add in its place the phrase "tribes, local governments, and".

§ 5.6 [Corrected]

■ 5. On page 51124, in the first column, in the text of § 5.6(a)(1), remove the phrase "Commission and" and add in its place the phrase "Commission and original and eight copies and".

■ 6. On page 51127, in the first column, in the text of § 5.6(d)(4), remove the phrase "paragraphs (d)(1) and (d)(2)" and add in its place the phrase "paragraph (d)(3)".

§ 5.9 [Corrected]

■ 7. On page 51128, in the second column, in the text of § 5.9(c), following the word "incur", remove the word "and" and add in its place the phrase "in order to".

§ 5.18 [Corrected]

■ 8. On page 51131, in the third column, in the text of § 5.18(a)(5)(iii), remove the phrase "A, F, and G" and add in its place the phrase "A, B, C, D, F, and G".

§ 5.19 [Corrected]

■ 9. On page 51135, in the third column, in the text of § 5.19, remove § 5.19(d) and redesignate § 5.19(e) as § 5.19(d).

Magalie R. Salas,

Secretary.

[FR Doc. 03–30932 Filed 12–15–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 1

[Docket No. 2002N–0278]

Guidance for Industry: Questions and Answers on the Interim Final Rule on Prior Notice of Imported Food; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability of guidance.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a guidance entitled "Prior Notice of Imported Food, Questions and Answers." The guidance responds to various questions raised about the section 307 of the Public Health Security and Bioterrorism Preparedness and Response Act of 2002 (the Bioterrorism Act) and the agency's implementing regulations that require, beginning on December 12, 2003, prior notice to FDA before food is imported or offered for import into the United States.

DATES: Submit written or electronic comments on the agency guidance at any time.

ADDRESSES: Submit written requests for single copies of the guidance to the Prior Notice Help Desk, phone 1–800–216–7331 or 301–575–0156, or Fax 301–210–0247. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

Submit written comments on the guidance to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.fda.gov/dockets/ecomments.*

FOR FURTHER INFORMATION CONTACT: Domenic Veneziano, Office of Regulatory Affairs (HFC–100), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 781–596–7785.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of October 10, 2003 (68 FR 58974), FDA issued an interim final rule to implement section 307 of the Bioterrorism Act. The prior notice regulations require, beginning on December 12, 2003, notification to FDA before food (including animal feed) is imported or offered for import into the United States. This guidance responds to questions raised about the interim final rule on prior notice, and it is intended to help the industry better understand and comply with the regulations.

FDA is issuing the guidance entitled "Prior Notice of Imported Food, Questions and Answers" as a Level 1 guidance. Consistent with FDA's good guidance practices regulation (21 CFR 10.115), the agency will accept comment, but it is implementing the guidance document immediately, in accordance with § 10.115(g)(2), because the agency has determined that prior public participation is not feasible or appropriate. FDA is under a strict statutory deadline in which to implement these regulations.

II. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments on the guidance at any time. Two copies of any mailed comments are to be submitted, except that individuals may submit one copy. Comments are to

be identified with the docket number found in brackets in the heading of this document. The guidance and received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

III. Electronic Access

Persons with access to the Internet may obtain the document at *http://www/cfsan.fda.gov/guidance.html.*

Dated: December 11, 2003.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 03–31038 Filed 12–12–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 1

[USCG–2003–16428]

Notice of Violation Program

AGENCY: Coast Guard, DHS.

ACTION: Notice of revised agency policy.

SUMMARY: The Coast Guard is expanding the scope of its Notice of Violation (NOV) program for resolving civil penalty cases as provided for in 33 CFR part 1, subpart 1.07. The Coast Guard will issue a revised policy expanding use of the NOV program to all statutory penalty provisions that the Coast Guard is authorized to enforce, and raising the maximum for proposed penalties under the NOV program to $10,000.

DATES: This revised policy is effective on January 5, 2004.

FOR FURTHER INFORMATION CONTACT: For further information on the use of the NOV program contact one of the persons listed below. For general questions, contact LCDR Scott Budka (G–MOA) U.S. Coast Guard by telephone at (202) 267–2026 or by electronic mail at *sbudka@comdt.uscg.mil.* For questions on application of the NOV program to U.S. vessels, contact LCDR Martin Walker (G–MOC) U.S. Coast Guard by telephone at (202) 267–1047 or by electronic mail at *mwalker@comdt.uscg.mil.* For questions on application of the NOV program to facilities, contact LCDR Phil Perry (G–MOC) U.S. Coast Guard by telephone at (202) 267–6700 or by electronic mail at *pperry@comdt.uscg.mil.* For questions on the application of the NOV program to outer continental shelf facilities, contact LCDR Eric Walters (G–MOC) U.S. Coast Guard by telephone at (202) 267–0499 or by electronic mail at *ewalters@comdt.uscg.mil.*

SUPPLEMENTARY INFORMATION: The Notice of Violation (NOV) program was implemented in 1995 to address the Coast Guard's concern that the civil penalty assessment process was too lengthy when applied to small (under 100 gallons) oil discharges and minor pollution prevention regulation violations (33 CFR parts 154, 155 and 156). The lengthy process time meant that a party frequently would have additional violations before being notified by a Hearing Officer of the initiation of action for the first violation. Early resolution of these minor violations saved time and reduced costs of internal reviews, improved deterrence, and facilitated corrective action by providing a party with earlier notice of violations.

In the Final Rule implementing the NOV program (59 FR 66482, Dec 27, 1994) we stated, "The NOV option can be used by other Coast Guard programs that use the civil penalty process. Any program that implements use of the NOV option will do so by internal policy with prior notification to the public in the **Federal Register**." We are now publishing this notice to inform the public that we are expanding the NOV program by internal policy.

Since the NOV program's implementation, the Coast Guard has issued on average 2,300 NOVs annually for small oil spills and minor pollution prevention regulation violations. 95 percent of those NOVs were accepted by the responsible party, paid and the case closed. Because of the success of the initial limited NOV program, it is being expanded to include oil spills of 1,000 gallons or less and to include violations of other laws and regulations that the Coast Guard enforces.

An NOV may not be issued when the total proposed penalty for a violation exceeds $10,000. All laws and regulations that the Coast Guard enforces which contain a civil penalty provision are eligible for inclusion in the NOV program. Coast Guard issuing officers will issue a Notice of Violation with a proposed penalty only in clear-cut cases as determined by applying specific written guidance contained in a Commandant Directive, an internal Coast Guard policy document. A penalty schedule based on objective criteria will form an enclosure to the above Commandant Directive. Any case in which aggravating or extenuating circumstances are evidenced, or which concern violations not included in specific guidance documents, may be referred to the Hearing Officer for processing under the Coast Guard's current procedures as detailed in 33 CFR part 1, subpart 1.07.

This expansion will not change the alleged violator's options concerning the NOV as detailed in 33 CFR 1.07–11. The party has the option of paying the proposed penalty and closing the case or declining the NOV. If the NOV is declined, the case is processed as a Class I Administrative Civil Penalty and adjudicated by the Coast Guard Hearing Office. If the party fails to pay or decline the NOV within 45 days of receipt, the NOV is considered in default, the proposed penalty is considered assessed, and the case is forwarded to Commander, Maintenance & Logistics Command Pacific, Claims and Litigations (Collections) for collection of the penalty.

The NOV process does not preclude the Coast Guard from exercising its authority to utilize any other penalty, enforcement, control, or compliance measures authorized by law.

Dated: December 9, 2003.

T.H. Gilmour,

Rear Admiral, U.S. Coast Guard, Assistant Commandant for Marine Safety, Security and Environmental Protection.

[FR Doc. 03–30916 Filed 12–15–03; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[CGD08–03–029]

RIN 1625–AA11

Regulated Navigation Area; Reporting Requirements for Barges Loaded With Certain Dangerous Cargoes, Inland Rivers, Eighth Coast Guard District

AGENCY: Coast Guard, DHS.

ACTION: Interim final rule; notice of approval of revised collection of information.

SUMMARY: On October 3, 2003, the Coast Guard published an interim final rule in the **Federal Register** that established a regulated navigation area (RNA) within all inland rivers of the Eighth Coast Guard District and contained reporting requirements for barges loaded with certain dangerous cargoes. This document provides notice that the Office of Management and Budget (OMB) has approved the revised collection of information contained in that interim rule.

DATES: OMB approved the revised collection of information 1625–0105 on November 3, 2003.

FOR FURTHER INFORMATION CONTACT: For information regarding this document, or if you have questions on viewing or submitting material to the docket, write or call Commander (CDR) Jerry Torok or Lieutenant (LT) Kevin Lynn, Project Managers for the Eighth Coast Guard District Commander, Hale Boggs Federal Bldg., 501 Magazine Street, New Orleans, LA 70130, telephone (504) 589–6271.

SUPPLEMENTARY INFORMATION: On October 3, 2003, the Coast Guard published an interim final rule entitled "Regulated Navigation Area; Reporting Requirements for Barges Loaded with Certain Dangerous Cargoes, Inland Rivers, Eighth Coast Guard District" in the **Federal Register** (68 FR 57358). In the preamble of that interim rule, we stated that we would publish a separate notice if and when OMB approved the revised collection of information (1625–0105) contained in the rule (68 FR 57363). On November 3, 2003, OMB announced that they had approved this revised collection of information.

Dated: December 1, 2003.

R.F. Duncan,

Rear Admiral, U.S. Coast Guard, Commander, Eighth Coast Guard District.

[FR Doc. 03–30917 Filed 12–15–03; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 65

[Docket No. FEMA–P–7630]

Changes in Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Interim rule.

SUMMARY: This interim rule lists communities where modification of the Base (1% annual-chance) Flood Elevations (BFEs) is appropriate because of new scientific or technical data. New flood insurance premium rates will be calculated from the modified BFEs for new buildings and their contents.

DATES: These modified BFEs are currently in effect on the dates listed in the table below and revise the Flood Insurance Rate Map(s) in effect prior to this determination for the listed communities.

From the date of the second publication of these changes in a newspaper of local circulation, any person has ninety (90) days in which to request through the community that the Mitigation Division Director of the Emergency Preparedness and Response Directorate reconsider the changes. The modified BFEs may be changed during the 90-day period.

ADDRESSES: The modified BFEs for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

FOR FURTHER INFORMATION CONTACT: Doug Bellomo, P.E., Hazard Identification Section, Emergency Preparedness and Response Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–2903.

SUPPLEMENTARY INFORMATION: The modified BFEs are not listed for each community in this interim rule. However, the address of the Chief Executive Officer of the community where the modified BFE determinations are available for inspection is provided.

Any request for reconsideration must be based on knowledge of changed conditions or new scientific or technical data.

The modifications are made pursuant to Section 201 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.*, and with 44 CFR Part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The modified BFEs are the basis for the floodplain management measures that the community is required to either adopt or to show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program (NFIP).

These modified BFEs, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State, or regional entities.

The changes in BFEs are in accordance with 44 CFR 65.4.

National Environmental Policy Act. This rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act. The Mitigation Division Director of the Emergency Preparedness and Response Directorate certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are required to maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

Regulatory Classification. This interim rule is not a significant regulatory action under the criteria of Section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism. This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform. This rule meets the applicable standards of Section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains, Reporting and record keeping requirements.

■ Accordingly, 44 CFR Part 65 is amended to read as follows:

PART 65—[AMENDED]

■ 1. The authority citation for Part 65 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 65.4 [Amended]

■ 2. The tables published under the authority of § 65.4 are amended as follows:

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Arkansas:					
Washington (Case No. 03–06–1948P).	Unincorporated Areas.	October 7, 2003, October 14, 2003, *Northwest Arkansas Times.*	The Honorable Jerry Hunton, Judge, Washington County, 280 North College Avenue, Suite 500, Fayetteville, AR 72701.	Jan. 13, 2004	050212
Washington (Case No. 03–06–1948P).	City of Fayetteville.	October 7, 2003, October 14, 2003, *Northwest Arkansas Times.*	The Honorable Dan Coody, Mayor, City of Fayetteville, 113 West Mountain Street, Fayetteville, AR 72701.	Jan. 13, 2004	050216
Illinois: Kendall (Case No. 03–05–0545P).	Village of Oswego.	October 23, 2003, October 30, 2003, *The Ledger-Sentinel.*	Mr. Craig Weber, President, Village of Oswego, 113 Main Street, Oswego, IL 60543.	Oct. 6, 2003	170345
Indiana:					
Lake (Case No. 03–05–5175P).	Town of Griffith ..	October 23, 2003, October 30, 2003, *The Times.*	The Honorable Stanley Dobosz, Town Council President, Town of Griffith, 111 North Broad Street, Griffith, IN 46319.	Jan. 29, 2004	185175
Lake (Case No. 03–05–5174P).	Town of Highland	October 23, 2003, October 30, 2003, *The Times.*	The Honorable Mark Herak, Town Council President, Town of Highland, 3333 Ridge Road, Highland, IN 46322.	Jan. 29, 2004	185176
Lake (Case No. 03–05–3366P).	Unincorporated Areas.	October 23, 2003, October 30, 2003, *The Times.*	The Honorable Gerry J. Scheub, President, Lake County Board of Commissioners, 2293 North Main Street, 3rd Floor, Building A, Crown Point, IN 46307.	Jan. 29, 2004	180126
Louisiana: East Baton Rouge Parish (Case No. 03–06–827P).	City of Zachary ..	October 16, 2003, October 23, 2003, *The Zachary Plainsman.*	The Honorable Charlene Smith, Mayor, City of Zachary, 4700 Main Street, Zachary, LA 70791.	Sept. 30, 2003	220061
Michigan: Macomb (Case No. 03–05–3367P).	City of Fraser	October 31, 2003, November 7, 2003, *The Macomb Daily.*	The Honorable Edmund T. Adamczyk, Mayor, City of Fraser, City Hall, 33000 Garfield Road, Fraser, MI 48026.	Oct. 17, 2003	260122
Minnesota: Carver (Case No. 02–05–0831P).	Unincorporated Areas.	October 23, 2003, October 30, 2003, *The Waconia Patriot.*	Mr. David Hemze, Acting Administrator, Carver County, Carver County Courthouse, 600 East Fourth Street, Chaska, MN 55318.	Jan. 29, 2004	270049
Missouri: St. Louis (Case No. 03–07–894P).	Unincorporated Areas.	October 22, 2003, October 29, 2003, *St Louis Post Dispatch.*	Mr. Buzz Westfall, St. Louis County Executive, 41 South Central Avenue, St. Louis, MO 63105.	Jan. 28, 2004	290327
New Mexico:					
Bernalillo (Case No. 03–06–1734P).	City of Albuquerque.	October 23, 2003, October 30, 2003, *Albuquerque Journal.*	The Honorable Martin Chavez, Mayor, City of Albuquerque, P.O. Box 1293, Albuquerque, NM 87103.	Oct. 9, 2003	350002
Bernalillo (Case No. 03–06–2528P).	Unincorporated Areas.	September 30, 2003, October 7, 2003, *Albuquerque Journal.*	Mr. Tom Rutherford, Chairperson, Bernalillo County, One Civic Plaza, N.W., Albuquerque, NM 87102.	Jan. 6, 2004	350001
Ohio: Lorain (Case No. 02–05–3235P).	City of Avon Lake.	October 9, 2003, October 16, 2003, *The Sun.*	The Honorable Robert Berner, Mayor, City of Avon Lake, 150 Avon Belden Road, Avon Lake, OH 44012.	Sept. 24, 2003	390602
Oklahoma:					
Tulsa (Case No. 03–06–1541P).	City of Tulsa	October 17, 2003, October 24, 2003, *Tulsa World.*	The Honorable Bill LaFortune, Mayor, City of Tulsa, City Hall, 200 Civic Center, Tulsa, OK 74103.	Oct. 1, 2003	405381
Tulsa (Case No. 03–06–1945P).	City of Tulsa	October 24, 2003, October 31, 2003, *Tulsa World.*	The Honorable Bill LaFortune, Mayor, City of Tulsa, City Hall, 200 Civic Center, Tulsa, OK 74103.	Oct. 9, 2003	405381
Texas:					
Johnson (Case No. 03–06–060P).	City of Burleson	October 22, 2003, October 29, 2003, *The Burleson Star.*	The Honorable Byron Black, Mayor, City of Burleson, 141 West Renfro, Burleson, TX 76028.	Jan. 28, 2004	485459

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Dallas (Case No. 03–06–435P).	City of Carrollton	October 24, 2003, October 31, 2003, *Northwest Morning News.*	The Honorable Mark Stokes, Mayor, City of Carrollton, 1945 E. Jackson Road, Carrollton, TX 75006.	Oct. 7, 2003	480167
Dallas (Case No. 02–06–2440P).	City of Cedar Hill	October 17, 2003, October 24, 2003, *Dallas Morning News.*	The Honorable Robert Franke, Mayor, City of Cedar Hill, P.O. Box 96, Cedar Hill, TX 75106.	Jan. 23, 2004	480168
Denton (Case No. 03–06–1926P).	Town of Flower Mound.	October 29, 2003, November 5, 2003, *Flower Mound Leader.*	The Honorable Lori DeLuca, Mayor, Town of Flower Mound, 2121 Cross Timbers Road, Flower Mound, TX 75028.	Oct. 15, 2003	480777
Tarrant (Case No. 02–06–2311P).	City of Fort Worth.	October 21, 2003, October 28, 2003 *The Star Telegram.*	The Honorable Michael J. Moncrief, Mayor, City of Fort Worth, 1000 Throckmorton Street, Fort Worth, TX 76102–6311.	Oct. 9, 2003	480596
Tarrant (Case No. 03–06–1376P).	City of Fort Worth.	October 22, 2003, October 29, 2003, *The Star Telegram.*	The Honorable Michael J. Moncrief, Mayor, City of Fort Worth, 1000 Throckmorton Street, Fort Worth, TX 76102–6311.	Oct. 7, 2003	480596
Denton (Case No. 03–06–435P).	City of Hebron ...	October 22, 2003, October 29, 2003, *The Carrollton Leader.*	The Honorable Kelly Clem, Mayor, Town of Hebron, 4216 Charles Street, Carrollton, TX 75010.	Oct. 7, 2003	481495
Tarrant (Case No. 03–06–444P).	City of North Richland Hills.	October 22, 2003, October 29, 2003 *The North East Tarrant County Morning News.*	The Honorable T. Oscar Trevino, Jr., Mayor, City of North Richland Hills, 7301 North East Loop 820, North Richland Hills, TX 76180.	Oct. 7, 2003	480607
Collin (Case No. 03–06–407P).	City of Plano	October 29, 2003, November 5, 2003 *Plano Star Courier.*	The Honorable Pat Evans, Mayor, City of Plano, P.O. Box 860358, Plano, TX 75086–0358.	Feb. 4, 2004	480140
Hays (Case No. 02–06–1681P).	City of San Marcos.	October 17, 2003, October 24, 2003, *San Marcos Daily Record.*	The Honorable Robert Habingreither, Mayor, City of San Marcos, 630 East Hopkins, San Marcos, TX 78666.	Sept. 30, 2003	485505

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance")

Dated: December 9, 2003.

Anthony S. Lowe,

Mitigation Division Director, Emergency Preparedness and Response Directorate.

[FR Doc. 03–30991 Filed 12–15–03; 8:45 am]

BILLING CODE 6718–04–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 67

Final Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Final rule.

SUMMARY: Base (1% annual-chance) Flood Elevations and modified Base Flood Elevations (BFEs) are made final for the communities listed below. The BFEs and modified BFEs are the basis for the floodplain management measures that each community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

EFFECTIVE DATE: The date of issuance of the Flood Insurance Rate Map (FIRM) showing BFEs and modified BFEs for each community. This date may be obtained by contacting the office where the FIRM is available for inspection as indicated in the table below.

ADDRESSES: The final base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

FOR FURTHER INFORMATION CONTACT: Doug Bellomo, P.E., Hazard Identification Section, Emergency Preparedness and Response Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–2903.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency makes the final determinations listed below of BFEs and modified BFEs for each community listed. These modified elevations have been published in newspapers of local circulation and ninety (90) days have elapsed since that publication. The Mitigation Division Director of the Emergency Preparedness and Response Directorate has resolved any appeals resulting from this notification.

This final rule is issued in accordance with Section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and 44 CFR Part 67.

The Federal Emergency Management Agency has developed criteria for floodplain management in floodprone areas in accordance with 44 CFR part 60.

Interested lessees and owners of real property are encouraged to review the proof Flood Insurance Study and FIRM

available at the address cited below for each community.

The BFEs and modified BFEs are made final in the communities listed below. Elevations at selected locations in each community are shown.

National Environmental Policy Act. This rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act. The Mitigation Division Director of the Emergency Preparedness and Response Directorate certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are required to establish and maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

Regulatory Classification. This final rule is not a significant regulatory action under the criteria of Section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism. This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform. This rule meets the applicable standards of Section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR part 67

Administrative practice and procedure, Flood insurance, Reporting and record keeping requirements.

■ Accordingly, 44 CFR part 67 is amended to read as follows:

PART 67—[AMENDED]

■ 1. The authority citation for part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.11 [Amended]

■ 2. The tables published under the authority of § 67.11 are amended as follows:

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD) modified ◆Elevation in feet (NAVD) modified
AR	Cherokee Village (City) Sharp and Fulton Counties (FEMA Docket No. P7627).	Big Otter Creek	At confluence with South Fork Spring River.	*386
			Approximately 0.25 miles downstream of the primary Spillway of Lake Thunderbird.	*393
		Big Otter Creek Tributary	Approximately 74.0 feet upstream of confluence with Big Otter Creek.	*485
			Approximately 400 feet downstream of the dam at Lake Navajo.	*561
		Little Otter Creek	Approximately 0.8 mile upstream of the primary spillway of Lake Sequoyah.	*484
			Approximately 600 feet upstream of Lakeshore Drive.	*493
		Short Draft Branch	Approximately 1.7 miles upstream of South Fork Spring River.	*509
			Approximately 0.1 mile downstream of the primary spillway of Lake Chanute.	*516
		South Fork Spring River	Just downstream of Griffin Road	*371
			Approximately 5700 feet upstream of Cherokee Road.	*410

Maps are available for inspection at the City of Cherokee Village, 2 Santee Drive, Cherokee Village, Arkansas.

Dated: December 9, 2003.

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance")

Anthony S. Lowe,

Mitigation Division Director, Emergency Preparedness and Response Directorate.

[FR Doc. 03–30992 Filed 12–15–03; 8:45 am]

BILLING CODE 6718–04–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 223

[Docket 020626160–3217–04; I.D. 070203F]

RIN 0648–AQ13

Taking of Threatened or Endangered Species Incidental to Commercial Fishing Operations

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule and technical correction.

SUMMARY: NMFS is issuing a final rule to prohibit fishing with drift gillnets in the California/Oregon (CA/OR) thresher shark/swordfish drift gillnet fishery in U.S. waters off southern California in waters east of the 120°W., for the months of June, July, and August, when the Assistant Administrator for Fisheries (AA) publishes a notice that El Nino conditions are forecasted or present off southern California. NMFS has determined that the incidental take of loggerhead sea turtles by this fishery correlates to the area and season being fished during these oceanographic conditions. If implemented, this time and area closure will result in a reduction in the take of loggerhead turtles by the fishery and would be necessary to avoid the likelihood of the CA/OR drift gillnet fishery jeopardizing the continued existence of the loggerhead turtle population.

DATES: This final rule is effective January 15, 2004.

ADDRESSES: Copies of the Environmental Assessment/Regulatory Impact Review (EA/RIR) and biological opinion (BO) are available on the internet at *http://swr.nmfs.noaa.gov* or may be obtained from Cathy Campbell, Protected Resources Division, National Marine Fisheries Service, Southwest Region, 501 West Ocean Boulevard, Suite 4200, Long Beach, CA 90802–4213.

FOR FURTHER INFORMATION CONTACT: Cathy Campbell, NMFS, Southwest Region, Protected Resources Division, (562) 980–4060.

SUPPLEMENTARY INFORMATION: All sea turtles that occur in U.S. waters are listed as either endangered or threatened under the Endangered Species Act (ESA). The loggerhead turtle (*Caretta caretta*) is listed as threatened. Under the ESA and its implementing regulations (50 CFR 223.205), taking threatened sea turtles, even incidentally, is prohibited, with exceptions identified in 50 CFR 223.206. The incidental take of threatened species may only be legally authorized by an incidental take statement in a biological opinion issued pursuant to section 7 of the ESA, an incidental take permit issued pursuant to section 10 of the ESA, or regulations under section 4(d) of the ESA. In order for an incidental take statement to be issued, the incidental take must be not likely to jeopardize the continued existence of listed species or destroy or adversely modify designated critical habitat.

On October 24, 2000 (65 FR 64670, October 30, 2000), NMFS issued a permit, for a period of 3 years, to authorize the incidental, but not intentional, taking of four stocks of threatened or endangered marine mammals (Fin whale, California/Oregon/Washington stock; Humpback whale, California/Oregon/Washington-Mexico stock; Steller sea lion, eastern stock; and Sperm whale, California/Oregon/Washington stock) by the CA/OR drift gillnet fishery under section 101(a)(5)(E) of the Marine Mammal Protection Act (MMPA) (16 U.S.C. 1371(a)(5)(E)).

NMFS completed a formal consultation to authorize this incidental take of marine mammals listed under the ESA, as required by section 7 of the ESA. This consultation also included an analysis of the effects of the CA/OR drift gillnet fishery on loggerhead turtles. On October 23, 2000, NMFS issued a BO in which it determined that the then current operations of the CA/OR drift gillnet fishery were likely to jeopardize the continued existence of loggerhead turtles.

Measure to Reduce Loggerhead Turtle Entanglements

To avoid the likelihood of the CA/OR drift gillnet fishery jeopardizing the continued existence of loggerhead turtles, NMFS developed a Reasonable and Prudent Alternative (RPA) in the BO that consists of prohibiting CA/OR drift gillnet vessels from fishing in U.S. waters off southern California east of the 120°W. (in the area bounded by the California coastline to the north and east, the U.S.- Mexico border to the south, and the 120° W to the west), from August 15 through August 31, and January 1 through January 31, during a forecasted, or occurring, El Nino event. This measure would reduce the likelihood of the CA/OR drift gillnet fishery incidentally entangling loggerhead turtles by 71 percent. On September 20, 2002, NMFS published a proposed rule (67 FR 59243) to implement this RPA to protect loggerhead turtles. On December 24, 2002, NMFS published an interim final rule (67 FR 78388) that implemented the RPA to protect loggerhead turtles and solicited public comment on an alternative closure during the months of June, July, and August. In response to a request from the public to provide more time to review the loggerhead turtle entanglement data and the sea surface temperature data, NMFS extended the comment period from February 7, 2003, to March 24, 2003 (68 FR 7080, February 12, 2003).

Responses to Comments

The measures in this final rule are based in part on comments received on the proposed (see 67 FR 78388 December 24, 2002, for comments and responses) and interim final rules. NMFS received ten comments on the interim final rule. NMFS reviewed and considered all comments received in the development of this rule.

Comment 1: Several commenters believe that the CA/OR thresher shark/swordfish drift gillnet fishery, which has a very low take of loggerhead turtles, is not the cause of the decline in the population of loggerhead sea turtles and that closures in this fishery are not necessary.

Response: While NMFS recognizes that the CA/OR thresher shark/swordfish drift gillnet fishery has a low level of take of loggerhead turtles, the status of the loggerhead turtle population is sufficiently depleted that the impact of this fishery in addition to existing impacts resulted in a finding that the current operations of the CA/OR drift gillnet fishery were likely to jeopardize the continued existence of loggerhead turtles.

Comment 2: Several commenters supported a closure during June through August rather than in January and August 15 through 31 during El Nino conditions. They noted that the closure in June through August provided greater protection to loggerhead turtles than the RPA in the October 2000 BO, while causing less economic burden to the CA/OR thresher shark/swordfish drift gillnet fishery.

Response: NMFS agrees and is implementing an alternate closure during the months of June, July, and August during El Nino conditions. As explained in the following section, NMFS conducted an analysis of observer data and recent fishing effort data and determined that a closure during June, July, and August during El Nino conditions provides greater protection for loggerhead turtles than the RPA in the October 2000 BO while causing less economic burden to the CA/OR thresher shark/swordfish drift gillnet fishery.

Comment 3: One commenter suggested moving the northern boundary of the closed area south to 32°45′N. and the western boundary east to 119°30′W because there have been no loggerhead turtles observed taken outside this area.

Response: Although there have been no observed loggerhead turtles taken in ocean waters north of 32°45′N. during El Nino events or west of 119°30′W., this does not mean that loggerhead turtles are not present in this area. During El Nino events, NMFS has limited observer data for this area, with only 77 observed sets in the area east of 120°W. and north of 32°45′N. and 14 sets between 120°W. and 119°30′W. south of 32°45′N. Therefore, the lack of an observed take in this area may be the result of fewer observations in this area during the summer months of El Nino events. Sea surface temperatures show that the area east of the 120°W during El Nino conditions are comparable to the sea surface temperatures where loggerhead turtle entanglements were observed. In

addition, NMFS has received reports of strandings of loggerhead turtles and sightings of unidentified hard shell turtles in the area north of 32°45′N. during El Nino events. Sea surface temperature and stranding data indicate that loggerhead turtles are likely to be present in the area west of the 119°30′W. and north of 32°45′N. and that a closure in this area is warranted.

Comment 4: One commenter opposed any closure during the months of January or August.

Response: Under this final rule, NMFS will not be implementing a closure during January; however, NMFS will be implementing a closure in August during El Nino conditions, as a closure during August is essential to providing adequate protection to loggerhead turtles. As discussed in the response to Comment 2, NMFS is implementing a closure during June, July, and August in order to provide greater protection for loggerhead turtles than the level specified in the RPA in the October 2000 BO while causing less economic burden to the CA/OR thresher shark/swordfish drift gillnet fishery.

Comment 5: One commenter noted that oceanographic conditions at Point Conception were not comparable with the areas in which the most northerly loggerhead turtle entanglement was observed (32°45′N) and that, therefore, the most northerly boundary of the closure should be 33°00′N, rather than the coast of California east of 120°W (which has a northerly boundary of 34°27′N). In addition, the commenter recommended the fishery should only be closed from August 16–31 during El Nino conditions, and should remain open during the month of January.

Response: Based on the sea surface temperature charts available on the NOAA Coastwatch West Coast Regional Node web page at *http://coastwatch.pfel.noaa.gov/*, sea surface temperatures in the area east of 120°W during El Nino conditions are comparable to the sea surface temperatures where loggerhead turtle entanglements were observed. NMFS agrees that the sea surface temperatures at Point Conception, which is outside the closure area, are generally lower than those seen in the area in which loggerhead turtle entanglements occurred. As explained in the response to Comment 3, NMFS believes that a northern boundary of 34°27′N will encompass an area where loggerheads are likely to occur during El Nino events.

NMFS' analysis of observer and fishing effort data shows that a closure during August 16–31 during El Nino conditions would not provide adequate protection to loggerhead turtles as required by the October 2000 BO. The closure (i.e., August 16–31 and January) required by the October 2000 BO is expected to result in the estimated reduction in take of 6 loggerhead turtles during El Nino years. A closure limited to the period of August 16–31 during El Nino years is expected to only result in a reduction in the estimated take of 3 to 4 loggerhead turtles. Thus, NMFS has determined that a closure during August 16–31 during El Nino years will not provide the level of protection required under the October 2000 BO. As discussed in the response to Comment 2, NMFS is implementing a closure during June, July, and August during El Nino conditions in order to provide greater protection to loggerhead turtles than the RPA in the October 2000 BO while causing less economic burden to the CA/OR thresher shark/swordfish drift gillnet fishery.

Comment 6: One commenter believed that NMFS' use of 3,000 sets as an estimate of annual fishing effort in the October 2000 BO was unrealistically high.

Response: At the time the BO was prepared, 3,000 sets was a reasonable estimate to predict future fishing effort based on a 3–year average using 1997, 1998, and 1999 data. NMFS is aware that fishing effort has continued to decline. As discussed in the following section, NMFS used a 3–year average of fishing effort using data from 1999 through 2001 to estimate future fishing effort in order to compare the alternative time/area closures to protect loggerhead turtles.

Comment 7: One commenter supported NMFS criteria for determining whether El Nino conditions are present along southern California for the purpose of implementing the time and area closure.

Response: NMFS has included these criteria in this final rule.

Comment 8: One commenter requested that NMFS continue its observer program at 20 percent coverage and continue its support for ongoing research on the distribution of sea turtles in the Pacific Ocean to determine which habitats and migratory routes these species use.

Response: NMFS intends to continue monitoring the CA/OR drift gillnet fishery targeting swordfish and thresher shark at 20 percent observer coverage and to continue its support for research on the distribution of sea turtles in the Pacific to determine which habitats and migratory routes they use.

Alternative Measure to Reduce Loggerhead Turtles Entanglements

The Pacific Offshore Cetacean Take Reduction Team recommended that NMFS implement a closure in June, July, and August, rather than during January and August 15 through 31, to reduce entanglement of loggerhead turtles. NMFS outlined this proposal in the interim final rule (67 FR 78388, December 24, 2002) and solicited comments on this alternative. As discussed in the previous section, NMFS received several additional comments on the interim final rule that favored the implementation of this alternative.

In response to these comments, NMFS conducted a review of observer data to determine whether an alternate closure in June, July, and August would offer the same or better protection than the closure during January 1 through 31 and August 15 through 31. The data used for this analysis are summarized in Table 1. NMFS reviewed observer data from the two most recent El Nino events (1992/1993 and 1997/1998) for the number of observed sets and the number of observed entanglements of loggerhead turtles that occurred during the months of January, June, July, and August, and used these data to calculate the average interaction rate for each of the two time periods. Future effort in the fishery for the two time periods was estimated by averaging fishing effort from 1999 through 2001. Using these data, NMFS estimated the number of loggerhead turtle entanglements that are expected to occur during each of the two time periods.

TABLE 1. COMPARISON OF EXPECTED LOGGERHEAD TURTLE ENTANGLEMENTS DURING ALTERNATE CLOSURE PERIODS

Closure Period	Observed Sets	Observed Entanglement	Catch Rate	Expected Average Fishing Effort (number of sets)	Expected Turtle Entanglement
Jun 1 - Aug 31	131	12	0.09	76	7
January + Aug 15–31	387	9	0.02	252	6

As illustrated in Table 1, the loggerhead turtle interaction rate is higher during June, July, and August (0.09 entanglements per set) than during January and August 15 through 31 (0.02 entanglements per set). However, the expected fishing effort, based on the average fishing effort from 1999–2001, is much lower in June, July, and August (76 sets) than during January and August 15 through 31 (252 sets). NMFS estimates that an average of 7 turtles would be taken during June, July, and August during El Nino conditions. By comparison, NMFS estimates that an average of 6 turtles would be taken during January and August 15 through 31. Thus, because of the higher entanglement rate during the June/July/August period, NMFS expects that a closure during this period will provide more protection to loggerhead turtles than a closure during January and August 15–31.

NMFS conducted an analysis to ensure that the June, July, and August closure period would avoid jeopardy for loggerhead turtles. The Incidental Take Statement in the 2000 BO stated that an observed take of 1 loggerhead turtle per El Nino year, extrapolated to an estimated mortality of 2 loggerhead turtles per El Nino year, would avoid jeopardy. NMFS' analysis of the June, July, and August closure period indicated that 6 loggerhead sea turtles would be captured per El Nino year outside of the closure period (e.g., September through May). Assuming that 32 percent of the captured loggerhead turtles would be killed (based on the survival rate of hard-shelled turtles caught by the CA/OR drift gillnet fleet from 1990–2000), NMFS estimated that 2 loggerhead turtles would be killed per El Nino year from September through May. Therefore the incidental mortality of loggerhead turtles that would be expected to occur with implementation of the June, July, and August closure period is consistent with the Incidental Take Statement and avoids jeopardy for loggerhead turtles.

As a result of this analysis, NMFS has concluded that implementation of the alternate closure in June, July, and August complies with the ESA because it provides at least the same level (and is expected to be greater) protection as the RPA identified in the BO.

Criteria for Determining El Nino Conditions

In order to determine whether El Nino conditions are present for the purposes of implementing this rule, NMFS is using the criteria outlined in the interim final rule (67 FR 78388, December 24, 2002). These criteria are outlined below.

For years in which an El Nino event has been declared by the NOAA Climate Prediction Center, NMFS uses the sea surface temperature anomaly charts available on the NOAA Coastwatch West Coast Regional Node web page at *http://coastwatch.pfel.noaa.gov/* and observer data on loggerhead turtle entanglements to determine whether El Nino conditions are present along southern California for the purpose of implementing the time and area closure identified in the October 2000 BO. NMFS uses the monthly sea surface temperature anomaly charts to determine whether there are warmer than normal sea surface temperatures present off of southern California during the months prior to the closure month for years in which an El Nino event has been declared by the NOAA Climate Prediction Center. "Normal sea surface temperatures" is the average of the monthly mean sea surface temperatures for 1950–97.

All loggerhead turtles observed entangled in the CA/OR drift gillnet fishery during El Nino events were entangled during months in which the sea surface temperatures ranged from approximately 60°F to 72°F (15.6°C to 22.2°C) and sea surface temperatures differed from the average by approximately 0°F to +4°F (0°C to +2.2°C). The sea surface temperature during the month preceding each observed loggerhead entanglement was either greater than normal or equal to the normal sea surface temperature. The sea surface temperature during the third month and second month prior to each entanglement during an El Nino event was always greater than the normal sea surface temperature for that month. NMFS believes this is because warmer sea surface temperatures are necessary for loggerhead turtles to move into the area. There have been no observed entanglements in this fishery in which any one of the preceding 3 months were colder than normal.

Based on this information, the need to allow sufficient lead time to publish a notice in the **Federal Register** announcing El Nino conditions prior to the start date of the closure, and the fact that the sea surface temperature charts for a recently completed given month are not available until the following month, NMFS is using sea surface temperature data from the third and second months prior to the month of the closure for determining whether El Nino conditions are present off of southern California. Thus, for years in which an El Nino event has been declared by the NOAA Climate Prediction Center, NMFS will evaluate sea surface temperatures for March and April to determine whether El Nino conditions in June will trigger a closure to conserve loggerhead turtles. Specifically, if an El Nino has been declared for equatorial waters and the sea surface temperatures off southern California during this 2–month time period are greater than normal, NMFS will publish a **Federal Register** notice with the determination that El Nino conditions are forecast off of southern California for the purpose of implementing the time and area closure to protect loggerhead turtles. If the sea surface temperatures are normal or below normal and the Assistant Administrator has previously published a **Federal Register** notice indicating that El Nino conditions are present off southern California, the Assistant Administrator will publish an additional **Federal Register** notice announcing that El Nino conditions are no longer present for purposes of implementing the closure.

Although the process for determining whether El Nino conditions are present for the purposes of implementing this rule was not set forth in the regulatory text of the interim final rule, it was outlined in the preamble to the interim final and comments were solicited on these criteria. NMFS has decided to make these criteria permanent by including them in the regulatory text of this final rule.

El Nino Determination for Summer 2003

NMFS has determined that El Nino conditions were neither forecasted nor present off southern California for purposes of implementing the time and area closure for June, July, and August 2003. This determination was based on the March, April, May, and June monthly sea surface temperature anomaly charts as well as actual sea surface temperatures. Based on the criteria outlined above, sea surface temperatures in both the third and second months prior to the closure would need to be warmer than normal in order to trigger the implementation of the closure. Sea surface temperature anomaly charts for March, May, and June 2003 show ocean waters off southern California to be normal to 0.9°F (0.5°C) cooler than normal. Thus, the U.S. waters off southern California, east to 120°W remained open to drift gillnet fishing in June, July, and August 2003.

El Nino Determination for Winter 2004

NMFS has determined that El Nino conditions are neither forecasted nor present off southern California for purposes of implementing a January 2004, time and area closure pursuant to

the December 24, 2002, Interim Final Rule (67 FR 78388). The October 2003 sea surface temperature anomaly chart indicates that sea surface temperatures off of southern California appear to be mostly normal with a narrow band of warmer than normal water (0.9°F (0.5°C) to 2.7°F (1.5°C)) near shore off of San Diego and extending down into Mexico along Baja California. Based on these sea surface temperatures, and sea surface temperature profiles during previous years in which there were observed loggerhead sea turtle captures during the month of January by the CA/OR drift gillnet fishery, the current oceanographic conditions along southern California do not appear to indicate that El Nino conditions are present, and therefore U.S. waters off southern California, east to 120°W remain open to drift gillnet fishing in January 2004. NMFS will continue to monitor El Nino conditions and accordingly determine whether to implement any future closures.

Technical Correction

In this final rule, NMFS is adding regulatory text to § 223.206(d)(6)(i) that establishes a Leatherback Conservation Area. That regulatory text was originally implemented through an August 24, 2001 (66 FR 44549) interim final rule but was inadvertently deleted from the Code of Federal Regulations because of faulty regulatory instructions in the December 2002 interim final rule.

Classification

NMFS prepared an EA (August 13, 2001), a supplement to the EA for the interim final rule (December 2002), and a revised supplement to the EA/RIR for this final rule and concluded that these regulations would have no significant impact on the human environment. For a description of the initial Regulatory Flexibility Analysis and a detailed economic analysis of the CA/OR drift gillnet fishery, readers should refer to the August 13, 2001, EA prepared for the proposed rule.

The economic analysis conducted for this final rule anticipates an impact of approximately 16 CA/OR drift gillnet vessel owners and operators, representing approximately 76 fishing sets annually. The total gross revenue loss to the CA/OR drift gillnet fleet resulting from the time and area closures in this final rule is expected to be $79,500 for an El Nino year. This estimate is based on California Department of Fish and Game landing receipts for the period from June 1 through August 31, using data from 1997 to 2000. This revenue loss to the fishery is a worst-case scenario based on the assumption that none of the fishing effort will shift to ocean areas that remain open to fishing. Based on 2001 fishing effort data, the reduction in total gross revenues is not expected to exceed $4,970 per vessel per El Nino year. On average, during these time periods, approximately $3,000 of louvar, $11,100 of mako shark, $3,000 of opah, $23,900 of swordfish, and $38,500 of thresher shark are landed. NMFS did not receive comments on the detailed economic analysis and alternatives on the August 2001 EA prepared for this final rule. The El Nino closure that would have been imposed under the December 24, 2002, interim final rule was expected to result in a total gross revenue loss of $440,000 and was expected to impact 500 sets per El Nino year. This final rule minimizes the negative economic impact to the fishery, while maintaining necessary protection for listed sea turtles, by reducing the total gross revenue loss by approximately 82 percent.

In addition to the time and area closures identified in this final rule, NMFS examined several alternatives for reducing or eliminating sea turtle entanglements when developing measures to avoid the incidental take of sea turtles. NMFS searched for a strategy that would provide the most certainty in reducing or eliminating entanglements upon implementation. These strategies included: (1) reducing fishing effort through gear modifications; (2) reducing fishing effort by decreasing the number of vessels; (3) increasing survival of entangled sea turtles; (4) implementing gear modifications to reduce interactions; and (5) changing fishing practices such as shorter soak times. These alternatives were analyzed in detail in the August 13, 2001, EA prepared for the proposed rule. They were not considered further because data are insufficient to determine whether these alternatives would avoid the likelihood of jeopardizing the continued existence of the loggerhead sea turtle as required by section 7(b) of the ESA. NMFS analyzed the patterns of loggerhead sea turtle captures and mortalities in the CA/OR drift gillnet fishery. Based on this assessment, NMFS found that the most effective method of avoiding loggerhead interactions and mortality is a time/area closure during El Nino years (anticipated reduction in interactions is approximately 92 percent). NMFS found no apparent correlation between variations in fishing strategy and loggerhead sea turtle interactions and determined that modifications in gear or gear deployment are not likely to achieve significant or measurable reductions in the capture and mortality rate of these turtles.

This final rule does not contain collection-of-information requirements subject to the Paperwork Reduction Act.

This final rule has been determined to be not significant for purposes of Executive Order 12866.

A BO on the issuance of a marine mammal permit under section 101(a)(5)(E) of the MMPA was issued on October 23, 2000. That BO concluded that issuance of a permit and continued operation of the CA/OR drift gillnet fishery was likely to jeopardize the continued existence of loggerhead turtles. That BO concluded that issuance of a permit and continued operation of the CA/OR drift gillnet fishery was likely to jeopardize the continued existence of leatherback (Dermochelys coriacea) and loggerhead sea turtles. This final rule implements an alternative to the RPA in the BO to protect loggerhead sea turtles. NMFS has determined that the alternative implemented by this final rule is more protective of loggerhead sea turtles than the RPA in the BO. NMFS, which issued the BO, has concurred that this alternative would provide more protection than the RPA identified in the BO and would avoid the likelihood of jeopardizing the continued existence of the loggerhead sea turtle. This alternative does not change the conclusions of the BO related to marine mammals listed under the ESA. Moreover, this final rule will have no adverse impacts on marine mammals that are not listed under the ESA.

In keeping with the intent of Executive Order 13132 to provide continuing and meaningful dialogue on issues of mutual State and Federal interest, NMFS has conferred with the States of California and Oregon regarding the implementation of the RPA. Both California and Oregon have expressed support for the measures identified in the BO for the protection of leatherback and loggerhead sea turtle species. NMFS intends to continue engaging in informal and formal contacts with the States of California and Oregon during the implementation of this RPA and development of the Fishery Management Plan for U.S. West Coast Fisheries for Highly Migratory Species.

List of Subjects in 50 CFR Part 223

Endangered and threatened species, Exports, Imports, Marine Mammals, Transportation.

Dated: December 8, 2003.

Rebecca Lent,

Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

■ For the reasons set out in the preamble, 50 CFR part 223 is amended to read as follows:

PART 223—THREATENED MARINE AND ANADROMOUS SPECIES

■ 1. The authority citation for part 223 is revised to read as follows:

Authority: 16 U.S.C. 1531–1543; subpart B, § 223.102 also issued under 16 U.S.C. 1361 *et seq.*

■ 2. In § 223.206(d), paragraph (d)(6) is revised to read as follows:

§ 223.206 Exceptions to prohibitions relating to sea turtles.

(d) * * *

(6) *Restrictions applicable to the California/Oregon drift gillnet fishery*—(i) *Pacific leatherback conservation area.* No person may fish with, set, or haul back drift gillnet gear in U.S. waters of the Pacific Ocean from August 15 through November 15 in the area bounded by straight lines connecting the following coordinates in the order listed:

(A) Point Sur (36°18.5′ N) to 34°27′ N 123°35′ W;

(B) 34°27′ N 123°35′ W to 34°27′ N 129° W;

(C) 34°27′ N 129° W to 45°N 129° W;

(D) 45° N 129° W to the point 45° N intersects the Oregon coast.

(ii) *Pacific loggerhead conservation area.* No person may fish with, set, or haul back drift gillnet gear in U.S. waters of the Pacific Ocean east of the 120° W. from June 1 through August 31 during a forecasted, or occurring, El Nino event off the coast of southern California (as determined under paragraph (d)(6)(iii) of this section).

(iii) *Determination and notification concerning an El Nino event.* The Assistant Administrator will publish in the **Federal Register** a notification that an El Nino event is occurring off of, or is forecast for, the coast of southern California and the imposition of a closure under paragraph (d)(6)(ii) of this section. Furthermore, the Assistant Administrator will announce the imposition of such a closure by other methods as are necessary and appropriate to provide actual notice to the participants in the California/Oregon drift gillnet fishery. The Assistant Administrator will rely on information developed by NOAA offices which monitor El Nino events, such as NOAA's Climate Prediction Center and the West Coast Office of NOAA's Coast Watch program, in order to determine whether an El Nino is forecasted or occurring for the coast of southern California. The Assistant Administrator will use the monthly sea surface temperature anomaly charts to determine whether there are warmer than normal sea surface temperatures present off of southern California during the months prior to the closure month for years in which an El Nino event has been declared by the NOAA Climate Prediction Center. Specifically, the Assistant Administrator, will use sea surface temperature data from the third and second months prior to the month of the closure for determining whether El Nino conditions are present off of southern California. If an El Nino has been declared for equatorial waters and the sea surface temperatures off southern California during this 2–month time period are greater than normal, the Assistant Administrator will publish in the **Federal Register** notification that an El Nino event is occurring off of, or is forecast for, the coast of southern California and the imposition of a closure under paragraph (d)(6)(ii) of this section. If the sea surface temperatures are normal or below normal and the Assistant Administrator has previously published a **Federal Register** notice indicating that El Nino conditions are present off southern California, the Assistant Administrator will publish an additional **Federal Register** notice announcing that El Nino conditions are no longer present for purposes of implementing the closure. The area closure imposed under this paragraph (d)(6) will remain in effect until the Assistant Administrator files with the Office of the Federal Register a notice that the El Nino event is no longer occurring.

* * * * *

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BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 229

[Docket No. 030221039–3309–04; I.D. 120903E]

RIN 0648–AQ04

Taking of Marine Mammals Incidental to Commercial Fishing Operations; Atlantic Large Whale Take Reduction Plan (ALWTRP)

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Temporary rule.

SUMMARY: The Assistant Administrator for Fisheries (AA), NOAA, announces temporary restrictions consistent with the requirements of the ALWTRP's implementing regulations. These regulations apply to lobster trap/pot and anchored gillnet fishermen in an area totaling approximately 1,356 square nautical miles (nm2) (4,651 km2), east of Portsmouth, NH for 15 days. The purpose of this action is to provide protection to an aggregation of North Atlantic right whales (right whales).

DATES: Effective beginning at 0001 hours December 18, 2003, through 2400 hours January 2, 2004.

ADDRESSES: Copies of the proposed and final Dynamic Area Management rules, Environmental Assessments (EAs), Atlantic Large Whale Take Reduction Team (ALWTRT) meeting summaries, and progress reports on implementation of the ALWTRP may also be obtained by writing Diane Borggaard, NMFS/Northeast Region, One Blackburn Drive, Gloucester, MA 01930.

FOR FURTHER INFORMATION CONTACT: Diane Borggaard, NMFS/Northeast Region, 978–281–9328 x6503; or Kristy Long, NMFS, Office of Protected Resources, 301–713–1401 x171.

SUPPLEMENTARY INFORMATION:

Electronic Access

Several of the background documents for the ALWTRP and the take reduction planning process can be downloaded from the ALWTRP Web site at *http://www.nero.noaa.gov/whaletrp/.*

Background

The ALWTRP was developed pursuant to section 118 of the Marine Mammal Protection Act (MMPA) to reduce the incidental mortality and serious injury of three endangered species of whales (right, fin, and humpback) as well as to provide conservation benefits to a fourth non-endangered species (minke) due to incidental interaction with commercial fishing activities. The ALWTRP, implemented through regulations codified at 50 CFR 229.32, relies on a combination of fishing gear modifications and time/area closures to reduce the risk of whales becoming entangled in commercial fishing gear (and potentially suffering serious injury or mortality as a result).

On January 9, 2002, NMFS published the final rule to implement the ALWTRP's Dynamic Area Management (DAM) program (67 FR 1133). On

August 26, 2003. NMFS amended the regulations by publishing a final rule, which specifically identified gear modifications that may be allowed in a DAM zone (68 FR 51195). The DAM program provides specific authority for NMFS to restrict temporarily on an expedited basis the use of lobster trap/pot and anchored gillnet fishing gear in areas north of 40° N. lat. to protect right whales. Under the DAM program, NMFS may: (1) require the removal of all lobster trap/pot and anchored gillnet fishing gear for a 15–day period; (2) allow lobster trap/pot and anchored gillnet fishing within a DAM zone with gear modifications determined by NMFS to sufficiently reduce the risk of entanglement; and/or (3) issue an alert to fishermen requesting the voluntary removal of all lobster trap/pot and anchored gillnet gear for a 15–day period and asking fishermen not to set any additional gear in the DAM zone during the 15–day period.

A DAM zone is triggered when NMFS receives a reliable report from a qualified individual of three or more right whales sighted within an area (75 nm^2 (139 km^2)) such that right whale density is equal to or greater than 0.04 right whales per nm^2 (1.85 km^2). A qualified individual is an individual ascertained by NMFS to be reasonably able, through training or experience, to identify a right whale. Such individuals include, but are not limited to, NMFS staff, U.S. Coast Guard and Navy personnel trained in whale identification, scientific research survey personnel, whale watch operators and naturalists, and mariners trained in whale species identification through disentanglement training or some other training program deemed adequate by NMFS. A reliable report would be a credible right whale sighting.

On December 4, 2003, an aerial-based survey reported a sighting of five right whales in the proximity of 42° 42.1′ N lat. and 70° 02.2′ W long. This position lies east of Portsmouth, NH. Thus, NMFS has received a reliable report from a qualified individual of the requisite right whale density to trigger the DAM provisions of the ALWTRP.

Once a DAM zone is triggered, NMFS determines whether to impose restrictions on fishing and/or fishing gear in the zone. This determination is based on the following factors, including but not limited to: the location of the DAM zone with respect to other fishery closure areas, weather conditions as they relate to the safety of human life at sea, the type and amount of gear already present in the area, and a review of recent right whale entanglement and mortality data.

NMFS has reviewed the factors and management options noted above relative to the DAM under consideration. Pursuant to this review, NMFS prohibits lobster trap/pot and anchored gillnet gear in this area during the 15–day restricted period unless it is modified in the manner described in this temporary rule. Because the December 4 right whale sightings occurred within the area included in a previous DAM zone triggered by the November 7, 2003, vessel-based sighting of four right whales (68 FR 65409, November 20, 2003), the coordinates for the current DAM zone will encompass the same area, which is bound by the following coordinates:

43°09′N, 70°26′W (NW Corner)
43°09′N, 69°36′W
42°32′N, 69°36′W
42°32′N, 70°26′W

In addition to those gear modifications currently implemented under the ALWTRP at 50 CFR 229.32, the following gear modifications are required in the DAM zone. If the requirements and exceptions for gear modification in the DAM zone, as described below, differ from other ALWTRP requirements for any overlapping areas and times, then the more restrictive requirements will apply in the DAM zone.

Lobster Trap/Pot Gear

Fishermen utilizing lobster trap/pot gear within the portion of the Northern Nearshore Lobster Waters, Northern Inshore State Lobster Waters, and Stellwagen Bank/Jeffreys Ledge Restricted Area that overlap with the DAM zone are required to utilize all of the following gear modifications while the DAM zone is in effect:

1. Groundlines must be made of either sinking or neutrally buoyant line. Floating groundlines are prohibited;
2. All buoy lines must be made of either sinking or neutrally buoyant line, except the bottom portion of the line, which may be a section of floating line not to exceed one-third the overall length of the buoy line;
3. Fishermen are allowed to use two buoy lines per trawl; and
4. A weak link with a maximum breaking strength of 600 lb (272.4 kg) must be placed at all buoys.

Fishermen utilizing lobster trap/pot gear within the portion of the Offshore Lobster Waters Area that overlap with the DAM zone are required to utilize all of the following gear modifications while the DAM zone is in effect:

1. Groundlines must be made of either sinking or neutrally buoyant line. Floating groundlines are prohibited;
2. All buoy lines must be made of either sinking or neutrally buoyant line, except the bottom portion of the line, which may be a section of floating line not to exceed one-third the overall length of the buoy line;
3. Fishermen are allowed to use two buoy lines per trawl; and
4. A weak link with a maximum breaking strength of 1,500 lb (680.4 kg) must be placed at all buoys.

Anchored Gillnet Gear

Fishermen utilizing anchored gillnet gear within the portion of the Other Northeast Gillnet Waters and Stellwagen Bank/Jeffreys Ledge Restricted Area that overlap with the DAM zone are required to utilize all the following gear modifications while the DAM zone is in effect:

1. Groundlines must be made of either sinking or neutrally buoyant line. Floating groundlines are prohibited;
2. All buoy lines must be made of either sinking or neutrally buoyant line, except the bottom portion of the line, which may be a section of floating line not to exceed one-third the overall length of the buoy line;
3. Fishermen are allowed to use two buoy lines per string;
4. Each net panel must have a total of five weak links with a maximum breaking strength of 1,100 lb (498.8 kg). Net panels are typically 50 fathoms (91.4 m) in length, but the weak link requirements would apply to all variations in panel size. These weak links must include three floatline weak links. The placement of the weak links on the floatline must be: one at the center of the net panel and one each as close as possible to each of the bridle ends of the net panel. The remaining two weak links must be placed in the center of each of the up and down lines at the panel ends; and
5. All anchored gillnets, regardless of the number of net panels, must be securely anchored with the holding power of at least a 22 lb (10.0 kg) Danforth-style anchor at each end of the net string.

The restrictions will be in effect beginning at 0001 hours December 18, 2003, through 2400 hours January 2, 2004, unless terminated sooner or extended by NMFS through another notification in the **Federal Register**.

The restrictions will be announced to state officials, fishermen, Atlantic Large Whale Take Reduction Team (ALWTRT) members, and other interested parties through e-mail, phone contact, NOAA website, and other appropriate media immediately upon filing with the **Federal Register**.

Classification

In accordance with section 118(f)(9) of the MMPA, the Assistant Administrator (AA) for Fisheries has determined that this action is necessary to implement a take reduction plan to protect North Atlantic right whales.

This action falls within the scope of alternatives and impacts analyzed in the Final Environmental Assessments prepared for the ALWTRP's DAM program. Further analysis under the National Environmental Policy Act (NEPA) is not required.

NMFS provided prior notice and an opportunity for public comment on the regulations establishing the criteria and procedures for implementing a DAM zone. Providing prior notice and opportunity for comment on this action, pursuant to those regulations, would be impracticable because it would prevent NMFS from executing its functions to protect and reduce serious injury and mortality of endangered right whales. The regulations establishing the DAM program are designed to enable the agency to help protect unexpected concentrations of right whales. In order to meet the goals of the DAM program, the agency needs to be able to create a DAM zone and implement restrictions on fishing gear as soon as possible once the criteria are triggered and NMFS determines that a DAM restricted zone is appropriate. If NMFS were to provide prior notice and an opportunity for public comment upon the creation of a DAM restricted zone, the aggregated right whales would be vulnerable to entanglement which could result in serious injury and mortality. Additionally, the right whales would most likely move on to another location before NMFS could implement the restrictions designed to protect them, thereby rendering the action obsolete. Therefore, pursuant to 5 U.S.C. 553(b)(B), the AA finds that good cause exists to waive prior notice and an opportunity to comment on this action to implement a DAM restricted zone to reduce the risk of entanglement of endangered right whales in commercial lobster trap/pot and anchored gillnet gear as such procedures would be impracticable.

For the same reasons, the AA finds that, under 5 U.S.C. 553(d)(3), good cause exists to waive the 30–day delay in effective date. If NMFS were to delay for 30 days the effective date of this action, the aggregated right whales would be vulnerable to entanglement, which could cause serious injury and mortality. Additionally, right whales would likely move to another location between the time NMFS approved the action creating the DAM restricted zone and the time it went into effect, thereby rendering the action obsolete and ineffective. Nevertheless, NMFS recognizes the need for fishermen to have time to either modify or remove (if not in compliance with the required restrictions) their gear from a DAM zone once one is approved. Thus, NMFS makes this action effective 2 days after the date of publication of this notice in the **Federal Register**. NMFS will also endeavor to provide notice of this action to fishermen through other means as soon as the AA approves it, thereby providing approximately 3 additional days of notice while the Office of the **Federal Register** processes the document for publication.

NMFS determined that the regulations establishing the DAM program and actions such as this one taken pursuant to those regulations are consistent to the maximum extent practicable with the enforceable policies of the approved coastal management program of the U.S. Atlantic coastal states. This determination was submitted for review by the responsible state agencies under section 307 of the Coastal Zone Management Act. Following state review of the regulations creating the DAM program, no state disagreed with NMFS' conclusion that the DAM program is consistent to the maximum extent practicable with the enforceable policies of the approved coastal management program for that state.

The DAM program under which NMFS is taking this action contains policies with federalism implications warranting preparation of a federalism assessment under Executive Order 13132. Accordingly, in October 2001 and March 2003, the Assistant Secretary for Intergovernmental and Legislative Affairs, DOC, provided notice of the DAM program and its amendments to the appropriate elected officials in states to be affected by actions taken pursuant to the DAM program. Federalism issues raised by state officials were addressed in the final rules implementing the DAM program. A copy of the federalism Summary Impact Statement for the final rules is available upon request (**ADDRESSES**).

This temporary rule implementing the DAM program has been determined to be not significant under Executive Order 12866.

Authority: 16 U.S.C. 1361 *et seq.* and 50 CFR 229.32(g)(3)

Dated: December 10, 2003.

John Oliver,

Deputy Assistant Administrator for Operations, National Marine Fisheries Service.

[FR Doc. 03–30995 Filed 12–15–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[I.D. 120903A]

Atlantic Highly Migratory Species; Bluefin Tuna Fisheries

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: General category closure.

SUMMARY: NMFS has determined that the 2003 fishing year Atlantic bluefin tuna (BFT) General category quota will be attained by December 10, 2002. Therefore, the General category fishery will be closed effective 11:30 p.m. on December 10, 2003. This action is being taken to prevent overharvest of the total adjusted General category quota of 534.4 metric tons (mt).

DATES: Effective 11:30 p.m. local time on December 10, 2003, through May 31, 2004.

FOR FURTHER INFORMATION CONTACT: Brad McHale or Dianne Stephan, 978–281–9260.

SUPPLEMENTARY INFORMATION: Regulations implemented under the authority of the Atlantic Tunas Convention Act (16 U.S.C. 971 *et seq.*) and the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act; 16 U.S.C. 1801 *et seq.*) governing the harvest of BFT by persons and vessels subject to U.S. jurisdiction are found at 50 CFR part 635. Section 635.27 subdivides the U.S. BFT quota recommended by the International Commission for the Conservation of Atlantic Tunas (ICCAT) among the various domestic fishing categories, and together with General category effort controls are specified annually under 50 CFR 635.23(a) and 635.27(a). The final initial 2003 BFT Quota and General category effort controls were published on October 2, 2003 (68 FR 56783).

General Category Closure

NMFS is required, under § 635.28 (a)(1), to file with the Office of the

Federal Register for publication, notification of closure when a BFT quota is reached, or is projected to be reached. On and after the effective date and time of such closure notification, for the remainder of the fishing year, or for a specified period as indicated in the notification, fishing for, retaining, possessing, or landing BFT under that quota category is prohibited until the opening of the subsequent quota period, or until such date as specified in the notification.

The 2003 BFT quota specifications issued pursuant to § 635.27 set a General category quota of 684.4 mt of large medium and giant BFT to be harvested from the regulatory area during the 2003 fishing year, and divided the General category quota into time-period subquotas. On November 18, 2003, NOAA Fisheries transferred 150 mt to the Reserve category, establishing an adjusted coastwide General category quota of 534.4 mt for the 2003 fishing year (68 FR 64990, November 18, 2003). Based on reported landings and effort, NMFS projects that the adjusted quota will be reached by December 10, 2003. Therefore, fishing for, retaining, possessing, or landing large medium or giant BFT intended for sale by persons aboard vessels in the General or HMS Charter/Headboat categories must cease at 11:30 p.m. local time December 10, 2003. The intent of this closure is to prevent overharvest of the adjusted quota established for the General category.

If it is determined that quota remains uncaught in the General category, or if additional quota can be made available to the General category through an inseason transfer, NMFS will announce the re-opening and/or transfer action in a separate **Federal Register** notice. General category and HMS Charter/Headboat permit holders may tag and release BFT while the General category is closed, subject to the requirements of the tag-and-release program at § 635.26.

Classification

Pursuant to 5 U.S.C. 553 (b) (B), the Assistant Administrator for Fisheries, NOAA (AA), finds that providing for prior notice and public comment for this action is impracticable and contrary to the public interest. Based on recent landings reports, this closure is necessary to prevent the overharvest of the adjusted BFT quota established for the coastwide General category. The fishery is currently underway, and any further delay in this action would cause the fishery to exceed the quota and be inconsistent with domestic and international requirements and objectives. NMFS provides notification of the closure by publishing the closure notice in the **Federal Register**, faxing notification to individuals on the HMS FAX Network and to known fishery representatives, announcing the notice on the Atlantic Tunas Information Line, and announcing the closure notice over NOAA Weather and Coast Guard radio channels. For these same reasons, the AA also finds good cause to waive the 30–day delay in effective date pursuant to 5 U.S.C. 553 (d)(3). This action is required under 50 CFR 635.28(a) (1) and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 971 *et seq.* and 1801 *et seq.*

Dated: December 9, 2003.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 03–30914 Filed 12–10–03; 3:50 pm]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 030908223–3289–02; I.D. 081403B]

RIN 0648–AP57

Magnuson-Stevens Fishery Conservation and Management Act Provisions; Fisheries of the Northeastern United States; Atlantic Surfclam and Ocean Quahog Fishery; Amendment 13 to the Surfclam and Ocean Quahog Fishery Management Plan

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule; implementation of Amendment 13 to the Surfclam and Ocean Quahog Fishery Management Plan (FMP).

SUMMARY: NMFS implements measures contained in Amendment 13 to the FMP (Amendment 13). Amendment 13 establishes: A new surfclam overfishing definition; multi-year fishing quotas; a mandatory vessel monitoring system (VMS), when such a system is economically viable; the ability to suspend or adjust the surfclam minimum size limit through a framework adjustment; and an analysis of fishing gear impacts on Essential Fish Habitat (EFH) for surfclams and ocean quahogs. This final rule includes technical corrections to the regulations implementing the FMP in order to clarify the Mid-Atlantic Fishery Management Council's (Council) intent not to restrict allocation ownership to only those entities that also own a permitted vessel, and to eliminate the restriction on the transfer of allocation tags of amounts less than 160 bushels (bu) (85 hectoliters (hL)) (i.e., 5 cage tags). The primary purpose of Amendment 13 is to rectify the disapproved surfclam overfishing definition and the EFH analysis and rationale contained in Amendment 12 in order to comply with the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), and to simplify the regulatory requirements of the FMP.

DATES: Effective January 15, 2004.

ADDRESSES: Copies of the Amendment 13 document, including the Regulatory Impact Review (RIR), the Initial Regulatory Flexibility Analysis (IRFA), and the Environmental Impact Statement (EIS), and other supporting documents for the amendment are available from Daniel Furlong, Executive Director, Mid-Atlantic Fishery Management Council, Room 2115, Federal Building, 300 South Street, Dover, DE 19901–6790. The Final Regulatory Flexibility Analysis (FRFA) consists of the IRFA, public comments and responses contained in this final rule, and the summary of impacts and alternatives contained in this final rule. Copies of the small entity compliance guide are available from Patricia A. Kurkul, Regional Administrator, NMFS, Northeast Regional Office, One Blackburn Drive, Gloucester, MA 01930–2298.

FOR FURTHER INFORMATION CONTACT: Susan A. Murphy, Supervisory Fishery Policy Analyst, 978–281–9252, fax 978–281–9135, *Susan.A.Murphy@noaa.gov*.

SUPPLEMENTARY INFORMATION: This final rule implements approved measures contained in the FMP, which was approved by NMFS on behalf of the Secretary of Commerce (Secretary) on November 21, 2003.

Details concerning the justification for and development of Amendment 13 and the implementing regulations were provided in the preamble to the proposed rule (68 FR 55358, September 25, 2003) and are only summarized here.

Background

Amendment 12 to the FMP was prepared by the Council to bring the FMP into compliance with the Magnuson-Stevens Act, as amended by the Sustainable Fisheries Act of 1996. On April 28, 1999, the Council was notified that NMFS partially approved Amendment 12. Two Amendment 12 measures were disapproved, the surfclam overfishing definition and the analysis and rationale for the status quo alternative for addressing fishing gear impacts to EFH. To rectify these disapprovals, the Council prepared, and NMFS published, a Notice of Intent to Prepare an Environmental Impact Statement (EIS) in the **Federal Register**, officially beginning the Council's scoping process for Amendment 13 (66 FR 13694, March 7, 2001). During this scoping process, other issues were identified for inclusion in the EIS, including: Multi-year quotas, a mandatory VMS requirement, and a permanent suspension of the surfclam minimum size limit.

The Amendment 13 measures implemented through this rule are multi-year fishing quotas and the ability to suspend or adjust the surfclam minimum size limit through a framework adjustment. The analysis of fishing gear impacts on EFH for surfclams and ocean quahogs, a new surfclam overfishing definition, and a mandatory VMS requirement are not accompanied by regulatory text because either they are non-regulatory in nature (fishing gear impacts on EFH and the new overfishing definition) or implementation is deferred (a mandatory VMS requirement). However, information on these measures was presented in the preamble of the proposed rule and is only summarized below.

Surfclam Overfishing Definition

The revised surfclam overfishing definition recommended by the Council and implemented through this final rule is based on the advice of the 30th Stock Assessment Workshop (SAW 30, April 2000), which incorporated the results of a research survey that took place during the summer of 1999. This surfclam overfishing definition is as follows: Biomass target (B_{target}) = ½ of current (1999) biomass (as a proxy for the biomass level at maximum sustainable yield (B_{msy})) = 1,268,500 mt; biomass threshold ($B_{threshold}$) = ½ the biomass target; fishing mortality threshold ($F_{threshold}$) = fishing mortality at maximum sustainable yield (F_{msy}), where the current proxy for F_{msy} is the natural mortality rate for surfclams (M); and the fishing mortality target (F_{target}) would always be set less than the $F_{threshold}$ and would be equivalent to the fishing mortality rate (F) associated with the quota selected by the Council.

Fishing Gear Impacts on EFH

The relatively recent "Workshop on the Effects of Fishing Gear on Marine Habitats off the Northeastern United States" (Workshop, October 2001) concluded that the effects of hydraulic clam dredges were limited to sandy substrates, since this type of gear is not used on muddy or gravel substrates and that overall impacts can be considered minimal. Based on information from this Workshop, NMFS is not taking any action to mitigate fishing gear impacts on EFH.

Multi-year Quotas

Beginning in 2005, Amendment 13 replaces the current annual specification process with a process that allows the Council to establish specifications to be in effect for up to 3 fishing years, provided that an annual evaluation of the surfclam and ocean quahog status is undertaken. This multi-year specification process allows the Council and NMFS to be more efficient by streamlining the regulatory process, and provides the industry with greater regulatory consistency and predictability. The maximum 3–year specification process is not meant to constrain the Council from setting specifications during the interim years if information obtained during the annual review indicates that the surfclam or ocean quahog specifications warrant a change, e.g., to comply fully with the Magnuson-Stevens Act.

Mandatory VMS

Amendment 13 lays the groundwork to implement a mandatory VMS requirement based on analysis provided by the Council and the agreement by NMFS that the system is economically viable. Upon such agreement, the Council would submit to NMFS the applicable paperwork to conform with the Paperwork Reduction Act, and submit a full economic analysis pertaining to this new requirement. Once these Council submissions are complete, NMFS will publish a proposed rule followed by a final rule that will evaluate the likely costs and benefits of any proposed VMS program. The public will have an opportunity to comment on all aspects of the proposed VMS program during the rulemaking stage.

Frameworkable Measures

This rule adds to the list of frameworkable management measures the ability to suspend or adjust the surfclam minimum size limit. Due to concerns expressed by some industry members, as well as Council concern that it may be more difficult to implement a change rather than to suspend a current provision, the Council voted, and NMFS agrees, to maintain the no action alternative and add to the list of frameworkable management measures the ability to suspend or adjust the surfclam minimum size limit.

Comments and Responses

The comment periods on the FMP and proposed rule ended on October 23, 2003, and October 27, 2003, respectively. All comments received have been considered as responsive to both comment requests. Three comments were received prior to the close of the comment periods.

Comment 1: Two letters were received expressing "no comment" regarding Amendment 13. A response received from the U.S. Coast Guard First Coast Guard District indicated that, while the First District had no comment on the Amendment, it would defer input on enforcement and safety issues to the Fifth Coast Guard District. The Fifth Coast Guard District did not have any vessel safety or enforcement concerns with Amendment 13.

Response: NMFS acknowledges that the U.S. Coast Guard did not express any vessel safety or enforcement concerns with Amendment 13.

Comment 2: One comment raised several issues related to the measures implemented under this FMP. The comment stated that, for any multi-year fishing quotas, quotas should be drastically reduced. The commenter also suggested that any VMS required by NMFS should be supplied by the Agency, and suggested that marine protected areas (MPAs) should be established.

Response: The multi-year quotas proposed under Amendment 13 would be required to comply fully with the Maguson-Stevens Act and would be established by the Council based upon the latest Northeast Fisheries Science Center clam survey and stock assessment, as well as any additional information that becomes available between stock assessments. NMFS believes that VMS units are a cost of conducting business and should be borne by the industry. Finally, the area most affected by the surfclam and ocean quahog industry operations is high-energy sandy areas that are only temporarily impacted by fishing operations under this FMP. As such, there is no immediate need for MPAs as a result of this fishery.

Changes from the Proposed Rule

This final rule includes changes to the regulations implementing the FMP.

These changes are intended to reflect the Council's intent not to restrict allocation ownership to only those entities that also own a permitted vessel, and to eliminate the restriction on the trade of allocation tags of amounts less than 160 bu (85 hL) (5 cage tags).

Amendment 8 to the FMP established the individual transferrable quota (ITQ) program for the Atlantic surfclam and ocean quahog fisheries in 1990. Amendment 8 states that there are "no restrictions on the permissible use of the quota." However, the regulations implementing Amendment 8 refer to the vessel owner as the individual to whom an allocation is issued. This language reflects the fact that the initial allocations were made to vessel owners. Subsequent to the initial allocation, and as contemplated by Amendment 8, some allocation holders sold their vessels or transferred allocation to individuals who did not own a vessel. This final rule changes this provision at 50 CFR 648.70(a) by specifying that the allocation for each fishing year will be allocated to the allocation owner as of the last day of the fishing year that allocation owners are allowed to permanently transfer their allocation (October 15).

The regulation prohibiting the transfer of allocation in amounts less than 160 bu (85 hL) (5 cage tags) was originally intended to reduce the administrative burden on NMFS. However, this regulation has inadvertently placed an undue burden on some vessels, particularly those in the Maine mahogany quahog fishery who chose to participate in the ITQ program, by preventing them from transferring less than 160 bu (85 hL) (5 cage tags) at any time. This regulation has also limited the activities of allocation owners within the Mid-Atlantic region, and may prevent some allocation owners from fully utilizing their allocations. Since the implementation of the ITQ program in 1990, computer programs have reduced the administrative burden such that this restriction is no longer necessary. This modification to the final rule eliminates the 160–bu (85–hL) restriction specified at 50 CFR 648.70(b) and allows participants to transfer allocation in any amount, including transfers of allocation in amounts less than 160 bu (85 hL), and would reduce the economic impact to and regulatory burden on participants in the ITQ program.

Classification

The Administrator, Northeast Region, NMFS, determined that the FMP amendment implemented by this rule is necessary for the conservation and management of the Atlantic surfclam and ocean quahog fisheries and that it is consistent with the Magnuson-Stevens Act and other applicable laws.

This final rule has been determined to be not significant for purposes of E.O. 12866.

Included in this final rule is the FRFA that contains the items specified in 5 U.S.C. 604(a). The FRFA consists of the IRFA, the comments and responses to the proposed rule, and the analyses completed in support of this action. A copy of the IRFA is available from the Council (see **ADDRESSES**).

The preamble to the proposed rule included a detailed summary of the analyses contained in the IRFA, and that discussion is not repeated in its entirety here.

Final Regulatory Flexibility Analysis

Statement of Objective and Need

A description of the reasons why this action is being considered, and the objectives of and legal basis for this action are contained in the preamble to the proposed rule and are not repeated here.

Summary of Significant Issues Raised in Public Comments

Comments received prior to the close of the comment period for the proposed rule focused on the measures contained within Amendment 13 and did not reference the analysis contained in the IRFA. Although one commenter stated that NMFS should pay for the cost of VMS units, the requirement to utilize VMS is not being mandated through this rule. Once NMFS determines the economic feasibility of a VMS system, NMFS will inform the public of the likely costs. However, at this time, NMFS believes that use of a VMS is a cost of doing business and should be borne by the industry. For a summary of the comments received, refer to Comments and Responses.

Description and Estimate of Number of Small Entities to Which the Rule Will Apply

A description and estimate of the number of small entities to which the rule will apply is provided in the IRFA and IRFA summary contained in the Classification section of the proposed rule and is only summarized here.

All of the affected businesses (fishing vessels) are considered small entities under the standards described by the Small Business Administration because they have annual returns (revenues) that do not exceed $3.5 million annually. This rule could affect any vessel holding an active Federal permit for either species. However, the commercial use of the permit is limited to vessels fishing under an individual fishing quota or fishing in the Maine mahogany fishery. In 2001, there were 51 vessels that landed either surfclams (21 vessels), ocean quahogs (16 vessels), or both (14 vessels). There were 31 vessels in 2001 that fished under the federal limited access Maine mahogany quahog permit for Maine ocean quahogs.

Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

There are no recordkeeping, reporting, or other compliance costs forthcoming from this action.

Steps Taken to Minimize Economic Impacts on Small Entities

Management measures contained in this rule would establish multi-year quotas and add the suspension of the surfclam minimum size limit and adjustment of the minimum size to the list of frameworkable measures under the FMP. None of the management measures in this rule would result in a substantial change in revenues or profitability of vessels comprising these fisheries. Although additional alternatives were considered for these management measures, the preferred alternative would minimize economic impacts to the greatest extent possible.

Overfishing Definition for Surfclams

The proposal to revise the overfishing definition for surfclams does not alter the optimum yield of the fishery, a basis for determining annual quotas, and does not directly impact gross revenues. Therefore, no change to gross revenues is expected from this revision. However, an initial regulatory flexibility analysis must be prepared at the time when quotas or other management measures that control landings are proposed through a general notice of proposed rulemaking. The NMFS considered three alternative overfishing definitions, none of which would meet the requirements of National Standard 1 of the Magnuson-Stevens Act. These alternative definitions included the following: (1) The disapproved definition from Amendment 12; (2) The pre-Sustainable Fisheries Act Amendment 9 definition; and (3) The Amendment 8 estimate of MSY at 2.9 million bushels (approximately 50 million pounds of shucked meats) for the Mid-Atlantic portion of the resource. As in the case of the preferred alternative, none of these alternatives would directly affect the profitability of individual vessels.

Multi-year Quotas and Frameworkable Minimum Size Limits and Adjustments for Surfclams

The establishment of multi-year quotas and frameworkable minimum size limits and adjustments for surfclams through this final rule are purely administrative and will not directly impact gross revenues. However, the Council and NMFS will be required to prepare an initial regulatory flexibility analysis for each quota set by the Council and for each surfclam minimum size limit adjustment, if applicable, when a notice of proposed rulemaking is developed.

The NMFS considered two alternatives to the multi-year quota measure including the status quo and an alternative that would set multi-year quotas without annual review. The Council also considered two alternatives to the minimum size limits and adjustments including the status quo and an alternative to adjust minimum sizes when the multi-year decisions occur. As explained above, any changes to annual quotas or adjustments to surfclam minimum size that could result from any alternatives considered would require, subject to the preparation of a proposed rule, preparation of regulatory flexibility analyses at that time.

Mandatory VMS

This final rule does not implement a mandatory VMS program at this time. However, the Council is planning to establish a vessel monitoring program at a later time. When the Regional Administrator determines that an economically viable monitoring system is available to the industry, the Council and NMFS must prepare an IRFA that fully examines the compliance costs associated with that system. A mandatory VMS requirement would be implemented through proposed and final rulemaking by a regulatory amendment.

Fishing Gear Impacts on EFH

This rule implements no changes to existing management measures to address fishing gear impacts on EFH. Therefore, there are no impacts on vessel gross revenues resulting from this aspect of Amendment 13.

Small Entity Compliance Guide

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that, for each rule or group of related rules for which an agency is required to prepare a FRFA, the agency shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as "small entity compliance guides." The agency shall explain the action a small entity is required to take to comply with a rule or group of rules. As part of this rulemaking process, a small entity compliance guide (the guide) was prepared. Copies of the guide will be sent to all holders of commercial Federal Atlantic surfclam and ocean quahog fishery permits. The guide will also be available on the Internet at *http://www.nero.noaa.gov*. Copies of the guide can also be obtained from the Regional Administrator (see **ADDRESSES**).

List of Subjects in 50 CFR Part 648

Fishing, Fisheries, Reporting and recordkeeping requirements.

Dated: December 9, 2003.

John Oliver,

Deputy Assitant Administrator for Operations, National Marine Fisheries Service.

■ For the reasons set out in the preamble, 50 CFR part 648 is amended as follows:

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

■ 1. The authority citation for part 648 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

■ 2. In § 648.70, paragraphs (a)(1), (b)(1) and (b)(2) are revised to read as follows:

§ 648.70 Annual individual allocations.

(a) * * *

(1) On or about November 1 of each fishing year, the Regional Administrator shall determine the initial allocation of surfclams and ocean quahogs for the next fishing year for each allocation holder owning an allocation pursuant to paragraph (a)(2) of this section. For each species, the initial allocation for the next fishing year is calculated by multiplying the allocation percentage owned by each allocation owner as of the last day of the previous fishing year in which allocation owners are permitted to permanently transfer allocation percentage pursuant to paragraph (b) of this section (i.e., October 15 of every year), by the quota specified by the Regional Administrator pursuant to § 648.71. The total number of bushels of allocation shall be divided by 32 to determine the appropriate number of cage tags to be issued or acquired under § 648.75. Amounts of allocation 0.5 or smaller created by this division shall be rounded downward to the nearest whole number, and amounts of allocation greater than 0.5 created by this division shall be rounded upward to the nearest whole number, so that allocations are specified in whole cages. These allocations shall be made in the form of an allocation permit specifying the allocation percentage and the allocation in bushels and cage tags for each species. An allocation permit is only valid for the entity for which it is issued. Such permits shall be issued on or before December 15, to allow allocation owners to purchase cage tags from a vendor specified by the Regional Administrator pursuant to § 648.75(b).

* * * * *

(b) * * *

(1) *Allocation percentage.* Subject to the approval of the Regional Administrator, part or all of an allocation percentage may be transferred in the year in which the transfer is made, to any person or entity eligible to own a documented vessel under the terms of 46 U.S.C. 12102(a). Approval of a transfer by the Regional Administrator and for a new allocation permit reflecting that transfer may be requested by submitting a written application for approval of the transfer and for issuance of a new allocation permit to the Regional Administrator at least 10 days before the date on which the applicant desires the transfer to be effective, in the form of a completed transfer log supplied by the Regional Administrator. The transfer is not effective until the new holder receives a new or revised annual allocation permit from the Regional Administrator. An application for transfer may not be made between October 15 and December 31 of each year.

(2) *Cage tags.* Cage tags issued pursuant to § 648.75 may be transferred at any time, and in any amount subject to the restrictions and procedure specified in paragraph (b)(1) of this section; provided that application for such cage tag transfers may be made at any time before December 10 of each year. The transfer is effective upon the receipt by the transferee of written authorization from the Regional Administrator.

* * * * *

■ 3. Section 648.71 is revised to read as follows:

§ 648.71 Catch quotas.

(a) *Establishing quotas.* Beginning in 2005, the amount of surfclams or ocean quahogs that may be caught annually by fishing vessels subject to these regulations will be specified for a 3–year period by the Regional Administrator on or about December 1, 2004. The initial 3–year specification will be based on the most recent available survey and stock assessments for Atlantic surfclams and ocean quahogs. Subsequent 3–year

specifications of the annual quotas will be accomplished on or about December 1 of the third year of the quota period, unless the quotas are modified in the interim pursuant to § 648.71(b). The amount of surfclams available for harvest annually must be specified within the range of 1.85 to 3.4 million bu (98.5 to 181 million L) per year. The amount of ocean quahogs available for harvest annually must be specified within the range of 4 to 6 million bu (213 to 319.4 million L).

(1) *Quota reports.* On an annual basis, MAFMC staff will produce an Atlantic surfclam and ocean quahog annual quota recommendation paper to the MAFMC based on the latest available stock assessment report prepared by NMFS, data reported by harvesters and processors, and other relevant data, as well as the information contained in paragraphs (a)(1)(i) through (vi) of this section. Based on that report, and at least once prior to August 15 of the year in which a 3–year annual quota specification expires, the MAFMC, following an opportunity for public comment, will recommend to the Regional Administrator annual quotas and estimates of DAH and DAP within the ranges specified for a 3–year period. In selecting the annual quotas, the MAFMC shall consider the current stock assessments, catch reports, and other relevant information concerning:

(i) Exploitable and spawning biomass relative to the OY.

(ii) Fishing mortality rates relative to the OY.

(iii) Magnitude of incoming recruitment.

(iv) Projected effort and corresponding catches.

(v) Geographical distribution of the catch relative to the geographical distribution of the resource.

(vi) Status of areas previously closed to surfclam fishing that are to be opened during the year and areas likely to be closed to fishing during the year.

(2) *Public review.* Based on the recommendation of the MAFMC, the Regional Administrator shall publish proposed surfclam and ocean quahog quotas in the **Federal Register**. Comments on the proposed annual quotas may be submitted to the Regional Administrator within 30 days after publication. The Assistant Administrator shall consider all comments, determine the appropriate annual quotas, and publish the annual quotas in the **Federal Register** on or about December 1 of each year. The quota shall be set at that amount that is most consistent with the objectives of the Atlantic Surfclam and Ocean Quahog FMP. The Regional Administrator may set quotas at quantities different from the MAFMC's recommendations only if he/she can demonstrate that the MAFMC's recommendations violate the national standards of the Magnuson-Stevens Act and the objectives of the Atlantic Surfclam and Ocean Quahog FMP and other applicable law.

(b) *Interim quota modifications.* Based upon information presented in the quota reports described in paragraph (a)(1) of this section, the MAFMC may recommend to the Regional Administrator a modification to the annual quotas that have been specified for a 3–year period and any estimate of DAH or DAP made in conjunction with such specifications within the ranges specified in paragraph (a)(1) of this section. Based upon the Council's recommendation, the Regional Administrator may propose surfclam and or ocean quahog quotas that differ from the annual quotas specified for the current 3–year period. Such modification shall be in effect for a period of 3 years from the year in which it is first implemented, unless further modified. Any interim modification shall follow the same procedures for establishing the annual quotas that are specified for a 3–year period.

(c) *Annual quotas.* The annual quotas for surfclams and ocean quahogs will remain effective unless revised pursuant to this section. NMFS will issue notification in the **Federal Register** if the previous year's specifications will not be changed.

* * * * *

■ 4. In § 648.75, paragraph (b) is revised to read as follows:

§ 648.75 Cage identification.

* * * * *

(b) *Issuance.* The Regional Administrator will issue a supply of tags to each individual allocation owner qualifying for an allocation under § 648.70 prior to the beginning of each fishing year, or he/she may specify, in the **Federal Register**, a vendor from whom the tags shall be purchased. The number of tags will be based on the owner's initial allocation as specified in § 648.70(a). Each tag represents 32 bu (1,700 L) of allocation.

* * * * *

■ 5. In § 648.77, paragraph (a)(1) is revised to read as follows:

§ 648.77 Framework adjustments to management measures.

(a) * * *

(1) *Adjustment process.* The Council shall develop and analyze appropriate management actions over the span of at least two Council meetings. The Council must provide the public with advance notice of the availability of the recommendation(s), appropriate justification(s) and economic and biological analyses, and the opportunity to comment on the proposed adjustment(s) at the first meeting, and prior to and at the second Council meeting. The Council's recommendations on adjustments or additions to management measures must come from one or more of the following categories: The overfishing definition (both the threshold and target levels), description and identification of EFH (and fishing gear management measures that impact EFH), habitat areas of particular concern, set-aside quota for scientific research, VMS, OY range, and suspension or adjustment of the surfclam minimum size limit.

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[FR Doc. 03–30923 Filed 12–15–03; 8:45 am]
BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 031009255–3302–02; I.D. 092503A]

RIN 0648–AQ88

Fisheries of the Exclusive Economic Zone Off Alaska; Revision to the Management of "Other Species" Community Development Quota

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS issues a final rule to modify the management of the "other species" Community Development Quota (CDQ) reserve by eliminating specific allocations of "other species" CDQ to individual CDQ managing organizations (CDQ groups) and, instead, allowing NMFS to manage the "other species" CDQ reserve with the general limitations used to manage the catch of non-CDQ groundfish in the Bering Sea and Aleutian Islands management area (BSAI). This action also eliminates the CDQ non-specific reserve and makes other changes to improve the clarity and consistency of CDQ Program regulations. This action is necessary to improve NMFS' ability to effectively administer the CDQ Program. It is intended to further the goals and objectives of the North Pacific Fishery Management Council (Council) with respect to this program.

DATES: Effective December 15, 2003, except for amendments to §§ 679.2, 679.7, the introductory paragraph to 679.31, and 679.32 which are effective January 15, 2004.

ADDRESSES: Copies of the Environmental Assessment/Regulatory Impact Review/Final Regulatory Flexibility Analysis (EA/RIR/FRFA) prepared for this action may be obtained from NMFS, Alaska Region, P.O. Box 21668, Juneau, AK 99802, Attn: Lori Durall.

FOR FURTHER INFORMATION CONTACT: Obren Davis, 907–586–7228 or *Obren.Davis@noaa.gov.*

SUPPLEMENTARY INFORMATION: The groundfish fisheries in the exclusive economic zone (EEZ) of the BSAI are managed under the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP). The Council prepared the FMP pursuant to the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), 16 U.S.C. 1801, *et seq.* Regulations governing U.S. fisheries and implementing the FMP appear at 50 CFR parts 600 and 679.

Regulations codified at 50 CFR part 679 implement the multispecies CDQ Program, a limited access system that provides exclusive harvesting privileges to a portion of the total allowable catches for halibut, crab and groundfish to eligible western Alaska communities. The purpose of this program is to provide the means for starting or supporting commercial fisheries business activities that will result in ongoing, regionally based, fisheries-related economic benefits for residents of eligible communities. NMFS allocates varying amounts of commercially valuable CDQ target species to CDQ groups each year. The harvest of these species provides a financial means for CDQ groups to fund economic development projects in support of overall program objectives.

This action would modify the management of the "other species" CDQ reserve and amend regulations to distinguish between the management of those groundfish CDQ reserves that are allocated to CDQ groups and those that are not. The "other species" complex is comprised of various species of sharks, skates, sculpins, and octopi. These species are incidentally caught with CDQ target species such as pollock, Pacific cod, sablefish, Atka mackerel, and flatfish. Exceeding an annual CDQ allocation results in an enforcement action against a CDQ group, which may include monetary or other penalties. To avoid exceeding their "other species" allocations, CDQ groups may have to modify their fishing practices by fishing in new or different locations or ceasing to fish for some target species. Failing to completely harvest CDQ target species allocations has an economic impact on CDQ groups and the CDQ communities when revenues are foregone, which may adversely affect the accomplishment of projects intended to foster economic development in western Alaska communities.

Under this action the "other species" CDQ reserve would still be established annually, but would no longer be allocated to CDQ groups. All catch of "other species" in the groundfish CDQ fisheries would accrue towards this reserve, rather than towards specific allocations to individual CDQ groups. Eliminating individual "other species" allocations would eliminate the potential that some CDQ target allocations would be unharvested for lack of "other species" bycatch, or that groups would incur enforcement actions for exceeding an annual "other species" CDQ allocation. Some CDQ groups receive allocations of "other species" CDQ that are not necessarily proportionate to the amount CDQ target species they are allocated, while other groups receive adequate amounts or even have surplus "other species" remaining at the end of each year. NMFS would manage the "other species" CDQ reserve as a whole with management measures in § 679.20(d). These measures provide the means to manage the catch of "other species" in both the CDQ and non-CDQ groundfish fishery.

This final rule makes the following changes to CDQ Program regulations: (1) amends the content and headings of definitions associated with the CDQ Program; (2) revises a prohibition associated with calculating maximum retainable amounts of CDQ catch; (3) amends the introductory paragraph that discusses CDQ reserves; (4) amends regulations to distinguish how NMFS will manage groundfish CDQ reserves apportioned to CDQ groups and how it will manage groundfish CDQ reserves that are not apportioned to CDQ groups; (5) amends regulations to specify that the "other species" CDQ reserve, is not allocated among CDQ groups; (6) amends regulations to allow NMFS to manage the "other species" CDQ reserve with fishery management measures typically used in non-CDQ fisheries; (7) amends regulations to describe how NMFS will apply CDQ percentage allocations to revised total allowable catch (TAC) categories that may arise from the annual groundfish harvest specifications process; and (8) amends catch monitoring requirements to align them with revisions to CDQ-related definitions. This action also will rescind the "other species" CDQ percentage allocations made to individual CDQ groups on January 17, 2003, and supercede the Alaska Regional Administrator's 2003–2005 allocation decision pertaining to this CDQ reserve category. These changes are necessary to promote the ability of CDQ groups to more fully utilize their annual groundfish CDQ allocations in support of the goals of the CDQ Program, to enhance NMFS' ability to administer the program, and to improve the consistency and clarity of CDQ Program regulations.

NMFS published a proposed rule to modify the management of the "other species" CDQ reserve on October 22, 2003 (68 FR 60327), with comments invited through November 6, 2003. The preamble to the proposed rule contains a full description and justification of the regulatory revisions implemented by this action. The preamble also contains additional background on the general history of the CDQ program and specific management measures used to allocate and account for the catch of "other species" CDQ, as well as the purpose and need for this action. No letters of comment were received by the end of the comment period. No changes were made from the proposed rule.

Classification

For the reasons set forth below, the Assistant Administrator finds that the primary provision of this action relieves a restriction, thereby making the normal 30–day delay in effective date inapplicable to the amendment to § 679.31(f). Without this action, existing regulations prohibit CDQ groups from exceeding any CDQ allocation, as discussed in the preamble. CDQ groups likely will have to curtail some of their target fisheries because they lack adequate "other species" CDQ to account for the incidental catch of such species. In this event, CDQ groups would forfeit some of the revenues that they would otherwise receive from the complete harvest of their CDQ target allocations. This would result in unnecessary adverse impacts to eligible communities that are dependent on CDQ royalties to fund economic development projects or on groundfish CDQ harvesting operations to provide employment to residents. This action would remove the allocation of CDQ "other species" to the CDQ groups and authorize management of CDQ "other

species" harvest at the CDQ reserve level and under the general management provisions at 50 CFR 679.20(d), thus relieving a restriction and allowing CDQ groups to continue fishing operations for CDQ target allocations without being curtailed by the group's harvest of "other species." It is anticipated that this action will allow CDQ groups and their eligible communities to realize the benefits associated with the harvest of valuable CDQ target allocations. Therefore, under the authority set forth at 5 U.S.C. 553(d)(1) and (3), the revision to § 679.31(f) is effective immediately upon filing with the Office of the Federal Register.

This final rule has been determined to be not significant for purposes of Executive Order 12866.

NMFS prepared a Final Regulatory Flexibility Analysis (FRFA) that contains the items specified in 5 U.S.C. 604(a). A copy of the EA/RIR/FRFA is available from NMFS (see **ADDRESSES**). The need for and objectives of this action are discussed in the preamble to this rule and in more detail in the proposed rule published October 22, 2003 (68 FR 60327). This rule: (1) amends the management of the "other species" CDQ reserve to discontinue allocating this reserve among CDQ reserves; (2) allows NMFS to manage the "other species" CDQ reserve with management measures currently used in the non-CDQ groundfish fishery; (3) eliminates the CDQ non-specific reserve mechanism; and (4) implements an assortment of regulatory revisions affiliated with the revision to the management of the "other species" CDQ reserve and changes to CDQ-related definitions.

NMFS prepared an IRFA to evaluate the impacts of this action on directly regulated small entities in compliance with the requirements of Section 603 of the Regulatory Flexibility Act. The IRFA was described in the classifications section of the proposed rule. The public comment period ended November 6, 2003. No comments related to the economic impact of this action were received.

The small entities that will be directly regulated by this action are the six CDQ groups that represent the 65 western Alaska communities that currently participate in the CDQ Program. This regulation will not impose new recordkeeping or reporting requirements on the regulated small entities.

This action relieves a constraint on CDQ groups to completely harvest their groundfish CDQ target species. NMFS considered, but did not adopt, a status quo alternative to the action because the alternative would not achieve the Council's objective for this action. Three additional alternatives also were identified for this action, but were not carried forward for further analysis. Two of the rejected alternatives encompassed allocative changes to the "other species" category that would have been difficult to accurately calculate to the degree that they would reliably benefit CDQ groups in the future. These rejected alternatives might also have been controversial to other BSAI fishery components due to concerns that such allocative changes could have adverse impacts on the successful prosecution of future non-CDQ fisheries. A third rejected alternative would have been contrary to statutory provisions of the Magnuson-Stevens Act. These alternatives were discussed in further detail in the classification section of the proposed rule.

Small Entity Compliance Guide

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that, for each rule or group of related rules for which an agency is required to prepare a FRFA, the agency shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as "small entity compliance guides." The agency shall explain the actions a small entity is required to take to comply with a rule or group of rules. Small entities are not required to take any additional actions to comply with this action. This final rule constitutes the agency's small entity compliance guide pursuant to Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996. Copies of this final rule are available from NMFS (see ADDRESSES) and at the following web site: *http://www.fakr.noaa.gov/*

List of Subjects in 50 CFR Part 679

Alaska, Fisheries, Recordkeeping and reporting requirements.

Dated: December 9, 2003.

John Oliver,

Deputy Assistant Administrator for Operations, National Marine Fisheries Service.

■ For reasons set out in the preamble, 50 CFR part 679 is amended as follows:

PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

■ 1. The authority citation for part 679 continues to read as follows:

Authority: 16 U.S.C. 773 *et seq.*, 1801 *et seq.*, and 3631 *et seq.*; Title II of Division C, Pub. L. 105–277; Sec. 3027, Pub L. 106–31, 113 Stat. 57; 16 U.S.C. 1540(f).

■ 2. In § 679.2, the definitions for "Community Development Quota," "Community Development Quota Program," "Community Development Quota reserve," and "Prohibited species quota (PSQ)" are removed; the definitions for "CDQ," "CDQ Program," "CDQ reserve," "PSQ," and "PSQ reserve" are added in alphabetical order; and the definitions for "CDQ species" and "PSQ species" are revised to read as follows:

§ 679.2 Definitions.

* * * * *

CDQ means community development quota and is the amount of a CDQ reserve that is allocated to a CDQ group.

* * * * *

CDQ Program means the Western Alaska Community Development Quota Program implemented under subpart C of this part.

* * * * *

CDQ reserve means a percentage of each groundfish TAC apportioned under § 679.20(b)(1)(iii), a percentage of a catch limit for halibut, or a percentage of a guideline harvest level for crab that has been set aside for purposes of the CDQ Program.

CDQ species means any species or species group that is allocated from a CDQ reserve to a CDQ group.

* * * * *

PSQ means prohibited species quota and is the amount of a PSQ reserve that is allocated to a CDQ group.

* * * * *

PSQ reserve means the percentage of a prohibited species catch limit established under § 679.21(e)(1) and (e)(2) that is allocated to the groundfish CDQ program under § 679.21(e)(1)(i) and (e)(2)(ii).

PSQ species means any species or species group that has been allocated from a PSQ reserve to a CDQ group.

* * * * *

■ 3. In § 679.7, paragraph (d)(16) is revised to read as follows:

§ 679.7 Prohibitions.

* * * * *

(d)* * *

(16) Use any groundfish accruing against a CDQ reserve as a basis species for calculating retainable amounts of non-CDQ species under § 679.20.

* * * * *

■ 4. In § 679.31, the introductory paragraph to this section and paragraph (f) are revised to read as follows:

§ 679.31 CDQ Reserves.

Portions of the CDQ and PSQ reserves for each subarea or district may be allocated for the exclusive use of CDQ groups in accordance with CDPs approved by the Governor in consultation with the Council and approved by NMFS. NMFS will allocate no more than 33 percent of each CDQ reserve to any one group with an approved CDP.

* * * * *

(f) *Management of the Groundfish CDQ Reserves*—(1) *Groundfish CDQ reserves allocated among CDQ groups.* (i) Except as limited by paragraph (f)(2) of this section, the groundfish CDQ reserves are apportioned among CDQ groups using percentage allocations approved by NMFS under § 679.30(d).

(ii) If the groundfish harvest specifications required by § 679.20(c) change the species comprising a TAC category or change a TAC category by combining or splitting management areas, then the CDQ percentage allocations approved by NMFS for the original TAC category will apply to any new categories.

(iii) A CDQ group is prohibited by § 679.7(d)(5) from exceeding an annual groundfish CDQ amount allocated to it.

(iv) NMFS may specify limitations or prohibitions to prevent overfishing of any BSAI groundfish species, including measures specific to groundfish CDQ species allocated among CDQ groups (see § 679.20(d)(3)).

(2) *Groundfish CDQ reserves not allocated among CDQ groups.* (i) The "other species" CDQ reserve, or individual species that comprise the "other species" CDQ reserve, will not be allocated among CDQ groups.

(ii) Groundfish CDQ reserves not allocated among CDQ groups will be managed at the CDQ reserve level under general limitations at § 679.20(d).

■ 5. In § 679.32, paragraph (c)(1)(i) is revised to read as follows:

§ 679.32 Groundfish and halibut CDQ catch monitoring.

* * * * *

(c) * * *

(1) *Catcher vessels without an observer.* (i) Operators of catcher vessels less than 60 ft (18.3 m) LOA must retain all groundfish CDQ species, halibut CDQ, and salmon PSQ until they are delivered to a processor that meets the requirements of paragraph (c)(3) or (c)(4) of this section, unless retention of groundfish CDQ species is not authorized under § 679.4, discard of the groundfish CDQ species is required under subpart B of this part, or, in waters within the State of Alaska, discard is required by the State of Alaska.

* * * * *

[FR Doc. 03–30921 Filed 12–15–03; 8:45 am]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 68, No. 241
Tuesday, December 16, 2003

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

SOCIAL SECURITY ADMINISTRATION

20 CFR Part 422

[Regulations No. 22]

RIN 0960–AF87

Evidence Requirements for Assignment of Social Security Numbers (SSNs); Assignment of SSNs to Foreign Academic Students in F–1 Status

AGENCY: Social Security Administration (SSA).

ACTION: Proposed rules.

SUMMARY: We propose to clarify our rules for assigning SSNs to foreign academic students in Bureau of Citizenship and Immigration Services (BCIS, formerly the Immigration and Naturalization Service or INS) classification status F–1 (referred to throughout this preamble as F–1 students). Specifically, we propose to add additional evidentiary requirements for F–1 students who are applying for an SSN. In addition to meeting SSA's requirement to provide evidence of age, identity, legal alien status, and work authorization, F–1 students would also be required to present evidence that employment has been secured before we will assign the F–1 student an SSN. These rules would further enhance the integrity of SSA's enumeration processes for assigning SSNs by reducing the opportunity for fraud through misuse of SSNs.

DATES: To be sure that your comments are considered, we must receive them by February 17, 2004.

ADDRESSES: You may give us your comments by: using our Internet facility (*i.e.*, Social Security Online) at *http://policy.ssa.gov/pnpublic.nsf/LawsRegs* or the Federal eRulemaking Portal: *http://www.regulations.gov*; email to *regulations@ssa.gov*; telefax to (410) 966–2830; or letter to the Commissioner of Social Security, P.O. Box 17703, Baltimore, MD 21235–7703. You may also deliver them to the Office of Regulations, Social Security Administration, 100 Altmeyer Building, 6401 Security Boulevard, Baltimore, MD 21235–6401, between 8 a.m. and 4:30 p.m. on regular business days. Comments are posted on our Internet site, or you may inspect them physically on regular business days by making arrangements with the contact person shown in this preamble.

Electronic Version

The electronic file of this document is available on the date of publication in the **Federal Register** at *http://www.gpoaccess.gov/fr/index.html*. It is also available on the Internet site for SSA (*i.e.*, Social Security Online) at *http://policy.ssa.gov/pnpublic.nsf/LawsRegs*.

FOR FURTHER INFORMATION CONTACT: Robert J. Augustine, Social Insurance Specialist, Office of Regulations, 100 Altmeyer Building, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235–6401, (410) 965–0020, or TTY (410) 966–5609. For information on eligibility or filing for benefits, call our national toll-free numbers, 1–800–772–1213 or TTY 1–800–325–0778, or visit our Internet web site, Social Security Online, at *http://www.socialsecurity.gov*.

SUPPLEMENTARY INFORMATION:

Background

Under section 205(c)(2)(A) of the Social Security Act (the Act), the Commissioner of Social Security is required to "establish and maintain records of the amounts of wages paid to * * * each individual and of the periods in which such wages were paid * * *" In addition, under section 205(c)(2)(B)(i)(I) of the Act, the Commissioner is required to assign Social Security numbers "to the maximum extent practicable * * * to aliens at the time of their lawful admission to the United States either for permanent residence or under other authority of law permitting them to engage in employment in the United States and to other aliens at such time as their status is so changed as to make it lawful for them to engage in such employment."

Current SSA Rules

Our regulations at 20 CFR 422.105 currently state that a nonimmigrant alien whose INS Form I–94, Arrival/Departure Record, does not reflect a classification permitting work must submit a current document issued by INS that verifies authorization to work has been granted.

Our regulations at 20 CFR 422.107(e) currently state that "When a person who is not a U.S. citizen applies for an original social security number or a duplicate or corrected social security number card, he or she is required to submit, as evidence of alien status, a current document issued by the [INS] in accordance with [its] regulations. The document must show that the applicant has been lawfully admitted to the United States, either for permanent residence or under authority of law permitting him or her to work in the United States, or that the applicant's alien status has changed so that it is lawful for him or her to work." If the applicant submits a valid unexpired INS document(s) that shows current authorization to work, we will assign an SSN and issue a card that is valid for work.

Current SSA procedures require an F–1 student who needs an SSN for work to present evidence of age, identity, lawful F–1 alien status, and work authorization. This work authorization can either be from BCIS in the form of an employment authorization document (EAD) or from the F–1 student's school. In the past, when an F–1 student applied for an SSN, we believed that the student had a job or imminent plans to secure a job. However, our recent experience has shown that some F–1 students apply for an SSN even when there is limited or no employment available. F–1 students often inform us that they do not intend to work but need an SSN to obtain goods or services in the community.

Additional evidence requirements for F–1 student SSN applicants are needed because available SSA data suggest that some F–1 students assigned SSNs misuse those SSNs to work illegally in the U.S. (*i.e.*, in work not permitted by their classification under immigration regulations at 8 CFR 274a.12) or engage in other fraudulent activities. (*See* the SSA Office of the Inspector General (OIG) study, "Using Social Security Numbers To Commit Fraud" (A–08–99–42002, May 1999) at *http://www.ssa.gov/oig/ADOBEPDF/A–08–99–42002.pdf*).

Wages have been reported to us for F–1 students who have been engaged in off-campus employment without proper authorization from their schools or BCIS. SSN misuse can impact society in the form of illegal employment in the U.S., fraudulent entitlement to Federal and State benefits and services, and other types of illegal activity such as bank and credit card fraud and identity theft.

In order to strengthen the security of the enumeration process, we propose to require additional evidence from F–1 students before we will assign SSNs to them.

Explanation of Additional Evidentiary Requirements

422.105 Presumption of Authority of Nonimmigrant Alien To Accept Employment

We propose to revise § 422.105 to state that, unless the F–1 student has an employment authorization document issued by BCIS, the F–1 student applicant must provide additional documentation that confirms both that he or she has authorization from the school to engage in employment and has secured authorized employment. (As of March 1, 2003, INS's benefit functions became part of the BCIS in the Department of Homeland Security.) We understand from discussions with BCIS officials that they support our plans to assign SSNs only to those F–1 students who have secured a job. The proposed revision includes a cross-reference to § 422.107(e)(2), where the specific evidence requirements will be explained.

422.107 Evidence Requirements

We propose to revise paragraph (e) of § 422.107 of our regulations by redesignating paragraph (e) as paragraph (e)(1) and adding a new paragraph (e)(2) to specify that if an F–1 student does not have an employment authorization document, the F–1 student must provide documentation of both work authorization and employment before we will assign an SSN to the student. First, the F–1 student would need to provide documentation from the school that he or she will be engaging in authorized employment. Under this clarification of our policy, we would not assign an SSN to the F–1 student unless the student provides a Form I–20, Certificate of Eligibility for Nonimmigrant (F–1) Status, and provides written confirmation from the designated school official (DSO) of (1) the nature of the employment the F–1 student is or will be engaged in and (2) the identification of the employer for whom the F–1 student is or will be working.

Second, we also propose to require that the F–1 student provide us with documentation that he or she is engaged in or has secured employment, *e.g.*, a statement from the F–1 student's employer.

By adding these additional evidentiary requirements, we believe there will be fewer opportunities for abuse of the enumeration process without having any adverse effects on F–1 students who need to work while they are in the U.S. The additional documentation we would require should be readily available.

Clarity of These Regulations

Executive Order 12866, as amended by Executive Order 13258, requires each agency to write all rules in plain language. In addition to your substantive comments on these proposed rules, we invite your comments on how to make these rules easier to understand. For example:

- Have we organized the material to suit your needs?
- Are the requirements in the rules clearly stated?
- Do the rules contain technical language or jargon that is unclear?
- Would a different format (grouping and order of sections, use of headings, paragraphing) make the rules easier to understand?
- Would more (but shorter) sections be better?
- Could we improve clarity by adding tables, lists or diagrams?
- What else could we do to make the rules easier to understand?

Regulatory Procedures

Executive Order 12866, as Amended by Executive Order 13258

The Office of Management and Budget (OMB) has reviewed these proposed rules in accordance with Executive Order 12866, as amended by Executive Order 13258.

Regulatory Flexibility Act

We certify that these proposed rules will not have a significant economic impact on a substantial number of small entities because they would affect only individuals. Thus, a regulatory flexibility analysis as provided in the Regulatory Flexibility Act, as amended, is not required.

Federalism

We have reviewed these proposed rules under the threshold criteria of Executive Order 13132 and have determined that they would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. There may be some minimal impact on those States whose academic institutions have not developed an alternative method in their record-keeping systems for identifying F–1 students not eligible for SSNs. There may also be some minimal impact on States whose academic institutions may be an F–1 student's employer.

Paperwork Reduction Act

These proposed rules contain reporting requirements as shown in the table below. Where the public reporting burden is accounted for in Information Collection Requests for the various forms that the public uses to submit the information to SSA, a 1-hour placeholder burden is being assigned to the specific reporting requirement(s) contained in these rules; we are seeking clearance of these burdens because they were not considered during the clearance of the forms.

CFR citation	Number of respondents	Frequency of response	Average burden per response	Estimated annual burden
422.105(a); 422.107	1	1	1	1
422.105(b)	125,000	1	1 minute	2,083 hours

An Information Collection Request has been submitted to OMB for clearance. We are soliciting comments on the burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility and clarity; and on ways to minimize the burden on respondents, including the use of automated collection techniques or other forms of information technology. Comments should be submitted to the Office of Management and Budget at the following fax number and to the Social Security Administration at the following address or fax number:

Office of Management and Budget, Attn: Desk Officer for SSA, Fax Number: 202–395–6974.

Social Security Administration, Attn: SSA Reports Clearance Officer, 1338 Annex Building, 6401 Security Boulevard, Baltimore, MD 21235–6401, Fax Number: 410–965–6400.

Comments can be received for between 30 and 60 days after publication of this notice and will be most useful if received by SSA within 30 days of publication.

(Catalog of Federal Domestic Assistance Program Nos. 96.001, Social Security—Disability Insurance; 96.002 Social Security—Retirement Insurance; 96.004, Social Security—Survivors Insurance)

List of Subjects in 20 CFR Part 422

Administrative practice and procedure, Organization and functions (Government agencies), Reporting and recordkeeping requirements, Social Security.

Dated: November 13, 2003.

Jo Anne B. Barnhart,

Commissioner of Social Security.

For the reasons set forth in the preamble, we propose to amend part 422, subpart B, chapter III of title 20, Code of Federal Regulations as follows:

PART 422—ORGANIZATION AND PROCEDURES

Subpart B—[Amended]

1. The authority citation for subpart B of part 422 continues to read as follows:

Authority: Secs. 205, 232, 702(a)(5), 1131, and 1143 of the Social Security Act (42 U.S.C. 405, 432, 902(a)(5), 1320b–1, and 1320b–13).

2. Section 422.105 is revised to read as follows:

§ 422.105 Presumption of authority of nonimmigrant alien to engage in employment.

(a) *General rule.* Except as provided in paragraph (b) of this section, if you are a nonimmigrant alien, we will presume that you have permission to engage in employment if you present a Form I–94 issued by the Bureau of Citizenship and Immigration Services that reflects a classification permitting work. (*See* 8 CFR 274a.12 for Form I–94 classifications.) If you have not been issued a Form I–94, or if your Form I–94 does not reflect a classification permitting work, you must submit a current document authorized by the Bureau of Citizenship and Immigration Services that verifies authorization to work has been granted, *e.g.*, an employment authorization document, to enable SSA to issue an SSN card that is valid for work.

(b) *Exception to presumption for foreign academic students in Bureau of Citizenship and Immigration Services classification status F–1.* If you are an F–1 student and do not have a separate Bureau of Citizenship and Immigration Services employment authorization document as described in paragraph (a) of this section, we will not presume you have authority to engage in employment without additional evidence. Before we will assign an SSN to you that is valid for work, you must give us proof (as explained in § 422.107(e)(2)) that:

(1) You have authorization from your school to engage in employment, and

(2) You are engaging in, or have secured, employment.

3. Section 422.107 is amended by redesignating paragraph (e) as paragraph (e)(1), adding a heading for paragraph (e)(1), and adding a new paragraph (e)(2) to read as follows:

§ 422.107 Evidence requirements.

* * * * *

(e) *Evidence of alien status.* (1) *General evidence rules.* * * *

(2) *Additional evidence rules for F–1 students.* (i) *Evidence from your designated school official.* If you are an F–1 student, you must give us documentation from your designated school official that you are authorized to engage in employment. You must submit your Form I–20, the Certificate of Eligibility for Nonimmigrant (F–1) Status. You must also submit documentation from your designated school official that includes:

(A) The nature of the employment you are or will be engaged in, and

(B) The identification of the employer for whom you are or will be working.

(ii) *Evidence of your employment.* You must also provide us with documentation that you are engaging in, or have secured employment; *e.g.*, a statement from your employer.

* * * * *

[FR Doc. 03–30965 Filed 12–15–03; 8:45 am]

BILLING CODE 4191–02–P

JAMES MADISON MEMORIAL FELLOWSHIP FOUNDATION

45 CFR Part 2400

Fellowship Program Requirements

AGENCY: James Madison Fellowship Foundation.

ACTION: Notice of proposed rulemaking.

SUMMARY: The following are proposed amendments to the regulations governing the annual competition for James Madison Fellowships and the obligations of James Madison Fellows. These amendments would update and replace certain provisions of the Foundation's existing regulations as implemented by the James Madison Memorial Fellowship Act of 1986. These revised regulations would govern the qualifications and applications of candidates for fellowships; the selection of Fellows by the Foundation; the graduate programs Fellows must pursue; the terms and conditions attached to awards; the Foundation's annual Summer Institute on the Constitution; and related requirements and expectations regarding fellowships.

DATES: Comments must be submitted on or before February 17, 2004.

ADDRESSES: Address all comments about these proposed regulations to James Madison Memorial Fellowship Foundation, 2000 K Street, NW., Suite 303, Washington, DC 20006–1809.

FOR FURTHER INFORMATION CONTACT: Lewis F. Larsen. Telephone: (202) 653–8700.

SUPPLEMENTARY INFORMATION: The reason for the proposed changes to the Foundation's regulations comes as a result of the Foundation's desire to clarify several of the rules and regulations that James Madison Fellows must observe when accepting their fellowships. Although many of the changes are minor insertions of words and punctuation, this document specifically expands the definition section to include further detailed definitions on Credit Hour Equivalent, Incomplete, Repayment, Satisfactory Progress, Stipend, Teaching Obligation, Termination and Withdrawal. The Foundation now encourages James Madison Fellows to choose a graduate program which does not include the writing of a thesis. Graduate programs for which Fellows may apply have been broadened to included political science. Finally, a section entitled "Teaching Obligation" was added to further clarify the obligation to teach, required by the Foundation once each fellow has earned a master's degree.

Regulatory Flexibility Act Certification

The President certifies that these regulations would not have a significant economic impact on a substantial number of small entities.

These regulations apply to individuals eligible to apply for fellowship assistance. Individuals are not included in the definition of "small entities" in the Regulatory Flexibility Act.

Paperwork Reduction Act of 1995

These proposed regulations do not contain any information collection requirements.

List of Subjects in 45 CFR Part 2400

Education, Fellowships.

Dated: December 10, 2003.

Paul A. Yost, Jr.,

President.

For the reasons set forth in the preamble and under authority of 20 U.S.C. 4501 *et seq.*, Chapter XXIV, Title 45 of the Code of Federal Regulations is proposed to be amended by revising part 2400 as follows:

PART 2400—FELLOWSHIP PROGRAM REQUIREMENTS

1. The authority citation for part 2400 is revised to read as follows:

Authority: 20 U.S.C. 4501 *et seq.*, unless otherwise noted.

2. Section 2400.3 is amended by revising paragraphs (a)(8) and (b)(8) to read as follows:

§ 2400.3 Eligibility.

* * * * *

(a) * * *

(8) Sign agreements that, after completing the education for which the fellowship is awarded, they will teach American history, American government, social studies, or political science full time in secondary schools for a period of not less than one year for each full year of study for which assistance was received, preferably in the State listed as their legal residence at the time of their fellowship award. For the purposes of this provision, a full academic year of study is considered by the Foundation to be 18 credit hours or 27 quarter hours. Fellows' teaching obligations will be figured at full academic years of study; and when Fellows have studies for partial academic years, those years will be rounded upward to the nearest one-half year to determine Fellows' total teaching obligations.

(b) * * *

(8) Sign an agreement that, after completing the education for which the fellowship is awarded, they will teach American history, American government, social studies, or political science full time in secondary schools for a period of not less than one year for each full academic year of study for which assistance was received, preferably in the State listed as their legal residence at the time of their fellowship award. Fellows' teaching obligations will be figured at full academic years of study; and when Fellows have studies for partial academic years, those years will be rounded upward to the nearest one-half year to determine Fellows' total teaching obligations.

3. Section 2400.4 is amended by revising the definitions of "*Full-time study*," "*State*," and "*Stipend*," to read as follows:

§ 2400.4 Definitions.

* * * * *

Full-time study means study for an enrolled student who is carrying at least 9 credit hours a semester or its equivalent.

* * * * *

State means each of the 50 states, the District of Columbia, the Commonwealth of Puerto Rico, and, considered as a single entity, Guam, the United States Virgin Islands, American Samoa, and the Commonwealth of the Northern Mariana Islands.

Stipend means the amount paid by the Foundation to a Fellow or on his or her behalf for the allowable costs of graduate study which have been approved under the fellowship.

* * * * *

4. Section 2400.20 is revised to read as follows:

§ 2400.20 Preparation of application.

Applications, on forms mailed directly by the Foundation to those who request applications or downloaded from the Foundation's website, must be completed by all fellowship candidates in order that they be considered for an award.

5. Section 2400.30 is amended by adding a new paragraph (g) to read as follows:

§ 2400.30 Selection criteria.

* * * * *

(g) Content of the 600-word essay.

§ 2400.31 [Amended]

6. In § 2400.31, paragraph (b) is amended by removing the word "legally" and adding, in its place, the word "legal"; and paragraph (c) is amended by removing the words "An alternate will receive" and adding, in their place, "An alternate may, at the Foundation's discretion, receive".

§ 2400.42 [Amended]

7. In § 2400.42, paragraph (b) is amended by removing the word "constitution" and adding, in its place, the word "Constitution".

§ 2400.43 [Amended]

8. In § 2400.43, paragraph (c) is amended by removing the words "strongly encourages" and adding, in their place, the words "in general, requires".

9. Section 2400.44 is amended by revising paragraph (a) to read as follows:

§ 2400.44 Commencement of graduate study.

(a) Fellows may commence study under their fellowships as early as the summer following the announcement of their award. Fellows are normally expected to commence study under their fellowships in the fall term of the academic year following the date on which their award is announced. However, as indicated in § 2400.61, they may seek to postpone the commencement of fellowship study for up to one year under extenuating circumstances.

* * * * *

§ 2400.46 [Amended]

10. Section 2400.46 is amended by removing the word "five" and adding, in its place, the word "three".

11. Section 2400.47 is revised to read as follows:

§ 2400.47 Summer Institute's relationship to fellowship.

Each year, the Foundation normally offers during July a four-week graduate-level Institute on the principles, framing, ratification, and implementation of the United States Constitution at an accredited university in the Washington, DC area. The Institute is an integral part of each fellowship.

12. Section 2400.48 is revised to read as follows:

§ 2400.48 Fellows' participation in the Summer Institute.

Each fellow is required as part of his or her fellowship to attend the Institute (if it is offered), normally during the summer following the Fellow's commencement of graduate study under a fellowship.

§ 2400.50 [Amended]

13. Section 2400.50 is amended by removing "For their participation in the Institute, Fellows are paid" and adding, in its place, "At the Foundation's discretion, Fellows may be paid".

§ 2400.53 [Amended]

14. Section 2400.53 is amended by adding a new sentence at the end to read "A waiver of the time limit may be given for full-time students who require more than 36 credit hours or 54 quarter hours to complete their approved degree."

15. Section 2400.55 is amended by revising paragraphs (f) and (i) to read as follows:

§ 2400.55 Certification for stipend.

* * * * *

(f) The amount and nature of income from any other grants or awards;

* * * * *

(i) A full Plan of Study over the duration of the fellowship, including information on the contents of required constitutional courses. Senior Fellows must provide evidence of their continued full-time employment as teachers in grades 7–12.

16. Section 2400.56 is revised to read as follows:

§ 2400.56 Payment of stipend.

Payment for tuition, required fees, books, room, and board subject to the limitations in §§ 2400.52 through 2400.55 and §§ 2400.59 through 2400.60 will be paid via Electronic Funds Transfer to each Fellow at the beginning of each term of enrollment and upon the Fellow's submission of a completed Payment Request Form which includes the current University bulletin of cost information.

§ 2400.58 [Amended]

17. In § 2400.58, paragraph (a) is amended by removing the words "fewer than" and adding, in their place, the words "at least"; and paragraph (b) is amended by removing the words "the Foundation will seek to recover" and adding, in their place, the words "the Fellow must repay".

§ 2400.60 [Amended]

18. In § 2400.60, paragraph (a) is amended by removing the words "unless they are credited to the minimum number of credits required for the degree" at the end of the paragraph.

§ 2400.61 [Amended]

19. Section 2400.61 is amended by adding a new sentence at the end to read "All postponements are given at the Foundation's discretion and will normally not extend for more than one year."

20. Section 2400.63 is revised to read as follows:

§ 2400.63 Excluded graduate study.

James Madison Fellowships do not provide support for study toward doctoral degrees, for the degree of master of arts in public affairs or public administration. The Foundation may at its discretion, upon request of the Fellow, provide tuition only assistance toward teacher certification.

[FR Doc. 03–30945 Filed 12–15–03; 8:45 am]
BILLING CODE 6820–05–P

Notices

Federal Register
Vol. 68, No. 241
Tuesday, December 16, 2003

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Doc. No. FV04–901–1NC]

Notice of Request for Extension and Revision of a Currently Approved Information Collection

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), this notice announces the Agricultural Marketing Service's (AMS) intention to request an extension for and revision to a currently approved generic information collection for vegetables and specialty crop marketing order programs.

DATES: Comments on this notice must be received by February 17, 2004.

ADDITIONAL INFORMATION OR COMMENTS: Contact Valerie L. Emmer-Scott, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, room 2525–S., Washington, DC 20090–6456; Tel: (202) 205–2829, Fax: (202) 720–5698, or E-mail: *moabdocket_clerk@usda.gov.*

Small businesses may request information on this notice by contacting Jay Guerber, Regulatory Fairness Representative, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, room 2525–S, Washington, DC 20090–6456; telephone (202) 720–2491, Fax: (202) 720–5698, or E-mail: *Jay.Gueber@usda.gov.*

SUPPLEMENTARY INFORMATION:

Title: Vegetable and Specialty Crop Marketing Orders.

OMB Number: 0581–0178.

Expiration Date of Approval: April 30, 2004.

Type of Request: Extension and revision of a currently approved information collection.

Abstract: Marketing order programs provide an opportunity for producers of fresh fruit, vegetables, and specialty crops, in specified production areas, to work together to solve marketing problems that cannot be solved individually. Order regulations help ensure adequate supplies of high quality products for consumers and adequate returns to producers. Under the Agricultural Marketing Agreement Act of 1937 (Act), as amended (7 U.S.C. 601–674), industries enter into marketing order programs. The Secretary of Agriculture (Secretary) is authorized to oversee the order operations and issue regulations recommended by a committee or board of representatives from each commodity industry.

The information collection requirements in this request are essential to carry out the intent of the Act, to provide the respondents the type of service they request, and to administer the marketing order programs. Under the Act, orders may authorize the following: production and marketing research including paid advertising, volume regulations, reserves including pools and producer allotments, container regulations, and quality control. Assessments are levied on handlers regulated under the marketing orders. Also pursuant to section 8e of the Act, importers of raisins, dates, and dried prunes are required to submit certain information.

Several forms are required to be filed by USDA to enable its administration of each program. These include forms covering the section process for industry members to serve on a marketing order's committee or board and ballots used in referenda to amend or continue marketing order programs.

Under Federal marketing orders, producers and handlers are nominated by their peers to serve as representatives on a committee or board which administers each program. Nominees must provide information on their qualifications to serve on the committee or board. Nominees are selected by the Secretary. Formal rulemaking amendments must be approved in referenda conducted by USDA and the Secretary. For the purposes of this action, ballots are considered information collections and are subject to the Paperwork Reduction Act. If an order is amended, handlers are asked to sign an agreement indicating their willingness to abide by the provisions of the amended order.

Some forms are required to be filed with the committee or board. The orders and their rules and regulations authorize the respective commodities' committees and boards, the agencies responsible for local administration of the orders, to require handlers and producers to submit certain information. Much of the information is compiled in aggregate and provided to the respective industries to assist in marketing decisions. The committees and boards have developed forms as a means for persons to file required information relating to supplies, shipments, and dispositions of their respective commodities, and other information needed to effectively carry out the purpose of the Act and their respective orders, and these forms are utilized accordingly.

OMB Control No. 0581–0071, Almonds Grown in California, Marketing Order No. 981, will also be merged into this information collection.

The forms covered under this information collection require the minimum information necessary to effectively carry out the requirements of the orders, and their use is necessary to fulfill the intent of the Act as expressed in the orders, and the rules and regulations issued under the orders.

The information collected is used only by authorized employees of the committees and boards and authorized representatives of the USDA, including AMS, Fruit and Vegetable Programs' regional and headquarter's staff. Authorized committee/board employees are the primary users of the information and AMS is the secondary user.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 0.086 hours per response.

Respondents: Producers, handlers, processors and importers.

Estimated Number of Respondents: 23,753.

Estimated Number of Responses: 163,709.

Estimated Number of Responses per Respondent: 7.195

Estimated Total Annual Burden on Respondents: 14,032 hours.

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments should reference this docket number and the appropriate marketing order, and be mailed to the Docket Clerk, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, room 2525–S, Washington, DC 20250–0237; Fax (202) 720–8938; or E-mail: *moab.docketclerk@usda.gov*. Comments should also reference the date and page number of this issue of the **Federal Register**. All comments received will be available for public inspection in the Office of the Docket Clerk during regular USDA business hours, or can be viewed at: *http://www.ams.usda.gov/fv/moab.html*.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will become a matter of public record.

Dated: December 9, 2003.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 03–30997 Filed 12–15–03; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Docket Number FV–04–304]

United States Standards for Grades of Mangos

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice.

SUMMARY: The Agricultural Marketing Service (AMS), prior to undertaking research and other work associated with creating an official grade standard, is soliciting comments on the petition to create the United States Standards for Grades of Mangos. At a recent meeting of the Fruit and Vegetable Industry Advisory Committee, AMS was asked to review all the fresh fruit and vegetable grade standards for usefulness in serving the industry and identify commodities that may be better served if a grade standard was developed. As a result, AMS has noted that the industry is interested in the creation of U.S. Standards for Grades of Mangos.

DATES: Comments must be received by February 17, 2004.

ADDRESSES: Interested persons are invited to submit written comments to the Standardization Section, Fresh Products Branch, Fruit and Vegetable Programs, Agricultural Marketing Service, U.S. Department of Agriculture, 1400 Independence Ave., SW., Room 1661, South Building, Stop 0240, Washington, DC 20250–0240, fax (202) 720–8871, e-mail *FPB.DocketClerk@usda.gov*. Comments should make reference to the dates and page number of this issue of the **Federal Register** and will be made available for public inspection in the above office during regular business hours.

FOR FURTHER INFORMATION CONTACT: David L. Priester, at the above address or call (202) 720–2185, e-mail *David.Priester@usda.gov*.

SUPPLEMENTARY INFORMATION:

At a recent meeting of the Fruit and Vegetable Industry Advisory Committee, AMS was asked to review all the fresh fruit and vegetable grade standards for usefulness in serving the industry and identify commodities that may be better served if a grade standard was developed. During the standards review, AMS noted that several industry members requested AMS develop a grade standard for mangos. In conjunction with industry interest in the development of a grade standard for mangos, AMS has also identified mangos as a possible commodity for the development of a grade standard. This standard could contain sections pertaining to grades, size classifications, color requirements, tolerances, application of tolerances, pack requirements, definitions, and other relevant and necessary provisions. Prior to undertaking detailed work to develop a proposed standard, AMS is soliciting comments on the possible development of U.S. standards for grades of mangos and the probable impact on growers, processors, and distributors.

This notice provides for a 60-day comment period for interested parties to comment on the development of the standards. Should AMS conclude that there is a need for the development of the standards, a proposed standard will be published in the **Federal Register** with a request for comments in accordance with 7 CFR part 36.

Authority: 7 U.S.C. 1621–1627.

Dated: December 9, 2003.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 03–30998 Filed 12–15–03; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Forest Service

18 Fire Recovery Project, Deschutes National Forest, Deschutes County, OR

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The USDA, Forest Service, will prepare an environmental impact statement (EIS) on a proposed action to salvage dead and severely damaged trees, and plant trees and other vegetation to assist in the restoration of the area burned in the 18 Fire on the Bend/Fort Rock Ranger District of the Deschutes National Forest. The 18 Fire, located about 3.5 miles southeast of Bend, Oregon, burned approximately 3,810 acres, outside of the range of the northern spotted owl, entirely on National Forest System lands. The alternatives will include the proposed action, no action, and additional alternatives that respond to issues generated during the scoping process. The agency will give notice of the full environmental analysis and decision making process so interested and affected people may participate and contribute to the final decision.

DATES: Comments concerning the scope of the analysis must be received by January 16, 2004.

ADDRESSES: Send written comments to Walter C. Schloer, Jr., District Ranger, Bend/Fort Rock Ranger District, 1230 NE. Third Street, Suite 262A, Bend, Oregon 97701.

FOR FURTHER INFORMATION CONTACT: Mark Macfarlane, Environmental Coordinator, 1230 NE. Third Street, Suite 262A, Bend, Oregon 97701. Phone: 541–383–4769. E-mail: *mmacfarlane@fs.fed.us*.

SUPPLEMENTARY INFORMATION: *Purpose and Need.* An estimated 76 percent of the fire occurred within the Deer Habitat Management Area of the Deschutes National Forest Land and Resource Management Plan (Forest Plan). The remaining portion of the fire burned within the General Forest (23 percent) and Scenic Views (1 percent) Management Areas. An estimated 2,500 acres burned at a moderate to high intensity with tree mortality of between 75 and 100 percent.

Timber salvage is needed to recover economic value and to provide funds to offset the costs of reforestation and restoration is an important emphasis of these management areas. Adjacent seed sources are no longer available in many areas, particularly within the interior areas of the fire. Based on shrub response within adjacent wildfires, interior areas with high tree mortality would require reforestation by planting ponderosa pine. Planting would establish a ponderosa pine forest that is desirable for long-term objectives such as hiding cover for big game and restoration of habitat for forest dependent species. Lowering fuel loadings to a level that reduces the likelihood of a high severity fire in regenerated stands would promote the long-term survival and growth of new conifers. A fire in heavy surface fuels could increase the duration of elevated temperatures during a fire event to levels capable of altering soil properties and affecting site productivity.

Proposed Action This action includes timber salvage and fuels reduction on approximately 2,030 acres. Fuels reduction would consist of whole tree removal. Salvage is only proposed in areas that experienced more than 75 percent mortality. An estimated 4 miles of temporary roads would be needed to remove the salvaged material. Ponderosa pine would be planted on 2,400 acres, including 2,030 acres of salvaged land.

Scoping. Public participation will be sought at several points during the analysis, including listing of this project in the winter 2003 and subsequent issues of the Central Oregon Schedule of Projects and on the Deschutes National Forest website. Agencies, organizations, tribes, and individuals who have indicated their interest would be contacted.

Issues and Alternatives. Preliminary issues identified include the potential effect of the proposed action on: soil productivity, snag and down wood habitat, and noxious weeds. A No Action alternative will be analyzed in the EIS. Other alternatives would result from the scoping process and refined issues.

Comment. Public comments about this proposal are requested in order to assist in identifying issues, determine how to best manage the resources, and to focus the analysis. Comments received to this notice, including names and addresses of those who comment, will be considered part of the public record on this proposed action and will be available for public inspection. Comments submitted anonymously will be accepted and considered; however, those who submit anonymous comments will not have standing to appeal the subsequent decisions under 36 CFR parts 215 and 217. Additionally, pursuant to 7 CFR 1.27(d), any person may request the agency to withhold a submission from the public record by showing how the Freedom of Information Act (FOIA) permits such confidentiality. Persons requesting such confidentiality should be aware that, under FOIA, confidentiality may be granted in only very limited circumstances, such as to protect trade secrets. The Forest Service will inform the requester of the agency's decision regarding the request for confidentiality, and where the request is denied, the agency will return the submission and notify the requester that the comments may be resubmitted with or without name and address within a specified number of days.

A draft EIS will be filed with the Environmental Protection Agency (EPA) and available for public review by April 2004. The comment period on the draft EIS will be 45 days from the date EPA publishes the Notice of Availability in the **Federal Register**. The final EIS is scheduled to be available July 2004.

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court ruling related to public participation in the environmental review process. First, reviewers of a draft EIS must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions (*Vermont Yankee Nuclear Power Corp. v. NRDC*, 435 U.S. 519, 553 (1978)). Also, environmental objections that could be raised at the draft EIS stage but that are not raised until after completion of the final EIS may be waived or dismissed by the courts (*City of Angoon v. Hodel*, 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc. v. Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980)). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final EIS.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft EIS should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft EIS or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions on the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

In the final EIS, the Forest Service is required to respond to substantive comments received during the comment period for the draft EIS. The Forest Service is the lead agency and the responsible official is the Forest Supervisor, Deschutes National Forest. The responsible official will decide where, and whether or not to salvage timber, reduce fuels, and reforest the area. The responsible official will also decide how to mitigate impacts of these actions and will determine when and how monitoring of effects will take place. The 18 Fire Recovery Project decision and the reasons for the decision will be documented in the record of decision. That decision will be subject to Forest Service Appeal Regulations (36 CFR Part 215).

Dated: December 5, 2003.

Kevin Martin,

Deputy Forest Supervisor.

[FR Doc. 03–30953 Filed 12–15–03; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service, USDA

Notice of Modoc County RAC Meetings

SUMMARY: Pursuant to the authorities in the Federal Advisory Committees Act (Public Law 92–463) and under the Secure Rural Schools and Community Self-Determination Act of 2000 (Public Law 106–393), the Modoc National Forest's Modoc County Resource Advisory Committee will meet Monday January 5, 2004 from 6 to 8 p.m. in Alturas, California. The meeting is open to the public.

SUPPLEMENTARY INFORMATION: Agenda topics for the meeting include approval of the November 3, 2003 minutes, quarterly review of projects approved, consideration of a modification to the Sugar Hill project, and election of new officers. The meeting will be held at Modoc National Forest Office, Conference Room, 800 West 12th St., Alturas, California on Monday, January 3, 2004 from 6 to 8 p.m. Time will be

set aside for public comments at the beginning of the meeting.

FOR FURTHER INFORMATION CONTACT: Forest Supervisor Stan Sylva, at (530) 233–8700; or Public Affairs Officer Nancy Gardner at (530) 233–8713.

Stanley G. Sylva,

Forest Supervisor.

[FR Doc. 03–30993 Filed 12–15–03; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

RIN 0596–AB90

Forest Transportation System Analysis; Revisions to Road Management Policy

AGENCY: Forest Service, USDA.

ACTION: Notice of issuance of final agency directive.

SUMMARY: The Forest Service is issuing a final directive that incorporates direction previously issued in the Forest Service directive system as Interim Directive (ID) 7710–2001–3 and ID 7710–2001–1, with minor clarifications. This final directive provides internal administrative direction to guide Forest Service employees in the improvement of the analysis of and decisionmaking about the forest transportation system. The final directive is issued to the Forest Service Manual (FSM) Title 7700—Engineering, Chapter 7710—Transportation Atlas, Records, and Analysis, as Amendment 7700–2003–2.

EFFECTIVE DATE: The final directive is effective December 16, 2003.

ADDRESSES: The final directive, which includes a digest of the summary of changes and the revised directive text in its entirety, is available electronically via the World Wide Web/Internet at *http://www.fs.fed.us/im/directives/fsm/7710.* Single paper copies of the directive also are available by contacting the USDA Forest Service, Engineering Staff (Mail Stop 1101), 1400 Independence Avenue, SW., Washington, DC 20250–1101.

FOR FURTHER INFORMATION CONTACT: Deborah Beighley or Nelson Hernandez, Engineering Staff, Forest Service, at (703) 605–4617 and (703) 605–4613, respectively.

SUPPLEMENTARY INFORMATION:

On January 12, 2001, the Forest Service concurrently adopted revised final regulations at 36 CFR part 212 (66 FR 3206) and revised agency directives in Forest Service Manual (FSM) Chapter 7700—Zero Code and Chapter 7710—Transportation Atlas, Records, and Analysis (66 FR 3219) to guide transportation planning, analysis, and management, especially road management on National Forest System lands. These regulations and directives together comprise what is referred to as the Forest Service Road Management Strategy.

The final rule at 36 CFR part 212 directs the Responsible Official of each National Forest, Grassland, or other unit of the National Forest System to perform a comprehensive analysis of the road system within the unit and to document the overall forest transportation system in a transportation atlas.

The directive at FSM Chapter 7710 (Amendment 7700–2001–3) established standards for creation of the road atlas and for determining the scope and scale of roads analyses needed to inform road management decisions; that is, road construction, reconstruction, and decommissioning. Additionally, this revision of FSM Chapter 7710 included interim requirements that, rather than addressing the transportation atlas, record, or analysis, imposed a significant restriction on road construction or reconstruction in inventoried roadless areas and contiguous unroaded areas until a forest-scale roads analysis is completed and incorporated into the Forest plan.

Upon adoption of the road management final rule and directives in January 2001, the Department and the agency reviewed those documents to determine if there were impediments to implementation. These reviews led the agency to initiate several Interim Directives (IDs).

The first was ID 7710–2001–1, issued May 31, 2001 (66 FR 44590), which encouraged reliance on local expertise and authority over forest-level issues as much as possible. The next two IDs (7710–2001–2 and 2400–2001–3) issued July 27, 2001 (66 FR 44111), implemented the Chief's June 7, 2001, announcement to manage and protect inventoried roadless areas as an important component of the National Forest System and to reserve the authority to make decisions, except in specific circumstances, regarding road management activities and timber harvesting in those areas. In a letter to Regional Foresters dated June 12, 2001, the Deputy Chief for National Forest System, noting the Chief's June 7, announcement, asked Regional Foresters and Forest Supervisors to review the road management policy to identify any provisions that they believed should be revised.

Further review of the road management policy resulted in the issuance of two new IDs (7710–2001–3 and 1920–2001–1) issued December 14, 2001 (66 FR 65796), which separated interim requirements related to road construction and reconstruction in inventoried roadless areas from the roads analysis direction in FSM Chapter 7710 and relocated the modified interim requirements to FSM Chapter 1920—Land and Resource Management Planning.

Over 72,000 responses in the form of letters, faxes, and e-mail messages were received on the three different **Federal Register** notices regarding the five IDs concerning the management of the forest transportation system analysis and roadless area protection. These comments came from private citizens, elected officials, and from groups and individuals representing businesses, private organizations, and Federal agencies. Responses consisted of over 9,500 original responses and over 62,500 form letters.

Public comment on the five IDs addressed a wide range of topics, many of which were directed at management of roadless areas and issues associated with the ID 1920–2001–1 to FSM Chapter 1920. Many people supported the IDs to FSM Chapter 7710, which provided for better inventory, analysis, and management of the Forest Service roads system, and separated direction for managing roads from direction on managing National Forest System land. Some respondents requested that the Forest Service revise the ID to FSM Chapter 7710 to clarify the definition of a road and the need for and content of a roads analysis.

This final directive to FSM 7710 represents the culmination of the agency's internal and public reviews of the practices concerning management of the forest transportation system. The agency has decided to incorporate the current ID direction into Amendment 7700–2003–2 to FSM 7710, with some minor clarifications. Comments regarding ID 1920–2001–1 to FSM Chapter 1920 on roadless area management will be addressed when the Amendment to that chapter is finalized.

Dated: December 8, 2003.

Dale N. Bosworth,

Chief.

[FR Doc. 03–30871 Filed 12–15–03; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A-583–008]

Circular Welded Carbon Steel Pipe and Tubes From Taiwan

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Extension of Time Limits.

SUMMARY: The Department of Commerce (the Department) is extending the time limits for the preliminary results of the 2002 - 2003 administrative review of the antidumping duty order on circular welded carbon steel pipe and tubes from Taiwan. This review covers one manufacturer/exporter of the subject merchandise to the United States, Yieh Hsing Enterprise Co., Ltd. (Yieh Hsing), and the period May 1, 2002 through April 30, 2003.

EFFECTIVE DATE: December 16, 2003.

FOR FURTHER INFORMATION CONTACT: Robert M. James at (202) 482–0649, AD/CVD Enforcement Office Eight, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background:

On July 1, 2003, in response to a request from petitioners, Allied Tube & Conduit Corporation, IPSCO Tubulars, Inc., and Wheatland Tube Company, the Department published in the **Federal Register** our notice of initiation of this administrative review. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 68 Fed. Reg. at 39,055. Pursuant to the time limits for administrative reviews established in section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Tariff Act), the current deadlines for this review are January 31, 2004, for the preliminary results and May 30, 2004, for the final results.

Extension of Time Limits:

Section 751(a)(3)(A) of the Tariff Act and 351.213(h) of the Department's regulations require the Department to issue the preliminary results of an antidumping administrative review within 245 days after the last day of the month in which occurs the anniversary date of the publication of the order. These same sections, however, provide that if it is not practicable to complete the review within those deadlines, the Department may extend the 245-day period to 365 days. We have determined it is not practicable for the Department to complete this review within the normal statutory time limit due to a number of significant case issues. These include, *inter alia*,: the sale of Yieh Hsing's pipe making facilities in their entirety during this period of review to Yieh Phui, an "affiliated" (Yieh Hsing's characterization) company; the unknown nature of any affiliations between Yieh Hsing and other entities in Taiwan engaged in the steel- or pipe-making industry, such as Yieh United Steel Company; the extent, if any, to which affiliated companies supplied hot-rolled feed stock or other raw materials to Yieh Hsing's pipe mill; and a pending request for a changed circumstances administrative review to establish Yieh Phui's entitlement to Yieh Hsing's cash deposit rate.

Because it is not practicable to complete this review within the normal statutory time limit, the Department is extending the time limits for completion of the preliminary results until May 30, 2004, in accordance with section 751(a)(3)(A) of the Tariff Act and 351.213(h)(2) of the Department's regulations. The deadline for the final results of this review will continue to be 120 days after publication of the preliminary results.

This extension is in accordance with section 751(a)(3)(A) of the Tariff Act of 1930, as amended (19 U.S.C. 1675(a)(3)(A)).

Dated: December 2, 2003.

Barbara E. Tillman,

Acting Deputy Assistant Secretary for Import Administration, Group III.

[FR Doc. 03–31019 Filed 12–15–03; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A-602–805, A-484–802, A-419–802, A-588–864, A-791–818]

Notice of Postponement of Preliminary Antidumping Duty Determinations: Electrolytic Manganese Dioxide from Australia, Greece, Ireland, Japan, and South Africa.

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On August 20, 2003, the Department of Commerce (the Department) initiated these antidumping duty investigations of Electrolytic Manganese Dioxide from Australia, Greece, Ireland, Japan, and South Africa, (68 FR 51551, dated August 27, 2003). The notice of initiation stated that the Department would issue preliminary determinations no later than January 7, 2004, 140 days after the date of initiation. *See* 68 FR 51551. The Department is now postponing the preliminary determinations in these antidumping duty investigations from January 7, 2004 until no later than February 26, 2004. These postponements are made pursuant to section 733(c)(1)(A) of the Tariff Act of 1930, as amended.

EFFECTIVE DATE: December 16, 2003.

FOR FURTHER INFORMATION CONTACT: Joe Welton, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–0165.

Postponement of Preliminary Determinations

Pursuant to section 733(b)(1)(A) of the Act, the Department shall make a preliminary determination in an antidumping duty investigation within 140 days after the date on which the Department initiates the investigation. Section 733 (c)(1)(A) of the Act further provides, however, that the Department may extend the 140-day period to 190 days if the petitioner makes a timely request for an extension. On November 14, 2003 and November 26, 2003, Kerr-McGee Chemical, LLC ("petitioner") made timely requests pursuant to 19 CFR 351.205(e) for 30-day and 20-day postponements, respectively, for a total of 50 days, pursuant to section 733(c)(1)(A) of the Act. Therefore, in accordance with petitioner's requests for postponements, the Department is postponing the preliminary determinations in these investigations for 50 days. These preliminary determinations will now be due no later than February 26, 2004. Unless extended, the deadline for the final determinations will continue to be 75 days after the date of the preliminary determinations.

This notice is issued and published pursuant to section 733(c)(2) of the Act and 19 CFR 351.205(f).

Dated: December 9, 2003.

James J. Jochum,

Assistant Secretary for Import Administration.

[FR Doc. 03–31016 Filed 12–15–03; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A-570–863]

Honey from the People's Republic of China: Preliminary Results of First Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of preliminary results of first antidumping duty administrative review.

SUMMARY: In response to requests from interested parties, the Department of Commerce (the Department) is conducting the first administrative review of the antidumping duty order on honey from the People's Republic of China. The period of review for those entities with an affirmative critical circumstances finding is February 10, 2001, through November 30, 2002. For all other companies, the period of review is May 11, 2001, through November 30, 2002. Two companies named in the initiation of this review had no exports or sales of the subject merchandise during their applicable period of review, and consequently we rescinded the review of these companies. In addition, we rescinded our review of three companies that are participating in new shipper reviews covering the period February 10, 2001, through November 30, 2002. We preliminarily determine that three companies have failed to cooperate by not acting to the best of their ability to comply with our requests for information and, as a result, should be assigned a rate based on adverse facts available. Finally, we have preliminarily determined that one respondent did make sales to the United States of the subject merchandise at prices below normal value.

We invite interested parties to comment on these preliminary results. Parties that submit comments are requested to submit with each argument (1) a statement of the issue, and (2) a brief summary of the argument(s).

EFFECTIVE DATE: December 16, 2003.

FOR FURTHER INFORMATION CONTACT: Angelica Mendoza or Brandon Farlander at (202) 482–3019 or (202) 482–0182, respectively; Antidumping and Countervailing Duty Enforcement Group III, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230.

SUPPLEMENTARY INFORMATION:

Background

On December 17, 2002, the Department published a notice of opportunity to request an administrative review of the antidumping duty order on honey from the People's Republic of China (PRC), 67 FR 77222 (December 17, 2002). On December 31, 2002, the Department received a timely request from the American Honey Producers Association and the Sioux Honey Association (collectively, petitioners) requesting that the Department conduct an administrative review of the antidumping duty order on honey shipments exported to the United States from the following PRC honey producers/exporters during the period of May 11, 2001, through November 30, 2002: (1) Anhui Native Produce Import & Export Corp. (Anhui), (2) Henan Native Produce and Animal By-Products Import & Export Company (Henan), (3) High Hope International Group Jiangsu Foodstuffs Import and Export Corp. (High Hope), (4) Inner Mongolia Autonomous Region Native Produce and Animal By-Products Import & Export Corp. (Inner Mongolia), (5) Kunshan Foreign Trade Company (Kunshan), (6) Shanghai Eswell Enterprise Co., Ltd. (Shanghai Eswell), (7) Shanghai Xiuwei International Trading Co., Ltd. (Shanghai Xiuwei), (8) Sichuan-Dujiangyan Dubao Bee Industrial Co., Ltd. (Sichuan Dubao), (9) Wuhan Bee Healthy Co., Ltd. (Wuhan), and (10) Zhejiang Native Produce and Animal By-Products Import & Export Corp. On December 31, 2002, we received a timely request from Zhejiang Native Produce and Animal By-Products Import & Export Corp. a.k.a. Zhejiang Native Produce and Animal By-Products Import and Export Group Corporation (Zhejiang) requesting that the Department conduct an administrative review of its honey shipments to the United States during the period May 11, 2001, through November 30, 2002. On January 22, 2003, the Department initiated an administrative review of the antidumping duty order on honey from the PRC, for the period of May 11, 2001, through November 30, 2002, in order to determine whether merchandise imported into the United States is being sold at less than fair value with respect to these ten companies. *See Initiation of Antidumping and Countervailing Duty Administrative Review and Requests for Revocations in Part*, 68 FR 3009 (January 22, 2003) (*Administrative Review Initiation*).[1] On January 27, 2003, the Department clarified that the period of review (POR) for High Hope, Kunshan, Zhejiang, Wuhan, Shanghai Xiuwei, and Sichuan Dubao is February 10, 2001, through November 30, 2002. *See* Memorandum to the File through Donna L. Kinsella, Case Manager, Office 8; POR for Exporters of Honey from the People's Republic of China with Affirmative Critical Circumstances Findings (January 27, 2003).

On February 20, 2003, the Department issued antidumping duty questionnaires to the above-referenced ten PRC companies. On February 28, 2003, Wuhan submitted a letter certifying that it did not have any other shipments during the first review period that are not already subject to an ongoing new shipper review.[2] On February 28, 2003, Inner Mongolia and Anhui submitted separate letters each certifying that they did not have any shipments of subject merchandise during the period of May 11, 2001, through November 30, 2002.

On April 4, 2003, we received responses to Section A of our antidumping duty questionnaire from Zhejiang, Wuhan, and High Hope. In its reply to the antidumping duty questionnaire, High Hope stated that it is unwilling to make the expenditure of time and money required to participate in the review, and therefore, has concluded that it is not able to fully respond to the Department's questionnaire. On April 7, 2003, the Department received notification from Kunshan that it will not be participating in this proceeding, and therefore, it is not responding to our questionnaire. *See* Memorandum to the File from Angelica L. Mendoza; Non-Responsive Company, dated April 7, 2003. On April 18, 2003, the Department received responses to Sections C and D of the antidumping duty questionnaire from Zhejiang and Wuhan. Henan did not respond to its questionnaire.[3]

On April 22, 2003, petitioners withdrew their request for review of Shanghai Eswell. On May 6, 2003, the Department rescinded, in part, the administrative review of the antidumping duty order on honey with respect to Shanghai Eswell. *See Honey from the People's Republic of China: Notice of Partial Rescission of Antidumping Duty Administrative Review*, 68 FR 23963 (May 6, 2003).

On May 6, 2003, the Department preliminarily determined to rescind, in part, the administrative reviews with respect to Anhui, Inner Mongolia, Shanghai Xiuwei, Sichuan Dubao, and Wuhan. *See* Memorandum to Barbara Tillman, Acting Deputy Assistant Secretary, AD/CVD Enforcement Group III; Intent to Partially Rescind Administrative Reviews (May 6, 2003) (Rescission Memo). As discussed in the Rescission Memo, Anhui and Inner Mongolia did not ship subject merchandise during the POR. As also discussed in the Rescission Memo, the Department determined that Shanghai Xiuwei, Sichuan Dubao, and Wuhan should not be subject to this proceeding because all of their POR sales were already subject to ongoing new shipper reviews.

On May 16, 2003, we issued a supplemental questionnaire to Zhejiang. On June 10, 2003, we invited interested parties to comment on the Department's surrogate country selection and/or significant production in the potential countries, and to submit publicly-available information to value the factors of production. On June 20, 2003, we received Zhejiang's supplemental questionnaire response. On June 24, 2003, we received petitioners' comments on the selection of a surrogate country in this proceeding. Zhejiang did not comment on the selection of a surrogate country in this proceeding. On June 30, 2003, petitioners submitted comments on Zhejiang's supplemental questionnaire response. On July 7, 2003, we issued a second supplemental questionnaire to Zhejiang. On July 7, 2003, Zhejiang and petitioners submitted surrogate information with which to value the factors of production. On July 17, 2003, we received Zhejiang's comments on petitioners' July 7, 2003, surrogate value submission. On July 18, 2003, we received Zhejiang's second supplemental questionnaire response.

On July 25, 2003, the Department issued a final determination to rescind, in part, the administrative reviews of Anhui, Inner Mongolia, Shanghai Xiuwei, Sichuan Dubao, and Wuhan. *See Honey from the People's Republic of China: Final Rescission, in Part, of Antidumping Duty Administrative Review*, 68 FR 44045 (July 25, 2003). On July 25, 2003, the Department also determined to extend the time limits for these preliminary results. *See Honey from the People's Republic of China: Extension of Time Limit for Preliminary Results of First Antidumping Duty Administrative Review*, 68 FR 44046 (July 25, 2003).

Scope of the Antidumping Duty Order

The products covered by this order are natural honey, artificial honey containing more than 50 percent natural honey by weight, preparations of natural honey containing more than 50 percent natural honey by weight, and flavored honey. The subject merchandise includes all grades and colors of honey whether in liquid, creamed, comb, cut comb, or chunk form, and whether packaged for retail or in bulk form.

The merchandise subject to this review is currently classifiable under subheadings 0409.00.00, 1702.90.90, and 2106.90.99 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheadings are provided for convenience and U.S. Customs and Border Protection (CBP) purposes, the Department's written description of the merchandise under order is dispositive.

Verification

As provided in section 782(i)(2) of the Tariff Act of 1930, as amended (the Act), and section 351.307 of the Department's regulations, we conducted verification of the questionnaire and supplemental responses of Zhejiang. We used standard verification procedures, including on-site inspection of the production facility of Zhejiang's unaffiliated supplier. Our verification results are outlined in the Memorandum to the File, through Abdelali Elouaradia, Program Manager, Verification of U.S. Sales Information Submitted by Zhejiang Native Produce & Animal By-Products Import & Export Group Corporation (a.k.a. Zhejiang Native Produce and Animal By-Products Import & Export Corp.) (Zhejiang) and Factors of Production Information Submitted by Zhejiang's Unaffiliated Supplier, dated September 26, 2003 (Zhejiang Verification Report). A public version of this report is on file in the Central Records Unit (CRU) located in room B-099 of the Main Commerce Building.

Separate Rates

In proceedings involving non-market economy (NME) countries, the Department begins with a rebuttable presumption that all companies within the country are subject to government control and, thus, should be assigned a single antidumping duty rate unless an exporter can affirmatively demonstrate an absence of government control, both in law (*de jure*) and in fact (*de facto*), with respect to its export activities. In this review, Zhejiang requested a separate company-specific rate.

To establish whether a company is sufficiently independent in its export activities from government control to be entitled to a separate, company-specific rate, the Department analyzes the exporting entity in an NME country under the test established in the *Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China*, 56 FR 20588, 20589 (May 6, 1991) (*Sparklers*), and amplified by the *Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China*, 59 FR 22585, 22586–22587 (May 2, 1994) (*Silicon Carbide*).

The Department's separate-rate test is unconcerned, in general, with macroeconomic/ border-type controls (*e.g.*, export licenses, quotas, and minimum export prices), particularly if these controls are imposed to prevent dumping. The test focuses, rather, on controls over the investment, pricing, and output decision-making process at the individual firm level. *See, e.g., Certain Cut-to-Length Carbon Steel Plate from Ukraine: Final Determination of Sales at Less Than Fair Value*, 62 FR 61754, 61757 (November 19, 1997); *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 62 FR 61276, 61279 (November 17, 1997); and *Honey from the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value*, 60 FR 14725, 14726 (March 20, 1995).

Zhejiang provided separate-rate information in its responses to our original and supplemental questionnaires. Accordingly, we performed a separate-rates analysis to

[1] In a separate proceeding, the Department also received timely requests from Shanghai Xiuwei and Sichuan Dubao, in accordance with 19 CFR 351.214(c), for new shipper reviews of the antidumping duty order on honey from the PRC, which has a December annual anniversary month. On February 5, 2003, we initiated new shipper reviews for Shanghai Xiuwei and Sichuan Dubao. *See Initiation of New Shipper Antidumping Duty Reviews*, 68 FR 5868 (February 5, 2003) (*New Shipper Initiation*). The POR for the new shipper reviews of these two companies is identical to the POR for the administrative review.

[2] The Department conducted a six-month new shipper review of Wuhan's sales during the period December 1, 2001, through May 31, 2002. *See, e.g., Preliminary Results of Antidumping Duty New Shipper Review: Honey from the People's Republic of China*, 68 FR 33099 (June 3, 2003); and *Honey from the People's Republic of China: Final Results of Antidumping Duty New Shipper Review*, 68 FR 62053 (October 31, 2003) (*Wuhan NSR Final Results*). On March 18, 2003, Wuhan submitted an additional letter clarifying that although it did have additional exports and sales during the period February 10, 2001, through November 30, 2002, nevertheless the entries for consumption of this merchandise did not occur until after this POR.

[3] On March 31, 2003, the Department issued a letter to Henan informing the company that it had failed to respond to our antidumping duty questionnaire issued on February 20, 2003 Additionally, we confirmed Henan's address and receipt of our March 31, 2003, letter. *See* Memorandum to The File from Angelica L. Mendoza, Case Analyst, First Administrative Review of the Antidumping Duty Order on Honey from the People's Republic of China: Correct Addresses, dated March 31, 2003.

determine whether this exporter is independent from government control (*see Notice of Final Determination of Sales at Less Than Fair Value: Bicycles From the People's Republic of China*, 61 FR 56570 (April 30, 1996)).

As stated above in the "Background" section, Kunshan and High Hope did not respond to the Department's antidumping questionnaire. Rather, as noted above, these companies informed the Department that they would not be participating in this proceeding. Moreover, the Department did not receive any type of response from Henan, although we issued it a supplemental request for information as noted in the "Background" section above. Because none of these three companies responded to our request for information regarding separate rates, we preliminarily determine that these companies do not merit separate rates. *See, e.g., Natural Bristle Paint Brushes and Brush Heads from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review*, 61 FR 57389 (November 6, 1996). Consequently, consistent with the statement in our notice of initiation, we find that, because these companies do not qualify for separate rates, they are deemed to be part of the PRC-entity. *See Administrative Review Initiation. See also* "The PRC-wide Rate and Use of Facts Otherwise Available" section below.

De Jure Control

The Department considers the following *de jure* criteria in determining whether an individual company may be granted a separate rate: (1) an absence of restrictive stipulations associated with an individual exporter's business and export licenses; (2) any legislative enactments decentralizing control of companies; and (3) any other formal measures by the government decentralizing control of companies. *See Sparklers*, 56 FR 20588, 20589.

Zhejiang has placed on the record a number of documents to demonstrate absence of *de jure control*, including the "Law of the People's Republic of China on Industrial Enterprises Owned by the Whole People" (April 13, 1998) (*Enterprises Owned by the Whole People*), the "Company Law of the People's Republic of China" (December 29, 1993) (*Company Law*), "Foreign Trade Law of the People's Republic of China" (May 12, 1994) (*Foreign Trade Law*), and the "Administrative Regulations of the People's Republic of China Governing the Registration of Legal Corporations" (June 3, 1998) (*Legal Corporations Regulations*). See Exhibit 2 of Zhejiang's April 4, 2003, submission. In particular, we found that the PRC law, *Enterprises Owned by the Whole People*, grants enterprises owned by all the people status of a legal person which allows for autonomy in management and provides full responsibility over their profits and losses. Chapter III of this law outlines the rights and responsibilities of business enterprises owned by the whole people. Under Article 27 of this chapter, enterprises are granted the right to negotiate and sign contracts with foreign parties, and allowed to withdraw and use their portion of foreign exchange earnings. Zhejiang states that the *Company Law* governs the establishment of limited liability companies, and provides that such a company shall operate independently and be responsible for its own profits and losses. See page 6 of Zhejiang's April 4, 2003, submission. We reviewed Article 11 of Chapter II of the *Foreign Trade Law*, which states that "foreign trade dealers shall enjoy full autonomy in their business operation and be responsible for their own profits and losses in accordance with the law." Moreover, in other proceedings, the Department has analyzed such PRC laws and found that they establish an absence of *de jure* control. *See, e.g., Pure Magnesium from the People's Republic of China: Final Results of New Shipper Review*, 63 FR 3085, 3086 (January 21, 1998) and *Preliminary Results of New Shipper Review: Certain Preserved Mushrooms From the People's Republic of China*, 66 FR 30695, 30696 (June 7, 2001).

Zhejiang submitted a copy of its business license in Exhibit 4 of its Section A questionnaire response, dated April 4, 2003. This license was issued by the Zhejiang Province Industrial and Commercial Administration Bureau. Zhejiang explains that its business license is necessary to register the company. Zhejiang affirms that its business operations are limited to the scope of the license, and that the license may be revoked if the company engages in illegal activities or if the company is found to have insufficient capital. At verification, we found that Zhejiang's business license and "Certificate of Approval: For Enterprises with Foreign Trade Rights in the People's Republic of China" were granted in accordance with the above-reference PRC laws. Moreover, the results of verification support the information provided regarding these PRC laws. *See* Zhejiang Verification Report at 4–5.

Therefore, consistent with our final determination in the less-than-fair-value investigation (LTFV), we preliminarily determine that there is an absence of *de jure* control over Zhejiang's export activities.

De Facto Control

Typically, the Department considers four factors in evaluating whether a respondent is subject to *de facto* governmental control of its export functions: (1) whether the export prices are set by, or subject to, the approval of a governmental authority; (2) whether the respondent has authority to negotiate and sign contracts, and other agreements; (3) whether the respondent has autonomy from the government in making decisions regarding the selection of its management; and (4) whether the respondent retains the proceeds of its export sales and makes independent decisions regarding disposition of profits or financing of losses. *See Silicon Carbide* at 22587.

As stated in previous cases, there is some evidence that certain enactments of the PRC central government have not been implemented uniformly among different sectors and/or jurisdictions in the PRC. *See Silicon Carbide* at 22586–22587. Therefore, the Department has determined that an analysis of de facto control is critical in determining whether respondents are, in fact, subject to a degree of governmental control which would preclude the Department from assigning separate rates.

Zhejiang has asserted the following: (1) it is a publicly-owned company that is independent from government control; (2) it sets prices through direct negotiations with U.S. customers, and such prices consider the company's total costs, including acquisition costs as well as movement expenses, overhead expenses and profit; (3) there is no government participation in its setting of export prices; (4) its Manager of the Bee Products Departments and authorized employees have the authority to bind sales contracts; (5) it does not have to notify any government authorities of its management selection; (6) there are no restrictions on the use of its export revenue and that its President decides how profits will be used; (7) it is responsible for financing its own losses; and (8) it is not required to sell any portion of foreign currency earned to the government.[4] Our analysis of the responses during verification reveals no other information indicating the existence of government control. *See* Zhejiang Verification Report at 6. Consequently, because evidence on the record indicates an absence of government control, both in law and in fact, over the company's export activities, we preliminarily determine that Zhejiang has met the criteria for the application of a separate rate.

[4] Zhejiang's questionnaire responses do not suggest that pricing is coordinated among exporters. Zhejiang states that its President is elected by the employees of the company, and in turn, the President selects the other management of the company. *See* Zhejiang's April 4, 2003, submission.

The PRC-wide Rate and Use of Facts Otherwise Available

Zhejiang, Kunshan, Henan, and High Hope were given the opportunity to respond to the Department's questionnaire. As explained above, we received questionnaire responses from Zhejiang, and we have calculated a separate rate for Zhejiang. The PRC-wide rate applies to all entries of subject merchandise except for entries from PRC producers/exporters that have their own calculated rate.

As discussed above, Kunshan, Henan, and High Hope are appropriately considered to be part of the PRC-wide entity. Therefore, we determine it is necessary to review the PRC-wide entity because it did not provide information necessary to the instant proceeding. In doing so, we note that section 776(a)(1) of the Act mandates that the Department use the facts available if necessary information is not available on the record of an antidumping proceeding. In addition, section 776(a)(2) of the Act provides that if an interested party or any other person: (A) withholds information that has been requested by the administering authority; (B) fails to provide such information by the deadlines for the submission of the information or in the form and manner requested, subject to subsections (c)(1) and (e) of section 782; (C) significantly impedes a proceeding under this title; or (D) provides such information but the information cannot be verified as provided in section 782(i), the Department shall, subject to section 782(d) of the Act, use the facts otherwise available in reaching the applicable determination under this title.[5]

According to section 776(b) of the Act, if the Department finds that an interested party "has failed to cooperate by not acting to the best of its ability to comply with a request for information," the Department may use information that is adverse to the interests of the party as facts otherwise available. Adverse inferences are appropriate "to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully." *See Statement of Administrative Action (SAA)* accompanying the URAA, H. Doc. No. 316, 103d Cong., 2d Session at 870 (1994). Furthermore, "an affirmative finding of bad faith on the part of the respondent is not required before the Department may make an adverse inference." *Antidumping Duties; Countervailing Duties: Final Rule*, 62 FR 27296, 27340 (May 19, 1997).

As above stated, the PRC-wide entity did not respond to our requests for information. Because the PRC-wide entity did not respond to our request for information, we find it necessary, under section 776(a)(2) of the Act, to use facts otherwise available as the basis for the preliminary results of review for the PRC-wide entity.

In addition, pursuant to section 776(b) of the Act, we find that the PRC-wide entity failed to cooperate by not acting to the best of its ability to comply with a request for information. As noted above, the PRC-wide entity informed the Department that it would not participate in this review, or otherwise, did not provide any response to the Department's questionnaire, despite repeated requests that it do so. Thus, because the PRC-wide entity refused to participate fully in this proceeding, we find it appropriate to use an inference that is adverse to the interests of the PRC-wide entity in selecting from among the facts otherwise available. By doing so, we ensure that the companies that are part of the PRC-wide entity will not obtain a more favorable result by failing to cooperate than had they cooperated fully in this review.

An adverse inference may include reliance on information derived from the petition, the final determination in the investigation, any previous review, or any other information placed on the record. *See* section 776(b) of the Act. It is the Department's practice to assign the highest rate from any segment of a proceeding as total adverse facts available when a respondent fails to cooperate to the best of its ability. *See, e.g., Stainless Steel Plate in Coils from Taiwan; Preliminary Results and Rescission in Part of Antidumping Duty Administrative Review*, 67 FR 5789 (February 7, 2002) ("Consistent with Department practice in cases where a respondent fails to cooperate to the best of its ability, and in keeping with section 776(b)(3) of the Act, as adverse facts available, we have applied a margin based on the highest margin from any prior segment of the proceeding.").

In accordance with the Department's practice, we have preliminarily assigned to the PRC-wide entity (including Kunshan, Henan, and High Hope) the rate of 183.80 percent as adverse facts available. *See, e.g., Rescission of Second New Shipper Review and Final Results and Partial Rescission of First Antidumping Duty Administrative Review: Brake Rotors from the People's Republic of China*, 64 FR 61581, 61584 (November 12, 1999). This rate is the highest dumping margin from any segment of this proceeding and was established in the LTFV investigation based on information contained in the petition. *See Notice of Final Determination of Sales at Less Than Fair Value: Honey from the PRC*, 66 FR 50608 (October 4, 2001) and accompanying Issues and Decision Memorandum (*Final Determination*). In selecting a rate for adverse facts available, the Department selects a rate that is sufficiently adverse "as to effectuate the purpose of the facts available rule to induce respondents to provide the Department with complete and accurate information in a timely manner." *See Final Determination of Sales at Less Than Fair Value: Static Random Access Memory Semiconductors from Taiwan*, 63 FR 8909, 8932 (February 23, 1998).

We note that information from a prior segment of this proceeding constitutes "secondary information," and section 776(c) of the Act provides that, when the Department relies on such secondary information rather than on information obtained in the course of a review, the Department shall, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal.[6] The SAA states that the independent sources may include published price lists, official import statistics and customs data, and information obtained from interested parties during the particular investigation or review. The SAA also clarifies that "corroborate" means that the Department will satisfy itself that the secondary information to be used has probative value. *See SAA* at 870. As noted in *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished,*

[5] Where the Department determines that a response to a request for information does not comply with the request, section 782(d) of the Act provides that the Department shall promptly inform the party submitting the response of the nature of the deficiency and shall, to the extent practicable, provide that party with an opportunity to remedy or explain the deficiency. Section 782(e) of the Act provides that the Department shall not decline to consider information that is submitted by an interested party and is necessary to the determination but does not meet all the applicable requirements established by the administering authority. Because the PRC-wide entity provided no information, we determine that sections 782(d) and (e) of the Act are not relevant to our analysis.

[6] Secondary information is described in the *SAA* as "information derived from the petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 concerning the subject merchandise." *See SAA* at 870.

from Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, from Japan; Preliminary Results of Antidumping Duty Administrative Reviews and Partial Termination of Administrative Reviews, 61 FR 57391, 57392 (November 6, 1996) (TRBs), to corroborate secondary information, the Department will, to the extent practicable, examine the reliability and relevance of the information used.

We note that in the LTFV investigation, the Department corroborated the information in the petition that formed the basis of the 183.80 percent PRC-wide entity rate. *See Final Determination*. Specifically, in the LTFV investigation, the Department compared the prices in the petition to the prices submitted by individual respondents for comparable merchandise. For normal value (NV), we compared petitioners' factor-consumption data to data reported by respondents. *See Notice of Preliminary Determination of Sales at Less Than Fair Value: Honey from the People's Republic of China*, 66 FR 24101 (May 11, 2001).

In order to satisfy the corroboration requirements under section 776(c) of the Act, in the instant review, we reviewed the Department's corroboration of the petition rates from the LTFV investigation. See Memorandum to the File, dated December 10, 2003, placing the Memorandum to Richard O. Weible, Office Director, The Use of Facts Available for the PRC-wide entity; and Corroboration of Secondary Information, dated May 4, 2001 (AFA & Corroboration Memo) on the record of this administrative review. Following the methodology of our corroboration analysis from the LTFV investigation, we compared the petition information to information on the record of this proceeding. We find that the petition information is both reasonable and reliable when compared to the range of Zhejiang's reported gross unit prices for honey it sold to the United States during the current POR. *See* AFA & Corroboration Memo at 5 and Exhibit 7 of Zhejiang's July 18, 2003, submission. Moreover, following the methodology of our corroboration analysis from the LTFV investigation, the highest calculated NV for Zhejiang (calculated as a separate NV for each of its two processed honey suppliers) is comparable to the NV relied on by petitioners to calculate the petition rate. *See* AFA & Corroboration Memo at 6 and the Margin Calculation Output for Zhejiang, dated December 10, 2003.

We further note that, with respect to the relevance aspect of corroboration, the Department stated in *TRBs* that it will "consider information reasonably at its disposal as to whether there are circumstances that would render a margin irrelevant. Where circumstances indicate that the selected margin is not appropriate as adverse facts available, the Department will disregard the margin and determine an appropriate margin." *See TRBs* at 61 FR 57392. *See also Fresh Cut Flowers from Mexico; Final Results of Antidumping Duty Administrative Review*, 61 FR 6812, 6814 (February 22, 1996) (disregarding the highest margin in the case as best information available because the margin was based on another company's uncharacteristic business expense resulting in an extremely high margin). The rate used is the rate currently applicable to all exporters subject to the PRC-wide rate. Further, as noted above, there is no information on the record that the application of this rate would be inappropriate in this administrative review or that the margin is not relevant. Thus, we find that the information is relevant. Therefore, the Department preliminarily determines that the PRC-wide entity rate of 183.80 is still reliable, relevant, and has probative value within the meaning of section 776(c) of the Act.

Normal Value Comparisons

To determine whether Zhejiang's sales of the subject merchandise to the United States were made at prices below normal value, we compared their United States prices to normal values, as described in the "United States Price" and "Normal Value" sections of this notice.

United States Price

For Zhejiang, we based United States price on export price (EP) in accordance with section 772(a) of the Act, because the first sale to an unaffiliated purchaser was made prior to importation, and constructed export price (CEP) was not otherwise warranted by the facts on the record. We calculated EP based on the packed price from the exporter to the first unaffiliated

customer in the United States. Where applicable, we deducted foreign inland freight, international freight, marine insurance expenses, and bank charges from the starting price (gross unit price), in accordance with section 772(c) of the Act.

Normal Value

Section 773(c)(1) of the Act provides that the Department shall determine NV using a factors-of-production methodology if (1) the merchandise is exported from an NME country, and (2) available information does not permit the calculation of NV using home-market prices, third-country prices, or constructed value under section 773(a) of the Act.

In every case conducted by the Department involving the PRC, the PRC has been treated as an NME country. Pursuant to section 771(18)(C)(i) of the Act, any determination that a foreign country is an NME country shall remain in effect until revoked by the administering authority. Zhejiang did not contest such treatment in this review. Accordingly, we have applied surrogate values to the factors of production to determine NV for each of Zhejiang's processed honey suppliers. See Factors of Production Valuation Memorandum for the Preliminary Results of the First Administrative Review of the Antidumping Duty Order on Honey from the People's Republic of China, dated December 10, 2003 (Factor Valuation Memo). A public version of this memorandum is on file in the CRU located in room B-099 of the Main Commerce Building.

We calculated NV based on factors of production in accordance with section 773(c)(4) of the Act and section 351.408(c) of our regulations. Consistent with the LTFV investigation of this order and the final results of a recent new shipper review covering the subject merchandise, we determine that India (1) is comparable to the PRC in level of economic development, and (2) is a significant producer of comparable merchandise.[7] Accordingly, we valued the factors of production using publicly-available information from India.

In selecting the surrogate values, we considered the quality, specificity, and contemporaneity of the data, in accordance with our practice. Where appropriate, we adjusted Indian import prices by adding foreign inland freight expenses to make them delivered prices. When we used Indian import values to value inputs sourced domestically by PRC suppliers, we added to Indian surrogate values a surrogate freight cost calculated using the shorter of the reported distance from the domestic supplier to the factory or the distance from the nearest port of export to the factory. This adjustment is in accordance with the Court of Appeals for the Federal Circuit's decision in *Sigma Corp. v. United States*, 117 F. 3d 1401 (Fed. Cir. 1997). When we used non-import surrogate values for factors sourced domestically by PRC suppliers, we based freight for inputs on the actual distance from the input supplier to the

[7] See Final Determination and Wuhan NSR Final Results.

site at which the input was used. When we relied on Indian import values to value inputs, in accordance with the Department's practice, we excluded imports from both NMEs and countries deemed to have generally available export subsidies (*i.e.*, Indonesia, Korea, and Thailand) from our surrogate value calculations. For those surrogate values not contemporaneous with the POR, we adjusted for inflation using the wholesale price indices for India, as published in the International Monetary Fund's publication, *International Financial Statistics*.

We valued the factors of production as follows:

To value raw honey, we continue to use the average of the highest and lowest price for one kilogram (kg.) of raw honey stated in an article published in *The Tribune of India* on March 1, 2000, entitled, "Apiculture, a major foreign exchange earner" (later republished in *The Agricultural Tribune* on May 1, 2000). Consistent with the methodology established in the previous proceeding, to account for raw honey price increases in India, we have inflated the average raw honey price from the March 2000, Tribune of India article (i.e., Rs. 35 per kg.) to December 2001 by dividing the Indian WPI for December 2001 by the Indian WPI for March 2000. *See Wuhan NSR Final Results* and accompanying Issues and Decision Memorandum at Comment 2. We note that pricing data submitted by petitioners in Exhibit 1 of their July 7, 2003, submission for Jallowal and Tiwana Bee Farms clearly indicate that inflating the March 2000, *Tribune of India* price data only by the WPI does not appropriately reflect the significant increase in Indian raw honey prices during the POR. Specifically, in reviewing the average raw honey purchase prices from Jallowal and Tiwana Bee Farms, we find that during the period December 2001, through May 2002, raw honey prices dramatically increased on a monthly basis in excess of the WPI. Therefore, to account for such increases in Indian raw honey prices from December 2001, through May 2002, in excess of inflation, we averaged raw honey purchase prices from the Tiwana and Jallowal Bee Farms submitted by petitioners in Exhibit 1 of their July 7, 2003, submission to calculate a total average raw honey price for each month from December 2001, through May 2002. Next, we calculated monthly price increases on a percentage-basis, and then applied these price increases (percentage) to our adjusted raw honey price from the March 2000, *Tribune of India* article. Then, we calculated a simple average of these adjusted monthly raw honey prices to derive our raw honey surrogate value for the period for which we had raw honey purchase pricing data (*i.e.*, December 1, 2001, through May 31, 2002). In order to make this value fully-contemporaneous to the POR, we further adjusted the raw honey surrogate value for inflation during the period of June 2002, through November 2002 based on the Indian WPI. Finally, we converted the raw honey value from a per kg.-basis to a per metric ton-(MT) basis. See Attachments 2 and 3 of the Factor Valuation Memo for further details. The Department intends to continue to carefully examine this issue for the final results of this review and invites interested parties to submit comments on this issue for purposes of the final results.

To value beeswax, a raw honey by-product, we used the average per kilogram import value of beeswax into India for the POR under the Indian Customs' heading of "152190" obtained from the World Trade Atlas, which notes that its data was obtained from the Ministry of Commerce of India (World Trade Atlas). To value scrap honey, a raw honey by-product, we used the average per kilogram import value of inedible molasses into India for the POR under the Indian Customs' heading of "170390" obtained from the World Trade Atlas. We converted the surrogate values for beeswax and scrap honey from a per kg.-basis to a per MT-basis.

To value coal, we relied upon contemporaneous Indian import values of "steam coal" under the Indian Customs' heading of "2701011902" obtained from the World Trade Atlas. We also adjusted the surrogate value for coal to include freight costs incurred between the supplier and the factory. To value electricity, we used the 2000 total average price per kilowatt hour, adjusted for inflation, for "Electricity for Industry" as reported in the International Energy Agency's publication, *Energy Prices and Taxes, Second Quarter*, 2002. To value water, we used the water tariff rate, as reported on the Municipal Corporation of Greater Mumbai's website. *See* http://www.mcgm.gov.in/Stat%20&%20Fig/Revenue.htm and Attachment 6 of the Factor Valuation Memo for source documents.

To value packing materials (*i.e.*, paint and steel drums), we relied upon contemporaneous Indian import data reported by the World Trade Atlas under the Indian Customs' heading "3209," and a price quote from an Indian steel drum manufacturer, respectively. We adjusted the surrogate value for steel drums to reflect inflation. We also adjusted the surrogate values of packing materials to include freight costs incurred between the supplier and the factory.

To value factory overhead, selling, general, and administrative expenses (SG&A), and profit, we relied upon publicly-available information in the 2001–2002 annual report of the Mahabaleshwar Honey Producers Cooperative Society, Ltd. (MHPC), a producer of the subject merchandise in India. We applied these rates to the calculated cost of manufacture and cost of production using the same methodology established in *Wuhan NSR Final Results*.

For labor, we used the PRC regression-based wage rate at Import Administration's home page, Import Library, Expected Wages of Selected NME Countries, revised in September 2002, and corrected in February 2003. Because of the variability of wage rates in countries with similar per capita gross domestic products, section 351.408(c)(3) of the Department's regulations requires the use of a regression-based wage rate. The source of these wage rate data on the Import Administration's web site is the *Year Book of Labour Statistics* 2001, International Labour Office (Geneva: 2001), Chapter 5B: Wages in Manufacturing.

To value truck freight, we used an average truck freight cost based on Indian market truck freight rates on a per MT basis published in the *Iron and Steel Newsletter*, April 2002. To value rail freight, we used an average rail freight cost based on rail freight costs of transporting molasses to various cities within India as stated on the Indian Railways' website (Indian Government Agency).

To value marine insurance expenses, where necessary, we used publicly-available price quotes from a marine insurance provider at http://www.rigconsultants.com/insurance/html.

For details on factor of production valuation calculations, see Factor Valuation Memo.

Currency Conversion

We made currency conversions pursuant to section 351.415 of the Department's regulations at the rates certified by the Federal Reserve Bank.

Preliminary Results of Review

We preliminarily determine that the following antidumping duty margins exist:

Exporter	POR	Margin (percent)
Zhejiang Native Produce & Animal By-Products Import & Export Corporation a.k.a. Zhejiang Native Produce & Animal By-Products Import & Export Group Corporation	02/10/01 - 11/30/02	77.09
PRC-wide Entity (including Kunshan, Henan, and High Hope)	02/10/01 - 11/30/02	183.80

For details on the calculation of the antidumping duty weighted-average margin for Zhejiang, *see* the Analysis Memorandum for the Preliminary Results of the First Administrative Review of the Antidumping Duty Order on Honey from the People's Republic of China, dated December 10, 2003. A public version of this memorandum is on file in the CRU.

Assessment Rates

Pursuant to section 351.212(b), the Department calculates an assessment rate for each importer of the subject merchandise. Upon issuance of the final results of this review, if any importer-specific assessment rates calculated in the final results are above *de minimis* (*i.e.*, at or above 0.50 percent), the Department will issue appraisement instructions directly to CBP to assess antidumping duties on appropriate entries by applying the assessment rate to the entered value of the merchandise. For assessment purposes, we calculated importer-specific assessment rates for the subject merchandise by aggregating the dumping duties due for all U.S. sales to each importer and dividing the amount by the total quantity of the sales to that importer. If these preliminary results are adopted in our final results of review, we will direct CBP to assess the resulting rate against the total quantity for the subject merchandise on each of Zhejiang's importer's/customer's entries during the POR.

Cash-Deposit Requirements

The following cash-deposit rates will be effective upon publication of the final results of this review for all shipments of honey from the PRC entered, or withdrawn from warehouse, for consumption on or after publication date, as provided for by section 751(a)(2)(C) of the Act: (1) for subject merchandise exported by Zhejiang, the cash-deposit rate will be that established in the final results of this review, except if the rate is less than 0.50 percent and, therefore, *de minimis* within the meaning of 19 CFR 351.106(c)(1), in which case the cash deposit rate will be zero; (2) for previously investigated or reviewed companies not listed above that have separate rates, the cash-deposit rate will continue to be the company-specific rate published for the most recent period (except for Kunshan, Henan, and High Hope, whose cash-deposit rates have changed in this review to the PRC-wide entity rate as noted below); (3) the cash-deposit rate for all other PRC exporters (including Kunshan, Henan, and High Hope) will be the "PRC-wide" rate established in the final results of this review; and (4) the cash deposit rate for all other non-PRC exporters will be the rate applicable to the PRC exporter that supplied that exporter.

These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

Schedule for Final Results of Review

The Department will disclose calculations performed in connection with the preliminary results of this review within five days of the date of publication of this notice in accordance with section 351.224(b) of the Department's regulations. Any interested party may request a hearing within 30 days of publication of this notice in accordance with section 351.310(c) of the Department's regulations. Any hearing would normally be held 37 days after the publication of this notice, or the first workday thereafter, at the U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230. Individuals who wish to request a hearing must submit a written request within 30 days of the publication of this notice in the **Federal Register** to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 1870, 14th Street and Constitution Avenue, NW, Washington, DC 20230. Requests for a public hearing should contain: (1) the party's name, address, and telephone number; (2) the number of participants; and (3) to the extent practicable, an identification of the arguments to be raised at the hearing.

Unless otherwise notified by the Department, interested parties may submit case briefs within 30 days of the date of publication of this notice in accordance with section 351.309(c)(ii) of the Department's regulations. As part of the case brief, parties are encouraged to provide a summary of the arguments not to exceed five pages and a table of statutes, regulations, and cases cited. Rebuttal briefs, which must be limited to issues raised in the case briefs, must be filed within five days after the case brief is filed. If a hearing is held, an interested party may make an affirmative presentation only on arguments included in that party's case brief and may make a rebuttal presentation only on arguments included in that party's rebuttal brief. Parties should confirm by telephone the time, date, and place of the hearing within 48 hours before the scheduled time. The Department will issue the final results of this review, which will include the results of its analysis of issues raised in the briefs, not later than 120 days after the date of publication of this notice.

Notification to Importers

This notice also serves as a preliminary reminder to importers of their responsibility under section 351.402(f) of the Department's regulations to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during these review periods. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.This administrative review and this notice are published in accordance with sections 751(a)(2)(B) and 777(i)(1) of the Act.

Dated: December 10, 2003.

James J. Jochum,

Assistant Secretary for Import Administration.

[FR Doc. 03–31017 Filed 12–15–03; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A-427–818]

Low Enriched Uranium from France: Extension of the Time Limit for the Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: December 16, 2003.

FOR FURTHER INFORMATION CONTACT: Vicki Schepker or Carol Henninger at (202) 482–1756 or (202) 482–3003, respectively; Office of AD/CVD Enforcement 5, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

TIME LIMITS:

Statutory Time Limits

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), requires the Department of Commerce (the Department) to complete the preliminary results of an administrative review within 245 days after the last day of the anniversary month of an order/finding for which a review is requested and the final results within 120 days after the date on which the preliminary results are published. However, if it is not practicable to complete the review within these time periods, section 751(a)(3)(A) of the Act allows the Department to extend the time limit for the preliminary results to a maximum of 365 days after the last day of the anniversary month of an order/finding for which a review is requested, and for the final results to 180 days (or 300 days if the Department does not extend the time limit for the preliminary results) from the date of publication of the preliminary results.

Background

Eurodif S.A. (Eurodif), a French producer of subject merchandise, and its affiliated parties Compagnie Générale Des Matières Nucléaires (COGEMA) and COGEMA, Inc. (collectively, COGEMA/Eurodif), requested an administrative review of the antidumping order on low enriched uranium from France on February 3, 2003. United States Enrichment Corporation and USEC, Inc. (the petitioner), a domestic producer of subject merchandise, requested a review on February 28, 2003. On March 25, 2003, the Department published a notice of initiation of the administrative review, covering the period July 13, 2001, through January 31, 2003, (*Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part*, 68 FR 14394). On October 27, 2003, the Department published a notice extending the time limit for the preliminary results, (*Extension of the Time Limit for the Preliminary Results of Antidumping Duty Administrative Review*, 68 FR 61184). The preliminary results are currently due no later than December 18, 2003. On November 18, 2003, the petitioner filed comments for the Department's consideration prior to the preliminary results. On December 1, 2003, COGEMA/Eurodif responded to those comments.

Extension of Time Limit for Preliminary Results of Review

We determine that it is not practicable to complete the preliminary results of this review within the revised time limit due to the complex issues that have been raised. Examples of issues that must be considered include the proper treatment of commingled merchandise, the appropriateness of granting a constructed export price (CEP) offset, and the application of the major input rule. Therefore, the Department is extending the time limit for completion of the preliminary results until no later than January 20, 2004. We intend to issue the final results no later than 120 days after publication of the preliminary results notice.

This extension is in accordance with section 751(a)(3)(A) of the Act.

Dated: December 9, 2003.

Holly A. Kuga,

Acting Deputy Assistant Secretary for AD/CVD Enforcement II.

[FR Doc. 03–31020 Filed 12–15–03; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A-580–813]

Stainless Steel Butt-Weld Pipe Fittings From Korea; Notice of Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Final Results Antidumping Duty Administrative Review.

SUMMARY: On September 29, 2003, the Department of Commerce (the Department) published the preliminary results and partial rescission of antidumping duty administrative review on stainless steel butt-weld pipe fittings from Korea. The review, as initiated, covered three manufacturers/exporters, Sam Sung Stainless Commerce & Ind. Co., Ltd. (Sam Sung), Sungkwang Bend Co., Ltd. (Sungkwang), and TK Corporation. However, along with the preliminary results we rescinded the review with respect to Sungkwang and TK Corporation because the only party that requested a review of these two companies withdrew the request in a timely manner. Therefore these final results of review cover only Sam Sung. The period of review is February 1, 2002 through January 31, 2003. We gave interested parties an opportunity to comment on our preliminary results. We received no comments. Furthermore, the Department made no changes in its analysis following publication of the preliminary results. Therefore, the final results of review are unchanged from those presented in the preliminary results of review.

EFFECTIVE DATE: December 16, 2003.

FOR FURTHER INFORMATION CONTACT: Fred Baker or Robert James, Enforcement Group III, Office 8, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–2924 and (202) 482–0649, respectively.

SUPPLEMENTARY INFORMATION:

Background

On September 29, 2003 the Department published its preliminary results and partial rescission of antidumping duty administrative review of stainless steel butt-weld pipe fittings from Korea. *See Stainless Steel Butt-Weld Pipe Fittings from Korea; Notice of Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review*, 68 FR 55935 (September 29, 2003) (*Preliminary Results*). In that notice we rescinded the review with respect to SungKwang and TK Corporation because the only party that requested the review of these companies withdrew the request in a timely manner. We also assigned Sam Sung an adverse facts available rate because it withheld information the Department requested by refusing to respond to the Department's antidumping questionnaire. We gave interested parties an opportunity to comment on our preliminary results. No parties submitted comments. We have now completed the administrative review in accordance with section 751(a) of the Tariff Act of 1930, as amended (the Tariff Act).

Period of Review

The period of review (POR) is February 1, 2002 through January 31, 2003.

Scope of the Review

The products subject to this review are certain welded stainless steel butt-weld pipe fittings (pipe fittings), whether finished or unfinished, under 14 inches in inside diameter.

Pipe fittings are used to connect pipe sections in piping systems where

conditions required welded connections. The subject merchandise can be used where one or more of the following conditions is a factor in designing the piping system: (1) corrosion of the piping system will occur if material other than stainless steel is used; (2) contamination of the material in the system by the system itself must be prevented; (3) high temperatures are present; (4) extreme low temperatures are present; (5) high pressures are contained within the system.

Pipe fittings come in a variety of shapes, and the following five are the most basic: "elbows," "tees," "reducers," "stub ends," and "caps." The edges of finished fittings are beveled. Threaded, grooved, and bolted fittings are excluded from this review. The pipe fittings subject to this review are classifiable under subheading 7307.23.00 of the Harmonized Tariff Schedule of the United States (HTSUS).

Although the HTSUS subheading is provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.

Use of Facts Available

For the reasons set forth in our preliminary results we continue to find that application of an adverse facts available rate of 21.20 percent to Sam Sung is appropriate. *See Preliminary Results* at 55936–37.

Final Results of Review

As a result of our determination that it is appropriate to apply adverse facts available to Sam Sung, we determine that a weighted-average dumping margin of 21.20 percent exists for Sam Sung for the period February 1, 2002 through January 31, 2003.

The Department will determine, and U.S. Customs and Border Protection (Customs) shall assess, antidumping duties on all appropriate entries. The Department will issue appropriate assessment instructions directly to Customs within 15 days of publication of these final results of review. We will direct Customs to assess the resulting assessment rate against the entered customs values for the subject merchandise on each entry during the review period.

Cash Deposit Requirements

The following deposit requirements will be effective upon publication of this notice of final results of administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication, as provided by section 751(a)(1) of the Tariff Act: (1) the cash deposit rate for the reviewed company will be the rate shown above; (2) for previously reviewed or investigated companies not listed above, the cash deposit will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original investigation, but the manufacturer is, the cash deposit rate will be that established for the most recent period for the manufacturer of the merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered in this review, any previous reviews, or the LTFV investigation, the cash deposit rate will be 21.20 percent, the "all others" rate established in the LTFV investigation. *See Final Determination of Sales at Less Than Fair Value: Certain Welded Stainless Steel Butt-Weld Pipe Fittings from the Republic of Korea*, 57 FR 61881, 61882 (December 29, 1992).

These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective orders (APOs) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305, which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

We are issuing and publishing this notice in accordance with sections 751(a)(1) and 777(i)(1) of the Tariff Act.

Dated: December 9, 2003.

James J. Jochum,

Assistant Secretary for Import Administration.

[FR Doc. 03–31018 Filed 12–15–03; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–583–816]

Certain Stainless Steel Butt-Weld Pipe Fittings from Taiwan: Final Results and Final Rescission in Part of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results and final rescission in part of the antidumping duty administrative review of certain stainless steel butt-weld pipe fittings from Taiwan.

SUMMARY: On July 8, 2003, the Department of Commerce ("Department") published in the **Federal Register** the preliminary results of the administrative review of the order on certain stainless steel butt-weld pipe fittings from Taiwan. See Certain Stainless Steel Butt-Weld Pipe Fittings From Taiwan: Preliminary Results of Antidumping Duty Administrative Review and Notice of Intent to Rescind in Part, 68 FR 40637 (July 8, 2003) ("Preliminary Results"). This review covers one manufacturer/exporter of the subject merchandise. The period of review ("POR") is June 1, 2001 through May 31, 2002.

We gave interested parties an opportunity to comment on the preliminary results. Based upon our analysis of the comments received, we have made changes in the margin calculation. Therefore, the final results differ from the preliminary results of this review. The final weight-averaged dumping margin is listed below in the section titled "Final Results of the Review."

EFFECTIVE DATE: December 16, 2003.

FOR FURTHER INFORMATION CONTACT: Jon Freed, Laurel LaCivita or Robert Bolling, Enforcement Group III, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue, NW., Washington, DC 20230, telephone 202–482–3818, 202–482–4243, or 202–482–3434, respectively, fax 202–482–0865.

SUPPLEMENTARY INFORMATION:

Background

The Department's preliminary results of review were published on July 8, 2003. *See Preliminary Results*. On September 8, 2003, petitioners [1] submitted pre-verification comments. From September 12–September 19, 2003, the Department conducted the home market sales verification of the questionnaire responses of Ta Chen Stainless Pipe Co., Ltd. ("Ta Chen") and Ta Chen International, Inc. ("TCI"). From September 22–September 25, 2003, the Department conducted the U.S. sales verification of the questionnaire responses of Ta Chen and TCI. On October 24, 2003, the Department extended the final results of this review by 35 days until December 10, 2003. *See Certain Stainless Steel Butt-Weld Pipe Fittings from Taiwan: Extension of Final Results of Antidumping Duty Administrative Review*, 68 FR 60915, (October 24, 2003). We invited parties to comment on the *Preliminary Results*. We received written comments on October 29, 2003 from petitioners and from Ta Chen. On November 5, 2003, we received rebuttal comments from petitioners and Ta Chen. On November 12, 2003, we received a supplemental brief from petitioners covering issues relating to verification exhibits that were not served on them until November 3, 2003. On November 12, 2003, we received a letter from Ta Chen clarifying its initial brief filed on October 29, 2003. On November 17, 2003, we received comments from Ta Chen rebutting petitioners' supplemental brief filed on November 12, 2003.

The Department is conducting this administrative review in accordance with section 751 of the Act.

[1] Markovitz Enterprises, Inc. (Flowline Division), Shaw Alloy Piping Products Inc., Gerlin, Inc., and Taylor Forge Stainless, Inc., collectively ("petitioners").

Scope of the Review

The products subject to this administrative review are certain stainless steel butt-weld pipe fittings, whether finished or unfinished, under 14 inches inside diameter. Certain welded stainless steel butt-weld pipe fittings ("pipe fittings") are used to connect pipe sections in piping systems where conditions require welded connections. The subject merchandise is used where one or more of the following conditions is a factor in designing the piping system: (1) Corrosion of the piping system will occur if material other than stainless steel is used; (2) contamination of the material in the system by the system itself must be prevented; (3) high temperatures are present; (4) extreme low temperatures are present; and (5) high pressures are contained within the system.

Pipe fittings come in a variety of shapes, with the following five shapes the most basic: "elbows", "tees", "reducers", "stub ends", and "caps." The edges of finished pipe fittings are beveled. Threaded, grooved, and bolted fittings are excluded from this review. The pipe fittings subject to this review are classifiable under subheading 7307.23.00 of the Harmonized Tariff Schedule of the United States ("HTSUS").

Although the HTSUS subheading is provided for convenience and customs purposes, our written description of the scope of this review is dispositive. Pipe fittings manufactured to American Society of Testing and Materials specification A774 are included in the scope of this order.

Partial Rescission of Review

In the *Preliminary Results*, the Department issued a notice of intent to rescind the review with respect to Liang Feng Stainless Steel Fitting Co., Ltd. ("Liang Feng"), and Tru-Flow Industrial Co., Ltd. ("Tru-Flow") as we found that there were no entries of subject merchandise during the POR. *See Preliminary Results* at 40638–40639. On September 17, 2003, the Department conducted a sales verification at the offices and production facilities of Tru-Flow and found no information inconsistent with their response that they had no shipments to the United States. *See Verification of Tru-Flow Industrial Co., Ltd. in the Antidumping Administrative Review of Certain Stainless Steel Butt-Weld Pipe Fittings from Taiwan*, (October 22, 2003). As the Department received no comments on this issue and no additional evidence has arisen, the Department is rescinding the review with respect to Liang Feng and Tru-Flow.

Analysis of Comments Received

All issues raised in the case briefs, as well as the Department's findings, in this administrative review are addressed in the *Issues and Decision Memorandum for the Administrative Review of Stainless Steel Butt-Weld Pipe Fittings from Taiwan: June 1, 2001 through May 31, 2002* ("*Decision Memorandum*"), dated December 10, 2003, which is hereby adopted by this notice. A list of the issues raised and to which we have responded, all of which are in the *Decision Memorandum*, is attached to this notice as Appendix I. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in this public memorandum which is on file at the U.S. Department of Commerce, in the Central Records Unit, in room B–099. In addition, a complete version of the *Decision Memorandum* can be accessed directly on the Web at *http://www.ia.ita.doc.gov*. The paper copy and electronic version of the public version of the *Decision Memorandum* are identical in content.

Sales Below Cost in the Home Market

As discussed in more detail in the *Preliminary Results*, the Department disregarded home market below-cost sales that failed the cost test in the final results of review.

Changes Since the Preliminary Results

A list of the issues which parties have raised and to which we have responded, all of which are in the *Decision Memorandum*, is attached to this notice as Appendix I. Based on our analysis of the comments received, we have made certain changes in the margin calculation, as discussed in the *Decision Memorandum*, accessible in B–099. The changes are as follows:

- The Department has adjusted the values reported for home market packing and U.S. packing to reflect the minor correction to Ta Chen's packing labor ratio.
- The Department has adjusted the values reported for home market indirect selling expenses for home market sales.
- The Department has included in the indirect expenses incurred in the home market for U.S. sales ("DINDIRSU") that were reported but not used in the preliminary results of review. *See* Comment 8 of the *Decision Memorandum*.
- The Department has adjusted the reported values for marine insurance, harbor maintenance fee, and United States customs duty for one invoice in the U.S. sales listing to reflect a minor correction made at verification.
- The Department has adjusted the U.S. repacking expense and the warehouse expenses for all sales out of TCI inventory to reflect the minor correction made at verification.
- The Department has adjusted the imputed credit expense for U.S. sales that are shipped directly from Taiwan to the unaffiliated customer to reflect changes explained in Comment 7 of the *Decision Memorandum* accompanying this notice.
- The Department has adjusted the U.S. indirect selling expense calculation to include TCI's cost of financing.

Final Results of the Review

We determine that the following percentage weighted-average margin exists for the period June 1, 2001 through May 31, 2002:

CERTAIN STAINLESS STEEL BUTT-WELD PIPE FITTINGS FROM TAIWAN

Producer/Manufacturer/Exporter	Weighted-average margin (percent)
Ta Chen	1.27

Assessment Rates

The Department will determine, and U.S. Customs and Border Protection ("CBP") shall assess, antidumping duties on all appropriate entries. In accordance with 19 CFR 351.212(b)(1), we have calculated an importer-specific assessment rate for merchandise subject to this review. The Department will issue appropriate assessment instructions directly to CBP within 15 days of publication of these final results of review. We will direct the CBP to assess the resulting assessment rates against the entered customs values for the subject merchandise on each of the importer's entries during the review period. For duty assessment purposes, we calculated importer-specific assessment rates by dividing the dumping margins calculated for each importer by the total entered value of sales for each importer during the POR.

Cash Deposit Requirements

In accordance with section 751(a)(1) of the Act, the following deposit requirements will be effective upon publication of this notice of final results of administrative review for all shipments of certain SSBWPF from Taiwan entered, or withdrawn from warehouse, for consumption on or after the date of publication: (1) The cash deposit rate for Ta Chen will be the rate shown above; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original less-than-fair-value (LTFV) investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers shall continue to be 31.01 percent.

These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

Notification of Interested Parties

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

This notice also serves as the only reminder to parties subject to administrative protective orders ("APO") of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

We are issuing and publishing this determination and notice in accordance with sections 751(a)(1) and 777(i) of the Act.

Dated: December 10, 2003.

James J. Jochum,

Assistant Secretary for Import Administration.

Appendix I.—List of Issues for Discussion

Comment 1: Adverse Facts Available ("AFA")
Comment 2: Ta Chen's Affiliation with PFP Taiwan
Comment 3: Constructed Export Price ("CEP") Offset
Comment 4: Date of Sale
Comment 5: Classification of Home Market Sales
Comment 6: Employee Bonuses and Compensation for Directors and Supervisors Recorded in Stockholders' Equity on the Balance Sheet
Comment 7: Selling Expenses Associated with Sales Returns in the U.S. Market
Comment 8: Home Market Indirect Selling Expenses Incurred for Sales to the United States
Comment 9: Home Market Inventory Carrying Costs Associated with U.S. Sales
Comment 10: The Inclusion of Time on the Water in U.S. Inventory Carrying Costs
Comment 11: U.S. Indirect Selling Expenses
Comment 12: Short-term Borrowing Rate for Imputed Credit in the United States
Comment 13: CEP Profit
Comment 14: Wire Transfer Fee for Payments from TCI to Ta Chen
Comment 15: U.S. Inventory Carrying Costs
Comment 16: Weighted-Average Direct Selling Expenses for U.S. Stock Sales

[FR Doc. 03–31021 Filed 12–15–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A-583–830]

Preliminary Rescission of Antidumping Duty Administrative Review: Stainless Steel Plate in Coils from Taiwan

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of the Preliminary Rescission of Antidumping Duty Administrative Review of Stainless Steel Plate in Coils from Taiwan.

SUMMARY: On July 1, 2003, the Department of Commerce ("Department") published a notice of initiation of an antidumping duty administrative review on stainless steel plate in coils from Taiwan. *See Notice of Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part* ("*Notice of Initiation*") 68 FR 39055 (July 1, 2003). This review covers two manufacturers/exporters of the subject merchandise, Yieh United Steel Corporation ("YUSCO"), a Taiwan producer and exporter of subject merchandise, and Ta Chen Stainless Pipe Co., Ltd. ("Ta Chen"), a Taiwan producer and exporter of subject merchandise. The period of review ("POR") is May 1, 2002 through April 30, 2003. We are preliminarily rescinding this review based on evidence on the record indicating that there were no entries into the United States of subject merchandise during the POR from the respondents.

EFFECTIVE DATE: December 16, 2003.

FOR FURTHER INFORMATION CONTACT: Catherine Bertrand or Lilit Astvatsatrian, Enforcement Group III, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue, NW., Washington, DC 20230, telephone 202–482–3207 or 202–482–6412, respectively.

SUPPLEMENTARY INFORMATION:

Background

On May 21, 1999, the Department of Commerce ("Department") published the antidumping duty order on stainless steel plate in coils from Taiwan. *See Antidumping Duty Orders; Certain Stainless Steel Plate in Coils From Belgium, Canada, Italy, the Republic of Korea, South Africa, and Taiwan*, 64 FR 27756 (May 21, 1999). On May 1, 2003, the Department published a notice of opportunity to request an administrative review of this order for the period May 1, 2002 through April 30, 2003. *See Notice of Opportunity to Request Administrative Review of Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation*, 68 FR 23281 (May 1, 2003). On May 30, 2003, petitioners[1] timely requested that the Department conduct an administrative review of sales by YUSCO, a Taiwan producer and exporter of subject merchandise, and Ta Chen, a Taiwan producer and exporter of subject merchandise. On July 1, 2003, in accordance with section 751(a) of the Tariff Act of 1930 as amended ("the Act"), the Department published in the **Federal Register** a notice of initiation of this antidumping duty administrative review of sales by YUSCO and Ta Chen for the period May 1, 2002 through April 30, 2003. *See Notice of Initiation.*

On July 3, 2003, the Department issued its antidumping duty questionnaire to YUSCO and Ta Chen. On August 19, 2003, Ta Chen stated that it did not have any U.S. sales or exports of subject merchandise during the POR, and requested that it should be excluded from answering the Department's questionnaire. On August 20, 2003, YUSCO stated that it did not have any U.S. sales, shipments or entries of subject merchandise during the POR. On August 21, 2003, petitioners urged the Department to instruct Ta Chen and YUSCO to submit a completed Section A questionnaire response and alleged that Ta Chen and YUSCO are affiliated with other companies that may have shipped subject merchandise to the United States during the POR. On September 8, 2003, we sent an inquiry to U.S. Customs and Border Protection ("CBP") to confirm that YUSCO and Ta Chen had no shipments of subject merchandise into the United States during the POR. CBP did not indicate that there were any entries of subject merchandise by Ta Chen or YUSCO during the POR.

On March 11, 2003, the Department amended the scope of the antidumping duty orders to remove the original language from the scope which excluded cold-rolled stainless steel plate in coils, in accordance with the Court of International Trade's ("CIT") decision in *Allegheny Ludlum Corp. v. United States*, 287 F.3d 1365 (Fed. Cir. 2000). *See Notice of Amended Antidumping Duty Orders: Certain Stainless Steel Plate in Coils from Belgium, Cananda, Italy, the Republid of Korea, South Africa, and Taiwan*, 68 FR 11520, (March 11, 2003) ("Scope of the Review"). Therefore, the new scope was effective March 11, 2003. *See* Scope of the Review below.

[1] Allegheny Ludlum, AK Steel Corporation, Butler Armco Independent Union, United Steelworkers of America, AFL-CIO/CLC, and Zanesville Armco Independent Organization are collectively ≥petitioners≥ for this review.

Scope of the Review

Effective: May 1, 2002 through March 10, 2003

For purposes of this review, the product covered is certain stainless steel plate in coils. Stainless steel is an alloy steel containing, by weight, 1.2 percent or less of carbon and 10.5 percent or more of chromium, with or without other elements. The subject plate products are flat-rolled products, 254 mm or over in width and 4.75 mm or more in thickness, in coils, and annealed or otherwise heat treated and pickled or otherwise descaled. The subject plate may also be further processed (e.g., cold-rolled, polished, *etc.*) provided that it maintains the specified dimensions of plate following such processing. Excluded from the scope of this petition are the following: (1) Plate not in coils, (2) plate that is not annealed or otherwise heat treated and pickled or otherwise descaled, (3) sheet and strip, and (4) flat bars. In addition, certain cold-rolled stainless steel plate in coils is also excluded from the scope of these orders. The excluded cold-rolled stainless steel plate in coils is defined as that merchandise which meets the physical characteristics described above that has undergone a cold-reduction process that reduced the thickness of the steel by 25 percent or more, and has been annealed and pickled after this cold reduction process.

The merchandise subject to this review is currently classifiable in the Harmonized Tariff Schedule of the United States (HTS) at subheadings: 7219110030, 7219110060, 7219120005, 7219120020, 7219120025, 7219120050, 7219120055, 7219120065, 7219120070, 7219120080, 7219310010, 7219900010, 7219900020, 7219900025, 7219900060, 7219900080, 7220110000, 7220201010, 7220201015, 7220201060, 7220201080, 7220206005, 7220206010, 7220206015, 7220206060, 7220206080, 7220900010, 7220900015, 7220900060, and 7220900080. Although the HTS subheadings are provided for convenience and Customs purposes, the written description of the merchandise under investigation is dispositive.

Effective March 11, 2003, and in accordance with the CIT's December 12, 2002 opinion in *Allegheny Ludhum Corp. v. United States*, the scope of the order is as stated below:

Effective: March 11, 2003 through April 30, 2003

The product covered by these orders is certain stainless steel plate in coils. Stainless steel is an alloy steel containing, by weight, 1.2 percent or less of carbon and 10.5 percent or more of chromium, with or without other elements. The subject plate products are flat-rolled products, 254 mm or over in width and 4.75 mm or more in thickness, in coils, and annealed or otherwise heat treated and pickled or otherwise descaled. The subject plate may also be further processed (e.g., cold-rolled, polished, *etc.*) provided that it maintains the specified dimensions of plate following such processing. Excluded from the scope of these orders are the following: (1) Plate not in coils, (2) plate that is not annealed or otherwise heat treated and pickled or otherwise descaled, (3) sheet and strip, and (4) flat bars.

The merchandise subject to this review is currently classifiable in the Harmonized Tariff Schedule of the United States (HTS) at subheadings: 7219.11.00.30, 7219.11.00.60, 7219.12.00.06, 7219.12.00.21, 7219.12.00.26, 7219.12.00.51, 7219.12.00.56, 7219.12.00.66, 7219.12.00.71, 7219.12.00.81, 7219.31.00.10, 7219.90.00.10, 7219.90.00.20, 7219.90.00.25, 7219.90.00.60, 7219.90.00.80, 7220.11.00.00, 7220.20.10.10, 7220.20.10.15, 7220.20.10.60, 7220.20.10.80, 7220.20.60.05, 7220.20.60.10, 7220.20.60.15, 7220.20.60.60, 7220.20.60.80, 7220.90.00.10, 7220.90.00.15, 7220.90.00.60, and 7220.90.00.80. Although the HTS subheadings are provided for convenience and Customs purposes, the written description of the merchandise subject to these orders is dispositive.

Period of Review

The POR is May 1, 2002 through April 30, 2003.

Preliminary Rescission of Review in Part

Pursuant to 19 CFR 351.213(d)(3) of the Department's regulations, the Department may rescind an administrative review, in whole or with respect to a particular exporter or producer, if the Secretary concludes that, during the period covered by the review, there were no entries, exports, or sales of the subject merchandise. Both Ta Chen and YUSCO certified on the record that they did not export subject merchandise to the United States during the POR. The Department

then conducted a CBP inquiry. The result of the CBP inquiry affirmed Ta Chen and YUSCO's claims that there were no entries of subject merchandise during the POR.

Petitioners allege Ta Chen and YUSCO were affiliated with other Taiwanese companies during the POR. *See* Petitioners submission to the Department, dated August 21, 2003. However, the Department has preliminarily determined to rescind this administrative review absent evidence of any entries during the POR. The parties being reviewed in this case are Ta Chen and YUSCO, not the other parties which have been alleged to be affiliated with Ta Chen and YUSCO. Neither the petitioners nor any other party requested an administrative review of Ta Chen's or YUSCO's alleged affiliates. Therefore, absent entries, there is no reason for the Department to conduct an affiliation analysis. If the petitioners believe in future periods of review that other parties potentially affiliated with Ta Chen and YUSCO have exported subject merchandise to the United States, then a review covering those subsequent periods of reviews for those companies should be requested.

The Department is satisfied, after a review of information on the record, certification from YUSCO and Ta Chen of no exports to the United States during the POR and the inquiry on data from CBP, that there were no entries of Ta Chen and YUSCO's stainless steel plate in coils during the POR to the United States. Therefore, the Department is preliminarily rescinding this administrative review. The cash deposit rate for YUSCO will remain at 8.02 percent, for Ta Chen the cash deposit rate will remain at 10.20 percent, and for "all other" producers/exporters of the subject merchandise the cash deposit rate will remain at 7.39 percent, the rates established in the most recently completed segment of this proceeding. *See Notice of Final Results and Rescission in Part of Antidumping Duty Administrative Review: Stainless Steel Plate in Coils From Taiwan*, 68 FR 63067 (November 7, 2003).Pursuant to 19 CFR 351.309, interested parties may submit written comments in response to this preliminary rescission. Case briefs must be submitted within 30 days after the date of publication of this notice and rebuttal briefs, limited to arguments raised in the case briefs, must be submitted no later than 7 days after the time limit for filing case briefs. Case and rebuttal briefs must be served on interested parties in accordance with 19 CFR 351.303(f).

This administrative review and notice is published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: December 9, 2003.

James J. Jochum,

Assistant Secretary for Import Administration.

[FR Doc. 03–31015 Filed 12–15–03; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 111403B]

Small Takes of Marine Mammals Incidental to Specified Activities; Oceanographic Surveys off the Northern Yucatan Peninsula in the Gulf of Mexico

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of receipt of application and proposed incidental take authorization; request for comments.

SUMMARY: NMFS has received an application from the Lamont-Doherty Earth Observatory (LDEO), a part of Columbia University, for an Incidental Harassment Authorization (IHA) to take small numbers of marine mammals, by harassment, incidental to conducting oceanographic surveys off the northern Yucatan Peninsula in the Gulf of Mexico. Under the Marine Mammal Protection Act (MMPA), NMFS is requesting comments on its proposal to issue an authorization to LDEO to incidentally take, by harassment, small numbers of several species of cetaceans and pinnipeds for a limited period of time within the next year.

DATES: Comments and information must be received no later than January 15, 2004.

ADDRESSES: Comments on the application should be addressed to P. Michael Payne, Chief, Marine Mammal Conservation Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910–3225, or by telephoning the contact listed here. A copy of the application containing a list of the references used in this document may be obtained by writing to this address or by telephoning the contact listed here and is also available at: *http://www.nmfs.noaa.gov/prot_res/PR2/Small_Take/smalltake_info.htm#applications* Comments cannot be accepted if submitted via e-mail or the Internet.

FOR FURTHER INFORMATION CONTACT: Kimberly Skrupky, Office of Protected Resources, NMFS, (301) 713–2322, ext 163.

SUPPLEMENTARY INFORMATION:

Background

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce to allow, upon request, the incidental, but not intentional, taking of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review.Permission may be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses and that the permissible methods of taking and requirements pertaining to the monitoring and reporting of such takings are set forth. NMFS has defined "negligible impact" in 50 CFR 216.103 as "...an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival."

Section 101(a)(5)(D) of the MMPA established an expedited process by which citizens of the United States can apply for an authorization to incidentally take small numbers of marine mammals by harassment. Under section 3(18)(A), the MMPA defines "harassment" as:

> any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering.

The term "Level A harassment" means harassment described in subparagraph (A)(i). The term "Level B harassment" means harassment described in subparagraph (A)(ii).

Section 101(a)(5)(D) establishes a 45–day time limit for NMFS review of an application followed by a 30–day public notice and comment period on any proposed authorizations for the incidental harassment of marine mammals. Within 45 days of the close of the comment period, NMFS must either issue or deny issuance of the authorization.

Summary of Request

On October 8, 2003, NMFS received an application from LDEO for the taking, by harassment, of several species of marine mammals incidental to conducting a seismic survey program. As presently scheduled, a seismic survey will be conducted in the Gulf of Mexico off the northern Yucatan Peninsula. The Gulf of Mexico research cruise will be off the coast of the northern Yucatan Peninsula in an area extending between 21° to 22.5° N and 88° to 91° W from March 7, 2004 to April 4, 2004. The operations will partly take place in the Exclusive Economic Zone (EEZ) of Mexico.

The purpose of the project is to study the Chicxulub Crater. The Chicxulub Crater was formed 65 million years ago when a massive meteor crashed into the Yucatan Peninsula of Mexico leaving behind the crater with a diameter of about 150 km (93 mi). The well-known massive extinction event at the Cretaceous-Tertiary (K–T) boundary appears to have been caused, at least in part, by this impact. It is also the only large terrestrial impact crater with a well preserved topographic peak ring. The Chicxulub Crater is uniquely suited for a seismic investigation into the deformation mechanisms of large diameter impacts in general and the physical parameters of the K–T impact in particular. The goals are to: (1) Determine the direction of approach and angle of the Chicxulub impact through the collaborative seismic and modeling effort, (2) map the deformation recorded in the upper crust near the crater center that may yield important information about the kinematics of large bolide impacts, (3) image the peak ring and other morphologic features in the northwest quadrant of the crater to further understand the physical parameters of the Chicxulub impact structure, and (4) model the 3–D collapse of an asymmetric transient crater to help better understand the mechanics of large impact craters and to quantify the environmental effects of the K–T impact.

Description of the Activity

The seismic survey will involve one vessel, the *R/V Maurice Ewing*. It will deploy an array of 20 airguns as an energy source, plus a 3 to 6–km (1.6 to 3.2 n.mi.) towed hydrophone streamer. As the airgun array is towed along the survey line, the towed hydrophone streamer or Ocean Bottom Seismometers (OBSs) will receive the returning acoustic signals and transfer the data to the on-board processing system. Water depths within the study area range are less than 100 m (328 ft) and almost all of the survey will be conducted in water depths less than 50 m (164 ft).

The procedures to be used for the seismic study will be similar to those used during previous seismic surveys by LDEO in the equatorial Pacific Ocean (Carbotte et al., 1998, 2000). The proposed seismic surveys will use conventional seismic methodology, with a towed airgun array as the energy source and a towed hydrophone streamer and/or OBSs as the receiver system. The energy to the airgun array is compressed air supplied by compressors on board the source vessel.

During the airgun operations, the vessel will travel at 7.4–9.3 km/hr (4–5 knots), and seismic pulses will be emitted at intervals of 60–90 sec (OBS lines) and approximately 20 sec Multi-Channel Seismic profiles (MCS lines). The 20–sec spacing corresponds to a shot interval of about 50 m (164 ft). The 60–90 sec spacing along OBS lines is to minimize reverberation from previous shot noise during OBS data acquisition, and the exact spacing will depend on water depth. The 20–airgun array will include airguns ranging in chamber volume from 80 to 850 in3. These airguns will be spaced in an approximate rectangle of dimensions of 35 m (115 ft) across track by 9 m (30 ft) along track.

Along the selected lines, the OBSs will be positioned on the ocean bottom by the *Maurice Ewing*. After each line is shot, the *Maurice Ewing* will retrieve the OBSs, download the data, and refurbish the units before redeploying the OBSs along the next line that will be shot. During the Yucatan cruise, there will be three deployments of OBSs.

In addition to the operations of the airgun array, the ocean floor will be mapped continuously throughout the entire cruise with an Atlas Hydrosweep DS–2 multibeam 15.5–kHz bathymetric sonar, and a 3.5–kHz sub-bottom profiler. Both of these sound sources will be operated simultaneously with the airgun array.

The Atlas Hydrosweep is mounted on the hull of the *Maurice Ewing*, and it operates in three modes, depending on the water depth. There is one shallow water mode and there are two deep-water modes: an Omni mode and a Rotational Directional Transmission mode (RDT).

The sub-bottom profiler is normally operated to provide information about the sedimentary features and the bottom topography that is simultaneously being mapped by the Hydrosweep. The energy from the sub-bottom profiler is directed downward by a 3.5 kHz transducer mounted in the hull of the *Maurice Ewing*. The output varies with water depth from 50 watts in shallow water to 800 watts in deep water. Pulse interval is 1 second (s) but a common mode of operation is to broadcast five pulses at 1–s intervals followed by a 5–s pause. The beamwidth is approximately 30° and is directed downward. Maximum source output is 204 dB re 1µPa; 800 watts, while nominal source output is 200 dB re 1 µPa, 500 watts. Pulse duration will be 4, 2, or 1 ms, and the bandwith of pulses will be 1.0 kHz, 0.5 kHz, or 0.25 kHz, respectively.

Additional information on the airgun arrays, bathymetric sonars, and sub-bottom profiler specifications is also contained in the application (see **ADDRESSES**) and in previous **Federal Register** notices (April 14, 2003, 68 FR 17909, and September 17, 2003, 68 FR 54421).

Description of Habitat and Marine Mammals Affected by the Activity

A detailed description of the Gulf of Mexico near the northern Yucatan Peninsula and its associated marine mammals can be found in the LDEO application and a number of documents referenced in the LDEO application, and is not repeated here. In the Gulf of Mexico near the Yucatan Peninsula, 29 marine mammal species are known to occur within the proposed study area. The species included in this application are the sperm whale (*Physeter macrocephalus*), pygmy sperm whale (*Kogia breviceps*), dwarf sperm whale (*Kogia sima*), Cuvier's beaked whale (*Ziphius cavirostris*), Sowerby's beaked whale (*Mesoplodon densirostris*), Gervais' beaked whale (*Mesoplodon europaeus*), Blainville's beaked whale (*Mesoplodon densirostris*), rough-toothed dolphin (*Steno bredanensis*), bottlenose dolphin (*Tursiops truncatus*), pantropical spotted dolphin (*Stenella attenuata*), Atlantic spotted dolphin (*Stenella frontalis*), spinner dolphin (*Stenella longirostris*), clymene dolphin (*Stenella clymene*), striped dolphin (*Stenella coeruleoalba*), short-beaked common dolphin (*Delphinus delphis*), long-beaked common dolphin (*Delphinus capensis*), Fraser's dolphin (*Lagenodelphis hosei*), Risso's dolphin (*Grampus griseus*), melon-headed whale (*Peponocephala electra*), pygmy killer whale (*Feresa attenuata*), false killer whale (*Pseudorca crassidens*), killer whale (*Orcinus orca*), short-finned pilot whale (*Globicephala macrorhynchus*), long-finned pilot whale (*Globicephala*

melas), North Atlantic right whale (*Eubalaena glacialis*), humpback whale (*Megaptera novaeangliae*), minke whale (*Balaenoptera acutorostrata*), Bryde's whale (*Balaenoptera edeni*), sei whale (*Balaenoptera borealis*), fin whale (*Balaenoptera physalus*), and blue whale (*Balaenoptera musculus*). Seven of these species are listed as endangered under the U.S. Endangered Species Act (ESA): sperm, North Atlantic right, humpback, sei, fin, and blue whales, as well as West Indian manatee. Also, one species of pinniped, the hooded seal (*Cystophora cristata*), could potentially be encountered during the proposed seismic surveys. Additional information on most of these species is available at: *http://www.nmfs.noaa.gov/prot_res/PR2/Stock Assessment Program/sars.html*.

Potential Effects on Marine Mammals

NMFS' April 14, 2003, **Federal Register** notice (68 FR 17909) describes generally the anticipated effects of the Ewing's airguns and multibeam bathymetric sonar on marine mammals, including masking, behavioral disturbance, and potential hearing impairment and other physical effects. Possible effects of the sub-bottom profiler used in the projects are described in the previously mentioned **Federal Register** notices (68 FR 44291, July 28, 2003). The LDEO application for operations in Yucatan also provides information on what is known about the effects of LDEO's planned seismic survey on marine mammals. Past **Federal Register** notices for other LDEO seismic surveys include July 28, 2003 (68 FR 44291), August 26, 2003 (68 FR 51240), September 12, 2003 (68 FR 53714), September 17, 2003 (68 FR 54421), and October 21, 2003 (68 FR 60086).

Estimates of Take for the Northern Yucatan Peninsula Cruise

NMFS' current criteria for onset of Level A harassment of cetaceans and pinnipeds from impulse sound are, respectively, 180 and 190 re 1 μPa root-mean-squared (rms). The rms pressure is an average over the pulse duration. The rms level of a seismic pulse is typically about 10 dB less than its peak level (Greene 1997; McCauley et al. 1998, 2000a). The criterion for Level B harassment onset is 160 dB.

Given the proposed mitigation (see Mitigation later in this document), all anticipated takes involve a temporary change in behavior that may constitute Level B harassment. The proposed mitigation measures will minimize the possibility of Level A harassment. LDEO has calculated the "best estimates" for the numbers of animals that could be taken by level B harassment during the proposed seismic survey at the northern Yucatan Peninsula using data on marine mammal abundance from a previous survey region, as shown in the predicted RMS radii table.

These estimates are based on a consideration of the number of marine mammals that might be exposed to sound levels greater than 160 dB, the criterion for the onset of Level B harassment, by operations with the 20–gun array planned to be used for this project. The anticipated radius of influence of the multibeam sonar is less than that for the airgun array, so it is assumed that any marine mammals close enough to be affected by the multibeam sonar would already be affected by the airguns. Therefore, no additional incidental takings are included for animals that might be affected by the multibeam sonar.

The following table explains the corrected density estimates as well as the best estimate of the numbers of each species that would be exposed to seismic sounds greater than 160 dB.

Species	"Best Estimate" of the Number of Exposures to Sound Levels ≥160 dB (≥170 dB)	% of North Atlantic Population	"Maximum Estimate" of the Number of Exposures to Sound Levels ≥160 dB (≥170 dB)
PHYSETERIDAE			
Sperm whale	0	0	0
Dwarf/Pygmy sperm whale	0	0	0
ZIPHIIDAE	0	0	0
Cuvier's beaked whale	0	0	0
Sowerby's beaked whale	0	0	0
Gervais' beaked whale	0	0	0
Blainville's beaked whale	0	0	0
DELPHINIDAE			
Rough-toothed dolphin	295 (85)	N.A.	443 (128)
Bottlenose dolphin	9107 (2631)	N.A.	13,660 (3946)
Pantropical spotted dolphin	436 (126)	<0.7	654 (189)
Atlantic spotted dolphin	988(285)	<1.8	1481 (428)
Spinner dolphin	26 (7)	<0.2[a]	38 (11)
Clymene dolphin	0	0	0
Striped dolphin	0	0	0
Short-beaked common dolphin			
Long-beaked common dolphin			
Fraser's dolphin	6 (1)	N.A.	10(2)
Risso's dolphin	6 (1)	0	10(2)
Melon-headed whale	6 (1)	0.1[a]	10(2)
Pygmy killer whale	0	0	0
False killer whale	359 (104)	N.A.	539 (156)
Killer whale	6 (1)	0.1	10(2)
Short-finned pilot whale	205 (59)	0	308 (89)
Long-finned pilot whale			
MYSTICETES			
North Atlantic right whale	0	0	0
Humpback whale	0	0	0
Minke whale	0	0	0
Bryde's whale	0	0	0
Sei whale	0	0	0

Species	"Best Estimate" of the Number of Exposures to Sound Levels ≥160 dB (≥170 dB)	% of North Atlantic Population	"Maximum Estimate" of the Number of Exposures to Sound Levels ≥160 dB (≥170 dB)
Fin whale	0	0	0
Blue whale	0	0	0
PINNIPED			
Hooded seal	0	0	0

[a] % of Gulf of Mexico population; N.A. = not available.

Conclusions- Effects on Cetaceans

Strong avoidance reactions by several species of mysticetes to seismic vessels have been observed at ranges up to 8 km (4.3 nm) and occasionally as far as 30 km (16.2 nm) from the source vessel. In Arctic waters, some bowhead whales avoided waters within 30 km (16.2 nm) of the seismic operation. However, reactions at such long distances appear to be atypical of other species of mysticetes and, even for bowheads, may only apply during migration.

Odontocete reactions to seismic pulses, or at least those of dolphins, are expected to extend to lesser distances than are those of mysticetes. Odontocete low-frequency hearing is less sensitive than that of mysticetes, and dolphins are often seen in the vicinity of seismic vessels. There are documented instances of dolphins approaching active seismic vessels. However, dolphins as well as some other types of odontocetes will sometimes show avoidance responses and/or other changes in behavior when near operating seismic vessels.

Taking account of the mitigation measures that are planned, effects on cetaceans are generally expected to be limited to avoidance of the area around the seismic operation and short-term changes in behavior, falling within the MMPA definition of Level B harassment.

The numbers of odontocetes that may be harassed by the proposed activities are small relative to the population sizes of the affected stocks. A maximum of 13660, 1481, and 654 bottlenose, Atlantic spotted, and pantropical spotted dolphins, respectively, (the most abundant delphinids in the proposed survey area) are expected to be exposed to seismic sounds greater than or equal to 160 dB. However, the best estimates for bottlenose, Atlantic spotted, and pantropical spotted dolphins are 9107, 988, and 436, respectively. This represents zero to 1.8 percent of the North Atlantic populations of these species based on population estimates. However, these dolphin species surveys have not been conducted for most of their range in the North Atlantic Ocean and adjacent waters. Therefore the true percentages of the populations that might be exposed to seismic sounds greater than or equal to 160 dB are likely to be much less than 1.8 percent, as the population sizes and the zero to 1.8 percent are based on only a small fraction of their range and their actual population sizes are much larger.

In light of the type of take expected and the small percentages of affected stocks, the action is expected to have no more than a negligible impact on the affected species or stocks of marine mammals. In addition, mitigation measures such as controlled vessel speed, course alteration, look-outs, ramp-ups, and power-downs when marine mammals are seen within defined ranges (see Mitigation) should further reduce short-term reactions to disturbance, and minimize any effects on hearing sensitivity.

Conclusions- Effects on Pinnipeds

Pinnipeds are not expected to be encountered during the proposed seismic survey at the northern Yucatan Peninsula in the Gulf of Mexico. However, a conservative estimate of a maximum of 5 hooded seals may be affected by a portion of the proposed survey in the Gulf of Mexico if they are encountered. Responses of pinnipeds to acoustic disturbance are variable, but usually quite limited. If hooded seals were encountered, the proposed seismic survey would have, at most, a short-term effect on their behavior, falling within the definition of Level B harassment. The action would therefore have no more than a negligible impact on the affected species or stocks of pinnipeds.

Mitigation

The following mitigation measures are proposed for the subject seismic surveys, provided that they do not compromise operational safety requirements: (1) Speed and course alteration; (2) power-down and shut-down procedures; and (3) ramp-up procedures. Mitigation also includes marine mammal monitoring in the vicinity of the arrays. These mitigation measures are further described here.

These mitigation measures will incorporate use of established safety radii which are equal to 1.5 times the distance from the arrays where sound levels ≥190 and 180 dB re 1 μPa rms (the criteria for onset of Level A harassment for pinnipeds and cetaceans respectively) are predicted to be received. LDEO has modeled the sound pressure fields for the 20–gun array in relation to distance and direction from the airguns and predicts that the 190–dB and 180–dB distance from the airgun array will be 275 ft (902 m) and 900 ft (2935 m) respectively.

The directional nature of the 20–airgun array to be used in this project is also an important mitigating factor. The airguns comprising these arrays will be spread out horizontally, so that the energy from the arrays will be directed mostly downward, resulting in lower sound levels at any given horizontal distance than would be expected at that distance if the source were omnidirectional with the stated nominal source level. Because the actual seismic source is a distributed sound source (20 guns) rather than a single point source, the highest sound levels measurable at any location in the water will be less than the nominal source level.

Speed and Course Alteration

If a marine mammal is detected outside the appropriate safety radius and, based on its position and the relative motion, is likely to enter the safety radius, the vessel's speed and/or direct course will be changed in a manner that also minimizes the effect to the planned science objectives. The marine mammal activities and movements relative to the seismic vessel will be closely monitored to ensure that the marine mammal does not approach within the safety radius. If the mammal appears likely to enter the safety radius, further mitigative actions will be taken, i.e., either further course alterations or shutdown of the airguns.

Power-down and Shut-down Procedures

Airgun operations will be powered-down (or shut-down) immediately when cetaceans or pinnipeds are seen within or about to enter the appropriate safety radius. If a marine mammal is detected outside the safety radius but is likely to enter the safety radius, and if the vessel's course and/or speed cannot be changed to avoid having the marine mammal enter the safety radius, the airguns will be powered-down before the mammal is within the safety radius. Likewise, if a mammal is already within the safety zone when first detected, the airguns will be powered-down immediately. If a marine mammal is seen within the appropriate safety radius of the array while the guns are powered-down, airgun operations will be shut-down. For the power-down procedure for the 20–gun array, one 80 in^3 airgun will continue to be operated during the interruption of seismic survey. Airgun activity (after both power-down and shut-down procedures) will not resume until any marine mammal has cleared the safety radius. The mammal has cleared the safety radius if it is visually observed to have left the safety radius, or if it has not been seen within the zone for 15 min (small odontocetes and pinnipeds) or 30 min (mysticetes and large odontocetes, including sperm, pygmy sperm, dwarf sperm, beaked and bottlenose whales).

Ramp-up Procedure

When airgun operations with the 20–gun array commence after a certain period without airgun operations, the number of guns firing will be increased gradually, or "ramped up" (also described as a "soft start"). Operations will begin with the smallest gun in the array (80 in^3). Guns will be added in sequence such that the source level of the array will increase in steps not exceeding 6 dB per 5–min period over a total duration of approximately 25 minutes. Throughout the ramp-up procedure, the safety zone for the full 20–gun array will be maintained. Given the presence of the streamer and airgun array behind the vessel, the turning rate of the vessel with trailing streamer and array is no more than five degrees per minute, limiting the maneuverability of the vessel during operations.

The "ramp-up" procedure will be required under the following circumstances. Under normal operational conditions (vessel speed 4 knots, or 7.4 km/hr), a ramp-up would be required after a power-down or shut-down period lasting about 8 minutes or longer if the *Ewing* was towing the 20–gun array. At 4 knots, the source vessel would travel 900 m (2953 ft) during an 8–minute period. If the towing speed is reduced to 3 knots or less, as sometimes required when maneuvering in shallow water, it is proposed that a ramp-up would be required after a "no shooting" period lasting 10 minutes or longer. At towing speeds not exceeding 3 knots, the source vessel would travel no more than 900 m (3117 ft) in 10 minutes. Based on the same calculation, a ramp-up procedure would be required after a 6 minute period if the speed of the source vessel was 5 knots.

Ramp-up will not occur if the safety radius has not been visible for at least 30 min prior to the start of operations in either daylight or nighttime. If the safety radius has not been visible for that 30 minute period (e.g., during darkness or fog), ramp-up will not commence unless at least one airgun has been firing continuously during the interruption of seismic activity.

Comments on past proposed IHAs raised the issue of prohibiting nighttime operations as mitigation. However, this is not practicable due to cost considerations. The daily cost to the federal government to operate vessels such as Ewing is approximately $33,000 to $35,000/day (Ljunngren, pers. comm. May 28, 2003). If the vessels were prohibited from operating during nighttime, it is possible that each trip would require an additional three to five days, or up to $175,000 more, depending on average daylight at the time of work.

Taking into consideration the additional costs of prohibiting nighttime operations and the likely impact of the activity (including all mitigation and monitoring), NMFS has determined that the proposed mitigation ensures that the activity will have the least practicable impact on the affected species or stocks. Marine mammals will have sufficient notice of a vessel approaching with operating seismic airguns (at least one hour in advance), thereby giving them an opportunity to avoid the approaching array; if ramp-up is required after an extended power-down, two marine mammal observers will be required to monitor the safety radii using night vision devices for 30 minutes before ramp-up begins and verify that no marine mammals are in or approaching the safety radii; ramp-up may not begin unless the entire safety radii are visible; and ramp-up may occur at night only if one airgun with a sound pressure level of at least 180 dB has been maintained during interruption of seismic activity. Therefore it is likely that the 20–gun array will not be ramped-up from a shut-down at night.

Marine Mammal Monitoring

LDEO must have at least two observers on board the vessel, and at least one must be an experienced marine mammal observer that NMFS approves. These observers will monitor marine mammals near the seismic source vessel during all daytime airgun operations and during any nighttime start-ups of the airguns. During daylight, vessel-based observers will watch for marine mammals near the seismic vessel during periods with shooting (including ramp-ups), and for 30 minutes prior to the planned start of airgun operations after an extended shut-down.

The observers will be on duty in shifts of no longer than 4 hours. The second observer must also be on watch part of the time, including the 30–minute periods preceding startup of the airguns and during ramp-ups. Use of two simultaneous observers will increase the likelihood that marine mammals near the source vessel are detected. LDEO bridge personnel will also assist in detecting marine mammals and implementing mitigation requirements whenever possible (they will be given instruction on how to do so), especially during ongoing operations at night when the designated observers are not on duty.

The observer(s) will watch for marine mammals from the highest practical vantage point on the vessel, which is either the bridge or the flying bridge. On the bridge of the *Maurice Ewing*, the observer's eye level will be 11 m (36 ft) above sea level, allowing for good visibility within a 210° arc. If observers are stationed on the flying bridge, the eye level will be 14.4 m (47.2 ft) above sea level. The observer(s) will systematically scan the area around the vessel with reticle binoculars (e.g., 7 X 50 Fujinon) and with the naked eye during the daytime. Laser rangefinding binoculars (Leica LRF 1200 laser rangefinder or equivalent) will be available to assist with distance estimation. The observers will be used to determine when a marine mammal is in or near the safety radii so that the required mitigation measures, such as course alternation and power-down or shut-down, can be implemented. If the airguns are powered or shut down, observers will maintain watch to determine when the animal is outside the safety radius.

Observers will not be on duty during ongoing seismic operations at night; bridge personnel will watch for marine mammals during this time and will call for the airguns to be powered-down if marine mammals are observed in or about to enter the safety radii. If the airguns are ramped-up at night, two marine mammal observers will monitor for marine mammals for 30 minutes prior to ramp-up and during the ramp-up using night vision equipment that will be available (ITT F500 Series Generation 3 binocular image intensifier or equivalent).

Comments on past proposed IHAs suggested that NMFS require the use of passive acoustic monitoring, which is generally more effective than visual observations. Shipboard passive acoustics would not allow those on board the vessel to determine a marine mammal's distance from the vessel through triangulation; the vessel operator could determine only that a marine mammal is some unknown distance from the vessel. In order to triangulate on the animal, a system similar to that used in the Gulf of Mexico Sperm Whale Seismic Study (SWSS) in May 2003 is necessary. That passive acoustical monitoring equipment is not the property of LDEO or the Ewing and is not available for the Yucatan cruises. LDEO is presently evaluating the scientific results of the passive sonar from the SWSS trip to determine whether it is practical to incorporate it into future seismic research cruises. NMFS expects a report on this analysis shortly.

Reporting

LDEO will submit a report to NMFS within 90 days after the end of the cruise, which is predicted to occur on or around April 4, 2004. The report will describe the operations that were conducted and the marine mammals that were detected. The report must provide full documentation of methods, results, and interpretation pertaining to all monitoring tasks. The report will summarize the dates and locations of seismic operations, marine mammal sightings (dates, times, locations, activities, associated seismic survey activities), and estimates of the amount and nature of potential take of marine mammals by harassment or in other ways.

ESA

Under section 7 of the ESA, the National Science Foundation(NSF), the agency funding LDEO, has begun consultation on the proposed issuance of an IHA under section 101(a)(5)(D) of the MMPA for this activity. Consultation will be concluded prior to the issuance of an IHA. NSF has initiated consultation with the U.S. Fish and Wildlife Service on West Indian Manatees.

National Environmental Policy Act (NEPA)

The NSF has prepared an EA for the northern Yucatan Peninsula surveys. NMFS is reviewing this EA and will either adopt it or prepare its own NEPA document before making a determination on the issuance of an IHA. A copy of the NSF EA for this activity is available upon request (see **ADDRESSES**).

Preliminary Conclusions

NMFS has preliminarily determined that the impact of conducting the seismic survey at the northern Yucatan Peninsula in the Gulf of Mexico will result, at worst, in a temporary modification in behavior by certain species of marine mammals. This activity is expected to result in no more than a negligible impact on the affected species or stocks.

While the number of potential incidental harassment takes will depend on the distribution and abundance of marine mammals in the vicinity of the survey activity, the number of potential harassment takings is estimated to be small. In addition, no take by injury and/or death is anticipated, and the potential for temporary or permanent hearing impairment is low and will be avoided through the incorporation of the mitigation measures mentioned in this document. In addition, the proposed seismic program is not expected to interfere with any subsistence hunts, since operations in the whaling and sealing areas will be limited or nonexistent.

Proposed Authorization

NMFS proposes to issue an IHA to LDEO for conducting a seismic surveys at the northern Yucatan Peninsula in the Gulf of Mexico, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated. NMFS has preliminarily determined that the proposed activity would result in the harassment of small numbers of marine mammals; would have no more than a negligible impact on the affected marine mammal stocks; and would not have an unmitigable adverse impact on the availability of species or stocks for subsistence uses.

Information Solicited

NMFS requests interested persons to submit comments and information concerning this request (see **ADDRESSES**).

Dated: December 4, 2003.

Phil Williams,

Acting Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 03–30922 Filed 12–15–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

Patent and Trademark Office

Secrecy and License To Export

ACTION: Proposed collection; comment request.

SUMMARY: The United States Patent and Trademark Office (USPTO), as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before February 17, 2004.

ADDRESSES: Direct all written comments to Susan K. Brown, Records Officer, Office of the Chief Information Officer, Office of Data Architecture and Services, Data Administration Division, (703) 308–7400, U.S. Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313, Attn: CPK 3 Suite 310; by e-mail at *susan.brown@uspto.gov;* or by facsimile at (703) 308–7407.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to the attention of Robert J. Spar, Director, Office of Patent Legal Administration, United States Patent and Trademark Office (USPTO), P.O. Box 1450, Alexandria, VA 22313–1450; by telephone (703) 308–5107; or by e-mail at *bob.spar@uspto.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

In the interest of national security, patent laws and rules place certain limitations on the disclosure of information contained in patents and patent applications and on the filing of applications for patents in foreign countries. When an invention is determined to be detrimental to national security, the Commissioner for Patents at the USPTO must issue a secrecy order and withhold the grant of a patent for such period as the national interest requires. If a secrecy order is applied to an international application, the application will not be forwarded to the

International Bureau as long as the secrecy order is in effect. The USPTO collects information to determine whether the patent laws and rules have been complied with, and to grant or revoke licenses to file abroad when appropriate. This collection of information is required by 35 U.S.C. 181–188 and administered through 37 CFR chapter 1, part 5, 5.1–5.33.

On November 29, 2001 OMB approved a Change Worksheet to adjust the burden estimates for this collection. The USPTO received more submissions than originally estimated; consequently, the responses increased by 332 and the total burden hours for this collection increased by 225 as an administrative adjustment.

In September 2003 the USPTO submitted an information collection package to OMB for review in support of a proposed rulemaking, "Changes to Support Implementation of the United States Patent and Trademark Office 21st Century Strategic Plan" (RIN 0651–AB64). This proposed rulemaking would increase the filing fees for petitions related to foreign licenses in order to more accurately reflect the USPTO's actual cost of processing these petitions. An existing petition, the Petition for Changing the Scope of a License, was not previously covered in this collection as a separate item, but was added to this rulemaking package with its proposed filing fee.

There are no forms associated with this collection of information.

II. Method of Collection

By mail, facsimile, or hand carry when the applicant or agent files a patent application with the USPTO, submits subsequent papers during the prosecution of the application to the USPTO, or submits a request for a foreign filing license for a patent application to be filed abroad before the filing of a United States patent application.

III. Data

OMB Number: 0651–0034.
Form Number(s): N/A.
Type of Review: Extension of a currently approved collection.
Affected Public: Individuals or households; business or other for profit; not-for-profit institutions; farms; Federal Government; and state, local or tribal Government.
Estimated Number of Respondents: 1,669 total responses per year. Of this total, 6 per year for petitions for rescission of secrecy order; 3 per year for petitions for permits to disclose or modification of secrecy order; 1 per year for general and group permits; 1,402 per year for petitions for foreign filing license without a corresponding application on file; 126 per year for petitions for foreign filing license with a corresponding United States application on file; 130 per year for petitions for retroactive license; and 1 per year for petitions for changing the scope of a license.
Estimated Time Per Response: The USPTO estimates that it will take approximately 3 hours for petitions for rescission of secrecy order; 2 hours petitions for permits to disclose or modification of secrecy order; 1 hour for general and group permits; 0.5 hours each for petitions for foreign filing licenses without a corresponding application and petitions for licenses with a corresponding U.S. patent application; 4 hours for petitions for retroactive licenses; and 1 hour for petitions for changing the scope of a license to gather, prepare and submit this information, depending upon the complexity of the situation.
Estimated Total Annual Respondent Burden Hours: 1,310 hours per year.
Estimated Total Annual Respondent Cost Burden: $374,660. Using the professional hourly rate of $286 for associate attorneys in private firms, the USPTO estimates $374,660 per year for salary costs associated with respondents.

Item	Estimated time for response	Estimated annual responses	Estimated annual burden hours
Petition for rescission of secrecy order	3 hours	6	18
Petition for permit to disclose or modification of secrecy order	2 hours	3	6
Petition for general and group permits	1 hour	1	1
Petition for License; no corresponding application	0.5 hours	1,402	701
Petition for License; corresponding U.S. application	0.5 hours	126	63
Petition for retroactive license	4 hours	130	520
Petition for changing the scope of a license	1 hour	1	1
Totals		1,669	1,310

Estimated Total Annual Non-Hour Respondent Cost Burden: $215,732. There are no capital start-up or maintenance costs associated with this information collection. There are, however, filing fees and postage costs.

There is a proposed rulemaking information collection currently at OMB under review which, if approved, would add $437,000 in filing fees to this collection for the petitions for the licenses to export. However, since the information collection currently at OMB under review is a proposed rulemaking, the USPTO is using the current filing fee rate of $130 for this submission, for a total of $215,670 in filing fees for the licenses to export. No fees are associated with the secrecy order petitions.

Item	Responses (a)	Filing Fee ($) (b)	Total Filing Fee Cost Burden (c) (a × b)
Petition for rescission of secrecy order	6	0	0.00
Petition for permit to disclose or modification of secrecy order	3	0	0.00
Petition for general and group permits	1	0	0.00
Petition for License, no corresponding application	1,402	130.00	182,260.00
Petition for License, corresponding U.S. application	126	130.00	16,380.00
Petition for retroactive license	130	130.00	16,900.00
Petition for changing the scope of a license	1	130.00	130.00
Totals	1,669		215,670.00

The USPTO estimates that 90 percent (90%) of the petitions in this collection are submitted to the USPTO by facsimile or hand carried because of the quick turnaround required. For the 10 percent (10%) of the public that chooses to submit the petitions in this collection to the USPTO by mail through the United States Postal Service, the USPTO estimates that the average first class postage cost for a mailed submission will be 37 cents. Therefore, the USPTO estimates that up to 167 submissions per year may be mailed to the USPTO at an average first class postage cost of 37 cents, for a total postage cost of $62.

The USPTO estimates that the total non-hour respondent cost burden for this collection in the form of postage costs and filing fees amounts to $215,732.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, *e.g.*, the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized or included in the request for OMB approval of this information collection; they will also become a matter of public record.

Dated: December 9, 2003.

Susan K. Brown,

Records Officer, USPTO, Office of the Chief Information Officer, Office of Data Architecture and Services, Data Administration Division.

[FR Doc. 03–30944 Filed 12–15–03; 8:45 am]

BILLING CODE 3510–16–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Information Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before January 15, 2004.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Melanie Kadlic, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street NW., Room 10235, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the Internet address *Melanie_Kadlic@omb.eop.gov*.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: December 10, 2003.

Angela C. Arrington,

Leader, Regulatory Information Management Group, Office of the Chief Information Officer.

Office of Special Education and Rehabilitative Services

Type of Review: Revision.
Title: Applications for New Grants under the Rehabilitation Services Administration (RSA).
Frequency: Annually.
Affected Public: Businesses or other for-profit; Not-for-profit institutions; State, Local, or Tribal Gov't, SEAs or LEAs.
Reporting and Recordkeeping Hour Burden:
Responses: 1,000.
Burden Hours: 40,000.
Abstract: Vocational rehabilitation "Federal Assistance" Discretionary Grant Application Forms and Instructions for Rehabilitation Programs on behalf of Individuals with Disabilities are required so that all applications are completed in accordance with specific and unique program requirements.

This information collection is being submitted under the Streamlined Clearance Process for Discretionary Grant Information Collections (1890–0001). Therefore, the 30-day public comment period notice will be the only public comment notice published for this information collection.

Requests for copies of the submission for OMB review; comment request may be accessed from *http://edicsweb.ed.gov*, by selecting the "Browse Pending Collections" link and by clicking on link number 2418. When you access the information collection, click on "Download Attachments "to view. Written requests for information should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW., Room 4050, Regional Office Building 3, Washington, DC 20202–4651 or to the e-mail address *vivan.reese@ed.gov*. Requests may also be electronically mailed to the internet address *OCIO_RIMG@ed.gov* or faxed to (202)–708–9346. Please specify the

complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Sheila Carey at her e-mail address *Sheila.Carey@ed.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 03–30943 Filed 12–15–03; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Office of Postsecondary Education; Developing Hispanic-Serving Institutions (HSI) Program

ACTION: Notice reopening application deadline for certain applicants.

SUMMARY: The Secretary reopens for a limited purpose the deadline date for grant applications under the HSI Program Fiscal Year 2003 grant competition. The original deadline date was published in the **Federal Register** on January 29, 2003 (68 FR 4454). Some applicants submitted incorrect enrollment data on the Hispanic-Serving Institutions Assurance Form in their applications. As a result, the reported data indicated that Hispanic students comprised less than 25 percent of applicants' enrollment of undergraduate full-time equivalent students, less than 50 percent of the applicants' Hispanic students were low-income individuals, or both. We are reopening the deadline date to allow these applicants to resubmit their Hispanic-Serving Institutions Assurance Form with corrected enrollment data. This revised data should reflect the date that each applicant submitted its original application, not current data. In addition, each applicant must submit documentation to support any revised enrollment data. The documentation should be concise and easily verifiable. Application Deadline: December 29, 2003.

Transmittal of Applications: The resubmitted Hispanic-Serving Institutions Assurance Form and supporting documentation must be sent by hardcopy to: Mr. Carlos Reeder, U.S. Department of Education, 1990 K Street, NW., 6th Floor, Washington, DC 20006–8513. Your submittals must be postmarked no later than December 19, 2003.

FOR FURTHER INFORMATION CONTACT: Ms. Darlene B. Collins, U.S. Department of Education, 1990 K Street, NW., 6th Floor, Washington, DC 20006–8513. Telephone: (202) 502–7576 or via Internet: *darlene.collins@ed.gov*.

If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**.

Electronic Access to This Document

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister*.

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll-free, at 1–888–293–6498; or in the Washington, DC area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html*.

Dated: December 10, 2003.

Sally L. Stroup,

Assistant Secretary, Office of Postsecondary Education.

[FR Doc. 03–31009 Filed 12–15–03; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Rocky Flats

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Rocky Flats. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of these meeting be announced in the **Federal Register.**

DATES: Thursday, January 8, 2004, 6 p.m. to 9 p.m.

ADDRESSES: College Hill Library, Room L211, Front Range Community College, 3705 West 112th Avenue, Westminster, CO.

FOR FURTHER INFORMATION CONTACT: Ken Korkia, Board/Staff Coordinator, Rocky Flats Citizens Advisory Board, 10808 Highway 93, Unit B, Building 60, Room 107B, Golden, CO, 80403; telephone (303) 966–7855; fax (303) 966–7856.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda

1. Discussion and approval of recommendations and comments on modifications to the Building 371 Decommissioning Operations Plan (DOP)
2. Presentation and discussion on the 903 Pad Lip Area Interim Measure/Interim Remedial Action (IM/IRA)
3. Other Board business may be conducted as necessary

Public Participation: The meeting is open to the public. Written statements may be filed with the Board either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Ken Korkia at the address or telephone number listed above. Requests must be received at least five days prior to the meeting and reasonable provisions will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of five minutes to present their comments.

Minutes: The minutes of this meeting will be available for public review and copying at the office of the Rocky Flats Citizens Advisory Board, 10808 Highway 93, Unit B, Building 60, Room 107B, Golden, CO 80403; telephone (303) 966–7855. Hours of operations are 7:30 a.m. to 4 p.m., Monday through Friday. Minutes will also be made available by writing or calling Ken Korkia at the address or telephone number listed above. Board meeting minutes are posted on RFCAB's Web site within one month following each meeting at: *http://www.rfcab.org/Minutes.HTML*.

Issued in Washington, DC on December 11, 2003.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 03–30972 Filed 12–15–03; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Notice of Intent To Grant Exclusive or Partially Exclusive Patent License

AGENCY: National Energy Technology Laboratory (NETL), Department of Energy (DOE).

ACTION: Notice.

SUMMARY: Notice is hereby given of an intent to grant to Powerspan Corporation at New Durham, New Hampshire, an exclusive or partially exclusive license to practice the invention described in the U.S. patent number 6,567,092 titled, "Method for Removal of Mercury from Various Gas Streams." The invention is owned by the United States of America, as represented by the Department of Energy (DOE). The proposed license will be exclusive or partially exclusive, subject to a license and other rights retained by the U.S. Government, and other terms and conditions to be negotiated. DOE intends to grant the license, upon a final determination in accordance with 35 U.S.C. 209(c), unless within 15 days of publication of this notice the Technology Transfer Manager, Department of Energy, National Energy Technology Laboratory, P.O. Box 880, Morgantown, WV 26507–0880, receives in writing any of the following, together with the supporting documents: A statement from any person setting forth reasons why it would not be in the best interest of the United States to grant the proposed license; or, an application for a nonexclusive license to the invention, in which applicant states that it already has brought the invention to practical application or is likely to bring the invention to practical application expeditiously.

DATES: Written comments or nonexclusive license applications are to be received at the address listed below no later than fifteen (15) days after the date of this published notice.

ADDRESSES: Diane Newlon, Technology Transfer Manager, U.S. Department of Energy, National Energy Technology Laboratory, P.O. Box 880, Morgantown, WV 26507–0880.

FOR FURTHER INFORMATION CONTACT: Diane Newlon, Technology Transfer Manager, U.S. Department of Energy, National Energy Technology Laboratory, P.O. Box 880, Morgantown, WV 26507–0880; Telephone (304) 285–4086; E-mail: *newlon@netl.doe.gov*.

SUPPLEMENTARY INFORMATION: 35 U.S.C. 209(c) provides the DOE with authority to grant exclusive or partially exclusive licenses in Department-owned inventions, where a determination can be made, among other things, that the desired practical application of the invention has not been achieved, or is not likely expeditiously to be achieved, under a nonexclusive license. The statute and implementing regulations (37 CFR part 404) require that the necessary determinations be made after public notice and opportunity for filing written objections.

Powerspan Corporation, a small business located at New Durham, New Hampshire, has applied for an exclusive or partially exclusive license to practice the inventions and has a plan for commercialization of the invention.

The proposed license will be exclusive or partially exclusive, subject to a license and other rights retained by the U.S. Government, and subject to a negotiated royalty. The Department will review all timely written responses to this notice, and will grant the license if, after expiration of the 15-day notice period, and after consideration of written responses to this notice, a determination is made, in accordance with 35 U.S.C. 209(c), that the license grant is in the public interest.

Issued: December 1, 2003.

Rita A. Bajura,

Director, National Energy Technology Laboratory.

[FR Doc. 03–30971 Filed 12–15–03; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC04–32–000, et al.]

RWE Trading Americas Inc., et al.; Electric Rate and Corporate Filings

December 8, 2003.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. RWE Trading Americas Inc., UBS AG

[Docket No. EC04–32–00]

Take notice that on December 3, 2003, RWE Trading Americas Inc. (RWE Trading) and UBS AG (together, the Applicants) filed a joint application pursuant to section 203 of the Federal Power Act for disposition of all of the wholesale power sales contracts of RWE Trading to UBS AG. The Applicants further request confidential treatment of Exhibits H and I to the application pursuant to section 388.112 of the Commission's rules. The Applicants request that the Commission act on the application so that the transfer may be consummated before January 1, 2004.

Comment Date: December 23, 2003.

2. WFEC GENCO, L.L.C.

[Docket No. ER01–388–002]

Take notice that on December 1, 2003, WFEC GENCO, L.L.C. (GENCO) tendered for filing, (1) an updated market power analysis in compliance with the Commission's order authorizing GENCO to engage in wholesale sales of electric power at market-based rates; and (2) an amendment to its market-based rate tariff to adopt the Commission's new Market Behavior Rules.

Comment Date: December 22, 2003.

3. International Transmission Company, DTE Energy Company

[Docket Nos. ER01–3000–008; RT01–101–008; EC01–146–008]

Take notice that on December 2, 2003, International Transmission Company and DTE Energy Company tendered a filing in compliance with the November 17, 2003, Commission's Order, 105 FERC ¶ 61,209 (2003).

Comment Date: December 23, 2003.

4. Bank of America, N.A.

[Docket No. ER02–2536–001]

Take notice that on December 1, 2003, Bank of America, N.A. (Bank of America) tendered for filing First Revised Sheet No. 1 and Original Sheet Nos. 2–3 in compliance with FERC's Order Amending Market-Based Rate Tariffs and Authorizations, Investigation of Terms and Conditions of Public Utility Market-Based Rate Authorizations, 105 FERC ¶ 61,218 (Nov. 17, 2003), and FERC's Order Conditionally Accepting Market-Based Rate Schedule, 101 FERC ¶ 61,098 (Oct. 30, 2002). These sheets contain the "Market Behavior Rules" amendment required by the November 17 Order.

Comment Date: December 22, 2003.

5. The Detroit Edison Company

[Docket No. ER03–19–003]

Take notice that on December 2, 2003, The Detroit Edison Company (Detroit Edison) tendered for filing a revised agency agreement between Midwest Independent System Operator, Inc., and Detroit Edison in compliance with Commission's Order, November 17, 2003, 105 FERC ¶ 61,209.

Comment Date: December 23, 2003.

6. MxEnergy Electric Inc.

[Docket No. ER04–170–001]

Take notice that on December 2, 2003, MxEnergy Electric Inc. submitted for filing a revised rate schedule, modifying

the rate schedule submitted on November 6, 2003 in Docket No. ER04–170–000.

Comment Date: December 23, 2003.

7. Citigroup Energy Inc.

[Docket No. ER042–08–001]

Take notice that on December 1, 2003, Citigroup Energy Inc. (CEI) submitted for filing a revised rate Schedule, FERC Volume 1, modifying the Market-based rate schedule submitted by CEI on November 19, 2003.

Comment Date: December 22, 2003.

8. AK Electric Supply LLC

[Docket No. ER04–213–001]

Take notice that on December 3, 2003, AK Electric Supply LLC (AK) filed a supplement to its application for market-based rates as power marketer. AK states that the supplement pertains to an amended and corrected Rate Schedule to comply with FERC Order 614.

Comment Date: December 24, 2003.

9. Xcel Energy Services Inc.

[Docket No. ER04–243–000]

Take notice that on December 1, 2003, Xcel Energy Services, Inc. (XES), on behalf of Public Service Company of Colorado (PSC), submitted for filing a Notice of Cancellation of a Power Purchase Agreement between Public Service Company of Colorado and the City of Glenwood Springs.

XES requests that this Notice of Cancellation become effective as of the date of this filing.

Comment Date: December 22, 2003.

10. Central Vermont Public Service Corporation

[Docket No. ER04–244–000]

Take notice that on December 1, 2003, Central Vermont Public Service Corporation (CVPS) tendered for filing a letter stating that CVPS will not file a Forecast 2004 Cost Report as required under Paragraph Q–2 of Rate Schedule FERC No. 135 (RS–2 Rate Schedule) under which CVPS sells electric power to Connecticut Valley Electric Company Inc. (Customer), its wholly owned subsidiary. CVPS states that:

(1) The Customer is selling its assets and franchise to Public Service of New Hampshire; and (2) CVPS and the Customer are terminating the RS–2 Rate Schedule, all effective January 1, 2004. CVPS further states that since these transactions are highly likely to occur, no service under the RS–2 Rate Schedule will be provided or taken, and thus the filing of a cost report will serve no useful purpose.

CVPS states that copies of the filing were served upon the Customer, the New Hampshire Public Utilities Commission, and the Vermont Public Service Board.

Comment Date: December 22, 2003.

11. Central Vermont Public Service Corporation

[Docket No. ER04–245–000]

Take notice that on December 1, 2003, Central Vermont Public Service Corporation (CVPS) tendered for filing a letter stating that CVPS will not file a Forecast 2004 Cost Report for FERC Electric Tariff, Original Volume No. 3. CVPS states that no customers will take Tariff No. 3 transmission service during 2002 because such service was terminated effective December 31, 1999. CVPS provides transmission service under its FERC Electric Tariff, First Revised Volume No. 7.

CVPS states that copies of the filing were served upon the Vermont Public Service Board and the New Hampshire Public Utilities Commission.

Comment Date: December 22, 2003.

12. Central Vermont Public Service Corporation

[Docket No. ER04–246–000]

Take notice that on December 1, 2003, Central Vermont Public Service Corporation (CVPS) tendered for filing a letter stating that CVPS will not file a Forecast 2004 Cost Report for FERC Electric Tariff, Original Volume No. 4, since there are no customers expected to take such service.

CVPS states that a copy of the filing was served upon the Vermont Public Service Board.

Comment Date: December 22, 2003.

13. Midwest Independent Transmission System Operator, Inc.

[Docket No. ER04–247–000]

Take notice that on December 1, 2003, the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) submitted for filing proposed revisions to Attachment J (Timing Requirements) of the Midwest ISO Open Access Transmission Tariff. FERC Electric Tariff, Second Revised Volume No. 1, to implement changes in the timing requirements of Attachment J. The Midwest ISO has requested an effective date of January 30, 2004.

The Midwest ISO states it has electronically served a copy of this filing, with attachments, upon all Midwest ISO Members, Member representatives of Transmission Owners and Non-Transmission Owners, the Midwest ISO Advisory Committee participants, as well as all state commissions within the region and in addition, the filing has been electronically posted on the Midwest ISO's Web site at *www.midwestiso.org* under the heading "Filings to FERC" for other interested parties in this matter. The Midwest ISO further states it will provide hard copies to any interested parties upon request.

Comment Date: December 22, 2003.

14. Michigan Electric Transmission Company, LLC

[Docket No. ER04–248–000]

Take notice that on December 2, 2003, Michigan Electric Transmission Company, LLC (METC) submitted proposed amendments to the following agreements: (1) "Project I Transmission Ownership and Operating Agreement Between Consumers Power Company and Michigan South Central Power Agency," dated November 20, 1980; (2) "Campbell Unit No. 3 Transmission Ownership and Operating Agreement Between Consumers Power Company and Northern Michigan Electric Cooperative, Inc. and Wolverine Electric Cooperative, Inc.," dated August 15, 1980; (3) "Campbell Unit No. 3 Transmission Ownership and Operating Agreement Between Consumers Power Company and Michigan Public Power Agency," dated October 1, 1979; (4) "Belle River Transmission Ownership and Operating Agreement Between Consumers Power Company and Michigan Public Power Agency," dated December 1, 1982; and (5) "Wolverine Transmission Ownership and Operating Agreement Between Consumers Power Company and Wolverine Power Supply Cooperative, Inc.," dated July 27, 1992 (collectively, the Customers and the Operating Agreements). METC states that the proposed amendments are intended to revise portions of the Operating Agreements to reflect certain changes necessary as a result of the acquisition of Consumers' transmission system by METC. METC requests an effective date of November 1, 2003, for the proposed amendments.

Comment Date: December 23, 2003.

15. Dominion Retail, Inc.

[Docket No. ER04–249–000]

Take notice that on December 2, 2003, Dominion Retail, Inc. (Dominion Retail), an indirect wholly owned subsidiary of Dominion Resources, Inc. an affiliate of Virginia Electric and Power Company, tendered for filing a rate schedule to engage in wholesale sales at market-based rates and a petition for waivers and blanket approvals under various regulations of the Commission. Dominion Retail states that it included in its filing a proposed code of conduct.

Comment Date: December 23, 2003.

16. California Independent System Operator Corporation

[Docket No. ER04–250–000]

Take notice that on December 2, 2003, the California Independent System Operator Corporation (ISO), tendered for filing a revised Participating Generator Agreement between the ISO and the California Department of Water Resources (CDWR) for acceptance by the Commission. The ISO states that the purpose of this revision is to conform Schedule 1 of the Participating Generator Agreement to the ISO's new format for specification of the technical characteristics of a Generating Unit, and to add certain units and remove certain units from this Schedule.

The ISO states that this filing has been served on CDWR, the California Public Utilities Commission, and all entities that are on the official service list for Docket No. ER99–3413.

The ISO is requesting a waiver of the 60-day prior notice requirement to allow the revised Schedule 1 to be made effective as of June 2, 2003, the date on which CDWR delivered to the ISO the request that the Schedule 1 be revised.

Comment Date: December 23, 2004.

17. California Independent System Operator Corporation

[Docket No. ER04–251–000]

Take notice that on December 2, 2003, the California Independent System Operator Corporation (ISO), tendered for filing a revised Participating Generator Agreement between the ISO and Northern California Power Agency (NCPA) for acceptance by the Commission. The ISO states that the purpose of this revision is to conform Schedule 1 of the Participating Generator Agreement to the ISO's new format for specification of the technical characteristics of a Generating Unit.

The ISO states that this filing has been served on NCPA, the California Public Utilities Commission, and all entities that are on the official service list for Docket No. ER00–2274.

The ISO is requesting a waiver of the 60-day prior notice requirement to allow the revised Schedule 1 to be made effective as of August 22, 2003, the date on which NCPA delivered to the ISO the request that the Schedule 1 be revised.

Comment Date: December 23, 2003.

18. Midwest Independent Transmission System Operator, Inc.

[Docket No. ER04–252–000]

Take notice that on December 3, 2003, Midwest Independent Transmission System Operator, Inc. (Midwest ISO) pursuant to section 205 of the Federal Power Act and section 35.12 of the Commission's regulations, 18 CFR part 35, submitted for filing an Interconnection and Operating Agreement among Kentucky Utilities Company, the Midwest ISO, and Cannelton Hydroelectric Project, L.P.

Midwest ISO states that a copy of this filing was served on all parties.

Comment Date: December 24, 2003.

19. Midwest Independent Transmission System Operator, Inc.

[Docket No. ER04–253–000]

Take notice that on December 3, 2003, Midwest Independent Transmission System Operator, Inc. (Midwest ISO) pursuant to section 205 of the Federal Power Act and section 35.12 of the Commission's regulations, 18 CFR 35.12, submitted for filing an Interconnection and Operating Agreement between Wabash Valley Power Association, Inc. and the Midwest ISO.

Midwest ISO states that a copy of this filing was served on Wabash Valley Power Association, Inc.

Comment Date: December 23, 2003.

20. Ameren Services Company

[Docket No. ER04–254–000]

Take notice that on December 3, 2003, Ameren Services Company (ASC) tendered for filing a Service Agreement for Network Integration Transmission Service Agreement and an associated Network Operating Agreement between ASC and Edgar Electric Cooperative Association, d/b/a EnerStar Power Corp. ASC asserts that the purpose of the Agreements are to permit ASC to provide transmission service to Edgar Electric Cooperative Association, d/b/a EnerStar Power Corp. pursuant to Ameren's Open Access Transmission Tariff.

Comment Date: December 23, 2003.

21. Midwest Independent Transmission System Operator, Inc.

[Docket No. ER04–256–000]

Take notice that on December 4, 2003, Midwest Independent Transmission System Operator, Inc. (Midwest ISO) pursuant to section 205 of the Federal Power Act and section 35.12 of the Commission's regulations, 18 CFR 35.12, submitted for filing an Interconnection and Operating Agreement among Northern Iowa Windpower II, LLC, the Midwest ISO and Interstate Power and Light Company, a wholly-owned subsidiary of Alliant Energy Corporation.

Midwest ISO states that a copy of this filing was served on all parties.

Comment Date: December 26, 2003.

22. Southern California Edison Company

[Docket No. ER04–257–000]

Take notice, that on December 4, 2003, Southern California Edison Company (SCE) tendered for filing the Service Agreement for Wholesale Distribution Service (Service Agreement) between SCE and the City of Corona, California (Corona). The Service Agreement sets forth SCE's agreement to provide Distribution Service from the ISO Grid at Mira Loma Substation to a proposed new SCE-Corona 12 kV interconnection. SCE requests that the Service Agreement become effective on November 14, 2003.

SCE states that copies of this filing were served upon the Public Utilities Commission of the State of California, and Corona.

Comment Date: December 26, 2003.

Standard Paragraph

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov*, using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number filed to access the document. For assistance, call (202) 502–8222 or TTY, (202) 502–8659. Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Magalie R. Salas,

Secretary.

[FR Doc. E3–00562 Filed 12–15–03; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7599–5]

Adequacy Status of Motor Vehicle Budgets in Submitted State Implementation Plan for Transportation Conformity Purposes; Washington, DC Metropolitan Area (DC–MD–VA)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of adequacy status.

SUMMARY: EPA is announcing that the motor vehicle emission budgets (the budgets) for the Metropolitan Washington, DC One-Hour Ozone Nonattainment Area (the Washington, DC area) identified in the revised 2005 Attainment Demonstration Plan (attainment plan) and the 2005 Rate of Progress (ROP) plan are adequate for transportation conformity purposes. This attainment plan was submitted to EPA by the Commonwealth of Virginia, the State of Maryland and the District of Columbia as State Implementation Plan (SIP) revisions on August 19, 2003, September 2, 2003, and September 5, 2003, respectively. These SIP revision submittals included ROP plans for 2002 and 2005 which also identified motor vehicle emissions budgets. EPA has made findings of adequacy for the budgets of the attainment plan and the 2005 ROP plan for transportation conformity purposes. EPA has taken no action on the budgets identified in the 2002 ROP plan.

DATES: The findings that the budgets identified in the attainment plan and 2005 ROP plan are adequate were made in letters dated December 9, 2003 from EPA Region III to the three jurisdictions (DC-MD-VA). These adequacy findings are effective on December 31, 2003.

FOR FURTHER INFORMATION CONTACT: Martin Kotsch, U.S. EPA, Region III, 1650 Arch Street, Philadelphia, PA 19103 at (215) 814–3335 or by e-mail at *kotsch.martin@epa.gov*.

SUPPLEMENTARY INFORMATION:

Throughout this document "we," "us," or "our" refer to EPA. The word "budgets" refers to the motor vehicle emission budgets for volatile organic compounds (VOCs) and nitrogen oxides (NO_X). The word "SIP" in this document refers to the revised 2005 attainment plan for the Washington, DC area submitted to EPA as a SIP revision by the Commonwealth of Virginia, the State of Maryland and the District of Columbia on August 19, 2003, September 2, 2003 and September 5, 2003, respectively. These SIP revision submittals also included ROP plans for 2002 and 2005 which identified motor vehicle emissions budgets.

On March 2, 1999, the DC Circuit Court ruled that motor vehicle emission budgets contained in submitted SIPs cannot be used for conformity determinations until EPA has affirmatively found them adequate.

The Commonwealth of Virginia, the State of Maryland and the District of Columbia formally submitted identical SIP revisions to EPA on August 19, 2003, September 2, 2003 and September 5, 2003, respectively, consisting of a revised 2005 attainment plan and initial 2002 and 2005 Rate ROP plans for the Washington, DC area. On September 10, 2003, we posted the availability of the plans and their identified budgets on our conformity Web site for the purpose of soliciting public comment on the adequacy of the budgets. EPA's public comment period closed on October 10, 2003. We received comments from the Sierra Club.

On December 9, 2003, EPA Region III sent a letter to each of the three jurisdictions (DC–MD–VA) that constituted final Agency action on the adequacy of the motor vehicle emission budgets contained in the revised attainment plan and in the 2005 ROP plan. That action was EPA's finding that the budgets identified in the revised attainment plan and 2005 ROP plan for the Washington, DC area are adequate for transportation conformity purposes. As a result of our December 9, 2003 findings, the budgets contained in the revised 2005 attainment plan and the 2005 ROP plan for the Washington, DC area may be used for future conformity determinations. The 2002 ROP plan submitted as part of the SIP revision by the three jurisdictions showed a shortfall in the level of VOC emissions reductions required to demonstrate ROP. EPA has taken no action with regard to the adequacy of the budgets identified in the 2002 ROP plan because we understand that the states are revising that 2002 ROP plan to reflect that there is, in fact, no VOC shortfall for the 2002 milestone year. EPA has, therefore, made findings of adequacy only for the budgets identified in the revised attainment plan and the budgets identified in the 2005 ROP plan. These budgets will be needed for conformity and transportation planning.

This is an announcement of adequacy findings that we made on December 9, 2003. The effective date of these findings is December 31, 2003. These findings will also be announced on EPA's Web site: *http://www.epa.gov/otaq/transp.htm* (once there, click on the "Conformity" button). The Web site will contain a detailed analysis of our adequacy findings.

Transportation conformity is required by section 176 of the Clean Air Act. EPA's conformity rule requires that transportation plans, programs, and projects conform to SIPs and establishes the criteria and procedures for determining whether or not they do so. Conformity to a SIP means that transportation activities will not produce new air quality violations, worsen existing violations, or delay timely attainment of the national ambient air quality standards. The criteria by which we determine whether a SIP's budgets are adequate for conformity purposes are outlined in 40 CFR 93.118 (e)(4) through (5).

Please note that these adequacy findings for the budgets identified in the revised attainment plan and 2005 ROP plan are separate from EPA's completeness determination of the revised SIP submission, and separate from EPA's action to approve or disapprove the revised SIP. Even though we have found the motor vehicle emission budgets of the Washington, DC area's revised 2005 attainment plan and 2005 ROP plan adequate, and they are replacing the previously approved budgets, those motor vehicle emission budgets contained in the revised attainment plan and 2005 ROP plan still have to be approved or disapproved.

Dated: December 9, 2003.

Thomas Voltaggio,

Acting Regional Administrator, Region III.

[FR Doc. 03–31005 Filed 12–15–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7599–4]

Notice of the Availability of the Final Document for the U.S.-Mexico Border 2012 Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The U.S. Environmental Protection Agency announces the availability of the "Border 2012: U.S.-Mexico Environmental Program" Framework Document (Border Plan or Border 2012). Border 2012 is a 10-year, binational, results-oriented, environmental program for the U.S.-Mexico border region, which has been developed by EPA, Secretaría del Medio Ambiente y Recursos Naturales (SEMARNAT, Mexico's Secretariat of Environment and Natural Resources),

the U.S. Department of Health and Human Services, Secretaría de Salud (Mexico's Secretariat of Health), the U.S. border Tribes, and the environmental agencies from each of the ten U.S.-Mexico border States. The mission of Border 2012 is to protect public health and the environment in the U.S.-Mexico border region, in a manner consistent with the principles of sustainable development. The Border 2012 Program is the latest multi-year, binational planning effort to be implemented under the La Paz Agreement and succeeds Border XXI, a five-year program that ended in 2000.

The proposed Border 2012 Program was announced in Mexico and in the U.S. **Federal Register** in September 2002. The announcement was followed by a 60-day public comment period which included binational and domestic meetings in 27 border cities. EPA and SEMARNAT also requested input from interested parties through additional meetings, written correspondence, and internet exchanges. During the comment period, over 1,000 individual comments were received. The Border 2012 Framework was then altered to reflect many of the comments and recommendations; the new framework contains more detailed goals and objectives and a focus on environmental education and training. In addition, based on public comments, the Border 2012 Operational Guidance was created to assist partners, stakeholders, and the general public to understand how the program is implemented. The Border 2012 Framework Document, the Response Summary Report, and the Operational Guidance can be found online at *http://www.epa.gov.usmexicoborder*.

SUPPLEMENTARY INFORMATION:

I. Background

The proposed Border 2012 emphasizes a bottom-up approach, anticipating that local decision-making, priority-setting and project implementation will best address environmental issues in the border region. The new Border 2012 Program builds upon the successes achieved under Border XXI while also establishing a regionally-focused border plan to facilitate environmental priority setting and planning at the regional and local levels. Border 2012 will emphasize concrete measurable results, public participation, transparency, and timely access to environmental information.

II. Coordinating Bodies

Border 2012 is organized around coordinating bodies. These coordinating bodies include National Coordinators, four Regional (geographically-focused) Workgroups, three Border-wide Workgroups, and three Policy Forums.

A. National Coordinators

Consistent with the requirements of the La Paz Agreement, the National Coordinators will monitor and manage implementation of the Border 2012 Program and ensure cooperation and communication among all coordinating bodies.

B. Regional Workgroups

Providing the foundation of the Border 2012 Program, four multi-media, regionally focused workgroups will support the efforts of local Task Forces and coordinate activities at the regional and local level. The Regional Workgroups are the following: California-Baja California, Arizona-Sonora, New Mexico-Texas-Chihuahua, and Texas-Coahuila-Nuevo Leon-Tamaulipas.

C. Border-wide Workgroups

Border-wide Workgroups will concentrate on issues that are multi-regional and primarily federal in nature. Three Border-wide Workgroups will have federal U.S. and Mexican co-chairs for the following issues: environmental health, emergency preparedness and response, and cooperative enforcement and compliance.

D. Policy Forums

Policy Forums will have a media-specific focus and will concentrate on broad policy issues that require an on-going dialogue between the U.S. and Mexico in the following areas: air; water; hazardous waste, solid waste; and toxic substances.

Border 2012 Coordinating Bodies will be broad-based and will include representation from local communities from both sides of the border, including non-governmental or community-based organizations; academic institutions; local, state, and U.S. tribal representatives; and binational organizations.

III. Goals and Objectives

Border 2012 establishes the following six border-wide environmental goals for the U.S.-Mexico border region: reduce water contamination; reduce air pollution; reduce land contamination; improve environmental health; reduce exposure to chemicals as a result of accidental chemical release and/or acts of terrorism; and improve environmental performance through compliance, enforcement, pollution prevention, and promotion of environmental stewardship.

For further information on Border 2012, please contact: EPA El Paso Border Office at 915–533–7273 or 800–334–0741 or EPA San Diego Border Office at 619–235–4765 or 800–334–0741. Hard copies of the Border 2012 Framework document can be obtained by calling 1–800–490–9198 or accessing *http://www.epa.gov/ncepihom* on the Internet and requesting public document #160R03001.

Dated: December 10, 2003.

Joan Fidler,

Director Office of Western Hemisphere and Bilateral Affairs, Office of International Affairs.

[FR Doc. 03–31006 Filed 12–15–03; 8:45 am]

BILLING CODE 6560–58–P

COUNCIL ON ENVIRONMENTAL QUALITY

National Environmental Policy Act Task Force

AGENCY: Council on Evironmental Policy.

ACTION: Notice of public meeting.

SUMMARY: The Rocky Mountain Regional NEPA Roundtable will be held on January 8 and 9, 2004. The Council on Environmental Quality (CEQ) established a National Environmental Policy Act (NEPA) Task Force to review the current NEPA implementing practices and procedures in the following areas: Technology and information management; Federal and intergovernmental collaboration; programmatic analyses and subsequent tiered documents; and adaptive management and monitoring. In addition, the NEPA Task Force reviewed other NEPA implementation issues such as the level of detail included in agencies' procedures and documentation for promulgating categorical exclusions; the structure and documentation of environmental assessments; and other implementation practices that would benefit Federal agencies.

"The Task Force Report to the Council on Environmental Quality—Modernizing NEPA Implementation" was published and presented to CEQ on September 24, 2003. The Report contains recommendations designed to improve federal agency decision making by modernizing the NEPA process. To further the work of the NEPA Task Force, CEQ is holding a series of regional public roundtables to raise public awareness of the NEPA Task Force draft recommendations and

discuss the recommendations and their implementation. The Rocky Mountain Regional NEPA Roundtable will be held at the Copper Mountain Conference Center, Copper Mountain, Colorado. Information about the location is at *http://www.whitehouse.gov/ceq* or the NEPA Tak Force Web site at *http://www.coppercolorado.com/meetings/site/virtual_tours* The Rocky Mountain NEPA Roundtable is co-hosted by the Greater Yellowstone Coalition and the National Ski Area Association. Representatives from important constituent groups that have worked on NEPA issues have been invited to participate in a discussion of the recommendations.

DATES: The Rocky Mountain regional public roundtable will be held on January 8 and 9, 2004. The January 8 session will begin at 9 a.m. and interested members of the public will have an opportunity to present their views at 3:30 p.m. following the roundtable discussion. That session will end in the evening after public views have been presented. The session on January 9 will begin at 9 a.m. and interested members of the public will have and opportunity to present their views at 11 a.m. following the roundtable discussion.

ADDRESSES: Interested parties can review the Task Force report via the CEQ Web site at *http://www.whitehouse.gov/ceq/* or the NEPA Task Force Web site at *http:ceq.eh.doe.gov/ntf/*. If you would like a printed copy, please mail a request to The NEPA Task Force, 722 Jackson Place, NW,, Washington, DC 20585, or contact Bill Perhach at (202) 395–0826 to request a copy.

Dated: December 10, 2003.

James L. Connaughton,

Chairman, Council on Environmental Quality.

[FR Doc. 03–30946 Filed 12–15–03; 8:45 am]

BILLING CODE 3125–01–M

FEDERAL COMMUNICATIONS COMMISSION

[EB Docket No. 03–241; DA 03–3783]

In the Matter of Roger Thomas Scaggs Advanced Class Amateur Radio Operator and Licensee of Amateur Radio Station W5EBC

AGENCY: Federal Communications Commission.

ACTION: Notice; Order to show cause.

SUMMARY: This document is an order in which the Enforcement Bureau of the Federal Communications Commission requests a hearing proceeding before a Commission administrative law judge to determine whether Roger Thomas Scaggs, the licensee of W5EBC Amateur Radio Station and Advanced Class Operator license, is qualified to remain a Commission licensee in light of his 1998 felony conviction for murder and whether his authorization should be revoked.

DATES: Effective December 22, 2003.

FOR FURTHER INFORMATION CONTACT: Gary Oshinsky, (202) 418–7167 or e-mail *goshinsky@fcc.gov*.

SUPPLEMENTARY INFORMATION: This is a summary of the *Order to Show Cause regarding Roger Thomas Scaggs*, EB Docket No. 03–241, DA 03–3738, released November 21, 2003. The complete text of this document is available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC, 20554. In addition, the complete text may be retrieved from the FCC's Web site at *http://www.fcc.gov*. The *Order to Show Cause regarding Roger Thomas Scaggs* may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC, 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com*.

A. Background

1. Approximately six months after the Commission granted Mr. Scaggs' subject amateur radio license, on November 16, 1998, he was convicted for the March 6, 1996, murder of Penny Scaggs, his wife of thirty-five years. The record in that case showed that Mr. Scaggs beat to death his wife with a galvanized lead pipe and then stabbed her several times in their home. Mr. Scaggs was convicted and sentenced by the jury to a prison term of thirty-two (32) years, and he was fined Ten Thousand Dollars ($10,000.00). His conviction was affirmed and his request for rehearing overruled on June 22, 2000.

B. Discussion

2. Accordingly, section 312(a) (2) of the Communications Act of 1934, as amended (the "Act"), provides that the Commission may revoke any license on the basis of "conditions coming to the attention of the Commission which would warrant it in refusing to grant a license or permit on the original application." Among the factors that the Commission considers in its review of applications to determine whether the applicant has the requisite qualifications to operate the station for which authority is sought is the character of the applicant. Before revoking a license, the Commission must serve the licensee with an order to show cause why revocation should not issue and must provide the licensee with an opportunity for hearing.

3. In assessing character qualifications in broadcast licensing matters, the Commission considers, as relevant, "evidence of any conviction for misconduct constituting a felony." The Commission believes that "[b]ecause all felonies are serious crimes, any conviction provides an indication of an applicant's or licensee's propensity to obey the law" and to conform to provisions of both the Act and the agency's rules and policies. The Commission has consistently applied these broadcast character standards to applicants and licensees in the Amateur Radio Service. Thus, very serious felonies raise potential questions regarding an amateur licensee's qualifications.

4. Here, Mr. Scaggs' murder conviction raises very serious questions as to whether he possesses the requisite character qualifications to be and to remain a Commission licensee and whether his captioned license should be revoked. For this reason, we are designating the matter for hearing before a Commission administrative law judge.

C. Ordering Clauses

5. Pursuant to sections 312(a) and (c) of the Act, and authority delegated pursuant to §§ 0.111, 0.311, and 1.91(a) of the Commission's rules, Roger Thomas Scaggs is hereby Ordered to Show Cause why his authorization for Amateur Radio Advanced Class License W5EBC should not be revoked. Roger Thomas Scaggs shall appear before an administrative law judge at a time and place to be specified in a subsequent order and provide evidence upon the following issues:

i. To determine the effect of Roger Thomas Scaggs' felony conviction on his qualifications to be and to remain a Commission licensee; and

ii. To determine, in light of the evidence adduced pursuant to the foregoing issue, whether Roger Thomas Scaggs is qualified to be and to remain a Commission licensee and whether his Amateur Radio Advanced Class License W5EBC should be revoked.

6. Pursuant to section 312(c) of the Act and 1.91(c) of the Commission's rules, to avail himself of the opportunity to be heard and the right to present evidence in the hearing in this proceeding, Roger Thomas Scaggs, in person or by his attorney, shall file with the Commission, within thirty (30) days of the release of this Order to Show Cause, a written appearance stating that he will appear on the date fixed for hearing and present evidence on the issues specified herein.

7. Pursuant to 1.92(c) of the Commission's rules, if Roger Thomas Scaggs fails to timely file a written appearance within the thirty (30)-day period, or has not filed a petition to accept, for good cause shown, a written appearance beyond the expiration of the thirty (30)-day period, the right to a hearing shall be deemed to be waived. Where a hearing is waived, the presiding administrative law judge shall, at the earliest practicable date, issue an order terminating the hearing proceeding and certifying the case to the Commission.

8. Pursuant to section 312(d) of the Act and § 1.91(d) of the Commission's rules, the burden of proceeding with the introduction of evidence and the burden of proof with respect to both of the issues specified above shall be on the Enforcement Bureau.

9. The *Order to Show Cause regarding Roger Thomas Scaggs*, be sent, by Certified Mail, Return Receipt Requested, to Roger Thomas Scaggs, RR 2 Box 4400, Gatesville, Texas 76597, and to his counsel, Charles R. Burton, Esq., Minton, Burton, Foster & Collins, 1100 Guadalupe Street, Austin, Texas 78701.

10. The Secretary of the Commission shall cause to have this *Order to Show Cause regarding Roger Thomas Scaggs* or a summary thereof published in the **Federal Register**.

Federal Communications Commission.

David Solomon,

Chief, Enforcement Bureau.

[FR Doc. 03–31022 Filed 12–15–03; 8:45 am]

BILLING CODE 6712–01–P

FOR FURTHER INFORMATION CONTACT: Ron Harris, Press Officer, Telephone (202) 694–1220.

Mary W. Dove,

Secretary of the Commission.

[FR Doc. 03–31156 Filed 12–12–03; 3:09 pm]

BILLING CODE 6715–01–M

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than December 30, 2003.

A. Federal Reserve Bank of New York (Jay Bernstein, Bank Supervision Officer) 33 Liberty Street, New York, New York 10045-0001:

1. Barry M. Snyder and Lindrew Properties, LLC, Buffalo, New York; to acquire additional voting shares of Great Lakes Bancorp, Inc., Buffalo, New York, and indirectly acquire additional voting shares of Greater Buffalo Savings Bank, Buffalo, New York.

Board of Governors of the Federal Reserve System, December 10, 2003.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 03–30952 Filed 12–15–03; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL ELECTION COMMISSION

Meeting; Sunshine Act

DATE & TIME: Thursday, December 18, 2003 at 10 a.m.

PLACE: 999 E Street, NW., Washington, DC (Ninth Floor).

STATUS: This meeting will be open to the public.

The following item has been added to the agenda: Enforcement Treasurer Policy—Official and Personal Capacities.

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 30, 2003.

A. Federal Reserve Bank of Richmond (A. Linwood Gill, III, Vice President) 701 East Byrd Street, Richmond, Virginia 23261-4528:

1. Southern Financial Bancorp., Inc., Warrenton, Virginia; to acquire 100 percent of the voting shares of Essex Bancorp, Inc., Norfolk, Virginia, and thereby indirectly acquire Essex Savings Bank, F.S.B., Norfolk, Virginia, and thereby engage in operating a savings association, pursuant to section 225.28(b)(4)(ii) of Regulation Y. Comments on this application must be received by January 9, 2004.

B. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166-2034:

1. City Bancorp, Springfield, Missouri; to engage *de novo* in extending credit and servicing activities pursuant to section 225.28(b)(1) of Regulation Y.

Board of Governors of the Federal Reserve System, December 10, 2003.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc.03–30951 Filed 12–15–03; 8:45 am]

BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Notice of Meeting of the Advisory Committee on Blood Safety and Availability

AGENCY: Office of the Secretary.

ACTION: Notice of meeting.

SUMMARY: The Advisory Committee on Blood Safety and Availability will meet to examine the role of the Federal Government in the distribution of the nation's blood supply. The meeting will be entirely open to the public.

DATES: The Advisory Committee on Blood Safety and Availability will meet on Wednesday, January 28 and Thursday, January 29, 2004 from 8 a.m. to 5 p.m.

ADDRESSES: The meeting will take place at the Grand Hyatt Washington Hotel, 1000 H Street NW., Washington, DC 20001.

FOR FURTHER INFORMATION CONTACT: CAPT Lawrence C. McMurtry, Deputy Executive Secretary, Advisory Committee on Blood Safety and Availability, Department of Health and Human Services, Office of Public Health and Science, 1101 Wootton Parkway, Suite 250, Rockville, MD 20852, (301) 443–2331, FAX (301) 443–4788, e-mail *lmcmurtry@osophs.dhhs.gov.*

SUPPLEMENTARY INFORMATION: Public comment will be solicited at the meeting. Public comment will be limited to five minutes per speaker. Those who wish to have printed material distributed to Advisory Committee members should submit thirty (30) copies to the Executive Secretary prior to close of business January 16, 2004. Those who wish to utilize electronic data projection in their presentation to the Committee must submit their material to the Executive Secretary prior to close of business January 16, 2004. In addition, anyone planning to comment is encouraged to contact the Executive Secretary at her/his earliest convenience.

Dated: December 10, 2003.

CAPT Lawrence C. McMurtry,

Deputy Executive Secretary, Advisory Committee on Blood Safety and Availability.

[FR Doc. 03–30966 Filed 12–15–03; 8:45 am]

BILLING CODE 4150–28–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons; Extension of Comment Period

AGENCY: Health and Human Services, HHS.

ACTION: Notice.

SUMMARY: The Department of Health and Human Services (HHS) is extending the period for comments on revised Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons through January 6, 2004. This revised guidance was issued pursuant to Executive Order 13166.

DATES: The deadline for comments is extended to January 6, 2004.

ADDRESSES: Comments should be addressed to Deeana Jang with "Attention: LEP Comments," and should be sent to 200 Independence Avenue, SW., Room 506F, Washington, DC 20201. Comments may also be submitted by e-mail at *LEP.comments@hhs.gov.*

FOR FURTHER INFORMATION CONTACT: Deeana Jang, 202–619–1795.

SUPPLEMENTARY INFORMATION: In the notice document 03–20179 beginning on page 47311 in the issue of Friday, August 8, 2003, HHS announced an extended 120 day comment period, "to encourage comment from the public and from recipients regarding experience in applying the revised guidance." However, that notice incorrectly identified January 6, 2004, as the end of the comment period. This was corrected in notice document C3–20179 on page 49843 in the issue of Tuesday, August 19, 2003, which identified the correct date as December 8, 2003. In comments received by the Department by December 8, concerns were raised that confusion about the close of the 120 day comment period may inadvertantly foreclose consideration of submissions made by commenters relying on the January 6, 2004 date. To avoid any such confusion, the Department will hold open the comment period through January 6, 2004, for comments received by the Department through that date.

Dated: December 9, 2003.

Richard M. Campanelli,

Director, Office for Civil Rights.

[FR Doc. 03–30967 Filed 12–15–03; 8:45 am]

BILLING CODE 4153–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Agency for Healthcare Research and Quality, HHS.

ACTION: Notice.

SUMMARY: This notice announces the intention of the Agency for Healthcare Research and Quality (AHRQ) to request that the Office of Management and Budget (OMB) allow the proposed information collection project: "National Children's Study Pilot: Primary Care Practice-Based Research Networks (PBRNs)." In accordance with the Paperwork Reduction Act of 1995, Public Law 1004–13 (44 U.S.C. 3506(c)(2)(A)), AHRQ invites the public to comment on this proposed information collection.

DATES: Comments on this notice must be received by February 17, 2004.

ADDRESSES: Written comments should be submitted to: Cynthia D. McMichael, Reports Clearance Officer, AHRQ, 540 Gaither Road, Room #5022, Rockville, MD 20850.

Copies of the proposed collection plans, data collection instruments, and specific details on the estimated burden can be obtained from the AHRQ Reports Clearance Officer.

FOR FURTHER INFORMATION CONTACT: Cynthia D. McMichael, AHRQ, Reports Clearance Officer, (301) 427–1651.

SUPPLEMENTARY INFORMATION:

Proposed Project

National Children's Study pilot project to determine feasibility of NCS data collection in Primary Care Practices."

The project is being conducted in response to a modification of an AHRQ RFP entitled "Recourse Center for Primary Care Practice-Based Research Networks (PBRNs)" (issued under Contract 290–02–0008). In January 2003 AHRQ requested that the PBRN Resource Center assess the potential for PBRNs to participate in the National Children's Study (NCS).

In 2000, Congress passed the Children's Health Act, authorizing an unprecedented study of the impact of the environment on children's health.

The goal of the NCS is to identify sufficient numbers of women of childbearing age to enroll 100,000 pregnant women into the NCS early in gestation, and then to enroll and follow their children through 21 years of age.

A key design issue for the NCS is the manner in which participants will be recruited and enrolled into the study. Previous research states that a well-established relationship between the researcher and the subject, convenient study location and active community ties bolster recruitment success and the likelihood of a parent to enroll their child in longitudinal studies. PBRNs consist mainly of non-academic, community-based primary care practices with well-established relationships with their subject population. PBRNs therefore offer a potentially valuable resource for identifying, enrolling, and following women and children for the NCS.

Recognizing this, AHRQ requested that the Resource Center participate in the design of a pilot study of PBRNs' ability to participate in the NCS. The proposed NCS pilot study will test the ability of PBRNs to collect, process, and manage data similar to that which is expected to be collected and processed in the NCS. This pilot study will allow the Resource Center to determine the factors that enable or hinder the collection of such data at primary care practices, as well as make an overall determination of the feasibility of PBRN practices' participation in the NCS.

The pilot study will involve use of in-person interviews, developmental assessments of children, self-administered parent/guardian questionnaires, and physical exams including the collection of urine. The pilot study will evaluate the feasibility of having PBRNs participate in the NCS using several indicators:

The ability of practices to use self-administered questionnaires to collect and manage the medical and dietary history data of pregnant women and of children ages 1 and 5;

The ability of practices to effectively collect and manage data from a physical examination of study subjects (including health status and urine collection);

The ability of practices to facilitate a developmental assessment of children conducted at age one and age five;

The amount of burden data collection places on practices;

The characteristics of successful and unsuccessful practices in the study;

The ease of data collection across different patient populations and data collection modes and;

To make the necessary determinations, assessments and surveys will be conducted with PBRN practice patients as well as with a small number of patients who ordinarily receive care elsewhere, and PBRN staff will also be surveyed.

Methods of Collection

The data will be collected from 36 practices per respondent category, meaning 36 practices will collect data on pregnant women, 36 practices will collect data on children aged 1 and 5. It is expected that some practices will collect data on more than one respondent group. Each practice will recruit 14 patients per respondent group using convenience sampling procedures. A total of 504 pregnant women and 504 children and their parents (half will be 1 year old and half will be 5 years old) will be involved in the data collection. Because a small proportion (20%) of patients will be asked to visit another practice participating in the pilot study in order to test the ability of practices to collect and manage data on non-member patients, the NCS will require some providers to collect data on some patients they do not normally care for.

The method of data collection for the patient assessment includes self-administered questionnaires, physical examination, and collection of a urine sample. The practice will contact potential participants through a mailing and a phone call. Non-respondents will not be contacted again.

Estimated Annual Respondent Burden

Data collection	Number of respondents	Estimated time per respondent in hours	Estimated total burden hours	Average hourly wage rate	Labor rates
Pregnant woman: Data collected at their current practice	403	2.5	1007.5	17.18*	$17,308.85
Pregnant woman: Data collected at a practice other than usual source of care	101	3	303	17.18*	5,205.54
Parent of a 1 year old or 5 year old: Data collected at their current practice	403	4	1,612	17.18*	27,694.16
Parent of a 1 year old or 5 year old: Data collected at a practice other than usual source of care	101	4.5	454.5	17.18*	7,808.31
1 year old or 5 year old: Data collected at their usual practice	403	4	1,612	0	0.00
1 year old or 5 year old: Data collected at their usual practice	101	4.5	454.5	0	0.00
Total	1512	3.6	5443.50		$58,016.86

*Based on the average hourly wage across private and public sector jobs in the United States, National Compensation Survey, July 2002. U.S. Bureau of Labor Statistics.

Estimated Costs to the Federal Government

The total cost to the government for activities directly related to this data collection is estimated to be $780,411.

Request for Comments

In accordance with the above cited legislation, comments on the AHRQ information collection are requested with regard to any of the following: (a) Whether the proposed collection of information is necessary for the proper performance of functions of AHRQ, including whether the information will have practical utility; (b) the accuracy of the AHRQ's estimate of burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information upon the respondents, including the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the request for OMB approval of the proposed information collection. All comments will become a matter of public record.

Dated: December 10, 2003.

Carolyn M. Clancy,

Director.

[FR Doc. 03–31023 Filed 12–12–03; 10:46 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Cooperative Agreement for Research on Prevention of Lyme Disease in Humans in the United States, Program Announcement 04008

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following meeting:

Name: Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Cooperative Agreement for Research on Prevention of Lyme Disease in Humans in the United States, Program Announcement 04008.

Times and Dates: 9 a.m.–9:30 a.m., January 15, 2004 (Open); 9:30 a.m.–4 p.m., January 15, 2004 (Closed).

Place: Atlanta Airport Marriott, 4711 Best Road, Atlanta, GA 30337, Telephone (404) 766–7900.

Status: Portions of the meeting will be closed to the public in accordance with provisions set forth in section 552b(c)(4) and (6), Title 5 U.S.C., and the Determination of the Director, Management Analysis and Services Office, CDC, pursuant to Public Law 92–463.

Matters To Be Discussed: The meeting will include the review, discussion, and evaluation of applications received in response to Program Announcement 04008.

For Further Information Contact: Nora L. Keenan, Ph.D., Scientific Review Administrator, Office of Extramural Research, National Center for Infectious Diseases, CDC, 1600 Clifton Road, NE., MS–C19, Atlanta, GA 30333, Telephone (404) 639–2176.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: December 3, 2003.

Alvin Hall,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 03–30954 Filed 12–15–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Data Coordinating Center for Autism and Other Developmental Disabilities Surveillance and Epidemiological Research Program Announcement 04014

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following meeting:

Name: Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Data Coordinating Center for Autism and Other Developmental Disabilities Surveillance and Epidemiological Research Program Announcement 04014.

Times and Dates: 8:45 a.m.–9:35 a.m., January 11, 2004 (Open); 10 a.m.–4:30 p.m., January 11, 2004 (Closed).

Place: Atlanta Airport Marriott, 4711 Best Road, College Park, GA 30337, Telephone (404) 766–7900.

Status: Portions of the meeting will be closed to the public in accordance with provisions set forth in section 552b(c) (4) and (6), Title 5 U.S.C., and the Determination of the Director, Management Analysis and Services Office, CDC, pursuant to Public Law 92–463.

Matters to be Discussed: The meeting will include the review, discussion, and evaluation of applications received in response to Program Announcement 04014.

For Further Information Contact: John F. Hough, Dr.PH., National Institutes of Health/NIAAA 6000 Executive Boulevard, Willco Building, Bethesda, MD 20892, (301) 402–9371.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: December 4, 2003.

Alvin Hall,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 03–30955 Filed 12–15–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Cooperative Agreement for Research on the Laboratory Diagnosis, Immunology and Pathogenesis of Lyme Disease in the United States, Program Announcement 04006

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following meeting:

Name: Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Cooperative Agreement for Research on the Laboratory Diagnosis, Immunology, and Pathogenesis of Lyme Disease in the United States, Program Announcement 04006.

Times and Dates: 8:30 a.m.–9 a.m., January 14, 2004 (Open); 9 a.m.–6 p.m., January 14, 2004 (Closed).

Place: Atlanta Airport Marriott, 4711 Best Road, Atlanta, GA 30337, Telephone (404) 766–7900.

Status: Portions of the meeting will be closed to the public in accordance with provisions set forth in section 552b(c)(4) and (6), Title 5 U.S.C., and the Determination of the Director, Management Analysis and Services Office, CDC, pursuant to Public Law 92–463.

Matters to be Discussed: The meeting will include the review, discussion, and evaluation of applications received in response to Program Announcement 04006.

For Further Information Contact: Nora L. Keenan, Ph.D., Scientific Review Administrator, Office of Extramural Research, National Center for Infectious Diseases, CDC, 1600 Clifton Road, NE, MS–C19, Atlanta, GA 30333, Telephone (404) 639–2176.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: December 3, 2003.

Alvin Hall,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 03–30956 Filed 12–15–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2000N–1652]

Agency Information Collection Activities; Announcement of Office of Management and Budget Approval; Requirements for Submission of Labeling for Human Prescription Drugs and Biologics in Electronic Format

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled "Requirements for Submission of Labeling for Human Prescription Drugs and Biologics in Electronic Format" has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: Karen Nelson, Office of Management Programs (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1482.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of May 3, 2002 (67 FR 22367), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under 44 U.S.C. 3507. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has now approved the information collection and has assigned OMB control number 0910–0530. The approval expires on November 30, 2006. A copy of the supporting statement for this information collection is available on the Internet at *http://www.fda.gov/ohrms/dockets.*

Dated: December 9, 2003.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 03–30962 Filed 12–15–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2003N–0142]

Agency Information Collection Activities; Announcement of Office of Management and Budget Approval; Guidance for Industry: Submitting and Reviewing Complete Responses to Clinical Holds

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled "Guidance for Industry: Submitting and Reviewing Complete Responses to Clinical Holds" has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: Karen Nelson, Office of Management Programs (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1482.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of July 23, 2003 (68 FR 43532), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under 44 U.S.C. 3507. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has now approved the information collection and has assigned OMB control number 0910–0445. The approval expires on November 30, 2006. A copy of the supporting statement for this information collection is available on the Internet at *http://www.fda.gov/ohrms/dockets.*

Dated: December 9, 2003.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 03–30963 Filed 12–15–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2003N–0542]

Agency Information Collection Activities; Proposed Collection; Comment Request; Premarket Notification Submissions

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on information collection requirements for premarket notification (510(k)) submissions.

DATES: Submit written and electronic comments on the collection of information by February 17, 2004.

ADDRESSES: Submit electronic comments on the collection of information to: *http://www.fda.gov/dockets/ecomments.* Submit written comments on the collection of information to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Peggy Robbins, Office of Management Programs (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. "Collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance

of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Premarket Notification 510(k) Submissions—21 CFR Part 807 (OMB Control Number 0910–0120)—Extension

Section 510(k) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360(k)) requires a person who intends to market a medical device to submit a 510(k) submission to FDA at least 90 days before proposing to begin the introduction, or delivery for introduction into interstate commerce, for commercial distribution of a device intended for human use. The definition of "person" has been expanded to include hospitals who re-use or re-manufacture single-use medical devices. The Medical Device User Fee and Modernization Act of 2002 (MDUFMA) (Public Law 107–250), added section 510(o) to the act to establish new regulatory requirements for reprocessed single-use devices (SUDs) (MDUFMA section 302(b), the act section 510(o)). MDUFMA was signed into law on October 26, 2002. Section 301(b) of MDUFMA adds new requirements for reprocessed SUDs to section 510 of the act. The estimated submissions below include those submitted by hospitals re-manufacturing single-use medical devices.

Section 510(k) of the act allows for exemptions to the 510(k) submissions, i.e., a 510(k) submission would not be required if FDA determines that premarket notification is not necessary for the protection of the public health, and they are specifically exempted through the regulatory process. Under 21 CFR 807.85 "Exemption from premarket notification," a device is exempt from premarket notification if the device intended for introduction into commercial distribution is not generally available in finished form for purchase and is not offered through labeling and advertising by the manufacturer, importer, or distributor for commercial distribution. In addition, the device must meet one of the following conditions: (1) It is intended for use by a patient or dentist (or other specially qualified persons), or (2) it is intended solely for use by a physician or dentist and is not generally available to other physicians or dentists.

A commercial distributor who places a device into commercial distribution for the first time under their own name and a repackager who places their own name on a device and does not change any other labeling or otherwise affect the device, shall be exempted from premarket notification if the device was legally in commercial distribution before May 28, 1976, or a premarket notification was submitted by another person.

One of MDUFMA's provisions requires the submission of validation data specified in the statute for certain reprocessed SUDs (as identified by FDA) such as cleaning and sterilization data, and functional performance data. FDA offers a guidance document to assist reprocessors of single use devices in submitting MDUFMA mandated validation data for the devices.

MDUFMA requires that FDA review the types of reprocessed SUDs not subject to premarket notification requirements and identify which of these devices require the submission of validation data to ensure their substantial equivalence to predicate devices. MDUFMA also requires that FDA review critical and semi-critical reprocessed SUDs that are currently exempt from premarket notification requirements and determine which of these devices require the submissions of 510(k)s to ensure their substantial equivalence to predicate devices. Under MDUFMA, FDA will use the validation data submitted for a reprocessed SUD to determine whether the device will remain substantially equivalent in terms of safety and effectiveness to its predicate after the maximum number of times the device is reprocessed as intended by the person submitting the premarket notification.

The information collected in a premarket notification is used by the medical, scientific, and engineering staffs of FDA in making determinations as to whether or not devices can be allowed to enter the U.S. market. The premarket notification review process allows for scientific and/or medical review of devices, subject to section 510(k) of the act, to confirm that the new devices are as safe and as effective as legally marketed predicate devices. This review process, therefore, prevents potentially unsafe and/or ineffective devices, including those with fraudulent claims, from entering the U.S. market. This information will allow FDA to collect data to ensure that the use of the device will not present an unreasonable risk for the subject's rights. The respondents to this information collection will primarily be medical device manufacturers and businesses.

FDA Form 3514 was developed to assist respondents in categorizing 510(k) data for submission to FDA. This form also assists respondents in organizing and submitting data for other FDA medical device programs such as premarket approval applications, investigational device exemptions, and humanitarian device exemptions.

FDA estimates the burden of this collection of information to be as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

21 CFR Section	Form No.	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
Part 807, Subpart E (807.81 and 807.87 (510(k)))		4,000	1	4,000	80	320,000
	FDA 3514	2,000	1	2,000	.5	1,000
Submission of validation data (2003)		20	5	100	40	28,000
Totals						349,000

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

TABLE 2.—ESTIMATED ANNUAL RECORDKEEPING BURDEN[1]

21 CFR Section	No. of Recordkeepers	Annual Frequency per Recordkeeping	Total Annual Records	Hours per Record	Total Hours
807.93	2,000	10	20,000	0.5	10,000
Totals					10,000

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

FDA has based these estimates on conversations with industry and trade association representatives, and from internal review of the documents listed in tables 1 and 2 of this document.

The total burden for using voluntary FDA Form 3514 is estimated to be approximately 1,000 hours and has been included in this collection of information. Once this collection of information has been approved, the burden for FDA Form 3514 will be reported and approved in each of the following OMB information collections: (1) Investigational device exemption reports and records (OMB control number 0910–0078), (2) premarket approval of medical devices (OMB control number 0910–0231), and (3) medical devices, humanitarian devices (OMB control number 0910–0332).

Dated: December 9, 2003.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 03–30964 Filed 12–15–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel; Preparation of Radiolabeled Materials.

Date: December 19, 2003.

Time: 12 p.m. to 3 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, 6116 Executive Boulevard, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: C. Michael Kerwin, Ph.D., MPH Scientific Review Administrator, Special Review and Logistics Branch, Division of Extramural Activities, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard, Room 8057, MSC 8329, Bethesda, MD 20892–8329, 301–496–7421, *kerwinm@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistant Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395; Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: December 10, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–30981 Filed 12–15–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal property.

Name of Committee: National Cancer Institute Initial Review Group, Subcommittee G—Education.

Date: February 9–11, 2004.

Time: 8 a.m to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Wyndham Washington, DC, 1400 M Street, NW., Washington, DC 20005.

Contact Person: Ilda M. McKenna, Scientific Review Administrator, Research Training Review Branch, Division of Extramural Activities, National Cancer Institute, 6116 Executive Boulevard Room 8111, Bethesda, MD 20892, 301–496–7481, *mckennai@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: December 10, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–30982 Filed 12–15–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Environmental Health Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which

would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Environmental Health Sciences Special Emphasis Panel, Research Program Projects.

Date: February 3–4, 2004.

Time: 7 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Doubletree Guest Suites, 2515 Meridian Parkway, Research Triangle Park, NC 27713.

Contact Person: Sally Eckert-Tilotta, Ph.D., National Inst. of Environmental Health Sciences, Office of Program Operations, Scientific Review Branch, P.O. Box 12233, MD EC–30, Research Triangle Park, NC 27709, 919/541–1446, *eckertt1@niehs.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.115, Biometry and Risk Estimation—Health Risks from Environmental Exposures; 93.142, NIEHS Hazardous Waste Worker Health and Safety Training; 93.143, NIEHS Superfund Hazardous Substances—Basic Research and Education; 93.894, Resources and Manpower Development in the Environmental Health Sciences; 93.113, Biological Response to Environmental Health Hazards; 93.114, Applied Toxicological Research and Testing, National Institutes of Health, HHS)

Dated: December 10, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–30973 Filed 12–15–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel, Biodefense Proteomics Research Programs: Identifying Targets for Therapeutic Interventions Using Proteomic Technology.

Date: January 7–9, 2004.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate contract proposals.

Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.

Contact Person: Gerald L. McLaughlin, Ph.D., Scientific Review Administrator, Scientific Review Program, National Institute of Allergy and Infectious Diseases, DEA/NIH/DHHS, 6700–B Rockledge Drive, MSC 7616, Room 2212, Bethesda, MD 20892–7616, (301) 436–7465, *gm145a@nih.gov*.

(Catalogue of Federal Domestic Assistance program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: December 10, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–30975 Filed 12–15–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; Innate Immune Receptors and Adjuvant Discovery.

Date: January 23, 2004.

Time: 8 a.m. to 3 p.m.

Agenda: To review and evaluate contract proposals.

Place: Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Paul A. Amstad, Ph.D., Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, National Institutes of Health/NIAID, 6700B Rockledge Drive, MSC 7616, Bethesda, MD 20892–7616, (301) 402–7098, *pamstad@niaid.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: December 10, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–30983 Filed 12–15–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Center for Scientific Review Special Emphasis Panel, December 19, 2003, 1 p.m. to December 19, 2003, 3 p.m., National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD, 20892 which was published in the **Federal Register** on November 26, 2003, 68 FR 66471–66472.

The meeting will be held December 18, 2003. The time and location remain the same. The meeting is closed to the public.

Dated: December 10, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–30974 Filed 12–15–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Geriatrics.

Date: December 12, 2003.

Time: 12:00 pm to 1:30 pm.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Charles G. Hollingsworth, DRPH, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5179, MSC 7840, Bethesda, MD 20892, 301–435–2406, *hollinc@csr.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Microbial Immunology.

Date: December 15, 2003.

Time: 11:00 am to 1:30 pm.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Tina McIntyre, Ph.D., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4202, MSC 7812, Bethesda, MD 20892, 301–594–6375, *mcintyrt@csr.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Folates.

Date: December 15, 2003.

Time: 1:30 pm to 3:30 pm.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Marcia Litwack, Ph.D., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6206, MSC 7804, Bethesda, MD 20892, 301–435–1719.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Down Syndrome: Development of Dementia.

Date: December 15, 2003.

Time: 1:30 pm to 2:30 pm.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Karen Sirocco, Ph.D., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3176, MSC 7848, Bethesda, MD 20892, 301–435–0676, *siroccok@csr.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Technology of Antibody Production.

Date: December 15, 2003.

Time: 4 pm to 5 pm.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Tina McIntyre, Ph.D., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4202, MSC 7812, Bethesda, MD 20892, 301–594–6375, *mcintyrt@csr.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, DNA Microarrays ZRG1 MDCN–A 03.

Date: December 17, 2003.

Time: 1 p.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Telephone Conference Call).

Contact Person: Carole L Jelsema, Ph.D., Scientific Review Administrator and Chief, MDCN Scientific Review Group, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4146, MSC 7850, Bethesda, MD 20892, (301) 435–1248, *jelsemac@csr.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, SARS Vaccines R21 Applications.

Date: December 18, 2003.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Hotel Embassy Row, 2015 Massachusetts Avenue, Washington, DC 20036.

Contact Person: Mary Clare Walker, Ph.D., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5104, MSC 7852, Bethesda, MD 20892, (301) 435–1165, *walkermc@csr.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Speech, Language and Memory Processes.

Date: December 18, 2003.

Time: 2 p.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Dana Plude, Ph.D., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3192, MSC 7848, Bethesda, MD 20892, 301–435–2309, *pluded@csr.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Morphogenesis & Regeneration Technology ZRG1 MDCN–A 02.

Date: December 22, 2003.

Time: 1 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Telephone Conference Call).

Contact Person: Carole L. Jelsema, Ph.D., Scientific Review Administrator and Chief, MDCN Scientific Review Group, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4146, MSC 7850, Bethesda, MD 20892, (301) 435–1248, *jelsemac@csr.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, R21 Stem Cells & Neurotechnology ZRG1 MDCN–A 04.

Date: December 30, 2003.

Time: 1 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Telephone Conference Call).

Contact Person: Carole L. Jelsema, Ph.D., Scientific Review Administrator and Chief, MDCN Scientific Review Group, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4146, MSC 7850, Bethesda, MD 20892, (301) 435–1248, *jelsemac@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Physiology & Neurotechnology ZRG1 MDCN–A 06.

Date: January 6, 2004.

Time: 1 p.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Telephone Conference Call).

Contact Person: Carole L. Jelsema, Ph.D., Scientific Review Administrator and Chief, MDCN Scientific Review Group, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4146, MSC 7850, Bethesda, MD 20892, (301) 435–1248, *jelsemac@csr.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: December 10, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–30976 Filed 12–15–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Center for Scientific Review Special Emphasis Panel, December 11, 2003, 2 p.m. to December 11, 2003, 3 p.m., National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 which was published in the **Federal Register** on December 3, 2003, 68 FR 67690–67691.

The meeting will be held December 17, 2003, from 1 p.m. to 2 p.m. The location remains the same. The meeting is closed to the public.

Dated: December 10, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–30977 Filed 12–15–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Center for Scientific Review Special Emphasis Panel, December 10, 2003, 2 p.m. to December 10, 2003, 3 p.m., National Institute of Health, 6701 Rockledge Drive, Bethesda, MD 20892 which was published in the **Federal Register** on December 3, 2003, 68 FR 67690–67691.

The meeting will be held December 17, 2003. The time and location remains the same. The meeting is closed to the public.

Dated: December 10, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–30978 Filed 12–15–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Center for Scientific Review Special Emphasis Panel, December 9, 2003, 12 p.m., to December 9, 2003, 1 p.m., National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD, 20892 which was published in the **Federal Register** on December 8, 2003, 68 FR 68404–68405.

The meeting will be held December 12, 2003, from 10 a.m. to 11 a.m. The location remains the same. The meeting is closed to the public.

Dated: December 10, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–30979 Filed 12–15–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Center for Scientific Review Special Emphasis Panel, December 19, 2003, 3 p.m. to December 19, 2003, 5 p.m., National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD, 20892 which was published in the **Federal Register** on November 26, 2003, 68 FR 66471–66472.

The meeting will be held December 16, 2003, from 1 p.m. to 3 p.m. The location remains the same. The meeting is closed to the public.

Dated: December 10, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–30980 Filed 12–15–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 concerning opportunity for public comment on proposed collections of information, the Substance Abuse and Mental Health Services Administration will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the information collection plans, call the SAMHSA Reports Clearance Officer on (301) 443–7978.

Comments are invited on: (a) Whether the proposed collections of information are necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project: Community Mental Health Services Block Grant Application Guidance and Instructions, FY 2005—2007 (OMB No. 0930–0168, Revision)—Sections 1911 through 1920 of the Public Health Service Act (42 U.S.C. 300x through 300x–9) provide for annual allotments to assist States to establish or expand an organized, community-based system of care for adults with serious mental illness and children with serious emotional disturbances. Under the provisions of the law, States may receive allotments only after an application is submitted and approved by the Secretary of the Department of Health and Human Services.

For the Federal fiscal years 2005—2007 Community Mental Health Services Block Grant application cycles, SAMHSA will provide States with revised application guidance and instructions. Proposed revisions to the previously approved application include: (1) Additional introductory text on the history and goals of federal mental health funding and an orientation to the transition to Performance Partnerships Grants, (2) changes in the format of the plan, and (3) the introduction of ten performance indicators as CMHS Core Performance Indicators. With the exception of one indicator, all are currently reported through the Uniform Reporting System (URS) and will not increase the State's burden; one indicator is currently in developmental status and beginning in FY 2004, States were given three years to develop capacity to report data for this indicator. The following table summarizes the annual burden for the revised application.

Part of application	Number of responses	Responses respondent	Burden response (hrs.)	Total burden hours
Plan—(Parts B and C):				
1 year	33	1	190	6,270
2 year	12	1	160	1,920
3 year	14	1	120	1,680
Implementation Report (Part D)	59	1	85	5,015
Data Tables (Part E)	59	1	40	2,360
Copy Plan and Report having more than 120 pages in length	10	2	1	20
Total	59	1		17,265

Send comments to Nancy Pearce, SAMHSA Reports Clearance Officer, Room 16–105, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated: December 9, 2003.

Anna Marsh,

Acting Executive Officer, SAMHSA.

[FR Doc. 03–30950 Filed 12–15–03; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOMELAND SECURITY

[CIS No. 2309–03]

Performance Review Boards—Appointment of Members

AGENCY: Department of Homeland Security, Bureau of Immigration and Customs Enforcement, and Bureau of Citizenship and Immigration Services.

ACTION: Notice.

SUMMARY: This notice announces the appointment of the members of the Bureau of Immigration and Customs Enforcement (ICE), and the Bureau of Citizenship and Immigration Services (CIS) Performance Review Boards (PRBs) under 5 U.S.C. 4314(c)(4). The purpose of the PRBs is to review performance appraisals for senior executives and to recommend to the appointing authority proposed performance ratings, bonuses, and other related personnel actions.

DATES: This notice is effective December 16, 2003.

FOR FURTHER INFORMATION CONTACT: C. Rick Hastings, Director, Workforce and Information Management, 800 K Street, NW., Suite 5000, Washington, DC 20536, Telephone (202) 514–3636.

SUPPLEMENTARY INFORMATION: There are two PRBs, one in ICE and the other in CIS.

ICE Performance Review Board

The purpose of this Board is to review the performance appraisals and proposed related personnel actions for senior executives who report to the Assistant Secretary, ICE. The members are: Joseph Mancias, Janis Sposato, Joseph Langlois, Terrance O'Reilly, Dea Carpenter, Andrea Quarantillo, and David R. Howell.

CIS Performance Review Board

The purpose of this Board is to review the performance appraisals and proposed related personnel actions for all senior executives who report to the Director, CIS: The members are: Anthony Tangeman, Charles DeMore, Joseph Greene, J. Scott Blackman, John Chase, Grace Mastalli, and Paul Ladd.

Dated: December 11, 2003.

Ronald J. James,

Chief Human Capital Officer.

[FR Doc. 03–31076 Filed 12–12–03; 10:06 am]

BILLING CODE 4410–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice and request for comments.

SUMMARY: The Federal Emergency Management Agency, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed continuing information collections. In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506(c)(2)(A)), this notice seeks comments concerning the information collection outlined in 44 CFR Part 61, as it pertains to application for National Flood Insurance Program (NFIP) insurance.

SUPPLEMENTARY INFORMATION: The National Flood Insurance Program (NFIP) is authorized by Public Law 90–448 (1968) and expanded by Public Law 93–234 (1973). The National Flood Insurance Act of 1968 requires that the Federal Emergency Management Agency (FEMA) provide flood insurance at full actuarial rates reflecting the complete flood risk to structures built or substantially improved on or after the effective date for the initial Flood Insurance Rate Map (FIRM) for the community, or after December 31, 1974, whichever is later, so that the risks associated with buildings in flood-prone areas are borne by those located in such areas and not by the taxpayers at large. In accordance with Public Law 93–234, the purchase of flood insurance is mandatory when Federal or federally related financial assistance is being provided for acquisition or construction of buildings located, or to be located, within FEMA-identified special flood hazard areas of communities that are participating in the NFIP. When flood damage occurs to insured property, information is collected to report, investigate, negotiate and settle the claim.

Collection of Information

Title: National Flood Insurance Program Claims Forms.

Type of Information Collection: Revision of a currently approved collection.

OMB Number: 1660–0005.

Form Numbers: 81–40 (Worksheet-Contents-Personal Property), 81–41 (Worksheet-Building), 81–41A (Worksheet-Building Continued), 81–42 (Proof of Loss), 81–42A (Increased Cost of Compliance Proof of Loss), 81–43 (Notice of Loss), 81–44 (Statement as to Full Cost to Repair or Replacement Cost Coverage, Subject to the Terms and Conditions of this Policy), 81–57 (National Flood Insurance Program Preliminary Report), 81–58 (National Flood Insurance Program Final Report), 81–59 (National Flood Insurance

Program Narrative Report), 81–63 (Cause of Loss and Subrogation Report), 81–96 (Mobile Home Worksheet), 81–98 (Increased Cost of Compliance (ICC) Adjuster Report), 81–109 (Adjuster Preliminary Damage Assessment), 81–110 (Adjuster Certification Application).

Abstract: In order to document and pay claims made against the National Flood Insurance Program Direct Business this information is collected and reviewed as part of the claims handling process by the servicing company under contract to FEMA.

Affected Public: Individuals or households; Business or other for-profit; Not-for-profit institutions; Farms; Federal Government; State, Local or Tribal Government.

Estimated Total Annual Burden Hours: 19,605.

Number of Respondents: 5,000.

Frequency of Response: On occasion, dependent on weather and related flooding conditions.

Estimated Hours Per Respondent: The average time required for the adjuster for each claim filed and the policyholder to list the items damaged in the flood and meet with the adjuster concerning the loss is estimated to be 4 hours. Burden hours are derived from the reports of the Adjusters who meet with the policyholders, from local community officials, and from DHS–FEMA staff's personal experience.

Estimated Total Cost to Respondents: $405,412.00.

Estimated Total Cost to the Government: The adjusters are paid from a fee schedule based on the gross amount of the claim. The average adjuster payment was $500.00 per claim. The number of claims annually varies with the weather and related flooding conditions. We estimate 5,000 claims, which provides, reimbursements to adjusters for expenses incurred in accordance with NFIP standards to evaluate the loss and obtain a proof of loss signed by the claimant, of approximately $2,500,000.00. All these costs are paid by the National Flood Insurance Program and by the government.

Comments: Written comments are solicited to (a) Evaluate whether the proposed data collection is necessary for the proper performance of the agency, including whether the information shall have practical utility; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) evaluate the accuracy of the estimated costs to respondents to provide the information to the agency; (d) enhance the quality, utility, and clarity of the information to be collected; and (e) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses. Comments should be received within 60 days of the date of this notice.

ADDRESSES: Interested persons should submit written comments to Muriel B. Anderson, Chief, Records Management Branch, Federal Emergency Management Agency, 500 C Street, SW., Room 316, Washington, DC 20472, or e-mail address: *Muriel.Anderson@dhs.gov*, or facsimile number (202) 646–3524.

FOR FURTHER INFORMATION CONTACT: For additional information contact James S.P. Shortley, Director of Claims, Mitigation Division, Risk Insurance Branch at (202) 646–3418. Contact Ms. Anderson for copies of the proposed collection of information.

Dated: December 9, 2003.

Edward W. Kernan,

Division Director, Information Resources Management Division, Information Technology Services Directorate.

[FR Doc. 03–30990 Filed 12–15–03; 8:45 am]

BILLING CODE 9110–11–P

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Invasive Species Advisory Committee; Request for Nominations

AGENCY: Office of the Secretary, National Invasive Species Council, Department of the Interior.

ACTION: Request for Nominations for the Invasive Species Advisory Committee.

Note: This is a republication of the notice published December 1, 2003 (68 FR 67202). It contains a correction to the date for nominations.

SUMMARY: The U.S. Department of the Interior, on behalf of the interdepartmental National Invasive Species Council, proposes to appoint new members to the Invasive Species Advisory Committee (ISAC). The Secretary of the Interior, acting as administrative lead, is requesting nominations for qualified persons to serve as members of the ISAC.

DATES: Nominations must be received by January 15, 2004.

ADDRESSES: Nominations should be sent to Lori Williams, Executive Director, National Invasive Species Council (OS/SIO/NISC), 1849 C Street NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Kelsey Brantley, Program Analyst, at (202) 513–7243, fax: (202) 371–1751, or by e-mail at *Kelsey_Brantley@ios.doi.gov*.

SUPPLEMENTARY INFORMATION:

Advisory Committee Scope and Objectives

The purpose and role of the ISAC are to provide advice to the Invasive Species Council (Council), as authorized by Executive Order 13112, on a broad array of issues including preventing the introduction of invasive species, providing for their control, and minimizing the economic, ecological, and human health impacts that invasive species cause. The Council is Co-chaired by the Secretaries of the Interior, Agriculture, and Commerce. The duty of the Council is to provide national leadership regarding invasive species issues. Pursuant to the Executive Order, the Council developed a National Invasive Species Management Plan. The Plan is available on the Web at *http://www.invasivespecies.gov*. The Council is responsible for effective implementation of the Plan. The Council coordinates Federal agency activities concerning invasive species; prepares, revises, and issues the National Invasive Species Management Plan; encourages planning and action at local, tribal, State, regional and ecosystem-based levels; develops recommendations for international cooperation in addressing invasive species; facilitates the development of a coordinated network to document, evaluate, and monitor impacts from invasive species; and facilitates establishment of an information-sharing system on invasive species that utilizes, to the greatest extent practicable, the Internet.

The role of ISAC is to maintain an intensive and regular dialogue regarding the aforementioned issues. ISAC provides advice in cooperation with stakeholders and existing organizations addressing invasive species. The ISAC meets up to four (4) times per year.

Terms for approximately half of the current members of the ISAC will expire in March 2004. Current members of the ISAC are eligible for reappointment. The Secretary of the Interior will appoint members to ISAC in consultation with the Secretaries of Agriculture and Commerce. The Secretary of Interior actively solicits new nominees to the ISAC. Members of ISAC should be knowledgeable in and represent one or more of the following communities of interests: weed science; fisheries science; rangeland management; forest science; entomology; nematology; plant pathology; veterinary medicine; the broad range of farming or agricultural practices; biodiversity issues; applicable laws and regulations relevant to invasive species policy; risk assessment; biological control of invasive species; public health/epidemiology; industry activities; international affairs or trade; tribal or state government interests; environmental education; ecosystem monitoring; natural resource database design and integration; and internet-based management of conservation issues.

Members should also have practical experience in one or more of the following areas: representing sectors of the national economy that are significantly threatened by biological invasions (*e.g.* agriculture, fisheries, public utilities, recreational users, tourism, etc.); representing sectors of the national economy whose routine operations may pose risks of new or expanded biological invasions (*e.g.* shipping, forestry, horticulture, aquaculture, pet trade, etc.); developing natural resource management plans on regional or ecosystem-level scales; addressing invasive species issues, including prevention, control and monitoring, in multiple ecosystems and on multiple scales; integrating science and the human dimension in order to create effective solutions to complex conservation issues including education, outreach, and public relations experts; coordinating diverse groups of stakeholders to resolve complex environmental issues and conflicts; and complying with NEPA and other federal requirements for public involvement in major conservation plans. Members will be selected in order to achieve a balanced representation of viewpoints, so to effectively address invasive species issues under consideration. No member may serve on the ISAC for more than three (3) consecutive terms. All terms will be limited to two (2) years in length.

Members of the ISAC and its subcommittees serve without pay. However, while away from their homes or regular places of business in the performance of services of the ISAC, members shall be allowed travel expenses, including per diem in lieu of subsistence, in the same manner as persons employed intermittently in the government service, as authorized by section 5703 of Title 5, United States Code.

Submitting Nominations

Nominations should be typed and should include the following:

1. A brief summary of no more than two (2) pages explaining the nominee's suitability to serve on the ISAC.
2. A resume or curriculum vitae.
3. At least two (2) Letters of reference.

Nominations should be sent no later than January 15, 2004, to Lori Williams, National Invasive Species Council (OS/SIO/NISC), 1849 C Street NW., Washington, DC 20240.

To ensure that recommendations of the ISAC take into account the needs of the diverse groups served, the Department of the Interior is actively soliciting nominations of qualified minorities, women, persons with disabilities and members of low income populations.

Dated: December 9, 2003.

Lori C. Williams,

Executive Director, National Invasive Species Council.

[FR Doc. 03–30918 Filed 12–15–03; 8:45 am]

BILLING CODE 4310–RK–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Draft Environmental Assessment/ Habitat Conservation Plan and Receipt of an Application for an Incidental Take Permit for Elizabeth Cross Roads Property, Town of Elizabeth, Elbert County, CO

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability and receipt of application.

SUMMARY: This notice advises the public that Elizabeth Cross Roads LLC (Applicant) has applied to the U.S. Fish and Wildlife Service (Service) for an incidental take permit pursuant to section 10(a)(1)(B) of the Endangered Species Act (Act) of 1973, as amended. The proposed permit would authorize the incidental take of the Preble's meadow jumping mouse (*Zapus hudsonius preblei*) (Preble's), federally-listed as threatened, through loss and modification of its habitat associated with construction of the Elizabeth Cross Roads Business Park, a commercial development, and an associated utility line in Elizabeth, Elbert County, Colorado. The duration of the permit would be 10 years from the date of issuance.

We announce the receipt of the Applicant's incidental take permit application, which includes a combined Environmental Assessment/Habitat Conservation Plan (EA/HCP) for the Preble's for the Elizabeth Cross Roads Property. The proposed EA/HCP is available for public review and comment. It fully describes the proposed project and the measures the Applicant would undertake to minimize and mitigate project impacts to the Preble's.

The Service requests comments on the EA/HCP and associated documents for the proposed issuance of the incidental take permit. All comments on the EA and permit application will become part of the administrative record and will be available to the public. We provide this notice pursuant to section 10(a) of the Act and the National Environmental Policy Act regulations (40 CFR 1506.6).

DATES: Written comments on the permit application and EA/HCP should be received on or before February 17, 2004.

ADDRESSES: Comments regarding the permit application and EA/HCP should be addressed to Susan Linner, Field Supervisor, U.S. Fish and Wildlife Service, Colorado Field Office, 755 Parfet Street, Suite 361, Lakewood, Colorado 80215. Comments also may be submitted by facsimile to (303) 275–2371.

FOR FURTHER INFORMATION CONTACT: Ms. Kathleen Linder, Fish and Wildlife Biologist, Colorado Field Office, telephone (303) 275–2370.

SUPPLEMENTARY INFORMATION:

Document Availability

Individuals wishing copies of the EA/HCP and associated documents for review should immediately contact the above office. Documents also will be available for public inspection, by appointment, during normal business hours at the above address.

Background

Section 9 of the Act and Federal regulations prohibit the "take" of a species listed as endangered or threatened. Take is defined under the Act, in part, as to kill, harm, or harass a federally listed species. However, the Service may issue permits to authorize "incidental take" of listed species under limited circumstances. Incidental take is defined under the Act as take of a listed species that is incidental to, and not the purpose of, the carrying out of an otherwise lawful activity under limited circumstances. Regulations governing permits for threatened species are promulgated in 50 CFR 17.32.

The Elizabeth Cross Roads Property is located at the northwest corner of Highway 86 and County Road 17, along Running Creek, in the Town of Elizabeth, Elbert County, Colorado. The

project site is 8.1 hectares (20 acres), but the proposed project will directly impact a maximum of 1.7 hectares (4.2 acres) that may result in incidental take of the Preble's. Of the total amount of impacted acreage, 0.6 hectare (1.4 acres) will be temporarily disturbed and will be revegetated. An HCP has been developed as part of the preferred alternative. The proposed HCP will allow for the incidental take of the Preble's by permitting a commercial development and associated utilities to be constructed in an area that may be periodically used as foraging, breeding or hibernation habitat.

In addition to the Proposed Action, alternatives considered included—(a) Waiting for the Elbert County Regional HCP to be approved, (b) developing the site without avoidance of Preble's habitat, (c) developing the portion of the site that will have no impacts to Preble's habitat, and (d) no action. The draft EA analyzes the onsite, offsite, and cumulative impacts of the proposed project and all associated development and construction activities and mitigation activities on the Preble's, and also on other threatened or endangered species, vegetation, wildlife, wetlands, geology/soils, land use, water resources, air and water quality, and cultural resources. All of the proposed permanent impacts are in upland areas outside of the 100-year floodplain. The Applicant, using the Service's definition of Preble's habitat, has determined that the proposed project would impact approximately 1.7 hectares (4.2 acres) of potential Preble's habitat. The mitigation will likely provide a net benefit to the Preble's and other wildlife by planting of native shrubs and protecting existing habitat along Running Creek from any future development.

Only one federally-listed species, the threatened Preble's, occurs onsite and has the potential to be adversely affected by the project. To mitigate impacts that may result from incidental take, the HCP provides mitigation for the commercial site by protecting and enhancing 2.1 hectares (5.3 acres) of the Running Creek corridor onsite and its associated riparian areas from all future development. Approximately 0.6 hectare (1.41 acres) of temporarily disturbed grassland will be enhanced prior to construction by fencing to eliminate grazing and an additional 1.6 hectares (3.9 acres) will be enhanced native shrub planting and native grass reseeding. Measures will be taken during construction to minimize impact to the habitat, including the use of silt fencing to reduce the amount of sediment from construction activities that reaches the creek. All of the proposed mitigation area is within the boundaries of the Elizabeth Cross Roads property, all of which is included in the drainage basin of Running Creek.

This notice is provided pursuant to section 10(c) of the Act. We will evaluate the permit application, the EA/HCP, and comments submitted therein to determine whether the application meets the requirements of section 10(a) of the Act. If it is determined that those requirements are met, a permit will be issued for the incidental take of the Preble's in conjunction with the construction of Elizabeth Cross Roads Business Park. The final permit decision will be made no sooner than 60 days after the date of this notice.

Dated: Novemeber 14, 2003.

Ralph O. Morgenweck,

Regional Director, Denver, Colorado.

[FR Doc. 03–30957 Filed 12–15–03; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Minerals Mangement Service

Outer Continental Shelf (OCS), Alaska OCS Region, Beaufort Sea Oil and Gas Lease Sale 195, March 2005

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Request for information and Notice of Intent (NOI) to prepare an Environmental Assessment.

SUMMARY: The Secretary's approved 5-Year OCS Oil and Gas Leasing Program for 2002–2007 provides for 3 sales: Sales 186, 195, and 202 to be held in the Beaufort Sea program area. The pre-sale process incorporated planning and analysis for all three sales. From the initial step in the process (the call for information and nominations (call)) through the final Environmental Impact Statement (EIS)/Consistency Determination (CD) step, the process covered the multiple sale proposals. However, there will be complete National Environmental Policy Act (NEPA), OCS Lands Act, and Coastal Zone Management Act coverage for each sale, and each sale will be preceded by a proposed and final notice of sale. The environmental analysis and the CD for Sale 195 will focus primarily on new issues and/or changes in the State's federally-approved coastal management plan.

The call and NOI to prepare an EIS for Sales 186, 195, and 202 was published in the **Federal Register** on September 19, 2001, at 66 FR 48268. The Beaufort Sea final EIS for Sales 186, 195, and 202 was released in February 2003 (OCS EIS/EA, MMS 2003–001). The first sale, Sale 186, was held on September 24, 2003. The MMS is now initiating a request for information for Beaufort Sea Sale 195.

DATES: Comments on the Request for Information and on the NOI must be received no later than 45 days following publication of this document in the **Federal Register** in envelopes labeled "Comments on the Request for Information for Beaufort Sea Sale 195" or "Comments on the NOI to Prepare an Environmental Assessment", as appropriate.

FOR FURTHER INFORMATION CONTACT: Please call Tom Warren at (907) 271–6691 in MMS's Alaska OCS Region regarding questions on the request for information/NOI to prepare an Environmental Assessment.

SUPPLEMENTARY INFORMATION: The environmental analysis and the CD for Sale 195 will focus primarily on new issues that may have arisen since the completion of the EIS for Sales 186, 195, and 202 (February 2003) and on any changes that may have occurred in the State's coastal management plan. The process will lead to identification of the area to be included in the proposed notice of sale. Each of these steps, including the proposed notice of sale, provides for a public comment period. At the culmination of each step and after analysis of any public comments, the MMS will decide whether to proceed to the next step. This process will:

- Focus on the environmental analysis by revising types and levels of impacts that changed since the analysis was done for Sale 186;
- Result in any new issues being more easily highlighted by the public;
- Eliminate issuance for public review of repetitive, voluminous EISs for each sale; and
- Result in a more efficient and responsive application of the NEPA.

The MMS will analyze all comments received in response to this request for information and re-examine information previously submitted in response to the call and the draft and final EISs for Sales 186, 195, and 202. The MMS will then identify the area to be analyzed in the NEPA document.

This request for information does not indicate a decision to lease in the area described below. Final delineation of the areas for possible leasing will be made after completion of the pre-sale steps described above and in compliance with the final 5-year program and applicable laws, including all requirements of the NEPA and the OCS Lands Act.

Request for Information

1. Authority

This request for information is published pursuant to the OCS Lands Act as amended (43 U.S.C. 1331–1356 (1994)) (OCS Lands Act), and the regulations issued thereunder (30 CFR part 256); and in accordance with the OCS Oil and Gas Leasing Program 2002 to 2007.

2. Purpose of Request

The purpose of the request for information is to gather information for Oil and Gas Lease Sale 195 in the Beaufort Sea, scheduled for March 2005. Information on oil and gas leasing, exploration, development, and production within the Beaufort Sea are sought from all interested parties. This early planning and consultation step is important for ensuring that all interests and concerns are communicated to the Department of the Interior for decisions in the leasing process pursuant to the OCS Lands Act and regulations at 30 CFR part 256.

The call published in the **Federal Register** on September 19, 2001, requested information and nominations from industry for Sales 186, 195, and 202 in the Beaufort Sea Planning Area. The MMS will use the information submitted in response to that call and any new information submitted in response to this request for information to determine the area that will be included in a NEPA analysis. It is not necessary to re-submit comments sent in response to the multiple-sale call or for industry to re-submit their areas of interest if your comments or indications of interest have not changed since that time. This process seeks to identify new areas of concern and areas of interest to industry.

3. Description of Area

The area located offshore the State of Alaska in the Beaufort Sea Planning Area is the subject of this request for information. It extends offshore from about 3 nautical miles to approximately 60 nautical miles, in water depths from approximately 25 feet to 200 feet. A small portion of the outer limits of the sale area north of Harrison Bay drops to approximately 3,000 feet. This area consists of approximately 1,898 whole and partial blocks (about 9.9 million acres). A page-size map of the area accompanies this notice. A large scale request for information map showing the boundaries of the area on a block-by-block basis is available without charge from the Records Manager at the address given below, or by telephone request at (907) 271–6621. Copies of Official Protraction Diagrams (OPDs) are also available for $2 each.

Alaska OCS Region, Minerals Management Service, 949 East 36th Avenue, Room 308, Anchorage, Alaska, 99508–4302; *http://www.mms.gov/alaska.*

4. Instructions on Request for Information

The request for information map delineates the area that is the subject of this request. Respondents are requested to indicate interest in and comment on any or all of the Federal acreage within the boundaries of the request for information area that they wish to have included in Beaufort Sea Sale 195.

If you wish to comment, you may submit your comments by any one of the following methods:

- You may mail comments to the Alaska OCS Region, Minerals Management Service, 949 East 36th Avenue, Room 308, Anchorage, Alaska 99508–4302.
- You may also comment via e-mail to *akrfi@mms.gov*. Please submit Internet comments as an ASCII file, avoiding the use of special characters and any form of encryption. Please also include "Attn: Comments on Request for Information for Beaufort Sea Sale 195" and your name and return address in your Internet message. If you do not receive a confirmation from the system that we have received your Internet message, contact us directly at (907) 271–6621.
- Finally, you may hand-deliver comments to the Alaska OCS Region, Minerals Management Service, 949 East 36th Avenue, Room 308, Anchorage, Alaska 99508–4302.

Our practice is to make comments, including names and addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their address from the record, which we will honor to the extent allowable by law. There also may be additional circumstances in which we would withhold a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

A. Areas of Interest to the Oil and Gas Industry

The MMS requests industry to submit any new information, including nomination of blocks that are of significant interest for exploration, development, and production. Information and nominations submitted in response to the multiple-sale call for Sales 186, 195, and 202, published on September 19, 2001 (66 FT 48268), will also be considered as information and nominations for the Sale 195 area identification process.

Nominations must be depicted on the request for information map by outlining the area(s) of interest along block lines. Nominators are asked to submit a list of whole and partial blocks nominated (by OPD and block number) to facilitate correct interpretation of their nominations on the request for information map. Although the identities of those submitting nominations become a matter of public record, the individual nominations are proprietary information.

Nominators also are requested to rank blocks nominated according to priority of interest (*e.g.*, priority 1 (high), or 2 (medium)). Blocks nominated that do not indicate priorities will be considered priority 3 (low). Nominators must be specific in indicating blocks by priority and be prepared to discuss their range of interest and activity regarding the nominated area(s). The telephone number and name of a person to contact in the nominator's organization for additional information should be included in the response. This person will be contacted to set up a mutually agreeable time and place for a meeting with the Alaska OCS Regional Office to present their views regarding the company's nominations.

B. Relation to Coastal Management Plans

Comments also are sought on potential conflicts with approved local coastal management plans that may result from the sale and future OCS oil and gas activities. These comments should identify specific coastal management plan policies of concern, the nature of the conflicts foreseen, and steps that MMS could take to avoid or mitigate the potential conflicts. Comments may be in terms of broad areas or restricted to particular blocks of concern. Commenters are requested to list block numbers or outline the subject area on the large-scale Request for Information map.

5. Use of Information From the Request for Information

Information submitted in response to this request for information will be used for several purposes. Responses will be used to:

- Help to further identify areas of potential oil and gas development;
- Identify environmental effects and potential use conflicts not previously addressed in the final EIS and CD for Sales 186, 195, and 202 (OCS EIS/EA, MMS 2003–0010);
- Develop any additional lease terms and conditions/mitigating measures that may be necessary; and
- Identify any potential conflicts between oil and gas activities and the Alaska coastal management plan not addressed in the CD for Sale 186.

6. Existing Information

The MMS has acquired a substantial amount of information, including that gained through the use of traditional knowledge, on the issues and concerns related to oil and gas leasing in the Beaufort Sea.

An extensive environmental, social, and economic studies program has been underway in this area since 1975. The emphasis has been on geologic mapping, environmental characterization of biologically sensitive habitats, endangered whales and marine mammals, physical oceanography, ocean-circulation modeling, and ecological and socio-cultural effects of oil and gas activities.

Information on the Studies program, completed studies, and a program status report for continuing studies in this area may be obtained from the Chief, Environmental Studies Section, Alaska OCS Region, by telephone request at (907) 271–6577, or by written request at the address stated under Description of Area. A request may also be made via the Alaska OCS Region Web site at *http://www.mms.gov/alaska/ref/pubindex/pubsindex.htm.*

7. Tentative Schedule

The following is a list of tentative milestone dates applicable to Beaufort Sea Sale 195 covered by this call:

Request for Information published.	December 2003
Area Identification	February 2004
NEPA/Environmental Assessment Review (or Supplemental EIS) published.	August 2004
Proposed Notice and CD.	October 2004
Final Notice of Sale	February 2005
Tentative Sale Date	March 2005

Notice of Intent To Prepare an Environmental Analysis

1. Authority

The NOI is published pursuant to the regulations (40 CFR 1501.7) implementing the provisions of the NEPA of 1969 as amended (42 U.S.C. 4321 *et seq.* (1988)).

2. Purpose of Notice of Intent

Pursuant to the regulations (40 CFR 1501.7) implementing the procedural provisions of the NEPA of 1969 (42 U.S.C. 4321 *et seq.*), MMS is announcing its intent to prepare an environmental assessment for Beaufort Sea Oil and Gas Lease Sale 195, scheduled for March 2005. The environmental assessment will be prepared to determine if there are significant new issues or impacts not previously addressed in the EIS for Sales 189, 195, and 202. If no significant new issues or impacts are identified, a finding of no new significant impacts will be issued. If information is submitted in response to this request for information that identifies significant new issues and/or impacts not previously addressed, a supplemental EIS may be prepared.

3. Instructions on Notice of Intent

Federal, State, tribal, and local governments and other interested parties are requested to send their written comments on new information and issues that should be addressed in the environmental assessment to the Regional Supervisor, Leasing and Environment, Alaska OCS Region, at the address stated under Request for Information, Item 4. Comments should be enclosed in an envelope labeled "Comments on the Notice of Intent to Prepare an Environmental Assessment for Beaufort Sea Sale 195." Comments are due no later than 45 days from publication of this notice.

Dated: December 2, 2003.

R.M. "Johnnie" Burton,

Director, Minerals Management Service.

[FR Doc. 03–31013 Filed 12–15–03; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

National Park Service

60-Day Notice of Intention To Request Clearance of Collection of Information; Opportunity for Public Comment

AGENCY: National Park Service, Department of Interior.

ACTION: Notice of intended submission to the Office of Management and Budget (OMB) and request for comments.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507 *et seq.*) and 5 CFR part 1320, the National Park Service (NPS) invites comments on its intention to request OMB to approve an existing collection in use with an OMB control number (1024–0245) associated with the United States Park Police Personal History Statements Questionnaire. The purpose of the United States Park Police Personal History Statement Questionnaire is to collect detailed information that will be used principally as a basis for an investigation to determine suitable applicants for the position of United States Park Police Officer.

DATES: To assure that the NPS considers your comments on this notice; NPS must receive the comments on or before February 17, 2004.

SEND COMMENTS TO: Lieutenant Charles A. Orton, Assistant Commander Human Resources Office, United States Park Police, 1100 Ohio Drive, SW., Washington, DC 20024, via fax at 202–619–7479, or via e-mail at *Charles_A_Orton@nps.gov.*

FOR FURTHER INFORMATION CONTACT: Lieutenant Charles A. Orton, Assistant Commander Human Resources Office, United States Park Police, 1100 Ohio Drive, SW., Washington, DC 20024, via fax at 202–619–7479, or via e-mail at *Charles_A_Orton@nps.gov* or via telephone at 202–619–7001.

SUPPLEMENTARY INFORMATION:

Title: United States Park Police Personal History Statements Questionnaire.

OMB Number: 1024–0245.

Expiration Date of Approval: 2/29/04.

Type of Request: Existing collection in use with an OMB Control number.

Abstract: This information collection has an impact on individuals that apply to the position of United States Park Police Officer. The NPS uses the information collections to hire adequately screened applicants for the position of United States Park Police Officer.

Respondents: Individual applicants to the position of United States Park Police Officer.

Estimate of Burden: NPS estimates that the public burden for the United States Personal History Statements Questionnaire collection of information will average 8 hours per applicant. This estimate of burden includes time for reviewing instructions, searching information sources, and gathering and reporting the information.

Estimated Number of Respondents: NPS estimates that there are 600 respondents. This is the gross number of respondents for all of the elements included in this information collection. The net number of applicants in this information collection annually are 600 applicants. Applicants complete the application each time a vacancy announcement is published.

Estimated average number of Applicant responses: 600 annually.

Estimated average burden hours per Applicant response: 8 hours.

Estimated Annual Burden on Respondents: 4,800 Hours.

NPS is soliciting comments regarding:

(1) Whether the collection of information is necessary for the proper performance of the functions of NPS, including whether the information will have practical utility;

(2) The accuracy of the burden estimate including the validity of the method and assumptions used;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected;

(4) Ways to minimize the burden of collecting the information, including through the use of appropriate automated, electronic, mechanical, or other forms of information technology; or,

(5) Any other aspect of this collection of information.

NPS will summarize and include in the request for OMB approval all responses to this notice. All comments will also become a matter of public record. You can obtain copies of the information collection from Lieutenant Charles A. Orton, Assistant Commander Human Resources Office, United States Park Police, 1100 Ohio Drive, SW., Washington, DC 20024.

Dated: December 10, 2003.

Leonard E. Stowe,

Acting Information Collection Clearance Officer, National Park Service, WAPC.

[FR Doc. 03–30925 Filed 12–15–03; 8:45 am]

BILLING CODE 4312–JK–M

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Availability of the Record of Decision for the Vessel Quotas and Operating Requirements Environmental Impact Statement, Glacier Bay National Park and Preserve, AK

SUMMARY: The National Park Service (NPS) announces the availability of the Record of Decision (ROD) for the Vessel Quotas and Operating Requirements Environmental Impact Statement (EIS), Glacier Bay National Park and Preserve, Alaska.

The record of decision documents the NPS decision to modify quotas and operating requirements for four types of motorized watercraft—cruise ships, tour, charter, and private vessels—in Glacier Bay National Park and Preserve. The decision addresses the continuing demand for motorized watercraft access into Glacier Bay in a manner that protects park resources and values while also providing a range of opportunities for visitors consistent with park purposes and values. It was based on consideration of the park's purposes and mission, resources and values, NPS policies, comments received throughout the EIS process, and information and analysis in the EIS.

The ROD briefly discusses the background for the planning effort, describes the six alternatives considered during the EIS process, states the decision and discusses the basis for it, specifies and describes the environmentally preferable alternative, identifies measures to minimize potential environmental harm, identifies ongoing and future studies and monitoring, and summarizes the results of public involvement during the planning process.

The NPS has selected alternative 6, as described in the FEIS, with the following modifications:

- The July 1 through August 21 timeframe during which a 0.25-nautical-mile vessel approach distance to a seal hauled out on ice in Johns Hopkins Inlet waters will be retained as in current regulations and will not be extended to year-round.
- A 13-knot speed limit for vessels greater than or equal to 262 feet (80 meters) will be in effect in Glacier Bay as needed, rather than a year-round basis.
- Existing conditions do not support immediate implementation of motor vessel limits in Dundas Bay. Studies and monitoring are insufficient to support the need for limits at this time. The Park Service will impose limits when a clearer need is established. The Park Service will undertake study and monitoring of use and resource conditions in Dundas Bay.

ADDRESSES: Copies of the ROD are available on request from: Nancy Swanton, EIS Project Manager, National Park Service, Glacier Bay National Park and Preserve, c/o 240 West 5th Avenue, Anchorage, Alaska 99501. Telephone: (907) 644–3696.

FOR FURTHER INFORMATION CONTACT: Nancy Swanton, EIS Project Manager, National Park Service, Glacier Bay National Park and Preserve, c/o 240 West 5th Avenue, Anchorage, Alaska 99501. Telephone: (907) 644–3696.

SUPPLEMENTARY INFORMATION: The NPS prepared an EIS, as required, under the National Environmental Policy Act (NEPA) of 1969 and Council of Environmental Quality regulations (40 Code of Federal Regulations [CFR] 1500).

A Notice of Intent to prepare an EIS, published in the **Federal Register** (FR) in May 6, 2002 (67 FR 8313), formally initiated the National Park Service planning and EIS effort. The draft EIS (DEIS) was issued in March 2003. A **Federal Register** notice announcing the availability of the final EIS (FEIS) was published by the U.S. Environmental Protection Agency on October 10, 2003, commencing the required 30-day no-action period (68 FR 58668). The final EIS describes and analyzes the environmental impacts of five action alternatives and a no-action alternative. The NPS has selected alternative 6, as described in the FEIS, with the three modifications listed above. The selected alternative is described below.

Vessel Quotas

The current daily vessel quotas in Glacier Bay will not change. They will continue as follows: two cruise ships, three tour-vessels, six charter vessels, and 25 private vessels. Daily quotas for cruise ships and tour vessels will continue to apply year-round. Daily quotas for charter and private vessels will continue to apply from June 1 through August 31.

Seasonal entry quotas will be eliminated. Seasonal-use day quotas will continue to apply. For cruise ships, the seasonal-use day quota will be 139 from June 1 through August 31, with potential for increases to a maximum of 184. In May and September, the seasonal-use day quota for cruise ships will be 92, with potential for increases up to 122 (*see* table 1). Any increases will be incremental and based on scientific and other information and applicable authorities. The seasonal-use day quota for tour, charter, and private vessels is the allowable daily vessel quota multiplied by the number of days in the season. The season during which seasonal-use days will apply for these three types of vessels is June 1 through August 31 (92 days). Thus, the seasonal-use day quotas for tour, charter, and private vessels are:

- 276 for tour vessels (three per day multiplied by 92 days).
- 552 for charter vessels (six per day multiplied by 92 days).

- 2,300 for private vessels (25 per day multiplied by 92 days).

TABLE 1.—SUMMARY OF VESSEL QUOTAS FOR GLACIER BAY, MAY 1–SEPTEMBER 30 [1]

Vessel class	Daily vessel quota		Seasonal-use days	
	June–Aug.	May and Sept.	June–Aug.	May and Sept.
Cruise ship [1]	2	2	[4] 139	[5] 92
Tour vessel [1]	3	3	276	183
Charter vessel [2]	6	([3])	552	([3])
Private vessel [2]	25	([3])	2,300	([3])

[1] Cruise ships and tour vessels are limited to the daily vessel quota year-round.
[2] Charter and private vessels are not subject to quotas from September through May.
[3] No limit.
[4] Potentially up to 184.
[5] Potentially up to 122.

Vessel Operating Requirements

The NPS is revising operating requirements, as described below. These revisions are intended to protect park resources and values, improve visitor experience, and simplify regulations.

Permitting Procedures. Permits will be issued to a designated individual for a specific vessel over a specific period of time, rather than issued to a vessel.

The exemption for private vessels based in Bartlett Cove to enter and exit Glacier Bay (these are not currently counted as daily entries) without a permit will be eliminated entrance to Glacier Bay.

Up to 10 permits may be issued to private vessels on "short-notice" daily. This number may be adjusted annually through use of the park compendium. These permits will be issued, on a space available basis, to any individual who requests a permit within 48 hours of entering Glacier Bay.

Speed Restrictions.

- The superintendent may impose a 13-knot speed limit, as necessary, for motor vessels greater than or equal to 262 feet (80 meters) in length throughout Glacier Bay because of the presence of humpback whales. Park Service staff will monitor whale abundance, movements, and distribution, and provide this information to the park superintendent, who will determine whether to set a 13-knot speed limit for vessels of this length or greater.
- From May 15 through September 30, in lower Bay whale waters, operating a motor vessel at more than 20 knots through the water will be prohibited.
- At any time of year in waters of Glacier Bay or Dundas Bay, the following will be prohibited: operating a motor vessel at more than 13 knots through the water when and where the superintendent has designated a maximum speed of 13 knots because of the presence of whales.

Whale Water Geographic Locations. Whale waters would be designated within the current lower Glacier Bay waters from May 15 through September 30. As authorized in current regulations, the superintendent may designate temporary whale waters and impose motor vessel speed restrictions in whale waters in any portion of Glacier Bay or Dundas Bay.

Measurement of Vessel Speed. Vessel speed will be measured as "through the water," the same as specified in current regulations.

Closed Waters, Islands, and Other Areas. No additional waters, islands, or other areas will be closed to all motor vessels under this decision.

Non-Motorized (Closed) Waters for Cruise Ships. Additional waters closed to cruise ships are Beardslee Entrance and the entrance to Adams Inlet in Glacier Bay.

Non-Motorized (Closed) Waters for Tour Vessels. Additional waters closed to tour vessels are Beardslee Entrance and the entrance to Adams Inlet in Glacier Bay.

Ferry Vessel Operating Requirements. Per section 127, Public Law 105–83, the ferry is restricted to the sole purpose of accessing the Bartlett Cove dock. The ferry will be subject to speed, distance from coastlines, and other operating requirements common to all vessel types. The ferry may not deviate from a direct course between the mouth of Glacier Bay and Bartlett Cove.

Vessel Routes. No vessel routes will be established except in designated whale waters (*i.e.*, the lower Bay whale waters), and following language in the current regulations will remain unchanged: "Except on vessels actually fishing as otherwise authorized by the superintendent or vessels operating solely under sail, while in transit, operators of motor vessels over 18 feet in length will in all cases where the width of the water permits, maintain a distance of at least one nautical mile from shore, and, in narrower areas will navigate in mid-channel: Provided, however, that unless other restrictions apply, operators may perpendicularly approach or land on shore (*i.e.*, by the most direct line to shore) through designated whale waters."

Harbor Seal Vessel Approach Distance in Johns Hopkins Inlet. This will remain unchanged from the current regulations. That language is as follows: "The following is prohibited: operating a vessel or a seaplane on Johns Hopkins Inlet waters south of 58 deg. 54.2 latitude (an imaginary line running approximately due west from Jaw Point), within 0.25 nautical mile of a seal hauled out on ice; except when safe navigation requires, and then with due care to maintain the 0.25 nautical mile distance from concentrations of seals." This regulation will continue to apply from July 1 through August 31. (Note: In accordance with the current regulations, which will not be changed with this decision, Johns Hopkins Inlet waters are closed to cruise ships from May 1 to August 31 and to all vessels from May 1 to June 30.)

Deviation from Vessel Operating Requirements. Deviation from vessel operating requirements may be made when the safety of passengers or the vessel is immediately threatened. Where possible, operators shall notify the Park Service before the deviation. In all cases, notifications must be made as soon as it is safe to do so.

Implementation of the decision will require promulgation of regulations, revising 36 CFR 13.65. Draft regulations are planned to be published for public comment in 2004, and final regulations are anticipated by early 2005.

Dated: November 26, 2003.

Thomas J. Ferranti,

Acting Regional Director, Alaska.

[FR Doc. 03–30930 Filed 12–16–03; 8:45 am]

BILLING CODE 4312–HX–M

DEPARTMENT OF THE INTERIOR

National Park Service

Star-Spangled Banner National Historic Trail Study Report Draft Environmental Impact Statement; Maryland, District of Columbia, and Virginia

AGENCY: National Park Service, Department of the Interior.

ACTION: Notice of Availability of the draft environmental impact statement for the Star-Spangled Banner National Historic Trail Study.

SUMMARY: Pursuant to the National Environmental Policy Act of 1969, 42 U.S.C. 4332(c), the National Park Service announces the availability of the draft Environmental Impact Statement for the Star-Spangled Banner National Historic Trail.

DATES: The National Park Service will accept comments from the public on the Draft Environmental Impact Statement for 60 days after publication of this notice. No public meetings are scheduled at this time.

ADDRESSES: Information will be available for public review and comment from the Northeast Region, National Park Service, 200 Chestnut Street, Philadelphia, PA 19106 or at *http://www.nps.gov/phso/jstarspan/*.

FOR FURTHER INFORMATION CONTACT: William Sharp, Project Manager, Northeast Region, 215–597–1655 or *william_sharp@nps.gov*.

SUPPLEMENTARY INFORMATION: If you wish to comment, you may submit your comments by any one of several methods. You may mail or e-mail comments to William Sharp, Northeast Region, 200 Chestnut Street, Philadelphia, PA 19106, or *william_sharp@nps.gov*. Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

Dated: November 5, 2003.

Marie Rust,

Director, Northeast Region, National Park Service.

[FR Doc. 03–30926 Filed 12–15–03; 8:45 am]

BILLING CODE 4310–25–M

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before December 6, 2003. Pursuant to section 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded by United States Postal Service, to the National Register of Historic Places, National Park Service, 1849 C St. NW., 2280, Washington, DC 20240; by all other carriers, National Register of Historic Places, National Park Service, 1201 Eye St. NW., 8th floor, Washington DC 20005; or by fax, 202–371–6447. Written or faxed comments should be submitted by December 31, 2003.

Carol D. Shull,

Keeper of the National Register of Historic Places.

ALASKA

Ketchikan Gateway Borough—Census Area

Guard Island Lighthouse, (Light Stations of the United States MPS), Guard Islands in the Clarence Strait at the N end of Tongass Narrow, 9.6 mi. NW. of Ketchikan, Ketchikan, 03001378

ARKANSAS

Arkansas County

U.S. Post Office—Stuttgart, 302 S. Maple, Stuttgart, 03001380

Mississippi County

Wildy, Edward Samuel, Barn, 1198 S. AR 136, Etowah, 03001382

Randolph County

Ravenden Springs School, (Public Schools in the Ozarks MPS) AR 90, Ravenden Springs, 03001379

Woodruff County

George Washington Carver High School Home Economics Building, 900 Pearl St., Augusta, 03001381

COLORADO

Montezuma County

Joe Ben Wheat Site Complex, (Great Pueblo Period of the McElmo Drainage Unit MPS) Address Restricted, Yellow Jacket, 03001383

DELAWARE

New Castle County

Liston Range Front Lighthouse, 1600 Belts Rd., Bay View Beach, 03001386

St. Joseph's Catholic Church, 1012 French St., Wilmington, 03001385

IDAHO

Idaho County

Chamberlain Ranger Station Historic District, Frank Church—River of No Return Wilderness, Payette National Forest, 03001388

IOWA

Woodbury County

Mylius—Eaton House, 2900 Jackson St., Sioux City, 03001390

Sioux City Masonic Temple, 820 Nebraska St., Sioux City, 03001389

KANSAS

Atchison County

Stein, Frederick W., House, 324 Santa Fe, Atchison, 03001391

Butler County

Towanda Masonic Lodge No. 30 A.F. and A.M., 401 Main St., Towanda, 03001392

Douglas County

Greenlee, Michael D., House, (Lawrence, Kansas MPS) 947 Louisiana St., Lawrence, 03001387

Ford County

Hennessy Hall, Saint Mary of the Plains Campus, 240 San Jose Dr., Dodge City, 03001396

Harvey County

Lincoln School, 406 W. Sixth St., Newton, 03001395

Newton Stadium, (New Deal-Era Resources of Kansas MPS) Athletic Park, Newton, 03001394

Pottawatomie County

Dennis Quarry, (Aboriginal Lithic Source Areas in Kansas MPS) Address Restricted, Onaga, 03001393

Shawnee County

East Topeka Junior High School, (New Deal-Era Resources of Kansas MPS) 1210 E. 8th St., Topeka, 03001397

Luttjohann, Fred and Cora, House, 2053 S. Kansas Ave., Topeka, 03001384

MAINE

Cumberland County

Androscoggin Swinging Bridge, Spanning the Androscoggin R bet. Topsham and Brunswick, Brunswick, 03001404
Intervale Farm, 1047 Intervale Rd., New Gloucester, 03001407
Steep Falls Library, (Maine Public Libraries MPS) 1128 Pequawket Trail, Steep Falls, 03001406

Hancock County

Hammond, Edward I., Hall, Main St., Winter Harbor, 03001405
Jarvis, Col. Charles and Mary Ann, Homestead, 10 Surry Rd., Ellsworth, 03001403

Piscataquis County

Kineo Cottage Row Historic District, West side of Kineo Peninsula in Moosehead Lake, Kineo Township, 03001408

Sagadahoc County

Trufant Historic District, Portions of Corliss, Highland, Middle, Pine and Washington Sts., Bath, 03001402

NEW MEXICO

Los Alamos County

Grant Road, (Homestead and Ranch School Era Roads and Trails of Los Alamos, New Mexico MPS) Approx. 131 ft. N of the NE corner of the jct. of Diamond Dr. and San Ildefonso Rd., Los Alamos, 03001409

Santa Fe County

Jones, Everret, House, (Buildings Designed by John Gaw Meem MPS) 210 Brownell Howland Rd., Santa Fe, 03001411

Taos County

Lawrence, D.H., Ranch Historic District, Lawrence Rd., approx 2.75 mi. E. of NM 522 on U.S. Forest Service Rd. 7, San Cristobal, 03001410

NEW YORK

Livingston County

First Presbyterian Church of Tuscarora, 8082 Main St., Tuscarora, 03001400

Rensselaer County

Carner, John Jr., House, 1310 Best Rd., East Greenbush, 03001399

Westchester County

Harden, Edward, Mansion, 200 North Broadway, Sleepy Hollow, 03001401
McVickar House, 131 Main St., Irvington, 03001398

OHIO

Montgomery County

Central Branch, National Home for Disabled Volunteer Soldiers, 4100 W. Third St., Dayton, 03001412

OREGON

Multnomah County

Mount Tabor Park Reservoirs Historic District, 1900 SE Reservoir Loop, 6445 SE. Salmon St., and 1600 SE. 60th Ave., Portland, 03001446
Washington Park Reservoirs Historic District, Res. 3 2549 SE. Murray Ave., Res. 4 2521 SW. Murray Ave., Portland, 03001447

PENNSYLVANIA

Lehigh County

Leaser, Frederick and Catherine, Farm, 7654 Leaser Rd., Lynn Township, 03001420

TEXAS

Cameron County

Rector Road Bridge at Clear Creek, (Historic Bridges of Texas MPS) Approx. 2.5 mi. SE. of Sanger, Sanger, 03001418

Cherokee County

Jacksonville Post Office, 402 E. Rusk St., Jacksonville, 03001417

Denton County

Gregory Road Bridge at Duck Creek, (Historic Bridges of Texas MPS) Approx. 0.5 mi. W. of Lois Rd., near the N. Denton County line, Sanger, 03001419

Gonzales County

Gonzales Memorial Museum and Amphitheater Historic District, 414 Smith St., Gonzales, 03001414

McLennan County

McDermott Motors Building, 1125 Washington Ave., Waco, 03001415

Travis County

Arnold Bakery, 1010 E. Eleventh St., Austin, 03001416
Old West Austin Historic District (Boundary Increase), Roughly bounded by Funston, W. 34th, Texas Loop 1, Oakmont, and W. 31st, Austin, 03001413

VIRGINIA

Alexandria Independent City

Alfred Street Baptist Church, (African American Historic Resources of Alexandria, Virginia MPS) 313 S. Alfred St., Alexandria (Independent City), 03001423
Beulah Baptist Church, (African American Historic Resources of Alexandria, Virginia MPS) 320 S. Washington St., Alexandria (Independent City), 03001424
Davis Chapel, (African American Historic Resources of Alexandria, Virginia MPS) 606–A S. Washington St., Alexandria (Independent City), 03001428
Hepburn, Moses, Rowhouses, (African American Historic Resources of Alexandria, Virginia MPS) 206–212 N. Pitt St., Alexandria (Independent City), 03001426
Johnson, Dr. Albert, House, (African American Historic Resources of Alexandria, Virginia MPS) 814 Duke St., Alexandria (Independent City), 03001422
Odd Fellows Hall, (African American Historic Resources of Alexandria, Virginia MPS) 411 S. Columbus St., Alexandria (Independent City), 03001427
Seaton, George Lewis, House, (African American Historic Resources of Alexandria, Virginia MPS) 404 S. Royal St., Alexandria (Independent City), 03001425

Bath County

Millboro School, Jct. of VA 668 (High St.) and VA 633 (Main St.), Millboro, 03001439

Brunswick County

Mason-Tillett House, 1050 Christanna Highway, Valentines, 03001443

Essex County

St. Matthew's Church, Jct. of VA 17, VA 631, and VA 724, Champlain, 03001429

Fairfax County

Silverbook Methodist Church, 8616 Silverbrook Rd., VA 600, Lorton, 03001438

Fauquier County

Hollow, The, VA 688, Leeds Manor Rd. and N. of Marshall School Ln., Markham, 03001442

Northampton County

Cessford, 16546 Courthouse Rd., Eastville, 03001441

Petersburg Independent City

Stewart-Hinton House, 416 High St., Petersburg (Independent City), 03001437

Pittsylvania County

North Danville Historic District, Roughly bounded by Riverside Dr., Claiborne St., Leemont Cemetery, Novle Ave., and Scales St., Danville, 03001432

Portsmouth Independent City

Monumental Methodist Church, 450 Dinwiddie St., Portsmouth (Independent City), 03001430

Powhatan County

Fine Creek Mills Historic District, 2425–2434 Robert E. Lee Rd. (VA 641), Fine Creek Mills, 03001440

Prince William County

Pilgrim's Rest (Boundary Increase), 2101 Belmont Grove Rd., Nokesville, 03001434

Richmond Independent City

Virginia Washington Monument, Capitol Square, Richmond (Independent City), 03001421

Southampton County

Vincent, William H., House, 23016 Main St., Capron, 03001444

Suffolk Independent City

West End Historic District, Roughly bounded by Causey Ave., Seaboard Coast Lines RR tracks, Pender St., Wellons St., Linden Ave., and RR tracks, Suffolk (Independent City), 03001433

Westmoreland County

St. Peter's Episcopal Church, Jct. of VA 3 and VA 205, Oak Grove, 03001445

Winchester Independent City

Fair Mount, 311 Fairmount Ave., Winchester (Independent City), 03001431

Wise County

Derby Historic District, VA 686, from a point beginning 1 mi. above the jct. with VA 78 and extending for 1.2 mi. to the NW., Appalachia, 03001436

Stonega Historic District, VA 600, form 0.1 mi. N. of jct. with VA 685 to a point approx. 3 mi. to the NE., Appalachia, 03001435

A request for a MOVE has been made for the following resource:

TEXAS

Harris County

Cohn, Arthur B., House 1711 Rusk Ave. Houston, 85002771

A request for REMOVAL has been made for the following resources:

MAINE

Androscoggin County

Livermore, Deacon Elijah, House 6 mi. S. of Livermore Falls on Hillman's Ferry Rd., Livermore Falls vicinity, 75000089

Kennebec County

Shrewsbury Round Barn, 109 Benton Ave., Winslow, 82000758

Lincoln County

Smith, Asa, Homestead, ME 218, Alna, 83000465

York County

First Parish Congregational Church, 12 Beach St., Saco, 90000921

[FR Doc. 03–30927 Filed 12–15–03; 8:45 am]

BILLING CODE 4312–51–P

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before November 29, 2003. Pursuant to section 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded by United States Postal Service, to the National Register of Historic Places, National Park Service, 1849 C St. NW., 2280, Washington, DC 20240; by all other carriers, National Register of Historic Places, National Park Service,1201 Eye St. NW., 8th floor, Washington, DC 20005; or by fax, 202–371–6447. Written or faxed comments should be submitted by December 31, 2003.

Carol D. Shull,

Keeper of the National Register of Historic Places.

CALIFORNIA

Stanislaus County

Plaza Building, Plaza #2, Patterson, 03001359

COLORADO

Costilla County

San Luis Souther Railway Trestle, (Railroads in Colorado, 1858–1948 MPS) abandoned section of Costilla Cty Rd. 12, Blanca, 03001361

Garfield County

Canyon (Canon) Creek School, District No. 32, (Rural School Buildings in Colorado MPS) 0566 Cty Rd. 137, Glenwood Springs, 03001360

Larimer County

Benson, A.S., House, 463 W. 5th St., Loveland, 03001362

FLORIDA

Indian River County

Old Town Sebastian Historic District, West, Bounded by Palmetto Ave, Lake and Main Sts., Sebastian, 03001364

Palm Beach County

Lofthus (shipwreck), 0.75 mi. N. of Boynton Inlet, 175 yards offshore, Boynton Beach, 03001363

GEORGIA

Banks County

Turk Family Farm, 534 Carson Segars Rd., Maysville, 03001365

IDAHO

Gooding County

Schubert Theatre, (Motion Picture Theater Buildings in Idaho MPS) 402 Main St., Gooding, 03001367

Idaho County

Baker, James V. and Sophia, House, 204 Broadway St., Cottonwood, 03001366

Latah County

White Spring Ranch, 1004 Lorang Rd., Genesee, 03001368

Washington County

Wilson House, 75 N. 5th St., Cambridge, 03001369

IOWA

Mahaska County

Vander Wilt Farmstead Historic District, 1345 IA 163, Black Oak Twp., Sec. 22, T26N, R17W, SW. of Ne, Leighton, 03001370

MARYLAND

Baltimore Independent city

Ednor Gardens Historic District, Roughly bounded by Ellerslie Ave., 36th St., The Alameda, Andover Rd. and Chestnut Hill Ave., Baltimore (Independent City), 03001373
Mayfield Historic District, Lake Montebello Rd.—Chesterfield Ave.,—Crossland Ave.—Erdman Ave., Baltimore (Independent City), 03001371

MASSACHUSETTS

Bristol County

Attleborough Falls Historic District, Mt. Hope St., just W of Reservoir St. to the 10 Mile River, Towne St. from Mt. Hope St. to the 10 Mile River, North Attleborough, 03001372

MINNESOTA

Dakota County

Oheyawahi—Pilot Knob, off MN 55, Mendota Heights, 03001374

NORTH CAROLINA

Gaston County

Downtown Gastonia Historic District, Roughly bounded by Main Ave., Broad St., Second Ave., and Chester St., Gastonia, 03001375

TEXAS

Fort Bend County

Woods, B. Ray and Charlotte, House, 610 Woods Ln., Katy, 03001377

Hunt County

Central Christian Church, 2611 Wesley St., Greenville, 03001376

[FR Doc. 03–30928 Filed 12–15–03; 8:45 am]

BILLING CODE 4312–51–P

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before November 22, 2003. Pursuant to section 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded by United States Postal Service, to the National Register of Historic Places, National Park Service, 1849 C St., NW., 2280, Washington, DC 20240; by all other carriers, National Register of Historic Places, National Park Service, 1201 Eye St., NW., 8th floor, Washington DC 20005; or by fax, 202–371–6447. Written or faxed comments should be submitted by December 31, 2003.

Carol D. Shull,

Keeper of the National Register of Historic Places.

CALIFORNIA

Butte County

Forks of Butte, Address Restricted, Paradise, 03001357

Inyo County

Reilly, Address Restricted, Trona, 03001358

Lassen County

Bruff's Rock Petroglyph Site, Address Restricted, Susanville, 03001356

Los Angeles County

Lincoln Park Historic District, Roughly bounded by McKinley Ave., Towne Ave., Pasadena St. and Carey Ave., Pomona, 03001347

San Luis Obispo County

Atascadero Printery, 6351 Olmeda, Atascadero, 03001355

IOWA

Johnson County

Henyon–Kasper—Duffy Barn, 2520 IA 1 NE., Solon, 03001348

Story County

Old Town Historic District, (Home for Science and Technology: Ames, IA MPS) Bet. Duff and Clark Ave., and 7th and 9th Sts., Ames, 03001349

MINNESOTA

Winona County

Winona High School and Winona Junior High School, 166 and 218 W. Broadway St., Winona, 03001350

NEW MEXICO

Dona Ana County

Rio Grande Theatre, 211 N. Downtown Mall, Las Cruces, 03001352

Valencia County

La Capilla de San Antonio de Los Lentes, (Religious Properties of New Mexico MPS) Los Lentes Rd., Los Lentes, 03001351

NEW YORK

Rensselaer County

Petersburgh United Methodist Church, 12 Head of Lane Rd., Petersburgh, 03001354
Sand Lake Baptist Church, 2960 NY 43, Averill Park, 03001353

[FR Doc. 03–30929 Filed 12–15–03; 8:45 am]

BILLING CODE 4312–51–P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–474]

Certain Recordable Compact Discs and Rewritable Compact Discs; Notice of Commission Decision To Review Portions of an Initial Determination Finding No Violation of Section 337 of the Tariff Act of 1930

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to review portions of the presiding administrative law judge's ("ALJ's") final initial determination ("ID") and to affirm ALJ Order No. 32.

FOR FURTHER INFORMATION CONTACT: Clara Kuehn, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–3012. Copies of the public version of the ALJ's final ID and all other nonconfidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov*. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on July 26, 2002, based on a complaint filed by U.S. Philips Corporation of Tarrytown, NY ("Philips" or "complainant"). 67 FR 48,948 (2002). The complaint, as supplemented, alleged violations of section 337 of the Tariff Act of 1930 in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain recordable compact discs and rewritable compact discs by reason of infringement of certain claims of six U.S. patents: claims 1, 5, and 6 of U.S. Patent No. 4,807,209; claim 11 of U.S. Patent No. 4,962,493; claims 1, 2, and 3 of U.S. Patent No. 4,972,401; claims 1, 3, and 4 of U.S. Patent No. 5,023,856; claims 1–5, and 6 of U.S. Patent No. 4,999,825; and claims 20, 23–33, and 34 of U.S. Patent No. 5,418,764. 67 FR 48,948 (2002).

The notice of investigation named 19 respondents, including GigaStorage Corporation Taiwan of Hsinchu, Taiwan; GigaStorage Corporation USA of Livermore, California (collectively, "GigaStorage"); and Linberg Enterprise Inc. ("Linberg") of West Orange, New Jersey. 67 FR 48,948 (2002). On August 14, 2002, the ALJ issued an ID (Order No. 2) granting a motion to intervene as respondents by Princo Corporation of Hsin-Chu, Taiwan, and Princo America Corporation of Fremont, California (collectively, "Princo"). That ID was not reviewed by the Commission. GigaStorage, Linberg, and Princo ("respondents") are the only remaining active respondents in this investigation. *See* ALJ Order No. 6 (an unreviewed ID terminating eight respondents on the basis of a consent order); ALJ Order No. 17 (an unreviewed ID terminating each of three respondents on the basis of a consent order and settlement agreement); and ALJ Order No. 18 (an unreviewed ID terminating one respondent on the basis of a consent order and settlement agreement); and ALJ Order No. 21 (an unreviewed ID finding four respondents in default).

On April 7, 2003, the ALJ issued an ID (ALJ Order No. 20) granting complainant's unopposed motion for summary determination that Linberg, GigaStorage, and Princo have each sold for importation, imported, and/or sold after importation products accused of infringing one or more of the asserted patent claims. That ID was not reviewed by the Commission.

A tutorial session was held on June 3, 2003, and an evidentiary hearing was held from June 10, 2003, through June 20, 2003.

On June 30, 2003, the ALJ issued an order (ALJ Order No. 32) granting a motion *in limine* filed by respondents to preclude complainant from asserting the doctrine of unclean hands with respect to respondents' affirmative defense of patent misuse.

The ALJ issued his final ID on October 24, 2003. Although he found that none of the asserted claims are invalid, that the accused products infringe the asserted claims, and that the domestic industry requirement of section 337 has been satisfied, he found no violation of section 337 because he concluded that all of the asserted patents are unenforceable by reason of patent misuse.

On November 5, 2003, complainant Philips petitioned for review of the portion of the final ID that found the asserted patents unenforceable due to patent misuse, and also appealed ALJ Order No. 32. On the same day, respondents filed a paper entitled "Statement of Respondents Princo Corp., Princo America Corp., Gigastorage Corp. Taiwan, Gigastorage Corp. USA, and Linberg Enterprises, Inc. Regarding the Initial Determination," in which respondents urged the Commission to adopt the ID in its entirety. Respondents and the IA filed responses to complainant's petition for review.

On December 8, 2003, the ALJ issued his recommended determination on remedy and bonding.

Having reviewed the record in this investigation, including the parties' written submissions, the Commission determined to affirm ALJ Order No. 32 and to review the ID's findings of fact and conclusions of law concerning patent misuse. The Commission has determined not to review the remainder of the ID, including the findings of fact and conclusions on the issues of infringement and invalidity of the asserted claims and the domestic industry requirement of section 337.

In connection with the final disposition of this investigation, the Commission may issue (1) An order that could result in the exclusion of the subject articles from entry into the United States, and/or (2) cease and desist orders that could result in respondents being required to cease and desist from engaging in unfair acts in the importation and sale of such articles. Accordingly, the Commission is interested in receiving written submissions that address the form of remedy, if any, that should be ordered. If a party seeks exclusion of an article from entry into the United States for purposes other than entry for consumption, the party should so indicate and provide information establishing that activities involving other types of entry either are adversely affecting it or are likely to do so. For background information, see the Commission Opinion, *In the Matter of Certain Devices for Connecting Computers via Telephone Lines*, Inv. No. 337–TA–360.

If the Commission contemplates some form of remedy, it must consider the effects of that remedy upon the public interest. The factors the Commission will consider include the effect that an exclusion order and/or cease and desist orders would have on (1) The public health and welfare, (2) competitive conditions in the U.S. economy, (3) U.S. production of articles that are like or directly competitive with those that are subject to investigation, and (4) U.S. consumers. The Commission is therefore interested in receiving written submissions that address the aforementioned public interest factors in the context of this investigation.

If the Commission orders some form of remedy, the President has 60 days to approve or disapprove the Commission's action. During this period, the subject articles would be entitled to enter the United States under a bond, in an amount to be determined by the Commission and prescribed by the Secretary of the Treasury. The Commission is therefore interested in receiving submissions concerning the amount of the bond that should be imposed.

Written Submissions: The parties to the investigation are requested to file written submissions on the issues under review. The submission should be concise and thoroughly referenced to the record in this investigation, including references to exhibits and testimony. Additionally, the parties to the investigation, interested government agencies, and any other interested persons are encouraged to file written submissions on the issues of remedy, the public interest, and bonding. Such submissions should address the ALJ's December 8, 2003, recommended determination on remedy and bonding. Complainant and the Commission investigative attorney are also requested to submit proposed remedial orders for the Commission's consideration. The written submissions and proposed remedial orders must be filed no later than the close of business on January 9, 2004. Reply submissions must be filed no later than the close of business on January 16, 2004. No further submissions will be permitted unless otherwise ordered by the Commission.

Persons filing written submissions must file with the Office of the Secretary the original and 14 true copies thereof on or before the deadlines stated above. Any person desiring to submit a document (or portion thereof) to the Commission in confidence must request confidential treatment unless the information has already been granted such treatment during the proceedings. All such requests should be directed to the Secretary of the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 CFR 201.6. Documents for which confidential treatment is granted by the Commission will be treated accordingly. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary.

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in sections 210.42–.45 of the Commission's Rules of Practice and Procedure (19 CFR 210.42–.45).

By order of the Commission.

Issued: December 10, 2003.

Marilyn R. Abbott,

Secretary.

[FR Doc. 03–30970 Filed 12–15–03; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF LABOR

Employment Standards Administration

Proposed Collection; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) (44 U.S.C. 3506(c)(2)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment Standards Administration is soliciting comments concerning the proposed collection: Medical Travel Refund Request (OWCP–957). A copy of the proposed information collection request can be obtained by contacting the office listed below in the addresses section of this notice.

DATES: Written comments must be submitted to the office listed in the addresses section below on or before February 17, 2004.

ADDRESSES: Ms. Hazel M. Bell, U.S. Department of Labor, 200 Constitution Ave., NW., Room S–3201, Washington, DC 20210, telephone (202) 693–0418, fax (202) 693–1451, Email *bell.hazel@dol.gov*. Please use only one method of transmission for comments (mail, fax, or Email).

SUPPLEMENTARY INFORMATION

I. Background

The Office of Workers' Compensation Programs (OWCP) administers the Federal Employees' Compensation Act (FECA), 5 U.S.C. 8101 *et seq.*, the Black Lung Benefits Act (BLBA), 30 U.S.C. 901 *et seq.*, and the Energy Employees Occupational Illness Compensation Program Act of 2000 (EEOICPA), 42 U.S.C. 7384 *et seq.* All three of these statutes require that OWCP reimburse beneficiaries for travel expenses incurred for covered medical treatment. In order to determine whether amounts requested as travel expenses are appropriate, OWCP must receive certain data elements, including the signature of the physician for expenses claimed under the BLBA. Form OWCP–957 is the standard format for the collection of these data elements. The OWCP–957 is used by OWCP and its contractor bill processing staff to process reimbursement requests for travel expenses. This information collection is currently approved for use through June 30, 2004.

II. Review Focus

The Department of Labor is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

III. Current Actions

The Department of Labor seeks approval for the extension of this information collection in order to carry out its responsibility to determine if requests for reimbursement for out-of-pocket expenses incurred when traveling to medical providers for covered medical testing or treatment should be paid.

Type of Review: Extension.

Agency: Employment Standards Administration.

Title: Medical Travel Refund Request.

OMB Number: 1215–0054.

Agency Number: OWCP–957.

Affected Public: Individual or households.

Total Respondents: 52,221.

Total Responses: 52,221.

Time Per Response: 10 minutes.

Frequency: On occasion.

Estimated Total Burden Hours: 8,669.

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintenance): $19,000.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: December 10, 2003.

Bruce Bohanon,

Chief, Branch of Management Review and Internal Control, Division of Financial Management, Office of Management, Administration and Planning, Employment Standards Administration.

[FR Doc. 03–30968 Filed 12–15–03; 8:45 am]

BILLING CODE 4510–27–P

DEPARTMENT OF LABOR

Employment Standards Administration

Proposed Collection; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) (44 U.S.C. 3506(c)(2)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment Standards Administration is soliciting comments concerning the proposed collection: Employment Information Forms (WH–3 and WH–3 Spanish). A copy of the proposed information collection request can be obtained by contacting the office listed below in the addresses section of this notice.

DATES: Written comments must be submitted to the office listed in the addresses section below on or before February 17, 2004.

ADDRESSES: Ms. Hazel M. Bell, U.S. Department of Labor, 200 Constitution Ave., NW., Room S–3201, Washington, DC 20210, telephone (202) 693–0418, fax (202) 693–1451, Email *bell.hazel@dol.gov*. Please use only one method of transmission for comments (mail, fax, or Email).

SUPPLEMENTARY INFORMATION:

I. Background

Section 11(d) of the Fair Labor Standards Act (FLSA), 29 U.S.C. 201 *et. seq.*, provides that the Secretary of Labor investigate and gather data regarding the wages, hours, and other conditions and practices of employment in any industry subject to the Act. Similar provisions are also contained in the Public Contracts Act, the Service Contract Act, the Davis-Bacon Act, the Consumer Credit Protection Act, the Employee Polygraph Protection Act, the Migrant and Seasonal Agricultural Worker Protection Act, and the Family and Medical Leave Act of 1993, all of which are enforced by the Wage and Hour Division of the U.S. Department of Labor. The Form WH–3 is an optional form used by complainants and others to provide information about alleged violations of the labor standards provisions of the Acts cited above. The form is provided in both English and Spanish versions. This information collection is currently approved for use through June 30, 2004.

II. Review Focus

The Department of Labor is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

III. Current Actions

The Department of Labor seeks approval for the extension of this information collection in order to carry out its responsibility to meet the statutory requirements to investigate alleged violations of the various labor standards laws enforced by the Wage and Hour Division.

Type of Review: Extension.

Agency: Employment Standards Administration.

Title: Employment Information Form.

OMB Number: 1215–0001.

Agency Number: WH–3 and WH–3 Spanish.

Affected Public: Individuals or households; farms, business or other for profit; not-for-profit institutions; Federal government; State, local or tribal government.

Total Respondents: 35,000.

Total Responses: 35,000.

Time per Response: 20 minutes.

Frequency: On occasion.

Estimated Total Burden Hours: 11,667.

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintenance): $0.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: December 10, 2003.

Bruce Bohanon,

Chief, Branch of Management Review and Internal Control, Division of Financial Management, Office of Management, Administration and Planning, Employment Standards Administration.

[FR Doc. 03–30969 Filed 12–15–03; 8:45 am]

BILLING CODE 4510–27–P

LIBRARY OF CONGRESS

Copyright Office

[Docket No. 2003–3]

Courier Mail

AGENCY: Copyright Office, Library of Congress.

ACTION: New procedure for courier deliveries.

SUMMARY: The Copyright Office is announcing the implementation of new procedures for deliveries made by non-government, in-person, commercial couriers or messengers. These procedures do not apply to deliveries made by U.S. government representatives or those made by large commercial carriers such as Federal Express or United Parcel Service.

EFFECTIVE DATE: December 29, 2003.

FOR FURTHER INFORMATION CONTACT: Melissa Dadant, Chief, Receiving and Processing Division. Telephone: (202) 707–7700. Telefax: (202) 707–1899. Tanya M. Sandros, Senior Attorney. Telephone: (202) 707–8380. Telefax: (202) 707–8366.

SUPPLEMENTARY INFORMATION: Beginning on December 29, 2003, the Library of Congress will no longer accept on site deliveries from non-governmental, in-person, commercial couriers or messengers. Instead, couriers must deliver materials for staff at the Library of Congress, including deliveries to Copyright Office employees, directly to the Congressional Courier Acceptance Site ("CCAS"), located on 2nd and D Streets, NE. The CCAS will accept items from couriers with proper identification, *e.g.*, a valid driver's license, Monday through Friday between 8:30 a.m. and 4 p.m. Short-term parking for both cars and bikes is available at the site. The date of receipt at the CCAS will be considered as the date materials would have been received at the Copyright Office but for the change in the Library's policy for accepting courier mail.

A courier may make a delivery of up to ten items to the CCAS at any one time. When a courier makes a delivery to the acceptance site, each item will be logged-in, noting date and time, x-rayed and screened for hazardous materials and substances. Packages no larger than 4″ × 14″ × 18″ will be accepted at the CCAS for processing on site. Larger packages delivered to the CCAS will be redirected to the Library of Congress' off-site mail processing center for inspection. Items will not be presorted and redirected based on their weight.

Expected deliveries from a source known to the recipient that arrive at the CCAS before 10 a.m. will be inspected and delivered to the appropriate office in the Library of Congress by the end of the day. All other deliveries will be delivered generally during the morning of the next business day. Expected deliveries are those which have been requested by a staff member of the Library from a sender known to the Library or a staff member, and which are delivered by an employee of a known organization, *i.e.*, one that is known by the Library and routinely conducts business with its staff, or by a courier company on its behalf.

These procedures do not apply to normal mail deliveries or deliveries from large commercial carriers such as Federal Express or United Parcel Service ("UPS"). Deliveries from these carriers will continue to be processed at the off-site mail facility.

Dated: December 12, 2003.

Marybeth Peters,

Register of Copyrights.

[FR Doc. 03–31125 Filed 12–15–03; 8:45 am]

BILLING CODE 1410–30–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice: 154]

Title VI of the Civil Rights Act of 1964, as Amended: Policy Guidance on the Prohibition Against National Origin Discrimination as It Affects Persons With Limited English Proficiency

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Policy guidance document.

SUMMARY: NASA adopts policy guidance to federal financial assistance recipients regarding Title VI prohibition against national origin discrimination affecting Limited English Proficient (LEP) persons. The NASA recipient LEP policy guidance is issued pursuant to Executive Order 13166 and supplants existing policy guidance on the same subject originally published at 66 FR 15141 (March 15, 2001).

DATES: Effective immediately.

FOR FURTHER INFORMATION CONTACT: Mr. Miguel A. Torres, 202–358–0937, or TDD: 202–358–3748. Arrangements to receive the policy in an alternative format may be made by contacting Mr. Miguel A. Torres.

SUPPLEMENTARY INFORMATION: The purpose of this policy guidance is to further clarify the responsibilities of institutions and/or entities that receive financial assistance from NASA, and assist them in fulfilling their responsibilities to LEP persons pursuant to Title VI of the Civil Rights Act of 1964. The policy guidance emphasizes that in order to avoid discrimination against LEP persons on grounds of national origin, recipients of NASA financial assistance must take adequate steps to ensure that people who are not proficient in English can effectively participate in and benefit from the recipient's programs and activities. Therefore, LEP persons should expect to receive the language assistance necessary to afford them meaningful access to the recipients' programs and activities, free of charge.

This document was originally published as policy guidance for public comment on March 15, 2001. *See* 66 FR 15141. The document was based on the policy guidance issued by the Department of Justice entitled "Enforcement of Title VI of the Civil Rights Act of 1964—National Origin Discrimination Against Persons with Limited English Proficiency." 65 FR 50213 (August 16, 2000). No public comments were received.

On October 26, 2001, and January 11, 2002, the Assistant Attorney General for

Civil Rights issued to federal departments and agencies guidance memoranda, which reaffirmed the Department of Justice's commitment to ensuring that federally assisted programs and activities fulfill their LEP responsibilities and which clarified and answered certain questions raised regarding the August 16th publication. In addition, on March 14, 2002, the Office of Management and Budget (OMB) issued a Report to Congress titled "Assessment of the Total Benefits and Costs of Implementing Executive Order No. 13166: Improving Access to Services for Persons with Limited English Proficiency." Among other things, the Report recommended the adoption of uniform guidance across all federal agencies, with flexibility to permit tailoring to each agency's specific recipients. Consistent with this OMB recommendation, DOJ published LEP Guidance for DOJ recipients that was drafted and organized to also function as a model for similar guidance documents by other Federal grant agencies. *See* 67 FR 41455 (June 18, 2002). NASA reviewed its March 15, 2001, publication in light of the aforementioned clarifications, to determine whether there was a need to clarify or modify the March 15th policy guidance.

In furtherance of those memoranda, NASA republished revised policy guidance for additional public comment on August 15, 2003 (68 FR 48947), for the purpose of obtaining additional public comment. Because the guidance must adhere to the federal-wide compliance standards and framework detailed in the model DOJ LEP Guidance, NASA specifically solicited comments on the nature, scope and appropriateness of the NASA-specific examples set out in the revised guidance explaining and/or highlighting how those consistent federal-wide compliance standards are applicable to recipients of federal financial assistance through NASA. No public comments were received.

It has been determined that this guidance, which supplants existing guidance on the same subject previously published at 66 FR 15141 (March 15, 2001), does not constitute a regulation subject to the rulemaking requirements of the Administrative Procedure Act, 5 U.S.C. 553. It also has been determined that this guidance is not subject to Executive Order 12866.

I. Introduction

Most individuals living in the United States read, write, speak and understand English. There are many individuals, however, for whom English is not their primary language. For instance, based on the 2000 census, over 26 million individuals speak Spanish and almost 7 million individuals speak an Asian or Pacific Island language at home. If these individuals have a limited ability to read, write, speak, or understand English, they are limited English proficient, or LEP. While detailed data from the 2000 census has not yet been released, 26% of all Spanish-speakers, 29.9% of all Chinese-speakers, and 28.2% of all Vietnamese-speakers reported that they spoke English not well or not at all in response to the 1990 census.

Language for LEP individuals can be a barrier to accessing important benefits or services, understanding and exercising important rights, complying with applicable responsibilities, or understanding other information provided by federally funded programs and activities. The Federal Government funds an array of services that can be made accessible to otherwise eligible LEP persons. The Federal Government is committed to improving the accessibility of these programs and activities to eligible LEP persons, a goal that reinforces its equally important commitment to promoting programs and activities designed to help individuals learn English. Recipients should not overlook the long-term positive impacts of incorporating or offering English as a Second Language (ESL) programs in parallel with language assistance services. ESL courses can serve as an important adjunct to a proper Language Assistance Plan (LAP). However, the fact that ESL classes are made available does not obviate the statutory and regulatory requirement to provide meaningful access for those who are not yet English proficient. Recipients of federal financial assistance have an obligation to reduce language barriers that can preclude meaningful access by LEP persons to important government services.[1]

In certain circumstances, failure to ensure that LEP persons can effectively participate in or benefit from federally assisted programs and activities may violate the prohibition under Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d and Title VI regulations against national origin discrimination. The purpose of this policy guidance is to assist recipients in fulfilling their responsibilities to provide meaningful access to LEP persons under existing law. This policy guidance clarifies existing legal requirements for LEP persons by providing a description of the factors recipients should consider in fulfilling their responsibilities to LEP persons.[2] These are the same criteria DOJ will use in evaluating whether recipients are in compliance with Title VI and Title VI regulations.

There are many productive steps that NASA can take to help recipients reduce the costs of language services without sacrificing meaningful access for LEP persons. Without these steps, certain smaller grantees may well choose not to participate in federally assisted programs, threatening the critical functions that the programs strive to provide. To that end, NASA plans to continue to provide assistance and guidance in this important area. In addition, NASA plans to work with its recipients, and LEP persons to identify and share model plans, examples of best practices, and cost-saving approaches. Moreover, NASA intends to explore how language assistance measures, resources and cost-containment approaches developed with respect to its own federally conducted programs and activities can be effectively shared or otherwise made available to recipients, particularly small businesses, and small non-profits. An interagency working group on LEP has developed a Web site, *http://www.lep.gov*, to assist in disseminating this information to recipients, federal agencies, and the communities being served.

Many commentators, responding to the proposed DOJ LEP Policy Guidance, noted that some have interpreted the case of *Alexander* v. *Sandoval*, 532 U.S. 275 (2001), as impliedly striking down the regulations promulgated under Title VI that form the basis for the part of Executive Order 13166 that applies to federally assisted programs and activities. The Department of Justice has taken the position that this is not the case, and NASA agrees with that position. Accordingly, NASA will strive to ensure that federally assisted programs and activities work in a way

[1] NASA recognizes that many recipients had language assistance programs in place prior to the issuance of Executive Order 13166. This policy guidance provides a uniform framework for a recipient to integrate, formalize, and assess the continued vitality of these existing and possibly additional reasonable efforts based on the nature of its program or activity, the current needs of the LEP populations it encounters, and its prior experience in providing language services in the community it serves.

[2] The policy guidance is not a regulation but rather a guide. Title VI and its implementing regulations require that recipients take responsible steps to ensure meaningful access by LEP persons. This guidance provides an analytical framework that recipients may use to determine how best to comply with statutory and regulatory obligations to provide meaningful access to the benefits, services, information, and other important portions of their programs and activities for individuals who are limited English proficient.

that is effective for all eligible beneficiaries, including those with limited English proficiency.

II. Legal Authority

Section 601 of Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d, provides that no person shall on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance. Section 602 authorizes and directs federal agencies that are empowered to extend federal financial assistance to any program or activity to effectuate the provisions of [Section 601] by issuing rules, regulations, or orders of general applicability. 42 U.S.C. 2000d–1.

NASA regulations promulgated pursuant to Section 602 forbid recipients from utilizing criteria or methods of administration which have the effect of subjecting individuals to discrimination because of their race, color, or national origin, or have the effect of defeating or substantially impairing accomplishment of the objectives of the program as to individuals of a particular race, color, or national origin. 14 CFR 1250.103–2.

The Supreme Court, in *Lau* v. *Nichols*, 414 U.S. 563 (1974), interpreted regulations promulgated by the former Department of Health, Education, and Welfare, including a regulation similar to that of NASA, 45 CFR 80.3(b)(2), to hold that Title VI prohibits conduct that has a disproportionate effect on LEP persons because such conduct constitutes national-origin discrimination. In *Lau*, a San Francisco school district that had a significant number of non-English speaking students of Chinese origin was required to take reasonable steps to provide them with a meaningful opportunity to participate in federally funded educational programs.

On August 11, 2000, Executive Order 13166 was issued. Improving Access to Services for Persons with Limited English Proficiency, 65 FR 50121 (August 16, 2000). Under that Order, every federal agency that provides financial assistance to non-federal entities must publish guidance on how their recipients can provide meaningful access to LEP persons and thus comply with Title VI regulations forbidding funding recipients from restricting an individual in any way in the enjoyment of any advantage or privilege enjoyed by others receiving any service, financial aid, or other benefit under the program. Title VI regulations also prohibit utilizing criteria or methods of administration which have the effect of subjecting individuals to discrimination because of their race, color, or national origin, or have the effect of defeating or substantially impairing accomplishment of the objectives of the program as respects individuals of a particular race, color, or national origin.

On that same day, DOJ issued a general guidance document addressed to Executive Agency Civil Rights Officers setting forth general principles for agencies to apply in developing guidance documents for recipients pursuant to the Executive Order. Enforcement of Title VI of the Civil Rights Act of 1964 National Origin Discrimination Against Persons With Limited English Proficiency, 65 FR 50123 (August 16, 2000) (DOJ LEP Guidance). The DOJ role under Executive Order 13166 (the Executive Order) is unique. The Executive Order charges DOJ with responsibility for providing LEP Guidance to other Federal agencies and for ensuring consistency among each agency-specific guidance. Consistency among Departments of the Federal Government is particularly important. Inconsistency or contradictory guidance could confuse recipients of federal funds and needlessly increase costs without rendering the meaningful access for LEP persons that this guidance is designed to address.

Subsequently, Federal agencies raised questions regarding the requirements of the Executive Order, especially in light of the Supreme Court's decision in *Alexander* v. *Sandoval*, 532 U.S. 275 (2001). On October 26, 2001, Ralph F. Boyd, Jr., Assistant Attorney General for the Civil Rights Division, issued a memorandum for Heads of Departments and Agencies, General Counsels and Civil Rights Directors. This memorandum clarified and reaffirmed the DOJ LEP Guidance in light of Sandoval.[3] The Assistant Attorney General stated that because Sandoval did not invalidate any Title VI regulations that proscribe conduct that has a disparate impact on covered groups—the types of regulations that form the legal basis for the part of Executive Order 13166 that applies to federally assisted programs and activities—the Executive Order remains in force.

Pursuant to Executive Order 13166, DOJ developed its own guidance document for recipients and initially issued it on January 16, 2001. Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons, 66 FR 3834 (January 16, 2001) (LEP Guidance for DOJ Recipients). NASA published in the **Federal Register** (66 FR 15141) its own LEP Guidance. NASA did not receive comments from the public.

This guidance document is thus published pursuant to Executive Order 13166 and supplants the March 15, 2001, publication.

III. Who Is Covered?

NASA regulations, 14 CFR Part 1250, require all recipients of federal financial assistance from NASA to provide meaningful access to LEP persons.[4] Federal financial assistance includes grants, training, use of equipment, donations of surplus property, and other assistance. Recipients of NASA assistance include, for example:

- State or local agencies
- Non-profit institutions or organizations
- Educational Institutions
- Any public or private individual to whom federal assistance is extended, directly or through another recipient, including any successor, assignee, or transferee thereof.

Sub-recipients likewise are covered when federal funds are passed through from one recipient to a sub-recipient.

Coverage extends to a recipient's entire program or activity, *i.e.*, to all parts of a recipient's operations. This is true even if only one part of the recipient receives the federal assistance.[5]

[3] The memorandum noted that some commentators have interpreted Sandoval as impliedly striking down the disparate-impact regulations promulgated under Title VI that form the basis for the part of Executive Order 13166 that applies to federally assisted programs and activities. *See, e.g., Sandoval*, 532 U.S. at 286, 286 n.6 ("[W]e assume for purposes of this decision that section 602 confers the authority to promulgate disparate-impact regulations.* * * We cannot help observing, however, how strange it is to say that disparate-impact regulations are 'inspired by, at the service of, and inseparably intertwined with' Sec. 601 when Sec. 601 permits the very behavior that the regulations forbid.") The memorandum, however, made clear that DOJ disagreed with the commentator's interpretation. *Sandoval* holds principally that there is no private right of action to enforce Title VI disparate-impact regulations. It did not address the validity of those regulations or Executive Order 13166 or otherwise limit the authority and responsibility of federal grant agencies to enforce their own implementing regulations.

[4] Pursuant to Executive Order 13166, the meaningful access requirement of Title VI regulations and the four-factor analysis set forth in the DOJ LEP Guidance are to additionally apply to the programs and activities of federal agencies, including NASA.

[5] However, if a federal agency were to decide to terminate federal funds based on noncompliance with Title VI or its regulations, only funds directed to the particular program or activity that is out of

Continued

Example: NASA provides assistance to a state department of education for curriculum enhancement in science and mathematics in its public schools. All of the operations of the entire state department of education—not just the schools—are covered.

Finally, some recipients operate in jurisdictions in which English has been declared the official language. Nonetheless, these recipients continue to be subject to federal non-discrimination requirements, including those applicable to the provision of federally assisted services to persons with limited English proficiency.

IV. Who Is a Limited English Proficient Individual?

Individuals who do not speak English as their primary language and who have a limited ability to read, write, speak, or understand English can be limited English proficient, or LEP, entitled to language assistance with respect to a particular type of service, benefit, or encounter.

Examples of populations likely to include LEP persons who are encountered and/or served by NASA recipients and should be considered when planning language services include, but are not limited to:

- Students enrolled in NASA-funded science, mathematics, and technology enrichment activities.
- Parents or family members of the above.
- Individuals participating in NASA program orientations and visiting exhibits at NASA Visitor centers where the programs and activities are funded and conducted by a NASA financial assistance recipient.

V. How Does a Recipient Determine the Extent of Its Obligation To Provide LEP Services?

Recipients are required to take reasonable steps to ensure meaningful access to their programs and activities by LEP persons. While designed to be a flexible and fact-dependent standard, the starting point is an individualized assessment that balances the following four factors: (1) The number or proportion of LEP persons eligible to be served or likely to be encountered by the program or grantee; (2) the frequency with which LEP individuals come in contact with the program; (3) the nature and importance of the program, activity, or service provided by the program to people's lives; and (4) the resources available to the grantee/recipient and costs. As indicated above, the intent of this guidance is to suggest a balance that ensures meaningful access by LEP persons to critical services while not imposing undue burdens on small business, small local governments, or small nonprofits.

After applying the above four-factor analysis, a recipient may conclude that different language assistance measures are sufficient for the different types of programs or activities in which it engages. For instance, some of a recipient's activities will be more important than others and/or have greater impact on or contact with LEP persons, and thus may require more in the way of language assistance. The flexibility that recipients have in addressing the needs of the LEP populations they serve does not diminish, and should not be used to minimize, the obligation that those needs be addressed. NASA recipients should apply the following four factors to the various kinds of contacts that they have with the public to assess language needs and decide what reasonable steps they should take to ensure meaningful access for LEP persons.

One factor in determining what language services recipients should provide is the number or proportion of LEP persons from a particular language group served or encountered in the eligible service population. The greater the number or proportion of these LEP persons, the more likely language services are needed. Ordinarily, persons eligible to be served, or likely to be directly affected, by a recipient's program or activity are those who are served or encountered in the eligible service population. This population will be program-specific, and includes persons who are in the geographic area that has been approved by a federal grant agency as the recipient's service area. However, where, for instance, a school district receiving NASA financial assistance serves a large LEP population, the appropriate service area is most likely the school district, and not the entire state. Where no service area has previously been approved, the relevant service area may be that which is approved by state or local authorities or designated by the recipient, provided that these designations do not themselves discriminatorily exclude certain populations. When considering the number or proportion of LEP individuals in a service area, recipients should consider LEP parent(s) when their English-proficient or LEP minor children and dependents are potential or actual participants or beneficiaries of NASA-funded programs and activities.

Recipients should first examine their prior experiences with LEP encounters and determine the breadth and scope of language services that were needed. In conducting this analysis, it is important to include language minority populations that are eligible for their programs or activities but may be underserved because of existing language barriers. Other data should be consulted to refine or validate a recipient's prior experience, including the latest census data for the area served, data from school systems and from community organizations, and data from state and local governments.[6] Community agencies, school systems, and others can often assist in identifying populations for whom outreach is needed and who would benefit from the recipients' programs and activities were language services provided.

(1) The Frequency With Which LEP Individuals Come in Contact With the Program

Recipients should assess, as accurately as possible, the frequency with which they have or should have contact with an LEP individual from different language groups seeking assistance. The more frequent the contact with a particular language group, the more likely that enhanced language services in that language are needed. The steps that are reasonable for a recipient that serves an LEP person on a one-time basis will be very different than those expected from a recipient that serves LEP persons daily. It is also advisable to consider the frequency of different types of language contacts. For example, frequent contacts with Spanish-speaking people who are LEP may require certain assistance in Spanish. Less frequent contact with different language groups may suggest a different and less intensified solution. If an LEP individual accesses a program or service on a daily basis, a recipient has greater duties than if the same individual's program or activity contact is unpredictable or infrequent. But even recipients that serve LEP persons on an unpredictable or infrequent basis should use this balancing analysis to determine what to do if an LEP individual seeks services under the program in question.

compliance would be terminated. 42 U.S.C. 2000d–1.

[6] The focus of the analysis is on lack of English proficiency, not the ability to speak more than one language. Note that demographic data may indicate the most frequently spoken languages other than English and the percentage of people who speak that language or understand English less than well. Some of the most commonly spoken languages other than English may be spoken by people who are also overwhelmingly proficient in English. Thus, they may not be languages spoken most frequently by limited English proficient individuals. When using demographic data, it is important to focus in on the languages spoken by those who are not proficient in English.

This plan need not be intricate. It may be as simple as being prepared to use one of the commercially-available telephonic interpretation services to obtain immediate interpreter services. In applying this standard, recipients should take care to consider whether appropriate outreach to LEP persons could increase the frequency of contact with LEP language groups.

(2) The Nature and Importance of the Program, Activity, or Service Provided by the Program

The more important the activity, information, service, or program, or the greater the possible consequences of the contact to the LEP individuals, the more likely language services are needed. The obligations to communicate information on short and long-term weather patterns to rural communities via satellite pictures and computer modeling differ, for example, from those to provide curriculum enhancement in science and mathematics to middle school students. A recipient needs to determine whether denial or delay of access to services or information could have serious or even life-threatening implications for the LEP individual. Decisions by NASA recipients to make an activity compulsory, such as instruction on safety and security requirements before touring a NASA facility, can serve as strong evidence of the program's importance.

(3) The Resources Available to the Recipient and Costs

A recipient's level of resources and the costs that would be imposed on it may have an impact on the nature of the steps it should take. Smaller recipients with more limited budgets are not expected to provide the same level of language services as larger recipients with larger budgets. In addition, reasonable steps may cease to be reasonable where the costs imposed substantially exceed the benefits.

Resource and cost issues, however, can often be reduced by technological advances; the sharing of language assistance materials and services among and between recipients, advocacy groups, and Federal grant agencies; and reasonable business practices. Where appropriate, training bilingual staff to act as interpreters and translators, information sharing through industry groups, telephonic and video conferencing interpretation services, pooling resources and standardizing documents to reduce translation needs, using qualified translators and interpreters to ensure that documents need not be fixed later and that inaccurate interpretations do not cause delay or other costs, centralizing interpreter and translator services to achieve economies of scale, or the formalized use of qualified community volunteers, for example, may help reduce costs.[7] Recipients should carefully explore the most cost-effective means of delivering competent and accurate language services before limiting services due to resource concerns. Large entities and those entities serving a significant number or proportion of LEP persons should ensure that their resource limitations are well-substantiated before using this factor as a reason to limit language assistance. Such recipients may find it useful to be able to articulate, through documentation or in some other reasonable manner, their process for determining that language services would be limited based on resources or costs.

This four-factor analysis necessarily implicates the mix of LEP services required. Recipients have two main ways to provide language services: Oral interpretation either in person or via telephone interpretation service (hereinafter interpretation) and written translation (hereinafter translation). Oral interpretation can range from on-site interpreters for critical services provided to a high volume of LEP persons to access through commercially-available telephonic interpretation services. Written translation, likewise, can range from translation of an entire document to translation of a short description of the document. In some cases, language services should be made available on an expedited basis while in others the LEP individual may be referred to another office of the recipient for language assistance.

The correct mix should be based on what is both necessary and reasonable in light of the four-factor analysis. For instance, a visit by the NASA Administrator to a largely Hispanic neighborhood may need immediate oral interpreters available. (Of course, many community organizations may have already made such arrangements.) In contrast, there may be circumstances where the importance and nature of the activity and number or proportion and frequency of contact with LEP persons may be low and the costs and resources needed to provide language services may be high, such as in the case of a voluntary general public tour of a NASA program site in which pre-arranged language services for the particular service may not be necessary.

[7] Small recipients with limited resources my find that entering into a bulk telephonic interpretation service will prove cost effective.

Regardless of the type of language service provided, quality and accuracy of those services can be critical in order to avoid serious consequences to the LEP person and to the recipient. Recipients have substantial flexibility in determining the appropriate mix.

VI. Selecting Language Assistance Services

Recipients have two main ways to provide language services: oral and written language services. Quality and accuracy of the language service is critical in order to avoid serious consequences to the LEP person and to the recipient.

A. Oral Language Services (Interpretation)

Interpretation is the act of listening to something in one language (source language) and orally translating it into another language (target language). Where interpretation is needed and is reasonable, recipients should consider some or all of the following options for providing competent interpreters in a timely manner:

Competence of Interpreters. When providing oral assistance, recipients should ensure competency of the language service provider; no matter which of the strategies outlined below are used. Competency requires more than self-identification as bilingual. Some bilingual staff and community volunteers, for instance, may be able to communicate effectively in a different language when communicating information directly in that language, but not be competent to interpret in and out of English. Likewise, they may not be able to do written translations.

Competency to interpret, however, does not necessarily mean formal certification as an interpreter, although certification is helpful. When using interpreters, recipients should ensure that they:

Demonstrate proficiency in and ability to communicate information accurately in both English and in the other language and identify and employ the appropriate mode of interpreting (*e.g.*, consecutive, simultaneous, summarization, or sight translation);

Have knowledge in both languages of any specialized terms or concepts peculiar to the entity's program or activity and of any particularized vocabulary and phraseology used by the LEP person,[8] and understand and follow

[8] Many languages have regionalisms, or differences in usage. For instance, a word that may be understood to mean something in Spanish for someone from Cuba may not be so understood by someone from Mexico. In addition, because there

Continued

confidentiality and impartiality rules to the same extent the recipient employee for whom they are interpreting and/or to the extent their position requires.

Understand and adhere to their role as interpreters without deviating into a role as counselor, legal advisor, or other roles.

Some recipients, such as technical or scientific recipients, may have additional self-imposed requirements for interpreters. Where the technical integrity of the information depends on precise, complete, and accurate interpretation or translations, particularly in the contexts of communicating technology innovations to the public, the use of certified interpreters is strongly encouraged.[9] Where such activities are lengthy, the interpreter will likely need breaks and team interpreting may be appropriate.

The quality and accuracy of language services is part of the appropriate mix of LEP services required. The quality and accuracy of language services during a safety and security briefing, for example, must be extraordinarily high, while the quality and accuracy of language services in responding to telephonic inquiries for general information need not meet the same exacting standards.

Finally, when interpretation is needed and is reasonable, it should be provided in a timely manner. To be meaningfully effective, language assistance should be timely. While there is no single definition for timely applicable to all types of interactions at all times by all types of recipients, one clear guide is that the language assistance should be provided at a time and place that avoids the effective denial of the service, benefit, or right at issue or the imposition of an undue burden on or delay in important rights, benefits, or services to the LEP person. For example, when the timeliness of services is important, such as with certain activities of NASA recipients which involve the provision of enrollment information to parents of potential student participants in NASA-funded enrichment activities in science, mathematics, and/or technology, a recipient would likely not be providing meaningful access if it had one bilingual member of the staff available one day a week to provide the service. Such conduct would likely result in delays for LEP persons that would be significantly greater than those for English proficient persons. Conversely, where access to or exercise of a service, benefit, or right is not effectively precluded by a reasonable delay, language assistance can likely be delayed for a reasonable period.

Hiring Bilingual Staff. When particular languages are encountered often, hiring bilingual staff offers one of the best, and often most economical, options. Recipients can, for example, fill public contact positions, such as public information specialists, guards, or program directors, with staff that are bilingual and competent to communicate directly with LEP persons in their language. If bilingual staff is also used to interpret between English speakers and LEP persons, or to orally interpret written documents from English into another language, they should be competent in the skill of interpreting. Being bilingual does not necessarily mean that a person has the ability to interpret. In addition, there may be times when the role of the bilingual employee may conflict with the role of an interpreter (for instance, a bilingual security guard would probably not be able to perform effectively the role of a planetary science interpreter and security guard at the same time, even if the security guard were a qualified interpreter). Effective management strategies, including any appropriate adjustments in assignments and protocols for using bilingual staff, can ensure that bilingual staff is fully and appropriately utilized. When bilingual staff cannot meet all of the language service obligations of the recipient, the recipient should turn to other options.

Hiring Staff Interpreters. Hiring interpreters may be most helpful where there is a frequent need for interpreting services in one or more languages. Depending on the facts, sometimes it may be necessary and reasonable to provide on-site interpreters to provide accurate and meaningful communication with an LEP person.

Contracting for Interpreters. Contract interpreters may be a cost-effective option when there is no regular need for a particular language skill. In addition to commercial and other private providers, many community-based organizations and mutual assistance associations provide interpretation services for particular languages. Contracting with and providing training regarding the recipient's programs and processes to these organizations can be a cost-effective option for providing language services to LEP persons from those language groups.

Using Telephone Interpreter Lines. Telephone interpreter service lines often offer speedy interpreting assistance in many different languages. They may be particularly appropriate where the mode of communicating with an English proficient person would also be over the phone. Although telephonic interpretation services are useful in many situations, it is important to ensure that, when using such services, the interpreters used are competent to interpret any technical or legal terms specific to a particular program that may be important parts of the conversation. Nuances in language and non-verbal communication can often assist an interpreter and cannot be recognized over the phone. Video teleconferencing may sometimes help to resolve this issue where necessary. In addition, where documents are being discussed, it is important to give telephonic interpreters adequate opportunity to review the document prior to the discussion and any logistical problems should be addressed.

Using Community Volunteers. In addition to consideration of bilingual staff, staff interpreters, or contract interpreters (either in-person or by telephone) as options to ensure meaningful access by LEP persons, use of recipient-coordinated community volunteers, working with, for instance, community-based organizations may provide a cost-effective supplemental language assistance strategy under appropriate circumstances. They may be particularly useful in providing language access for a recipient's less critical programs and activities. To the extent the recipient relies on community volunteers, it is often best to use volunteers who are trained in the information or services of the program and can communicate directly with LEP persons in their language. Just as with all interpreters, community volunteers used to interpret between English speakers and LEP persons, or to orally translate documents, should be competent in the skill of interpreting and knowledgeable about applicable confidentiality and impartiality rules. Recipients should consider formal arrangements with community-based organizations that provide volunteers to address these concerns and to help ensure that services are available more regularly.

Use of Family Members or Friends as Interpreters. Although recipients should not plan to rely on an LEP person's family members, friends, or other informal interpreters to provide meaningful access to important

may be languages that do not have an appropriate direct interpretation of some technical terms, the interpreter should be so aware of the issue. The interpreter and recipient can then work to develop a consistent and appropriate set of descriptions of these terms in that language so that they can be used again, when appropriate.

[9] For those languages for which no formal accreditation or certification currently exists, NASA recipients should consider a formal process for establishing the credentials of the interpreter.

programs and activities, where LEP persons so desire, they should be permitted to use, at their own expense, an interpreter of their own choosing (whether a professional interpreter, family member, or friend) in place of or as a supplement to the free language services expressly offered by the recipient. LEP persons may feel more comfortable when a trusted family member, or friend, acts as an interpreter. In addition, in exigent circumstances that are not reasonably foreseeable, temporary use of interpreters not provided by the recipient may be necessary. However, with proper planning and implementation, recipients should be able to avoid such situations.

Recipients, however, should take special care to ensure that family, legal guardians, caretakers, and other informal interpreters are appropriate in light of the circumstances and subject matter of the program, service or activity, including protection of the recipient's own administrative or enforcement interest in accurate interpretation. In many circumstances, family members (especially children), or friends, persons are not competent to provide quality and accurate interpretations. Issues of confidentiality, privacy, or conflict of interest may also arise. LEP individuals may feel uncomfortable revealing or describing sensitive, confidential, or potentially embarrassing medical, law enforcement (*e.g.*, sexual or violent assaults), family, or financial information to a family member, friend, or member of the local community.[10] In addition, such informal interpreters may have a personal connection to the LEP person or an undisclosed conflict of interest, such as the desire to protect themselves or another person in certain matters. For these reasons, when oral language services are necessary, recipients should generally offer competent interpreter services free of cost to the LEP person. For NASA recipient programs and activities, this is particularly true in situations in which health, safety, or security is at stake, or when credibility and accuracy are important to protect an individual's rights and access to important services.

An example of such a case is when security guards respond to an illegal entry call. In such a case, use of family members or neighbors to interpret for the alleged perpetrator or witnesses may raise serious issues of competency, confidentiality, and conflict of interest and is thus inappropriate. While issues of competency, confidentiality, and conflict of interest in the use of family members (especially children), or friends, often make their use inappropriate, the use of these individuals as interpreters may be an appropriate option where proper application of the four factors would lead to a conclusion that recipient-provided services are not necessary. An example of this is a voluntary, unescorted tour of artwork in a NASA facility open to the general public. There, the importance and nature of the activity may be relatively low and unlikely to implicate issues of confidentiality, conflict of interest, or the need for accuracy. In addition, the resources needed and costs of providing language services may be high. In such a setting, an LEP person's use of family members, friends, or others may be appropriate.

If the LEP person voluntarily chooses to provide his or her own interpreter, a recipient should consider whether a record of that choice and of the recipient's offer of assistance is appropriate. Where precise, complete, and accurate interpretations or translations of information are critical, or where the competency of the LEP person's interpreter is not established, a recipient might decide to provide its own, independent interpreter, even if an LEP person wants to use his or her own interpreter as well. Extra caution should be exercised when the LEP person chooses to use a minor as the interpreter. While the LEP person's decision should be respected, there may be additional issues of competency, confidentiality, or conflict of interest when the choice involves using children as interpreters. The recipient should take care to ensure that the LEP person's choice is voluntary, that the LEP person is aware of the possible problems if the preferred interpreter is a minor child, and that the LEP person knows that a competent interpreter could be provided by the recipient at no cost.

B. Written Language Services (Translation)

Translation is the replacement of a written text from one language (source language) into an equivalent written text in another language (target language).

What Documents Should Be Translated? After applying the four-factor analysis, a recipient may determine that an effective Language Assistance Plan (LAP) for its particular program or activity includes the translation of vital written materials into the language of each frequently-encountered LEP group eligible to be served and/or likely to be affected by the recipient's program.

Such written materials could include, for example:

- Consent and complaint forms
- Written notices of rights, or discontinuation of programs and/or activities
- Notices advising LEP persons of free language assistance
- Security or safety brochures for visitors to NASA facilities
- Applications to participate in a recipient's program or activity or to receive recipient benefits or services.

Whether or not a document (or the information it solicits) is vital may depend upon the importance of the program, information, encounter, or service involved, and the consequence to the LEP person if the information in question is not provided accurately or in a timely manner. For instance, applications for participation in an after-school science and mathematics enrichment program could be considered vital. Where appropriate, recipients are encouraged to create a plan for consistently determining, over time and across its various activities, what documents are vital to the meaningful access of the LEP populations they serve.

Classifying a document as vital or non-vital is sometimes difficult, especially in the case of outreach materials like brochures or other information on rights and services. Awareness of rights or services is an important part of meaningful access. Lack of awareness that a particular program, right, or service exists may effectively deny LEP individuals meaningful access. Thus, where a recipient is engaged in community outreach activities in furtherance of its activities, it should regularly assess the needs of the populations frequently encountered or affected by the program or activity to determine whether certain critical outreach materials should be translated. Community organizations may be helpful in determining what outreach materials may be most helpful to translate. In addition, the recipient should consider whether translations of outreach material may be made more effective when done in tandem with

[10] For example, special circumstances may raise additional serious concerns regarding the voluntary nature, conflicts of interest, and privacy issues surrounding the use of persons other than qualified interpreters, particularly where technical information, an important right, benefit, service, or access to personal or law enforcement information is at stake. In some situations, individuals could potentially misuse information they obtained in interpreting for other persons. In addition to ensuring competency and accuracy of the interpretation, recipients should take these special circumstances into account when determining whether a person makes a knowing and voluntary choice to use another person to interpret, instead of an interpreter provided by the recipient.

other outreach methods, including utilizing the ethnic media, schools, religious, and community organizations to spread a message.

Sometimes a document includes both vital and non-vital information. This may be the case when the document is very large. It may also be the case when the title and a phone number for obtaining more information on the contents of the document in frequently-encountered languages other than English is critical, but the document is sent out to the general public and cannot reasonably be translated into many languages. Thus, vital information may include, for instance, the provision of information in appropriate languages other than English regarding where a LEP person might obtain an interpretation or translation of the document.

Into What Languages Should Documents Be Translated? The languages spoken by the LEP individuals with whom the recipient has contact determine the languages into which vital documents should be translated. A distinction should be made, however, between languages that are frequently encountered by a recipient and less commonly-encountered languages. Many recipients serve communities in large cities or across the country. They may serve LEP persons who speak many different languages. To translate all written materials into all of those languages is unrealistic. Although recent technological advances have made it easier for recipients to store and share translated documents, such an undertaking would incur substantial costs and require substantial resources. Nevertheless, well-substantiated claims of lack of resources to translate all vital documents into dozens of languages do not necessarily relieve the recipient of the obligation to translate those documents into at least several of the more frequently-encountered languages and to set benchmarks for continued translations into the remaining languages over time. As a result, the extent of the recipient's obligation to provide written translations of documents should be determined by the recipient on a case-by-case basis, looking at the totality of the circumstances in light of the four-factor analysis. Because translation is a one-time expense, consideration should be given to whether the upfront cost of translating a document (as opposed to oral interpretation) should be amortized over the likely lifespan of the document when applying this four-factor analysis.

Safe Harbor. Many recipients would like to ensure with greater certainty that they comply with their obligations to provide written translations in languages other than English. Paragraphs (a) and (b) outline the circumstances that can provide a safe harbor for recipients regarding the requirements for translation of written materials. A safe harbor means that if a recipient provides written translations under these circumstances, such action will be considered strong evidence of compliance with the recipient's written-translation obligations.

The failure to provide written translations under the circumstances outlined in paragraphs (a) and (b) does not mean there is non-compliance. Rather, they provide a common starting point for recipients to consider whether and at what point the importance of the service, benefit, or activity involved; the nature of the information sought; and the number or proportion of LEP persons served call for written translations of commonly-used forms into frequently-encountered languages other than English. Thus, these paragraphs merely provide a guide for recipients that would like greater certainty of compliance than can be provided by a fact-intensive, four-factor analysis.

Example: Even if the safe harbors are not used, if written translation of a certain document(s) would be so burdensome as to defeat the legitimate objectives of its program, the translation of the written materials is not necessary. Other ways of providing meaningful access, such as effective oral interpretation of certain vital documents, might be acceptable under such circumstances.

Safe Harbor. The following actions will be considered strong evidence of compliance with the recipient's written-translation obligations:

(a) The NASA recipient provides written translations of vital documents for each eligible LEP language group that constitutes five percent or 1,000, whichever is less, of the population of persons eligible to be served or likely to be affected or encountered. Translation of other documents, if needed, can be provided orally; or

(b) If there are fewer than 50 persons in a language group that reaches the five percent trigger in (a), the recipient does not translate vital written materials but provides written notice in the primary language of the LEP language group of the right to receive competent oral interpretation of those written materials, free of cost.

These safe harbor provisions apply to the translation of written documents only. They do not affect the requirement to provide meaningful access to LEP individuals through competent oral interpreters where oral language services are needed and are reasonable. For example, NASA-funded educational enrichment programs should, where appropriate, ensure that NASA safety and security rules have been explained to LEP participants, at orientation, for instance, prior to taking a tour of any NASA facility.

Competence of Translators. As with oral interpreters, translators of written documents should be competent. Many of the same considerations apply. However, the skill of translating is very different from the skill of interpreting, and a person who is a competent interpreter may or may not be competent to translate.

Particularly where scientific and other technical documents are being translated, competence can often be achieved by use of certified translators. Certification or accreditation may not always be possible or necessary.[11] Competence can often be ensured by having a second, independent translator check the work of the primary translator. Alternatively, one translator can translate the document, and a second, independent translator could translate it back into English to check that the appropriate meaning has been conveyed. This is called Aback translation.

Translators should understand the expected reading level of the audience and, where appropriate, have fundamental knowledge about the target language group's vocabulary and phraseology. Sometimes direct translation of materials results in a translation that is written at a much more difficult level than the English language version or has no relevant equivalent meaning.[12] Community organizations may be able to help consider whether a document is written at a good level for the audience. Likewise, consistency in the words and phrases used to translate terms of art, legal, or other technical concepts helps avoid confusion by LEP individuals and may reduce costs. Creating or using already-created glossaries of commonly used terms may be useful for LEP persons and translators, and cost effective for the recipient. Providing translators with examples of previous accurate translations of similar material by the recipient, other recipients, of Federal agencies may be helpful.

While quality and accuracy of translation services is critical, the quality and accuracy of translation services is nonetheless part of the appropriate mix of LEP services required. For instance, documents that are simple for LEP persons who rely on them may use translators that are less skilled than important documents upon which reliance has important consequences (including, *e.g.*, information or documents of NASA recipients regarding certain security, health, and safety requirements.). The permanent nature of written translations, however, imposes additional responsibility on the recipient to ensure that the quality and accuracy permit meaningful access by LEP persons.

[11] For those languages in which no formal accreditation currently exists, a particular level of membership in a professional translation association can provide some indicator of professionalism.

[12] For instance, there may be languages which do not have an appropriate direct translation of some technical terms and the translator should be able to provide an appropriate translation. The translator should likely also make the recipient aware of this. Recipients can then work with translators to develop a consistent and appropriate set of descriptions of these terms in that language that can be used again, when appropriate. Recipients will find it more effective and less costly if they try to maintain consistency in the words and phrases used to translate terms of art and legal or other technical concepts.

VII. Elements of Effective Plan on Language Assistance for LEP Persons

After completing the four-factor analysis and deciding what language assistance services are appropriate, a recipient should develop an implementation plan to address the identified needs of the LEP populations they serve. Recipients have considerable flexibility in developing this plan. The development and maintenance of a periodically-updated written LAP for LEP persons for use by recipient employees serving the public will likely be the most appropriate and cost-effective means of documenting compliance and providing a framework for the provision of timely and reasonable language assistance. Moreover, such written plans would likely provide additional benefits to a recipient's managers in the areas of training, administration, planning, and budgeting. These benefits should lead most recipients to document in a written LAP, their language assistance services, and how staff and LEP persons can access those services. Despite these benefits, certain NASA recipients, such as recipients serving very few LEP persons and recipients with very limited resources, may choose not to develop a written LAP. However, the absence of a written LAP does not obviate the underlying obligation to ensure meaningful access by LEP persons to a recipient's program or activities. Accordingly, in the event that a recipient elects not to develop a written plan, it should consider alternative ways to articulate in some other reasonable manner a plan for providing meaningful access. Entities having significant contact with LEP persons, such as schools, religious organizations, community groups, and groups working with new immigrants can be very helpful in providing important input into this planning process from the beginning.

The following five steps may be helpful in designing a LAP and are typically part of effective implementation plans.

(1) Identifying LEP Individuals Who Need Language Assistance

The first two factors in the four-factor analysis require an assessment of the number or proportion of LEP individuals eligible to be served or encountered and the frequency of encounters. This requires recipients to identify LEP persons with whom it has contact.

One way to determine the language of communication is to use language identification cards (or "I speak cards"), which invite LEP persons to identify their language needs to staff. Such cards, for instance, might say "I speak Spanish" in both Spanish and English, "I speak Vietnamese" in both English and Vietnamese, etc. To reduce costs of compliance, the federal government has made a set of these cards available on the Internet. The Census Bureau "I speak card" can be found and downloaded at *http://www.usdoj.gov/crt/cor/13166.htm*. When records are normally kept of past interactions with members of the public, the language of the LEP person can be included as part of the record. In addition to helping employees identify the language of LEP persons they encounter, this process will help in future applications of the first two factors of the four-factor analysis.

(2) Language Assistance Measures

An effective LAP would likely include information about the ways in which language assistance will be provided. For instance, recipients may want to include information on at least the following:

- Types of language services available.
- How staff can obtain those services.
- How to respond to LEP callers.
- How to respond to written communications from LEP persons.
- How to respond to LEP individuals who have in-person contact with recipient staff.
- How to ensure competency of interpreters and translation services.

(3) Training Staff

Staff should know their obligations to provide meaningful access to information and services for LEP persons. An effective LAP plan would likely include training to ensure that:

- Staff know about LEP policies and procedures.
- Staff having contact with the public (or those in a recipient's custody) are trained to work effectively with in-person and telephone interpreters.

Recipients may want to include this training as part of the orientation for new employees. It is important to ensure that all employees in public contact positions are properly trained. Recipients have flexibility in deciding the manner in which the training is provided. The more frequent the contact with LEP persons, the greater the need will be for in-depth training. Staff with little or no contact with LEP persons may only have to be aware of a LAP. However, management staff, even if they do not interact regularly with LEP persons, should be fully aware of and understand the plan so they can reinforce its importance and ensure its implementation by staff.

(4) Providing Notice to LEP Persons

Once a recipient has decided, based on the four factors, that it will provide language services, it is important for the recipient to let LEP persons know that those services are available and that they are free of charge. Recipients should provide this notice in a language LEP persons will understand. Examples of notification that recipients should consider include:

- Posting signs in intake areas and other entry points. When language assistance is needed to ensure meaningful access to information and services, it is important to provide notice in appropriate languages in intake areas or initial points of contact so that LEP persons can learn how to access those language services. This is particularly true in areas with high volumes of LEP persons seeking access to certain NASA programs, activities and or facilities run by NASA recipients. For instance, signs in entry areas could state that free language assistance is available. The signs should be translated into the most common languages encountered. They should explain how to get the language help. In addition, posting notices in commonly encountered languages notifying LEP persons of language assistance will encourage them to self-identify.
- Stating in outreach documents that language services are available from the NASA recipient. Announcements could

be in, for instance, brochures, booklets, and in outreach and recruitment information. These statements should be translated into the most common languages and could be placed on the front of common documents.

• Working with community-based organizations and other stakeholders to inform LEP individuals of the recipients' services, including the availability of language assistance services.

• Using a telephone voice mail menu. The menu could be in the most common languages encountered. It should provide information about available language assistance services and how to get them.

• Including notices in local newspapers in languages other than English.

• Providing notices on non-English-language radio and television stations about the available language assistance services and how to get them.

• Presentations and/or notices at schools and religious organizations.

(5) Monitoring and Updating the LAP

Recipients should, where appropriate, have a process for determining, on an ongoing basis, whether new documents, programs, services, and activities need to be made accessible for LEP individuals, and they may want to provide notice of any changes in services to the LEP public and to employees. In addition, recipients should consider whether changes in demographics, types of services, or other needs require annual reevaluation of their LAP. Less frequent reevaluation may be more appropriate where demographics, services, and needs are more static. One good way to evaluate the LAP is to seek feedback from the community.

In their reviews, recipients may want to consider assessing changes in:

• Current LEP populations in service area or population affected or encountered.

• Frequency of encounters with LEP language groups.

• Nature and importance of activities to LEP persons.

• Availability of resources, including technological advances and sources of additional resources, and the costs imposed.

• Whether existing assistance is meeting the needs of LEP persons.

• Whether staff knows and understands the LAP and how to implement it.

• Whether identified sources for assistance are still available and viable.

In addition to these five elements, effective plans set clear goals, management accountability, and opportunities for community input and planning throughout the process.

VIII. Voluntary Compliance Effort

The goal for Title VI and Title VI regulatory enforcement is to achieve voluntary compliance. The requirement to provide meaningful access to LEP persons is enforced and implemented by NASA through the procedures identified in the Title VI regulations. These procedures include complaint investigations, compliance reviews, efforts to secure voluntary compliance, and technical assistance.

The Title VI regulations provide that NASA will investigate whenever it receives a complaint, report, or other information that alleges or indicates possible noncompliance with Title VI or NASA regulations.[13] If an investigation results in a finding of noncompliance, NASA will inform the recipient in writing of this determination, including the basis for the determination. NASA uses voluntary mediation to resolve most complaints. However, if a case is fully investigated and results in a finding of noncompliance, NASA must inform the recipient of the noncompliance through a Letter of Findings that sets out the areas of noncompliance and the steps that must be taken to correct the noncompliance. It must attempt to secure voluntary compliance through informal means. If the matter cannot be resolved informally, NASA must secure compliance through the termination of federal assistance after the NASA recipient has been given an opportunity for an administrative hearing and/or by referring the matter to the DOJ to seek injunctive relief or pursue other enforcement proceedings. NASA engages in voluntary compliance efforts and provides technical assistance to recipients at all stages of an investigation. During these efforts, NASA proposes reasonable timetables for achieving compliance and consults with and assists recipients in exploring cost-effective ways of coming into compliance. In determining a recipient's compliance with the Title VI regulations, NASA's primary concern is to ensure that the recipient's policies and procedures provide meaningful access for LEP persons to the recipient's programs and activities.

While all recipients must work toward building systems that will ensure access for LEP individuals, NASA acknowledges that the implementation of a comprehensive system to serve LEP individuals is a process and that a system will evolve over time as it is implemented and periodically reevaluated. As recipients take reasonable steps to provide meaningful access to federally assisted programs and activities for LEP persons, NASA will look favorably on intermediate steps recipients take that are consistent with this guidance, and that, as part of a broader implementation plan or schedule, move their service delivery system toward providing full access to LEP persons. This does not excuse noncompliance but instead recognizes that full compliance in all areas of a recipient's activities and for all potential language minority groups may reasonably require a series of implementing actions over a period of time. However, in developing any phased implementation schedule, NASA recipients should ensure that the provision of appropriate assistance for significant LEP populations or with respect to activities having a significant impact on beneficiaries is addressed first. Recipients are encouraged to document their efforts to provide LEP persons with meaningful access to federally assisted programs and activities.

Dorothy Hayden-Watkins,

Assistant Administrator for Equal Opportunity Programs.

[FR Doc. 03–30931 Filed 12–15–03; 8:45 am]

BILLING CODE 7510–01–P

[13] At educational institutions, investigations will be conducted by the U.S. Department of Education under a Memorandum of Understanding (MOU) between NASA and the U.S. Department of Education.

NATIONAL INDIAN GAMING COMMISSION

Notice of Approval of Class III Tribal Gaming Ordinances

AGENCY: National Indian Gaming Commission.

ACTION: Notice.

SUMMARY: The purpose of this notice is to inform the public of class III gaming ordinances approved by the Chairman of the National Indian Gaming Commission and to update and correct the last Notice published on August 26, 2002.

EFFECTIVE DATE: This notice is effective upon date of publication in the **Federal Register.**

FOR FURTHER INFORMATION CONTACT: Ms. Frances Fragua, Office of General Counsel at the National Indian Gaming Commission, 202/632–7003, or by facsimile at 202/632–7066 (not toll-free numbers).

SUPPLEMENTARY INFORMATION: The Indian Gaming Regulatory Act (IGRA) 25 U.S.C. 2701 *et seq.*, was signed into law on October 17, 1988. The IGRA established the National Indian Gaming Commission (Commission). Section 2710 of the IGRA authorizes the Commission to approve class II and class III tribal gaming ordinances. Section 2710(d)(2)(B) of the IGRA as implemented by 25 CFR 522.8 (58 FR 5811 (January 22, 1993)) requires the Commission to publish, in the **Federal Register,** approved class III gaming ordinances.

The IGRA requires all tribal gaming ordinances to contain the same requirements concerning ownership of the gaming activity, use of net revenues, annual audits, health and safety, background investigation and licensing of key employees. The Commission, therefore, believes that publication of each ordinance in the **Federal Register** would be redundant and result in unnecessary cost to the Commission. The Commission believes that publishing a notice of approval of each class III gaming ordinance is sufficient to meet the requirements of 25 U.S.C. 2710(d)(2)(B). Also, the Commission will make copies of approved class III ordinances available to the public upon request. Requests can be made in writing to the Office of General Counsel, National Indian Gaming Commission (Attention: Legal Staff Assistant), 1441 L Street, NW., Suite 9100, Washington, DC 20005.

On August 26, 2002, the Commission published a list of tribes for which the Chairman had previously approved tribal gaming ordinances authorizing class III gaming. It was later discovered that this list was incomplete. Therefore, the following list of tribes constitutes an update and correction to the notice published on August 26, 2002.

1. Apache Tribe of Oklahoma
2. Auberry Big Sandy Rancheria
3. California Valley Miwok Tribe (FKA Sheep Ranch Tribe of We-Wuk Indians)
4. Fort Belknap Indian Community
5. Karuk Tribe of California
6. Manchester Band of Pomo Indians
7. Match-E-Be-She-Wish Band of Pottawatomi Indians
8. Otoe-Missouri Tribe of Oklahoma
9. Seneca-Cayuga Tribe of Oklahoma
10. Seneca Nation of Indians of New York
11. Shawnee Tribe of Oklahoma
12. Viejas Band of Mission Indians
13. Wichita and Affiliated Tribes of Oklahoma

Philip N. Hogen,

Chairman, National Indian Gaming Commission.

[FR Doc. 03–30949 Filed 12–15–03; 8:45 am]

BILLING CODE 7545–02–P

NATIONAL SCIENCE FOUNDATION

Advisory Committee for Small Business Industrial Innovation; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Advisory Committee for Small Business Industrial Innovation (SBIR)—(61).

Date and Time: January 7, 2004, 2 p.m.–6 p.m.

Type of Meeting: Open.

Place: Wyndham Anatole Hotel. Dallas. TX. DMII National Conference.

Contact Person: Kesh Narayanan, Director, Small Business Innovation Research and Small Business Technology Transfer Programs, Room 590, Division of Design, Manufacturing, and Industrial Innovation (703) 292–7076, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

Minutes: May be obtained from the contact person listed above.

Purpose of Committee: To provide advice and recommendations concerning research programs pertaining to the small business community.

Agenda: January 7, 2004,
2 p.m.—Welcome
2:15 p.m.—Introductions
2:30 p.m.—SBIR/STTR Program Overview
5:15 p.m.—Open Discussion
6 p.m.—Adjourn

Dated: December 11, 2003.

Susanne Bolton,

Committee Management Officer.

[FR Doc. 03–31012 Filed 12–15–03; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 72–3]

Notice of Issuance of Amendment to Materials License No. SNM–2502; Carolina Power & Light Company, H.B. Robinson Independent Spent Fuel Storage Installation

The U.S. Nuclear Regulatory Commission (NRC or the Commission) has issued Amendment 13 to Materials License SNM–2502 held by Carolina Power & Light Company (CP&L) for the receipt, possession, transfer, and storage of spent fuel at the H.B. Robinson Independent Spent Fuel Storage Installation (ISFSI), located in Darlington County, South Carolina. The amendment is effective as of the date of issuance.

By application dated September 3, 2003, CP&L requested an amendment to Materials License SNM–2502 for the H.B. Robinson ISFSI to make editorial changes to the technical specifications. The request involved changing the drawing numbers referenced in section 5 of Appendix A of the technical specifications from the original ISFSI vendor's numbers to the H.B. Robinson plant's numbers used for drawing control. The requested changes do not affect the design, operation, or surveillance of the ISFSI.

This amendment complies with the requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR chapter I, which are set forth in the license amendment.

In accordance with 10 CFR 72.46(b)(2), a determination has been made that the amendment does not present a genuine issue as to whether public health and safety will be significantly affected. Therefore, the publication of a notice of proposed action and an opportunity for hearing or a notice of hearing is not warranted. Notice is hereby given of the right of interested persons to request a hearing on whether the action should be rescinded or modified.

The Commission has determined that the issuance of the amendment meets the criteria for a categorical exclusion set forth in 10 CFR 51.22(c)(10) of the regulations. Therefore, an environmental assessment need not be prepared in connection with issuance of the amendment.

The request for amendment was docketed under 10 CFR part 72, Docket 72–3. For further details with respect to this action, see the amendment request dated September 3, 2003, which is available for public inspection at the Commission's Public Document Room, One White Flint North Building, 11555 Rockville Pike, Rockville, MD or from the publicly available records component of NRC's Agencywide Documents Access and Management System (ADAMS) under Accession No. ML032510880. The NRC maintains ADAMS, which provides text and image files of NRC's public documents. These documents may be accessed through the NRC's Public Electronic Reading Room on the Internet at *http://www.nrc.gov/reading-rm/adams.html.* If you do not

have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) Reference staff at 1–800–397–4209, 301–415–4737 or by email to *pdr@nrc.gov*.

Dated in Rockville, Maryland, this 9th day of December, 2003

For the Nuclear Regulatory Commission.

James Randall Hall,

Senior Project Manager, Licensing Section, Spent Fuel Project Office, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 03–30958 Filed 12–15–03; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–425]

Southern Nuclear Operating Company, Inc.; Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of issuance; correction.

SUMMARY: This document corrects a notice appearing in the **Federal Register** on November 18, 2003 (68 FR 65092), that corrects the 30-day date for hearing request.

FOR FURTHER INFORMATION CONTACT: Frank Rinaldi, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone (301) 415–1447, e-mail: *FXR2@NRC.GOV*.

SUPPLEMENTARY INFORMATION: On page 65093, in the first column, in the third complete paragraph, first line, it is corrected to read from "December 2, 2003" to "December 18, 2003".

Dated in Rockville, Maryland, this 9th day of December, 2003.

For the Nuclear Regulatory Commission.

Frank Rinaldi,

Project Manager, Section 1, Project Directorate II, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 03–30959 Filed 12–15–03; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–280 and 50–281]

Virginia Electric and Power Company; Surry Power Station, Units 1 and 2 Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of an amendment to Renewed Facility Operating License Nos. DPR–32 and DPR–37, issued to Virginia Electric and Power Company (the licensee), for operation of the Surry Power Station, Unit Nos. 1 and 2, Surry County, Virginia. As required by 10 CFR 51.21, the NRC is issuing this environmental assessment and finding of no significant impact.

Environmental Assessment

Identification of the Proposed Action

The proposed action would allow the licensee to correct various administrative and editorial errors to the Surry Technical Specifications (TS) in accordance with the licensee's application dated December 19, 2002, as supplemented by letter dated October 20, 2003.

The Need for the Proposed Action

The proposed action corrects administrative and editorial errors to the Surry TS.

Environmental Impacts of the Proposed Action

The NRC has completed its evaluation of the proposed action and concludes, as set forth below, that there are no significant environmental impacts associated with the proposed changes to the Surry TS.

The proposed action will not significantly increase the probability or consequences of accidents, no changes are being made in the types of effluents that may be released off site, and there is no significant increase in occupational or public radiation exposure. Therefore, there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential non-radiological impacts, the proposed action does not have a potential to affect any historic sites. It does not affect non-radiological plant effluents and has no other environmental impact. Therefore, there are no significant non-radiological environmental impacts associated with the proposed action.

Accordingly, the NRC concludes that there are no significant environmental impacts associated with the proposed action.

Environmental Impacts of the Alternatives to the Proposed Action

As an alternative to the proposed action, the staff considered denial of the proposed action (*i.e.*, the "no-action" alternative). Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

The action does not involve the use of any different resource than those previously considered in the Final Environmental Statement for the Surry Power Station, Unit Nos. 1 and 2, dated May 1972 and June 1972, respectively.

Agencies and Persons Consulted

On November 21, 2003, the staff consulted with the Virginia State official, Mr. Les Foldesi of the Virginia Department of Radiological Health, regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

On the basis of the environmental assessment, the NRC concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the NRC has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated December 19, 2002, as supplemented by letter dated October 20, 2003. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management System (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html*. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff by telephone at 1–800–397–4209 or 301–415–4737, or by e-mail to *pdr@nrc.gov*.

Dated in Rockville, Maryland, this 9th day of December, 2003.

For the Nuclear Regulatory Commission.

Christopher Gratton,

Senior Project Manager, Section 1, Project Directorate II, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 03–30960 Filed 12–15–03; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Sunshine Federal Register Notice

DATES: Weeks of December 15, 22, 29, 2003, January 5, 12, 19, 2004.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of December 15, 2003

Tuesday, December 16, 2003

9:30 a.m. Discussion of Security Issues (closed—ex. 1).

Week of December 22, 2003—Tentative

There are no meetings scheduled for the Week of December 22, 2003.

Week of December 29, 2003—Tentative

There are no meetings scheduled for the Week of December 29, 2003.

Week of January 5, 2004—Tentative

There are no meetings scheduled for the Week of January 5, 2004.

Week of January 12, 2004—Tentative

Wednesday, January 14, 2004

9:30 a.m. Briefing on Status of Office of Chief Information Officer Programs, Performance, and Plans (Public Meeting). (Contact: Jacqueline Silber, (301) 415–7330.)

This meeting will be webcast live at the Web address *http://www.nrc.gov*.

Week of January 19, 2004—Tentative

There are no meetings scheduled for the Week of January 19, 2004.

* The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (recording)—(301) 415–1292. Contact person for more information: Timothy J. Frye, (301) 415–1651.

* * * * *

ADDITIONAL INFORMATION: By a vote of 3–0 on December 9, the Commission determined pursuant to U.S.C. 552b(e) and 9.107(a) of the Commission's rules that "Affirmation of Duke Energy Corporation (McGuire Nuclear Station, Units 1 & 2, Catawba Nuclear Station Units 1 & 2) Petition for Review of LBP–03–17" be held on December 9, and on less than one week's notice to the public.

* * * * *

The NRC Commission Meeting Schedule can be found on the Internet at: *http://www.nrc.gov/what-we-do/policy-making/schedule.html*.

* * * * *

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 (301–415–1969). In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to *dkw@nrc.gov*.

Dated: December 11, 2003.

Timothy J. Frye,

Technical Coordinator, Office of the Secretary.

[FR Doc. 03–31081 Filed 12–12–03; 8:45 am]

BILLING CODE 7590–01–M

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon written request, copies available from: Securities and Exchange Commission, Office of Filings and Information Services, 450 Fifth Street, NW., Washington, DC 20549.

Extension:

Rules 8b–1 to 8b–32; SEC File No. 270–135; OMB Control No. 3235–0176.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("Commission") is soliciting comments on the collections of information summarized below. The Commission plans to submit these existing collections of information to the Office of Management and Budget for extension and approval.

Rules Under Section 8(b) of the Investment Company Act of 1940

Rules 8b–1 to 8b–32 (17 CFR 270.8b–1 to 8b–32) under the Investment Company Act of 1940 (15 U.S.C. 80a) (the "Act") are the procedural rules an investment company must follow when preparing and filing a registration statement. These rules were adopted to standardize the mechanics of registration under the Act and to provide more specific guidance for persons registering under the Act than the information contained in the statute. For the most part, these procedural rules do not require the disclosure of information. Two of the rules, however, require limited disclosure of information.[1] The information required by the rules is necessary to ensure that investors have clear and complete information upon which to base an investment decision. The Commission uses the information that investment companies provide on registration statements in its regulatory, disclosure review, inspection and policy-making roles. The respondents to the collection of information are investment companies filing registration statements under the Act.

The Commission does not estimate separately the total annual reporting and recordkeeping burden associated with rules 8b–1 to 8b–32 because the burden associated with these rules are included in the burden estimates the Commission submits for the investment company registration statement forms (*e.g.*, Form N–1A, Form N–2, Form N–3, and Form N–4). For example, a mutual fund that prepares a registration statement on Form N–1A must comply with the rules under section 8(b), including rules on riders, amendments, the form of the registration statement, and the number of copies to be submitted. Because the fund only incurs a burden from the section 8(b) rules when preparing a registration statement, it would be impractical to measure the compliance burden of these rules separately. The Commission believes that including the burden of the section 8(b) rules with the burden estimates for the investment company registration statement forms provides a more accurate and complete estimate of the total burdens associated with the registration process.

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection

[1] Rule 8b–3 (17 CFR 270.8b–3) provides that whenever a registration form requires the title of securities to be stated, the registrant must indicate the type and general character of the securities to be issued. Rule 8b–22 (17 CFR 270.8b–22) provides that if the existence of control is open to reasonable doubt, the registrant may disclaim the existence of control, but it must state the material facts pertinent to the possible existence of control.

techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Kenneth A. Fogash, Acting Associate Executive Director/CIO, Office of Information Technology, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549.

Dated: December 9, 2003.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–30937 Filed 12–15–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–26286; 811–78332]

Bexil Corporation; Notice of Application

December 10, 2003.

AGENCY: Securities and Exchange Commission ("Commission").

ACTION: Notice of application for deregistration under section 8(f) of the Investment Company Act of 1940 (the "Act").

SUMMARY OF APPLICATION: Bexil Corporation requests an order declaring that it has ceased to be an investment company.

Applicant: Bexil Corporation.

Filing Dates: The application was filed on April 8, 2002, and amended on December 5, 2003.

Hearing or Notification of Hearing: An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on January 5, 2004, and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Applicant, c/o Stephanie A. Djinis, Law Offices of Stephanie A. Djinis, 1749 Old Meadow Road, Suite 310, McLean, VA 22102.

FOR FURTHER INFORMATION CONTACT: Jaea F. Hahn, Senior Counsel, at (202) 942–0614, or Todd F. Kuehl, Branch Chief, at (202) 942–0564 (Office of Investment Company Regulation, Division of Investment Management).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Branch, 450 Fifth Street, NW., Washington, DC 20549–0102 (tel. 202–942–8090).

Applicant's Representations:

1. From 1986 through 1996, applicant's predecessor operated as a diversified series of shares of Bull & Bear Funds II, Inc., an open-end management investment company organized in 1974 under the laws of the State of Maryland and registered under the Act. Applicant was incorporated under the laws of the State of Maryland as Bull & Bear U.S. Government Securities Fund, Inc. on August 30, 1996. On September 27, 1996, applicant registered under the Act as a closed-end management investment company. Applicant changed its name to Bexil Corporation on August 26, 1999. On November 28, 2000, applicant's stockholders approved a proposal to change the nature of applicant's business so as to cease to be an investment company and become an operating company. On June 13, 2001, applicant's board of directors (the "Board") terminated its management contract with an outside investment adviser effective July 31, 2001, and authorized applicant's officers to manage applicant's business affairs.

2. On January 18, 2002, applicant acquired 50% of the outstanding voting stock of York Insurance Services Group, Inc. ("York"), a newly formed Delaware corporation. On that same date, York purchased all of the outstanding stock of certain subsidiaries of AIG Insurance Services, Inc. ("AIGIS"), a Delaware corporation. These subsidiaries have served as independent adjustment companies and third party administrators providing claims, data, and risk related services to insurers, insureds, and intermediaries located throughout the United States. Applicant states that York is not an investment company as defined in section 3(a) of the Act.

3. Mr. Thomas MacArthur ("MacArthur"), York's chairman and chief executive officer, owns the remaining 50% of York's outstanding stock. Pursuant to a stockholder's agreement among MacArthur, York and the applicant, York's board of directors consists of five members; each of MacArthur and the applicant has the right to nominate two members and AIGIS has the right to nominate one member.[1] Through a voting agreement among York, MacArthur and the applicant ("Voting Agreement"), applicant states that it has control over 50% of York's board of directors.[2] Two members of applicant's Board currently serve as members of York's board of directors. Applicant's president currently serves as York's vice-chairman. Applicant states that it substantially contributes to the management of York's lines of business expansion or contraction, executive compensation and human resources, internal audit, accounting and auditing, budgeting and capital expenditures, legal capitalization structure and related uses of debt and equity financing and mergers and acquisition activity. Applicant also states that it sets the compensation of all York officers, other than MacArthur, through its control over the compensation committee of York's board of directors. At June 30, 2003, applicant's interest in York represented approximately 98% of applicant's total assets on an unconsolidated basis (exclusive of Government securities and cash items).

Applicant's Legal Analysis:

1. Section 8(f) of the Act provides that whenever the Commission, upon application or its own motion, finds that a registered investment company has ceased to be an investment company, the Commission shall so declare by order and upon the taking effect of such order, the registration of such company shall cease to be in effect.

2. Section 3(a)(1)(A) of the Act defines an investment company as any issuer which "is or holds itself out as being engaged primarily, or proposes to engage primarily, in the business of investing, reinvesting, or trading in securities." Section 3(a)(1)(C) of the Act defines an investment company as any issuer which "is engaged or proposes to engage in the business of investing, reinvesting, owning, holding, or trading in securities, and owns or proposes to acquire investment securities having a value exceeding 40 per centum of the value of such issuer's total assets (exclusive of Government securities and cash items) on an unconsolidated basis." Section 3(a)(2) of the Act defines investment securities as "all securities except (a) Government securities, (B) securities issued by employees' securities companies, and (C) securities issued by majority-owned subsidiaries of the owner which (i) are not investment companies, and (ii) are not relying on the exception from the definition of investment company in paragraph (1) or (7) of subsection (c)." Section 2(a)(24) of the Act defines majority-owned subsidiary of a person as "a company 50 per centum or more of the outstanding voting securities of which are owned by such person, or by a company which, within the meaning of this paragraph, is a majority-owned subsidiary of such person." Applicant states that it is no longer an investment company as defined in section 3(a)(1)(A) or section 3(a)(1)(C). Applicant states that it is actively engaged in the business of overseeing its York subsidiary's provision of claims, data, and risk related services to insurers, insureds, and intermediaries located throughout the United States, and that applicant is also actively engaged in conducting a business review, development, and acquisition program for other operating businesses.

3. Applicant states that it no longer meets the definition of investment company under the Act, and that it is thus qualified for an order of the Commission pursuant to section 8(f) of the Act. Applicant states that after entry of the order requested by the application, it will continue to be a publicly-held company listed on the American Stock Exchange and will continue to be subject to the reporting and other requirements of the Securities Exchange Act of 1934.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–30985 Filed 12–15–03; 8:45 am]

BILLING CODE 8010–10–P

[1] York's bylaws provide that directors shall be nominated by a plurality of votes, except that any election of the individual nominated by AIGIS shall require a unanimous vote. All of AIGIS' rights with respect to directorships of York terminate at such time as the principal amount of a subordinated note dated January 18, 2002, of York payable to AIGIS shall be paid in full.

[2] The Voting Agreement requires that MacArthur vote his shares in favor of the AIGIS nominee, and that MacArthur will not vote for any individual to fill the vacancy left by an AIGIS nominee. The Voting Agreement contains no similar provision regarding the applicant's voting shares in York.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48898; File No. SR–Amex–2003–98]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change by American Stock Exchange LLC Relating to Trust Certificates Linked to a Basket of Investment Grade Fixed Income Securities

December 10, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on November 14, 2003, the American Stock Exchange LLC ("Amex" or "Exchange") filed with the Securities and Exchange Commission the proposed rule change as described in items I and II below, which items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and is approving the proposal on an accelerated basis.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to approve for listing and trading under section 107A of the Amex Company Guide ("Company Guide"), trust certificates linked to a basket of investment grade fixed income debt instruments.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Amex included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in item III below. The Amex has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

Under section 107A of the Company Guide, the Exchange may approve for listing and trading securities which cannot be readily categorized under the listing criteria for common and preferred stocks, bonds, debentures, or warrants.[3] The Amex proposes to list for trading under section 107A of the Amex Company Guide, the ABS Securities. The Exchange proposed to list and trade under section 107A of the Company Guide, asset-backed securities ("ABS Securities") representing ownership interests in the IndexPlus Trust Series 2003–1 ("Trust"), a special purpose trust to be formed by Merrill Lynch Depositor, Inc. ("MLD"),[4] and the trustee of the Trust pursuant to a trust agreement, which will be entered into on the date that the ABS Securities are issued. The assets of the Trust will consist primarily of a basket or portfolio of up to approximately twenty-five (25) investment-grade-fixed-income securities ("Underlying Corporate Bonds") and United States Department of Treasury STRIPS or securities issued by the United States Department of the Treasury ("Treasury Securities"). In the aggregate, the component securities of the basket or portfolio will be referred to as the "Underlying Securities."

The ABS Securities will conform to the initial listing guidelines under section 107A[5] and continued listing guidelines under sections 1001–1003[6]

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 27753 (March 1, 1990), 55 FR 8626 (March 8, 1990) (order approving File No. SR–Amex–89–29).

[4] Merrill Lynch Depositor, Inc. is a wholly-owned special purpose entity of Merrill Lynch, Pierce, Fenner & Smith Incorporated and the registrant under the Form S–3 Registration Statement (No. 333–88166) under which the securities will be issued.

[5] The initial listing standards for the ABS Securities require: (1) A minimum public distribution of one million units; (2) a minimum of 400 shareholders; (3) a market value of at least $4 million; and (4) a term of at least one year. In addition, the listing guidelines provide that the issuer have assets in excess of $100 million, stockholder's equity of at least $10 million, and pre-tax income of at least $750,000 in the last fiscal year or in two of the three prior fiscal years. In the case of an issuer which is unable to satisfy the earning criteria stated in section 101 of the Company Guide, the Exchange pursuant to section 107A of the Company Guide will require the issuer to have the following: (1) Assets in excess of $200 million and stockholders' equity of at least $10 million; or (2) assets in excess of $100 million and stockholders' equity of at least $20 million.

[6] The Exchange's continued listing guidelines are set forth in sections 1001 through 1003 of part 10 to the Exchange's Company Guide. Section 1002(b) of the Company Guide states that the Exchange will consider removing from listing any security where, in the opinion of the Exchange, it appears that the extent of public distribution or aggregate market value has become so reduced to make further dealings on the Exchange inadvisable. With respect to continued listing guidelines for distribution of the ABS Securities, the Exchange will rely on the guidelines for bonds in section 1003(b)(iv). Section 1003(b)(iv)(A) provides that the Exchange will normally consider suspending dealings in, or removing from the list, a security if the aggregate

Continued

of the Company Guide. At the time of issuance, the ABS Securities will receive an investment grade rating from a nationally recognized securities rating organization ("NRSRO"). The issuance of the ABS Securities will be a repackaging of the Underlying Corporate Bonds together with the addition of Treasury Securities and the obligation of the Trust to make distributions to holders of the ABS Securities depending on the amount of distributions received by the Trust on the Underlying Securities.

However, due to the pass-through and passive nature of the ABS Securities, the Exchange intends to rely on the assets and stockholder equity of the issuers of the Underlying Corporate Bonds, rather than the Trust to meet the requirement in section 107A of the Company Guide. The corporate issuers of the Underlying Corporate Bonds will meet or exceed the requirements of section 107A of the Company Guide. The distribution and principal amount/aggregate market value requirements found in section 107A(b) and (c), respectively, will otherwise be met by the Trust as issuer of the ABS Securities. In addition, the Exchange for purposes of including Treasury Securities will rely on the fact that the issuer is the United States government rather than the asset and stockholder tests found in section 107A.

The basket of Underlying Securities will not be managed and will generally remain static over the term of the ABS Securities. Each of the Underlying Securities provides for the payment of interest on a semi-annual basis and the ABS Securities will also provide for interest distributions on a semi-annual basis. The Treasury Securities will not make periodic payments of interest.[7] To alleviate cash flow timing issues, the Trust will deposit interest payments it receives between distribution dates in a non-interest bearing account to be held until such funds are distributed on the subsequent semi-annual distribution date. Principal distributions on the ABS Securities are expected to be made on dates that correspond to the maturity dates of the Underlying Securities, (*i.e.*, the Underlying Corporate Bonds and Treasury Securities). However, some of the Underlying Securities may have redemption provisions and in the event of an early redemption or other liquidation (*e.g.*, upon an event of default) of the Underlying Securities, the proceeds from such redemption (including any make-whole premium associated with such redemption) or liquidation will be distributed pro rata to the holders of the ABS Securities. Each Underlying Corporate Bond will be investment grade and issued by a corporate issuer and purchased in the secondary market.

In the case of Treasury Securities, the Trust will either purchase the securities directly from primary dealers or in the secondary market, which consists of primary dealers, non-primary dealers, customers, financial institutions, non-financial institutions and individuals.

Holders of the ABS Securities generally will receive interest on the face value in an amount to be determined at the time of issuance of the ABS Securities and disclosed to investors. The rate of interest payments will be based upon prevailing interest rates at the time of issuance and made to the extent that coupon payments are received from the Underlying Securities. Distributions of interest will be made semi-annually. Investors will also be entitled to be repaid the principal of their ABS Securities from the proceeds of the principal payments on the Underlying Securities.[8] The payout or return to investors on the ABS Securities will not be leveraged.

The ABS Securities will mature on the latest maturity date of the Underlying Securities. Holders of the ABS Securities will have no direct ability to exercise any of the rights of a holder of an Underlying Corporate Bond; however, holders of the ABS Securities as a group will have the right to direct the Trust in its exercise of its rights as holder of the Underlying Securities.

The proposed ABS Securities are substantially similar to various Select Note Trust securities currently listed and traded on the Exchange.[9] The instant ABS Securities as compared to the Select Note Trust issuances have the following differences: (1) the actual Underlying Securities in the basket of investment-grade-fixed income securities, (2) a par value of $25 instead of $1000, and (3) the lack of an Interest Distribution Agreement. Accordingly, the Exchange proposes to provide for the listing and trading of the ABS Securities where the Underlying Securities meet the Exchange's Bond and Debenture Listing Standards set forth in section 104 of the Amex Company Guide. The Exchange represents that all of the Underlying Securities in the proposed basket will meet or exceed these listing standards.

The Exchange's Bond and Debenture Listing Standards in section 104 of the Company Guide provide for the listing of individual bond or debenture issuances provided the issue has an aggregate market value or principal amount of at least $5 million and any of: (1) The issuer of the debt security has equity securities listed on the Exchange (or on the New York Stock Exchange ("NYSE" or on the Nasdaq National Market ("Nasdaq")); (2) an issuer of equity securities listed on the Exchange (or on the NYSE or on the Nasdaq) directly or indirectly owns a majority interest in, or is under common control with, the issuer of the debt security; (3) an issuer of equity securities listed on the Exchange (or on the NYSE or on the Nasdaq) has guaranteed the debt security; (4) an NRSRO has assigned a current rating to the debt security that is no lower than an S&P Corporation ("S&P") "B" rating or equivalent rating by another NRSRO; or (5) or if no NRSRO has assigned a rating to the issue, an NRSRO has currently assigned (i) an investment grade rating to an immediately senior issue or (ii) a rating that is no lower than a S&P "B" rating or an equivalent rating by another NRSRO to a pari passu or junior issue.

In addition to the Exchange's Bond and Debenture Listing Standards, an Underlying Security must also be of investment grade quality as rated by an NRSRO and at least 75% of the underlying basket is required to contain Underlying Securities from issuances of $100 million or more. The maturity of each Underlying Security is expected to match the payment of principal of the ABS Securities with the maturity date of the ABS Securities being the latest maturity date of the Underlying Securities. Amortization of the ABS

market value or the principal amount of bonds publicly held is less than $400,000.

[7] A stripped fixed income security, such as a Treasury Security, is a security that is separated into its periodic interest payments and principal repayment. The separate strips are then sold individually as zero coupon securities providing investors with a wide choice of alternative maturities.

[8] The Underlying Securities may drop out of the basket upon maturity, redemption or upon payment default or acceleration of the maturity date for any default other than payment default, or if an Underlying Security that constitutes 10% or more of the assets of the Trust ceases to file periodic reports with the Securities and Exchange Commission under the Securities Exchange Act of 1934. *See* prospectus for a schedule of the distribution of interest and of the principal upon maturity of each Underlying Security and for a description of payment default and acceleration of the maturity date.

[9] *See* Securities Exchange Act Release Nos. 48791 (November 17, 2003), 68 FR 65750 (November 21, 2003) (SR–Amex–2003–92); 48312 (August 8, 2003), 68 FR 48970 (August 15, 2003) (SR–Amex–2003–69); 47884 (May 16, 2003), 68 FR 28305 (May 23, 2003) (SR–Amex–2003–37); 47730 (April 24, 2003), 68 FR 23340 (May 1, 2003) (SR–Amex–2003–25); 46923 (November 27, 2002), 67 FR 72247 (December 4, 2002) (SR–Amex–2002–92); and 46835 (November 14, 2002), 67 FR 70271 (November 21, 2002) (SR–Amex–2002–70).

Securities will be based on (1) the respective maturities of the Underlying Securities, including Treasury Securities, (2) principal payout amounts reflecting the pro-rata principal amount of maturing Underlying Securities, and (3) any early redemption or liquidation of the Underlying Securities, including Treasury Securities.

Investors will be able to obtain the prices for the Underlying Securities through Bloomberg L.P. or other market vendors, including the broker-dealer through whom the investor purchased the ABS Securities.[10] In addition, The Bond Market Association ("TBMA") provides links to price and other bond information sources on its investor Web site at *http://www.investinginbonds.com*. Transaction prices and volume data for the most actively traded bonds on the exchanges are also published daily in newspapers and on a variety of financial Web sites. The National Association of Securities Dealers, Inc. ("NASD") Trade Reporting and Compliance Engine ("TRACE") will also help investors obtain transaction information for most corporate debt securities, such as investment grade corporate bonds.[11] For a fee, investors can have access to intra-day bellwether quotes.[12]

Price and transaction information for Treasury Securities may also be obtained at *http://publicdebt.treas.gov*. Price quotes are also available to investors via proprietary systems such as Bloomberg, Reuters and Dow Jones Telerate. Valuation prices[13] and analytical data may be obtained through vendors such as Bridge Information Systems, Muller Data, Capital Management Sciences, Interactive Data Corporation and Barra.

The ABS Securities will be listed in $25 denominations with the Exchange's existing equity floor trading rules applying to trading. First, pursuant to Amex Rule 411, the Exchange will impose a duty of due diligence on its members and member firms to learn the essential facts relating to every customer prior to trading the ABS Securities.[14] Second, the ABS Securities will be subject to the equity margin rules of the Exchange.[15] Third, the Exchange will, prior to trading the ABS Securities, distribute a circular to the membership providing guidance with regard to member firm compliance responsibilities (including suitability recommendations) when handling transactions in the ABS Securities and highlighting the special risks and characteristics of the ABS Securities. With respect to suitability recommendations and risks, the Exchange will require members, member organizations and employees thereof recommending a transaction in the ABS Securities: (1) To determine that such transaction is suitable for the customer, and (2) to have a reasonable basis for believing that the customer can evaluate the special characteristics of, and is able to bear the financial risks of such transaction.

The Exchange represents that its surveillance procedures are adequate to properly monitor the trading of the ABS Securities. Specifically, the Amex will rely on its existing surveillance procedures governing equity, which have been deemed adequate under the Act. In addition, the Exchange also has a general policy, which prohibits the distribution of material, non-public information by its employees.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6 of the Act[16] in general and furthers the objectives of section 6(b)(5)[17] in particular in that it is designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, remove impediments to and perfect the mechanisms of a free and open market and a national market system, and, in general, protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange did not receive any written comments on the proposed rule change.

III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Comments may also be submitted electronically at the following e-mail address: *rule-comments@sec.gov*. All comment letters should refer to File No. SR–Amex–2003–98. The file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, comments should be sent in hardcopy or by e-mail but not by both methods. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to the File No. SR–Amex–2003–98 and should be submitted by January 6, 2004.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

After careful consideration, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with the requirements of section 6(b)(5) of the Act.[18] The Commission finds that this proposal is similar to several approved asset-backed trust certificates currently listed and traded on the Amex.[19] Accordingly, the Commission finds that the listing and trading of ABS Securities is consistent

[10] The prices of Underlying Securities generally will be determined by one or more market makers in accordance with applicable law and Exchange's rules.

[11] *See* Securities Exchange Act Release No. 43873 (January 23, 2001), 66 FR 8131 (January 29, 2001). Investors are able to access TRACE information at *http://www.nasdbondinfo.com/*.

[12] Corporate prices are available at 20-minute intervals from Capital Management Services at *http://www.bondvu.com/*.

[13] "Valuation Prices" refer to an estimated price that has been determined based on an analytical evaluation of a bond in relation to similar bonds that have traded. Valuation prices are based on bond characteristics, market performance, changes in the level of interest rates, market expectations and other factors that influence a bond's value.

[14] Amex Rule 411 requires that every member, member firm or member corporation use due diligence to learn the essential facts, relative to every customer and to every order or account accepted.

[15] *See* Amex Rule 462.

[16] 15 U.S.C. 78f(b).

[17] 15 U.S.C. 78f(b)(5).

[18] *Id.*

[19] *See supra* note 9.

with the Act and will promote just and equitable principles of trade, foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, and, in general, protect investors and the public interest consistent with section 6(b)(5) of the Act.[20]

As described more fully above, the ABS Securities are asset-backed securities and represent a repackaging of the Underlying Corporate Bonds together with the addition of Treasury Securities, subject to certain distribution of interest obligations of the Trust. The ABS Securities are not leveraged instruments. The ABS Securities are debt instruments whose price will still be derived and based upon the value of the Underlying Securities. The Exchange represents that the value of the Underlying Securities will be determined by one or more market makers, in accordance with the Exchange rules. Investors are guaranteed, subject to certain conditions, at least the principal amount that they paid for the Underlying Securities.[21] In addition, each of the Underlying Corporate Bonds will pay interest on a semi-annual basis and thus the ABS Securities themselves will also pay interest on a semi-annual basis. To alleviate cash flow timing issues, the Trust will deposit any interest payments it receives between distribution dates in a non-interest bearing account to be held until such funds are distributed on the subsequent semi-annual distribution date. The Treasury Securities will not make periodic payments of interest.[22] In addition, the ABS Securities will mature on the latest maturity date of the Underlying Securities.[23] However, due to the pass-through nature of the ABS Securities, the level of risk involved in the purchase or sale of the ABS Securities is similar to the risk involved in the purchase or sale of traditional common stock.

The Commission notes that the Exchange's rules and procedures that address the special concerns attendant to the trading of hybrid securities will be applicable to the ABS Securities. In particular, by imposing the hybrid listing standards, suitability, disclosure, and compliance requirements noted above, the Commission believes the Exchange has addressed adequately the potential problems that could arise from the hybrid nature of the ABS Securities. Moreover, the Commission notes that the Exchange will distribute a circular to its membership calling attention to the specific risks associated with the ABS Securities.

The Commission notes that the ABS Securities are dependent upon the individual credit of the issuers of the Underlying Securities. To some extent this credit risk is minimized by the Exchange's listing standards in section 107A of the Company Guide which provide that only issuers satisfying asset and equity requirements may issue securities such as the ABS Securities. In addition, the Exchange's "Other Securities" listing standards further provide that there is no minimum holder requirement if the securities are traded in thousand dollar denominations.[24] The Commission notes that the Exchange has represented that the ABS Securities will be listed in $25 denominations with its existing debt floor trading rules applying to the trading. In any event, financial information regarding the issuers of the Underlying Securities will be publicly available.[25]

Due to the pass-through and passive nature of the ABS Securities, the Commission does not object to the Exchange's reliance on the assets and stockholder equity of the Underlying Securities rather than the Trust to meet the requirement in section 107A of the Company Guide. The Commission notes that the distribution and principal amount/aggregate market value requirements found in sections 107A(b) and (c), respectively, will otherwise be met by the Trust as issuer of the ABS Securities. Thus, the ABS Securities will conform to the initial listing guidelines under section 107A and continued listing guidelines under sections 1001–1003 of the Company Guide, except for the assets and stockholder equity characteristics of the Trust. At the time of issuance, the Commission also notes that the ABS Securities will receive an investment grade rating from an NRSRO.

The Commission also believes that the listing and trading of the ABS Securities should not unduly impact the market for the Underlying Securities or raise manipulative concerns. As discussed more fully above, the Exchange represents that, in addition to requiring the issuers of the Underlying Securities meet the Exchange's section 107A listing requirements (in the case of Treasury securities, the Exchange will rely on the fact that the issuer is the U.S. government rather than the asset and stockholder tests found in section 107A), the Underlying Securities will be required to meet or exceed the Exchange's Bond and Debenture Listing Standards pursuant to section 104 of the Amex's Company Guide, which among other things, requires that underlying debt instrument receive at least an investment grade rating of "B" or equivalent from an NRSRO. Furthermore, at least 75% of the basket is required to contain Underlying Securities from issuances of $100 million or more. The Amex also represents that the basket of Underlying Securities will not be managed and will remain static over the term of the ABS securities. In addition, the Amex's surveillance procedures will serve to deter as well as detect any potential manipulation.

The Commission notes that the investors may obtain price information on the Underlying Securities through market venders such as Bloomberg, L.P., or though Web sites such as *http://www.investinginbonds.com* and *http://publicdebt.treas.gov* for Treasury Securities.

The Commission finds good cause for approving the proposed rule change prior to the 30th day after the date of publication of notice thereof in the **Federal Register**. The Amex has requested accelerated approval because this product is similar to several other asset-backed instruments currently listed and traded on the Amex.[26] The Commission believes that the ABS Securities will provide investors with an additional investment choice and that accelerated approval of the proposal will allow investors to begin trading the ABS Securities promptly. Additionally, the ABS Securities will be listed pursuant to Amex's existing hybrid security listing standards as described above. Based on the above, the Commission believes that there is good cause, consistent with sections 6(b)(5) and 19(b)(2) of the Act [27] to approve the proposal on an accelerated basis.

V. Conclusion

Is it therefore ordered, pursuant to section 19(b)(2) of the Act,[28] that the proposed rule change (SR-Amex-2003-98) is hereby approved on an accelerated basis.

[20] 15 U.S.C. 78f(b)(5). In approving this rule, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[21] *See supra* note 8.

[22] *See supra* note 7.

[23] *See supra* note 8.

[24] *See* Company Guide section 107A.

[25] The ABS Securities will be registered under section 12 of the Act.

[26] See supra note 9.

[27] 15 U.S.C. 78f(b)(5) and 78s(b)(2).

[28] 15 U.S.C. 78o–3(b)(6) and 78s(b)(2).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[29]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–30988 Filed 12–15–03; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48885; File No. SR–DTC–2002–17]

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Elimination of Matching Criteria for DRS Transactions

December 5 2003.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on December 11, 2002, The Depository Trust Company ("DTC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which items have been prepared primarily by DTC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change provides for a processing enhancement to the Profile Modification System ("Profile") of the Direct Registration System ("DRS") by eliminating the matching criteria for the investor's account registration for certain DRS transactions using Profile.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, DTC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. DTC has prepared summaries, set forth in sections (A), (B) and (C) below, of the most significant aspects of these statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to enhance Profile processing by eliminating investor's account registration information [3] as a matching criteria for certain DRS transactions processed through Profile. Implemented by DTC in May 2000, Profile provides an electronic means for both participants and DRS limited participants (*i.e.*, transfer agents) to convey an investor's request to move from one form of securities ownership to another with the actual position movements taking place in DRS.[4] Currently the investor's social security number ("SS") or taxpayer identification number ("TIN"), DRS account number, CUSIP, share quantity to be moved through Profile, and the account registration information are used by participants and DRS limited participants as matching criteria when processing DRS transactions through Profile. DTC will eliminate the use of the account registration information as a matching criteria for certain DRS transactions processed through Profile in order to increase processing efficiencies. For those transactions where the investor's SS or TIN is available, participants and limited participants will be required to use the SS or TIN, CUSIP, DRS account number, and share quantity as matching criteria to process DRS transactions through Profile. In the event an investor's SS or TIN is not available, the registration, in addition to the other criteria, will continue to be required as matching criteria.

DTC's Profile System will be enhanced to accommodate the registration elimination for incoming and outgoing files. The following rules will apply to Profile transactions submitted by participants and DRS limited participants:

- For Profile transactions where the participant or limited participant inputs the investor's SS or TIN, DTC will no longer require registration information. DTC will not forward the registration information to the party receiving the Profile instruction.
- The registration information will be required when a participant or DRS limited participant does not know the investor's SS or TIN or that information is not available. Participants and DRS limited participants will be required to input nine "1s" if the SS or TIN is not known or input nine "9s" if the SS or TIN is not available (as in the case of a foreign investor) and to input the investor's registration as it appears on the investor's DRS statement. DTC will forward the registration information to the party receiving the Profile instruction.

DTC believes that the proposed rule change is consistent with the requirements of Section 17A of the Act [5] and the rules and regulations thereunder applicable to DTC because the proposed rule change will provide for more efficient use of DRS by participants and DRS limited participants. The proposed rule change will be implemented consistently with the safeguarding of securities and funds in DTC's custody or control for which it is responsible since the operation of DRS, as modified by the proposed rule change, will be similar to the current operation of DRS.

(B) Self-Regulatory Organization's Statement on Burden on Competition

DTC does not believe that the proposed rule change will have any impact or impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments relating to the proposed rule change have not yet been solicited or received. DTC will notify the Commission of any written comments received by DTC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(iii) [6] of the Act and Rule 19b–4(f)(4) [7] promulgated thereunder because the proposal effects a change in an existing service of a registered clearing agency that does not adversely affect the safeguarding of securities or funds in the custody or control of the clearing agency or for which it is responsible and does not significantly affect the respective rights or obligations of DTC or persons using the service. At

[29] 17 CFR.200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] The Commission has modified the text of the summaries prepared by DTC.

[3] Account registration information generally includes, but is not limited to, the investor's name, designation (*i.e.*, title), and form of ownership.

[4] Profile allows a broker-dealer to electronically submit an instruction to a transfer agent to move an investor's securities held in DRS at the transfer agent to the investor's account at the broker-dealer and allows a transfer agent to submit an instruction to a broker-dealer to move securities held in the investor's account at the broker-dealer to the investor's DRS account at the transfer agent.

[5] 15 U.S.C. 78q–1.

[6] 15 U.S.C. 78s(b)(3)(A)(iii).

[7] 17 CFR 240.19b–4(f)(4).

any time within sixty days of the filing of such proposed rule change, the Commission could have summarily abrogated such rule change if it appeared to the Commission that such action was necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Comments may also be submitted electronically at the following e-mail address: *rule-comments@sec.gov*. All comment letters should refer to File No. SR–DTC–2002–17. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, comments should be sent in hardcopy or by e-mail but not by both methods. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of DTC and on DTC's Web site at *http://www.dtc.org/impNtc/mor/index.html*. All submissions should refer to File No. SR–DTC–2002–17 and should be submitted by January 6, 2004.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

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[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48892; File No. SR–ISE–2003–34]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto by the International Securities Exchange, Inc. Relating to Firm Quotations

December 8, 2003.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on November 20, 2003, the International Securities Exchange, Inc. ("ISE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The ISE submitted Amendment No. 1 to the proposed rule change on December 3, 2003.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The ISE is proposing to amend its rules governing firm quotations. The text of the proposed rule change is available at the Office of the Secretary, ISE and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Michael Simon, Senior Vice President and General Counsel, ISE, to Nancy Sanow, Assistant Director, Division of Market Regulation, Commission, dated December 2, 2003. In Amendment No. 1, ISE corrects an error in the second sentence of the rule text of the original filing. Specifically, Amendment No. 1 deletes the reference to "Order Execution Size"—a term no longer used in the rule—and substitutes the term "a bid or offer."

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this proposed rule change is to require ISE market makers to be firm for the stated size of their quotations in all instances. Earlier this year, the Exchange moved to "one size" for market maker quotations.[4] As now in effect, a market maker's disseminated quotation is firm at its stated size for all incoming orders. However, there currently is one exception to the "one size" rule: when quotes of two ISE market makers interact, a market maker can limit its exposure to one contract, regardless of the size of its disseminated quotation. This proposed rule change will remove that exception.

The ISE originally proposed the limited exception to the one-size rule to help limit market makers' risk during the transition to one size. Because quotations often change across multiple series in an options class, a market maker could be at risk when multiple quotes "hit" the quotes of other market makers and multiple trades occur. At the time the ISE moved to one size, the Commission granted the ISE an exemption from the firm quote rule [5] to permit market makers to limit their exposure in this limited situation.[6] ISE market makers have now operated under the one-size rule for almost a year, and have grown increasingly comfortable with the rule. As a general matter, both the ISE and its market makers believe that all market maker quotations should be firm for the full size in all situations. Thus, the ISE proposes to eliminate the current exception.

2. Statutory Basis

The ISE states that the basis under the Act for this proposed rule change is the requirement under Section 6(b)(5) of the Act,[7] that the rules of an exchange be designed to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The ISE states that, in particular, the proposed rule change will further the development of the national market system by having ISE market makers be

[4] *See* Securities Exchange Act Release No. 47220 (January 21, 2003), 68 FR 4260 (January 28, 2003).

[5] 17 CFR 240.11Ac1–1.

[6] *See* letter from Robert L.D. Colby, Deputy Director, Division of Market Regulation, to Michael J. Simon, Senior Vice President and General Counsel, ISE, dated January 21, 2003.

[7] 15 U.S.C. 78f(b)(5).

fully compliant with Commission Rule 11Ac1–1 under the Act.[8]

B. Self-Regulatory Organization's Statement on Burden on Competition

The ISE does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The ISE has not solicited, and does not intend to solicit, comments on this proposed rule change. The ISE has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(a) by order approve such proposed rule change; or

(b) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Comments may also be submitted electronically at the following e-mail address: *rule-comments@sec.gov*. All comment letters should refer to File No. SR–ISE–2003–34. This file number should be included on the subject line if e-mail is used. To help the Commission process and review comments more efficiently, your comments should be sent in hardcopy or by e-mail but not by both methods.

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the ISE. All submissions should refer to File No. SR–ISE–2003–34 and should be submitted by January 6, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

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[8] 17 CFR 240.11Ac1–1.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48897; File No. SR–NASD–2003–104]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment Nos. 1 and 2 Thereto by the National Association of Securities Dealers, Inc. Relating to Proposed New Uniform Definition of "Branch Office" Under NASD Rule 3010(g)(2)

December 9, 2003.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b-4 thereunder,[2] notice is hereby given that on July 2, 2003, the National Association of Securities Dealers, Inc. ("NASD") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by NASD. On October 21, 2003, NASD amended the proposed rule change.[3] On December 8, 2003, NASD amended the proposed rule change.[4] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NASD filed the proposed rule change with the Commission (1) to amend NASD Rule 3010(g)(2) to revise the definition of the term "branch office"; and (2) to adopt IM–3010–1 to provide guidance on factors to be considered by a member firm in conducting internal inspections of offices. NASD represents that the purpose of the proposed rule change is to facilitate the creation of a branch office registration system through the Central Registration Depository ("CRD")® to provide a more efficient, centralized method for members and associated persons to register branch office locations as required by the rules and regulations of states and self-regulatory organizations, including NASD. NASD expects centralized registration of such locations would provide efficiency, clarity, and costs savings to members. NASD believes that the creation of a uniform registration system for branch offices through CRD® also would allow NASD and other securities regulators to effectively examine such locations to further investor protections.

In addition, NASD represents that the proposed rule change is part of NASD's rule modernization initiative to streamline and update NASD Rules while preserving investor protections. The proposed definition establishes a broader national standard and is the product of a coordinated effort among regulators to reduce inconsistencies in the definitions used by the Commission, NASD, the NYSE, and state securities regulators in identifying locations where broker/dealers conduct securities or investment banking business. The proposed rule change is set forth below. Proposed new language is in *italics;* proposed deletions are in [brackets].

* * * * *

3000. Responsibilites Relating to Associated Persons, Employees, and Others' Employees

3010. Supervision

(a) through (f) No change.

[1] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b-4.

[3] *See* letter from Kosha K. Dalal, Assistant General Counsel, NASD, to Katherine A. England, Assistant Director, Division of Market Regulation ("Division"), Commission, dated October 21, 2003 ("Amendment No. 1"). In Amendment No. 1, NASD restated the proposed rule change in its entirety.

[4] *See* letter from Kosha K. Dalal, Assistant General Counsel, NASD, to Katherine A. England, Assistant Director, Division, Commission, dated December 8, 2003 ("Amendment No. 2"). In Amendment No. 2, NASD revised the proposed rule change (i) to insert the word "associated" into subparagraph (g)(2)(B)(i) of Rule 3010; (ii) to correct a cross-reference in subparagraph (g)(2)(C) of Rule 3010; and (iii) to correct punctuation in subparagraph (g)(3) of Rule 3010. In addition, in Amendment No. 2, NASD revised the discussion of the purpose of the proposed rule change (i) to remove a discussion regarding the Economic Advisory Board and references thereto, and (ii) to clarify a statement regarding the "branch office" definition proposed by The New York Stock Exchange (the "NYSE") and its position with respect to such definition.

(g) Definitions

(1) No Change.

(2) [''Branch Office'' means any location identified by any means to the public or customers as a location at which the member conducts an investment banking or securities business, excluding:]

[(A) any location identified in a telephone directory line listing or on a business card or letterhead, which listing, card, or letterhead also sets forth the address and telephone number of the branch office or OSJ of the firm from which the person(s) conducting business at the non-branch locations are directly supervised;]

[(B) any location referred to in a member advertisement, as this term is defined in Rule 2210, by its local telephone number and/or local post office box provided that such reference may not contain the address of the non-branch location and, further, that such reference also sets forth the address and telephone number of the branch office or OSJ of the firm from which the person(s) conducting business at the non-branch location are directly supervised; or]

[(C) any location identified by address in a member's sales literature, as this term is defined in Rule 2210, provided that the sales literature also sets forth the address and telephone number of the branch office or OSJ of the firm from which the person(s) conducting business at the non-branch locations are directly supervised.]

[(D) any location where a person conducts business on behalf of the member occasionally and exclusively by appointment for the convenience of customers, so long as each customer is provided with the address and telephone number of the branch office or OSJ of the firm from which the person conducting business at the non-branch location is directly supervised.]

A ''branch office'' is any location where one or more associated persons of a member regularly conduct the business of effecting any transactions in, or inducing or attempting to induce the purchase or sale of, any security, or that is held out as such, excluding:

(A) Any location that is established solely for customer service and/or back office type functions where no sales activities are conducted and that is not held out to the public as a branch office;

(B) Any location that is the associated person's primary residence; provided that

(i) Only one associated person, or multiple associated persons who reside at that location and are members of the same immediate family, conduct business at the location;

(ii) The location is not held out to the public as an office and the associated person does not meet with customers at the location;

(iii) Neither customer funds nor securities are handled at that location;

(iv) The associated person is assigned to a designated branch office, and such designated branch office is reflected on all business cards, stationery, advertisements and other communications to the public by such associated person;

(v) The associated person's correspondence and communications with the public are subject to the firm's supervision in accordance with Rule 3010;

(vi) Electronic communications (e.g., e-mail) are made through the member's electronic system;

(vii) All orders are entered through the designated branch office or an electronic system established by the member that is reviewable at the branch office;

(viii) Written supervisory procedures pertaining to supervision of sales activities conducted at the residence are maintained by the member; and

(ix) A list of the residence locations are maintained by the member;

(C) Any location, other than a primary residence, that is used for securities business for less than 30 business days in any one calendar year, provided the member complies with the provisions of paragraph (B)(ii) through (viii) above;

*(D) Any office of convenience, where associated persons occasionally and exclusively by appointment meet with customers, which is not held out to the public as an office;**

(E) Any location that is used primarily to engage in non-securities activities and from which the associated person(s) effects no more than 25 securities transactions in any one calendar year; provided that any advertisement or sales literature identifying such location also sets forth the address and telephone number of the location from which the associated person(s) conducting business at the non-branch locations are directly supervised; or

(F) The Floor of a registered national securities exchange where a member conducts a direct access business with public customers; and

(G) A temporary location established in response to the implementation of a business continuity plan.

The term ''business day'' as used in Rule 3010(g)(2) shall not include any partial business day provided that the associated person spends at least four hours on such business day at his or her designated branch office during the hours that such office is normally open for business.

[(3) A member may substitute a central office address and telephone number for the supervisory branch office or OSJ locations referred to in paragraph (g)(2) above provided it can demonstrate to the Association's District Office having jurisdiction over the member that it has in place a significant and geographically dispersed supervisory system appropriate to its business and that any investor complaint received at the central site is provided to and resolved in conjunction with the office or offices with responsibility over the non-branch business location involved in the complaint.]

IM–3010–1—Standards for Reasonable Review

In fulfilling its obligations pursuant to Rule 3010(c), each member must conduct a review, at least annually, of the businesses in which it engages, which review must be reasonably designed to assist in detecting and preventing violations of and achieving compliance with applicable securities laws and regulations and with NASD Rules. Each member shall establish and maintain supervisory procedures that must take into consideration, among other things, the firm's size, organizational structure, scope of business activities, number and location of offices, the nature and complexity of products and services offered, the volume of business done, the number of associated persons assigned to a location, whether a location has a principal on-site, whether the office is a non-branch location, the disciplinary history of registered representatives or associated persons, etc. The procedures established and the reviews conducted must provide that the quality of supervision at remote offices is sufficient to assure compliance with applicable securities laws and regulations and with NASD Rules. With respect to a non-branch location where a registered representative engages in securities activities, a member must be especially diligent in establishing procedures and conducting reasonable reviews. Based on the factors outlined above, members may need to impose reasonably designed supervisory procedures for certain locations and/or may need to provide for more frequent reviews of certain locations.

* Where such office of convenience is located on bank premises, signage necessary to comply with applicable federal and state laws, rules, and regulations and applicable rules and regulations of NASD, other self-regulatory organizations, and securities or banking regulators may be displayed and shall not be deemed ''holding out'' for purposes of this section.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NASD included statements concerning the purpose of and basis for the proposed rule change, as amended, and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NASD has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Background

While NASD believes that its current branch office definition effectively meets its regulatory objectives, NASD appreciates that a uniform branch office definition would create a broader national standard that would minimize compliance burdens for members. Adoption of the proposed branch office definition by NASD and state securities administrators would facilitate the creation of a centralized branch office registration system through the CRD®, and provide efficiency, clarity, and costs savings to members.

Currently, there is no uniform approach among regulators for classifying locations from which registered representatives regularly conduct the business of effecting transactions in securities. The Commission, the NYSE, and state securities regulators all define the term ''branch office'' (or similar term) differently; and the term has different significance based on who classifies it. As a result, a member must comply with multiple definitions in each jurisdiction in which it conducts a securities business. This requires tracking numerous definitions, filing multiple forms to register and/or renew registration of such locations, meeting various deadlines, and continually monitoring each jurisdiction for changes in rules or procedures.

NASD member firms are currently required to complete Schedule E to the Form BD (''Schedule E'') to register or report branch offices to the Commission, NASD, and with particular state(s) in which they conduct a securities business that requires branch office registration. While Schedule E does capture certain data with respect to branch offices, NASD represents that both its staff and state regulators believe that Schedule E does not adequately fulfill their regulatory needs. For example, Schedule E does not link an individual registered representative with a particular branch office; this can make it difficult for state regulators to track down individual persons during examinations. In addition, member firms have said that Schedule E is a burdensome and time-consuming method by which to register branch offices. Since numerous states have varying branch office definitions, members must understand and comply with the requirements in each individual state. Further, updates or amendments to Schedule E do not update or amend an individual registered representative's Form U–4. Currently, a firm must amend these forms separately and there is no method to alert firms or regulators if the information on the two forms differs. NASD believes that the proposed branch office registration system through CRD'' would alleviate most, if not all, of these concerns.

As a result, NASD has been working with the North American Securities Administrators Association (''NASAA''), and the NYSE to reduce the inconsistencies that currently exist among the various ways in which locations are defined in order to increase the utility of CRD'' as a central branch office registration system for NASD, other self-regulatory organizations, and states. NASD staff has held numerous meetings with other regulators over the past three years with the purpose of achieving this goal. NASD represents that these meetings ultimately proved successful as the parties have reached agreement on a core proposed uniform definition which largely tracks the Commission's definition of ''office'' in the books and records rules, Rule 17a–3 and Rule 17a–4 (the ''Books and Records Rules'') under the Act.[5]

The proposed definition would contain several exceptions from branch office registration. The single difference to a common definition among regulators concerns the registration of certain primary residences as branch offices ''NASD and NASAA support a primary residence exception that provides for limitations on the activities (*e.g.*, no holding out of the residence as a place to conduct securities business, and no handling of funds or securities at the location), that can be performed at a primary residence without triggering branch office registration. The NYSE, however, believes that under no circumstances should associated persons be permitted to engage in securities activities for more than 50 business days annually from their primary residences without requiring members to register such residences as branch offices.[6]

Current Definition

NASD currently defines a branch office as any location identified by any means to the public or customers as a location at which the member conducts an investment banking or securities business. The definition provides that the following activities would not be deemed ''holding out'' and, therefore, would not trigger registration of the location as a branch office: (1) A location identified in a telephone directory, business card, or letterhead; (2) a location referred to in a member advertisement; (3) a location identified in a member's sales literature; and (4) any location where a person conducts business on behalf of the member only occasionally; provided, in each case, the phone number and address of the branch office or Office of Supervisory Jurisdiction (''OSJ'') that supervises the location is also identified. NASD designates locations from which associated persons work as either branch offices or unregistered locations. This designation primarily affects the supervisory responsibilities of, and the fees paid by, members. An office that is designated a ''branch office'' under NASD rules must pay an annual registration fee and have a branch manager on site. A branch office is further classified as an OSJ if any one of the following enumerated activities occurs at the location: order execution, maintenance of customer funds and securities, final approval of new accounts and advertisements, review of customer orders, and supervision of associated persons at other branch offices. NASD represents that an office that is designated an OSJ must have a registered principal on-site and be inspected on an annual basis.[7]

Proposed Uniform Branch Office Definition

The core definition in the proposed uniform definition largely tracks the

[5] 17 CFR 240.17a–3 and 17 CFR 240.17a–4

[6] *See* Securities Exchange Act Release No. 46888 (November 22, 2002), 67 FR 72257 (December 4, 2002) (SR–NYSE–2002–34)

[7] NASD Rule 3010(c) provides that each branch office shall be inspected according to a cycle set forth in the firm's written supervisory and inspection procedures.

Commission's Books and Records Rules' definition of "office."[8] The proposed rule change does not alter or affect the obligations of a firm to comply with the minimum requirements of the Books and Records Rules which specifies the records broker/dealers must make, and how long those records and other documents relating to a broker/dealer's business must be kept.[9]

The proposed rule change would define a "branch office" as any location where one or more associated persons of a member regularly conduct the business of effecting any transactions in, or inducing or attempting to induce the purchase or sale of, any security, or that is held out as such.

The proposed rule change would exclude from registration as a branch office: (1) A location that operates as a back office; (2) a representative's primary residence provided it is not held out to the public and certain other conditions are satisfied; (3) a location, other than the primary residence, that is used for less than 30 business days annually for securities business, is not held out to the public as an office, and satisfies certain of the conditions set forth in the primary residence exception; (4) a location of convenience used occasionally and by appointment; (5) a location used primarily for non-securities business and from which less than 25 securities transactions are effected annually; (6) the floor of an exchange; and (7) a temporary location used as part of a business continuity plan.

In developing the proposed definition, NASD understands the need to provide reasonable exceptions from branch office registration that take into account technological innovations and current business practices without compromising the need for investor protection. NASD believes the proposed exceptions from branch office registration are practically based while still containing important safeguards and limitations to protect investors. For example, the exception from branch office registration for customer service/back office locations would require that no sales activities would be able to be conducted from such locations and such locations would not be able to be held out to the public.

Further, the primary residence exception contains significant safeguards, including that: the location cannot be held out to the public; only one associated person or associated persons who are members of the same immediate family and reside at the location may conduct business at such location; the associated person does not meet with customers at the location; neither customer funds nor securities are handled at that location; the associated person must be assigned to a designated branch office; and such branch office is used on all business cards, stationery, advertisements, and other communications to the public; the associated person's correspondence and communications with the public are subject to the firm's supervision; electronic communications are made through the firm's system; all orders are entered through the designated branch office or an electronic system established by the member and reviewable at such location; written supervisory procedures pertaining to supervision of sales activities conducted at the residence are maintained by the member; and the member maintains a list of the locations. These limitations closely track the limitations on the use of a private residence in the Commission's Books and Records Rules which provide that a broker/dealer is not required to maintain records at an office that is a private residence if only one associated person (or multiple associated persons if members of the same family) regularly conducts business at the office, the office is not held out to the public as an office, and neither customer funds nor securities are handled at the office.[10]

As noted above, in addition to these limitations on the primary residence exception, the NYSE believes that if an associated person works primarily from home, such location should be registered as a branch office.[11] Given the different business models used by NASD members that are not also NYSE members, NASD concluded that the 50-business day limitation on the use of a primary residence would not be practical for small firms and independent dealers, and would not provide any added regulatory benefit. NASD represents that NASAA representatives have committed to recommending to their members (state securities regulators) adoption of the proposed branch office definition outlined in this rule filing (thus omitting the 50-business day limitation).[12]

NASD reached its conclusions as to the significant negative impact of the 50-business day requirement on members, without any added corresponding regulatory benefit or investor protection, after considering comments received in response to NASD Notice to Members 02–52. As discussed below, numerous firms asserted that the 50-business day requirement in the primary residence exception to the branch office definition would be burdensome, time consuming, and difficult to enforce. NASD concluded that limited member compliance resources could be more effectively directed to supervising activities at all locations, rather than tracking the number of days and hours an associated person works from his or her primary residence. NASD strongly believes that the numerous other safeguards that would need to be satisfied to qualify for the primary residence exception serve its regulatory needs and protect investors.

The proposed definition also would exempt from branch office registration a temporary location, other than a primary residence, that is used for securities business less than 30-business days in any calendar year. The limitations on the use of a primary residence described above also would apply to use of a temporary location for conducting securities business.[13] For purposes of calculating the number of days for this exception, the proposed rule provides that a "business day" would not include any partial business day provided that the associated person spends at least four hours on such business day at his or her designated branch office during normal business hours.

In exempting offices of convenience from branch office registration, NASD believes that it again has imposed important safeguards for the public. At such offices of convenience, associated persons would be limited to meeting customers occasionally and exclusively by appointment, and the location would not be permitted to be held out to the public as a branch office. The proposed rule notes, however, that where such office of convenience is located on bank premises, signage necessary to comply with applicable federal and state laws, rules and regulations, and applicable rules and regulations of NASD, other self-regulatory organizations, and securities or banking regulators would be able to be displayed and would not be deemed "holding out" for purposes of this section. Such necessary signage generally is intended to prevent confusing customers who might otherwise believe that traditional riskless investments, such as deposits, are being offered by associated persons at such offices on bank premises. In addition, other than meeting customers at these offices of convenience, all other functions of the associated person would be conducted and supervised through the designated branch office.

The proposed rule also exempts from branch office registration any location that is primarily used to engage in non-securities activities (*e.g.*, insurance) and from which the associated person effects no more than 25 securities transactions in any one calendar year; provided that advertisements or sales literature identifying such location also set forth locations from which the associated person is directly supervised. In addition, such securities activities would be conducted through and supervised by the associated person's designated branch office.

Proposed IM–3010–1 (Standards for Reasonable Review)

Certain state securities regulators have expressed concern about their ability to cite members for violating the inspection and review standards set forth in NASD Rule 3010(c) where a registered person operates from his or her primary residence. They asked NASD staff to review the requirements of Rule 3010(c) and consider clarifying the standards.

NASD staff believes that Rule 3010(c) is an industry benchmark, imposing high standards regarding supervisory obligations and, therefore, should not be amended. As an alternative to amending Rule 3010(c), NASD is proposing new interpretive material, IM–3010–1 (Standards for Reasonable Review). Proposed IM–3010–1 emphasizes the requirement that members already have to establish reasonable supervisory procedures and conduct reviews of locations taking into consideration, among other things, the firm's size, organizational structure, scope of business activities, number and location of offices, the nature and complexity of products and services offered, the volume of business done, the number of associated persons assigned to a location, whether a location has a principal on-site, whether the office is a non-branch location, and the disciplinary history of the registered person.[14] The proposed interpretive material notes that members would be required to be especially diligent in establishing procedures and conducting reasonable reviews with respect to non-branch locations. NASD represents that the proposed interpretive material incorporates guidance previously issued on this matter by NASD.

Development of Branch Office Registration System Through CRD®

NASD operates the CRD® system pursuant to policies developed jointly with NASAA. NASD works with the Commission, NASAA, other members of the regulatory community, and member firms to establish policies and procedures reasonably designed to ensure that information submitted to and maintained on the CRD® system is accurate and complete. Currently, members with numerous offices must register with each individual state that requires registration (including annual renewals). Failure of members to timely register offices with a specific jurisdiction can result in significant sanctions; for example, in at least one jurisdiction, failure to timely register (or renew registration) can result in the possible rescission of all trades originated at that location. A uniform branch office definition would establish a broader national standard that would facilitate the development of a branch office registration system through the CRD®. NASD believes this approach would provide efficiency, clarity and cost savings to members and aid securities regulators in conducting regular examinations of such locations to further investor protections. NASD represents that members have strongly supported the use of CRD® to register branch offices because of the enormous potential time and liability savings.[15]

As part of the initiative, NASD expects to seek Commission approval to amend Form U–4 to require members to disclose, but not register, all non-branch locations.[16] Further, NASD expects that the system would include a requirement that a branch office list any other names ("doing business as" or "DBAs") under which it may operate.

NASD expects to develop a new branch office registration form to collect data on each branch office. The new form also would require members to designate registered representatives to specific branch offices. NASD staff expects the system would include certain efficiencies; for example, when a member enters amendments to Form U–4, the system would automatically update corresponding items on the proposed new branch office registration form and vice versa.

NASD believes that it would take up to one year to develop a centralized registration system for branch offices and expects to have the system live by mid-2004.

2. Statutory Basis

NASD believes that the proposed rule change, as amended, is consistent with the provisions of Section 15A of the Act,[17] in general, and with Section 15A(b)(6) of the Act,[18] in particular, which requires, among other things, that NASD's rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. NASD believes that a uniform definition would better serve the securities industry, regulators, and the public by creating a broader national standard that would allow for central registration of branch offices with NASD through the CRD® system. In addition, NASD represents that the proposed new interpretive material summarizes guidance previously issued on this matter by NASD.

B. Self-Regulatory Organization's Statement on Burden on Competition

NASD does not believe that the proposed rule change, as amended, would result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

A version of the proposed rule change, which included the 50-business day requirement in the primary

[8] 17 CFR 240.17a–3 and 17 CFR 240.17a–4.

[9] 17 CFR 240.17a–3 and 17 CFR 240.17a–4.

[10] 17 CFR 240.17a–4(k).

[11] *See* NYSE Response to Comments to File No. SR–NYSE–2002–34, dated March 27, 2003.

[12] Letter dated April 17, 2003, from Christine A. Bruenn, NASAA President, to Marc Menchel, Senior Vice President and General Counsel, Regulatory Policy and Oversight, NASD. NASAA has stated that it supports the proposed uniform definition of "branch office" proposed herein and has stated that it will encourage its members (state securities administrators) to adopt the proposed uniform definition.

[13] For purposes of satisfying condition (a) to the temporary location exception, an associated person would be deemed to "reside" at such temporary location.

[14] NASD has filed a proposed rule change with Commission that seeks to adopt new Rule 3012 and amend other rules regarding the supervisory and supervisory control procedures of member firms. As part of such rule filing, Rule 3010(a) would be amended to provide that members must inspect (i) at least annually every office of supervisory jurisdiction and any branch office that supervises one or more branch locations; (ii) at least every three years every branch office that does not supervise one or more non-branch locations; and (iii) on a regular periodic schedule every non-branch location. The rule filing is pending. *See* Securities Exchange Act Release No. 48298 (August 7, 2003), 68 FR 48421 (August 13, 2003) (SR–NASD–2002–162).

[15] *See* Item 5 below for a summary of comment letters received in response to Notice to Members 02–52 (August 2002).

[16] NASD staff is working with NASAA to identify the level of activities that would trigger this reporting requirement.

[17] 15 U.S.C. 78*o*–3.

[18] 15 U.S.C. 78*o*–3(b)(6).

residence exception, was published for comment in NASD Notice to Members 02–52 (August 2002) ("NtM 02–52"). The text of the proposed rule change is available at the principal office of NASD, and at the Commission. NASD sought comment on whether the proposed uniform definition would: (1) Provide clarity on when a location is required to be registered as a branch office; (2) provide a cost savings to firms as a result of centralized registration of locations through the CRD® system; (3) minimize regulatory compliance burdens; (4) significantly affect the number of locations that a firm is required to register; and (5) adequately address evolving business practices based on technological innovations. Additionally, NASD sought comment on whether the proposed exceptions to the branch office were appropriate.

NtM 02–52 provided members and other interested parties with a checklist of seven questions that they could use to respond to the request for comment in addition to, or in lieu of, sending written comments. NASD noted that the checklist did not cover all aspects of the proposal, and it encouraged commenters to provide written comments, as necessary. NASD extended the comment period from September 20, 2002 to October 21, 2002 and received a total of 137 comments in response to NtM 02–52. A list of commenters and copies of the comment letters received in response to NtM 02–52 is available at the principal office of NASD, and at the Commission.

NASD represents that seventy-eight of the 137 responses to NtM 02–52 consisted solely of written comments (*i.e.*, did not complete the checklist of seven questions provided). The remaining 59 commenters responded to the checklist either in whole or in part. A significant percentage of the commenters identified themselves as member firms or registered representatives associated with NASD member firms. NASD represents that an overwhelming number of the commenters favored the creation of a uniform definition of the term "branch office" that would permit centralized registration of locations through CRD®. NASD has summarized the key comments below.

An overwhelming majority of the commenters were in favor of NASD providing centralized registration of branch offices through the CRD® system.[19] Commenters stated that a uniform definition of branch office would greatly simplify their compliance obligations and that a uniform method of registering locations through CRD® would be welcome.[20] One commenter said that the current environment in which they are required to track numerous state definitions of "branch office," fill out different forms to register locations as branch offices, comply with varying supervisory requirements for such offices and spend significant amounts of administrative time and energy complying is a very frustrating process and that the present situation is in dire need of immediate change.[21] However, numerous commenters expressed concern that a central registration system, while an improvement, could be too costly.

Commenters expressed concern about the impact of the proposed definition on the supervisory systems of their firms and related registration costs.[22] Commenters stated that the proposed definition would significantly increase registration fees and supervisory obligations of members.[23] Several commenters stated that the proposed definition would cause offices currently registered as branch offices to become OSJs since NASD Rule 3010(g)(1)(G) defines an OSJ as any office that supervises the activities of persons associated with other branch offices. Supervisors at these new OSJs would have to become registered principals.[24] Other commenters noted that smaller offices in smaller communities may elect to shut down their securities business and restrict themselves to related fields in which they may now be involved, such as insurance and tax preparation—this would mean less access to the financial system for people in these communities.[25]

In addition, commenters were concerned that the proposed definition would significantly increase the number of branch offices they would have to register. Commenters stated that they have between 0 and 225 branch offices currently registered but could have between 0 and 3,400 registered branch offices under the proposed uniform definition (based on a proposed definition that includes a 50-business day restriction in the primary residence exception). One commenter stated that with such definition, the firm would go from 1 to 700 registered branch offices.[26] A second commenter stated that they would go from 658 registered branch offices to over 1,000 registered branch offices if the proposed definition is applied to its unregistered offices and residential offices.[27]

Several commenters stated that any costs savings resulting from centralized registration of branch offices through CRD® would be greatly outweighed by the substantial increases in costs caused by having to register hundreds of remote locations as branch offices.[28] Commenters generally were concerned that the proposed branch office definition (including the 50-business day limitation in the primary residence exception) would greatly increase their costs. These increased costs would include NASD and state registration fees, state corporation income tax filings, Fidelity bond coverage premiums, personnel time and travel expenses for inspections, and the hiring of more staff for supervision. A few commenters offered cost increase estimates ranging from $3,000 to $450,000 and elaborated on the reasons for such increases.[29] Several commenters said that they could not accurately gauge cost increases until they know how states will amend their definitions. Several commenters suggested that NASD consider reducing its registration fees so that the rule change is revenue neutral for NASD and the financial burden on firms is minimized.[30] Commenters stated that they would realize certain cost efficiencies through centralized registration, provided the states also adopted the proposed definition.[31] NASD believes that the removal of the 50-business day requirement from the primary residence exception would alleviate some of the burdens that the original proposal raised regarding members' supervisory systems.

As noted earlier, the proposed definition as set forth in NtM 02–52 provided an exception from branch office registration for a primary residence that is used for securities business for less than 50-business days in any one calendar year and that satisfies, among other things, conditions similar to those found in the Commission's Books and Records Rules definition for "office." An overwhelming majority of the commenters stated that they could not support the proposed definition with a 50-business day requirement because it would be too burdensome, time consuming, and difficult to enforce.[32] Commenters argued that no added investor protection would be gained for this restriction.[33] Commenters stated that branch office registration should be based on the types of activities conducted at a location and not based on the number of days logged at a given location.[34] In addition, several commenters stated that they view the proposal to be unenforceable because just as firms are unable to track the number of times representatives are involved in securities transactions for their clients from a certain location, NASD will similarly be unable to track such usage.[35]

Commenters, small firms in particular, stated that tracking the 50-business day requirement would introduce a tremendous compliance burden.[36] Commenters said the 50-business day limitation would require firms to closely monitor where work has been performed and for how long, and such monitoring would be prone to error. Commenters stated that the proposed definition provides sufficient restrictions on the use of a primary residence office and, so long as the activities are substantially limited (*e.g.*, no holding out of the residence as a place to conduct securities business, and no handling of funds or securities at the location) and the location is properly supervised, the number of days logged at such residential location should not trigger registration of such location as a branch office.[37] Commenters also stated that the resulting increase in supervisory costs would cause firms to act contrary to all employment trends by prohibiting people from working outside the office.

Commenters also noted that elimination of the 50-business day restriction would be consistent with the Books and Records Rules. They asserted that since the Books and Records Rules do not require records to be kept at these sites for examinations, there should be no reason to register a representative's primary residence regardless of the number of days it is used for securities business, provided the other conditions to the exception are satisfied.[38]

Based on the comments to NtM 02–52, NASD is proposing to retain the definition described in NtM 02–52, without the 50-business day restriction contained in the primary residence exception. The elimination of the 50-business day requirement contained in the primary residence exception should mitigate the additional registration and supervisory burdens on firms that would result from the proposed rule change. In addition, NASD believes these modifications would not disrupt the business model used by many NASD member firms.

Commenters also expressed concern that the temporary location exception in the proposed definition is too restrictive. The proposed definition provides an exception from branch office registration for a location, other than a primary residence, that is used for securities business less than 30 business days in any one calendar year and that satisfies the other conditions set forth in the primary residence exception. Certain commenters asked that the 30-business-day limitation be eliminated for many of the same reasons described above with respect to the 50-business day requirement in the primary residence exception. NASD, however, believes that limiting the number of days such location can be used is consistent with the intent of this exception. The exception from registration is for a temporary location, as opposed to a primary residence, and a bright-line test of what constitutes "temporary" is intended to make the application of this exception consistent.

Commenters also sought clarification as to the application of the office of convenience exception. The proposed definition provides an exception from branch office registration for any office of convenience, where associated persons occasionally and exclusively by appointment meet with customers, and that is not held out to the public. Commenters sought clarification on whether this exception applies to associated persons generally or is limited strictly to bank circuit riders.[39] In numerous discussions with members and others, NASD has made clear that this exception is applicable to all members that satisfy the conditions, not just bank circuit riders.

Commenters also raised concerns about the non-securities business location exception. The proposed definition provides an exception from branch office registration for any location that is used primarily to engage in non-securities activities and from which the associated person(s) effects no more than 25 securities transactions in any one calendar year so long as the address/phone number of the supervising office is set forth on all

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[19] *See, e.g.*, Allmerica Financial comment letter, dated August 28, 2002; Assist Investment Management Co., Inc. comment letter, dated October 18, 2002; Anderson LeNeave & Co. comment letter, dated September 13, 2002; B. Riley & Co. comment letter, dated September 10, 2002; BB&T Investment Services, Inc. comment letter, dated September 18, 2002; Carillon Investments, Inc. comment letter, dated September 16, 2002; Empire Securities Corporation of Southern California comment letter, dated September 17, 2002; GWR Investments, Inc. comment letter, dated October 25, 2002; Investment Centers of America, Inc. comment letter, dated August 30, 2002; Lesko Securities, Inc. comment letter, dated September 18, 2002; Packerland Brokerage Services, Inc. comment letter, dated September 9, 2002; Paradigm Equities, Inc. comment letter, dated October 18, 2002; Presidio Financial Services, Inc. comment letter, dated October 3, 2002; Private Portfolio, Inc. comment letter, dated August 22, 2002; Raike Financial Group, Inc. comment letter, dated September 9, 2002; Securian Financial Services, Inc. comment letter, dated September 6, 2002; and Triad Advisors, Inc. comment letter, dated September 20, 2002.

[20] *See, e.g.*, Associated Securities Corp. comment letter dated September 13, 2002; Horace Mann Investors, Inc. comment letter, dated September 20, 2002; Securian Financial Services, Inc. comment letter, dated September 6, 2002; and T. Rowe Price Investment Securities, Inc. comment letter, dated September 19, 2002.

[21] *See* The O.N. Equity Sales Company comment letter, dated October 21, 2002.

[22] *See, e.g.*, Mission Securities comment letter, dated September 17, 2002; and Oak Tree Securities comment letter, dated September 20, 2002.

[23] *See, e.g.*, Lesko Securities, Inc. comment letter, dated September 18, 2002; National Planning Holdings, Inc. comment letter, dated September 3, 2002; National Association of Independent Broker/Dealers comment letter, dated September 7, 2002; and Transamerica Financial Advisors comment letter, dated September 16, 2002.

[24] *See, e.g.*, Granite Securities, LLC comment letter, dated September 20, 2002; Equity Services, Inc. comment letter, dated September 19, 2002; and Lincoln Financial Advisors, Corp. comment letter, dated October 17, 2002.

[25] *See, e.g.*, AM&M Investment Brokers comment letter, dated September 23, 2002.

[26] *See* Horace Mann Investors, Inc. comment letter, dated September 20, 2002.

[27] *See* Lincoln Financial Services, Inc. comment letter, dated October 17, 2002.

[28] *See, e.g.*, Transamerica Financial Advisors comment letter, dated September 16, 2002; and Horace Mann Investors, Inc. comment letter, dated September 20, 2002.

[29] *See, e.g.*, Signator Investors, Inc. comment letter, dated October 16, 2002; and Granite Securities, LLC comment letter, dated September 20, 2002.

[30] *See, e.g.*, Equity Services, Inc. comment letter, dated September 19, 2002; 1st Global Securities, Inc. comment letter, dated September 4, 2002; Moloney Securities Co., Inc. comment letter, dated October 19, 2002; Safeco Investment Services, Inc. comment letter, dated October 11, 2002; State Farm Insurance Companies comment letter, dated October 18, 2002; Sunset Financial Services comment letter, dated October 21, 2002; and The O.N. Equity Sales Company comment letter, dated October 15, 2002.

[31] *See, e.g.*, The O.N. Equity Sales Company comment letter, dated October 15, 2002; and Metropolitan Life Insurance Company comment letter, dated September 30, 2002.

[32] *See, e.g.*, Empire Securities Corporation of Southern California comment letter, dated September 17, 2002; INVEST Financial Corporation comment letter, dated September 4, 2002; and Securian Financial Services, Inc. comment letter, dated September 6, 2002.

[33] *See, e.g.*, Securities Industry Association comment letter, dated October 21, 2002; and International Money Management Group, Inc. comment letter, dated September 26, 2002.

[34] *See, e.g.*, AM&M Investment Brokers comment letter, dated September 23, 2002.

[35] *See* Keystone Capital Corporation comment letter, dated September 7, 2002; and XCU Capital Corporation comment letter, dated September 16, 2002.

[36] *See, e.g.*, Pashley Financial comment letter, dated September 23, 2002; and Vasiliou & Company, Inc. comment letter, dated October 1, 2002.

[37] *See, e.g.*, GWR Investments, Inc. comment letter, dated October 25, 2002; and A.G. Edwards, Inc. comment letter, dated October 11, 2002.

[38] *See, e.g.*, Securian Financial Services, Inc. comment letter, dated September 6, 2002; and A.G. Edwards & Sons, Inc. comment letter, dated October 11, 2002.

[39] *See, e.g.*, BB&T Investment Services, Inc. comment letter, dated September 18, 2002.

advertisements. Commenters said that the non-securities business exception, which limits securities activities to no more than 25 securities transactions annually, is vague and that the threshold number is too low.[40] Commenters asked that the number of securities transactions allowed in any one-year be increased, or that certain systematic (automatic) payments not count towards the 25 securities transactions limit.[41] In this regard, NASD intends to provide interpretive guidance to members on a case-by-case basis regarding specific application of the exception.

Commenters also stated that the proposed rule is not in step with the prevalent use of modern communications technology to effect transactions from remote locations because it continues to use a "bricks and mortar" approach to the definition.[42] Commenters stated that modern communications technology, such as mobile telephones, laptop computers, and personal digital assistants (PDAs), is diminishing the need for branch offices to be in a physical location. With such technology, registered representative can effect transactions anywhere. These commenters asserted that consumers and investors now accept such means of conducting business and the proposed definition is outdated.[43] Several commenters also stated that the proposal, which would require the listing of branch office locations, including primary residences, might invade the privacy of registered representatives. The commenters stated that addresses of primary residence offices should not be made publicly available.[44]

Based on the comments to NtM 02–52, NASD is proposing changes to the original proposal as described above. NASD believes that these modifications would address a majority of concerns raised by commenters to the original proposal. Overall, NASD believes that the proposed definition would establish a broader national standard for classifying such locations and would provide administrative and cost efficiencies to members through the creation of a centralized registration system on CRD®. In addition, NASD believes that the proposed rule change would allow regulators to effectively monitor and audit locations and the activities conducted there without compromising investor protection. Each exception to the proposed branch office definition contains important safeguards and limitations. In particular, the primary residence exception contains the same safeguards provided in the Commission's Books and Records Rules exception for private residences (which also does not contain any restrictions on the number of business days an associated person may operate from his or her residence). NASD determined to remove the 50-business day requirement from the primary residence exception because NASD believes it does not serve any added regulatory benefit and, instead, imposes substantial costs and burdens to the industry. Based on the extensive comments from the industry, NASD, on balance, does not believe that the costs of such provision outweigh the benefits.

NASD would announce the effective date of the proposed definition of the term "branch office" in a Notice to Members. NASD expects the effective date of the proposed rule change would correspond with the commencement date of the centralized branch office registration system on CRD®.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve such proposed rule change, as amended, or

B. Institute proceedings to determine whether the proposed rule change, as amended, should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. In particular, the Commission seeks commenters' specific views on the primary residence exception and the divergent proposals by NASD and the NYSE with respect to the NYSE's proposed annual 50-business day limitation on engaging in securities activities from a primary residence.

Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Comments may also be submitted electronically at the following e-mail address: *rule-comments@sec.gov*. All comment letters should refer to File No. SR–NASD–2003–104. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, comments should be sent in hardcopy or by e-mail but not by both methods. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR–NASD–2003–104 and should be submitted by January 6, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[45]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–30987 Filed 12–15–03; 8:45 am]

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[40] *See, e.g.*, Northwestern Mutual Investment Services, LLC comment letter, dated September 20, 2002; and Carillon Investments, Inc. comment letter, dated September 16, 2002.

[41] *See, e.g.*, Equity Services, Inc. comment letter, dated September 19, 2002.

[42] *See, e.g.*, Associated Securities Corporation comment letter, dated September 13, 2002.

[43] *See, e.g.*, Lincoln Financial Advisors comment letter, dated October 17, 2002; and Source Capital Group comment letter, dated September 19, 2002.

[44] *See, e.g.*, Keystone Capital Corporation comment letter, dated September 7, 2002; Mission Securities Corporation comment letter, dated September 17, 2002; and West America Securities Corp. comment letter, dated September 17, 2002; and National Planning Holdings, Inc. comment letter, dated September 3, 2002.

[45] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48887; File No. SR–NASD–2003–110]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment Nos. 1 and 2 by the National Association of Securities Dealers, Inc. Relating to Uniform Hearing Procedures for and Consolidation of Rules Applicable to Expedited Proceedings

December 5, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 15, 2003, the National Association of Securities Dealers, Inc. ("NASD") filed with the Securities and Exchange Commission ("Commission"), the proposed rule change as described in items I, II, and III below, which items have been prepared by the NASD. On September 2, 2003, the NASD filed an amendment to the proposed rule change.[3] On November 18, 2003, the NASD again amended the proposed rule change.[4] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NASD is proposing to create a new rule series, the proposed NASD Rule 9550 Series, to consolidate, clarify and streamline those existing procedural rules that have an expedited proceeding component. The text of the proposed rule change is available at the NASD and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in item IV below. The NASD has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The NASD proposes to modify certain NASD rules that have an expedited proceeding component to make them more understandable and uniform, and to make the overall process for actions covered by such rules more efficient. Existing NASD rules recognize that expedited treatment is needed for certain types of actions. These actions fall into two general categories: (i) Those that involve misconduct capable of causing further harm to the investing public, other members or the integrity of the markets; and (ii) those that can be appropriately expedited for administrative ease. Unlike disciplinary actions that may concern complex sales-practice violations, the expedited actions that are affected by this proposal generally involve straightforward issues unrelated to complicated securities transactions (*e.g.*, whether the respondent paid an arbitration award or NASD fee, provided information requested by NASD staff, or complied with the net capital requirements).[5]

However, the present NASD rules that have provisions for fast-track procedures vary considerably in some respects and overlap in others, at times without any clear rationale. The proposed rule change, discussed in detail below, streamlines and clarifies the existing expedited rules and makes them more uniform. At the same time, the modifications, which do not abrogate any substantive rights held by members or associated persons, continue to ensure that expedited actions are fair to all parties. The current rules that have been renumbered and otherwise affected by the proposed rule change are as follows:

- NASD Rule 8220 Series (Suspension for Obstructing Investigations);[6]
- NASD Rule 9410 Series (Procedures for Regulating Activities of a Member Experiencing Financial or Operational Difficulties);[7]
- NASD Rule 9510 Series (Summary and Non-Summary Proceedings);[8]
- NASD Rule 9530 Series (Suspension or Cancellation for Failure to Pay Dues, Fees and Other Charges);[9] and

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Barbara Z. Sweeney, Senior Vice President and Corporate Secretary, NASD, to Kathy England, Assistant Director, Division of Market Regulation ("Division"), Commission dated August 29, 2003 ("Amendment No. 1"). Amendment No. 1 amended and superseded the proposed rule change in its entirety.

[4] *See* letter from Barbara Z. Sweeney, Senior Vice President and Corporate Secretary, NASD, to Kathy England, Assistant Director, Division, Commission dated November 17, 2003 ("Amendment No. 2"). Amendment No. 2 amended and superseded the proposed rule change in its entirety.

[5] In most instances, the issues raised by these types of proceedings are uncomplicated and the defenses are limited. For example, in a case involving a respondent's failure to pay an arbitration award, the issue presented is whether the member or person has paid the award. A respondent cannot collaterally attack the actual arbitration award. *See John G. Pearce*, 52 S.E.C. 796, 798, 1996 SEC LEXIS 1329, at *5 (1996) ("To permit a party dissatisfied with an arbitral award to attack it collaterally for legal flaws in a subsequent disciplinary proceeding would subvert the salutary objective that the NASD's [arbitration] resolution seeks to promote."); *see also James Anthony Morrill*, 51 S.E.C. 1162, 1164 n.6, 1994 SEC LEXIS 1766, at *6 (1994) (same). Similarly, in an action for failure to provide information, the issue presented is whether the respondent provided information requested by the NASD. It is well settled that respondents must fully and promptly cooperate with the NASD, *see Mark Allen Elliott*, 51 S.E.C. 1148, 1150, 1994 SEC LEXIS 1765, at *5–6 (1994), and respondents cannot second guess NASD information requests or impose conditions on responding. *See Joseph Patrick Hannan*, 53 S.E.C. 854, 859, 1998 SEC LEXIS 1955, at *11 (1998) ("[A]n NASD member may not 'second guess' or 'impose conditions on' the NASD's request for information."); *Michael David Borth*, 51 S.E.C. 178, 181, 1992 SEC LEXIS 3248, at *7 (1992) ("The Rules do not permit second guessing the NASD's requests" or permit a respondent "to shift his responsibility to others * * *"). The issues also are very narrow in a net capital case. Indeed, "[t]he gravamen of the charge is the conduct of business by the firm while its net capital is deficient. The cause of the deficiency does not bear on this issue." *Charters & Co. of Miami*, 43 S.E.C. 175, 177, 1966 SEC LEXIS 189, at *6 (1966). *See also Litwin Securities, Inc.*, 52 S.E.C. 1339, 1344–45, 1997 SEC LEXIS 1146, at *16 (1997) (holding that intent is irrelevant to whether a respondent violated the net-capital requirements).

[6] The current NASD Rule 8220 Series (Suspension for Obstructing Investigations) is now located at proposed NASD Rule 9552 (Failure to Provide Information or Keep Information Current).

[7] The current NASD Rule 9410 Series (Procedures for Regulating Activities of a Member Experiencing Financial or Operational Difficulties) is now located at proposed NASD Rule 9557 (Procedures for Regulating Activities Under NASD Rules 3130 and 3131 Regarding a Member Experiencing Financial or Operational Difficulties). As noted above, on September 4, 2003, the Commission approved certain NASD proposed changes to NASD Rules 3130 and 3131 and the NASD Rule 9410 Series. *See* Securities Exchange Act Release No. 48438 (September 4, 2003), 68 FR 53766 (September 12, 2003) (SR–NASD–2003–74) (Commission Approval Order of NASD Proposed Rule Change Regarding the Regulation of Activities of Members Experiencing Financial and/or Operational Difficulties).

[8] The current NASD Rule 9510 Series (Summary and Non-Summary Proceedings) has been separated into a number of individual proposed rules. Summary proceedings under NASD Rule 9511(a)(1) for actions authorized under section 15A(h)(3) of the Act are now located at proposed NASD Rule 9558 (Summary Proceedings for Actions Authorized by section 15A(h)(3) of the Act). Non-summary proceedings under NASD Rule 9511(a)(2)(A) for failure to comply with an arbitration award or related settlement agreement are now located at proposed NASD Rule 9554 (Failure to Comply with an Arbitration Award or Related Settlement). Non-summary proceedings under NASD Rule 9511(a)(2)(B) for failure to meet the qualification requirements or other prerequisites for access to the NASD or member services is now located at proposed NASD Rule 9555 (Failure to Meet the Eligibility or Qualification Standards or Prerequisites for Access to Services). Non-summary proceedings under NASD Rule 9511(a)(2)(C) for failure to adhere to certain public communication standards are now located at proposed NASD Rule 9551 (Failure to Comply with the Public Communication Standards). Finally, non-summary proceedings under NASD Rule 9511(a)(2)(D) for failure to comply with a temporary or permanent cease and desist order are now located at proposed NASD Rule 9556 (Failure to Comply with a Temporary or Permanent Cease and Desist Order). It should be noted that proposed NASD Rule 9556, along with the NASD Rule 9800 Series and related amendments adopted by SR–NASD–98–80, will expire on June 23, 2005, unless extended or permanently adopted by the NASD pursuant to Commission approval at or before such date.

[9] The current NASD Rule 9530 Series (Suspension or Cancellation for Failure to Pay Dues,

Continued

- NASD Rule 9540 Series (Failure to Provide Information or Meet the Eligibility and Qualification Standards).[10]

With this proposed rule change, the NASD believes that the first major improvement to the expedited proceedings provisions is that they are reorganized into a single rule series, the proposed NASD Rule 9550 Series, and each type of action is clearly labeled. At present, the various types of expedited proceedings are scattered throughout the NASD's rules, in many instances without clear headings,[11] increasing the likelihood of confusion for interested parties and adjudicators. Going forward, interested parties will simply need to review the NASD Rule 9550-Series, with its clearly marked subheadings, to ascertain their rights and obligations with regard to expedited actions.

The proposed amendments also consolidate some current expedited rules that have similar or overlapping provisions. For instance, current NASD Rules 8221(a) and (b) and 9541(a) and (b) have identical provisions that allow NASD staff to issue a notice of suspension if a member or associated person "fails to provide any information, report, material, data, or testimony." These provisions are consolidated into a single rule, proposed NASD Rule 9552, under the proposed amendments. Similarly, current NASD Rules 9511(a)(2)(B) and 9541(c) both cover situations where a member or associated person fails to meet eligibility or qualification standards. Under the proposal, these provisions are now consolidated and clarified under the amendments as proposed NASD Rule 9555. The NASD believes that the consolidation of these various rules will alleviate the current confusion over which rule to use in a particular situation.

The proposed amendments, moreover, separate into individual rules some provisions, the consolidation of which has caused confusion. The proposed amendments, for example, separate the four "non-summary" actions currently located in NASD Rule 9511(a)(2) for failure to pay an arbitration award, failure to meet eligibility or qualification standards, failure to comply with certain public communication standards and failure to comply with a cease and desist order. The NASD believes that these provisions were not logically connected to one another; they are separated into individual rules under the proposed amendments.[12] The substance of the four provisions remains intact, however. The NASD proposes to separate these four provisions into individual rules so that the rule headings clearly denote the substance of the actions. The NASD believes that the previous heading of "non-summary" proceedings was confusing because there are a number of rules that have an expedited component that could be viewed as "non-summary" in nature.

In addition, the proposed rule change modifies the authorization provision for initiating certain summary proceedings. Pursuant to section 15A(h)(3) of the Act,[13] existing NASD Rule 9512 allows the summary suspension or limitation of activities of a member or associated person when, for example, another self-regulatory organization has expelled, barred or suspended the member or associated person, or when the member is in such financial or operating difficulty that it cannot be permitted to continue to do business as a member with safety to investors, creditors, other members or the NASD. Currently, the NASD may only invoke NASD Rule 9512 with NASD Board authorization.[14] The proposed rule change would allow the President of NASD Regulatory Policy and Oversight or the Executive Vice President for NASD Regulatory Policy and Programs (rather than the Board) to authorize the issuance of summary proceeding notices, which begin the summary proceeding process. The NASD would only initiate a summary proceeding under circumstances demanding quick action. This modification to the authorization provision would avoid the logistical difficulties of having to obtain the necessary authorization from the Board on short notice, while at the same time ensuring that such decisions are made at the highest NASD staff levels.[15] Unlike the current summary provision, moreover, the modified provision provides that a respondent's request for a hearing generally will result in a stay of the action.[16]

The proposed amendments also reorganize the hearing provisions of these various rules into a single rule within the new NASD Rule 9550 Series. The NASD believes that the new hearing rule, proposed NASD Rule 9559, creates a uniform, efficient and manageable expedited procedure consistent with the NASD's obligations to the investing public, the securities markets and NASD members. Under the proposal, a respondent may request a hearing at any time prior to the effective date of the action contained in the notice issued pursuant to the new NASD Rule 9550 Series. Under the present scheme, some rules have five-day periods while others have seven-day periods to request hearings,[17] even though the notices often do not become effective for much longer periods of time.[18] This new provision ties the periods together, giving respondents more time to request a hearing without altering the expedited nature of the proceedings.

The NASD believes that the proposed NASD Rule 9550 Series also simplifies the actual hearing process in a number of ways. First, the rule series channels all requests for hearings to the Office of Hearing Officers ("OHO"). At present, various expedited proceedings are held before different adjudicative bodies—*e.g.*, NASD Board hearing panels, National Adjudicatory Council ("NAC") hearing panels, OHO hearing panels, Hearing Officers—with little justification. This practice has proven to be cumbersome. Under the proposed amendments, respondents file a written request for a hearing with OHO. For actions involving a failure to pay an arbitration award or NASD fees, a Hearing Officer from OHO will act as the sole adjudicator, as is the current practice. For all other matters involving expedited proceedings, an OHO-appointed hearing panel, consisting of a hearing officer and two hearing panelists, will act as the adjudicative body.[19] Second, the amendments allow adjudicators to conduct hearings by telephone. Third, the proposed rule series will allow various expedited actions to be consolidated, eliminating the need for parties to litigate related matters in separate venues.[20] In brief, the NASD believes that the fairness of the process will not be impaired—and the efficiency will be improved—by these changes.

Furthermore, the NASD believes that the proposed NASD Rule 9550 Series provides respondents with greater protection by mandating that the action be stayed while the matter is pending, save for limited circumstances. The current rules with expedited components take different approaches as to whether a request for a hearing stays the action.[21] In general, under the proposed NASD Rule 9550 Series, a request for a hearing automatically stays the action, unless the Hearing Officer orders otherwise (*e.g.*, where there is a threat of harm to the public or other members if the suspension or limitation is not immediately effective). In the ordinary case, this provision will allow respondents to be heard before the suspension, bar or expulsion takes effect. However, the streamlined procedures for final NASD action, discussed below, ensure that the action will not be stayed for a prolonged period (as can now happen due, in part, to the infrequency of NAC and NASD Board meetings and the difficulty of using special mailing ballots). The NASD believes that the rule change strikes an appropriate balance between the need to ensure fairness to respondents and the need for swift action in appropriate cases.

As indicated above, the NASD believes that the proposed NASD Rule 9550 Series streamlines the procedures for final NASD action. In general, hearings must be conducted and matters resolved within a specified, shortened timeframe once a respondent requests a hearing.[22] The NASD believes that the use of such deadlines is consistent with the Commission's recent adoption of amendments to its Rules of Practice that impose binding completion dates in certain Commission administrative proceedings.[23] The NASD believes that the deadlines also are consistent with both the Commission's and the NASD's emphasis on "real-time enforcement."

Once the hearing panel or Hearing Officer issues the initial decision, the NAC's Review Subcommittee has the ability to call the matter for review in a condensed timeframe. As is currently the case with most expedited rules, respondents will not have the right to appeal the matter to the NAC,[24] and the NASD Board will not have the ability to call the matter for review. Thus, the hearing panel or Hearing Officer decision, if not called for review by the NAC, is the NASD's final action. However, the respondent would have the ability to appeal a hearing panel or Hearing Officer decision to the Commission.[25] The NASD believes that these provisions ensure that respondents have a right to a full and fair hearing before OHO and that the NAC has the ability to call matters for review when appropriate, while eliminating time-consuming review that can significantly delay the effectiveness of the subject action without necessarily adding benefit to the decision-making process in these uncomplicated matters.[26]

Finally, NASD no longer refers to itself or its subsidiary, NASD Regulation, Inc., using its full corporate name, "the Association," "the NASD"

Fees and Other Charges) is now located at proposed NASD Rule 9553 (Failure to Pay NASD Dues, Fees and Other Charges).

[10] The current NASD Rule 9540 Series (Failure to Provide Information or Meet the Eligibility and Qualification Standards) has been combined with two proposed rules, NASD Rules 9541(a) and (b) regarding failure to provide information is now located at proposed NASD Rule 9552 (Failure to Provide Information or Keep Information Current). NASD Rule 9541(c) regarding failure to meet the eligibility and qualification standards is now located at proposed NASD Rule 9555 (Failure to Meet the Eligibility or Qualification Standards or Prerequisites for Access to Services).

[11] For instance, NASD Rule 9511(a)(2) covers three distinct and unrelated types of conduct without any description in the title beyond "non-summary proceedings."

[12] As discussed above, current NASD Rule 9511(a)(2)(A) (Failure to Comply with an Arbitration Award) is now located at proposed NASD Rule 9554. Current NASD Rule 9511(a)(2)(B) (Failure to Meet Eligibility or Qualification Standards) is now located at proposed NASD Rule 9555. Current NASD Rule 9511(a)(2)(C) (Failure to Comply with Certain Public Communication Standards) is now located at proposed NASD Rule 9551. Finally, current NASD Rule 9511(a)(2)(D) (Failure to Comply with a Temporary or Permanent Cease and Desist Order) is now located at proposed NASD Rule 9556.

[13] 15 U.S.C. 78*o*–3(h)(3).

[14] The present requirement that the NASD Board must authorize such actions is set forth in NASD's rule and not in the Act.

[15] This proposed change makes the authorization provision for summary proceedings consistent with the authorization provision for temporary cease and desist orders under NASD Rule 9810(a).

[16] As mentioned *supra*, the summary proceedings provisions have been renumbered and will be located at proposed NASD Rule 9558.

[17] *Compare* NASD Rules 8222(a) (a respondent must request a hearing within *five* days of the service of the notice); 9413(a) (same); 9532(a) (same); 9542(a) (same) *with* NASD Rule 9514(a)(1) (a respondent must request a hearing within *seven* days of the service of the notice).

[18] See, *e.g.*, NASD Rules 8221–22 (respondent must request hearing within five days of service of notice but the notice of suspension does not become effective for 20 days); NASD Rules 9531–32 (respondent must request hearing within five days of the notice but the notice of suspension or cancellation does not become effective until 15 days after service of the notice); NASD Rule 9541–42 (respondent must request hearing within five days of service of notice but the notice of suspension does not become effective for 20 days).

[19] The Chief Hearing Officer will select as Panelists persons who meet the qualifications delineated in NASD Rule 9231(b).

[20] It is not uncommon for a firm to experience multiple, related problems, for example, a financial crisis, issues about the qualifications of the Financial Operations Principal, and a failure to provide information in response to NASD staff's queries about the problems. Under the current rules, NASD staff would be required to initiate multiple proceedings to address the issues.

[21] *Compare* NASD Rule 8220 Series (request for a hearing does not stay the action); NASD Rule 9514(c)(1) (request for a hearing does not stay the action); *with* NASD Rule 9413(c) (request for a hearing does stay the action); NASD Rule 9514(c)(2) (request for a hearing does stay action as to certain alleged violations but does not as to others); NASD Rule 9532(a) (request for a hearing does stay the action); NASD Rule 9542(a) (request for a hearing does stay the action).

[22] For instance, proposed NASD Rule 9559(f) requires that hearings for failure to comply with cease and desist orders, summary proceedings and members experiencing financial or operational difficulties be held within 14 days, and hearings for all other actions be held within 60 days of a request for a hearing. In addition, under proposed NASD Rule 9559(o), OHO must issue a decision in cases involving a failure to comply with cease and desist orders, a summary proceeding or a member experiencing financial or operational difficulty within 21 days and in all other cases within 60 days of the date of the close of the hearing. However, the Hearing Officer or, if applicable, hearing panel is given flexibility to manage the progress of the case. In some instances, parties legitimately may need more time to explore the issues in the case, gather and provide detailed documentation, make preparations for witnesses, draft and file motions, etc. For good cause shown, or with the consent of all of the parties to a proceeding, the Hearing Officer or, if applicable, the hearing panel may extend or shorten any time limits prescribed by the rule. The proposed rule change thus gives adjudicators the discretion to adapt to the circumstances of each case.

[23] *See* Release Nos. 33–8240, 34–48018, 35–27686, 39–2408 (June 11, 2003), 68 FR 35787 (June 17, 2003) (Commission Adoption of Amendments to Rules of Practice). In the release, the Commission stated, "Based upon [our] experience with non-binding completion dates, the Commission has determined that timely completion of proceedings can be achieved more successfully through the adoption of mandatory deadlines and procedures designed to meet these deadlines." *Id.* The Commission also stated, "Any and all deadlines and timelines established by these amendments to the Commission's Rules of Practice confer no substantive rights on respondents." *Id.* at 35788. As with the Commission's amendments, the deadlines and timelines established by the NASD's proposed amendments for hearing panels and the NAC to hold hearings and issue decisions confer no substantive rights on respondents.

[24] Under many of the existing rules with expedited components, respondents may not appeal the matter to an NASD appellate body, such as the NAC. For example, the NAC appoints the original, "trial level" hearing panel in actions under the NASD Rule 8220 Series (failure to provide information). The NASD Board appoints the hearing panel in actions under the NASD Rule 9510 Series (summary and non-summary proceedings). Under neither rule series does a respondent have any right of appeal to an internal, NASD appellate body. Similarly, an OHO appointed hearing panel's decision in actions under the NASD Rule 9410 Series (member experiencing financial or operational difficulties) and NASD Rule 9530 (failure to pay fees) is not appealable to the NAC or any other internal, NASD appellate body under the existing system.

[25] As is currently the case, a respondent's appeal of an expedited action to the Commission would be governed by Section 19(f) of the Act. *See William J. Gallagher*, Securities Exchange Act Release No. 47501, 2003 SEC LEXIS 599, at *5 (March 14, 2003) (reviewing appeal involving failure to pay arbitration award under Section 19(f) of the Act and explaining that the Commission need only to find that "'the 'specific grounds' on which the SRO based its action 'exist in fact' "). Of course, an adjudicator's determination regarding a request for extraordinary relief (*e.g.*, a motion for leave to file a late request for a hearing) is not appealable to the Commission. *See Warren B. Minton, Jr.*, Securities Exchange Act Release No. 46709, 2002 SEC LEXIS 2712, at *9–10 (October 23, 2002) ("[W]e do not have jurisdiction to review the NASD's denial of Minton's motion to vacate the default. * * * [T]he NASD merely rejected Minton's collateral attack on the NASD's [previous] action. * * * [E]ven if an applicant is adversely affected by the NASD's denial of a motion to set aside a default, that fact 'does not transform the denial into a reviewable NASD order.' "); *Gary A. Fox*, Securities Exchange Act Release. No. 46511, 2002 SEC LEXIS 2381, at *3–5 (September 18, 2002) ("[W]e are precluded from considering an applicant's application for review if that applicant failed to follow the NASD's procedures. * * * Fox failed to respond to NASD requests for information, failed to respond to the * * * notice of his suspension, and failed to apply for reinstatement within the time required". [W]e are [thus] precluded from considering Fox's application for review.").

[26] *See supra* note 5 and accompanying text.

or "NASD Regulation, Inc." Instead, the NASD uses "NASD" unless otherwise appropriate for corporate or regulatory reasons. Accordingly, the proposed rule change replaces several references to "the Association" and "the NASD" in the text of the proposed rule change with the name "NASD" and deletes several references to "NASD Regulation, Inc." Although the proposal would delete the name "NASD Regulation, Inc." NASD Regulation, Inc. will continue to perform the functions described in the rule.

2. Statutory Basis

The NASD believes that the proposed rule change is consistent with the provisions of section 15A(b)(6) of the Act,[27] which requires, among other things, that the NASD's rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. The NASD believes that the proposed rule change is consistent with the provisions of section 15A(b)(7) of the Act,[28] which provides that NASD members, or persons associated with its members, are appropriately disciplined for violations of any provisions of the Act or the NASD's rules.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the NASD consents, the Commission will:

A. By order approve such proposed rule change; or

[27] 15 U.S.C. 78o–3(b)(6).

[28] 15 U.S.C. 78o–3(b)(7).

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Comments may also be submitted electronically at the following e-mail address: *rule-comments@sec.gov*. All comment letters should refer to File No. SR–NASD–2003–110. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, comments should be sent in hardcopy or by e-mail but not by both methods. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the File No. SR–NASD–2003–110 and should be submitted by January 6, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[29]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–30989 Filed 12–15–03; 8:45 am]

BILLING CODE 8010–01–P

[29] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48893; File No. SR–PCX–2003–38]

Self-Regulatory Organizations; Order Granting Approval to Proposed Rule Change and Amendment No. 1 Thereto by the Pacific Exchange, Inc. Relating to the Establishment of a Cross-and-Post Order Type

December 8, 2003.

I. Introduction

On July 23, 2003, the Pacific Exchange, Inc. ("PCX") filed with the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 [1] and Rule 19b–4 thereunder,[2] a proposed rule change to implement a new order type, the "Cross-and-Post Order," for use on the Archipelago Exchange ("ArcaEx"). On September 25, 2003, the PCX submitted Amendment No. 1 to the proposed rule change.[3] Notice of the proposed rule change, as amended, was published for comment in the **Federal Register** on October 29, 2003.[4] The Commission received no comments in response to the proposal. This order approves the PCX's proposed rule change.

II. Description

The PCX, through its wholly owned subsidiary, PCX Equities, Inc. ("PCXE") proposed to adopt a new order type called a "Cross-and-Post Order." The Cross-and-Post Order would be an order that is executed pursuant to the existing "Cross Order" rules [5] while allowing for any residual portion of the Cross Order to be displayed in the Arca Book. Further, the ArcaEx trading system would cancel a Cross-and-Post Order at the time of order entry if: (i) The cross price would cause an execution at a price that trades through the NBBO; or (ii) the cross price is between the BBO and does not improve the BBO by the minimum price improvement increment ("MPII") pursuant to PCXE Rule 7.6(a), Commentary .06.[6]

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Amendment No. 1 replaced the original filing in its entirety.

[4] *See* Securities Exchange Act Release No. 48676 (October 21, 2003), 68 FR 61711 (SR–PCX–2003–38).

[5] A "Cross Order" is a two-sided order with instructions to match the identified buy-side with the identified sell-side at a specified price (the "cross price"). *See* PCXE Rule 7.31(s).

[6] The MPII on ArcaEx is equal to $0.01 or 10% of the NBBO spread, whichever is greater. See PCXE Rule 7.6(a), Commentary .06. Under current PCXE rules, the MPII requirements must be satisfied in the execution of Cross Orders. *See* PCXE Rule 7.31(s).

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

[9] In approving this rule, the Commission has considered the proposal's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

[10] 15 U.S.C. 78s(b)(2).

[11] 17 CFR 200.30–3(a)(12).

III. Discussion

After careful review, the Commission finds that the proposed rule change is consistent with section 6(b) of the Act [7] in general and furthers the objectives of section 6(b)(5) of the Act.[8] The Commission believes that the proposed rule change is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments and perfect the mechanism of a free and open market.[9]

The Commission believes that Cross-and-Post Orders will facilitate order interaction on ArcaEx and increase investor choices with respect to executing orders. Currently on ArcaEx, any portion of a Cross Order that remains unexecuted is canceled. Customers must then re-enter the residual portion of the order if they wish to have it posted in the Arca Book. The Commission believes that the Cross-and-Post Order will enable automatic electronic posting of the residual portion of the Cross-and-Post Order.

IV. Order Granting Approval

For the foregoing reasons, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[10] that the proposed rule change, as amended (SR–PCX–2003–38), is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–30939 Filed 12–15–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48888; File No. SR–PCX–2003–46]

Self-Regulatory Organizations; Order Approving a Proposed Rule Change and Amendment No. 1 Thereto by the Pacific Exchange, Inc. Relating to Transmission of Identity Orders

December 5, 2003.

I. Introduction

On September 5, 2003, the Pacific Exchange, Inc. ("PCX") filed with the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b–4 thereunder,[2] a proposed rule change to offer an identity order feature to its Equities Trading Permit ("ETP") Holders. On September 30, 2003, the Exchange filed Amendment No. 1 to the proposed rule change. The proposed rule change, as amended, was published for public comment in the **Federal Register** on October 16, 2003.[3] The Commission received one comment letter on the proposal.[4] This order approves the proposed rule change, as amended.

II. Description of the Proposal

The PCX proposes to offer ETP Holders the ability to display their identities with orders entered into the Archipelago Exchange ("ArcaEx"). The identity order feature would offer an ETP Holder the choice to display its unique ETP Identifier ("ETPID") with a specified order. Alternatively, an ETP Holder may choose to remain anonymous.

Any identity orders entered into ArcaEx would be included in the Arca Book data feed that ArcaEx makes available free of charge to Users [5] and other subscribers. Identity orders would also be included in the ArcaEx limit order book that is displayed for free on the ArcaEx Web site.

ArcaEx would process orders designated as identity orders no differently from other orders sent to ArcaEx. PCXE Rules 7.36 (Order Ranking and Display) and 7.37 (Order Execution) set forth the order interaction process for orders entered on the ArcaEx. Orders designated as identity orders would be ranked, displayed, and executed under the same criteria (under PCXE Rules 7.36 and 7.37) as anonymous orders in the ArcaEx. ArcaEx has no capacity limitations on the number of identity orders that could be displayed for an individual security.

The purpose of the identity order feature is to provide more visibility to those ETP Holders who may choose to identify their ETPIDs with their trading interest in a particular security. The PCX believes that the identity order feature would benefit investors by increasing market transparency in an automatic execution venue such as ArcaEx. By providing a mechanism by which ETP Holders could display their identities, ArcaEx hopes to attract more orders and contribute more liquidity to the market while adding to the transparency of trading interest.

III. Summary of Comments

As noted above, the Commission received one comment in response to the proposed rule change, which supported the proposal. The commenter believed that allowing ETP Holders to choose to display their orders with their unique ETPIDs promotes market transparency in general and is therefore consistent with a key National Market System goal. The commenter also noted that the ability to trade on ArcaEx on an attributed or anonymous basis would be similar to the ability of participants in the Nasdaq Stock Market, Inc's SuperMontage to trade on an attributed basis using their own MPID or on an anonymous basis using the SIZE feature.

IV. Discussion

To facilitate the identity order feature, the PCX has proposed to amend PCXE Rules 7.7(b) and 7.36(b). Currently, PCXE Rule 7.7(b) prohibits an ETP Holder from transmitting information "regarding a bid, offer or other indication of an order" to a non-ETP Holder until the bid, offer or other indication of information has been disclosed and permission to transmit the information has been obtained from the originating ETP Holder. Conversely, PCXE Rule 7.36(b) provides for anonymity in displaying orders in the Display Order Process [6] of the ArcaEx Book.[7]

The Exchange wishes to revise PCXE Rule 7.36(b) to state that except as

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 48598 (October 7, 2003), 68 FR 59663.

[4] *See* letter dated November 21, 2003, from Duncan L. Niederauer, Managing Director, Spear, Leeds and Kellogg to Jonathan G. Katz, Secretary, Commission.

[5] *See* PCXE Rule 1.1(yy) for the definition of "User."

[6] *See* PCXE Rule 7.36(a)–(c) for a discussion of the Display Order Process.

[7] *See* PCXE Rule 1.1(a) for a definition of Arca Book.

provided by PCXE Rule 7.7(b), all orders at all price levels will continue to be displayed on an anonymous basis. Therefore, a User could choose to either display its ETPID or remain anonymous.

Additionally, the Exchange proposes to revise PCXE Rule 7.7(a)[8] to reflect the proposed changes to PCXE Rules 7.7(b) and 7.36(b).

In the proposed rule change, the PCX represented that identity orders would be centrally processed for execution by computer, subject to the same price, time, and priority rules that govern the automated matching and execution of orders. According to the PCX, the use of identity orders on ArcaEx would not confer ETP Holders any time and place advantages over other orders on ArcaEx, and would therefore comply with the requirements and policy concerns underlying section 11(a) of the Act.[9] The PCX also represented that the proposed rule change would not alter the responsibilities of market makers and would not change the manner in which market maker orders are processed and executed within ArcaEx. Finally, the PCX represented that PCXE has developed procedures to maintain a high level of surveillance of ETP Holders and their use of specific order types, including mechanisms to help detect manipulation of prices on ArcaEx, through the use of identity orders or otherwise.

Based, in part, on the PCX's representations, the Commission is approving the PCX's introduction of the identity order feature. The Commission finds that the proposed rule change, as amended, is consistent with the requirements of section 6 of the Act [10] and the rules and regulations thereunder applicable to a national securities exchange.[11] In particular, the Commission finds that the identity order feature is consistent with section 6(b)(5) of the Act,[12] which requires, among other things, that the Exchange's rules be designed to perfect the mechanisms of a free and open market and, in general, to protect investors and the public interest. The Commission believes that providing ETP Holders with the ability to display their identity on an order-by-order basis will add to market transparency by offering market participants the option of anonymity in placing orders on the PCX.

[8] PCXE Rule 7.7(a) provides that "[t]he names of ETP Holders bidding for or offering securities through the use of the facilities of the Corporation shall not be transmitted from the facilities of the Corporation to a non-holder of an ETP. No ETP Holder having the right to trade through the facilities of the Corporation and who has been a party to or has knowledge of an execution shall be under obligation to divulge the name of the buying or selling firm in any transaction."

[9] 15 U.S.C. 78k(a).

[10] 15 U.S.C. 78f(b)

[11] In approving the proposed rule change, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[12] 15 U.S.C. 78f(b)(5).

V. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[13] that the proposed rule change (SR–PCX–2003–46), is approved, as amended.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–30940 Filed 12–15–03; 8:45 am]

BILLING CODE 8010–01–P

[13] 15 U.S.C. 78s(b)(2).

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48875; File No. SR–Phlx–2003–75]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. To Adopt Commentary .04 of Its Rule 1064 To Allow the Concurrent Representation of Hedging Stock Positions With Option Facilitation Orders in the Trading Crowd

December 4, 2003.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on November 17, 2003, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to adopt Commentary .04 to Phlx Rule 1064, Crossing, Facilitation, and Solicited Orders, to allow the concurrent representation of hedging stock positions with option facilitation orders in the trading crowd ("Stock Tied Up Orders"). The text of the proposed rule change is set forth below. Text in italics indicates material to be added.

* * * * *

Crossing, Facilitation and Solicited Orders

Rule 1064. (a)–(c) No change.

(d) No member organization or person associated with a member or member organization who has knowledge of the material terms and conditions of a solicited order, an order being facilitated, or orders being crossed, the execution of which are imminent, shall enter, based on such knowledge, an order to buy or sell an option for the same underlying security; an order to buy or sell the security underlying such class; or an order to buy or sell any related instrument until (i) the terms and conditions of the order and any changes in the terms of the order of which the member, member organization or person associated with a member or member organization has knowledge are disclosed to the trading crowd, or (ii) the trade can no longer reasonably be considered imminent in view of the passage of time since the order was received. For purposes of this Rule, an order to buy or sell a "related instrument" means, in reference to an index option, an order to buy or sell securities comprising 10% or more of the component securities in the index or an order to buy or sell a futures contract on an economically equivalent index.

Commentary:

.01–.03. No change.

.04. Rule 1064(d) does not prohibit a member or member organization from buying or selling a stock position following receipt of a customer's options order but prior to announcing such order to the trading crowd, provided that:

(a) such member or member organization shall create a written record that it is engaging in a "Stock Tied Up Order" (as described below) prior to buying or selling any shares of the underlying stock in the hedging stock position;

(b) such hedging stock position is: (i) comprised of the same underlying stock applicable to the option order; (ii) announced concurrently with the option order in the crowd; (iii) offered to the crowd in its entirety; and (iv) offered, at the stock execution price received by the member organization introducing the order, to any option crowd participant who has established parity or priority for the related options;

(c) the hedging stock position does not exceed the options order on a delta basis; and

(d) the hedging stock order is transacted promptly upon receipt of the option order and, if brought to the Exchange, is brought without undue delay to the crowd. Crowd participants may participate in the option transaction without participating in the hedging stock position. Combination option and stock positions offered in reliance upon this Commentary .04 shall be referred to as "Stock Tied Up Orders."

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Phlx represents that the purpose of the proposed rule change is to expressly adopt into Exchange rules concerning the handling of certain option orders, Stock Tied Up Orders, to bring clarity to the practice of representing hedging stock positions in conjunction with option orders in the trading crowd.

In a Stock Tied Up Order, Exchange members would be permitted to hedge a customer options order with the underlying security, and then forward the customer order and hedging stock position to a Floor Broker with instructions to represent the customer order together with the hedging stock position in the underlying security to the options crowd. Under the proposal, the trading crowd would have the choice to participate in the option portion of the transaction or both the option and stock hedging position.

The proposal would also include a number of conditions which must be satisfied both prior to the time a Stock Tied Up Order is represented to the options trading crowd, and concurrently with the representation of a Stock Tied Up Order in the trading crowd.

Currently, Exchange market participants trading options employ a number of strategies that involve multiple securities, including non-option components. For example, Exchange Rule 1066 permits Exchange members to engage in the trading of spread [3] and combination [4] orders, as well as synthetic options.[5] The Stock Tied Up Order would also include an option component and a stock component.

The proposed rule would require members and member organizations to satisfy certain conditions prior to representing Stock Tied Up Orders in the crowd. First, members or member organizations would be required to create a written record that it is engaging in a Stock Tied Up Order prior to buying or selling any shares of the underlying stock in the hedging stock position. The Exchange states that the purpose of this provision is to create a record to ensure that stock trades would be appropriately associated with the related options order. The Exchange believes that this requirement should enable the Exchange to surveil for compliance with the requirements of proposed Commentary .04(b) of Phlx Rule 1064, as discussed below, by identifying the specific purchase or sell orders relating to the hedging stock position.

Secondly, proposed Commentary .04(b) of Phlx Rule 1064 would require that members and member organizations that have decided to engage in Stock Tied Up Orders for representation in the trading crowd would have to ensure that the hedging stock position associated with the Stock Tied Up Order is comprised of the same underlying stock applicable to the option order. For example, if the option component of the Stock Tied Up Order overlies XYZ stock, then the hedging stock position associated with the order would have to be XYZ stock. The Exchange states that the purpose of this provision is to ensure that the hedging stock position would be for the same stock as the overlying option, thus allowing crowd participants who may be considering participation in a Stock Tied Up Order to adequately evaluate the risk associated with the option as it relates to the actual underlying stock. Occasionally, crowd participants hedge option positions with stock that is related to the option, such as the stock of an issuer in the same industry, but not the actual stock associated with the option. The proposed rule change would not allow such a "related" hedging stock position, but would require the hedging stock position to be the actual security underlying the option.

The proposal would require that the hedging stock position be announced concurrently with the option order in the crowd, offered to the crowd in its entirety, and offered at the stock execution price received by the member organization introducing the order to any option crowd participant who has established parity or priority for the related options. The Phlx states that the purpose of these requirements is to ensure that the hedging stock position represented to the crowd would be a good faith effort to provide crowd participants with the same opportunity as the member or member organization introducing the Stock Tied Up Order to compete for the option order. For example, if the member or member organization introducing the Stock Tied Up Order were to offer 1,000 XYZ option contracts to the crowd (overlying 100,000 shares of XYZ stock) and concurrently offers only 30,000 shares of the underlying stock, crowd participants might only be willing or able to participate in 300 of the option contracts offered, if the hedging stock position cannot be obtained at a price as favorable as the stock hedging position offering price, if at all. The Exchange states that the effect of this would be to place the crowd at a disadvantage relative to the introducing member firm for the remaining 700 option contracts

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] A spread order is an order to buy a stated number of option contracts and to sell the same number of option contracts, in a different series of the same class of options. In the case of adjusted stock option contracts, a spread order need not consist of the same number of put and call contracts if such contracts both represent the same number of underlying shares or foreign currency at option, in a different series of the same class of options. *See* Exchange Rule 1066(f)(1).

[4] A combination order is an order involving a number of call option contracts and the same number of put option contracts in the same underlying security and representing the same number of shares at option (if the underlying security is a stock or Exchange-Traded Fund Share) or the same number of foreign currency units (if the underlying security is a foreign currency). A combination order includes a conversion (generally, buying a put, selling a call, and buying the underlying stock or Exchange-Traded Fund Share) and a reversal (generally, selling a put, buying a call, and selling the underlying stock or Exchange-Traded Fund Share). In the case of adjusted option contracts, a combination order need not consist of the same number of shares at option. *See* Exchange Rule 1066(f)(3).

[5] A synthetic option order is an order to buy or sell a stated number of option contracts and buy or sell the underlying stock or Exchange-Traded Fund Share in an amount that would offset (on a one-for-one basis) the option position. For example:

(i) Buy-write: An example of a buy-write is an order to sell one call and buy 100 shares of the underlying stock or Exchange-Traded Fund Share.

(ii) Synthetic put: An example of a synthetic put is an order to buy one call and sell 100 shares of the underlying stock or Exchange-Traded Fund Share.

(iii) Synthetic call: An example of a synthetic call is an order to buy (or sell) one put and buy (or sell) 100 shares of the underlying stock or Exchange-Traded Fund Share. *See* Exchange Rule 1066(g).

in the Stock Tied Up Order, and thus create a disincentive for the crowd to bid or offer competitively for the remaining 700 option contracts. The Exchange believes that the requirement to present the hedging stock position concurrently with the option order in the crowd and offered to the crowd in its entirety at the stock execution price received by the member organization introducing the order should ensure that the crowd would be competing on a level playing field with the introducing member or member organization to provide the best price to the customer.

In addition, the proposal would require that the hedging stock position not exceed the options order on a delta basis.[6] For example, in the situation where a Stock Tied Up Order involves the simultaneous purchase of 100 shares of XYZ stock and the sale of 1 XYZ call contract (known as a "buy-write"), and the delta of the option is 100, it would be considered "hedged" by 100 shares of stock. Accordingly, the proposed rule would not allow the introducing member firm to purchase more than 100 shares of stock in the hedging stock position. The Exchange believes that it is reasonable to require that the hedging stock position be in amounts equivalent to the size of the related options order on a delta basis, and not for a greater number of shares of stock. The Exchange believes that the proposed rule change would support its view that the member or member organization introducing the Stock Tied Up Order be guided by the notion that any excess hedging activity could be detrimental to the eventual execution price of the customer order. Consequently, while delta estimates may vary slightly, the introducing member or member organization would be required to assume hedging stock positions not to exceed the equivalent size of the options order on a delta basis.

The proposed rule change would also require that the hedging stock order be transacted by the member or member organization introducing the Stock Tied Up Order promptly upon receipt of the option order, and, if brought to the Exchange, such order would be required to be brought without undue delay to the crowd. The Exchange believes that in many circumstances the member or member organization introducing the Stock Tied Up Order would best serve the interest of the customer by establishing the hedging stock position over a brief period of time, rather than by way of a block-sized market order that could be of high-impact to the stock price. However, the Exchange states that the "prompt" requirement of the proposed rule is intended to ensure that this working period be brief so that the hedging stock position could be brought to the Floor under optimal circumstances for crowd participants to compete most effectively. To accomplish this, the Exchange believes that the hedging stock position must be reasonably related to the price of the option order upon receipt of the option order. In the event a delay does occur and the stock price becomes unattractive as a hedge, the proposed rule would provide that the crowd participants could elect to participate in the option order without participating in the hedging stock position.

Finally, while the particular circumstances surrounding each transaction on the Exchange's options floor are different, the Exchange does not believe, as a general proposition, that the Stock Tied Up Order would be inherently harmful or detrimental to customers. The fact that the parties to such a trade end up fully hedged may contribute to the best execution of the orders, and, in any event, participants continue to be governed by, among other things, their best execution responsibilities.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act[7] in general, and furthers the objectives of Section 6(b)(5) of the Act[8] in particular, because it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest, by establishing rules governing Stock Tied Up Orders, which include specific requirements and procedures to be followed prior to and during representation of such orders in the crowd.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. In particular, the Commission seeks commenters' specific views on whether the proposed rule change is consistent with the Act. What would be the impact under the proposed rule change of allowing Phlx members to hedge large options orders while avoiding pressures on the market for the underlying securities that can result from the reporting of such options transactions to the tape? Would the proposed rule change violate prohibitions on front running? Should the proposed rule change provide specific standards to determine when a member's hedging stock position does not exceed the options order on a delta basis?

Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Comments may also be submitted electronically at the following e-mail address: *rule-comments@sec.gov*. All comment letters should refer to File No. SR–Phlx–2003–75. This file number should be included on the subject line if e-mail is used. To help us process and review comments more efficiently, comments should be sent in hardcopy or by e-mail but not by both methods. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Phlx.

All submissions should refer to file number SR–Phlx–2003–75 and should be submitted by January 6, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–30941 Filed 12–15–03; 8:45 am]

BILLING CODE 8010–01–P

[6] The price of an option is not completely dependent on supply and demand, nor on the price of the underlying security. Specialists and ROTs price options based on basic measures of risk as well. One of these such measures, delta, is the rate of change in the price of an option as it relates to changes in the price of the underlying security. The delta of an option is measured incrementally based on movement in the price of the underlying security. For example, if the price of an option increases or decreases by $1.00 for each $1.00 increase or decrease in the price of the underlying security, the option would have a delta of 100. If the price of an option increases or decreases by $.50 for each $1.00 increase or decrease in the price of the underlying security, the option would have a delta of 50. *See, e.g.*, Securities Exchange Act Release No. 45575 (March 15, 2002), 67 FR 13395 (March 22, 2002) (SR–Phlx–2001–25).

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

[9] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[CVP SBIC, L.P.; License No. 09/79–0449]

Notice Seeking Exemption Under Section 312 of the Small Business Investment Act, Conflicts of Interest

Notice is hereby given that CVP SBIC, L.P., 1010 El Camino Real, Suite 250, Menlo Park, CA 94025, a Federal Licensee under the Small Business Investment Act of 1958, as amended ("the Act"), in connection with the financing of a small concern, has sought an exemption under section 312 of the Act and § 107.730, Financings Which Constitute Conflicts of Interest of the Small Business Administration ("SBA") Rules and Regulations (13 CFR 107.730). CVP SBIC, L.P. proposes to provide equity/debt security financing to Telcontar. The financing is contemplated for national sales force expansion and working capital.

The financing is brought within the purview of § 107.730(a)(1) of the Regulations because Cardinal Venture Partners, L.P. and Cardinal Venture Affiliates, L.P., Associates of CVP SBIC, L.P., collectively own more than ten percent of Telcontar.

Notice is hereby given that any interested person may submit written comments on the transaction to the Associate Administrator for Investment, U.S. Small Business Administration, 409 Third Street, SW., Washington, DC 20416.

Dated: November 20, 2003.

Jeffrey Pierson,

Associate Administrator for Investment.

[FR Doc. 03–31011 Filed 12–15–03; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice 4557]

Culturally Significant Objects Imported for Exhibition Determinations: "Arcadia and Metropolis: Masterworks from the Neue Nationalgalerie Berlin"

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236 of October 19, 1999, as amended, and Delegation of Authority No. 257 of April 15, 2003 [68 FR 19875], I hereby determine that the objects to be included in the exhibition "Arcadia and Metropolis: Masterworks from the Neue Nationalgalerie Berlin," imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners. I also determine that the exhibition or display of the exhibit objects at the Neue Galerie New York, New York, NY, from on or about March 15, 2004 until on or about June 8, 2004, and at possible additional venues yet to be determined, is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact the Office of the Legal Adviser, U.S. Department of State, (telephone: (202) 619–6982). The address is U.S. Department of State, SA–44, 301 4th Street, SW., Room 700, Washington, DC 20547–0001.

Dated: December 9, 2003.

C. Miller Crouch,

Principal Deputy Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. 03–31003 Filed 12–15–03; 8:45 am]

BILLING CODE 4710–08–P

DEPARTMENT OF STATE

[Public Notice 4558]

Culturally Significant Objects Imported for Exhibition Determinations: "The Glory of Baroque Dresden Exhibition"

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 [79 Stat. 985, 22 U.S.C. 2459], the Foreign Affairs Reform and Restructuring Act of 1998 [112 Stat. 2681 *et seq.*], Delegation of Authority No. 234 of October 1, 1999 [64 FR 56014], Delegation of Authority No. 236 of October 19, 1999 [64 FR 57920], as amended by Delegation of Authority No. 236–3 of August 28, 2000 [65 FR 53795], and Delegation of Authority No. 257 of April 15, 2003 [68 FR 19875], I hereby determine that the objects to be included in the exhibit, "The Glory of Baroque Dresden Exhibition," imported from abroad for the temporary exhibition without profit within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with foreign lenders. I also determine that the temporary exhibition or display of the objects at the Mississippi Arts Pavilion, Jackson, Mississippi, from on or about March 1, 2004, to on or about September 6, 2004, and possible additional venues yet to be determined is in the national interest. Public Notice of these determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact Paul W. Manning, Attorney-Adviser, Office of the Legal Adviser, (202) 619–5997, and the address is United States Department of State, SA–44, Room 700, 301 4th Street, SW., Washington, DC 20547–0001.

Dated: December 10, 2003.

C. Miller Crouch,

Principal Deputy Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. 03–31004 Filed 12–15–03; 8:45 am]

BILLING CODE 4710–08–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34439]

Union Pacific Railroad Company and Stillwater Central Railroad Company—Joint Relocation Project Exemption—Fort Sill, OK

On November 25, 2003, Union Pacific Railroad Company (UP) and Stillwater Central Railroad Company (SLWC) filed a verified notice of exemption under 49 CFR 1180.2(d)(5) to participate in a joint project involving the relocation of certain rail lines of UP near the Fort Sill Military Reservation (FSMR) at Fort Sill, OK. The transaction was scheduled to be consummated on or after December 2, 2003.

The purpose of the joint relocation project is to permit the reconstruction of the wye tracks providing access to FSMR to accommodate larger rail cars. To allow the needed reconstruction, UP must remove certain existing main line track and relocate its operations over that track to a parallel line of SLWC. Thus, the joint relocation project notice covers the following actions:

(1) SLWC will grant trackage rights to UP (including rights to serve FSMR) over SLWC's line extending from SLWC milepost 624.65 near Fort Sill, OK, to SLWC milepost 628.0 near Lawton, OK, a distance of approximately 3.35 miles; and

(2) UP will abandon and remove approximately 1.04 miles of its line between UP milepost 48.56 and UP milepost 49.60 near Fort Sill, OK.

UP and SLWC state that the proposed project will not disrupt service to shippers. They also state that the relocated line and trackage rights will not involve an expansion of service by either carrier into a new territory, but rather, will enable UP to continue to serve FSMR once its line is abandoned and removed.

The Board will exercise jurisdiction over the abandonment or construction components of a relocation project, and require separate approval or exemption, only where the removal of track affects service to shippers or the construction of new track involves expansion into new territory. *See City of Detroit* v. *Canadian National Ry. Co., et al.*, 9 I.C.C.2d 1208 (1993), *aff'd sub nom. Detroit/Wayne County Port Authority* v. *ICC*, 59 F.3d 1314 (D.C. Cir. 1995). Line relocation projects may embrace trackage rights transactions such as the one involved here. *See D.T.&I.R.—Trackage Rights*, 363 I.C.C. 878 (1981). Under these standards, the incidental abandonment, construction, and trackage rights components require no separate approval or exemption when the relocation project, as here, will not disrupt service to shippers and thus qualifies for the class exemption at 49 CFR 1180.2(d)(5).

As a condition to this exemption, any employees affected by the trackage rights will be protected by the conditions imposed in *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34439, must be filed with the Surface Transportation Board, 1925 K Street NW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Robert T. Opal, Union Pacific Railroad Company, 1416 Dodge Street, Room 830, Omaha, NE 68179 and Craig R. Richey, Stillwater Central Railroad Company, 315 West 3rd Street, Pittsburg, KS 66767.

Board decisions and notices are available on our website at *http://www.stb.dot.gov*.

Decided: December 9, 2003.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 03–30894 Filed 12–15–03; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

[No. 2003–63]

Required Notice to Customers Making Payment by Check

AGENCY: Office of Thrift Supervision (OTS), Treasury.

ACTION: Notice.

SUMMARY: In a continuing effort to operate more efficiently, the Office of Thrift Supervision (OTS) has implemented a new system for processing checks it receives.

DATES: Effective October 31, 2003.

FOR FURTHER INFORMATION CONTACT: Howard Verp, Operating Accountant, (202) 906–6427; or Gina March, Operating Accountant, (202) 906–7247, Financial Operations, Information Systems, Administration & Finance, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION: OTS receives checks from customers for examination fees, application filings, conference registrations, security filings, and other purposes. The Bureau of Public Debt's Administrative Resource Center (ARC) now processes all checks received for OTS. ARC utilizes a Financial Management Service system to convert each check received for OTS into an electronic fund transfer.

The following guidelines apply:

Authorization to Convert the Check: If a customer submits a check to OTS to make a payment, the check will be converted to an electronic fund transfer. "Electronic fund transfer" is the term used to refer to the process by which OTS electronically instructs the customer's financial institution to transfer funds from the customer's account to OTS's account, rather than processing the check. By submitting a completed, signed check to OTS, the customer authorizes OTS to copy the check and to use the account information from the check to make an electronic fund transfer from the customer's account for the same amount as the check. If the electronic fund transfer cannot be processed for technical reasons, the customer authorizes OTS to process the check.

Insufficient Funds: The electronic fund transfer from the customer's account will usually occur within 24 hours, which is less time than when a check is normally processed. Therefore, the customer should ensure that there are sufficient funds available in the customer's checking account when the customer sends OTS the check. If the electronic fund transfer cannot be completed because of insufficient funds, OTS will try to make the transfer up to two times before contacting the customer.

Transaction Information: The electronic fund transfer from the customer's account will appear on the account statement the customer receives from the customer's financial institution. However, the transfer may be in a different place on the statement from where the customer's checks normally appear. For example, it may appear under "other withdrawals" or "other transactions." The customer will not receive the original check back from the financial institution. For security reasons, OTS will destroy the original check, but OTS will keep a copy of the check for record keeping purposes.

Customer Rights: The customer should contact the financial institution immediately if the customer believes that the electronic fund transfer reported on the account statement was not properly authorized or is otherwise incorrect. The Electronic Fund Transfer Act provides consumers with protections for unauthorized or incorrect electronic fund transfers.

Dated: December 9, 2003.

By the Office of Thrift Supervision.

James E. Gilleran,

Director.

[FR Doc. 03–30942 Filed 12–15–03; 8:45 am]

BILLING CODE 6720–01–P

DEPARTMENT OF THE TREASURY

United States Mint

Notification of Call for Artists To Apply for the United States Mint's Artistic Infusion Program

SUMMARY: The United States Mint is inviting artists to participate in its new Artistic Infusion Program to help design United States coins and medals. The Artistic Infusion Program has been created to enrich and invigorate the design of United States coins and medals by developing a pool of up to 20 professional artists (Master Designers) and up to 20 college and graduate-level art students (Associate Designers) in sculpture, engraving, drawing, graphic design, painting, printmaking and other visual arts, who will be invited to create and submit new designs for selected coin and medal programs throughout the year.

The United States Mint encourages applications from talented artists, representing diverse backgrounds and a variety of interests reflecting those of the American people, who will look at coin design in new ways. Artists selected to participate in the program will be paid honoraria for their work, and those whose designs are used for certain coins and medals will be named as the designer in historical documents, including certificates of authenticity and promotional materials. Most importantly, the program provides the Nation's most gifted artists with the opportunity to contribute beautiful designs to coins that will be enjoyed by all Americans.

The National Endowment for the Arts has partnered with the United States Mint to evaluate artists' applications. Submissions will be evaluated on artistic excellence and merit.

An orientation session and designer symposium will be held for artists selected to participate in the program (attending at the Mint's expense) on Thursday and Friday, February 19 and 20, 2004, at the United States Mint in Philadelphia to learn about the history of United States coin and medal design, the coin making process and upcoming design opportunities.

Please Note: At this time, the Artistic Infusion Program is limited to coin and medal design (*i.e.*, drawings) and does not encompass the execution (sculpting and engraving) of designs. The United States Mint Sculptor/Engravers will model designs created by the Artistic Infusion artists.

Application Deadline: January 9, 2004.

Receipt of Applications: Artists who are U.S. citizens should submit a completed application that will include samples of their work. A design exercise for applicants will also be required. Interested artists are required to use the "Call for Artists Application Packet," which includes program details, eligibility requirements, artistic criteria and detailed application guidelines. The packet is available on the United States Mint's website at *www.usmint.gov*, or by contacting the United States Mint at (202) 354–7727 or *art@usmint.treas.gov*.

Dated: December 8, 2003.

Henrietta Holsman Fore,

Director, United States Mint.

[FR Doc. 03–30924 Filed 12–15–03; 8:45 am]

BILLING CODE 4810–37–P

Federal Register

Tuesday,
December 16, 2003

Part II

Department of Health and Human Services

Health Resources and Services Administration

42 CFR Part 102

Smallpox Vaccine Injury Compensation Program: Administrative Implementation; Interim Final Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

42 CFR Part 102

RIN 0906–AA61

Smallpox Vaccine Injury Compensation Program: Administrative Implementation

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Interim final rule.

SUMMARY: The Smallpox Emergency Personnel Protection Act of 2003 (SEPPA), authorizes the Secretary of Health and Human Services (the Secretary), to establish the Smallpox Vaccine Injury Compensation Program ("the Program"). This program is designed to provide benefits and/or compensation to certain persons harmed as a direct result of receiving smallpox covered countermeasures, including the smallpox vaccine, or as a direct result of contracting vaccinia through certain accidental exposures. In addition, the Secretary may provide death benefits to certain survivors of individuals who died as the direct result of these injuries.

On August 27, 2003, the Secretary published an interim final rule that set out a Smallpox (Vaccinia) Vaccine Injury Table ("the Table"). The table includes adverse effects (including injuries, disabilities, conditions, and deaths) within specific time periods that shall be presumed to result from the receipt of, or exposure to, the smallpox vaccine. The Secretary will use this table, as well as the procedures set out in this regulation, in deciding whether persons are eligible to receive benefits under the program.

In this interim final rule, the Secretary is setting out the administrative policies, procedures, and requirements governing the program, as authorized by the SEPPA. The Secretary is seeking public comment on this interim final rule.

DATES: This regulation is effective on December 16, 2003. Written comments must be submitted on or before February 17, 2004. The Secretary will consider the comments received and will decide whether to amend the current procedures and requirements based on such comments.

ADDRESSES: All written comments concerning this interim final rule should be submitted to the Director, Smallpox Vaccine Injury Compensation Program, Special Programs Bureau, Health Resources and Services Administration, Parklawn Building, Room 16C–17, 5600 Fishers Lane, Rockville, MD 20857. Express and courier mail should be sent to the Director, Smallpox Vaccine Injury Compensation Program, Special Programs Bureau, Health Resources and Services Administration, 4350 East-West Highway, 10th Floor, Bethesda, Maryland 20814. Electronic comments should be sent to *smallpox@hrsa.gov*. Comments received will be available for public inspection at the Smallpox Vaccine Injury Compensation Program Office, Special Programs Bureau, Health Resources and Services Administration, 4350 East-West Highway, 10th Floor, Bethesda, Maryland 20814, between the hours of 8:30 a.m. and 5 p.m. on Federal government workdays.

FOR FURTHER INFORMATION CONTACT: Paul T. Clark, Director, Smallpox Vaccine Injury Compensation Program, telephone 1–888–496–0338. This is a toll-free number. Electronic inquiries should be sent to *smallpox@hrsa.gov*. Interested parties may also wish to consult the program's Web site at *http://www.hrsa.gov/smallpoxinjury*.

SUPPLEMENTARY INFORMATION:

Background

Before it was eradicated, smallpox (variola) was a serious illness that manifested as outbreaks of either variola major with death rates of greater than 20% or variola minor with death rates of almost 1%. The smallpox (vaccinia) vaccine (referred to in this rule as the "smallpox vaccine") contains a live vaccinia virus that induces immunity to smallpox infection, but does not lead to variola infection or disease. Vaccinia virus is an orthopox type virus that is different from, but related to, the smallpox virus. The smallpox vaccine was an essential tool for the successful global eradication of the smallpox virus, announced by the World Health Organization in 1980. Despite such eradication, concern exists that terrorists may have access to the smallpox virus.

On December 13, 2002, the President announced a plan to protect the population of the United States against the threat of a possible smallpox attack. This plan was based on heightened concerns, in the wake of the attacks of September and October 2001, that terrorists may have access to the smallpox virus and may attempt to use it against the population of the United States and government facilities abroad. Under this plan, which the Secretary is actively working to implement, State and local governments have formed smallpox emergency response plans to facilitate the provision of critical services to the population of the United States in the event of a smallpox virus attack.

To further the President's plan, the Secretary issued a Declaration Regarding Administration of Smallpox Countermeasures on January 24, 2003 (68 FR 4212). This Declaration was issued pursuant to statutory authority, 42 U.S.C. 233(p)(2)(A), which was enacted by the Homeland Security Act of 2002, Pub. L. 107–296, 116 Stat. 2135. In this Declaration, the Secretary stated that "a potential bioterrorist incident makes it advisable to administer, on a voluntary basis, covered countermeasures specified * * * for prevention or treatment of smallpox or control or treatment of adverse events related to smallpox vaccination, to [specified] categories of individuals * * *." The specific "covered countermeasures" described in the Declaration are smallpox vaccines, cidofovir and its derivatives, and Vaccinia Immune Globulin. The categories of persons to whom the Secretary recommended the administration of such covered countermeasures, on a voluntary basis, included certain health care workers, certain public safety personnel, other members of smallpox emergency response plans identified by State or local government entities or the Department of Health and Human Services, and certain personnel associated with specific Federal facilities abroad. The Secretary recommended that such persons receive the smallpox vaccine to ensure the immediate mobilization of smallpox emergency response personnel who would provide critical services to the population of the United States in the event of a smallpox virus attack. The Secretary's Declaration became effective on January 24, 2003, and will remain effective until January 23, 2004, unless the Secretary extends or shortens that time period by amendment.

Under the Smallpox Vaccine Injury Compensation Program authorized by the SEPPA, certain persons may be entitled to benefits (defined as benefits and/or compensation) for covered injuries, described below, suffered as a direct result of the administration of smallpox covered countermeasures (including the smallpox vaccine) or accidental vaccinia inoculation. Specifically, the SEPPA authorizes the Secretary to make the benefits available to two categories of eligible persons who sustained covered injuries, provided they meet the legal requirements (*e.g.*, filing deadlines).

The first category, "smallpox vaccine recipients," includes certain persons who volunteer for, and are selected to be members of, a smallpox emergency response plan, are vaccinated with a smallpox vaccine under such a plan, and sustain covered injuries. The second category, vaccinia contacts, includes certain persons who have covered injuries as the direct result of exposure to vaccinia through contact with certain persons who received the smallpox vaccine or with the contacts of such recipients. In addition, if a person in either category dies, his or her survivors or his or her estate may be eligible for selected benefits under this program in certain circumstances.

The benefits available under the program include compensation for medical care, lost employment income, and survivor death benefits. To be considered for program benefits, requesters (*i.e.*, smallpox vaccine recipients, vaccinia contacts, survivors, or the representatives of the estates of deceased smallpox vaccine recipients or vaccinia contacts), or persons filing on their behalf as their representatives, must file a Request Form and the documentation required under this regulation to show that they are eligible.

As mandated under the SEPPA, the Secretary is herein, at 42 CFR part 102, establishing the procedures and requirements governing the program. At this time, the Secretary is seeking public comments on these procedures and requirements.

Summary of the Regulation

Summary of Available Benefits and Secondary Nature of Benefits (§ 102.2, § 102.84)

The benefits available under this program are medical benefits, benefits for lost employment income, and survivor death benefits.

As explained in § 102.2(b), the SEPPA establishes that the government is a secondary payor for most benefits available under the program. Thus, benefits paid under this program are generally secondary to any obligation of any third-party payor, described in § 102.3(aa), to pay for or provide such benefits. Requesters generally must provide the names of all other third-party payors that have already provided benefits, that are expected to do so in the future, or that may have a duty to do so. These payers include, but are not limited to: insurance companies, workers' compensation programs, the Federal Employees' Compensation Act (FECA) Program, or the Public Safety Officers' Benefit (PSOB) Program, a program within the United States Department of Justice that provides payments to public safety officers and their survivors, including death payments for officers killed in the line of duty. If such a third-party payor has paid for or provided the type of benefits requested under this program, the Secretary will only pay such benefits in an amount necessary to supplement the payments already provided. For example, if a requester were otherwise entitled to $10,000 in medical benefits from this program and the requester's health insurance company (a third-party payor) has paid $5,000 for the covered medical benefits and services, the program would pay the requester $5,000 (the amount the requester is entitled to under this program, reduced by the amount the requester is entitled to from third-party payors). As explained later in the preamble, upon payment of benefits under the Smallpox Vaccine Injury Compensation Program, the Secretary will be subrogated to the rights of the requester and may assert a claim against any third-party payor with a legal or contractual obligation to pay for, or provide, such benefits.

Description of Eligible Requesters (§ 102.10(a))

(1) *Smallpox vaccine recipients*, as defined in § 102.3(y).

A person who has received a smallpox vaccine is only considered a "smallpox vaccine recipient," for purposes of this program, if he or she meets the criteria described in this regulation. Specifically, he or she must have been in a covered occupation (including health care workers, law enforcement officers, public safety personnel, and supporting personnel), received a smallpox vaccine as a participant in an approved smallpox emergency response plan, and sustained a covered injury, described later in this preamble. The exact requirements for smallpox vaccine recipients are set forth in § 102.3(x). For example, this regulation provides that, in order to be eligible, a smallpox vaccine recipient must have received the smallpox vaccine between January 24, 2003, and January 23, 2004, unless the period is extended by the Secretary. In order to be covered by the program, a smallpox vaccine recipient must also have volunteered for and been selected to be a member of a smallpox emergency response plan before the time that the Secretary publicly announces that an active case of smallpox has been identified anywhere in the world. For this reason, persons who become members of smallpox emergency response plans in order to respond to a case of smallpox that has already occurred will not be considered "smallpox vaccine recipients." Likewise, persons who receive the smallpox vaccine as members of the military or members of the public who receive the smallpox vaccine voluntarily, and not as part of an approved smallpox emergency response plan, are not entitled to benefits under the program.

(2) *Vaccinia contact*, as defined in § 102.3(bb).

The SEPPA imposes specific restrictions as to which persons who have contracted vaccinia from another person may be eligible for benefits under this program. The specific requirements pertaining to vaccinia contacts are set forth in § 102.3(bb). As explained in that section, vaccinia contacts are only eligible for benefits under this program if they can show that they contracted vaccinia as a result of contact with a person who either meets the definition of a smallpox vaccine recipient (except that the vaccine recipient does not need to sustain a covered injury) or who was accidentally inoculated by such a person. For this reason, if the source of a contact's exposure to vaccinia is a person who received a smallpox vaccine other than under an approved smallpox emergency response plan, the contact would not fall within the regulation's definition of a "vaccinia contact" and would not be eligible for benefits under the program. For example, the contacts of members of the military and State Department personnel who receive the smallpox vaccine for their employment, but not as part of an approved smallpox emergency response plan, would not be entitled to benefits under this program. Likewise, the contacts of members of the general public who receive the smallpox vaccine voluntarily, and not as part of an approved smallpox emergency response plan, would not be covered under this program. In addition, vaccinia contacts must have contracted vaccinia during the effective period of the Declaration (between January 24, 2003, and January 23, 2004, unless extended by the Secretary), or within 30 days after the end of such period, and must have sustained a covered injury.

(3) *Certain survivors of deceased smallpox vaccine recipients or vaccinia contacts*, as defined in §102.3(z).

Categories of eligible survivors and the priority of such survivors to receive benefits from the program are discussed in the section of this preamble concerning death benefits (the only type of benefit survivors are eligible to receive).

(4) *Representatives of estates of deceased smallpox vaccine recipients or vaccinia contacts.*

Representatives of estates of deceased smallpox vaccine recipients or vaccinia contacts may file Request Packages with the program as long as they are seeking benefits on behalf of the deceased person's estate.

Benefits Available to Different Categories of Requesters (§ 102.30)

An eligible requester who is a smallpox vaccine recipient or a vaccinia contact may be entitled to receive either medical benefits or benefits for lost employment income or both as long as they provide the proper documentation. For example, such requesters must submit documentation showing that they have out-of-pocket reasonable and necessary medical expenses as a result of a covered injury or its health complications in order to receive medical benefits, and documentation showing that they lost employment income as a result of a covered injury or its health complications in order to receive benefits for lost employment income. Such documentation requirements are discussed later in this preamble.

An eligible requester who is the survivor of a deceased smallpox vaccine recipient or vaccinia contact may be entitled to receive a death benefit.

The estate of a deceased smallpox vaccine recipient or vaccinia contact may be eligible to receive medical benefits or benefits for lost employment income or both if such benefits were accrued during the deceased person's lifetime as a direct result of a covered injury or its health complications, but were not paid during the deceased person's lifetime. However, the estate would not be eligible to receive payments for benefits that were not accrued during the deceased person's lifetime. For example, the estate would not be entitled to benefits for projected lost employment income that the person might have accrued if he or she had not died.

Covered Injuries (§ 102.20—§ 102.21)

Covered injuries are defined in § 102.3(g) and set out in subpart C of this rule. Covered injuries are those injuries in smallpox vaccine recipients or vaccinia contacts that the Secretary determines are more likely than not (*i.e.*, by a preponderance of the evidence) the direct result of the administration of a covered countermeasure (including a smallpox vaccine) or of vaccinia acquired through accidental vaccinia inoculation. Because even survivors of, and representatives of estates of, deceased smallpox vaccine recipients and vaccinia contacts must demonstrate that the deceased person sustained a covered injury, a requester will not be deemed eligible for benefits under the program unless the Secretary determines that an eligible smallpox vaccine recipient or vaccinia contact sustained a covered injury.

One way that requesters can demonstrate that they sustained a covered injury is by demonstrating that they sustained an injury listed on the Smallpox (Vaccinia) Vaccine Injury Table (the table) within the required time interval, as set out in § 102.21. In accordance with the SEPPA, a smallpox vaccine recipient or vaccinia contact shall be presumed to have sustained a covered injury as the direct result of the administration of, or exposure to, the smallpox vaccine if the requester submits sufficient documentation demonstrating that he or she sustained an injury included on the table, with the onset of the first symptom or manifestation within the time interval specified on the table. The injury must also meet the table's definitions and requirements, set forth in § 102.21(b). In such circumstances, the Secretary will presume, solely for purposes of the program, that the smallpox vaccine recipient or vaccinia contact's injury was caused by the smallpox vaccine or exposure to vaccinia. Such a requester need not actually demonstrate that the vaccine (or the vaccinia contracted from accidental vaccinia inoculation) caused the underlying injury, only that an injury listed on the table was sustained and that it first manifested itself within the time interval listed.

In directing the Secretary to establish a table with such a presumption, Congress did not direct the Secretary to make this presumption conclusive. In the Secretary's view, it would be inconsistent with the purposes of the SEPPA to make this presumption absolutely conclusive. For this reason, based on his review of the submitted documentation and other relevant evidence, the Secretary may determine that an injury meeting the table requirements was more likely than not (*i.e.*, by a preponderance of the evidence) caused by other factors and was not caused by the smallpox vaccine or exposure to vaccinia (*e.g.*, if the Secretary determined that the medical records demonstrated that an individual's injury of encephalopathy was caused by a car accident that occurred post-vaccination and not by the smallpox vaccine or exposure to vaccinia). In these circumstances, which we expect to occur rarely, the Secretary could rebut the table presumption and decide that the requester may not be entitled to benefits under the program.

Requesters who believe they sustained an injury included on the table, but did not meet all the table requirements (*e.g.*, the first manifestation of the injury did not become apparent within the required time interval), or requesters who believe they sustained an injury not included on the table, may still be able to demonstrate that the injury is one that is covered under the program. In order to establish a covered injury, such requesters may need to submit sufficient relevant medical documentation (such as isolation of vaccinia from the injured part of the body) or scientific evidence (such as results of studies published in peer-reviewed medical literature). In order to establish a covered injury, the Secretary, upon review of this evidence, must conclude that, more likely than not, the injury was actually caused by the administration of a covered countermeasure or by vaccinia through accidental inoculation during the time periods set forth by law. In other words, in evaluating such claims, the Secretary will employ a preponderance of the evidence standard, taking into consideration all relevant medical and scientific evidence, including all relevant medical records. As provided under the SEPPA, this determination, as with all other actions by the Secretary under this Act, is not reviewable by any court.

Any injury that the Secretary considers minor is not a covered injury. For example, covered injuries do not include expected skin reactions or expected minor scarring at the vaccination or inoculation site. No benefits will be paid for these reactions, as stated in § 102.20(b).

Medical Benefits—Summary and Calculation (§ 102.31 and § 102.80)

Medical benefits that may be available under the program are described in § 102.31. They include payment(s) or reimbursement for medical services and medical items that the Secretary determines are reasonable and necessary for the diagnosis or treatment of a covered injury or its direct health complications (*sequelae*). Past, current, and expected future medical services and items may be included in medical benefits.

In making determinations about which medical services and items provided in the past were reasonable and necessary, the Secretary may consider whether those medical services and items were prescribed or recommended by a health care practitioner. In considering benefits for future medical services and items, the Secretary will consider statements by health care practitioners with expertise in the medical issues involved (for example, a statement by a treating neurologist concerning services and items likely to be needed to address neurological issues) concerning those services and items that appear likely to be needed in the future to diagnose or treat the covered injury or its health complications.

In order for a requester to receive medical benefits for a health complication, the health complication must have resulted from the covered injury and not be more likely due to other factors or conditions. Examples of health complications include complications of a covered injury that occur as part of the natural course of the underlying disease, an adverse reaction to a prescribed medication or diagnostic test used in connection with a covered injury, or a complication of a surgical procedure used to treat the injury.

If a smallpox vaccine recipient or vaccinia contact dies before filing for, or being paid, benefits for the cost of medical services or items accrued during his or her lifetime as a result of a covered injury or its health complications, the deceased person's estate may be paid such medical benefits. Because such payments are for medical expenses accrued as a result of a covered injury while the injured person was alive, the cause of death does not have to be related to the covered injury for these medical benefits to be paid.

The calculation of medical benefits is described in § 102.80. There are no caps on medical benefits. However, the Secretary may limit the payment of such benefits to the amounts he considers reasonable for those services and items he considers reasonable and necessary. In addition, payment of medical benefits or reimbursement of costs for medical services and items by the program is secondary to the obligations of any third-party payor, such as the United States (except for payment of benefits under this program), State or local government entities, private insurance carriers, employers, or any other third-party payors that may have a statutory or contractual obligation to pay for or provide medical benefits.

When the Secretary has determined that the requester is eligible for medical benefits and that all of the documentation is available by which he can compute the amount, he will do the following, consistent with the calculations described in § 102.80:

(1) Determine which medical expenses that have been submitted are reasonable and necessary to diagnose or treat a covered injury or its health complications.

(2) Compute all those reasonable medical expenses, including medical services and items provided in the past, and anticipated future medical expenses.

(3) Deduct from his computation the total amount paid, or payable, by all other third-party payors. This will be the basis for the program's payment. For example: An eligible, injured individual incurred $5,000 in reasonable and necessary medical expenses. If the individual's insurance company paid $3,000, and the individual is responsible for the $2,000 balance (due to deductibles and co-payments), then the Secretary will pay a medical benefit of $2,000.

As explained elsewhere in the preamble, the Secretary may make a payment of medical benefits and later pursue such a payment from a third-party payor with an obligation to pay for or provide the medical services or items.

Lost Employment Income—Summary and Calculation (§ 102.32 and § 102.81)

Lost employment income benefits that may be available under the program are set out in § 102.32. The program will provide benefits for lost employment income (secondary to other benefits that may be available to the requester) based on the number of days of work that the injured person lost as a result of the covered injury or its health complications (including diagnosis and treatment). These benefits are a percentage of the employment income lost and are based on the number of eligible work days for which such income was lost. Employment income includes the injured person's gross employment income. The lost work days do not have to be consecutive, and partial days of lost work are included in the calculation. For example, if an individual's workday is eight hours and he or she missed four hours a day for doctors' appointments on two different days, the eight hours of work missed will be considered one total day of lost work. As described in § 102.32(c), a day in which an individual used paid leave (*e.g.*, sick leave or vacation leave) in order to be paid for lost work will not be considered a day for which employment income was lost and will not be used in calculating benefits for lost employment income. The only exception to this rule is in a case in which the injured person's employer restores the paid leave taken and puts the requester in the same position as if he or she had not used paid leave on the lost work day (*i.e.*, treats the employee as if he or she did not take paid leave by taking back the payments made when the leave was used and giving back the leave to the employee for future use).

Under the SEPPA, the program cannot pay for the first five days of lost employment income resulting from a covered injury or its health complications, unless the injured individual lost employment income for 10 or more work days (in which case, all of the lost work days will be included in the calculation). For this reason, if an individual lost a total of four days of employment income as a result of a covered injury, he or she will not be eligible for any benefits for lost employment income.

The calculation of benefits for lost employment income is described in § 102.81. The annual cap on benefits for lost employment income for a requester is $50,000. A requester may use documents such as pay slips, earning and leave statements, and other documents concerning the injured individual's salary and benefits, to document his or her employment income. The benefit terminates once the requester reaches the age of 65. Benefits that represent future lost employment income will be adjusted to account for inflation. It is important to remember that future lost employment income will be calculated based on an individual's employment income at the time the covered injury was sustained (except for the inflation adjustment provided for in this regulation) and will not be based on an individual's anticipated future employment income. The lifetime cap for this benefit is equal to the amount of the death benefit available under the PSOB Program in the same fiscal year in which the lifetime cap is reached (currently approximately $262,100, but subject to change). However, this lifetime limitation does not apply if the Secretary determines that an individual has a covered injury considered to be a total and permanent disability under section 216(i) of the Social Security Act. For this reason, a requester deemed to have a permanent and total disability by the Secretary may be eligible to receive up to $50,000 a year until he or she reaches the age of 65.

As with medical benefits, if a smallpox vaccine recipient or vaccinia contact dies before filing for, or being paid, benefits for lost employment income incurred during his or her lifetime as a result of a covered injury or its health complications, the representative of that person's estate may file for such benefits on behalf of the estate. Because this payment is made for loss of employment income that accrued while the injured person

was alive, the death does not have to be related to the covered injury for these benefits to be paid.

Once the Secretary has determined that he has all the information necessary to compute lost employment income, the calculation will be made as follows, as set out in § 102.81:

(1) If the eligible individual lost five days or fewer of employment income, then there will be no benefits for lost employment income.

(2) If the eligible individual lost six to nine days of employment income, then the Secretary will subtract five days from the number of lost work days; if the eligible individual lost 10 or more days of employment income, then every lost work day will be counted.

(3) The Secretary will multiply the injured individual's daily gross employment income (including income from self-employment) at the time of the covered injury by the number of lost work days (as computed above). This figure will be adjusted to account for inflation, as appropriate.

(4) The Secretary will compute 75% of the lost employment income if the injured individual had one or more dependents (at the time of the covered injury) or 66 2/3% of the lost employment income if there were no dependents (at the time of the covered injury). This calculation will serve as the basis for the lost employment income benefit.

(5) The amount of payment will be reduced by any benefit that the requester is entitled to receive from a third-party payor (*e.g.*, a workers' compensation program). However, the Secretary may make a payment of lost employment income and later pursue such a payment from a third-party payor with an obligation to pay for or provide the benefit (*e.g.*, the Secretary can pay a benefit for lost employment income to a requester with a claim pending in a State workers' compensation program, and then has a right to recover such a payment from the State if its program determines that such a benefit is due the requester).

(6) The payments made will be subject to an annual cap of $50,000. The benefits paid in lost employment income will be subject to a lifetime cap, as discussed above, unless the Secretary determines that a requester has a covered injury considered to be a total and permanent disability under section 216(i) of the Social Security Act.

No State law workers' compensation lien may be maintained on any benefit for lost employment income paid under this program.

Death Benefits—Summary and Calculation (§ 102.11, § 102.33, and § 102.82)

Certain survivors of smallpox vaccine recipients or vaccinia contacts who died as a direct result of a covered injury or its health complications may be eligible for death benefits, as set out in § 102.11 (eligible survivors and their priority to receive death benefits), § 102.33 (general description of death benefits) and § 102.82 (calculation of death benefits).

The SEPPA provides that death benefits under this program may be available under two different calculations. The "standard calculation" is a lump-sum payment to eligible survivors and is described in § 102.82(c). In general, this method is based on the death benefit available under the PSOB Program. The "alternative calculation" is only available to surviving dependents who are younger than the age of 18, as described in § 102.82(d). This method is based upon the deceased person's employment income at the time of the covered injury.

Eligible Survivors and Priorities for Receiving Death Benefits

With limited exceptions, the Smallpox Vaccine Injury Compensation Program follows the requirements of the PSOB Program with respect to the categories of eligible survivors (known in the PSOB Program as beneficiaries) and the order of priority for payments of death benefits to them. The order of priority for survivors to receive death benefits under the program is subject to changes made in the future under the PSOB Program concerning eligible survivors and their priority to receive death benefits.

Currently, the categories of eligible survivors under the PSOB Program are as follows: (1) Surviving spouses; (2) surviving eligible children; (3) individuals designated by the deceased person as the beneficiaries under the deceased person's most recently executed life insurance policy; and (4) surviving parents. Such survivors, as defined under the PSOB Program, are also eligible survivors under this program. Currently, a surviving child is considered eligible under the PSOB Program if he or she is an individual who is a natural, illegitimate, adopted, or posthumous child, or stepchild, of the deceased person, and is 18 years of age or younger, or between 19 and 23 years of age and a full-time student, or is over 18 years of age and incapable of self-support because of physical or mental disability.

The SEPPA included two additional categories of survivors under this program who are not eligible survivors under the PSOB Program: (5) Legal guardians of deceased minors without surviving parents; and (6) surviving dependents who are younger than the age of 18 (some of whom may also fall within the category of surviving eligible children). As discussed below, special criteria apply to the final category of eligible survivors.

Under current practices, in the event that the deceased eligible individual is survived by a spouse and eligible children, the spouse will receive 50% of the death benefit and the children will divide the remaining 50% equally. If there are no surviving eligible children, then the spouse receives the entire benefit; if there is no surviving spouse, then the children divide the benefit in equal shares. In the event that the deceased injured individual has no surviving spouse or children, the individual designated by the deceased individual as the beneficiary under his or her most recently executed life insurance policy will receive the death benefit. If there is no life insurance policy or no surviving designated beneficiary under such a policy, the parents will divide the death benefit in equal shares. If none of these categories of survivors exists, the legal guardian of a deceased minor (who was a smallpox vaccine recipient or vaccinia contact) with no living parent will receive the death benefit, if applicable. As explained in § 102.11(b)(5), surviving dependents younger than the age of 18 will have the same priority as surviving eligible children.

Only the legal guardians of persons qualifying both as surviving eligible children under the PSOB Program and as dependents younger than the age of 18 can choose between a proportional death benefit under the standard and the alternative methods of payment. Survivors eligible under the PSOB Program's categories of survivors (*e.g.*, spouses, parents, certain insurance designees, and surviving eligible children) who do not qualify as dependent minors are only covered under the standard calculation. Dependents who are minors and who do not qualify under another category of eligible survivors (for example, eligible surviving children of the deceased) are only covered by the alternative method of payment.

Death Benefits Under the Standard Calculation, Described in § 102.82(c)

Under the "standard calculation," the amount of the death benefit that can be paid under the program in a particular fiscal year will equal the amount of the death benefit available under the PSOB Program in the same fiscal year (without regard to any reduction in PSOB Program death benefits due to a limitation in appropriations). The amount of the PSOB Program death benefit, which is subject to change, is currently approximately $262,100. Survivors who already collected, or are eligible to collect, death benefits under the PSOB Program are not eligible to receive Smallpox Vaccine Injury Compensation Program death benefits under the standard calculation. Survivors receiving a death benefit under the standard calculation from this program will receive the difference between any disability benefit paid under the PSOB Program and the death benefit available under the standard calculation if the PSOB Program disability benefit was underpaid due to a limitation in appropriations.

Death benefits under the standard calculation will be reduced by the amount of lost employment income benefits that were paid under this program either to the deceased individual during his or her lifetime, or to his or her estate after death. For example, if a smallpox vaccine recipient received $40,000 from the program during his lifetime in benefits for lost employment income and later died, his survivors would be entitled to receive a total of approximately $222,100 in this fiscal year (the approximate $262,100 death benefit, minus the $40,000 in benefits for lost employment income paid to the injured person during his lifetime).

Death Benefits Under the Alternative Calculation, Described in § 102.82(d)

Payments made under the "alternative calculation" of death benefits are based on the deceased person's employment income at the time he or she sustained the covered injury. Under this calculation, 75% of the deceased person's employment income (determined in the same manner as employment income for purposes of lost employment income benefits) at the time he or she sustained the covered injury resulting in death will be paid annually until the youngest of the dependents reaches the age of 18. However, the maximum annual amount that may be paid to dependents (in total) under the alternative calculation is $50,000. No lifetime caps apply to death benefits under this alternative calculation.

Death benefits under this alternative calculation are available only to surviving dependents who are younger than the age of 18. In order for such surviving dependents to receive payments under the alternative calculation as opposed to the standard calculation, the legal guardian of all the dependents younger than the age of 18 must choose to receive a proportionate share of the benefits under this calculation on their behalf, as described in § 102.82(d)(1). In the event that multiple dependents have different legal guardians, each legal guardian is responsible for choosing the calculation of death benefits on behalf of the dependents of whom he or she is the legal guardian. For this reason, the legal guardian of several individuals who qualify both as surviving dependents younger than the age of 18 and as surviving eligible children cannot select a death benefit under the standard calculation for some of those dependents and a death benefit under the alternative calculation for other dependents. For those survivors who are eligible for a death benefit under both calculations, the particular circumstances (*e.g.*, the age of the survivors, the employment income of the deceased person at the time of the covered injury) will determine which method of calculation will provide the greatest financial benefit.

If dependent survivors choose to receive death benefits under the alternative calculation, no death benefits will be paid to those dependents under the standard calculation. However, such payments would not preclude other eligible survivors of equal priority from receiving a proportionate death benefit under the standard calculation. For example, if a deceased smallpox recipient or vaccinia contact is survived by two dependents younger than the age of 18 from a prior marriage and by a spouse who is not the legal guardian of the dependents, the legal guardian of the two dependents could choose to receive a 50% share of the death benefit for the dependent children under the alternative calculation and the surviving spouse would still be able to receive his or her 50% share of the death benefit under the standard calculation. As another example, if a deceased smallpox recipient is survived by two minor, dependent children, one whose living parent is the deceased person's surviving spouse and another whose living parent is the deceased person's former spouse, the surviving spouse could receive a 50% share of the death benefit under the standard calculation and each of the dependent children would be eligible for a proportionate share (25%) of the death benefit available under the standard calculation or the alternative calculation, as determined by the children's respective legal guardians. Although the Program will generally apportion death benefits among multiple eligible survivors, it will not do so on behalf of dependents receiving death benefits under the alternative calculation if the dependents share the same legal guardian (because such payments would be made to the legal guardian on behalf of all of the dependents for whom he or she is the legal guardian). The legal guardian would be expected to apportion the award appropriately.

Death benefits paid to survivors under this alternative calculation are secondary to all payments made, or expected to be made in the future, by any third party payor for: (i) Compensation for the deceased person's loss of employment income on behalf of the dependents receiving death benefits under the alternative calculation, or their legal guardian(s); (ii) disability, retirement, or death benefits in relation to the deceased person on behalf of the dependents receiving death benefits under the alternative calculation, or their legal guardian(s); and (iii) life insurance benefits on behalf of the dependents receiving death benefits under the alternative calculation. Such secondary benefits are described in § 102.83(d)(3)(A). Reductions will not be made if such benefits were paid to other persons (for example, if a retirement benefit was paid to the surviving spouse who is not the dependents' legal guardian, no deduction would be made to the dependents' death benefit to account for the benefit the spouse received). In calculating such reductions, the Secretary will have discretion to apportion over multiple years any lump-sum third-party payments. The Secretary has a right to recover benefits paid under this program from third-party payors that have an obligation to pay for or provide such benefits.

As with other determinations made under this regulation, any determination concerning the calculation and payment of death benefits is not subject to any judicial review.

Filing a Request Package (§ 102.40–§ 102.41)

A Smallpox Vaccine Injury Compensation Request Form (hereinafter "Request Form") available from the program and all the eligibility and benefits documentation comprise the Smallpox Vaccine Injury Compensation Request Package (hereinafter "Request Package"). In order for a requester to have his or her request reviewed by the program, the

requester must submit, at a minimum, a completed Request Form postmarked within the filing deadlines established by this regulation. If requesters choose to use a commercial carrier such as Federal Express, United Parcel Service, Emery, etc., or a private delivery service, in the absence of a postmark, the date that the Request Form or Request Package is marked as received by the delivery service will be considered the equivalent of a postmark. Requesters must send their Request Forms and Request Packages to the applicable address listed in § 102.41.

Representatives of Requesters (§ 102.44)

This program has been designed so that requesters do not need to retain the services of lawyers to pursue benefits under this program. However, as provided in § 102.44, requesters may have a legal or personal representative submit the Request Form and/or Request Package on their behalf. A legally competent requester must certify on the Request Form that he or she has authorized the representative to submit the Request Package on his or her behalf. Requesters who are minors or legally incompetent adults will require the assistance of a representative (who does not need to be a lawyer). Representatives of requesters who are minors or adults determined by a court to be legally incompetent are required to submit specific documentation, in addition to the documentation generally required of requesters, which is described in § 102.63. The representative of a requester is required to submit the documents that would ordinarily be required of the requester. For example, if this regulation requires a requester to submit his or her medical records, the requester's representative would be required to submit the same records on behalf of the requester.

The Secretary will direct all correspondence to, and communicate exclusively with, a requester's representative unless the Secretary is advised that the representation has stopped. As explained above, although legal representation is permitted, it is not needed for filing for program benefits. As described in § 102.44(d), the Secretary will not be responsible for the payment of any fees for the services of legal or personal representatives or for any associated costs.

Filing Deadlines (§ 102.42)

Smallpox vaccine recipients who have a covered injury have one year from the date of a smallpox vaccination administered during the effective period of the Declaration (between January 24, 2003, and January 23, 2004, unless the Secretary extends the time period) to submit a Request Form. This deadline applies even if the requester's injury was the direct result of a covered countermeasure other than the smallpox vaccine (*e.g.*, cidofovir) that was administered after the vaccine administration. Vaccinia contacts have two years to submit their Request Forms from the date of the onset of the covered injury, as documented in their medical records. Because the SEPPA, in its discussion of filing deadlines, refers to requests based on the administration of the smallpox vaccine and requests based on accidental vaccinia inoculation, the filing deadlines that apply to Request Forms filed by smallpox vaccine recipients or vaccinia contacts are the same filing deadlines that apply to Request Forms filed by the survivors or the representatives of the estates of deceased smallpox vaccine recipients and vaccinia contacts. However, as explained later in the preamble, if a smallpox vaccine recipient or vaccinia contact filed a timely Request Form and later died, his or her survivors (or the representative of his or her estate) could file an amendment to that Request Package outside of the filing deadline. Because the administration of smallpox covered countermeasures other than the smallpox vaccine (cidofovir and its derivatives or Vaccinia Immune Globulin), in the context of this program, generally relates back to complications arising from the administration of the smallpox vaccine or of accidental vaccinia inoculation, the filing deadlines set forth in § 102.42 extend to the administration of such other covered countermeasures.

In the event that the Secretary amends the Table of Injuries, requesters have an extended filing deadline, based on the effective date of the table amendment, which will be published in the **Federal Register**. However, the extended filing deadline only applies if the table amendment enables a person who could not establish a table injury before the amendment to establish such an injury.

To speed the review of eligibility, requesters should file all documentation required for eligibility determinations by the filing deadline. However, a requester will meet the filing deadline requirement by submitting only the completed and signed Request Form by that deadline, with documentation to follow. Request Forms not filed within the governing filing deadline will not be processed, and the requester will not be considered for any program benefits.

Amendments to Request Packages (§ 102.46)

The filing of amendments to previously filed Request Packages is discussed in § 102.46. As explained in that section, if a smallpox vaccine recipient or vaccinia contact filed a Request Package, but later dies, his or her survivors or the representative of his or her estate may amend the Request Package. However, a requester filing such an amended request will only be entitled to benefits under the program if the original Request Form (filed by the smallpox vaccine recipient, vaccinia contact, or representative) was filed within the applicable filing deadline. If such an amendment is filed, all of the documentation submitted with the original Request Package will be considered part of the amended Request Package and the survivor or estate representative need not resubmit such documentation. Requesters are responsible for notifying the program of any changes in circumstances that may have an impact on the Secretary's eligibility and benefits determinations.

Documentation Needed for the Secretary To Determine Eligibility (§ 102.50–§ 102.54)

Requesters or their representatives must submit appropriate documentation to allow the Secretary to determine if the requesters are eligible for program benefits. The documentation required will vary somewhat depending on whether the requester is filing as a smallpox vaccine recipient, vaccinia contact, survivor, or representative of an estate.

Medical Records Required of All Requesters To Establish a Covered Injury (§ 102.50)

Because all Request Packages filed with the program, including those filed by survivors or representatives of the estates of deceased persons, must relate back to a smallpox vaccine recipient or vaccinia contact who sustained a covered injury, all requesters must submit medical records sufficient to demonstrate to the Secretary that a covered injury was sustained by a smallpox vaccine recipient or a vaccinia contact. Section 102.50(a) describes the medical records that are generally required in order for a requester to establish that a covered injury was sustained. The Secretary will use the records submitted, as well as any other available evidence, to evaluate either whether an injury set out in the table and meeting the table's requirements was sustained or whether an injury was sustained as the direct result of receiving a covered countermeasure (including a smallpox vaccine) or of contracting vaccinia through accidental exposure. The program will consider copies of medical records to be the same as the original records.

Although the medical records described in § 102.50(a) are those that will generally be required for all requesters, requesters may also submit additional documentation, as provided for under § 102.50(b). As described in § 102.50(d), the Secretary may determine that particular records described in § 102.50(a) are not necessary for particular requesters (for example, if certain medical records provide the exact same information as other records that are submitted) or that additional records may be required in order to make a covered injury determination (for example, in cases in which a preexisting condition may be the cause of the current injury).

If certain medical records are unavailable to a requester, the requester must submit a statement describing the reasons for the records' unavailability and the reasonable efforts the requester has made to obtain them. The Secretary may, at his discretion, accept such a statement from the requester instead of the required medical records, if the circumstances so warrant, as set forth in § 102.50(c).

If a smallpox vaccine recipient or vaccinia contact died and his or her survivors seek a death benefit under the program, the Secretary will need to review the medical records to determine whether the death was the direct result of a covered injury. As explained in § 102.53(d), the medical records reviewed for this purpose may be the same as those submitted for the covered injury determination.

In making covered injury determinations, the Secretary may consider all of the scientific evidence available (*e.g.*, published articles concerning a relationship between the smallpox vaccine and an injury) and consult with qualified medical experts.

Documentation a Smallpox Vaccine Recipient Must Submit To Be Deemed Eligible (§ 102.51)

As described above, a smallpox vaccine recipient must submit medical records that are sufficient to show that he or she sustained a covered injury, including medical records produced after the vaccination from all hospitals, clinics, or providers. In order to show eligibility, such a requester must also submit a completed and signed Request Form and the documentation described in § 102.51. As noted in § 102.51(b), a requester may submit a certification form, available from the program, completed by the entity (*e.g.*, State government, private employer) that participated in the administration of the smallpox vaccine or other covered countermeasure to the smallpox vaccine recipient as part of a smallpox emergency response plan in place of documentation otherwise required concerning the requester's participation in, and receipt of the smallpox vaccine under, an approved smallpox emergency response plan.

Documentation a Vaccinia Contact Must Submit To Be Deemed Eligible (§ 102.52)

A requester who is a vaccinia contact must submit a completed and signed Request Form and the documentation described in § 102.52. Among the required documentation is documentation identifying the individual who was the source of the accidental vaccinia inoculation. However, if such documentation is unavailable, for example, if the source of the exposure to vaccinia is unknown, the Secretary has the discretion to accept other documentation providing evidence of the source of such exposure. For example, the Secretary may accept an affidavit signed by the requester explaining the circumstances under which he or she contracted the vaccinia. If this information is supportive of the vaccinia contact contracting vaccinia from a smallpox vaccine recipient (as defined in this regulation, except that the recipient need not sustain a covered injury) or from the contact of such a person, the Secretary may accept such an affidavit in place of the required documentation.

Documentation a Survivor Must Submit To Be Deemed Eligible (§ 102.53)

A requester who is a survivor of a deceased smallpox vaccine recipient or vaccinia contact must submit a completed and signed Request Form, the documentation discussed above that the deceased person would have had to submit if he or she were alive at the time of filing, and the documentation required of survivor requesters. These requirements are described in § 102.53.

Documentation a Representative of a Deceased Person's Estate Must Submit for the Estate To Be Deemed Eligible (§ 102.54)

A requester who is the representative of the estate of a deceased smallpox vaccine recipient or vaccinia contact, seeking benefits under the program on behalf of the estate, must submit a completed and signed Request Form, the documentation discussed above that the deceased person would have had to submit if he or she were alive at the time of filing, and the documentation required of requesters who are estate representatives. These requirements are described in § 102.54.

Documentation Needed for the Secretary To Calculate Benefits (§ 102.60–§ 102.63)

In addition to the documentation requesters must submit for the Secretary to make eligibility determinations (including the determination that a covered injury was sustained), requesters must submit documentation to enable the program to calculate the type and amount of benefits available. Because the benefits available under the program are generally secondary to benefits received from third-party payors, it may be possible that certain requesters who are deemed eligible will not receive benefits from the program. Sections 102.60–102.63 describe the documentation that is required for requesters seeking particular types of benefits.

Although the program will accept such documentation at any time after a Request Form is filed, a requester need not submit any of the documentation pertaining to benefits until the Secretary has informed the requester that he or she is eligible under the program. The submission of benefits documentation is described in § 102.43(b) and is designed to ease the documentary burden on requesters who do not know whether or not they will be deemed eligible. Requesters need not submit benefits documentation until they have been notified by the Secretary that they are eligible.

In order to calculate the amount of each type of benefit available, the program requires requesters to provide documentation of every third-party payor that may have paid for or provided the benefits requested, or that may have an obligation to do so. The information required concerning such third-party payors with respect to each type of benefit available under the program is described in § 102.60–§ 102.62.

Requesters seeking medical benefits must also submit documentation concerning the amount paid or expected to be paid by such third-party payors for the medical services or items for which payment is being sought under the program. Third-party payors of medical benefits include, but are not limited to, medical insurance, Medicaid, Medicare, and any other source of medical recompense. An example of the documentation necessary to satisfy this requirement is an Explanation of

Benefits form issued by the requester's health insurance company.

Third-party payors of benefits for lost employment income include, but are not limited to, the requester's employer, disability insurance, and workers' compensation programs. In order to satisfy his or her obligations under § 102.61, a requester may need to submit documentation including his or her earnings and leave statements, information concerning the number of hours in the requester's standard work day, as well as documentation concerning any lost work benefits programs or payments.

Requesters seeking death benefits will have to submit different documentation concerning third-party payors depending on whether they are seeking death benefits under the standard calculation described in § 102.82(c) or are choosing a death benefit under the alternative calculation described in § 102.82(d). For example, survivors seeking a death benefit under the standard calculation must submit documentation concerning PSOB Program death and disability benefits. The legal guardian of survivors seeking a death benefit under the alternative calculation must submit documentation concerning a broader group of existing or potential third-party payors (described fully in the death benefits calculation section of this preamble and set forth in § 102.83(d)(3)(A)). Requesters seeking death benefits must submit other documentation described in § 102.62.

Before payments will be made, the representatives of requesters who are minors or legally incompetent adults must submit additional documentation described in § 102.63. Because some of this documentation may be time-consuming to obtain (*e.g.*, obtaining a court decree establishing a guardianship of the estate for a legally incompetent adult), the requester can wait until a benefits calculation has been made, and a written approval has been issued, before submitting such documentation.

Determinations the Secretary Will Make (§ 102.70–§ 102.74)

When the Secretary receives a completed and signed Request Form or Request Package postmarked in the appropriate time frame, he will conduct two separate reviews, as described in § 102.70. First, he will determine whether the requester is eligible. Second, the Secretary will determine the type and amount of benefits that may be paid (if any).

If the Request Package does not include sufficient documentation to determine eligibility, the Secretary will send written notice to the requester (or his or her representative) identifying the documentation that is needed, as provided for in § 102.71. The requester will be given 60 days to submit the required documentation. If, after reasonable efforts to obtain the documents, the documentation remains unavailable, the requester must submit a letter explaining the circumstances to the Secretary. The Secretary also has the discretion to accept a letter meeting the requirements set out in § 102.71 as a substitute for the unavailable documentation. Once the Secretary has sufficient documentation to make an eligibility determination, he will make that decision in a timely manner.

If the Secretary determines that a requester is not eligible for benefits under the program, he will inform the requester (or his or her representative) of the disapproval in writing. As described in § 102.72(a), the Secretary will provide information as to the options available to the requester, including the requester's right to seek reconsideration of the eligibility decision.

If the Secretary determines that a requester meets the eligibility requirements, he will notify the requester in writing of this decision, at which point the Secretary will review the Request Package in order to calculate the type and amount of the benefits. If the Request Package does not have sufficient documentation for the Secretary to calculate the amount of the benefits, the Secretary will notify the requester in writing of the documentation he requires to complete the calculation. As with the eligibility documentation, the requester will be given 60 days to submit the required documentation or provide a letter setting forth the circumstances that make the records unavailable. Again, the Secretary may accept a letter meeting the requirements set forth in § 102.71 as a substitute for the unavailable documentation. Once the Secretary has sufficient documentation to calculate a requester's benefits, the Secretary will complete this calculation in a timely manner.

As set out in § 102.73, once the Secretary has calculated the amount of the benefits and determined that payment is to be made, he will inform the requester of the approval in writing and then initiate payment. Under § 102.74, if the Secretary disapproves a request, which the Secretary may do at any time, he will so notify the requester (or his or her representative) in writing and provide information as to the options available to the requester, including the requester's right to seek reconsideration of the Secretary's decision.

Payment of All Benefits Under the Program (§ 102.83)

The Secretary's options in paying all benefits under the program are described in § 102.83. If the Secretary determines that there is a reasonable likelihood that payments of medical benefits, benefits for lost employment income, or death benefits paid under the alternative calculation (described in § 102.82(d)) will be required for a period in excess of a year from the date the Secretary determines that the requester is eligible for such benefits, the Secretary may pay such benefits through a lump-sum payment, annuity or medical insurance policy, or appropriate structured settlement agreement, as long as the payment, annuity, policy, or agreement is actuarially determined to have a value equal to the present value of the projected total amount of such benefits that the requester is eligible to receive.

As described in § 102.83(b), lump sum payments will generally be made through electronic funds transfers to requesters' accounts. If a requester is a minor, the payment will be transferred to the account of the minor's legal guardian (generally, the minor's parent). The legal guardians of minor requesters under this program will be required to use the payments for the benefit of the minor. Such legal guardians are subject to applicable State law requirements concerning payments made on behalf of minors (*e.g.*, become the guardian of the minor's estate or establish an account with State court supervision, if required by State law). In administering this program, consistent with the practice of the PSOB Program in paying death benefits on behalf of minors, the Secretary will not require proof that the legal guardian has taken such actions. Section 102.83(b) describes the requirements pertaining to lump sum payments made on behalf of adults considered legally incompetent.

As provided in § 102.83(c), the Secretary may choose to make interim payments of benefits under the program (in other words, issue a payment for a certain type or portion of program benefit prior to making the final benefits payment) in order to get certain benefits to a requester more quickly than would otherwise be possible. For example, the Secretary may pay medical benefits for past services or items to an eligible requester whose covered injury has resulted in substantial medical bills before making the final determination concerning the payment of future medical benefits. In certain cases, the Secretary may make an interim payment of benefits even before a final eligibility or benefits determination is made. The Secretary expects such instances to be rare, and the requester in such circumstances must agree to repay the Secretary for any benefits later determined to be improper.

The Tax Consequences of Receiving Benefits From the Program

The Secretary has asked the Internal Revenue Service (IRS) to provide prompt guidance on the tax consequences of receiving benefits under SEPPA. The IRS intends to publish guidance before the end of the year that will give requesters who receive benefits under the program the information they would need to meet any Federal tax responsibilities. The IRS has committed to working with the Secretary to ensure that requesters have ready access to the tax information and assistance with any additional questions they may have.

The Secretary's Right To Recover Benefits Paid Under the Program From Third-Party Payors (§ 102.84)

As described elsewhere in this preamble, the payment of benefits under this program is generally secondary to benefits available from other third-party payors. The category of third-party payors that have primary responsibility to pay for or provide such benefits is different for each type of benefit available under this program. Such third-party payors are discussed in the sections of the preamble concerning the different types of benefits. As described in § 102.84, after the Secretary pays benefits under this program, he will be subrogated to the rights of the requester, meaning that the Secretary may assert a claim against any third-party payor with a legal or contractual obligation to pay for, or provide, such benefits. The Secretary may recover from such a third-party payor the amount of benefits the third-party payor has or had an obligation to pay for or provide. For example, if the Secretary pays a requester $10,000 in benefits for lost employment income under this program and a State workers' compensation program later determines that it is obliged to pay the requester $5,000 in workers' compensation benefits, the Secretary may pursue a claim against the State for the $5,000 (because the Secretary, as the secondary payor, would only be obligated to pay the requester $5,000 in benefits for lost employment income). Any benefits paid under this program are not subject to any lien by any primary third-party payor.

The Reconsideration Process (§ 102.90)

Every individual who has filed a Request Package and has received a determination by the Secretary either denying eligibility for benefits or denying a category or amount of benefits requested, has a right to seek reconsideration of the Secretary's determination(s). Although such initial determinations are characterized as Secretarial determinations, this decision-making authority will be delegated to the Smallpox Vaccine Injury Compensation Program Office. The requester or his or her representative must send a letter seeking reconsideration to the Associate Administrator, Special Programs Bureau, Health Resources and Services Administration, at the address provided in § 102.90(b). The letter must be received by the Department within 60 calendar days of the date of the Department's determination letter. The letter should state the reasons why the Secretary should reconsider his decision. No new documentation can be included with this letter.

The Associate Administrator, Special Programs Bureau, will convene a panel to review all cases seeking reconsideration. The panel will consist of qualified individuals who are independent of the Smallpox Vaccine Injury Compensation Program Office. The panel will review the Request Package that was before the Secretary at the time of the determination (and will not consider any new documentation submitted by the requester).

After reviewing the case, the panel will make a recommendation to the Associate Administrator, Special Programs Bureau, who will then make a final determination as to whether or not the requester is eligible for benefits or as to the type and/or amount of benefits that may be paid. The Associate Administrator will inform the requester or his or her representative in writing of the determination(s) and of the reasons. This decision will be considered the Secretary's final action on the issue for which reconsideration was sought. Requesters may not seek review of such a decision.

If the Associate Administrator's final decision is that a requester who was determined to be ineligible for benefits is, in fact, eligible, then the Secretary will make a determination as to the type and amount of benefits to be paid. The requester then has a right to seek reconsideration of the Secretary's determination on that issue.

Secretary's Review Authority and No Further Review of Determinations Made Under This Regulation (§ 102.91, § 102.92)

As described in § 102.91, the SEPPA authorizes the Secretary to review at any time, and at his own motion or on application, any determination made concerning eligibility, entitlement to benefits, and the calculation and payment of benefits under the Program and authorizes the Secretary to affirm, vacate, or modify such determination in any manner the Secretary deems appropriate.

As explained in § 102.92, once the Secretary has made a final decision as to eligibility or type or amount of benefits and the requester has exercised his or her right to reconsideration, section 262(f)(2) of the Public Health Service Act does not allow any further review of that decision by any court or administrative body (unless the President specifically directs further administrative review). Given this broad statutory prohibition against further review, no determination made under this part (including, but not limited to, eligibility determinations, benefits calculations, payment decisions, and reconsideration decisions) will be subject to any review by Federal or State courts.

Justification for Omitting Notice of Proposed Rulemaking and for Waiver of Delayed Effective Date

Through the enactment by the SEPPA of part C, Title II of the Public Health Service Act (PHS Act), the Secretary was authorized to establish and administer the Smallpox Vaccine Injury Compensation Program. Congress authorized the Secretary to issue regulations implementing the SEPPA as the Secretary deems reasonable and necessary, and provided that the initial implementing regulations could be published by interim final rule. In accordance with that statutory authority, the Secretary is herein establishing the procedures and requirements to govern the program.

In addition, the Secretary has determined, under 5 U.S.C. 553(b), that it is contrary to the public interest to follow proposed rulemaking procedures (*i.e.*, issuing a proposed rule, with an accompanying solicitation of public comments) before issuance of these regulations, because such a process might delay the continuing implementation of the President's plan to protect the population of the United States against the threat of a smallpox attack. A significant element of this plan, which is also an important priority

of the Secretary, is the increased voluntary participation of persons in smallpox emergency response plans throughout the nation, which includes voluntary immunization with the smallpox vaccine. The sooner this regulation is in effect, the sooner the program is implemented and the sooner potential requesters will be able to assess their eligibility to receive benefits from the program. Once this implementing regulation is in effect, the Secretary expects individuals who believe that they may be entitled to benefits under the program will file requests for such benefits within a short time frame. In addition, publishing this regulation promptly is necessary given that the governing filing deadlines, as applied to particular requesters, will begin to occur within a short period of time.

For the same reasons, the Secretary has determined that there is good cause to waive a delay in the rule's effective date. Nonetheless, as noted above, comments on the procedures and requirements set forth in this interim final rule will be accepted at the above listed address for a period of 60 days following the publication of the rule in the **Federal Register**. Thus, although the rule is effective immediately upon publication, the Secretary will consider the comments received and, based on them, may amend the procedures and/or requirements pertaining to this program.

Economic and Regulatory Impact

Regulatory Flexibility Act and Executive Order 12866. Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when rulemaking is necessary, to select regulatory approaches that provide the greatest net benefits (including potential economic, environmental, public health, safety distributive and equity effects). In addition, under the Regulatory Flexibility Act of 1980 (RFA), if a rule has a significant economic effect on a substantial number of small entities, the Secretary must specifically consider the economic effect of a rule on small entities and analyze regulatory options that could lessen the impact of the rule.

Executive Order 12866 requires that all regulations reflect consideration of alternatives, of costs, of benefits, of incentives, of equity, and of available information. Regulations must meet certain standards, such as avoiding an unnecessary burden. Regulations that are "significant" because of cost, adverse effects on the economy, inconsistency with other agency actions, effects on the budget, or novel legal or policy issues, require special analysis.

The Secretary has determined that minimal resources are required to implement the provisions included in this regulation. Therefore, in accordance with the RFA, and the Small Business Regulatory Enforcement Fairness Act of 1996, which amended the RFA, the Secretary certifies that this rule will not have a significant impact on a substantial number of small entities. Specifically, both the benefits and the burdens associated with this interim final rule will go almost entirely to individuals who are filing as requesters with the program. Any burdens on small entities associated with the implementation of this final rule (*e.g.*, completing a certification form concerning a smallpox vaccine recipient who was vaccinated under the auspices of a small entity as part of a smallpox emergency response plan, providing records to requesters seeking to comply with the regulation's documentation requirements) will be minimal in nature. Moreover, the number of small entities affected in this way will be very small in number.

The Secretary has also determined that this proposed rule does not meet the criteria for a major rule as defined by Executive Order 12866 and would have no major effect on the economy or Federal expenditures. We have determined that the proposed rule is not a "major rule" within the meaning of the statute providing for Congressional Review of Agency Rulemaking, 5 U.S.C. 801.

Nonetheless, the Secretary believes that a discussion of the factors that led to the creation of the smallpox vaccination plan and of the Smallpox Vaccine Injury Compensation Program, as well as the likely impact of both programs, is warranted. As described earlier in this preamble, prior to its eradication, smallpox (variola) was a serious illness that manifested either as outbreaks of variola major with death rates of greater than 20% or variola minor with death rates approaching 1%. Those who survived were frequently left with significant disabilities, such as blindness. Smallpox vaccine was an essential tool for the successful global eradication of smallpox, announced by the World Health Organization in 1980. Despite such eradication, concern exists that terrorists may have access to the smallpox virus.

On December 13, 2002, the President announced a plan to protect the population of the United States against the threat of a possible smallpox attack. This plan was based on heightened concerns, in the wake of the attacks of September and October 2001, that terrorists may have access to the smallpox virus and may attempt to use it against the population of the United States and government facilities abroad. Under this plan, which the Secretary is actively working to implement, State and local governments have formed volunteer smallpox-emergency response teams that will be prepared to provide critical services to the population of the United States in the event of a smallpox virus attack.

In furtherance of the President's plan, and as described earlier, the Secretary issued a Declaration Regarding Administration of Smallpox Countermeasures on January 24, 2003. In this Declaration, the Secretary stated that "a potential bioterrorist incident makes it advisable to administer, on a voluntary basis, covered countermeasures specified * * * for prevention or treatment of smallpox [(virus infection)] or control or treatment of adverse events related to smallpox vaccination, to [specified] categories of individuals * * *." The specific "covered countermeasures" described in the Declaration are smallpox vaccines, cidofovir and derivatives thereof, and Vaccinia Immune Globulin. The categories of persons to whom the Secretary recommended the administration of such covered countermeasures, on a voluntary basis, included certain health care workers, members of smallpox emergency response plans identified by State or local government entities or the Department of Health and Human Services, certain public safety personnel, and certain personnel associated with specific Federal facilities abroad. The Secretary recommended that such persons receive the smallpox vaccine to ensure that essential personnel would be able to mobilize immediately and provide critical services to the population of the United States in the event of a smallpox virus attack.

As already stated, the SEPPA was enacted on April 30, 2003. This statute authorized the Secretary to establish the Smallpox Vaccine Injury Compensation Program (the program). This program has been appropriated $42 million for the administration of the program and the payment of benefits under the program. The purpose of the program is to provide benefits to eligible members of smallpox emergency response plans who sustain a covered injury as the result of receiving the smallpox vaccine (or other smallpox covered countermeasures). In addition, certain persons who come in contact with a vaccinated member of a smallpox

emergency response plan (or the contact of such a person) and sustain a covered injury may be eligible for benefits. As noted above, death benefits are also available to survivors of individuals whose death resulted directly from a covered injury.

The availability of benefits to injured persons (and certain survivors, in the case of death) under this program was considered an important step in the implementation of the Administration's smallpox vaccination plan and in the nation's preparedness to face potential terrorist events involving the smallpox virus. Prior to the enactment of the SEPPA, and the establishment of this program, eligible smallpox vaccine recipients and vaccinia contacts were only entitled to benefits for medical care or for lost employment income related to covered injuries that were otherwise available from other third-party payors (*e.g.*, State workers' compensation programs). In addition, pursuant to the Homeland Security Act of 2002, certain smallpox vaccine recipients and vaccinia contacts could pursue legal actions relating to covered injuries under the Federal Torts Claims Act (FTCA). The latter option was limited insofar as awards under the FTCA are available only to the extent that negligence can be shown in relation to the vaccine production or administration. The SEPPA expanded the benefits available to eligible smallpox vaccine recipients and vaccinia contacts through the establishment of a no-fault administrative compensation program that supplements the benefits available from other third-party payors.

The Administration has worked to remove other disincentives to smallpox vaccination through approved smallpox emergency response plans (*e.g.*, providing appropriate guidelines for pre-vaccination screening for potential contraindications, engaging in post-vaccination surveillance and data collection).

Because it is impossible to quantify the risk of potential terrorist incidents involving the smallpox virus, it is impossible to assess the contribution that a group of first responders vaccinated with the smallpox vaccine through smallpox emergency response plans will provide to the population of the United States. In making benefits available to eligible individuals, the Administration is removing a disincentive that may be a barrier against first responders and others receiving the smallpox vaccination as participants in approved smallpox emergency response plans. In removing this disincentive, the program is likely to increase the nation's preparedness in the face of uncertainty. In addition, the establishment of the program ensures that individuals who sustain covered injuries as the direct result of such vaccinations (or of other smallpox covered countermeasures) or of accidental vaccinia inoculation will be afforded appropriate benefits, including payment for related medical services and items.

As of September 2003, approximately 38,400 vaccinations have been administered to civilians under approved smallpox emergency response plans. Of those, approximately 800 have reported medical injuries to the CDC through the Vaccine Adverse Events Reporting System (VAERS). Such reports have included three fatalities and 92 serious injuries. Some of those who have reported injuries may not be eligible for the Smallpox Vaccine Injury Compensation Program, either because the injury is not covered by the Act (*e.g.*, because the injury is excluded as a minor injury or because the injury is neither listed on the table nor is there evidence linking the smallpox vaccine to the occurrence of the injury) or because the individual is not eligible under the SEPPA (*e.g.*, the requester received the smallpox vaccine, but not as a participant in an approved smallpox emergency response plan). Nevertheless, these recorded injuries indicate a possible injury rate of about 2% of the vaccinated population.

The $42 million appropriated to the Program, in addition to covering administrative costs, was projected by Congress to cover the provision of benefits to eligible requesters. This figure was reached after consideration of the projected number of covered injuries and related deaths, projected medical costs related to the covered injuries, and the projected number of lost work days resulting from such covered injuries. The fact that program benefits are generally only available if such benefits are not available from other third-party payors (*e.g.*, medical benefits will not be paid for medical services or items if a requester's health insurance company has an obligation to pay for or provide such services or items), or are generally only available in an amount necessary to supplement benefits available from third-party payors, was also considered.

It should be noted that the smallpox vaccination program that was being considered by Congress and the Administration when the $42 million appropriation was made contemplated that up to 2–3 million individuals could be vaccinated through approved smallpox emergency response plans if individuals representing all of the occupations described in the SEPPA (including health care workers, firefighters, and public safety personnel) fully participated in the smallpox vaccination program. The number of individuals who have received the smallpox vaccine under approved smallpox emergency response plans to date is substantially smaller than the number of such vaccinees that were considered possible if the smallpox vaccination program reached full participation. As of September 2003, approximately 38,400 vaccinations were administered under approved smallpox emergency response plans. For this reason, the number of individuals eligible to receive benefits under the program may in fact be a small percentage of the numbers originally considered. Given that the number of individuals who have volunteered to receive the smallpox vaccine under approved smallpox emergency response plans is significantly smaller than the total number of potential vaccinees likely considered in devising the $42 million appropriation, the program expects the adverse events associated with the smallpox vaccination program and the amount of benefits paid by the program (which will depend, on large part, upon the amount of medical services and items, as well as lost employment income, relating to covered injuries) to be similarly smaller than what was considered in calculating the $42 million appropriation. Of course, this expectation may change over time depending upon many factors, including the number of volunteers who receive the smallpox vaccine under approved smallpox emergency response plans in the future, as well as new scientific findings concerning the existence of causal relationships between particular medical conditions and the smallpox vaccine (as well as other covered countermeasures and vaccinia contracted through accidental exposure).

In establishing the procedures described in this regulation, the Secretary has made operational decisions that will assist eligible requesters to receive benefits in a prompt and fair manner. For example, requesters are not required to obtain the services of an attorney in order to obtain benefits under the program, but are permitted to appoint a representative to assist them in filing a Request Package if this will be helpful to the requester.

In addition, the Secretary has made an effort to be flexible in circumstances in which a requester is unable to submit documentation that would otherwise be required in order to establish eligibility and entitlement to benefits. For

example, if a requester has made a good faith effort to obtain medical records, but is unable to access such records (*e.g.*, if a physician's practice is no longer in business), the Secretary may choose to accept a statement by the requester describing the reasons for the records' unavailability and the reasonable efforts the requester has made to obtain them in place of the unavailable medical records. Likewise, if a vaccinia contact is unable to identify the source of his or her exposure to vaccinia, this interim final rule enables the requester to submit an affidavit explaining the circumstances under which he or she contracted the vaccinia. If this information is consistent with the vaccinia contact contracting vaccinia from an eligible vaccinee or the contact of such a person (*e.g.*, the vaccinia contact works in a hospital and was in close contact with several individuals who received the smallpox vaccine under an approved smallpox emergency response plan and, to the best of his or her knowledge, was not in close contact with any person who received the smallpox vaccine outside such a plan), the Secretary may accept such an affidavit in place of the required documentation.

Unfunded Mandates Reform Act of 1995. The Secretary has determined that this interim final rule will not have effects on State, local, and tribal governments and on the private sector such as to require consultation under the Unfunded Mandates Reform Act of 1995.

Federalism Impact Statement. The Secretary has also reviewed this rule in accordance with Executive Order 13132 regarding federalism, and has determined that it does not have "federalism implications." The rule does not "have substantial direct effects on the States, or on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

Impact on Family Well-Being. This interim final rule will not adversely affect the following elements of family well-being: Family safety, family stability, marital commitment; parental rights in the education, nurture and supervision of their children; family functioning, disposable income or poverty; or the behavior and personal responsibility of youth, as determined under section 654(c) of the Treasury and General Government Appropriations Act of 1999. In fact, this interim final rule may have a positive impact on the disposable income and poverty elements of family well-being to the extent that families of injured persons (and of other persons deemed eligible to receive benefits under this part) receive, or are helped by, benefits paid under this part without imposing a corresponding burden on them.

Impact of the New Rule. In this interim final rule, the Secretary establishes the procedures and requirements applicable to requesters filing for benefits available under the program. This interim final rule is based on the SEPPA. It will have the effect of enabling certain eligible individuals who sustained covered injuries as the direct result of receiving a covered countermeasure under the Secretary's Declaration, or as a direct result of vaccinia contracted through accidental vaccinia inoculation in the case of certain vaccinia contacts, to receive benefits under the program. In the event that an otherwise eligible smallpox vaccine recipient or vaccinia contact has died, his or her estate and/or survivors may be entitled to certain benefits. This interim final rule sets out the eligibility requirements that apply to the program, and the documentation that must be submitted.

Paperwork Reduction Act of 1995. In accordance with section 3506(c)(2)(A) of the Paperwork Reduction Act (PRA) of 1995, the Department is required to solicit public comments, and receive final Office of Management and Budget (OMB) approval, on any information collection requirements set forth in rulemaking. As indicated, in order to implement the SEPPA, certain information is required as set forth in §§ 102.50–102.63 of this rule.

In accordance with the PRA, we have submitted and obtained OMB approval on this data collection and reporting of this information. An emergency review was needed before the expiration of the normal time limits under OMB's regulations at 5 CFR part 1320, to ensure the timely availability of data as necessary to ensure the provision of benefits to eligible petitioners. Delaying the data collection would delay implementation of the statutory purpose of providing benefits to eligible individuals who sustained covered injuries, particularly because the statutory filing deadlines for certain eligible requesters may occur as early as January 2004. Implementing this regulation and providing benefits as soon as possible will ensure that the intent of SEPPA in making these benefits to eligible individuals will be implemented, to the extent possible. OMB has approved this collection, with a 180-day approval period. During this period, we will publish a separate **Federal Register** notice announcing the initiation of an extensive 60-day agency review and public comment period on the requirements set forth.

Collection of Information: The Smallpox Vaccine Injury Compensation Program.

Description of Respondents: Individuals who are members of smallpox emergency response plans who received a smallpox vaccine and sustained a covered injury from it or from other covered countermeasures. Individuals who were injured by vaccinia from contact with a vaccinated member of a smallpox emergency response plan or other vaccinia contacts also qualify. In addition, some survivors of smallpox vaccine recipients or of vaccinia contacts may be eligible for death benefits and the estates of such deceased persons may receive certain benefits.

Estimated Annual Reporting: The estimated annual reporting for this data collection is a total of six hours for reviewing and completing the Smallpox Vaccine Injury Compensation Request Form as well as the time to obtain and provide medical and financial documentation for eligibility and the computation of benefits. The estimated annual response burden is as follows:

Form	Number of respondents	Responses per respondent	Hourly response	Total burden hours	Wage rate	Total hour cost
Request Form and Supporting Documentation	1,250	1	5	6,250	$37.50	$234,375
Certification	1,250	1	1	1,250	37.50	46,875
Total	2,500			7,500		281,250

According to CDC's Vaccine Adverse Event Reporting System (VAERS), there are reports of three fatalities and 92 serious injuries (out of approximately 800 total reported injuries) based on the administration of approximately 38,400 smallpox vaccinations to volunteers within the civilian sector (as of September 2003). The program recognizes the difficulty inherent in predicting the number of individuals who will file for benefits under approved smallpox emergency response plans. Nonetheless, with the anticipation of additional individuals receiving the smallpox vaccine, plus a number of potential contact cases, the program predicts that there may be up to 1,250 requesters. It is important to note that a large number of such requesters filing Request Forms with the program may not be eligible for payments under the program for a variety of reasons (*e.g.*, they sustained minor injuries that do not qualify as covered injuries, the Secretary determines that their injuries do not qualify as table injuries and that there is insufficient evidence to establish causation, they received the smallpox vaccine outside of an approved smallpox emergency response plan, or they did not file their Request Form within the governing filing deadlines).

The annual burden estimate includes the time required to review and complete the Request Form as well as the time to obtain and provide further documentation necessary for eligibility and benefits determinations. Comments on this information collection activity should be sent to Lauren Wittenberg, OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, 725 17th Street, NW., Washington, DC 20053; FAX: (202) 395–6974.

List of Subjects in 42 CFR Part 102

Benefits, Biologics, Compensation, Immunization, Public health, Smallpox, Vaccinia.

Dated: October 27, 2003.

Elizabeth M. Duke,

Administrator, Health Resources and Services Administration.

Approved: December 8, 2003.

Tommy G. Thompson,

Secretary.

■ For the reasons stated above, the Department of Health and Human Services amends part 102 of 42 CFR as follows:

■ 1. The authority section for part 102 is revised to read as follows:

Authority: 42 U.S.C. 216, 42 U.S.C. 239–239h.

■ 2. In part 102, add sections 102.1—102.20 to read as follows:

PART 102—SMALLPOX VACCINE INJURY COMPENSATION PROGRAM

Subpart A—General Provisions

Sec.
102.1 Purpose.
102.2 Summary of available benefits.
102.3 Definitions.

Subpart B—Persons Eligible to Receive Benefits

102.10 Eligible requesters.
102.11 Survivors.

Subpart C—Covered Injuries

102.20 How to establish a covered injury.
102.21 Smallpox (Vaccinia) Vaccine Injury Table.

Subpart D—Available Benefits

102.30 Benefits available to different categories of requesters under this program.
102.31 Medical benefits.
102.32 Benefits for lost employment income.
102.33 Death benefits.

Subpart E—Procedures for Filing Request Packages

102.40 How to obtain forms and instructions.
102.41 How to file a request package.
102.42 Deadlines for filing request forms.
102.43 Deadlines for submitting documentation.
102.44 Representatives of requesters.
102.45 Multiple survivors.
102.46 Amending a request package.

Subpart F—Required Documentation To Be Deemed Eligible

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Subpart A—General Provisions

§ 102.1 Purpose.

This part implements Section 2 of the Smallpox Emergency Personnel Protection Act of 2003 (the Act). The Act directs the Secretary of Health and Human Services to establish procedures for providing benefits to certain individuals who sustained a covered injury as the direct result of the administration of the smallpox vaccine or other covered countermeasure, and to certain individuals who sustained a covered injury as the direct result of accidental vaccinia inoculation through contact with certain persons vaccinated with the smallpox vaccine or with individuals accidentally inoculated by them. Also, if the Secretary determines that an individual died as a result of a covered injury, the Act provides for certain survivors of that individual to receive death benefits.

§ 102.2 Summary of available benefits.

(a) The Act authorizes three forms of benefits to requesters deemed eligible by the Secretary:

(1) Payment or reimbursement for reasonable and necessary medical services and items to diagnose or treat a covered injury or its health complications, as described in § 102.31.

(2) Lost employment income incurred as a result of a covered injury, as described in § 102.32.

(3) Death payments to survivors if the Secretary determines that the death of the smallpox vaccine recipient or vaccinia contact was the direct result of

a covered injury, as described in § 102.33.

(b) The benefits paid under the Program, with the exception of death benefits paid under § 102.82(c), are secondary to any obligation of any third-party payor to pay for such benefits. Death benefits paid under § 102.82(c) are secondary to death and disability benefits under the PSOB Program. The benefits paid under the Program usually will only be paid after the requester has pursued all other available coverage from all third-party payors with an obligation to pay for or provide such benefits (*e.g.*, medical insurance for medical items, workers' compensation program(s) for lost employment income). However, as provided in § 102.84, the Secretary has the discretion to pay benefits under this Program before a potential third-party payor makes a determination on the availability of similar benefits and has the right to later pursue a claim against any third-party payor with a legal or contractual obligation to pay for, or provide, such benefits.

§ 102.3 Definitions.

This section defines certain words and phrases found throughout this part. Words and phrases that are used only in limited situations are defined in specific sections of this part.

(a) *Accidental vaccinia inoculation* means the transfer of vaccinia virus from an existing vaccination site (the skin surface where the vaccinia virus entered the body through vaccination) or inoculation site (the skin or mucous membrane surface where the vaccinia virus entered the body through means other than vaccination) on a person to a second person, resulting in a contact case.

(b) *Act* means the Smallpox Emergency Personnel Protection Act of 2003, Pub. L. 108–20, 117 Stat. 638.

(c) *Approval* means a decision by the Secretary that the requester will be paid benefits under the Program.

(d) *Benefits* means benefits and/or compensation.

(e) *Contact case* means a case in which a person developed an initial vaccinial lesion or vaccinial infection through an exposure other than being vaccinated him/herself.

(f) *Covered countermeasure* means smallpox (vaccinia) vaccines, cidofovir and its derivatives, or Vaccinia Immune Globulin, when used to prevent or treat the smallpox disease or control or treat the adverse effects of vaccinia vaccination or inoculation or of the administration of another countermeasure.

(g) *Covered injury* means an injury determined by the Secretary, in accordance with subpart C of this part, to be:

(1) An injury meeting the requirements of the Table, which is presumed to be the direct result of the administration of a smallpox vaccine or accidental vaccinia inoculation; or

(2) More likely than not, the direct result of:

(A) The administration of a covered countermeasure (including the smallpox vaccine) during the effective period of the Declaration, in the case of a smallpox vaccine recipient; or

(B) Vaccinia contracted through accidental vaccinia inoculation (and not the result of receiving a smallpox vaccine) during the effective period of the Declaration (or within 30 days after the end of such period), in the case of a vaccinia contact.

(h) *Declaration* means the Declaration Regarding Administration of Smallpox Countermeasures issued by the Secretary on January 24, 2003, and published in the **Federal Register** on January 28, 2003 (68 FR 4212).

(i) *Dependent* means a person who would be considered a dependent by the Internal Revenue Service.

(j) *Disapproval* means a decision by the Secretary that the requester will not be paid benefits under the Program.

(k) *Effective period of the Declaration* means the time span specified in the Declaration (January 24, 2003 until and including January 23, 2004), unless extended by the Secretary.

(l) *FECA Program* means the workers' compensation benefits program for civilian officers and employees of the Federal Government established under the Federal Employees' Compensation Act (5 U.S.C. 8101 *et seq.*), as amended, and implemented by the United States Department of Labor in regulations codified at 20 CFR Part 10, as amended.

(m) *Health care practitioner* means a health care provider licensed by a State and authorized to diagnose and prescribe medications and other treatments or authorized to provide primary or specialty care.

(n) *Injury* means an injury (including death), disability, illness, or condition.

(o) *Legally incompetent* means a person who is considered to lack legal capacity under applicable State law.

(p) *Program* means the Smallpox Vaccine Injury Compensation Program.

(q) *Public Safety Officers' Benefits Program (PSOB Program)* means the Program established under subpart 1 of part L of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3796 *et seq.*), as amended, and implemented by the United States Department of Justice in regulations codified at 28 CFR Part 32, as amended.

(r) *Requester* means a smallpox vaccine recipient, vaccinia contact, survivor, or representative of the estate of a deceased smallpox vaccine recipient or vaccinia contact (on behalf of the estate) who files a Request Package, or on whose behalf a Request Package is filed, under this part.

(s) *Request Form* means the form designated by the Secretary as the request form for purposes of this part.

(t) *Request Package* means the Request Form, all documentation submitted by or on behalf of the requester, and all documentation obtained by the Secretary as authorized by or on behalf of the requester for determinations of eligibility and benefits under this part.

(u) *Secretary* means the Secretary of Health and Human Services and any other officer or employee of the Department of Health and Human Services to whom the authority involved has been delegated.

(v) *Smallpox emergency response plan* means a State, local, or Department of Health and Human Services plan, approved by the Secretary, detailing actions to be taken in preparation for a possible smallpox-related emergency during the period prior to the identification of an active case of smallpox either within or outside the United States.

(w) *Smallpox (Vaccinia) Vaccine Injury Table* or *Table* or *Table of Injuries* means the table of injuries included at § 102.21, including the definitions and requirements set forth at § 102.21(b).

(x) *Smallpox vaccine recipient* means a person:

(1) Who has been a health care worker, law enforcement officer, firefighter, security personnel, emergency medical personnel, other public safety personnel, or support personnel for such occupational specialties who has volunteered and been selected to be a member of a smallpox emergency response plan prior to the time at which the Secretary publicly announces that an active case of smallpox has been identified within or outside of the United States;

(2) Who is or will be functioning in a role identified in a smallpox emergency response plan;

(3) To whom a smallpox vaccine is administered pursuant to a smallpox emergency response plan during the effective period of the Declaration; and

(4) Who sustained a covered injury.

(y) *State* means any State of the United States of America, the District of Columbia, United States territories, commonwealths, and possessions, the Republic of the Marshall Islands, the Republic of Palau, and the Federated States of Micronesia.

(z) *Survivor* means a survivor of a deceased smallpox vaccine recipient or vaccinia contact meeting the requirements of § 102.11.

(aa) *Third-party payor* means the United States (other than for payments of benefits under this Program) or any other third-party, including any State or local governmental entity, private insurance carrier, or employer, with a legal or contractual obligation to pay for or provide benefits.

(bb) *Vaccinia contact* means an individual who:

(1) Contracted vaccinia during the effective period of the Declaration (or within 30 days after the end of such period);

(2) Prior to contracting vaccinia, was accidentally inoculated by a person:

(A) Meeting the criteria set forth in § 102.3(x)(1)–(3) (a person meeting the definition of a smallpox vaccine recipient, except for the requirement that the person sustained a covered injury); or

(B) Who was accidentally inoculated by a person meeting the criteria set forth in § 102.3(x)(1)–(3) (a person meeting the definition of a smallpox vaccine recipient, except for the requirement that the person sustained a covered injury); and

(3) Sustained a covered injury.

Subpart B—Persons Eligible To Receive Benefits

§ 102.10 Eligible requesters.

(a) The following requesters may, as determined by the Secretary, be eligible to receive benefits from this Program:

(1) Smallpox vaccine recipients, as described in § 102.3(x);

(2) Vaccinia contacts, as described in § 102.3(bb); or

(3) Survivors, as described in § 102.3(z) and § 102.11.

(4) Representatives of the estates of deceased smallpox vaccine recipients or vaccinia contacts (*i.e.*, individuals authorized to act on behalf of the deceased person's estate under applicable state law, such as an executor).

(b) If a smallpox vaccine recipient or vaccinia contact dies, his or her survivor(s) or the representative of his or her estate may file a new Request Package (or Request Package(s)) or amend a previously filed Request Package. A new Request Package may be filed whether or not a Request Package was previously submitted by or on behalf of the deceased person, but must be filed within the filing deadlines described in § 102.42. Amendments to previously filed Request Packages and the filing deadlines for such amendments are described in § 102.46.

(c) The benefits available to different categories of requesters are described in § 102.30.

§ 102.11 Survivors.

(a) *Survivors of individuals who died as the direct result of a covered injury.* If the Secretary determines that a smallpox vaccine recipient or vaccinia contact died as the direct result of a covered injury (or injuries), his or her survivor(s) may be eligible for death benefits.

(b) *Survivors who may be eligible to receive benefits and order of priority for benefits.*

(1) The Act uses the same categories of survivors and order of priority for benefits as established and defined by the PSOB Program, except as provided in paragraphs (b)(3), (b)(4), and (b)(5) of this section.

(2) The PSOB Program's categories of survivors (known in the PSOB Program as beneficiaries) and order of priority for receipt of death benefits are detailed under subpart 1 of part L of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3796 *et seq.*), as amended, as implemented in 28 CFR Part 32, as amended.

(3) In the PSOB Program, the person who is survived must satisfy the eligibility requirements for a deceased public safety officer, whereas the person who is survived under this Program must be a deceased smallpox vaccine recipient or vaccinia contact who would otherwise have been eligible under this part.

(4) Unlike the PSOB Program, if there are no survivors eligible to receive death benefits under the PSOB Program (as set forth in paragraph (b)(2) of this section), the legal guardian of a deceased minor who was a smallpox vaccine recipient or vaccinia contact may be eligible as a survivor under this Program. Such legal guardianship must be determined by a court of competent jurisdiction under applicable State law.

(5) A surviving dependent younger than the age of 18 whose legal guardian opts to receive a death benefit under the alternative calculation on the dependent's behalf will have the same priority as surviving eligible children under the PSOB Program (consistent with paragraph (b)(2) of this section) even if the dependent is not the surviving eligible child of the deceased person for purposes of the PSOB Program. However, such a dependent may only be eligible to receive benefits under the alternative death benefits calculation, described in § 102.82(d), and is not eligible to receive death benefits under the standard calculation described in § 102.82(c). Because death benefits paid under the alternative calculation will be paid to the dependents' legal guardian(s) on behalf of all such dependents, the Secretary will not divide or apportion such benefits among the dependents.

(6) Any change in the order of priority of survivors or of the eligible category of survivors under the PSOB Program shall apply to requesters seeking death benefits under this Program on the effective date of the change, even prior to any corresponding amendment to this part. Such changes will apply to Request Packages pending with the Program on the effective date of the change, as well as to requests filed after that date.

Subpart C—Covered Injuries

§ 102.20 How to establish a covered injury.

(a) *General.* In order to receive benefits under the Program, a requester must submit documentation showing that a covered injury, as described in § 102.3(g), was sustained. A requester can establish that a covered injury was sustained by demonstrating to the Secretary that a Table injury occurred, as described in paragraph (c) of this section. In the alternative, a requester can establish that an injury was actually caused by a covered countermeasure or accidental vaccinia inoculation, as described in paragraph (d) of this section. The Secretary will consider all relevant medical and scientific evidence, such as medical records and documentation submitted by the requester, when determining whether a covered injury was established. In addition, the Secretary may obtain the views of qualified medical experts in making determinations concerning covered injuries. As set forth in the definition of covered countermeasures, if a covered injury is related to the administration of a covered countermeasure, the countermeasure must have been administered to prevent or treat the smallpox disease or to control or treat the adverse effects of vaccinia vaccination or inoculation or of the administration of another countermeasure. The time periods described in this part for receiving a covered countermeasure (during the effective period of the Declaration) or for vaccinia contracted from accidental vaccinia inoculation (during the effective period of the Declaration or within 30 days after the end of such

period) in relation to a covered injury must also be met.

(b) *Minor injuries.* Any injuries that the Secretary deems minor will not be considered covered injuries. Minor injuries include expected and routine responses to the smallpox vaccine, other covered countermeasures, or accidental vaccinia inoculation that are not severe (*e.g.*, minor scarring or minor local reactions, for instance a mild systemic illness with a generalized maculopapular rash that resolves quickly).

(c) *Table injuries.* A requester may establish that a covered injury occurred by demonstrating that a smallpox vaccine recipient or vaccinia contact sustained an injury listed on the Smallpox (Vaccinia) Vaccine Injury Table, set forth in § 120.21, within the time interval listed on the Table and as defined by the Table's Definitions and Requirements, set forth in § 120.21(b). In such circumstances, the requester need not demonstrate the cause of the injury because the Secretary will presume, only for purposes of making determinations under this subpart, that the injury was the direct result of the administration of a smallpox vaccine or exposure to vaccinia. Even if the Table requirements are satisfied, however, an injury will not be considered a covered injury if the Secretary determines, based upon his review of the evidence, that a source other than the smallpox vaccine or exposure to vaccinia more likely than not caused the injury. In such circumstances, the Table presumption will be rebutted.

(d) *Injuries for which causation must be proven.* If an injury is not included on the Table or if a requester is unable to meet all of the Table requirements with respect to an injury included on the Table (*e.g.*, onset of the injury within the time interval included on the Table), a requester may establish a covered injury by proving causation. To establish that a covered countermeasure or accidental vaccinia inoculation caused an injury, the requester must demonstrate, by a preponderance of the evidence (more likely than not), that:

(1) In the case of a smallpox vaccine recipient, he or she sustained an injury as the direct result of the administration of a covered countermeasure (including the smallpox vaccine) during the effective period of the Declaration; or

(2) In the case of a vaccinia contact, he or she sustained an injury as the direct result of vaccinia contracted through accidental vaccinia inoculation from a person described in § 102.3(bb)(2) (a person meeting the definition of a smallpox vaccine recipient, except that the person need not sustain a covered injury, or the contact of such a person), and not as the result of receiving a smallpox vaccine. Such vaccinia must have been contracted during the effective period of the Declaration (or within 30 days after the end of such period). The Secretary will consider an injury that resulted from the administration of a covered countermeasure (other than the smallpox vaccine) to be the direct result of vaccinia contracted through accidental vaccinia inoculation if the covered countermeasure was administered as a result of such vaccinia.

§§ 102.22–102.29 [Reserved]

3. In part 102, reserve §§ 102.22–102.29.

§§ 102.30–102.91 [Added]

4. In part 102, add sections 102.30–102.91 to read as follows:

Subpart D—Available Benefits

§ 102.30 Benefits available to different categories of requesters under this Program.

(a) *Benefits available to smallpox vaccine recipients and vaccinia contacts.*

A requester who is an eligible smallpox vaccine recipient or vaccinia contact may be entitled to receive either medical benefits or benefits for lost employment income, or both.

(b) *Benefits available to survivors.* A requester who is an eligible survivor of a smallpox vaccine recipient or vaccinia contact may be entitled to receive a death benefit.

(c) *Benefits available to estates of deceased smallpox vaccine recipients or vaccinia contacts.* The estate of an otherwise eligible deceased smallpox vaccine recipient or vaccinia contact may be eligible to receive medical benefits or benefits for lost employment income, or both, if such benefits were accrued during the deceased person's lifetime as a result of a covered injury or its health complications, but were not paid while the deceased person was living. Such medical benefits and benefits for lost employment income may be available regardless of whether the death was the direct result of a covered injury or an unrelated factor. The estate of a deceased smallpox vaccine recipient or vaccinia contact may not receive a death benefit.

§ 102.31 Medical benefits.

(a) Smallpox vaccine recipients and vaccinia contacts may receive payments or reimbursements for medical services and items that the Secretary determines to be reasonable and necessary to diagnose or treat a covered injury or a health complication of a covered injury (*i.e.*, sequela). The Secretary may pay for such medical services and items in an effort to cure, counteract, or minimize the effects of any covered injury, or any health complication of a covered injury, or to give relief, reduce the degree or the period of disability, or aid in lessening the amount of monthly benefits to a requester (*e.g.*, a surgical procedure that lessens the amount of time and expense for the treatment of a covered injury). The Secretary may make such payments or reimbursements if the medical services and items have already been provided or if they are likely to be provided in the future. In making determinations about which medical services and items are reasonable and necessary, the Secretary may consider whether those medical services and items were prescribed or recommended by a health care practitioner.

(b) To receive medical benefits for the health complications of a covered injury, a requester must demonstrate that the complications are the direct result of the covered injury. Examples of health complications include, but are not limited to, complications of a covered injury that occur as part of the natural course of the underlying disease, an adverse reaction to a prescribed medication or diagnostic test used in connection with a covered injury, or a complication of a surgical procedure used to treat a covered injury.

(c) The calculation of medical benefits available under this Program is described in § 102.80. Although there are no caps on medical benefits available under this Program, the Secretary may limit payments to the amount he deems reasonable for those services and items he considers reasonable and necessary. All payment or reimbursement for medical services and items is secondary to any obligation of any third-party payor to pay for or provide such services or items to the requester. As provided in § 102.84, the Secretary retains the right to recover medical benefits paid to requesters by third-party payors.

(d) The Secretary may make payments or reimbursements of medical benefits to the estate of a deceased smallpox vaccine recipient or vaccinia contact as long as such benefits were accrued during the deceased person's lifetime as the result of a covered injury or its health complications and were not paid during the deceased person's lifetime.

§ 102.32 Benefits for lost employment income.

(a) Requesters who are smallpox vaccine recipients or vaccinia contacts may be able to receive benefits for loss of employment income incurred as a result of a covered injury (or its health complications, as described in § 102.31(b)). These benefits are a percentage of the employment income lost due to the covered injury or its health complications.

(b) The method and amount of benefits for lost employment income are described in § 102.81. Benefits for lost employment income will be adjusted if there are fewer than 10 days of lost employment income. Benefits provided for lost employment income may also be adjusted for annual and lifetime caps. Payment of benefits for lost employment income is secondary to any obligation of any third-party payor to pay for lost employment income or to provide disability or retirement benefits to the requester. As provided in § 102.84, the Secretary retains the right to recover benefits for lost employment income paid to requesters from third-party payors.

(c) The Secretary is not requiring an individual to use paid leave (*e.g.*, sick leave or vacation leave) to be paid for lost work days. However, if an individual uses such paid leave in order to be paid for lost work days, the Secretary will not consider the days in which such leave was used to be days of lost employment income, unless the individual's employer restores the leave that was used. By restoring paid leave, an employer puts the individual in the same position as if he or she had not used paid leave on the lost work day (*i.e.*, takes back the payments made when the leave was taken and gives back the leave to the employee for future use).

(d) The Secretary may pay benefits for lost employment income to the estate of a deceased smallpox vaccine recipient or vaccinia contact as long as such benefits were accrued during the deceased person's lifetime as the result of a covered injury or its health complications and were not paid to the deceased person during his or her lifetime.

§ 102.33 Death benefits.

(a) Eligible survivors may be able to receive a death benefit under this Program if the Secretary determines that an otherwise eligible deceased smallpox vaccine recipient or vaccinia contact sustained a covered injury and died as a direct result of the injury. Annual and lifetime caps may apply to the death benefits provided. The method and amount of death benefits are described in § 102.82. As provided in § 102.84, the Secretary retains the right to recover death benefits paid to requesters from third-party payors. Death benefits may be paid under two different calculations.

(b) The standard calculation, described in § 102.82(c), is based upon the death benefit available under the PSOB Program and is available to all eligible survivors (except for surviving dependents younger than the age of 18 who are not also surviving eligible children). In the event that death benefits were paid under the PSOB Program with respect to the deceased person, no death benefits may be paid under the standard calculation. In addition, death benefits under this standard calculation are secondary to disability benefits under the PSOB Program. Any death benefit paid under the standard calculation will be reduced by the total amount of benefits for lost employment income paid to the smallpox vaccine recipient or vaccinia contact during his or her lifetime and to his or her estate after death.

(c) The alternative calculation, described in § 102.82(c), is calculated based on the person's employment income at the time of the covered injury. This calculation is only available to surviving dependents who are younger than the age of 18. The legal guardian(s) of such surviving dependents must select the death benefit as calculated under this alternative calculation before it will be paid. The payment of a death benefit as calculated under this alternative calculation is secondary to other benefits received (compensation for loss of employment income, death benefits (including PSOB Program death benefits), disability benefits, or retirement benefits on behalf of the dependent(s) or his or her legal guardian or life insurance benefits on behalf of the dependent(s)).

Subpart E—Procedures for Filing Request Packages

§ 102.40 How to obtain forms and instructions.

Interested parties may obtain copies of all necessary forms and instructions by sending a letter through the U.S. Postal Service, commercial carrier, or private courier service, by telephone, or by downloading them from the Program's website.

(a) If using the U.S. Postal Service, interested parties should send letters asking for forms and instructions to the Smallpox Vaccine Injury Compensation Program Office, Special Programs Bureau, Health Resources and Services Administration, Parklawn Building, Room 16C–17, 5600 Fishers Lane, Rockville, MD 20857.

(b) If using a commercial carrier or private courier service, interested parties should send letters asking for forms and instructions to the Smallpox Vaccine Injury Compensation Program Office, Special Programs Bureau, Health Resources and Services Administration, 4350 East-West Highway, 10th Floor, Bethesda, Maryland 20814.

(c) For forms and instructions, interested parties can call (888) 496–0338. This is a toll-free number.

(d) Interested parties can download forms and instructions from the Internet at *http://www.hrsa.gov/smallpoxinjury*. Click on the link to "Forms and Instructions."

§ 102.41 How to file a Request Package.

A Request Package comprises all the forms and documentation that are submitted to enable the Secretary to determine eligibility and calculate payments. Request Packages may be filed through the U.S. Postal Service, commercial carrier, or private courier service. The Smallpox Vaccine Injury Compensation Program Office will not accept Request Packages electronically or by hand-delivery.

(a) If using the U.S. Postal Service, requesters (or their representatives) should send all forms and documentation to the Smallpox Vaccine Injury Compensation Program Office, Special Programs Bureau, Health Resources and Services Administration, Parklawn Building, Room 16C–17, 5600 Fishers Lane, Rockville, MD 20857.

(b) If using a commercial carrier or private courier service, requesters (or their representatives) should send all forms and documentation to the Smallpox Vaccine Injury Compensation Program Office, Special Programs Bureau, Health Resources and Services Administration, 4350 East-West Highway, 10th Floor, Bethesda, Maryland 20814.

§ 102.42 Deadlines for Filing Request Forms.

(a) *General.* Filing deadlines vary depending on whether the injured individual is a smallpox vaccine recipient or a vaccinia contact. In all cases, the filing date is the date the Request Form is postmarked. A legibly dated receipt from a commercial carrier, a private courier service, or the U.S. Postal Service (*e.g.*, the date that a commercial carrier places on the package at the time of drop-off) will be considered equivalent to a postmark. A Request Form will not be considered filed unless it has been completed (to the fullest extent possible) and signed by the requester or his or her representative. After filing a Request

Form within the governing filing deadline, a requester can and should update the Request Form to reflect new information.

(b) *Request forms not filed within deadline.* If the Secretary determines that a Request Form was not filed within the governing filing deadline set out in this section, the Request Form will not be processed and the requester will not be entitled to any benefits under this Program.

(c) *Smallpox vaccine recipients.* All Request Forms filed by, or on behalf of, a smallpox vaccine recipient must be filed within one year of the date of the administration of a smallpox vaccine to the smallpox vaccine recipient. This deadline also applies to a deceased smallpox vaccine recipient's survivor(s) and the representative of his or her estate. This deadline applies to Request Forms concerning injuries resulting from the administration of a smallpox vaccine or other covered countermeasures.

(d) *Vaccinia contacts.* All Request Forms filed by, or on behalf of, a vaccinia contact must be filed within two years after the date of the first symptom or manifestation of onset of the covered injury in the vaccinia contact. This deadline also applies to a deceased vaccinia contact's survivor(s) and the representative of his or her estate. This deadline applies to Request Forms concerning injuries resulting from vaccinia contracted through accidental vaccinia inoculation or from the administration of covered countermeasures (other than the smallpox vaccine) as a result of such accidental vaccinia inoculation.

(e) *Request forms (or amendments to request forms) based on modifications to the table of injuries.* The Secretary may amend the Table set forth in § 102.21. The effect of such an amendment may enable a requester who previously could not establish a Table injury to establish a Table injury. In such circumstances, the requester must file a new Request Form or an amendment to a previously filed Request Form as follows:

(1) If the injured person is a smallpox vaccine recipient, within one year after the effective date of the amendment to the Table; or

(2) If the injured person is a vaccinia contact, within two years after the effective date of the amendment to the Table.

§ 102.43 Deadlines for submitting documentation.

(a) *Documentation for eligibility determinations.* All eligibility documentation required by the Program should be filed together with the Request Form. However, if this is not possible, a requester will satisfy the filing deadline as long as the signed Request Form is completed (to the fullest extent possible) and submitted within the governing filing deadline described in § 102.42. The Secretary will not generally begin his review of a requester's eligibility until the documentation necessary for the Secretary to make this determination has been submitted. All such documentation must be submitted before the Program terminates.

(b) *Documentation for benefits determinations.* Although the Secretary will accept documentation required to make benefits determinations (*i.e.*, calculate benefits available, if any) at the time the Request Form is filed or any time thereafter, requesters need not submit such documentation until they have been notified that the Secretary has determined eligibility. The Secretary will not generally begin his review of the benefits available to a requester until the documentation necessary for the Secretary to make a benefits determination has been submitted. All such documentation must be submitted before the Program terminates.

§ 102.44 Representatives of requesters.

(a) Persons other than a requester (*e.g.*, a lawyer, guardian, friend) may file a Request Package on a requester's behalf as his or her representative. A requester need not use the services of a lawyer to secure benefits under this Program. A representative (who does not need to be a lawyer) is only required, as described in this section, for requesters who are minors or legally incompetent adults. In the event that a representative files on behalf of a requester, the representative will be bound by the obligations and documentation requirements that apply to the requester (*e.g.*, if a requester is required to submit employment records, the representative must file the requester's employment records). The representative must also satisfy the requirements specific to representatives set forth in this regulation. If a requester has a representative, all communications from the Secretary will be directed exclusively to the representative.

(b) *Representatives of legally competent adults.* A requester who is a legally competent adult *may* use a representative to submit a Request Package on his or her behalf. In such circumstances, the requester must certify on the Request Form that he or she is authorizing the representative to pursue benefits under this Program on his or her behalf.

(c) *Representatives of minors and legally incompetent adults.* A requester who is a minor or a legally incompetent adult *must* use a representative to pursue benefits under this Program on his or her behalf. In such circumstances, the representative must certify, in the place provided on the Request Form, that the requester is a minor or a legally incompetent adult and that the representative is filing on behalf of the requester. In addition, before the requester will be paid by the Program, the representative must submit the documentation described in § 102.63.

(d) *No payment for attorneys' fees or costs.* Because it is not necessary to hire a lawyer to obtain benefits under this Program and because attorneys' fees or other fees and costs to representatives are not covered under the Act, the Secretary will not reimburse such fees or costs.

§ 102.45 Multiple survivors.

Multiple survivors of the same smallpox vaccine recipient or vaccinia contact may file Request Forms separately or together. Multiple survivors may also submit one set of any required documentation on behalf of all of the requesting survivors as long as such documentation is identical for each survivor.

§ 102.46 Amending a request package.

(a) *Generally.* All requesters may amend their documentation concerning eligibility until the Secretary has made an eligibility determination. Requesters also may amend their information or documentation concerning the calculation of benefits until the Secretary has made a benefits determination. The Secretary may, at his discretion, accept eligibility or benefits documents even after eligibility or benefits determinations have been made (*e.g.*, the Secretary may accept new documents concerning eligibility after determining that a requester is ineligible and may use such documents to reevaluate the earlier eligibility determination). However, such new documentation will not be used in any reconsideration regarding the initial determination. The Secretary will not consider any documentation submitted after the Program terminates.

(b) *Requesters who are survivors.* If a smallpox vaccine recipient or vaccinia contact submitted a Request Form within the filing deadline, but subsequently dies, his or her survivor(s) may amend his or her Request Package at any time before the Program terminates in order to be considered

eligible for death benefits. Such an amendment can be filed regardless of whether the Secretary made an eligibility determination or paid benefits with respect to the deceased person's Request Package. However, a survivor filing an amendment to a previously filed Request Package may only be entitled to benefits if the previously filed Request Package was filed within the governing filing deadline. All documentation that has already been submitted with respect to the deceased person will be considered part of the survivor requester's Request Package, and he or she is not required to resubmit such documentation. Survivor requesters must also file an amendment to a Request Package if there is a change in the order of priority of survivors, as described in § 102.11. Such an amendment may be filed at any time before the Program terminates.

(c) *Requests in which benefits are sought by the estate of a deceased smallpox vaccine recipient or vaccinia contact.* If a smallpox vaccine recipient or vaccinia contact submitted a Request Form within the filing deadline, but subsequently dies, a representative of his or her estate may amend his or her Request Package at any time before the Program terminates in order to be considered eligible for benefits. Such an amendment can be filed regardless of whether the Secretary made an eligibility determination or paid benefits with respect to the deceased person's Request Package. However, a representative of an estate filing an amendment to a previously filed Request Package may only be entitled to benefits if the previously filed Request Package was filed within the governing filing deadline. All required documentation that has already been submitted with respect to the deceased person will be considered part of the amended Request Package, and the representative of the estate is not required to resubmit such documentation.

Subpart F—Required Documentation To Be Deemed Eligible

§ 102.50 Medical records necessary to establish that a covered injury was sustained.

(a) In order to establish that a smallpox vaccine recipient or vaccinia contact sustained a covered injury, a requester must submit the following medical records:

(1) All physician, clinic, or hospital outpatient medical records documenting medical visits, consultations, and test results that occurred on or after the date of the smallpox vaccination or exposure to vaccinia; and

(2) All inpatient hospital medical records, including the admission history and physical examination, the discharge summary, all physician subspecialty consultation reports, all progress notes, and all test results that occurred on or after the date of the smallpox vaccination or exposure to vaccinia.

(b) A requester may submit additional medical documentation that he or she believes will support the Request Package. Although generally not required if a Table injury was sustained, a requester may need to introduce additional medical documentation or scientific evidence in order to establish that an injury was caused by a covered countermeasure (including the smallpox vaccine) or vaccinia contracted through accidental vaccinia inoculation.

(c) If certain medical records listed in paragraph (a) of this section are unavailable to the requester after he or she has made reasonable efforts to obtain the records, the requester must submit a statement describing the reasons for the records' unavailability and the efforts he or she has taken to obtain the records. The Secretary has the discretion to accept such a statement in place of the unavailable medical records. In this circumstance, the Secretary may require an authorization from the requester (or his or her representative) to try to obtain the records on his or her behalf.

(d) In certain circumstances, the Secretary may require additional medical records to make a determination that a covered injury was sustained (*e.g.*, medical records prior to the date of vaccination or accidental vaccinia exposure) or may determine that certain records described in paragraph (a) of this section are not necessary for an eligibility determination (*e.g.*, records that are duplicative of other records submitted). If the Program requests additional medical records (or information) from a requester's health care practitioner, then the requester may use a release form in order to have the medical records sent directly to the Program.

§ 102.51 Documentation a smallpox vaccine recipient must submit to be deemed eligible by the Secretary.

(a) A smallpox vaccine recipient must submit the following documentation in order to be deemed eligible by the Secretary:

(1) A completed (to the fullest extent possible) and signed Request Form.

(2) Documentation demonstrating that the requester:

(A) Is a health care worker, law enforcement officer, firefighter, security personnel, emergency medical personnel, other public safety personnel, or support personnel for such occupational specialties who has volunteered and been selected to be a member of a smallpox emergency response plan prior to the time at which the Secretary publicly announces that an active case of smallpox has been identified within or outside of the United States and that the requester is or will be functioning in a role identified in a smallpox emergency response plan; and

(B) Was administered a smallpox vaccine pursuant to an approved smallpox emergency response plan during the effective period of the Declaration.

(3) If the requester's injury relates to the administration of cidofovir or its derivatives or Vaccinia Immune Globulin, and not the smallpox vaccine, documentation demonstrating that the requester was administered such a covered countermeasure during the effective period of the Declaration.

(4) Medical records sufficient to demonstrate that the requester sustained a covered injury, as described in § 102.3(g), in accordance with the requirements set forth in § 102.50.

(b) As an alternative to the documentation described in paragraphs (a)(2)(A)–(B) of this section (documentation concerning a vaccine recipient's participation in, and receipt of the smallpox vaccine under, an approved smallpox emergency response plan), a requester may submit a certification, by a Federal, State, or local government entity or private health care entity participating in the administration of covered countermeasures through a smallpox emergency response plan, that the requester is a person described in § 102.3(x)(1)–(3) (a person meeting the definition of a smallpox vaccine recipient, except for the requirement that the person sustained a covered injury). A certification form that may be used for this purpose is available from the Program.

§ 102.52 Documentation a vaccinia contact must submit to be deemed eligible by the Secretary.

A requester who is a vaccinia contact must submit the following documentation in order to be deemed eligible by the Secretary:

(a) A completed (to the fullest extent possible) and signed Request Form;

(b) Documentation identifying the individual who was the source of the accidental vaccinia inoculation. This

documentation must demonstrate that the source of the vaccinia was an individual described in § 102.3(x)(1)–(3) (a person meeting the definition of a smallpox vaccine recipient, except for the requirement that the person sustained a covered injury) or an individual who was accidentally inoculated by an individual described in § 102.3(x)(1)–(3) (a person meeting the definition of a smallpox vaccine recipient, except for the requirement that the person sustained a covered injury). If the requester is unable to provide the identity of the person who was the source of the accidental exposure, he or she must explain in writing both why this criterion cannot be met and the circumstances of the accidental vaccinia inoculation that support an individual described above as the source of the accidental vaccinia inoculation. The Secretary has the discretion to accept the requester's statement as evidence of the requester's source of exposure; and

(c) Medical records sufficient to demonstrate that the requester contracted vaccinia during the effective period of the Declaration (or within 30 days thereafter) and sustained a covered injury, as described in § 102.3(g), in accordance with the requirements set forth in § 102.50. These records must be consistent with the requester contracting vaccinia after the accidental vaccinia inoculation described in paragraph (b) of this section.

§ 102.53 Documentation a survivor must submit to be deemed eligible by the Secretary.

A requester who is a survivor must submit the following documentation in order to be deemed eligible by the Secretary:

(a) A completed (to the fullest extent possible) and signed Request Form;

(b) All of the documentation required in:

(1) Section 102.51(a)(2)–(4) (documentation requirements for smallpox vaccine recipients), in the case of a deceased smallpox vaccine recipient. The survivor requester may submit a certification, as described in § 102.51(b) in the place of the documentation described in § 102.51(a)(2) (documentation concerning a vaccine recipient's participation in, and receipt of the smallpox vaccine under, an approved smallpox emergency response plan); or

(2) Section 102.52(b)–(d) (documentation requirements for vaccinia contacts), in the case of a deceased vaccinia contact;

(c) A death certificate for the deceased smallpox vaccine recipient or vaccinia contact. If a death certificate is unavailable, the requester must submit a letter providing the reasons for its unavailability. The Secretary has the discretion to accept other documentation as evidence that the smallpox recipient or vaccinia contact is deceased;

(d) Medical records sufficient to demonstrate that the deceased smallpox vaccine recipient or vaccinia contact died as the result of the covered injury. Such medical records may be the same as those required under § 102.50. If an autopsy was performed on the deceased smallpox vaccine recipient or vaccinia contact, the requester must submit a complete copy of the final autopsy report.

(e) Documentation showing that the requester is an eligible survivor, pursuant to § 102.11 (*e.g.*, birth certificate or marriage certificate); and

(f) A certification, on the place provided on the Request Form, either that there are no other eligible survivors (*e.g.*, for surviving eligible children, a certification that there is no surviving spouse, no other surviving eligible children, and no other surviving dependents younger than the age of 18 who may be eligible for the death benefit under the alternative calculation) or that other eligible survivors exist (along with the information known about such survivors). Section 102.11 lists eligible survivors and the priorities of survivorship.

§ 102.54 Documentation the representative of the estate of a deceased smallpox vaccine recipient or vaccine contact must submit to be deemed eligible by the Secretary.

A requester who is the representative of the estate of a deceased smallpox vaccine recipient or vaccinia contact must submit the following documentation in order for the estate to be deemed eligible by the Secretary:

(a) A completed (to the fullest extent possible) and signed Request Form;

(b) All of the documentation required in:

(1) Section 102.51(a)(2)–(4) (documentation requirements for smallpox vaccine recipients), in the case of a deceased smallpox vaccine recipient. The requester may submit a certification, as described in § 102.51(b) in the place of the documentation described in § 102.51(a)(2) (documentation concerning a vaccine recipient's participation in, and receipt of the smallpox vaccine under, an approved smallpox emergency response plan); or

(2) Section 102.52(b)–(d) (documentation requirements for vaccinia contacts), in the case of a deceased vaccinia contact;

(c) A death certificate for the deceased smallpox vaccine recipient or vaccinia contact. If a death certificate is unavailable, the requester must submit a letter providing the reasons for its unavailability. The Secretary has the discretion to accept other documentation as evidence that the smallpox recipient or vaccinia contact is deceased; and

(d) Documentation showing that the requester is the representative of the estate of the deceased smallpox vaccine recipient or vaccinia contact.

Subpart G—Required Documentation for Eligible Requesters to Receive Benefits

§ 102.60 Documentation an eligible requester seeking medical benefits must submit.

A requester deemed eligible by the Secretary who seeks payment or reimbursement for medical services or items must submit the following, in addition to the documentation submitted under subpart F:

(a) *List of third-party payors.* The requester must submit a list of all third-party payors that may have an obligation to pay for or provide any medical services or items for which payment or reimbursement is being sought under this Program. Such third-party payors may include, but are not limited to, health maintenance organizations, health insurance companies, Medicare, Medicaid, and other entities obligated to provide medical services or items or recompense individuals for medical expenses. Such a list must include the individual's account numbers and other applicable information. If the requester knows of no such third-party payor, he or she must certify to that fact. If the requester becomes aware that a third-party payor may have such an obligation, the requester must inform the Secretary within 10 business days of becoming aware of this information.

(b) *Documents for medical services or items provided in the past.* A requester seeking payment or reimbursement for medical services or items provided in the past must submit an itemized statement from each health care entity (*e.g.*, clinic, hospital, doctor, or pharmacy) and third-party payor listing the services or items provided to diagnose or treat the covered injury or its health complications and the amounts paid or expected to be paid by third parties for such services or items (*e.g.*, an Explanation of Benefits from the individual's health insurance company). If no third-party payor has an obligation to pay for or provide such services or items, the requester must certify to that fact and submit an itemized list of the services or items provided (including the total cost of such services or items). To assist the Secretary in making a determination as to whether such services or items were reasonable and necessary to diagnose or treat a covered injury or its health complications, the requester may submit, in addition to the required medical records, documentation showing that a health care practitioner prescribed or recommended such services or items. The medical records must support the requested services and items;

(c) *Documents for medical services and items expected to be provided in the future.* A requester seeking payments for medical services or items expected to be provided in the future must submit a statement from one or more health care practitioner(s) (*e.g.*, a treating neurologist for neurologic issues and a treating cardiologist for cardiologic issues) describing those services and items that appear likely to be needed to diagnose or treat the covered injury or its health complications in the future. The medical records must support the requested services and items. A requester must submit documentation, if available, concerning the likely cost of, and the amount expected to be paid by third-party payors for, such services or items.

§ 102.61 Documentation an eligible requester seeking benefits for lost employment income must submit.

A requester deemed eligible by the Secretary who seeks benefits for lost employment income from the Program must submit, in addition to the documentation submitted under subpart F, documentation describing:

(a) The number of days (including partial days) of work missed by the smallpox vaccine recipient or vaccinia contact as a result of the covered injury or its health complications for which employment income was lost (*e.g.*, time sheet from pay period reflecting work days missed). As stated in § 102.32(c), days for which an individual used paid leave in order to be paid for lost work will be considered days of work for which employment income was received (unless the individual's employer restores the leave that was used by putting the individual in the same position as if he or she had not used paid leave);

(b) The smallpox vaccine recipient or vaccinia contact's gross employment income at the time the covered injury was sustained (*e.g.*, the individual's most recent Federal tax return or a pay stub from the time of the covered injury);

(c) Whether the smallpox vaccine recipient or vaccinia contact had one or more dependents at the time the covered injury was sustained (*e.g.*, the individual's most recent Federal tax return); and

(d) All third-party payors that have paid for or that may be required to pay the requester benefits for loss of employment income or provide disability and retirement benefits for which payment or reimbursement is being sought under this Program (*e.g.*, State workers' compensation programs, disability insurance programs, *etc.*). A requester must submit documentation, if available, concerning the amount of such payments or benefits expected to be paid by third-party payors. If the requester knows of no such third-party payor, he or she must certify to that fact. If, at any time, the requester becomes aware that a third-party payor may have such an obligation, the requester must inform the Secretary within 10 business days of becoming aware of this information.

§ 102.62 Documentation an eligible requester seeking a death benefit must submit.

(a) A requester deemed an eligible survivor by the Secretary who seeks a death benefit under § 102.82(c) must submit, in addition to the documentation submitted under subpart F, a certification informing the Secretary whether a disability or death benefit was paid under the PSOB Program with respect to the deceased smallpox vaccine recipient or vaccinia contact. If such a benefit(s) was provided, the requester must submit documentation showing the amount of the benefit(s) provided by the PSOB Program. If no such benefits were provided, the certification must explain whether any survivors are eligible for a death benefit under the PSOB Program and, if so, whether death benefits have been sought under the PSOB Program.

(b) A representative seeking a death benefit under § 102.82(d) on behalf of a dependent requester younger than the age of 18 deemed an eligible survivor by the Secretary must submit, in addition to the documentation submitted under subpart F, the following:

(1) Documentation showing that the deceased smallpox vaccine recipient or vaccinia contact is survived by one or more dependents younger than the age of 18. Such documentation must show the date of birth of all such dependents (*e.g.*, copies of birth certificates);

(2) A written selection by each legal guardian, on behalf of all of the dependents described in paragraph (b)(1) of this section for whom he or she is the legal guardian, to receive proportional death benefits under the alternative calculation as described in § 102.82(d), in place of proportional benefits available under the standard calculation as described in § 102.82(c). Written selections are described in § 102.82(d)(1).

(3) Documentation showing that the requester is the legal guardian of all of the dependents described in paragraph (b)(1) of this section, as required under § 102.63(b). If multiple dependents have different legal guardians, the legal guardian of each dependent(s) must submit such documentation;

(4) Documentation showing the deceased smallpox vaccine recipient or vaccinia contact's gross employment income at the time the covered injury was sustained (*e.g.*, the decedent's most recent Federal tax return or a pay stub from the time of the covered injury); and

(5) A description of all third-party payors that have paid for or that may be required to pay for the benefits described in § 102.82(d)(3)(A). This description must include the amount of such benefits that have been paid or that may be authorized to be paid in the future. If the representative knows of no such third-party payor, he or she must certify to that fact. If, at any time, the representative becomes aware that a third-party payor may have such an obligation, he or she must inform the Secretary within 10 business days of becoming aware of this information.

§ 102.63 Documentation a representative filing on behalf of an eligible requester who is a minor or a legally incompetent adult must submit.

Before benefits will be paid under by the Program to an eligible requester who is a minor or legally incompetent adult, his or her representative must submit, in addition to the documentation submitted under subpart F and under §§ 102.60–102.62, the following:

(a) Documentation showing that the requester is:

(1) A minor (*e.g.*, birth certificate); or

(2) A legally incompetent adult (*e.g.*, court decree of incompetency); and

(b) Documentation showing that:

(1) In the case of a minor, the requester is the legal guardian of the minor (*e.g.*, birth certificates for parents who are legal guardians or, for other legal guardians, a decree by a court of competent jurisdiction establishing the legal guardianship of a person other

than the minor's parents under applicable State law). If a minor has more than one legal guardian, this information is required only of one legal guardian; or

(2) In the case of a legally incompetent adult, a decree by a court of competent jurisdiction establishing a guardianship or conservatorship of the requester's estate under applicable State law.

Subpart H—Secretarial Determinations

§ 102.70 Determinations the Secretary must make before benefits can be paid.

(a) Before reviewing a Request Package, the Secretary will assign a Program number to the Request Package and so inform the requester (or his or her representative) in writing. All correspondence to the requester (or his or her representative) about a specific Request Package will be referenced by this Program number.

(b) Before the Secretary will pay benefits under this Program, he must determine that:

(1) The requester or his or her representative submitted a completed (to the fullest extent possible) and signed Request Form within the governing filing deadline;

(2) The requester meets the eligibility requirements set out in this part (including a determination that a covered injury was sustained); and

(3) The requester is entitled to receive benefits from the Program. In making this determination, the Secretary will decide the type(s) and amounts of benefits that will be paid to the requester.

(c) Once the Secretary has sufficient documentation to make an eligibility or benefits determination, he will make the decision in a timely manner.

§ 102.71 Insufficient documentation for eligibility and benefits determinations.

In the event that there is insufficient documentation in the Request Package for the Secretary to make the applicable determinations under this part, the Secretary will notify the requester, or his or her representative. The requester will be given 60 calendar days from the date of the Secretary's notification to submit the required documentation. If the requester is unable to provide the additional documentation, he or she may write to the Secretary and explain the reason that the requested documentation is unavailable and the efforts the requester has taken to obtain the documents. The Secretary may accept such a letter in place of the required documentation or disapprove the request due to insufficient documentation. If no documentation is submitted in response to the Secretary's letter, the Secretary may disapprove the request. The Secretary also may require an authorization from the requester (or his or her representative) to try to obtain required documentation on his or her behalf.

§ 102.72 Sufficient documentation for eligibility and benefits determinations.

(a) *Eligibility determinations.* When the Secretary determines that there is sufficient documentation in the Request Package to conduct an evaluation of a requester's eligibility, he will begin the review to determine whether the requester is eligible. If the Secretary determines that the requester is not eligible, the Secretary will inform the requester (or his or her representative) in writing of the disapproval and the options available to the requester, including reconsideration.

(b) *Benefits determinations.* If the Secretary determines that the requester is eligible for benefits, he will, after receiving documentation from the requester for a benefits determination, either calculate the amount and types of benefits, as described in subpart I of this part, or request additional documentation in order to calculate the benefits that can be paid (*e.g.*, an Explanation of Benefits from the requester's insurance company if none was provided).

(c) *Additional documentation required.* At any time after a Request Form has been filed, the Secretary may direct a requester to supplement or amend the Request Package by providing additional information or documentation.

§ 102.73 Approval of benefits.

When the Secretary has determined that benefits will be paid to a requester and has calculated the type and amount of such benefits, he will notify the requester (or his or her representative) in writing. The Secretary will make payments in accordance with § 102.83.

§ 102.74 Disapproval of benefits.

(a) If the Secretary determines that a requester is not eligible for payments under the Program, the Secretary will disapprove the request and provide the requester, or his or her representative, with a written notice of the basis for the disapproval and the options available to the requester, including reconsideration.

(b) The Secretary may disapprove a request at any time, even before the requester has submitted required documentation (*e.g.*, the Secretary may determine that a requester did not meet the filing deadline, even before required documentation is submitted or reviewed).

Subpart I—Calculation and Payment of Benefits

§ 102.80 Calculation of medical benefits.

In calculating medical benefits, the Secretary will take into consideration all reasonable costs for those medical items and services that are reasonable and necessary to diagnose or treat a smallpox vaccine recipient or vaccinia contact's covered injury or its health complications, as described in § 102.31. The Secretary will consider and may rely upon benefits documentation submitted by the requester (*e.g.*, bills, Explanation of Benefits, and cost-related documentation to support the expenses relating to the covered injury or its health complications), as required by § 102.60. The Secretary will make such payments only to the extent that such costs were not, and will not be, paid by any third-party payor and only if no third-party payor had or has an obligation to provide such services or items to the requester, except as provided in § 103.83(c) and § 103.84. There are no caps on medical benefits that may be provided under the Program.

§ 102.81 Calculation of benefits for lost employment income.

(a) Primary calculation. Benefits under this section may be paid for days of work lost as a result of a covered injury or its health complications if the smallpox vaccine recipient or vaccinia contact lost employment income for the lost work days. As described in § 102.32(c), days in which an individual used paid leave (including vacation and sick leave) for lost work days will not be considered days for which the individual lost employment income (unless the individual's employer restores the leave taken by putting the employee in the same position as if he or she had not used paid leave).

(1) The Secretary will calculate the rate of benefits to be paid for the lost work days based on the smallpox vaccine recipient or vaccinia contact's gross employment income, which includes income from self-employment, at the time he or she sustained the covered injury. The Secretary may not, except with respect to injured individuals who are minors, consider projected future earnings in this calculation.

(A) For a smallpox vaccine recipient or vaccinia contact with no dependents at the time the covered injury was sustained, the benefits are 66⅔% of the individual's gross employment income at the time the covered injury was sustained.

(B) For a smallpox vaccine recipient or vaccinia contact with one or more dependents at the time the covered injury was sustained, the benefits are 75% of the individual's gross employment income at the time the covered injury was sustained; and

(2) In the case of a smallpox vaccine recipient or vaccinia contact who is a minor, the Secretary may consider the provisions of 5 U.S.C. 8113 (part of the statute authorizing the FECA Program), and any implementing regulations, in determining the amount of payments under this section and the circumstances under which such payments are reasonable and necessary.

(b) *Adjustment for inflation.* Benefits for lost employment income paid under the Program that represent future lost employment income will be adjusted annually to account for inflation.

(c) *Limitations on benefits paid.* The Secretary will reduce the benefits calculated under paragraphs (a) and (b) of this section, according to the limitations described in this paragraph:

(1) *Annual limitation.* The maximum amount that a requester can receive in any one year in benefits for lost employment income under this Program is $50,000;

(2) *Lifetime limitation.* The maximum amount that a requester can receive during his or her lifetime in benefits for lost employment income under this Program is the amount of the death benefit calculated under the PSOB Program in the same fiscal year as the year in which this lifetime cap is reached. This amount is the maximum death benefit payable to survivors under this Program using the standard calculation described in § 102.82(c). However, this lifetime cap does not apply if the Secretary determines that the smallpox vaccine recipient or vaccinia contact has a covered injury (or injuries) meeting the definition of "disability" in section 216(i) of the Social Security Act, 42 U.S.C. 416(i); and

(3) *Number of lost work days.* A requester will be compensated for ten or more days of work lost if he or she lost employment income for those days as a result of the covered injury (or its health complications). If the number of days of lost employment income due to the covered injury (or its health complications) is fewer than ten, the Secretary will reduce the number of lost work days by 5 days. If the smallpox vaccine recipient or vaccinia contact lost employment income for a period of 5 days or fewer, no benefits for lost employment income will be paid. Lost work days do not need to be consecutive. Partial days of lost employment income may be aggregated to calculate the total number of lost work days. The Secretary has the discretion to consider the reasonableness of work days (or partial work days) lost as a result of a covered injury or its health complications in this calculation.

(d) *Reductions for other coverage.* From the amount of benefits calculated under paragraphs (a), (b), and (c) of this section, the Secretary will make reductions:

(1) For all payments made, or expected to be made in the future, to the requester for compensation of lost employment income or disability or retirement benefits, by any third-party payor in relation to the covered injury or its health complications, consistent with § 102.32(b); and

(2) So that the total amount of benefits for lost employment income paid to a requester under this Program, together with the total amounts paid (or payable) by third-party payors, as described in paragraph (d)(1) of this section, does not exceed 66⅔% (or 75%, if the smallpox vaccine recipient or vaccinia contact had at least one dependent at the time the covered injury was sustained) of his or her employment income at the time of the covered injury for the lost work days. If a requester receives a lump-sum payment from any third-party payor, under any obligation described in paragraph (d)(1) of this section, the Secretary will deem such a payment to be received over a period of years, rather than in a single year. The Secretary has discretion as to how to apportion such payments over multiple years; and

(e) *Termination of payments.* The Secretary will not pay benefits for lost employment income after the requester reaches the age of 65.

§ 102.82 Calculation of death benefits.

(a) *Definitions.* For purposes of this section:

(1) *Alternative calculation* means the calculation used under paragraph (d) of this section for the death benefit available to dependents.

(2) *Deceased person* means an otherwise eligible deceased smallpox vaccine recipient or vaccinia contact; and

(3) *Dependent* means a person whom the Internal Revenue Service would have considered the deceased person's dependent at the time the covered injury was sustained, and who is younger than the age of 18 at the time of filing the Request Form.

(4) *Standard calculation* means the calculation used under paragraph (c) of this section for the death benefit available to all eligible survivors (other than dependents who do not meet another category of eligible survivors, such as surviving eligible children).

(b) *General.* (1) If the legal guardian(s) of dependents younger than 18 years of age does not file a written selection to receive death benefits under the alternative calculation, as described in paragraph (d)(1) of this section, or if the Secretary does not approve such a selection, the Secretary will pay proportionate death benefits under the standard calculation to all of the eligible survivors with priority to receive death benefits under the standard calculation, as described in § 102.11(b).

(2) If the Secretary approves a written selection to receive benefits under the alternative calculation, as described in paragraph (d)(1) of this section:

(A) If no other eligible survivors are of equal priority to receive death benefits, the Secretary will pay a death benefit in an amount calculated under the alternative calculation to the aggregate of the dependents on whose behalf the election was filed; and

(B) If other eligible survivors are of equal priority to receive death benefits as the dependents receiving death benefits under the alternative calculation, the Secretary will pay the other eligible survivors a proportionate amount of the death benefit available and calculated under the standard calculation. In such circumstances, the Secretary will pay the aggregate of the dependents receiving a death benefit under the alternative calculation a proportionate share of the benefits available under that calculation (in place of the proportionate share of the death benefit that would be available under the standard calculation). For example, if a deceased smallpox vaccine recipient is survived by a dependent 10-year old child and a spouse who is not the child's legal guardian (*e.g.*, the dependent child's parents were the deceased person and his or her former spouse), the surviving spouse would be able to receive his or her share of the death benefit under the standard calculation, and the dependent child's legal guardian, on behalf of the minor, would receive either the child's proportionate share of the death benefit under the standard calculation or the child's proportionate share of the death benefit available under the alternative calculation (if the legal guardian filed a written selection for such a death benefit).

(c) *Standard calculation of death benefits.* (1) The maximum death benefit available under the standard calculation of death benefits is the amount of the

comparable death benefit calculated under the PSOB Program in the same fiscal year as the year in which the death benefit under the standard calculation is paid under this Program (without regard to any reduction under the PSOB Program attributable to a limitation in appropriations), reduced by the total amount of benefits for lost employment income paid under this Program to the deceased person during his or her lifetime and to his or her estate after death.

(2) No death benefit will be paid under the standard calculation if a death benefit has been paid, or if survivors are eligible to receive a death benefit, under the PSOB Program with respect to the deceased person.

(3) No death benefit will be paid under the standard calculation if a disability benefit has been paid under the PSOB Program with respect to the deceased person. However, if the PSOB Program disability benefit paid was reduced because of a limitation on appropriations, a death benefit will be available under the standard calculation to the extent necessary to ensure that the total amount of disability benefits paid under the PSOB Program, together with the amount of death benefits paid under the standard calculation, equals the amount of the death benefit described in paragraph (c)(1) of this section.

(4) Death benefits will be paid under the standard calculation in a lump sum.

(d) *Alternative calculation of death benefits available to surviving dependents younger than the age of 18.* If a deceased smallpox vaccine recipient or vaccinia contact had at least one dependent who is younger than the age of 18 (and will be younger than the age of 18 at the time of the payment), the legal guardian(s) of all such dependents may request benefits under the alternative calculation described in this paragraph. To receive such a benefit, the legal guardian, on behalf of all such dependents for whom he or she is the legal guardian, must file a selection to receive benefits under the alternative calculation, as described in paragraph (d)(1) of this section. If multiple dependents have different legal guardians, each legal guardian is responsible for requesting benefits under the standard calculation or for filing a selection for a death benefit under the alternative calculation. If a single dependent has more than one legal guardian, one legal guardian may file the selection. Payments made under the alternative calculation will be made to the legal guardian(s) of all of the dependents on behalf of all of those dependents until they reach the age of 18.

(1) *Selection of benefits under alternative calculation.* Before a payment of a death benefit will be approved under the alternative calculation, the legal guardian(s) of the dependents for whom he or she is the legal guardian must file a written selection, on behalf of all such dependents, to receive a death benefit under the alternative calculation. If such a selection is approved by the Secretary, these dependents will be paid a proportionate share of the death benefit under the alternative calculation in place of the proportionate share of benefits that would otherwise be available to them under the standard calculation.

(2) *Amount of payments.* The maximum death benefit available under this paragraph is 75% of the deceased person's income (including income from self-employment) at the time he or she sustained the covered injury that resulted in death, adjusted to account for inflation (as appropriate), except as follows:

(A) The maximum payment of death benefits that may be made on behalf of the aggregate of the dependents in any one year is $50,000;

(B) All payments made under this paragraph will stop once the youngest of the dependents reaches the age of 18.

(3) *Reductions for other coverage.* The total amount of death benefits provided under the alternative calculation will be reduced so that the total amount of payments made (or expected to be made) under obligations described in paragraph (d)(3)(A) of this section, together with the death benefits paid under the alternative calculation, is not greater than the amount of payments described in paragraph (d)(2) of this section. In other words, the total amount of death benefits paid to dependents under the alternative calculation may be reduced if third-party payors have paid (or are expected to pay) for certain benefits so that such dependents will receive a total sum (combining the death benefit paid under the alternative calculation and the actual and expected benefits paid for by third-party payors) that is not greater than the death benefit that would be available under the alternative calculation if no third-party payor existed to pay such benefits.

(A) The amount of death benefits paid under the alternative calculation will be reduced for all payments made, or expected to be made in the future, by any third-party payor for:

(i) Compensation for the deceased person's loss of employment income on behalf of the dependents or their legal guardian(s);

(ii) Disability, retirement, or death benefits in relation to the deceased person (including, but not limited to, death and disability benefits under the PSOB Program) on behalf of the dependents or their legal guardian(s); and

(iii) Life insurance benefits on behalf of the dependents.

(B) In calculating such reductions, the Secretary will deem any lump-sum payment made by a third-party payor under any obligation described in paragraph (d)(3)(A) of this section, as received over a period of years, rather than in a single year. The Secretary has discretion as to how to apportion such payments over multiple years.

(4) *Timing of payments.* Payments made under this paragraph will be made on an annual basis, beginning at the time of the initial payment, to the legal guardian(s) on behalf of the aggregate of the dependents receiving the payment. In the year in which the youngest dependent reaches the age of 18, payments under this section will be paid on a pro rata basis for the period of time before that dependent reaches the age of 18. Once a dependent reaches the age of 18, the payments under this alternative calculation will no longer be made on his or her behalf. Because payments under the alternative calculation are to be made on behalf of dependents who are younger than the age of 18, if a dependent meets this requirement at the time of filing of the Request Form, but reaches the age of 18 (or is older than 18 years of age) at the time of the initial payment, no payment will be made to the dependent's legal guardian on his or her behalf under the alternative calculation.

§ 102.83 Payment of all benefits.

(a) The Secretary may pay any benefits under this Program through lump-sum payments. If the Secretary determines that there is a reasonable likelihood that the payments of medical benefits, benefits for lost employment income, or death benefits paid under the alternative calculation (described in § 102.82(d)) will be required for a period in excess of one year from the date the Secretary determines the requester is eligible for such benefits, the Secretary may make a lump-sum payment, purchase an annuity or medical insurance policy, or execute an appropriate structured settlement agreement, provided that such payment, annuity, policy, or agreement is actuarially determined to have a value equal to the present value of the projected total amount of benefits that the requester is eligible to receive under §§ 102.80, 102.81, and 102.82(d).

(b) Lump sum payments will be made through an electronic funds transfer to an account of the requester. However, if the requester is a minor, the payment will be made to the account of his or her legal guardian on behalf of the minor. In accepting such payments, the legal guardian of a minor requester is obliged to use the funds for the benefit of the minor and to take any actions necessary to comply with state law requirements pertaining to such payments. If the requester is a legally incompetent adult, the legal guardian must establish a guardianship or conservatorship of the estate account with court oversight, in accordance with State law, and payment will be made to that account.

(c) The Secretary may, at his discretion, make interim payments of benefits under this Program, even before he makes a final determination as to the total type and total amount of benefits that will be paid. The Secretary may, for example, make an interim payment of medical benefits that have been calculated before a final determination on benefits for lost employment income is completed, or of past medical benefits that have been calculated before a final calculation of future medical benefits is completed. The Secretary may, in his discretion, make an interim payment even before a final eligibility or benefits determination is made (*e.g.*, if a piece of documentation has not been obtained because a person with a severe vaccine-related injury is hospitalized, but all other documentation is consistent with the requester meeting the eligibility requirements). If such a requester's documentation is incomplete, the requester must submit the required documentation within the time-frame determined by the requester. Such a requester must agree that he or she will be obliged to repay the Secretary such benefits in the event that such payments are later determined to be inappropriate. Any payments made on an interim basis will not entitle a requester to seek reconsideration of the Secretary's decision on these benefits until the Secretary makes a complete benefits determination.

§ 102.84 The Secretary's right to recover benefits paid under this program from third-party payors.

Upon payment of benefits under this program, the Secretary will be subrogated to the rights of the requester and may assert a claim against any third-party payor with a legal or contractual obligation to pay for (or provide) such benefits and may recover from such third-party payor(s) the amount of benefits paid up to the amount of benefits the third-party payor has or had an obligation to pay for (or provide). In other words, the Secretary may pay benefits before the requester receives a payment from a third-party payor in specific circumstances. In those circumstances, the Secretary has a right to be reimbursed by the third-party payor. The circumstances in which the Secretary may assert this right include those in which the Secretary pays benefits under this Program to a requester before a final decision is made that a third-party payor has an obligation to pay such benefits to the requester. Requesters receiving benefits under this Program (or their representatives) shall assist the Secretary in recovering such benefits. In the event that a requester receives a benefit from a third-party payor after receiving the same type of benefits from the Secretary under this Program, the Secretary has a right to recover the amount of the benefits awarded from the requester.

Subpart J—Reconsideration of the Secretary's Determinations

§ 102.90 Reconsideration of the Secretary's eligibility and benefits determinations.

(a) *Right of reconsideration.* A requester has the right to seek reconsideration of the Secretary's determination that he or she is not eligible for payment. In addition, a requester who asserts that the amount of the benefits paid by the Secretary (or the fact that certain benefits were not paid or payable) is incorrect may also seek reconsideration. Letters seeking reconsideration must be in writing, describe the reason(s) why the decision should be reconsidered, and be postmarked within 60 calendar days of the date of the Secretary's decision on the request. Because no new documentation will be considered in the reconsideration process, the letter seeking reconsideration may not include or refer to any documentation that was not before the Secretary at the time of his initial determination.

(b) *Letters seeking reconsideration.* A requester, or his or her representative, may send a letter seeking reconsideration through the U.S. Postal Service, commercial carrier, or a private courier service. The Secretary will not accept letters seeking reconsideration electronically or by hand-delivery.

(1) Letters sent through the U.S. Postal Service must be sent to the Associate Administrator, Special Programs Bureau, Health Resources and Services Administration, 5600 Fishers Lane, Room 16C–17, Rockville, Maryland 20857.

(2) Letters sent through a commercial carrier or private courier service must be sent to the Associate Administrator, Special Programs Bureau, Health Resources and Services Administration, 4350 East-West Highway, 10th Floor, Bethesda, Maryland 20814.

(c) *Reconsideration process.* When the Associate Administrator of the Special Programs Bureau (the Associate Administrator), receives a letter seeking reconsideration, a qualified panel will be convened, independent of the Program, to review the Secretary's initial determination. The panel will base its recommendation on the documentation before the Secretary when the initial determination(s) was made. The panel will perform its own review and make its own findings, which will be submitted to the Associate Administrator. The Associate Administrator will then review the panel's recommendation(s) and make a final determination, which will be sent to the requester (or his or her representative). This will be the Secretary's final action on the letter seeking reconsideration and will be considered the Secretary's final determination on the request. Requesters may not seek review of a decision made on reconsideration.

§ 102.91 Secretary's review authority.

Under section 262(f)(1) of the Public Health Service Act (42 U.S,C. 239a(f)(1)), the Secretary may, at any time, review on his own motion or on application, any determination made under this part (including, but not limited to, determinations concerning eligibility, entitlement to benefits, and the calculation and payment of benefits under the Program). Upon review of such a determination, the Secretary may affirm, vacate, or modify the determination in any manner the Secretary deems appropriate.

§ 102.92 No additional judicial or administrative review of determinations made under this part.

Under section 262(f)(2) of the Public Health Service Act (42 U.S.C. 239a(f)(2)), no further judicial review of the Secretary's actions under this part (including, but not limited to, eligibility determinations, the calculation of benefits, and determinations about the method of payment of benefits) is permitted. In addition, no further administrative review of the Secretary's actions under this part is permitted

unless the President specifically directs otherwise.

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Federal Register

Tuesday,
December 16, 2003

Part III

Environmental Protection Agency

40 CFR Part 81
Deferral of Effective Date of Nonattainment Designations for 8-Hour Ozone National Ambient Air Quality Standards for Early Action Compact Areas; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 81

[FRL–7599–7]

RIN 2060–AL85

Deferral of Effective Date of Nonattainment Designations for 8-Hour Ozone National Ambient Air Quality Standards for Early Action Compact Areas

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rulemaking.

SUMMARY: The EPA is proposing to defer the effective date of air quality designations for certain areas of the country that do not meet the 8-hour ozone national ambient air quality standard (NAAQS). Early Action Compact (compact) areas have agreed to reduce ground-level ozone pollution earlier than the Clean Air Act (CAA) requires. By April 15, 2004, EPA will designate all areas for the 8-hour ozone NAAQS. The EPA is proposing that, when it promulgates the designations in April 2004, EPA will issue the first of three deferrals of the effective date of the designation for any compact area that is designated nonattainment and continues to meet all compact milestones. In this proposal, EPA is proposing to defer until September 30, 2005, the effective date of the 8-hour ozone nonattainment designation for specific areas.

The EPA believes this program provides an incentive for early planning, early implementation, and early reductions of emissions leading to expeditious attainment and maintenance of the 8-hour ozone standard. In addition, these compact agreements give local areas the flexibility to develop their own approach to meeting the 8-hour ozone standard, provided the communities control emissions from local sources earlier than the CAA would otherwise require. People living in areas that realize reductions sooner will enjoy the health benefits of cleaner air sooner than might otherwise occur.

This proposed rule does not propose to establish attainment/nonattainment designations, nor does it address the principles that will be considered in the designation process.

DATES: Comments must be received on or before January 15, 2004. The EPA does not intend to grant a request to extend the comment period due to the need to complete the designations process by April 2004. If EPA receives comments after the close of the comment period, we will make every effort to review them.

ADDRESSES: All comments should be submitted to Docket Number OAR 2003–0090 and a copy to David Cole, EPA. Comments may be submitted electronically, by mail, by facsimile, or through hand delivery/courier. Follow the detailed instructions as provided in unit I.A of the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Mr. David Cole, Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Mail Code C539–02, Research Triangle Park, NC 27711, phone number (919) 541–5565 or by e-mail at: *cole.david@epa.gov* or Ms. Valerie Broadwell, Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Mail Code C539–02, Research Triangle Park, NC 27711, phone number (919) 541–3310 or by e-mail at: *broadwell.valerie@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. How Can I Get Copies of This Document and Other Related Information?

1. *Docket.* The EPA has established an official public docket for this action under Docket ID Number OAR 2003–0090. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Air and Radiation Docket in the EPA Docket Center, (EPA/DC) EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Air and Radiation Docket is (202) 566–1742.

2. *Electronic Access.* You may access this **Federal Register** document electronically through the EPA Internet under the "Federal Register" listings at *http://www.epa.gov/fedrgstr/*.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the appropriate docket identification number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute and which, therefore, is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. The EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in unit I.A.1.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the Docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

B. How and to Whom Do I Submit Comments?

You may submit comments electronically, by mail, by facsimile, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket identification number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." The EPA is not required to consider these late comments.

1. *Electronically.* If you submit an electronic comment as prescribed below, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. The EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets.* Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket*, and follow the online instructions for submitting comments. To access EPA's electronic public docket from the EPA Internet Home Page, select "Information Sources," "Dockets," and "EPA Dockets." Once in the system, select "search," and then key in Docket ID No. OAR–2003–0090. The system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail.* Comments may be sent by electronic mail (e-mail) to *A-and-R-Docket@epa.gov*, Attention Docket ID No. OAR–2003–0090. In addition, please send a copy of e-mail comments to *cole.david@epa.gov*. In contrast to EPA's electronic public docket, EPA's e-mail system is not an "anonymous access" system. If you send an e-mail comment directly to the Docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. The E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM.* You may submit comments on a disk or CD ROM that you mail to the mailing address identified in unit I.B.2 below. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By Mail.* Send your comments to: Air and Radiation Docket, U.S. Environmental Protection Agency, Mail Code: 6102T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, Attention Docket ID No. OAR 2003–0090. In addition, please send a copy of your comments to: David Cole, U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, Mail Code: C539–02, Research Triangle Park, NC 27711.

3. *By Hand Delivery or Courier.* Deliver your comments to: Air and Radiation Docket, U.S. Environmental Protection Agency, 1301 Constitution Avenue, NW., Room B102, Washington, DC 20004, Attention Docket ID No. OAR 2003–0090. Such deliveries are only accepted during the Docket's normal hours of operation as identified in unit I.A.1. Please also deliver a copy of your comments to: David Cole, U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, 109 T.W. Alexander Drive, Research Triangle Park, NC 27709.

4. *By Facsimile.* Fax your comments to: 202–566–1741; Attention Docket ID No. OAR 2003–0090; and to: 919–541–0824, Attention: David Cole.

C. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at your estimate.

5. Provide specific examples to illustrate your concerns.

6. Offer alternatives.

7. Make sure to submit your comments by the comment period deadline identified.

8. To ensure proper receipt by EPA, identify the appropriate docket identification number in the subject line on the first page of your response. It would also be helpful if you provided the name, date, and **Federal Register** citation related to your comments.

Outline

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  G. Executive Order 13045: Protection of Children from Environmental Health and Safety Risks
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II. What Are the Health Concerns Addressed by the 8-Hour Ozone Standard?

Ground-level ozone pollution is formed by the reaction of volatile organic compounds (VOC) and nitrogen oxides (NO_X) in the atmosphere in the presence of sunlight. These two pollutants, often referred to as ozone precursors, are emitted by many types of pollution sources, including on-road and off-road motor vehicles and engines, power plants and industrial facilities, and smaller "area" sources.

In 1979, we promulgated the 0.12 ppm (parts per million) 1-hour ozone standard, (44 FR 8202, February 8, 1979). On July 18, 1997, we promulgated a revised standard of 0.08 ppm, measured over an 8-hour period, *i.e.*, the 8-hour standard (62 FR 38856). In general, the 8-hour standard is more protective of public health and more stringent than the 1-hour standard, and there are more areas that do not meet the 8-hour standard than there are areas that do not meet the 1-hour standard.

Ozone can irritate the respiratory system, causing coughing, throat irritation, and/or uncomfortable sensation in the chest. Ozone can reduce lung function and make it more difficult to breathe deeply, and breathing may become more rapid and shallow than normal, thereby limiting a person's normal activity. Ozone also can aggravate asthma, leading to more asthma attacks that require a doctor's attention and/or the use of additional medication. In addition, ozone can inflame and damage the lining of the lungs, which may lead to permanent changes in lung tissue, irreversible reductions in lung function, and a lower quality of life if the inflammation occurs repeatedly over a long time period (months, years, a lifetime). People who are particularly susceptible to the effects of ozone include children and adults who are active outdoors, people with respiratory disease, such as asthma, and people with unusual sensitivity to ozone.

More detailed information on health effects of ozone can be found at the following web site: *http://www.epa.gov/ttn/naaqs/standards/ozone/s_o3_index.html*.

III. What Is the Background on Implementation of the 8-hour Ozone Standard?

This action proposes an option that provides incentives for certain areas taking voluntary, early actions for reducing ozone for implementing the 8-hour ozone NAAQS. The option was discussed in EPA's June 2, 2003 proposed rulemaking (68 FR 32859) for implementing that standard. This section presents background information on the June 2, 2003 proposal.

On July 18, 1997, we revised the ozone NAAQS (62 FR 38856) by promulgating an ozone standard of .08 ppm as measured over an 8-hour period. At that time, we indicated that we believed that the 8-hour ozone NAAQS should be implemented under the less detailed requirements of subpart 1 of part D of title I of the CAA rather than the more detailed requirements of subpart 2. Various industry groups and States challenged EPA's final rule promulgating the 8-hour ozone NAAQS in the U.S. Court of Appeals for the District of Columbia Circuit.[1] In May 1999, the Court of Appeals remanded the ozone standard to EPA on the basis that our interpretation of our authority under the standard-setting provisions of the CAA resulted in an unconstitutional delegation of authority. *American Trucking Assns., Inc.*, v. *EPA*, 175 F.3d 1027, 1034–1040 (ATA I) *aff'd*, 195 F.3d 4 (D.C. Cir., 1999)(ATA II). In addition, the Court held that the CAA clearly provided for implementation of a revised ozone standard under subpart 2, not subpart 1. *Id.* at 1048–1050.[2] We sought review of these two issues in the U.S. Supreme Court. In February 2001, the Supreme Court held that EPA's action in setting the NAAQS was not an unconstitutional delegation of authority. *Whitman* v. *American Trucking Assoc.*, 121 S.Ct. 903, 911–914 (2001) (Whitman). In addition, the Supreme Court held that the D.C. Circuit incorrectly determined that the CAA was clear in requiring implementation only under subpart 2, but determined that our implementation approach, which did not provide a role for subpart 2 in implementing the 8-hour NAAQS, was unreasonable. *Id.* at 916–919. The Court also identified some elements of the CAA's classification scheme under subpart 2 that are "ill-fitted" to the revised standard and remanded the implementation strategy to EPA to develop a reasonable approach for implementation. *Id.* Because the D.C. Circuit had not addressed all of the issues raised in the underlying case, the court remanded the case to the D.C. Circuit for disposition of those issues. *Id.* at 919. On March 26, 2002, the D.C. Circuit rejected all remaining challenges to the ozone and fine particle ($PM_{2.5}$) standards. *American Trucking Assoc.* v. *EPA*, 283 F.3d 355 (D.C. Cir. 2002) (ATA III).

In response to the Court's remand, we proposed the 8-hour ozone implementation rule on June 2, 2003 (68 FR 32802). We plan to issue a final rule on an implementation approach in the near future.

[1] On July 18, 1997, we also promulgated a revised particulate matter (PM) standard (62 FR 38652). Litigation on the PM standard paralleled the litigation on the ozone standard and the court issued one opinion addressing both challenges. However, issues regarding implementation of the revised PM NAAQS were not litigated.

[2] The Court addressed a number of other issues, which are not relevant here.

IV. What Actions Is EPA Taking To Designate Areas for the 8-Hour Ozone Standard?

A. What Is EPA's Schedule for Designating Areas for the 8-Hour Ozone Standard?

Section 107(d) of the CAA establishes a deadline for EPA to promulgate designations of areas.[3] We have entered into a consent decree that requires us to promulgate designations on a revised schedule.[4] In a settlement with nine environmental groups, we agreed to designate areas for the 8-hour ozone standard by April 15, 2004. This deadline provided States and Tribes ample time to update their recommendations by July 15, 2003 for nonattainment area boundaries. On November 14, 2002, we issued a guidance memorandum outlining the new designations schedule, requirements for designating Tribal areas, and discussing the impact of the designation schedule on areas that are developing Early Action Compacts.[5]

B. What Action Is EPA Taking To Defer the Effective Date of Nonattainment Designation for Early Action Compact Areas?

At the time we designate areas in April 2004, we plan to take final action to defer the effective date of the nonattainment designation on a rolling basis for participating compact areas that are monitoring a violation of the 8-hour ozone standard, provided all terms of the agreement continue to be met, including timely completion of all compact milestones and reports. In today's rule, we are proposing to establish the first of three deferred effective dates. At the same time we designate all areas either attainment or nonattainment, we will take final action determining whether to defer until September 30, 2005, the effective date of the nonattainment designation for the 8-hour ozone standard for compact areas that are violating the standard, provided these areas continue to meet all compact milestones, which are described in section V of this proposal.

Prior to the time the first deferral expires, EPA intends to take further action to propose and, as appropriate, promulgate a second deferred effective date of the nonattainment designation for those areas that continue to fulfill all compact obligations. Finally, prior to the time the second deferral expires, EPA would propose and, as appropriate, promulgate a third deferral for those areas that continue to meet all compact milestones.

[3] Section 107(d) of the CAA sets forth a schedule for designations following the promulgation of a new or revised NAAQS. The Transportation Equity Act for the Twenty-first Century (TEA–21) revised the deadline to publish nonattainment designations for the 8-hour ozone NAAQS to provide an additional year (to July 2000), but HR 3645 (EPA's appropriation bill in 2000) restricted EPA's authority to spend money to designate areas until June 2001 or the date of the Supreme Court ruling on the standard, whichever came first.

[4] *American Lung Association* v. *EPA* (D.D.C. No. 1:02CV02239).

[5] Memorandum from Jeffrey R. Holmstead, Assistant Administrator, to EPA Regional Administrators, "Schedule for 8-Hour Ozone Designations and its Effect on Early Action Compacts," November 14, 2002. Docket No. OAR–2003–0090–0003.

V. What Is an Early Action Compact, and What Are Compact Areas Required To Do?

A. Why Was the Compact Program Developed?

As discussed in the proposed 8-hour implementation rule, State, local and Tribal air pollution control agencies have continued to express a need for added flexibility in implementing the 8-hour ozone NAAQS, including incentives for taking action sooner than the CAA requires for reducing ground-level ozone. The compact program permits local areas to make decisions that will achieve reductions in VOC and NO_X emissions sooner than otherwise is mandated by the CAA. Early planning and early implementation of control measures that improves air quality will likely accelerate protection of public health. We issued our policy on early planning on November 14, 2002, as described in section IV of this action.

B. What Early Action Protocol Did Texas Submit to EPA?

In March 2002, the Texas Commission on Environmental Quality (TCEQ) encouraged EPA to consider incentives for early planning towards achieving the 8-hour ozone NAAQS. The TCEQ submitted to EPA the Protocol for Early Action Compacts Designed to Achieve and Maintain the 8-hour Ozone Standard (Protocol). The Protocol was designed to achieve NO_X and VOC emissions reductions for the 8-hour ozone NAAQS sooner than would otherwise be required under the CAA. The TCEQ recommended that the Protocol be formalized by "Early Action Compact" agreements primarily developed by local, State and Federal (EPA) officials. The principles of the compacts, as described in the Protocol, are the following:

1. Early planning, implementation, and emissions reductions leading to expeditious attainment and maintenance of the 8-hour ozone standard;

2. Local control of the measures employed, with broad-based public input;

3. State support to ensure technical integrity of the early action plan;

4. Formal incorporation of the early action plan into the State implementation plan (SIP);

5. Designation of all areas as attainment or nonattainment in April 2004, but, for compact areas, deferral of the effective date of the nonattainment designation and/or designation requirements so long as all compact terms and milestones continue to be met; and

6. Safeguards to return areas to traditional SIP attainment requirements should compact terms be unfulfilled (*e.g.*, if the area fails to attain in 2007), with appropriate credit given for reduction measures already implemented.

In a letter dated June 19, 2002, from Gregg Cooke, Administrator, Region 6, to Robert Huston, Chairman, TCEQ, EPA endorsed the principles outlined in the Protocol. The Protocol was subsequently revised on December 11, 2002, based on comments from EPA.

The Protocol specifies certain components that compacts are addressing, including the development of local air quality plans and the following elements:

1. Completion of emissions inventories and modeling (based on most recent Agency guidance) to support selection of local control measures;

2. Adoption of control strategies that demonstrate attainment and that are submitted as a revision to the SIP;

3. Completion of a component to address emissions growth at least 5 years beyond December 31, 2007, ensuring that the area will remain in attainment of the 8-hour ozone standard during that period;

4. Public involvement in all stages of planning and implementation, including public education programs and a process that ensures stakeholder involvement and public participation in planning local strategies and reviewing air quality plans; and

5. Semiannual reports detailing progress toward completion of compact milestones.

C. What Are Compact Areas Required To Do?

The Protocol and Agency guidance (EPA memorandum dated November 14, 2002, described in section IV, and EPA memorandum dated April 4, 2003[6] establish what compact areas are required to do. To be eligible for a compact, these areas must be attaining the 1-hour ozone standard (including maintenance areas for the 1-hour ozone standard, to the extent such areas continue to maintain that standard) and be designated attainment for that standard at the time the compact was entered into. These areas, however, may be approaching or monitoring exceedances of the 8-hour ozone standard.[7] A compact area must be attaining the 8-hour ozone standard by December 31, 2007, based on the most recent 3 years of air quality monitoring data.

The EPA's November 14, 2002, memorandum specified that compacts must be completed, submitted to EPA and signed by local, State and EPA officials by December 31, 2002. We intend to honor the commitments established in these agreements, provided these areas meet all components of the Protocol and Agency guidance and schedules. No additional areas were allowed to enter into compacts after December 31, 2002.

The Protocol describes the process by which compact areas are required to select control strategies based on SIP-quality modeling that shows attainment of the 8-hour ozone standard no later than December 31, 2007, through implementation of control strategies. The EPA specified that all compact areas must submit a local plan by March 31, 2004 that will include measures that are specific, quantified, and permanent and that, if approved into the SIP by EPA, will be federally enforceable. The March 31, 2004 submission must also include specific implementation dates for the local controls, as well as detailed documentation supporting the selection of measures. Controls must be implemented no later than December 31, 2005, which is at least 16½ months earlier than required by the CAA. Reports are required every 6 months to describe progress toward completion of milestones. In June 2006 compact areas must submit a report to EPA that describes implementation of measures that was required by the end of December 2005, as well as an assessment of reductions in emissions and air quality.

[6] Memorandum from Lydia N. Wegman, Director, Air Quality Strategies and Standards Division, "Early Action Compacts (EACs): The June 16, 2003 Submission and Other Clarifications," April 4, 2003. Docket No. OAR–2003–0090–0002.

[7] One-hour ozone maintenance areas are areas that were previously designated nonattainment for the 1-hour ozone standard, but were redesignated to attainment pursuant to section 107(d)(3)(E) and subject to the requirements of section 175A of the CAA.

Table 1 describes the milestones and submissions that compact areas are required to complete in order to continue eligibility for a deferral of the effective date of nonattainment designation for the 8-hour ozone standard.

TABLE 1.—EARLY ACTION COMPACT MILESTONES

Submittal date	Compact milestone
December 31, 2002	Submit Compact for EPA signature.
June 16, 2003	Submit preliminary list and description of potential local control measures under consideration.
March 31, 2004	Submit complete local plan to State (includes specific, quantified and permanent control measures to be adopted).
December 31, 2004	State submits adopted local measures to EPA as a SIP revision that, when approved, will be federally enforceable.
2005 Ozone Season (or no later than December 31, 2005).	Implement SIP control measures.
June 30, 2006	State reports on implementation of measures and assessment of air quality improvement and reductions in NO_x and VOC emissions to date.
December 31, 2007	Area attains 8-hour ozone NAAQS.

According to the Protocol, EPA would recognize the local area's commitment to early, voluntary action by designating the compact areas violating the 8-hour NAAQS as nonattainment in April 2004 (at the time of national designations for all areas), but deferring the effective date of the nonattainment designation, so long as all terms and milestones of the Compact continue to be met. A copy of the revised Protocol is available in the docket for this proposed rulemaking.[8]

VI. What Areas Are Participating in the Early Action Compact Program?

We have entered into compacts with 33 communities. A list of these areas is presented in Table 2.

TABLE 2.—8-HOUR OZONE EARLY ACTION COMPACT AREAS

Appalachian (Greenville-Spartanburg-Anderson Area), SC.
Austin-San Marcos Area, TX.
Berkeley-Charleston-Dorchester (Charleston Area), SC.
Catawba (York-Chester-Lancaster-Union Counties), SC—part of Charlotte-Gastonia-Rock Hill Area.
Central Midlands (Columbia area), SC.
Chattanooga Area, TN–GA.
Denver Area, CO.
Fayetteville Area, NC.
Haywood County (near Memphis), TN.
Knoxville Area, TN.
Low Country (Beaufort area), SC.
Lower Savannah-Augusta (Augusta-Aiken area), GA–SC.
Memphis Area, TN–AR–MS.
Mountain Area of NC (Asheville area), NC.
Nashville Area, TN.
Northeast Texas Area (Longview-Marshall-Tyler Area), TX.
Northern Shenandoah Valley Region (Winchester/Frederick County), VA.
Oklahoma City Area, OK.
Pee Dee (Florence Area), SC.
Putnam County (Central TN, between Nashville and Knoxville), TN.
Roanoke Area, VA.
San Antonio Area, TX.
San Juan County (Farmington Area), NM.
Santee Lynches (Sumter Area), SC.
Shreveport-Bossier City Area, LA.
The Eastern Pan Handle Region (Martinsburg Area), WV.
Triad Area (Greensboro-Winston Salem-High Point), NC.
Tri-Cities Area (Johnson City-Kingsport-Bristol Area), TN.
Tulsa Area, OK.
Unifour Area (Hickory-Morganton-Lenoir Area), NC.
Upper Savannah (Abbeville-Greenwood Area), SC.
Waccamaw (Myrtle Beach Area), SC.
Washington County (West of Washington, DC), MD.

[8] The Texas Protocol was submitted to EPA in March 2002 for review and was revised in December 2002 based on the Agency's comments concerning the need for additional milestones and other clarifications. Docket No. OAR–2003–0090–0004.

A. What Progress Are Compact Areas Making Toward Completing Their Milestones?

Compact areas are continuing to make good progress toward timely completion of their milestones. All 33 communities met the June 16, 2003 milestone, which required areas to submit a list and description of local control measures each area is considering for adoption and implementation. In addition, all 33 compact areas submitted the June 30, 2003 progress report. The June 16 submissions contained many innovative measures that EPA believes have the potential to reduce air pollution, while at the same time, produce additional benefits for these communities. For example, many compact areas are considering electrified truck stops to replace the need for engine idling during truck loading or unloading. A number of other areas are considering the addition of cetane additives to fuel for increased fuel efficiency. San Antonio's list of measures includes a walking school bus program. Under this program, parents rotate the responsibility of walking groups of students to school in lieu of going by bus or by car. The Center for Disease Control reports that lack of exercise is one of the primary reasons why childhood obesity has reached epidemic proportions in the U.S. In addition to reducing vehicle miles traveled (VMT), thus decreasing mobile source emissions, a walking school bus program provides children with another opportunity to get physical exercise.

Stakeholders for the Austin, Texas compact are exploring an expedited permitting process for "mixed use, transit-oriented, infill development." Mixing land uses can reduce VMT in several ways, including trip lengths, mode choice and vehicle ownership. In a recent study, EPA has concluded that by encouraging people to walk, bike, and use transit rather than drive, mixed-use development patterns reduce VMT, thereby decreasing automobile emissions and improving regional air quality.[9]

The EPA believes that these types of long-term, land use changes can reduce air pollution well into the future, as well as produce multiple benefits that go beyond cleaner air. Such additional effects include an increase in mobility for all segments of the population, an increase in physical activity and an improved quality of life. These are the kinds of measures that EPA would like to see more areas explore, but for which the CAA provides no real incentives. Based on the many innovative and creative measures contained in the June 16, 2003 submission, we believe that the Early Action Compact program can provide such an incentive.

B. How Will EPA Address Compact Areas Attaining the 8-Hour Ozone Standard in April 2004?

Compact areas that are not violating the 8-hour ozone standard using 2001–2003 ozone monitoring data will be designated attainment at the time we designate areas in April 2004. In most cases, compact areas that would not be in violation of the 8-hour standard when designations are made in April 2004 would have ozone design values near 85 parts per billion (ppb), and therefore, are at risk for violating the 8-hour ozone standard in subsequent ozone seasons (*e.g.*, 2004–2006). We encourage compact areas designated attainment for the 8-hour standard based on 2001–2003 data to continue to develop clean air plans and to remain committed to the compact program to ensure air quality remains clean. Should an area participating in the program that is designated attainment in April 2004 subsequently violate the 8-hour ozone standard during the term of the compact, EPA would not commit to redesignate the area to nonattainment for so long as the area continues to comply with the compact requirements and meet all compact milestones. The EPA would not permit any extension of the compact requirement to attain the standard by December 2007 for any compact area that violates the standard after 8-hour ozone designations in April 2004, whether the area was designated attainment or nonattainment with a deferral of the effective date of the designation.

C. What Is the Air Quality of the Compact Areas?

A total of 146 counties are covered by compacts. Sixty-four of these counties have ozone monitors and 82 counties do not. Table 3 below summarizes 2000–2002 air quality data that are available for the 146 counties participating in the program. However, in April 2004, EPA will designate areas based on 2001–2003 data; therefore, the air quality status of some compact areas may change for the purpose of designating areas for the 8-hour ozone standard.

TABLE 3.—2000–2002 OZONE AIR QUALITY DATA FOR EARLY ACTION COMPACT COUNTIES

State	Compact area	County	2000–2002 Ozone design value, ppb ozone
EPA Region 3			
VA	Northern Shenandoah Valley Region. (This area is not a MSA.) Adjacent to Washington-Baltimore MSA.	Winchester City	
		Frederick County	85
VA	Roanoke Area (part of Roanoke MSA)	Roanoke County*	87
		Botetourt County*	
		Roanoke City*	
		Salem City*	
MD	Washington County (west of Washington, DC—part of Washington-Baltimore CMSA).	Washington County*	87
WV	The Eastern Pan Handle Region (Martinsburg area—part of Washington-Baltimore MSA).	Berkeley County*	
		Jefferson County*	
EPA Region 4			
NC	Mountain Area of Western NC (Asheville MSA + additional counties)	Buncombe County*	85

[9] "Our Built and Natural Environments" (EPA 231–R–01–002, January 2001).

TABLE 3.—2000–2002 OZONE AIR QUALITY DATA FOR EARLY ACTION COMPACT COUNTIES—Continued

State	Compact area	County	2000–2002 Ozone design value, ppb ozone
		Haywood County	87
		Henderson County	
		Madison County*	
		Transylvania County	
NC	Unifour (Hickory-Morganton-Lenoir MSA)	Catawba County*	
		Alexander County*	91
		Burke County*	
		Caldwell County*	86
NC	Triad (Greensboro-Winston Salem—High Point MSA + additional counties).	Surry County	
		Yadkin County*	
		Randolph County*	
		Forsyth County*	94
		Davie County*	95
		Alamance County*	
		Caswell County	91
		Davidson County*	
		Stokes County*	
		Guilford County*	93
		Rockingham County	90
NC	Fayetteville (Fayetteville MSA)	Cumberland County*	87
SC	Appalachian—A (Greenville-Spartanburg-Anderson MSA + additional counties).	Cherokee County*	87
		Spartanburg County*	90
		Greenville County*	
		Pickens County*	85
		Anderson County*	88
		Oconee County	87**/84
SC	Catawba—B (part of Charlotte-Gastonia-Rock Hill MSA)	York County*	84
		Chester County	84
		Lancaster County	
		Union County	81
SC	Pee Dee—C (Florence MSA + additional counties)	Florence County*	
		Chesterfield County	
		Darlington County	86
		Dillon County	
		Marion County	
		Marlboro County	
SC	Waccamaw—D (Myrtle Beach MSA + additional counties)	Williamsburg County	73
		Georgetown County	
		Horry County*	
SC	Santee Lynches—E (Sumter MSA + additional counties)	Clarenton County	
		Lee County	
		Sumter County*	
		Kershaw County	
SC	Berkeley-Charleston-Dorchester—F (Charleston-North Charleston MSA)	Dorchester County*	
		Berkeley County*	81**75
		Charleston County*	77**/74
SC	Low Country—G (Beaufort area/not a MSA)	Beaufort County	
		Colleton County	80
		Hampton County	
		Jasper County	
SC/GA	Lower Savannah-Augusta (part of Augusta-Aiken MSA + additional counties).	Aiken County, SC	83
		Orangeburg County, SC	
		Barnwell County, SC	83
		Calhoun County, SC	
		Allendale County, SC	
		Bamberg County, SC	
		Richmond County, GA*	87
		Columbia County, GA*	
SC	Central Midlands—I (Columbia MSA + additional counties)	Richland County*	93
		Lexington County*	
		Newberry County	
		Fairfield County	
SC	Upper Savannah—(Abbeville-Greenwood area/not a MSA)	Abbeville County	
		Edgefield County* (in Augusta-Aiken MSA).	83
		Laurens County	

TABLE 3.—2000–2002 OZONE AIR QUALITY DATA FOR EARLY ACTION COMPACT COUNTIES—Continued

State	Compact area	County	2000–2002 Ozone design value, ppb ozone
		Saluda County	
		Greenwood County	
TN/GA	Chattanooga (Chattanooga MSA + additional county)	Hamilton County, TN*	93
		Meigs County, TN*	93
		Marion County, TN*	
		Walker County, GA*.	
		Catoosa County, GA*	
TN	Knoxville (Knoxville MSA + additional counties)	Knox County*	96
		Anderson County*	92
		Union County*	
		Loudon County*	
		Blount County*	94
		Sevier County*	98
		Jefferson County	95
TN	Nashville (Nashville MSA)	Davidson County*	80
		Rutherford County*	84
		Williamson County*	87
		Wilson County*	85
		Sumner County*	88
		Robertson County*	
		Cheatham County*	
		Dickson County*	
TN/AR/MS	Memphis (Memphis MSA)	Shelby County, TN*	90
		Tipton County, TN*	
		Fayette County, TN*	
		DeSoto County, MS*	86
		Crittenden County, AR*	94
TN	Haywood County (near Memphis)—adjacent to Memphis MSA and Jackson MSA.	Haywood County	86
TN	Putnam County (central TN, between Nashville and Knoxville)—not a MSA.	Putnam County	86
TN	Johnson City-Kingsport-Bristol Area—portion of the Johnson City-Kingsport-Bristol MSA + additional county.	Sullivan County, TN*	92
		Hawkins County, TN*	
		Washington County, TN*	
		Unicoi County, TN*	
		Carter County, TN*	
		Johnson County, TN.	
	EPA Region 6		
TX	Austin/San Marcos (Austin-San Marcos MSA)	Travis County*	85
		Williamson County*	
		Hays County*	
		Bastrop County*	
		Caldwell County*	
TX	Northeast Texas (Longview-Marshall & Tyler MSAs + additional county)	Gregg County* (Longview MSA)	88
		Harrison County* (Longview MSA)	
		Rusk County	
		Smith County* (Tyler MSA)	84
		Upshur County* (Longview MSA)	
TX	San Antonio (San Antonio MSA)	Bexar County*	86
		Wilson County*	
		Comal County*	
		Guadalupe County*	
OK	Oklahoma City (Oklahoma City MSA)	Canadian County*	
		Cleveland County*	77
		Logan County*	
		McClain County*	79
		Oklahoma County*	82
		Pottawatomie County*	
OK	Tulsa (part of Tulsa MSA)	Tulsa County*	87
		Creek County* (part)	
		Osage County* (part)	
		Rogers County* (part)	
		Wagoner County* (part)	
LA	Shreveport-Bossier City (Shreveport-Bossier City MSA)	Bossier Parish*	84
		Caddo Parish*	79
		Webster Parish*	

TABLE 3.—2000–2002 OZONE AIR QUALITY DATA FOR EARLY ACTION COMPACT COUNTIES—Continued

State	Compact area	County	2000–2002 Ozone design value, ppb ozone
NM	San Juan County (Farmington area—not a MSA, but a southeast segment is adjacent to Albuquerque MSA).	San Juan County	76
	EPA Region 8		
CO	Denver (part of Denver-Boulder-Greeley MSA)	Denver County*	72
		Boulder County* (excluding Rocky Mtn National Park).	73
		Jefferson County*	83
		Douglas County*	80
		City/County of Broomfield* (a new county downtown).	
		Adams* and Arapahoe* Counties (the part west of Kiowa Creek) (excludes extreme eastern portions of counties).	64, 76

Note: The air quality information in this table is based on 2000–2002 data from monitors (where available) located in each county of a compact area. Ozone designations in April 2004 will be based on 2001–2003 data. The boundaries of these compact areas will not necessarily correspond to the boundaries for the 8-hour ozone nonattainment areas that will be designated in April 2004. An ozone design value of 85 ppb or greater indicates a violation of the 8-hour ozone standard. A single asterisk following a county name means that county is included in a Consolidated/Metropolitan Statistical Area (C/MSA). In a few counties, higher historical design values (indicated by double asterisks) are also listed when 2000–2002 design values are not complete at a monitoring site. A blank in the last column means either no monitor is located in the county or the monitor(s) in the county have recorded less than 3 years of data.

VII. What Are the Impacts of This Action?

This section discusses the effect of this proposed rule on compact areas, including the regulatory effects and the consequences of participation in these compacts.

A. What Are the Regulatory Effects of This Action?

Since the effective date of the nonattainment designation would be deferred for compact areas that are violating the 8-hour standard, all CAA requirements for the 8-hour standard that would apply to an area designated nonattainment for that standard, such as new source review (NSR) and transportation conformity, would not apply during the deferral period.

In April 2004, the Agency will designate areas as nonattainment based on 2001–2003 air quality monitoring data. However, based on 2000–2002 data, we do know that of those compact areas that are violating the 8-hour ozone standard, most are very close to the standard. We believe many of these areas, if their nonattainment designations were not deferred, would be classified under subpart 1 of the CAA, if EPA adopted its preferred classification scheme described in the June 2, 2003 proposed rule to implement the 8-hour ozone standard (68 FR 32866). Table 4 is a summary of the requirements that would apply if compact areas do not receive a deferred nonattainment effective date and instead become classified under subpart 1. Providing information about subpart 1 requirements in this notice does not imply that we have decided not to adopt our proposed classification option 1, which would have placed all areas under subpart 2.

TABLE 4.—SUBPART 1 NONATTAINMENT AREA REQUIREMENTS

Achieve attainment as expeditiously as practicable, but no later than 5 years after designation. EPA may grant an additional 5-year extension under certain circumstances.
Reasonable Further Progress (RFP).
Reasonably Available Control Measures requirement.
Attainment demonstration.
Major source definition of 100 tons per year or more for NSR and Reasonably Available Control Technology.
NSR offset ratio of greater than 1 to 1.
NSR permit program.
Emissions inventory.
Transportation conformity.
Contingency measures to take effect in the event of failure to show RFP or to attain.

Conversely, with a deferred effective date, a compact area would not be subject to the requirements listed above, as long as the area continues to meet all of its milestones as described in Section V, Table 1, of this notice.[10]

[10] Note that compact areas that have maintenance plans for any other NAAQS, including the ozone 1-hour standard, are still subject to the requirements in the maintenance plan, such as contingency measures. In addition, transportation conformity would continue to apply for such areas for the 1-hour standard and any other applicable standards.

B. What Are the Consequences of Compacts for Local Areas?

In addition to the benefit of early reductions, there are other consequences associated with participating in these compacts, some of which are noted below.

1. Compacts give local areas the flexibility to develop their own approach to meeting the 8-hour ozone standard, provided the communities control emissions from local sources earlier than the CAA would otherwise require, consistent with timelines in the Protocol.

2. If all terms of the agreement are met, EPA would defer the effective date of the nonattainment designation for compact areas.

3. People living in areas that realize reductions sooner will enjoy the health benefits of cleaner air sooner than might otherwise occur.

4. Reductions in emissions from pollution control measures that are implemented as part of a compact are creditable toward air quality planning goals, to the extent credit is allowed by EPA guidance and the CAA.

5. Success of compacts depends on active and sustained participation by all stakeholders.

6. Compact areas (as well as non-compact areas) that are maintenance areas for the 1-hour ozone standard would still be subject to transportation conformity requirements for the 1-hour standard while the maintenance plan for the area is still in force under section 175A of the CAA. (Note that EPA has proposed that when it revokes the 1-hour ozone standard, transportation conformity under the 1-hour standard would no longer apply to 1-hour maintenance areas.)

7. Compact areas in the Ozone Transport Region are still subject to nonattainment NSR in accordance with section 184(b)(2) of the CAA for so long as the 1-hour ozone NAAQS continues to apply.

8. Because they are not considered nonattainment for the 8-hour ozone NAAQS until the effective date, compact areas are not eligible for Congestion Mitigation and Air Quality Improvement Program (CMAQ) funds for purposes of the 8-hour ozone NAAQS.

9. Compact areas have an aggressive, accelerated program of milestones to meet. If an area misses a milestone, its nonattainment designation will take effect, and as such, will be subject to all of the requirements for nonattainment areas.

VIII. Statutory and Executive Order Reviews

Upon promulgation of a new or revised NAAQS, the CAA requires EPA to designate areas as attaining or not attaining that NAAQS. The CAA then specifies requirements for areas based on whether such areas are attaining or not attaining the NAAQS. This proposed rule provides flexibility for areas that have entered into a compact and take early action to achieve emissions reductions necessary to attain the 8-hour ozone standard. This action proposes to defer the effective date of the nonattainment designation for these areas and would allow these areas to adopt control requirements agreed to by the affected localities.

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether the regulatory action is "significant" and, therefore, subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, it has been determined that this rule is not a "significant regulatory action" because none of the above factors applies. As such, this proposed rule was not formally submitted to OMB for review.

B. Paperwork Reduction Act

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

C. Regulatory Flexibility Act

The Regulatory Flexibility Act generally requires an Agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedures Act or any other statute unless the Agency certifies the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's proposed rule on small entities, small entity is defined as: (1) A small business that is a small industrial entity as defined in the U.S. Small Business Administration (SBA) size standards. (See 13 CFR 121.); (2) a governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's proposed rule on small entities, I certify that this rule will not have a significant economic impact on a substantial number of small entities. This proposed rule will not impose any requirements on small entities. Rather, this rule would defer the effective date of the nonattainment designation for areas that implement control measures and achieve emissions reductions earlier than otherwise required by the CAA in order to attain the 8-hour ozone NAAQS. In addition, States and local areas that have entered into compacts with EPA have the flexibility to decide what to regulate in their communities.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and Tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and Tribal governments, in the aggregate, or to the private sector, of $100 million or more in any 1 year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the

Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including Tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

The EPA has determined that this rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and Tribal governments, in the aggregate, or the private sector in any 1 year. Today's rule is not subject to the requirements of sections 202 and 205 of the UMRA.

The CAA requires States to develop plans, including control measures, based on their designations and classifications. In this rule, EPA is deferring the effective date of nonattainment designations for certain areas that have entered into compacts with us. This rule is not establishing a specific requirement for States to submit SIPs, nor does it impose any regulatory requirements. However, even if this rule did establish such a requirement, it is questionable whether a requirement to submit a SIP revision would constitute a Federal mandate in any case. The obligation for a State to submit a SIP that arises out of section 110 and part D of the CAA is not legally enforceable by a court of law, and at most is a condition for continued receipt of highway funds. Therefore, it is possible to view an action requiring such a submittal as not creating any enforceable duty within the meaning of section 421(5)(9a)(I) of UMRA (2 U.S.C. 658(a)(I)). Even if it did, the duty could be viewed as falling within the exception for a condition of Federal assistance under section 421(5)(a)(i)(I) of UMRA (2 U.S.C. 658(5)(a)(i)(I)).

In the proposal, EPA has determined that this rule contains no regulatory requirements that may significantly or uniquely affect small governments, including Tribal governments. Nonetheless, EPA carried out consultations with governmental entities affected by this rule, including States and local air pollution control agencies.

E. Executive Order 13132: Federalism

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

This proposed rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. Finally, the CAA establishes the scheme whereby States take the lead in developing plans to meet the NAAQS. This proposed rule would not modify the relationship of the States and EPA for purposes of developing programs to implement the NAAQS. Thus, Executive Order 13132 does not apply to this proposed rule.

Although section 6 of Executive Order 13132 does not apply to this rule, EPA discussed the compact program with representatives of State and local air pollution control agencies, as well as the Clean Air Act Advisory Committee, which is also composed of State and local representatives.

In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and State and local governments, EPA specifically solicits comment on this proposed rule from State and local officials.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." This proposed rule does not have "Tribal implications" as specified in Executive Order 13175.

This proposed rule concerns the deferral of the effective date of nonattainment designation of the 8-hour ozone standard in compact areas that do not meet that standard, but continue to meet compact milestones. The CAA provides for States and Tribes to develop plans to regulate emissions of air pollutants within their jurisdictions. Early Action Compact areas that would be affected by this proposed rule would be required to develop and submit local plans for adoption and implementation of the 8-hour ozone standard earlier than the CAA requires. These plans would be submitted to EPA as SIP revisions in December 2004 rather than in April 2007. The Tribal Authority Rule (TAR) gives Tribes the opportunity to develop and implement CAA programs such as the 8-hour ozone NAAQS, but it leaves to the discretion of the Tribe whether to develop these programs and which programs, or appropriate elements of a program, they will adopt.

This proposed rule does not have Tribal implications as defined by Executive Order 13175. It does not have a substantial direct effect on one or more Indian Tribes, since no Tribe has implemented a CAA program to attain the 8-hour ozone NAAQS at this time or has participated in a compact. Furthermore, this proposed rule does not affect the relationship or distribution of power and responsibilities between the Federal government and Indian Tribes. The CAA and the TAR establish the relationship of the Federal government and Tribes in developing plans to attain the NAAQS, and this proposed rule does nothing to modify that relationship. Because this proposed rule does not have Tribal implications, Executive Order 13175 does not apply.

Although Executive Order 13175 does not apply to this proposed rule, EPA did outreach to Tribal representatives to inform them about the compact program, its impact on designations, and this proposed rule. The EPA supports a national "Tribal Designations and Implementation Work Group" which provides an open forum for all Tribes to voice concerns to EPA about the designation and implementation process for the 8-hour ozone standard. These discussions have given EPA valuable information about Tribal concerns regarding designations and implementation of the 8-hour ozone NAAQS. The EPA has encouraged Tribes to participate in the national public meetings held to take comment on early approaches to the proposed rule. Several Tribes made public comments at the April 2002 public meeting in Tempe, Arizona. The EPA specifically solicits additional comment on this proposed rule from Tribes.

G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks

Executive Order 13045: "Protection of Children From Environmental Health and Safety Risks" (62 FR 19885, April 23, 1997) applies to any rule that (1) is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

The proposed rule is not subject to Executive Order 13045 because the Agency does not have reason to believe the environmental health risks or safety risks addressed by this rule present a disproportionate risk to children. Nonetheless, we have evaluated the environmental health or safety effects of the 8-hour ozone NAAQS on children. The results of this evaluation are contained in 40 CFR part 50, NAAQS for Ozone, Final Rule (62 FR 38855–38896; specifically, 62 FR 38854, 62 FR 38860 and 62 FR 38865).

H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

This proposed rule is not a "significant energy action" as defined in Executive Order 13211, "Actions That Significantly Affect Energy Supply, Distribution, or Use," (66 FR 28355, May 22, 2001) because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

Information on the methodology and data regarding the assessment of potential energy impacts is found in Chapter 6 of U.S. EPA 2002, Cost, Emission Reduction, Energy, and Economic Impact Assessment of the Proposed Rule Establishing the Implementation Framework for the 8-Hour, 0.08 ppm Ozone National Ambient Air Quality Standard, prepared by the Innovative Strategies and Economics Group, Office of Air Quality Planning and Standards, Research Triangle Park, N.C. April 24, 2003.

I. National Technology Transfer Advancement Act

Section 12(d) of the National Technology Transfer Advancement Act of 1995 (NTTAA), Pub. L. No. 104–113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards (VCS) in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by VCS bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable VCS.

This proposed rulemaking does not involve technical standards. Therefore, EPA is not considering the use of any VCS.

The EPA will encourage States that have compact areas to consider the use of such standards, where appropriate, in the development of their SIPs.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order 12898 requires that each Federal agency make achieving environmental justice part of its mission by identifying and addressing, as appropriate, disproportionate high and adverse human health or environmental effects of its programs, policies, and activities on minorities and low-income populations.

The EPA believes that this proposed rule should not raise any environmental justice issues. The health and environmental risks associated with ozone were considered in the establishment of the 8-hour, 0.08 ppm ozone NAAQS. The level is designed to be protective with an adequate margin of safety.

List of Subjects in 40 CFR Part 81

Air pollution control, Environmental protection.

Authority: 42 U.S.C. 7408; 42 U.S.C. 7410; 42 U.S.C. 7501–7511f; 42 U.S.C. 7601(a)(1).

Dated: November 11, 2003.

Jeffrey R. Holmstead,

Assistant Administrator, Office of Air and Radiation.

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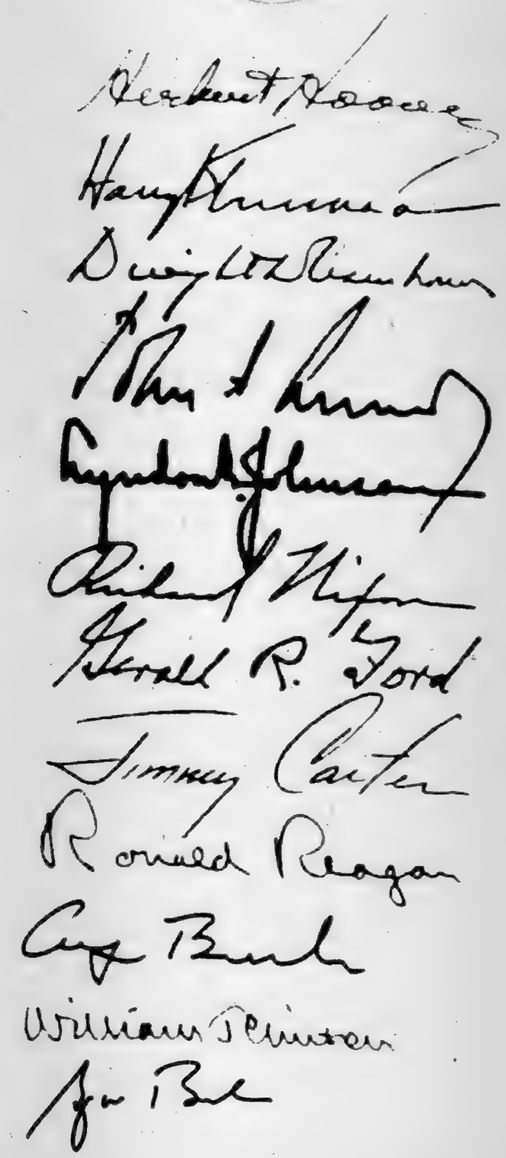
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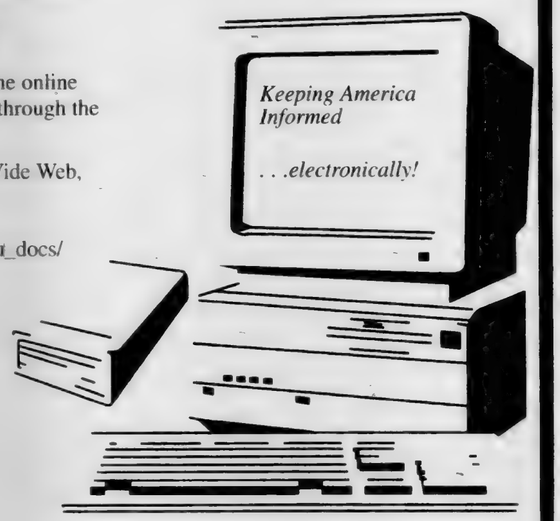
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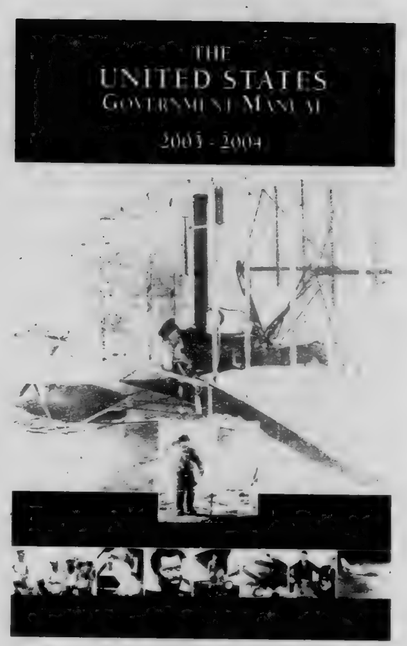
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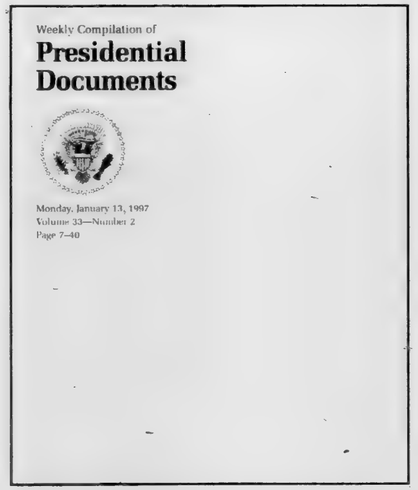
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Consult the Reader Aids section at the end of this issue for phone numbers, online resources, finding aids, reminders, and notice of recently enacted public laws.

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Rules and Regulations

Federal Register
Vol. 68, No. 242
Wednesday, December 17, 2003

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

NUCLEAR REGULATORY COMMISSION

10 CFR Part 72

RIN 3150–AH27

List of Approved Spent Fuel Storage Casks: Standardized NUHOMS®–24P, –52B, –61BT, and –24PHB Revision (Amendment 6): Correction and Confirmation of Effective Date

AGENCY: Nuclear Regulatory Commission.

ACTION: Direct final rule: correction and confirmation of effective date.

SUMMARY: The Nuclear Regulatory Commission (NRC) is correcting the direct final rule that was published in the **Federal Register** on October 7, 2003 (68 FR 57785). This direct final rule amended the NRC's regulations to revise the Standardized NUHOMS® cask system listing to include Amendment No. 6 to Certificate of Compliance (CoC) No. 1004. The correction removes the specified effective date for Amendment No. 5 to this cask system. The NRC is also confirming the effective date of December 22, 2003, for this direct final rule.

DATES: The effective date of December 22, 2003, is confirmed for this direct final rule.

ADDRESSES: Documents related to this rulemaking, including comments received, may be examined at the NRC Public Document Room, located at One White Flint North, 11555 Rockville Pike, Rockville, MD 20852. These same documents may also be viewed and downloaded electronically via the rulemaking Web site (*http://ruleforum.llnl.gov*). For information about the interactive rulemaking Web site, contact Ms. Carol Gallagher (301) 415–5905; e-mail *CAG@nrc.gov*.

FOR FURTHER INFORMATION CONTACT: Margaret Stambaugh, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 415–5449, e-mail *mxs8@nrc.gov*.

SUPPLEMENTARY INFORMATION: On October 7, 2003 (68 FR 57785), the NRC published a direct final rule amending its regulations in 10 CFR part 72 to revise the Standardized NUHOMS® cask system listing within the "List of Approved Spent Fuel Storage Casks" to include Amendment No. 6 to CoC No. 1004. This amendment will permit a part 72 licensee to store high burnup Babcock & Wilcox 15x15 spent fuel assemblies with an average burnup of up to 55,000 megawatt-days/metric ton of uranium, enrichment equal to 4.5 weight percent uranium-235, a maximum decay heat load of 1.3 kilowatt (kW) per assembly, and a maximum heat load of 24 kW per cask, under a general license. In the direct final rule, NRC stated that if no significant adverse comments were received, the direct final rule would become final on December 22, 2003. The NRC did not receive any comments that warranted withdrawal of the direct final rule. Therefore, this rule will become effective as scheduled.

The NRC is also correcting this direct final rule to remove the specified effective date for Amendment No. 5 in the Standardized NUHOMS® cask system listing. On August 19, 2003 (68 FR 49683), the NRC published a direct final rule that would have added Amendment No. 5 to the Standardized NUHOMS® cask system listing with an effective date of November 3, 2003. The October 7, 2003, direct final rule for Amendment No. 6 included the anticipated effective date for Amendment No. 5. On October 30, 2003 (68 FR 61734), the NRC withdrew the August 19, 2003, direct final rule because it received significant adverse comment in response to an identical proposed rule which was published concurrently with that direct final rule. Therefore, the amendment to 10 CFR 72.214 setting out the text for Certificate of Compliance 1004 presented in the October 7, 2003, direct final rule for Amendment No. 6 is corrected to remove the effective date for Amendment No. 5 and the reference to the cask model number that would have been added by Amendment No. 5.

PART 72—[CORRECTED]

■ 1. In § 72.214, Certificate of Compliance 1004 is corrected to read as follows:

§ 72.214 List of approved spent fuel storage casks.

* * * * *

Certificate Number: 1004

Initial Certificate Effective Date: January 23, 1995.

Amendment Number 1 Effective Date: April 27, 2000.

Amendment Number 2 Effective Date: September 5, 2000.

Amendment Number 3 Effective Date: September 12, 2001.

Amendment Number 4 Effective Date: February 12, 2002.

Amendment Number 5 Effective Date: [Reserved].

Amendment Number 6 Effective Date: December 22, 2003.

SAR Submitted by: Transnuclear, Inc.

SAR Title: Final Safety Analysis Report for the Standardized NUHOMS® Horizontal Modular Storage System for Irradiated Nuclear Fuel.

Docket Number: 72–1004.

Certificate Expiration Date: January 23, 2015.

Model Number: Standardized NUHOMS®–24P, NUHOMS®–52B, NUHOMS®–61BT, and NUHOMS®–24PHB.

* * * * *

Dated in Rockville, Maryland, this 11th day of December, 2003.

For the Nuclear Regulatory Commission.

Michael T. Lesar,

Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration.

[FR Doc. 03–31090 Filed 12–16–03; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Parts 3, 5, 6, 7, 9, 28, and 34

[Docket No. 03-24]

RIN 1557-AB97

Rules, Policies, and Procedures for Corporate Activities; Bank Activities and Operations; Real Estate Lending and Appraisals

AGENCY: Office of the Comptroller of the Currency, Treasury.

ACTION: Final rule.

SUMMARY: The Office of the Comptroller of the Currency (OCC) is publishing a final rule implementing authority provided to national banks by sections 1204, 1205, and 1206 of the American Homeownership and Economic Opportunity Act of 2000 (AHEOA). Section 1204 permits national banks to reorganize directly to be controlled by a holding company. Section 1205 increases the maximum term of service for national bank directors, permits the OCC to adopt regulations allowing for staggered terms for directors, and permits national banks to apply for permission to have more than 25 directors. Section 1206 permits national banks to merge with one or more of their nonbank affiliates, subject to OCC approval. In addition, the rule amends parts 5, 7, 9, and 34, for other purposes and makes several technical corrections.

EFFECTIVE DATE: January 16, 2004.

FOR FURTHER INFORMATION CONTACT: For questions concerning 12 CFR 5.20, contact Richard Cleva, Senior Counsel, Bank Activities and Structure Division, (202) 874–5300; or Andra Shuster, Counsel, Legislative and Regulatory Activities Division, (202) 874–5090. For questions concerning 12 CFR 5.32, contact Mark Ginsberg, Senior Licensing Analyst, Licensing Policy and Systems Division, (202) 874–5060; or Andra Shuster, Counsel, Legislative and Regulatory Activities Division, (202) 874–5090. For questions concerning 12 CFR 5.33, contact Crystal Maddox, Senior Licensing Analyst, Licensing Policy and Systems Division, (202) 874–5060; Richard Cleva, Senior Counsel, Bank Activities and Structure Division, (202) 874–5300; or Andra Shuster, Counsel, Legislative and Regulatory Activities Division, (202) 874–5090. For questions concerning 12 CFR 7.2024, contact Andra Shuster, Counsel, Legislative and Regulatory Activities Division, (202) 874–5090. For questions concerning 12 CFR 34.3, contact Mark Tenhundfeld, Assistant Director, or Andra Shuster, Counsel, Legislative and Regulatory Activities Division, (202) 874–5090. For questions concerning 12 CFR 9.18, contact Beth Kirby, Special Counsel, Securities and Corporate Practices Division, (202) 874–5210.

SUPPLEMENTARY INFORMATION: On February 7, 2003, the OCC published a notice of proposed rulemaking in the **Federal Register** (68 FR 6363) to implement the AHEOA and clarify our visitorial powers regulations (NPRM). In addition, we proposed to amend (1) 12 CFR part 5 concerning limited-purpose banks, factors to be considered in business combinations, and operating subsidiary activities eligible for after-the-fact notice requirements; (2) 12 CFR part 7 concerning national banks' ability to provide tax advice; (3) 12 CFR part 9 concerning the valuation of collective investment funds; and (4) 12 CFR part 34 to update regulatory text to conform to a statutory change. Various technical changes to correct citations or footnote numbering were also part of the NPRM.

The OCC received a total of 55 comments on the NPRM. Of this number, 34 addressed the parts of the proposal that implemented the AHEOA provisions and amended 12 CFR parts 5, 7, 9, and 34. These comments included two from bank holding companies, four from banking trade associations, one from a community trade association, one from a non-profit consumer group, one from a bank supervisors' trade association, and 25 from state bank supervisors' offices. While many of the commenters supported the proposed changes, many offered suggestions for changes. For the reasons discussed below, we have adopted the provisions of the NPRM with a number of changes in response to the comments received to clarify certain provisions.

Many of the comments we received on the proposal also addressed the revision to our visitorial powers regulation. A number of these comments contained thoughtful and detailed arguments that we will address in a rulemaking to be published separately in the **Federal Register**.

I. Amendments Implementing the AHEOA

A. Background

The National Bank Consolidation and Merger Act (12 U.S.C. 215 *et seq.*) (Merger Act) permits consolidations and mergers involving national banks. Pursuant to 12 U.S.C. 215 and 215a, national banks or state banks [1] may, with OCC approval, merge or consolidate with a national bank located in the same state, resulting in a national bank. National banks also may merge or consolidate with Federal thrifts under 12 U.S.C. 215c, resulting in either a national bank or Federal thrift. Pursuant to 12 U.S.C. 215a–1, an insured national bank may merge or consolidate with an insured bank located in a different state.

Prior to the enactment of the AHEOA on December 27, 2000,[2] the Merger Act did not address mergers or consolidations involving a national bank and its nonbank affiliates. However, section 1206[3] of the AHEOA amended the Merger Act to permit national banks to merge with one or more of their nonbank affiliates with the approval of the OCC (Section 1206 Merger).

Other provisions of the AHEOA liberalize statutory reorganization and corporate governance requirements for national banks. Section 1204[4] amends the Merger Act to expedite the procedures that a national bank may use when it reorganizes to become a subsidiary of a holding company. Section 1205[5] of the AHEOA liberalizes the requirements governing the number and length of service of national bank directors.

This final rule contains amendments to 12 CFR parts 5 and 7 to implement these changes made by the AHEOA.

B. Description of the Proposal, Comments Received, and Final Rule

1. Reorganization into a Holding Company Subsidiary—New § 5.32

Pursuant to section 1204 of the AHEOA, a national bank, with the OCC's approval and the affirmative vote of shareholders holding at least two-thirds of the bank's outstanding capital stock, may reorganize to become a subsidiary of a bank holding company or a company that will become a bank holding company through the reorganization.

Proposed new § 5.32 implemented this provision. Paragraph (a) stated the authority for engaging in section 1204 transactions. Paragraph (b) repeated the scope of the statute and provided that § 5.32 applies to a reorganization of a national bank into a subsidiary of a bank holding company or of a company that will become a bank holding company through the reorganization. In order to clarify the types of entities that would be covered under this section, we have added a sentence at the end of paragraph (b) that states that, for purposes of § 5.32, "bank holding company" means *any* company that owns or controls a national bank, or will own or control one as a result of the reorganization. Thus, the term "bank holding company" is not limited to companies that would be bank holding companies under the definition of the term in the Bank Holding Company Act of 1956 (BHCA).

Pursuant to proposed § 5.32(c), a national bank must submit an application to, and obtain approval from, the OCC prior to participating in a section 1204 reorganization. Paragraph (d) described the procedural requirements for this type of transaction. In accordance with proposed § 5.32(d)(1), the application is deemed approved by the OCC as of the 30th day after the OCC receives it, unless the OCC otherwise notifies the applicant national bank. Approval of applications under § 5.32 is subject to the condition that the bank give the OCC 60 days' prior notice of any material change in its business plan or any material change from the proposed changes described in the bank's plan of reorganization. A few commenters recommended that the OCC give national banks notice that an application has been received and is complete to verify that the application is in process and to ensure that all parties know when the 30-day time period starts to run. We have not revised the proposal in response to this suggestion, however, because our standard application procedure includes sending out an acknowledgment letter that will provide the information the commenters requested.

These same commenters also suggested that the OCC provide banks with guidance regarding the type of changes to the business plan that would be material. The OCC has developed a policy addressing the circumstances that constitute a "significant deviation" from a national bank's existing business plan or operations and circumstances under which we will impose a written condition requiring a bank to provide notice of any significant deviation. This "OCC Significant Deviation Policy" is posted on our website as a sample to the Charters Booklet of the Comptroller's Licensing Manual.[6] We expect that this policy will provide the guidance commenters are seeking with respect to the changes we think should prompt the notice required by § 5.32. In order to make the final rule consistent with this Policy, we have changed the references to "material change" in the proposal to "significant deviation."

Paragraph (d)(2) of proposed § 5.32 implemented the statutory requirements that apply to the content of the reorganization plan. The plan must: (1) Specify how the reorganization is to be carried out; (2) be approved by a majority of the national bank's board of directors; (3) specify the amount and type of consideration that the bank holding company will provide for the stock of the bank, the date on which the shareholders' rights to participate in the exchange are to be determined, and the procedure for carrying out the exchange; (4) be submitted to the shareholders of the reorganizing bank at a meeting called in accordance with the procedures outlined in section 3 of the Merger Act;[7] and (5) where applicable, describe any changes to the bank's business plan resulting from the reorganization. Consistent with section 3 of the Merger Act, the proposal also required that at least two-thirds of the bank's shareholders approve a reorganization.

Paragraph (d)(3) of proposed § 5.32 provided that the OCC will review the financial and managerial resources and future prospects of the national bank when considering a section 1204 reorganization.

Proposed § 5.32(e) provided dissenters' rights protections for section 1204 reorganizations. As provided in the Merger Act, this paragraph would permit any shareholder who has voted against the reorganization at a meeting or given notice in writing at or prior to the meeting to receive the value of his or her shares by providing a written request to the bank within 30 days after the consummation of the reorganization.

Section 5.32(f) of the proposal stated that § 5.32 does not affect the applicability of the BHCA to a transaction covered under § 5.32(b); applicants must indicate in their § 5.32 applications the status of any BHCA application they are required to file with the Board of Governors of the Federal Reserve System.

Proposed paragraph (g) of § 5.32 stated that the OCC's approval of a § 5.32 application will expire if a national bank has not completed the reorganization within one year of the date of such approval. A commenter suggested that the OCC incorporate flexibility into this provision for complicated transactions that may take longer than one year to complete by permitting banks to apply for a waiver of this restriction. We do not think it is necessary to amend the regulation to establish a formal waiver process, but we will evaluate the need for an extension of the standard time frame on a case-by-case basis in accordance with 5.13(g).[8]

Finally, proposed paragraph (h)(1) stated that applicants shall inform shareholders of all material aspects of a reorganization and comply with applicable requirements in the Federal securities laws and the OCC's securities regulations in 12 CFR part 11. Proposed paragraph (h)(2) stated that applicants that are not subject to registration requirements under the Securities Exchange Act of 1934 shall submit proxy materials or information statements used in connection with a reorganization to the appropriate OCC district office no later than when such materials are sent to shareholders.

We received no comments regarding proposed § 5.32 other than those we have discussed. Accordingly, we are adopting this provision as proposed with the changes just described.

2. Section 1206 Mergers—Revised § 5.33

Section 1206 of the AHEOA provided new authority for a national bank to merge with one or more of its nonbank affiliates, subject to the OCC's approval.

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[1] The term "state bank" is defined by the statute to include state-chartered banks, banking associations, trust-companies, savings banks (other than mutual savings banks), and other banking institutions engaged in the business of receiving deposits. 12 U.S.C. 215b. This section also contains other definitions.

[2] Pub. L. 106–569, 114 Stat. 2944.

[3] Pub. L. 106–569, sec. 1206, 114 Stat. 2944, 3034 (codified at 12 U.S.C. 215a–3).

[4] Pub. L. 106–569, sec. 1204, 114 Stat. 2944, 3033 (codified at 12 U.S.C. 215a–2).

[5] Pub. L. 106–569, sec 1205, 114 Stat. 2944, 3033–3034 (amending 12 U.S.C. 71 and 71a).

[6] This policy can be found on the OCC's Web site at *http://www.occ.treas.gov/corpbook/forms/SigDevPolicy8-03.pdf*. The policy defines a significant deviation from a bank;s business plan or operations to include, but not be limited to, a material deviation or material change in the bank's: (1) Projected growth, such as planning significant growth in a product or service; (2) strategy or philosophy, such as significantly reducing the emphasis of its targeted niche (for example, small business lending) in favor of significant expansion of another area (for example, funding large commercial real-estate projects); (3) lines of business, such as intiating a new program for sub-prime lending; (4) funding sources such as shifting from core deposits to brokered deposits; (5) scope of activities, such as establishing transactional Internet banking or entering new, untested markets; (6) stock benefit plans for de novo banks, including the introduction of plans that were not previously reviewed during the chartering process with no objection by the OCC; and (7) relationships with a parent company or affiliate, such as a shift to signficant reliance on a parent or affiliate as a funding source or provider of back office support

[7] Section 3 of the Merger Act, 12 U.S.C. 215a(a)(2), provides generally that a shareholders' meeting will be called by the bank's directors after publishing notice of the time, place, and object of the meeting for four consecutive weeks in a newspaper of general circulation where the bank is located and after sending notice to each shareholder of record by certified or registered mail at least 10 days prior to the meeting.

[8] This section provides that the OCC generally does not grant extensions unless the delay is beyond the control of the applicant.

Current § 5.33 sets forth application and notice procedures for national banks entering into business combinations, such as mergers or consolidations, with other national banks or state-chartered banks, as well as OCC review and approval standards for such transactions. The proposal contained amendments to § 5.33 to include Section 1206 Mergers within its scope.

The proposal added new application and prior OCC approval requirements for Section 1206 Mergers at the end of redesignated § 5.33(c). These requirements are similar to those for mergers of a national bank or state bank into a national bank under 12 U.S.C. 215a.

A number of new definitions were added to § 5.33(d) in order to implement section 1206. Current § 5.33(d) defines only the terms "business combination," "business reorganization," "home state," and "interim bank." The proposal amended the definition of "business combination" to include Section 1206 Mergers, but left the definitions of the other three terms unchanged.

Proposed § 5.33(d)(1) added a definition of "bank" and defined it as any national bank or state bank. This definition was added because the term is used in the definition for "nonbank affiliate."

Proposed § 5.33(d)(4) defined the term "company" to mean a corporation, limited liability company, partnership, business trust, association, or similar organization. This term was proposed to be added because it is used in the definition of "nonbank affiliate" and "control."

Proposed § 5.33(d)(5) defined "control," which is used in the definition of "nonbank affiliate." Under the proposal, for business combinations under § 5.33(g)(4) and (5), a company or shareholder would be deemed to control another company if (1) the company or shareholder directly or indirectly, or acting through one or more other persons, owns, controls, or has power to vote 25 per cent or more of any class of voting securities of the other company; or (2) the company or shareholder controls in any manner the election of a majority of the directors or trustees of the other company.

Because section 1206 provides merger authority for entities previously not included within the scope of § 5.33, the proposal added the definition of "nonbank affiliate" to describe the entities that are covered by section 1206. Proposed § 5.33(d)(8) defined "nonbank affiliate" of a national bank as any company that controls, is controlled by, or is under common control with the national bank. Banks and Federal savings associations were not included as "affiliates" because mergers with such entities are governed by statutes other than section 1206. Nonbank subsidiaries would be considered to be nonbank affiliates for purposes of § 5.33.

Section 5.33(e)(3)(ii) currently requires that, if as a result of a business combination, a national bank obtains control of a new subsidiary, the bank must provide the same information regarding the new subsidiary's activities that would be required if the applicant were establishing a new subsidiary under either 12 CFR 5.34 (which addresses operating subsidiaries) or 12 CFR 5.39 (which addresses financial subsidiaries). The current rule contains an exception if the subsidiary was a subsidiary of a national bank. The proposal modified this provision to take into account the fact that the bank may now merge with a nonbank affiliate that has a subsidiary.

Section 5.33(f) sets forth exceptions to the rules that generally govern the OCC's application procedures, such as requirements for the publication of notice or for hearings. Pursuant to § 5.33(f)(1), a national bank applicant that is subject to specific statutory notice requirements for business combinations is not subject to § 5.8(a), (b), or (c), which requires, and prescribes the timing and contents of, public notice. Instead, a national bank applicant must follow the notice requirements in the applicable statute.

A national bank applicant in a Section 1206 Merger *resulting in a national bank* would be required to follow the notice requirements of 12 U.S.C. 215a. A national bank applicant in a Section 1206 Merger *resulting in a nonbank affiliate* would be required to follow the notice requirements of 12 U.S.C. 214a. We proposed to amend § 5.33(f)(1) by adding references to the special procedures to be followed in Section 1206 Mergers. We did not receive any comments on the foregoing provisions and, therefore, we adopt them as proposed.

In addition, we proposed to state in § 5.33(f)(1) that §§ 5.10 (regarding public comments) and 5.11(regarding requests for hearings) are not applicable as a general rule to Section 1206 Mergers. However, we also reserved the discretion to determine that some or all of the provisions in § 5.10 and § 5.11 apply in a Section 1206 Merger if an application presents significant and novel policy, supervisory, or legal issues.

A few commenters urged the OCC to make the provisions in §§ 5.10 and 5.11 applicable to all Section 1206 Mergers either because this type of merger is unprecedented and likely to raise many important issues or because these mergers would result in arbitrary or uneven application of the Community Reinvestment Act (CRA)[9] and fair lending laws. For several reasons we decline to adopt the commenters' suggestion to impose a notice requirement in every Section 1206 Merger. First, if an insured national bank is involved in the merger, FDIC approval is required under the Bank Merger Act.[10] That approval requires publication of notice and provides for public comment. Second, where the national bank involved in the merger is uninsured, such as a trust bank, the OCC may determine on a case-by-case basis that an application presents significant and novel policy, supervisory, or legal issues and that public notice is, therefore, warranted. This standard covers the situations identified by commenters as appropriate for notice and hearings. Evaluating the need for public notice, or a hearing, on a case-by-case basis also avoids unnecessary burdens. In addition, we note that CRA is not applicable to transactions where no deposit facility is being acquired. Therefore, we decline the commenters' suggestion to impose a notice requirement in every Section 1206 Merger.

Finally, we proposed to make two technical changes to paragraph (f)(1). The reference to paragraph (g) for mergers or consolidations with a Federal savings association would be amended to refer more specifically to paragraph (g)(2) and the reference to a resulting state bank in the parenthetical following this reference would be corrected to refer to a national bank. No comments were received on these provisions. For the reasons discussed above, we adopt § 5.33(f) as proposed.

The proposal also added a new § 5.33(g)(4) to address Section 1206 Mergers of national banks with their nonbank affiliates when the resulting entity is a national bank. Section 5.33(g)(4)(i) stated that a national bank may enter into this type of Section 1206 Merger when the law of the state or other jurisdiction under which the nonbank affiliate is organized allows the nonbank affiliate to engage in such mergers. This section also required a national bank to obtain the OCC's approval.

One commenter suggested that we modify the regulation to specify that a merger between an insured national bank and its nonbank affiliate must

[9] 12 U.S.C. 2901 *et seq.*

[10] 12 U.S.C. 1828(c).

receive prior approval by the FDIC. As noted above, if the national bank involved is insured, the transaction is also subject to approval by the FDIC under the Bank Merger Act. For purposes of clarification, we have added this language to the final rule. In addition, we have also added language stating that in determining whether to approve a merger under this section, the OCC will consider the purpose of the transaction, its impact on the safety and soundness of the bank, and any effect on the bank's customers. The OCC may deny the merger if it would have a negative effect on any of these factors.

A few commenters questioned the OCC's decision to condition the merger of a nonbank affiliate on whether the law of the state or other jurisdiction under which the affiliate is organized permits the affiliate to participate in such a merger. These commenters contended that there is no such requirement in the statute and that this condition encourages states to discriminate against national banks by enacting laws that prohibit this type of merger. One commenter suggested that this requirement be revised to permit the merger where the state's law permits a merger between the nonbank affiliate and any other body corporate. We believe the language of the proposal as drafted already achieves this result. The proposal required only that the state statute permit such a merger. As long as this is the case, the state statute providing merger authority need not specifically mention national banks. For these reasons, the state law provision is retained in the final rule.

Proposed § 5.33(g)(4)(ii) stated that a national bank entering into such a merger must follow the procedures and requirements contained in 12 U.S.C. 215a (which addresses the merger of state banks into national banks), as if the nonbank entity were a state bank. The proposal applied the procedures and requirements in 12 U.S.C. 215a because section 215a addresses the same issues that arise in a Section 1206 Merger and its requirements are familiar to national banks. In addition, we believe that these procedures and requirements impose the least amount of burden on the participants consistent with our supervisory objectives in reviewing the proposed transactions. We received no comments on this provision and, therefore, adopt it as proposed.

Proposed § 5.33(g)(4)(iii) stated that a nonbank affiliate entering into such a merger is to follow the procedures in the law of the state or other jurisdiction under which the nonbank entity is organized. Two commenters disagreed with the use of state law procedures for mergers of a nonbank affiliate into a national bank. One commenter contended that there is no such requirement in the statute and that it has the effect of requiring the national bank to follow both state and Federal law, which may be in conflict. We note, however, that in a merger of a state bank into a national bank, the state bank follows the procedures for mergers in state law. Proposed § 5.33(g)(4)(iii) simply treats nonbank affiliates the same as state banks by requiring them to follow the procedures contained in the law of the state in which they are incorporated. We believe that this similarity of treatment is appropriate and, therefore, have adopted this provision as proposed.

Proposed § 5.33(g)(4)(iv) stated that the rights of dissenting shareholders and appraisal of dissenters' shares of stock in the nonbank entity shall be determined in accordance with the laws of the state or other jurisdiction under which the nonbank entity is organized. We received no comments suggesting changes to this section of the proposed rule and have, therefore, adopted it as proposed.

Proposed § 5.33(g)(4)(v) of the proposal stated that the corporate existence of each institution participating in the merger shall be continued in the resulting national bank, and all the rights, franchises, property, appointments, liabilities, and other interests of the participating institutions shall be transferred to the resulting national bank in the same manner and to the same extent as in a merger between a national bank and a state bank under 12 U.S.C. 215a, as if the nonbank affiliate were a state bank. A few commenters suggested that this provision state that a national bank resulting from a merger with a nonbank affiliate may not exercise any power or engage in any activity that would not be permissible for a national bank under applicable provisions of Federal law other than section 215a–3. We note that this language is already set forth specifically in the statute at 12 U.S.C. 215a–3(b)(2). In addition, current § 5.33(e)(5) states that the OCC generally requires a national bank to discontinue nonconforming activities within a reasonable time following a business combination. This provision would be applicable to transactions under § 5.33(g)(4). Because the statute and our rules already address this point, we believe no further clarification is required, and we have adopted the provision as proposed.

The proposal also added a new § 5.33(g)(5), which addressed section 1206 Mergers of uninsured national banks with their nonbank affiliates when the resulting entity is a nonbank affiliate. The proposal limited this type of section 1206 Merger to national banks that are not insured banks (as defined in 12 U.S.C. 1813(h)). Prior to the enactment of section 1206, there was no efficient way for a national bank to cease its deposit-taking business, surrender its charter, and combine its business with that of an affiliate because no statutory provisions addressed this type of transaction. The section 1206 authority allows this transaction to take place in a merger and therefore allows the OCC to establish the procedures necessary when an uninsured national bank wishes to surrender its national charter but continue conducting lines of business that are authorized for the nonbank affiliate.

Proposed § 5.33(g)(5)(i) stated that this type of section 1206 Merger may be entered into when the law of the state or other jurisdiction under which the nonbank affiliate is organized allows such mergers. It also provided that an uninsured national bank must obtain the OCC's approval for the transaction. As was done in § 5.33(g)(4)(i), we have added language to the final rule in § 5.33(g)(5)(i) stating that the OCC will consider the purpose of the transaction, its impact on the safety and soundness of the bank, and any effect on the bank's customers. The OCC may deny the merger if it would have a negative effect on any of these factors.

Proposed § 5.33(g)(5)(ii) stated that a national bank entering into such a merger shall follow the procedures and requirements contained in 12 U.S.C. 214a (which addresses the merger of national banks into state banks), as if the nonbank entity were a state bank. Section 5.33(g)(5)(iii) stated that a nonbank affiliate entering into such a merger shall follow the procedures and requirements in the law of the state or other jurisdiction under which the nonbank entity is organized. Section 5.33(g)(5)(iv) of the proposal stated that dissenting national bank shareholders may receive in cash the value of their national bank shares if they comply with the requirements of 12 U.S.C. 214a as if the nonbank affiliate were a state bank. That section also stated that the OCC may conduct an appraisal or reappraisal of dissenters' shares of stock in a national bank involved in a merger with a nonbank affiliate that results in a nonbank affiliate if all parties agree that the determination is final and binding on each party and agree on how the OCC's expenses relating to the appraisal will be divided among the parties and paid to the OCC. The proposal provided that rights of

dissenting shareholders and appraisal of dissenters' shares of stock in the nonbank entity shall be determined in accordance with the laws of the state or other jurisdiction under which the nonbank entity is organized. We received no comments on these provisions and adopt them as proposed.

Proposed § 5.33(g)(5)(v) stated that the corporate existence of each entity participating in the merger shall be continued in the resulting nonbank affiliate, and all the rights, franchises, property, appointments, liabilities, and other interests of the participating national bank shall be transferred to the resulting nonbank affiliate as set forth in 12 U.S.C. 214b, in the same manner and to the same extent as in a merger between a national bank and a state bank under 12 U.S.C. 214a, as if the nonbank affiliate were a state bank. A number of commenters suggested that we clarify that where the surviving entity is a nonbank affiliate, it does not succeed to any of the powers of the national bank, and that the national bank and its powers cease to exist. We agree that a national bank ceases to exist following consummation of a section 1206 Merger and that a surviving nonbank affiliate will not be permitted to exercise powers of the former national bank except to the extent permitted under state law or other law applicable to the resulting nonbank affiliate. The wording of the regulation does not say otherwise, however and in our view it is important to be clear that the surviving nonbank affiliate does enjoy corporate succession to the corporate rights, franchises, property, appointments, liabilities, and other interests of the former national bank. This is the same result as when a national bank merges into a state bank under 12 U.S.C. 214a and 214b. We do not believe that any change to the regulation is necessary by virtue of these comments and adopt this provision as proposed.

Finally, the proposal added a new paragraph (j)(1)(iv) to § 5.33 that permits applications for certain transactions under § 5.33(g)(4) to receive streamlined treatment. In order to qualify for such treatment, the acquiring bank must be an eligible bank, the resulting national bank must be well capitalized immediately following consummation of the transaction, the applicants in a prefiling communication must request and obtain approval from the appropriate district office to use the streamlined application, and the total assets acquired in the transaction must not exceed 10 percent of the total assets of the acquiring national bank, as reported in the bank's Consolidated Report of Condition and Income filed for the quarter immediately preceding the filing of the application. We received no comments on this provision and adopt it as proposed.

3. National Bank Directors—§ 7.2024 (new)

Section 1205 of the AHEOA amended section 5145 of the Revised Statutes of the United States (12 U.S.C. 71) and section 31 of the Banking Act of 1933 (12 U.S.C. 71a) regarding national bank directors. Section 1205 increases the maximum term a director may serve from one to not more than three years and permits a national bank to adopt bylaws that provide for staggering the terms of its directors in accordance with the OCC's regulations. In addition, this section permits the OCC to exempt a national bank from the otherwise applicable requirement that it have no more than 25 directors.

The proposal added a new § 7.2024 conforming the OCC's rules to these provisions. Pursuant to proposed § 7.2024(a), national banks may adopt bylaws that provide for staggering the terms of their directors. Proposed § 7.2024(b) increased the permissible maximum term of national bank directors from one year to three years. Finally, paragraph (c) provided that a national bank may increase the size of its board of directors above the statutory limit of 25 provided that the bank satisfies the notice requirements set out in that section. We received two comments on this provision, both of which supported the proposal. Accordingly, we adopt it as proposed.

II. Additional Changes to Parts 5, 7, 9, and 34

A. Part 5 Amendments

The final rule also revised three other provisions in part 5 of our regulations. Section 5.20 of our regulations contains the requirements that govern the organization of a national bank. The proposal amended § 5.20(e)(1) to provide that the newly organized bank may be a special purpose national bank that limits its activities to fiduciary activities or to any other activities within the business of banking. The purpose of this proposed change was to clarify that a limited purpose national bank may exist with respect to activities other than fiduciary activities, provided the activities in question are part of the business of banking. Some commenters expressed concern that this provision was too broad and that the expansion of the limited purpose charter had the potential to exclude from state oversight entities conducting activities only loosely related to banking. We agree that it is appropriate to provide further clarification of the scope of activities permissible for a limited purpose national bank, and we have amended this provision to require limited purpose national banks to conduct at least one of the following core banking functions: (1) Receiving deposits; (2) paying checks; or (3) lending money. These functions are based on 12 U.S.C. 36, which identifies activities that cause a facility to be considered a bank branch.

Section 5.33(e) of our regulations contains a listing of factors the OCC considers in evaluating applications for business combinations. These factors are based upon the factors set forth in the Bank Merger Act and the CRA. As part of the USA PATRIOT Act,[11] Congress amended the Bank Merger Act by adding a factor to be considered in evaluating merger transactions. This factor requires the responsible agencies to consider the effectiveness of any insured depository institution involved in a proposed merger in combating money laundering activities.[12] The proposal conformed our regulations with the statute by adding the factor at § 5.33(e)(1)(v).

Finally, current § 5.34(e)(5)(iv) permits certain national banks to acquire or establish an operating subsidiary or perform a new activity in an existing operating subsidiary by providing after-the-fact notice to the OCC if the operating subsidiary conducts certain activities listed in § 5.34(e)(5)(v). That list currently includes the underwriting of credit-related insurance consistent with section 302 of the Gramm-Leach-Bliley Act. Since the list was last revised, the OCC has determined, in Corporate Decision 2001–10 (April 23, 2001) and Corporate Decision 2000–16 (August 29, 2000), that credit-related reinsurance products satisfy GLBA section 302's statutory requirements and are "authorized products." The proposal therefore amended 12 CFR 5.34(e)(5)(v)(L) to add reinsuring of credit-related insurance to the list of activities eligible for after-the-fact notice requirements.

We received no comments on these proposed changes to §§ 5.33(e) or 5.34(e) and therefore adopt these changes as proposed.

[11] Pub. L. 107–56, 115 Stat. 272 (Oct. 26, 2001).

[12] The FDIC recently updated its Statement of Policy on Bank Merger Transactions to include this new factor at 67 FR 48178 (July 23, 2002). This update only provides the new provision. The complete Policy Statement as it existed before this update may be found at 63 FR 44761 (August 20, 1998).

B. Part 7 Amendment

As corporate transactions have become more sophisticated, an integral part of financial and transactional advice with respect to mergers and other corporate restructurings inevitably involves providing advice on the tax implications of those transactions. Recently amended § 5.34(e)(5)(v)(J) and (K) permit national banks to provide tax planning services and to provide financial and transactional advice on structuring, arranging, and executing financial transactions, including mergers, acquisitions, and divestitures. Providing tax planning services encompasses tax consulting in order for a bank to be able to offer comprehensive services in this area. Accordingly, the proposal deleted as outdated the prohibition against serving as an expert tax consultant that currently appears at § 7.1008.[13] We received no comments regarding this change, and therefore adopt it as proposed.

C. Part 9 Amendment

Currently, 12 CFR 9.18(b)(4)(i) requires valuation of collective investment funds at least every three months. However, certain funds are only required to be valued once a year. Those funds must be "(a)(2) funds" (*i.e.*, funds that may be held pursuant to 12 CFR 9.18(a)(2) that are primarily invested in real estate or other assets that are not readily marketable). A growing number of collective investment funds, including (a)(1) funds, however, are comprised of a mix of assets that are readily marketable and assets that are not readily marketable. Those funds do not qualify for the one-year valuation because they are not (a)(2) funds primarily invested in real estate or other assets that are not readily marketable. However, a one-year valuation may be appropriate for assets in those funds that are not readily marketable. Thus, we proposed to amend the regulation to require quarterly valuation of readily marketable assets in all collective investment funds, including (a)(1) funds. Assets that are not readily marketable must be valued at least once a year regardless of whether the assets are in (a)(1) or (a)(2) funds or whether the funds' assets are primarily invested in real estate or other assets that are not readily marketable. For purposes of an admission or withdrawal date, this provision does not negate the need to provide a current value at the time of such admission or withdrawal. We received no comments regarding this change, and therefore adopt it as proposed.

D. Part 34 Amendment

Section 34.3 restates the comprehensive authority vested in the OCC by 12 U.S.C. 371 to regulate real estate lending by national banks. Section 371 authorizes national banks to engage in real estate lending subject to 12 U.S.C. 1828(o) (real estate lending safety and soundness standards) and "such restrictions and requirements as the Comptroller of the Currency may prescribe by regulation or order." The cross-reference to 12 U.S.C. 1828(o) was added to the statute in 1991, but the text of the regulation was never revised to reflect it. Thus, the proposal updated the regulation to reflect that change to the underlying statute. Other portions of the regulation remain unchanged.[14] We received no comments regarding this change, and therefore adopt it as proposed.

III. Technical Amendments

The proposal contained the following technical amendments:

- 12 CFR part 3, appendix A, section 3(a)(2)(ix) currently cross-references a definition of "General obligation of a State or political subdivision" but contains the wrong regulatory citation for that definition. The definition in question has been moved from 12 CFR 1.3(g) to 12 CFR 1.2(b). The proposed revision corrected the citation. Also in part 3 appendix A, section 4(a)(11)(ii), the references to section 4(a)(8)(i) and (ii) were corrected to refer to section 4(a)(9)(i) and (ii), respectively.
- The citations to FDIC regulations in current 12 CFR 6.4(c)(1)(i) and (ii) are incorrect. The proposal amended the citations to correct them.
- Current 12 CFR 7.1016(a) contains a footnote reference and accompanying footnote text. The footnote reference number is 30, but should be 1. The proposal made this change.
- Current 12 CFR 9.20(b) contains a reference to SEC rules 17 CFR 240.17Ad–1 through 240.17Ad–16. A new rule, at 17 CFR 240.17Ad–17, has been added, so the proposal changed the reference to 240.17Ad–16 to reflect the addition.
- Current 12 CFR 28.16(e), dealing with uninsured deposit notices, makes a reference to an FDIC regulation, 12 CFR 346.7, which was removed in 1998. The proposal corrected this citation to refer to the current rule for uninsured deposit notices, which can now be found at 12 CFR 347.207.

We received no comments regarding these changes, and therefore adopt them as proposed.

IV. Regulatory Analysis

CDRI Act Delayed Effective Date

This final rule takes effect 30 days after the date of its publication in the **Federal Register**, consistent with the delayed effective date requirement of the Administrative Procedure Act. *See* 5 U.S.C. 553(d). Section 302 of the Riegle Community Development and Regulatory Improvement Act of 1994 (CDRI Act), 12 U.S.C. 4802(b), provides that regulations that impose additional reporting, disclosure, or other requirements on insured depository institutions may not take effect before the first day of the quarter following publication unless the agency finds that there is good cause to make the rule effective at an earlier date. The regulations in this final rule provide procedures to be used by national banks wishing to take advantage of the new transactions or corporate governance options permitted by the AHEOA. The regulations make it easier for national banks to exercise this new statutory authority. Accordingly, the OCC finds that there is good cause to dispense with the requirements of the CDRI Act.

Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b) (RFA), the regulatory flexibility analysis otherwise required under section 604 of the RFA is not required if the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities and publishes its certification and a short, explanatory statement in the **Federal Register** along with its rule.

Pursuant to section 605(b) of the RFA, the OCC hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis is not needed. The amendments to the OCC's regulations relating to the AHOEA are permissive provisions that will be used only by banks that wish to take advantage of the new transactions, procedures, or corporate governance options permitted by the statute as implemented by the regulations. 12 CFR 5.33(g)(5) reduces burden by implementing a simpler way to

[13] National banks engaged in providing the services permitted by 12 CFR 5.34(e)(5)(v)(J) and (K) must comply with applicable regulations of the Internal Revenue Service (IRS) governing the provision of such services. Information about the IRS regulations may be obtained at *www.irs.treas.gov*.

[14] We have proposed additional changes to part 34 in a separate rulemaking that invites comment on changes to the provisions governing preemption. *See* 68 FR 46119 (Aug. 5, 2003). The comment period for that rulemaking closed October 6, 2003.

accomplish a merger of a national bank into one of its nonbank affiliates. The amendments simply provide the OCC's implementation of the AHEOA or make other technical changes to the rules to correct existing errors or clarify various points. They do not impose any new requirements or burdens. As such, they will not result in any adverse economic impact.

Executive Order 12866

The OCC has determined that this final rule is not a significant regulatory action under Executive Order 12866.

Unfunded Mandates Reform Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995, Public Law 104–4 (2 U.S.C. 1532) (Unfunded Mandates Act), requires that an agency prepare a budgetary impact statement before promulgating any rule likely to result in a Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector of $100 million or more in any one year. If a budgetary impact statement is required, section 205 of the Unfunded Mandates Act also requires an agency to identify and consider a reasonable number of regulatory alternatives before promulgating a rule. The OCC has determined that this final rule will not result in expenditures by State, local, and tribal governments, or by the private sector, of $100 million or more in any one year. Accordingly, this rulemaking is not subject to section 202 of the Unfunded Mandates Act.

Paperwork Reduction Act

The OCC may not conduct or sponsor, and a respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number.

The information collection requirements in this final rule are contained in §§ 5.32, 5.33, and 7.2024.

OMB has reviewed and approved the information collection requirements under OMB Control Number 1557–0014, in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Comptroller's Corporate Manual (Manual) explains the OCC's policies and procedures for the formation of a new national bank, entry into the national banking system by other institutions, and corporate expansion and structural changes by existing national banks. The Manual embodies all required procedures, forms, and regulations regarding OCC corporate decisions.

The information collection requirements imposed by §§ 5.32 and 5.33 are contained in the Business Combinations booklet in the Manual and are part of the total requirement.

The respondents are national banks.

Estimated number of respondents: 270.

Estimated number of responses: 270.

Average hours per response: 24.

Estimated total burden hours: 5,580.

The information collection requirements imposed by § 7.2024 are included in the Corporate Organization booklet in the Manual, along with several other corporate requirements.

The respondents are national banks.

Estimated number of respondents: 1,000.

Estimated number of responses: 1,000.

Average hours per response: .5 hour.

Estimated total burden hours: 500 hours.

The burden estimates represent total burden for national banks' compliance with the information collection requirements associated with corporate organization matters and business combination activities.

Executive Order 13132

Executive Order 13132 (Order) requires Federal agencies, including the OCC, to certify their compliance with that Order when they transmit to the Office of Management and Budget any draft final regulation that has Federalism implications. Under the Order, a regulation has Federalism implications if it has "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." In the case of a regulation that has Federalism implications and that preempts state law, the Order imposes certain consultation requirements with state and local officials; requires publication in the preamble of a Federalism summary impact statement; and requires the OCC to make available to the Director of the Office of Management and Budget any written communications submitted by state and local officials. By the terms of the Order, these requirements apply to the extent that they are practicable and permitted by law and, to that extent, must be satisfied before the OCC promulgates a final regulation. In the opinion of the OCC, this final rule does not have Federalism implications.

List of Subjects

12 CFR Part 3

Administrative practice and procedure, National banks, Reporting and recordkeeping requirements.

12 CFR Part 5

Administrative practice and procedure, National banks, Reporting and recordkeeping requirements, Securities.

12 CFR Part 6

National banks.

12 CFR Part 7

Credit, Insurance, Investments, National banks, Reporting and recordkeeping requirements, Securities, Surety bonds.

12 CFR Part 9

Estates, Investments, National banks, Reporting and recordkeeping requirements, Trusts and trustees.

12 CFR Part 28

Foreign banking, National banks, Reporting and recordkeeping requirements.

12 CFR Part 34

Mortgages, National banks, Reporting and recordkeeping requirements.

Authority and Issuance

■ For the reasons set forth in the preamble, the OCC amends parts 3, 5, 6, 7, 9, 28, and 34 of chapter I of title 12 of the Code of Federal Regulations as follows:

PART 3—MINIMUM CAPITAL RATIOS; ISSUANCE OF DIRECTIVES

■ 1. The authority citation for part 3 continues to read as follows:

Authority: 12 U.S.C. 93a, 161, 1818, 1828(n), 1828 note, 1831n note, 1835, 3907, and 3909.

Appendix A to Part 3—[Amended]

■ 2. In appendix A to part 3:

■ a. In section 3, amend paragraph (a)(2)(ix) by removing "12 CFR 1.3(g)" and adding in its place "12 CFR 1.2(b)"; and

■ b. In section 4, amend paragraph (a)(11)(ii) by removing, "section (4)(a)(8)(i) and (ii)" and adding in its place "section (4)(a)(9)(i) and (ii)".

* * * * *

PART 5—RULES, POLICIES, AND PROCEDURES FOR CORPORATE ACTIVITIES

■ 3. The authority citation for part 5 is revised to read as follows:

Authority: 12 U.S.C. 1 *et seq.*, 93a; 215a–2; 215a–3; and section 5136A of the Revised Statutes (12 U.S.C. 24a).

Subpart B—Initial Activities

■ 4. In § 5.20, add new second and third sentences to paragraph (e)(1) to read as follows:

§ 5.20 Organizing a bank.

* * * * *

(e) *Statutory requirements*—(1) *General.* * * * The bank may be a special purpose bank that limits its activities to fiduciary activities or to any other activities within the business of banking. A special purpose bank that conducts activities other than fiduciary activities must conduct at least one of the following three core banking functions: receiving deposits; paying checks; or lending money. * * *

* * * * *

Subpart C—Expansion of Activities

■ 5. Add a new § 5.32 to Subpart C to read as follows:

§ 5.32 Expedited procedures for certain reorganizations.

(a) *Authority.* 12 U.S.C. 93a and 215a–2.

(b) *Scope.* This section prescribes the procedures for OCC review and approval of a national bank's reorganization to become a subsidiary of a bank holding company or a company that will, upon consummation of such reorganization, become a bank holding company. For purposes of this section, a "bank holding company" means any company that owns or controls a national bank, or will own or control one as a result of the reorganization.

(c) *Licensing requirements.* A national bank shall submit an application to, and obtain approval from, the OCC prior to participating in a reorganization described in paragraph (b) of this section.

(d) *Procedures*—(1) *General.* An application filed in accordance with this section shall be deemed approved on the 30th day after the OCC receives the application, unless the OCC notifies the bank otherwise. Approval is subject to the condition that the bank provide the OCC with 60 days' prior notice of any significant deviation from the bank's business plan or any significant deviation from the proposed changes to the bank's business plan described in the bank's plan of reorganization.

(2) *Reorganization plan.* The application must include a reorganization plan that:

(i) Specifies the manner in which the reorganization shall be carried out;

(ii) Is approved by a majority of the entire board of directors of the national bank;

(iii) Specifies:

(A) The amount and type of consideration that the bank holding company will provide to the shareholders of the reorganizing bank for their shares of stock of the bank;

(B) The date as of which the rights of each shareholder to participate in that exchange will be determined; and

(C) The manner in which the exchange will be carried out;

(iv) Is submitted to the shareholders of the reorganizing bank at a meeting to be held at the call of the directors in accordance with the procedures prescribed in connection with a merger of a national bank under section 3 of the National Bank Consolidation and Merger Act, 12 U.S.C. 215a(a)(2); and

(v) Describes any changes to the bank's business plan resulting from the reorganization.

(3) *Financial and managerial resources and future prospects.* In reviewing an application under this section, the OCC will consider the impact of the proposed affiliation on the financial and managerial resources and future prospects of the national bank.

(e) *Rights of dissenting shareholders.* Any shareholder of a bank who has voted against an approved reorganization at the meeting referred to in paragraph (d)(2)(iv) of this section, or who has given notice of dissent in writing to the presiding officer at or prior to that meeting, is entitled to receive the value of his or her shares by providing a written request to the bank within 30 days after the consummation of the reorganization, as provided by section 3 of the National Bank Consolidation and Merger Act, 12 U.S.C. 215a(b) and (c), for the merger of a national bank.

(f) *Approval under the Bank Holding Company Act.* This section does not affect the applicability of the Bank Holding Company Act of 1956. Applicants shall indicate in their application the status of any application required to be filed with the Board of Governors of the Federal Reserve System.

(g) *Expiration of approval.* Approval expires if a national bank has not completed the reorganization within one year of the date of approval.

(h) *Adequacy of disclosure.* (1) An applicant shall inform shareholders of all material aspects of a reorganization and comply with applicable requirements of the Federal securities laws, including the OCC's securities regulations at 12 CFR part 11.

(2) Any applicant not subject to the registration provisions of the Securities Exchange Act of 1934 shall submit the proxy materials or information statements it uses in connection with the reorganization to the appropriate district office no later than when the materials are sent to the shareholders.

■ 6. In § 5.33:

■ a. revise paragraph (a);

■ b. paragraph (b) is redesignated as paragraph (c), paragraph (c) is redesignated as paragraph (b), newly redesignated paragraph (b) is revised and a sentence is added at the end of newly redesignated paragraph (c);

■ c. paragraphs (d)(1), (d)(2), (d)(3), and (d)(4) are redesignated as paragraphs (d)(2), (d)(3), (d)(6), and (d)(7), respectively; revise newly designated paragraph (d)(2); and add new paragraphs (d)(1), (d)(4), (d)(5), and (d)(8);

■ d. add new paragraph (e)(1)(v);

■ e. revise paragraph (e)(3)(ii);

■ f. revise the second sentence of paragraph (f)(1) and add two new sentences at the end of the paragraph;

■ g. add new paragraphs (g)(4) and (g)(5);

■ h. at the end of paragraph (j)(1)(ii), remove the term "or";

■ i. at the end of paragraph (j)(1)(iii), remove "." and add "; or"; and

■ j. add new paragraph (j)(1)(iv) to read as follows:

§ 5.33 Business combinations.

(a) *Authority.* 12 U.S.C. 24(Seventh), 93a, 181, 214a, 214b, 215, 215a, 215a–1, 215a–3, 215c, 1815(d)(3), 1828(c), 1831u, and 2903.

(b) *Scope.* This section sets forth the provisions governing business combinations and the standards for:

(1) OCC review and approval of an application for a business combination between a national bank and another depository institution resulting in a national bank or between a national bank and one of its nonbank affiliates; and

(2) Requirements of notices and other procedures for national banks involved in other combinations with depository institutions.

(c) *Licensing requirements.* * * * A national bank shall submit an application and obtain prior OCC approval for any merger between the national bank and one or more of its nonbank affiliates.

(d) *Definitions.* (1) *Bank* means any national bank or any state bank.

(2) *Business combination* means any merger or consolidation between a national bank and one or more depository institutions in which the resulting institution is a national bank, the acquisition by a national bank of all,

or substantially all, of the assets of another depository institution, the assumption by a national bank of deposit liabilities of another depository institution, or a merger between a national bank and one or more of its nonbank affiliates.

* * * * *

(4) *Company* means a corporation, limited liability company, partnership, business trust, association, or similar organization.

(5) For business combinations under § 5.33(g)(4) and (5), a company or shareholder is deemed to *control* another company if:

(i) Such company or shareholder, directly or indirectly, or acting through one or more other persons owns, controls, or has power to vote 25 percent or more of any class of voting securities of the other company, or

(ii) Such company or shareholder controls in any manner the election of a majority of the directors or trustees of the other company. No company shall be deemed to own or control another company by virtue of its ownership or control of shares in a fiduciary capacity.

* * * * *

(8) *Nonbank affiliate* of a national bank means any company (other than a bank or Federal savings association) that controls, is controlled by, or is under common control with the national bank.

(e) * * *

(1) * * *

(v) *Money laundering.* The OCC considers the effectiveness of any insured depository institution involved in the business combination in combating money laundering activities, including in overseas branches.

* * * * *

(3) * * *

(ii) An applicant proposing to acquire, through a business combination, a subsidiary of any entity other than a national bank must provide the same information and analysis of the subsidiary's activities that would be required if the applicant were establishing the subsidiary pursuant to §§ 5.34 or 5.39.

* * * * *

(f) *Exceptions to rules of general applicability*—(1) *National bank applicant.* * * * A national bank applicant shall follow, as applicable, the public notice requirements contained in 12 U.S.C. 1828(c)(3) (business combinations), 12 U.S.C. 215(a) (consolidation under a national bank charter), 12 U.S.C. 215a(a)(2) (merger under a national bank charter), paragraph (g)(2) of this section (merger or consolidation with a Federal savings association resulting in a national bank), paragraph (g)(4) of this section (merger with a nonbank affiliate under a national bank charter), and paragraph (g)(5) of this section (merger with nonbank affiliate not under national bank charter). Sections 5.10 and 5.11 do not apply to mergers of a national bank with its nonbank affiliate. However, if the OCC concludes that an application presents significant and novel policy, supervisory, or legal issues, the OCC may determine that some or all provisions in §§ 5.10 and 5.11 apply.

* * * * *

(g) * * *

(4) *Mergers of a national bank with its nonbank affiliates under 12 U.S.C. 215a–3 resulting in a national bank.* (i) With the approval of the OCC, a national bank may merge with one or more of its nonbank affiliates, with the national bank as the resulting institution, in accordance with the provisions of this paragraph, provided that the law of the state or other jurisdiction under which the nonbank affiliate is organized allows the nonbank affiliate to engage in such mergers. The transaction is also subject to approval by the FDIC under the Bank Merger Act, 12 U.S.C. 1828(c). In determining whether to approve the merger, the OCC shall consider the purpose of the transaction, its impact on the safety and soundness of the bank, and any effect on the bank's customers, and may deny the merger if it would have a negative effect in any such respect.

(ii) A national bank entering into the merger shall follow the procedures of 12 U.S.C. 215a as if the nonbank affiliate were a state bank, except as otherwise provided herein.

(iii) A nonbank affiliate entering into the merger shall follow the procedures for such mergers set out in the law of the state or other jurisdiction under which the nonbank affiliate is organized.

(iv) The rights of dissenting shareholders and appraisal of dissenters' shares of stock in the nonbank affiliate entering into the merger shall be determined in the manner prescribed by the law of the state or other jurisdiction under which the nonbank affiliate is organized.

(v) The corporate existence of each institution participating in the merger shall be continued in the resulting national bank, and all the rights, franchises, property, appointments, liabilities, and other interests of the participating institutions shall be transferred to the resulting national bank, as set forth in 12 U.S.C. 215a(a), (e), and (f) in the same manner and to the same extent as in a merger between a national bank and a state bank under 12 U.S.C. 215a(a), as if the nonbank affiliate were a state bank.

(5) *Mergers of an uninsured national bank with its nonbank affiliates under 12 U.S.C. 215a–3 resulting in a nonbank affiliate.* (i) With the approval of the OCC, a national bank that is not an insured bank as defined in 12 U.S.C. 1813(h) may merge with one or more of its nonbank affiliates, with the nonbank affiliate as the resulting entity, in accordance with the provisions of this paragraph, provided that the law of the state or other jurisdiction under which the nonbank affiliate is organized allows the nonbank affiliate to engage in such mergers. In determining whether to approve the merger, the OCC shall consider the purpose of the transaction, its impact on the safety and soundness of the bank, and any effect on the bank's customers, and may deny the merger if it would have a negative effect in any such respect.

(ii) A national bank entering into the merger shall follow the procedures of 12 U.S.C. 214a, as if the nonbank affiliate were a state bank, except as otherwise provided in this section.

(iii) A nonbank affiliate entering into the merger shall follow the procedures for such mergers set out in the law of the state or other jurisdiction under which the nonbank affiliate is organized.

(iv) (A) National bank shareholders who dissent from an approved plan to merge may receive in cash the value of their national bank shares if they comply with the requirements of 12 U.S.C. 214a as if the nonbank affiliate were a state bank. The OCC may conduct an appraisal or reappraisal of dissenters' shares of stock in a national bank involved in the merger if all parties agree that the determination is final and binding on each party and agree on how the total expenses of the OCC in making the appraisal will be divided among the parties and paid to the OCC.

(B) The rights of dissenting shareholders and appraisal of dissenters' shares of stock in the nonbank affiliate involved in the merger shall be determined in the manner prescribed by the law of the state or other jurisdiction under which the nonbank affiliate is organized.

(v) The corporate existence of each entity participating in the merger shall be continued in the resulting nonbank affiliate, and all the rights, franchises, property, appointments, liabilities, and other interests of the participating national bank shall be transferred to the resulting nonbank affiliate as set forth in 12 U.S.C. 214b, in the same manner and to the same extent as in a merger between a national bank and a state bank under 12 U.S.C. 214a, as if the nonbank affiliate were a state bank.

* * * * *

(j) * * *

(1) * * *

(iv) In the case of a transaction under paragraph (g)(4) of this section, the acquiring bank is an eligible bank, the resulting national bank will be well capitalized immediately following consummation of the transaction, the applicants in a prefiling communication request and obtain approval from the appropriate district office to use the streamlined application, and the total assets acquired do not exceed 10 percent of the total assets of the acquiring national bank, as reported in the bank's Consolidated Report of Condition and Income filed for the quarter immediately preceding the filing of the application.

* * * * *

■ 7. In 5.34, revise paragraph (e)(5)(v)(L) to read as follows:

§ 5.34 Operating subsidiaries.

* * * * *

(e) * * *

(5) * * *

(v) * * *

(L) Underwriting and reinsuring credit related insurance to the extent permitted under section 302 of the GLBA (15 U.S.C. 6712);

* * * * *

PART 6—PROMPT CORRECTIVE ACTION

■ 8. The authority citation for part 6 continues to read as follows:

Authority: 12 U.S.C. 93a, 1831o.

Subpart A—Capital Categories

■ 9. In § 6.4, revise paragraphs (c)(1)(i) and (ii) to read as follows:

§ 6.4 Capital measures and capital category definitions.

* * * * *

(c) * * *

(1) * * *

(i) Maintains the pledge of assets required under 12 CFR 347.210; and

(ii) Maintains the eligible assets prescribed under 12 CFR 347.211 at 108 percent or more of the preceding quarter's average book value of the insured branch's third-party liabilities; and

* * * * *

PART 7—BANK ACTIVITIES AND OPERATIONS

■ 10. Revise the authority citation for part 7 to read as follows:

Authority: 12 U.S.C. 1 *et seq.*, 71, 71a, 92, 92a, 93, 93a, 481, 484, 1818.

Subpart A—Bank Powers

■ 11. Revise § 7.1008 to read as follows:

§ 7.1008 Preparing income tax returns for customers or public.

A national bank may assist its customers in preparing their tax returns, either gratuitously or for a fee.

§ 7.1016 [Amended]

■ 12. In § 7.1016(a), redesignate footnote 30 as footnote 1.

Subpart B—Corporate Practices

■ 13. Add a new § 7.2024 to read as follows:

§ 7.2024 Staggered terms for national bank directors and size of bank board.

(a) *Staggered terms.* Any national bank may adopt bylaws that provide for staggering the terms of its directors. National banks shall provide the OCC with copies of any bylaws so amended.

(b) *Maximum term.* Any national bank director may hold office for a term that does not exceed three years.

(c) *Number of directors.* A national bank's board of directors shall consist of no fewer than 5 and no more than 25 members. A national bank may, after notice to the OCC, increase the size of its board of directors above the 25 member limit. A national bank seeking to increase the number of its directors must notify the OCC any time the proposed size would exceed 25 directors. The bank's notice shall specify the reason(s) for the increase in the size of the board of directors beyond the statutory limit.

PART 9—FIDUCIARY ACTIVITIES OF NATIONAL BANKS

■ 15. The authority citation for part 9 continues to read as follows:

Authority: 12 U.S.C. 24 (Seventh), 92a, and 93a; 15 U.S.C. 78q, 78q–1, and 78w.

■ 16. In § 9.18, revise paragraph (b)(4)(i) to read as follows:

§ 9.18 Collective investment funds.

* * * * *

(b) * * *

(4) *Valuation*—(i) *Frequency of valuation.* A bank administering a collective investment fund shall determine the value of the fund's readily marketable assets at least once every three months. A bank shall determine the value of the fund's assets that are not readily marketable at least once a year.

* * * * *

■ 17. In § 9.20, amend paragraph (b), by removing the term "240.17Ad–16" and adding in its place the term "240.17Ad–17."

PART 28—INTERNATIONAL BANKING ACTIVITIES

■ 18. The authority citation for part 28 continues to read as follows:

Authority: 12 U.S.C. 1 *et seq.*, 24 (Seventh), 93a, 161, 602, 1818, 3101 *et seq.*, and 3901 *et seq.*

Subpart B—Federal Branches and Agencies of Foreign Banks

■ 19. In § 28.16, amend paragraph (e), by removing the term "12 CFR 346.7" and adding in its place the term "12 CFR 347.207."

PART 34—REAL ESTATE LENDING AND APPRAISALS

Subpart A—General

■ 20. The authority citation for part 34 continues to read as follows:

Authority: 12 U.S.C. 1 *et seq.*, 29, 93a, 371, 1701j–3, 1828(o), and 3331 *et seq.*

■ 21. Revise § 34.3 to read as follows:

§ 34.3 General rule.

A national bank may make, arrange, purchase, or sell loans or extensions of credit, or interests therein, that are secured by liens on, or interests in, real estate (real estate loans), subject to 12 U.S.C. 1828(o) and such restrictions and requirements as the Comptroller of the Currency may prescribe by regulation or order.

Dated: October 17, 2003.

John D. Hawke, Jr.,

Comptroller of the Currency.

[FR Doc. 03–31093 Filed 12–16–03; 8:45 am]

BILLING CODE 4810–33–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 11 and 91

[Docket No. FAA–2002–12261; Amendment Nos. 11–49 and 91–276]

RIN 2120–AH68

Reduced Vertical Separation Minimum in Domestic United States Airspace

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; technical amendment.

SUMMARY: This document corrects the effective date of a final rule published in the **Federal Register** on October 27, 2003 (68 FR 61304). That rule permits the initiation of Reduced Vertical Separation Minimum (RVSM) flights in the airspace over the contiguous 48 States of the United States, the District of Columbia, Alaska, that portion of the Gulf of Mexico where the Federal Aviation Administration (FAA) provides air traffic services, the San Juan Flight Information Region (FIR), and the airspace between Florida and the San Juan FIR. The RVSM programs allows the use of 1,000-foot vertical separation at certain altitudes between aircraft that meet stringent altimeter and certain altitudes between aircraft that meet stringent altimeter and autopilot performance requirements. The October 27, 2003, rule also requires any aircraft that is equipped with Traffic Alert and Collision Avoidance System version II (TCAS II) and flown in RVSM airspace to incorporate a version of TCAS II software that is compatible with RVSM operations. This document corrects the effective date.

EFFECTIVE DATE: In this rule amendments numbers 2, 5, 7, 9, and 11 are effective December 17, 2003. In this rule amendments numbers 3, 6, 8, 10, and 12 are effective January 26, 2004.

FOR FURTHER INFORMATION CONTACT: Robert Swain, telephone (202) 385–4576.

SUPPLEMENTARY INFORMATION: On October 27, 2003, we published in the **Federal Register** a final rule entitled, "Reduced Vertical Separation Minimum in Domestic United States". The Reduced Vertical Separation Minimum (RVSM) program allows the use of 1,000-foot vertical separation at certain altitudes between aircraft that meet stringent altimeter and autopilot performance requirements. The rule also requires any aircraft that is equipped with Traffic Alert and Collision Avoidance System version II (TCAS II) and flown in RVSM airspace to incorporate a version of TCAS II software that is compatible with RVSM operations. This action is to assist aircraft operators to save fuel and time, to enhance air traffic control flexibility, and to enhance airspace capacity. The effective date of the October 27, 2003, rule was inadvertently given as November 26, 2003.

The Office of Management and Budget (OMB) declared that the October 27, 2003, final rule is a major rule. Thus we should have given January 26, 2004, as the effective date in accordance with 5 U.S.C. 801(a)(4). However, we erroneously incorporated an incorrect effective date of October 1, 2003. This document changes the effective date of the October 27, 2003, rule to January 26, 2004.

List of Subjects

14 CFR Part 11

Administrative practice and procedure, Reporting and record-keeping requirements.

14 CFR Part 91

Air-traffic control, Aircraft, Airmen, Airports, Aviation safety, Reporting and record-keeping requirements.

The Amendment

■ For the reasons discussed in the preamble, the Federal Aviation Administration amends parts 11 and 91 of Title 14 of the Code of Federal Regulations as follows:

PART 11—GENERAL RULEMAKING PROCEDURES

■ 1. The authority citation for part 11 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40101, 40103, 40105, 40109, 40113, 44110, 44502, 44701–44702, 44711, and 46102.

Subpart B—Paperwork Reduction Act Control Numbers

■ 2. Effective December 17, 2003, amend the table in § 11.201(b) by revising the entry for part 91 to read as follows:

§ 11.201 Office of Management and Budget (OMB) control numbers assigned under the Paperwork Reduction Act.

* * * * *

(b) * * *

14 CFR part or section identified and described	Current OMB control number
. . .	. . .
Part 91	2120–0005, 2120–0026, 2120–0027, 2120–0573, 2120–0606, 2120–0620, 2120–0631, 2120–0651
. . .	. . .

■ 3. Effective January 26, 2004, amend the table in § 11.201(b) by revising the entry for part 91 to read as follows:

§ 11.201 Office of Management and Budget (OMB) control numbers assigned under the Paperwork Reduction Act.

* * * * *

(b) * * *

14 CFR part or section identified and described	Current OMB control number
. . .	. . .
Part 91	2120–0005, 2120–0026, 2120–0027, 2120–0573, 2120–0606, 2120–0620, 2120–0631, 2120–0651, 2120–0679
. . .	. . .

PART 91—GENERAL OPERATING AND FLIGHT RULES

■ 4. The authority citation for part 91 continues to read as follows:

Authority: 49 U.S.C. 106(b), 1155, 40103, 40113, 40120, 44101, 44111, 44701, 44709, 44711, 44712, 44715, 44716, 44717, 44722, 46306, 46315, 46316, 46540, 46505–46507, 47122, 47508, 47528–47531, articles 12 and 29 of the Convention on International Civil Aviation (61 stat. 1180).

■ 5. Effective December 17, 2003, amend § 91.159 by revising paragraph (b) to read as follows and by adding paragraph (c) to read as follows:

§ 91.159 VFR cruising altitude or flight level.

* * * * *

(b) When operating above 18,000 feet MSL to flight level 290 (inclusive) and—

(1) On a magnetic course of zero degrees through 179 degrees, any odd flight level +500 feet (such as 195, 215, or 235); or

(2) On a magnetic course of 180 degrees through 359 degrees, any even flight level +500 feet (such as 185, 205, or 225).

(c) When operating above flight level 290 and—

(1) On a magnetic course of zero degrees through 179 degrees, any flight level, at 4,000-foot intervals, beginning at and including flight level 300 (such as flight level 300, 340, or 380) or

(2) On a magnetic course of 180 degrees through 359 degrees, any flight level, at 4,000-foot intervals, beginning at and including flight level 320 (such as flight level 320, 360, or 400).

■ 6. Effective January 26, 2004, amend § 91.159 by revising paragraph (b) to read as follows and by removing paragraph (c).

§ 91.159 VFR cruising altitude or flight level.

* * * * *

(b) When operating above 18,000 feet MSL, maintain the altitude or flight level assigned by ATC.

■ 7. Effective December 17, 2003, amend § 91.179 by revising paragraph (b)(3) introductory text and removing paragraph (b)(4) to read as follows:

§ 91.179 IFR cruising altitude or flight level.

* * * * *

(b) * * *

(3) When operating at flight level 290 and above airspace, and—

* * * * *

■ 8. Effective January 26, 2004, amend § 91.179 by revising paragraph (b)(3) introductory text and adding a new paragraph (b)(4) to read as follows:

§ 91.179 IFR cruising altitude or flight level.

(b) * * *

(3) When operating at flight level 290 and above in non-RVSM airspace, and—

* * * * *

(4) When operating at flight level 290 and above in airspace designated as Reduced Vertical Separation Minimum (RVSM) airspace and—

(i) On a magnetic course of zero degrees through 179 degrees, any odd flight level, at 2,000-foot intervals beginning at and including flight level 290 (such as flight level 290, 310, 330, 350, 370, 390, 410); or

(ii) On a magnetic course of 180 degrees through 359 degrees, any even flight level, at 2000-foot intervals beginning at and including flight level 300 (such as 300, 320, 340, 360, 380, 400).

§ 91.180 [Removed]

■ 9. Effective December 17, 2003, remove § 91.180 from subpart B.

■ 10. Effective January 26, 2004, add § 91.180 to subpart B to read as follows:

§ 91.180 Operations within airspace designated as Reduced Vertical Separation Minimum airspace.

(a) Except as provided in paragraph (b) of this section, no person may operate a civil aircraft in airspace designated as Reduced Vertical Separation Minimum (RVSM) airspace unless:

(1) The operator and the operator's aircraft comply with the minimum standards of appendix G of this part; and

(2) The operator is authorized by the Administrator or the country of registry to conduct such operations.

(b) The Administrator may authorize a deviation from the requirements of this section.

■ 11. Effective December 17, 2003, in Appendix G, amend section 5 by revising the introductory text; redesignating paragraph (a) as paragraph (2) and revising newly redesignated paragraph (2); and amend section 8 by removing paragraphs (d), (e), and (f) to read as follows:

Appendix G to Part 91—Operations in Reduced Vertical Separation Minimum (RVSM) Airspace

* * * * *

Section 5. Deviation Authority Approval

The Administrator may authorize an aircraft operator to deviate from the requirements of § 91.706 for a specific flight in RVSM airspace if that operator has not been approved in accordance with Section 3 of this appendix, and if:

(2) The operator submits an appropriate request with the air traffic control center controlling the airspace, (request should be made at least 48 hours in advance of the operation unless prevented by exceptional circumstances); and

* * * * *

■ 12. Effective January 26, 2004, in Appendix G, amend section 5 by revising the introductory text; redesignating paragraph (2) as paragraph (a) and by revising newly redesignated (a); and amend section 8 by adding new paragraphs (d), (e), and (f) to read as follows:

Appendix G to Part 91—Operations in Reduced Vertical Separation Minimum (RVSM) Airspace

* * * * *

Section 5. Deviation Authority Approval

The Administrator may authorize an aircraft operator to deviate from the requirements of § 91.180 or § 91.706 for a specific flight in RVSM airspace if that operator has not been approved in accordance with section 3 of this appendix if:

(a) The operator submits a request in a time and manner acceptable to the Administrator; and

* * * * *

Section 8. Airspace Designation

* * * * *

(d) *RVSM in the United States.* RVSM may be applied in the airspace of the 48 contiguous states, District of Columbia, and Alaska, including that airspace overlying the waters within 12 nautical miles of the coast.

(e) *RVSM in the gulf of Mexico.* RVSM may be applied in the Gulf of Mexico in the following areas: Gulf of Mexico High Offshore Airspace, Houston Oceanic ICAO FIR and Miami Oceanic ICAO FIR.

(f) *RVSM in Atlantic High Offshore Airspace and the San Juan FIR.* RVSM may be applied in Atlantic High Offshore Airspace and in the San Juan ICAO FIR.

Issued in Washington, DC, on December 11, 2003.

Donald P. Byrne,

Assistant Chief Counsel.

[FR Doc. 03–31096 Filed 12–16–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. NM266; Special Conditions No. 25–255–SC]

Special Conditions: Airbus Model A320 Airplanes; Child Restraint System

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions.

SUMMARY: These special conditions are for Airbus Model A320 airplanes. These airplanes, as modified by AMSAFE Inc., will have novel and unusual design features associated with a child restraint system that attaches to the existing passenger lap belt. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

EFFECTIVE DATE: January 16, 2004.

FOR FURTHER INFORMATION CONTACT: Alan Sinclair, FAA, Airframe and Cabin Safety Branch, ANM–115, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue, SW., Renton, Washington, 98055–4056; telephone (425) 227–2195; facsimile (425) 227–1149, e-mail *alan.sinclair@faa.gov*.

SUPPLEMENTARY INFORMATION:

Background

On February 12, 2003, AMSAFE Inc., P.O. Box 1570, Higley, Arizona 85236, applied for a supplemental type certificate for the modification of Airbus Model A320 airplanes. The modification includes a child restraint system (identified by AMSAFE as a child safety system (CSS)) that attaches to the existing passenger lap belt and can be installed on certain seats of Airbus Model A320 airplanes in order to reduce the potential for injury in the event of an accident. The Model A320 is a swept-wing, conventional tail, twin-engine, turbofan-powered transport airplane.

Type Certification Basis

Under the provisions of § 21.101, AMSAFE Inc. must show that the Airbus Model A320 airplanes, as changed, continue to meet the applicable provisions of the regulations incorporated by reference in Type Certificate No. A28NM, or the applicable regulations in effect on the date of application for the change. The regulations incorporated by reference in the type certificate are commonly referred to as the "original type certification basis." The regulations incorporated by reference in Type Certificate No. A28NM are as follows: 14 CFR part 25, effective February 1, 1965, including Amendments 25–1 through 25–56; SFAR 27, effective February 1, 1974, including Amendments 27–1 through 27–5; and 14 CFR part 36 effective December 1, 1969, including Amendments 36–1 through 36–12. In addition, the certification basis includes other regulations and special conditions that are not pertinent to these special conditions.

If the Administrator finds that the applicable airworthiness regulations (*i.e.*, 14 CFR part 25) do not contain adequate or appropriate safety standards for the Airbus Model A320 airplanes because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

In addition to the applicable airworthiness regulations and special conditions, the Airbus Model A320 airplanes must comply with the fuel vent and exhaust emission requirements of 14 CFR part 34 and the noise certification requirements of 14 CFR part 36.

Special conditions, as defined in § 11.19, are issued in accordance with § 11.38 and become part of the type certification basis in accordance with § 21.101.

Special conditions are initially applicable to the model for which they are issued. Should AMSAFE Inc. apply for a supplemental type certificate to modify any other model included on the same type certificate to incorporate the same or similar novel or unusual design feature, the special conditions would also apply to the other model under the provisions of § 21.101.

Novel or Unusual Design Features

The AMSAFE Inc., Child Safety System (CSS) is an improved harness type child restraint system (CRS) that utilizes the seat back and the lap belt on passenger seats to provide upper torso restraint and to improve the restraint of small children. The physical characteristics of small children will govern the use of the CSS and must be defined according to accepted classification standards. The device is intended for children in the 1 to 4-year age group who are prohibited from being held in their parents' arms during taxi, take-off, and landing and must occupy their own passenger seat, typically with no supplemental restraint. The CSS is made with webbing and fastening hardware and consists of an adjustable strap that wraps horizontally around the seat back to secure the device to the passenger seat, and a double shoulder harness that is fastened around the child's upper torso. The ends of the device's shoulder harness are held in place using the existing passenger lap belt that is passed through two open loops on the lower ends of the device's shoulder straps. The current part 25 airworthiness regulations are not adequate to define the necessary certification criteria.

Discussion

The CSS is a non-conforming CRS, that is not approved for use on aircraft per Federal Motor Vehicle Safety Standard (FMVSS) 213 and as such the design requirements are established in these special conditions. It is a safety restraint device specifically designed for use by small children on JetBlue Airways Airbus A320 aircraft.

The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this particular design feature. Additional safety standards are therefore necessary to establish a level of safety equivalent to that established by the existing airworthiness standards for transport category airplanes.

Additionally, the operating regulations, 14 CFR 91.107 and 121.311, prohibit the use of any "vest-type child restraints, and harness-type child restraints" for commercial and private use operations. In order for the CSS, which is a harness-type child restraint, to be useable in the U.S., AMSAFE Inc., or their agent, must petition the FAA for an exemption from the operating regulations. The petition must be granted in order to allow use of the CSS.

The following special conditions can be characterized as addressing the safety performance of the system and the capability of the system to be installed and utilized without creating additional safety concerns. Because of the nature of the system and the direct interface with the crew and passengers, as well as the intended occupants, these special conditions are more rigorous from a design standpoint than for the standard lapbelt installation.

Discussion of Comments

Notice of proposed special conditions No. 25–03–07–SC for the Airbus Model A320 airplanes was published in the **Federal Register** on October 8, 2003 (68 FR 58042). One commenter responded.

The commenter, on behalf of its members, notes that the members generally support the special conditions, but express some concerns (some safety related, others not so) with the design and certification of the CSS. The commenter's concerns and FAA responses are as follows:

Comment 1: The CSS could endanger the child if installed on a seat with full breakover, and it would be difficult to control the seats where the CSS could be installed.

FAA Response: The FAA does not agree. Special Condition 1 requires that the CSS prevent serious head and other injuries under dynamic landing conditions. If a seat with full breakover would cause serious head or other injuries to a child in a CSS, the CSS cannot be installed in such a seat. Special Condition 11 requires that seats, together with the child safety system, that can be shown to achieve Special Condition 1 need to be identified to the installer of the CSS. While this may incur some difficulty for an operator wishing to use the CSS, this is part of the responsibility the operator accepts for voluntarily using the CSS. Additionally, Special Condition 9 requires that the CSS be shown to not cause the affected seat back to fold over in a crash and cause injury to the occupant.

Comment 2: The CSS could potentially damage the tray table in the seat back or interfere with its operation by the passenger seated behind the CSS.

FAA Response: Interference with the use of a tray table is not a safety concern. Each potential user must determine whether or not to offer the CSS to airplane occupants. These special conditions do not require any operator to provide the CSS. Special Condition 10, however, is intended to ensure that items such as a tray table do not interfere with the performance of the CSS.

Comment 3: The seat back is not designed to carry the load of the CSS plus an occupant and may be damaged in an emergency.

FAA Response: Special Conditions 1 and 9 are intended to ensure that the combination of CSS and passenger seat will provide protection to the occupant during a dynamic event. Damage to the passenger seat is not addressed by these special conditions. Again, it is up to the potential installer/operator to determine if the CSS should be offered as an option to the airplane occupants.

Comment 4: There may be delay in releasing the harness in an emergency due to unfamiliarity by crewmembers, and additional training may be necessary for flight attendants.

FAA Response: Special conditions 3, 4, 5, and 6 are intended to fully address the issue of use of the CSS and the rapidity of egress of the occupant from the device. Training, if deemed necessary or appropriate, is one of the considerations for whether or not the CSS should be offered by the installer/operator.

The FAA agrees with the intent of the safety concerns expressed by the commenter, but, as noted above, considers that they are adequately addressed by the special conditions and existing certification requirements. The special conditions are therefore adopted as proposed.

Applicability

As discussed above, these special conditions are applicable to the Airbus Model A320 airplanes modified by AMSAFE Inc. Should AMSAFE Inc. apply at a later date for a supplemental type certificate to modify any other model included on Type Certificate No. A28NM to incorporate the same or similar novel or unusual design feature, these special conditions would apply to that model as well under the provisions of § 21.101.

Conclusion

This action affects only certain novel or unusual design features on Airbus Model A320 airplanes. It is not a rule of general applicability, and it affects only the applicant who applied to the FAA for approval of these features on the airplane.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

Authority Citation

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701, 44702, 44704.

The Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for the Airbus Model A320 airplanes modified by AMSAFE Inc.

1. The child safety system (CSS) must provide child restraint protection under dynamic emergency landing conditions to prevent serious head and other injuries. It must protect a range of occupant statures for which the system is designed in accordance with Sections 2.3 and 2.4 of the Society of Automotive Engineers (SAE) document AS5276/1. The CSS must provide a consistent approach to energy absorption throughout that range.

2. Means must be provided to prevent the use of the CSS with children who are outside the range of statures for which the system was designed and tested. The range of statures for which the CSS is approved must be clearly labeled on the device.

3. There must be obvious, clear, and concise instructions readily available to the flight and cabin crew as to the proper installation and use of the CSS system for children.

4. The design of the CSS must prevent it from being incorrectly buckled and/or incorrectly installed such that the CSS would not properly perform its intended function.

5. The CSS must meet the minimum performance standards of Appendix 1 and the test conditions of Appendix 2 of Technical Standard Order C100b.

6. The CSS must not impede rapid egress of the occupant using the CSS and the occupants seated in the same row.

7. Means must be provided to prohibit the installation and use of the CSS in the emergency exit rows.

8. The CSS must be shown to operate safely in the following locations, or means must be provided to prohibit the installation and use of the CSS at these seat locations:

a. Behind any wall or seat back that has an inflatable airbag.

b. Any passenger seat that has an inflatable restraint system.

c. Side-facing seats.

9. It must be shown that the CSS will not cause the occupant's passenger seat back to fold over during a crash situation and cause injury to the occupant.

10. It must be shown that tray tables, phones or other devices installed in the seat back will not degrade the performance of the CSS.

11. Passenger seats approved for installation of the CSS must be clearly identified to the installer by location and part number.

12. The operating regulations, 14 CFR 91.107 and 14 CFR 121.311, prohibit the use of any "vest-type child restraints, and harness-type child restraints" in commercial and private use operations. It is therefore incumbent upon AMSAFE Inc., or their agent, to petition the FAA for exemption from these two regulations. The exemption must be granted in order for the system to be used by a U.S. operator.

Issued in Renton, Washington, on December 8, 2003.

Kevin M. Mullin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–31024 Filed 12–16–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–NE–19–AD; Amendment 39–13391; AD 2003–25–08]

RIN 2120–AA64

Airworthiness Directives; Rolls-Royce Corporation (Formerly Allison Engine Company) AE 3007A1, AE 3007A1/1, AE 3007A1/3, AE 3007A3, AE 3007A1E, and AE 3007A1P Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for Rolls-Royce Corporation (formerly Allison Engine Company) AE 3007A1, AE 3007A1/1, AE 3007A1/3, AE 3007A3, AE 3007A1E, and AE 3007A1P turbofan engines, with 1st to 2nd stage turbine spacers, part number (P/N) 23069627, 23070989, 23072849, or 23075364 installed. This AD reduces the life limit for 1st to 2nd stage turbine spacers, P/N 23072849, to a certain lower life limit, based on engine model. This AD also requires a one-time fluorescent penetrant inspection (FPI) of 1st to 2nd stage turbine spacers P/Ns 23069627, 23070989, 23072849, and 23075364 before reaching the spacer life limit, within specified cycles-since-new (CSN), and requires replacement of the spacer if found cracked, or with bent or missing aft tangs. This AD is prompted by a report that during a scheduled inspection, aft pilot tangs on a 1st to 2nd stage turbine spacer were found bent and cracked. We are issuing this AD to prevent 1st to 2nd stage turbine spacer failure, leading to uncontained turbine failure, engine shutdown, and damage to the airplane.

DATES: This AD becomes effective January 21, 2004.

ADDRESSES: You can get the service information identified in this AD from Rolls-Royce Corporation, P.O. Box 420, Indianapolis, IN 46206–0420; telephone (317) 230–6400; fax (317) 230–4243.

You may examine the AD docket, by appointment, at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA. You may examine the service information, by appointment, at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA.

FOR FURTHER INFORMATION CONTACT: Michael Downs, Aerospace Engineer, Chicago Aircraft Certification Office, FAA, Small Airplane Directorate, 2300 East Devon Avenue, Des Plaines, IL 60018; telephone: (847) 294–7870, fax: (847) 294–7834.

SUPPLEMENTARY INFORMATION: The FAA proposed to amend 14 CFR part 39 with a proposed AD. The proposed AD applies to Rolls-Royce Corporation (formerly Allison Engine Company) AE 3007A1, AE 3007A1/1, AE 3007A1/3, AE 3007A3, AE 3007A1E, and AE 3007A1P turbofan engines, with 1st to 2nd stage turbine spacers, P/N 23069627, 23070989, 23072849, or 23075364 installed. We published the proposed AD in the **Federal Register** on August 13, 2003 (68 FR 48326). That action proposed to reduce the life limit for 1st to 2nd stage turbine spacers, P/N 23072849, to a certain lower life limit, based on engine model. That action also proposed to require a one-time FPI of 1st to 2nd stage turbine spacers P/Ns 23069627, 23070989, 23072849, and 23075364 before reaching the spacer life limit, within specified CSN, and to require replacement of the spacer if found cracked, or with bent or missing aft tangs.

Comments

We provided the public the opportunity to participate in the development of this AD. We have considered the comment received.

Request To Rewrite Paragraph (g)(1)

One commenter, the manufacturer, requests that we rewrite paragraph (g)(1) from "For an engine inducted into the shop for any reason, if the spacer has accumulated 3,000 CSN or more" to "For an engine inducted into the shop for any reason, requiring disassembly of the engine core split lines, if the spacer has accumulated 3,000 CSN or more". The commenter estimates that approximately two to four engines a year return to the shop to address external issues only. The commenter states that paragraph (g)(1), as written, creates a burden to the operators and imposes an engine core teardown on those engines returned to the shop for external issues only.

The FAA agrees. The requested change does not change the risk assessment or the inspection criteria of the AD, and as long as the upper limit of 9,800 CSN or the life limit is not exceeded, the operator should not be forced into an engine teardown if the spacer has 3,000 CSN or more. Paragraph (g)(1) is rewritten as requested in this AD.

Conclusion

We have carefully reviewed the available data, including the comment received, and determined that air safety and the public interest require adopting the AD with the changes described previously. We have determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Changes to 14 CFR Part 39—Effect on the AD

On July 10, 2002, the FAA published a new version of 14 CFR part 39 (67 FR 47997, July 22, 2002), which governs the FAA's AD system. That regulation now includes material that relates to altered products, special flight permits, and alternative methods of compliance. The material previously was included in each individual AD. Since the material is included in 14 CFR part 39, we will not include it in future AD actions.

Regulatory Findings

We have determined that this AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that this AD:

(1) Is not a "significant regulatory action" under Executive Order 12866;

(2) Is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and

(3) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a summary of the costs to comply with this AD and placed it in the AD Docket. You may get a copy of this summary by sending a request to us at the address listed under **ADDRESSES.** Include "AD Docket No. 2003–NE–19–AD" in your request.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

■ Accordingly, under the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new airworthiness directive (AD):

2003–25–08 Rolls-Royce Corporation (formerly Allison Engine Company): Amendment 39–13391. Docket No. 2003–NE–19–AD.

Effective Date

(a) This AD becomes effective January 21, 2004.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Rolls-Royce Corporation (formerly Allison Engine Company) AE 3007A1, AE 3007A1/1, AE 3007A1/3, AE 3007A3, AE 3007A1E, and AE 3007A1P turbofan engines, with 1st to 2nd stage turbine spacer part number (P/N) 23069627, 23070989, 23072849, or 23075364 installed. These engines are installed on, but not limited to, EMBRAER EMB–135 and EMB–145 series airplanes.

Unsafe Condition

(d) This AD is prompted by a report that during a scheduled inspection, aft pilot tangs on a 1st to 2nd stage turbine spacer were found bent and cracked. We are issuing this AD to prevent 1st to 2nd stage turbine spacer failure, leading to uncontained turbine failure, engine shutdown, and damage to the airplane.

Compliance

(e) You are responsible for having the actions required by this AD performed within the compliance times specified unless the actions have already been done.

1st to 2nd Stage Turbine Spacer Life Limits

(f) 1st to 2nd stage turbine spacer life limits are as follows:

(1) For P/N 23072849, the newly established life limit is:

(i) 13,100 cycles-since-new (CSN) for engine models AE 3007A1/1, AE 3007A1/3, AE 3007A1, AE 3007A3; and

(ii) 12,900 CSN for engine models AE 3007A1E and AE 3007A1P.

(2) For P/Ns 23069627, 23070989, and 23075364, the life limits are unchanged.

Inspection

(g) After the effective date of this AD, perform a one-time fluorescent penetrant inspection (FPI) of the 1st to 2nd stage turbine spacer P/Ns 23069627, 23070989, 23072849, and 23075364 and replace spacer if cracked or if aft pilot tangs are bent or missing, with a new or serviceable 1st to 2nd stage turbine spacer, using the following compliance criteria:

(1) For an engine inducted into the shop for any reason, requiring disassembly of the engine core split lines, if the spacer has accumulated 3,000 CSN or more.

(2) For installed engines, if the spacer has accumulated more than 9,300 CSN, inspect before accumulating an additional 500 cycles-in-service, or before accumulating 4,200 cycles-since-last FPI, whichever is more, but do not exceed the spacer life limit in paragraph (f) of this AD.

(3) For installed engines, if the spacer has accumulated 9,300 or less CSN, inspect before accumulating 9,800 CSN, or before accumulating 4,200 cycles-since-last FPI, whichever is more, but do not exceed the spacer life limit in paragraph (f) of this AD.

Alternative Methods of Compliance

(h) The Manager, Chicago Aircraft Certification Office, has the authority to approve alternative methods of compliance for this AD if requested using the procedures found in 14 CFR part 39.19.

Material Incorporated by Reference

(i) None.

Related Information

(j) The subject of this AD is addressed in Rolls-Royce Corporation alert service bulletin No. AE 3007A–A–72–265, Revision 1, dated April 10, 2003.

Issued in Burlington, Massachusetts, on December 9, 2003.

Jay J. Pardee,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 03–31057 Filed 12–16–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2003–16180; Airspace Docket No. 03–AEA–14]

Amendment of Class E Airspace; New York, NY

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Finale rule.

SUMMARY: This action amends Class E airspace at New York, NY. The development of multiple area navigation (RNAV) Copter Standard Instrument Approach Procedures (SIAP) and the proliferation of airports within the metropolitan New York area with approved Instrument Flight Rules (IFR) operations and the resulting overlap of designated Class E–5 airspace has made this action necessary. This action consolidates the Class E–5 airspace designations for nineteen airports and results in the recision of twelve Class E–5 descriptions through separate rulemaking action. The area will be depicted on aeronautical charts for pilot reference.

EFFECTIVE DATE: 0901 UTC April 15, 2004.

FOR FURTHER INFORMATION CONTACT: Mr. Francis Jordan, Airspace Specialist, Airspace Branch, AEA–520, Air Traffic Division, Eastern Region, Federal Aviation Administration, 1 Aviation Plaza, Jamaica, New York 11434–4809, telephone: (718) 553–4521.

SUPPLEMENTARY INFORMATION:

History

On November 6, 2003, a notice proposing to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) by consolidating existing Class E–5 airspace designations in the New York metropolitan area and incorporating those areas into the New York, NY description was published in the **Federal Register** (68 FR 62758–62759). Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments to the proposal were received. The rule is adopted as proposed.

The coordinates for this airspace docket are based on North American Datum 83. Class E airspace area designations for airspace extending upward from the surface are published in paragraph 6005 of FAA Order 7400.9L, dated September 2, 2003, and effective September 16, 2003, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be amended in the order.

The Rule

This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) provides controlled Class E airspace extending upward from 700 ft above the surface for aircraft conducting IFR operations within the New York, NY Class E–5 airspace description.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation: (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation it is certified that this rule will not have significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

■ In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

■ 1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; EO 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9L, Airspace Designations and Reporting Points, dated September 2, 2003, and effective September 16, 2003, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700ft above the surface of the earth.

* * * * *

AEA NY E5 New York, NY (Revised)

That airspace extending upward from 700 feet above the surface within an area bounded by a line beginning at lat. 40°49′00″ N., long. 73°17′02″ W., to lat. 40°36′00″ N., long. 73°12′27″ W., to lat. 40°29′42″ N., long. 73°30′53″ W., to lat. 40°29′43″ N., long. 73°52′12″ W., to lat. 40°15′00″ N., long. 74°00′00″ W., to lat. 40°14′32″ N., long. 74°29′47″ W., to lat. 40°24′45″ N., long. 74°51′22″ W., to lat. 41°08′17″ N., long. 75°00′00″ W., to lat. 41°23′15″ N., long. 74°43′13″ W., to lat. 41°26′08″ N., long. 73°52′54″ W., to lat. 41°16′48″ N., long. 73°34′53″ W., to the point of beginning excluding the airspace that coincides with the Wrightstown, NJ, Pittstown, NJ, Philadelphia, PA, Poughkeepsie, NY, Mewburgh, NY, and Danbury, CT Class E airspace areas.

* * * * *

Issued in Jamaica, New York, on December 8, 2003.

John G. McCartney,

Assistant Manager, Air Traffic Division, Eastern Region.

[FR Doc. 03–31026 Filed 12–16–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2003–16614; Airspace Docket No. 03–AEA–17]

Amendment of Class E Airspace; New York, and New Jersey

AGENCY: Federal Aviation Administration (FAA) DOT.

ACTION: Final rule; request for comments.

SUMMARY: This action removes the description of the Class E airspace designated for Republic Airport, Farmingdale, NY; Westchester County Airport, White Plains, NY; Ossining, NY; Linden Airport, NJ; Greenwood Lake Airport, West Milford, NJ; Somerset Airport, Sommerville, NJ; Sussex Airport, NJ; Aeroflex-Andover Airport, Andover, NJ; Old Bridge Airport, NJ; Princeton Airport, NJ; Solberg-Hunterdon Airport, Readington, NJ; Central Jersey Regional Airport, Manville, NJ. The affected Class E–5 airspace for the airport included in these descriptions will be consolidated into the New York, NY airspace description contained in Docket No. FAA–2003–16180; Airspace Docket No. 03–AEA–14, effective June 10, 2004.

DATES: *Effective date:* April 15, 2004.

Comment Date: Comments must be received on or before February 19, 2004.

ADDRESSES: Send comments of the rule to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2003–16614/Airspace Docket No. 03–AEA–17 at the beginning of your comments. You may also submit comments on the Internet at *http://dms.dot.gov.* You may review the public docket containing the rule, any comments received, and any final disposition in person in the Docket Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527) is on the plaza level of the Department of Transportation NASSIF building at the above address.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division, Federal Aviation Administration, Eastern Region, 1 Aviation Plaza, Jamaica, NY 11434–4890.

FOR FURTHER INFORMATION CONTACT: Mr. Francis Jordan, Airspace Specialist, Airspace Branch, AEA–520, Aviation Plaza, Jamaica, NY 11434–4809, telephone: (718) 553–4521.

SUPPLEMENTARY INFORMATION: Although this action is a final rule, which involves the amendment of Class E airspace within New York, and New Jersey, by consolidating that airspace into one description, and was not preceded by notice and public procedure, comments are invited on the rule. This rule will become effective on the date specified in the **DATES** section. However, after the review of any comments and, if the FAA finds that further changes are appropriate, it will initiate rulemaking proceedings to extend the effective date or to amend the regulation.

Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in evaluating the effects of the rule, and in determining whether additional rulemaking is required. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the rule which might suggest the need to modify the rule.

The Rule

This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) amends the description of Class E airspace in the New York, NY area by removing the airspace designations for Babylon, NY; Ossining, NY; White Plains, NY; Andover, NJ; Linden, NJ; Manville, NJ; Old Bridge, NJ; Princeton, NJ; Readington, NJ; Somerville, NJ; Sussex, NJ; and West Milford, NJ. It consolidates those airspace areas into the New York, NY description. The proliferation of airports with Instrument Flight Rule (IFR) operations in the vicinity of New York, NY has resulted in the overlap of numerous Class E airspace areas that complicate the chart depictions. This action clarifies the airspace and diminishes the scope and complexity of charting. The IFR airports within those areas will be incorporated into the New York, NY Class E airspace area. Accordingly, since this action merely consolidates these airspace areas into one airspace designation and has inconsequential impact on aircraft operations in the area, notice and public procedure under 5 U.S.C. 553(b) are unnecessary.

Class E airspace designations for airspace extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9L, dated September 2, 2003, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation: (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation it is certified that this rule will not have significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporated by reference, Navigation (air).

Adoption of the Amendment

■ In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

■ 1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854; 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9L, Airspace Designations and Reporting Points, dated September 2, 2003 and effective September 16, 2003, is amended as follows:

Paragraph 6005 Class E airspace areas extending from 700 feet or more above the surface of the earth.

* * * * *

AEA NY E5 Babylon, NY [Removed]
AEA NY E5 Ossining, NY [Removed]
AEA NY E5 White Plains, NY [Removed]
AEA NJ E5 Andover, NJ [Removed]
AEA NJ E5 Linden, NJ [Removed]
AEA NJ E5 Manville, NJ [Removed]
AEA NJ E5 Old Bridge, NJ [Removed]
AEA NJ E5 Princeton, NJ [Removed]
AEA NJ E5 Readington, NJ [Removed]
AEA NJ E5 Somerville, NJ [Removed]
AEA NJ E5 Sussex, NJ [Removed]
AEA NJ E5 West Milford, NJ [Removed]

* * * * *

Issued in Jamaica, New York on December 8, 2003.

John G. McCartney,

Assistant Manager, Air Traffic Division, Eastern Region.

[FR Doc. 03–31025 Filed 12–16–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2003–16291; Airspace Docket No. 03–AEA–08]

Modification of Class E Airspace; York, PA; Correction

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; correction.

SUMMARY: This action corrects an error in the geographic coordinates in the description of the York County, PA Class E–2 designated airspace that was published in Federal Aviation Administration Order 7400.9L, Airspace Designations and Reporting Points, dated September 2, 2003 and effective September 16, 2003.

EFFECTIVE DATE: 0901 UTC, February 19, 2004.

FOR FURTHER INFORMATION CONTACT: Mr. Francis T. Jordan, Airspace Specialist, Airspace Branch, AEA–520, Air Traffic Division, Eastern Region, Federal Aviation Administration, 1 Aviation Plaza, Jamaica, New York 11434–4809, telephone: (718) 553–4521.

SUPPLEMENTARY INFORMATION:

History

Airspace Docket No. 99–AEA–09, published in the **Federal Register** on October 26, 1999 (64 FR 57557–57558), established the Class E–2 airspace area at York Airport, York County, PA. The description of the airspace incorporated the geographic reference point (GRP) for the airport. The designation was subsequently published in Federal Aviation Administration Order 7400.9L, Airspace Designations and Reporting Points, dated September 2, 2003, and effective September 16, 2003, which is incorporated by reference in 14 CFR 71.1.

Need for Correction

The final rule described the geographic position of the airport with a GRP. Other airspace designations for the airport incorporate the airport reference point (ARP) in the descriptions. This action deletes the GRP and incorporates the ARP for the airport in the description of the Class E–2 airspace designation.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

■ Accordingly, pursuant to the authority delegated to me, 14 CFR part 71 is corrected by making the following amendment:

PART 71—[CORRECTED]

■ 1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR 1959–1963 Comp., p 389.

§ 71.1 [Corrected]

■ 2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9L, Airspace Designations and Reporting Points, dated September 2, 2003 and effective September 16, 2003, is corrected as follows:

Paragraph 6002 Class E Airspace Areas extending upward from the surface

* * * * *

AEA PA E2 York County, PA [CORRECTED]

York Airport, PA
(Lat. 39°55′01″ N., long. 76°52′23″ W.)

That airspace extending upward from the surface within a 6.5-mile radius of the York Airport.

* * * * *

Issued in Jamaica, New York on, December 8, 2003.

John McCartney,

Assistant Manager, Air Traffic Division, Eastern Region.

[FR Doc. 03–31029 Filed 12–16–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2003–15228; Airspace Docket No. 03–AEA–04]

Establishment of Class E Airspace; Gettysburg, PA; Correction

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; correction.

SUMMARY: Airspace Docket No. 03–AEA–04, published in the **Federal Register** on November 5, 1003 (68 FR 62515), established the description of the Class E airspace area at Gettysburg, PA. An error was discovered in the geographic coordinates for the Gettysburg Airport and Travel Center and the effective date was in error. This action corrects those errors.

DATES: The effective date of 0901 UTC, May 15, 2004, is changed to 0901 UTC, April 15, 2004.

FOR FURTHER INFORMATION CONTACT: Mr. Francis Jordan, Airspace Specialist, Airspace Branch, AEA–520, Air Traffic Division, Eastern Region, Federal Aviation Administration, 1 Aviation Plaza, Jamaica, New York 11434–4809, telephone: (718) 553–4521.

SUPPLEMENTARY INFORMATION: Airspace Docket No. 03–AEA–04, published in the **Federal Register** on November 5, 2003 (68 FR 62515), established the description of the Class E airspace area at Gettysburg, PA. The final rule established Class E airspace for the Gettysburg Airport and Travel Center with an effective date of May 15, 2004. The geographic coordinates describing the designated airspace area and the effective date were published in error. The date of May 15, 2004, is not an official charting date. This action corrects the geographic coordinates and changes the effective date to April 15, 2004.

In rule FR Doc. 03–27741 published on November 5, 2003 (68 FR 62515), make the following corrections. On page 62515 in the first column, change the effective date to read "April 15, 2004." In the third column, change the geographic coordinates by removing "(lat. 39°50′27″ N., long. 73°57′43″ W.)" and substituting "(lat. 39°50′27″ N., long. 77°16′27″ W.)."

Issued in Jamaica, New York, on December 8, 2003.

John G. McCartney,

Assistant Manager, Air Traffic Division, Eastern Region

[FR Doc. 03–31028 Filed 12–16–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2003–15789; Airspace Docket No. 03–AEA–09]

Amendment of Class E Airspace; Charlottesville, VA; Correction

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final Rule; correction.

SUMMARY: An amendment to Airspace Docket No. 03–AEA–09, published in the **Federal Register** on November 6, 2003 (68 FR 62735), corrected the description of the Class E airspace area at Charlottesville, VA. The published effective date was in error. This action corrects this error.

EFFECTIVE DATE: 0901 UTC, February 19, 2004.

FOR FURTHER INFORMATION CONTACT: Mr. Francis Jordan, Airspace Specialist, Airspace Branch, AEA–520, Air Traffic Division, Eastern Region, Federal Aviation Administration, 1 Aviation Plaza, Jamaica, New York 11434–4809, telephone: (718) 553–4521.

SUPPLEMENTARY INFORMATION: Airspace Docket No. 03–AEA–09, published in the **Federal Register** on November 6, 2003 (68 FR 62735), corrected the description of the Class E airspace area at Charlottesville, VA. The final rule amended the description of the Class E airspace for Charlottesville, VA to include Charlottesville-Albermarle Airport as the primary airport. The effective date was published as November 6, 2003. The effective date must be established to coincide with the earliest available charting date. This action corrects the effective date to February 19, 2004.

In rule FR Doc. 03–27899, published November 6, 2003, (68 FR 62735), make the following correction. On page 62735, in the first column, change the effective date to read "February 19, 2004".

Issued in Jamaica, New York, on December 8, 2003.

John G. McCartney,

Assistant Manager, Air Traffic Division, Eastern Region.

[FR Doc. 03–31027 Filed 12–16–03; 8:45 am]

BILLING CODE 4910–13–M

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1500

Exemptions From Classification as a Banned Toy or Other Banned Article for Use by Children; Dive Sticks; Correction

AGENCY: Consumer Product Safety Commission.

ACTION: Final rule; Correction.

SUMMARY: This document corrects a citation error in the regulation that states certain requirements dive sticks must meet in order not to be banned hazardous substances. The Consumer Product Safety Commission is issuing this revision to correct an erroneous paragraph designation to the banning rule.

DATES: This rule is effective on December 17, 2003.

FOR FURTHER INFORMATION CONTACT: Patricia M. Pollitzer, Office of the General Counsel, Consumer Product Safety Commission, Washington, DC 20207; telephone (301) 504–7634; e-mail *ppollitzer@cpsc.gov*.

SUPPLEMENTARY INFORMATION:

The Correction

On March 7, 2001, the Commission issued a final rule banning dive sticks that did not meet specified requirements. 66 FR 13645. That rule amended 16 CFR 1500.86(a) to add dive sticks that meet the specified requirements to the list of articles exempted from classification as a banned toy or other article intended for use by children. A citation in § 1500.86(a)(7) and (8) was incorrect.

As published, the final regulation contains erroneous citations which may be misleading and need to be clarified.

The Administrative Procedure Act

Section 553(b)(3)(B) of the Administrative Procedure Act ("APA") authorizes an agency to dispense with notice and comment procedures when the agency, for good cause, finds that those procedures are "impracticable, unnecessary, or contrary to the public interest." This amendment corrects typographical errors and does not make any substantive change. Accordingly, the Commission finds that notice and comment on this technical correction is unnecessary.

The APA also authorizes an agency, "for good cause found and published with the rule," to dispense with the otherwise applicable requirement that a rule be published in the **Federal Register** at least 30 days before its effective date. 5 U.S.C. 553(d)(3). The Commission hereby finds that a 30 day delay of the effective date is unnecessary because this technical amendment merely corrects typographical errors.

List of Subjects in 16 CFR Part 1500

Consumer protection, Hazardous substances, Imports, Infants and children, Labeling, Law enforcement, and Toys.

■ Accordingly, 16 CFR part 1500 is corrected by making the following correcting amendments:

PART 1500—HAZARDOUS SUBSTANCES AND ARTICLES: ADMINISTRATION AND ENFORCEMENT REGULATIONS

■ 1. The authority for part 1500 continues to read as follows:

Authority: 15 U.S.C. 1261–1278.

§ 1500.86 [Amended]

■ 2. In § 1500.86, paragraphs (a)(7) and (a)(8) are amended by removing the reference "§ 1500.18(a)(18)" and adding the reference "§ 1500.18(a)(19)" in its place.

Dated: December 11, 2003.

Todd Stevenson,

Secretary, Consumer Product Safety Commission.

[FR Doc. 03–31127 Filed 12–16–03; 8:45 am]

BILLING CODE 6355–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 602

[TD 9099]

RIN 1545–BA78

Disclosure of Relative Values of Optional Forms of Benefit

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations that consolidate the content requirements applicable to explanations of qualified joint and survivor annuities and qualified preretirement survivor annuities payable under certain retirement plans, and specify requirements for disclosing the relative value of optional forms of benefit that are payable from certain retirement plans in lieu of a qualified joint and survivor annuity. These regulations affect plan sponsors and administrators, and participants in and beneficiaries of, certain retirement plans.

DATES: Effective Date: These final regulations are effective on December 17, 2003.

Applicability Date: These final regulations are applicable to QJSA explanations with respect to distributions with annuity starting dates on or after October 1, 2004, and to QPSA explanations provided on or after July 1, 2004.

FOR FURTHER INFORMATION CONTACT: John T. Ricotta at (202) 622–6060 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information (requirement to disclose information) contained in these final regulations has been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) under control number 1545–0928. Responses to this collection of information are mandatory.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by the Office of Management and Budget.

The estimated annual burden per respondent varies from .01 to .99 hours, depending on individual circumstances, with an estimated average of .5 hours.

Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be sent to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, SE:W:CAR:MP:T:SP, Washington, DC 20224, and to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503.

Books or records relating to a collection of information must be retained as long as their contents might become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Background

This document contains amendments to 26 CFR part 1 under section 417(a)(3) of the Internal Revenue Code of 1986 (Code).

A qualified retirement plan to which section 401(a)(11) applies must pay a vested participant's retirement benefit under the plan in the form of a qualified joint and survivor annuity (QJSA), except as provided in section 417. Section 401(a)(11) applies to defined benefit plans, money purchase pension plans, and certain other defined contribution plans. A QJSA is defined in section 417(b) as an annuity for the life of the participant with a survivor annuity for the life of the spouse (if the participant is married) that is not less than 50 percent of (and is not greater than 100 percent of) the amount of the annuity that is payable during the joint lives of the participant and the spouse. Under section 417(b)(2), a QJSA for a married participant generally must be the actuarial equivalent of the single life annuity benefit payable for the life of the participant. However, a plan is permitted to subsidize the QJSA for a married participant. If the plan fully subsidizes the QJSA for a married participant so that failure to waive the QJSA would not result in reduced payments over the life of the participant compared to the single life annuity benefit, then the plan need not provide an election to waive the QJSA. *See* section 417(a)(5).

For a married participant, the QJSA must be at least as valuable as any other optional form of benefit payable under the plan at the same time. *See* § 1.401(a)–20, Q&A–16. Further, the anti-forfeiture rules of section 411(a) prohibit a participant's benefit under a defined benefit plan from being satisfied through payment of a form of benefit that is actuarially less valuable than the value of the participant's accrued benefit expressed in the form of an annual benefit commencing at normal retirement age. These determinations must be made using reasonable actuarial assumptions. However, *see* § 1.417(e)–1(d) for actuarial assumptions required for use in certain present value calculations.

If a plan provides a subsidy for one optional form of benefit (*i.e.*, the payments under an optional form of benefit have an actuarial present value that is greater than the actuarial present value of the accrued benefit), there is no requirement to extend a similar subsidy (or any subsidy) to every other optional form of benefit. Thus, for example, a participant might be entitled to receive a single-sum distribution upon early retirement that does not reflect any early retirement subsidy in lieu of a QJSA that reflects a substantial early retirement subsidy. As a further example, a participant might be entitled to receive a single-sum distribution at normal retirement age in lieu of a QJSA that is subsidized as described in section 417(a)(5).

Section 417(a) provides rules under which a participant (with spousal consent) may waive payment of the participant's benefit in the form of a QJSA. Section 417(a)(3) provides that a plan must provide to each participant, within a reasonable period before the annuity starting date (and consistent with such regulations as the Secretary may prescribe), a written explanation of the terms and conditions of the QJSA, the participant's right to make, and the effect of, an election to waive the QJSA form of benefit, the rights of the participant's spouse, and the right to revoke (and the effect of the revocation of) an election to waive the QJSA form of benefit.

Section 205 of the Employee Retirement Income Security Act of 1974 (ERISA), Public Law 93–406 (88 Stat. 829) as subsequently amended, provides rules that are parallel to the rules of sections 401(a)(11) and 417 of the Internal Revenue Code. In particular, section 205(c)(3) of ERISA provides a rule parallel to the rule of section 417(a)(3) of the Code.

Under section 101 of Reorganization Plan No. 4 of 1978 (43 FR 47713), the Secretary of the Treasury has interpretative jurisdiction over the ERISA provisions that are parallel to the

Code provisions addressed in these regulations. Therefore, these regulations apply for purposes of section 205(c)(3) of ERISA, as well as for section 417(a)(3) of the Code.

Regulations governing the requirements for waiver of a QJSA were published in the **Federal Register** on August 19, 1988 (TD 8219; 53 FR 31837). Section 1.401(a)–20, Q&A–36, provides rules for the explanation that must be provided under section 417(a)(3) as a prerequisite to waiver of a QJSA. Section 1.401(a)–20, Q&A–36, requires that such a written explanation contain a general description of the eligibility conditions and other material features of the optional forms of benefit and sufficient additional information to explain the relative values of the optional forms of benefit available under the plan (*e.g.*, the extent to which optional forms are subsidized relative to the normal form of benefit or the interest rates used to calculate the optional forms). In addition, § 1.401(a)–20, Q&A–36, provides that the written explanation must comply with the requirements set forth in § 1.401(a)–11(c)(3). Section 1.401(a)–11(c)(3) was issued prior to the enactment of section 417, and provides rules relating to written explanations that were required prior to a participant's election of a preretirement survivor annuity or election to waive a joint and survivor annuity. Section 1.401(a)–11(c)(3)(i)(C) provides that such a written explanation must contain a general explanation of the relative financial effect of these elections on a participant's annuity.

In addition, under section 411 and § 1.411(a)–11(c), so long as a benefit is immediately distributable (within the meaning of § 1.411(a)–11(c)(4)), a participant must be informed of his or her right to defer that distribution. This requirement is independent of the section 417 requirements addressed in these regulations.

Concerns have been expressed that, in certain cases, the information provided to participants under section 417(a)(3) regarding the available distribution forms does not adequately enable them to compare those distribution forms without professional advice. In particular, participants who are eligible for both subsidized annuity distributions and unsubsidized single-sum distributions may be receiving notices that do not adequately explain the value of the subsidy that is foregone if the single-sum distribution is elected. In such a case, merely disclosing the amount of the single-sum distribution and the amount of annuity payments, or merely stating that the single sum distribution does not include the subsidy that is included in the annuity payments, may not adequately enable those participants to make an informed comparison of the relative values of those distribution forms, even if the interest rate used to derive the single sum is disclosed. Furthermore, questions have been raised as to how the relative values of optional forms of benefit are required to be expressed under current regulations.

Accordingly, proposed regulations were published in the **Federal Register** on October 7, 2002 (67 FR 62417) that would consolidate the content requirements applicable to explanations of qualified joint and survivor annuities and qualified preretirement survivor annuities payable under certain retirement plans, and provide disclosure requirements that would enable participants to compare the relative values of the available distribution forms using more readily understandable information.

After consideration of the comments received concerning the proposed regulations, these final regulations adopt provisions of the proposed regulations with certain modifications, the most significant of which are highlighted below.

Explanation of Provisions

These regulations provide guidance regarding the required description of the relative values of optional forms of benefit compared to the value of the QJSA and the content of the required disclosure of relative values. Commentators generally approved of the increased disclosure that would result from the approach in the proposed regulations, and these final regulations are substantially similar to the proposed regulations.

As under the proposed regulations, the description of the relative value of an optional form of benefit compared to the value of the QJSA must be expressed in a manner that provides a meaningful comparison of the relative economic values of the two forms of benefit without the participant having to make calculations using interest or mortality assumptions. In order to provide this comparison, the benefit under one or both optional forms of benefit must be converted, taking into account the time value of money and life expectancies, so that both are expressed in the same form. While one commentator requested that the regulations only permit comparisons to be made on the basis of present value, the regulations do not take this approach. Instead, the final regulations retain the examples of techniques that may be used for this comparison that were included in the proposed regulation: expressing the actuarial present value of the optional form of benefit as a percentage or factor of the actuarial present value of the QJSA; stating the amount of an annuity payable at the same time and under the same conditions as the QJSA that is the actuarial equivalent of the optional form of benefit; or stating the actuarial present value of both the QJSA and the optional form of benefit. However, a specific example has been added illustrating the use of the actuarial present value to express relative value.

The comparisons required under the proposed regulations depended on which form of benefit constitutes the QJSA for the participant. One commentator noted that this would result in a different comparison for married and unmarried participants, creating an unnecessary burden for plan sponsors in situations where the benefit options are identical for married and unmarried participants. Furthermore, if the plan sponsor did not know whether a participant is married, the plan would need to provide comparisons that covered both possibilities. In response to the comment, the final regulations permit a plan to use a uniform basis of comparison of relative value (*i.e.*, either the QJSA for married participants or the QJSA for unmarried participants) for both married and unmarried participants, if the benefit options are the same for married and unmarried participants. Thus, in a plan in which the applicable QJSA form for unmarried participants is a straight life annuity and the applicable QJSA form for married participants is a 50 percent joint and contingent annuity (and each of these forms of distribution are available to all participants on the same terms), the plan may choose to compare the relative value of the plan's optional forms of benefit to the value of the straight life annuity with respect to the required disclosure for all participants or the plan may choose to compare the relative value of the plan's optional forms of benefit to the value of the 50 percent joint and contingent annuity with respect to the required disclosure for all participants.

Since disclosing the relative value of every optional form of benefit regardless of the degree of subsidy may be too burdensome, and may provide participants with information that appears more precise than is warranted based on the inexact nature of the actuarial assumptions used, the final regulations follow the proposed regulation in providing for certain simplifications in the disclosure. Under one simplification, two or more optional forms of benefit that have approximately the same value could be grouped for purposes of disclosing relative value. Under the proposed regulations, two or more optional forms of benefit were treated as having approximately the same value if those optional forms of benefit varied in relative value in comparison to the value of the QJSA by 5 percentage points or less when the relative value comparison is made by expressing the actuarial present value of each of those optional forms of benefit as a percentage of the actuarial present value of the QJSA.

Several commentators recommended changes in this 5 percentage point band. One commentator suggested that a band of 7.5 percentage points be used to simplify compliance and ease the administrative burden to plans. The commentator said that a band of 7.5 percentage points would allow a plan to treat unsubsidized optional forms of benefit for virtually all retiring participants as having approximately equal value. By contrast, another commentator favored a maximum band of 3 percentage points in order for participants to receive adequate disclosure about significant differences in value. The commentator said that a 5 percentage point difference in value was significant enough to be brought to the participant's attention.

These final regulations generally retain the 5 percentage point banding rule of the proposed regulations. This rule aims to minimize the compliance burdens for plans to the extent consistent with providing participants with information on differences in value that are material in light of the inexact nature of the actuarial assumptions used.

The proposed regulations also would have allowed a plan to treat all of its forms of benefit as approximately equal in value if the actuarial present value of all of those forms is not less than 95 percent of the actuarial present value of the QJSA. The final regulations permit a plan that is comparing the relative value of each optional form to the value of the QJSA for a married participant to treat each presently available optional form of benefit that has an actuarial present value of at least 95 percent of the actuarial present value of the QJSA as having approximately the same value as the QJSA. In addition, in the case of a plan that is comparing the relative value of each optional form to the value of the single life annuity, if all of the optional forms of benefit presently available have actuarial present values that are at least 95 percent, but not greater than 102.5 percent, of the actuarial present value of the presently available single life annuity, the plan is permitted to treat all the presently available forms of distribution as approximately equal in value.

Some commentators recommended that participants have the right to know what actuarial assumptions were used in the plan's estimates of relative value. The final regulations require that this information be made available upon request if it is not provided in the notice.

Several commentators raised questions concerning whether the methods used in disclosing relative value of a plan's optional forms of benefit in accordance with these regulations affect the application of the requirement at § 1.401(a)–20, Q&A–16, that the QJSA for married participants be at least as valuable as any other optional form of benefit under the plan. While this issue is not addressed in these final regulations, there is no requirement, or implication, that the same actuarial assumptions used by a plan for purposes of disclosing relative value in accordance with these regulations must be applied for purposes of the requirement in § 1.401(a)–20, Q&A–16, that the QJSA for married participants be at least as valuable as any other optional form of benefit under the plan.

One commentator requested that these regulations address the use of electronic media to deliver the QJSA explanation or the QPSA explanation. The IRS and the Treasury Department are considering the extent to which the QJSA explanation and the QPSA explanation, as well as other notices under the various Internal Revenue Code requirements relating to qualified retirement plans, can be provided electronically, taking into account the effect of the Electronic Signatures in Global and National Commerce Act (ESIGN), Public Law 106–229, 114 Stat. 464 (2000). The IRS and the Treasury Department have invited comments on these issues, and anticipate issuing further guidance regarding electronic notices.

Commentators raised a number of other issues, including issues that relate to basic QJSA rules that are not addressed in these regulations and a request for the final regulations to include model language that can be included in a QJSA notice. These regulations do not include model language for several reasons, including the wide variety of distribution alternatives found in plans (including the variety of actuarial assumptions used to calculate optional forms of benefit), the variations in the average participant in the plan for purposes of understandability, as well as inclusion in the regulations of several detailed examples showing how the information can be provided in order to disclose relative value.

Effective Date

These final regulations are applicable to QJSA explanations with respect to distributions with to annuity starting dates on or after October 1, 2004, and to QPSA explanations provided on or after July 1, 2004. In the case of a retroactive annuity starting date under section 417(a)(7), when required under § 1.417(e)–1(b)(3)(vi), the date of commencement of payments based on the retroactive annuity starting date is substituted for the annuity starting date for purposes of this effective date.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. It is hereby certified that the collection of information in these regulations will not have a significant economic impact on a substantial number of small entities. This certification is based upon the fact that qualified retirement plans of small businesses typically commence distribution of benefits to few, if any, plan participants in any given year and, similarly, only offer elections to waive a QPSA to few, if any, participants in any given year. Thus, the collection of information in these regulations will only have a minimal economic impact on most small entities. Therefore, an analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. Pursuant to section 7805(f) of the Code, the proposed regulations preceding these regulations were submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal authors of these regulations are Linda S.F. Marshall and John T. Ricotta of the Office of the Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities). However, other personnel from the IRS and Treasury participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

■ Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1986

■ **Paragraph 1.** The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

■ **Par. 2.** Paragraph (c)(3) of § 1.401(a)–11 is revised to read as follows:

§ 1.401(a)–11 Qualified joint and survivor annuities.

* * * * *

(c) * * *

(3) *Information to be provided by plan.* For rules regarding the information required to be provided with respect to the election to waive a QJSA or a QPSA, see § 1.417(a)(3)–1.

* * * * *

■ **Par. 3.** A–36 of § 1.401(a)–20 is revised to read as follows:

§ 1.401(a)–20 Requirements of qualified joint and survivor annuity and qualified preretirement survivor annuity.

* * * * *

A–36. For rules regarding the explanation of QPSAs and QJSAs required under section 417(a)(3), see § 1.417(a)(3)–1.

* * * * *

■ **Par. 4.** Section 1.417(a)(3)–1 is added to read as follows:

§ 1.417(a)(3)–1 Required explanation of qualified joint and survivor annuity and qualified preretirement survivor annuity.

(a) *Written explanation requirement*—(1) *General rule.* A plan meets the survivor annuity requirements of section 401(a)(11) only if the plan meets the requirements of section 417(a)(3) and this section regarding the written explanation required to be provided a participant with respect to a QJSA or a QPSA. A written explanation required to be provided to a participant with respect to either a QJSA or a QPSA under section 417(a)(3) and this section is referred to in this section as a section 417(a)(3) explanation. See § 1.401(a)–20, Q&A–37, for exceptions to the written explanation requirement in the case of a fully subsidized QPSA or QJSA, and § 1.401(a)–20, Q&A–38, for the definition of a fully subsidized QPSA or QJSA.

(2) *Time for providing section 417(a)(3) explanation*—(i) *QJSA explanation.* See § 1.417(e)–1(b)(3)(ii) for rules governing the timing of the QJSA explanation.

(ii) *QPSA explanation.* See § 1.401(a)–20, Q&A–35, for rules governing the timing of the QPSA explanation.

(3) *Required method for providing section 417(a)(3) explanation.* A section 417(a)(3) explanation must be a written explanation. First class mail to the last known address of the participant is an acceptable delivery method for a section 417(a)(3) explanation. Likewise, hand delivery is acceptable. However, the posting of the explanation is not considered provision of the section 417(a)(3) explanation.

(4) *Understandability.* A section 417(a)(3) explanation must be written in a manner calculated to be understood by the average participant.

(b) *Required content of section 417(a)(3) explanation*—(1) *Content of QPSA explanation.* The QPSA explanation must contain a general description of the QPSA, the circumstances under which it will be paid if elected, the availability of the election of the QPSA, and, except as provided in paragraph (d)(3) of this section, a description of the financial effect of the election of the QPSA on the participant's benefits (*i.e.*, an estimate of the reduction to the participant's estimated normal retirement benefit that would result from an election of the QPSA).

(2) *Content of QJSA explanation.* The QJSA explanation must satisfy either paragraph (c) or paragraph (d) of this section. Under paragraph (c) of this section, the QJSA explanation must contain certain specific information relating to the benefits available under the plan to the particular participant. Alternatively, under paragraph (d) of this section, the QJSA explanation can contain generally applicable information in lieu of specific participant information, provided that the participant has the right to request additional information regarding the participant's benefits under the plan.

(c) *Participant-specific information required to be provided*—(1) *In general.* A QJSA explanation satisfies this paragraph (c) if it provides the following information with respect to each of the optional forms of benefit presently available to the participant (*i.e.*, optional forms of benefit with an annuity starting date for which the QJSA explanation applies)—

(i) A description of the optional form of benefit;

(ii) A description of the eligibility conditions for the optional form of benefit;

(iii) A description of the financial effect of electing the optional form of benefit (*i.e.*, the amount payable under the form of benefit to the participant during the participant's lifetime and the amount payable after the death of the participant);

(iv) In the case of a defined benefit plan, a description of the relative value of the optional form of benefit compared to the value of the QJSA, in the manner described in paragraph (c)(2) of this section; and

(v) A description of any other material features of the optional form of benefit.

(2) *Requirement for numerical comparison of relative values*—(i) *In general.* The description of the relative value of an optional form of benefit compared to the value of the QJSA under paragraph (c)(1)(iv) of this section must be expressed to the participant in a manner that provides a meaningful comparison of the relative economic values of the two forms of benefit without the participant having to make calculations using interest or mortality assumptions. Thus, in performing the calculations necessary to make this comparison, the benefits under one or both optional forms of benefit must be converted, taking into account the time value of money and life expectancies, so that the values of both optional forms of benefit are expressed in the same form. For example, such a comparison may be expressed to the participant using any of the following techniques—

(A) Expressing the actuarial present value of the optional form of benefit as a percentage or factor of the actuarial present value of the QJSA;

(B) Stating the amount of the annuity that is the actuarial equivalent of the optional form of benefit and that is payable at the same time and under the same conditions as the QJSA; or

(C) Stating the actuarial present value of both the optional form of benefit and the QJSA.

(ii) *Use of one form for both married and unmarried individuals*—(A) *In general.* Under the rules of this paragraph (c)(2)(ii), in lieu of providing different QJSA explanations for married and unmarried individuals, the plan may provide a QJSA explanation to an individual that does not vary based on the participant's marital status. Except as specifically provided in paragraph (c)(3)(iii) of this section, any reference in this section to comparing the relative value of an optional form of benefit to the value of the QJSA may be satisfied using the substitution permitted under paragraph (c)(2)(ii)(B) or (C) of this section.

(B) *Substitution of single life annuity for married individual.* For a married participant, in lieu of comparing the value of each optional form of benefit presently available to the participant to the value of the QJSA, the plan can compare the value of each optional form of benefit (including the QJSA) to the value of a QJSA for an unmarried participant (*i.e.*, a single life annuity), but only if that same single life annuity is available to that married participant.

(C) *Substitution of joint and survivor annuity for unmarried individual.* For an unmarried participant, in lieu of comparing the value of each optional form of benefit presently available to the participant to the value of the QJSA for that individual (which is a single life annuity), the plan can compare the value of each optional form of benefit (including the single life annuity) to the value of the joint and survivor annuity that is the QJSA for a married participant, but only if that same joint and survivor annuity is available to that unmarried participant.

(iii) *Simplified presentations permitted*—(A) *Grouping of certain optional forms.* Two or more optional forms of benefit that have approximately the same value may be grouped for purposes of a required numerical comparison described in this paragraph (c)(2). For this purpose, two or more optional forms of benefit have approximately the same value if none of those optional forms of benefit vary in relative value in comparison to the value of the QJSA by more than 5 percentage points when the relative value comparison is made by expressing the actuarial present value of each of those optional forms of benefit as a percentage of the actuarial present value of the QJSA. For such a group of optional forms of benefit, the requirement relating to disclosing the relative value of each optional form of benefit compared to the value of the QJSA can be satisfied by disclosing the relative value of any one of the optional forms in the group compared to the value of the QJSA, and disclosing that the other optional forms of benefit in the group are of approximately the same value. If a single-sum distribution is included in such a group of optional forms of benefit, the single-sum distribution must be the distribution form that is used for purposes of this comparison.

(B) *Representative relative value for grouped optional forms.* If, in accordance with paragraph (c)(2)(iii)(A) of this section, two or more optional forms of benefits are grouped, the relative values for all of the optional forms of benefit in the group can be stated using a representative relative value as the approximate relative value for the entire group. For this purpose, a representative relative value is any relative value that is not less than the relative value of the member of the group of optional forms of benefit with the lowest relative value and is not greater than the relative value of the member of that group with the highest relative value when measured on a consistent basis. For example, if three grouped optional forms have relative values of 87.5 percent, 89 percent, and 91 percent of the value of the QJSA, all three optional forms can be treated as having a relative value of approximately 90 percent of the value of the QJSA. As required under paragraph (c)(2)(iii)(A) of this section, if a single-sum distribution is included in the group of optional forms of benefit, the 90 percent relative factor of the value of the QJSA must be disclosed as the approximate relative value of the single sum, and the other forms can be described as having the same approximate value as the single sum.

(C) *Special rules.* If the plan is comparing the value of each optional form to the value of the QJSA for a married participant, this paragraph (c)(2)(iii)(C) provides a grouping rule that is in addition to the grouping rules of paragraph (c)(2)(iii)(A) of this section. Under this special rule, the relative value of all optional forms of benefit that have an actuarial present value that is at least 95 percent of the actuarial present value of the QJSA for a married participant is permitted to be described by stating that those optional forms of benefit are approximately equal in value to the QJSA, or that all of those forms of benefit and the QJSA are approximately equal in value. In addition, if a plan is comparing the value of optional forms of benefit to the value of the single life annuity and all optional forms of benefit have actuarial present values that are at least 95 percent, but not greater than 102.5 percent, of the actuarial present value of the single life annuity, the plan is permitted to describe the relative value of all optional forms of benefit by stating that all the optional forms of benefit are approximately equal in value, or that all of those forms of benefit and the single life annuity are approximately equal in value.

(iv) *Actuarial assumptions used to determine relative values.* For the purpose of providing a numerical comparison of the value of an optional form of benefit to the value of the immediately commencing QJSA under this paragraph (c)(2), the following rules apply—

(A) If an optional form of benefit is subject to the requirements of section 417(e)(3) and § 1.417(e)–1(d), any comparison of the value of the optional form of benefit to the value of the QJSA must be made using the applicable mortality table and the applicable interest rate as defined in § 1.417(e)–1(d)(2) and (3) (or, at the option of the plan, another reasonable interest rate and reasonable mortality table used under the plan to calculate the amount payable under the optional form of benefit); and

(B) All other optional forms of benefit payable to the participant must be compared with the QJSA using a single set of interest and mortality assumptions that are reasonable and that are applied uniformly with respect to all such optional forms payable to the participant (regardless of whether those assumptions are actually used under the plan for purposes of determining benefit payments).

(v) *Required disclosure of assumptions*—(A) *Explanation of concept of relative value.* The notice must provide an explanation of the concept of relative value, communicating that the relative value comparison is intended to allow the participant to compare the total value of distributions paid in different forms, that the relative value comparison is made by converting the value of the optional forms of benefit presently available to a common form (such as the QJSA or a single-sum distribution), and that this conversion uses interest and life expectancy assumptions. The explanation of relative value must include a general statement that all comparisons provided are based on average life expectancies, and that the relative value of payments ultimately made under an annuity optional form of benefit will depend on actual longevity.

(B) *Disclosure of assumptions.* A required numerical comparison of the value of the optional form of benefit to the value of the QJSA under this paragraph (c)(2) is required to include a disclosure of the interest rate that is used to develop the comparison. If all optional forms of benefit are permitted to be grouped under paragraph (c)(2)(iii)(A) of this section, then the requirement of this paragraph (c)(2)(v)(B) does not apply for any optional form of benefit not subject to the requirements of section 417(e)(3) and § 1.417(e)–1(d)(3).

(C) *Offer to provide actuarial assumptions.* If the plan does not disclose the actuarial assumptions used to calculate the numerical comparison required under paragraph (c)(2) of this section, then, the notice must be accompanied by a statement that includes an offer to provide, upon the participant's request, the actuarial assumptions used to calculate the relative value of optional forms of benefit under the plan.

(3) *Permitted estimates of financial effect and relative value*—(i) *General rule.* For purposes of providing a description of the financial effect of the distribution forms available to a participant as required under paragraph (c)(1)(iii) of this section, and for purposes of providing a description of the relative value of an optional form of benefit compared to the value of the QJSA for a participant as required under paragraph (c)(1)(iv) of this section, the plan is permitted to provide reasonable estimates (*e.g.*, estimates based on data as of an earlier date than the annuity starting date, a reasonable assumption for the age of the participant's spouse, or, in the case of a defined contribution plan, reasonable estimates of amounts that would be payable under a purchased annuity contract), including reasonable estimates of the applicable interest rate under section 417(e)(3).

(ii) *Right to more precise calculation.* If a QJSA notice uses a reasonable estimate under paragraph (c)(3)(i) of this section, the QJSA explanation must identify the estimate and explain that the plan will, upon the request of the participant, provide a more precise calculation and the plan must provide the participant with a more precise calculation if so requested. Thus, for example, if a plan provides an estimate of the amount of the QJSA that is based on a reasonable assumption concerning the age of the participant's spouse, the participant can request a calculation that takes into account the actual age of the spouse, as provided by the participant.

(iii) *Revision of prior information.* If a more precise calculation described in paragraph (c)(3)(ii) of this section materially changes the relative value of an optional form compared to the value of the QJSA, the revised relative value of that optional form must be disclosed, regardless of whether the financial effect of selecting the optional form is affected by the more precise calculation. For example, if a participant provides a plan with the age of the participant's spouse and that information materially changes the relative value of an optional form of benefit (such as a single sum) compared to the value of the QJSA, then the revised relative value of the optional form of benefit and the value of the QJSA must be disclosed, regardless of whether the amount of the payment under that optional form of benefit is affected by the more precise calculation.

(4) *Special rules for disclosure of financial effect for defined contribution plans.* For a written explanation provided by a defined contribution plan, a description of financial effect required by paragraph (c)(1)(iii) of this section with respect to an annuity form of benefit must include a statement that the annuity will be provided by purchasing an annuity contract from an insurance company with the participant's account balance under the plan. If the description of the financial effect of the optional form of benefit is provided using estimates rather than by assuring that an insurer is able to provide the amount disclosed to the participant, the written explanation must also disclose this fact.

(d) *Substitution of generally applicable information for participant information in the section 417(a)(3) explanation*—(1) *Forms of benefit available.* In lieu of providing the information required under paragraphs (c)(1)(i) through (v) of this section for each optional form of benefit presently available to the participant as described in paragraph (c) of this section, the QJSA explanation may contain the information required under paragraphs (c)(1)(i) through (v) of this section for the QJSA and each other optional form of benefit generally available under the plan, along with a reference to where a participant may readily obtain the information required under paragraphs (c)(1)(i) through (v) of this section for any other optional forms of benefit that are presently available to the participant.

(2) *Financial effect and comparison of relative values*—(i) *General rule.* In lieu of providing a statement of the financial effect of electing an optional form of benefit as required under paragraph (c)(1)(iii) of this section, or a comparison of relative values as required under paragraph (c)(1)(iv) of this section, based on the actual age and benefit of the participant, the QJSA explanation is permitted to include a chart (or other comparable device) showing the financial effect and relative value of optional forms of benefit in a series of examples specifying the amount of the optional form of benefit payable to a hypothetical participant at a representative range of ages and the comparison of relative values at those same representative ages. Each example in this chart must show the financial effect of electing the optional form of benefit pursuant to the rules of paragraph (c)(1)(iii) of this section, and a comparison of the relative value of the optional form of benefit to the value of the QJSA pursuant to the rules of paragraph (c)(2) of this section, using reasonable assumptions for the age of the hypothetical participant's spouse and any other variables that affect the financial effect, or relative value, of the optional form of benefit. The requirement to show the financial effect of electing an optional form can be satisfied through the use of other methods (*e.g.*, expressing the amount of the optional form as a percentage or a factor of the amount payable under the normal form of benefit), provided that the method provides sufficient information so that a participant can determine the amount of benefits payable in the optional form. The chart (or other comparable device) must be accompanied by the disclosures described in paragraph (c)(2)(v) of this section explaining the concept of relative value and disclosing certain interest assumptions. In addition, the chart (or other comparable device) must be accompanied by a general statement describing the effect of significant variations between the assumed ages or other variables on the financial effect of electing the optional form of benefit and the comparison of the relative value of the optional form of benefit to the value of the QJSA.

(ii) *Actual benefit must be disclosed.* The generalized notice described in this paragraph (d)(2) will satisfy the requirements of paragraph (b)(2) of this section only if the notice includes either the amount payable to the participant under the normal form of benefit or the amount payable to the participant under the normal form of benefit adjusted for immediate commencement. For this purpose, the normal form of benefit is the form under which payments due to the participant under the plan are expressed under the plan, prior to adjustments for form of benefit. For example, assuming that a plan's benefit accrual formula is expressed as a straight life annuity, the generalized notice must provide the amount of either the straight life annuity commencing at normal retirement age or the straight life annuity commencing immediately.

(iii) *Ability to request additional information.* The generalized notice described in this paragraph (d)(2) must be accompanied by a statement that includes an offer to provide, upon the participant's request, a statement of financial effect and a comparison of relative values that is specific to the participant for any presently available optional form of benefit, and a description of how a participant may obtain this additional information.

(3) *Financial effect of QPSA election.* In lieu of providing a specific description of the financial effect of the QPSA election, the QPSA explanation may provide a general description of the financial effect of the election. Thus, for example, the description can be in the form of a chart showing the reduction to a hypothetical participant's normal retirement benefit at a representative range of participant ages as a result of the QPSA election (using a reasonable assumption for the age of the hypothetical participant's spouse relative to the age of the hypothetical participant). In addition, this chart must be accompanied by a statement that includes an offer to provide, upon the participant's request, an estimate of the reduction to the participant's estimated normal retirement benefit, and a description of how a participant may obtain this additional information.

(4) *Additional information required to be furnished at the participant's request*— The generalized notice described in paragraph (d)(2) of this section must be accompanied by a statement that includes an offer to provide, upon the participant's request, information described in this paragraph (d)(4)(i) and (ii), and a description of how a participant may obtain this additional information.

(i) *Explanation of QJSA.* If, as permitted under paragraphs (d)(1) and (2) of this section, the content of a QJSA explanation does not include all the items described in paragraph (c) of this section, then, upon a participant's request for any of the information required under paragraphs (c)(1)(i) through (v) of this section for one or more presently available optional forms (including a request for all optional forms presently available to the participant), the plan must furnish the information required under paragraphs (c)(1)(i) through (v) of this section with respect to those optional forms. Thus, with respect to those optional forms of benefit, the participant must receive a QJSA explanation specific to the participant that is based on the participant's actual age and benefit. In addition, the plan must comply with paragraph (c)(3)(iii) of this section. Further, if as permitted under paragraph (c)(2)(v)(B) of this section, the plan does not disclose the actuarial assumptions used to calculate the numerical comparison required under paragraph (c)(2) of this section, then, upon request, the plan must provide the actuarial assumptions used to calculate the relative value of optional forms of benefit under the plan.

(ii) *Explanation of QPSA.* If, as permitted under paragraph (d)(3) of this section, the content of a QPSA explanation does not include all the items described in paragraph (b)(1) of this section, then, upon a participant's request, the plan must furnish an estimate of the reduction to the participant's estimated normal retirement benefit that would result from a QPSA election.

(e) *Examples.* The following examples illustrate the application of this section. Solely for purposes of these examples, the applicable interest rate that applies to any distribution that is subject to the rules of section 417(e)(3) is assumed to be 5½ percent, and the applicable mortality table under section 417(e)(3) and § 1.417(e)–1(d)(2) is assumed to be the table that applies as of January 1, 2003. In addition, solely for purposes of these examples, assume that a plan which determines actuarial equivalence using 6 percent interest and the applicable mortality table under section 417(e)(3) and § 1.417(e)–1(d)(2) that applies as of January 1, 1995, is using reasonable actuarial assumptions. The examples are as follows:

Example 1. (i) Participant M participates in Plan A, a qualified defined benefit plan. Under Plan A, the QJSA is a joint and 100 percent survivor annuity, which is actuarially equivalent to the single life annuity determined using 6 percent interest and the section 417(e)(3) applicable mortality table that applies as of January 1, 1995. On October 1, 2004, M will terminate employment at age 55. When M terminates employment, M will be eligible to elect an unreduced early retirement benefit, payable as either a single life annuity or the QJSA. M will also be eligible to elect a single-sum distribution equal to the actuarial present value of the single life annuity payable at normal retirement age (age 65), determined using the applicable mortality table and the applicable interest rate under section 417(e)(3).

(ii) Consistent with paragraph (c) of this section, Participant M is provided with a QJSA explanation that describes the single life annuity, the QJSA, and single-sum distribution options under the plan, and any eligibility conditions associated with these options. Participant M is married when the explanation is provided. The explanation indicates that, if Participant M commenced benefits at age 55 and had a spouse age 55, the monthly benefit under an immediately commencing single life annuity is $3,000, the monthly benefit under the QJSA is estimated to be 89.96 percent of the monthly benefit under the immediately commencing single life annuity or $2,699, and the single sum is estimated to be 74.7645 times the monthly benefit under the immediately commencing single life annuity or $224,293.

(iii) The QJSA explanation indicates that the single life annuity and the QJSA are of approximately the same value, but that the single-sum option is equivalent in value to a monthly benefit under the QJSA of $1,215. (This amount is 45 percent of the value of the QJSA at age 55 ($1,215 divided by 89.96 percent of $3,000 equals 45 percent).) The explanation states that the relative value comparison converts the value of the single life annuity and the single-sum options to the value of each if paid in the form of the QJSA and that this conversion uses interest and life expectancy assumptions. The explanation specifies that the calculations relating to the single-sum distribution were prepared using 5.5 percent interest and average life expectancy, that the other calculations were prepared using a 6 percent interest rate and that the relative value of actual annuity payments for an individual can vary depending on how long the individual and spouse live. The explanation notes that the calculation of the QJSA assumed that the spouse was age 55, that the amount of the QJSA will depend on the actual age of the spouse (for example, annuity payments will be significantly lower if the spouse is significantly younger than the participant), and that the amount of the single-sum payment will depend on the interest rates that apply when the participant actually takes a distribution. The explanation also includes an offer to provide a more precise calculation to the participant taking into account the spouse's actual age.

(iv) In accordance with paragraph (c)(3)(ii) of this section, Participant M requests a more precise calculation of the financial effect of choosing a QJSA taking into account that Participant M's spouse is 50 years of age. Using the actual age of Participant M's spouse, Plan A determines that the monthly payments under the QJSA are 87.62 percent of the monthly payments under the single life annuity, or $2,628.60 per month, and provides this information to M. Plan A is not required to provide an updated calculation of the relative value of the single sum because the value of single sum continues to be 45 percent of the value of the QJSA.

Example 2. (i) The facts are the same as in *Example 1*, except that the comparison of the relative values of optional forms of benefit to the value of the QJSA is not expressed as a percentage of the actuarial present value of the QJSA, but instead is expressed by disclosing the actuarial present values of the optional forms and the QJSA. In addition, the Plan uses the applicable interest rate and the applicable mortality table under section 417(e)(3) for all comparison purposes.

(ii) Accordingly, the QJSA explanation indicates that the QJSA has an actuarial present value of $498,089, while the single-sum payment has an actuarial present value of $224,293 (*i.e.* the amount of the single sum is $224,293) and that the single life annuity is approximately equal in value to the QJSA. The explanation states that the relative value comparison converts the value of single life annuity and the QJSA into an amount payable in the form of the single-sum option (even though a single-sum distribution in that amount is not available under the plan) and that this conversion uses interest and life expectancy assumptions. The explanation specifies that the calculations were prepared using 5.5 percent interest and average life expectancy, and that the relative value of actual annuity payments for an individual can vary depending on how long the individual and spouse live. The explanation notes that the calculation of the QJSA assumed that the spouse was age 55, that the amount of the QJSA will depend on the actual age of the spouse (for example, annuity payments will be significantly lower if the spouse is significantly younger than the participant), and that the amount of the single-sum payment will depend on the interest rates that apply when the participant

actually takes a distribution. The explanation also includes an offer to provide a more precise calculation to the participant taking into account the spouse's actual age.

Example 3. (i) The facts are the same as in *Example 1*, except that, in lieu of providing information specific to Participant M in the QJSA notice as set forth in paragraph (c) of this section, Plan A satisfies the QJSA explanation requirement in accordance with paragraph (d)(2) of this section by providing M with a statement that M's monthly benefit under an immediately commencing single life annuity (which is the normal form of benefit under Plan A, adjusted for immediate commencement) is $3,000, along with the following chart. The chart shows the financial effect of electing each optional form of benefit for a hypothetical participant with a $1,000 benefit and a spouse who is the same age as the participant. Instead of showing the relative value of these optional forms of benefit compared to the value of the QJSA, the chart shows the relative value of these optional forms of benefit compared to the value of the single life annuity. Separate charts are provided for ages 55, 60, and 65 as follows:

AGE 55 COMMENCEMENT

Optional form	Amount of distribution per $1,000 of immediate single life annuity	Relative value
Life Annuity	$1,000 per month	n/a.
QJSA (Joint and 100 percent survivor annuity)	$900 per month ($900 per month for survivor annuity).	Approximately the same value as the Life Annuity.
Lump sum	$74,764	Approximately 45 percent of the value of the Life Annuity.

AGE 60 COMMENCEMENT

Optional form	Amount of distribution per $1,000 of immediate single life annuity	Relative value
Life Annuity	$1,000 per month	n/a.
QJSA (Joint and 100 percent survivor annuity)	$878 per month ($878 per month for survivor annuity).	Approximately the same value as the Life Annuity.
Lump sum	$99,792	Approximately 66 percent of the value of the Life Annuity.

AGE 65 COMMENCEMENT

Optional form	Amount of distribution per $1,000 of immediate single life annuity	Relative value
Life Annuity	$1,000 per month	n/a.
QJSA (Joint and 100 percent survivor annuity)	$852 per month ($852 per month for survivor annuity).	Approximately the same value as the Life Annuity.
Lump sum	$135,759	Approximately the same value as the Life Annuity.

(ii) In accordance with paragraph (d)(4)(i) of this section, when Participant M requests specific information regarding the amounts payable under the QJSA, the joint and 100 percent survivor annuity, and the single-sum distribution and provides the age of M's spouse, Plan A determines that M's QJSA is $2,628.60 per month and the single-sum distribution is $224,293. The actuarial present value of the QJSA (determined using the 5.5 percent interest and the section 417(e)(3) applicable mortality table) is $498,896 and the actuarial present value of the single life annuity is $497,876. Accordingly, the specific information discloses that the single-sum distribution has a value that is 45 percent of the value of the single life annuity available to M on October 1, 2004. In accordance with paragraph (c)(2)(iii)(C) of this section, the QJSA notice provides that the QJSA is of approximately the same value as the single life annuity.

Example 4. (i) The facts are the same as in *Example 1*, except that under Plan A, the single-sum distribution is determined as the actuarial present value of the immediately commencing single life annuity. In addition, Plan A provides a joint and 75 percent survivor annuity that is reduced from the single life annuity and that is the QJSA under Plan A. For purposes of determining the amount of the QJSA, if the participant is married the reduction is only half of the reduction that would normally apply under the actuarial assumptions specified in Plan A for determining actuarial equivalence of optional forms.

(ii) In lieu of providing information specific to Participant M in the QJSA notice as set forth in paragraph (c) of this section, Plan A satisfies the QJSA explanation requirement in accordance with paragraph (d)(2) of this section by providing M with a statement that M's monthly benefit under an immediately commencing single life annuity (which is the normal form of benefit under Plan A, adjusted for immediate commencement) is $3,000, along with the following chart showing the financial effect and the relative value of the optional forms of benefit compared to the QJSA for a hypothetical participant with a $1,000 benefit and a spouse who is three years younger than the participant. For each optional form generally available under the plan, the chart shows the financial effect and the relative value, using the grouping rules of paragraph (c)(2)(ii) of this section. Separate charts are provided for ages 55, 60, and 65, as follows:

AGE 55 COMMENCEMENT

Optional form	Amount of distribution per $1,000 of immediate single life annuity	Relative value
Life Annuity	$1,000 per month	Approximately the same value as the QJSA.

AGE 55 COMMENCEMENT—Continued

Optional form	Amount of distribution per $1,000 of immediate single life annuity	Relative value
QJSA (joint and 75 percent survivor annuity for a participant who is married).	$956 per month ($717 per month for survivor annuity).	n/a.
Joint and 100 percent survivor annuity	$886 per month ($886 per month for survivor annuity).	Approximately the same value as the QJSA.
Lump sum	$165,959	Approximately the same value as the QJSA.

AGE 60 COMMENCEMENT

Optional form	Amount of distribution per $1,000 of immediate single life annuity	Relative value
Life Annuity	$1,000 per month	Approximately 94 percent of the value of the QJSA.
QJSA (joint and 75 percent survivor annuity for a participant who is married).	$945 per month ($709 per month for survivor annuity).	n/a.
Joint and 100 percent survivor annuity	$859 per month ($859 per month for survivor annuity).	Approximately 94 percent of the value of the QJSA.
Lump sum	$151,691	Approximately the same value as the QJSA.

AGE 65 COMMENCEMENT

Optional form	Amount of distribution per $1,000 of immediate single life annuity	Relative value
Life Annuity	$1,000 per month	Approximately 93 percent of the value of the QJSA
QJSA (joint and 75 percent survivor annuity for a participant who is married).	$932 per month ($699 per month for survivor annuity).	n/a.
Joint and 100 percent survivor annuity	$828 per month ($828 per month for survivor annuity).	Approximately 93 percent of the value of the QJSA.
Lump sum	$135,759	Approximately 93 percent of the value of the QJSA.

(iii) The chart disclosing the financial effect and relative value of the optional forms specifies that the calculations were prepared assuming that the spouse is three years younger than the participant, that the calculations relating to the single-sum distribution were prepared using 5.5 percent interest and average life expectancy, that the other calculations were prepared using a 6 percent interest rate, and that the relative value of actual payments for an individual can vary depending on how long the individual and spouse live. The explanation states that the relative value comparison converts the single life annuity, the joint and 100 percent survivor annuity, and the single-sum options to value of each if paid in the form of the QJSA and that this conversion uses interest and life expectancy assumptions. The explanation notes that the calculation of the QJSA depends on the actual age of the spouse (for example, annuity payments will be significantly lower if the spouse is significantly younger than the participant), and that the amount of the single-sum payment will depend on the interest rates that apply when the participant actually takes a distribution. The explanation also includes an offer to provide a calculation specific to the participant upon request, and an offer to provide mortality tables used in preparing calculations upon request.

(iv) In accordance with paragraph (d)(4)(i) of this section, Participant M requests specific information regarding the amounts payable under the QJSA, the joint and 100 percent survivor annuity, and the single sum.

(v) Based on the information about the age of Participant M's spouse, Plan A determines that M's QJSA is $2,856.30 per month, the joint and 100 percent survivor annuity is $2,628.60 per month, and the single sum is $497,876. The actuarial present value of the QJSA (determined using the 5.5 percent interest and the section 417(e)(3) applicable mortality table, the actuarial assumptions required under section 417) is $525,091. Accordingly, the value of the single-sum distribution available to M on October 1, 2004, is 94.8 percent of the actuarial present value of the QJSA. In addition, the actuarial present value of the life annuity and the 100 percent joint and survivor annuity are 95.0 percent of the actuarial present value of the QJSA.

(vi) Plan A provides M with a QJSA explanation that incorporates these more precise calculations of the financial effect and relative value of the optional forms for which M requested information.

(f) *Effective date.* This section applies to QJSA explanations with respect to distributions with annuity starting dates on or after October 1, 2004, and to QPSA explanations provided on or after July 1, 2004. In the case of a retroactive annuity starting date under section 417(a)(7), when required under § 1.417(e)–1(b)(3)(vi), the date of commencement of the actual payments based on the retroactive annuity starting date is substituted for the annuity starting date for this purpose.

§ 1.417(e)–1 [Amended]

■ **Par. 5.** In § 1.417(e)–1, paragraph (b)(2) is amended by removing the language "§ 1.401(a)–20 Q&A–36" and adding "§ 1.417(a)(3)–1" in its place.

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

■ **Par. 6.** The authority citation for part 602 continues to read as follows:

Authority: 26 U.S.C. 7808.

■ **Par. 7.** In § 602.101, paragraph (b) is amended by adding an entry for "§ 1.417(a)(3)–1" in numerical order to the table to read in part as follows:

§ 602.101 OMB Control numbers.

* * * * *

(b) * * *

CFR part or section where identified and described	Current OMB control No.

CFR part or section where identified and described	Current OMB control No.
. . . . .	.
1.417(a)(3)–1	1545–0928
. . . . .	.

Mark E. Matthews,
Deputy Commissioner for Services and Enforcement.
Approved: December 3, 2003.
Gregory Jenner,
Deputy Assistant Secretary (Tax Policy).
[FR Doc. 03–31033 Filed 12–16–03; 8:45 am]
BILLING CODE 4830–01–P

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

29 CFR Part 1626

RIN 3046–AA54

Procedures—Age Discrimination in Employment Act

AGENCY: Equal Employment Opportunity Commission (EEOC).
ACTION: Final rule.

SUMMARY: This rule revises the regulations on the processing of age discrimination charges to provide that the Commission will issue a notice, when it has dismissed or otherwise terminated the processing of an age discrimination charge, that the right to file a lawsuit on the charge under the Age Discrimination in Employment Act (ADEA) will expire in 90 days. These amendments also delete references to the previously applicable two- or three-year limitations period for filing a civil action. Finally, EEOC is deleting its list of ADEA referral states because the list is obsolete and unnecessary. These changes conform the Commission's regulations to the procedures adopted by the Commission to implement section 115 of the Civil Rights Act of 1991.

EFFECTIVE DATE: January 16, 2004.

FOR FURTHER INFORMATION CONTACT: Thomas J. Schlageter, Assistant Legal Counsel at (202) 663–4669 (voice) or (202) 663–7026 (TTY). This final rule is also available in the following formats: large print, braille, audiotape and electronic file on computer disk. Requests for this notice in an alternative format should be made to EEOC's Publication Center at 1–800–669–3362.

SUPPLEMENTARY INFORMATION: The Commission published a Notice of Proposed Rulemaking (NPRM) in the **Federal Register** on August 12, 2002 (67 FR 52431), proposing revisions to part 1626 of its regulations. These changes were proposed to (1) conform the Commission's regulations to the procedures it adopted for the processing of charges under the Age Discrimination in Employment Act (ADEA) following passage of section 115 of the Civil Rights Act of 1991 (CRA) and (2) delete an obsolete and unnecessary list of State Fair Employment Practices Agencies to which EEOC will send copies of ADEA charges.

The current § 1626.7(a) provides that charges will not be rejected as untimely provided that they are not barred by the statute of limitations contained in section 6 of the Portal to Portal Act. This provision recognized the Commission's authority to file suit within the Portal to Portal Act's limitation period even if the aggrieved party did not have a private right of action because the charge was filed more than 180 days (or 300 days in a referral jurisdictions) after the discriminatory event took place. Following passage of the CRA, the statute of limitations contained in the Portal to Portal Act is no longer applicable to ADEA lawsuits filed by either the aggrieved party or the Commission. We therefore proposed to delete the current § 1626.7(a). The Commission will dismiss ADEA charges filed more than 180 days (or 300 days in a referral jurisdiction) after the discriminatory act, absent waiver, estoppel or equitable tolling.

The current § 1626.9(b) and (c) contain a list of states to which the Commission refers charges under section 14(b) of the ADEA. These lists were created when there were relatively few such agencies. Since almost all states now have laws prohibiting age discrimination, we proposed to delete the lists because they are obsolete and unnecessary. The regulation continues to provide that the Commission will refer age charges to appropriate state agencies.

Section 7(d) of the ADEA requires that, upon receipt of a charge, the Commission shall promptly attempt to eliminate any alleged unlawful practice by informal methods of conciliation, conference and persuasion. Under current § 1626.12, EEOC issues a notice if this attempt at conciliation fails. To eliminate any possible confusion between this failure of conciliation notice and the new Notice of Dismissal or Termination (NDT), we proposed to add a sentence to § 1626.12 stating that notice under this section is not a Notice of Dismissal or Termination under § 1626.20.

The second sentence and last two sentences of the current § 1626.15(b) concern the tolling of the ADEA's statute of limitations during EEOC conciliation. Because this tolling provision no longer applies, we proposed to delete these sentences. We also proposed an editorial change to the third sentence, eliminating a reference to the current second sentence that was being deleted.

The Commission proposed to add three new sections. Section 1626.17 was modeled on 29 CFR 1601.28 and provides for issuance of a Notice of Dismissal or Termination to an aggrieved person when EEOC dismisses or otherwise terminates its processing of an ADEA charge. Notification will be made by issuing a Notice of Dismissal or Termination to each aggrieved person. In the case of a charge concerning more than one aggrieved person, Notices of Dismissal or Termination will only be issued when the charge is dismissed or EEOC's proceedings are terminated as to all aggrieved persons.

Section 1626.18 concerns the institution of private civil actions. Paragraph (a) states that a civil action may be filed by an aggrieved person in either federal or state court under section 7 of the ADEA. Paragraph (b) makes clear that an aggrieved person need not wait for a Notice of Dismissal or Termination to be issued in order to file a civil action, but can file suit on a pending charge any time after 60 days have elapsed from the filing of the charge. Paragraph (c) provides that the right to file a private suit under the ADEA expires 90 days after receipt of a Notice of Dismissal or Termination. Paragraph (d) provides that when the Commission becomes aware that an aggrieved person has filed a private lawsuit under the ADEA against the respondent named in the charge, the Commission will terminate further processing of the charge or the portion of the charge affecting that person unless it is determined that further proceedings will effectuate the purposes of the ADEA.

Section 1626.19 clarifies that, unlike Title VII of the Civil Rights Act of 1964, 42 U.S.C. 2000e, and Title I of the Americans with Disabilities Act, 42 U.S.C. 12101 *et seq.*, the ADEA does not require the filing of a charge before the Commission has authority to investigate and litigate a possible violation of the ADEA. In addition, the termination of proceedings on an age discrimination charge and the issuance of a Notice of Dismissal or Termination does not prevent the Commission from investigating or litigating a matter that may have been the subject of or related to a charge on which a Notice of Dismissal or Termination was issued.

Two comments were received in response to the NPRM. Both expressed support for the proposed revisions. They noted that conforming the regulations to existing practice would provide helpful clarification and avoid unnecessary confusion.

In addition to this over-all support for the proposed changes, one of the two commenters encouraged the Commission to exercise thoughtful restraint in enforcing the ADEA where a timely charge has not been filed or after a Notice of Dismissal or Termination has been issued. This comment did not request any change in the regulation. The Commission does, however, want to reassure the commenter that it intends to exercise its enforcement discretion responsibly. The other commenter suggested further clarification of §§ 1626.17(a), 1626.17(a)(3), and 1626.18.

In § 1626.17(a), we proposed that Notices of Dismissal or Termination be issued in the case of a charge involving more than one aggrieved person only when EEOC terminates its processing as to all aggrieved persons. The commenter suggests that it would better serve judicial economy to issue Notices of Dismissal or Termination to the aggrieved persons seriatim during the process as we make determinations rather than to all at the end. We disagree and think the suggested alternative would be inefficient and not serve judicial economy. Seriatim issuance would likely lead to consecutive court filings by individuals as they receive the Notices and either premature termination of EEOC's processing of the remainder of the charge or early EEOC intervention in the lawsuit(s). The Commission believes that its proposal better serves efficiency and judicial economy by allowing orderly completion of the administrative process, appropriate pre-suit conciliation efforts by EEOC and contemporaneous filing of individual lawsuits.

In § 1626.17(a)(3), we proposed that the issuance of a Notice of Dismissal or Termination would not preclude the Commission from offering the recipient of the notice such assistance as it deems necessary or appropriate or from continuing to investigate. The commenter argues that this is vague, could mislead the aggrieved person into thinking that EEOC will intervene in his or her lawsuit and overstates EEOC's authority. The proposed language on rendering assistance was borrowed from our Title VII and ADA procedural regulations. *See* 29 CFR 1601.28(a)(4)("The issuance of a notice of right to sue does not preclude the Commission from offering such assistance to a person issued such notice as the Commission deems necessary or appropriate."). That language has appeared in 29 CFR 1601.28 for over 25 years. We are not aware of any evidence that this language has been found to be confusing or that individuals have been misled by it. Furthermore, the statement that the Commission could continue to investigate or litigate after a Notice is issued is simply a recognition that the Commission's jurisdiction under the ADEA is not dependent on the filing of a charge.

In § 1626.18(b), we state that an aggrieved person who files a charge may file a lawsuit without waiting for a Notice of Dismissal or Termination as long as 60 days have passed since the filing of the charge. The commenter argues that § 1626.18 does not present a clear picture of the aggrieved person's right to file a private lawsuit because, among other things, it does not mention that the right to file an individual lawsuit terminates if the Commission files suit on the charge. We agree that the individual's right to file a lawsuit is terminated when the Commission files a lawsuit and have added some language to § 1626.18(c) to make that clear. The commenter also argues that subsection (b) either makes an unwarranted assumption not based on clear statutory language or places undue emphasis on the 60-day provision of the ADEA. We believe subsection (b) is based on clear statutory authority allowing a private ADEA lawsuit to be filed anytime after 60 days from filing of the charge up to 90 days after issuance of the Notice of Dismissal or Termination or the filing of a Commission lawsuit. We do not believe that § 1626.18 gives improper emphasis to the right to file a lawsuit before the Notice is issued.

In § 1626.18(d), we stated that the Commission "may" dismiss a charge if a private lawsuit has been filed. The commenter states that the word "may" in subsection (d) should be "shall" because "may" implies that the Commission has unfettered discretion. Proposed subsection (d) provided that the EEOC "may" dismiss a charge if a private lawsuit is filed on the charge unless an EEOC official determines that further processing would effectuate the purposes of the Act. The effect and intent of the proposed provision, as indicated in the preamble to the NPRM, was that EEOC would terminate further proceedings unless an appropriate official made an affirmative determination that further processing would effectuate the purposes of the Act. While we do not think that the use of "shall" instead of "may" changes the result, we agree with the commenter that "shall" makes more sense in light of the "unless" clause and have made that change.

Finally, we made three minor editorial changes. We changed "Associate General Counsel" to "General Counsel" in §§ 1626.17(b) and 1626.18(d). We modified § 1626.17(c)(2) slightly to mirror the similar, but better stated, language in § 1626.17(a)(1). We also added a cross reference to § 1626.12 in § 1626.18(b).

Regulatory Procedures

Executive Order 12866

Pursuant to Executive Order 12866, EEOC has coordinated this final rule with the Office of Management and Budget. Under section 3(f)(1) of Executive Order 12866, EEOC has determined that the regulation will not have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State or local tribal governments or communities. Therefore, a detailed cost-benefit assessment of the regulation is not required.

Paperwork Reduction Act

This final rule contains no new information collection requirements subject to review by the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

Regulatory Flexibility Act

The Commission certifies under 5 U.S.C. 605(b) that this final rule will not have a significant economic impact on a substantial number of small entities, because it does not affect any small entities. The regulation affects what the Commission does and what aggrieved parties can do. For this reason, a regulatory flexibility analysis is not required.

Unfunded Mandates Reform Act of 1995

This final rule will not result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

List of Subjects in 29 CFR Part 1626

Administrative practice and procedure, aged, equal employment opportunity.

Dated: December 10, 2003.

For the Commission.

Cari M. Dominguez,

Chair.

■ For the reasons set forth in the preamble, EEOC amends 29 CFR part 1626 as follows:

PART 1626—PROCEDURES—AGE DISCRIMINATION IN EMPLOYMENT ACT

■ 1. The authority citation for part 1626 continues to read as follows:

Authority: Sec. 9, 81 Stat. 605, 29 U.S.C. 628; sec. 2, Reorg. Plan No. 1 of 1978, 3 CFR, 1978 Comp., p. 321.

§ 1626.7 [Amended]

■ 2. Section 1626.7 is amended by removing paragraph (a) and redesignating paragraphs (b) and (c) as paragraphs (a) and (b).

§ 1626.9 [Amended]

■ 3. Section 1626.9 is amended by removing the paragraph designation "(a)" and by removing paragraphs (b) and (c).

■ 4. Section 1626.12 is amended by adding a sentence at the end of the section to read as follows:

§ 1626.12 Conciliation efforts pursuant to section 7(d) of the Act.

* * * Notification under this section is not a Notice of Dismissal or Termination under § 1626.17.

§ 1626.15 [Amended]

■ 5. Paragraph (b) of § 1626.15 is amended by:

(a) removing the second sentence;

(b) removing the words "Such notice will" and adding in their place, the words "Notice of commencement of conciliation will"; and

(c) removing the last two sentences.

§§ 1626.17, 1626.18, 1626.19 [Redesignated as §§ 1626.20, 1626.21 and 1626.22]

■ 6. Sections 1626.17, 1626.18 and 1626.19 are redesignated as §§ 1626.20, 1626.21 and 1626.22.

■ 7. A new section 1626.17 is added to read as follows:

§ 1626.17 Notice of Dismissal or Termination.

(a) *Issuance of Notice of Dismissal or Termination.* (1) Where a charge filed with the Commission under the ADEA is dismissed or the Commission's proceedings are otherwise terminated, the Commission will issue a Notice of Dismissal or Termination on the charge as described in paragraph (c) of this section to the person(s) claiming to be aggrieved. In the case of a charge concerning more than one aggrieved person, the Commission will only issue a Notice of Dismissal or Termination when the charge is dismissed or proceedings are otherwise terminated as to all aggrieved persons.

(2) Where the charge has been filed under the ADEA and Title VII or the Americans with Disabilities Act (ADA), the Commission will issue a Notice of Dismissal or Termination under the ADEA at the same time it issues the Notice of Right to Sue under Title VII or the ADA.

(3) The issuance of a Notice of Dismissal or Termination does not preclude the Commission from offering such assistance to a person receiving the notice as the Commission deems necessary or appropriate. The issuance does not preclude or interfere with the Commission's continuing right to investigate and litigate the same matter or any ADEA matter under its enforcement authority.

(b) *Delegation of Authority to Issue Notices of Dismissal or Termination.* The Commission hereby delegates authority to issue Notices of Dismissal or Termination, in accordance with this section, to: District Directors; Area Directors; Local Directors; the Director of the Office of Field Programs; the General Counsel; the Director of Field Management Programs, Office of Field Programs; or their designees.

(c) *Contents of the Notice of Dismissal or Termination.* The Notice of Dismissal or Termination shall include:

(1) A copy of the charge;

(2) Notification that the charge has been dismissed or the Commission's proceedings have otherwise been terminated; and

(3) Notification that the aggrieved person's right to file a civil action against the respondent on the subject charge under the ADEA will expire 90 days after receipt of such notice.

■ 8. A new section 1626.18 is added to read as follows:

§ 1626.18 Filing of private lawsuit.

(a) An aggrieved person may file a civil action against the respondent named in the charge in either Federal or State court under section 7 of the ADEA.

(b) An aggrieved person whose claims are the subject of a timely pending charge may file a civil action at any time after 60 days have elapsed from the filing of the charge with the Commission (or as provided in § 1626.12) without waiting for a Notice of Dismissal or Termination to be issued.

(c) The right of an aggrieved person to file suit expires 90 days after receipt of the Notice of Dismissal or Termination or upon commencement of an action by the Commission to enforce the right of such person.

(d) If the Commission becomes aware that the aggrieved person whose claim is the subject of a pending ADEA charge has filed an ADEA lawsuit against the respondent named in the charge, it shall terminate further processing of the charge or portion of the charge affecting that person unless the District Director; Area Director; Local Director; Director of the Office of Field Programs; the General Counsel; the Director of Field Management Programs; or their designees determine at that time or at a later time that it would effectuate the purpose of the ADEA to further process the charge.

■ 9. A new section 1626.19 is added to read as follows:

§ 1626.19 Filing of Commission lawsuit.

The right of the Commission to file a civil action under the ADEA is not dependent on the filing of a charge and is not affected by the issuance of a Notice of Dismissal or Termination to any aggrieved person.

[FR Doc. 03–31042 Filed 12–16–03; 8:45 am]

BILLING CODE 6570–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[CGD01–03–111]

Drawbridge Operation Regulations: Niantic River, CT

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, First Coast Guard District, has issued a temporary deviation from the drawbridge operation regulations for the Amtrak Bridge across the Niantic River, mile 0.0, at Niantic, Connecticut. This temporary deviation will allow the bridge to remain in the closed position from 7 a.m. on January 2, 2004 through 8 p.m. on February 15, 2004. This temporary deviation is necessary to facilitate structural repairs at the bridge.

DATES: This deviation is effective from January 2, 2004 through February 15, 2004.

ADDRESSES: Materials referred to in this document are available for inspection or copying at the First Coast Guard District, Bridge Branch Office, One South Street, New York, New York, 10004, between 8 a.m. and 3:30 p.m., Monday through Friday, except Federal holidays. The telephone number is (212) 668–7165. The First Coast Guard District Bridge Branch maintains the public docket for this temporary deviation.

FOR FURTHER INFORMATION CONTACT: Mr. Joseph Schmied, Project Officer, First Coast Guard District Bridge Branch, (212) 668–7165.

SUPPLEMENTARY INFORMATION: The vertical clearance under the Amtrak Bridge in the closed position is 11 feet at mean high water and 14 feet at mean low water. The existing regulations are listed at 33 CFR 117.215(a).

The bridge owner, National Railroad Passenger Corporation (Amtrak), requested a temporary deviation from the Drawbridge Operation Regulations to facilitate scheduled structural maintenance, replacement of flange angles and tread plates, at the bridge.

The Coast Guard coordinated this project with the mariners who normally use this waterway to minimize the impact on the marine transportation system.

Under this temporary deviation the Amtrak Bridge, mile 0.0, across the Niantic River, may remain in the closed position from 7 a.m. on January 2, 2004 through 8 p.m. on February 15, 2004. Vessels that can pass under the bridge without a bridge opening may do so at all times.

This deviation from the operating regulations is authorized under 33 CFR 117.35, and will be performed with all due speed in order to return the bridge to normal operation as soon as possible.

Dated: December 9, 2003.

Vivien S. Crea,

Rear Admiral, U.S. Coast Guard, Commander, First Coast Guard District.

[FR Doc. 03–31099 Filed 12–16–03; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[COTP San Francisco Bay 03–027]

RIN 1625–AA00

Security Zone; Suisun Bay, Concord, CA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary security zone in the navigable waters of the United States adjacent to the Military Ocean Terminal Concord (MOTCO), California (formerly United States Naval Weapons Center Concord, California). In light of recent terrorist actions against the United States, the security zone is necessary to ensure the safe onloading and offloading of military equipment and to ensure the safety of the nearby public from potential subversive acts. The security zone will prohibit all persons and vessels from entering, transiting through or anchoring within a portion of the Suisun Bay surrounding the MOTCO unless authorized by the Captain of the Port (COTP) or his designated representative.

DATES: This rule is effective from 7 a.m. p.s.t. on December 8, 2003, to 11:59 p.m. p.s.t. on December 19, 2003.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket [COTP San Francisco Bay 03–027] and are available for inspection or copying at Coast Guard Marine Safety Office San Francisco Bay, Coast Guard Island, Alameda, California, 94501, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Doug Ebbers, U.S. Coast Guard Marine Safety Office San Francisco Bay, at (510) 437–3073.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a NPRM. Additionally, under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register** as the schedule and other logistical details were not known until a date fewer than 30 days prior to the start date of the military operation. Publishing a NPRM and delaying this rule's effective date would be contrary to the public interest since the safety and security of the people, ports, waterways, and properties of the Port Chicago and Suisun Bay areas would be jeopardized without the protection afforded by this security zone. Any delay in implementing this rule would be contrary to the public interest since immediate action is necessary to ensure the protection of all cargo vessels, their crews, the public and national security.

Background and Purpose

Since the September 11, 2001, terrorist attacks on the World Trade Center in New York, the Pentagon in Arlington, Virginia and Flight 93, the Federal Bureau of Investigation (FBI) has issued several warnings concerning the potential for additional terrorist attacks within the United States. In addition, the ongoing hostilities in Afghanistan and the conflict in Iraq have made it prudent for U.S. ports to be on a higher state of alert because Al-Qaeda and other organizations have declared an ongoing intention to conduct armed attacks on U.S. interests worldwide.

The threat of maritime attacks is real as evidenced by the October 2002 attack of a tank vessel off the coast of Yemen and the continuing threat to U.S. assets as described in the President's finding in Executive Order 13273 of August 21, 2002 (67 FR 56215, September 3, 2002), that the security of the U.S. is endangered as evidenced by the September 11, 2001, attacks and that such disturbances continue to endanger the international relations of the United States. *See also Continuation of the National Emergency with Respect to Certain Terrorist Attacks*, (67 FR 58317, September 13, 2002); *Continuation of the National Emergency With Respect To Persons Who Commit, Threaten To Commit, Or Support Terrorism*, (67 FR 59447, September 20, 2002). Additionally, a Maritime Advisory was issued to: *Operators of U.S. Flag and Effective U.S. controlled Vessels and Other Maritime Interests*, detailing the current threat of attack, MARAD 02–07 (October 10, 2002).

In its effort to thwart terrorist activity, the Coast Guard has increased safety and security measures on U.S. ports and waterways. As part of the Diplomatic Security and Antiterrorism Act of 1986 (Pub. L. 99–399), Congress amended section 7 of the Ports and Waterways Safety Act (PWSA), 33 U.S.C. 1226, to allow the Coast Guard to take actions, including the establishment of security and safety zones, to prevent or respond to acts of terrorism against individuals, vessels, or public or commercial structures. The Coast Guard also has authority to establish security zones pursuant to the Act of June 15, 1917, as amended by the Magnuson Act of August 9, 1950 (50 U.S.C. 191 *et seq.*), and implementing regulations promulgated by the President in subparts 6.01 and 6.04 of part 6 of title 33 of the Code of Federal Regulations.

In this particular rulemaking, to address the aforementioned security concerns, United States Army officials

have requested that the Captain of the Port, San Francisco Bay, California, establish a temporary security zone in the navigable waters of the United States surrounding the Military Ocean Terminal Concord (MOTCO), California, to safeguard vessels, cargo and crew engaged in military operations. This temporary security zone is necessary to safeguard the MOTCO terminal and the surrounding property from sabotage or other subversive acts, accidents or criminal acts. This zone is also necessary to protect military operations from compromise and interference and to specifically protect the people, ports, waterways, and properties of the Port Chicago and Suisun Bay areas.

Discussion of Rule

In this temporary rule, the Coast Guard is establishing a fixed security zone around Military Ocean Terminal Concord (MOTCO), California, encompassing the navigable waters, extending from the surface to the sea floor, within a line connecting the following coordinates: latitude 38°03′07″ N and longitude 122°03′00″ W; thence to latitude 38°03′15″ N and longitude 122°03′04″ W; thence to latitude 38°03′30″ N and longitude 122°02′35″ W; thence to latitude 38°03′50″ N and longitude 122°01′15″ W; thence to latitude 38°03′41″ N and longitude 122°00′03″ W; thence to latitude 38°03′18″ N and longitude 121°59′31″ W, and along the shoreline back to the beginning point. Persons and vessels are prohibited from entering, transiting through or anchoring within the security zone unless authorized by the Captain of the Port (COTP) or his designated representative.

Vessels or persons violating this section will be subject to the penalties set forth in 33 U.S.C. 1232 and 50 U.S.C. 192. Pursuant to 33 U.S.C. 1232, any violation of the security zone described herein, is punishable by civil penalties (not to exceed $27,500 per violation, where each day of a continuing violation is a separate violation), criminal penalties (imprisonment up to 6 years and a maximum fine of $250,000), and in rem liability against the offending vessel. Any person who violates this section using a dangerous weapon, or who engages in conduct that causes bodily injury or fear of imminent bodily injury to any officer authorized to enforce this regulation, will also face imprisonment up to 12 years. Vessels or persons violating this section are also subject to the penalties set forth in 50 U.S.C. 192: Seizure and forfeiture of the vessel to the United States, a maximum criminal fine of $10,000, and imprisonment up to 10 years, and a civil penalty of not more than $25,000 for each day of a continuing violation.

The Captain of the Port will enforce this zone and may enlist the aid and cooperation of any Federal, State, county, municipal, and private agency to assist in the enforcement of the regulation. This regulation is proposed under the authority of 33 U.S.C. 1226 in addition to the authority contained in 50 U.S.C. 191 and 33 U.S.C. 1231.

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Homeland Security (DHS).

Although this regulation restricts access to portions of navigable waters, the effect of this regulation will not be significant because the zone will encompass only a small portion of the waterway for a short duration. Vessels and persons may be allowed to enter these zones on a case-by-case basis with permission of the Captain of the Port or his designated representative.

The size of the zone is the minimum necessary to provide adequate protection for MOTCO, vessels engaged in operations at MOTCO, their crews, other vessels operating in the vicinity, and the public. The entities most likely to be affected are commercial vessels transiting to or from Suisun Bay via the Port Chicago Reach section of the channel.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule will affect the following entities, some of which may be small entities: The owners and operators of vessels intending to anchor or transit to or from Suisun Bay via the Port Chicago Reach section of the channel. Although the security zone will occupy a section of the navigable channel (Port Chicago Reach) adjacent to the Marine Ocean Terminal Concord (MOTCO), vessels may receive authorization to transit through the zone by the Captain of the Port or his designated representative on a case-by-case basis. Additionally, vessels engaged in recreational activities, sightseeing and commercial fishing will have ample space outside of the security zone to engage in these activities. Small entities and the maritime public will be advised of this security zone via public notice to mariners.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offer to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process. If the rule will affect your small business, organization, or government jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed under **FOR FURTHER INFORMATION CONTACT** for assistance in understanding this rule.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

We have analyzed this rule under Commandant Instruction M16475.lD, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction, from further environmental documentation because we are establishing a security zone.

A final "Environmental Analysis Check List" and a final "Categorical Exclusion Determination" are available in the docket where located under **ADDRESSES.**

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701; 50 U.S.C. 191, 195; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 165.T11–097 to read as follows:

§ 165.T11–097 Security Zone; Navigable Waters of the United States Surrounding Military Ocean Terminal Concord (MOTCO), Concord, California.

(a) *Location.* The security zone, which will be marked by lighted buoys, will encompass the navigable waters, extending from the surface to the sea floor, surrounding the Military Ocean Terminal Concord, Concord, California, within a line connecting the following coordinates: latitude 38°03′07″ N and longitude 122°03′00″ W; thence to latitude 38°03′15″ N and longitude 122°03′04″ W; thence to latitude 38°03′30″ N and longitude 122°02′35″ W; thence to latitude 38°03′50″ N and longitude 122°01′15″ W; thence to latitude 38°03′41″ N and longitude 122°00′03″ W; thence to latitude 38°03′18″ N and longitude 121°59′31″ W, and along the shoreline back to the beginning point.

(b) *Regulations.* (1) In accordance with the general regulations in § 165.33 of this part, entering, transiting through or anchoring in this zone is prohibited unless authorized by the Coast Guard Captain of the Port, San Francisco Bay, or his designated representative.

(2) Persons desiring to transit the area of the security zone may contact the Patrol Commander on scene on VHF–FM channel 13 or 16 or the Captain of the Port at telephone number 415–399–3547 to seek permission to transit the area. If permission is granted, all persons and vessels must comply with the instructions of the Captain of the Port or his or her designated representative.

(c) *Authority.* In addition to 33 U.S.C. 1231 and 50 U.S.C. 191, the authority for this section includes 33 U.S.C. 1226.

(d) *Enforcement.* The U.S. Coast Guard may be assisted in the patrol and enforcement of the security zone by local law enforcement and the MOTCO police as necessary.

(e) *Effective period.* This section becomes effective at 7 a.m. p.s.t. on December 8, 2003, and terminates at 11:59 p.m. p.s.t. on December 19, 2003.

Dated: December 3, 2003.

Gerald M. Swanson,

Captain, U.S. Coast Guard, Captain of the Port, San Francisco Bay, California.

[FR Doc. 03–31098 Filed 12–16–03; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 721

[OPPT–2002–0078; FRL–7307–3]

RIN 2070–AB27

Significant New Uses of Certain Chemical Substances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is promulgating significant new use rules (SNURs) under section 5(a)(2) of the Toxic Substances Control Act (TSCA) for 65 chemical substances which were the subject of premanufacture notices (PMNs) and subject to TSCA section 5(e) consent orders issued by EPA. This action requires persons who intend to manufacture, import, or process these chemical substances for a significant new use to notify EPA at least 90 days before commencing the manufacturing or processing of the chemical substance for a use designated by this rule as a significant new use. The required notification will provide EPA with the opportunity to evaluate the intended

use, and if necessary, to prohibit or limit that activity before it occurs to prevent any unreasonable risk of injury to human health or the environment.

DATES: The effective date of this rule is February 17, 2004, without further notice, unless EPA receives adverse or critical comments, or notice of intent to submit adverse or critical comments before January 16, 2004. This rule shall be promulgated for purposes of judicial review at 1 p.m. (e.s.t.) on December 31, 2003.

If EPA receives adverse or critical comments or notice of intent to submit adverse or critical comments before January 16, 2004, on EPA's action in establishing a SNUR for one or more of the chemical substances subject to this rule, EPA will withdraw the SNUR before the effective date for the chemical substance for which the adverse or critical comment or notice of intent to submit adverse or critical comment is received and will issue a proposed SNUR providing a 30-day period for public comment.

ADDRESSES: Adverse or critical comments or notice of intent to submit adverse or critical comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: *For general information contact*: Barbara Cunningham, Director, Environmental Assistance Division (7408M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 554–1404; e-mail address: *TSCA-Hotline@epa.gov*.

For technical information contact: James Alwood, Chemical Control Division (7405M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 564–8974, e-mail address: *alwood.jim@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you manufacture, import, process, or use the chemical substances contained in this rule. Potentially affected entities may include, but are not limited to:

- Chemical manufacturers (NAICS 325), e.g., Manufacturers, importers, processors, and users of chemicals
- Petroleum and coal product industries (NAICS 324), e.g., Manufacturers, importers, processors, and users of chemicals

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. To determine whether you or your business may be affected by this action, you should carefully examine the applicability provisions in 40 CFR 721.5. If you have any questions regarding the applicability of this action to a particular entity, consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket*. EPA has established an official public docket for this action under docket identification (ID) number OPPT–2002–0078. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the EPA Docket Center, Rm. B102-Reading Room, EPA West, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The EPA Docket Center Reading Room telephone number is (202) 566–1744 and the telephone number for the OPPT Docket, which is located in EPA Docket Center, is (202) 566–0280.

2. *Electronic access*. You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr/*. The OPPTS harmonized test guidelines referenced in this document are available at *http://www.epa.gov/opptsfrs/home/guidelin.htm/*. A frequently updated electronic version of 40 CFR part 721 is available at *http://www.access.gpo.gov/nara/cfr/cfrhtml_00/Title_40/40cfr721_00.html/*, a beta site currently under development.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select "search," then key in the appropriate docket ID number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

C. How and to Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit I.D. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically*. If you submit an electronic comment as prescribed in this unit, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets*. Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket/*, and follow the online instructions for submitting comments. Once in the system, select "search," and then key in docket ID number OPPT–20027–0078. The system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail*. Comments may be sent by e-mail to *oppt.ncic@epa.gov*, Attention: Docket ID Number OPPT–2002–0078. In contrast to EPA's electronic public docket, EPA's e-mail system is not an "anonymous access" system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM*. You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Unit I.C.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By mail*. Send your comments to: Document Control Office (7407M), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

3. *By hand delivery or courier*. Deliver your comments to: OPPT Document Control Office (DCO) in EPA East Bldg., Rm. 6428, 1201 Constitution Ave., NW., Washington, DC. Attention: Docket ID Number OPPT–2002–0078. The DCO is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the DCO is (202) 564–8930.

D. How Should I Submit CBI to the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

E. What Should I Consider as I Prepare My Comments for EPA?

We invite you to provide your views on the various options in this document, new approaches we haven't considered, the potential impacts of the various options (including possible unintended consequences), and any data or information that you would like the Agency to consider during the development of the final action. You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Offer alternative ways to improve the rule.

7. Make sure to submit your comments by the deadline in this document.

8. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. Background

A. What Action is the Agency Taking?

EPA is promulgating this SNUR using direct final procedures. This SNUR will require persons to notify EPA at least 90 days before commencing manufacturing, importing, or processing a chemical substance for any activity designated by this SNUR as a significant new use. The supporting rationale and background to this rule are more fully set out in the preamble to EPA's first direct final SNUR published in the **Federal Register** of April 24, 1990 (55 FR 17376). Consult that preamble for further information on the objectives, rationale, and procedures for the rules and on the basis for significant new use designations including provisions for developing test data.

B. What is the Agency's Authority for Taking this Action?

Section 5(a)(2) of TSCA (15 U.S.C. 2604(a)(2)) authorizes EPA to determine that a use of a chemical substance is a "significant new use." EPA must make this determination by rule after considering all relevant factors, including those listed in TSCA section 5(a)(2). Once EPA determines that a use of a chemical substance is a significant new use, TSCA section 5(a)(1)(B) requires persons to submit a notice to EPA at least 90 days before they manufacture, import, or process the chemical substance for that use. The mechanism for reporting under this requirement is established under 40 CFR 721.5.

C. Applicability of General Provisions

General provisions for SNURs appear under subpart A of 40 CFR part 721. These provisions describe persons subject to the rule, recordkeeping requirements, exemptions to reporting requirements, and applicability of the rule to uses occurring before the effective date of the final rule. Provisions relating to user fees appear at 40 CFR part 700. Persons subject to this SNUR must comply with the same notice requirements and EPA regulatory procedures as submitters of PMNs under TSCA section 5(a)(1)(A). In particular, these requirements include the information submission requirements of TSCA section 5(b) and 5(d)(1), the exemptions authorized by TSCA section 5(h)(1), (h)(2), (h)(3), and (h)(5), and the regulations at 40 CFR part 720. Once EPA receives a SNUR notice, EPA may take regulatory action under TSCA section 5(e), 5(f), 6, or 7 to control the activities on which it has received the SNUR notice. If EPA does not take action, EPA is required under TSCA section 5(g) to explain in the **Federal Register** its reasons for not taking action.

Persons who intend to export a chemical substance identified in a proposed or final SNUR are subject to the export notification provisions of TSCA section 12(b). The regulations that interpret TSCA section 12(b) appear at 40 CFR part 707. Persons who intend to import a chemical substance identified in a final SNUR are subject to the TSCA section 13 import certification requirements, which appear at 19 CFR 12.118 through 12.127 and 127.28. Such persons must certify that they are in compliance with SNUR requirements. The EPA policy in support of the import certification appears at 40 CFR part 707.

III. Substances Subject to this Rule

EPA is establishing significant new use and recordkeeping requirements for the following chemical substances under 40 CFR part 721, subpart E. In this unit, EPA provides a brief description for each chemical substance, including its PMN number, chemical name (generic name if the specific name is claimed as CBI), CAS number (if assigned for non-confidential chemical identities), basis for the action taken by EPA in the TSCA section 5(e) consent order or as a non-section 5(e) SNUR for the chemical substance (including the statutory citation and specific finding), toxicity concern, and the CFR citation assigned in the regulatory text section of this rule. The specific uses which are designated as significant new uses are cited in the regulatory text section of this document by reference to 40 CFR part 721, subpart E where the significant new uses are described in detail. Certain new uses, including production limits and other uses designated in the rule are claimed as CBI. The procedure for obtaining confidential information is set out in Unit VII.

Where the underlying TSCA section 5(e) consent order prohibits the PMN submitter from exceeding a specified production limit without performing specific tests to determine the health or environmental effects of a chemical substance, the tests are described in this unit. As explained further in Unit VI., the SNUR for such chemical substances contains the same production limit, and exceeding the production limit is defined as a significant new use. Persons who intend to exceed the production limit must notify the Agency by submitting a significant new use notice (SNUN) at least 90 days in advance. In addition, this unit describes tests that are recommended by EPA to provide sufficient information to evaluate the chemical substance, but for which no production limit has been established in the TSCA section 5(e) consent order. Descriptions of recommended tests are provided for informational purposes.

Data on potential exposures or releases of the chemical substances, testing other than that specified in the TSCA section 5(e) consent order for the chemical substances, or studies on analogous chemical substances, which may demonstrate that the significant new uses being reported do not present an unreasonable risk, may be included with significant new use notification. Persons submitting a SNUN must comply with the same notice requirements and EPA regulatory procedures as submitters of PMNs, as stated in 40 CFR 721.1(c), including submission of test data on health and environmental effects as described in 40 CFR 720.50.

EPA is not publishing SNURs for PMNs 99–255, 99–314, 99–350/351/352/353, 99–534,99–848, 00–277/278/280, 00–281–285, 00–286–292, 00–502/503/504, 00–574/575/576/577/608,00–901, 00–1085, 00–1093, 01–558, 01–584, 01–629, 01–728, 01–757, 01–776, 02–16, 02–195, 02–415, 02–536, 02–609, and 02–700, which are subject to a final TSCA section 5(e) consent order. The TSCA section 5(e) consent orders for these chemical substances are derived from an exposure finding based solely on substantial production volume and significant or substantial human exposure and/or release to the environment of substantial quantities. For these cases there were limited or no toxicity data available for the PMN substances. In such cases, EPA regulates the new chemical substances under TSCA section 5(e) by requiring certain toxicity tests. For instance, chemical substances with potentially substantial releases to surface waters would be subject to toxicity testing of aquatic organisms and chemicals with potentially substantial human exposures would be subject to health effects testing for mutagenicity, acute effects, and subchronic effects. However, for these chemical substances, the short-term toxicity testing required by the TSCA section 5(e) consent order is usually completed within 1 to 2 years of notice of commencement (NOC). EPA's experience with exposure-based SNURs requiring short-term testing is that the SNUR is often revoked within 1 to 2 years when the test results are received. Rather than issue and revoke SNURs in such a short span of time, EPA will defer publication of exposure-based SNURs until either a NOC or data demonstrating risk are received unless the toxicity testing required is long-term. EPA is issuing this explanation and notification as required in 40 CFR 721.160(a)(2) as it has determined that SNURs are not needed at this time for these chemical substances which are subject to a final section 5(e) consent order under TSCA.

PMN Number P–97–1108
Chemical name: (generic) Polycarboxylic acid ester.
CAS number: Not available.
Basis for action: The PMN substance will be used as a plasticizer. Based on structural analogy to esters, EPA is concerned that toxicity to aquatic organisms may occur at a concentration as low as 1 part per billion (ppb) of the PMN substance in surface waters. Since

environmental releases are not expected as described in the PMN, EPA has not determined that the proposed manufacturing, processing, and use of the PMN substance may present an unreasonable risk. EPA has determined, however, that release of the PMN substance to surface waters may cause significant adverse environmental effects. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(4)(ii).
Recommended testing: EPA has determined that a fish chronic toxicity study (OPPTS 850.1400 test guideline), a daphnid chronic toxicity study (OPPTS 850.1300 test guideline); and an algal toxicity study (OPPTS 850.5400 test guideline) would help to characterize the environmental effects of the PMN substance. A porous pot study (OPPTS 835.3220 test guideline) would help to characterize possible environmental effects of the PMN substance as well.
CFR citation: 40 CFR 721.3110.

PMN Number P–98–848
Chemical name: Silicic acid ($H_6SiO_2O_7$), magnesium strontium salt(1:1:2), dysprosium and europium-doped.
CAS number: 181828–07–9.
Effective date of section 5(e) consent order: June 1, 2000.
Basis for section 5(e) consent order: The order was issued under section 5(e)(1)(A)(i) and section 5(e)(1)(A)(ii)(I) of TSCA based on a finding that the PMN substance may present an unreasonable risk to human health.
Recommended testing: EPA has determined that a 90-day subchronic inhalation study (OPPTS 870.3465 test guideline) and a 2-year bioassay (OPPTS 870.4200) would help to characterize the human health effects of the PMN substance.
CFR citation: 40 CFR 721.9511.

PMN Number P–98–1033/1034/1035
Chemical name: (generic) Halogen substituted oxetanes.
CAS number: Not available.
Effective date of section 5(e) consent order: April 6, 1999.
Basis for section 5(e) consent order: The order was issued under section 5(e)(1)(A)(i) and section 5(e)(1)(A)(ii)(II) of TSCA based on a finding that these PMN substances are expected to be produced in substantial quantities, there may be significant or substantial human exposure to the PMN substances, and the PMN substances may enter the environment in substantial quantities.
Recommended testing: EPA has determined that the following studies would help to characterize the health effects of these PMN substances: A 28-day oral toxicity study in rats (OPPTS 870.3050) that includes a neurotoxicity functional observational battery (National Technical Information Service (NTIS): PB 91–154617) for all test doses with the highest dose set at 1,000 milligram/kilogram (mg/kg); and for the highest test dose group only, histopathologic examination to include testes/ovaries and lungs; an *in vivo* mouse micronucleus assay (intraperitoneal) (OPPTS 870.5395); and an oral developmental toxicity study in one species (OPPTS 870.3700). EPA has determined that a fish acute toxicity study (OPPTS 850.1075), a daphnid acute toxicity study (OPPTS 850.1010), and an algal acute toxicity study (OPPTS 850.5400) would help to characterize the environmental effects of these PMN substances. The PMN submitter has agreed not to exceed the production volume limit without performing these toxicity studies using P–98–1033.
CFR citation: 40 CFR 721.5546.

PMN Number P–99–783
Chemical name: (generic) Chromate(2-), [3-hydroxy-4-[(2-hydroxy-1-naphthenyl)azo]-7-nitro-1-substituted][N-[7-hydroxy-8-[(2-hydroxy-5-nitrophenyl)azo]-1-substituted]-, salt.
CAS number: Not available.
Basis for action: The PMN substance will be used for the dyeing of wool fiber. Based on structural analogy to anionic dyes, EPA is concerned that toxicity to aquatic organisms may occur at a concentration as low as 7 part per billion (ppb) of the PMN substance in surface waters. Since significant environmental exposure is not expected as described in the PMN, EPA has not determined that the proposed manufacturing, processing, and use of the PMN substance may present an unreasonable risk. EPA has determined, however, that release of the PMN substance to surface waters in significant amounts from domestic manufacture may cause significant adverse environmental effects. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(4)(ii).
Recommended testing: EPA has determined that a daphnid acute toxicity study (OPPTS 850.1010 test guideline), and an algal toxicity study (OPPTS 850.5400 test guideline) would help to characterize the environmental effects of the PMN substance. A stock solution should be prepared and its pH adjusted to 7.0 prior to testing. The dilution water of the daphnid acute toxicity test should have a hardness of less than 180.0 mg/liter(L) as $CaCO_3$ and a total organic carbon (TOC) concentration of less than 2.0 mg TOC/L. The green algal growth medium should also have a TOC of less than 2.0 mg TOC/L. The daphnid test should be done with a flow-through method and measured concentrations. The algal toxicity test should be done with the static method and measured concentrations.
CFR citation: 40 CFR 721.5288.

PMN Number P–99–817
Chemical name: (generic) Salt of an acrylic acid – acrylamide terpolymer
CAS number: Not available.
Basis for action: The PMN substance will be used as described in the PMN. Based on structural analogy to polyanionic polymers, EPA has identified concerns for lung toxicity from respiratory overload if the PMN substance is inhaled. Since significant human exposure is unlikely when the PMN substance is used as described in the PMN, EPA has not determined that the proposed manufacturing, processing, and use of the PMN substance may present an unreasonable risk. EPA has determined, however, that use of the PMN substance as a solid may result in significant human exposure. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(3)(ii).
Recommended testing: EPA has determined that the 90-day inhalation toxicity study with a 60-day holding period (OPPTS 870.3465 test guideline) would help to characterize the human health effects of the PMN substance. Attention should be given to the lungs; including histopathology of the lungs (inflamation, epithelial hyperplasia, and fibrosis), bronchoalveolar lavage (BAL) analysis for markers of lung injury, and lung burden analysis for clearance of the test material (EPA–748–R–96–001). The neurotoxicity components and examination of organs other than the lungs are not required.
CFR citation: 40 CFR 721.9640.

PMN Number P–99–897
Chemical name: (generic) Substituted benzothiazole-azo-substituted benzoquinoline nickel complex.
CAS number: Not available
Basis for action: The PMN substance will be used as a material for optical disks. Based on analogy to nickel, EPA is concerned that toxicity to aquatic organisms may occur at a concentration as low as 5 ppb of the PMN substance in surface waters. Since environmental releases are not expected as described in the PMN, EPA has not determined that the proposed manufacturing, processing, and use of the PMN substance may present an unreasonable risk. EPA has determined, however, that release of the PMN substance to surface waters may cause significant adverse environmental effects. Based on this

information, the PMN substance meets the concern criteria at § 721.170(b)(4)(ii).
Recommended testing: EPA has determined that a fish acute toxicity study (OPPTS 850.1075 test guideline), a daphnid acute toxicity study (OPPTS 850.1010 test guideline), and an algal toxicity study (OPPTS 850.5400 test guideline) would help to characterize the environmental effects of the PMN substance.
CFR citation: 40 CFR 721.5340.

PMN Number P–99–920
Chemical name: Poly(oxy-1,2-ethanediyl), alpha-(9Z)-9-octadecenyl-.omega.-hydroxy-, phosphate, ammonium salt.
CAS number: 38857–49–1
Basis for action: The PMN substance will be used as a dispersing agent for pigment pastes. Based on structural analogy to anionic surfactants, EPA is concerned that toxicity to aquatic organisms may occur at a concentration as low as 8 ppb of the PMN substance in surface waters. Since significant environmental releases are not expected as described in the PMN, EPA has not determined that the proposed processing, and use of the PMN substance may present an unreasonable risk. EPA has determined, however, that domestic manufacture may result in release of the PMN substance to surface waters which may cause significant adverse environmental effects. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(4)(ii).
Recommended testing: EPA has determined that a fish acute toxicity study (OPPTS 850.1075 test guideline), a daphnid acute toxicity study (OPPTS 850.1010 test guideline), and an algal toxicity study (OPPTS 850.5400 test guideline) would help to characterize the environmental effects of the PMN substance. Tests for fish and daphnids should be done with a flow through method and measured concentrations. The algal test can be done with a static method and measured concentrations. A stock solution of PMN substance should be prepared and adjusted to pH 7 with either HCl or NaOH.
CFR citation: 40 CFR 721.5293.

PMN Number P–99–928
Chemical name: 2-propanol, 1,1',1'-nitrilotris-, compds. with ethanol 2-[2-(C_{12-14}-alkyloxy) ethoxy] derivs. hydrogen sulfates.
CAS number: 222975–06–6.
Basis for action: The PMN substance will be used as a surfactant in a toilet bowl cleaner. Based on structural analogy to anionic surfactants, EPA is concerned that toxicity to aquatic organisms from the PMN substance may occur at a concentration of 50 ppb in surface waters. Since significant environmental releases are not expected, as described in the PMN, EPA has not determined that the proposed manufacturing, processing, and use of the PMN substance may present an unreasonable risk. EPA has determined, however, that other uses of the PMN substance could result in releases to surface waters resulting in significant adverse environmental effects. Based on this information the PMN substance meets the concern criteria at § 721.170(b)(4)(ii).
Recommended testing: EPA has determined that a fish acute toxicity study (OPPTS 850.1075 test guideline), a daphnid acute toxicity study (OPPTS 850.1010 test guideline), and an algal toxicity study (OPPTS 850.5400 test guideline) would help to characterize the environmental effects of the PMN substance. Fish and daphnid tests should be done with a flow-through method and measured concentrations. The algal test should also be done with measured concentrations of PMN substance.
CFR citation: 40 CFR 721.5358.

PMN Number P–99–951 and P–99–952
Chemical name: (generic) Polyisobutene epoxide.
CAS number: Not available.
Basis for action: The PMN substances will be used as described in the PMNs. Based on structural analogy to epoxides, EPA is concerned that toxicity to aquatic organisms from the PMN substances may occur at a concentration as low as 10 ppb in surface waters. Since significant environmental releases are not expected, as described in the PMNs, EPA has not determined that the proposed manufacturing, processing, and use of the PMN substances may present an unreasonable risk. EPA has determined, however, that other uses of the PMN substances may result in releases that may cause significant adverse environmental effects. Based on this information, the PMN substances meet the concern criteria at § 721.170(b)(4)(ii).
Recommended testing: EPA has determined that a fish acute toxicity study (OPPTS 850.1075 test guideline), a daphnid acute toxicity study (OPPTS 850.1010 test guideline), and an algal toxicity study (OPPTS 850.5400 test guideline) would help to characterize the environmental effects of the PMN substance. Fish and daphnid tests should be done using the flow-though method and measured concentrations. The algae test should be done using the static method and measured concentrations.
CFR citation: 40 CFR 721.2685.

PMN Number P–99–1075
Chemical name: 2-Propenoic acid, 2-methyl-, (octahydro-4,7-methano-1H-indene-5,?- diyl)bis(methylene) ester.
CAS number: 43048–08–4.
Basis for action: The PMN substance will be used as a coating agent for resin curing. Based on analogy to methacrylates and esters, EPA is concerned that toxicity to aquatic organisms from the PMN substance may occur at a concentration as low as 5 ppb in surface waters. EPA determined that use of the PMN substance as described in the PMN did not present an unreasonable risk because the PMN substance is imported and would not be released to surface waters. EPA has determined that domestic manufacturing and other uses of the PMN substance may result in releases to surface waters which exceed the concern concentration. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(4)(ii)
Recommended testing: EPA has determined that a fish chronic toxicity study (OPPTS 850.1400 test guideline), a daphnid chronic toxicity study (OPPTS 850.1300 test guideline), and an algal toxicity study (OPPTS 850.5400 test guideline) would help to characterize the environmental effects of the PMN substance.
CFR citation: 40 CFR 721.8485.

PMN Number P–99–1202
Chemical name: (generic) Sulfonyl azide intermediate.
CAS number: Not available
Basis for action: The PMN substance will be used as a reactive additive for polymers. Based on structural analogy to azides, EPA is concerned that toxicity to aquatic organisms may occur at a concentration as low as 1 ppb of the PMN substance in surface waters. Since environmental releases are not expected as described in the PMN, EPA has not determined that the proposed manufacturing, processing, and use of the PMN substance may present an unreasonable risk. EPA has determined, however, that any release of the PMN substance to surface waters may cause significant adverse environmental effects. Based on this information the PMN substance meets the concern criteria at § 721.170(b)(4)(ii). Also, based on submitted test data, EPA has identified concerns for blood, kidney and lung toxicity from inhalation exposure to the PMN substance. Since significant human exposure is unlikely when used as described in the PMN, EPA has not determined that the proposed manufacturing, processing, and use of the PMN substance may present an unreasonable risk. EPA has determined, however, that use of the PMN substance as a powder may result in significant human exposure. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(3)(i).
Recommended testing: EPA has determined that a fish chronic toxicity study (OPPTS 850.1400 test guideline), a daphnid chronic toxicity study (OPPTS 850.1300 test guideline), and an algal toxicity study (OPPTS 850.5400 test guideline) would help to characterize the environmental effects of the PMN substance. The fish and daphnid tests should use a flow-through method and measured concentrations. The algal toxicity test should use the static method and measured concentrations. A 90-day inhalation toxicity study (OPPTS 870.3465 test guideline) would help to characterize the human health effects of the PMN substance.
CFR citation: 40 CFR 721.983.

PMN Number P–99–1288
Chemical name: (generic) Substituted anilino halobenzamide.
CAS number: Not available.
Basis for action: The PMN substance will be used as described in the PMN. Based on structural analogues for anilines and phenols, EPA is concerned that toxicity to aquatic organisms may occur at a concentration as low as 1 ppb of the PMN substance in surface waters. Since environmental releases are not expected as described in the PMN, EPA has not determined that the proposed manufacturing, processing, and use of the PMN substance may present an unreasonable risk. EPA has determined, however, that domestic manufacture may result in release of the PMN substance to surface waters which may cause significant adverse environmental effects. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(4)(ii).
Recommended testing: EPA has determined that a fish acute toxicity study (OPPTS 850.1075 test guideline), a daphnid acute toxicity study (OPPTS 850.1010 test guideline), and an algal toxicity study (OPPTS 850.5400 test guideline) would help to characterize the environmental effects of the PMN substance. The fish and daphnid tests should be performed with a flow-through method and measured concentrations. The algal test should be done with measured concentrations. A stock solution of the PMN substance should be prepared and its pH adjusted to pH 7 with either HCl or NaOH.
CFR citation: 40 CFR 721.4096.

PMN Number P–99–1295
Chemical name: (generic) Chlorohydroxyalkyl butyl ether.
CAS number: Not available

Basis for action: The PMN substance will be used as described in the PMN. Based on structural analogy to halo alcohols, EPA is concerned that toxicity to aquatic organisms may occur at a concentration as low as 3 ppb of the PMN substance in surface waters. Since environmental releases are not expected as the PMN substance is not released to surface waters above 3 ppb, as described in the PMN, EPA has not determined that the proposed manufacturing, processing, and use of the PMN substance may present an unreasonable risk. EPA has determined, however, that other uses of the PMN substance resulting in release to surface waters above 3 ppb may cause significant adverse environmental effects. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(4)(ii).
Recommended testing: EPA has determined that a fish acute toxicity study (OPPTS 850.1075 test guideline), a daphnid acute toxicity study (OPPTS 850.1010 test guideline), and an algal toxicity study (OPPTS 850.5400 test guideline) would help to characterize the environmental effects of the PMN substance. The fish and daphnid tests should be performed under flow through conditions with measured concentrations. The algal test should be performed under static conditions with measured concentrations.
CFR citation: 40 CFR 721.3438.

PMN Number P–99–1304
Chemical name: (generic) Substituted benzenesulfonic acid salt.
CAS number: Not available.
Basis for action: The PMN substance will be used as described in the PMN. Based on structural analogy to anionic surfactants, EPA is concerned that toxicity to aquatic organisms may occur at a concentration as low as 2 ppb of the PMN substance in surface waters. Since significant environmental releases are not expected, as described in the PMN, EPA has not determined that the proposed manufacturing, processing, and use of the PMN substance may present an unreasonable risk to the environment. EPA has determined, however, that other uses of the PMN substance resulting in release to surface waters in significant amounts, may cause significant adverse environmental effects. Based on this information the PMN substance meets the concern criteria at § 721.170(b)(4)(ii). Also, based on structural analogues, EPA has identified concerns for lung effects from inhalation exposure to the PMN substance. Since significant human exposure is unlikely for the use described in the PMN, EPA has not determined that the proposed manufacturing, processing, and use of the PMN substance may present an unreasonable risk to human health. EPA has determined, however, that other uses of the PMN substance, may result in significant human exposure. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(3)(ii).
Recommended testing: EPA has determined that a fish acute toxicity study (OPPTS 850.1075 test guideline), a daphnid acute toxicity study (OPPTS 850.1010 test guideline), and an algal toxicity study (OPPTS 850.5400 test guideline) would help to characterize the environmental effects of the PMN substance. The fish and daphnid tests should be conducted with flow through methods and measured concentrations. The algal test should be conducted with static methods and measured concentrations. A stock solution should be prepared and its pH adjusted to 7.0 with either HCl or NaOH. A 90-day inhalation toxicity study (OPPTS 870.3465 test guideline) would help to characterize the human health effects of the PMN substance.
CFR citation: 40 CFR 721.1648.

PMN Number P–99–1341
Chemical name: 2-Naphthalenecarboxylic acid, 4,4'-methylenebis [3-hydroxy-, strontium salt.
CAS number: 235083–90–6.
Basis for action: The PMN substance will be used as described in the PMN. Based on structural analogy to phenols, anionic surfactants, and inorganic metal salts, EPA is concerned that toxicity to aquatic organisms may occur at a concentration as low as 3 ppb of the PMN substance in surface waters. Since significant environmental exposure is not expected as the PMN substance is not released to surface water above10 ppb, as described in the PMN, EPA has not determined that the proposed manufacturing, processing, and use of the PMN substance may present an unreasonable risk. EPA has determined, however, that other uses of the PMN substance resulting in release to surface waters above 10 ppb may cause significant adverse environmental effects. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(4)(ii).
Recommended testing: EPA has determined that a fish acute toxicity study (OPPTS 850.1075 test guideline); a daphnid acute toxicity study (OPPTS 850.1010 test guideline), an algal toxicity study (OPPTS 850.5400 test guideline) would help to characterize the environmental effects of the PMN substance. All studies should use the

static method and nominal concentrations.
CFR citation: 40 CFR 721.5253.

PMN Number P–99–1342

Chemical name: 2-Naphthalenecarboxylic acid, 4,4'-methylenebis [3-hydroxy-, zinc salt
CAS number: 235083–88–2.
Basis for action: The PMN substance will be used as described in the PMN. Based on structural analogy to phenols, anionic surfactants, and inorganic metal salts, EPA is concerned that toxicity to aquatic organisms may occur at a concentration as low as 3 ppb of the PMN substance in surface waters. Since significant environmental exposure is not expected as the PMN substance is not released to surface water above 10 ppb, as described in the PMN, EPA has not determined that the proposed manufacturing, processing, and use of the PMN substance may present an unreasonable risk. EPA has determined, however, that other uses of the PMN substance resulting in release to surface waters above 10 ppb may cause significant adverse environmental effects. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(4)(ii).
Recommended testing: EPA has determined that a fish acute toxicity study (OPPTS 850.1075 test guideline), a daphnid acute toxicity study (OPPTS 850.1010 test guideline), and an algal toxicity study (OPPTS 850.5400 test guideline) would help to characterize the environmental effects of the PMN substance. All studies should use the static method and nominal concentrations
CFR citation: 40 CFR 721.5252.

PMN Number P–00–7

Chemical name: D-Glucuronic acid, polymer with 6-deoxy-L-mannose and D-glucose, acetate, calcium magnesium potassium sodium salt.
CAS number: 125005–87–0.
Basis for action: The PMN substance will be used as an oilfield drilling fluid, an oilfield spacer fluid, in oilfield cementing, in cementitious packaged products, in concrete applications, and in foam applications. Based on structural analogues and submitted test data, EPA has identified concerns for lung effects from inhalation exposure to the PMN substance. Since significant inhalation exposure is unlikely when used as described in the PMN, EPA has not determined that the proposed manufacturing, processing, and use of the PMN substance may present an unreasonable risk. EPA has determined, however, that use of the PMN substance other than as described in the PMN may result in significant human exposure. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(3)(i) and (b)(3)(ii).
Recommended testing: EPA has determined that the 90-day inhalation toxicity study with a 60-day holding period (OPPTS 870.3465 test guideline) would help to characterize the human health effects of the PMN substance. Attention should be given to the lungs, including histopathology of the lungs (inflamation, epithelial hyperplasia, and fibrosis), (BAL) analysis for markers of lung injury, and lung burden analysis for clearance of the test material (EPA–748–R–96–001). The neurotoxicity components and examination of organs other than the lungs are not required in the 90-day study.
CFR citation: 40 CFR 721.2076.

PMN Number P–00–368

Chemical name: (generic) Benzenesulfonamide, alkylphenylsubstitutedphenyl substituted carbonyl-.
CAS number: Not available.
Effective date of section 5(e) consent order: March 28, 2001.
Basis for section 5(e) consent order: The Order was issued under section 5(e)(1)(A)(i) and (e)(1)(A)(ii)(I) of TSCA based on a finding that the PMN substance may present an unreasonable risk of injury to human health and the environment.
Recommended testing: EPA has determined that a subchronic inhalation toxicity study (OPPTS 870.3465) would help to characterize the potential health effects of the PMN substance. EPA has also determined that a fish chronic toxicity study (OPPTS 850.1400) and a daphnid chronic toxicity test (OPPTS 850.1300) would help to characterize potential environmental effects.
CFR citation: 40 CFR 721.1620.

PMN Number P–00–636

Chemical name: (generic) Alkylated nitroso-phenylenediamine.
CAS number: Not available.
Basis for action: The PMN substance will be used as a polymerization inhibitor. Based on test data for the PMN substance and analogy to structurally similar compounds, EPA has identified human health concerns for systemic effects, reproductive effects, and cancer from dermal exposure to the PMN substance. Since significant worker exposure is unlikely when the PMN substance is used as described in the PMN, EPA has not determined that the proposed manufacturing, processing, and use of the PMN substance may present an unreasonable risk. EPA has determined, however, that use of the PMN substance without dermal protection could result in worker exposures which may cause significant adverse human health effects. Based on this information the PMN substance meets the concern criteria at § 721.170(b)(3)(i), (b)(3)(ii), and (b)(1)(i)(C).
Recommended testing: The Agency has determined that the results of a 2-generation reproduction/fertility effects study (OPPTS 870.3800 test guideline) and a carcinogenicity study (OPPTS 870.4200 test guideline) would help to characterize possible human health effects of the PMN substance.
CFR citation: 40 CFR 721.5935.

PMN Number P–00–838

Chemical name: (generic) Substituted alkyl sulfonamide.
CAS number: Not available.
Basis for action: The PMN substance will be used for a contained use in an article. Based on structural analogy to neutral organic compounds, EPA is concerned that toxicity to aquatic organisms may occur at a concentration as low as 1 ppb of the PMN substance in surface waters. Since significant environmental exposure is not expected as the PMN substance is not released to surface waters above 1 ppb, EPA has not determined that the proposed processing and use of the PMN substance may present an unreasonable risk. EPA has determined, however, that releases to surface waters above 1 ppb may cause significant adverse environmental effects. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(4)(ii).
Recommended testing: The Agency has determined that the results of a fish chronic toxicity study (OPPTS 850.1400 test guideline) would help to characterize possible environmental effects of the PMN substance. This test should be conducted with flow-through conditions and measured concentrations.
CFR citation: 40 CFR 721.9572.

PMN Number P–00–912

Chemical name: (generic) Epoxy resin containing phosphorus.
CAS number: Not available.
Basis for action: The PMN substance will be used as described in the PMN. EPA has identified health concerns for carcinogenicity, reproductive toxicity in males, and developmental toxicity based on structural analogy to epoxides. EPA also identified health and environmental concerns because the PMN substance may be persistent, bioaccumulative, and potentially toxic based on physical/chemical properties of the PMN substance as described in the New Chemical Program's Persistent, Bioaccumulative, and Toxic (PBT) Category (64 FR 60194, FRL-6907-7, November 4, 1999). Since significant worker and environmental exposure is unlikely when used as described in the PMN, EPA has not determined that the proposed manufacturing, processing, and use of the PMN substance may cause significant adverse effects. EPA has determined, however, that use of the PMN substance other than as described in the PMN could result in exposures which may cause serious chronic effects and significant environmental effects. Based on this information, the PMN substance meets the concern criteria at § 721.170 (b)(l)(i)(C), (b)(3)(ii), and (b)(4)(ii).
Recommended testing: EPA has determined that the results of the tiered testing as described in the New Chemical Program's PBT Category would help to characterize the PBT properties of the PMN substance. EPA has also determined that a fish chronic toxicity study (OPPTS 850.1400 test guideline), a daphnid chronic toxicity study (OPPTS 850.1300 test guideline), and an algal toxicity study (OPPTS 850.5400 test guideline) would help to characterize the environmental effects of the PMN substance. The fish and daphnid tests should be conducted with flow-through methods and measured concentrations The algal test should be conducted with static methods and measured concentrations. In addition, a 2-year, two-species oral carcinogenicity study (OPPTS 870.4200 test guideline) and a 90-day oral subchronic in rats (OPPTS 870.3100 test guideline), with attention to pathology of the reproductive organs, would help to characterize the health effects of the PMN substance.
CFR citation: 40 CFR 721.2752.

PMN Number P–00–966

Chemical name: (generic) Haloarylalkylketoester.
CAS number: Not available.
Basis for action: The PMN substance will be used as an agricultural product intermediate. Toxicity data on structurally similar esters indicate that the PMN substance may cause toxicity to aquatic organisms. Based on this data, EPA expects toxicity to aquatic organisms to occur at a concentration as low as 200 ppb of the PMN substance in surface waters. Since environmental releases to surface waters are not expected to exceed 200 ppb, EPA has not determined that the proposed processing and use of the PMN substance may present an unreasonable risk. EPA has determined, however, that if releases to surface waters were to exceed a concentration of 200 ppb, the PMN substance may cause significant adverse environmental effects. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(4)(ii).
Recommended testing: The Agency has determined that an algal toxicity test (OPPTS 850.5400 test guideline), an aquatic invertebrate acute toxicity test (OPPTS 850.1010 test guideline), and a fish acute toxicity test (OPPTS 850.1075 test guideline) would help to characterize possible environmental effects of the PMN substance. Ready biodegradation testing (OPPTS 835.3110 test guideline) would help to characterize possible environmental effects of the PMN substance as well. The aquatic toxicity tests should be conducted with flow-through conditions and measured concentrations.
CFR citation: 40 CFR 721.3062.

PMN Number P–00–991

Chemical name: Formaldehyde, polymer with (chloromethyl) oxirane and phenol, reaction products with 6H-dibenz[c,e][1,2]oxaphosphorin-6-oxide.
CAS number: 300371–38–4.
Basis for action: The PMN substances will be used in the manufacturing of composites. Based on structural analogy to epoxides, EPA is concerned that toxicity to aquatic organisms may occur at a concentration as low as 6 ppb of the PMN substances in surface waters. Since significant environmental exposure is not expected, as the PMN substances are not released to surface waters above 6 ppb, as described in the PMNs, EPA has not determined that the proposed manufacturing, processing, and use of the PMN substances may present an unreasonable risk. EPA has determined, however, that other uses of the PMN substances resulting in release to surface waters above 6 ppb may cause significant adverse environmental effects. Based on this information, the PMN substances meet the concern criteria at § 721.170(b)(4)(ii).
Recommended testing: EPA has determined that an algal toxicity test (OPPTS 850.5400 test guideline), an aquatic invertebrate acute toxicity test (OPPTS 850.1010 test guideline), and a fish acute toxicity test (OPPTS 850.1075 test guideline) would help to characterize possible environmental effects of the PMN substance. Ready biodegradation testing (OPPTS 835.3110 test guideline) would help to characterize possible environmental effects of the PMN substance as well. The aquatic toxicity tests should be conducted with flow-through conditions and measured concentrations.
CFR citation: 40 CFR 721.3062.

PMN Number P–00–991

Chemical name: Formaldehyde, polymer with (chloromethyl) oxirane and phenol, reaction products with 6H-dibenz[c,e][1,2]oxaphosphorin-6-oxide.
CAS number: 300371–38–4.
Basis for action: The PMN substances will be used in the manufacturing of composites. Based on structural analogy to epoxides, EPA is concerned that toxicity to aquatic organisms may occur at a concentration as low as 6 ppb of the PMN substances in surface waters. Since significant environmental exposure is not expected, as the PMN substances are not released to surface waters above 6 ppb, as described in the PMNs, EPA has not determined that the proposed manufacturing, processing, and use of the PMN substances may present an unreasonable risk. EPA has determined, however, that other uses of the PMN substances resulting in release to surface waters above 6 ppb may cause significant adverse environmental effects. Based on this information, the PMN substances meet the concern criteria at § 721.170(b)(4)(ii).
Recommended testing: EPA has determined that a developmental toxicity study with two species (rats and mice) by gavage (OPPTS 870.3700 test guideline), a 2-generation reproductive and toxicity study (OPPTS 870.3800 test guideline), an Ames assay/salmonella study (OPPTS 870.5100 test guideline), a micronucleus assay (OPPTS 870.5395 test guideline), and a carcinogenicity study in rats (OPPTS 870.4200 test guideline) would help to characterize human health effects. In addition, a fish acute toxicity study (OPPTS 850.1075 test guideline), a daphnid acute toxicity study (OPPTS 850.1010 test guideline), and an algal acute toxicity study (OPPTS 850.5400 test guideline) would help to characterize the environmental effects.
CFR citation: 40 CFR 721.9674.

PMN Number P–00–1205

Chemical name: (generic) 6-Methoxy-1H-benz[de]isoquinoline-2 [3H]-dione derivative.
CAS number: Not available.
Basis for action: The PMN substance will be used as an intermediate in the manufacture of aqueous dyes. Toxicity data on structurally similar chemicals indicate that the PMN substance may cause toxicity to aquatic organisms. Based on this data, EPA expects toxicity to aquatic organisms to occur at a concentration of 30 ppb of the PMN substance in surface waters. Since significant environmental exposure is not expected as the PMN substance is not released to surface waters above 30 ppb, EPA has not determined that the

proposed processing and use of the PMN substance may present an unreasonable risk. EPA has determined, however, that other uses of the PMN substance resulting in release to surface waters above 10 ppb may cause significant adverse environmental effects. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(4)(ii).
Recommended testing: The Agency has determined that the results of a fish acute toxicity test (OPPTS 850.1075 test guideline) and a fish acute toxicity mitigated by humic acid (OPPTS 850.1085 test guideline), and an activated sludge sorption/desorption isotherm test (OPPTS 835.1110 test guideline) would help to characterize environmental effects of the PMN substance.
CFR citation: 40 CFR 721.9078.
PMN Number P–00–1220
Chemical name: (generic) Phenol-biphenyl polymer condensate.
CAS number: Not available.
Basis for action: The PMN substance will be used as an electric molding. Based on structural analogy to phenols, EPA is concerned that toxicity to aquatic organisms may occur at a concentration as low as 1 ppb of the PMN substance in surface waters. Since significant environmental exposure is not expected as the PMN substance is not released to surface water, EPA has not determined that the proposed manufacturing, processing, and use of the PMN substance may present an unreasonable risk. EPA has determined, however, that any release of the PMN substance to surface water may cause significant adverse environmental effects. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(4)(ii).
Recommended testing: EPA has determined that a fish acute toxicity study (OPPTS 850.1075 test guideline), a daphnid acute toxicity study (OPPTS 850.1010 test guideline), and an algal acute toxicity study (OPPTS 850.5400 test guideline) would help to characterize the environmental effects of the PMN substance.
CFR citation: 40 CFR 721.5713.
PMN Number P–01–1
Chemical name: (generic) Chloroformate.
CAS number: Not available
Basis for action: The PMN substance will be used as an intermediate. Based on analogy to acid halides and neutral organic compounds, EPA is concerned that toxicity to aquatic organisms may occur at a concentration as low as 2 ppb of the PMN substance and 70 ppb of the PMN substance's hydrolysis product in surface waters. EPA has not determined that the proposed manufacturing, processing, and use of the PMN substance may present an unreasonable risk. EPA has determined, however, that any release of the PMN substance to surface waters above 2 ppb may cause significant adverse environmental effects. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(4)(ii).
Recommended testing: EPA has determined that a hydrolysis study at 25 °C and pH 7 (OPPTS 835.2120 test guideline), a ready biodegradability study (OPPTS 835.3110 test guideline), a fish acute toxicity study (OPPTS 850.1075 test guideline), a daphnid acute toxicity study (OPPTS 850.1010 test guideline), and an algal acute toxicity study (OPPTS 850.5400 test guideline) would help to characterize the environmental effects of the PMN substance.
CFR citation: 40 CFR 721,3835.
PMN Number P–01–7
Chemical name: (generic) Ethylenediaminetetraacetic acid mixed salt.
CAS number: Not available.
Basis for action: The PMN substance will be used as described in the PMN. EPA has identified concerns for reproductive toxicity in males and mutagenicity based on submitted test data, and carcinogenicity based on analogy to nitrilotriacetic acid. Since significant worker exposure is unlikely when the PMN substance is used as described in the PMN, EPA has not determined that the proposed processing and use of the PMN substance may present an unreasonable risk. EPA has determined, however, that domestic manufacture or use of the PMN substance in a powder form may cause serious health effects. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(3)(i) and (b)(l)(i)(C).
Recommended testing: EPA has determined that a prenatal developmental toxicity study by the oral route in two species (OPPTS 870.3700) and a carcinogenicity study in rats (OPPTS 870.4200) would help to characterize the human health effects of the PMN substance.
CFR citation: 40 CFR 721.2098.
PMN Number P–01–9
Chemical name: (generic) Halogenated arylsilane.
CAS number: Not available.
Basis for action: The PMN substance will be used as described in the PMN. EPA has identified environmental concerns because the PMN substance may be persistent, bioaccumulative, and potentially toxic based on physical/chemical properties of the PMN substance as described in the New Chemical Program's PBT Category. Also, based on structural analogy to neutral organics, EPA expects toxicity to aquatic organisms at surface water concentrations as low as 1 ppb. Since significant environmental exposure is not expected, as the PMN substance is not released to surface waters, as described in the PMN, EPA has not determined that the proposed manufacturing, processing, and use of the PMN substance may present an unreasonable risk. EPA has determined, however, that release to surface water may cause significant adverse environmental effects. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(4)(ii).
Recommended testing: EPA has determined that the results of the tiered testing as described in the New Chemicals Program's PBT Category would help to characterize the PBT properties of the PMN substance. EPA has determined that the results of a fish chronic toxicity study (OPPTS 850.1400), a daphnid chronic toxicity study (OPPTS 850.1300), and an algal toxicity study (OPPTS 850.5400) would help to characterize the environmental effects of the PMN substance. The fish and daphnid tests should be conducted with flow-through methods and measured concentrations The algal test should be conducted with static methods and measured concentrations.
CFR citation: 40 CFR 721.9506.
PMN Number P–01–22
Chemical name: Propanoic acid, 2-(trimethoxysilyl)-, ethyl ester.
CAS number: 137787–41–8.
Basis for action: The PMN substance will be used as described in the PMN. Based on structural analogy to alkoxysilanes, EPA is concerned that toxicity to aquatic organisms may occur at a concentration as low as 10 ppb of the PMN substance in surface waters. Since significant environmental exposure is not expected as the PMN substance is not released to surface waters above 10 ppb, as described in the PMN, EPA has not determined that the proposed manufacturing, processing, and use of the PMN substance may present an unreasonable risk. EPA has determined, however, that other uses of the PMN substance resulting in release to surface waters above 10 ppb may cause significant adverse environmental effects. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(4)(ii).

Recommended testing: EPA has determined that a fish acute toxicity study (OPPTS 850.1075), a daphnid acute toxicity study (OPPTS 850.1010), and an algal toxicity study (OPPTS 850.5400) would help to characterize the environmental effects of the PMN substance. The fish and daphnid tests should be conducted with flow-through conditions and measured concentrations. The algae test should be conducted with static conditions and measured concentrations.
CFR citation: 40 CFR 721.7290.
PMN Number P–01–69
Chemical name: (generic) Substituted naphthalene hydrazide.
CAS number: Not available.
Basis for action: The PMN substance will be used as described in the PMN. Based on structural analogy to phenols and hydrazines. EPA is concerned that toxicity to aquatic organisms may occur at a concentration as low as 1 ppb of the PMN substance in surface waters. Since environmental releases are not expected as described in the PMN, EPA has not determined that the proposed manufacturing, processing and use of the PMN substance as described in the PMN may present an unreasonable risk. EPA has determined, however, that any release of the PMN substance to surface waters may cause significant adverse environmental effects. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(4)(ii).
Recommended testing: EPA has determined that a fish acute toxicity study (OPPTS 850.1075 test guideline), a daphnid acute toxicity study (OPPTS 850.1010 test guideline), and an algal toxicity study (OPPTS 850.5400 test guideline) would help to characterize the environmental effects of the PMN substance. The fish and daphnid tests should be conducted with flow-through conditions and measured concentrations. The algae test should be conducted with static conditions and measured concentrations.
CFR citation: 40 CFR 721.4258.
PMN Number P–01–71
Chemical name: Phenol, 2,2'-[6-(2,4-dibutoxyphenyl)-1,3,5-triazine-2,4-diyl]bis[5-butoxy-.
CAS number: 208343–47–9.
Basis for action: The PMN substance will be used as an ultraviolet absorber for use in photographic emulsions. Based on structural analogy to phenols, EPA is concerned that toxicity to aquatic organisms may occur at a concentration as low as 1 ppb of the PMN substance in surface waters. Since significant environmental exposure is not expected, as the PMN substance is not released to surface waters, as described in the PMN, EPA has not determined that the proposed manufacturing, processing and use of the PMN substance may present an unreasonable risk. EPA has determined, however, that any release to surface waters may cause significant adverse environmental effects. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(4)(ii).
Recommended testing: EPA has determined that a fish chronic toxicity study (OPPTS 850.1400 test guideline), and a daphnid chronic toxicity study (OPPTS 850.1300 test guideline) would help to characterize the environmental effects of the PMN substance. The fish and daphnid studies should be conducted with flow-through method and measured concentrations.
CFR citation: 40 CFR 721.5718.
PMN Number P–01–77
Chemical name: (generic) Disubstituted benzenedicarboxcylic acid.
CAS number: Not available.
Basis for action: The PMN substance will be used as described in the PMN. EPA has identified health concerns for developmental toxicity based on structural analogy to phthalate esters. Since significant worker exposure is unlikely when the PMN substance is used as described in the PMN, EPA has not determined that the proposed manufacturing, processing, and use of the PMN substance may present an unreasonable risk. EPA has determined, however, that use of the PMN substance other than as an intermediate could result in exposures which may cause serious health effects. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(3)(ii). Also, based on structural analogy to esters, EPA is concerned that toxicity to aquatic organisms may occur at a concentration as low as 12 ppb of the PMN substance in surface waters. Since significant environmental exposure is not expected, as the PMN substance is not released to surface waters, as described in the PMN, EPA has not determined that the proposed manufacturing, processing and use of the PMN substance as described in the PMN may present an unreasonable risk. EPA has determined, however, that other uses of the PMN substance resulting in release to surface water may cause significant adverse environmental effects. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(4)(ii).
Recommended testing: EPA has determined that a Combined Repeated Dose with Reproductive/Developmental Toxicity (OPPTS 870.3650) or a Reproductive/Development Toxicity Test (OPPTS 870.3550) would help to characterize the human health effects of the PMN substance. EPA has also determined that a fish acute toxicity study (OPPTS 850.1075), a daphnid acute toxicity study (OPPTS 850.1010), and an algal toxicity study (OPPTS 850.5400) would help characterize the environmental effects of the PMN substance. The fish and daphnid tests should be conducted with the flow-through conditions and measured concentrations. The algae test should be conducted with the static method and measured concentrations.
CFR citation: 40 CFR 721.2060.
PMN Number P–01–85
Chemical name: (generic) Mono esters from 2-propenoic acid.
CAS number: Not available.
Basis for action: The PMN substance will be used as described in the PMN. Based on structural analogy to esters, EPA is concerned that toxicity to aquatic organisms may occur at a concentration as low as 1 ppb of the PMN substance in surface waters. Since significant environmental exposure is not expected, as the PMN substance is not released to surface waters, as described in the PMN, EPA has not determined that the proposed manufacturing, processing and use of the PMN substance may present an unreasonable risk. EPA has determined, however, that any release to surface waters may cause significant adverse environmental effects. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(4)(ii).
Recommended testing: EPA has determined that a fish acute toxicity study (OPPTS 850.1075 test guideline), a daphnid acute toxicity study (OPPTS 850.1010 test guideline), and an algal toxicity study (OPPTS 850.5400 test guideline) would help to characterize the environmental effects of the PMN substance. All tests should be conducted with flow-through methods and measured concentrations.
CFR citation: 40 CFR 721.8340.
PMN Number P–01–97
Chemical name: (generic) Polyaziridinyl ester of an aliphatic alcohol.
CAS number: Not available.
Basis for action: The PMN substance will be used as described in the PMN. EPA has identified health concerns for mutagenicity, carcinogenicity, male reproductive toxicity, and developmental toxicity based on structural analogy to epoxides. Since significant worker exposure is unlikely, when used as described in the PMN, EPA has not determined that the proposed manufacturing, processing,

and use of the PMN substance may present an unreasonable risk. EPA has determined, however, that use of the PMN substance other than as described in the PMN may result in serious health effects. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(3)(ii) and (b)(l)(i)(C).
Recommended testing: EPA has determined that a 90-day oral subchronic toxicity study in rats (OPPTS 870.3100 test guideline), with attention to pathology of the reproductive organs, and a carcinogenicity study in rats (OPPTS 870.4200 test guideline) would help to characterize the human health effects of the PMN substance.
CFR citation: 40 CFR 721.7250.
PMN Number P–01–144
Chemical name: Propanamide, N-(2-hydroxyethyl)-3-methoxy-.
CAS number: 35544–45–7.
Basis for action: The PMN substance will be used as an organic stripper additive. EPA has identified health concerns for the solvent properties of the PMN substance. Since significant worker exposure is unlikely, when the PMN substance is used as described in the PMN, EPA has not determined that the proposed manufacturing, processing, and use of the PMN substance may present an unreasonable risk. EPA has determined, however, that use of the PMN substance other than as described in the PMN could result in exposures which may cause serious health effects. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(3)(ii).
Recommended testing: EPA has determined that a prenatal developmental toxicity study (OPPTS 870.3700 test guideline), a 28-day oral toxicity study in rats (OPPTS 870.3050) that includes a neurotoxicity functional observational battery (NTIS: PB 91-154617) for all test doses with the highest test dose set at 1,000 mg/kg, and for the highest test dose group only, histopathologic examination shall be extended to include testes/ovaries and lungs, an acute oral toxicity (OPPTS 870.1100 test guideline), a mammalian erythrocyte micronucleus test (OPPTS 870.5395 test guideline), and a salmonella typhimurium reverse mutation assay (OPPTS 870.5265 test guideline) would help to characterize the human health effects of the PMN substance.
CFR citation: 40 CFR 721.8130.
PMN Number P–01–149
Chemical name: Sulfuric acid, mono-C_{9-11}-alkyl esters, sodium salts.
CAS number: 84501–49–5.
Basis for action: The PMN substance will be used as a component in surfactant/foaming agent for leather processing. Based on structural activity relationship analysis, EPA has identified health concerns for internal organ effects. Since significant worker exposure is unlikely, when the PMN substance is used as described in the PMN, EPA has not determined that the proposed manufacturing, processing, and use of the PMN substance may present an unreasonable risk. EPA has determined, however, that an increase in production volume may cause serious health effects. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(3)(ii).
Recommended testing: EPA has determined that a 90-day subchronic oral toxicity study in rodents (OPPTS 870.3100 test guideline) would help to characterize the human health effects of the PMN substance.
CFR citation: 40 CFR 721.3130.
PMN Number P–01–152
Chemical name: Benzenamine, 4-methoxy-2-methyl-N-(3-methylphenyl)-.
CAS number: 93072–06–1.
Basis for action: The PMN substance will be used as described in the PMN. Based on structural analogy to neutral organic compounds, EPA is concerned that toxicity to aquatic organisms may occur at a concentration as low as 5 ppb of the PMN substance in surface waters. EPA also identified environmental concerns because the PMN substance may be persistent, bioaccumulative, and potentially toxic based on physical/chemical properties of the PMN substance as described in the New Chemical Program's PBT Category. Since significant environmental exposure is not expected as the PMN substance is not released to surface water above 5 ppb, as described in the PMN, EPA has not determined that the proposed manufacturing, processing, and use of the PMN substance may present an unreasonable risk. EPA has determined, however, that other uses of the PMN substance resulting in release to surface waters above 5 ppb may cause significant adverse environmental effects. Based on this information, the PMN substance meets the concern criteria at § 721.170 (b)(4)(ii).
Recommended testing: EPA has determined that the results of the tiered testing as described in the New Chemicals Program's PBT Category would help to characterize the PBT properties of the PMN substance. EPA has determined that the results of a fish acute toxicity study (OPPTS 850.1075 test guideline), a daphnid acute toxicity study (OPPTS 850.1010 test guideline), and an algal toxicity study (OPPTS 850.5400 test guideline) would help to characterize the environmental effects of the PMN substance.
CFR citation: 40 CFR 721.1070.
PMN Number P–01–170
Chemical name: Acetic acid, [(5-chloro-8-quinolinyl)oxy-], 1-methylhexyl ester.
CAS number: 99607–70–2.
Basis for action: The PMN substance will be used as a seed safener. Based on test data, there is concern for liver toxicity and thyroid effects. Since significant worker exposure is unlikely, EPA has not determined that the proposed processing, and use of the PMN substance may present an unreasonable risk. EPA has determined, however, that domestic manufacture or use without protective equipment may cause serious health effects. Based on this information, the PMN substance meets the concern criteria in § 721.170(b)(3)(i).
Recommended testing: The Agency recommends no further toxicity testing for hazard assessment of the PMN substance. However, additional information on human exposures to the PMN substance would help to characterize potential risks.
CFR citation: 40 CFR 721.304.
PMN Number P–01–298
Chemical name: (generic) Substituted propane
CAS number: Not available.
Basis for action: The PMN substance will be used as a polymer additive. EPA has identified health concerns for mutagenicity, neurotoxicity, developmental toxicity, liver toxicity and kidney toxicity based on submitted test data. Since significant worker exposure is unlikely, when used as described in the PMN, EPA has not determined that the proposed manufacturing, processing, and use of the PMN substance may cause significant adverse effects. EPA has determined, however, that use of the PMN substance other than as described in the PMN may result in serious health effects. Based on this information, the PMN substance meets the concern criteria at § 721.170 (b)(3)(i).
Recommended testing: EPA has determined that a prenatal development toxicity study by the oral route in two species (OPPTS 870.3100 test guideline) would help to characterize the human health effects of the PMN substance.
CFR citation: 40 CFR 721.8140.
PMN Number P–01–320
Chemical name: Propane, 1, 1,1,2,2,3,3-heptafluoro-3-methoxy-.
CAS number: 375–03–1.
Basis for action: The PMN substance will be used as heating transfer fluid and a refrigerant. EPA has identified health concerns for liver and kidney toxicity based on submitted test data and cardiac sensitization and developmental toxicity based on analog data. Since significant worker exposure is unlikely, when the PMN substance is used described in the PMN, EPA has not determined that the proposed manufacturing, processing, and use of the PMN substance may present an unreasonable risk. EPA has determined, however, that an increase in production volume or use of the PMN substance other than as described in the PMN could result in serious health effects. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(4)(i) and (b)(4)(ii).
Recommended testing: EPA has determined that a 90-day subchronic inhalation study in rodents (OPPTS 870.3465 test guideline) would help to characterize the human health effects of the PMN substance.
CFR citation: 40 CFR 721.8145.
PMN Number P–01–397
Chemical name: (generic) Dihydro quinacridone derivative.
CAS number: Not available.
Basis for action: The PMN substance will be used as described in the PMN. Based on structural analogy to neutral organic compounds, EPA is concerned that toxicity to aquatic organisms may occur at a concentration as low as 2 ppb of the PMN substance in surface waters. Since significant environmental exposure is not expected as the PMN substance is not released to surface water above 2 ppb, as described in the PMN, EPA has not determined that the proposed manufacturing, processing, and use of the PMN substance may present an unreasonable risk. EPA has determined, however, that an increase in production volume or other uses of the PMN substance resulting in releases to surface waters above 2 ppb may cause significant adverse environmental effects. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(4)(ii).
Recommended testing: EPA has determined that a fish chronic toxicity study (OPPTS 850.1400 test guideline), a daphnid chronic toxicity study (OPPTS 850.1300 test guideline), and an algal toxicity study (OPPTS 850.5400 test guideline) would help to characterize the environmental effects of the PMN substance. The fish and daphnid tests should be conducted with flow-through conditions and measured concentrations. The algae test should be conducted with static condition and nominal concentrations.
CFR citation: 40 CFR 721.9079.
PMN Number P–01–420
Chemical name: (generic) Aromatic acrylate.
CAS number: Not available.
Basis for action: The PMN substance will be used as described in the PMN. Based on structural analogy to acrylates, EPA is concerned that toxicity to aquatic organisms may occur at a concentration as low as 3 ppb of the PMN substance in surface waters. Since significant environmental exposure is not expected, as the PMN substance is not released to surface waters as described in the PMN, EPA has not determined that the proposed manufacturing, processing, and use of the PMN substance may present an unreasonable risk. EPA has determined, however, that other uses of the PMN substance resulting in release to surface waters may cause significant adverse environmental effects. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(4)(ii).
Recommended testing: EPA has determined that a fish acute toxicity study (OPPTS 850.1075 test guideline), a daphnid acute toxicity study (OPPTS 850.1010 test guideline), and an algal toxicity study (OPPTS 850.5400 test guideline) would help to characterize the environmental effects of the PMN substance.
CFR citation: 40 CFR 721.330.
PMN Number P–01–423
Chemical name: (generic) Substituted benzoic acid.
CAS number: Not available.
Basis for action: The PMN substance will be used as a dye intermediate. EPA has identified health concerns for developmental toxicity, irritation to lung, skin, eyes, and mucous membranes, blood toxicity, male reproductive toxicity, and dermal sensitization based on analogue data. Since significant worker exposure is unlikely, when the PMN substance is used as described in the PMN, EPA has not determined that the proposed processing, and use of the PMN substance may present an unreasonable risk. EPA has determined, however, that domestic manufacture could result in exposures which may cause serious health effects. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(3)(ii).
Recommended testing: EPA has determined that a 90-day subchronic inhalation study in rodents (OPPTS 870.3465 test guideline) would help to characterize the human health effects of the PMN substance.
CFR citation: 40 CFR 721.1680.
PMN Number P–01–433
Chemical name: (generic) Halogenated alkane.
CAS number: Not available.
Basis for action: The PMN substance will be used as an intermediate. Based on analogy to structural analogues, EPA has concerns for carcinogenicity and cardiac sensitization. Also, based on analogy to neutral organic chemicals, EPA is concerned that toxicity to aquatic organisms may occur at a concentration as low as 400 ppb of the PMN substance in surface waters. Since significant worker and environmental exposure is unlikely, when the PMN substance is used as described in the PMN, EPA has not determined that the manufacturing, processing, and use of the PMN substance may present an unreasonable risk. EPA determined, however, that use of the PMN substance other than as an intermediate may result in exposures which may cause serious health effects and significant adverse environmental effects. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(3)(ii) and (b)(4)(ii).
Recommended testing: EPA has determined that a 90-day subchronic inhalation study in rodents (OPPTS 870.3465 test guideline) and a cardiac sensitization study would help to characterize the human health effects of the PMN substance. EPA has also determined that a fish acute toxicity study (OPPTS 850.1075 test guideline), a daphnid acute toxicity study (OPPTS 850.1010 test guideline), and an algal toxicity study (OPPTS 850.5400 test guideline) would help to characterize the environmental effects of the PMN substance.
CFR citation: 40 CFR 721.535.
PMN Number P–01–441
Chemical name: (generic) Modified phenolic resin
CAS number: Not available.
Basis for action: The PMN substance will be used as described in the PMN. EPA has identified environmental concerns because the PMN substance may be persistent, bioaccumulative, and potentially toxic based on physical/chemical properties of the PMN substance as described in the New Chemical Program's PBT Category. EPA is concerned that toxicity to aquatic organisms may occur at a concentration as low as 9 ppb of the PMN substance in surface waters based on structural analogy to phenols. Since environmental exposure is not expected, as the PMN substance is not released to surface waters as described in the PMN, EPA has not determined that the proposed manufacturing, processing, and use of the PMN substance may present an unreasonable risk. EPA has

determined, however, that other uses of the PMN substance resulting in release to surface waters may cause significant adverse environmental effects. Based on this information the PMN substance meets the concern criteria at § 721.170(b)(4)(ii).
Recommended testing: EPA has determined that the results of the tiered testing as described in the New Chemical Program's PBT Category would help to characterize the PBT properties of the PMN substance. EPA has also determined that a fish acute toxicity study (OPPTS 850.1075 test guideline), a daphnid acute toxicity study (OPPTS 850.1010 test guideline), and an algal toxicity study (OPPTS 850.5400 test guideline) would help to characterize the environmental effects of the PMN substance.
CFR citation: 40 CFR 721.5905.

PMN Number P–01–459

Chemical name: Chromate(3-), bis[3-[[6-amino-1,4-dihydro-2-[[[4-[(2-hydroxy-1-naphthalenyl)azo] phenyl]sulfonyl]amino]-4-(oxo-.kappa.O)-5-pyrimidinyl]azo-.kappa.N1]-4-(hydroxy-.kappa.O)-5-nitrobenzenesulfonato(3-)]-, trisodium.
CAS number: 178452–72–7
Basis for action: The PMN substance will be used as an acid dye for dyeing leather. Based on submitted test data, EPA has identified human health concerns for blood, liver, and spleen effects. Since significant worker exposure is unlikely, as inhalation exposure is not expected for the use described in the PMN, EPA has not determined that the proposed manufacturing, processing, and use of the PMN substance may present an unreasonable risk. EPA has determined, however, that use of the PMN substance in a powder form may cause serious health effects. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(3)(i).
Recommended testing: EPA has determined that a 90-day inhalation study with a 60-day holding period (OPPTS 870.3465 test guideline) would help to characterize the human health effects of the PMN substance.
CFR citation: 40 CFR 721.8940.

PMN Number P–01–460

Chemical name: Chromate(3-), bis[3-[[6-amino-1,4-dihydro-2-[[[4-[(2-hydroxy-1-naphthalenyl)azo] phenyl]sulfonyl]amino]-4-(oxo-.kappa.O)-5-pyrimidinyl]azo-.kappa.N1]-4-(hydroxy-.kappa.O)-5-nitrobenzenesulfonato(3-)]-, sodium triethanolamine salts.
CAS number: 327177–98–0.
Basis for action: The PMN substance will be used as an acid dye for dyeing leather. Based on submitted test data, EPA has identified human health concerns for blood, liver, and spleen effects. Since significant worker exposure is unlikely, as inhalation exposure is not expected for the use described in the PMN, EPA has not determined that the proposed manufacturing, processing, and use of the PMN substance may present an unreasonable risk. EPA has determined, however, that use of the PMN substance in a powder form may cause serious health effects. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(3)(i).
Recommended testing: EPA has determined that a 90-day inhalation study with a 60-day holding period (OPPTS 870.3465 test guideline) would help to characterize the human health effects of the PMN substance.
CFR citation: 40 CFR 721.8950.

PMN Numbers P–00–992 and P–01–471

Chemical name: (generic) Phosphorous modified epoxy resin.
CAS number: Not available.
Basis for action: The PMN substance will be used as described in the PMN. Based on structural analogy to epoxides, EPA is concerned that toxicity to aquatic organisms may occur at a concentration as low as 6 ppb of the PMN substance in surface waters. Since significant environmental exposure is not expected as the PMN substance is not released to surface water above 6 ppb, as described in the PMN, EPA has not determined that the proposed manufacturing, processing, and use of the PMN substance may present an unreasonable risk. EPA has determined, however, that use of the PMN substance other than as described in the PMN could cause releases to surface waters above 6 ppb which may cause significant adverse environmental effects. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(4)(ii).
Recommended testing: EPA has determined that a fish chronic toxicity study (OPPTS 850.1400 test guideline), a daphnid chronic toxicity study (OPPTS 850.1300 test guideline), and an algal toxicity study (OPPTS 850.5400 test guideline) would help to characterize the environmental effects of the PMN substance. The fish and daphnid tests should be conducted with flow-through conditions and measured concentrations. The algae test should be conducted with static conditions and nominal concentrations.
CFR citation: 40 CFR 721.3135.

PMN Number P–01–481

Chemical name: (generic) Polyurethane polymer.
CAS number: Not available.
Basis for action: The PMN substance will be used as described in the PMN. Based on physical/ chemical properties and submitted test data, EPA has identified health concerns for inhalation exposure. Since significant inhalation exposure to workers is unlikely, when the PMN substance is used as described in the PMN, EPA has not determined that the proposed manufacturing, processing, and use of the PMN substance may present an unreasonable risk. EPA has determined, however, that use of the PMN substance other than that as described in the PMN may cause serious health effects. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(3)(i).
Recommended testing: The Agency is not recommending further toxicity testing to evaluate potential health effects. However, additional information on human exposures to the PMN substance would help to characterize potential health risks.
CFR citation: 40 CFR 721.9959.

PMN Number P–01–561

Chemical name: (generic) Modified phenolic resin.
CAS number: Not available.
Basis for action: The PMN substance will be used as described in the PMN. Based on structural analogy to polyphenols, EPA is concerned that toxicity to aquatic organisms may occur at a concentration as low as 20 ppb of the PMN substance in surface waters. Since significant environmental exposure is not expected, as the PMN substance is not released to surface waters as described in the PMN, EPA has not determined that the proposed manufacturing, processing, and use of the PMN substance may present an unreasonable risk. EPA has determined, however, that any release to surface waters may cause significant adverse environmental effects. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(4)(ii).
Recommended testing: EPA has determined that a fish acute toxicity study (OPPTS 850.1075 test guideline), a daphnid acute toxicity study (OPPTS 850.1010 test guideline), and an algal toxicity study (OPPTS 850.5400 test guideline) would help to characterize the environmental effects of the PMN substance.
CFR citation: 40 CFR 721.5908.

PMN Number P–01–573

Chemical name: (generic) Aromatic aldehyde phenolic resin
CAS number: Not available.
Basis for action: The PMN substance will be used as described in the PMN. Based on structural analogy to phenols, EPA is concerned that toxicity to aquatic organisms may occur at a concentration of 1 ppb in surface waters. Since significant environmental exposure is unlikely, as the PMN substance is not released to surface waters, as described in the PMN, EPA has not determined that manufacturing, processing, and use of the PMN substance may present an unreasonable risk. EPA has determined, however, that any release to surface waters may cause significant adverse environmental effects. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(4)(ii).
Recommended testing: EPA has determined that a fish acute toxicity study (OPPTS 850.1075 test guideline), a daphnid acute toxicity study (OPPTS 850.1010 test guideline), and an algal toxicity study (OPPTS 850.5400 test guideline) would help to characterize the environmental effects of the PMN substance.
CFR citation: 40 CFR 721.5762.

PMN Number P–01–578

Chemical name: (generic) Alkoxylated alkyl amine.
CAS number: Not available.
Basis for action: The PMN substance will be used as described in the PMN. Based on analogy to cationic surfactants, EPA is concerned that toxicity to aquatic organisms may occur at a concentration as low as 2 ppb of the PMN substance in surface waters. Since significant environmental exposure is unlikely, when the PMN substance is used as described in the PMN, EPA has not determined that the proposed manufacturing and use of the PMN substance may present an unreasonable risk. EPA has determined, however, that use of the PMN substance other than as described in the PMN could result in exposures which may cause significant adverse environmental effects. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(4)(ii).
Recommended testing: EPA has determined that an algal toxicity study (OPPTS 850.5400 test guideline), a daphnid acute toxicity study (OPPTS 850.1010 test guideline), and a fish acute toxicity study (OPPTS 850.1075 test guideline) would help to characterize the environmental effects of the PMN substance. All tests should be conducted with static methods and nominal concentrations.
CFR citation: 40 CFR 721.647.

PMN Number P–01–646

Chemical name: 1-propanaminium, 3-amino-, N, N, N-trimethyl-N-soya acyl derivs., chloride
CAS number: 391232–99–8
Basis for action: The PMN substance will be used as described in the PMN. Based on analogy to cationic surfactants, EPA is concerned that toxicity to aquatic organisms may occur at a concentration as low as 200 ppb of the PMN substance in surface waters. Since significant environmental exposure is unlikely, when the PMN substance is used as described in the PMN, EPA has not determined that the proposed manufacturing and use of the PMN substance may present an unreasonable risk. EPA has determined, however, that use of the PMN substance other than as described in the PMN could result in exposures which may cause significant adverse environmental effects. Based on this information, the PMN substance meets the concern criteria at § 721.170 (b)(4)(ii) .
Recommended testing: EPA has determined that an algal toxicity study (OPPTS 850.5400 test guideline), a daphnid acute toxicity study OPPTS 850.1010 test guideline), and a fish acute toxicity study (OPPTS 850.1075 test guideline) would help to characterize the environmental effects of the PMN substance. All tests should be conducted with static methods and nominal concentrations.
CFR citation: 40 CFR 721.7270

PMN Number P–01–716

Chemical name: (generic) Polyurea.
CAS number: Not available.
Basis for action: The PMN substance will be used as described in the PMN. EPA has identified environmental concerns because the PMN substance may be persistent, bioaccumulative, and potentially toxic based on physical/ chemical properties of the PMN substance as described in the New Chemical Program's PBT category. EPA is concerned that toxicity to aquatic organisms may occur at a concentration as low as 1 ppb of the PMN substance in surface waters based on submitted test data. Since environmental exposure is not expected, as the PMN substance is not released to surface waters as described in the PMN, EPA has not determined that the proposed manufacturing, processing, and use of the PMN substance may present an unreasonable risk. EPA has determined, however, that other uses of the PMN substance resulting in releases to surface waters may cause significant adverse environmental effects. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(4)(i).
Recommended testing: EPA has determined that the results of the tiered testing as described in the New Chemical Program's PBT Category would help to characterize the PBT properties of the PMN substance. EPA has also determined that an algal toxicity study (OPPTS 850.5400 test guideline), a fish chronic toxicity study (OPPTS 850.1400 test guideline), a daphnid chronic toxicity study (OPPTS 850.1300 test guideline), and a shake-flask die-away test (OPPTS 835.3170 test guideline) would help to characterize the environmental effects of the PMN substance.
CFR citation: 40 CFR 721.9929.

PMN Number P–01–781

Chemical name: Silane, triethoxy[3-(oxiranylmethoxy)propyl]-
CAS number: 2602–34–8.
Basis for action: The PMN substance will be used as described in the PMN. EPA has identified health concerns for carcinogenicity based on analogy to epoxides. EPA has concerns also for mutagenicity, developmental toxicity, reproductive toxicity, irritation, and sensitization based on analogy to trimethoxy silane derivatives. Since significant worker exposure is unlikely, when the PMN substance is used as described in the PMN, EPA has not determined that the proposed manufacturing, processing, and use of the PMN substance may present an unreasonable risk. EPA has determined, however, that use of the PMN substance other than as described in the PMN may cause serious health effects. Based on this information the PMN substance meets the concern criteria at § 721.170(b)(1)(i)(C) and (b)(3)(ii) . Also, based on structural analogy to epoxides, EPA is concerned that toxicity to aquatic organisms may occur at a concentration as low as 10 ppb of the PMN substance in surface waters. Since environmental exposure is not expected as the PMN substance is not released to surface waters above 10 ppb, as described in the PMN, EPA has not determined that the proposed manufacturing, processing and use of the PMN substance may present an unreasonable risk. EPA has determined, however, that releases to surface waters above 10 ppb may cause significant adverse environmental effects. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(4)(ii).
Recommended testing: EPA has determined that a combined chronic toxicity/carcinogenicity study (OPPTS 870.4300 test guideline) and a 90-day subchronic inhalation study in rodents with attention to pathology of the reproductive organs (OPPTS 870.3465 test guidelines) would help to characterize the health effects of the PMN substance. EPA has determined that a fish acute toxicity study (OPPTS 850.1075 test guideline), a daphnid acute toxicity study (OPPTS 850.1010 test guideline), and an algal toxicity

study (OPPTS 850.5400 test guideline) would help to characterize the environmental effects of the PMN substance. The fish and daphnid tests should be conducted with the flow-through conditions and measured concentrations. The algae test should be conducted with the static method and measured concentrations.
CFR citation: 40 CFR 721.9501.
PMN Number P–01–833
Chemical name: (generic) Polyethyleneamine crosslinked with substituted polyethylene glycol.
CAS number: Not available.
Basis for action: The PMN substance will be used as an absorbent polymer. Based on toxicity data for other high molecular weight, water swellable polymers, EPA has identified potential lung toxicity from inhalation exposure. Since significant inhalation exposure is unlikely when the PMN substance is used as identified in the PMN, EPA has not determined that the proposed manufacturing, processing, and use of the PMN substance may present an unreasonable risk. EPA has determined, however, that use of the PMN substance other than as described in the PMN may lead to inhalation exposure which could cause serious health effects. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(3)(ii).
Recommended testing: EPA has determined that a 90-day inhalation toxicity study with a 60-day holding period (OPPTS 870.3465 test guideline) would help to characterize the human health effects of the PMN substance. Attention should be given to the lungs, including histopathology of the lungs (inflamation, epithelial hyperplasia, and fibrosis), BAL analysis for markers of lung injury, and lung burden analysis for clearance of the test material (EPA–748–R–96–001). The neurotoxicity components and examination of organs other than the lungs are not required.
CFR citation: 40 CFR 721.7255.
PMN Number P–02–17
Chemical name: (generic) Phenyl azo dye.
CAS number: Not available.
Basis for action: The PMN substance will be used as described in the PMN. Based on the submitted 28-day study, EPA has concerns for effects to the testes. Also, based on structural analogy to the azo reduction product, EPA has concerns for developmental toxicity, hemolytic anemia, kidney toxicity, liver toxicity, spleen toxicity, and irreversible ocular phototoxicity. Since significant inhalation exposure to workers is unlikely for the use described in the PMN, EPA has not determined that manufacturing, processing, and use of the PMN substance as described in the PMN may present an unreasonable risk. EPA has determined, however, that use of the PMN substance as a solid may cause serious health effects. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(3)(i) and (b)(3)(ii).
Recommended testing: EPA has determined that a prenatal developmental toxicity study by the oral route in two species (OPPTS 870.3700 test guideline) would help to characterize the human health effects of the PMN substance.
CFR citation: 40 CFR 721.5917.
PMN Number P–02–90
Chemical name: (generic) Nickel, cobalt mixed metal oxide.
CAS number: Not available.
Basis for action: The PMN substance will be used as described in the PMN. EPA has identified health concerns for developmental toxicity, mutagenicity, carcinogenicity, cardiotoxicity, immunotoxicity, neurotoxicity, and allergenicity based on the presence of various metal oxides as well as lung effects from exposure to insoluble particles and pulmonary carcinogenicity due to the crystalline nature of the PMN material. Since significant worker exposure is unlikely when used as described in the PMN, EPA has not determined that the proposed manufacturing, processing, and use of the PMN substance may cause significant adverse effects. EPA has determined, however, that domestic manufacture or use of the PMN substance other than as described in the PMN may result in serious health effects. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(3)(ii).
Recommended testing: EPA has determined that a 90-day subchronic inhalation toxicity study in rat (OPPTS 870.3465 test guideline) would help to characterize the human health effects of the PMN substance.
CFR citation: 40 CFR 721.5315.
PMN Number P–02–207
Chemical name: Piperdinium, 1,1-dimethyl-, chloride.
CAS number: 24307–26–4.
Basis for action: The PMN substance will be used as described in the PMN. Based on submitted test data, EPA has identified health concerns for neurotoxicity and chronic toxic effects for the PMN substance. Since significant worker exposure is unlikely when used as described in the PMN, EPA has not determined that the proposed manufacturing, processing, and use of the PMN substance may cause significant adverse effects. EPA has determined, however, that use of the PMN substance other than as described in the PMN may result in serious health effects. Also, based on structural analogy to cationic surfactants, EPA is concerned that toxicity to aquatic organisms may occur at surface water concentrations as low as 300 ppb of the PMN substance in surface waters. Since environmental releases are not expected as described in the PMN, EPA has not determined that the proposed manufacturing, processing, and use of the PMN substance may present an unreasonable risk. EPA has determined, however, that release of the PMN substance to surface water may cause significant adverse environmental effects. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(3)(i), and (b)(4)(ii).
Recommended testing: EPA has determined that information on potential human and environmental exposures would help to characterize the potential health and environmental risks of the PMN substance.
CFR citation: 40 CFR 721.6167.
PMN Number P–02–262
Chemical name: (generic) Substituted benzophenone.
CAS number: Not available.
Basis for action: The PMN substance will be used as described in the PMN. Based on analogy to benzophenones, EPA has identified health concerns for neurotoxicity and liver toxicity. Since significant worker exposure is unlikely when the PMN substance is used as described in the PMN, EPA has not determined that the proposed processing, and use of the PMN substance may present an unreasonable risk. EPA has determined, however, that domestic manufacture of the PMN substance could result in exposures which may cause serious health effects. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(3)(ii). Also, based on structural analogy to neutral organic chemicals, EPA is concerned that toxicity to aquatic organisms may occur at a concentration as low as 20 ppb of the PMN substance in surface waters. Since environmental releases are not expected as described in the PMN, EPA has not determined that the proposed manufacturing, processing and use of the PMN substance may present an unreasonable risk. EPA has determined, however, that any release of the PMN substance to surface water may cause significant adverse environmental effects. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(4)(ii).
Recommended testing: EPA has determined that a 90-day oral subchronic study in rats (OPPTS 870.3465 test guideline) would help characterize the human health effects of the PMN substance. EPA has also determined that a fish acute toxicity study (OPPTS 850.1075 test guideline), a daphnid acute toxicity study (OPPTS 850.1010 test guideline), and an algal acute toxicity study (OPPTS 850.5400 test guideline) would help to characterize the environmental effects of the PMN substance.
CFR citation: 40 CFR 721.1747.

IV. Objectives and Rationale of the Rule

During review of the PMNs submitted for the chemical substances that are subject to this SNUR, EPA concluded that for 5 of the 65 chemical substances, regulation was warranted under section 5(e) of TSCA, pending the development of information sufficient to make reasoned evaluations of the health or environmental effects of the chemical substances. The basis for such findings is outlined in Unit III. Based on these findings, TSCA section 5(e) consent orders requiring the use of appropriate exposure controls were negotiated with the PMN submitters; the SNUR provisions for these chemical substances listed in this document are consistent with the provisions of the TSCA section 5(e) consent orders.

In the other 60 cases for which the proposed uses are not regulated under a TSCA section 5(e) consent order, EPA determined that one or more of the criteria of concern established at 40 CFR 721.170 were met.

EPA is issuing this SNUR for specific chemical substances which have undergone premanufacture review to ensure that:

1. EPA will receive notice of any company's intent to manufacture, import, or process a listed chemical substance for a significant new use before that activity begins.
2. EPA will have an opportunity to review and evaluate data submitted in a SNUR notice before the notice submitter begins manufacturing, importing, or processing a listed chemical substance for a significant new use.
3. When necessary, to prevent unreasonable risks, EPA will be able to regulate prospective manufacturers, importers, or processors of a listed chemical substance before a significant new use of that chemical substance occurs.
4. All manufacturers, importers, and processors of the same chemical substance which is subject to a TSCA section 5(e) consent order are subject to similar requirements.

Issuance of a SNUR for a chemical substance does not signify that the chemical substance is listed on the TSCA Inventory. Manufacturers, importers, and processors are responsible for ensuring that a new chemical substance subject to a final SNUR is listed on the TSCA Inventory.

V. Direct Final Procedures

EPA is issuing these SNURs as a direct final rule, as described in 40 CFR 721.160(c)(3) and 721.170(d)(4). In accordance with 40 CFR 721.160(c)(3)(ii), this rule will be effective February 17, 2004, unless EPA receives a written notice by January 16, 2004, of adverse or critical comments, or notice of intent to submit adverse or critical comments on EPA's action. If EPA receives such a notice, EPA will publish a document to withdraw the direct final SNUR for the specific chemical substance to which the adverse or critical comments apply. EPA will then propose a SNUR for the specific chemical substance providing a 30-day comment period.

This action establishes SNURs for a number of chemical substances. Any person who submits adverse or critical comments or notice of intent to submit adverse or critical comments, must identify the chemical substance and the new use to which it applies. EPA will not withdraw a SNUR for a chemical substance not identified in a notice.

VI. Test Data and Other Information

EPA recognizes that TSCA section 5 does not require developing any particular test data before submission of a SNUN. Persons are required only to submit test data in their possession or control and to describe any other data known to or reasonably ascertainable by them. In cases where a TSCA section 5(e) consent order requires or recommends certain testing, Unit III. lists those recommended tests.

However, EPA has established production limits in the TSCA section 5(e) consent orders for several of the chemical substances regulated under this rule, in view of the lack of data on the potential health and environmental risks that may be posed by the significant new uses or increased exposure to the chemical substances. These production limits cannot be exceeded unless the PMN submitter first submits the results of toxicity tests that would permit a reasoned evaluation of the potential risks posed by these chemical substances. Under recent consent orders, each PMN submitter is required to submit each study at least 14 weeks (earlier consent orders required submissions at least 12 weeks) before reaching the specified production limit. Listings of the tests specified in the TSCA section 5(e) consent orders are included in Unit III. The SNURs contain the same production volume limits as the consent orders. Exceeding these production limits is defined as a significant new use.

The recommended studies may not be the only means of addressing the potential risks of the chemical substance. However, SNUNs submitted for significant new uses without any test data may increase the likelihood that EPA will take action under TSCA section 5(e), particularly if satisfactory test results have not been obtained from a prior submitter. EPA recommends that potential SNUN submitters contact EPA early enough so that they will be able to conduct the appropriate tests.

SNUN submitters should be aware that EPA will be better able to evaluate SNUNs which provide detailed information on:

1. Human exposure and environmental release that may result from the significant new use of the chemical substances.
2. Potential benefits of the chemical substances.
3. Information on risks posed by the chemical substances compared to risks posed by potential substitutes.

VII. Procedural Determinations

EPA is establishing through this rule some significant new uses which have been claimed as CBI subject to Agency confidentiality regulations at 40 CFR part 2. EPA is required to keep this information confidential to protect the CBI of the original PMN submitter. EPA promulgated a procedure to deal with the situation where a specific significant new use is CBI. This procedure appears in 40 CFR 721.1725(b)(1) and is similar to that in § 721.11 for situations where the chemical identity of the chemical substance subject to a SNUR is CBI. This procedure is cross-referenced in each of these SNURs.

A manufacturer or importer may request EPA to determine whether a proposed use would be a significant new use under this rule. Under the procedure in § 721.1725(b)(1), a manufacturer or importer must show that it has a *bona fide* intent to manufacture or import the chemical substance and must identify the specific use for which it intends to manufacture or import the chemical substance. If EPA concludes that the person has shown a *bona fide* intent to manufacture or import the chemical substance, EPA will tell the person whether the use identified in the *bona fide* submission would be a significant new use under the rule. Since most of the chemical identities of the chemical substances

subject to these SNURs are also CBI, manufacturers and processors can combine the *bona fide* submission under the procedure in § 721.1725(b)(1) with that under § 721.11 into a single step.

If a manufacturer or importer is told that the production volume identified in the *bona fide* submission would not be a significant new use, i.e., it is below the level that would be a significant new use, that person can manufacture or import the chemical substance as long as the aggregate amount does not exceed that identified in the *bona fide* submission to EPA. If the person later intends to exceed that volume, a new *bona fide* submission would be necessary to determine whether that higher volume would be a significant new use. EPA is considering whether to adopt a special procedure for use when CBI production volume is designated as a significant new use. Under such a procedure, a person showing a *bona fide* intent to manufacture or import the chemical substance, under the procedure described in § 721.11, would automatically be informed of the production volume that would be a significant new use. Thus, the person would not have to make multiple *bona fide* submissions to EPA for the same chemical substance to remain in compliance with the SNUR, as could be the case under the procedures in § 721.1725(b)(1).

VIII. Applicability of Rule to Uses Occurring Before Effective Date of the Final Rule

To establish a significant "new" use, EPA must determine that the use is not ongoing. The chemical substances subject to this rule have recently undergone premanufacture review. TSCA section 5(e) consent orders have been issued for 5 chemical substances and notice submitters are prohibited by the TSCA section 5(e) consent orders from undertaking activities which EPA is designating as significant new uses. In cases where EPA has not received an NOC and the chemical substance has not been added to the TSCA Inventory, no other person may commence such activities without first submitting a PMN. For chemical substances for which an NOC has not been submitted at this time, EPA has concluded that the uses are not ongoing. However, EPA recognizes in cases when chemical substances identified in this SNUR are added to the inventory prior to the effective date of the rule, the chemical substances may be manufactured, imported, or processed by other persons for a significant new use as defined in this rule before the effective date of the rule. However, 45 of the 65 chemical substances contained in this rule have CBI chemical identities, and since EPA has received a limited number of post-PMN *bona fide* submissions, the Agency believes that it is highly unlikely that any of the significant new uses described in the following regulatory text are ongoing.

As discussed in the **Federal Register** of April 24, 1990, EPA has decided that the intent of section 5(a)(1)(B) of TSCA is best served by designating a use as a significant new use as of the date of publication rather than as of the effective date of the rule. Thus, persons who begin commercial manufacture, import, or processing of the chemical substances regulated through this SNUR will have to cease any such activity before the effective date of this rule. To resume their activities, these persons would have to comply with all applicable SNUR notice requirements and wait until the notice review period, including all extensions, expires.

EPA has promulgated provisions to allow persons to comply with this SNUR before the effective date. If a person were to meet the conditions of advance compliance under § 721.45(h), the person would be considered to have met the requirements of the final SNUR for those activities. If persons who begin commercial manufacture, import, or processing of the chemical substance between publication and the effective date of the SNUR do not meet the conditions of advance compliance, they must cease that activity before the effective date of the rule. To resume their activities, these persons would have to comply with all applicable SNUR notice requirements and wait until the notice review period, including all extensions, expires.

IX. Economic Analysis

EPA has evaluated the potential costs of establishing SNUN requirements for potential manufacturers, importers, and processors of the chemical substances subject to this rule. EPA's complete economic analysis is available in the public docket.

X. Statutory and Executive Order Reviews

1. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993), the Office of Management and Budget (OMB) has determined that proposed or final SNURs are not a "significant regulatory action" subject to review by OMB, because they do not meet the criteria in section 3(f) of the Executive order.

2. Paperwork Reduction Act

According to the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, an Agency may not conduct or sponsor, and a person is not required to respond to a collection of information that requires OMB approval under the PRA, unless it has been approved by OMB and displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register**, listed in 40 CFR part 9, and included on the related collection instrument or form, if applicable.

The information collection requirements related to this action have already been approved by OMB pursuant to the PRA under OMB control number 2070–0012 (EPA ICR No. 574). This action does not impose any burden requiring additional OMB approval. If an entity were to submit a SNUN to the Agency, the annual burden is estimated to average between 30 and 170 hours per response. This burden estimate includes the time needed to review instructions, search existing data sources, gather and maintain the data needed, and complete, review, and submit the required SNUN.

Send any comments about the accuracy of the burden estimate, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques, to the Director, Collection Strategies Division, Office of Environmental Information (2822T), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. Please remember to include the OMB control number in any correspondence, but do not submit any completed forms to this address.

3. Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), the Agency hereby certifies that promulgation of this SNUR will not have a significant adverse economic impact on a substantial number of small entities. The rationale supporting this conclusion is as follows. A SNUR applies to any person (including small or large entities) who intends to engage in any activity described in the rule as a "significant new use." By definition of the word "new," and based on all information currently available to EPA, it appears that no small or large entities presently engage in such activity. Since a SNUR only requires that any person who intends to engage in such activity in the future must first notify EPA by submitting a SNUN, no economic impact will even occur until someone decides to engage in those activities. Although some small entities may decide to conduct such activities in the future, EPA cannot presently determine how many, if any, there may be. However, EPA's experience to date is that, in response to the promulgation of over 1,000 SNURs, the Agency receives on average only 10 notices per year. Of those SNUNs submitted, none appear to be from small entities in response to any SNUR. In addition, the estimated reporting cost for submission of a SNUN (see Unit IX.), are minimal regardless of the size of the firm. Therefore, EPA believes that the potential economic impact of complying with this SNUR are not expected to be significant or adversely impact a substantial number of small entities. In a SNUR that published on June 2, 1997 (62 FR 29684) (FRL–5597–1), the Agency presented it's general determination that proposed and final SNURs are not expected to have a significant economic impact on a substantial number of small entities, which was provided to the Chief Counsel for Advocacy of the Small Business Administration.

4. Unfunded Mandates Reform Act

Based on EPA's experience with proposing and finalizing SNURs, State, local, and Tribal governments have not been impacted by these rulemakings, and EPA does not have any reasons to believe that any State, local, or Tribal government will be impacted by this rulemaking. As such, EPA has determined that this regulatory action does not impose any enforceable duty, contain any unfunded mandate, or otherwise have any affect on small governments subject to the requirements of sections 202, 203, 204, or 205 of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4).

5. Executive Order 13132: Federalism

This action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999).

6. Executive Order 13175: Consultation and Coordination with Indian Tribal Governments

This rule does not have Tribal implications because it is not expected to have substantial direct effects on Indian Tribes. This does not significantly or uniquely affect the communities of Indian Tribal governments, nor does it involve or impose any requirements that affect Indian Tribes. Accordingly, the requirements of Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000), do not apply to this rule.

7. Executive Order 13045: Protection of Children from Environmental Health Risks and Safety Risks

This action is not subject to Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997), because this is not an economically significant regulatory action as defined by Executive Order 12866, and this action does not address environmental health or safety risks disproportionately affecting children.

8. Executive Order 13211: Actions that Significantly Affect Energy Supply, Distribution, or Use

This rule is not subject to Executive Order 13211, entitled *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001), because this action is not expected to affect energy supply, distribution, or use.

9. National Technology Transfer Advancement Act

In addition, since this action does not involve any technical standards, section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note), does not apply to this action.

10. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations

This action does not entail special considerations of environmental justice related issues as delineated by Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994).

11. Executive Order 12630: Governmental Actions and Interference With Constitutionally Protected Property Rights (Takings)

EPA has complied with Executive Order 12630, entitled *Governmental Actions and Interference with Constitutionally Protected Property Rights* (53 FR 8859, March 15, 1988), by examining the takings implications of this rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" issued under the Executive order.

12. Executive Order 12988: Civil Justice Reform

In issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct, as required by section 3 of Executive Order 12988, entitled *Civil Justice Reform* (61 FR 4729, February 7, 1996).

13. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a final rule may take effect, the Agency promulgating it must submit a final rule report, which includes a copy of the final rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this final rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the final rule in the **Federal Register**. This final rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 721

Environmental protection, Chemicals, Hazardous substances, Reporting and recordkeeping requirements.

Dated: December 7, 2003.

Charles M. Auer,

Director, Office of Pollution Prevention and Toxics.

■ Therefore, 40 CFR part 721 is amended as follows:

PART 721—[AMENDED]

■ 1. The authority citation for part 721 continues to read as follows:

Authority: 15 U.S.C. 2604, 2607, and 2625(c).

■ 2. By adding new § 721.304 to subpart E to read as follows

§ 721.304 Acetic acid, [(5-chloro-8-quinolinyl)oxy-], 1-methyl hexyl ester.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified as acetic acid, [(5-chloro-8-quinolinyl)oxy-]-, 1-methylhexyl ester (PMN P–01–170;

CAS No. 99607–70–2) is subject to reporting under this section for the significant new use described in paragraph (a)(1) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1), (a)(3), (a)(4), and (a)(5)(iv).

(ii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(f).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a), (b), (c), (d), (e), and, (i) are applicable to manufacturers, importers, and processors of this chemical substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

■ 3. By adding new § 721.330 to subpart E to read as follows:

§ 721.330 Aromatic acrylate (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as an aromatic acrylate (PMN P–01–420) is subject to reporting under this section for the significant new use described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water.* Requirements as specified § 721.90(a)(1), (b)(1), and (c)(1).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a), (b), (c), and (k) are applicable to manufacturers, importers, and processors of this chemical substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

■ 4. By adding new § 721.535 to subpart E to read as follows:

§ 721.535 Halogenated alkane (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as halogenated alkane (PMN P–01–433) is subject to reporting under this section for the significant new use described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(g).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a), (b), (c), and (i) are applicable to manufacturers, importers, and processors of this chemical substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

■ 5. By adding new § 721.647 to subpart E to read as follows:

§ 721.647 Alkoxylated alkyl amine (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as an alkoxylated alkyl amine (PMN P–01–578) is subject to reporting under this section for the significant new use described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(j).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a), (b), (c), and (i) are applicable to manufacturers, importers, and processors of this chemical substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.1725(b)(1) apply to this section.

■ 6. By adding new § 721.983 to subpart E to read as follows:

§ 721.983 Sulfonyl azide intermediate (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as sulfonyl azide intermediate (PMN P–99–1202) is subject to reporting under this section for the significant new use described in paragraph (a)(1) of this section.

(2) The significant new uses are:

(i) *Release to water.* Requirements as specified in § 721.90(a)(1), (b)(1), and (c)(1).

(ii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(f), (v)(1), and (x)(1).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a), (b), (c), (i), and (k) are applicable to manufacturers, importers, and processors of this chemical substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

■ 7. By adding new § 721.1070 to subpart E to read as follows:

§ 721.1070 Benzenamine, 4-methoxy-2-methyl-N-(3-methylphenyl).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as benzenamine, 4-methoxy-2-methyl-N-(3-methylphenyl) (PMN P–01–152; CAS No. 93072–06–1) is subject to reporting under this section for the significant new use described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water.* Requirements as specified in § 721.90(a)(4), (b)(4), and (c)(4) (N=5).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a), (b), (c), and (k) are applicable to manufacturers, importers, and processors of this chemical substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

■ 8. By adding new § 721.1620 to subpart E to read as follows:

§ 721.1620 Benzenesulfonamide, alkylphenyl substituted phenyl substituted carbonyl- (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as benzenesulfonamide alkylphenyl substituted phenyl substituted carbonyl- (PMN P–00–368) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(4), (a)(5)(iii), (a)(5)(iv), (a)(5)(v), (a)(5)(vi), (a)(5)(vii), (a)(6)(i), (b) (concentration set at 1.0%), and (c). As an alternative to the respiratory requirements listed here, a manufacturer, importer, or processor may choose to follow the new chemical exposure limit (NCEL) provisions listed in the TSCA section 5(e) consent order for this chemical substance.

(ii) *Hazard communication program.* Requirements as specified in § 721,72(a), (b), (c), (d), (e) (concentration set at 1.0%), (f), (g)(1)(iv), (g)(2)(ii), (g)(2)(iv), (g)(3)(ii), (g)(4)(i), and (g)(5).

(iii) *Release to water.* Requirements as specified in § 721.90(a)(4), (b)(4), and (c)(4) (N=30).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a), (b), (c), (d), (f), (g), (h), and (k) are applicable to manufacturers, importers, and processors of this chemical substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

■ 9. By adding new § 721.1648 to subpart E to read as follows:

§ 721.1648 Substituted benzenesulfonic acid salt (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as substituted benzenesulfonic acid (PMN P–99–1304) is subject to reporting under this section for the significant new use described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(j).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a), (b), (c), and (i) are applicable to manufacturers, importers, and processors of this chemical substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.1725(b)(1) apply to this section.

■ 10. By adding new § 721.1680 to subpart E to read as follows:

§ 721.1680 Substituted benzoic acid (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as substituted benzoic acid (PMN P–01–423) is subject to reporting under this section for the significant new use described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(f).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a), (b), (c), and (i) are applicable to manufacturers, importers, and processors of this chemical substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

■ 11. By adding new § 721.1747 to subpart E to read as follows:

§ 721.1747 Substituted benzophenone (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as a substituted benzophenone (PMN P–02–262) is subject to reporting under this section for the significant new use described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(f).

(ii) *Release to water.* Requirement as specified § 721.90(b)(1) and (c)(1).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a), (b), (c), (i), and (k) are applicable to manufacturers, importers, and processors of this chemical substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

■ 12. By adding new § 721.2060 to subpart E to read as follows:

§ 721.2060 Disubstituted benzenedicarboxylic acid (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as a disubstituted benzenedicarboxylic acid (PMN P–01–77) is subject to reporting under this section for the significant new use described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(g).

(ii) *Release to water.* Requirements as specified § 721.90(a)(1), (b)(1), and (c)(1).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a), (b), (c), (i), and (k) are applicable to manufacturers, importers, and processors of this chemical substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

■ 13. By adding new § 721.2076 to subpart E to read as follows:

§ 721.2076 D-Glucuronic acid, polymer with 6-deoxy-L-mannose and D-glucose, acetate, calcium magnesium potassium sodium salt.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified as D-Glucuronic acid, polymer with 6-deoxy-L-mannose and D-glucose, acetate, calcium magnesium potassium sodium salt (PMN P–00–7; CAS No.125005–87–0) is subject to reporting under this section for the significant new use described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(j), (oilfield drilling fluid, oilfield spacer fluid, oilfield cementing, cementitious packaged products, concrete applications, and foam applications).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a), (b), (c), and (i) are applicable to manufacturers, importers, and processors of this chemical substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

■ 14. By adding new § 721.2098 to subpart E to read as follows:

§ 721.2098 Aliphatic polycarboxylic acid metal salt (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substances identified generically as an aliphatic polycarboxylic acid metal salt (PMN P–01–7) is subject to reporting under this section for the significant new use described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(v)(1), (x)(1), and (f).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a), (b), (c), and (i) are applicable to manufacturers, importers, and processors of this chemical substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

■ 15. By adding new § 721.2685 to subpart E to read as follows:

§ 721.2685 Polyisobutene epoxide (generic).

(a) *Chemical substances and significant new uses subject to reporting.* (1) The chemical substances identified generically as polyisobutene epoxide (PMNs P–99–951 and P–99–952) are subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(j).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a), (b), (c), and (i) are applicable to manufacturers, importers, and processors of this chemical substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.1725(b)(1) apply to this section.

■ 16. By adding new § 721.2752 to subpart E to read as follows:

§ 721.2752 Epoxy resin containing phosphorus (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as an epoxy resin containing phosphorus (PMN P–00–912) is subject to reporting under this section for the significant new use described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(j).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a), (b), (c), and (i) are applicable to manufacturers, importers, and processors of this chemical substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.575(b)(1) apply to this section.

■ 17. By adding new § 721.3062 to subpart E to read as follows:

§ 721.3062 Haloarylalkylketoester (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as a haloarylalkylketoester. (PMN P–00–966) is subject to reporting under this section for the significant new use described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water.* Requirements as specified in § 721.90(a)(4), (b)(4), and (c)(4) (N=200).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a), (b), (c), and (k) are applicable to manufacturers, importers, and processors of this chemical substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

■ 18. By adding new § 721.3110 to subpart E to read as follows:

§ 721.3110 Polycarboxylic acid ester (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as a polycarboxylic acid ester (PMN P–97–1108) is subject to reporting under this section for the significant new use described in paragraph (a)(1) of this section.

(2) The significant new uses are:

(i) *Release to water.* Requirements as specified in § 721.90(a)(1), (b)(1), and (c)(1).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a), (b), (c), and (k) are applicable to manufacturers, importers, and processors of this chemical substance.

(2) *Limitations or evocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

■ 19. By adding new § 721.3130 to subpart E to read as follows:

§ 721.3130 Sulfuric acid, mono-C_{9-11}-alkyl esters, sodium salts.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified as sulfuric acid, mono-C_{9-11}-alkyl esters, sodium salts (PMN P–01–149; CAS No. 84501–49–5) is subject to reporting under this section for the significant new use described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(s) (5,000 kilogram (kg)).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a), (b), (c), and (i) are applicable to manufacturers, importers, and processors of this chemical substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

■ 20. By adding new § 721. 3135 to subpart E to read as follows:

§ 721.3135 Phosphorous modified epoxy resin (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as a phosphorous modified epoxy resin (PMNs P–00–992 and P–01–471) is subject to reporting under this section for the significant new use described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water.* Requirements as specified § 721.90(a)(4), (b)(4), and (c)(4) (N=6).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a), (b), (c), and (k) are applicable to manufacturers, importers, and processors of this chemical substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

■ 21. By adding new § 721.3438 to subpart E to read as follows:

§ 721.3438 Chlorohydroxyalkyl butyl ether (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as chlorohydroxyalkyl butyl ether (PMN P–99–1295) is subject to reporting under this section for the significant new use described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water.* Requirements as specified in § 721.90(a)(4), (b)(4), and (c)(4) (N=3).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a), (b), (c), and (k) are applicable to manufacturers, importers, and processors of this chemical substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

■ 22. By adding new § 721.3835 to subpart E to read as follows:

§ 721.3835 Chloroformate (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as a chloroformate (PMN P–01–1) is subject to reporting under this section for the significant new use described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Releases to water.* Requirements as specified in § 721.90(a)(4), (b)(4), and (c)(4) (N=2).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a), (b), (c), and (k) are applicable to manufacturers, importers, and processors of this chemical substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

■ 23. By adding new § 721.4096 to subpart E to read as follows:

§ 721.4096 Substituted anilino halobenzamide (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as substituted anilino halobenzamide (PMN P–99–1288) is subject to reporting under this section for the significant new use described in paragraph (a)(1) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(f).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a), (b), (c), and (i) are applicable to manufacturers, importers, and processors of this chemical substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

■ 24. By adding new § 721.4258 to subpart E to read as follows:

§ 721.4258 Substituted naphthalene hydrazide (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as substituted naphthalene hydrazide (PMN P–01–69) is subject to reporting under this section for the significant new use described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water.* Requirement as specified § 721.90(a)(1), (b)(1), and (c)(1).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a), (b), (c), and (k) are applicable to manufacturers, importers, and processors of this chemical substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

■ 25. By adding new § 721.5252 to subpart E to read as follows:

§ 721.5252 2-Naphthalenecarboxylic acid, 4,4'-methylenebis [3-hydroxy-, zinc salt.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified as 2-Naphthalenecarboxylic acid, 4:4'-methylenebis [3-hydroxy-, zinc salt (P–99–1342; CAS No. 235083–88–2) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water.* Requirements as specified in § 721.90(a)(4), (b)(4), and (c)(4) (N=10).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Record keeping requirements as specified in § 721.125(a), (b), (c), and (k) are applicable to manufacturers, importers, and processors of this chemical substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

■ 26. By adding new § 721.5253 to subpart E to read as follows:

§ 721.5253 2-Naphthalenecarboxylic acid, 4,4'-methylenebis [3-hydroxy-, strontium salt.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified as 2-Naphthalenecarboxylic acid, 4,4'-methylenebis [3-hydroxy-, strontium salt (PMN P–99–1341; CAS No. 235083–90–6) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water.* Requirements as specified in § 721.90(a)(4), (b)(4), and (c)(4) (N=10).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Record keeping requirements as specified in § 721.125(a), (b), (c), and (k) are applicable to manufacturers, importers, and processors of this chemical substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

■ 27. By adding new § 721.5288 to subpart E to read as follows:

§ 721.5288 Chromate(2-), [3-hydroxy-4-[(2-hydroxy-1-naphthenyl)azo]-7-nitro-1-substituted][N-[7-hydroxy-8-[(2-hydroxy-5-nitrophenyl)azo]-1-substituted]-, salt (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as chromate(2-), [3-hydroxy-4-[(2-hydroxy-1-naphthenyl)azo]-7-nitro-1-substituted][N-[7-hydroxy-8-[(2-hydroxy-5-nitrophenyl)azo]-1-substituted]-, salt (PMN P–99–783) is subject to reporting under this section for the significant new use described in paragraph (a)(1) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(f).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a), (b), (c), and (i) are applicable to manufacturers, importers, and processors of this chemical substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

■ 28. By adding new § 721.5293 to subpart E to read as follows:

§ 721.5293 Poly(oxy-1,2-ethanediyl), alpha-(9Z)-9-octadecenyl-.omega.-hydroxy-, phosphate, ammonium salt.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified as poly(oxy-1,2-ethanediyl), alpha-(9Z)-9-octadecenyl-.omega.-hydroxy-, phosphate, ammonium salt (PMN P–99–920; CAS No. 58857–49–1) is subject to reporting under this section for the significant new use described in paragraph (a)(1) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(f).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a), (b), (c), and (i) are applicable to manufacturers, importers, and processors of this chemical substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.1725(b)(1) apply to this section.

■ 29. By adding new § 721.5315 to subpart E to read as follows:

§ 721.5315 Nickel, cobalt mixed metal oxide (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as nickel, cobalt mixed metal oxide. (PMN P–02–90) is subject to reporting under this section for the significant new use described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(f) and (j).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a), (b), (c), and (i) are applicable to manufacturers, importers, and processors of this chemical substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.1725(b)(1) apply to this section.

■ 30. By adding new § 721.5340 to subpart E to read as follows:

§ 721.5340 Substituted benzothiazole-azo-substituted benzoquinoline nickel complex (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as substituted benzothiazole-azo-substituted benzoquinoline nickel complex (PMN P–99–897) is subject to reporting under this section for the significant new use described in paragraph (a)(1) of this section.

(2) The significant new uses are:

(i) *Release to water.* Requirements as specified in § 721.90(a)(1), (b)(1), and (c)(1).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a), (b), (c), and (k) are applicable to manufacturers, importers, and processors of this chemical substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

■ 31. By adding new § 721.5358 to subpart E to read as follows:

§ 721.5358 2-propanol, 1,1',1'-nitrilotris-, compds. with ethanol 2-[2-(C_{12-14}- alkyloxy) ethoxy] derivs. hydrogen sulfates.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified as 2-propanol, 1,1',1'-nitrilotris-, compds. with ethanol 2-[2-(C_{12-14}- alkyloxy) ethoxy] derivs. hydrogen sulfates (PMN P–99–928; CAS No. 222975–06–6) is subject to reporting under this section for the significant new use described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(j) (surfactant used in toilet bowl cleaner).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a), (b), (c), and (i) are applicable to manufacturers, importers, and processors of this chemical substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of 721.185 apply to this section.

■ 32. By adding new § 721.5546 to subpart E to read as follows:

§ 721.5546 Halogen substituted oxetanes (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substances identified generically as halogen substituted oxetanes. (PMNs P–98–1033 through P–98–1035) are subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(q).

(ii) *Hazard communication program.* A significant new use of these chemical substances is any manner or method of manufacture, import, or processing associated with any use of these chemical substances without providing risk notification as follows:

(A) If as a result of the test data required under the TSCA section 5(e) consent order for these chemical substances, the employer becomes aware that these chemical substances may present a risk of injury to human health or the environment, the employer must incorporate this new information, and any information on methods for protecting against such risk, into a Material Safety Data Sheet (MSDS) as described in § 721.72(c) within 90 days from the time the employer becomes aware of the new information. If this chemical substance is not being manufactured, imported, processed, or used in the employer's workplace, the employer must add the new information to an MSDS before the chemical substances are reintroduced into the workplace.

(B) The employer must ensure that persons who will receive or who have received the chemical substances from the employer within 5 years from the date the employer becomes aware of the new information described in paragraph (a)(2)(i)(A) of this section, are provided an MSDS as described in § 721.72(c) containing the information required under paragraph (a)(2)(i)(A) of this section within 90 days from the time the employer becomes aware of the new information.

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), (f), (h), and (i) are applicable to manufacturers, importers, and processors of these chemical substances.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.1725(b)(1) apply to this section.

■ 33. By adding new § 721.5560 to subpart E to read as follows:

§ 721.5560 Formaldehyde, polymer with (chloromethyl) oxirane and phenol, reaction products with 6H-dibenz[c,e][1,2]oxaphosphorin-6-oxide.

(a) *Chemical substance and significant new uses subject to reporting.* (1)The chemical substance identified as formaldehyde, polymer with (chloromethyl) oxirane and phenol, reaction products with 6H-dibenz[c,e][1,2]oxaphosphorin-6-oxide. (PMN P–00–991; CAS No. 300371–38–4) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water.* Requirements as specified in § 721.90(a)(4), (b)(4), and (c)(4) (N=6).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a), (b), (c), and (k) are applicable to manufacturers, importers, and processors of this chemical substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

■ 34. By adding new § 721.5713 to subpart E to read as follows:

§ 721.5713 Phenol - biphenyl polymer condensate (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as a phenol - biphenyl polymer condensate (PMN P–00–1220) is subject to reporting under this section for the significant new use described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water.* Requirements as specified § 721.90(a)(1), (b)(1), and (c)(1).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a), (b), (c), and (k) are applicable to manufacturers, importers, and processors of this chemical substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

■ 35. By adding new § 721.5718 to subpart E to read as follows:

§ 721.5718 Phenol, 2,2'-[6-(2,4-dibutoxyphenyl)-1,3,5-triazine-2,4-diyl]bis[5-butoxy-.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified as phenol, 2,2'-[6-(2,4-dibutoxyphenyl)-1,3,5-triazine-2,4-diyl]bis[5-butoxy- (PMN P–01–71; CAS No. 208343–47–9) is subject to reporting under this section for the significant new use described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water.* Requirements as specified § 721.90(a)(1), (b)(1), and (c)(1).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a), (b), (c), and (k) are applicable to manufacturers, importers, and processors of this chemical substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

■ 36. By adding new § 721.5762 to subpart E to read as follows:

§ 721.5762 Aromatic aldehyde phenolic resin (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as aromatic aldehyde phenolic resin (PMN P–01–573) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water.* Requirements as specified in § 721.90(a)(1), (b)(1), and (c)(1)

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a), (b), (c), and (k) are applicable to manufacturers, importers, and processors of this chemical substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of sect; 721.185 apply to this section.

■ 37. By adding new § 721.5905 to subpart E to read as follows:

§ 721.5905 Modified phenolic resin (generic).

(a) *Chemical substance and significant new uses subject to reporting.*

(1) The chemical substance identified generically as a modified phenolic resin (PMN P–01–441) is subject to reporting under this section for the significant new use described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water.* Requirements as specified § 721.90(a)(1), (b)(1), and (c)(1).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a), (b), (c), and (k) are applicable to manufacturers, importers, and processors of this chemical substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

■ 38. By adding new § 721.5908 to subpart E to read as follows:

§ 721.5908 Modified phenolic resin (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as modified phenolic resin (PMN P–01–561) is subject to reporting under this section for the significant new use described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water.* Requirements as specified § 721.90(a)(1), (b)(1), and (c)(1).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a), (b), (c), and (k) are applicable to manufacturers, importers, and processors of this chemical substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

■ 39. By adding new § 721.5917 to subpart E to read as follows:

§ 721.5917 Phenyl azo dye (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as a phenyl azo dye (PMN P–02–17) is subject to reporting under this section for the significant new use described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(v)(2), (w)(2), and (x)(2).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a), (b), (c), and (i) are applicable to manufacturers, importers, and processors of this chemical substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

■ 40. By adding new § 721.5935 to read as follows:

§ 721.5935 Alkylated nitroso-phenylenediamine (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as alkylated nitroso-phenylenediamine (PMN P–00–636) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1) and (a)(3).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a), (b), (c), (d), and (e) are applicable to manufacturers, importers, and processors of this chemical substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

■ 41. By adding new § 721.6167 to subpart E to read as follows:

§ 721.6167 Piperdinium, 1,1-dimethyl-, chloride.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified as piperdinium, 1,1-dimethyl-, chloride. (PMN P–02–207; CAS No. 24307–26–4) is subject to reporting under this section for the significant new use described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(j).

(ii) *Release to water.* Requirements as specified in § 721.90(a)(1), (b)(1), and (c)(1).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a), (b), (c), (i), and (k) are applicable to manufacturers, importers, and processors of this chemical substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.1725(b)(1) apply to this section.

■ 42. By adding new § 721.7250 to subpart E to read as follows:

§ 721.7250 Polyaziridinyl ester of an aliphatic alcohol (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as a polyaziridinyl ester of an aliphatic alcohol (PMN P–01–97) is subject to reporting under this section for the significant new use described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(j).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a), (b), (c), and (i) are applicable to manufacturers, importers, and processors of this chemical substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.575(b)(1) apply to this section.

■ 43. By adding new § 721.7255 to subpart E to read as follows:

§ 721.7255 Polyethyleneamine crosslinked with substituted polyethylene glycol (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as polyethyleneamine crosslinked with substituted polyethylene glycol (PMN P–01–833) is subject to reporting under this section

for the significant new use described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(j) (absorbent polymer).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a), (b), (c), and (i) are applicable to manufacturers, importers, and processors of this chemical substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

■ 44. By adding new § 721.7270 to subpart E to read as follows:

§ 721.7270 1-propanaminium, 3-amino-, N, N, N-trimethyl-N-soya acyl derivs., chloride.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified as 1-propanaminium, 3-amino-, N, N, N-trimethyl-N-soya acyl derivs., chloride (PMN P–01–646; CAS No. 391232–99–8) is subject to reporting under this section for the significant new use described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(j).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a), (b), (c), and (i) are applicable to manufacturers, importers, and processors of this chemical substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.1725 apply to this section.

■ 45. By adding new § 721.7290 to subpart E to read as follows:

§ 721.7290 Propanoic acid, 2-(trimethoxysilyl)-, ethyl ester.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified as propanoic acid, 2-(trimethoxysilyl)-, ethyl ester (PMN P–01–22; CAS No. 137787–41–8) is subject to reporting under this section for the significant new use described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721,80(j) (organic stripper additive).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a), (b), (c), and (i) are applicable to manufacturers, importers, and processors of this chemical substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

■ 46. By adding new § 721.8130 to subpart E to read as follows:

§ 721.8130 Propanamide, -(2-hydroxyethyl)-3-methoxy-.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified as propanamide, -(2-hydroxyethyl)-3-methoxy- (PMN P–01–144; CAS No. 35544–45–7) is subject to reporting under this section for the significant new use described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified § 721.80(j) (heating transfer fluid and a refrigerant) and (s) (100,000 kg)

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a), (b), (c), and (i) are applicable to manufacturers, importers, and processors of this chemical substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

■ 47. By adding new § 721.8140 to subpart E to read as follows:

§ 721.8140 Substituted propane (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as a substituted propane (PMN P–01–298) is subject to reporting under this section for the significant new use described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(j) (polymer additive).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a), (b), (c), and (i) are applicable to manufacturers, importers, and processors of this chemical substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

■ 48. By adding new § 721.8145 to subpart E to read as follows:

§ 721.8145 Propane,1,1,1,2,2,3,3-heptafluoro-3-methoxy-.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified as propane,1,1,1,2,2,3,3-heptafluoro-3-methoxy- (PMN P–01–320; CAS No. 375–03–1) is subject to reporting under this section for the significant new use described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified § 721.80(j) (heating transfer fluid and a refrigerant) and (s) (100,000 kg)

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a), (b), (c), and (i) are applicable to manufacturers, importers, and processors of this chemical substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

■ 49. By adding new § 721.8340 to subpart E to read as follows:

§ 721.8340 Mono esters from 2- propenoic acid (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as mono esters from 2-propenoic acid (PMN P–01–85) is subject to reporting under this section for the significant new use described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water.* Requirements as specified § 721.90(a)(1), (b)(1), and (c)(1).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a), (b), (c), and (k) are applicable to manufacturers, importers, and processors of this chemical substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

■ 50. By adding new § 721.8485 to subpart E to read as follows:

§ 721.8485 2-Propenoic acid, 2-methyl-, (octahydro-4,7-methano-1H- indene-5-diyl)bis(methylene) ester.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified as 2-propenoic acid, 2-methyl-, (octahydro-4,7-methano- 1H- indene-5-diyl)bis(methylene) ester (PMN P–99–1075; CAS No. 43048–08–4) is subject to reporting under this section for the significant new use described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(f).

(ii) *Release to water.* Requirements as specified in § 721.90(b)(1) and (c)(1).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a), (b), (c), (i), and (k) are applicable to manufacturers, importers, and processors of these chemical substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

■ 51. By adding new § 721.8940 to subpart E to read as follows:

§ 721.8940 Chromate(3-), bis[3-[[6-amino-1,4-dihydro-2-[[[4-[(2-hydroxy-1-naphthalenyl)azo] phenyl]sulfonyl] amino]-4-(oxo-.kappa.O)-5- pyrimidinyl]azo-.kappaN1] -4-hydroxy-.kappa.O)-5-nitrobenzenesulfonato(3-)]-, trisodium.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified as chromate(3-), bis[3-[[6-amino-1,4-dihydro-2-[[[4-[(2-hydroxy-1-naphthalenyl]azo] phenyl] sulfonyl]amino]-4-(oxo-.kappa.O)-5-pyrimidinyl]azo-.kappaN1] -4-hydroxy-.kappa.O)-5-nitrobenzenesulfonato(3-)]-, trisodium (PMN P–01–459; CAS No. 178452–72–7) is subject to reporting under this section for the significant new use described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80 (v)(1), (w)(1), and (x)(1).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a), (b), (c), and (i) are applicable to manufacturers, importers, and processors of this chemical substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

■ 52. By adding new § 721.8950 to subpart E to read as follows:

§ 721.8950 Chromate(3-), bis[3-[[6-amino-1,4-dihydro-2-[[[4-[(2-hydroxy-1-naphthalenyl)azo]phenyl]sulfonyl]amino]-4-(oxo-.kappa.O)-5-pyrimidinyl]azo-.kappaN1]-4-hydroxy-.kappa.O)-5-nitrobenzenesulfonato(3-)]-, sodium triethanolamine salts.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified as chromate(3-), bis[3-[[6-amino-1,4-dihydro-2- [[[4-[(2-hydroxy-1-naphthalenyl)azo] phenyl]sulfonyl]amino]-4-(oxo-.kappa.O)-5-pyrimidinyl]azo-.kappaN1] -4-hydroxy-.kappa.O)-5-nitrobenzenesulfonato(3-)]-, sodium triethanolamine salts. (PMN P–01–460; CAS No. 327177–98–0) is subject to reporting under this section for the significant new use described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80 (v)(1), (w)(1), and (x)(1).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a), (b), (c), and (i) are applicable to manufacturers, importers, and processors of this chemical substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

■ 53. By adding new § 721.9078 to subpart E to read as follows:

§ 721.9078 6-Methoxy-1H-benz[de]isoquinoline-2 [3H]-dione derivative (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as 6-methoxy-1H-benz[de]isoquinoline-2 [3H]-dione derivative (PMN P–00–1205) is subject to reporting under this section for the significant new use described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water.* Requirements as specified in § 721.90(a)(4), (b)(4), and (c)(4) (N=30).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a), (b), (c), and (k) are applicable to manufacturers, importers, and processors of this chemical substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

■ 54. By adding new § 721.9079 to subpart E to read as follows:

§ 721.9079 Dihydro quinacridone derivative (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as dihydro quinacridone derivative (PMN P–01–397) is subject to reporting under this section for the significant new use described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(s) (1,000 kg).

(ii) *Release to water.* Requirements as specified § 721.90(a)(4), (b)(4), and (c)(4) (N=2).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a), (b), (c), (i), and (k) are applicable to manufacturers, importers, and processors of this chemical substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

■ 55. By adding new § 721.9501 to subpart E to read as follows:

§ 721.9501 Silane, triethoxy[3-oxiranylmethoxy)propyl]-.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified as silane, triethoxy[3-oxiranylmethoxy)propyl]- (PMN P–01–781; CAS No. 2602–34–2) is subject to reporting under this section for the significant new use described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(y)(l).

(ii) *Release to water.* Requirements as specified § 721.90(a)(4), (b)(4), and (c)(4) (N=10).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a), (b), (c), (i), and (k) are applicable to manufacturers, importers, and processors of this chemical substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

■ 56. By adding new § 721.9506 to subpart E to read as follows:

§ 721.9506 Halogenated arylsilane (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as a halogenated arylsilane (PMN P–01–9) is subject to reporting under this section for the significant new use described in paragraph (a)(1) of this section.

(2) The significant new uses are:

(i) *Release to water.* Requirements as specified § 721.90(a)(1), (b)(1), and (c)(1).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a), (b), (c), and (k) are applicable to manufacturers, importers, and processors of this chemical substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

■ 57. By adding new § 721.9511 to subpart E to read as follows:

§ 721.9511 Silicic acid ($H_6SiO_2O_7$), magnesium, strontium salt(1:1:2), dysprosium and europium-doped.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified as silicic acid ($H_6SiO_2O_7$) magnesium, strontium salt(1:1:2), dysprosium and europium-doped. (PMN P–98–848; CAS No.181828–07–9) is subject to reporting under this section for the significant new use described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(j) (manufacture or import of the chemical substance where greater than 5% of the chemical substance is below the 10 micron (respirable particles) threshold).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a), (b), (c), and (i) are applicable to manufacturers, importers, and processors of this chemical substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

■ 58. By adding new § 721.9572 to subpart E to read as follows:

§ 721.9572 Substituted alkyl sulfonamide (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as substituted alkyl sulfonamide (PMN P–00–838) is subject to reporting under this section for the significant new use described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water.* Requirements as specified in § 721.90(a)(4), (b)(4), and (c)(4) (N=1).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a), (b), (c), and (k) are applicable to manufacturers, importers, and processors of this chemical substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

■ 59. By adding new § 721.9640 to subpart E to read as follows:

§ 721.9640 Salt of an acrylic acid – acrylamide terpolymer (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as salt of an acrylic acid – acrylamide terpolymer (PMN P–99–817) is subject to reporting under this section for the significant new use described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(v)(2), (w)(2), and (x)(2).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a), (b), (c), and (i) are applicable to manufacturers, importers, and processors of this chemical substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

■ 60. By adding new § 721.9674 to subpart E to read as follows:

§ 721.9674 Sulfonated-copper phthalocyanine salt of a triarylmethane dye (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as sulfonated-copper phthalocyanine salt of a triarylmethane dye (PMN P–00–1055) is subject to reporting under this section for the significant new use described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(v)(1), (w)(1), and (x)(1).

(ii) *Release to water.* Requirements as specified in § 721.90(a)(4), (b)(4), and (c)(4) (N=1).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a), (b), (c), (i), and (k) are applicable to manufacturers, importers, and processors of this chemical substance.

(2) *Limitations or revocation of certain notification requirements.* The

provisions of § 721.185 apply to this section.

■ 61. By adding new § 721.9929 to subpart E to read as follows:

§ 721.9929 Polyurea (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as a polyurea (PMN P–01–716) is subject to reporting under this section for the significant new use described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water.* Requirements as specified § 721.90(a)(1), (b)[1), and (c)(1).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a), (b), (c), and (k) are applicable to manufacturers, importers, and processors of this chemical substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

■ 62. By adding new § 721.9959 to subpart E to read as follows:

§ 721.9959 Polyurethane polymer (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as a polyurethane polymer (PMN P–01–481) is subject to reporting under this section for the significant new use described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(j).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a), (b), (c), and (i) are applicable to manufacturers, importers, and processors of this chemical substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.1725(b)(1) apply to this section.

[FR Doc. 03–31121 Filed 12–16–03; 8:45 am]

BILLING CODE 6560–50–S

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

45 CFR Part 1185

Institute of Museum and Library Services; Governmentwide Debarment and Suspension (Nonprocurement), and Requirements for Drug-Free Workplace (Grants); Correction

AGENCY: Institute of Museum and Library Services, National Foundation on the Arts and Humanities.

ACTION: Final rule; correction.

SUMMARY: The Institute of Museum and Library Services (IMLS) joined several agencies in publishing Governmentwide Debarment and Suspension (Nonprocurement), and Requirements for a Drug-Free Workplace (Grants) in the **Federal Register** of November 26, 2003. Inadvertently, amendatory instructions were deleted from part 1185. This document corrects the amendatory language revising part 1185.

DATES: Effective on November 26, 2003.

FOR FURTHER INFORMATION CONTACT: Nancy Weiss, General Counsel, Institute of Museum and Library Services, 1100 Pennsylvania Avenue, Washington, DC 20506; telephone 202–606–5414; TDD: 202–606–8636.

SUPPLEMENTARY INFORMATION: The IMLS published a document in the **Federal Register** on November 26, 2003, in which the amendatory instructions were inadvertently deleted from part 1185. In FR Doc. 03–28454 published on November 26, 2003, make the following correction to page 66639.

PART 1185—[CORRECTED]

■ In rule FR Doc. 03–28454 published on November 26, 2003 (68 FR 66534) make the following correction. On page 66639, in the third column, correct amendatory instruction 1 to read as follows:

"1. Part 1185 is revised to read as set forth in instruction 1 at the end of the common preamble."

Dated: December 2, 2003.

Nancy E. Weiss,

General Counsel.

[FR Doc. 03–30994 Filed 12–16–03; 8:45 am]

BILLING CODE 7036–01–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 20

[CC Docket No. 94–102; FCC 03–242]

Ensure Compatibility With Enhanced 911 Emergency Calling Systems

AGENCY: Federal Communications Commission.

ACTION: Clarification.

SUMMARY: In this document, the Commission denies in part, and grants in part, a Petition from OnStar Corporation (OnStar). The action is necessary to clarify that OnStar telematics units that provide a Commercial Mobile Radio Service (CMRS) personal calling service are handsets or mobile phones in accordance with part 20 of the Commission's rules. The Commission also grants a temporary, conditional waiver of its E911 Phase II rules, including the equipment activation requirements, as they apply to wireless licensees that furnish the underlying wireless service for OnStar analog and first generation digital telematics units installed in OnStar equipped vehicles prior to December 31, 2005. The waiver allows OnStar and its wireless carrier partners a reasonable period to continue their cooperative effort to adjust the performance of OnStar's digital equipment.

FOR FURTHER INFORMATION CONTACT: David Siehl at (202) 418–1310.

SUPPLEMENTARY INFORMATION: This is a summary of the *Order* released on October 21, 2003. The complete text of the *Order* is available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC, 20554. The *Order* may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC, 20554, telephone 202–863–2893, facsimile 202–863–2989, or via e-mail *qualexint@aol.com*.

Synopsis of the Order

1. OnStar's provision of telematics services combines wireless communications, autonomous geographic positioning system (GPS) capability, and voice recognition technology that are integrated into automobiles' electrical architecture. OnStar telematics units cannot be removed from vehicles.

2. On December 3, 2002, OnStar filed its Petition seeking clarification. The Commission's Wireless Telecommunications Bureau (Wireless Bureau) released a Public Notice, 68 FR 2252 (January 16, 2003), seeking comment on the Petition.

3. The *Order* finds that telematics units provided by OnStar that are not capable of providing wireless calling service are not within the definition of § 20.3, and therefore, not subject to the E911 requirements of § 20.18(g) of the Commission's rules. On the other hand, although OnStar telematics units do not have the appearance of "traditional" portable handsets, some units are also capable of providing a commercial mobile radio service (CMRS) in addition to telematics services. 911 calls may be made from them over the underlying CMRS network of the carrier licensees, with whom OnStar has reached agreements to provide that wireless service. Their capability to function as mobile phones and to provide commercial wireless service through a licensee qualifies them as mobile phones within the definition § 20.3 and, thus, within the scope of the E911 requirements pursuant to § 20.18(g) of the Commission's rules.

4. The *Order* further determines that licensees who provide CMRS service in accordance with § 20.18 have a responsibility in terms of the requirements of that section with respect to OnStar telematics units that are capable of providing CMRS.

5. The *Order* concludes that the circumstances regarding OnStar's telematics units that provide commercial calling service warrant granting a waiver to (1) cover carriers who currently providing underlying wireless service to OnStar, and (2) its prospective wireless partners with whom it is attempting to work out arrangements as it migrates from analog to digital based equipment and service. Grant of a waiver of the E911 Phase II rules serves to clarify the obligations of CMRS licensees by resolving that OnStar telematics units that provide CMRS do not have to be included in the count for the equipment activation requirements under § 20.18(g) prior to December 31, 2005. The grant of the waiver is conditioned on the determinations the Commission makes on the larger telematics issues in its *Further Notice of Proposed Rulemaking*, 68 FR 3214 (January 23, 2003), proceeding in the same docket, CC Docket No. 94–102.

Ordering Clauses

6. *It is ordered* that, pursuant to section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303(r), and §§ 0.131, 0.331, 1.3, of the Commission's rules, 47 CFR 0.131, 0.331, 1.3, the Petition for Ruling filed by OnStar Corporation on December 3, 2002 is denied in part and granted in part.

7. *It is further ordered* that, pursuant to section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303(r), and §§ 0.131, 0.331, 1.3, of the Commission's rules, 47 CFR 0.131, 0.331, 1.3, a waiver of the Commission's E911 Phase II rules pursuant to part 20 of the Commission's rules is granted to wireless licensees with respect to OnStar Corporation's telematics equipment that is capable of providing a commercial wireless service, as described, and subject to the conditions set forth, herein.

8. *It is further ordered* that this waiver is granted until December 31, 2005, unless otherwise modified by the Commission.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 03–31105 Filed 12–16–03; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AI81

Endangered and Threatened Wildlife and Plants; Determination of Endangered Status for the Dugong (*Dugong dugon*) in the Republic of Palau

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the United States Fish and Wildlife Service (Service), determine endangered status for the population of dugong (*Dugong dugon*) in the Republic of Palau pursuant to the Endangered Species Act of 1973, as amended (Act). Currently, the dugong is listed under the Act as endangered throughout its entire range, except in the Republic of Palau. It is believed that Palauan waters support one of the most isolated populations of dugong in the world, and it is unlikely that this population is receiving any recruitment from other areas. The Palauan population is seriously threatened by poaching.

EFFECTIVE DATE: January 16, 2004.

ADDRESSES: The complete supporting file for this rule is available for public inspection, by appointment, during normal business hours at the Division of Scientific Authority, U.S. Fish and Wildlife Service, 4401 N. Fairfax Drive, Room 750, Arlington, Virginia 22203.

FOR FURTHER INFORMATION CONTACT: Eleanora Babij at the above address, or by phone, 703–358–1708; fax, 703–358–2276; or e-mail, *ScientificAuthority@fws.gov*.

SUPPLEMENTARY INFORMATION:

Background

The dugong (*Dugong dugon*) is the only extant species in the Family Dugongidae and is one of only four extant members of the mammalian Order Sirenia. It is the only herbivorous mammal that is strictly marine; other members of the Order Sirenia, including three species of manatees, all use fresh water to varying degrees (Marsh *et al.* 1995). It has a large range that spans the waters of at least 37 countries and includes tropical and subtropical coastal and inland waters from East Africa to the Solomon Islands (Marsh *et al.* 2002). Historically, the dugong's distribution is believed to be broadly coincident with the tropical Indo-Pacific distribution of its food plants, phanerogamous, or flowering, seagrasses of the families Potamogetonaceae and Hydrocharitaceae (Husar 1978). Currently, throughout much of its range, the dugong is represented by relict populations separated by large areas where its numbers have been greatly reduced or it is already extirpated (Marsh *et al.* 2002).

It is thought that most dugong populations around isolated archipelagoes have always been small. This is mostly due to the fact that dugongs are largely restricted to a diet of rooted vascular macrophytes, such as seagrass, found only in protected inshore waters (Brownell *et al.* 1981). It has been suggested that dugongs select seagrasses that are lower seral or pioneer species, and species of genera such as *Halophila* and *Halodule* are favored in many areas. Dugongs optimize their diet by selecting species that are more digestible and have higher nutrients and/or species that can compensate for grazing. Dugongs generally frequent coastal waters that support extensive seagrass meadows (Marsh and Lawler 1998) where these food species can be found. Major concentrations of dugong tend to occur in wide, shallow, protected bays; wide, shallow mangrove channels; and in the lees of large inshore islands (Heinsohn *et al.* 1979). Shallow waters, such as tidal sandbanks (Marsh *et al.* 1984) and

estuaries, have also been reported as sites for calving.

Dugongs do not appear to be well adapted to activity in rough seas, where the necessity to surface frequently to breathe may impose heavy energy costs (Anderson and Birtles 1978). Food requirements and energy demands combine to force dugongs to use inshore areas frequently, where they may be taken by hunters with even the smallest watercraft. It has been reported that animals subject to hunting pressure frequent deeper waters during the daytime (Brownell *et al.* 1981) and move toward the shore to feed at night. However, Nishiwaki and Marsh (1985) found that there is diurnal (daytime) inshore feeding in some areas.

Dugongs are long-lived, with a low reproductive rate, long generation time, and a high investment in each offspring. Marsh (2002) has suggested that females do not bear their first calf until they are at least 10 and up to 17 years old. The gestation period is 13–15 months, and the litter size is usually one. The calf suckles for 14–18 months, and periods between successive calving range from 2.4 to 7 years (Nowak 1991). Population simulations by Marsh (1995, 1999) have revealed that, even with the most optimistic combinations of life-history parameters (low natural mortality and no human-induced mortality), a dugong population is unlikely to increase more than 5 percent per year.

In the Micronesian area, dugongs occur only in Palau, except for occasional sightings around Yap and Guam (Nishiwaki *et al.* 1979, as cited in Marsh *et al.* 1995). It is believed that Palauan waters support one of the most isolated populations of dugong in the world. The closest dugong populations are found in Papua Barat, 800 km to the south, and in the Philippines, 850 km to the west. In both of these areas, dugongs are under threat from human exploitation, and it is unlikely that the Palauan population is supplemented by recruitment from either of these areas (Marsh *et al.* 1995). The dugong's close ties to the shore increase its chances of local extinction and may limit the chances of long-distance dispersal and recolonization or recruitment through immigration (Brownell *et al.* 1981).

Full aerial surveys have been conducted in these waters around Palau in 1977–1978, 1983, and 1991. One survey was partially completed in 1998, but was halted because of the loss of the aircraft (The Nature Conservancy 2002). The numbers of individuals observed were 15 in 1977 and 34 in 1978 (Brownell *et al.* 1981). Of these numbers, 13 percent of the specimens seen in 1977 were calves, whereas 24 percent were calves in 1978, indicating an apparent increase in the reproductive rate (Eldredge 1991). The population in Palau was resurveyed in 1983 by Rathbun *et al.* (1988), with the total number of individuals observed being 38, including three calves. A survey conducted in 1991 by Marsh *et al.* (1992) covered 55 percent of the waters inside the barrier reefs. Twenty-six dugongs were sighted, including four calves. This is a minimum count because some dugongs on the surface are missed by observers and others are not seen because they are too far below the water surface (Marsh and Lawler 1998). The number of dugongs sighted in the 1991 survey suggests a reduction in the number of dugongs in Palauan waters over the earlier estimates from the 1980s. After the 1991 survey, the total dugong population for Palau was considered to be a few hundred animals at most (The Nature Conservancy 2002). While incomplete, the 1998 survey yielded more adults with calves than did the 1991 survey, indicating that the population was, at a minimum, still reproductively viable (ibid). The latest survey in this area was completed in March 2003. Although the final report is not yet complete, results from the overflight are 20 adults and 7 calves (Chris Swenson, Service, pers. com. 2003).

Previous Federal Action

The dugong is currently listed under the Act as endangered throughout its entire range, except in the Republic of Palau. Prior to the enactment of the Act, species were afforded protection through the Endangered Species Conservation Act of 1969. Under this 1969 Act, the Service prepared two lists: a "Native" list and a "Foreign" list. Originally, the dugong was included in the "Foreign" list of protected species and was listed on December 2, 1970 (35 FR 18320). When the Act became effective in 1973, it supplanted the Endangered Species Conservation Act of 1969. The "Foreign" and "Native" lists were combined to create one list of endangered and threatened species (39 FR 1171; January 4, 1974). On this list, the dugong was listed as endangered throughout its entire range.

When the lists were combined, the United Nations Trust Territory of the Pacific Islands (Republic of Palau) was under the jurisdiction of the United States (U.S.). Section 4(b)(5) of the Act requires that notice of proposed regulations be given to affected States in which the species occurs. The U.S. population of dugong was included on the list without prior notice to the Republic of Palau. Therefore, in 1988, the Service amended the Code of Federal Regulations to exclude the U.S. population from the listing. The Republic of Palau was then formally notified, and on August 5, 1993, we published a proposal to extend the endangered classification to the dugong population in Palau (58 FR 41688) and opened a 60-day public comment period.

The proposal was not finalized, however, because of budget limitations and subsequent litigation-driven listing priorities. Additionally, after three decades as part of the UN Trust Territory of the Pacific under U.S. administration, this westernmost cluster of the Caroline Islands opted for independence in 1978 rather than joining the Federated States of Micronesia. A Compact of Free Association with the United States was approved in 1986, but not ratified until 1993. It entered into force the following year when the islands gained independence (Central Intelligence Agency 2002). Finally, on December 2, 2002 (67 FR 71529), we published a notice to reopen the comment period on our proposal to list the dugong as endangered in the Republic of Palau for 90 days to allow all interested parties to submit additional information and written comments for our consideration.

All populations of the dugong are also listed in Appendix I of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES). In addition, dugong are also listed as vulnerable to extinction in the IUCN Red List (The World Conservation Union [IUCN] 2002).

Summary of Comments and Recommendations

In the August 5, 1993, proposed rule (58 FR 41688), we requested all interested parties to submit factual reports or information that might contribute to the development of a final listing decision. We contacted appropriate Federal agencies, State agencies, county governments, scientific organizations, and other interested parties to request information and comments. We published a legal notice in the *Pacific Daily News* on August 16, 1993. The first public comment period was open for 60 days and closed on October 4, 1993. We re-opened a second comment period on December 2, 2002, for an additional 90 days, closing on March 3, 2003 (67 FR 71529). During this time, we contacted the government in the Republic of Palau for comment. The Ministry of State responded positively, indicating that Palau was fully committed to coordinating its efforts with the United States and other countries in protecting the dugong population from becoming extinct. We did not receive any requests for a public hearing during either comment period.

We received 10 comment letters, including 1 letter from a peer-reviewer. Nine of the comment letters supported the proposal, and one was opposed. Some additional information was provided and has been incorporated into the "Summary of Factors" of this final rule. Comments of a similar nature or point regarding the proposed rule have been grouped into issues and are discussed below.

Issue 1: Two commenters questioned our ability to declare a species endangered in countries outside U.S. jurisdiction. One of these respondents believed that, if we declared a species endangered in another country, this would open the way for individuals in other countries to declare something endangered in the United States for political reasons and not for conservation purposes.

Our Response: We have the jurisdiction to list foreign species under section 4 of the Act. In fact, the listing of foreign species predates the Act with the Endangered Species Conservation Act of 1969. Initial publication of the "United States List of Endangered Foreign Fish and Wildlife" appeared in the **Federal Register** on June 2, 1970 (35 FR 8491). In addition, the Endangered Species Act of 1973 requires that foreign species (including subspecies and distinct vertebrate populations) be give the same consideration as native U.S. species with regard to addition to the Lists of Endangered and Threatened Wildlife and Plants.

Individuals in other countries cannot list species under the U.S. Federal Endangered Species Act. The Fish and Wildlife Service in the Department of the Interior and the National Oceanic and Atmospheric Administration-National Marine Fisheries Service in the Department of Commerce share responsibility for administration of the Act. These two agencies are the only ones that can list a species under the Act. However, members of the public may petition to have a foreign species listed, delisted, or reclassified under the Act, and the Service can initiate its own review process for foreign species.

Conservation measures provided to foreign species listed as endangered or threatened under the Act include recognition and awareness of the species' status, international cooperation, requirements for Federal protection in the United States and its territories, and prohibitions against certain activities. Recognition through listing also encourages conservation measures by Federal, international, and private agencies, groups, and individuals.

Issue 2: One respondent stated that, while the Palauan population of dugong should be listed as endangered, a more appropriate status for the Australian population of dugong would be "vulnerable."

Our Response: The dugong, which included the Australian population, was part of a rulemaking involving foreign species that were listed as endangered on December 2, 1970 (35 FR 18319). The Australian population of dugongs is not currently the focus of this rulemaking. The Act requires that we conduct periodic reviews of listed species at least once every 5 years. On the basis of such a review, we make a determination of whether a species is listed appropriately or should be removed from the List (delisted) or reclassified (from endangered to threatened, or threatened to endangered). The status of dugong will be reviewed as part of this process and reclassified if needed. A classification of "vulnerable" does not exist under the Act.

Issue 3: One respondent indicated that critical habitat should be designated for the dugong population in Palau and extended well beyond the areas delimited by the current distribution.

Our Response: Although habitat loss can become a serious threat for the dugong, we do not designate critical habitat outside the United States or on the high seas. The Solicitor for the Department of Interior has noted that the provisions found in the Act do not involve the Secretary of State or consultations with foreign governments when it comes to matters involving critical habitat. In addition, there are obvious difficulties and constraints on U.S. entities operating in other countries to designate critical habitat. Therefore, we have adopted the position that critical habitat may not be determined in foreign countries.

Summary of Factors Affecting the Species

Section 3 of the Act and regulations promulgated to implement the listing provisions of the Act (50 CFR part 424) set forth the procedures for adding species to the Federal List of Endangered and Threatened Wildlife. After a thorough review and consideration of all information available, we determine that the population of dugong in the Republic of Palau should be classified as an endangered species. We may determine a species to be endangered or threatened due to one or more of the five factors described in section 4(a)(1) of the Act. These factors, and their application to the population of dugong (*Dugong dugon*) in the Republic of Palau, are as follows:

A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

The most important dugong habitat in Palau is around Malakal Harbour and in the waters between Babelthuap Island and the barrier reef, especially to the west (Marsh *et al.* 2002). Dugongs typically graze in lagoons with relatively low seagrass biomass in waters more than 7 meters deep. They feed on virtually all species of seagrasses, and are seldom found far from seagrass beds (Anderson and Birtles 1978). Impacts on, or destruction of, these seagrass beds may have future implications for the sustainability of dugong populations in Palauan waters. Palau is experiencing an increase in development. Seagrass ecosystems are very sensitive to human influence (Poiner and Peterken 1996).

With no land-use plans in place, deteriorating water quality from activities such as land clearing and other non-point-source impacts are likely to be more serious threats than point-source impacts such as sewage discharge or anchor damage (Marsh *et al.* 2002). These activities cause increases in sedimentation and turbidity which, in turn, lead to degredation through smothering and lack of light (ibid.). *Halophila ovalis*, one of the preferred food species of dugongs, appears to be particularly sensitive to light reduction (Longstaff *et al.* 1999). Duration and frequency of light deprivation events are apparently the primary factors affecting the survival of this seagrass in environments that experience light deprivation (ibid.). Habitat destruction associated with increased development and water projects could become a serious threat (Marsh *et al.* 2002).

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

The most serious threat to the dugong population in Palau is from poaching activities. Although hunting is illegal, dugongs are still poached regularly in the Koror area and along the western coast of Babeldaob (Marsh *et al.* 2002). Hunting of dugong in this area is a deliberate act, not an opportunistic one. The meat of dugong is oftentimes obtained for special occasions, particularly festive occasions, rather than sold. The meat is often served to guests without their knowledge because

there is disapproval of killing dugongs among many people, especially women (Marsh *et al.* 1995). All of the hunters indicated that they preferred the meat of females and juveniles rather than that of adult males. If females and immature animals are preferentially taken, future recruitment will be reduced more significantly than if hunting targets males or takes animals at random.

Although the main motive for hunting dugongs is for their meat, these animals are also killed for the creation of jewelry items made from the animals' ribs. In the past, atlas vertebrae from dugongs were obtained to make bracelets that were only worn by chiefs (Brownell *et al.* 1981). Although this traditional use has diminished in importance, Marsh *et al.* (1995) found jewelry that was locally crafted from dugong ribs on sale at four stores in Koror. At least two of the retailers knew this activity was illegal (ibid.).

Traditionally dugongs were hunted from canoes with heavy spears (Rathbun *et al.* 1988). More recently, dugongs have been hunted mainly at night from small outboard-powered boats (>35hp) with spears, firearms, or dynamite (Brownell *et al.* 1981). Most dugongs are harpooned after being chased (Marsh and Lawler 1998). The dugongs are ambushed from boats as they move with the tide onto or off the shallow seagrass beds where they feed at night (Brownell *et al.* 1988). Residents indicate that dugong movements are predictable and they are relatively easy prey. In 1992, 23 knowledgeable locals (including 5 admitted dugong hunters) were interviewed by Marsh *et al.* (1995). These informants claimed that at least 13 dugongs had been killed in 1990. At least five dugongs were taken between December 1996 and December 1997. Marsh (2002) found that all hunters were aware that killing dugongs was illegal and that the motive for the hunting was that it is an exciting way to obtain meat.

Marsh *et al.* (1995) considered that any deliberate exploitation of dugongs in Palau is unsustainable. Population modeling by Marsh (1986) has suggested that a sustainable level of exploitation of dugongs may be as low as 2 percent of females per year. This means that at least 250 females would be needed to support an annual take of 5 females from Palauan waters. A population of this size is considered to be extremely unlikely given the low number of dugongs sighted during the aerial surveys, suggesting that documented levels of take are not sustainable and will lead to further declines of the species. Marsh (1994) considers that any deliberate exploitation of dugongs in Palau is unsustainable and the current small population found in Palau is unlikely to be able to sustain the current level of poaching (Marsh and Lawler 1998).

C. Disease or Predation

Dugongs are susceptible to a wide range of diseases. Some of these diseases are infectious or parasitic and include pneumonia, pancreatitis, and dermatitis. Wild dugongs support a range of parasites, including at least 19 species of trematodes and one species of nematode internally, and a barnacle and a copepod externally (Eros *et al.* 2000). Bryden *et al.* (1998) and Smith *et al.* (1978) found that dugongs may also carry a range of other diseases documented in marine mammals such as leptospirosis, lobomycosis, cryptococcosus, blastomycosis, caliciviruses, salmonellosis, morbillivirus, toxoplasmosis, tuberculosis, and hepatitis. Any outbreak of disease could have devastating effects on this isolated population.

While it appears that people have had the most serious and long-term impacts on dugong populations, sharks are probably the main natural enemy of dugongs. It has been reported that dugongs will defend themselves against sharks, however. Lekagul and McNeely (1977) found that individual dugongs will "gang up" on sharks in shallow waters and drive them off by butting them with their heads. Even so, a devastating attack was reported by Anderson and Prince (1985), during which 10 killer whales surrounded and killed approximately 40 dugongs.

D. The Inadequacy of Existing Regulatory Mechanisms

Marsh and Lawler (1998) identified strengthening and enforcing laws to protect dugongs in Palau as the highest conservation priority in "Action Plan for the Management of the Dugong in Palau". Until recently, Palauan legislation relevant to the dugong was found in the chapter entitled Protected Sea Life, subchapter iv, on dugongs. The first section of the law stated that "no person shall kill, trap, capture, wound, possess, transport, restrain or otherwise have under his control any dugong or any part or product." A person found guilty of violating this section for the first time could face a jail term of not more than 6 months, or a fine of not more than $50.00, or both. For any subsequent offense, the convicted person would be imprisoned for not more than 1 year, or fined not more than $100.00, or both. If a dugong was accidentally caught in a fishing net or by any other fishing method and was still alive, it was required to be released immediately. If found dead, and this fact was affirmed by the chief executive officer of the state, the dead dugong would be released to the person who found it. Marsh *et al.* (1995) found that the hunters they interviewed were not willing to stop hunting while others were continuing to do so, especially when the punishment itself was of little consequence.

In 1996 and 1997, the Palau Conservation Society began a Dugong Management and Education Program (Marsh *et al.* 2002). The dugong was used as a target species to raise awareness and establish pride in Palau's natural heritage. This effort was aimed, in part, at raising the understanding of the general public about the status of the dugong in Palau as well as trying to increase public support for tougher laws to protect dugongs. The effort seemed to be effective in changing attitudes. In 1998, although hunting activities continued, it was being conducted secretly, as opposed to occurring more openly as was found in 1991 (Marsh *et al.* 2002).

On October 31, 2002, a new law was passed in Palau to help protect the dugong. It sharply increased penalties and may be more effective in deterring poachers than the previous law. First-time offenders now face a $5,000 to $10,000 fine and a jail term of 3 months to 1 year. Each subsequent offense can result in a fine of $10,000 to $20,000 and a jail sentence of 6 months to 3 years. The government can seize the dugong or part of the dugong that was taken in violation of the law as well as any assets used in the taking of the dugong, including boats, cars, and nets. The new law also encourages citizens to protect dugongs by lodging complaints against violators. If the case is won, the citizen responsible for the complaint can receive any expenses incurred in the action and a reward of 50 percent of any fine actually collected from the violator. In addition, the new law calls for the establishment of educational programs for Palauan citizens and the general public about the dugong. Finally, there is a section that requires the completion of Environmental Impact Statements before any new development occurring in dugong habitat. This would allow the Ministry of Resources and Development or the Environmental Quality Protection Board to deny any construction permits or require appropriate mitigation if dugong habitats are adversely affected.

As discussed, the Republic of Palau has significantly strengthened its legislation banning dugong hunting. Poaching, which is considered to be the most serious threat to dugongs in Palau, needs to be stopped if dugong are to survive in this area. However, the strengthening of any law must also be accompanied by effective enforcement. The effectiveness of this new law is unknown at this time.

E. Other Natural or Manmade Factors Affecting Its Continued Existence

Fishing and boating activities around dugong populations could have potential impacts on the species. In Palau, mortality of dugongs caused by collisions with speedboats has not been a major problem. However, this has the potential to become a problem in Malakal Harbor, which is an important dugong area (Marsh *et al.* 2002). Additionally, there is some circumstantial evidence that dugongs cease to use previously favored habitats when the volume of boat traffic becomes high (Marsh and Lawler 1998). In Palau, this boat traffic may be from recreational or fishing boats. In many other parts of the world, dugongs often drown in gill nets (Paterson 1990). In Palau, fishermen have the knowledge and gear to catch dugongs in this manner. However, they do not purposely use their fishing gear to catch dugongs because of the potential for damage to their nets (Marsh and Lawler 1998).

Conclusion

In developing this rule, we have carefully assessed the best scientific and commercial information available regarding the past, present, and future threats facing this species. The dugong population in Palau is imperiled primarily by poaching activities. The current small population found in this area is unlikely to be able to sustain the current level of poaching. It is believed that Palauan waters support one of the most isolated populations of dugong in the world, and it is unlikely that this population is receiving any recruitment from other areas. Currently, the dugong is listed under the Act as endangered throughout its entire range, except in the Republic of Palau. This species is in danger of extinction "throughout all or a significant portion of its range" (section 3(6) of the Act), and because of the high potential that these threats could result in the extinction of the dugong in Palau, the preferred action is to list the population of dugong in the Republic of Palau as endangered. This action will result in the classification of the entire species of dugong as endangered, wherever it occurs.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Act include recognition of conservation status, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies and groups, and individuals. The protection required of Federal agencies and the prohibitions against take and harm are discussed, in part, below.

Section 7(a) of the Act, as amended, and as implemented by regulations at 50 CFR part 402, requires Federal agencies to evaluate their actions that are to be conducted within the United States or upon the high seas, with respect to any species that is proposed to be listed or is listed as endangered or threatened and with respect to its proposed or designated critical habitat, if any is being designated. Because the dugong is not native to the United States, no critical habitat is being proposed for designation with this rule. Regulations implementing the interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) of the Act requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of a listed species or to destroy or adversely modify its critical habitat. If a proposed Federal action may affect a listed species, the responsible Federal agency must enter into formal consultation with the Service. Currently, with respect to the dugong, no Federal activities are known that would require conferral or consultation.

Section 8(a) of the Act authorizes the provision of limited financial assistance for the development and management of programs that the Secretary of the Interior determines to be necessary or useful for the conservation of endangered species in foreign countries. Sections 8(b) and 8(c) of the Act authorize the Secretary to encourage conservation programs for foreign endangered species, and to provide assistance for such programs, in the form of personnel and the training of personnel.

The Act and its implementing regulations set forth a series of general prohibitions and exceptions that apply to all endangered wildlife. As such, these prohibitions are applicable to the population of dugong in Palau. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to "take" (includes harass, harm, pursue, hunt, shoot wound, kill, trap, capture, or to attempt any of these) within the United States or upon the high seas; import or export; deliver, receive, carry, transport, or ship in interstate commerce in the course of commercial activity; or sell or offer for sale in interstate or foreign commerce any endangered wildlife species. It also is illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken in violation of the Act. Certain exceptions apply to agents of the Service and State conservation agencies.

Permits may be issued to carry out otherwise prohibited activities involving endangered wildlife species under certain circumstances. Regulations governing permits are codified at 50 CFR 17.22. With regard to endangered wildlife, a permit may be issued for the following purposes: for scientific purposes, to enhance the propagation or survival of the species, and for incidental take in connection with otherwise lawful activities.

National Environmental Policy Act

We have determined that Environmental Assessments and Environmental Impact Statements, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Act. A notice outlining our reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

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Author

The primary author of this notice is Eleanora Babij, Division of Scientific Authority, U.S. Fish and Wildlife Service (*see* **ADDRESSES** section; telephone 703/358–1708).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Accordingly, 50 CFR chapter I is amended as follows:

PART 17—[AMENDED]

■ 1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625. 100 Stat. 3500; unless otherwise noted.

■ 2. Amend § 17.11(h) by revising the following entry under Mammals in the List of Endangered and Threatened Wildlife:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species							
Common name	Scientific name	Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
MAMMALS							
•	•	•	•	•	•	•	•
Dugong	*Dugong dugon*	East Africa to southern Japan, including Palau.	Entire	E	4,740	NA	NA.
•	•	•	•	•	•	•	•

Dated: October 16, 2003.

Marshall P. Jones, Jr.,

Director, Fish and Wildlife Service.

[FR Doc. 03–31126 Filed 12–16–03; 8:45 am]

BILLING CODE 4310–55–P

Proposed Rules

Federal Register
Vol. 68, No. 242
Wednesday, December 17, 2003

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

ADMINISTRATIVE COMMITTEE OF THE FEDERAL REGISTER

1 CFR Part 11

RIN 3095–AB35

Price Changes to Federal Register Publications

AGENCY: Administrative Committee of the Federal Register (ACFR).

ACTION: Proposed rule.

SUMMARY: The Administrative Committee of the Federal Register (ACFR) proposes increases in the prices charged for the paper and microfiche editions of Federal Register publications. The price changes would apply to the daily **Federal Register** (paper and microfiche editions), the Federal Register Index, the Code of Federal Regulations (CFR) (paper and microfiche editions), and the Weekly Compilation of Presidential Documents. The Administrative Committee has determined that it is necessary to increase prices to enable the Government Printing Office (GPO) to recover the full cost of producing and distributing **Federal Register** publications.

DATES: Comment will be accepted through January 16, 2004.

ADDRESSES: You may submit comments by any of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments.
- E-mail: *fedreg.legal@nara.gov*.
- Fax: 202–741–6026.
- Mail: Office of the Federal Register (NF), National Archives and Records Administration, 700 Pennsylvania Ave., Washington, DC 20408.
- Hand Delivery/Courier: Office of the Federal Register, 800 North Capitol St., NW., Suite 700, Washington, DC 20002.

Instructions: All comments received will be posted on a National Archives and Records Administration (NARA)/Office of the Federal Register (OFR) Web page, including any personal information provided.

Docket: For access to the docket to read comments received, go to *http://www.archives.gov//federal_register/acfr/docket.html*.

FOR FURTHER INFORMATION CONTACT: Michael White at 202–741–6025, or *michael.white@nara.gov*.

SUPPLEMENTARY INFORMATION:

Background

Under the Federal Register Act (44 U.S.C. Chapter 15), the Administrative Committee of the Federal Register is responsible for establishing the prices charged for **Federal Register** publications. The Administrative Committee must set prices according to the funding mechanisms authorized under law for the Federal Register program. By law, **Federal Register** publications are sold and distributed to the public by GPO's Superintendent of Documents. GPO receives no appropriation for the costs associated with producing **Federal Register** publications. Operating funds for the sales program are derived from subscribers and single copy buyers. The Administrative Committee periodically reviews data submitted by the Superintendent of Documents to determine whether subscription rates and single copy charges produce sufficient revenue to fully recover the Superintendent of Document's printing, handling, and distribution costs, including postal rate increases.

Over the past decade, the Administrative Committee has balanced two imperatives: the need to produce and price the paper editions of **Federal Register** publications in a fiscally sound manner, and the public benefit derived from making this essential regulatory information available to the public free of charge online via the GPO Access system *(http://www.gpoaccess.gov/nara)*. Since 1994, when the Administrative Committee began providing online access to the **Federal Register**, the number of paid subscriptions has declined by 85 percent. The decline in paper subscription revenue far exceeds the savings realized from producing fewer paper copies. Over the same time period in which sales of **Federal Register** publications have fallen, use of online **Federal Register** publications through GPO Access has expanded rapidly. Information retrievals from the online edition of the **Federal Register** grew from just under 15 million documents in calendar year 1996 to over 68 million documents downloaded in calendar year 2002. Over the same period, information retrievals from the online edition of the CFR grew from about 725,000 documents to more than 87 million documents downloaded. At the same time, there are still some subscribers who prefer to pay for the convenience of receiving bound, paper editions for their libraries and internal distribution systems. The price of these paper publications must reflect the economic reality of producing and distributing them.

While the Federal Register Act does not provide any specific guidelines on the prices to be charged for **Federal Register** publications, the longstanding policy of the Administrative Committee is to operate the program on a break-even basis. Due to fluctuations in subscriptions and single copy buying patterns, some temporary funding shortfalls may be unavoidable. But it is implicit in the statutory scheme that the ACFR and GPO's Superintendent of Documents may not operate the Federal Register sales program over the long term with a built-in deficit caused by a known insufficiency of funds. GPO's current analysis indicates that the portion of its revolving fund dedicated to the Federal Register sales program has been depleted to the point that prices should be raised to support the program in the future.

To determine current costs and prepare a proposed price schedule, the Superintendent of Documents conducted an in-depth study of actual costs from prior years and made conservative estimates of future costs. This proposed rule takes into account GPO's actual production and distribution costs since 2001 and projected costs for fiscal year 2004. The pricing analysis includes GPO's recent cost-cutting initiatives to streamline and improve its operations. Specific actions to cut costs that have been taken or are presently underway include: reducing personnel expenses through an employee buyout plan; reorganizing the Superintendent of Documents organization and operations; consolidating distribution facilities; and closing GPO Bookstores. GPO has also reevaluated and subsequently reduced

estimated handling charges as they apply to Federal Register products. The new handling charges of $1.46 per copy for the **Federal Register** (down from $2.39) and $1.39 for the CFR (down from $2.39) were factored into the pricing analysis. The Administrative Committee believes these efforts will help minimize the need to raise prices of **Federal Register** publications in the future.

Based on all the information available, the Administrative Committee has determined that it should make price adjustments to certain publications to accurately reflect the current costs of production and distribution, and thereby avoid running a deficit. If the proposed prices are adopted, the Administrative Committee projects that the **Federal Register** program will achieve full cost recovery. In the current ACFR price regulations, the stated prices include postage. In this proposed rule, the Administrative Committee has decided to exclude postage from the stated prices, except for single issues of certain editions, because postal rate making decisions and timing are entirely beyond the control of the Committee. If the proposed rule is adopted, the prevailing postal rates will be applied to orders, based on the method of delivery requested by customers. The prices for single issues of the **Federal Register** (paper and microfiche) and the Weekly Compilation of Presidential Documents, and single volumes of the CFR on microfiche, would continue to include postage because the cost of delivery is only a small component of the total cost.

This proposed rule would increase the subscription rates for the paper editions of the daily **Federal Register**, the Federal Register Index, the Code of Federal Regulations (CFR) and the Weekly Compilation of Presidential Documents. The cost to customers for the LSA (List of CFR Sections Affected), with postage calculated at the current periodical rate, is unchanged. The subscription rates and the single copy prices of the microfiche editions of the daily **Federal Register** and CFR also will increase slightly. In addition, the Administrative Committee would establish a multi-tiered price schedule for single copies of the **Federal Register** to account for the true cost of publishing issues of varying size.

The following figures state the proposed percentage of increase for **Federal Register** publications. To be consistent with past analyses, the calculation includes the current basic postal rates applicable to each publication. Under this analysis, it will be necessary to increase the price of the paper **Federal Register** subscription by 21 per cent, and the price of the paper CFR subscription by 12 percent. The average increase for all paper **Federal Register** subscriptions amounts to 16 per cent. The overall price change for paper and microfiche editions combined amounts to a 14 per cent increase. The increases are primarily attributable to higher labor expenses, paper costs, and a substantial decline in sales of printed publications, causing upward pressure on the average cost per subscription. Pricing for the microfiche editions of the **Federal Register** and the CFR are determined through a competitive bidding process.

While the rate increases discussed in this proposed rule will affect subscribers of the paper and microfiche editions, the success of our online publications demonstrates that the Administrative Committee is fulfilling its mission to provide the broader public with essential information on the functions, actions, and regulatory requirements of the Federal government. The Administrative Committee is constantly engaged in efforts to improve the quality of our online publications, including investments in new technology applications that will enhance e-government services to the public. In early 2003, the OFR and GPO helped the Environmental Protection Agency and other agency partners launch Regulations.gov as part of the President's eRulemaking initiative. OFR and GPO created a one-stop regulatory clearinghouse for this application to enhance public participation in the rulemaking process (see *http://www.regulations.gov*). This system is based, in large part, on OFR/GPO production systems and online **Federal Register** publications. More than 2 million users have accessed proposed and final regulations through this new resource, and the system has garnered a number of awards from various e-Government organizations. In addition, GPO, in consultation with OFR, recently completed an effort to thoroughly rewrite and reorganize its **Federal Register** and CFR web pages to improve the user experience. And GPO is also actively engaged in acquiring a new search and retrieval engine for **Federal Register** databases, including the e-CFR, which is a prototype for a currently updated, online version of the CFR (*http://www.gpoaccess.gov/ecfr*). For members of the public who prefer to read the printed editions, GPO continues to provide free access to **Federal Register** publications at Federal Depository libraries located throughout the nation.

The Proposed Amendments

The increased prices for **Federal Register** publications are reflected in proposed amendments to 1 CFR part 11. The following rates would be effective 30 days after issuance of a final rule. The annual subscription rate for the daily **Federal Register** paper edition would be $749. For a combined **Federal Register**, Federal Register Index and LSA (List of CFR Sections Affected) subscription, the price would be $808. The price of a single copy of the daily **Federal Register** would be based on the number of pages: $11 for an issue less than 200 pages; $22 for an issue between 200 and 400 pages; and $33 for an issue with more than 400 pages. The annual subscription price of the microfiche edition of the **Federal Register**, which includes the Federal Register Index and LSA, would be $165. The price of a single copy of the daily **Federal Register** microfiche edition would be $3. The annual price for the Federal Register Index would be $29. The annual subscription price for the monthly LSA would be $30. The annual subscription rate for a full set of CFR volumes would be $1,019 for the paper edition and $247 for the microfiche edition. The price of a single volume of the CFR microfiche edition would be $4. The annual Subscription rate for the Weekly Compilation of Presidential Documents would be $113. The price of a single copy of the Weekly Compilation of Presidential Documents would be $5.

Regulatory Analyses

Executive Order 12866

The proposed rule has been drafted in accordance with Executive Order 12866, section 1(b), "Principles of Regulation." The Administrative Committee has determined that this proposed rule is not a significant regulatory action, as defined under section 3(f) of Executive Order 12866.

Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, does not apply to rate increases necessary to recover the costs to the Government of printing and distributing **Federal Register** publications. This proposed rule would not have a significant impact on small entities because it would not impose any substantive requirements, and any increased costs could be avoided by accessing **Federal Register** publications on the Internet via the free GPO Access service. In addition, Federal depository libraries located throughout the nation provide free access to the bound paper editions or microfiche editions of **Federal Register** publications, as well as free use of computers for access to the online editions.

Federalism

This proposed rule has no federalism implications under Executive Order 13132. It would not impose compliance costs on State or local government or preempt State law.

List of Subjects in 1 CFR Part 11

Code of Federal Regulations, **Federal Register**, Government publications, Weekly Compilation of Presidential Documents.

For the reasons discussed in the preamble, the Administrative Committee of the **Federal Register** proposes to amend part 11 of chapter 1 of title 1 of the Code of Federal Regulations as set forth below:

PART 11—SUBSCRIPTIONS

1. The authority citation for part 11 continues to read as follows:

Authority: 44 U.S.C. 1506; sec. 6, E.O. 10530, 19 FR 2709, 3 CFR, 1954–1958 Comp., p. 189.

2. In § 11.2, revise paragraph (a) to read as follows:

§ 11.2 Federal Register.

(a) The subscription price for the paper edition of the daily **Federal Register** is $749 per year. A combined subscription to the daily **Federal Register**, the monthly **Federal Register** Index, and the monthly LSA (List of CFR Sections Affected) is $808 per year for the paper edition, or $165 per year for the microfiche edition. Six-month subscriptions for the paper and microfiche editions are also available at one-half the annual rate. Those prices exclude postage. The prevailing postal rates will be applied to orders according to the delivery method requested. The price of a single copy of the daily **Federal Register**, including postage, is based on the number of pages: $11 for an issue containing less than 200 pages; $22 for an issue containing 200 to 400 pages; and $33 for an issue containing more than 400 pages. Single issues of the microfiche edition may be purchased for $3 per copy, including postage.

* * * * *

3. In § 11.3, revise paragraph (a) to read as follows:

§ 11.3 Code of Federal Regulations.

(a) The subscription price for a complete set of the Code of Federal Regulations is $1,019 per year for the bound, paper edition, or $247 per year for the microfiche edition. Those prices exclude postage. The prevailing postal rates will be applied to orders according to the delivery method requested. The Government Printing Office sells individual volumes of the paper edition of the Code of Federal Regulations at prices determined by the Superintendent of Documents under the general direction of the Administrative Committee. The price of a single volume of the microfiche edition is $4 per copy, including postage.

* * * * *

4. In § 11.6, revise paragraph (a) to read as follows:

§ 11.6 Weekly Compilation of Presidential Documents.

(a) The subscription price for the paper edition of the Weekly Compilation of Presidential Documents is $113 per year, excluding postage. The prevailing postal rates will be applied to orders according to the delivery method requested. The price of an individual copy is $5, including postage.

* * * * *

5. Revise § 11.7 to read as follows:

§ 11.7 Federal Register Index.

The annual subscription price for the monthly **Federal Register** Index, purchased separately, in paper form, is $29. The price excludes postage. The prevailing postal rates will be applied to orders according to the delivery method requested.

6. Revise § 11.8 to read as follows:

§ 11.8 LSA (List of CFR Sections Affected).

The annual subscription price for the monthly LSA (List of CFR Sections Affected), purchased separately, in paper form, is $30. The price excludes postage. The prevailing postal rates will be applied to orders according to the delivery method requested.

By order of the Committee.
Dated: December 12, 2003.

Raymond A. Mosley,

Secretary, Administrative Committee of the Federal Register.

[FR Doc. 03–31145 Filed 12–16–03; 8:45 am]

BILLING CODE 1505–02–P

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Part 275

RIN 0584–AD29

Food Stamp Program: High Performance Bonuses

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This rulemaking proposes to amend Food Stamp Program (FSP) regulations to implement provisions of section 4120 of the Farm Security and Rural Investment Act of 2002 (FSRIA). This section authorizes the Food and Nutrition Service (FNS) to award bonuses to States that demonstrate high or improved performance in administering the FSP. This rule proposes performance measures for these bonuses for fiscal year (FY) 2005 and beyond. It also proposes the data that will be used to measure the identified performance. The performance bonuses are meant to act as an incentive for State agencies to improve or maintain high performance in administering the FSP.

DATES: Comments must be received on or before February 17, 2004.

ADDRESSES: You may mail comments to the Food Stamp Program, Food and Nutrition Service, USDA, 3101 Park Center Drive, Alexandria, Virginia 22302, Attention: Program Design Branch. You may FAX comments to us at 703–305–2486, Attention: Program Design Branch. You may also hand-deliver comments to us on the 8th floor at the above address.

FOR FURTHER INFORMATION CONTACT: Moira Johnston, Senior Program Analyst, Program Design Branch, Program Development Division, Food Stamp Program, FNS, 3101 Park Center Drive, Room 812, Alexandria, Virginia, (703) 305–2515, or via the Internet at *Moira.Johnston@fns.usda.gov*.

SUPPLEMENTARY INFORMATION:

Additional information on Comment Filing/Electronic Access

Electronic Access and Filing Address

You may view and download an electronic version of this proposed rule at *http://www.fns.usda.gov/fsp/*. You may also comment via the Internet at the same address. Please include "Attention: RIN 0584–AD29" and your name and return address in your Internet message. If you do not receive a confirmation from the system that we have received your message, contact us directly at 703–305–2515.

Written Comments

Written comments on the proposed rule should be specific, should be confined to issues pertinent to the proposed rule, and should explain the reason for any change you recommend. Where possible, you should reference the specific section or paragraph of the proposed rule you are addressing. We

may not consider or include in the Administrative Record for the final rule comments that we receive after the close of the comment period or comments delivered to an address other than those listed above.

We will make all comments, including names, street addresses, and other contact information of respondents, available for public inspection on the 8th floor, 3101 Park Center Drive, Alexandria, Virginia 22302 between 8:30 a.m. and 5 p.m. Eastern time, Monday through Friday, excluding Federal holidays. Individual respondents may request confidentiality. If you wish to request that we consider withholding your name, street address, or other contact information from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your comment. We will honor requests for confidentiality on a case-by-case basis to the extent allowed by law. We will make available for public inspection in their entirety all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses.

Executive Order 12866

This proposed rule was determined to be significant and was reviewed by the Office of Management and Budget (OMB) in conformance with Executive Order 12866.

Executive Order 12372

The Food Stamp Program is listed in the Catalog of Federal Domestic Assistance under No. 10.551. For the reasons set forth in the final rule in 7 CFR part 3105, subpart V and related notice (48 FR 29115, June 24, 1983), this Program is excluded from the scope of Executive Order 12372, which requires intergovernmental consultation with State and local officials.

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is intended to have preemptive effect with respect to any State or local laws, regulations, or policies that conflict with its provisions or that would otherwise impede its full implementation. This rule is not intended to have retroactive effect unless so specified in the "Effective Date" paragraph of this rule. Prior to any judicial challenge to the provisions of this rule or the application of its provisions, all applicable administrative procedures must be exhausted.

Regulatory Flexibility Act

This rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act of 1980 (5 U.S.C. 601–612). Eric M. Bost, Under Secretary for Food, Nutrition, and Consumer Services, has certified that this rule will not have a significant economic impact on a substantial number of small entities. The changes will affect State and local welfare agencies that administer the FSP, to the extent that they must implement the provisions described in this action.

Unfunded Mandate Analysis

Title II of the Unfunded Mandate Reform Act of 1995 (UMRA), Pub. L. 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of UMRA, the Department generally must prepare a written statement, including a cost benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, or tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. When such a statement is needed for a rule, section 205 of UMRA generally requires the Department to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, more cost-effective or least burdensome alternative that achieves the objectives of the rule.

This rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) that impose costs on State, local, or tribal governments or to the private sector of $100 million or more in any one year. Thus, this rule is not subject to the requirements of section 202 and 205 of UMRA.

Regulatory Impact Analysis

Need for Action

This NPRM is needed to implement the provisions of Section 4120 of the FSRIA that authorized FNS to establish performance measures relating to actions taken to correct errors, reduce rates of error, improve the eligibility determinations and other indicators of effective administration; measure States' performance against these performance measures; and award performance bonus payments totaling $48 million for each fiscal year to State agencies that show high or improved performance relating to the performance measures.

Benefits

State agencies will benefit from the provisions of this rule because they have the potential to be awarded bonuses for high or improved performance in administering the FSP.

Recipients will benefit from the provisions of this rule because, as the State agencies seek to improve their performance in determining eligibility, issuing benefits, and attracting and retaining participants, their actions will positively affect applicants and participants.

Costs

The cost of implementing these provisions is $48 million each fiscal year, or $240 million over 5 years.

Executive Order 13132

Federalism Summary Impact Statement

Executive Order 13132 requires Federal agencies to consider the impact of their regulatory actions on State and local governments. Where such actions have "federalism implications," agencies are directed to provide a statement for inclusion in the preamble to the regulation describing the agency's considerations in terms of the three categories called for under section (6)(b)(2)(B) of Executive Order 13132.

Prior Consultation With State Officials

Prior to drafting the rule, we received input from State and local agencies. Since the FSP is a State administered, Federally funded program, our national headquarters staff and regional offices have formal and informal discussions with State and local officials on an ongoing basis regarding FSP implementation and policy issues. This arrangement allows State and local agencies to provide feedback that forms the basis for any discretionary decisions made in this and other FSP rules. In addition, we solicited ideas at various State, regional, national, and professional conferences. Finally, we consulted with State government representatives and our partners in the anti-hunger arena through meetings with such entities as the National Conference of State Legislators (NCSL), the National Governors Association (NGA), the American Public Human Services Association (APHSA), the Food Research and Action Center (FRAC) and the Center on Budget and Policy Priorities (CBPP).

Nature of Concerns and the Need To Issue This Rule

State agencies expressed their preferences that performance measures for the high performance bonuses should be based on: (1) Activities that FNS and State agencies value most; (2) outcomes that State agencies could influence; (3) available data, even if imperfect, so as not to impose additional collection and reporting requirements on State agencies.

Extent to Which We Met Those Concerns

FNS took the State agencies' preferences into consideration when drafting this NPRM. In addition, FNS will consider comments on the NPRM prior to publishing the final rulemaking. This NPRM is required by law to implement the high performance bonuses for FY 2005 and beyond.

Civil Rights Impact Analysis

FNS has reviewed this proposed rule in accordance with the Department Regulation 4300–4, "Civil Rights Impact Analysis," to identify and address any major civil rights impacts the rule might have on minorities, women, and persons with disabilities. After a careful review of the rule's intent and provisions, and the characteristics of food stamp households and individual participants, FNS has determined that there is no adverse effect on any of the protected classes. The rulemaking is directed at State agencies and not applicants or recipients. If there were a trickle down effect on applicants or recipients, it would more than likely be positive and affect all applicants and recipients as this rulemaking includes incentives for State agencies to improve the eligibility determination and certification systems.

FNS has no discretion in implementing any of these changes, which were effective upon enactment of the FSRIA on May 13, 2002. We do have discretion regarding the performance measures used to award bonuses. However, as discussed above, these performance measures are directed at State agencies. To the extent States act on these incentives, customer service and payment accuracy may improve. Therefore, FNS anticipates no adverse impact on any of the individuals eligible for food stamps and no disproportionate impact on any protected class.

In general, all data available to FNS indicate that protected individuals have the same opportunity to participate in the Food Stamp Program as non-protected individuals. FNS specifically prohibits the State and local government agencies that administer the FSP from engaging in actions that discriminate based on race, color, national origin, gender, age, disability, marital or family status. Regulations at 7 CFR 272.6 specifically state that "State agencies shall not discriminate against any applicant or participant in any aspect of program administration, including, but not limited to, the certification of households, the issuance of coupons, the conduct of fair hearings, or the conduct of any other program service for reasons of age, race, color, sex, handicap, religious creed, national origin, or political beliefs. Discrimination in any aspect of program administration is prohibited by these regulations, the Food Stamp Act of 1977 (the Act), the Age Discrimination Act of 1975 (Pub. L. 94–135), the Rehabilitation Act of 1973 (Pub. L. 93–112, section 504), and title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d). Enforcement action may be brought under any applicable Federal law. Title VI complaints shall be processed in accord with 7 CFR part 15." Where State agencies have options, and they choose to implement a certain provision, they must implement it in such a way that it complies with the regulations at 7 CFR 272.6.

Paperwork Reduction Act

There are no revisions to information collections identified in this rule. This proposed rule contains information collections that have been previously approved by OMB. The burden for the Quality Control Negative Case Action Review Schedule (FNS–245) is approved under OMB #0584–0034. The Quality Control Review Schedule (FNS–380–1) is approved under OMB #0584–0299. The Integrated Quality Control Review Worksheet (FNS–380) is approved under OMB #0584–0074. The State Coupon Issuance and Participation Estimates (FNS–388) is approved under OMB #0584–0081.

FNS is committed to compliance with the GPEA, which requires Government agencies, in general, to provide the public the option of submitting information or transacting business electronically to the maximum extent possible.

Background

Section 16(a) of the Food Stamp Act of 1977 (the Act), 7 U.S.C. 2025(a), establishes the base administrative cost-sharing rate between the Federal Government and States at 50 percent. That is, pursuant to Section 16(a), the Department will typically reimburse half a State's costs incurred in administering the FSP. The Act prior to FSRIA and FSP regulations at 7 CFR 277.4(b)(l)(ii) provide that a State agency would receive enhanced funding if it has a payment error rate less than or equal to 5.9 percent and a negative case error rate less than the national weighted mean negative case error rate for the previous year. State agencies and advocate groups have expressed concerns that this incentive is too narrowly focused on payment accuracy and should be modified to also reward States for efficient management of the FSP in other areas.

On May 13, 2002, the enactment of FSRIA (Pub. L. 107–171) re-designed the quality control (QC) system, doing away with enhanced funding and replacing it with bonuses for States with high or improved performance administering the FSP, while significantly reducing liabilities assessed against States with poor accuracy outcomes.

This NPRM proposes to implement only those provisions related to the high performance bonuses. Elimination of enhanced funding and changes in the liability system will be dealt with in a separate rulemaking.

What Are the Legislation's Basic Provisions for Performance Bonuses?

Section 4120 of the FSRIA amended section 16 of the Act to authorize FNS to establish performance measures relating to actions taken to correct errors, reduce rates of error, improve eligibility determinations, and other indicators of effective administration; measure States' performance against these performance measures; and award performance bonus payments totaling $48 million for each fiscal year to State agencies that show high or improved performance relating to the performance measures. Section 16(d)(3) prohibits a State from being eligible for a performance bonus payment any fiscal year for which it has a liability amount established. Section 16(d)(4) provides that the amount of the bonus payment and whether or not to award such bonus payment is not subject to administrative or judicial review. Pursuant to section 16(d)(2)(B)(ii) of the amended Act, FNS is to award the bonus payments in the fiscal year following the fiscal year of performance.

How Is the Legislation To Be Implemented To Measure and Reward Performance for FY 2003 and 2004?

For FY 2003 and FY 2004, section 16(d)(1)(A) of the Act authorized FNS to establish performance measures through guidance. FNS issued guidance implementing the performance measures for FY 2003 on September 30, 2002. The performance measures for FY 2004 had not been established at the time FNS drafted this proposed rule.

How Is the Legislation To Be Implemented To Measure and Reward Performance for FY 2005 and Beyond?

For FY 2005 and beyond, section 16(d)(2) of the Act provides that FNS must establish the performance measures through regulation. This rule proposes the performance measures for FY 2005 and beyond.

Does the Legislation Require FNS To Consult With Organizations?

Under Section 16(d)(2)(A)(iii) FNS is required to solicit ideas from State agencies and organizations that represent States' interests prior to issuing the proposed rule. In June 2002, FNS held two meetings, one in Alexandria, Virginia, and one in Dallas, Texas, with representatives from all the State agencies to discuss the FSRIA and to solicit their ideas for implementation. FNS took the opportunity at that time to solicit ideas from State agency representatives specifically on the performance measures. On July 2, 2002, FNS met with representatives from State agencies, APHSA, NCSL and NGA, and on July 11, 2002, FNS officials met with representatives from CBPP and FRAC specifically to solicit ideas on possible performance measures for the high performance bonuses. FNS officials also solicited ideas from State agencies through on-going discussions and through the September 30, 2002 guidance.

Were Methods for Structuring Bonuses Discussed at These Meetings?

During these discussions, the participants also put forth ideas on how to structure the bonuses. For example, some of the issues explored included but were not limited to:

- How many States should FNS reward? Should FNS reward more States with less money or fewer States with more money?
- How many measures should FNS propose? Should FNS propose several individual measures? Or, should it propose a few measures that are made up of several elements that are then indexed or weighted?
- Should FNS measure improvements or absolutes? Or, both?
- What percentage of the $48 million should go towards payment accuracy versus other measures?
- How does FNS apportion the money? By size of State? By caseload or dollars issued?
- Should FNS allow States to choose whether or not to compete for the bonuses? Or, should it be mandatory?

What Were Some of the Possible Performance Measures Discussed During These Meetings?

During the meetings, the participants discussed many ideas on possible performance measures. The performance measures discussed included but were not limited to: per case State administrative costs, recipient claims establishment, payment accuracy, general customer service, application processing timeliness, increasing family self-sufficiency, participation levels, participation rates, nutrition education, fair hearings, and creativity/innovations.

What Were Some of the Criteria Participants in These Meetings Used To Evaluate the Possible Performance Measures?

In examining the possible measures, participants used several criteria to determine which ones to pursue and which ones to set aside. Participants felt very strongly that the measures should be ones that the States could influence. For example, the number of individuals participating in the FSP relates more to the size of the State and condition of the economy than to State agency actions. However, the percentage of eligible citizens actually participating in the Program can be influenced by State agency practices such as outreach, accessibility of offices, the length of the application form, and the speed of application processing. In addition, two key considerations were the value of the performance reflected by the measure, and the availability of objective data for a given measure. In some areas, FNS has considerable data but participants did not believe that these data measured core areas of FSP performance. For example, FNS has data on recipient claims. Participants expressed concern, however, about rewarding States with high error rates and that have a much larger pool of claims to establish and collect. In addition, participants emphasized that State agencies were already financially rewarded in that they retain a certain percentage of all the claims they collect.

FNS has data on the amount of States' administrative costs. Participants expressed concern, however, about rewarding States with low administrative costs that may have less effective programs. In other instances, an activity may advance a key part of the FSP mission but data is not available or not sufficient to gauge success. For example, nutrition education promotes the basic purpose of the FSP, which is to improve the nutrient intake of low-income persons. While food intake data is relevant to measure nutrient intake, it is not sufficient because it is not collected annually and the sample sizes are not sufficient to develop statistically adequate estimates of nutritional intake at the State level. The measures that FNS decided to propose following the conclusion of the meetings, while not perfect, met the basic criteria mentioned above.

Were There Overall Themes That Emerged During the Discussions?

During the discussions mentioned above, as well as subsequent in-house discussions, the following overall themes emerged concerning the performance measures:

- Performance measures should be based on: (1) Activities that FNS and State agencies value most; (2) outcomes that State agencies could influence; (3) available data, even if imperfect, so as not to impose additional collection and reporting requirements on State agencies.
- The bonuses should be structured as simply as possible; several individual performance measures are preferable over composite measures that would include several categories that would be "weighted."
- FNS should award more States with smaller bonuses, since recognition may be as important as money.
- FNS should make awards proportional to State's caseloads to give all States sufficient incentive to compete for these bonuses.
- FNS should emphasize rewarding excellence, but also award improvement. This will give all States an opportunity to receive an award and motivate more States to try.
- Awards should reflect a balancing of the goals of program integrity and program access. Integrity continues to be one of FNS' highest priorities.
- FNS should measure all States in all areas, as opposed to having them choose which bonuses to compete for, because the data are available, are public information, and will motivate States to improve.

What Performance Measures and Bonus Structure Has FNS Decided To Propose for FY 2005 and Beyond?

While there are many measures, many ways to divide the money, and many ways to structure the bonuses, FNS believes the following proposed scheme reflects the values of the FSP, strikes a good balance between payment accuracy and access, and recognizes both improvements and excellence.

How Many Proposed Categories Are There?

There are 7 proposed categories that would provide bonuses for up to 30 States.

What Are the Proposed Categories?

The 7 categories include the lowest and most improved combined payment error rates, the lowest and most improved negative error rates, the highest and most improved participant access rates, and the best application processing timeliness rate. Following is a detailed discussion of each proposed measure and the proposed data that would be used for each measure.

As mentioned above, FNS and representatives of partnering agencies and organizations considered many categories. One of these categories was for innovation. Generally, FNS believes that a determination of "most innovative" would require a subjective determination, unlike the other measures discussed and eventually proposed in this rulemaking that are based on objective and quantifiable data. Therefore, FNS decided at the time of this proposed rulemaking to reserve such a category for the annual non-monetary awards that FNS gives out at the American Association of Food Stamp Directors Conference. FNS is interested in the idea of rewarding innovation, and would like to solicit comments on whether or not to include as a high performance bonus a category for innovation. Specifically, what criteria could be used to rank innovative projects?

Payment Accuracy

FNS proposes to divide $24 million (50 percent of the total amount) among the 7 States with the lowest and the 3 States with the most improved combined payment error rate (the error rate). FNS believes allocating 50 percent of the total amount towards payment accuracy sends a strong signal that payment accuracy is still one of the Agency's highest priorities. In addition, it is an established index that measures outcomes that are influenced by many aspects of FSP management, such as policies, training and customer service. In general terms, the error rate consists of the rate of over issuances and under issuances to participating households. More specifically, the regulations at 7 CFR part 275 define the error rate, prescribe how this data is collected and manipulated, and describe how the error rate is determined. These data are the most readily available data of all the proposed performance measures. They are selected from random sampling of approximately 54,000 cases that are reviewed by the States and validated by FNS. Determination of error rates is a long established practice, one that the State agencies and others are familiar with. Therefore, for the sake of brevity, this proposed rule will not detail the QC data collection process.

How Will the Most Improved Error Rate Be Determined—by Percent Decrease (Relative) or by Percentage Point Decrease (Absolute)?

FNS proposes that the most improved error rate be determined by measuring the percentage points decreased (absolute improvement). For example, if State A has an error rate of 10 percent in FY 2003 and an error rate of 6 percent in 2004, its improvement is 4 percentage points, or a 40 percent improvement. If State B has an error rate of 6 percent in 2003 and an error rate of 3 percent in FY 2004, its improvement is 3 percentage points, or a 50 percent improvement. FNS proposes to rank State A higher than State B because its absolute improvement (4 percentage points) is greater.

FNS believes absolute improvement has more of an impact on the national FSP than relative improvement. For example, if States A and B both issued $100 million in benefits, State A would have reduced its payment error by $4 million while State B would have reduced its payment error by only $3 million.

Negative Error Rate

FNS proposes to divide $6 million among the 4 States with the lowest and the 2 States with the most improved negative error rate. The negative error rate measures the correctness of the State agency's action to deny an application, or suspend or terminate the benefits of a participating household. It also measures whether a State correctly determined a household's eligibility in terms of the State's compliance with Federal procedural requirements. For example, a case may be reported as an invalid denial because the State denied the application prior to the 30th day, even though the household is not eligible. The negative error rate is the best measure FNS has of how many people walk in the door and do not get the services and benefits as provided by statute. As with the error rate, the determination of the negative error rate is spelled out in 7 CFR part 275. Again, it is long standing practice and, therefore, this proposed rule will not detail how FNS determines the negative error rate.

How Will the Most Improved Negative Error Rate Be Determined—by Percent Decrease (Relative) or by Percentage Point Decrease (Absolute)?

FNS proposes to determine the most improved negative error rate by measuring the percentage points improved. For example, if two States have the same caseload: State A starts with a 6 percent negative error rate and State B starts with a 3 percent negative error rate. State A reduces its error rate to 4.5 percent, a reduction of 1.5 percentage points (absolute) and a 25 percent (relative) reduction. State B reduces its error rate to 2 percent, a reduction of 1 percentage point (absolute) and a 33 percent (relative) reduction.

Our proposal is to acknowledge State A because it has had a larger effect on its State caseload than State B (1.5 percentage points versus 1 percentage point).

If both States start with the same caseload, it is clear that State A has affected more cases in its improvement. When the caseloads are different, State A still has had a bigger impact in proportion to its caseload than has State B.

FNS would like to solicit comments on whether States must attain a certain threshold to be rewarded for improvement. For example, if a State improves its negative error rate from 20 percent to 15 percent should it be rewarded, even though its negative error rate is still very high?

Participant Access Rate

FNS proposes to divide $12 million among the 4 States with the highest and the 4 States with the most improved participant access rate. This measure is central to the purpose of the FSP in that it reflects the degree to which those in need of nutritional assistance are accessing the benefits to which they are eligible. FNS and others discussed measuring States' performance based on the participation rate that FNS publishes every year. The participation rate measures the rate at which eligible individuals are participating in the FSP. In determining this measure, FNS makes adjustments for things that would make a household or individual otherwise ineligible for the FSP such as resources, alien status, household composition and whether or not an individual has reached the time limits for able-bodied adults without dependents. It also makes adjustments for things that would make a household otherwise eligible for the FSP such as annual income versus monthly income. For example, a household could have an annual income

above 130 percent of the poverty line, and at first glance would be ineligible for the FSP. But, because the sole breadwinner was laid off halfway through the year, the household was "poor" for many months within that year, and thus income eligible for the FSP for those months. The participation rate is based in part on data from the Census Bureau's March Supplement to the Current Population Survey. FNS then makes the adjustments discussed above. As this process takes time, the participation rate is not available until a year after the bonuses are to be awarded.

FNS is proposing that States be measured against a participant access rate (PAR). The PAR differs from the participation rate, in that it measures the ratio of participants in the FSP to the number of persons in poverty in the State. In calculating the PAR, FNS does not make adjustments for things that would make individuals otherwise ineligible for the FSP such as resources or alien status, or otherwise eligible, such as monthly income versus annual income. Therefore, it is available within the timeframe needed in order to award the bonuses within the statutory time frame.

What Data Will FNS Use To Calculate the Participant Access Rate?

FNS proposes to use a variety of data sources to calculate the participant access rate. FNS proposes that the denominator be composed of data from the Census Bureau's March Supplement to the Current Population Survey. FNS would use the annual State counts of persons below 125 percent of poverty from the Census Bureau shortly after it is released, usually in late September. These counts are based on income received in the previous calendar year. For the numerator, or the number of food stamp participants, FNS proposes to use administrative counts of participants by State over the same calendar year for the Census Bureau's persons below 125 percent of poverty, averaging 12 months of data.

The threshold of 125 percent of poverty differs from what FNS used for fiscal years 2003 and 2004 (100 percent of poverty). However, our analysis shows that using 125 percent of poverty better correlates to our official Food Stamp Program participation rates. We are examining whether 130 percent of poverty is an even better match. However, at this time, this data is not readily available from the Census Bureau and would require time to obtain. If we are guaranteed to receive this data from the Census Bureau within a reasonable timeframe and the data better correlates to our official statistics, in the final rule making we will use numbers of people below 130 percent rather than 100 percent of poverty.

FNS is also considering using data from the American Community Survey (ACS) instead of the Current Population Survey because ACS has a larger sample and is released earlier than the official poverty statistics. Currently, the only ACS data available is for 2002. We will examine how well the ACS poverty counts correlate to the official Food Stamp Program participation rate, when the 2002 rates are available this coming summer. If the ACS data provides a better proxy for the official program participation rate, in final rule making we will use the ACS rather than the CPS.

Would FNS Make Adjustments for Special State Specific Situations That Might Affect the Number of People Receiving Food Stamps?

FNS proposes to make adjustments for two special situations. First, because persons receiving Supplemental Security Income (SSI) are ineligible for food stamps in California, FNS proposes to reduce the number of persons below 125 percent of poverty in California by the percentage of such persons who received SSI in the previous year. Second, because some individuals residing on reservations may choose to receive food assistance from either the FSP or the Food Distribution Program on Indian Reservations (FDPIR) but not both simultaneously, FNS proposes to add to the number of food stamp participants the number of FDPIR participants using administrative data averaged over a calendar year.

FNS proposes to not make adjustments for State option programs that offer State benefits through the FSP to immigrants because they are not Federal food assistance programs.

Application Processing Timeliness

FNS proposes to divide $6 million among the 6 States with the highest percentage of timely processed applications. FNS believes application-processing timeliness is an important aspect of customer service, not only because it measures whether households get the food stamps as provided by statute in a timely fashion, but also because it is a well established standard that is mandated by section 11(e)(3) of the Act (7 U.S.C. 2025(e)(3)). Many State agencies and advocates agree. However, FNS also recognizes that reliable data for measuring application-processing timeliness are not readily available and/or reliable. Currently, FNS collects some of this information on the Program Activity Statement (Form FNS–366) such as data on certification, fair hearings and fraud control. However, in many instances these data are reported inconsistently or inaccurately. For example, States have different reporting systems (manual or automatic) or eligibility workers may understate the number of late decisions for fear of being reprimanded. In addition, FNS does not validate the data that the State agencies report. A review of the data from the current Form FNS–366B indicates a wide range of performance. Rewarding States that report stellar performance may reflect reporting differences rather than exceptional timeliness. Finally, if we were to use the Form FNS–366B to collect this data, we would have to mandate consistent systems and reporting processes that would result in an additional burden on States. In light of these concerns, FNS is proposing to use other data for this measure.

What Data Does FNS Propose Using To Measure Application-Processing Timeliness?

FNS proposes collecting data on application-processing timeliness through the QC system. FNS has initiated collection of data as part of the QC reviews beginning with FY 2003 cases for use in determining the measure and evaluating its use in measuring these data (FNS–380). Instructions for collecting this information, which can be found in the *FNS Handbook 310: The Food Stamp Program Quality Control Review Handbook*, have already been shared with the Regional offices and State agencies. FNS is seeking particular comment on this data collection instrument and its ability to collect the sought after information.

What Application-Processing Standard Does FNS Propose To Use To Measure Timeliness?

FNS proposes to use the application-processing standard of 30 days (or 7 days for expedited service). An applicant must be given the "opportunity to participate" (as defined in 7 CFR 274.2) within thirty days (or 7 days for expedited service). New applications that are processed outside this standard would be considered untimely for this measure, with one exception as discussed below.

Will FNS Count Client Caused Delays as Untimely?

Yes. Any application processed outside of the 30-day processing standard will be considered untimely for this measure including client caused delays, with one exception. FNS is proposing not to include in the measure applications that are properly pended because the applicant failed to provide requested verification. Properly pended means the State agency has taken the actions described in 7 CFR 273.2(h)(1)(i)(C) and it has pended the application in accordance with 273.2(h)(2)(i).

FNS recognizes that the regulations at 7 CFR 273.2(h)(2)(i) provide procedures for State agencies that, for one reason or another, are unable to meet the 30-day standard. For example, if the delay is the fault of the State agency, the State agency may not deny the application, but must hold it pending while taking immediate corrective action. If the delay is the fault of the applicant (for example, the household failed to complete the application), the State agency may either deny the application or hold it pending for 30 days from the date of the initial request for verification. Some may argue that FNS should measure States' compliance with these regulations rather than States' performance under a 30-day standard mandated in section 11(e)(3) of the Act. Why then does this rulemaking propose to measure State agencies' performance against the statutory 30-day limit as opposed to compliance with the regulations? First, FNS believes that the incidence of client caused delays does not vary that much by State, and therefore, with this methodology States are on an even playing field. Second, FNS would not want to reward a State that is relatively weak in meeting the 30-day standard but good at getting benefits out within 60 days. Furthermore, FNS believes it would be difficult, based upon certification records, to consistently distinguish between delays that are client versus agency caused, except in the situation described above. However, given the considerable discussion around this measure, FNS is soliciting comments on whether to exclude all client-caused delays from this measure and, if so, how to work that into the existing reporting and QC framework.

Will Both Approvals and Denials Be Included in the Determination of Timeliness?

FNS proposes that only approvals be included in the determination of timeliness since this measure is focused on meeting the 30-day standard for providing eligible households the opportunity to participate.

Will Every Case Identified for QC Review in the Performance Year Be Evaluated for Timeliness?

FNS proposes that QC reviewers evaluate for timeliness only new applications in the State QC active sample that were filed on or after the beginning of the fiscal year because they were filed within the performance measurement year for which the bonuses are awarded.

FNS realizes that this approach reduces the sample size. For example, if a QC reviewer pulls a case for review in November, chances are it was originally certified in the previous fiscal year. Therefore, that case will not be included in the sample for the application-processing-timeliness measure. It may be several months into the fiscal year before the QC reviewers sample cases that are certified within the performance measurement year. FNS will monitor the sample size and, depending upon the confidence it has in the data and comments it receives on the approach, reevaluate this method of measuring timeliness. However, we believe this sample size will give us enough data to make a determination of State rankings.

Will This Information Be Validated?

Federal reviewers will examine the data during the Federal re-review process and possibly at the end of the review period.

General Questions

Can a State Agency Win More Than One Bonus in the Same General Category, i.e., the Best and the Most Improved Payment Error Rate?

FNS proposes that a State cannot be awarded two bonuses in the same category, *i.e.*, the best and most improved participant access rate. FNS proposes that if a State were among the most improved in a category, it would not be counted among the best. This allows the "next best" State to receive an award as being among the best States. A State may be awarded bonuses for different general categories, such as most improved negative error rate and highest participant access rate.

How Will FNS Ascertain the Winners of Each Category When There Is a Tie?

Where there is a tie to the fourth decimal point, FNS proposes to add the additional State(s) into the category. For example, if 7 awards should be made for the lowest error rate, but there are 3 States that are tied for the 7th spot, 9 States would receive the award.

Can a State Agency That Has a Liability Amount Established Receive a Bonus?

No. Section 4120 of the SFIRA provided in section 16(d)(3) of the Act that a State may not be eligible for a performance bonus payment in any fiscal year for which it has a liability amount. To have a liability amount established, a State's combined payment error rate must exceed 105 percent of the national performance measure for payment errors for two consecutive fiscal years. Therefore, since FY 2003 was the first year for which a State could have poor performance as discussed above, it would not have a liability amount established unless it has poor performance in FY 2004 as well. However, note that no State will have a liability established in accordance with section 16(d)(3) of the Act in FY 2003 and, therefore, all States are eligible for a high performance bonus for that year.

How Will the Money Be Apportioned?

FNS proposes that the money be divided among States in proportion to the size of their caseloads (average number of households per month for the fiscal year for which performance is measured). For example, if 6 states are to split $6 million and State A accounts for 40 percent of all food stamp participants in these 6 states, State A will receive 40 percent of $6 million, or $2.4 million. FNS believes that this is the most equitable way to apportion the money. This method recognizes that more effort is needed to influence a large State's performance versus a small State's performance. At the same time, though, it provides a per-case award so that each case is in effect weighted equally.

When Will the Bonuses for FY 2005 and Subsequent Fiscal Years' Performance Be Awarded?

The bonuses for performance in FY 2005 will be awarded in FY 2006, as required by section 16(d)(2)(B)(ii) of the Act. For each subsequent fiscal year, FNS will award bonuses in the fiscal year following the performance measurement year.

Is FNS's Decision To Award a Performance Bonus Payment Subject to Administrative or Judicial Review?

No. Section 16(d)(4) of the Act specifically states that the determination by the Secretary whether, and in what amount, to award a performance bonus payment under this subsection shall not be subject to administrative or judicial review.

Where Does FNS Propose Revising the Regulations To Include the High Performance Bonuses?

FNS proposes to codify these provisions in a new section at 7 CFR 275.24.

List of Subjects in 7 CFR Part 275

Administration, Management evaluation reviews, Quality control reviews, Data analysis and evaluation, Corrective action, Responsibilities for reporting on program performance, Program performance.

Accordingly, 7 CFR part 275 is proposed to be amended as follows:

PART 275—PERFORMANCE REPORTING SYSTEM

1. The authority citation for Part 275 continues to read as follows:

Authority: 7 U.S.C. 2011–2036.

2. A new § 275.24 is added to read as follows.

§ 275.24 High performance bonuses.

(a) General rule. (1) FNS will award bonuses totaling $48 million for each fiscal year to State agencies that show high or improved performance in accordance with the performance measures under paragraph (b) of this section.

(2) FNS will award the bonuses no later than September 30th of the fiscal year following the performance measurement year.

(3) A State agency is not eligible for a bonus payment in any fiscal year for which it has a liability amount established.

(4) The determination whether, and in what amount, to award a performance bonus payment is not subject to administrative or judicial review.

(5) FNS will divide the award money among the States in each category (*see* paragraph (b) of this section) in proportion to the size of their caseloads (the average number of households per month for the fiscal year for which performance is measured).

(6) A State cannot be awarded two bonuses in the same category; the relevant categories are payment accuracy (which is outlined in paragraph (b)(1) of this section), negative error rate (which is outlined in paragraph (b)(2) of this section), or participant access rate (which is outlined in paragraph (b)(3) of this section). If a State is determined to be the best and the most improved in a category, it would be awarded a bonus only for being the most improved. This allows the "next best" State to receive an award as being among the best States.

(7) Where there is a tie to the fourth decimal point for the categories outlined in paragraphs (b)(1) through (b)(4) of this section, FNS will add the additional State(s) into the category and the money will be divided among all the States in accordance with paragraph (a)(5) of this section.

(b) *Performance measures.* FNS will measure performance by and base awards on the following categories of performance measures:

(1) *Payment accuracy.* FNS will divide $24 million among the 10 States with the lowest and the most improved combined payment error rates as specified in paragraphs (b)(1)(i) and (b)(1)(ii) of this section.

(i) *Excellence in payment accuracy.* FNS will provide bonuses to the 7 States with the lowest combined payment error rates based on the validated quality control payment error rates for the performance measurement year as determined in accordance with this part.

(ii) *Most improved in payment accuracy.* FNS will provide bonuses to the 3 States with the largest percentage point decrease in their combined payment error rates based on the comparison of the validated quality control payment error rates for the performance measurement year and the previous fiscal year as determined in accordance with this part.

(2) *Negative error rate.* FNS will divide $6 million among the 6 States with the lowest and the most improved negative error rates as specified in paragraphs (b)(2)(i) and (b)(2)(ii) of this section.

(i) *Lowest negative error rate.* FNS will provide bonuses to the 4 States with the lowest negative error rate based on the validated quality control negative error rate for the performance year as determined in accordance with this part.

(ii) *Most improved negative error rate.* FNS will provide bonuses to the 2 States with the largest percentage point decrease in their negative error rates based on the comparison of the performance measurement year's validated quality control negative error rates with those of the previous fiscal year as determined in accordance with this part.

(3) *Participant access rate (PAR).* FNS will divide $12 million among the 8 States with the highest and the most improved level of participation as specified in paragraphs (b)(3)(i) through (b)(3)(iii).

(i) *High Participant Access Rate.* FNS will provide bonuses to the 4 States with the highest PAR as determined in accordance with paragraph (b)(3)(iii) of this section.

(ii) *Most improved participant access rate.* FNS will provide bonuses to the 4 States with the most improved PAR as determined in accordance with paragraph (b)(3)(iii) of this section.

(iii) *Data.* For the number of participants (numerator), FNS will use the administrative counts of participants by State for the calendar year, increased by the administrative counts of participants in the Food Distribution Program on Indian Reservations (FDPIR) as reported by the States that operated FDPIR. For the number of people below 125 percent of poverty (denominator), FNS will use the Census Bureau's count of people below 125 percent of poverty for the same calendar year, reducing California's count by the number of people below 125 percent of poverty in California who received Supplemental Security Income in the previous year.

(4) *Application processing timeliness.* FNS will divide $6 million among the 6 States with the highest percentage of timely processed applications.

(i) *Data.* FNS will use quality control data for application processing timeliness.

(ii) *Timely processed applications.* A timely processed application is one that provides an eligible applicant the "opportunity to participate" as defined in 7 CFR 274.2, within thirty days for normal processing or 7 days for expedited processing. New applications that are processed outside of this standard are untimely for this measure, except for applications that are properly pended in accordance with § 273.2(h)(2) of this chapter because verification is incomplete and the State agency has taken all the actions described in § 273.2(h)(1)(i)(C) of this chapter. Such applications will not be included in this measure.

(iii) *Evaluation of applications.* Only applications that were filed on or after the beginning of the performance measurement (fiscal) year will be evaluated under this measure.

Dated: December 9, 2003.

Eric M. Bost,

Under Secretary, Food, Nutrition and Consumer Services.

[FR Doc. 03–31031 Filed 12–16–03; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

7 CFR Part 810

Request for Public Comment on the United States Standards for Sorghum

AGENCY: Grain Inspection, Packers and Stockyards Administration, USDA.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Grain Inspection, Packers and Stockyards Administration (GIPSA) is initiating a review of the United States Standards for Sorghum. GIPSA invites comments and suggested changes to these standards.

DATES: Comments must be received on or before February 17, 2004.

ADDRESSES: Written comments must be submitted to Tess Butler at GIPSA, USDA, STOP 3604, 1400 Independence Avenue, SW., Washington, DC 20250–3604; faxed to (202) 690–2755; or e-mailed to *comments.gipsa@usda.gov*. Please indicate your comment refers to United States Standards for Sorghum.

All comments received are available for public inspection at Room 1652, South Building, 1400 Independence Avenue, SW., Washington, DC, during regular business hours (7 CFR 1.27 (b)).

FOR FURTHER INFORMATION CONTACT: Marianne Plaus, telephone (202) 690–3460 at GIPSA, USDA, Room 2409 North/South Building, 1400 Independence Avenue, SW., Washington, DC 20250–3630; Fax Number (202) 720–1015.

SUPPLEMENTARY INFORMATION: On August 14, 1998, GIPSA published an Advance Notice of Proposed Rulemaking in the **Federal Register** (63 FR 43641) requesting views and comments on the sorghum standards. Based on comments received, GIPSA determined that the U.S. Standards for Sorghum were meeting the needs of producers, shippers, and others who handle and market sorghum and that no changes were needed at that time.

Recently, the National Grain Sorghum Producers (NGSP), an association representing U.S. grain sorghum farmers nationwide, has requested that GIPSA initiate a review of the sorghum standards. NGSP would welcome the opportunity to clarify several definitions in the current standards to more accurately reflect advancements in sorghum genetics and better reflect what is relevant to deriving value in the marketplace. GIPSA is seeking all comments that will assist the Agency in making the standards more relevant in the contemporary market. Accordingly, GIPSA is initiating a review of the United States Standards for Sorghum in Subpart I of 7 CFR part 810 at §§ 810.1401–810.1405.

During this review, GIPSA will assess the need for revisions on the various sections of the United States Standards for Sorghum, the potential for improvements, and language clarity.

GIPSA invites any comments and suggestions concerning these standards, and the benefits and costs of any changes including, but not limited to, those addressing sorghum classification, definitions, and grade limits.

Authority: Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71, *et seq.*)

Donna Reifschneider,

Administrator, Grain Inspection, Packers and Stockyards Administration.

[FR Doc. 03–31092 Filed 12–16–03; 8:45 am]

BILLING CODE 3410–EN–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1230

[No. LS–03–08]

Pork Promotion, Research, and Consumer Information Order—Decrease in Importer Assessments

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: Pursuant to the Pork Promotion, Research, and Consumer Information Act of 1985 (Act) and the Pork Promotion, Research, and Consumer Information Order (Order) issued thereunder, this proposed rule would decrease by five-hundredths to seven-hundredths of a cent per pound the amount of the assessment per pound due on imported pork and pork products to reflect a decrease in the 2002 average price for domestic barrows and gilts. This proposed action would bring the equivalent market value of the live animals from which such imported pork and pork products were derived in line with the market values of domestic porcine animals. In addition, this rule deletes two live porcine animal Harmonized Tariff Schedule (HTS) numbers—0103.91.0000 and 0103.92.0000—and adds five new live porcine animal HTS numbers 0103.91.0010, 0103.91.0020, 0103.91.0030, 0103.92.0010, and 0103.92.0090—to the table in § 1230.110(a) in order to update the HTS numbers used for live porcine animals.

DATES: Comments must be received by January 16, 2004.

ADDRESSES: Send comments to Kenneth R. Payne, Chief; Marketing Programs Branch, Room 2638–S; Livestock and Seed Program; Agricultural Marketing Service (AMS), USDA; STOP 0251; 1400 Independence Avenue, SW., Washington, DC 20250–0251. Comments may also be submitted electonrically to *PorkComments@usda.gov* or by fax at (202) 720–1125. All comments should reference the document number (LS–03–08), the date, and the page number of this issue of the **Federal Register**. Comments will be available for public inspection via the Internet at *http://www.ams.usda.gov/lsg/mpb/rp-pork.htm* or during regular business hours, 8 a.m. to 4:30 p.m. eastern time, Monday through Friday, at the above address.

FOR FURTHER INFORMATION CONTACT: Kenneth R. Payne, Chief, Marketing Programs Branch, (202) 720–1115.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

The Office of Management and Budget (OMB) has waived the review process required by Executive Order 12866 for this action.

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. This proposal is not intended to have a retroactive effect. The Act states that the statute is intended to occupy the field of promotion and consumer education involving pork and pork products and of obtaining funds thereof from pork producers and that the regulation of such activity (other than a regulation or requirement relating to a matter of public health or the provision of State or local funds for such activity) that is in addition to or different from the Act may not be imposed by a State.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 1625 of the Act, a person subject to an order may file a petition with the Secretary stating that such order, a provision of such order or an obligation imposed in connection with such order is not in accordance with the law; and requesting a modification of the order or an exemption from the order. Such person is afforded the opportunity for a hearing on the petition. After the hearing, the Secretary would rule on the petition. The Act provides that the district court of the United States in the district in which a person resides or

does business has jurisdiction to review the Secretary's determination, if a complaint is filed not later than 20 days after the date such person receives notice of such determination.

Regulatory Flexibility Act

This action also was reviewed under the Regulatory Flexibility Act (RFA) (5 United States Code (U.S.C.) 601 *et seq.*). The effect of the Order upon small entities initially was discussed in the September 5, 1986, issue of the **Federal Register** (51 FR 31898). It was determined at that time that the Order would not have a significant effect upon a substantial number of small entities. Many of the estimated 500 importers may be classified as small entities under the Small Business Administration definition (13 CFR 121.201).

This proposed rule would decrease the amount of assessments on imported pork and pork products subject to assessment by five-hundredths to seven-hundredths of a cent per pound, or as expressed in cents per kilogram, eleven-hundredths to fifteen-hundredths of a cent per kilogram. This decrease is consistent with the decrease in the annual average price of domestic barrows and gilts for calendar year 2002. The average annual market price decreased from $45.87 in 2001 to $37.09 in 2002, a decrease of about 20 percent. Adjusting the assessments on imported pork and pork products would result in an estimated decrease in assessments of approximately $562,000 over a 12-month period. Assessments collected on imported hogs, pork, and pork products for 2002 were $4,250,578. Accordingly, the Administrator of AMS has determined that this action would not have a significant economic impact on a substantial number of small entities.

The Act (7 U.S.C. 4801–4819) approved December 23, 1985, authorized the establishment of a national pork promotion, research, and consumer information program. The program was funded by an initial assessment rate of 0.25 percent of the market value of all porcine animals marketed in the United States and on imported porcine animals with an equivalent assessment on pork and pork products. However, that rate was increased to 0.35 percent in 1991 (56 FR 51635), to 0.45 percent effective September 3, 1995 (60 FR 29963), and then decreased to 0.40 percent effective September 30, 2002 (67 FR 58320). The final Order establishing a pork promotion, research, and consumer information program was published in the September 5, 1986, issue of the **Federal Register** (51 FR 31898; as corrected, at 51 FR 36383 and amended at 53 FR 1909, 53 FR 30243, 56 FR 4, 56 FR 51635, 60 FR 29963, 61 FR 29002, 62 FR 26205, 63 FR 45936, 64 FR 44643, 66 FR 67071, and 67 FR 58320) and assessments began on November 1, 1986.

The Order requires importers of porcine animals to pay U.S. Customs Service (USCS), upon importation, the assessment of 0.40 percent of the animal's declared value and importers of pork and pork products to pay USCS, upon importation, the assessment of 0.40 percent of the market value of the live porcine animals from which such pork and pork products were produced. This proposed rule would decrease the assessments on all imported pork and pork products subject to assessment as published in the **Federal Register** as a final rule September 16, 2002, and effective on September 30, 2002 (67 FR 58320). This decrease is consistent with the decrease in the annual average price of domestic barrows and gilts for calendar year 2002 as calculated by the Department of Agriculture's (Department), AMS, Livestock and Grain Market News (LGMN) Branch. This decrease in assessments would make the equivalent market value of the live porcine animal from which the imported pork and pork products were derived reflect the recent decrease in the market value of domestic porcine animals, thereby promoting comparability between importer and domestic assessments. This proposed rule would not change the current assessment rate of 0.40 percent of the market value.

The methodology for determining the per pound amounts for imported pork and pork products was described in the Supplementary Information accompanying the Order and published in the September 5, 1986, **Federal Register** at 51 FR 31901. The weight of imported pork and pork products is converted to a carcass weight equivalent by utilizing conversion factors that are published in the Department's Agricultural Handbook No. 697 "Conversion Factors and Weights and Measures." These conversion factors take into account the removal of bone, weight lost in cooking or other processing, and the nonpork components of pork products. Secondly, the carcass weight equivalent is converted to a live animal equivalent weight by dividing the carcass weight equivalent by 74 percent, which is the average dressing percentage of porcine animals in the United States as recognized by the industry. Thirdly, the equivalent value of the live porcine animals is determined by multiplying the live animal equivalent weight by an annual average market price for barrows and gilts as calculated by LGMN Branch. Finally, the equivalent value is multiplied by the applicable assessment rate of 0.40 percent due on imported pork and pork products. The end result is expressed in an amount per pound for each type of pork or pork product. To determine the amount per kilogram for pork and pork products subject to assessment under the Act and Order, the cent per pound assessments are multiplied by a metric conversion factor 2.2046 and carried to the sixth decimal.

Since 2001, there has been a change in the way LGMN Branch reports hog prices. Due to the implementation of the Livestock Mandatory Price Reporting program, LGMN no longer report hogs on a live basis because most of the industry buys hogs on a carcass basis. Therefore, the annual average market price for barrows and gilts is now derived from the National Daily Direct Hog Price Report (Slaughtered). To convert this figure to a live basis it must be multiplied by 74 percent, the average dressing percentage of porcine animals.

The formula in the preamble for the Order at 51 FR 31901 contemplated that it would be necessary to recalculate the equivalent live animal value of imported pork and pork products to reflect changes in the rate of assessment or changes in the annual average price of domestic barrows and gilts to maintain equity of assessments between domestic and porcine animals and imported pork and pork products.

The average annual market price decreased from $45.87 per hundredweight in 2001 to $37.09 per hundredweight in 2002, a decrease of about 20 percent. This decrease would result in a corresponding decrease in assessments for all HTS numbers listed in the table in § 1230.110(b), 67 FR 58320; September 16, 2002, of an amount equal to five-hundredths to seven-hundredths of a cent per pound, or as expressed in cents per kilogram, eleven-hundredths to fifteen-hundredths of a cent per kilogram. Based on the most recent available Department of Commerce, Bureau of Census, data on the volume of imported pork and pork products imported during 2002, the proposed decrease in assessment amounts would result in an estimated $562,000 decrease in assessments over a 12-month period. The assessment rate for imported live hogs is not affected by the change in the cents per pound assessment rate for imported pork and pork products.

In addition, this rule deletes two live porcine animal Harmonized Tariff Schedule (HTS) numbers—0103.91.0000 and 0103.92.0000—and adds five new live porcine animal HTS numbers 0103.91.0010, 0103.91.0020, 0103.91.0030, 0103.92.0010, and 0103.92.0090—to the table in § 1230.110(a) to reflect current USCS HTS numbers used for live porcine animals.

This proposed rule provides for a 30-day comment period. This comment period is deemed appropriate because the proposed rule simply provides for a decrease in the per pound assessment levels on imported pork and pork products to reflect changes in live hog prices which occurred during 2002. These live hog prices form the basis for the assessments. This adjustment, if adopted, should be made effective as soon as possible to bring the equivalent market value of live animals from which such imported pork and pork products were derived in line with the market values of domestic porcine animals.

List of Subjects in 7 CFR part 1230

Administrative practice and procedure, Advertising, Agricultural research, Marketing agreement, Meat and meat products, Pork and pork products.

For the reasons set forth in the preamble, it is proposed that 7 CFR part 1230 be amended as follows:

PART 1230—PORK PROMOTION, RESEARCH, AND CONSUMER INFORMATION

1. The authority citation for 7 CFR part 1230 continues to read as follows:

Authority: 7 U.S.C. 4801–4819.

Subpart B—[Amended]

2. Section 1230.110 is revised to read as follows:

§ 1230.110 Assessments on imported pork and pork products.

(a) The following Harmonized Tariff Schedule (HTS) categories of imported live porcine animals are subject to assessment at the rate specified.

Live porcine animals	Article description	Assessment
0103.10.0000	Purebred breeding animals	0.40 percent Customs Entered Value
0103.91.00	Other: Weighing less than 50 kg each.	
0103.91.0010	Weighing less than 7 kg each	0.40 percent Customs Entered Value
0103.91.0020	Weighing 7 kg or more but less than 23 kg each.	0.40 percent Customs Entered Value
0103.91.0030	Weighing 23 kg or more but less than 50 kg each.	0.40 percent each Customs Entered Value
0103.92.00	Weighing 50 kg or more each.	
0103.92.0010	Imported for immediate slaughter	0.40 percent Customs Entered Value
0103.92.0090	Other	0.40 percent Customs Entered Value

(b) The following HTS categories of imported pork and pork products are subject to assessment at the rates specified.

Pork and pork products	Article description	Assessment	
		cents/lb	cents/kg
0203	Meat of swine, fresh, chilled, or frozen: Fresh or chilled:		
0203.11.0000	Carcasses and half-carcasses	.20	.440920
0203.12.1010	Processed hams and cuts thereof, with bone in	.20	.440920
0203.12.1020	Processed shoulders and cuts thereof, with bone in	.20	.440920
0203.12.9010	Other hams and cuts thereof, with bone in	.20	.440920
0203.12.9020	Other shoulders and cuts thereof, with bone in	.20	.440920
0203.19.2010	Processed spare ribs	.23	.507058
0203.19.2090	Processed other	.23	.507058
0203.19.4010	Bellies	.20	.440920
0203.19.4090	Other	.20	.440920
0203.21.0000	Frozen carcasses and half-carcasses	.20	.440920
0203.22.1000	Frozen-processed hams, shoulders, and cuts thereof, with bone in.	.20	.440920
0203.22.9000	Frozen-other hams, shoulders, and cuts thereof, with bone in.	.20	.440920
0203.29.2000	Frozen processed other	.23	.507058
0203.29.4000	Frozen other: Other	.20	.440920
0206	Edible offal of bovine animals, swine, sheep, goats, horses, asses, mules or hinnies, fresh, chilled, or frozen:		
0206.30.0000	Of swine, fresh or chilled	.20	.440920
0206.41.0000	Of swine, frozen: Livers	.20	.440920
0206.49.0000	Of swine, frozen: Other	.20	.440920
0210	Meat and edible meat offal, salted, in brine, dried or smoked; edible flours and meals of meat or meat offal:		
0210.11.0010	Meat of swine: Hams and cuts thereof, with bone in	.20	.440920
0210.11.0020	Meat of swine: Shoulders and cuts thereof, with bone in	.20	.440920
0210.12.0020	Meat of swine: Bellies (streaky) and cuts thereof, Bacon	.20	.440920
0210.12.0040	Meat of swine: Bellies (streaky) and cuts thereof, Other	.20	.440920
0210.19.0010	Meat of swine: Canadian style bacon	.23	.507058
0210.19.0090	Meat of Swine: Other	.23	.507058

	Pork and pork products	Article description	Assessment	
			cents/lb	cents/kg
1601		Sausages and similar products, of meat, meat offal or blood; food preparations based on these products:		
1601.00.2010		Pork canned	.28	.617288
1601.00.2090		Pork other	.28	.617288
1602		Other prepared or preserved meat, meat offal or blood:		
1602.41.2020		Of swine: Boned and cooked and packed in airtight containers holding less than 1 kg.	.30	.661380
1602.41.2040		Of swine: Other boned and cooked and packed in airtight containers.	.30	.661380
1602.41.9000		Of swine: Other	.20	.440920
1602.42.2020		Of swine: Shoulders and cuts thereof: Boned and cooked and packed in airtight containers holding less than 1 kg.	.30	.661380
1602.42.2040		Of swine: Shoulders and cuts thereof: Other boned and cooked and packed in airtight containers.	.30	.661380
1602.42.4000		Of swine: Other shoulders and cuts thereof	.20	.440920
1602.49.2000		Of swine: Other, including mixtures: Not containing cereals or vegetables: Boned and cooked and packed in air-tight containers.	.28	.617288
1602.49.4000		Of swine: Other, including mixtures: Not containing cereals or vegetables: Other.	.23	.507058
1602.49.9000		Of swine: Other, including mixtures: Other	.23	.507058

Dated: December 9, 2003.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 03–31074 Filed 12–16–03; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–NM–34–AD]

RIN 2120–AA64

Airworthiness Directives; Empresa Brasileira de Aeronautica S.A. (EMBRAER) Model EMB–135 and –145 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain EMBRAER Model EMB–135 and –145 series airplanes. This proposal would require modification of the of the mid, aft, and forward upper liners in the baggage compartment. The modification would involve replacing the plastic lens protection grids on all upper liners with new, light metal lens protection grids. This action is necessary to prevent the plastic lens protection grids from breaking away and exposing the lens as a source of fire, which could lead to fire damage to the aircraft systems and structure, and expose the passengers and crew to hazardous quantities of smoke. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by January 16, 2004.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2003–NM–34–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov*. Comments sent via fax or the Internet must contain "Docket No. 2003–NM–34–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 or 2000 or ASCII text.

The service information referenced in the proposed rule may be obtained from Empresa Brasileira de Aeronautica S.A. (EMBRAER), P.O. Box 343—CEP 12.225, Sao Jose dos Campos—SP, Brazil. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Todd Thompson, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–1175; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2003–NM–34–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2003–NM–34–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Departmento de Aviacao Civil (DAC), which is the airworthiness authority for Brazil, notified the FAA that an unsafe condition may exist on certain EMBRAER Model EMB–135 and –145 series airplanes. The DAC advises that the plastic lamp/smoke detector covers and joints in the baggage compartment do not comply with Section 25.855 of the Federal Aviation Regulations (FARs). Section 25.855 ("Improved Flammability Standards for Thermal/Acoustic Insulation Materials Used in Transport Category Airplanes") of the FAR (14 CFR 25.855) requires that materials used in the construction of cargo or baggage compartments meet prescribed flammability tests. This noncompliance with the flammability tests of the affected model airplanes has been determined to be an unsafe condition. This condition, if not corrected, could result in the plastic lens protection grids breaking away and exposing the lens as a source of fire, which could lead to fire damage to the aircraft systems and structure, and expose the passengers and crew to hazardous quantities of smoke.

Explanation of Relevant Service Information

EMBRAER has issued Service Bulletin 145–25–0168, Change 02, dated August 8, 2000, which describes procedures for modification of the mid, aft, and forward baggage compartment upper liners to replace the plastic lens protection grids on all upper liners with new, light metal lens protection grids. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition. The DAC classified this service bulletin as mandatory and issued Brazilian airworthiness directive 2000–06–01, dated July 3, 2000, to ensure the continued airworthiness of these airplanes in Brazil.

EMBRAER Service Bulletin 145–25–0168 references C&D Aerospace Service Bulletin 145–20216–25–03, Revision 2, dated June 9, 2000, as an additional source of service information for accomplishment of the modification. The C&D Aerospace service bulletin is included within the EMBRAER service bulletin.

FAA's Conclusions

These airplane models are manufactured in Brazil and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of the actions specified in the service bulletin described previously.

Cost Impact

The FAA estimates that 160 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 7 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $65 per work hour. Parts will be provided by the manufacturer at no charge. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $72,800, or $455 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Empresa Brasileira de Aeronautica S.A. (EMBRAER): Docket 2003–NM–34–AD.

Applicability: Model EMB–135 and –145 series airplanes, having serial numbers (S/Ns) 145004 through 145187 inclusive, S/Ns 145191 through 145196 inclusive, S/N 145200, and S/N 145204; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent the plastic lens protection grids in the baggage compartment from breaking away and exposing the lens as a source of fire, which could lead to fire damage to the aircraft systems and structure, and expose the passengers and crew to hazardous quantities of smoke, accomplish the following:

Note 1: EMBRAER Service Bulletin 145–25–0168, Change 02, dated August 8, 2000, references C&D Aerospace Service Bulletin 145–20216–25–03, Revision 2, dated June 9, 2000, as an additional source of service information for accomplishment of the modification. The C&D Aerospace Service Bulletin is included within the EMBRAER service bulletin.

Modification

(a) Within 2,000 flight hours after the effective date of this AD: Modify the mid, aft, and forward baggage compartment upper liners to replace the plastic lens protection grids on all upper liners with new, light metal lens protection grids, according to the Accomplishment Instructions of EMBRAER Service Bulletin 145–25–0168, Change 02, dated August 8, 2000.

Actions Accomplished Per Previous Issue of Service Bulletin

(b) Modifications accomplished before the effective date of this AD per EMBRAER Service Bulletin 145–25–0168, Change 01, dated April 13, 2000, are considered acceptable for compliance with the corresponding action specified in this AD.

Parts Installation

(c) As of the effective date of this AD, no person may install on any airplane a smoke detector cover having part number 7161119–507, or a ceiling panel having part number 7161011–507, 7161011–517, 7161011–519, 7161011–523, 7161011–525, 7161011–527, 7161011–529, 7161011–531, or 7161011–533.

Alternative Methods of Compliance

(d) In accordance with 14 CFR 39.19, the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, is authorized to approve alternative methods of compliance for this AD.

Note 2: The subject of this AD is addressed in Brazilian airworthiness directive 2000–06–01, dated July 4, 2000.

Issued in Renton, Washington, on December 5, 2003.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–31068 Filed 12–16–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–211–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A300 B4 Series Airplanes and Model A300 B4–600, A300 B4–600R, and A300 F4–600R (Collectively Called A300–600) Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness directive (AD), applicable to certain Airbus Model A300 B4 series airplanes and all Airbus Model A300–600 series airplanes. That AD currently requires a one-time high frequency eddy current inspection to detect cracking of the splice fitting at fuselage frame (FR) 47 between stringers 24 and 25; and corrective actions if necessary. This action would require new repetitive inspections of an expanded area, and would add airplanes to the applicability in the existing AD. The actions specified by the proposed AD are intended to detect and correct cracking of the splice fitting at fuselage FR 47, which could result in reduced structural integrity of the airplane. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by January 16, 2004.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–211–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov*. Comments sent via fax or the Internet must contain "Docket No. 2002–NM–211–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 or 2000 or ASCII text.

The service information referenced in the proposed rule may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Tom Rodriguez, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–1137; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2002–NM–211–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–211–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

On February 9, 2001, the FAA issued AD 2001–03–14, amendment 39–12118 (66 FR 10957, February 21, 2001), applicable to certain Airbus Model A300 series airplanes and all Airbus Model A300–600 series airplanes. That AD requires a one-time high frequency eddy current (HFEC) inspection to detect cracking of the splice fitting at fuselage frame (FR) 47 between stringers 24 and 25; and corrective actions if necessary. That action was prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The requirements of that AD are intended to detect and correct cracking of the splice fitting at fuselage FR 47, which could result in reduced structural integrity of the airplane.

Actions Since Issuance of Previous AD

Since the issuance of AD 2001–03–14, the Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, notified the FAA that an unsafe condition may exist on certain Airbus Model A300 B4 and all A300–600 series airplanes. The DGAC advises that cracks have been found on airplanes on which the modification specified in the existing AD has been done, and HFEC inspections of the modification performed. A laboratory investigation was done on a cracked splice fitting, and the analysis of crack growth rate shows that an inspection program is necessary for all airplanes affected by the existing AD. This program involves expanding the inspection area to fuselage frame (FR) 47 between stringers 24 and 26 (the existing AD specified stringers 24 and 25), and adding new repetitive inspections. Cracking of the splice fitting at fuselage FR 47 could result in reduced structural integrity of the airplane.

Explanation of Relevant Service Information

Airbus has issued Service Bulletins A300–53–0350 (for Model A300 series airplanes) and A300–53–6123 (for Model A300–600 series airplanes), both Revision 01, both dated December 18, 2001. The procedures specified in Revision 01 of the service bulletins are similar to those specified in the original issue of the service bulletins referenced in the existing AD for accomplishment of the inspections and corrective actions. However, Revision 01 defines a new inspection program for pre-mod and post-mod airplanes which expands the inspection area to fuselage frame (FR) 47 between stringers 24 and 26, and adds an HFEC rotating probe inspection after bolt removals. Revision 01 also adds airplanes to the applicability specified in the original issue. Revision 01 of the service bulletins also describes certain repair procedures. The DGAC classified the service bulletins as mandatory and issued French airworthiness directive 2002–184(B), dated April 3, 2002, to ensure the continued airworthiness of these airplanes in France.

FAA's Conclusions

These airplane models are manufactured in France and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept us informed of the situation described above. We have examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed AD

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would supersede AD 2001–03–14 to require new repetitive inspections of an expanded area and to add airplanes to the applicability in the existing AD. The actions would be required to be accomplished in accordance with the service bulletins described previously, except as discussed below.

Clarification of Compliance Times

The compliance times specified in the service bulletins for doing the high frequency eddy current inspections do not specify whether the inspections should be done at the earlier or later of the recommended flight cycles/flight hours. This proposed AD adds "whichever is first" to those compliance times. In addition, the compliance times specified do not give an effective date for when the inspections are to be accomplished; this proposed AD requires accomplishment of the inspections "after the effective date of this AD."

Interim Action

We consider this proposed AD interim action. The manufacturer is currently developing a modification that would address the unsafe condition identified in this proposed AD. Once this modification is developed, approved, and available, we may consider additional rulemaking.

Differences Between Proposed AD and Service Information

Although the service bulletins specify that the manufacturer may be contacted for disposition of certain repair conditions, this proposed AD would require the repair of those conditions to be accomplished in accordance with a method approved by either the FAA or the DGAC (or its delegated agent). In light of the type of repair that would be required to address the identified unsafe condition, and in consonance with existing bilateral airworthiness agreements, we have determined that, for the proposed AD, a repair approved by either us or the DGAC would be acceptable for compliance with this proposed AD.

Service Bulletin A300–53–0350 specifies doing the initial inspection at the next C-check, but not exceeding a certain number of flight cycles or flight hours, as the recommended compliance time. Because "C-check" schedules vary among operators, such a nonspecific interval would provide no assurance that operators would do the inspection within the prescribed schedule. This proposed AD would exclude the C-check and specify only flight cycles or flight hours. We find that such a compliance time is appropriate for affected airplanes to continue to operate without compromising safety.

The service bulletins referenced in this proposed AD specify to submit certain inspection findings to the manufacturer; however, this AD does not include such a requirement.

Cost Impact

There are approximately 83 airplanes of U.S. registry that would be affected by this proposed AD.

The inspection of an expanded area that is proposed in this AD action would take approximately 29 work hours per airplane to accomplish, at an average labor rate of $65 per work hour. Based on these figures, the cost impact of the proposed inspection on U.S. operators is estimated to be $156,455, or $1,885 per airplane, per inspection cycle.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the current or proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore,

it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–12118 (66 FR 10957, February 21, 2001), and by adding a new airworthiness directive (AD), to read as follows:

Airbus: Docket 2002–NM–211–AD. Supersedes AD 2001–03–14, Amendment 39–12118.

Applicability: All Model A300 B4–600, B4–600R, and F4–600R (Collectively Called A300–600) series airplanes; and all Model A300 B4 series airplanes; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To detect and correct cracking of the splice fitting at fuselage frame (FR) 47, which could result in reduced structural integrity of the airplane, accomplish the following:

Repetitive Inspections

(a) For airplanes defined in Airbus Service Bulletin A300–53–0350, Revision 01, dated December 18, 2001: Do a high frequency eddy current (HFEC) inspection to detect cracking of the splice fitting at fuselage FR 47 between stringers 24 and 26 (left- and right-hand sides), at the applicable times specified in paragraph (a)(1) or (a)(2) of this AD. Repeat the inspection thereafter at the earlier of the flight-cycle/flight-hour intervals specified in the applicable column in Table 2 of Figure 1 and Sheet 1 of the Accomplishment Instructions of the service bulletin. Do the inspections per the service bulletin, excluding Appendix 01.

(1) For airplanes that have accumulated 20,000 or more total flight cycles as of the effective date of this AD: Do the initial inspection at the later of the times specified in paragraphs (a)(1)(i) and (a)(1)(ii) of this AD:

(i) At the earlier of the flight-cycle/flight-hour intervals after the effective date of this AD, as specified in the applicable column in Table 1 of Figure 1 and Sheet 1 of the Accomplishment Instructions of the service bulletin.

(ii) Within 750 flight cycles or 1,500 flight hours after the effective date of this AD, whichever is first.

(2) For airplanes that have accumulated fewer than 20,000 total flight cycles as of the effective date of this AD: Do the initial inspection at the later of the times specified in paragraphs (a)(2)(i) and (a)(2)(ii) of this AD.

(i) At the earlier of the flight-cycle/flight-hour intervals after the effective date of this AD, as specified in the applicable column in Table 1 of Figure 1 and Sheet 1 of the Accomplishment Instructions of the service bulletin.

(ii) Within 1,800 flight cycles or 3,000 flight hours after the effective date of this AD, whichever is first.

(b) For airplanes defined in Airbus Service Bulletin A300–53–6123, Revision 01, dated December 18, 2001: Do the HFEC inspection required by paragraph (a) of this AD at the applicable times specified in paragraph (b)(1) or (b)(2) of this AD. Repeat the inspection thereafter at the earlier of the flight-cycle/flight-hour intervals specified in the applicable column in Table 2 of Figure 1 and Sheet 1 of the Accomplishment Instructions of the service bulletin. Do the inspections per the service bulletin, excluding Appendix 01.

(1) For airplanes that have accumulated 10,000 or more total flight cycles as of the effective date of this AD: Do the initial inspection within 750 flight cycles or 1,900 flight hours after the effective date of this AD, whichever is first.

(2) For airplanes that have accumulated fewer than 10,000 total flight cycles as of the effective date of this AD: Do the initial inspection at the later of the times specified in paragraphs (b)(2)(i) and (b)(2)(ii) of this AD.

(i) At the earlier of the flight-cycle/flight-hour intervals after the effective date of this AD, as specified in the applicable column in Table 1 of Figure 1 and Sheet 1 of the Accomplishment Instructions of the service bulletin.

(ii) Within 1,500 flight cycles or 3,800 flight hours after the effective date of this AD, whichever is first.

Repair

(c) Repair any cracking found during any inspection required by this AD before further flight, per Airbus Service Bulletin A300–53–0350 or A300–53–6123, both Revision 01, both excluding Appendix 01, both dated December 18, 2001; as applicable. Where the service bulletins specify to contact Airbus in case of certain crack findings, this AD requires that a repair be accomplished before further flight in accordance with a method approved by either the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate; or the Direction Générale de l'Aviation Civile (DGAC) (or its delegated agent).

Alternative Methods of Compliance

(d) In accordance with 14 CFR 39.19, the Manager, International Branch, ANM–116, is authorized to approve alternative methods of compliance for this AD.

Note 1: The subject of this AD is addressed in French airworthiness directive 2002–184(B), dated April 3, 2002.

Issued in Renton, Washington, on December 5, 2003.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–31067 Filed 12–16–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–116–AD]

RIN 2120–AA64

Airworthiness Directives; Aerospatiale Model ATR42 and ATR72 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Aerospatiale Model ATR42 and ATR72 series airplanes. This proposal would require replacement of the swinging lever spacers in the left and right leg assemblies of the main landing gear with new, improved spacers. This action is necessary to prevent propagation of fatigue cracking, which could result in failure of the spacer base and could affect the symmetrical functioning of the braking system. Asymmetrical braking could result in the airplane overrunning the runway during takeoff or landing. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by January 16, 2004.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–116–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov*. Comments sent via fax or the Internet must contain "Docket No. 2002–NM–116–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 or 2000 or ASCII text.

The service information referenced in the proposed rule may be obtained from Aerospatiale, 316 Route de Bayonne, 31060 Toulouse, Cedex 03, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Tony Jopling, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2190; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (e.g., reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2002–NM–116–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–116–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, notified the FAA that an unsafe condition may exist on certain Aerospatiale Model ATR42 and ATR72 series airplanes. The DGAC advises that several cases of fatigue cracking have been found on the swinging lever spacers in the main landing gear (MLG). The fatigue cracking is located at the intersection base of the spacer, and is due to a stress concentration. Propagation of such cracking could result in failure of the spacer base and could affect the symmetrical functioning of the braking system. Asymmetrical braking could result in the airplane overrunning the runway during takeoff or landing.

Explanation of Relevant Service Information

The manufacturer has issued Avions de Transport Regional Service Bulletins ATR42–32–0094 and ATR72–32–1042, both dated November 26, 2001. The Avions de Transport Regional Service Bulletins reference Messier-Dowty Service Bulletins 631–32–166, dated November 28, 2001 (for Model ATR42 series airplanes); and 631–32–165, dated November 27, 2001 (for Model ATR72 series airplanes) for accomplishment of the replacement of the swinging lever spacers of the MLG. The Messier-Dowty service bulletins describe procedures for replacement of the swinging lever spacers in the left and right leg assemblies of the MLG with new, improved spacers. The new spacers were manufactured using 7175 material, which is stronger than the 2024 and 7010 material used in the existing spacers. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition. The DGAC classified the Avions de Transport Regional service bulletins as mandatory and issued French airworthiness directives 2001–614–089(B) and 2001–615–062(B), both dated December 26, 2001, to ensure the continued airworthiness of these airplanes in France.

FAA's Conclusions

These airplane models are manufactured in France and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept us informed of the situation described above. We have examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed AD

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of the actions specified in the service information described previously, except as discussed below.

Differences Among French Airworthiness Directive, Service Information, and Proposed AD

The applicability specified in French airworthiness directive 2001–614–089(B) includes Aerospatiale Model ATR42–400; however, this proposed AD does not include that model because no U.S. type certificate has been issued for that airplane.

Paragraph 1.C.(4) of service bulletin ATR42–32–0094 references Messier-Dowty Service Bulletin No. 631–32–165 for the replacement of the swinging lever spacers of the MLG; however, the correct number for that service bulletin is No. 631–32–166. The manufacturer has been notified of this typographical error and will be issuing a revised service bulletin.

Cost Impact

The FAA estimates that 133 airplanes of U.S. registry would be affected by this proposed AD, that it would take about

16 work hours per airplane to accomplish the proposed replacement, and that the average labor rate is $65 per work hour. Required parts would cost between $921 and $4,272 per airplane. Based on these figures, the cost impact of the proposed replacement on U.S. operators is estimated to be between $1,961 and $5,312 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levers of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Aerospatiale: Docket 2002–NM–116–AD.

Applicability: Model ATR42–200, –300, –320, and –500 series airplanes on which ATR Modification 5338 has not been done; and Model ATR72–101, –102, –201, –202, –211, –212, and –212A series airplanes on which ATR Modification 5337 has not been done; certificated in any category:

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the spacer base of the swinging lever spacers in the left and right leg assemblies of the main landing gear (MLG) and consequent asymmetrical braking, which could result in the airplane overrunning the runway during takeoff or landing, accomplish the following:

Replacement

(a) Replace the swinging lever spacers in the left and right leg assemblies of the MLG with new, improved spacers, per Avions de Transport Regional Service Bulletins ATR42–32–0094 and ATR72–32–1042, both dated November 26, 2001. Do the replacement at the applicable time specified in paragraphs (a)(1) or (a)(2) of this AD.

(1) For Model ATR42–200, –300, and –320, and Model ATR72–101, –102, –201, –202, –211, –212, and –212A series airplanes: Do the replacement at the later of the times specified in paragraphs (a)(1)(i) and (a)(1)(ii) of this AD.

(i) Before the accumulation of 15,000 total landings or 8 years in-service on new or overhauled swinging lever spacers, whichever is first.

(ii) Within 3,000 landings after the effective date of this AD.

(2) For Model ATR42–500 series airplanes: Do the replacement before the accumulation of 18,000 total landings or 9 years in-service on new or overhauled swinging lever spacers, whichever is first.

(b) Messier-Dowty Service Bulletins 631–32–166, dated November 28, 2001 (for Model ATR42 series airplanes); and 631–32–165, dated November 27, 2001 (for Model ATR72 series airplanes); may be used for accomplishment of the replacement required by paragraph (a) of this AD.

Alternative Methods of Compliance

(c) In accordance with 14 CFR 39.19, the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, is authorized to approve alternative methods of compliance for this AD.

Note 1: The subject of this AD is addressed in French airworthiness directives 2001–614–089(B) and 2001–615–062(B), both dated December 26, 2001.

Issued in Renton, Washington, on December 5, 2003.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–31066 Filed 12–16–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–239–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A319, A320, and A321 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD), applicable to certain Airbus Model A319, A320, and A321 series airplanes. The proposed AD would require checking the identification plate on the ram air turbine (RAT) actuator and re-identifying the actuator or replacing the actuator with one which has been cleaned and tested by its manufacturer. This proposal is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by the proposed AD are intended to prevent jamming of the RAT actuator in an emergency which requires deployment of the RAT, and consequent loss of hydraulic and electrical power in the airplane.

DATES: Comments must be received by January 16, 2004.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–239–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov*. Comments sent via fax or the Internet must contain "Docket No. 2001–NM–239–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Airbus, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Dan Rodina, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2125; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 2001–NM–239–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–239–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, notified the FAA that an unsafe condition may exist on certain Airbus Model A319, A320, and A321 series airplanes. The DGAC advises that, during a test of an ram air turbine (RAT) on the final assembly line, the RAT did not deploy due to contamination of the RAT actuator by machining chips. This condition, if not corrected, could result in jamming of the RAT actuator in an emergency which requires deployment of the RAT, and consequent loss of hydraulic and electrical power in the airplane.

Explanation of Relevant Service Information

Airbus has issued Service Bulletin A320–29–1098, Revision 02, dated February 20, 2003, which describes procedures for the following steps:

(1) Extending the RAT actuator to check the part number, the serial number, and the notations on the Amend Block of the identification plate;

(2) Re-identifying certain RAT actuators; and

(3) Sending certain RAT actuators back to their manufacturer (Arkwin Industries, Inc.) and replacing them with RAT actuators which have been cleaned and re-identified by the manufacturer.

Airbus Service Bulletin A320–29–1098, Revision 02, dated February 20, 2003, refers to Hamilton Sundstrand/Arkwin Industries Service Bulletin ERPS08A–29–2, dated February 22, 2001, as a secondary source of service information for these actions.

The DGAC classified Airbus Service Bulletin A320–29–1098, Revision 02, dated February 20, 2003, as mandatory. On December 24, 2002, the DGAC issued French airworthiness directive 2001–236(B) R1 in order to assure the continued airworthiness of these airplanes in France.

Related Rulemaking

For Airbus Models A319 and A321 series airplanes, Airbus Service Bulletin A320–29–1098, Revision 02, dated February 20, 2003, specifies that there is to be prior or concurrent accomplishment of Airbus Service Bulletin A320–29–1088. Accomplishment of that service bulletin is required by AD 2000–05–08, amendment 39–11617 (65 FR 12080, March 8, 2000).

FAA's Conclusions

These airplane models are manufactured in France and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require checking the identification plate on the RAT actuator and re-identifying the actuator or replacing it with one which has been cleaned, tested and re-identified by its manufacturer. The actions would be required to be accomplished in accordance with Airbus Service Bulletin A320–29–1098, Revision 02, dated February 20, 2003, and Hamilton Sundstrand/Arkwin Industries Service Bulletin ERPS08A–29–2, dated February 22, 2001.

Cost Impact

There are approximately 195 airplanes of U.S. registry that would be affected by this proposed AD.

The actions that are proposed in this AD action would take a maximum of 5 work hours per airplane to accomplish, at an average labor rate of $65 per work hour. There would be no cost for required parts. Based on these figures, the cost impact of the proposed requirements of this AD on U.S. operators is estimated to be $63,375 or $325 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the current or proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD.

These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive (AD), to read as follows:

Airbus: Docket 2001–NM–239–AD.

Applicability: Model A320 series airplanes which have received modification 27189, Model A319 series airplanes; and Model A321 series airplanes, provided that none has received modification 30978 or 28413; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent jamming of the ram air turbine (RAT) actuator in an emergency which requires deployment of the RAT, and consequent loss of hydraulic and electrical power in the airplane, accomplish the following:

Extension of RAT Actuator

(a) Within 31 months after the effective date of this AD: Extend the existing RAT actuator, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A320–29–1098, Revision 02, dated February 20, 2003.

Determination of Identification of RAT Actuator

(b) Immediately after accomplishment of paragraph (a) of this AD: Check the identification plate on the RAT actuator to determine the part number (P/N), the serial number, and whether there is a notation in the Amend Block, in accordance with the Accomplishment Instructions of Hamilton Sundstrand/ Arkwin Industries Service Bulletin ERPS08A–29–2, dated February 22, 2001.

Retraction, Re-identification, or Replacement of RAT Actuator

(c) Depending upon the identification of the RAT actuator, accomplish the follow-on action indicated in Table 1 of this AD, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A320–29–1098, Revision No. 02, dated February 20, 2003.

TABLE–1.—FOLLOW-ON ACTIONS

If the P/N is—	And the Amend Block is marked with an "A"—	And the serial number is—	Then—
764711A	N/A	N/A	No further action is required.
764711	No	N/A	Prior to further flight, remove the RAT actuator and replace it with one which has been cleaned, tested and re-identified by its manufacturer.
764711	Yes	0868–0889	Prior to further flight, remove the RAT actuator and replace it with one which has been cleaned, tested and re-identified by its manufacturer.
764711	Yes	Other than 0868–0889	Prior to further flight, re-identify the RAT actuator, in accordance with paragraph 2.G. of the Accomplishment Instructions of Hamilton Sundstrand/ Arkwin Industries Service Bulletin ERPS08A–29–2, dated February 22, 2001.

Parts Installation

(d) As of the effective date of this AD: No person may install an Arkwin Industries RAT actuator having P/N 764711 on any Airbus Model A319, A320, or A321 airplane, unless it is in compliance with this AD.

Note 1: The subject of this AD is addressed in French airworthiness directive 2001–236(B) R1, dated December 24, 2002.

Issued in Renton, Washington, on December 5, 2003.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certificiation Service.

[FR Doc. 03–31065 Filed 12–16–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–18–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A319, A320, and A321 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Airbus Model A319, A320, and A321 series airplanes. This proposal would require replacing the upper guide rod fittings at the rear passenger doors with improved fittings. This action is necessary to prevent failure of an upper guide rod fitting, which could cause a rear passenger door to jam during opening, delaying an emergency evacuation and resulting in injury to passengers or crew members. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by January 16, 2004.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–18–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov*. Comments sent via fax or the Internet must contain "Docket No. 2002–NM–18–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 or 2000 or ASCII text.

The service information referenced in the proposed rule may be obtained from Airbus, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Dan Rodina, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2125; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2002–NM–18–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–18–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, notified the FAA that an unsafe condition may exist on certain Airbus Model A319, A320, and A321 series airplanes. The DGAC advises that there have been several reports of cracking and rupture of the upper guide rod fittings for the rear passenger doors on in-service airplanes. This condition, if not corrected, could cause a rear passenger door to jam during opening, delaying an emergency evacuation and resulting in injury to passengers or crew members.

Explanation of Relevant Service Information

Airbus has issued Service Bulletin A320–53–1154, Revision 2, dated March 7, 2003. That service bulletin describes procedures for replacing the upper guide rod fitting on each rear passenger door with an improved fitting. The improved fitting is stronger than the existing one due to an increase in thickness and different material.

Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition. The DGAC classified a previous revision of this service bulletin as mandatory and issued French airworthiness directive 2001–634(B), dated December 26, 2001, to ensure the continued airworthiness of these airplanes in France.

FAA's Conclusions

These airplane models are manufactured in France and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are

certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of the actions specified in the service bulletin described previously.

Cost Impact

The FAA estimates that 440 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 10 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $65 per work hour. Required parts would cost approximately $2,200 per airplane. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $1,254,000, or $2,850 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions. The manufacturer may cover the cost of replacement parts associated with this proposed AD, subject to warranty conditions. As a result, the costs attributable to the proposed AD may be less than stated above.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation: (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Airbus: Docket 2002–NM–18–AD.

Applicability: Model A319, A320, and A321 series airplanes; certificated in any category; on which Airbus Modification 30821 has not been accomplished.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of an upper guide rod fitting, which could cause a rear passenger door to jam during opening, delaying an emergency evacuation and resulting in injury to passengers or crew members, accomplish the following:

Replacement

(a) Within 22 months after the effective date of this AD, replace the upper guide rod fitting on each rear passenger door with an improved fitting by doing all actions in and per the Accomplishment Instructions of Airbus Service Bulletin A320–53–1154, Revision 2, dated March 7, 2003.

Replacements Accomplished Previously

(b) Replacements accomplished before the effective date of this AD per the Accomplishment Instructions of Airbus Service Bulletin A320–53–1154, dated July 12, 2001; or Revision 1, dated August 28, 2002; are acceptable for compliance with the corresponding action required by this AD.

Alternative Methods of Compliance

(c) In accordance with 14 CFR 39.19, the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, is authorized to approve alternative methods of compliance for this AD.

Note 1: The subject of this AD is addressed in French airworthiness directive 2001–634(B), dated December 26, 2001.

Issued in Renton, Washington, on December 5, 2003.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–31064 Filed 12–16–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 301

[REG–146893–02, REG–115037–00]

RIN 1545–BB31, 1545–AY38

Treatment of Services Under Section 482; Allocation of Income and Deductions From Intangibles; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document contains corrections to a notice of proposed rulemaking and notice of public hearing that was published in the **Federal Register** on Wednesday, September 10, 2003 (68 FR 53448). The proposed regulations provide guidance regarding the treatment of controlled services transactions under section 482 and the allocation of income from intangibles in particular when one controlled taxpayer performs activities that increase (or are expected to increase) the valve of an intangible owned by another controlled taxpayer.

FOR FURTHER INFORMATION CONTACT: J. Peter Luedtke or Helen Hong-George, (202) 435–5265 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The notice of proposed rulemaking and notice of public hearing that is the subject of this correction is under section 482 of the Internal Revenue Code.

Need for Correction

As published, the notice of proposed rulemaking and notice of public hearing contains errors that may prove to be misleading and are in need of clarification.

Correction of Publication

Accordingly, the publication of the notice of proposed regulations and

notice of public hearing (REG–146893–02, REG–115037–00), that was the subject of FR Doc. 03–22550, are corrected as follows:

1. On page 53448, column 1, in the preamble under the paragraph heading "DATES", second line of the paragraph, the language "must be received December 9, 2003." is corrected to read "must be received by December 9, 2003."

2. On page 53449, column 2, in the preamble under the paragraph heading "2. Income Attributable to Intangibles", fifth line of the paragraph, the language, "property. The Taxpayers and other" is corrected to read "property. Taxpayers and other".

3. On page 53455, column 3, in the preamble under the paragraph heading "10. Total Services Costs—§ 1.482–9(j)", the last line of the paragraph, the language, "analysis of the result expressed as ration" is corrected to read "analysis of the result expressed as the ratio".

4. On page 53464, column 3, following § 1.482–6(c)(3)(i)(B)(*2*), paragraph (c)(3)(ii) is added to read as follows:

§ 1.482–6 Profit split method.

* * * * *

(c) * * *

(3) * * * (i) * * *

(ii) * * *

* * * * *

5. On page 53473, columns 2 and 3, § 1.482–9(f)(2)(iv)(A) through (C) introductory text are corrected to read as follows:

§ 1.482–9 Methods to determine taxable income in connection with a controlled services transaction.

* * * * *

(f) * * *

(2) * * *

(iv) Measurement of limitation on allocations: The rules of paragraphs (f)(2)(i) and (ii) of this section are expressed in this paragraph (f)(2)(iv) in equations and a table.

(A) The minimum arm's length markup necessary for an allocation by the Commissioner (Z) is the sum of the markup charged by the taxpayer (X) and the applicable number of percentage points determined under paragraph (f)(2)(ii) of this section (Y). Where the markup charged by the taxpayer is not less than zero, the minimum arm's length markup necessary for allocation by the Commissioner (Z) also equals the lesser of—

(*1*) The sum of six percentage points and half of the markup charged by the taxpayer (X); and

(*2*) Ten percentage points.

(B) The equations in paragraph (f)(2)(iv)(A) of this section may also be expressed as follows:

$Z = X + Y = \min((6\% + 0.5 \times X), 10\%)$ where $X \geq 0$.

(C) The following table illustrates the results of these calculations in representative cases:

* * * * *

6. On page 53480, column 1, § 1.482–9(l)(4), *Example 12*, the last line of the paragraph, the language, "therefore Company Y is considered to obtain." is corrected to read "therefore Company Y is considered to obtain a benefit from the activities."

Cynthia E. Grigsby,

Acting Chief, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel (Procedure and Administration).

[FR Doc. 03–31034 Filed 12–16–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Alcohol and Tobacco Tax and Trade Bureau

27 CFR Part 9

RIN: 1512–AC62

[Notice No. 24]

Proposed Trinity Lakes Viticultural Area (2001R–32P)

AGENCY: Alcohol and Tobacco Tax and Trade Bureau (TTB), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Alcohol and Tobacco Tax and Trade Bureau proposes to establish the "Trinity Lakes" viticultural area in Trinity County, California. The proposed viticultural area consists of approximately 96,000 acres surrounding Trinity and Lewiston lakes and a portion of the Trinity River basin below Lewiston Dam. We invite comments on this proposal.

DATES: We must receive written comments on or before February 17, 2004.

ADDRESSES: You may send comments to any of the following addresses:

- Chief, Regulations and Procedures Division, Alcohol and Tobacco Tax and Trade Bureau, PO Box 50221, Washington, DC 20091–0221 (Attn: Notice No. 24);
- 202–927–8525 (facsimile);
- *nprm@ttb.gov* (e-mail); or
- *http://www.ttb.gov* (An online comment form is posted with this notice on our Web site.)

You may view copies of this notice and any comments received at *http://www.ttb.gov/alcohol/rules/index.htm* or by appointment at our library, 1310 G Street, NW., Washington, DC 20005; phone 202–927–8210.

See the Public Participation section of this notice for specific instructions and requirements, and for information on how to request a public hearing.

FOR FURTHER INFORMATION CONTACT: Tim DeVanney, Specialist, Regulations and Procedures Division, Alcohol and Tobacco Tax and Trade Bureau, 650 Massachusetts Avenue, NW., Washington, DC 20226; telephone 202–927–8210.

SUPPLEMENTARY INFORMATION:

Background on Viticultural Areas

TTB Authority

The Federal Alcohol Administration Act (FAA Act) at 27 U.S.C. 205(e) requires that alcohol beverage labels provide the consumer with adequate information regarding a product's identity, while prohibiting the use of misleading information on such labels. The FAA Act also authorizes the Secretary of the Treasury to issue regulations to carry out the Act's provisions. The Secretary has delegated this authority to the Alcohol and Tobacco Tax and Trade Bureau (TTB).

Regulations in 27 CFR Part 4, Labeling and Advertising of Wine, allow the establishment of definitive viticultural areas and the use of their names as appellations of origin on wine labels and in wine advertisements. Title 27 CFR Part 9, American Viticultural Areas, contains the list of approved viticultural areas.

Definition

Title 27 CFR 4.25(e)(1) defines an American viticultural area as a delimited grape-growing region distinguishable by geographic features whose boundary has been delineated in subpart C of part 9. The establishment of viticultural areas allows the identification of regions where a given quality, reputation, or other characteristics of the wine is essentially attributable to its geographic origin. We believe that the establishment of viticultural areas allows wineries to describe more accurately the origin of their wines to consumers and helps consumers identify the wines they purchase. Establishment of a viticultural area is neither an approval nor endorsement by TTB of the wine produced there.

Requirements

Section 4.25(e)(2) outlines the procedure for proposing an American viticultural area. Anyone interested may

petition TTB to establish a grape-growing region as a viticultural area. The petition must include—

- Evidence that the proposed viticultural area is locally and/or nationally known by the name specified in the petition;
- Historical or current evidence that the boundaries of the proposed viticultural area are as specified in the petition;
- Evidence that the proposed area's growing conditions, such as climate, soils, elevation, physical features, etc., distinguish it from surrounding areas;
- A description of the proposed viticultural area's specific boundaries, based on features found on maps approved by the United States Geological Survey (USGS); and
- A copy of the appropriate USGS-approved map(s) with the boundaries prominently marked.

Impact on Current Wine Labels

Under our 27 CFR part 4 regulations, viticultural area names have geographic significance. The regulations prohibit the use of a brand name with geographic significance on a wine unless the wine meets the appellation of origin requirements for the named area. Our regulations also prohibit any other label references that suggest an origin other than the true place of origin of the wine.

If we establish this proposed viticultural area, bottlers who use brand names, including trademarks like Trinity Lakes, must ensure that their existing products are eligible to use the viticultural area's name as an appellation of origin. For a wine to be eligible, at least 85 percent of the grapes in the wine must have been grown within the viticultural area, and the wine must meet the other requirements of 27 CFR 4.25(e)(3). If a wine is not eligible for the appellation, the bottler must change the brand name or other label reference and obtain approval of a new label.

Different rules apply to wines in this category that have brand names traceable to labels approved prior to July 7, 1986. *See* 27 CFR 4.39(i) for details. In addition, if you use the viticultural area name on a wine label in a context other than an appellation of origin, the general prohibitions against misleading representation in 27 CFR part 4 apply.

Trinity Lakes Petition

TTB has received a petition from Keith Groves of Alpen Cellars proposing a new American viticultural area to be called "Trinity Lakes." The proposed viticultural area is in Trinity County, in northwest California. It encompasses two man-made reservoirs, Trinity Lake and the adjoining but smaller Lewiston Lake to its south, and a portion of the Trinity River basin below Lewiston Dam. According to the petition, the proposed area covers about 96,000 acres, of which 18%, or 17,285 acres, is lake surface water, while 1.5%, or 1,440 acres, is land suitable for viticulture. Currently, 30 acres are planted vineyards. Rugged, steep, timbered ridges and narrow agricultural valleys characterize the proposed area. The lakes' daytime cooling and nighttime warming influences moderate the agricultural valleys' climate.

Name Evidence

The majority of the proposed Trinity Lakes viticultural area is located within the Trinity Lake unit of the Whiskeytown-Shasta-Trinity National Recreation Area. This unit includes both Trinity Lake and the smaller Lewiston Lake and, according to the petitioner, the region surrounding both lakes is commonly known as the Trinity Lakes area. The petitioner provided current photographs of road signs displaying the Trinity Lakes name as a reference for both Trinity and Lewiston Lakes. In Weaverville, Trinity Lakes Boulevard is the name used for California 3, a major highway.

A letter, dated December 13, 2002, from Mr. David Steinhauser, president of the Trinity County Chamber of Commerce, fully supports this viticultural proposal. He writes that the name "Trinity Lakes" is used to refer to the lake areas of Trinity and Lewiston Lakes.

Created in the early 1960s, the larger man-made lake was originally named Clair Engle Lake. The petitioner states, however, that area residents have historically referred to the lake as, and prefer the name of, Trinity Lake. The petitioner notes that a grassroots movement sought to change the lake's name and mentions that Clair Engle Lake road signs often disappeared shortly after being posted. A 1997 Trinity Journal news article, included in the petition, spoke of U.S. Senator Barbara Boxer's support for the effort to have the lake re-named. Congress and the President made the change official in September 1997, with the passage and approval of Public Law 105–44, which renamed the reservoir Trinity Lake. The current California AAA road map and USGS topographic maps use the Trinity Lakes name.

Boundary Evidence

The proposed Trinity Lakes viticultural area was viticulturally developed only after the completion of the two man-made lakes in the early 1960s as the climate-moderating lake effect on the surrounding valleys provided an opportunity to grow wine grapes. The petitioner states that in 1981 a small vineyard was planted at the north end of Trinity Lake. It became a bonded winery in 1984. There are currently four vineyards, encompassing 30 acres, producing wine grapes within the proposed viticultural area.

The proposed Trinity Lakes viticultural area is in Trinity County, California. The proposed area is irregular in shape, generally running from northeast to southwest, and surrounds Trinity Lake, the smaller Lewiston Lake to the south of Trinity Dam, and a portion of the Trinity River basin downstream of Lewiston Dam. The majority of the proposed area is within the Trinity Lake unit of the Whiskeytown-Shasta-Trinity National Recreation Area.

The boundary of the proposed viticultural area begins north of Carrville at Derrick Flat, runs east across the Trinity River, continues south and southwest past Trinity and Lewiston dams and the town of Lewiston, and crosses the Trinity River near the mouth of Neaman Gulch. The boundary then runs north and northeast back past the two dams and the town of Trinity Center, returning to the beginning point at Derrick Flat. A list of the approved U.S.G.S. maps, used for determining the boundary of the proposed area, is located in paragraph (b) of the proposed rule below.

The boundaries of the proposed Trinity Lakes viticultural area are discussed in detail in paragraph (c) of the proposed rule shown below in this notice.

Growing Conditions/Geographical Features

The petitioner indicates that rugged, steep, timbered ridges dropping into Trinity and Lewiston lakes and the Trinity River basin characterize the area's topography. The Bureau of Land Reclamation states that Trinity Lake's surface covers 16,535 acres while Lewiston Lake covers 750 acres, for a total of 17,285 acres of lake surface water. The filling of the lakes has left small, narrow valleys around the lakes, which are suitable for viticulture.

The large surface area of the two lakes moderates the proposed viticultural area's climate, bringing cooler days and warmer nights to the narrow valleys and the Trinity River basin. The petition cites a 70-year local resident's claim that there is less snow and sub-freezing weather and more fog than before the lakes' creation. This provides, according to the petitioner, a uniquely situated and moderated grape-growing region. Other potential grape growing areas, located further from the lakes and outside the proposed area, have a similar mountainous climate, but no moderating lake influence.

The petition indicates the agricultural soils of the proposed viticultural area are on well-drained alluvial fans in narrow valleys on stream terraces. The petitioner states that this contrasts with surrounding Trinity County areas, which have wider valley floors and deeper soils with higher clay content.

Boundary Description

The proposed viticultural area is located in Trinity County in northwest California. The boundary encompasses Trinity Lake and Lewiston Lake, both within the Trinity Lake unit of the Whiskeytown-Shasta-Trinity National Recreation Area, and a portion of the Trinity River basin below Lewiston Dam.

Maps

The petitioner submitted the required United States Geological Survey (USGS)-approved required maps. See the list of maps in the proposed regulation below.

Public Participation

Comments Sought

We request comments from anyone interested. Please support your comments with specific information about the proposed area's name, growing conditions, or boundaries. All comments must include your name and mailing address, reference this notice number, and be legible and written in language acceptable for public disclosure.

Although we do not acknowledge receipt, we will consider your comments if we receive them on or before the closing date. We will consider comments received after the closing date if we can. We regard all comments as originals.

Confidentiality

We do not recognize any submitted material as confidential. All comments are part of the public record and subject to disclosure. Do not enclose in your comments any material you consider confidential or inappropriate for disclosure.

Submitting Comments

You may submit comments in any of four ways:

- *By mail:* You may send written comments to TTB at the address listed in the **ADDRESSES** section.
- *By facsimile:* You may submit comments by facsimile transmission to 202–927–8525. Faxed comments must—
  (1) Be on 8.5-by 11-inch paper;
  (2) Contain a legible, written signature; and
  (3) Be five or less pages long. This limitation assures electronic access to our equipment. We will not accept faxed comments that exceed five pages.
- *By e-mail:* You may e-mail comments to *nprm@ttb.gov*. Comments transmitted by electronic-mail must—
  (1) Contain your e-mail address;
  (2) Reference this notice number on the subject line; and
  (3) Be legible when printed on 8.5-by 11-inch paper.
- *By online form:* We provide a comment form with the online copy of this notice on our Web site at *http://www.ttb.gov/alcohol/rules/index.htm*. Select "Send comments via e-mail" under this notice number.

You may also write to the Administrator before the comment closing date to ask for a public hearing. The Administrator reserves the right to determine, in light of all circumstances, whether a public hearing will be held.

Disclosure

You may view copies of the petition, the proposed regulation, the appropriate maps, and any comments received by appointment at our library, 1310 G Street, NW., Washington, DC 20005. You may also obtain copies at 20 cents per 8.5-x 11-inch page. Contact our librarian at the above address or telephone 202–927–8210 to schedule an appointment or to request copies of comments.

For your convenience, we will post this notice and the comments received on the TTB Web site. We may omit voluminous attachments or material that we consider unsuitable for posting. In all cases, the full comment will be available in the TTB Reference Library. To access the online copy of this notice, visit *http://www.ttb.gov/alcohol/rules/index.htm* and select the "View Comments" link under this notice number to view the posted comments.

Regulatory Analyses and Notices

Paperwork Reduction Act

We propose no requirement to collect information. Therefore, the provisions of the Paperwork Reduction Act of 1995, 44 U.S.C. 3507, and its implementing regulations, 5 CFR part 1320, do not apply.

Regulatory Flexibility Act

We certify that this proposed regulation, if adopted, will not have a significant economic impact on a substantial number of small entities. This proposed regulation imposes no new reporting, recordkeeping, or other administrative requirement. Any benefit derived from the use of a viticultural area name would be the result of a proprietor's efforts and consumer acceptance of wines from that area. Therefore, no regulatory flexibility analysis is required.

Executive Order 12866

This proposed rule is not a significant regulatory action as defined by Executive Order 12866, 58 FR 51735. Therefore, it requires no regulatory assessment.

Drafting Information

The principal author of this document is Tim DeVanney, Regulations and Procedures Division, Alcohol and Tobacco Tax and Trade Bureau.

List of Subjects in 27 CFR Part 9

Wine.

Authority and Issuance

For the reasons discussed in the preamble, we propose to amend Title 27, Code of Federal Regulations, Part 9, American Viticultural Areas, as follows:

PART 9—AMERICAN VITICULTURAL AREAS

1. The authority citation for part 9 continues to read as follows:

Authority: 27 U.S.C. 205.

2. Subpart C is amended by adding § 9. to read as follows:

Subpart C—Approved American Viticultural Areas

§ 9. Trinity Lakes.

(a) The name of the viticultural area described in this section is "Trinity Lakes".

(b) *Approved Maps.* The appropriate maps for determining the boundaries of the Trinity Lakes viticultural area are eleven 1:24,000 Scale USGS topographic maps. They are titled:

(1) Carrville, Calif. Provisional Edition 1986;

(2) Whisky Bill Peak, Calif. Provisional Edition 1986;

(3) Damnation Peak, Calif. Provisional Edition 1982;

(4) Trinity Center, Calif. Provisional Edition 1982;

(5) Papoose Creek, Calif. Provisional Edition 1982;

(6) Trinity Dam, Calif. Provisional Edition 1982;

(7) Lewiston, Calif. Provisional Edition 1982;

(8) Weaverville, Calif. Provisional Edition 1982;

(9) Rush Creek Lakes, Calif. Provisional Edition 1982;

(10) Siligo Peak, Calif. Provisional Edition 1982; and

(11) Covington Mill, Calif. Provisional Edition 1982.

(c) *Boundaries.* The proposed viticultural area is located in Trinity County in northern California. The boundary encompasses Trinity Lake and Lewiston Lake, both within the Trinity Lake unit of the Whiskeytown-Shasta-Trinity National Recreation Area, and a portion of the Trinity River basin below Lewiston Dam.

(1) The beginning point is on the Carrville, California quadrangle map on township line T38N/T37N at the northwest corner of section 5, T37N/R7W, near the Trinity River at Derrick Flat;

(2) From the beginning point, follow township line T38N/T37N due east to the northeast corner of section 5, T37N/R7W;

(3) Proceed due south on the eastern boundary of sections 5, 8, 17, and 20 to the northwest corner of section 28, T37N/R7W, near Snow Gulch;

(4) Follow the northern boundary of section 28, T37N/R7W, due east to the section's northeast corner;

(5) Continue due south on the eastern boundary of sections 28 and 33, T37N/R7W, to township line T37N/T36N at the northeast corner of section 4, T36N/R7W;

(6) Proceed due east on township line T37N/T36N onto the Whisky Bill Peak, California quadrangle map to the R7W/R6W range line at the southwest corner of section 31, T37N/R6W, near the East Fork of the Trinity River;

(7) Follow the R7W/R6W range line due north to the northwest corner of section 30, T37N/R6W;

(8) Continue due east along the northern boundary of section 30, T37N/R6W, to the section's northeast corner;

(9) Proceed due south on the eastern boundary of sections 30 and 31, T37N/R6W, and sections 6 and 7, T36N/R6W, and continue onto the Damnation Peak, California quadrangle map to the southeast corner of section 7;

(10) Follow the southern boundary of section 7, T36N/R6W, and section 12, T36N/R7W, due west onto the Trinity Center, California quadrangle map to the northeast corner of section 14, T36N/R7W;

(11) Continue due south along the eastern boundary of sections 14, 23, 26, and 35, T36N/R7W, to the boundary's intersection with township line T36N/T35N at the southeast corner of section 35;

(12) Proceed due west along township line T36N/T35N approximately 0.5 miles to the township line's intersection with the 900-meter contour line;

(13) Follow the meandering 900-meter contour line generally west through sections 35 and 34, T36N/R7W; cross the T36N/T35N township line and continue generally southwest on the contour line around Linton Ridge, through Bridge Gulch, Bragdon Gulch, and around Feeny Ridge; cross onto the Papoose Creek, California quadrangle map and continue southwesterly to the contour line's first intersection with a line marked "NAT RECREATION BDY INDEFINITE," approximately 2000 feet north of Feeny Gulch;

(14) Continue easterly on the 900-meter contour line over Feeny Gulch; then proceed southwesterly on the meandering contour line across Van Ness Creek, both Bear Gulches, Langdon Gulch, Digger Gulch, around Fairview Ridge, along the northern side of Papoose Arm, and over the North, East and South Forks of Papoose Creek; continue westerly on the contour line along the southern side of Papoose Arm to the contour line's intersection with Little Papoose Creek in section 24, T34N/R8W;

(15) Continue generally west along the meandering 900-meter contour line through sections 24, 23, 14, and 15, T34N/R8W; cross onto the Trinity Dam, California quadrangle map and continue on the contour line through sections 15 and 22; pass back onto the Papoose Creek map and follow the contour line through sections 22, 23, and 22 again; then cross back onto the Trinity Dam map and follow the contour line to its intersection with the southern boundary of section 22, T34N/R8W;

(16) Proceed due west along the southern boundary of section 22 to the northeast corner of section 28, T34N/R8W;

(17) Follow the eastern boundary of sections 28 and 33, T34W/R8W, and section 4, T33N/R8W, due south onto the Lewiston, California quadrangle map, and continue due south on the eastern boundary of sections 4, 9, 16, and 21 to the southeast corner of section 21, T33N/R8W;

(18) Then proceed due west along the southern boundary of sections 21 and 20 to the northeast corner of section 30, T33N/R8W;

(19) Follow the eastern boundary of section 30, T33N/R8W, due south to the section's southeast corner;

(20) Continue due west along the southern boundary of section 30, T33N/R8W, and sections 25 and 26, T33N/R9W, to the northeast corner of section 34, T33N/R9W;

(21) Proceed due south on the eastern boundary of section 34, T33N/R9W, and section 3, T32N/R9W, to the southeast corner of section 3 near Tom Lang Gulch;

(22) Follow the southern boundary of section 3, T32N/R9W, due west onto the Weaverville, California quadrangle map, and continue west along the southern boundary of sections 3, 4, and 5, T32N/R9W, to the southwest corner of section 5;

(23) Then proceed due north along the western boundary of section 5, T32N/R9W, for approximately 0.8 miles to its intersection with the 700-meter contour line;

(24) Follow the 700-meter contour line generally northwest through section 5, T32N/R9W, and then through sections 32, 31, 32 again, 29, and 28, T33N/R9W, to the contour line's intersection with the northern boundary of section 28;

(25) Proceed due east along the northern boundary of section 28 across Limekiln Gulch and China Gulch to the southwest corner of section 22, T33N/R9W;

(26) Follow the western boundary of section 22, T33N/R9W, due north to the section's northwest corner;

(27) Then continue due east along the northern boundary of section 22, T33N/R9W, onto the Lewiston map to the section's northeast corner;

(28) Proceed due north on the western boundary of section 14, T33N/R9W, to the section's northwest corner;

(29) Follow the northern boundary of sections 14 and 13, T33N/R9W, due east to the R9W/R8W range line at the northeast corner of section 13;

(30) Then proceed due north along the R9W/R8W range line onto the Trinity Dam map, and continue along the range line to the southeast corner of section 1, R9W/T34N, near Smith Gulch;

(31) Continue due west along the southern boundary of section 1, T34N/R9W, for approximately 0.3 miles to its intersection with the 900-meter contour line;

(32) Follow the meandering 900-meter contour line generally west over Tannery Gulch and around Tannery Ridge, cross onto the Rush Creek Lakes, California quadrangle map, and continue along the 900-meter contour line to its intersection with Slate Creek in section 4, T34N/R9W;

(33) Using the Rush Creek Lakes and Trinity Dam maps, follow the contour line generally northeast from Slate Creek, crossing Irish Gulch in section 3, T34N/R9W, (crossing back and forth between the two maps three times) to the contour line's intersection with township line T34N/T35N at the northern boundary of section 3, T34N/R9W, on the Trinity Dam map;

(34) Continue generally northwest on the meandering 900-meter contour line and cross onto the Rush Creek Lakes map in section 34, T35N/R9W; continue northwesterly on the contour line over Cummings Creek, Bear Gulch, Snowslide Gulch, Sawmill Creek, and Van Matre Creek; cross onto the Siligo Peak, California quadrangle map and continue generally northwest on the 900-meter contour line over Middle Creek and Owens Creek to the contour line's intersection with Stuart Fork;

(35) Continue generally southeast on the 900-meter contour line over Fire Camp Creek, Lightning Creek, and Sunday Creek; cross onto the Rush Creek Lakes map and continue generally southeast on the contour line over Elk Gulch and Trinity Alps Creek; cross onto the Trinity Dam map in section 27, T35N/R9W, and proceed easterly along the contour line to its intersection with the eastern boundary of section 27, T35N/R9W;

(36) Continue generally north along the 900-meter contour line through sections 26 and 23, T35N/R9W, cross onto the Covington Mill, California quadrangle map in section 23, T35N/R9W, and continue northerly along the contour line to its intersection with Stoney Creek in the same section;

(37) From Stoney Creek, continue generally south on the 900-meter contour line, cross back onto the Trinity Dam map in section 23, T35N/R9W, and continue southerly on the contour line through sections 23, 26, and 35 to the contour line's intersection with the eastern boundary of section 35, T35N/R9W, near that section's northeast corner;

(38) Continue generally northeast on the meandering 900-meter contour line over Telephone Ridge, Buck Gulch, and Buck Ridge; cross onto the Covington Mill map in section 19, T35N/R8W, and continue northwesterly along the contour line across Mule Creek and Snowslide Gulch in section 13, T35N/R9W; continue on the contour line, cross Little Mule Creek in section 18, T35N/R8W, and continue southeasterly on the contour line to its intersection with a line marked "TRANS LINE SINGLE WOOD POLES" in section 20, T35N/R8W;

(39) Continue generally northeast along the 900-meter contour line through sections 20 and 17, T35N/R8W, and cross Strope Creek, Mosquito Gulch, Greenhorn Gulch, Taylor Gulch, Stuart Fork (in section 5, T35N/R8W), and Davis Creek; cross onto the Trinity Center map in section 35, T36/R8W, and continue on the contour line to its intersection with the northern boundary of that section;

(40) Proceed due east along the northern boundary of sections 35 and 36, T36N/R8W, to the R8W/R7W range line at the northeast corner of section 36;

(41) Follow the R8W/R7W range line due north onto the Carrville map and continue along the range line to its intersection with township line T38N/T37N at the northwest corner of section 6, T37N/R7W; and

(42) Proceed due east along township line T38N/T37N and return to the beginning point at the northwest corner of section 5, T37N/R7W.

Signed: December 3, 2003.

Arthur J. Libertucci,

Administrator.

[FR Doc. 03–31052 Filed 12–16–03; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 222 and 223

[Docket No.031202301–3301–01; I.D. 111403C]

RIN 0648–AR53

Taking of Threatened or Endangered Species Incidental to Commercial Fishing Operations

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule.

SUMMARY: NMFS proposes to prohibit shallow longline sets of the type normally targeting swordfish on the high seas in the Pacific Ocean east of 150° W. long. by vessels that are not already prohibited from making such sets under the current regulations for the Fishery Management Plan for the Pelagic Fisheries of the Western Pacific Region (WesPac FMP). This action is intended to protect endangered and threatened sea turtles from the adverse impacts of shallow longline fishing by U.S. longline fishing vessels in the Pacific Ocean and operating out of the west coast instead of Hawaii. This rule would supplement the regulations proposed to implement the Fishery Management Plan for U.S. West Coast Fisheries for Highly Migratory Species (FMP) that would prohibit shallow longline sets on the high seas in the Pacific Ocean west of 150° W. long. by vessels that would be managed under that FMP. The FMP is currently under review by NMFS and will be approved, disapproved or partially approved in early February 2004. Together, these two regulations are expected to conserve leatherback and loggerhead sea turtles as required under the Endangered Species Act (ESA).

DATES: Comments on the proposed rule must be received or transmitted by facsimile by 5 p.m., Pacific Standard Time, on January 16, 2004. Comments transmitted via e-mail or the Internet will not be accepted.

ADDRESSES: Comments should be sent to Rodney R. McInnis, Acting Administrator, Southwest Region, NMFS, 501 West Ocean Boulevard, Suite 4200, Long Beach, CA 90802, or by fax (562) 980–4027.

Copies of the FMP, which includes an environmental impact statement (EIS) accompanied by a regulatory impact review (RIR) and an initial regulatory flexibility analysis (IRFA) are available on the internet at *http://www.pcouncil.org/hms/hmsfmp.html* or may be obtained from Daniel Waldeck, Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 200, Portland, Oregon, 97220–1384, *Daniel.Waldeck@noaa.gov*, (503) 820–2280. This proposed action corresponds to the High Seas Pelagic Longline Alternative 3 in the Council EIS, RIR, and IRFA.

FOR FURTHER INFORMATION CONTACT: Tim Price, NMFS, Southwest Region, Protected Resources Division, (562) 980–4029.

SUPPLEMENTARY INFORMATION: All species of sea turtles that are known to interact with U.S. longline vessels in the Pacific Ocean are listed as either endangered or threatened under the ESA. The leatherback (*Dermochelys coriacea*) sea turtle is listed as endangered. The loggerhead (*Caretta caretta*), olive ridley (*Lepidochelys olivacea*), and green (*Chelonia mydas*) sea turtles are listed as threatened, except for populations of olive ridleys on the Pacific coast of Mexico and green turtles in Florida and on the Pacific coast of Mexico, which are listed as endangered. Under the ESA and its implementing regulations (50 CFR 223.205), taking endangered and threatened sea turtles, even incidentally, is prohibited, with exceptions identified in 50 CFR 223.206. The incidental taking of an endangered species of wildlife within the United States, U.S. territorial sea, or high seas is prohibited by section 9(a)(1)(B) and (C) of the ESA. The incidental take of endangered species may be authorized only by an incidental take statement issued under

section 7 of the ESA or an incidental take permit issued under section 10 of the ESA. The incidental take of threatened species may be authorized only by an incidental take statement in a biological opinion issued pursuant to section 7 of the ESA, an incidental take permit issued pursuant to section 10 of the ESA, or regulations under section 4(d) of the ESA. Pursuant to section 11(f) of the ESA, the Secretary of Commerce is authorized to promulgate regulations to enforce the requirements of the ESA.

West Coast-Based Pelagic Longline Fishery

Since the early 1990s, a number of longline vessels targeting swordfish and, possibly, tuna, although no sets have been documented, have unloaded their catch and re-provisioned in California ports. Participation has declined from a peak of 43 vessels participating in the fishery in 2001 and 38 vessels in 2000, to approximately 28 vessels in 2002 and an estimated 20–25 vessels in 2003. Almost all of these vessels had some history of fishing in the Hawaii-based longline fishery. Participants in the West Coast-based pelagic longline fishery often fish more than 1,000 nautical miles (1,900 km) offshore and are generally prohibited by state regulations from fishing within 200 nautical miles (370 km) of the West Coast. Longline vessels registered in West Coast states are allowed to land longline caught fish into West Coast ports provided that fishing takes place outside the 200–mile Exclusive Economic Zone. All documented longline fishing by West Coast vessels in recent years has been out of California ports.

NMFS began placing observers aboard West Coast-based pelagic longline fishing vessels on a voluntary basis in October 2001 and began a mandatory observer program in August 2002 under the Marine Mammal Protection Act. From October 2001 through May 2003, 280 sets were observed on 13 trips, documenting a total of 27 sea turtle interactions, consisting of two leatherback sea turtles, 24 loggerhead sea turtles, and one olive ridley sea turtle. All of the observed sea turtles were released alive.

High Seas Fishing Compliance Act

On March 22, 1996, NMFS issued an interim final rule (61 FR 11751) to implement the High Seas Fishing Compliance Act of 1995 (HSFCA). The purpose of the HSFCA is to license U.S. vessels fishing on the high seas and to implement the Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas. The West Coast-based pelagic longline vessels are permitted under the HSFCA. In May 2001, the Center for Biological Diversity and Turtle Island Restoration Network filed a complaint with the U.S. District Court for the Northern District of California alleging that NMFS unlawfully failed to conduct an ESA section 7 consultation on the West Coast-based pelagic longline fishery when issuing the HSFCA permits for this fishery. On November 27, 2001, the court denied the plaintiffs' motion and ruled in favor of NMFS. In response, the plaintiffs appealed the decision to the Ninth Circuit Court of Appeals in December 2001. On August 21, 2003, the Ninth Circuit Court ruled that NMFS is required to engage in consultation under section 7 of the ESA regarding the effects on sea turtles and other listed species when issuing fishing permits under the HSFCA to West Coast-based pelagic longline fishing vessels. Consequently, the effects of issuing of HSFCA permits that authorize fishing by West Coast-based pelagic longline vessels will be considered during the section 7 consultation that is now being conducted. Furthermore, this proposed rule, if adopted, would be the vehicle by which NMFS imposes conditions and restrictions on the HSFCA permits (16 U.S.C. 5503(d)) held by West Coast-based pelagic longline vessels to ensure the fishery complies with the ESA.

Fishery Management Plan for U.S. West Coast Fisheries for Highly Migratory Species

On October 31, 2003, the Pacific Fishery Management Council (Council) submitted the FMP to NMFS for review. After a public comment process, NMFS will approve, disapprove, or partially approve the FMP, and then implement those portions that were approved (if any). The FMP includes management measures for the West Coast-based pelagic longline fishery that would prohibit shallow longline sets of the type normally used to target swordfish on the high seas in the Pacific Ocean west of 150° W. long. by vessels managed under the new FMP. The FMP would not prohibit West Coast-based pelagic longline vessels from targeting swordfish in waters east of 150° W. long. It should be noted that Hawaii-based longline vessels are currently prohibited from targeting swordfish in this area, pursuant to regulations under the WesPac FMP. Those regulations will be vacated on April 1, 2004, by Court Order. NMFS will propose regulations with any necessary restrictions or prohibitions for vessels operating under the WesPac FMP. The regulations that will be proposed under the WesPac FMP will be subject to NEPA review and ESA Section 7 consultation.

In addition, to conserve sea turtles, the FMP would require West Coast-based pelagic longline vessels to have on board and to use dip nets, line cutters, and wire or bolt cutters capable of cutting through the vessel's hooks to release sea turtles with the least harm possible to the sea turtles. NMFS issued a proposed rule to implement the FMP on December 10, 2003 (68 FR 68834).

Estimated Sea Turtle Take Levels

There are two sets of data from which rates of sea turtle interactions in the West Coast-based pelagic longline fishery could be derived: (1) Data from observers on Hawaii-based longline vessels operating in the same areas as the West Coast-based pelagic longline vessels; and (2) data from observers on West Coast-based pelagic longline vessels. Vessels in the West Coast-based pelagic longline fishery fish in the same manner, and frequently in the same area, as vessels that had been targeting swordfish in the Hawaii-based longline fishery. Because of the strong similarities between these two fisheries and the limited amount of observer data available for the West Coast-based pelagic longline fleet alone, NMFS concluded that using the combined observer data from the Hawaii-based and West Coast-based longline fleets for fishing east of 150° W. long. is more likely to be representative of the sea turtle interaction rates that can be expected to occur throughout the West Coast-based pelagic longline fishery.

Using the combined observer data, NMFS developed estimates of sea turtle take levels that would result from the West Coast-based pelagic longline fishery under different fishery scenarios. Assuming that the West Coast-based pelagic longline fleet deploys 1.55 million hooks east of 150° W. longitude (the estimated fleet effort in 2002 according to the FMP), NMFS estimates the fishery under the FMP would result in the annual take of 174 loggerhead and 52 leatherback sea turtles. For loggerhead sea turtles, NMFS estimates that 3 may be entangled and no hooking or injury will occur, 74 may be hooked externally or entangled with line left on the animal, 97 may be hooked in the mouth or ingested the hook, and 0 may be released dead. For leatherback sea turtles, NMFS estimates that 0 may be entangled and no hooking or injury will occur, 46 may be hooked externally or entangled with line left on the animal, 6 may be hooked in the mouth or ingested the hook, and 0 may be released dead. Applying the 27 and 42 percent post-release mortality rates developed by NMFS for sea turtles that have been hooked externally or entangled with line left on the animal and for sea turtles that have been hooked in the mouth or ingested the hook, preliminary estimates indicate that the West Coast-based pelagic longline fishery under the management measures proposed by the Council would result in the annual mortality of 61 loggerhead sea turtles and 15 leatherback sea turtles.

Impacts to Loggerhead and Leatherback Sea Turtle Populations

The estimated takes and mortalities of loggerhead and leatherback sea turtles by the West Coast-based pelagic longline fishery under the proposed FMP exceed those authorized under the ESA in other Pacific fisheries. As an example, the agency's incidental take statement in the 2002 biological opinion on the western Pacific pelagic fisheries authorized takes in the Hawaii-based longline fishery of only 8 leatherback and 14 loggerhead turtles per year. In contrast, as calculated above, at the estimated fishing level of 2002, longline fishing for swordfish east of 150 W long. would be expected to result in the take of 52 leatherback turtles and 174 loggerhead turtles.

As required under the ESA, NMFS is now conducting a formal consultation under section 7 of the ESA on the Council's FMP in order to determine if fishing activities proposed under the FMP are likely to jeopardize the continued existence of endangered or threatened species under NMFS' jurisdiction. Based on the severe decline and lack of recovery in loggerhead and leatherback sea turtles populations, and the extensive analyses conducted by the agency on existing threats to these populations, NMFS is concerned that the take levels expected to occur in the West coast-based pelagic longline fishery under the Council's FMP might be likely to jeopardize the continued existence of these species. If the section 7 consultation on the Council's FMP concludes that the action is likely to jeopardize the continued existence of endangered or threatened sea turtle species, then NMFS will be unable to authorize the expected amount of incidental take by the West Coast-based pelagic longline fishery under the Council's FMP.

Until NMFS completes a full analysis of the impacts of the Council's FMP on endangered or threatened sea turtles, NMFS cannot determine what measures will be included in the final regulations of this fishery in order to conserve loggerhead and leatherback sea turtles. The consultation could conclude that the Council's FMP is not likely to jeopardize sea turtle populations. On the other hand, the consultation could conclude that the Council's FMP is likely to jeopardize the continued existence of sea turtle populations and include a reasonable and prudent alternative (RPA) that would mitigate sea turtle takes to avoid the likelihood of jeopardy. Mitigation measures may depend on the severity of the impact to sea turtle populations and could include effort reduction or a complete prohibition of swordfish fishing. The FMP contains framework procedures by which adjustments in conservation and management measures may be made through regulatory amendments if available information and conditions warrant it, and the RPA could provide a basis for such action. However, promulgation of regulations to implement the RPA could take several months to complete and leave fishers in a very difficult situation in the interim because they would lack an exemption from the take prohibition specified in section 9 of the ESA.

Given that NMFS anticipates an annual mortality of 61 loggerhead sea turtles and 15 leatherback sea turtles as a result of the West Coast-based pelagic fishery, NMFS is proposing to implement restrictions in the West Coast-based pelagic longline fishery in waters east of 150° W. long. to conserve leatherback and loggerhead sea turtles as required under the ESA. Under this rule, West Coast-based pelagic longline vessels would be prohibited from making shallow longline sets on the high seas in the Pacific Ocean east of 150° W. long. The prohibition of shallow longline sets west of 150° W. long. proposed under the FMP would also apply, if the FMP is approved and implemented by NMFS. The regulatory text of this proposed rule might be revised, as necessary, to comport with the RPA , if any, of the section 7 consultation on the FMP. As a result, NMFS is requesting comments on this rulemaking and any alternative management regime to conserve sea turtles.

There are several other factors that may ultimately affect the management of the West Coast-based pelagic longline fishery. As noted, the FMP contains framework procedures by which adjustments in conservation and management measures may be made through regulatory amendments if warranted by available information and conditions. Further, the FMP recognizes a potential for exempted fishing permits that allow testing of alternative gear and/or techniques that might demonstrate that longline fishing can be conducted in a manner that will not adversely affect protected species or that will result in lower levels of bycatch. NMFS is conducting research in the Atlantic Ocean into gear and techniques that might allow longline fishing for swordfish or other species with less risk to sea turtles. Preliminary results from this research indicate that the use of 18/0 circle hooks with no offset and squid bait may reduce loggerhead and leatherback sea turtle capture rates by more than 80 and 50 percent, respectively. The use of 18/0 circle hooks with a 10 percent offset and mackerel type bait may reduce loggerhead and leatherback sea turtle capture rates by more than 90 and 65 percent, respectively. Additional treatments are being tested using 20/0 circle hooks and mackerel which also show promise with possible significant reductions in sea turtle catch rates. Large circle hooks have also been shown to reduce the rate of swallowed hooks which may decrease post-hooking mortality resulting from internal injuries. The best treatments for reducing the capture of loggerhead and leatherback sea turtles cannot be identified until the researchers analyze the data and their significance. However, based on these promising results, NMFS is considering allowing the use of circle hooks and mackerel type bait to target swordfish and is soliciting public comment on this alternative.

A similar experiment is planned for the central Pacific Ocean, pending completion of an Environmental Impact Statement. The results of these experiments will be provided to the Council. NMFS anticipates that the Council will review information as it is generated to consider possible changes in longline fishing regulations and may propose changes. NMFS will consider any such proposals, which could result in lessening the burden to fishermen while maintaining adequate protection of sea turtles under these regulations. NMFS will fully support the Council in examination and selection of appropriate protective measures. However, the need for protection of sea turtles in the near term warrants the use of Secretarial authority under the ESA (as well as under the HSFCA, 16 U.S.C. 5503(d)) to promulgate regulations in this fishery to ensure the fishery complies with the ESA.

Classification

NMFS has determined that this proposed rule is consistent with the ESA and other applicable laws.

The impacts of this proposed action and alternatives are evaluated in accordance with the National Environmental Policy Act as the High Seas Pelagic Longline Alternative 3 in the EIS prepared by the Council (see **ADDRESSES**).

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

This proposed rule does not contain collection-of-information requirements subject to the Paperwork Reduction Act.

The Council prepared a combined RIR/IRFA that describes the economic impacts of the Council's FMP, which includes an analysis of this proposed action as High Seas Pelagic Longline Alternative 3. The RIR/IRFA is available from the Council (see **ADDRESSES**). A summary of the RIR/IRFA follows:

The **SUMMARY** and **SUPPLEMENTARY INFORMATION** sections of this proposed rule provide a description of the action, why it is being considered, and the legal basis for this action. That information is not repeated here.

A fish-harvesting business is considered a "small" business by the Small Business Administration (SBA) if it has annual receipts not in excess of $3.5 million. For related fish-processing businesses, a small business is one that employs 500 or fewer persons. For marinas and charter/party boats, a small business is one with annual receipts not in excess of $5.0 million.

This regulation imposes controls on the fleet of approximately 22–25 longline vessels that fish principally out of California ports for swordfish and associated species. A total of 28 vessels participated in the West-coast-based pelagic longline fishery during 2002, down from a peak of 43 vessels in 2001 and from 38 vessels in 2000. All of these vessels would be considered small businesses under the SBA standards. Therefore, there would be no financial impacts resulting from disproportionality between small and large vessels under the proposed action. For most of the longline vessels involved, swordfish caught by longline gear makes up more than half the total revenue from fish sales. Table 1 presents total ex-vessel revenue and dependence on swordfish landings for the 38 West coast-based vessels with high seas pelagic longline swordfish landings in 2001, broken down by the number of vessels with varying percent dependence on swordfish. NMFS believes these data are representative of 2002 as well.

TABLE 1. TOTAL EX-VESSEL REVENUE AND DEPENDENCE ON SWORDFISH FOR 38 WEST-COAST-BASED VESSELS WITH HIGH SEAS PELAGIC LONGLINE LANDINGS IN 2001.

Number of Vessels	Dependence on High Seas Longline Caught Swordfish (category of swordfish revenue/ total revenue)	Average Total Ex-vessel Revenue ($/vessel)	Average Percent Longline Swordfish (swordfish revenue/ total revenue)
4	< 50%	$228,951	32.57%
3	50 - 70%	$170,067	60.99%
3	> 70 - 80%	$222,089	76.66%
4	> 80 - 90%	$258,335	86.77%
13	> 90 - 95%	$182,211	93.26%
11	> 95%	$219,885	97.57%

The impacts of alternatives to this proposed action were evaluated in the Council's RIR/IRFA. The Council considered three alternatives for managing the high seas pelagic longline fishery. Under Alternative 1 (Status Quo), the FMP would not impose regulations on this fishery. The Council assumes that in the short-run, the fishery would continue to operate as it currently does, earning average annual profits of $6.7 million. However, in the long-run, the Council expected that regulations would be established under other authorities , such that over time the fishery would disappear, and long-run profits would become zero as the fishery was phased out.

Alternative 2 (Council Proposed Action) would maintain the fishery, allowing fishermen to continue targeting swordfish east of 150° W. long., but impose some additional costs on longliners targeting swordfish on the high seas. Short-run average annual profits would remain at $6.7 million, minus the cost of adopting turtle and sea bird mitigation measures, accommodating observers, and using monitoring equipment. NMFS is developing guidelines for the design and performance standards of equipment required for the handling of incidentally caught sea turtles. The required tools can be purchased, for an estimated maximum cost of $2,000 per vessel, but vessel owners may also be able use the guidelines to fabricate the equipment with lower cost materials. Vessel owners do not pay an observer's salary, but do bear costs associated with providing room and board for the observer. Additionally, carrying an observer may increase the cost of insurance that the vessel carries. Vessel monitoring equipment costs approximately $2,000 to purchase and $500 to install, and would require annual maintenance estimated to cost approximately 20 percent of the purchase price per year. However, despite the equipment costs, the fishery would be able to land swordfish, and so over 25 years, the present value of long-run profits relative to the status quo would range between $78 and $105 million, using 7 percent and 4 percent discount rates, respectively.

Alternative 3, which is the same as this proposed action, would prohibit fishermen from targeting swordfish east of 150° W. long. Swordfish are the target species of this fishery. This would effectively eliminate all but incidental swordfish landings and the short- and long-run profits currently associated with landing swordfish ($6.7 million, and $78 million to $105 million, respectively), at least until alternative fishing opportunities are identified. This loss assumes that all vessels in this fishery cease fishing, although longline fishing targeting tuna out of West Coast ports or Hawaii may be an alternative. However, current participants in the fishery indicate that without being able to target swordfish, the high seas longline fishery originating from West Coast ports would cease to exist.

Although no fishery interactions with the endangered short-tailed albatrosses (*Phoebastria albatrus*) have been recorded to date, on September 22, 2003, NMFS initiated section 7 consultation under the ESA with the U.S. Fish and Wildlife Service for this species. On September 24, 2003, formal consultation with NMFS Protected Resources under the Endangered Species Act was initiated on the fisheries managed under the FMP, including the fisheries now permitted under the HSFCA.

Based on the conclusions of the consultation, NMFS will determine if fishing activities under the FMP are likely to jeopardize the continued existence of endangered or threatened species under NMFS' jurisdiction. The results of this consultation will determine whether NMFS needs to implement the regulations outlined in this proposed rule in order to meet the requirements of the ESA. Based on analyses conducted during previous biological opinions, NMFS is concerned that the amount of take estimated to occur if fishing were managed under the Council's FMP might be likely to jeopardize the continued existence of leatherback and loggerhead sea turtles. Therefore, NMFS is proposing to implement a prohibition on shallow sets by West Coast-based pelagic longline vessels that has proven effective at reducing sea turtle encounters in the Hawaii-based pelagic longline fishery and the Atlantic pelagic longline fishery.

In keeping with the intent of Executive Order 13132 to provide continuing and meaningful dialogue on issues of mutual state and Federal interest, NMFS is conferring with the States of California, Oregon, and Washington regarding this proposed rule. NMFS intends to continue engaging in informal and formal contacts with these States during the implementation of this proposed rule and review of the FMP.

List of Subjects

50 CFR Part 222

Administrative practice and procedure, Endangered and threatened species, Exports, Imports, Reporting and record keeping requirements, Transportation.

50 CFR Part 223

Endangered and threatened species, Exports, Imports, Marine mammals, Transportation.

Dated: December 11, 2003.

Rebecca Lent,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR parts 222 and 223 are proposed to be amended to read as follows:

PART 222—GENERAL ENDANGERED AND THREATENED MARINE SPECIES

1. The authority citation for part 223 continues to read as follows:

Authority: 16 U.S.C. 1531 *et seq.*; 16 U.S.C 742a *et seq.*; 31 U.S.C. 9701; § 222.403 also issued under 16 U.S.C. 1361 *et seq.*

2. In § 222.102, the following definitions are added alphabetically, to read as follows:

§ 222.102 Definitions.

* * * * *

Basket-style longline gear means a type of longline gear that is divided into units called *baskets*, each consisting of a segment of main line to which 10 or more branch lines with hooks are spliced. The mainline and all branch lines are made of multiple braided strands of cotton or of nylon or other synthetic fibers impregnated with tar or other heavy coatings that cause the lines to sink rapidly in seawater.

* * * * *

Pelagic longline gear means longline gear consisting of a main line that is suspended horizontally in the water column and not stationary or anchored, and from which dropper lines with hooks (gangions) are attached.

* * * * *

PART 223—THREATENED MARINE AND ANADROMOUS SPECIES

3. The authority citation for part 223 continues to read as follows:

Authority: 16 U.S.C. 1531–1543; subpart B, § 223.12 also issued under 16 U.S.C. 1361 *et seq.*; 16 U.S.C. 5503(d) for § 223.206(d)(9)

4. In § 223.206, a new paragraph (d)(9) is added to read as follows:

§ 223.206 Exceptions to prohibitions relating to sea turtles.

* * * * *

(d) * * *

(9) *Restrictions applicable to Pacific pelagic longline vessels.* In addition to the general prohibitions specified in § 600.725 of Chapter VI, it is unlawful for any person who is not operating under a western Pacific longline permit under § 660.21 to do any of the following:

(i) Direct fishing effort toward the harvest of swordfish (*Xiphias gladius*) using longline gear deployed on the high seas of the Pacific Ocean north of the equator (0° lat.).

(ii) Possess a light stick on board a longline vessel when fishing on the high seas of the Pacific Ocean north of the equator.

(iii) Possess a light stick on board a longline vessel on the high seas of the Pacific Ocean north of the equator. A light stick as used in this paragraph is any type of light emitting device, including any flourescent glow bead, chemical, or electrically powered light that is affixed underwater to the longline gear.

(iv) Possess more than 10 swordfish on board a longline vessel from a fishing trip where any part of the trip included fishing in the Pacific Ocean north of the equator (0° lat.).

(v) An operator of a longline vessel subject to this section may land or possess no more than 10 swordfish from a fishing trip where any part of the trip included fishing east of 150° W. long. and north of the equator (0° N. lat.).

(vi) Fail to employ basket-style longline gear such that the mainline is deployed slack when fishing on the high seas of the Pacific Ocean north of the equator.

(vii) When a conventional monofilament longline is deployed by a vessel subject to this section, no fewer than 15 branch lines may be set between any two floats. Vessel operators using basket-style longline gear must set a minimum of 10 branch lines between any 2 floats when fishing in waters north of the equator.

(viii) Longline gear deployed by a vessel subject to this section must be deployed such that the deepest point of the main longline between any two floats, i.e., the deepest point in each sag of the main line, is at a depth greater than 100 m (328.1 ft or 54.6 fm) below the sea surface.

* * * * *

[FR Doc. 03–31140 Filed 12–16–03; 8:45 am]
BILLING CODE 3510–22–S

Notices

Federal Register
Vol. 68, No. 242
Wednesday, December 17, 2003

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Marrowbone Creek Watershed Dam No. 1, Henry County, VA

AGENCY: Natural Resources Conservation Service, USDA.

ACTION: Notice of a Finding of No Significant Impact.

SUMMARY: Pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969, the Council on Environmental Quality Regulations (40 CFR part 1500); and the Natural Resources Conservation Service Regulations (7 CFR part 650); the Natural Resources Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Marrowbone Creek Watershed Structure No. 1, Henry County, Virginia.

FOR FURTHER INFORMATION CONTACT: M. Denise Doetzer, State Conservationist, Natural Resources Conservation Service, 1606 Santa Rosa Road, Suite 209, Richmond, Virginia 23229, Telephone (804) 287–1691, E-mail *Denise.Doetzer@va.usda.gov*.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, M. Denise Doetzer, State Conservationist, has determined that the preparation and review of an environmental impact statement is not needed for this project.

The project purpose is continued flood prevention. The planned works of improvement include upgrading an existing floodwater retarding structure.

The Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the U.S. Environmental Protection Agency and to various Federal, State, and local agencies and interested parties. A limited number of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting M. Denise Doetzer at the above number.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register**.

(This activity is listed in the Catalog of Federal Domestic Assistance under 10.904, Watershed Protection and Flood Prevention, and is subject to the provisions of Executive Order 12372, which requires intergovernment consultation with State and local officials.)

M. Denise Doetzer,

State Conservationist.

[FR Doc. 03–31131 Filed 12–16–03; 8:45 am]

BILLING CODE 3410–16–P

DEPARTMENT OF COMMERCE

[Docket No. 031203305–3305–01]

Privacy Act New System of Records

AGENCY: Department of Commerce.

ACTION: Notice of a New Privacy Act System of Records, COMMERCE/ITA–7, "Export.gov Community Registration".

SUMMARY: This notice announces the Department's proposal for a new system of records under the Privacy Act. The system is entitled "Export.gov Community Registration". The International Trade Administration is creating a new system of records that would enable visitors to Export.gov to register for the site in order to access specific types of market research and counseling services, and to have this basic information automatically populate web forms and registrations across the Trade Promotion Coordination Committee web domains that comprise or directly link to Export.gov. The registration database (system of records) would be accessible by other partner agencies and would act as a common, multi-agency registration database. The registrants would have the ability to opt-in to receive e-mailed updates of upcoming trade leads, trade events, new market reports, foreign standards notifications, and/or whether they wanted to be contacted for exporter assistance. This system of records is designed to: (1) reduce the amount of time required for exporters to fill out numerous online forms and export documentation; and (2) enable exporters to opt to receive information of interest to better utilize the products and services available through the federal government.

DATES: *Comment Date:* To be considered, written comments must be submitted on or before January 16, 2004.

Effective Date: Unless comments are received, the new system of records will become effective as proposed on the date of publication of a subsequent notice in the **Federal Register**.

ADDRESSES: Comments may be mailed to Gordon Keller, U.S. Department of Commerce, International Trade Administration, Room 1850, 1401 Constitution Avenue, NW., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Gordon Keller at 202–482–3801.

SUPPLEMENTARY INFORMATION: Information collected in this system of records is basic, non-proprietary business and personal contact information. No private or proprietary data will be collected and/or stored by this system.

COMMERCE/ITA–7

SYSTEM NAME:

Export.gov Community Registration.

SYSTEM LOCATION:

System will be housed and hosted in the International Trade Administration, Room 1842 1401 Constitution Avenue, NW., Washington, DC 20230.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

U.S. exporting companies and/or individuals involved in an ongoing exporting concern, U.S. private citizens, students and/or researchers.

CATEGORIES OF RECORDS IN THE SYSTEM:

Company name, contact person's name, contact person's title, company address, company telephone number, company Web address, U.S. or non-U.S. organization, e-mail address, login name and password, fax number, company type, number of employees, product/service description, estimated annual sales, industry, the country(ies) of interest, yes/no option to be contacted with more information, and similar identifying information.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

15 U.S.C. 1512.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

(1) A record from this system of records may be disclosed to the Trade Promotion Coordination Committee (TPCC) partner agencies trade professionals.

(2) In the event that a system of records maintained by the Department to carry out its functions indicates a violation or potential violation of law or contract, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program statute or contract, or rule, regulation, or order issued pursuant thereto, or the necessity to protect an interest of the Department, the relevant records in the system of records may be referred to the appropriate agency, whether Federal, State, local or foreign, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute or contract, or rule, regulation or order issued pursuant thereto, or protecting the interest of the Department.

(3) A record from this system of records may be disclosed in the course of presenting evidence to a court, magistrate or administrative tribunal, including disclosures to opposing counsel in the course of settlement negotiations.

(4) A record in this system of records may be disclosed to a Member of Congress submitting a request involving an individual when the individual has requested assistance from the Member with respect to the subject matter of the record.

(5) A record in this system of records may be disclosed to the Department of Justice in connection with determining whether disclosure thereof is required by the Freedom of Information Act (5 U.S.C. 552).

(6) A record in this system of records may be disclosed to a contractor of the Department having need for the information in the performance of the contract, but not operating a system of records within the meaning of 5 U.S.C. 552a(m).

(7) A record from this system of records may be disclosed to the Administrator, General Services, or his designee, during an inspection of records conducted by GSA as part of that agency's responsibility to recommend improvements in records management practices and programs, under authority of 44 U.S.C. 2904 and 2906. Such disclosure shall be made in accordance with the GSA regulations governing inspection of records for this purpose, and any other relevant (*i.e.* GSA or Commerce) directive. Such disclosure shall not be used to make determinations about individuals.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in computer processible storage media, such as computer hard drives, magnetic disc, tape, in file folders, and on paper lists and forms.

RETRIEVABILITY:

Records are submitted to the system by registrants to *Export.gov*. Each registrant chooses a unique username and password that enables the registrant to retrieve and edit their record only. Registrant records are transferred (or retrieved) from the central database by participating Federal Trade Promotion Coordinating Committee Agencies (TPCC) via Simple Object Access Protocol (SOAP). The security of the data transmissions between agencies are protected through the use of an encryption key shared between the International Trade Administration and its partner agency(ies).

SAFEGUARDS:

Records and servers are located in a locked, climate controlled server room within the Department of Commerce. Access to this room and server is limited to those whose official duties require access.

RETENTION AND DISPOSAL:

All records shall be retained and disposed of in accordance with National Archives and Records Administration regulations (36 CFR Subchapter B—Records Retention); Departmental directives and comprehensive records schedules.

SYSTEM MANAGER(S) AND ADDRESS:

Same as listed under **SYSTEM LOCATION.**

NOTIFICATION PROCEDURE:

Information may be obtained from: Chief Information Office, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue, NW., Room 4800, Washington, DC 20230.

RECORD ACCESS PROCEDURES:

Requests from individuals should be addressed to the same address as stated in the Notification section above.

CONTESTING RECORD PROCEDURES:

The Department's rules for access, for contesting contents, and appealing initial determinations by the individual concerned appear in 15 CFR part 4b. Use address contained in the notification section.

RECORD SOURCE CATEGORIES:

Information in this system is provided by the individual on whom the record is maintained.

Dated: December 11, 2003.

Brenda Dolan,

Department of Commerce, , Freedom of Information/Privacy Act Officer.

[FR Doc. 03–31095 Filed 12–16–03; 8:45 am]

BILLING CODE 3510–25–P

DEPARTMENT OF COMMERCE

Economic Development Administration

Award for Excellence in Economic Development—Request for Comments

ACTION: Proposed Information Collection, comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 350(C)(2)(A)).

DATES: Written comments must be submitted on or before February 17, 2004.

ADDRESSES: Direct all written comments to Diana Hyneck, Departmental Forms Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Nat Wienecke, Deputy Assistant Secretary, Congressional Liaison, Program Research and Evaluation, Room 7824, Washington, DC 20230, telephone: (202) 482–5631.

SUPPLEMENTARY INFORMATION

I. Abstract

EDA provides a broad range of economic development assistance to help distressed communities design and implement effective economic development strategies. Part of this assistance includes disseminating

information about best practices and encouraging collegial learning among economic development practitioners. EDA has created the Award for Excellence in Economic Development to recognize outstanding economic development activities of national importance. In order to make Awards for Excellence in Economic Development, EDA must collect two kinds of information: (a) information identifying the nominee and contacts within the organization being nominated and (b) information explaining why the nominee should be given the award. The information will be used to determine those applicants best meeting the preannounced selection criteria. Use of a nomination form standardizes and limits the information collected as part of the nomination process. This makes the competition fair and eases any burden on applicants and reviewers alike. Participation in the competition is voluntary. The award is strictly honorary.

II. Method of Collection

As part of the development of the Award for Excellence in Economic Development, EDA has designed a short nomination form. Nominees will submit the form to EDA, where they will be screened for completeness and forwarded to the Selection Panel for review. The information will be used by the Selection Panel to determine those applicants best meeting the pre announced selection criteria. The Selection Panel will include: three representatives of the economic development practitioner community; one member from academe; three representatives of the Economic Development Administration; and up to two at-large members.

III. Data

OMB Number(s): 0610–0097.
Form Number: Not applicable.
Burden: 150 hours.
Type of Review: Reinstatement of previously-approved collection.
Affected Public: State, local, or tribal government and not-for-profit organizations.
Estimated Number of Respondents: 50.
Estimated Time Per Response: 3 hours.
Estimated Total Annual Burden Hours: 150.
Estimated Total Annual Cost: $11,180.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the equality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques of other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection, they also will become a matter of public record.

Dated: December 12, 2003.

Madeleine Clayton,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 03–31143 Filed 12–16–03; 8:45 am]

BILLING CODE 3510–34–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A-570–803]

Heavy Forged Hand Tools from the People's Republic of China: Amended Final Results of Antidumping Duty Administration Review in Accordance with Court Decision

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Amended Final Results of Antidumping Duty Administration Review

SUMMARY: On July 28, 2003, the United States Court of International Trade (CIT) affirmed the Department of Commerce's (the Department's) redetermination on remand of the final results of the seventh administrative review of the antidumping duty orders on heavy forged hand tools from the People's Republic of China. *See Fujian Machinery and Equipment Import & Export Corporation, et al.* v. *United States*, Slip Op. 03–92 (CIT July 28, 2003) (*Fujian II*). Because all litigation has concluded and the injunction has been lifted, we are amending our final results of review.

EFFECTIVE DATE: December 17, 2003.

FOR FURTHER INFORMATION CONTACT: Thomas Martin, AD/CVD Enforcement, Office 4, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Ave., N.W., Washington, D.C. 20230; telephone:(202) 482–3936.

SUPPLEMENTARY INFORMATION:

Background

On August 11, 1999, the Department published a notice of the final results of the seventh administrative review of the antidumping duty orders on heavy forged hand tools from the People's Republic of China. *See Heavy Forged Hand Tools, Finished or Unfinished, With or Without Handles, From the People's Republic of China; Final Results and Partial Recission of Antidumping Duty Administrative Reviews*, 64 FR 43659 (August 11, 1999) (*Final Results*). Subsequent to the Department's *Final Results*, the respondent filed a lawsuit with the CIT challenging these results. Thereafter, the CIT issued an Order and Opinion dated September 28, 2001, in *Fujian Machinery and Equipment Import & Export Corporation, et al.* v. *United States*, 178 F. Supp. 2d 1305 (Ct. Int'l Trade 2001) (*Fujian I*), remanding several issues to the Department. Among the issues remanded in *Fujian I*, the CIT ordered the Department to issue separate rates for Fujian Machinery Import & Export Corporation (FMEC) and Shandong Machinery Import & Export Corporation (SMC). *See Fujian I*, 178 F. Supp. 2d at 1336. Pursuant to *Fujian I*, the Department filed its remand results on February 20, 2002, issuing separate rates for FMEC and SMC. The CIT reviewed and affirmed the Department's final results of redetermination in *Fujian Machinery and Equipment Import & Export Corporation, et al.* v. *United States*, Slip Op. 03–92 (CIT July 28, 2003) (*Fujian II*). On August 6, 2003, we published a notice of court decision. *See Notice of Decision of the Court of International Trade: Heavy Forged Hand Tools From the People's Republic of China*, 68 FR 46582 (August 6, 2003).

The time period for appealing the CIT's final decision has expired and no party has appealed this decision. Therefore, in accordance with *Fujian II*, and because all litigation has concluded and the injunction has been lifted, we are amending our final results in this matter and we will instruct the U.S. Customs and Border Protection (CBP) to liquidate entries, as appropriate, in accordance with our remand results.

Amendment to Final Results

Pursuant to section 516A(e) of the Tariff Act of 1930, as amended (the Act), there is now a final and conclusive court decision with respect to litigation for FMEC and SMC, and we are amending the *Final Results* to reflect the findings of *Fujian II*. We will instruct the CBP to liquidate entries, as appropriate. As a result of the remand determinations, we have assigned FMEC and SMC final weighted-average margins as follows:

Fujian Machinery Import & Export Corporation (FMEC)

hammers/sledges	27.71%
bars/wedges	47.88%
picks and mattocks	98.77%
axes/adzes	18.72%

Shandong Machinery Import & Export Corporation (SMC)

hammers/sledges	27.71%
bars/wedges	47.88%
picks and mattocks	98.77%
axes/adzes	18.72%

Assessment Rates

The Department will determine, and the CBP shall assess, antidumping duties on all appropriate entries. The Department will issue appropriate assessment instructions directly to the CBP within 15 days of publication of these amended final results of review.

Notification

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f), to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely written notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

These final results of administrative review are issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act (19 U.S.C. 1675(a)(1) and 19 U.S.C. 1677f(i)(1)).

Dated: December 9, 2003.

James J. Jochum,

Assistant Secretary for Import Administration.

[FR Doc. 03–31128 Filed 12–16–03; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A-570–504]

Petroleum Wax Candles From the People's Republic of China: Notice of Extension of Time Limit of Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce is extending the time limit for the final results of the administrative review of petroleum wax candles from the People's Republic of China (PRC) until no later than March 8, 2004. The period of review is August 1, 2001 through July 31, 2002. This extension is made pursuant to section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act).

EFFECTIVE DATE: December 17, 2003.

FOR FURTHER INFORMATION CONTACT: Mark Hoadley, Office of AD/CVD Enforcement VII, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington D.C. 20230; telephone: (202) 482–3148.

SUPPLEMENTARY INFORMATION:

Background

On August 28, 1986, the Department of Commerce (the Department) published the antidumping duty order on petroleum wax candles from the PRC (51 FR 30686). On August 6, 2002, the Department published an opportunity to request an administrative review of the order (67 FR 50856) for the period August 1, 2001 through July 31, 2002. The Department received timely requests from Dongguan Fay Candle Co., Ltd. (Fay Candle), a PRC producer and exporter of subject merchandise, and its U.S. importers, TIJID, Inc. (TIJID) (d/b/a DIJIT Inc.), and Palm Beach Home Accents, Inc.(Palm Beach); Wal-Mart Stores, Inc. (Wal-Mart); Qingdao Kingking Applied Chemistry Co., Ltd. (Qingdao Kingking); and petitioner, the National Candle Association (NCA), to conduct an administrative review of the antidumping duty order on petroleum wax candles from the PRC for 108 companies. On September 25, 2002, the Department published its *Notice of Initiation of Antidumping and Countervailing Duty Administrative Reviews, Requests for Revocation in Part and Deferral of Administrative Review*, 67 FR 60210. On March 26, 2003, the Department extended the due date for the preliminary results of this review (68 FR 14578). On September 9, 2003, the Department published the preliminary results of this review (68 FR 53109).

Extension of Time Limit for Final Results

Pursuant to section 751(a)(3)(A) of the Act, the Department may extend the deadline for completion of the final results of an administrative review if it determines that it is not practicable to complete the final results within the statutory time limit of 120 days from the date on which the preliminary results were published. The Department has determined that it is not practicable to complete the final results of this review within the statutory time limit. During the course of this review, numerous issues have been raised, including a possible affiliation between Fay Candle and its U.S. importers and a discrepancy between Qingdao Kingking's reported sales and Customs data, among others. Due to the complexity of the issues involved, it is not practicable to complete this review within the time limits mandated by section 751(a)(3)(A) of the Act and section 19 CFR 351.213(h)(1) of the Department's regulations.

Therefore, the Department is extending the time limit for the final results by 60 days (180 days from the date of publication of the preliminary results pursuant to section 19 CFR 351.213(h)(2)), until no later than March 8, 2004 (the calculated due date is March 7, 2004; however, since March 7, falls on a weekend, the due date will fall on the next business day, March 8). This notice is published in accordance with section 751(1)(3)(A) of the Act and section 19 CFR 351.213(h)(2) of the Department's regulations.

Dated: December 2, 2003.

Barbara E. Tillman,

Acting Deputy Assistant Secretary for Import Administration, Group III.

[FR Doc. 03–31130 Filed 12–16–03; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A-570–890]

Initiation of Antidumping Duty Investigation: Wooden Bedroom Furniture from the People's Republic of China

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: December 17, 2003.

FOR FURTHER INFORMATION CONTACT: Alex Villanueva or Robert Bolling, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–3208 and (202) 482–3434, respectively.

SUPPLEMENTARY INFORMATION:

INITIATION OF INVESTIGATION

The Petition

On October 31, 2003, the Department of Commerce ("Department") received a Petition on imports of wooden bedroom furniture from the People's Republic of China ("China") ("Petition") filed in proper form by the American Furniture Manufacturers Committee for Legal Trade ("Committee") and its individual members and the Cabinet Makers, Millmen, and Industrial Carpenters Local 721 (collectively, "the Petitioners") on behalf of the domestic industry and workers producing wooden bedroom furniture. On November 6, 2003 and November 10, 2003, the Department requested clarification of certain areas of the Petition and received responses to both requests on November 12, 2003. On November 12, 2003, Markor International Furniture (Tianjin) Manufacturing Co., ("Markor") and Lacquer Craft Manufacturing Company, Ltd., ("Lacquer") submitted comments regarding the industry support for the Petition. On November 13, 2003, the Department received comments from Furniture Brands International, Inc. ("FBI"). On November 20, 2003, the Petitioners amended the Petition to include an additional margin estimate for a product within the scope of the investigation. On November 24, 2003, the Department published a notice in the **Federal Register** extending the twenty-day initiation determination deadline and requesting information from domestic producers of wooden bedroom furniture *See Notice of Request for Information and Extension of Time: Wooden Bedroom Furniture from the People's Republic of China* ("*Extension Notice*") 68 FR 65875 (November 24, 2003). On November 24, 2003, the Department requested from the Petitioners that certain business proprietary information be made public. On November 28, 2003, the Department received the public version of the business proprietary information requested on November 24, 2003. On December 2, 2003, the Department received additional comments regarding industry support from Markor and Lacquer. Additionally, on December 2, 2003, the Department received comments from the Petitioners regarding opposition to the Petition. On December 3, 2003, the Department received rebuttal comments to Markor's and Lacquer's December 2, 2003 comments from the Petitioners. On December 3, 2003, the Department received comments from the Petitioners regarding the calculation of industry support. On December 4, 2003, the Petitioners amended the Petition adding four certified labor unions as Petitioners. Additionally, on December 4, 2003, FBI submitted comments regarding the calculation of industry support. On December 5, 2003, the Department received comments from Markor and Lacquer. On December 8, 2003, the Department received comments from FBI and Markor and Lacquer. On December 9, 2003 the Department received comments from the Petitioners. Additionally, on December 9, 2003, the Department received a request from the Petitioners that the Department reject numerous submissions submitted earlier in this proceeding in accordance with Section 732(b)(3)(B) of the Tariff Act of 1930, as amended ("the Act"). On December 9, 2003, the Department returned FBI's comments of December 8, 2003. *See Memorandum to the File from Lisa Shishido, Case Analyst, Regarding Wooden Bedroom Furniture from the People's Republic of China*, dated December 9, 2003. We note that in FBI's November 13, 2003 comments and Markor and Lacquer's December 8, 2003 comments, both parties included comments on issues other than industry support, we did not reject those submission because they contained information regarding industry support. *See Memo to the File from Alex Villanueva, Senior Case Analyst, Regarding Wooden Bedroom Furniture from the People's Republic of China: FBI's November 13, 2003 Comments and Markor and Lacquer's December 8, 2003 Comments*, dated December 9, 2003. However, we did not consider FBI's December 8, 2003 comments and Markor and Lacquer's December 8, 2003 comments that were not on industry support. *See Import Administration: Antidumping Duty Investigation Initiation Checklist of Wooden Bedroom Furniture from China*("*Initiation Checklist*"), dated December 10, 2003 at Attachment III. December 10, 2003, FBI revised their comments from December 8, 2003.

In accordance with section 732(b) of the Ac, the Petitioners allege that imports of wooden bedroom furniture from China are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Act, and that such imports are materially injuring and threaten to injury and industry in the United States.

Scope of Investigation

For purposes of this investigation, the product covered is wooden bedroom furniture (*i.e.*, subject merchandise). Wooden bedroom furniture is generally, but not exclusively, designed, manufactured, and offered for sale in coordinated groups, or bedrooms, in which all of the individual pieces are of approximately the same style and approximately the same material and/or finish. The subject merchandise are made substantially of wood products, including both solid wood and also engineered wood products made from wood particles, fibers, or other wooden materials such as plywood, oriented strand board, particle board, and fiberboard; with or without wood veneers, wood overlays, or laminates; with or without non-wood components or trim such as metal, marble, leather, glass, plastic, or other resins; and whether or not assembled, completed, or finished.

The subject merchandise includes (1) wooden beds such as loft beds, bunk beds, and other beds; (2) wooden headboards for beds (whether stand-alone or attached to side rails), wooden footboards for beds, wooden side rails for beds, and wooden canopies for beds; (3) night tables, night stands, dressers, commodes, bureaus, mule chests, gentlemen's chests, bachelor's chests, lingerie chests, wardrobes, vanities, chessers, chifforobes, and wardrobe-type cabinets; (4) dressers with framed glass mirrors that are attached to, incorporated in, sit on, or hang over the dresser; (5) chests-on-chests[1], highboys[2], lowboys[3], chests of drawers[4], chests[5], door chests[6], chiffoniers[7], hutches[8], and armoires[9]; (6) desks, computer stands, filing cabinets, book cases, or writing tables that are attached to or incorporated in the subject merchandise; and (7) other bedroom furniture consistent with the above list.

The scope of the Petition excludes (1) seats, chairs, benches, couches, sofas, sofa beds, stools, and other seating furniture; (2) mattresses, mattress supports (including box springs), infant cribs, water beds, and futon frames; (3) office furniture, such as desks, stand-up desks, computer cabinets, filing cabinets, credenzas, and bookcases; (4) dining room or kitchen furniture such as dining tables, chairs, servers, sideboards, buffets, corner cabinets, china cabinets, and china hutches; (5) other non-bedroom furniture, such as television cabinets, cocktails tables, end tables, occasional tables, wall systems, book cases, and entertainment systems; (6) bedroom furniture made primarily of wicker, cane, osier, bamboo or rattan; (7) side rails for beds made of metal if sold separately from the headboard and footboard; and (8) bedroom furniture in which bentwood parts predominate.[10]

Imports of subject merchandise are classified under statistical category 9403.50.9040 of the Harmonized Tariff Schedule of the United States ("HTSUS") as "wooden * * * beds" and under statistical category 9403.50.9080 of the HTSUS as "other * * * wooden furniture of a kind used in the bedroom." In addition, wooden headboards for beds, wooden footboards for beds, wooden side rails for beds, and wooden canopies for beds may also be entered under statistical category 9403.50.9040 of the HTSUS as "parts of wood" and framed glass mirrors may also be entered under statistical category 7009.92.5000 of the HTSUS as "glass mirrors...framed." This investigation covers all wooden bedroom furniture meeting the above description, regardless of tariff classification. Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.

During our review of the Petition, we discussed the scope with the Petitioners to ensure that it accurately reflects the product for which the domestic industry is seeking relief. Moreover, as discussed in the preamble to the Department's regulations, we are setting aside a period for interested parties to raise issues regarding product coverage. *See Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27295, 27323 (1997). The Department encourages all interested parties to submit such comments within 20 calendar days of publication of this notice.

Comments should be addressed to Import Administration's Central Records Unit at Room 1870, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230. The period of scope consultations is intended to provide the Department with ample opportunity to consider all comments and consult with interested parties prior to the issuance of the preliminary determination.

Determination of Industry Support for the Petition

Section 732(b)(1) of the Act requires that a Petition be filed on behalf of the domestic industry. Section 732(c)(4)(A) of the Act provides that the Department's industry support determination, which is to be made before the initiation of the investigation, be based on whether a minimum percentage of the relevant industry supports the Petition. A Petition meets this requirement if the domestic producers or workers who support the Petition account for: (i) at least 25 percent of the total production of the domestic like product; and (ii) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the Petition. Moreover, section 732(c)(4)(D) of the Act provides that, if the Petition does not establish support of domestic producers or workers accounting for more than 50 percent of the total production of the domestic like product, the Department shall: (i) poll the industry or rely on other information in order to determine if there is support for the Petition, as required by subparagraph (A), or (ii) determine industry support using a statistically valid sampling method.

Section 771(4)(A) of the Act defines the "industry" as the producers of a domestic like product. Thus, to determine whether a Petition has the requisite industry support, the statute directs the Department to look to producers and workers who produce the domestic like product. The International Trade Commission ("ITC"), which is responsible for determining whether "the domestic industry" has been injured, must also determine what constitutes a domestic like product in order to define the industry. While both the Department and the ITC must apply the same statutory definition regarding the domestic like product (section 771(10) of the Act), they do so for different purposes and pursuant to a separate and distinct authority. In addition, the Department's determination is subject to limitations of time and information. Although this may result in different definitions of the like product, such differences do not render the decision of either agency contrary to law. *See USEC, Inc. v. United States*, 132 F. Supp. 2d 1, 8 (Ct. Int'l Trade 2001), citing *Algoma Steel Corp. Ltd. v. United States*, 688 F. Supp. 639, 642–44 (Ct. Int'l Trade 1988).

Section 771(10) of the Act defines the domestic like product as "a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this title." Thus, the reference point from which the domestic like product analysis begins is "the article subject to an investigation," *i.e.*, the class or kind of merchandise to be investigated, which normally will be the scope as defined in the Petition.

With regard to the domestic like product, Petitioner does not offer a definition of domestic like product distinct from the scope of the investigation. Based on our analysis of the information submitted in the Petition we have determined there is a single domestic like product, wooden bedroom furniture, which is defined further in the "Scope of the Investigations" section above, and we have analyzed industry support in terms of that domestic like product.

Based on information provided in the Petition, the share of total estimated U.S. production of the domestic like product in calendar year 2002

[1] A chest-on-chest is typically a tall chest-of-drawers in two or more sections (or appearing to be in two or more sections), with one or two sections mounted (or appearing to be mounted) on a slightly larger chest; also known as a tallboy.

[2] A highboy is typically a tall chest of drawers usually composed of a base and a top section with drawers, and supported on four legs or a small chest (often 15 inches or more in height).

[3] A lowboy is typically a short chest of drawers, not more than four feet high, normally set on short legs.

[4] A chest of drawers is typically a case containing drawers for storing clothing

[5] A chest is typically a case piece taller than it is wide featuring a series of drawers and with or without one or more doors for storing clothing. The piece can either include drawers or be designed as a large box incorporating a lid.

[6] A door chest is typically a chest with hinged doors to store clothing, whether or not containing drawers. The piece may also include shelves for televisions and other entertainment electronics.

[7] A chiffonier is typically a tall and narrow chest of drawers normally used for storing undergarments and lingerie, often with mirror(s) attached.

[8] A hutch is typically an open case of furniture with shelves that typically sits on another piece of furniture and provides storage for clothes.

[9] An armoire is typically a tall cabinet or wardrobe (typically 50 inches or taller), with doors, and with one or more drawers (either exterior below or above the doors or interior behind the doors), shelves, and/or garment rods or other apparatus for storing clothes. Bedroom armoires may also be used to hold television receivers and/or other audio-visual entertainment systems.

[10] As used herein, bentwood means solid wood made pliable. Bentwood is wood that is brought to a curved shape by bending it while made pliable with moist heat or other agency, and then set by cooling or drying. *See* Customs' Headquarters' Ruling Letter 043859, dated May 17, 1976.

represented by the Petitioners and the supporting domestic producers equal over 25 percent of total domestic production but less than 50 percent of production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the Petition. *See Extension Notice.* Therefore, in accordance with 732(c)(4)(D) of the Act, we polled the industry.

On November 13, 2003, November 17, 2003 and November 19, 2003, we issued polling questionnaires to all known producers of wooden bedroom furniture identified in the Petition, listed on the *Thomas Register* and found on the internet by the Department. The combined list contained 264 companies. *See Memorandum to the File from Michael Holton, Case Analyst, Regarding the Addresses for All Parties the Department of Commerce Sent the Polling Questionnaire to on November 13, 2003* ("*Addresses Memo*"), dated November 14, 2003. The addresses attached to the *Addresses Memo* were also used when sending the revised questionnaires dated November 17, 2003 and November 19, 2003. *See Memorandum to the File from Alex Villanueva, Case Analyst, Regarding the Addresses for All Parties the Department of Commerce Sent the Polling Questionnaire on November 17, 2003 and November 19, 2003*, dated December 3, 2003. The questionnaires are on file in the Central Records Unit ("CRU") in room B-099 of the main Department of Commerce building. Additionally, the final questionnaire dated November 19, 2003 was available on the Import Administration website. As noted earlier, the Department also published a notice in the **Federal Register** extending the twenty-day initiation determination deadline and requesting information from domestic producers of wooden bedroom furniture. *See Extension Notice* at 65877, 65878. We requested that each company complete the polling questionnaire and certify their responses and requested that all companies respond no later than November 26, 2003 by faxing their responses to the Department at (202) 482–9089.

By the deadline of November 26, 2003, the Department received a total of 104 responses. *See Memorandum to the File from Alex Villanueva, Case Analysts through Robert A. Bolling, Program Manager and Edward C. Yang, Office Director, Regarding the Calculation of Industry Support* ("*Memo on Industry Support*"), dated December 10, 2003 at Attachment II of the *Initiation Checklist*. Any responses received after this date were not included in our analysis. *See Extension Notice* at 65876 and *Initiation Checklist* at Attachment II. The Department will be returning all polling questionnaire responses not received by November 26, 2003. Pursuant to section 351.104 of the Department's regulations, the Department has relied upon the responses to this questionnaire and follow-up phone calls to clarify certain responses to determine industry support. For a log of the phone calls made by the Department, please see the *Memorandum to the File from Lisa Shishido, Case Analyst, Regarding the Telephone Call Log Clarifying Information Received by the Department*, dated December 10, 2003. For a detailed discussion of the responses received please see the *Initiation Checklist* at Attachment II. For a discussion on the comments received from interested parties, please see the *Initiation Checklist* at Attachment III. For a detailed discussion of the comments received by workers, please see the *Initiation Checklist* at Attachment II. Our analysis of the data indicates that the domestic producers of wooden bedroom furniture who support the Petition account for more than 57 percent of the production (by U.S. dollar sales value) of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the Petition. *See Initiation Checklist* at Attachment II.

Accordingly, the Department determines that the industry support requirements of section 732(c)(4)(A) of the Act have been met.

Export Price and Normal Value

The following is a description of the allegation of sales at less than fair value ("LTFV") upon which the Department based its decision to initiate this investigation. The sources of data for the deductions and adjustments relating to the U.S. price and the factors of production are also discussed in the *Initiation Checklist*. Should the need arise to use any of this information as facts available under section 776 of the Act in our preliminary or final determination, we may reexamine the information and revise the margin calculations, if appropriate.

Export Price

The Petitioners identified approximately one-hundred thirty five Chinese companies as major producers and exporters of wooden bedroom furniture in China. *See Petition* at Exhibit 6.

The Petitioners calculated an export price ("EP"). To calculate export prices for wooden bedroom furniture from China, Petitioners used invoices for wooden bedroom furniture produced by Chinese producers that were purchased during the period of investigation ("POI"). Given the sales terms on the invoice, the Petitioners have used free on board ("FOB") prices as the basis for the U.S. price and, conservatively, have not deducted foreign inland freight from the factory to the port, brokerage and handling fees, or port charges at the port of exportation. However, to obtain ex-factory prices, the Petitioners deducted a percentage of the selling price (price listed on the invoice) to account for an agent markup for sales made from the agent to the U.S. customer in the United States. *See Initiation Checklist* for further information.

Normal Value

China is a non-market economy country and no determination to the contrary has yet been made by the Department. *See Initiation Checklist* at 4–5. Accordingly, the Petitioners provided a dumping margin calculation using the Department's NME methodology as required by 19 C.F.R. §351.202(b)(7)(i)(C) of the Department's regulations.

For the normal value ("NV") calculation, the Petitioners based the factors of production, as defined by section 773(c)(3) of the Act (raw materials, labor and energy), for wooden bedroom furniture using the factors of production used to make the wooden bedroom furniture on the invoices used in their calculation of export price above. In order to accurately calculate the usage of materials used in the production of the imported furniture, the Petitioners disassembled each piece of furniture and identified, weighed, and measured each component part. The items selected by the Petitioners for deconstruction and ultimately used for the normal value calculation, provide a broad selection of items within the wooden bedroom furniture like product category. According to the Petitioners, the dumping margins in the Petition represent "each of the products in a standard bedroom suite because subject imports are typically sold in suites, collections, or groups" and are "representative of the prices for imports" of wooden bedroom furniture from China during the POI. *See* Petitioners' November 12, 2003 Submission at 8. However, the amount of labor hours and energy needed to produce the wooden bedroom furniture items analyzed were based on the experience of the Petitioners. *See Initiation Checklist.*

The Petitioners selected India as their surrogate country. The Petitioners argued that pursuant to section 773(c)(4) of the Act, India is an appropriate surrogate because it is a market-economy country that is at a comparable level of economic development to the NME and is a significant producer of comparable merchandise. Based on the information provided by the Petitioners, we believe that the Petitioners' use of India as a surrogate country is appropriate for purposes of initiating this investigation. *See Initiation Checklist.*

In accordance with section 773(c)(4) of the Act, the Petitioners valued factors of production, where possible, on reasonably available, public surrogate country data. To value certain raw materials, the Petitioners used official Indian government import statistics, excluding those values from countries previously determined by the Department to be NME countries and imports into India from Indonesia, Korea and Thailand, in light of the prevalence of export subsidies in those countries. *See Notice of Final Determination of Sales at Less Than Fair Value: Ferrovanadium from the People's Republic of China* 67 FR 71137, 71139 (November 20, 2002). For inputs valued in Indian Rupees and not contemporaneous with the POI (*i.e.*, April 2003-September 2003), the Petitioners used information from the wholesale price indices ("WPI") in India as published in the *International Financial Statistics* of the International Monetary Fund to determine the appropriate adjustments for inflation. In addition, the Petitioners made currency conversions, where necessary, based on the average rupee/U.S. dollar exchange rate for the POI. *See Petition* at Exhibit 11.

To value the raw materials, (lumber (*e.g.*, ash, birch, maple, oak, pine, poplar tupelo), other wood items (*e.g.*, cherry wood veneer, fiberboard, hardboard, okoume plywood, lauan plywood, particle board, poplar veneer, oak veneer, wood pulls and okoume veneer), fasteners (*e.g.*, brad & nails, staples, dowels, screws, washers, brass hinges, nuts, brass bolts and hex key), paints and stains (non-water based stains, sealers and lacquers), other miscellaneous items (*e.g.*, printed labels, printed tags, printed paper, glues, plastic furniture fittings, metal drawer pulls & parts, drawer guide brackets, felt and mirrors), packing materials (*e.g.*, polyethylene foam, styrofoam, corrugated cardboard, tape, poly bags, poly straps, plywood, and shrink wrap)), the Petitioners calculated surrogate values from the Indian import statistics. *See Petition* at Exhibits 12 & 13.

To value electricity, the Petitioners calculated surrogate values using prices paid by industrial electrical users in India from *Key World Energy Statistics* published by the International Energy Agency in 2003. However, the price listed in Key World Energy Statistics is for electricity prices from 2000. Therefore, this price was adjusted for inflation using the WPI from the *International Financial Statistics*. *See Petition* at Exhibits 12 and 15.

Pursuant to 19 C.F.R. §351.408(c)(3) of the Department's regulations, the Department calculates and publishes the surrogate values for labor to be used in non-market economy cases. Therefore, the Petitioners used the labor rate of $0.83 per hour listed on the Department's website. *See Petition* at Exhibit 14.

The Petitioners calculated surrogate financial ratios (factory overhead, selling, general and administrative expenses (SG&A) and profit) using the publicly available financial statements from India Furniture Products, Ltd., an Indian producer of wooden bedroom furniture for the period (March 1, 2002-March 31, 2003), the most recently available financial period.

Based on comparisons of EP to NV, calculated in accordance with section 773(c) of the Act, the estimated recalculated dumping margin for wooden bedroom furniture ranges from 158.74 percent to 440.96 percent.

Fair Value Comparisons

Based on the data provided by the Petitioners, there is reason to believe that imports of wooden bedroom furniture from China are being, or are likely to be, sold in the United States at less than fair value.

Allegations and Evidence of Material Injury and Causation

The Petition alleges that the U.S. industry producing the domestic like product is being materially injured and is threatened with material injury, by reason of the imports of the subject merchandise sold at less than NV. The Petitioners contend that the industry's injured condition is evident in: (1) increasing imports' market share and apparent domestic consumption; (2) declining employment; (3) declining production and capacity utilization; (4) plant closures; and (5) lost sales and revenues. *See Initiation Checklist* at Attachment V (Injury).

The Department assessed the allegations and supporting evidence regarding material injury and causation and determined that these allegations are supported by accurate and adequate evidence and meet the statutory requirements for initiation.

Initiation of Antidumping Investigation

Based upon our examination of the Petition on wooden bedroom furniture from China, we find that the Petition meets the requirements of section 732 of the Act. Therefore, we are initiating an antidumping duty investigation to determine whether imports of wooden bedroom furniture from China are being, or are likely to be, sold in the United States at less than fair value. Unless postponed, we will make our preliminary determination no later than 140 days after the date of this initiation.

Distribution of Copies of the Petition

In accordance with section 732(b)(3)(A) of the Act, a copy of the public version of the Petition has been provided to the government representatives of China.

International Trade Commission Notification

We have notified the ITC of our initiation, as required by section 732(d) of the Act.

Preliminary Determination by the ITC

The ITC will preliminarily determine, no later than mid-January, whether there is a reasonable indication that imports of wooden bedroom furniture from China are causing material injury, or threatening to cause material injury, to a U.S. industry. A negative ITC determination will result in this investigation being terminated; otherwise, this investigation will proceed according to statutory and regulatory time limits.

This notice is published pursuant to section 777(i) of the Act.

Dated: December 10, 2003.

James J. Jochum,

Assistant Secretary for Import Administration.

[FR Doc. 03–31129 Filed 12–16–03; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

Export Trade Certificate of Review

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of application to amend an Export Trade Certificate of Review.

SUMMARY: The Office of Export Trading Company Affairs ("OETCA"), International Trade Administration, U.S. Department of Commerce, has

received an application to amend an Export Trade Certificate of Review ("Certificate"). This notice summarizes the proposed amendment and requests comments relevant to whether the Certificate should be issued.

FOR FURTHER INFORMATION CONTACT: Jeffrey C. Anspacher, Director, Office of Export Trading Company Affairs, International Trade Administration, (202) 482–5131 (this is not a toll-free number) or by E-mail at *oetca@ita.doc.gov*.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. 4001–21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. An Export Trade Certificate of Review protects the holder and the members identified in the Certificate from state and federal government antitrust actions and from private treble damage antitrust actions for the export conduct specified in the Certificate and carried out in compliance with its terms and conditions. Section 302(b)(1) of the Export Trading Company Act of 1982 and 15 CFR 325.6(a) require the Secretary to publish a notice in the **Federal Register** identifying the applicant and summarizing its proposed export conduct.

Request for Public Comments

Interested parties may submit written comments relevant to the determination whether an amended Certificate should be issued. If the comments include any privileged or confidential business information, it must be clearly marked and a nonconfidential version of the comments (identified as such) should be included. Any comments not marked privileged or confidential business information will be deemed to be nonconfidential. An original and five (5) copies, plus two (2) copies of the nonconfidential version, should be submitted no later than 20 days after the date of this notice to: Office of Export Trading Company Affairs, International Trade Administration, U.S. Department of Commerce, Room 1104H, Washington, DC 20230, or transmit by E-mail at *oetca@ita.doc.gov*. Information submitted by any person is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552). However, nonconfidential versions of the comments will be made available to the applicant, if necessary, for determining whether or not to issue the Certificate. Comments should refer to this application as "Export Trade Certificate of Review, application number 97–7A003."

The Association for the Administration of Rice Quotas, Inc.'s ("AARQ") original Certificate was issued on January 21, 1998 (63 FR 4220, January 28, 1998) and last amended on November 19, 2002 (68 FR 8739, February 25, 2003). A summary of the application for an amendment follows.

Summary of the Application

Applicant: Association for the Administration of Rice Quotas, Inc. ("AARQ"), c/o David Van Oss of Riviana Foods Inc., 2777 Allen Parkway, Houston, Texas 77019.

Contact: M. Jean Anderson, Esq., Counsel to Applicant, Telephone: (202) 682–7217.

Application No.: 97–7A003.

Date Deemed Submitted: December 4, 2003.

Proposed Amendment: AARQ seeks to amend its Certificate to:

1. Add each of the following companies as a new "Member" of the Certificate within the meaning of § 325.2(l) of the Regulations (15 CFR 325.2(l) (2003)): Itochu International Inc., New York, New York (a subsidiary of Itochu Corporation, Tokyo, Japan); and Veetee Rice Inc., Springfield, Virginia (a subsidiary of Veetee Investments, Nassau, Bahamas).

2. Change the listing of the following Members: "California Commodity Traders, LLC, Robbins, California, and its affiliate American Commodity Company, LLC, Robbins, California" should be amended to read "American Commodity Company, LLC, Robbins, California"; "Cargill Americas, Inc., Wayzata, Minnesota" should be amended to read "Cargill Americas, Inc., Coral Gables, Florida"; "ConAgra Foods, Inc., Omaha, Nebraska, and its subsidiary, Alliance Grain, Inc., Voorhees, New Jersey" should be amended to read "ConAgra Foods, Inc., Omaha, Nebraska, and its subsidiary, Alliance Grain, Inc., Marlton, New Jersey"; "Gulf Pacific, Inc., and its subsidiaries, Gulf Pacific Rice Co., Inc., and Gulf Rice Milling, Inc., Houston, Texas" should be amended to read "Gulf Pacific Rice Co., Inc., Gulf Rice Milling, Inc., Houston, Texas, and Harvest Rice, Inc., McGehee, Arkansas (each a subsidiary of Gulf Pacific, Inc., Houston, Texas)"; "Rickmers Rice USA, Inc., St. Louis, Missouri" should be amended to read "Rickmers Rice USA, Inc., Knoxville, Tennessee"; "Sunshine Rice, Inc., Stockton, California (a subsidiary of Sunshine Business Enterprise, Inc.)" should be amended to read "KD International Trading, Inc., Stockton, California (a subsidiary of Sunshine Business Enterprises, Inc.)"; and "Uncle Ben's Inc., Greenville, Mississippi" should be amended to read "Masterfoods USA a Mars, Incorporated Company, Greenville, Mississippi."

Dated: December 11, 2003.

Jeffrey. C. Anspacher,

Director, Office of Export Trading Company Affairs.

[FR Doc. 03–31069 Filed 12–16–03; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 121103A]

Proposed Information Collection; Comment Request; Management and Oversight of the National Estuarine Research Reserve System

AGENCY: National Oceanic and Atmospheric Administration (NOAA).

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before February 17, 2004.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Doris Grimm at 301–713–3155, ext. 107, or to *Doris.Grimm@noaa.gov*.

SUPPLEMENTARY INFORMATION:

I. Abstract

The National Estuarine Research Reserve System consists of carefully-selected estuarine areas of the U.S. that are designated, preserved, and managed for research and educational purposes. The information to be collected is needed from states to review proposed designations. For sites selected, States must develop management plans and submit an annual report/work plan.

NOAA needs the information to ensure that the sites selected meet national standards.

II. Method of Collection

Much information can be submitted electronically via a Web site. Other information can be submitted in paper form.

III. Data

OMB Number: 0648–0121.

Form Number: None.

Type of Review: Regular submission.

Affected Public: State, Local, or Tribal Government.

Estimated Number of Respondents: 27.

Estimated Time Per Response: 2,000 for a management plan; 2,000 hours for a site nomination; 15 hours for an annual report/work plan; and 2 hours beyond basic application information for an application requiring a categorical exclusion checklist, state historical office comments, a preliminary engineering report for a construction project or restoration, or a Federal Consistency Certification.

Estimated Total Annual Burden Hours: 14,180.

Estimated Total Annual Cost to Public: $30,794.

IV. Request for Comments

Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: December 10, 2003.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 03–31136 Filed 12–16–03; 8:45 am]

BILLING CODE 3510–08–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 121103C]

Proposed Information Collection; Comment Request; Alaska Region Gear Identification Requirements

AGENCY: National Oceanic and Atmospheric Administration (NOAA) Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before February 17, 2004.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Patsy A. Bearden, 907–586–7008, or *Patsy.Bearden@noaa.gov*.

SUPPLEMENTARY INFORMATION:

I. Abstract

Regulations at 50 CFR 679.24 require that all hook-and-line, longline pot, and pot-and-line marker buoys carried on board or used by any vessel regulated under 50 CFR part 679 shall be marked with the vessel name, Federal permit number, or registration number. The regulations also specify the size and color of markings. The marking of gear aids law enforcement and enables other fishermen to report on misplaced gear.

II. Method of Collection

No information is collected; this is a gear-marking requirement.

III. Data

OMB Number: 0648–0353.

Form Number: None.

Type of Review: Regular submission.

Affected Public: Business or other for-profit organizations, and individuals or households.

Estimated Number of Respondents: 2,116.

Estimated Time Per Response: 15 minutes per buoy.

Estimated Total Annual Burden Hours: 3,750.

Estimated Total Annual Cost to Public: $4,332.

IV. Request for Comments

Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: December 10, 2003.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 03–31137 Filed 12–16–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 121203A]

Proposed Information Collection; Comment Request; Socio-economic Assessment of Marine Protected Areas Management Preferences

AGENCY: National Oceanic and Atmospheric Administration (NOAA).

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before February 17, 2004.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at dHynek@doc.gov).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Dr. Juan Agar, Department of Commerce, NOAA, National Marine Fisheries Service, Southeast Fisheries Science Center, 75 Virginia Beach Drive, Miami, FL 33149, (305 361 4218).

SUPPLEMENTARY INFORMATION:

I. Abstract

The National Marine Fisheries Service proposes to conduct a survey to collect socio-economic data to strengthen the management, protection, and conservation of existing and proposed Marine Protected Areas (MPAs) in the U.S. Caribbean (Puerto Rico and U.S. Virgin Islands). MPAs are any area of the marine environment that has been reserved by Federal, State, territorial, tribal, or local laws or regulations to provide lasting protection for part or all of the natural and cultural resources therein. The survey intends to collect demographic, cultural, and economic information from communities that are dependent on the estuarine and marine resources for their livelihood. The proposed data collection is necessary to develop science-based criteria and protocols to identify and evaluate the economic impacts of management decisions. The information will be used to protect the sustainable use of estuarine and marine ecosystems for present and future generations. The information collected will also be used to satisfy legal mandates under Executive Order 13158, the Magnuson-Stevens Fishery Conservation Act, the National Marine Sanctuaries Act, the National Wildlife Refuge Administration Act, the Coastal Zone Management Act, the National Environmental Policy Act, and other pertinent statues.

II. Method of Collection

The socio-economic information will be collected via personal interviews and mail surveys.

III. Data

OMB Number: None.
Form Number: None.
Type of Review: Regular submission.
Affected Public: Business and other for-profit organizations.
Estimated Number of Respondents: 700.
Estimated Time Per Response: 1 hour.
Estimated Total Annual Burden Hours: 700.
Estimated Total Annual Cost to Public: $0.

IV. Request for Comments

Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: December 10, 2003.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 03–31139 Filed 12–16–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 120903D]

Marine Mammals; File No. 881–1724

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Receipt of application.

SUMMARY: Notice is hereby given that the Alaska SeaLife Center, 301 Railway Avenue, Seward, Alaska 99664, has applied in due form for a permit to import and export marine mammal parts for purposes of scientific research.

DATES: Written or telefaxed comments must be received on or before January 16, 2004.

ADDRESSES: The application and related documents are available for review upon written request or by appointment in the following office(s):

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301)713–2289; fax (301)713–0376; and

Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802–1668; phone (907)586–7221; fax (907)586–7249.

FOR FURTHER INFORMATION CONTACT: Amy Sloan or Ruth Johnson, (301)713–2289.

SUPPLEMENTARY INFORMATION: The subject permit is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (MMPA; 16 U.S.C. 1361 *et seq.*), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR 222–226), and the Fur Seal Act of 1966, as amended (16 U.S.C. 1151 *et seq.*).

The applicant requests authorization to import and export an unlimited number of specimen samples (hard and soft parts) from the following species: Antarctic fur seal (*Arctocephalus gazella*), Australian fur seal (*Arctocephalus pusillus*), Australian sea lion (*Neophoca cinerea*), California sea lion (*Zalophus californianus*), harbor seal (*Phoca vitulina*), northern fur seal (*Callorhinus ursinus*), ribbon seal (*Phoca fasciata*), ringed seal (*Phoca hispida*), Southern fur seal (*Arctocephalus australis*), Southern sea lion (*Otaria flavescens*), Steller sea lion (*Eumetopias jubatus*), beluga whale (*Delphinapterus leucas*), bowhead whale (*Balaena mysticetus*), gray whale (*Eschrichtius robustus*), humpback whale (*Megaptera novaeangliae*), killer whale (*Orcinus orca*), and sperm whale (*Physeter catodon*). Specimens would be collected from the following sources and then imported or exported: under existing permits in the country of origin; from legal subsistence hunts; from legal incidental bycatch; and from opportunistic collection of stranded carcasses. The purposes of this research are for a number of projects to study marine mammal population ecology, diet and nutrition, reproductive physiology, toxicology, and health. The applicant has requested a five-year permit.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an initial determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Written comments or requests for a public hearing on this application should be mailed to the Chief, Permits, Conservation and Education Division, F/PR1, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular request would be appropriate.

Comments may also be submitted by facsimile at (301)713–0376, provided the facsimile is confirmed by hard copy submitted by mail and postmarked no later than the closing date of the comment period. Please note that comments will not be accepted by e-mail or by other electronic media.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Dated: December 11, 2003.

Stephen L. Leathery,

Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 03–31138 Filed 12–16–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–301–099]

ANR Pipeline Company; Notice Of Negotiated Rate

December 10, 2003.

Take notice that on December 1, 2003, ANR Pipeline Company, (ANR) tendered for filing two negotiated rate agreements between ANR and Callon Petroleum Operating Company pursuant to ANR's Rate Schedules ITS and ITS (Liquefiables), and a related Lease Dedication Agreement.

ANR states that it is also submitted the following tariff sheets to add the Callon Lease Dedication Agreement, as well as various other ANR Lease Dedication Agreements previously accepted by the Commission, to Section 31, Non-Conforming Agreements, of the General Terms and Conditions of ANR's FERC Gas Tariff:

Sixteenth Revised Sheet No. 190
Original Sheet No. 190A

ANR requests that the Commission accept and approve the subject negotiated rate agreements and revised tariff sheets to be effective December 1, 2003.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with § 385.214 or § 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with § 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the e-Filing link.

Magalie R. Salas,

Secretary.

[FR Doc. E3–00566 Filed 12–16–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–545–002]

Dominion Cove Point LNG, LP; Notice of Compliance Filing

December 10, 2003.

Take notice that on December 9, 2003, Dominion Cove Point LNG, LP (Cove Point) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the following tariff sheets, with an effective date of August 1, 2003:

Second Substitute Second Revised Sheet No. 240
Second Substitute First Revised Sheet No. 241
Substitute Second Revised Sheet No. 245

Cove Point states that the purpose of this filing is to comply with the Commission's "Order On Compliance" issued on November 18, 2003. Cove Point has filed to modify its capacity release provisions in Section 10 (Release and Assignment of Service Rights) of the General Terms and Conditions (GT & C) of its FERC Gas Tariff consistent with the Commission's November 18 Order.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with § 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with § 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the e-Filing link.

Magalie R. Salas,

Secretary.

[FR Doc. E3–00579 Filed 12–16–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–551–002]

Dominion Transmission, Inc.; Notice of Compliance Filing

December 10, 2003.

Take notice that on November 26, 2003, Dominion Transmission, Inc. (DTI) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheets, with an effective date of November 1, 2003:

Ninth Revised Sheet No. 39
Original Sheet No. 1503
Sheet Nos. 1504–1999

DTI states that the purpose of this filing is to comply with the Commission's October 27 Order in Docket No. RP02–551–001.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with § 385.211 of

the Commission's Rules and Regulations. All such protests must be filed in accordance with § 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the e-Filing link.

Magalie R. Salas,

Secretary.

[FR Doc. E3–00578 Filed 12–16–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP04–24–000]

Gulf South Pipeline Company, LP and Prism Gas Systems, Inc.; Notice of Application

December 10, 2003.

Take notice that on December 1, 2003, Gulf South Pipeline Company, LP (Gulf South) located at 20 East Greenway Plaza, Suite 900, Houston, Texas 77046 and Prism Gas Systems, Inc. (Prism) located at 2350 Airport Freeway, Suite 200, Bedford, Texas 76022, filed, in Docket No. CP04–24–000, an application pursuant to Section 7(b) of the Natural Gas Act (NGA), as amended, and Part 157 of the Commission regulations, for authorization to abandon certain Gulf South natural gas pipeline facilities (Panola County Facilities), located primarily in Panola and Harrison Counties, Texas, by sale to Prism and for authorization to abandon Gulf South's gathering and transportation services provided through such pipeline facilities. Gulf South and Prism also request that the Commission declare that the Panola County Facilities, once abandoned, will be gathering facilities and exempt from the Commission's regulation pursuant to Section 1(b) of the NGA, all as more fully set forth in the application which is on file with the Commission and open to public inspection. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "e-Library" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659.

Any questions concerning this application may be directed to J. Kyle Stephens, Director of Certificates, Gulf South Pipeline Company, LP, 20 East Greenway Plaza, Houston, Texas, 77046, or: phone (713) 544–7309, fax (713) 544–4818, e-mail *kyle.stephens@gulfsouthpl.com*.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10) by the comment date, below. A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Protests, comments and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Comment Date: December 31, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. E3–00570 Filed 12–16–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–176–097]

Natural Gas Pipeline Company of America; Notice of Negotiated Rates

December 10, 2003.

Take notice that on December 5, 2003, Natural Gas Pipeline Company of America (Natural) tendered for filing to become part of its FERC Gas Tariff, Sixth Revised Volume No. 1, the tariff sheets listed on Appendix A to the filing, to be effective December 5, 2003.

Natural states that the purpose of this filing is to cancel Natural's tariff sheets setting forth certain expired negotiated rate transactions.

Natural states that copies of the filing are being mailed to all parties set out on the Commission's official service list in Docket No. RP99–176.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with § 385.214 or § 385.211 of the Commission's Rules and § 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the e-Filing link.

Magalie R. Salas,

Secretary.

[FR Doc. E3–00582 Filed 12–16–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–563–003]

Northern Border Pipeline Company; Notice of Compliance Filing

December 10, 2003.

Take notice that on December 4, 2003, Northern Border Pipeline Company (Northern Border) tendered for filing to become part of Northern Border's FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets to become effective January 5, 2004:

Substitute Fifth Revised Sheet No. 270
Original Sheet No. 270.01
Original Sheet No. 270.02

Northern Border states that this filing is made to comply with an order issued on September 10, 2003 in Docket No. RP03–563–000 wherein Northern Border was required to clarify its tariff with respect to procedures for bids and awards for available capacity.

Northern Border states that it is proposing to modify Subsections 26.2(a) and 26.2(b) of its tariff to clarify the criteria to be used for the bidding and awarding of capacity that will commence either (1) more than 90 days prior to the commencement of service date or (2) within 90 days or less prior to the commencement of service date.

Northern Border states that copies of this filing have been sent to all parties of record in this proceeding and to Northern Border's contracted shippers and interested state regulatory commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with § 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the e-Filing link.

Magalie R. Salas,

Secretary.

[FR Doc. E3–00580 Filed 12–16–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–116–002]

Northwest Pipeline Corporation; Notice of Compliance Filing

December 10, 2003.

Take notice that on December 5, 2003, Northwest Pipeline Corporation (Northwest) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheets, to be effective as indicated:

Effective January 1, 2002
Substitute Fourth Revised Sheet No. 303–A
Effective October 1, 2002
Substitute Fifth Revised Sheet No. 303–A

Northwest states that it has revised its tariff in compliance with the Commission's Order dated November 18, 2003, to provide that the value of any gas to which it takes title pursuant to Section 5.2 of Rate Schedule DEX–1 will be credited to shippers through its penalty crediting mechanism.

Northwest states that a copy of this filing has been served upon each person designated on the official service list compiled by the Secretary in this proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with § 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with § 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the e-Filing link.

Magalie R. Salas,

Secretary.

[FR Doc. E3–00577 Filed 12–16–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP04–21–000]

Transcontinental Gas Pipe Line Corporation; Notice of Application for Abandonment of Service

December 10, 2003.

Take notice that on December 1, 2003, Transcontinental Gas Pipe Line Corporation (Transco), filed in Docket No. CP04–21–000, an application, in abbreviated form, pursuant to section 7(b) of the Natural Gas Act, as amended, and part 157 of the Rules and Regulations of the Federal Energy Regulatory Commission, for an order permitting and approving abandonment of certain firm sales service provided to Alabama Gas Corporation (Linden) (AGC Linden) under Transco's Rate Schedule FS.

Transco states that it entered into a firm sales agreement with AGC Linden on August 1, 1991, under which Transco sells gas to AGC Linden under Rate Schedule FS (FS Agreement). Transco further states that it is prepared to seek accelerated abandonment of any Rate Schedule FS services it provides to a similarly situated customer that requests such an accelerated abandonment.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with § 385.214 or § 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before the date as indicated below. Protests will be considered by the Commission in determining the appropriate action to be

taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the e-Filing link.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission on this application if no petition is filed within the time required herein, and the Commission on its own review of the matter finds that a grant of the abandonment is required by the public convenience and necessity. If a protest or petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given. Under this procedure, unless otherwise advised, it will be unnecessary for Transco to appear or to be represented at the hearing.

Comment Date: December 29, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. E3–00567 Filed 12–16–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP04–22–000]

Transcontinental Gas Pipe Line Corporation; Notice of Application for Abandonment of Service

December 10, 2003.

Take notice that on December 1, 2003, Transcontinental Gas Pipe Line Corporation (Transco), filed in Docket No. CP04–22–000 an application, in abbreviated form, pursuant to Section 7(b) of the Natural Gas Act, as amended, and part 157 of the Rules and Regulations of the Federal Energy Regulatory Commission, for an order permitting and approving abandonment of certain firm sales service provided to Alabama Gas Corporation (Thomaston) (AGC Thomaston) under Transco's Rate Schedule FS.

Transco states that it entered into a firm sales agreement with AGC Thomaston on August 1, 1991, under which Transco sells gas to AGC Thomaston under Rate Schedule FS (FS Agreement). Transco further states that it is prepared to seek accelerated abandonment of any Rate Schedule FS services it provides to a similarly situated customer that requests such an accelerated abandonment.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with § 385.214 or § 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before the date as indicated below. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary: Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the e-Filing link.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission on this application if no petition is filed within the time required herein, and the Commission on its own review of the matter finds that a grant of the abandonment is required by the public convenience and necessity. If a protest or petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given. Under this procedure, unless otherwise advised, it will be unnecessary for Transco to appear or to be represented at the hearing.

Comment Date: December 29, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. E3–00568 Filed 12–16–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP04–23–000]

Transcontinental Gas Pipe Line Corporation; Notice of Application for Abandonment of Service

December 10, 2003.

Take notice that on December 1, 2003, Transcontinental Gas Pipe Line Corporation (Transco), filed in Docket No. CP04–23–000 an application, in abbreviated form, pursuant to Section 7(b) of the Natural Gas Act, as amended, and Part 157 of the Rules and Regulations of the Federal Energy Regulatory Commission, for an order permitting and approving abandonment of certain firm sales service provided to Fountain Inn Natural Gas Company (Fountain Inn) under Transco's Rate Schedule FS.

Transco states that it entered into a firm sales agreement with Fountain Inn on August 1, 1991, under which Transco sells gas to Fountain Inn under Rate Schedule FS (FS Agreement). Transco further states that it is prepared to seek accelerated abandonment of any Rate Schedule FS services it provides to a similarly situated customer that requests such an accelerated abandonment.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with § 385.214 or § 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before the date as indicated below. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary. Enter

the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208-3676, or TTY, contact (202) 502-8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission on this application if no petition is filed within the time required herein, and the Commission on its own review of the matter finds that a grant of the abandonment is required by the public convenience and necessity. If a protest or petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given. Under this procedure, unless otherwise advised, it will be unnecessary for Transco to appear or to be represented at the hearing.

Comment Date: December 29, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. E3–00569 Filed 12–16–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP04–20–000]

Transcontinental Gas Pipe Line Corporation; Notice of Application for Abandonment for Service

December 10, 2003.

Take notice that on December 1, 2003, Transcontinental Gas Pipe Line Corporation (Transco), filed in Docket No. CP04–20–000 an application, in abbreviated form, pursuant to Section 7(b) of the Natural Gas Act, as amended, and part 157 of the Rules and Regulations of the Federal Energy Regulatory Commission, for an order permitting and approving abandonment of certain firm sales service provided to Alabama Gas Corporation (Clanton) (AGC Clanton) under Transco's Rate Schedule FS.

Transco states that it entered into a firm sales agreement with AGC Clanton on August 1, 1991, under which Transco sells gas to AGC Clanton under Rate Schedule FS (FS Agreement). Transco further states that it is prepared to seek accelerated abandonment of any Rate Schedule FS services it provides to a similarly situated customer that requests such an accelerated abandonment.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with § 385.214 or § 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before the date as indicated below. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the e-Filing link.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission on this application if no petition is filed within the time required herein, and the Commission on its own review of the matter finds that a grant of the abandonment is required by the public convenience and necessity. If a protest or petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given. Under this procedure, unless otherwise advised, it will be unnecessary for Transco to appear or to be represented at the hearing.

Comment Date: December 29, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. E3–00583 Filed 12–16–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–104–000]

Wyoming Interstate Company, Ltd.; Notice of Proposed Changes in FERC Gas Tariff

December 10, 2003.

Take notice that on December 4, 2003, Wyoming Interstate Company, Ltd. (WIC) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 2, the tariff sheets listed in appendix A to the filing with an effective date of January 1, 2004.

WIC states that these tariff sheets remove the Columbia Exit Fee Surcharge Credits provisions that are due to terminate on December 31, 2003.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with § 385.214 or § 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with § 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the e-Filing link.

Magalie R. Salas,

Secretary.

[FR Doc. E3–00581 Filed 12–16–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing With the Commission and Soliciting Motions To Intervene and Protests

December 9, 2003.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* Original Minor License Application.

b. *Project No.:* 12063–001.

c. *Date filed:* October 17, 2003.

d. *Applicant:* William Arkoosh.

e. *Name of Project:* Little Wood River Ranch II Hydroelectric Project.

f. *Location:* On the Little Wood River, near the Town of Shoshone, Lincoln County, Idaho. No lands of the United States would be affected.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* William Arkoosh, 2005 Highway 26, Gooding, Idaho 83330, (208) 934–5387.

i. *FERC Contact:* Gaylord W. Hoisington, (202) 502–6032, or e-mail at: *gaylord.hoisington@ferc.gov.*

j. *Cooperating agencies:* We are asking Federal, State, local, and tribal agencies with jurisdiction and/or special expertise with respect to environmental issues to cooperate with us in the preparation of the environmental document. Agencies who would like to request cooperating status should follow the instructions for filing comments described in item k below.

k. *Deadline for filing motions to intervene and protest and requests for cooperating agency status:* 60 days from the issuance date of this notice (February 9, 2004).

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

Motions to intervene and protest and requests for cooperating agency status may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the "e-Filing" link.

l. This application is not ready for environmental analysis at this time.

m. The proposed new construction run-of-river project would consist of: (1) A 10-foot-high, 220-foot-long rock rubble diversion dam; (2) a 2,800-foot-long open feeder canal; (3) a concrete intake structure having two parallel 5-foot-diameter, 250-foot-long steel penstocks; (4) a 60-foot-long, 20-foot-wide, 25-foot-high concrete and steel power house containing two hydraulic Francis turbines with a total installed capacity of 1,500 kilowatts; (5) a 3,500-foot-long tailrace channel; (6) a 10,500-foot-long, 12.5-kilovolt transmission line; (7) an access road and (8) appurtenant facilities.

n. A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

o. Any qualified applicant desiring to file a competing application must submit to the Commission, on or before the specified deadline date for the particular application, a competing development application, or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing development application no later than 120 days after the specified deadline date for the particular application. Applications for preliminary permits will not be accepted in response to this notice.

A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

Anyone may submit a protest or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, and 385.214. In determining the appropriate action to take, the Commission will consider all protests filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any protests or motions to intervene must be received on or before the specified deadline date for the particular application.

When the application is ready for environmental analysis, the Commission will issue a public notice requesting comments, recommendations, terms and conditions, or prescriptions.

All filings must (1) bear in all capital letters the title "PROTEST" or "MOTION TO INTERVENE," "NOTICE OF INTENT TO FILE COMPETING APPLICATION," or "COMPETING APPLICATION;" (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. Agencies may obtain copies of the application directly from the applicant. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application.

Magalie R. Salas,

Secretary.

[FR Doc. E3–00572 Filed 12–16–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Tendered for Filing With the Commission, Soliciting Additional Study Requests, and Establishing Procedures for Relicensing and a Deadline for Submission of Final Amendments

December 10, 2003.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* Original Major License.

b. *Project No.:* 12454–001.

c. *Date Filed:* November 26, 2003.

d. *Applicant:* Energie Group, LLC.

e. *Name of Project:* Williams Hydroelectric Project.

f. *Location:* On the East Fork of the White River, in the Town of Williams, Lawrence County, Indiana. The project does not affect federal lands.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Andrew R. Blystra, A.R. Blystra, Ltd. 15 West Sixth Street, Holland, MI 49423, (616) 394–0606 or Stacy Harriott, 641 Monroe Street Suite 108, Sheboygan Falls, WI 53085, (920) 467–9048.

i. *FERC Contact:* Carolyn Holsopple at (202) 502–6407, or *carolyn.holsopple@ferc.gov.*

j. *Cooperating Agencies:* We are asking federal, state, local, and tribal agencies with jurisdiction and/or special expertise with respect to environmental issues to cooperate with us in the preparation of the environmental document. Agencies who would like to request cooperating status should follow the instructions for filing comments described in item l below.

k. Pursuant to § 4.32(b)(7) of 18 CFR of the Commission's regulations, if any resource agency, Indian Tribe, or person believes that an additional scientific study should be conducted in order to form an adequate factual basis for a complete analysis of the application on its merit, the resource agency, Indian Tribe, or person must file a request for a study with the Commission not later than 60 days from the date of filing of the application, and serve a copy of the request on the applicant.

l. *Deadline for Filing Additional Study Requests and Requests for Cooperating Agency Status:* 60 days from the filing date shown in paragraph (c), or January 25, 2004.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. The Commission's Rules of Practice require all interveners filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

Additional study requests may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filing. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site *http://www.ferc.gov* under the "e-Filing" link. After logging into the e-Filing system, select "Comment on Filing" from the Filing Type Selection screen and continue with the filing process.

m. *Status:* This application is not ready for environmental analysis at this time.

n. *Description of Project:* The proposed Williams Project would be operated manually in a run-of-river mode by an operator living on site. The proposed project would consist of the following features: (1) A 295-foot-long, 32.5-foot-tall concrete spillway dam, with 2.5-foot buttresses on each side; (2) eight new intake gates (two to each flume), with new trashracks; (3) a 263-acre reservoir, with a normal reservoir elevation of 475.0 feet National Geodetic Vertical Datum and a storage capacity of 2,680 acre-feet; (4) four flumes, supplying water to the generating units; (5) stop-logs at the downstream end of each flume; (6) a 144-foot-long; 42-foot-wide concrete and steel powerhouse, containing five turbine and generating units (two Vertical Shaft Propeller—Nagler Type turbines, two Vertical shaft Double Runner Francis turbines and one new low-flow Vertical Shaft Francis turbine), having an installed capacity of 4,250 kilowatts; (7) a 12,470-volt transmission line; and (8) appurtenant facilities.

The applicant estimates that the average annual generation would be about 21,286,200 kilowatt-hours.

o. A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number, excluding the last three digits in the docket number field (P–2603), to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov*, or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

You may also register online at *http://www.ferc.gov/esubscribenow.htm* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

p. With this notice, we are initiating consultation with the *INDIANA STATE HISTORIC PRESERVATION OFFICER* (SHPO), as required by section 106, National Historic Preservation Act, and the regulations of the Advisory Council on Historic Preservation, 36 CFR 800.4.

q. *Procedural schedule and final amendments:* The application will be processed according to the following Hydro Licensing Schedule. Revisions to the schedule will be made if the Commission determines it necessary to do so:

Action	Tentative date
Issue Deficiency Letter	January 2004.
Issue Acceptance letter	April 2004.
Issue Scoping Document 1 for comments.	May 2004.
Request Additional Information	July 2004.
Issue Scoping Document 2	August 2004.
Notice of application is ready for environmental analysis.	November 2004.
Notice of the availability of the draft EA.	April 2005.
Notice of the availability of the final EA.	August 2005.
Ready for Commission's decision on the application.	November 2005.

Final amendments to the application must be filed with the Commission no later than 30 days from the issuance date of this notice.

Magalie R. Salas,

Secretary.

[FR Doc. E3–00573 Filed 12–16–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing, and Soliciting Comments, Motions To Intervene, and Protests

December 10, 2003.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* License amendment for non-project use of project lands and waters.

b. *Project No.:* 1951–114.

c. *Date Filed:* September 3, 2003.

d. *Applicant:* Georgia Power.

e. *Name of Project:* Sinclair Project.

f. *Location:* Sinclair Project reservoir on the Oconee River, in Baldwin and Putnam Counties, Georgia.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Scott Hendricks, Georgia Power, 241 Ralph McGill Blvd., NE., Atlanta, GA 30308–3374, (404) 506–2392.

i. *FERC Contact:* Ms. Monica Maynard, (202) 502–6013.

j. *Deadline for filing motions to intervene, protests and comments:* January 12, 2004.

k. The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

l. *Description of Proposed Action:* The Applicant seeks to allow the Sinclair Water Authority (SWA), a joint water authority created by Baldwin and Putnam Counties (both of which border the project), to withdraw up to 6 MGD from the Oconee River within the Sinclair Project boundary, for municipal water supply.

m. The filings are available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov*. For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the addresses in item h.

n. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

o. *Comments, Protests, or Motions To Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

p. *Filing and Service of Responsive Documents:* Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", OR "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

q. *Agency Comments:* Federal, State, and local agencies are invited to file comments on the described applications. A copy of the applications may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

r. Comments, protests, and interventions may be filed electronically on the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See* CFR 18 385.2001(a)(1)(iii) and the instructions on the Commission's Web site, *http://ferc.gov* under the "e-filing" link.

Magalie R. Salas,

Secretary.

[FR Doc. E3–00574 Filed 12–16–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application for Transfer of License and Soliciting Comments, Motions To Intervene, and Protests

December 10, 2003.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Transfer of License.

b. *Project No:* 2901–015.

c. *Date Filed:* October 31, supplemented November 18 and December 8, 2003.

d. *Applicants:* Nekoosa Packaging Corporation (Nekoosa, Transferor), Holcomb Rock Company (Holcomb, Transferee).

e. *Name and Location of Project:* The Holcomb Rock Hydroelectric Project is located on the James River in Amherst and Bedford Counties, Virginia.

f. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.

g. *Applicant Contacts:* For Nekoosa: George Cifelli, Georgia Pacific Corporation, 9363 Lee Jackson Highway, Big Island, VA 24526. For Holcomb: Byron Wenger, Shenandoah Hydro Company, 788 Brady Lane, Mount Jackson, VA 22842, (540) 477–3434.

h. *FERC Contact:* James Hunter, (202) 502–6086.

i. *Deadline for filing comments, protests, and motions to intervene:* January 12, 2004.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings. Please include the project number (P–2901–015) on any comments or motions filed.

The Commission's Rules of Practice and Procedure require all interveners filing a document with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the documents on that resource agency.

j. *Description of Application:* The Applicants request Commission approval to transfer the project license from Nekoosa to Holcomb.

k. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the project number excluding the last three digits (P–2901) in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov*. For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the addresses in item g. above.

l. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

m. *Comments, Protests, or Motions To Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

n. *Filing and Service of Responsive Documents:* Any filings must bear in all capital letters the title "COMMENTS", "PROTEST", OR "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

o. *Agency Comments:* Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Magalie R. Salas,

Secretary.

[FR Doc. E3–00575 Filed 12–16–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Project No. 2984–052]

S.D. Warren Company; Notice of Meeting To Discuss the Eel Weir Project's Operation During the Spring of 2003

December 10, 2003.

On January 7, 2004, the Federal Energy Regulatory Commission (FERC) will hold a meeting at Sebago Lake State Park in Casco, Maine to discuss this past year's spring operation of the Eel Weir Hydroelectric Project (FERC No. 2984). The project is owned and operated by S.D. Warren Company (licensee) and located on the Presumpscot River in Cumberland County, Maine.

By Order Amending Lake Level Management Plan, the licensee is required, in part, to maintain the elevation of Sebago Lake within prescribed elevations between May 1 and November 1 each year. The lake level management plan states that the lake shall be managed during spring fill-up to reach a level of 266.65 feet, plus or minus six inches, no sooner than May 1 and no later than the second week in June.

At the January 7th meeting we will discuss this past year's spring operation under the required parameters and varying natural conditions. Also, we will discuss the upcoming year's operation (during the winter and spring of 2004) in order to achieve the required lake level. The January 7 Meeting will focus solely on spring 2003 and 2004 operation and not discuss any relicensing issues that are currently pending before the Commission.

The time and location of the meeting is as follows:

Date: Wednesday, January 7, 2004.

Time: 10 a.m.

Place: Sebago Lake State Park.

Address: 11 Park Access Road, Casco, Maine 04015.

Phone: (207) 693–6231.

If you have any questions regarding the meeting or this notice, please contact Mr. Thomas LoVullo at FERC at (202) 502–8900.

Magalie R. Salas,

Secretary.

[FR Doc. E3–00576 Filed 12–16–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Sunshine Act Meeting

December 10, 2003.

The following notice of meeting is published pursuant to section 3(a) of the Government in the Sunshine Act (Pub. L. 94–409), 5 U.S.C 552b:

AGENCY HOLDING MEETING: Federal Energy Regulatory Commission.

DATE AND TIME: December 17, 2003, 10 a.m.

PLACE: Room 2C, 888 First Street, NE., Washington, DC 20426.

STATUS: Open.

MATTERS TO BE CONSIDERED: Agenda.

*** Note**—Items listed on the agenda may be deleted without further notice.

CONTACT PERSON FOR MORE INFORMATION: Magalie R. Salas, Secretary, Telephone (202) 502–8400. For a recording listing items stricken from or added to the meeting, call (202) 502–8627.

This is a list of matters to be considered by the Commission. It does not include a listing of all papers relevant to the items on the agenda; however, all public documents may be examined in the Reference and Information Center.

846th Meeting—December 17, 2003; Regular Meeting, 10 a.m.

Administrative Agenda

A–1.
Docket# AD02–1, 000, Agency Administrative Matters.

A–2.
Docket# AD02–7, 000, Customer Matters, Reliability, Security and Market Operations; Follow-up to December 1, 2003, Reliability-Related Technical Conference.

Markets, Tariffs and Rates—Electric

E–1.
Docket# AD04–2, 000, MISO Business Plan Update: Implementation of Reliability Improvements and Market Design Steps.

E–2.
Docket# OA97–261, 006, Pennsylvania-New Jersey-Maryland Interconnection.
Other#s EC96–28, 007, Atlantic City Electric Company, Baltimore Gas and Electric Company, Delmarva Power & Light Company, Jersey Central Power & Light Company, Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power & Light Company, Potomac Electric Power Company and Public Service Electric and Gas Company.
EC96–29, 007, PECO Energy Company.
EL96–69, 007, Atlantic City Electric Company, Baltimore Gas and Electric Company, Delmarva Power & Light Company, Jersey Central Power & Light Company, Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power & Light Company, Potomac Electric Power Company and Public Service Electric and Gas Company.
ER96–2516, 007, Atlantic City Electric Company, Baltimore Gas and Electric Company, Delmarva Power & Light Company, Jersey Central Power & Light Company, Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power & Light Company, Potomac Electric Power Company and Public Service Electric and Gas Company.
ER96–2668, 007, PECO Energy Company.
EC97–38, 005, Pennsylvania Electric Company, Pennsylvania Power & Light Company, Potomac Electric Power Company, Public Service Electric and Gas Company, Atlantic City Electric Company, Baltimore Gas and Electric Company, Delmarva Power & Light Company, Jersey Central Power & Light Company, Jersey Central Power & Light Company and Metropolitan Edison Company.
EL97–44, 005, Pennsylvania-New Jersey-Maryland Interconnection Restructuring.
ER97–1082, 008, Pennsylvania-New Jersey-Maryland Interconnection.
ER97–3189, 034, Atlantic City Electric Company, Baltimore Gas and Electric Company, Delmarva Power & Light Company, Jersey Central Power & Light

Company and Metropolitan Edison Company.
ER97–3273, 005, Pennsylvania Electric Company, Pennsylvania Power & Light Company, Potomac Electric Power Company, Public Service Electric and Gas Company and Pennsylvania-New Jersey-Maryland Interconnection Restructuring.
OA97–678, 005, PJM Interconnection, L.L.C.
E–3.
Docket# PA03–12, 000, Transmission Congestion on the Delmarva Peninsula.
E–4.
Docket# ER03–1141, 000, New England Power Pool and ISO New England, Inc.
Other#s EL03–222, 000, *Maine Public Utilities Commission, Maine Public Advocate, Rhode Island Public Utilities Commission, Pinpoint Power, NRG Energy, Inc. and GenPower, LLC.*, v. *New England Power Pool and ISO New England, Inc.*
ER03–1141, 001, New England Power Pool and ISO New England, Inc.
ER03–1141, 002, New England Power Pool and ISO New England, Inc.
EL03–222, 001, *Maine Public Utilities Commission, Maine Public Advocate, Rhode Island Public Utilities Commission, Pinpoint Power, NRG Energy, Inc. and GenPower, LLC.*, v. *New England Power Pool and ISO New England, Inc.*
EL03–222, 002, *Maine Public Utilities Commission, Maine Public Advocate, Rhode Island Public Utilities Commission, Pinpoint Power, NRG Energy, Inc. and GenPower, LLC.*, v. *New England Power Pool and ISO New England, Inc.*
E–5.
Docket# EC03–131, 000, Oklahoma Gas & Electric Company and NRG McClain LLC.
E–6.
Docket# ER04–55, 000, Maine Yankee Atomic Power Company.
E–7.
Omitted
E–8.
Omitted
E–9.
Omitted
E–10.
Docket# ER04–35, 000, Entergy Services, Inc.
E–11.
Docket# RT03–2, 000, Three Rivers Energy LLC.
E–12.
Docket# OA97–237, 012, New England Power Pool and New England Independent System Operator.
Other#s OA97–237, 013, New England Power Pool and New England Independent System Operator.
OA97–237, 014, New England Power Pool and New England Independent System Operator.
E–13.
Omitted
E–14.
Docket# ER01–2214, 002, Entergy Services, Inc.
E–15.
Omitted
E–16.
Docket# EL00–95, 077, *San Diego Gas & Electric Company* v. *Sellers of Energy and Ancillary Services into Markets Operated by the California Independent System Operator Corporation and the California Power Exchange.*
Other#s EL00–98, 065, Investigation of Practices of the California Independent System Operator Corporation and the California Power Exchange.
E–17.
Docket# ER01–889, 014, California Independent System Operator Corporation.
Other#s EL00–95, 072, *San Diego Gas & Electric Company* v. *Sellers of Energy and Ancillary Services Into Markets Operated by the California Independent System Operator Corporation and the California Power Exchange.*
ER01–889, 015, California Independent System Operator Corporation.
ER01–3013, 006, California Independent System Operator Corporation.
E–18.
Omitted
E–19.
Docket# EL03–27, 001, *Niagara Mohawk Power Corporation* v. *Huntley Power LLC, NRG Huntley Operations, Inc., Dunkirk Power LLC, NRG Dunkirk Operations, Inc., Oswego Harbor Power LLC and NRG Oswego Operations, Inc.*
E–20.
Docket# ER03–421, 002, PPL Wallingford Energy LLC.
Other#s ER03–421, 004, PPL Wallingford Energy LLC.
ER03–421, 006, PPL Wallingford Energy LLC.
ER03–563, 011, Devon Power LLC.
ER03–563, 013, Devon Power LLC.
ER03–563, 015, Devon Power LLC.
ER03–563, 017, Devon Power LLC.
ER03–563, 019, Devon Power LLC.
ER03–563, 022, Devon Power LLC.
E–21.
Docket# ER01–313, 003, *California Independent System Operator Corporation.*
Other#s ER01–424, 003, Pacific Gas and Electric Company.
EL03–131, 000, *San Diego Gas & Electric Company* v. *California Independent System Operator Corporation.*
E–22.
Omitted
E–23.
Omitted
E–24.
Docket# RT01–1, 003, RTO Informational Filings.
Other#s RT01–3, 001, Citizens Communications Company.
RT01–5, 001, Maine Public Service Company.
RT01–11, 001, Baconton Power LLC.
RT01–19, 001, Maine Electric Power Company.
RT01–30, 001, Florida Keys Electric Cooperative Association, Inc.
RT01–39, 001, Concord Electric Company and Exeter & Hampton Electric Light Company.
RT01–61, 001, Northern Maine Independent System Administrator Inc.
RT01–86, 004, Bangor Hydro-Electric Co., Central Maine Power Company, National Grid USA, Northeast Utilities Service Company, United Illuminating Company, Vermont Electric Power Company and ISO New England Inc.
RT01–90, 003, Fitchburg Gas & Electric Light Company, Concord Electric Company and Exeter & Hampton Electric Light Company.
RT01–94, 004, NSTAR Services Company.
RT01–95, 004, New York Independent System Operator Inc.
RT01–97, 001, Central Vermont Public Service Corporation, Citizens Communications Company, Green Mountain Power Corporation and Vermont Electric Power Company.
RT01–99, 001, Regional Transmission Organizations.
RT02–3, 001, ISO New England Inc., and New York Independent System Operator, Inc.
E–25.
Docket# ER02–1656, 014, California Independent System Operator Corporation.
Other#s EL01–68, 027, Investigation of Wholesale Rates of Public Utility Sellers of Energy and Ancillary Services in the Western Electricity Coordinating Council.
ER02–2576, 004, California Independent System Operator Corporation.
ER02–1656, 010, California Independent System Operator Corporation.
ER02–1656, 011, California Independent System Operator Corporation.
ER02–1656, 012, California Independent System Operator Corporation.
E–26.
Docket# ER00–1831, 005, CinCap VII, LLC.
Other#s ER00–1784, 006, CinCap Madison, LLC.
ER02–319, 003, CinCap VII, LLC.
ER02–322, 004, CinCap Madison, LLC.
E–27.
Docket# EL02–23, 002, *Consolidated Edison Company of New York, Inc.*, v. *Public Service Electric and Gas Company, PJM Interconnection, L.L.C. and New York Independent System Operator.*
Other#s EL02–23, 001, *Consolidated Edison Company of New York, Inc.*, v. *Public Service Electric and Gas Company, PJM Interconnection, L.L.C. and New York Independent System Operator.*
E–28.
Omitted
E–29.
Docket# ER03–690, 002, New York Independent System Operator, Inc.
E–30.
Docket# ER03–552, 004, New York Independent System Operator, Inc.
Other#s ER03–552, 005, *New York Independent System Operator, Inc.*
ER03–984, 002, New York Independent System Operator, Inc.
ER03–984, 003, New York Independent System Operator, Inc.
E–31.

Docket# EL02–121, 005, *Occidental Chemical Corporation* v. *PJM Interconnection, L.L.C. and Delmarva Power & Light Company.*
E–32.
Docket# EL03–197, 002, PPM Energy, Inc. (f/k/a PacifiCorp Power Marketing, Inc.)
Other#s EL03–138, 002, Aquila Merchant Services, Inc. (f/k/a Aquila, Inc.)
EL03–181, 002, Aquila Merchant Services, Inc. (f/k/a Aquila, Inc.)
EL03–188, 002, Eugene Water and Electric Board.
E–33.
Docket# ER03–1221, 001, California Independent System Operator Corporation.
E–34.
Omitted
E–35.
Omitted
E–36.
Docket# RM01–8, 000, Filing Requirements for Electric Utility Service Agreements.
Other#s ER02–2001, 000, Electric Quarterly Reports.
E–37.
Omitted
E–38.
Docket# EL03–14, 000, City of Azusa, California.
Other#s EL03–15, 000, City of Anaheim, California.
EL03–15, 002, City of Anaheim, California.
EL03–20, 002, City of Riverside, California.
EL03–20, 000, City of Riverside, California.
EL03–21, 000, City of Banning, California.
E–39.
Omitted
E–40.
Docket# EL04–16, 000, Devon Power, LLC, Middletown Power LLC. Montville Power LLC and Norwalk Power LLC.
E–41.
Docket# EL04–12, 000, Springerville Unit 3 Holding, LLC.
E–42.
Docket# EL03–123, 000, *Richard Blumenthal, Attorney General of the State of Connecticut, and the Connecticut Department of Public Utility Control* v. *NRG Power Marketing, Inc.*
Other#s EL03–134, 000, *Richard Blumenthal, Attorney General of the State of Connecticut, and the Connecticut Department of Public Utility Control* v. *NRG Power Marketing, Inc.*
EL03–129, 000, Connecticut Light and Power Company.
EL03–123, 001, *Richard Blumenthal, Attorney General of the State of Connecticut, and the Connecticut Department of Public Utility Control* v. *NRG Power Marketing, Inc.*
E–43.
Docket# EL03–56, 000, *American Municipal Power—Ohio, Inc.* v. *Dayton Power and Light Company and PJM Interconnection, L.L.C.*
E–44.
Omitted
E–45.
Docket# EL03–204, 000, *AES Somerset, LLC* v. *Niagara Mohawk Power Corporation.*
E–46.
Docket# EL04–2, 000, *Sacramento Municipal Utility District* v. *Pacific Gas and Electric Company, Southern California Edison Company and San Diego Gas & Electric Company.*
E–47.
Docket# EL03–234, 000, *Nine Mile Point Nuclear Station, LLC* v. *Niagara Mohawk Power Corporation.*
E–48.
Docket# EL01–93, 009, *Mirant Americas Energy Marketing, LP, Mirant New England, LLC, Mirant Kendall, LLC, and Mirant, LLC* v. *ISO New England Inc.*
E–49.
Omitted
E–50.
Omitted
E–51.
Omitted
E–52.
Docket# EL03–117, 000, Investigation of Certain Enron-Affiliated QF's.
Other#s QF86–972, 006, Cogen Technologies NJ Venture.
QF90–65, 008, Cogen Technologies Linden Venture, L.P.
QF90–87, 008, Camden Cogen, L.P.
E–53.
Omitted
E–54.
Omitted
E–55.
Docket# ER98–495, 000, Pacific Gas and Electric Company.
Other#s ER98–1614, 000, Pacific Gas and Electric Company.
ER98–2145, 000, Pacific Gas and Electric Company.
ER99–3603, 000, Pacific Gas and Electric Company.
E–56.
Omitted
E–57.
Docket# ER93–465, 000, Florida Power & Light Company.
Other#s ER96–417, 000, Florida Power & Light Company.
ER96–1375, 000, Florida Power & Light Company.
OA97–245, 000, Florida Power & Light Company.
OA96–39, 000, Florida Power & Light Company.
E–58.
Docket# TX96–4, 001, Suffolk County Electrical Agency.
E–59.
Docket# EL03–47, 003, Investigation of Certain Enron-Affiliated QF's.
Other#s QF83–278, 009, Lumberton Power, LLC.
QF83–316, 010, Elizabethtown Power, LLC.
E–60.
Docket# EL03–47, 002, Investigation of Certain Enron-Affiliated QF's.
Other#s QF95–328, 004, EcoElectrica, L.P.
E–61.
Omitted
E–62.
Docket# EC04–18, 000, Alfalfa Electric Cooperative, Inc., Choctaw Electric Cooperative, Inc., and People's Electric Cooperative.
Other#s EL04–18, 000, Alfalfa Electric Cooperative, Inc., Choctaw Electric Cooperative, Inc., and People's Electric Cooperative.
E–63.
Docket# EL02–114, 000, Portland General Electric Company.
Other#s EL02–114, 006, Portland General Electric Company.
EL02–115, 001, Enron Power Marketing, Inc.
EL02–115, 007, Enron Power Marketing, Inc.
E–64.
Docket# EL03–236, 000, PJM Interconnection L.L.C.
E–65.
Docket# ER03–668, 001, Southwest Power Pool, Inc.
E–66.
Docket# ER03–1081, 002, Midwest Independent Transmission System Operator, Inc.
Other#s ER03–1081, 001, Midwest Independent Transmission System Operator, Inc.
E–67.
Docket# PA02–2, 000, Fact-Finding Investigation of Potential Manipulation of Electric and Natural Gas Prices.
Other#s PA03–1, 000, American Electric Power Company, Inc.
PA03–2, 000, Aquila Marketing Service.
PA03–3, 000, Coral Energy Resources, L.P.
PL03–3, 000, Price Discovery in Natural Gas and Electric Markets.
PA03–4, 000, CMS Marketing Services & Trading.
PA03–5, 000, Dynegy Inc.
PA03–6, 000, Duke Energy Trading and Marketing LLC.
AD03–7, 000, Natural Gas Price Formation.
PA03–7, 000, El Paso Merchant Energy, L.P.
PA03–8, 000, Mirant Americas Energy Marketing L.P.
PA03–9, 000, Reliant Resources, Inc.
IN03–10, 000, Investigation of Anomalous Bidding, Behavior and Practices in the Western Markets.
PA03–10, 000, Sempra Energy Trading Corp.
PA03–11, 000, Williams Energy Marketing & Trading Company.
EL03–59, 000, Reliant Energy Services, Inc.
EL03–60, 000, BP Energy Company.
EL03–77, 000, Enron Power Marketing, Inc., and Enron Energy Services Inc.
RP03–311, 000, Bridgeline Gas Marketing L.L.C., Citrus Trading Corporation, ENA Upstream Company, LLC, Enron Canada Corp., Enron Compression Services Company, Enron Energy Services, Inc., Enron MW, LLC, and Enron North America Corp.
E–68.
Docket# PA02–2, 000, Fact-Finding Investigation of Potential Manipulation of Electric and Natural Gas Prices.
E–69.
Docket# EL03–55, 001, *AES Warrior Run, Inc.*, v. *Potomac Edison Company d/b/a Allegheny Power.*
E–70.
Docket# ER03–601, 000, San Diego Gas & Electric Company.
E–71.
Docket# ER98–3527, 004, PJM Interconnection L.L.C.

E–72.
Docket# ER04–64, 000, American Electric Power Service Corporation.
E–73.
Omitted
E–74.
Docket# ER04–61, 000, California Independent System Operator Corporation.
E–75.
Docket# ER04–111, 000, California Power Exchange Corporation.
E–76.
Docket# ER01–2658, 000, American Electric Power Service Corporation.
Other#s EL00–79, 000, *Mid-Tex G&T Electric Cooperative, Inc., Big Country Electric Cooperative, Inc., Coleman County Electric Cooperative, Inc., Concho Valley Electric Cooperative, Inc., Golden Spread Electric Cooperative, Inc., Kimble Electric Cooperative, Inc., Lighthouse Electric Cooperative, Inc., Rio Grande Electric Cooperative, Inc., Southwest Texas Electric Cooperative, Inc., and Taylor Electric Cooperative, Inc.*, v. *West Texas Utilities Company.*
EL01–113, 000, *Mid-Tex G&T Electric Cooperative, Inc., Big Country Electric Cooperative, Inc., Coleman County Electric Cooperative, Inc., Concho Valley Electric Cooperative, Inc., Golden Spread Electric Cooperative, Inc., Kimble Electric Cooperative, Inc., Lighthouse Electric Cooperative, Inc., Rio Grande Electric Cooperative, Inc., Southwest Texas Electric Cooperative, Inc., and Taylor Electric Cooperative, Inc.*, v. *West Texas Utilities Company.*
EC01–130, 000, American Electric Power Services Corporation.
ER01–2658, 001, American Electric Power Services Corporation.
ER01–2668, 000, American Electric Power Services Corporation.
ER01–2977, 000, American Electric Power Services Corporation.
ER01–2977, 001, American Electric Power Services Corporation.
ER01–2980, 000, American Electric Power Services Corporation.
ER01–2980, 001, American Electric Power Services Corporation.
EL02–24, 000, *Mid-Tex G&T Electric Cooperative, Inc., Big Country Electric Cooperative, Inc., Coleman County Electric Cooperative, Inc., Concho Valley Electric Cooperative, Inc., Golden Spread Electric Cooperative, Inc., Kimble Electric Cooperative, Inc., Lighthouse Electric Cooperative, Inc., Rio Grande Electric Cooperative, Inc., Southwest Texas Electric Cooperative, Inc., and Taylor Electric Cooperative, Inc.*, v. *West Texas Utilities Company.*
ER02–371, 000, American Electric Power Services Corporation.
ER02–371, 001, American Electric Power Services Corporation.
ER02–371, 002, American Electric Power Services Corporation.
ER02–602, 000, American Electric Power Services Corporation.
ER02–602, 001, American Electric Power Services Corporation.
ER02–1216, 000, American Electric Power Services Corporation.
ER02–1410, 000, West Texas Utilities Company.
E–77.
Docket# EG04–16,000, Central Mississippi Generating Company, LLC.
E–78.
Docket# ER03–694, 000, PJM Interconnection L.L.C.
Other#s ER03–694, 001, PJM Interconnection L.L.C.
E–79.
Docket# EL02–111, 004, Midwest Independent Transmission System Operator, Inc.
Other#s EL02–111, 005, Midwest Independent Transmission System Operator, Inc.
EL02–111, 006, Midwest Independent Transmission System Operator, Inc.
EL02–111, 007, Midwest Independent Transmission System Operator, Inc.
EL02–111, 008, Midwest Independent Transmission System Operator, Inc.
EL03–212, 002, Midwest Independent Transmission System Operator, Inc.
EL04–5, 000, American Electric Power Service Corporation.

Markets, Tariffs and Rates—Gas

G–1.
Docket# RP00–152, 002, Northern Natural Gas Company.
G–2.
Docket# PL02–6, 001, Natural Gas Pipeline Negotiated Rate-Policies and Practices.
G–3.
Docket# RP03–591, 001, CenterPoint Energy Gas Transmission Company.
G–4.
Docket# RP03–604, 000, *LSP-Cottage Grove, L.P. and LSP-Whitewater Limited Partnership* v. *Northern Natural Gas Company.*
G–5.
Docket# RP02–153, 004, Horizon Pipeline Company, L.L.C.
Other#s RP02–153, 005, Horizon Pipeline Company, L.L.C.
G–6.
Docket# RP04–57, 000, Transcontinental Gas Pipe Line Corporation.
G–7.
Docket# RP04–58, 000, Trunkline Gas Company, L.L.C.
G–8.
Docket# RP04–47, 000, High Island Offshore System, L.L.C.
G–9.
Docket# RP00–337, 006, Kern River Gas Transmission Company.
G–10.
Docket# RP00–533, 006, Algonquin Gas Transmission Company.
Other#s RP00–533, 008, Algonquin Gas Transmission Company.
G–11.
Docket# RP02–489, 003, Maritimes & Northeast Pipeline, L.L.C.
G–12.
Docket# RP02–493, 003, East Tennessee Natural Gas Company.
G–13.
Omitted
G–14.
Omitted
G–15.
Docket# RP03–13, 003, Transcontinental Gas Pipe Line Corporation.
Other#s RP01–236, 013, Transcontinental Gas Pipe Line Corporation.
G–16.
Docket# RP02–492, 003, Algonquin Gas Transmission Company.
G–17.
Docket# RP02–494, 003, Texas Eastern Transmission, LP.
G–18.
Omitted
G–19.
Docket# SA04–1, 000, CEC Technologies, Limited.
G–20.
Omitted
G–21.
Docket# RP02–114, 003, Tennessee Gas Pipeline Company.
Other#s RP02–114, 002, Tennessee Gas Pipeline Company.
G–22.
Omitted
G–23.
Docket# PR97–1, 001, Consumers Power Company.
G–24.
Docket# RP03–492, 002, Columbia Gulf Transmission Company.
G–25.
Docket# RP02–241, 003, Southern Star Central Gas Pipeline, Inc.
G–26.
Omitted
G–27.
Docket# RP03–243, 002, Nicole Gas Production, Ltd.
G–28.
Docket# RP03–70, 003, PG&E Gas Transmission, Northwest Corporation.
Other#s RP03–70, 002, PG&E Gas Transmission, Northwest Corporation.
G–29.
Docket# RP03–491, 002, Columbia Gas Transmission Corporation.
G–30.
Omitted
G–31.
Docket# RP02–363, 005, North Baja Pipeline LLC.
Other#s RP02–363, 002, North Baja Pipeline LLC.
RP02–363,006 North Baja Pipeline LLC.
G–32.
Omitted
G–33.
Omitted
G–34.
Docket# OR03–6, 000, *Sinclair Oil Corporation* v. *ChevronTexaco Pipeline Company.*
G–35.
Omitted
G–36.
Docket# RP04–103, 000, Northern Natural Gas Company.
G–37.
Docket# RP03–551, 000, *Wisconsin Gas Company* v. *Viking Gas Transmission Co.*

Energy Projects—Hydro

H–1.
Omitted
H–2.
Omitted
H–3.
Omitted
H–4.
Omitted
H–5.
Omitted
H–6.
Docket# P–2105, 090, Pacific Gas and Electric Company.
H–7.
Docket# P–2852, 015, New York State Electric & Gas Corporation.
H–8.
Omitted
H–9.
Docket# P–516, 319, South Carolina Electric & Gas Company.
Other#s P–516, 321, South Carolina Electric & Gas Company.
P–516, 326, South Carolina Electric & Gas Company.
P–516, 329, South Carolina Electric & Gas Company.
P–516, 330, South Carolina Electric & Gas Company.
P–516, 331, South Carolina Electric & Gas Company.
P–516, 332, South Carolina Electric & Gas Company.
P–516, 333, South Carolina Electric & Gas Company.
P–516, 354, South Carolina Electric & Gas Company.
P–516, 355, South Carolina Electric & Gas Company.
P–516, 356, South Carolina Electric & Gas Company.
P–516, 357, South Carolina Electric & Gas Company.
P–516, 358, South Carolina Electric & Gas Company.
P–516, 359, South Carolina Electric & Gas Company.
H–10.
Docket# P–1494, 260, Grand River Dam Authority.
H–11.
Docket# P–2299, 053, Turlock Irrigation District and Modesto Irrigation District.
H–12.
Docket# P–460, 028, City of Tacoma, Washington.

Energy Projects—Certificates

C–1.
Omitted
C–2.
Docket# CP03–338, 000, Panther Interstate Pipeline Energy, LLC.
Other#s CP03–337, 000, Natural Gas Pipeline Company of America.
CP03–339, 000, Panther Interstate Pipeline Energy, LLC.
CP03–340, 000, Panther Interstate Pipeline Energy, LLC.
C–3.
Docket# CP96–53, 011, NE Hub Partners, L.P.
C–4.
Omitted
C–5.
Docket# CP04–10, 000, EnCana Border Pipelines Limited and Omimex Canada, Ltd.
Other#s CP04–11, 000, Chinook Pipeline Company and Omimex Canada, Ltd.
C–6.
Docket# CP03–330, 000, Tennessee Gas Pipeline Company.
C–7.
Docket# CP03–41, 001, Dominion Transmission, Inc.
Other#s CP03–43, 001, Texas Eastern Transmission, L.P.
C–8.
Docket# CP02–233, 001, Equitrans, L.P. and Carnegie Interstate Pipeline Company.

Magalie R. Salas,
Secretary.
[FR Doc. 03–31171 Filed 12–12–03; 5:03 pm]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Sunshine Act; Notice of Meeting, Notice of Vote, Explanation of Action Closing Meeting and List of Persons To Attend

December 11, 2003.

The following notice of meeting is published pursuant to section 3(a) of the Government in the Sunshine Act (Pub. L. 94–409), 5 U.S.C. 552b:

AGENCY HOLDING MEETING: Federal Energy Regulatory Commission.

DATE AND TIME: December 18, 2003, 9 a.m.

PLACE: Hearing Room 5 (2nd floor), 888 First Street, NE., Washington, DC 20426.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Non-public investigations and inquiries and enforcement related matters.

CONTACT PERSON FOR MORE INFORMATION: Magalie R. Salas, Secretary, Telephone (202) 502–8400.

Chairman Wood and Commissioners Brownell, and Kelliher, voted to hold a closed meeting on December 18, 2003. The certification of the General Counsel explaining the action closing the meeting is available for public inspection in the Commission's Public Reference Room at 888 First Street, NW., Washington, DC 20426.

The Chairman and the Commissioners, their assistants, the Commission's Secretary and her assistant, the General Counsel and members of her staff, and a stenographer are expected to attend the meeting. Other staff members from the Commission's program offices who will advise the Commissioners in the matters discussed will also be present.

Magalie R. Salas,
Secretary.
[FR Doc. 03–31172 Filed 12–12–03; 5:04 pm]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Sunshine Act Meeting

December 10, 2003.

Take notice that all Commissioners, members of the Federal Energy Regulatory Commission, will participate in a press conference immediately following the Commission's open meeting scheduled for December 17, 2003, at the offices of the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. The press conference will be open to the public.

This Notice is issued pursuant to the Government in the Sunshine Act, 5 U.S.C. 552b.

For further information, please contact Bryan Lee at 202–502–8004.

Magalie R. Salas,
Secretary.
[FR Doc. E3–00571 Filed 12–15–03; 3:07 pm]
BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2003–0334; FRL–7338–8]

Exposure Modeling Work Group; Notice of Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Exposure Modeling Work Group (EMWG) will hold a 1–day meeting on January 6, 2004. This notice announces the location and time for the meeting and sets forth the tentative agenda topics.

DATES: The meeting will be held on January 6, 2004, from 9 a.m. to 3 p.m.

ADDRESSES: The meeting will be held at the Office of Pesticide Programs (OPP), Environmental Protection Agency, Crystal Mall #2, Room 1126 (Fishbowl), 1921 Jefferson Davis Hwy., Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT: James C. Lin, Environmental Fate and Effects Division (7507C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–9591; fax number: (703) 305–6309; e-mail address: *lin.james@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general, and may be of particular interest to those persons who are or may be required to conduct testing of chemical substances under the Toxic Substances Control Act (TSCA), the Federal, Food, Drug, and Cosmetic Act (FFDCA), or the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number OPP–2003–0334. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr/*.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select "search," then key in the appropriate docket ID number.

II. Background

On a quarterly interval, the EMWG meets to discuss current issues in modeling pesticide fate, transport, and exposure to pesticides in support of risk assessment in a regulatory context.

III. How Can I Request to Participate in this Meeting?

You may submit a request to participate in this meeting to the person listed under **FOR FURTHER INFORMATION CONTACT**.

IV. Tentative Agenda

This section provides tentative agenda topics for the 1–day meeting:

1. Welcome and introductions.
2. Old action items.
3. Brief updates.
   - EPA's Pesticide Root Zone/ Exposure Analysis Modeling System (PRZM/EXAMS) model.
   - Perspective groundwater (PGW) guidance.
   - PE4 (Environmental Fate Effects Division (EFED)'s Shell).
   - Groundwater model.
   - Regional plate count agar (PCA).
   - Drinking water treatment workshop.
   - Proposal of soil dissipation meeting at the American Chemical Society (ACS) (spring 2004).
   - EFED water quality projects.
4. Major topics.

Morning session

- Use of foliar dissipation study for exposure purpose.
- Update on FOCUS kinetics group.

Afternoon session

- Use of Geographical Information System (GIS) for design of water monitoring study.
- A degree-day concept for estimating degradation time under field conditions.

List of Subjects

Environmental protection, Pesticides, Pests, Modeling.

Dated: December 10, 2003.

Steven Bradbury,

Director, Environmental Fate and Effects Division, Office of Pesticide Programs.

[FR Doc. 03–31007 Filed 12–16–03; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2003–0393; FRL–7338–1]

Pesticide Product; Registration Applications

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces receipt of applications to register pesticide products containing new active ingredients not included in any previously registered products pursuant to the provisions of section 3(c)(4) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

DATES: Written comments, identified by the docket ID number OPP–2003–0393, must be received on or before January 16, 2004.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: The Regulatory Action Leader, Registration Division (7505C), listed in this unit:

Regulatory Action Leader	Telephone number/e-mail address	Mailing address	File symbol
Joanne Miller	(703) 305–6224; e-mail address: *miller.joanne@epa.gov.*	Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001	62719–UOO 62719–LNE 62719–LNG 62719–LNR 62719–LNN 66330–UL 66330–UA
Jim Tompkins	(703) 305–5697; e-mail address:*tompkins.jim@epa.gov*	Do.	264–AOU 264–INE 264–INR

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you manufacture pesticides or apply pesticides to growing crops. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS 111)
- Animal production (NAICS 112)
- Food manufacturing (NAICS 311)
- Pesticide manufacturing (NAICS 32532)

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number OPP–2003–0393. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr/*.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the appropriate docket ID number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the Docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

C. How and To Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit I.D. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically.* If you submit an electronic comment as prescribed in this unit, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets.* Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket*, and follow the online instructions for submitting comments. Once in the system, select "search," and then key in docket ID number OPP–2003–0393. The system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail.* Comments may be sent by e-mail to *opp-docket@epa.gov*, Attention: Docket ID Number OPP–2003–0393. In contrast to EPA's electronic public docket, EPA's e-mail system is not an "anonymous access"

system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM.* You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Unit I.C.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By mail.* Send your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency (7502C), 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001, Attention: Docket ID Number OPP–2003–0393.

3. *By hand delivery or courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, Attention: Docket ID Number OPP–2003–0393. Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit I.B.1.

D. How Should I Submit CBI To the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Offer alternative ways to improve the registration activity.

7. Make sure to submit your comments by the deadline in this notice.

8. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. Registration Applications

EPA received applications as follows to register pesticide products containing active ingredients not included in any previously registered products pursuant to the provision of section 3(c)(4) of FIFRA. Notice of receipt of these applications does not imply a decision by the Agency on the applications.

Products Containing Active Ingredients not Included in Any Previously Registered Products

1. *File symbol*: 62719–UOO. *Applicant*: Dow AgroSciences LLC, 9330 Zionsville Road, Indianapolis, IN 46268–1054. *Product name*: Penoxsulam Technical. *Active ingredient*: Penoxsulam (2-(2,2-difluoroethoxy)-6-trifluoromethyl-*N*-(5,8-dimethoxy[1,2,4]triazolo-[1,5c]pyrimidin-2-yl)benzenesulfonamide) at 98%. *Proposed classification/Use*: None. For formulation into herbicide end use products; for use in rice.

2. *File symbol*: 62719–LNE. *Applicant*: Dow AgroSciences LLC, 9330 Zionsville Road, Indianapolis, IN 46268–1054. *Product name*: GF-881 Manufacturing Use Concentrate. *Active ingredient*: Penoxsulam at 50%. *Proposed classification/Use*: None. For formulation into herbicide end use products; for use in rice.

3. *File symbol*: 62719–LNG. *Applicant*: Dow AgroSciences LLC. *Product name*: GF-947 Granule SF. *Active ingredient*: Penoxsulam at 0.24%. *Proposed classification/Use*: None. For use in water seeded rice.

4. *File symbol*: 62719–LNR. *Applicant*: Dow AgroSciences LLC. *Product name*: GF-947 Granule CA. *Active ingredient*: Penoxsulam at 0.24%. *Proposed classification/Use*: None. For use in water seeded rice.

5. *File symbol*: 62719–LNN. *Applicant*: Dow AgroSciences LLC. *Product name*: GF-443 SC SF. *Active ingredient*: Penoxsulam at 21.7%. *Proposed classification/Use*: None. For use in rice.

6. *File symbol*: 264–AOU. *Applicant*: Bayer Crop Science, 2 T.W. Alexander Drive, Research Triangle Park, NC 27709. *Product name*: Mesosulfuron-methyl Technical. *Active ingredient*: Mesosulfuron-methyl at 96.8%. *Proposed classification/Use*: None. For formulation into herbicide end use products; for use in wheat.

7. *File symbol*: 264–INE. *Applicant*: Bayer Crop Science. *Product name*: Osprey Herbicide. *Active ingredient*: Mesosulfuron-methyl at 4.5%. *Proposed classification/Use*: None. For use in winter wheat.

8. *File symbol*: 264–INR. *Applicant*: Bayer Crop Science. *Product name*: Silverado Wild Oat Herbicide. *Active ingredient*: Mesosulfuron-methyl at 2.0%. *Proposed classification/Use*: None. For use in spring wheat including durum.

9. *File symbol*: 66330–UL. *Applicant*: Arvesta Corporation, 100 First Street, Suite 1700, San Francisco, CA 94105. *Product name*: Amicarbazone Technical Herbicide. *Active ingredient*: Amicarbazone at 98%. *Proposed classification/Use*: None. For formulation into herbicide end use products and for use in corn.

10. *File symbol*: 66330–UA. *Applicant*: Arvesta Corporation. *Product name*: Amicarbazone DF Herbicide. *Active ingredient*: Amicarbazone at 70%. *Proposed classification/Use*: None. For use in corn.

List of Subjects

Environmental protection, Pesticides and pest.

Dated: December 4, 2003.

Peter Caulkins,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 03–31008 Filed 12–16–03; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2003–0352; FRL–7336–4]

Cis-Isomer of 1-(3-Chloroallyl)-3,5,7-Triaza-1-Azoniaadamantane Chloride; Notice of Filing a Pesticide Petition to Establish a Tolerance for a Certain Pesticide Chemical in or on Food

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of a pesticide petition proposing the establishment of regulations for residues of a certain pesticide chemical in or on various food commodities.

DATES: Comments, identified by docket identification (ID) number OPP–2003–0352, must be received on or before January 16, 2004.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: James Parker, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–0371; e-mail address: *parker.james@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS 111)
- Animal production (NAICS 112)
- Food manufacturing (NAICS 311)
- Pesticide manufacturing (NAICS 32532)

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under docket ID number OPP–2003–0352. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr/*.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select "search," then key in the appropriate docket ID number.

Certain types of information will not be placed in EPA's Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

C. How and to Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit I.D. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically.* If you submit an electronic comment as prescribed in this unit, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk

or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets.* Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket/*, and follow the online instructions for submitting comments. Once in the system, select "search," and then key in docket ID number OPP–2003–0352. The system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail.* Comments may be sent by e-mail to *opp-docket@epa.gov*, Attention: Docket ID Number OPP–2003–0352. In contrast to EPA's electronic public docket, EPA's e-mail system is not an "anonymous access" system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM.* You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Unit I.C.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By mail.* Send your comments to: Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001, Attention: Docket ID Number OPP–2003–0352.

3. *By hand delivery or courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, Attention: Docket ID Number OPP–2003–0352. Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit I.B.1.

D. How Should I Submit CBI to the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Make sure to submit your comments by the deadline in this notice.

7. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. What Action is the Agency Taking?

EPA has received a pesticide petition as follows proposing the establishment and/or amendment of regulations for residues of a certain pesticide chemical in or on various food commodities under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that this petition contains data or information regarding the elements set forth in FFDCA section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: Decembern 4, 2003.

Peter Caulkins,

Acting Director, Registration Division, Office of Pesticide Programs.

Summary of Petition

The petitioner's summary of the pesticide petition is printed below as required by FFDCA section 408(d)(3). The summary of the petition was prepared by the petitioner and represents the view of the petitioner. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

Dow Chemical Company

PP 3E6656

EPA has received a pesticide petition (3E6656) from Dow Chemical Company, Building 1803, Midland, Michigan 48674, proposing pursuant to section 408(d) of the FFDCA, 21 U.S.C. 346a(d), to amend 40 CFR part 180 to establish an exemption from the requirement of a tolerance for the cis-isomer of 1-(3-chloroallyl)-3,5,7-triaza-1-azoniaadamantane chloride (CAS Reg. No. 51229–78–8), when used as an inert ingredient, a preservative in pesticide formulations applied to growing crops. EPA has determined that the petition contains data or information regarding the elements set forth in section

408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition.

A. Residue Chemistry

1. *Plant metabolism.* Residue chemistry data are not generally required by EPA regarding tolerance exemption petitions. Consequently, no plant metabolism data have been generated.

2. *Analytical method.* Since this petition is for an exemption from the requirement of a tolerance, an enforcement analytical method for cis-isomer of 1-(3-chloroallyl)-3,5,7-triaza-1-azoniaadamantane chloride is not needed.

3. *Magnitude of residues.* Based on the negligible amount of cis-isomer of 1-(3-chloroallyl)-3,5,7-triaza-1-azoniaadamantane chloride to be used in final product formulations (0.14% by weight (wt) or less), the recommended frequency and rates of application to growing crops, and the hydrolysis characteristics of cis-isomer of 1-(3-chloroallyl)-3,5,7-triaza-1-azoniaadamantane chloride with the rapid degradation action of formaldehyde, the Dow Chemical Company believes that residues are expected to be essentially undetectable and not toxicologically significant.

B. Toxicological Profile

In the Dowicil CTAC Reregistration Eligibility Document (RED), dated April 1995, EPA completed it's assessment of the potential human health and environmental risks associated with the active ingredient non-food uses of the cis and trans isomer mixture of 1-(3-chlorallyl)-3,5,7-triaza-1-azoniaadamantane chloride and the cis-isomer of 1-(3-chlorallyl)-3,5,7-triaza-1-azoniaadamantane chloride. Due to the similarities of the two active ingredients the Agency accepted toxicology studies conducted using either the cis and trans isomer mixture or the cis isomer only. Thus, the existing data base includes toxicity studies that were performed with the cis-isomer and the toxicity studies that were performed with a mixture of the cis and trans isomers.

1. *Acute toxicity*—i. *Acute oral.* Cis-isomer of 1-(3-chloroallyl)-3,5,7-triaza-1-azoniaadamantane chloride was administered by single-dose gavage to 6 groups of 6 rats/sex/dose at dosages of 200, 400, 800, 1,600, 3,200, and 6,300 milligrams/kilogram (mg/kg). Clinical signs of lethargy, diarrhea, and lacrimation, were observed at the 800, 1,600, and 3,200 mg/kg dose groups. Body tremors and exudate staining of the nares were also seen in the 3,200 mg/kg group. Animals were observed for 7 days including the day of treatment. There were no mortalities in the 200, 400, 800, and 1,600 mg/kg dose groups. Five of six mortalities occurred in the 3,200 mg/kg dose group within 4 days of treatment, and 6/6 mortalities in the 6,300 mg/kg dose group on day–1 of treatment. All animals which survived gained weight during the observation period. There were no treatment-related changes on gross necropsy. The oral lethal dose (LD_{50} (95% confidence interval) was 2,664 mg/kg for males and females combined.

ii. *Acute dermal.* Cis-isomer of 1-(3-chloroallyl)-3,5,7-triaza-1-azoniaadamantane chloride was administered to four rabbits per dose level. Each dose group was topically treated for 24 hours with 160, 320, 630, 1,300, 2,500, or 5,000 mg/kg of undiluted test material (moistened with 5 meters/Liter (m/L) of distilled water) and with 250, 500, 1,000, and 2,000 mg/kg of the material as a 50% aqueous solution. In the undiluted test group, mortality rates were as follows: 160 mg/kg (0/4); 320 mg/kg (1/4); 630 mg/kg (1/4); 1,300 mg/kg (4/4); 2,500 mg/kg (2/4); 5,000 mg/kg (3/4).

The acute dermal LD_{50} (95% confidence interval) was 923 mg/kg for males and females combined with undiluted test material. Lethargy and anorexia were reported in the surviving animals. Topical reactions ranging from slight erythema to marked swelling and necrosis were observed. Treatment-related necropsy lesions (decreased abdominal adipose tissue, serous atrophy of the remaining adipose tissue and thymic atrophy) were observed at the two highest dose levels. The lesions were judged to be the result of stress and decreased appetite.

The number of mortalities observed in the 50% aqueous preparation was as follows: 250 mg/kg (1/4); 500 (3/4); 1,000 (1/4); 2,000 (4/4).

The acute dermal LD_{50} (95% confidence interval) was 605 mg/kg for males and females combined. Lethargy and anorexia were observed in the three lowest dose groups; lethergy and rapid, shallow breathing were seen in the highest dose group. Topical reactions ranging from slight edema to marked necrosis were reported. There were no lesions on necropsy attributable to treatment.

iii. *Acute inhalation.* In an acute inhalation study 10 rats (5 males/5 females) were exposed to 1-(3-chloroallyl)-3,5,7-triaza-1-azoniaadamantane cloride and cis-1-(3-chloroallyl)-3,5,7-triaza-1-azoniaadamantane chloride. There were no mortalities during the exposure period nor during the post-exposure observation period. There was generalized soiling and test material stains on fur. All animals exhibited a significant weight loss (9–11%) in the first few days post-exposure. Weight gain resumed 4 days post-exposure to end of study. Normal activity throughout the test period continued to the end of the study. One animal had unilateral corneal opacity. All other tissues and organs examined were normal. The acute inhalation toxicity lethal dose (LC_{50} to 1-(3-chloroallyl)-3,5,7-triaza-1-azoniaadamantane chloride and cis-1-(3-chloroallyl)-3,5,7-triaza-1-azoniaadamantane chloride was greater than 4.7 milligrams/Liter (mg/L).

iv. *Primary eye irritation.* In a primary eye irritation study, nine New Zealand white rabbits had a 1 gram dose of cis-isomer of 1-(3-chloroallyl)-3,5,7-triaza-1-azoniaadamantane chloride instilled into the conjunctival sac of the right eye of each of six rabbits (Groups A). The same procedure was followed with three other rabbits (Group B), however these eyes were washed with tap water after a 30–second exposure period. The left eye served as an untreated control in all of the animals. Twenty four hours prior to treatment, the eyes of all nine rabbits were examined using 5% fluoresein stain and found to be normal. The eves were examined 1, 2, 3, 4, and 7 days after the instillation and scored for evidence of damage to the conjunctival (redness, chemosis, and discharge), cornea (degree of opacity and area of cornea involved), and iris (area involved). In Group A rabbits, there was slight (3/6) or moderate (1/6) conjunctival redness and slight (1/6) conjunctival discharge. In Group B rabbits, there was slight (2/3) conjunctival redness. No corneal opacity was observed with either group. Signs of irritation were absent 72 and 48 hours in Groups A and B, respectively. The test material was determined to be a slight primary eye irritant.

v. *Primary dermal irritation.* In a primary dermal irritation study, 0.5 grams of undiluted cis-isomer of 1-(3-chloroallyl)-3,5,7-triaza-1-azoniaadamantane chloride was applied to the backs of six rabbits to an intact and an abraded site on each animal. The areas were covered with gauze patch and then a piece of heavy-gauge Saran® film. Elizabethan collars were placed on the rabbits to prevent ingestion. After 24 hours of exposure, the bandages were removed and each site was scored on a scale of 0 (normal) to 4 (severe) for dermal irritation (erythema and edema) then, and again at 72 hours from the

initial exposure. There was no evidence of erythema in the intact skin at either time point. The abraded skin on one animal showed a slight erythematous reaction at 24 hours; at 72 hours, two abraded areas were graded very slight and one moderate. The intact skin of one animal showed very slight edematous reaction at 24 hours. The abraded areas had either a very slight or slight edematous reaction at both time points. Cis-isomer of 1-(3-chloroallyl)-3,5,7-triaza-1-azoniaadamantane chloride was considered to be only a slight irritant.

vi. *Dermal sensitization.* The dermal sensitization potential of cis-isomer of 1-(3-chloroallyl)-3,5,7-triaza-1-azoniaadamantane chloride was tested using the modified Maguire method. Ten male Hartley Albino guinea pigs received four induction doses of 0.1 milliliter (mL) of 10% solution of the cis-isomer of 1-(3-chloroallyl)-3,5,7-triaza-1-azoniaadamantane chloride in 8 days. Freund's Adjuvant was injected intradermally adjacent to the site at the time of the third application. On challenge 2 weeks after the last induction application, the test material produced a positive response in one animal. The positive control, a 10% solution of DER 331 epoxy resin, confirmed that the test system was operating appropriately. The study demonstrated that a 0.1 mL dose of a 10% solution of cis-isomer of 1-(3-chloroallyl)-3,5,7-triaza-1-azoniaadamantane chloride is not a dermal sensitizer in guinea pigs.

2. *Genotoxicity.* Cis-isomer of 1-(3-chloroallyl)-3,5,7-triaza-1-azoniaadamantane chloride was mutagenic in the *in vitro* Chinese hamster ovary (CHO) cell hypoxanthine guanine phophoribosyl transferase (HGPRT) forward mutation assay with activation but nonmutagenic without activation. Cis-isomer of 1-(3-chloroallyl)-3,5,7-triaza-1-azoniaadamantane chloride was negative in the rat hepatocyte unscheduled deoxyribonucleic acid (DNA) synthesis assay. It was negative also in the mouse micronucleus test.

3. *Reproductive and developmental toxicity.* A dermal developmental toxicity study was conducted with Fischer 344 rats. Doses of 0, 250, or 500 mg/kg/day of 1-(3-chloroallyl)-3,5,7-triaza-1-azoniaadamantane chloride as a 50% aqueous solution were applied to the dorsal skin daily on gestation days 6 through 15. No significant adverse effects from treatment with the test compound were found but the study was considered adequate because the doses were sufficiently high.

4. *Subchronic toxicity*—i. *Dermal subchronic study.* In a 13–week dermal subchronic study, New Zealand white rabbits were given dermal applications of cis-isomer of 1-(3-chloroallyl)-3,5,7-triaza-1-azoniaadamantane chloride for 13 weeks. The doses were 0, 50, 200, or 1,000 mg/kg/day. The only treatment related effect was a dose-dependent increase in ulcerative dermatitis, at the treatment site, that was correlated with the abrasions from clipping. The NOAEL for systemic toxicity was 1,000 mg/kg/day.

ii. *A 90–day oral subchronic study.* One study was conducted to determine the level of cis-isomer of 1-(3-chloroallyl)-3,5,7-triaza-1-azoniaadamantane chloride in the diet which would result in complete acceptance of the diet by rats. Ten rats/sex/group were administered the chemical in the diet at dosages of 0, 1, 2, or 4 mg/kg/day for 90 days. The only parameters evaluated were body weight, food consumption, and organ weight (absolute and relative). Male rats in the 4 mg/kg/day group had a significant decrease in body weight at approximately 36% of the weighing periods. This group also had a significant decrease in food consumption throughout the study. The absolute weight of the heart in the 4 mg/kg/day group males was significantly decreased. The relative weight of the brain and liver were increased in the 4 mg/kg/day group of females.

iii. *A 90–day oral subchronic study.* In another study, cis-isomer of 1-(3-chloroallyl)-3,5,7-triaza-1-azoniaadamantane chloride was administered in the diet to groups of 10 rats/sex/group at dosages of 0, 7.5, 15, 30, and 60 mg/kg/day for 90 days. Mean body weight was significantly decreased in all the treated males and females throughout the study. Overall mean body weight gain was decreased in all the treated groups. Mean food consumption was significantly decreased in the treated males, especially at the beginning of the study. Although all of the treated female groups had significantly reduced intake at some time during the study, females were not as frequently affected as males. Calculation of feed efficiency values for the overall study and for the latter half of the study showed that the major effect of decreased food intake on body weight occurred at the beginning of the study. However, the decrease in food efficiency does indicate that the chemical had a toxic effect on body weight that cannot be accounted for solely by decreased food consumption. The only other possible effect of treatment was an increase in the incidence of minimal hepatocellular swelling in the 60 mg/kg/day group males (0/5 in the control vs. 3/5 in the 60 mg/kg/day group).

iv. *A 90–day oral subchronic study.* In a dog study, cis-isomer of 1-(3-chloroallyl)-3,5,7-triaza-1-azoniaadamantane chloride was administered in gelatin capsules to four Beagle dogs/sex/group at dosages of 0, 7.5, 15, or 30 mg/kg/day for 90 days. One female in the 30 mg/kg/day was sacrificed due to general deterioration on the 84th day of the study; necropsy revealed ascites with evidence of liver toxicity. The only other toxicologically significant findings during the study included a significant decrease in the hematocrit (HCT), hemoglobin (Hgb), and white blood count (WBC) measurements in the 30 mg/kg/day group males and histopathological changes, especially in the liver, in the 30 mg/kg/day group males and females. The incidence and/or severity of several findings in the liver were increased in the 30 mg/kg/day group males and females during the following:

- Obliterative vasculitis and perivasculitis of the hepatic blood vessels.
- Perivascular and pericholangiolar infiltration of mononuclear cells.
- Hyperplasia of the reticuloendothelial cells lining the hepatic sinusoid.

5. *Endocrine disruption.* No specific tests have been conducted with cis-isomer of 1-(3-chloroallyl)-3,5,7-triaza-1-azoniaadamantane chloride to determine whether the chemical may have an effect in humans that is similar to an effect produced by a naturally occurring estrogen or other endocrine effects. However, there are no significant findings in other relevant toxicity tests, *i.e.*, developmental toxicity, which would suggest cis-isomer of 1-(3-chloroallyl)-3,5,7-triaza-1-azoniaadamantane chloride produces effects characteristic of the disruption of endocrine function.

C. Aggregate Exposure

Dietary exposure. The proposed use of cis-isomer of 1-(3-chloroallyl)-3,5,7-triaza-1-azoniaadamantane chloride as a preservative in end-use product formulations applied to growing crops is not expected to result in significant additional dietary exposure, due to the low concentration of cis-isomer of 1-(3-chloroallyl)-3,5,7-triaza-1-azoniaadamantane chloride employed in the formulation and the extremely low probability of contact by the general public following treatment.

Cis-isomer of 1-(3-chloroallyl)-3,5,7-triaza-1-azoniaadamantane chloride, when used according to good manufacturing practices, meets the requirements of food additive regulations in 21 CFR 175.105 for use as a preservative in adhesives; 21 CFR 176.1680 for preservation of polyurethane resins in contact with dry bulk foods; 21 CFR 176.170 for preservation of components of paper and paperboard intended for use in contact with aqueous and fatty foods; and 21 CFR 176.180 for preservation of components of paper and paperboard intended for use in contact with dry foods. These uses are not expected to result in quantifiable residues in the diet when used as a preservative, at low levels, in end-use agriculture pesticide formulations applied to growing crops.

D. Cumulative Effects

There is no reliable information that would indicate or suggest that cis-isomer of 1-(3-chloroallyl)-3,5,7-triaza-1-azoniaadamantane chloride has any toxic effects on mammals that would be cumulative with those of any other chemical.

E. Safety Determination

1. *U.S. population.* The Dow Chemical Company believes that based on the following information it is not expected that a tolerance for cis-isomer of 1-(3-chloroallyl)-3,5,7-triaza-1-azoniaadamantane chloride is required because:

- The cis-isomer of 1-(3-chloroallyl)-3,5,7-triaza-1-azoniaadamantane chloride is practically nontoxic to slightly toxic to humans.
- It will not pose a significant risk to humans.
- The parent compound as well as formaldehyde formation dissipate fairly rapidly under hydrolysis.
- The level of cis-isomer of 1-(3-chloroallyl)-3,5,7-triaza-1-azoniaadamantane chloride to be included as a preservative in pesticide formulations applied to growing crops will be at low levels (0.14% by weight or less).

Therefore, it is not anticipated that a tolerance for the cis-isomer of 1-(3-chloroallyl)-3,5,7-triaza-1-azoniaadamantane chloride would be necessary to protect the public health.

2. *Infants and children.* An exemption from a tolerance as proposed is expected to be negligible and not place infants and children at increased health risks.

F. International Tolerances

There are no known international tolerances for cis-isomer of 1-(3-chloroallyl)-3,5,7-triaza-1-azoniaadamantane chloride.

[FR Doc. E3–00560 Filed 12–16–03; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7596–1]

Notice of Proposed Settlement Under Section 122(h)(1) of the Comprehensive Environmental Response, Compensation and Liability Act; In the Matter of American Woodcraft Superfund Site

AGENCY: Environmental Protection Agency.

ACTION: Notice, request for public comment.

SUMMARY: Notice of Settlement: in accordance with section 122(i)(1) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended ("CERCLA"), notice is hereby given of a settlement concerning past response costs at the American Woodcraft Superfund Site, in Union City, Michigan. This settlement requires Comerica Bank to pay $13,837.64 to the Hazardous Substances Superfund.

For thirty (30) days following the date of publication of this notice, the Agency will receive written comments relating to the settlement. The Agency will consider all comments received and may modify or withdraw its consent to the settlement if comments received disclose facts or considerations which indicate that the settlement is inappropriate, improper, or inadequate. The Agency's response to any comments received will be available for public inspection at the Superfund Records Center, located at 77 West Jackson Boulevard, Seventh Floor, Chicago, Illinois.

DATES: Comments must be provided on or before January 16, 2004.

ADDRESSES: The proposed settlement and additional background information relating to the settlement are available for public inspection at the Superfund Records Center, located at 77 West Jackson Boulevard, Seventh Floor, Chicago, Illinois 60604. A copy of the proposed settlement may be obtained from the Superfund Records Center. Comments should reference the American Woodcraft Superfund Site and EPA Docket No. V–W–04–C–765 and should be addressed to Karen L. Peaceman, Associate Regional Counsel, 77 West Jackson Boulevard (C–14J), Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Karen L. Peaceman, 312–353–5751. Mail Code C–14J, U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Authority: The Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. 9601 *et seq.*

Thomas W. Mateer,

Acting Director, Superfund Division.

[FR Doc. 03–31119 Filed 12–16–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7596–2]

Notice of Proposed Administrative Settlement Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act, as Amended by the Superfund Amendments and Reauthorization Act; Polar Star Superfund Removal Site

AGENCY: Environmental Protection Agency.

ACTION: Notice, request for public comments.

SUMMARY: In accordance with section 122(i) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended ("CERCLA"), 42 U.S.C. 9622(i), notice is hereby given of a proposed CERCLE 122(H) Agreement for Recovery of Past Response Costs ("Agreement") concerning the Polar Star Superfund Removal Site in Dutch Flat, California with Desert Star Group, Inc. ("DSGI") and Tuli P. Haromy, the sole shareholder and sole officer of DSGI. The Agreement requires the settling parties to sell all the real property parcels owned by DSGI in Dutch Flat, and to pay 95% of the net proceeds from such sales to the U.S. Environmental Protection Agency (the "Agency" or "USEPA") Hazardous Substance Superfund. All property must be listed with a real estate listing agent for a period of one year from the effective date of the Agreement. If any property is not sold within that period, it must be offered for sale at a public auction. Upon performance of the Agreement by the settling parties, the settling parties shall have resolved any and all civil liability to USEPA under section 107(a) of CERCLA, 42 U.S.C. 9607 (a), for reimbursement of past response costs. For thirty (30) days following the date of publication of this notice, the Agency will receive written comments relating to the Agreement. The Agency will

consider all comments received and may modify or withdraw its consent to the Agreement if comments received disclose facts or considerations which indicate that the Agreement is inappropriate, improper, or inadequate. The Agency's response to any comments received will be available for public inspection at USEPA Region IX, 75 Hawthorne Street, San Francisco, California.

DATES: Comments must be submitted on or before January 16, 2004.

ADDRESSES: The proposed Agreement may be obtained from Judith Winchell, Environmental Protection Specialist, telephone (415) 972–3124. Comments regarding the proposed Agreement should be addressed to Judith Winchell (SFD–7) at EPA Region IX, 75 Hawthorne Street, San Francisco, California 94105, and should reference the Polar Star Superfund Removal Site, Dutch Flat, California, and USEPA Docket No. 2003–16.

FOR FURTHER INFORMATION CONTACT: Joshua Wirtschafter, Office of Regional Counsel, telephone (415) 972–3912, USEPA Region IX, 75 Hawthorne Street, San Francisco, California 94105.

Dated: December 8, 2003.

Daniel A. Meer,

Chief, Response, Planning & Assessment Branch, Superfund Division (SFD–9).

[FR Doc. 03–31120 Filed 12–16–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPPT–2003–0069; FRL–7338–7]

Certain New Chemicals; Receipt and Status Information

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5 of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture (defined by statute to include import) a new chemical (*i.e.*, a chemical not on the TSCA Inventory) to notify EPA and comply with the statutory provisions pertaining to the manufacture of new chemicals. Under sections 5(d)(2) and 5(d)(3) of TSC, EPA is required to publish a notice of receipt of a premanufacture notice (PMN) or an application for a test marketing exemption (TME), and to publish periodic status reports on the chemicals under review and the receipt of notices of commencement to manufacture those chemicals. This status report, which covers the period from October 1, 2003 to November 28, 2003, consists of the PMNs pending or expired, and the notices of commencement to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period.

DATES: Comments identified by the docket ID number OPPT–2003–0069 and the specific PMN number or TME number, must be received on or before January 16, 2004.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Barbara Cunningham, Director, Environmental Assistance Division, Office of Pollution Prevention and Toxics (7408M), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 554–1404; e-mail address: *TSCA-Hotline@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. As such, the Agency has not attempted to describe the specific entities that this action may apply to. Although others may be affected, this action applies directly to the submitter of the premanufacture notices addressed in the action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number OPPT–2003–0069. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the EPA Docket Center, Rm. B102-Reading Room, EPA West, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The EPA Docket Center Reading Room telephone number is (202) 566–1744 and the telephone number for the OPPT Docket, which is located in EPA Docket Center, is (202) 566–0280.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr/*.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select "search," then key in the appropriate docket ID number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

C. How and to Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number and specific PMN number or TME number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit I.D. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically.* If you submit an electronic comment as prescribed in this unit, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets.* Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket/*, and follow the online instructions for submitting comments. Once in the system, select "search," and then key in docket ID number OPPT–2003–0069. The system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail.* Comments may be sent by e-mail to *oppt.ncic@epa.gov*, Attention: Docket ID Number OPPT–2003–0069 and PMN Number or TME Number. In contrast to EPA's electronic public docket, EPA's e-mail system is not an "anonymous access" system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM.* You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Unit I.C.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By mail.* Send your comments to: Document Control Office (7407M), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

3. *By hand delivery or courier.* Deliver your comments to: OPPT Document Control Office (DCO) in EPA East Bldg., Rm. 6428, 1201 Constitution Ave., NW., Washington, DC. Attention: Docket ID Number OPPT–2003–0069 and PMN Number or TME Number. The DCO is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the DCO is (202) 564–8930.

D. How Should I Submit CBI to the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Offer alternative ways to improve the notice or collection activity.

7. Make sure to submit your comments by the deadline in this document.

8. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action and the specific PMN number you are commenting on in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. Why is EPA Taking this Action?

Section 5 of TSCA requires any person who intends to manufacture (defined by statute to include import) a new chemical (*i.e.*, a chemical not on the TSCA Inventory to notify EPA and comply with the statutory provisions pertaining to the manufacture of new chemicals. Under sections 5(d)(2) and 5(d)(3) of TSCA, EPA is required to publish a notice of receipt of a PMN or an application for a TME and to publish

periodic status reports on the chemicals under review and the receipt of notices of commencement to manufacture those chemicals. This status report, which covers the period from October 1, 2003 to November 28, 2003, consists of the PMNs, pending or expired, and the notices of commencement to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period.

III. Receipt and Status Report for PMNs

This status report identifies the PMNs, pending or expired, and the notices of commencement to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period. If you are interested in information that is not included in the following tables, you may contact EPA as described in Unit II. to access additional non-CBI information that may be available.

In Table I of this unit, EPA provides the following information (to the extent that such information is not claimed as CBI) on the PMNs received by EPA during this period: the EPA case number assigned to the PMN; the date the PMN was received by EPA; the projected end date for EPA's review of the PMN; the submitting manufacturer; the potential uses identified by the manufacturer in the PMN; and the chemical identity.

I. 149 PREMANUFACTURE NOTICES RECEIVED FROM: 10/1/03 TO 11/28/03

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–04–0001	10/01/03	12/29/03	Toyo Color America, LLC	(S) Ultraviolet curable additive for optical lens	(S) Poly(oxy-1,2-ethanediyl),.alpha.-(1-oxo-2-propenyl)-.omega.-([1,1′-biphenyl]-2-yloxy)-
P–04–0002	10/01/03	12/29/03	Toyo Color America, LLC	(S) Ultraviolet curable oligomer for optical lens	(S) Hexanedioic acid, polymer with 1,6-diisocyanatohexane, 1,6-diisocyanato-2,2,4-trimethylhexane, 1,6-diisocyanato-2,4,4-trimethylhexane, 1,1′-[(1-methylethylidene)bis(4,1-phenyleneoxy)]bis[2-propanol] and 3-methyl-1,5-pentanediol, 2-hydroxyethyl acrylate-blocked
P–04–0003	10/01/03	12/29/03	Toyo Color America, LLC	(S) Light stabilizer additive for ultraviolet curable glue	(S) 2-propenoic acid, 2-methyl-, 1,2,2,6,6-pentamethyl-4-piperidinyl ester
P–04–0004	10/01/03	12/29/03	Toyo Color America, LLC	(S) Ultraviolet curable additive for optical lens	(S) Poly[oxy(methyl-1,2-ethanediyl)],.alpha.,.alpha′.-[(1-methylethylidine)di-4,1-phenylene]bis[.omega.-[(1-oxo-2-propenyl)oxy]-
P–04–0005	10/01/03	12/29/03	CBI	(S) Adhesion promoter in sealants; coupling agent for industrial coatings	(G) Aminosilane
P–04–0006	10/01/03	12/29/03	Brueggemann Chemical U.S., Inc.	(G) Additive	(G) Arylphosphine copper iodide
P–04–0007	10/01/03	12/29/03	Meadwestvaco Corporation - Specialty Chemicals Division	(S) Intermediate used for sterol production	(G) Modified saponified tall oil distillates
P–04–0008	10/02/03	12/30/03	Vantico Inc.	(S) Epoxy curing agent	(G) Phenol, 4,4′-(1-methylethylidene)bis-, polymer with (chloromethyl)oxirane, reaction products with an epoxide and triethylenetetramine
P–04–0009	10/03/03	12/31/03	CBI	(G) Petroleum lubricant additive	(G) Alkylbenzene sulfonic acid
P–04–0010	10/02/03	12/30/03	CBI	(G) Developer for thermal sensitive paper	(G) Salicylic acid compound
P–04–0011	10/03/03	12/31/03	E. I. Dupont De Nemours and Company, Inc.	(G) Injection molded and extruded parts, films, ribbons, tubes and filaments for high heat applications	(G) Aromatic - aliphatic polyamides
P–04–0012	10/03/03	12/31/03	E. I. Dupont De Nemours and Company, Inc.	(G) Injection molded and extruded parts, films, ribbons, tubes and filaments for high heat applications	(G) Aromatic - aliphatic polyamides
P–04–0013	10/03/03	12/31/03	E. I. Dupont De Nemours and Company, Inc.	(G) Injection molded and extruded parts, films, ribbons, tubes and filaments for high heat applications	(G) Aromatic - aliphatic polyamides
P–04–0014	10/03/03	12/31/03	E. I. Dupont De Nemours and Company, Inc.	(G) Injection molded and extruded parts, films, ribbons, tubes and filaments for high heat applications	(G) Aromatic - aliphatic polyamides
P–04–0015	10/03/03	12/31/03	Gardere Wynne Sewell LLP	(S) Carrier for herbicides and pesticides; paint and ink formulations; indoor heating oil; solvent blend	(S) Alkanes, C_{8-12} - branched
P–04–0016	10/06/03	01/03/04	CBI	(G) Open, non-dispersive (dyestuff)	(G) Azo dyestuff
P–04–0017	10/03/03	12/31/03	CBI	(G) Low foaming cleanser additive	(G) Octyl-d-glucoside

I. 149 PREMANUFACTURE NOTICES RECEIVED FROM: 10/1/03 TO 11/28/03—Continued

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–04–0018	10/03/03	12/31/03	E. I. Dupont De Nemours and Company, Inc.	(G) Intermediate	(G) Salts of aliphatic amine with aromatic acid or with mixed aromatic and aliphatic acids
P–04–0019	10/03/03	12/31/03	E. I. Dupont De Nemours and Company, Inc.	(G) Intermediate	(G) Salts of aliphatic amine with aromatic acid or with mixed aromatic and aliphatic acids
P–04–0020	10/03/03	12/31/03	E. I. Dupont De Nemours and Company, Inc.	(G) Intermediate	(G) Salts of aliphatic amine with aromatic acid or with mixed aromatic and aliphatic acids
P–04–0021	10/03/03	12/31/03	E. I. Dupont De Nemours and Company, Inc.	(G) Intermediate	(G) Salts of aliphatic amine with aromatic acid or with mixed aromatic and aliphatic acids
P–04–0022	10/07/03	01/04/04	Cognis Corporation	(G) Metal working fluid	(S) Fatty acids, C_{14-18} and C_{16-18} unsaturated-2-ethyl hexyl esters
P–04–0023	10/07/03	01/04/04	Petroferm Inc.	(S) Slip and leveling additive to ultra violet and eb-cured inks, paints and coatings; oligomer in the manufacture of polymeric materials	(G) Allyl alcohol ethoxylate urethane
P–04–0024	10/07/03	01/04/04	Petroferm Inc.	(S) Slip and leveling additive to ultra violet and eb-cured inks, paints and coatings; oligomer in the manufacture of polymeric materials	(G) Peg urethane
P–04–0025	10/07/03	01/04/04	CBI	(G) Industrial coatings binder	(G) Aminated styrenate acrylic salt
P–04–0026	10/07/03	01/04/04	Petroferm Inc.	(S) Slip and leveling additive to ultra violet and eb-cured inks, paints and coatings; oligomer in the manufacture of polymeric materials	(G) Combed silicone urethane
P–04–0027	10/07/03	01/04/04	Petroferm Inc.	(S) Slip and leveling additive to ultra violet and eb-cured inks, paints and coatings; oligomer in the manufacture of polymeric materials	(G) Linear silicone urethane
P–04–0028	10/07/03	01/04/04	CBI	(G) Intermediate for an electrical insulating coating	(G) Methylene di (phenylene isocyanate) polymer with substituted propanol and secondary butyl phenol
P–04–0029	10/08/03	01/05/04	CBI	(S) Binder in hot melt inks	(G) Cyclic diamine bisamide with monocarboxylic fatty acids
P–04–0030	10/08/03	01/05/04	CBI	(S) Binder in hot melt inks	(G) Cyclic diamine bisamide with monocarboxylic fatty acids
P–04–0031	10/08/03	01/05/04	BASF Corporation	(G) Component used in the manufacture of polyurethane parts	(G) Hexanedioic acid, polymer with aliphatic diols and diisocyanate
P–04–0032	10/09/03	01/06/04	CBI	(G) Papermaking Chemical, non-dispersive use	(G) Aminopolyamide resin
P–04–0033	10/09/03	01/06/04	CBI	(G) Destructive use	(G) Hindered phenolic ester
P–04–0034	10/09/03	01/06/04	Bp Amoco Chemical Company Inc.	(G) Grease thickener	(G) Lithium grease thickener
P–04–0035	10/09/03	01/06/04	CBI	(G) Paper making chemical	(G) Cross-linked aminopolyamide resin
P–04–0036	10/10/03	01/07/04	CBI	(G) Ingredients for use in consumer products: highly dispersive	(G) Heterocycle (oxa, thia, aza)
P–04–0037	10/10/03	01/07/04	CBI	(G) Moisture curing polyurethane adhesives	(G) Isocyanate terminated urethane polymer
P–04–0038	10/10/03	01/07/04	CBI	(G) Additive for plastics	(G) Acrylic polymer
P–04–0039	10/10/03	01/07/04	CBI	(G) Chemical intermediate	(G) Hydroxycycloalkanone
P–04–0040	10/14/03	01/11/04	CBI	(S) Surfactant for metal finishing baths	(G) Polyethylene glycol benzyl alkyl ether
P–04–0041	10/14/03	01/11/04	CBI	(G) Fixing agent	(G) Polymeric amine
P–04–0042	10/14/03	01/11/04	CBI	(G) Fixing agent	(G) Polymeric amine
P–04–0043	10/15/03	01/12/04	CBI	(G) A component of a pigmented epoxy resin for coating and surfacing	(G) Epoxy amine adduct
P–04–0044	10/15/03	01/12/04	CBI	(G) Lubricant base fluid	(G) Fatty acid esters with neopentyl glycol
P–04–0045	10/15/03	01/12/04	CBI	(G) Coating binder	(G) Epoxy-acrylic copolymer
P–04–0046	10/17/03	01/14/04	CBI	(G) Dispersant	(G) Polyether carboxylate
P–04–0047	10/17/03	01/14/04	CBI	(G) Dispersant	(G) Polyether carboxylate
P–04–0048	10/17/03	01/14/04	CBI	(G) Dispersant	(G) Polyether carboxylate

I. 149 PREMANUFACTURE NOTICES RECEIVED FROM: 10/1/03 TO 11/28/03—Continued

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–04–0049	10/17/03	01/14/04	CBI	(G) Dispersant	(G) Polyether carboxylate
P–04–0050	10/17/03	01/14/04	CBI	(G) Laminating adhesive	(G) Polyurethane
P–04–0051	10/17/03	01/14/04	CBI	(G) Destructive use	(G) Substituted aluminoxane
P–04–0052	10/17/03	01/14/04	CBI	(G) Open, non-dispersive (resin)	(G) Cationic polyacrylamide
P–04–0053	10/17/03	01/14/04	Toyo Color America, LLC	(S) Ultra violet curable monomer for optical lens	(S) 2-propenoic acid, 1,9-nonanediyl ester
P–04–0054	10/22/03	01/19/04	Ashland Inc., Environmental Health and Safety	(G) Adhesive, coating, ink	(G) Multifunctional acrylate oligomer resin
P–04–0055	10/22/03	01/19/04	Ashland Inc., Environmental Health and Safety	(G) Adhesive, coating, ink	(G) Multifunctional acrylate oligomer resin
P–04–0056	10/22/03	01/19/04	Ashland Inc., Environmental Health and Safety	(G) Adhesive, coating, ink	(G) Multifunctional acrylate oligomer resin
P–04–0057	10/22/03	01/19/04	Ashland Inc., Environmental Health and Safety	(G) Adhesive, coating, ink	(G) Multifunctional acrylate oligomer resin
P–04–0058	10/22/03	01/19/04	Ashland Inc., Environmental Health and Safety	(G) Adhesive, coating, ink	(G) Multifunctional acrylate oligomer resin
P–04–0059	10/22/03	01/19/04	Ashland Inc., Environmental Health and Safety	(G) Adhesive, coating, ink	(G) Multifunctional acrylate oligomer resin
P–04–0060	10/21/03	01/18/04	CBI	(G) Coating component	(G) Substituted metal complex
P–04–0061	10/21/03	01/18/04	CBI	(G) Coating component	(G) Substituted metal complex
P–04–0062	10/21/03	01/18/04	CBI	(G) Coating component	(G) Modified metal complex
P–04–0063	10/21/03	01/18/04	CBI	(G) Adhesive-closed system	(G) Aromatic copolyamic acid
P–04–0064	10/21/03	01/18/04	CBI	(S) Inks; coatings	(G) Polyester acrylate
P–04–0065	10/21/03	01/18/04	CBI	(G) Surfactant	(G) Alkylammonium ether sulfate
P–04–0066	10/22/03	01/19/04	CBI	(G) Coatings, adhesives and printing plates	(G) Polybutadiene acrylate
P–04–0067	10/22/03	01/19/04	CBI	(G) Coatings, adhesives and printing plates	(G) Polybutadiene acrylate
P–04–0068	10/22/03	01/19/04	CBI	(S) Ingredient in fragrance compound	(S) 3-pentanol, 2,2,4-trimethyl-1-[(2-methyl-2-propenyl)oxy]-
P–04–0069	10/23/03	01/20/04	CBI	(G) Adhesion promoter for coatings	(G) Acid modified chlorinated polyolefin
P–04–0070	10/23/03	01/20/04	CBI	(G) Additive, open, non-dispersive	(G) Polyether fatty acid ester
P–04–0071	10/23/03	01/20/04	CBI	(G) Additive, open, non-dispersive	(G) Silicone containing acidic polyester
P–04–0072	10/23/03	01/20/04	CBI	(G) Additive, open, non-dispersive	(G) Acidic polyester
P–04–0073	10/23/03	01/20/04	The Dow Chemical Company	(S) Ultra violet curable resin for coatings	(G) Vinyl ester of epichlorohydrin/bisphenol-a polymer
P–04–0074	10/23/03	01/20/04	The Dow Chemical Company	(S) Ultra violet curable resin for coatings	(G) Vinyl ester of epichlorohydrin/bisphenol-a polymer
P–04–0075	10/24/03	01/21/04	CBI	(S) Viscosity modifier for the manufacture of ink vehicles	(G) Modified aluminum alkoxide
P–04–0076	10/27/03	01/24/04	CBI	(G) Resin coating	(G) Polyester acrylate
P–04–0077	10/27/03	01/24/04	CBI	(G) Polymer material for pigment	(G) Acrylic copolymer
P–04–0078	10/27/03	01/24/04	CBI	(G) Polymer material for pigment	(G) Acrylic copolymer
P–04–0079	10/27/03	01/24/04	CBI	(S) Monomer used in the production of reactive polymers for surface coating materials and other polymer intermediates [open / non-dispersive use]	(G) Halogen-substituted oxetane
P–04–0080	10/27/03	01/24/04	CBI	(S) Monomer used in the production of reactive polymers for surface coating materials and other polymer intermediates [open / non-dispersive use]	(G) Halogen-substituted oxetane
P–04–0081	10/27/03	01/24/04	CBI	(S) Thickness and rheology modifiers for emulsion paint	(G) Polyalkylene glycol, alkyl ether, reaction products with diisocyanatoalkane and polyalkylene glycol

I. 149 PREMANUFACTURE NOTICES RECEIVED FROM: 10/1/03 TO 11/28/03—Continued

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–04–0082	10/27/03	01/24/04	CBI	(S) Thickness and rheology modifiers for emulsion paint	(G) Polyalkyene glycol, alkyl ether, reaction products with diisocyanatoalkane and polyalkylene glycol
P–04–0083	10/27/03	01/24/04	CBI	(S) Water proofing for fibersheets	(S) Amines, N-C_{16-22}-alkyltrimethylenedi-
P–04–0084	10/28/03	01/25/04	CBI	(G) Component of paper or plastic coating	(G) Substituted acrylate polymer
P–04–0085	10/28/03	01/25/04	CBI	(S) Thickener for coating Colors applied to paper and paperboard	(G) Acrylic-acrylonitrile copolymer
P–04–0086	10/28/03	01/25/04	CBI	(G) Industrial corrosion inhibitor	(G) C_{16-18} fatty acid product with polyethylene, phosphonomethylated
P–04–0087	10/28/03	01/25/04	CBI	(S) Siloxane polymer used as a raw material in photoresist	(G) Blocked siloxane polymer
P–04–0088	10/29/03	01/26/04	Shin-Etsu silicones of America Inc.	(S) Sealant	(G) Silicone modified acrylic polymer
P–04–0089	10/29/03	01/26/04	CIBA Specialty Chemicals Corporation	(S) Photoinitiator for overprint varnishes and printing inks	(G) Aromatic compound-photoinitiator
P–04–0090	10/29/03	01/26/04	CBI	(G) Rust inhibition reagent	(G) Triazine derivative
P–04–0091	10/29/03	01/26/04	R. T. Vanderbilt Company, Inc.	(S) Anti-wear and antioxidant additive for lubricants, especially greases	(S) Carbamodithioic acid, dipentyl-, compound with n-pentyl-1-pentanamine (1:1)
P–04–0092	10/29/03	01/26/04	R. T. Vanderbilt Company, Inc.	(S) Anti-wear and antioxidant additive for lubricants, especially greases	(S) Carbamodithioic acid, bis(2-ethylhexyl)-, compound with 2-ethyl-n-(2-ethylhexyl)-1-hexanamine (1:1)
P–04–0093	10/29/03	01/26/04	R. T. Vanderbilt Company, Inc.	(S) Anti-wear and antioxidant additive for lubricants, especially greases	(G) Dialkylamine dialkyldithiocarbamate
P–04–0094	10/29/03	01/26/04	R. T. Vanderbilt Company, Inc.	(S) Anti-wear and antioxidant additive for lubricants, especially greases	(S) Carbamodithioic acid, ditridecyl-, branched, compounds with branched n-tridecyl-1-tridecanamine
P–04–0095	10/29/03	01/26/04	CBI	(G) Open, non-dispersive (resin)	(G) Polyurethane dispersion
P–04–0096	10/30/03	01/27/04	CBI	(G) Reactive additive for a coating formulation	(G) Functionalized diether
P–04–0097	10/31/03	01/28/04	Zeon Chemicals L.P.	(S) Polymerization monomer	(G) Cycloaliphatic ester
P–04–0098	10/31/03	01/28/04	CBI	(G) Resin coating	(G) Urethane acrylate
P–04–0099	10/31/03	01/28/04	Engelhard Corporation	(G) Intermediate	(G) Intermediate for diazo yellow pigment
P–04–0100	11/03/03	01/31/04	CBI	(G) Open, non-dispersive (bulking agent)	(G) Fatty acid amide amine
P–04–0101	11/03/03	01/31/04	CBI	(G) Emulsifier	(G) Polyolefin aminoester
P–04–0102	11/03/03	01/31/04	Degussa Corporation	(S) Coating systems and printing inks	(G) Aqueous ketone-aldehyde resin
P–04–0103	11/03/03	01/31/04	CBI	(S) Automotive industry	(G) Cycloaliphaticdiisocyanate, homopolymer, compound with alkanedioic acid ester
P–04–0104	10/31/03	01/28/04	Johnson Polymer	(G) Polymeric coating vehicle	(G) Acrylic copolymer
P–04–0105	11/04/03	02/01/04	CBI	(G) Water removal and drag reduction for transport of liquids and gases	(G) Alkyl oxirane - epichlorohydrin - alkyl bis(phenol) - polyhydroxy polyol
P–04–0106	11/04/03	02/01/04	Transmare Houston Inc.	(S) Carrier for herbicides and pesticides; paint and ink formulations; indoor heating oil; solvent blend for cleaning	(S) Alkanes, C_{8-12}-branched and linear
P–04–0107	11/05/03	02/02/04	Eastman Kodak Company	(G) Contained use in digital and imaging products	(G) Substituted amino ethane sulfonic acid salt
P–04–0108	11/05/03	02/02/04	Conocophillips Company	(S) Olefin manufacturing feedstock; Specialty solvents; alcohol denaturant; fuel blendstock	(G) Naphtha
P–04–0109	11/06/03	02/03/04	CBI	(G) Reactant in thermoset coating or adhesive formulation; degree of containment — (c) open, non-dispersive use	(G) Amine prepolymer
P–04–0110	11/06/03	02/03/04	Archer Daniels Midland Company	(S) Co-adhesive for composite panel products	(S) Linseed oil, conjugated
P–04–0111	11/06/03	02/03/04	CBI	(S) Plasticizer for concrete and cement	(G) Polycarboxylated ether
P–04–0112	11/10/03	02/07/04	CBI	(G) Open non-dispersive (resin)	(G) Polyester polyurethane resin
P–04–0113	11/10/03	02/07/04	CBI	(G) Open non-dispersive (acrylate resin)	(G) Acrylic acid ester

I. 149 PREMANUFACTURE NOTICES RECEIVED FROM: 10/1/03 TO 11/28/03—Continued

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–04–0114	11/10/03	02/07/04	International flavors and; Fragrances Inc.	(S) Raw material for use in fragrances for soaps, detergents, cleaners and other household products	(S) 94–98%indeno[4,4-d]-1,3-dioxin, 4, 4a, 5, 6, 7, 8, 9, 9b-octahydro-7,7,8,9,9-pentamethyl
P–04–0115	11/07/03	02/04/04	Zeon Chemicals L.P.	(S) Electron beam resist in the manufacture of ic chips and masks via microlithography processes	(S) 2-propenoic acid, 2-chloro-, methyl ester, polymer with (1-methylethenyl)benzene
P–04–0116	11/12/03	02/09/04	CBI	(G) Coating resin for open, no-dispersive use	(G) Amino alkyl alcohol modified fluoropolymer
P–04–0117	11/12/03	02/09/04	BASF Corporation	(S) Additive for ink jet printing inks	(S) 1,2-pentanediol
P–04–0118	11/12/03	02/09/04	Invista Inc.	(S) Intermediate for polymer manufacture	(G) Triamine adipate salt
P–04–0119	11/12/03	02/09/04	Invista Inc.	(G) Polymer for fiber	(G) Aliphatic polyamide
P–04–0120	11/12/03	02/09/04	Forbo Adhesives, LLC	(G) Hot melt polyurethane adhesive	(G) Isocyanate functional polyester polyether urethane polymer
P–04–0121	11/10/03	02/07/04	CBI	(G) Laminating adhesive	(G) Polyurethane
P–04–0122	11/13/03	02/10/04	CBI	(G) Rubber elastomer for tires, wheels, rolls and other Specialty urethane applications	(G) Mdi/carbonate prepolymer
P–04–0123	11/13/03	02/10/04	CBI	(G) Rubber elastomer for tires, wheels, rolls and other Specialty urethane applications	(G) Ppdi/carbonate/caprolactone/ether prepolymer
P–04–0124	11/14/03	02/11/04	CBI	(G) Controlled release of catalyst	(G) Polymethylene polyphenylene polyurea polymer
P–04–0125	11/17/03	02/14/04	CIBA Specialty Chemicals Corporation, Textile Effects	(S) Exhaust dyeing of cellulosic fibers	(G) Reaction products of substituted benzenesulfonic acid azo substituted phenyl amino compound and substituted amino phenyl compound
P–04–0126	11/17/03	02/14/04	CBI	(S) Flame retardant for plastic articles	(G) Diphosphoric acid, amine salt
P–04–0127	11/18/03	02/15/04	CBI	(G) Fuel additive	(G) Polyether/allylphenol modified siloxane
P–04–0128	11/19/03	02/16/04	Eastman Kodak Company	(G) Contained use in an article	(G) Heterocyclic substituted butanoic acid ester
P–04–0129	11/18/03	02/15/04	Ashland Inc., Environmental Health and; Safety	(G) Raw material in higher molecular weight polymer product	(G) Multifunctional acrylate oligomer resin
P–04–0130	11/17/03	02/14/04	CBI	(G) Viscosity index improver	(G) Alkyl methacrylates copolymer
P–04–0131	11/20/03	02/17/04	CBI	(G) Open, non-dispersive use	(G) Blocked isocyanate resin
P–04–0132	11/20/03	02/17/04	CBI	(G) Additive for industrial applications	(G) Ethylhexyl oxetane
P–04–0133	11/19/03	02/16/04	CBI	(S) Dispersing and wetting agent	(G) Polyester polyamide
P–04–0134	11/20/03	02/17/04	CIBA Specialty Chemicals Corporation, Textile effects	(S) Continuous dyeing of nylon carpet	(G) Reaction products of substituted amino anthracenesulfonic acid and substituted triazine amino phenyl compound
P–04–0135	11/21/03	02/18/04	CBI	(G) Open non-dispersive (polyurethane lacquer)	(G) Polyester urethane
P–04–0136	11/21/03	02/18/04	CBI	(S) Production of molded or extruded articles or as component of other industrial products	(G) Polyetherimide polymer
P–04–0137	11/21/03	02/18/04	CBI	(G) Emulsifier for emulsion polymerization	(G) Polyalkylene glycol alkyl ether sulfate, reaction products with allyl glycidyl ether, ammonium salt
P–04–0138	11/21/03	02/18/04	CBI	(G) Component of paper or plastic coating	(G) Substituted acrylate polymer
P–04–0139	11/24/03	02/21/04	CBI	(G) Additive for various cleaners	(G) Modified amidoamine
P–04–0140	11/24/03	02/21/04	CBI	(G) Additive for cleaning products	(G) Fatty acid ester salt
P–04–0141	11/24/03	02/21/04	CBI	(G) Additive for various cleaners	(G) Modified aminoamine
P–04–0142	11/24/03	02/21/04	CBI	(G) Additive for various cleaners	(G) Modified amidoamine
P–04–0143	11/24/03	02/21/04	CBI	(G) Additive for various cleaners	(G) Modified amidoamine
P–04–0144	11/24/03	02/21/04	CBI	(G) Chemical intermediate; destructive use	(G) Modified amidoamine
P–04–0145	11/24/03	02/21/04	CBI	(G) Open non-dispersive (coating material)	(G) Polyisocyanate
P–04–0146	11/25/03	02/22/04	Solvay Fluorides, Inc.	(S) Flux for brazing aluminum	(S) Potassium zinc fluoride
P–04–0147	11/25/03	02/22/04	CBI	(G) Chemical intermediate	(S) Hydroxylamine, o-[(2e)-3-chloro-2-propyl]-

I. 149 PREMANUFACTURE NOTICES RECEIVED FROM: 10/1/03 TO 11/28/03—Continued

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–04–0148	11/25/03	02/22/04	CBI	(G) Paraffin inhibitor	(G) Olefin - maleic anhydride esterified polymer
P–04–0149	11/25/03	02/22/04	Invista Inc.	(G) Polymer for fiber	(G) Aliphatic polyamide
P–04–0150	11/25/03	02/22/04	CBI	(S) Fertilizer for turf and crops	(S) Seaweed extract (saragassum thumbergii)
P–04–0151	11/25/03	02/22/04	CBI	(S) Bicyclic tertiary amine salt used as a photoresist component	(G) Bicylic tertiary amine salt
P–04–0152	11/28/03	02/25/04	CBI	(G) Resin coating	(G) Polyester acrylate

In Table II of this unit, EPA provides the following information (to the extent that such information is not claimed as CBI) on the Notices of Commencement to manufacture received:

II. 80 NOTICES OF COMMENCEMENT FROM: 10/01/03 TO 11/28/03

Case No.	Received Date	Commencement Notice End Date	Chemical
P–00–0119	11/12/03	10/10/03	(G) Polyol ester
P–00–0157	11/17/03	10/17/03	(G) Organo silane ester
P–00–0406	10/08/03	03/26/01	(G) Calcium fatty acid complex
P–00–0900	10/06/03	09/12/03	(G) Polyalkene, sulfonated
P–00–0901	10/06/03	09/17/03	(G) Polyalkylene sulfonate, salts
P–01–0292	10/20/03	10/10/03	(S) Silane, trimethoxyoctyl-
P–01–0527	10/29/03	10/09/03	(G) Polyester polyol
P–01–0637	11/20/03	11/10/03	(G) Polyurethane resin
P–01–0728	11/03/03	10/14/03	(G) Oligomeric ester, capped with iso-alcohols
P–01–0790	11/04/03	10/10/03	(G) Aluminum alkoxide complex
P–02–0587	10/23/03	10/08/03	(G) Polyester polyether isocyanate
P–02–0693	10/01/03	09/15/03	(G) Saturated hydrocarbon
P–02–0795	11/17/03	10/26/03	(G) Copolymer
P–02–0797	11/17/03	10/26/03	(G) Copolymer
P–02–0873	10/28/03	10/01/03	(G) Polyurethane prepolymer
P–02–1013	11/05/03	07/24/03	(G) Modified polyvinyl butyral
P–03–0007	11/18/03	09/04/03	(G) Alkyl cinnamic aldehyde
P–03–0035	11/25/03	10/27/03	(G) Alkene acrylate copolymer
P–03–0045	11/05/03	09/30/03	(S) Glycerides, soya mono- and di-, phosphates, sodium salts
P–03–0047	11/26/03	11/11/03	(S) Benzenemethanaminium, n-(3-aminopropyl)-n,n-dimethyl-, n-soya acyl derivs., chlorides
P–03–0176	10/10/03	09/11/03	(G) Urethane acrylate
P–03–0181	11/25/03	10/27/03	(G) Amino resin modified polyether polyurethane
P–03–0182	10/29/03	10/03/03	(G) Polysulfonated dpo/diphone
P–03–0194	10/21/03	09/30/03	(G) Bis[phenyl, 2h-1,3-benzoxazine] derivative
P–03–0227	10/07/03	09/09/03	(G) Substituted phenolic resin
P–03–0258	10/07/03	09/26/03	(S) 2,5-furandione, dihydro-3-[3-(triethoxysilyl)propyl]-
P–03–0276	10/31/03	10/16/03	(G) Polyalkylenecarbonate diol
P–03–0277	10/31/03	10/16/03	(G) Polyalkylenecarbonate diol
P–03–0301	10/07/03	09/29/03	(G) Vinyl acrylic emulsion polymer
P–03–0329	11/06/03	10/21/03	(G) Trialkylamine salt of substituted alkyarylpolyurethane
P–03–0343	10/17/03	09/12/03	(G) Acrylic polymer
P–03–0344	10/17/03	09/30/03	(G) Acrylic polymer
P–03–0362	10/28/03	10/23/03	(G) Thionocarbamate derivative or modified thionocarbamate
P–03–0423	10/17/03	10/01/03	(G) Modified polyol
P–03–0438	11/21/03	11/09/03	(G) Polyether modified polyurethane urea
P–03–0439	10/07/03	10/01/03	(G) Polyether modified polyurethane urea
P–03–0451	11/14/03	10/27/03	(G) Silicone polyether
P–03–0478	10/08/03	09/29/03	(G) Substituted -9,10-dihydro-9,10-dioxo-anthracentyl-phenylhalo compound
P–03–0479	10/08/03	09/29/03	(G) Substituted -9,10-dihydro-9,10-dioxo-anthracentyl-phenylhalo compound
P–03–0480	10/08/03	09/29/03	(G) Substituted -9,10-dihydro-9,10-dioxo-anthracentyl-phenylhalo compound
P–03–0484	11/12/03	10/24/03	(G) Fatty ester
P–03–0502	11/18/03	10/31/03	(S) Benzene, ethenyl-, polymer with cyclopentene and 1,3-pentadiene
P–03–0518	11/20/03	11/06/03	(G) Acrylic polymer
P–03–0528	11/12/03	10/19/03	(G) 2-propenoic acid, 2-methyl-, polymer with 1,2-ethanediyl bis(2-methyl-2-propenoate), 2-ethyl-2-[[(2-methyl-1-oxo-2-propenyl)oxy]methyl]-1,3-propanediyl bis(2-methyl-2-propenoate) and methyl 2-methyl-2-propenoate, compound with-imidazole
P–03–0530	10/10/03	09/11/03	(G) Salt of a polyalkylenepolyamine derivative
P–03–0531	10/10/03	09/11/03	(G) Salt of mixed fatty amidoamines

II. 80 NOTICES OF COMMENCEMENT FROM: 10/01/03 TO 11/28/03—Continued

Case No.	Received Date	Commencement Notice End Date	Chemical
P–03–0536	11/06/03	10/21/03	(G) Polymer of substituted allylamine
P–03–0554	10/08/03	09/10/03	(G) Polyurethane
P–03–0555	10/15/03	10/03/03	(G) Isocyanate functional polyester polyether urethane polymer
P–03–0563	11/25/03	10/29/03	(S) 2-propenoic acid, 2-methyl-, 2-ethyltricyclo[3.3.1.13,7]dec-2-yl ester
P–03–0565	11/25/03	11/20/03	(S) 2-propenoic acid, 2-methyltricyclo[3.3.1.13,7]dec-2-yl ester
P–03–0573	10/28/03	10/24/03	(G) Polyester resin
P–03–0581	10/08/03	09/24/03	(G) Telechelic polyacrylate
P–03–0583	10/10/03	09/11/03	(G) Polyurethane
P–03–0584	11/18/03	11/05/03	(G) Urethane acrylate
P–03–0585	10/07/03	09/27/03	(S) 1,3-benzenedisulfonic acid, 4-[bis[4-(diethylamino)phenyl]methyl]-6-hydroxy-
P–03–0588	11/26/03	11/02/03	(G) Polycarboxylate polymer with alkenyloxyalkylol modified poly(oxyalkylenediyl), calcium sodium salt
P–03–0590	10/16/03	10/08/03	(S) 1-hexanol, 3-mercapto-
P–03–0609	11/17/03	11/04/03	(G) Oligomer of aromatic, alkyl amines and alkyl epoxide
P–03–0613	11/12/03	10/07/03	(G) Modified diaryliodoniumhexafluoroantimonate
P–03–0623	11/21/03	10/29/03	(G) Amino epoxy silane
P–03–0635	11/04/03	10/09/03	(G) Acrylate, acrylonitrile, butadiene rubber-extended epoxy resin polymer
P–03–0636	10/15/03	10/02/03	(G) Epoxy acrylate oligomer
P–03–0644	10/10/03	10/02/03	(G) Acrylate ester
P–03–0646	10/15/03	09/23/03	(G) Cationic amine salt epoxy resin
P–03–0648	10/30/03	10/10/03	(S) 2-propenoic acid, 2-methyl-, 1,2-ethanediyl ester, polymer with butyl 2-methyl-2-propenoate
P–03–0651	10/15/03	10/03/03	(G) Polyurethane
P–03–0656	10/06/03	09/24/03	(S) Fatty acids, sunflower-oil, esters with propylene glycol
P–03–0666	11/04/03	10/27/03	(G) Distillation residue from glycol production
P–03–0678	11/17/03	10/21/03	(G) Styrene-acrylic copolymer
P–03–0714	11/25/03	11/13/03	(G) Aluminum alkoxide complex
P–03–0722	10/30/03	10/22/03	(G) Pyrazolone derivative
P–03–0729	11/18/03	11/10/03	(G) Alkyleneoxide derivatives
P–03–0731	11/24/03	10/23/03	(G) Polypropylene glycol, polymer with a carbomonocyclic diisocyanate, substituted-trialkoxysilane-blocked
P–03–0733	11/12/03	11/04/03	(G) Aspartic ester
P–92–0353	10/28/03	10/01/03	(G) Substituted polyhydroxy aromatic compound
P–98–0777	11/05/03	10/13/03	(S) Mixture of: alpha-d-glucopyranoside, ,1-6-bis-o-(1-oxooctyl)-b-d-fructofuranosyl and alpha-d-glucopyranoside, 6-o-(1-oxooctyl)-b-d-fructofuranosyl
P–98–0943	11/12/03	10/27/03	(G) Substituted-[(1,2,3,4-tetrahydro-5,8-dihydroxy-1,4-methanonaphthalene -6,7-diyl)bis(methylene)]bis
P–99–0916	10/15/03	09/30/03	(G) Telogen, telomer with alkenes and alkenyl acetate

List of Subjects

Environmental protection, Chemicals, Premanufacturer notices.

Dated: December 4, 2003.

Anthony Cheatham,

Acting Director, Information Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. E3–00365 Filed 12–16–03; 8:45 am]

BILLING CODE 6560–50–S

EXPORT-IMPORT BANK OF THE UNITED STATES

Economic Impact Policy

This notice is to inform the public that the Export-Import Bank of the United States has received an application to finance the export of $328 million of U.S. goods and services for a mining project in Argentina. According to the applicant, the U.S. exports will enable the buyer to produce an additional 14.74 metric tons of gold and 17.86 metric tons of silver per year. Available information indicates that virtually all of this new production will be exported from Argentina and sold on the world market. Interested parties may submit comments on this transaction by e-mail to *economic.impact@exim.gov* or by mail to 81 Vermont Avenue, NW., Room 1238, Washington, DC 20571, within 14 days of the date this notice appears in the **Federal Register**.

Helene S. Walsh,

Director, Policy Oversight and Review.

[FR Doc. 03–31124 Filed 12–16–03; 8:45 am]

BILLING CODE 6690–01–M

FEDERAL MARITIME COMMISSION

Notice of Agreements Filed

The Commission hereby gives notice of the filing of the following agreements under the Shipping Act of 1984. Interested parties can review or obtain copies of agreements at the Washington, DC offices of the Commission, 800 North Capitol Street, NW., Room 940. Interested parties may submit comments on an agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days of the date this notice appears in the **Federal Register**.

Agreement No.: 011637–009.

Title: Ampac Cooperative Working Agreement.

Parties: Compania Chilena de Navegacion Interoceanica, S.A.; Hamburg-Südamerikanische Dampfschifffahrtsgesellschaft KG; Maruba S.C.A.; TMM Lines Limited, LLC.

Synopsis: The proposed modification deletes the "Columbus Line" trade name of Hamburg-Süd and indicates that TMM will resign from the agreement on or about March 11, 2004.

Agreement No.: 011637–010.

Title: Ampac Cooperative Working Agreement.

Parties: Compania Chilena de Navegacion Interoceanica, S.A.; Hamburg-Südamerikanische Dampfschifffahrtsgesellschaft KG; Maruba S.C.A.

Synopsis: The proposed agreement modification adds Japan to the geographic scope of the agreement, reflects changes in the provision of vessels due to TMM's departure, deletes certain restrictions on the use of space, adds restrictions on competing services, establishes a new minimum duration for the revised agreement, and restates the agreement. The parties request expedited review.

Agreement No.: 011649–004.

Title: Joint Operating Agreement Between Interocean Lines, Inc. and Trinity Shipping Line, S.A.

Parties: Interocean Lines, Inc. and Trinity Shipping Line, S.A.

Synopsis: The proposed amendment deletes the understanding between the parties that terminal services will be provided by specific companies in Ecuador.

Dated: December 12, 2003.

By Order of the Federal Maritime Commission.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 03–31142 Filed 12–16–03; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MEDIATION AND CONCILIATION SERVICE

Labor-Management Cooperation Program; Application Solicitation

AGENCY: Federal Mediation and Conciliation Service.

ACTION: Request for public comment on draft Fiscal Year 2004 Program Guidelines/Application Solicitation for Labor-Management Committees.

SUMMARY: The Federal Mediation and Conciliation Service (FMCS) is publishing the draft Fiscal Year 2004 Program Guidelines/Application Solicitation for the Labor-Management Cooperation Program to inform the public. The program is supported by Federal funds authorized by the Labor-Management Cooperation Act of 1978, subject to annual appropriations. The Solicitation contains changes in the eligibility requirement, specifically, that applicants who have not received funding under this program within the past 6 years are eligible to re-apply.

DATES: Comments must be submitted on or before January 16, 2004.

ADDRESSES: Send Comments to: Jane A. Lorber, Director, Labor Management Grants Program, FMCS 2100 K Street, NW., Washington, DC 20427.

FOR FURTHER INFORMATION CONTACT: Jane A. Lorber, 202–271–8868.

Labor-Management Cooperation Program Application Solicitation for Labor-Management Committees FY 2004

A. Introduction

The following is the final solicitation for the Fiscal Year (FY) 2004 cycle of the Labor-Management Cooperation Program as it pertains to the support of labor-management committees. These guidelines represent the continuing efforts of the Federal Mediation and Conciliation Service to implement the provisions of the Labor-Management Cooperation Act of 1978, which was initially implemented in FY81. The Act authorizes FMCS to provide assistance in the establishment and operation of company/plant, area, public sector, and industry-wide labor-management committees which:

(A) Have been organized jointly by employers and labor organizations representing employees in that company/plant, area, government agency, or industry; and

(b) Are established for the purpose of improving labor-management relationships, job security, and organization effectiveness; enhancing economic development; or involving workers in decisions affecting their working lives, including improving communication with respect to subjects of mutual interest and concern.

The Program Description and other sections that follow, as well as a separately published FMCS Financial and Administrative Grants Manual, make up the basic guidelines, criteria, and program elements a potential applicant for assistance under this program must know in order to develop an application for funding consideration for either a company/plant, area-wide, industry, or public sector labor-management committee. Directions for obtaining an application kit may be found in Section H. A copy of the Labor-Management Cooperation Act of 1978, included in the application kit, should be reviewed in conjunction with this solicitation.

B. Program Description

Objectives

The Labor-Management Cooperation Act of 1978 identifies the following seven general areas for which financial assistance would be appropriate:

(1) To improve communication between representatives of labor and management;

(2) To provide workers and employers with opportunities to study and explore new and innovative joint approaches to achieving organizational effectiveness;

(3) To assist workers and employers in solving problems of mutual concern not susceptible to resolution within the collective bargaining process;

(4) To study and explore ways of eliminating potential problems which reduce the competitiveness and inhibit the economic development of the company/plant, area, or industry;

(5) To enhance the involvement of workers in making decisions that affect their working lives;

(6) To expand and improve working relationships between workers and managers; and

(7) To encourage free collective bargaining by establishing continuing mechanisms for communication between employers and their employees through Federal assistance in the formation and operation of labor-management committees.

The primary objective of this program is to encourage and support the establishment and operation of joint labor-management committees to carry out specific objectives that meet the aforementioned general criteria. The term "labor" refers to employees represented by a labor organization and covered by a formal collective bargaining agreement. These committees may be found at either the plant (company), area, industry, or public sector levels.

A plant or company committee is generally characterized as restricted to one or more organizational or productive units operated by a single employer. An area committee is generally composed of multiple employers of diverse industries as well as multiple labor unions operating within and focusing upon a particular city, county, contiguous multicounty, or statewide jurisdiction. An industry committee generally consists of a collection of agencies or enterprises and related labor union(s) producing a common product or service in the private sector on a local, state, regional, or nationwide level. A public sector committee consists of government employees and managers and employees of public institutions of higher education, or of employees and managers of public elementary and secondary schools. Those employees must be covered by a formal collective bargaining agreement or other enforceable labor-management agreement. In deciding whether an application is for an area or industry committee, consideration should be

given to the above definitions as well as to the focus of the committee.

In FY 2004, competition will be open to company/plant, area, private industry, and public sector committees. Special consideration will be given to committee applications involving innovative or unique efforts. All application budget requests should focus directly on supporting the committee. Applicants should avoid seeking funds for activities that are clearly available under other Federal programs (*e.g.*, job training, mediation of contract disputes, *etc.*)

Required Program Elements

1. *Problem Statement*—The application should have numbered pages and discuss in detail what specific problem(s) face the company/plant, area, government, or industry and its workforce that will be addressed by the committee. Applicants must document the problem(s) using as much relevant data as possible and discuss the full range of impacts these problem(s) could have or are having on the company/plant, government, area, or industry. An industrial or economic profile of the area and workforce might prove useful in explaining the problem(s). This section basically discusses *why* the effort is needed.

2. *Results or Benefits Expected*—By using specific goals and objectives, the application must discuss in detail *what* the labor-management committee will accomplish during the life of the grant. Applications that promise to provide objectives *after* a grant is awarded will receive little or no credit in this area. While a goal of "improving communication between employers and employees" may suffice as one over-all goal of a project, the objectives must, whenever possible, be expressed in *specific* and *measurable* terms. Applicants should focus on the outcome, impacts or changes that the committee's efforts will have. Existing committees should focus on *expansion* efforts/results expected from FMCS funding. The goals, objectives, and projected impacts will become the foundation for future monitoring and evaluation efforts of the grantee, as well as the FMCS grants program.

3. *Approach*—This section of the application specifies how the goals and objectives will be accomplished. At a minimum, the following elements must be included in all grant applications:

(a) A discussion of the strategy the committee will employ to accomplish its goals and objectives;

(b) A listing, by name and title, of all existing or proposed members of the labor-management committee. The application should also offer a rationale for the selection of the committee members (e.g., members represent 70% of the area or company/plant workforce).

(c) A discussion of the number, type, and role of all committee staff persons. Include proposed position descriptions for all staff that will have to be hired as well as resumes for staff already on board; noting, that grant funds may not be used to pay for existing employees

(d) In addressing the proposed approach, applicants must also present their justification as to why Federal funds are needed to implement the proposed approach;

(e) A statement of how often the committee will meet (we require meetings at least every other month) as well as any plans to form subordinate committees for particular purposes; and

(f) For applications from existing committees, a discussion of past efforts and accomplishments and how they would integrate with the proposed expanded effort.

4. *Major Milestones*—This section must include an implementation plan that indicates what major steps, operating activities, and objectives will be accomplished as well as a timetable for *when* they will be finished. A milestone chart must be included that indicates what specific accomplishments (process and impact) will be completed by month over the life of the grant using October 1, 2004, as the start date. The accomplishment of these tasks and objectives, as well as problems and delays therein, will serve as the basis for quarterly progress reports to FMCS.

5. *Evaluation*—Applicants must provide for either an external evaluation or an internal assessment of the project's success in meeting its goals and objectives. An evaluation plan must be developed which briefly discusses what basic questions or issues the assessment will examine and what baseline data the committee staff already has or will gather for the assessment. This section should be written with the application's own goals and objectives clearly in mind and the impacts or changes that the effort is expected to cause.

6. *Letters of Commitment*—Applications must include current letters of commitment from *all* proposed or existing committee participants and chairpersons. These letters should indicate that the participants support the application and will attend scheduled committee meetings. A blanket letter signed by a committee chairperson or other official on behalf of all members is not acceptable. We encourage the use of individual letters submitted on company or union letterhead represented by the individual. The letters should match the names provided under Section 3(b).

7. *Other Requirements*—Applicants are also responsible for the following:

(a) The submission of data indicating approximately how many employees will be covered or represented through the labor-management committees;

b. From existing committees, a copy of the existing staffing levels, a copy of the by-laws (if any), a breakout of annual operating costs and identification of all sources and levels of current financial support;

(c) A detailed budget narrative based on policies and procedures contained in the FMCS Financial and Administrative Grants Manual;

(d) An assurance that the labor-management committee will not interfere with any collective bargaining agreements; and

(e) An assurance that committee meetings will be held at least every other month and that written minutes of all committee meetings will be prepared and made available to FMCS.

Selection Criteria

The following criteria will be used in the scoring and selection of applications for award:

(1) The extent to which the application has clearly identified the problem and justified the needs that the proposed project will address.

(2) The degree to which appropriate and *measurable* goals and objectives have been developed to address the problems/needs of the applicant.

(3) The feasibility of the approach proposed to attain the goals and objectives of the project and the perceived likelihood of accomplishing the intended project results. This section will also address the degree of innovativeness or uniqueness of the proposed effort.

(4) The appropriateness of committee membership and the degree of commitment of these individuals to the goals of the application as indicated in the letters of support.

(5) The feasibility and thoroughness of the implementation plan in specifying major milestones and target dates.

(6) The cost effectiveness and fiscal soundness of the application's budget request, as well as the application's feasibility vis-a-vis its goals and approach.

(7) The overall feasibility of the proposed project in light of all of the information presented for consideration; and

(8) The value to the government of the application in light of the overall objectives of the Labor-Management Cooperation Act of 1978. This includes such factors as innovativeness, site location, cost, and other qualities that impact upon an applicant's value in encouraging the labor-managment concept.

C. Eligibility

Eligible grantees include state and local units of government, labor-management committees (or a labor union, management association, or company on behalf of a committee that will be created through the grant), and certain third-party private non-profit entities on behalf of one or more committees to be created through the grant. Federal government agencies and their employees are not eligible.

Third-party private, non-profit entities that can document that a major purpose or function of their organization is the improvement of labor relations are eligible to apply. However, all funding must be directed to the functioning of the labor-management committee, and all requirements under Part B must be followed. Applications from third-party entities must document particularly strong support and participation from all labor and management parties with whom the applicant will be working. Applications from third-parties which do not directly support the operation of a new or expanded committee will not be deemed eligible, nor will applications signed by entities such as law firms or other third-parties failing to meet the above criteria.

Successful grantees *will* be bound by OMB Circular 110, *i.e.*, "contractors that develop or draft specifications, requirements, statements of work, invitations for bids and/or requests for proposals shall be *excluded*" (emphasis added from competing for such procurements).

Applicants who received funding under this program within the past 6 years for committee operations are not eligible to re-apply. The only exception will be made for grantees that seek funds on behalf of an entirely different committee whose efforts are totally outside of the scope of the original grant.

D. Allocations

The FY2004 appropriation for this program *anticipated* to be $1,490,250 of which at least $1,000,000–$1,050,000 will be available competitively for new applicants. Specific funding levels will not be established for each type of committee. The review process will be conducted in such a manner that at least two awards will be made in each category (company/plant, industry, public sector, and area), provided that FMCS determines that at least two outstanding applications exist in each category. After these applications are selected for award, the remaining applications will be considered according to merit without regard to category.

In addition to the competitive process identified in the preceding paragraph, FMCS will set aside a sum not to exceed thirty percent of its non-reserved appropriation to be awarded on a non-competitive basis. These funds will be used only to support applications that have been solicited by the Director of the Service and are not subject to the dollar range noted in Section E. All funds returned to FMCS from a competitive grant award may be awarded on a non-competitive basis in accordance with budgetary requirements.

FMCS reserves the right to retain up to five percent of the FY2004 appropriation to contract for program support purposes (such as evaluation) other than administration.

E. Dollar Range and Length of Grants

Awards to expand existing or establish new labor-management committees will be for a period of up to 18 months. If successful progress is made during this initial budget period and all grants funds are not obligated within the specified period, these grants may be extended for up to six months. Continuation awards may be made.

The dollar range of awards is as follows:

—Up to $65,000 over a period of up to 18 months for company/plant committees or single department public sector applicants;

—Up to $125,000 per 18-month period for area, industry, and multi-department public sector committee applicants.

Applicants are reminded that these figures *represent maximum Federal funds only*. If total costs to accomplish the objectives of the application exceed the maximum allowable Federal funding level and its required grantee match, applicants may supplement these funds through voluntary contributions from other sources. Applicants are also strongly encouraged to consult with their local or regional FMCS field office to determine what kinds of training may be available at no cost before budgeting for such training in their applications. A list of our field leadership team and their phone numbers is included in the application kit.

F. Cash Match Requirements and Cost Allowability

All applicants must provide at least 10 percent of the total allowable project costs in cash. Matching funds may come from state or local government sources or private sector contributions, but many generally not include other Federal funds. Funds generated by grant-supported efforts are considered "project income," and may not be used for matching purposes.

It is the policy of this program to reject all requests for indirect or overhead costs as well as "in-kind" match contributions. In addition, grant funds must not be used to supplant private or local/state government funds currently spent for committee purposes. Funding requests from existing committees should focus entirely on the costs associated with the expansion efforts. Also, under no circumstances may business or labor officials participating on a labor-management committee be compensated out of grant funds for *time* spent at committee meetings or *time* spent in committee training sessions. Applicants generally will not be allowed to claim all or a portion of *existing* full-time staff as an expense or match contribution. For a more complete discussion of cost allowability, applicants are encouraged to consult the FY2004 FMCS Financial and Administrative Grants Manual, which will be included in the application kit.

G. Application Submission and Review Process

The Application for Federal Assistance (SF–424) form must be signed by *both* a labor and management representative. In lieu of signing the SF–424 form representatives may type their name, title, and organization on plain bond paper with a signature line signed and dated, in accordance with block 18 of the SF–424 form. Applications must be postmarked no later than June 30, 2004. No applications or supplementary materials will be accepted after the deadline. It is the responsibility of the applicant to ensure that the U.S. Postal Service or other carrier correctly postmarks the application. An original application containing numbered pages, plus *three* copies, should be addressed to the Federal Mediation and Conciliation Service, Labor-Management Grants Program, 2100 K Street, NW., Washington, DC 20427. FMCS will not consider videotaped submissions or video attachments to submissions.

After the deadline has passed, all eligible applications will be reviewed

and scored preliminarily by one or more Grant Review Boards. The Board(s) will recommend selected applications for rejection or further funding consideration. The Director, Labor-Management Grants Program, will finalize the scoring and selection process. The individual listed as contact person in Item 6 on the application form will generally be the only person with whom FMCS will communicate during the application review process. Please be sure that person is available between June and September of 2004.

All FY2004 grant applicants will be notified of results and all grant awards will be made before October 1, 2003. Applications submitted after the June 30 deadline date or fail to adhere to eligibility or other major requirements will be administratively rejected by the Director, Labor-Management Grants Program.

H. Contact

Individuals wishing to apply for funding under this program should contact the Federal Mediation and Conciliation Service as soon as possible to obtain an application kit. Please consult the FMCS Web site (*www.fmcs.gov*) to download forms and information.

These kits and additional information or clarification can be obtained free of charge by contacting the Federal Mediation and Conciliation Service, Labor-Management Grants Program, 2100 K Street, NW., Washington, DC 20427; or by calling 202–606–8181.

John J. Toner,

Chief of Staff, Federal Mediation and Conciliation Service.

[FR Doc. 03–31032 Filed 12–16–03; 8:45 am]

BILLING CODE 6732–01–M

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than December 31, 2003.

A. Federal Reserve Bank of Atlanta (Sue Costello, Vice President) 1000 Peachtree Street, N.E., Atlanta, Georgia 30303:

1. The Edwards Family Holdings, LLLP, The Edwards Family Management Trust, J. Joseph Edwards and Patricia C. Edwards, all of Barnesville, Georgia; James J. Edwards, Jr., Thomaston, Georgia; and Christopher C. Edwards, Griffin, Georgia; to retain voting shares of United Bank Corporation, Barnesville, Georgia, and thereby indirectly retain voting shares of United Bank, Zebulon, Georgia.

B. Federal Reserve Bank of San Francisco (Tracy Basinger, Director, Regional and Community Bank Group) 101 Market Street, San Francisco, California 94105-1579:

1. Arnold Clair Benton and Neva Clair Benton, Reno, Nevada; to acquire additional shares of Heritage Bancorp, Reno, Nevada, and thereby indirectly acquire additional voting shares of Heritage Bank of Nevada, Reno, Nevada.

Board of Governors of the Federal Reserve System, December 11, 2003.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E3–00564 Filed 12–16–03; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center Web site at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than January 9, 2004.

A. Federal Reserve Bank of Chicago (Phillip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690-1414:

1. Fentura Financial, Inc., Fenton, Michigan; to merge with West Michigan Financial Corporation, Hudsonville, Michigan, and thereby indirectly acquire West Michigan Community Bank, Hudsonville, Michigan.

Board of Governors of the Federal Reserve System, December 11, 2003.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E3–00563 Filed 12–16–03; 8:45 am]

BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Meeting of the President's Council on Bioethics on January 15–16, 2004

AGENCY: The President's Council on Bioethics, HHS.

ACTION: Notice.

SUMMARY: The President's Council on Bioethics (Leon R. Kass, M.D., chairman) will hold its fifteenth meeting, at which, among other things, it will continue discussion of its stem cell research, "beyond therapy" (enhancement), and "biotechnology and public policy" (regulation) projects. Subjects discussed at past Council meetings (and potentially touched on at this meeting) include: human cloning; embryo research; aging retardation and lifespan-extension; organ procurement for transplantation; and assisted reproduction and reproductive genetics (including IVF, ICSI, PGD; sex selection, inheritable genetic modification; and the patentability of human genes, tissues, and organisms).

DATES: The meeting will take place Thursday, January 15, 2004, from 9 a.m. to 5:15 p.m. et; and Friday, January 16, 2004, from 8:30 a.m. to 12:30 p.m. et.

ADDRESSES: Hotel Wyndham Washington DC, 1400 M Street, NW., Washington, DC 20005.

Public Comments: The meeting agenda will be posted at http://www.bioethics.gov. Interested members of the public are encouraged to offer comments, either in person or in writing. A period of time will be set aside during the meeting to receive comments from the public, beginning at 11:30 a.m., on Friday, January 16. Comments will be limited to no more than five minutes per speaker or organization. As a courtesy, please inform Ms. Diane Gianelli, Director of Communications, in advance of your intention to make a public statement, and please give her your name, affiliation, and a brief description of the topic or nature of your comments. To submit a written statement, mail or e-mail it to Ms. Gianelli at one of the addresses given below.

FOR FURTHER INFORMATION CONTACT: Ms. Diane Gianelli, Director of Communications, The President's Council on Bioethics, Suite 700, 1801 Pennsylvania Avenue, Washington, DC 20006. Telephone: 202/296–4669. E-mail: *info@bioethics.gov*. Web site: *http://www.bioethics.gov*.

Dated: December 10, 2003.

Dean Clancy,

Executive Director, The President's Council on Bioethics.

[FR Doc. 03–31046 Filed 12–16–03; 8:45 am]

BILLING CODE 4168–17–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Agency for Healthcare Research and Quality, HHS.

ACTION: Notice.

SUMMARY: This notice announces the intention of the Agency for Healthcare Research and Quality (AHRQ) to request that the Office of Management and Budget (OMB) allow the proposed information collection project: "Medical Expenditure Panel Survey Household Component and Medical Provider Component (MEPS–HC and MEPS–MPC)—2004 and 2005". In accordance with the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)), AHRQ invites the public to comment on this proposed information collection.

This proposed information collection was previously published in the **Federal Register** on October 16, 2003 and allowed 60 days for public comment. No public comments were received. The purpose of this notice is to allow an additional 30 days for public comment.

DATES: Comments on this notice must be received by January 16, 2004.

ADDRESSES: Written comments should be submitted to: Allison Eydt, Human Resources and Housing Branch, Office of Information and Regulatory Affairs, OMB, New Executive Office Building, Room 10235, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Cynthia D. McMichael, AHRQ, Reports Clearance Officer, (301) 427–1651.

SUPPLEMENTARY INFORMATION:

Proposed Project

"Medical Expenditure Panel Survey Household Component and Medical Provider Component (MEPS–HC and MPC)—2004 and 2005".

The AHRQ intends to conduct an annual panel survey of U.S. households and medical providers to collect information on a variety of measures related to health status, health insurance coverage, health care use and expenditures, and sources of payment for health services. This collection project consists of two parts: the MEPS Household Component (HC) and the MEPS Medical Provider component (MPC).

Each panel of the MEPS–HC consists of a nationally representative sample of U.S. households with a data collection period covering 2½ years.

This time frame allows for the collection of annual data from the MEPS sample that covers their health care experiences over two consecutive calendar years. The first panel of MEPS began in 1996 and a new panel has been initiated annually thereafter. The MEPS–HC is jointly sponsored by the AHRQ and the National Center for Health Statistics (NCHS).

The MEPS–HC will be conducted using a sample of households selected from households which responded to the previous year's National Health Interview Survey (NHIS) sponsored by NCHS. The NHIS is a household survey which collects health data from approximately 50,000 households and 110,000 individuals. The NHIS is used as the sampling frame for the MEPS and several other surveys as part of efforts by the Department of Health and Human Services (DHHS) to integrate survey data collection activities.

Data to be collected from each household include detailed information on demographics, health conditions, current health status, utilization of health care providers, charges and payments for health care services, quality of care received, medications, employment and health insurance.

The purpose of the MEPS–MPC is to supplement the information provided by household respondents in the MEPS–HC about the use of medical services in the United States based on a nationally representative sample. The MEPS–MPC will be conducted with the permission of members of the households surveyed in the MEPS–HC. The AHRQ contractor will contact the medical providers of the HC Survey respondents to determine the actual dates of service, the diagnoses, the services provided, the amount that was charged, the amount that was paid and the sources of payment. Thus, the MPC is derived from or is based upon the survey, (MEPS–HC). The MPC confirms and/or improves the quality of the core survey data.

Data from household respondents in the MEPS Household Component for calendar year 2004, will be collected, beginning in 2004, and continuing into the year 2005, data for calendar year 2005 will be collected, beginning in 2005, and continuing into the year 2006.

Data from medical providers linked to household respondents in the MEPS Household Component for calendar year 2004, will be collected, beginning in 2005, and continuing into the year 2006, provider data for calendar year 2005 will be collected, beginning in 2006, and continuing into the year 2007.

Data Confidentiality Provisions

MEPS data confidentiality is protected under the AHRQ and NCHS Confidentiality statutes, section 308(d) and section 924(c) of the Public Health Service Act (42 U.S.C. 242m(d) and 42 U.S.C. 299c–(c), respectively).

In accordance with SHRQ and NCHS confidentiality statutes, statistical and non-identifying data will be made available through publications, articles in major journals as well as public use data files. The statistical and analytic data are intended to be used for purposes such as:

- Generating national estimates of individual and family health care use and expenditures, private and public health insurance coverage, and the availability, costs and scope of private health insurance benefits among Americans;
- Examining the effects of changes in how chronic care and disability are managed and finances;
- Evaluating the growing impact of managed care and of enrollment in different types of managed care plans; and,

• Examining access to and costs of health care for common diseases and conditions, health care quality, prescription drug use, and other health issues.

Statisticians and researchers will use these data to make important generalizations about the health care of civilian non-institutionalized population of the United States, as well as to conduct research in which the household is the unit of analysis.

Methods of Collection

Data from the MEPS–HC will be collected using a combination of modes. For example, the AHRQ intends to introduce study participants to the survey through advance mailings. The first contact will provide the household with information regarding the importance and uses of the information obtained. The AHRQ will then conduct five (in-person) interviews with each household to obtain health care use and expense data for 2 calendar years. Data will be collected using a computer-assisted personal interviewing method (CAPI). In certain cases, AHRQ will conduct interviews over the telephone, if necessary respondents may be asked to respond to 1 or more short self-administered questionnaires over the course of the survey.

The medical provider survey will be conducted predominantly by telephone, but may include self-administered mail surveys, if requested by the respondent.

Estimated Annual Respondent Burden Per Year for the MEPS HC: Each MEPS participated is asked to complete 5 interviews over two and one half years. Each interview averages 1.8 hours in length. Total burden is estimated in the following chart:

MEPS HOUSEHOLD COMPONENT ESTIMATED BURDEN FOR 2004 AND 2005

Survey period	Number of completes	Burden per complete (hours)	Total burden (hours)
Jan–Jul '04	22,037	1.8	39,667
Aug–Dec '04	14,746	1.8	26,543
Jan–Jul '05	22,418	1.8	40,352
Aug–Dec '05	15,003	1.8	27,005
Jan–Jul '06	14,838	1.8	26,708
Total			160,275

Estimated Annual Respondent Burden per year for the MEPS MPC: The estimated annual hour burden is as follows:

MPC for Calendar Year 2004 and 2005

Type of provider	Number of respondents	Average number of patients/ provider	Number of patient/provider pairs	Average number of events/ patient	Average burden/event (in minutes)	Total hours of burden
MPC 2004:						
Hospital Office-based	5,502	2.2	12,105	3.2	5	3,227
Doctor	23,077	1.3	30,000	3.5	5	8,750
Separately Billing Doctor	17,143	1.4	24,000	1.3	5	2,600
Home Health	545	1.1	600	5.8	5	290
Pharmacy	8,077	2.6	21,000	10.3	3	10,815
Total	54,344		87,705			25,682
MPC 2005:						
Hospital Office-based	5,310	2.2	11,681	3.2	5	3,115
Doctor	22,269	1.3	28,950	3.5	5	8,444
Separately Billing Doctor	16,543	1.4	23,160	1.3	5	2,509
Home Health	526	1.1	579	5.8	5	280
Pharmacy	7,794	2.6	20,265	10.3	3	10,436
Total	52,442		84,635			24,784

Request for Comments

In accordance with the above cited legislation, comments on the AHRQ information collection are requested with regard to any of the following: (a) Whether the proposed collection of information is necessary for the proper performance of functions of AHRQ, including whether the information will have practical utility; (b) the accuracy of the AHRQ's estimate of burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information upon the respondents, including the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the request for OMB approval of the proposed information collection. All comments will become a matter of public record.

Dated: November 26, 2003.

Carolyn M. Clancy,

Director.

[FR Doc. 03–31197 Filed 12–16–03; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Agency for Healthcare Research and Quality, HHS.

ACTION: Notice.

SUMMARY: This notice announces the intention of the Agency for Healthcare Research and Quality (AHRQ) to request that the Office of Management and Budget (OMB) allow the proposed information collection project: "Medical Expenditure Panel Survey—Medical Provider Component (MEPS–MPC) for 2003". In accordance with the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)), AHRQ invites the public to comment on this proposed information collection.

This proposed information collection was previously published in the **Federal Register** on October 15, 2003 and allowed 60 days for public comment. No public comments were received. The purpose of this notice is to allow an additional 30 days for public comment.

DATES: Comments on this notice must be received by January 16, 2004.

ADDRESSES: Written comments should be submitted to: Allison Eydt, Human Resources and Housing Branch, Office of Information and Regulatory Affairs, OMB, New Executive Office Building, Room 10235, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Cynthia D. McMichael, AHRQ, Reports Clearance Officer, (301) 427–1651.

SUPPLEMENTARY INFORMATION:

Proposed Project

"Medical Expenditure Panel Survey—Medical Provider Component (MEPS–MPC) for 2003".

The MEPS–MPC is a survey of hospitals, physicians and other medical providers. The purpose of this survey is to supplement and verify the information provided by respondent households participating in the household component of the MEPS (MEPS–HC) about their use of medical services in the United States.

With the permission of members of the households surveyed in the MEPS–HC, AHRQ contractor will contact the medical providers of the HC survey respondents to determine the actual dates of service, the diagnoses, the services provided, the amount that was charged, the amount that was paid and the sources of payment. Thus, the MPC is derived from or is based upon the core survey, MEPS–HC, and will improve the qualify of the core survey data.

The Medical Expenditure Panel Survey Household Component (MEPS–HC) conducted in 2003, will provide annual estimates, based upon a national representative sample, of health care use, expenditures, sources of payment and insurance coverage, for the U.S. civilian non-institutionalized population for 2003. Data from medical providers linked to household respondents in the MEPS Household component for calendar year 2003, will be collected beginning 2004 and continuing into the year 2005. MEPS is co-sponsored by the Agency for Healthcare Research and Quality (AHRQ) and the National Center for Health Statistics (NCHS).

Data Confidentiality Provisions

MEPS data confidentiality is protected under the AHRQ and NCHS Confidentiality statutes, section 308(d) and section 924(c) of the Public Health Service Act (42 U.S.C. 242m(d) and 42 U.S.C. 299c–3(c),respectively).

Methods of Collection

The Medical Provider Survey will be conducted predominantly by telephone, but may include self-administered mail surveys,if requested by the respondent. The MPC for Calendar year 2003 estimated annual burden is as follows:

Type of provider	Number of respondents	Average number of patients/ provider	Number of patients/provider pairs	Average Number of events/ patient	Average burden/event (in minutes)	Total hours of burden
MPC 2003:						
Hospital Office-based	5,095	2.2	11,210	3.2	5	2,977
Doctor	16,031	1.3	20,840	3.5	5	6,054
Separately Billing doctor	15,879	1.4	22,230	1.3	5	2,399
Home Health	505	1.1	555	5.8	5	267
Pharmacy	7,481	2.6	19,450	10.3	3	10,017
Total	44,991		74,285			21,714

Request for Comments

In accordance with the above cited legislation, comments on the AHRQ information collection are requested with regard to any of the following:

(a) Whether the proposed collection of information is necessary for the proper performance of functions of AHRQ, including whether the information will have practical utility; (b) the accuracy of the AHRQ's estimate of burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information upon the respondents, including the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the request for OMB approval of the proposed information collection. All comments will become a matter of public record.

Dated: November 26, 2003.

Carolyn M. Clancy,

Director.

[FR Doc. 03–31198 Filed 12–16–03; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 04004]

Agency for Toxic Substances and Disease Registry; Public Health Conference Support Grant Program; Notice of Availability of Funds—Amendment

A notice announcing the availability of fiscal year 2004 funds for grants to support public health conferences was published in the **Federal Register** on August 28, 2003, Volume 68, Number

167, pages 51781–51785. The notice is amended as follows:

Page 51781, third column, under Application Deadline: delete "Cycle C: June 1, 2004."

Page 51784, first column, Section H. "Submission and Deadline," paragraph 2, delete the first sentence. Replace with, "There will be two conference support reviews this year."

Paragraph 4, should be changed to read, "* * * between August 1, 2004 and September 30, 2005 * * *"

Delete Paragraph 5.

Under subtitle "Letter of Intent Due Dates", lines 5 and 6, Cycle B: January 6, 2004 should be changed to read, "For conferences August 1, 2004–September 30, 2005."

Delete lines 7, 8, and 9.

Lines 10–12 should be changed to read, "Letter of Intent (LOI) Submission: On or before October 1, 2003, and January 6, 2004 submit an original and two signed copies * * *"

Page 51784, second column, under paragraph 1, in block 1, "Application due dates," delete "Cycle C: June 1, 2004": in block 2, "Earliest possible award dates," delete "September 1, 2004."

In paragraph 2, under Application Submission, line 2, should be changed to read, "On or before November 19, 2003 and March 8, 2004 submit an original and two * * *"

Dated: December 11, 2003.

Edward Schultz,

Acting Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 03–31077 Filed 12–16–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–06–04]

Proposed Data Collections Submitted for Public Comment and Recommendations

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 498–1210. Send written comments to CDC, Desk Officer, Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 or by fax to (202) 395–6974. Written comments should be received within 30 days of this notice.

Proposed Project: Domestic Violence Prevention Enhancement and Leadership through Alliances (DELTA)—New—National Center for Injury Prevention and Control (NCIPC), Centers for Disease Control and Prevention (CDC).

Domestic violence is a large, potentially preventable source of physical and emotional harm for women, children, and families. One promising approach to domestic violence prevention is the coordinated community response (CCR) model wherein multiple agencies within a community come together to work collectively on domestic violence issues. However, many CCRs formed to date focus on responding to, rather than preventing acts of violence. CDC is launching the *Domestic Violence Prevention Enhancement and Leadership through Alliances* (*DELTA*) demonstration program to stimulate the development of prevention-focused programs and diffuse current programs into the existing operations of CCRs, using fourteen state domestic violence coalitions as intermediaries.

This project will be conducted through a policy research contract. First there will be an identification and description of each state's CCR structures and operations, then an evaluation of the DELTA Program's success in developing and disseminating prevention enhancements to CCRs. The contractor will use an environmental scan to identify the full population of CCRs in each state, as well as profile the organizational, political, and economic landscape in which the CCRs operate. This information will assist CDC and the state coalitions in developing prevention enhancements that are responsive to the capacities and circumstances of local CCRs while at the same time providing baseline measures to facilitate and evaluate the DELTA program. The DELTA program evaluation will then use these baseline measures, together with additional data collected each year throughout program implementation to assess how well the program performs in strengthening collaborative activity across domestic violence programs, developing prevention enhancements and incorporating them into current CCR operations, and institutionalizing organizational changes that will sustain primary prevention as part of the everyday workings of state coalitions and CCRs.

The fourteen state coalitions that are DELTA grantees will be interviewed every six months by the contractor, and an annual survey of all local CCRs in the fourteen DELTA states will also be conducted. Once the initial data collection is completed, the contractor will also conduct a one-time survey of state domestic violence coalitions and up to ten other organizations in each of the 36 non-DELTA states. A separate OMB submission will be prepared for this phase. The estimated annualized burden is 400 hours for this data collection.

Information collection instrument	Number of respondents	Number of response/respondent	Average burden/response (in hours)
Mail Survey of CCRs in DELTA States	448	1	35/60
Telephone Interviews of DELTA Grantees	28	2	2

Dated: December 5, 2003.

Alvin Hall,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 03–31056 Filed 12–16–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Efficacy Trials of Parenting Programs for Fathers

Announcement Type: New.

Funding Opportunity Number: 04055.

Catalog of Federal Domestic Assistance Number: 93.136.

Key Dates: Letter of Intent Deadline: January 16, 2004.

Application Deadline: February 18, 2004.

I. Funding Opportunity Description

Authority: This program is authorized under section 391(a)(1) of the Public Health Service Act, [42 U.S.C. section 280b(a)(1), as amended].

Purpose: The purpose of the program is to examine the efficacy of parenting programs for high-risk fathers, expectant fathers, or father surrogates of children age birth to two and/or age three to five for the prevention of child maltreatment and the promotion of positive parenting behaviors. This program addresses the "Healthy People 2010" focus area of Injury and Violence Prevention.

Measurable outcomes of the program will be in alignment with the following performance goal for the National Center for Injury Prevention and Control: Conduct a targeted program of research to reduce injury-related death and disability.

Outcomes to be assessed include:

- Knowledge and attitudes towards parenting, including perceptions of self-reported parenting competence;
- Changes in daily parental behavior and parenting style;
- Mothers' perceptions of fathers' support;
- Mothers' and fathers' reports of fathers' involvement in care giving;
- Incidence of neglect, and physical, sexual, and emotional abuse; and
- Incidence of unintentional injuries.

Research Objectives: Research suggests that most cases of serious child physical abuse and fatality are caused by fathers or father figures (Anderson, Ambrosino, Valentine, & Lauderdale, 1983; Bergman, Larsen, & Mueller, 1986; Brewster *et al.*, 1998; Daley & Piliavin, 1982; Hicks & Gaughan, 1995; Jason & Andereck, 1983; Rosenthal, 1988). Although there is little research on the determinants of abuse among fathers or father figures, it appears that they may have similar characteristics to those of physically abusive mothers: greater perceived stress and distress, greater physiological reactivity, lack of social support, negative perceptions of their children, and inaccurate knowledge or expectations of developmentally appropriate complex child behaviors (Milner, 1998).

Recruiting fathers in prevention programs is a major challenge. However, some prevention and awareness programs have been developed to teach experienced and new fathers the basics in caring for infants and young children. Such programs provide men with a safe environment to discuss their concerns about fatherhood and learn basic childcare skills. Participants report high rates of satisfaction and show low levels of attrition. However, more rigorous evaluation of such programs is needed to establish their potential impact.

Research funded under this announcement is expected to address this important gap in the prevention literature (*i.e.*, efficacy studies of interventions that are designed to reduce the above types of parenting characteristics). The ultimate aim of such an approach is to assess whether interventions designed to teach expectant, new, experienced, and surrogate fathers the basics in caring for infants and young children, can reduce risk factors for child maltreatment.

At a minimum, competitive applicants will provide theoretical rationale and empirical evidence in support of a specific extant parenting course directed toward fathers whose intimate partners are currently expecting or have children under the age of five, and conduct a rigorous efficacy study.

Priority will be given to efficacy studies of primary prevention parenting programs that focus on the determinants of abuse among expectant, new, experienced or surrogate fathers, over those that focus on criminal justice responses (*e.g.*, arrest strategies).

Priority will also be given to proposals that:

- Propose more stringent and rigorous evaluation designs, including: Experimental and quasi-experimental designs with appropriate baseline/pre-intervention data, post-intervention data, and at least one follow-up collection point; data from at least one comparison or control group; and data from multiple sources.
- Propose data analytic plans that are appropriate to the intervention, research design and hypotheses, data collection measures, and project period, and that anticipate and evaluate the effect of threats to the internal and external validity of the specified research design.
- Target traditionally underserved communities.

Activities: Awardee activities for this program are as follows:

1. Design and conduct research, including formative research and pilot testing to address the described goals of this cooperative agreement.
2. Collaborate with CDC scientists in the development of the human subjects protocol for the CDC Institutional Review Board (IRB) by all cooperating institutions participating in the research project.
3. Obtain approval of the study protocol by the recipient's local IRB.
4. Implement and evaluate project delivery.
5. Write and disseminate reports of research activities to regional, state, and local partners.
6. Conduct one reverse site visit to meet with CDC staff in Atlanta on an annual basis.
7. Complete all required reports as specified under "Reporting".
8. Analyze data and publish findings in peer-reviewed journals.

In a cooperative agreement, CDC staff is substantially involved in the program activities, above and beyond routine grant monitoring.

CDC Activities for this program are as follows:

(1) Provide scientific and programmatic consultation. CDC will collaborate with project staff on decision-analyses, programmatic issues, and dissemination of the study results in publications and presentations.

(2) Assist in the development of a research protocol for Institutional Review Board (IRB) review by all cooperating institutions participating in the research.

(3) The CDC IRB will review and approve the protocol initially and on at least an annual basis until the research project is completed.

(4) CDC staff will monitor and review scientific and operational accomplishments of the project through conference calls, site visits, and review of technical reports.

II. Award Information

Type of Award: Cooperative Agreement. CDC involvement in this program is listed in the Activities Section above. Fiscal Year Funds: 2004 Approximate Total Funding: $500,000.

Approximate Number of Awards: One.

Approximate Average Award: N/A.

Floor of Award Range: $250,000.
Ceiling of Award Range: $500,000.
Anticipated Award Date: September 1, 2004.
Budget Period Length: 12 months.
Project Period Length: Four years.
Throughout the project period, CDC's commitment to continuation of awards will be conditioned on the availability of funds, evidence of satisfactory progress by the recipient (as documented in required reports), and the determination that continued funding is in the best interest of the Federal Government.

III. Eligibility Information

III.1. Eligible applicants: Applications may be submitted by public and private nonprofit and for profit organizations and by governments and their agencies, such as:

- Public nonprofit organizations;
- Private nonprofit organizations;
- For profit organizations;
- Small, minority, women-owned businesses;
- Universities;
- Colleges;
- Research institutions;
- Hospitals;
- Community-based organizations;
- Faith-based organizations;
- Federally recognized Indian tribal governments;
- Indian tribes;
- Indian tribal organizations;
- State and local governments or their Bona Fide Agents (this includes the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, the Commonwealth of the Northern Marianna Islands, American Samoa, Guam, the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau)
- Political subdivisions of States (in consultation with States).

A Bona Fide Agent is an agency/organization identified by the State as eligible to submit an application under the State eligibility in lieu of a State application. If you are applying as a bona fide agent of a State or local government, you must provide a letter from the State or local government as documentation of your status. Place this documentation behind the first page of your application form.

III.2. Cost Sharing or Matching: Matching funds are not required for this program.

III.3. Other Eligibility Requirements: If your application is incomplete or non-responsive to the requirements listed below, it will not be entered into the review process. You will be notified that your application did not meet submission requirements. The following applicant requirements are:

- A principal investigator who has documented prior training and experience in conducting efficacy and effectiveness trials.
- A principal investigator who has conducted research, published the findings in peer-reviewed journals, and has specific authority and responsibility to carry out the proposed project.
- Demonstrated experience on the applicant's project team in conducting, evaluating, and publishing violence prevention and related research in peer-reviewed journals.
- Effective and well-defined working relationships within the performing organization and with outside entities, which will ensure implementation of the proposed activities.
- The overall match between the applicant's proposed research objectives and the program priorities as described under the heading, "Research Objectives".
- The requested funding amount should not be greater than the ceiling of the award range.
- It is especially important to include an abstract that reflects the study's focus, because the abstract will be used to help determine the responsiveness of the application.
- Principal investigators (PI's) are encouraged to submit only one proposal in response to this program announcement. With few exceptions (*e.g.*, research issues needing immediate public health attention), only one application per PI will be funded under this announcement.

Note: Title 2 of the United States Code section 1611 states that an organization described in section 501(c)(4) of the Internal Revenue Code that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant, or loan.

IV. Application and Submission Information

IV.1. Address to Request-Application Package: To apply for this funding opportunity, use application form PHS 398 (OMB number 0925–0001 rev. 5/2001). Forms and instructions are available in an interactive format on the CDC web site, at the following Internet address: *www.cdc.gov/od/pgo/forminfo.htm.*

Forms and instructions are also available in an interactive format on the National Institutes of Health (NIH) web site at the following Internet address: *http://grants.nih.gov/grants/funding/phs398/phs398.html.*

If you do not have access to the Internet, or if you have difficulty accessing the forms on-line, you may contact the CDC Procurement and Grants Office Technical Information Management Section (PGO–TIM) staff at: 770–488–2700. Application forms can be mailed to you.

IV.2. Content and Form of Application Submission: Letter of Intent (LOI): CDC requests that you send a LOI if you intend to apply for this program. Although the LOI is not required, not binding, and does not enter into the review of your subsequent application, your LOI will be used to gauge the level of interest in this program, and to allow CDC to plan the application review. Your LOI must be written in the following format:

- Maximum number of pages: Two;
- Single spaced;
- Font size: 12-point unreduced;
- Paper size: 8.5 by 11 inches;
- Page margin size: One inch;
- Printed only on one side of page;
- Written in English, avoid jargon.

Your LOI must contain the following information:

- Descriptive title of the proposed research;
- Name, address, e-mail address and telephone number of the Principal Investigator;
- Names of other key personnel;
- Participating institutions;
- Number and title of this Program Announcement (PA).

Application: Follow the PHS 398 application instructions for content and formatting of your application. See Attachment 1 of this announcement for guidance on how to complete Form 398 for this Program Announcement.

You must include a research plan with your application. The research plan should be no more than 25 pages (8.5 inches by 11 inches), single-spaced, printed on one side only, with one-inch margins on all sides, and unreduced 12 point font.

Your application will be evaluated on the criteria listed under Section V. Application Review Information, so it is important to follow them, as well as the Research Objectives and the Administrative and National Policy Requirements (AR's), in laying out your research plan.

Your research plan should address activities to be conducted over the entire project period. The research plan should consist of the following information: 1. Abstract. It is especially important to include an abstract that reflects the study's focus, because the abstract will be used to help determine the responsiveness of the application.

2. Program Goals and Objectives. Describe the goals and objectives the proposal is designed to achieve in the short and long term. Specific research questions and hypotheses should also be included.

3. Program Participants. Describe the population from which the sample will be drawn and the method by which they will be selected. In addition, the proposal should provide evidence that the recipient (or collaborating partner) has access to the target population, and that participation in the fathering program will be adequate.

4. Intervention. Describe the proposed strategies or components of the intervention and the plan for implementing the efficacy study. Proposals should explicate the theoretical and empirical justification for the potential effectiveness of the intervention for reducing child maltreatment. The proposal should describe incidence, prevalence, morbidity, and/or mortality rates associated with child maltreatment within the location or setting in which the intervention component(s) will occur, and describe the relevance of this setting to the strategy and desired outcomes.

5. Evaluation Design. Describe the proposed design, methods and analysis plan for assessing the efficacy of the intervention. The specific type of evaluation method chosen should reflect the nature of the intervention, feasibility, and ethical considerations. Potential threats to the validity of the study should be described along with how such threats will be recognized and addressed. The status of all necessary measurement instruments should be described. If any materials are not extant, the methods and time frame for measure development, pilot testing, and validation should be given. For data collected from archival records (*e.g.*, hospital records, police records, etc.) the proposal should discuss issues of accessibility, reliability, and validity of those data.

6. Project Management. Provide evidence of the expertise, capacity, and community support necessary to successfully implement the efficacy study of programs for fathers or father surrogates. Each existing or proposed position for the project should be described by job title, function, general duties, level of effort and allocation of time. Management operation principles, structure, and organization should also be noted.

7. Collaborative Efforts. List and describe the current and proposed collaborations with government, health, or children's agencies, community- or faith-based organizations, minority organizations, and other researchers. Include letters of support and memoranda of understanding that specify the nature of past, present, and proposed collaborations, and the products/services/activities that will be provided by and to the applicant.

8. Data sharing and release: Describe plans for the sharing and release of data (See AR–25 for additional information).

9. Project Budget. Provide a detailed budget for each activity undertaken, with accompanying justification of all operating expenses that is consistent with the stated objectives and planned activities of the project. This program announcement does not use the modular budget format.

You are required to have a Dun and Bradstreet Data Universal Numbering System (DUNS) number to apply for a grant or cooperative agreement from the Federal government. Your DUNS number must be entered in item 11 of the face page of the PHS 398 application form. The DUNS number is a nine-digit identification number, which uniquely identifies business entities. Obtaining a DUNS number is easy and there is no charge. To obtain a DUNS number, access *www.dunandbradstreet.com* or call 1–866–705–5711. For more information, see the CDC web site at: *http://www.cdc.gov/od/pgo/funding/pubcommt.htm.*

IV.3. Submission Dates and Times:
LOI Deadline Date: January 16, 2004.
Application: February 18, 2004.
Explanation of Deadlines: Applications must be received in the CDC Procurement and Grants Office by 4 p.m. Eastern Time on the deadline date. If you send your application by the United States Postal Service or commercial delivery service, you must ensure that the carrier will be able to guarantee delivery of the application by the closing date and time. If CDC receives your application after closing due to: (1) Carrier error, when the carrier accepted the package with a guarantee for delivery by the closing date and time, or (2) significant weather delays or natural disasters, you will be given the opportunity to submit documentation of the carrier's guarantee. If the documentation verifies a carrier problem, CDC will consider the application as having been received by the deadline.

This announcement is the definitive guide on application submission address and deadline. It supersedes information provided in the application instructions. If your application does not meet the deadline above, it will not be eligible for review, and will be discarded. You will be notified that your application did not meet the submission requirements.

CDC will not notify you upon receipt of your application. If you have a question about the receipt of your application, first contact your courier. If you still have a question, contact the PGO–TIM staff at: 770–488–2700. Before calling, please wait two to three days after the application deadline. This will allow time for applications to be processed and logged.

4. Intergovernmental Review of Applications: Executive Order 12372 does not apply to this program.

5. Funding Restrictions: Restrictions, which must be taken into account while writing your budget, are as follows: None.

If you are requesting indirect costs in your budget, you must include a copy of your indirect cost rate agreement. If your indirect cost rate is a provisional rate, the agreement must be less than 12 months of age.

6. Other Submission Requirements:
LOI Submission Address: Submit your LOI by express mail, delivery service, fax, or e-mail to: Robin Forbes, CDC, NCIPC, 4770 Buford Hwy, NE, Mailstop K–62, Atlanta, GA 30341. Phone: 770–488–4037. Fax: 770–488–1662. Email: *CIPERT@cdc.gov.*

Application Submission Address: Submit the signed original and five copies of your application by mail or express delivery service to: Technical Information Management—PA# 04055, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341.

Applications may not be submitted electronically at this time.

V. Application Review Information

V.1. Criteria: You are required to provide measures of effectiveness that will demonstrate the accomplishment of the various identified objectives of the cooperative agreement. Measures of effectiveness must relate to the performance goals stated in the "Purpose" section of this announcement. Measures must be objective and quantitative, and must measure the intended outcome. These measures of effectiveness must be submitted with the application and will be an element of evaluation.

The goals of CDC-supported research are to advance the understanding of biological systems, improve the control and prevention of disease, and enhance health. In the written comments, reviewers will be asked to evaluate the application in order to judge the likelihood that the proposed research will have a substantial impact on the pursuit of these goals.

The scientific review group will address and consider each of the following criteria in assigning the application's overall score, weighting

them as appropriate for each application. The application does not need to be strong in all categories to be judged likely to have major scientific impact and thus deserve a high priority score. For example, an investigator may propose to carry out important work that by its nature is not innovative, but is essential to move a field forward.

The criteria are as follows:

Significance: Does this study address an important problem? If the aims of the application are achieved, how will scientific knowledge be advanced? What will be the effect of these studies on the concepts or methods that drive this field?

Approach: Are the conceptual framework, design, methods, and analyses adequately developed, scientifically rigorous, well integrated, and appropriate to the aims of the project? Does the applicant acknowledge potential problem areas and consider alternative tactics?

Innovation: Does the project employ novel concepts, approaches or methods? Are the aims original and innovative? Does the project challenge existing paradigms or develop new methodologies or technologies?

Investigator: Is the investigator appropriately trained and well suited to carry out this work? Is the work proposed appropriate to the experience level of the principal investigator and other researchers (if any)?

Environment: Does the scientific environment in which the work will be done contribute to the probability of success? Does the proposed research take advantage of unique features of the scientific environment or employ useful collaborative arrangements? Is there evidence of institutional support?

Additional Review Criteria: In addition to the above criteria, the following items will be considered in the determination of scientific merit and priority score:

Intervention: Is the potential effectiveness of the proposed intervention within the target community theoretically justified and supported with epidemiologic, methodological, and behavioral research? How feasible is the implementation of the intervention as proposed? Can the intervention reasonably be predicted to produce the expected reductions in risk factors for child maltreatment? Is the setting of implementation appropriate?

Protection of Human Subjects From Research Risks: Does the application adequately address the requirements of title 45 CFR part 46 for the protection of human subjects? This will not be scored; however, an application can be disapproved if the research risks are sufficiently serious and protection against risks is so inadequate as to make the entire application unacceptable.

Inclusion of Women and Minorities in Research: Does the application adequately address the CDC Policy requirements regarding the inclusion of woman, ethnic, and racial groups in the proposed research? This includes: (1) The proposed plan for the inclusion of both sexes and racial and ethnic minority populations for appropriate representation; (2) The proposed justification when representation is limited or absent; (3) A statement as to whether the design of the study is adequate to measure differences when warranted; and (4) A statement as to whether the plans for recruitment and outreach for study participants include the process of establishing partnerships with community(ies) and recognition of mutual benefits.

Inclusion of Children as Participants in Research Involving Human Subjects: The NIH maintains a policy that children (*i.e.*, individuals under the age of 21) must be included in all human subjects research, conducted or supported by the NIH, unless there are scientific and ethical reasons not to include them. This policy applies to all initial (Type 1) applications submitted for receipt dates after October 1, 1998.

All investigators proposing research involving human subjects should read the "NIH Policy and Guidelines" on the inclusion of children as participants in research involving human subjects that is available at: *http://grants.nih.gov/grants/funding/children/children.htm.*

Budget: The reasonableness of the proposed budget and the requested period of support in relation to the proposed research.

V.2. Review and Selection Process: Applications will be reviewed for completeness by the Procurement and Grants Office (PGO) and for responsiveness of eligibility information by the National Center for Injury Prevention and Control (NCIPC). Incomplete applications and applications that are non-responsive to the eligibility criteria will not advance through the review process. You will be notified that your application did not meet submission requirements.

Applications that are complete and responsive to the PA will be subjected to a preliminary evaluation (streamline review) by a peer review committee, the Initial Review Group (IRG), convened by NCIPC to determine if the application is of sufficient technical and scientific merit to warrant further review by the IRG. CDC will withdraw from further consideration applications judged to be noncompetitive and promptly notify the principal investigator or program director and the official signing for the applicant organization. Those applications judged to be competitive will be further evaluated by a dual review process:

1. The primary review will be a peer review conducted by the IRG. All applications will be reviewed for scientific merit in accordance with the review criteria listed above. Applications will be assigned a priority score based on the National Institutes of Health (NIH) scoring system of 100–500 points.

2. The secondary review will be conducted by the Science and Program Review Subcommittee (SPRS) of NCIPC's Advisory Committee for Injury Prevention and Control (ACIPC). The ACIPC Federal agency experts will be invited to attend the secondary review, and will receive modified briefing books (*i.e.*, abstracts, strengths and weaknesses from summary statements, and project officer's briefing materials). ACIPC Federal agency experts will be encouraged to participate in deliberations when applications address overlapping areas of research interest, so that unwarranted duplication in federally funded research can be avoided and special subject area expertise can be shared. The NCIPC Division Associate Directors for Science (ADS) or their designees will attend the secondary review in a similar capacity as the ACIPC Federal agency experts to assure that research priorities of the announcement are understood and to provide background regarding current research activities. Only SPRS members will vote on funding recommendations, and their recommendations will be carried to the entire ACIPC for voting by the ACIPC members in closed session. If any further review is needed by the ACIPC, regarding the recommendations of the SPRS, the factors considered will be the same as those considered by the SPRS.

The committee's responsibility is to develop funding recommendations for the NCIPC Director based on the results of the primary review, the relevance and balance of proposed research relative to the NCIPC programs and priorities, and to assure that unwarranted duplication of federally funded research does not occur. The secondary review committee has the latitude to recommend to the NCIPC Director, to reach over better-ranked proposals in order to assure maximal impact and balance of proposed research.

3. All applicants will receive a written critique. The factors to be considered will include:

a. The results of the primary review including the application's priority score as the primary factor in the selection process.

b. The relevance and balance of proposed research relative to the NCIPC programs and priorities.

c. The significance of the proposed activities in relation to the priorities and objectives stated in "Healthy People 2010," the Institute of Medicine report, "Reducing the Burden of Injury," and the "CDC Injury Research Agenda."

All awards will be determined by the Director of the NCIPC based on priority scores assigned to applications by the IRG, recommendations by the secondary review committee, *e.g.*, NCIPC's Advisory Committee for Injury Prevention and Control (ACIPC), consultation with NCIPC senior staff, and the availability of funds.

VI. Award Administration Information

VI.1. Award Notices: If your application is to be funded, you will receive a Notice of Grant Award (NGA) from the CDC Procurement and Grants Office. The NGA shall be the only binding, authorizing document between the recipient and CDC. The NGA will be signed by an authorized Grants Management Officer, and mailed to the recipient fiscal officer identified in the application.

VI.2. Administrative and National Policy Requirements: 45 CFR Part 74 and 92. For more information on the Code of Federal Regulations, see the National Archives and Records Administration at the following Internet address: *http://www.access.gpo.gov/nara/cfr/cfr-table-search.html.*

The following additional requirements apply to this project:

- AR–1 Human Subjects Requirements
- AR–2 Requirements for Inclusion of Women and Racial and Ethnic Minorities in Research
- AR–8 Public Health System Reporting Requirements
- AR–9 Paperwork Reduction Act Requirements
- AR–10 Smoke-Free Workplace Requirements
- AR–11 Healthy People 2010
- AR–12 Lobbying Restrictions
- AR–13 Prohibition on Use of CDC Funds for Certain Gun Control Activities
- AR–14 Accounting System Requirements
- AR–15 Proof of Non-Profit Status
- AR–16 Security Clearance Requirement
- AR–21 Small, Minority, and Women-Owned Business
- AR–22 Research Integrity
- AR–23 States and Faith-Based Organizations
- AR–24 Health Insurance Portability and Accountability Act Requirements
- AR–25 Release and Sharing of Data

Starting with the December 1, 2003 receipt date, all NCIPC funded investigators seeking more than $500,000 in total costs in a single year are expected to include a plan describing how the final research data will be shared/released or explain why data sharing is not possible. Details on data sharing/release, including the timeliness and name of the project data steward, should be included in a brief paragraph immediately following the Research Plan Section of the PHS 398 form. References to data sharing/release may also be appropriate in other sections of the application (*e.g.*, background and significance, human subjects requirements, etc.) The content of the data sharing/release plan will vary, depending on the data being collected and how the investigator is planning to share the data. The data sharing/release plan will not count towards the application page limit and will not factor into the determination scientific merit or priority scores. Investigators should seek guidance from their institutions, on issues related to institutional policies, local IRB rules, as well as local, State and Federal laws and regulations, including the Privacy Rule.

Further detail on the requirements for addressing data sharing in applications for NCIPC funding may be obtained by contacting NCIPC program staff or visiting the NCIPC internet web site: at *http://www.cdc.gov/ncipc/osp/sharing_policy.htm.*

Additional information on these requirements can be found on the CDC web site at the following Internet address: *http://www.cdc.gov/od/pgo/funding/ARs.htm.*

VI.3. Reporting: You must provide CDC with an original, two copies, and a disk of the following reports:

1. Interim progress report, (PHS 2590, OMB Number 0925–0001, rev. 5/2001) no less than 90 days before the end of the budget period. The progress report will serve as your non-competing continuation application, and must contain the following elements:

a. Current Budget Period Activities Objectives.

b. Current Budget Period Financial Progress.

c. New Budget Period Program Proposed Activity Objectives.

d. Detailed Line-Item Budget and Justification.

e. Additional Requested Information.

2. Financial status report, no more than 90 days after the end of the budget period.

3. Final financial and performance reports, no more than 90 days after the end of the project period.

VII. Agency Contacts

For general questions about this announcement, contact: Technical Information Management Section, CDC Procurement and Grants Office. 2920 Brandywine Road, Atlanta, GA 30341, Telephone: (770) 488–2700.

For scientific/research program technical assistance, contact: Joanne Klevens, PhD., Epidemiologist, Prevention Development and Evaluation Branch, Division of Violence Prevention, National Center for Injury Prevention and Control, 4770 Buford Highway, NE., M/S: K–60, Atlanta, GA 30341, Telephone: (770) 488–1386, E-mail: *DZK8@cdc.gov.*

For questions about peer review, contact: Gwen Cattledge, Scientific Review Administrator, Centers for Disease Control and Prevention, National Center for Injury Prevention and Control, 4770 Buford Highway, NE., Mailstop: K–02, Atlanta, GA 30341, Telephone: (770) 488–1430, E-mail: *gxc8@cdc.gov.*

For budget assistance, contact: Van King, Grants Management Specialist, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341, Telephone: (770) 488–2751, E-mail: *vbk5@cdc.gov.*

VIII. Other Information

Attachment 1

Errata Sheet:

Special Instructions for PHS–398, Rev. 11/2002

ANNOUNCEMENT #04055

SECTION I—PREPARING YOUR APPLICATION

B. GENERAL INSTRUCTIONS (Page 3)

Use English only and avoid jargon and unusual abbreviations. Type the application.

FORMAT SPECIFICATIONS

The content section of the Program Announcement refers to "the Research Plan." The research plan should consist of items listed in the program announcement. Use only standard size fonts in black print that can be photocopied and easily read, do not use photo reduction or compressed print. Draw all graphs, diagrams, tables, and charts in black ink. Do not include photographs, oversized documents, or materials that cannot be photocopied in the body of the application.

The ONLY item that should be used to keep the application together is a rubber band. Please do not use spiral binders, 3-ring notebooks, envelopes, binder clips, etc.

Do not submit an incomplete application. An application will be considered incomplete and returned if it is illegible, if it fails to follow the instructions, or if the material presented is insufficient to permit an adequate review. Unless specifically required by these instructions (*e.g.*, human subjects certification, changes in other support), do not send supplementary or corrective material pertinent to the application after the receipt date without its

being specifically solicited or agreed to by prior discussion with the Grants Management Specialist.

PAGE LIMITATIONS AND CONTENT REQUIREMENTS (Page 4)

Disregard Page Limits under Research Plan, Sections a–d and adhere to the prescribed guidance in the Program Announcement.

C. SPECIFIC INSTRUCTIONS BUDGET INSTRUCTIONS (Page 11)

This Announcement does not use the modular budget format. Disregard instructions regarding the dollar limitations. PHS 398 Form Page 4 and Form Page 5 are required to be submitted by all applications regardless of the dollar amount requested.

Human Subject Research (Section 8.e, Pages 18–19)

Ensure that the application addresses the issue of Inclusion of Women and Ethnic and Racial Minorities in Research Involving Human Subjects. The application could be determined as non-responsive if this issue is not covered within the research plan.

SECTION II—SUBMITTING YOUR APPLICATION

Send the Application to the following address: Technical Information Management—PA# 04055 CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, Georgia 30341–4146.

PLEASE DO NOT SEND THE APPLICATION TO THE NATIONAL INSTITUTES OF HEALTH

Disregard all instructions under Section A. INSTRUCTIONS (Page 31)

Disregard Sections B–D (Pages 34–35). Please refer to the Program Announcement Application Review Information (Section V) for the applicable CDC review process.

Disregard Section M. First Paragraph (Pages 53–54); Section N (Pages 54–55) and Section O (Pages 55–56); and all pages following Page 56.

Dated: December 10, 2003.

Edward Schultz,

Acting Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 03–31083 Filed 12–16–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2003D–0092]

Food and Cosmetic Security Guidances; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a guidance document related to food security entitled "Retail Food Stores and Food Service Establishments: Food Security Preventive Measures Guidance" (food security guidance) and a guidance document related to cosmetics security entitled "Cosmetics Processors and Transporters: Cosmetics Security Preventive Measures Guidance" (cosmetics security guidance). The food security preventive Measures Guidance" is designed as an aid to operators of retail food stores and food service establishments (e.g., bakeries, bars, bed-and-breakfast operations, cafeterias, camps, child and adult day care providers, church kitchens, commissaries, community fund raisers, convenience stores, fairs, food banks, grocery stores, interstate conveyances, meal services for homebound persons, mobile food carts, restaurants, and vending machine operators). It identifies the kinds of preventive measures that operators may take to minimize the risk that food under their control will be subject to tampering or other malicious, criminal, or terrorist actions. The cosmetics security guidance is designed as an aid to operators of cosmetics establishments (e.g., firms that process, store, repack, relabel, distribute, or transport cosmetics or cosmetics ingredients). It identifies the kinds of preventive measures that operators may take to minimize the risk that cosmetics under their control will be subject to tampering or other malicious, criminal, or terrorist actions.

DATES: You may submit written or electronic comments on the guidance documents at any time.

ADDRESSES: Submit written requests for single copies of the guidance document entitled "Retail Food Stores and Food Service Establishments: Food Security Preventive Measures Guidance," or "Cosmetics Processors and Transporters: Cosmetics Security Preventive Measures Guidance" to John Kvenberg, Center for Food Safety and Applied Nutrition (HFS–600), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740. Include a self-addressed adhesive label to assist that office in processing your request.

Submit written comments on the documents to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville MD 20852. Submit electronic comments to *http://www.fda.gov/dockets/ecomments*. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance documents.

FOR FURTHER INFORMATION CONTACT: John Kvenberg, Center for Food Safety and Applied Nutrition (HFS–600), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 301–436–2359, e-mail: *jkvenberg@cfsan.fda.gov* or Donald W. Kraemer, Center for Food Safety and Applied Nutrition (HFS–400), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 301–436–2300, e-mail: *dkraemer@cfsan.fda.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

Operators of retail food store, food service, and cosmetics establishments are encouraged to review their current security procedures and controls in light of the potential for tampering or other malicious, criminal, or terrorist actions and make appropriate improvements.

FDA announced the availability of two guidance documents related to food security in the **Federal Register** of January 9, 2002 (67 FR 1224). They were entitled "Food Producers, Processors, Transporters, and Retailers: Food Security Preventive Measures Guidance" and "Importers and Filers: Food Security Preventive Measures Guidance." The agency solicited public comment, but indicated that the two guidance documents would be implemented immediately in accordance with § 10.115(g)(2) (21 CFR 10.115(g)(2)). The two guidance documents were prompted by the tragedies of September 11, 2001, and the resulting scrutiny of, and interest in, food safety and security that followed.

A number of the comments on the two guidance documents urged FDA to issue guidance that was specifically tailored for the retail food store and food service sector. In response to these comments, the agency announced in the **Federal Register** of March 21, 2003 (68 FR 13932), the availability of a draft guidance document entitled "Retail Food Store and Food Service Establishments: Food Security Preventive Measures Guidance." This draft guidance document identified the kinds of preventive measures that operators of retail food store and food service establishments (e.g., bakeries, bars, bed-and-breakfast operations, cafeterias, camps, child and adult day care providers, church kitchens, commissaries, community fund raisers, convenience stores, fairs, food banks, grocery stores, interstate conveyances, meal services for homebound persons, mobile food carts, restaurants, and vending machine operators) can take to minimize the risk that food under their control will be subject to tampering or other malicious, criminal, or terrorist actions.

In that same March 21, 2003, **Federal Register** notice, the agency also requested comment on whether the agency's package of food security guidance documents should be expanded to include coverage of cosmetics, in addition to foods. To facilitate such comments, the agency announced the availability of a draft guidance document entitled "Cosmetics Processors and Transporters: Cosmetics Security Preventive Measures Guidance" (68 FR 13932). This draft guidance identified the kinds of preventive measures that operators of cosmetics establishments can take to minimize the risk that cosmetics under their control will be subject to tampering or other malicious, criminal, or terrorist actions. It takes the operator through each segment of the cosmetics production system that is within their control, in order to minimize the risk of tampering or other malicious, criminal, or terrorist action at each segment. Implementation of these measures requires commitment from both management and employees to be successful and, therefore, both should participate in their development and review.

The agency solicited public comment on the draft guidance documents. FDA received three letters and three electronic responses, each containing one or more comments, from industry, consumer groups, and consumers in response to the draft guidance documents. The agency has reviewed and evaluated the comments and has determined that further modification of the guidance documents is unnecessary. The agency is therefore finalizing the draft guidances without revision.

The guidance documents are level 1 guidances issued consistent with FDA's good guidance practices regulation (§ 10.115) relating to the development, issuance, and use of guidance documents.

The guidance documents represent the agency's current thinking on appropriate measures that retail food store, food service, and cosmetics establishments may take to minimize the risk that foods or cosmetics under their control will be subjected to tampering or other malicious, criminal, or terrorist actions. They do not create or confer any rights for or on any person and do not operate to bind FDA or the public.

II. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments regarding these guidance documents. Submit a single copy of electronic comments or two paper copies of any mailed comments, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The guidance documents and received comments are available for public examination in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

III. Electronic Access

Copies of these guidance documents also are available on the Internet at *http://www.cfsan.fda.gov/guidance.html*. The guidance documents also can be viewed at: *http://www.fda.gov/ohrms/dockets*.

Dated: December 3, 2003.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 03–31048 Filed 12–16–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Health Resources and Services Administration (HRSA) publishes abstracts of information collection requests under review by the Office of Management and Budget, in compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35). To request a copy of the clearance requests submitted to OMB for review, call the HRSA Reports Clearance Office at (301) 443–1129.

Proposed Project: Children's Hospitals Graduate Medical Education Payment Program (CHGME PP) (OMB No. 0915–0247)—Revision

The CHGME PP was enacted by Pub. L. 106–129 to provide Federal support for graduate medical education (GME) to freestanding children's hospitals. This legislation attempts to provide support for GME comparable to the level of Medicare GME support received by other, non-children's hospitals. The legislation indicates that eligible children's hospitals will receive payments for both direct and indirect medical education. Direct payments are designed to offset the expenses associated with operating approved graduate medical residency training programs and indirect payments are designed to compensate hospitals for expenses associated with the treatment of more severely ill patients and the additional costs relating to teaching residents in such programs.

Technical assistance workshops and consultation with applicant hospitals resulted in an opportunity for hospital representatives to raise issues and provide suggestions resulting in proposed revisions in the CHGME application forms and instructions.

Data is collected on the number of full-time equivalent residents in applicant children's hospitals' training programs to determine the amount of direct and indirect medical education payments to be distributed to participating children's hospitals. Indirect medical education payments will also be derived from a formula that requires the reporting of discharges, beds, and case mix index information from participating children's hospitals. Hospitals will be requested to submit such information in an annual application. Hospitals will also be requested to submit data on the number of full-time equivalent residents a second time during the Federal fiscal year to participate in the reconciliation payment process.

The estimated average annual reporting for this data collection is approximately 150 hours per hospital. The estimated annual burden is as follows:

Form	Number of respondents	Responses per respondent	Total number of responses	Hours per response	Total burden hours
HRSA 99–1 (Initial)	60	1	60	24	1,440
HRSA 99–1 (Reconciliation)	60	1	60	8	480
HRSA 99–2 (Initial)	60	1	60	14	840
HRSA 99–2 (Reconciliation)	60	1	60	4	240

Form	Number of respondents	Responses per respondent	Total number of responses	Hours per response	Total burden hours
HRSA 99–4 (Reconciliation)	60	1	60	14	840
Total	60		60		3,840

Written comments and recommendations concerning the proposed information collection should be sent within 30 days of this notice to: John Morrall, Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: December 10, 2003.

Tina M. Cheatham,

Acting Director, Division of Policy Review and Coordination.

[FR Doc. 03–31049 Filed 12–16–03; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

In compliance with the requirement for the opportunity for public comment on proposed data collection projects (section 3506(c)(2)(A) of title 44, United States Code, as amended by the Paperwork Reduction Act of 1995, Pub. L. 104–13), the Health Resources and Services Administration (HRSA) publishes periodic summaries of proposed projects being developed for submission to OMB under the Paperwork Reduction Act of 1995. To request more information on the proposed project or to obtain a copy of the data collection plans and draft instruments, call the HRSA Reports Clearance Officer at (301) 443–1129.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information shall have practical utility; (b) the accuracy of the Agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project: Bullying Benchmark Study—New

The Bullying Benchmark Study is designed to gather information from 9- to 13-year-olds and parents of 9- to 13-year-olds (parents and children from the same household will not be interviewed) that will help establish measures to evaluate the ongoing effectiveness of a Maternal and Family Health funded bullying prevention campaign.

The overall goal of the Benchmark Bullying Poll is to establish measurable benchmarks which will be used to evaluate the effectiveness of the Bullying Prevention Campaign. These include: (1) Assessment of underlying attitudes and perceptions about bullying among 9- to 13-year-olds and parents that the campaign is designed to alter; (2) level of concern about bullying among 9- to 13-year-olds and parents; (3) perceived seriousness of bullying among 9- to 13-year-old and parents; (4) level of communications about bullying between 9- to 13-year-olds and their parents, caregivers and other adults; (5) incidence of bullying and bullying prevention behavior in and out of school; and (6) prevalence of anti-bullying procedures and programs in middle schools and their impact on bullying behavior and attitudes and perceptions about bullying.

The methodology used to administer the survey will be by telephone. All prospective respondents will be contacted by phone, using random digit dialing. Respondents meeting the screening criteria will be asked to participate in a short (15 to 20 minutes) telephone interview about this issue and its affects on children in school. Permission for participation of 9- to 13-year-olds will be obtained from their parents. A total of 700 telephone interviews; 350 with children ages 9 to 13 and parents of children ages 9 to 13 will be completed.

Form	Number of respondents	Responses per respondent	Total responses	Minutes per response	Total burden hours
Telephone interviews	700	1	700	15	175

Send comments to Susan G. Queen, PhD, HRSA Reports Clearance Officer, Room 14–45, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated: December 10, 2003.

Tina M. Cheatham,

Acting Director, Division of Policy Review and Coordination.

[FR Doc. 03–31050 Filed 12–16–03; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Proposed Collection: Comment Request

In compliance with the requirement for opportunity for public comment on proposed data collection projects (section 3506(c)(2)(A) of title 44, United States Code, as amended by the Paperwork Reduction Act of 1995, Pub. L. 104–13), the Health Resources and Services Administration (HRSA) publishes periodic summaries of proposed projects being developed for submission to OMB under the Paperwork Reduction Act of 1995. To request more information on the proposed project or to obtain a copy of the data collection plans and draft instruments, call the HRSA Reports Clearance Officer on (301) 443–1129.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project: Health Care Infrastructure Application Forms for Funding Opportunities—New

HRSA Safety Net programs, including the Consolidated Health Center (CHC) Program and the Healthy Communities Access Program (HCAP), are administered by HRSA's Bureau of Primary Health Care (BPHC). HRSA/BPHC is committed to assisting communities in the development of integrated and comprehensive health care delivery systems which will improve the effectiveness, efficiency, and coordination of services for uninsured and underinsured individuals, resulting in higher quality care for these populations at less cost.

Grant funding opportunities are provided to Health Centers to support: The integration and coordination of primary, hospital and specialty care; the enhancement of the network and the health centers ability to compete in the marketplace; and the strategic alignment of health center information systems and technology infrastructures to integrate uniform clinical information with business systems.

BPHC will assist in achieving this new health center infrastructure through various funding opportunities. Application forms are used by new and current Health Centers through, (1) Health Center Network Planning and Development (HCNPD) which includes, Integrated Service Development Initiative (ISDI), Shared Integrated Management Information System (SIMIS), Integrated Information and Communication Technology (ICT), (2) Healthy Communities Access Program (HCAP), and (3) Operational Health Center Networks (OHCN) which include the ISDI and Pharmacy Networks.

Estimates of annualized reporting burden are as follows:

Type of application form	Number of respondents	Hours per response	Total burden hours
HCNPD	35		1575
ISDI	7	45	315
SIMIS	7	45	315
ICT	9	45	405
Pharmacy Networks	12	45	540
HCAP	242		10,890
OHCN	37		1,665
Pharmacy Networks	20	45	900
ISDI	17	45	765
Total	314		14,130

Send comments to Susan G. Queen, Ph.D., HRSA Reports Clearance Officer, Room 14–45, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated: December 10, 2003.

Tina M. Cheatham,

Acting Director, Division of Policy Review and Coordination.

[FR Doc. 03–31051 Filed 12–16–03; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

Proposed Collection; Comment Request; United States-Caribbean Basin Trade Partnership Act

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, Bureau of Customs and Border Protection (CBP) invites the general public and other Federal agencies to comment on an information collection requirement concerning the United States-Caribbean Basin Trade Partnership Act. This request for comments is being made pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3505(c)(2)).

DATES: Written comments should be received on or before February 17, 2004, to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of Customs and Border Protection, Information Services Group, Room 3.2.C, 1300 Pennsylvania Ave., NW., Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Bureau of Customs and Border Protection, Attn.: Tracey Denning, Room 3.2.C, 1300 Pennsylvania Avenue, NW., Washington, DC 20229, Tel. (202) 927–1429.

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3505(c)(2)). The comments should address: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology; and (e) estimates of capital or start-up costs and costs of operations, maintenance, and purchase of services to provide information. The comments that are submitted will be summarized and included in the CBP request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document CBP is soliciting comments concerning the following information collection:

Title: United States—Caribbean Basin Trade Partnership Act.

OMB Number: 1651–0083.

Form Number: CBP–450.

Abstract: The collection of information is required to implement the duty preference provisions of the United States-Caribbean Basin Trade Partnership Act.

Current Actions: There are no changes to the information collection. This submission is being submitted to extend the expiration date.

Type of Review: Extension (without change).

Affected Public: Individuals, businesses.

Estimated Number of Respondents: 440.

Estimated Time Per Respondent: 42.5 hours.

Estimated Total Annual Burden Hours: 18,720.

Estimated Total Annualized Cost on the Public: $430,560.

Dated: December 10, 2003.

Tracey Denning,

Agency Clearance Officer, Information Services Group.

[FR Doc. 03–31144 Filed 12–16–03; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

Proposed Collection; Comment Request; Distribution of Continued Dumping and Subsidy Offset to Affected Domestic Producers

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, Bureau of Customs and Border Protection (CBP) invites the general public and other Federal agencies to comment on an information collection requirement concerning the Distribution of Continued Dumping and Subsidy Offset to Affected Domestic Procedures. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3505(c)(2)).

DATES: Written comments should be received on or before February 17, 2004, to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of Customs and Border Protection, Information Services Group, Room 3.2.C, 1300 Pennsylvania Ave., NW., Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Bureau of Customs and Border Protection, Attn.: Tracey Denning, Room 3.2.C., 1300 Pennsylvania Avenue NW., Washington, DC 20229, Tel. (202) 927–1429.

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3505(c)(2)). The comments should address: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology; and (e) estimates of capital or start-up costs and costs of operations, maintenance, and purchase of services to provide information. The comments that are submitted will be summarized and included in the CBP request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document CBP is soliciting comments concerning the following information collection:

Title: Distribution of Continued Dumping and Subsidy Offset to Affected Domestic Producers.

OMB Number: 1651–0086.

Form Number: N/A.

Abstract: The collection of information is required to implement the duty preference provisions of the Continued Dumping and Subsidy Offset Act of 2000, by prescribing the administrative procedures under which anti-dumping and countervailing duties are assessed on imported products.

Current Actions: This submission is being submitted to extend the expiration date.

Type of Review: Extension.

Affected Public: Businesses.

Estimated Number of Respondents: 1.

Estimated Time Per Respondent: 1 hour.

Estimated Total Annual Burden Hours: 1.

Estimated Total Annualized Cost on the Public: N/A.

Dated: December 10, 2003.

Tracey Denning,

Agency Clearance Officer, Information Services Group.

[FR Doc. 03–31146 Filed 12–16–03; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

Proposed Collection; Comment Request; Land Border Carrier Initiative Program

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, Bureau of Customs and Border Protection (CBP) invites the general public and other Federal agencies to comment on an information collection requirement concerning the Land Border Carrier Initiative Program. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13; 44 U.S.C. 3505(c)(2)).

DATES: Written comments should be received on or before February 17, 2004, to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of Customs and Border Protection, Information Services Group, Attn.: Tracey Denning, 1300 Pennsylvania Avenue, NW., Room 3.2C, Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Bureau of Customs and Border Protection, Attn.: Tracey Denning, 1300 Pennsylvania Avenue NW., Room 3.2.C, Washington, DC 20229, Tel. (202) 927–1429.

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13; 44 U.S.C. 3505(c)(2)). The comments should address: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology; and (e) estimates of capital or start-up costs and costs of operations, maintenance, and purchase of services to provide information. The comments that are submitted will be summarized and included in the CBP request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document CBP is soliciting comments concerning the following information collection:

Title: Land Border Carrier Initiative Program.

OMB Number: 1651–0077.

Form Number: N/A.

Abstract: The Land Border Carrier Initiative Program is designed to prevent smugglers of illicit drugs from utilizing commercial conveyances for their commodities, and to make participation in this program at certain, high-risk locations a condition for use of the Line Release method of processing repetitive entries of merchandise.

Current Actions: This submission is being submitted to extend the expiration date.

Type of Review: Extension (without change).

Affected Public: Businesses, Individuals, Institutions.

Estimated Number of Respondents: 1,050.

Estimated Time Per Respondent: 5 hours.

Estimated Total Annual Burden Hours: 5,250.

Estimated Total Annualized Cost on the Public: $78,750.

Dated: December 10, 2003.

Tracey Denning,

Agency Clearance Officer, Information Services Branch.

[FR Doc. 03–31147 Filed 12–16–03; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

Proposed Collection; Comment Request; Drawback Process Regulations and Entry Collection Documents

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, Bureau of Customs and Border Protection (CBP) invites the general public and other Federal agencies to comment on an information collection requirement concerning Drawback Process Regulations and Entry Collection Documents, This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13; 44 U.S.C. 3505(c)(2)).

DATES: Written comments should be received on or before February 17, 2004, to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of Customs and Border Protection, Information Services Group, Attn.: Tracey Denning, 1300 Pennsylvania Avenue, NW., Room 3.2.C, Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Bureau of Customs and Border Protection, Attn.: Tracey Denning, 1300 Pennsylvania Avenue NW., Room 3.2.C, Washington, DC 20229, Tel. (202) 927–1429.

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13; 44 U.S.C. 3505(c)(2)). The comments should address: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology; and (e) estimates of capital or start-up costs and costs of operations, maintenance, and purchase of services to provide information. The comments that are submitted will be summarized and included in the CBP request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document CBP is soliciting comments concerning the following information collection:

Title: Drawback Process Regulations and Entry Collection Documents.

OMB Number: 1651–0075.

Form Number: Forms CBP–7551, 7552, 7553.

Abstract: The information is to be used by CBP officers to expedite the filing and processing of drawback claims, while maintaining necessary enforcement information to maintain effective administrative oversight over the drawback program.

Current Actions: There are no changes to the information collection. This submission is being submitted to extend the expiration date.

Type of Review: Extension (without change).

Affected Public: Businesses, Institutions.

Estimated Number of Respondents: 8,150.

Estimated Time per Respondent: 11 hours.

Estimated Total Annual Burden Hours: 90,000.

Estimated Total Annualized Cost on the Public: $3,098,405.86.

Dated: December 10, 2003.

Tracey Denning,

Agency Clearance Officer, Information Services Branch.

[FR Doc. 03–31148 Filed 12–16–03; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

Proposed Collection; Comment Request; Accreditation of Commercial Testing Laboratories; Approval of Commercial Gaugers

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, Bureau of Customs and Border Protection (CBP) invites the general public and other Federal agencies to comment on an information collection requirement concerning the Accreditation of Commercial Testing Laboratories and Approval of Commercial Gaugers. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13; 44 U.S.C. 3505(c)(2)).

DATES: Written comments should be received on or before February 17, 2004, to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of Customs and Border Protection, Information Services Group, Room 3.2.C, 1300 Pennsylvania Ave., NW., Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Bureau of Customs and Border Protection, Attn.: Tracey Denning, Room 3.2.C, 1300 Pennsylvania Avenue NW., Washington, DC 20229, Tel. (202) 927–1429.

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13; 44 U.S.C. 3505(c)(2)). The comments

should address: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology; and (e) estimates of capital or start-up costs and costs of operations, maintenance, and purchase of services to provide information. The comments that are submitted will be summarized and included in the CBP request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document CBP is soliciting comments concerning the following information collection:

Title: Accreditation of Commercial Testing Laboratories; Approval of Commercial Gaugers.

OMB Number: 1651–0053.

Form Number: None.

Abstract: The Accreditation of Commercial Testing Laboratories; Approval of Commercial Gaugers are used by individuals or businesses desiring CBP approval to measure bulk products or to analyze importations. This recognition is required of businesses wishing to perform such work on imported merchandise.

Current Actions: There are no changes to the information collection. This submission is being submitted to extend the expiration date.

Type of Review: Extension (without change).

Affected Public: Businesses.

Estimated Number of Respondents: 250.

Estimated Time per Respondent: 60 minutes.

Estimated Total Annual Burden Hours: 250.

Estimated Total Annualized Cost on the Public: $2,500.

Dated: December 10, 2003.

Tracey Denning,

Agency Clearance Officer, Information Services Group.

[FR Doc. 03–31149 Filed 12–16–03; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

Proposed Collection; Comment Request; African Growth and Opportunity Act Certificate of Origin

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, Bureau of Customs and Border Protection (CBP) invites the general public and other Federal agencies to comment on an information collection requirement concerning the African Growth and Opportunity Act Certificate of Origin. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13; 44 U.S.C. 3505(c)(2)).

DATES: Written comments should be received on or before February 17, 2004, to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of Customs and Border Protection, Information Services Group, Room 3.2.C, 1300 Pennsylvania Ave., NW., Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Bureau of Customs and Border Protection, Attn.: Tracey Denning, Room 3.2.C., 1300 Pennsylvania Avenue, NW., Washington, DC 20229, Tel. (202) 927–1429.

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13; 44 U.S.C. 3505(c)(2)). The comments should address: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology; and (e) estimates of capital or start-up costs and costs of operations, maintenance, and purchase of services to provide information. The comments that are submitted will be summarized and included in the CBP request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document CBP is soliciting comments concerning the following information collection:

Title: African Growth and Opportunity Act Certificate of Origin.

OMB Number: 1651–0082.

Form Number: None.

Abstract: The collection of information is required to implement the duty preference provisions of the African Growth and Opportunity Act (AGOA) to provide extension of duty-free treatment under the Generalized System of Preferences (GSP) to sensitive articles normally excluded from GSP duty treatment. It also provides for the entry of specific textile and apparel articles free of duty and free of any quantitative limits to the countries of sub-Saharan Africa.

Current Actions: There are no changes to the information collection. This submission is being submitted to extend the expiration date.

Type of Review: Extension (without change).

Affected Public: Individuals, businesses.

Estimated Number of Respondents: 440.

Estimated Time Per Respondent: 23 hours.

Estimated Total Annual Burden Hours: 10,400.

Estimated Total Annualized Cost on the Public: $239,269.

Dated: December 10, 2003.

Tracey Denning,

Agency Clearance Officer, Information Services Group.

[FR Doc. 03–31150 Filed 12–16–03; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4818–N–15]

Notice of Proposed Information Collection for Public Comment: Telephone Surveys of Nonprofit Sponsors of HUD-Assisted Properties for the Elderly Regarding Knowledge of or Experience With HUD's Assisted Living Conversion Program

AGENCY: Office of Policy Development and Research, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: Comment Due Date February 17, 2004.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Reports Liaison Officer, Office of Policy Development and Research, Department of Housing and Urban Development, 451 7th Street, SW., Room 8226, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Cheryl A. Levine, Office of Policy Development and Research, Department of Housing and Urban Development, 451 7th Street, SW., Room 8140, Washington, DC 20410; telephone (202) 708–0614, x3928. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Ms. Levine.

SUPPLEMENTARY INFORMATION: The Department of Housing and Urban Development will submit the proposed information collection package to OMB for review as required by the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including the use of appropriate automated collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

This notice also lists the following information:

Title of Proposal: Telephone Surveys of Nonprofit Sponsors of HUD-assisted Properties for the Elderly Regarding Knowledge of or Experience with HUD's Assisted Living Conversion Program.

Description of the need for the information and proposed use: The information to be collected is part of a larger study, conducted by Econometrica Inc. and Abt Associates Inc., of the early implementation and outcomes of the Assisted Living Conversion Program. Specifically, the study will look at the characteristics of projects eligible to apply for the ALCP; the characteristics of funded projects and the experience of funded grantees with the conversion process; and for eligible project sponsors who have not applied for funding, the reasons they have not applied. Two telephone surveys of sponsors will be administered. The first survey will be administered to a sample of 50 eligible non-applicant sponsors. This survey will focus on the respondents' level of familiarity with the ALCP and, for those who knew about the program, the reasons they decided not to apply. The second survey will be administered to all of the ALCP grantees that have not yet completed their conversions (approximately 35 respondents.) This survey will focus on the grantees' experience with applying for and implementing the ALCP grant. (Site visits will be conducted to up to eight completed projects; completed projects will not be included in the telephone surveys.) The information sought in both surveys is not currently available from any other source. The data will be compiled in a database for analysis for the study's final report. This research is intended to help HUD document strategies of successful grantees, identify barriers to full utilization of the program, and assess future needs that can be met by the program.

Members of affected public: Nonprofit sponsors of HUD-assisted projects built primarily for elderly occupancy.

Estimation of the total number of hours needed to prepare the information collection, including the number of respondents, frequency of response, and hours of response:

Types of respondents	Number of respondents	Number of responses	Minutes per respondent	Total burden hours
ALCP grantees that have not completed conversion	35	35	60	35
Eligible non-applicants for the ALCP	50	50	45	37.5

Status of the proposed information collection: Pending OMB approval.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C. chapter 35, as amended; and section 8(C)(1) of the United States Housing Act of 1937.

Dated: December 9, 2003.

Darlene F. Williams,

General Deputy Assistant Secretary for Policy Development and Research.

[FR Doc. 03–31041 Filed 12–16–03; 8:45 am]

BILLING CODE 4210–62–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID–076–1430–ES—IDI–34292]

Notice of Realty Action; Recreation and Public Purposes (R&PP) Act Classification; Idaho

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action.

SUMMARY: Jerome County, Idaho has applied for an R&PP lease on public lands along the north rim of the Snake River Canyon for recreation purposes, including kiosks, staging areas, equestrian, motorized and non-motorized, and pedestrian trails. The land would be developed through partnerships with recreation groups and organizations.

FOR FURTHER INFORMATION CONTACT: Bill Baker, at (208) 732–7200.

SUPPLEMENTARY INFORMATION: The following public lands near the community of Jerome, Jerome County, Idaho have been examined and found suitable for classification for lease to Jerome County, Idaho under the provisions of the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 *et seq.*):

Boise Meridian

(Those portions south of Interstate 84.)

T. 9 S., R. 17 E.,
Sec. 14: S1/2SW;
Sec. 15: SW, SWNW;
Sec. 19: Lots 2, 8, 9, SENW;
Sec. 20: N1/2SE;
Sec. 21: E1/2, E1/2W1/2, SWNW, SW;
Sec. 22: W1/2, W1/2SWSE, W1/2E1/2SWSE, NWSE, SWNE, W1/2W1/2SENE, N1/2NE;
Sec. 23: All;

Sec. 24: S1/2SE, N1/2SE;
Sec. 25: All;
Sec. 26: All;
Sec. 28: NENW, N1/2NE, SENE;
Sec. 36: Lot 15.
T. 9 S., R. 18 E.,
Sec. 19: Lots 3, 4, E1/2SW, S1/2SE;
Sec. 28: SW, SWSE;
Sec. 29: S1/2, S1/2NE, NW;
Sec. 30: Lots 1–4, E1/2W1/2, E1/2;
Sec. 31: Lots 1, 4, 5, N1/2NE, NENW;
Sec. 32: Lot 3, N1/2N1/2;
Sec. 33: Lot 1, N1/2, N1/2S1/2, S1/2SE, SESW;
Sec. 34: N1/2SW, SWNW.
T. 10 S., R. 18 E.,
Sec. 3: Lots 4, 5, 8;
Sec. 4: Lots 1, 2;
Sec. 10: Lots 1, 2;
Sec. 11: Lots 1, 2, 5, 6;
Sec. 12: Lot 3.
Containing approximately 6,590 acres.

An R&PP lease is consistent with current BLM land use planning and would be in the public interest. The lease, when issued, will be subject to the following terms and conditions:

1. Provisions of the Recreation and Public Purposes Act and to all applicable regulations of the Secretary of the Interior.

2. Any other conditions that the authorized officer determines appropriate to ensure public access and proper management of Federal lands and interests therein.

3. All authorized uses and designations will continue to be administered by the Bureau. Detailed information concerning this action is available for review at the office of the Bureau of Land Management, Upper Snake River District, Shoshone Field Office, and 400 West F Street, Shoshone, Idaho 83352.

Upon publication of this notice in the **Federal Register**, the lands will be segregated from all other forms of appropriation under the public land laws, including the general mining laws, except for lease under the Recreation and Public Purposes Act. For a period until February 2, 2004, interested persons may submit comments regarding the proposed classification of the lands to the Field Manager; Shoshone Field Office, 400 West F Street, Shoshone, Idaho 83352.

Classification Comments: Interested parties may submit comments involving the suitability of the land for recreation use. Comments on the classification are restricted to whether the land is physically suited for the proposal, whether the use will maximize the future use or uses of the land, whether the use is consistent with local planning and zoning, or if the use is consistent with State and Federal programs.

Application Comments: Interested parties may submit comments regarding the specific use proposed in the application and plan of development, whether the BLM followed proper administrative procedures in reaching the decision, or any other factor not directly related to the suitability of the land for recreation.

Any adverse comments will be reviewed by the State Director. In the absence of any adverse comments, the classification will become effective February 17, 2004.

Dated: October 20, 2003.

Joe Kraayenbrink,

Acting District Manager.

[FR Doc. 03–31122 Filed 12–16–03; 8:45 am]

BILLING CODE 4310–GG–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–957–00–1420–BJ: GP04–0044]

Filing of Plats of Survey: Oregon/Washington

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The plat of survey of the following described lands was officially filed in the Oregon State Office, Portland, Oregon, on September 25, 2003.

Willamette Meridian

Washington

T. 36 N., R. 33 E., accepted September 5, 2003.

The plats of survey of the following described lands were officially filed in the Oregon State Office, Portland, Oregon, July 23, 2003.

Oregon

T. 32 S., R. 6W., accepted July 18, 2003.
T. 18 S., R. 32 E., accepted October 17, 2003.
T. 19 S., R. 32 E., accepted October 17, 2003.
T. 5 S., R. 4 E., accepted October 17, 2003.
T. 29 S., R. 5 W., accepted October 31, 2003.

Washington

T. 31 N., R. 31 E., accepted October 7, 2003.
T. 18 N., R. 1 E., accepted October 7, 2003.

A copy of the plats may be obtained from the Public Room at the Oregon State Office, Bureau of Land Management, 333 SW. 1st Avenue, Portland, Oregon 97204, upon required payment. A person or party who wishes to protest against a survey must file a notice that they wish to protest (at the above address) with the State Director, Bureau of Land Management, Portland, Oregon.

FOR FURTHER INFORMATION CONTACT: Chief, Branch of Cadastral Survey, Bureau of Land Management, (333 SW 1st Avenue) PO Box 2965, Portland, Oregon 97208.

Dated: December 3, 2003.

Robert D. DeViney, Jr.,

Branch of Realty and Records Services.

[FR Doc. 03–31047 Filed 12–16–03; 8:45 am]

BILLING CODE 4310–33–P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–498]

Reissued Notice; In the Matter of Certain Insect Traps; Notice of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Institution of investigation pursuant to 19 U.S.C. 1337.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on August 8, 2003, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of American Biophysics Corporation of East Greenwich, Rhode Island. A supplement to the complaint was filed on August 27, 2003. The complaint, as supplemented, alleges violations of section 337 in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain insect traps by reason of infringement of claims 1–3, 5–7, 9, 13, 28, 31–33, 35–37, 39–41, and 43–45 of U.S. Patent No. 6,286,249 B1 and claims 1–4, 7, 15–19, and 21–39 of U.S. Patent No. 6,145,243. The complaint further alleges that an industry in the United States exists as required by subsection (a)(2) of section 337.

The complainant requests that the Commission institute an investigation and, after the investigation, issue a permanent exclusion order and a permanent cease and desist order.

Due to typographical errors the agency is reissuing the notice in its entirety.

ADDRESSES: The complaint, except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Room 112, Washington, DC 20436, telephone 202–205–2000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server at *http://www.usitc.gov*. The public record for this investigation may be viewed on the Commission's electronic docket imaging system (EDIS) at *http://edis.usitc.gov*.

FOR FURTHER INFORMATION CONTACT: Jay H. Reiziss, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, telephone 202–205–2579.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in § 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR 210.10 (2003).

Scope of Investigation: Having considered the complaint, the U.S. International Trade Commission, on September 8, 2003, *ordered that*—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain insect traps by reason of infringement of claims 1–3, 5–7, 9, 13, 28, 31–33, 35–37, 39–41, or 43–45 of U.S. Patent No. 6,286,249 B1 or claims 1–4, 7, 15–19, or 21–39 of U.S. Patent No. 6,145,243 and whether an industry in the United States exists as required by subsection (a)(2) of section 337.

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is—American Biophysics Corporation, 2240 South County Trail, East Greenwich, RI 02818–1536.

(b) The respondent is the following company alleged to be in violation of section 337, and is a party upon which the complaint is to be served: Blue Rhino Corporation, 104 Cambridge Plaza Drive, Winston-Salem, NC 27104.

(c) Jay H. Reiziss, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street, SW., Suite 401, Washington, DC 20436, who shall be the Commission investigative attorney, party to this investigation; and

(4) For the investigation so instituted, the Honorable Sidney Harris is designated as the presiding administrative law judge.

A response to the complaint and the notice of investigation must be submitted by the named respondent in accordance with § 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(d) and 210.13(a), such response will be considered by the Commission if received not later than 20 days after the date of service by the Commission of the complaint and the notice of investigation. Extensions of time for submitting the response to the complaint and the notice of investigation will not be granted unless good cause therefor is shown.

Failure of the respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter a final determination containing such findings, and may result in the issuance of a limited exclusion order or cease and desist order or both directed against such respondent.

Issued: December 12, 2003.
By order of the Commission.

Marilyn R. Abbott,

Secretary.

[FR Doc. 03–31104 Filed 12–16–03; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Antitrust Division

United States v. Alcan Inc., Alcan Aluminum Corp., Pechiney, S.A., and Pechiney Rolled Products, LLC; Complaint, Proposed Final Judgment and Competitive Impact Statement

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h), that a proposed Final Judgment, Hold Separate Stipulation and Order, and Competitive Impact Statement have been filed with the United States District Court for the District of Columbia in *United States* v. *Alcan, Inc., Alcan Aluminum Corp., Pechiney, S.A., and Pechiney Rolled Products, LLC*, No. 1:03 CV 02012 (GK).

On September 29, 2003, the United States filed a Complaint alleging that Alcan's proposed acquisition of Pechiney would violate section 7 of the Clayton Act, 15 U.S.C. 18, by substantially lessening competition in development, production, and sale of brazing sheet in North America. Brazing sheet is an aluminum alloy used to make heat exchangers (*e.g.*, radiators, heaters, and air conditioners) for motor vehicles. The proposed Final Judgment, filed simultaneously with the Complaint, requires the defendants to divest Pechiney's brazing sheet business to a person acceptable to the United States within 120 days after Alcan receives preliminary notice from the responsible French stock market regulatory authority that the firm's tender offer for Pechiney has been successful. Copies of the Complaint, the proposed Final Judgment, Hold Separate Stipulation and Order, and Competitive Impact Statement are available for inspection at the U.S. Department of Justice, Antitrust Division, Suite 215 North, 325 7th Street, NW., Washington, DC 20004 (telephone: (202) 514–2692), and at the Clerk's Office of the U.S. Court for the District of Columbia, 333 Constitution Avenue NW., Washington, DC 20001.

Public comment is invited within 60-days of the date of this notice. Such comments and responses thereto will be published in the **Federal Register** and filed with the Court. Comments should be directed to Maribeth Petrizzi, Chief, Litigation II Section, Antitrust Division, U.S. Department of Justice, 1401 H Street, NW., Suite 3000, Washington, DC 20530 (telephone: (202) 307–0924).

J. Robert Kramer II,

Director of Operations, Antitrust Division.

United States District Court for the District of Columbia

United States of America, U.S. Department of Justice, Antitrust Division, 1401 H Street, NW., Suite 3000, Washington, DC 20530, *Plaintiff*, v. *Alcan Inc.*, 1188 Sherbrooke Street West, Montreal, Quebec, Canada, H3A 3G2; Alcan Aluminum Corp., 6060 Parkland Boulevard, Cleveland, OH 44124–4185; Pechiney, S.A., 7, Place Du Chancelier Adenauer, CEDEX 16—75218—Paris, France; and Pechiney Rolled Products, LLC, Rural Route 2 Ravenswood, WV 26164–9802, Defendants.

Case No.
Judge:
Deck Type: Antitrust
Date:

Complaint

The United States of America, acting under the direction of the Attorney General of the United States, brings this civil antitrust action to obtain equitable relief against defendants, and alleges as follows:

1. In early July 2003, Alcan Inc. ("Alcan") launched a $4.6 billion tender offer for Pechiney, S.A. ("Pechiney"), which was later endorsed by Pechiney's board of directors. The United States seeks to enjoin this proposed acquisition, which, if consummated, would result in consumers

paying higher prices for brazing sheet, an aluminum alloy used in making heat exchangers for motor vehicles.

2. Alcan, through its United States subsidiary (Alcan Aluminum Corp.), and Pechiney, through its United States subsidiary (Pechiney Rolled Products, LLC), are, respectively, the second and fourth largest producers of brazing sheet in North America. Brazing sheet consists of a class of layered aluminum alloys, each of which has a unique ability to form a uniform, durable, leak-proof bond with other aluminum surfaces. Brazing sheet is widely used in fabricating the major components of heat exchanges for motor vehicles, including engine cooling (*e.g.*, radiators and oil coolers) and climate control (*e.g.*, heaters and air conditioners) systems. A combination of Alcan and Pechiney would command over 40 percent of brazing sheets sales in North America. The combined firm and one other competitor would account for over 80 percent of all brazing sheet sold in North America.

3. The proposed acquisition, if consummated, would combine Alcan, a low cost new entrant and price maverick, with Pechiney, a large industry incumbent, compromising Alcan's incentive to quickly expand its sales by reducing brazing sheet prices, and ending the intense competitive rivalry that currently exists between Alcan and Pechiney in developing, producing, and selling brazing sheet. This competition, which will intensify in the next few years as Alcan completes qualifying its brazing sheet with more customers, already has produced significant improvements in brazing sheet quality, durability, and reliability, and highly competitive prices and terms for this material. By reducing the number of major North American producers of brazing sheet from four to three, this acquisition would substantially increase the likelihood that the combined firm will unilaterally increase, or that it and the other major competitor will tacitly or explicitly cooperate to increase, prices of brazing sheet to the detriment of consumers.

4. Unless this proposed acquisition is blocked, Alcan's acquisition of Pechiney will substantially lessen competition in the development, production, and sale of brazing sheet and likely result in an increase in prices and a reduction in quality and innovation for brazing sheet in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. 18.

I. Jurisdiction and Venue

5. This Complaint is filed by the United States under Section 15 of the Clayton Act, as amended, 15 U.S.C. 25, to prevent and restrain defendants from violating Section 7 of the Clayton Act, 15 U.S.C. 18.

6. Alcan and Pechiney develop, produce, and sell brazing sheet in the flow of interstate commerce. Alcan's and Pechiney's activities in developing, producing, and selling brazing sheet substantially affect interstate commerce. This Court has jurisdiction over the subject matter of this action pursuant to Section 12 of the Clayton Act, 15 U.S.C. 22, and 28 U.S.C. 1331, 1337(a) and 1345.

7. Alcan, Alcan Aluminum Corp., Pechiney, and Pechiney Rolled products LLP have consented to personal jurisdiction and venue in this judicial district.

II. Defendants

8. Alcan is a Canadian corporation with its headquarters in Montreal, Quebec. Alcan Aluminum, an Alcan subsidiary, is a Delaware corporation with its principal place of business in Cleveland, OH. Alcan is one of the world's largest fully integrated aluminum producers. Alcan mines ore from which primary aluminum is produced, and produces a very wide range of rolled aluminum products, including brazing sheet. In 2002, Alcan reported sales of about $12.5 billion. Alcan projects that its sales of brazing sheet in North American in excess of $30 million in 2003.

9. Pechiney is a French corporation with its main office in Paris, France. A subsidiary, Pechiney Rolled Products, is a Delaware corporation with its principal place of business in Ravenswood, WV. Pechiney is also a leading integrated aluminum producer that makes a wide range of rolled aluminum products. In 2002, Pechiney reported total sales of about $11.3 billion. Its United States operations generate over $100 million in North American sales of brazing sheet.

III. The Proposed Transaction

10. In early July 2003, Alcan publicly announced a tender offer for shares of Pechiney, a transaction now valued at over $4.6 billion. The tender offer, recently endorsed by Pechiney's board of directors, is expected to be completed on November 30, 2003, and soon after, Alcan is expected to acquire a majority of the voting shares in Pechiney.

IV. Trade and Commerce

A. The Relevant Product Market

11. Brazing sheet comprises a class of custom-engineered aluminum alloys, each of which is composed of a solid metal "core" clad on one or both sides with an alloy whose melting temperature is lower than that of the core material. When brazing sheet is baked at the appropriate temperature, the cladding alloy will melt and form a durable, uniform leak-proof bond between the core and any adjoinng aluminum surface, effectively welding the two materials together.

12. Brazing sheet is ideally suited for fabricating the major components of heat exchange systems used in motor vehicles. Heat exchanges include engine cooling systems such as radiators and oil coolers and climate control systems such as heater cores and air conditioning units (*i.e.*, evaporator and condenser cores). By making the basic components of heat exchanges with brazing sheet, a parts maker can avoid the physically tedious and costly task of welding or soldering individual components, many of which have unusually intricate surfaces that form joints deep within the heat exchange unit. A parts maker instead can loosely assemble the brazed components and bake the assembly in a brazing oven. The surfaces of the components will melt, converting the entire loose assembly into a solid, leak-proof heat exchange unit.

13. Today, the major components of all heat exchangers used in motor vehicles are made of brazing sheet. Less expensive, lighter, more durable and formable than materials it replaced, brazing sheet enables vehicle makers simultaneously to reduce vehicle cost, size, and weight; improve gas mileage; and extend engine, climate control system, and drive train life. In heat exchange applications, no other material matches the combination of strength, light weight, durability, formability, and corrosion resistance of brazing sheet. Because of the unique attributes, brazing sheet is the preferred material for making heat exchangers for motor vehicles.

14. A small but significant and nontransitory increase in prices for brazing sheet would not cause parts makers to switch to other materials for heat exchanger components in volumes sufficient to make such a price increase unprofitable and unsustainable. Accordingly, the development, production, and sale of brazing sheet is a line of commerce and a relevant product market within the meaning of Section 7 of the Clayton Act.

B. The Relevant Geographic Market

15. Alcan produces brazing sheet in an aluminum hot rolling mill in Oswego, NY, and "slits" or cuts finished roll stock at a cold rolling mill in Fairmont, WV. Pechiney makes brazing sheet in an aluminum hot rolling mill in Ravenswood, WV. The only other large competitor produces brazing sheet in a hot rolling mill in the United States. A much smaller rival produces brazing sheet in hot rolling mills in Canada and in Europe. Additional volumes of brazing sheet are exported to the United States from Europe. Brazing sheet exports to North America, however, account for less than eight percent of total sales. The Canadian and foreign firms, moreover, operate at or near their full production capacity.

16. Domestic parts makers prefer to purchase brazing sheet from North American sources. Foreign brazing sheet typically costs much more than, but does not outperform, brazing sheet produced in North America. Reliance on overseas sources for brazing sheet can be especially risky for domestic parts makers since foreign brazing sheet is more prone to supply interruptions and delays than brazing sheet procured from local, North American sources. Typically, when overseas demand has surged, foreign producers of brazing sheet have cut shipments to North American customers, resulting in production bottlenecks that have jeopardized North American parts makers' relationships with their customers.

17. For these reasons, North American parts makers generally restrict purchases of foreign brazing sheet imports to unique circumstances, *e.g.*, as an interim measure until one or more domestic producers have been qualified to make brazing sheet for use in an auto maker's vehicle, or for low volume heat exchanger parts for which a foreign auto maker has designated a single foreign supplier as the only qualified source for that brazing sheet material.

18. A small but significant and nontransitory increase in prices for brazing sheet in North America would not cause parts makers to buy so much brazing sheet from sources outside North America that such a price increase would be unprofitable and unsustainable. Accordingly, North America is a relevant geographic market within the meaning of Section 7 of the Clayton Act.

C. Anticompetitive Effects

19. There are only four significant competitors in the sale of brazing sheet in North America. Pechiney is the second largest producer with over 30 percent of sales; Alcan is the fourth largest with over 10 percent of sales. After the proposed acquisition, the combined firm and the largest U.S. producer of brazing sheet would command over 80 percent of all brazing sheet sales. Total North American sales of brazing sheet exceed $360 million annually.

20. The brazing sheet market would become substantially more concentrated if Alcan acquires Pechiney. Using a measure of market concentration called the Herfindahl-Hirschman Index ("HHI") (defined and explained in Appendix A), the post-acquisition HHI would increase by at least 600 points, resulting in a post-merger HHI of about 3600, well in excess of levels that ordinarily would raise significant antitrust concerns.

21. The proposed transaction would combine Alcan with Pechiney, and remove a low cost, aggressive, and disruptive competitor in the North American brazing sheet market. Before the announced acquisition, Alcan recently had undertaken to significantly increase its sales of brazing sheet in North America. In 2001, Alcan moved its brazing sheet operations from England to Oswego, NY, then developed new, highly proprietary aluminum rolling technology that would make a low cost producer of brazing sheet in North America. Alcan also recently has completed qualifying to provide brazing sheet to several major domestic parts makers.

22. The proposed transaction will make it more likely that the few remaining brazing sheet producers will engage in anticompetitive coordination to increase prices, reduce quality and innovation, and decrease production of brazing sheet. After the acquisition, the combined firm and its largest North American rival would share market leadership and a common incentive to pursue strategies that emphasize accommodation and do the risk provocation. The acquisition also would substantially increase the likelihood that the combined firm will unilaterally increase prices of brazing sheet to the detriment of customs for whom Pechiney and Alcan are the only firms now qualified to provide brazing sheet for those customers' requirements. The other competitors in brazing sheet sales in North America do not have the incentive or ability, individually or collectively, to effectively constrain a unilateral or cooperative exercise of market power after the acquisition.

23. Purchasers of brazing sheet have benefited from competition between Alcan and Pechiney through lower prices and improved products. Alcan's acquisition of Pechiney would eliminate substantial competition and lead to an increase in prices and reduction in innovation and quality of brazing sheet.

24. The proposed transaction, if consummated, would eliminate a significant competitor and facilitate unilateral or coordinated increases in prices, or a reduction in levels of quality and innovation, for brazing sheet.

D. Entry Unlikely To Deter a Post Acquisition Exercise of Market Power

25. Successful entry into the brazing sheet market would not be timely, likely or sufficient to deter any unilateral or coordinated exercise of market power as a result of the transaction.

26. Significant barriers prevent do novo or lateral entry into the development, production, and sale of brazing sheet in North America. To produce this material, not only must a firm possess an aluminum hot rolling mill (which costs a least $80 million to construct), but also the technology and expertise to create custom-engineered aluminum alloys that perform well in the demanding operating conditions prevalent in the small heat exchangers used in motor vehicles. Even firms with the physical and technological assets to produce brazing sheet must, in order to have a significant impact, "qualify" with customers, *i.e.*, demonstrate that it would be a reliable producer of consistently high quality brazing sheet material. Qualification can be acquired only after the new firm has made a substantial investment in expensive alloy technology, successfully completed a series of time-consuming tests of its materials and components, and acquired actual experience producing brazing sheet that meets the exacting specifications of risk-averse parts markers. It took Alcan over two years from when it moved its brazing sheet operations to Oswego, New York to qualify with enough customers to make a significant sales impact.

V. Violations Alleged

27. The effect of Alcan's proposed acquisition of Pechiney may be to substantially lessen competition and tend to create a monopoly in interstate trade and commerce in violation of Section 7 of the Clayton Act.

28. The transaction will likely have the following anticompetitive effects, among others:

a. Competition generally in the development, production, and sale of brazing sheet in North America would be substantially lessened;

b. Actual and potential competition between Alcan and Pechiney in the development, production, and sale of brazing sheet in North America would be eliminated; and

c. Prices for brazing sheet sold in North America would likely increase and the levels of quality and innovation would likely decline.

29. Unless prevented, the acquisition of Pechiney by Alcan would violate section 7 of the Clayton Act, as amended, 15 U.S.C. 18.

VI. Requested Relief

30. Plaintiff requests:

a. That the proposed acquisition of Pechiney by Alcan be adjudged and decreed to be unlawful and in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. 18;

b. That defendants and all persons acting on their behalf be permanently enjoined and restrained from carrying out any contract, agreement, understanding or plan, the effect of which would be to combine Pechiney with the operations of Alcan;

c. That plaintiff recover the costs of this action; and

d. That plaintiff receive such other and further relief as the case requires and this Court may deem proper.

Dated: September 29, 2003.

Respectfully submitted,

For Plaintiff United States of America:

R. Hewitt Pate,
Assistant Attorney General, DC Bar # 473598.

Deborah P. Majoras,
Deputy Assistant Attorney General, DC Bar # 474239.

J. Robert Kramer II,
Director of Operations & Civil Enforcement, PA Bar # 23963.

Maribeth Petrizzi,
Chief, Litigation II Section, DC Bar # 435204.

Anthony E. Harris,
IL Bar # 1133713.

Joseph M. Miller,
DC Bar # 439965.

Carolyn L. Davis

John B. Arnett, Sr.,
DC Bar # 439122.

Trial Attorneys, U.S. Department of Justice, Antitrust Division, Litigation II Section, 1401 H Street, NW., Suite 3000, Washington, DC 20530. Telephone: (202) 307–6583.

Appendix A—Herfindahl-Hirschman Index Calculations

"HHI" means the Herfindahl-Hirschman Index, a commonly accepted measure of market concentration. It is calculated by squaring the market share of each firm competing in the market and then summing the resulting numbers. For example, for a market consisting of four firms with shares of thirty, thirty, twenty, and twenty percent, HHI is 2600 ($30^2 + 30^2 + 20^2 = 2600$). The HHI takes into account the relative size distribution of the firms in a market and approaches zero when a market consists of a large number of firms of relatively equal size. The HHI increases both as the number of firms in the market decreases and as the disparity in size between those firms increases.

Market in which the HHI is between 1000 and 1800 points are considered to be moderately concentrated, and those in which the HHI is in excess of 1800 points are considered to be highly concentrated. Transactions that increase the HHI by more than 100 points in highly concentrated markets presumptively raise antitrust concerns under the Horizontal Merger Guidelines issued by the U.S. Department of Justice and the Federal Trade Commission. *See Merger Guidelines* § 1.51.

Final Judgment

Whereas, plaintiff, United States of America, filed its Complaint on September 29, 2003, and plaintiff and defendants, Alcan Inc., Alcan Aluminum Corp., Pechiney, S.A.,

and Pechiney Rolled Products, LLC, by their respective attorneys, have consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law, and without this Final Judgment constituting any evidence against or admission by any party regarding any issue of fact or law:

And whereas, defendants agree to be bound by the provisions of this Final Judgment pending its approval by the Court;

And whereas, the essence of this Final Judgment is the prompt and certain divestiture of certain rights or assets by the defendants to assure that competition is not substantially lessened;

And whereas, plaintiff requires defendants to make certain divestitures for the purpose of remedying the loss of competition alleged in the Complaint;

And whereas, defendants have represented to the United States that the divestiture required below can and will be made and that defendants will later raise no claim of hardship or difficulty as grounds for asking the Court to modify any of the divestiture provisions contained below;

Now therefore, before any testimony is taken, without trial or adjudication of any issue of fact or law, and upon consent of the parties, it is *ordered, adjudged and decreed*:

I. Jurisdiction

This Court has jurisdiction over the subject matter of and each of the parties to this action. The Complaint states a claim upon which relief may be granted against defendants under Section 7 of the Clayton Act, as amended, 15 U.S.C. 18. .

II. Definitions

As used in this Final Judgment:

A. "Acquirer" means the entity or entities to whom defendants divest Pechiney's Brazing Sheet Business.

B. "Alcan" means defendant Alcan Inc., a Canadian corporation with its headquarters in Montreal, Canada, its successors and assigns, and its subsidiaries (including defendant Alcan Aluminum Corp.), divisions, groups, affiliates, partnerships, joint ventures, and their directors, officers, managers, agents, and employees.

C. "Pechiney" means Pechiney, S.A., a French corporation with its headquarters in Paris, France, and its successors and assigns, its subsidiaries, divisions (including Pechiney Rolled Products, LLC), groups, affiliates, partnerships, joint ventures, and their directors, officers, managers, agents, and employees.

D. "Brazing sheet" means a layered aluminum alloy that consists of a core clad on one or both sides with aluminum alloy whose melting temperature is lower than that of the core material. Brazing sheet is used primarily in making components of heat exchange systems (*e.g.*, radiators, oil coolers, and air conditioning units) for motor vehicles.

E. "Pechiney's Brazing Sheet Business" means all assets, interests, and rights in Pechiney Rolled Products, LLC's aluminum product rolling mill located in or near Ravenswood, West Virginia 26164 ("Ravenswood Facility"), including:

1. All tangible assets of the Ravenswood Facility and the real property on which the Ravenswood Facility is situated; any facilities used for research, development, and engineering support to the Ravenswood Facility ("the Engineering Facilities"), and any real property associated with those facilities; manufacturing and sales assets relating to the Ravenswood Facility and to the Engineering Facilities, including capital equipment, vehicles, supplies, personal property, inventory, office furniture, fixed assets and fixtures, materials, on- or off-site warehouses or storage facilities, and other tangible property or improvements; all licenses, permits and authorizations issued by and governmental organization relating to the Ravenswood Facility and to the Engineering Facilities; all contracts, agreements, leases, commitments, and understandings pertaining to the operations of the Ravenswood Facility and to the Engineering Facilities; supply agreements all customer lists, accounts, and credit records; and other records maintained by Pechiney Rolled Products in connection with the operations of the Ravenswood Facility and of the Engineering Facilities;

2. All intangible assets, including but not limited to all patents, licenses and sublicenses, intellectual property, trademarks, trade names, service marks, service names (except to the extent such trademarks, trade names, service marks, or service names contain the trademark or names "Pechiney" or any variation thereof), technical information, know-how, trade secrets, drawings, blueprints, designs, design protocols, specifications for materials, specifications for parts and devices, safety procedures for the handling of materials and substances, quality assurance and control procedures, design tools and simulation capability, and all manuals and technical information Pechiney Rolled Products, LLC provides to its employees, customers, suppliers, agent or licensees in connection with the operations of the Ravenswood Facility; provided, however, that defendants may require the Acquirer, in the United States's sole discretion, to license defendants to make, have made, use, or sell outside of North America any Pechiney product or process made by or used in connection with the Ravenswood Facility; and

3. All research data concerning historic and current research and development efforts relating to the operations of the Ravenswood Facility and of the Engineering Facilities, including designs of experiments, and the results of unsuccessful designs and experiments.

F. "Date that Alcan's tender offer for Pechiney ends" means the date Alcan receives a preliminary indication from the Conseil des Marches Financiers of Paris, France, that Alcan's tender offer has been successful.

III. Applicability

A. This Final Judgment applies to Alcan and Pechiney, as defined above, and all other persons in active concert or participation with any of them who receive actual notice of this Final Judgment by personal service or otherwise.

B. Defendants shall require, as a condition of the sale or other disposition of all or substantially all of their assets or of lessor business units that include Pechiney's Brazing Sheet Business, that the purchaser agrees to be bound by the provisions of this Final Judgment, provided, however, that defendants need not obtain such an agreement from the Acquirer.

IV. Divestiture

A. Defendants are ordered and directed, within one hundred twenty (120) calendar days after the date that Alcan's tender offer for Pechiney ends, or five (5) days after notice of the entry of this Final Judgment by the Court, whichever is later, to divest Pechiney's Brazing Sheet Business in a manner consistent with this Final Judgment to an Acquirer acceptable to the United States in its sole discretion. The United States, in its sole discretion, may agree to one or more extensions of this time period, not to exceed in total sixty (60) calendar days, and shall notify the Court in each such circumstance. Defendants agree to use their best efforts to divest Pechiney's Brazing Sheet Business as expeditiously as possible.

B. In accomplishing the divestiture ordered by this Final Judgment, defendants promptly shall make known, by usual and customary means, the availability of Pechiney's Brazing Sheet Business. Defendants shall inform any person making inquiry regarding a possible purchase of Pechiney's Brazing Sheet Business that it will be divested pursuant to this Final Judgment and provide that person with a copy of this Final Judgment. Defendants shall offer to furnish to all prospective Acquirers, subject to customary confidentiality assurances, all information and documents relating to Pechiney's Brazing Sheet Business customarily provided in a due diligence process except such information or documents subject to the attorney-client or work-product privilege. Defendants shall make available such information to the United States at the same time that such information is made available to any other person.

C. Defendants shall provide prospective Acquirers of Pechiney's Brazing Sheet Business and the United States information relating to the personnel involved in the production, operation, development, and sale of Pechiney's Brazing Sheet Business to enable the Acquirer to make offers of employment. Defendants will not interfere with any negotiations by the Acquirer to employ any of the defendants' employees whose responsibilities includes the production, operation, development, or sale of the products of Pechiney's Brazing Sheet Business.

D. Defendants shall permit prospective Acquirers of Pechiney's Brazing Sheet Business to have reasonable access to personnel and to make inspections of the physical facilities of Pechiney's Brazing Sheet Business; access to any and all environment, zoning, and other permit documents and information; and access to any and all financial, operational, or other documents and information customarily provided as part of a due diligence process.

E. Defendants shall warrant to the Acquirer of Pechiney's Brazing Sheet Business that each asset that was operational as of the date of filing of the Complaint in this matter will be operational on the date of divestiture.

F. Defendants shall not take any action that will impede in any way the permitting, operation, or divestiture of Pechiney's Brazing Sheet Business.

G. Defendants shall not take any action, direct or indirect, that would prevent or discourage in any way any dealer from distributing the products of Pechiney's Brazing Sheet Business for a period of two years after such divestiture. Nothing in this provision, however, shall prevent defendants from promoting and selling in the ordinary course of business products that compete with those of Pechiney's Brazing Sheet Business.

H. Defendants shall warrant to the Acquirer of Pechiney's Brazing Sheet Business that there are no material defects in the environmental, zoning, or other permits pertaining to the operation of Pechiney's Brazing Sheet Business, and that following the sale of Pechiney's Brazing Sheet Business, defendants will not undertake, directly or indirectly, any challenge to the environmental, zoning, or other permits relating to the operation of Pechiney's Brazing Sheet Business.

I. Nothing in this Final Judgment shall be construed to require the Acquirer as a condition of any license granted by or to defendants pursuant to section II (E) and IV to extend to defendants the right to use the Acquirer's improvements to any of Pechiney's Brazing Sheet Business.

J. Unless the United States otherwise consents in writing, the divestiture pursuant to Section IV, or by trustee appointed pursuant to Section V, of this Final Judgment, shall include the entire Pechiney's Brazing Sheet Business, and shall be accomplish in such a way as to satisfy the United States, in its sole discretion, that Pechiney's Brazing Sheet Business can and will be used by the Acquirer as part of a viable, ongoing business, engaged in developing, manufacturing, and selling brazing sheet in North America. Divestiture of Pechiney's Brazing Sheet Business may be made to an Acquirer, provided that it is demonstrated to the sole satisfaction of the United States that Pechiney's Brazing Sheet Business will remain viable and the divestiture of such assets will remedy the competitive harm alleged in the Complaint. The divestitures, whether pursuant to Section IV or Section V of this Final Judgment,

1. Shall be made to an Acquirer that, in the United States's sole judgment, has the managerial, operational and financial capability to compete effectively in the development, manufacture, and sale of brazing sheet in North America; and

2. Shall be accomplished so as to satisfy the United States, in its sole discretion, that none of the terms of any agreement between an Acquirer and defendants give defendants the ability unreasonably to raise the Acquirer's costs, to lower the Acquirer's efficiency, or otherwise to interfere in the ability of the Acquirer to complete effectively.

V. Appointment of Trustee to Effect Divestiture

A. If defendants have not divested Pechiney's Brazing Sheet Business within the time period specified in Section IV(A), defendants shall notify the United States of that fact in writing. Upon application of the United States, the Court shall appoint a trustee selected by the United States and approved by the Court to effect the divestiture of Pechiney's Brazing Sheet Business.

B. After the appointment of a trustee becomes effective, only the trustee shall have the right to sell Pechiney's Brazing Sheet Business. The trustee shall have the power and authority to accomplish the divestiture to an Acquirer acceptable to the United States at such price and on such terms as are then obtainable upon reasonable effort by the trustee, subject to the provisions of sections IV, V and VI of this Final Judgment, and shall have such other powers as this Court deems appropriate. Subject to section V(D) of this Final Judgment, the trustee may hire at the cost and expense of defendants any investment bankers, attorneys, or other agents, who shall be solely accountable to the trustee, reasonable necessary in the trustee's judgment to assist in the divestiture.

C. Defendants shall not object to a sale by the trustee on any ground other than the trustee's malfeasance. Any such objections by defendants must be conveyed in writing to the United States and the trustee within ten (10) calendar days after the trustee has provided the notice required under Section VI.

D. The trustee shall serve at the cost and expense of defendants, on such terms and conditions as plaintiff approves, and shall account for all monies derived from the sale of Pechiney's Brazing Sheet Business and all costs and expenses to incurred. After approval by the Court of the trustee's accounting, including fees for its services and those of any professionals and agents retained by the trustee, all remaining money shall be paid to defendants and the trust shall then be terminated. The compensation of the trustee and any professionals and agents retained by the trustee shall be reasonable in light of the value of Pechiney's Brazing Sheet Business and based on a fee arrangement providing the trustee with an incentive based on the price and terms of the divestiture and the speed with which it is accomplished, but timeliness is paramount,

E. Defendants shall use their best efforts to assist the trustee in accomplishing the required divestiture. The trustee and any consultants, accountants, attorneys, and other persons retained by the trustee shall have full and complete access to the personnel, books, records, and facilities of the business to be divested, and defendants shall develop financial and other information relevant to such business as the trustee may reasonably request, subject to customary confidentiality protection for trade secret or other confidential research, development, or commercial information. Defendants shall take no action to interfere with or to impede the trustee's accomplishment of the divestiture.

F. After its appointment, the trustee shall file monthly reports with the United States and the Court setting forth the trustee's efforts to accomplish the divestiture ordered under this Final Judgment. To the extent such reports contain information that the trustee deems confidential, such reports shall not be filed in the public docket of the Court. Such reports shall include the name, address, and telephone number of each person who, during the preceding month, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, and interest in Pechiney's Brazing Sheet Business and shall describe in detail each contact with any such person. The trustee shall maintain full records of all efforts made to divest Pechiney's Brazing Sheet Business.

G. If the trustee has not accomplished such divestiture within six months after its appointment, the trustee shall promptly file with the Court a report setting forth (1) the trustee's efforts to accomplish the required divestiture; (2) the reasons, in the trustee's judgment, why the required divestiture has not been accomplished; and (3) the trustee's recommendations. To the extent such reports contain information that the trustee deems confidential, such reports shall not be filed in the public docket of the Court. The trustee shall at the same time furnish such report to the plaintiff who shall have the right to make additional recommendations consistent with the purpose of the trust. The Court thereafter shall enter such orders as it shall deem appropriate to carry out the purpose of the Final Judgment, which may, if necessary, include extending the trust and the term of the trustee's appointment by a period requested by the United States.

VI. Notice of Proposed Divestiture

A. Within two (2) business days following execution of a definitive divestiture agreement, defendants or the trustee, whichever is then responsible for effecting the divestiture required herein, shall notify the United States of any proposed divestiture required by section IV or V of this Final Judgment. If the trustee is responsible, it shall similarly notify defendants. The notice shall set forth the details of the proposed divestiture and list the name, address, and telephone number of each person not previously identified who offered or expressed an interest in or desire to acquire any ownership interest in Pechiney's Brazing Sheet Business, together with full details of the same.

B. Within fifteen (15) calendar days of receipt by the United States of such notice, the United States may request from defendants, the proposed Acquirer, any other third party, or the trustee if applicable additional information concerning the proposed divestiture, the proposed Acquirer, and any other potential Acquirer. Defendants and the trustee shall furnish any additional information requested within fifteen (15) calendar days of the receipt of the request, unless the parties shall otherwise agree.

C. Within thirty (30) calendar days after receipt of the notice or within twenty (20) calendar days after the United States has been provided the additional information requested from defendants, the proposed

Acquirer, any third party, and the trustee, whichever is later, the United States shall provide written notice to defendants and the trustee, if there is one, stating whether or not it objects to the proposed divestiture. If the United States provides written notice that it does not object, the divestiture may be consummated, subject only to defendants' limited right to object to the sale under section V(D) of this Final Judgment. Absent written notice that the United States does not object to the proposed Acquirer or upon objection by the United States, a divestiture proposed under section IV or V shall not be consummated. Upon objection by defendants under section V(D), a divestiture proposed under section V shall not be consummated unless approved by the Court.

VII. Financing

Defendants shall not finance all or any part of any purchase made pursuant to section IV or V of this Final Judgment.

VIII. Hold Separate

Until the divestiture required by this Final Judgment has been accomplished defendants shall take all steps necessary to comply with the Hold Separate Stipulation and Order entered by this Court. Defendants shall take no action that would jeopardize the divestiture order by this Court.

IX. Affidavits

A. Within twenty (20) calendar days of the filing of Complaint in this matter, and every thirty (30) calendar days thereafter until the divestiture has been completed under Section IV or V, defendants shall deliver to the United States an affidavit as to the fact and manner of its compliance with section IV or V of this Final Judgment. Each such affidavit shall include the name, address, and telephone number of each person who, during the preceding thirty days, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, any interest in Pechiney's Brazing Sheet Business, and shall describe in detail each contact with any such person during that period. Each such affidavit shall also include a description of the efforts defendants have taken to solicit buyers for Pechiney's Brazing Sheet Business, and to provide required information to any prospective Acquirer, including the limitations, if any, on such information. Assuming the information set forth in the affidavit is true and complete, any objection by the United States to information provided by defendants, including limitations on the information, shall be made within fourteen (14) days of receipt of such affidavit.

B. Within twenty (20) calendar days of the filing of the Complaint in this matter, defendants shall deliver to the United States an affidavit that describes in reasonable detail all actions defendants have taken and all steps defendants have implemented on an ongoing basis to comply with Section IX of this Final Judgment. Defendants shall deliver to the United States an affidavit describing any changes to the efforts and actions outlined in defendants' earlier affidavits filed pursuant to this section within fifteen (15) calendar days after the change is implemented.

C. Defendants shall keep all records of all efforts made to preserve Pechiney's Brazing Sheet Business and to divest Pechiney's Brazing Sheet Business until one year after such divestiture has been completed.

X. Compliance Inspection

A. For purposes of determining or securing compliance with this Final Judgment, or of determining whether the Final Judgment should be modified or vacated, and subject to any legally recognized privilege, from time to time duly authorized representatives of the United States Department of Justice, including consultants and other persons retained by the United States, shall, upon written request of a duly authorized representative of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to defendants, be permitted:

1. Access during defendants' office hours to inspect and copy, or at plaintiff's option, to require defendants to provide copies of, all books, ledgers, accounts, records and documents in the possession, custody, or control of defendants, relating to any matters contained in this Final Judgment; and

2. To interview, either informally or on the record, defendants' officers, employees, or agents, who may have their individual counsel present, regarding such matters. The interviews shall be subject to the reasonable convenience of the interviewee and without restraint or interference by defendants.

B. Upon the written request of a duly authorized representative of the Assistant Attorney General in charge of the Antitrust Division, defendants shall submit written reports, under oath if requested, relating to any of the matters contained in this Final Judgment as may be requested.

C. No information or documents obtained by the means provided in this section shall be divulged by the United States to any person other than an authorized representative of the executive branch of the United States, except in the course of legal proceedings to which the United States is a party (including grand jury proceedings), or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

D. If at the time information or documents are furnished by defendants to the United States, defendants represent and identify in writing the material in any such information or documents to which a claim of protection may be asserted under Rule 26(c)(7) of the Federal Rules of Civil Procedure, and defendants mark each pertinent page of such material, "Subject to claim of protection under Rule 26(c)(7) of the Federal Rules of Civil Procedure," then the United States shall give defendants ten (10) calendar days notice prior to divulging such material in any legal proceeding (other than a grand jury proceeding).

XI. No Reacquisition

Defendants may not reacquire any part of Pechiney's Brazing Sheet Business during the term of this Final Judgment.

XII. Retention of Jurisdiction

This Court retains jurisdiction to enable any party to this Final Judgment to apply to this Court at any time for further orders and directions as may be necessary or appropriate to carry out or construe this Final Judgment, to modify any of its provisions, to enforce compliance, and to punish violations of its provisions.

XIII. Expiration of Final Judgment

Unless this Court grants an extension, this Final Judgment shall expire ten years from the date of its entry.

XIV. Public Interest Determination

Entry of this Final Judgment is in the public interest.

Date: _____

Court approval subject to procedures of the Antitrust Procedures and Penalties Act, 15 U.S.C. 16.

United States District Judge

Competitive Impact Statement

The United States, pursuant to section 2(b) of the Antitrust Procedures and Penalties Act ("Tunney Act"), 15 U.S.C. 16(b)–(h), files this Competitive Impact Statement relating to the proposed Final Judgment submitted for entry in this civil antitrust proceeding.

I. Nature and Purpose of the Proceeding

In early July 2003, Alcan Inc., ("Alcan") Publicly announced that it would soon begin a tender offer for shares of Pechiney, S.A. ("Pechiney"), a transaction formally endorsed by Pechiney's board of directors on August 30, 2003. On September 29, 2003, the United States filed a civil antitrust suit alleging that Alcan's proposed acquisition of Pechiney would violate Section 7 of the Clayton Act, 15 U.S.C. 18. The Complaint alleges that a combination of Alcan and Pechiney would substantially lessen competition in the development, production, and sale of brazing sheet in North America. Pechiney and Alcan are, respectively, the second and fourth largest competitors in the sale of brazing sheet in North America. The acquisition would result in a single firm—Alcan—with a market share of over 40 percent, and the industry's two largest firms having a combined share of over 80 percent, of North American sales of brazing sheet. The attendant reduction in competition in this highly concentrated market would lead to an increase in brazing sheet prices and a reduction in product quality and innovation to the detriment of North American consumers. Accordingly, the prayer for relief in the Complaint seeks: (1) A judgment that the proposed acquisition would violate Section 7 of the Clayton Act, and (2) a permanent injunction that would prevent Alcan from acquiring control of, or otherwise combining its assets with, Pechiney.

At the same time the Complaint was filed, the United States filed a proposed settlement that would allow Alcan to acquire Pechiney but require defendants to divest Pechiney's entire North American brazing sheet business in such a way as to preserve competition in North America. The settlement consists of a Hold Separate Stipulation and Order and a proposed Final Judgment. According to the terms of the settlement, defendants must divest Pechiney's brazing sheet business [1] to a person acceptable to the United States, in its sole discretion, within 120 calendar days after Alcan receives preliminary notification from the responsible French stock market regulatory agency, Conseil des Marches Financiers, that the firm's tender offer for shares of Pechiney has been successful, or within five (5) days after notice of entry of the Final Judgment, whichever is later. The United States, in its sole discretion, may extend the time period for this divestiture one or more times, not to exceed a total of 60 days past the initial divestiture deadline. If defendants do not complete the ordered divestiture within the prescribed time period, then the United States may nominate, and the Court will appoint, a trustee who will have sole authority to divest Pechiney's brazing sheet assets.

The parties have stipulated that the proposed Final Judgment may be entered by the Court after compliance with the Tunney Act. Entry of the proposed Judgment would terminate this action, except that the Court would retain jurisdiction to construe, modify, or enforce the provisions of the proposed Final Judgment and to punish violations thereof.

II. Description of the Events Giving Rise to the Alleged Violations of the Antitrust Laws

A. The Defendants and the Proposed Transaction

Alcan is a Canadian corporation based in Montreal, Quebec. One of the world's largest fully integrated aluminum producers, Alcan producers primary aluminum ingot and a wide range of rolled aluminum products, including brazing sheet. Its annual revenues exceed $12.5 billion, including over $30 million in North American sales of brazing sheet. This business operation is managed by a domestic subsidiary of Alcan, Alcan Aluminum Corporation.

Pechiney is a French corporation based in Paris, France. Pechiney is also a major fully integrated aluminum producer, with annual revenues exceeding $11.3 billion. Its U.S. subsidiary, Pechiney Rolled Products, LLC, produces a wide variety of rolled aluminum products (including brazing sheet) in an aluminum rolling mill in Ravenswood, West Virginia. Pechiney's total North American sales of brazing sheet exceed $100 million annually.

Alcan has launched a teder offer for shares of Pechiney, a transaction now valued at over $4.6 billion. The tender offer, publicly announced in early July and approved in August by Pechiney's board of directors, is expected to be completed in early December 2003. If the tender offer is successful, Alcan's acquisition of Pechiney would combine, respectively, the fourth and second largest competitors in the sale of brazing sheet in North America, and substantially lessen competition in this already highly concentrated market.

The acquisition would combine Alcan, a low-cost new entrant and pricing maverick, with Pechiney, a large industry incumbent. The deal would eliminate Alcan's incentive to expand its sales quickly by reducing its brazing sheet prices and increase its sales at the expense of larger rivals such as Pechiney, and end the current intense competitive rivalry in developing, producing, and selling brazing sheet in North America. This competition, which promises to intensify in the next few years as Alcan finishes qualifying its brazing sheet for more applications with other North American customers, has already produced significant improvements in brazing sheet quality, durability, and reliability, and highly competitive prices and contractual terms for this material. The transaction would reduce the number of significant competitors in the sale of brazing sheet in North America from four to three, and substantially increase the prospect of future tacit or explicit post-merger coordination between these firms to increase prices of brazing sheet to the detriment of consumers. Other North American competitors in the sale of brazing sheet have neither the production capacity nor competitive incentive, individually or collectively, to discipline a small but significant post-merger unilateral or cooperative price increase in brazing sheet.

B. The Effects of the Transaction on Competition in the Sale of Brazing Sheet

1. Relevant market: the sale of brazing sheet in North America. The Complaint alleges that development, production, and sale of brazing sheet is a relevant product market within the meaning of Section 7 of the Clayton Act. Brazing sheet describes a class of custom-engineered aluminum alloys made of a solid metal core clad on one or both sides with an alloy whose melting temperature is lower than that of the core material. When heated to the appropriate termperature, the cladding alloy melts and forms a durable, uniform leak-proof bond between the core and any adjoining aluminum surface, effectively welding the two materials together. Brazing sheet is ideally suited, and virtually all of it is used, for fabircating the major components of heat exchange systems for motor vehicles. These heat exchangers include engine cooling systems, such as radiators and oil coolers, and climate control systems, such as heater cores and air conditioning units (*i.e.*, evaporator and condenser cores).

By constructing the basic components of motor vehicle heat exchangers with brazing sheet, a parts maker can avoid the tedious and costly task of welding or soldering individual components, many of which have usually intricate surfaces that form joints deep within the heat exchange unit. A parts maker can instead loosely assemble brazed components and bake the entire assembly in a brazing oven. The surfaces of the components will met, converting the assembly into a solid, leak-proof heat exchange unit.

The major components of all heat exchangers used in motor vehicles are made of brazing sheet, a mterial that enables vehicle makers simultaneously to reduce vehicle cost, size, and weight; improve gas mileage; and extend engine, climate control system, and drive train life. In heat exchange applications, no other material can match the combination of low cost, strength, light weight, durability, formability, and corrosion resistance provided by brazing sheet.

A small but significant and nontransitory increase in prices for brazing sheet would be profitable and sustainable because it would not cause parts makers to begin using significant amounts of other materials to make heat exchangers for motor vehicles. The development, production, and sale of brazing sheet is a line of commerce and a relevant product market within the meaning of section 7 of the Clayton Act.[2]

The Complaint alleges that the sale of brazing sheet in North America is a relevant geographic market within the meaning of Section 7 of the Clayton Act. Over ninety percent of brazing sheet sold in North America is produced by firms located in either the United States or Canada. Some customers import brazing sheet into North America from overseas sources. Foreign brazing sheet, however, is significantly more expensive and more prone to unpredictable and costly delivery delays than brazing sheet produced in North America. North American customers are reluctant to rely on it for general production requirements. A small but significant aand nontransitory increase in prices of brazinag sheet sold in North America would be profitable and sustainable because it would not be undermined by increased customer imports of brazing sheet from overseas sources. North America is a relevant geographic market in which to assess the competitive effects of Alcan's proposed acquisition of Pechiney on sales of brazing sheet.

2. Anticompetitive effects of the acquisition. The Complaint alleges that in this highly concentrated market for brazing sheet, a combination of Alcan and Pehiney likely would: (i) Substantially lessen competition in the development, production, and sale of brazing sheet in North America; (ii) eliminate actual and potential competition between Alcan's and Pechiney's brazing sheet businesses; and (iii) increase prices and reduce current levels of quality and innovation for brazing sheet in North America.

Specifically, the Complaint alleges that Pechiney and Alcan are, respectively, the second and fourth largest producers of brazing sheet in North America. The

[1] Pechiney's brazing sheet business, as defined in Section II(E) of the proposed Final Judgment, includes all tangible and intangible assets of Pechiney's Ravenswood, West Virginia aluminum rolling mill and the engineering facilities, wherever located, that provide research and development support for any product produced at the Ravenswood plant.

[2] Brazing sheet is designed for and sold to motor vehilcle parts makers (and others) on an application-specific basis. Thus, it may be possible to delineate relevant markets smaller than the "all brazing sheet" market alleged in the Complaint. A producer of brazing sheet for use in one type of heat exchange component, however, generally has the ability to make and market brazing sheet suitable for use in producing other types of components for heat exchange units. According to the Merger Guidelines, if such production substitutability is "nearly universal" among the firms that make and sell brazing sheet, then it is appropriate, as a matter of convenience, to describe the relevant product market as "all brazing sheet." *See* Horizontal Merger Guidelines, n. 14 (1997 rev.).

combined firm and one other producer command over 80 percent of brazing sheet sales in North America. Two smaller firms also sell brazing sheet in North America. However, these small firms do not have sufficient excess production capacity or capability to attract significant sales away from the larger market incumbents, and thereby effectively constrain a post-merger exercise of market power by those firms.

Alcan's acquisition of Pechiney is likely to diminish competition substantially. First, the remaining competitors would be more likely to successfully engage in tacit or explicit coordinated pricing to the detriment of consumers, because they would not need to worry about the loss of sales to Alcan, currently a small, "hungry," low-cost new entrant. Second, Alcan could unilaterally increase its prices for brazing sheet for which it and Pechiney are the only qualified suppliers.

New entry into the development, production, and sale of brazing sheet in North America is difficult. To produce brazing sheet, a firm must have an aluminum hot rolling mill (which costs at least $80 million and takes three years to construct). Even after acquiring an aluminum hot rolling mill, a new firm can begin selling brazing sheet to customers only after it has made an additional substantial investment in developing and mastering allow-making technology, successfully "qualified" its products with prospective customers by completing a series of time-consuming tests of brazing sheet materials and sample heat exchange components, and finally, acquired some actual experience producing brazing sheet that meets the exacting specifications of risk-averse parts makers.[3] These so-called "sunk" entry costs[4] are very large relative to the size of the North American market for brazing sheet, and there is a very high risk that a new entrant may not receive any profits from its entry. In these circumstances, it is unlikely that, after a combination of Alcan and Pechiney, new entry into the brazing sheet market in North America would occur so rapidly and be of such magnitude that it would effectively constrain a cooperative or unilateral post-merger exercise of market power by incumbent producers of brazing sheet.

III. Explanation of the Proposed Final Judgment

The proposed Final Judgment will preserve competition in the sale of brazing sheet in North America. The Judgment requires that defendants sell Pechiney's brazing sheet business to an acquirer acceptable to the United States within 120 calendar days after Alcan has received a preliminary indication from Conseil des Marches Financiers, a French stock market regulatory agency, that Alcan's tender offer for shares of Pechiney has been successful, or within five (5) days after notice of entry of the Final Judgment, whichever is later. The United States may extend this time period for divestiture one or more times, for a total time not to exceed 60 days. Defendants must use their best efforts to divest Pechiney's brazing sheet business as expeditiously as possible, and until the ordered divestiture takes place, defendants must cooperate with any prospective purchasers.

If Alcan and Pechiney do not accomplish the ordered divestiture within the prescribed time period, the United States will nominate, and the Court will appoint, a trustee to assume sole power and authority to complete the divestiture. Defendants must cooperate fully with the trustee's efforts to divest Pechiney's brazing sheet business to an acquirer acceptable to the United States and periodically report to the United States on their divestiture efforts.

If the trustee is appointed, the defendants will pay all costs and expenses of the trustee. The trustee's commission will be structured so as to provide an incentive for the trustee based on the price obtained and the speed with which the divestiture is completed. After his or her appointment becomes effective, the trustee will file monthly reports with the parties and the Court, setting forth the trustee's efforts to accomplish the divestiture. At the end of six months, if the divestiture has not been accomplished, the trustee and the parties will make recommendations to the Court, which shall enter such orders as appropriate to carry out the purpose of the trust, including extending the trust and the term of the trustee's appointment.

IV. Remedies Available to Potential Private Litigants

Section 4 of the Clayton Act (15 U.S.C. 15) provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal court to recover three times the damages the person has suffered, as well as costs and reasonable attorney's fees. Entry of the proposed Final Judgment will neither impair nor assist the bringing of any private antitrust damage action. Under the provisions of Section 5(a) of the Clayton Act (15 U.S.C. 16(a)), the proposed Final Judgment has no *prima facie* effect in any subsequent private lawsuit that may be brought against defendants.

V. Procedures Available for Modification of the Proposed Final Judgment

The parties have stipulated that the proposed Final Judgment may be entered by the Court after compliance with the provisions of the Tunney Act, provided that the United States has not withdrawn its consent. The Tunney Act conditions entry of the decree upon the Court's determination that the proposed Final Judgment is in the public interest.

The Tunney Act provides a period of at least 60 days preceding the effective date of the proposed Final Judgment within which any person may submit to the United States written comments regarding the proposed Final Judgment. Any person who wishes to comment should do so within 60 days of the date of publication of this Competitive Impact Statement in the **Federal Register**. The United States will evaluate and respond to the comments. All comments will be given due consideration by the Department of Justice, which remains free to withdraw its consent to the Proposed Final Judgment at any time prior to entry. The comments and the response of the United States will be filed with the Court and published in the **Federal Register**. Written comments should be submitted to: Maribeth Petrizzi, Chief, Litigation II Section, Antitrust Division, United States Department of Justice, 1401 H Street, NW., Suite 3000, Washington, DC 20530.

The proposed Final Judgment provides that the Court retains jurisdiction over this action, and the parties may apply to the Court for any order necessary or appropriate for the modification, interpretation, or enforcement of the Judgment.

VI. Alternatives to the Proposed Final Judgment

The United States considered, as an alternative to the proposed Final Judgment, a full trial on the merits against defendants Alan and Pechiney. The United States could have continued the litigation to seek preliminary and permanent injunctions against Alcan's acquisition of Pechiney. The United States is satisfied, however, that the divestiture of the assets as proposed in the Final Judgment will establish, preserve, and ensure competition in the relevant market. To this end, the United States is convinced that the proposed relief, once implemented by the Court, will prevent Alcan's acquisition of Pechiney from having adverse competition effects.

VII. Standard of Review Under the Tunney Act for the Proposed Final Judgment

The Tunney Act requires that proposed consent judgments in antitrust cases brought by the United States be subject to a sixty-day comment period, after which the Court shall determine whether entry of the proposed Final Judgment "is in the public interest." In making that determination, the Court may consider:

(1) The competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration or relief sought, anticipated effects of alternative remedies actually considered, and any other considerations bearing upon the adequacy of such judgment;

(2) The impact of entry of such judgment upon the public generally and individuals alleging specific injury from the violations set forth in the complaint including consideration of the public benefit, if any, to be derived from a determination of the issues at trial.

15 U.S.C. 16(e). As the United States Court of Appeals for the District of Columbia Circuit held, the Tunney Act permits a court to consider, among other things, the relationship between the remedy secured and the specific allegations set forth in the government's complaint, whether the decree is sufficiently clear, whether enforcement mechanisms are sufficient, and whether the decree may positively harm third parties. *See United States* v. *Microsoft*, 56 F.3d 1448, 1458–62 (D.C. Cir. 1995).

In conducting this inquiry, "[t]he court is nowhere compelled to go to trial or to engage in extended proceedings which might have the effect of vitiating the benefits of prompt and less costly settlement through the consent decree process." 119 Cong. Rec. 24,598 (1973) (statement of Senator Tunney).[5] Rather:

[a]bsent a showing of corrupt failure of the government to discharge its duty, the Court, in making its public interest finding, should * * * carefully consider the explanations of the government in the competitive impact statement and its responses to comments in order to determine whether those explanations are reasonable under the circumstances.

United States v. *Mid-America Dairymen, Inc.*, 1977–I Trade Cas. (CCH) ¶61,508, at 71,980 (W.D. Mo. May 17, 1977).

Accordingly, with respect to the adequacy of the relief secured by the decree, a court may not "engage in an unrestricted evaluation of what relief would best serve the public." *United States* v. *BNS, Inc.*, 858 F.2d 456, 462 (9th Cir. 1988) (citing *United States* v. *Bachtel Corp.*, 648 F.2d 660, 666 (9th Cir. 1981)); *see also Microsoft*, 56 F.3d at 1460–62. Case law requires that:

[t]he balancing of competing social and political interests affected by a proposed antitrust consent decree must be left, in the first instance, to the discretion of the Attorney General. The court's role in protecting the public interest is one of insuring that the government has not breached its duty to the public in consenting to the decree. The court is required to determine not whether a particular decree is the one that will best serve society, but whether the settlement is "*within the reaches of the public interest.*" More elaborate requirements might undermine the effectiveness of antitrust enforcement by consent decree.

Bechtel, 648 F.2d at 666 (emphasis added) (citations omitted).[6]

The proposed Final Judgment, therefore, should not be reviewed under a standard of whether it is certain to eliminate every anticompetitive effect of a particular practice or whether it mandates certainty of free competition in the future. Court approval of a final judgment requires a standard more flexible and less strict than the standard required for a finding of liability. "[A] proposed decree must be approved even if it falls short of the remedy the court would impose on its own, as long as it falls within the range of acceptability or is 'within the reaches of public interest.' " *United States* v. *Am. Telephone & Telegraph Co.*, 552 F. Supp. 131, 151 (D.D.C. 1982) (citations omitted) (quoting *Gillette*, 406 F. Supp. at 716), *aff'd sub nom. Maryland* v. *United States*, 460 U.S. 1001 (1983); *see also United States* v. *Alcan Aluminum Ltd.*, 605 F. Supp. 619, 622 (W.D. Ky. 1985) (approving the consent decree even though the court would have imposed a greater remedy).

Moreover, the Court's role under the Tunney Act is limited to reviewing the remedy in relationship to the violations that the United States has alleged in its Complaint, and does not authorize the Court to "construct [its] own hypothetical case and then evaluate the decree against that case." *Microsoft*, 56 F.3d at 1459. Because the "court's authority to review the decree depends entirely on the government's exercising its prosecutorial discretion by bringing a case in the first place," it follows that "the court is only authorized to review the decree itself," and not to "effectively redraft the complaint" to inquire into other matters that the United States might have but did not pursue. *Id.* at 1459–60.

VIII. Determinative Documents

There are no determinative materials or documents within the meaning of the Tunney Act that were considered by the United States in formulating the proposed Final Judgment.

Dated: November 13, 2003.

Respectfully submitted,

Anthony E. Harris,
Illinois Bar #1133713, U.S. Department of Justice, Antitrust Division, Litigation II Section, 1401 H Street, NW., Suite 3000, Washington, DC 20530, Telephone: (202) 307–6583.

Certificate of Service

I, Anthony E. Harris, hereby certify that on November 14, 2003, I caused the foregoing Competitive Impact Statement to be served on defendants by sending a facsimile and by mailing a copy first-class, postage prepaid, to duly authorized legal representatives of those parties, as follows:

Counsel for Defendants Alcan Inc. and Alcan Aluminum Corp.

D. Stuart Meiklejohn, Esquire, Michael B. Miller, Esquire, Sullivan & Cromwell, 125 Broad Street, New York, NY 10004–2498

Counsel for Defendants Pechiney, S.A., and Pechiney Rolled Products, LLC

W. Dale Collins, Esquire, Shearman & Sterling LLP, 599 Lexington Avenue, New York, NY 10022–6069

Anthony E. Harris, Esquire,
Illinois Bar #1133713, U.S. Department of Justice, Antitrust Division, 1401 H Street, NW., Suite 3000, Washington, DC 20530, Telephone No.: (202) 307–6583.

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[3] It took Alcan over two years from when it moved its brazing sheet operations to Oswego, New York, to qualify with enough customers to make a significant sales impact.

[4] The term "sunk costs" as used in this context includes the costs of acquiring tangible and intangible assets that cannot be recovered through the redeployment of these assets outside the relevant market, *i.e.*, costs that were uniquely incurred to enter the production and sale of brazing sheet in North America and cannot be recovered upon exit from that industry.

[5] *See United States* v. *Gillette Co.*, 406 F. Supp. 713, 715–16 (D. Mass. 1975) (recognizing it was not the court's duty to settle; rather, the court must only answer "whether the settlement achieved [was] within the reaches of the public interest"). A "public interest" determination can be made properly on the basis of the Competitive Impact Statement and Response to Comments filed pursuant to the Tunney Act. Although the Tunney Act authorizes the use of additional procedures, 15 U.S.C. 16(f), those procedures are discretionary. A court need not invoke any of them unless it believes that the comments have raised significant issues and that further proceedings would aid the court in resolving those issues. *See* H.R. Rep. No. 93–1463, 93rd Cong., 2d Sess. 8–9 (1974), reprinted in 1974 U.S.C.C.N. 6535, 6538.

[6] Cf. BNS, 858 F.2d at 463 (holding that the court's "ultimate authority under the [Tunney Act] is limited to approving or disapproving the consent decree"); *Gillette*, 406 F. Supp. at 716 (noting that, in this way, the court is constrained to "look at the overall picture not hypercritically, nor with a microscope, but with an artist's reducing glass"). *See generally Microsoft*, 56 F. 3d at 1461 (discussing whether "the remedies [obtained in the decree are] so inconsonant with the allegations charged as to fall outside of the 'reaches of the public interest'").

DEPARTMENT OF JUSTICE

Antitrust Division

United States and the State of Florida v. *Waste Management, Inc.*, and *Allied Waste Industries, Inc.*; Complaint, Proposed Final Judgment and Competitive Impact Statement

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h), that a Complaint, proposed Final Judgment, Hold Separate Stipulation and Order, and Competitive Impact Statement were filed with the U.S. District Court for the District of Columbia in *United States and State of Florida* v. *Waste Management, Inc., and Allied Waste Industries, Inc., Civ. Action No. 1:03CV02076*. On October 14, 2003, the United States and the State of Florida filed a Complaint, which sought to enjoin Waste Management, Inc. ("Waste Management") from acquiring certain small container commercial hauling assets in Broward County, Florida from Allied Waste Industries, Inc. ("Allied"). The Complaint alleged that Waste Management's acquisition of these small container commercial hauling assets from Allied would substantially lessen competition resulting in higher prices for small container commercial hauling services in Broward County, Florida in violation of the Clayton Act, as amended, 15 U.S.C. 18. The proposed Final Judgment, also filed on October 14, 2003, requires defendants to divest contracts and accounts on selected Allied small container commercial hauling routes, to preserve competition in the provision of small container commercial hauling services. A Competitive Impact Statement filed by the United States describes the Complaint, the proposed Final Judgment, and the remedies available to

private litigants who may have been injured by the alleged violations.

Copies of the Complaint, proposed Final Judgment, Hold Separate Stipulation and Order, and Competitive Impact Statement are available for inspection at the U.S. Department of Justice, Antitrust Division, 325 Seventh Street, NW., Suite 215, Washington, DC 20530 (telephone: 202–514–2481), and at the Clerk's Office of the United States District Court for the District of Columbia, Washington, DC. Copies of these materials may be obtained upon request and payment of a copying fee.

Public comment is invited within the statutory 60-day comment period. Such comments and responses thereto will be published in the **Federal Register** and filed with the Court. Comments should be directed to Maribeth Petrizzi, Chief, Litigation II Section, Antitrust Division, U.S. Department of Justice, 1401 H Street, NW., Suite 3000, Washington, DC 20530 (telephone: 202–307–0924).

Dorothy B. Fountain,

Deputy Director of Operations, Antitrust Division.

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

In the matter of: UNITED STATES OF AMERICA, Department of Justice, Antitrust Division, 1401 H Street, NW, Suite 3000, Washington, DC 20530, and STATE OF FLORIDA, Office of the Attorney General, Plaza 1—The Capitol, Tallahassee, Florida 32399–1050, Plaintiffs, v. WASTE MANAGEMENT, INC., 1001 Fannin Street, Suite 4000 Houston, Texas 7702, and ALLIED WASTE INDUSTRIES, INC., 15880 Greenway-Hayden Loop, Suite 100, Scottsdale, Arizona 85260, Defendants.

Case No. 1:03CV02076
JUDGE: James Robertson
DECK TYPE: ANTITRUST
DATE STAMP: October 14, 2003

Complaint for Injunctive Relief

Plaintiff United States of America ("United States"), acting under the direction of the Attorney General of the United States, and Plaintiff State of Florida ("Florida"), acting under the direction of its Attorney General, bring this civil antitrust action to enjoin the acquisition by Defendant Waste Management, Inc. ("Waste Management") of certain commercial waste collection and hauling assets (hereinafter referred to as "small container commercial hauling assets") from Defendant Allied Waste Industries, Inc. ("Allied") and to obtain equitable and other relief as is appropriate. Plaintiffs complain and allege as follows:

1. Pursuant to an asset purchase agreement and a stock agreement, both dated August 15, 2003, Waste Management plans to acquire from Allied certain small container commercial hauling assets. The proposed transaction would lessen competition substantially as a result of Waste Management's acquisition of small container commercial hauling assets in Broward County, Florida.

2. Defendants Waste Management and Allied are two of only three significant providers of small container commercial hauling services in Broward County. Unless the acquisition is enjoined, consumers of small container commercial hauling services in Broward County will likely pay higher prices and receive fewer services as a consequence of the elimination of the vigorous competition between Waste Management and Allied.

I. Jurisdiction and Venue

3. The United State brings this action under section 15 of the Clayton Act, 15 U.S.C. 25, to prevent and restrain the violation by Defendants of section 7 of the Clayton Act, 15 U.S.C. 18. Florida brings this action under Section 16 of the Clayton Act, 15 U.S.C. 26, to prevent and restrain the violation by Defendants of Section 7 of the Clayton Act, 15 U.S.C. 18.

4. Defendants Waste Management and Allied are located in and transact business in the District of Columbia. Venue is therefore proper in this District under Section 12 of the Clayton Act, 15 U.S.C. 22 and 28 U.S.C. 1391(c).

5. Defendants Waste Management and Allied collect municipal solid waste from residential, commercial, and industrial customers. In their waste collection businesses, Waste Management and Allied make sales and purchases in interstate commerce, ship waste in the flow of interstate commerce, and engage in activities that substantially affect interstate commerce. The Court has jurisdiction over this action and over the parties pursuant to 15 U.S.C. 22 and 28 U.S.C. 1331 and 1337.

II. Definitions

6. "Broward County" means Broward County, Florida.

7. "MSW" means municipal solid waste, a term of art used to describe solid putrescible waste generated by households and commercial establishments such as retail stores, offices, restaurants, warehouses, and non-manufacturing activities in industrial facilities. MSW does not include special handling waste (*e.g.*, waste from manufacturing processes, regulated medical waste, sewage, and sludge), hazardous waste, or waste generated by construction or demolition sites.

8. "Small container hauling" means the business of collection MSW from commercial and industrial accounts, usually in "dumpsters" (*i.e.*, a small container with one to ten cubic yards of storage capacity), and transporting or "hauling" such waste to a disposal site by use of a front-end or rear-end load truck. Typical commercial waste collection customers include office and apartment buildings and retail establishments (*e.g.*, stores and restaurants). Small container commercial hauling, as used herein, does not include collection of roll-off containers.

III. Defendants and the Transaction

9. Waste Management is a Delaware corporation with its principal office in Houston, Texas. Waste Management is the nation's largest waste hauling company. It is engaged in providing waste collection and disposal services throughout the United States. In 2002, Waste Management reported total revenues of approximately $11.1 billion.

10. Allied is a Delaware corporation with its principal office in Scottsdale, Arizona. Allied is the nation's second largest waste hauling company. It is engaged in providing waste collection and disposal services throughout the United States. In 2002, Allied reported total revenues of approximately $5.5 billion.

11. On August 15, 2003, Defendants Waste Management and Allied entered into an asset purchase agreement and a stock purchase agreement purchase to which Waste Management would acquire from Allied, *inter alia*, small container commercial hauling assets in Broward County, Florida.

IV. Trade and Commerce

A. The Relevant Service Market

12. Waste collection firms, or haulers, collect MSW from residential, commercial, and industrial establishments and transport the waste to a disposal site, such as a transfer station, landfill, or incinerator, for processing and disposal. Private waste haulers typically contract directly with customers for the collection of waste generated by commercial accounts. MSW generated by residential customers, on the other hand, is often collected either by local governments or by private haulers pursuant to contracts bid by, or franchises granted by, municipal authorities.

13. Small container commercial hauling differs in many important respects from the collection of residential or other types of waste. An individual commercial customer typically generates substantially more MSW than a residential customer. To handle this high volume of MSW efficiently, haulers provide commercial customers with dumpsters for storing the waste. Haulers organize their commercial accounts into routes, and collect and transport the MSW generated by these accounts in vehicles uniquely well suited for commercial waste collection—primarily front-end load trucks. Less frequently, haulers may use more maneuverable, but less efficient, rear-end load trucks, especially in those areas in which a collection route includes narrow alleyways or streets. Front-end load trucks are unable to navigate narrow passageways easily and cannot efficiently collect the waste located in them.

14. On a typical small container commercial hauling route, an operator drives a front-end load truck to the customer's container, engages a mechanism that grasps and lifts the container over the front of the truck, and empties the container into the vehicle's storage section where the waste is compacted and stored. The operator continues along the route, collecting MSW from each of the commercial accounts, until the vehicle is full. The operator then drives the front-end load truck to a disposal facility, such as a transfer station, landfill, or incinerator, and empties the contents of the vehicle. Often, the operator returns to the route and repeats the process.

15. In contrast to a commercial collection route, a residential waste collection route is significantly more labor intensive. The customer's MSW is stored in much smaller containers (*e.g.*, garbage bags or trash cans) and instead of front-end load trucks, waste collection firms routinely use rear-end load or side-load trucks manned by larger crews (usually, two-person or three-person teams). On residential routes, crew generally hand-load the customer's MSW, typically by tossing garbage bags and emptying trash cans into the vehicle's storage section. Because of the differences in the collection processes, residential customers and commercial customers usually are organized into separate routes. Likewise, other types of collection activities, such as the use of roll-off containers (typically used for construction debris) and the collection of liquid or hazardous waste, are rarely combined with commercial waste collection. This separation of routes is due to differences in the hauling equipment required, the volume of waste collected, health and safety concerns, and the ultimate disposal option used.

16. The differences in the types and volume of MSW collected and in the equipment used in collection services distinguish small container commercial hauling from all other types of waste collection activities. These differences mean that small container commercial building firms can profitably increase their charges for small container commercial hauling services without losing significant sales or revenues to firms engaged in the provision of other types of waste collection services. Thus, small container commercial hauling is a line of commerce, or relevant service, for purposes of analyzing the effects of the acquisition under Section 7 of the Clayton Act.

B. The Relevant Geographic Market

17. Small container commercial hauling services are generally provided in highly localized areas because to operate efficiently and profitably, a hauler must have sufficient density in its commercial waste collection operations (*i.e.*, a large number of commercial accounts that are reasonably close together). In addition, a front-end load or rear-end load vehicle cannot be efficiently driven long distances without collecting significant amounts of MSW, which makes it economically impractical for a small container commercial hauling firm to service metropolitan areas from a distant base. Haulers, therefore, generally establish garages and related facilities within each major local area served.

18. Generally, haulers compete for small container commercial hauling customers in "open" competition or through competition for municipal franchises. In open competition work, a hauler competes for individual customers, whereas in franchise work, the hauler is awarded a municipal contract that permits the hauler to provide service to all of the small container commercial customers in that municipality. The municipality decides whether it will grant a franchise or allow haulers to compete for customers in open competition.

19. Local small container commercial hauling firms in Broward County can profitably increase prices to customers in the open areas of Broward County—that is, those not covered by a municipal franchise—without losing sales to a municipal franchise, or to more distant competitors. The open areas of Broward County is a section of the county, or relevant geographic market, for purposes of analyzing the effects of the acquisition under Section 7 of the Clayton Act.

C. Reduction in Competition as a Consequence of the Acquisition

20. Defendants Waste Management and Allied directly compete to provide small container commercial hauling services for open competition in open areas of Broward County, Florida. Waste Management and Allied each account for a substantial share of total revenues from commercial waste collection services in Broward County.

21. The proposed acquisition would reduce from three to two the number of significant firms that compete to provide small container commercial hauling services in open areas of Broward County, Florida. After the acquisition, Waste Management would control over 68 percent of total market revenues, which exceed $40 million annually. Using a standard measure of market concentration called the "HHI" (defined and explained in Appendix A), the post-merger HHI for small container commercial hauling would be approximately 5490, an increase of 2063 points over the pre-merger HHI of 3428.

D. Entry Into Commercial Waste Collection of MSW

22. Significant new entry into small container commercial hauling business is difficult and time-consuming. A new entrant into small container commercial hauling cannot provide a significant competitive constraint on the prices charged by market incumbents until it achieves minimum efficient scale and operating efficiencies comparable to existing firms. In order to obtain a comparable operating efficiency, a new firm must achieve route density similar to existing firms. However, an incumbent's use of price discrimination and long-term contracts prevents new entrants from winning a large enough base of customers to achieve efficient routes in sufficient time to constrain the post-acquisition firm from significantly raising prices. Differences in the service provided by an incumbent hauler to each customer permit the incumbent to meet competition easily from new entrants by pricing its services lower to any individual customer that wants to switch to the new entrant. An incumbent's use of three-to-five year contracts, which may contain large liquidated damage provisions for contract termination, automatically renew, or permit specified price increases, make it more difficult for a customer to switch to a new hauler and obtain lower prices for its collection service. These contracts increase the cost and time required by an entrant to form an efficient route, reducing the likelihood that the entrant will ultimately be successful.

E. Harm to Competition

23. The acquisition of Allied's small container commercial hauling assets by Waste Management would remove a significant competitor in the small container commercial hauling business in a market that is already highly concentrated and difficult to enter. In this market, the resulting substantial increase in concentration, loss of competition, and absence of any reasonable prospect of significant new entry or expansion by market incumbents likely will result in higher prices for small container commercial hauling services.

V. Violation Alleged

24. Waste Management's proposed acquisition of Allied's small container commercial hauling assets in Broward County, Florida will lessen competition substantially and tend to create a monopoly in interstate trade and commerce in violation of Section 7 of the Clayton Act.

25. The transaction likely will have the following effects, among others:

a. Competition for small container commercial hauling services in open areas of Broward County, Florida will be lessened substantially; and

b. Prices charged by small container commercial hauling firms in open areas of Broward County, Florida will likely increase.

VI. Requested Relief

Plaintiffs request:

1. That Waste Management's proposed acquisition of Allied's small container commercial hauling assets in Broward County, Florida be adjudged and decreed to be unlawful and in violation of Section 7 of the Clayton Act;

2. That Defendants be permanently enjoined from carrying out the acquisition of small container commercial hauling assets in the asset purchase and stock purchase agreements dated August 15, 2003, or from entering into or carrying out any agreement, understanding, or plan, the effect of which would be to exchange those assets between the Defendants;

3. That Plaintiffs receive such other and further relief as the case requires and the Court deems proper; and

4. That Plaintiffs recover the costs of this action.

Dated: October 14, 2003.

Respectfully submitted,

FOR PLAINTIFF UNITED STATES:

/s/ _____

R. Hewitt Pate

Assistant Attorney General.

/s/ _____

J. Bruce McDonald

Deputy Assistant Attorney General.

/s/ _____

Dorothy B. Fountain

Deputy Director of Operations.

/s/ _____

Maribeth Petrizzi

Chief Litigation II Section.

/s/ _____

Paul A. Moore III

Maryland Bar.

Karen Y. Douglas

Trial Attorneys, United States Department of Justice, Antitrust Division, Litigation II

Section, 1401 H Street, N.W., Suite 3000, Washington, D.C. 20530, (202) 307–0924.

FOR PLAINTIFF STATE OF FLORIDA:

CHARLES J. CRIST, Jr.

Attorney General.

By:

/s/

L. CLAYTON ROBERTS

Executive Deputy Attorney General.

PATRICIA A. CONNERS

Director, Antitrust Division

LIZABETH A. LEEDS

Senior Assistant Attorney General

Florida Bar No. 0457991

NICHOLAS J. WEILHAMMER

Assistant Attorney General, Office of the Attorney General, Antitrust Division, PL–01, The Capitol, Tallahassee, Florida 32399–1050, Phone: (850) 414–3600, Fax: (850) 488–9134.

Appendix A—Herfindahl-Hirschman Index Calculations

"HHI" means the Herfindahl-Hirschman Index, a commonly accepted measure of market concentration. It is calculated by squaring the market share of each firm competing in the market and then summing the resulting numbers. For example, for a market consisting of four firms with shares of thirty, thirty, twenty, and twenty percent, the HHI is 2600 ($30^2 + 30^2 + 20^2 + 20^2 = 2600$). The HHI takes into account the relative size and distribution of the firms in a market and approaches zero when a market consists of a large number of firms of relatively equal size. The HHI increases both as the number of firms in the market decreases and as the disparity in size between those firms increases.

Markets in which the HHI is between 1000 and 1800 points are considered to be moderately concentrated, and those in which the HHI is in excess of 1800 points are considered to be highly concentrated. Transactions that increase the HHI by more than 100 points in highly concentrated markets presumptively raise antitrust concerns under the Horizontal Merger Guidelines issued by the U.S. Department of Justice and the Federal Trade Commission. *See Merger Guidelines* § 1.51.

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA, and STATE OF FLORIDA, Plaintiffs, v. WASTE MANAGEMENT, INC., and ALLIED WASTE INDUSTRIES, INC., Defendants.

Civil No: 1:03CV02076.

JUDGE: James Robertson.

DECK TYPE: Antitrust.

FILED: October 14, 2003.

Final Judgment

Whereas, Plaintiffs, the United States of America ("United States") and the State of Florida ("Florida"), filed their Complaint on October 14, 2003, and Plaintiffs and Defendants, Waste Management, Inc. ("Waste Management") and Allied Waste Industries, Inc. ("Allied"), by their respective attorneys, have consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law, and without this Final Judgment constituting any evidence against or admission by any party regarding any issue of fact or law;

And whereas, Defendants agree to be bound by the provisions of this Final Judgment pending its approval by the Court;

And whereas, the essence of this Final Judgment is the prompt and certain divestiture of certain assets by Defendant Waste Management to ensure that competition is not substantially lessened;

And whereas, Plaintiffs require Defendant Waste Management to make certain divestitures in order to remedy the loss of competition alleged in the Complaint;

And whereas, Defendants have represented to Plaintiffs that the divestitures required below can and will be made and that Defendants will later raise no claims of hardship or difficulty as grounds for asking the Court to modify any of the divestitures or other injunctive provisions contained below;

And whereas, Defendant Waste Management shall be enjoined from acquiring the assets to be divested, except as provided in this Final Judgment;

Now, therefore, before any testimony is taken, and without trial or adjudication of any issue of fact or law, and upon consent of the parties, it is *ordered, adjudged, and decreed:*

I. Jurisdiction

This Court has jurisdiction over the subject matter of and each of the parties to this action. The Complaint states a claim upon which relief may be granted against Defendants under Section 7 of the Clayton Act, as amended, 15 U.S.C. 18.

II. Definitions

As used in this Final Judgment:

A. *Acquirer* means the entity or entities to whom Waste Management divests the Relevant Hauling Assets.

B. *Allied* means Defendant Allied Waste Industries, Inc., a Delaware corporation with its headquarters in Scottsdale, Arizona, its successors and assigns, and its subsidiaries, division, groups, affiliates, partnerships, joint ventures, and their directors, officers, managers, agents, and employees.

C. *MSW* means municipal solid waste, a term of art used to describe solid putrescible waste generated by households and commercial establishments such as retail stores, offices, restaurants, warehouses, and non-manufacturing activities in industrial facilities. MSW does not include special handling waste (*e.g.*, waste from manufacturing processes, regulated medical waste, sewage, and sludge), hazardous waste, or waste generated by construction or demolition sites.

D. *Relevant Hauling Assets* means Allied's small container commercial hauling routes 501, 901, 902, 903, 904, 906, 907, 909, 912, 914, and 915 that operate out of Allied's Broward County, Florida division located at 2380 College Avenue, Davie, Florida 33317 including:

(1) All tangible assets, including capital equipment, trucks and other vehicles, containers, interests, supplies, and if requested by the purchaser, real property and improvements to real property (*i.e.*, buildings and garages);

(2) All intangible assets, including hauling-related customer lists, leasehold interests, permits, and contracts and accounts related to each small container commercial hauling route, and any contract or account serviced in whole or in part on any of the routes listed above; and

(3) Relevant Hauling Assets does not include accounts and contracts serviced in unincorporated Broward County, accounts serviced through a franchise agreement, and accounts and contracts serviced in the City of Margate.

E. *Small container commercial hauling* means the business of collecting MSW from commercial and industrial accounts, usually in "dumpsters" (*i.e.*, a small container with one to ten cubic yards of storage capacity), and transporting or "hauling" such waste to a disposal site by use of a front- or rear-end loader truck. Typical small container commercial hauling customers include office and apartment buildings and retail establishments (*e.g.*, stores and restaurants). Small container commercial hauling, as used herein, does not include collection of roll-off containers.

F. *Waste Management* means Defendant Waste Management, Inc., a Delaware corporation with its headquarter in Houston, Texas, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships, joint ventures, and their directors, officers, managers, agents, and employees.

III. Applicability

A. This Final Judgment applies to Waste Management and Allied, as defined above, and all other persons in active concert or participation with any of them who receive actual notice of this Final Judgment by personal service or otherwise.

B. Defendants shall require, as a condition of the sale or other disposition of all or substantially all of their assets, or of lesser business units that include the Relevant Hauling Assets, that the Acquirer agree to be bound by the provisions of this Final Judgment.

IV. Divestiture

A. Defendant Waste Management is ordered and directed, within ninety calendar days after the filing of the Complaint in this matter, or five days after notice of the entry of this Final Judgment by the Court, whichever is later, to divest the Relevant Hauling Assets in a manner consistent with this Final Judgment to an Acquirer acceptable to the United States in its sole discretion, after consultation with Florida. The United States, in its sole discretion, after consultation with Florida, may agree to an extension of this time period of up to sixty calendar days, and shall notify the Court in such circumstances. Defendants agree to use their best efforts to divest the Relevant Hauling Assets as expeditiously as possible.

B. In accomplishing the divestiture ordered by this Final Judgment, Defendant Waste Management promptly shall make known, by

usual and customary means, the availability of the Relevant Hauling Assets. Defendants shall inform any person making inquiry regarding a possible purchase of the Relevant Hauling Assets that they are being divested pursuant to this Final Judgment and provide that person with a copy of this Final Judgment. Defendants shall offer to furnish to all prospective Acquirers, subject to customary confidentiality assurances, all information and documents relating to the Relevant Hauling Assets, whichever is then available for sale, customarily provided in a due diligence process except such information or documents subject to the attorney-client or work-produce privileges.

C. Defendants shall provide the United States and Florida, and each prospective Acquirer of the Relevant Hauling Assets, information relating to the personnel involved in the operation and management of the Relevant Hauling Assets to enable the Acquirer to make offers of employment. Defendants will not interfere with any negotiations by the Acquirer to employ any of Defendants' employees whose primary responsibility is the operation or management of the Relevant Hauling Assets.

D. Defendants shall permit each prospective Acquirer of the Relevant Hauling Assets to have reasonable access to personnel and to make inspections of the physical facilities; access to any and all environmental, zoning, and other permit documents and information; and access to any and all financial, operational, or other documents and information customarily provided as part of the a due diligence process.

E. Defendant Waste Management shall warrant to the Acquirer of the Relevant Hauling Assets that each asset will be operational on the date of sale.

F. Defendants shall not take any action that will impede in any way the permitting, operation, or divestiture of the Relevant Hauling Assets.

G. Defendant Waste Management shall warrant to the Acquirer of the Relevant Hauling Assets that there are no material defects in the environmental, zoning or other permits pertaining to the operation of each asset, and that following the sale of the Relevant Hauling Assets, Defendants will not undertake, directly or indirectly, any challenges to the environmental, zoning, or other permits relating to the operation of the Relevant Hauling Assets.

H. Unless the United States, in its sole discretion, after consultation with Florida, otherwise consents in writing, the divestiture pursuant to Section IV, or by trustee appointed pursuant to Section V, of this Final Judgment shall include the entire Relevant Hauling Assets, and shall be accomplished in such a way as to satisfy the United States, in its sole discretion, after consultation with Florida, that the divested assets will be used by the Acquirer, as part of a viable, ongoing small container commercial hauling business. Divestiture of the Relevant Hauling Assets may be made to an Acquirer, provided that it is demonstrated to the sole satisfaction of the United States, after consultation with Florida, that the Relevant Hauling Assets will remain viable and the divestiture of such assets will remedy the competitive harm alleged in the Complaint. The divestiture, whether pursuant to Section IV or Section V of this Final Judgment.

1. Shall be made to an Acquirer that, in the United States' sole judgment, after consultation with Florida, has the intent and capability, including managerial, operational, and financial capability, to compete effectively in the small container commercial hauling business; and

2. Shall be accomplished so as to satisfy the United States, in its sole discretion, after consultation with Florida, that none of the terms of any agreement between an Acquirer and Defendant Waste Management gives Defendant Waste Management the ability unreasonably to raise the Acquirer's costs, to lower the Acquirer's efficiency, or otherwise to interfere in the ability of the Acquirer to compete effectively.

V. Appointment of Trustee

A. If Defendant Waste Management has not divested the Relevant Hauling Assets within the time period specified in Section IV.A., Defendant Waste Management shall notify the United States of that fact in writing. Upon application of the United States, in its sole discretion, the Court shall appoint a trustee selected by the United States and approved by the Court to effect the divestiture of the Relevant Hauling Assets.

B. After the appointment of the trustee becomes effective, only the trustee shall have the right to sell the Relevant Hauling Assets.

C. The trustee shall have the power and authority to accomplished the divestiture to an Acquirer acceptable to the United States, in its sole discretion, after consultation with Florida, at such price and on such terms as are then obtainable upon reasonable effort by the trustee, subject to the provisions of Sections IV, V, and VI of this Final Judgment, and shall have such other powers as this Court deems appropriate. Subject to Section V.E. of this Final Judgment, the trustee may hire at the cost and expense of Defendant Waste Management any investment bankers, attorneys, or other agents, who shall be solely accountable to the trustee, reasonably necessary in the trustee's judgment to assist in the divestiture.

D. Defendant Waste Management shall not object to a sale by the trustee on any ground other than the trustee's malfeasance. Any such objections by Defendant Waste Management must be conveyed in writing to the United States, Florida, and the trustee within ten calendar days after the trustee has provided the notice required under Section VI.

E. The trustee shall serve at the cost and expense of Defendant Waste Management, on such terms and conditions as the United States approves, and shall account for all monies derived from the sale of the Relevant Hauling Assets sold by the trustee and all costs and expenses so incurred. After approval by the Court of the trustee's accounting, including fees for its services and those of any professionals and agents retained by the trustee, all remaining money shall be paid to Defendant Waste Management and the trust shall then be terminated. The compensation of the trustee and any professionals and agents retained by the trustee shall be reasonable in light of the value of the Relevant Hauling Assets, and based on a fee arrangement providing the trustee with an incentive based on the price and terms of the divestiture and the speed with which it is accomplished, but timeliness is paramount.

F. Defendants shall use their best efforts to assist the trust in accomplishing the required divestiture. The trustee and any consultants, accountants, attorneys, and other persons retained by the trustee shall have full and complete access to the personnel, books, records, and facilities of the business to be divested, and Defendants shall develop financial and other information relevant to such business as the trustee may reasonably request, subject to customary confidentiality protection for trade secret or other confidential research, development, or commercial information. Defendants shall take no action to interfere with or to impede the trustee's accomplishment of the divestiture.

G. After its appointment, the trustee shall file monthly reports with the United States, Florida, and the Court setting forth the trustee's efforts to accomplish the divestiture ordered under this Final Judgment. To the extent that such reports contain information that the trustee deems confidential, such reports shall not be filed in the public docket of the Court. Such reports shall include the name, address, and telephone number of each person who, during the preceding month, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, any interest in the Relevant Hauling Assets, and shall describe in detail each contact with any such person. The trustee shall maintain full records of all efforts of all efforts made to divest the Relevant Hauling Assets.

H. If the trustee has not accomplished such divestiture within six (6) months after its appointment, the trustee shall promptly file with the Court a report setting forth: (1) The trustee's efforts to accomplish the required divestiture, (2) the reasons, in the trustee's judgment, why the required divestiture has not been accomplished, and (3) the trustee's recommendations. To the extent that such reports contain information that the trustee deems confidential, such reports shall not be filed in the public docket of the Court. The trustee shall, at the same time, furnish such report to the United States and Florida. The United States, in its sole discretion, after consultation with Florida, shall have the right to make additional recommendations consistent with the purpose of the trust. The Court thereafter shall enter such orders as it shall deem appropriate to carry out the purpose of the Final Judgment, which may, if necessary, including extending the trust and the term of the trustee's appointment by a period requested by the United States.

VI. Notice of Proposed Divestiture

A. Within two business days following execution of a definitive divestiture agreement, Defendant Waste Management or the trustee, whichever is then responsible for

effecting the divestiture required herein, shall notify the United States and Florida of any proposed divestiture required by Section IV or V of this Final Judgment. If the trustee is responsible, it shall similarly notify Defendant Waste Management. The notice shall set forth the details of the proposed divestiture and list the name, address, and telephone number of each person not previously identified who offered or expressed an interest in or desire to acquire any ownership interest in the Relevant Hauling Assets together with full details of the same.

B. Within fifteen calendar days of receipt by the United States and Florida of such notice, the United States, in its sole discretion, after consultation with Florida, may request from Defendants, the proposed Acquirer or Acquirers, any other third party, or the trustee, if applicable, additional information concerning the proposed divestiture, the proposed Acquirer, and any other potential Acquirer. Defendants and the trustee shall furnish the United States and Florida any additional information requested within fifteen calendar days of the receipt of the request, unless the parties shall otherwise agree.

C. Within thirty calendar days after receipt of the notice or within twenty calendar days after the United States and Florida have been provided the additional information requested from Defendants, the proposed Acquirer, any third party, and the trustee, whichever is later, the United States, after consultation with Florida, shall provide written notice to Defendants and the trustee, if there is one, stating whether or not it objects to the proposed divestiture. If the United States provides written notice that it does not object, the divestiture may be consummated, subject only to Defendant Waste Management's limited right to object to the sale under Section V.D. of this Final Judgment. Absent written notice that the United States does not object to the proposed Acquirer or upon objection by the United States, a divestiture proposed under Section IV or Section V shall not be consummated. Upon objection by Defendant Waste Management under Section V.D., a divestiture proposed under Section V shall not be consummated unless approved by the Court.

VII. Financing

Defendants shall not finance all or any part of any purchase made pursuant to Section IV or V of this Final Judgment.

VIII. Hold Separate

Until the divestiture required by this Final Judgment has been accomplished, Defendants shall take all steps necessary to comply with the Hold Separate Stipulation and Order entered by this Court. Defendants shall take no action that would jeopardize the divestiture ordered by this Court.

IX. Affidavits

A. Within twenty calendar days of the filing of the Complaint in this matter, and every thirty calendar days thereafter until the divestiture has been completed under Section IV or V, Defendants shall deliver to the United States and to Florida an affidavit as to the fact and manner of its compliance with Section IV or V of this Final Judgment. Each such affidavit shall include the name, address, and telephone number of each person who, during the preceding thirty days, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, any interest in the Relevant Hauling Assets, and shall describe in detail each contact with any such person during that period. Each such affidavit shall also include a description of the efforts Defendants have taken to solicit buyers for the Relevant Hauling Assets, and to provide required information to each prospective Acquirer, including the limitations, if any, on such information. Assuming the information set forth in the affidavit is true and complete, any objection by the United States, in its sole discretion, after consultation with Florida, to information provided by Defendants, including limitations on information, shall be made within fourteen days of receipt of such affidavit.

B. Within twenty calendar days of the filing of the Complaint in this matter, Defendants shall deliver to the United States and Florida an affidavit that describes in reasonable detail all actions Defendants have taken and all steps Defendants have implemented on an ongoing basis to comply with Section VIII of this Final Judgment. Defendants shall deliver to the United States and Florida an affidavit describing any changes to the efforts and actions outlined in Defendants' earlier affidavits filed pursuant to this section within fifteen calendar days after the change is implemented.

C. Defendants shall keep all records of all efforts made to preserve the Relevant Hauling Assets, and to divest the Relevant Hauling Assets, until one year after such divestiture has been completed.

X. Compliance Inspection

A. For purposes of determining or securing compliance with this Final Judgment, or of determining whether the Final Judgment should be modified or vacated, and subject to any legally recognized privilege, from time to time duly authorized representatives of the United States Department of Justice, including consultants and other persons retained by the United States, upon written request of a duly authorized representative of the Assistant Attorney General in charge of the Antitrust Division, or a duly authorized representative of the Florida Attorney General's Office, and on reasonable notice to Defendants, be permitted:

1. Access during Defendants' office hours to inspect and copy, or at the United States' or Florida's option, to require Defendants to provide copies of, all books, ledgers, accounts, records and documents in the possession, custody or control of Defendants, relating to any matters contained in this Final Judgment; and

2. To interview, either informally or on the record, Defendants' officers, employees, or agents, who may have their individual counsel present, regarding such matters. The interviews shall be subject to the reasonable convenience of the interviewee and without restraint or interference by Defendants.

B. Upon the written request of a duly authorized representative of the Assistant Attorney General in charge of the Antitrust Division, or a duly authorized representative of the Florida Attorney General's Office, Defendants shall submit such written reports, under oath if requested, relating to any of the matters contained in this Final Judgment as may be requested.

C. No information or documents obtained by the means provided in this section and sections IV and VI above shall be divulged by the Plaintiffs to any person other than an authorized representative of the executive branch of the United States, or the Florida Attorney General's Office, except in the course of legal proceedings to which the United States or Florida is a party (including grand jury proceedings), or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

D. If at the time information or documents are furnished by Defendants to Plaintiffs, Defendants represent and identify in writing the material in any such information or documents to which a claim of protection may be asserted under Rule 26(c)(7) of the Federal Rules of Civil Procedure, and Defendants mark each pertinent page of such material, "Subject to claim of protection under Rule 26(c)(7) of the Federal Rules of Civil Procedure," then Plaintiffs shall give Defendants ten calendar days notice prior to divulging such material in any legal proceeding (other than a grand jury proceeding).

XI. Notice

A. Defendant Waste Management shall provide written advance notification to representatives of the Antitrust Division of the United States Department of Justice and the Florida Attorney General's Office during the period ending four years after the Final Judgment is entered before acquiring, directly or indirectly, any interest in any assets (other than in the ordinary course of business), capital stock, or voting securities of any small container commercial hauling business that, at any time during the twelve months immediately preceding such acquisition, were used to provide small container commercial hauling services in Broward County, Florida, where that business's small container commercial hauling assets generated in excess of $500,000 in revenues per year or where total revenues were in excess of $1 million per year.

B. Such written notification shall be provided to representatives of the Antitrust Division and the Florida Attorney General's Office at least thirty days prior to acquiring any such interest, which period may be shortened by permission of the Antitrust Division and the Florida Attorney General's Office.

XII. No Reacquisition

Defendant Waste Management may not reacquire, lease, or control any part of the Relevant Hauling Assets during the term of this Final Judgment.

XIII. Retention of Jurisdiction

This Court retains jurisdiction to enable any party to this Final Judgment to apply to this Court at any time for further orders and directions as may be necessary or appropriate to carry out or construe this Final Judgment, to modify any of its provisions, to enforce compliance, and to punish violations of its provisions.

XIV. Expiration of Final Judgment

Unless this Court grants an extension, this Final Judgment shall expire ten years form the date of its entry.

XV. Public Interest Determination

Entry of this Final Judgment is in the public interest.

Date:

Court approval subject to procedures of Antitrust Procedures and Penalties Act, 15 U.S.C. 16.

UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA, and STATE OF FLORIDA, Plaintiffs, v. WASTE MANAGEMENT, INC., and ALLIED WASTE INDUSTRIES, INC., Defendants.
Cast No.: 1:03CV02076.
JUDGE: James Robertson.
DECK TYPE: Antitrust.

Competitive Impacts Statement

Plaintiff United States of America ("United States"), pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act ("APPA"), 15 U.S.C. 16(b)–(h), files this Competitive Impact Statement relating to the proposed Final Judgment submitted for entry in this civil antitrust proceeding.

I. Nature and Purpose of the Proceeding

Defendant Waste Management, Inc. ("Waste Management") and Defendant Allied Waste Industries, Inc. ("Allied") entered into an asset purchase agreement and a stock purchase agreement, both dated August 15, 2003, pursuant to which Waste Management would acquire from Allied, *inter alia*, certain small container commercial hauling assets in Broward County, Florida. The United States and the State of Florida ("Florida") filed a civil antitrust Complaint on October 14, 2003, seeking to enjoin the proposed acquisition. The Complaint alleges that the likely effect of this acquisition would be to lessen competition substantially for small container commercial hauling services in Broward County, Florida in violation of Section 7 of the Clayton Act. This loss of competition would result in consumers paying higher prices and receiving fewer services for the collection of small container commercial waste.

At the same time the Complaint was filed, the United States also filed a Hold Separate Stipulation and Order and proposed Final Judgment, which are designed to eliminate the anticompetitive effects of the acquisition. Under the proposed Final Judgment, which is explained more fully below, Waste Management is required within 90 days after the filing of the Complaint, or five days after notice of the entry of the Final Judgment by the Court, Whichever is later, to divest, as a viable business operation, specified small container commercial hauling assets located in Broward County, Florida. Under the terms of the Hold Separate Stipulation and Order, Waste Management is required to take certain steps to ensure that the assets to be divested are fully maintained in operable condition at no less than the state they were in at the time the United States, Florida, and Defendants agreed to the divestitures outlined below and held separate from its other assets and businesses.

The United States, Florida, and the Defendants have stipulated that the proposed Final Judgment may be entered after compliance with the APPA. Entry of the proposed Final Judgment would terminate this action, except that the Court would retain jurisdiction to construe, modify, or enforce the provisions of the proposed Final Judgment and to punish violations thereof.

II. Description of the Events Giving Rise to the Alleged Violation

A. The Defendants and the Proposed Transaction

Waste Management, with 2002 revenues of approximately $11.1 billion, is the nation's largest waste collection and disposal company, operating throughout the United States. Allied, with 2002 revenues of approximately $5.5 billion, is the nation's second largest waste collection and disposal company. The proposed transaction, as initially agreed to by Defendants on August 15, 2003, would lessen competition substantially as a result of Waste Management's acquisition of Allied's small container commercial hauling assets in Broward County, Florida. This acquisition is the subject of the Complaint and proposed Final Judgment filed by the United States and Florida on October 14, 2003.

B. The Competitive Effects of the Transaction on Competition in Small Container Commercial Hauling

Municipal solid waste ("MSW") is solid, putrescible waste generated by households and commercial establishments. Waste collection firms, or haulers, contract to collect MSW from residential and commercial customers and transport the waste to private and public disposal facilities (*e.g.*, transfer stations, incinerators, and landfills), which, for a fee, process and legally dispose of the waste. Small container commercial hauling is one component of MSW collection, which also includes residential and other waste collection. Waste Management and Allied compete in the collection of small container commercial waste in Broward County, Florida.

Small container commercial hauling is the collection of MSW in one to ten cubic yard containers, usually from commercial businesses such as office and apartment buildings and retail establishments (*e.g.*, stores and restaurants) for shipments to, and disposal at, an approved disposal facility. Because of the type and volume of waste generated by commercial accounts and the frequency of service required, haulers organize small container commercial accounts into their own special routes, and generally use specialized equipment to store, collect, and transport waste from these accounts to approved disposal sites. This equipment (*e.g.*, one- to ten-cubic-yard containers for waste storage, and front-end load vehicles commonly used for collection and transportation) is uniquely well-suited for small container commercial hauling. Providers of other types of waste collection services (*e.g.*, residential and roll-off services) are not good substitutes for small container commercial hauling firms. In their waste collection efforts, these firms use different waste storage equipment (*e.g.*, garbage cans or semi-stationary roll-off containers) and different vehicles (*e.g.*, rear-load, side-load, or roll-off trucks), which, for a variety of reasons, cannot be conveniently or efficiently used to store, collect, or transport waste generated by commercial customers, and hence, are rarely used on small container commercial hauling routes. In the event of a small but significant and nontransitory increase in price for small container commercial hauling, customers would not switch to any other alternative. Thus the Complaint alleges that the provision of small container commercial hauling constitutes a line of commerce, or relevant service, for purposes of analyzing the effects of the transaction.

The Complaint alleges that the provision of small container commercial hauling service takes place in compact, highly localized geographic markets. The geographic markets are compact and highly localized because it is expensive to ship waste long distances in either collection or disposal operations. To minimize transportations costs and maximize the scale, density, and efficiency of their waste collection operations, small container commercial hauling firms concentrate their customers and collection routes in small areas. Firms with operations concentrated in a distant area cannot easily compete against firms whose routes and customers are locally based. Distance may significantly limit a remote firm's ability to provide commercial waste hauling service as frequently or conveniently as that offered by local firms with nearby routes. Also, local small container commercial hauling firms have significant cost advantages over other firms and can profitably increase their charges to local small container commercial hauling customers without losing significant sales to firms outside the area.

Small container commercial haulers in Broward County, Florida compete for customers either in "open" competition or through competition for municipal franchises. In open competition areas, haulers compete to service individual customers. In areas where commercial hauling is controlled by the respective municipality, small container commercial haulers compete to be awarded a municipal contract, or franchise, that permits the hauler to provide service to all of the small container commercial customers in that municipality. The municipality decides whether to grant a franchise or to allow haulers to compete for customers in open competition. Local small container commercial hauling firms in Broward County can profitably increase prices to customers in the open areas of Broward County—that is, those customers not covered by a municipal

franchise—without losing sales to a municipal franchise, or to more distant competitors.

Applying this analysis, the Complaint alleges that the open competition areas of Broward County, Florida constitute a section of the country, or relevant geographic market, for the purpose of assessing the competitive effects of a combination of Waste Management and Allied in the provision of small container commercial hauling services.

There are significant entry barriers into the provision of small container commercial hauling services. A new entrant in the small container commercial hauling business must achieve a minimum efficient scale and operating efficiencies comparable to those of existing firms in order to provide a significant competitive constraint on the prices charged by market incumbents. In order to obtain comparable operating efficiencies, a new firm must achieve route density similar to existing firms. An efficient route usually handles eighty or more customers or containers each day. Because most customers have their waste collected once of twice a week, a new entrant must have several hundred customers in close proximity to construct an efficient route. However, the common use of price discrimination and long-term contracts by existing small container commercial hauling firms can leave too few customers available to the entrant in a sufficiently confined geographic area to create an efficient route. The incumbent firm can selectively and temporarily charge an unbeateably low price to specified customers targeted by new entrants. Long-term contracts often run for three to five years and may automatically renew or contain large liquidated damage provisions for contract termination. Such terms make it more costly or difficult for a customer to switch to a new hauler and obtain lower prices for its collection service. Because of these factors, a new entrant may find it difficult to compete by offering its services at pre-entry price levels comparable to the incumbent's prices. Also, a new entrant may face an increase in the cost and time required to form an efficient route, which may limit the entrant's ability to build an efficient route and reduce the likelihood that the entrant ultimately will be successful.

The need for route density, the use of long-term contracts with restrictive terms, and the ability of existing firms to price discriminate raise significant barriers to entry by new firms, which will likely be forced to compete at lower than entry price levels. Such barriers in the market for small container commercial hauling services have allowed incumbent firms to raise prices successfully.

In Broward County, Florida, Waste Management's acquisition of Allied's small container commercial hauling assets would reduce from three to two the number of significant firms that compete to provide small container commercial hauling. After the acquisition, Waste Management would control over 60 percent of total market revenues, which exceed $40 million annually. There is only one other significant small container commercial hauling competitor in this market.

The Complaint alleges that a combination of Waste Management and Allied in Broward County would remove a significant competitor in small container commercial hauling. In this market the resulting increase in concentration, loss of competition, loss of competition, and absence of any reasonable prospect of entry or expansion by market incumbents likely will result in higher prices for small container commercial hauling.

III. Explanation of the Proposed Final Judgment

The divestiture requirement of the proposal Final Judgment will eliminate the anticompetitive effects of the acquisition in small container commercial hauling in Broward County, Florida by establishing a new, independent, and economically viable competitor. The proposed Final Judgment requires Waste Management, within ninety days after the filing of the Complaint, or five days after notice of the entry of the Final Judgment by the Court, whichever is later, to divest, as a viable ongoing business, small container commercial hauling assets (*e.g.*, routes, trucks, containers, and customer lists) in Broward County, Florida. The assets must be divested in such a way as to satisfy the United States in its sole discretion, after consultation with Florida, that the operations can and will be operated by the purchaser as a viable, ongoing business that can compete effectively in the relevant market. Defendants must take all reasonable steps necessary to accomplish the divestiture quickly and shall cooperate with prospective purchasers.

In the event that Defendants do not accomplish the divestiture within the periods prescribed in the proposed Final Judgment, the Final Judgment provides that the Court will appoint a trustee selected by the United States to effect the divestiture. If a trustee is appointed, the proposed Final Judgment provides that Waste Management will pay all costs and expenses of the trustee. The trustee's commission will be structured so as to provide an incentive for the trustee based on the price obtained and the speed with which the divestiture is accomplished. After his or her appointment becomes effective, the trustee will file monthly reports with the Court, the United States, and Florida, setting forth his or her efforts to accomplish the divestiture. At the end of six months, if the divestiture has not been accomplished, the trustee, the United States, and Florida, will make recommendations to the Court, which shall enter such orders as appropriate, in order to carry out the purpose of the trust, including extending the trust or the term of the trustee's appointment.

The divestiture provisions of the proposed Final Judgment will eliminate the anticompetitive effects of the acquisition in the provision of small container commercial hauling services in Broward County, Florida. Under the proposed Final Judgment, Waste Management is required to divest customers and contracts on eleven of Allied's routes (routes 901, 902, 903, 904, 906, 907, 909, 912, 914, 915, and 501, except for specific portions of these routes that did not raise significant competitive concerns, including accounts and contracts serviced in parts unincorporated Broward County, accounts serviced through franchise agreements, and accounts and contracts serviced in the City of Margate) to a new, independent, and economically viable competitor in Broward County, Florida. In addition, Waste Management agrees that, if an Allied customer has a single contract with accounts and service locations that are on both a route to be divested and a route Waste Management will acquire, Waste Management will divest the entire contract. The divested assets produce annual revenues of over $8 million from small container commercial hauling service in the open competition areas of Broward County, which represents over 80 percent of Allied's revenues generated in the open competition areas.

IV. Remedies Available to Potential Private Litigants

Section 4 of the Clayton Act (15 U.S.C. 15) provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal court to recover three times the damages the person has suffered, as well as costs and reasonable attorney's fees. Entry of the proposed Final Judgment will neither impair nor assist the bringing of any private antitrust damage action. Under the provisions of section 5(a) of the Clayton Act (15 U.S.C. 16(a)), the proposed Final Judgment has no *prima facie* effect in any subsequent private lawsuit that may be brought against the Defendants.

V. Procedures Available for Modification of the Proposed Final Judgment

The United States, Florida, and Defendants have stipulated that the proposed Final Judgment may be entered by the Court after compliance with the provisions of the APPA, provided that the United States has not withdrawn its consent. The APPA conditions entry upon the Court's determination that the proposed Final Judgment is in the public interest.

The APPA provides a period of at least 60 days preceding the effective date of the proposed Final Judgment within which any person may submit to the United States written commends regarding the proposed Final Judgment. Any person who wishes to comment should do so within sixty days of the date of publication of this Competitive Impact Statement in the **Federal Register**. The United States will evaluate and respond to the comments. All comments will be given due consideration by the Department of Justice, which remains free to withdraw its consent to the proposed Final Judgment at any time prior to entry. The comments and the response of the United States will be filed with the Court and published in the **Federal Register**.

Written comments should be submitted to: Maribeth Petrizzi, Chief, Litigation II Section, Antitrust Division, United States Department of Justice, 1401 H Street, NW., Suite 3000, Washington, DC 20530.

The proposed Final Judgment provides that the Court retains jurisdiction over this action, and the parties may apply to the Court for any order necessary or appropriate for the modification, interpretation, or enforcement of the Final Judgment.

VI. Alternatives to the Proposed Final Judgment

The United States considered, as an alternative to the proposed Final Judgment, a full trial on the merits against Defendants. The United States could have continued the litigation and sought preliminary and permanent injunctions against Waste Management's acquisition of certain assets from Allied. The United States is satisfied, however, that the divestiture of assets described in the proposed Final Judgment will preserve competition for the provision of small container commercial hauling services in the relevant market identified by the United States and Florida.

VII. Standard of Review Under the APPA for the Proposed Final Judgment

The APPA requires that proposed consent judgments in antitrust cases brought by the United States be subject to a sixty-day comment period, after which the Court shall determine whether entry of the proposed Final Judgment "is in the public interest." In making that determination, the Court may consider:

(1) The competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration or relief sought, anticipated effects of alternative remedies actually considered, and any other considerations bearing upon the adequacy of such judgment;

(2) The impact of entry of such judgment upon the public generally and individuals alleging specific injury from the violations set forth in the complaint including consideration of the public benefit, if any, to be derived from a determination of the issues at trial.

15 U.S.C. 16(e). As the United States Court of Appeals for the District of Columbia Circuit held, the APPA permits a court to consider, among other things, the relationship between the remedy secured and the specific allegations set forth in the government's complaint, whether the decree is sufficiently clear, whether enforcement mechanisms are sufficient, and whether the decree may positively harm third parties. *See United States* v. *Microsoft*, 56 F.3d 1448, 1458–62 (D.C. Cir. 1995).

In conducting this inquiry, "[t]he court is nowhere compelled to go to trial or to engage in extended proceedings which might have the effect of vitiating the benefits of prompt and less costly settlement through the consent decree process." 119 Cong. Rec. 24,598 (1973) (statement of Senator Tunney).[1] Rather:

> [a]bsent a showing of corrupt failure of the government to discharge its duty, the Court, in making its public interest finding, should * * * carefully consider the explanations of the government in the competitive impact statement and its responses to comments in order to determine whether those explanations are reasonable under the circumstances.

United States v. *Mid-America Dairymen, Inc.*, 1977–1 Trade Cas. (CCH) ¶61,508, at 71,980 (W.D. Mo. May 17, 1977).

Accordingly, with respect to the adequacy of the relief secured by the decree, a court may not "engage in an unrestricted evaluation of what relief would best serve the public." *United States* v. *BNS*, Inc., 858 F.2d 456, 462 (9th Cir. 1988) (citing *United States* v. *Bechtel Corp.*, 648 F.2d 660, 666 (9th Cir. 1981)); *see also Microsoft*, 56 F.3d at 1460–62. Case law requires that:

> [t]he balancing of competing social and political interests affected by a proposed antitrust consent decree must be left, in the first instance, to the discretion of the Attorney General. The court's role in protecting the public interest is one of insuring that the government has not breached its duty to the public in consenting to the decree. The court is required to determine not whether a particular decree is the one that will best serve society, but whether the settlement is "*within the reaches of the public interest.*" More elaborate requires might undermine the effectiveness of antitrust enforcement by consent decree.

Bechtel, 648 F.2d at 666 (emphasis added) (citations omitted).[2]

The proposed final Judgment, therefore, should not be reviewed under a standard of whether it is certain to eliminate every anticompetitive effect of a particular practice or whether it mandates certainty of free competition in the future. Court approval of a final judgment requires a standard more flexible and less strict than the standard required for a finding of liability. "[A] proposed decree must be approved even if it falls short of the remedy the court would impose on its own, as long as it falls within the range of acceptability or is 'within the reaches of public interest.'" *United States* v. *Am. Tel. & Tel. Co.*, 552 F. Supp. 131, 151 (D.D.C. 1982) (citations omitted) (quoting Gillette, 406 F. Supp. at 716), *aff'd sub nom. Maryland* v. *United States*, 460 U.S. 1001 (1983); *see also United States* v. *Alcan Aluminum Ltd.*, 605 f. Supp. 619, 622 (W.D. Ky. 1985) (approving the consent decree even though the court would have imposed a greater remedy).

Moreover, the Court's role under the APPA is limited to reviewing the remedy in relationship to the violations that the United States has alleged in its Compliant, and does not authorize the Court to "construct [its] own hypothetical case and then evaluate the decree against that case." Microsoft, 56 F.3d at 1459. Because the "court's authority to review the decree depends entirely on the government's exercising its prosecutorial discretion by bringing a case in the first place," it follows that "the court is only authorized to review the decree itself," and not to "effectively redraft the complaint" to inquire into other matters that the United States might have but did not pursue. *Id.* at 1459–60.

VIII. Determinative Documents

There are no determinative materials or documents within the meaning of the APPA that were considered by the United States in formulating the proposed Final Judgment.

Dated: November 19, 2003.

Respectfully submitted,

Paul A. Moore III, Maryland Bar, U.S. Department of Justice, Antitrust Division, Litigation II Section, 1401 H Street, NW, Suite 3000, Washington, DC 20530, (202) 514–8380.

Certificate of Service

I hereby certify that a copy of the foregoing has been served upon Waste Management, Inc., Allied Waste Industries, Inc., and the State of Florida by placing a copy of this Competitive Impact Statement in the U.S. mail, first class and postage prepaid, directed to each of the above-named parties at the addresses given below, this 19th day of November, 2003.

Counsel for Defendant Waste Management, Inc., Melanie Sabo, Esquire, Preston Gates Ellis & Rouvelas Meeds LLP, 1735 New York Avenue, NW, Suite 500, Washington: DC 20006; (202) 628–1700.

Counsel for Defendant Allied Waste Industries, Inc., Mia F. Cohen, Esquire, Jones Day Reavis & Pogue, 51 Louisiana Avenue, NW, Washington, DC 20001–2113, (202) 879–3971.

Counsel for Plaintiff State of Florida, Lizabeth A. Leeds, Esquire, Senior Assistant Attorney General, Office of the Attorney General, Antitrust Division, PL–01, The Capitol, Tallahassee, Florida 32399–1050, Phone: (850) 414–3600, Fax: (850) 488–9134.

Paul A. Moore III, U.S. Department of Justice, Antitrust Division, Litigation II Section, 1401 H Street, NW, Suite 3000, Washington, DC 20530, (202) 307–0938

[FR Doc. 03–31053 Filed 12–16–03; 8:45 am]

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[1] *See United States* v. *Gillette Co.*, 406 F. Supp. 713, 716 (D. Mass. 1975) (recognizing it was not the court's duty to settle; rather, the court must only answer "whether the settlement achieved (was) within the reaches of the public interest"). A "public interest" determination can be made properly on the basis of the competitive Impact Statement and Response to Comments filed pursuant to the APPA. Although the APPA authorizes the use of additional procedures, 15 U.S.C. 16(f), those procedures are discretionary. A court need not invoke any of them unless it believes that the comments have raised significant issues and that further proceedings would aid the court in resolving those issues. See H.R. Rep. No. 93–1463, 93rd Cong., 2d Sess. 8–9 (1974), *reprinted* in 1974 U.S.C.C.A.N. 6535, 6538.

[2] *Cf. BNS*, 858 F.2d at 463 (holding that the court's "ultimate authority under the [APPA] is limited to approving or disapproving the consent decree"); *gillette*, 406 F. Supp. at 716 (noting that, in this way, the court is constrained to "look at the overall picture not hypercritically, nor with a microscope, but with an artist's reducing glass"). *See generally Microsoft*, 56 F. 3d at 1461 (discussing whether "the remedies [obtained in the decree are] so inconsonant with the allegations charged as to fall outside of the 'reaches of the public interest'").

DEPARTMENT OF JUSTICE

Antitrust Division

United States and New Jersey v. Waste Management, Inc. and Allied Waste Industries, Inc.; Public Comments and Plaintiff's Response

Notice is hereby given pursuant to section 2(d) of the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(d), that the Public Comments and Plaintiff's Response thereto have been filed with the United States District Court for the District of Columbia in *United States and New Jersey* v. *Waste Management, Inc. and Allied Waste Industries, Inc.*, Civil No. 1:03CV01409 (GK).

On June 27, 2003, the United States and the State of New Jersey filed a civil antitrust Complaint alleging that Waste Management's acquisition of certain voting securities and waste-hauling and disposal assets of Allied would lessen competition substantially in the provision of small container commercial waste collection services in the areas of Pitkin County, Colorado; Garfield County, Colorado; Augusta, Georgia; Myrtle Beach, South Carolina; Morris County, New Jersey; and Bergen and Passaic Counties, New Jersey, and in the provision of municipal solid waste disposal services in the Bergen and Passaic Counties, New Jersey and Tulsa and Muskogee, Oklahoma disposal areas; in violation of section 7 of the Clayton Act, 15 U.S.C. 18. The proposed Final Judgment, filed at the same time as the Complaint, requires, among other things, that defendant Waste Management (1) divest small container commercial waste collection assets in the areas of Pitkin County, Colorado; Garfield County, Colorado; Augusta, Georgia; Myrtle Beach, South Carolina; Morris County, New Jersey; and Bergen and Passaic Counties, New Jersey; (2) alter the contracts it uses with its existing and new small container commercial waste customers in the areas of Augusta, Georgia and Myrtle Beach, South Carolina; (3) divest transfer station facilities serving Bergen and Passaic Counties, New Jersey; and (4) sell throughput disposal rights at a facility serving Bergen and Passaic Counties, New Jersey.

Public comment was invited within the statutory 60-day comment period. The two comments received, and the response thereto, are hereby published in the **Federal Register** and filed with the Court. Copies of these are available for inspection at the U.S. Department of Justice, Antitrust Division, Suite 215 North, 325 7th Street, NW., Washington, DC 20530 (telephone: 202–514–2481) and at the Clerk's Office, United States District Court for the District of Columbia, 333 Constitution Avenue, NW., Washington, DC 20001.

Dorothy B. Fountain,

Deputy Director of Operations, Antitrust Division.

United States District Court for the District of Columbia

In the matter of: United States of America, and State of New Jersey, Plaintiffs, v. Waste Management, Inc., and Allied Waste Industries, Inc., Defendants.

Case No: 1:03CV01409; Judge: Gladys Kessler, Deck Type: Antitrust.

Response of the United States to Public Comments on the Proposed Final Judgment

Pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b) ("APPA" or "Tunney Act"), Plaintiffs United States of America ("United States") hereby files comments received from members of the public concerning the proposed Final Judgment in this civil antitrust suit and the Response of the United States to those comments.

I. Background

On January 29, 2003, Defendants Waste Management, Inc. ("Waste Management") and Allied Waste Industries, Inc. ("Allied") entered into stock and asset purchase agreements pursuant to which Waste Management would acquire certain voting securities and waste-hauling and disposal assets of Allied in a number of areas throughout the United States. The United States and the State of New Jersey ("New Jersey") filed a civil antitrust Complaint on June 27, 2003, seeking to enjoin the proposed acquisition. The Complaint alleged that the likely effect of the acquisition would be to lessen competition substantially for waste collection and disposal services in several markets in violation of section 7 of the Clayton Act. This loss of competition would result in consumers paying higher prices and receiving fewer services for the collection and disposal of waste.

At the same time the Complaint was filed, the parties also filed a Hold Separate Stipulation and Order and a proposed Final Judgment. Under the proposed Final Judgment, Waste Management is required within 90 days after the filing of the Complaint, or five (5) days after notice of the entry of the Final Judgment by the Court, whichever is later, to divest, as viable business operations, specified waste-hauling and disposal assets. The proposed Final Judgment also requires Defendants, within 90 days after approval by the New Jersey Department of Environmental Protection of Waste Management's request to acquire assets in New Jersey, to divest, as viable business operations, certain waste-hauling and disposal assets located in New Jersey and New York. In addition to the divestitures, the proposed Final Judgment also requires Waste Management to comply with certain conditions relating to its customer contracts in two identified areas. Under the terms of the Hold Separate Stipulation and Order, Waste Management is required to take certain steps to ensure that the assets to be divested will be preserved and held separate from its other assets and businesses pending their divestiture.

The United States, New Jersey, and the Defendants have stipulated that the proposed Final Judgment may be entered after compliance with the APPA. In compliance with the APPA, the United States filed a Competitive Impact Statement ("CIS") on July 22, 2003. Waste Management and Allied filed statements pursuant to 15 U.S.C. 16(g) on August 4, 2003. A summary of the terms of the proposed Final Judgment and CIS were published in the *Washington Post*, a newspaper of general circulation in the District of Columbia, for seven days during the period of August 9, 2003, through August 15, 2003. The Hold Separate Stipulation and Order, proposed Final Judgment, and CIS were published in the **Federal Register** on August 12, 2003, 68 FR 47930 (2003). The 60-day comment period commenced on August 15, 2003, and terminated on October 14, 2003. During the 60-day comment period, the United States received two public comments (attached as Appendix A).

II. Response to Public Comments

A. Legal Standard Governing the Court's Public Interest Determination

Upon the publication of the public comments and this Response, the United States will have fully complied with the Tunney Act. After receiving the motion of the United States for entry of the proposed Final Judgment, the Tunney Act directs the Court to determine whether entry of the proposed Final Judgment "is in the public interest." 15 U.S.C. 16(e). In making that determination, the "court's function is not to determine whether the resulting array of rights and liabilities is one that will best serve society, but only to confirm that the resulting settlement is within the reaches of the public interest." *United States* v. *Western Elec. Co.*, 993 F.2d 1572, 1576 (D.C. Cir.), *cert. denied*, 510 U.S. 984 (1993). The Court should evaluate the relief set forth in the proposed Final Judgment and should enter the Judgment if it falls within the government's "rather broad discretion to settle with the defendant within the reaches of the public interest." *United States* v. *Microsoft Corp.*, 56 F.3d 1448, 1461 (D.C. Cir. 1995); *accord United States* v. *Associated Milk Producers*, 534 F.2d 113, 117–18 (8th Cir.), *cert. denied*, 429 U.S. 940 (1976). The Court should review the proposed Final Judgment "in light of the violations charged in the complaint and * * * withhold approval only (a) if any of the terms appear ambiguous, (b) if the enforcement mechanism is inadequate, (c) if third parties will be positively injured, or (d) if the decree otherwise makes a 'mockery of judicial power.'" *Mass Sch. of Law at Andover, Inc.* v. *United States*, 118 F.3d 776, 783 (D.C. Cir. 1997) (quoting *Microsoft*, 56 F. 3d at 1462). The Tunney Act does not empower the Court to reject the remedies in the proposed Final Judgment based on the belief that "other remedies were preferable," *Microsoft*, 56 F.3d at 1460, nor does it give the Court authority to impose different terms on the parties. *See, e.g., United States* v.

American Tel. & Tel. Co., 552 F. Supp. 131, 153 n.95 (D.D.C. 1982), *aff'd sub nom. Maryland* v. *United States*, 460 U.S. 1001 (1983) (mem.); *accord* H.R. Rep. No. 93–1463, at 8 (1974).

B. Summary of Public Comments and the United States' Responses

Two individuals expressed their views on the proposed Final Judgment. Copies of this response, without the Appendix, are being mailed to them. A summary of their comments and the responses of the United States are below.

1. *Peter Anderson*

Peter Anderson, writing on behalf of the Center for a Competitive Waste Industry, requests data discovered by the United States concerning local disposal markets, including the size of the municipal solid waste firms in each market, and the ownership and maximum daily throughput for transfer stations. Mr. Anderson also states that the CIS correctly notes the critical importance of free access to disposal capacity on non-discriminatory terms and notes that the proposed Final Judgment requires the partial divestiture of transfer and disposal assets in New Jersey and Oklahoma.

The United States appreciates Mr. Anderson's comment on the proposed Final Judgment. However, the United States is unable to make public the data that it collected on local disposal markets. Disclosing such data would require that the United States reveal information that was received pursuant to a statute that limits its disclosure[1] or, alternatively, produce sensitive information that the United States will not disclose unless required by law or necessary to further a legitimate public purpose. The United States believes, however, that some of the information requested by Mr. Anderson may be available through various public sources, including the New Jersey Department of Environmental Protection Web site.

Mr. Anderson is mistaken in stating that the decree requires Waste Management to divest transfer or disposal assets in Oklahoma. Rather, the Defendants agreed to exclude from the transaction the sale of Allied's waste-hauling and disposal assets located in the Tulsa and Muskogee, Oklahoma area and, as specified in section XI of the proposed Final Judgment, Waste Management further agreed to provide the United States with notice of any future acquisition of disposal assets in the Tulsa and Muskogee, Oklahoma area.

2. *Gregory Neppl*

Gregory Neppl filed a comment setting forth his understanding of the purpose and effect of Section XIII of the proposed Final Judgment relating to "Revisions to Contracts." Mr. Neppl states that he understands proposed Final Judgment precludes Waste Management, effective June 27, 2003, from enforcing any contract term inconsistent with those set forth in section XIII.B. and affecting its commercial waste collection customers in the Augusta, Georgia and Myrtle Beach, South Carolina areas. Mr. Neppl further notes that he understands that Waste Management must also offer new contracts that conform with the terms set forth in the proposed Final Judgment to its new and existing customers subject to the deadlines set forth in Section XIII.

The United States concurs with Mr. Neppl's interpretation of section XIII of the proposed Final Judgment as stated in his letter of October 9, 2003.

III. Conclusion

The United States hereby files the comments of the members of the public together with the Response of the United States to the comments, pursuant to 15 U.S.C. 16(d). The Competitive Impact Statement and this Response to Comments demonstrate that the proposed Final Judgment serves the public interest. Accordingly, the United States will move this Court for entry of the proposed Final Judgment after the comments and the Response are published in the **Federal Register** pursuant to 15 U.S.C. 16(d).

Dated this 9th day of December, 2003.

Respectfully submitted,

Michael K. Hammaker, Esquire,
D.C. Bar No. 233684, United States Department of Justice, Antitrust Division, 1401 H Street, NW., Room 3000, Washington, DC 20530; (202) 307–0938.

Certificate of Service

I hereby certify that on this 9th day of November, 2003, I caused a copy of the foregoing Response of the United States to Public Comments on the Proposed Final Judgment and the attached Appendix to be served by electronic filing on Waste Management and Allied Waste Industries, and by first class mail, postage prepaid, on the State of New Jersey at the addresses given below:

Counsel for Defendant Waste Management, Inc.,
James R. Weiss, Esquire, Preston Gates Ellis & Rouvelas Meeds LLP, 1735 New York Avenue, NW., Suite 500, Washington, DC 20006; *jimwe@prestongates.com*; (202) 628–1700.

Counsel for Defendant Allied Waste Industries, Inc.,
Tom D. Smith, Esquire, Jones Day, 51 Louisiana Avenue, NW., Washington, DC 20001–2113; *tdsmith@jonesday.com*; (202) 879–3971.

Counsel for Plaintiff State of New Jersey,
Andrew L. Rossner, Esquire, Assistant Attorney General—Deputy Director, New Jersey Attorney General's Office, Division of Criminal Justice, 25 Market Street, Trenton, NJ 08625–0085; (609) 984–0028.

Stacy R. Procter, Esquire,
CA Bar No. 221078, United States Department of Justice, Antitrust Division, 1401 H Street, NW., Room 3000, Washington, DC 20530. Telephone: (202) 514–8666.

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[1] *See* Hart-Scott-Rodino Antitrust Improvements Act of 1976, 15 U.S.C. 18a(h); Antitrust Civil Process Act, 15 U.S.C. 1311 *et seq.*

To: Hammaker, Michael
Subject: Re: Waste Management: 4/28/03 Sale of $1 Billion of Allied Waste Assets to Waste Management

We have the Competitive Impact Statement for the Waste Management/Allied swap.

The CIS correctly notes the critical importance to the maintenance of competition of free access to disposal capacity on non-discriminate terms, and goes onto to note the partial divestitures of transfer and disposal assets in New Jersey and Oklahoma.

In order to comment intelligently on the proposed settlement, we would like to ask if DOJ would share its discovery data on local conditions in the market for disposal in those areas. Specifically, the ownership and maximum daily throughputs for transfer stations, and the ownership, maximum daily tonnages and remaining life and locations for landfills. Also, the names and, if possible, very general indices of the size/share (that does impinge on trade secrets) of the municipal solid waste firms in each market.

Thank you.

Peter Anderson,
Center for a Competitive Waste Industry.

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FOLEY LARDNER
ATTORNEYS AT LAW

FOLEY & LARDNER
WASHINGTON HARBOUR
3000 K STREET, N.W. SUITE 500
WASHINGTON, D.C. 20007-5143
202.672.5300 TEL
202.672.5399 FAX
www.foleylardner.com

WRITER'S DIRECT LINE
202.672.5451

CLIENT/MATTER NUMBER
086804 0102

October 9, 2003

BY HAND DELIVERY

Ms. Stacy R. Procter
Trial Attorney
Antitrust Division
United States Department of Justice
1401 H Street, N.W., Suite 3000
Washington, DC 20530

Re: U.S. v. Waste Management, Inc. and Allied Waste Industries, Inc.
Civil Case No: 1:03CV01409

Dear Ms. Procter:

Thank you for your recent comments as to the purpose and effect of the language contained in Section XIII of the Final Judgment, entitled "Revisions to Contracts," regarding the obligation of Waste Management not to "attempt to enforce any contract term affecting commercial waste collection customers in the specified areas [Myrtle Beach, SC and Augusta, GA] that conflicts with or is inconsistent with the above terms [reflecting five contract prohibitions], even if those customers choose not to sign a contract with the new terms."

Pursuant to the Final Judgment, these five contract prohibitions provide that "[n]o contract shall:"

1. Have an initial term longer than two (2) years;
2. Have any renewal term longer than one (1) year;
3. Require that the customer give Waste Management notice of termination more than thirty (30) days prior to the end of any initial term or renewal term;
4. Require that the customer pay liquidated damages in excess of three times its average monthly charge during the first year the customer has had service with Waste Management; and
5. Require that the customer pay liquidated damages in excess of two (2) times its average monthly charge after the first year the customer has had service with Waste Management.

FOLEY LARDNER
ATTORNEYS AT LAW

As you have advised, the language quoted above became effective as of June 27, 2003. At that time, Waste Management became immediately obligated not to enforce any contract provision(s) inconsistent with the five contract prohibitions listed above, although other contract terms may remain enforceable by Waste Management. As a result, contracts in place as of June 27, 2003 must conform to these five contract prohibitions. Moreover, Waste Management is also obligated to offer new contracts to new and existing customers in accordance with these five contract prohibitions, subject to the deadlines set forth in Section XIII the Final Judgment.

In short, the obligation upon Waste Management not to enforce any contract provision(s) inconsistent with the five contract prohibitions currently applies, whether or not the contracts in place physically incorporate the language in question. On that basis, we have no objection to or other comment on the proposed Final Judgment pending before Judge Gladys Kessler.

Sincerely,

Gregory E. Neppl

[FR Doc. 03–31054 Filed 12–16–03; 8:45 am]
BILLING CODE 4410–11–C

DEPARTMENT OF JUSTICE

Parole Commission

Record of Vote of Meeting Closure (Public Law 94–409) (5 U.S.C. Sec. 552b)

I, Edward F. Reilly, Jr., Chairman of the United States Parole Commission, was present at a meeting of said Commission, which started at approximately 10:45 a.m. on Thursday, December 11, 2003, at the U.S. Parole Commission, 5550 Friendship Boulevard, 4th Floor, Chevy Chase, Maryland 20815. The purpose of the meeting was to decide one petition for reconsideration pursuant to 28 CFR 2.27. Three Commissioners were present, constituting a quorum when the vote to close the meeting was submitted.

Public announcement further describing the subject matter of the meeting and certifications of General Counsel that this meeting may be closed by vote of the Commissioners present were submitted to the Commissioners prior to the conduct of any other business. Upon motion duly made, seconded, and carried, the following Commissioners voted that the meeting be closed: Edward F. Reilly, Jr., John R. Simpson, and Cranston J. Mitchell.

In witness whereof, I make this official record of the vote taken to close this meeting and authorize this record to be made available to the public.

Dated: December 11, 2003.

Edward F. Reilly, Jr.,

Chairman, U.S. Parole Commission.

[FR Doc. 03–31188 Filed 12–15–03; 9:58 am]
BILLING CODE 4410–01–M

DEPARTMENT OF LABOR

Employee Benefits Security Administration

[Application No. D–11198, et al.]

Proposed Exemptions; Bangs, McCullen, Butler, Foye & Simmons, L.L.P. Employees Profit Sharing Plan (the Plan)

AGENCY: Employee Benefits Security Administration, Labor

ACTION: Notice of Proposed Exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a hearing on the pending exemptions, unless otherwise stated in the Notice of Proposed Exemption, within 45 days from the date of publication of this **Federal Register** Notice. Comments and requests for a hearing should state: (1) The name, address, and telephone number of the person making the comment or request, and (2) the nature of the person's interest in the exemption and the manner in which the person would be adversely affected by the exemption. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing.

ADDRESSES: All written comments and requests for a hearing (at least three copies) should be sent to the Employee Benefits Security Administration (EBSA), Office of Exemption Determinations, Room N–5649, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. Attention: Application No. _____, stated in each Notice of Proposed Exemption. Interested persons are also invited to submit comments and/or hearing requests to EBSA via e-mail or FAX. Any such comments or requests should be sent either by e-mail to: *"moffitt.betty@dol.gov"*, or by FAX to (202) 219–0204 by the end of the scheduled comment period. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of the Employee Benefits Security Administration, U.S. Department of Labor, Room N–1513, 200 Constitution Avenue, NW., Washington, DC 20210.

Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register**. Such notice shall include a copy of the notice of proposed exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978, 5 U.S.C. App. 1 (1996), transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of proposed exemption are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

Bangs, McCullen, Butler, Foye & Simmons, L.L.P. Employees Profit Sharing Plan (the Plan) Located in Rapid City, South Dakota

[Application No. D–11198]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply, effective January 1, 2004, to the proposed lease by the Plan (the New Lease) of certain improved real property (the Property) located in Rapid City, South Dakota, to Bangs, McCullen, Butler, Foye & Simmons, L.L.P. (the Employer), the sponsor of the Plan, and a party in interest with respect to the Plan; provided that the following conditions are satisfied:

(A) All terms and conditions of the New Lease are at least as favorable to the Plan as those which the Plan could obtain in an arm's-length transaction with an unrelated party;

(B) The New Lease is a triple net lease under which the Employer is obligated to pay for all costs of maintenance, repair, and taxes related to the Property;

(C) The interests of the Plan for all purposes under the New Lease are represented by an independent fiduciary, Wells Fargo Bank, N.A., Rapid City, South Dakota (the Trustee);

(D) The rent paid by the Employer under the New Lease is no less than the fair market rental value of the Property; and

(E) If the summary appraisal of the Property (the Summary Appraisal), due in mid-December 2003, contains a fair market rental value that is higher than the current fair market rental value set forth in the New Lease, the Employer will amend the New Lease to pay the Plan the higher amount, retroactive to January 1, 2004.

Effective Date: This exemption, if granted, will be effective as of January 1, 2004.

Summary of Facts and Representations

1. The Plan is a profit sharing retirement plan which was established December 31, 1964. As of July 31, 2003, the Plan had 42 participants and $9,693,762.89 in assets. The Plan is maintained by the Employer, which is a South Dakota general partnership engaged in the practice of law. Investment discretion over the Plan's assets is exercised by Thomas H. Foye, Charles Riter and John H. Raford. Mr. Riter and Mr. Raford are partners of the Employer, and Mr. Foye is an employee of the Employer. The Plan's assets are held in trust by Wells Fargo Bank, N.A., Rapid City, South Dakota (*i.e.*, the Trustee), which will also be serving as the independent fiduciary for purposes of the New Lease. The Trustee was formerly named Norwest Bank South Dakota, N.A. (Norwest Bank). Norwest Bank was acquired by Wells Fargo Bank, N.A., effective November 2, 1998. The Trustee represents that it is independent of the Employer and its affiliates. In this regard, the applicant represents that while the Employer has deposits with the Trustee, those deposits constitute less than one percent (1%) of the Trustee's total deposits. It is represented that the Trustee does not have common officers or directors with the Employer. While the Employer may have occasional loans with the Trustee, such loans would be less than 1% of the Trustee's total outstanding loans. The Trustee and its predecessors have served as trustees for the Plan since the time it was adopted in 1964.

2. Among the assets of the Plan is the Property, a parcel of improved real estate which constitutes the Employer's principal place of business. The Property is located in downtown Rapid City, South Dakota, and is a two-story brick office building containing approximately 9,600 square feet of office space. The Employer has leased the Property from the Plan under a triple net lease (the Prior Lease) with a ten year term commencing January 1, 1994 and ending December 31, 2003. The Prior Lease was exempt from the prohibitions of section 406 of the Act and section 4975(c) of the Code by virtue of an individual administrative exemption, Prohibited Transaction Exemption 94–25 (PTE 94–25, 59 FR 12355, March 16, 1994), granted by the Department. The interests of the Plan under the Prior Lease were represented by the Trustee's predecessor, Norwest Bank.

Under PTE 94–25, Norwest Bank monitored the Employer's performance and represented the Plan in enforcing the terms and the conditions of the Prior Lease. The Trustee represents that the Employer occupied the Property in compliance with all terms and conditions of the Prior Lease for its duration. The Prior Lease expires on December 31, 2003.

3. The Trustee states that the Plan's lease of the Property to the Employer continues to be a favorable Plan investment because, among other things, it provides the Plan with an annual rate of return which is better than annual returns produced by other Plan investments at this time.

Therefore, the Trustee concludes that, effective January 1, 2004, the continued leasing of the Property by the Plan to the Employer for approximately a three (3) year period would be in the best interest of the Plan. The Trustee is attempting to sell the Property and has listed the Property for sale with the real estate firm of Coldwell Banker Kirkeby-Hall. The Property has been listed for sale since May 20, 2003. However, no offers have been received to date. The Trustee states that a shorter term lease is preferable because a long-term lease may dissuade a potential buyer from purchasing the Property, especially if the buyer desires to occupy the Property. Therefore, the Trustee and the Employer have agreed to a new leasing arrangement (*i.e.*, the New Lease), effective January 1, 2004, which will provide for the Plan's continued leasing of the Property to the Employer for at least three (3) years (as discussed below). Accordingly, the Employer and the Trustee are requesting an exemption for the New Lease under the terms and conditions described herein.

4. The New lease is a triple net lease for a term of three (3) years commencing January 1, 2004 and terminating December 31, 2006, both dates inclusive. The New Lease may be renewed by the Employer as the tenant for an additional period of one (1) year (the Option). The Option may be exercised upon giving sixty (60) days written notice to the Plan, as the landlord.

The interests of the Plan under the New Lease will be represented by the Trustee. In this regard, the Trustee states that it knows of no capital repairs or improvements that are required to the Property at this time, and does not anticipate any such repairs in the foreseeable future. The annual rental under the New Lease is payable in equal monthly installments. Initial rental under the New Lease will be $7,200 per month, or $86,400 annually.

5. The fair market rental value of the Property has been established periodically (pursuant to the terms of the Prior Lease and PTE 94–25) by Richard S. Kahler, CCIM, GAA, CFP (Mr. K), a professional real estate appraiser with Kahler Appraisal Services, located in Rapid City, South Dakota. Mr. K discusses the current fair market rental value of the Property in letters dated March 31, 2003 and August 6, 2003 (the Updates). In the Updates, Mr. K refers to an appraisal prepared during the Prior Lease, as required under PTE 94–25. Mr. K states, among other things, that in 2002, the fair market rent for the Property was increased to $9.00 per square foot. Furthermore, Mr. K also states that his market review prepared in March, 2003, did not evidence an additional increase in the fair market rental value for the Property at that time.

In anticipation of the New Lease or a possible sale of the Property to a third-party buyer, the applicant had Mr. K prepare an immediate restricted appraisal report (the Report) of the Property on October 15, 2003. In the Report, Mr. K relied on the sales comparison approach (SC Approach) and the income approach (Inc. Approach) in appraising the fair market value of the Property. Mr. K states that the current fair market value of the Property under the SC Approach is between $748,000 and $770,000. Under the Inc. Approach, Mr. K used an appropriate capitalization rate (*i.e.*, 9.0%),[1] to determine an estimated market value of between $760,000 and $785,000 for the Property. Therefore, as of October 15, 2003, Mr. K determined that the fair market value of a fee simple interest in the Property would be in the range of $750,000 to $800,000.

6. Furthermore, Mr. K has represented to the applicant and the Department that he will provide a full updated summary appraisal (Summary Appraisal) of the fair market value and fair rental value of the Property by middle of December, 2003. The New Lease has a provision stating that if the Summary Appraisal contains a fair market rental value for the Property that is higher than the current fair market rental value set forth in the New Lease (*i.e.*, $7,200 per month, or $86,400 annually), the Employer will amend the New Lease to pay the Plan the higher amount. Any new rental amount will be adjusted retroactive to January 1, 2004, to provide for the higher rental value as of that date. In addition, commencing January 1, 2004, any appropriate higher amount of rent will be paid to the Plan by the Employer within 30 days of the receipt of the Summary Appraisal.

Furthermore, the Trustee states that it will monitor the New Lease and its fair market rent provisions annually. The Trustee will obtain annual independent determinations of the fair market rental value of the Property. The Trustee will ensure that the Plan receives annual increases in rents that reflect the fair market rental value of the Property.

Under the New Lease, the Employer will indemnify and hold the Plan harmless from all penalties, claims, demands, liabilities, expenses and losses of any nature arising from the Employer's use of the Property.

7. The Trustee will monitor the Employer's performance under the New Lease, on behalf of the Plan, and will enforce its terms and conditions. As the Plan's independent fiduciary, the Trustee will take whatever actions are necessary to protect the interests of the Plan and its participants and beneficiaries.

The Trustee has reviewed and evaluated the Plan's continued leasing of the Property to the Employer under the New Lease and has determined that the transaction would be in the best interests of the Plan's participants and beneficiaries. Specifically, the Trustee states that the Employer has proven to be a successful, reliable tenant of the Property, and that the Property constitutes a productive Plan asset.

8. In summary, the applicant represents that the subject transaction satisfies the criteria of section 408(a) of the Act because:

(A) The New Lease is a triple net lease requiring the Employer to pay all costs for repair, maintenance, taxes and insurance on the Property;

(B) The interests of the Plan under the New Lease are represented by the Trustee, an independent fiduciary which will monitor and enforce the Employer's performance under the terms and conditions of the New Lease;

(C) The New Lease ensures that the rental payments will remain no less than the fair market rental value of the Property for the duration of the transaction;

(D) The New Lease contains a provision stating that if the Summary Appraisal, due in mid-December 2003, contains a fair market rental value for the Property that is higher that the current fair market rental value set forth in the New Lease, the Employer will amend the New Lease to pay the Plan the higher amount, retroactive to January 1, 2004; and

(E) The Trustee has reviewed the Plan's continued leasing of the Property under the New Lease and has determined that the transaction would be in the best interests of the Plan and its participants and beneficiaries.

FOR FURTHER INFORMATION CONTACT: Ekaterina A. Uzlyan of the Department at (202) 693–8540. (This is not a toll-free number.)

[1] A capitalization rate is a rate of interest used to convert a series of future payments into a single present value.

Painters District Council No. 4 Apprenticeship, Upgrading & Retraining Trust Fund (the Plan) Located in Cheektowaga, New York

[Application No. L–11190]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and in accordance with the procedures set forth in 29 CFR part 2570, Subpart B (55 FR 32836, August 10, 1990). If the exemption is granted, the restrictions of section 406(a) of the Act shall not apply to a lease (the Lease) of certain space (the Leased Premises) in a building (the Building) owned by the Plan to Lipsitz, Green, Fahringer, Roll, Salisbury & Cambria, LLP (the Applicant), a party in interest with respect to the Plan; provided that the following conditions are satisfied:

(a) All terms and conditions of the Lease are at least as favorable to the Plan as those which the Plan could obtain in an arm's-length transaction with an unrelated party;

(b) The decision by the Plan to enter into the Lease will be made by the trustees of the Plan (the Trustees); and

(c) The fair market rental amount for the Lease will be determined by an independent, qualified appraiser as of the date of the commencement of the Lease; and

(d) After commencement of the Lease, an additional fair market rental appraisal of the Leased Premises will be performed by an independent, qualified appraiser every thirty months with the rental rate being adjusted accordingly.

Summary of Facts and Representations

1. The Plan is a defined contribution plan, covering members of the Painters District Council No. 4 whose employers contribute to the Plan under the terms of Collective Bargaining Agreements with the Painters District Council. The Plan is subject to the provisions of ERISA, and became effective on September 25, 1966. The Plan provides apprenticeship training and journeyman upgrading to participants. In addition, the Plan offers training and certification in the following Health and Safety Disciplines: OSHA Hazard Awareness, Scaffolding, Welding, Fall Protection, Ergonomics, Confined Space, Respirator Fit Testing, Hazwoper, Lead Abatement, Asbestos and CPR-First Aid for the Painting and Glazing Industry. The Plan currently has approximately 500 active participants. The Applicant provides legal services to the Plan and to other multi-employer pension and welfare plans.

The Applicant is a law firm that practices in a broad range of legal concentrations. The Applicant has an employment law practice that represents a number of jointly administered employee benefit funds. One of the Applicant's clients is the Plan.

2. The Leased Premises and the Building are located at 585 Aero Drive, Cheektowaga, New York. The Building is a one-story office and warehouse facility containing 11,922 square feet. The Leased Premises has 1,500 square feet of office area. On December 11, 2002, the Plan purchased the Building for $450,000 from the Niagara Frontier Transportation Authority, an unrelated third party. The Plan continues to lease the other office space to the same parties to whom it was previously subleased including multi-employer funds (the Funds) who are parties in interest to the Plan. The Applicant represents that the lease agreements with the Funds operate pursuant to the guidelines established by Prohibited Transaction Exemption 76–1 (41 FR 12740, 12744, March 26, 1976) (PTE 76–1).[2]

Due to the Applicant's hiring of a new attorney who now seeks to rent the Leased Premises, the Applicants will become parties in interest with respect to the Plan upon the inception of the Lease. The Applicants seek to enter into a five-year lease agreement for the Leased Premises. The decision by the Plan to enter into the Lease will be made by the Trustees who are independent of the Applicant. The fair market rental amount for the Lease will be determined by an independent, qualified appraiser. Additionally, fair market rental appraisals will be performed at the commencement of the Lease and at thirty month intervals thereafter by an independent, qualified appraiser. Rental rates will be adjusted in accordance with each subsequent appraisal.

3. The fair market rent of the Leased Premises has been established by an appraisal dated February 25, 2003 and will be updated prior to the commencement of the Lease. The appraisal was prepared by Howard P. Schultz & Associates. The appraisal relied on the market sales comparison approach to determine the fair market rental value of the Leased Premises. The appraisal states that the fair market rent for the Leased Premises is $15/square foot, which equates to $22,500 annually. The rental rate includes real estate taxes, insurance, utilities, cleaning and janitorial service all of which will be paid by the Applicant. The Lease will be on the terms no less favorable to the Applicant than an arm's length transaction with an unrelated party.

4. The Applicant states that the Lease will be protective of the Plan and consistent with the Plan's investment needs and objectives. The exemption would be protective of the rights of the Plan participants and their beneficiaries because the Lease will provide rental income to the Plan as owners of the Building. Moreover, the Applicant will pay rent in an amount determined to be commercially identical to an arm's length business transaction. Not only would the Lease constitute an arm's length business transaction, but having legal counsel close to the Plan would be beneficial for the Plan fiduciaries. Legal issues typically arise with some of the Plan participants that require immediate legal attention or advice. Having the Applicant located next to the office for the Plan's employees would reduce telephone costs and the time needed to get answers for legal questions that require immediate assistance.

The location of the office is also extremely beneficial for trustee meetings, and meetings with other Plan officials who normally would have to assume the cost for travel for the Applicant's employees. In addition, many of the apprenticeship standards and procedures for Plan operations are changed on a regular basis. These changes are not made effective until legal counsel has reviewed the changes to all of the corresponding documents. Having the Applicant within the same Building as the Plan's employees would decrease the expenses and time associated with multiple mailings. Documents can be reviewed instantly without redlined copies having to be mailed back and forth.

5. In summary, the Applicant represents that the transaction satisfies the statutory criteria of section 408(a) of the Act because:

(a) All terms and conditions of the Lease are at least as favorable to the Plan as those which the Plan could obtain in an arm's-length transaction with an unrelated party;

(b) The decision by the Plan to enter into the Lease will be made by the Trustees;

(c) The fair market rental value for the Lease will be determined by an independent, qualified appraiser as of the date of the commencement of the Lease; and

(d) Thirty months after commencement of the five year lease an additional fair market rental appraisal of the Leased Premises will be performed by an independent, qualified appraiser every thirty months with the rental rate being adjusted accordingly.

Notice to Interested Persons: Notice of the proposed exemption shall be given to all interested persons in the manner agreed upon by the applicant and Department within 15 days of the date of publication in the **Federal Register**. Comments are due forty-five (45) days after publication of the notice in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Khalif Ford of the Department, telephone (202) 693–8540 (this is not a toll-free number).

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which, among other things, require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(b) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries, and protective of the rights of participants and beneficiaries of the plan;

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 12th day of December, 2003.

Ivan Strasfeld,

Director of Exemption Determinations, Employee Benefits Security Administration, Department of Labor.

[FR Doc. 03–31102 Filed 12–16–03; 8:45 am]

BILLING CODE 4510–29–P

[2] The Department expresses no opinion herein as to whether the lease agreements between the Funds and the Plan satisfy the provisions of PTE 76–1.

DEPARTMENT OF LABOR

Employee Benefits Security Administration

[Prohibited Transaction Exemption 2003–36; Exemption Application No. D–11086 et al.]

Grant of Individual Exemptions; Deutsche Bank AG

AGENCY: Employee Benefits Security Administration, Labor.

ACTION: Grant of Individual Exemptions.

SUMMARY: This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

A notice was published in the **Federal Register** of the pendency before the Department of a proposal to grant such exemption. The notice set forth a summary of facts and representations contained in the application for exemption and referred interested persons to the application for a complete statement of the facts and representations. The application has been available for public inspection at the Department in Washington, DC. The notice also invited interested persons to submit comments on the requested exemption to the Department. In addition the notice stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicant has represented that it has complied with the requirements of the notification to interested persons. No requests for a hearing were received by the Department. Public comments were received by the Department as described in the granted exemption.

The notice of proposed exemption was issued and the exemption is being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978, 5 U.S.C. App. 1 (1996), transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990) and based upon the entire record, the Department makes the following findings:

(a) The exemption is administratively feasible;

(b) The exemption is in the interests of the plan and its participants and beneficiaries; and

(c) The exemption is protective of the rights of the participants and beneficiaries of the plan.

Deutsche Bank AG

[Prohibited Transaction Exemption No. 2003–36; Application Nos. D–11086; D–11087; D–11088; D–11089; and D–11090]

Exemption

Section I: Basic Exemption

The restrictions of section 406(a)(1)(A) through (D) of the Act and the taxes imposed by section 4975 (a) and (b) of the Code, by reason of 4975(c)(1)(A) through (D) of the Code, shall not apply to a transaction between a party in interest with respect to a plan (as defined in section (v(h)) and such plan, provided that the Deutsche Bank In-house Manager (DBIM) (as defined in section IV(a)) has discretionary authority or control with respect to the plan assets involved in the transaction and the following conditions are satisfied:

(a) The terms of the transaction are negotiated on behalf of the plan by, or under the authority and general direction of, the DBIM, and either the DBIM, or (so long as the DBIM retains full fiduciary responsibility with respect to the transaction) a property manager acting in accordance with written guidelines established and administered by the DBIM, makes the decision on behalf of the plan to enter into the transaction.

Notwithstanding the foregoing, a transaction involving an amount of $5,000,000 or more, which has been negotiated on behalf of the plan by the DBIM will nor fail to meet the requirements of this section I(a) solely because the plan sponsor or its designee retains the right to veto or approve such transaction;

(b) The transaction is not described in—

(1) Prohibited Transaction Exemption 81–6 [1] (relating to securities lending arrangements),

(2) Prohibited Transaction Exemption 83–1 [2] (relating to acquisitions by plans of interests in mortgage pools), or

(2) Prohibited Transaction Exemption 88–59 [3] (relating to certain mortgage financing arrangements);

(c) The transaction is not part of an agreement, arrangement or understanding designed to benefit a party in interest;

(d) At the time the transaction is entered into, and at the time of any subsequent renewal or modification thereof that requires the consent of the DBIM, the terms of the transaction are at least as favorable to the plan as the terms generally available in arm's length transactions between unrelated parties;

(e) The party in interest dealing with the plan: (1) Is a party in interest with respect to the plan (including a fiduciary) solely by reason of providing services to the plan, or solely by reason of a relationship to a service provider described in section 3(14)(F), (G), (H), or (I) of the Act; and (2) does not have discretionary authority or control with respect to the investment of the plan assets involved in the transaction and does not render investment advice (within the meaning of 29 CFR 2510.3–21(c)) with respect to those assets;

(f) The party in interest realign with the plan is neither the DBIM nor a person related to the DBIM (within the meaning of section IV(d)):

(g) The DBIM adopts written policies and procedures that are designed to assure compliance with the conditions of the exemption;

(h) An independent auditor, who has appropriate technical training or experience and proficiency with ERISA's fiduciary responsibility provisions and so represents in writing, conducts an exemption audit (as defined in section IV(f)) on an annual basis. Following completion of the exemption audit, the auditor shall issue a written report to the plan presenting its specific findings regarding the level of compliance with the policies and procedure adopted by the DBIM in accordance with section I(g); and

(i) In addition to the above:

(1) The DBIM is a bank that has the power to manage, acquire or dispose of assets of a plan, which bank has, as of the last day of its most recent fiscal year, equity capital in excess of $1,000,000 and is either supervised by a state or federal agency, or by the German Federal Banking Supervisory Authority, Bundesanstalt fur Finanzdienstleistungsaufsicht (BAFin) in cooperation with the Deutsche Bundesbank (Bundesbank);

(2) Prior to entering into any transaction described in the exemption, the DBIM agrees in writing:

(A) To submit to the jurisdiction of the United States;

(B) To appoint an agent for service of process in the United States, which maybe an affiliate (the Process Agent);

(C) To consent to service of process on the Process Agent;

(D) That it may be sued in the United States courts in connection with the transactions described in this proposed exemption;

(E) To comply with, and be subject to, all relevant provisions of the Act; and

(F) That enforcement of any claim arising between a plan(s) and the DBIM, resulting from a transaction described in the exemption, will occur in the United States courts.

Section II: Leasing of Office Space

The restrictions of sections 406(a), 406(b)(1), 406(b)(2) and 407(a) of the Act and the taxes imposed by section 4975 (a) and (b) of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to:

(a) The leasing of office or commercial space owned by a plan managed by a DBIM to an employer any of whose employees are covered by the plan or an affiliate of such an employer (as defined in section 407(d)(7) of the Act), if—

(1) The plan acquires the office or commercial space subject to an existing lease with an employer, or its affiliate as a result of foreclosure on a mortgage or deed of trust;

(2) the DBIM makes the decision on behalf of the plan to foreclose on the mortgage or deed of trust as part of the exercise of its discretionary authority:

(3) The exemption provided for transactions engaged in with a plan pursuant to section II(a) is effective until the later of the expiration of the lease term or any renewal thereof which does not require the consent of the plan lessor;

(4) The amount of space covered by the lease does not exceed fifteen (15) percent of the rentable space of the office building or the commercial center; and

(5) The requirements of sections I(c), I(g), and I(h) are satisfied with respect to the transaction.

(b) The leasing of residential space by a plan to a party in interest if—

(1) The party in interest leasing space from the plan is an employee of an employer any of whose employees are covered by the plan or an employee of an affiliate of such employer (as defined in section 407(d)(7) of the Act);

(2) The employee who is leasing space does not have any discretionary authority or control with respect to the investment of the assets involved in the lease transaction and does not render investment advice (within the meaning of 29 CFR 2510.3–21(c)) with respect to those assets;

(3) The employee who is leasing space is not an officer, director, or a ten percent (10%) or more shareholder of the employer or an affiliate of such employer;

(4) At the time the transaction is entered into, and at the time of any subsequent renewal or modification thereof that requires the consent of the DBIM, the terms of the transaction are not less favorable to the plan than the terms afforded by the plan to other, unrelated lessees in comparable arm's length transactions;

(5) The amount of space covered by the lease does not exceed five percent (5%) of the rentable space of the apartment building or multi-unit residential subdivision, and the aggregate amount of space leased to all employees of the employer or an affiliate of such employer does not exceed ten percent (10%) of such rentable space; and

(6) The requirements of section I(a), I(c), I(d), I(g), and I(h) are satisfied with respect to the transaction.

Section III: Places of Public Accommodation

The restrictions of sections 406(a)(1)(A) through (D) and 406(b) (1) and (2) of the Act and the taxes imposed by section 4975 (a) and (b) of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the furnishing of services and facilities (and goods incidental thereto) by a place of public accommodation owned by a plan and managed by a DBIM to a party in interest with respect to the plan, if the services and facilities (and incidental goods) are furnished on a comparable basis to the general public.

Section IV: Definitions

For the purposes of this exemption:

(a) The term "Deutsche Bank In-house Manager" or "DBIM" means an organization which is—

(1) Deutsche Bank, or a direct or indirect wholly-owned bank or trust company subsidiary of Deutsche Bank, supervised under the laws of the United States, a State, or Germany, that (A) Has the power to manage, acquire, or dispose of assets of a plan, (B) has, as of the last day of its most recent fiscal year, equity capital (*i.e.*, common and preferred stock, surplus, undivided profits, contingency reserves, group contingency reserves, and other capital reserves) in excess of $1,000,000,[4] and (C) has as of the last day of its most recent fiscal year under its management and control total assets attributable to plans maintained by affiliates of the DBIM (as defined in section IV(b)) in excess of $50 million; provided that if it has no prior fiscal year as a separate legal entity as a result of it constituting a division or group within the employer's organizational structure, then this requirement will be deemed met as of the date during its initial fiscal year as a separate legal entity that responsibility for the management of such assets in excess of $50 million was transferred to it from the employer.

In addition, plans maintained by affiliates of the DBIM and/or the DBIM, must have, as of the last day of each plan's reporting year, aggregate assets of at least $250 million.

(b) For purposes of section IV(a) and section IV(h), an "affiliate" of a DBIM means a member of either: (1) A controlled group of corporations (as defined in section 414(b)) of the Code of which the DBIM is a member; or (2) a group of trades or businesses under common control (as defined in section 414(c)) of the Code of which the DBIM is a member; provided that "50 percent" shall be substituted for "80 percent" wherever "80 percent" appears in section 414(b) or 414(c) of the Code or the rules thereunder.

(c) The term "party in interest" means a person described in section 3(14) of the Act and includes a "disqualified person" as defined in section 4975(e)(2) of the Code.

(d) A DBIM is "related" to a party in interest for purposes of section I(f) of this exemption if the party in interest (or a person controlling, or controlled by, the party in interest) owns a five percent (5%) or more interest in the DBIM or if the DBIM (or a person controlling, or controlled by, the DBIM) owns a five percent (5%) or more interest in the party in interest. For purposes of this definition:

(1) The term "interest" means with respect to ownership of an entity—

(A) The combined voting power of all classes of stock entitled to vote or the total value of the shares of all classes of stock of the entity if the entity is a corporation.

(B) The capital interest or the profits interest of the entity if the entity is a partnership, or

(C) The beneficial interest of the entity if the entity is a trust or unincorporated enterprise;

(2) A person is considered to own an interest held in any capacity is the person has or shares the authority—

(A) To exercise any voting rights or to direct some other person to exercise the voting rights relating to such interest, or

(B) To dispose or to direct the disposition of such interest; and

(3) The term "control" means the power to exercise a controlling influence over the management or policies of a person other than an individual.

(e) For purposes of this exemption, the time as of which any transaction occurs is the date upon which the transaction is entered into. In addition, in the case of a transaction that is continuing, the transaction shall be deemed to occur until it is terminated. If any transaction is entered into on or after April 8, 2002; or any renewal that requires the consent of the DBIM occurs on or after April 8, 2002, and the requirements of this exemption are satisfied at the time the transaction is entered into or renewed, the requirements will continue to be satisfied thereafter with respect to the transaction. Nothing in this paragraph shall be construed as exempting a transaction entered into by a plan which becomes a transaction described in section 406 of the Act or section 4975 of the Code while the transaction is continuing, unless the conditions of the exemption were met either at the time the transaction was entered into or at the time the transaction would have become prohibited but for this exemption. In determining compliance with the conditions of the exemption at the time that the transaction was entered into for purposes of the preceding sentence, section I(e) will be deemed satisfied if the transaction was entered into between a plan and a person who was not then a parety in interest.

(f) Exemption Audit. An "exemption audit" of a plan must consist of the following:

(1) A review of the written policies and procedures adopted by the DBIM pursuant to Section I(g) for consistency with each of the objective requirements of this exemption (as described in Section IV(g)).

(2) A test of a representative sample of the plan's transactions in order to make findings regarding whether the DBIM is in compliance with (i) the written policies and procedures adopted by the DBIM pursuant to section I(g) of the exemption and (ii) the objective requirements of the exemption.

(3) A determination as to whether the DBIM has satisfied the definition of a DBIM under the exemption; and

(4) Issuance of a written report describing the steps performed by the auditor during the course of its review and the auditor's findings.

(g) For purposes of section IV(f), the written policies and procedures must describe the following objective requirements of the exemption and the steps adopted by the DBIM to assure compliance with each of these requirements:

(1) The definition of a DBIM in section IV(a).

(2) The requirements of Part I and section I(a) regarding the discretionary authority or control of the DBIM with respect to the plan assets involved in the transaction, in negotiating the terms of the plan to enter into the transaction, and with regard to the decision on behalf of the plan to enter into the transaction.

(3) That any procedure for approval or veto of the transaction meets the requirements of section I(a).

(4) For a transaction described in section I:

(A) that the transaction is not entered into with any person who is excluded from relief under section I(e)(1), section I(e)(2), to the extent such person has discretionary authority or control over the plan assets involved in the transaction, or section I(f), and

(B) that the transaction is not described in any of the class exemptions listed in section I(b).

(5) For a transaction described in Part III:

(A) If the transaction is described in section II(a).

(i) that the transaction is with a party described in section II(a);

(ii) that the transaction occurs under the circumstances described in section II(a)(1) and (2);

(iii) that the transaction does not extend beyond the period of time described in section II(a)(3); and

(iv) that the percentage test in section II(a)(4) has been satisfied or

(B) If the transaction is described in section II(b),

(i) that the transaction is with a party described in section II(b)(1);

(ii) that the transaction is not entered into with any person excluded from relief under section II(b)(2) to the extent such person has discretionary authority or control over the plan assets involved in the lease transaction or section II(b)(3); and

(iii) that the percentage test in section II(b)(5) has been satisfied.

[1] 46 FR 7527; January 23, 1981.

[2] 48 FR 895; January 7, 1983.

[3] 53 FR 24811; June 30, 1998.

[4] The condition in Part IV(a) of the proposed exemption that the INHAM have in excess of $1 million in equity capital mirrors the parallel requirement in Part IV(a) of QPAM, PTE 84–14.

(h) the term "plan" means a plan maintained by the DBIM or an affiliate of the DBIM.

Effective Date of Exemption: The effective date of this exemption is April 8, 2002.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the Notice of Proposed Exemption (the Notice) published on March 21, 2003 at 68 FR 13960.

Written Comments

The Department received thirty one written comments and three requests for a public hearing from interested persons in response to the Notice. The Department forwarded copies of the comments to Deutsche Bank and requested that Deutsche Bank address in writing the various concerns raised by the commentators. Many of the comments fell into broad categories to which Deutsche Bank responded collectively. Where a single commentator raised a unique issue, such issue was responded to individually. The comments and Deutsche Bank's responses are summarized below.

Several commentators questioned whether the proposed exemption reduces or eliminates their benefits under their Deutsche Bank plans. Deutsche Bank responded that the proposed exemptions does not address, much less reduce or eliminate, benefits under the plans.

One commentator asked what safeguards are in place under the proposed exemption. Deutsche Bank responded that protective conditions for the proposed exemption are described in the Notice. Those conditions are essentially the same as the protective conditions found in PTE 96–23, 61 Fed. Reg. 15975 (Apr. 10, 1996), which provides relief with respect to in-house asset managers that is substantially similar to the relief provided in the proposed exemption. Deutsche Bank represented that it will comply with all such conditions.

One commentator expressed concern about the proposed exemption to the extent it allows a bank supervised under the laws of Germany to act as an in-house investment manager, asserting that current economic pressures will distract German authorities from adequately regulating such banks. Deutsche Bank responded that the Department has implicitly recognized the present capability of Germany authorities to adequately supervise banks subject to German law by recently granting exemptive relief (in many different contexts) where the affected bank or other person is subject to supervision under German law. *See, e.g.*, PTE 2003–20, 68 Fed. Reg. 40689 (July 8, 2003); PTE 2003–12, 68 Fed. Reg. 34648 (June 10, 2003); PTE 2003–11, 68 Fed. Reg. 34646 (June 10, 2003); PTE 2002–48, 67 Fed. Reg. 62827 (Oct. 8, 2002); PTE 2002–31, 67 Fed. Reg. 42072 (June 20, 2002). Additionally, Deutsche Bank responded that the German authorities are actively focused on banking regulation. Last year, Germany adopted its Law on Integrated Financial Services Supervision (Gesetz ueber die integrierte Finanzaufsicht—FinDAG), pursuant to which the Federal Authority for Financial Services Supervision (Bundesanstalt fuer Finanzdiensteleistungsaufsicht—BAFin) was established. The functions of the former offices for banking supervision (Gundesaufsichtsamt fuer das Kreditwesen—BAKred), insurance supervision (Bundesaufsichtsamt fuer das Versicherungswesen—BAV), and securities supervision (Bundesaufsichtsamt fuer den Wertpapierhandel—BAWe) have been combined in this single state regulator that supervises banks, financial services institutions, and insurance undertakings across the entire financial market and comprises all the key functions of consumer protection and solvency supervision. The BAFin was created to ensure a consistent regulation and supervision of the financial services and markets in Germany through one single authority.

Several commentators asked whether ERISA will continue to govern the plans and their in-house investment managers if the proposed exemption is granted. Deutsche Bank responded that ERISA will continue to govern its plans, that the in-house investment managers to which the proposed exemption applies will be subject to the same rules and regulations under ERISA that govern the plan currently, and that any foreign in-house managers can be sued in the United States. Deutsche Bank represented that it will fully comply with all laws respecting its plans.

Some commentators questioned whether the exemption is in the interest of plan participants. Deutsche Bank responded that, as reflected in the Notice, the exemption allows plans to take greater advantage of the investment management expertise and experience of Deutsche Bank, the world's largest bank in terms of assets and one of the world's largest asset managers, which will provide investment management services to the plans without a fee.

Several commentators requested general clarification of the proposed exemption, and others expressed concern about conflicts of interest arising from in-house investment management. In response, Deutsche Bank stated that, under PTE 96–23, the Department has essentially granted the relief with respect to in-house asset managers that is provided in the proposed exemption. The only substantial difference between PTE 96–23 and the proposed exemption is that the proposed exemption allows the in-house adviser to be a bank supervised under the laws of the United States, a State, or Germany, rather than a registered investment adviser. Although such banks are not subject to registration under the Investment Advisers Act of 1940, they are experienced investment advisers and subject to adequate regulations by competent government authorities. Deutsche Bank also responded that the proposed exemption does not negate the legal protections of ERISA, including the requirement that investment managers discharge their duties with respect to the plans solely in the interest of the participants and beneficiaries.

Several commentators expressed concern, asked questions, or made recommendations with respect to their benefits, plan administration, or plan design. While these comments do not relate to the terms of the proposed exemption, Deutsche Bank represents that it will contact those commentators and attempt to address their issues.

One commentator requested that the exemption not be granted, but provided no basis for his position. Since the commentator provided no basis for his position, the Department believes that no response is necessary.

With respect to the requests for a hearing, the Department has determined that a public hearing is not necessary in this case because none of the interested persons requesting a hearing provided any substantive information justifying such request. In addition, the Department is satisfied that the exemption contains adequate independent safeguards to protect the interests of the plans and their participants and beneficiaries.

The Department has determined to modify section IV(h) of the final exemption as follows in order to provide consistency with PTE 96–23:

(h) the term "plan" means a plan maintained by the DBIM or an affiliate of the DBIM.

Accordingly, after giving full consideration to the entire record, including the comments by the commentators, and the responses of Deutsche Bank, the Department has determined to grant the exemption as modified herein. In this regard, the comments submitted to the Department have been included as part of the public record of the exemption application. The complete application file, including all supplemental submissions received by the Department, is made available for public inspection in the Public Documents Room of the Employee Benefits Security Administration, Room N–1513, U.S. Department of Labor, 200 Constitution Ave. NW, Washington DC 20210.

FOR FURTHER INFORMATION CONTACT: Khalif Ford of the Department, telephone (202) 693–8540 (this is not a toll-free number).

The National Electrical Benefit Fund (the Plan) Located in Rockville, Maryland

[Prohibited Transaction Exemption No. 2003–37; Application No. D–11136]

Exemption

The restrictions of sections 406(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (D) of the Code, shall not apply effective October 17, 2002 to Bank of America, N.A. (the Bank) providing a guaranty of repayment for the benefit of the bondholders in the form of an Irrevocable Direct Draw Letter of Credit No. 3051512 (Letter of Credit) and the Partnership's subsequent reimbursement to the Bank of amounts advanced by the Bank pursuant to the Letter of Credit in connection with the investment by the Plan in Golma Apartment Associates, L.P. (the Partnership). This exemption is conditioned upon the adherence to the material facts and representations described herein and upon the satisfaction of the following requirements:

(a) The Plan's investment in the Partnership is on terms no less favorable to the Plan than those which the Plan could obtain in arm's length transactions with unrelated parties;

(b) The decisions on behalf of the Plan to invest in the Partnership and consent to the terms of the reimbursement agreement in favor of the Bank are made by fiduciaries, which are not included among, and are independent of and unaffiliated with; the Bank;

(c) The investment in the Partnership represents no more than .5% of the total assets of the Plan; and

(d) The general partners of the Partnership are independent of the Plan and of the Bank of America.

(e) The Plan shall have no obligation to fund its capital contribution unless and until (i) all conditions imposed by the construction lender regarding disbursement to the Partnership of $25,950,000 of the tax-exempt bond construction financing proceeds have been satisfied by the Partnership; and (ii) the Department grants the proposed exemption; and

(f) The Plan's capital contribution will be used solely for the purpose of reimbursing Bank of America for the draw on the Letter of Credit.

EFFECTIVE DATE OF EXEMPTION: The effective date of this exemption is October 17, 2002.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the Notice of Proposed Exemption published on September 29, 2003 at 68 FR 56008.

FOR FURTHER INFORMATION CONTACT: Khalif Ford of the Department, telephone (202) 693–8540 (this is not a toll-free number).

Aetna Life Insurance Company (Aetna) and UBS Realty Investors LLC UBS Realty) Located in Hartford, Connecticut

[Prohibited Transaction Exemption 2003–; Exemption Application No. D–11167]

Exemption

Section I—Exemption for Certain Transactions Involving the Management of Investments Shared by Two or More Accounts

The restrictions of certain sections of the Act and the sanctions resulting from the application of certain parts of section 4975 of the Code shall not apply to the following transactions if the conditions set forth in Section IV are met:

(a) *Transfers Between Accounts*—The restrictions of section 406(b)(2) of the Act shall not apply to the sale or transfer of an interest in a shared investment (including a shared partnership interest) between two or more Accounts (except the General Account), provided that each ERISA-Covered Account pays no more, or receives no less, than fair market value for its interested in a shared investment.

(b) *Joint Sales of Property*—The restrictions of sections 406(a), 406(b)(1) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code; shall not apply to the sale to a third party of the entire interest in a shared investment (including a shared partnership interest) by two or more Accounts, provided that each ERISA-Covered Account receives no less than fair market value for its interest in the shared investment.

(c) *Additional Capital Contributions*—The restrictions of sections 406(a), 406(b)(1) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(b)(1)(A) through (E) of the Code, shall not apply either to the making of a proportionate equity capital contribution by one or more of the Accounts to a shared investment; or to the making of a Disproportionate [as defined in Section V(e)] equity capital contribution (or the failure to make such additional contribution) by the one or more of such Accounts which results in an adjustment in the equity ownership interests of the Accounts in the shared investment on the basis of the fair market value of such interests subsequent to such contribution, provided that each ERISA-Covered Account is given an opportunity to make a proportionate contribution.

(d) *Lending of Funds*—The restrictions of sections 406(a), 406(b)(1) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(a)(1)(A) through (E) of the Code, shall not apply to the lending of funds from the General Account to an ERISA-Covered Account to enable the ERISA-Covered Account to make an additional proportionate contribution, provided that such loan—

(A) Is unsecured and non-recourse plans;

(B) Bears interest at a rate not to exceed the prevailing rate on 90-day Treasury Bills;

(C) Is not callable at any time by the General Account; and

(D) Is prepayable at any time without penalty.

(e) *Shared Debt Investments*—In the case of a debt investment that is shared between two or more Accounts, including one or more of the ERISA-Covered Accounts:

(1) The restrictions of sections 406(a) and 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to any material modification in the terms of the loan agreement resulting from a request by the borrower or any decision regarding the action to be taken, if any, on behalf of the Accounts in the event of a loan default by the borrower;

(2) the restrictions of section 406(b)(2) of the Act shall not apply to any decision by Aetna or UBS Realty on behalf of one or more ERISA-Covered

Accounts: (A) Not to modify a loan agreement as requested by the borrower; or (B) to exercise any rights provided in the loan agreement in the event of a loan default by the borrower, even though the independent fiduciary for one of such Accounts has approved such modification or has not approved the exercise of such rights; and

(3) the restrictions of section 406(a), 406(b)(1) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply either to the proportionate acquisition of additional debt by one or more of the Accounts to a shared debt investment, or to the acquisition of Disproportionate additional debt (or the failure to acquire such additional debt) by one or more of such Accounts which results in an adjustment in the amount of debt held by the Accounts in the shared investment provided that each ERISA-Covered Account is given an opportunity to acquire additional debt on a proportionate basis.

Section II—Exemption for Certain Transactions Involving the Management of Partnership Interests Shared by Two or More Accounts

The restrictions of certain sections of the Act and the sanctions resulting from the application of certain parts of section 4975 of the Code shall not apply to the following transactions resulting from the sharing of an investment in a real estate partnership between two or more Accounts, if the conditions set forth in Section IV are met:

(a) *Additional Capital Contributions*—(1) The restrictions of sections 406(a), 406(b)(1) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(a)(1)(A) through (E) of the Code, shall not apply either to the making of additional proportionate equity capital contributions by one or more Accounts participating in the partnership; or to the making of Disproportionate (as defined Section V(e)) equity capital contributions by one or more of such Accounts which results in an adjustment in the equity ownership interest of the Accounts in the shared partnership investment on the bases of the fair market value of such interests subsequent to such contributions; provided that each ERISA-Covered Account is given an opportunity to make a proportionate contribution.

(2) The restrictions of sections 406(a), 406(b)(1) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the lending of funds from the General Account to an ERISA-Covered Account to enable the ERISA-Covered Account to make an additional proportionate capital contribution, provided that such loan—

(A) Is unsecured and non-recourse with respect to the participating plans,

(B) bears interest at a rate not to exceed the prevailing rate on 90-day Treasury Bills,

(C) is not callable at any time by the General Account, and

(D) is prepayable at any time without penalty.

(3) The restrictions of section 406(b)(2) of the Act shall not apply to the making of Disproportionate additional equity capital contributions (or the failure to make such additional contributions) to the partnership by Accounts other than the General Account which result in an adjustment in the equity ownership interests of the ERISA-Covered Accounts in the partnership on the basis of the fair market value of such partnership interests subsequent to such contributions, provided that each ERISA-Covered Account is given an opportunity to provide its proportionate share of the additional equity capital contributions; and

(4) In the event a co-partner fails to provide all or any part of its proportionate share of an additional equity capital contribution, the restrictions of sections 406(a), 406(b)(1) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the acquisition by the Account, including one or more ERISA-Covered Account[s], on either a proportionate or Disproportionate basis of a co-partner's interest in the partnership in connection with a decision on behalf of such Accounts to reject such purchase offer, provided that each ERISA-Covered Account is first given an opportunity to participate in the acquisition on a proportionate basis; and

(2) The restrictions of section 406(b)(2) of the Act shall not apply to any acceptance by Aetna or UBS Realty on behalf of two or more Accounts, including one or more ERISA-Covered Account[s], of an offer by a third party to purchase a property owned by the partnership even though the independent fiduciary for one or more of such ERISA-Covered Account[s] has not approved the acceptance of the offer where all of the Accounts (other than the General Account) participating in such investment are not in agreement on how to proceed with respect to such offer, provided that the declining Account[s] are first afforded the opportunity to buy out both the co-partner and "selling" Account's interests in the partnership.

(c) *Rights of First Refusal*—(1) In the case of the right to exercise a right of first refusal described in a partnership agreement to purchase a co-partner's interest in the partnership at the price offered for such interest by a third party, the restrictions of sections 406(a), 406(b)(1) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the acquisition by such Account, including one or more ERISA-Covered Account[s], on either a proportionate or Disproportionate basis of a co-partner's interest in the partnership in connection with the exercise of such a right of first refusal, provided that each ERISA-Covered Account is first given an opportunity to participate in the acquisition on a proportionate basis; and

(2) The restrictions of section 406(b)(2) of the Act shall not apply to any decision by Aetna or UBS Realty on behalf of the ERISA-Covered Accounts not to exercise such a right of first refusal even though the independent fiduciary for one or more of such ERISA-Covered Accounts has approved the exercise of the right of first refusal where all of the Accounts participating in such investment (other than the General Account) are not in agreement on how to proceed with respect to such right of first refusal, provided that the Accounts that approved the exercise of the right of first refusal are offered the opportunity to buy-out the co-partner on their own.

(b) *Third Party Purchase Offers*—(1) In the case of an offer by a third party to purchase any property owned by the partnership, the restrictions of sections 406(a), 406(b)(1) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the acquisition by the Accounts, including one or more ERISA-Covered

(d) *Buy-Sell Options*—(1) In the case of the exercise of a buy-sell option set forth in the partnership agreement, the restrictions of sections 406(a), 406(b)(1) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code by reason of section 4975(c)(1)(A) through (E) of the Code shall not apply to the acquisition by one or more of the Accounts on either a proportionate or Disproportionate basis of a co-partner's interest in the partnership in connection with the exercise of such a buy-sell option, provided that each ERISA-Covered Account is first given the opportunity to participate on a proportionate basis; and

(2) The restrictions of section 406(b)(2) of the Act shall not apply to any decision by Aetna or UBS Realty on behalf of two or more Accounts, including one or more ERISA-Covered Account[s], to sell the interest of such Accounts in the partnership to a co-partner even though the independent fiduciary for one or more of such ERISA-Covered Account[s] has not approved such sale where all of the Accounts participating in such investment (other than the General Account) are not in agreement on how to proceed with respect to the buy-sell option, provided that such disapproving Account is first afforded the opportunity to purchase the entire interest of the co-partner.

Section III—Exemption for Transactions Involving a Partnership or Persons Related to a Partnership

The restrictions of section 406(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code, shall not apply, if the conditions in Section IV are met, to any additional equity or debt capital contributions to a partnership, or any transaction with the co-partner which arises in connection with the operation of the partnership, by an ERISA-Covered Account that is participating in an interest in the partnership, or to any material modification in the terms of, or action taken upon default with respect to, a loan to the partnership in which the ERISA-Covered Account has an interest as a lender, where the partnership is a party in interest solely by reason of the ownership on behalf of the General Account of a 50 percent or more interest in such joint venture.

Section IV—General Conditions

(a) The decision to participate in any ERISA-Covered Account that shares real estate investments must be made by plan fiduciaries who are totally unrelated to Aetna, UBS Realty and their respective affiliates. This condition shall not apply to plans covering employees of Aetna, UBS Realty or any of their respective affiliates.

(b) Each contractholder or prospective contractholder in an ERISA-Covered Account which shares or proposes to share real estate investments is provided with a written description of potential conflicts of interest that may result from the sharing, a copy of the notice of pendency, and a copy of the exemption as granted.

(c) An independent fiduciary must be appointed on behalf of each ERISA-Covered Account participating in the sharing of investments. The independent fiduciary shall be either:

(1) A business organization which has at least five years of experience with respect to commercial real estate investments.

(2) A committee comprised of one or more individuals who each have at least five years of experience with respect to commercial real estate investments, or

(3) The plan sponsor (or its designee) of a plan (or plans) that is the sole participant in an ERISA-Covered Account.

(d) The independent fiduciary or independent fiduciary committee member shall not be or consist of Aetna, UBS Realty or any of their respective affiliates.

(e) No organization or individual may serve as an independent fiduciary for an ERISA-Covered Account for any fiscal year if the gross income (other than fixed, non-discretionary retirement income and any cost of living increases thereon) received by such organization or individual (or any partnership or corporation of which such organization or individual is an officer, director, or ten percent or more partner or shareholder) from Aetna, UBS Realty, any of their respective affiliates, and the ERISA-Covered Accounts for that fiscal year exceeds five percent of its or his annual gross income from all sources for the prior fiscal year. If such organization or individual had no income for the prior fiscal year, the five percent limitation shall be applied with reference to the fiscal year in which such organization or individual serves as an independent fiduciary. The income limitation will include income for services rendered to the Accounts as independent fiduciary under any prohibited transaction exemption(s) granted by the Department. However, such income limitation shall not include any income for services rendered to Single Customer ERISA-Covered Account by an independent fiduciary selected by the Plan Sponsor to the extent determined by the Department in any subsequent prohibited transaction proceeding.

In addition, no organization or individual who is an independent fiduciary, and no partnership or corporation of which such organization or individual is an officer, director or ten percent or more partner or shareholder, may acquire any property from, sell any property to, or borrow any funds from, Aetna, UBS Realty, any of their respective affiliates, or any Account managed by Aetna, UBS Realty or any of their respective affiliates, during the period that such organization or individual serves as an independent fiduciary and continuing for a period of six months after such organization or individual ceases to be an independent fiduciary, or negotiate any such transaction during the period that such organization or individual serves as independent fiduciary.

(f) The independent fiduciary acting on behalf of an ERISA-Covered Account shall have the responsibility and authority to approve or reject recommendations made by Aetna, UBS Realty or any of their respective affiliates for each of the transactions in this exemption. Aetna, UBS Realty and any of their respective affiliates shall involve the independent fiduciary in the consideration of contemplated transactions prior to the making of any decisions, and shall provide the independent fiduciary with whatever information may be necessary in making its determinations.

In addition, the independent fiduciary shall review on an as-needed basis, but not less than twice annually the shared real estate investments in the ERISA-Covered Account to determine whether the shared real estate investments are held in the best interest of the ERISA-Covered Account.

(g) Neither UBS Realty nor any of its affiliates is a co-investor in the shared investment or partnership to which an exemption provided by Sections I, II or III above is being applied; provided, however, that this condition shall not preclude an employee benefit plan maintained by Aetna, UBS Realty or any of their affiliates from participating in an ERISA-Covered Account that is such a co-investor.

(h) Aetna or UBS Realty maintains for a period of six years from the date of the transaction the records necessary to enable the persons described in paragraph (i) of this Section to determine whether the conditions of this exemption have been met, except that a prohibited transaction will not be considered to have occurred if, due to circumstances beyond the control of

Aetna. UBS Realty or any of their respective affiliates, the records are lost or destroyed prior to the end of the six-year period.

(i) Except as provided in paragraph (2) of this subsection (i) and notwithstanding any provisions of subsection (a)(2) and (b) of section 504 of the Act, the records referred to in subsection (h) of this Section are unconditionally available at their customary location for examination during normal business hours by—

(A) Any duly authorized employee or representative of the Department or the Internal Revenue Service.

(B) Any fiduciary of a plan participating in an ERISA-Covered Account who has authority to acquire or dispose of the interests of the plan, or any duly authorized employee or representative of such fiduciary.

(C) Any contributing employer to any plan participating in an ERISA-Covered Account or any duly authorized employee or representative of such employer, and

(D) Any participant or beneficiary of any plan participating in an ERISA-Covered Account, or any duly authorized employee or representative of such participant or beneficiary.

(2) None of the persons described in subparagraphs (B) through (D) of this subsection (i) shall be authorized to examine trade secrets of Aetna, UBS Realty or any of their respective affiliates, or commercial or financial information which is privileged or confidential.

(j) Given that this exemption is a replacement to a previous prohibited transaction exemption (see PTE 91–10, 56 FR 3273, January 29, 1991) any approvals, appointments, disclosures, and decisions made or given pursuant to PTE 91–10 shall remain in full force and effect with respect to this replacement exemption.

Section V—Definitions

For the purposes of this exemption:

(a) An "affiliate" of Aetna or UBS Realty, respectively includes—

(1) Any person directly or indirectly through one or more intermediaries, controlling, controlled by, or under common control with Aetna or UBS Realty, respectively.

(2) Any officer, director or employee or Aetna, UBS Realty or any person described in section V(a)(1), and

(3) Any partnership in which Aetna or UBS Realty is a partner.

(b) An "Account" means any account maintained by Aetna and, except in the case of the General Account, managed by UBS Realty. The term "Account" includes the General Account, ERISA-Covered Accounts, Pooled Accounts and Single Customer Accounts, as well as combinations of accounts other than the General Account which are consolidated for investment management purposes as if they were a single account.

(c) The "General Account" means the general asset account of Aetna and any of its affiliates which are insurance companies licensed to do business in at least one State as defined in section 3(10) of the Act.

(d) An "ERISA-Covered Account" means any Account (other than the General Account) in which employee benefit plans subject to Title I or Title II of the Act participate.

(e) "Disproportionate" means not in proportion to an Account's existing equity ownership interest in an investment, partnership or partnership interest in a debt.

(f) The "Transition Effective Date" is the effective date of the delegation by Aetna to UBS Realty of the management of the Accounts, which has been designated as October 1, 2003.

Effective Date: This exemption is effective as of October 1, 2003, the Transition Effective Date.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on September 29, 2003, at 68 FR 55993.

Comments and Modification: In response to a request made by the applicant, the Department has added a condition to the exemption (see Section IV (j)) stating that any approvals, appointments, disclosures, and decisions made or given pursuant to the prior exemption for Aetna (*i.e.*, PTE 91–10) shall remain in full force and effect with respect to this exemption. In this regard, the applicant represents that the appropriate plan fiduciaries for ERISA-Covered Accounts were informed that any approvals, appointments, disclosures and decisions made or given pursuant to PTE 91–10 shall remain in full force and effect after the date that this exemption is published in the **Federal Register**. In addition, as noted in the notice of proposed exemption (see 68 FR at 55994, column one, last sentence of paragraph 1 of the Summary of Facts and Representations), PTE 91–10 shall be superseded and replaced by this exemption for all transactions entered into after the Transition Effective Date.

No other written comments, and no requests for a public hearing, were received by the Department. Accordingly, the Department has decided to grant the exemption as modified.

FOR FURTHER INFORMATION CONTACT: Brian J. Buyniski of the Department, at telephone (202) 693–8545. (This is not a toll-free number).

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) This exemption is supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transactional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(3) The availability of this exemption is subject to the express condition that the material facts and representations contained in the application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 12th day of December, 2003.

Ivan Strasfeld,

Director of Exemption Determinations, Employee Benefits Security Administration, Department of Labor.

[FR Doc. 03–31103 Filed 12–16–03; 8:45 am]

BILLING CODE 4510–29–M

NATIONAL COUNCIL ON DISABILITY

Sunshine Act Meetings

TIMES AND DATES: 8:30 a.m.–5 p.m., February 8–February 9, 2004.

PLACE: Wyndham Bonaventure Resort & Spa, 250 Racquet Club Road, Fort Lauderdale, Florida.

STATUS: Parts of this meeting will be open to the public. The rest of the meeting will be closed to the public.

MATTERS TO BE CONSIDERED: Reports from the Chairperson and the Executive Director, Committee Meetings and Committee Reports, Executive Session, Unfinished Business, New Business, Announcements, Adjournment.

PORTIONS OPEN TO THE PUBLIC: Reports from the Chairperson and the Executive Director, Committee Meetings and Committee Reports, Unfinished Business, New Business, Announcements, Adjournment.

PORTIONS CLOSED TO THE PUBLIC: Executive Session.

CONTACT PERSON FOR MORE INFORMATION: Mark S. Quigley, Director of Communications, National Council on Disability, 1331 F Street, NW., Suite 850, Washington, DC 20004; 202–272–2004 (Voice), 202–272–2074 (TTY), 202–272–2022 (Fax), *mquigley@ncd.gov* (E-mail).

AGENCY MISSION: The National Council on Disability (NCD) is an independent federal agency composed of 15 members appointed by the President and confirmed by the U.S. Senate. Its overall purpose is to promote policies, programs, practices, and procedures that guarantee equal opportunity for all people with disabilities, including people from culturally diverse backgrounds, regardless of the nature or significance of the disability; and to empower people with disabilities to achieve economic self-sufficiency, independent living, and inclusion and integration into all aspects of society.

ACCOMMODATIONS: Those needing sign language interpreters or other disability accommodations should notify NCD at least one week before this meeting.

LANGUAGE TRANSLATION: In accordance with E.O. 13166, Improving Access to Services for Persons with Limited English Proficiency, those people with disabilities who are limited English proficient and seek translation services for this meeting should notify NCD at least one week before this meeting.

MULTIPLE CHEMICAL SENSITIVITY/ ENVIRONMENTAL ILLNESS: People with multiple chemical sensitivity/ environmental illness must reduce their exposure to volatile chemical substances to attend this meeting. To reduce such exposure, NCD requests that attendees not wear perfumes or scented products at this meeting. Smoking is prohibited in meeting rooms and surrounding areas.

Dated: December 9, 2003.

Ethel D. Briggs,

Executive Director.

[FR Doc. 03–31224 Filed 12–15–03; 1:05 pm]

BILLING CODE 6820–MA–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts; Fellowships Advisory Panel

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Fellowships Advisory Panel, Folk & Traditional Arts section (National Heritage Fellowships category) to the National Council on the Arts will be held on January 27–30, 2004 in Room 716 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506. The panel will meet from 9 a.m. to 6:30 p.m. on January 27th–29th, and from 9 a.m. to 3 p.m. on January 30th.

This meeting is for the purpose of Panel review, discussion, evaluation, and recommendation on nominations for recognition under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by nominators and nominees. In accordance with the determination of the Chairman of April 30, 2003, these sessions will be closed to the public pursuant to (c)(6) of title 5, United States Code, section 552b.

Further information with reference to this meeting can be obtained from Ms. Kathy Plowitz-Worden, Office of Guidelines & Panel Operations, National Endowment for the Arts, Washington, DC 20506, or call 202/682–5691.

Dated: December 11, 2003.

Kathy Plowitz-Worden,

Panel Coordinator, Panel Operations, National Endowment for the Arts.

[FR Doc. 03–31108 Filed 12–16–03; 8:45 am]

BILLING CODE 7537–01–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts; Leadership Initiatives Advisory Panel

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that two meetings of the Leadership Initiatives Advisory Panel to the National Council on the Arts will be held at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506 as follows:

Media Arts: January 7–9, 2004, Room 716 (Arts on Radio and Television category). This meeting will be closed.

Folk & Traditional Arts: January 12–13, 2004, Room 714 (Infrastructure Initiative category). A portion of this meeting, from 10 a.m. to 11 a.m. on January 13th, will be open to the public for policy discussion. The remaining portions of this meeting, from 9 a.m. to 6 p.m. on January 12th, and from 9 a.m. to 10 a.m. and 11 a.m. to 12 p.m. on January 13th, will be closed.

Closed meetings and portions of meetings are for the purpose of panel review, discussion, evaluation, and recommendations on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of April 30, 2003, these sessions will be closed to the public pursuant to subsection (c)(6) of 5 U.S.C. 552b.

Any person may observe meetings, or portions thereof, of advisory panels that are open to the public, and, if time allows, may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of AccessAbility, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682–5532, TDY–TDD 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Kathy Plowitz-Worden, Office of Guidelines & Panel Operations, National Endowment for the Arts, Washington, DC, 20506, or call 202/682–5691.

Dated: December 11, 2003.

Kathy Plowitz-Worden,

Panel Coordinator, Panel Operations, National Endowment for the Arts.

[FR Doc. 03–31106 Filed 12–16–03; 8:45 am]

BILLING CODE 7537–01–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts; Partnerships Advisory Panel

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Partnerships Advisory Panel (State Partnership Agreements), to the National Council on

the Arts will be held on January 22–23, 2004. The panel will meet from 9:30 a.m. to 6 p.m on January 22nd and from 8:30 a.m. to 3 p.m. on January 23rd in Room 716 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

This meeting will be open to the public on a space available basis. Topics will include review of the State Partnership Agreement applications, discussion of guidelines and policy issues, and other business as necessary.

Any person may observe meetings, or portions thereof, of advisory panels that are open to the public, and, if time allows, may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of Access Ability, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682–5532, TDY–TDD 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Kathy Plowitz-Worden, Office of Guidelines & Panel Operations, National Endowment for the Arts, Washington, DC 20506, or call 202/682–5691.

Dated: December 11, 2003.

Kathy Plowitz-Worden,

Panel Coordinator, Panel Operations, National Endowment for the Arts.

[FR Doc. 03–31107 Filed 12–16–03; 8:45 am]

BILLING CODE 7537–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–348 and 50–364]

Southern Nuclear Operating Company, Inc., Alabama Power Company, Joseph M. Farley Nuclear Plant, Units 1 and 2; Notice of Withdrawal of Application for Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has granted the request of Duke Energy Corporation (the licensee) to withdraw its December 3, 2003, application for proposed amendment to Facility Operating License Nos. NPF–2 and NPF–8 for the Joseph M. Farley Nuclear Plant, Units 1 and 2, located in Houston County, Alabama.

The proposed amendments would have revised the Technical Specifications to extend the completion time for the 1C Emergency Diesel Generator from 10 days to 13 days. This change would have allowed the continued operation of Farley Nuclear Plant, Units 1 and 2 with the inoperable diesel generator until December 13, 2003.

The Commission had previously issued a Notice of Consideration of Issuance of Amendment published in the *Dothan Eagle* newspaper on December 5 and 6, 2003. However, by letter dated December 9, 2003, the licensee withdrew the proposed change.

For further details with respect to this action, see the application for amendment dated December 3, 2003, and the licensee's letter dated December 9, 2003, which withdrew the application for license amendment. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, Public File Area O1F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management Systems (ADAMS) Public Electronic Reading Room on the internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams/html*. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff by telephone at 1–800–397–4209, or 301–415–4737 or by e-mail to *pdr@nrc.gov*.

Dated at Rockville, Maryland, this 12th day of December 2003.

For the Nuclear Regulatory Commission.

Sean E. Peters,

Project Manager, Section 1, Project Directorate II, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 03–31091 Filed 12–16–03; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services. Washington, DC 20549.

Extension

Rule 3 and Form U–3A3–1, SEC File No. 270–77, OMB Control No. 3235–0160.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("Commission") is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Form U–3A3–1, Part 259.403 [17 CFR 259.403] under the Public Utility Holding Company Act of 1935, as amended ("Act"), 15 U.S.C. 79, *et seq.*, is an application for exemption from regulation, under Rule 3 of the Act, filed annually by banks that are incidentally public utility holding companies by virtue of holding utility securities in their capacity as a bank.

Rule 3 requires the information collection prescribed by Form U–3A3–1. The Commission estimates that the total annual reporting and record keeping burden of collections for Form U–3A3–1 is 10 hours (5 responses × 2 hours = 10 hours).

The estimate of average burden hours are made for purposes of the Paperwork Reduction Act and are not derived from a comprehensive or representative survey or study of the costs of complying with the requirements of Commission rules and forms.

Written comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the collection of information; (3) ways to enhance the quality, utility and clarity of the information collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Kenneth A. Fogash, Acting Associate Executive Director/CIO, Office of Information Technology, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549.

Dated: December 10, 2003.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–31112 Filed 12–16–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, 450 5th Street, NW., Washington, DC 20549.

Extension

Rules 1(a) and (b) and Forms U5A and U5B, SEC File No. 270–168, OMB Control No. 3235–0170.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("Commission") is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Form U5A, Part 259.5a [17 CFR 259.5a] under the Public Utility Holding Company Act of 1935, as amended ("Act"), 15 U.S.C. 79, *et seq.*, is a registration notification required to be filed under Rule 1(a) of the Act by any person proposing to become a registered holding company to notify the Commission of that fact. Form U5B, Part 259.5b [17 CFR 259.5b] under the Act is a registration statement required to be filed under Rule 1(b) by every registered holding company within 90 days of registration.

Rules 1(a) and (b) require the information collection prescribed by Forms U5A and U5B. The Commission estimates that the total annual reporting and record keeping burden of collections for Forms U5A and U5B is 320 hours (4 combined responses × 80 hours = 320 hours).

The estimate of average burden hours are made for purposes of the Paperwork Reduction Act and are not derived from a comprehensive or representative survey or study of the costs of complying with the requirements of Commission rules and forms.

Written comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the collection of information; (3) ways to enhance the quality, utility and clarity of the information collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Kenneth A. Fogash, Acting Associate Executive Director/CIO, Office of Information Technology, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549.

Dated: December 10, 2003.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–31113 Filed 12–16–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension

Rule 95 and Form U–13E–1, SEC File No. 270–74, OMB Control No. 3235–0162.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("Commission") is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Form U–13E–1, Part 259.213 [17 CFR 259.213] under the Public Utility Holding Company Act of 1935, as amended ("Act"), 15 U.S.C. 79, *et seq.*, is required to be filed under Rule 95 of the Act by certain companies providing services and selling goods to registered public utility holding companies and their subsidiaries.

Rule 95 under the Act, which implements sections 12(e) and (f) of the Act, requires the information collection prescribed by Form U–13E–1. The Commission estimates that the total annual reporting and recordkeeping burden of collections for Form U–13E–1 is 2 hours (1 response × 2 hours = 2 hours).

The estimate of average burden hours are made for purposes of the Paperwork Reduction Act and are not derived from a comprehensive or representative survey or study of the costs of complying with the requirements of Commission rules and forms.

Written comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the collection of information; (3) ways to enhance the quality, utility and clarity of the information collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Kenneth A. Fogash, Acting Associate Executive Director/CIO, Office of Information Technology, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549.

Dated: December 10, 2003.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–31114 Filed 12–16–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, 450 Fifth Street, NW., Washington, DC 20549.

Extension

Rule 83, SEC File No. 270–82, OMB Control No. 3235–0181.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et. seq.*), the Securities and Exchange Commission ("Commission") is soliciting comments on the collection of information summarized below. The Commission plans to submit the existing collection of information to the Office of Management and Budget for extension and approval.

Rule 83, Exemption in the Case of Transactions with Foreign Associates, authorizes an exemption from the "at cost" standard of section 13(b) of the Public Utility Holding Company Act of 1935 (the "Act") for services provided to associated foreign utility companies.

Rule 83 requires a registered holding company system that wishes to avail itself of this exemption from section 13(b) of the Act to submit an application, in the form of a declaration, to the Commission. The Commission

will grant the application if, by reason of the lack of any major interest of holders of securities offered in the United States in servicing arrangements affecting such serviced subsidiaries, such an application for exemption is necessary or appropriate in the public interest or for the protection of investors.

Rule 83 does not create a record-keeping burden or retention burden on respondents. The rule does, however, contain reporting and filing requirements. The Commission has not received any applications specifically under rule 83 in the past 3 years. The only rule 83 related filings were made within the context of larger filings concerning other matters. Therefore, we estimate the burden of rule 83 as zero.

The estimate of average burden hours is made solely for the purpose of the Paperwork Reduction Act and are not derived from a comprehensive or even a representative survey or study of the costs of SEC rules and forms.

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have a practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Kenneth A. Fogash, Acting Associate Executive Director/CIO, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549.

Dated: December 10, 2003.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–31115 Filed 12–16–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension

Rule 206(3)–2, SEC File No. 270–216, OMB Control No. 3235–0243.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("Commission") is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Rule 206(3)–2, which is entitled "Agency Cross Transactions for Advisory Clients," permits investment advisers to comply with section 206(3) of the Investment Advisers Act of 1940 ("Advisers Act") by obtaining a client's blanket consent to enter into agency cross transactions (*i.e.*, a transaction in which an adviser acts as a broker to both the advisory client and the opposite party to the transaction), provided that certain disclosures are made to the client. Rule 206(3)-2 applies to all registered investment advisers. In relying on the rule, investment advisers must provide certain disclosures to their clients; advisory clients can use the disclosures to monitor agency cross transactions.

The information requirements of the rule consist of the following: (1) Prior to obtaining the client's consent appropriate disclosure must be made to the client as to the practice of, and the conflicts of interest involved in, agency cross transactions; (2) at or before the completion of any such transaction the client must be furnished with a written confirmation containing specified information and offering to furnish upon request certain additional information; and (3) at least annually, the client must be furnished with a written statement or summary as to the total number of transactions during the period covered by the consent and the total amount of commissions received by the adviser or its affiliated broker-dealer attributable to such transactions.

The Commission estimates that approximately 780 respondents use the rule annually, necessitating about 32 responses per respondent each year, for a total of 24,960 responses. Each response requires about .5 hours, for a total of 12,480 hours. The estimated average burden hours are made solely for the purposes of the PRA and are not derived from a comprehensive or even representative survey or study of the cost of Commission rules and forms.

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within sixty (60) days of this publication.

Please direct your written comments to Kenneth A. Fogash, Acting Associate Executive Director/CIO, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549.

Dated: December 10, 2003.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–31116 Filed 12–16–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension

Industry Guides Notice of Exempt Preliminary Roll-Up Communication. OMB Control Nos. 3235–0069 and 3235–0452; SEC File Nos. 270–069 and 270–396.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) the Securities and Exchange Commission ("Commission") is soliciting comments on the collections of information summarized below. The Commission plans to submit these existing collections of information to the Office of Management and Budget for extension and approval.

Industry Guides (OMB 3235–0069; SEC File No. 270–069) are used by registrants in certain specified industries as disclosure guidelines to be followed in disclosing information to investors in Securities Act and Exchange Act registration statements and certain other Exchange Act filings. The Commission estimates for administrative purposes only that the total annual burden with respect to the Industry Guides is one hour. The Industry Guides do not directly impose any disclosure burden.

A Notice of Exempt Preliminary Roll-Up Communication ("Notice") (OMB 3235–0452; SEC File No. 270–396) provides information regarding ownership interest and any potential conflicts of interest to be included in statements submitted by or on behalf of a person pursuant to § 240.14a-2(b)(4) and § 240.14a-6(n). The Notice takes approximately .25 hours per response and his filed by 4 respondents for a total of 1 annual burden hour.

Written comments are invited on: (a) Whether these proposed collections of information are necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Kenneth A. Fogash, Acting Associate Executive Director/CIO, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549.

Dated: December 10, 2003.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–31117 Filed 12–16–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549–0004.

Extension

Rule 88 and Form U–13–1, SEC File No. 270–80, OMB Control No. 3235–0182.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("Commission") is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Form U–13–1, Section 259.113 [17 CFR 259.113] under the Public Utility Holding Company Act of 1935, as amended ("Act"), 15 U.S.C. 79, *et seq.*, is required to be filed under Rule 88 of the Act by companies seeking Commission approval to become mutual service companies under the Act.

Rule 88 under the Act, which implements Section 13 of the Act, requires the information collection prescribed by Form U–13–1. The Commission estimates that the total annual reporting and record keeping burden of collections for Form U–13–1 is 88 hours (22 responses × 4 hours = 88 hours).

The estimate of average burden hours are made for purposes of the Paperwork Reduction Act and are not derived from a comprehensive or representative survey or study of the costs of complying with the requirements of Commission rules and forms.

Written comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the collection of information; (3) ways to enhance the quality, utility and clarity of the information collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Kenneth A. Fogash, Acting Associate Executive Director/CIO, Office of Information Technology, Securities and Exchange Commission, 450 5th Street NW., Washington, DC 20549–0004.

Dated: December 10, 2003.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–31118 Filed 12–16–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[File No. 1–31650]

Issuer Delisting; Notice of Application To Withdraw From Listing and Registration on the American Stock Exchange LLC (Mindspeed Technologies, Inc., Common Stock, $.01 Par Value and the Associated Preferred Share Purchase Rights)

December 11, 2003.

Mindspeed Technologies, Inc., a Delaware corporation ("Issuer"), has filed an application with the Securities and Exchange Commission ("Commission"), pursuant to section 12(d) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 12d2–2(d) thereunder,[2] to withdraw its Common Stock, $.01 par value, and the associated Preferred Share Purchase Rights ("Securities"), from listing and registration on the American Stock Exchange LLC ("Amex" or "Exchange").

The Issuer intends to withdraw its Securities from listing on the Amex and to list its Securities on The Nasdaq Stock Market, Inc. National Market System ("Nasdaq NMS"). The Issuer believes that listing and trading of the Securities on Nasdaq NMS would provide, among other things, increased visibility to technology investors, increased liquidity for the Securities and increased volume of trading in the Securities; and that as a technology company, the Issuer would benefit from trading in a market where many of the Issuer's peer companies are traded. The Issuer states that it expects to commence trading on the Nasdaq NMS on December 15, 2003.

The Issuer stated in its application that it has met the requirements of Amex Rule 18 by complying with all applicable laws in the State of Delaware, in which it is incorporated, and with the Amex's rules governing an issuer's voluntary withdrawal of a security from listing and registration.

The Issuer's application relates solely to the withdrawal of the Securities from listing on the Amex and from registration under section 12(b) of the Act[3] and shall not affect its obligation to be registered under section 12(g) of the Act.[4]

Any interested person may, on or before January 5, 2004, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609, facts

[1] 15 U.S.C. 78*l*(d).
[2] 17 CFR 240.12d2–2(d).
[3] 15 U.S.C. 78*l*(b).
[4] 15 U.S.C. 78*l*(g).

bearing upon whether the application has been made in accordance with the rules of the Amex and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority. [5]

Jonathan G. Katz,

Secretary.

[FR Doc. 03–31111 Filed 12–16–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[File No. 1–13964]

Issuer Delisting; Notice of Application To Withdraw From Listing and Registration on the American Stock Exchange LLC (The Southern Banc Company, Inc., Common Stock, $.01 Par Value)

December 11, 2003.

The Southern Banc Company, Inc., a Delaware corporation ("Issuer"), has filed an application with the Securities and Exchange Commission ("Commission"), pursuant to section 12(d) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 12d2–2(d) thereunder,[2] to withdraw its Common Stock, $.01 par value ("Security"), from listing and registration on the American Stock Exchange LLC ("Amex" or "Exchange").

The Board of Directors of the Issuer unanimously approved a resolution on November 12, 2003 to withdraw the Issuer's Security from listing on the Amex. The Board of Directors of the Issuer states that the reasons it is taking such action are as follows: (i) The Issuer has a limited number of stockholders of record; (ii) the costs associated with maintaining the Issuer's status as an Amex-listed company; (iii) the limited volume of trading of the shares; and (iv) no analysts cover the Issuer and the shares.

The Issuer stated in its application that it has met the requirements of Amex Rule 18 by complying with all applicable laws in the State of Delaware, in which it is incorporated, and with the Amex's rules governing an issuer's voluntary withdrawal of a security from listing and registration.

The Issuer's application relates solely to the withdrawal of the Securities from listing on the Amex and from registration under section 12(b) of the Act [3] and shall not affect its obligation to be registered under section 12(g) of the Act.[4]

Any interested person may, on or before January 5, 2004, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609, facts bearing upon whether the application has been made in accordance with the rules of the Amex and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

Jonathan G. Katz,

Secretary.

[FR Doc. 03–31110 Filed 12–16–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48902; File No. SR–NASD–2003–162]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto by National Association of Securities Dealers, Inc. Relating to Prime and ADAP Data Feeds in NASD Rule 7010(q)

December 10, 2003.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 29, 2003, the National Association of Securities Dealers, Inc. ("NASD"), through its subsidiary, The Nasdaq Stock Market, Inc. ("Nasdaq"), filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Nasdaq. On December 5, 2003, Nasdaq filed Amendment No. 1 to the proposed rule change.[3] The Commission is publishing this notice, as amended, to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

Nasdaq filed with the Commission a proposed rule change to NASD Rule 7010(q). The proposed rule change would rename the Nasdaq Prime data feed as the TotalView Data Feed, expand it to include quotes and orders at all price levels associated with an individual issue traded on Nasdaq, and discontinue the Nasdaq Aggregated Depth at Price ("ADAP") data feed.

Nasdaq proposes to expand the TotalView Data Feed on or after April 1, 2004 and to eliminate the ADAP data feed on or after February 16, 2004; in each case, Nasdaq will issue a vendor alert announcing the actual date of the change at least three calendar days before it is implemented.[4] Nasdaq previously issued a vendor alert in August 2004 announcing its intention to seek these rule changes.[5]

Proposed new language is *italicized*; proposed deletions are in brackets.

* * * * *

Rule 7010. Charges for Services and Equipment

(a)–(p) No change.

(q) Nasdaq Data Entitlement Packages

This subsection (q) sets out the charges for the data entitlement packages collectively known as ViewSuite. Subsections (q)(1) and (q)(2) describe the data entitlement packages and set out the regular charges for each. Subsection (q)(3) describes the Enterprise License Program, an optional pilot program that modifies the regular charges for participants as set out therein. Subsection (q)(4) describes *the Non-Display Enterprise License Pilot. Subsection (q)(5) describes* the ViewSuite entitlement, a second pilot program that suspends the regular charges set out in (q)(1) and (q)(2) during its operation. Thus, the monthly charges set out in (q)(1) and (q)(2) below are not in effect during the length of the pilot program set out in (q)[(4)](5). *Subsection (q)(6) sets forth definitions and subsection (q)(7) addresses revenue sharing.*

(1) DepthView and PowerView

(A) The DepthView entitlement package contains all [information disseminated through the Nasdaq Aggregated Depth at Price (ADAP) data feed: the five best price levels in Nasdaq on both the bid and offer side of the market. Each price level is dynamically updated and displays the aggregate size of "displayed" trading interest, attributable and non-attributable, at each price level.] *aggregate data carried on the TotalView Data Feed, as defined in (q)(2).* The Nasdaq PowerView entitlement package consists of DepthView and the Nasdaq Quotation Dissemination Service (NQDS) feed.

(i) Except as provided in *(q)*(1)(A)(ii) [below], for DepthView, there [will] *shall* be a $50.00 monthly charge [to be paid] for each controlled device.[1]

(ii) [t]*T*he charge to [be paid by] a non-professional [2] subscriber *of DepthView* for each controlled device shall be $25.00 per month.

(B)(i) Except as provided in [paragraph] *(q)*(1)(B)(ii) [below], for PowerView, there [will] *shall* be a $75.00 monthly charge [to be paid] for each controlled device.[3]

(ii) [t]*T*he charge to [be paid by] a non-professional subscriber [4] *of PowerView* for each controlled device [will] *shall* be $29.00 per month[5].

(C) Distributors [6] of [ADAP data] *aggregate data carried on the TotalView Data Feed* [(either through DepthView or PowerView)] shall pay a charge of $1,000.00 per month.

(D) Thirty-Day Free-Trial Offer. Nasdaq [will] *shall* offer all new individual subscribers and potential new individual subscribers a 30-day waiver of the fees for any ViewSuite service (DepthView or PowerView) that such subscriber or potential subscriber chooses to try for the 30-day period. This waiver [does] *shall* not include *the incremental* fees assessed for the NQDS-*only* service[7], *which are $30.00 for professional users and $9.00 for non-professional users per month.* This fee waiver period [will] *shall* be applied on a rolling basis, determined by the date on which a new individual subscriber or potential individual subscriber is first entitled by a distributor to receive access to DepthView or PowerView. A distributor may only provide this waiver to a specific individual subscriber once.

(i) DepthView. For the period of the offer, the DepthView fee of $50 per professional user and $25 per non-professional user *per month* [will] *shall* be waived.

(ii) PowerView. For the period of the offer, the PowerView fee of $45 per professional user and $20 per non-professional user *per month* [will] *shall* be waived.

(2) TotalView

The *TotalView Data Feed* [NQDS Prime data feed (hereinafter referred to as "Prime")] consists of the individual Nasdaq SuperMontage participant orders and quotes *and the aggregate size of such orders and quotes at each price level* [that make up the top five price levels] in [the] SuperMontage [System]. The TotalView entitlement package includes the information disseminated through the [Prime data feed] *TotalView Data Feed* in addition to the data contained in the PowerView entitlement package.

(A) Distributors of TotalView data shall pay a charge of $7,500 per month.

(B) For TotalView, there [will] *shall* be a charge of $150 per month per controlled device.[8]

(C) 30-Day Free-Trial Offer. Nasdaq [will] *shall* offer all new individual subscribers and potential new individual subscribers a 30-day waiver of the fees for TotalView. This waiver [does] *shall* not include *the incremental* fees assessed for the NQDS-*only* service[9], *which are $30.00 for professional users and $9.00 for non-professional users per month.* This fee waiver period [will] *shall* be applied on a rolling basis, determined by the date on which a new individual subscriber or potential individual subscriber is first entitled by a distributor to receive access to TotalView. A distributor may only provide this waiver to a specific individual subscriber once.

[(i)] For the period of the offer, the TotalView fee of $120 per professional user and $141 per non-professional user *per month shall* [will] be waived.

(3) Enterprise License Pilot[.]

For a nine-month period commencing on April 1, 2003, each distributor of DepthView, PowerView, and/or TotalView may purchase one or more enterprise licenses that entitle it to distribute the licensed product to its entitled Level 1 or NQDS subscribers[3] for a fixed monthly fee based on the formulae set forth in [subparagraphs] *(q)(3)*(A)–(F) [below]. *The Enterprise License Pilot shall not apply to the Level 1 and NQDS data services. All distributors continue to be obligated to report and pay for all entitled Level 1 and NQDS subscribers throughout the pilot period.* A distributor must purchase an enterprise license(s) within two months following the beginning of this program and must agree by contract to pay the fixed monthly fee for the remaining length of the nine-month period. The distributor must also pay applicable distributor fees set forth in [subparagraph] *(q)*(1)*(C)* or *(q)*(2)*(A)* [above].

(A) DepthView Non-Professional Enterprise License:

(i) The DepthView Non-Professional Enterprise License permits a distributor to provide DepthView to all of its entitled Level 1 non-professional subscribers.

(ii) The formula for the DepthView Non-Professional Enterprise License fee is 0.25 × number of entitled-Level 1 non-professional subscribers in the Predicate Month[4] × $25.

(B) DepthView Professional Enterprise License:

(i) The DepthView Professional Enterprise License permits a distributor to provide DepthView to all of its entitled Level 1 professional subscribers.

(ii) The formula for the DepthView Professional Enterprise License fee is 0.25 × number of Level 1 professional subscribers in the Predicate Month × $50.

(C) PowerView Non-Professional Enterprise License:

(i) The PowerView Non-Professional Enterprise License permits a distributor to provide PowerView to all of its entitled NQDS non-professional subscribers.

(ii) The formula for the PowerView Non-Professional Enterprise License fee is 0.35 × number of NQDS non-professional subscribers in the Predicate Month × $20.

(D) PowerView Professional Enterprise License:

(i) The PowerView Professional Enterprise License permits a distributor to provide PowerView to all of its entitled NQDS professional subscribers.

(ii) The formula for the PowerView Professional Enterprise License fee is 0.35 × number of NQDS professional subscribers in the Predicate Month × $45.

(E) TotalView Non-Professional Enterprise License:

(i) The TotalView Non-Professional Enterprise License permits a distributor to provide TotalView to all of its entitled NQDS non-professional subscribers.

(ii) The formula for the TotalView Non-Professional Enterprise License fee is 0.25 × number of NQDS non-

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[1] 17 CFR 200.30–3(a)(1).

[2] 15 U.S.C. 78*l*(d).

[3] 17 CFR 240.12d2–2(d).

[1] 15 U.S.C. 78*l*(b).

[2] 15 U.S.C. 78*l*(g).

[3] 17 CFR 200.30–3(a)(1).

[4] 1 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[1] *See* Letter from Mary M. Dunbar, Vice President and Deputy General Counsel, Nasdaq, to Katherine A. England, Assistant Director, Division of Market Regulation ("Division"), Commission, dated December 4, 2003. In Amendment No. 1, Nasdaq replaced in its entirety the original rule filing.

[4] Nasdaq has represented that even if it eliminates the ADAP data feed prior to the expansion of the TotalView Data Feed, distributors that wish to continue to distribute only the aggregate data (*i.e.*, the aggregate size of attributable and non-attributable quotes and orders at five price levels) may do so by using the aggregate data available from the current Nasdaq Prime data feed. Telephone conversation among Mary M. Dunbar, Vice President and Deputy General Counsel, Nasdaq, Thomas Davin, Senior Vice President, Nasdaq, and David Hsu, Attorney, Division, Commission, on December 10, 2003.

[5] *See* Nasdaq Vendor Alert 2003–51, which is available on *www.nasdaqtrader.com*.

professional subscribers in the Predicate Month × $141.

(F) TotalView Professional Enterprise License:

(i) The TotalView Professional Enterprise License permits a distributor to provide TotalView to all of its entitled NQDS professional subscribers.

(ii) The formula for the TotalView Professional Enterprise License fee is 0.25 × number of NQDS professional subscribers in the Predicate Month × $120.

(4) Non-Display Enterprise License Pilot[.]

In addition or as an alternative to the Enterprise License Pilot, for a nine-month period commencing on April 1, 2003, each distributor of DepthView, PowerView, and/or TotalView may purchase one or more non-display licenses that entitle it to provide non-display benefits of the product to users of controlled devices who do not display the data for an additional fee calculated based on the formulae set forth in [subparagraphs] *(q)(4)*(A)–(C). [below.[5]] *The Non-Display Enterprise License Pilot shall not apply to the Level 1 and NQDS data services. All distributors continue to be obligated to report and pay for all entitled Level 1 and NQDS subscribers throughout the pilot period.* A distributor must purchase a non-display license(s) within two months following the beginning of this program and must agree by contract to pay the fixed monthly fee for the remaining length of the period. The distributor must also pay applicable distributor fees set forth in [subparagraph] *(q)*(1)*(C)* or *(q)*(2)*(A)* [above].

(A) DepthView Non-Display License. A distributor may provide non-display benefits of DepthView to users of controlled devices who do not display the data for an additional fee calculated as 0.25 × the population of non-display controlled devices in March 2003 × $50 for professional users or $25 for non-professional users.

(B) PowerView Non-Display License. A distributor may provide non-display benefits of PowerView to users of controlled devices who do not display the data for an additional fee calculated as 0.35 × the population of non-display controlled devices in March 2003 × $45 for professional users or $20 for non-professional users.

(C) TotalView Non-Display License. A distributor may provide non-display benefits of TotalView to users of controlled devices who do not display the data for an additional fee calculated as 0.25 × the population of non-display controlled devices in March 2003 × $120 for professional users or $141 for non-professional users.

[(4)] *(5) TotalView Entitlement Pilot*

For a one-year pilot period commencing on October 1, 2003, the DepthView, PowerView and TotalView entitlements described above in *(q)* (1) and *(q)*(2) [of this subsection (q)] shall be offered as a single entitlement, "the [ViewSuite entitlement] *TotalView entitlement*," and not offered separately. The *TotalView entitlement* [ViewSuite entitlement] shall allow a subscriber to see all of the data in DepthView, PowerView and TotalView including [the ADAP data feed (aggregated depth at the top five price levels),] the NQDS feed[,] and *the TotalView Data Feed* [Prime (aggregated quotes of all participants in the top five price levels)].

(A)(i) Except as provided in *(q)(5)*[(4)](A)(ii) [below], for the [ViewSuite] *TotalView* entitlement there shall be a $70 monthly charge for each controlled device[, as defined in subsection (q)(1)(A)(i) above].

(ii) A non-professional subscriber[, as defined in subsection (q)(1)(A)(ii) above,] shall pay $14 per month for each controlled device.

(B) The pilot [ViewSuite] *TotalView* entitlement shall not affect the distributor charges [for ADAP data or Prime data] set out in [subsections] (q)(1)(C) and (q)(2)(A) respectively. Those distributors who are presently receiving only aggregate data may at their option continue to receive that feed at the [ADAP] distributor charge set out in [subsection] (q)(1)(C) [above].

(6) Definitions

(A) A "controlled device" is any device that a distributor of the Nasdaq data entitlement package(s) permits to: (i) Access the information in the Nasdaq data entitlement package(s); or (ii) communicate with the distributor so as to cause the distributor to access the information in the Nasdaq data entitlement package(s). If a controlled device is part of an electronic network between computers used for investment, trading or order routing activities, the burden shall be on the distributor to demonstrate that the particular controlled device should not have to pay for an entitlement. For example, in some display systems the distributor gives the end user a choice to see the data or not; a user that chooses not to see it would not be charged. Similarly, in a non-display system, users of controlled devices may have a choice of basic or advanced computerized trading or order routing services, where only the advanced version uses the information. Customers of the basic service then would be excluded from the entitlement requirement.

(B) A "distributor" of a Nasdaq data feed is any firm that receives a Nasdaq data feed directly from Nasdaq or indirectly through another vendor and then distributes it either internally or externally. All distributors shall execute a Nasdaq distributor agreement. Nasdaq itself is a vendor of its data feed(s) and has executed a Nasdaq distributor agreement and pays the distributor charge.

(C) A "non-professional" is a natural person who is neither: (i) registered or qualified in any capacity with the Commission, the Commodities Futures Trading Commission, any state securities agency, any securities exchange or association, or any commodities or futures contract market or association; (ii) engaged as an "investment advisor" as that term is defined in Section 201(11) of the Investment Advisors Act of 1940 (whether or not registered or qualified under that Act); nor (iii) employed by a bank or other organization exempt from registration under federal or state securities law to perform functions that would require registration or qualification if such functions were performed for an organization not so exempt.

(D) "Predicate Month" shall mean December 2002 or, if a distributor reported no Level 1 or NQDS subscribers in December 2002, the most recent month after December 2002 in which the distributor did report Level 1 or NQDS subscribers.

(7) Revenue Sharing

So long as NQDS is subject to the Nasdaq Unlisted Trading Privileges (UTP) Plan, the revenues from TotalView and PowerView that are directly attributable to the sale of NQDS under the currently approved pricing for NQDS shall be shared pursuant to the UTP Plan.

Text of Footnotes to Subsections (q)(1) and (q)(2):

[1. A controlled device is any device that a distributor of the Nasdaq Data Entitlement Package(s) permits to: (a) Access the information in the Nasdaq Data Entitlement Package(s); (b) communicate with the distributor so as to cause the distributor to access the information in the Nasdaq Data Entitlement Package(s). If a controlled device is part of an electronic network between computers used for investment, trading or order routing activities, the burden will be on the distributor to demonstrate that the particular controlled device should not have to pay for an entitlement. For example, in some display systems the distributor gives the end user a choice to see the data or not—a user that chooses not to see it would not be charged. Similarly, in a non-display system, users of controlled devices may have a choice of basic or advanced computerized trading or order routing services, where only the advanced version uses the information. Customers of the basic service would be excluded from the entitlement requirement.

2. A "non-professional" is a natural person who is neither: (a) Registered or qualified in any capacity with the Commission, the Commodities Futures Trading Commission, any state securities agency, any securities exchange or association, or any commodities or futures contract market or association; (b) engaged as an "investment advisor" as that term is defined in Section 201(11) of the Investment Advisors Act of 1940 (whether or not registered or qualified under that Act); nor (c) employed by a bank or other organization exempt from registration under federal or state securities law to perform functions that would require registration or qualification if such functions were performed for an organization not so exempt.

3. So long as NQDS is subject to the Nasdaq Unlisted Trading Privileges (UTP) Plan, the revenues garnered from use of PowerView that are directly attributable to the sale of NQDS under the currently approved pricing for NQDS will be shared pursuant to the UTP Plan.

4. *See* footnote 2 (definition of non-professional).

5. *See* footnote 3 (sharing of revenue pursuant to the UTP Plan).

6. A distributor of a Nasdaq data feed is any firm that receives a Nasdaq data feed directly from Nasdaq or indirectly through another vendor and then distributes it either internally or externally. All distributors must execute a Nasdaq distributor agreement. Nasdaq itself is a vendor of its data feed(s) and will execute a Nasdaq distributor agreement and pay the distributor charge.

7. The NQDS-only fees (incremental to the Level 1 charges) are $30 for professional users and $9 for non-professional users.

8. So long as NQDS is subject to the Nasdaq UTP plan, the revenues from TotalView that are directly attributable to the sale of NQDS under the currently approved pricing for NQDS will be shared pursuant to the UTP Plan.

9. The NQDS-only fees (incremental to the Level 1 charges) are $30 for professional users and $9 for non-professional users.]

Text of Footnotes to Subsection (q)(3):

[3. The Enterprise License Pilot does not apply to the Level 1 and NQDS data services. All distributors continue to be obligated to report and pay for all entitled Level 1 and NQDS subscribers throughout the pilot period.

4. "Predicate Month" shall mean December of 2002 or, if a distributor reported no Level 1 or NQDS subscribers in December of 2002, the most recent month after December of 2002 in which the distributor did report Level 1 or NQDS subscribers.

5. The Non-Display License Pilot does not apply to the Level 1 and NQDS data services. All distributors continue to be obligated to report and pay for all entitled Level 1 and NQDS subscribers throughout the pilot period.]

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Currently, Nasdaq offers two data feeds to distributors to support the proprietary ViewSuite products that are offered to professional and non-professional subscribers. The Aggregated Depth at Price ("ADAP") data feed includes the five best price levels in SuperMontage and the aggregate size of attributable and non-attributable quotes and orders at each of the five price levels, but does not include the individual quotes and orders that make up the aggregate size. The Prime data feed provides all of the information in the ADAP data feed plus the individual quotes and orders at the top five price levels in SuperMontage.[6]

In this rule filing, Nasdaq proposes to rename Prime as the Nasdaq TotalView Data Feed and expand it to include all of the Prime data feed information at all price levels in SuperMontage, rather than just the top five price levels. Nasdaq also proposes to discontinue the ADAP data feed since all of the data currently offered through it would be available in the new TotalView Data Feed. Nasdaq proposes no change to its distributor fees or its professional or non-professional subscriber fees.[7] Under Nasdaq's proposal, current ADAP-only distributors that wish to continue to distribute only the aggregate data (*i.e.*, the aggregate size of attributable and non-attributable quotes and orders at each price level) that is received either directly from Nasdaq via the new TotalView Data Feed or from another distributor may do so for the same distributor fee Nasdaq charges today.[8]

Nasdaq believes that the proposed rule change offers many benefits to investors and market data vendors. First, expanding the Prime data feed to cover all price levels, rather than just the top five price levels, enhances the transparency of the Nasdaq market for both securities professionals and individual investors. Second, current Prime distributors will have an opportunity to reduce their telecommunications charges because the new TotalView Data Feed is expected to use less bandwidth than the Prime data feed. Although the TotalView Data Feed will carry more price levels, it will not have to accommodate message traffic for eliminating quotes that have fallen out of the top five levels in SuperMontage as the Prime data feed did. Third, because the TotalView Data Feed will contain all of the data that is currently carried in the NQDS data feed plus the aggregate size information, some data recipients may choose to discontinue receipt of the NQDS data feed as a way to save telecommunications costs.[9]

[6] If a market participant has multiple attributable orders at one price, the total number of shares available from that market participant at that price is displayed in Prime. The total number of shares making up unattributable quotes and orders at a given price display under the SIZE moniker.

[7] The currently applicable subscriber fees are set forth in proposed paragraph (q)(5) of NASD Rule 7010.

[8] The fee for distributing the aggregate data only from the TotalView data feed will remain $1,000 per month under NASD Rule 7010(q)(1)(C). The fee for distributing the complete TotalView data feed will remain $7,500 per month under NASD Rule 7010(q)(2)(A).

[9] NQDS is the Nasdaq Quote Dissemination Service, a data feed that includes all quotes for Nasdaq issues. The NASD is required to provide the best bid and offer and quote size of each member acting as a market maker under SEC Rule 11Ac1–1(b)(1)(ii), 17 CFR 240.11Ac1–1(b)(1)(ii). As the Securities Information Processor for the UTP Plan, Nasdaq also provides a data feed of the best bid and offer for each Nasdaq issue (the UTP Quote Data Feed or "UQDF") and last sale information (the UTP Trade Data Feed or "UTDF"). The UQDF and UTDF information are sometimes referred to as

Continued

Nasdaq also proposes to eliminate ADAP because the market for it as a separate data feed has been extremely limited. Nasdaq represents that the cost of maintaining a separate feed that carries redundant information is substantial, and Nasdaq does not recoup its costs from the few distributors choosing to take only ADAP. Nasdaq also believes that eliminating the ADAP feed will enable Nasdaq to reduce its overall costs, enabling greater opportunities to maintain low prices on all data products. Finally, Nasdaq represents that almost all of the current recipients of ADAP already receive the Prime data feed. Nasdaq believes that the elimination of ADAP feed will result in minimal disruption to the current recipients.

The proposed rule change also corrects certain subsection and footnote designations that were inadvertently duplicated in the adoption of SR–NASD–2003–27 and SR–NASD–2003–111. SR–NASD–2003–27 added new subsections (q)(3) and (q)(4) and new footnotes 3, 4, and 5, although footnotes with such numbers already existed in the then-effective rule. Nasdaq proposes to correct the duplicate footnote issue by eliminating all footnotes and adding the footnote text to the rule text or to the new subsection (q)(6) or (q)(7) as appropriate. SR–NASD–2003–111 inadvertently added a second subsection designated as (q)(4), which is redesignated as (q)(5). Nasdaq also proposes other non-substantive changes to the rule to make it more readable and consistent.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of section 15A of the Act,[10] in general and with section 15A(b)(5)[11] and 15A(b)(6)[12] of the Act, in particular, in that the proposal provides for the equitable allocation of reasonable dues, fees, and other charges among members and issuers and other persons using any facility or system which the association operates or controls, and it benefits investors and market data vendors. Under the proposal, one data feed will be expanded and another will be discontinued, but Nasdaq will not change its prices for either distributors or professional or non-professional subscribers. Nasdaq believes that expanding the Prime data feed to cover all price levels, rather than just the top five price levels, enhances the transparency of the Nasdaq market for both securities professionals and individual investors. In addition, Nasdaq believes that most market data distributors will have an opportunity to reduce their telecommunications charges and/or the number of feeds they receive.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Nasdaq believes that the expansion of the Prime data feed to include all price levels will benefit distributors and subscribers by providing more data at the same price. Nasdaq also believes that this benefit substantially outweighs any potential additional cost to the few distributors receiving only the ADAP feed directly from Nasdaq that may have to increase the bandwidth of their telecommunications lines to receive the new TotalView data feed directly from Nasdaq. Nasdaq represents that the proposed rule change also would not violate any of Nasdaq's contractual obligations.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve such proposed rule change, or

B. institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Comments should be submitted electronically at the following e-mail address: *rule-comments@sec.gov*. All comment letters should refer to File No. SR–NASD–2003–162. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, comments should be sent in hard copy or by e-mail but not by both methods. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR–NASD–2003–162 and should be submitted by January 7, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–31073 Filed 12–16–03; 8:45 am]

BILLING CODE 8010–01–P

Level 1. Nasdaq is required under current law to offer the preceding three products. In contrast, the ViewSuite products are proprietary and Nasdaq has no legal obligation to offer them.

[10] 15 U.S.C. 78o–3.

[11] 15 U.S.C. 78o–3(b)(5).

[12] 15 U.S.C. 78o–3(b)(6).

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48894; File No. SR–PCX–2003–42]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change and Amendment No. 1 Thereto by the Pacific Exchange, Inc. To Amend its Rules Governing the Execution of Complex Orders Involving Options and Single Stock Futures

December 8, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 15, 2003, the Pacific Exchange, Inc. ("PCX" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in items I, II and III below, which items have been substantially prepared by the PCX. On November 14, 2003, the PCX filed Amendment No. 1 to the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Mai Sharif Shiver, Senior Attorney, Regulatory Policy, PCX, to Nancy J. Sanow, Assistant Director, Division of Market Regulation, Commission, dated November 13, 2003 ("Amendment No. 1") (replacing the form 19b–4 in its entirety). In Amendment No. 1, the Exchange, in part, clarified the margin requirements for members, requiring members who effect SSF/option order transactions to elect to be bound by the initial and maintenance margin requirements of either the Chicago Board Options Exchange ("CBOE") or the New York Stock Exchange ("NYSE"), as those rules may be in effect from time to time. In addition, the Exchange amended the filing to make it immediately effective. For purposes of calculating the 60-day abrogation period, the Commission considers the period to have commenced on November 14, 2003, the date the PCX filed Amendment No. 1. In addition, the Exchange made a technical correction to its rule text and amended its discussion of its change to its proposed rule 6.62. Telephone conversation between Mai Sharif Shiver, Senior Attorney, Regulatory Policy, PCX, and Elizabeth MacDonald, Attorney, Division of Market Regulation, Commission, December 8, 2003.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The PCX proposes to amend its rules governing the execution of complex orders involving options and single stock futures ("SSF"). The text of the proposed rule change is set forth below. Proposed new language is in *italics*; proposed deletions are in [brackets].

* * * * *

Rules of the Board of Governors

Rule 6

Options Trading

"Crossing" Orders and Stock/Option, *SSF/Option* Orders

Rule 6.47(a)–(e)—No change.

(f) Stock/Option *and SSF/Option* Orders.

(1) When a stock/option or *SSF/option* order is taken to a crowd for execution, the stock transaction *or SSF transaction* must be effected prior to the option transaction pursuant to Rule 6.47, Commentary .04. The following procedure applies to all executions of stock/option *and SSF/option* orders: After an agreement with other members of the crowd has been reached as to the terms of the transaction, the option order tickets must be written up and time stamped. However, the order tickets should not be turned in to the Order Book Official at this time. The members shall attempt to immediately effect the transaction in the underlying or related security *or SSF*. If the stock *or SSF* transaction cannot be executed immediately or is effected at a price other than the agreed-upon price, the members shall not be held to the option transaction. If the stock *or SSF* transaction is effected at the agreed-upon price, then all the members who participated in the option transaction shall be held to their agreed-upon price. At the time the stock *or SSF* transaction is effected, the option trade tickets should be given to the Order Book Official.

(2) SSF/Option Orders Margin Requirements

(a) Any Member or Member Organization must elect to be bound by the initial and maintenance margin requirements of either the Chicago Board of Options Exchange or the New York Stock Exchange as the same may be in effect from time to time;

(b) Such election shall be made in writing by a notice filed with the Exchange.

(c) Upon the filing of such election, a Member will be bound to comply with the margin rules of the Chicago Board of Options Exchange or the New York Stock Exchange, as applicable, as though such rules were part of these rules.

Commentary:

.01–.06—No change.

Certain Types of Orders Defined

Rule 6.62(a)–(i)—No change.

(j) *Combination orders [with no-equity options legs]. One or more legs of a combination order may be to purchase or sell a stated number of units of another security.*

(1) Stock/option order. A stock/option order is an order to buy or sell a stated number of units of an underlying *stock* or a [related] security *convertible into the underlying stock ("convertible security")* coupled with either *(A)*[(i)] the purchase or sale of option contract(s) [of the same series] on the opposite side of the market representing either the same number of units of the underlying *stock or convertible security or the number of units of the underlying stock necessary to create a delta neutral position;* [or related security] or *(B)*[(ii)] the purchase [and] *or* sale of an equal number of put and call option contracts, each having the same exercise price, expiration date and *each representing the same* number of units of [the underlying or related security,] stock as, and on the opposite side of the market *from, the stock or convertible security portion of the order.* [representing in aggregate twice the number of units of the underlying or related security.]

(2) Single Stock Future ("SSF")/Option Order. An SSF/option order is an order to buy or sell a stated number of units of a single stock future or a security convertible into a single stock future ("convertible SSF") coupled with either (A) the purchase or sale of option contract(s) on the opposite side of the market representing either the same number of units of stock underlying the single stock future or convertible SSF, or the number of units of stock underlying the single stock future or convertible SSF necessary to create a delta neutral position; or (B) the purchase or sale of an equal number of put and call option contracts, each having the same exercise price, expiration date, and each representing the same number of units of underlying stock, as and on the opposite side of the market from, the stock underlying the single stock future or convertible SSF portion of the order.

Priority and Order Allocation Procedures

Rule 6.75. Except as provided by Rule 6.76 below, the following rules of priority shall be observed with respect to bids and offers:

(a)–(d)—No change.

(e) Notwithstanding anything in paragraphs (a) and (b) to the contrary, when a member holding a spread order, a straddle order, or a combination order and bidding or offering on the basis of a total credit or debit for the order has determined that the order may not be executed by a combination of transactions with or within the bids and offers displayed by the Order Book Official or other members, in procedures determined by the Options Floor Trading Committee, then the order may be executed as a spread, straddle, or combination at the total credit or debit with one or more members without giving priority to bids or offers for the individual option series of the Order Book Official or of other members at the post that are no better than the bids or offers comprising such total credit or debit. Under the circumstances described above, a stock/option *or SSF/option* order has priority over the bids and offers of members in the trading crowd but not over the bids and offers of the Order Book Official.

(f)–(h)—No change.

Commentary:

.01–.04—No change.

Transactions Off the Exchange

Rule 6.78 (a)–(f)—No change.

Commentary:

.01–.02—No change.

.03 To the extent applicable, all other Exchange rules, including Rule 6.49, Solicited Transactions, will apply to the

transfer procedure set forth in subsections (d) through (f). The following Rules do not apply to transfer procedures: 6.71 (Meaning of Premium Bids and Offers); 6.74 (Bids and Offers in Relation to Units of Trading); 6.75 (Priority of Bids and Offers); 6.76 (Priority of Split Price Transactions); 6.47 ("Crossing" Orders and Stock/Option, *SSF/Option* Orders); and 7.9 (Meaning of Premium Bids and Offers, Index Options).

.04—No change.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the PCX included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in item IV below. The Exchange prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

PCX Rule 6.47(f) governs the execution process for complex orders including stock/option orders. The Exchange is proposing to amend this rule to authorize the execution of complex orders involving options and SSFs. The proposed procedures for the execution of SSF/option orders are virtually identical to the existing stock/option procedure and would permit members to enter SSF/option orders. As with stock/option orders, the option leg of the transaction would have priority over the bids (offers) of members at the same price in the trading crowd but not over bids (offers) in the limit order book.

When an SSF/option order is represented in the crowd for execution, the SSF transaction must be effected prior to the option leg of the trade pursuant to PCX Rule 6.47, Commentary .04. As with stock/option orders, if the parties are unable to execute the SSF leg of the transaction due to a change in market conditions, then they could cancel the option leg of the transaction. If the stock or SSF transaction is effected at the agreed-upon price, then all the members who participated in the option transaction shall be held to their agreed-upon price. At the time the stock or SSF transaction is effected, the option trade tickets should be given to the Order Book Official.

The Exchange also seeks to add a margin requirement as proposed PCX Rule 6.47(f)(2) that would require a Member or Member Organization who effects SSF/option order transactions to elect to be bound by the initial and maintenance margin requirements of either the CBOE or the NYSE as those rules may be in effect from time to time. The Member or Member Organization will be required to make its election in writing and file the same to the Exchange's Financial and Operational Compliance Department. Upon filing of the election, the Member or Member Organization will be bound to comply with the margin rules of the CBOE or the NYSE, as applicable, as though such rules were incorporated into the Exchange's rules.[4]

The Exchange also seeks to amend its Rule 6.62 that defines certain types of orders. Specifically, the Exchange seeks to modify PCX Rule 6.62(j) (Combination Orders) in order to: (i) Add a definition for SSF/option order types and (ii) modify the definition of stock/option order that correlates with the new proposed SSF definition. The Exchange proposes new PCX Rule 6.62(j)(2) in order to define a SSF/option order as an order to buy or sell a stated number of units of a single stock future or a security convertible into a SSF[5] coupled with either: (A) the purchase or sale of option contracts on the opposite side of the market representing the same number of units of stock underlying the SSF or convertible SSF or the number of units of stock underlying the SSF or convertible SSF necessary to create a delta neutral position, or (B) the purchase or sale of an equal number of put and call option contracts each having the same exercise price, expiration date, and representing the same number of units of underlying stock as, and on the opposite side of, the market from the stock underlying the single stock future or convertible SSF portion of the order. The proposed definition is identical to that used by the ISE.[6]

The Exchange also seeks to modify PCX Rule 6.62(j)(1) in order to amend its existing definition of stock/option order so that its provisions are parallel to its newly proposed definition for SSF/option orders and identical to the definition used by ISE Rule 722.

The Exchange proposes to amend PCX Rule 6.75 regarding priority and order allocation procedures in order to clarify that in addition to stock/option orders, SSF/option orders will also have priority over the bids and offers of members in the trading crowd but not over bids and offers of the Order Book Official.

The Exchange proposes to amend PCX Rule 6.78, Commentary .03 regarding transactions off of the Exchange in order to clarify that SSF will be included as a component of the rules that do not apply to transfer procedures off the floor as set forth in sub-sections (d) through (f) of PCX Rule 6.78.

2. Statutory Basis

The PCX believes that the rule change is consistent with section 6(b) of the Act in general[7] and section 6(b)(5) of the Act in particular.[8] The Exchange believes that the proposed rule change is intended to remove impediments to and perfect the mechanism for a free and open market and a national market system, and, in general, to protect investors and the public interest. The Exchange also believes that making additional complex orders involving options and SSFs available to investors will offer investors new trading opportunities on the Exchange and enhance the Exchange's competitive position.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change, as amended, does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if the proposal is consistent with the protection of investors and the public interest; and the Exchange has given the Commission written notice of its intention to file the proposed rule change at least five business days prior to filing, or such shorter time as designated by the Commission, it has become effective pursuant to section 19(b)(3)(A) of the Act[9] and Rule 19b–4(f)(6)[10] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.[11]

The PCX has requested the Commission to waive the 30-day operative delay. The Commission has decided to waive the 30 day operative delay. The Commission believes such waiver is consistent with the protection of investors and the public interest. The Commission notes that PCX's proposal is substantially similar to ISE's rules.[12] For these reasons, the Commission designates the proposal to be effective and operative upon filing of Amendment No. 1 with the Commission.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the amended proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Comments may also be submitted electronically at the following e-mail address: *rule-comments@sec.gov*. All comment letters should refer to File No. SR–PCX–2003–42. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, comments should be sent in hard copy or by e-mail, but not by both methods. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the PCX. All submissions should refer to File No. SR–PCX–2003–42 and should be submitted by January 7, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–31072 Filed 12–16–03; 8:45 am]

BILLING CODE 8010–01–P

[4] This proposal is substantially similar to Rule 1202 of the International Securities Exchange ("ISE").

[5] To the extent that "a security convertible into a SSF" means an option on a SSF, the Commission notes that trading of such products has not yet been approved by the Commission and the Commodity Futures Trading Commission. Nothing in this notice should be interpreted as granting such approval.

[6] *See* ISE Rule 722.

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(6).

[11] For purposes of calculating the 60-day abrogation period, the Commission considers the period to have commenced on November 14, 2003, the date the PCX filed Amendment No. 1.

[12] For purposes of accelerating the operative date of the proposal, the Commission has considered the proposed rule's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(3)(f).

[13] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3560]

State of Texas

Harris County and the contiguous counties of Brazoria, Chamber, Fort Bend, Galveston, Liberty, Montgomery and Waller in the State of Texas constitute a disaster area due to excessive rain, flooding and tornadoes that occurred November 17 through November 18, 2003. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on February 9, 2004, and for economic injury until the close of business on September 8, 2004, at the address listed below or other locally announced locations:

U.S. Small Business Administration, Disaster Area 3 Office, 14925 Kingsport Road, Fort Worth, TX 76155–2243.

The interest rates are:

For Physical Damage:

Homeowners with credit available elsewhere: 6.250%;

Homeowners without credit available elsewhere: 3.125%;

Businesses with credit available elsewhere: 6.123%;

Businesses and non-profit organizations without credit available elsewhere: 3.061%;

Others (including non-profit organizations) with credit available elsewhere: 4.875%.

For Economic Injury:

Businesses and small agricultural cooperatives without credit available elsewhere: 3.061%.

The number assigned to this disaster for physical damage is 356006 and for economic injury the number is 9Y3900.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: December 8, 2003.

Hector V. Barreto,

Administrator.

[FR Doc. 03–31080 Filed 12–16–03; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3561]

Commonwealth of Virginia

As a result of the President's major disaster declaration on December 9, 2003, I find that the Independent City of Galax, and the counties of Bland, Buchanan, Giles, Smyth, and Tazewell in the Commonwealth of Virginia constitute a disaster area due to damages caused by severe storms and flooding occurring on November 18, 2003 and continuing through November 19, 2003. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on February 9, 2004 and for economic injury until the close of business on September 9, 2004 at the address listed below or other locally announced locations:

U.S. Small Business Administration, Disaster Area 1 Office, 360 Rainbow Blvd., South 3rd Fl., Niagara Falls, NY 14303–1192.

In addition, applications for economic injury loans from small businesses located in the following contiguous counties may be filed until the specified date at the above location: Carroll, Craig, Dickenson, Grayson, Montgomery, Pulaski, Russell, Washington, and Wythe Counties in the Commonwealth of Virginia; McDowell, Mercer, Mingo, Monroe, and Summers Counties in the State of West Virginia; and Pike County in the Commonwealth of Kentucky.

The interest rates are:

For Physical Damage:

Homeowners with credit available elsewhere: 6.250%;

Homeowners Without Credit Available Elsewhere: 3.125%;

Businesses with credit available elsewhere: 6.123%;

Businesses and non-profit organizations without credit available elsewhere: 3.061%; Others (Including non-

profit organizations) with credit available elsewhere: 4.875%.

For Economic Injury:

Businesses and Small Agricultural Cooperatives Without Credit Available Elsewhere: 3.061%.

The number assigned to this disaster for physical damage is 356111. For economic injury the number is 9Y4000 for Virginia; 9Y4100 for West Virginia; and 9Y4200 for Kentucky.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: December 10, 2003.

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. 03–31079 Filed 12–16–03; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3558]

State of West Virginia (Amendment #4)

In accordance with a notice received from the Department of Homeland Security—Federal Emergency Management Agency, effective December 9, 2003, the above numbered declaration is hereby amended to include Braxton, Lewis, Logan, and Taylor Counties as disaster areas due to damages caused by severe storms, flooding and landslides occurring on November 11, 2003, and continuing through November 30, 2003.

All other counties contiguous to the above named primary counties have been previously declared. All other information remains the same, *i.e.*, the deadline for filing applications for physical damage is January 20, 2004, and for economic injury the deadline is August 23, 2004.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: December 10, 2003.

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. 03–31078 Filed 12–16–03; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice No. 4527]

Bureau of Oceans and International Environmental and Scientific Affairs; Request for Nominations for the Scientific Advisory Subcommittee of the General Advisory Committee to the United States Section to the Inter-American Tropical Tuna Commission

SUMMARY: The Department of State is seeking applications and nominations for the Scientific Advisory Subcommittee of the General Advisory Committee to the Inter-American Tropical Tuna Commission (IATTC). The purpose of the Scientific Advisory Subcommittee is to provide public input and advice to the United States Section to the IATTC in the formulation of U.S. policy and positions at meetings of the IATTC and its subsidiary bodies. The Scientific Advisory Subcommittee shall also function as the National Scientific Advisory Committee (NATSAC) provided for in the Agreement on the International Dolphin Conservation Program (AIDCP). The United States Section to the IATTC is composed of the U.S. Commissioners to the IATTC, appointed by the President, and the Deputy Assistant Secretary of State for Oceans and Fisheries or his or her designated representative. Authority to establish the Scientific Advisory Subcommittee is provided by the Tuna Conventions Act of 1950, as amended by the International Dolphin Conservation Program Act (IDCPA) of 1997.

DATES: Nominations must be submitted on or before February 17, 2004.

ADDRESSES: Nominations should be submitted to David Balton, Deputy Assistant Secretary for Oceans and Fisheries, Bureau of Oceans and International Environmental and Scientific Affairs, Room 7831, Department of State, Washington, DC 20520–7818; or by fax to 202–736–7350.

FOR FURTHER INFORMATION CONTACT: David Hogan, Office of Marine Conservation, Department of State: 202–647–2335.

SUPPLEMENTARY INFORMATION:

Scientific Advisory Subcommittee

The Tuna Conventions Act (16 U.S.C. 953, Section 4) provides that the Secretary of State, in consultation with the U.S. Commissioners to the IATTC, shall appoint a Scientific Advisory Subcommittee (the Subcommittee) of the General Advisory Committee. The Subcommittee is composed of not fewer than 5 and not more than 15 qualified scientists with balanced representation from the public and private sectors, including non-governmental conservation organizations. The Subcommittee advises the Committee and the U.S. Section on matters including: the conservation of ecosystems; the sustainable uses of living marine resources related to the tuna fishery in the eastern tropical Pacific Ocean; and the long-term conservation and management of stocks of living marine resources in the eastern tropical Pacific Ocean.

In addition, at the request of the Committee, the U.S. Commissioners, or the Secretary of State, the Subcommittee performs such functions and provides such assistance as may be required by formal agreements entered into by the United States for the eastern Pacific tuna fishery, including the AIDCP. The functions may include: the review of data from the International Dolphin Conservation Program (IDCP), including data received from the IATTC staff; recommendations on research needs and the coordination and facilitation of such research; recommendations on scientific reviews and assessments required under the IDCP; recommendations with respect to measures to assure the regular and timely full exchange of data among the Parties to the AIDCP and each nation's NATSAC (or its equivalent); and consulting with other experts as needed. The Subcommittee is invited to have representatives attend all non-executive meetings of the U.S. Section and the General Advisory Committee and is given full opportunity to examine and to be heard on all proposed programs of scientific investigation, scientific reports, and scientific recommendations of the Commission. Representatives of the Subcommittee may attend meetings of the IATTC and the AIDCP as members of the U.S. delegation or otherwise in accordance with the rules of those bodies governing such participation. Participation as a member of the U.S. delegation is subject to such limits as may be placed on the size of the delegation.

National Scientific Advisory Committee

The Subcommittee also functions as the NATSAC established pursuant to Article XI of the AIDCP. In this regard, the Subcommittee performs the functions of the NATSAC as specified in Annex VI of the AIDCP including, but not limited to: receiving and reviewing relevant data, including data provided to the National Marine Fisheries Service (NMFS) by the IATTC Staff; advising and recommending to the U.S. Government measures and actions that should be undertaken to conserve and manage stocks of living marine resources in the AIDCP Area; making recommendations to the U.S. Government regarding research needs related to the eastern Pacific Ocean tuna purse seine fishery; promoting the regular and timely full exchange of data among the Parties on a variety of matters related to the implementation of the AIDCP; and consulting with other experts as necessary in order to achieve the objectives of the Agreement.

General Provisions

Each appointed member of the Committee and the Subcommittee/NATSAC is appointed for a term of 3 years and may be reappointed. Logistical and administrative support for the operation of the Subcommittee will be provided by the Department of State, Bureau of Oceans and International Environmental and Scientific Affairs, and by the Department of Commerce, National Marine Fisheries Service. Members receive no compensation for their service on the Subcommittee/NATSAC, nor will members be compensated for travel or other expenses associated with their participation.

Procedures for Submitting Applications/Nominations

Applications/nominations for the Scientific Advisory Subcommittee/NATSAC should be submitted to the Department of State (See **ADDRESSES**). Such applications/nominations should include the following information:

(1) Full name/address/phone/fax and e-mail of applicant/nominee;

(2) Applicant/nominee's organization or professional affiliation serving as the basis for the application/nomination;

(3) Background statement describing the applicant/nominee's qualifications and experience, especially as related to the tuna purse seine fishery in the eastern tropical Pacific Ocean or other factors relevant to the implementation of the Convention establishing the IATTC or the AIDCP;

(4) A written statement from the applicant/nominee of intent to participate actively and in good faith in the meetings and activities of the Scientific Advisory Subcommittee/NATSAC. Applicants/nominees who submitted material in response to the **Federal Register** notices published by the U.S. Department of State on November 12, 2002 and February 5, 2003 need not resubmit their applications pursuant to this notice.

Dated: December 1, 2003.

David A. Balton,

Deputy Assistant Secretary for Oceans and Fisheries, Department of State.

[FR Doc. 03–31134 Filed 12–16–03; 8:45 am]

BILLING CODE 4710–09–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Determinations Under the African Growth and Opportunity Act

AGENCY: Office of the United States Trade Representative.

ACTION: Notice.

SUMMARY: The United States Trade Representative (USTR) has determined that Cote d'Ivoire has adopted an effective visa system and related procedures to prevent unlawful transshipment and the use of counterfeit documents in connection with shipment of textile and apparel articles and has implemented and follows, or making substantial progress toward implementing and following, the customs procedures required by the African Growth and Opportunity Act (AGOA). Therefore, imports of eligible products from Cote d'Ivoire qualify for the textile and apparel benefits provided under the AGOA.

DATES: December 17, 2003.

FOR FURTHER INFORMATION CONTACT: Patrick Coleman, Director for African Affairs, Office of the United States Trade Representative, (202) 395–9514.

SUPPLEMENTARY INFORMATION: The AGOA (Title I of the Trade and Development Act of 2000, Pub. L. 106–200, as amended by section 3108 of the Trade Act of 2002) provides preferential tariff treatment for imports of certain textile and apparel products of beneficiary sub-Saharan African Countries. The textile and apparel trade benefits under the AGOA are available to imports of eligible products from countries that the President designates as "beneficiary sub-Saharan African countries," provided that these countries: (1) Have adopted an effective visa system and related procedures to prevent unlawful transshipment and the use of counterfeit documents; and (2) have implemented and follow, or are making substantial progress toward implementing and following, certain customs procedures that assist the Customs Service in verifying the origin of the products.

In Proclamation 7561 (May 16, 2002), the President designated Cote d'Ivoire as a "beneficiary sub-Saharan African country" and proclaimed that, for purposes of section 112(b)(3)(B) of the AGOA, Cote d'Ivoire shall be considered a lesser developed beneficiary sub-Saharan African country. In Proclamation 7350 (October 2, 2002), the President delegated to the USTR the authority to determine whether designated countries have met the two requirements described above. The President directed the USTR to announce any such determinations in the **Federal Register** and to implement them through modifications of the Harmonized Tariff Schedule of the United States (HTS). Based on actions that Cote d'Ivoire has taken, I have determined that Cote d'Ivoire has satisfied these two requirements.

Accordingly, pursuant to the authority vested in the USTR by Proclamation 7350, U.S. note 7(a) to subchapter II of chapter 98 of the HTS, and U.S. notes 1 and 2(d) to subchapter XIX of chapter 98 of the HTS are each modified by inserting "Cote d'Ivoire" in alphabetical sequence in the list of countries. The foregoing modifications to the HTS are effective with respect to articles entered, or withdrawn from warehouse for consumption, on or after the effective date of this notice. Importers claiming preferential tariff treatment under the AGOA for entries of textile and apparel articles should ensure that those entries meet the applicable visa requirements. *See Visa Requirements Under the African Growth and Opportunity Act*, 66 FR 7837 (2001).

Robert B. Zoellick,

United States Trade Representative.

[FR Doc. 03–31133 Filed 12–16–03; 8:45 am]

BILLING CODE 3190–W3–M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Determinations Under the African Growth and Opportunity Act

AGENCY: Office of the United States Trade Representative.

ACTION: Notice.

SUMMARY: The United States Trade Representative (USTR) has determined that Niger has adopted an effective visa system and related procedures to prevent unlawful transshipment and the use of counterfeit documents in connection with shipments of textile and apparel articles and has implemented and follows, or is making substantial progress toward implementing and following, the customs procedures required by the African Growth and Opportunity Act (AGOA). Therefore, imports of eligible

products from Niger qualify for the textile and apparel benefits provided under the AGOA.

DATES: Effective December 17, 2003.

FOR FURTHER INFORMATION CONTACT: Patrick Coleman, Director for African Affairs, Office of the United States Trade Representative, (202) 395–9514.

SUPPLEMENTARY INFORMATION: The AGOA (Title I of the Trade and Development Act of 2000, Pub. L. 106–200) provides preferential tariff treatment for imports of certain textile and apparel products of beneficiary sub-Saharan African countries. The textile and apparel trade benefits under the AGOA are available to imports of eligible products from countries that the President designates as "beneficiary sub-Saharan African countries," provided that these countries: (1) Have adopted an effective visa system and related procedures to prevent unlawful transshipment and the use of counterfeit documents; and (2) have implemented and follow, or are making substantial progress toward implementing and following, certain customs procedures that assist the Customs Service in verifying the origin of the products.

In Proclamation 7350 (Oct. 2, 2000), the President designated Niger as a "beneficiary sub-Saharan African country." Proclamation 7350 delegated to the USTR the authority to determine whether designated countries have met the two requirements described above. The President directed the USTR to announce any such determinations in the **Federal Register** and to implement them through modifications of the Harmonized Tariff Schedule of the United States (HTS). Based on actions that Niger has taken, I have determined that Niger has satisfied these two requirements.

Accordingly, pursuant to the authority vested in the USTR by Proclamation 7350, U.S. note 7(a) to subchapter II of chapter 98 of the HTS and U.S. note 1 to subchapter XIX of chapter 98 of the HTS are each modified by inserting "Niger" in alphabetical sequence in the list of countries. The foregoing modifications to the HTS are effective with respect to articles entered, or withdrawn from warehouse for consumption, on or after the effective date of this notice. Importers claiming preferential tariff treatment under the AGOA for entries of textile and apparel articles should ensure that those entries meet the applicable visa requirements. *See Visa Requirements Under the African Growth and Opportunity Act*, 66 FR 7837 (2001).

Robert B. Zoellick,

United States Trade Representative.

[FR Doc. 03–31132 Filed 12–16–03; 8:45 am]

BILLING CODE 3190–W3–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Aircraft Certification Policy Notice

AGENCY: Federal Aviation Administration (DOT).

ACTION: Notice of availability and requests for public comment; correction.

SUMMARY: This action corrects the Internet address needed to acquire a copy of the proposed Certification Policy Notice for approving Complex Supplemental Type Certificates (STC). This action also includes under the heading **ADDRESSES**, an Internet address for those persons who desire to submit their comments electronically.

DATES: Identify comments as Certification Policy Complex STC and they must arrive by February 12, 2004.

ADDRESSES: Send all comments on the proposed Certification Policy Notice to: Federal Aviation Administration, Aircraft Certification Service, Aircraft Engineering Division, Room 815, 800 Independence Avenue, SW., Washington, DC 20591. Attn: Stephen (Steve) Flanagan, AIR–110. Or, deliver comments to: Federal Aviation Administration, Room 815, 800 Independence Avenue, SW., Washington, DC 20591. You may electronically submit comments on the proposal to the following Internet address: *9-awa-avr-air-policycomments@faa.gov*. Include in the subject line of your e-Mail message the words "Complex STC."

FOR FURTHER INFORMATION CONTACT: Stephen (Steve) Flanagan, Aerospace Engineer, Federal Aviation Administration, Aircraft Certification Service, Aircraft Engineering Division, Certification Procedures Branch, AIR–110, Room 815, 800 Independence Avenue, SW., Washington, DC 20591, Telephone (202) 267–3549, FAX (202) 267–5340. E-mail *steve.flanagan@faa.gov*.

SUPPLEMENTARY INFORMATION:

Comments Invited

You may comment on the proposed Certification Policy Notice listed in this notice by sending such written data, views, or arguments to the above listed address. You may also examine comments received on the proposed Certification Policy Notice, before and after the comment closing date, in Room 815, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591, weekdays except Federal holidays, between 8:30 a.m. and 4:30 p.m. The Director of the Aircraft Certification Service will consider all communications received by the closing date before issuing the final Certification Policy Notice.

Background

We typically issue STCs that permit installation on any aircraft of a specific type and model designation. Aircraft compatibility is addressed by the following limitation: "The installer is responsible for determining the compatibility of this STC with other previously approved modifications." Nevertheless there have been installations made on inappropriate aircraft. These inappropriate installations could have been prevented if STC approvals were restricted to a specified baseline aircraft configuration that includes details of the STC physical and functional interfaces with the prototype aircraft.

Applicant's installation drawings or other installation instructions have not always been detailed enough for accurate replication of the design. This is especially true when follow-on STC installations occur at facilities other than that used by the STC holder for the prototype installation.

The STC certification process does not adequately address how to evaluate the compatibility of an STC with other previously installed STCs, major alterations or repairs. We need a more rigorous compatibility evaluation for certain STCs. This proposed policy ensures that the modified aircraft will be airworthy.

How To Get Copies

You may get a copy of the proposed Certification Policy Notice via the Internet at, *http://www.airweb.faa.gov/rgl*, or by contacting the person listed in the section titled **FOR FURTHER INFORMATION CONTACT**.

Issued in Washington, DC, on December 11, 2003.

Nancy Lane,

Acting Manager, Aircraft Engineering Division, Aircraft Certification Service.

[FR Doc. 03–31097 Filed 12–16–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Policy Statement No. ANM–03–117–58; Flight Data Recording Systems on Transport Category Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed policy; request for comments.

SUMMARY: The Federal Aviation Administration (FAA) announces the availability of proposed policy that provides clarification of policy and advisory material associated with certification of flight data recording systems on transport category airplanes.

DATES: Send your comments on or before January 16, 2004.

ADDRESSES: Address your comments to the individual identified under **FOR FURTHER INFORMATION CONTACT**.

FOR FURTHER INFORMATION CONTACT: Forrest Keller, Federal Aviation Administration, Transport Airplane Directorate, Transport Standards Staff, Safety Management Branch, ANM–117, 1601 Lind Avenue SW., Renton, WA 98055–4056; telephone (425) 227–2790; fax (425) 227–1320; e-mail: *forrest.keller@faa.gov*.

SUPPLEMENTARY INFORMATION:

Comments Invited

The proposed policy is available on the Internet at the following address: *http:///www.airweb.faa.gov/rgl*. If you do not have access to the Internet, you can obtain a copy of the policy by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**.

The FAA invites your comments on this proposed policy. We will accept your commenters, data, views, or arguments by letter, fax, or e-mail. Send your comments to the person listed in **FOR FURTHER INFORMATION CONTACT**. Mark your comments, "Comments to Policy Statement ANM–03–117–58."

Use the following format when preparing your comments:

- Organize your comments issue-by-issue.
- For each issue, state what specific change you are requesting to the proposed policy.
- Include justification, reasons, or data for each change you are requesting.

We also welcome comments in support of the proposed policy. We will consider all communications received on or before the closing date for comments. We may change the proposed policy because of the comments received.

Background

This proposed policy:

- Establishes working definitions for the terms "filtered data" and "method of readily retrieving" and describes how these terms apply within a Flight Data Recorder (FDR) system certification program.
- Explains how FDR operational rules in 14 CFR parts 121, 125, and 135 affect certification of FDR systems, as well as the scope of findings to be made on such programs.
- Clarifies the guidance associated with AC 20–141, "Airworthiness and Operational Approval of Digital Flight Data Recorder Systems," particularly paragraph 7b(1) that deals with "filtered" data.
- Addresses how to document compliance findings associated with the "intended function" requirement of 14 CFR 25.1301 for FDR installations approved as part of type, amended type, or supplemental type certification programs.

Issued in Renton, Washington on December 4, 2003.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–31030 Filed 12–16–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

Environmental Impact Statement: Metrocenter Corridor in Phoenix, AZ

AGENCY: Federal Transit Administration, DOT.

ACTION: Notice of intent to prepare an environmental impact statement (EIS).

SUMMARY: The Federal Transit Administration (FTA) and Valley Metro Rail, Inc., intend to prepare an Alternatives Analysis (AA) and an Environmental Impact Statement (EIS) in accordance with the National Environmental Policy Act (NEPA) on a proposal by Valley Metro Rail, Inc. to provide additional transit service to the northwest portion of the City of Phoenix. The AA/EIS will consider the following alternatives: (1) A No-Build Alternative, consisting of improvements contained in the Maricopa Association of Governments (MAG) Long Range Transportation Plan and the Phoenix Transit Plan and programmed improvements with the exception of connections to the planned Central Phoenix/East Valley Light Rail Transit Project that is scheduled to begin operation in December 2006; (2) Transportation System Management Alternative (TSM), consisting of all reasonable cost-effective transit service improvements within the Metrocenter Corridor short of a major investment in a New Starts project; (3) Bus Rapid Transit (BRT) Alternatives; (4) Light Rail Transit (LRT) At Grade Alternatives; and (5) LRT Aerial Alternatives. The type, location, and need for ancillary facilities, such as maintenance facilities, will also be considered for each alternative. In addition, alternatives that are identified from the scoping process will be evaluated in the AA. Scoping will be accomplished through correspondence and discussions with interested persons; organizations; and Federal, State, and local agencies; and through public and agency meetings. Depending on the outcome of the scoping process and the analysis of a wide range of transit alternatives, a Locally Preferred Alternative (LPA) will be selected and evaluated in the EIS. The EIS will evaluate the potential impacts of the selected investment strategy (the Build Alternative) and a No-Build Alternative.

DATES: *Comment Due Date:* Written comments on the scope of alternatives and impacts to be considered in the AA/EIS must be received no later than January 27, 2004, and must be sent to Valley Metro Rail, Inc. at the address indicated below.

Scoping Meetings: Valley Metro Rail, Inc. will conduct two identical scoping meetings for the public. These meetings will be held on January 13, 2004, from 7 p.m. to 9 p.m. at the Westwind Preparatory Academy Charter High School, located at 2045 West Northern Avenue, Phoenix, Arizona; and January 15, 2004, from 6 p.m. to 8 p.m. at the Orangewood Elementary School, located at 7337 North 19th Avenue, Phoenix, Arizona. In addition, a scoping meeting for governmental agencies will be held on January 20, 2004, from 2 p.m. to 4 p.m. at the Valley Metro Rail, Inc. LRT Board Room, located at 411 North Central Avenue, Suite 200, Phoenix, Arizona.

ADDRESSES: Written comments should be sent to Mr. Jim Mathien, Metrocenter Corridor Study Project Manager, Valley Metro Rail, Inc., 411 North Central Avenue, Suite 200, Phoenix, Arizona 85004. e-mail: *jmathien@valleymetro.org*. Phone: (602) 744–5598. To be added to the mailing list, contact Mr. Jim Mathien at the address listed above. Please specify the mailing list for the Metrocenter Corridor Study Alternatives Analysis/Draft Environmental Impact Statement (AA/DEIS). Persons with special needs such

as sign language interpretation should contact Ruben Landa, Public Involvement Coordinator, Valley Metro Rail, Inc., 411 North Central Avenue, Suite 200, Phoenix, Arizona 85004. E-mail: *rlanda@valleymetro.org*. Phone: (602) 495–8230. The dates and addresses of the scoping meetings are given in the **DATES** section above. All locations are accessible to people with disabilities.

FOR FURTHER INFORMATION CONTACT: To request a scoping information packet, contact Mr. Jim Mathien, Metrocenter Corridor Study Project Manager, Valley Metro Rail, Inc., 411 North Central Avenue, Suite 200, Phoenix, Arizona 85004. E-mail: *jmathien@valleymetro.org*. Phone: (602) 744–5598. The Federal agency contact is Mr. Hymie Luden, Office of Planning and Program Development, FTA, 201 Mission Street, Room 2210, San Francisco, CA 94105. Phone: (415) 744–2732.

SUPPLEMENTARY INFORMATION:

I. Description of Study Area and Scope

The Federal Transit Administration (FTA), as joint lead agency with the Valley Metro Rail, Inc., will prepare an AA/EIS on a proposal to improve transit service in an approximately six mile-long corridor in northwest Phoenix, Arizona. The study area for the Metrocenter Corridor is bounded by Missouri Avenue to the south; 15th Avenue to the east; Cholla Street to the north; and 31st Avenue to the west. Most of the study area is densely developed with a mixture of urban land uses. Although not a part of the formal AA/EIS process for the Metrocenter Corridor Project, a secondary study area defined as the "Future Deer Valley Core Connection Study Area" will also be considered to identify opportunities for future transportation connections to that area should Valley Metro Rail, Inc. later decide to move forward with that potential project. The secondary study area is on the north side of the primary study area and is bounded by Dunlap Avenue to the south; 15th Avenue to the east; Rose Garden Lane to the north; and 31st Avenue to the west. Any further detailed planning and design for a future Deer Valley Core connection would be prepared in accordance with NEPA. Valley Metro Rail, Inc. will perform conceptual engineering for transit alternatives within the Metrocenter Corridor for the AA/DEIS that satisfies NEPA requirements. In addition, a financial plan will be developed that examines alternative funding sources.

II. Purpose and Need

The Metrocenter area is a major employment and activity center. The study corridor continues to experience significant growth in population and jobs. Along with this growth, traffic congestion and capacity deficiencies are expected to increase despite planned transportation improvements. Inadequate transit service has hampered access to this area and to other Valley destinations, other than by automobile. A major transit investment is recognized as a feasible alternative to providing additional capacity within this corridor.

The Metrocenter Corridor Project was included in the City of Phoenix's Transit 2000 ballot initiative that was passed by the voters in 2000 and provides a 0.4% sales tax to help fund the City's transit program. The project also is included in the currently approved Maricopa Association of Governments (MAG) financially constrained Long Range Transportation Plan (LRTP).

III. Alternatives

In 1999, a Major Investment Study (MIS) was completed for a proposed transit system from the northern end-of-line station of the planned Central Phoenix/East Valley Light Rail Transit Project (CP/EV LRT) continuing north and west into Phoenix and Glendale. The CP/EV LRT is scheduled to begin construction in late 2004. The MIS evaluated and recommended an appropriate transit technology and corridor alignment options. The study concluded that light rail transit (LRT) was the appropriate technology for the Metrocenter Corridor Connection. The MIS recommended 19th Avenue with various subalignments to the Metrocenter Shopping Center as the best alignment option(s) for this study corridor. Although the MIS made these recommendations, it does not meet current FTA requirements for Alternatives Analysis (AA). Therefore, the AA will re-evaluate both technology modes as well as alignment options within the study area. At a minimum, the alternatives to be considered include:

- No-Build Alternative;
- Transportation System Management (TMS)—all reasonable cost-effective transit service improvements short of an investment in a New Starts project;
- Bus Rapid Transit (BRT);
- LRT At Grade; and
- LRT Aerial.

Specific alignment alternatives include, but are not limited to: (1) 19th Avenue Corridor; (2) I–17 Freeway Corridor; and (3) 27th Avenue Corridor. These alternatives will be developed further during the preparation of the AA/DEIX. Additional reasonable Build Alternatives suggested during the scoping process, including those involving other modes, may be considered.

IV. Probable Effects

The purpose of the EIS is to fully disclose the environmental consequences of building and operating a major capital investment in the Metrocenter Corridor in advance of any decisions to commit substantial financial or other resources towards its implementation. The EIS will explore the extent to which study alternatives and alignment options result in environmental impacts and will discuss actions to reduce or eliminate such impacts.

Environmental issues to be examined in the EIS include: potential changes to the physical environment (natural resources, air quality, noise, water quality, geology, visual); changes in the social environment (land use, development, business and neighborhood disruptions); changes in traffic and pedestrian circulation; changes in transit service and patronage; associated changes in traffic congestion; and impacts on parklands and historic sites. Impacts will be identified both for the construction period and for the long-term operation of the alternatives. The proposed evaluation criteria include transportation, social, economic, and financial measures, as required by current Federal (NEPA) environmental laws and the implementing regulations of the Council on Environmental Quality and of FTA.

To ensure that the full range of issues related to this proposed action will be addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the Valley Metro Rail, Inc. Manager as noted in the **ADDRESSES** section above.

V. FTA Procedures

To streamline the NEPA process and to avoid duplication of effort, the agencies involved in the scoping process will consider the results of any previous planning studies or financial feasibility studies prepared in support of a decision by the Maricopa Association of Governments (MAG) to include a particular alternative in the regional transportation plan for metropolitan Phoenix. Prior transportation planning studies may be pertinent to establishing the purpose and need for the proposed action and the range of alternatives to be evaluated in detail in the AA/EIS. Depending on the outcome of the scoping process and the analysis of a wide range of transit alternatives, a Locally Preferred Alternative (LPA) will be selected and evaluated in the Draft EIS. The Draft EIS will be prepared simultaneously with conceptual engineering for the alternatives, including station and alignment options. The Draft EIS process will address the potential use of Federal funds for the proposed action, as well as assess the social, economic, and environmental impacts of the station and alignment alternatives. Station designs and any alignment options will be refined to minimize and mitigate any adverse impacts.

After publication, the Draft EIS will be available for public and agency review and comment, and a public hearing will be held. Based on the Draft EIS and comments received, the LPA may be refined, and Valley Metro Rail, Inc. will further assess the LPA in the Final EIS and will apply for FTA approval to initiate Preliminary Engineering of the LPA.

Issued on: December 12, 2003.

F. James Kenna,

Deputy Regional Administrator, Region IX.

[FR Doc. 03–31141 Filed 12–16–03; 8:45 am]

BILLING CODE 4910–57–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 9452

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 9452, Filing Assistance Program (Do you have to file a tax return?).

DATES: Written comments should be received on or before February 17, 2004, to be assured of consideration.

ADDRESSES: Direct all written comments to R. Joseph Durbula, Internal Revenue Service, room 6411, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Carol Savage at Internal Revenue Service, room 6407, 1111 Constitution Avenue, NW., Washington, DC 20224, or at (202) 622–3945, or through the Internet at *CAROL.A.SAVAGE@irs.gov*.

SUPPLEMENTARY INFORMATION:

Title: Filing Assistance Program (Do you have to file a tax return?).

OMB Number: 1545–1316.

Form Number: 9452.

Abstract: Form 9452 aids individuals in determining whether it is necessary to file a Federal tax return. Form 9452 will not be collected by the IRS; it is to be used by individuals at their discretion. Form 9452 is used by the Service's taxpayer assistance programs. It is also available on the Internet, and it is distributed in an annual mailout to taxpayers.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households.

Estimated Number of Respondents: 1,650,000.

Estimated Time Per Response: 30 minutes.

Estimated Total Annual Burden Hours: 825,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: December 10, 2003.

R. Joseph Durbala,

IRS Reports Clearance Officer

[FR Doc. 03–31035 Filed 12–16–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 1099–H

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 1099–H, Health Coverage Tax Credit (HCTC) Advance Payments.

DATES: Written comments should be received on or before February 17, 2004, to be assured of consideration.

ADDRESSES: Direct all written comments to R. Joseph Durbala, Internal Revenue Service, room 6411, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Carol Savage at Internal Revenue Service, room 6407, 1111 Constitution Avenue, NW., Washington, DC 20224, or at (202) 622–3945, or through the Internet at *CAROL.A.SAVAGE@irs.gov*.

SUPPLEMENTARY INFORMATION:

Title: Health Coverage Tax Credit (HCTC) Advance Payments.

OMB Number: 1545–1813.

Form Number: 1099–H.

Abstract: Form 1099–H is used to report advance payments of health insurance premiums to qualified recipients for their use in computing the allowable health insurance credit on Form 8885.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Responses: 110,000.

Estimated Time Per Respondent: 18 minutes.

Estimated Total Annual Burden Hours: 33,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: December 10, 2003.

R. Joseph Durbula,

IRS Reports Clearance Officer.

[FR Doc. 03–31036 Filed 12–16–03; 8:45 am]

BILLING CODE 4830–01–P

Corrections

Federal Register

Vol. 68, No. 242

Wednesday, December 17, 2003

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Studies to Determine the Prevalence of a History of Traumatic Brain Injury (TBI) in an Institutionalized Population

Correction

In notice document 03–30583 beginning on page 68926 in the issue of Wednesday, December 10, 2003, make the following correction:

On page 68926, in the third column, the "Application Deadline: February 18, 2003," should read, "February 18, 2004."

[FR Doc. C3–30583 Filed 12–16–03; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Area 2 Taxpayer Advocacy Panel (Including the States of Delaware, North Carolina, South Carolina, New Jersey, Maryland, Pennsylvania, Virginia and the District of Columbia)

Correction

In notice document 03–30640 beginning on page 68970 in the issue of Wednesday, December 10, 2003 make the following correction:

On page 68971, in the first column, in the signature block, the signer's name should read "Bernard Coston".

[FR Doc. C3–30640 Filed 12–16–03; 8:45 am]

BILLING CODE 1505–01–D

Federal Register

Wednesday,
December 17, 2003

Part II

Department of Transportation

Office of the Secretary

49 CFR Part 24

Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally-Assisted Programs; Proposed Rule

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Part 24

[FHWA Docket No. FHWA–2003–14747]

RIN 2125–AE97

Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally-Assisted Programs

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of proposed rulemaking (NPRM), request for comments, and notice of public meetings.

SUMMARY: The FHWA is proposing to amend several sections of the regulations that set forth governmentwide requirements for implementing the Uniform Relocation Assistance and Real Property Acquisition Policies Act (Uniform Act.) These proposed changes would clarify present requirements, meet modern needs and improve the service to individuals and businesses affected by Federal or federally-assisted projects while at the same time reducing the burdens of government regulations. The regulation has not been fully reviewed or updated since it was issued in 1989. The proposed amendments to the Uniform Act regulation would affect the land acquisition and displacement activities of 16 Federal Agencies including the new Department of Homeland Security. This document also provides notice of public meetings on the proposed changes to the regulation.

DATES: The public meetings will be held on January 15, 2004, from 10 a.m. to 2 p.m., Washington, DC; January 22, 2004, from 10 a.m. to 2 p.m., Lakewood, CO; and January 28, 2004, from 10 a.m. to 2 p.m., Atlanta, GA.

Comments in response to this NPRM must be received on or before February 17, 2004.

ADDRESSES: The January 15, 2004 meeting will be held in Washington, DC, United States Department of Transportation, 400 7th Street, SW., Room 8236. The January 22, 2004 meeting will be held in Lakewood, CO, Zang Building, Conference Room 360, 555 Zang Street. The January 28, 2004 meeting will be held in Atlanta, GA, Atlanta Federal Center, Conference Room B, 61 Forsyth Street, SW., Atlanta, Georgia. Each meeting will be scheduled from 10 a.m. to 2 p.m.

Mail or hand deliver comments to the docket number that appears in the heading of this document to the U.S. Department of Transportation, Dockets Management Facility, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590, or submit electronically at *http://dmses.dot.gov/submit*. All comments received will be available for examination and copying at the above address 9 a.m. to 5 p.m., e.s.t., Monday through Friday, except Federal holidays. Those desiring notification of receipt of comments must include a pre-addressed, stamped envelope or post card or you may print the acknowledgement page that appears after submitting comments electronically.

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act statement in the **Federal Register** published on April 11, 2002 (Volume 65, Number 70, Page 19477–78) or you may visit *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Ronald E. Fannin, Office of Real Estate Services, HEPR, (202) 366–2042; Reginald K. Bessmer, Office of Real Estate Services, HEPR, (202) 366–2037 or Reid Alsop, Office of the Chief Counsel, HCC–30, (202) 366–1371, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.s.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access and Filing

You may submit or retrieve comments online through the Document Management System (DMS) at: *http://dmses.dot.gov/submit*. Acceptable formats include: MS Word (versions 95 to 97), MS Word for Mac (versions 6 to 8), Rich Text File (RTF), American Standard Code Information Interchange (ASCII)(TXT), Portable Document Format (PDF), and WordPerfect (versions 7 to 8.) The DMS is available 24 hours each day, 365 days each year. Electronic submission and retrieval help and guidelines are available under the help section of the web site.

An electronic copy of this document may be downloaded by using a modem and suitable communications software from the Government Printing Office's Electronic Bulletin Board Service at (202) 512–1661. Internet users may also reach the Federal Register's home page at: *http://www.archives.gov* and the Government Printing Office's database at: *http://www.access.gpo.gov/nara*.

Background

Reasons for This Proposal

Title 49 CFR part 24 has not been comprehensively revised or updated since its initial publication in 1989. We believe there is some confusion regarding a number of existing requirements. There could be improvement in achieving the goal of national program uniformity; and there are inadequacies in meeting contemporary needs. We also believe we could improve the service to individuals and businesses affected by Federal and federally-assisted projects while reducing administrative burdens.

History

Relevant Legislation

Title 49 CFR part 24 implements the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, 42 U.S.C. 4601 *et seq.*, ("the Uniform Act").

Current Regulations

As originally enacted, the Uniform Act authorized "the head of each Federal Agency" to establish regulations and procedures for implementing the Uniform Act. Inevitably, this led to significant differences in Agencies implementing regulations. In a March 8, 1978, Report to Congress (GAO Report No. GGD–78–6, "Changes Needed in the Relocation Act to Achieve More Uniform Treatment of Persons Displaced by Federal Programs, B–148044 (1978))," [1] the Comptroller General found that as a result of these differences the Federal government was not providing uniform treatment to people displaced from their homes and businesses by Federal or federally-assisted-programs. Those differences among Federal implementing regulations also imposed significant administrative burdens on State and local governments. In 1981, for the Vice President's Presidential Task Force on Regulatory Relief, State and local governments identified the Uniform Act as a good candidate for State and local regulatory relief.

Therefore, in May 1982, the Office of Management and Budget (OMB) formed a Uniform Act Interagency Regulatory Review Working Group to develop uniform regulations to be implemented by each Agency covered by the Uniform Act. A Presidential Memorandum, dated February 27, 1985, was published in the **Federal Register** on March 5, 1985 (50 FR 8953), naming the U.S. Department of Transportation (USDOT) as the Agency with lead responsibility for the Uniform Act. The Secretary of Transportation (hereafter Secretary) delegated this responsibility to the Federal Highway Administrator.

[1] A copy of this report, Changes Needed in the Relocation Act to Achieve More Uniform Treatment of Persons Displaced by Federal Programs, is available in the docket.

On March 5, 1985 (50 FR 8955), the USDOT published a model Uniform Act regulation, which, in accordance with the President's Memorandum of February 27, 1985, served as the basis for a proposed Uniform Act "common rule" to be issued by the 16 other affected Agencies. The proposed common rule was issued for comment by those 16 Agencies on May 28, 1985 (50 FR 21712.) After consideration of comments, on February 27, 1986, the common rule was adopted by each of the affected Federal Agencies and the former disparate relocation regulations of those Agencies were removed. This common rulemaking effort by the Federal Agencies that administered both direct Federal programs and projects, and federally-assisted programs and projects undertaken by State or local Agencies, achieved regulatory consistency among the separate Federal Agencies subject to the Uniform Act.

This common rulemaking effort presaged several of the statutory changes to the Uniform Act that were made by the Uniform Relocation Act Amendments of 1987 (Title IV, Pub. L. 100–17, 101 Stat. 246) ("1987 Amendments"). In the administrative area, for example, to further ensure uniformity, the amendments specifically designated the USDOT as Lead Agency and required it, in coordination with other Federal Agencies, to issue a governmentwide rule, establish procedures and make interpretations to implement provisions of the Uniform Act. In the substantive area, the common rulemaking effort granted greater flexibility and discretion to State and local Agencies, a theme reiterated in the 1987 Amendments.

Implementation of the 1987 Amendments to the Uniform Act

On May 19, 1987 (52 FR 18768), the FHWA issued a notice proposing significant changes to the common rule as a result of the 1987 amendments to the Uniform Act. On December 1, 1987 (52 FR 45667), the FHWA issued a Notice of Regulatory Intent giving further notice of the specific regulatory actions that it and the other affected Federal Agencies would take to implement the 1987 Amendments.

On December 17, 1987 (52 FR 47994), the FHWA issued an interim final rule, as 49 CFR part 24, that revised the provisions of the common rule to include those provisions of the 1987 amendments to the Uniform Act (primarily increases in the dollar amounts of specific relocation assistance) that did not allow for administrative discretion or interpretation, and for which a period of public notices and comment would have been impractical. This interim final rule was promulgated in order to allow those Federal, State and local Agencies that were willing and able to provide the increased dollar amounts for specific relocation assistance, provided by the 1987 amendments, to do so expeditiously. On the same day at 52 FR 48015, 17 Federal Departments and Agencies that administer the Uniform Act published interim final rules rescinding the common rule from each of their regulations and adopting in its place a cross-reference to the single interim final rule published by the FHWA as 49 CFR part 24. The effective date for these Agency rescissions and cross-references varied. However, all such actions took effect on or before April 2, 1989, the date the 1987 Amendments became mandatory. The Department of Housing and Urban Development (HUD), was unable to join the other Federal Agencies in publishing an interim final rescission and cross referencing action on December 17, 1987, because of its need to first satisfy certain Congressional review obligations. HUD subsequently published such an interim rule on February 19, 1988 (53 FR 4964).

The FHWA issued an NPRM on July 21, 1988, at 53 FR 27598, proposing to fully implement the statutory amendments to the Uniform Act and to replace the interim final rule. On March 2, 1989 (54 FR 8928), the FHWA issued the final rule, which implemented all of the provisions of the 1987 Amendments to the Uniform Act, and replaced the interim final rule. This was the final step in the development of a single common rule for implementing the Uniform Act.

The Uniform Act and the common rule govern the relocation and land acquisition programs of all Federal departments and Agencies. Those departments and Agencies that, for convenience, provide a cross reference to this part, and the location of those cross-references, are listed below:

Department of Agriculture
7 CFR Part 21
Department of Commerce
15 CFR Part 11
Department of Defense
32 CFR Part 259
Department of Education
34 CFR Part 15
Department of Energy
10 CFR Part 1039
Environmental Protection Agency
40 CFR Part 4
Federal Emergency Management Agency
44 CFR Part 25
General Services Administration
41 CFR Part 105–51
Department of Health and Human Services
45 CFR Part 15
Department of Housing and Urban Development
24 CFR Part 42
Department of Justice
41 CFR Part 128–18
Department of Labor
29 CFR Part 12
National Aeronautics and Space Administration
14 CFR Part 1208
Tennessee Valley Authority
18 CFR Part 1306
Veterans Administration
38 CFR Part 25

The United States Postal Service has indicated that it will comply voluntarily with the Uniform Act, although its current regulations (39 CFR part 777) differ slightly from these proposed regulations.

However, because the Uniform Act applies to all acquisitions of real property or displacements of persons resulting from Federal or federally-assisted programs or projects, the Act's application is not affected by the absence of a cross reference to 49 CFR part 24 in a department's or Agency's regulations. Further, Federal or federally-assisted activities involving land acquisition or displacement, undertaken by a newly constituted Federal department or Agency, such as, for example, the new Department of Homeland Security, would be covered by the Act.

1993 Amendments to the Governmentwide Regulations

On January 28, 1992, the President issued a Memorandum for Certain Department and Agency Heads entitled "Reducing the Burden of Government Regulation" which called upon Departments and Agencies to review their existing regulations in order to determine whether changes should be made to promote economic growth, create jobs, or eliminate unnecessary costs or other burdens on the economy.

The FHWA, as a result of its review of the Uniform Act common rule, identified several amendments that it believed would enhance the relocation assistance provided to displaced businesses, thus increasing their chances of a successful relocation. Additionally, we identified changes that

would reduce the regulatory burden imposed on such businesses as well as on State and local governments implementing the regulation. Therefore, on July 27, 1992 (57 FR 33164), we issued a notice of proposed rulemaking (NPRM) proposing these changes to the common rule and published the final rule on April 30, 1993 (58 FR 26072).

1999 Amendments to the Governmentwide Regulation

Pub. L. 105–117, 111 Stat. 2384 (November 21, 1997) amended the Uniform Act to provide that an alien not lawfully present in the United States shall not be eligible to receive relocation payments or any other assistance provided under the Uniform Act, unless such ineligibility would result in exceptional and extremely unusual hardship to the alien's spouse, parent, or child, and such spouse, parent, or child is a citizen or an alien admitted for permanent residence. As a result of these changes, the FHWA proposed to amend the common rule to reflect the prohibitions on payments to aliens not lawfully present in the United States. After publishing an NPRM on June 12, 1998 (63 FR 32175), the FHWA published a final rule implementing these changes on February 12, 1999 (64 FR 7127).

FHWA Actions To Update the Regulations

Following a series of requests from other Federal Agencies, States, and local public agencies, concerning the need for updating the Uniform Act and Title 49, CFR Part 24, the FHWA initiated a comprehensive review of 49 CFR part 24 by hosting an all Federal Agency briefing and listening session at the Uniform Act 30th Anniversary Symposium in Mesa, Arizona, in November of 2001. Seventy-five individuals representing 14 Federal Agencies, provided specific comments and suggestions. We compiled the comments and in March of 2002 we formed a Federal Interagency Task Force (Task Force) to review all comments received from both the private and public sectors and to begin developing proposed changes to the common rule. All 18 Federal Agencies whose programs are affected by the Uniform Act were asked to provide a representative to be a member of the Task Force. Next, the FHWA published a notice on May 14, 2002 (67 FR 34514), announcing 5 nationwide public listening sessions in June and July 2002 to gather broader input.

Following these sessions, the Task Force once again evaluated each comment. Based on the comments received, the FHWA determined there was a need to update the regulation. The Task Force then began to identify specific provisions of the regulation that should be updated. The Task Force drafted proposed regulatory language, and on November 7, 2002, the FHWA hosted an All-Federal Agencies' meeting to present and discuss the draft language to each of the Agencies affected by this rule. On December 5, 2002, each Agency was given the draft language and asked to provide its specific feedback to the FHWA. This feedback helped the FHWA formulate the proposed changes in this NPRM.

Section-by-Section Discussion of Proposed Changes

Descriptions of the regulatory changes proposed in this part are set forth below. All members of the public who are affected by relocation or land acquisition activities undertaken or funded by Federal departments and Agencies are encouraged to comment on this NPRM. Comments from interested State and local governments are particularly requested. We have made several minor grammar changes such as adding or deleting commas and shortening sentences for clarity that will not change the meaning or intent. These minor changes are not addressed in the Section-by-Section discussion.

Subpart A—General

Section 24.2 Definitions

We propose to add a subsection listing acronyms and to include a numbering system to better identify definitions. This would provide users a list of the most commonly used acronyms in the regulation. These acronyms have become commonplace in conversation and correspondence in the land acquisition and displacement activities of the 18 Federal Agencies. Also, currently, there are 35 complex and lengthy definitions listed in alphabetical order. Without a clear and simple way of referring to definition provisions it is difficult to communicate with affected parties, which complicates both effective Agency administration and public understanding of applicable provisions. Since this rule applies to the programs of approximately 18 Federal Agencies, it is important that they all write and talk with the same understanding. To include a numbering system for the definitions was one of the most requested proposals received during the comment period from both the private and public domain.

Section 24.2(a)(6)(ii) Comparable Replacement Dwelling

We propose to remove the phrase "style of living" from paragraph (2) of the definition of comparable replacement dwelling.

The phrase "style of living" has sometimes been misused and has proven to be confusing. Occasionally, it has been used out of context and interpreted to require identical unique features found in acquired dwellings such as, cherry cabinets, gold fixtures, and other specialized items to be in comparable replacement dwellings. In such cases, the standard for replacement housing has been raised to a level above "comparable." This interpretation can make it nearly impossible to find appropriate replacement housing and could result in replacement housing payments greater than those intended by Congress. As noted in the conference report accompanying the 1987 amendments, "The Conferees recognize that strict and absolute adherence to an exhaustive, detailed, feature-by-feature comparison can result in rigidities. These can constitute a substantial economic burden and can lead to excessive cost if the law requires, or is interpreted to require, the replacement dwelling to possess every feature of the acquired dwelling as an absolute minimum." H.R. Conf. Rep. No. 100–27, at 247 (1987).

The Congress realized the difficulty in finding comparable replacement dwellings and intended there to be some flexibility in the definition. Removing the phrase "style of living" will not erode any protections provided to the displaced person. Other criteria under the definition of comparability would adequately cover the factors covered by "style of living."

Section 24.2(a)(6)(vii) Comparable Replacement Dwelling—Currently Available

We propose to revise section 24.2(a)(6)(vii) by deleting the last sentence and moving it to a new section, 24.2(a)(6)(ix). This new section would also provide that, when a person that is displaced from government subsidized housing accepts an offer of government housing assistance at the replacement dwelling, any requirements of the government housing program relating to the number of rooms or living space of the replacement dwelling would apply.

Section 24.2(a)(6)(viii) Comparable Replacement Dwelling—Within the Financial Means of the Displaced Person

We propose to consolidate the definition of comparable replacement dwelling into a single paragraph, proposed as § 24.2(a)(6)(viii). This consolidation would define the purchase price or amount of rent that is considered to be within the displaced person's financial means for both a homeowner and a residential tenant. The consolidation would reduce verbiage, without any change in substance.

Section 24.2(a)(8)(ii) Decent, Safe, and Sanitary Dwelling

We propose to add a requirement to the decent, safe, and sanitary dwelling definition to reflect the protections provided by Public Law 102–550, Residential Lead-Based Paint Hazard Reduction Act of 1992. Lead based paint hazard levels established by the U.S. Environmental Protection Agency in accordance with Public Law 102–550 are intended to protect families and children under the age of six from ingesting paint dust or chips while occupying replacement housing. HUD's Lead Safe Housing Rule (24 CFR 35, subparts B–R), which implements that law for federally-owned and assisted housing, provides the strategy for protecting occupants during temporary relocation. The replacement dwelling unit must not have deteriorated paint (or deteriorated lead-based paint if paint testing is conducted) or dust-lead hazards. A unit built on or after January 1, 1978 meets the requirement. The lead safety provision does not apply to displacement of persons who are either elderly or disabled (unless a child under 6 years will reside or be expected to reside in the unit), nor if the replacement dwelling unit is a zero-bedroom dwelling. This proposed change would include this same standard in § 24.2(a)(8)(ii).

Section 24.2(a)(8)(v) Decent, Safe, and Sanitary Dwelling—Local Housing Codes

We propose to amend this definition to require the Agencies to follow the local housing code provision that addresses the maximum number of persons permitted to occupy a room used for sleeping purposes. In the absence of a local housing code requirement, the written policy of the Agency would govern. Additionally, Agencies must also follow any housing code provision which addresses the minimum amount of square feet for each person occupying a dwelling unit or portion thereof. This would make it easier to determine the number of bedrooms required for a replacement dwelling unit.

Similarly, we propose that the local housing code or, if no such code provision exists, the written policy of the Agency, would determine the minimum age of children of the opposite gender which must occupy separate rooms used for sleeping purposes. In the absence of a local housing code or a written policy by the Agency, the minimum standards established for a decent, safe and sanitary dwelling in § 24.2(a)(8) are to be applied.

Section 24.2(a)(9)(ii)(D) Persons Not Displaced

We proposed to amend this section in appendix A to provide that temporary relocation assistance to a person required to move from their dwelling, business, farm, or nonprofit organization are limited to a one year period. Such persons remaining in a temporary location for a period exceeding one year must be offered all permanent relocation assistance.

Section 24.2(a)(11) Dwelling Site

We propose to add a definition of the term "dwelling site." The dwelling site represents the area, and specifically the size of the land area, on which a dwelling is located. The "dwelling site," as defined, is a typical lot for similar dwellings in the neighborhood where the dwelling to be acquired is located. This definition would help ensure more accurate computations of replacement housing payments when a dwelling is located on a larger than normal site or when mixed-use or multi-family properties are involved, and reflects current practice.

Section 24.2(a)(12) Eviction for Cause

At the request of the HUD and with concurrence by the Task Force, we propose to simplify the eviction for cause provision in § 24.206 by adding a definition of eviction for cause to § 24.2(a)(12). The proposed definition includes some of the provisions that are currently included in § 24.206. Eviction is a legal process, not an administrative procedure, and therefore, the proposed definition would retain the current link to applicable State and local law.

Section 24.2(a)(15) Household Income

At the request of Federal, State, and local public Agencies having the responsibility of administering the Uniform Act, we propose to add, for clarity, a new definition, "household income." This definition would include examples of what does and does not constitute a person's gross monthly household income for purposes of establishing a base monthly income under proposed § 24.402(b)(2)(ii).

Household income would generally include average monthly income from all sources, but would exclude income from dependent children 18 years old or younger and full time students, and various governmental assistance described in appendix A of this part, § 24.2(a)(15).

Section 24.2(a)(16) Initiation of Negotiations

We propose to add a sentence to the definition of "initiation of negotiations" to provide that, in the case of acquisitions of real property, described in the initiation of negotiations, for the purposes of § 24.101(b)(1) through (5) (that must be based on an amicable agreement with the owner) establishing a qualified tenant's eligibility for relocation benefits, would occur when the Agency and the owner reach agreement to purchase the real property.

Section 24.2(a)(18) Mobile Home

We propose to add a definition for a mobile home to this section. The term includes both manufactured homes and recreational vehicles used as residences. We also propose to add further requirements that recreational vehicles must meet in order to be qualified for relocation assistance in appendix A. Appendix A would also explain the difference between manufactured homes and mobile homes recognized by HUD for that Agency's programs. For purposes of this regulation, however, we propose that both are to be considered as mobile homes. (Subpart F continues to include an explanation of the different methods of computing relocation assistance when a mobile home has been determined to be personal property, and when it is determined to be real property.)

Section 24.2(a)(24) Salvage Value

We propose to revise the definition of "salvage value" to clarify that the value of an item is to be based on the item being removed at the buyer's expense.

Section 24.2(a)(30) Unlawful Occupant

We propose to change the term "unlawful occupancy" to "unlawful occupant" so that the definition can be stated more clearly. We also propose to remove the word "squatter" from the definition. The word may be offensive and is not necessary to the definition. The wording changes proposed would simplify the definition without changing its meaning.

Section 24.2(a)(34) Waiver Valuation

We propose to use the term "waiver valuation" to identify the valuation

process and product when § 24.102(c)(2) appraisal waiver provisions are implemented.

Section 24.9 Recordkeeping and Reports

In accordance with the Presidential Memorandum dated February 27, 1985, United States Department of Transportation is required to report annually to the President's Council on Management Improvement, a part of the Office of Management and Budget, on implementation of the Uniform Act. Under the current reporting requirement, the Lead Agency has received very little statistical information, and thus has little or no knowledge of the extent and impact of other Federal funding Agencies acquisition and displacement activities. Therefore, in § 24.9(c), we propose to require Federal Agencies to submit an annual report summarizing of their real property acquisition and displacement activities to the Lead Agency. This proposed change would enable us to prepare and submit a more comprehensive and useful report, in addition to facilitating a more active monitoring role in our duty as Lead Agency.

We propose to redesign Appendix B to be less burdensome and to enable the information to be reported electronically. Appendix B is the statistical support form of which Agencies are required to submit reports of real property acquisition and displacement activities, if required by the Federal Agency funding the project. Additionally, we propose to remove the requirement that the Agency submit this report no more frequently than every three years, since this report is issued each year.

The Department of Housing and Urban Development and most other Federal funding Agencies support this proposed change.

Subpart B—Real Property Acquisition

We propose to make a minor change by replacing the term "fair market value" with "market value" throughout the subpart to better reflect current appraisal terminology.

Section 24.101 Applicability of Acquisition Requirements

We propose to restructure § 24.101(a) to clarify the application of the real property acquisition requirements set forth in this subpart, and to revise the exceptions to those requirements.

Currently, the two major exceptions to real property acquisition requirements in Subpart B are voluntary transactions and acquisitions in which the Agency does not have the power of eminent domain.

Based on the suggestion of Federal Agencies, we propose that these exceptions no longer apply to acquisitions by Federal Agencies. We are advised that some Federal Agencies use these types of transactions to a significant extent. To best ensure that the objectives of the Uniform Act are satisfied, we propose that Federal Agencies follow the valuation processes set forth in this subpart for all of their direct acquisitions. This proposal is also consistent with section 305(b)(2) (42 U.S.C. 4655(b)(2)) of the Uniform Act, which allows these exceptions for recipients of Federal financial assistance, but provides no such exceptions for Federal Agencies themselves. We propose to retain the exceptions for federally-assisted projects and programs.

Essential to the exceptions is the requirement that the owner must be informed that the property would not be acquired unless an amicable agreement can be reached. Currently, the regulation requires the Agency to inform the owner what it believes to be the fair market value of the property. We propose to require the Agency to inform the property owner in writing (1) that the property will not be acquired unless an amicable agreement can be reached, and (2) of the market value of his/her property. This would more closely parallel the Uniform Act requirement that is applicable to covered transactions, and provide the property owner with documented assurance of the Agency's authority and intentions.

Some Agencies suggested that the requirement that the Agency inform the owner of what it believes to be market value in § 24.101(a)(1) and (2) be revised to also include a requirement for a supporting appraisal. We have not proposed adding such a requirement. However, we propose adding language to Appendix A noting that, while the regulation does not require an appraisal in these cases, an Agency may still decide to use some form of an appraisal, and, in any event, an agency must have some reasonable basis for the valuation required by § 24.101(a)(1) and (2).

To assist readers/users, we propose to add a cross reference to the location in the rule of relocation assistance provisions that are applicable to any tenants that must move as a result of these excepted acquisitions.

We propose to delete the introductory phrase in proposed § 24.101(c), currently § 24.101(b), to eliminate unnecessary verbiage.

Section 24.102 Basic Acquisition Policies

The Uniform Act provides that the requirement for an appraisal may be waived in cases involving the acquisition of property with a low market value. We propose to clarify § 24.102(c)(2) by separating it into paragraphs (i) and (ii). Paragraph (i) would concern donations and is essentially unchanged. Paragraph (ii) would address low value properties and would specify that when such properties are to be acquired, and the appraisal waived, the Agency must prepare a "waiver valuation," a term proposed to be defined in § 24.2(a)(34). We propose to raise the appraisal waiver threshold in § 24.102(c)(2) from $2,500 to $10,000. In addition, we propose to add a new provision that would allow the Federal funding Agency to raise the threshold up to a maximum of $25,000, provided that the Agency acquiring the real property offers the property owner the option of having an appraisal performed.

These proposed changes reflect the general increase in property values since the present threshold was established. Comments we have received and our experience to date, have shown no indication of administrative abuse or property owner objection. Broad Agency support indicates a higher threshold is justified.

Section 24.102(e) Summary Statement

We propose to revise the language in (3) to be clearer and more specific.

Section 24.102(i) Administrative Settlement

We propose to revise the language to require more specific information in the written justification ("state" rather than "indicate") and delete specific suggestions ("appraisals, recent court awards, estimated trial costs, or valuation problems") in favor of requesting "what available information, including trial risks, supports the settlement."

Section 24.102(n) Conflict of Interest

Language currently in § 24.103(e) Criteria for appraisals, addresses conflicts of interest for appraisers and review appraisers. Proposed language would add all persons making waiver valuations under § 24.102(c)(2) to this section. This proposed change would bring equal conflict of interest standards to all individuals valuing real property, whether their work be waiver valuations, appraisal, or appraisal review, and would clarify who is covered.

We also propose adding a new provision that any person functioning as a negotiator shall not supervise or formally evaluate either the appraiser, review appraiser or person making waiver valuations. This provision would enhance appraiser independence and further support the Uniform Act concept that the appraisal is part of the acquisition process that includes not only appraisal and appraisal review, but also the Agency responsibility and authority to establish an amount, based on an approved (reviewed) appraisal, believed to be just compensation, offer that amount to the property owner, and be prepared to consider updating the offer of just compensation (§ 24.102(g)) and administrative settlement (§ 24.102(i)), as appropriate. Recognizing that some Federal assistance recipients, particularly those with limited staff resources, may find this provision unworkable, we propose that, in such cases, the Federal funding agency may waive this provision. And, since the proposed provision would apply to more individuals than just the appraiser, we propose to relocate it to be under basic acquisition policies.

Section 24.103 Criteria for Appraisal

The revisions we propose to §§ 24.103 and 24.104 are the first since the Appraisal Foundation published the Uniform Standards of Professional Appraisal Practice (USPAP).[2] Considerable confusion and misunderstanding as to the applicability of USPAP provisions to Uniform Act real property acquisitions have existed ever since USPAP was published. The Uniform Act and 49 CFR Part 24 set the requirements for appraisal and appraisal review in support of Federal and federally-assisted acquisition of real property for government projects.

Appraisers who are committed to adhere to USPAP by virtue of State appraisal licensing or certification should look to the provisions of USPAP, including the scope of work, the Jurisdictional Exception Rule and the Supplemental Standards provisions, and their State Appraisers' board for guidance on how they can remain in compliance with USPAP and perform appraisals for Agencies following Uniform Act and 49 CFR part 24 requirements.

Many of the proposed provisions of §§ 24.103 and 24.104, are intended to assist the appraiser, the Agency and others in understanding the requirements of these subparts in light of USPAP.

We propose to change the terminology throughout this section from "standards" to "requirements" to avoid confusion with USPAP standards rules. We also propose to add the phrase "Federal and federally-assisted program" to more accurately identify the type of appraisal practices that are to be referenced, and to differentiate them from private sector, especially mortgage lending, appraisal practice.

Section 24.103(a) Appraisal Requirements

We propose to add a sentence indicating that these regulations set forth the requirements for real property acquisition appraisals for Federal and federally-assisted programs. This would make it clear that other performance standards, such as USPAP and those issued by professional appraisal societies, do not govern programs covered by the Uniform Act. We propose to reorder other sentences in the paragraph for greater clarity, and to add a requirement for a scope of work statement in each appraisal. In appendix A, we propose to add a discussion on preparing the scope of work. We also propose to insert the word "simple" to help identify and differentiate the "minimum requirements" appraisal. We propose to move the requirements now in § 24.103(a)(1) to the scope of work, as discussed in appendix A, and renumber the remaining detailed appraisal requirements (1) through (5).

Section 24.103(a)(3)

To clarify the intent of this section, we propose to add language that describes the content of a detailed appraisal to conform with currently used terminology (sales comparison approach). We also propose to move the discussion of the Agency's authority to require only the market approach (sales comparison approach) to appendix A, where we propose it be included in the determination of the scope of work.

Section 24.103(b)

We propose to delete the first phrase because it is redundant.

Section 24.103(d)

We propose to specifically add "review appraisers" to clarify that they are included in this section that addresses appraiser qualifications. We also propose to add a discussion to appendix A to emphasize the need for appraisers and review appraisers to be qualified and competent, and that State licensing or certification can help provide an indication of an appraiser's abilities.

Section 24.104 Review of Appraisals

We propose to use consistent terminology to refer to the person performing appraisal reviews, *i.e.*, review appraiser. We also propose to add language to clarify and specify the responsibilities, authorities and expectations associated with appraisal review.

Section 24.104(a)

We propose to add language that would specifically state that the review appraiser's examination of the appraisal must include examination of the presentation and analysis of market information. While this may not be a change from what Agencies, as a matter of practice, now expect of review appraisers, we believe this proposed language would avoid misunderstanding and confusion. Also, we propose to state clearly that the review appraiser is to ensure that appraisal performance complies with appraisal requirements in § 24.103 and other applicable requirements, and supports the appraiser's opinion of value. This would avoid any misunderstanding as to the criteria for the review. The level of analysis and reporting would depend on the complexity of the appraisal and appraisal review problems. We propose that the report identify the appraisal report(s) reviewed, document the findings and conclusions arrived at during the review of the appraisal(s), and identify each appraisal report as rejected, accepted (meets all requirements, but not selected as approved), or approved (as the basis for the establishment of the amount believed to be just compensation). Identification of each appraisal report is proposed as a method of avoiding confusion as to the status of each reviewed appraisal.

Section 24.104(b)

We propose to add language that would make it clear that the review appraiser may develop independent valuation information as part of the appraisal review process.

Section 24.104(c)

We propose to add language that would require the review appraiser to prepare a written report and specify what is to be in the report.

We also propose that the review appraiser prepare a signed certification, which would state the parameters of the review and the approved value and, if

[2] Uniform Standards of Professional Appraisal Practice (USPAP). Published by the Appraisal Foundation, a non-profit educational organization. Copies may be ordered from the Foundation at the following URL: *http://www.appraisalfoundation.org/html/USPAP2003/toc.htm.*

appropriate, the amount believed to be just compensation to be offered the property owner.

Subpart C—General Relocation Requirements

Section 24.202 Applicability

We propose to add a sentence to § 24.202 that adds a requirement that displaced persons be fully informed of their rights and benefits. It has come to our attention that displaced persons have been asked to waive their relocation rights and benefits without being informed of the extent of those benefits. This proposal would protect and strengthen the requirement that Agencies fully inform displaced persons of any rights and benefits they may be eligible for under this part.

This proposal is also integral to new proposed § 24.207(f), Waiver of relocation benefits, which would prohibit Agencies from proposing or asking displaced persons to waive their relocation rights and benefits.

Section 24.203(d) Notice of Intent To Acquire

We propose to move the definition of "notice of intent to acquire" from § 24.2 "Definitions" to § 24.203, "Relocation notices," with a minor revision. This proposed revision would be for continuity and clarity.

Section 24.205 Relocation Planning, Advisory Services and Coordination

In response to widespread concern about the inadequacy of Uniform Act relocation and reestablishment procedures and payments for displaced businesses, we sponsored the National Business Relocation Study [3] ("the study"). The study, undertaken for FHWA by an independent consultant, investigated business relocation concerns and provided recommendations to develop solutions to these problems.

The study found that relocation assistance advisory services for businesses were generally considered fair to poor. Some of the findings specifically noted that relocation agents were not adequately trained or informed to address the complexities of complicated business relocations, and were unable to provide meaningful assistance in locating replacement properties.

The changes proposed in this section are based upon the findings and recommendations of the study and are meant to address the added burden of displacement on businesses, and provide additional assistance to increase businesses' viability after displacement.

Section 24.205(a) Relocation Planning

We propose to change § 24.205(a) to provide additional items for Agencies to consider in planning for business relocations.

The Uniform Act and this section of the regulation require Agencies to plan federally funded programs and projects in such a manner that Agencies recognize the problems associated with displacement and develop solutions to minimize the adverse affects of displacement. An Agency must engage in such planning before proceeding with any action, which causes displacement and should scope the plan to the complexity and nature of the displacing action.

Currently, this section of the regulation provides examples of items to consider in relocation planning. The planning considerations currently include both residential and non-residential items, but residential planning requirements are more comprehensive than the non-residential planning ones. We recognize that the Uniform Act requires a more generous "make whole" approach for residential displacements. However, we also recognize that a significant number of displaced small businesses have not been able to successfully relocate. Therefore, we propose to require the Agency to engage in planning for the problems associated with non-residential displacement.

Section 24.205(c)(2)(i)(A)–(F) Relocation Assistance Advisory Services

We propose to change § 24.205(c)(2)(i)(A) through (F) to include six specific items in personal interviews for business relocations. These six paragraphs are a result of our National Relocation Business Study and will assist in determining the future needs of displaced businesses.

During the five national listening sessions, the FHWA received many comments concerning the lack of guidance and direction on what information the Agency should obtain when making personal interviews with businesses. The FHWA also received testimony from States and Local Public Agencies of actual cases where good interviewing and early planning is credited with preventing business closures.

The Uniform Act and this section of the regulation requires Agencies to ensure that relocation assistance advisory services are made available to all persons displaced by the Agency. A critical element in any successful relocation, and also an advisory services requirement, is to determine the needs and preferences of displaced persons through a personal interview.

Currently, this section of the regulations provides no examples of items for Agencies to consider in personal interviews for either residential or non-residential displacements. Generally, we believe Agencies do not need additional guidance in conducting personal interviews for residential displacements. However, we believe that specific guidance in conducting personal interviews for non-residential displacements is necessary to help address the added burden of displacement on businesses and provide additional assistance to increase their viability after displacement. Therefore, we have proposed guidance in (c)(2)(i)(A) through (F) of this section to assist Agencies in conducting personal interviews. This proposed change is based upon the findings and recommendations of the National Business Relocation Study.

Section 24.205(c)(2)(ii)(C) Relocation Assistance Advisory Service

We propose to revise this section to permit any displacing agency that has a program objective of providing minority persons with an opportunity to relocate to areas outside of minority concentration to provide reasonable and justifiable increases in the replacement housing payment to facilitate such moves.

Section 24.205(c)(2)(ii)(D) Transportation

In order to make it clear that all displaced persons must be offered transportation to inspect replacement housing, we propose to eliminate the specific reference to the elderly and handicapped in the current regulation.

Section 24.206 Eviction for Cause

We propose to revise this section on eviction for cause by moving several of the current provisions to the new definition of eviction for cause in § 24.2(a)(12).

Section 24.207(f) Waiver of Relocation Benefits

We propose to implement a new requirement for "waiver of relocation benefits." This requirement would offer more protection to displaced persons. It would prohibit an Agency from proposing or requesting a displaced person to give up his/her rights or entitlements to relocation assistance.

[3] The National Business Relocation Study (2002) is available for public inspection at the following URL: *http//www.fhwa.dot.gov/realestate/nbrs2002.htm*.

We do not believe that an otherwise eligible person may relieve a governmental body of its statutory obligation to provide Uniform Act assistance by agreeing to waive such assistance. The primary purpose of the Uniform Act is to impose requirements upon Agencies that acquire property and displace persons for Federal or federally-funded projects. The Uniform Act does not grant rights or benefits directly to individuals, rather it imposes duties and obligations upon Federal, State, and local governments.

A statement or agreement by a displaced person who does not wish to receive certain assistance does not free a government Agency from the obligations or requirements imposed by Federal law. In such a case where a displaced person indicates in writing he/she does not want assistance, the Federal or State Agencies must still fully inform the displaced person of all the assistance he/she is entitled to receive.

Section 24.207(g) Entitlement to Payments

We propose to add new paragraph (g) to § 24.207 to clarify that, since relocation payments are considered a form of compensation, they do not constitute Federal financial-assistance, and accordingly, the expenditure of such relocation payments by a displaced person would not trigger further application of the Uniform Act or similarly applicable Federal requirements.

Section 24.208(f)(1) Aliens Not Lawfully Present in the United States

We propose that the references to the Immigration and Naturalization Service (INS) in § 24.208(f)(1) be revised to reflect the fact that the INS has become part of the Department of Homeland Security, and renamed the Bureau of Citizenship and Immigration Services (BCIS).

Subpart D—Payments for Moving and Related Expenses

We propose to substantially reorganize Subpart D. With few exceptions, the basic content would remain the same; however, based upon the comments from our 5 national public listening sessions and comments from other Agencies, this subpart needs to be reorganized for clarity and ease of use. Accordingly, we propose to realign the different moving costs allowance provisions.

We propose to divide Subpart D into six sections. We would transfer a number of criteria from § 24.304, Reestablishment Expense, with its $10,000 limit, to § 24.301, Payment for actual reasonable moving and related expenses, and § 24.303, Payment for related non-residential expenses, where there are no limits and the payment is determined by actual, reasonable and necessary criteria. This would offer greater flexibility in assisting small businesses, farms, and non-profit organizations by removing several relocation costs from inclusion in the $10,000 statutory limit placed on reestablishment expenses. We propose to incorporate existing § 24.303 into proposed § 24.301 with specific criteria clearly spelled out for each type of move.

We propose several new paragraphs that would help clarify the different types of moving costs. In § 24.303 we propose that payment would be provided for certain moving related costs that are not personal property but are essential to the continuance of operation of the business. We propose a new paragraph, § 24.301(e), that would compensate displaced persons who are not forced to move from their residence or business but have personal property that must be moved from the acquired area.

Section 24.301(b)(3), 24.301(c)(iii) and 24.301(d)(2)(ii) Moving Cost Finding

We are proposing to add a provision allowing moving expenses to be determined by a qualified staff person for small uncomplicated personal property moves, commonly called a "moving cost finding" or "a finding." The proposed moving cost finding is another option available to the displaced person and the Agency. This option cannot be forced on the displaced person. The proposed moving cost finding would recognize an additional method of moving personal property that is currently being used by many Agencies. The proposed moving cost finding gives the Agency a cost effective and expeditious way to pay for small uncomplicated moves of personal property that are located outside of the primary dwelling or business structure(s). This method would allow the Agency to use qualified staff personnel to estimate the cost of such small-uncomplicated personal property moves and offer the option to the displaced person as a means of a self move. The cost would be capped at $3,000 and not be binding on the displaced person. The displaced person may elect any of the other methods to move. This provides both the Agency and the displaced person a quick cost effective way of making a self-move.

Section 24.301(e) Personal Property Only

We propose a new paragraph that would describe the relocation assistance available to a displaced person for moving personal property from the acquisition area, when the acquisition does not require the relocation of a dwelling (including a mobile home), business, farms or nonprofit organizations. Personal property only moves might include moving such things as farm equipment or livestock where the related buildings are not affected.

Section 24.301(g)(14)(i) Actual Direct Loss of Tangible Personal Property

The Uniform Act provides that a displaced business, farm or non-profit organization is entitled to be compensated for the actual direct loss of tangible personal property. We propose to slightly change the direct loss of tangible personal property provision to eliminate much confusion over the term "fair market value for continued use." Displacing Agencies are reluctant to discuss this benefit with displaced businesses because of the uncertainty over how to determine the payment.

Therefore, we propose to strike the phrase "fair market value of the item for continued use at the displacement site" and replace it with "market value of the item, less the proceeds of the sale" to clarify the basis for valuing such property. This is consistent with the intent of the Uniform Act, 42 U.S.C. 4622(a)(2).

Section 24.301(g)(14)(ii) Actual Direct Loss of Tangible Personal Property

We propose to add language to this section that would clarify what constitutes the estimated cost of moving when a business elects to discontinue the business or the business has a piece of equipment in storage or non-operational at the acquired site. Confusion comes from whether or not such an estimate, used to compute the payment for actual direct loss of tangible personal property, should include disconnecting and reconnecting costs when the business elects to discontinue operation or elects not to move the equipment to the replacement location. The proposed language would clarify those cases in which reconnecting costs would or would not be included in calculating the estimated cost of moving such equipment. We believe this would be consistent with the intent of the Uniform Act, to provide moving benefits that are actual, reasonable and necessary.

Section 24.301(g)(17) Searching for a Replacement Location

We propose to move this paragraph from § 24.303(a)(13) and increase "searching expenses" from $1,000 to $2,500. This amount has been set at $1,000 for 16 years. This proposed change is supported by the FHWA's National Business Relocation Study which recommended increasing the searching expenses. Searching expenses are intended to provide compensation for the actual time and effort to find a replacement site, which also should include reasonable costs to investigate the site. Such costs may include the cost of obtaining permits, attending zoning hearings or negotiating the purchase of a replacement site. We propose to provide additional insight and flexibility in appendix A on the application of searching expenses.

Section 24.301(g)(18) Low Value/High Bulk

We propose to add a paragraph on low value/high bulk property. The current regulation does not address cases where items of personal property owned by a displaced business are more costly to move than they are worth. The proposed change would provide a procedure available when the personal property to be moved is of low value and high bulk and, in the judgment of the displacing Agency, the cost of moving the personal property is disproportionate to its value.

Section 24.301(h)(12) Ineligible Moving and Related Expenses.

For clarity and uniformity, we propose to add refundable security and utility deposits to the list of ineligible moving expenses, § 24.301(h)(12). Since refundable deposits, by the name alone, indicates a return of the investment to the displaced person, we do not consider a refundable deposit a reimbursable expense under the Uniform Act.

Section 24.301(i)(1) and (2) Notification and Inspection

We propose to reorganize and merge this section from four paragraphs into three paragraphs. We do not propose to change the wording. These proposed changes are for clarity and readability. The phrase "The displaced person must" is merged into the introductory paragraph to eliminate redundancy and provide clarity.

Section 24.302 Fixed Payment for Moving Expenses-Residential Moves

This section provides that displaced residential owners and tenants may receive a moving expense payment based on the Fixed Residential Moving Cost Schedule [4] approved by the FHWA. Currently, this section provides that the Fixed Residential Moving Cost Schedule payment made to a person with minimal personal possessions in occupancy of a dormitory style room or whose residential move is performed by an Agency at no cost to the individual is limited to $50. This has been the limit since 1987. Since this payment is included in the fixed residential moving cost schedule that is updated periodically, we are proposing to remove the $50 dollar amount from § 24.302, so that the amount and future increases to this payment would be established by the Fixed Residential Moving Cost Schedule. Therefore, each time the schedule is updated, this payment could be updated as well. Agencies must be sure they are using the most current edition of the Fixed Residential Moving Cost Schedule.

Section 24.303 Related Non-Residential Eligible Expenses

As a result of reorganizing Subpart D for convenience and clarity, the relocation of all items of personal property would be included in § 24.301. We are proposing to add a new section, § 24.303, that would provide reimbursement for several costs that are not considered to be personal property but are essential to the continuing operation of the business. These costs are additional expenses, other than for moving personal property, that are not covered by either § 24.301 (personal property) or § 24.304 (real property.) Reimbursement for these expenses would be allowed if they are determined by the Agency to be "actual, reasonable and necessary."

Subpart E—Replacement Housing Payments

Section 24.401(e)(4) Incidental Expenses

We are proposing to add professional home inspection to the list of reimbursable incidental expenses. Professional home inspections including electrical systems, plumbing, and HVAC are commonplace and should be added to the list of reimbursable incidental expenses. Most agencies are currently allowing for this expense.

[4] The Fixed Residential Moving Cost Schedule is available for public inspection at the following URL: *http://www.fhwa.dot.gov//////realestate/fixsch96.htm.*

Section 24.401(f) Rental Assistance Payment for 180 Day Homeowner-Occupant

We propose to add language that would allow a rental assistance payment for a 180-day homeowner, who elects to rent, instead of purchase, a replacement dwelling, to exceed $5,250 if the difference in the estimated market rent of the acquired dwelling and the rent for a comparable replacement dwelling support a higher figure. However, the rental supplemental payment would not be allowed to exceed the amount the 180-day owner would have received as a housing (purchase) supplemental payment under proposed § 24.401(b). It was brought to our attention through the national listening sessions and through discussions with other Federal Agencies that this change would be fair and make the displaced person whole at no additional cost to the Agency.

An example of the proposed change would be where an elderly couple who own their home may want to rent rather than purchase another home. Under current procedure, the Agency would compute a replacement housing offer, which for this example is, say, $10,000. The Agency would then compute a rental assistance payment based on the difference in market rent and an available comparable dwelling, which for this example is $7,000. Currently, we would only pay the maximum amount of $5,250. The proposed change would allow the Agency to pay the $7,000 rent supplement or any rent supplement up to what they would have received as a 180-day homeowner ($10,000 in this example) to purchase a replacement dwelling.

We feel this would be a fair and equitable approach, provided the rent supplement does not exceed the amount the 180-day homeowner could receive if he or she elected to purchase a replacement dwelling, rather than to rent one.

Section 24.402(b)(2)(ii) Replacement Housing Payment for 90-Day Occupant

We propose to slightly revise § 24.402(b)(2)(ii) to reflect the statutory requirement that only a low-income displaced person's income shall be taken into consideration when calculating rental assistance payments for a comparable replacement dwelling (42 U.S.C. 4624(a).)

Section 24.402(b)(2) currently uses 30 percent of a person's average monthly gross household income as the criteria for computing replacement housing payments for all eligible displaced tenants. This often results in large payments to existing tenants who are not low income and who elect to pay more than 30 percent of their monthly gross household income for rental housing. This proposed change would be more reflective of the intent of the Uniform Act in that it assures consideration of income for low-income persons.

The proposal would rely on the U.S. Department of Housing and Urban Development's Annual Survey of Income Limits.[5] The proposed procedures in § 24.402(b)(2)(ii) would continue to use the 30 percent of monthly gross household income, but only for displaced persons who qualify as low income. The base monthly rental would continue to be established solely on the criteria in § 24.402(b)(2).

Section 24.402(c) Downpayment Assistance Payment

For uniformity, we propose to clarify that the replacement housing payment received under § 24.402(b) may be used for a downpayment assistance payment. There is a disparity among Agencies as to the amount that can be used as the downpayment. Most State and Federal Agencies currently allow the full amount of the rent supplement to be applied to the downpayment. Some, on the other hand, follow the guidance in appendix A of this regulation which limits the amount of the downpayment to what would ordinarily be required to obtain conventional loan financing for a decent, safe and sanitary dwelling. No such limits are included in the Uniform Act.

Therefore, we propose to add language that would allow the displaced person to apply the full amount of the rent supplement to the downpayment on a decent, safe and sanitary dwelling. We also propose to slightly modify appendix A to conform to the proposed change.

Section 24.403(a) Determining Cost of Comparable Replacement Dwelling

At the request of several Federal Agencies, we are proposing that Agencies pay, as a part of the reasonable cost of a comparable replacement dwelling, the increased real estate taxes, if any, for displaced 180-day owner occupants displaced as a result of a Federal or federally-funded project. This payment would be based on the difference between the monthly real estate tax on the acquired dwelling, and the monthly real estate tax on the replacement dwelling at the time of purchase but not to exceed the monthly real estate tax on a comparable replacement dwelling.

The benefit would be calculated over a 24-month period. If the displaced person elects to purchase a replacement dwelling where the real estate tax at the time of purchase exceeds that of the comparable replacement dwelling, the increased tax payment, if any, would be limited to the increased monthly tax cost of the comparable replacement dwelling at the time of purchase for 24 months. Should the displaced person elect to purchase a replacement dwelling for less than the cost of a comparable replacement dwelling, the increased tax calculation would be based on the 24 month increase, if any, in the real estate tax of the acquired dwelling and that of the replacement dwelling at the time of purchase.

The rationale for this proposal is that increased real estate taxes represent a real part of the cost of a replacement dwelling and are often a financial burden, particularly for displaced persons with fixed incomes, such as social security. Other situations could arise where a displaced person that purchases a new home may lose his/her grand-fathered real estate tax rate privileges and be subject to a higher real estate tax rate. The proposal would comport with the spirit and purpose of the Uniform Act, which is to treat displaced persons fairly by ensuring that they are able to relocate to a replacement dwelling that is comparable to the dwelling from which they were displaced.

Section 24.403(a)(1) Adjustment of Comparables

We propose to remove the requirement that Agencies adjust the asking price of the comparable replacement dwelling in computing replacement housing payments. Currently, this section bases a displaced person's replacement housing payment on the adjusted difference between the asking price and the selling price of a comparable replacement dwelling as determined by an Agency survey of the area. This requirement, because it can provide a replacement housing payment that is different than the price of a comparable dwelling, is burdensome and forces the displaced person to become a negotiator. This imposes an unnecessary obligation on the displaced person for which he/she probably is not qualified. Removing this requirement also would relieve the Agency of the administrative burden of conducting a market survey to determine the adjusted sales value. The procedure for determining a comparable dwelling would not change, only the current requirement to adjust the price of the selected comparable dwelling would be eliminated. The replacement housing payment would be based on the list price of the comparable dwelling not the adjusted price. Additionally, the reference to the adjustment of comparable replacement dwellings in Appendix A would be removed.

[5] The Annual Survey of Income Limits can be found at the following URL: *http://www.huduser.org/datasets/il.html.*

Subpart F—Mobile Homes

Based upon the comments from our five national public listening sessions and comments from the other Agencies, we are proposing to reorganize Subpart F for clarity and ease of use. The basic content would remain unchanged.

We propose to move the required determinations to distinguish a mobile home displacement as either an acquisition of real property or as a move of personal property, to the eligibility paragraph in § 24.502.

Subpart E provides replacement housing payments for an owner occupant or tenant occupant displaced from a conventional dwelling. Subpart F provides similar payments for an owner occupant or tenant that is displaced from an acquired mobile home. However, mobile homes may instead be considered personal property and relocated, not purchased, which in turn may lead to the determination that the occupant is not displaced from his/her dwelling. The proposed reorganization merely consolidates the necessary displacement determination, locating each with the applicable payment eligibility provisions.

We propose to eliminate § 24.505 (Additional rules governing relocation payments to mobile home occupants), and consolidate its provisions into the following paragraphs in which they are more closely affiliated: § 24.501 (Applicability); § 24.502 (currently § 24.503—Replacement housing payment for 180-day mobile homeowner-occupants); and § 24.503 (currently § 24.504 —Replacement housing payment for 90-day mobile home occupants.) Also, as previously discussed in the preamble to Subpart D, we propose to consolidate the moving provisions in § 24.301(g)(8) through (g)(10).

Section 24.502(b) Replacement Housing Payment Computation for a 180-Day Owner Displaced From a Mobile Home

We propose to modify and consolidate § 24.502(b) that provides for payment of actual moving expenses with the criteria for replacement housing payments in those cases where the displacing Agency determines the homeowner is displaced from the

mobile home for the reasons described in § 24.502(a)(3).

Section 24.502(c). Rental Assistance Payment for a 180-Day Owner-Occupant Displaced From Acquired Leased or Rented Site

We propose to allow the displaced person to claim the computed rental assistance payment if it is applied towards the purchase of a replacement site or added to the eligible purchase price of a conventional dwelling or mobile home. This would eliminate the confusion over combining the two payments (mobile home and mobile home site) in the purchase of a conventional dwelling. The justification being that when buying a conventional dwelling, the land and dwelling are one; whereas, in many instances with mobile homes, the displaced person owns the mobile home but rents the land. Therefore, in the case where the mobile home owner buys a conventional dwelling we would allow the rental supplement on the land (site) to be added to the housing supplement, not to exceed the statutory limit of $22,500 (unless the housing supplement is in Housing of Last Resort). The total payment must be used toward the purchase of replacement decent, safe and sanitary housing.

Distribution Tables

For ease of reference, distribution and derivation tables are provided for the current sections and the proposed sections, as follows:

DISTRIBUTION TABLE

Old section	New section
Subpart A	
24.1	24.1 Text unchanged.
24.1(b)	24.1(b) Revised.
24.2 Heading	24.2 Heading revised.
None	24.2(a) Introductory para. added.
Agency	24.2(a)(1) Paras. revised.
Alien not lawfully present in the United States	24.2(a)(2) Paras. redesignated.
Appraisal	24.2(a)(3) Redesignated.
Business	24.2(a)(4) Redesignated.
Citizen	24.2(a)(5) Redesignated.
Comparable replacement dwelling	24.2(a)(6) Redesignated.
(1) and (2)	24.2(a)(6)(i) and (ii) Redesignated and revised.
(3) through (6)	24.2(a)(6)(iii) through (vi) Redesignated and text unchanged.
(7) and (8)	24.2(a)(6)(vii) and (viii) Redesignated and revised.
None	24.2(a)(6)(ix) Added.
Contribute materially	24.2(a)(7) Redesignated and text unchanged.
Decent, safe, and sanitary dwelling	24.2(a)(8) Redesignated and revised.
(1)	24.2(a)(8) Redesignated and text unchanged.
None	24.2(a)(8) Added.
(2) and (3)	24.2(a)(8)(iii) and (iv) Redesignated and text unchanged.
(4)	24.2(a)(8)(v) and (vi) Redesignated and revised.
(5) and (6)	24.2(a)(8)(vii) and (viii) Redesignated and revised.
Displaced person	24.2(a)(9) All paras. redesignated.
Displaced person (1)(i)	24.2 (a)(9)(i)(A) Revised.
Displaced person (1)(iii)	24.2 (a)(9)(i)(C) Revised.
Displaced person (2)(v)	24.2(a)(9)(ii)(E) Revised.
Displaced person (2)(vii)	24.2(a)(9)(ii)(G) Revised.
Displaced person (2)(xi)	24.2(a)(9)(ii)(K) Revised.
Dwelling	24.2(a)(10) Redesignated.
None	24.2(a)(11) Added.
None	24.2(a)(12) Added.
Farm operation	24.2(a)(13) Redesignated.
Federal financial assistance	24.2(a)(14) Revised.
None	24.2(a)(15) Added.
Initiation of negotiations—Intro. Para	24.2(a)(16)Intro. para. Redesignated and text unchanged.
(1) through (3)	24.2(a)(16)(i) through (iii) Redesignated and text unchanged.
None	24.2(a)(16)(iv) Added.
Lead agency	24.2(a)(17) Redesignated.
None	24.2(a)(18) Added.
Mortgage	24.2(a)(19) Redesignated.
Nonprofit organization	24.2(a)(20) Redesignated.
Notice of intent to acquire or notice of eligibility for relocation assistance.	24.203(d) Revised.
Owner of a dwelling	24.2(a)(21) Revised.
Person	24.2(a)(22) Redesignated.
Program or project	24.2(a)(23) Redesignated.
Salvage value	24.2(a)(24) Revised.
Small business	24.2(a)(25) Redesignated.
State	24.2(a)(26) Redesignated.
Tenant	24.2(a)(27) Redesignated.
Uneconomic remnant	24.2(a)(28) Redesignated.
Uniform Act	24.2(a)(29) Revised.
Unlawful occupancy	24.2(a)(30) Revised.
Utility costs	24.2(a)(31) Redesignated.
Utility facility	24.2(a)(32) Redesignated.

DISTRIBUTION TABLE—Continued

Old section	New section
Utility relocation	24.2(a)(33) Redesignated.
None	24.2(a)(34) Added.
None	24.2(b) Added.
24.3	24.3 Revised.
24.4(a)(1) and (2)	24.4(a)(1) and (2) Text unchanged.
None	24.4(a)(3) Added.
24.4(a)(3)	24.4(a)(4) Revised.
24.4(b) and (c)	24.4(b) and (c) Text unchanged.
24.5 through 24.7	24.5 through 24.7 Text unchanged.
24.8 (a) through (g)	24.8(a) through (g) Text unchanged.
24.8(h)	24.8(h) Revised.
24.8(i)	24.8(i) Revised.
24.8(j) through (l)	24.8(j) through (l) Text unchanged.
24.8(m)	24.8(m) Removed.
24.8(n)	24.8(m) Redesignated.
None	24.8(n) Added
24.9(a) and (b)	24.9(a) and (b) Text unchanged.
24.9(c)	24.9(c) Revised.
24.10(a) through (f)	24.10(a) through (f) Text unchanged.
24.10(g) and (h)	24.10(g) and (h) Revised.
Subpart B	
24.101 Heading.	24.101 Heading Text unchanged.
24.101(a)	24.101(a) Revised.
24.101(a) Second para.	24.101(b) Redesignated and revised.
24.101(a)(1)	24.101(b)(1) Redesignated and revised.
24.101(a)(1)(i)	24.101(b)(1)(i) Redesignated and revised.
24.101(a)(1)(ii) and (iii)	24.101(b)(1)(ii) and (iii) Redesignated.
24.101(a)(1)(iv)	24.101(b)(1)(iv) Redesignated and revised.
24.101(a)(2)	24.101(b)(2) Redesignated.
24.101(a)(2)(i)	24.101(b)(2)(i) Redesignated.
24.101(a)(2)(ii)	24.101(b)(2)(ii) Redesignated and revised.
24.101(a)(3) and (4)	24.101(b)(3) and (4) Redesignated.
24.101(a)(5)	24.101(b)(5) Redesignated and revised.
24.101(b)	24.101(c) Redesignated and revised.
24.101(c)	24.101(d) Redesignated and revised.
24.102(a)	24.102(a) Text unchanged.
24.102(b)	24.102(b) Revised.
24.102(c) Intro. para.	24.102(c) Intro. para. Text unchanged.
24.102(c)(1) through (e) Intro. para.	24.102(c)(1) through (e) Intro para. Revised.
24.102(e)(1) and (2)	24.102(e)(1) and (2) Text unchanged.
24.102(e)(3)	24.102(e)(3) Revised.
24.102(f)	24.102(f) Revised.
24.102(g) and (h)	24.102(g) and (h) Text unchanged.
24.102(i) through (k)	24.102(i) through (k) Revised.
24.102 (l)	24.102 (l) Text unchanged.
24.102(m)	24.102(m) Revised.
None	24.102(n) Added.
24.103 Heading	24.103 Heading Text unchanged.
24.103(a)	24.103(a) Revised.
24.103(a)(1)	Appendix 24.103(a).
24.103(a)(2)	24.101(a)(1) Redesignated and text unchanged.
24.103(a)(3)	24.103(a)(2) Redesignated and revised.
24.103(a)(4) through (6)	24.103(a)(3) through (5) Redesignated.and text unchanged.
24.103(b) and (c)	24.103(b) and (c) Revised.
24.103(d) Heading and (d)(1)	24.103(d) Heading and (d)(1) Revised.
24.103(d)(2)	24.103(d)(2) Text unchanged.
24.103(e)	24.102(n) Redesignated and revised.
24.104 Introductory para.	24.104 Introductory para. Text unchanged.
24.104(a), (b) and (c)	24.104(a), (b) and (c) Revised.
24.105(a) and (b)	24.105(a) and (b) Text unchanged.
24.105(c)	24.105(c) Revised.
24.105(d) Introductory para	24.105(d) Introductory para. Revised.
24.105(d)(1) through 24.105(e)	24.105(d)(1) through 24.105(e) Text unchanged.
24.106(a)	24.106(a) Text unchanged.
24.106(b)	24.106(b) Revised.
24.107 through 24.108	24.107 through 24.108 Text unchanged.
Subpart C	
24.201	24.201 Text unchanged.

DISTRIBUTION TABLE—Continued

Old section	New section
24.202	24.202 Revised.
24.203 (a) and (a)(1)	24.203(a) and (a)(1) Text unchanged
24.203(a)(2) through (5)	24.203(a)(2)–(5) Revised.
24.203(b) and (c)	24.203(b) and (c) Text unchanged.
None	24.203(d) Added.
24.204(a)	24.204(a) Revised.
24.204(a)(1) through (c)	24.204(a)(1) through (c) Text unchanged.
24.205(a)	24.205(a) Revised.
24.205(a)(1) and (2)	24.205(a)(1) and (2) Revised.
24.205(a)(3)	24.205(a)(3) Text unchanged.
None	24.205(a)(4) Added.
24.205(a)(4)	24.205(a)(5) Redesignated.
24.205(b) through 24.205(c)(2)	24.205(b) through 24.205(c)(2) Text unchanged.
24.205(c)(2)(i)	24.205(c)(2)(i) Revised.
None	24.205(c)(2)(i)(A) through (F) Added.
24.205(c)(2)(ii) and (c)(2)(ii)(A)	24.205(c)(2)(ii) and (c)(2)(ii)(A) Text unchanged.
24.205(c)(2)(ii)(B) through (E)	24.205(c)(2)(ii)(B) through (E) Revised.
None	24.205(c)(2)(ii)(F) Added.
24.205(c)(2)(iii) through (v)	24.205(c)(2)(iii) through (v) Text unchanged.
24.205(c)(2)(vi)	24.205(e) Redesignated and text unchanged.
None	24.205(c)(2)(vi) Added.
24.205(d)	24.205(d) Text unchanged.
24.206 Introductory paragraph	24.206 Revised.
24.206(a) and (b)	24.2(a)(12)(i) and (ii) Redesignated and revised.
24.206(c)	24.206 Redesignated and revised.
24.207(a) through (d)(1)	24.207(a) through (d)(1) Text unchanged.
24.207(d)(2)	24.207(d)(2) Revised.
24.207(e)	24.403(a)(5) Redesignated.
24.207(f)	24.403(a)(6) Redesignated
24.207(g)	24.207(e) Redesignated.
None	24.207(f) and (g) Added.
24.208 Intro. para.	24.208 Intro. para. Text unchanged.
24.208(a) through (f) Intro. para	24.208(a) through (f) Intro. para. Text unchanged.
24.208(f)(1)	24.208(f)(1) Revised.
24.208(f)(2) through 24.209	24.208(f)(2) through 24.209 Text unchanged.
Subpart D	
24.301 Heading	24.301 Heading Revised.
24.301 Introductory paragraph	24.301(a) Redesignated and revised.
None	24.301(a) Added.
24.301(a) and (b)	24.301(g)(1) and (g)(2) Redesignated and text unchanged.
None	24.301(b) Added.
24.301(c)	24.301(g)(3) Redesignated
None	24.301(c) Added.
24.301(d) through (f)	24.301(g)(4) through (g)(6) Redesignated.
None	24.301(d) through (f) Added.
24.301(g)	24.301(g)(7) Revised.
None	24.301(g)(18) Added.
None	24.301(h) through (j) Added.
24.302	24.302 Revised.
24.303	24.303 Revised.
24.303(a) through (a)(14)	24.301(g)(1) through (g)(17) Redesignated and revised.
24.303(b) through (b)(3)	24.301(i)(1) and (2) Redesignated and revised.
24.303(c)	24.301(d) Redesignated and revised.
24.303(d)	24.301(j) Redesignated and text unchanged.
24.303(e) through (e)(2)	24.301(f) through (f)(2) Redesignated and text unchanged.
24.304 Heading	24.304 Heading Text unchanged.
24.304 Introductory para.	24.304 Introductory para. Revised.
24.304(a) through (a)(3)	24.304(a) through (a)(3) Text unchanged.
24.304(a)(4)	24.303(a) Redesignated.
24.304(a)(5)	24.304(a)(4) Redesignated.
24.304(a)(6)	24.301(g)(11) Redesignated.
24.304(a)(7)	24.303(b) Redesignated and revised.
24.304(a)(8)	24.304(a)(5) Redesignated.
24.304(a)(9)	24.303(b) Redesignated and revised.
24.304(a)(10)	24.304(a)(6) Redesignated.
24.304(a)(11)	24.303(c) Redesignated and revised.
24.304(a)(12)	24.304(a)(7) Redesignated.
24.304(b)(1) through (3)	24.304(b)(1) through (3) Text unchanged.
24.304(b)(4)	24.304(b)(4) Revised.
24.305 section heading	24.305 Removed.

DISTRIBUTION TABLE—Continued

Old section	New section
24.305(a) through (k)	24.301(h) through (h)(11) Redesignated and revised.
None	24.305(h)(12) Added.
24.306 section heading	24.305 Redesignated.
24.306(a)	24.305(a) Redesignated and revised.
24.306(a)(1) through (a)(5)	24.305(a)(1) through (a)(5) Redesignated and text unchanged.
24.306(a)(6)	24.305(a)(6) Revised.
24.306(b)	24.305(b) Revised.
24.306(c)	24.305(c) Revised.
24.306(c)(1) through (d)	24.305(c)(1) through (d) Redesignated.
24.306(e)	24.305(e) Revised.
24.307 section heading	24.306 Redesignated.
24.307(a) through (b)	24.306(a) through (b) Redesignated.
24.307(c)	24.306(c) Revised.
Subpart E	
24.401 through 24.401(b)	24.401 through 24.401(b) Text unchanged.
24.401(c)	24.401(c) Text unchanged.
24.401(c)(1)	24.401(c)(1) Revised.
24.401(c)(1)(i) and (ii)	24.401(c)(1)(i) and (ii) Text unchanged.
24.401(c)(2)	24.403(a)(7) Redesignated and revised.
24.401(c)(3)	24.403(g) Redesignated and revised.
24.401(c)(4)	24.401(c)(2) Redesignated and text unchanged.
24.401(c)(4)(i)	24.401(c)(2)(i) Redesignated and text unchanged.
24.401(c)(4)(ii) and (iii)	24.401(c)(2)(ii) and (iii) Redesignated and revised.
24.401(c)(4)(iv)	24.401(c)(2)(iv) Redesignated and text unchanged.
24.401(d) through 24.401(e)(3)	24.401(d) through 24.401(e)(3) Text unchanged.
24.401(e)(4)	24.401(e)(4) Revised.
24.401(e)(5) through (e)(3)	24.401(e)(5) through (e)(9) Text unchanged.
24.401(f)	24.401(f) Revised.
24.402(a) through (b)(2)(i)	24.402(a) through (b)(2)(i) Text unchanged.
24.402(b)(2)(ii)	24.402(b)(2)(ii) Revised.
24.402(b)(2)(iii) and (b)(3)	24.402(b)(2)(iii) and (b)(3) Text unchanged.
24.402(c)(1)	24.402(c)(1) Revised.
24.402(c)(2)	24.402(c)(2) Text unchanged.
24.403 Heading	24.403 Text unchanged.
24.403(a) and (a)(1)	24.403(a) and (a)(1) Revised.
24.403(a)(2) through (4)	24.403(a)(2) through (4) Text unchanged.
None	24.403(a)(5) through (7) Added.
24.403(b)	24.403(b) Revised.
24.403(c) through (f)(1)	24.403(c) through (f)(1) Text unchanged.
24.403(f)(2)	24.403(f)(2) Revised.
24.403(f)(3)	24.403(f)(3) Text unchanged.
None	24.403(g) Added.
24.404(a) through 404(a)(2)(ii)	24.404(a) through 404(a)(2)(ii) Text unchanged.
24.404(a)(2)(iii)	24.404(a)(2)(iii) Revised.
24.404(b) through 404(c)(1)	24.404(b) through 404(c)(1) Text unchanged.
24.404(b) through 404(c)(1)(i)	24.404(b) through 404(c)(1)(i) Revised.
24.404(c)(ii) through 404(c)(1)(vi)	24.404(c)(ii) through 404(c)(1)(vi) text unchanged.
24.404(c)(1)(vii)	24.404(c)(1)(vii) Revised.
24.404(c)(1)(viii)	24.404(c)(1)(viii) Text unchanged.
24.404(c)(2)	24.404(c)(2) Revised.
24.404(c)(3)	24.404(c)(3) Text unchanged.
Subpart F	
24.501 Heading	24.501 Heading Text unchanged.
24.501 Intro. para.	24.501(a) Revised.
None	24.501(b) Added.
24.502(b) through (b)(3)	24.301(f)(8) through (f)(10) Redesignated and revised.
24.503 section heading	24.502 Redesignated and revised.
24.503(a)	24.502(a) Redesignated and revised.
24.503(a)(1)	24.502(a)(1) Revised.
None	24.502(a)(1)(i) through (iii) Added.
24.503(a)(2) through (3)	24.502(a)(2) through (3) Redesignated and text unchanged.
24.503(a)(3)	24.502(a)(3) Revised.
24.503(a)(3)(i) through (iv)	24.502(a)(3)(i) through (iv) Redesignated and text unchanged.
None	24.502(b)(1) Added.
24.503(b)	24.502(b)(2) Revised.
None	24.502 (c) through (e) Added.
24.504 Heading	24.503 Heading Redesignated and text unchanged.
24.504 Intro. para.	24.503 Intro. para. Redesignated.

DISTRIBUTION TABLE—Continued

Old section	New section
24.504(a) and (b)	24.503(a) and (b) Redesignated and text unchanged.
24.504(c)	24.503(c) Redesignated and revised.
24.505(a) through (e)	24.505(a) through (e) Removed.
24.505(e)	24.501(b) Redesignated.
24.601	24.601 Text unchanged.
24.602	24.602 Revised.
24.603	24.603 Text unchanged.

DERIVATION TABLE

New section	Old section
24.1	24.1.
24.2(a)	None.
24.2(a)(1)	24.2 Agency.
24.2(a)(2)	24.2 Alien not lawfully present in the United States.
24.2(a)(3)	24.2 Appraisal.
24.2(a)(4)	24.2 Business.
24.2(a)(5)	24.2 Citizen.
24.2(a)(6)	24.2 Comparable replacement dwelling.
24.2(a)(6)(ix)	None.
24.2(a)(7)	24.2 Contribute materially.
24.2(a)(8)	24.2 Decent, safe, and sanitary dwelling.
24.2(a)(8)(i)	24.2 Decent, safe, and sanitary dwelling, Para. (1).
24.2(a)(8)(ii)	None.
24.2(a)(8)(iii)	24.2 Decent, safe, and sanitary dwelling, Para. (2).
24.2(a)(8)(iv)	24.2 Decent, safe, and sanitary dwelling, Para. (3).
24.2(a)(8)(v)	24.2 Decent, safe, and sanitary dwelling, Para. (4), First sentence.
24.2(a)(8)(vi)	24.2 Decent, safe, and sanitary dwelling, Para. (4), All text after first sentence.
24.2(a)(8)(vii) and (viii)	24.2 Decent, safe, and sanitary dwelling, Paras. (5) and (6).
24.2(a)(9)	24.2 Displaced person.
24.2(a)(10)	24.2 Dwelling.
24.2(a)(11)	None.
24.2(a)(12)	24.206 Intro. para.
24.2(a)(12)(i) and (ii)	24.206(a) and (b).
24.2(a)(13)	24.2 Farm operation.
24.2(a)(14)	24.2 Federal financial assistance.
24.2(a)(15)	None.
24.2(a)(16)	24.2 Initiation of negotiations.
24.2(a)(17)	24.2 Lead Agency.
24.2(a)(18)	None.
24.2(a)(19)	24.2 Mortgage.
24.2(a)(20)	24.2 Nonprofit organization.
24.2(a)(21)	24.2 Owner of a dwelling.
24.2(a)(22)	24.2 Person.
24.2(a)(23)	24.2 Program or project.
24.2(a)(24)	24.2 Salvage value.
24.2(a)(25)	24.2 Small business.
24.2(a)(26)	24.2 State.
24.2(a)(27)	24.2 Tenant.
24.2(a)(28)	24.2 Uneconomical remnant.
24.2(a)(29)	24.2 Uniform Act.
24.2(a)(30)	24.2 Unlawful occupancy.
24.2(a)(31)	24.2 Utility costs.
24.2(a)(32)	24.2 Utility facility.
24.2(a)(33)	24.2 Utility relocation.
24.2(a)(34)	None.
24.2(b)	None.
24.8(m)	24.8(n).
24.8(n)	None.
24.101(b)	24.101(a) 2nd para.
24.101(b)(1)	24.101(a)(1).
24.101(b)(1)(i)	24.101(a)(1)(i).
24.101(b)(1)(ii)	24.101(a)(1)(ii).
24.101(b)(1)(iii)	24.101(a)(1)(iii).
24.101(b)(1)(iv)	24.101(a)(1)(iv).
24.101(b)(2)	24.101(a)(2).
24.101(b)(2)(i)	24.101(a)(2)(i).
24.101(b)(2)(ii)	24.101(a)(2)(ii).
24.101(b)(3)	24.101(a)(3).

DERIVATION TABLE—Continued

New section	Old section
24.101(b)(4)	24.101(a)(4).
24.101(b)(5)	24.101(a)(5).
24.101(c)	24.101(b).
24.101(d)	24.101(c).
24.102(n)	24.103(e).
24.103(a)(1)	24.103(a)(2).
24.103(a)(2)	24.103(a)(3).
24.103(a)(3)	24.103(a)(4).
24.103(a)(4)	24.103(a)(5).
24.103(a)(5)	24.103(a)(6).
24.203(d)	24.2 Notice of intent to acquire.
24.205(a)(4)	None.
24.205(a)(5)	24.205(a)(4).
24.205(c)(2)(i)(A) through (F)	None.
24.205(c)(2)(ii)(F)	None.
24.205(c)(2)(vi)	Added.
24.205(e)	24.205(c)(2)(vi) Redesignated and text unchanged.
24.206	24.206 Intro. para. and 24.206(c).
24.207(e)	24.207(g)
24.207(f) and (g)	Added.
24.301(a)	24.303(a) and 24.502(b).
24.301(a)(1)	24.502(a).
24.301(b)	None.
24.301(b)(1) and (2)	24.301 Intro. para.
24.301(b)(1)	24.303(a).
24.301(b)(2)(i)	24.302 First sentence.
24.301(b)(3)	None.
24.301(c)	None.
24.301(d)	24.303(a) and (c).
24.301(d)(1) and (2)	24.303(c).
24.301(f)	24.303(e).
24.301(f)(8) through (10)	24.502(b) through (b)(3)
24.301(g)(1)	24.301(a) and 24.303(a)(1).
24.301(g)(2)	24.301(b) and 24.303(a)(2).
24.301(g)(3)	24.301(a) and 24.303(a)(3).
24.301(g)(4)	24.301(d) and 24.303(a)(4).
24.301(g)(5)	24.301(e) and 24.303(a)(5).
24.301(g)(6)	24.301(f) and 24.303(a)(7).
24.301(g)(7)	24.301(g) and 24.303(a)(14).
24.301(g)(8)	24.502(b)(1).
24.301(g)(9)	24.502(b)(2).
24.301(g)(10)	24.502(b)(3).
24.301(g)(11)	24.303(a)(6).
24.301(g)(12)	24.303(a)(8).
24.301(g)(12)(i) through (iii)	24.303(a)(8)(i) through (iii).
24.301(g)(13) through (17)	24.303(a)(9) through (13).
24.301(g)(18)	None.
24.301(h)(1) through (11)	24.305(a) through (k).
24.301(i)	24.303(b).
24.301(j)	24.303(d).
24.303 Intro. para.	23.303 Intro. para.
24.303(a)	24.304(a)(4).
24.303(b)	24.304(a)(7) and (a)(9).
24.303(c)	24.304(a)(11).
24.304(a)(4)	24.304(a)(5).
24.304(a)(5)	24.304(a)(8).
24.304(a)(6)	24.304(a)(10).
24.304(a)(7)	24.304(a)(12).
24.304(b)	24.305(b).
24.305 and 24.305(a) and (b)	24.306 and 24.306(a) and (b).
24.305(b)(1) through (4)	24.306(b)(1) through (4).
24.305(c) through (e)	24.306(c) through (e).
24.306	24.307.
24.401(c)(2)	24.401(c)(4).
24.403(a)(5)	24.207(e).
24.403(a)(6)	24.207(f).
24.403(a)(7)	24.401(c)(2).
24.403(g)	24.401(c)(3).
24.501(a)	24.501 Intro. para.
24.501(b)	24.505(e).
24.502 Heading	24.503.
24.502(a)	24.503(a)(1).

DERIVATION TABLE—Continued

New section	Old section
24.502(a)(1)	24.503(a)(1).
24.502(a)(2) and (3)	24.503(a)(2) and (3).
24.502(b)	24.503(b).
24.502(b)(1)	None.
24.502(b)(2)	24.503(a)(3) and 503(b).
24.502(c)	24.505(a).
24.502(d)	24.503(a)(3)(iii).
24.502(e)	24.505(b)(2).
24.503	24.504.

Public Meetings

Public meetings will be held on January 15, 22, and 28, 2004. The January 15, 2004 meeting will be held in Washington, DC, United States Department of Transportation, 400 7th Street SW., Room 8236; the January 22, 2004 meeting will be held in Lakewood, CO, Zang Building, Conference Room 360, 555 Zang Street. The January 28, 2004 meeting will be held in Atlanta, GA, Atlanta Federal Center, Conference Room B, 61 Forsyth Street, SW., Atlanta, Georgia. Each meeting will be held from 10 am to 2 pm.

Rulemaking Analyses and Notices

All comments received before the close of business on the comment closing date indicated above will be considered and will be available for examination in the docket at the above address. Comments received after the comment closing date will be filed in the docket and will be considered to the extent practicable. In addition to late comments, the FHWA will also continue to file relevant information in the docket as it becomes available after the comment period closing date, and interested persons should continue to examine the docket for new material. A final rule may be published at any time after close of the comment period.

Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

The FHWA has determined preliminarily that this action would not be a significant regulatory action within the meaning of Executive Order 12866, nor would it be significant within the meaning of Department of Transportation regulatory policies and procedures. It is anticipated that the economic impact of this rulemaking would be minimal.

This action proposes to update and streamline the Uniform Act regulation and does not propose any new initiatives. We have proposed only nominal adjustments to enhance services and payments to persons displaced by Federal and federally-assisted real property acquisitions. The costs of the increased benefits will continue to be funded through Federal and federally-assisted project funds. These proposed changes would assist the 18 Federal Agencies that acquire real property and several of these Agencies provided input in developing these proposals.

These proposed changes would not adversely affect, in a material way, any sector of the economy. These changes would assist Agencies in developing their programs that acquire real property by providing increased assistance, especially for businesses, farms and non-profit organizations. None of the proposed changes would materially alter the budgetary impact of any entitlements, grants, user fees, or loan programs. Consequently, a full regulatory evaluation is not required.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (Pub. L. 96–354, 5 U.S.C. 601–612) the FHWA has evaluated the effects of this proposed action on small entities and has determined that the proposed action would not have a significant economic impact on a substantial number of small entities.

This action proposes to update the governmentwide regulation that provides assistance for persons, including small businesses, displaced by government acquisition of real property. One of the reasons for proposing the update is to increase assistance for displaced small businesses. We anticipate this proposal would have a positive impact on those relatively few small businesses that are affected by government acquisition of real property. Financial impacts on local governments are mitigated by the fact that any increased costs would accrue only on federally-assisted programs, which would include participation of Federal funds. For these reasons, the FHWA certifies that this action would not have a significant economic impact on a substantial number of small entities.

Unfunded Mandates Reform Act of 1995

This proposed rule would not impose unfunded mandates as defined by the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4, March 22, 1995, 109 Stat. 48). The proposed updates are applicable only on Federal and federally-assisted programs. This proposed rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year (2 U.S.C. 1532).

Executive Order 13132 (Federalism)

This proposed action has been analyzed in accordance with the principles and criteria contained in Executive Order 13132, and the FHWA has determined that this proposed action would not have a substantial direct effect or sufficient federalism implications on States that would limit the policymaking discretion of the States. The FHWA has also determined that this proposed action would not preempt any State law or State regulation or affect the States' ability to discharge traditional State governmental functions.

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501, *et seq.*), Federal Agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct, sponsor, or require through regulations.

Most of the data FHWA proposes to collect is currently required under the existing regulation. All information the FHWA proposes to collect for reporting purposes is statistical data from the 18 Federal Agencies engaged in land acquisition and displacement activities. The PRA was enacted to minimize paperwork burdens and recordkeeping requirements that the Federal government imposes on non-Federal entities. All the information this proposed rule proposes to collect comes from the 18 Federal Agencies that acquire real property for Federal and federally-assisted projects, and the information is generally already collected by those Agencies for their own internal purposes. Therefore, the FHWA has determined that this proposal does not contain collection of information requirements for the purposes of the PRA.

National Environmental Policy Act

The FHWA has analyzed this proposed action for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321) and has determined that this proposed action would not have any effect on the quality of the environment.

Executive Order 12630 (Taking of Private Property)

This proposed action would not affect a taking of private property or otherwise have taking implications under Executive Order 12630, Government Actions and Interface with Constitutionally Protected Property Rights.

Executive Order 12988 (Civil Justice Reform)

This proposed action meets applicable standards in §§ 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Executive Order 13045 (Protection of Children)

We have analyzed this proposed action under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This proposed action does not involve an economically significant rule and does not concern an environmental risk to health or safety that may disproportionately affect children.

Executive Order 13175 (Tribal Consultation)

The FHWA has analyzed this proposal under Executive Order 13175, dated November 6, 2000, and believes that the proposed action will not have substantial direct effects on one or more Indian tribes; will not impose substantial direct compliance costs on Indian tribal governments; and will not preempt tribal law. Therefore, a tribal summary impact statement is not required.

Executive Order 13211 (Energy Effects)

We have analyzed this proposed rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a significant energy action under that order because it is not a significant regulatory action under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Therefore, a Statement of Energy Effects under Executive Order 13211 is not required.

Regulation Identification Number

A regulation identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

List of Subjects in 49 CFR Part 24

Real property acquisition, Relocation assistance, Reporting and recordkeeping requirements and Transportation.

Issued on: December 5, 2003.

Mary E. Peters,

Federal Highway Administrator.

In consideration of the foregoing, the FHWA proposes to revise title 49 Code of Federal Regulations part 24, as set forth below:

PART 24—UNIFORM RELOCATION ASSISTANCE AND REAL PROPERTY ACQUISITION FOR FEDERAL AND FEDERALLY-ASSISTED PROGRAMS

Subpart A—General

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24.301 Payment for actual reasonable moving and related expenses.
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24.305 Fixed payment for moving expenses—non-residential moves.
24.306 Discretionary utility relocation payments.

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24.401 Replacement housing payment for 180-day homeowner-occupants.
24.402 Replacement housing payment for 90-day occupants.
24.403 Additional rules governing replacement housing payments.
24.404 Replacement housing of last resort.

Subpart F—Mobile Homes

24.501 Applicability.
24.502 Replacement housing payment for 180-day mobile homeowner displaced from a mobile home, and/or from the acquired mobile home site.
24.503 Replacement housing payment for 90-day mobile home occupants.

Subpart G—Certification

24.601 Purpose.
24.602 Certification application.
24.603 Monitoring and corrective action.
Appendix A to Part 24—Additional Information
Appendix B to Part 24—Statistical Report Form

Authority: 42 U.S.C. 4601 *et seq.*; 49 CFR 1.48(cc).

Subpart A—General

§ 24.1 Purpose.

The purpose of this part is to promulgate rules to implement the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (42 U.S.C. 4601 *et seq.*), in accordance with the following objectives:

(a) To ensure that owners of real property to be acquired for Federal and federally-assisted projects are treated fairly and consistently, to encourage and expedite acquisition by agreements with such owners, to minimize litigation and relieve congestion in the courts, and to promote public confidence in Federal and federally-assisted land acquisition programs;

(b) To ensure that persons displaced as a direct result of Federal or federally-assisted projects are treated fairly, consistently, and equitably so that such displaced persons will not suffer disproportionate injuries as a result of projects designed for the benefit of the public as a whole; and

(c) To ensure that Agencies implement these regulations in a manner that is efficient and cost effective.

§ 24.2 Definitions and acronyms.

(a) *Definitions.* Unless otherwise noted, the following terms used in this part shall be understood as defined in this section:

(1) *Agency.* The term *Agency* means the Federal Agency, State, State Agency, or person that acquires real property or displaces a person.

(i) *Acquiring Agency.* The term *acquiring Agency* means a State Agency, as defined in paragraph (a)(1)(iv) of this section, which has the authority to acquire property by eminent domain under State law, and a State Agency or person which does not have such authority.

(ii) *Displacing Agency.* The term *displacing Agency* means any Federal Agency carrying out a program or project, and any State, State Agency, or person carrying out a program or project with Federal financial assistance, which causes a person to be a displaced person.

(iii) *Federal Agency.* The term *Federal Agency* means any department, Agency, or instrumentality in the executive branch of the Government, any wholly owned government corporation, the Architect of the Capitol, the Federal Reserve Banks and branches thereof, and any person who has the authority to acquire property by eminent domain under Federal law.

(iv) *State Agency.* The term *State Agency* means any department, Agency or instrumentality of a State or of a political subdivision of a State, any department, Agency, or instrumentality of two or more States or of two or more political subdivisions of a State or States, and any person who has the authority to acquire property by eminent domain under State law.

(2) *Alien not lawfully present in the United States.* The phrase "alien not lawfully present in the United States" means an alien who is not "lawfully present" in the United States as defined in 8 CFR 103.12 and includes:

(i) An alien present in the United States who has not been admitted or paroled into the United States pursuant to the Immigration and Nationality Act (8 U.S.C. 1101 *et seq.*) and whose stay in the United States has not been authorized by the United States Attorney General, and

(ii) An alien who is present in the United States after the expiration of the period of stay authorized by the United States Attorney General or who otherwise violates the terms and conditions of admission, parole or authorization to stay in the United States.

(3) *Appraisal.* The term *appraisal* means a written statement independently and impartially prepared by a qualified appraiser setting forth an opinion of defined value of an adequately described property as of a specific date, supported by the presentation and analysis of relevant market information.

(4) *Business.* The term *business* means any lawful activity, except a farm operation, that is conducted:

(i) Primarily for the purchase, sale, lease and/or rental of personal and/or real property, and/or for the manufacture, processing, and/or marketing of products, commodities, and/or any other personal property;

(ii) Primarily for the sale of services to the public;

(iii) Primarily for outdoor advertising display purposes, when the display must be moved as a result of the project; or

(iv) By a nonprofit organization that has established its nonprofit status under applicable Federal or State law.

(5) *Citizen.* The term *citizen* for purposes of this part, includes both citizens of the United States and noncitizen nationals.

(6) *Comparable replacement dwelling.* The term *comparable replacement dwelling* means a dwelling which is:

(i) Decent, safe and sanitary as described in paragraph (a)(8) of this section;

(ii) Functionally equivalent to the displacement dwelling. The term *functionally equivalent* means that it performs the same function, and provides the same utility. While a comparable replacement dwelling need not possess every feature of the displacement dwelling, the principal features must be present. Generally, functional equivalency is an objective standard, reflecting the range of purposes for which the various physical features of a dwelling may be used. However, in determining whether a replacement dwelling is functionally equivalent to the displacement dwelling, the Agency may consider reasonable trade-offs for specific features when the replacement unit is equal to or better than the displacement dwelling. (See appendix A to this part);

(iii) Adequate in size to accommodate the occupants;

(iv) In an area not subject to unreasonable adverse environmental conditions;

(v) In a location generally not less desirable than the location of the displaced person's dwelling with respect to public utilities and commercial and public facilities, and reasonably accessible to the person's place of employment;

(vi) On a site that is typical in size for residential development with normal site improvements, including customary landscaping. The site need not include special improvements such as outbuildings, swimming pools, or greenhouses. (See also § 24.403(a)(2));

(vii) Currently available to the displaced person on the private market except as provided in paragraph (a)(6)(ix) of this section. (*See* appendix A, section 24.2(a)(6)); and

(viii) Within the financial means of the displaced person eligible for a replacement housing payment. This means that after receipt of all acquisition and relocation payments under this regulation (including any amount deducted because of rent owed the Agency), the price or rent (including utilities), as appropriate, of the replacement dwelling offered as a comparable does not exceed the price or rent (including utilities) of the dwelling from which displaced.

(ix) For a person receiving government housing assistance before displacement, a dwelling that may reflect similar government housing assistance. In such cases any requirements of the government housing assistance program relating to the size of the replacement dwelling shall apply. (*See* appendix A, section 24.2(a)(6)).

(7) *Contribute materially.* The term *contribute materially* means that during the 2 taxable years prior to the taxable year in which displacement occurs, or during such other period as the Agency determines to be more equitable, a business or farm operation:

(i) Had average annual gross receipts of at least $5,000; or

(ii) Had average annual net earnings of at least $1,000; or

(iii) Contributed at least 33 1/3 percent of the owner's or operator's average annual gross income from all sources.

(iv) If the application of the above criteria creates an inequity or hardship in any given case, the Agency may approve the use of other criteria as determined appropriate.

(8) *Decent, safe, and sanitary dwelling.* The term *decent, safe, and sanitary dwelling* means a dwelling which meets local housing and occupancy codes. However, any of the following standards which are not met by the local code shall apply unless waived for good cause by the Federal Agency funding the project. The dwelling shall:

(i) Be structurally sound, weathertight, and in good repair;

(ii) Have no deteriorated paint (or no deteriorated lead-based paint if paint testing is conducted) and have no dust-lead hazards, as these terms are defined at 24 CFR 35.110, unless the displaced person is either elderly or disabled and no child under 6 years of age will reside or be expected to reside in the unit, or the replacement dwelling unit is a zero-bedroom dwelling. A unit built on or after January 1, 1978, shall meet this requirement;

(iii) Contain a safe electrical wiring system adequate for lighting and other devices;

(iv) Contain a heating system capable of sustaining a healthful temperature (of approximately 70 degrees) for a displaced person, except in those areas where local climatic conditions do not require such a system;

(v) Be adequate in size with respect to the number of rooms and area of living space needed to accommodate the displaced person. The number of persons occupying each habitable room used for sleeping purposes shall not exceed that permitted by local housing codes or the policies of the displacing Agency. In addition, the displacing Agency shall follow the requirements for separate bedrooms for children of the opposite gender included in local housing codes or the policies of such Agencies;

(vi) There shall be a separate, well lighted and ventilated bathroom that provides privacy to the user and contains a sink, bathtub or shower stall, and a toilet, all in good working order and properly connected to appropriate sources of water and to a sewage drainage system. In the case of a housekeeping dwelling, there shall be a kitchen area that contains a fully usable sink, properly connected to potable hot and cold water and to a sewage drainage system, and adequate space and utility service connections for a stove and refrigerator;

(vii) Contains unobstructed egress to safe, open space at ground level; and

(viii) For a displaced person with a disability, be free of any barriers which would preclude reasonable ingress, egress, or use of the dwelling by such displaced person. (*See* appendix A, section 24.2(a)(8).)

(9) *Displaced person*—(i) *General.* The term *displaced person* means, except as provided in paragraph (a)(9)(ii) of this section, any person who moves from the real property or moves his or her personal property from the real property. (This includes a person who occupies the real property prior to its acquisition, but who does not meet the length of occupancy requirements of the Uniform Act as described at § 24.401(a) and § 24.402(a)):

(A) As a direct result of a written notice of intent to acquire (*see* section 24.203(d)), the initiation of negotiations for, or the acquisition of, such real property in whole or in part for a project;

(B) As a direct result of rehabilitation or demolition for a project; or

(C) As a direct result of a written notice of intent to acquire, or the acquisition, rehabilitation or demolition of, in whole or in part, other real property on which the person conducts a business or farm operation, for a project. However, eligibility for such person under this paragraph applies only for purposes of obtaining relocation assistance advisory services under § 24.205(c), and moving expenses under § 24.301, § 24.302 or § 24.303.

(ii) *Persons not displaced.* The following is a nonexclusive listing of persons who do not qualify as displaced persons under this part:

(A) A person who moves before the initiation of negotiations (see section 24.403(d)), unless the Agency determines that the person was displaced as a direct result of the program or project;

(B) A person who initially enters into occupancy of the property after the date of its acquisition for the project;

(C) A person who has occupied the property for the purpose of obtaining assistance under the Uniform Act;

(D) A person who is not required to relocate permanently as a direct result of a project. Such determination shall be made by the Agency in accordance with any guidelines established by the Federal Agency funding the project. (*See* appendix A, section 24.2(a)(9)(ii)(D));

(E) An owner-occupant who moves as a result of an acquisition of real property as described in § 24.101(b)(1) through (5), or as a result of the rehabilitation or demolition of the real property. (However, the displacement of a tenant as a direct result of any acquisition, rehabilitation or demolition for a Federal or federally-assisted project is subject to this part.);

(F) A person whom the Agency determines is not displaced as a direct result of a partial acquisition;

(G) A person who, after receiving a notice of relocation eligibility (described at § 24.203(b)), is notified in writing that he or she will not be displaced for a project. Such notice shall not be issued unless the person has not moved and the Agency agrees to reimburse the person for any expenses incurred to satisfy any binding contractual relocation obligations entered into after the effective date of the notice of relocation eligibility;

(H) An owner-occupant who conveys his or her property, as described in § 24.101(b)(1) through (5), after being informed in writing that if a mutually satisfactory agreement on terms of the conveyance cannot be reached, the Agency will not acquire the property. In such cases, however, any resulting displacement of a tenant is subject to the regulations in this part; or

(I) A person who retains the right of use and occupancy of the real property for life following its acquisition by the Agency;

(J) An owner who retains the right of use and occupancy of the real property for a fixed term after its acquisition by the Department of the Interior under Public Law 93–477, Appropriations for National Park System, or Public Law 93–303, Land and Water Conservation Fund, except that such owner remains a displaced person for purposes of subpart D of this part;

(K) A person who is determined to be in unlawful occupancy prior to or after the initiation of negotiations, or a person who has been evicted for cause, under applicable law, as provided for in § 24.206. However, advisory assistance may be provided to unlawful occupants at the option of the Agency in order to facilitate the project; or

(L) A person who is not lawfully present in the United States and who has been determined to be ineligible for relocation assistance in accordance with § 24.208.

(10) *Dwelling.* The term *dwelling* means the place of permanent or customary and usual residence of a person, according to local custom or law, including a single family house; a single family unit in a two-family, multi-family, or multi-purpose property; a unit of a condominium or cooperative housing project; a non-housekeeping unit; a mobile home; or any other residential unit.

(11) *Dwelling site.* The term *dwelling site* means a typical site upon which a dwelling is located.

(12) *Eviction for cause.* The term *eviction for cause* means an eviction in conformance with applicable State and local requirements, provided:

(i) The eviction notice was received before or after the initiations of negotiations and as a result of that notice is later evicted; or

(ii) Eviction was for serious or repeated violations of material terms of the lease or occupancy agreement.

(13) *Farm operation.* The term *farm operation* means any activity conducted solely or primarily for the production of one or more agricultural products or commodities, including timber, for sale or home use, and customarily producing such products or commodities in sufficient quantity to be capable of contributing materially to the operator's support.

(14) *Federal financial assistance.* The term *Federal financial assistance* means a grant, loan, lease payments or contribution provided by the United States, except any Federal guarantee or insurance and any interest reduction payment to an individual in connection with the purchase and occupancy of a residence by that individual.

(15) *Household income.* The term *household income* means total gross income received for a 12 month period from all sources (earned and unearned) including, but not limited to wages, salary, child support, alimony, unemployment benefits, workers compensation social security, or the net income from a business. It does not include income received or earned by dependent children and full time students under 18 years of age. (See appendix A, section 24.2(a)(15) for examples of exclusions to income.)

(16) *Initiation of negotiations.* Unless a different action is specified in applicable Federal program regulations, the term *initiation of negotiations* means the following:

(i) Whenever the displacement results from the acquisition of the real property by a Federal Agency or State Agency, the *initiation of negotiations* means the delivery of the initial written offer of just compensation by the Agency to the owner or the owner's representative to purchase the real property for the project. However, if the Federal Agency or State Agency issues a notice of its intent to acquire the real property, and a person moves after that notice, but before delivery of the initial written purchase offer, the *initiation of negotiations* means the actual move of the person from the property.

(ii) Whenever the displacement is caused by rehabilitation, demolition or privately undertaken acquisition of the real property (and there is no related acquisition by a Federal Agency or a State Agency), the *initiation of negotiations* means the notice to the person that he or she will be displaced by the project or, if there is no notice, the actual move of the person from the property.

(iii) In the case of a permanent relocation to protect the public health and welfare, under the Comprehensive Environmental Response Compensation and Liability Act of 1980 (Public Law 96–510, or Superfund) the *initiation of negotiations* means the formal announcement of such relocation or the Federal or federally-coordinated health advisory where the Federal Government later decides to conduct a permanent relocation.

(iv) In the case of permanent relocation of a tenant as a result of an acquisition of real property described in § 24.101(b)(1) through (5), the initiation of negotiations means acceptance of the Agency's offer to purchase the real property.

(17) *Lead Agency.* The term *Lead Agency* means the Department of Transportation acting through the Federal Highway Administration.

(18) *Mobile home.* The term *mobile home* includes manufactured homes and recreational vehicles. (*See* appendix A, section 24.2(a)(18).)

(19) *Mortgage.* The term *mortgage* means such classes of liens as are commonly given to secure advances on, or the unpaid purchase price of, real property, under the laws of the State in which the real property is located, together with the credit instruments, if any, secured thereby.

(20) *Nonprofit organization.* The term *nonprofit organization* means an organization that is incorporated under the applicable laws of a State as a non-profit organization, and exempt from paying Federal income taxes under section 501 of the Internal Revenue Code (26 U.S.C. 501).

(21) *Owner of a dwelling.* The term owner of a dwelling means a person who is considered to have met the requirement to own a dwelling if the person purchases or holds any of the following interests in real property:

(i) Fee title, a life estate, a land contract, a 99 year lease, or a lease including any options for extension with at least 50 years to run from the date of acquisition; or

(ii) An interest in a cooperative housing project which includes the right to occupy a dwelling; or

(iii) A contract to purchase any of the interests or estates described in § 24.2(a)(1)(i) or (ii) of this section, or

(iv) Any other interest, including a partial interest, which in the judgment of the Agency warrants consideration as ownership.

(22) *Person.* The term *person* means any individual, family, partnership, corporation, or association.

(23) *Program or project.* The phrase *program or project* means any activity or series of activities undertaken by a Federal Agency or with Federal financial assistance received or anticipated in any phase of an undertaking in accordance with the Federal funding Agency guidelines.

(24) *Salvage value.* The term *salvage value* means the probable sale price of an item offered for sale to knowledgeable buyers with the requirement that it be removed from the property at a buyer's expense (*i.e.*, not eligible for relocation assistance). This includes items for re-use as well as items with components that can be re-used or recycled when there is no reasonable prospect for sale except on this basis.

(25) *Small business.* A *small business* is a business having not more than 500 employees working at the site being acquired or displaced by a program or project, which site is the location of economic activity. Sites occupied solely by outdoor advertising signs, displays, or devices do not qualify as a business for purposes of § 24.304.

(26) *State.* Any of the several States of the United States or the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, or a political subdivision of any of these jurisdictions.

(27) *Tenant.* The term *tenant* means a person who has the temporary use and occupancy of real property owned by another.

(28) *Uneconomic remnant.* The term *uneconomic remnant* means a parcel of real property in which the owner is left with an interest after the partial acquisition of the owner's property, and which the Agency has determined has little or no value or utility to the owner.

(29) *Uniform Act.* The term *Uniform Act* means the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (Public Law 91–646, 84 Stat. 1894; 42 U.S.C. 4601 *et seq.*), and amendments thereto.

(30) *Unlawful occupant.* A person who occupies without property right, title or payment of rent or a person legally evicted, with no legal rights to occupy a property under State law. An Agency, at its discretion, may consider such person to be in lawful occupancy.

(31) *Utility costs.* The term *utility costs* means expenses for heat, lights, water and sewer.

(32) *Utility facility.* The term *utility facility* means any electric, gas, water, steam power, or materials transmission or distribution system; any transportation system; any communications system, including cable television; and any fixtures, equipment, or other property associated with the operation, maintenance, or repair of any such system. A utility facility may be publicly, privately, or cooperatively owned.

(33) *Utility relocation.* The term *utility relocation* means the adjustment of a utility facility required by the program or project undertaken by the displacing Agency. It includes removing and reinstalling the facility, including necessary temporary facilities; acquiring necessary right-of-way on a new location; moving, rearranging or changing the type of existing facilities; and taking any necessary safety and protective measures. It shall also mean constructing a replacement facility that has the functional equivalency of the existing facility and is necessary for the continued operation of the utility service, the project economy, or sequence of project construction.

(34) *Waiver valuation.* The term *waiver valuation* means the valuation process used and the product produced when the Agency determines that an appraisal is not required, pursuant to § 24.102(c)(2) appraisal waiver provisions.

(b) *Acronyms.* The following acronyms are commonly used in the implementation of programs subject to this part:

(1) *BCIS.* Bureau of Citizenship and Immigration Service.

(2) *FEMA.* Federal Emergency Management Agency.

(3) *FHA.* Federal Housing Administration.

(4) *FHWA.* Federal Highway Administration.

(5) *FIRREA.* Financial Institutions Reform, Recovery, and Enforcement Act of 1989.

(6) *HLR.* Housing of last resort.

(7) *HUD.* U. S. Department of Housing and Urban Development.

(8) *MIDP.* Mortgage interest differential payment.

(9) *RHP.* Replacement housing payment.

(10) *STURAA.* Surface Transportation and Uniform Relocation Act Amendments of 1987.

(11) *URA.* Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970.

(12) *USDOT.* U.S. Department of Transportation.

(13) *USPAP.* Uniform Standards of Professional Appraisal Practice.

§ 24.3 No duplication of payments.

No person shall receive any payment under this part if that person receives a payment under Federal, State, local law, or insurance proceeds which is determined by the Agency to have the same purpose and effect as such payment under this part. (See appendix A, section 24.3.)

§ 24.4 Assurances, monitoring and corrective action.

(a) *Assurances.* (1) Before a Federal Agency may approve any grant to, or contract, or agreement with, a State Agency under which Federal financial assistance will be made available for a project which results in real property acquisition or displacement that is subject to the Uniform Act, the State Agency must provide appropriate assurances that it will comply with the Uniform Act and this part. A displacing Agency's assurances shall be in accordance with section 210 of the Uniform Act. An acquiring Agency's assurances shall be in accordance with section 305 of the Uniform Act and must contain specific reference to any State law which the Agency believes provides an exception to sections 301 or 302 of the Uniform Act. If, in the judgment of the Federal Agency, Uniform Act compliance will be served, a State Agency may provide these assurances at one time to cover all subsequent federally-assisted programs or projects. An Agency, which both acquires real property and displaces persons, may combine its section 210 and section 305 assurances in one document.

(2) If a Federal Agency or State Agency provides Federal financial assistance to a "person" causing displacement, such Federal or State Agency is responsible for ensuring compliance with the requirements of this part, notwithstanding the person's contractual obligation to the grantee to comply.

(3) Any Agency or person solely acquiring property pursuant to the provisions of § 24.101(b)(1) through (5) need not provide the assurances required by § 24.4(a)(1) or (2).

(4) As an alternative to the assurance requirement described in paragraph (a)(1) of this section, a Federal Agency may provide Federal financial assistance to a State Agency after it has accepted a certification by such State Agency in accordance with the requirements in subpart G of this part.

(b) *Monitoring and corrective action.* The Federal Agency will monitor compliance with this part, and the State Agency shall take whatever corrective action is necessary to comply with the Uniform Act and this part. The Federal Agency may also apply sanctions in accordance with applicable program regulations. (Also see § 24.603 of this part.)

(c) *Prevention of fraud, waste, and mismanagement.* The Agency shall take appropriate measures to carry out this part in a manner that minimizes fraud, waste, and mismanagement.

§ 24.5 Manner of notices.

Each notice which the Agency is required to provide to a property owner or occupant under this part, except the notice described at § 24.102(b), shall be personally served or sent by certified or registered first-class mail, return receipt requested, and documented in Agency files. Each notice shall be written in plain, understandable language. Persons who are unable to read and understand the notice must be provided with appropriate translation and counseling. Each notice shall indicate the name and telephone number of a person who may be contacted for answers to questions or other needed help.

§ 24.6 Administration of jointly-funded projects.

Whenever two or more Federal Agencies provide financial assistance to an Agency or Agencies, other than a Federal Agency, to carry out functionally or geographically related activities, which will result in the acquisition of property or the displacement of a person, the Federal Agencies may by agreement designate one such Agency as the cognizant Federal Agency. In the unlikely event that agreement among the Agencies cannot be reached as to which Agency shall be the cognizant Federal Agency, then the Lead Agency shall designate one of such Agencies to assume the cognizant role. At a minimum, the agreement shall set forth the federally-assisted activities which are subject to its terms and cite any policies and procedures, in addition to this part, that are applicable to the activities under the agreement. Under the agreement, the

cognizant Federal Agency shall assure that the project is in compliance with the provisions of the Uniform Act and this part. All federally-assisted activities under the agreement shall be deemed a project for the purposes of this part.

§ 24.7 Federal Agency waiver of regulations.

The Federal Agency funding the project may waive any requirement in this part not required by law if it determines that the waiver does not reduce any assistance or protection provided to an owner or displaced person under this part. Any request for a waiver shall be justified on a case-by-case basis.

§ 24.8 Compliance with other laws and regulations.

The implementation of this part must be in compliance with other applicable Federal laws and implementing regulations, including, but not limited to, the following:

(a) Section 1 of the Civil Rights Act of 1866 (42 U.S.C. 1982 *et seq.*).

(b) Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d *et seq.*).

(c) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. 3601 *et seq.*), as amended.

(d) The National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*).

(e) Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 790 *et seq.*).

(f) The Flood Disaster Protection Act of 1973 (Public Law 93–234).

(g) The Age Discrimination Act of 1975 (42 U.S.C. 6101 *et seq.*).

(h) Executive Order 11063—Equal Opportunity and Housing, revised by Executive Order 12892.

(i) Executive Order 11246—Equal Employment Opportunity, as amended.

(j) Executive Order 11625—Minority Business Enterprise.

(k) Executive Orders 11988—Floodplain Management, and 11990—Protection of Wetlands.

(l) Executive Order 12250—Leadership and Coordination of Non-Discrimination Laws.

(m) Executive Order 12630—Governmental Actions and Interference with Constitutionally Protected Property Rights.

(n) Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*)

§ 24.9 Recordkeeping and reports.

(a) *Records.* The Agency shall maintain adequate records of its acquisition and displacement activities in sufficient detail to demonstrate compliance with this part. These records shall be retained for at least 3 years after each owner of a property and each person displaced from the property receives the final payment to which he or she is entitled under this part, or in accordance with the applicable regulations of the Federal funding Agency, whichever is later.

(b) *Confidentiality of records.* Records maintained by an Agency in accordance with this part are confidential regarding their use as public information, unless applicable law provides otherwise.

(c) *Reports.* (1) The Agency shall submit a report of its real property acquisition and displacement activities under this part if required by the Federal Agency funding the project. The report shall be prepared in the format contained in appendix B of this part.

(2) Federal Agencies shall submit an annual report summarizing their real property acquisition and displacement activities under this part to the Lead Agency. The report may be prepared and submitted using the format contained in appendix B of this part.

§ 24.10 Appeals.

(a) *General.* The Agency shall promptly review appeals in accordance with the requirements of applicable law and this part.

(b) *Actions which may be appealed.* Any aggrieved person may file a written appeal with the Agency in any case in which the person believes that the Agency has failed to properly consider the person's application for assistance under this part. Such assistance may include, but is not limited to, the person's eligibility for, or the amount of, a payment required under § 24.106 or § 24.107, or a relocation payment required under this part. The Agency shall consider a written appeal regardless of form.

(c) *Time limit for initiating appeal.* The Agency may set a reasonable time limit for a person to file an appeal. The time limit shall not be less than 60 days after the person receives written notification of the Agency's determination on the person's claim.

(d) *Right to representation.* A person has a right to be represented by legal counsel or other representative in connection with his or her appeal, but solely at the person's own expense.

(e) *Review of files by person making appeal.* The Agency shall permit a person to inspect and copy all materials pertinent to his or her appeal, except materials which are classified as confidential by the Agency. The Agency may, however, impose reasonable conditions on the person's right to inspect, consistent with applicable laws.

(f) *Scope of review of appeal.* In deciding an appeal, the Agency shall consider all pertinent justification and other material submitted by the person, and all other available information that is needed to ensure a fair and full review of the appeal.

(g) *Determination and notification after appeal.* Promptly after receipt of all information submitted by a person in support of an appeal, the Agency shall make a written determination on the appeal, including an explanation of the basis on which the decision was made, and furnish the person a copy. If the full relief requested is not granted, the Agency shall advise the person of his or her right to seek judicial review of the Agency decision.

(h) *Agency official to review appeal.* The Agency official conducting the review of the appeal shall be either the head of the Agency or his or her authorized designee. However, the official shall not have been directly involved in the action appealed.

Subpart B—Real Property Acquisition

§ 24.101 Applicability of acquisition requirements.

(a) *Federal program or project.* The requirements of this subpart apply to any acquisition of real property for a direct Federal program or project, except acquisition for a program or project which is undertaken by the Tennessee Valley Authority or the Rural Electrification Administration. (*See* appendix A, section 24.101(a).)

(b) *Programs and projects receiving Federal financial assistance.* The requirements of this subpart apply to any acquisition of real property for programs and projects where there is Federal financial assistance in any part of project costs except for the acquisitions described in paragraphs (b)(1) through (5) of this section. The relocation assistance provisions in this part are applicable to any tenants that must move as a result of an acquisition described in paragraphs (b)(1) through (5) of this section. Such tenants are considered displaced persons. (*See* § 24.2(a)(9))

(1) Acquisitions that meet all of the conditions in paragraphs (b)(1)(i) through (iv) of this section.

(i) No specific site or property needs to be acquired, although the Agency may limit its search for alternative sites to a general geographic area. Where an Agency wishes to purchase more than one site within a general geographic area on this basis, all owners are to be treated similarly. (*See* appendix A, section 24.101(b)(1)(i).)

(ii) The property to be acquired is not part of an intended, planned, or designated project area where all or substantially all of the property within the area is to be acquired within specific time limits.

(iii) The Agency will not acquire the property in the event negotiations fail to result in an agreement, and the owner is so informed in writing.

(iv) The Agency will inform the owner in writing of what it believes to be the market value of the property. (*See* appendix A, section 24.101(b)(1)(iv) & (2)(ii).)

(2) Acquisitions for programs or projects undertaken by an Agency or person that receives Federal financial assistance but does not have authority to acquire property by eminent domain, provided that such Agency or person shall:

(i) Prior to making an offer for the property, advise the owner in writing that it is unable to acquire the property in the event negotiations fail to result in an amicable agreement; and

(ii) Inform the owner in writing of what it believes to be market value of the property. (*See* appendix A, section 24.101(b)(1)(iv) & (2)(ii).)

(3) The acquisition of real property from a Federal Agency, State, or State Agency, if the Agency desiring to make the purchase does not have authority to acquire the property through condemnation.

(4) The acquisition of real property by a cooperative from a person who, as a condition of membership in the cooperative, has agreed to provide without charge any real property that is needed by the cooperative.

(5) Acquisition for a program or project which receives Federal financial assistance from the Tennessee Valley Authority or the Rural Electrification Administration.

(c) *Less-than-full-fee interest in real property.* The provisions of this subpart apply when acquiring fee title subject to retention of a life estate or a life use; to acquisition by leasing where the lease term, including option(s) for extension, is 50 years or more; and to the acquisition of permanent easements. (*See* appendix A, section 24.101(c).)

(d) *Federally-assisted projects.* For projects receiving Federal financial assistance, the provisions of §§ 24.102, 24.103, 24.104, and 24.105 apply to the greatest extent practicable under State law. (*See* section 24.4(a).)

§ 24.102 Basic acquisition policies.

(a) *Expeditious acquisition.* The Agency shall make every reasonable effort to acquire the real property expeditiously by negotiation.

(b) *Notice to owner.* As soon as feasible, the Agency shall notify the owner in writing of the Agency's interest in acquiring the real property and the basic protections provided to the owner by law and this part. (*See also* § 24.203.)

(c) *Appraisal, waiver thereof, and invitation to owner.* (1) Before the initiation of negotiations, the real property to be acquired shall be appraised, except as provided in § 24.102(c)(2), and the appraiser shall provide the owner, or the owner's designated representative, an opportunity to accompany the appraiser during the appraiser's inspection of the property.

(2) An appraisal is not required if:

(i) The owner is donating the property and releases the Agency from its obligation to appraise the property, or

(ii) The Agency determines that an appraisal is unnecessary because the valuation problem is uncomplicated and the market value is estimated at $10,000 or less, based on a review of available data. When an appraisal is determined to be unnecessary, the Agency shall prepare a waiver valuation. The Federal Agency funding the project may, on a case-by-case basis, approve exceeding the $10,000 threshold, up to a maximum of $25,000, if the Agency acquiring the real property offers the property owner the option of having the Agency appraise the property. If the property owner elects to have the Agency appraise the property, the Agency shall obtain an appraisal and not use procedures described in this paragraph. (*See* appendix A, section 24.102(c)(2).)

(d) *Establishment and offer of just compensation.* Before the initiation of negotiations, the Agency shall establish an amount which it believes is just compensation for the real property. The amount shall not be less than the approved appraisal of the market value of the property, taking into account the value of allowable damages or benefits to any remaining property. The amount believed to be just compensation must be established by an Agency official. (*See also* § 24.104.) Promptly thereafter, the Agency shall make a written offer to the owner to acquire the property for the full amount believed to be just compensation. (*See* appendix A, section 24.102(d).)

(e) *Summary statement.* Along with the initial written purchase offer, the Agency shall provide the owner a written statement of the basis for the offer of just compensation, which shall include:

(1) A statement of the amount offered as just compensation. In the case of a partial acquisition, the compensation for the real property to be acquired and the compensation for damages, if any, to the remaining real property shall be stated separately.

(2) A description and location identification of the real property and the interest in the real property to be acquired.

(3) An identification of the buildings, structures, and other improvements (including removable building equipment and trade fixtures) which are included as part of the offer of just compensation. Where appropriate, the statement shall identify any other separately held ownership interest in the property, *e.g.*, a tenant-owned improvement, and indicate that such interest is not covered by this offer.

(f) *Basic negotiation procedures.* The Agency shall make reasonable efforts to contact the owner or the owner's representative and discuss its offer to purchase the property, including the basis for the offer of just compensation and explain its acquisition policies and procedures, including its payment of incidental expenses in accordance with § 24.106. The owner shall be given reasonable opportunity to consider the offer and present material which the owner believes is relevant to determining the value of the property and to suggest modification in the proposed terms and conditions of the purchase. The Agency shall consider the owner's presentation. (*See* appendix A, section 24.102(f).)

(g) *Updating offer of just compensation.* If the information presented by the owner, or a material change in the character or condition of the property, indicates the need for new appraisal information, or if a significant delay has occurred since the time of the appraisal(s) of the property, the Agency shall have the appraisal(s) updated or obtain a new appraisal(s). If the latest appraisal information indicates that a change in the purchase offer is warranted, the Agency shall promptly reestablish just compensation and offer that amount to the owner in writing.

(h) *Coercive action.* The Agency shall not advance the time of condemnation, or defer negotiations or condemnation or the deposit of funds with the court, or take any other coercive action in order to induce an agreement on the price to be paid for the property.

(i) *Administrative settlement.* The purchase price for the property may exceed the amount offered as just compensation when reasonable efforts to negotiate an agreement at that amount have failed and an authorized Agency official approves such administrative settlement as being reasonable, prudent, and in the public interest. When Federal

funds pay for or participate in acquisition costs, a written justification shall be prepared, which states what available information, including trial risks, supports such a settlement. (*See* appendix A, section 24.102(i).)

(j) *Payment before taking possession.* Before requiring the owner to surrender possession of the real property, the Agency shall pay the agreed purchase price to the owner, or in the case of a condemnation, deposit with the court, for the benefit of the owner, an amount not less than the Agency's approved appraisal of the market value of such property, or the court award of compensation in the condemnation proceeding for the property. In exceptional circumstances, with the prior approval of the owner, the Agency may obtain a right-of-entry for construction purposes before making payment available to an owner. (*See* appendix A, section 24.102(j).)

(k) *Uneconomic remnant.* If the acquisition of only a portion of a property would leave the owner with an uneconomic remnant, the Agency shall offer to acquire the uneconomic remnant along with the portion of the property needed for the project. (*See* section 24.2(a)(28).)

(l) *Inverse condemnation.* If the Agency intends to acquire any interest in real property by exercise of the power of eminent domain, it shall institute formal condemnation proceedings and not intentionally make it necessary for the owner to institute legal proceedings to prove the fact of the taking of the real property.

(m) *Fair rental.* If the Agency permits a former owner or tenant to occupy the real property after acquisition for a short term or a period, subject to termination by the Agency on short notice, the rent shall not exceed the fair market rent for such occupancy. (*See* appendix A, section 24.102(m).)

(n) *Conflict of interest.* No appraiser, review appraiser or other person making an appraisal or a waiver valuation under § 24.102(c)(2) shall have any interest, direct or indirect, in the real property being valued for the Agency that would in any way conflict with the preparation of the appraisal, the waiver valuation or the review of the appraisal. Compensation for making an appraisal or a waiver valuation shall not be based on the amount of the valuation estimate. No person functioning as a negotiator for a project or program shall supervise or formally evaluate the performance of any appraiser or review appraiser performing appraisal or appraisal review work for that project or program, except that, for a program or project receiving Federal financial assistance, the Federal funding agency may waive this requirement if it determines it would create a hardship for the Agency. No appraiser or other person making an appraisal or a waiver valuation shall act as a negotiator for real property for which that person has made an appraisal or a waiver valuation, except that the Agency may permit such person to negotiate an acquisition where the offer to acquire the property is $10,000, or less. (*See* appendix A, section 24.102(n).)

§ 24.103 Criteria for appraisals.

(a) *Appraisal requirements.* These regulations set forth the requirements for real property acquisition appraisals on Federal and federally-assisted programs. The format and level of documentation for an appraisal depend on the complexity of the appraisal problem. An appraisal must contain a scope of work statement and sufficient documentation, including valuation data and the appraiser's analysis of that data, to support his or her opinion of value. The Agency shall develop minimum requirements for simple appraisals consistent with established and commonly accepted Federal and federally-assisted program appraisal practice for those acquisitions, which, by virtue of their low value or simplicity, do not require the in-depth analysis and presentation necessary in a detailed appraisal. A detailed appraisal shall be prepared for all other acquisitions. A detailed appraisal shall reflect established and commonly accepted Federal and federally-assisted program appraisal practices, including, to the extent appropriate, the Uniform Appraisal Standards for Federal Land Acquisition.[1] At a minimum, a detailed appraisal shall contain the following items: (*See* appendix A, sections 24.103 and 24.103(a).)

(1) An adequate description of the physical characteristics of the property being appraised (and, in the case of a partial acquisition, an adequate description of the remaining property), a statement of the known and observed encumbrances, if any, title information, location, zoning, present use, an analysis of highest and best use, and at least a 5 year sales history of the property.

(2) All relevant and reliable approaches to value consistent with established Federal and federally-assisted program appraisal practices. If the appraiser uses more than one approach, there shall be an analysis and reconciliation of approaches to value used that is sufficient to support the appraiser's opinion of value. (*See* appendix A, section 24.103(a).)

(3) A description of comparable sales, including a description of all relevant physical, legal, and economic factors such as parties to the transaction, source and method of financing, and verification by a party involved in the transaction.

(4) A statement of the value of the real property to be acquired and, for a partial acquisition, a statement of the value of the damages and benefits, if any, to the remaining real property, where appropriate.

(5) The effective date of valuation, date of appraisal, signature, and certification of the appraiser.

(b) *Influence of the project on just compensation.* The appraiser shall disregard any decrease or increase in the market value of the real property caused by the project for which the property is to be acquired, or by the likelihood that the property would be acquired for the project, other than that due to physical deterioration within the reasonable control of the owner. (*See* appendix A, section 24.103(b).)

(c) *Owner retention of improvements.* If the owner of a real property improvement is permitted to retain it for removal from the project site, the amount to be offered for the interest in the real property to be acquired shall be not less than the difference between the amount determined to be just compensation for the owner's entire interest in the real property and the salvage value (defined at § 24.2(a)(24)) of the retained improvement.

(d) *Qualifications of appraisers and review appraisers.* (1) The Agency shall establish criteria for determining the minimum qualifications of appraisers and review appraisers. Qualifications shall be consistent with the level of difficulty of the assignment. The Agency shall review the experience, education, training, and other qualifications of appraisers and review appraisers and use only those determined to be qualified. (*See* appendix A, section 24.103(d)(1).)

(2) If the appraisal assignment requires the preparation of a detailed appraisal pursuant to § 24.103(a), and the Agency uses a contract (fee) appraiser to perform the appraisal, such appraiser shall be certified in accordance with title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA) (12 U.S.C. 3331 *et seq.*).

[1] The "Uniform Appraisal Standards for Federal Land Acquisitions" is published by the Interagency Land Acquisition Conference. It is a compendium of Federal eminent domain appraisal law, both case and statute, regulations and practices. It is available at *http://www.usdoj.gov/enrd/land-ack/toc.htm* or in soft cover format from the Appraisal Institute at *http://www.appraisalinstitute.org/ecom/publications/Items.asp?ID=3* or call 888–570–4545.

§ 24.104 Review of appraisals.

The Agency shall have an appraisal review process and, at a minimum:

(a) A qualified review appraiser (*See* § 24.103(d)(2) and appendix A, section 24.104) shall examine the presentation and analysis of market information in all appraisals to assure that they meet the definition of appraisal found in 49 CFR 24.2(a)(3), appraisal requirements found in 49 CFR 24.103 and other applicable requirements, including, to the extent appropriate, the Uniform Appraisal Standards for Federal Land Acquisition, and support the appraiser's opinion of value. The level of review analysis and reporting depends on the complexity of the appraisal problem. As needed, the review appraiser shall, prior to acceptance, seek necessary corrections or revisions. The review appraiser shall identify each appraisal report as approved (as the basis for the establishment of the amount believed to be just compensation), accepted (meets all requirements, but not selected as approved), or rejected. If authorized by the Agency to do so, the review appraiser shall also develop and report the amount believed to be just compensation. (*See* appendix A, section 24.104(a).)

(b) If the review appraiser is unable to approve an appraisal as an adequate basis for the establishment of the offer of just compensation, and it is determined by the acquiring Agency that it is not practical to obtain an additional appraisal, the review appraiser may develop appraisal documentation in accordance with § 24.103 to support an approved or recommended value. (*See* appendix A, section 24.104(b).)

(c) The review appraiser shall prepare a written report that identifies the appraisal reports reviewed and documents the findings and conclusions arrived at during the review of the appraisal(s). Any damages or benefits to any remaining property shall be identified in the review appraiser's report. The review appraiser shall also prepare a signed certification that states the parameters of the review. The certification shall state the approved value, and, if the review appraiser is authorized to do so, the amount believed to be just compensation for the acquisition. (*See* appendix A, section 24.104(c).)

§ 24.105 Acquisition of tenant-owned improvements.

(a) *Acquisition of improvements.* When acquiring any interest in real property, the Agency shall offer to acquire at least an equal interest in all buildings, structures, or other improvements located upon the real property to be acquired, which it requires to be removed or which it determines will be adversely affected by the use to which such real property will be put. This shall include any improvement of a tenant-owner who has the right or obligation to remove the improvement at the expiration of the lease term.

(b) *Improvements considered to be real property.* Any building, structure, or other improvement, which would be considered to be real property if owned by the owner of the real property on which it is located, shall be considered to be real property for purposes of this subpart.

(c) *Appraisal and establishment of just compensation for tenant-owned improvements.* Just compensation for a tenant-owned improvement is the amount which the improvement contributes to the market value of the whole property or its salvage value, whichever is greater. (Salvage value is defined at § 24.2(a)(24).)

(d) *Special conditions for tenant owned improvements.* No payment shall be made to a tenant-owner for any real property improvement unless:

(1) The tenant-owner, in consideration for the payment, assigns, transfers, and releases to the Agency all of the tenant-owner's right, title, and interest in the improvement; and

(2) The owner of the real property on which the improvement is located disclaims all interest in the improvement; and

(3) The payment does not result in the duplication of any compensation otherwise authorized by law.

(e) *Alternative compensation.* Nothing in this subpart shall be construed to deprive the tenant-owner of any right to reject payment under this subpart and to obtain payment for such property interests in accordance with other applicable law.

§ 24.106 Expenses incidental to transfer of title to the Agency.

(a) The owner of the real property shall be reimbursed for all reasonable expenses the owner necessarily incurred for:

(1) Recording fees, transfer taxes, documentary stamps, evidence of title, boundary surveys, legal descriptions of the real property, and similar expenses incidental to conveying the real property to the Agency. However, the Agency is not required to pay costs solely required to perfect the owner's title to the real property;

(2) Penalty costs and other charges for prepayment of any preexisting recorded mortgage entered into in good faith encumbering the real property; and

(3) The pro rata portion of any prepaid real property taxes which are allocable to the period after the Agency obtains title to the property or effective possession of it, whichever is earlier.

(b) Whenever feasible, the Agency shall pay these costs directly so that the owner will not have to pay such costs and then seek reimbursement from the Agency. (*See* appendix A, section 24.106(b).)

§ 24.107 Certain litigation expenses.

The owner of the real property shall be reimbursed for any reasonable expenses, including reasonable attorney, appraisal, and engineering fees, which the owner actually incurred because of a condemnation proceeding, if:

(a) The final judgment of the court is that the Agency cannot acquire the real property by condemnation; or

(b) The condemnation proceeding is abandoned by the Agency other than under an agreed-upon settlement; or

(c) The court having jurisdiction renders a judgment in favor of the owner in an inverse condemnation proceeding or the Agency effects a settlement of such proceeding.

§ 24.108 Donations.

An owner whose real property is being acquired may, after being fully informed by the Agency of the right to receive just compensation for such property, donate such property or any part thereof, any interest therein, or any compensation paid therefore, to the Agency as such owner shall determine. The Agency is responsible for assuring that an appraisal of the real property is obtained unless the owner releases the Agency from such obligation, except as provided in § 24.102(c)(2).

Subpart C—General Relocation Requirements

§ 24.201 Purpose.

This subpart prescribes general requirements governing the provision of relocation payments and other relocation assistance in this part.

§ 24.202 Applicability.

These requirements apply to the relocation of any displaced person as defined at § 24.2(a)(9). Any person who qualifies as a displaced person must be fully informed of his or her rights and benefits to relocation assistance and payments provided by the Uniform Act and this regulation. (See appendix A, section 24.202.)

§ 24.203 Relocation notices.

(a) *General information notice.* As soon as feasible, a person scheduled to be displaced shall be furnished with a general written description of the displacing Agency's relocation program which does at least the following:

(1) Informs the person that he or she may be displaced for the project and generally describes the relocation payment(s) for which the person may be eligible, the basic conditions of eligibility, and the procedures for obtaining the payment(s).

(2) Informs the displaced person that he or she will be given reasonable relocation advisory services, including referrals to replacement properties, help in filing payment claims, and other necessary assistance to help the displaced person successfully relocate.

(3) Informs the displaced person that he or she will not be required to move without at least 90 days advance written notice (See paragraph (c) of this section), and informs any person to be displaced from a dwelling that he or she cannot be required to move permanently unless at least one comparable replacement dwelling has been made available.

(4) Informs the displaced person that any person who is an alien not lawfully present in the United States is ineligible for relocation advisory services and relocation payments, unless such ineligibility would result in exceptional and extremely unusual hardship to a qualifying spouse, parent, or child, as defined in § 24.208(h).

(5) Describes the displaced person's right to appeal the Agency's determination as to a person's application for assistance for which a person may be eligible under this part.

(b) *Notice of relocation eligibility.* Eligibility for relocation assistance shall begin on the date of initiation of negotiations (defined in § 24.2(a)(16)) for the occupied property. When this occurs, the Agency shall promptly notify all occupants in writing of their eligibility for applicable relocation assistance.

(c) *Ninety-day notice.* (1) *General.* No lawful occupant shall be required to move unless he or she has received at least 90 days advance written notice of the earliest date by which he or she may be required to move.

(2) *Timing of notice.* The displacing Agency may issue the notice 90 days or earlier before it expects the person to be displaced.

(3) *Content of notice.* The 90-day notice shall either state a specific date as the earliest date by which the occupant may be required to move, or state that the occupant will receive a further notice indicating, at least 30 days in advance, the specific date by which he or she must move. If the 90-day notice is issued before a comparable replacement dwelling is made available, the notice must state clearly that the occupant will not have to move earlier than 90 days after such a dwelling is made available. (*See* § 24.204(a).)

(4) *Urgent need.* In unusual circumstances, an occupant may be required to vacate the property on less than 90 days advance written notice if the displacing Agency determines that a 90-day notice is impracticable, such as when the person's continued occupancy of the property would constitute a substantial danger to health or safety. A copy of the Agency's determination shall be included in the applicable case file.

(d) *Notice of intent to acquire.* A notice of intent to acquire is a displacing Agency's written communication that is provided to a person to be displaced, including those to be displaced by rehabilitation or demolition activities from property acquired prior to the commitment of Federal financial assistance to the activity, which clearly sets forth that the Agency intends to acquire the property. A notice of intent to acquire establishes eligibility for relocation assistance prior to the initiation of negotiation and/or prior to the commitment of Federal financial assistance. (*See* § 24.2(a)(9)(i)(A).)

§ 24.204 Availability of comparable replacement dwelling before displacement.

(a) *General.* No person to be displaced shall be required to move from his or her dwelling unless at least one comparable replacement dwelling (defined at § 24.2 (a)(6)) has been made available to the person. Where possible, three or more comparable replacement dwellings shall be made available. A comparable replacement dwelling will be considered to have been made available to a person, if:

(1) The person is informed of its location;

(2) The person has sufficient time to negotiate and enter into a purchase agreement or lease for the property; and

(3) Subject to reasonable safeguards, the person is assured of receiving the relocation assistance and acquisition payment to which the person is entitled in sufficient time to complete the purchase or lease of the property.

(b) *Circumstances permitting waiver.* The Federal Agency funding the project may grant a waiver of the policy in paragraph (a) of this section in any case where it is demonstrated that a person must move because of:

(1) A major disaster as defined in section 102(c) of the Disaster Relief Act of 1974 (42 U.S.C. 5121); or

(2) A presidentially declared national emergency; or

(3) Another emergency which requires immediate vacation of the real property, such as when continued occupancy of the displacement dwelling constitutes a substantial danger to the health or safety of the occupants or the public.

(c) *Basic conditions of emergency move.* Whenever a person to be displaced is required to relocate for a temporary period because of an emergency as described in paragraph (b) of this section, the Agency shall:

(1) Take whatever steps are necessary to assure that the person is temporarily relocated to a decent, safe, and sanitary dwelling;

(2) Pay the actual reasonable out-of-pocket moving expenses and any reasonable increase in rent and utility costs incurred in connection with the temporary relocation; and

(3) Make available to the displaced person as soon as feasible, at least one comparable replacement dwelling. (For purposes of filing a claim and meeting the eligibility requirements for a relocation payment, the date of displacement is the date the person moves from the temporarily occupied dwelling.)

§ 24.205 Relocation planning, advisory services, and coordination.

(a) *Relocation planning.* During the early stages of development, an Agency shall plan Federal and federally-assisted programs or projects in such a manner that recognizes the problems associated with the displacement of individuals, families, businesses, farms, and nonprofit organizations and develops solutions to minimize the adverse impacts of displacement. Such planning, where appropriate, shall precede any action by an Agency which will cause displacement, and should be scoped to the complexity and nature of the anticipated displacing activity including an evaluation of program resources available to carry out timely and orderly relocations. Planning may involve a relocation survey or study which may include the following:

(1) An estimate of the number of households to be displaced including information such as owner/tenant status, estimated value and rental rates of properties to be acquired, family characteristics, and special consideration of the impacts on minorities, the elderly, large families, and persons with disabilities when applicable.

(2) An estimate of the number of comparable replacement dwellings in the area (including price ranges and rental rates) that are expected to be available to fulfill the needs of those households displaced. When an adequate supply of comparable housing is not expected to be available, the Agency should consider housing of last resort actions.

(3) An estimate of the number, type and size of the businesses, farms, and nonprofit organizations to be displaced and the approximate number of employees that may be affected.

(4) An estimate of the availability of replacement business sites. When an adequate supply of replacement business sites is not expected to be available, the impacts of displacing the businesses should be considered and addressed. Planning for displaced businesses which are reasonably expected to involve complex or lengthy moving processes or small businesses with limited financial resources and/or few alternative relocation sites should include an analysis of business moving problems.

(5) Consideration of any special relocation advisory services that may be necessary from the displacing Agency and other cooperating Agencies.

(b) *Loans for planning and preliminary expenses.* In the event that an Agency elects to consider using the duplicative provision in section 215 of the Uniform Act which permits the use of project funds for loans to cover planning and other preliminary expenses for the development of additional housing, the Lead Agency will establish criteria and procedures for such use upon the request of the Federal Agency funding the program or project.

(c) *Relocation assistance advisory services.* (1) *General.* The Agency shall carry out a relocation assistance advisory program which satisfies the requirements of title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d *et seq.*), title VIII of the Civil Rights Act of 1968 (42 U.S.C. 3601 *et seq.*), and Executive Order 11063 (27 FR 11527, November 24, 1962), and offer the services described in paragraph (c)(2) of this section. If the Agency determines that a person occupying property adjacent to the real property acquired for the project is caused substantial economic injury because of such acquisition, it may offer advisory services to such person.

(2) *Services to be provided.* The advisory program shall include such measures, facilities, and services as may be necessary or appropriate in order to:

(i) Determine, for non-residential (businesses, farms and non-profit organizations) displacements, the relocation needs and preferences of each business (farms and non-profit organizations) to be displaced and explain the relocation payments and other assistance for which the business may be eligible, the related eligibility requirements, and the procedures for obtaining such assistance. This shall include a personal interview with each business. At a minimum, interviews with displaced business owners and operators should include the following items:

(A) The business's replacement site requirements, current lease terms and other contractual obligations and the financial capacity of the business to accomplish the move.

(B) Determination of the need for outside specialists in accordance with § 24.301(g)(12) that will be required to assist in planning the move, assistance in the actual move, and in the reinstallation of machinery and/or other personal property.

(C) For tenant businesses, an identification and resolution of personalty/realty issues. This determination must be made prior to the appraisal of the property.

(D) An estimate of the time required for the business to vacate the site.

(E) An estimate of the searching expense payments required based on the anticipated difficulty in locating a replacement property.

(F) An identification of any advance relocation payments required for the move, and the Agency's legal capacity to provide them.

(ii) Determine, for residential displacements, the relocation needs and preferences of each person to be displaced and explain the relocation payments and other assistance for which the person may be eligible, the related eligibility requirements, and the procedures for obtaining such assistance. This shall include a personal interview with each residential displaced person. At a minimum, interviews with displaced business owners and operators should include the following items:

(A) Provide current and continuing information on the availability, purchase prices, and rental costs of comparable replacement dwellings, and explain that the person cannot be required to move unless at least one comparable replacement dwelling is made available as set forth in § 24.204(a).

(B) As soon as feasible, the Agency shall inform the person in writing of the specific comparable replacement dwelling and the price or rent used for establishing the upper limit of the replacement housing payment (*See* § 24.403 (a) and (b)) and the basis for the determination, so that the person is aware of the maximum replacement housing payment for which he or she may qualify.

(C) Where feasible, housing shall be inspected prior to being made available to assure that it meets applicable standards. (*See* § 24.2(a)(8).) If such an inspection is not made, the Agency shall notify the person to be displaced that a replacement housing payment may not be made unless the replacement dwelling is subsequently inspected and determined to be decent, safe, and sanitary.

(D) Whenever possible, minority persons shall be given reasonable opportunities to relocate to decent, safe, and sanitary replacement dwellings, not located in an area of minority concentration, that are within their financial means. While this policy does not require an Agency to provide a person a larger payment than is necessary to enable a person to relocate to a comparable replacement dwelling, if a displacing Agency has a program objective of providing minority persons with an opportunity to relocate to areas outside of minority concentration, the Agency may determine to provide a reasonable and justifiable increase in the payment to facilitate a move to a comparable replacement dwelling in such areas.

(E) The Agency shall offer all persons transportation to inspect housing to which they are referred.

(F) Any displaced person that may be eligible for government housing assistance at the replacement dwelling shall be advised of any requirements of such government housing assistance program that would limit the size of the replacement dwelling (*see* § 24.2(a)(6)(ix)), as well as of the long term nature of such rent subsidy, and the limited (42 month) duration of the relocation rental assistance payment.

(iii) Provide, for non-residential moves, current and continuing information on the availability, purchase prices, and rental costs of suitable commercial and farm properties and locations. Assist any person displaced from a business or farm operation to obtain and become established in a suitable replacement location.

(iv) Minimize hardships to persons in adjusting to relocation by providing counseling, advice as to other sources of assistance that may be available, and such other help as may be appropriate.

(v) Supply persons to be displaced with appropriate information concerning Federal and State housing

programs, disaster loan and other programs administered by the Small Business Administration, and other Federal and State programs offering assistance to displaced persons, and technical help to persons applying for such assistance.

(d) *Coordination of relocation activities.* Relocation activities shall be coordinated with project work and other displacement-causing activities to ensure that, to the extent feasible, persons displaced receive consistent treatment and the duplication of functions is minimized. (*See also* § 24.6.)

(e) Any person who occupies property acquired by an Agency, when such occupancy began subsequent to the acquisition of the property, and the occupancy is permitted by a short term rental agreement or an agreement subject to termination when the property is needed for a program or project, shall be eligible for advisory services, as determined by the Agency.

§ 24.206 Eviction for cause.

An eviction may not be undertaken to deny assistance or evade the provisions of the Uniform Act or this part. Any person who occupies the real property on the date of the initiation of negotiations is presumed to be entitled to relocation payments and other assistance set forth in this part unless the Agency determines that such person vacated the real property as the result of an eviction for cause. (*See* § 24.2(a)(12) and appendix A section 24.206.)

§ 24.207 General requirements—claims for relocation payments.

(a) *Documentation.* Any claim for a relocation payment shall be supported by such documentation as may be reasonably required to support expenses incurred, such as bills, certified prices, appraisals, or other evidence of such expenses. A displaced person must be provided reasonable assistance necessary to complete and file any required claim for payment.

(b) *Expeditious payments.* The Agency shall review claims in an expeditious manner. The claimant shall be promptly notified as to any additional documentation that is required to support the claim. Payment for a claim shall be made as soon as feasible following receipt of sufficient documentation to support the claim.

(c) *Advance payments.* If a person demonstrates the need for an advance relocation payment in order to avoid or reduce a hardship, the Agency shall issue the payment, subject to such safeguards as are appropriate to ensure that the objective of the payment is accomplished.

(d) *Time for filing.* (1) All claims for a relocation payment shall be filed with the Agency no later than 18 months after:

(i) For tenants, the date of displacement;

(ii) For owners, the date of displacement or the date of the final payment for the acquisition of the real property, whichever is later.

(2) The Agency shall waive this time period for good cause.

(e) *Notice of denial of claim.* If the Agency disapproves all or part of a payment claimed or refuses to consider the claim on its merits because of untimely filing or other grounds, it shall promptly notify the claimant in writing of its determination, the basis for its determination, and the procedures for appealing that determination.

(f) *Waiver of relocation assistance.* A displacing Agency shall not propose or request that a displaced person waive his or her rights or entitlements to relocation assistance and payments provided by the Uniform Act and this part.

(g) *Entitlement to payments.* Relocation payments, provided pursuant to this part, provide compensation for relocation costs and impacts, and shall not be considered to constitute Federal financial assistance. Accordingly, this part does not apply to purchases of real property resulting from the expenditure of such payments by, or for, a displaced person.

§ 24.208 Aliens not lawfully present in the United States.

(a) Each person seeking relocation payments or relocation advisory assistance shall, as a condition of eligibility, certify:

(1) In the case of an individual, that he or she is either a citizen or national of the United States, or an alien who is lawfully present in the United States.

(2) In the case of a family, that each family member is either a citizen or national of the United States, or an alien who is lawfully present in the United States. The certification may be made by the head of the household on behalf of other family members.

(3) In the case of an unincorporated business, farm, or nonprofit organization, that each owner is either a citizen or national of the United States, or an alien who is lawfully present in the United States. The certification may be made by the principal owner, manager, or operating officer on behalf of other persons with an ownership interest.

(4) In the case of an incorporated business, farm, or nonprofit organization, that the corporation is authorized to conduct business within the United States.

(b) The certification provided pursuant to paragraphs (a)(1), (a)(2), and (a)(3) of this section shall indicate whether such person is either a citizen or national of the United States, or an alien who is lawfully present in the United States. Requirements concerning the certification in addition to those contained in this rule shall be within the discretion of the Federal funding Agency and, within those parameters, that of the displacing Agency.

(c) In computing relocation payments under the Uniform Act, if any member(s) of a household or owner(s) of an unincorporated business, farm, or nonprofit organization is (are) determined to be ineligible because of a failure to be legally present in the United States, no relocation payments may be made to him or her. Any payment(s) for which such household, unincorporated business, farm, or nonprofit organization would otherwise be eligible shall be computed for the household, based on the number of eligible household members and for the unincorporated business, farm, or nonprofit organization, based on the ratio of ownership between eligible and ineligible owners.

(d) The displacing Agency shall consider the certification provided pursuant to paragraph (a) of this section to be valid, unless the displacing Agency determines in accordance with paragraph (f) of this section that it is invalid based on a review of an alien's documentation or other information that the Agency considers reliable and appropriate.

(e) Any review by the displacing Agency of the certifications provided pursuant to paragraph (a) of this section shall be conducted in a nondiscriminatory fashion. Each displacing Agency will apply the same standard of review to all such certifications it receives, except that such standard may be revised periodically.

(f) If, based on a review of an alien's documentation or other credible evidence, a displacing Agency has reason to believe that a person's certification is invalid (for example a document reviewed does not on its face reasonably appear to be genuine), and that, as a result, such person may be an alien not lawfully present in the United States, it shall obtain the following information before making a final determination:

(1) If the Agency has reason to believe that the certification of a person who has certified that he or she is an alien lawfully present in the United States is invalid, the displacing Agency shall obtain verification of the alien's status from the local Bureau of Citizenship and Immigration Service (BCIS) Office. A list of local BCIS offices is available at *http://www.bcis.gov/graphics/fieldoffices/alphaa.htm.* Any request for BCIS verification shall include the alien's full name, date of birth and alien number, and a copy of the alien's documentation. (If an Agency is unable to contact the BCIS, it may contact the FHWA in Washington, DC, Office of Real Estate Services at 202–366–0142 or Office of Chief Counsel, 202–366–0740, for a referral to the BCIS.)

(2) If the Agency has reason to believe that the certification of a person who has certified that he or she is a citizen or national is invalid, the displacing Agency shall request evidence of United States citizenship or nationality from such person and, if considered necessary, verify the accuracy of such evidence with the issuer.

(g) No relocation payments or relocation advisory assistance shall be provided to a person who has not provided the certification described in this section or who has been determined to be not lawfully present in the United States, unless such person can demonstrate to the displacing Agency's satisfaction that the denial of relocation assistance will result in an exceptional and extremely unusual hardship to such person's spouse, parent, or child who is a citizen of the United States, or is an alien lawfully admitted for permanent residence in the United States.

(h) For purposes of paragraph (g) of this section, "exceptional and extremely unusual hardship" to such spouse, parent, or child of the person not lawfully present in the United States means that the denial of relocation payments and advisory assistance to such person will directly result in:

(1) A significant and demonstrable adverse impact on the health or safety of such spouse, parent, or child;

(2) A significant and demonstrable adverse impact on the continued existence of the family unit of which such spouse, parent, or child is a member; or

(3) Any other impact that the displacing Agency determines will have a significant and demonstrable adverse impact on such spouse, parent, or child.

(i) The certification referred to in paragraph (a) of this section may be included as part of the claim for relocation payments described in § 24.207 of this part. (Approved by the Office of Management and Budget under control number 2105–0508.)

§ 24.209 Relocation payments not considered as income.

No relocation payment received by a displaced person under this part shall be considered as income for the purpose of the Internal Revenue Code of 1954, which has been redesignated as the Internal Revenue Code of 1986 (Title 26, U.S.C.), or for the purpose of determining the eligibility or the extent of eligibility of any person for assistance under the Social Security Act (42 U.S.C. 301 *et seq.*) or any other Federal law, except for any Federal law providing low-income housing assistance.

Subpart D—Payments for Moving and Related Expenses

§ 24.301 Payment for actual reasonable moving and related expenses.

(a) *General.* (1) Any owner-occupant or tenant who qualifies as a displaced person (defined at § 24.2(a)(9)) and who moves from a dwelling (including a mobile home) or who moves from a business, farm or non-profit organization is entitled to payment of his or her actual moving and related expenses, as the Agency determines to be reasonable and necessary.

(2) A non-occupant owner of a rented mobile home is eligible for actual cost reimbursement under § 24.301 to relocate the mobile home. If the mobile home is not acquired as real estate, but the homeowner-occupant obtains a replacement housing payment under one of the circumstances described at § 24.502(a)(3), the owner is not eligible for payment for moving the mobile home, but may be eligible for a payment for moving personal property from the mobile home.

(b) *Moves from a dwelling.* A displaced person's actual, reasonable and necessary moving expenses for moving personal property from a dwelling may be determined based on the cost of one, or a combination of the following methods, but not by the lower of two bids or estimates. Eligible expenses for moves from a dwelling include the expenses described in paragraphs (g)(1) through (g)(7) of this section.

(1) *Commercial move*—moves performed by a professional mover.

(2) *Self move*—moves that may be performed by the displaced person in one or a combination of the following methods:

(i) *Fixed Residential Moving Cost Schedule.* (Described in § 24.302.)

(ii) *Actual cost move.* Supported by receipted bills for labor and equipment. Hourly labor rates and equipment rental fees should not exceed the cost paid by a commercial mover.

(iii) *Moving cost finding.* A qualified Agency staff person may estimate and determine the cost of a small uncomplicated personal property move of $3,000 or less, with the informed consent of the displaced person. This estimate may include only the cost of moving personal property located outside of the dwelling, that is not included in the Fixed Residential Moving Cost Schedule, such as personal property in garages, storage sheds or other loose items outside of structures that are personal property.

(c) *Moves from a mobile home.* A displaced person's actual, reasonable and necessary moving expenses for moving personal property from a mobile home may be determined based on the cost of one, or a combination of the following methods, but not by the lower of two bids or estimates. Eligible expenses for moves from a mobile home include those expenses described in paragraphs (g)(1) through (g)(7) of this section. In addition to the items in paragraph (a) of this section, the owner-occupant of a mobile home that is moved as personal property and used as the person's replacement dwelling, is also eligible for the moving expenses described in paragraphs (g)(8) through (g)(10) of this section.

(1) *Commercial move*—moves performed by a professional mover.

(2) *Self move*—moves that may be performed by the displaced person in one or a combination of the following methods:

(i) *Fixed Residential Moving Cost Schedule.* (Described in § 24.302.)

(ii) *Actual cost move.* Supported by receipted bills for labor and equipment. Hourly labor rates and equipment rental fees should not exceed the cost paid by a commercial mover.

(iii) *Moving cost finding.* A qualified Agency staff person may estimate and determine the cost of a small uncomplicated personal property move of $3,000 or less, with the informed consent of the displaced person. This estimate may include only the cost of moving personal property located outside of the mobile home, that is not included in the Fixed Residential Moving Cost Schedule, such as personal property in garages, storage sheds or other loose items outside of structures that are personal property

(d) *Moves from a business, farm or nonprofit organization.* Personal property as determined by an inventory from a business, farm or non-profit organization may be moved by one or a combination of the following methods. Eligible expenses for moves from a business, farm or nonprofit organization include those expenses described in

paragraphs (g)(1) through (g)(7) of this section and paragraphs (g)(11) through (g)(18) of this section and § 24.303.

(1) *Commercial move.* Based on the lower of two bids or estimates prepared by a commercial mover. At the Agency's discretion, payment for a low cost or uncomplicated move may be based on a single bid or estimate.

(2) *Self-move.* A self-move payment may be based on one or a combination of the following:

(i) The lower of two bids or estimates prepared by a commercial mover or qualified Agency staff person. At the Agency's discretion, payment for a low cost or uncomplicated move may be based on a single bid or estimate; or

(ii) *Moving cost finding.* A qualified Agency staff person may estimate and determine the cost of a small uncomplicated personal property move of $3,000 or less, with the informed consent of the displaced person. This method may be used to estimate the cost of small uncomplicated moves of equipment or other personal property.

(e) *Personal property only.* Eligible expenses for a person who is required to move personal property from real property but is not required to move from a dwelling (including a mobile home), business, farm or nonprofit organization include those expenses described in paragraphs (g)(1) through (g)(7) of this section.

(f) *Advertising signs.* The amount of a payment for direct loss of an advertising sign which is personal property shall be the lesser of:

(1) The depreciated reproduction cost of the sign, as determined by the Agency, less the proceeds from its sale; or

(2) The estimated cost of moving the sign, but with no allowance for storage.

(g) *Eligible actual moving expenses.* (1) Transportation of the displaced person and personal property. Transportation costs for a distance beyond 50 miles are not eligible, unless the Agency determines that relocation beyond 50 miles is justified.

(2) Packing, crating, unpacking, and uncrating of the personal property.

(3) Disconnecting, dismantling, removing, reassembling, and reinstalling relocated household appliances, machinery, equipment, and other personal property, including substitute personal property. For businesses, this includes connection to utilities available within the building. It also includes modifications to the personal property necessary to adapt it to the replacement structure, the replacement site, or the utilities at the replacement site, and modifications necessary to adapt the utilities at the replacement site to the personal property.

(4) Storage of the personal property for a period not to exceed 12 months, unless the Agency determines that a longer period is necessary.

(5) Insurance for the replacement value of the property in connection with the move and necessary storage.

(6) The replacement value of property lost, stolen, or damaged in the process of moving (not through the fault or negligence of the displaced person, his or her agent, or employee) where insurance covering such loss, theft, or damage is not reasonably available.

(7) Other moving-related expenses that are not listed as ineligible under § 24.301(h), as the Agency determines to be reasonable and necessary.

(8) The reasonable cost of disassembling, moving, and reassembling any appurtenances attached to a mobile home, such as porches, decks, skirting, and awnings, which were not acquired, anchoring of the unit, and utility "hookup" charges.

(9) The reasonable cost of repairs and/or modifications so that a mobile home can be moved and/or made decent, safe, and sanitary.

(10) The cost of a nonrefundable mobile home park entrance fee, to the extent it does not exceed the fee at a comparable mobile home park, if the person is displaced from a mobile home park or the Agency determines that payment of the fee is necessary to effect relocation.

(11) Any license, permit, fees or certification required of the displaced person at the replacement location. However, the payment may be based on the remaining useful life of the existing license, permit, fees or certification.

(12) Professional services as the Agency determines to be actual, reasonable and necessary for:

(i) Planning the move of the personal property;

(ii) Moving the personal property; and

(iii) Installing the relocated personal property at the replacement location.

(13) Relettering signs and replacing stationery on hand at the time of displacement that are made obsolete as a result of the move.

(14) Actual direct loss of tangible personal property incurred as a result of moving or discontinuing the business or farm operation. The payment shall consist of the lesser of:

(i) The market value in place of the item as is for continued use, less the proceeds from its sale. (To be eligible for payment, the claimant must make a good faith effort to sell the personal property, unless the Agency determines that such effort is not necessary. When payment for property loss is claimed for goods held for sale, the market value shall be based on the cost of the goods to the business, not the potential selling prices.); or

(ii) The estimated cost of moving the item as is, but not including any allowance for storage; or for reconnecting a piece of equipment if the equipment is in storage or not being used at the acquired site (See appendix A, section 24.301(g)(14)(ii).) If the business or farm operation is discontinued, the estimated cost of moving the item shall be based on a moving distance of 50 miles.

(15) The reasonable cost incurred in attempting to sell an item that is not to be relocated.

(16) Purchase of substitute personal property. If an item of personal property which is used as part of a business or farm operation is not moved but is promptly replaced with a substitute item that performs a comparable function at the replacement site, the displaced person is entitled to payment of the lesser of:

(i) The cost of the substitute item, including installation costs of the replacement site, minus any proceeds from the sale or trade-in of the replaced item; or

(ii) The estimated cost of moving and reinstalling the replaced item but with no allowance for storage. At the Agency's discretion, the estimated cost for a low cost or uncomplicated move may be based on a single bid or estimate.

(17) Searching for a replacement location. A business or farm operation is entitled to reimbursement for actual expenses, not to exceed $2,500, as the Agency determines to be reasonable, which are incurred in searching for a replacement location, including:

(i) Transportation;

(ii) Meals and lodging away from home;

(iii) Time spent searching, based on reasonable salary or earnings;

(iv) Fees paid to a real estate agent or broker to locate a replacement site, exclusive of any fees or commissions related to the purchase of such sites; and

(v) The costs of obtaining permits and attending zoning hearings.

(18) Low value/high bulk. When the personal property which is used in connection with any business or farm operation is of low value and high bulk, and the cost of moving the property would be disproportionate in relation to its value in the judgment of the displacing Agency, the allowable moving cost reimbursement shall not exceed the difference between the amount which would have been received if such property was sold, and the cost of replacing the material at the replacement site with a comparable quantity available on the market. This provision applies to items such as stockpiled sand, gravel, minerals, and other similar items of personal property.

(h) *Ineligible moving and related expenses.* A displaced person is not entitled to payment for:

(1) The cost of moving any structure or other real property improvement in which the displaced person reserved ownership. (However, this part does not preclude the computation under § 24.401(c)(2)(iii));

(2) Interest on a loan to cover moving expenses;

(3) Loss of goodwill;

(4) Loss of profits;

(5) Loss of trained employees;

(6) Any additional operating expenses of a business or farm operation incurred because of operating in a new location except as provided in § 24.304(a)(6);

(7) Personal injury;

(8) Any legal fee or other cost for preparing a claim for a relocation payment or for representing the claimant before the Agency;

(9) Expenses for searching for a replacement dwelling;

(10) Physical changes to the real property at the replacement location of a business or farm operation except as provided in §§ 24.301(g)(3) and 24.304(a); and

(11) Costs for storage of personal property on real property already owned or leased by the displaced person.

(12) Refundable security and utility deposits.

(i) *Notification and inspection.* The Agency shall inform the displaced person, in writing, of the requirements of this section as soon as possible after the initiation of negotiations. This information may be included in the relocation information provided the displaced person as set forth in § 24.203. To be eligible for payments under this section the displaced person must:

(1) Provide the Agency reasonable advance notice of the approximate date of the start of the move or disposition of the personal property and an inventory of the items to be moved. However, the Agency may waive this notice requirement after documenting its file accordingly.

(2) Permit the Agency to make reasonable and timely inspections of the personal property at both the displacement and replacement sites and to monitor the move.

(j) *Transfer of ownership.* Upon request and in accordance with applicable law, the claimant shall transfer to the Agency ownership of any personal property that has not been moved, sold, or traded in.

§ 24.302 Fixed payment for moving expenses—residential moves.

Any person displaced from a dwelling or a seasonal residence or a dormitory style room is entitled to receive a fixed moving cost payment as an alternative to a payment for actual moving and related expenses under § 24.301. This payment shall be determined according to the Fixed Residential Moving Cost Schedule[2] approved by the Federal Highway Administration and published in the **Federal Register** on a periodic basis. The payment to a person with minimal personal possessions who is in occupancy of a dormitory style room or a person whose residential move is performed by an Agency at no cost to the person shall be limited to the amount stated in the most recent edition of the Fixed Residential Moving Cost Schedule.

§ 24.303 Related non-residential eligible expenses.

The following expenses, in addition to those provided by § 24.301 for moving personal property, shall be provided if the Agency determines that they are actual, reasonable and necessary:

(a) Connection to available nearby utilities from the right-of-way to improvements at the replacement site.

(b) Professional services in connection with the purchase or lease of a replacement site including feasibility surveys, soil testing, and marketing studies (exclusive of any fees or commissions related to such site).

(c) Impact fees or one time assessments for anticipated heavy utility usage, as determined necessary by the Agency.

§ 24.304 Reestablishment expenses—non-residential moves.

In addition to the payments available under §§ 24.301 and 24.303 of this subpart, a small business, as defined in § 24.2(a)(25), farm or nonprofit organization is entitled to receive a payment, not to exceed $10,000, for expenses actually incurred in relocating and reestablishing such small business, farm or nonprofit organization at a replacement site.

(a) *Eligible expenses.* Reestablishment expenses must be reasonable and necessary, as determined by the Agency. They include, but are not limited to, the following:

(1) Repairs or improvements to the replacement real property as required by Federal, State or local law, code or ordinance.

(2) Modifications to the replacement property to accommodate the business operation or make replacement structures suitable for conducting the business.

(3) Construction and installation costs for exterior signing to advertise the business.

(4) Redecoration or replacement of soiled or worn surfaces at the replacement site, such as paint, paneling, or carpeting.

(5) Advertisement of replacement location.

(6) Estimated increased costs of operation during the first 2 years at the replacement site for such items as:

(i) Lease or rental charges,

(ii) Personal or real property taxes,

(iii) Insurance premiums, and

(iv) Utility charges, excluding impact fees.

(7) Other items that the Agency considers essential to the reestablishment of the business.

(b) *Ineligible expenses.* The following is a nonexclusive listing of reestablishment expenditures not considered to be reasonable, necessary, or otherwise eligible:

(1) Purchase of capital assets, such as, office furniture, filing cabinets, machinery, or trade fixtures.

(2) Purchase of manufacturing materials, production supplies, product inventory, or other items used in the normal course of the business operation.

(3) Interest on money borrowed to make the move or purchase the replacement property.

(4) Payment to a part-time business in the home which does not contribute materially (defined at § 24.2(a)(7)) to the household income.

§ 24.305 Fixed payment for moving expenses—non-residential moves.

(a) *Business.* A displaced business may be eligible to choose a fixed payment in lieu of the payments for actual moving and related expenses, and actual reasonable reestablishment expenses provided by §§ 24.301 and 24.303. Such fixed payment, except for payment to a nonprofit organization, shall equal the average annual net earnings of the business, as computed in accordance with paragraph (e) of this section, but not less than $1,000 nor more than $20,000. The displaced business is eligible for the payment if the Agency determines that:

(1) The business owns or rents personal property which must be moved

[2] The Fixed Residential Moving Cost Schedule is available at the following URL: *http://www.fhwa.dot.gov//////realestate/fixsch96.htm.* Agencies are cautioned to ensure they are using the most recent edition.

in connection with such displacement and for which an expense would be incurred in such move and, the business vacates or relocates from its displacement site;

(2) The business cannot be relocated without a substantial loss of its existing patronage (clientele or net earnings.) A business is assumed to meet this test unless the Agency determines that it will not suffer a substantial loss of its existing patronage;

(3) The business is not part of a commercial enterprise having more than three other entities which are not being acquired by the Agency, and which are not under the same ownership and engaged in the same or similar business activities.

(4) The business is not operated at a displacement dwelling solely for the purpose of renting such dwelling to others;

(5) The business is not operated at the displacement site solely for the purpose of renting the site to others; and

(6) The business contributed materially to the income of the displaced person during the 2 taxable years prior to displacement. (*See* § 24.2(a)(7).)

(b) *Determining the number of businesses.* In determining whether two or more displaced legal entities constitute a single business which is entitled to only one fixed payment, all pertinent factors shall be considered, including the extent to which:

(1) The same premises and equipment are shared;

(2) Substantially identical or interrelated business functions are carried out and business and financial affairs are commingled;

(3) The entities are held out to the public, and to those customarily dealing with them, as one business; and

(4) The same person or closely related persons own, control, or manage the affairs of the entities.

(c) *Farm operation.* A displaced farm operation (defined at § 24.2(a)(13)) may choose a fixed payment, in lieu of the payments for actual moving and related expenses and actual reasonable reestablishment expenses, in an amount equal to its average annual net earnings as computed in accordance with paragraph (e) of this section, but not less than $1,000 nor more than $20,000. In the case of a partial acquisition of land which was a farm operation before the acquisition, the fixed payment shall be made only if the Agency determines that:

(1) The acquisition of part of the land caused the operator to be displaced from the farm operation on the remaining land; or

(2) The partial acquisition caused a substantial change in the nature of the farm operation.

(d) *Nonprofit organization.* A displaced nonprofit organization may choose a fixed payment of $1,000 to $20,000, in lieu of the payments for actual moving and related expenses and actual reasonable reestablishment expenses, if the Agency determines that it cannot be relocated without a substantial loss of existing patronage (membership or clientele.) A nonprofit organization is assumed to meet this test, unless the Agency demonstrates otherwise. Any payment in excess of $1,000 must be supported with financial statements for the two 12-month periods prior to the acquisition. The amount to be used for the payment is the average of 2 years annual gross revenues less administrative expenses. (*See* appendix A, 24.305(d).)

(e) *Average annual net earnings of a business or farm operation.* The average annual net earnings of a business or farm operation are one-half of its net earnings before Federal, State, and local income taxes during the 2 taxable years immediately prior to the taxable year in which it was displaced. If the business or farm was not in operation for the full 2 taxable years prior to displacement, net earnings shall be based on the actual period of operation at the displacement site during the 2 taxable years prior to displacement, projected to an annual rate. Average annual net earnings may be based upon a different period of time when the Agency determines it to be more equitable. Net earnings include any compensation obtained from the business or farm operation by its owner, the owner's spouse, and dependents. The displaced person shall furnish the Agency proof of net earnings through income tax returns, certified financial statements, or other reasonable evidence which the Agency determines is satisfactory. (*See* appendix A, 24.305(e).)

§ 24.306 Discretionary utility relocation payments.

(a) Whenever a program or project undertaken by a displacing Agency causes the relocation of a utility facility (*See* § 24.2(a)(32)) and the relocation of the facility creates extraordinary expenses for its owner, the displacing Agency may, at its option, make a relocation payment to the owner for all or part of such expenses, if the following criteria are met:

(1) The utility facility legally occupies State or local government property, or property over which the State or local government has an easement or right-of-way;

(2) The utility facility's right of occupancy thereon is pursuant to State law or local ordinance specifically authorizing such use, or where such use and occupancy has been granted through a franchise, use and occupancy permit, or other similar agreement;

(3) Relocation of the utility facility is required by and is incidental to the primary purpose of the project or program undertaken by the displacing Agency;

(4) There is no Federal law, other than the Uniform Act, which clearly establishes a policy for the payment of utility moving costs that is applicable to the displacing Agency's program or project; and

(5) State or local government reimbursement for utility moving costs or payment of such costs by the displacing Agency is in accordance with State law.

(b) For the purposes of this section, the term extraordinary expenses means those expenses which, in the opinion of the displacing Agency, are not routine or predictable expenses relating to the utility's occupancy of rights-of-way, and are not ordinarily budgeted as operating expenses, unless the owner of the utility facility has explicitly and knowingly agreed to bear such expenses as a condition for use of the property, or has voluntarily agreed to be responsible for such expenses.

(c) A relocation payment to a utility facility owner for moving costs under this section may not exceed the cost to functionally restore the service disrupted by the federally-assisted program or project, less any increase in value of the new facility and salvage value of the old facility. The displacing Agency and the utility facility owner shall reach prior agreement on the nature of the utility relocation work to be accomplished, the eligibility of the work for reimbursement, the responsibilities for financing and accomplishing the work, and the method of accumulating costs and making payment. (See appendix A to this part, section 24.306.)

Subpart E—Replacement Housing Payments

§ 24.401 Replacement housing payment for 180-day homeowner-occupants.

(a) *Eligibility.* A displaced person is eligible for the replacement housing payment for a 180-day homeowner-occupant if the person:

(1) Has actually owned and occupied the displacement dwelling for not less than 180 days immediately prior to the initiation of negotiations; and

(2) Purchases and occupies a decent, safe, and sanitary replacement dwelling within one year after the later of the following dates (except that the Agency may extend such one year period for good cause):

(i) The date the displaced person receives final payment for the displacement dwelling or, in the case of condemnation, the date the full amount of the estimate of just compensation is deposited in the court; or

(ii) The date the displacing Agency's obligation under § 24.204 is met.

(b) *Amount of payment.* The replacement housing payment for an eligible 180-day homeowner-occupant may not exceed $22,500. (See also § 24.404.) The payment under this subpart is limited to the amount necessary to relocate to a comparable replacement dwelling within one year from the date the displaced homeowner-occupant is paid for the displacement dwelling, or the date a comparable replacement dwelling is made available to such person, whichever is later. The payment shall be the sum of:

(1) The amount by which the cost of a replacement dwelling exceeds the acquisition cost of the displacement dwelling, as determined in accordance with paragraph (c) of this section;

(2) The increased interest costs and other debt service costs which are incurred in connection with the mortgage(s) on the replacement dwelling, as determined in accordance with paragraph (d) of this section; and

(3) The reasonable expenses incidental to the purchase of the replacement dwelling, as determined in accordance with paragraph (e) of this section.

(c) *Price differential*—(1) *Basic computation.* The price differential to be paid under paragraph (b)(1) of this section is the amount which must be added to the acquisition cost of the displacement dwelling and site (See § 24.2(a)(11)) to provide a total amount equal to the lesser of:

(i) The reasonable cost of a comparable replacement dwelling as determined in accordance with § 24.403(a); or

(ii) The purchase price of the decent, safe, and sanitary replacement dwelling actually purchased and occupied by the displaced person.

(2) *Owner retention of displacement dwelling.* If the owner retains ownership of his or her dwelling, moves it from the displacement site, and reoccupies it on a replacement site, the purchase price of the replacement dwelling shall be the sum of:

(i) The cost of moving and restoring the dwelling to a condition comparable to that prior to the move;

(ii) The cost of making the unit a decent, safe, and sanitary replacement dwelling (defined at § 24.2(a)(8)); and

(iii) The current market value for residential use of the replacement site (*See* appendix A of this part, section 24.401(c)(2)(iii)), unless the claimant rented the displacement site and there is a reasonable opportunity for the claimant to rent a suitable replacement site; and

(iv) The retention value of the dwelling, if such retention value is reflected in the "acquisition cost" used when computing the replacement housing payment.

(d) *Increased mortgage interest costs.* The displacing Agency shall determine the factors to be used in computing the amount to be paid to a displaced person under paragraph (b)(2) of this section. The payment for increased mortgage interest cost shall be the amount which will reduce the mortgage balance on a new mortgage to an amount which could be amortized with the same monthly payment for principal and interests that for the mortgage(s) on the displacement dwelling. In addition, payments shall include other debt service costs, if not paid as incidental costs, and shall be based only on bona fide mortgages that were valid liens on the displacement dwelling for at least 180 days prior to the initiation of negotiations. Paragraphs (d)(1) through (d)(5) of this section shall apply to the computation of the increased mortgage interest costs payment, which payment shall be contingent upon a mortgage being placed on the replacement dwelling.

(1) The payment shall be based on the unpaid mortgage balance(s) on the displacement dwelling; however, in the event the displaced person obtains a smaller mortgage than the mortgage balance(s) computed in the buydown determination the payment will be prorated and reduced accordingly. (*See* appendix A, section 24.401(d).) In the case of a home equity loan the unpaid balance shall be that balance which existed 180 days prior to the initiation of negotiations or the balance on the date of acquisition, whichever is less.

(2) The payment shall be based on the remaining term of the mortgage(s) on the displacement dwelling or the term of the new mortgage, whichever is shorter.

(3) The interest rate on the new mortgage used in determining the amount of the payment shall not exceed the prevailing fixed interest rate for conventional mortgages currently charged by mortgage lending institutions in the area in which the replacement dwelling is located.

(4) Purchaser's points and loan origination or assumption fees, but not seller's points, shall be paid to the extent:

(i) They are not paid as incidental expenses;

(ii) They do not exceed rates normal to similar real estate transactions in the area;

(iii) The Agency determines them to be necessary; and

(iv) The computation of such points and fees shall be based on the unpaid mortgage balance on the displacement dwelling, less the amount determined for the reduction of the mortgage balance under this section.

(5) The displaced person shall be advised of the approximate amount of this payment and the conditions that must be met to receive the payment as soon as the facts relative to the person's current mortgage(s) are known and the payment shall be made available at or near the time of closing on the replacement dwelling in order to reduce the new mortgage as intended.

(e) *Incidental expenses.* The incidental expenses to be paid under paragraph (b)(3) of this section or § 24.402(c)(1) are those necessary and reasonable costs actually incurred by the displaced person incident to the purchase of a replacement dwelling, and customarily paid by the buyer, including:

(1) Legal, closing, and related costs, including those for title search, preparing conveyance instruments, notary fees, preparing surveys and plats, and recording fees.

(2) Lender, FHA, or VA application and appraisal fees.

(3) Loan origination or assumption fees that do not represent prepaid interest.

(4) Professional home inspection, certification of structural soundness, and termite inspection when required.

(5) Credit report.

(6) Owner's and mortgagee's evidence of title, *e.g.*, title insurance, not to exceed the costs for a comparable replacement dwelling.

(7) Escrow agent's fee.

(8) State revenue or documentary stamps, sales or transfer taxes (not to exceed the costs for a comparable replacement dwelling).

(9) Such other costs as the Agency determines to be incidental to the purchase.

(f) Rental assistance payment for 180-day homeowner. A 180-day homeowner-occupant, who could be eligible for a replacement housing payment under paragraph (a) of this

section but elects to rent a replacement dwelling, is eligible for a rental assistance payment. The amount of the rental assistance payment is based on a determination of market rent for the acquired dwelling compared to a comparable rental dwelling available on the market. The difference, if any, is computed and disbursed in accordance with § 24.402(b), however, the calculation under § 24.402(b)(2)(ii) is not applicable. Under no circumstance would the rental assistance payment exceed the amount that could have been received had the 180-day homeowner elected to receive a replacement housing payment under paragraph (a) of this section.

§ 24.402 Replacement housing payment for 90-day occupants.

(a) *Eligibility.* A tenant or owner-occupant displaced from a dwelling is entitled to a payment not to exceed $5,250 for rental assistance, as computed in accordance with paragraph (b) of this section, or downpayment assistance, as computed in accordance with paragraph (c) of this section, if such displaced person:

(1) Has actually and lawfully occupied the displacement dwelling for at least 90 days immediately prior to the initiation of negotiations; and

(2) Has rented, or purchased, and occupied a decent, safe, and sanitary replacement dwelling within 1 year (unless the Agency extends this period for good cause) after:

(i) For a tenant, the date he or she moves from the displacement dwelling; or

(ii) For an owner-occupant, the later of:

(A) The date he or she receives final payment for the displacement dwelling, or in the case of condemnation, the date the full amount of the estimate of just compensation is deposited with the court; or

(B) The date he or she moves from the displacement dwelling.

(b) *Rental assistance payment*—(1) *Amount of payment.* An eligible displaced person who rents a replacement dwelling is entitled to a payment not to exceed $5,250 for rental assistance. (*See also* § 24.404.) Such payment shall be 42 times the amount obtained by subtracting the base monthly rental for the displacement dwelling from the lesser of:

(i) The monthly rent and estimated average monthly cost of utilities for a comparable replacement dwelling; or

(ii) The monthly rent and estimated average monthly cost of utilities for the decent, safe, and sanitary replacement dwelling actually occupied by the displaced person.

(2) *Base monthly rental for displacement dwelling.* The base monthly rental for the displacement dwelling is the lesser of:

(i) The average monthly cost for rent and utilities at the displacement dwelling for a reasonable period prior to displacement, as determined by the Agency (for an owner-occupant, use the fair market rent for the displacement dwelling. For a tenant who paid little or no rent for the displacement dwelling, use the fair market rent, unless its use would result in a hardship because of the person's income or other circumstances);

(ii) Thirty (30) percent of the displaced person's average monthly gross household income if the amount is classified as "low income" by the U.S. Department of Housing and Urban Development's annual survey of Income Limits for the Public Housing and Section 8 Programs.[3] The base monthly rental shall be established solely on the criteria in paragraph (b)(2)(i) of this section for persons with income exceeding the survey's "low income" limits, for persons refusing to provide appropriate evidence of income, and for persons who are dependents. A full time student or resident of an institution may be assumed to be a dependent, unless the person demonstrates otherwise or,

(iii) The total of the amounts designated for shelter and utilities if the displaced person is receiving a welfare assistance payment from a program that designates the amounts for shelter and utilities.

(3) *Manner of disbursement.* A rental assistance payment may, at the Agency's discretion, be disbursed in either a lump sum or in installments. However, except as limited by § 24.403(f), the full amount vests immediately, whether or not there is any later change in the person's income or rent, or in the condition or location of the person's housing.

(c) *Downpayment assistance payment*—(1) *Amount of payment.* An eligible displaced person who purchases a replacement dwelling is entitled to a downpayment assistance payment in the amount the person would receive under paragraph (b) of this section if the person rented a comparable replacement dwelling. At the Agency's discretion, a downpayment assistance payment that is less than $5,250 may be increased to any amount not to exceed $5,250. However, the payment to a displaced homeowner shall not exceed the amount the owner would receive under § 24.401(b) if he or she met the 180-day occupancy requirement. If the Agency elects to provide the maximum payment of $5,250 as a downpayment, the Agency shall apply this discretion in a uniform and consistent manner, so that eligible displaced persons in like circumstances are treated equally. A displaced person eligible to receive a payment as a 180-day owner-occupant under § 24.401(a) is not eligible for this payment. (*See* appendix A, section 24.402.)

(2) *Application of payment.* The full amount of the replacement housing payment for downpayment assistance must be applied to the purchase price of the replacement dwelling and related incidental expenses.

§ 24.403 Additional rules governing replacement housing payments.

(a) *Determining cost of comparable replacement dwelling.* The upper limit of a replacement housing payment shall be based on the cost of a comparable replacement dwelling (defined at § 24.2(a)(6)), and the amount, if any, that will compensate a displaced homeowner for the estimated amount of any increase real estate taxes for 24 months determined in accordance with appendix A. (*See* appendix A, section 24.403(a).)

(1) If available, at least three comparable replacement dwellings shall be examined and the payment computed on the basis of the dwelling most nearly representative of, and equal to, or better than, the displacement dwelling.

(2) If the site of the comparable replacement dwelling lacks a major exterior attribute of the displacement dwelling site, (*e.g.*, the site is significantly smaller or does not contain a swimming pool), the value of such attribute shall be subtracted from the acquisition cost of the displacement dwelling for purposes of computing the payment.

(3) If the acquisition of a portion of a typical residential property causes the displacement of the owner from the dwelling and the remainder is a buildable residential lot, the Agency may offer to purchase the entire property. If the owner refuses to sell the remainder to the Agency, the market value of the remainder may be added to the acquisition cost of the displacement dwelling for purposes of computing the replacement housing payment.

(4) To the extent feasible, comparable replacement dwellings shall be selected from the neighborhood in which the displacement dwelling was located or, if that is not possible, in nearby or similar neighborhoods where housing costs are generally the same or higher.

(5) Multiple occupants of one displacement dwelling. If two or more occupants of the displacement dwelling move to separate replacement dwellings, each occupant is entitled to a reasonable prorated share, as determined by the Agency, of any relocation payments that would have been made if the occupants moved together to a comparable replacement dwelling. However, if the Agency determines that two or more occupants maintained separate households within the same dwelling, such occupants have separate entitlements to relocation payments.

(6) Deductions from relocation payments. An Agency shall deduct the amount of any advance relocation payment from the relocation payment(s) to which a displaced person is otherwise entitled. Similarly, a Federal Agency shall, and a State Agency may, deduct from relocation payments any rent that the displaced person owes the Agency; provided that no deduction shall be made if it would prevent the displaced person from obtaining a comparable replacement dwelling as required by § 24.204. The Agency shall not withhold any part of a relocation payment to a displaced person to satisfy an obligation to any other creditor.

(7) Mixed-use and multifamily properties. If the displacement dwelling was part of a property that contained another dwelling unit and/or space used for non-residential purposes, and/or is located on a lot larger than typical for residential purposes, only that portion of the acquisition payment which is actually attributable to the displacement dwelling shall be considered the acquisition cost when computing the replacement housing payment.

(b) *Inspection of replacement dwelling.* Before making a replacement housing payment or releasing the initial payment from escrow, the Agency or its designated representative shall inspect the replacement dwelling and determine whether it is a decent, safe, and sanitary dwelling as defined at § 24.2(a)(8).

(c) *Purchase of replacement dwelling.* A displaced person is considered to have met the requirement to purchase a replacement dwelling, if the person:

(1) Purchases a dwelling;

(2) Purchases and rehabilitates a substandard dwelling;

(3) Relocates a dwelling which he or she owns or purchases;

(4) Constructs a dwelling on a site he or she owns or purchases;

(5) Contracts for the purchase or construction of a dwelling on a site provided by a builder or on a site the person owns or purchases; or

(6) Currently owns a previously purchased dwelling and site, valuation of which shall be on the basis of current market value.

(d) *Occupancy requirements for displacement or replacement dwelling.* No person shall be denied eligibility for a replacement housing payment solely because the person is unable to meet the occupancy requirements set forth in these regulations for a reason beyond his or her control, including:

(1) A disaster, an emergency, or an imminent threat to the public health or welfare, as determined by the President, the Federal Agency funding the project, or the displacing Agency; or

(2) Another reason, such as a delay in the construction of the replacement dwelling, military duty, or hospital stay, as determined by the Agency.

(e) *Conversion of payment.* A displaced person who initially rents a replacement dwelling and receives a rental assistance payment under § 24.402(b) is eligible to receive a payment under § 24.401 or § 24.402(c) if he or she meets the eligibility criteria for such payments, including purchase and occupancy within the prescribed 1 year period. Any portion of the rental assistance payment that has been disbursed shall be deducted from the payment computed under § 24.401 or § 24.402(c).

(f) *Payment after death.* A replacement housing payment is personal to the displaced person and upon his or her death the undisbursed portion of any such payment shall not be paid to the heirs or assigns, except that:

(1) The amount attributable to the displaced person's period of actual occupancy of the replacement housing shall be paid.

(2) Any remaining payment shall be disbursed to the remaining family members of the displaced household in any case in which a member of a displaced family dies.

(3) Any portion of a replacement housing payment necessary to satisfy the legal obligation of an estate in connection with the selection of a replacement dwelling by or on behalf of a deceased person shall be disbursed to the estate.

(g) *Insurance proceeds.* To the extent necessary to avoid duplicate compensation, the amount of any insurance proceeds received by a person in connection with a loss to the displacement dwelling due to a catastrophic occurrence (fire, flood, etc.) shall be included in the acquisition cost of the displacement dwelling when computing the price differential. (*See also* § 24.3.)

§ 24.404 Replacement housing of last resort.

(a) *Determination to provide replacement housing of last resort.* Whenever a program or project cannot proceed on a timely basis because comparable replacement dwellings are not available within the monetary limits for owners or tenants, as specified in § 24.401 or § 24.402, as appropriate, the Agency shall provide additional or alternative assistance under the provisions of this subpart. Any decision to provide last resort housing assistance must be adequately justified either:

(1) On a case-by-case basis, for good cause, which means that appropriate consideration has been given to:

(i) The availability of comparable replacement housing in the program or project area;

(ii) The resources available to provide comparable replacement housing; and

(iii) The individual circumstances of the displaced person.

(2) By a determination that:

(i) There is little, if any, comparable replacement housing available to displaced persons within an entire program or project area; and, therefore, last resort housing assistance is necessary for the area as a whole;

(ii) A program or project cannot be advanced to completion in a timely manner without last resort housing assistance; and

(iii) The method selected for providing last resort housing assistance is cost effective, considering all elements which contribute to total program or project costs.

(b) *Basic rights of persons to be displaced.* Notwithstanding any provision of this subpart, no person shall be required to move from a displacement dwelling unless comparable replacement housing is available to such person. No person may be deprived of any rights the person may have under the Uniform Act or this part. The Agency shall not require any displaced person to accept a dwelling provided by the Agency under these procedures (unless the Agency and the displaced person have entered into a contract to do so) in lieu of any acquisition payment or any relocation payment for which the person may otherwise be eligible.

(c) *Methods of providing comparable replacement housing.* Agencies shall have broad latitude in implementing this subpart, but implementation shall be for reasonable cost, on a case-by-case basis unless an exception to case-by-

[3] The U.S. Department of Housing and Urban Development's Home Program Income Limits are updated annually and are available annually on HUD's Web site at *http://www.huduser.org/datasets/il.html.*

case analysis is justified for an entire project.

(1) The methods of providing replacement housing of last resort include, but are not limited to:

(i) A replacement housing payment in excess of the limits set forth in § 24.401 or § 24.402. A replacement housing payment under this section may be provided in installments or in a lump sum at the Agency's discretion.

(ii) Rehabilitation of and/or additions to an existing replacement dwelling.

(iii) The construction of a new replacement dwelling.

(iv) The provision of a direct loan, which requires regular amortization or deferred repayment. The loan may be unsecured or secured by the real property. The loan may bear interest or be interest-free.

(v) The relocation and, if necessary, rehabilitation of a dwelling.

(vi) The purchase of land and/or a replacement dwelling by the displacing Agency and subsequent sale or lease to, or exchange with a displaced person.

(vii) The removal of barriers for persons with disabilities.

(viii) The change in status of the displaced person with his or her concurrence from tenant to homeowner when it is more cost effective to do so, as in cases where a downpayment may be less expensive than a last resort rental assistance payment.

(2) Under special circumstances, consistent with the definition of a comparable replacement dwelling, modified methods of providing replacement housing of last resort permit consideration of replacement housing based on space and physical characteristics different from those in the displacement dwelling (*See* appendix A, § 24.404), including upgraded, but smaller replacement housing that is decent, safe, and sanitary and adequate to accommodate individuals or families displaced from marginal or substandard housing with probable functional obsolescence. In no event, however, shall a displaced person be required to move into a dwelling that is not functionally equivalent in accordance with § 24.2(a)(6)(ii) of this part.

(3) The Agency shall provide assistance under this subpart to a displaced person who is not eligible to receive a replacement housing payment under §§ 24.401 and 24.402 because of failure to meet the length of occupancy requirement when comparable replacement rental housing is not available at rental rates within the displaced person's financial means. (*See* § 24.2(6)(viii)). Such assistance shall cover a period of 42 months.

Subpart F—Mobile Homes

§ 24.501 Applicability.

(a) *General.* This subpart describes the requirements governing the provision of replacement housing payments to a person displaced from a mobile home and/or mobile home site who meets the basic eligibility requirements of this part. Except as modified by this subpart, such a displaced person is entitled to a moving expense payment in accordance with subpart D to this part and a replacement housing payment in accordance with subpart E to this part to the same extent and subject to the same requirements as persons displaced from conventional dwellings. Moving cost payments to persons occupying mobile homes are covered in §§ 24.301(g)(1) through (g)(10).

(b) *Partial acquisition of mobile home park.* The acquisition of a portion of a mobile home park property may leave a remaining part of the property that is not adequate to continue the operation of the park. If the Agency determines that a mobile home located in the remaining part of the property must be moved as a direct result of the project, the occupant of the mobile home shall be considered to be a displaced person who is entitled to relocation payments and other assistance under this part.

§ 24.502 Replacement housing payment for 180-day mobile homeowner displaced from a mobile home, and/or from the acquired mobile home site.

(a) *Eligibility.* An owner-occupant displaced from a mobile home is entitled to a replacement housing payment, not to exceed $22,500, under § 24.401 if:

(1) The person occupied the mobile home on the displaced site for at least 180 days immediately before:

(i) The initiation of negotiations to acquire the mobile home, if the person owned the mobile home and the mobile home is real property;

(ii) The initiation of negotiations to acquire the mobile home site if the mobile home is personal property, but the person owns the mobile home site; or

(iii) The date the person is notified that he or she is a displaced person if the person owns neither the mobile home or the site, if the Agency makes one of the determinations in paragraphs (a)(3)(i) through (iv) of this section.

(2) The person meets the other basic eligibility requirements at § 24.401(a); and

(3) The Agency acquires the mobile home as real estate, or acquires the mobile home site from the displaced owner, or the mobile home is personal property but the owner is displaced from the mobile home because the Agency determines that the mobile home:

(i) Is not, and cannot economically be made decent, safe, and sanitary;

(ii) Cannot be relocated without substantial damage or unreasonable cost;

(iii) Cannot be relocated because there is no available comparable replacement site; or

(iv) Cannot be relocated because it does not meet mobile home park entrance requirements.

(b) *Replacement housing payment computation for a 180-day owner that is displaced from a mobile home.* The replacement housing payment for an eligible displaced 180-day owner is computed as described at § 24.401(c) incorporating the following, as applicable:

(1) If the Agency acquires the mobile home as real estate, the acquisition cost used to compute the payment is the actual amount paid to the owner as just compensation for the acquisition of the mobile home, and site, if owned by the displaced mobile homeowner.

(2) If the owner is determined to be eligible for a replacement housing payment based on paragraph (a)(1)(iii) of this section, but the Agency does not purchase the mobile home as real estate, the cost of a replacement mobile home used to compute the payment, is the lesser of the displaced mobile homeowner's net cost to purchase a replacement mobile home (*i.e.*, purchase price of the replacement mobile home less trade-in or sale proceeds of the displacement mobile home); or, the cost of the Agency's selected comparable mobile home less the Agency's estimate of the salvage or trade-in value for the mobile home from which the person is displaced.

(c) *Rental assistance payment for a 180-day owner-occupant that is displaced from a leased or rented mobile home site.* If the displacement mobile home site is leased or rented, a displaced 180-day owner-occupant is entitled to a rental assistance payment computed as described in § 24.402(b). This rental assistance payment may be used to lease a replacement site; may be applied to the purchase price of a replacement site; or may be applied, with any replacement housing payment attributable to the mobile home, to the purchase of a replacement mobile home or conventional decent, safe and sanitary dwelling.

(d) *Comparable mobile home site not available.* If a comparable replacement mobile homesite is not available, the replacement housing payment shall be computed on the basis of the reasonable cost of a conventional comparable replacement dwelling.

(e) *Owner not displaced from the mobile home.* If the Agency determines that a mobile home is personal property and may be relocated to a comparable replacement site, but the owner-occupant elects not to do so, the owner is not entitled to a replacement housing payment for the purchase of a replacement mobile home. However, the owner is eligible for moving costs described at § 24.301 and any replacement housing payment for the purchase or rental of a comparable site as described in paragraph (c) of this section.

§ 24.503 Replacement housing payment for 90-day mobile home occupants.

A displaced tenant or owner-occupant of a mobile home is eligible for a replacement housing payment, not to exceed $5,250, under § 24.402 if:

(a) The person actually occupied the displacement mobile home on the displacement site for at least 90 days immediately prior to the initiation of negotiations;

(b) The person meets the other basic eligibility requirements at § 24.402(a); and

(c) The Agency acquires the mobile home and/or mobile home site, or the mobile home is not acquired by the Agency but the Agency determines that the occupant is displaced from the mobile home because of one of the circumstances described at § 24.502(a)(3).

Subpart G—Certification

§ 24.601 Purpose.

This subpart permits a State Agency to fulfill its responsibilities under the Uniform Act by certifying that it shall operate in accordance with State laws and regulations which shall accomplish the purpose and effect of the Uniform Act, in lieu of providing the assurances required by § 24.4 of this part.

§ 24.602 Certification application.

An Agency wishing to proceed on the basis of a certification may request an application for certification from the Lead Agency Director, Office of Real Estate Services, HEPR–1, Federal Highway Administration, 400 Seventh St. SW., Washington, DC 20590. The completed application for certification must be approved by the governor of the State, or the governor's designee, and must be coordinated with the Federal funding Agency, in accordance with application procedures.

§ 24.603 Monitoring and corrective action.

(a) The Federal Lead Agency shall, in coordination with other Federal Agencies, monitor from time to time State Agency implementation of programs or projects conducted under the certification process and the State Agency shall make available any information required for this purpose.

(b) The Lead Agency may require periodic information or data from affected Federal or State Agencies.

(c) A Federal Agency may, after consultation with the Lead Agency, and notice to and consultation with the governor, or his or her designee, rescind any previous approval provided under this subpart if the certifying State Agency fails to comply with its certification or with applicable State law and regulations. The Federal Agency shall initiate consultation with the Lead Agency at least 30 days prior to any decision to rescind approval of a certification under this subpart. The Lead Agency will also inform other Federal Agencies, which have accepted a certification under this subpart from the same State Agency, and will take whatever other action that may be appropriate.

(d) Section 103(b)(2) of the Uniform Act, as amended, requires that the head of the Lead Agency report biennially to the Congress on State Agency implementation of section 103. To enable adequate preparation of the prescribed biennial report, the Lead Agency may require periodic information or data from affected Federal or State Agencies.

Appendix A to Part 24—Additional Information

This Appendix provides additional information to explain the intent of certain provisions of this part.

Subpart A—General

Section 24.2 Definitions and Acronyms.

Section 24.2(a)(6) Definition of comparable replacement dwelling. The requirement in § 24.2(a)(6)(ii) that a comparable replacement dwelling be "functionally equivalent" to the displacement dwelling means that it must perform the same function, and provide the same utility. While it need not possess every feature of the displacement dwelling, the principal features must be present.

For example, if the displacement dwelling contains a pantry and a similar dwelling is not available, a replacement dwelling with ample kitchen cupboards may be acceptable. Insulated and heated space in a garage might prove an adequate substitute for basement workshop space. A dining area may substitute for a separate dining room. Under some circumstances, attic space could substitute for basement space for storage purposes, and vice versa.

Only in unusual circumstances may a comparable replacement dwelling contain fewer rooms or, consequentially, less living space than the displacement dwelling. Such may be the case when a decent, safe, and sanitary replacement dwelling (which by definition is "adequate to accommodate" the displaced person) may be found to be "functionally equivalent" to a larger but very run-down substandard displacement dwelling. Another example is when a displaced person accepts an offer of government housing assistance and the applicable requirements of such housing assistance program require that the displaced person occupy a dwelling that has fewer rooms or less living space than the displacement dwelling.

Section 24.2(a)(6)(vii). The definition of comparable replacement dwelling requires that a comparable replacement dwelling for a person who is not receiving assistance under any government housing program before displacement must be currently available on the private market without any subsidy under a government housing program.

Section 24.2(a)(6)(ix). A public housing unit may qualify as a comparable replacement dwelling only for a person displaced from a public housing unit. A privately owned dwelling with a housing program subsidy tied to the unit may qualify as a comparable replacement dwelling only for a person displaced from a similarly subsidized unit or public housing.

A housing program subsidy that is paid to a person (not tied to the building), such as a HUD Section 8 Housing Voucher Program, may be reflected in an offer of a comparable replacement dwelling to a person receiving a similar subsidy or occupying a privately owned subsidized unit or public housing unit before displacement.

However, nothing in this part prohibits an Agency from offering, or precludes a person from accepting, assistance under a government housing program, even if the person did not receive similar assistance before displacement. However, the Agency is obligated to inform the person of his or her options under this part. (If a person accepts assistance under a government housing assistance program the rules of that program governing the size of the dwelling apply, and the rental assistance payment under § 24.402 would be computed on the basis of the person's actual out-of-pocket cost for the replacement housing.)

Section 24.2(a)(8)(viii) Persons with a disability. Reasonable accommodation of a displaced person with a disability at the replacement dwelling means the Agency is required to address situations involving persons dependent on the use of a wheelchair for mobility. In these situations, reasonable accommodation should include the following at a minimum: Doors of adequate width; ramps or other assistance devices to traverse stairs and access bathtubs, shower stalls, toilets and sinks; storage cabinets, vanities, sink and mirrors at appropriate heights. Kitchen accommodations will include sinks and storage cabinets built at appropriate heights for access. The Agency shall also consider

other items that may be necessary, such as physical modification to a unit, based on the displaced person's needs.

Section 24.2(a)(9)(ii)(D) Persons not displaced. Paragraph (a)(9)(ii)(D) of this section recognizes that there are circumstances where the acquisition of real property takes place without the intent or necessity that an occupant of the property be permanently displaced. Because such occupants are not considered "displaced persons" under this part, great care must be exercised to ensure that they are treated fairly and equitably. For example, if the tenant-occupant of a dwelling will not be displaced, but is required to relocate temporarily in connection with the project, the temporarily occupied housing must be decent, safe, and sanitary and the tenant must be reimbursed for all reasonable out-of-pocket expenses incurred in connection with the temporary relocation. These expenses may include moving expenses and increased housing costs during the temporary relocation. Temporary relocation should not extend beyond one year before the person is returned to his or her previous unit or location. Any residential tenant who has been temporarily relocated for a period beyond one year must be contacted by the Agency and be offered all permanent relocation assistance. This assistance would be in addition to any assistance the person has already received for temporary relocation, and may not be reduced by the amount of any temporary relocation assistance.

Similarly, if a business will be shut-down for any length of time due to rehabilitation of a site, it may be temporarily relocated and reimbursed for all reasonable out of pocket expenses or must be determined to be displaced at the agency's option.

It is also noted that any person who disagrees with the Agency's determination that he or she is not a displaced person under this part may file an appeal in accordance with 49 CFR 24.10.

Section 24.2(a)(15) Household income (exclusions). Household income for purposes of this regulation does not include program benefits that are not considered income by Federal law such as food stamps and the Women Infants and Children (WIC) program. For a more detailed list of income exclusions see Federal Highway Administration, Office of Real Estate Services Web site: *http://www.fhwa.dot.gov/realestate.* (FR 4644–N–16 page 20319 Updated.) If there is a question on whether or not to include income from a specific program contact the Federal Agency administering the program.

Section 24(a)(16) Initiation of negotiations. This section provides a special definition for acquisitions and displacements under Public Law 96–510 or Superfund. These activities differ under Superfund in that relocation may precede acquisition, the reverse of the normal sequence. Superfund is a program designed to clean up hazardous waste sites. When such a site is discovered, it may be necessary, in certain limited circumstances, to alert the public to the danger and to the advisability of moving immediately. If a decision were made later to permanently relocate such persons, those who had moved earlier would no longer be on site when a formal, written offer to acquire the property was made and thus would lose their eligibility for a replacement housing payment. In order to prevent this unfair outcome, we have provided a definition that is based on the public health advisory or announcement of permanent relocation.

Section 24.2(a)(18) Mobile home. A recreational vehicle that is capable of providing living accommodations may be considered a replacement dwelling if the following criteria are met: the recreational vehicle is purchased and occupied as the "primary" place of residence; it is located on a purchased or leased site and connected to all necessary utilities for functioning as a housing unit on the date of the displacing Agency's inspection; and the dwelling, as sited, meets all local, State, and Federal requirements for a DSS dwelling. (It should be noted that the regulations of some local jurisdictions will not permit the consideration of these vehicles as DSS dwellings. In those cases, the recreational vehicle will not qualify as a replacement dwelling.)

There are several types of factory-built housing, but the most common is "HUD-Code" or manufactured homes. HUD-Code homes are so named because since June 15, 1976, these home must be designed and constructed according to the Federal "Manufactured Home Construction and Safety Standards" [1] administered by HUD.

Our definition of a mobile home would also include mobile homes, defined as being transportable in one or more sections not less than eight feet wide and forty feet long.

When assembled, manufactured homes built after 1976 contain no less than 320 square feet. They are built on-and remain on a permanent chassis, and may or may not be installed on a permanent foundation when connected to utilities. Manufactured homes may be single or multi-sectioned units when installed. Their designation as personalty or realty will be determined by State law. When determined to be realty, most are eligible for conventional mortgage financing.

The 1976 HUD standards distinguish manufactured homes from factory-built "modular homes" as well as conventional or "stick-built" homes. Both of these types of housing are required to meet State and local construction codes.

Section 24.3 No Duplication of Payments. This section prohibits an Agency from making a payment to a person under these regulations that would duplicate another payment the person receives under Federal, State, or local law. The Agency is not required to conduct an exhaustive search for such other payments; it is only required to avoid creating a duplication based on the Agency's knowledge at the time a payment is computed.

Section 24.9 Recordkeeping and Reports.

Section 24.9(c) Reports. This paragraph requires that Federal Agencies submit an annual report of their real property acquisition and displacement activities under this part to the lead Agency. The report covers activities during the Federal fiscal year immediately prior to the submission date. In order to minimize the administrative burden on Agencies implementing this part, a basic report form (See appendix B of this part) has been developed which, with only minor modifications, would be used in all Federal and federally-assisted programs or projects.

Subpart B—Real Property Acquisition

Section 24.101 Applicability of Acquisition Requirements.

Section 24.101(a) Direct Federal program or project. All 49 CFR Part 24 requirements apply to all direct acquisitions for Federal programs and projects by Federal Agencies, except for acquisitions undertaken by the Tennessee Valley Authority or the Rural Electrification Administration. There are no exceptions for "voluntary transactions."

Section 24.101(b)(1)(i). The term "general geographic area" is used to clarify that the "geographic area" is not to be construed to be a small, limited area.

Section 24.101(b)(1)(iv) and (2)(ii). These sections provide that for programs and projects receiving Federal financial assistance, Agencies are to inform the owner(s) in writing of the Agency's estimate of the market value for the property to be acquired.

While this part does not require an appraisal for these transactions, Agencies may still decide that an appraisal is necessary to support their determination of the market value of these properties, and, in any event, Agencies must have some reasonable basis for their determination of market value. In addition, some of the concepts inherent in Federal Program appraisal practice are appropriate for these estimates. It would be appropriate for Agencies to adhere to project influence restrictions, as well as guard against discredited "public interest value" valuation concepts.

Section 24.101(c) Less-than-full-fee interest in real property. This provision provides a benchmark beyond which the requirements of the subpart clearly apply to leases. However, the Agency may apply the regulations to any less-than-full-fee acquisition which is less than 50 years in duration, but which in its judgment should be covered.

Section 24.102 Basic Acquisition Policies.

Section 24.102(c)(2) Appraisal, waiver thereof, and invitation to owner. The threshold for an appraisal waiver is based on minimizing appraisal costs for low value, non-complex acquisitions.

The determination to use the appraisal waiver process, *i.e.*, that the acquisition will be uncomplicated and the market value is estimated at $10,000 or less must be made by a person who has enough understanding of appraisal principles to be qualified to make such a determination.

The intent of the appraisal waiver provision is that waiver valuations be made by non-appraisers, freeing appraisers to do more sophisticated work. Since waiver valuations are not appraisals, there is no requirement for an appraisal review. However, the Agency must have a reasonable basis for the waiver valuation and an Agency official must still establish an amount believed to be just compensation to offer the property owner(s).

All parties, including State certified and licensed appraisers who may be engaged to perform waiver valuations, should keep in mind that waiver valuations are not appraisals under the applicable definitions of "appraisal" in § 24.2(a)(3) and "waiver valuation" in § 24.2(a)(34). Waiver valuations may be used on Federal and federally-assisted programs and projects without regard to whether or not appraisal requirements from any non-governmental source, such as the Appraisal Foundation's Uniform Standards of Professional Appraisal Practice (USPAP) or professional appraiser societies, account for such waiver valuations. Waiver valuations are intended to avoid the costs and time delays associated with appraisal requirements for low value, non-complex acquisitions.

Section 24.102(d) Establishment of offer of just compensation. The initial offer to the property owner may not be less than the amount of the Agency's approved appraisal, but may exceed that amount if the Agency determines that a greater amount reflects just compensation for the property.

Section 24.102(f) Basic negotiation procedures. An offer should be adequately presented to an owner, and the owner be properly informed. Personal, face-to-face contact should take place, if feasible, but this section does not require such contact in all cases.

This section also provides that the property owner be given a reasonable opportunity to consider the Agency's offer and to present relevant material to the Agency. In order to satisfy this requirement, Agencies must allow owners time for analysis, research and development, and compilation of a response, including perhaps getting an appraisal. The needed time can vary significantly, depending on the circumstances, but thirty (30) days would seem to be the minimum time these actions can be reasonably expected to require. Regardless of project time pressures, property owners must be afforded this opportunity.

In some jurisdictions, there is pressure to initiate formal eminent domain procedures at the earliest opportunity because completing the process, including gaining possession of the needed real property, is very time consuming. These provisions are not intended to restrict this practice, so long as it does not interfere with the reasonable time that must be provided for negotiations, described above, and the Agencies adhere to the Uniform Act ban on coercive action [section 301(7) of the Uniform Act].

If the owner expresses an intent to provide an appraisal report, Agencies are encouraged to provide the owner and/or his/her appraiser a copy of Agency appraisal requirements and inform them that their appraisal should be based on those requirements.

Section 24.102(i) Administrative settlement. This section provides guidance on administrative settlement as an alternative to judicial resolution of a difference of opinion on the value of a property, in order to avoid unnecessary litigation and congestion in the courts.

All relevant facts and circumstances should be considered by an Agency official delegated this authority. Appraisers, including review appraisers, must not be pressured to adjust their estimate of value for the purpose of justifying such settlements. Such action would invalidate the appraisal process.

Section 24.102(j) Payment before taking possession. It is intended that a right-of-entry for construction purposes be obtained only in the exceptional case, such as an emergency project, when there is no time to make an appraisal and purchase offer and the property owner is agreeable to the process.

Section 24.102(m) Fair rental. Section 301(6) of the Uniform Act limits what an Agency may charge when a former owner or previous occupant of a property is permitted to rent the property for a short term or when occupancy is subject to termination by the Agency on short notice. Such rent may not exceed "the fair rental value of the property to a short-term occupier." Generally, the Agency's right to terminate occupancy on short notice (whether or not the renter also has that right) supports the establishment of a lesser rental than might be found in a longer, fixed-term situation..

Section 24.102(n) Conflict of interest. The overall objective is to minimize the risk of fraud and while allowing Agencies to operate as efficiently as possible. There are three parts to this provision. The first provision is the prohibition against having any interest in the real property being valued by the appraiser (for an appraisal), the valuer (for a waiver estimate) or the review appraiser (for an appraisal review). The second provision is that no person functioning as a negotiator for a project or program can supervise or formally evaluate the performance of any appraiser or review appraiser performing appraisal or appraisal review work for that project or program. However, for a program or project receiving Federal financial assistance, the Federal funding agency may waive this requirement if it would create a hardship for the Agency. The intent is to accommodate Federal-aid recipients that have a small staff where this provision would be unworkable. The third provision is to minimize situations where administrative costs exceed acquisition costs, § 24.102(n) also provides that the same person may prepare a valuation estimate (including an appraisal) and negotiate that acquisition, if the valuation estimate amount is $10,000 or less. However, it should be noted that this exception for properties valued at $10,000 or less is not mandatory, *e.g.*, Agencies are not required to use those who prepare a waiver valuation or appraisal of $10,000 or less to negotiate the acquisition, and, all appraisals must be reviewed in accordance with § 24.104. This includes appraisals of real property valued at $10,000 or less.

Section 24.103 Criteria for Appraisals.

The term "requirements" is used throughout this section to avoid confusion with the Appraisal Foundation's Uniform Standards of Professional Appraisal Practice (USPAP) "standards." Although this section discusses appraisal requirements, the definition of "appraisal" itself at § 24.2(a)(3) includes appraisal performance requirements that are an inherent part of this section.

The term "Federal and federally-assisted program" is used to better identify the type of appraisal practices that are to be referenced and to differentiate them from the private sector, especially mortgage lending, appraisal practice.

Section 24.103(a) Appraisal requirements. The first sentence instructs readers that requirements for appraisals for Federal and federally-assisted programs are located in 49 CFR part 24. These are the basic appraisal requirements for Federal and federally-assisted programs. However, Agencies may enhance and expand on them, and there may be specific project or program legislation that references other appraisal requirements.

The term "scope of work" defines the general parameters of the appraisal. It reflects the needs of the Agency and the requirements of Federal and federally-assisted program appraisal practice. It should be developed cooperatively by the assigned appraiser and an Agency official who is competent to both represent the Agency's needs and respect valid appraisal practice. The scope of work statement should include the purpose and/or function of the appraisal, a definition of the estate being appraised, and, if it is market value, its applicable definition, and the assumptions and limiting conditions affecting the appraisal. It may include parameters for the data search and identification of the technology, including approaches to value, to be used to analyze the data. The scope of work for a detailed appraisal should consider the specific requirements in 49 CFR 24.103(a)(1) through (5) and address them as appropriate.

Paragraph (a)(2) of this section, explains that all relevant and reliable approaches to value are to be used. However, where an Agency determines that the sales comparison approach will be adequate by itself because of the type of property being appraised and the availability of sales data, it may limit the appraisal assignment to the sales comparison approach. This should be reflected in the scope of work.

Section 24.103(b) Influence of the project on just compensation. As used in this section, the term "project" means an undertaking which is planned, designed, and intended to operate as a unit.

When the public is aware of the proposed project, project area property values may be affected. Therefore, property owners should not be penalized because of a decrease in value caused by the proposed project nor reap a windfall at public expense because of increased value created by the proposed project.

Section 24.103(d)(1). The appraiser and review appraiser must each be qualified and competent to perform the appraisal and appraisal review assignments, respectively. Among other qualifications, State licensing or certification can help provide an indication of an appraiser's abilities.

Section 24.104 Review of appraisals.

[1] The U.S. Department of Housing & Urban Development's "Manufactured Home Construction and Safety Standards" is available at the following URL: *http://www.cfda.gov/public/viewprog.asp?progid=316.*

The term "review appraiser" is used rather than "reviewing appraiser," to emphasize that "review appraiser" is a separate specialty and not just an appraiser who happens to be reviewing an appraisal. Federal Agencies have long held the perspective that appraisal review is a unique skill that, while it certainly builds on appraisal skills, requires more. The review appraiser should posses both appraisal technical abilities and the ability to be the two-way bridge between the Agency's real property valuation needs and the appraiser.

Agency review appraisers typically perform a role greater than technical appraisal review. They are often involved in early project development. Later they may be involved in devising the appraisal problem statements and participate in making appraisal assignments to fee and/or staff appraisers. They are also mentors and technical advisors, especially on Agency policy and requirements, to appraisers, both staff and fee. Additionally, review appraisers are frequently technical advisors to other Agency officials.

Section 24.104(a). This paragraph states what the review appraiser is to review (the appraiser's presentation and analysis of market information) and what it is to be reviewed against § 24.103 and other applicable requirements, including, to the extent appropriate, the Uniform Appraisal Standards for Federal Land Acquisition. The appraisal review is to be a technical review by an appropriately qualified review appraiser. The qualifications of the review appraiser and the level of explanation of the basis for the reviewer's approved value depend on the complexity of the appraisal problem. If the initial appraisal submitted for review is unacceptable, the review appraiser is expected to communicate and work with the appraiser to the greatest extent possible to facilitate the appraiser's development of an acceptable appraisal. In doing this, the review appraiser is to remain in an advisory role, not directing the appraisal, and retaining objectivity and options for the appraisal review itself.

If the Agency intends that the staff review appraiser establish the amount the Agency believes is just compensation, she/he must be specifically authorized by the Agency to do so. If the review appraiser is not specifically authorized to establish the amount believed to be just compensation, that authority is with another Agency official.

Section 24.104(b). If the review appraiser develops an independent opinion of value, he/she may reference any acceptable resource, including acceptable parts of any appraisal, including an otherwise unacceptable appraisal, to support his/her independent approved value. If no submitted appraisal is approved, and the review appraiser determines an independent review amount, while remaining the appraisal review, that review also becomes the appraisal of record for Uniform Act purposes. It is within Agency discretion to decide whether a second review is needed if the first review appraiser establishes a value different from that in the appraisal report or reports on the property.

Section 24.104(c). Before acceptance of an appraisal, the review appraiser must determine that the appraiser's documentation, including valuation data and analysis of that data, demonstrates the soundness of the appraiser's opinion of value. For the purposes of this part, an acceptable appraisal is any appraisal that, on its own, meets the requirements of § 24.103. An approved appraisal is the one acceptable appraisal that is determined to best fulfill the requirement to be the basis for the amount believed to be just compensation. Recognizing that appraisal is not an exact science, there may be more than one acceptable appraisal of a property, but for the purposes of this part, there can be only one approved appraisal.

At the Agency's discretion, for a low value property requiring only a simple appraisal process, the review appraiser's approval, endorsing the appraiser's report, may be determined to satisfy the requirement for the review appraiser's signed report and certification.

Section 24.106(b) Expenses incidental to transfer of title to the agency. Generally, the Agency is able to pay such incidental costs directly and, where feasible, is required to do so. In order to prevent the property owner from making unnecessary out-of-pocket expenditures and to avoid duplication of expenses, the property owner should be informed early in the acquisition process of the Agency's intent to make such arrangements. Such expenses must be reasonable and necessary.

Subpart C—General Relocation Requirements

Section 24.202 Applicability and *Section 205(c) Services to be provided.* In extraordinary circumstances, when a displaced person is not readily accessible, the Agency must make a good faith effort to comply with these sections and document its efforts in writing.

Section 24.204 Availability of comparable replacement dwelling before displacement.

Section 24.204(a) General. This provision requires that no one may be required to move from a dwelling without a comparable replacement dwelling having been made available. In addition, § 24.204(a) requires that, "Where possible, three or more comparable replacement dwellings shall be made available." Thus, the basic standard for the number of referrals required under this section is three. Only in situations where three comparable replacement dwellings are not available (*e.g.*, when the local housing market does not contain three comparable dwellings) may the Agency make fewer than three referrals.

Section 24.205 Relocation assistance advisory services.

Section 24.205(c)(2)(ii)(C) emphasizes that if the comparable replacement dwellings are located in areas of minority concentration, minority persons should, if possible, also be given opportunities to relocate to replacement dwellings not located in such areas.

Section 24.206 Eviction for cause. An eviction related to non-compliance with a requirement related to carrying out a project (*e.g.*, failure to move or relocate when instructed, or to cooperate in the relocation process) shall not negate a person's entitlement to relocation payments and other assistance set forth in this part.

Section 24.207 General requirements—Claims for relocation payments. Section 24.207(a) allows an Agency to make a payment for low cost or uncomplicated moves without additional documentation, as long as the payment is limited to the amount of the lowest acceptable bid or estimate, as provided for in § 24.301(d)(1).

While section 24.207(f) prohibits an Agency from proposing or requesting that a displaced person waive his or her rights or entitlements to relocation assistance and payments, an Agency may accept a written statement from the displaced person that states that they have chosen not to accept some or all of the payments or assistance to which they are entitled. Any such written statement must clearly show that the individual knows what they are entitled to receive (a copy of the Notice of Eligibility which was provided may serve as documentation) and their statement must specifically identify which assistance or payments they have chosen not to accept. The statement must be signed and dated.

Subpart D—Payment for Moving and Related Expenses

Section 24.301 Payment for actual reasonable moving and related expenses.

Section 24.301(g)(14)(ii). If the piece of equipment is operational at the acquired site the estimated cost to reconnect the equipment shall be based on the cost to install the equipment as it currently exists, and shall not include the cost of code-required betterments or upgrades that may apply at the replacement site.

Section 24.301(g)(17) Searching expenses. In special cases where the displacing Agency determines it to be reasonable and necessary, certain additional categories of searching costs may be considered for reimbursement. These include those costs involved in investigating potential replacement sites and the time of the business owner, based on salary or earnings, required to apply for licenses or permits, zoning changes, and attendance at zoning hearings. Necessary permit, license and attorney fees are also reimbursable. In those instances when such additional costs to investigate and acquire the site exceed $2,500, the displacing Agency may consider waiver of the cost limitation under the § 24.7 waiver provision. Such a waiver should be subject to the approval of the Federal funding Agency in accordance with existing delegation authority.

Section 24.305 Fixed Payment for Moving Expenses—Nonresidential Moves.

Section 24.305(d) Nonprofit organization. Gross revenues may include membership fees, class fees, cash donations, tithes, receipts from sales or other forms of fund collection that enables the non-profit organization to operate. Administrative expenses are those for administrative support such as rent, utilities, salaries, advertising, and other like items as well as fundraising expenses. Operating expenses for carrying out the purposes of the non-profit organization are not included in administrative expenses. The monetary receipts and expense amounts may be verified with certified financial statements or financial documents required by public Agencies.

Section 24.305(e) Average annual net earnings. If the average annual net earnings of the displaced business, farm, or non-profit organization are determined to be less than $1,000, even $0 or a negative amount, the minimum payment of $1,000 shall be provided.

Section 24.306 Discretionary Utility Relocation Payments.

Section 24.306(c) describes the issues that the Agency and the utility facility owner must agree to in determining the amount of the relocation payment. To facilitate and aid in reaching such agreement, the practices in the Federal Highway Administration regulation, 23 CFR part 645, subpart A, Utility Relocations, Adjustments and Reimbursement, should be followed.

Subpart E—Replacement Housing Payments

Section 24.401 Replacement Housing Payment for 180-day Homeowner-Occupants.

Section 24.401(a)(2). An extension of eligibility may be granted if some event beyond the control of the displaced person such as acute or life threatening illness, bad weather preventing the completion of construction, or physical modifications required for reasonable accommodation of a replacement dwelling, or other like circumstances causes a delay in occupying a decent, safe, and sanitary replacement dwelling.

Section 24.401(c)(2)(iii) Price differential. The provision in § 24.401(c)(2)(iii) to use the current market value for residential use does not mean the Agency must have the property appraised. Any reasonable method for arriving at the market value may be used.

Section 24.401(d) Increased mortgage interest costs. The provision in § 24.401(d) sets forth the factors to be used in computing the payment that will be required to reduce a person's replacement mortgage (added to the downpayment) to an amount which can be amortized at the same monthly payment for principal and interest over the same period of time as the remaining term on the displacement mortgages. This payment is commonly known as the "buydown."

The Agency must know the remaining principal balance, the interest rate, and monthly principal and interest payments for the old mortgage as well as the interest rate, points and term for the new mortgage to compute the increased mortgage interest costs. If the combination of interest and points for the new mortgage exceeds the current prevailing fixed interest rate and points for conventional mortgages and there is no justification for the excessive rate, then the current prevailing fixed interest rate and points shall be used in the computations. Justification may be the unavailability of the current prevailing rate due to the amount of the new mortgage, credit difficulties, or other similar reasons.

SAMPLE COMPUTATION

Old Mortgage:	
Remaining Principal Balance	$50,000
Monthly Payment (principal and interest)	458.22
Interest rate (percent)	7
New Mortgage:	
Interest rate (percent)	10
Points	3
Term (years)	15

Remaining term of the old mortgage is determined to be 174 months. Determining, or computing, the actual remaining term is more reliable than using the data supplied by the mortgagee.) However, if it is shorter, use the term of the new mortgage and compute the needed monthly payment.

Amount to be financed to maintain monthly payments of $458.22 at 10%—$42,010.18

Calculation:	
Remaining Principal Balance	$50,000.00
Minus Monthly Payment (principal and interest)	− 42,010.18
Increased mortgage interest costs	7,989.82
3 points on $42,010.18	1,260.31
Total buydown necessary to maintain payments at $458.22/month	9,250.13

If the new mortgage actually obtained is less than the computed amount for a new mortgage ($42,010.18), the buydown shall be prorated accordingly. If the actual mortgage obtained in our example were $35,000, the buydown payment would be $7,706.57 ($35,000 / by $42,010.18 = .8331; $9,250.13 × .83 = $7,706.57).

The Agency is obligated to inform the displaced person of the approximate amount of this payment and that the displaced person must obtain a mortgage of at least the same amount as the old mortgage and for at least the same term in order to receive the full amount of this payment. The Agency must advise the displaced person of the interest rate and points used to calculate the payment.

Section 24.402 Replacement Housing Payment for 90-day Occupants.

The down payment assistance provisions in § 24.402(c) limit such assistance to the amount of the computed rental assistance payment for a tenant or an eligible homeowner. It does, however, provide the latitude for Agency discretion in offering down payment assistance that exceeds the computed rental assistance payment, up to the $5,250 statutory maximum. This does not mean, however, that such Agency discretion may be exercised in a selective or discriminatory fashion. The displacing Agency should develop a policy that affords equal treatment for displaced persons in like circumstances and this policy should be applied uniformly throughout the Agency's programs or projects.

For the purpose of this section, should the amount of the rent supplement exceed the purchase price of the replacement dwelling, the payment would be limited to the cost of the dwelling.

Section 24.403 Additional Rules Governing Replacement Housing.

Section 24.403(a) Determining Cost of Comparable Replacement Dwelling. The payment for increased real estate taxes, if any, for displaced 180-day owner occupants displaced as a result of a Federal or federally-funded project, would be based on the difference between the monthly real estate tax on the acquired dwelling, and the monthly real estate tax on the replacement dwelling at the time of purchase, but not to exceed the real estate tax on a comparable replacement dwelling.

The increase dollar amount, if any, would be provided for a 24 month period. If the displaced person elects to purchase a replacement dwelling whose real estate tax exceeds that of the comparable dwelling, the increased tax payment would be limited to the increased monthly tax on the comparable replacement dwelling at the time of purchase for 24 months. Should the displaced person elect to purchase a replacement dwelling for less than the cost of a comparable replacement dwelling, the increased tax calculation would be based on the 24 month increase, if any, in the tax cost of the acquired dwelling and that of the replacement dwelling at the time of purchase.

24.404 Replacement Housing of Last Resort.

Section 24.404(b) Basic rights of persons to be displaced. This paragraph affirms the right of a 180-day homeowner-occupant, who is eligible for a replacement housing payment under § 24.401, to a reasonable opportunity to purchase a comparable replacement dwelling. However, it should be read in conjunction with the definition of "owner of a dwelling" at § 24.2(a)(21). The Agency is not required to provide persons owning only a fractional interest in the displacement dwelling a greater level of assistance to purchase a replacement dwelling than the Agency would be required to provide such persons if they owned fee simple title to the displacement dwelling. If such assistance is not sufficient to buy a replacement dwelling, the Agency may provide additional purchase assistance or rental assistance.

Section 24.404(c) Methods of providing comparable replacement housing. This Subpart emphasizes the use of cost effective means of providing comparable replacement housing. The term "reasonable cost" is used to highlight the fact that while innovative means to provide housing are encouraged, they should be cost-effective. Section 24.404(c)(2) permits the use of last resort housing, in special cases, which may involve variations from the usual methods of obtaining comparability. However, such variation should never result in a lowering of housing standards nor should it ever result in a lower quality of living style for the displaced person. The physical characteristics of the comparable replacement dwelling may be dissimilar to those of the displacement dwelling but they may never be inferior.

One example might be the use of a new mobile home to replace a very substandard conventional dwelling in an area where comparable conventional dwellings are not available.

Another example could be the use of a superior, but smaller, decent, safe and sanitary dwelling to replace a large, old substandard dwelling, only a portion of which is being used as living quarters by the occupants and no other large comparable dwellings are available in the area.

Appendix B to Part 24—Statistical Report Form

This Appendix sets forth the statistical information collected from Agencies in accordance with § 24.9(c).

General

1. *Report coverage.* This report covers all relocation and real property acquisition activities under a Federal or a federally-assisted project or program subject to the provisions of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended. If the exact numbers are not easily available, an Agency may provide what it believes to be a reasonable estimate.

2. *Report period.* Activities shall be reported on a Federal fiscal year basis, i.e., October 1 through September 30.

3. *Where and when to submit report.* Submit a copy of this report to the lead Agency as soon as possible after September 30, but not later than November 15. Lead Agency address: Federal Highway Administration, Office of Real Estate Services (HEPR), Room 3221, 400 7th Street SW., Washington, DC 20590.

4. *How to report relocation payments.* The full amount of a relocation payment shall be reported as if disbursed in the year during which the claim was approved, regardless of whether the payment is to be paid in installments.

5. *How to report dollar amounts.* Round off all money entries in Parts of this section A, B and C to the nearest dollar.

6. *Regulatory references.* The references in Parts A, B, C and D of this section indicate the subpart of the regulations pertaining to the requested information.

Part A. Real Property Acquisition Under the Uniform Act

Line 1. Report all parcels acquired during the report year where title or possession was vested in the Agency during the reporting period. The parcel count reported should relate to ownerships and not to the number of parcels of different property interests (*e.g.*, fee, perpetual easement, temporary easement, *etc.*) that may have been part of an acquisition from one owner. For example, an acquisition from a property that includes a fee simple parcel, a perpetual easement parcel, and a temporary easement parcel should be reported as 1 parcel not 3 parcels. (Include parcels acquired without Federal financial assistance, if there was or will be Federal financial assistance in other phases of the project or program.)

Line 2. Report the number of parcels reported on Line 1 that were acquired by condemnation. Include those parcels where compensation for the property was paid, deposited in court, or otherwise made available to a property owner pursuant to applicable law in order to vest title or possession in the Agency through condemnation authority.

Line 3. Report the number of parcels in Line 1 acquired through administrative settlement where the purchase price for the property exceeded the amount offered as just compensation and efforts to negotiate an agreement at that amount have failed.

Line 4. Report the total of the amounts paid, deposited in court, or otherwise made available to a property owner pursuant to applicable law in order to vest title or possession in the Agency in Line 1.

Part B. Residential Relocation Under the Uniform Act

Line 5. Report the number of households who were permanently displaced during the fiscal year by project or program activities and moved to their replacement dwelling. The term "households" includes all families and individuals. A family shall be reported as "one" household, not by the number of people in the family unit.

Line 6. Report the total amount paid for residential moving expenses (actual expense and fixed payment).

Line 7. Report the total amount paid for residential replacement housing payments including payments for replacement housing of last resort provided pursuant to § 24.404 of this part.

Line 8. Report the number of households in Line 5 who were permanently displaced during the fiscal year by project or program activities and moved to their replacement dwelling as part of last resort housing assistance.

Line 9. Report the number of tenant households in Line 5 who were permanently displaced during the fiscal year by project or program activities, and who purchased and moved to their replacement dwelling using a down payment assistance payment under this part.

Line 10. Report the total sum costs of residential relocation expenses and payments (excluding Agency administrative expenses) in Lines 6 and 7.

Part C. Nonresidential Relocation Under the Uniform Act

Line 11. Report the number of businesses, nonprofit organizations, and farms who were permanently displaced during the fiscal year by project or program activities and moved to their replacement location. This includes businesses, nonprofit organizations, and farms, that upon displacement, discontinued operations.

Line 12. Report the total amount paid for nonresidential moving expenses (actual expense and fixed payment.)

Line 13. Report the total amount paid for nonresidential reestablishment expenses.

Line 14. Report the total sum costs of nonresidential relocation expenses and payments (excluding Agency administrative expenses) in Lines 12 and 13.

Part D. Relocation Appeals

Line 15. Report the total number of relocation appeals filed during the fiscal year by aggrieved persons (residential and nonresidential).

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FEDERAL FISCAL YEAR ENDING SEPT. 30, 20____

REPORTING AGENCY: _____

STATE: _____

CITY/COUNTY (For Local Government Agencies): _____

FEDERAL FUNDING AGENCY: _____

PART A. REAL PROPERTY ACQUISITION UNDER THE UNIFORM ACT	
1) Total Number of Parcels Acquired (Ownerships)	
2) Number of Parcels in Line 1 Acquired by Condemnation	
3) Number of Parcels in Line 1 Acquired by Administrative Settlement (Above initial offer - see 24.102(j))	
4) Compensation – Total Costs (Including 24.106 Excluding appraisal costs, negotiator fees and other administrative expenses)	
PART B. RESIDENTIAL RELOCATION UNDER THE UNIFORM ACT	
5) Total Number of Residential Displacements (Households)	
6) Residential Moving Payments – Total Costs	
7) Replacement Housing Payments – Total Costs	
8) Number of Last Resort Housing Displacements in Line 5 (Households)	
9) Number of Tenants converted to Homeowners in Line 5 (Households using 24.402(c))	
10) Total Costs for Residential Relocation Expenses and Payments (Sum of lines 6 and 7, excluding Agency Administrative Costs)	
PART C. NONRESIDENTIAL RELOCATION UNDER THE UNIFORM ACT	
11) Total Number of Non-Residential Displacements	
12) Non-Residential Moving Payments – Total Costs (Including 24.305)	
13) Non-Residential Reestablishment Payments – Total Costs	
14) Total Costs for Nonresidential Relocation Expenses and Payments (Sum of lines 12 and 13, excluding Agency Administrative Costs)	
PART D. RELOCATION APPEALS UNDER THE UNIFORM ACT	
15) Total Number of Relocation Appeals (Residential & Non-Residential)	

[FR Doc. 03–30804 Filed 12–16–03; 8:45 am]

BILLING CODE 4910–22–C

Federal Register

Wednesday,
December 17, 2003

Part III

Securities and Exchange Commission

17 CFR Part 270

Amendments to Rules Governing Pricing of Mutual Fund Shares; Proposed Rule

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 270

[Release No. IC–26288; File No. S7–27–03]

RIN 3235–AJ01

Amendments to Rules Governing Pricing of Mutual Fund Shares

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule amendments.

SUMMARY: The Securities and Exchange Commission ("Commission") is proposing amendments to the rule under the Investment Company Act that requires forward pricing of redeemable securities issued by registered investment companies ("funds"). The amendments would provide that an order to purchase or redeem fund shares would receive the current day's price only if the fund, its designated transfer agent, or a registered securities clearing agency receives the order by the time that the fund establishes for calculating its net asset value. The amendments are designed to prevent unlawful late trading in fund shares.

DATES: Comments must be received on or before February 6, 2004.

ADDRESSES: To help us process and review your comments more efficiently, comments should be sent by only one method only. Comments in paper format should be submitted in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549–0609. Comments in electronic format should be submitted to the following E-mail address: *rule-comments@sec.gov*. All comment letters should refer to File No. S7–27–03; if E-mail is used, this file number should be included on the subject line. Comment letters will be available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street NW., Washington, DC 20549. Electronically submitted comment letters will be posted on the Commission's Internet Web site *(http://www.sec.gov)*.[1]

FOR FURTHER INFORMATION CONTACT: Adam B. Glazer, Attorney, or Penelope W. Saltzman, Senior Counsel, Office of Regulatory Policy, (202) 942–0690, Division of Investment Management, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0506.

[1] We do not edit personal, identifying information, such as names or E-mail addresses, from electronic submissions. Submit only information you wish to make publicly available.

SUPPLEMENTARY INFORMATION: The Commission today is proposing for public comment amendments to rule 22c–1 [17 CFR 270.22c–1] under the Investment Company Act of 1940 [15 U.S.C. 80a] (the "Investment Company Act" or the "Act").

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I. Background

Rule 22c–1 under the Investment Company Act, the "forward pricing" rule, requires funds, their principal underwriters, and dealers to sell and redeem fund shares at a price based on the current net asset value ("NAV") next computed after receipt of an order to buy or redeem.[2] The rule also requires that funds calculate their NAV at least once a day.[3] Today, most funds calculate NAV when the major U.S. stock exchanges close at 4 p.m. Eastern Time.[4]

Under rule 22c–1, an investor who submits an order before the 4 p.m. pricing time must receive that day's price, and an investor who submits an order after the pricing time must receive the next day's price. "Late trading" refers to the illegal practice of permitting a purchase or redemption order received after the 4 p.m. pricing time to receive the share price calculated as of 4 p.m. that day.[5] A late trader can exploit events occurring after 4 p.m., such as earnings announcements, by buying on good news (and thus obtaining fund shares too cheaply) or selling on bad news (and thus selling at a higher price than the shares are worth). In either case, the late trader profits at the expense of long-term investors in the fund.

Investors do not submit orders directly to funds, but to any one of several different types of intermediaries. All order information for a particular fund is ultimately submitted to the transfer agent ("primary transfer agent") that acts as the master recordkeeper for the fund, keeping track of shares sold and redeemed and cash flowing into and out of the fund.[6] Those investors who deal directly with the fund by telephone or computer typically submit their order information to the fund's primary transfer agent.[7] Many, however, invest in mutual fund shares through other intermediaries such as broker-dealers, banks, and retirement plans[8] that form a network of intermediaries that process and record the transactions.[9]

Instead of submitting hundreds or even thousands of individual purchase and redemption orders each day, intermediaries typically net orders received from investors against each other and submit a single file containing net or omnibus purchase or redemption order information to the fund's primary transfer agent.[10] Many of the purchase and redemption orders are routed to fund primary transfer agents through the National Securities Clearing Corporation ("NSCC"), currently the only registered clearing agency[11] that operates an automated system for processing those orders for funds[12] ("Fund/SERV").[13] Fund/SERV provides a central processing system that collects order information from clearing brokers and others, sorts all the incoming order information according to fund, and transmits the order information to each fund's primary transfer agent.[14]

Although purchase and redemption orders must be submitted to retail dealers and other intermediaries by 4 p.m. in order to receive that day's price, our rules permit those intermediaries to forward the order information to Fund/SERV or fund primary transfer agents at a later time.[15] These intermediaries, which include broker-dealers, banks, and administrators of retirement plans, typically process orders received before 4 p.m. in the early evening hours before submitting them to Fund/SERV or fund primary transfer agents. The process is typically completed in the middle of the night.

II. Discussion

Investigations by Commission staff and state securities authorities have uncovered late trading of fund shares by intermediaries in violation of our rules, in some cases with the assistance of fund managers.[16] Our investigations and examinations are ongoing, but to date suggest that late trading of fund shares is not isolated, nor is it limited to any one type of fund or intermediary.[17]

Fund managers themselves have permitted late trades by favored investors. Late trading not only violates rule 22c–1, but managers who permit late trading also breach their fiduciary duties to the funds and fund shareholders. We have approved a new rule requiring that all funds have policies and procedures in place designed, among other things, to prevent late trading facilitated by fund personnel. We believe these new policies and procedures, administered by a chief compliance officer reporting directly to the fund's board of directors, will make such schemes more difficult. Vigorous civil enforcement, as well as criminal enforcement actions, when appropriate, will further deter such behavior.

Fund intermediaries have blended late trades with legitimate trades in the file containing net order information submitted to Fund/SERV or a fund's primary transfer agent after 4 p.m., effectively concealing the late trades from fund managers and from our compliance examiners. When we adopted rule 22c–1, we also amended our broker-dealer recordkeeping rules to require time-stamping of fund orders, which would permit us to detect late trades.[18] The rule has been circumvented by, for example, routinely permitting favored investors to place orders before 4 p.m., but cancel them after late news is received. Purchase orders would survive only when good news released after 4 p.m. increased the value of the fund's portfolio, while redemption orders would survive only when bad news depressed the value of the portfolio. Similarly, orders have been placed before 4 p.m. to be modified or changed after 4 p.m. Also clients that had placed an order for one fund's shares before 4 p.m. that was rejected by the fund, have been permitted to substitute an order for another fund's shares after 4 p.m. In each of these circumstances, the broker's records would appear to support a series of bona fide trades all of which were time-stamped before 4 p.m.

We are very concerned that our current rules, which permit intermediaries to process trades after 4 p.m., have failed to prevent late trading, and that available tools to control late trading facilitated by fund intermediaries have proven inadequate. Fund managers have informed us that, although they contractually require intermediaries to segregate orders submitted before 4 p.m. from those submitted later, they have no practical way to enforce that contractual obligation because they cannot discern late trades. Some broker-dealers engaging in late trading appear to have successfully concealed their activities from our examination staff and the self-regulatory organizations. Other fund intermediaries are not subject to our regular examination, and we cannot take steps we believe are adequate to prevent late trading through those intermediaries.

To eliminate late trading through fund intermediaries, we are proposing to amend rule 22c–1, as discussed in more detail below, to require that all purchase and redemption orders be received by the fund,[19] a single transfer agent

[2] 17 CFR 270.22c–1(a). The rule also applies to any other person designated in the fund's prospectus as authorized to receive purchase orders or tenders of securities for redemption. *Id.*

[3] *See* 17 CFR 270.22c–1(b)(1). The rule provides exceptions from the daily pricing requirement for: (i) days on which changes in the value of the fund's portfolio securities will not materially affect the current NAV of the fund's redeemable securities; (ii) days during which the fund does not receive an order for purchase or redemption of fund shares; and (iii) customary national business holidays and local and regional business holidays listed in the fund's prospectus. *Id.*

[4] Thus, a fund's NAV generally reflects the closing prices of the securities it holds. For securities that are not listed on exchanges or for which there are otherwise no readily available market values, a fund's board of directors must establish a fair value for the securities. *See* 15 U.S.C. 80a–2(a)(41)(B)(ii).

[5] In this Release, we will assume for convenience that all funds choose to price their securities daily as of 4 p.m. Some funds, however, price their securities more than once per day, and many funds price their securities earlier than 4 p.m.

[6] A "transfer agent" is any person who engages on behalf of a securities issuer, or on behalf of itself as an issuer of securities, in (a) countersigning the issuer's securities when issued; (b) monitoring issuance of the securities to prevent unauthorized issuance; (c) registering the transfer of the securities; (d) exchanging or converting the securities; or (e) transferring record ownership of the securities by book entry (*i.e.*, record entry of ownership without issuing a physical certificate). *See* 15 U.S.C. 78c(a)(25). Transfer agents are registered with and regulated by the Commission. *See* 15 U.S.C. 78q–1(c).

[7] Such intermediaries that are not registered as broker-dealers need to consider whether the securities activities that they are undertaking are brokerage activities that require them to register as broker-dealers. Section 3(a)(4) of the Securities Exchange Act of 1934 ("Exchange Act") defines a broker as a person engaged in the business of effecting transactions in securities for the account of others. It includes several exceptions for certain bank activities. *See* 15 U.S.C. 78c(a)(4). It includes several exceptions for certain bank activities. *See* 15 U.S.C. 78c(a)(4). Section 15 of the Exchange Act essentially makes it unlawful for a broker or dealer "to effect any transactions in, or to induce or attempt to induce the purchase or sale of, any security (other than an exempted security or commercial paper, bankers' acceptances, or commercial bills)" unless the broker or dealer is registered with the Commission. *See* 15 U.S.C. 78o(a)(1).

[8] A large portion of these investors invest through tax-advantaged retirement plans, such as 401(k) accounts. About one-third of all mutual fund shares are held through retirement accounts. *See* Investment Company Institute, *Mutual Funds and the U.S. Retirement Market in 2002*, Fundamentals, June 2003, AT 1, 2.

[9] *See supra* note 7.

[10] Some intermediaries submit one aggregated purchase order and one aggregated redemption order in a single "batch." Others submit orders in multiple batches in the course of the day. The intermediary will batch customer orders it receives during the day at various times, with a 4 p.m. cut-off time for orders that are included in the last batch transmitted to the fund's primary transfer agent for same-day pricing. Orders received by the intermediary after the last cut-off time are included in a batch of orders transmitted to the fund's primary transfer agent for next-day pricing.

[11] A "clearing agency" is a person that acts as an intermediary in making payments or deliveries (or both) in connection with transactions in securities, or that provides facilities for comparing data with respect to the terms of securities transactions to reduce the number of settlements or the allocation of securities settlement responsibilities. *See* 15 U.S.C. 78c(a)(23)(A). A clearing agency is a self-regulatory organization, and its rules of operation are subject to approval by the appropriate federal regulatory agency. *See* 15 U.S.C. 78c(a)(26), 78s(b).

[12] Shares of exchange-traded funds ("ETFs"), however, are cleared through NSCC and the Depository Trust Company. An ETF typically is a registered open-end investment company with shares that trade intra-day at market-determined prices. *See* Actively Managed Exchange-Traded Funds, Investment Company Act Release No. 25258, nn. 6–8 and accompanying text (Nov. 8, 2001) [66 FR 57614 (Nov. 15, 2001)].

[13] "Fund/SERV" is an acronym for the Mutual Fund Settlement, Entry and Registration Verification Service. Only NSCC members who are Fund/SERV participants may use the system. Funds or their distributors are NSCC members, who designate the primary transfer agent to receive information on share transactions on the fund or distributor's behalf.

[14] The primary transfer agent provides Fund/SERV with its electronic confirmation of the order, and Fund/SERV forwards those confirmations back to the clearing brokers. In 2002, Fund/SERV processed 83 million fund transactions at a value of $1.3 trillion. *See DTCC Business Volumes Set Records in 2002*, The Depository Trust & Clearing Corporation, Press Release (May 5, 2003) (available at *http://www.dtcc.com/PressRoom/2003/2002review.html*).

[15] *See* Staff Interpretive Position Relating to Rule 22c–1, Investment Company Act Release No. 5569 (Dec. 27, 1968) (rule 22c–1 "contemplates that the time of receipt of the order by the retail dealer is controlling" for purposes of determining the price obtained by the dealer). *See also* Charles Schwab & Co., Inc., SEC Staff No-Action Letter (July 7, 1997) (the time an order was received by a person designated in the fund's prospectus will be deemed the time the order was received for purposes of rule 22c–1).

[16] *See, e.g.*, In the Matter of Steven B. Markovitz, Investment Company Act Release No. 26201 (Oct. 2, 2003).

[17] *See* Testimony of Stephen M. Cutler Concerning Recent Commission Activity to Combat Misconduct Relating to Mutual Funds Before the Senate Subcommittee on Financial Management, the Budget, and International Security, Committee on Governmental Affairs, 108th Cong., 1st Sess., 11–15 (Nov. 3, 2003).

[18] *See* Adoption of Rule 22c–1 Under the Investment Company Act of 1940 Prescribing the Time of Pricing Redeemable Securities for Distribution, Redemption, and Repurchase, and Amendment of Rule 17a–3(a)(7) Under the Securities Exchange Act of 1934 Requiring Dealers to Time-Stamp Orders, Investment Company Act Release No. 5519 (Oct. 16, 1968) [33 FR 16331 (Nov. 7, 1968)]. *See also* 17 CFR 240.17a–3(a)(6)(i) (requiring broker-dealers to record each brokerage order and information pertaining to the order, including the time the order was received and the time of entry).

[19] Under the rule, orders submitted to various intermediaries, such as third-party administrators, would not be considered orders received by the

Continued

designated by the fund and required by written contract to receive order information and maintain a record of the date and time it receives the information ("designated transfer agent"), or a registered clearing agency (*e.g.*, Fund/SERV) no later than the time at which the fund prices its securities (*e.g.*, 4 p.m.), in order to obtain the current day's price.[20] As a consequence, fund intermediaries, such as broker-dealers, banks, and administrators of retirement plans would have to submit orders to the fund before 4 p.m. in order for their customers to receive the 4 p.m. price.[21] Orders received later would have to receive the following day's price.

We recognize that this proposed rule change, if adopted, would likely require substantial changes in the way fund intermediaries process fund purchase and redemption orders. The capacity of computer systems that process those orders will likely have to be expanded to handle more transactions within a shorter period of time. Intermediaries will likely require investors to submit purchase orders at an earlier time in the day (*e.g.*, 2 p.m.) to obtain the 4 p.m. price, in order to allow the intermediary time to process the purchase and redemption orders before submitting them to the fund, its designated transfer agent, or the clearing agency. Administrators of defined contribution employee pension plans, (*e.g.*, 401(k) plans) have informed us that they likely will be unable to process any purchase and redemption requests the same day they are made.[22]

We seek comment on these costs, and whether they are justified by the benefits of the proposed amendments. In proposing these amendments, we assume investors and intermediaries will adapt to the new requirements, just as they adapted when we required forward pricing in 1968. Investors for whom it is important to be able to place orders shortly before 4 p.m. will seek out fund complexes that permit investors to submit orders directly to the fund's designated transfer agent. Some fund intermediaries also may compete for such investors by developing more efficient order processing systems. Others may eschew such customers because they tend to be short-term traders or market-timers. We believe that the burden on most fund investors will be small because most are not sensitive to the time at which their purchase or redemption orders are priced. They make longer-term investments, often as part of an automatic purchase program, and treat the time and date of the purchase order as a random event controlled by their employer's payroll processing protocols, or the delivery of the mail. In some cases, a purchase order executed at the next day's price will be executed at a lower price than it would the same day; in other cases, it will be executed at a higher price.

We also seek comment on an approach that has been suggested.[23] This approach would require fund intermediaries, in order to be eligible to submit orders to designated transfer agents or Fund/SERV after 4 p.m., to have adopted certain protections designed to prevent late trading.[24] Such protections could include:

- Electronic or physical time-stamping of orders in a manner that cannot be altered or discarded once the order is entered into the trading system;
- Annual certification that the intermediary has policies and procedures in place designed to prevent late trades, and that no late trades were submitted to the fund or its designated transfer agent during the period; and
- Submission of the intermediary to an annual audit of its controls conducted by an independent public accountant who would submit his report to the fund's chief compliance officer.

We have identified these three protections as important components of this approach. Would each of these protections be appropriate to preventing trading in fund shares? Are there other protections that would be necessary or appropriate to prevent unlawful late trading while permitting intermediaries to continue processing purchase and redemption orders after 4 p.m.? If so, what are they?

Would such an approach be effective at stopping late trading? Some broker-dealers appear to have easily circumvented current system controls, including the time-stamping required by our rules. Our staff reports that at least one broker-dealer that had obtained an annual audit of its internal controls by an independent auditor has submitted late trades. We are therefore concerned that an independent auditor may fail to detect weaknesses in internal controls that allow late trading to occur. How could we prevent any such protections and controls from being circumvented similarly in the future? How would we police compliance with the controls by the fund intermediaries over which we have no regulatory authority? Finally, we recognize that this approach might require different systems changes than those required under the proposed amendments discussed in this Release. What costs would this approach impose on intermediaries? Would these costs be passed on to fund investors? Are there other conditions that would be more effective, or equally effective but less costly?

A. Proposed Pricing Requirements

Rule 22c–1 currently deems a purchase or redemption order to be received, for purposes of determining the appropriate day's price, when the retail dealer receives the order, even if it is actually submitted to the fund's transfer agent at a later time. The proposed amendments would deem an order received only when it is received[25] by (i) the fund itself, (ii) the fund's designated transfer agent, or (iii) a clearing agency registered with the Commission (*e.g.*, NSCC's Fund/SERV system).[26]

Under the proposed rule, fund designated transfer agents would be required to record the date and time they receive order information.[27] These transfer agents and NSCC will operate, in effect, as time-stamping organizations, ensuring that orders are assigned the correct day's price.[28] We believe these organizations, which are regulated by the Commission[29] and operate large automated processing systems, will serve to ensure the integrity of fund pricing.[30]

Are there other intermediaries that could also serve this role? Are there intermediaries that may become involved in processing order information in the foreseeable future that would be capable of serving this role? We recognize that this proposal will require fund transfer agents, NSCC, and other intermediaries to modify, and in some cases to expand, their data processing systems to reflect the rule proposals. If we adopt these proposals in similar form, we would expect to provide a one-year transition period to accommodate system changes. Would such a transition period be adequate? We also note that transfer agents currently are not required under Commission rules to time-stamp information they record.[31] Nevertheless, only a transfer agent that has the ability to time-stamp order information it receives and maintain a record of that information could be a "designated transfer agent" under the proposed amendments. Should our transfer agent rules include time-stamping and record retention requirements for designated transfer agents? If so, should any information in addition to the order information and date and time of receipt be included in the record? In what form and for how long should the record be maintained?

B. Purchase and Sale Orders; Exchanges

We propose to define the term "order" in the rule to clarify when an order is complete (and therefore has been received) for purposes of obtaining the appropriate day's price. Under the proposed amendments an "order" would mean the direction to purchase or sell either (i) a specific number of shares of a fund (*e.g.*, all the shares held in the account), or (ii) an indeterminate number of shares of a specific value (*e.g.*, $10,000 of shares of the fund).[32] The definition also would state that each order would be deemed irrevocable as of the next pricing time after receipt by the fund, its designated transfer agent, or registered clearing agency.[33] This provision is designed to prevent the cancellation or modification of orders after the pricing time applicable to the order.

Our proposed amendment also contains a special provision for exchange orders. An investor who exchanges between two funds actually engages in two transactions—a redemption of the securities he owns in one fund and a purchase (using the redemption proceeds) of securities in another fund. Typically, exchanges between funds in the same fund complex, and sometimes in different complexes, are processed as a single transaction so that they receive the same day's prices. In the case of an exchange involving a fixed number of shares (*e.g.*, in which the investor redeems all of his shares of the first fund), neither the amount nor the number of shares of the second fund will be known until the NAV of the first fund is determined, which will be sometime after 4 p.m. To preserve the ability of funds to offer "seamless" exchange transactions, we propose to define "order" to include a direction to purchase redeemable securities of the fund using proceeds of a contemporaneous order to redeem a specific number of shares of another.

C. Exceptions

Rule 22c–1 contains several exceptions from the forward pricing requirements, all of which we would preserve.[34] We would add to those exceptions another exception that would permit investor orders to receive same-day treatment if, as a result of an emergency, a dealer (or its agent) was unable to transmit the orders, or NSCC or the fund's designated transfer agent was unable to receive the orders.[35] The exception would prevent investors from losing the current day's price for orders received by dealers before 4 p.m., if those orders could not be transmitted to or received by NSCC or the fund's designated transfer agent by 4 p.m. because of, for example, a power failure, hurricane or other emergency.[36]

The emergency exception would be available to dealers only if the chief executive officer certifies to the fund (i) the nature, existence, and duration of the emergency, and (ii) that the intermediary received the orders before the applicable pricing time.[37] A fund also would be required to keep a record of each certification it received for six years.[38] If an emergency prevented the designated transfer agent or the clearing agency from receiving order information, the chief executive officer of the designated transfer agent or clearing agency would have to provide notice of the emergency to the fund.[39]

The second exception addresses "conduit" funds, which invest all their

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"fund," even if those intermediaries are agents of the fund.

[20] *See* proposed rule 22c–1(a).

[21] The general requirement of the rule would be subject to a few limited exceptions. *See infra* Section II.C.

[22] *See, e.g.*, Letter from Robert G. Wuelfing, *The Spark Institute, Inc.*, to Paul F. Roye, Director, *Division of Investment Management, Securities and Exchange Commission*, and Cynthia M. Fornelli, Deputy Director, *Division of Investment Management, Securities and Exchange Commission* (Oct. 31, 2003) ("*Spark Institute Letter*") (available in the public comment file). Another administrator has noted that orders would have to be placed several hours earlier than 4 p.m. *See* Testimony of E. Scott Peterson, Global Practice Leader of Defined Contribution Services, Hewitt Associates, Submitted for the Record, U.S. Senate Subcommittee on Financial Management, the Budget, and International Security, Committee on Governmental Affairs, Hearing on Mutual Funds, Trading Practices and Abuses that Harm Investors, 108th Cong., 1st Sess. 6 (Nov. 3, 2003).

[23] Several groups have urged us to adopt such an approach. *See, e.g.*, Letter from Marc E. Lackritz, President, *Securities Industry Association*, to Paul F. Roye, Director, *Division of Investment Management, Securities and Exchange Commission* (Oct. 31, 2003); *Spark Institute Letter*, *supra* note 22. *See also* Letter from Edward L. Yingling, Executive Vice President, *American Bankers Association*, to Paul F. Roye, Director, *Division of Investment Management, Securities and Exchange Commission* (Nov. 12, 2003); Letter from Steve Bartlett, President, *The Financial Services Roundtable*, to Paul Roye, Director, *Division of Investment Management, Securities and Exchange Commission* (Nov. 10, 2003); Letter from Geof Gradler, Senior Vice President and Head, Office of Government Affairs, *Charles Schwab & Co., Inc.*, to Paul F. Roye, Director, *Division of Investment Management, Securities and Exchange Commission*, Cynthia M. Fornelli, Deputy Director, *Division of Investment Management, Securities and Exchange Commission*, and Douglas J. Scheidt, Chief Counsel, *Division of Investment Management, Securities and Exchange Commission* (Oct. 27, 2003) (advocating similar approaches). Each of the letters cited is available in the public comment file.

[24] These protections would be required for intermediaries other than the fund's designated transfer agent or the registered clearing agency.

[25] We use the term "receive" in the proposed rule text for purposes of proposed rule 22c–1 only. Receipt of an order in NSCC's Fund/SERV refers only to its role as an electronic communication hub that transmits fund orders from the broker-dealer to the appropriate mutual fund processor.

[26] *See* proposed rule 22c–1(a). The proposed amendments would retain the requirements in the current rule concerning the frequency and time of determining NAV, but would reorganize and reword those provisions. The proposed amendment would use the phrase "based on the current net asset value established as of the next pricing time" instead of the phrase "based on the current net asset value which is next computed." This amendment is intended to clarify the current requirement that orders received after the pricing time, but before calculation of the NAV is complete, do not receive same-day pricing.

[27] The proposed rule defines "designated transfer agent" to mean the single registered transfer agent, as defined in section 3(a)(25) of the Securities Exchange Act of 1934 [15 U.S.C. 78c(a)(25)], that is designated, in the fund's registration statement, and required by written contract to receive order information and maintain a record of the date and time it receives the order information. *See* proposed rule 22c–1(c)(1).

[28] Although orders would have to be received by Fund/SERV or the designated transfer agent by 4 p.m. to ensure same-day pricing, the clearing agency and designated transfer agent each may complete its processing after the pricing time.

[29] *See supra* notes 6, 11.

[30] Some groups have endorsed this approach. *See* Statement of Paul G. Haaga, Jr., Chairman, Investment Company Institute on "Mutual Funds: Who's Looking Out for Investors," Before the House Subcommittee on Capital Markets, Insurance and Government Sponsored Enterprises of the Committee on Financial Services, 108th Cong., 1st Sess. (Nov. 4, 2003) (available at *http://www.ici.org/statements/tmny/03_house_haaga_tmny.html*); Letter from David B. Yeske, President, *The Financial Planning Association*, to William H. Donaldson, Chairman, *Securities and Exchange Commission* (Nov. 7, 2003) (available in the public comment file).

[31] The proposed amendments would not impose any new recordkeeping requirements on transfer agents in general.

[32] *See* proposed rule 22c–1(c)(3).

[33] *Id.*

[34] The rule preserves three existing exceptions. The first permits sales of unit investment trust shares in the secondary market involving backward pricing under conditions that do not dilute existing shareholders' interest in the trust. *See* proposed rule 22c–1(b)(3). The second permits insurance company separate accounts to price initial purchase payments up to two days after receipt of a complete contract application and up to five days while obtaining additional information to complete the application. *See* proposed rule 22c–1(b)(4). The third permits a fund to adjust the price of its redeemable securities sold pursuant to a sale, merger, consolidation, or purchase of substantially all the assets of certain companies. *See* proposed rule 22c–1(b)(5).

[35] *See* proposed rule 22c–1(b)(1)(i).

[36] *See, e.g.*, Amendment to Pricing Rule and Adoption of Rule on Pricing of Redemptions, Investment Company Act Release No. 14559 (June 6, 1985) (distinguishing circumstances, such as a natural disaster or other external occurrence, that constitute an emergency for purposes of rule 22c–1, from other circumstances, such as internal operational difficulties, that do not)

[37] *See* proposed rule 22c–1(b)(1)(i)(A).

[38] The fund, or its designated agent, would be required to keep the records for six years, the first two years in an easily accessible location. *See* proposed rule 22c–1(b)(1)(ii).

[39] *See* proposed rule 22c–1(b)(1)(i)(B).

assets in another fund and therefore must calculate their NAV on the basis of the other fund's NAV.[40] These funds are registered investment companies, and are subject to regulation and oversight by the Commission. The exception would permit a conduit fund, such as a "master-feeder" fund or an insurance company separate account, to submit its orders based on the NAV established by the other fund on the same day.[41]

We request comment on the exceptions included in the amended rule. Are there other exceptions that we should consider?

III. General Request for Comment

The Commission requests comment on the proposed amendments to rule 22c–1, suggestions for additions to the proposed amendments, and comment on other matters that might have an effect on the proposals contained in this Release. We note that the comments that are of greatest assistance are those that are accompanied by supporting data and analysis of the issues addressed in those comments.

IV. Cost-Benefit Analysis

The Commission is sensitive to the costs and benefits imposed by its rules. As discussed above, the proposed amendments to rule 22c–1 would require that an order to purchase or redeem fund shares be received by the fund, its designated transfer agent, or a registered securities clearing agency, by the time that the fund's board of directors establishes for calculating the fund's NAV in order to receive the current day's price.

A. Benefits

We anticipate that funds and shareholders would benefit from the proposed amendments. The amendments to rule 22c–1 are designed to prevent late trading in fund shares. Preventing late trading would ensure that the value of a fund's outstanding redeemable securities would not be diluted through the sale of a fund's securities at a price below its NAV, or the redemption or repurchase of a fund's securities at a price above its NAV.[42] This dilution harms the fund's long-term shareholders who lose at least as much as late traders gain in profits. By preventing this dilution, long-term investors would have more confidence in the financial markets as a whole, and funds in particular.

Funds would benefit by the increase in investor confidence, as investors would be less likely to seek alternative financial products in which to invest. Long-term investors also would benefit. Without these protections, many long-term investors, who would prefer to invest in mutual funds, may choose other investment instruments to avoid losses to late traders. Finally, these reforms will reduce the transaction costs that funds incur. When a late trader rapidly moves a large amount of money into and out of a fund, the fund incurs significant costs in buying securities and then selling them. These transaction costs include commissions and the spread between the bid and ask prices.

B. Costs

Currently, orders for a fund's shares received by broker-dealers, 401(k) plan administrators, and other third-party intermediaries from their customers prior to the fund's pricing time are eligible to receive that day's price. The proposed amendments to rule 22c–1 would limit same-day pricing to orders received by the fund, its designated transfer agent, or a registered clearing agency prior to the fund's pricing time. As a result, third-party intermediaries (including broker-dealers and retirement plan administrators) and NSCC would incur certain costs, and funds and investors might incur costs.[43] In addition, fund designated transfer agents would incur costs as a result of a recordkeeping requirement contained in the proposed amendments.

Third-party intermediaries would have to combine their fund share orders for processing prior to the pricing time, and therefore their customers may have to place their orders earlier in the day than investors who conduct business directly with the fund's designated transfer agent in order to receive that day's price.[44] This would put intermediaries at a competitive disadvantage with designated transfer agents, and may result in a number of an intermediary's customers or potential customers bypassing the intermediary and purchasing or redeeming shares directly with the designated transfer agent. Alternatively, intermediaries, in order to compete with designated transfer agents, may upgrade their computer systems in order to process orders more quickly, thus allowing customers to place their orders as close to the pricing time as possible while qualifying for that day's price.[45] We would expect that the systems would become increasingly efficient over time and thus reduce the delay between the intermediary's receipt of the order and transmission to Fund/SERV or the designated transfer agent. The Commission, however, has no reasonable basis for determining the number of customers or potential customers that intermediaries might lose or the costs associated with the potential lost customer orders. The computer system upgrade would impose one-time costs. The Commission, however, has no reasonable basis for determining the costs of the technological upgrades intermediaries might incur as a result of the proposed amendments, because each intermediary could upgrade in a way that it deems best for its particular computer system.

NSCC, which operates Fund/SERV, would incur costs as a result of the proposed rule amendments. Under the proposed amendments, orders transmitted to Fund/SERV by broker-dealers and other intermediaries prior to a fund's pricing time would receive that day's price. Orders transmitted to Fund/SERV after a fund's pricing time, including orders received by the intermediary prior to a fund's pricing time, would receive the fund's next-day price. Intermediaries, therefore, would likely transmit a number of orders to Fund/SERV close to the pricing time, resulting in a substantial increase in the volume of transmissions received by Fund/SERV just prior to the pricing time. In response to this increase, NSCC would likely have to increase Fund/SERV's capacity to handle the expected concentration of orders just prior to the pricing time. We do not know what the cost estimate for the increased capacity might be.

Funds might incur costs as a result of the proposed rule amendments. First, if third-party intermediaries, such as retirement plan administrators, find it too expensive to upgrade their computer systems, potential investors may end up investing in alternative financial products. For example, if a retirement plan sponsor determines that the system upgrades necessary to complete fund orders in a timely fashion are too expensive, the plan may discontinue offering investments in some or all funds and offer investments in alternative financial products, causing funds to lose potential investors. The Commission, however, cannot predict the potential loss in investments to funds. Second, some funds, particularly smaller funds, that do not have the financial resources to increase their advertising expenditures might lose potential investors as a result of investors bypassing third-party intermediaries and purchasing shares from fund designated transfer agents. Financial intermediaries are likely to be aware of and offer many or most funds regardless of whether the funds advertise. Individual investors, however, are less likely to be aware of funds that do not advertise extensively. Therefore, as a result of investors bypassing financial intermediaries, smaller funds may lose some potential investors.

Finally, if a fund chooses to select a designated transfer agent to receive order information, the fund would incur costs. A fund would have to identify its designated transfer agent in its registration statement and include a provision in its contract with the designated transfer agent requiring the designated transfer agent to receive order information and to maintain a record of the date and time it received the order information.[46] For purposes of the Paperwork Reduction Act, Commission staff has estimated that the one-time cost of identifying a designated transfer agent in the fund's registration statement would be negligible. The one-time cost of modifying the fund's existing contract with one of its transfer agents would be approximately 4.5 hours and $287.66 per fund. It is estimated that all funds together would spend 17,662.5 hours and $1,129,065.50 to comply with this contract modification requirement.

As noted above, as a result of the proposed amendments, some investors might choose to send order information directly to a designated transfer agent instead of to an intermediary that transmits information through Fund/SERV. In that case, designated transfer agents might have to augment their capacity to handle increased order information and an expected concentration of orders shortly before pricing time. The Commission has no reasonable basis for predicting the increase in orders that may be directed to designated transfer agents, and therefore does not know how to estimate the cost for the increased capacity. An increase in order information directed to designated transfer agents also would result in the transmission of larger numbers of individual orders, rather than smaller numbers of aggregated and netted orders for omnibus accounts. We do not know what, if any, costs to funds would result if there were such an increase in order information.

We believe the costs of these rule amendments will be minimal for long-term investors. Long-term investors (who invest both on their own and through retirement funds) attempt to save for events that are years in the future, such as retirement. They may find a deposit or redemption is delayed by one day because it reached the fund after 4 p.m. However, because they have no special information about day-to-day deviations in a fund's NAV from its fair market value, long-term investors are likely to receive a better price as often as they receive a worse one. In addition, because day-to-day changes in NAVs are generally small, the effect on long-term investors who receive a worse price because their orders were received after 4 p.m. is likely to be small.

A possible consequence of the proposed amendments is that some long-term investors will choose other financial instruments to avoid the risk of getting the next day's price. These investors may believe the instruments they choose are inferior to mutual funds (which were these investors' first choice). However, this disadvantage is likely to be minimal because products such as exchange-traded funds are available.[47] These instruments offer features very similar to conventional mutual funds but are actively traded intra-day at market-determined prices. In addition, the proposed amendments would allow many investors, for whom mutual funds would be a first choice but for fear of share value dilution resulting from late trading, to invest in mutual funds with greater confidence. If returns on investments in the alternative financial products were higher than the returns on investments in funds that investors would have chosen, investors would benefit. Conversely, if returns on investments in the alternative financial products were lower than the returns on investments in funds that investors would have chosen, investors would incur costs. The Commission, therefore, cannot quantify the potential costs (or benefits) to investors.

As discussed above, the proposed amendments would include an emergency exception so that orders would receive same-day treatment if, as a result of an emergency, the fund intermediary was unable to transmit the orders, or NSCC or the fund's designated transfer agent was unable to receive the orders.[48] The emergency exception would be available to fund intermediaries only if the chief executive officer of the intermediary certifies to the fund (i) the nature, existence, and duration of the emergency, and (ii) that the intermediary received the orders before the applicable pricing time.[49] A fund, or its designated agent, also would be required to keep a record of each certification it received for six years.[50] The certification requirement would impose costs on the intermediary, and the recordkeeping requirement would impose costs on funds. If an emergency prevented the designated transfer agent or the clearing agency from receiving order information, the chief executive officer of the designated transfer agent or registered clearing agency would have to provide notice of the emergency to the fund.[51] We have not specified the manner in which the chief executive officer must notify the fund, and seek comment on what method these entities are likely to use. The Commission, however, expects emergencies to occur infrequently. Therefore, we believe the costs involved in qualifying for the emergency exception would be minor.[52]

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[40] Proposed rule 22c–1(b)(2).

[41] Conduit funds rely on section 12(d)(1)(E) of the Act, and include most insurance company separate accounts. *See* 15 U.S.C. 80a–12(d)(1)(E). Section 12(d)(1)(E) permits a fund's acquisition of securities issued by another fund if, among other requirements, the security is the only investment security the acquiring fund holds (or the securities are the only investment securities the acquiring fund holds if it is a registered unit investment trust that issues two or more classes or series of securities, each of which provides for the accumulation of shares of a different fund). The separate account invests the proceeds from the sale of interests in variable annuity and variable life insurance contracts in shares of the underlying mutual fund according to the directions of the investor in the insurance contract. "Master-feeder funds" typically are arrangements in which two or more funds invest in a single fund. Investors purchase shares in the "feeder" fund, which is an open-end fund and a conduit to the master fund. *See* H.R. REP NO. 622, 104th Cong. 2d Sess., at 41 (1996).

[42] It has been estimated that shareholders lose as much as $400 million per year as a result of late trading. *See* Eric Zitzewitz, *How Widespread is Late Trading in Mutual Funds?* (Sept. 2003) *http://gobi.standord.edu/ResearchPapers/Library/RP1817.pdf*.

[43] *See supra* notes 11–12 and accompanying text.

[44] Some have estimated that orders would have to be submitted from two to four hours before pricing time. *See* Tom Lauricella, *Funds, Regulators Seek Balanced Fix in U.S. Industry*, Wall St. J. Eur., Oct. 31, 2003 at M1.

[45] Some administrators of 401(k) plans have informed us that they likely would not be able to process any purchase or redemption requests the same day they are made due to the myriad of rules governing 401(k) plans. *See supra* note 22 and accompanying text.

[46] *See* proposed rule 22c–1(c)(1).

[47] *See supra* note 12.

[48] *See* proposed rule 22c–1(b)(1)(i).

[49] *See* proposed rule 22c–1(b)(1)(i)(A).

[50] The fund would be required to keep the records for six years, the first two years in an easily accessible location. *See* proposed rule 22c–1(b)(1)(ii).

[51] *See* proposed rule 22c–1(b)(1)(i)(B).

[52] Notification for emergencies preventing the receipt of orders by the designated transfer agent or NSCC could be by telephone or in writing and would not need to be certified. Therefore, the notification requirement would involve minimal, if any, costs. For purposes of the Paperwork Reduction Act, the Commission staff has estimated that it would take a total of approximately 1 hour and $163.53 per broker-dealer to comply with the certification requirement. It is estimated that all broker-dealers together would spend 2,203 hours and $360,246 to comply with the certification requirement. For purposes of the Paperwork Reduction Act, the Commission staff has estimated that it would take a total of approximately 1 hour

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If a fund chooses to select a designated transfer agent to receive order information and the transfer agent accepts this designation, the proposed amendments would impose a recordkeeping requirement on the fund's designated transfer agent. The designated transfer agent would be required to maintain a record of the date and time it receives order information.[53] For purposes of the Paperwork Reduction Act, the Commission staff has estimated that it would take a total of approximately 100 hours and $1,892 per designated transfer agent to comply with the time of receipt recordkeeping requirement. It is estimated that all designated transfer agents together would spend 20,800 hours and $393,536 to comply with this recordkeeping requirement.

C. Request for Comment

The Commission requests comment on the potential costs and benefits of the proposed rule amendments. We also request comment on the potential costs and benefits of the approach under which intermediaries, in order to be eligible to submit orders to the fund after 4 p.m., would be required to adopt certain protections designed to prevent late trading. The Commission also requests comment on the potential costs and benefits of any other alternatives suggested by commenters. We encourage commenters to identify, discuss, analyze, and supply relevant data regarding any additional costs and benefits. For purposes of the Small Business Regulatory Enforcement Act of 1996,[54] the Commission also requests information regarding the potential impact of the proposals on the U.S. economy on an annual basis. Commenters are requested to provide data to support their views.

V. Paperwork Reduction Act

Certain provisions of the proposed amendments to rule 22c–1 would result in new "collection of information" requirements within the meaning of the Paperwork Reduction Act of 1995.[55] The Commission is submitting these proposals to the Office of Management and Budget ("OMB") for review in accordance with 44 U.S.C. 3507(d) and 5 CFR 1320.11. The title for the collection of information requirements is "Rule 22c–1 under the Investment Company Act of 1940, 'Pricing of redeemable securities for distribution, redemption and repurchase.'" An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

To eliminate late trading through fund intermediaries, we are proposing to amend rule 22c–1 to require that all purchase and redemption orders be received by the fund, its designated transfer agent, or a registered clearing agency no later than the time at which the fund prices its securities, in order to obtain the current day's price. As a consequence, certain fund intermediaries, such as broker-dealers, banks, and retirement plan administrators would have to submit orders to the fund before 4 p.m. in order for their customers to receive the 4 p.m. price. Orders submitted later would have to receive the following day's price. The proposed amendments to rule 22c–1 would allow a fund to designate a transfer agent to receive orders to purchase or redeem fund shares. Orders received by that designated transfer agent no later than the fund's pricing time would receive same-day pricing. The amendments would require that the fund designate the transfer agent in its registration statement filed with the Commission, and include a provision in the fund's contract with the designated transfer agent requiring the transfer agent to receive order information and maintain a record of the date and time it receives the order information.[56] These collection of information requirements would be voluntary, because a fund does not need to select a designated transfer agent unless the fund chooses to have same-day pricing available for orders received by its transfer agent. These collection of information requirements are needed to ensure that designated transfer agents do not allow late trading to occur, and to assist the Commission's examination staff in assessing whether late trading is occurring.

The proposed rule amendments would contain an exception that would permit investor orders to receive same-day pricing if, as a result of an emergency, a dealer (or its agent) was unable to transmit the orders, or NSCC or the fund's designated transfer agent was unable to receive the orders by the fund's pricing time.[57] The exception would prevent investors from losing the current day's price for orders received by dealers before 4 p.m., if those orders could not be transmitted to or received by NSCC or the fund's designated transfer agent by 4 p.m. because of, for example, a power failure, hurricane, or other emergency. The emergency exception would be available to dealers only if the chief executive officer of the dealer certifies to the fund (i) the nature, existence, and duration of the emergency, and (ii) that the dealer received the orders before the applicable pricing time.[58] A fund also would be required to keep a record of each certification it received for six years.[59] In the event an emergency prevented the designated transfer agent or the clearing agency from receiving order information, the chief executive officer of the designated transfer agent or clearing agency would have to provide notice of the emergency to the fund.[60] These information collections are voluntary because they are only required for an exception for orders that are not timely received due to an emergency and, therefore, funds may choose not to rely on the emergency exception. These collections are needed to ensure that the emergency exception is limited to bona fide emergencies that prevent the orders from reaching the fund's designated transfer agent or Fund/SERV by 4 p.m. and that late trading is not occurring. The recordkeeping information collection requirement also would assist the Commission's examination staff in assessing whether a particular event constituted an emergency for purposes of the exception.

The proposed amendments would require a fund that chooses to have a designated transfer agent to identify that transfer agent in the fund's registration statement. This information collection would be a one-time event, and the Commission believes that this burden would be negligible. A fund that chooses to select a designated transfer agent also would be required to include in its contract with the transfer agent a provision obligating the transfer agent to receive order information and maintain a record of the date and time the transfer agent receives order information. The Commission staff estimates that there are currently 3,925 funds (3,100 registered open-end investment companies and 825 registered unit investment trusts) and that each fund would select one of its current transfer agents to be its designated transfer agent.[61] As such, each fund would have to modify the existing contract it has with the transfer agent it selects to be its designated transfer agent. This modification would create a one-time burden of 4.5 hours per fund (4 hours by in-house counsel, .5 hours by support staff) or about 17,662.5 burden hours.[62]

Under the proposal, a transfer agent that is designated by the fund would have to maintain records of the date and time it receives order information. There are currently approximately 208 registered fund transfer agents.[63] The Commission estimates that these transfer agents receive approximately 83 million fund share orders per year.[64] Each of the 208 transfer agents, therefore, receives approximately 399,038 orders per year. The Commission estimates that each designated transfer agent would spend approximately 100 hours per year maintaining records of the time it received order information.[65] Thus, the annual aggregate burden hours associated with the time of receipt recordkeeping requirement would be 20,800 hours.[66]

Broker-dealers and funds that choose to rely on the emergency exception would have collection of information requirements. There are currently approximately 2,203 broker-dealers that are classified as specialists in fund shares.[67] The Commission estimates that each broker-dealer would incur no more than one emergency per year that would qualify for the emergency exception. The Commission also estimates that each broker-dealer is involved in the sale of shares of approximately 300 funds. Thus, approximately 2,203 broker-dealers could be subject to preparing and transmitting one certification each year to each of the 300 funds whose shares they sell, for a total of 300 certifications per year for each broker-dealer. We estimate that the average annual hour burden for all certifications per broker-dealer emergency would be one hour, or one burden hour per year for each broker-dealer.[68] Thus, the annual aggregate burden hours associated with the certification requirement would be 2,203 hours.[69]

The staff estimates that each fund would spend one hour annually, on average, maintaining the records of the certifications required by proposed rule 22c–1(b)(1)(ii). Thus, the annual aggregate burden hours associated with the emergency exception recordkeeping requirement would be 3,925 hours.[70] In total, the collections of information associated with the emergency exception contained in the proposed amendments to rule 22c–1 would entail 6,128 burden hours.[71] Using a three-year period, the average information collection burden under the proposed amendments to rule 22c–1 would be 32,815.5 hours.[72]

We request comment on whether these estimates are reasonable. Pursuant to 44 U.S.C. 3506(c)(2)(B), the Commission solicits comments in order to: (i) evaluate whether the proposed collections of information are necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (ii) evaluate the accuracy of the Commission's estimate of the burden of the proposed collections of information; (iii) determine whether there are ways to enhance the quality, utility, and clarity of the information to be collected; and (iv) minimize the burden of the collections of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology.

Persons wishing to submit comments on the collection of information requirements of the proposed amendments should direct them to the Office of Management and Budget, Attention Desk Officer of the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Room 10102, New Executive Office Building, Washington, DC 20503, and should send a copy to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609, with reference to File No. S7–27–03. OMB is required to make a decision concerning the collections of information between 30 and 60 days after publication of this Release; therefore a comment to OMB is best assured of having its full effect if OMB receives it within 30 days after publication of this Release. Requests for materials submitted to OMB by the Commission with regard to these collections of information should be in writing, refer to File No. S7–27–03, and be submitted to the Securities and Exchange Commission, Records Management, Office of Filings and Information Services.

VI. Initial Regulatory Flexibility Analysis

This Initial Regulatory Flexibility Analysis ("IRFA") has been prepared in accordance with 5 U.S.C. 603. It relates to the amendments to rule 22c–1 under the Investment Company Act that we are proposing in this Release.

A. Reasons for the Proposed Action

Section I of this Release describes the background and reasons for the proposed action. As discussed above, late trading appears to have been facilitated by fund managers, intermediaries, and investors in violation of our rules.[73] Our investigations are ongoing, but suggest that late trading of fund shares is not isolated, nor limited to any one type of fund or intermediary.[74]

B. Objectives of the Proposed Action

Section II of this Release discusses the objectives of the proposed amendments. As discussed above, the Commission is proposing amendments to the rule under the Investment Company Act that requires forward pricing of redeemable securities issued by funds. The

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and $18.92 per fund to comply with the recordkeeping requirement. It is estimated that all funds together would spend 3,925 hours and $74,261 to comply with the recordkeeping requirement.

[53] *See* proposed rule 22c–1(c)(1).

[54] Pub. L. 104–121, Title II, 110 Stat. 857 (1996).

[55] 44 U.S.C. 3501.

[56] *See* proposed rule 22c–1(c)(1).

[57] *See* proposed rule 22c–1(b)(1)(i).

[58] *See* proposed rule 22c–1(b)(1)(i)(A).

[59] The fund would be required to keep the records for six years, the first two years in an easily accessible location. *See* proposed rule 22c–1(b)(1)(ii).

[60] *See* proposed rule 22c–1(b)(1)(i)(B).

[61] These numbers are based on Commission filings and are current as of the end of September 2003.

[62] 3,925 funds × 4.5 hours = 17,662.5 hours

[63] The number of fund transfer agents is based on Form TA–2 filings with the Commission between January 1, 2003 and November 11, 2003.

[64] The Commission staff estimates that transfer agents receive approximately half of the total number of fund share orders made each year. Fund/SERV processes the other half of the total number of fund share orders made each year. In 2002, Fund/SERV processed 83 million fund transactions. *See supra* note. Based on that information, the Commission estimates that there were 166,000,000 total fund share orders processed in 2002. Transfer agents received approximately half of those 166,000,000 orders. Therefore, transfer agents directly received approximately 83,000,000 fund share orders. We request comment on our estimate of the number of fund orders submitted directly to designated transfer agents.

[65] For purposes of this supporting statement, the Commission assumes that transfer agents receive most fund share orders electronically, and that designated transfer agents would maintain the records of the time of receipt electronically.

[66] 208 transfer agents × 100 hours = 20,800 hours.

[67] The number of broker-dealers is based on year-end 2002 Commission filings.

[68] Because the certification to each of the 300 funds would be based on the same emergency, the information required to be included in the certification would be the same for each of the 300 certifications. Therefore, little time would be required after the preparation of the first certification to prepare the remaining certifications.

[69] 2,203 broker-dealers × 1 hour = 2,203 hours

[70] 3,925 funds × 1 hour = 3,925 hours.

[71] 2,203 hours for the certification of the emergencies + 3,925 hours maintaining records = 6,128 hours.

[72] The average of the first year burden of 44,590.5 hours (17,662.5 hours for the contract modification collection of information + 20,800 hours for the time of receipt recordkeeping collection of information + 6,128 hours for the emergency exception collections of information) and the burden of 26,928 hours for each of the next two years (20,800 hours for the time of receipt recordkeeping collection of information + 6,128 hours for the emergency exception collections of information) is 32,815.5 hours.

[73] *See supra* note 17 and accompanying text.

[74] *See supra* notes 16–17 and accompanying text.

proposed amendments would deem an order received for purposes of determining the applicable pricing time only when it is received by (i) the fund itself; (ii) the fund's designated transfer agent, or (iii) a clearing agency registered with the Commission.[75]

C. Legal Basis

The amendments to rule 22c–1 are proposed pursuant to the authority set forth in sections 22(c) and 38(a) of the Investment Company Act.[76]

D. Small Entities Subject to the Proposed Rule and Amendments

A small business or small organization (collectively, "small entity") for purposes of the Regulatory Flexibility Act is a fund that, together with other funds in the same group of related investment companies, has net assets of $50 million or less as of the end of its most recent fiscal year.[77] Of approximately 3,925 funds (3,100 registered open-end investment companies and 825 registered unit investment trusts), approximately 163 are small entities.[78] A broker-dealer is considered a small entity if its total capital is less than $500,000, and it is not affiliated with a broker-dealer that has $500,000 or more in total capital.[79] Of approximately 6,800 registered broker-dealers, approximately 880 are small entities, with approximately 400 of these classified as specialists in funds. A transfer agent is considered a small entity if it has: (i) received less than 500 items for transfer and less than 500 items for processing during the preceding six months (or in the time that it has been in business, if shorter); (ii) transferred items only of issuers that would be deemed "small business" or "small organizations" as defined in rule 0–10 under the Securities Exchange Act of 1934;[80] (iii) maintained master shareholder files that in the aggregate contained less than 1,000 shareholder accounts or was the named transfer agent for less than 1,000 shareholder accounts at all times during the preceding fiscal year (or in the time that it has been in business, if shorter); and (iv) is not affiliated with any person (other than a natural person) that is not a small business or small organization under rule 0–10. We estimate that 40 out of approximately 208 registered fund transfer agents qualify as small entities.

As we discuss above, under the proposed rule amendments, an order placed with a registered broker-dealer (or with any other intermediary) would no longer receive a fund's NAV price calculated on the day the intermediary received the order, unless the order were transmitted to the fund, its designated transfer agent, or a registered clearing agency prior to the pricing time.[81] These amendments would apply to all intermediaries and third-party administrators, including those that fall within the various definitions of small entities. How much these amendments would affect these small entities would be determined largely by the importance these intermediaries and their clients place on receiving the NAV calculated on the day a client places an order.

The Commission staff expects that these rule changes may alter the manner in which some intermediaries transmit their purchase (or redemption) orders to funds, what they charge for their services, and perhaps how they market these services. A broker-dealer, for example, that commits to transmitting its orders to a fund (or to the designated transfer agent or clearing agency) prior to the fund's pricing time may need to modify its existing computer system. Because the Commission and its staff are not familiar with the full range of available technologies associated with these upgrades, we request that commenters address the cost of such upgrades, including specific data when available.

E. Reporting, Recordkeeping, and Other Compliance Requirements

The proposal would contain one new recordkeeping requirement and one new compliance requirement for funds that choose to designate a transfer agent. If a fund designates a transfer agent, the fund would be required to identify the designated transfer agent in the fund's registration statement filed with the Commission, and include a provision in the fund's contract with the transfer agent requiring the transfer agent to receive order information and maintain a record of the date and time it receives the order information. All funds, regardless of size, would be subject to the reporting requirement and the compliance requirement. The designation of a transfer agent would occur once and involve minimal compliance efforts. Funds that are small entities would not be unduly burdened by these requirements.

The proposed amendments also would introduce one new recordkeeping requirement for transfer agents that choose to become a "designated transfer agent." In order to be a designated transfer agent under the proposal, a transfer agent would have to maintain a record of the date and time it receives order information. All designated transfer agents, regardless of size, would be subject to this recordkeeping requirement. The time of receipt recordkeeping requirement for designated transfer agents would be minimal; designated transfer agents that are small entities would not be unduly burdened by the record maintenance duty.

The proposal also would contain new compliance and recordkeeping requirements for a registered broker-dealer that sought to rely on the proposed rule's emergency exception. The exception would permit investor orders to receive same-day treatment if, as a result of an emergency, the dealer (or its agent) was unable to transmit the orders, or NSCC or the fund's designated transfer agent could not receive the orders. The exception would permit investors to receive the same day's price for orders received by a dealer before 4 p.m. that could not be transmitted to the fund, its designated transfer agent, or the registered clearing agency (or could not be received by the designated transfer agent or the registered clearing agency) because of, for example, a power failure, hurricane or other emergency. The exception would be available only if the chief executive officer of the dealer certifies to the fund (i) the nature, existence, and duration of the emergency, and (ii) that the orders were received before the applicable pricing time.[82] In addition, a fund, or its designated agent, would be required to keep a record of each certification it receives.[83] If the emergency were experienced by the fund's designated transfer agent or NSCC, the chief executive officer of the designated transfer agent or NSCC would have to provide notice of the emergency to the fund.[84]

All intermediaries and funds, regardless of size, would be subject to these notification and recordkeeping

[75] *See* proposed rule 22c–1(a).

[76] 15 U.S.C. 80a–22(c), 80a–37(a).

[77] 17 CFR 270.0–10.

[78] Some or all of these entities may contain multiple series or portfolios. If a registered investment company is a small entity, the portfolios or series it contains are also small entities.

[79] 17 CFR 240.0–10.

[80] 17 CFR 240.0–10(h).

[81] The proposal would permit exceptions in very limited circumstances. See proposed rule 22c–1(b).

[82] *See* proposed rule 22c–1(b)(1)(i)(A).

[83] The fund would be required to keep these records for six years, the first two years in an easily accessible location. *See* proposed rule 22c–1(b)(1)(ii). The fund would not have to keep a record of the notices it receives from its designated transfer agent or NSCC.

[84] *See* proposed rule 22c–1(b)(1)(i)(B).

requirements in the event they rely on the exception. Neither the certification that the broker-dealer would be required to send, nor the notification that the designated transfer agent or registered clearing agent would be required to provide as a result of an emergency that delayed the transmission or receipt of orders, is intended to be a lengthy document, and small entities should not bear a disproportionate expense in complying with this condition. Furthermore, because the proposed emergency exception would be optional, a small entity might not use the exception, particularly if it concluded that any costs borne are unlikely to be offset by the resulting benefits. Similarly, the recordkeeping requirements for funds that receive emergency certifications are minimal; funds that are small entities would not be unduly burdened by these record maintenance duties.

F. Duplicative, Overlapping, or Conflicting Federal Rules

The Commission has not identified any federal rules that duplicate, overlap, or conflict with the proposed rule or amendments.

G. Significant Alternatives

The Regulatory Flexibility Act directs the Commission to consider significant alternatives that would accomplish the stated objective, while minimizing any significant adverse impact on small entities. Alternatives in this category would include: (i) establishing different compliance or reporting standards that take into account the resources available to small entities; (ii) clarifying, consolidating, or simplifying the compliance requirements under the rule for small entities; (iii) using performance rather than design standards; and (iv) exempting small entities from coverage of the rule, or any part of the rule.

The Commission does not presently believe that the establishment of special compliance requirements or timetables under the proposals for small entities is feasible or necessary.[85] Because the proposed amendments arise from a concern that fund shareholders are disadvantaged by abuses of a deadline, exceptions for small entities could compromise the effectiveness of the amended rule. Except for funds that are small entities, the other small entities affected by the proposed amendments (*e.g.*, broker-dealers and designated transfer agents) would have no formal compliance requirements as a result of these proposed amendments.

A recordkeeping requirement would arise for small transfer agents that choose to be a fund's designated transfer agent. The time of receipt recordkeeping requirement is necessary to enable the Commission and its staff to verify that late trading has not taken place. Reporting or compliance obligations would arise for a small broker-dealer that invoked the proposed emergency exception allowing for an order to receive same-day pricing for orders transmitted to the fund, its designated transfer agent, or registered clearing agency after 4 p.m. These minimal compliance and reporting requirements would be necessary to enable the Commission and its staff to verify that late trading has not taken place. Accordingly, the Commission cannot further clarify, consolidate, or simplify the requirements associated with this exception.

The Commission is asking for comment on an approach that would allow certain intermediaries to continue to obtain same-day pricing for orders they receive before the pricing time even if they submit those orders to the fund (or its designated transfer agent or a registered clearing agency) after the pricing time. This approach would be available to intermediaries who have technology-based systems, as well as controls, that demonstrably limit the ability of the intermediary to trade after the pricing time.[86] We request comment on any concerns raised by this approach. Assessing the reliability of such technology, for example, may be difficult for funds and the Commission. Would the Commission or its staff need to establish and then verify the standards of such systems?

Moreover, under this approach, small intermediaries desiring same-day pricing might have to choose between potentially costly technological and telecommunication upgrades in order to compete with larger firms. Would this approach place small intermediaries at a disadvantage with respect to their larger competitors?[87]

H. Solicitation of Comments

The Commission encourages the submission of comments with respect to any aspect of this IRFA. Comment is specifically requested on the number of small entities that would be affected by the proposed amendments, and the likely impact of the proposals on small entities. Commenters are asked to describe the nature of any impact and provide empirical data supporting the extent of the impact. These comments will be considered in connection with the adoption of the proposed rule and amendments, and reflected in the Final Regulatory Flexibility Analysis.

Comments should be submitted in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Comments also may be submitted electronically at the following E-mail address: *rule-comments@sec.gov*. All comment letters should refer to File No. S7–27–03, and this file number should be included on the subject line if E-mail is used.[88] Comment letters will be available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549–0102. Electronically submitted comment letters also will be posted on the Commission's Internet Web site (*http://www.sec.gov*).

VII. Statutory Authority

The Commission is proposing amendments to rule 22c–1 pursuant to the authority set forth in sections 22(c) and 38(a) of the Investment Company Act [15 U.S.C. 80a–22(c) and 80a–37(a)].

List of Subjects in 17 CFR Part 270

Investment companies, Reporting and recordkeeping requirements, Securities.

Text of Proposed Rule

For reasons set out in the preamble, title 17, chapter II of the Code of Federal Regulations is proposed to be amended as follows:

PART 270—RULES AND REGULATIONS, INVESTMENT COMPANY ACT OF 1940

1. The authority citation for part 270 continues to read in part as follows:

Authority: 15 U.S.C. 80a–1 *et seq.*, 80a–34(d), 80a–37, and 80a–39, unless otherwise noted.

* * * * *

2. Section 270.22c–1 is revised to read as follows:

[85] The proposal would permit exceptions in very limited circumstances, such as well-documented emergencies that prohibit timely transmission. *See* proposed rule 22c–1(b)(1)(i).

[86] *See supra* notes 23–24 and accompanying and following text.

[87] We have found through investigations and examinations of transfer agents that clients of broker-dealers that have a small volume of business in fund share transactions rely on paper-based applications in 10–40% of mutual fund share transactions. There is no discernible time sensitivity in this mode of fund investment, in which account applications and bank checks are sent to funds or their transfer agents through regular or express mail.

[88] Comments on the IRFA will be placed in the same public file that contains comments on the proposed rule and amendments themselves.

§ 270.22c–1 Pricing of redeemable securities for distribution, redemption and repurchase.

(a) *Forward pricing required.* It is unlawful for any registered investment company issuing redeemable securities ("fund"), its principal underwriter, and any dealer to sell, redeem, or repurchase a redeemable security issued by the fund at a price other than the price based on the current net asset value established as of the next pricing time after the fund, its designated transfer agent, or a registered clearing agency receives an order to purchase or redeem the security.

(1) *Time.* The fund's board of directors must initially set the time or times during the day as of which the current net asset value of the fund's redeemable securities must be calculated, and may make and approve any changes the board deems necessary.

(2) *Frequency.* The fund must calculate the current net asset value of any redeemable security at least once daily, Monday through Friday, at the specific time or times during the day that the fund's board of directors sets, except on:

(i) Days on which changes in the value of the fund's portfolio securities will not materially affect the current net asset value of the fund's redeemable securities;

(ii) Days during which the fund, its designated transfer agent, and registered clearing agency receives no order to purchase or redeem the fund's redeemable securities; or

(iii) Customary national business holidays described or listed in the prospectus and local and regional business holidays listed in the prospectus.

(b) *Exceptions permitted.* Notwithstanding paragraph (a) of this section:

(1) *Emergencies.* (i) The fund may deem an order to have been received by the fund, its designated transfer agent, or a registered clearing agency immediately before the applicable pricing time if:

(A) An emergency prevents a dealer (or any agent of the dealer) from timely transmitting the orders to the fund, its designated transfer agent, or a registered clearing agency; and the chief executive officer of the dealer provides a written certification to the fund as to the nature, existence, and duration of the emergency, and that the orders were received by the dealer before the applicable pricing time; or

(B) An emergency prevents a designated transfer agent or registered clearing agency from timely receiving orders, and the chief executive officer of the designated transfer agent or registered clearing agency notifies the fund as to the nature, existence, and duration of the emergency.

(ii) The fund, or its designated agent, must maintain a written record of each certification it receives under paragraph (b)(1)(i)(A) of this section for at least six years after the end of the fiscal year in which it receives the report, the first two years in an easily accessible place.

(2) *Transactions through conduit funds.* A fund may deem receipt of an order to have occurred immediately before the applicable pricing time if the fund, its designated transfer agent, or registered clearing agency receives the order from a registered investment company that invests in the fund in reliance on section 12(d)(1)(E) of the Act (15 U.S.C. 80a–12(d)(1)(E)).

(3) *Secondary market transactions.* A sponsor of a unit investment trust ("trust") engaged exclusively in the business of investing in eligible trust securities (as defined in § 270.14a–3(b)) may sell or repurchase trust units in a secondary market at a price based on the offering side evaluation of the eligible trust securities in the trust's portfolio, determined at any time on the last business day of each week, effective for all sales made during the following week, if on the days that such sales or repurchases are made the sponsor receives a letter from a qualified evaluator stating, in its opinion, that:

(i) In the case of repurchases, the current bid price is not higher than the offering side evaluation, computed on the last business day of the previous week; and

(ii) In the case of resales, the offering side evaluation, computed as of the last business day of the previous week, is not more than one-half of one percent ($5.00 on a unit representing $1,000 principal amount of eligible trust securities) greater than the current offering price.

(4) *Insurance company separate accounts.* A registered separate account offering variable annuity contracts may apply the initial purchase payment for any such contract at a price based on the current net asset value of the contract established as of the next pricing time:

(i) Not later than two business days after receipt of the order to purchase by the insurance company sponsoring the separate account ("insurer"), if the contract application and other information necessary for processing the order to purchase (collectively, "application") are complete upon receipt; or

(ii) Not later than two business days after an application which is incomplete upon receipt by the insurer is made complete, provided that, if an incomplete application is not made complete within five business days after receipt:

(A) The prospective purchaser is informed of the reasons for the delay; and

(B) The initial purchase payment is returned immediately and in full, unless the prospective purchaser specifically consents to the insurer retaining the purchase payment until the application is made complete.

(5) *Mergers.* Any fund may adjust the price of its redeemable securities sold pursuant to a merger, consolidation or purchase of substantially all of the assets of a company that meets the conditions specified in § 270.17a–8.

(c) *Definitions.* For purposes of this section,

(1) *Designated transfer agent* means the single registered transfer agent (as defined in section 3(a)(25) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(25))) that is designated, in the fund's registration statement filed with the Commission, and is required by written contract to receive order information and maintain a record of the date and time it receives the order information.

(2) *Initial purchase payment* means the first purchase payment submitted to the insurer by, or on behalf of, a prospective purchaser.

(3) *Order* means a direction to purchase or redeem a specific number of fund shares or an indeterminate number of fund shares of a specific value. Each order is deemed to be irrevocable as of the next pricing time after the fund, its designated transfer agent, or registered clearing agency receives it. If a fund, its designated transfer agent, or registered clearing agency receives a direction to purchase redeemable securities of the fund using the proceeds of a contemporaneous order to redeem a specific number of shares of another fund (an exchange), the first fund may deem the direction to purchase its redeemable securities to be an order.

(4) *Pricing time* means the time of day as of which the fund calculates the current net asset value pursuant to paragraph (a)(1) of this section.

(5) *Prospective purchaser* means either an individual contract owner or an individual participant in a group contract.

(6) *Qualified evaluator* means any evaluator that represents it is in a position to determine, on the basis of an informal evaluation of the eligible trust securities held in a unit investment trust's portfolio, whether:

(i) The current bid price is higher than the offering side evaluation, computed on the last business day of the previous week; and

(ii) The offering side evaluation, computed as of the last business day of the previous week, is more than one-half of one percent ($5.00 on a unit representing $1,000 principal amount of eligible trust securities) greater than the current offering price.

By the Commission.

Dated: December 11, 2003.

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. 03–31071 Filed 12–16–03; 8:45 am]

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December 17, 2003

Part IV

Securities and Exchange Commission

17 CFR Parts 239 and 274
Disclosure Regarding Market Timing and Selective Disclosure of Portfolio Holdings, Proposed Rule

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 239 and 274

[Release Nos. 33–8343; IC–26287; File No. S7–26–03]

RIN 3235–AI99

Disclosure Regarding Market Timing and Selective Disclosure of Portfolio Holdings

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule.

SUMMARY: The Securities and Exchange Commission is proposing amendments to Form N–1A under the Securities Act of 1933 and the Investment Company Act of 1940 to require open-end management investment companies to disclose in their prospectuses both the risks to shareholders of the frequent purchase and redemption of investment company shares, and the investment company's policies and procedures with respect to such frequent purchases and redemptions. The proposals would also amend Forms N–3, N–4, and N–6 to require similar prospectus disclosure for insurance company separate accounts issuing variable annuity and variable life insurance contracts. The Commission is also proposing to amend Forms N–1A and N–3 to clarify that open-end management investment companies and insurance company managed separate accounts that offer variable annuities, other than money market funds, are required to explain both the circumstances under which they will use fair value pricing and the effects of using fair value pricing. In addition, the Commission is proposing to require open-end management investment companies and insurance company managed separate accounts that offer variable annuities to disclose their policies and procedures with respect to the disclosure of their portfolio securities, and any ongoing arrangements to make available information about their portfolio securities.

DATES: Comments must be received on or before February 6, 2004.

ADDRESSES: To help us process and review your comments more efficiently, comments should be sent by one method only. Comments should be submitted in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Comments also may be submitted electronically at the following e-mail address: *rule-comments@sec.gov*. All comment letters should refer to File No. S7–26–03; this file number should be included in the subject line if electronic mail is used. Comment letters will be available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549. Electronically submitted comment letters also will be posted on the Commission's Internet Web site *(http://www.sec.gov)*.[1]

FOR FURTHER INFORMATION CONTACT: Kieran G. Brown, Attorney, or Sanjay Lamba, Attorney, Office of Disclosure Regulation, Division of Investment Management, (202) 942–0721, at the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0506.

SUPPLEMENTARY INFORMATION: The Securities and Exchange Commission ("Commission") is proposing for comment amendments to Form N–1A [17 CFR 239.15A and 274.11A], Form N–3 [17 CFR 239.17a and 274.11b], Form N–4 [17 CFR 239.17b and 274.11c], and Form N–6 [17 CFR 239.17c and 274.11d], registration forms used by investment companies to register under the Investment Company Act of 1940 ("Investment Company Act") and to offer their securities under the Securities Act of 1933 ("Securities Act").

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[1] We do not edit personal identifying information, such as names or electronic mail addresses, from electronic submissions. You should submit only information that you wish to make available publicly.

I. Introduction and Background

Millions of individual American investors hold shares of open-end management investment companies ("mutual funds"), relying on these funds for their retirements, their children's educations, and their other basic financial needs.[2] The tremendous growth of mutual funds reflects the trust that investors have placed in funds and the regulatory protections provided by the federal securities laws.

Recent allegations regarding late trading and abusive market timing, however, point to instances where it appears that some in the mutual fund industry, and some intermediaries that sell fund shares, have lost sight of their obligations to investors.[3] These allegations relate to abuses in at least three areas:

- "Late trading," the practice of placing orders to buy or redeem mutual fund shares after 4 p.m., Eastern time, as of which most funds calculate their net asset value ("NAV"), but receiving the price based on the 4 p.m. NAV;
- Abuses related to "market timing," including the alleged overriding of stated market timing policies by fund executives to benefit large investors at the expense of small investors, or to benefit the fund's investment adviser; and
- The selective disclosure by some fund managers of their funds' portfolio holdings in order to curry favor with large investors.

The Commission is extremely concerned by the abuses that have surfaced in the mutual fund industry, and we have taken vigorous enforcement action where abuses have been uncovered.[4] We also believe, however, that regulatory reforms are necessary to help prevent such abuses from recurring in the future. The Commission is proposing a package of rule amendments intended to address abuses that have surfaced in the areas of late trading, market timing, and selective disclosure. In this release, we are proposing disclosure reforms intended to shed more light on market timing and selective disclosure of portfolio holdings. In a second release, we are proposing amendments that would require that an order to purchase or redeem redeemable securities of a registered investment company be received by the company, its designated transfer agent, or a registered securities clearing agency by the time that the fund establishes for calculating its NAV in order to receive that day's price. In addition, we are publishing a release adopting rules requiring registered investment companies and investment advisers to adopt and implement written compliance policies and procedures, review those policies and procedures annually, and designate a chief compliance officer responsible for their administration.

[2] A management investment company is an investment company other than a unit investment trust or face-amount certificate company. *See* section 4 of the Investment Company Act [15 U.S.C. 80a–4]. Management investment companies typically issue shares representing an undivided proportionate interest in a changing pool of securities, and include open-end and closed-end companies. *See* T. Lemke, G. Lins, A. Smith III, Regulation of Investment Companies, Vol. I, ch. 4, § 4.04, at 4–5 (2002). An open-end company is a management company that is offering for sale or has outstanding any redeemable securities of which it is the issuer.

[3] *See, e.g.*, Riva D. Atlas, *Another Fund Faces Inquiry Over Trading*, NEW YORK TIMES, October 22, 2003, at C4; Tom Lauricella, *Two-Tier System: For Staid Mutual Fund Industry, Growing Probe Signals Shake Up—Investigators Find Indications of Widespread Abuses Hurting Small Investors—Unfair Pricing for Big Players*, WALL STREET JOURNAL, October 20, 2003, at A1; Brooke A. Masters, *Spitzer Alleges Mutual Fund Improprieties*, WASHINGTON POST, September 4, 2003, at E1.

[4] *See, e.g., In the Matter of Putnam Investment Management, LLC*, Release No. IC–26255 (Nov. 13, 2003) (investment adviser violated antifraud provisions of the federal securities laws by failing to disclose potentially self-dealing short-term trading of mutual fund shares by several of its employees, and by failing to take adequate steps to detect and deter such trading activity through its own internal controls and its supervision of investment management professionals); *In the Matter of James Patrick Connelly, Jr.*, Release No. IC–26209 (Oct. 16, 2003) (vice chairman of investment advisory firm violated antifraud provisions of the federal securities laws by allowing select investors to time mutual funds managed by the firm); *In the Matter of Steven B. Markovitz*, Release No. IC–26201 (Oct. 2, 2003) (hedge fund trader who engaged in late trading of mutual fund shares violated antifraud provisions of the federal securities laws and rule 22c–1(a) under the Investment Company Act).

A. Forward Pricing and Market Timing

Section 22 of the Investment Company Act of 1940 (the "Investment Company Act") regulates the pricing, distribution, and redemption of redeemable securities, including mutual fund shares.[5] Paragraph (c) of section 22 gives the Commission broad power to regulate the pricing of redeemable securities, including the power to prescribe by rule methods for computing the price that a shareholder will receive upon redemption. Rule 22c–1(a) under the Investment Company Act requires mutual funds to sell and redeem their shares at a price based on the NAV next computed after receipt of an order. This requirement is referred to as "forward pricing." The purpose of this requirement is to prevent dilution and assure that prices bear an appropriate relation to the current NAV of a mutual fund's shares.[6] Rule 22c–1 generally requires mutual funds to compute their NAVs at least once daily, Monday through Friday, at a specific time or times as determined by their boards.[7] Typically, mutual funds calculate their NAVs once each day at or near the close of the major U.S. securities exchanges and markets (usually 4 p.m., Eastern time).

Mutual funds generally calculate their NAVs by using the closing prices of portfolio securities on the exchange or market on which the securities principally trade. In some cases, however, the closing price of a security held in a mutual fund's portfolio may not reflect its current market value at the time of the fund's NAV calculation, for example, if an event that will affect the value of those securities has occurred since the closing price was established, but before the fund's NAV calculation.[8]

When market quotations for a portfolio security are not readily available (including when market quotations are unreliable), a mutual fund is required to calculate its NAV by using the fair value of that security, as determined in good faith by the fund's board.[9] In a separate release adopting rule 38a–1 under the Investment Company Act, we are reemphasizing the obligation of mutual funds to fair value their securities under certain circumstances. If a mutual fund misprices its shares by failing to use fair value pricing when market quotations for its portfolio securities are unreliable, an investor may take advantage of the disparity between the portfolio securities' last quoted prices and their fair value. When mutual fund shares are mispriced, short-term traders have an arbitrage opportunity that they can use to exploit the fund and disadvantage the fund's long-term investors by extracting value from the fund without assuming any significant investment risk, through market timing.[10] Mutual funds that fair value their portfolio securities consistent with their obligations can effectively reduce or eliminate the profit that market timers seek to exploit.[11]

Mutual funds that invest in overseas securities markets are particularly vulnerable to market timers who may take advantage of time zone differences between the foreign markets on which international funds' portfolio securities trade and the U.S. markets which generally determine the time as of which NAV is calculated ("time-zone arbitrage"). For example, a market timer may purchase shares of a mutual fund that invests in overseas markets based on events occurring after foreign market closing prices are established, but before the fund's NAV calculation, that are likely to result in higher prices in foreign markets the following day. The market timer would redeem the fund's shares the next day when the fund's share price would reflect the increased prices in foreign markets, for a quick profit at the expense of long-term fund shareholders. Market timing opportunities are not limited to international funds. Mutual funds that invest in small-cap securities and other types of investments which are not frequently traded, including high-yield bonds, also can be the targets of market timers.[12]

[5] Both mutual funds and unit investment trusts issue redeemable securities. *See* section 4(2) and 5(a)(1) of the Investment Company Act [15 U.S.C. 80a–4(2) and 80a–5(a)(1)]. For purposes of simplicity, this section of the release only refers to mutual funds.

[6] Investment Company Act Release No. 5519 (Oct 16, 1968) [33 FR 16331 (October 8, 1968) (adopting rule 22c–1) ("Rule 22c–1 Adopting Release").

[7] Rule 22c–1(b) under the Investment Company Act [17 CFR 270.22c–1(b)]

[8] Investment Company Act Release No. 14244 (Nov. 21, 1984) [49 FR46558, 46559–46660 n.7 (Nov. 27, 1984)].

[9] *See* Accounting Series Release No. 118 (Dec. 23, 1970) [35 FR 19986 (Dec. 31, 1970)]; Investment Company Act Release No. 14244 (Nov. 21, 1984) [49 FR46558, 46559–46660 n.7 (Nov. 27, 1984)]. Subsequent to the issuance of these releases, our staff has reminded funds of their fair valuation obligations. In 1999 and 2001, the Division of Investment Management issued interpretive letters elaborating on funds' obligations under sections 2(a)(41) of the Investment Company Act and rule 22c–1 [17 CFR 270.22c–1] thereunder. Letter from Douglas Scheidt, Associate Director and Chief Counsel, SEC Division of Investment Management, to Craig S. Tyle, General Counsel, Investment Company Institute (Dec. 8, 1999) (*http://www.sec.gov/divisions/investment/guidance/tyle120899.htm*); Letter from Douglas Scheidt, Associate Director and Chief Counsel, SEC Division of Investment Management, to Craig S. Tyle, General Counsel, Investment Company Institute (Apr. 30, 2001) (*http://www.sec.gov/divisions/investment/guidance/tyle043001.htm*)

[10] *See* Rule 22c–1 Adopting Release, *supra* note 6 (describing market timing). Market timing may take many forms. In this release, we use the term to refer to arbitrage activity involving the frequent buying and selling of mutual fund shares in order to take advantage of the fact that there may be a lag between a change in the value of a mutual fund's portfolio securities and the reflection of that change in the fund's share price.

[11] "Fair valuation" refers to the process of determining the current market value of a security when market quotations are not readily available (such as when there are no market quotations for the security or if the market quotations for the security are unreliable). When market quotations for a security are not readily available, a fund is required to calculate its NAV by using the fair value of that security, as determined in good faith by the fund's board.

[12] *See* Eric Zitzewitz, *Who Cares About Shareholders? Arbitrage-Proofing Mutual Funds*, Research Paper No. 1749, Stanford Graduate School of Business Research Paper Series (Oct. 2002), available at *http://faculty-gsb.stanford.edu/zitzewitz/Research/arbitrage1002.pdf* ("Zitzewitz"), at 2 (estimating arbitrage returns available in domestic small-cap equity funds at 20–25 percent

Continued

Market timing itself is not illegal. However, market timing may dilute the value of long-term shareholders' interests in a mutual fund if the fund calculates NAV using closing prices that are no longer accurate. Dilution may occur, for example, if fund shares are overpriced because redeeming shareholders will receive a windfall at the expense of the shareholders that remain in the fund. Similarly, dilution may occur when a fund sells its shares at a price lower than its NAV.[13]

Market timing also may harm shareholders because it may cause mutual funds to manage their portfolios in a disadvantageous manner. For example, a mutual fund's investment adviser may maintain a larger percentage of its assets in cash or may be forced to liquidate certain portfolio securities prematurely to meet higher levels of redemptions due to market timing. This is particularly true for mutual funds that invest primarily in foreign or emerging market securities, which are often thinly traded. Mutual funds also may incur increased brokerage and administrative costs related to the frequent purchases and redemptions associated with market timing.

In order to discourage market timers, many mutual funds have developed policies and procedures with respect to frequent purchases and redemptions of fund shares. Some mutual funds disclose in their prospectuses that they do not permit market timing, and many mutual funds have taken steps to discourage market timing. These steps may include, for example:

- Imposing redemption or exchange fees on shares that are redeemed or exchanged within a certain time period following their purchase;
- Restricting exchange privileges, for example, by restricting exchange requests submitted through a particular medium, such as telephone or facsimile transmission, or received after a certain time of day, or by delaying both the redemption and purchase sides of an exchange;
- Restricting frequent trading, for example by limiting the total number of exchanges that an investor may make within a certain time period, or by limiting the number of "round trip" transactions where an investor purchases shares of a fund, exchanges those shares for shares of a different fund, and then exchanges back into the originally purchased fund;
- Delaying the payment of the proceeds from the redemption of fund shares for up to seven days;[14] and
- Identifying market timers and restricting their trading privileges or expelling them from the fund.

While many mutual funds disclose in their prospectuses that they discourage market timing, many do not identify with specificity the frequency or type of trading that they consider to be problematic, or the specific steps that they will take to ensure that market timing trades are detected and prevented. Other mutual funds disclose specifically the number of trades that they consider to be problematic and the steps that they take to prevent and detect market timing. Item 7(c) of Form N–1A requires mutual funds to disclose in their prospectuses procedures for redeeming the fund's shares, including any restrictions on redemptions; any redemption charges, including how these charges will be collected and under what circumstances the charges will be waived; and the circumstances, if any, under which the fund may delay honoring a request for redemption for a certain time after a shareholder's investment.[15] Item 8(a)(2) of Form N–1A requires a description of exchange privileges, which may be provided in the prospectus or the Statement of Additional Information ("SAI").[16] Item 3 of Form N–1A requires a mutual fund to include any exchange fee or redemption fee in the fee table of its prospectus.[17]

Other aspects of mutual fund policies and procedures to deter market timing are not explicitly required to be disclosed, however. For example, our registration forms do not explicitly require funds to describe with specificity the circumstances under which restrictions on frequent purchases and redemptions will not be imposed, or the terms of arrangements with particular investors pursuant to which frequent purchases and redemptions are permitted.[18]

We believe that it may be useful to require mutual funds to describe with specificity the restrictions they place on frequent purchases and redemptions and the circumstances and arrangements under which the restrictions are not imposed. These additional disclosure requirements would enable investors to better assess a mutual fund's risks, policies, and procedures in this area, and to determine if a fund's policies and procedures are in line with their expectations.

B. Selective Disclosure of Fund Portfolio Holdings

Currently, mutual funds are required to include their complete portfolio holdings in the reports that are delivered to all shareholders twice a year.[19] In December 2002, we proposed amendments that would require mutual funds to disclose their complete

and estimating arbitrage returns available in convertible and high-yield and convertible bond funds at 10–25 percent). *See also* William Goetzmann, Zoran Ivkovich, and K. Geert Rouwenhorst, Day Trading International Mutual Funds: Evidence and Policy Solutions, Working Paper No. ICF–00–03, Yale School of Management, Yale University (Oct. 2000), available at: *http://papers.ssrn.com/paper.taf?abstract_id=217168*, at 7–8 (describing opportunities for arbitrage in stale pricing of Russell 2000 index).

[13] By one estimate, dilution resulting from market timing can cost investors in international stock funds that are focused on a particular geographic region as much as 2.3% of their assets each year, and may cost fund shareholders as a whole up to $4.9 billion per year. *See* Zitzewitz, *supra* note 12, at 2 and 16; Jason Greene and Charles Hodges, *The Dilution Impact of Daily Fund Flows on Open-End Mutual Funds: Evidence and Policy Solutions*, 36 Journal of Financial Economics, 131–158 (2002) (estimating annualized dilution from market timing of 0.48% in international funds and nearly 1% for a subsample of funds whose daily flows are particularly large).

[14] Under section 22(e) of the Investment Company Act [15 U.S.C. 80a–22(e)], in general no registered investment company may suspend the right of redemption, or postpone the date of payment or satisfaction upon redemption of any redeemable security, for more than seven days after the tender of such security to the company or its agent designated for that purpose for redemption.

[15] Items 7(c)(1), (c)(2), and (c)(6) of Form N–1A. Form N–1A is the registration form used by mutual funds to register under the Investment Company Act and to offer their shares under the Securities Act of 1933 [15 U.S.C. 77a].

[16] Item 8(a)(2) of Form N–1A. Similarly, Items in the registration forms for insurance company separate accounts that issue variable annuities and variable life insurance policies require disclosure of provisions and limitations for transfers of contract value among sub-accounts of the separate account. Item 8(b)(ii) of Form N–3; Item 7(b)(ii) of Form N–4; Item 6(b)(2) of Form N–6.

[17] Item 3 and Instructions 2(b) and 2(c) to Item 3 of Form N–1A. Similarly, Item 3(a) and Instruction 10 to Item 3(a) of Form N–3; Item 3(a) and Instruction 11 to Item 3(a) of Form N–4; and Item 3 and Instruction 2(b) to Item 3 of Form N–6 require fee table disclosure of fees charged for transfers of contract value among sub-accounts.

[18] Commission staff sent information requests to 88 of the largest mutual fund complexes, with approximately 90% of the fund industry's total assets and 4,100 individual funds or portfolios under management. Fifty percent of the fund groups that responded to these staff information requests appear to have one or more arrangements with certain shareholders to allow these shareholders to engage in market timing.

[19] Section 30(e) of the Investment Company Act [15 U.S.C. 80a–29(e)] (requiring a registered investment company to transmit to its stockholders, at least semi-annually, reports containing financial statements and other financial information as the Commission may prescribe by rules and regulations); rule 6–10(c)(1) of Regulation S–X [17 CFR 210.6–10(c)(1)] (requiring that a portfolio schedule be filed in support of the balance sheet entry for investments in securities of unaffiliated issuers).

The SAI is part of a fund's registration statement and contains information about a fund in addition to that contained in the prospectus. The SAI is required to be delivered to investors upon request and is available on the Commission's Electronic Data Gathering, Analysis, and Retrieval System.

portfolio schedules on a quarterly basis.[20] A significant majority of funds already make their full portfolio schedules publicly available at least quarterly.[21]

Recent allegations, however, have highlighted instances where some mutual fund managers may be selectively disclosing their portfolios in order to reward large investors. Specifically, allegations have been made that certain funds gave frequent updates of their portfolio holdings to favored shareholders, enabling these shareholders to use a fund's portfolio information to short the fund's holdings in the same or similar proportions to the fund's established positions.[22] In addition, more than 30% of mutual fund complexes that responded to a recent Commission examination request for information sent to 88 of the largest such complexes appear to have disclosed portfolio information in circumstances that may have provided certain fund shareholders with the ability to make advantageous decisions to place orders for fund shares. This selective disclosure can facilitate fraud and have severely adverse ramifications for a fund's investors if someone uses that portfolio information to trade against the fund, or otherwise uses the information in a way that would harm the fund.

We are concerned about the misuse of material, nonpublic information that may occur when a mutual fund's portfolio holdings are selectively disclosed and professional traders are given the opportunity to use this information to their advantage to the detriment of fund shareholders. For many issuers, Regulation FD generally requires that when an issuer discloses material information, it do so through public disclosure, not through selective disclosure.[23] Regulation FD does not, however, apply to mutual funds.[24] We have concluded that the recent allegations regarding selective disclosure of portfolio holdings by some mutual fund managers suggest that we need to take steps to reinforce funds' and advisers' obligations to prevent the misuse of portfolio holdings information that is selectively disclosed.

C. Disclosure Proposals

The Commission is proposing form amendments to require better disclosure with respect to the tools that mutual funds use to combat market timing activity. First, in order to enable investors to assess a mutual fund's practices regarding frequent purchases and redemptions of fund shares to determine if they are in line with their expectations, the Commission is proposing to require improved disclosure in fund prospectuses of a mutual fund's risks, policies, and procedures in this area. The proposals would:

- Require a mutual fund to describe in its prospectus the risks, if any, that frequent purchases and redemptions of fund shares may present for other shareholders;
- Require a mutual fund to state in its prospectus whether or not the fund's board of directors has adopted policies and procedures with respect to frequent purchases and redemptions of fund shares and, if the board has not adopted any such policies and procedures, state the specific basis for the view of the board that it is appropriate for the fund not to have such policies and procedures;
- Require a mutual fund to describe any policies and procedures for deterring frequent purchases and redemptions of fund shares, and any arrangements to permit frequent purchases and redemptions of fund shares; and
- Require similar disclosure in prospectuses for insurance company separate accounts offering variable insurance contracts, with respect to frequent transfers among sub-accounts.

Second, we are proposing to clarify instructions to our registration forms to require all mutual funds (other than money market funds) and insurance company managed separate accounts that offer variable annuities to explain in their prospectuses both the circumstances under which they will use fair value pricing and the effects of using fair value pricing. As described above, fair valuation of a fund's portfolio securities, which is required under certain circumstances, can serve to foreclose arbitrage opportunities available to market timers.

In addition, in order to provide greater transparency of fund practices with respect to the disclosure of the fund's portfolio holdings, and to reinforce funds' and advisers' obligations to prevent the misuse of material, non-public information, the Commission is proposing to require mutual funds and insurance company managed separate accounts that offer variable annuities to disclose their policies with respect to disclosure of portfolio holdings information. The proposals would:

- Require a fund to describe in its SAI any policies and procedures with respect to the disclosure of the fund's portfolio securities to any person and any ongoing arrangements to make available information about the fund's portfolio securities to any person; and
- Require a fund to state in its prospectus that a description of the policies and procedures is available in the fund's SAI, and on the fund's Web site, if applicable.

II. Discussion

A. Disclosure Concerning Frequent Purchases and Redemptions of Fund Shares

The Commission is proposing amendments to Form N–1A, the registration form used by mutual funds, that would require disclosure of both the risks to fund shareholders of the frequent purchase and redemption of fund shares, and a fund's policies and procedures with respect to such frequent purchases and redemptions.[25] As discussed above, market timing strategies often involve such frequent purchases and redemptions of fund shares. These proposals are intended to require mutual funds to describe with specificity the restrictions they place on frequent purchases and redemptions, if any, and the circumstances under which any such restriction will not apply. This additional disclosure would enable investors to assess mutual funds' risks, policies, and procedures in this area and determine if a fund's policies and procedures are in line with their

[20] Investment Company Act Release No. 25870 (Dec. 18, 2002) [68 FR 160 (Jan. 2, 2003)].

[21] *See* Scott Cooley, *Tell Investors What They Own*, Morningstar Online, Feb. 6, 2002 (more than 70% of funds currently provide monthly or quarterly portfolio disclosure to Morningstar). *See also* Tom Lauricella and Aaron Lucchetti, *To Industry, Silence is Golden—Mutual Funds Embrace Disclosure Rules—As Long as it Doesn't Involve Them*, Wall Street Journal Europe, Aug. 1, 2002, at M1 (roughly 200 fund firms and 17 of the top 20 largest funds provide quarterly or monthly holdings updates to investors); *Survey of Fund Groups' Portfolio Disclosure Policies Summary of Results*, Investment Company Institute (2001), available at: *http://www.ici.org/port_holdings_appdxa.html*.

[22] *See State of New York* v. *Canary Capital Partners, LLC, et. al.*, at 25 and 41, (N.Y. Sup. Ct., filed Sept. 3, 2003) available at: *http://www.oag.state.ny.us/press/2003/sep/canary_complaint.pdf* (alleging that fund group regularly provided investor with detailed breakdowns of the portfolios of the target funds, allowing the investor to sell short the stocks that the portfolios contained); Ian McDonald, *Will Funds Disclose More—Publicly?*, The Wall Street Journal, Sept. 9, 2003, at C1 (describing allegations that fund groups provided hedge fund with more frequent reports on their fund holdings than were available to other investors).

[23] Regulation FD [17 CFR 243.100 *et seq.*]; Investment Company Act Release No. 24599 (Aug. 15, 2000) [65 FR 51716 (Aug. 24, 2000)] (adopting Regulation FD).

[24] Rule 101(b) of Regulation FD [17 CFR 243.101(b)].

[25] Proposed Item 7(e) of Form N–1A.

expectations.[26] We are also proposing similar amendments to the registration forms for insurance company separate accounts that issue variable annuities and variable life insurance policies.[27]

The amendments that we are proposing to Form N–1A would require that a mutual fund's prospectus describe the risks, if any, that frequent purchases and redemptions of fund shares may present for other shareholders of the fund.[28] These risks may include, among other things, dilution in the value of fund shares held by long-term shareholders, interference with the efficient management of the fund's portfolio, and increased brokerage and administrative costs. The disclosure should be specific to the fund, taking into account its investment objectives, policies, and strategies. For example, we would generally expect a fund that invests in overseas markets to describe the risks of time-zone arbitrage.

The proposed amendments would also require a mutual fund's prospectus to state whether the fund's board of directors has adopted policies and procedures with respect to frequent purchases and redemptions of fund shares by fund shareholders.[29] If the fund's board of directors has not adopted any such policies and procedures, the fund's prospectus would be required to include a statement of the specific basis for the view of the board that it is appropriate for the fund not to have such policies and procedures.[30] On the other hand, if the fund's board of directors has adopted such policies and procedures, the fund's prospectus would be required to include a description of those policies and procedures, including:

- Whether or not the fund discourages frequent purchases and redemptions of fund shares by fund shareholders;
- Whether or not the fund accommodates frequent purchases and redemptions of fund shares by fund shareholders;
- Any policies and procedures of the fund for deterring frequent purchases and redemptions of fund shares by fund shareholders; and
- Any policies and procedures of the fund for detecting frequent purchases and redemptions of fund shares, including any arrangements for detecting frequent purchases and redemptions of fund shares through intermediaries, such as investment advisers, broker-dealers, transfer agents, and third party administrators.[31]

The description of the mutual fund's policies and procedures, if any, for deterring frequent purchases and redemptions of fund shares by fund shareholders would be required to include any restrictions imposed by the fund to prevent or minimize such frequent purchases and redemptions, including:

- Any restrictions on the volume or number of purchases, redemptions, or exchanges that a shareholder may make within a given time period;
- Any exchange fee or redemption fee;
- Any costs or administrative or other fees or charges that are imposed on shareholders deemed to be engaged in frequent purchases and redemptions of fund shares, together with a description of the circumstances under which such costs, fees, or charges will be imposed;
- Any minimum holding period that is imposed before an investor may make exchanges into another fund;
- Any restrictions imposed on exchange or purchase requests submitted by overnight delivery, electronically, or via facsimile or telephone; and
- Any right of the fund to reject, limit, delay, or impose other conditions on exchanges or purchases or to close or otherwise limit accounts based on a history of frequent purchases and redemptions of fund shares, including the circumstances under which such right will be exercised.

The proposals would require that the policies and procedures for deterring frequent purchases and redemptions, including any restrictions imposed to prevent or minimize such frequent purchases and redemptions, be described with specificity.[32] For example, a fund might state that a 2% redemption fee will be applied to all redemptions within 60 days after purchase or, in describing any restrictions on the volume or number of purchases, redemptions, or exchanges that a shareholder may make within a given time period, a fund might state that it prohibits more than 3 exchanges per year.

A fund would also be required to indicate whether each restriction applies uniformly in all cases or whether the restriction will not be imposed under certain circumstances. If any restriction will not be imposed under certain circumstances, the fund would be required to describe with specificity the circumstances under which the restriction will not be imposed.[33]

We are also proposing to require a mutual fund to describe in its prospectus any arrangements with any person to permit frequent purchases and redemptions of fund shares.[34] This description would include the identity of the persons permitted to engage in frequent purchases and redemptions and any compensation or other consideration received by the fund, its investment adviser, or any other party pursuant to such arrangements. A proposed instruction would clarify that the consideration required to be disclosed includes any agreement to maintain assets in the fund or in other investment companies or accounts managed by the investment adviser or by any affiliated person of the investment adviser.[35]

We emphasize that a mutual fund that enters into an arrangement with any person to permit frequent purchases and redemptions of fund shares may only do so consistent with the antifraud provisions of the federal securities laws and the fiduciary duties of the fund and its investment adviser to fund shareholders. Disclosure provided pursuant to these proposed amendments would not make lawful conduct that is otherwise unlawful. For example, disclosure would not render lawful an arrangement whereby an investment adviser permits frequent purchases and redemptions of a mutual fund's shares in return for consideration that benefits the adviser, such as an agreement to maintain assets in other accounts managed by the adviser.

The proposed amendments to Form N–1A would also clarify that the new disclosure that would be required regarding frequent purchases and redemptions of fund shares may not be omitted from the prospectus in reliance on current Item 7(f), which would be redesignated as Item 7(g).[36] Current Item 7(f) permits funds to omit from the prospectus certain information concerning purchase and redemption procedures if, among other things, the information is included in a separate document that is incorporated by reference into, and filed and delivered with, the prospectus.[37] We believe that the information required by new Item 7(e) is more appropriately included in the same document as the prospectus.

We are proposing to require similar disclosure in Forms N–3,[38] N–4,[39] and N–6,[40] the registration forms for insurance company separate accounts that issue variable annuity and variable life insurance contracts, with respect to both the risks of frequent transfers of contract value among sub-accounts, and the separate account's policies and procedures with respect to such frequent transfers. However, we are proposing the following modifications to address the different structure of these issuers:

- The proposed amendments to Forms N–3, N–4, and N–6 would require disclosure regarding the risks of, and policies and procedures with respect to, frequent transfers of contract value among sub-accounts of the registrant. A person attempting to engage in market timing of mutual funds through a variable annuity or variable life insurance contract typically would make tax-free transfers of contract value among sub-accounts, each of which invests in a particular underlying mutual fund.[41]
- The proposed amendments to Forms N–4 and N–6 would require disclosure with respect to whether the separate account or its depositor has policies and procedures with respect to frequent transfers of contract value among sub-accounts, rather than whether such policies and procedures have been adopted by the separate account's board of directors. The separate accounts registered on these forms are unit investment trusts, which do not have boards of directors, and the depositor would be responsible for adopting and implementing any policies and procedures.[42] If neither the separate account nor the depositor has any such policies and procedures, the proposals would require that the prospectus include a statement of the specific basis for the view of the depositor that it is appropriate for the separate account and depositor not to have such policies and procedures.[43]
- The proposed amendments to Forms N–3, N–4, and N–6 would require disclosure of the risks that frequent transfers of contract value among sub-accounts may present not only for other contractowners, but also for other persons who have material rights under the contract (including, in the case of Forms N–3 and N–4, participants, annuitants, and beneficiaries, and, in the case of Form N–6, the insured or beneficiary).[44]
- The proposed amendments to Forms N–3, N–4, and N–6 that require disclosure of any arrangements for detecting frequent transfers of contract value among sub-accounts would not explicitly reference arrangements for detecting transfers through intermediaries, such as investment advisers, broker-dealers, transfer agents, and third party administrators.[45] Because the variable annuity and variable life insurance contracts registered on these forms are typically held in the name of the contractowner and not an intermediary, insurance companies generally will not need to enter into any such arrangements with intermediaries in order for the insurance company to be able to detect frequent transfers among sub-accounts. If an insurance company had any such arrangements with intermediaries, however, disclosure of those arrangements would be required.
- The proposed amendments to Forms N–3, N–4, and N–6 would specifically require disclosure concerning any consideration received by the sponsoring insurance company pursuant to any arrangements to permit frequent transfers of contract value.[46]
- A proposed Instruction in Form N–3 clarifies that consideration received pursuant to arrangements to permit frequent transfers of contract value includes any agreement to maintain assets in the registrant or in other investment companies or accounts managed or sponsored by the investment adviser, the insurance company, or any affiliated person of the investment adviser or the insurance company.[47] The parallel proposed Instructions in Forms N–4 and N–6 would include as consideration any agreement to maintain assets in the registrant or in other investment companies or accounts managed or sponsored by any investment adviser of a mutual fund in which a sub-account of the registrant is invested, the sponsoring insurance company, or any affiliated person of such an investment adviser or the insurance company.[48]

We request comment generally on the proposals described above and specifically on the following issues:

- Should we require that mutual funds and insurance company separate accounts make each of the proposed disclosures discussed above? Should we require any additional disclosures?
- Is the prospectus the appropriate location for each of the proposed disclosures? Would all or part of the disclosure be more appropriately located in the SAI, reports to shareholders, Form N–CSR, the registrant's Web site, or another location? Should we permit mutual funds to disclose any of the required information in the separate disclosure document referenced in current Item 7(f) of Form N–1A?
- Several Items of Forms N–1A, N–3, N–4, and N–6 (*e.g.*, Items 3, 7(c), and 8(a)(2) of Form N–1A; Items 3 and 8(b)(ii) of Form N–3; Items 3 and 7(b)(ii) of Form N–4; and Items 3 and 6(b)(2) of Form N–6) call for disclosures that are related to the disclosures called for by the proposals. Should we amend any of these other Items or alter the proposals

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[26] In our release adopting rule 38a–1 under the Investment Company Act, we state that a fund must have procedures reasonably designed to ensure compliance with its disclosed policies regarding market timing.

[27] Proposed Item 8(e) of Form N–3; proposed Item 7(e) of Form N–4; proposed Item 6(f) of Form N–6.

[28] Proposed Item 7(e)(1) of Form N–1A.

[29] Proposed Item 7(e)(2) of Form N–1A.

[30] Proposed Item 7(e)(3) of Form N–1A.

[31] Proposed Item 7(e)(4) of Form N–1A.

Persons that are not registered as broker-dealers need to consider whether the securities activities that they are undertaking are brokerage activities that require them to register as broker-dealers. Section 3(a)(4) of the Securities Exchange Act of 1934 ("Exchange Act") defines a broker as a person engaged in the business of effecting transactions in securities. It includes several exceptions for certain bank activities. Section 15 of the Exchange Act essentially makes it unlawful for a broker or dealer "to effect any transactions in, or to induce or attempt to induce the purchase or sale of, any security (other than an exempted security or commercial paper, bankers' acceptances, or commercial bills)" unless the broker or dealer is registered with the Commission.

[32] Proposed Item 7(e)(4)(iii) of Form N–1A. A fund need not repeat this disclosure to the extent it is provided in the prospectus in response to other Items of Form N–1A, including Items 3 (redemption and exchange fees), 7(c) (restrictions on redemptions, and redemption charges), and 8(a)(2) (exchange privileges).

[33] Proposed Item 7(e)(4)(iii) of Form N–1A.

[34] Proposed Item 7(e)(5) of Form N–1A.

[35] Proposed Instruction to Item 7(e)(5) of Form N–1A.

[36] Proposed Item 7(g) of Form N–1A.

[37] Item 7(f) of Form N–1A.

[38] Proposed Item 8(e) of Form N–3. Form N–3 is used by all insurance company separate accounts offering variable annuity contracts that are registered under the Investment Company Act as management investment companies.

[39] Proposed Item 7(e) of Form N–4. Form N–4 is used by all insurance company separate accounts offering variable annuity contracts that are registered under the Investment Company Act as unit investment trusts. *See* section 4(2) of the Investment Company Act [15 U.S.C. 80a–4(2)] (defining "unit investment trust").

[40] Proposed Item 6(f) of Form N–6. Form N–6 is used by all insurance company separate accounts offering variable life insurance policies that are registered under the Investment Company Act as unit investment trusts.

[41] Increases in the cash values of variable annuity and variable life insurance contracts—known as the "inside buildup"—are tax-deferred until the contract's surrender or maturity. *See* I.R.C. section 7702(g) (1986).

[42] Proposed Item 7(e)(ii) of Form N–4; proposed Item 6(f)(2) of Form N–6.

[43] Proposed Item 7(e)(iii) of Form N–4; proposed Item 6(f)(3) of Form N–6

[44] Proposed Item 8(e)(i) of Form N–3; proposed Item 7(e)(i) of Form N–4; proposed Item 6(f)(1) of Form N–6.

[45] Proposed Item 8(e)(iv)(D) of Form N–3; proposed Item 7(e)(iv)(D) of Form N–4; proposed Item 6(f)(4)(iv) of Form N–6.

[46] Proposed Item 8(e)(v) of Form N–3; proposed Item 7(e)(v) of Form N–4; proposed Item 6(f)(5) of Form N–6.

[47] Proposed Instruction to Item 8(e)(v) of Form N–3.

[48] Proposed Instruction to Item 7(e)(v) of Form N–4; proposed Instruction to Item 6(f)(5) of Form N–6.

in any way to better coordinate the disclosure requirements of these Items?

• Exchange traded funds ("ETFs") are investment companies that are registered under the Investment Company Act as open-end management investment companies or unit investment trusts. However, unlike typical open-end funds or unit investment trusts, ETFs do not sell or redeem their individual shares at NAV. Instead, ETFs sell and redeem their shares at NAV only in large blocks, generally in exchange for a basket of securities that mirrors the composition of the ETF's portfolio, plus a small amount of cash. Shares of ETFs are listed on national securities exchanges for trading, which allows investors to purchase and sell individual ETF shares among themselves at market prices throughout the day. Should ETFs be expressly excluded from the proposed disclosure requirements?

B. Disclosure of Circumstances Under Which Funds Will Use Fair Value Pricing

The Commission is proposing to amend the Instruction to Item 7(a)(1) of Form N–1A, and to add a corresponding Instruction to Form N–3, to clarify that all mutual funds and managed separate accounts that offer variable annuities, other than money market funds, are required to explain briefly in their prospectuses both the circumstances under which they will use fair value pricing and the effects of using fair value pricing.[49] We are proposing to amend this instruction to clearly reflect that funds are required to use fair value prices any time that market quotations for their portfolio securities are not readily available (including when they are not reliable). Money market funds would not be subject to the proposed requirement to disclose the circumstances under which they would use fair value pricing and the effects of such use, because such funds are subject to rule 2a–7 under the Investment Company Act, which contains its own detailed pricing requirements.[50]

We note that the disclosure regarding the circumstances under which a fund would use fair value pricing and the effects of such use should be specific to the fund. For example, if a fund invests exclusively in frequently traded exchange listed securities of large capitalization domestic issuers and calculates its NAV as of the time the exchange typically closes, there may be very limited circumstances in which it would use fair value pricing (*e.g.*, if the exchange on which a portfolio security is principally traded closes early or if trading in a particular portfolio security was halted during the day and did not resume prior to the fund's NAV calculation). By contrast, if a fund invests primarily in securities that are traded on overseas markets, we would expect a fuller discussion of the circumstances under which the fund would use fair value pricing, such as specific events occurring after the close of the overseas exchange that would cause the fund to use fair value pricing. Similarly, we would expect that the description of the effects of using fair value pricing would be fund specific, *e.g.*, minimizing the possibilities for time-zone arbitrage, in the case of a fund investing in overseas markets.[51]

We request comment generally on the proposed disclosure regarding fair value pricing and specifically on the following issues:

• Is the proposed Instruction requiring funds to explain briefly the circumstances under which they will use fair value pricing and the effects of using fair value pricing appropriate? Is this proposed disclosure necessary in light of the fact that all funds are required to use fair value pricing if market quotations for a portfolio security are not readily available (including when they are not reliable)? Will the disclosure provide useful information to investors about the particular circumstances under which a fund will use fair value pricing and the effects on that fund of using fair value pricing? Should money market funds or any other types of funds not be required to provide the disclosure?

• Is the fund prospectus the appropriate location for the proposed disclosure, or would the SAI provide investors with adequate access to this information? Are there any other locations, such as Form N–CSR, reports to shareholders, or the fund's Web site, that would be more appropriate for this disclosure?

• Are there cases where disclosure of the circumstances under which a mutual fund will use fair value pricing and the effect on the fund of using fair value pricing may assist investors who intend to engage in market timing strategies? If so, how should we modify the proposed Instruction to address these cases?

C. Selective Disclosure of Fund Portfolio Holdings

We are proposing amendments to Form N–1A that would require mutual funds to disclose their policies and procedures with respect to the disclosure of their portfolio securities and any ongoing arrangements to make available information about their portfolio securities.[52] We are also proposing parallel amendments to Form N–3 for managed separate accounts that issue variable annuities.[53] These amendments are intended to provide greater transparency of fund practices with respect to the disclosure of the fund's portfolio holdings, and to reinforce funds' and advisers' obligations to prevent the misuse of material, non-public information.

We emphasize that a mutual fund or investment adviser that discloses the fund's portfolio securities may only do so consistent with the antifraud provisions of the federal securities laws and the fund's or adviser's fiduciary duties to fund shareholders. Disclosure provided pursuant to these proposed amendments would not make lawful conduct that is otherwise unlawful. Divulging portfolio holdings to selected third parties is permissible only when the fund has legitimate business purposes for doing so and the recipients are subject to a duty of confidentiality. Examples of instances in which selective disclosure of a fund's portfolio securities may be appropriate, subject to confidentiality agreements and trading restrictions, include disclosure for due diligence purposes to an investment adviser that is in merger or acquisition talks with the fund's current adviser, disclosure to a newly hired investment adviser or sub-adviser prior to commencing its duties, or disclosure to a rating agency for use in developing a rating.

Our proposals would require a mutual fund's SAI to describe the fund's policies and procedures with respect to the disclosure of its portfolio securities.[54] The mutual fund's prospectus would be required to state that a description of its policies and procedures is available in its SAI and, if applicable, on its Web site.[55] The SAI description of the mutual fund's policies and procedures with respect to the disclosure of its portfolio securities would be required to include:

• How the policies and procedures apply to disclosure to different categories of persons, including individual investors, institutional investors, intermediaries that distribute the fund's shares, third-party service providers, rating and ranking organizations, and affiliated persons of the fund;[56]

• Any conditions or restrictions placed on the use of information about portfolio securities that is disclosed, including any requirement that the information be kept confidential or prohibitions on trading based on the information, and any procedures to monitor the use of this information;[57]

• The frequency with which information about portfolio securities is disclosed, and the length of the lag, if any, between the date of the information and the date on which the information is disclosed;[58]

• Any policies and procedures with respect to the receipt of compensation or other consideration by the fund, its investment adviser, or any other party in connection with the disclosure of information about portfolio securities;[59]

• The persons who may authorize disclosure of the fund's portfolio securities;[60]

• The procedures that the fund uses to ensure that disclosure of information about portfolio securities is in the best interests of fund shareholders, including procedures to address conflicts between the interests of fund shareholders, on the one hand, and those of the fund's investment adviser; principal underwriter; or any affiliated person of the fund, its investment adviser, or its principal underwriter, on the other;[61] and

• The manner in which the board of directors exercises oversight of disclosure of the fund's portfolio securities.[62]

A mutual fund's disclosure of its policies and procedures with respect to the disclosure of its portfolio securities would be required to include any policies and procedures of the fund's investment adviser, or any other third party, that the fund uses or that are used on the fund's behalf.[63]

We are also proposing to require a mutual fund to describe in its SAI any ongoing arrangements to make available information about the fund's portfolio securities to any person, including the identity of the persons who receive information pursuant to such arrangements and any compensation or other consideration received by the fund, its investment adviser, or any other party in connection with such arrangements.[64] A proposed instruction would clarify that the consideration required to be disclosed would include any agreement to maintain assets in the fund or in other investment companies or accounts managed by the investment adviser or by any affiliated person of the investment adviser.[65] As indicated above, however, divulging portfolio holdings to selected third parties is permissible only when the fund has legitimate business purposes for doing so, and legitimate business purposes generally would not include the receipt of consideration by the fund's investment adviser or its affiliates. With respect to these ongoing arrangements, funds would also be required to describe:

• Any conditions or restrictions placed on the use of information about portfolio securities that is disclosed, including any requirement that the information be kept confidential or prohibitions on trading based on the information, and any procedures to monitor the use of this information;

• The frequency with which information about portfolio securities is disclosed, and the length of the lag, if any, between the date of the information and the date on which the information is disclosed; and

• The persons who may authorize disclosure of the fund's portfolio securities.[66]

We request comment generally on the proposed disclosure requirements regarding disclosure of a fund's portfolio securities and specifically on the following issues:

• Should we require mutual funds and insurance company managed separate accounts to disclose their policies and procedures with respect to the disclosure of portfolio securities to any person? If so, what information should they be required to disclose?

• Are there any types of arrangements that should be excluded from the requirement to disclose ongoing arrangements to make available information about portfolio securities, such as arrangements where the information that is disclosed is subject to a confidentiality requirement or a prohibition on trading based on the information?

• What is the appropriate location for any disclosure about a mutual fund's or separate account's disclosure of its portfolio securities (*e.g.*, prospectus,

[49] Proposed Instruction to Item 7(a)(1) of Form N–1A; proposed Instruction to Item 11(c) of Form N–3. We are not proposing to amend Forms N–4 and N–6 because these forms are used by insurance company separate accounts that are organized as unit investment trusts and typically hold only securities issued by underlying mutual funds. These underlying mutual funds are responsible for valuing their own portfolio securities, including, as required, through fair valuation.

[50] Rule 2a–7(c) (describing the requirements for calculating the share price of money market funds using the amortized cost and penny-rounding methods).

[51] We also note that the Commission is issuing a release adopting new rule 38a–1 under the Investment Company Act, which requires funds to adopt policies and procedures that require a fund to monitor for circumstances that may necessitate the use of fair value prices, establish criteria for determining when market quotations are no longer reliable for a particular portfolio security, provide a methodology or methodologies by which the fund determines the current fair value of the portfolio security, and regularly review the appropriateness and accuracy of the method used in valuing securities and make any necessary adjustments.

[52] Proposed Items 4(d) and 12(f) of Form N–1A. In the release adopting rule 38a–1 under the Investment Company Act, we state that a fund's compliance policies and procedures should address misuses of nonpublic information, including the disclosure to third parties of material information about the fund's portfolio, its trading strategies, or pending transactions.

[53] Proposed Items 5(f) and 19(e) of Form N–3. We are not proposing to amend Forms N–4 and N–6 because these forms are used by insurance company separate accounts that are organized as unit investment trusts, which typically hold only securities issued by underlying mutual funds.

[54] Proposed Item 12(f)(1) of Form N–1A; proposed Item 19(e)(i) of Form N–3.

[55] Proposed Item 4(d) of Form N–1A; proposed Item 5(f) of Form N–3.

[56] Proposed Item 12(f)(1)(i) of Form N–1A. With respect to managed separate accounts issuing variable annuity contracts registered on Form N–3, the categories would include contractowners, participants, annuitants, and beneficiaries. Proposed Item 19(e)(i)(A) of Form N–3.

[57] Proposed Item 12(f)(1)(ii) of Form N–1A; proposed Item 19(e)(i)(B) of Form N–3.

[58] Proposed Item 12(f)(1)(iii) of Form N–1A; proposed Item 19(e)(i)(C) of Form N–3.

[59] Proposed Item 12(f)(1)(iv) of Form N–1A. With respect to managed separate accounts issuing variable annuity contracts registered on Form N–3, this description would also be required to include any policies and procedures with respect to the receipt of compensation or other consideration by the sponsoring insurance company. Proposed Item 19(e)(i)(D) of Form N–3.

[60] Proposed Item 12(f)(1)(v) of Form N–1A; proposed Item 19(e)(i)(E) of Form N–3.

[61] Proposed Item 12(f)(1)(vi) of Form N–1A. With respect to managed separate accounts issuing variable annuity contracts registered on Form N–3, this description would be required to include the procedures that are used to ensure that disclosure of information about portfolio securities is in the best interests of contractowners, participants, annuitants, and beneficiaries, including procedures to address conflicts between the interests of such persons, on the one hand, and those of the separate account's investment adviser or principal underwriter; the sponsoring insurance company; or any affiliated person of the separate account, its investment adviser or principal underwriter, or the sponsoring insurance company, on the other. Proposed Item 19(e)(i)(F) of Form N–3.

[62] Proposed Item 12(f)(1)(vii) of Form N–1A; proposed Item 19(e)(i)(G) of Form N–3.

[63] Proposed Instruction to Item 12(f)(1) of Form N–1A; proposed Instruction to Item 19(e)(i) of Form N–3.

[64] Proposed Item 12(f)(2) of Form N–1A. With respect to managed separate accounts issuing variable annuity contracts registered on Form N–3, disclosure of any compensation or other consideration received by the sponsoring insurance company would also be required. Proposed Item 19(e)(ii) of Form N–3.

[65] Proposed Instruction to Item 12(f)(2) of Form N–1A. With respect to managed separate accounts issuing variable annuity contracts registered on Form N–3, the consideration required to be disclosed would also include any agreement to maintain assets in other investment companies or accounts managed or sponsored by the sponsoring insurance company of the registrant or by an affiliated person of such sponsoring insurance company. Proposed Instruction to Item 19(e)(ii) of Form N–3.

[66] Proposed Item 12(f)(2) of Form N–1A; proposed Item 19(e)(ii) of Form N–3.

SAI, Form N–CSR, Form 8–K, shareholder reports, Web site, etc.)?

- In addition to disclosing ongoing arrangements, should we require mutual funds and insurance company managed separate accounts to disclose all instances of selective disclosure of portfolio securities? If so, when should this disclosure be required to be made? What facts should be required to be disclosed regarding each such instance of selective disclosure (*e.g.*, the names of persons or entities who receive portfolio holdings information; the terms of the disclosure, including any compensation paid for the information; the reasons why the disclosure is in the best interests of fund shareholders; the terms of any confidentiality agreement)? Should funds be required to disclose whether the board of directors has approved each individual instance of selective disclosure?
- Currently, Regulation FD, which governs the selective disclosure of material non-public information, does not apply to funds, other than closed-end funds.[67] Should Regulation FD apply to mutual funds or managed separate accounts with respect to their disclosure of portfolio holdings or other information?
- Are there any other measures that we should consider to reinforce the obligations of funds and their advisers to comply with their fiduciary duties and to prevent the misuse of material, non-public information, including the selective disclosure of portfolio holdings information?

D. Compliance Date

If we adopt the proposed disclosure requirements, we expect to require all new registration statements and all post-effective amendments to effective registration statements filed on or after the effective date of the amendments to comply with the proposed amendments. The Commission requests comment on this proposed compliance date.

III. General Request for Comments

The Commission requests comment on the amendments proposed in this release, whether any further changes to our rules or forms are necessary or appropriate to implement the objectives of our proposed amendments, and on other matters that might have an effect on the proposals contained in this release.

IV. Paperwork Reduction Act

Certain provisions of the proposed amendments contain "collection of information" requirements within the meaning of the Paperwork Reduction Act of 1995 [44 U.S.C. 3501, *et seq.*], and the Commission is submitting the proposed collections of information to the Office of Management and Budget ("OMB") for review in accordance with 44 U.S.C. 3507(d) and 5 CFR 1320.11. The titles for the collections of information are: (1) "Form N–1A under the Investment Company Act of 1940 and Securities Act of 1933, Registration Statement of Open-End Management Investment Companies"; (2) "Form N–3—Registration Statement of Separate Accounts Organized as Management Investment Companies"; (3) "Form N–4—Registration Statement of Separate Accounts Organized as Unit Investment Trusts"; and (4) "Form N–6 under the Investment Company Act of 1940 and the Securities Act of 1933, Registration Statement of Insurance Company Separate Accounts Registered as Unit Investment Trusts that Offer Variable Life Insurance Policies." An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Form N–1A (OMB Control No. 3235–0307), Form N–3 (OMB Control No. 3235–0316), Form N–4 (OMB Control No. 3235–0318), and Form N–6 (OMB Control No. 3235–0503) were adopted pursuant to section 8(a) of the Investment Company Act [15 U.S.C. 80a–8(a)] and section 5 of the Securities Act [15 U.S.C. 77e].

We are proposing amendments to Form N–1A to require mutual funds to provide improved disclosure regarding their policies and procedures with respect to frequent purchases and redemptions of fund shares. The proposals also would amend Forms N–3, N–4, and N–6 to require similar disclosure in prospectuses for insurance company separate accounts offering variable insurance contracts, with respect to frequent transfers among sub-accounts. In addition, we are proposing amendments to clarify instructions to Forms N–1A and N–3 to require all mutual funds (other than money market funds) and managed separate accounts that issue variable annuities, to explain in their prospectuses the circumstances under which they will use fair value pricing, and the effects of using fair value pricing.

Finally, we are proposing amendments to Form N–1A to require disclosure regarding mutual funds' policies and procedures with respect to the selective disclosure of their portfolio holdings to any person. We are also proposing parallel amendments to Form N–3 for managed separate accounts that issue variable annuities.

Form N–1A

Form N–1A, including the proposed amendments, contains collection of information requirements. The likely respondents to this information collection are open-end funds registering with the Commission. Compliance with the disclosure requirements of Form N–1A is mandatory. Responses to the disclosure requirements are not confidential.

The current hour burden for preparing an initial registration statement on Form N–1A is 809 hours per portfolio. The current annual hour burden for preparing post-effective amendments of Form N–1A is 101 hours per portfolio. The Commission estimates that, on an annual basis, registrants file initial registration statements on Form N–1A covering 483 portfolios, and file post-effective amendments on Form N–1A covering 6,542 portfolios. An additional burden of 1,694 hours for the preparation and filing of initial registration statements and 22,897 hours for the filing of post-effective amendments is expected to result from the Commission's recent proposed rulemaking relating to "fund of funds" arrangements.[68] Thus, the Commission estimates that the current total annual hour burden for the preparation and filing of Form N–1A is 1,076,080 hours.[69]

We estimate that the proposed amendments would increase the hour burden per portfolio per filing of an initial registration statement by 10 hours and would increase the hour burden per portfolio per filing of a post-effective amendment to a registration statement by 4 hours. Thus, if the proposed amendments to Form N–1A are adopted, the total annual hour burden for all funds for preparation and filing of initial registration statements and post-effective amendments to Form N–1A would be 1,107,078 hours ((10 hours × 483 portfolios) + (4 hours × 6,542 portfolios) + 1,076,080 hours).

Form N–3

Form N–3, including the proposed amendments, contains collection of information requirements. The likely respondents to this information collection are separate accounts, organized as management investment companies offering variable annuities, registering with the Commission on Form N–3. Compliance with the disclosure requirements of Form N–3 is mandatory. Responses to the disclosure requirements are not confidential.

The current annual hour burden for preparing an initial registration statement on Form N–3 is 915.2 hours per portfolio. The current annual hour burden for preparing post-effective amendments of Form N–3 is 150.4 hours per portfolio. The Commission estimates that, on an annual basis, 3 initial registration statements will be filed on Form N–3 and 38 post-effective amendments will be filed on Form N–3. We estimate that the average number of portfolios per filing is 4, and therefore that annually there are a total of 12 portfolios covered by initial registration statements on Form N–3 and 152 portfolios covered by post-effective amendments on Form N–3. The Fund of Funds Proposing Release would require additional cumulative burdens of 42 hours and 49 hours, respectively. Thus, we estimate that the current total annual hour burden for the preparation and filing of Form N–3 is 33,934 hours.[70]

We estimate that the proposed amendments would increase the hour burden per portfolio per filing of an initial registration statement on Form N–3 by 10 hours and would increase the hour burden per portfolio per filing of a post-effective amendment to a registration statement on Form N–3 by 4 hours. Thus, if the proposed amendments to Form N–3 are adopted, the total annual hour burden for all funds for preparation and filing of initial registration statements and post-effective amendments on Form N–3 would be 34,662 hours ((10 hours × 12 portfolios) + (4 hours × 152 portfolios) + 33,934 hours).

Form N–4

Form N–4, including the proposed amendments, contains collection of information requirements. The likely respondents to this information collection are separate accounts, organized as unit investment trusts that offer variable annuity contracts, registering with the Commission on Form N–4. Compliance with the disclosure requirements of Form N–4 is mandatory. Responses to the disclosure requirements are not confidential.

The current annual hour burden for preparing an initial registration statement on Form N–4 is 273.2 hours per separate account. The current annual hour burden for preparing a post-effective amendment on Form N–4 is 195 hours per separate account. The Commission estimates that annually, 157 initial registration statements are filed on Form N–4 and 1,242 post-effective amendments are filed on Form N–4. The Fund of Funds Proposing Release would require additional cumulative burdens of 39.5 hours and 310.5 hours, respectively. Thus, we estimate that the current total annual hour burden for the preparation and filing of Form N–4 is 285,432 hours.[71]

We estimate that the proposed amendments would increase the hour burden per filing of an initial registration statement on Form N–4 by 5 hours and would increase the hour burden per filing of a post-effective amendment to a registration statement on Form N–4 by 2 hours. Thus, if the proposed amendments to Form N–4 are adopted, the total annual hour burden for separate accounts for preparation and filing of initial registration statements and post-effective amendments on Form N–4 would be 288,701 hours ((5 hours × 157 portfolios) + (2 hours × 1,242 portfolios) + 285,432 hours).

Form N–6

Form N–6, including the proposed amendments, contains collection of information requirements. The likely respondents to this information collection are separate accounts, organized as unit investment trusts that offer variable life insurance policies, registering with the Commission on Form N–6. Compliance with the disclosure requirements of Form N–6 is mandatory. Responses to the disclosure requirements are not confidential.

The current annual hour burden for preparing an initial registration statement on a Form N–6 is 765 hours per separate account. The current annual hour burden for preparing a post-effective amendment filed as an annual update on Form N–6 is 65 hours, and the annual hour burden for preparing a post-effective amendment filed for other purposes is 10 hours. The Commission estimates that annually, 50 initial registration statements, 150 post-effective amendments that are annual updates, and 350 additional post-effective amendments are filed on Form N–6. The Fund of Funds Proposing Release would require additional cumulative burdens of 12.5 hours for initial registration statements, and 37.5 hours for annual update post-effective amendments and additional post-effective amendments. Thus, we estimate that the current total annual hour burden for the preparation and filing of Form N–6 is 51,550 hours.[72]

We estimate that the proposed amendments would increase the hour burden per filing of an initial registration statement on Form N–6 by 5 hours, and would increase the hour burden per filing of a post-effective amendment that is an annual update on Form N–6 by 2 hours. Thus, if the proposed amendments to Form N–6 are adopted, the total annual hour burden for separate accounts for preparation and filing of initial registration statements and post-effective amendments on Form N–6 would be 52,100 hours ((5 hours × 50 portfolios) + (2 hours × 150 portfolios) + 51,550 hours).

Request for Comments

We request your comments on the accuracy of our estimates. Pursuant to 44 U.S.C. 3506(c)(2)(B), the Commission solicits comments to: (i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (ii) evaluate the accuracy of the Commission's estimate of burden of the proposed collection of information; (iii) determine whether there are ways to enhance the quality, utility, and clarity of the information to be collected; and (iv) evaluate whether there are ways to minimize the burden of the collection of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology.

Persons submitting comments on the collection of information requirements should direct the comments to the Office of Management and Budget, Attention: Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Room 10102, New Executive Office Building, Washington, DC 20503, and should send a copy to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549–0609, with reference to File No. S7–26–03. OMB is required to make a decision concerning

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[67] 17 CFR 243.101(b).

[68] *See* Investment Company Act Release No. 26198 (Oct. 2, 2003) ("Fund of Funds Proposing Release").

[69] This estimate is based on the following calculation: (809 hours × 483 portfolios) + (101 hours × 6,542 portfolios) = 1,051,489 hours. The additional annual hour burden of 24,591 hours (22,897 + 1,694) resulting from the proposed rules described in the Fund of Funds Proposing Release yield a total annual hour burden of 1,076,080 hours.

[70] This estimate is based on the following calculation: (915.2 hours × 12 portfolios) + (150.4 hours × 152 portfolios) + (42 hours + 49 hours) = 33,934.2 hours.

[71] This estimate is based on the following calculation: (273.2 hours × 157 separate accounts) + (195 hours × 1,242 separate accounts) + (39.5 hours + 310.5 hours) = 285,432.4 hours.

[72] This estimate is based on the following calculation: (765 hours × 50 initial registration statements) + (65 hours × 150 annual update post-effective amendments) + (10 hours × 350 additional post-effective amendments) + (12.5 hours + 37.5 hours) = 51,550 hours.

the collection of information between 30 and 60 days after publication of this release. Consequently, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days after publication of this Release.

V. Cost/Benefit Analysis

The Commission is sensitive to the costs and benefits imposed by its rules. Our proposals would require mutual funds to provide enhanced disclosure about their policies and procedures with respect to frequent purchases and redemptions of fund shares. Specifically, the proposals would:

- Require a mutual fund to describe in its prospectus the risks, if any, that frequent purchases and redemptions of fund shares may present for other shareholders;
- Require a mutual fund to state in its prospectus whether or not the fund's board of directors has adopted policies and procedures with respect to frequent purchases and redemptions of fund shares and, if the board has not adopted any such policies and procedures, state the specific basis for the view of the board that it is appropriate for the fund not to have such policies and procedures;
- Require a mutual fund to describe any policies and procedures for deterring frequent purchases and redemptions of fund shares, and any arrangements to permit frequent purchases and redemptions of fund shares; and
- Require similar disclosure in prospectuses for insurance company separate accounts offering variable insurance contracts, with respect to frequent transfers among sub-accounts.

The Commission is also proposing amendments to clarify instructions to our registration forms for mutual funds and insurance company managed separate accounts that offer variable annuities to require that all such funds (other than money market funds) explain in their prospectuses both the circumstances under which they will use fair value pricing and the effects of using fair value pricing.

In addition, our proposals would require mutual funds, and insurance company managed separate accounts that offer variable annuities, to disclose their policies with respect to the disclosure of portfolio holdings information. The proposals would:

- Require a fund to describe in its SAI any policies and procedures with respect to the disclosure of the fund's portfolio securities to any person and any ongoing arrangements to make available information about the fund's portfolio securities to any person; and
- Require a fund to state in its prospectus that a description of the policies and procedures is available in the fund's SAI, and on the fund's Web site, if applicable.

A. Benefits

The proposed form amendments will benefit fund investors by providing them with more detailed information about mutual fund practices relating to frequent purchases and redemptions of fund shares (or, in the case of insurance company separate accounts offering variable insurance products, frequent transfers of contract value among sub-accounts). These proposals are intended to require mutual funds and insurance company separate accounts to describe with specificity the restrictions they place on frequent purchases and redemptions (or frequent transfers among sub-accounts), if any, and the circumstances under which a restriction will not apply. Market timing arbitrage strategies often involve such frequent purchases and redemptions of mutual fund shares or frequent transfers among sub-accounts of insurance company separate accounts. By increasing transparency of funds' policies and procedures in this area, the proposals are designed to help restore investor confidence in the fairness of fund operations and in the practices and procedures of intermediaries selling fund shares. This additional disclosure would enable investors to assess funds' risks, policies, and procedures in this area and determine if a fund's policies and procedures are in line with the investor's expectations. In addition, these proposed amendments may benefit fund shareholders by deterring decisions relating to portfolio management that are motivated by considerations of the interests of the fund or the fund's adviser rather than the interests of fund shareholders.

The proposed amendments to Forms N–1A and N–3 relating to fair value pricing also will benefit investors by clarifying that all mutual funds and managed separate accounts that offer variable annuities, other than money market funds, are required to explain both the circumstances under which they will use fair value pricing and the effects of using such pricing. These amendments would clearly reflect that funds are required to use fair value prices any time that market quotations for their portfolio securities are not readily available (including when they are not reliable). Fair valuation of a fund's portfolio securities, which is required under certain circumstances, can serve to foreclose arbitrage opportunities available to market timers. Similarly, the proposed amendments to Forms N–1A and N–3 relating to funds' policies and procedures with respect to the selective disclosure of portfolio holdings information may benefit investors by providing greater transparency of fund practices relating to the disclosure of the fund's portfolio holdings, and reinforcing funds' and advisers' obligations to prevent the misuse of material, non-public information. We have no means by which to quantify these benefits, however.

We seek comment on the benefits of the proposed amendments (and any alternatives suggested by commenters) as well as any data quantifying those benefits.

B. Costs

The proposals would impose new requirements on mutual funds to provide disclosure of their policies and procedures with respect to frequent purchases and redemptions of fund shares (or frequent transfers of contract value among sub-accounts, in the case of insurance company separate accounts offering variable insurance contracts), and selective disclosure of portfolio holdings information. We estimate that complying with the proposed new disclosure requirements would entail a relatively small financial burden. The information regarding a fund's policies and procedures in these areas should be readily available to management and the board of directors of a fund. Therefore, we expect that the cost of compiling and reporting this information should be limited.

Our proposals would require additional disclosure by a mutual fund in its prospectus regarding its policies and procedures relating to frequent purchases and redemptions by fund shareholders and additional disclosure by an insurance company separate account that issues variable insurance products in its prospectus regarding its policies and procedures relating to frequent transfers among sub-accounts. In addition, we are proposing to require each mutual fund and insurance company managed separate account to describe in its SAI any policies and procedures regarding the disclosure of the fund's portfolio holdings information, and to state in its prospectus that a description of those policies and procedures is available in the fund's SAI.[73] These costs may include both internal costs (for attorneys and other non-legal staff of a fund, such as computer programmers, to prepare and review the required disclosure) and external costs (for printing and typesetting of the disclosure).[74] For purposes of the Paperwork Reduction Act, we have estimated that the proposed new disclosure requirements would add 35,545 hours to the burden of completing Forms N–1A, N–3, N–4, and N–6.[75] We estimate that this additional burden would equal total internal costs of $1,608,411 annually, or approximately $423 per fund.[76]

The external costs of providing the new prospectus disclosure relating to frequent purchases and redemptions of mutual fund shares and frequent transfers among sub-accounts of insurance company separate accounts may or may not be significant, depending on the complexity of a fund's policies and procedures in these areas, the extent to which restrictions on frequent purchases and redemptions or transfers among sub-accounts apply uniformly in all cases or will not be imposed under certain circumstances, and the extent to which a fund currently provides specific disclosure in this area. We expect that the external costs of providing the new disclosure relating to each mutual fund's and insurance company managed separate account's policies and procedures with respect to disclosure of portfolio holdings information would be minimal, because the required description of a fund's policies and procedures with respect to the disclosure of the fund's portfolio securities to any person and any ongoing arrangements to make available information about the fund's portfolio securities will be required in the fund's SAI, which is delivered to investors upon request.[77]

We request comment on the nature and magnitude of our estimates of the costs of the additional disclosure that would be required if our proposals were adopted.

C. Request for Comments

We request comments on all aspects of this cost-benefit analysis, including identification of any additional costs or benefits of, or suggested alternatives to, the proposed amendments. Commenters are requested to provide empirical data and other factual support for their views to the extent possible.

VI. Consideration of Effects on Efficiency, Competition, and Capital Formation

Section 2(c) of the Investment Company Act [15 U.S.C. 80a–2(c)] and section 2(b) of the Securities Act [15 U.S.C. 77(b)] require the Commission, when engaging in rulemaking that requires it to consider or determine whether an action is necessary or appropriate in the public interest, to consider, in addition to the protection of investors, whether the action will promote efficiency, competition, and capital formation.

The proposed amendments are intended to provide greater transparency for mutual fund shareholders regarding a fund's policies and procedures with respect to frequent purchases and redemptions of fund shares (or frequent transfers of contract value among sub-accounts, in the case of insurance company separate accounts offering variable insurance contracts), and selective disclosure of portfolio holdings information. These changes may improve efficiency. The enhanced disclosure requirements are intended to enable shareholders to make a more informed assessment as to whether a particular fund is in line with shareholders' investment objectives; which could promote more efficient allocation of investments by investors and more efficient allocation of assets among competing funds. The proposed amendments may also improve competition, as enhanced disclosure may prompt funds to compete to provide investors with policies and procedures that effectively protect long-term investors from harmful market timing, and from the misuse of portfolio holdings information through selective disclosure. Finally, the effects of the proposed amendments on capital formation are unclear.

Although, as noted above, we believe that the proposed amendments would benefit investors, the magnitude of the effect of the proposed amendments on efficiency, competition, and capital formation, and the extent to which they would be offset by the costs of the proposals, are difficult to quantify. We note that, with respect to our proposals regarding funds' policies and procedures with respect to frequent purchases and redemptions (or frequent transfers among sub-accounts), in many cases funds currently provide disclosure in their prospectuses or elsewhere of the limitations that they place on frequent trading in order to discourage market timing.

We request comment on whether the proposed amendments, if adopted, would promote efficiency, competition, and capital formation. Commenters are requested to provide empirical data and other factual support for their views if possible.

VII. Initial Regulatory Flexibility Analysis

This Initial Regulatory Flexibility Analysis ("Analysis") has been prepared in accordance with 5 U.S.C. 603, and relates to the Commission's proposed form amendments under the Securities Act and the Investment Company Act to require funds to provide additional disclosure about their policies and procedures with respect to frequent purchases and redemptions of mutual fund shares (or, with respect to insurance company separate accounts, frequent transfers among sub-accounts) and selective disclosure of fund portfolio holdings to any person. Specifically, the proposals would:

- Require a mutual fund to describe in its prospectus the risks, if any, that frequent purchases and redemptions of fund shares may present for other shareholders;
- Require a mutual fund to state in its prospectus whether or not the fund's board of directors has adopted policies and procedures with respect to frequent purchases and redemptions of fund shares and, if the board has not adopted any such policies and procedures, state the specific basis for the view of the board that it is appropriate for the fund not to have such policies and procedures;
- Require a mutual fund to describe any policies and procedures for

[73] The proposed amendments that would clarify mutual funds' and insurance company managed separate accounts' disclosure requirements with respect to fair value pricing are not expected to result in any significant costs.

[74] We note that, with respect to our proposals regarding mutual funds' policies and procedures with respect to frequent purchases and redemptions and insurance company separate accounts' policies and procedures with respect to frequent transfers among sub-accounts, in many cases funds currently provide disclosure in their prospectuses or elsewhere of the limitations that they place on frequent trading in order to discourage market timing.

[75] This would represent 30,998 additional hours for Form N–1A, 728 additional hours for Form N–3, 3,269 additional hours for Form N–4, and 550 additional hours for Form N–6.

[76] These figures are based on a Commission estimate that approximately 3,800 investment companies would be subject to the proposed amendments and an estimated hourly wage rate of $45.25. The estimate of the number of investment companies is based on data derived from the Commission's EDGAR filing system. The estimated wage figure is based on published compensation for compliance attorneys outside New York City ($37.60) and programmers ($29.44), and the estimate that attorneys and programmers would divide time equally on compliance with the proposed disclosure requirements, yielding a weighted wage rate of $33.52 (($37.60 × .50) + (29.44 × .50)) = $33.52). *See* Securities Industry Association, Report on Management & Professional Earnings in the Securities Industry 2002 (Sept. 2002). This weighted wage rate was then adjusted upward by 35% for overhead, reflecting the costs of supervision, space, and administrative support, to obtain the total per hour internal cost of $45.25 (33.52 × 1.35) = $45.25.

[77] A fund would be required to state in its prospectus that a description of its policies and procedures is available in the fund's SAI, and on the fund's Web site, if applicable.

deterring frequent purchases and redemptions of fund shares, and any arrangements to permit frequent purchases and redemptions of fund shares; and

• Require similar disclosure in prospectuses for insurance company separate accounts offering variable insurance contracts, with respect to frequent transfers among sub-accounts.

The Commission is also proposing amendments to clarify instructions to our registration forms for mutual funds and insurance company managed separate accounts that offer variable annuities to require that all such funds (other than money market funds) explain in their prospectuses both the circumstances under which they will use fair value pricing and the effects of using fair value pricing.

As noted above, the Commission also is proposing to require mutual funds, and insurance company managed separate accounts that offer variable annuities, to disclose their policies with respect to disclosure of portfolio holdings information. The proposals would:

• Require a fund to describe in its SAI any policies and procedures with respect to the disclosure of the fund's portfolio securities to any person and any ongoing arrangements to make available information about the fund's portfolio securities to any person; and

• Require a fund to state in its prospectus that a description of the policies and procedures is available in the fund's SAI, and on the fund's Web site, if applicable.

A. Reasons for, and Objectives of, Proposed Amendments

Recent allegations regarding late trading, abusive market timing, and other abuses point to instances where it appears that some in the mutual fund industry, and some intermediaries that sell fund shares, have lost sight of their obligations to investors. The proposed amendments include disclosure reforms intended to shed more light on market timing and selective disclosure of portfolio holdings information. The proposals are intended to require mutual funds to describe with specificity the restrictions they place on frequent purchases and redemptions, if any, and the circumstances under which any such restriction will not apply. The proposals would require similar disclosure by insurance company separate accounts that offer variable insurance contracts, with respect to the restrictions, if any, that they place on frequent transfers among sub-accounts. This additional disclosure would enable investors to assess mutual funds' and insurance company separate accounts' risks, policies, and procedures in this area and determine if the policies and procedures are in line with their expectations. The proposed amendments also are intended to provide greater transparency of mutual fund and insurance company managed separate account practices with respect to the disclosure of a fund's portfolio holdings, and to reinforce funds' and advisers' obligations to prevent the misuse of material, non-public information. The proposals are part of a package of rule amendments intended to address abuses that have surfaced in the areas of late trading, market timing, and selective disclosure.

B. Legal Basis

The Commission is proposing amendments to Forms N–1A, N–3, N–4, and N–6 pursuant to authority set forth in sections 5, 6, 7, 10, and 19(a) of the Securities Act [15 U.S.C. 77e, 77f, 77g, 77j, and 77s(a)], and sections 8, 22, 24(a), 30, and 38 of the Investment Company Act [15 U.S.C. 80a–8, 80a–22, 80a–24(a), 80a–29, and 80a–37].

C. Small Entities Subject to the Rule

For purposes of the Regulatory Flexibility Act, an investment company is a small entity if it, together with other investment companies in the same group of related investment companies, has net assets of $50 million or less as of the end of its most recent fiscal year.[78] Approximately 145 investment companies registered on Form N–1A meet this definition.[79] We estimate that few, if any, registered separate accounts registered on Form N–3, N–4, or N–6 are small entities.[80]

D. Reporting, Recordkeeping, and Other Compliance Requirements

The proposed amendments would require a mutual fund to disclose in its prospectus both the risks to shareholders of the frequent purchase and redemption of fund shares, and the fund's policies and procedures with respect to frequent purchases and redemptions of fund shares. The proposals would require similar prospectus disclosure for insurance company separate accounts issuing variable insurance contracts. The proposed amendments would also clarify that all mutual funds and insurance company managed separate accounts that issue variable annuities, other than money market funds, are required to explain both the circumstances under which they will use fair value pricing, and the effects of using fair value pricing. Finally, the proposals would require mutual funds and insurance company managed separate accounts that issue variable annuities to disclose their policies and procedures with respect to the disclosure of their portfolio securities to any person and any ongoing arrangements to make available information about their portfolio securities.

The Commission estimates some one-time formatting and ongoing costs and burdens that would be imposed on all funds, including funds that are small entities. We note, however, that in many cases funds currently provide disclosure in their prospectuses of the limitations that they place on frequent trading in order to discourage market timing. For purposes of the Paperwork Reduction Act, we have estimated that the proposed new disclosure requirements would increase the hour burden per portfolio per filing of an initial registration statement on Form N–1A by 10 hours and would increase the hour burden per portfolio per filing of a post-effective amendment to a registration statement by 4 hours. We estimate that this additional burden would increase total internal costs of an initial filing by $452.50 per mutual fund portfolio annually, and would increase total costs of filing a post-effective amendment by $181 per mutual fund portfolio annually.[81]

The external costs of providing the new prospectus disclosure relating to frequent purchases and redemptions of mutual fund shares and frequent transfers among sub-accounts of insurance company separate accounts that issue variable insurance contracts may or may not be significant, depending on the complexity of a fund's policies and procedures in these areas, the extent to which restrictions on frequent purchases and redemptions or frequent transfers among sub-accounts apply uniformly in all cases or will not be imposed under certain circumstances, and the extent to which a fund currently provides specific disclosure in this area. We expect that the external costs of providing the new disclosure relating to a mutual fund's or insurance company managed separate account's policies and procedures with respect to disclosure of portfolio holdings information would be minimal, because the required description of a fund's policies and procedures with respect to the disclosure of the fund's portfolio securities to any person and any ongoing arrangements to make available information about the fund's portfolio securities will be required in the fund's SAI, which is delivered to investors upon request.

The Commission solicits comment on the effect the proposed amendments would have on small entities.

E. Duplicative, Overlapping or Conflicting Federal Rules

There are no rules that duplicate, overlap, or conflict with the proposed amendments.

F. Significant Alternatives

The Regulatory Flexibility Act directs us to consider significant alternatives that would accomplish our stated objective, while minimizing any significant adverse impact on small issuers. In connection with the proposed amendments, the Commission considered the following alternatives: (i) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (ii) the clarification, consolidation, or simplification of compliance and reporting requirements under the proposed amendments for small entities; (iii) the use of performance rather than design standards; and (iv) an exemption from coverage of the proposed amendments, or any part thereof, for small entities.

The Commission believes at the present time that special compliance or reporting requirements for small entities, or an exemption from coverage for small entities, would not be appropriate or consistent with investor protection. The proposed disclosure amendments would provide shareholders with greater transparency of mutual funds' policies and procedures with respect to frequent purchases and redemptions of fund shares (and, with respect to insurance company separate accounts that issue variable insurance contracts, frequent transfers among sub-accounts) and mutual funds' and insurance company managed separate accounts' policies and procedures with respect to selective disclosure of their portfolio holdings. Different disclosure requirements for funds that are small entities may create the risk that the shareholders in these funds would not be as able as investors in larger funds to assess a fund's risks, policies, and procedures with respect to frequent purchases and redemptions of fund shares, as well as a fund's practices with respect to the disclosure of its portfolio holdings. We believe it is important for the disclosure that would be required by the proposed amendments to be provided to shareholders by all funds, not just funds that are not considered small entities.

We have endeavored through the proposed amendments to minimize the regulatory burden on all funds, including small entities, while meeting our regulatory objectives. Small entities should benefit from the Commission's reasoned approach to the proposed amendments to the same degree as other investment companies. Further clarification, consolidation, or simplification of the proposals for funds that are small entities would be inconsistent with the Commission's concern for investor protection. Finally, we do not consider using performance rather than design standards to be consistent with our statutory mandate of investor protection in the present context.

G. Solicitation of Comments

The Commission encourages the submission of written comments with respect to any aspect of this Analysis. Comment is specifically requested on the number of small entities that would be affected by the proposed amendments and the likely impact of the proposals on small entities. Commenters are asked to describe the nature of any impact and provide empirical data supporting the extent of the impact. These comments will be considered in the preparation of the Final Regulatory Flexibility Analysis, if the proposed amendments are adopted, and will be placed in the same public file as comments on the proposed amendments themselves. Comments should be submitted in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Comments also may be submitted electronically at the following e-mail address: *rule-comments@sec.gov*. All comment letters should refer to File No. S7–26–03; this file number should be included on the subject line if e-mail is used. Comment letters will be available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549–0102. Electronically submitted comment letters also will be posted on the Commission's Internet Web site (*http://www.sec.gov*).[82]

VIII. Consideration of Impact on the Economy

For purposes of the Small Business Enforcement Fairness Act of 1996,[83] a rule is "major" if it results or is likely to result in:

• An annual effect on the economy of $100 million or more;

• A major increase in costs or prices for consumers or individual industries; or

• Significant adverse effects on competition, investment, or innovation.

The Commission requests comment on the potential impact of the proposed amendments on the U.S. economy on an annual basis. Commenters are requested to provide empirical data to support their views.

IX. Statutory Authority

The Commission is proposing amendments to Forms N–1A, N–3, N–4, and N–6 pursuant to authority set forth in sections 5, 6, 7, 10, and 19(a) of the Securities Act [15 U.S.C. 77e, 77f, 77g, 77j, and 77s(a)] and sections 8, 22, 24(a), 30, and 38 of the Investment Company Act [15 U.S.C. 80a–8, 80a–22, 80a–24(a), 80a–29, and 80a–37].

List of Subjects

17 CFR Part 239

Reporting and recordkeeping requirements; Securities.

17 CFR Part 274

Investment companies, Reporting and recordkeeping requirements, Securities.

Text of Proposed Rule and Form Amendments

For the reasons set out in the preamble, the Commission proposes to amend Title 17, Chapter II, of the Code of Federal Regulations as follows.

PART 239—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933

1. The authority citation for part 239 continues to read in part as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 77z–2, 77sss, 78c, 78l, 78m, 78n, 78o(d), 78u–5, 78w(a), 78*ll*(d), 79e, 79f, 79g, 79j, 79*l*, 79m, 79n, 79q, 79t, 80a–8, 80a–24, 80a–26, 80a–29, 80a–30, and 80a–37, unless otherwise noted.

[78] 17 CFR 270.0–10.

[79] This estimate is based on analysis by the Division of Investment Management staff of information from databases compiled by third-party information providers, including Morningstar, Inc. and Lipper.

[80] This estimate is based on figures compiled by Division of Investment Management staff regarding separate accounts registered on Forms N–3, N–4, and N–6. In determining whether an insurance company separate account is a small entity for purposes of the Regulatory Flexibility Act, the assets of insurance company separate accounts are aggregated with the assets of their sponsoring insurance companies. Rule 0–10(b) under the Investment Company Act [17 CFR 270.0–10(b)].

[81] These figures are based on an estimated hourly wage rate of $45.25. *See supra* note 76.

[82] We do not edit personal identifying information, such as names or electronic mail addresses, from electronic submissions. You should submit only information that you wish to make available publicly.

[83] Pub. L. 104–21, Title II, 110 Stat. 857 (1996).

PART 274—FORMS PRESCRIBED UNDER THE INVESTMENT COMPANY ACT OF 1940

2. The authority citation for part 274 continues to read in part as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 78c(b), 78*l*, 78m, 78n, 78o(d), 80a–8, 80a–24, 80a–26, and 80a–29, unless otherwise noted.

Note: The text of Forms N–1A, N–3, N–4, and N–6 do not, and these amendments will not, appear in the Code of Federal Regulations.

3. Form N–1A (referenced in §§ 239.15A and 274.11A) is amended by:

a. In Instruction 6 to Item 1(b)(1), revising the reference "Item 7(f)" to read "Item 7(g)";

b. In Instruction 6 to Item 1(b)(1), revising the reference "Item 7(f)(3)" to read "Item 7(g)(3)";

c. In Item 4, revising the title and adding new paragraph (d);

d. In Item 7, revising the Instruction to paragraph (a)(1);

e. In Item 7, redesignating paragraphs (e) and (f) as paragraphs (f) and (g), respectively;

f. In Item 7, adding paragraph (e);

g. In newly redesignated Item 7(f)(2)(i), revising the reference "paragraph (e)(1)" to read "paragraph (f)(1)";

h. In newly redesignated paragraph (g) of Item 7, revising the introductory text;

i. In paragraph (a)(2) of Item 8, revising the reference "Item 7(f)" to read "Item 7(g)"; and

j. In Item 12, adding paragraph (f).

The additions and revisions read as follows:

Form N–1A

* * * * *

Item 4. Investment Objectives, Principal Investment Strategies, Related Risks, and Disclosure of Portfolio Holdings

* * * * *

(d) *Portfolio Holdings.* State that a description of the Fund's policies and procedures with respect to the disclosure of the Fund's portfolio securities is available (i) in the Fund's SAI; and (ii) on the Fund's Web site, if applicable.

* * * * *

Item 7. Shareholder Information

(a) * * *

(1) * * *

Instruction. A Fund (other than a Money Market Fund) must provide a brief explanation of the circumstances under which it will use fair value pricing and the effects of using fair value pricing.

* * * * *

(e) *Frequent Purchases and Redemptions of Fund Shares.*

(1) Describe the risks, if any, that frequent purchases and redemptions of Fund shares by Fund shareholders may present for other shareholders of the Fund.

(2) State whether or not the Fund's board of directors has adopted policies and procedures with respect to frequent purchases and redemptions of Fund shares by Fund shareholders.

(3) If the Fund's board of directors has not adopted any such policies and procedures, provide a statement of the specific basis for the view of the board that it is appropriate for the Fund not to have such policies and procedures.

(4) If the Fund's board of directors has adopted any such policies and procedures, describe those policies and procedures, including:

(i) Whether or not the Fund discourages frequent purchases and redemptions of Fund shares by Fund shareholders;

(ii) Whether or not the Fund accommodates frequent purchases and redemptions of Fund shares by Fund shareholders;

(iii) Any policies and procedures of the Fund for deterring frequent purchases and redemptions of Fund shares by Fund shareholders, including any restrictions imposed by the Fund to prevent or minimize frequent purchases and redemptions. Describe each of these policies, procedures, and restrictions with specificity. Indicate whether each of these restrictions applies uniformly in all cases or whether the restriction will not be imposed under certain circumstances. Describe with specificity the circumstances under which any restriction will not be imposed. Include a description of the following restrictions, if applicable:

(A) Any restrictions on the volume or number of purchases, redemptions, or exchanges that a shareholder may make within a given time period;

(B) Any exchange fee or redemption fee;

(C) Any costs or administrative or other fees or charges that are imposed on shareholders deemed to be engaged in frequent purchases and redemptions of Fund shares, together with a description of the circumstances under which such costs, fees, or charges will be imposed;

(D) Any minimum holding period that is imposed before an investor may make exchanges into another Fund;

(E) Any restrictions imposed on exchange or purchase requests submitted by overnight delivery, electronically, or via facsimile or telephone; and

(F) Any right of the Fund to reject, limit, delay, or impose other conditions on exchanges or purchases or to terminate or otherwise limit accounts based on a history of frequent purchases and redemptions of Fund shares, including the circumstances under which such right will be exercised; and

(iv) Any policies and procedures of the Fund for detecting frequent purchases and redemptions of Fund shares, including any arrangements for detecting frequent purchases and redemptions of Fund shares through intermediaries, such as investment advisers, broker-dealers, transfer agents, and third party administrators.

(5) Describe any arrangements with any person to permit frequent purchases and redemptions of Fund shares, including the identity of the persons permitted to engage in frequent purchases and redemptions pursuant to such arrangements, and any compensation or other consideration received by the Fund, its investment adviser, or any other party pursuant to such arrangements.

Instruction. The consideration required to be disclosed by Item 7(e)(5) includes any agreement to maintain assets in the Fund or in other investment companies or accounts managed by the investment adviser or by any affiliated person of the investment adviser.

* * * * *

(g) *Separate Disclosure Document.* A Fund may omit from the prospectus information about purchase and redemption procedures required by Items 7(b)–(d) and 8(a)(2), other than information that is also required by Item 7(e), and provide it in a separate document if the Fund:

* * * * *

Item 12. Description of the Fund and Its Investments and Risks

* * * * *

(f) *Disclosure of Portfolio Holdings.*

(1) Describe the Fund's policies and procedures with respect to the disclosure of the Fund's portfolio securities to any person, including:

(i) How the policies and procedures apply to disclosure to different categories of persons, including individual investors, institutional investors, intermediaries that distribute the Fund's shares, third-party service providers, rating and ranking organizations, and affiliated persons of the Fund;

(ii) Any conditions or restrictions placed on the use of information about portfolio securities that is disclosed, including any requirement that the information be kept confidential or prohibitions on trading based on the information, and any procedures to monitor the use of this information;

(iii) The frequency with which information about portfolio securities is disclosed, and the length of the lag, if any, between the date of the information and the date on which the information is disclosed;

(iv) Any policies and procedures with respect to the receipt of compensation or other consideration by the Fund, its investment adviser, or any other party in connection with the disclosure of information about portfolio securities;

(v) The persons who may authorize disclosure of the Fund's portfolio securities;

(vi) The procedures that the Fund uses to ensure that disclosure of information about portfolio securities is in the best interests of Fund shareholders, including procedures to address conflicts between the interests of Fund shareholders, on the one hand, and those of the Fund's investment adviser; principal underwriter; or any affiliated person of the Fund, its investment adviser, or its principal underwriter, on the other; and

(vii) The manner in which the board of directors exercises oversight of disclosure of the Fund's portfolio securities.

Instruction. Include any policies and procedures of the Fund's investment adviser, or any other third party, that the Fund uses, or that are used on the Fund's behalf, with respect to the disclosure of the Fund's portfolio securities to any person.

(2) Describe any ongoing arrangements to make available information about the Fund's portfolio securities to any person, including the identity of the persons who receive information pursuant to such arrangements. Describe any compensation or other consideration received by the Fund, its investment adviser, or any other party in connection with such arrangements, and provide the information described by paragraphs (f)(1)(ii), (iii), and (v) of Item 12 with respect to such arrangements.

Instruction. The consideration required to be disclosed by Item 12(f)(2) includes any agreement to maintain assets in the Fund or in other investment companies or accounts managed by the investment adviser or by any affiliated person of the investment adviser.

* * * * *

4. Form N–3 (referenced in §§ 239.17a and 274.11b) is amended by:

a. In Item 5, adding paragraph (f).

b. In Item 8, adding paragraph (e).

c. In Item 11, adding an Instruction to paragraph (c).

d. In Item 19, adding paragraph (e).

The additions read as follows:

Form N–3

* * * * *

Item 5. General Description of Registrant and Insurance Company

* * * * *

(f) State that a description of the Registrant's policies and procedures with respect to the disclosure of the Registrant's portfolio securities is available (A) in the Registrant's Statement of Additional Information; and (B) on the Registrant's Web site, if applicable.

* * * * *

Item 8. General Description of Variable Annuity Contracts

* * * * *

(e)(i) Describe the risks, if any, that frequent transfers of contract value among sub-accounts of the Registrant may present for other contractowners and other persons (*e.g.*, participants, annuitants, or beneficiaries) who have material rights under the variable annuity contracts.

(ii) State whether or not the Registrant's board of managers has adopted policies and procedures with respect to frequent transfers of contract value among sub-accounts of the Registrant.

(iii) If the Registrant's board of managers has not adopted any such policies and procedures, provide a statement of the specific basis for the view of the board that it is appropriate for the Registrant not to have such policies and procedures.

(iv) If the Registrant's board of managers has adopted any such policies and procedures, describe those policies and procedures, including:

(A) Whether or not the Registrant discourages frequent transfers of contract value among sub-accounts of the Registrant;

(B) Whether or not the Registrant accommodates frequent transfers of contract value among sub-accounts of the Registrant;

(C) Any policies and procedures of the Registrant for deterring frequent transfers of contract value among sub-accounts of the Registrant, including any restrictions imposed by the Registrant to prevent or minimize frequent transfers. Describe each of these policies, procedures, and restrictions with specificity. Indicate whether each of these restrictions applies uniformly in all cases or whether the restriction will not be imposed under certain circumstances. Describe with specificity the circumstances under which any restriction will not be imposed. Include a description of the following restrictions, if applicable:

(*1*) Any restrictions on the volume or number of transfers that may be made within a given time period;

(*2*) Any transfer fee;

(*3*) Any costs or administrative or other fees or charges that are imposed on persons deemed to be engaged in frequent transfers of contract value among sub-accounts of the Registrant, together with a description of the circumstances under which such costs, fees, or charges will be imposed;

(*4*) Any minimum holding period that is imposed before a transfer may be made from a sub-account into another sub-account of the Registrant;

(*5*) Any restrictions imposed on transfer requests submitted by overnight delivery, electronically, or via facsimile or telephone; and

(*6*) Any right of the Registrant to reject, limit, delay, or impose other conditions on transfers or to terminate or otherwise limit contracts based on a history of frequent transfers among sub-accounts, including the circumstances under which such right will be exercised; and

(D) Any policies and procedures of the Registrant for detecting frequent transfers of contract value among sub-accounts of the Registrant.

(v) Describe any arrangements with any person to permit frequent transfers of contract value among sub-accounts of the Registrant, including the identity of the persons permitted to engage in frequent transfers pursuant to such arrangements, and any compensation or other consideration received by the Registrant, its investment adviser, the Insurance Company, or any other party pursuant to such arrangements.

Instruction:

The consideration required to be disclosed by Item 8(e)(v) includes any agreement to maintain assets in the Registrant or in other investment companies or accounts managed or sponsored by the investment adviser, the Insurance Company, or any affiliated person of the investment adviser or the Insurance Company.

* * * * *

Item 11. Purchases and Contract Value

* * * * *

(c) * * *

Instruction:

A Registrant (other than a money market fund or sub-account) must provide a brief explanation of the

circumstances under which it will use fair value pricing and the effects of using fair value pricing.

* * * * *

Item 19. Investment Objectives and Policies

* * * * *

(e)(i) Describe the Registrant's policies and procedures with respect to the disclosure of the Registrant's portfolio securities to any person, including:

(A) How the policies and procedures apply to disclosure to different categories of persons, including contractowners, participants, annuitants, beneficiaries, institutional investors, intermediaries that distribute the Registrant's contracts, third-party service providers, rating and ranking organizations, and affiliated persons of the Registrant;

(B) Any conditions or restrictions placed on the use of information about portfolio securities that is disclosed, including any requirement that the information be kept confidential or prohibitions on trading based on the information, and any procedures to monitor the use of this information;

(C) The frequency with which information about portfolio securities is disclosed, and the length of the lag, if any, between the date of the information and the date on which the information is disclosed;

(D) Any policies and procedures with respect to the receipt of compensation or other consideration by the Registrant, its investment adviser, the Insurance Company, or any other party in connection with the disclosure of information about portfolio securities;

(E) The persons who may authorize disclosure of the Registrant's portfolio securities;

(F) The procedures that the Registrant uses to ensure that disclosure of information about portfolio securities is in the best interests of contractowners, participants, annuitants, and beneficiaries, including procedures to address conflicts between the interests of such persons, on the one hand, and those of the Registrant's investment adviser or principal underwriter; the Insurance Company; or any affiliated person of the Registrant, its investment adviser or principal underwriter; or the Insurance Company, on the other; and

(G) The manner in which the board of managers exercises oversight of disclosure of the Registrant's portfolio securities.

Instruction:

Include any policies and procedures of the Registrant's investment adviser, or any other third party, that the Registrant uses, or that are used on the Registrant's behalf, with respect to the disclosure of the Registrant's portfolio securities to any person.

(ii) Describe any ongoing arrangements to make available information about the Registrant's portfolio securities to any person, including the identity of the persons who receive information pursuant to such arrangements. Describe any compensation or other consideration received by the Registrant, its investment adviser, the Insurance Company, or any other party in connection with such arrangements, and provide the information described by paragraphs (e)(i)(B), (C), and (E) of Item 19 with respect to such arrangements.

Instruction:

The consideration required to be disclosed by Item 19(e)(ii) includes any agreement to maintain assets in the Registrant or in other investment companies or accounts managed or sponsored by the investment adviser, the Insurance Company, or any affiliated person of the investment adviser or the Insurance Company.

* * * * *

5. Item 7 of Form N–4 (referenced in §§ 239.17b and 274.11c) is amended by adding paragraph (e), to read as follows:

Form N–4

* * * * *

Item 7. General Description of Variable Annuity Contracts

* * * * *

(e)(i) Describe the risks, if any, that frequent transfers of contract value among sub-accounts of the Registrant may present for other contractowners and other persons (*e.g.*, participants, annuitants, or beneficiaries) who have material rights under the variable annuity contracts.

(ii) State whether or not the Registrant or depositor has policies and procedures with respect to frequent transfers of contract value among sub-accounts of the Registrant.

(iii) If neither the Registrant nor the depositor has any such policies and procedures, provide a statement of the specific basis for the view of the depositor that it is appropriate for the Registrant and depositor not to have such policies and procedures.

(iv) If the Registrant or depositor has any such policies and procedures, describe those policies and procedures, including:

(A) Whether or not the Registrant or depositor discourages frequent transfers of contract value among sub-accounts of the Registrant;

(B) Whether or not the Registrant or depositor accommodates frequent transfers of contract value among sub-accounts of the Registrant;

(C) Any policies and procedures of the Registrant or depositor for deterring frequent transfers of contract value among sub-accounts of the Registrant, including any restrictions imposed by the Registrant or depositor to prevent or minimize frequent transfers. Describe each of these policies, procedures, and restrictions with specificity. Indicate whether each of these restrictions applies uniformly in all cases or whether the restriction will not be imposed under certain circumstances. Describe with specificity the circumstances under which any restriction will not be imposed. Include a description of the following restrictions, if applicable:

(*1*) Any restrictions on the volume or number of transfers that may be made within a given time period;

(*2*) Any transfer fee;

(*3*) Any costs or administrative or other fees or charges that are imposed on persons deemed to be engaged in frequent transfers of contract value among sub-accounts of the Registrant, together with a description of the circumstances under which such costs, fees, or charges will be imposed;

(*4*) Any minimum holding period that is imposed before a transfer may be made from a sub-account into another sub-account of the Registrant;

(*5*) Any restrictions imposed on transfer requests submitted by overnight delivery, electronically, or via facsimile or telephone; and

(*6*) Any right of the Registrant or depositor to reject, limit, delay, or impose other conditions on transfers or to terminate or otherwise limit contracts based on a history of frequent transfers among sub-accounts, including the circumstances under which such right will be exercised; and

(D) Any policies and procedures of the Registrant or depositor for detecting frequent transfers of contract value among sub-accounts of the Registrant.

(v) Describe any arrangements with any person to permit frequent transfers of contract value among sub-accounts of the Registrant, including the identity of the persons permitted to engage in frequent transfers pursuant to such arrangements, and any compensation or other consideration received by the Registrant, the depositor, or any other party pursuant to such arrangements.

Instruction:

The consideration required to be disclosed by Item 7(e)(v) includes any agreement to maintain assets in the Registrant or in other investment companies or accounts managed or sponsored by the depositor, any investment adviser of a portfolio company, or any affiliated person of the depositor or of any such investment adviser.

* * * * *

6. Item 6 of Form N–6 (referenced in §§ 239.17c and 274.11d) is amended by adding paragraph (f), to read as follows:

Form N–6

* * * * *

Item 6. General Description of Contracts

* * * * *

(f) *Frequent Transfers among Sub-accounts of the Registrant.*

(1) Describe the risks, if any, that frequent transfers of Contract value among sub-accounts of the Registrant may present for other Contractowners and other persons (*e.g.*, the insured or beneficiaries) who have material rights under the Contract.

(2) State whether or not the Registrant or Depositor has policies and procedures with respect to frequent transfers of Contract value among sub-accounts of the Registrant.

(3) If neither the Registrant nor the Depositor has any such policies and procedures, provide a statement of the specific basis for the view of the Depositor that it is appropriate for the Registrant and Depositor not to have such policies and procedures.

(4) If the Registrant or Depositor has any such policies and procedures, describe those policies and procedures, including:

(i) Whether or not the Registrant or Depositor discourages frequent transfers of Contract value among sub-accounts of the Registrant;

(ii) Whether or not the Registrant or Depositor accommodates frequent transfers of Contract value among sub-accounts of the Registrant;

(iii) Any policies and procedures of the Registrant or Depositor for deterring frequent transfers of Contract value among sub-accounts of the Registrant, including any restrictions imposed by the Registrant or Depositor to prevent or minimize frequent transfers. Describe each of these policies, procedures, and restrictions with specificity. Indicate whether each of these restrictions applies uniformly in all cases or whether the restriction will not be imposed under certain circumstances. Describe with specificity the circumstances under which any restriction will not be imposed. Include a description of the following restrictions, if applicable:

(A) Any restrictions on the volume or number of transfers that may be made within a given time period;

(B) Any transfer fee;

(C) Any costs or administrative or other fees or charges that are imposed on persons deemed to be engaged in frequent transfers of Contract value among sub-accounts of the Registrant, together with a description of the circumstances under which such costs, fees, or charges will be imposed;

(D) Any minimum holding period that is imposed before a transfer may be made from a sub-account into another sub-account of the Registrant;

(E) Any restrictions imposed on transfer requests submitted by overnight delivery, electronically, or via facsimile or telephone; and

(F) Any right of the Registrant or Depositor to reject, limit, delay, or impose other conditions on transfers or to terminate or otherwise limit Contracts based on a history of frequent transfers among sub-accounts, including the circumstances under which such right will be exercised; and

(iv) Any policies and procedures of the Registrant or Depositor for detecting frequent transfers of Contract value among sub-accounts of the Registrant.

(5) Describe any arrangements with any person to permit frequent transfers of Contract value among sub-accounts of the Registrant, including the identity of the persons permitted to engage in frequent transfers pursuant to such arrangements, and any compensation or other consideration received by the Registrant, the Depositor, or any other party pursuant to such arrangements.

Instruction. The consideration required to be disclosed by Item 6(f)(5) includes any agreement to maintain assets in the Registrant or in other investment companies or accounts managed or sponsored by the Depositor, any investment adviser of a Portfolio Company, or any affiliated person of the Depositor or of any such investment adviser.

* * * * *

Dated: December 11, 2003.

By the Commission.

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. 03–31070 Filed 12–16–03; 8:45 am]

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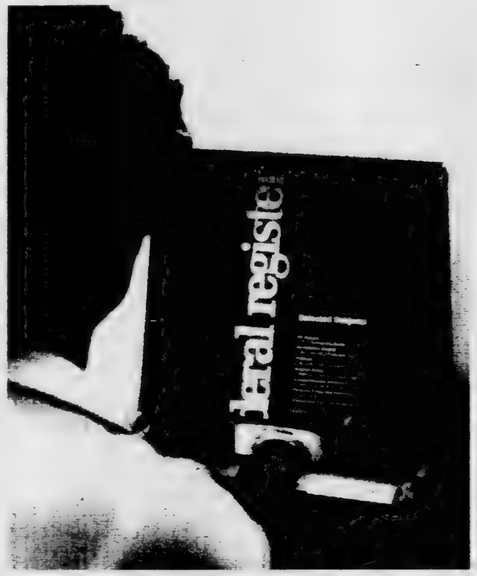
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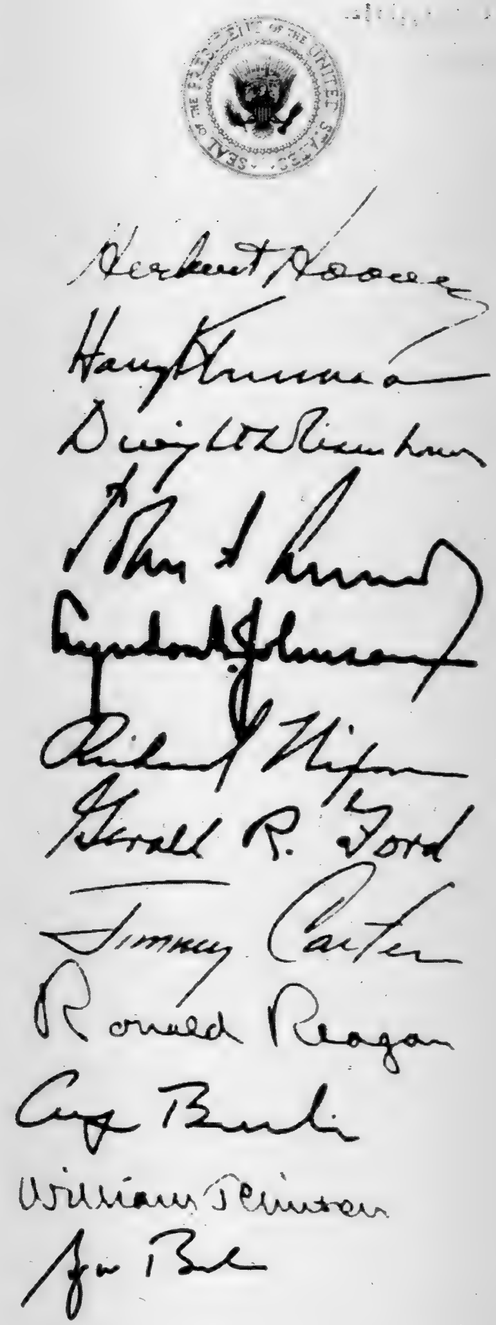
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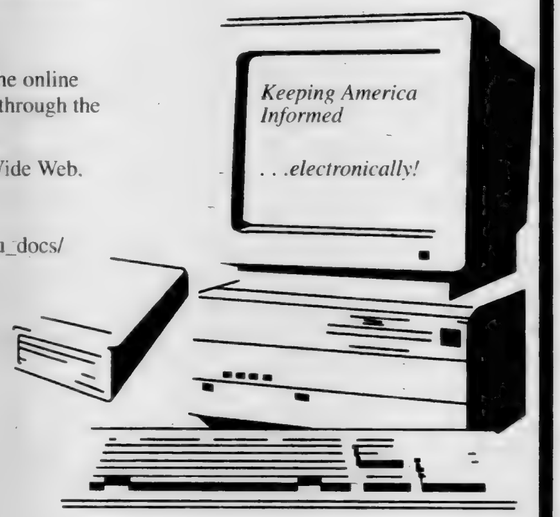
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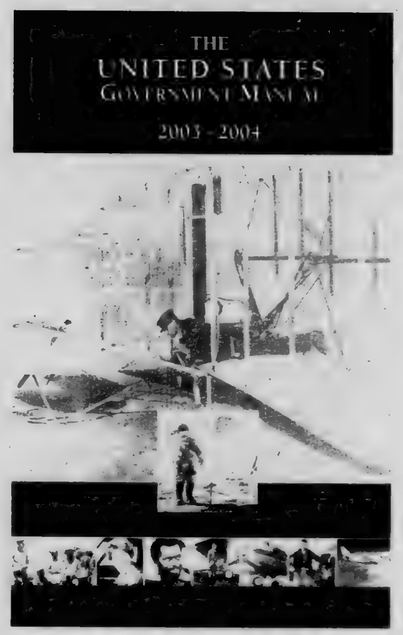
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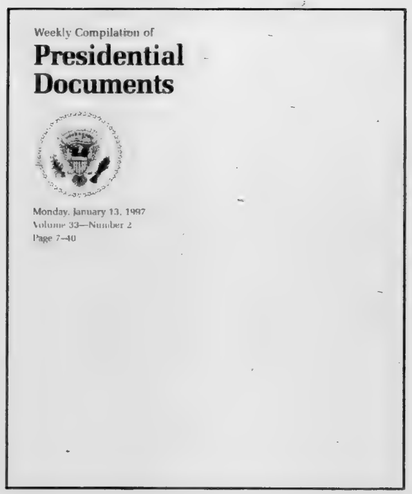
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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 319

[Docket No. 03–067–1]

Ports of Entry for Certain Plants and Plant Products

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Direct final rule.

SUMMARY: We are amending the regulations governing the importation of nursery stock and other articles by designating the ports of Atlanta, Georgia, and Agana, Guam, as plant inspection stations. The addition of the two plant inspection stations will help reduce transportation time and costs to importers who must currently import plants through inspection stations that are considerably distant from the importers' facilities.

DATES: This rule will be effective on February 17, 2004, unless we receive written adverse comments or written notice of intent to submit adverse comments on or before January 20, 2004. If we receive written adverse comments or written notice of intent to submit adverse comments, we will publish a document in the **Federal Register** withdrawing this rule before the effective date.

ADDRESSES: You may submit comments or notice of intent to submit adverse comments by postal mail/commercial delivery or by e-mail. If you use postal mail/commercial delivery, please send four copies (an original and three copies) to: Docket No. 03–067–1, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 03–067–1. If you use e-mail, address your comment to *regulations@aphis.usda.gov*. Your comment must be contained in the body of your message; do not send attached files. Please include your name and address in your message and "Docket No. 03–067–1" on the subject line.

You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS dockets, are available on the Internet at *http://www.aphis.usda.gov/ppd/rad/webrepor.html*.

FOR FURTHER INFORMATION CONTACT: Mr. James A. Petit de Mange, Senior Staff Officer, Quarantine Policy, Analysis and Support, PPQ, APHIS, 4700 River Road Unit 60, Riverdale, MD 20737–1232; (301) 734–8295.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 7 CFR part 319 prohibit or restrict the importation of certain plants and plant products into the United States to prevent the introduction of plant pests. The regulations contained in "Subpart—Nursery Stock, Plants, Roots, Bulbs, Seeds, and Other Plant Products." §§ 319.37 through 319.37–14 (referred to below as the regulations), restrict, among other things, the importation of living plants, plant parts, and seeds for propagation.

In § 319.37–14 of the regulations, paragraph (b) contains a list of approved ports of entry through which restricted articles may be imported into the United States. Restricted articles that do not require a permit may be imported through any of the approved ports of entry; restricted articles that do require a permit, because of their greater plant pest and disease risk, may be imported only through ports equipped with special inspection and treatment facilities. These ports, known as plant inspection stations, are indicated on the list by an asterisk.

Currently, 14 plant inspection stations operate at or near many major U.S. ports and airports. These facilities are designed for inspection and, in some cases, treatment of imported plants and seeds. Plant Protection and Quarantine (PPQ) staffs plant inspection stations with officers who specialize in, among other things, entomology, plant pathology, and botany.

At plant inspection stations, PPQ officers inspect imported plants and seeds to ensure that they are free from plant pests and diseases that are known not to occur in the United States and that they otherwise comply with U.S. import regulations. When pests or diseases are detected, PPQ may require that the planting material be treated, exported, or destroyed.

In order to be designated as a plant inspection station, a building must have adequate space for inspection areas to be set up, laboratory facilities for pest and disease identification, provide easy access by shipments for inspection, and, in most cases, contain various treatment facilities. We have determined that the facilities in Atlanta, GA, and Agana, GU, satisfy the criteria for designation as plant inspection stations.

Therefore, in accordance with the procedures explained below under "Dates," this rule amends the list of ports of entry in § 319.37–14(b) by replacing the current entries for Atlanta, GA, and Agana, GU, on the list and designating those ports as plant inspection stations.

Dates

We are publishing this rule without a prior proposal because we view this action as noncontroversial and anticipate no adverse public comment. This rule will be effective, as published in this document, on February 17, 2004, unless we receive written adverse comments or written notice of intent to submit adverse comments on or before January 20, 2004.

Adverse comments are comments that suggest the rule should not be adopted or that suggest the rule should be changed.

If we receive written adverse comments or written notice of intent to submit adverse comments, we will publish a document in the **Federal Register** withdrawing this rule before the effective date. We will then publish a proposed rule for public comment.

As discussed above, if we receive no written adverse comments or written notice of intent to submit adverse comments within 30 days of publication of this direct final rule, this direct final rule will become effective 60 days following its publication. We will publish a document in the **Federal Register**, before the effective date of this direct final rule, confirming that it is effective on the date indicated in this document.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. For this action, the Office of Management and Budget has waived its review under Executive Order 12866.

This proposed rule would add Atlanta, GA, and Agana, GU, as ports of entry through which individuals and companies would be able to import nursery stock. This action would save business costs to concerned individuals and companies, making the routing of nursery stock materials to other authorized entry ports unnecessary.

We are amending the regulations governing the importation of nursery stock and other articles by designating the ports of Atlanta, Georgia, and Agana, Guam, as plant inspection stations. The addition of the two plant inspection stations will help reduce transportation time and costs to importers who must currently import plants through inspection stations that are considerably distant from the importers' facilities.

The United States imported about 700 million plant units in 2002, about 4.6 percent over the previous year and 21 percent above 2000 level.[1] Nursery stock imports were valued at $591 million in 2002, an increase of about 135 percent over a decade ago. The major sources are Canada (50.4 percent), Netherlands (25.5 percent), Costa Rica (3.9 percent), Mexico (2.7 percent), and Taiwan (2.2 percent). Nursery stock exports were valued at $250 million in 2002, about 13 percent over 1992 total.[2]

Planting seeds are imported from many countries, with a few countries accounting for the major proportion of U.S. total planting seed imports. The leading suppliers are Chile ($105.8 million), Canada ($105 million), the Netherlands ($36.5 million), Argentina ($21.2 million), China ($17.9 million), Japan ($14 million), Finland ($11.1 million), Australia ($8.3 million), Denmark ($7.5 million), and India ($7.1 million) in 2001.[3] These 10 countries accounted for $334.4 million, or about 84 percent, of total U.S. planting seed imports.

Nursery Stock Industry

The availability of good quality nursery stock and seeds contributes to domestic production of food grains, field crops, cotton, oil crops, vegetables, herbs, flowers, trees, and shrubs. Presently, imported nursery stock and seeds can enter the United States with a phytosanitary certificate through 14 approved plant inspection stations. Atlanta, GA, and Agana, GU, though not listed as approved Federal plant inspection stations, currently serve as ports of entry for other restricted articles that do not require a permit. The new facilities in Georgia and Guam have the capacity and resources to handle the importation of nursery stock and seeds, which will allow them to be listed as plant inspection stations.

This action may result in reduced costs for importers by making the routing of nursery stock materials through another plant inspection station unnecessary when the materials are destined for the regions of Atlanta, GA, or Agana, GU. Importers and distributers both in Atlanta, GA, and Agana, GU, should benefit from transportation cost savings and reduced plant injury that can result during transport.

The Agana International Airport serves Guam and surrounding islands, which are growing tourist centers. Currently, most of the nursery stock imported into Guam is routed through Hawaii. Very little is imported from Asian sources because of the time and cost involved in shipping to Federal plant inspection stations in Hawaii and then to Guam. Additionally, plant mortality is high due to the additional time involved routing through Honolulu, HI, which is a major factor apart from the shipping cost. The direct air cargo cost from Narita, Japan, to Honolulu, HI, is $11.96 per kilogram and from Hawaii to Guam is $6.65 per kilogram for a total routing cost from Narita to Guam of $18.61 per kilogram. The direct air cargo cost from Narita to Guam is $7.04 per kilogram. Thus, as Agana becomes an approved Federal plant inspection station, importers will benefit from direct importation of nursery stock materials from Japan, Taiwan, China, the Philippines, and other Asian countries through reduced transportation costs. Presently there are 20 establishments engaged in nursery stock trade in Guam. The number of establishments that import nursery stock may increase because of the reduced transportation costs, reduced time, and lower probability of damaged plants.

The Hartsfield Atlanta International Airport is becoming a major air cargo hub. It is an entry port for other restricted articles that do not require a permit and is much closer to most nursery stock importers from the surrounding areas and States (northern Alabama, North Carolina, South Carolina, southern Virginia, Kentucky, and Tennessee) than any of the other closest Federal plant inspection stations in Miami, FL, New Orleans, LA, and Orlando, FL. There are about 470 retail nursery companies in Georgia alone, of which 141 are in metropolitan areas. Nursery retailers from the surrounding areas that import products would benefit from reduced routing costs and reduced mortality of plants that usually occurs from multiple box openings for inspection and from the longer time elapsed between the place of origin and the final destination.

Impact on Small Entities

The Regulatory Flexibility Act requires that agencies consider the economic impact of their rules on small entities. The Small Business Administration (SBA) has established the size standards for determining which economic entities meet the definition of a small firm. A retail nursery or lawn and garden store (NAICS code 444220)[4] is defined as a small business if it employs 100 or fewer workers. Resort hotels, golf courses, and local governments that use nursery stock for parks and landscaping could be affected. Additionally, specialized groups such as horticultural societies, arboreta, and individual plant hobbyists who import and exchange nursery stock and small lots of seed could also be affected.

Nationally, there are 6,845 establishments that are engaged in selling trees, shrubs, other plants, seeds, bulbs, mulch, and related products (NAICS 444220). About 470 of these are in Georgia, including the Atlanta metropolitan area. There are 20 companies currently engaged in nursery stock trade in Guam. Over 99 percent are small entities. However, specialized groups such as horticultural societies, arboreta, several resort hotels, golf courses, and local governments that use imported plants for landscaping projects, and individual hobbyists who collect, grow, exhibit, preserve, exchange, and donate special nursery stocks and seeds could also be affected. The exact present size and number of these entities are difficult to determine.

Since Atlanta, GA, and Agana, GU, already serve as ports of entry for other restricted articles and have the capacity and resources to handle the importation of nursery stock and seeds, no effect on Federal Government processing of permits and inspection of imported materials is expected. Also, no effects on other Federal agencies and State and local governments are expected. Since imports of these materials are a small fraction of the total domestic supply of nursery stock and seeds, no substantial change in supply and price is expected.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (*See* 7 CFR part 3015, subpart V.)

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 7 CFR Part 319

Bees, Coffee, Cotton, Fruits, Honey, Imports, Logs, Nursery stock, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Rice, Vegetables.

■ Accordingly, 7 CFR part 319 is amended as follows:

PART 319—FOREIGN QUARANTINE NOTICES

■ 1. The authority citation for part 319 continues to read as follows:

Authority: 7 U.S.C. 450 and 7701–7772; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.3.

■ 2. In § 319.37–14, paragraph (b), the list of ports of entry is amended by revising the entries for Atlanta, Georgia, and Agana, Guam, to read as follows:

§ 319.37–14 Ports of entry.

* * * * *

(b) * * *

List of Ports of Entry

* * * * *

Georgia

Atlanta

Hartsfield Atlanta International Airport, Atlanta, GA 30320. * * *

Guam

Agana

Guam International Airport, Tamuning, GU 96931.

* * * * *

Done in Washington, DC, this 11th day of December, 2003.

Bobby R. Acord,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 03–31203 Filed 12–17–03; 8:45 am]

BILLING CODE 3410–34–P

[1] USDA/APHIS/PPQ, WADS Database, June 2003.

[2] USDA/ERS, *Foreign Agricultural Trade of the United States*, June 30, 2003.

[3] USDA/FAS, FAS Online: U.S. Planting Seed Trade Archives (*http://www.fas.usda.gov/seed_arc.html*)

[4] U.S. Census Bureau, 1997 Economic Census, Wholesale Trade-Subject Series, August 2000.

NUCLEAR REGULATORY COMMISSION

10 CFR Part 72

RIN 3150–AH28

List of Approved Spent Fuel Storage Casks: Standardized NUHOMS®–24P, –52B, –61BT, –32PT, and –24PHB Revision

AGENCY: Nuclear Regulatory Commission.

ACTION: Direct final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending its regulations revising the Transnuclear, Inc., Standardized NUHOMS® Horizontal Modular Storage System (Standardized NUHOMS® System) listing within the "List of approved spent fuel storage casks" to include Amendment No. 7 in Certificate of Compliance (CoC) Number 1004. Amendment No. 7 will incorporate changes in support of the Amergen Corporation plans to load damaged fuel and additional fuel types at its Oyster Creek Nuclear Station. Specifically, the amendment will add damaged Boiling Water Reactor spent fuel assemblies and additional fuel types to the authorized contents of the NUHOMS®–61BT Dry Shielded Canister under a general license. In addition, the amendment includes three minor changes to the Technical Specifications to correct inconsistencies and remove irrelevant references.

DATES: The final rule is effective March 2, 2004, unless significant adverse comments are received by January 20, 2004. A significant adverse comment is one which explains why the rule would be inappropriate, including challenges to the rule's underlying premise or approach, or would be ineffective or unacceptable without a change. If the rule is withdrawn, timely notice will be published in the **Federal Register**.

ADDRESSES: You may submit comments by any one of the following methods. Please include the following number (RIN 3150–AH28) in the subject line of your comments. Comments on rulemakings submitted in writing or in electronic form will be made available to the public in their entirety on the NRC rulemaking website. Personal information will not be removed from your comments.

Mail comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, ATTN: Rulemakings and Adjudications Staff.

E-mail comments to: *SECY@nrc.gov*. If you do not receive a reply e-mail confirming that we have received your comments, contact us directly at (301) 415–1966. You may also submit comments via the NRC's rulemaking website at http://ruleforum.llnl.gov. Address questions about our rulemaking website to Carol Gallagher (301) 415–5905; e-mail *cag@nrc.gov*.

Hand deliver comments to: 11555 Rockville Pike, Rockville, Maryland 20852, between 7:30 am and 4:15 pm Federal workdays (telephone (301) 415–1966).

Fax comments to: Secretary, U.S. Nuclear Regulatory Commission at (301) 415–1101.

Publicly available documents related to this rulemaking may be viewed electronically on public computers located at the NRC's Public Document Room (PDR), Public File Area O–1F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland. The PDR reproduction contractor will copy documents for a fee. Selected documents, including comments, can be viewed and downloaded electronically via the NRC rulemaking website at *http://ruleforum.llnl.gov*.

Publicly available documents created or received at the NRC after November 1, 1999, are available electronically at the NRC's Electronic Reading Room at *http://www.nrc.gov/NRC/ADAMS/*

index.html. From this site, the public can gain entry into the NRC's Agencywide Document Access and Management System (ADAMS), which provides text and image files of NRC's public documents. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC PDR Reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr@nrc.gov*. An electronic copy of the proposed CoC, proposed Technical Specifications (TS), and preliminary Safety Evaluation Report (SER) can be found under ADAMS Accession Nos. ML032100773, ML032100775, and ML032100776, respectively.

CoC No. 1004, the revised Conditions for Cask Use and TS, the underlying SER for Amendment No. 7, and the Environmental Assessment (EA) are available for inspection at the NRC Public Document Room, 11555 Rockville Pike, Rockville, MD. Single copies of these documents may be obtained from Jayne McCausland, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–6219, e-mail *jmm2@nrc.gov*.

FOR FURTHER INFORMATION CONTACT: Jayne M. McCausland, telephone (301) 415–6219, e-mail *jmm2@nrc.gov*, of the Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

SUPPLEMENTARY INFORMATION:

Background

Section 218(a) of the Nuclear Waste Policy Act of 1982, as amended (NWPA), requires that "[t]he Secretary [of the Department of Energy (DOE)] shall establish a demonstration program, in cooperation with the private sector, for the dry storage of spent nuclear fuel at civilian nuclear power reactor sites, with the objective of establishing one or more technologies that the [Nuclear Regulatory] Commission may, by rule, approve for use at the sites of civilian nuclear power reactors without, to the maximum extent practicable, the need for additional site-specific approvals by the Commission." Section 133 of the NWPA states, in part, that "[t]he Commission shall, by rule, establish procedures for the licensing of any technology approved by the Commission under Section 218(a) for use at the site of any civilian nuclear power reactor."

To implement this mandate, the NRC approved dry storage of spent nuclear fuel in NRC-approved casks under a general license by publishing a final rule in 10 CFR part 72 entitled, "General License for Storage of Spent Fuel at Power Reactor Sites" (55 FR 29181; July 18, 1990). This rule also established a new Subpart L within 10 CFR part 72, entitled "Approval of Spent Fuel Storage Casks" containing procedures and criteria for obtaining NRC approval of spent fuel storage cask designs. The NRC subsequently issued a final rule on December 22, 1994 (59 FR 65920), that approved the Standardized NUHOMS® System (NUHOMS®–24P and –52B) cask designs and added them to the list of NRC-approved cask designs in § 72.214 as CoC No. 1004. Amendments 3, 5, and 6, respectively, added the –61BT, –32PT, and –24PHB designs to the Standardized NUHOMS® System.

Discussion

On March 29, 2002, and as supplemented on February 14, 2003, and July 10, 2003, the certificate holder, Transnuclear, Inc. (TN), submitted an application to the NRC to amend CoC No. 1004 to incorporate changes in support of the Amergen Corporation plans to load damaged fuel and additional fuel types at its Oyster Creek Nuclear Station. Specifically, the amendment will add damaged Boiling Water Reactor (BWR) spent fuel assemblies and additional fuel types to the authorized contents of the NUHOMS®–61BT Dry Shielded Canister under a general license. In addition, three minor changes to the TS were requested to correct inconsistencies and remove irrelevant references. No other changes to the Standardized NUHOMS® System were requested in this application. The NRC staff performed a detailed safety evaluation of the proposed CoC amendment request and found that an acceptable safety margin is maintained. In addition, the NRC staff has determined that there is still reasonable assurance that public health and safety and the environment will be adequately protected.

This direct final rule revises the Standardized NUHOMS® System listing in § 72.214 by adding Amendment 7 to CoC No. 1004. The amended TS are identified in the NRC staff's SER for Amendment 7.

The amended Standardized NUHOMS® System, when used in accordance with the conditions specified in the CoC, the TS, and NRC regulations, will meet the requirements of part 72; thus, adequate protection of public health and safety will continue to be ensured.

Discussion of Amendments by Section

Section 72.214 List of Approved Spent Fuel Storage Casks

Certificate No. 1004 is revised by adding the effective date of Amendment Number 7.

Procedural Background

This rule is limited to the changes contained in Amendment 7 to CoC No. 1004 and does not include other aspects of the Standardized NUHOMS® System. The NRC is using the "direct final rule procedure" to issue this amendment because it represents a limited and routine change to an existing CoC that is expected to be noncontroversial. Adequate protection of public health and safety continues to be ensured. The amendment to the rule will become effective on March 2, 2004. However, if the NRC receives significant adverse comments by January 20, 2004, then the NRC will publish a document that withdraws this action and will address the comments received in response to the proposed amendments published elsewhere in this issue of the **Federal Register**. A significant adverse comment is a comment which explains why the rule would be inappropriate, including challenges to the rule's underlying premise or approach, or would be ineffective or unacceptable without a change. A comment is adverse and significant if:

(1) The comment opposes the rule and provides a reason sufficient to require a substantive response in a notice-and-comment process. For example, a substantive response is required when:

(A) The comment causes the NRC staff to reevaluate (or reconsider) its position or conduct additional analysis;

(B) The comment raises an issue serious enough to warrant a substantive response to clarify or complete the record; or

(C) The comment raises a relevant issue that was not previously addressed or considered by the NRC staff.

(2) The comment proposes a change or an addition to the rule, and it is apparent that the rule would be ineffective or unacceptable without incorporation of the change or addition.

(3) The comment causes the NRC staff to make a change (other than editorial) to the CoC or TS.

These comments will be addressed in a subsequent final rule. The NRC will not initiate a second comment period on this action. However, if the NRC receives significant adverse comments by January 20, 2004, then the NRC will publish a document that withdraws this action and will address the comments received in response to the proposed amendments published elsewhere in this issue of the **Federal Register**.

Voluntary Consensus Standards

The National Technology Transfer Act of 1995 (Pub. L. 104–113) requires that Federal agencies use technical standards that are developed or adopted by voluntary consensus standards bodies unless the use of such a standard is inconsistent with applicable law or otherwise impractical. In this direct final rule, the NRC would revise the Standardized NUHOMS® System listed in § 72.214 (List of NRC-approved spent fuel storage cask designs). This action does not constitute the establishment of a standard that establishes generally applicable requirements.

Agreement State Compatibility

Under the "Policy Statement on Adequacy and Compatibility of Agreement State Programs" approved by the Commission on June 30, 1997, and published in the **Federal Register** on September 3, 1997 (62 FR 46517), this rule is classified as Compatibility Category "NRC." Compatibility is not required for Category "NRC" regulations. The NRC program elements in this category are those that relate directly to areas of regulation reserved to the NRC by the Atomic Energy Act of 1954, as amended (AEA), or the provisions of Title 10 of the Code of Federal Regulations. Although an Agreement State may not adopt program elements reserved to NRC, it may wish to inform its licensees of certain requirements via a mechanism that is consistent with the particular State's administrative procedure laws, but does not confer regulatory authority on the State.

Plain Language

The Presidential Memorandum dated June 1, 1998, entitled "Plain Language in Government Writing," directed that the Government's writing be in plain language. The NRC requests comments on this direct final rule specifically with respect to the clarity and effectiveness of the language used. Comments should be sent to the address listed under the heading **ADDRESSES** above.

Finding of No Significant Environmental Impact: Availability

Under the National Environmental Policy Act of 1969, as amended, and the NRC regulations in Subpart A of 10 CFR part 51, the NRC has determined that this rule, if adopted, would not be a major Federal action significantly affecting the quality of the human environment and, therefore, an environmental impact statement is not required. The rule would amend the CoC for the Standardized NUHOMS® System within the list of approved spent fuel storage casks that power reactor licensees can use to store spent fuel at reactor sites under a general license by revising the NUHOMS®–61BT to incorporate changes in support of the Amergen Corporation plans to load damaged fuel and additional fuel types at its Oyster Creek Nuclear Station. Specifically, the amendment will add damaged BWR spent fuel assemblies and additional fuel types to the authorized contents of the NUHOMS®–61BT Dry Shielded Canister. In addition, the amendment includes three minor changes to the TS to correct inconsistencies and remove irrelevant references. The environmental assessment (EA) and finding of no significant impact on which this determination is based are available for inspection at the NRC Public Document Room, 11555 Rockville Pike, Rockville, MD. Single copies of the EA and finding of no significant impact are available from Jayne M. McCausland, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–6219, email *jmm2@nrc.gov*.

Paperwork Reduction Act Statement

This direct final rule does not contain a new or amended information collection requirement subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). Existing requirements were approved by the Office of Management and Budget, Approval Number 3150–0132.

Public Protection Notification

The NRC may not conduct or sponsor, and a person is not required to respond to, a request for information or an information collection requirement unless the requesting document displays a currently valid OMB control number.

Regulatory Analysis

On July 18, 1990 (55 FR 29181), the NRC issued an amendment to 10 CFR part 72 to provide for the storage of spent nuclear fuel under a general license in cask designs approved by the NRC. Any nuclear power reactor licensee can use NRC-approved cask designs to store spent nuclear fuel if it notifies the NRC in advance, spent fuel is stored under the conditions specified in the cask's CoC, and the conditions of the general license are met. A list of NRC-approved cask designs is contained in § 72.214. On December 22, 1994 (59 FR 65920), the NRC issued an amendment to part 72 that approved the Standardized NUHOMS® System (NUHOMS®–24P and –52B) by adding it to the list of NRC-approved cask designs in § 72.214. Amendments 3, 5, and 6, respectively, added the –61BT, –32PT,and –24PHB cask designs to the Standardized NUHOMS® System. On March 29, 2002, and as supplemented on February 14, 2003, and July 10, 2003, the certificate holder, Transnuclear, Inc. (TN), submitted an application to the NRC to amend CoC No. 1004 to incorporate changes in support of the Amergen Corporation plans to load damaged fuel and additional fuel types at its Oyster Creek Nuclear Station. Specifically, the amendment will add damaged BWR spent fuel assemblies and additional fuel types to the authorized contents of the NUHOMS®–61BT Dry Shielded Canister under a general license. In addition, the amendment includes three minor changes to the TS to correct inconsistencies and remove irrelevant references.

The alternative to this action is to withhold approval of this amended cask system design and issue an exemption to the general license for each utility that decides to use the amended cask system design. This alternative would cost both the NRC and the utilities more time and money because each utility would have to pursue an exemption.

Approval of the direct final rule will eliminate this problem and is consistent with previous NRC actions. Further, the direct final rule will have no adverse effect on public health and safety. This direct final rule has no significant identifiable impact or benefit on other Government agencies. Based on this discussion of the benefits and impacts of the alternatives, the NRC concludes that the requirements of the direct final rule are commensurate with the NRC's responsibilities for public health and safety and the common defense and security. No other available alternative is believed to be as satisfactory, and thus, this action is recommended.

Regulatory Flexibility Certification

In accordance with the Regulatory Flexibility Act of 1980 [5 U.S.C. 605(b)], the NRC certifies that this rule will not, if issued, have a significant economic impact on a substantial number of small entities. This direct final rule affects only the licensing and operation of nuclear power plants, independent spent fuel storage facilities, and Transnuclear, Inc. The companies that own these plants do not fall within the scope of the definition of "small entities" set forth in the Regulatory Flexibility Act or the Small Business Size Standards set out in regulations

issued by the Small Business Administration at 13 CFR part 121.

Backfit Analysis

The NRC has determined that the backfit rule (10 CFR 50.109 or 10 CFR 72.62) does not apply to this direct final rule because this amendment does not involve any provisions that would impose backfits as defined. Therefore, a backfit analysis is not required.

Small Business Regulatory Enforcement Fairness Act

In accordance with the Small Business Regulatory Enforcement Fairness Act of 1996, the NRC has determined that this action is not a major rule and has verified this determination with the Office of Information and Regulatory Affairs, Office of Management and Budget.

List of Subjects in 10 CFR Part 72

Administrative practice and procedure, Criminal penalties, Manpower training programs, Nuclear materials, Occupational safety and health, Penalties, Radiation protection, Reporting and recordkeeping requirements, Security measures, Spent fuel, Whistleblowing.

■ For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 552 and 553; the NRC is adopting the following amendments to 10 CFR part 72.

PART 72—LICENSING REQUIREMENTS FOR THE INDEPENDENT STORAGE OF SPENT NUCLEAR FUEL, HIGH-LEVEL RADIOACTIVE WASTE, AND REACTOR-RELATED WASTE GREATER THAN CLASS C WASTE

■ 1. The authority citation for part 72 continues to read as follows:

Authority: Secs. 51, 53, 57, 62, 63, 65, 69, 81, 161, 182, 183, 184, 186, 187, 189, 68 Stat. 929, 930–932, 933, 934, 935, 948, 953, 954, 955, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2071, 2073, 2077, 2092, 2093, 2095, 2099, 2111, 2201, 2232, 2233, 2234, 2236, 2237, 2238, 2282); sec. 274, Pub. L. 86–373, 73 Stat. 688, as amended (42 U.S.C. 2021); sec. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846); Pub. L. 95–601, sec. 10, 92 Stat. 2951 as amended by Pub. L. 102–486, sec. 7902, 106 Stat. 3123 (42 U.S.C. 5851); sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332); secs. 131, 132, 133, 135, 137, 141, Pub. L. 97–425, 96 Stat. 2229, 2230, 2232, 2241, sec. 148, Pub. L. 100–203, 101 Stat. 1330–235 (42 U.S.C. 10151, 10152, 10153, 10155, 10157, 10161, 10168).

Section 72.44(g) also issued under secs. 142(b) and 148(c), (d), Pub. L. 100–203, 101 Stat. 1330–232, 1330–236 (42 U.S.C. 10162(b), 10168(c),(d)). Section 72.46 also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239); sec. 134, Pub. L. 97–425, 96 Stat. 2230 (42 U.S.C. 10154). Section 72.96(d) also issued under sec. 145(g), Pub. L. 100–203, 101 Stat. 1330–235 (42 U.S.C. 10165(g)). Subpart J also issued under secs. 2(2), 2(15), 2(19), 117(a), 141(h), Pub. L. 97–425, 96 Stat. 2202, 2203, 2204, 2222, 2244 (42 U.S.C. 10101, 10137(a), 10161(h)). Subparts K and L are also issued under sec. 133, 98 Stat. 2230 (42 U.S.C. 10153) and sec. 218(a), 96 Stat. 2252 (42 U.S.C. 10198).

■ 2. In § 72.214, Certificate of Compliance 1004 is revised to read as follows:

§ 72.214 List of approved spent fuel storage casks.

* * * * *

Certificate Number: 1004.

Initial Certificate Effective Date: January 23, 1995.

Amendment Number 1 Effective Date: April 27, 2000.

Amendment Number 2 Effective Date: September 5, 2000.

Amendment Number 3 Effective Date: September 12, 2001.

Amendment Number 4 Effective Date: February 12, 2002.

Amendment Number 5 Effective Date: [Reserved].

Amendment Number 6 Effective Date: December 22, 2003.

Amendment Number 7 Effective Date: March 2, 2004.

SAR Submitted by: Transnuclear, Inc.

SAR Title: Final Safety Analysis Report for the Standardized NUHOMS® Horizontal Modular Storage System for Irradiated Nuclear Fuel.

Docket Number: 72–1004.

Certificate Expiration Date: January 23, 2015.

Model Number: Standardized NUHOMS®–24P, NUHOMS®–52B, NUHOMS®–61BT, NUHOMS®–32PT, and NUHOMS®–24PHB.

* * * * *

Dated at Rockville, Maryland, this 19th day of November, 2003.

For the Nuclear Regulatory Commission.

William F. Kane,

Acting Executive Director for Operations.

[FR Doc. 03–31207 Filed 12–17–03; 8:45 am]

BILLING CODE 7590–01–P

FEDERAL ELECTION COMMISSION

11 CFR Parts 4 and 111

[Notice 2003–25]

Statement of Policy Regarding Disclosure of Closed Enforcement and Related Files

AGENCY: Federal Election Commission.

ACTION: Statement of policy.

SUMMARY: The Commission is adopting an interim policy with respect to placing closed files on the public record in enforcement, administrative fines, and alternative dispute resolution cases. The categories of records that will be included in the public record are described below. This is an interim policy only; the Commission will conduct a rulemaking in this respect, with full opportunity for public comment, in 2004.

EFFECTIVE DATE: January 1, 2004.

FOR FURTHER INFORMATION CONTACT: Vincent J. Convery, Jr., Assistant General Counsel, 999 E Street, NW., Washington, DC 20463, 202–694–1650 or 1–800–424–9530.

SUPPLEMENTARY INFORMATION: The "confidentiality provision" of the Federal Election Campaign Act, 2 U.S.C. 431 *et seq.*, (FECA), provides that: "Any notification or investigation under [Section 437g] shall not be made public by the Commission * * * without the written consent of the person receiving such notification or the person with respect to whom such investigation is made." 2 U.S.C. 437g(a)(12)(A). For approximately the first twenty-five years of its existence, the Commission viewed the confidentiality requirement as ending with the termination of a case. The Commission placed on its public record the documents that had been considered by the Commissioners in their determination of a case, minus those materials exempt from disclosure under the FECA or under the Freedom of Information Act, 5 U.S.C. 552, (FOIA). *See* 11 CFR 5.4(a)(4). In *AFL–CIO* v. *FEC*, 177 F.Supp.2d 48 (D.D.C. 2001), the district court disagreed with the Commission's interpretation of the confidentiality provision and found that the protection of section 437g(a)(12)(A) does not lapse at the time the Commission terminates an investigation. 177 F.Supp.2d at 56.

Following that district court decision, the Commission placed on the public record only those documents that reflected the agency's "final determination" with respect to enforcement matters. Such disclosure is required under section 437g(a)(4)(B)(ii) of the FECA and section (a)(2)(A) of the FOIA. In all cases, the final determination is evidenced by a certification of Commission vote. The Commission also continued to disclose documents that explained the basis for the final determination. Depending upon the nature of the case, those documents consisted of General Counsel's Reports (frequently in redacted form); Probable Cause to Believe Briefs; conciliation agreements;

Statements of Reasons issued by one or more of the Commissioners; or, a combination of the foregoing. The district court indicated that the Commission was free to release these categories of documents. *See* 177 F.Supp.2d at 54 n.11. In administrative fines cases, the Commission began placing on the public record only the Final Determination Recommendation and certification of vote on final determination. In alternative dispute resolution cases, the public record consisted of the certification of vote and the negotiated agreement.

Although it affirmed the judgment of the district court in *AFL–CIO*, the Court of Appeals for the District of Columbia Circuit differed with the lower court's restrictive interpretation of the confidentiality provision of 2 U.S.C. 437g(a)(12)(A). The Court of Appeals stated that: "the Commission may well be correct that * * * Congress merely intended to prevent disclosure of the fact that an investigation is pending," and that: "deterring future violations and promoting Commission accountability may well justify releasing more information than the minimum disclosures required by section 437g(a)." *See AFL–CIO* v. *FEC*, 333 F.3d 168 (D.C. Cir. 2003) at 174, 179. However, the Court of Appeals warned that, in releasing enforcement information to the public, the Commission must "attempt to avoid unnecessarily infringing on First Amendment interests where it regularly subpoenas materials of a 'delicate nature * * * represent[ing] the very heart of the organism which the first amendment was intended to nurture and protect.'" *Id.* at 179. (Citation omitted). The decision suggested that, with respect to materials of this nature, a "balancing" of competing interests is required—on one hand, consideration of the Commission's interest in promoting its own accountability and in deterring future violations and, on the other, consideration of the respondent's interest in the privacy of association and belief guaranteed by the First Amendment. Noting that the Commission had failed to tailor its disclosure policy to avoid unnecessarily burdening the First Amendment rights of the political organizations it investigates, *id.* at 178, the Court found the agency's disclosure regulation at 11 CFR 5.4(a)(4) to be impermissible, *Id.* at 179.

The Commission is issuing this interim policy statement to identify several categories of documents integral to its decisionmaking process that will be disclosed upon termination of an enforcement matter. The categories of documents that the Commission intends to disclose either do not implicate the Court's concerns, *e.g.*, categories 8, 9 and 10, or, because they play a critical role in the resolution of a matter, the balance tilts decidedly in favor of public disclosure, even if the documents reveal some confidential information.

With respect to enforcement matters, the Commission will place the following categories of documents on the public record:

1. Complaint or internal agency referral;
2. Response to complaint;
3. General Counsel's Reports that recommend dismissal, reason to believe, no reason to believe, no action at this time, probable cause to believe, no probable cause to believe, no further action, or acceptance of a conciliation agreement;
4. Notification of reason to believe findings (including Factual and Legal Analysis);
5. Respondent's response to reason to believe findings;
6. Briefs (General Counsel's Brief and Respondent's Brief);
7. Statements of Reasons;
8. Conciliation Agreements;
9. Evidence of payment of civil penalty or of disgorgement; and
10. Certifications of Commission votes.

In addition, the Commission will make certain other documents available which will assist the public in understanding the record without intruding upon the associational interests of the respondents. These are:

1. Designations of counsel;
2. Requests for extensions of time;
3. Responses to requests for extensions of time; and
4. Closeout letters.

The Commission is placing the foregoing categories of documents on the public record in all matters it closes on or after January 1, 2004.

The Commission is not placing on the public record certain other materials from its investigative files, such as subpoenaed records, deposition transcripts, and other records produced in discovery, even if those evidentiary documents are referenced in, or attached to, documents specifically subject to release under this interim practice. Release of these underlying evidentiary documents may require a closer balancing of the competing interests cited by the D.C. Circuit. Accordingly, the Commission will consider the appropriateness of disclosing these materials only after a full rulemaking with the opportunity for public comment. However, if a document or record is referenced in, or attached to, a document specifically subject to release under this interim practice, that document or record will be disclosed if it is, or was, otherwise publicly available.

The Commission will place documents on the public record in all cases that are closed, regardless of the outcome. By doing so, the Commission complies with the requirements of 2 U.S.C. 437g(a)(4)(B)(ii) and 5 U.S.C. 552(a)(2)(A). Conciliation Agreements are placed on the public record pursuant to 2 U.S.C. 437g(a)(4)(B)(ii).

The Commission will place these documents on the public record as soon as practicable, and will endeavor to do so within thirty days of the date on which notifications are sent to complainant and respondent. *See* 11 CFR 111.20(a). In the event a Statement of Reasons is required, but has not been issued before the date proposed for the release the remainder of the documents in a matter, those documents will be placed on the public record and the Statement of Reasons will be added to the file when issued.

With respect to administrative fines cases, the Commission will place the entire administrative file on the public record, which includes the following:

1. Reason to Believe recommendation;
2. Respondent's response;
3. Reviewing Officer's memoranda to the Commission;
4. Final Determination recommendation;
5. Certifications of Commission votes;
6. Statements of Reasons;
7. Evidence of payment of fine; and
8. Referral to Department of the Treasury.

With respect to alternative dispute resolution (ADR) cases, the Commission will place the following categories of documents on the public record:

1. Complaint or internal agency referral;
2. Response to complaint;
3. ADR Office's case analysis report to the Commission;
4. Notification to respondent that case has been assigned to ADR;
5. Letter or Commitment Form from respondent participating in the ADR program;
6. ADR Office recommendation as to settlement;
7. Certifications of Commission votes;
8. Negotiated settlement agreement; and
9. Evidence of compliance with terms of settlement.

When disclosing documents in administrative fines and alternative dispute resolution cases, the Commission will release publicly available records that are referenced in,

or attached to, documents specifically subject to release under this interim practice.

With this interim policy, the Commission intends to provide guidance to outside counsel, the news media, and others seeking to understand the Commission's disposition of enforcement, administrative fines, and alternative dispute resolution cases and, thus, to enhance their ability to assess particular matters in light of past decisions. In all matters, the Commission will continue to redact information that is exempt from disclosure under the FECA and the FOIA.

As discussed above, the Commission hereby is announcing an interim policy. A rulemaking, with full opportunity for public comment, will be initiated in 2004.

Dated: December 12, 2003.

Ellen L. Weintraub,

Chair, Federal Election Commission.

[FR Doc. 03–31341 Filed 12–17–03; 8:45 am]

BILLING CODE 6715–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–266–AD; Amendment 39–13388; AD 2003–25–05]

RIN 2120–AA64

Airworthiness Directives; Bombardier Model DHC–8–102, –103, –106, –201, –202, –301, –311, and –315 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to certain Bombardier DHC–8–102, –103, –106, –201, –202, –301, –311, and –315 airplanes, that currently requires inspections to detect breakage in the struts of the rear mount strut assemblies on the left and right engine nacelles, and replacement of any broken struts. The existing AD also requires eventual replacement of all currently installed struts with new and/or reworked struts, as terminating action for the inspections. The amendment requires new repetitive inspections of the strut assemblies for cracking of struts replaced per the existing AD, and replacement of any cracked strut with a new, machined strut. The amendment also changes the applicability of the existing AD by adding certain airplanes and removing certain other airplanes, and includes an optional terminating action for the repetitive inspections. The actions specified by this AD are intended to prevent failure of the engine rear mount struts, which could result in reduced structural integrity of the nacelle and engine support structure. This action is intended to address the identified unsafe conditions.

DATES: Effective January 22, 2004.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of January 22, 2004.

ADDRESSES: The service information referenced in this AD may be obtained from Bombardier, Inc., Bombardier Regional Aircraft Division, 123 Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Jon Hjelm, Aerospace Engineer, Airframe Branch, ANE–171, FAA, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York 11581; telephone (516) 256–7523; fax (516) 568–2716.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding AD 94–04–09, amendment 39–8829 (59 FR 8393, February 22, 1994), which is applicable to certain Bombardier Model DHC–8–100 and DHC–8–300 airplanes, was published in the **Federal Register** on October 9, 2003 (68 FR 58283). The action proposed to require new repetitive inspections of the strut assemblies for cracking of struts replaced per the existing AD, and replacement of any cracked strut with a new, machined strut. The action also proposed to change the applicability of the existing AD by adding certain airplanes and removing certain other airplanes, and proposed to include an optional terminating action for the repetitive inspections.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public.

Conclusion

The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

There are approximately 192 airplanes of U.S. registry that will be affected by this AD.

The actions that are currently required by AD 94–04–09 take approximately 16 work hours per airplane to accomplish, at an average labor rate of $65 per work hour. Required parts are provided by the manufacturer at no cost to the operators. Based on these figures, the cost impact of the currently required actions is estimated to be $1,040 per airplane.

The new detailed inspection that is required in this AD action takes approximately 1 work hour per airplane to accomplish, at an average labor rate of $65 per work hour. Based on these figures, the cost impact of the required inspection on U.S. operators is estimated to be $12,480, or $65 per airplane, per inspection cycle.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

The optional terminating action, if done, will take approximately 16 work hours per strut to accomplish, at an average labor rate of $65 per work hour. Required parts will cost aproximately $800 per strut. Based on these figures, the cost impact of the optional terminating action is estimated to be $1,840 per strut, per airplane.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

■ Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. Section 39.13 is amended by removing amendment 39–8829 (59 FR 8393, February 22, 1994), and by adding a new airworthiness directive (AD), amendment 39–13388, to read as follows:

2003–25–05 Bombardier, Inc. (Formerly de Havilland, Inc.): Amendment 39–13388. Docket 2001–NM–266–AD. Supersedes AD 94–04–09, Amendment 39–8829.

Applicability: Model DHC–8–102, –103, –106, –201, –202, –301, –311, and –315 airplanes; serial numbers 003 through 509 inclusive; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the engine rear mount struts on the left and right engine nacelles, which could result in reduced structural integrity of the nacelle and engine support structure, accomplish the following:

Repetitive Inspections

(a) Within 1,000 flight hours since installation of any new or reworked rear mount strut per the replacement required by paragraph (b) of AD 94–04–09, amendment 39–8829, or within 250 flight hours after the effective date of this AD, whichever is later; do a detailed inspection for cracking of each rear mount strut in the left and right engine nacelles.

Note 1: Bombardier Service Bulletin 8–71–24, dated August 21, 2001, does not contain inspection procedures for the detailed inspection required by paragraph (a) of this AD; however, the definition of a detailed inspection is specified in Note 2 of this AD.

Note 2: For the purposes of this AD, a detailed inspection is defined as: "An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required."

(1) If no crack is found, repeat the inspection at intervals not to exceed 250 flight hours, until accomplishment of paragraph (b) of this AD.

(2) If any crack is found, before further flight, replace the strut with a new, improved strut per Bombardier Service Bulletin 8–71–24, dated August 21, 2001. Repeat the inspection thereafter at intervals not to exceed 50 flight hours, for that nacelle only.

Optional Terminating Action

(b) Replacement of both rear mount struts in a nacelle with new, improved struts, by doing all the actions specified in the Job Set-up, Procedure, and Close-out sections of the Accomplishment Instructions of Bombardier Service Bulletin 8–71–24, dated August 21, 2001, ends the repetitive inspections required by this AD for that nacelle only. Replacement of both rear mount struts on both the left and right engine nacelles ends the repetitive inspections required by this AD.

Parts Installation

(c) As of the effective date of this AD, no person shall install an engine rear mount strut, P/N 87110016–001, –003, –005, –007, –009, or –011, on any airplane.

Alternative Methods of Compliance

In accordance with 14 CFR 39.19, the Manager, New York Aircraft Certification Office, FAA, is authorized to approve alternative methods of compliance for this AD.

Incorporation by Reference

(e) Unless otherwise provided in this AD, the actions shall be done in accordance with Bombardier Service Bulletin 8–71–24, dated August 21, 2001. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 522(a) and 1 CFR part 51. Copies may be obtained from Bombardier, Inc., Bombardier Regional Aircraft Division, 123 Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 3: The subject of this AD is addressed in Canadian airworthiness directive CF–2001–20, dated May 16, 2001.

Effective Date

(f) This amendment becomes effective on January 22, 2004.

Issued in Renton, Washington, on December 5, 2003.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–31058 Filed 12–17–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–137–AD; Amendment 39–13389; AD 2003–25–06]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A300 B4–622R and A300 F4–622R Airplanes, and Model A310–324 and –325 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Airbus Model A300 B4–622R and A300 F4–622R airplanes, and Model A310–324 and –325 series airplanes, that are equipped with Pratt & Whitney PW4000 series engines. This AD requires replacement of the existing flexible hose assembly that connects the oil pressure transmitter to the main oil circuit, with a new improved tube assembly. This action is necessary to prevent failure of the oil pressure indicator and low-oil-pressure warning in the event of an engine fire, which could result in an unannounced shutdown of the engine. This action is intended to address the identified unsafe condition.

DATES: Effective January 22, 2004.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of January 22, 2004.

ADDRESSES: The service information referenced in this AD may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Todd Thompson, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–1175; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Airbus Model A300 B4–622R and A300 F4–622R airplanes, and Model A310–324 and –325 series airplanes, that are equipped with Pratt & Whitney PW4000 series engines, was published in the **Federal Register** on September 19, 2003 (68 FR 54872). That action proposed to require replacement of the existing flexible hose assembly that connects the oil pressure transmitter to the main oil circuit, with a new improved tube assembly.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the single comment received. The commenter has no objection to the proposed AD.

Conclusion

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

The FAA estimates that 139 airplanes of U.S. registry will be affected by this AD, that it will take approximately 10 work hours per airplane to accomplish the required actions, and that the average labor rate is $65 per work hour. Required parts will be provided by the manufacturer at no charge. Based on these figures, the cost impact of this AD on U.S. operators is estimated to be $90,350, or $650 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

■ Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. Section 39.13 is amended by adding the following new airworthiness directive:

2003–25–06 Airbus: Amendment 39–13389. Docket 2002–NM–137–AD.

Applicability: Model A300 B4–622R and A300 F4–622R airplanes, and Model A310–324 and –325 series airplanes, equipped with Pratt & Whitney PW4000 series engines; certificated in any category; except those on which Airbus Modification 12468 has been accomplished in production.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the oil pressure indicator and low-oil-pressure warning in the event of an engine fire, which could result in an unannounced shutdown of the engine, accomplish the following:

Replacement

(a) Within 8 months after the effective date of this AD, replace the existing flexible hose assembly, part number (P/N) 113286, that connects the oil pressure transmitter to the main oil circuit, with a new improved tube assembly, P/N 221–5318–501. Before further flight after the replacement, perform a test of the engine oil system. Do these actions according to the Accomplishment Instructions of the service bulletin specified in paragraph (a)(1) or (a)(2) of this AD, as applicable.

(1) For Model A300 B4–622R and A300 F4–622R airplanes: Airbus Service Bulletin A300–79–6003, dated January 31, 2002.

(2) For Model A310–324 and –325 series airplanes: Airbus Service Bulletin A310–79–2004, dated January 31, 2002.

Note 1: Airbus Service Bulletins A300–79–6003 and A310–79–2004 refer to Pratt & Whitney Alert Service Bulletin PW4NAC A79–21, dated October 15, 2001, as an additional source of service information for the replacement required by this AD.

Alternative Methods of Compliance

(b) In accordance with 14 CFR 39.19, the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, is authorized to approve alternative methods of compliance for this AD.

Incorporation by Reference

(c) The actions shall be done in accordance with Airbus Service Bulletin A300–79–6003, dated January 31, 2002; or Airbus Service Bulletin A310–79–2004, dated January 31, 2002; as applicable. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 2: The subject of this AD is addressed in French airworthiness directive 2002–173(B), dated April 3, 2002.

Effective Date

(d) This amendment becomes effective on January 22, 2004.

Issued in Renton, Washington, on December 5, 2003.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–31059 Filed 12–17–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–57–AD; Amendment 39–13390; AD 2003–25–07]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A319 and A320 Series Airplanes Equipped With Elevator and Aileron Computer (ELAC) L80 Standard

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to certain Airbus Model A319 and A320 series airplanes, that currently requires revising the airplane flight manual to specify procedures for landing under certain conditions of gusty winds and turbulence. This amendment requires replacement of both Elevator and Aileron Computers (ELACs) having L80 standards with new ELACs having L81 standards, which terminates the requirements of the existing AD. The actions specified by this AD are intended to prevent activation of the high angle-of-attack protection during final approach for landing, which could result in loss of ability to flare properly during landings. This action is intended to address the identified unsafe condition.

DATES: Effective January 22, 2004.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of January 22, 2004.

ADDRESSES: The service information referenced in this AD may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Tim Dulin, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2141; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding AD 2001–08–26, amendment 39–12203 (66 FR 20912, April 26, 2001), which is applicable to certain Airbus Model A319 and A320 series airplanes, was published in the **Federal Register** on September 18, 2003 (68 FR 54691). The action proposed to require revising the airplane flight manual to specify procedures for landing under certain conditions of gusty winds and turbulence. The action also proposed to require replacement of both Elevator and Aileron Computers (ELACs) having L80 standards with new ELACs having L81 standards, which would terminate the requirements of the existing AD.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public.

Conclusion

The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

There are approximately 350 airplanes of U.S. registry that will be affected by this AD.

The AFM revision currently required by AD 2001–08–26 takes approximately 1 work hour per airplane to accomplish, at an average labor rate of $65 per work hour. Based on these figures, the cost impact of the currently required actions on U.S. operators is estimated to be $22,750, or $65 per airplane.

The new replacement required in this AD action takes approximately 1 work hour per airplane to accomplish, at an average labor rate of $65 per work hour. Required parts will be provided by the manufacturer at no cost to operators. Based on these figures, the cost impact of the replacement on U.S. operators is estimated to be $22,750, or $65 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

■ Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. Section 39.13 is amended by removing amendment 39–12203 (66 FR 20912, April 26, 2001), and by adding a new airworthiness directive (AD), amendment 39–13390, to read as follows:

2003–25–07 Airbus: Amendment 39–13390. Docket 2002–NM–57–AD. Supersedes AD 2001–08–26, Amendment 39–12203.

Applicability: Model A319 and A320 series airplanes; certificated in any category; equipped with Elevator and Aileron Computer (ELAC) L80 Standard having part numbers listed in Airbus Service Bulletin A320–27–1135, dated June 29, 2001.

Compliance: Required as indicated, unless accomplished previously.

To prevent activation of the high angle-of-attack protection during final approach for landing, which could result in loss of the

ability to flare properly during landings, accomplish the following:

Restatement of Requirements of AD 2001–08–26

Revision of Airplane Flight Manual (AFM)

(a) Within 10 days after May 11, 2001 (the effective date of AD 2001–08–26, amendment 39–12203): Revise the Limitations Section of the AFM to incorporate the following procedures. This may be accomplished by inserting a copy of this AD into the AFM. This action is required until accomplishment of paragraph (b) of this AD.

"FOR APPROACH TO RUNWAYS WITH KNOWN GUSTY ENVIRONMENT, ESPECIALLY IF THESE CONDITIONS GENERATE VERTICAL GUSTS DUE TO THE SURROUNDING TERRAIN, OR
—REPORTED GUST WIND INCREMENT (MAX. WIND MINUS AVERAGE WIND) HIGHER THAN 10 KT, OR
—EXPECTED MODERATE TO SEVERE TURBULENCE ON SHORT FINAL,
THE FLIGHT CREW SHOULD STRICTLY ADHERE TO THE FOLLOWING PROCEDURE:
—USE CONF 3 FOR APPROACH AND LANDING.
—MINIMUM VAPP IS VLS + 10 KT. THE RECOMMENDATION TO USE MANAGED SPEED REMAINS VALID.
—CORRECT THE LANDING DISTANCE FOR THE SPEED INCREMENT.
—IF "SINK RATE" GPWS WARNING OCCURS BELOW 200 FT, IMMEDIATELY INITIATE A GO AROUND."

New Requirements of This AD

Replacement

(b) Within 1 year after the effective date of this AD: Replace both Elevator and Aileron Computers (ELACs) having L80 standards with new ELACs having L81 standards, by doing all the actions per paragraphs A., B., C., and D. of the Accomplishment Instructions of Airbus Service Bulletin A320–27–1135, dated June 29, 2001. Accomplishment of this replacement ends the requirements in paragraph (a) of this AD.

Part Installation

(c) As of the effective date of this AD, no person may install on any airplane an ELAC having a part number listed in the "Old Part Number" column in the table specified in paragraph 2.C., "List of Components," of Airbus Service Bulletin A320–27–1135, dated June 29, 2001.

Alternative Methods of Compliance

(d)(1) In accordance with 14 CFR 39.19, the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, is authorized to approve alternative methods of compliance for this AD.

(2) Alternative methods of compliance, approved previously per AD 2001–08–26, amendment 39–12203, are approved as alternative methods of compliance with paragraph (a) of this AD.

Incorporation by Reference

(e) Unless otherwise provided in this AD, the actions shall be done in accordance with Airbus Service Bulletin A320–27–1135, dated June 29, 2001. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 1: The subject of this AD is addressed in French airworthiness directive 2001–508(B), dated October 17, 2001.

Effective Date

(f) This amendment becomes effective on January 22, 2004.

Issued in Renton, Washington, on December 5, 2003.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–31060 Filed 12–17–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–295–AD; Amendment 39–13385; AD 2003–25–02]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 777–200 and 777–300 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 777–200 and 777–300 series airplanes, that requires application of high-temperature sealant in designated areas of the strut aft dry bay. The actions specified by this AD are intended to prevent leakage of hydraulic fluid into the strut aft dry bay, where high temperatures associated with the adjacent primary exhaust nozzle may ignite the fluid, resulting in an uncontrolled fire in the strut aft dry bay. This action is intended to address the identified unsafe condition.

DATES: Effective January 22, 2004.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of January 22, 2004.

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: John Vann, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 917–6513; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to Boeing Model 777–200 and 777–300 series airplanes was published in the **Federal Register** on November 18, 2002 (67 FR 69493). That action proposed to require application of high-temperature sealant to the strut aft dry bay.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Add Inspection To Determine Whether Sealant Was Applied During Production

Several commenters stated that, in some of the airplanes on the effectivity list of Boeing Alert Service Bulletin 777–54A0016, dated January 25, 2001, (referenced in the proposed rule as the appropriate service bulletin), high-temperature sealant had been applied to the strut aft dry bay at the factory during production with no signs of damage or leakage. According to these commenters, The Boeing Company confirmed that not all the airplanes on the effectivity list were delivered with sealant missing from the designated areas of the strut aft dry bay. The commenters request, therefore, that the AD (1) add an inspection of those areas to determine whether sealant had been applied during production, and (2) require application of sealant only if had not been applied.

The FAA concurs with the commenters' request. We requested and subsequently approved a revision to the Boeing service bulletin. Service Bulletin 777–54A0016, Revision 1, dated July 10, 2003, adds an inspection for high-temperature sealant in the designated areas of the strut aft bay. If it is found that sealant has been properly applied at each of the designated areas during production, no further action is required. If it is found that sealant is missing or damaged at any of the designated areas, it must be applied. Paragraphs (b)(1) and (b)(2) have been added to this AD to specify the appropriate action.

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. In adding paragraphs (b)(1) and (b)(2) to this AD, we considered whether they would increase the economic burden on any operator or increase the scope of the AD. Our conclusion is that, if paragraph (b)(1) applies, it will be relieving; if paragraph (b)(2) applies, it will be neutral in its effect. Therefore, there is no need to provide additional opportunity for public comment.

Changes to 14 CFR Part 39/Effect on the AD

On July 10, 2002, the FAA issued a new version of 14 CFR part 39 (67 FR 47997, July 22, 2002), which governs the FAA's airworthiness directives system. The regulation now includes material that relates to altered products, special flight permits, and alternative methods of compliance. However, for clarity and consistency in this final rule, we have retained the language of the NPRM regarding that material.

Cost Impact

We have reviewed the figures we have used over the past several years to calculate AD costs to operators. To account for various inflationary costs in the airline industry, we find it necessary to increase the labor rate used in these calculations from $60 per work hour to $65 per work hour. The cost impact information, below, reflects this increase in the specified hourly labor rate.

There are approximately 298 Model 777–200 and 777–300 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 95 airplanes of U.S. registry will be affected by this AD, that it will take approximately 4 work hours per airplane to accomplish the required actions, and that the average labor rate is $65 per work hour. Required parts will cost approximately $20 per airplane. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $26,600, or $280 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

■ Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. Section 39.13 is amended by adding the following new airworthiness directive:

2003–25–02 Boeing: Amendment 39–13385. Docket 2001–NM–295–AD.

Applicability: Model 777–200 and 777–300 series airplanes having line numbers 2 through 297 inclusive, 299, and 300; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent leakage of hydraulic fluid into the strut aft dry bay, where high temperatures associated with the adjacent primary exhaust nozzle may ignite the fluid, resulting in an uncontrolled fire in the strut aft dry bay: accomplish the following:

Application of Sealant

(a) Within 1,000 flight hours after the effective date of this AD: Except as provided in paragraph (b) of this AD, apply high-temperature sealant to designated areas in the strut aft dry bay, in accordance with the Accomplishment Instruction of Boeing Alert Service Bulletin 777–54A0016, dated January 25, 2001, or with Revision 1, dated July 10, 2003.

(b)(1) If, upon opening the strut aft fairing forward access panels in accordance with the Accomplishment Instruction of Boeing Alert Service Bulletin 777–54A0016, dated January 25, 2001; or with Revision 1, dated July 10, 2003; it is observed that high-temperature sealant has already been properly applied to each of the designated areas in the strut aft dry bay, no further action is required.

(2) If, upon opening the strut aft fairing forward access panels in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 777–54A0016, dated January 25, 2001; or with Revision 1, dated July 10, 2003; it is observed that high-temperature sealant has been improperly applied to any of the designated areas in the strut aft dry bays, re-apply the sealant in each such area in accordance with either of the service bulletins.

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 1: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permits

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(e) The actions shall be done in accordance with Boeing Alert Service Bulletin 777–54A0016, dated January 25, 2001; or Boeing Service Bulletin 777–54A0016, Revision 1, dated July 10, 2003. This incorporation by reference was approved by the Director of the

Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Date

(f) This amendment becomes effective on January 22, 2004.

Issued in Renton, Washington, on December 5, 2003.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–31061 Filed 12–17–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–78–AD; Amendment 39–13386; AD 2003–25–03]

RIN 2120–AA64

Airworthiness Directives; Bombardier Model DHC–8–400, –401, and –402 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Bombardier Model DHC–8–400, –401, and –402 airplanes, that requires a one-time inspection of the forward engine mount assemblies on the left and right engine nacelles for installation of pre-production engine mount assemblies, and follow-on corrective actions if necessary. This action is necessary to prevent failure of the forward engine mount, which could result in reduced structural integrity of the nacelle and engine support structure. This action is intended to address the identified unsafe condition.

DATES: Effective January 22, 2004.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of January 22, 2004.

ADDRESSES: The service information referenced in this AD may be obtained from Bombardier, Inc., Bombardier Regional Aircraft Division, 123 Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Douglas G. Wagner, Aerospace Engineer, Systems and Flight Test Branch, ANE–172, FAA, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York 11581; telephone (516) 256–7506; fax (516) 568–2716.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Bombardier Model DHC–8–400, –401, and –402 airplanes was published in the **Federal Register** on October 9, 2003 (68 FR 58287). That action proposed to require a one-time inspection of the forward engine mount assemblies on the left and right engine nacelles for installation of pre-production engine mount assemblies, and follow-on corrective actions if necessary.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public.

Conclusion

The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

We estimate that 11 airplanes of U.S. registry will be affected by this AD, that it will take approximately 2 work hours per airplane to accomplish the required inspection, and that the average labor rate is $65 per work hour. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $1,430, or $130 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

■ Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. Section 39.13 is amended by adding the following new airworthiness directive:

2003–25–03 Bombardier, Inc. (Formerly de Havilland, Inc.): Amendment 39–13386. Docket 2002–NM–78–AD.

Applicability: Model DHC–8–400, –401, and –402 airplanes; serial numbers 4005, 4006, 4008 through 4016 inclusive, 4018 through 4051 inclusive, and 4053; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the forward engine mount, which could result in reduced structural integrity of the nacelle and engine support structure, accomplish the following:

Inspection

(a) Within 100 flight cycles after the effective date of this AD: Do a general visual inspection of the forward engine mount assemblies on the left and right engine nacelles for installation of pre-production assemblies (determine the part number and configuration for each assembly), per the Accomplishment Instructions of Bombardier Alert Service Bulletin A84–71–06, Revision "A," dated December 5, 2001. If no pre-production engine mount assembly is installed, no further action is required by this AD.

Note 1: For the purposes of this AD, a general visual inspection is defined as: "A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made from within touching distance unless otherwise specified. A mirror may be necessary to enhance visual access to all exposed surfaces in the inspection area. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or droplight and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked."

Follow-on Corrective Actions

(b) If any pre-production engine mount assembly is installed, do all the applicable follow-on corrective actions (including repetitive detailed inspections for cracking, and rework or replacement of the pre-production engine mount assembly if necessary), per all the actions specified in the Accomplishment Instructions of Bombardier Alert Service Bulletin A84–71–06, Revision "A," dated December 5, 2001, at the applicable times specified in Paragraph I., Part D., "Compliance," of the service bulletin. Any replacement due to cracking must be done before further flight.

Note 2: For the purposes of this AD, a detailed inspection is defined as: "An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required."

Optional Terminating Action for Follow-on Repetitive Inspections

(c) Installation of production engine mount assemblies on all four forward engine mounts ends the repetitive inspection requirements of paragraph (b) of this AD.

Part Installation

(d) As of the effective date of this AD, no person may install an engine mount assembly having a pre-production configuration and/or part number 96042–07 on any airplane, unless the assembly has been reworked per Part B of the Accomplishment Instructions of Bombardier Alert Service Bulletin A84–71–06, Revision "A," dated December 5, 2001.

Alternative Methods of Compliance

(e) In accordance with 14 CFR 39.19, the Manager, New York Aircraft Certification Office, FAA, is authorized to approve alternative methods of compliance for this AD.

Incorporation by Reference

(f) Unless otherwise provided in this AD, the actions shall be done per Bombardier Alert Service Bulletin A84–71–06, Revision "A," dated December 5, 2001. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Bombardier, Inc., Bombardier Regional Aircraft Division, 123 Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 3: The subject of this AD is addressed in Canadian airworthiness directive CF–2002–07, dated January 21, 2002.

Effective Date

(g) This amendment becomes effective on January 22, 2004.

Issued in Renton, Washington, on December 5, 2003.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–31062 Filed 12–17–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 882

[Docket No. 2002N–0370]

Neurological Devices; Classification of Human Dura Mater

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is classifying human dura mater intended to repair defects in human dura mater into class II (special controls). This action is being taken to establish sufficient regulatory control to provide reasonable assurance of the safety and effectiveness of the device. Elsewhere in this issue of the **Federal Register**, FDA is announcing the availability of a guidance document entitled "Class II Special Controls Guidance Document: Human Dura Mater" that will serve as the special control for this device.

DATES: This rule is effective January 20, 2004.

FOR FURTHER INFORMATION CONTACT: Charles N. Durfor, Center for Devices and Radiological Health (HFZ–410), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–3090.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of October 22, 2002 (67 FR 64835), FDA issued a proposed rule to classify human dura mater into class II based on new information regarding this device and the recommendation of the Neurological Devices Panel. FDA identified the draft guidance document entitled "Class II Special Controls Guidance Document: Human Dura Mater; Guidance for Industry and FDA" as the proposed special control capable of providing reasonable assurance of the safety and effectiveness of the device. The device is intended to repair defects in human dura mater. FDA invited interested persons to comment on the proposed rule by January 21, 2003. FDA received one comment.

II. Summary of the Comment and FDA's Response

The comment did not express an opinion on the proposed rule. It informed FDA of new research in transgenic mice which suggests that it may be difficult to distinguish whether a patient's cause of death is related to Creutzfeldt-Jakob Disease (CJD) or variant CJD based on neuropathology. FDA appreciates receipt of the information but does not believe it affects the classification of human dura mater. The guidance document "Class II Special Controls Guidance Document: Human Dura Mater" recommends clinical and histopathological methods, including next of kin interviews and full brain autopsy, respectively, that are intended to identify and defer potential human dura mater donors who have either CJD or variant CJD.

III. FDA's Conclusion

Based on a review of the available information in the preamble to the proposed rule and placed on file in FDA's Division of Dockets Management (HFA–305), Food and Drug Administration, 5600 Fishers Lane, rm. 1061, Rockville, MD 20852, FDA concludes that special controls, in conjunction with general controls, provide reasonable assurance of the safety and effectiveness of this device.

Elsewhere in this issue of the **Federal Register**, FDA is announcing the availability of the class II special controls guidance document. Following the effective date of this final classification rule, any firm submitting a premarket notification (510(k)) for human dura mater will need to address the issues covered in the class II special control guidance. However, the firm need only show that its device meets the recommendations of the guidance or in some other way provides equivalent assurances of safety and effectiveness.

FDA is now codifying the classification and the class II special control guidance document for human dura mater by adding § 882.5975 to the device regulations in Title 21, Code of Federal Regulations (21 CFR). For the convenience of the reader, FDA is also adding § 882.1(e) to inform the reader where to find guidance documents referenced in 21 CFR part 882.

As discussed in the preamble to the proposed rule (67 FR 64835), FDA intends to transfer the regulation of human dura mater from the Center for Devices and Radiological Health to the Center for Biologics Evaluation and Research. FDA expects this transfer will take place upon the implementation of human-cellular and tissue-based product regulations, including regulations addressing donor suitability, good tissue practices, and registration and listing. FDA has initiated rulemaking proceedings involving these products. (See 64 FR 52696, September 30, 1999; 66 FR 1507, January 8, 2001; and 66 FR 5447, January 19, 2001.) In the interim, FDA believes that regulation of dura mater as a class II device subject to general and special controls provides a reasonable assurance of its safety and effectiveness.

IV. Environmental Impact

The agency has determined under 21 CFR 25.34(b) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

V. Analysis of Impacts

FDA has examined the impacts of the final rule under Executive Order 12866 and the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The agency believes that this rule is consistent with the regulatory philosophy and principles identified in the Executive order. In addition, the final rule is not a significant regulatory action as defined by the Executive order and so is not subject to review under the Executive order.

FDA has also examined the impact of the rule under the Regulatory Flexibility Act. The purpose of this rule is to change the classification of human dura mater from an unclassified medical device into a class II medical device subject to special controls. As an unclassified device, this device is already subject to premarket notification and the general labeling provisions of the act. There are currently five to seven manufacturers of human dura mater medical devices. All of the firms meet the Small Business Administration's definition of a small entity (fewer than 500 employees). FDA, however, believes that manufacturers presently marketing this device already conform with many of the recommendations in the special controls guidance document. New manufacturers of human dura mater will only need to submit 510(k)s, as the statute now requires them to do, and demonstrate that they meet the recommendations of the guidance or in some way provide equivalent assurances of safety and effectiveness. In addition, biocompatibility and structural testing recommendations are eliminated from the guidance, which will decrease the premarket notification costs for manufacturers introducing new human dura mater devices into commercial distribution. The agency, therefore, certifies that this rule will not have a significant economic impact on a substantial number of small entities. In addition, this rule will not impose costs of $100 million or more on either the private sector or State, local, and tribal governments in the aggregate, and therefore, a summary statement or analysis under section 202(a) of the Unfunded Mandates Reform Act of 1995 is not required.

VI. Federalism

FDA has analyzed this final rule in accordance with the principles set forth in Executive Order 13132. FDA has determined that the rule does not contain policies that have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, the agency has concluded that the rule does not contain policies that have federalism implications as defined in the Executive order and, consequently, a federalism summary impact statement is not required.

VII. Paperwork Reduction Act of 1995

This final rule does not contain information collection provisions that are subject to review by the Office of Management and Budget under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

List of Subjects in 21 CFR Part 882

Medical devices.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 882 is amended as follows:

PART 882—NEUROLOGICAL DEVICES

■ 1. The authority citation for 21 CFR part 882 continues to read as follows:

Authority: 21 U.S.C. 351, 360, 360c, 360e, 360j, 371.

■ 2. Section 882.1 is amended by adding paragraph (e) to read as follows:

§ 882.1 Scope.

* * * * *

(e) Guidance documents referenced in this part are available on the Internet at *http://www.fda.gov/cdrh/guidance.html*.

■ 3. Section 882.5975 is added to subpart F to read as follows:

§ 882.5975 Human dura mater.

(a) *Identification.* Human dura mater is human pachymeninx tissue intended to repair defects in human dura mater.

(b) *Classification.* Class II (special controls). The special control for this device is the FDA guidance document entitled "Class II Special Controls Guidance Document: Human Dura Mater." See § 882.1(e) for the availability of this guidance.

Dated: December 5, 2003.

Linda S. Kahan,

Deputy Director, Center for Devices and Radiological Health.

[FR Doc. 03–31174 Filed 12–17–03; 8:45 am]

BILLING CODE 4160–01–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CT–057–7216e; A–1–FRL–7600–2]

Approval and Promulgation of Implementation Plans; Connecticut; Motor Vehicle Emissions Budgets for 2005 and 2007 using MOBILE6.2 for the Connecticut Portion of the New York-Northern New Jersey-Long Island Nonattainment Area and for 2007 for the Greater Connecticut Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The EPA is approving a revision to the Connecticut State Implementation Plan (SIP) for the attainment and maintenance of the one-hour National Ambient Air Quality Standard (NAAQS) for ground level ozone submitted by the State of Connecticut. The intended effect of this action is to approve Connecticut's 2005 and 2007 motor vehicle emissions budgets recalculated using MOBILE6.2 for the Connecticut portion of the New York-Northern New Jersey-Long Island nonattainment area and to approve Connecticut's 2007 motor vehicle emissions budgets for the Greater Connecticut nonattainment area also recalculated using MOBILE6.2. This action is being taken under the Clean Air Act.

DATES: This direct final rule will be effective February 17, 2004, unless EPA receives adverse comments by January 20, 2004. If adverse comments are received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Comments may be mailed to David Conroy, Unit Manager, Air Quality Planning, Office of Ecosystem Protection (mail code CAQ), U.S. Environmental Protection Agency, EPA New England Regional Office, One Congress Street, Suite 1100, Boston, MA 02114–2023. Comments may also be submitted electronically, or through hand delivery/courier, please follow the detailed instructions described in part (I)(B)(1)(i) through (iii) of the Supplementary Information section.

FOR FURTHER INFORMATION CONTACT: Jeff Butensky, Environmental Planner, Air Quality Unit, U.S. Environmental Protection Agency, EPA New England Regional Office, One Congress Street, Suite 1100 (CAQ), Boston, MA 02114–2023, (617) 918–1665, *butensky.jeff@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. How Can I Get Copies of This Document and Other Related Information?

1. *The Regional Office has established an official public rulemaking file available for inspection at the Regional Office.* EPA has established an official public rulemaking file for this action under CT–057–7216e. The official public file consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public rulemaking file does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public rulemaking file is the collection of materials that is available for public viewing at the Office of Ecosystem Protection, U.S. Environmental Protection Agency, EPA New England Regional Office, One Congress Street, Suite 1100, Boston, MA. EPA requests that if at all possible, you contact the contact listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30 excluding federal holidays.

2. *Copies of the State submittal and EPA's technical support document are also available for public inspection during normal business hours, by appointment at the State Air Agency.* Bureau of Air Management, Department of Environmental Protection, State Office Building, 79 Elm Street, Hartford, CT 06106–1630.

3. *Electronic Access.* You may access this **Federal Register** document electronically through the Regulation.gov Web site located at *http://www.regulations.gov* where you can find, review, and submit comments on Federal rules that have been published in the **Federal Register**, the government's legal newspaper, and are open for comment.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing at the EPA Regional Office, as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in the official public rulemaking file. The entire printed comment, including the copyrighted material, will be available at the Regional Office for public inspection.

B. How and To Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate rulemaking identification number by including the text "Public comment on proposed rulemaking CT–057–7216d" in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments.

1. *Electronically.* If you submit an electronic comment as prescribed below, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *E-mail.* Comments may be sent by electronic mail (e-mail) to *conroy.david@epa.gov* please including the text "Public comment on proposed rulemaking CT–057–7216d" in the subject line. EPA's e-mail system is not an "anonymous access" system. If you send an e-mail comment directly without going through Regulations.gov, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

ii. *Regulation.gov.* Your use of Regulation.gov is an alternative method of submitting electronic comments to EPA. Go directly to Regulations.gov at *http://www.regulations.gov,* then click on the button "TO SEARCH FOR REGULATIONS CLICK HERE," and select Environmental Protection Agency as Agency name to search on. The list of current EPA actions available for comment will be listed. Please follow the online instructions for submitting comments. The system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

iii. *Disk or CD ROM.* You may submit comments on a disk or CD ROM that you mail to the mailing address identified in section 2, directly below. These electronic submissions will be accepted in WordPerfect, Word or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By Mail.* Send your comments to: David Conroy, Unit Manager, Air Quality Planning, Office of Ecosystem Protection (mail code CAQ), U.S. Environmental Protection Agency, EPA New England Regional Office, One Congress Street, Suite 1100, Boston, MA 02114–2023. Please include the text "Public comment on proposed rulemaking CT–057–7216d" in the subject line on the first page of your comment.

3. *By Hand Delivery or Courier.* Deliver your comments to: David Conroy, Unit Manager, Air Quality Planning, Office of Ecosystem Protection, U.S. Environmental Protection Agency, EPA New England Regional Office, One Congress Street, 11th floor, (CAQ), Boston, MA 02114–2023. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30 excluding federal Holidays.

C. How Should I Submit CBI to the Agency?

Do not submit information that you consider to be CBI electronically to EPA. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the official public regional rulemaking file. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public file and available for public inspection without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

II. Rulemaking Information

On June 17, 2003, the Connecticut Department of Environmental Protection (CTDEP) submitted an amendment to the Connecticut State Implementation Plan (SIP) containing 2005 and 2007 motor vehicle emissions budgets recalculated using the MOBILE6.2 model for the Connecticut portion of the New York-Northern New Jersey-Long Island nonattainment area and 2007 motor vehicle emissions budgets for the Greater Connecticut nonattainment area. This SIP revision fulfills the commitment made by the CTDEP in its February 8, 2000 SIP submittal to revise the transportation conformity budgets using EPA's MOBILE6 emissions model.[1] In addition, this SIP revision demonstrates that the new levels of motor vehicle emissions calculated using MOBILE6.2 continue to support achievement of the rate of progress requirements and projected attainment of the one-hour ozone NAAQS for the Connecticut portion of the New York-Northern New Jersey-Long Island nonattainment area and the Greater Connecticut nonattainment area. Connecticut held a public hearing on its proposed SIP revision on May 27, 2003. Today's action approves these budgets.

Organization of this document. The following outline is provided to aid in locating information in this preamble.

A. Background
B. What is MOBILE6.2?
C. Are the revised budgets using MOBILE6.2 consistent with Connecticut's one-hour attainment demonstration?
D. Are Connecticut's motor vehicle emissions budgets approvable?

[1] Document titled "Addenda to the Ozone Attainment Demonstrations for the Southwest Connecticut Severe Ozone Nonattainment Area and Greater Connecticut Serious Ozone Nonattainment Area," February 8, 2000.

A. Background

The entire State of Connecticut is designated as nonattainment for the one-hour ozone NAAQS. Southwest Connecticut (*i.e.*, all of Fairfield County except the town of Shelton, plus the Litchfield County towns of Bridgewater and New Milford) is part of the New York-Northern New Jersey-Long Island severe ozone nonattainment area, and the remainder of Connecticut is the Greater Connecticut serious ozone nonattainment area. The CTDEP submitted attainment demonstrations for both the Southwest Connecticut and Greater Connecticut ozone nonattainment areas on September 16, 1998, and EPA published proposed rulemakings on CTDEP's attainment demonstrations on December 16, 1999. 64 FR at 70332–70364 (December 16, 1999).

EPA's December 16, 1999 proposal to approve the attainment demonstration for the Greater Connecticut area was contingent upon several issues. The issues relevant to this action were the submittal of an adequate motor vehicle emissions budget that was consistent with attainment and a commitment to revise the motor vehicle emissions budget within one year after official release of EPA's MOBILE6 emissions model. The CTDEP submitted the required motor vehicle emissions budgets (calculated using EPA's MOBILE5b emissions model) for Greater Connecticut on February 8, 2000. The motor vehicle budgets submitted for Greater Connecticut on February 8, 2000 were calculated using then-current EPA guidance. This guidance is articulated in two memoranda which detail how states should incorporate the benefits of the federal motor vehicle Tier 2 standard into their SIPs, "Guidance on Motor Vehicle Emissions Budgets in one-hour Ozone Attainment Demonstrations," issued November 3, 1999, and "One-hour Ozone Attainment Demonstrations and Tier2/Sulfur Rulemaking," issued November 8, 1999. In addition, states that have attainment demonstrations that include interim MOBILE5b-based estimates of the federal motor vehicle Tier 2 standards are required to submit motor vehicle emissions budgets using the EPA's April 2000 MOBILE5 guidance, "MOBILE5 Information Sheet #8: Tier 2 Benefits Using MOBILE5."[2] EPA granted full approval to the Greater Connecticut

[2] The final rule on Tier 2 Motor Vehicle Emissions Standards and Gasoline Sulfur Control Requirements ("Tier 2 standards") for passenger cars, light trucks, and larger passenger vehicles was published on February 10, 2000 (65 FR 6698).

attainment demonstration on January 3, 2001 (66 FR 633).

For the Connecticut portion of the New York-Northern New Jersey-Long Island nonattainment area, EPA's December 16, 1999 rulemaking proposed to conditionally approve the ozone attainment SIP for the nonattainment area, and in the alternative, to disapprove the SIP if the specified conditions were not satisfied. The only condition of importance to today's action is the submittal of adequate MOBILE5b 2007 motor vehicle emissions budgets that are consistent with attainment, and a commitment to revise the 2007 motor vehicle emissions budgets within one year after official release of EPA's MOBILE6 emissions model. In the February 8, 2000 submittal, the CTDEP submitted revised 2007 motor vehicle emissions budgets (determined with MOBILE5b), which EPA found adequate on June 16, 2000 (65 FR 37778–37779). Connecticut also committed to revise its motor vehicle emissions budgets within one year after release of MOBILE6.[3] In addition, the CTDEP incorporated the federal motor vehicle Tier 2 standards program into the SIP and provided the necessary SIP commitments as part of revisions submitted to EPA in February 2000 and October 2001,[4] respectively. As a result of this submittal and the resolution of other issues on the attainment demonstration, EPA granted full approval of Connecticut's one-hour ozone attainment demonstrations on December 11, 2001 for the Connecticut portion of the New York-Northern New Jersey-Long Island nonattainment area (66 FR 63921).

The SIP being approved today satisfies CTDEP's commitments to revise motor vehicle emissions budgets within one year after EPA's release of the MOBILE6 motor vehicle emissions model. EPA published the release of the MOBILE6 model in the **Federal Register** on January 29, 2002 (67 FR 4254), beginning the one-year time line for submitting revised budgets. Thus, the effective date of that **Federal Register** notice constituted the start of the one-year time period for which Connecticut was required to revise its one-hour ozone attainment demonstration SIP using the MOBILE6 model. Therefore, Connecticut was required to submit this SIP revision to EPA by January 29, 2003. EPA subsequently released updated versions of the model, and the latest model update, MOBILE6.2, was used to prepare this SIP revision.

Although not required by EPA, CTDEP is electing to replace the existing 2005 MOBILE5b budgets for Connecticut portion of the New York-Northern New Jersey-Long Island nonattainment area with MOBILE6.2 budgets. There are no applicable budget requirements for 2005 for Greater Connecticut, but the State previously had 2005 budgets approved by EPA for the Connecticut portion of the New York-Northern New Jersey-Long Island nonattainment area (66 FR 63921). Connecticut is only required to submit new 2007 budgets using the MOBILE6.2 model for the attainment year of 2007. Therefore, EPA's adequacy determination will only be for the revised attainment year budgets for 2007 for both the Connecticut portion of the New York-Northern New Jersey-Long Island nonattainment area and the Greater Connecticut nonattainment area and not for the revised reasonable further progress (2005) budgets for the Connecticut portion of the New York-Northern New Jersey-Long Island nonattainment area. This is consistent with EPA's approval of the previous MOBILE5 budgets which limited the adequacy process to only the revised attainment year budgets, or 2007 for both nonattainment areas in Connecticut. EPA has notified the public of Connecticut's SIP revision containing 2007 motor vehicle emissions budgets recalculated using the MOBILE6.2 model for the Connecticut portion of the New York-Northern New Jersey-Long Island ozone nonattainment area and for the Greater Connecticut ozone nonattainment area on EPA's Office of Transportation and Air Quality Web site "SIP Submissions Currently Under EPA Adequacy Review" located at *http://www.epa.gov/otaq/transp/conform/currsips.htm.* The thirty-day public comment period associated with the adequacy review process started Friday, December 5, 2003.

[3] The Connecticut commitment for submitting MOBILE6 budgets within one year after is codified at 40 CFR 52.377(b) for the Greater Connecticut area and 40 CFR 52.377(c) for the Southwest Connecticut area.

[4] MOBILE5b inputs and estimates are from the previously approved SIP submittals "Addenda to the Ozone Attainment Demonstrations for the Southwest Connecticut Severe Ozone Nonattainment Area and Greater Connecticut Serious Ozone Nonattainment Area" (submitted to EPA on February 8, 2000) and "Updates to the Ozone Attainment Demonstration for the Southwest Connecticut Severe Ozone Nonattainment Area (submitted to EPA in October 2001).

B. What is MOBILE6.2?

MOBILE6.2 is an EPA emissions factor model for estimating pollution from on-road motor vehicles in states outside of California. MOBILE6.2 calculates emissions of volatile organic compounds (VOCs), nitrogen oxides (NO_X) and carbon monoxide (CO) from passenger cars, motorcycles, buses, and light-duty and heavy-duty trucks. The model accounts for the emission impacts of factors such as changes in vehicle emission standards, changes in vehicle populations and activity, variations in temperature, humidity, fuel type, vehicle type and age distribution, and air quality programs such as inspection and maintenance, and many other variables. Although some minor updates were made in 1996 with the release of MOBILE5b, MOBILE6.2 is the first major revision to MOBILE since MOBILE5a was released in 1993.

In developing mobile source emission estimates, states rely on estimates of daily vehicle miles traveled (VMT) using travel demand forecasting models which use variables such as population, housing, land use, and other relevant planning data. Resulting VMT, speed data, vehicle age distribution, speed data, road types, vehicle type data, and other data are then entered into the MOBILE6.2 model to develop on-road vehicle emission factors. More information on Connecticut's travel demand modeling is contained in the state's June 17, 2003 SIP submittal.

Transportation conformity is required under section 176(c) of the Clean Air Act. The purpose of transportation conformity is to ensure that federally supported highway and transit project activities are consistent with ("conform to") the purpose of a SIP. Conformity to the purpose of the SIP means that transportation activities will not cause new air quality violations, worsen existing violations, or delay timely attainment of the NAAQS. EPA's transportation conformity rule establishes the criteria and procedures for determining whether transportation activities conform to the state air quality plan. 40 CFR part 51, subpart W and part 93. The purpose of the MOBILE6.2 transportation conformity budgets being proposed for approval today is to cap the emissions resulting from Connecticut's statewide transportation improvement program (STIP) in the effort to reduce emissions and achieve the NAAQS for ground level ozone. The modeling conducted as part of the STIP must show that emissions are below these emissions budgets. This process is known as a "conformity determination."

C. Are the Revised Budgets Using MOBILE6.2 Consistent With Connecticut's One-Hour Attainment Demonstration?

In using MOBILE6.2 to calculate the revised budgets, states must consider whether these calculations continue to

support attainment of the NAAQS for ozone. EPA has articulated its policy regarding the use of MOBILE6.2 in SIP development in its "Policy Guidance on the Use of MOBILE6.2 for SIP Development and Transportation Conformity" [5] and "Clarification of Policy Guidance for MOBILE6.2 in Mid-course Review Areas."[6] Consistent with this policy guidance, Connecticut submitted a relative reduction comparison to show that its one-hour ozone attainment demonstration SIP continues to demonstrate attainment when applying the new MOBILE6.2 budgets.

In developing the EPA approved one-hour ozone attainment demonstrations, Connecticut relied on a "weight-of-evidence" approach that examined photochemical grid modeling results, emission projections, and air quality data. As part of Connecticut's one-hour attainment demonstration, the level of additional emission reductions needed for attainment was determined by applying a relative emission reduction technique.[7] This relied on measured air quality data and emission estimates from 1999, along with previous photochemical grid modeling with 2007 emission estimates, to determine whether additional emission reductions were necessary to provide for a projection of attainment for Connecticut in 2007. EPA concluded that attainment could be demonstrated if emission reductions expected from the federal motor vehicle Tier 2 program were incorporated into the SIP, and Connecticut subsequently incorporated this program into the SIP as part of revisions submitted to EPA in February 2000 and October 2001, respectively.[8]

CTDEP used a similar approach to determine if the 2007 MOBILE6.2 emission projections remain consistent with the approved attainment plans. CTDEP analyzed 1999 through 2007 to compare the relative emission reductions projected by MOBILE6.2 to those projected by MOBILE5b to determine if the relative reductions estimated over the 1999–2007 period with MOBILE6.2 equal or exceed those estimates using MOBILE5b.

MOBILE6.2 generally calculates higher emission factors than MOBILE5b between the base year and the attainment year, or 1999 and 2007 for the budgets that are being approved today. As can be seen in table 1, for the Connecticut portion of the New York-Northern New Jersey-Long Island nonattainment area, MOBILE6.2 reductions are greater than MOBILE5b for emissions of total precursors (39.7 tons per summer day (tpd) versus 26.6 tpd), VOC (18.3 tpd versus 7.9 tpd), and NO_X (21.4 tpd versus 18.7 tpd). In addition, the rate of emission reductions between the base year of 1999 and attainment year of 2007 is also greater with MOBILE6.2 than MOBILE5b for total precursor emissions (46.3% versus 44.3%) and VOC emissions (52.7% versus 44.9%); but slightly lower for NO_X emissions (41.9% versus 44.1%). Therefore, MOBILE6.2 provides an "excess" rate of VOC reductions that is 7.9% above what MOBILE5b provided in the approved attainment SIP. In addition, MOBILE6.2 provides a 2.2% smaller rate of NO_X reductions compared to the MOBILE5b emissions included in the approved attainment SIP.

TABLE 1.—COMPARISON OF MOBILE5B AND MOBILE6.2 EMISSION ESTIMATES: 1999–2007

	Connecticut portion of the New York-Northern New Jersey-Long Island nonattainment area			Greater Connecticut		
	$VOC + NO_X$	VOC	NO_X	$VOC + NO_X$	VOC	NO_X
MOBILE5b: 1999 (tpd)	60.0	17.6	42.4	191.7	52.3	139.4
MOBILE5b: 2007 (tpd)	33.4	9.7	23.7	109.6	30.0	79.6
M5b Reduction (tpd)	26.6	7.9	18.7	82.1	22.3	59.8
M5b % Reduction	44.3%	44.9%	44.1%	42.8%	42.6%	42.9%
MOBILE6.2: 1999 (tpd)	85.8	34.7	51.1	272.2	107.3	164.9
MOBILE6.2: 2007 (tpd)	46.1	16.4	29.7	150.3	51.9	98.4
M6.2 Reduction (tpd)	39.7	18.3	21.4	121.9	55.4	66.5
M6.2 % Reduction	46.3%	52.7%	41.9%	44.8%	51.6%	40.3%
Difference in % Reductions (M6.2 – M5b)	1.9%	7.9%	−2.2%	2.0%	9.0%	−2.6%
"Excess" Reductions with MOBILE6.2 (after VOC for NO_X substitution at 0.83 to 0.61 ratio established by EPA method)	NA	4.9%	0.0%	NA	5.5%	0.0%

To demonstrate the net beneficial effect on ozone of the combined 7.9% "excess" VOC reductions and the 2.2% NO_X "deficit," CTDEP applied the emission reduction factors previously approved by EPA to determine the amount of additional reductions needed in Connecticut to ensure attainment of the ozone standard. See Addenda to the Ozone Attainment Demonstrations for the Southwest Connecticut Severe Ozone Nonattainment Area and Greater Connecticut Serious Ozone Nonattainment Area, section 3.B. at 4–7 (January 14, 2000). This method determined that emission reductions of 0.83% VOC and 0.61% NO_X resulted in an ozone air quality improvement of one ppb in the New York City modeling domain. Scaling these "normalized" values, the 2.2% MOBILE6.2 NO_X deficit described above can be offset by 3.0% (*i.e.*, $(0.83/0.61) \times 2.2\% = 3.0\%$ with rounding) of the 7.9% MOBILE6.2 VOC "excess."[9] This substitution results in a final MOBILE6.2 VOC "excess" reduction of 4.9% (with a net zero balance of NO_X), relative to the MOBILE5b emissions included in the approved attainment SIP. Similar calculations are summarized in Table 1 for the Greater Connecticut nonattainment area.

The methodology used in these calculations differs from the methodology provided in EPA guidance,[10] but Connecticut has provided evidence that these budgets continue to support attainment of the ozone NAAQS by 2007 in both nonattainment areas. First, to assess the relative level of reduction under the MOBILE5 model compared with the MOBILE6 model, Connecticut compared mobile source emission reductions from 1999 to 2007, the attainment year for these areas. EPA's guidance, however, recommends comparing reductions from the base year of the attainment demonstration with the attainment year. For most purposes, the base year for the attainment demonstrations in Connecticut was 1990. Nevertheless, Connecticut believes that it makes more sense to start the comparison with 1999 levels, because that was the year Connecticut assembled its attainment demonstration for EPA using a weight of evidence assessment of various emissions and air quality trends. Much of the data used in that weight of evidence assessment came from the late 1990's and made projections of attainment in 2007 by assessing how past trends in that data would likely proceed from 1999 forward. See *e.g.* the discussion of the Regional Design Value Rollback Analysis for the Connecticut Nonattainment Areas (64 FR at 70341–70342 (Greater Connecticut) and at 70359 (Southwest Connecticut) (December 16, 1999)). Connecticut and EPA effectively used 1999 as a base year for several purposes when constructing the weight of evidence analysis supporting our approval of the state's attainment demonstration. Therefore, Connecticut used 1999 as the starting point for assessing whether the relative level of reductions in mobile emissions projected using MOBILE6 still supports its attainment demonstration, since a critical step in that demonstration relied on projections from 1999 to 2007.

Second, Connecticut used the factors described above to compare and offset the "deficit" in NO_X reductions with "excess" VOC reductions. EPA's guidance does not directly address the situation where the overall level of ozone precursor reductions appears to support the weight of evidence analysis underlying the attainment demonstration but there is a slight shortfall in the level of reduction for one pollutant. Connecticut has looked to an analogous exercise the State and EPA undertook to calculate how to balance between NO_X and VOC reductions when calculating emission reduction shortfalls in ozone nonattainment areas. EPA believes the State's use of these factors is a reasonable extension of that methodology, since the goal of both exercises is to compare the relative benefit in reducing ozone that results from reductions in either VOC or NO_X.

Application of this methodology provides evidence that MOBILE6.2 projects a net reduction in total ozone precursor emissions between the 1999 base year and the 2007 attainment year that are at least equivalent to the level of reduction Connecticut relied on for its attainment demonstration using MOBILE5. These excess emission reductions determined with MOBILE6.2 reaffirm that the transportation budgets developed with MOBILE6.2 are consistent with Connecticut's previously approved attainment demonstrations.

In addition to the evaluation of on-road mobile source emissions, CTDEP also reevaluated the effects on the attainment plan of recent changes to 2007 growth projections for other emission source categories (*i.e.*, point, area, and non-road mobile sources). The Connecticut Department of Labor's updated total employment projections for the manufacturing sector are actually lower than previous projections by almost five percent. In addition, population projections were also updated. When updated employment growth and population forecasts are incorporated into emission calculations,[11] overall ozone precursor emission projections for 2007 are slightly lower than those included in the previously approved attainment plan. These lower emission projections further support the attainment plan's conclusion that emission reductions included in the SIP are on target to achieve one-hour ozone attainment by 2007 in both the Connecticut portion of the New York-Northern New Jersey-Long Island nonattainment area and the Greater Connecticut area.

Connecticut must submit a mid-course review of its attainment demonstration by December 31, 2004 to ensure that the state remains on track to attain by 2007. During that mid-course review, EPA can reconfirm that these mobile budgets continue to support Connecticut's attainment demonstration.

Lastly, to further support the approval of Connecticut's mobile source budgets, EPA supplemented Connecticut's analysis with an analysis of its own based on information provided by the CTDEP. For the entire state, we compared the relative reduction, by percentage, between the 1990 and 2007 inventories generated using the two different versions of the models to ensure that the approved 1-hour ozone attainment demonstrations for Connecticut will continue to demonstrate attainment by 2007. The methodology for this relative reduction comparison consists of comparing the revised MOBILE6 baseline and attainment case inventories, by pollutant, with the previously approved MOBILE5 inventory totals for the State of Connecticut to determine if attainment can still be predicted by the attainment date.

Table 2 below contrasts Connecticut's revised MOBILE6-based motor vehicle emissions inventories with the previously approved MOBILE5-based inventories for the two Connecticut nonattainment areas, by pollutant, expressed in units of tons per summer day (tpd). These revised inventories were developed using the latest available information including vehicle registration data, traffic data, vehicle miles traveled, and growth assumptions. Non-road emissions were calculated using the latest version of EPA's non-road model.

[5] Memorandum, "Policy Guidance on the Use of MOBILE6.2 for SIP Development and Transportation Conformity," issued January 18, 2002.

[6] Memorandum, "Clarification of Policy Guidance for MOBILE6.2 SIPs in Mid-course Review Areas," issued February 12, 2003.

[7] 66 FR 63921–63938 (December 11, 2001) for the New York-Northern New Jersey-Long Island nonattainment area; 66 FR 634–663 (January 3, 2001) for the Greater Connecticut area.

[8] MOBILE5b inputs and estimates are from the previously approved SIP submittals "Addenda to the Ozone Attainment Demonstrations for the Southwest Connecticut Severe Ozone Nonattainment Area and Greater Connecticut Serious Ozone Nonattainment Area" (submitted to EPA on February 8, 2000) and "Updates to the Ozone Attainment Demonstration for the Southwest Connecticut Severe Ozone Nonattainment Area (submitted to EPA in October 2001). MOBILE6.2 estimates were determined as described in the current SIP revision.

[9] Note that Connecticut's submittal indicates that the required "offset" for the level of NO_X reduction from the MOBILE6 model is 3.1%, not 3.0%. EPA has re-run these calculations, and we believe that the correct number is 3.0%. In either case, it is clear that the level of VOC reduction projected by the MOBILE6 model more than compensates for the "deficit" in NO_X reductions.

[10] Two Memoranda: "Policy Guidance on the Use of MOBILE6.2 for SIP development and Transportation Conformity," issued January 18, 2002, and "Clarification of Policy Guidance for MOBILE6.2 SIPs in Mid-course Review Areas," issued February 12, 2003.

[11] Calculations with updated CTDOL employment projections, U.S. Census Bureau were carried out using the procedures documented in Connecticut's Post-1999 Rate-of-Progress Plan. See section 3.2 and appendix F of "Ozone Reduction Strategy for the Southwest Connecticut Portion of the New York-New Jersey-Connecticut Severe Nonattainment Area: Post-1999 Rate-of-Progress Plan"; CTDEP, September 2001. See: *http://www.dep.state.ct.us/air2/siprac/2001/pst99tsd.pdf*

TABLE 2.—COMPARISON OF CONNECTICUT'S MOBILE5 AND REVISED MOBILE6-BASED EMISSIONS INVENTORIES

State of Connecticut	1990 VOC (tpd)	2007 VOC (tpd)	Percent reduction	1990 NO_X (tpd)	2007 NO_X (tpd)	Percent reduction
MOBILE5b-based emissions inventory	536.3	311.1	41.99	463.6	297.2	35.88
MOBILE6.2-based revised emissions inventory	587.3	341.8	41.80	452.3	285.7	36.82
Difference in % Reductions (M6.2–M5b)	.....	.....	−0.18	.....	.....	0.94
"Excess" Reductions with MOBILE6.2 (after NO_X for VOC substitution at 0.61 to 0.83 ratio)	.....	.....	0.0	.....	.....	0.81

This relative reduction comparison shows that the reduction in NO_X emissions, on a percentage basis, is greater in the revised MOBILE6-based inventories than in the previously approved MOBILE5 inventories. For VOC emissions, the relative reduction in the revised MOBILE6-based inventories is slightly less than in the previously approved MOBILE5 inventories. However, the "deficit" in VOC reductions is more than offset with the "excess" in NO_X reductions when the technique that Connecticut DEP used in its analysis is performed. This analysis satisfies the conditions outlined in EPA's MOBILE6 Policy guidance, and demonstrates that the new levels of motor vehicle emissions calculated using MOBILE6 continue to support achievement of the projected attainment of the 1-Hour Ozone NAAQS by the attainment date of 2007 for Connecticut ozone nonattainment areas.

D. Are Connecticut's Motor Vehicle Emissions Budgets Approvable?

Table 3 contains Connecticut's revised budgets that EPA is approving today. These budgets were developed using the latest planning assumptions, including 2000 vehicle registration data, VMT, speeds, fleet mix, and SIP control measures. For the Connecticut portion of the New York-Northern New Jersey-Long Island nonattainment area, EPA is approving budgets for 2005 and 2007, and for the Greater Connecticut nonattainment area EPA is approving budgets for 2007.

TABLE 3.—MOBILE6.2 TRANSPORTATION CONFORMITY BUDGETS

Year	Connecticut portion of the New York-Northern New Jersey-Long Island non-attainment area		Greater Connecticut	
	VOC (tons/day)	NO_X (tons/day)	VOC (tons/day)	NO_X (tons/day)
2005	19.5	36.8	NA	NA
2007	16.4	29.7	51.9	98.4

As stated in section IIA above, EPA has posted an announcement on EPA's Office of Transportation and Air Quality Web site *http://www.epa.gov/otaq/transp/conform/currsips.htm*, initiating the adequacy review process for the MOBILE6.2 2007 attainment year budgets for both areas in Connecticut in accordance with EPA guidance.[12] The 2005 budgets for the Connecticut portion of the New York-Northern New Jersey-Long Island nonattainment area must be approved before being used in a conformity analysis and are not subject to the adequacy process. The 2007 MOBILE6.2 attainment year budgets may be used for conformity determinations upon EPA's determination of "adequate," as described in EPA guidance[13] and specified in EPA's approvals of Connecticut's attainment demonstrations.[14]

Once the MOBILE6.2 2007 attainment year motor vehicle emissions budgets for the Connecticut portion of the New York-Northern New Jersey-Long Island are deemed adequate, transportation air quality conformity analyses, prepared with MOBILE6.2, can be evaluated in southwestern Connecticut using the SIP-approved MOBILE5b 2005 and the MOBILE6.2 2007 budgets for the emission budget tests.

The MOBILE6.2 budgets for 2005 and 2007 for the Connecticut portion of the New York-Northern New Jersey-Long Island nonattainment area and for 2007 for the Greater Connecticut nonattainment area will be approved effective 60 days from today. Once the MOBILE6.2 budgets are approved, all future transportation conformity analyses in Connecticut will be required to demonstrate conformity with the new MOBILE6.2 budgets.

III. Final Action

EPA is approving Connecticut's revision submitted on June 17, 2003 containing 2005 and 2007 motor vehicle emissions budgets using MOBILE6.2 for the Connecticut portion of the New York-Northern New Jersey-Long Island nonattainment area and 2007 budgets for the Greater Connecticut nonattainment area.

The EPA is publishing this action without a prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should relevant adverse comments be filed. This rule will be effective February 17, 2004 without further notice unless the Agency receives relevant adverse comments by January 20, 2004.

If the EPA receives such comments, then EPA will publish a notice withdrawing the final rule and informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period on the proposed rule. Only parties interested in commenting on the proposed rule should do so at this time. If EPA receives no such comments, the public is advised that this rule will be effective on February 17, 2004 and EPA will take no further action on the proposed rule. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

IV. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves state law as meeting federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the federal Government and Indian tribes, or on the distribution of power and responsibilities between the federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*)

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by February 17, 2004. Interested parties should comment in response to the proposed rule rather than petition for judicial review, unless the objection arises after the comment period allowed for in the proposal. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: December 10, 2003.

Robert W. Varney,

Regional Administrator, EPA New England.

■ Part 52 of chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

■ 1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart H—Connecticut

■ 2. Section 52.377 is amended by revising paragraphs (b), (c) and (d) to read as follows:

§ 52.377 Control strategy: Ozone.

* * * * *

(b) Approval—Revisions to the State Implementation Plan submitted by the Connecticut Department of Environmental Protection on September 16, 1998, February 8, 2000 and June 17, 2003. The revisions are for the purpose of satisfying the attainment demonstration requirements of section 182(c)(2)(A) of the Clean Air Act for the Greater Connecticut serious ozone nonattainment area. The revision establishes an attainment date of November 15, 2007 for the Greater Connecticut serious ozone nonattainment area. Connecticut commits to conduct a mid-course review to assess modeling and monitoring progress achieved toward the goal of attainment by 2007, and submit the results to EPA by December 31, 2004. The June 17, 2003 revision

[12] Memorandum, "Conformity Guidance on Implementation of March 2, 1999 Conformity Court Decision," issued May 14, 1999. A copy of this memorandum cab be found on EPA's Web site at *www.epa.gov/otaq/transp/tranqconf.htm*.

[13] Policy Guidance on the Use of MOBILE6 for SIP Development and Transportation Conformity; dated January 18, 2002; see *http://www.epa.gov/otaq/models/mobile6/m6policy.pdf*.

[14] 66 FR 63921–63938; (December 11, 2001) (see page 63923 for a discussion regarding the MOBILE6 conformity budget adequacy determination for the Southwest Connecticut area); 66 FR 633–663 (January 3, 2001) (see page 635 for a discussion regarding the MOBILE6 conformity budget adequacy determination for the Greater Connecticut area).

establishes MOBILE6-based motor vehicle emissions budgets for 2007 of 51.9 tons per day of volatile organic compounds (VOC) and 98.4 tons per day of nitrogen oxides (NO_X) to be used in transportation conformity in the Greater Connecticut serious ozone nonattainment area.

(c) Approval—Revisions to the State Implementation Plan submitted by the Connecticut Department of Environmental Protection on October 15, 2001 and June 17, 2003. These revisions are for the purpose of satisfying the rate of progress requirement of section 182 (c)(2)(B) through 2007, and the contingency measure requirements of section 182 (c)(9) of the Clean Air Act, for the Connecticut portion of the NY–NJ–CT severe ozone nonattainment area. The October 15, 2001 revision establishes motor vehicle emissions budgets for 2002 of 15.20 tons per day of VOC and 38.39 tons per day of NO_X to be used in transportation conformity in the Connecticut portion of the NY–NJ–CT severe ozone nonattainment area. The June 17, 2003 revision establishes motor vehicle emissions budgets for 2005 of 19.5 tons per day of VOC and 36.8 tons per day of NO_X to be used in transportation conformity in the Connecticut portion of the NY–NJ–CT severe ozone nonattainment area.

(d) Approval—Revisions to the State Implementation Plan submitted by the Connecticut Department of Environmental Protection on September 16, 1998, February 8, 2000, October 15, 2001 and June 17, 2003. The revisions are for the purpose of satisfying the attainment demonstration requirements of section 182(c)(2)(A) of the Clean Air Act for the Connecticut portion of the NY–NJ–CT severe ozone nonattainment area. The June 17, 2003 revision establishes MOBILE6-based motor vehicle emissions budgets for 2007 of 16.4 tons per day of VOC and 29.7 tons per day of NO_X to be used in transportation conformity in the Connecticut portion of the NY–NJ–CT severe ozone nonattainment area. Connecticut commits to adopt and submit by October 31, 2001, additional necessary regional control measures to offset the emission reduction shortfall in order to attain the one-hour ozone standard by November 2007. Connecticut commits to adopt and submit by October 31, 2001, additional necessary intrastate control measures to offset the emission reduction shortfall in order to attain the one-hour ozone standard by November 2007. Connecticut commits to adopt and submit additional restrictions on VOC emissions from mobile equipment and repair operations; and requirements to reduce VOC emissions from certain consumer products. Connecticut also commits to conduct a mid-course review to assess modeling and monitoring progress achieved toward the goal of attainment by 2007, and submit the results to EPA by December 31, 2004.

[FR Doc. 03–31234 Filed 12–17–03; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

45 CFR Part 31

Tax Refund Offset

AGENCY: Department of Health and Human Services.

ACTION: Final rule.

SUMMARY: The Department of Health and Human Services (HHS) is amending its tax refund offset regulation to reflect amendments to 31 U.S.C. 3720A made by tax refund offset provisions of the Debt Collection Improvement Act of 1996 (DCIA). The amended regulation changes the process by which HHS certifies and refers past-due debt to the Department of Treasury for tax refund offset to satisfy debt owed to the HHS.

EFFECTIVE DATE: December 18, 2003.

FOR FURTHER INFORMATION CONTACT: Katherine M. Drews, Associate General Counsel, General Law Division, Office of the General Counsel, Cohen Building, Room 4760, Washington DC 20201, 202–619–0150.

SUPPLEMENTARY INFORMATION:

Background

This final rule implements the tax refund offset provisions of the Debt Collection Improvement Act of 1996 (DCIA), Pub. L. 104–134, 110 Stat. 1321–358, codified at 31 U.S.C. 3720A. As required by the tax refund offset provisions of the DCIA, a Federal agency owed a past-due debt must notify the Secretary of the Treasury of such debt for collection by tax refund offset in accordance with regulations promulgated by the Secretary of the Treasury. The Financial Management Service (FMS), a bureau of the Department of the Treasury (Treasury), is responsible for promulgating the regulations implementing this and other debt collection tools established by the DCIA. The Treasury Final Rule, as amended, is published in section 285.2 of title 31 of the Code of Federal Regulations.

Basic Provisions

In accordance with the requirements of the DCIA and the implementing regulations issued by the Department of the Treasury at 31 CFR 285.2, the rule establishes the rules and procedures for certifying and referring a past-due debt to FMS for tax refund offset, correcting and updating referral information transmitted to FMS, and providing the debtor with written notice at least 60 days before the Department refers a debt to FMS. This written notice informs the debtor of the nature and amount of the debt, that the debt is past-due and legally enforceable, that the Department intends to enforce collection by referring the debt to the Department of the Treasury for tax refund offset, and that the debtor has a right to inspect and copy Department records relating to the debt, enter into a repayment agreement, and request review and present evidence that all or part of the debt is not past-due or legally enforceable.

Rules and Procedures

Except for minor changes to make the provisions agency-specific, the final rule is substantially identical to the Treasury Final Rule. In accordance with the substantive and procedural requirements of the DCIA and the Treasury Final Rule, the final rule establishes HHS rules and procedures for:

1. Certifying and referring a past-due debt to FMS for tax refund offset.
2. Correcting and updating referral information transmitted to FMS.
3. Providing the debtor with written notice at least 60 days before referring a debt to FMS. This written notice must inform the debtor of the nature and amount of the debt, that the debt is past-due and legally enforceable, that the Department intends to enforce collection by referring the debt to the Department of the Treasury for tax refund offset, and that the debtor has a right to inspect and copy Department records relating to the debt, enter into a repayment agreement, and request review and present evidence that all or part of the debt is not past-due or legally enforceable.

Analysis of and Responses to Public Comments

No public comments were received.

Economic Impact

We have examined the impact of this rule as required by Executive Order 12866 (September 1993, Regulatory Planning and Review), as amended by Executive Order 13258 (February 2002, Amending Executive Order 12866 on Regulatory Planning and Review) and

the Regulatory Flexibility Act (RFA) (September 19, 1980; Pub. L. 96–354), the Unfunded Mandated Reform Act of 1995 (Pub. L. 104–4), and Executive Order 13132 (August 1999, Federalism).

Executive Order 12866 (the Order), as amended by Executive Order 13258, directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize the benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects ($100 million or more in 1 year). We have determined that the final rule is consistent with the principles set forth in the Order, and we find that the final rule would not have an effect on the economy that exceeds $100 million in any one year. In addition, this rule is not a major rule as defined at 5 U.S.C. 804(2). In accordance with the provisions of the Order, the rule was reviewed by the Office of Management and Budget.

It is hereby certified under the RFA that this final rule will not have a significant economic impact on a substantial number of small entities. This final rule applies only to individuals with past-due debts owed to the United States.

Section 202 of the Unfunded Mandates Reform Act of 1995 also requires that agencies assess anticipated costs and benefits before issuing any rule that may result in expenditure of in any 1 year by State, local, or tribunal governments, in the aggregate, or by the private sector, of $100 million. As noted above, we find that the final rule would not have an effect of this magnitude on the economy.

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a proposed rule (and subsequent final rule) that imposes substantial direct requirement costs on State and local governments, preempts State law, or otherwise has Federalism implications. We have reviewed the final rule under the threshold criteria of Executive Order 13132, Federalism, and have determined that this final rule would not have substantial direct impact on States, or on the distribution of power and responsibilities among the various levels of government. As there are no Federalism implications, a Federalism impact statement is not required.

For purposes of the Paperwork Reduction Act, 44 U.S.C. chapter 35, this final rule will impose no new reporting or record-keeping requirements on any member of the public.

List of Subjects in 45 CFR Part 31

Administrative practice and procedure, Taxes, Claims, and Debts.

■ For the reasons set forth in the preamble, HHS amends 45 CFR Subtitle A as follows: Revise part 31 to read as follows:

PART 31—TAX REFUND OFFSET

Sec.

31.1 Purpose and scope.
31.2 Definitions.
31.3 General rule.
31.4 Certification and referral of debt.
31.5 Notice.
31.6 Review of Departmental records.
31.7 Review of a determination that a debt is past-due and legally enforceable.

Authority: 31 U.S.C. 3720A, 31 CFR 285.2, E.O. 12866, E.O. 13258.

§ 31.1 Purpose and scope.

(a) *Purpose.* This part prescribes the Department's standards and procedures for submitting past-due, legally enforceable debts to the Department of the Treasury for collection by tax refund offset.

(b) *Authority.* These standards and procedures are authorized under the tax refund offset provision of the Deficit Reduction Act of 1984, as amended by the Debt Collection Improvement Act of 1996, codified at 31 U.S.C. 3720A, and the implementing regulations issued by the Department of the Treasury at 31 CFR 285.2.

(c) *Scope.* (1) This part applies to all Departmental Operating Divisions and Regional Offices that administer a program that gives rise to a past-due non-tax debt owed to the United States, and to all officers or employees of the Department authorized to collect such debt. This part does not apply to any debt or claim owed to the Department of Health and Human Services by another Federal agency.

(2) Nothing in this part precludes the Department from pursuing other debt collection procedures, including administrative wage garnishment under part 32 of this title, to collect a debt that has been submitted to the Department of the Treasury under this part. The Department may use such debt collection procedures separately or in conjunction with the offset collection procedures of this part.

§ 31.2 Definitions.

In this part, unless the context otherwise requires:

Administrative offset means withholding funds payable by the United States (including funds payable by the United States on behalf of a State government) to, or held by the United States for, a person to satisfy a claim.

Day means calendar day. For purposes of computation, the last day of the period will be included unless it is a Saturday, Sunday, or a Federal legal holiday, in which case the next business day will be considered the last day of the period.

Debt or *claim* means an amount of money, funds, or other property determined by an appropriate official to be owed to the United States from any individual, entity, organization, association, partnership, corporation, or State or local government or subdivision, except another Federal agency.

Debtor means an individual, organization, association, partnership, corporation, or State or local government or subdivision indebted to the Government, or the person or entity with legal responsibility for assuming the debtor's obligation.

Department means the Department of Health and Human Services, and each of its Operating Divisions and regional offices.

Evidence of service means information retained by the Department indicating the nature of the document to which it pertains, the date of mailing of the document, and the address and name of the debtor to whom it is being sent. A copy of the dated and signed written notice of intent to offset provided to the debtor pursuant to this part may be considered evidence of service for purposes of this regulation. Evidence of service may be retained electronically so long as the manner of retention is sufficient for evidentiary purposes.

FMS means the Financial Management Service, a bureau within the Department of the Treasury.

IRS means the Internal Revenue Service, a bureau of the Department of the Treasury.

Legally enforceable means that there has been a final agency determination that the debt, in the amount stated, is due and there are no legal bars to collection action.

Operating division means each separate component, within the Department of Health and Human Services, including, but not limited to, the Administration for Children and Families, Administration on Aging, the Centers for Disease Control and Prevention, the Centers for Medicare & Medicaid Services, the Food and Drug Administration, the National Institutes of Health, and the Office of the Secretary.

Past-due debt means a debt which the debtor does not pay or otherwise resolve by the date specified in the initial demand for payment, or in an applicable written repayment agreement or other instrument, including a post-delinquency repayment agreement.

Secretary means the Secretary of the Department of Health and Human Services, or the Secretary's designee within any Operating Division or Regional Office.

Taxpayer identifying number means the identifying number described under section 6109 of the Internal Revenue Code of 1986 (26 U.S.C. 6109). For an individual, the taxpayer identifying number is the individual's social security number.

Tax refund offset means withholding or reducing a tax refund payment by an amount necessary to satisfy a debt owed to the United States by the payee(s) of a tax refund payment.

Tax refund payment means any overpayment of Federal taxes to be refunded to the person making the overpayment after the IRS makes the appropriate credits as provided in 26 U.S.C. 6402 for any liabilities for any tax on the part of the person who made the overpayment.

§ 31.3 General rule.

(a) Any past-due, legally enforceable debt of at least $25, or such other minimum amount as determined by the Secretary of the Treasury, shall be submitted to FMS for collection by tax refund offset.

(b) FMS will compare tax refund payment records, as certified by the IRS, with records of debts submitted by the Department under this part. A match will occur when the taxpayer identification number and name of a payment certification record are the same as the taxpayer identifying number and name control of a debtor record. When a match occurs and all other requirements for tax refund offset have been met, FMS will reduce the amount of any tax refund payment payable to a debtor by the amount of any past-due legally enforceable debt. Any amounts not offset will be paid to the payee(s) listed in the payment certification record.

§ 31.4 Certification and referral of debt.

(a) *Certification.* The Secretary shall certify to FMS that:

(1) The debt is past-due and legally enforceable in the amount submitted and that the Department will ensure that collections are properly credited to the debt;

(2) Except in the case of a judgment debt or as otherwise allowed by law, the debt is referred within ten (10) years after the Department's right of action accrues;

(3) The Department has made reasonable efforts to obtain payment of the debt, and has:

(i) Submitted the debt to FMS for collection by offset and complied with the administrative offset provision of 31 U.S.C. 3716(a) and related regulations, to the extent that collection by administrative offset is not prohibited by statute;

(ii) Notified, or made a reasonable attempt to notify, the debtor that the debt is past-due, and unless paid within 60 days of the date of the notice, the debt may be referred to Treasury for tax refund offset. For purposes of this regulation, the Department has made a reasonable attempt to notify the debtor if the agency uses the current address information contained in the Department's records related to the debt. If address validation is desired or necessary, the Department may obtain information from the IRS pursuant to 26 U.S.C. 6103(m)(2)(4) or (5).

(iii) Given the debtor at least 60 days to present evidence that all or part of the debt is not past-due or not legally enforceable, considered any evidence presented by the debtor, and determined that the debt is past-due and legally enforceable; and

(iv) Provided the debtor with an opportunity to make a written agreement to repay the debt; and

(4) The debt is at least $25.

(b) *Referral.* (1) The Secretary shall submit past-due, legally enforceable debt information for tax refund offset in the time and manner prescribed by the Department of the Treasury.

(2) For each debt referred under this part, the Secretary will include the following information:

(i) The name and taxpayer identifying number, as defined in 26 U.S.C. 6109, of the debtor responsible for the debt;

(ii) The amount of such past-due and legally enforceable debt;

(iii) The date on which the debt became past-due; and

(iv) The designation of the Department referring the debt.

(c) *Correcting and updating referral.* (1) After referring a debt under this part, the Secretary shall promptly notify the Department of the Treasury if:

(i) An error was made with respect to information transmitted to the Department of the Treasury;

(ii) The Department receives a payment or credits a payment to the account of a debtor referred for tax refund offset; or

(iii) The debt amount is otherwise incorrect.

(2) The Department shall provide the certification required under paragraph (a) of this section for any increases to amounts owed.

(d) *Rejection of certification.* If the Department of Treasury rejects a certification because it does not comply with the requirements of paragraph (a) of this section, upon notification of the rejection and the reason(s) for rejection, the Secretary will resubmit the debt with a corrected certification.

§ 31.5 Notice.

(a) *Requirements.* If not previously included in the initial demand letter provided under section 30.11, at least 60 days before referring a debt for tax refund offset, the Secretary shall mail, by first class mail to the debtor's last known address, written notice informing the debtor of:

(1) The nature and amount of the debt;

(2) The determination that the debt is past-due and legally enforceable, and unless paid within 60 days after the date of the notice, the Secretary intends to enforce collection by referring the debt the Department of the Treasury for tax refund offset; and

(3) The debtor's rights to:

(i) Inspect and copy Department records relating to the debt;

(ii) Enter into written agreement to repay the amount of the debt;

(iii) Request review and present evidence that all or part of the debt is not past-due or not legally enforceable.

(b) The Secretary will retain evidence of service indicating the date of mailing of the notice. The notice may be retained electronically so long as the manner of retention is sufficient for evidentiary purposes

§ 31.6 Review of Departmental records.

(a) To inspect or copy Departmental records relating to the debt, the debtor must send a written request to the address designated in the notice described in section 31.5. The request must be received by the Department within 60 days from the date of the notice.

(b) In response to a timely request as described in paragraph (a) of this section, the designated Department official shall notify the debtor of the location and time when the debtor may inspect and copy such records. If the debtor is unable to personally inspect such records as the result of geographical or other constraints, the Department will arrange to send copies of the records to the debtor.

§ 31.7 Review of a determination that a debt is past-due and legally enforceable.

(a) *Requesting a review.* (1) If the debtor believes that all or part of the debt is not past-due or not legally enforceable, the debtor may request a review by the Department by sending a written request to the address provided in the notice. The written request must be received by the Department within 60 days from the date of the notice or, if the debtor has requested to inspect the records, within 30 days from the debtor's inspection of the records or the Department's mailing of the records under section 31.6(b), whichever is later.

(2) The request for review must be signed by the debtor, state the amount disputed, and fully identify and explain the evidence that the debtor believes supports the debtor's position. The debtor must submit with the request any documents that the debtor wishes to be considered, or the debtor must state in the request that additional information will be submitted within the above specified time period.

(3) Failure to timely request a review will be deemed an admission by the debtor that the debt is past-due and legally enforceable, and will result in a referral of the debt to the Department of the Treasury without further action.

(b) *Review.* Upon the timely submission of evidence by the debtor, the Department shall review the dispute and shall consider its records and any documentation and evidence submitted by the debtor. The Department shall make a determination based on the review of the written record, and shall send a written notice of its decision to the debtor. There is no administrative appeal of this decision.

(c) A debt that previously has been reviewed pursuant to this part, or that has been reduced to a judgment, will not be reconsidered under this part unless the evidence presented by the debtor disputes payments made or events occurring subsequent to the previous review or judgment.

Dated: September 22, 2003.

Tommy G. Thompson,

Secretary.

[FR Doc. 03–31043 Filed 12–17–03; 8:45 am]

BILLING CODE 4150–26–P

Proposed Rules

Federal Register
Vol. 68, No. 243
Thursday, December 18, 2003

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 319

[Docket No. 02–106–1]

Importation of Fruits and Vegetables

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We propose to amend the fruits and vegetables regulations to list a number of fruits and vegetables from certain parts of the world as eligible, under specified conditions, for importation into the United States. All of the fruits and vegetables, as a condition of entry, would be inspected and subject to treatment at the port of first arrival as may be required by an inspector. In addition, some of the fruits and vegetables would be required to meet other special conditions. We also propose to recognize areas in Peru as free from the South American cucurbit fly. These actions would provide the United States with additional types and sources of fruits and vegetables while continuing to protect against the introduction of quarantine pests through imported fruits and vegetables.

DATES: We will consider all comments that we receive on or before February 17, 2004.

ADDRESSES: You may submit comments by postal mail/commercial delivery or by e-mail. If you use postal mail/commercial delivery, please send four copies of your comment (an original and three copies) to: Docket No. 02–106–1, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 02–106–1. If you use e-mail, address your comment to *regulations@aphis.usda.gov*. Your comment must be contained in the body of your message; do not send attached files. Please include your name and address in your message and "Docket No. 02–106–1" on the subject line.

You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS dockets, are available on the Internet at *http://www.aphis.usda.gov/ppd/rad/webrepor.html*.

FOR FURTHER INFORMATION CONTACT: Mr. Wayne Burnett, Senior Import Specialist, PPQ, APHIS, 4700 River Road Unit 140, Riverdale, MD 20737–1236; (301) 734–6799.

SUPPLEMENTARY INFORMATION:

Background

The regulations in "Subpart—Fruits and Vegetables" (7 CFR 319.56 through 319.56–8, referred to below as the regulations) prohibit or restrict the importation of fruits and vegetables into the United States from certain parts of the world to prevent the introduction and spread of plant pests that are new to or not widely distributed within the United States.

At the request of various importers and foreign ministries of agriculture, we propose to amend the regulations to list a number of fruits and vegetables from certain parts of the world as eligible, under certain conditions, for importation into the United States. We also propose to list certain fruits and vegetables that have been imported into the United States under a permit without being specifically listed in the regulations to improve the transparency of our regulations.

The fruits and vegetables referred to in this document would have to be imported under a permit and would be subject to the requirements in § 319.56–6 of the regulations. Under § 319.56–6, all imported fruits and vegetables, as a condition of entry into the United States, must be inspected; they are also subject to disinfection at the port of first arrival if an inspector requires it. Section 319.56–6 also provides that any shipment of fruits and vegetables may be refused entry if the shipment is so infested with plant pests that an inspector determines that it cannot be cleaned or treated.

Some of the fruits and vegetables proposed for importation would have to meet other special conditions. The proposed conditions of entry, which are discussed below, appear adequate to prevent the introduction and spread of quarantine pests through the importation of these fruits and vegetables.

We have prepared a pest risk assessment or, in two cases, a decision sheet, for each of the fruits and vegetables that we propose to add, unless we have allowed their entry previously under a permit. Copies of the pest risk assessments and decision sheets are available from the person listed under **FOR FURTHER INFORMATION CONTACT.**

We also propose to make other amendments to update and clarify the regulations and improve their effectiveness. Our proposed amendments are discussed below by topic.

Inspected and Subject to Disinfection

Section 319.56–2t lists fruits and vegetables that may be imported into the United States upon inspection and subject to disinfection. We propose to amend that list to include additional fruits and vegetables from certain countries; some of the fruits and vegetables would be added in response to requests that we have received, while others have been imported into the United States under a permit but are not listed in the regulations. We also propose to make miscellaneous, nonsubstantive changes to § 319.56–2t. All of these proposed changes are discussed below.

African Horned Cucumber From Chile

We propose to amend § 319.56–2t to allow the entry of the African horned cucumber (*Cucumis metuliferus*) fruit from Chile. The pest risk assessment indicates that there are no quarantine pests associated with the African horned cucumber fruit from Chile that are likely to follow the import pathway. Therefore, we believe that the African horned cucumber from Chile may be imported into the United States under the requirements in § 319.56–6. The pest risk assessment was limited to the continental United States. Therefore, we would require African horned cucumber from Chile to be shipped in boxes labeled "Not for importation or distribution in HI, PR, VI, or Guam."

Annona spp. from Grenada

We propose to amend § 319.56–2t to allow the entry of commercial fruit shipments of cherimoya (*Annona cherimola*), soursop (*A. muricata*), custard apple (*A. reticulata*), sugar apple (*A. squamosa*), and atemoya (*A. squamosa* × *A. cherimola*) into the United States from Grenada.

The Government of Grenada requested that we authorize the importation of these commodities several years ago, before we routinely prepared pest risk assessments according to the guidelines provided by the Food and Agriculture Organization and the North American Plant Protection Organization. At that time, we prepared decision sheets. Decision sheets contain relatively the same information that is contained in modern pest risk assessments, but without the standardized format.

The decision sheet identified three internal feeders as quarantine pests in the West Indies: *Bephratelloides cubensis*, *Talponia batesi*, and *Cerconota anonella*. Because of the possibility that these internal feeders may have existed in Grenada, we did not issue a permit to allow the importation of *Annona* spp. fruit. Subsequently, Grenada informed us that they did not have those pests. We agreed to reconsider their import request if a survey determined that the internal feeders were indeed not present in *Annona* spp. fruit grown in Grenada. Grenada conducted a 3-year survey for the internal feeders and sampled more than 16,000 fruits, and no internal feeders or quarantine pests were found. In addition to approving the survey protocol, the Animal and Plant Health Inspection Service (APHIS) periodically observed the survey. More information on the survey and copies of the report may be obtained from the person listed under **FOR FURTHER INFORMATION CONTACT.**

We would limit imports of *Annona* spp. fruit to commercial shipments because produce grown commercially is less likely to be infested with plant pests than noncommercial shipments. Noncommercial shipments are more prone to infestations because the commodity is often ripe to overripe, could be a variety with unknown susceptibility to pests, and is often grown with little or no pest control. Commercial shipments, as defined in § 319.56–1, are shipments of fruits and vegetables that an inspector identifies as having been produced for sale and distribution in mass markets. Identification of a particular shipment as commercial is based on a variety of indicators, including, but not limited to, the quantity of produce, the type of packaging, identification of a grower or packing house on the packaging, and documents consigning the shipment to a wholesaler or retailer.

Based on the survey results and the decision sheet, we believe that restricting imports of *Annona* spp. fruit to commercial shipments and requiring inspection at the port of first arrival would be adequate to mitigate any pest risks. Therefore, we propose to list *Annona* spp. fruits from Grenada in § 319.56–2t.

Fruits and Vegetables From Mexico

The regulations in § 319.56–2(e) provide that any fruit or vegetable, except those otherwise restricted, may be imported under permit if APHIS is satisfied that the fruit or vegetable meets one of several conditions:

(1) The fruit or vegetable is not attacked in the country of origin by quarantine pests.

(2) It has been treated or is to be treated for all quarantine pests in the country of origin, in accordance with conditions and procedures that may be prescribed by the Administrator.

(3) It is imported from a definite area or district in the country of origin that is free from all quarantine pests that attack the fruit or vegetable and its importation is in compliance with the criteria of § 319.56–2(f).

(4) It is imported from a definite area or district of the country of origin that is free from quarantine pests that attack the fruit or vegetable and the criteria of § 319.56–2(f) are met with regard to those quarantine pests, provided that all other quarantine pests that attack the fruit or vegetable in the area or district of the country of origin have been eliminated from the fruit or vegetable by treatment or any other procedures that may be prescribed by the Administrator.

Prior to 1992, APHIS did not specifically amend the regulations to list those fruits and vegetables for which we issued a permit after determining that the fruit or vegetable was eligible for entry under the regulations in § 319.56–2(e). However, in 1992, in an effort to increase transparency, we changed our approach and began to amend the regulations to specifically list all newly eligible fruits and vegetables (*i.e.*, those that were not previously eligible under a specific administrative instruction or imported under permit in accordance with § 319.56–2(e)). In most cases, we have not amended the regulations to list the fruits and vegetables that were allowed entry exclusively under permit prior to our decision to specifically list the commodities in the regulations.

In this document, we propose to list the following fruits and vegetables in § 319.56–2t. These fruits and vegetables, which we determined meet the criteria of § 319.56–2(e)(4), have been imported into the United States from Mexico under permit since before 1992.

Common name	Botanical name	Plant part(s)
Allium	*Allium spp*	Whole plant.
Asparagus	*Asparagus officinalis*	Whole plant.
Beet	*Beta vulgaris*	Whole plant.
Carrot	*Daucus carota*	Whole plant.
Coconut	*Cocos nucifera*	Fruit without husk.
Eggplant	*Solanum melongena*	Whole plant.
Grape	*Vitis* spp	Fruit, cluster, leaves.
Jicama	*Pachyrhizus tuberosus*	Whole plant.
Lemon	*Citrus limon*	Fruit.
Lime, sour	*Citrus aurantiifolia*	Fruit.
Parsley	*Petroselinum crispum*	Whole plant.
Pineapple	*Ananas comosus*	Fruit.
Prickly-pear pad	*Opuntia* spp	Pad.
Radish	*Raphanus sativus*	Whole plant.
Tomato	*Lycopersicon lycopersicum*	Whole plant.
Tuna	*Opuntia* spp	Fruit.

In addition, although the flower of banana (*Musa* spp.) and the inflorescence of cucurbits (*Cucurbitaceae*) are currently listed in § 319.56–2t as admissible plant parts from Mexico, the fruit of banana and the flower and fruit of cucurbits have been admissible as well under permit. Therefore, we propose to amend the existing entries for bananas and cucurbits from Mexico so that all admissible plant parts of those commodities are listed in § 319.56–2t.

While a few quarantine pests have been detected on these particular fruits and vegetables during inspection at the ports, they have been eliminated from the fruit or vegetable by treatment or other procedures. Therefore, we believe that these fruits and vegetables, or plant parts, should be listed in § 319.56–2t so that the regulations specifically indicate that these commodities may be imported from Mexico. In accordance with § 319.56–6, these fruits and vegetables would continue to be inspected at the port of first arrival and, if required by an inspector, disinfected at the port of first arrival.

Coconut Fruit With Milk and Husk From Mexico

In 1989, we prepared a decision sheet in response to Mexico's request to export coconut fruit with milk and husk to the United States. Because we identified two quarantine pests of concern (the red ring nematode [*Rhadinaphelenchus cocophlus*] and lethal yellowing disease), we denied the request.

Since that time, however, we have determined that the risk associated with red ring nematode is low. In 1992, we amended 7 CFR 319.37–5(g) to allow seed coconuts to be imported into the United States from Costa Rica, where the red ring nematode is also known to occur, since the risk associated with introducing red ring nematode in seed coconuts was determined to be low. Prior to that amendment, the importation of seed coconut was allowed only from Jamaica, where the red ring nematode is not known to occur. Given that the risk associated with the red ring nematode is the same for seed coconuts and coconuts with milk and husk, and that seed coconut from Costa Rica has been successfully imported into the United States for over a decade, we have reconsidered Mexico's request and propose to allow coconut fruit with milk and husk to be imported into the United States from Mexico if inspected at the port of first arrival in accordance with § 319.56–6. Because the risk associated with the red ring nematode is low, we believe that inspection at the port of first arrival is sufficient to mitigate the risk.

To mitigate the risk associated with lethal yellowing disease, we propose to allow coconut fruit with milk and husk to be imported into the United States from Mexico under conditions similar to the existing conditions for the importation of seed coconuts from Costa Rica and Jamaica. Seed coconuts imported into the United States from Costa Rica or Jamaica must be of either the Malayan dwarf variety or the Maypan variety, which are resistant to lethal yellowing disease. The seed coconuts must be accompanied by a phytosanitary certificate which declares that the coconuts are either the Malayan dwarf variety or the Maypan variety.

Therefore, we are proposing to require that the coconut fruit with milk and husk be accompanied by a phytosanitary certificate issued by the national plant protection organization (NPPO) of Mexico with an additional declaration stating that the fruit is of the Malayan dwarf variety or Maypan variety (=F_1 hybrid, Malayan Dwarf×Panama Tall), based on verification of the parent stock. Inspection at the port of entry would further mitigate the risk associated with lethal yellowing disease. We believe that these proposed conditions are adequate to prevent the introduction of the quarantine pests of concern. Therefore, we propose to list coconut fruit with milk and husk from Mexico in § 319.56–2t.

Pitaya From Mexico

Based on a pest risk assessment conducted for pitaya from Mexico that identified the pests of concern as the Mediterranean fruit fly (Medfly, *Ceratitis capitata*), fruit flies of the genus *Anastrepha*, gray pineapple mealybug (*Dymicoccus neobrevipes*), and passionvine mealybug (*Planococcus minor*), we propose to allow the entry of pitaya from Mexico only under certain conditions.

In addition to requiring that pitaya from Mexico be subject to inspection and disinfection at the port of entry, we would require that the pitaya be grown in an area that has been recognized as a fruit fly-free area. The regulations in § 319.56–2(h) list the municipalities in Mexico that APHIS has determined meet the criteria of § 319.56–2(e) and (f) with regard to freedom from the Medfly and fruit flies of the genus *Anastrepha*.

The fruit would have to be accompanied by a phytosanitary certificate issued by Mexico's NPPO declaring that the fruit originated in an area designated in § 319.56–2(h) as free from pests and, upon inspection, was found free of *D. neobrevipes* and *P. minor*. These additional conditions would be necessary to assure us that the product originated in a fruit fly-free area and was inspected and found free of the specified mealybugs.

Because the pest risk assessment was limited to the continental United States, we would require pitaya from Mexico to be shipped in boxes labeled "Not for importation or distribution in HI, PR, VI, or Guam."

We believe that these proposed conditions are adequate to prevent the introduction of the quarantine pests of concern. Therefore, we propose to list pitaya from Mexico in § 319.56–2t.

Other Amendments to § 319.56–2t

In many cases, the entries for specific fruits and vegetables in the table in § 319.56–2t include additional conditions, such as restrictions on the distribution of the fruit or vegetable or a requirement that the fruit or vegetable originate in a pest-free area and be so certified on a phytosanitary certificate. We propose to remove those additional conditions from the table and place them in a new paragraph (b) in § 319.56–2t. In the table, the entries in which the additional conditions had appeared would instead include a reference to the paragraph or paragraphs in the new paragraph (b) where the applicable conditions would appear. We believe this reorganization of the information contained in the table would make the table easier to read and use and would eliminate the need to repeat the same conditions multiple times when those conditions apply to more than one fruit or vegetable.

In order to minimize the number of restrictions in the proposed new paragraph (b), we would state certain requirements more generally. For instance, rather than stating that a phytosanitary certificate must be issued by the NPPO of a specific country, we would state that the phytosanitary certificate must be issued by the NPPO of the country of origin. Because the term "country of origin" is not defined in the regulations, we propose to add a definition of the term "country of origin" in § 319.56–1. The term "country of origin" would be defined as "Country where the plants from which the plant products are derived were grown," which is consistent with the definition provided in the standards of the International Plant Protection Convention of the United Nations' Food and Agriculture Organization.

The entries for some of the fruits and vegetables in the current regulations specify that the commodity may not be imported into or distributed within certain areas. For example, papaya from Guatemala is prohibited entry into Hawaii due to the papaya fruit fly, and cartons in which fruit is packed must be stamped "Not for importation into or distribution within HI." However, for other commodities, such as dasheen from Indonesia, the required statement refers only to distribution (*i.e.*, the statement does not refer to both importation and distribution). For consistency, we would specify that the importation into, as well as the distribution within, certain areas is prohibited.

Under § 319.56–2t, lucuma, mountain papaya, and sand pear from Chile may be imported from a Medfly-free area. However, the regulations do not specify that a phytosanitary certificate declaring that the commodity was grown in a Medfly-free area must accompany the shipment. We propose to add that requirement for those commodities.

We also propose to make grammatical changes and updates throughout the list of fruits and vegetables. The footnote for Haiti concerning Executive Order 12779 would be removed because that Executive order was revoked on October 16, 1994 (59 FR 52403, published October 18, 1994). The footnote requiring that no green may be visible on the shoot of asparagus from Austria would be removed and added to the entry for asparagus from Austria. We would also amend the entry for watermelon from Spain by changing the scientific name provided for watermelon from *Citrullus vulgaris* to *C. lanatus*. *C. lanatus* is the most current scientific name for watermelon, and *C. vulgaris* is a synonym.

Melon and Watermelon From Certain Countries in South America

We propose to amend the regulations to allow the entry of commercial shipments of watermelon and several varieties of melon (*Cucumis melo* L. subsp. *melo*) into the United States from Peru. The specific varieties of melon that would be considered for importation include cantaloupe, netted melon (muskmelon, nutmeg melon, and Persian melon), vegetable melon (snake melon and oriental pickling melon), and winter melon (honeydew and casaba melon).

At the request of the Government of Peru, we conducted a pest risk assessment for melon and watermelon from Peru. In that assessment, we identified the pests of concern as the South American cucurbit fly (*A. grandis*) and the gray pineapple mealybug. We propose to allow the entry of melon and watermelon from Peru only under certain conditions to prevent the introduction into the United States of the South American cucurbit fly and the gray pineapple mealybug. These proposed conditions, which are discussed below, are similar to the existing conditions under which certain melon and watermelon may be imported from Ecuador (§ 319.56–2y) and from Brazil and Venezuela (§ 319.56–2aa).

The melon and watermelon would have to be grown in areas of Peru considered by APHIS to be free of the South American cucurbit fly. Peru recently provided APHIS with fruit fly survey data that demonstrate that the Departments of Lima, Ica, Arequipa, Moquegua, and Tacna meet the criteria for freedom in § 319.56–2(e) and (f) relative to the South American cucurbit fly. (The survey data is available upon request from the person listed under **FOR FURTHER INFORMATION CONTACT**.) Therefore, we propose to consider those areas as free of the South American cucurbit fly in Peru and to list them as such.

In addition, shipments of melon and watermelon would have to be accompanied by a phytosanitary certificate issued by the Peruvian NPPO that includes a declaration that the fruit was grown in an area recognized to be free of the South American cucurbit fly, and upon inspection, was found free of the gray pineapple mealybug. We would also specify in the regulations that only commercial shipments of melon and watermelon from Peru may be imported, given that, as discussed previously with respect to *Annona* spp. fruit from Grenada, produce grown commercially is less likely to be infested with plant pests than noncommercial shipments.

The pest risk assessment was limited to the continental United States. Therefore, we would require melon and watermelon from Peru to be shipped in boxes labeled "Not for distribution in HI, PR, VI, or Guam." All shipments of melon and watermelon would have to be labeled in accordance with § 319.56–2(g), which states, in part, that the box of fruit imported into the United States must be clearly labeled with the name of the orchard or grove of origin, or the name of the grower; and the name of the municipality and State in which it was produced; and the type and amount of fruit it contains.

We believe that the above conditions would be adequate to guard against the introduction of quarantine pests into the United States with melon and watermelon imported from Peru.

As noted previously, the requirements for cantaloupe and watermelon from Ecuador are in § 319.56–2y, and the requirements for melons and watermelon from Brazil and Venezuela are in § 319.56–2aa. Because these sections are similar, we propose to combine them into a single section, which would also contain the requirements described above for melons and watermelon from Peru. The section would be entitled "Conditions governing the entry of melon and watermelon from South America."

Specific reference to each country's agricultural department would be changed to the more general reference of the country's NPPO, thus avoiding the need to amend the regulations should the specific name of the NPPO change. In § 319.56–2y(a)(2), "South American cucurbit fruit fly" would be corrected to "South American cucurbit fly (*Anastrepha grandis*)." The requirement for phytosanitary certificates for cantaloupe, honeydew melon, and watermelon from Brazil and Venezuela, which would be moved from § 319.56–2aa(a)(2) to § 319.56–2y(b)(1) for Brazil and § 319.56–2y(c)(1) for Venezuela, would be amended to modify the requirement for the additional declaration. Rather than requiring that the declaration indicate that the cantaloupe or melons were grown in an area recognized to be free of the South American cucurbit fly, we would replace the terms "cantaloupe or melons" with the more general term "fruit." Because we are combining two sections into a single section, changes such as updating references to "this section" to read "this paragraph" would be necessary. In addition, we would make other minor, nonsubstantive grammatical and style changes for consistency.

Watermelon, Squash, Cucumber, and Oriental Melon From the Republic of Korea

We propose to allow watermelon, squash (*Curcurbita maxima*), cucumber (*Cucumis sativus*), and oriental melon (*C. melo*) to be imported into the United States from the Republic of Korea under certain conditions, which would be set forth in § 319.56–2aa. (As discussed above, the current § 319.56–2aa would be combined with § 319.56–2y.) These fruits can be the host of several quarantine pests, including the pumpkin fruit fly (*Bactrocera depressa*), the cotton caterpillar (*Diaphania indica*), and the Asian corn borer (*Ostrinia furnacalis*), which were identified as pests with high pest-risk potential in the pest risk assessment. The cucumber green mottle mosaic virus was identified as a quarantine pest with medium pest-risk potential in the pest risk assessment.

We believe that the following conditions would guard against the

entry of the specified quarantine pests in shipments of watermelon, squash, cucumber, and oriental melon imported from the Republic of Korea into the United States:

Condition	Quarantine pest to which it applies
The watermelon, squash, cucumber, and oriental melon must be grown in pest-proof greenhouses registered with the Republic of Korea's NPPO.	*B. depressa, D. indica, O. furnacalis.*
The NPPO must inspect and regularly monitor greenhouses for plant pests. The NPPO must inspect greenhouses and plants, including fruit, at intervals of no more than 2 weeks, from the time of fruit set until the end of harvest.	*B. depressa, D. indica, O. furnacalis,* cucumber green mottle mosaic virus.
The NPPO must set and maintain fruit fly traps in greenhouses from October 1 to April 30. The number of traps must be set as follows: Two traps for greenhouses smaller than 0.2 hectare in size; three traps for greenhouses 0.2 to 0.5 hectare; four traps for greenhouses over 0.5 hectare and up to 1.0 hectare; and for greenhouses greater than 1 hectare, traps must be placed at a rate of four traps per hectare.	*B. depressa.*
The NPPO must check all traps once every 2 weeks. If a single pumpkin fruit fly is captured, that greenhouse will lose its registration until trapping shows that the infestation has been eradicated.	*B. depressa.*
The fruit may be shipped only from December 1 through April 30	*B. depressa.*
Each shipment must be accompanied by a phytosanitary certificate issued by NPPO, with the following additional declaration: "The regulated articles in this shipment were grown in registered greenhouses as specified by 7 CFR 319.56–2aa".	*B. depressa, D. indica, O. furnacalis,* cucumber green mottle mosaic virus.
Each shipment must be protected from pest infestation from harvest until export. Newly harvested fruits must be covered with insect-proof mesh or a plastic tarpaulin while moving to the packinghouse and awaiting packing. Fruit must be packed within 24 hours of harvesting, in an enclosed container or vehicle or in insect-proof cartons or cartons covered with insect-proof mesh or plastic tarpaulin, and then placed in containers for shipment. These safeguards must be intact when the shipment arrives at the port in the United States.	*B. depressa, D. indica, O. furnacalis.*

Grapes from the Republic of Korea

We propose to allow the importation of grapes (*Vitis* spp.) into the United States from the Republic of Korea under certain conditions that would be set forth in a new § 319.56–2ll. The quarantine pests of concern for grapes grown in the Republic of Korea that were rated "high" in the pest risk assessment are the yellow peach moth (*Conogethes punctiferalis*), grapevine moth (*Eupoecilia ambiguella*), leaf-rolling torix (*Sparganothis pilleriana*), apple heliodinid (*Stathmopoda auriferella*), and the plant pathogenic fungus *Monilinia fructigena*. Another quarantine pest of concern is the moth *Nippoptilia vitis*, which was rated "medium" in the pest risk assessment. We propose the following phytosanitary measures to guard against the entry of quarantine pests in shipments of grapes imported from the Republic of Korea into the United States:

(1) The fields where the grapes are grown must be inspected during the growing season by the NPPO. The NPPO must inspect 150 grapevines per hectare, inspecting leaves, stems, and fruit of the vines.

(2) If evidence of *C. punctiferalis, E. ambiguella, S. pilleriana, S. auriferella,* or *M. fructigena* is detected during inspection, the field will immediately be rejected, and exports from that field will be canceled until visual inspection of the vines shows that the infestation has been eradicated.

(3) Fruit must be bagged from the time the fruit sets until harvest.

(4) Each shipment must be inspected by NPPO before export. For each shipment, NPPO must issue a phytosanitary certificate with an additional declaration stating that the fruit in the shipment was found free from *C. punctiferalis, E. ambiguella, S. pilleriana, S. auriferella, M. fructigena,* and *N. vitis.*

We believe that these proposed growing, inspection, and shipping requirements would be adequate to prevent the introduction of quarantine pests into the United States with grapes imported from the Republic of Korea.

Executive Order 12866 and Regulatory Flexibility Act

This proposed rule has been reviewed under Executive Order 12866. The rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

In accordance with 5 U.S.C. 603, we have performed an initial regulatory flexibility analysis, which is set out below, regarding the economic effects of this proposed rule on small entities. Based on the information we have, there is no reason to conclude that adoption of this proposed rule would result in any significant economic effect on a substantial number of small entities. However, we do not currently have all of the data necessary for a comprehensive analysis of the effects of this proposed rule on small entities. Therefore, we are inviting comments on potential effects. In particular, we are interested in determining the number and kind of small entities that may incur benefits or costs from the implementation of this proposed rule.

Under the Plant Protection Act (7 U.S.C. 7701–7772), the Secretary of Agriculture is authorized to regulate the importation of plants, plant products, and other articles to prevent the introduction of plant pests into the United States or the dissemination of plant pests within the United States.

We propose to amend the fruits and vegetables regulations to list a number of fruits and vegetables from certain parts of the world as eligible, under specified conditions, for importation into the United States. All of the fruits and vegetables, as a condition of entry, would be inspected and subject to such disinfection at the port of first arrival as may be required by an inspector. In addition, some of the fruits and vegetables would be required to meet other special conditions. We also propose to recognize areas in Peru as free from the South American cucurbit fly. These actions would provide the United States with additional kinds and sources of fruits and vegetables while continuing to provide protection against the introduction and spread of quarantine pests.

Availability of and Request for Production and Trade Data

For some of the commodities proposed for importation into the United States in this document, data on the levels of production are unavailable for a number of reasons. Some of these commodities are not produced in significant quantities either in the United States or in the country that would be exporting the commodity to the United States. Generally, statistical data are less available for commodities produced in small quantities when compared to a country's more widely or commercially produced commodities. The uncertainty surrounding the cost and availability of transportation and the demand for the commodity in the United States increases the difficulty in obtaining estimates of the potential volume of commodities exported from foreign countries to the United States.

Therefore, we are requesting the public to provide APHIS with any available data regarding the production or trade of *Annona* spp. in the United States and Grenada and pitaya in the United States and Mexico. These data will assist us in further assessing the effects that allowing the importation of these commodities could have on U.S. producers or consumers.

Effects on Small Entities

Data on the number and size of U.S. producers of the various commodities proposed for importation into the United States in this document are not available. However, since most fruit and vegetable farms are small by Small Business Administration standards, it is likely that the majority of U.S. farms producing the commodities discussed below are small. Potential economic effects that could occur if this proposal is adopted are discussed below by commodity and country of origin.

African horned cucumber from Chile. We propose to amend the regulations to allow the entry of African horned cucumber from Chile. African horned cucumber is a specialty crop that is grown in small quantities. Less than 20 acres of the fruit are cultivated in California; and less than 10 acres in Region V (Olmue) and Region X (Osorno) of Chile have been cultivated since 1996. Approximately 32,000 pounds of fruit are expected to be shipped to the United States annually from March to May. There is no reason to believe that allowing imports of African horned cucumber from Chile would have any significant economic impact on U.S. entities. In addition, we believe that U.S. consumers of African horned cucumber would benefit from the increase in its supply and availability.

Annona spp. from Grenada. In this document, we propose to allow the entry of commercial fruit shipments of cherimoya, soursop, custard apple, sugar apple, and atemoya, which are species of *Annona*, into the United States from Grenada. In the United States, *Annona* spp. are apparently a specialty crop produced on a small scale mainly in southern California; thus no data on the U.S. production of *Annona* spp. are available. Although no separate data are available on the production and trade of *Annona* spp. from Grenada, data may have been included with the production of all apples. From 2001 to 2003, Grenada produced an average of 533 metric tons of apples. In addition, *Annona* spp. exports may be included under the category of "apples, not elsewhere specified," which includes wild apples. The 3-year average for exports of apples, not elsewhere specified, from Grenada is 5 metric tons. We believe any exports to the United States would be minimal and would not have any significant economic effect on U.S. producers, whether small or large, or consumers. In addition, we believe that U.S. consumers of *Annona* spp. would benefit from the increase in its supply and availability.

Fruit and vegetables from Mexico. We propose to specifically list *Allium* spp., asparagus, banana, beets, carrots, coconut fruit without husk, cucurbits, eggplant, grape, jicama, lemon, sour lime, parsley, pineapple, prickly pear pads, radish, tomato, and tuna as admissible fruits and vegetables from Mexico. Because these fruits and vegetables are admissible into the United States from Mexico under permit, specifically listing these commodities in the regulations would not have any economic effect on U.S. producers, whether small or large, or consumers. While production and trade data are not available for jicama, prickly pear, and tuna from Mexico or the United States, data are shown for the other commodities, as available, in table 1. The data provided in table 1 are based on either a 2- or 3-year average. The averages presented for most U.S. and Mexican production and trade, as well as for tomato exports from Mexico, are for the 3-year period of 2000, 2001, and 2002. A 2-year average for 2000 and 2001 is given for exports from Mexico (except tomatoes), U.S. production of parsley and beets, and U.S. imports of parsley and cucurbits.

TABLE 1.—U.S. AND MEXICAN PRODUCTION AND TRADE DATA (IN METRIC TONS) OF FRUITS AND VEGETABLES

Commodity	U.S. production	U.S. imports from all countries	U.S. imports from Mexico	Mexican production	Mexican exports
Allium spp.:					
Shallot and green onion	444,429	257,784	159,953	1,021,605	599,491
Garlic	258,680	37,806	14,776	50,894	27,544
Leek and other alliaceous vegetables	(1)	3,040	2,752	(1)	87,455
Asparagus	103,060	75,086	38,231	57,545	44,378
Banana	12,850	4,232,383	74,560	1,961,201	126,368
Beets	101,738	20,341	15,254	(1)	775,100
Carrot	1,913,700	85,037	23,508	358,054	201,944
Coconut	0	63,075	4,854	1,058,667	87,584
Cucurbits:					
Melon and watermelons	2,969,250	882,350	363,902	1,469,700	572,529
Cucumbers and gherkins	1,078,800	15,035	1,924	416,667	7,880
Pumpkins, squash, and gourds	761,253	223,697	148,343	550,000	372,294
Eggplant	77,290	40,233	36,863	59,000	135,697
Grape	6,495,380	987,124	191,477	427,497	117,510
Lemon and lime	572,250	218,816	184,814	1,658,420	733,184
Parsley	14,210	5,897	(1)	(1)	(1)
Pineapple	302,500	348,617	19,923	598,629	117,510

TABLE 1.—U.S. AND MEXICAN PRODUCTION AND TRADE DATA (IN METRIC TONS) OF FRUITS AND VEGETABLES—Continued

Commodity	U.S. production	U.S. imports from all countries	U.S. imports from Mexico	Mexican production	Mexican exports
Radish	53,781	15,338	14,654	(1)	(1)
Tomato	10,590,000	804,548	664,362	2,085,831	1,551,685

[1] Not available.

Coconut fruit with milk and husk from Mexico. As noted earlier in this document, coconut fruit without husk have been admissible into the United States from Mexico under permit. In this document, we propose to allow coconut fruit with milk and husk from Mexico to be imported into the United States. While the data on coconut production and trade do not differentiate between coconut fruit with or without husk and milk, it is possible that an increase in imports of coconuts into the United States from Mexico would occur, since coconut fruit with milk and husk have previously been inadmissible from Mexico. Because the U.S. production of coconut fruit with milk and husk is supplemented with imports in order to satisfy the domestic demand, we do not believe that allowing the importation of coconut fruit with milk and husk from Mexico would have a significant effect on either U.S. consumers or producers. In addition, we believe that U.S. consumers would benefit from the increase in the supply and availability of coconut fruit with milk and husk from Mexico.

Pitaya from Mexico. In the United States, pitaya are a specialty crop produced on a small scale; thus no data on the U.S. production of pitaya are available. Mexican production and trade data are also not available.

Melon and watermelon from Peru. We propose to amend the regulations to allow the entry of commercial shipments of watermelon and several varieties of melon (*Cucumis melo* L. subsp. *melo*) into the United States from Peru. The specific varieties of melons that would be considered for importation include cantaloupe, netted melon (muskmelon, nutmeg melon, and Persian melon), vegetable melon (snake melon and oriental pickling melon), and winter melon (honeydew and casaba melon). The melon and watermelon from Peru would be admissible from the Departments of Lima, Ica, Arequipa, Moquegua, and Tacna, which we propose to recognize as free of the South American cucurbit fly.

From 2001 to 2003, the United States produced an average of almost 3 million metric tons of melon and watermelon and imported an average of 882,350 metric tons. For that same 3-year period, Peru produced an average of 72,337 metric tons of melon and watermelon. For the 2-year period of 2000 and 2001, Peru exported an average of 1,393 metric tons of melon and watermelon. Because the U.S. production of melon and watermelon is supplemented with imports in order to satisfy the domestic demand, we do not believe that allowing the importation of melon and watermelon from certain areas of Peru would have a significant effect on either U.S. consumers or producers. In addition, we believe that U.S. consumers of melon and watermelon would benefit from the increase in its supply and availability.

Watermelon, squash, cucumber, and oriental melon from the Republic of Korea. We propose to allow watermelon, squash, cucumber, and oriental melon to be imported into the United States from the Republic of Korea (South Korea) under certain conditions. Table 2 shows the average U.S. and South Korean production and trade data available for the 3-year period of 2000, 2001, and 2002, with a 2-year average for 2000 and 2001 for exports from South Korea. Note that data include a broader category than what is actually proposed to be imported; *e.g.*, we propose to import cucumber, but the data are available under the broader category of cucumber and gherkins.

TABLE 2.—PRODUCTION AND TRADE DATA (IN METRIC TONS) FOR U.S. AND SOUTH KOREAN FRUITS AND VEGETABLES

Commodity	U.S. production	U.S. imports from all countries	U.S.imports from South Korea	South Korean production	South Korean exports
Melon and watermelons	2,969,250	882,350	0	324,260	428
Cucumbers and gherkins	1,078,800	15,035	0	451,175	7,030
Pumpkins, squash, and gourds	761,253	223,697	0	240,161	515

Grapes from South Korea. We propose to allow the importation of grapes into the United States from South Korea under certain conditions. From 2001 to 2003, the United States produced an average of almost 6.5 million metric tons of grapes and imported an average of 987,124 metric tons. For that same 3-year period, South Korea produced an average of 461,198 metric tons grapes (approximately 7 percent of the total U.S. production) with an average export of 101 metric tons. Because the U.S. production of grapes is supplemented with imports in order to satisfy the domestic demand, we do not believe that allowing the importation of grapes from South Korea would have a significant effect on either U.S. consumers or producers. In addition, we believe that U.S. consumers of grapes would benefit from the increase in its supply and availability.

This proposed rule contains information collection requirements, which have been submitted for approval to the Office of Management and Budget (see "Paperwork Reduction Act" below).

Executive Order 12988

This proposed rule would allow certain fruits and vegetables to be imported into the United States from certain parts of the world. If this proposed rule is adopted, State and local laws and regulations regarding the importation of fruits and vegetables under this rule would be preempted while the fruits and vegetables are in foreign commerce. Fresh fruits and vegetables are generally imported for immediate distribution and sale to the consuming public and would remain in foreign commerce until sold to the ultimate consumer. The question of when foreign commerce ceases in other cases must be addressed on a case-by-case basis. If this proposed rule is adopted, no retroactive effect will be given to this rule, and this rule will not require administrative proceedings before parties may file suit in court challenging this rule.

National Environmental Policy Act

APHIS' review and analysis of the potential environmental impacts associated with the proposed importations are documented in detail in an environmental assessment entitled "Proposed Rule for the 12th Periodic Amendment of the Fruits and Vegetables Regulations" (September 2003). The environmental assessment was prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*), (2) regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508), (3) USDA regulations implementing NEPA (7 CFR part 1b), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372).

Copies of the environmental assessment are available for public inspection in our reading room (information on the location and hours of the reading room is provided under the heading **ADDRESSES** at the beginning of this document). In addition, copies may be obtained by writing to the individual listed under **FOR FURTHER INFORMATION CONTACT.** The environmental assessment may be viewed on the Internet at *http://www.aphis.usda.gov/ppd/es/ppqdocs.html.*

Paperwork Reduction Act

In accordance with section 3507(d) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB). Please send written comments to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for APHIS, Washington, DC 20503. Please state that your comments refer to Docket No. 02–106–1. Please send a copy of your comments to: (1) Docket No. 02–106–1, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238, and (2) Clearance Officer, OCIO, USDA, room 404–W, 14th Street and Independence Avenue SW., Washington, DC 20250. A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication of this proposed rule.

In this document, we propose to amend the fruits and vegetables regulations to list a number of fruits and vegetables from certain parts of the world as eligible, under specified conditions, for importation into the United States. All of the fruits and vegetables, as a condition of entry, would be inspected and subject to treatment at the port of first arrival as may be required by an inspector. In addition, some of the fruits and vegetables would be required to meet other special conditions. We also propose to recognize areas in Peru as free from the South American cucurbit fly.

Allowing these fruits and vegetables to be imported would necessitate the use of certain information collection activities, including the completion of import permits, phytosanitary certificates, and fruit fly monitoring records.

We are soliciting comments from the public (as well as affected agencies) concerning our proposed information collection and recordkeeping requirements. These comments will help us:

(1) Evaluate whether the proposed information collection is necessary for the proper performance of our agency's functions, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the information collection on those who are to respond (such as through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology; *e.g.*, permitting electronic submission of responses).

Estimate of burden: Public reporting burden for this collection of information is estimated to average 0.1320 hours per response.

Respondents: U.S. importers of fruits and vegetables; plant health officials of exporting countries.

Estimated annual number of respondents: 141.

Estimated annual number of responses per respondent: 5.5319.

Estimated annual number of responses: 780.

Estimated total annual burden on respondents: 103 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

Copies of this information collection can be obtained from Mrs. Celeste Sickles, APHIS's Information Collection Coordinator, at (301) 734–7477.

Government Paperwork Elimination Act Compliance

The Animal and Plant Health Inspection Service is committed to compliance with the Government Paperwork Elimination Act (GPEA), which requires Government agencies in general to provide the public the option of submitting information or transacting business electronically to the maximum extent possible. For information pertinent to GPEA compliance related to this proposed rule, please contact Mrs. Celeste Sickles, APHIS's Information Collection Coordinator, at (301) 734–7477.

List of Subjects in 7 CFR Part 319

Bees, Coffee, Cotton, Fruits, Honey, Imports, Logs, Nursery stock, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Rice, Vegetables.

Accordingly, we propose to amend 7 CFR part 319 as follows:

PART 319—FOREIGN QUARANTINE NOTICES

1. The authority citation for part 319 would continue to read as follows:

Authority: 7 U.S.C. 450 and 7701–7772; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.3.

2. Section 319.56–1 would be amended by adding, in alphabetical order, a new definition for *country of origin* to read as follows:

§ 319.56–1 Definitions.

* * * * *

Country of origin. Country where the plants from which the plant products are derived were grown.

* * * * *

3. Section 319.56–2t would be revised to read as follows:

§ 319.56–2t Administrative instructions: Conditions governing the entry of certain fruits and vegetables.

(a) The following commodities may be imported into all parts of the United States, unless otherwise indicated, from the places specified, in accordance with § 319.56–6 and all other applicable requirements of this subpart:

Country/locality	Common name	Botanical name	Plant part(s)	Additional restrictions (See paragraph (b) of this section.)
Argentina	Artichoke, globe	*Cynara scolymus*	Immature flower head.	
	Basil	*Ocimum* spp	Above ground parts.	
	Currant	*Ribes* spp	Fruit.	
	Endive	*Cichorium endivia*	Leaf and stem.	
	Gooseberry	*Ribes* spp	Fruit.	
	Marjoram	*Origanum* spp	Above ground parts.	
	Oregano	*Origanum* spp	Above ground parts.	
Australia	Currant	*Ribes* spp	Fruit	
	Gooseberry	*Ribes* spp	Fruit.	
Austria	Asparagus, white	*Asparagus officinalis*	Shoot (no green may be visible on the shoot).	
Barbados	Banana	*Musa* spp	Flower.	
Belgium	Leek	*Allium* spp	Whole plant	(b)(5)(i)
	Pepper	*Capsicum* spp	Fruit	
Belize	Banana	*Musa* spp	Flower in bracts with stems.	
	Bay leaf	*Laurus nobilis*	Leaf and stem	
	Mint	*Mentha* spp	Above ground parts.	
	Papaya	*Carica papaya*	Fruit	(b)(1)(i), (b)(2)(iii)
	Rambutan	*Nephelium lappaceum*	Fruit	(b)(2)(i), (b)(5)(iii)
	Sage	*Salivia officinalis*	Leaf and stem.	
	Tarragon	*Artemisia dracunculus*	Above ground parts.	
Bermuda	Avocado	*Persea americana*	Fruit.	
	Carambola	*Averrhoa carambola*	Fruit.	
	Grapefruit	*Citrus paradisi*	Fruit.	
	Guava	*Psidium guajava*	Fruit.	
	Lemon	*Citrus limon*	Fruit.	
	Longan	*Dimocarpus longan*	Fruit.	
	Loquat	*Eriobotrya japonica*	Fruit.	
	Mandarin orange	*Citrus reticulata*	Fruit.	
	Natal plum	*Carissa macrocarpa*	Fruit.	
	Orange, sour	*Citrus aurantium*	Fruit.	
	Orange, sweet	*Citrus sinensis*	Fruit.	
	Papaya	*Carica papaya*	Fruit.	
	Passion fruit	*Passiflora* spp	Fruit.	
	Peach	*Prunus persica*	Fruit.	
	Pineapple guava	*Feijoa* spp	Fruit.	
	Surinam cherry	*Eugenia uniflora*	Fruit.	
Bolivia	Belgian endive	*Cichorium intybus*	Leaf.	
Chile	African horned cucumber	*Cucumis metuliferus*	Fruit	(b)(2)(i)
	Babaco	*Carica x heilborni* var. *pentagona.*	Fruit	(b)(1)(i)
	Basil	*Ocimum* spp.	Above ground parts.	
	Lucuma	*Manilkara sapota* (=*Lucuma mammosa*).	Fruit	(b)(1)(i)
	Mountain papaya	*Carica pubescens* (=*C. candamarcensis*).	Fruit	(b)(1)(ii)
	Oregano	*Origanum* spp.	Leaf and stem.	
	Pepper	*Capsicum annuum*	Fruit	(b)(1)(i)
	Sandpear	*Pyrus pyrifolia*	Fruit	(b)(1)(ii)
	Tarragon	*Artemisia dracunculus*	Above ground parts.	
China	Bamboo	*Bambuseae* spp	Edible shoot, free of leaves and roots.	
Colombia	Rhubarb	*Rheum rhabarbarum*	Stalk.	
	Snow pea	*Pisum sativum* subsp. *sativum*	Flat, immature pod.	
	Tarragon	*Artemisia dracunculus*	Above ground parts.	
Cook Islands	Banana	*Musa* spp	Green fruit	(b)(4)(i)
	Cucumber	*Cucumis sativus*	Fruit.	
	Drumstick	*Moringa pterygosperma*	Leaf.	
	Ginger	*Zingiber officinale*	Root	(b)(2)(ii)
	Indian mulberry	*Morinda citrifolia*	Leaf.	
	Lemongrass	*Cymbopogon* spp	Leaf.	
	Tossa jute	*Corchorus olitorius*	Leaf.	
Costa Rica	Basil	*Ocimum* spp	Whole plant.	
	Chinese kale	*Brassica alboglabra*	Leaf and stem.	
	Chinese turnip	*Raphanus sativus*	Root.	

Country/locality	Common name	Botanical name	Plant part(s)	Additional restrictions (See paragraph (b) of this section.)
	Cole and mustard crops, including cabbage, broccoli, cauliflower, turnips, mustards, and related varieties.	*Brassica* spp	Whole plant of edible varieties only.	
	Jicama	*Pachyrhizus tuberosus* or *P. erosus.*	Root.	
	Rambutan	*Nephelium lappaceum*	Fruit	(b)(2)(i), (b)(5)(iii)
Dominican Republic	Bamboo	*Bambuseae* spp	Edible shoot, free of leaves and roots.	
	Durian	*Durio zibethinus*	Fruit.	
Ecuador	Banana	*Musa* spp	Flower.	
	Basil	*Ocimum* spp	Above ground parts.	
	Chervil	*Anthriscus* spp	Leaf and stem.	
	Cole and mustard crops, including cabbage, broccoli, cauliflower, turnips, mustards, and related varieties.	*Brassica* spp	Whole plant of edible varieties only.	
	Radicchio	*Cichorium* spp	Above ground parts.	
El Salvador	Basil	*Ocimum* spp	Above ground parts..	
	Cilantro	*Coriandrum sativum*	Above ground parts..	
	Cole and mustard crops, including cabbage, broccoli, cauliflower, turnips, mustards, and related varieties.	*Brassica* spp	Whole plant of edible varieties only.	
	Dill	*Anethum graveolens*	Above ground parts.	
	Eggplant	*Solanum melongena*	Fruit	(b)(3)
	Fennel	*Foeniculum vulgare*	Leaf and stem	(b)(2)(i)
	German chamomile	*Matricaria recutita* and *Matricaria chamomilla.*	Flower and leaf	(b)(2)(i)
	Loroco	*Fernaldia* spp	Flower, leaf, and stem.	
	Oregano or sweet marjoram	*Origanum* spp	Leaf and stem	(b)(2)(i)
	Parsley	*Petroselinum crispum*	Leaf and stem	(b)(2)(i)
	Rambutan	*Nephelium lappaceum*	Fruit	(b)(2)(i), (b)(5)(iii)
	Rosemary	*Rosmarinus officinalis*	Leaf and stem	(b)(2)(i)
	Waterlily or lotus	*Nelumbo nucifera*	Roots without soil	(b)(2)(i)
	Yam-bean or Jicama root	*Pachyrhizus* spp	Roots without soil	(b)(2)(i)
France	Tomato	*Lycopersicon esculentum*	Fruit	(b)(4)(ii)
Great Britain	Basil	*Ocimum* spp	Leaf and stem.	
Grenada	Abiu	*Pouteria caimito*	Fruit	(b)(3)
	Atemoya	*Annona squamosa* x *A. cherimola.*	Fruit.	
	Bilimbi	*Averrhoa bilimbi*	Fruit.	
	Breadnut	*Brosimum alicastrum*	Fruit.	
	Cherimoya	*Annona cherimola*	Fruit	(b)(3)
	Cocoplum	*Chrysobalanus icaco*	Fruit.	
	Cucurbits	Cucurbitaceae	Fruit.	
	Custard apple	*Annona reticulata*	Fruit	(b)(3)
	Durian	*Durio zibethinus*	Fruit.	
	Jackfruit	*Artocarpus heterophyllus*	Fruit.	
	Jambolan	*Syzygium cumini*	Fruit.	
	Jujube	*Ziziphus* spp	Fruit.	
	Langsat	*Lansium domesticum*	Fruit.	
	Litchi	*Litchi chinensis*	Fruit.	
	Malay apple	*Syzygium malaccense*	Fruit.	
	Mammee apple	*Mammea americana*	Fruit.	
	Peach palm	*Bactris gasipaes*	Fruit.	
	Piper	*Piper* spp	Fruit.	
	Pulasan	*Nephelium ramboutan-ake*	Fruit.	
	Rambutan	*Nephelium lappaceum*	Fruit.	
	Rose apple	*Syzygium jambos*	Fruit.	
	Santol	*Sandoricum koetjape*	Fruit.	
	Sapote	*Pouteria sapota*	Fruit.	
	Soursop	*Annona muricata*	Fruit	(b)(3)
	Sugar apple	*Annona squamosa*	Fruit	(b)(3)
Guatemala	Artichoke, globe	*Cynara scolymus*	Immature flower head.	
	Basil	*Ocimum* spp	Above ground parts.	
	Dill	*Anethum graveonlens*	Above ground parts.	
	Eggplant	*Solanum melongena*	Fruit.	

Country/locality	Common name	Botanical name	Plant part(s)	Additional restrictions (See paragraph (b) of this section.)
	Fennel	*Foeniculum vulgare*	Leaf and stem	(b)(2)(i)
	German	*Matricaria chamomile chamomilla* and *Matricaria recutita.*	Flower and leaf	(b)(2)(i)
	Jicama	*Pachyrhizus tuberosus* or *P. erosus.*	Root.	
	Loroco	*Fernaldia* spp	Flower and leaf.	
	Mint	*Mentha* spp	Above ground parts.	
	Oregano	*Origanum* spp.	Leaf and stem.	
	Papaya	*Carica papaya*	Fruit	(b)(1)(i), (b)(2)(iii)
	Rambutan	*Nephelium lappaceum*	Fruit	(b)(2)(i), (b)(5)(iii)
	Rhubarb	*Rheum rhabarbarum*	Above ground parts.	
	Rosemary	*Rosmarinus officinalis*	Leaf and stem	(b)(2)(i)
	Tarragon	*Artemisia dracunculus*	Above ground parts.	
	Waterlily or lotus	*Nelumbo nucifera*	Roots without soil	(b)(2)(i)
Haiti	Jackfruit	*Artocarpus heterophyllus*	Fruit.	
Honduras	Banana	*Musa* spp	Flower.	
	Basil	*Ocimum basilicum*	Leaf and stem	(b)(2)(i), (b)(5)(iv)
	Chicory	*Cichorium* spp	Leaf and stem.	
	Cilantro	*Coriandrum sativum*	Above ground parts.	
	Cole and mustard crops, including cabbage, broccoli, cauliflower, turnips, mustards, and related varieties.	*Brassica* spp	Whole plant of edible varieties only.	
	German chamomile	*Matricaria recutita* and *Matricaria chamomilla.*	Flower and leaf.	(b)(2)(i)
	Loroco	*Fernaldia* spp	Flower and leaf	
	Oregano or sweet marjoram	*Origanum* spp	Leaf and stem	(b)(2)(i)
	Radish	*Raphanus sativus*	Root.	
	Rambutan	*Nephelium lappaceum*	Fruit	(b)(2)(i), (b)(5)(iii)
	Waterlily or lotus	*Nelumbo nucifera*	Roots without soil	(b)(2)(i)
	Yam-bean or Jicama root	*Pachyrhizus* spp	Roots without soil	(b)(2)(i)
Indonesia	Dasheen	*Colocasia* spp., *Alocasia* spp., and *Xanthosoma* spp..	Tuber	(b)(2)(iv)
	Onion	*Allium cepa*	Bulb.	
	Shallot	*Allium ascalonicum*	Bulb.	
Israel	Arugula	*Eruca sativa*	Leaf and stem.	
	Chives	*Allium schoenoprasum*	Leaf.	
	Dill	*Anethum graveolens*	Above ground parts.	
	Mint	*Mentha* spp	Above ground parts.	
	Parsley	*Petroselinum crispum*	Above ground parts.	
	Watercress	*Nasturtium officinale*	Leaf and stem.	
Jamaica	Fenugreek	*Tirgonella foenum-graceum*	Leaf, stem, root.	
	Jackfruit	*Artocarpus heterophyllus*	Fruit.	
	Ivy gourd	*Coccinia grandis*	Fruit.	
	Pak choi	*Brassica chinensis*	Leaf and stem.	
	Pointed gourd	*Trichosanthes dioica*	Fruit.	
Japan	Bamboo	*Bambuseae* spp	Edible shoot, free of leaves and roots.	
	Mioga ginger	*Zingiber mioga*	Above ground parts.	
	Mung bean	*Vigna radiata*	Seed sprout.	
	Soybean	*Glycine max*	Seed sprout.	
Liberia	Jute	*Corchorus capsularis*	Leaf.	
	Potato	*Solanum tuberosum*	Leaf.	

Country/locality	Common name	Botanical name	Plant part(s)	Additional restrictions (See paragraph (b) of this section.)
Mexico	Allium	*Allium* spp	Whole plant.	
	Anise	*Pimpinella anisum*	Leaf and stem.	
	Apple	*Malus domestica*	Fruit.	(b)(1)(iii)
	Apricot	*Prunus armeniaca*	Fruit.	(b)(1)(iii)
	Arugula	*Eruca sativa*	Leaf and stem.	
	Asparagus	*Asparagus officinalis*	Whole plant.	
	Banana	*Musa* spp	Flower and fruit.	
	Bay leaf	*Laurus nobilis*	Leaf and stem.	
	Beet	*Beta vulgaris*	Whole plant.	
	Blueberry	*Vaccinium* spp.	Fruit.	
	Carrot	*Daucus carota*	Whole plant.	
	Coconut	*Cocos nucifera*	Fruit without husk.	
			Fruit with milk and husk.	(b)(5)(v)
	Cucurbits	Cucurbitaceae	Inflorescence, flower, and fruit.	
	Eggplant	*Solanum melongena*	Whole plant.	
	Fig	*Ficus carica*	Fruit	(b)(1)(iii), (b)(2)(i)
	Grape	*Vitis* spp	Fruit, cluster, and leaf	
	Grapefruit	*Citrus paradisi*	Fruit.	(b)(1)(iii)
	Jicama	*Pachyrhizus tuberosus*	Whole plant.	
	Lambsquarters	*Chenopodium* spp	Above ground parts.	
	Lemon	*Citrus limon*	Fruit.	
	Lime, sour	*Citrus aurantiifolia*	Fruit.	
	Mango	*Mangifera indica*	Fruit.	(b)(1)(iii)
	Orange	*Citrus sinensis*	Fruit.	(b)(1)(iii)
	Parsley	*Petroselinum crispum*	Whole plant.	
	Peach	*Prunus persica*	Fruit.	(b)(1)(ii)
	Persimmon	*Diospyros* spp	Fruit.	(b)(1)(iii)
	Pineapple	*Ananas comosus*	Fruit.	
	Pitaya	*Hylocereus* spp	Fruit.	(b)(1)(iv), (b)(2)(i)
	Piper	*Piper* spp	Leaf and stem.	
	Pomegranate	*Punica granatum*	Fruit.	(b)(1)(iii)
	Porophyllum	*Porophyllum* spp	Above ground parts.	
	Prickly-pear pad	*Opuntia* spp	Pad.	
	Radish	*Raphanus sativus*	Whole plant.	
	Rambutan	*Nephelium lappaceum*	Fruit.	(b)(2)(i), (b)(5)(iii)
	Rosemary	*Rosmarinus officinalis*	Above ground parts.	
	Salicornia	*Salicornia* spp	Above ground parts.	
	Tangerine	*Citrus reticulata*	Fruit.	(b)(1)(iii)
	Tepeguaje	*Leucaena* spp.	Fruit.	
	Thyme	*Thymus vulgaris*	Above ground parts.	
	Tomato	*Lycopersicon lycopersicum*	Whole plant.	
	Tuna	*Opuntia* spp	Fruit.	
Morocco	Strawberry	*Fragaria* spp	Fruit.	
Morocco and Western Sahara.	Tomato	*Lycopersicon esculentum*	Fruit.	(b)(4)(ii)
Netherlands	Leek	*Allium* spp	Whole plant.	(b)(5)(i)
	Radish	*Raphanus sativus*	Root.	
New Zealand	Avocado	*Persea americana*	Fruit.	
	Fig	*Ficus carica*	Fruit.	
	Oca	*Oxalis tuberosa*	Tuber.	
Nicaragua	Cilantro	*Coriandrum sativum*	Above ground parts.	
	Cole and mustard crops, including cabbage, broccoli, cauliflower, turnips, mustards, and related varieties..	*Brassica* spp	Whole plant of edible varieties only.	
	Eggplant	*Solanum melongena*	Fruit.	(b)(3)
	Fennel	*Foeniculum vulgare*	Leaf and stem.	(b)(2)(i)
	German chamomile	*Matricaria recutita* and *M. chamomilla.*	Flower and leaf	(b)(2)(i)
	Loroco	*Fernaldia* spp	Leaf and stem.	
	Mint	*Mentha* spp	Above ground parts.	
	Parsley	*Petoselinum crispum*	Above ground parts.	
	Radicchio	*Cichorium* spp	Above ground parts.	
	Rambutan	*Nephelium lappaceum*	Fruit	(b)(2)(i). (b)(5)(iii)
	Rosemary	*Rosmarinus officinalla*	Above ground parts	
	Waterlily or lotus	*Nelumbo nucifera*	Roots without soil	(b)(2)(i)

Country/locality	Common name	Botanical name	Plant part(s)	Additional restrictions (See paragraph (b) of this section.)
Panama	Yam-bean or Jicama root	*Pachyrhizus* spp	Roots without soil	(b)(2)(i)
	Basil	*Ocimum* spp	Above ground parts.	
	Bean, green and lima	*Phaseolus vulgaris* and *P. lunatus.*	Seed.	
	Belgian endive	*Cichorium* spp	Above ground parts.	
	Chervil	*Anthriscus cerefolium*	Above ground parts.	
	Chicory	*Cichorium* spp	Above ground parts.	
	Eggplant	*Solanum melongena*	Fruit.	
	Endive	*Cichorium* spp	Above ground parts.	
	Fenugreek	*Tirgonella foenum-graceum*	Leaf and stem.	
	Lemon thyme	*Thymus citriodorus*	Leaf and stem.	
	Mint	*Mentha* spp	Above ground parts.	
	Oregano	*Origanum* spp	Above ground parts.	
	Rambutan	*Nephelium lappaceum*	Fruit	(b)(2)(i), (b)(5)(iii)
	Rosemary	*Rosmarinus officinalis*	Above ground parts.	
	Tarragon	*Artemisia dracunculus*	Above ground parts.	
Peru	Argula	*Eruca sativa*	Leaf and stem.	
	Basil	*Ocimum* spp	Leaf and stem.	
	Carrot	*Daucus carota*	Root.	
	Chervil	*Anthriscus* spp	Leaf and stem.	
	Cole and mustard crops, including cabbage, broccoli, cauliflower, turnips, mustards, and related varieties..	*Brassica* spp	Whole plant of edible varieties only.	
	Cornsalad	*Valerianella* spp	Whole plant.	
	Dill	*Anethum graveolens*	Above ground parts.	
	Lambsquarters	*Chenopodium album*	Above ground parts.	
	Lemongrass	*Cymbopogon* spp	Leaf and stem.	
	Marijoram	*Origanum* spp	Above ground parts.	
	Mustard greens	*Brassica juncea*	Leaf.	
	Oregano	*Origanum* spp	Leaf and stem.	
	Parsley	*Petroselinum crispum*	Leaf and stem.	
	Radicchio	*Cichorium* spp	Leaf.	
	Swiss chard	*Beta vulgaris*	Leaf and stem.	
	Thyme	*Thymus vulgaris*	Above ground parts.	
Philippines	Jicama	*Pachyrhizus tuberosus* or *P. erosus.*	Root.	
Poland	Pepper	*Capsicum* spp	Fruit.	
	Tomato	*Lycopersicon esculentum*	Fruit.	
Republic of Korea	Angelica	*Aralia elata*	Edible shoot.	
	Aster greens	*Aster scaber*	Leaf and stem.	
	Bonnet bellflower	*Codonopsis lanceolata*	Root.	
	Chard	*Beta vulgaris* subsp. *cicla*	Leaf.	
	Chinese bellflower	*Platycodon grandiflorum*	Root.	
	Dasheen	*Colocasia* spp., *Alocasia* spp., and *Xanthosoma* spp.	Root	(b)(2)(iv)
	Eggplant	*Solanum melongena*	Fruit.	
	Kiwi	*Actinidia deliciosa*	Fruit.	
	Lettuce	*Lactuca sativa*	Leaf.	
	Mugwort	*Artemisia vulgaris*	Leaf and stem.	
	Onion	*Allium cepa*	Bulb	
	Shepherd's pursue	*Capsell bursa*	Leaf and stem.	
	Strawberry	*Fragaria* spp	Leaf and stem.	
	Watercress	*Nasturtium official*	Leaf and stem.	
	Youngia greens	*Youngia sonchifolia*	Leaf, stem, and root.	
Sierra Leone	Cassava	*Manihot esculenta*	Leaf.	
	Jute	*Corchorus capsularis*	Leaf.	
	Potato	*Solanum tuberosum*	Leaf.	
St. Vincent and the Grenadines.	Turmeric	*Curcuma longa*	Rhizome.	
South Africa	Artichoke, globe	*Cynara scolymus*	Immature flower head.	
	Pineapple	*Ananas* spp	Fruit.	
Spain	Eggplant	*Solanum melongena*	Fruit	(b)(3)
	Tomato	Lycopersicon escyulentum	Fruit	(b)(4)(ii)
	Watermelon	*Citrullus lanatus*	Fruit	(b)(3)

Country/locality	Common name	Botanical name	Plant part(s)	Additional restrictions (See paragraph (b) of this section.)
Suriname	Amaranth	*Amaranthus* spp	Leaf and stem.	
	Black palm nut	*Astrocaryum* spp	Fruit.	
	Jessamine	*Cestrum latifolium*	Leaf and stem.	
	Malabar spinach	*Bassella alba*	Leaf and stem.	
	Mung bean	*Vigna radiata*	Seed sprout.	
	Pak choi	*Brassica chinensis*	Leaf and stem.	
Sweden	Dill	*Astrocaryum graveolens*	Above ground parts.	
Taiwan	Bamboo	*Bambuseae* spp	Edible shoot, free of leaves and roots.	
	Burdock	*Arctium lappa*	Root.	
	Wasabi (Japanese horseradich)	*Wasabia japonica*	Root and stem.	
Thailand	Dasheen	*Alocasia* spp., *Colocaisa* spp., and *Xanthosoma* spp..	Leaf and stem.	
	Tumeric	*Curcuma domestica*	Leaf and stem.	
Tonga	Burdock	*Arctium lappa*	Root, stem, and leaf.	
	Jicama	*Pachyrhizus tuberosus*	Root.	
	Pumpkin	*Cucurbita maxima*	Fruit.	
Trinidad and Tobago	Lemongrass	*Cymbopogon citratus*	Leaf and stem.	
	Leren	*Calathea allouia*	Tuber.	
	Shield leaf	*Cecropia peltata*	Leaf and stem.	
Zambia	Snow pea	*Pisum sativum* spp. *sativum*	Flat, immature pod.	

(b) Additional restrictions for applicable fruits and vegetables as specified in paragraph (a) of this section.

(1) *Free areas.*

(i) The commodity must be from a Medfly-free area listed in § 319.56–2(j) and must be accompanied by a phytosanitary certificate issued by the national plant protection organization (NPPO) of the country of origin with an additional declaration stating that the commodity originated in a Medfly-free area.

(ii) The commodity must be from a Medfly-free area listed in § 319.56–2(j) and must be accompanied by a phytosanitary certificate issued by the NPPO of the country of origin with an additional declaration stating that the commodity originated in a free area. Fruit from outside Medfly-free areas must be treated in accordance with § 319.56–2x of this subpart.

(iii) The commodity must be from a fruit-fly free area listed in § 319.56–2(h) and must be accompanied by a phytosanitary certificate issued by the NPPO of the country of origin with an additional declaration stating that the commodity originated in a free area.

(iv) The commodity must be from a fruit-fly free area listed in § 319.56–2(h) and must be accompanied by a phytosanitary certificate issued by the NPPO of the country of origin with an additional declaration stating: "These regulated articles originated in an area free from pests as designated in 7 CFR 319.56–2(h) and, upon inspection, were found free of *Dymicoccus neobrevipes* and *Planococcus minor.*"

(2) *Restricted importation and distribution.*

(i) Prohibited entry into Puerto Rico, Virgin Islands, Hawaii, and Guam. Cartons in which commodity is packed must be stamped "Not for importation into or distribution within PR, VI, HI, or Guam."

(ii) Prohibited entry into Puerto Rico, Virgin Islands, and Guam. Cartons in which commodity is packed must be stamped "Not for importation into or distribution within PR, VI, or Guam."

(iii) Prohibited entry into Hawaii. Cartons in which commodity is packed must be stamped "Not for importation into or distribution within HI."

(iv) Prohibited entry into Guam. Cartons in which commodity is packed must be stamped "Not for importation into or distribution within Guam."

(3) Commercial shipments only.

(4) *Stage of fruit.*

(i) The bananas must be green at the time of export. Inspectors at the port of arrival will determine that the bananas were green at the time of export if: (1) Bananas shipped by air are still green upon arrival in the United States; and (2) bananas shipped by sea are either still green upon arrival in the United States or yellow but firm.

(ii) The tomatoes must be green upon arrival in the United States. Pink or red fruit may only be imported in accordance with § 319.56–2dd of this subpart.

(5) *Other conditions.*

(i) Must be accompanied by a phytosanitary certificate issued by the NPPO of the country of origin with an additional declaration stating that the commodity is apparently free of *Acrolepiopsis assectella.*

(ii) Entry permitted only from September 15 to May 31, inclusive, to prevent the introduction of a complex of exotic pests including, but not limited to a thrips (*Haplothrips chinensis*) and a leafroller (*Capua tortrix*).

(iii) Must be accompanied by a phytosanitary certificate issued by the NPPO of the country of origin with an additional declaration stating that the fruit is free from *Coccus moestus, C. viridis, Dysmicoccus neobrevipes, Planococcus lilacinus, P. minor,* and *Psedococcus landoi;* and all damaged fruit was removed from the shipment prior to export under the supervision of the NPPO.

(iv) Must be accompanied by a phytosanitary certificate issued by the NPPO of the country of origin with an additional declaration stating that the fruit is free from *Planococcus minor.*

(v) Must be accompanied by a phytosanitary certificate issued by the national plant protection organization of the country of origin with an additional declaration stating that the fruit is of the Malayan dwarf variety or Maypan variety (=F_1 hybrid, Malayan Dwarf×Panama Tall) (which are resistant to lethal yellowing disease) based on verification of the parent stock. (Approved by the Office of Management and Budget under control number 0579–0049)

4. Sections 319.56–2y and 319.56–2aa would be revised and a new § 319.56–2ll would be added to read as follows:

§ 319.56–2y Conditions governing the entry of melon and watermelon from certain countries in South America.

(a) *Cantaloupe and watermelon from Ecuador.* Cantaloupe (*Cucumis melo*) and watermelon (*fruit*) (*Citrullus lanatus*) may be imported into the United States from Ecuador only in accordance with this paragraph and all other applicable requirements of this subpart:

(1) The cantaloupe or watermelon may be imported in commercial shipments only.

(2) The cantaloupe or watermelon must have been grown in an area where trapping for the South American cucurbit fly (*Anastrepha grandis*) has been conducted for at least the previous 12 months by the national plant protection organization (NPPO) of Ecuador, under the direction of APHIS, with no findings of the pest.[7]

(3) The following area meets the requirements of paragraph (a)(2) of this section: The area within 5 kilometers of either side of the following roads:

(i) Beginning in Guayaquil, the road north through Nobol, Palestina, and Balzar to Velasco-Ibarra (Empalme);

(ii) Beginning in Guayaquil, the road south through E1 26, Puerto Inca, Naranjal, and Camilo Ponce to Enriquez;

(iii) Beginning in Guayaquil, the road east through Palestina to Vinces;

(iv) Beginning in Guayaquil, the road west through Piedrahita (Novol) to Pedro Carbo; or

(v) Beginning in Guayaquil, the road west through Progreso, Engunga, Tugaduaja, and Zapotal to El Azucar.

(4) The cantaloupe or watermelon may not be moved into Alabama, American Samoa, Arizona, California, Florida, Georgia, Guam, Hawaii, Louisiana, Mississippi, New Mexico, Puerto Rico, South Carolina, Texas, and the U.S. Virgin Islands. The boxes in which the cantaloupe or watermelon is packed must be stamped with the name of the commodity followed by the words "Not to be distributed in the following States or territories: AL, AS, AZ, CA, FL, GA, GU, HI, LA, MS, NM, PR, SC, TX, VI".

(b) *Cantaloupe, honeydew melons, and watermelon from Brazil.* Cantaloupe, honeydew melons, and watermelon may be imported into the United States from Brazil only in accordance with this paragraph and all other applicable requirements of this subpart:

(1) The cantaloupe, honeydew melons, or watermelon must have been grown in the area of Brazil considered by APHIS to be free of the South American cucurbit fly in accordance with § 319.56–2(e)(4) of this subpart.

(i) The following area in Brazil is considered free of the South American cucurbit fly: That portion of Brazil bounded on the north by the Atlantic Ocean; on the east by the River Assu (Acu) from the Atlantic Ocean to the city of Assu; on the south by Highway BR 304 from the city of Assu (Acu) to Mossoro, and by Farm Road RN–015 from Mossoro to the Ceara State line; and on the west by the Ceará State line to the Atlantic Ocean.

(ii) All shipments of cantaloupe, honeydew melons, and watermelon must be accompanied by a phytosanitary certificate issued by the NPPO of Brazil that includes a declaration indicating that the fruit was grown in an area recognized to be free of the South American cucurbit fly.

(2) The cantaloupe, honeydew melons, and watermelon must be packed in an enclosed container or vehicle, or must be covered by a pest-proof screen or plastic tarpaulin while in transit to the United States.

(3) All shipments of cantaloupe, honeydew melons, and watermelon must be labeled in accordance with § 319.56–2(g) of this subpart.

(c) *Cantaloupe, honeydew melons, and watermelon from Venezuela.* Cantaloupe, honeydew melons, and watermelon may be imported into the United States from Venezuela only in accordance with this paragraph and all other applicable requirements of this subpart:

(1) The cantaloupe, honeydew melons, or watermelon must have been grown in the area of Venezuela considered by APHIS to be free of the South American cucurbit fly in accordance with § 319.56–2(e)(4) of this subpart.

(i) The following area in Venezuela is considered free of the South American cucurbit fly: The Paraguana Peninsula, located in the State of Falcon, bounded on the north and east by the Caribbean Ocean, on the south by the Gulf of Coro and an imaginary line dividing the autonomous districts of Falcon and Miranda, and on the west by the Gulf of Venezuela.

(ii) All shipments of cantaloupe, honeydew melons, and watermelon must be accompanied by a phytosanitary certificate issued by the NPPO of Venezuela that includes a declaration indicating that the fruit was grown in an area recognized to be free of the South American cucurbit fly.

(2) The cantaloupe, honeydew melons, and watermelon must be packed in an enclosed container or vehicle, or must be covered by a pest-proof screen or plastic tarpaulin while in transit to the United States.

(3) All shipments of cantaloupe, honeydew melons, and watermelon must be labeled in accordance with § 319.56–2(g) of this subpart.

(d) *Cantaloupe, netted melon, vegetable melon, winter melon, and watermelon from Peru.* Cantaloupe, netted melon, vegetable melon, and winter melon (*Cucumis melo* L. subsp. *melo*); and watermelon may be imported into the United States from Peru only in accordance with this paragraph and all other applicable requirements of this subpart:

(1) The fruit may be imported in commercial shipments only.

(2) The fruit must have been grown in the area of Peru considered by APHIS to be free of the South American cucurbit fly in accordance with § 319.56–2(e)(4) of this subpart.

(i) The Departments of Lima, Ica, Arequipa, Moquegua, and Tacna in Peru are considered free of the South American cucurbit fly.

(ii) All shipments must be accompanied by a phytosanitary certificate issued by the NPPO of Peru that includes a declaration indicating that the fruit was grown in an area recognized to be free of the South American cucurbit fly, and upon inspection, were found free of the gray pineapple mealybug (*Dymicoccus neobrevipes*).

(3) The fruit must be packed in an enclosed container or vehicle, or must be covered by a pest-proof screen or plastic tarpaulin while in transit to the United States.

(4) All shipments of fruit must be labeled in accordance with § 319.56–2(g) of this subpart, and the boxes in which the fruit is packed must be labeled "Not for distribution in HI, PR, VI, or Guam."

* * * * *

§ 319.56–2aa Conditions governing the entry of watermelon, squash, cucumber, and oriental melon from the Republic of Korea.

Watermelon (*Citrullus lanatus*), squash (*Curcurbita maxima*), cucumber (*Cucumis sativus*), and oriental melon (*Cucumis melo*) may be imported into the United States from the Republic of Korea only in accordance with this paragraph and all other applicable requirements of this subpart:

(a) The fruit must be grown in pest-proof greenhouses registered with the Republic of Korea's national plant protection organization (NPPO).

(b) The NPPO must inspect and regularly monitor greenhouses for plant pests. The NPPO must inspect greenhouses and plants, including fruit, at intervals of no more than 2 weeks, from the time of fruit set until the end of harvest.

(c) The NPPO must set and maintain fruit fly traps in greenhouses from October 1 to April 30. The number of traps must be set as follows: Two traps for greenhouses smaller than 0.2 hectare in size; three traps for greenhouses 0.2 to 0.5 hectare; four traps for greenhouses over 0.5 hectare and up to 1.0 hectare; and for greenhouses greater than 1 hectare, traps must be placed at a rate of four traps per hectare.

(d) The NPPO must check all traps once every 2 weeks. If a single pumpkin fruit fly is captured, that greenhouse will lose its registration until trapping shows that the infestation has been eradicated.

(e) The fruit may be shipped only from December 1 through April 30.

(f) Each shipment must be accompanied by a phytosanitary certificate issued by NPPO, with the following additional declaration: "The regulated articles in this shipment were grown in registered greenhouses as specified by 7 CFR 319.56–2aa."

(g) Each shipment must be protected from pest infestation from harvest until export. Newly harvested fruit must be covered with insect-proof mesh or a plastic tarpaulin while moving to the packinghouse and awaiting packing. Fruit must be packed within 24 hours of harvesting, in an enclosed container or vehicle or in insect-proof cartons or cartons covered with insect-proof mesh or plastic tarpaulin, and then placed in containers for shipment. These safeguards must be intact when the shipment arrives at the port in the United States.

* * * * *

§ 319.56–2ll Conditions governing the entry of grapes from the Republic of Korea.

Grapes (*Vitis* spp.) may be imported into the United States from the Republic of Korea under the following conditions:

(a) The fields where the grapes are grown must be inspected during the growing season by the Republic of Korea's national plant protection organization (NPPO). The NPPO will inspect 250 grapevines per hectare, inspecting leaves, stems, and fruit of the vines.

(b) If evidence of *Conogethes punctiferalis, Eupoecilia ambiguella, Sparganothis pilleriana, Stathmopoda auriferella,* or *Monilinia fructigena* is detected during inspection, the field will immediately be rejected, and exports from that field will be canceled until visual inspection of the vines shows that the infestation has been eradicated.

(c) Fruit must be bagged from the time the fruit sets until harvest.

(d) Each shipment must be inspected by the NPPO before export. For each shipment, the NPPO must issue a phytosanitary certificate with an additional declaration stating that the fruit in the shipment was found free from *C. punctiferalis, E. ambiguella, S. pilleriana, S. auriferella,* or *M. fructigena,* and *Nippoptilia vitis.*

Done in Washington, DC, this 11th day of December, 2003.

Bobby R. Acord,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 03–31202 Filed 12–17–03; 8:45 am]

BILLING CODE 3410–34–P

[7] Information on the trapping program may be obtained by writing to the Animal and Plant Health Inspection Service, International Services, Stop 3432, 1400 Independence Avenue SW., Washington, DC 20250–3432.

NUCLEAR REGULATORY COMMISSION

10 CFR Part 72

RIN 3150—AH28

List of Approved Spent Fuel Storage Casks: Standardized NUHOMS®–24P, –52B, –61BT, –32PT, and –24PHB Revision

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending its regulations revising the Transnuclear, Inc., Standardized NUHOMS® Horizontal Modular Storage System (Standardized NUHOMS® System) listing within the "List of approved spent fuel storage casks" to include Amendment No. 7 in Certificate of Compliance Number 1004. Amendment No. 7 would incorporate changes in support of the Amergen Corporation plans to load damaged fuel and additional fuel types at its Oyster Creek Nuclear Station. Specifically, the amendment would add damaged Boiling Water Reactor spent fuel assemblies and additional fuel types to the authorized contents of the NUHOMS®–61BT Dry Shielded Canister under a general license. In addition, the amendment would include three minor changes to the Technical Specifications to correct inconsistencies and remove irrelevant references.

DATES: Comments on the proposed rule must be received on or before January 20, 2004.

ADDRESSES: You may submit comments by any one of the following methods. Please include the following number (RIN 3150–AH28) in the subject line of your comments. Comments on rulemakings submitted in writing or in electronic form will be made available to the public in their entirety on the NRC rulemaking Web site. Personal information will not be removed from your comments.

Mail comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, ATTN: Rulemakings and Adjudications Staff.

E-mail comments to: *SECY@nrc.gov.* If you do not receive a reply e-mail confirming that we have received your comments, contact us directly at (301) 415–1966. You may also submit comments via the NRC's rulemaking Web site at *http://ruleforum.llnl.gov.* Address questions about our rulemaking Web site to Carol Gallagher (301) 415–5905; email *cag@nrc.gov.*

Hand deliver comments to: 11555 Rockville Pike, Rockville, Maryland 20852, between 7:30 am and 4:15 pm Federal workdays (telephone (301) 415–1966).

Fax comments to: Secretary, U.S. Nuclear Regulatory Commission at (301) 415–1101.

Publicly available documents related to this rulemaking may be viewed electronically on public computers located at the NRC's Public Document Room (PDR), Public File Area O–1F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland. The PDR reproduction contractor will copy documents for a fee. Selected documents, including comments, can be viewed and downloaded electronically via the NRC rulemaking Web site at *http://ruleforum.llnl.gov.*

Publicly available documents created or received at the NRC after November 1, 1999, are available electronically at the NRC's Electronic Reading Room at *http://www.nrc.gov/NRC/ADAMS/index.html.* From this site, the public can gain entry into the NRC's Agencywide Document Access and Management System (ADAMS), which provides text and image files of NRC's public documents. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC PDR Reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr@nrc.gov.* An electronic copy of the proposed Certificate of Compliance (CoC), Technical Specifications (TS),

and preliminary safety evaluation report can be found under ADAMS Accession Nos. ML032100773, ML032100775, and ML032100776, respectively.

FOR FURTHER INFORMATION CONTACT: Jayne M. McCausland, telephone (301) 415–6219, e-mail, *jmm2@nrc.gov* of the Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

SUPPLEMENTARY INFORMATION: For additional information see the direct final rule published in the final rules section of this **Federal Register**.

Procedural Background

This rule is limited to the changes contained in Amendment 7 to CoC No. 1004 and does not include other aspects of the Standardized NUHOMS® System. The NRC is using the "direct final rule procedure" to issue this amendment because it represents a limited and routine change to an existing CoC that is expected to be noncontroversial. Adequate protection of public health and safety continues to be ensured.

Because NRC considers this action noncontroversial and routine, the proposed rule is being published concurrently as a direct final rule. The direct final rule will become effective on March 2, 2004. However, if the NRC receives significant adverse comments by January 20, 2004, then the NRC will publish a document that withdraws this action and will address the comments received in response to the proposed amendments published elsewhere in this issue of the **Federal Register**. A significant adverse comment is a comment where the commenter explains why the rule would be inappropriate, including challenges to the rule's underlying premise or approach, or would be ineffective or unacceptable without a change. A comment is adverse and significant if:

(1) The comment opposes the rule and provides a reason sufficient to require a substantive response in a notice-and-comment process. For example, a substantive response is required when—

(A) The comment causes the NRC staff to reevaluate (or reconsider) its position or conduct additional analysis;

(B) The comment raises an issue serious enough to warrant a substantive response to clarify or complete the record; or

(C) The comment raises a relevant issue that was not previously addressed or considered by the NRC staff.

(2) The comment proposes a change or an addition to the rule, and it is apparent that the rule would be ineffective or unacceptable without incorporation of the change or addition.

(3) The comment causes the NRC staff to make a change (other than editorial) to the CoC or TS.

These comments will be addressed in a subsequent final rule. The NRC will not initiate a second comment period on this action.

List of Subjects In 10 CFR Part 72

Administrative practice and procedure, Criminal penalties, Manpower training programs, Nuclear materials, Occupational safety and health, Penalties, Radiation protection, Reporting and recordkeeping requirements, Security measures, Spent fuel, Whistleblowing.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 553, the NRC is proposing to adopt the following amendments to 10 CFR part 72.

PART 72—LICENSING REQUIREMENTS FOR THE INDEPENDENT STORAGE OF SPENT NUCLEAR FUEL, HIGH-LEVEL RADIOACTIVE WASTE, AND REACTOR-RELATED WASTE GREATER THAN CLASS C WASTE

1. The authority citation for Part 72 continues to read as follows:

Authority: Secs. 51, 53, 57, 62, 63, 65, 69, 81, 161, 182, 183, 184, 186, 187, 189, 68 Stat. 929, 930, 932, 933, 934, 935, 948, 953, 954, 955, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2071, 2073, 2077, 2092, 2093, 2095, 2099, 2111, 2201, 2232, 2233, 2234, 2236, 2237, 2238, 2282); sec. 274, Pub. L. 86–373, 73 Stat. 688, as amended (42 U.S.C. 2021); sec. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846); Pub. L. 95–601, sec. 10, 92 Stat. 2951 as amended by Pub. L. 102–486, sec. 7902, 106 Stat. 3123 (42 U.S.C. 5851); sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332); secs. 131, 132, 133, 135, 137, 141, Pub. L. 97–425, 96 Stat. 2229, 2230, 2232, 2241, sec. 148, Pub. L. 100–203, 101 Stat. 1330–235 (42 U.S.C. 10151, 10152, 10153, 10155, 10157, 10161, 10168).

Section 72.44(g) also issued under secs. 142(b) and 148(c), (d), Pub. L. 100–203, 101 Stat. 1330–232, 1330–236 (42 U.S.C. 10162(b), 10168(c), (d)). Section 72.46 also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239); sec. 134, Pub. L. 97–425, 96 Stat. 2230 (42 U.S.C. 10154). Section 72.96(d) also issued under sec. 145(g), Pub. L. 100–203, 101 Stat. 1330–235 (42 U.S.C. 10165(g)). Subpart J also issued under secs. 2(2), 2(15), 2(19), 117(a), 141(h), Pub. L. 97–425, 96 Stat. 2202, 2203, 2204, 2222, 2244, (42 U.S.C. 10101, 10137(a), 10161(h)). Subparts K and L are also issued under sec. 133, 98 Stat. 2230 (42 U.S.C. 10153) and sec. 218(a), 96 Stat. 2252 (42 U.S.C. 10198).

2. In § 72.214, Certificate of Compliance 1004 is revised to read as follows:

§ 72.214 List of approved spent fuel storage casks.

* * * * *

Certificate Number: 1004.

Initial Certificate Effective Date: January 23, 1995.

Amendment Number 1 Effective Date: April 27, 2000.

Amendment Number 2 Effective Date: September 5, 2000.

Amendment Number 3 Effective Date: September 12, 2001.

Amendment Number 4 Effective Date: February 12, 2002.

Amendment Number 5 Effective Date: [Reserved].

Amendment Number 6 Effective Date: December 22, 2003.

Amendment Number 7 Effective Date: March 2, 2004.

SAR Submitted by: Transnuclear, Inc.

SAR Title: Final Safety Analysis Report for the Standardized NUHOMS® Horizontal Modular Storage System for Irradiated Nuclear Fuel.

Docket Number: 72–1004.

Certificate Expiration Date: January 23, 2015.

Model Number: Standardized NUHOMS®–24P, NUHOMS®–52B, NUHOMS®–61BT, NUHOMS®–32PT, and NUHOMS®–24PHB.

* * * * *

Dated at Rockville, Maryland, this 20th day of November, 2003.

For the Nuclear Regulatory Commission.

William F. Kane,

Acting Executive Director for Operations.

[FR Doc. 03–31208 Filed 12–17–03; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–111–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A300 B2 Series Airplanes; A300 B4 Series Airplanes; A300 B4–600, B4–600R, F4–600R, and C4–605R Variant F (Collectively Called A300–600) Series Airplanes; and A310 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness directive (AD), applicable to certain Airbus Model A300 series airplanes, that currently requires either a one-time ultrasonic inspection, or repetitive visual inspections and eventual ultrasonic inspection, to detect cracking of the longitudinal skin splice above the mid-passenger door panels, and corrective actions if necessary. This action would require repetitive ultrasonic inspections to detect cracking of certain skin lap joints in additional areas of the fuselage and repair if necessary. This action also would expand the applicability of the existing AD to include additional airplanes. The actions specified by the proposed AD are intended to detect and correct cracking of certain skin lap joints, which could result in reduced structural integrity and decompression of the airplane. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by January 20, 2004.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–111–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov*. Comments sent via fax or the Internet must contain "Docket No. 2001–NM–111–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Anthony Jopling, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2190; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of comments received.

Submit comments using the following format:

- Organize comments issue-by issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2001–NM–111–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docked No. 2001–NM–111–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

On January 31, 2000, the FAA issued AD 2000–02–39, amendment 39–11557 (65 FR 5756, February 7, 2000), applicable to certain Airbus Model A300 series airplanes, to require either a one-time ultrasonic inspection, or repetitive visual inspections and eventual ultrasonic inspection, to detect cracking of the longitudinal skin splice above the mid-passenger door panels, and corrective actions if necessary. That action was prompted by notification from the Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, that during a routine maintenance check on an Airbus Model A300 series airplane, a horizontal crack of 35.6 inches was detected in the surrounding panel above the right mid-passenger door. The requirements of that AD are intended to detect and correct cracking of the longitudinal skin splice (skin lap joint) above the mid-passenger door panels, which could result in reduced structural integrity of the fuselage pressure vessel.

Actions Since Issuance of Previous Rule

Since the issuance of that AD, further analysis by the manufacturer revealed that additional areas with similar stress loading and design may also be affected by cracking. Because of the similar stress loading and design, cracking of certain skin lap joints may exist on all Airbus Model A300 B4–600, B4–600R, F4–600R, C4–605R Variant F (collectively called A300–600), and A310 series airplanes; therefore, those airplanes may also be subject to the same unsafe condition described above. The DGAC issued French airworthiness directive 2002–639(B), dated December 24, 2002, to ensure the continued airworthiness of these airplanes in France. That French airworthiness directive supersedes French airworthiness directives 2000–001–300(B)R1 and 2001–071(B).

Explanation of Relevant Service Information

For Model A300 B2 and A300 B4 series airplanes, Airbus has issued Service Bulletins A300–53–0354, Revision 02, dated December 13, 2001; A300–53–0356, dated December 26, 2000; and A300–53–0357, dated December 26, 2000. These service bulletins describe procedures for repetitive ultrasonic inspections to detect cracking in certain skin lap joints, and repair if necessary.

- Service Bulletin A300–53–0354 describes procedures for repetitive inspections of skin lap joints located above the mid-passenger doors. If repair is necessary, operators are instructed to do temporary or final repair, as applicable, per the applicable repair drawing.
- Service Bulletin A300–53–0356 describes procedures for repetitive inspections of skin lap joints located below the mid-passenger doors and in the lower fuselage aft of the wing. If repairs is necessary, operators are instructed to do a final repair per the applicable Airbus structural repair manual. The effectivity of this specific service bulletin excludes those airplanes modified by Airbus Modification 2611 in production.
- Service Bulletin A300–53–0357 describes procedures for repetitive inspections on skin lap joints located above the aft-passenger doors. If repair

is necessary, operators are instructed to contact Airbus for repair instructions.

For Model A300–600 series airplanes, Airbus has issued Service Bulletin A310–53–6129, Revision 02, dated December 13, 2001, which describes procedures for repetitive ultrasonic inspections to detect cracking in skin lap joints located above the mid-passenger doors, and repair if necessary.

For Model A310 series airplanes, Airbus has issued Service Bulletin A310–53–2112, dated December 26, 2000, which describes procedures for repetitive ultrasonic inspections to detect cracking in skin lap joints located below the aft passenger door, and repair if necessary.

Accomplishment of the actions specified in the service bulletins are intended to adequately address the identified unsafe condition.

FAA's Conclusions

These airplane models are manufactured in France and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD actions is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would supersede AD 2000–02–39 to continue to require either a one-time ultrasonic inspection, or repetitive visual inspections and eventual ultrasonic inspection, to detect cracking of the longitudinal skin splice above the mid-passenger door panels, and corrective actions if necessary. The proposed AD would also require repetitive ultrasonic inspections to detect cracking of certain skin lap joints in additional areas of the fuselage, and repair if necessary. The actions would be required to be accomplished in accordance with the service bulletins described previously, except as discussed below.

Explanation of Change Made to Existing Requirements

The FAA has changed all references to a "detailed visual inspection" in the existing AD to "detailed inspection" in this action.

Explanation of Change to Applicability

In this proposed AD the FAA has revised the applicability of affected Airbus Model A300 series airplanes to "Airbus Model A300 B2 Series Airplanes" and "Airbus Model A300 B4 Series Airplanes" to match the most recent type certificate data sheet for the affected models.

Also, for Model A300 series airplanes, the applicability of the existing AD includes serial numbers "1 through 156 inclusive." In this action the applicability for Airbus Model A300 B2 and B4 series airplanes has been changed to include serial numbers "0003 through 0156 inclusive." The airplanes with serial numbers 1 and 2 were destroyed by the manufacturer.

No Flight With Cracks

Airbus Service Bulletins A300–53–0354, Revision 02; A300–53–0356; and A300–53–6129, Revision 02; allow flight with cracking of certain lengths, as specified in the applicable service bulletin. This proposed AD would not allow flight with any cracking, regardless of crack length. We have determined that because of the safety implications and consequences associated with such cracking, any cracking must be repaired before further flight.

Difference Between the Proposed AD and the Service Information

Operators should note that, although the service bulletins specify that the manufacturer may be contacted for disposition of certain repair conditions and repetitive inspections after a final repair, this proposal would require the repair of those conditions to be accomplished in accordance with a method approved by either the FAA, or the DGAC (or its delegated agent). In light of the type of repair that would be required to address the identified unsafe condition, and consonance with existing bilateral airworthiness agreements, the FAA has determined that, for this proposed AD, a repair approved by either the FAA or the DGAC would be acceptable for compliance with this proposed AD.

Cost Impacts

There are approximately 128 airplanes of U.S. registry that would be affected by this proposed AD.

The ultrasonic inspection that is currently required by AD 200–02–39 takes approximately 4 work hours per airplane to accomplish, at an average labor rate of $65 per work hour. Based on these figures, the cost impact of the currently required actions is estimated to be $260 per airplane.

The detailed inspection that is currently required by AD 2000–01–39 takes approximately 2 work hours per airplane to accomplish, at an average labor rate of $65 per work hour. Based on these figures, the cost impact of the currently required actions is estimated to be $130 per airplane.

The ultrasonic inspection that is proposed in this AD action would take approximately 1 work hour per airplane to accomplish, at an average rate of $65 per work hour. Based on these figures, the cost impact of this proposed inspection on U.S. operators is estimated to be $8,320, or $65 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the current or proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–11557 (65 FR 5756, February 7, 2000), and by adding a new airworthiness directive (AD), to read as follows:

Airbus: Docket 2001–NM–111–AD. Supersedes AD 2000–02–39, Amendment 39–11557.

Applicability: Model A300 B2 series airplanes; A300 B4 series airplanes; A300 B4–600; B4–600R, and C4–605R Variant F (Collectively Called A300–600) series airplanes; and A310 series airplanes; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To detect and correct cracking of certain skin lap joints, which could result in reduced structural integrity and decompression of the airplane, accomplish the following:

Restatement of Certain Requirements of AD 2000–02–39

Ultrasonic or Detailed Visual Inspection

(a) For Model A300 series airplanes having serial number (S/N) 0003 through 0156 inclusive: Within 14 days after January 31, 2000 (the effective date of AD 2000–02–39, amendment 39–11557), accomplish the requirements of either paragraph (a)(1) or (a)(2) of this AD, in accordance with Airbus All Operators Telex (AOT) A300–53A0352, dated January 4, 2000.

(1) Perform a one-time ultrasonic inspection to detect cracking of the longitudinal skin splice above the mid-passenger door panels below stringer 11 (left- and right-hand) and between frames 28A and 30A.

(i) If no cracking is detected: No further action is required by this paragraph.

(ii) If any cracking is detected: Before further flight, accomplish the requirements of paragraph (b) of this AD.

(2) Perform a detailed inspection to detect cracking of the longitudinal skin splice above the mid-passenger door panels below stringer 11 (left- and right-hand) and between frames 28A and 30A.

Note 1: For the purposes of this AD, a detailed inspection is defined as: "An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirrors, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required."

(i) If no cracking is detected: Accomplish the requirements of paragraphs (a)(2)(i)(A) and (a)(2)(i)(B) of this AD.

(A) Repeat the detailed inspection thereafter at intervals not to exceed 80 flight cycles; and

(B) Within 90 days after January 31, 2000: Accomplish the requirements of paragraph (a)(1) of this AD.

(ii) If any cracking is detected: Before further flight, accomplish the requirements of paragraph (b) of this AD.

Corrective Actions

(b) For airplanes on which any cracking is detected during any inspection required by paragraph (a)(1) or (a)(2) of this AD: Before further flight, install either a temporary or final repair, in accordance with Airbus AOT A300–53A0532, dated January 4, 2000.

(1) If a temporary repair is installed: Prior to the accumulation of 2,000 flight cycles after the installation of the repair, install the final repair.

(2) If a final repair is installed: No further action is required by paragraphs (a) and (b) of this AD.

New Requirements of This AD

Inspections and Corrective Actions: Model A300 B2 and B4 Series Airplanes

(c) For Model A300 B2 and A300 B4 series airplanes with S/Ns 0003 through 0305 inclusive: From the airplane interior, do an ultrasonic inspection to detect cracking of the skin lap joint located above the mid-passenger door panel below stringer 11, between frames 28A and 31, on the left and right sides of the airplane, as applicable, per the Accomplishment Instructions of Airbus Service Bulletin A300–53–0354, Revision 02, dated December 13, 2001 Do the inspection at the times specified in paragraphs (c)(1) or (c)(2) of this AD, as applicable. Accomplishment of this inspection terminates the repetitive inspections required by paragraph (a)(2)(i)(A) of this AD.

(1) For airplanes with S/Ns 0003 through 0156 inclusive, except those airplanes on which the final repair in AOT A300–53A0352, Dated January 4, 2000; or Airbus Service Bulletin A300–53–0354, Revision 02, dated December 13, 2001, has been accomplished: Do the inspection within 2,500 flight cycles after the inspection per paragraph (a) of this AD, or within 14 days after the effective date of this AD, whichever occurs later. If no cracking is detected, repeat the inspection thereafter at intervals not to exceed 2,500 flight cycles.

(2) For airplanes with S/Ns 0157 through 0305 inclusive, except those airplanes on which the final repair in Airbus Sevice Bulletin A300–53–0354, Revision 02, dated December 13, 2001, has been accomplished: Do the initial inspection at the applicable time specified in paragraph (c)(2)(i) or (c)(2)(ii) of this AD. If no cracking is detected, repeat the inspection thereafter at intervals not to exceed 6,500 flight cycles.

(i) For airplanes with less than 20,500 flight cycles as of the effective date of this AD: Inspect before the accumulation of 20,500 total flight cycles or within 19 months after the effective date of this AD, whichever occurs later.

(ii) For airplanes with 20,500 total flight cycles or more, but less than 26,500 total flight cycles as of the effective date of this AD: Inspect within 500 flight cycles after the effective date of this AD.

(d) Accomplishment of the actions specified in Airbus Service Bulletin A300–53–0354, Revision 01, dated December 26, 2000, before the effective date of this AD, is considered acceptable for compliance with the requirements of paragraph (c) of this AD.

(e) If any cracking is detected during any inspection per paragraph (c) of this AD: Do paragraphs (e)(1) and (e)(2) of this AD, as applicable.

(1) If any crack is detected in Area A as defined in Figure 1 of Airbus Service Bulletin A300–53–0354, Revision 02, dated December 13, 2001: Before further flight, repair per a method approved by either the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, or the Direction Générale de l'Aviation Civile (DGAC) (or its delegated agent).

(2) If any crack is detected in Area B as defined in Figure 1 of Airbus Service Bulletin A300–53–0354, Revision 02, dated December 13, 2001: Before further flight, do a temporary repair or final repair, as applicable, per the Accomplishment Instructions of the service bulletin.

(f) For Model A300 B2 and A300 B4 series airplanes with S/Ns 0003 through 0305 inclusive which have been repaired per paragraph (d)(2) of this AD: Do paragraph (f)(1) of (f)(2) of this AD, as applicable.

(1) If a temporary repair has been accomplished: Within 2,000 flight cycles after doing the temporary repair, do the final repair per the Accomplishment Instructions of Airbus Service Bulletin A300–53–0354, Revision 02, dated December 13, 2001.

(2) If a final repair has been accomplished: Perform repetitive inspections per a method and at intervals approved by either the Manager, International Branch, ANM–116, Transport Directorate, FAA, or the DGAC (or its delegated agent).

(g) For Model A300 B2 and A300 B4 series airplanes, except those airplanes with Airbus Modification 2611 accomplished in production: Prior to the accumulation of 30,300 total flight cycles, or within 19 months after the effective date of this AD, whichever occurs later, do the inspections in paragraphs (g)(1) and (g)(2) of this AD.

(1) From the airplane interior: Do an ultrasonic inspection to detect cracking of the skin lap joint located below the mid-passenger door panel, below stringer 27, between frames 28A and 30A, on the left and right sides of the airplane, as applicable, per the Accomplishment Instructions of Airbus Service Bulletin A300–53–0356, dated December 26, 2000.

(i) If no cracking is detected: Repeat the inspection required by paragraph (g)(1) of this AD thereafter at intervals not to exceed 4,100 flight cycles.

(ii) If any cracking is detected in area A as defined in Figure 1 of Airbus Service Bulletin A300–53–0356: Before further flight, repair the affected area per a method approved by either the Manager, International Branch, ANM–116, or the DGAC (or its delegated agent). Upon completion of the repair, do repetitive inspections of the affected area per a method and at intervals approved by one of the airworthiness authorities listed above.

(2) Do an external ultrasonic inspection to detect cracking of the skin lap joint located in the lower fuselage, aft of the wing, below the mid-passenger door panel, below stringer 52, between frames 56 and 58, on the left and right sides of the airplane, as applicable, per the Accomplishment Instructions of Airbus Service Bulletin A300–53–0356, dated December 26, 2000. If an internal or external repair doubler approved by the FAA or the DGAC (or its delegated agent), of Airbus design origin, has been installed in this area, the doubler does not need to be removed for inspection of this area.

(i) If no cracking is detected: Repeat the inspection required by paragraph (g)(2) of this AD thereafter at intervals not to exceed 4,100 flight cycles.

(ii) If any cracking is detected in Area B as defined in Figure 1 of Airbus Service Bulletin A300–53–0356: Before further flight, do a final repair per the Accomplishment Instructions of Airbus Service Bulletin A300–53–0356.

(h) For Model A300 B2 and A300 B4 series airplanes, except those on which Airbus Service Bulletin A300–53–0209 has been accomplished: From the airplane interior, do an ultrasonic inspection to detect cracking of the skin lap joint located below the aft-passenger door panel, below stringer 28, between frames 72 and 76 on the left and right sides of the airplane, as applicable, per the Accomplishment Instructions of Airbus Service Bulletin A300–53–0357, dated December 26, 2000. If an internal or external repair doubler is installed in this area, inspection of this area is not required. Perform the inspection at the later of the times specified in paragraphs (h)(1) and (h)(2) of this AD.

(1) Prior to the accumulation of 24,100 total flight cycles for S/Ns 0003 through 0156 inclusive, or 29,500 total flight cycles for S/Ns 0157 through 0305 inclusive.

(2) Within 2,000 flight cycles or 19 months after the effective date of this AD, whichever occurs first.

(i) If no cracking is detected during the inspection required by paragraph (h) of this AD: Repeat the inspection required by paragraph (h) of this AD at the intervals specified in paragraph (i)(1) and (i)(2) of this AD, as applicable.

(1) For Model A300 B2 and A300 B4 series airplanes with S/Ns 003 through 0156 inclusive: Repeat the inspection thereafter at intervals not to exceed 3,400 flight cycles.

(2) For Model A300 B2 and A300 B4 series airplanes with S/Ns 0157 through 0305 inclusive: Repeat the inspection thereafter not to exceed 5,400 flight cycles.

(j) For all Model A300 B2 and A300 B4 series airplanes; if any cracking is detected during the inspection required by paragraph (h) of this AD: Before further flight, repair the affected area, per a method approved by either the Manager, International Branch, ANM–116, or the DGAC (or its delegated agent).

Inspections and Corrective Actions: Model A310 Series Airplanes

(k) For Model A310 series airplanes; prior to the accumulation of 29,500 total flight cycles, or within 19 months after the effective date of this AD, whichever occurs later: From the airplane interior, do an ultrasonic inspection to detect cracking of the skin lap joint located below the aft-passenger door panel, below stringer 28, between frame 72 and frame 76, on the right and left sides of the airplane, as applicable, per the Accomplishment Instructions of Airbus Service Bulletin A310–53–2112, dated December 26, 2000. If an internal or external repair doubler is installed in any inspection area, inspection of that specific area is not required.

(1) If no cracking is detected: Repeat the inspection thereafter at intervals not to exceed 5,400 flight cycles.

(2) If any cracking is detected: Before further flight, repair the affected area, per a method and at repetitive intervals approved by either the Manager, International Branch, ANM–116, or the DGAC (or its delegated agent).

Inspections and Corrections Actions: Model A300–600 Series Airplanes

(l) For Model A300–600 series airplanes: From the airplane interior, do an ultrasonic inspection to detect cracking of the skin lap joint located above the mid-passenger door panel, below stringer 11, between frames 28A and 31, on the right and left sides of the airplane, as applicable, per the Accomplishment Instructions of Airbus Service Bulletin A300–53–6129, Revision 02, dated December 13, 2001. Do the inspection at the applicable time specified in paragraph (l)(1), (l)(2), or (l)(3) of this AD. If no cracking is detected, repeat the inspection thereafter at intervals not to exceed 6,500 flight cycles.

(1) For airplanes with less than 20,500 flight cycles as of the effective date of this AD: Inspect before the accumulation of 20,500 total flight cycles or within 19 months after the effective date of this AD, whichever occurs later.

(2) For airplanes with 20,500 total flight cycles or more, but less than 26,500 total flight cycles as of the effective date of this AD: Inspect within 500 flight cycles after the effective date of this AD.

(3) For airplanes with 26,500 total flight cycles or more as of the effective date of this AD: Inspect within 200 flight cycles or 30 days after the effective date of this AD, whichever occurs later.

(m) If any cracking is detected during any inspection per paragraph (l) of this AD: Do paragraphs (m)(1) and (m)(2) of this AD, as applicable.

(1) If any crack is detected in Area A as defined in Figure 1 of Airbus Service Bulletin A300–53–619, Revision 02, dated December 13, 2001: Before further flight, repair per a method approved by either the Manager, International Branch, ANM–116, or the DGAC (or its delegated agent).

(2) If any crack is detected in Area B as defined in figure 1 of Airbus Service Bulletin A300–53–6129, Revision 02, dated December 13, 2001: Before further flight, do a temporary repair or final repair, as applicable, per the Accomplishment Instructions of Airbus Service Bulletin A300–53–6129, Revision 02, dated December 13, 2001.

(n) For airplanes which have been repaired per paragraph (m)(2) of this AD: Do paragraph (n)(1) or (n)(2) of this AD, as applicable.

(1) If a temporary repair has been accomplished: Within 2,000 flight cycles after doing the temporary repair, do the final repair per the Accomplishment Instructions of Airbus Service Bulletin A300–53–6129, Revision 02, dated December 13, 2001.

(2) If a final repair has been accomplished: Perform repetitive inspections per a method and at intervals approved by either the Manager, International Branch, ANM–116, or the DGAC (or its delegated agent).

Credit for Previous Service Bulletin Revision

(o) Accomplishment of the actions in Airbus Service Bulletin A300–53–6129, Revision 01, dated December 26, 2000, before the effective date of this AD, is considered acceptable for compliance with the requirements of paragraph (1) of this AD.

Submission of Inspection Results to Manufacture Not Required

(p) Although the service bulletins referenced in this AD specify to submit information to the manufacture, this AD does not include such a requirement.

Alternative Methods of Compliance

(q)(1) In accordance with 14 CFR 39.19, the Manager, International Branch, ANM–116, is authorized to approve alternative methods of compliance for this AD.

(2) Alternative methods of compliance, approved previously in accordance with AD 2000–02–39, amendment 39–11557, are approved as alternative methods of compliance with the applicable actions in this AD.

Note 2: The subject of this AD is addressed in French airworthiness directive 2002–639(B), dated December 24, 2002.

Dated: Issued in Renton, Washington, on December 11, 2003.

Kevin M. Mullin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–31194 Filed 12–17–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–126–AD]

RIN 2120–AA64

Airworthiness Directives; Bombardier Model DHC–8–101, –102, –103, –106, –201, –202, –301, –311, and –315 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to all Bombardier Model DHC–8–101, –102, –103, –106, –201, –202, –301, –311, and –315 airplanes. This proposal would require a detailed inspection of the wing leading edge de-icer boots to determine if they comply with the patch size and/or patch number limits in the critical zone as defined in the Aircraft Maintenance Manual; and corrective action, if necessary. This action is necessary to prevent reduced aerodynamic smoothness of the wing leading edge de-icer boots and possible reduced stall margin, which could result in a significant increase in stall speeds, leading to a possible stall prior to activation of the stall warning. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by January 20, 2004.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–126–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov*. Comments sent via fax or the Internet must contain "Docket No. 2002–NM–126–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 or 2000 or ASCII text.

The service information referenced in the proposed rule may be obtained from Bombardier, Inc., Bombardier Regional Aircraft Division, 123 Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York.

FOR FURTHER INFORMATION CONTACT: Ezra Sasson, Aerospace Engineer, Systems and Flight Test Branch, ANE–172, FAA, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York 11581; telephone (516) 256–7520; fax (516) 568–2716.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2002–NM–126–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–126–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

Transport Canada Civil Aviation (TCCA), which is the airworthiness authority for Canada, notified the FAA that an unsafe condition may exist on certain Bombardier Model DHC–8–101, –102, –103, –106, –201, –202, –301, –311, and –315 airplanes. The manufacturer has revised the Aircraft Maintenance Manual (AMM) to tighten the limit on the size and number of repair patches on the de-icer boots in the wing critical zone to avoid any adverse effect to the aerodynamic stall margins. The new limits are based on the airplane aerodynamic characteristics and the smoothness of the boots. Reduced aerodynamic smoothness of the wing leading edge de-icer boots, and possible reduced stall margin, if not corrected, could result in a significant increase in stall speeds, leading to a possible stall prior to activation of the stall warning.

Explanation of Relevant Service Information

Bombardier has issued revisions to the AMM, listed in the following table, which describe procedures for a detailed inspection of the wing leading edge de-icer boots for damage and to determine if they comply with the patch size and/or patch number limits in the critical zone as defined in the AMM. The AMM revisions also describe procedures for replacement of non-compliant de-icer boots with new de-icer boots, if necessary.

TABLE—AMM REVISIONS

Model—	AMM—	Program support manual (PSM)—	Chapter—	Revision—	Dated—
DHC–8–101, –102, –103, and –106	Series 100	1–8–2	30–10–48	49	October 3, 2001.
DHC–8–201, and –202	Series 200	1–82–2	30–12–00	11	October 19, 2001.
DHC–8–301, –311, and –315	Series 300	1–83–2	30–10–48		October 30, 2001.

[1] Temporary Revision (TR) 30–21.

Accomplishment of the actions specified in the applicable AMM revision is intended to adequately address the identified unsafe condition.

TCCA classified these actions as mandatory and issued Canadian airworthiness directive CF–2001–43, dated November 23, 2001, to ensure the continued airworthiness of these airplanes in Canada.

FAA's Conclusions

These airplane models are manufactured in Canada and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the TCCA has kept us informed of the situation described above. We have examined the findings of the TCCA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of the actions specified in the Canadian airworthiness directive described previously, and corrective actions, if necessary. The corrective actions involve the temporary revision of the Aircraft Flight Manual (AFM) to specify operating limitations, and eventual replacement of the de-icer boots with new boots.

Cost Impact

We estimate that 200 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 2 work hours per airplane to accomplish the proposed inspection, and that the average labor rate is $65 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $26,000, or $130 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Bombardier, Inc. (Formerly de Havilland, Inc.): Docket 2002–NM–126–AD.

Applicability: All Model DHC–8–101, –102, –103, –106, –201, –202, –301, –311, and –315 airplanes; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent reduced aerodynamic smoothness of the wing leading edge de-icer boots and possible reduced stall margin, which could result in a significant increase in stall speeds, leading to a possible stall prior to activation of the stall warning; accomplish the following:

Maintenance Manual Reference

(a) The term "Aircraft Maintenance Manual," or the acronym "AMM," as used in this AD, means the chapter of the Bombardier Aircraft Maintenance Manuals listed in Table 1 of this AD, as applicable:

TABLE 1.—AMM REFERENCE

Model—	AMM—	Program support manual (PSM)—	Chapter—	Revision—	Dated—
DHC–8–101, –102, –103, and –106	Series 100	1–8–2	30–10–48	49	October 3, 2001.
DHC–8–201, and –202	Series 200	1–82–2	30–12–00	11	October 19, 2001.
DHC–8–301, –311, and –315	Series 300	1–83–2	30–10–48	(1)	October 30, 2001.

[1] Temporary Revision (TR) 30–12.

Detailed Inspection

(b) Within 60 days after the effective date of this AD: Perform a detailed inspection of the wing leading edge de-icer boots to determine if the de-icer boots comply with the patch size and/or patch number limits in the critical zone as defined in the AMM.

Note 1: For the purposes of this AD, a detailed inspection is defined as: "An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required."

(1) If all de-icer boots are within the patch size and/or patch number limits in the critical zone as defined in the AMM, no further action is required by this paragraph.

(2) If any de-icer boot exceeds the patch size and/or patch number limits in the critical zone as defined in the AMM, accomplish the corrective actions required by paragraph (c) of this AD.

Corrective Actions

(c) For de-icer boots that require the corrective actions described in paragraph (b)(2) of this AD, accomplish the following corrective actions:

TABLE 2.—PERFORMANCE PENALTIES

AFM sections	AFM limits with de-ice boot patch limits exceeded **Note:** Flap settings as applicable to aircraft model
T/O Speed: Sub-Section 5–2	
V_1, V_r & V_2	*Add:* 5 kt (flap 0°) 5 kt (flap 5°) 5 kt (flap 10°) 5 kt (flap 15°)
Final T/O Climb Speed	*Add:* 5 kt (flap 0°)
T/O WAT Limit: Sub-Section 5–3 **Note:** Weight reduction not required when limited by maximum structural weight.	*Subtract:* 18 kg, 400 lb. (flap 0°) 90 kg, 200 lb. (flap 5°) No change (flap 10°) No change (flap 15°)
T/O Climb: Sub-Section 5–4	
1st Seg. Gradient	*Subtract:* 0.008 (flap 0°) 0.004 (flap 5°) 0.004 (flap 10°) 0.004 (flap 15°)
2nd Seg. Gradient	*Subtract:* 0.005 (flap 0°) 0.002 (flap 5°) 0.002 (flap 10°) 0.002 (flap 15°)
Final Seg. Gradient	*Subtract:* 0.009 (flap 0°)
T/O Field Length: Sub-Section 5–5	

(1) Before further flight, insert the contents of Table 2 of this AD in the Limitations Section of the Aircraft Flight Manual (AFM) and advise flight crews to comply with the performance penalties detailed in Table 2 of this AD.

(2) Within 24 months after the effective date of this AD, replace all wing de-icer boots that exceed the patch size and/or patch number limits in the critical zone as defined in the AMM, with new de-icer boots, in accordance with the applicable AMM referenced in Table 1 of this AD. Remove the contents of Table 2 of this AD from the AFM, and terminate the requirements to comply with the performance penalties after all replacements are accomplished.

TABLE 2.—PERFORMANCE PENALTIES—Continued

AFM sections	AFM limits with de-ice boot patch limits exceeded **Note:** Flap settings as applicable to aircraft model
TOR, TOD & ASD	*Add:* 16% (flap 0°) 16% (flap 5°) 16% (flap 10°) 16% (flap 15°)
Net T/O Flight Path: Sub-Section 5–6	
Ref Gradient	*Subtract* 0.005 (flap 0°) 0.002 (flap 5°) 0.002 (flap 10°) 0.002 (flap 15°)
4th Seg. Net Gradient	*Subtract:* 0.012 (flap 0°)
Flap Retraction Initiation Speed	*Add:* 5 kt (flap 5°) 5 kt (flap 10°) 5 kt (flap 15°)
Enroute Climb Data: Sub-Section 5–7	
Enroute Climb Speed	Add: 5 kt
Net Climb Gradient	*Subtract:* 0.004
OEI-Climb Ceiling	*Subtract:* 1,200 ft
Landing Speed: Sub-Section 5–8	
Approach, Go-around & Vref	*Add:* 5 kt (flap 5°) 5 kt (flap 10°) 5 kt (flap 15°) 5 kt (flap 35°)
Landing WAT Limit: Sub-Section 5–9	
Note: Weight reduction not required when limited by maximum structural weight.	*Subtract:* 860 kg, 1900 lb.(flap 10°) 225 kg, 500 lb. (flap 15°) 180 kg, 400 lb. (flap 35°)
Landing Climb Data: Sub-Section 5–10	
Approach Gross Climb Gradient	*Subtract:* 0.010 (flap 5°) 0.003 (flap 10°) 0.002 (flap 15°)
Balked Landing Gross Climb Gradient	*Subtract:* 0.035 (flap 10°) 0.017 (flap 15°) 0.016 (flap 35°)
Landing Field Length: Sub-Section 5–11	*Add:* 23% (flap 10°) 16% (flap 15°) 10% (flap 35°)
Brake Energy: Sub-Section 5–12	
Accel/Stop B.E.	*Add* 7% (flap 0°) 7% (flap 5°) 7% (flap 10°) 7% (flap 15°)
Landing B.E.	*Add:* 30% (flap 10°) 20% (flap 15°) 8% (flap 35°)

Parts Installation

(d) As of the effective date of this AD, no person may install—on any airplane—a de-icer boot patch in the critical zone of the wing de-icer boots that exceeds the AMM limits referenced in paragraph (b) of this AD.

Alternative Methods of Compliance

(e) In accordance with 14 CFR 39.19, the Manager, New York Aircraft Certification Office (ACO), FAA, is authorized to approve alternative methods of compliance for this AD.

Note 2: The subject of this AD is addressed in Canadian airworthiness directive CF–2001–43, dated November 23, 2001.

Issued in Renton, Washington, on December 10, 2003.

Kevin Mullin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–31183 Filed 12–17–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–NM–80–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A300 B4–600 and A300 C4–600 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Airbus Model A300 B4–600 and A300 C4–600 series airplanes. This proposal would require a one-time inspection to detect damage of the pump diffuser guide slots (bayonet) of the center tank fuel pumps, the pump diffuser housings, and the pump canisters; repetitive inspections to detect damage of the fuel pumps and the fuel pump canisters; and corrective action, if necessary. This action is necessary to detect and correct damage of the center tank fuel pumps and fuel pump canisters, which could result in separation of a pump from its electrical motor housing, loss of flame trap capability, and a possible fuel ignition source in the center fuel tank. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by January 20, 2004.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2003–NM–80–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov.* Comments sent via fax or the Internet must contain "Docket No. 2003–NM–80–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 or 2000 or ASCII text.

The service information referenced in the proposed rule may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Tim Backman, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2797; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (e.g., reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2003–NM–80–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2003–NM–80–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, notified the FAA that an unsafe condition may exist on certain Airbus Model A300 B4–600 and A300 C4–600 series airplanes. The DGAC previously advised the FAA that damaged center tank fuel pumps and pump canisters had been found on Airbus Model A300 B4–600R and A300 F4–600R series airplanes. Investigation revealed that the pump canister legs had cracked due to fatigue. In one instance, this led to the separation of the upper part of the pump canister from its lower part attached at the center tank bottom wall. Fatigue cracking was also found at the base of the fuel pump diffuser housing. The DGAC has since advised the FAA that fuel tank pump canisters have also been found broken on Model A300 B4–600 and A300 C4–600 series airplanes, which are consequently subject to the unsafe condition identified in this proposed AD: separation of a fuel pump from its electrical motor housing, loss of flame trap capability, and a possible fuel ignition source in the center fuel tank.

Related Rulemaking

On December 23, 1999, the FAA issued AD 99–27–07, amendment 39–11488 (65 FR 213, January 4, 2000), for all Model A300 B4–600R and A300 F4–600R series airplanes. That AD requires a one-time inspection for damage of the center tank fuel pumps and fuel pump canisters, repetitive inspections of the fuel pumps and fuel pump canisters, and replacement of damaged parts with

new or serviceable parts. The actions specified by that AD are intended to detect damage to the fuel pump and fuel pump canister, which could result in loss of flame trap capability and could provide a fuel ignition source in the center fuel tank.

Explanation of Relevant Service Information

Airbus has issued All Operators Telex (AOT) A300–600–28A6075, dated February 20, 2003, which describes procedures for the following:

- A one-time detailed inspection to detect cracks, fretting, and other damage of the lower part of the pump diffuser guide slots (bayonet) of the center tank fuel pumps and the bottom of the pump diffuser housings; and replacement of any damaged pump and its corresponding fuel pump canister with new parts.
- A one-time detailed inspection to detect cracks of the center tank fuel pump canisters, and replacement of any cracked fuel pump canister and its corresponding fuel pump with new parts.
- Repetitive detailed inspections to detect damage of the fuel pumps, and replacement of any damaged pump with a new part.
- Repetitive nondestructive test (NDT) inspections to detect damage of the fuel pump canisters, and replacement of any damaged canister with a new part. Replacement of a canister would reset the inspection schedule for the next inspection to 7,000 flight cycles, to be repeated within 1,500-flight-cycle intervals. Replacement of a canister eliminates the need to reinspect the fuel pumps.
- A report of the findings for each inspection.

The DGAC classified this AOT as mandatory and issued French telegraphic airworthiness directive 2003–085 (B), dated February 21, 2003, to ensure the continued airworthiness of these airplanes in France.

Airbus AOT A300–600–28A6075 refers to Airbus Alert Service Bulletin A300–28A6061, Revision 04, dated August 1, 2002, as an additional source of service information for accomplishment of the NDT inspections.

FAA's Conclusions

These airplane models are manufactured in France and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of the actions specified in and in accordance with the AOT described previously, except as discussed under "Differences Between Proposed AD and AOT/French Airworthiness Directive." This proposed AD would also require that operators report their findings to the manufacturer.

Differences Between Proposed AD and AOT/French Airworthiness Directive

The DGAC issued French airworthiness directive 2003–085 (B) as "telegraphic." The FAA agrees that the unsafe condition could warrant immediate attention but finds it unnecessary to immediately adopt this rule. At the time of issuance, this proposed AD would affect only two airplanes. The FAA has been advised that the one-time detailed inspections specified in paragraph (a) of this proposed AD (with a proposed compliance time of 15 days) have been accomplished for both affected airplanes. Furthermore, the proposed compliance time for the repetitive inspections is long enough to provide notice and the opportunity for public comment on the proposed rule.

The applicability/effectivity for the French airworthiness directive/AOT includes A300 B4–600 and A300 C4–600 series airplanes, which are identified as "A300–600 aircraft without a fuel trim tank system (pre-production Mod 4801)." The only Model A300 C4–600 airplane listed on the type certificate data sheet is the A300 C4–605 Variant F. Therefore, the applicability of this proposed AD is Model A300 B4–601, A300 B4–603, A300 B4–620, and A300 C4–605 Variant F series airplanes; except those equipped with a fuel trim tank system.

The French airworthiness directive excludes certain airplanes (serial numbers 546, 553, 618, and 623) that "have already been inspected per Airbus Alert Service Bulletin A300–28A6061." However, that inspection must be repeated at regular intervals. The FAA finds that those airplanes are still subject to the identified unsafe condition and should be included in the applicability of this proposed AD.

Interim Action

This is considered to be interim action. The inspection reports that would be required by this proposed AD would enable the manufacturer to obtain better insight into the nature, cause, and extent of the fuel pump damage, and eventually to develop final action to address the unsafe condition. Once final action has been identified, the FAA may consider further rulemaking.

Changes to 14 CFR Part 39/Effect on the Proposed AD

On July 10, 2002, the FAA published a new version of 14 CFR 39 (67 FR 47997, July 22, 2002), which governs the FAA's AD system. This regulation now includes material that relates to altered products, special flight permits, and alternative methods of compliance (AMOCs). This proposed AD does not include this material; however, the office authorized to approve AMOCs is identified in paragraph (d).

Change to Labor Rate Estimate

We have reviewed the figures we have used over the past several years to calculate AD costs to operators. To account for various inflationary costs in the airline industry, we find it necessary to increase the labor rate used in these calculations from $60 per work hour to $65 per work hour. The cost impact information, below, reflects this increase in the specified hourly labor rate.

Cost Impact

The FAA estimates that 2 airplanes of U.S. registry would be affected by this proposed AD. The detailed inspections would take about 2 work hours per airplane, and the NDT inspection would take about 5 work hours per airplane, per inspection cycle. The average labor rate is $65 per work hour. Based on these figures, the cost per airplane is estimated to be $130 for the detailed inspections and $325 per NDT inspection.

The FAA has been advised that the proposed one-time detailed inspections have already been accomplished for both of the U.S.-registered airplanes. Therefore, the future economic cost impact of this proposed AD on U.S. operators would be only $325 per airplane, per each of the repetitive NDT inspections.

The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, plan, or perform other administrative actions.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Airbus: Docket 2003–NM–80–AD.

Applicability: Model A300 B4–601, A300 B4–603, A300 B4–620, and A300 C4–605 Variant F series airplanes; certificated in any category; except those airplanes equipped with a fuel trim tank system (Airbus Modification 4801).

Compliance: Required as indicated, unless accomplished previously.

To detect and correct damage of the center tank fuel pumps and fuel pump canisters, which could result in separation of a pump from its electrical motor housing, loss of flame trap capability, and a possible fuel ignition source in the center fuel tank, accomplish the following:

Detailed Inspections

(a) Within 15 days after the effective date of this AD (unless accomplished previously), perform detailed inspections as specified in paragraphs (a)(1) and (a)(2) of this AD, in accordance with paragraph 4.2 of Airbus All Operators Telex (AOT) A300–600–28A6075, dated February 20, 2003.

Note 1: For the purposes of this AD, a detailed inspection is defined as: "An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required."

(1) Inspect the lower part of the pump diffuser guide slots (bayonet) of the center tank fuel pumps and the bottom of the pump diffuser housings to detect cracks, fretting, and other damage. Replace any damaged pump and the corresponding fuel pump canister with new parts before further flight in accordance with the AOT.

(2) Inspect the center tank fuel pump canisters to detect cracks. Replace any cracked fuel pump canister and the corresponding fuel pump with new parts before further flight in accordance with the AOT.

Repetitive Inspections

(b) Within 600 flight hours after the effective date of this AD: Perform a detailed inspection of the fuel pumps, and an eddy current inspection of the fuel pump canisters, to detect damage. Do the inspections in accordance with paragraph 4.3 of Airbus AOT A300–600–28A6075, dated February 20, 2003. Replace any damaged part with a new part before further flight in accordance with the AOT. Repeat the inspections at intervals not to exceed 1,500 flight cycles.

(c) Within 7,000 flight cycles after canister replacement as specified in paragraph (b) of this AD: Perform an eddy current inspection of the fuel pump canisters to detect damage in accordance with Airbus AOT A300–600–28A6075, dated February 20, 2003. Replace any damaged part with a new part before further flight in accordance with the AOT. Thereafter repeat the inspection at intervals not to exceed 1,500 flight cycles.

Note 2: Airbus AOT A300–600–28A6075 refers to Airbus Alert Service Bulletin A300–28A6061, Revision 04, dated August 1, 2002, as an additional source of service information for accomplishment of the eddy current inspection required by paragraph (b)(2) of this AD.

Reporting Requirement

(d) At the applicable time specified in paragraph (d)(1) or (d)(2) of this AD: Submit a report of findings (both positive and negative) of each inspection required by this AD, in accordance with Airbus AOT A300–600–28A6075, dated February 20, 2003. Information collection requirements contained in this AD have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2120–0056.

(1) For any inspection accomplished after the effective date of this AD: Submit the report within 10 days after performing that inspection.

(2) For any inspection accomplished before the effective date of this AD: Submit the report within 10 days after the effective date of this AD.

Alternative Methods of Compliance

(e) In accordance with 14 CFR 39.19, the Manager, International Branch, ANM–116, FAA, is authorized to approve alternative methods of compliance for this AD.

Note 3: The subject of this AD is addressed in French telegraphic airworthiness directive 2003–085 (B), dated February 21, 2003.

Issued in Renton, Washington, on December 10, 2003.

Kevin Mullin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–31182 Filed 12–17–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–352–AD]

RIN 2120–AA64

Airworthiness Directives; Empresa Brasileira de Aeronautica S.A. (EMBRAER) Model EMB–135 and –145 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Empresa Brasileira de Aeronautica S.A. (EMBRAER) Model EMB–135 and –145 series airplanes. This proposal would require replacement of the air turbine starters (ATS) with modified ATSs. This action is necessary to prevent sheared ATS output shafts, which could result in oil flowing down the engine accessory gear box shafts and dripping into the engine

compartments, and consequent oil fire, in-flight shutdown, and/or rejected take-off. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by January 20, 2004.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–352–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov*. Comments sent via fax or the Internet must contain "Docket No. 2002–NM–352–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 or 2000 or ASCII text.

The service information referenced in the proposed rule may be obtained from Empresa Brasileira de Aeronautica S.A. (EMBRAER), P.O. Box 343–CEP 12.225, Sao Jose dos Campos–SP, Brazil. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Todd Thompson, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–1175; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2002–NM–352–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–352–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Departmento de Aviacao Civil (DAC), which is the airworthiness authority for Brazil, notified the FAA that an unsafe condition may exist on certain EMBRAER Model EMB–135 and –145 series airplanes. The DAC advises that it has received reports of interference problems between the engine air turbine starter (ATS) output shafts and the engine accessory gear box (AGB) shafts, which resulted in sheared ATS output shafts. Sheared ATS output shafts could result in oil flowing down the engine AGB shafts and dripping into the engine compartments, and consequent oil fire, in-flight shutdown, and/or rejected take-off.

Explanation of Relevant Service Information

EMBRAER has issued Service Bulletin 145–80–0004, Change 01, dated October 22, 2001, which describes procedures for replacing the existing ATS with a modified ATS. That service bulletin references Honeywell Service Bulletin 3505910–80–1710, Revision 1, dated August 7, 2001, as an additional source of service information for accomplishment of the modification. The Honeywell service bulletin is included within the EMBRAER service bulletin. The procedures in the Honeywell service bulletin include inspecting the magnetic drain plug for metal contamination, inspecting the ATS output shafts for interference marks, modifying the ATS output shafts by machining/drilling holes and installing a restrictor, and installing modified ATSs on the airplane. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition. The DAC classified this service bulletin as mandatory and issued Brazilian airworthiness directive 2001–09–04, dated October 10, 2001, to ensure the continued airworthiness of these airplanes in Brazil.

FAA's Conclusions

These airplane models are manufactured in Brazil and are type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed AD

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of the actions specified in the service bulletin described previously, except as described below.

Difference Between the Brazilian AD and the Proposed AD

The effectivity listed in the original issue of EMBRAER Service Bulletin 145–80–0004, dated May 23, 2001, was the same as the applicability listed in Brazilian airworthiness directive 2001–09–04, dated October 10, 2001. When EMBRAER Service Bulletin 145–80–0004, Change 01, dated October 22, 2001, was issued, the effectivity was revised and additional airplanes were added to the effectivity of the service bulletin. The Brazilian airworthiness directive has not been revised; therefore, the applicability does not match the current effectivity listed in Change 01 of the service bulletin. The applicability of this proposed AD references the effectivity as listed in Change 01 of the service bulletin so all affected airplanes are addressed. This difference has been coordinated with the DAC.

Cost Impact

The FAA estimates that 290 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 1 work hour per airplane to accomplish the proposed actions, and that the average labor rate is $65 per work hour. There would be no charge for required parts. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $18,850, or $65 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Empresa Brasileira de Aeronautica S.A. (EMBRAER): Docket 2002–NM–352–AD.

Applicability: Model EMB–135 and –145 series airplanes, as listed in EMBRAER Service Bulletin 145–80–0004, Change 01, dated October 22, 2001; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent sheared air turbine starters (ATS) output shafts, which could result in oil flowing down the engine accessory gear box shafts and dripping into the engine compartments, and consequent oil fire, in-flight shutdown, and/or rejected take-off, accomplish the following:

Replacement of ATSs With Modified ATSs

(a) Within 800 flight hours after the effective date of this AD, replace the ATSs with modified ATSs in accordance with the Accomplishment Instructions of EMBRAER Service Bulletin 145–80–0004, Change 01, dated October 22, 2001.

Note 1: Honeywell Service Bulletin 3505910–80–1710, Revision 1, dated August 7, 2001, is incorporated within the pages of EMBRAER Service Bulletin 145–80–0004, Change 01, dated October 22, 2001.

(b) Accomplishment of the specified actions before the effective date of this AD in accordance with EMBRAER Service Bulletin 145–80–0004, dated May 23, 2001, is considered acceptable for compliance with paragraph (a) of this AD.

Alternative Methods of Compliance

(c) In accordance with 14 CFR 39.19, the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, is authorized to approve alternative methods of compliance for this AD.

Note 2: The subject of this AD is addressed in Brazilian airworthiness directive 2001–09–04, dated October 10, 2001.

Issued in Renton, Washington, on December 10, 2003.

Kevin Mullin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–31181 Filed 12–17–03; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–335–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 707 and 720 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Boeing Model 707 and 720 series airplanes. This proposal would require repetitive inspections of the upper and lower barrel nuts and bolts that retain the aft trunnion support fitting of each main landing gear for corrosion, cracks, and loose or missing nuts and bolts; torque checks of the upper and lower bolts to verify the torque is within a specified range; and corrective actions, if necessary. This action is necessary to detect and correct cracking and/or loss of the barrel nuts and bolts that retain the aft trunnion support fitting, which could result in the collapse of the main landing gear upon landing. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by February 2, 2004.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–335–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov*. Comments sent via fax or the Internet must contain "Docket No. 2002–NM–335–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 or 2000 or ASCII text.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport

Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Candice Gerretsen, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 917–6428; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2002–NM–335–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–335–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The FAA has received reports indicating that one operator found cracks in the barrel nut that attaches the aft trunnion bearing cap of the main landing gear to the trunnion support fitting and that another operator discovered that the barrel nut and bolt were missing, on Boeing Model 707 series airplanes. The cause of the cracking is stress corrosion. This condition, if not detected and corrected, could result in cracking and/or loss of the barrel nuts and bolts that retain the aft trunnion support fitting, which could result in the collapse of the main landing gear upon landing.

Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing 707/720 Alert Service Bulletin A3509, dated June 13, 2002, which describes procedures for performing repetitive detailed inspections of the upper and lower barrel nuts and bolts that retain the aft trunnion support fitting of each main landing gear for corrosion, cracks, and loose or missing nuts and bolts; torque checks of the upper and lower bolts to verify the torque is within the specified range; and corrective actions, if necessary. The corrective actions consist of performing a detailed inspection of the aft trunnion bearing cap and aft trunnion support fitting for corrosion, and repair if necessary; performing a magnetic particle inspection of the aft trunnion bearing cap for cracks, and replacement if necessary; and reinstalling the main landing gear trunnion with new Inconel barrel nuts and bolts to retain the aft trunnion support fitting. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require accomplishment of the actions specified in the service bulletin described previously.

Cost Impact

There are approximately 230 airplanes of the affected design in the worldwide fleet. The FAA estimates that 42 airplanes of U.S. registry would be affected by this proposed AD.

It would take approximately 1 work hour per airplane to accomplish the proposed detailed inspection of the upper and lower barrel nuts and bolts and the torque check. The average labor rate is $65 per work hour. Based on these figures, the cost impact on U.S. operators is estimated to be $2,730, or $65 per airplane, per inspection and torque check.

It would take approximately 3 work hours per airplane to accomplish the proposed detailed inspection of the aft trunnion bearing cap. The average labor rate is $65 per work hour. Based on these figures, the cost impact on U.S. operators is estimated to be $8,190, or $195 per airplane.

It would take approximately 4 work hours per airplane to accomplish the proposed installation of the new Inconel barrel nut and bolt and the main landing gear trunnion. The average labor rate is $65 per work hour. Based on these figures, the cost impact on U.S. operators is estimated to be $10,920, or $260 per airplane.

Required parts would cost approximately $3,380 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this proposed AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Boeing: Docket 2002–NM–335–AD.

Applicability: Model 707 and 720 series airplanes, as listed in Boeing 707/720 Alert Service Bulletin A3509, dated June 13, 2002; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To detect and correct cracking and/or loss of the upper and lower barrel nuts and bolts that retain the aft trunnion support fitting, which could result in the collapse of the main landing gear upon landing, accomplish the following:

Service Bulletin References

(a) The term "service bulletin," as used in this AD, means the Accomplishment Instructions of Boeing 707/720 Alert Service Bulletin A3509, dated June 13, 2002.

Initial Inspection

(b) Within 60 days after the effective date of this AD, for each main landing gear, perform the inspection specified in paragraph (b)(1) of this AD and the torque check specified in paragraph (b)(2) of this AD, in accordance with the service bulletin.

(1) Perform a detailed inspection of the upper and lower barrel nuts and bolts that retain the aft trunnion support fitting for corrosion, cracks, and loose or missing nuts and bolts.

(2) Torque check the upper and lower bolts to verify the torque is within the range specified in Figure 2 of the service bulletin.

Repetitive Inspections

(c) If no corrosion, crack, or loose or missing nut or bolt is found, and the torque is found to be within the specified range, during the inspection and torque check specified in paragraph (b) of this AD, then repeat the actions specified in paragraph (b) of this AD thereafter at intervals not to exceed 60 days.

Corrective Actions

(d) If any corrosion, crack, or loose or missing nut or bolt is found, or if the torque is found not to be within the specified range, during the inspection and torque check specified in paragraph (b) of this AD: Before further flight, do the corrective actions specified in paragraphs (d)(1) through (d)(3) of this AD. Accomplishment of these actions constitutes terminating action for the repetitive inspections specified in paragraph (c) of this AD.

(1) Perform a detailed inspection of the aft trunnion bearing cap and aft trunnion support fitting for corrosion, in accordance with the service bulletin. If any corrosion is detected, before further flight, repair in accordance with the service bulletin.

(2) Perform a magnetic particle inspection of the aft trunnion bearing cap for cracks in accordance with Figure 3 of the service bulletin.

(i) If no crack is found, before further flight, reinstall the inspected aft trunnion bearing cap in accordance with the service bulletin.

(ii) If any crack is found, before further flight, replace the aft trunnion bearing cap with a new aft trunnion bearing cap in accordance with the service bulletin.

(3) Reinstall the main landing gear trunnion with new Inconel barrel nuts and bolts to retain the aft trunnion support fitting, in accordance with Figure 4 of the service bulletin.

Terminating Action

(e) Within one year after the effective date of this AD, for each main landing gear, replace the upper and lower steel barrel nuts and H–11 bolts that retain the aft trunnion support fitting with new Inconel barrel nuts and bolts as specified in paragraphs (d)(1) through (d)(3) of this AD. Accomplishment of these actions constitutes terminating action for the requirements of this AD.

Parts Installation

(f) As of the effective date of this AD, no person shall install a steel barrel nut with H–11 bolt to retain the aft trunnion support fitting, on any airplane.

Alternative Methods of Compliance

(g) In accordance with 14 CFR 39.19, the Manager, Seattle Aircraft Certification Office, FAA, is authorized to approve alternative methods of compliance for this AD.

Issued in Renton, Washington, on December 10, 2003.

Kevin Mullin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–31180 Filed 12–17–03; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–175–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A310 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness directive (AD), applicable to certain Airbus Model A310 series airplanes, that requires repetitive inspections of the fuselage skin to detect corrosion or fatigue cracking around and under the chafing plates of the wing root; and corrective actions, if necessary. That AD also provides an optional terminating action for the repetitive inspections. This action would reinstate repetitive inspections in certain areas where corrosion was detected and reworked as required by the existing AD. The actions specified by the proposed AD are intended to detect and correct fatigue cracks and corrosion around and under the chafing plates of the wing root, which could result in reduced structural integrity of the airplane. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by January 20, 2004.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–175–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov*. Comments sent via fax or the Internet must contain "Docket No. 2002–NM–175–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 or 2000 or ASCII text.

The service information referenced in the proposed rule may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at .

the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Anthony Jopling, Program Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2190; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2002–NM–175–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–175–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

On April 21, 1998, the FAA issued AD 98–09–20, amendment 39–10501 (63 FR 23377, April 29, 1998), applicable to certain Airbus Model A310 series airplanes, to require repetitive inspections of the fuselage skin to detect corrosion or fatigue cracks around and under the chafing plates of the wing root; and corrective actions, if necessary. That AD also provides an optional terminating action for the repetitive inspections. That action was prompted by notification from the Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, that it received reports of the presence of corrosion under the chafing plates and around the fasteners of the wing root between fuselage frames 36 and 39. The requirements of that AD are intended to detect and correct fatigue cracks and corrosion around and under the chafing plates of the wing root, which could result in reduced structural integrity of the airplane.

Actions Since Issuance of Previous Rule

Although AD 98–09–20 provides an optional terminating action for repetitive inspections for fatigue cracking around and under the chafing plates of the wing root, it has been determined that repetitive inspections for fatigue cracking are still necessary on the left and right sides of frame 39, stringer 35, if any corrosion was reworked in this area.

Explanation of Relevant Service Information

Since the issuance of AD 98–09–20, Airbus has issued Service Bulletin A310–53–2069, Revision 02, dated September 23, 1996; Revision 03, dated October 28, 1997; and Revision 04, dated November 8, 2000. These service bulletins describe the same procedures as specified in Airbus Service Bulletin A310–53–2069, Revision 01, dated September 19, 1995, for repetitive inspections to detect corrosion and fatigue cracks around and under the chafing plates of the wing root between fuselage frame 36 and frame 39. These service bulletins also include the same procedures for follow-on and corrective actions as Service Bulletin A310–53–2069, Revision 01. The corrective actions include reworking corroded areas, oversizing and reaming holes, installing doublers, and performing a high frequency eddy current inspection and an x-ray inspection. Revision 01 of the service bulletin is cited in AD 98–09–20 as the appropriate source of service information.

Airbus has also issued Service Bulletin A310–53–2070, Revision 02, dated November 8, 2000, which describes procedures for replacement of the stainless steel chafing plates with new chafing plates made of aluminum alloy. Accomplishment of this service bulletin eliminates the need for the repetitive inspections for fatigue cracking, unless corrosion was detected and reworked on the left and/or right side of frame 39, stringer 35. If corrosion was detected and reworked in this area, repetitive inspections for fatigue cracking are still necessary. The original issue of this service bulletin, dated October 3, 1994, is cited in AD 98–09–20 as an acceptable source of service information for the optional terminating action.

The DGAC classified Airbus Service Bulletin A310–53–2069, Revision 04, dated November 8, 2000, as mandatory and issued French airworthiness directive 2000–514–326(B) R1, dated May 15, 2002, to ensure the continued airworthiness of these airplanes in France.

FAA's Conclusions

This airplane model is manufactured in France and is type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. We have examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would supersede AD 98–09–20 to continue to require repetitive inspections of the fuselage skin to detect corrosion or fatigue cracking around and under the chafing plates of the wing root; and corrective actions, if necessary. The inspections would be required to be accomplished in accordance with Airbus Service Bulletin A310–53–2069, Revision 04; Revision 03; Revision 02; or Revision 01; described previously; except as discussed below. The replacement of the chafing plates would be required to be accomplished in accordance with Airbus Service Bulletin A310–53–2070, Revision 02; Revision 01, dated September 23, 1996; or Original Issue; described previously; except as discussed below. This action would reinstate repetitive inspections for fatigue cracking at frame 39, stringer 35, if corrosion was detected and reworked in this area.

Differences Among Proposed Rule, Service Information, and French Airworthiness Directive

Although the service bulletins specify that operators may contact the manufacturer for disposition of certain repair conditions, this proposal would require operators to repair those conditions per a method approved by either the FAA or the DGAC (or its delegated agent). In light of the type of repair that would be required to address the unsafe condition, and consistent with existing bilateral airworthiness agreements, we have determined that, for this proposed AD, a repair approved by either the FAA or the DGAC would be acceptable for compliance with this proposed AD.

Also, operators should note that, although the Accomplishment Instructions of the referenced service bulletins describe procedures for reporting inspection results to the manufacturer, this proposed AD would not require such reporting. The FAA does not need this information from operators.

Cost Impact

There are approximately 46 airplanes of U.S. registry that would be affected by this proposed AD. This proposed AD adds no new requirements. It requires continuation of repetitive inspections for airplanes where corrosion was detected and reworked at frame 39, stringer 35. The current costs associated with this proposed AD are reiterated in their entirety as follows for the convenience of affected operators:

The inspections that are currently required by AD 98–09–20 take approximately 68 work hours per airplane to accomplish at an average labor rate of $65 per work hour. Based on these figures, the cost impact of the currently required actions is estimated to be $4,420 per airplane, per inspection cycle.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the current or proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–10501 (63 FR 23377, April 29, 1998), and by adding a new airworthiness directive (AD), to read as follows:

Airbus: Docket 2002–NM–175–AD. Supersedes AD 98–09–20, Amendment 39–10501.

Applicability: Model A310 series airplanes on which Airbus Modifications 8888 and 8889 have not been accomplished, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To detect and correct fatigue cracking and corrosion around and under chafing plates of the wing root between fuselage frame 36 and frame 39, which could result in reduced structural integrity of the airplane, accomplish the following:

Restatement of Requirements of AD 98–09–20

Repetitive Inspections and Corrective Actions

(a) Except as provided by paragraph (b) of this AD: Within 4 years since date of manufacture, or within 12 months after June 3, 1998 (the effective date of AD 98–09–20, amendment 39–10501), whichever occurs later, perform an inspection to detect discrepancies around and under the chafing plates of the wing root, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A310–53–2069, Revision 04, dated November 8, 2000; Revision 03, dated October 28, 1997; Revision 02, dated September 23, 1996; or Revision 01, dated September 19, 1995. If any discrepancy is found, prior to further flight, accomplish follow-on corrective actions (*i.e.*, removal of corrosion, corrosion protection, high frequency eddy current inspection, x-ray inspection), as applicable, in accordance with the applicable service bulletin. Repeat the inspections thereafter at the intervals specified in the applicable service bulletin. After the effective date of this AD, repeat the inspections thereafter at the intervals specified in Revision 04 of the service bulletin.

(b) If any discrepancy is found during any inspection required by paragraph (a) of this AD, and Airbus Service Bulletin A310–53–2069, Revision 04, dated November 8, 2000; Revision 03, dated October 28, 1997; Revision 02, dated September 23, 1996; or Revision 01, dated September 19, 1995; as applicable; specifies to contact Airbus for appropriate action: Prior to further flight, repair in accordance with a method approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. Where differences in the compliance times or corrective actions exist between the service bulletin and this AD, the AD prevails.

New Requirements of This AD

Optional Terminating Action

(c) Except as provided by paragraph (d) of this AD: Accomplishment of the replacement of the stainless steel chafing plates with new chafing plates made of aluminum alloy, in accordance with Airbus Service Bulletin A310–53–2070, Revision 02, dated November 8, 2000; Revision 01, dated September 23, 1996; or the Original Issue, dated October 3, 1994; constitutes terminating action for the repetitive inspections required by paragraph (a) of this AD.

Continuation of Repetitive Inspections

(d) Within 30 days after the effective date of this AD: Do a review of the airplane maintenance records to determine if any corrosion was detected and reworked on the left and/or right side of frame 39, stringer 35, during the accomplishment of any corrective

action or repair specified in paragraphs (a) or (b) of this AD. If any corrective action or repair has been accomplished in this area, perform an inspection for fatigue cracking of frame 39, stringer 35, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A310–53–2069, Revision 04, dated November 8, 2000. Do the initial inspection at the threshold specified in Figure 1 of the service bulletin, or within 30 days after the effective date of this AD, whichever is later. Repeat the inspection thereafter at the intervals specified in Figure 1 of the service bulletin. If any discrepancy is found, prior to further flight, accomplish the applicable follow-on corrective actions in accordance with the Accomplishment Instructions of the service bulletin.

Submission of Information Not Required

(e) Although the service bulletins referenced in this AD specify to submit information to the manufacturer, this AD does not include such a requirement.

Alternative Methods of Compliance

(f) In accordance with 14 CFR 39.19, the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, is authorized to approve alternative methods of compliance for this AD.

Note 1: The subject of this AD is addressed in French airworthiness directive 2000–514–326(B) R1, dated May 15, 2002.

Issued in Renton, Washington, on December 10, 2003.

Kevin Mullin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–31179 Filed 12–17–03; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–136890–02]

RIN 1545–BA90

Transfers To Provide for Satisfaction of Contested Liabilities; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to notice of proposed rulemaking by cross-reference to temporary regulations.

SUMMARY: This document contains a correction to a notice of proposed rulemaking by cross-reference to temporary regulations relating to the transfer of indebtedness or stock of a taxpayer or related persons or of a promise to provide services or property in the future to provide for the satisfaction of an asserted liability that the taxpayer is contesting.

FOR FURTHER INFORMATION CONTACT: Norma Rotunno (202) 622–7900 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The proposed rulemaking by cross-reference to temporary regulations that are the subject of this correction are under section 461(f) of the Internal Revenue Code.

Need for Correction

As published, the proposed rulemaking by cross-reference to temporary regulations (REG–136890–02), contains an error that may prove to be misleading and is in need of clarification.

Correction of Publication

Accordingly, the publication of the proposed rulemaking by cross-reference to temporary regulations (REG–136890–02), which is the subject of FR. Doc. 03–29043, is corrected as follows:

1. On page 65646, column 1, in the preamble, under the subject heading "Comments and Public Hearing", paragraph 3, line 8, the language "March 2, 2003. A period of 10 minutes" is corrected to read "March 2, 2004. A period of 10 minutes".

Cynthia E. Grigsby,

Acting Chief, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel (Procedures and Administration).

[FR Doc. 03–31163 Filed 12–17–03; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF COMMERCE

Patent and Trademark Office

37 CFR Part 2

[Docket No. 2003–T–023]

RIN 0651–AB67

Changes in the Requirements for Amendment and Correction of Trademark Registrations

AGENCY: Patent and Trademark Office, Commerce.

ACTION: Proposed rule.

SUMMARY: The United States Patent and Trademark Office ("Office") proposes to amend its rules to eliminate the requirement that a request for amendment or correction of a registration be accompanied by the original certificate of registration or a certified copy thereof, and the requirement that an application to surrender a registration for cancellation be accompanied by the original certificate or a certified copy; and add a requirement that a request for correction of a mistake in a registration be filed within one year of the date of registration.

DATES: To be ensured of consideration, written comments must be received on or before February 2, 2004. No public hearing will be held.

ADDRESSES: The Office prefers that all comments be sent by electronic mail to *TMSection7Comments@uspto.gov*. Written comments may also be submitted by mail or hand delivery to: Commissioner for Trademarks, 2900 Crystal Drive, Arlington, VA 22202–3514, attention Mary Hannon. Copies of all comments will be available for public inspection in Suite 10B10, South Tower Building, 10th floor, 2900 Crystal Drive, Arlington, Virginia 22202–3514, from 8:30 a.m. until 5 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Mary Hannon, Office of the Commissioner for Trademarks, by telephone at (703) 308–8910, ext. 137; or by e-mail to *mary.hannon@uspto.gov*.

SUPPLEMENTARY INFORMATION: The Office proposes to amend its rules to (1) eliminate the requirement that a request for amendment or correction of a registration be accompanied by the original certificate of registration or a certified copy thereof, and the requirement that an application to surrender a registration for cancellation be accompanied by the original certificate or a certified copy; and (2) add a requirement that a request for correction of a mistake in a registration be filed within one year of the date of registration.

References below to "the Act," "the Trademark Act," or "the statute" refer to the Trademark Act of 1946, 15 U.S.C. 1051 *et seq.*, as amended.

One Year Time Limit for Requests for Correction of Registrations

Currently, there is no time limit set forth in §§ 2.174 and 2.175 for filing a request for correction of a mistake in a registration under section 7(g) or 7(h) of the Trademark Act. Some registrants have filed requests to correct an error in a mark years after the date of registration. Granting these requests is harmful to examining attorneys and third parties who search Office records, because they do not have accurate information about existing registrations. Therefore, the Office proposes to amend §§ 2.174 and 2.175 to require that all requests for correction of a registration be filed within one year after the date of registration, even where a mistake in a registration resulted from an Office error.

Applicants and registrants are advised to carefully review notices of publication, notices of allowance, and certificates of registration to ensure that the data is correct, so that any necessary requests for correction can be filed within one year of the date of registration.

Requirement For Submission of Original Certificate of Registration or Certified Copy

Currently, § 2.172 requires that an application for surrender of a registration for cancellation under section 7 of the Trademark Act be accompanied by the original certificate, if not lost or destroyed. If the original certificate is submitted, the Office will destroy the certificate once the registration is cancelled. If the original certificate does not accompany the request, the Office assumes that the certificate is lost or destroyed, and processes the request for cancellation.

Sections 2.173, 2.174, and 2.175(b) currently require that a request for amendment or correction of a registration under section 7 of the Trademark Act be accompanied by the original certificate of registration or a certified copy thereof. The Office amends or corrects the registration by attaching an updated registration certificate, showing the amendment or correction, to the original certificate of registration and to the printed copies of the registration in the Office. *See* 37 CFR 2.173(c), 2.174 and 2.175(c). The Office returns the original registration certificate, or certified copy thereof, with the updated registration certificate attached, to the owner of record. TMEP §§ 1609.01 and 1609.09.

The Office believes that requiring the registrant to submit the original certificate or a certified copy is unnecessary and inefficient. The Office proposes to eliminate this requirement. When amending or correcting a registration, the Office will send the updated registration certificate showing the amendment or correction to the registrant, and instruct the registrant to attach it to the certificate of registration. The Office will also update its own records to show the amendment or correction. The Office will send an updated registration certificate to the owner of record.

Discussion of Specific Rules

The Office proposes to amend §§ 2.172, 2.173, 2.174, 2.175, and 2.176.

The Office proposes to amend § 2.172 to eliminate the requirement that an application to surrender a trademark registration for cancellation be accompanied by the original certificate of registration.

The Office proposes to amend § 2.173 to eliminate the requirement that a request for amendment of a trademark registration be accompanied by the original certificate of registration or a certified copy thereof.

The Office proposes to amend § 2.174 to: (1) Eliminate the requirement that a request for correction of a mistake by the Office in a trademark registration pursuant to section 7(g) of the Trademark Act be accompanied by the original certificate of registration or a certified copy thereof; and (2) add a requirement that a request for correction of a mistake by the Office be filed within one year of the date of registration.

The Office proposes to amend § 2.175 to: (1) Eliminate the requirement that a request for correction of a mistake by a registrant in a trademark registration pursuant to section 7(g) of the Trademark Act be accompanied by the original certificate of registration or a certified copy thereof; and (2) add a requirement that a request for correction of a mistake by a registrant be filed within one year of the date of registration.

The Office proposes to amend § 2.176 to change "Examiner of Trademarks" to "Post Registration Examiner."

Rule Making Requirements

Regulatory Flexibility Act

The Deputy General Counsel for General Law of the United States Patent and Trademark Office has certified to the Chief Counsel for Advocacy of the Small Business Administration that the proposed rule changes will not have a significant impact on a substantial number of small entities (Regulatory Flexibility Act, 5 U.S.C. 605(b)).

Executive Order 13132

This rule making does not contain policies with federalism implications sufficient to warrant preparation of a Federalism Assessment under Executive Order 13132 (Aug. 4, 1999).

Executive Order 12866

This rule making has been determined not to be significant for purposes of Executive Order 12866 (Sept. 30, 1993).

Paperwork Reduction Act

This rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). Existing collections of information and recordkeeping requirements have been reviewed and approved by OMB under OMB Control Number 0651–0009, Trademark Processing. Notwithstanding any other provision of law, no person is required to respond to nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a currently valid OMB control number.

List of Subjects in 37 CFR Part 2

Administrative practice and procedure. Trademarks.

For the reasons given in the preamble and under the authority contained in 35 U.S.C. 2 and 15 U.S.C. 1123, as amended, the Office proposes to amend part 2 of title 37 as follows:

PART 2—RULES OF PRACTICE IN TRADEMARK CASES

1. The authority citation for 37 CFR part 2 continues to read as follows:

Authority: 15 U.S.C. 1123, 35 U.S.C. 2, unless otherwise noted.

2. Revise § 2.172 to read as follows:

§ 2.172 Surrender for cancellation.

Upon application by the registrant, the Director may permit any registration to be surrendered for cancellation. Application for surrender must be signed by the registrant. When there is more than one class in a registration, one or more entire class(es) but less than the total number of classes may be surrendered. Deletion of less than all of the goods or services in a single class constitutes amendment of registration as to that class (see § 2.173).

3. Amend § 2.173 by revising paragraph (a) to read as follows:

§ 2.173 Amendment of registration.

(a) A registrant may apply to amend a registration or to disclaim part of the mark in the registration. The registrant must submit a written request specifying the amendment or disclaimer. This request must be signed by the registrant and verified or supported by a declaration under § 2.20, and accompanied by the required fee. If the amendment involves a change in the mark, the registrant must submit a new specimen showing the mark as used on or in connection with the goods or services, and a new drawing of the amended mark. The registration as amended must still contain registrable matter, and the mark as amended must be registrable as a whole. An amendment or disclaimer must not materially alter the character of the mark.

* * * * *

4. Revise § 2.174 to read as follows:

§ 2.174 Correction of Office mistake.

(a) Whenever a material mistake in a registration, incurred through the fault of the United States Patent and Trademark Office, is clearly disclosed by the records of the Office, a certificate of correction stating the fact and nature of the mistake, signed by the Director or by an employee designated by the Director, shall be issued without charge and recorded. A printed copy of the certificate of correction shall be attached to each printed copy of the registration certificate. Thereafter, the corrected certificate shall have the same effect as if it had been originally issued in the corrected form. In the discretion of the Director the Office may issue a new certificate of registration without charge.

(b) A request for correction of an Office error in a registration must be filed within one year after the date of registration.

5. Amend § 2.175 by revising paragraphs (a) and (b) to read as follows:

§ 2.175 Correction of mistake by registrant.

(a) Whenever a mistake has been made in a registration and a showing has been made that the mistake occurred in good faith through the fault of the registrant, the Director may issue a certificate of correction. In the discretion of the Director, the Office may issue a new certificate upon payment of the required fee, provided that the correction does not involve such changes in the registration as to require republication of the mark.

(b) Application for such action must:

(1) Be filed within one year after the date of registration;

(2) Include the following:

(i) Specification of the mistake for which correction is sought;

(ii) Description of the manner in which it arose; and

(iii) A showing that it occurred in good faith;

(3) Be signed by the registrant and verified or include a declaration in accordance with § 2.20; and

(4) Be accompanied by the required fee.

* * * * *

6. Amend § 2.176 to read as follows:

§ 2.176 Consideration of above matters.

The matters in §§ 2.171 to 2.175 will be considered in the first instance by the Post Registration Examiner. If the action of the Examiner is adverse, registrant may request the Director to review the action under § 2.146. If the registrant does not respond to an adverse action of the Examiner within six months of the mailing date, the matter will be considered abandoned.

Dated: December 9, 2003.

James E. Rogan,

Under Secretary of Commerce for Intellectual Property and Director of the Patent and Trademark Office.

[FR Doc. 03–31094 Filed 12–17–03; 8:45 am]

BILLING CODE 3510–16–UJENNIFER

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CT–057–7216d; A–1–FRL–7600–1]

Approval and Promulgation of Implementation Plans; Connecticut; Motor Vehicle Emissions Budgets for 2005 and 2007 Using MOBILE6.2 for the Connecticut Portion of the New York-Northern New Jersey-Long Island Nonattainment Area and for 2007 for the Greater Connecticut Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA is proposing to approve a revision to the Connecticut State Implementation Plan (SIP) for the attainment and maintenance of the one-hour National Ambient Air Quality Standard (NAAQS) for ground level ozone submitted by the State of Connecticut. EPA is proposing approval of Connecticut's 2005 and 2007 motor vehicle emissions budgets recalculated using MOBILE6.2 for the Connecticut portion of the New York-Northern New Jersey-Long Island nonattainment area and 2007 motor vehicle emissions budgets for the Greater Connecticut nonattainment area. This action is being taken under the Clean Air Act.

DATES: Written comments must be received on or before January 20, 2004.

ADDRESSES: Comments may be mailed to David Conroy, Unit Manager, Air Quality Planning, Office of Ecosystem Protection (mail code CAQ), U.S. Environmental Protection Agency, EPA New England Regional Office, One Congress Street, Suite 1100, Boston, MA 02114–2023.

Comments may also be submitted electronically, or through hand delivery/courier, please follow the detailed instructions (Part (I)(B)(1)(i) through (iii) of the **SUPPLEMENTARY INFORMATION** section) described in the direct final rule which is located in the Rules section of this **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Jeff Butensky, Environmental Planner, Air Quality Unit, U.S. Environmental Protection Agency, EPA New England Regional Office, One Congress Street, Suite 1100 (CAQ), Boston, MA 02114–2023, (617) 918–1665, *butensky.jeff@epa.gov*.

SUPPLEMENTARY INFORMATION: In the Rules section of this **Federal Register**, EPA is approving the State's SIP submittal as a direct final rule without a prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If EPA receives no adverse comments in response to this action, we contemplate no further activity. If EPA receives adverse comments, we will withdraw the direct final rule and we will address all public comments we receive in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

For additional information, see the direct final rule which is located in the Rules section of this **Federal Register**.

Dated: December 10, 2003.

Robert W. Varney,

Regional Administrator, EPA New England.

[FR Doc. 03–31233 Filed 12–17–03; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[I.D. 112803A]

RIN 0648–AR74

Fisheries of the Exclusive Economic Zone Off Alaska; Rebuilding Overfished Fisheries

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of availability; request for comments.

SUMMARY: The North Pacific Fishery Management Council (Council) has submitted for Secretarial review Amendment 17 to the Fishery Management Plan for Bering Sea/Aleutian Islands King and Tanner Crabs (FMP). This amendment would implement a rebuilding plan for the overfished stock of Pribilof Islands blue king crab. This action is intended to ensure that conservation and management measures continue to be based on the best scientific information available and enhance the Council's ability to achieve, on a continuing basis, optimum yield from fisheries under its authority.

DATES: Comments on the amendment must be submitted on or before February 17, 2004.

ADDRESSES: Comments may be submitted to Sue Salveson, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802–1668, Attn: Lori Durall. Comments also may be sent via facsimile (fax) to 907–586–7465. Comments will not be accepted if submitted via e-mail or Internet. Courier or hand delivery of comments may be made to NMFS in the Federal Building, Room 420, Juneau, AK 99801.Copies of Amendment 17 to the FMP, and the Environmental Assessment (EA) prepared for the amendment are available from the above address.

FOR FURTHER INFORMATION CONTACT: Gretchen Harrington, 907–586–7228 or gretchen.harrington@noaa.gov.

SUPPLEMENTARY INFORMATION: NMFS declared the Pribilof Islands stock of blue king crab (*Paralithodes platypus*) overfished because the spawning stock biomass was below the minimum stock size threshold defined in Amendment 7 to the FMP. Amendment 7 specified objective and measurable criteria for identifying when any of the crab fisheries covered by the FMP are overfished or when overfishing is occurring (64 FR 11390, March 9, 1999).

On September 23, 2002, NMFS notified the Council that the Pribilof Islands blue king crab stock was overfished (67 FR 62212, October 4, 2002). The Council then took action to develop a rebuilding plan within 1 year of notification as required by section 304(e)(3) of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). In October 2003, the Council adopted Amendment 17, the rebuilding plan, to accomplish the purposes outlined in the national standard guidelines to rebuild the overfished stock.

Amendment 17 specifies a time period for rebuilding the stock intended to satisfy the requirements of the Magnuson-Stevens Act. Under the rebuilding plan, the Pribilof Islands blue king crab stock is estimated to rebuild, with a 50–percent probability, within 10 years. The stock will be considered "rebuilt" when it reaches the maximum sustainable yield stock size level in 2 consecutive years. This rebuilding time period is as short a possible and takes into account the status and biology of the stock, the needs of fishing communities, and the interaction of the overfished stock within the marine ecosystem, as required by the Magnuson-Stevens Act in section 304(e)(4)(A)(i).

The rebuilding plan consists of a framework that references the State of Alaska's harvest strategy. Section 8.3 of the FMP defers to the State of Alaska the authority to develop and implement harvest strategies, with oversight by NMFS and the Council. The rebuilding harvest strategy, and alternative harvest strategies, were developed and analyzed by the Alaska Department of Fish and Game and reviewed and adopted by the Alaska Board of Fisheries. The rebuilding harvest strategy, and detailed alternatives analysis, were reviewed by the Council, its Scientific and Statistical Committee, and Crab Plan Team for consistency with the FMP, Magnuson-Stevens Act, and the National Standard guidelines. The analysis prepared for the rebuilding harvest strategy is contained in the EA prepared for this action.

The rebuilding harvest strategy, which closes the directed fishery until the stock is rebuilt, should result in more spawning biomass than allowing a fishery during rebuilding, because more large male crab would be conserved and fewer juveniles and females would die due to incidental catch and discard mortality. More spawning biomass would be expected to produce larger year-classes when environmental conditions are favorable.

This conservative rebuilding plan is warranted at this time for this stock given the concerns regarding the rebuilding potential of this stock, the potential vulnerability to overfishing, and the poor precision of survey estimates. The other alternatives under consideration, which would allow fishing prior to stock rebuilding, would not provide sufficient safeguards for this vulnerable stock. The preferred alternative, while forgoing harvest in the short-term, is the strongest guarantee that the stock will be healthy and support a fishery in the long term. Once rebuilt, fishing communities would once again have expanded opportunities (both fishing and processing) in this potentially lucrative fishery. As this rebuilding plan applies the same restrictions to all participants, the plan allocates the fishery restrictions fairly and equitably among sectors of the fishery. Likewise, the plan allocates all recovery benefits fairly and equitably among sectors of the fishery.

No additional habitat or bycatch measures are part of this rebuilding plan because neither habitat nor bycatch measures are expected to have a measurable impact in rebuilding. Habitat is protected from fishing impacts by the existing Pribilof Islands Habitat Conservation Zone, which encompasses the majority of blue king crab habitat. Bycatch of blue king crab in both crab and groundfish fisheries is a negligible proportion of the total population abundance.

An EA was prepared for Amendment 17 that describes the management background, the purpose and need for action, the management alternatives, and the environmental and socio-economic impacts of the alternatives. A copy of the EA can be obtained from NMFS (see **ADDRESSES**).

The Magnuson-Stevens Act requires that each regional fishery management council submit each FMP or FMP amendment it prepares to NMFS for review and approval, disapproval, or partial approval. The Magnuson-Stevens Act also requires that NMFS, upon receiving an FMP or FMP amendment, immediately publish a notification in the **Federal Register** that the amendment is available for public review and comment. This action constitutes such notice for FMP Amendment 17. NMFS will consider public comments received during the comment period in determining whether to approve this FMP amendment. To be considered, a comment must be received by close of business by the last day of the comment period (see **DATES**), regardless of the comment's postmark or transmission date.

Dated: December 12, 2003.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 03–31226 Filed 12–17–03; 8:45 am]

BILLING CODE 3510–22–S

Notices

Federal Register

Vol. 68, No. 243

Thursday, December 18, 2003

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Payette National Forest, Krassel and McCall Ranger Districts, Idaho; and Boise National Forest, Cascade Ranger District, Idaho; South Fork Salmon River Subbasin Noxious Weed Management

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement (EIS).

SUMMARY: The USDA Forest Service will prepare an environmental impact statement (EIS) for management of noxious and invasive weeds in the South Fork Salmon River (SFSR) Subbasin. The analysis area of approximately 788,660 acres includes headwater streams to the Salmon River and includes portions of the Boise National Forest (BNF) and Payette National Forest (PNF) in central Idaho. The subbasin is immediately adjacent to and upstream of the Frank Church River of No Return (FC–RONR) Wilderness. The purpose of the proposed project is to identify and treat noxious and invasive weeds using a variety of methods including herbicide application by hand and aerial spraying. The need is to minimize the impacts of noxious and invasive weeds. The EIS will disclose the environmental effects of the proposed action and alternatives. The Forest Service now invites comments on the scope of the analysis and the issues to address.

DATES: Comments must be received by January 19th, 2004. The Draft EIS is expected in October 2004, and the Final EIS is expected in April 2005.

ADDRESSES: Send written comments to: District Ranger, Krassel Ranger District, P.O. Box 1026, McCall, Idaho 83638.

FOR FURTHER INFORMATION CONTACT: Ana Egnew, Krassel Ranger District, P.O. Box 1026, McCall, Idaho 83638 or phone (208) 634–0600.

SUPPLEMENTARY INFORMATION:

Purpose and Need for Action

The purpose of the proposed project is to:

- Prioritize weed species and treatment areas;
- Identify and treat weed infestations using a variety of methods including herbicide application by hand and aerial spraying;
- Prevent or limit the introduction and establishment of noxious and invasive weed species; and
- Maintain native plant communities and watershed function.

The SFSR Subbasin is an ecologically important, relatively pristine area where the spread of noxious and invasive weeds could result in unacceptable consequences on fish and wildlife habitat, recreation, and other resources.

Proposed Action

The overall management objective of the proposed action is to maximize the treatment of noxious and invasive weeds throughout the SFSR Subbasin. The proposed action would prioritize noxious and invasive weed species and treatment areas within the Subbasin based on the following goals:

1. Treat all known sites less than 5 acres in size with the goal of eradication.

2. Reduce all established areas of noxious and invasive weeds greater than 5 acres in size by 50 percent.

Treatment would begin by determining the minimum tool necessary to achieve management objectives (see below). Treatment methods would include removal by hand pulling and shovel, herbicide treatment by hand, herbicide treatment with truck mounted equipment, aerial application of herbicides, and biological control. Limits would be placed on the type, amount, and location of herbicide use. Noxious and invasive weed management would also include education and preventive measures such as area closures and weed-free hay requirements and inspections. Weeds would be treated on a maximum area of 3,000 acres each year in the SFSR Subbasin. The distribution of treatment acres between ground application, aerial application, and mechanical treatment, and biological control would likely vary on a yearly basis; however, it is expected that ground application would dominate.

The minimum tool approach means that managers would use the minimum necessary weed treatment method(s) to accomplish management objectives.

The minimum tool approach would be implemented on a site-specific basis. A number of steps would be followed to determine and implement the most appropriate site-specific treatment method including:

- Detection of the weed;
- Prioritization of weed treatment at a particular site;
- Determination if sensitive environmental receptors are present;
- Consideration of potential for adverse effects;
- Determination of the treatment methods, including minimum tool method;
- Selection of appropriate treatment method for the weed; and
- Treatment followed by restoration and monitoring, as necessary.

Possible Alternatives

A "No Action" alternative is required under NEPA regulations and also serves as a baseline for comparison of other alternatives. The No Action Alternative would be no chemical treatment, because no environmental analysis has ever been completed for noxious weed treatment in the SFSR Subbasin. Another alternative to be considered would include the same noxious weed treatment methods that are used on the remainder of the Payette National Forest.

Scoping Process

The Forest Service is seeking comments from individuals, organizations, Tribal governments, and federal, state, and local agencies interested in or affected by this project. Public participation will be solicited through news releases, scoping meetings and requests for written comments. The first formal opportunity to comment is to respond to this notice of intent, which initiates the scoping process (40 CFR 1501.7). Scoping includes: (1) Identifying potential issues, (2) identifying significant issues, (3) exploring alternatives, and (4) identifying potential environmental effects of the proposed action and alternatives.

Preliminary Issues

The Forest Service has identified the following nine potential issues. Public input will help determine which of these issues and what other issues merit detailed analyses.

- Issue 1—*Water Quality:* Effects to water quality.
- Issue 2—*Soil:* Effects to soil productivity.
- Issue 3—*Fisheries Resources:* Effects to listed species.
- Issue 4—*Vegetation:* Effects on native plant communities and rare plants.
- Issue 5—*Fire and Fuels:* Effects on fire regimes and spread of weeds due to fire.
- Issue 6—*Wildlife Resources:* Effects on big game, listed species, Forest Service sensitive species, and PNF and BNF Management Indicator Species (MIS).
- Issue 7—*Recreation:* Effects to inventoried Roadless Areas, Wild and scenic Rivers, adjacent Wilderness, and visual resources.
- Issue 8—*Cultural Resources:* Effects of treatment methods on cultural resources, particularly Traditional Cultural Properties (TCP).
- Issue 9—*Human Health:* Effects of herbicide use on human health.

Comment Requested

This notice of intent initiates the scoping process that guides the development of the EIS. To assist the Forest Service in identifying and considering issues and alternatives, comments should be as specific as possible. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points. Comments received, including the names and addresses of those who comment, will be part of the project record and will be available for public inspection.

Early Notice of Importance of Public Participation in Subsequent Environmental Review

The Draft EIS is proposed to be available for public comment in October of 2004. The comment period on the Draft EIS will be 45 days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register.**

The Forest Service believes it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First reviewers of draft EISs must structure their participation in the environmental review of the proposal so that is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.*, v *NRDC*, 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft EIS stage, but that are not raised until completion of the final EIS, may be waived or dismissed by the courts. *City of Angoon* v. *Hodell*, 803 F .2d 1016, 1002 (9th Cir. 1986), and *Wisconsin Heritages, Inc.*, v. *Harris*, 490 F. Supp. 1334, 1338 (E. D. Wis. 1980). Because of these court rulings, it is important that those interested in this proposed action participate by the close of the 45-day comment period so substantive comments and objections are made available to the Forest service at a time when it can meaningfully consider them and respond to them in the final EIS.

Nature of Decision To Be Made

This decision will be whether or not to implement specific noxious weed management activities in the SFSR Subbasin, and if so, what types of weed treatments would be implemented. The decision would include any mitigation measures needed in addition to those prescribed in the Forest Plans.

Responsible Official

I am the responsible official for the preparation of the EIS. The deciding officials for the decision to accompany the Final EIS are: Mark J. Madrid, Forest Supervisor, Payette National Forest, P.O. Box 1026, McCall, Idaho 83628; and Richard A. Smith, Forest Supervisor, Boise National Forest, 1249 South Vinnell Way, Suite 200, Boise, Idaho 83709.

Dated: December 12, 2003.

Mark J. Madrid,

Forest Supervisor.

[FR Doc. 03–31190 Filed 12–17–03; 8:45 am]

BILLING CODE 3410–11–M

CHEMICAL SAFETY AND HAZARD INVESTIGATION BOARD

Sunshine Act Meeting

In connection with its investigation into the cause of a deadly explosion and the leakage of 26,000 pounds of aqua ammonia into the atmosphere from the DD Williamson & Co., Inc. plant in Louisville, Kentucky on April 11, 2003, the United States Chemical Safety and Hazard Investigation Board announces that it will convene a public meeting beginning at 9:30 a.m. local time on January 14, 2004, at the Galt House, 140 North Fourth Street, Louisville, KY, 40202—telephone: (502) 568–5200.

At the meeting CSB staff will present to the Board the results of their investigation into this incident, including an analysis of the incident together with a discussion of the key findings, root and contributing causes, and draft recommendations. The CSB staff presentation will focus on three key safety issues: overpressure protection, hazard evaluation systems, and engineering at small facilities.

This incident occurred at 2:10 a.m. on Friday, April 11, 2003, when a vessel explosion at the DD Williamson plant killed an operator and caused extensive damage to the western end of the facility. As a consequence of the explosion, 26,000 pounds of aqua ammonia (29.4% ammonia solution in water) leaked into the atmosphere, forcing the evacuation of 26 residents. The DD Williamson plant employs approximately 45 people and is located in a mixed industrial and residential neighborhood approximately 1.5 miles east of downtown Louisville.

Recommendations proposed in the investigative report are issued by a vote of the Board and address identified safety deficiencies uncovered during the investigation, and specify how to correct the situation. Safety recommendations are the primary tool used by the Board to motivate implementation of safety improvements and prevent future incidents. The CSB uses its unique independent accident investigation perspective to identify trends or issues that might otherwise be overlooked. CSB recommendations may be directed to corporations, trade associations, government entities, safety organizations, labor unions and others.

After the staff presentation, the Board will allow a time for public comment. Following the conclusion of the public comment period, the Board will consider whether to vote to approve the final report and recommendations.

All staff presentations are preliminary and are intended solely to allow the Board to consider in a public forum the issues and factors involved in this case. No factual analyses, conclusions or findings should be considered final. Only after the Board has considered the staff presentation and approved the staff report will there be an approved final record of this incident.

The meeting will be open to the public. Please notify CSB if a translator or interpreter is needed, at least 5 business days prior to the public meeting. For more information, please contact the Chemical Safety and Hazard

Investigation Board at (202) 261–7600, or visit our Web site at: *www.csb.gov*.

Christopher W. Warner,

General Counsel.

[FR Doc. 03–31330 Filed 12–16–03; 12:52 pm]

BILLING CODE 6350–01–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–601]

Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China: Final Results of 2001–2002 Administrative Review and Partial Rescission of Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Final Results of 2001–2002 Administrative Review and Partial Rescission of the Review.

SUMMARY: We have determined that sales of tapered roller bearings and parts thereof, finished and unfinished, from the People's Republic of China, were made below normal value during the period June 1, 2001, through May 31, 2002. We are also rescinding the review, in part, in accordance with 19 CFR § 351.213(d)(3).

Based on our review of comments received and a reexamination of surrogate value data, we have made certain changes in the margin calculations of all of the reviewed companies. Consequently, the final results differ from the preliminary results. The final weighted-average dumping margins for these firms are listed below in the section entitled "Final Results of the Review." Based on these final results of review, we will instruct the U.S. Customs and Border Protection to assess antidumping duties based on the difference between the export price and normal value on all appropriate entries.

EFFECTIVE DATE: December 18, 2003.

FOR FURTHER INFORMATION CONTACT: S. Anthony Grasso or Andrew R. Smith, Group 1, Office I, Antidumping/Countervailing Duty Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW, Washington, DC 20230; telephone (202) 482–3853 or (202) 482–1276, respectively.

SUPPLEMENTARY INFORMATION:

Background

On February 14, 2003, the Department published the preliminary results of this review of tapered roller bearings and parts thereof, finished and unfinished ("TRBs") from the People's Republic of China ("PRC"). *See Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China: Preliminary Results of 2001–2002 Administrative Review and Partial Rescission of Review*, 68 FR 7500 (February 14, 2003) ("*Preliminary Results*"). The period of review ("POR") is June 1, 2001, through May 31, 2002. This review covers the following producers or exporters (referred to collectively as "the respondents"): Wanxiang Group Corporation ("Wanxiang"), China National Machinery Import & Export Corporation ("CMC"), Tianshui Hailin Import and Export Corporation ("Hailin"), Luoyang Bearing Corporation (Group) ("Luoyang"), Liaoning MEC Group Co. Ltd. ("Liaoning"), Peer Bearing Company - Changshan ("CPZ"), and Yantai Timken Co., Ltd. ("Yantai Timken")

We invited parties to comment on the *Preliminary Results*. On March 17, 2003, we received case briefs from the Timken Company ("the petitioner"), CPZ, and Yantai Timken. On March 24, 2003, the Timken Company and Yantai Timken submitted rebuttal briefs.

The Department has conducted this administrative review in accordance with section 751 of the Tariff Act of 1930, as amended ("the Act").

Scope of Review

Merchandise covered by this review is TRBs from the PRC; flange, take up cartridge, and hanger units incorporating tapered roller bearings; and tapered roller housings (except pillow blocks) incorporating tapered rollers, with or without spindles, whether or not for automotive use. This merchandise is currently classifiable under the *Harmonized Tariff Schedule* of the United States ("HTSUS") item numbers 8482.20.00, 8482.91.00.50, 8482.99.30, 8483.20.40, 8483.20.80, 8483.30.80, 8483.90.20, 8483.90.30, 8483.90.80, 8708.99.80.15, and 8708.99.80.80. Although the HTSUS item numbers are provided for convenience and customs purposes, the written description of the scope of the order and this review is dispositive.

Rescission of Review in Part

As noted in the *Preliminary Results*, on September 10, 2002, Hailin, Wanxiang, Luoyang, Liaoning, and CMC withdrew their requests for review. The petitioner did not request reviews of any of these companies. Therefore, pursuant to 19 CFR § 351.213(d)(1), because these companies withdrew their requests for review within 90 days of the date of publication of the notice of initiation of this review and no other party requested a review of these companies, we are rescinding the review with respect to Hailin, Wanxiang, Luoyang, Liaoning, and CMC.

Use of Facts Otherwise Available

As discussed in detail in the *Preliminary Results*, we have determined that companies which did not respond to the Department's questionnaire in this proceeding should not receive separate rates and, thus, are viewed as part of the PRC-wide entity. Moreover, as noted in the *Preliminary Results*, we determine that, in accordance with sections 776(a) and (b) of the Act, the use of adverse facts available is appropriate for companies that did not respond to our requests for information. No party in this proceeding has commented on these issues since the publication of the *Preliminary Results*. Thus, for these final results, we have continued to assign the rate of 33.18 percent to companies that are part of the PRC-entity.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this review are addressed in the "Issues and Decision Memorandum" from Jeffrey May, Deputy Assistant Secretary, Import Administration, to James J. Jochum, Assistant Secretary, Import Administration, dated December 11, 2003 ("*Decision Memorandum*"), which is hereby adopted by this notice. Attached to this notice as an Appendix is a list of the issues that parties have raised and to which we have responded in the *Decision Memorandum*. Parties can find a complete discussion of all issues raised in this investigation and the corresponding recommendations in this public memorandum, which is on file in the Department's Central Records Unit, located in Room B-099 of the main Department building ("CRU"). In addition, a complete version of the *Decision Memorandum* can be accessed directly on the Internet at *http://ia.ita.doc.gov/frn/* under the heading "China PRC." The paper copy and electronic version of the *Decision Memorandum* are identical in content.

Changes Since the Preliminary Results

Based on our review of comments received and a reexamination of surrogate value data, we have made certain changes to the calculations for the final results. These changes are discussed in the following Comments in the *Decision Memorandum* or in the referenced final calculation memoranda for particular companies:

All Companies

Certain adjustments were made to the overhead, SG&A, and profit ratios. *See Decision Memorandum* at Comment 5.

CPZ

In the *Preliminary Results* we used data on Japanese exports to India to value the hot-rolled alloy steel used by CPZ to manufacture the subject merchandise. For these final results, we revised this surrogate value. Instead, we relied on data for Japanese exports to Indonesia to value the hot-rolled alloy steel used to manufacture the subject merchandise. *See Decision Memorandum* at Comment 3 and the Memorandum from Team to Susan Kuhbach: "Factors of Production Values Used for the Final Results," dated December 11, 2003.

Yantai Timken

We revised Yantai Timken's final results calculations to correct several minor reporting and clerical errors noted by Yantai Timken in its case brief. *See* Memorandum from Case Analyst to File, "Final Results Calculation Memorandum for Yantai Timken Company, Ltd." ("*Yantai Timken's Calc Memo*"), dated December 11, 2003, which is on file in the Department's CRU.

As noted in the *Preliminary Results*, and consistent with our treatment of subsidized inputs in *TRBs XIV*, *TRBs XIII*, and *TRBs XII*, we do not use the prices paid by PRC producers of TRBs for inputs that we have a reason to believe or suspect are subsidized. Accordingly, for a particular input that Yantai Timken purchased from a market economy country, for these final results, we have used a surrogate value instead of the market price paid by Yantai Timken and used in the *Preliminary Results*. (*See Yantai Timken's Calc Memo* for a more detailed discussion of this issue.)

Final Results of Review

We determine that the following dumping margins exist for the period June 1, 2000, through May 31, 2001:

Exporter/manufacturer	Weighted-average margin percentage
Peer Bearing Company - Changshan	0.00
Yantai Timken Co., Ltd.	18.75
PRC-wide rate	33.18

Assessment Rates

In accordance with 19 CFR § 351.212(b)(1), we have calculated importer (or customer)-specific assessment rates for the merchandise subject to this review. To determine whether the duty assessment rates were *de minimis*, in accordance with the requirement set forth in 19 CFR § 351.106(c)(2), we calculated importer (or customer)-specific *ad valorem* rates by aggregating the dumping margins calculated for all U.S. sales to that importer (or customer) and dividing this amount by the total value of the sales to that importer (or customer). Where an importer (or customer)-specific *ad valorem* rate was greater than *de minimis*, we calculated a per unit assessment rate by aggregating the dumping margins calculated for all U.S. sales to that importer (or customer) and dividing this amount by the total quantity sold to that importer (or customer). Where an importer (or customer)-specific *ad valorem* rate was *de minimis*, we will order the Customs Service to liquidate without regard to antidumping duties.

All other entries of the subject merchandise during the POR will be liquidated at the antidumping duty rate in place at the time of entry.

The Department will issue appropriate assessment instructions directly to U.S. Customs and Border Protection ("CBP") within 15 days of publication of these final results of review.

Cash Deposit Requirements

The following cash deposit rates will be effective upon publication of these final results for all shipments of TRBs from the PRC entered, or withdrawn from warehouse, for consumption on or after the publication date of this notice, as provided for by section 751(a)(1) of the Act: (1) the cash deposit rates for the reviewed companies will be the rates shown above except that, for firms whose weighted-average margins are less than 0.5%, and therefore, *de minimis*, the Department shall require no deposit of estimated antidumping duties; (2) for a company previously found to be entitled to a separate rate and for which no review was requested, the cash deposit rate will be the rate established in the most recent review of that company; (3) for all other PRC exporters of subject merchandise, the rate will be the PRC country-wide rate, which is 33.18 percent; and (4) for non-PRC exporters of subject merchandise from the PRC, the cash deposit rate will be the rate applicable to the PRC exporter that supplied that exporter. These deposit rates shall remain in effect until publication of the final results of the next administrative review.

Notification to Importers

This notice also serves as a final reminder to importers of their responsibility under 19 CFR § 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

Notification Regarding APOs

This notice also serves as a reminder to parties subject to administrative protective orders ("APO") of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR § 351.305, which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

We are issuing and publishing this determination and notice in accordance with sections section 751(a)(1) and 771(i) of the Act.

Dated: December 11, 2003.

James J. Jochum,

Assistant Secretary for Import Administration.

Appendix

List of Comments and Issues in the Decision Memorandum

Comment 1: Peer Bearing Company - Changshan's ("CPZ") Market Economy Steel

Comment 2: Valuing the Steel Input Used by CPZ to Manufacture Cups and Cones

Comment 3: Cups and Cones Surrogate Value: Japanese Exports to India Versus to Indonesia

Comment 4: Correct the Surrogate Value Calculated Using Japanese Exports to India

Comment 5: Financial Ratios: HMT's Financial Records and Calculate Using a Simple Average

Comment 6: Discontinue Excluding Negative Dumping Margins

Comment 7: Amelioration of the Anomalous Situation Arising from the

Petitioner Owning 100% of Yantai Timken
Comment 8: Yantai Timken Reported Steel Values Clerical Error
Comment 9: Yantai Timken Packing Values Clerical Error
Comment 10: Yantai Timken Part-Specific Costs

[FR Doc. 03–31223 Filed 12–17–03; 8:45 am]
BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

Export Trade Certificate of Review

ACTION: Notice of issuance of an Export Trade Certificate of Review, Application No. 03–00006.

SUMMARY: The Department of Commerce has issued an Export Trade Certificate of Review to Western Fruit Exporters, LLC ("WFE"). This notice summarizes the conduct for which certification has been granted.

FOR FURTHER INFORMATION CONTACT: Jeffrey C. Anspacher, Director, Office of Export Trading Company Affairs, International Trade Administration, by telephone at (202) 482–5131 (this is not a toll-free number), or by e-mail at *oetca@ita.doc.gov*.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. 4001–21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. The regulations implementing Title III are found at 15 CFR part 325 (2003).

The Office of Export Trading Company Affairs ("OETCA") is issuing this notice pursuant to 15 CFR 325.6(b), which requires the Department of Commerce to publish a summary of the Certificate in the **Federal Register**. Under section 305(a) of the Act and 15 CFR 325.11(a), any person aggrieved by the Secretary's determination may, within 30 days of the date of this notice, bring an action in any appropriate district court of the United States to set aside the determination on the ground that the determination is erroneous.

Description of Certified Conduct

I. Export Trade

1. Products

Brine sweet cherries in any stage of processing and finished maraschino cherry products in any stage of packaging.

2. Services

Inspection, quality control, marketing and promotional services.

3. Technology Rights

Proprietary rights to all technology associated with Products or Services, including, but not limited to: patents, trademarks, service marks, trade names, copyrights, trade secrets, know-how.

4. Export Trade Facilitation Services (as They Relate to the Export of Products, Services and Technology Rights)

All export trade-related facilitation services, including, but not limited to: Consulting and trade strategy; sales and marketing; export brokerage; foreign marketing research; foreign market development; overseas advertising and promotion; product research and design based on foreign buyer and consumer preferences; communication and processing of export orders; inspection and quality control; transportation; freight forwarding and trade documentation; insurance; billing of foreign buyers; collection (letters of credit and other financial instruments); provision of overseas sales and distribution facilities and overseas sales staff, legal, accounting and tax assistance; management information systems development and application; assistance and administration related to participation in government export assistance programs.

II. Export Markets

The Export Markets include all parts of the world except the United States (the fifty states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands).

III. Export Trade Activities and Methods of Operation

In connection with the promotion and sale of Members' Products, Services, and/or Technology Rights into the Export Markets, WFE and/or one or more of its Members may:

1. Design and execute foreign marketing strategies for its Export Markets;

2. Prepare joint bids, establish export prices for Members' Products and Services, and establish terms of sale in Export Markets in connection with potential or actual bona fide opportunities;

3. Grant sales and distribution rights for the Products, whether or not exclusive, into designated Export Markets to foreign agents or importers ("exclusive" meaning that WFE and/or one or more Members may agree not to sell the Products into the designated Export Markets through any other foreign distributor, and that the foreign distributor may agree to represent only WFE and/or one or more Members in the Export Markets and none of its competitors);

4. Design develop and market generic corporate labels for use in Export Markets;

5. Engage in joint promotional activities directly targeted at developing Export Markets, such as: arranging trade shows and marketing trips; providing advertising services; providing brochures and industry newsletters; providing product, service, and industry information; conducting international market and product research; and procuring, international marketing, advertising, and promotional services;

6. Share the cost of joint promotional activities among the Members;

7. Conduct product and packaging research and development exclusively for export in order to meet foreign regulatory requirements, foreign buyer specifications, and foreign consumer preferences;

8. Negotiate and enter into agreements with governments and other foreign persons regarding non-tariff trade barriers in Export Markets such as packaging requirements, and providing specialized packing operations and other quality control procedures to be followed by WFE and Members in the export of Products into the Export Markets;

9. Assist each other in maintaining the quality standards necessary to be successful in the Export Markets;

10. Provide Export Trade Facilitation Services with respect to Products, Services and Technology (including such items as commodity fumigation, refrigeration and storage techniques, and other quality control procedures to be followed in the export of Products in Export Markets;

11. Advise and cooperate with agencies of the United States government in establishing procedures regulating the export of the Members' Products, Services and/or Technology Rights in Export Markets;

12. Negotiate and enter into purchase agreements with buyers in Export Markets regarding export prices, quantities, type and quality of Products, time periods, and the terms and conditions of sale;

13. Broker or take title to Products intended for Export Markets;

14. Purchase Products from non-Members to fulfill specific sales obligations, provided that WFE and/or one or more Members shall make such purchases only on a transaction-by-transaction basis and when the purchasing Members are unable to supply, in a timely manner, the requisite Products at a price competitive under the circumstances;

15. Solicit non-Member producers to become Members;

16. Communicate and process export orders;

17. Procure, negotiate, contract, and administer transportation services for Products in the course of export, including overseas freight transportation, inland freight transportation from the packing house to the U.S. port of embarkment, leasing of transportation equipment and facilities, storing and warehousing, stevedoring, wharfage and handling, insurance, and freight forwarder services;

18. Arrange for trade documentation and services, customs clearance, financial instruments, and foreign exchange;

19. Arrange financing through private financial entities, government financial assistance and incentive programs and other arrangements;

20. Bill and collect monies from foreign buyers, and arrange for or provide accounting, tax, legal and consulting services in relation to Export Trade Activities and Methods of Operation;

21. Enter into exclusive agreements with non-Members to provide Export Trade Services and Export Trade Facilitation Services;

22. Open and operate overseas sales and distribution offices and companies to facilitate the sales and distribution of Products in the Export Markets;

23. Negotiate and enter into agreements with governments and foreign persons to develop countertrade arrangements, provided that this Certificate does not protect any conduct related to the sale of goods in the United States that are imported as part of any countertrade transactions;

24. Refuse to deal with or provide quotations to other Export Intermediaries for sales of Members' Products into Export Markets;

25. Require common marking and identification of Members' Products sold in Export Markets;

26. Exchange information as necessary to carry out Export Trade Activities and Methods of Operation, including:

(a) Information about sales, marketing efforts, and sales strategies in Export Markets, including pricing; projected demand in Export Markets for Products; customary terms of sale; and foreign buyer and consumer product specifications;

(b) Information about the price, quality, quantity, source and delivery dates of Products available from WFE and its Members for export;

(c) Information about terms and conditions of contracts for sales in Export Markets to be considered and/or bid on by WFE and/or Members;

(d) Information about joint bidding opportunities;

(e) Information about methods by which export sales are to be allocated among WFE and/or Members;

(f) Information about expenses specific to exporting to and within Export Markets, including transportation, transshipments, inter-modal shipments, insurance, inland freight to port, port storage, commissions, export sales, documentation, financing and customs duties or taxes;

(g) Information about U.S. and foreign legislation and regulations, including federal marketing order programs that may affect sales to Export Markets;

(h) Information about WFE's or Members' export operations, including sales and distribution networks established by WFE or Members in Export Markets, and prior export sales by Members, including export price information; and

(i) Information about claims or bad debts by WFE's or Members' customers in Export Markets.

IV. Definitions

"Export Intermediary" means a person who acts as distributor, sales representative, sales or marketing agent, or broker, or who performs similar functions, including providing, or arranging for the provision of, Export Trade Facilitation Services.

V. Members (Within the Meaning of Section 325.2(l) of the Regulations)

Eola Cherry Company, Inc., Gervais, Oregon; Diana Fruit Co., Inc., Santa Clara, California; Johnson Foods Co., Inc., Sunnyside, Washington; and Oregon Cherry Growers, Inc., Salem, Oregon.

VI. Terms and Conditions of Certificate

1. Neither WFE nor any Member shall intentionally disclose, directly or indirectly, to any other Member any information about its or any other Member's costs, production, capacity, inventories, domestic prices, domestic sales, terms of domestic marketing or sale, or U.S. business plans, strategies, or methods, unless (1) such information is already generally available to the trade or public; or (2) the information disclosed is a necessary term or condition (*e.g.*, price, time required to fill an order, etc.) of an actual or potential bona fide sale and the disclosure is limited to the prospective purchasing Member.

2. Each Member shall determine independently of WFE and each other the quantity of Products each will make available for export or sell through WFE. WFE may not require any Member to accept any offer for sale or require any Member to export any minimum quantity of Products.

3. Any agreements, discussions, or exchanges of information under this Certificate relating to quantities of Products available for Export Markets, product specifications or standards, export prices, product quality or other terms and conditions of export sales (other than export financing) shall be in connection only with actual or potential bona fide export transactions or opportunities and shall include only those Members participating or having a genuine interest in participating in such transactions or opportunities, provided that WFE and/or the Members may discuss standardization of Products and Services for purposes of making bona fide recommendations to foreign governmental or private standard setting organizations.

4. Meetings at which WFE and Members allocate export sales and establish export prices shall not be open to the public.

5. Participation by WFE and/or Members in any Export Trade Activity or Method of Operation under this Certificate shall be entirely voluntary as to WFE and/or the Members, subject to the honoring of contractual commitments for sales of Products, Services or Technology Rights in specific export transactions. A Member may withdraw from coverage under this Certificate at any time by giving written notice to WFE, a copy of which WFE shall promptly transmit to the Secretary of Commerce and the Attorney General.

6. WFE and the Members will comply with requests made by the Secretary of Commerce on behalf of the Secretary or the Attorney General for information or documents relevant to conduct under the Certificate. The Secretary of Commerce will request such information or documents when either the Attorney General or the Secretary believes that the information or documents are required to determine that the Export Trade, Export Trade Activities and Methods of Operation of a person protected by this Certificate of Review continue to comply with the standards of section 303(a) of the Act.

VII. Protection Provided by Certificate

This Certificate protects WFE and its directors, officers, and employees acting on its behalf, as well as its Members,

and their directors, officers, and employees acting on their behalf, from private treble damage actions and governmental criminal and civil suits under U.S. Federal and state antitrust laws for the export conduct specified in the Certificate and carried out during its effective period in compliance with its terms and conditions.

VIII. Effective Period of Certificate

This Certificate continues in effect from the effective date indicated below until it is relinquished, modified or revoked as provided in the Act and the Regulations.

IX. Other Conduct

Nothing in this Certificate prohibits WFE and its Members from engaging in conduct not specified in this Certificate, but such conduct is subject to the normal application of the antitrust laws.

X. Disclaimer

The issuance of this Certificate of Review to WFE by the Secretary of Commerce with the concurrence of the Attorney General under the provisions of the Act does not constitute, explicitly or implicitly, an endorsement or opinion by the Secretary of Commerce or the Attorney General concerning either (a) the viability or quality of the business plans of WFE or its Members or (b) the legality of such business plans of WFE or its Members under the laws of the United States (other than as provided in the Act) or under the laws of any foreign country.

The application of this Certificate to conduct in Export Trade where the United States government is the buyer or where the United States Government bears more than half the cost of the transaction is subject to the limitations set forth in Section V(D) of the "Guidelines for the Issuance of Export Trade Certificates of Review (Second Edition)," 50 FR 1786 (January 11, 1985) ("Guidelines").

In accordance with the authority granted under the Act and Regulations, this Export Trade Certificate of Review is hereby granted to Western Fruit Exporters, L.L.C.

The effective date of the Certificate is December 8, 2003. A copy of this certificate will be kept in the International Trade Administration's Freedom of Information Records Inspection Facility Room 4102, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

Dated: December 15, 2003.

Jeffrey C. Anspacher,

Director, Office of Export Trading Company Affairs.

[FR Doc. 03–31323 Filed 12–17–03; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

International Trade Administration

Notice of Allocation of Tariff Rate Quotas on the Import of Certain Worsted Wool Fabrics for Calendar Year 2004

December 12, 2003.

AGENCY: Department of Commerce, International Trade Administration.

ACTION: Notice of allocation of 2004 worsted wool fabric tariff rate quota.

SUMMARY: The Department of Commerce (Department) has determined the allocation for Calendar Year 2004 of imports of certain worsted wool fabrics under tariff rate quotas established by Title V of the Trade and Development Act of 2000 as amended by the Trade Act of 2002. The companies that are being provided an allocation are listed below.

FOR FURTHER INFORMATION CONTACT: Sergio Botero, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-4058.

SUPPLEMENTARY INFORMATION:

BACKGROUND:

Title V of the Trade and Development Act of 2000 (The Act) as amended by the Trade Act of 2002 creates two tariff rate quotas, providing for temporary reductions in the import duties on two categories of worsted wool fabrics suitable for use in making suits, suit-type jackets, or trousers. For worsted wool fabric with average fiber diameters greater than 18.5 microns (Harmonized Tariff Schedule of the United States (HTS) heading 9902.51.11), the reduction in duty is limited to 4,500,000 square meters per year. For worsted wool fabric with average fiber diameters of 18.5 microns or less (HTS heading 9902.51.12), the reduction is limited to 3,500,000 square meters per year. The Act requires the President to ensure that such fabrics are fairly allocated to persons (including firms, corporations, or other legal entities) who cut and sew men's and boys' worsted wool suits and suit-like jackets and trousers in the United States and who apply for an allocation based on the amount of such suits cut and sewn during the prior calendar year. Presidential Proclamation 7383, of December 1, 2000, authorized the Secretary of Commerce to allocate the quantity of worsted wool fabric imports under the tariff rate quotas. On January 22, 2001, the Department published regulations establishing procedures for applying for, and determining, such allocations. 66 FR 6459, 15 CFR 335.

On August 28, 2003, the Department published a notice in the **Federal Register** (68 FR 51767) soliciting applications for an allocation of the 2004 tariff rate quotas with a closing date of September 29, 2003. The Department received timely applications for the HTS 9902.51.11 tariff rate quota from 13 firms. The Department received timely applications for the HTS 9902.51.12 tariff rate quota from 14 firms. All applicants were determined eligible for an allocation. Most applicants submitted data on a business confidential basis. As allocations to firms were determined on the basis of this data, the Department considers individual firm allocations to be business confidential.

FIRMS THAT RECEIVED ALLOCATIONS:

HTS 9902.51.11, fabrics, of worsted wool, with average fiber diameter greater than 18.5 micron, certified by the importer as suitable for use in making suits, suit-type jackets, or trousers (provided for in subheading 5112.11.60 and 5112.19.95). Amount allocated: 4,500,000 square meters.

Companies Receiving Allocation:

Bowdon Manufacturing Co., Inc--Bowdon, GA
Calvin Clothing Company, Inc.--Scranton, PA
Hartmarx Corporation--Chicago, IL
Hartz & Company, Inc.--Frederick, MD
Hugo Boss Cleveland, Inc-Brooklyn, OH
JA Apparel Corp.--New York, NY
John H. Daniel Co.--Knoxville, TN
Majer Brands Company, Inc.-Hanover, PA
Saint Laurie Ltd--New York, NY
Sewell Clothing Company, Inc.--Bremen, GA
Southwick Clothing L.L.C.--Lawrence, MA
Toluca Garment Company-Toluca, IL
The Tom James Co.--Franklin, TN

HTS 9902.51.12, fabrics, of worsted wool, with average fiber diameter of 18.5 micron or less, certified by the importer as suitable for use in making suits, suit-type jackets, or trousers (provided for in subheading 5112.11.30 and 5112.19.60). Amount allocated: 3,500,000 square meters.

Companies Receiving Allocation:

American Fashion, Inc.--Chula Vista, CA
Retail Brand Alliance, Inc. d/b/a Brooks Brothers--New York, NY
Hartmarx Corporation--Chicago, IL
Hartz & Company, Inc.--Frederick, MD
Hugo Boss Cleveland, Inc.-Brooklyn, OH
JA Apparel Corp.--New York, NY
John H. Daniel Co.--Knoxville, TN
Majer Brands Company, Inc.-Hanover, PA

Martin Greenfield--Brooklyn, NY
Saint Laurie Ltd--New York, NY
Sewell Clothing Company, Inc.--Bremen, GA
Southwick Clothing L.L.C.--Lawrence, MA
Toluca Garment Compan-Toluca, IL
The Tom James Co.--Franklin, TN

Dated: December 12, 2003.

James C. Leonard III,

Deputy Assistant Secretary for Textiles, Apparel and Consumer Goods Industries, Department of Commerce.

[FR Doc. E3–00584 Filed 12–17–03; 8:45 am]

BILLING CODE 3510–DR–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 103003D]

Marine Mammals; Photography Permit Application No. 1050–1727–00

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Receipt of application.

SUMMARY: Notice is hereby given that the NOAA Pribilof Islands Restoration Project Office, National Ocean Service, 7600 Sand Point Way, Seattle, WA 98115 [Principal Investigator: John Lindsay] has applied in due form for a permit to take Northern fur seal seals (*Callorhinus ursinus*) for purposes of commercial/educational photography.

DATES: Written or telefaxed comments must be received on or before January 20, 2004.

ADDRESSES: The application and related documents are available for review upon written request or by appointment in the following office(s):

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301)713–2289; fax (301)713–0376; and

Northwest Region, NMFS, 7600 Sand Point Way NE, BIN C15700, Bldg. 1, Seattle, WA 98115–0700; phone (206)526–6150; fax (206)526–6426; and,

Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802–1668; phone (907)586–7221; fax (907)586–7249.

FOR FURTHER INFORMATION CONTACT: Ruth Johnson or Jennifer Jefferies (301)713–2289.

SUPPLEMENTARY INFORMATION: The subject permit is requested under the authority of section 104(c)(6) of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216). Section 104(c)(6) provides for photography for educational or commercial purposes involving marine mammals in the wild not listed as endangered or threatened. NMFS is currently working on proposed regulations to implement this provision. However, in the meantime, NMFS has received and is processing this request as a "pilot" application for Level B Harassment of non-listed marine mammals for photographic purposes.

The applicant proposes to take by harassment up to 2000 northern fur seals each year during ground and underwater filming activities. The purpose of the proposed project is to collect high-definition digital media of contemporary norther fur seals on the Pribilof Islands, particularly breeding and territorial behaviors in a natural setting on rookeries and haulout areas for public television documentary series. The documentary series will combine footage of northern fur seals with original research, photographs and other documents about the history of commercial fur sealing on the Pribilofs with emphasis on key historical figures. The action area is the Pribilof Islands, including St. George, St. Paul, Walrus and Otter Islands and Sea Lion Rock. The Permit would expire 2 years after the date of issuance.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an initial determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Written comments or requests for a public hearing on this application should be mailed to the Chief, Permits, Conservation and Education Division, F/PR1, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular request would be appropriate.

Comments may also be submitted by facsimile to (301) 713–0376, provided the facsimile is confirmed by hard copy submitted by mail and postmarked no later than the closing date of the comment period. Please note that comments will not be accepted by e-mail or by other electronic media.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Dated: December 11, 2003.

Stephen L. Leathery,

Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 03–31227 Filed 12–17–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 103103A]

Marine Mammals; File Nos. 704–1698 and 1044–1706

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Issuance of permits.

SUMMARY: Notice is hereby given that the following applicants have been issued permits to take marine mammals parts from species of marine mammals under NMFS jurisdiction for purposes of scientific research: (1) The University of Alaska Museum, 907 Yukon Drive, P.O. Box 756960, Fairbanks, AK 99775 (Dr. Gordon Jarrell, Principal Investigator (PI)); and (2) The Alaska Sea Otter and Steller Sea Lion Commission (TASSC), 6239 B Street, Suite 204, Anchorage, AK 99518 (Dr. Dolly Garza, PI).

ADDRESSES: The permits and related documents are available for review upon written request or by appointment in the following office(s):

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301)713–2289; fax (301)713–0376; and

Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802–1668; phone (907)586–7221; fax (907)586–7249.

FOR FURTHER INFORMATION CONTACT: Ruth Johnson or Amy Sloan, (301)713–2289.

SUPPLEMENTARY INFORMATION: On September 8, 2003, notice was published in the **Federal Register** (68 FR 52905) that requests for scientific research permits to take marine mammal parts had been submitted by the above-named organizations. The requested permits have been issued under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531

et seq.), the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR parts 222–226), and the Fur Seal Act of 1966, as amended (16 U.S.C. 1151 *et seq.*).

File No. 704–1698: The University of Alaska Museum is authorized to take, import and export specimen samples (whole carcasses; hard and soft parts) from all marine mammal species (pinnipeds and cetaceans) under NMFS jurisdiction. The objective of this permit is to archive specimens for future bona fide research at the University of Alaska and other institutions in the U.S. and world-wide.

File No. 1044–1706: TASSC is authorized to take, import and export parts and tissues from marine mammals taken from legally subsistence hunted Steller sea lions and other species. The objectives of this research are to promote Alaska Native participation in Steller sea lion conservation and management; assess the health and condition of Steller sea lions through biological data and tissue collection; educate and inform the public on the traditional and contemporary relationship between the Steller sea lion and Alaska Natives; and work with regulatory agencies toward the common goal of enhancing and protecting healthy Steller sea lion populations.

Issuance of these permits, as required by the ESA, was based on a finding that such permits (1) were applied for in good faith, (2) will not operate to the disadvantage of the endangered species which is the subject of these permits, and (3) are consistent with the purposes and policies set forth in section 2 of the ESA.

Dated: December 12, 2003.

Stephen L. Leathery,

Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 03–31228 Filed 12–17–03; 8:45 am]

BILLING CODE 3510–22–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Establishment of Import Limits for Certain Wool and Man-Made Fiber Textile Products Produced or Manufactured in Belarus

December 12, 2003.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner, Bureau of Customs and Border Protection establishing limits.

EFFECTIVE DATE: January 1, 2004.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927-5850, or refer to the Bureau of Customs and Border Protection Web site at *http://www.customs.gov*. For information on embargoes and quota re-openings, refer to the Office of Textiles and Apparel Web site at *http://otexa.ita.doc.gov*.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The Bilateral Textile Memorandum of Understanding dated January 10, 2003 between the Governments of the United States and Belarus establishes limits for the period January 1, 2004 through December 31, 2004.

These limits may be revised if Belarus becomes a member of the World Trade Organization (WTO) and the United States applies the WTO agreement to Belarus.

In the letter published below, the Chairman of CITA directs the Commissioner, Bureau of Customs and Border Protection to establish the limits.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see Federal Register notice 68 FR 1599, published on January 13, 2003). Information regarding the availability of the 2004 CORRELATION will be published in the **Federal Register** at a later date.

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

December 12, 2003.

Commissioner,
Bureau of Customs and Border Protection, Washington, DC 20229.

Dear Commissioner: Pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended; you are directed to prohibit, effective on January 1, 2004, entry into the United States for consumption and withdrawal from warehouse for consumption of textiles and textile products in the following categories, produced or manufactured in Belarus and exported during the twelve-month period beginning on January 1, 2004 and extending through December 31, 2004:

Category	Twelve-month restraint limit
622	9,646,000 square meters of which not more than 1,590,000 square meters shall be in Category 622-L[1].
435	67,320 dozen.
448	34,680 dozen.

[1] Category 622-L: only HTS numbers 7019.51.9010, 7019.52.4010, 7019.52.9010, 7019.59.4010, and 7019.59.9010.

Products in the above categories exported during 2003 shall be charged to the applicable category limit and sublimit for that year (see directive dated January 21, 2003) to the extent of any unfilled balance. In the event the limit and sublimit established for that period have been exhausted by previous entries, such products shall be charged to the limit and sublimit set forth in this directive.

The limits set forth above are subject to adjustment pursuant to the current bilateral agreement between the Governments of the United States and Belarus.

This limits may be revised if Belarus becomes a member of the World Trade Organization (WTO) and the United States applies the WTO agreement to Belarus.

In carrying out the above directions, the Commissioner, Bureau of Customs and Border Protection should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,
James C. Leonard III,
Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. E3–00585 Filed 12–17–03; 8:45 am]

BILLING CODE 3510–DR–S

COMMODITY FUTURES TRADING COMMISSION

In the Matter of Intermarket Clearing Corporation—Request for Vacation From Designation as Derivatives Clearing Organization

AGENCY: Commodity Futures Trading Commission.

ACTION: Proposed order.

SUMMARY: In response to a request by the Intermarket Clearing Corporation ("ICC"), the Commodity Futures Trading Commission ("Commission" or "CFTC") is proposing to issue an order vacating ICC's designation as a Derivatives Clearing Organization ("DCO").

ADDRESSES: Interested persons should submit their views and comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581. In addition, comments may be sent by facsimile transmission to facsimile number (202) 418–5521, or by electronic mail to *secretary@cftc.gov*. Reference should be made to "ICC".

DATES: Comments must be received by December 23, 2003.

FOR FURTHER INFORMATION CONTACT: R. Trabue Bland, Attorney, Division of Clearing and Intermediary Oversight, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581. Telephone: (202) 418–5430. E-mail: *tbland@cftc.gov*.

SUPPLEMENTARY INFORMATION:

I. Statutory Background

Section 5b(d) of the Commodity Exchange Act[1] provides that DCOs that clear contracts for boards of trade designated by the Commission as contract markets prior to a certain date are deemed registered with the Commission. Under section 1a(29)(C) of the Act, registered DCOs are "registered entities." Section 7 of the Act[2] provides that "any person that has been designated or registered as a registered entity in the manner herein provided may have such designation or registration vacated and set aside by giving notice to the Commission requesting that its designation or registration as a registered entity be vacated, which notice shall be served at least ninety days prior to the date named therein as the date when vacation of designation or registration shall take effect." ICC has requested that the vacation of its registration take place before the expiration of the ninety-day period. In response to the request, the Commission is proposing to exempt ICC from the notice requirements of section 7 of the Act pursuant to section 4(c) of the Act,[3] which gives the Commission broad exemptive authority and then vacate ICC's registration.

II. Request for Vacation of Registration

A. Background

By letter to the Division of Clearing Intermediary Oversight, the ICC submitted a request for the vacation of registration.[4] The ICC is a registered DCO under section 5b(d) of the Act and thus a registered entity as defined in section 1a(29)(C) of the Act. The ICC is a wholly owned subsidiary of The Options Clearing Corporation ("OCC"), another registered DCO. For the past several years, ICC has not engaged in any clearing activities, and thus the OCC wishes to merge the ICC into the OCC. At the completion of the merger, ICC will cease to exist as a corporate entity. Therefore, the ICC requests that the Commission vacate the registration of ICC as a DCO.

Section 7 of the Act allows "any person that has been designated or registered as a registered entity in the manner herein provided may have such designation or registration vacated and set aside by giving notice to the Commission requesting that its designation or registration as a registered entity be vacated, which notice shall be served at least ninety days prior to the date named therein as the date when vacation of designation or registration shall take effect." ICC served notice to the Commission on November 17, 2003. However, the merger of ICC and OCC will take place before the end of the calendar year 2003, which will occur before the expiration of the ninety-day notice requirement required by section 7 of the Act. Therefore, at ICC's request, pursuant to section 4(c) of the Act, the Commission proposes to exempt ICC from section 7's 90-day notice requirement.

B. Public Interest Considerations

This proposed order is waiving the section 7 90-day notice requirement pursuant to section 4(c) of the Act, which grants the Commission broad exemptive authority. Section 4(c) of the Act provides that, in order to promote responsible economic or financial innovation and fair competition, the Commission "may, by rule, regulation or order, exempt any class of agreements, contracts or transactions, including any person or class of persons offering, entering into, rendering advice or rendering other services with respect to, the agreement, contract, or transaction, from the contract market designation requirement of section 4(a) of the Act, or any other provision of the Act * * * if the Commission determines that the exemption would be consistent with the public interest."[5]

As explained above, the ICC has not operated as a clearing entity in a number of years. The merger of ICC into OCC will allow the OCC to streamline its operations. The Commission believes that exempting ICC from the 90-day requirement of section 7 is consistent with the public interest, is consistent with the purposes of the Act and would have no adverse effect on the ability of OCC to fulfill its self-regulatory responsibilities imposed by the Act.

III. Conclusion

After consideration of the ICC request, the Commission is proposing to exempt ICC from the 90-day notice requirement of section 7 of the Act. Furthermore, the Commission proposes to vacate the Intermarket Clearing Corporation's registration as a derivatives clearing organization upon completion of the merger between ICC and OCC.

The Commission specifically invites comment on whether it should vacate the registration of ICC and whether the Commission should exempt ICC from the 90-day notice requirement of section 7. In addition to issues specified above, the Commission welcomes comment on any aspect of the proposed order.

IV. Cost-Benefit Analysis

Section 15(a) of the Act requires the Commission to consider the costs and benefits of its action before issuing a new regulation or order under the Act. By its terms, section 15(a) does not require the Commission to quantify the costs and benefits of a new regulation or to determine whether the benefits of the proposed regulation outweigh its costs. Rather, section 15(a) simply requires the Commission to "consider the costs and benefits" of its action.

Section 15(a) further specifies that costs and benefits shall be evaluated in light of five broad areas of market and public concern: Protection of market participants and the public; efficiency, competitiveness, and financial integrity of futures markets; price discovery; sound risk management practices; and other public interest considerations. Accordingly, the Commission could in its discretion give greater weight to any one of the five enumerated areas and could in its discretion determine that, notwithstanding its costs, a particular rule was necessary or appropriate to protect the public interest or to effectuate any of the provisions or to

[1] 7 U.S.C. 7a–1 (2003).
[2] 7 U.S.C. 11 (2003).
[3] 7 U.S.C. 6c (2003).

[4] The letter, dated November 17, 2003, was sent to John Lawton, Deputy Director and Chief Counsel of the Division of Clearing and Intermediary Oversight.

[5] *See, e.g.* 65 FR 77993 (December 13, 2000) (adopting final rules pursuant to the 4(c) exemption).

accomplish any of the purposes of the Act.

The proposed order is intended to vacate the registration of the ICC, in order to allow the Options Clearing Corporation to merge with the ICC. The Commission has considered the costs and benefits of the order in light of the specific provisions of section 15(a) of the Act.

1. Protection of Market Participants and the Public

The ICC does not provide any clearing services to any designated contract markets. Accordingly, the proposed order should have no effect on the Commission's ability to protect market participation and the public.

2. Efficiency and Competition

The proposed order is not expected to have an effect on efficiency or competition.

3. Financial Integrity of Futures Markets and Price Discovery

The proposed order should have no effect, from the standpoint of imposing costs or creating benefits, on the financial integrity or price discovery function of the commodity futures and options markets.

4. Sound Risk Management Practices

The proposed order should have no effect on sound risk management practices.

5. Other Public Interest Considerations

The proposed order will have the positive effect of allowing the OCC to streamline its operations.

V. Proposed Order

Upon due consideration, and pursuant to its authority under section 7 of the Act to vacate the designation of a registered entity and pursuant to its authority under section 4(c) of the Act to exempt ICC from the requirement that notice be served within 90 days of vacation, the Commission finds that:

(1) The Intermarket Clearing Corporation ("ICC") is currently registered with the Commission as a derivatives clearing organization ("DOC") under section 5b(d) of the Commodity Exchange Act (the "Act");

(2) ICC has not engaged in activity as a DCO for several years;

(3) ICC proposes to merge into The Options Clearing Corporation, which is also registered as a DCO;

(4) Upon the effectiveness of that merger, ICC will cease to exist as a corporate entity;

(5) ICC has requested that the Commission terminate ICC's registration as a DCO upon the effectiveness of that merger;

(6) The merger of ICC and OCC will take place before the expiration of the ninety day requirement of section 7 of the Act; and

(7) Exempting ICC from the 90-day requirement of section 7 of the Act will have no adverse effect on any of the regulatory or self-regulatory responsibilities imposed by the Act and will be consistent with the public interest.

Therefore, the Commission hereby orders that ICC's designation as a DCO be and hereby is vacated upon the effectiveness of that merger.

Issued in Washington, DC, on December 12, 2003, by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 03–31220 Filed 12–17–03; 8:45 am]

BILLING CODE 6351–01–M

DEPARTMENT OF DEFENSE

Department of the Air Force

Proposed Collection; Comment Request

AGENCY: Department of the Air Force, DoD.

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Title, Form Number, and OMB Number: Application for Establishment of Air Force Junior ROTC Unit; AFOATS Form 59; OMB Number 0701–0114.

Type of Request: Extension.

Number of Respondents: 1.

Responses per Respondent: 1.

Annual Responses: 40.

Average Burden per Response: 30 minutes.

Annual Burden Hours: 20.

Needs and Uses: The information collection requirement is necessary to obtain information about schools that would like to host an Air Force Junior ROTC unit. Respondents are high school officials who provide information about their school. The completed form is used to determine the eligibility of the school to host an Air Force JROTC unit.

Affected Public: Not-For-Profit Institutions; State, Local or Tribal Government.

Frequency: On Occasion.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: Mr. Edward C. Springer.

Written comments and recommendations on the proposed information collection should be sent to Mr. Springer at Office of Management and Budget, Desk Officer for DoD, Room 10236, new Executive Office Building, Washington DC 20503.

Pamela Fitzgerald,

Air Force Federal Register Liaison Officer.

[FR Doc. 03–31169 Filed 12–17–03; 8:45 am]

BILLING CODE 5001–01–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Information Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before January 20, 2004.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Melanie Kadlic, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503, or should be electronically mailed to the Internet address *Melanie_Kadlic@omb.eop.gov*.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.*, new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: December 15, 2003.

Angela C. Arrington,

Leader, Regulatory Information Management Group, Office of the Chief Information Officer.

Office of Innovation and Improvement

Type of Review: New.

Title: Application for Grants under the State Charter School Facilities Incentive Grant Program.

Frequency: Annually.

Affected Public: State, local, or tribal gov't, SEAs or LEAs.

	Responses	Burden hours
Reporting and recordkeeping hour burden:	12	4,800

Abstract: This is a grant application for a program to give States incentive grants to establish new or enhance existing per-pupil facilities aid programs for charter schools.

This information collection is being submitted under the Streamlined Clearance Process for Discretionary Grant Information Collections (1890–0001). Therefore, the 30-day public comment period notice will be the only public comment notice published for this information collection.

Requests for copies of the submission for OMB review; comment request may be accessed from *http://edicsweb.ed.gov*, by selecting the "Browse Pending Collections" link and by clicking on link number 2424. When you access the information collection, click on "Download Attachments" to view. Written requests for information should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW., Room 4050, Regional Office Building 3, Washington, DC 20202–4651, or to the e-mail address *vivan.reese@ed.gov*. Requests may also be electronically mailed to the Internet address *OCIO_RIMG@ed.gov* or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Kathy Axt at her e-mail address *Kathy.Axt@ed.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 03–31222 Filed 12–17–03; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Office of Vocational and Adult Education, Department of Education; Notice of Intent to Award Grantback Funds to the Commonwealth of Massachusetts Department of Education

SUMMARY: Under section 459 of the General Education Provisions Act (GEPA), 20 U.S.C. 1234h, the Secretary of Education (Secretary) intends to repay to the Commonwealth of Massachusetts Department of Education (MADOE), under a grantback agreement, an amount equal to 75 percent of the principal amount of funds recovered by the U.S. Department of Education (Department) in resolution of findings 42, 51, 54, 57, and 60 of the State's Single Audit Reports for the years ended June 30, 1997 (ACN: 01–97–88064); June 30, 1998 (ACN: 01–98–08038); and June 30, 1999 (ACN: 01–99–08038), respectively. The Department's recovery of funds followed two settlement agreements executed by the parties under which the MADOE refunded $2,432,628 to the Department in full resolution of the findings noted above. The MADOE has submitted to the Department a grantback application in accordance with section 459(a) of GEPA. This notice describes the MADOE's plan for use of the repaid funds and the terms and conditions under which the Secretary intends to make those funds available. This notice also invites comments on the proposed grantback.

DATES: We must receive your comments on or before January 20, 2004.

ADDRESSES: All written comments should be addressed to Maurice James, Chief, State Administration Branch, Office of Vocational and Adult Education, U.S. Department of Education, 400 Maryland Avenue, SW., Mary E. Switzer Building, Room 4319, MS 7323, Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: Maurice James. Telephone: (202) 205–8781 or via Internet at: *maurice.james@ed.gov*.

If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

A. Background

Under two settlement agreements between the Department and the MADOE, the Department recovered $3,841,433 from the MADOE in full resolution of claims arising under the Carl D. Perkins Vocational and Technical Education Act of 1998 (Perkins III), 20 U.S.C. 2301 *et seq.*, the Elementary and Secondary Education Act of 1965, as amended, 20 U.S.C. 6301 *et seq.*, and the Individuals with Disabilities Education Act, as amended, 20 U.S.C. 1401, 1411–1419. Of the total amount recovered under the two agreements, $2,432,628 resolved Perkins III-related findings cited in Massachusetts' Single Audit Reports covering State fiscal years (FYs) 1997 (ACN: 01–97–88064), 1998 (ACN: 01–98–98009) and 1999 (ACN: 01–99–08038). In its grantback application, the MADOE requests repayment of 75 percent of the $2,432,628 recovered by the Department for Perkins III-related claims.

The Department's claim of $2,432,628 for Perkins III-related findings was contained in a May 25, 2001 program determination letter (PDL) and accompanying Matrix of Closed Findings (Matrix) issued by the Deputy Assistant Secretary for Vocational and Adult Education and other Department officials. The Matrix noted that the MADOE violated the Federal requirements governing matching and time distribution. Specifically, the MADOE failed to match, from non-Federal sources and on a dollar-for-dollar basis, Federal funds reserved for State administration. In addition, the MADOE failed to keep proper time distribution records for salaries and fringe benefits paid with Perkins III funds. These findings were resolved through the Department's Cooperative Audit Resolution and Oversight Initiative (CAROI).

The CARO process culminated in the two settlement agreements under which the MADOE refunded to the Department a principal amount of $2,432,628 for Perkins III-related claims. The settlement agreements were executed in May 2001. The Department received full payment for these determinations in October 2001.

B. Authority for Awarding a Grantback

Section 459(a) of GEPA, 20 U.S.C. 1234h(a), provides that whenever the Secretary has recovered funds following a final audit determination with respect to any applicable program, the Secretary may consider those funds to be additional funds available for the program and may arrange to repay to the State or local educational agency affected by that determination an amount not to exceed 75 percent of the recovered funds. The Secretary may enter into this grantback arrangement if the Secretary determines that—

(1) The practices or procedures of the recipient that resulted in the violation of law have been corrected and the recipient is in all other respects in compliance with the requirements of that program;

(2) The recipient has submitted to the Secretary a plan for the use of those funds pursuant to the requirements of that program and, to the extent possible, for the benefit of the population that was affected by the failure to comply or by the misuse of funds that resulted in the recovery; and

(3) The use of the funds in accordance with that plan would serve to achieve the purposes of the program under which the funds were originally paid.

C. Plan for Use of Funds Awarded Under a Grantback Arrangement

Pursuant to section 459(a)(2) of GEPA, the MADOE has applied for a grantback of $1,824,471, or 75 percent of the $2,432,628 refunded to the Department for Perkins III-related claims under the two settlement agreements, and has submitted a plan for use of the proposed grantback funds, consistent with Perkins III. The MADOE has implemented a system to address the requirement in Perkins III to match administration costs on a dollar-for-dollar basis. The MADOE will not count towards the match any State administrative expenditures for staff that are not 100 percent related to vocational education. The positions funded from Perkins III administrative funds will be supported by monthly time sheets, and their costs will be counted toward the match.

A May 2002 on-site monitoring visit by Department staff confirmed that the MADOE has implemented policies and procedures for the process and reconciliation of salary charges to Federal programs, including the Perkins III account. Adjustments will be made to the Federal accounts in a timely manner, and any excess charges will be the responsibility of the State. The salary adjustment plan that was implemented specified a monthly reporting requirement. There are no plans to alter these procedures. There were no questioned costs in this area based on the FY 2002 audit conducted by the independent public accounting firm of Deloitte and Touche.

D. Consultation in the Development of the Grantback Application

In developing the grantback application, the MADOE states that it solicited input from:

- Secondary and postsecondary educators in the State;
- Workforce training and development organizations;
- Massachusetts Community College Executive Office;
- Massachusetts Association of Vocational Administrators;
- Massachusetts Tech Prep Roundtable;
- Massachusetts Postsecondary Perkins Committee.

According to the MADOE, each constituency group reviewed and supported the identified priorities. The priorities include:

- Improving the transition of career and technical education (CTE) students from high school to college CTE programs;
- Supporting the development and implementation of Statewide secondary to postsecondary "pathways" in information technology, health and pre-engineering career fields;
- Increasing the participation and completion of CTE programs that lead to nontraditional training and employment;
- Increasing the pool of highly qualified vocational technical educators through a Web-based licensing and job bank system and an improved pre-service program for new vocational technical educators; and
- Providing support to Perkins-eligible secondary and postsecondary schools and colleges to add new CTE programs for occupations in information technology, health and pre-engineering, or to assist these schools and colleges in attaining national program approval or business and industry standards in these three areas.

The MADOE's grantback application indicates that the Executive Director for the Massachusetts Community College System is especially supportive of the grantback priority that focuses on the improvement of postsecondary CTE student retention and graduation rates. Approximately 50 percent of the proposed grantback activities will support a strengthened partnership between secondary and postsecondary education institutions.

E. Description of the State's Current Activities Under the Applicable Program

The MADOE's CTE unit is directly responsible for administering programs authorized under Perkins III. The unit is also responsible for approving programs under Charter 74 (the State law for CTE) and for providing technical assistance to school districts, community colleges, and other agencies on issues related to the transition from school to careers.

According to the MADOE, over the past three years, the CTE unit has focused its work on addressing the four core indicators in the State's Perkins accountability system. These efforts address:

- Improving academic and technical skill gains for secondary and postsecondary CTE students;
- Increasing the number of CTE students graduating from high school and receiving a two-year associate degree or a one- or two-year certificate;
- Improving the placement of students in technical careers related to their fields of study; and
- Increasing the number of students enrolled in and completing nontraditional programs.

To reach these goals the CTE unit has focused on:

- Supporting whole school restructuring through the State's membership in the *High Schools that Work* initiative. The State network is comprised of 30 high schools, including many of the most challenged schools in the Commonwealth;
- Offering State-sponsored professional development highlighting "best practices" that lead to improved student achievement. Perkins III local recipients provide high-quality professional development through the use of a mandated "15 percent or more set-aside" of State leadership funds. The State has designed its professional development programs in a manner intended to increase teachers' knowledge of academic and technical subject matter and to support school-wide academic initiatives in such areas as reading, writing and mathematics;
- Providing additional financial resources to school districts' CTE programs through the MADOE's "Academic Support Grants" to increase the number of CTE students passing the Massachusetts Comprehensive Assessment System exam (a requirement for receiving a high school diploma);
- Encouraging and supporting schools and colleges in applying for and receiving national program approval and helping students to earn industry or State-recognized credentials;
- Supporting the development of a career and technical assessment system that would lead to issuing a certificate of occupational proficiency;
- Providing strong tech-prep programs that lead to increased numbers of CTE students successfully transitioning to and completing two-year and four-year postsecondary programs of study; and
- Providing technical assistance and professional development specifically targeted to increasing the number of CTE students enrolling in and completing nontraditional programs.

In its grantback application, the MADOE states that for the past two years, the CTE unit's administration and staff have analyzed the data collected from their work addressing the four core indicators and identified particular areas of need for the focus of the grantback application. In addition, the Perkins program compliance audit, conducted in May 2002 by a team from the Department's Office of Vocational and Adult Education, and subsequent report support the need for the initiatives outlined in the grantback application.

F. Proposed Initiatives

The following is a description of the seven proposed initiatives, as outlined in the MADOE's grantback application:

(1) Successful transition of CTE students from high school to college—competitive grant program.

The MADOE proposes to offer a competitive request for proposal (RFP) to Perkins-eligible secondary and postsecondary institutions to develop collaborative programs that focus on intensive college transition and preparation programs for CTE high school students. This initiative would focus on the academic and technical preparedness needed for a student's success at the postsecondary level. Programs would include academic school year preparedness and transition activities with an intensive summer program for entering college students.

(2) Development and dissemination of Statewide secondary-to-postsecondary pathways in information technology, health and pre-engineering/engineering career fields.

The MADOE's CTE unit proposes to develop specific high school-to-college (four-year high school to one-year, two-year and four-year college) program pathways in health, information technology and engineering. Competencies, course and program sequencing, syllabi, curricula, articulation processes, workplace opportunities and assessment models will be identified in all three career areas. All of the resources produced as part of this initiative will be posted at the CTE unit's Web site for employers, schools and colleges. The CTE unit also will provide professional development opportunities to support Statewide implementation of the pathway models. This initiative will be aligned with and be part of the implementation of the new system to issue Certificates of Occupational Proficiency and the new Massachusetts Vocational-Technical Career 74 Regulations.

(3) Workplace models in high-wage, high-demand career and technical education pathways—competitive grant program.

The MADOE proposes to issue a competitive RFP to Perkins-eligible school districts and colleges to develop and provide workplace models in health, information technology and engineering program pathways. Program models must include intensive workplace projects, employer mentoring, academic and technical skill competency attainment related to course content, collaborative project development that includes industry employees and high school and college staff, and assessment of both product outcomes for industry and academic and technical skill gain by students.

(4) Increased participation in and completion of technical education programs that lead to nontraditional training and employment.

The MADOE is proposing a two-pronged study to alter current career and technical education enrollment patterns. A contractor will be selected through a competitive "request for response" (RFR) process to study the current nontraditional enrollment patterns in secondary career and technical education programs. The study will examine the underlying factors for selecting a career major and take into consideration any recent research done in the field. The study will also include actions that the MADOE and school districts can take to help alter current secondary career and technical education enrollment patterns.

(5) Web-based Perkins accountability system.

The MADOE proposes to develop a Web-based application for licensing vocational technical educators. This will be an enhancement to the State's current "Educator Licensure and Recruitment" system, known as ELAR. The system will allow applicants to request waivers, search jobs and post resumes, and make fee payments online. It will be linked to the State's educator preparation education programs and its vocational educator testing center. The new system will include an on-line faculty register that will be used by MADOE staff to ensure that all current vocational technical education teachers employed by school districts and collaboratives have the appropriate credentials.

(6) High-wage, high-demand career and technical education—competitive grant program.

The MADOE will issue a competitive RFP for Perkins-eligible secondary and postsecondary institutions with career and technical programs. Grantees will use funds either to begin a new CTE program in high-wage, high-demand fields within the three cluster areas or to update existing programs in those clusters to align with national program standards or industry-recognized certifications. The MADOE believes that there is an inadequate number of technically skilled workers to fill the jobs being created in technology-driven services. As a result of rapid growth in this sector, demand for professional and technical workers, including in fields requiring less than a four-year degree for entry-level positions, is expected to expand the fastest and generate the most new jobs in the State. It is also expected that engineering and architectural services will grow by 13 percent and generate 4,300 new jobs. Of the 25 fastest growing occupations in the State, more than half are related to information technology and health care.

(7) Vocational technical education teachers' pre-service training.

The Massachusetts Board of Education recently approved a new set of vocational technical education regulations that became effective on September 1, 2003. The teacher credentialing portion of the regulations contains a new provision that requires vocational technical education teacher candidates to earn 21 college degree credits in professional education courses. These courses include a three credit college degree seminar specifically designed for new teachers. New teachers will be required to take these courses in their first year of teaching. As part of the State's effort to prepare first-year vocational technical education teachers better, a "new teachers tool kit" will be developed in consultation with the State's three vocational technical educator preparation programs. The tool kit will

be based upon the professional standards for vocational technical education teachers contained in the regulations. Topics covered in the tool kit may include, but are not limited to, student grading, assigning and reviewing homework, classroom management, lesson planning, developing a course syllabus and project-based learning, and pertinent State and Federal laws and regulations.

G. The Secretary's Determination

The Secretary has carefully reviewed the plan submitted by the MADOE and other relevant documentation. Based upon that review, the Secretary has determined that the conditions under section 459(a) of GEPA have been met.

This determination is based upon the best information available to the Secretary at the present time. If this information is not accurate or complete, the Secretary is not precluded from taking appropriate administrative action. In finding that the conditions of section 459(a) of GEPA have been met, the Secretary makes no determination concerning any pending audit recommendations or other investigations.

H. Notice of the Secretary's Intent To Enter Into a Grantback Arrangement

Section 459(d) of GEPA requires that, at least 30 days before entering into an agreement to award funds under a grantback arrangement, the Secretary publish in the **Federal Register** a notice of intent to do so, and the terms and conditions under which the payment will be made.

In accordance with section 459(d) of GEPA, notice is hereby given that the Secretary intends to make funds available to the MADOE under a grantback agreement. The grantback award would be in the amount of $1,824,471, which is 75 percent—the maximum percentage authorized by GEPA—of the principal recovered by the Department as a result of the final audit determinations and resolution of the Perkins III-related claims.

I. Terms and Conditions Under Which Payments Under a Grantback Arrangement Would Be Made

The MADOE has agreed to comply with the following terms and conditions under which payment under a grantback arrangement would be made:

(1) The MADOE will expend the funds awarded under the grantback in accordance with —

(a) All applicable statutory and regulatory requirements, and

(b) The plan that was submitted and any amendments to the plan that are approved in advance by the Secretary; and

(2) All funds received under this grantback arrangement must be obligated by September 30, 2004, in accordance with section 459(c) of GEPA and the MADOE's plan;

(3) The MADOE will, no later than 90 calendar days after the expiration date of the approved grantback award, submit a report to the Secretary that—

(a) Indicates that the funds awarded under the grantback have been expended in accordance with the proposed plan, and

(b) Describes the results and effectiveness of the projects for which the funds were spent; and

(4) Separate accounting records must be maintained documenting the expenditures of funds awarded under the grantback arrangement.

Electronic Access to This Document

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *www.ed.gov/legislation/FedRegister*.

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.access.gpo/nara/index.html*.

(Catalog of Federal Domestic Assistance Number 84.048, Basic State Grants for Vocational Education)

Dated: December 11, 2003.

Richard T. LaPointe,

Deputy Assistant Secretary for Vocational and Adult Education.

[FR Doc. 03–31010 Filed 12–17–03; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC04–35–000, et al.]

Madison Gas and Electric Company, et al.; Electric Rate and Corporate Filings

December 10, 2003.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. Madison Gas and Electric Company; MGE Energy, Inc.; MGE Power LLC; MGE Power West Campus LLC

[Docket Nos. EC04–35–000 and EL04–32–000]

Take notice that on December 5, 2003, Madison Gas and Electric Company, MGE Energy, Inc., MGE Power LLC and MGE Power West Campus filed an Application for Approval of the Disposition of Jurisdictional Facilities under section 203 of the Federal Power Act, 16 U.S.C. 824b (2000), and Petition for Declaratory Order. MGE Power West Campus, a non-utility subsidiary of MGE Energy and MGE Power, states that it will develop, construct and own generating assets and associated interconnection facilities and lease those facilities under a long-term lease to its corporate affiliate, MGE.

Comment Date: December 29, 2003.

2. Duquesne Power, L.P.

[Docket No. EG04–21–000]

Take notice that on December 8, 2003, Duquesne Power, L.P., (applicant) filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to part 365 of the Commission's regulations. The applicant is a limited partnership that will engage directly or indirectly and exclusively in the business of owning and/or operating eligible facilities in the United States and selling electric energy at wholesale. The applicant states that it proposes to own and operate an approximately 436 megawatt four-unit coal-fired generating station located in Shamokin Dam, Pennsylvania. The applicant states that it is seeking a determination of its exempt wholesale generator status and all electric energy sold by the applicant will be sold exclusively at wholesale.

Comment Date: December 29, 2003.

Standard Paragraph

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov*, using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number filed to access the document. For assistance, call (202) 502–8222 or TTY, (202) 502–8659. Protests and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Magalie R. Salas,

Secretary.

[FR Doc. E3–00589 Filed 12–17–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–398–000]

Northern Natural Gas Company; Notice of Informal Settlement Conference

December 12, 2003.

Take notice that an informal settlement conference will be convened in this proceeding commencing at 10 a.m. on Tuesday, December 16, 2003 and if necessary, 9 a.m. on Wednesday, December 17, 2003 at the offices of the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC, 20426, for the purpose of exploring the possible settlement of the above-referenced docket.

Any party, as defined by 18 CFR 385.102(c), or any participant as defined by 18 CFR 385.102(b), is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations (18 CFR 385.214).

For additional information, please contact Michael Cotleur (202) 502–8519 *michael.cotleur@ferc.gov*, William Collins (202) 502–8248 *william.collins@ferc.gov*, or Kevin Frank (202) 502–8065 *kevin.frank@ferc.gov*.

Magalie R. Salas,

Secretary.

[FR Doc. E3–00590 Filed 12–17–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM98–1–000]

Records Governing Off-the Record Communications; Public Notice

December 12, 2003.

This constitutes notice, in accordance with 18 CFR 385.2201(b), of the receipt of exempt and prohibited off-the-record communications.

Order No. 607 (64 FR 51222, September 22, 1999) requires Commission decisional employees, who make or receive an exempt or prohibited off-the-record communication relevant to the merit's of a contested on-the-record proceeding, to deliver a copy of the communication, if written, or a summary of the substance of any oral communication, to the Secretary.

Prohibited communications will be included in a public, non-decisional file associated with, but not a part of, the decisional record of the proceeding. Unless the Commission determines that the prohibited communication and any responses thereto should become a part of the decisional record, the prohibited off-the-record communication will not be considered by the Commission in reaching its decision. Parties to a proceeding may seek the opportunity to respond to any facts or contentions made in a prohibited off-the-record communication, and may request that the Commission place the prohibited communication and responses thereto in the decisional record. The Commission will grant such a request only when it determines that fairness so requires. Any person identified below as having made a prohibited off-the-record communication shall serve the document on all parties listed on the official service list for the applicable proceeding in accordance with Rule 2010, 18 CFR 385.2010.

Exempt off-the-record communications will be included in the decisional record of the proceeding, unless the communication was with a cooperating agency as described by 40 CFR 1501.6, made under 18 CFR 385.2201(e)(1)(v).

The following is a list of prohibited and exempt communications recently received in the Office of the Secretary. The communications listed are grouped by docket numbers. These filings are available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary (FERRIS) link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC, Online Support at *FERCOnlineSupport@ferc.gov* or toll free at (866)208–3676, or for TTY, contact (202)502–8659.

EXEMPT

Docket No.	Date filed	Presenter or requester
1. Project No. 2232–407	11–28–03	Hon. John Edwards.
2. Docket No. CP02–90–000	12–2–03	James Martin.
3. Docket No. CP02–78–000	12–2–03	Linda Kokemuller, *et al.*
4. Project No. 2030–000	12–4–03	Peter Lickwar.
5. Project No. 2086–000	12–12–03	Dr. Knox Mellon.

Magalie R. Salas,
Secretary.
[FR Doc. E3–00591 Filed 12–17–03; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Public Utility District No. 2 of Grant Project No. P–2114–116; County Washington; Errata Notice

December 12, 2003.

On November 3, 2003, the Commission issued a "Notice of Application Tendered for Filing with the Commission, Soliciting Additional Study Requests, and Establishing Procedural Schedule for Relicensing and a Deadline for Submission of Final Amendments" in the above-referenced proceeding.

Item "1." of the referenced Notice read "Deadline for filing additional study requests and requests for agency cooperating status: December 22, 2003." The date should have been: December 29, 2003.

Magalie R. Salas,
Secretary.
[FR Doc. E3–00592 Filed 12–17–03; 8:45 am]
BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7599–8]

Notice of Request for Initial Proposals (IPs) for Projects To Be Funded From the Water Quality Cooperative Agreement Allocation (CFDA 66.463—Water Quality Cooperative Agreements)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA is soliciting Initial Proposals (IPs) from States, Tribes, local governments, universities, non-profits, and other eligible entities, as shown below in the section called Eligible Applicants, interested in applying for Federal assistance for Water Quality Cooperative Agreements (CFDA 66.463) under the Clean Water Act (CWA) section 104(b)(3). EPA Headquarters intends to award an estimated $3.5 million to eligible applicants through assistance agreements ranging in size from $10,000 up to $500,000 for Water Quality Cooperative Agreements, which are for unique and innovative projects that address the requirements of the National Pollutant Discharge Elimination Systems (NPDES) program with special emphasis on wet weather activities, *i.e.*, storm water, combined sewer overflows, sanitary sewer overflows, and concentrated animal feeding operations as well as projects that enhance the ability of the regulated community to deal with non-traditional pollution problems in priority watersheds. From the IPs received, EPA estimates that 30 to 35 projects may be selected to submit full applications.

The Agency intends to make available at least $200,000 per year of the annual appropriation for Water Quality Cooperative Agreements, from FY 2004 through FY 2005, for projects which address cooling water intake issues to include technical and environmental studies. The Agency has made available $600,000 from FY 2001 through FY 2003. It is expected that the $200,000 available for cooling water intake projects in FY 2004 will be used to fund a project approved in a prior year.

The Agency reserves the right to reject all IPs and make no awards.

DATES: EPA will consider all IPs received on or before 5 p.m. Eastern Time, February 17, 2004. IPs received after the due date, may be reviewed at EPA's discretion.

ADDRESSES: It is preferred that IPs be electronically mailed (E-mailed) to *WQCA2004@EPA.GOV*. If mailed through the postal service or other means, three copies should be sent to: Barry Benroth, 4204M, WQCA2004 U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460.

The following address must be used for delivery of the copies by an overnight delivery or courier service: Barry Benroth, 4204M, WQCA2004, Phone 202–564–0672, U.S. Environmental Protection Agency, Room 7324 J, EPA East, 1201 Constitution Avenue, NW., Washington, DC 20004.

FOR FURTHER INFORMATION CONTACT: Barry Benroth by telephone at 202–564–0672 or by E-mail at *benroth.barry@epa.gov*.

SUPPLEMENTARY INFORMATION:

Purpose of This Request Is for Initial Proposals

The Office of Wastewater Management, Office of Water at EPA Headquarters is requesting IPs from States, Tribes, local governments, non-profit organizations and other eligible entities under the Clean Water Act Section 104(b)(3) for unique and innovative projects that address the requirements of the National Pollutant Discharge Elimination Systems (NPDES) program with special emphasis on wet weather activities, *i.e.*, storm water, and concentrated animal feeding operations as well as projects that enhance the ability of the regulated community to deal with non-traditional pollution problems in priority watersheds.

An organization whose IP is selected for possible Federal assistance must complete an EPA Application for Assistance, including the Federal SF–424 form (Application for Federal Assistance, *see* 40 CFR 30.12 and 31.10).

Organizations who have an existing agreement under this program are eligible to compete with proposals for new awards.

The Office of Wastewater Management, Office of Water, EPA Headquarters Has Identified the Following High Priority Areas for Consideration

Assistance agreements awarded under Section 104(b)(3) may only be used to conduct and promote the coordination and acceleration of activities such as research, investigations, experiments, training, education, demonstrations, surveys, and studies relating to the causes, effect, extent, prevention, reduction, and elimination of water pollution. These activities, while not defined in the statute, advance the state of knowledge, gather information, or transfer information. For instance, "demonstrations" are generally projects that demonstrate new or experimental technologies, methods, or approaches and the results of the project will be disseminated so that others can benefit from the knowledge gained. A project that is accomplished through the performance of routine, traditional, or established practices, or a project that is simply intended to carry out a task rather than transfer information or advance the state of knowledge, however worthwhile the project may be, is not a demonstration. Research projects may include the application of established practices when they contribute to learning about an environmental concept or problem.

The Office of Wastewater Management at EPA Headquarters has identified several subject areas for priority consideration. EPA will award Assistance Agreements for research, investigations, experiments, training, demonstrations, surveys and studies related to the causes, effects, extent, prevention, reduction, and elimination of water pollution in the subject areas shown below in bold. Example projects are shown for each area.

Water and Wastewater Infrastructure

Benefits assessment of wastewater infrastructure investments including funding from the Clean Water State Revolving Fund program.

Tools, techniques, benchmarking, or training for more efficient wastewater and other systems performance.

Capacity development for Tribes, Native Villages, and small communities to effectively operate and maintain water and wastewater treatment facilities.

Innovative water efficiency programs or techniques to reduce infrastructure costs or municipal water use.

Demonstration of remote techniques for assessing the performance and environmental impacts of on-site/decentralized wastewater systems.

Innovative approaches or methods to reduce risk or impact of terrorist or other attacks to integrity and effectiveness of wastewater collections and treatment.

Impacts of Wet Weather Flows

Test results achieved by peak excess flow technologies in collection systems at CSO outfalls and at treatment plants, and test performance of devices before and after blending. Testing may include pollutants in effluent or ambient settings.

Measure, or develop tools to determine the effectiveness of storm water BMPs.

Develop and pilot storm water discharge and ambient water monitoring techniques for gauging water quality improvements.

Develop and pilot sample performance measures for use by small Municipal Separate Storm Sewer Systems (MS4s) to incorporate into storm water management plans.

Outreach on low impact development (LID) and its potential uses.

Provide tools to help permitees select options and overcome barriers in storm water pollution prevention plan development.

Pathogens

Conduct studies on monitoring pathogens in wastewater and biosolids, including bacterial, viruses and parasites.

Conduct studies on treatability of pathogens in wastewater.

Characterization of impacts of PH levels on municipal infrastructure systems (pretreatment discharges to POTWs).

National Pollutant Discharge Elimination System (NPDES) Program Strategies To Implement Watershed-based Efforts

Conduct a demonstration project that provides support to facilitate watershed-based permitting and trading.

Develop and pilot innovative techniques to facilitate NPDES program management for enhanced results, integrity and/or efficiency.

Animal Feeding Operations

Develop and demonstrate innovative or alternative technologies for CAFOs to treat/process wastewater or manage manure.

CAFO producer outreach programs to train/educate the industry on implementation of the CAFO rule.

EPA may also consider other project areas for funding to the extent authorized by CWA section 104(b)(3) and to the extent funds are available for such project areas.

Statutory Authority, Applicable Regulations, and Funding Level

Water Quality Cooperative Agreements are awarded under the authority of section 104(b)(3) of the Clean Water Act (33 U.S.C. 1254(b)(3)).

The regulations governing the award and administration of Water Quality Cooperative Agreements are 40 CFR part 30 (for institutions of higher learning, hospitals, and other non-profit organizations) and 40 CFR part 31 and 40 CFR part 35, subparts A and B (for States, Tribes, local governments, intertribal consortia, and interstate agencies).

Applicants requested to submit a full application (SF–424) will be required to comply with Intergovernmental Review requirements (40 CFR part 29).

Applicants must provide a Dun and Bradstreet (D&B) Data Universal Numbering System (DUNS) number with the full application. Organizations may obtain the number by calling, toll free, 1–866–705–5711.

Total funding available for award by Headquarters will depend on EPA's appropriation for Fiscal Year 2004; however, it is estimated that $3.5 million will be available for funding approved projects. The average size of an award is anticipated to be approximately $100,000.

Construction projects, except for the construction required to carry out a demonstration project, and acquisition of land, are not eligible for funding under this program. New or on-going programs to implement environmental controls are not eligible for funding under this program.

Request for Initial Proposal Format and Contents

IPs should be limited to four pages. Full application packages should not be submitted at this time. It is recommended that confidential information not be included in the IP. The following format should be used for all IPs:

Name of Project:

Point of Contact: (Individual and Organization Name, Address, Phone Number, Fax Number, E-mail Address)

Is This a Continuation of a Previously Funded Project (if so, please provide the number and status of the current grant or cooperative agreement):

Proposed Award Amount:

Proposed Awardee Cost Share: (Cost sharing is not required)

Description of General Budget Proposed To Support Project:

Project Area: (based on areas of interest shown above)

Project Description: (Should not exceed three pages of single-spaced text)

Expected Accomplishments or Product, With Dates, Environmental Results and Interim Milestones: This section should also include a discussion of a communication plan for distributing the project results to interested parties.

Describe How the Project Meets the Evaluation Criteria Specified Below:

EPA IP Evaluation Criteria

EPA will award Water Quality Cooperative Agreements on a competitive basis and evaluate IPs based on the following criteria (maximum points for each element are shown).

- The relationship of the proposed project to the priorities identified in this notice. (5)
- How well the project proposes to address a nationally important need, issue, or interest. (30)
- Communication plan to transfer results of the project to other potentially interested parties. (25)
- How well the project furthers the goal of the Clean Water Act to prevent, reduce, and eliminate water pollution. (20)
- Leverage of other resources (*e.g.*, cost share, participation by other organizations) as part of the proposed approach. (10)
- Cost effectiveness and reasonableness of the proposal. (10)

The IPs will be evaluated by EPA staff on the elements shown above. Maximum points equals 100. EPA may consider IPs even if all criteria are not fully met, provided the proposed projects meet the applicable statutory and regulatory requirements and funds

are available for such projects. IPs which are not in compliance with the notice, *i.e.*, do not provide the required information, are submitted by ineligible applicants, are considered to be primarily construction projects, or are for the acquisition of land will not be considered.

IP Selection

Final selection of IPs will be made by the Director, Office of Wastewater Management. Selected organizations will be notified and requested to submit a full application. It is expected that unsuccessful applicants will be notified by e-mail.

Eligible Applicants

Eligible applicants for assistance agreements under section 104(b)(3) of the Clean Water Act are State water pollution control agencies, Tribal governments, intertribal consortia, interstate agencies, and other public or non-profit private agencies, institutions, organizations and individuals.

Application Procedure

Electronic transmittal of IPs is preferred to facilitate the review process. Hard copies are acceptable. Please send three copies of the IPs if it is not electronically transmitted.

Dispute Resolution Process

Procedures at 40 CFR 30.63 and 40 CFR 31.70 apply.

Type of Assistance

It is expected that all the awards under this program will be cooperative agreements. States, interstate agencies, federally recognized tribes, and intertribal consortia meeting the requirements at 40 CFR 35.504 may include the funds for Water Quality Cooperative Agreements in a Performance Partnership Grant (PPG) in accordance with the regulations governing PPGs at 40 CFR part 35, subparts A and B. For states and interstate agencies that choose to do so, the regulations provide that the work plan commitments that would have been included in the WQCA must be included in the PPG work plan. A description of the Agency's substantial involvement in cooperative agreements will be included in the final agreement.

Schedule of Activities

This is the estimated schedule of activities for submission, review of proposals and notification of selections:

February 17, 2004—RFIPs due to EPA.

March 29, 2004—Initial approvals identified and sponsors of projects selected for funding will be requested to submit a formal application package. Schedule may be modified based on the level of response.

A list of selected projects will be posted on the Office of Wastewater Management Web site *http://www.epa.gov/owm/wqca/2004.htm*. This web site may also contain additional information about this request. Deadline extensions, if any, will be posted on this web site and not in the **Federal Register**.

Dated: December 11, 2003.

Jane S. Moore,

Deputy Director, Office of Wastewater Management.

[FR Doc. 03–31236 Filed 12–17–03; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission, Comments Requested

December 10, 2003.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act (PRA) of 1995, Public Law No. 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act that does not display a valid control number. Comments are requested concerning (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written Paperwork Reduction Act (PRA) comments should be submitted on or before February 17, 2004. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all Paperwork Reduction Act (PRA) comments to Judith B. Herman, Federal Communications Commission, Room 1–C804, 445 12th Street, SW., Washington, DC 20554 or via the Internet to *Judith-B.Herman@fcc.gov*.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Judith B. Herman at 202–418–0214 or via the Internet at *Judith-B.Herman@fcc.gov*.

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–1046.

Title: Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, CC Docket No. 96–128, Report and Order.

Form No.: N/A.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents: 1,023 respondents; 7,140 responses.

Estimated Time Per Response: 100 hours.

Frequency of Response: Quarterly reporting requirement, third party disclosure requirement, and recordkeeping requirement.

Total Annual Burden: 714,000 hours.

Total Annual Cost: N/A.

Needs and Uses: The Commission issued a Report and Order in CC Docket No. 96–128, FCC 03–235, in which final rules were adopted that altered the previous payphone compensation rules. The new rules place the liability to compensate payphone service providers (PSPs) for payphone-originated calls on the facilities-based long distance carriers from whose switches such calls are completed. The new rules were not put in effect immediately to allow industry time to prepare for implementation of the new rules. Accordingly, the Order adopted interim rules initially adopted in the Second Order on Reconsideration until the new rules outlined in CC Docket No. 96–128 become effective. The interim rules received OMB approval on 11/14/03 and are currently in effect. The Commission is now seeking OMB approval of the final rules. The interim rules will be vacated and the new rules will go into effect on the first day of the next full quarter following the date of OMB approval.

OMB Control No.: 3060–0894.

Title: Certification Letter Accounting for Receipt of Federal Support—CC Docket Nos. 96–45 and 96–262.

Form No.: N/A.

Type of Review: Revision of a currently approved collection.

Respondents: State, local or tribal government.

Number of Respondents: 52.

Estimated Time Per Response: 3–5 hours.

Frequency of Response: On occasion and annual reporting requirements.

Total Annual Burden: 162 hours.

Total Annual Cost: N/A.

Needs and Uses: The Commission requires states to certify that carriers within the state had accounted for its receipt of federal support in its rates or otherwise used the support pursuant with Section 254(e). In an Order on Remand, the Commission modifies the high-cost universal service support mechanism for non-rural carriers and adopts measures to induce states to ensure reasonable comparability of rural and urban rates in areas served by non-rural carriers.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 03–31155 Filed 12–17–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[DA 03–3178]

Freeze on High Power Use of the 460–470 MHz Band Extended

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: In this document the Federal Communications Commission (FCC) announces that its freeze on the filing of applications for high power operations on 12.5 kHz offset channels in the private land mobile radio 460–470 MHz band, which had been originally set to expire October 16, 2003, will instead be extended. In June 2000, the FCC established the Wireless Medical Telemetry Service (WMTS), and allotted a total of 13.5 megahertz of spectrum on a primary basis in three blocks (608–614 MHz, 395–1400 MHz, and 1427–1429.5). To prevent potential interference to medical telemetry operations the FCC froze applications for high power use of offset channels in the 460–470 MHz band on October 16, 2000 for a period not to exceed three years. Thus, the freeze was set to expire on October 16, 2003. The purpose of the three year freeze was to give hospitals sufficient time to migrate their medical telemetry operations from the 460–470 MHz band to the new WMTS bands.

DATES: For up to 180 days after October 16, 2003, the freeze on the filing of applications for high power operations on 12.5 kHz offset channels in the private land mobile radio 460–470 MHz band, will continue in the "freeze" status.

FOR FURTHER INFORMATION CONTACT: John Kuzma, P.E., *john.kuzma@fcc.gov*, Public Safety and Private Wireless Division, Wireless Telecommunications Bureau, (202) 418–7479, or TTY (202) 418–7233.

SUPPLEMENTARY INFORMATION: This is a summary of FCC Public Notice, DA 03–3178, released October 15, 2003. The full text of this document is available for inspection and copying during normal business hours in the FCC Reference Center, 445 12th Street, SW., Washington, DC 20554. The complete text may be purchased from the FCC's copy contractor, Qualex International, 445 12th Street, SW., Room CY–B402, Washington, DC 20554. The full text may also be downloaded at: *http://www.fcc.gov/wtb*. Alternative formats are available to persons with disabilities by contacting Brian Millin at (202) 418–7426 or TTY (202) 418–7365 or at *bmillin@fcc.gov*.

1. On September 23, 2003, the American Hospital Association (AHA) reported that, based on its recent, informal polling of hospitals, there has been virtually no migration of medical telemetry systems to the WMTS frequencies. AHA notes that high power use in the 460–470 MHz band has the potential to interfere with existing medical telemetry systems that have not moved to the WMTS frequencies and has proposed a thirty-month plan for the transition of medical telemetry equipment into the WMTS frequencies.

2. The decision to extend the freeze is procedural in nature and therefore not subject to the notice and comment and effective date requirements of the Administrative Procedure Act. Moreover, there is good cause for not using notice and comment procedures in this case, or making the freeze extension effective 30 days after publication in the **Federal Register**. The FCC finds that such procedures would be impractical, unnecessary and contrary to the public interest as our compliance would undermine the public policy rationale of the freeze in the first place. The decision to impose a temporary extension of the freeze is not intended to reflect on the ultimate resolution of the use of this band, but is intended to maintain the FCC's regulatory options in the band pending the resolution of such issues described herein and to the continue to protect against harmful interference to medical telemetry operations pending such resolutions. This action is authorized under sections 4(i), 4(j), and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), 303(r), and is taken under delegated authority pursuant to §§ 0.131 and 0.331 of the Commission's rules, 47 CFR 0.131, 0.331.

Federal Communications Commission.

Ramona Melson,

Deputy Chief, Public Safety and Private Wireless Division.

[FR Doc. 03–31217 Filed 12–17–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Notice of information collections to be submitted to OMB for review and approval under the Paperwork Reduction Act of 1995.

SUMMARY: In accordance with requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the FDIC hereby gives notice that it plans to submit to the Office of Management and Budget (OMB) a request for OMB review and approval of the following information collection systems described below.

1. *Type of Review:* Renewal of a currently approved collection.

Title: Application for Consent to Exercise Trust Powers.

Form Number: 6200/09.

OMB Number: 3064–0025.

Annual Burden:

Estimated annual number of respondents: 18.

Estimated time per response: 14 applications—8 hours; 4 applications—24 hours.

Total annual burden hours: 208 hours.

Expiration Date of OMB Clearance: January 31, 2004.

SUPPLEMENTARY INFORMATION: Insured State nonmember banks submit applications to FDIC for consent to exercise trust powers. Applications are evaluated by FDIC to verify qualifications of bank management to administer a trust department and to ensure that bank's financial condition will not be jeopardized as a result of trust operations.

2. *Type of Review:* Renewal of a Currently Approved Collection.

Title: Appraisal Standards.
OMB Number: 3064–0103.
Annual Burden:
Estimated annual number of respondents: 5,346.
Estimated number of responses: 328,600.
Estimated time per response: 15 minutes.
Average annual burden hours: 82,150 hours.
Expiration Date of OMB Clearance: February 29, 2004.

SUPPLEMENTARY INFORMATION: FIRREA directs the FDIC to prescribe appropriate standards for the performance of real estate appraisals in connection with federally related transactions under its jurisdiction. The information collection activities attributable to 12 CFR part 323 are a direct consequence of the statutory requirements and the legislative intent.

DATES: Comments on these collections of information are welcome and should be submitted on or before January 20, 2004, to both the OMB reviewer and the FDIC contact listed below.

ADDRESSES: Information about this submission, including copies of the proposed collections of information, may be obtained by calling or writing the FDIC contact listed below.

- *Mail:* Leneta G. Gregorie, (202) 898–3719, Legal Division, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.

Joseph F. Lackey, Jr., Office of Management and Budget, Office of Information and Regulatory Affairs, New Executive Office Building, Room 10236, Washington, DC 20503.

Dated: December 10, 2003.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. E3–00555 Filed 12–17–03; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than January 2, 2004.

A. Federal Reserve Bank of Richmond (A. Linwood Gill, III, Vice President) 701 East Byrd Street, Richmond, Virginia 23261-4528:

1. Herman Eugene Ratchford, Triangle Real Estate of Gastonia, Inc., Herman Eugene Ratchford, Jr., and James Henry Ratchford, all of Gastonia, North Carolina, as a group acting in concert to acquire voting shares of First South Bancorp, Inc., Spartanburg, South Carolina, and thereby indirectly acquire voting shares of First South Bank, Spartanburg, South Carolina.

Board of Governors of the Federal Reserve System, December 12, 2003.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E3–00587 Filed 12–17–03; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center Web site at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than January 12, 2004.

A. Federal Reserve Bank of Boston (Richard Walker, Community Affairs Officer) 600 Atlantic Avenue, Boston, Massachusetts 02106-2204:

1. Manulife Financial Corporation, Toronto, Canada; to become a bank holding company by acquiring 100 percent of the voting shares of John Hancock Financial Services, Inc., Boston, Massachusetts, and thereby indirectly acquire First Signature Bank and Trust Company, Portsmouth, New Hampshire.

In connection with this application, John Hancock Financial Services, Inc., Boston, Massachusetts; to become a bank holding company by acquiring 100 percent of the voting shares of First Signature Bank and Trust Company, Portsmouth, New Hampshire.

B. Federal Reserve Bank of Richmond (A. Linwood Gill, III, Vice President) 701 East Byrd Street, Richmond, Virginia 23261-4528:

1. Community Capital Corporation, Greenwood, South Carolina; to merge with Abbeville Capital Corporation, Abbeville, South Carolina, and thereby indirectly acquire The Bank of Abbeville, Abbeville, South Carolina.

C. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166-2034:

1. Home Bancshares, Inc., Conway, Arkansas; to retain 32.25 percent of the voting shares of TCBancorp, Inc., North Little Rock, Arkansas, and thereby indirectly retain voting shares of Twin City Bank, North Little Rock, Arkansas.

Board of Governors of the Federal Reserve System, December 12, 2003.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E3–00586 Filed 12–17–03; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Federal Open Market Committee; Domestic Policy Directive of October 28, 2003

In accordance with § 271.25 of its rules regarding availability of information (12 CFR part 271), there is set forth below the domestic policy directive issued by the Federal Open Market Committee at its meeting held on October 28, 2003.[1]

The Federal Open Market Committee seeks monetary and financial conditions that will foster price stability and promote sustainable growth in output. To further its long-run objectives, the Committee in the immediate future seeks conditions in reserve markets consistent with maintaining the federal funds rate at an average of around 1 percent.

By order of the Federal Open Market Committee, December 12, 2003.

Vincent R. Reinhart,

Secretary, Federal Open Market Committee.

[FR Doc. E3–00588 Field 12–17–03; 8:45 am]

BILLING CODE 6210–01–S

[1] Copies of the Minutes of the Federal Open Market Committee meeting on October 28, 2003, which includes the domestic policy directive issued at the meeting, are available upon request to the Board of Governors of the Federal Reserve System, Washington, DC 20551. The minutes are published in the Federal Reserve Bulletin and in the Board's annual report.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Office of Public Health and Science; Statements of Organizations, Functions, and Delegations of Authority

Part A, Office of the Secretary (OS) of the Statement of Organization, Functions, and Delegation of Authority for the Department of Health and Human Services (HHS), chapter AC, Office of Public Health and Science (OPHS), as last amended at 67 FR 71568, dated December 2, 2002, is being amended to reflect the realignment of personnel oversight, administration, and management functions for the U.S. Public Health Service (PHS) Commissioned Corps in the OPHS. Specifically, it realigns these functions in a newly established Office of Commissioned Corps Force Management (ACQ) and in the Office of the Surgeon General (ACM). The changes are as follows:

I. *Under Part A, Chapter AC, Office of Public Health and Science, make the following changes:*

A. Under Paragraph AC.10 Organization, insert the following line at the end of the listing:

N. Office of Commissioned Corps Force Management (ACQ)

B. Under Paragraph AC.20, Functions, make the following changes:

1. Delete Paragraph, "K. Office of the Surgeon General (ACM)," in its entirety and replace with the following:

K. Office of the Surgeon General (ACM)

Section ACM.00 Mission—The Office of the Surgeon General (OSG) is headed by the SG who reports to the Assistant Secretary for Health (ASH), provides staff support for: (1) Activities relating to membership on the Board of Regents of the Uniformed Services University of the Health Sciences and as principal health official for PHS on matters related to policies affecting PHS faculty and students (10 U.S.C. 2113(a)(3)); (2) activities related to responsibilities on other boards are assigned, including the (a) National Library of Medicine; (b) Armed Forces Institute of Pathology (AFIP); (c) American Medical Association (AMA) House of Delegates; and (d) Executive Committee, Association of Military Surgeons of the United States. The Office provides support to the SG; (3) in issuing warnings to the public on identified health hazards; (4) for review of the particulars of Department of Defense (DoD) plans for transportation, open testing and disposal of lethal chemicals and biological agents and in recommending precautions necessary to protect the public health and safety binding on the Secretary, DoD, which can only be overridden by the President (50 U.S.C. 1512 (2) & (3)); (5) communicating with professional societies to receive, solicit, and channel concerns regarding health policy in behalf of the ASH; (6) maintaining liaison with the Surgeons General of the Armed Forces and the Department of Veterans Affairs; (7) representing PHS at national and international health and professional meetings to interpret PHS philosophy, policies, organizational responsibilities and programs, as assigned; (8) providing management and oversight for the community-based, civilian Medical Reserve Corps program; (9) providing liaison with governmental and non-governmental organizations on matters pertaining to military and veterans affairs; and, (10) assuring day-to-day management of the Corps' operations, force readiness, and field command of deployments of the Commissioned Corps.

Section ACM.10 Organization: includes the following components:

- Immediate Office of the Surgeon General (ACM)
- Office of Science and Communications (ACM1)
- Office of Commissioned Corps Operations (ACM2)
- Office of Force Readiness and Deployment (ACM3)
- Office of Reserve Affairs (ACM4)

Section ACM.20 Functions:

(a) Immediate Office of the Surgeon General (ACM): (1) Advises the ASH on matters relating to protecting and advancing the public health of the Nation; (2) manages special deployments that address Presidential and Secretarial initiatives directed toward resolving critical public health problems; (3) as requested, serves as a spokesperson on behalf of the Secretary and the ASH, addressing the quality of public health practice on the Nation; (4) provides supervision of activities relating to the day-to-day management of operations and deployment of officers of the Commissioned Corps; (5) provides advice to the ASH, collaborating with the Office of Commissioned Corps Management (OCCFM), on the policies and implementation related to the appointment, promotion, assimilation, recognition, professional development, and other matters required for the efficient management of the Corps; (6) provides liaison with governmental and non-governmental organizations on matters pertaining to military and veterans affairs; (7) directs and oversees internal office administrative operations (including proposing and executing office budgets); and (8) convenes periodic meetings of the flag officers to obtain senior level advice concerning the day-to-day management of Corps' operations.

(b) Office of Science and Communications (ACM1): (1) Coordinates activities to plan, develop, introduce, and evaluate Surgeon General's Reports, Calls-to-Action, workshops, and other authoritative statements; (2) advises the SG on science, data, and evidence pertaining to population-based public health and the furtherance of public health priorities; (3) represents the SG in efforts to coordinate federal public health activities with similar activities in the States and local areas, (4) coordinates and is responsible for the preparation of SG correspondence, speeches, and communications; (5) represents the SG at conferences, symposia, and community events; and (6) coordinates the receipt of senior level advice from the Chief Professional Officers, the Surgeon General's Professional Advisory Council, and categorical Professional Advisory Committees.

(c) Office of Commissioned Corps Operations (ACM2):

Section ACM2.00 Mission: (1) Provides advice to the SG on matters related to the day-to-day management of Commissioned Corps operations,

including active duty and reserve components; (2) implements the policies established by the ASH for the operations of the PHS Commissioned Corps; (3) provides for the delivery of training and for career development, and applies professional credentialing requirements for the Corps; (4) manages systems required for selecting personnel for appointment, promotion, assimilation, and award recognition, for evaluating officer performance, and for processes required for disability retirement, disciplinary, and other-than-honorable discharge purposes; (5) implements officer and force accession plans through a staff of recruiters, including an Associate Recruiters Program; (6) manages personnel administration systems for the permanent or temporary assignment, deployment, and detail of Corps members; (7) implements policies established by the ASH for commissioned and warrant officers on active duty, Commissioned Officer Student Training Extern Program (COSTEP), reserve officers, retired officers, and survivors of deceased officers; (8) prepares all personnel orders for approval and signature by the ASH; (9) makes recommendations to the SG on individual details for review and action by the ASH; (10) reviews and makes recommendations on proposed blanket personnel agreements negotiated by the ASH; (11) reviews and makes recommendations on the temporary deployments of officers not specifically under an assignment to another Operating or Staff Division of the Department or another Department or agency covered by a memorandum of agreement or blanket detail agreement; (12) provides technical review and recommendations to the SG on appeals of adverse actions that would result in the termination of officers' commissions and on formal Equal Employment Opportunity complaints; (13) maintains liaison with the OCCFM, and, as directed, with Departmental Operating and Staff Divisions and, as directed, with non-departmental entities to which officers are assigned under blanket agreements; and (14) works with OCCFM and agencies to identify career development assignments, and to identify officers to be recommended for directed reassignments where appropriate.

Section ACM2.10 Organization. The Office of Commissioned Corps Operations is headed by a Director, who reports to the SG, and includes the following components:

- Immediate Office of the Director (ACM2)
- Division of Commissioned Corps Recruitment (ACM21)
- Division of Commissioned Corps Assignment (ACM22)
- Division of Commissioned Corps Training and Career Development (ACM23)
- Division of Commissioned Corps Officer Support (ACM24)

Section ACM2 2.0 Functions

(1) Immediate Office of the Director (ACM2): (1) Advises the SG on all matters related to the operations management of the PHS Commissioned Corps; (2) provides for the day-to-day management of Commissioned Corps operations, implements policies received from the ASH for personnel, training, readiness, assignment, deployment, promotion, and retirement for all officers; (3) collaborates with OCCFM on the development and implementation of Commissioned Corps policies; (4) coordinates the application of information technology and support for the execution of OSG activities; (5) manages the process for adverse action decisions and other-than-honorable discharges; and (6) is responsible for the appropriate exercise of delegated authorities and responsibilities.

(2) Division of Commissioned Corps Recruitment (ACM21): (1) Implements approved programs to assure awareness of the Corps and its career opportunities among health professional schools and associations, provider institutions, and the public; (2) in accordance with policies, goals, and strategies established by the ASH, carries out programs and activities designed to attract new health personnel to the Corps, to attract officers already in the Corps to designated assignments, and to promote the Corps and service in it; (3) manages an Associate Recruiter Program and otherwise mobilizes recruitment activity among the active duty, reserve, and retired officers; (4) assists OCCFM in promoting the effective and efficient utilization of the Corps within all venues where the Corps is utilized; and (5) carries out approved recruitment programs specifically for reserve components and other Corps personnel asset programs.

(3) Division of Commissioned Corps Assignments (ACM22): (1) Addresses and meets the short-term and long-term placement requirements for active-duty and reserve component personnel established by the ASH and developed by OCCFM, including the Commissioned Corps and the warrant Corps, by category; (2) works with OCCFM to identify and categorize the types of assignments for which Corps members and its reserve personnel assets may be required; (3) implements a billet management system utilizing standards developed by OCCFM, and approved by the ASH; (4) evaluates and grades billets to which officers are to be assigned in accordance with standards established by OCCFM; (5) assures that assignments of officers and the billets to which assigned are consistent and appropriately categorized and identified; (6) reviews all proposed officer personnel actions and prepares orders for signature by the ASH; (7) implements, manages, and monitors approved blanket personnel agreements and individual details; (8) reviews and recommends to the ASH the temporary deployment of all officers not specifically under an assignment to another operating or staff division of the Department or another department or agency; and (9) administers a system to monitor assignments.

(4) Division of Commissioned Corps Training and Career Development (ACM23): (1) Identifies and manages training resources required for establishing and maintaining the readiness and proficiency of the members of the Corps; (2) operates Commissioned Officer education and training systems, providing basic, mid-career, and specialized training programs; (3) monitors officer compliance with credentialing standards; (4) implements career development programs and provides individual career counseling; (5) coordinates COSTEP; (6) administers training programs; and (7) assists officers with retirement planning.

(5) Division of Commissioned Corps Officer Support (ACM24): (1) Coordinates the assignment of members of boards convened for the purpose of recommending appointments, promotions, assimilation actions, approval of award nominations, disability retirements, and other boards that may be required to support operations; (2) supports the boards convened by OSG; (3) administers a system for assuring credentialing, licensing, and other regulatory compliance, and for the periodic evaluation of the individual members of the Corps, including Corps reserve personnel assets; (4) reviews all personnel evaluations to assure that Corps standards are being maintained; and (5) maintains the official personnel records of the Corps.

(d) Office of Force Readiness and Deployment (ACM3): (1) Administers readiness activities to include (a) advice to the ASH and OCCFM on strategic and long term readiness planning, (b) assurance of the accuracy and maintenance of an adequate roster of the readiness status of officers, (c) development and maintenance of systems for the tracking, mission critical training, mobilization, and deployment of commissioned officers; (d) supervision of a teaching staff charged with officer instruction using plans, strategies, and materials, consistent with policy developed by the ASH, necessary for officers to fulfill readiness and deployment standards; and (e) coordination of logistics for after-action requirements about deployments; (2) administers and oversees mobile medical teams and other special operations team activities and supports the OASPHEP with resources as required for emergency operations at headquarters and in the field; (3) provides day-to-day management and oversight of the USA Freedom Corps Medical Reserve Corps (MRC) program by: (a) Managing the MRC grant program and (b) providing technical assistance to MRC communities on a variety of community and outreach issues; (4) maintains liaison with the OSPHEP and other Federal entities as appropriate; and (5) manages and supervises temporary deployments of all officers not specifically under an assignment to another Operating or Staff Division of the Department or another Department or agency.

(e) Office of Reserve Affairs (ACM4): (1) Develops and maintains reserve components or assets, except for extended active duty reserve officers, in accordance with established plans; (2) serves as the SG's principal advisor on activities related to the preparedness and activation of the Corps reserve personnel assets; (3) in conjunction with the OCCFM conducts strategic and long-term planning for Corps reserve personnel assets; and (4) coordinates the assignments of Corps reserve personnel assets, to support the missions of HHS as well as those of the DoD, the U.S. Coast Guard, the National Oceanographic and Atmospheric Administration, the Department of Justice, and other federal, state, and local agencies.

2. At the end of Section AC.20 Functions, insert the following new component:

N. Office of Commissioned Corps Force Management (ACQ)

Section ACQ.00 Mission. The Office of Commissioned Corps Force Management (OCCFM), under the direction of a Director who reports to the ASH, (1) Develops policies and proposes regulations in order to carry out a comprehensive force management program for the Commissioned Corps; (2) convenes and manages policy and planning related boards and committees; (3) develops workforce and officer standards, conducts workforce planning for all components of the Commissioned Corps and evaluates workforce effectiveness; (4) maintains the Commissioned Corps Personnel Manual (CCPM); (5) in coordination with OPHS budget staff, prepares and executes the Commissioned Corps Personnel Services budget as established through the Service and Supply Fund Board and provides liaison with that Board; (6) serves as the Secretariat for the Public Health Service Commissioned Corps Council; (7) convenes periodic meetings of the flag officers, on behalf of the Secretary and chaired by the ASH, to obtain senior level policy advise; (8) develops policies and programs for the recruitment, appointment, promotion, assimilation, training, and evaluation of all commissioned and warrant officers of the Commissioned Corps; (9) establishes time lines, performance standards, and measurements for the evaluation of the operations and management of the Commissioned Corps; (10) works closely with the OSG to facilitate operations and implementation of policies and programs; and (11) oversees the Beneficiary Medical Program, systems for the compensation of members of the Corps, and the programs for survivor assistance, medical affairs, and any other function that may be conducted in behalf of the ASH under a contract or memorandum of agreement, or performed within any other component of the department.

Section ACQ.10 Organization. The Office of Commissioned Corps Force Management is headed by a Director, who reports to the ASH, and includes the following components:

- Immediate Office of the Director (ACQ)
- Recruitment, Marketing, and Information Systems Division (ACQ1)
- Workforce Policy and Plans Division (ACQ2)
- Program Evaluation and Oversight Division (ACQ3)

Section ACQ.20 Functions:

(a) Immediate Office of the Director (ACQ): (1) Advises the ASH on all matters related to the development of policies affecting all officers, whether active-duty, reserve, or retired; (2) convenes and manages policy and planning related boards and committees; (3) directs the development of issuances and maintenance of the Commissioned Corps Personnel Manual, including all policies and regulations requiring approval of the ASH or the Secretary; (4) develops and executes the budget for the operation of OCCFM, including contracted or subsidiary services; (5) reviews the Commissioned Corps Personnel Services budget as established through the Service and Supply Fund Board and provides liaison with that Board; (6) oversees the policy development and implementation for the activities carried out by the Program Support Center (PSC) and/or other contractors for the implementation of Corps-related services; (7) assures the availability of information technology and support for the execution of Commissioned Corps personnel activities for OCCFM and OSG; (8) works with external federal and non-federal organizations to develop memorandums of agreement and contracts as required for the effective management and oversight of the Corps, including the proper assignment of contracted duties and evaluation of contractor performance; and (9) collaborates with other elements of the Department as appropriate to acquire legal opinions and services as needed, and coordinates legislative activities.

(b) Recruitment, Marketing, and Information Systems Division (ACQ1): (1) Develops recruitment strategies, programs, materials, and other resources directed toward attracting health professional audiences who are potential candidates to apply for and to become officers serving in the active duty and reserve components of the Commissioned Corps; (2) plans and prepares a public affairs program designed to raise awareness of members of the public, the press, and other external constituencies, to promote interest in the activities of the Commissioned Corps; (3) develops and oversees information technology and systems to support recruitment, personnel and Corps management functions and collaborates with the OSG on their implementation, usage, and improvement; (4) provides daily liaison with agencies and their respective human resource functions to promote the effective and efficient use of officers and to incorporate agency-specific marketing information into recruiting programs.

(c) Force Policy and Plans Division (ACQ2): (1) Conducts a program of comprehensive force planning including a billet evaluation and management system, including working with agencies to determine requirements for commissioned corps staffing by professional category, and developing short and long-term manpower projections to assist in directing recruitment; (2) develops issuances for, and maintains, the CCPM, as well as regulations required for the management of the Commissioned Corps; (3)

develops a broad range of personnel standards, including commissioning, professional, and officer competency standards; (4) develops training and education policy and career development guidelines and materials; (5) develops and maintains policies for billet description, grading, and classification that reflect both commissioned corps and agency requirements; (6) advises the ASH on policy pertaining to deployments, and on mission nature, size, duration and mix and blend of the use of active duty and reserve officers for deployments; (7) conducts force planning for all elements of reserve assets, and recommends policy to support plans, goals, and objectives; (8) develops policy, guidelines, and standard memoranda of agreement for individual and blanket details; and (9) works with the Program Evaluation and Oversight Division and other uniformed services to identify and adapt best practices to improve efficiency and effectiveness, and for the purpose of developing systems to provide the highest quality services to the agencies and to the commissioned officer community.

(d) Program Evaluation and Oversight Division (ACQ3): (1) Develops and implements evaluations and assessments of the Commissioned Corps in meeting its goals, objectives and milestones; (2) manages relationships with the PSC and all contractors; (3) assures that programs contain appropriately time framed goals, objectives, and outcomes by which to monitor and assess progress and performance; (4) conducts after action assessments and evaluations pertaining to the use of the Commissioned Corps for deployments, special assignments, or other non-routine uses of officers; (5) oversees and evaluates the medical benefit and payroll programs; (6) conducts periodic program reviews of all aspects of the management and utilization of the Commissioned Corps; and (7) develops methods and approaches to monitor satisfaction and follow up concerning services provided to various customers, and provides feedback to program officials.

II. *Continuation of Policy:* Except as inconsistent with this reorganization, all statements of policy and interpretations with respect to the Commissioned Corps of the PHS heretofore issued and in effect prior to this reorganization are continue in full force and effect.

III. *Delegation of Authority:* All delegations and redelegations of authority made by officials and employees of affected organizational components will continue in them or their successors pending further redelegation, provided they are consistent with this reorganization.

IV. *Funds, Personnel, and Equipment:* Transfer of organizations and functions affected by this reorganization shall be accompanied by direct and support funds, positions, personnel, records, equipment, supplies and other resources.

Dated: December 11, 2003.

Ed Sontag,

Assistant Secretary for Administration and Management.

[FR Doc. 03–31242 Filed 12–17–03; 8:45 am]

BILLING CODE 4150–28–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–10–04]

Proposed Data Collections Submitted for Public Comment and Recommendations

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 498–1210. Send written comments to CDC, Desk Officer, Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 or by fax to (202) 395–6974. Written comments should be received within 30 days of this notice.

Proposed Project: NCHS Questionnaire Design Research Laboratory (OMB No. 0920–0222)—Revision—National Center for Health Statistics (NCHS), Centers for Disease Control and Prevention (CDC). The NCHS Questionnaire Design Research Laboratory (QDRL) conducts questionnaire pre-testing and evaluation activities for CDC surveys (such as the NCHS National Health Interview Survey) and other federally sponsored surveys. The most common questionnaire evaluation method is the cognitive interview. In a cognitive interview, a questionnaire design specialist interviews a volunteer participant. The interviewer administers the draft survey questions as written, probes the participant in depth about interpretations of questions, recall processes used to answer questions and adequacy of response categories to express answers, while noting points of confusion and errors in responding.

Interviews are generally conducted in small rounds of 12 interviews; the questionnaire is re-worked between rounds, and revisions are tested iteratively until interviews yield relatively few new insights. When possible, cognitive interviews are conducted in the survey's intended mode of administration. For example, when testing telephone survey questionnaires, participants often respond to the questions via a telephone in a laboratory room. This method forces the participant to answer without face-to-face interaction, yet it still allows QDRL staff to observe response difficulties, and to conduct a face-to-face debriefing. Five types of activities will be carried out: (1) Survey questionnaire development and testing based on cognitive interviewing methodology; (2) Research on the cognitive aspects of survey methodology; (3) Research on computer-user interface design for computer-assisted instruments, also known as usability testing; (4) Pilot household interviews; and (5) Studies of the optimal design and presentation of statistical, graphical and textual materials.

In general, cognitive interviewing provides useful data on questionnaire performance at minimal cost and respondent burden (note that respondents receive remuneration for their travel and effort). Similar methodology has been adopted by other federal agencies, as well as by academic and commercial survey organizations. The estimated annualized burden for this data collection is 600 hours. CDC is requesting OMB approval of this data collection for 3 years.

Anticipated 2004–2007 projects	Number of respondents	Number of responses per respondent	Average burden per response (in hours)
QDRL Laboratory Interviews:			
(1) National Health Interview Survey (NHIS) modules	100	1	1.25

Anticipated 2004–2007 projects	Number of respondents	Number of responses per respondent	Average burden per response (in hours)
(2) Behavioral Risk Factor Surveillance System Survey (BRFSS)	50	1	1.25
(3) Healthy People 2010 (HP 2010)	50	1	1.25
(4) National Survey of Family Growth (NSFG)	50	1	1.25
(5) Pregnancy Risk Assessment Monitoring System (PRAMS)	50	1	1.25
(6) National Health and Nutrition Examination Survey (NHANES)	50	1	1.25
(7) Other questionnaire testing:			
2004	100	1	1.25
2005	100	1	1.25
2006	100	1	1.25
(8) Perceptions of Quality of Life project	80	1	1.25
(9) Perceptions of Confidentiality Project	50	1	1.25
(10) Perception of Statistical Maps Project	50	1	1.25
(11) General Methodological Research	100	1	1.25
Pilot Household Interviews:			
2004 NHIS Modules	50	1	1.25
2005 NHIS Modules	50	1	1.25
2006 NHIS Modules	50	1	1.25
Focus Groups (10 groups of 10 for three years)	300	1	1.50

Dated: December 8, 2003.

Alvin Hall,

Director, Management Analysis and Services Office, Centers for Disease Control And Prevention.

[FR Doc. 03–31187 Filed 12–17–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Opportunity To Collaborate in the Evaluation of Topical Microbicides To Reduce Sexual Transmission of Human Immunodeficiency Virus (HIV)

AGENCY: Centers for Disease Control and Prevention, Department of Health and Human Services (DHHS).

ACTION: Opportunities for collaboration for evaluation of topical microbicides.

The Centers for Disease Control and Prevention (CDC), National Center for HIV, STD, and TB Prevention (NCHSTP), Division of HIV/AIDS Prevention-Surveillance and Epidemiology (DHAP–SE), Epidemiology Branch (EpiBr), announces an opportunity for collaboration to evaluate the safety and preliminary efficacy of topical microbicides designed for vaginal and/or rectal application to reduce HIV transmission. These evaluations will include in-vitro assays, macaque studies, and phase I/phase II trials in women and men.

SUMMARY: The Division of HIV/AIDS Prevention-Surveillance and Epidemiology (DHAP–SE) of the National Center of HIV, STD, and TB Prevention (NCHSTP) at the Centers for Disease Control and Prevention (CDC) of the Department of Health and Human Services (DHHS) seeks one or more pharmaceutical, biotechnical, or other companies that hold a proprietary position on agents which may be useful as microbicides to prevent sexual transmission of HIV infection. The selected company and CDC will execute an Agreement under which the company will provide a product for CDC to study the product's safety and preliminary efficacy as a topical microbicide. Initial studies will include in-vitro assays and may include macaque studies. Agents will be selected for phase I and phase II trials in women and men based upon data obtained in the CDC studies as well as other available published and unpublished safety and efficacy data. Each collaboration would have an expected duration of one (1) to five (5) years. The goals of the collaboration include the timely development of data to further the identification and commercialization of effective topical microbicides and the rapid publication of research findings to increase the number of HIV prevention technologies proven effective and available for use.

Confidential proposals, preferably 10 pages or less (excluding appendices), are solicited from companies with patented or licensed agents which have undergone sufficient preclinical testing to be prepared to submit an Investigational New Drug (IND) application to the FDA within six months of submitting the proposal.

DATES: This Notice will be open indefinitely.

ADDRESSES: Formal proposals should be submitted to Carmen Villar, Epidemiology Branch, Division of HIV/AIDS Prevention—Surveillance and Epidemiology, NCHSTP, CDC, 1600 Clifton Road, Mailstop E–45, Atlanta, GA 30333; Phone: (direct) 404–639–5259, (office) 404–639–6130; Fax: 404–639–6127; e-mail: *CVillar@cdc.gov.* Scientific questions should be addressed to Lisa A. Grohskopf, MD, MPH, Epidemiology Branch, Division of HIV/AIDS Prevention—Surveillance and Epidemiology, NCHSTP, CDC, 1600 Clifton Road, Mailstop E–45, Atlanta, GA 30333; Phone: (direct) 404–639–6116, (office) 404–639–6146; Fax: 404–639–6127; e-mail: *lkg6@cdc.gov.* Inquiries directed to "Agreement" documents related to participation in this opportunity should be addressed to Thomas E, O'Toole, MPH, Deputy Director, Technology Transfer Office, CDC, 1600 Clifton Road, Mailstop K–79, Atlanta, GA 30333; Phone: (direct) 770–488–8611, (office) 770–488–8607; Fax: 770–488–8615; e-mail: *TEO1@cdc.gov.*

SUPPLEMENTARY INFORMATION:

Technology Available

One mission of the Epidemiology Branch (EpiBr) of DHAP–SE/NCHSTP is to develop and evaluate biomedical interventions to reduce HIV transmission. To this end, the EpiBr is establishing contracts to conduct phase I and phase II trials of topical microbicides. EpiBr also funds research in the Division of AIDS, STD, and TB Laboratory Research (DASTLR) of the National Center for Infectious Diseases (NCID) at CDC and with external laboratories to conduct macaque studies and in-vitro studies in support of human microbicide trials. The goal of these efforts is to provide scientific and technical expertise and key resources

for the evaluation of topical microbicides through late preclinical, phase I and phase II safety and phase II efficacy clinical trials.

Technology Sought

EpiBr now seeks potential collaborators having licensed or patented agents for use as vaginal and/or rectal microbicides which:

(1) Have laboratory or animal model evidence of anti-HIV activity;

(2) Have been formulated for vaginal or rectal application;

(3) Are not entering phase III clinical trial in the next 12 months;

(4) Have sufficient preclinical data to submit an IND application within approximately six months following submission of proposal; and

(5) Have manufacturing arrangements for production of clinical trial-grade product (and applicator if necessary) under Good Manufacturing Process (c-GMP) standards.

NCHSTP and Collaborator Responsibilities

The NCHSTP anticipates that its role may include, but not be limited to, the following:

(1) Providing intellectual, scientific, and technical expertise and experience to the research project;

(2) Planning and conducting preclinical (in-vitro and in-vivo) research studies of the agent and interpreting results;

(3) Publishing research results;

(4) Depending on the results of these preclinical investigations, NCHSTP may elect to conduct additional research with macaques to evaluate safety and/or efficacy proof-of-concept; and

(5) Depending on the results of preclinical and/or macaque studies and FDA approval, NCHSTP may elect to conduct phase I/II clinical trials of the agent.

The NCHSTP anticipates that the role of the successful collaborator(s) will include the following:

(1) Providing intellectual, scientific, and technical expertise and experience to the research project;

(2) Participating in the planning of research studies, interpretation of research results, and as appropriate, joint publication of conclusions;

(3) Providing NCHSTP access to necessary proprietary technology and/or data in support of the research activities; and

(4) Providing NCHSTP clinical grade (c-GMP) agent for use in preclinical and clinical studies covered in this collaboration.

Other contributions may be necessary for particular proposals.

Selection Criteria

In addition to evidence of the ability to fulfill the roles described above, proposals submitted for consideration should address, as best as possible and to the extent relevant to the proposal, each of the following:

(1) Data on the in-vitro anti-HIV activity of the agent;

(2) Animal and other data on the safety of the agent when applied to mucosal surfaces;

(3) Data on the effects of the agent on vaginal and/or rectal commensal microbial organisms; and

(4) Data on the in-vitro activity of the agent against other sexually transmitted organisms.

Dated: December 11, 2003.

Joseph R. Carter,

Deputy Chief Operating Officer, Centers for Disease Control and Prevention.

[FR Doc. 03–31186 Filed 12–17–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Advisory Committee Information Hotline

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that we have revised the Advisory Committee Information Hotline (the hotline). The hotline provides the public with access to the most current information available on FDA advisory committee meetings. This notice supersedes all previously published announcements of FDA's Advisory Committee Information Hotline.

FOR FURTHER INFORMATION CONTACT: Theresa L. Green, Committee Management Officer (HF–4), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1220.

SUPPLEMENTARY INFORMATION: The Advisory Committee Information Hotline can be accessed by dialing 1–800–741–8138 or 301–443–0572. The advisory committee meeting information and information updates can also be accessed via FDA's Advisory Committee calendar at *http://www.fda.gov/oc/advisory/accalendar/accalendar.html.*

Each advisory committee is assigned a 10-digit number. This 10-digit number will appear in each individual notice of meeting. The public can obtain information about a particular advisory committee meeting by using the committee's 10-digit number. Information on the hotline is preliminary and may change before a meeting is actually held. The hotline will be updated when such changes are made. The following is a list of each advisory committee's 10-digit number to be used when accessing the hotline.

ADVISORY COMMITTEE	NUMBER
OFFICE OF THE COMMISSIONER	
Science Board to the FDA	3014512603
CENTER FOR BIOLOGICS EVALUATION AND RESEARCH	
Allergenic Products Advisory Committee	3014512388
Biological Response Modifiers Advisory Committee	3014512389
Blood Products Advisory Committee	3014519516
Transmissible Spongiform Encephalopathies Advisory Committee	3014512392
Vaccines and Related Biological Products Advisory Committee	3014512391
CENTER FOR DRUG EVALUATION AND RESEARCH	
Anesthetic and Life Support Drugs Advisory Committee	3014512529
Anti-Infective Drugs Advisory Committee (Peds SubC)	3014512530
Antiviral Drugs Advisory Committee	3014512531
Arthritis Advisory Committee	3014512532
Cardiovascular and Renal Drugs Advisory Committee	3014512533
Dermatologic and Ophthalmic Drugs Advisory Committee	3014512534
Drug Safety and Risk Management Advisory Committee (Drug Abuse Subcommittee)	3014512535
Endocrinologic and Metabolic Drugs Advisory Committee	3014512536
Gastrointestinal Drugs Advisory Committee	3014512538
Nonprescription Drugs Advisory Committee	3014512541
Oncologic Drugs Advisory Committee	3014512542
Peripheral and Central Nervous System Drugs Advisory Committee	3014512543
Pharmaceutical Science, Advisory Committee for	3014512539
Psychopharmacologic Drugs Advisory Committee	3014512544
Pulmonary-Allergy Drugs Advisory Committee	3014512545
Reproductive Health Drugs, Advisory Committee for	3014512537
CENTER FOR FOOD SAFETY AND APPLIED NUTRITION	
Food Advisory Committee (full committee and subcommittees)	3014510564
Additives and Ingredients Subcommittee	
Biotechnology Subcommittee	
Contaminants and Natural Toxicants Subcommittee	
Dietary Supplements Subcommittee	
Infant Formula Subcommittee	
Nutrition Subcommittee	
CENTER FOR DEVICES AND RADIOLOGICAL HEALTH	
Device Good Manufacturing Practice Advisory Committee	3014512398
Medical Devices Advisory Committee (comprised of 18 panels)	N/A
Anesthesiology and Respiratory Therapy Devices Panel	3014512624
Circulatory System Devices Panel	3014512625
Clinical Chemistry and Clinical Toxicology Devices Panel	3014512514
Dental Products Panel	3014512518
Ear, Nose, and Throat Devices Panel	3014512522
Gastroenterology-Urology Devices Panel	3014512523
General and Plastic Surgery Devices Panel	3014512519
General Hospital and Personal Use Devices Panel	3014512520
Hematology and Pathology Devices Panel	3014512515
Immunology Devices Panel	3014512516
Medical Devices Dispute Resolution Panel	3014510232
Microbiology Devices Panel	3014512517
Molecular and Clinical Genetics Panel	3014510231
Neurological Devices Panel	3014512513
Obstetrics-Gynecology Devices	3014512524
Ophthalmic Devices Panel	3014512396
Orthopaedic and Rehabilitation Devices Panel	3014512521
Radiological Devices Panel	3014512526
National Mammography Quality Assurance Advisory Committee	3014512397
Technical Electronic Product Radiation Safety Standards Committee	3014512399
CENTER FOR VETERINARY MEDICINE	
Veterinary Medicine Advisory Committee	3014512548
NATIONAL CENTER FOR TOXICOLOGICAL RESEARCH	
Science Advisory Board to NCTR	3014512559
Advisory Committee on Special Studies Relating to the Possible Long-Term Health Effects of Phenoxy Herbicides and Contaminants.	3014512560

The hotline will provide the most recent information available on upcoming advisory committee meetings, guidance for making an oral presentation during the open public hearing portion of a meeting, and procedures on obtaining copies of transcripts of advisory committee meetings. Because the hotline will communicate the most current information available about any particular advisory committee meeting, this system will provide interested parties with timely and equal access to such information. The hotline should also conserve agency resources by reducing the current volume of inquiries individual FDA offices and employees must handle concerning advisory committee schedules and procedures.

This notice is issued under the Federal Advisory Committee Act (5 U.S.C. app. 2) and 21 CFR part 14, relating to advisory committees.

Dated: December 10, 2003.

Peter J. Pitts,

Associate Commissioner for External Relations.

[FR Doc. 03–31157 Filed 12–17–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2002D–0371]

Class II Special Controls Guidance Document: Human Dura Mater; Guidance for Industry and FDA; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of the guidance entitled "Class II Special Controls Guidance Document: Human Dura Mater." This guidance document describes a means

by which human dura mater may comply with the requirement of special controls for class II devices. Elsewhere in this issue of the **Federal Register**, FDA is publishing a final rule to classify this device type into class II (special controls).

DATES: Submit written or electronic comments on the guidance at any time.

ADDRESSES: Submit written requests for single copies on a 3.5" diskette of the guidance document entitled "Class II Special Controls Guidance Document: Human Dura Mater" to the Division of Small Manufacturers, International, and Consumer Assistance (HFZ–220), Center for Devices and Radiological Health (CDRH), Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850. Send one self-addressed adhesive label to assist that office in processing your request, or fax your request to 301–443–8818. Submit written comments concerning this guidance to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.fda.gov/dockets/ecomments*. See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the guidance.

FOR FURTHER INFORMATION CONTACT: Charles N. Dufor, Center for Devices and Radiological Health (HFZ–410), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–3090.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of October 22, 2002 (67 FR 64835), FDA published a proposed rule to classify human dura mater into class II (special controls). FDA identified the draft guidance document entitled "Class II Special Controls Guidance Document: Human Dura Mater: Draft Guidance for Industry and FDA" as the special control, in conjunction with general controls, that is capable of providing reasonable assurance of safety and effectiveness for this device.

FDA invited interested persons to comment on the draft guidance by January 21, 2003. FDA received one comment that informed the agency of research findings concerning Creutzfeldt-Jakob Disease. The comment did not express any opinion on the guidance.

II. Significance of Guidance

This guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The guidance represents the agency's current thinking on the human dura mater device. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statute and regulations.

III. Paperwork Reduction Act of 1995

This guidance contains information collection provisions that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (the PRA)(44 USC 3501–3520). The collections of information addressed in the guidance document have been approved by OMB in accordance with the PRA under the regulations governing premarket notification submissions (21 CFR part 807, subpart E; OMB Control No. 0910–0120). The labeling provisions addressed in the guidance have been approved by OMB under the PRA under OMB Control No. 0910–0485.

IV. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments on the guidance at any time. Two copies of mailed comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The guidance and received comments are available for public examination in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

V. Electronic Access

To receive a copy of "Class II Special Controls Guidance Document: Human Dura Mater" by fax machine, call the CDRH Facts-On-Demand system at 800–899–0381 or 301–827–0111 from a touch-tone telephone. Press 1 to enter the system. At the second voice prompt, press 1 to order a document. Enter the document number (054) followed by the pound sign (#). Follow the remaining voice prompts to complete your request.

Persons interested in obtaining a copy of the guidance may also do so by using the Internet. CDRH maintains an entry on the Internet for easy access to information including text, graphics, and files that may be downloaded to a personal computer with Internet access. Updated on a regular basis, the CDRH home page includes device safety alerts, **Federal Register** reprints, information on premarket submissions (including lists of approved applications and manufacturers' addresses), small manufacturer's assistance, information on video conferencing and electronic submissions, Mammography Matters, and other device-oriented information. The CDRH Web site may be accessed at *http://www.fda.gov/cdrh*. A search capability for all CDRH guidance documents is available at *http://www.fda.gov/cdrh/guidance.html*. Guidance documents are also available on the Division of Dockets Management Internet site at *http://www.fda.gov/ohrms/dockets*.

Dated: December 5, 2003.

Linda S. Kahan,

Deputy Director, Center for Devices and Radiologiccal Health.

[FR Doc. 03–31175 Filed 12–17–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Fiscal Year (FY) 2004 Funding Opportunity

ACTION: Notice of funding availability for Statewide Family Network Grants.

Authority: Section 520 A of the Public Health Service Act, as amended and subject to the availability of funds.

SUMMARY: The Substance Abuse and Mental Health Services Administration (SAMHSA), Center for Mental Health Services (CMHS) announces the availability of FY 2004 funds for Statewide Family Network Grants. A synopsis of this funding opportunity, as well as many other Federal Government funding opportunities, is also available at the Internet site: *http://www.grants.gov*.

For complete instructions, potential applicants must obtain a copy of the standard Infrastructure Grants Program Announcement (INF–04 PA), and the PHS 5161–1 (Rev. 7/00) application form before preparing and submitting an application. The INF–04 PA describes the general program design and provides instructions for applying for all SAMHSA Infrastructure Grants, including Statewide Family Network Grants. Additional instructions and requirements specific to the Statewide Family Network Grants are described below.

Funding Opportunity Title: Statewide Family Network Grants.

Announcement Type: Initial.

Funding Opportunity Number: SM 04–004.

Catalog of Federal Domestic Assistance (CFDA) Number: 93.243.

Due Date for Applications: February 27, 2004.

You will be notified by postal mail that your application has been received.

Note: Letters from State Single Point of Contact (SPOC) in response to E.O. 12372 are due April 27, 2004.

Funding Instrument: Grant.

Funding Opportunity Description: The Statewide Family Networks program is one of SAMHSA's Infrastructure Grants programs. SAMHSA's Infrastructure Grants provide funds to increase the capacity of mental health and/or substance abuse service systems to support programs and services. SAMHSA's Infrastructure Grants are intended for applicants seeking Federal support to develop or enhance their service system infrastructure in order to support effective substance abuse and/or mental health service delivery. Statewide Family Network Grants are intended for applicants seeking Federal support to act as "Agents of Transformation" in developing or enhancing their service system infrastructure in order to support effective substance abuse and/or mental health service delivery which is consumer and family driven. The Statewide Family Network Program is a critical part of the SAMHSA/CMHS effort to implement the President's New Freedom Commission on Mental Health Report.

The purpose of the Statewide Family Networks program is to enhance State capacity and infrastructure to be more oriented to the needs of children and adolescents with serious emotional disturbances and their families. The programs goals are to: (1) Strengthen organizational relationships; (2) foster leadership and business management skills among families of children and adolescents with serious emotional disturbance; and (3) identify and address the technical assistance needs of children and adolescents with serious emotional disturbances and their families. To achieve this goal, the program assists family members around the country to work with policy makers and service providers to improve services for children and adolescents with serious emotional disturbances and their families. The Statewide Family Networks Program is designed to ensure that families are the catalysts for transforming the mental health and related systems in their State by strengthening coalitions among family members, and between family members and policymakers and service providers, recognizing that family members are the best and most effective change agents.

Background: The Statewide Family Network Program builds on the work of The Child, Adolescent and Services Systems Program (CASSP), which helped to establish a child and family focus in programs serving children and adolescents with serious emotional disturbances around the county. Today, nearly every State has active family organizations dedicated to promoting systems of care that are responsive to the needs of children and adolescents with serious emotional disturbances and their families. Although significant progress has been made, further support will ensure self-sufficient, empowered networks that will effectively participate in State and local mental health services planning and health care reform activities related to improving community-based services for children and adolescents with serious emotional disturbances and their families.

Estimated Funding Available/Number of Awards: It is expected that $2.8 million will be available to fund 43 awards in FY 2004, with a limit of one award per State. Only Category 1—Small Infrastructure Grant awards, as defined in the INF–04 PA, will be made. In general, these Category 1 awards are expected to be up to $60,000 per year in total costs (direct and indirect). Up to 22 grantees with projects that include a youth leadership component may receive an additional $10,000 per year. Applications without a youth leadership component that include proposed budgets that exceed $60,000 in any year will be returned without review. Applications with a youth leadership component that include proposed budgets that exceed $70,000 in any year will be returned without review. The actual amount available for the awards may vary, depending on unanticipated program requirements and the number and quality of the applications received. This program is being announced prior to the annual appropriation for FY 2004 for SAMHSA's programs, with funding estimates based on the President's budget request for FY 2004 and/or preliminary Congressional action on SAMHSA's appropriation. Applications are invited based on the assumption that sufficient funds will be appropriated for FY 2004 to permit funding of a reasonable number of applications hereby solicited. This program is being announced in order to allow applicants sufficient time to plan and prepare applications. Solicitation of applications in advance of a final appropriation will also enable the award of appropriated grant funds in an expeditious manner. All applicants are reminded, however, that we cannot guarantee that sufficient funds will be appropriated to permit SAMHSA to fund any applications.

Period of Support: Awards will be made for project periods of up to three years, with annual continuations depending on the availability of funds, grantee progress in meeting program goals and objectives, and timely submission of required data and reports.

Eligible Applicants: Eligible applicants are limited to domestic private, nonprofit entities, including faith-based entities, tribal family organizations, and currently funded Statewide Family Networks grantees that: (1) Are controlled and managed by family members; (2) are dedicated to the improvement of mental health services statewide; and (3) have a Board of Directors comprised of no less than 51 percent family members. SAMHSA is limiting eligibility to family-controlled organizations because the goals of this grant program are to: strengthen the capacity of families to act as agents of transformation in influencing the type and amount of services provided to them and to their children who have a serious emotional disturbance and to ensure that their mental health care is consumer and family driven. Applicants will be required to complete and sign a Certification of Eligibility and provide necessary supportive documentation. This certification will be provided in the application kit, available from the National Mental Health Information Center, and will also be posted on the SAMHSA Web page along with the NOFA.

Additional information regarding eligibility, including program requirements and formatting requirements, is provided in the INF–04 PA. Applications that do not comply with these requirements will be screened out and will not be reviewed.

Is Cost Sharing or Matching Required: No.

Exceptions to the INF–04 and Other Special Requirements: The following information describes exceptions or limitations to the INF–04 PA and provides special requirements that pertain only to the Statewide Family Network Grants:

• *Review Criteria/Project Narrative:* Applicants for Statewide Family Networks grants are required to address the following requirements in the Project Narrative of their applications, in addition to the requirements specified in the INF–04 PA:

(1) In Section B, applicants must describe how the primary focus of the proposed project will be on training capacity, network development (*i.e.*, with other consumer and family organizations), organizational and

community readiness, and policy development to support best practices.

(2) In Section B, applicants must describe the applicant's collaborations with other family and consumer networks, the State Director of Consumer Affairs (if applicable), family representatives on the State Planning Council, and other disability groups.

(3) In Section C, applicants must describe the applicant's organizational mission and how its scope of work reflects statewide focus on families who have children, youth and adolescents up to age 18 with a serious emotional, behavior or mental disorder and are currently receiving services, or up to age 25 with a serious emotional, behavior or mental disorder and are receiving transitional services from children to adult services.

(4) In Section C, applicants must describe the extent to which the applicant's Board of Directors includes family members whose children up to age 18 with a serious emotional, behavior or mental disorder and are currently receiving services, or up to age 25 with a serious emotional, behavior or mental disorder and are receiving transitional services from children to adult services.

(5) Applicants must clearly indicate in their applications whether or not a youth leadership component is included in the proposed project. Applicants that include a youth leadership component must include relevant information about the youth leadership component in *all* sections of the Project Narrative and Supporting Documentation. For example, Section A must address the need for a youth leadership component in the State where the project will be located, Section B must include a description of the proposed approach for implementing a youth leadership component, Section C must include a description of the staff, management and related experience for the youth leadership component, and Section D must include a description of evaluation and data activities for the youth leadership component. The budget for the youth leadership component provided in Section E must be separately justified and may not exceed $10,000.

Performance Measurement: All SAMHSA grantees are required to collect performance data so that SAMHSA can meet its obligations under the Government Performance and Results Act (GPRA). In Section D of their applications, applicants for the Statewide Family Networks program must document their ability to collect and report data on the following indicators:

- An increase of families served; and
- An increase in the number of grantees that demonstrate inclusion of consumers [adolescents and young adults transitioning to adult services] and family members in planning, policy, and service delivery decisions through (a) Having policies in place; and (b) data on consumers [adolescents and young adults transitioning to adult services] and family member participation.

SAMHSA will work with grantees to finalize a standard methodology related to these indicators shortly after award. The data collection tool is yet to be developed. Grantees will be required to report performance data to SAMHSA on an annual basis.

Application and Submission Information: Complete application kits may be obtained from: the National Mental Health Information Center at 1–800–789–2649. When requesting an application kit, the applicant must specify the funding opportunity title and number for which detailed information is desired. All information necessary to apply, including where to submit applications and application deadline instructions, are included in the application kit. The PHS 5161–1 application form is also available electronically via SAMHSA's World Wide Web Home Page: *http://www.samhsa.gov* (Click on "Grant Opportunities") and the INF–04 PA is available electronically at *http://www.samhsa.gov/grants/2004/standard/Infrastructure/index.asp*.

When submitting an application, be sure to type "SM 04–004, Statewide Family Networks" in Item Number 10 on the face page of the application form. Also, SAMHSA applicants are required to provide a DUNS number on the face page of the application. To obtain a DUNS Number, access the Dun and Bradstreet Web site at *http://www.dunandbradstreet.com* or call 1–866–705–5711.

Intergovernmental Review: Applicants for this funding opportunity must comply with Executive Order 12372 (E.O. 12372). E.O.12372, as implemented through Department of Health and Human Services regulation at 45 CFR Part 100, sets up a system for State and local review of applications for Federal financial assistance. Grantees must comply with the requirements of E.O. 12372. Instructions for complying with E.O. 12372 are provided in the INF–04 PA. A current listing of State Single Points of Contact (SPOCs) is included in the application kit and is available at *http://www.whitehouse.gov/omb/grants/spoc.html*.

Public Health System Impact Statement: The Public Health System Impact Statement (PHSIS) is intended to keep State and local health officials informed of proposed health services grant applications submitted by community-based, non-governmental organizations within their jurisdictions. State and local governments and Indian tribal government applicants are not subject to the Public Health System Reporting Requirements. Instructions for completing the PHSIS are provided in the INF–04 PA.

Application Review Information: SAMHSA applications are peer-reviewed. For those programs where the individual award is over $100,000, applications must also be reviewed by the Appropriate National Advisory Council. Decisions to fund a grant are based on the strengths and weaknesses of the application as identified by the peer review committee and approved by the National Advisory Council, and the availability of funds. Unless otherwise specified, SAMHSA intends to make not more than one award per organization per funding opportunity in any given fiscal year.

Checklist for Application Formatting Requirements: SAMHSA's desire is to review all applications submitted for grant funding. However, this desire must be balanced against SAMHSA's obligation to ensure equitable treatment of applications. For this reason, SAMHSA has established certain formatting requirements for its applications. Your application must adhere to these formatting requirements. If you do not adhere to these requirements, your application will be screened out and returned to you without review. In addition to these formatting requirements, programmatic requirements (*e.g.*, relating to eligibility) may be specified in the NOFA. Please check the entire NOFA before preparing your application.

- Use the PHS 5161–1 application.
- The 10 application components required for SAMHSA applications must be included (*i.e.*, Face Page, Abstract, Table of Contents, Budget Form, Project Narrative and Supporting Documentation, Appendices, Assurances, Certifications, Disclosure of Lobbying Activities, and Checklist.)
- Text must be legible.
- Paper must be white paper and 8.5″ by 11.0″ in size.
- Pages must be single-spaced with one column per page.
- Margins must be at least one inch.
- Type size in the Project Narrative cannot exceed an average of 15 characters per inch when measured with a ruler. (Type size in charts, tables, graphs, and footnotes will not be considered in determining compliance.)
- Photo reduction or condensation of type cannot be closer than 15 characters per inch or 6 lines per inch.
- Pages cannot have printing on both sides.
- Page limitations specified for the Project Narrative (25 pages) and Appendices 1, 3, and 4 (30 pages) cannot be exceeded.
- Information provided must be sufficient for review.
- Applications must be received by the application deadline. Applications received after this date must have a proof of mailing date from the carrier dated at least 1 week prior to the due date. Private metered postmarks are not acceptable as proof of timely mailing. Applications not received by the application deadline or postmarked a week prior to the application deadline will not be reviewed.
- Applications that do not comply with the following requirements and any additional program requirements specified in the NOFA, or are otherwise unresponsive to PA guidelines, will be screened out and returned to the applicant without review:
- Provisions relating to confidentiality, participant protection and the protection of human subjects specified in Section VIII–A of this document.
- Budgetary limitations as specified in Sections I, II and IV–E of this document.
- Documentation of nonprofit status as required in the PHS 5161–1.

To facilitate review of your application, follow these additional guidelines. Failure to follow these guidelines will not result in your application being screened out. However, following these guidelines will help reviewers to consider your application.

- Please use black ink and number pages consecutively from beginning to end so that information can be located easily during review of the application. The cover page should be page 1, the abstract page should be page 2, and the table of contents page should be page 3. Appendices should be labeled and separated from the Project Narrative and budget section, and the pages should be numbered to continue the sequence.
- Send the original application and two copies to the mailing address in the PA. Please do not use staples, paper clips, and fasteners. Nothing should be attached, stapled, folded, or pasted. Do not use any material that cannot be copied using automatic copying machines. Odd-sized and oversized attachments such as posters will not be copied or sent to reviewers. Do not include videotapes, audiotapes, or CD–ROMs.

Award Administration: Award information, including information about award notices, administrative requirements and reporting requirements, is included in the INF–04 PA.

Contact for Additional Information: Elizabeth Sweet, SAMHSA/CMHS, Child, Adolescent and Family Branch, Center for Mental Health Services, 5600 Fishers Lane, Room 11C–16, Rockville, MD 20857; 301–443–1333; E-mail: *esweet@samhsa.gov*.

Dated: December 12, 2003.

Anna Marsh,

Acting Executive Officer, Substance Abuse and Mental Health Services, Administration.

[FR Doc. 03–31158 Filed 12–17–03; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Fiscal Year (FY) 2004 Funding Opportunity

ACTION: Notice of funding availability for Statewide Consumer Network Grants.

Authority: Section 520 A of the Public Health Service Act, as amended and subject to the availability of funds.

SUMMARY: The Substance Abuse and Mental Health Services Administration (SAMHSA), Center for Mental Health Services (CMHS), announces the availability of FY 2004 funds for Statewide Consumer Network Grants. A synopsis of this funding opportunity, as well as many other Federal Government funding opportunities, is also available at the Internet site: *http://www.grants.gov*.

For complete instructions, potential applicants must obtain a copy of the standard Infrastructure Grants Program Announcement (INF–04 PA), and the PHS 5161–1 (Rev. 7/00) application form before preparing and submitting an application. The INF–04 PA describes the general program design and provides instructions for applying for all SAMHSA Infrastructure Grants, including Statewide Consumer Network Grants. Additional instructions and requirements specific to Statewide Consumer Network Grants are described below.

Funding Opportunity Title: Statewide Consumer Network Grants (Short Title: Statewide Consumer Networks).

Announcement Type: Initial.

Funding Opportunity Number: SM 04–003.

Catalog of Federal Domestic Assistance (CFDA) Number: 93.243.

Due Date for Applications: February 25, 2004.

You will be notified by postal mail that your application has been received.

[**NOTE:** Letters from State Single Point of Contact (SPOC) in response to E.O. 12372 are due April 25, 2004.]

Funding Instrument: Grant.

Funding Opportunity Description: The Statewide Consumer Networks program is one of SAMHSA's Infrastructure Grants programs. SAMHSA's Infrastructure Grants provide funds to increase the capacity of mental health and/or substance abuse service systems to support programs and services. SAMHSA's Infrastructure Grants are intended for applicants seeking Federal support to develop or enhance their service system infrastructure in order to support effective substance abuse and/or mental health service delivery. Statewide Consumer Network Grants are intended for applicants seeking Federal support to act as "Agents of Transformation" in developing or enhancing their service system infrastructure in order to support effective substance abuse and/or mental health service delivery which is consumer driven. The Statewide Consumer Network Grant Program is a critical part of the SAMHSA/CMHS efforts to implement the recommendations of the Final Report of the President's New Freedom Commission on Mental Health.

The purpose of the Statewide Consumer Networks program is to enhance State capacity and infrastructure to be consumer-centered and targeted toward recovery and resiliency and consumer-driven by promoting the use of consumers as agents of transformation. The program goals are to (1) strengthen organizational relationships; (2) promote skill development with an emphasis on leadership and business management; and (3) identify technical assistance needs of consumers and provide training and support to ensure that they are the catalysts for transforming the mental health and related systems in their State. To achieve this goal, the program assists consumer organizations around the country to work with policymakers and services providers to improve services for consumers with a serious mental illness. The Program is designed to strengthen coalitions among consumers, policymakers and service providers, recognizing that the

consumers are the best and most effective change agents.

The Statewide Consumer Network grants will support State-level consumer-run organizations to assist consumers to participate in the development of policies, programs, and quality assurance activities related to the Final Report of the President's New Freedom Commission on Mental Health as it applies to mental health service delivery. Grantees are especially encouraged to utilize training capacity, network development, organizational and community readiness, and policy development to support best practices but are not limited to these specific activities. Examples of the types of community services that grantees will work to improve include State planning boards and councils, individualized plans of care, anti-stigma initiatives, interactions with the criminal justice system, supported employment programs, rights protection, cultural competence, outreach to people in rural areas, people of color and older-adults: research on recovery, trauma and medication; evidence based determinations and applications; workforce development; tele-health and other on line supports including personal recovery pages.

Background: The Statewide Consumer Network Grant Program builds on the work of the Federal Community Support Program (CSP). The Center for Mental Health Services has supported the development of accessible, responsive mental health treatment, rehabilitation, and supportive services for people with a serious mental illness through CSP. The mission of CSP is to promote the development of systems of care which help adults with serious mental illness recover, live independently and productively in the community, and avoid inappropriate use of institutions.

CSP helped to establish consumer and family organizations throughout the country. Today, nearly every State has an active consumer organization dedicated to promoting systems of care that are responsive to the needs of people with a serious mental illness. By providing appropriate training and tools in the development of individualized mental health plans, understanding the need and use of accountability and evaluation measures, and the many other self-help, self-management skills, consumers can provide the guidance and foresight into changing the present system to a recover-oriented system for all peers and thereby ensuring the implementation of the goals of the Final Report of the President's New Freedom Commission on Mental Health.

Estimated Funding Available/Number of Awards: It is expected that $1.5 million will be available in FY 2004 to fund approximately 20–22 awards of up to $70,000 per year in total costs (direct and indirect), with a limit of one award per State. It is expected that only Category 1-Small Infrastructure Grant awards, as defined in the INF–04 PA, will be made. Applications that include proposed budgets that exceed $70,000 in any year will be returned without review. The actual amount available for the awards may vary, depending on unanticipated program requirements and the number and quality of the applications received. This program is being announced prior to the annual appropriation for FY 2004 for SAMHSA's programs, with funding estimates based on the President's budget request for FY 2004 and/or preliminary Congressional action on SAMHSA's appropriation. Applications are invited based on the assumption that sufficient funds will be appropriated for FY 2004 to permit funding of a reasonable number of applications hereby solicited. This program is being announced in order to allow applicants sufficient time to plan and prepare applications. Solicitation of applications in advance of a final appropriation will also enable the award of appropriated grant funds in an expeditious manner. All applicants are reminded, however, that we cannot guarantee that sufficient funds will be appropriated to permit SAMHSA to fund any applications.

Eligible Applicants: Eligible applicants are limited to domestic private, nonprofit entities, including faith-based entities and currently funded Statewide Consumer Network Grantees that (1) are controlled and managed by mental health consumers; (2) are dedicated to the improvement of mental health services statewide; and (3) have a Board of Directors comprised of more than 51 percent consumers. SAMHSA is limiting eligibility to consumer-controlled organizations because the goals of this grant program are to: to strengthen the capacity of consumers to act as agents of transformation in influencing the type and amount of services and supports provided to people with a serious mental illness and to ensure that their mental health care is consumer driven. Applicants will be required to complete and sign a Certification of Eligibility and provide necessary supportive documentation. This certification will be provided in the application kit, available from the National Mental Health Information Center, and will also be posted on the SAMHSA Web page along with the NOFA.

Additional information regarding eligibility, including program requirements and formatting requirements, is provided in the INF–04 PA. Applications that do not comply with these requirements will be screened out and will not be reviewed.

Period of Support: Awards will be made for project periods of up to three years, with annual continuations depending on the availability of funds, grantee progress in meeting program goals and objectives, and timely submission of required data and reports.

Is Cost Sharing or Matching Required: No.

Exceptions to the INF–04 and Other Special Requirements: The following information describes exceptions or limitations to the INF–04 PA and provides special requirements that pertain only to the Statewide Consumer Network Grants:

• *Review Criteria/Project Narrative*—Applicants for Statewide Consumer Networks grants are required to address the following requirements in the Project Narrative of their applications, in addition to the requirements specified in the INF–04 PA:

(1) In Section B, applicants must describe how the primary focus of the proposed project will include work to transform the system through specific training and capacity building activities, and network and policy development that reflects the goals of the Final Report of the President's New Freedom Commission on Mental Health.

(2) In Section B, applications must describe the applicant's collaborations with other family and consumer networks, the State Director of Consumer Affairs in the State office of mental health (if applicable), consumers on the State Planning Council, and other disability groups.

(3) In Section C, applicants must describe the applicant's organizational mission and how its scope of work reflects statewide focus on consumers with a serious mental illness and promotes the concepts of consumer self-help; management plan and staffing.

• Performance Measurement—All SAMHSA grantees are required to collect performance data so that SAMHSA can meet its obligations under the Government Performance and Results Act (GPRA). In Section D of their applications, applicants for the Statewide Consumer Networks Program must document their ability to collect and report data on all the following indicators:

• An increase in the number of consumers served; and

• An increase in the number of consumers and family members in planning, policy, and service delivery decisions by (a) having policies in place; and (b) data on consumers and family member participation.

SAMHSA will work with grantees to finalize a standard methodology related to these indicators shortly after award. The data collection tool has not yet been developed. Grantees will be required to report performance data to SAMHSA on an annual basis.

Application and Submission Information: Complete application kits may be obtained from: the National Mental Health Information Center at 1–800–789–2649. When requesting an application kit, the applicant must specify the funding opportunity title and number for which detailed information is desired. All information necessary to apply, including where to submit applications and application deadline instructions, are included in the application kit. The PHS 5161–1 application form is also available electronically via SAMHSA's World Wide Web Home Page: *http://www.samhsa.gov* (Click on "Grant Opportunities") and the INF–04 PA is available electronically at *http://www.samhsa.gov/grants/2004/standard/Infrastructure/index.asp.*

When submitting an application, be sure to type "SM 04–003, Statewide Consumer Networks" in Item Number 10 on the face page of the application form. Also, SAMHSA applicants are required to provide a DUNS number on the face page of the application. To obtain a DUNS Number, access the Dun and Bradstreet Web site at *http://www.dunandbradstreet.com* or call 1–866–705–5711.

Intergovernmental Review: Applicants for this funding opportunity must comply with Executive Order 12372 (E.O. 12372). E.O. 12372, as implemented through Department of Health and Human Services regulation at 45 CFR Part 100, sets up a system for State and local review of applications for Federal financial assistance. Instructions for complying with E.O. 12372 are provided in the INF–04 PA. A current listing of State Single Points of Contact (SPOCs) is included in the application kit and is available at *http://www.whitehouse.gov/omb/grants/spoc.html.*

Public Health System Impact Statement: The Public Health System Impact Statement (PHSIS) is intended to keep State and local health officials informed of proposed health services grant applications submitted by community-based, non-governmental organizations within their jurisdictions. State and local governments and Indian tribal government applicants are not subject to the Public Health System Reporting Requirements. Instructions for completing the PHSIS are provided in the INF–04 PA.

Application Review Information: SAMHSA applications are peer-reviewed. For those programs where the individual award is over $100,000, applications must also be reviewed by the Appropriate National Advisory Council. Decisions to fund a grant are based on the strengths and weaknesses of the application as identified by the peer review committee and approved by the National Advisory Council, and the availability of funds. Unless other wise specified, SAMHSA intends to make not more than one award per organization per funding opportunity in any given fiscal year.

Checklist for Application Formatting Requirements: SAMHSA's desire is to review all applications submitted for grant funding. However, this desire must be balanced against SAMHSA's obligation to ensure equitable treatment of applications. For this reason, SAMHSA has established certain formatting requirements for its applications. Your application must adhere to these formatting requirements. If you do not adhere to these requirements, your application will be screened out and returned to you without review. In addition to these formatting requirements, programmatic requirements (*e.g.*, relating to eligibility) may be specified in the NOFA. Please check the entire NOFA before preparing your application.

• Use the PHS 5161–1 application.

• The 10 application components required for SAMHSA applications must be included (*i.e.*, Face Page, Abstract, Table of Contents, Budget Form, Project Narrative and Supporting Documentation, Appendices, Assurances, Certifications, Disclosure of Lobbying Activities, and Checklist.)

• Text must be legible.

• Paper must be white paper and 8.5″ by 11.0″ in size.

• Pages must be single-spaced with one column per page.

• Margins must be at least one inch.

• Type size in the Project Narrative cannot exceed an average of 15 characters per inch when measured with a ruler. (Type size in charts, tables, graphs, and footnotes will not be considered in determining compliance.)

• Photo reduction or condensation of type cannot be closer than 15 characters per inch or 6 lines per inch.

• Pages cannot have printing on both sides.

• Page limitations specified for the Project Narrative (25 pages) and Appendices 1, 3, and 4 (30 pages) cannot be exceeded.

• Information provided must be sufficient for review.

• Applications must be received by the application deadline. Applications received after this date must have a proof of mailing date from the carrier dated at least 1 week prior to the due date. Private metered postmarks are not acceptable as proof of timely mailing. Applications not received by the application deadline or postmarked a week prior to the application deadline will not be reviewed.

• Applications that do not comply with the following requirements and any additional program requirements specified in the NOFA, or are otherwise unresponsive to PA guidelines, will be screened out and returned to the applicant without review:

• Provisions relating to confidentiality, participant protection and the protection of human subjects specified in Section VIII–A of this document.

• Budgetary limitations as specified in Sections I. II and IV–E of this document.

• Documentation of nonprofit status as required in the PHS 5161–1.

To facilitate review of your application, follow these additional guidelines. Failure to follow these guidelines will not result in your application being screened out. However, following these guidelines will help reviewers to consider your application.

• Please use black ink and number pages consecutively from beginning to end so that information can be located easily during review of the application. The cover page should be page 1, the abstract page should be page 2, and the table of contents page should be page 3. Appendices should be labeled and separated from the Project Narrative and budget section, and the pages should be numbered to continue the sequence.

• Send the original application and two copies to the mailing address in the PA. Please do not use staples, paper clips, and fasteners. Nothing should be attached, stapled, folded, or pasted. Do not use any material that cannot be copied using automatic copying machines. Odd-sized and oversized attachments such as posters will not be copied or sent to reviewers. Do not include videotapes, audiotapes, or CD-ROMs.

Award Administration: Award information, including information about award notices, administrative requirements and reporting

requirements, is included in the INF–04 PA.

FOR FURTHER INFORMATION CONTACT: Risa Fox, SAMHSA/Center for Mental Health Services, 5600 Fishers Lane, Room 11C–22, Rockville, MD 20857; 301–443–3653; E-mail: *rfox@samhsa.gov*.

Dated: December 12, 2003.

Anna Marsh,

Acting Executive Officer, Substance Abuse and Mental Health Services Administration.

[FR Doc. 03–31159 Filed 12–17–03; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

Annual User Fee for Customs Broker Permit and National Permit; General Notice

AGENCY: Bureau of Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of due date for Customs broker user fee.

SUMMARY: This is to advise Customs brokers that the annual fee of $125 that is assessed for each permit held by a broker whether it may be an individual, partnership, association or corporation, is due by February 27, 2004. This announcement is being published to comply with the Tax Reform Act of 1986.

DATES: Due date for payment of fee: February 27, 2004.

FOR FURTHER INFORMATION CONTACT: Bruce Raine, Broker Management, (202) 927–0380.

SUPPLEMENTARY INFORMATION: Section 13031 of the Consolidated Omnibus Budget Reconciliation Act of 1985 (Pub. L. 99–272) established that an annual user fee of $125 is to be assessed for each Customs broker permit and National permit held by an individual, partnership, association or corporation. This fee is set forth in the Customs Regulations in section 111.96 (19 CFR 111.96).

Customs Regulations provide that this fee is payable for each calendar year in each broker district where the broker was issued a permit to do business by the due date which will be published in the **Federal Register** annually. Broker districts are defined in the general notice published in the **Federal Register**, volume 60, no. 187, September 27, 1995.

Section 1893 of the Tax Reform Act of 1986 (Pub. L. 99–514) provides that notices of the date on which the payment is due for each broker permit shall be published by the Secretary of the Treasury in the **Federal Register** by no later than 60 days before such due date.

This document notifies brokers that for 2004, the due date of the user fee is February 27, 2004. It is expected that the annual user fees for brokers for subsequent years will be due on or about the 20th of January of each year.

Dated: December 11, 2003.

Jayson P. Ahern,

Assistant Commissioner, Office of Field Operations.

[FR Doc. 03–31237 Filed 12–17–03; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE INTERIOR

Office of the Assistant Secretary—Indian Affairs; Application Deadline for Self-Governance in 2005

AGENCY: Office of Self-Governance and Self-Determination, Interior.

ACTION: Notice of application deadline.

SUMMARY: In this notice, the Office of Self-Governance and Self-Determination (OSG) establishes a March 1, 2004, deadline for tribes/consortia to submit completed applications to begin participation in the tribal self-governance program in fiscal year 2005 or calendar year 2005.

DATES: Completed application packages must be received by March 1, 2004.

ADDRESSES: Application packages for inclusion in the applicant pool should be sent to William A. Sinclair, Director, Office of Self-Governance and Self-Determination, Department of the Interior, Mail Stop 2548, 1849 C Street, NW., Washington DC 20240.

FOR FURTHER INFORMATION CONTACT: Dr. Kenneth D. Reinfeld, Office of Self-Governance and Self-Determination, Telephone 202–208–5734.

SUPPLEMENTARY INFORMATION: Under the Tribal Self-Governance Act of 1994 (Pub. L. 103–413), as amended by the Fiscal Year 1997 Omnibus Appropriations Bill (Pub. L. 104–208) the Director, Office of Self-Governance and Self-Determination may select up to 50 additional participating tribes/consortia per year for the tribal self-governance program, and negotiate and enter into a written funding agreement with each participating tribe. The Act mandates that the Secretary submit copies of the funding agreements at least 90 days before the proposed effective date to the appropriate committees of the Congress and to each tribe that is served by the Bureau of Indian Affairs (BIA) agency that is serving the tribe that is a party to the funding agreement. Initial negotiations with a tribe/consortium located in a region and/or agency which has not previously been involved with self-governance negotiations, will take approximately two months from start to finish. Agreements for an October 1 to September 30 funding year need to be signed and submitted by July 1. Agreements for a January 1 to December 31 funding year need to be signed and submitted by October 1.

Purpose of Notice 25 CFR 1000.10 to 1000.31 will be used to govern the application and selection process for tribes/consortia to begin their participation in the tribal self-governance program in fiscal year 2005 and calendar year 2005. Applicants should be guided by the requirements in these subparts in preparing their applications. Copies of these subparts may be obtained from the information contact person identified in this notice.

Tribes/consortia wishing to be considered for participation in the tribal self-governance program in fiscal year 2005 or calendar year 2005 must respond to this notice, except for those which are (1) currently involved in negotiations with the Department; (2) one of the 83 tribal entities with signed agreements; or (3) one of the tribal entities already included in the applicant pool as of the date of this notice.

Dated: December 2, 2003.

Aurene M. Martin,

Principal Deputy Assistant Secretary—Indian Affairs.

[FR Doc. 03–31161 Filed 12–17–03; 8:45 am]

BILLING CODE 4310–W8–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Tallahatchie, Dahomey, and Coldwater River National Wildlife Refuges

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of intent to prepare a Comprehensive Conservation Plan and Environmental Assessment for Tallahatchie, Dahomey, and Coldwater River National Wildlife Refuges, located in the State of Mississippi.

SUMMARY: The Fish and Wildlife Service, Southeast Region, intends to gather information necessary to prepare a comprehensive conservation plan and environmental assessment pursuant to the National Environmental Policy Act and its implementing regulations. The Service is furnishing this notice in compliance with the National Wildlife Refuge System Administration Act of 1966, as amended (16 U.S.C. 668dd *et seq.*), to achieve the following:

(1) Advise our agencies and the public of our intentions, and

(2) Obtain suggestions and information on the scope of issues to include in the environmental document.

Special mailings, newspaper articles, and other media announcements will be used to inform the public and state and local government agencies of the opportunities for input throughout the planning process.

ADDRESSES: Address comments, questions, and requests for more information to Stephen W. Gard, Project Leader, North Mississippi National Wildlife Refuge Complex, 2776 Sunset Drive, P.O. Box 1070, Grenada, Mississippi 38901; Telephone: 662/226–8286; Fax: 662/226–8488; E-mail: *FWR4RWNorthMSRefuges@fws.gov*.

SUPPLEMENTARY INFORMATION: By Federal law, all lands within the National Wildlife Refuge System are to be managed in accordance with an approved comprehensive conservation plan. The plan guides management decisions and identifies refuge goals, long-range objectives, and strategies for achieving refuge purposes. The planning process will consider many elements including wildlife and habitat management, public recreational activities, and cultural resource protection. Public input in the planning process is essential as the Service establishes management priorities and explores opportunities for non-invasive and low-impact activities.

Tallahatchie National Wildlife Refuge, established in 1990, is located in Grenada and Tallahatchie Counties, Mississippi. It consists of 4,083 acres and is managed primarily to provide habitat for migratory waterfowl. Refuge objectives are to create a woodland corridor along Tippo Bayou for migratory neotropical songbirds, convert marginal agricultural land to hardwood forests, and provide fallow field habitat for wintering grassland birds.

Dahomey National Wildlife Refuge, also established in 1990, is located in Bolivar County, Mississippi. It consists of 9,691 acres, and is the largest remaining tract of bottomland hardwood forested wetlands in the northwest portion of Mississippi. Objectives are to provide habitat for migratory waterfowl and other migratory birds, and to provide recreational use and environmental education to the public.

Coldwater River National Wildlife Refuge, established in 1991, is located in Tallahatchie and Quitman Counties, Mississippi. It consists of 2,202 acres, much of which is inaccessible during the winter months due to backwater flooding of the Tallahatchie River. Objectives are to provide habitat for migratory waterfowl, shorebirds, and wading birds; convert marginal agricultural land to hardwood forests; and provide fallow field habitat for wintering grassland birds.

Authority: This notice is published under the authority of the National Wildlife Refuge System Improvement Act of 1997, Pub. L. 105–57.

Dated: November 14, 2003.

J. Mitch King,

Acting Regional Director.

[FR Doc. 03–31165 Filed 12–17–03; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Receipt of Applications for Permit

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of applications for permit.

SUMMARY: The public is invited to comment on the following applications to conduct certain activities with endangered species and/or marine mammals.

DATES: Written data, comments or requests must be received by January 20, 2004.

ADDRESSES: Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents within 30 days of the date of publication of this notice to: U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203; fax 703/358–2281.

FOR FURTHER INFORMATION CONTACT: Division of Management Authority, telephone 703/358–2104.

SUPPLEMENTARY INFORMATION:

Endangered Species

The public is invited to comment on the following applications for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, *as amended* (16 U.S.C. 1531, *et seq.*).

Written data, comments, or requests for copies of these complete applications should be submitted to the Director (address above).

Applicant: Gerald L. Otterbacher, Medina, OH, PRT–074571.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Applicant: George H. Brannen, II, Inverness, FL, PRT–080563.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the pufpose of enhancement of the survival of the species.

Applicant: Richard B. Nilsen, Ft. Lauderdale, FL, PRT–077045.

The applicant requests a permit to import the sport-hunted trophy of one male black-faced impala (*Aepyceros melampus petersi*) taken in Namibia, for the purpose of enhancement of the survival of the species.

Applicant: James A. Shipley, Highland, MI, PRT–077046.

The applicant requests a permit to import the sport-hunted trophy of one male black-faced impala (*Aepyceros melampus petersi*) taken in Namibia, for the purpose of enhancement of the survival of the species.

Applicant: John L. Schwabland, Jr., Seattle, WA, PRT–077047.

The applicant requests a permit to import the sport-hunted trophy of one male black-faced impala (*Aepyceros melampus petersi*) taken in Namibia, for the purpose of enhancement of the survival of the species.

Applicant: Ralph S. Cunningham, Montgomery, TX, PRT–077050.

The applicant requests a permit to import the sport-hunted trophy of one male black-faced impala (*Aepyceros melampus petersi*) taken in Namibia, for the purpose of enhancement of the survival of the species.

Applicant: Dan L. Duncan, Houston, TX, PRT–077051.

The applicant requests a permit to import the sport-hunted trophy of one male black-faced impala (*Aepyceros melampus petersi*) taken in Namibia, for the purpose of enhancement of the survival of the species.

Applicant: Wildlife Conservation Society, Bronx, NY, PRT–079034.

The applicant requests a permit to re-export biological samples from maned wolf (*Chrysocyon brachyurus*) to Dr. Beat Bigler, Bern, Switzerland, for the purpose of diagnostic and scientific research. This notification covers activities to be conducted by the applicant over a five-year period.

Applicant: James J. Homann, Sr., Omaha, NE, PRT–080210.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Applicant: Atlanta Zoo, Atlanta, GA, PRT–080016.

The applicant requests a permit to import frozen semen samples from one male giant panda (*Ailuropoda melanoleuca*) from the Chengdu Research Base of Giant Panda Breeding, China, for the purpose of artificial insemination for scientific research and propagation for the enhancement of the survival of the species.

Applicant: Michelle L. Sauther, University of Colorado, Boulder, CO, PRT–040033.

The applicant requests an amendment and renewal of their permit to import biological samples from ring-tailed lemur (*Lemur catta*) collected in the wild in Madagascar, for the purpose of scientific research. This notification covers activities to be conducted by the applicant over a five-year period.

Applicant: Cleveland Metroparks Zoo, Cleveland, OH, PRT–080013.

The applicant requests a permit to import two male and two female captive born ocelots (*Leopardus pardalis*) from several zoos in Brazil, as part of the Brazilian Ocelot Consortium (BOC), for the purpose of enhancement of the survival of the species through captive propagation and conservation education.

Marine Mammals

The public is invited to comment on the following application for a permit to conduct certain activities with marine mammals. The application was submitted to satisfy requirements of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*), and the regulations governing marine mammals (50 CFR Part 18). Written data, comments, or requests for copies of the complete applications or requests for a public hearing on these applications should be submitted to the Director (address above). Anyone requesting a hearing should give specific reasons why a hearing would be appropriate. The holding of such a hearing is at the discretion of the Director.

Applicant: Ronald J. Bartels, Schriever, LA, PRT–080350.

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport hunted from the Baffin Bay polar bear population in Canada prior to February 18, 1997, for personal use.

Dated: December 5, 2003.

Michael S. Moore,

Senior Permit Biologist, Branch of Permits, Division of Management Authority.

[FR Doc. 03–31212 Filed 12–17–03; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Endangered and Threatened Species Permit Applications

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of application.

SUMMARY: The following applicants have applied for permits to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*).

DATES: Written data or comments should be submitted to the Regional Director, U.S. Fish and Wildlife Service, Ecological Services, 1 Federal Drive, Fort Snelling, Minnesota 55111—4056, and must be received on or before January 20, 2004.

FOR FURTHER INFORMATION CONTACT: Mr. Peter Fasbender, (612) 713–5343.

SUPPLEMENTARY INFORMATION:

Permit Number TE 056081–1

Applicant: EnviroScience, Incorporated, Stow, Ohio.

The applicant requests a permit to take (collect) listed fish and mussel species throughout the State of Georgia. Activities are proposed to identify populations of listed species and to develop methods to minimize or avoid project related impacts to those populations. The scientific research is aimed at enhancement of survival of species in the wild.

Permit Number TE 023666–0

Applicant: Eric R. Britzke, Clemson University, Clemson, South Carolina.

The applicant requests a permit to take (collect) the northern flying squirrel (*Glaucomys sabrinus*) throughout North Carolina and Virginia. Activities are proposed for the enhancement of survival of the species in the wild.

Permit Number TE 079161–0

Applicant: Paula K. Kleintjes, University of Wisconsin-Eau Claire, Eau Claire, Wisconsin.

The applicant requests a permit to take (harass) Karner blue butterfly (*Lycaeides melissa samuelis*) in Wisconsin. Activities are proposed for the enhancement of survival of (*Lycaeides melissa samuelis*) in Wisconsin. Activities are proposed for the enhancement of survival of the species in the wild.

Permit Number TE 079162–0

Applicant: Jeremy A. Williamson, Polk County Land and Water Resources Department, Balsam Lake, Wisconsin.

The applicant requests a permit to take (collect) Higgins' eye pearlymussel (*Lampsilis higginsi*) and winged mapleleaf (*Quadrula fragosa*) in Wisconsin. Activities are proposed for the enhancement of survival of the species in the wild.

Permit Number TE 072500

Applicant: U.S. Army Corps of Engineers, Engineer Research and Development Center, Champaign, Illinois.

The applicant requests a permit to take Topeka shiner (*Notropis topeka*) in Illinois. Activities are proposed for the enhancement of survival of the species in the wild.

Dated: December 3, 2003.

T.J. Miller,

Acting Assistant Regional Director, Ecological Services, Region 3, Fort Snelling, Minnesota.

[FR Doc. 03–31184 Filed 12–17–03; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Receipt of Applications for Endangered Species Permits

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of applications for permits.

SUMMARY: The public is invited to comment on the following applications to conduct certain activities with endangered species. We provide this notice pursuant to section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

DATES: We must receive written data or comments on these applications at the address given below, by January 20, 2004.

ADDRESSES: Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, 1875 Century Boulevard, Suite 200, Atlanta, Georgia 30345 (Attn: Victoria Davis, Permit Biologist).

FOR FURTHER INFORMATION CONTACT: Victoria Davis, telephone 404/679–4176; facsimile 404/679–7081.

SUPPLEMENTARY INFORMATION: The public is invited to comment on the following applications for permits to conduct certain activities with endangered species. If you wish to comment, you may submit comments by any one of the following methods. You may mail comments to the Service's Regional Office (see **ADDRESSES** section) or via electronic mail (e-mail) to *"victoria_davis@fws.gov"*. Please submit electronic comments as an ASCII file avoiding the use of special characters and any form of encryption. Please also include your name and return address in your e-mail message. If you do not receive a confirmation from the Service that we have received your e-mail message, contact us directly at the telephone number listed above (*see* **FOR FURTHER INFORMATION CONTACT** section). Finally, you may hand deliver comments to the Service office listed above (*see* **ADDRESSES** section).

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the administrative record. We will honor such requests to the extent allowable by law. There may also be other circumstances in which we would withhold from the administrative record a respondent's identity, as allowable by law. If you wish us to withhold your name and address, you must state this prominently at the beginning of your comments. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

Applicant: Claudia Frosch, Gulf Shores, Alabama, TE080231–0.

The applicant requests authorization to take (trap, handle, relocate, radio-tag, PIT-tag, and release) the Alabama beach mouse (*Peromyscus polionotus ammobates*) and Perdido Key beach mouse (*Peromyscus polionotus trissyllepsis*) while conducting presence and absence studies and population monitoring. The proposed activities would occur on Bon Secour National Wildlife Refuge, Baldwin County, Alabama; Johnson Beach of Gulf Island National Seashore, Escambia County, Florida; Perdido Key State Recreation Area, Escambia County, Florida; and Alabama Point, Baldwin County, Alabama.

Applicant: Jereme N. Phillips, Gulf Shores, Alabama, TE080229–0.

The applicant requests authorization to take (trap, mark, recapture, and release) the Alabama beach mouse (*Peromyscus polionotus ammobates*) while conducting presence and absence studies. The proposed activities would occur on Bon Secour National Wildlife Refuge, Baldwin County, Alabama.

Dated: December 3, 2003.

Jackie Parrish,

Acting Regional Director.

[FR Doc. 03–31185 Filed 12–17–03; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Endangered and Threatened Wildlife and Plants; 90-Day Finding for a Petition to Delist the Preble's Meadow Jumping Mouse in Colorado and Wyoming

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of 90-day petition finding.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces a 90-day finding for a petition to delist the Preble's meadow jumping mouse (*Zapus hudsonius preblei*) under the Endangered Species Act of 1973, as amended. We find that the petition and additional information in our files did not present substantial scientific or commercial information indicating that delisting may be warranted. We will not be initiating a further status review in response to this petition. We ask the public to submit to us any new information that becomes available concerning the status of or threats to this species. This information will help us monitor and encourage the conservation of this species.

DATES: The finding announced in this document was made on December 11, 2003. You may submit new information concerning this species for our consideration at any time.

ADDRESSES: Questions or information concerning this petition should be sent to the Field Supervisor, U.S. Fish and Wildlife Service, Ecological Services, 755 Parfet, Lakewood, Colorado 80215. The separate petition finding, supporting data, and comments are available for public review, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Ms. Susan Linner at 303–275–2370 (*see* **ADDRESSES** section).

SUPPLEMENTARY INFORMATION:

Background

Section 4(b)(3)(A) of the Endangered Species Act (Act) of 1973, as amended (16 U.S.C. 1531 *et seq.*), requires that the Service make a finding on whether a petition to list, delist, or reclassify a species presents substantial scientific or commercial information to demonstrate that the petitioned action may be warranted. This finding is to be based on all information readily available to the Service at the time the finding is made. To the maximum extent practicable, the finding shall be made within 90 days following receipt of the petition and promptly published in the **Federal Register**. Following a positive finding, section 4(b)(3)(B) of the Act requires the Service to promptly commence a status review of the species.

The Preble's meadow jumping mouse is a small rodent in the family Zapodidae and is 1 of 12 recognized subspecies of the species *Zapus hudsonius*, the meadow jumping mouse. Preble's is native only to the Rocky Mountains-Great Plains interface of eastern Colorado and southeastern Wyoming. This shy, largely nocturnal mouse is 8 to 9 inches long (its tail accounts for 60 percent of its length) with hind feet adapted for jumping. It occurs in foothills riparian habitat from southeastern Wyoming to south central Colorado. Preble's meadow jumping mice regularly use upland grasslands adjacent to riparian habitat, and they may be dependent upon some amount of open water. The species hibernates near riparian zones from mid-October to early May. Loss of riparian habitats and other factors associated with urbanization appear to be the major threat to the species.

On August 16, 1994, the Service received a petition from the Biodiversity Legal Foundation to list the Preble's

meadow jumping mouse. On March 15, 1995, the Service published a notice of the 90-day finding that the petition presented substantial information indicating that listing the Preble's may be warranted, and requested comments and biological data on the status of the mouse (60 FR 13950). On March 25, 1997, the Service issued a 12-month finding on the petition action along with a proposed rule to list Preble's as an endangered species and announced a 90-day public comment period (62 FR 14093), with subsequent reopenings of the comment period to gather additional information (62 FR 24387, 62 FR 67041). The Service added the Preble's meadow jumping mouse to the List of Endangered and Threatened Wildlife in 50 CFR 17.11 as a threatened species on May 13, 1998 (63 FR 26517).

On July 27, 1999, the Service received a petition to delist the Preble's, dated July 20, 1999. The Service subsequently received two other petitions to delist the Preble's—one dated July 26, 1999, and one dated August 27, 2000. These petitions are being treated as second petitions for the requested delisting action, and both have been considered in this 90-day finding.

Review of the Petition

In requesting that the Service delist the Preble's, the first petitioner stated that the information available to the Service did not justify a listing and asked the Service to "set aside" the Act relative to the Preble's to allow time to gather more information. The third petitioner stated that, because the information available on the Preble's is limited, the Service's listing of the subspecies was "precipitate and uninformed." The Service is mandated to use the best scientific information available at the time we make a decision to list a species (50 CFR 424.11(b)). Once petitioned to list a species, we are under statutory obligations as stated in the Act to complete the petition process. We did extend or reopen the comment period twice and held three public hearings to seek factual reports or information that might contribute to the development of the final rule (63 FR 26517).

The first petitioner stated that additional information was available on trapping conducted by private landowners, the Forest Service, and the State Department of Transportation that the Service did not consider in its 1998 listing and that the Service should set aside the listing to evaluate this new information. The third petitioner stated that the information coming to light in 1999 indicated a plenitude of this subspecies. Trapping conducted by private landowners, the Forest Service, and the Wyoming Department of Transportation in a number of potential habitat sites in the North Platte drainage occurred after the species was listed as threatened in 1998. Although the Service did not have this trapping information available for consideration during preparation of the 1998 listing rule, we did consider in the listing rule that the Preble's likely occurred in these areas because the species historically had been collected there and these areas have suitable habitat for the Preble's. Therefore, the Service took into consideration the likely presence of the Preble's in these surveyed locations in the 1998 listing rule.

The second petitioner stated that the reason for the delisting request was the inability to identify the mouse. We interpret this concern, that is the difficulty in differentiating Preble's from the western jumping mouse in the field, as either a concern that (1) the listing is invalid or (2) the taxonomic entity is not valid. The range of the western jumping mouse (*Zapus princeps*) in Wyoming and Colorado overlaps that of Preble's (Hall 1981), and the two species are similar in their appearance. Despite difficulties in field identification, the Preble's can be differentiated from the western jumping mouse. Compared to the western jumping mouse, the Preble's is generally smaller and has a more distinctly bicolored tail and a less obvious dorsal (back) stripe. A better technique for identification of the Preble's requires skulls of specimens housed in natural history museums, where dental characteristics (such as the presence or absence of a tooth fold on the first lower molar (Klingener 1963, Hafner 1993) or the shape of a tooth cusp) can be seen and used in combination with distribution and elevation. These techniques have been useful scientific tools for almost half a century. A third and more recent technique to identify Preble's uses a combination of skull measurements in addition to the tooth fold (which may not always be reliable by itself due to tooth wear) (Conner and Shenk in press). These techniques accurately identify most of the Preble's specimens. A fourth technique is genetic analysis. Future DNA studies, including a current study being conducted at the Denver Museum of Nature and Science, will go a long way towards resolving some of the few remaining identification inconsistencies.

In addition, ease of field identification is not a threat to be evaluated when making a listing determination. The Act requires that the Service evaluate five factors in determining whether to list a taxon as endangered or threatened. Under section 4(a)(1) of the Act, we must determine whether a species should be listed as threatened or endangered due to one or more of the following five factors—(1) present or threatened destruction, modification, or curtailment of habitat or range; (2) overutilization for commercial, recreational, scientific, or educational purposes; (3) disease or predation; (4) the inadequacy of existing regulatory mechanisms; and (5) other natural or manmade factors affecting the species' continued existence. Our determination is statutorily limited to an evaluation of these five factors.

In response to whether the taxonomic entity is valid, the Code of Federal Regulations (50 CFR 424.11) states that in listing entities as endangered or threatened under the Act, the Service will rely on standard scientifically accepted taxonomy. The Preble's meadow jumping mouse (*Zapus hudsonius preblei*) is a valid, scientifically accepted subspecies of meadow jumping mice (*Zapus hudsonius*) (Krutzch 1954; Clark and Stromberg 1987; Fitzgerald *et al.* 1994).

The third petitioner disagreed with the use of information available on *Zapus hudsonius* and the application of this information to *Zapus hudsonius preblei*. When information specific to a subspecies is lacking, information on the parent species may be the best information available for the Service to use. We must base our determination on the best available scientific information. Many characteristics of the species *Z. hudonius* would generally be applicable to all its subspecies, including *Z. h. preblei*.

The third petitioner stated that the original petition to list the Preble's should not have been given credence because it lacked sufficient information on the Preble's. Under the Code of Federal Regulations (50 CFR 424.13 and 424.14), the Service is required to seriously consider all petitions and utilize all available information, not just the petitioner's, when making its determination. In the 1998 listing rule, we relied on a host of scientific information available on the species concerning the threats it faced and did not make our determination based solely on the information provided in the original petition.

The third petitioner stated that the 1998 listing is inappropriate because of errors in the subspecies' geographical distribution. The third petitioner stated that the Service did not accept the identification of an individual Preble's reportedly found in Las Animas County, Colorado, because it would have raised questions regarding the subspecies' presence in Huerfano, Costilla, and Pueblo Counties of Colorado. As stated in the 1998 listing rule, the Service did not accept this identification because further morphological analysis determined this individual to be a different species of mouse, the western jumping mouse, not the Preble's.

The third petitioner stated that favorable habitat may occur in other Colorado counties (Gilpin, Clear Creek, Fremont, Teller, Huerfano, and Costilla) that have not been surveyed. Since receipt of the third petitioner's petition, surveys have been undertaken in Fremont and Teller Counties. Gilpin, Clear Creek, and Teller are high-elevation counties west of known Preble's distribution with almost no favorable habitat. The only favorable habitat would occur where these counties meet lower elevation neighboring counties. The lower elevation habitat within the South Platte River drainage in northern Teller County may be occupied by the Preble's near the Jefferson County line. Surveys identified one Preble's mouse at approximately the county line but none upstream within Teller County. The habitat in Teller County is very limited in extent because the elevation rapidly becomes too high upstream from Teller County's border with Jefferson County. Similarly, elevations in Gilpin and Clear Creek Counties are generally too high to support the Preble's. At the eastern edge of both counties, mountain drainages exit into Jefferson County to lower elevation streams characteristic of the subspecies' range. Surveys of lower elevation streams in Gilpin and Clear Creek Counties suggest that habitat is marginal, at best, for the Preble's. Any additional habitat in these counties would not significantly increase the size of the Preble's geographical distribution and, therefore, would not alter the threat analysis in the 1998 listing rule.

Fremont, Costilla, and Huerfano Counties are not likely to support Preble's. Surveys of possibly suitable habitats in Fremont County have failed to document the Preble's (Christina Werner, Colorado Natural Heritage Program, in litt. 2003). While a portion of Huerfano County is within the Arkansas River drainage (where Preble's has been documented in the northernmost part), Huerfano County is even further south of known Preble's range and is even less likely to have suitable habitat for the Preble's. Costilla County is in the Rio Grande drainage. It lies far from known Preble's range, south and west of the Arkansas River drainage and separated by a mountain range.

The third petitioner stated the use of Sherman live traps as a reason why the subspecies' geographical distribution cannot be fixed entirely. The geographical distribution of the subspecies was determined based on small mammal surveys conducted in Colorado and Wyoming over the past 100 years primarily using snaptraps, not Sherman live traps. Therefore, surveys using Sherman live traps were not the primary information used to determine the species' geographical distribution. The use of Sherman live traps in surveying for Preble's became standard methodology in the early 1990s, and information from these surveys has refined but not significantly altered the subspecies geographical distribution.

Additionally, the third petitioner stated that the Service did not accurately identify the Preble's geographical range because of what the petitioner stated were errors in several citations (Whitaker 1972; Compton and Hugie 1993; Harrington et. al. 1995, and Meaney and Clippenger 1996). In defining the geographical distribution, the Service used all scientific information available; it did not rely only upon the citations mentioned by the third petitioner but used other citations as well to give a full picture of the species' range.

The third petitioner cites Shenk (1998) as saying that there is insufficient information on Preble's range and ecology. While Shenk cites gaps in knowledge on the Preble's, Shenk's intent was to identify information needed to support a conservation strategy for the Preble's and was not related to the species' listing.

The third petitioner stated that population declines have not been documented. The Preble's has been extirpated from some historically occupied areas. Surveys have identified various locations where the subspecies was historically present but is now absent (Ryon 1996). Since at least 1991, the Preble's has not been found in Denver, Adams, or Arapahoe Counties in Colorado. Its absence in these counties is likely due to urban development, which has altered, reduced, or eliminated riparian habitat (Compton and Hugie 1993; Ryon 1996).

The third petitioner referred to statements made by unidentified parties about lack of historical information and about additional animals being found. We have addressed the issue of insufficient information in previous paragraphs. We address the issue of additional surveys and documentation of additional populations in response to additional statements by the third petitioner below.

Based on information that (1) the Service has identified numerous known or potential population areas, and (2) there are large numbers of unsurveyed sites, the third petitioner concludes that the Preble's is abundant and has never been threatened.

The Service did identify areas of known or potential Preble's populations to assist local governments and other entities in planning activities (63 FR 66777, December 3, 1998). The sites identified as "potential" Preble's population areas had not been surveyed; the presence of Preble's in these locations was considered possible, but had not been verified. This list was a preliminary estimate of potential habitat; some of these potential sites have since been found not to have suitable habitat and/or not to support Preble's populations. The potential habitats since found to support Preble's continue to be subject to the threats listed in the 1998 listing rule.

The third petitioner asserts that the numbers of known and potential Preble's habitat indicate its abundance. The list of known or potential populations identifies fragments of the original Preble's habitat. The number of fragments may appear high but represent only a small portion of the original whole. The number of separate sites reflects the amount of fragmentation that has occurred within historic habitat and is an indication of the previous and continuing threats to Preble's habitat described in the 1998 listing rule.

Additional surveys have been undertaken since the 1998 listing rule in some locations throughout the subspecies' range where habitat was believed suitable and where the species was presumed to occur but had not been documented. Some of these surveys verified Preble's presence at the survey locations; others did not. While new populations have been documented and additional animals have been found, the threat analysis in the 1998 listing rule identified significant threats to the subspecies and its habitat throughout most of its range in both known and potentially occupied areas. The newly documented populations remain subject to the threats analyzed in the 1998 listing rule.

The third petitioner stated that there is no rational definition of habitat. Typical habitat for the Preble's comprises well-developed plains riparian vegetation with adjacent undisturbed grassland communities and a nearby water source. Well-developed plains riparian vegetation typically includes a dense combination of grasses, forbs, and shrubs; a taller shrub and tree

canopy may be present (Bakeman 1997). When present, the shrub canopy is often *Salix* spp. (willow), although shrub species including *Symphoricarpus* spp. (snowberry), *Prunus virginiana* (chokecherry), *Crataegus* spp. (hawthorn), *Quercus gambelli* (Gambel's oak), *Alnus incana* (alder), *Betula fontinalis* (river birch), *Rhus trilobata* (skunkbrush), *Prunus americana* (wild plum), *Amorpha fruticosa* (lead plant), *Cornus sericea* (dogwood), and others also may occur (Bakeman 1997; Shenk and Eussen 1998).

Additional research on the species' habitat has supported and refined the definition of habitat used in the 1998 listing rule. This recent information indicates that, although Preble's have rarely been trapped in uplands adjacent to riparian areas (Dharman 2001), detailed studies of the Preble's movement patterns using radio-telemetry found Preble's feeding and resting in adjacent uplands and traveling considerable distances along streams, as far as 1.6 km (1.0 mi) in one evening (Shenk and Sivert 1999a; Shenk and Sivert 1999b; Ryon 1999; Schorr 2001). These studies suggest that the Preble's uses uplands at least as far out as 100 m (330 ft) beyond the 100-year floodplain (Ryon 1999; Tanya Shenk, Colorado Division of Wildlife, in litt. 2002).

The third petitioner also raised several issues specifically dealing with stated increased costs or private property takings or life, health, and safety issues, including disease carried by deer mice. The Code of Federal Regulations (50 CFR 424.11(b)) states that the Service must make determinations based on the basis of the best available scientific and commercial information regarding a species' status, without reference to possible economic or other impacts of such determination.

New Information Available in the Service's Files

In addition to considering information provided by the petitioners, if any, the Service also must consider the information readily available at the time of this finding. Additional information on the Preble's has become available since the species was listed in 1998 and since the petitions were received. As cited earlier, numerous surveys have been undertaken throughout the species' range in suitable habitat areas where the species was presumed to occur but had not been documented. Some of these surveys provided verification of Preble's presence at the survey locations; others did not. The survey results indicate that the species may persist at or may have been extirpated from individual survey locations. Research has been conducted, such as radio-telemetry studies on habitat use and movements by Preble's that has added to current knowledge about the species' biology. There is new information verifying differences in morphological characteristics between *Zapus hudsonius preblei* and related taxa (Connor and Shenk, in press).

Information is available on the presence of and possible increases in threats to Preble's and its habitat throughout a large portion of the species' range, as evidenced by—(1) section 7 consultations conducted to address adverse effects to the Preble's from Federal actions and (2) applications by private parties for permits to take Preble's. The Service is in the process of preparing a recovery plan for the Preble's and is involved in section 7 consultations on Federal activities as well as assisting with the development of Habitat Conservation Plans addressing many private activities. Through these efforts, we are continually reviewing and considering all newly available information regarding the species' abundance and the threats it faces.

Finding

The Service has reviewed the petitions, the material submitted with the petitions and subsequent to the petitions, and additional information in the Service's files. On the basis of the best scientific and commercial data available, the Service finds that the petitions and information in the Service's files do not present substantial information that delisting the Preble's meadow jumping mouse in Colorado and Wyoming may be warranted.

References Cited

A complete list of all references cited in this finding is available, upon request, from the Lakewood, Colorado Fish and Wildlife Office (*see* **ADDRESSES** section).

Authority

The authority for this action is section 4 of the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*).

Dated: December 11, 2003.

Steve Williams,

Director, Fish and Wildlife Service.

[FR Doc. 03–31255 Filed 12–17–03; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Draft Recovery Plan for *Deinandra conjugens* (Otay Tarplant)

AGENCY: U.S. Fish and Wildlife Service, Interior.

ACTION: Notice of document availability for review and comment.

SUMMARY: The U.S. Fish and Wildlife Service ("we"), announces the availability of the Draft Recovery Plan for *Deinandra conjugens* (Otay Tarplant) for public review. This draft recovery plan includes specific criteria and measures to be taken in order to effectively recover the species to the point where delisting is warranted. We solicit review and comment from the public and local, State, and Federal agencies on this draft recovery plan.

DATES: Comments on the draft recovery plan must be received on or before March 2, 2004 to receive our consideration.

ADDRESSES: Hard copies of the draft recovery plan will be available in 2 to 4 weeks. An electronic copy of this draft plan is now available at *http://www.pacific.fws.gov/ecoservices/endangered/recovery/default*. Written request for copies of the draft recovery plan and submission of written comments regarding the plan should be addressed to the Field Supervisor, U.S. Fish and Wildlife Service, Carlsbad Fish and Wildlife Office, 6010 Hidden Valley Road, Carlsbad, California 92009. Supporting documents are available for inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Kelly Goocher, Fish and Wildlife Biologist, at the above Carlsbad address (telephone: 760–431–9440).

SUPPLEMENTARY INFORMATION:

Background

Recovery of endangered or threatened animals and plants is a primary goal of our endangered species program and the Endangered Species Act (Act) (16 U.S.C. 1531 *et seq.*). Recovery means improvement of the status of listed species to the point at which listing is no longer appropriate under the criteria set out in section 4(a)(1) of the Act. Recovery plans describe actions considered necessary for the conservation of the species, establish criteria for downlisting or delisting listed species, and estimate time and cost for implementing the measures needed for recovery.

The Act requires the development of recovery plans for listed species unless such a plan would not promote the conservation of a particular species. Section 4(f) of the Act requires that public notice and an opportunity for public review and comment be provided during recovery plan development. We will consider all information presented during the public comment period prior to approval of each new or revised recovery plan. Substantive technical comments may result in changes to the recovery plan. Substantive comments regarding recovery plan implementation may not necessarily result in changes to the recovery plan, but will be forwarded to appropriate Federal or other entities so that they can take these comments into account during the course of implementing recovery actions. Individual responses to comments will not be provided.

Deinandra conjugens is an annual plant in the family Asteraceae. It was federally listed as a threatened species on October 13, 1998 (63 FR 54938). The species occurs in southwest San Diego County, California, and in northern Baja California, Mexico. It occurs predominantly on clay soils, subsoils, or lenses (isolated areas of clay soil), which typically support grasslands, but may support some woody vegetation.

Agriculture and urban development, invasion of nonnative species, and habitat fragmentation and degradation have resulted in the loss of suitable habitat across the species' range. The species' self-incompatible breeding system (an individual plant cannot pollinate itself, so successful reproduction requires pollination between genetically unrelated plants), its annual habit, and the extensive fragmentation of remaining populations potentially create additional threats from random population fluctuations, reduced populations of pollinators, a subsequent reduction in cross pollination and gene flow between populations, and a decline in genetic variation. Maintenance of the genetic variability within the species, through cross-pollination, may be critical to long-term survival.

Within San Diego County, the species occurs entirely within the Multiple Species Conservation Planning (MSCP) area, primarily within three associated subarea plans: the City of San Diego Subarea Plan, the County of San Diego Subarea Plan, and the City of Chula Vista Subarea Plan. These subarea plans provide for the conservation of *Deinandra conjugens* and many other listed and non-listed species by developing a reserve system with a monitoring and management framework, and protecting key populations. Additional measures outlined in the draft recovery plan will enhance the species' ability to achieve recovery.

This draft recovery plan recognizes efforts by the local jurisdictions to conserve *Deinandra conjugens* under the MSCP, and includes additional conservation measures designed to ensure *D. conjugens* will continue to exist, distributed throughout its extant and historic range. Recovery is dependent upon the conservation of sufficient habitat to sustain populations of *D. conjugens*, as well as populations of its primary pollinators; maintaining genetic variability within the species; and connect conserved populations to ensure gene flow (through cross pollination).

The ultimate goal of this recovery plan is to delist *Deinandra conjugens* through implementation of a variety of recovery actions including: (1) stabilizing and protecting habitat supporting known populations within the conserved areas under the MSCP; (2) surveying for new populations; (3) assessing status of known populations; (4) adaptively managing and monitoring conserved areas; (5) identifying research needs and conducting studies on biology and ecology of the species; and (6) developing and implementing a community outreach plan.

Public Comments Solicited

We solicit written comments on the draft recovery plan described. All comments received by the date specified above will be considered in developing a final recovery plan.

Authority

The authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: November 28, 2003.

D. Kenneth McDermond,

Acting Manager, California/Nevada Operations Office, Region 1, Fish and Wildlife Service.

[FR Doc. 03–31164 Filed 12–17–03; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Draft Revised Recovery Plan for the 'Alalā *(Corvus hawaiiensis)*

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability for review and comment.

SUMMARY: The U.S. Fish and Wildlife Service ("we") announces the availability of a draft revised recovery plan for the 'Alalā, or Hawaiian Crow (*Corvus hawaiiensis*) for public review. This endemic Hawaiian bird, a member of the family Corvidae, is now believed to be extinct in the wild and survives only in captivity. The 'Alalā was listed as an endangered species in 1967 (32 FR 4001). The original recovery plan for the 'Alalā was published in 1982.

DATES: Comments on the draft revised recovery plan must be received on or before February 17, 2004 to receive our consideration.

ADDRESSES: Copies of the draft revised recovery plan are available for inspection, by appointment, during normal business hours at the following locations: U.S. Fish and Wildlife Service, Pacific Islands Fish and Wildlife Office, 300 Ala Moana Boulevard, Room 3–122, Honolulu, Hawaii 96850 (telephone 808–792–9400) and Hawaii State Library, 478 S. King Street, Honolulu, Hawaii 96813. Requests for copies of the draft revised recovery plan and written comments and materials regarding this plan should be addressed to the Field Supervisor, Ecological Services, at the above Honolulu address. An electronic copy of the draft revised recovery plan is also available at: *http://endangered.fws.gov/recovery/index.html#plans*.

FOR FURTHER INFORMATION CONTACT: Jay Nelson, Fish and Wildlife Biologist, at the above Honolulu address.

SUPPLEMENTARY INFORMATION:

Background

Recovery of endangered or threatened animals and plants is a primary goal of our endangered species program and the Endangered Species Act (Act) (16 U.S.C. 1531 *et seq.*). Recovery means improvement of the status of listed species to the point at which listing is no longer appropriate under the criteria set out in section 4(a)(1) of the Act. Recovery plans describe actions considered necessary for the conservation of the species, establish criteria for downlisting or delisting listed species, and estimate time and cost for implementing the measures needed for recovery.

The Act requires the development of recovery plans for listed species unless such a plan would not promote the conservation of a particular species. Section 4(f) of the Act requires that public notice and an opportunity for public review and comment be provided during recovery plan development. We will consider all information presented during the public comment period prior

to approval of each new or revised recovery plan. Comments may result in changes to the plan. Comments regarding recovery plan implementation will be forwarded to appropriate Federal or other entities so that they can take these comments into account during the course of implementing recovery actions. Individual responses to comments will not be provided.

The Hawaiian Crow, or 'Alalā, is an omnivorous, forest-dwelling bird endemic to dry and mesic forests on the island of Hawai'i. Although 'Alalā were still abundant in the 1890's, their numbers decreased sharply throughout the twentieth century despite legal protection conferred by the Territory of Hawaii in 1931, the Act in 1973, and the State of Hawai'i Endangered Species Act in 1982. Progressive range reduction and population fragmentation have characterized the decline. By 1987, the wild 'Alalā population was reduced to a single bird in north Kona, and an unknown number in central Kona, on the west slope of Mauna Loa volcano, Hawai'i. The last reproduction of birds in the wild was in 1996, and the wild population declined from 12 birds in 1992 to 2 birds (possibly 3) in 2002, and apparent extinction in the wild in 2003.

Today, the 'Alalā is believed to survive only in captivity. Small population size and inbreeding are the primary threats to the species at present, fertility and hatching success in captivity are currently low, and the incidence of congenital abnormalities is increasing.

Many factors contributed to the decline of 'Alalā in the wild. Destruction of most of the lowland forests restricted the bird's ability to follow seasonal fruiting up and down the mountains. The upland forests have been thinned and fragmented, and many fruiting plants lost, due to logging, ranching, and the effects of grazing by feral pigs, cattle, and sheep. Mongooses, cats, and rats prey on 'Alalā eggs and fledglings. Diseases carried by introduced mosquitoes may have cause the mortality of many 'Alalā, as they did other forest birds. The role of 'Io in this decline, however, is unknown, despite their known effect on released birds. However, 'Io densities are higher, and vulnerability of 'Alalā may be greater, in areas where ungulate grazing has reduced understory cover.

The overall objective of this plan is to provide a framework for the recovery of the 'Alalā so that its protection under the Act is no longer necessary. Recovery is contingent upon protecting and managing suitable habitat for reintroduction of 'Alalā. Recovery actions include measures to protect habitat where the taxa occurred and habitat where the species is not known to have occurred but which may be suitable, restoration of degraded habitat, removal of feral ungulates from habitat areas, predator control, captive propagation and reintroduction, development of strategies to reduce mortality of reintroduced 'Alalā by 'Io predation, and the development of means to address threats of avian disease. Key to recovery will be propagation of 'Alalā in captivity; removal of feral ungulates that degrade forest habitat, spread introduced nonnative plant species, and create breeding sites for disease-carrying mosquitoes; control of introduced rodents; removal of feral cats that carry toxoplasmosis; and control of invasive plant species. Habitat management and restoration will increase foods available to released 'Alalā and provide better cover for escape in areas with 'Io.

Significant features of the 'Alalā's life history, behavior, ecological interactions, and habitat needs remain unknown. These unknowns, combined with the pressing need to successfully maintain and augment the last remaining population of the species in captivity, led us to develop a draft revised recovery plan that focuses primarily on actions to conserve the 'Alalā in the short-term while working within the framework of a broader long-term recovery strategy. This draft revised recovery plan is therefore presented in three sections: (1) An Introduction and Overview provides information on the biology of the species; (2) a Strategic Plan outlines the overall long-term goals and broad strategies which we anticipate shall remain effective throughout the recovery process for this species; and (3) a 5-year Implementation Plan which sets short-term goals for recovery efforts and research essential to conservation of the species. It is anticipated that new Implementation Plans will be prepared and published as addenda to the revised recovery plan every 3 to 5 years as we gain further knowledge of the 'Alalā and are better able to determine the parameters and techniques for the effective recovery of this species in the wild.

Public Comments Solicited

We solicit written comments on the draft revised recovery plan described. All comments received by the date specified above will be considered in developing a final revised recovery plan.

Authority

The authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533 (f).

Dated: October 16, 2003.

David J. Wesley,

Regional Director, Region 1, U.S. Fish and Wildlife Service.

[FR Doc. 03–31166 Filed 12–17–03; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Draft Recovery Plan for the Blackburn's Sphinx Moth *(Manduca blackburni)*

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability for review and comment.

SUMMARY: The U.S. Fish and Wildlife Service ("we") announces the availability of the Draft Recovery Plan for the Blackburn's Sphinx Moth (*Manduca blackburni*) (sphinx moth) for public review and comment. This insect taxon is listed as endangered (45 FR 4770; February 1, 2000), and is endemic to the main Hawaiian Islands. We solicit review and comment from local, State, and Federal agencies, and the public on this draft recovery plan.

DATES: Comments on this draft recovery plan must be received on or before February 17, 2004 to receive our consideration.

ADDRESSES: Copies of the draft recovery plan are available for inspection, by appointment, during normal business hours at the following locations: U.S. Fish and Wildlife Service, Pacific Islands Fish and Wildlife Office, 300 Ala Moana Boulevard, Room 3–122, Box 50088, Honolulu, Hawaii 96850 (phone: 808–541–3441) and the Hawaii State Library 478 S. King Street, Honolulu, Hawaii 96813. Requests for copies of the draft plan and written comments and materials regarding this plan should be addressed to the Field Supervisor, Ecological Services, at the above Honolulu address.

FOR FURTHER INFORMATION CONTACT: The Field Supervisor at the above Honolulu address.

SUPPLEMENTARY INFORMATION:

Background

Recovery of endangered or threatened animals and plants is a primary goal of our endangered species program and the Endangered Species Act (Act) (16 U.S.C. 1531 *et seq.* Recovery means improvement of the status of listed species to the point at which listing is no longer necessary under the criteria set out in section 4(a)(1) of the Act. Recovery plans describe actions considered necessary for the conservation and survival of the species, establish criteria for downlisting or delisting listed species, and estimate time and cost for implementing the measures needed for recovery.

The Act requires the development of recovery plans for listed species unless such a plan would not promote the conservation of a particular species. Section 4(f) of the Act requires that public notice, and an opportunity for public review and comment, be provided during recovery plan development. We will consider all information presented during a public comment period prior to approval of each new or revised recovery plan. We, along with other Federal agencies, will also take these comments into account in the course of implementing approved recovery plans. Individual responses to comments will not be provided.

The sphinx moth was federally listed as endangered on February 1, 2000 (65 FR 4770). This insect taxon is currently known to occur on three of the seven Hawaiian Islands where it historically occurred, including Hawaii, Maui, and Kahoolawe. Although some habitat is under public ownership and zoned for conservation purposes, no known sphinx moth habitat complexes are entirely protected, and the species faces threats throughout its range.

The sphinx moth is currently found in association with topographically diverse landscapes that contain low to moderate levels of nonnative vegetation. Vegetation types that support the sphinx moth include dry to mesic shrub land and forest from sea level to mid-elevations. Soil and climatic conditions, as well as physical factors, affect the suitability of habitat within the species' range. The primary threats to the sphinx moth include urban and agricultural development; invasion by non-native plant species; habitat fragmentation and degradation; increased wildfire frequency; impacts from ungulates; other human-caused disturbances that have resulted in substantial losses of habitat throughout the species' historic range; parasitoids and insect predators; and vandalism (collection). Needed conservation activities include protection, management, and restoration of suitable and restorable habitat; outplanting of native *Nothocestrum* spp. host plants; and a sphinx moth captive breeding program that would augment or expand the existing population within its historic range. This draft recovery plan identifies 3 recovery units, comprising 13 management units, which are geographic areas recently documented to contain sphinx moth populations and/or sphinx moth host plant populations, and shall be the focus of recovery actions or tasks. The three recovery units and their component management units contain habitat considered necessary for the long-term conservation of the sphinx moth (*e.g.*, networks of suitable habitat patches and connecting lands).

The recovery actions described in this draft recovery plan include: (1) Protect habitat and control threats to the moth and its habitat; (2) expand existing wild *Nothocestrum* spp. host plant populations; (3) conduct additional research essential to recovery of the sphinx moth; (4) develop and implement a detailed monitoring plan for the sphinx moth; (5) reestablish wild sphinx moth populations within its historic range; (6) develop and provide information for the public on the sphinx moth; and (7) validate recovery objectives.

The recovery objective of this draft recovery plan is to ensure the species' long-term survival and conservation and to conduct research necessary to refine recovery criteria so that the sphinx moth can be reclassified to threatened and eventually delisted.

Public Comments Solicited

We solicit written comments on the draft recovery plan described. All comments received by the date specified above will be considered in developing a final sphinx moth recovery plan.

Authority

The authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: October 14, 2003.

David J. Wesley,

Acting Regional Director, Region 1, Fish and Wildlife Service.

[FR Doc. 03–31189 Filed 12–17–03; 8:45 am]

BILLING CODE 4310–55–U

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Aquatic Nuisance Species Task Force Mississippi River Basin Panel Meeting

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of meeting.

SUMMARY: This notice announces a meeting of the Aquatic Nuisance Species (ANS) Task Force Mississippi River Basin Regional Panel. The meeting topics are identified in the **SUPPLEMENTARY INFORMATION.**

DATES: The Mississippi River Basin Regional Panel will meet from 8 a.m. to 5 p.m. on Thursday, January 8, 2004, and 8 a.m. to 4 p.m. on Friday, January 9, 2004. Minutes of the meeting will be available for public inspection during regular business hours, Monday through Friday.

ADDRESSES: The Mississippi River Basin Regional Panel meeting will be held at the Radisson Hotel—New Orleans, 1500 Canal Street, New Orleans, LA 70112. Phone 504–522–4500. Minutes of the meeting will be maintained in the office of Chief, Division of Environmental Quality, U.S. Fish and Wildlife Service, Suite 322, 4401 North Fairfax Drive, Arlington, Virginia 22203–1622.

FOR FURTHER INFORMATION CONTACT: Jay Rendall, Mississippi River Basin Panel Chair and Exotic Species Program Coordinator, Minnesota Department of Natural Resources at (651) 297–1464 or Jerry Rasmussen, Coordinator, MICRA, P.O. Box 774, Bettendorf, IA 52722, at (309) 793–5811, or Shawn Alam, Aquatic Nuisance Species Task Force at (703) 358–2025.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. App. I), this notice announces meetings of the Aquatic Nuisance Species Task Force Mississippi River Basin Regional Panel. The Task Force was established by the Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990. The Mississippi River Basin Regional Panel was established by the ANS Task Force in 2002. The Mississippi River Basin Panel, comprised of representatives from Federal, State, local agencies and from private environmental and commercial interests, performs the following activities:

a. Identifies priorities for activities in the Mississippi River Basin,

b. develops and submits recommendations to the national Aquatic Nuisance Species Task Force,

c. coordinates aquatic nuisance species program activities in the Basin,

d. advises public and private interests on control efforts, and

e. submits an annual report to the Aquatic Nuisance Species Task Force.

The purpose of the Panel is to advise and make recommendations to the Aquatic Nuisance Species Task Force on issues relating to the Mississippi River Basin region of the United States that includes thirty-two Mississippi River Basin States: Alabama, Arkansas, Colorado, Georgia, Iowa, Illinois, Indiana, Kentucky, Kansas, Louisiana,

Maryland, Michigan, Minnesota, Missouri, Mississippi, Montana, North Carolina, North Dakota, Nebraska, New Mexico, New York, Ohio, Oklahoma, Pennsylvania, South Carolina, South Dakota, Tennessee, Texas, Virginia, West Virginia, Wisconsin, and Wyoming. The Mississippi River Basin Regional Panel will discuss several topics at this meeting including: a review of the first Panel meeting and Panel efforts to date including the development of an Executive Board report; presentations on round goby predation on smallmouth bass eggs; updates on Asian Carp, bighead and silver carp risk assessments; updates on white perch and distribution of ANS in the Basin; discussions on pathways and prevention activities such as the use of HACCP in fish hatcheries; a report on an Asian carp barrier feasibility study initiated by the Minnesota DNR; development of national ballast water regulations, and state ballast water regulations; status reports from panel subcommittees; a discussion on each subcommittee's responsibilities, the 2004 Action Plans, and recommendations for the ANS Task Force; and updates from Panel member organizations and states.

Dated: December 1, 2003.

William E. Knapp,

Acting Co-Chair, Aquatic Nuisance Species Task Force, Acting Assistant Director—Fisheries & Habitat Conservation.

[FR Doc. 03–31211 Filed 12–17–03; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WO–230–1030–PB–24 1A]

OMB Approval Number 1004–0001; Information Collection Submitted to the Office of Management and Budget Under the Paperwork Reduction Act

The Bureau of Land Management (BLM) has sent a request to extend the current information collection to the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). On February 5, 2003, the BLM published a notice in the **Federal Register** (68 FR 5913) requesting comment on this information collection. The comment period ended on April 7, 2003. BLM received no comments. You may obtain copies of the collection of information and related forms and explanatory material by contacting the BLM Information Collection Clearance Officer at the telephone number listed below.

The OMB must respond to this request within 60 days but may respond after 30 days. For maximum consideration your comments and suggestions on the requirement should be directed within 30 days to the Office of Management and Budget, Interior Department Desk Officer (1004–0001), at OMB–OIRA via facsimile to (202) 395–6566 or e-mail to *OIRA_DOCKET@omb.eop.gov*. Pleae provide a copy of your comments to the Bureau Information Collection Clearance Officer (WO–630), Bureau of Land Management, Eastern States Office, 7450 Boston Blvd., Springfield, Virginia 22153.

Nature of Comments: We specifically request your comments on the following:

1. Whether the collection of information is necessary for the proper functioning of the BLM, including whether the information will have practical utility;

2. The accuracy of our estimates of the information collection burden, including the validity of the methodology and assumptions we use;

3. Ways to enhance the quality, utility and clarity of the information we collect; and

4. Ways to minimize the information collection burden on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other forms of information technology.

Title: Free Use Application and Permit (Vegetative or Mineral Materials) (43 CFR 3620 and 5510).

OMB Approval Number: 1004–0001.

Bureau Form Number(s): 5510–1.

Abstract: The Bureau of Land Management (BLM) collects information from respondents to monitor and assess the use of authorized removals of vegetative or mineral materials to ensure sustainable resource management.

Frequency: Occasional.

Description of Respondents: Individuals, groups, not for profit organizations, Federal, State, and local governments, or corporations.

Estimated Completion Time: 30 minutes.

Annual Responses: 300.

Application Fee Per Response: 0.

Annual Burden Hours: 150.

Bureau Clearance Officer: Michael Schwartz, (202) 452–5033.

Dated: November 14, 2003.

Michael H. Schwartz,

Bureau of Land Management, Information Collection Clearance Officer.

[FR Doc. 03–31214 Filed 12–17–03; 8:45 am]

BILLING CODE 4310–84–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WO–230–1030–PB–24 1A]

OMB Control Number 1004–0058; Information Collection Submitted to the Office of Management and Budget Under the Paperwork Reduction Act

The Bureau of Land Management (BLM) has sent a request to extend the current information collection to the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). On February 11, 2003, the BLM published a notice in the **Federal Register** (68 FR 6941) requesting comment on this information collection. The comment period ended on April 14, 2003. BLM received no comments. You may obtain copies of the collection of information and related forms and explanatory material by contacting the BLM Information Collection Clearance Officer at the telephone number listed below.

The OMB must respond to this request within 60 days but may respond after 30 days. For maximum consideration your comments and suggestions on the requirement should be directed within 30 days to the Office of Management and Budget, Interior Department Desk Officer (1004–0058), at OMB–OIRA via facsimile to (202) 395–6566 or e-mail to *OIRA&_DOCKET@omb.eop.gov*. Please provide a copy of your comments to the Bureau Information Collection Clearance Officer (WO–630), Bureau of Land Management, Eastern States Office, 7450 Boston Blvd., Springfield, Virginia 22153.

Nature of Comments: We specifically request your comments on the following:

1. Whether the collection of information is necessary for the proper functioning of the BLM, including whether the information will have practical utility;

2. The accuracy of our estimates of the information collection burden, including the validity of the methodology and assumptions we use;

3. Ways to enhance the quality, utility and clarity of the information we collect; and

4. Ways to minimize the information collection burden on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other forms of information technology.

Title: Timber Export Reporting and Substitution Determination (43 CFR 5400).

OMB Control Number: 1004–0058.

Bureau Form Number(s): 5460–17.

Abstract: The Bureau of Land Management (BLM) collects and uses the information to determine if there was a substitution of Federal timber for exported private timber in violation of 43 CFR 5400.0–3(c).

Frequency: Occasional and within 12 months of last export sale.

Description of Respondents: Federal timber purchasers.

Estimated Completion Time: 1 hour.

Annual Responses: 25.

Application Fee Per Response: 0.

Annual Burden Hours: 25.

Bureau Clearance Officer: Michael Schwartz, (202) 452–5033.

Dated: November 24, 2003.

Michael H. Schwartz,

Bureau of Land Management, Information Collection Clearance Officer.

[FR Doc. 03–31215 Filed 12–17–03; 8:45 am]

BILLING CODE 4310–84–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WO–320–1320–PB–24 1A]

OMB Approval Number 1004–0073; Information Collection Submitted to the Office of Management and Budget Under the Paperwork Reduction Act

The Bureau of Land Management (BLM) has sent a request to extend the current information collection to the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). On July 26, 2002, the BLM published a notice in the **Federal Register** (67 FR 48936) requesting comment on this information collection. The comment period ended on September 24, 2002. BLM received no comments. You may obtain copies of the collection of information and related forms and explanatory material by contacting the BLM Information Collection Clearance Officer at the telephone number listed below.

The OMB must respond to this request within 60 days but may respond after 30 days. For maximum consideration your comments and suggestions on the requirement should be directed within 30 days to the Office of Management and Budget, Interior Department Desk Officer (1004–0073), at OMB–OIRA via facsimile to (202) 395–6566 or e-mail to *OIRA DOCKET@omb.eop.gov*. Please provide a copy of your comments to the Bureau Information Collection Clearance Officer (WO–630), Bureau of Land Management, Eastern States Office, 7450 Boston Blvd., Springfield, Virginia 22153.

Nature of Comments: We specifically request your comments on the following:

1. Whether the collection of information is necessary for the proper functioning of the BLM, including whether the information will have practical utility;

2. The accuracy of our estimates of the information collection burden, including the validity of the methodology and assumptions we use;

3. Ways to enhance the quality, utility and clarity of the information we collect; and

4. Ways to minimize the information collection burden on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other forms of information technology.

Title: Coal Management (43 CFR 3400).

OMB Approval Number: 1004–0073.

Bureau Form Number: 3400–12 and 3440–1.

Abstract: The Bureau of Land Management (BLM) collects and uses the information for leasing or developing Federal coal. BLM uses the information to determine if an applicant is qualified to hold a Federal coal lease.

Frequency: Quarterly, monthly, and annually.

Description of Respondents: Individuals, groups, or corporations.

Estimated Completion Time: 10 hours for 3440–1 and 1 hour for 3400–12.

The following chart lists non-form information collection requirements.

Information collection	Public burden HR per action
a. Application for an exploration license	36
b. Issuance and termination of an exploration license	12
c. Operations under and modification of an exploration license	1
d. Collection and submission of data from a exploration license	18
e. Call for coal resource and other information	24
f. Surface owner consultation	1
g. Expression of leasing interest	0
h. Response to notice of sale (bids received)	56
i. Consultation with the Attorney General	4
j. Leasing on application (application received)	308
k. Surface owner consent	1
l. Preference right lease application	800
m. Lease modification	12
n. License to mine	21
o. Relinquishments	18
p. Transfers, assignments, subleases	10
q. Bond actions (by lease or license)	8
r. Land description requirements	2
s. Future interest lease application	8
t. Special leasing qualification	3
u. Qualification statement	3
v. Lease rental and royalty rate reductions	13
w. Lease suspension	20
x. Lease form	1
y. Logical mining units	170
z. General obligations of the operator lessee	1
aa. Exploration plans	30
bb. Resource recovery and protection plan	192
cc. Modifications to the exploration plans and resource recovery and protection plan	16
dd. Mining operations maps	20
ee. Request for payment in lieu of continued operations	22

Information collection	Public burden HR per action
ff. Performance standards for exploration	1
gg. Performance standards for surface and underground coal mines	1
hh. Exploration reports	4
ii. Production reports	10
jj. Notices and orders	3
kk. Enforcement	2

Annual Responses: 1,289. *Application Fee Per Response:*

	Estimated number of actions	Filing fee per action	Total estimated annual collection
(a) Application for an exploration license	10	$250	$2,500
(j) Leasing on application (applications received)	15	250	3,750
(m) Lease modifications	6	250	1,500
(n) License to mine	2	10	20
(p) Transfers, assignments, subleases	27	50	1,350
Total			9,120

Annual Burden Hours: 25,585.
Bureau Clearance Officer: Michael Schwartz, (202) 452–5033.

Dated: December 11, 2003.

Michael H. Schwartz,

Bureau of Land Management, Information Collection Clearance Officer.

[FR Doc. 03–31216 Filed 12–17–03; 8:45 am]

BILLING CODE 4310–84–M

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–393 and 731–TA–829–840 (Final) (Remand)]

Cold-Rolled Steel From Argentina, Brazil, China, Indonesia, Japan, Russia, Slovakia, South Africa, Taiwan, Thailand, Turkey, and Venezuela; Notice and Scheduling of Remand Proceedings

AGENCY: International Trade Commission.

ACTION: Notice.

SUMMARY: The United States International Trade Commission (Commission) gives notice of the court-ordered remand of its final countervailing duty and antidumping duty investigations Nos. 701–TA–393 and 731–TA–829–840 (Final) (Remand).

FOR FURTHER INFORMATION CONTACT: Michael Diehl, Esq., Office of the General Counsel, telephone (202) 205–3095 or Diane Mazur, Office of Investigations, telephone (202) 205–3184, 500 E Street SW., Washington, DC 20436, U.S. International Trade Commission. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*).

SUPPLEMENTARY INFORMATION:

Reopening the Record

In March, May, and July of 2000, the Commission made negative final determinations in the referenced investigations. The determinations were appealed to the U.S. Court of International Trade (CIT). On October 28, 2003, the CIT issued an opinion requiring the Commission to reconsider its findings on the applicability of the captive production provision (19 U.S.C. 1677(7)(C)(iv)) and its injury determination. The Commission was instructed to file its findings on remand within 90 days of its order, or on January 26, 2004.

In order to assist it in making its determinations on remand, the Commission is reopening the record on remand in these investigations to include information bearing on the applicability of the captive production provision. The record in these proceedings will encompass the material from the record of the original investigations and information gathered by Commission staff during the remand proceedings.

Participation in the Proceedings

Only those persons who were interested parties to the original administrative proceedings and are parties to the ongoing litigation (*i.e.*, persons listed on the Commission Secretary's service list and parties to *Bethlehem Steel* v. *United States*, Consol. Ct. No. 00–00151) may participate in these remand proceedings.

Nature of the Remand Proceedings

On January 5, 2004, the Commission will make available to parties who participate in the remand proceedings information that has been gathered by the Commission as part of these remand proceedings. Parties that are participating in the remand proceedings may file comments on or before January 8, 2004 on whether any new information received affects the Commission's findings as to the applicability of the captive production provision in these investigations. Any material in the comments that does not address this limited issue will be stricken from the record or disregarded. No additional new factual information may be included in such comments. Comments shall be typewritten and submitted in a font no smaller than 11-point (Times new roman) and shall not exceed twelve double-spaced pages (inclusive of any footnotes, tables, graphs, exhibits, appendices, *etc.*).

In addition, all written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain business proprietary information (BPI) must also conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing submissions with the Secretary by facsimile or electronic means. Each document filed by a party participating in the remand investigations must be served on all other parties who may participate in the remand investigations (as identified by either the public of BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service. Parties are also advised to consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subpart A (19 CFR part 207) for provisions of general applicability concerning written submissions to the Commission.

Limited Disclosure of Business Proprietary Information (BPI) Under an Administrative Protective Order (APO) and BPI Service List

Information obtained during the remand investigations will be released to the referenced parties, as appropriate, under the administrative protective order (APO) in effect in the original investigation. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO in these remand investigations.

Authority: This action is taken under the authority of the Tariff Act of 1930, title VII.

By order of the Commission.
Issued: December 15, 2003.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 03–31272 Filed 12–17–03; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Clean Water Act

Under 28 CFR 50.7, notice is hereby given that on December 3, 2003, a proposed consent decree in *United States* v. *Government of Guam*, Civil Case No. 02–00022, was lodged with the United States District Court for the District of Guam.

In this action, the United States sought injunctive relief and civil penalties under section 309 of the Clean Water Act ("CWA") against the Government of Guam for: (1) Discharges of leachate from the Ordot Landfill without a permit in violation of CWA section 301; and (2) violation of the U.S. Environmental Protection Agency's administrative order to cease the discharges. The consent decree requires the Government of Guam to: (1) Close the Ordot Landfill, conduct environmental studies, and develop, design, construct, and operate a new sanitary landfill; (2) as a supplemental environmental project, develop and implement a comprehensive waste diversion strategy for household hazardous waste on Guam; and (3) pay a civil penalty of $200,000.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the consent decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States* v. *Government of Guam*, D.J. Ref. #90–5–1–1–06658.

The consent decree may be examined at the Office of the United States Attorney, Suite 500, Sirena Plaza, 108 Hernan Cortez, Hagatna, Guam, and at U.S. EPA Region 9, Office of Regional Counsel, 75 Hawthrone Street, San Francisco, California. During the public comment period, the consent decree may also be examined on the following Department of Justice Web site: *http://www.usdoj.gov/enrd/open.html*. A copy of the consent decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $20.00 (25 cents per page reproduction cost) payable to the U.S. Treasury.

Ellen M. Mahan,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 03–31152 Filed 12–17–03; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response Compensation and Liability Act ("CERCLA")

Notice is hereby given that on December 3, 2003, a proposed Consent Decree ("Consent Decree") in *United States* v. *Island Chemical Company*, et al., Civil Action No. 2003–193 was lodged with the United States District Court for the District of the Virgin Islands, Division of St. Criox.

In this action the United States sought the implementation of the remedy set forth in the Record of Decision issued August 13, 2002, and the recovery of costs incurred by the United States in response to releases and threatened releases of hazardous substances at the Site pursuant to sections 106, 107(a) and 113 of the Comprehensive Environmental Response, Compensation, and Recovery Act, as amended ("CERCLA"), 42 U.S.C. 9606, 9607(a) and 9613. The Consent Decree, which was lodged concurrently with the filing of the complaint, resolves the United States' claims under the Complaint, recovers $490,000 of unreimbursed past costs, plus future costs, and obligates the Settling Defendants to perform the Remedial Design/Remedial Action ("RD/RA") at the Site valued at approximately $1.4 million with a contingency groundwater remedy estimated to cost an additional $1 million.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States* v. *Island Chemical Company*, et al., D.J. Ref. 90–11–2–954/2.

The Consent Decree may be examined at the Office of the United States Attorney, District of the Virgin Islands, P.O. Box 3239 Christiansted, St. Croix, U.S. Virgin Islands 00822, (contact Assistant United States Attorney Ernest A. Batenga) and at U.S. EPA Region II, 290 Broadway, New York, New York 10007–1866 (contact Assistant Regional Counsel Carol Berns). During the public comment period, the Consent Decree, may also be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/open.html*. A copy of the Consent Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $41.50 (25 cents per page reproduction cost), payable to the U.S. Treasury.

Ronald Gluck,

Assistant Chief, Environmental, Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 03–31154 Filed 12–17–03; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Comprehensive Environmental Response, Compensation and Liability Act

Notice is hereby given that on December 10, 2003, a proposed Consent Decree in *United States* v. *Ralph L. Lowe*, et al., Civil Action No. H–91–830 was lodged with United States District Court for the Southern District of Texas.

In this action the United States sought all costs incurred by the United States for responding to releases or threatened releases of hazardous substances at the Dixie Oil Processors, Inc. Superfund Site near Friendswood in Harris County, Texas. The Consent Decree resolves the United States claim against Pharmacia Corporation (formerly known as Monsanto Company), the Dow Chemical Company, Merichem Company, Lyondell Chemical Company (as successor to ARCO Chemical Company), and Rohn and Haas Company for past response costs that have been incurred and for future response costs that will be incurred by the United States at the Site. These Defendants have agreed to pay $873,949.80.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States* v. *Ralph L. Lowe*, et al., D.J. Ref. 90–11–2–0323.

The Consent Decree may be examined at the Office of the United States Attorney, 910 Travis Street, Suite 1500, Houston, Texas and at U.S. EPA Region 6, 1445 Ross Avenue, Suite 1200, Dallas, Texas. During the public comment period, the Consent Decree, may also be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/open.html*. A copy of the Consent Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $7.00 (25 cents per page reproduction cost) payable to the U.S.Treasury.

Thomas Mariani,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 03–31153 Filed 12–17–03; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Judgment Pursuant to Clean Air Act

Notice is hereby given that on December 1, 2003, a proposed Consent Judgment in *United States* v. *The New York City Transit Authority*, Civil Action No. CV–97–7521, was lodged with the United States District Court for the Eastern District of New York.

The proposed Consent Judgment will resolve the United States' claims under section 113 of the Clean Air Act, 42 U.S.C. 7413, on behalf of the U.S. Environmental Protection Agency against defendant New York City Transit Authority ("TA") in connection with the TA's renovation of six subway stations in Brooklyn and Queens, New York. According to the complaint, asbestos-containing material was improperly removed during the renovation of six subway stations in Brooklyn and Queens, New York. The Consent Judgment requires the TA to pay $300,000 in civil penalties and enjoins the TA from committing violations of the Clean Air Act and the National Emission Standards for Hazardous Air Pollutants for Asbestos, 40 CFR part 61, subpart M.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed Consent Judgment. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *The New York City Transit Authority*, Civil Action No. CV–97–7521, D.J. Ref. 90–5–2–1–2135.

The proposed Consent Judgment may be examined at the Office of the United States Attorney, Eastern District of New York, One Pierrepoint Plaza, 14th Fl., Brooklyn, New York 11201, and at the United States Environmental Protection Agency, Region, II, 290 Broadway, New York, New York 10007–1866. During the public comment period, the proposed Consent Judgment may also be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/open.html*. A copy of the proposed Consent Judgment may be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. If requesting a copy of the proposed Consent Judgment, please so note and enclose a check in the amount of $3.00 (25 cent per page reproduction cost) payable to the U.S. Treasury.

Ronald Gluck,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 03–31151 Filed 12–17–03; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Larry E. Davenport, M.D.: Denial of Application for DEA Registration

I. Background

On September 21, 2001, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA) issued an Order to Show Cause (OTSC) to Larry E. Davenport, M.D., (Respondent), proposing to deny his application for a DEA Certificate of Registration. The basis for the Order to Show Cause was that Respondent's registration would be inconsistent with the public interest as that term is used 21 U.S.C. 823(f). More specifically, the OTSC alleged that the Tennessee Department of Health found that in 1998 and 1999, Respondent obtained Schedule II and III controlled substances for the personal use of Respondent and his wife. Respondent obtained the drugs by telephoning in prescriptions using the DEA registration numbers of several different physicians. Sometimes he had his employees do the calling. The OTSC also alleged that Respondent removed controlled substances from the clinic where he was employed, including Emerol, a Schedule II controlled substance.

By letter dated December 10, 2001, Respondent,through his legal counsel, requested a hearing on the issues raised in the OTSC. The matter was placed on the docket of Administrative Law Judge Gail A. Randall. (The ALJ).

The following prehearing procedures, testimony was presented before the ALJ on June 5 and 6, 2002, in Knoxville, Tennessee. The Government presented testimony from three witnesses and had admitted into evidence several exhibits.

Respondent testified on his behalf and also had several exhibits admitted into evidence. After the hearing, both parties submitted Proposed Findings of Fact, conclusions of Law and Argument.

On August 6, 2003, the ALJ certified and transmitted the record to the Acting Deputy Administrator of DEA. The record included, among other thing, the Recommended Rulings, Findings of Fact, Conclusions of Law and Decision of the Administrative Law Judge, the findings of act and conclusions of law proposed by all parties, all of the exhibits and affidavits, and the tr4anscript of the hearing sessions.

II. Final Order

The Acting Deputy Administrator does not adopt the Findings of Fact, Conclusions of Law, and Decision of the Administrative Law Judge. The Acting Deputy Administrator has carefully reviewed the entire record in this matter, as defined above, and hereby issues this final rule and final order prescribed by 21 CFR 1316.67 and 21 CFR 1301.46, based upon the following findings of fact and conclusions of law.

The Government adduced substantial evidence at the hearing that in 1998 and 1999, Respondent was diverting Demerol, a Schedule II controlled substance, for his own use. At the hearing, Pam Runyon-Dean (Ms. Runyon-Dean) testified on behalf of the Government. Ms. Runyon-Dean was a medical assistant at Respondent's clinic, the MediCenter, in Pigeon Forge, Tennessee form May 1995 until January 1999. After completing training to become a medical assistant, she did her externship at the MediCenter.

Ms. Runyon-Dean testified about her observations of the Respondent's diversion of Demerol. As the result of a complaint, the Tennessee Health Related Board (HRB) initiated an investigation of Respondent. Marianne Cheaves, an HRB investigator, met with Ms. Runyon-Dean and another employee of the MediCenter, and suggested that Ms. Runyon-Dean maintain notes of events occuring there. Since Ms. Runyon-Dean already utilized a daily planner, she used it to write her notes, which she then transferred on to lined notebook pages. The notes were later faxed to Investigator Cheaves. Entries were written on the date when incidents occurred.

Ms. Runyon-Dean testified that Demerol and other controlled substances at the MediCenter were stored in a safe in a closet. The dispensing of controlled substances was recorded on a drug log, usually by a medical assistant. There were no other procedure to keep track of controlled substances at the MediCenter.

On September 22, 1998, and again on September 29, 1998, Ms. Runyon-Dean recorded in her log Respondent's requests for tuberculin syringes, which he claimed were necessary to give his daughter allergy shots at home. On October 6, 1998, Ms. Runyon-Dean observed that Respondent's speech "became more slurred, his eyes were glassy and droopy, he was real groggy and sleepy." Ms. Runyon-Dean also wrote that Respondent went to the Pigeon Forge Drugstore and picked up a bottle of Demerol, and later spent "a lot of time in the restroom." On the same day, Ms. Runyon-Dean, who was solely responsible for keeping the employees' restroom clean, noticed several Kleenex tissues in the employee's restroom trash can that had small spots of blood on them.

On the same day, Ms. Runyon-Dean recorded in her log a conversation with another employee, Sherry Linsey. After Ms. Lindsey learned that Ms. Runyon-Dean provided syringes to Respondent, she stated that Respondent's daughter did not receive allergy injections. Ms. Runyon-Dean never witnessed Respondent's daughter receive an allergy shot at the MediCenter and the medical record at the MediCenter for Respondent's daughter did not corroborate any recommendations for allergy shots. At the hearing, Respondent testified that his daughter suffers from allergies and that Ms. Lindsey should not have made the above statements because she doesn't know his daughter's condition. However, Respondents presented no documentary evidence of his daughter's condition.

On October 9, 1998, Ms. Runyon-Dean reported in her log that she went into the employee's restroom after Respondent came out and found blood spots on the commode seat. She had to wipe the spots before she could use the commode. When she threw away her paper towel, Ms. Runyon-Dean saw a wrapper in the trash can from one of the MediCenter's 3cc syringes. It was the only thing she saw in the trash can. Ms. Runyon-Dean testified that the trash can was empty prior to Respondent's use of the restroom that day because she had cleaned the facility that morning. Ms. Runyon-Dean did not notice blood spots prior to Respondent going into the restroom. She also thought it odd to find a 3cc syringe in the employee's restroom because there was no medication in the room and the room was not used to give injections.

On October 11, 1998, Ms. Runyon-Dean again observed that Respondent spent a lot of time in the restroom, and again noticed throughout the day blood spots on Kleenex in the trash can along with blood spots on the commode and sink in the employees' restroom. At the end of the day, she saw Respondent emerge from the employee's restroom and drop a bloody Kleenex into a trash can next to the drug closet.

Respondent testified that the bloody tissues could have been from anybody, including staff or patients. However, Ms. Runyon-Dean testified that aside from these occasions, she never saw blood on the lid of the commode of the employees' restroom and on the occasions where she saw blood, she knew no one had used the restroom other than Respondent. Ms. Runyon-Dean further testified that initially, she would clean the employees' restroom once or twice a day; however, after the change in Respondent's behavior, she would sometimes have to clean the restroom five or six times per day as other employees alerted her that there was blood in the restroom that needed to be cleaned up.

On October 13, 1998, Ms. Runyon-Dean also noted in her log a meeting between Sheri Linsey and Respondent about Demerol that was missing from the drug safe. Respondent told the staff that if the drug was missing, then the drug would no longer be kept in the office. This account was corroborated by Respondent's testimony. Ms. Runyon-Dean noted that the staff agreed with the Respondent's decision to keep the drug out of the office. Ms. Runyon-Dean further noted, however, that the reason the drug was missing was that Ms. Lindsey (unbeknownst to Respondent) had taken the drug out of the safe the previous Friday afternoon and hid it in the front office to keep it from Respondent. Ms. Runyon-Dean testified that Ms. Lindsey told her that she hid the bottle of Demerol from Respondent because she felt that he was taking it for personal use. Ms. Runyon-Dean also noted that after a few days, a bottle of Demerol was back in the drug safe.

On October 19, 1998, Ms. Runyon-Dean noted in her log that Respondent called her in the morning, and his speech was slurred and he would lose his train of thought in the middle of a sentence. Respondent came into the MediCenter later that day, and Ms. Runyon-Dean again noted that Respondent's speech was slurred. Ms. Runyon-Dean also noted that as the day progressed, Respondent became more and more sleepy, groggy and glassy eyed, and his speech became more slurred, to a point where his words were very drawn out.

During his testimony, Respondent disagreed and attributed his demeanor to the lack of sleep. Respondent also testified that he doubted his speech was slurred.

On that same date, Ms. Edna Kimble, a patient of the MediCenter, told Ms. Runyon-Dean that she observed Respondent take a syringe into the employees' restroom, and later return with a bloody Band-Aid on his right arm, holding a bloody Kleenex on it. When Ms. Kimble asked the Respondent why he was bleeding, he informed her that Terry Sutton, an employee of the MediCenter, had drawn Respondent's blood to measure his cholesterol. Ms. Runyon-Dean testified that when she asked Mr. Sutton that day if he had drawn any blood, or tried to draw blood from the Respondent that day, Mr. Sutton stated that he had been too busy and had not drawn Respondent's or anyone else's blood on that day. Later that day, Ms. Runyon-Dean emptied the trash can in the employees' restroom and found several bloodied Kleenex along with two empty packages of generic Halcion. Ms. Runyon-Dean also saw a Band Aid on Respondent's arm.

During his testimony, the Respondent again attributed the blood on his arm to the "one time" that his employee, Terry Sutton, attempted to draw Respondent's blood. Respondent claimed that Mr. Sutton got a "flashback" ("pierced the vein"). Respondent failed to explain, however, why Mr. Sutton denied drawing Respondent's blood, and did not continue the blood drawing procedure at another location on the vein or on another vein after he had gotten the flashback. When Ms. Runyon-Dean asked Mr. Sutton whether he had drawn blood that day from Respondent, Mr. Sutton did not mention to Ms. Runyon-Dean that there had been any "flashback" in an attempt to draw blood from Respondent.

Ms. Runyon-Dean further testified that anytime MediCenter staff drew blood from someone, requisitions for the lab are filled out. On October 19, 1998, there were no requisitions for lab worked filled out on the Respondent. At the hearing, Respondent contested Ms. Runyon-Dean's account, stating that she never asked Terry Sutton about drawing blood, and that in any event "* * * it's none of her business when I draw blood and when I don't draw blood."

In her log entry for October 20, 1998, Ms. Runyon-Dean noted her observations of Respondent entering the MediClinic that morning and proceeding straight to the drug closet. She then realized that he had gone into the drug safe where the Demerol and other controlled substances were kept, because she heard the bottles jingling. She then observed Respondent go into the employees' restroom. Ms. Runyon-Dean immediately asked Julie Bowman, an office employee, to check the drug safe. Upon inspection, the Demerol was missing. Ms. Runyon-Dean testified that she, along with Ms. Bowman and another office employee, noted that the Demerol was present in the safe prior to Respondent going into the safe. About 20 minutes later, after Respondent had emerged from the restroom, the MediCenter staff noticed that the bottle of Demerol had been returned to the drug safe. Ms. Runyon-Dean testified that periodically during that day, the bottle of Demerol was missing and those times corresponded to Respondent's visits to the employees' restroom. By the end of the day, the bottle of Demerol had disappeared and was never returned to the safe.

In addition to testifying that blood spots on his shirt were attributed to a "flashback" brought about as a result of blood being drawn by an employee, Respondent further testified that blood would also "spray back" on him from lancing wounds and the like. Respondent also testified that blood found in the employees' restroom was form employees going there to wash off blood if it got splattered.

Ms. Runyon-Dean noted in her log that on October 20, 1998, Respondent's shirt sleeves were rolled up to the elbows, and there were blood spots on his "left arm sleeve." She further testified during the hearing that Respondent had blood stains on his t-shirt underneath his scrubs. On one occasion, Respondent was observed with a syringe sticking out of the top of his left back pocket. On that same date, MediCenter staff witnessed Ms. Runyon-Dean empty the trash in the employees' restroom. The contents of the trash revealed several wads of wet paper towels with blood on them along with two "very bloody" Band Aids.

On October 2, 1998, Respondent was not in the MediCenter and the Demerol was missing from the drug safe. Respondent called later and told Ms. Lindsey that he had taken the Demerol and emptied it out because he did not want to keep it in the office anymore. He then told Ms. Lindsey that he had changed his mind and asked her to get a new bottle of Demerol from the pharmacy.

HRB Inspector Cheaves also testified about the MediCenter's handling of Demerol. She first performed an audit of the Demerol purchased by the clinic for a period of approximately one year. It showed that the clinic had received 14,000 milligrams of Demerol during the period. She then calculated how much Demerol had been dispensed to the clinic's patients during that time. The audit showed that 10,100 milligrams were not accounted for.

Thus, there is substantial evidence to conclude that Respondent abused Demerol in 1998 and 1999, and at the hearing, Respondent provided very little evidence to rebut this conclusion. The large amount of Demerol unaccounted for in Ms. Cheave's audit, Respondent's seemingly drugged behavior on certain days, his frequent forays into the employees' restroom, leaving behind syringes, bloody band aids, tissues and blood on the commode, the disappearance and reappearance of the Demerol bottle in the drug safe corresponding to Respondent's visits to the restroom, Respondent's untruths about having his blood drawn and the prescription for Demerol syrup (*see infra*) together constitute ample evidence that Respondent diverted a substantial amount of Demerol for his own use.

The Government also adduced plentiful evidence that from 1995 until 1998, Respondent was calling in prescriptions, or having his employees call in prescriptions, for Respondent and his family, using the names of other doctors at the MediCenter. The Government produced a copy of an Agreed Order entered into by Respondent and the Tennessee Department of Health (the Department) in January 2001. In the Agreed Order, Respondent agreed that he had issued 41 prescriptions for controlled substances for his wife and himself under the names of other physicians. The Agreed Order was signed by Respondent on January 21, 2001. The controlled substances included Halcion, Ambien, Hydrocodone and Lorcet. The Department suspended Respondent's medical license for three months and levied a fine, followed by a two-year period of probation.

The evidence presented by the Government at the hearing confirmed Respondent's misconduct. Ms. Runyon-Dean testified that she had heard Respondent call in prescriptions for himself and his family members, requesting that the prescriptions be issued under the names of other doctors at the MediCenter. Two pharmacists told the HRB investigator that Respondent had called in prescriptions for himself and his wife and had asked that the prescriptions be issued in another physician's name. The pharmacists knew that Respondent was on the phone because they recognized his voice. Ms. Runyon-Dean testified that when some of the physicians at the MediCenter found out that their names had been used on prescriptions that they had not issued, became upset about it.

From October 13, 1998, through the middle of the year 2000, HRB investigators conducted interviews of past and present employees of the MediCenter, including nine physicians. The physicians interviewed were shown pharmacy printouts and original prescriptions for controlled substances purportedly issued in their names for Respondent and his wife. The physicians were asked to review and verify the prescriptions in question. All but two of the physicians confirmed that they had not authorized the prescriptions attributed to them. One physician was unsure whether he had authorized the prescriptions. One of the physicians told the investigator that when he later confronted Respondent about the prescriptions issued in his name (to which Respondent admitted), the Respondent replied "that's what partners do."

One physician, Dr. Underwood, confirmed that he had approved a prescription for Respondent's wife. The doctor explained that he issued a prescription for Lorcet, a Schedule III controlled substance, to Respondent's wife, because Respondent had told him that his wife was experiencing painful periods. The physician admitted, however, that he had never seen Respondent's wife.

In a later interview, Dr. Underwood further explained that on or about February 5, 1999, he received a telephone call from the Respondent and was advised that the Respondent had called in another prescription for his wife, apparently using Dr. Underwood's name and DEA registration number. In a February 17, 1999, written statement, Dr. Underwood stated: "Without my knowledge or permission, neither express or implied, [Respondent] apparently, called in a prescription of a pain medicine, as well as, anaprox ds and a sedative for insomnia using my name and DEA number * * * [h]e did not tell me the date that he called in the prescription, nor the pharmacy that he called."

At the hearing, Respondent denied that he had ever called in a prescription using another doctor's name without first obtaining the physician's permission. He contended that he, or one of his employees, had asked the doctors to call in the prescriptions for him, and that this was run of the mill practice at the clinic. Respondent claimed that the doctors must have forgotten to annotate the patient charts, and were now lying to protect themselves.

The Government also presented the testimony of DEA Diversion Investigator (D/I) Rhonda Phillips. Investigator Phillips has been a Diversion Investigator with the DEA Nashville Office for fourteen years. She testified that Respondent came to the attention of DEA in 1999, when the HRB requested assistance in its investigation of Respondent. In the course of its investigation, DEA received a copy of a report prepared by the Federal Bureau of Investigation (FBI). The initial target of the FBI investigation was a chiropractor, however, Dr. Underwood was interviewed as part of that investigation. Dr. Underwood stated in the report that Respondent posed as him in calling in a Vicodin prescription for Respondent's wife around January 1999. According to Dr. Underwood, Respondent apparently became concerned about being caught, and told Dr. Underwood, in effect, that "We have to do something." Respondent then requested that Dr. Underwood postdate a patient chart for his wife to make it appear that the earlier prescription was medically necessary. Dr. Underwood refused to take such action. At the hearing, Respondent denied asking Dr. Underwood to cover up the prescription, claiming that Dr. Underwood was lying in order to protect himself.

There was also evidence that Respondent issued prescriptions in his own name for his own use. On March 22, 2001, DEA personnel interviewed Clark M. Kent, former registered pharmacist for Drugs For Less #2121 in Halls, Tennessee. Mr. Kent stated that Respondent would come into the pharmacy and write hydrocodone prescriptions in the names of other individuals and take the controlled substances with him. Mr. Kent further recalled a conversation where Respondent asked Mr. Kent if he would fill a call-in prescription that was issued under Dr. O'Shaughnessy's name. Mr. Kent stated that he declined Respondent's request because it violated federal and state regulations. Mr. Kent also informed investigators that Respondent called in a prescription for Demerol syrup for the latter's son. Mr. Kent found the prescription unusual since that type of medication was not ordinary for a young individual. During the hearing, Respondent denied that he had called in a prescription for Demerol syrup for his son.

The Government also presented evidence concerning Respondent's issuance of controlled substance prescriptions after his DEA registration expired in July 1998. In the Agreed Order, Respondent agreed that he had issued prescriptions for controlled substances after the expiration of his DEA registration.

At the hearing, Respondent admitted that he had issued prescriptions for controlled substances after his DEA registration had expired, blaming it on his own negligence. He claimed that he wrote the prescriptions not realizing that his registration had expired. The Government presented evidence, however, that Respondent continued to issue several prescriptions for controlled substances after he learned of the expiration of his registration. The evidence showed that Respondent learned about the expiration of his registration in late 1998. Respondent testified that he stopped writing prescriptions after he learned of the expiration of his DEA registration and instructed his staff not to refill or call in any prescriptions using his name. Nevertheless, Investigator Cheaves obtained a prescription profile from the Medicine Shoppe in Knoxville, Tennessee showing that on January 7, 1999, after Respondent learned that his DEA registration had expired, a prescription for Valium was filled for patient Hugh Ray Wilson under Respondent's expired DEA registration number, and two prescriptions for Ambien for Mr. Wilson were refilled under that registration number on January 26 and April 7, 1999.

On January 23, 1999, a prescription was filed for Clorazepate Dipotassium (a Schedule IV controlled substance); on February 10, 1999, a prescription was filled for Guaituss DAC Syrup (a Schedule V controlled substance); on May 26, 2000,[1] a prescription was filled for Lomitil liquid (diphenoxylate hydrochloride and atropine sulfate (a Schedule V controlled substance). With respect to the Lomitil prescription, Respondent admitted calling it in, but added that he didn't know the drug was a controlled substance. Respondent later added that someone from his staff may have called in the prescription.

Based upon the above, the Acting Deputy Administrator finds that Respondent diverted substantial amounts of Demerol for his own use; failed to comply with DEA regulations to account for controlled substances at his place of business; called in or caused to be called in controlled substance prescriptions for himself and his wife using other physicians' names; and negligently issued prescriptions for

[1] This prescription was also authorized following Respondent's submission of his January 3, 2000 application for DEA registration.

controlled substances after his DEA registration had expired.

The Acting Deputy Administrator will now consider the factors used by DEA to determine the public interest. Under 21 U.S.C. 823(f), the Attorney General shall register a practitioner to handle controlled substances unless the Attorney General determines that the registration of the applicant is inconsistent with public interest.[2] In determining the public interest, the Acting Deputy Administrator shall consider:

1. Maintenance by the applicant of effective controls against diversion of listed chemicals into other than legitimate channels;

2. Compliance by the applicant with applicable Federal, State, and local laws;

3. Any prior conviction record of the applicant under Federal or State laws relating to controlled substances or the chemicals controlled under Federal or State law;

4. Any past experience of the applicant in the manufacture and distribution of chemicals, and

5. Such other factors as are relevant to and consistent with the public health and safety.

Consideration of the first factor weights heavily against Respondent. Respondent could not account for a large amount of Demerol that had been purchased by the MediCenter. Respondent never audited his supplies of controlled substances and at the hearing testified that he was not even aware of the existence of the Code of Federal Regulations.

With regard to the second factor, there was substantial evidence that Respondent failed to comply with Federal, State and local law. His diversion of Demerol for his own use violated 21 U.S.C. 841(a). His failure to conduct audits of the controlled substances in his place of business violated 21 U.S.C. 827. Respondent's issuance of prescriptions to himself and his wife under other doctors' names violated 21 U.S.C. 841(a) and 21 CFR 1306.04 and 1306.05.

As for the third factor, there is no evidence that Respondent had any prior convictions related to controlled substances. The fourth factor is not relevant to these proceedings.

With regard to the fifth factor, many considerations weigh heavily against providing Respondent with a DEA Certificate of Registration. Respondent's misconduct is extremely alarming. The diversion of Demerol for his own use and his long-term issuance of prescriptions for controlled substances in other physicians' names are particularly disturbing. Moreover, even in the face of overwhelming evidence of his misconduct, Respondent has failed to admit to any intentional misconduct whatsoever. Respondent's appalling misconduct and his continued denials about his misuse of controlled substances show that he has failed to recognize the gravity of his actions and that it would not be in the public interest to permit him to handle controlled substances. Accordingly, the Acting Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in her by 21 U.S.C. 823 and 824 and 28 CFR 0.100 and 0.104, hereby finds that the performance of the evidence establishes that the registration of Respondent as a practitioner would be inconsistent with the public interest.

Therefore the Acting Deputy Administrator hereby orders that Respondent's application for a DEA Certificate of Registration and any requests for renewal or modification submitted by Respondent be, and hereby are, denied.

Dated: November 26, 2003.

Michele M. Leonhart,

Acting Deputy Administrator.

[FR Doc. 03–31218 Filed 12–17–03; 8:45 am]

BILLING CODE 4410–09–M

[2] This function has been redelegated to the Acting Deputy Administrator of DEA.

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 00–22]

OTC Distribution Company; Revocation of Registration

On May 9, 2000, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to OTC Distribution Company ("OTC") as to why the OTC's DEA Certificate of Registration as a distributor of List I chemical products should not be revoked as being inconsistent with the public interest, as determined by 21 U.S.C. 823(h). The Order to Show Cause alleged that: (1) OTC (Respondent) had failed to comply with the terms and conditions agreed to in a Memorandum of Agreement (MOA) with the DEA, including the requirements: To abide by all laws relative to listed chemicals, to report all sales and purchases to DEA monthly, to prepare quarterly inventories, to contact the DEA field office regarding questions about potential customers and to institute effective control and procedures against diversion; (2) multiple bottles of OTC pseudoephedrine were seized from an illicit manufacturing lab in Oregon; (3) OTC failed to report an uncommon method of payment as required by 21 CFR 1310.05(a); (4) OTC shipped listed chemicals to an unregistered location in violation of the MOA; (5) an audit of OTC's purchase orders and sales invoices revealed a failure to comply with the regulatory requirements of 21 CFR 1310.06(a); (6) the audit also revealed that OTC was unable to account for approximately 415,000 bottles of pseudoephedrine as a result of a failure to maintain complete and accurate records; and (7) the monthly sales spreadsheets OTC provided to the DEA underreported the company's actual total pseudoephedrine sales by more than 200,000 bottles.

By letter dated June 6, 2000, Respondent, by counsel, filed a request for a hearing on the issues raised by the Order to Show Cause and the matter was docketed before Administrative Law Judge Gail A. Randall. On July 17, 2000, the Administrator of the DEA issued an Order of Immediate Suspension of Registration based on the fact that: (1) After the Order to Show Cause was issued, a second audit of OTC's inventory and records revealed a shortage of over 10,000 bottles of pseudoephedrine; and (2) subsequent to the issuance of the Order to Show Cause, the DEA sent four warning letters to the Respondent, alleging that OTC's pseudoephedrine products had been found at various sites related to the illegal manufacturing of methamphetamine.

Following prehearing procedures, a hearing was held in Arlington, Virginia on September 5–6, 2000, and in Dallas, Texas on November 15–17 and December 5–7, 2000, and on May 8, 2001. At the hearing, both parties called witnesses to testify and introduced documentary evidence. After the hearing, both parties submitted Proposed Findings of Fact, Conclusions of Law and Argument. On August 8, 2002, Judge Randall issued her Recommended Rulings, Findings of Fact, Conclusions of Law, and Decision of the Administrative Law Judge (Opinion and Recommended Ruling), recommending that Respondent's DEA registration be revoked. Both parties filed exceptions to the Opinion and Recommended Ruling and on September 27, 2002, Judge Randall transmitted the record of these proceedings to the Deputy Administrator.

The Acting Deputy Administrator has considered the record in its entirety and pursuant to 21 CFR 1316.67, hereby issues her final order based upon findings of fact and conclusions of law as hereinafter set forth. Except as specifically noted, the Acting Deputy Administrator adopts, in full, the Opinion and Recommended Ruling of the Administrative Law Judge. Her adoption is in no manner diminished by any recitation of facts, issues and conclusions herein, or any failure to mention a matter of fact or law.

Pseudoephedrine is a List I chemical used as a precursor in the clandestine production of methamphetamine. Most clandestine laboratory operators use a variety of methods to conceal their purchases of precursor chemicals and equipment from law enforcement and firms distributing such chemicals and goods are required to carefully scrutinize their sales transactions to prevent the unauthorized purchase and use of such goods. Pseudoephedrine is lawfully marketed in the United States for use as a decongestant in 30 or 60 mg. tablets and the maximum recommended adult daily dose is four 60 mg. tablets per day, amounting to 120 tablets per month. Ephedrine, also a List I chemical which may be used as a precursor in the clandestine manufacture of methamphetamine, is marketed for use as a bronchodilator for asthma and may be used as a topical decongestant.

From 1994 until 1999, DEA clandestine laboratory seizures rose from 263 to 2,025 and in 1999, the national total for all State, local and Federal agencies was 6,835. During an eight-month period in 2000, DEA reported over 3,000 clandestine laboratory seizures. The overwhelming majority of these laboratories were associated with the clandestine manufacture of methamphetamine. Methamphetamine has a high abuse potential and adverse impact on public health. Dependency is the primary motivation for methamphetamine use and between 1993 and 1998, 3,903 methamphetamine-related deaths were reported in the Drug Abuse Warning Network for the Primary Metropolitan and Statistical Areas of San Diego, Los Angeles, San Francisco and Phoenix.

Pseudoephedrine bulk powder is usually imported from China or India, tableted by DEA-registered manufacturers, distributed to various distributors, wholesalers and then to retail outlets. Of DEA's approximately 3,500 chemical registrants in 2000, over 3,100 were distributors. While illegal diversion can occur at any point in the distribution chain, it usually occurs after the manufacturer has sold its product to a distributor.

OTC's chemical background originated from the business operations of L&M Vending company (L&M Vending), OTC's predecessor entity. On April 30, 1997, Larry Petit filed for a DEA Registration on behalf of L&M Vending. Subsequently, Tim Petit, brother of Larry Petit, filed an Assumed Name Record and Copy Request with the Earl Bullock County Clerk's Office, asserting ownership for the unincorporated business, L&M Vending. Articles of Incorporation for L&M Vending were later issued by the Office of Secretary of State of Texas, naming "Larry Petit," "Mitzi Petit," and "Timmy Petit" as initial directors of the corporation. Larry Petit was designated the initiated Registered Agent for L&M Vending.

By letter of November 15, 1999, OTC informed the DEA that, effective August 1, 1999, L&M. Vending no longer sold List I chemical products, L&M Vending surrendered its DEA Certificate of Registration and transferred to OTC, via invoice, all of its inventory of products containing List I chemicals. Larry Petit, who had performed confidential informant work for DEA in which L&M Vending was used, testified at the hearing that OTC was formed in order to shift legitimate List I chemical products sales away from L&M Vending's informant operations. Due to policy changes within the agency, DEA discontinued using Larry Petit applied as a cooperating source in September of 1997. In May of 2001, L&M Vending was still in business, supplying novelty merchandise to convenience stores.

Larry Petit testified during the hearing in this matter that Tim Petit was the owner of L&M Vending and OTC. However, on June 30, 2000, after these proceedings began, OTC filed Articles of Incorporation with the Texas Secretary of State, listing Larry Petit, Mitzi Petit and Timmy Petit as directors of the corporation. On May 5, 1999, Tom Petit applied for a DEA Registration for OTC to distribute List I chemical products. In connection with OTC's May 5, 1999, application for a DEA Registration, on July 30, 1999, DEA and Larry Petit (on behalf of OTC), entered into a Memorandum of Agreement ("MOA"). In the MOA DEA promised to grant OTC a Certificate of Registration for chemical code numbers 8112 (pseudoephedrine), 8113 (ephedrine) and 1225 (phenylpropanolamine), in exchange for Respondent's compliance with requirements beyond those stated in Federal, State and local law. Generally, the Respondent agreed to maintain complete records, review each sale for any suspicious transaction, identify its customers and promptly notify DEA in the event of a change in business or ownership.

A DEA registration was issued to OTC on or about July 30, 1999, and was scheduled to expire December 31, 2000, if no renewal application was filed. OTC was thus authorized to distribute List I chemical products while its registration was valid, until July 17, 2000, when the Administrator entered his Order of Immediate Suspension of Registration.

On December 22, 2000, Tim Petit filed a renewal application for DEA registration. The application was "OTC Distribution.Co." typed in as the registrant's name. However, handwritten below that entry was "OTC Distribution Inc." Additionally, in the explanation section of the application, the words "Temporary (sic.) Suspended" were handwritten. Tim Petit signed the renewal application, designating himself as "President-Owner" of the business. On August 31, 2000, OTC filed a Designation of Representatives and Power of Attorney (Designation), pursuant to 21 CFR 1316.50. The Designation, executed by Tim Petit, appointed Larry Petit "as representative of the sole proprietorship and/or Corporation, *nunc pro tunc* to July 7, 1999 (for the proprietorship) and June 30, 2000 (for the Corporation), to represent either or both with regard to matters within DEA's jurisdiction." While Larry Petit provided testimony on behalf of the Respondent, Tim Petit did not appear or testify at the hearing.

Both L&M Vending, Inc. and OTC conducted business through "800" numbers on vehicle cell phones. L&M Vending is not listed in the Dallas area telephone directory. Larry Petit testified at the hearing that he did not know whether or not OTC was listed in the telephone directory. Testimony at the hearing also established that OTC had never had a marketing plan, never advertised, had promotions, nor provided point-of-sale advertising. Larry Petit did not know the number of pseudoephedrine tablets sold in 2000, had not assessed the total market for that product, was unaware of his market share for that product and did not have a product catalogue or price list.

In the Memorandum of Agreement which OTC entered into with DEA in 1999 in order to become registered, the company agreed to maintain records of receipt, distribution and returns of each transaction of listed chemical products, even if the transaction was not a regulated transaction. These records were to include information as to the purchaser's identity, date of transaction, full description of the product and

method of transfer and the method of payment. Receipt and distribution records were to be maintained at the registered location or at Larry Petit's daughter-in-law's, Tita Petit's, office, be readily retrievable and maintained for two (2) years after the transaction. Distribution of all List I chemical products were to be made under the name OTC.

Larry Petit further agreed to mail photocopies of receipt and distribution records of listed chemical products to DEA on a monthly basis and submit monthly reports to DEA of mail order sales of listed chemical products. OTC was not in compliance with the MOA because OTC failed to regularly provide the requisite purchase records to DEA for its listed chemical products. OTC also failed to provide DEA with monthly purchase records, although it did provide monthly sales records. Both were required by the MOA.

Respondent also agreed in the MOA that Larry Petit would personally review each sale by OTC of listed chemical products for suspicious orders, any and all of which were to be promptly reported to DEA. Although not required of List I chemical distributors by law, under the MOA, Respondent was obligated to take quarterly inventories of its List I chemical products, which would include the List I chemical's name, strength, form of packaging, amount in stock, date of inventory and a witnessed signature of the person taking the inventory.

OTC was also required to keep two forms of identification on file for all customers and maintain a separate file on each customer purchasing List I chemical products. For retail customers, the file should include a copy of the customer's business license and photographs of the establishment bearing the company name. If the company was a DEA registrant, that status was to be verified with the DEA Dallas Field Division. OTC was also to ensure the "ship to" address of retail customers matched the addresses on business licenses maintained in the customer files.

OTC's List I chemical products were to be received and stored only at 12617 Gaslite Drive, Dallas, Texas and DEA approval was required before OTC could use any other storage facility. OTC also agreed to provide advance notification to the Dallas Field Division of any planned ownership change in OTC and promptly notify DEA if OTC Distribution Co. discontinued business.

During a pre-registration investigation of Respondent's premises conducted July 28, 1999, DEA Investigators reviewed the terms of the proposed MOA point by point with Larry Petit, who was permitted to ask questions and make comments on the terms of the agreement. Larry Petit did suggest some changes and DEA agreed to allow OTC's books to be kept at Tita Petit's residence, separate from OTC's registered location. Larry Petit was advised that he would have to very carefully and fully identify OTC's customers and comply with regulations stipulated in the Code of Federal Regulations. Copies of regulations and warning sheets, advising the DEA had seized combination ephedrine and pseudoephedrine at clandestine methamphetamine laboratories, were also provided. Larry Petit was instructed that OTC should have a photocopy of customer's applications or DEA licenses or of photographic identification or driver's licenses and should physically verify that the company existed.

The Acting Deputy Administrator agrees with the Administrative Law Judge that this MOA is a valid and binding agreement between DEA and Respondent.

On March 30, 2000, DEA Diversion Investigators went to Tita Petit's residence. Since August 1999, Tina Petit had worked for OTC, assisting Larry Petit in keeping the company's List I chemical product records, and the records were maintained at her residence. The Diversion Investigators asked for OTC's purchase and sales records, and Tita Petit produced hardcopy sale and purchase invoices which she confirmed were "all the records." The records were found to be incomplete in that they did not indicate when and if a product was actually received. Tita Petit indicated she and Larry Petit were trying to "work out the problem" and at that time there was no real way to tell when a shipment had been received. During this period they were working with OTC's main supplier of List I chemical products, OTC Brokerage, Inc. ("OTCB"), to match up invoices. In a May 10, 2000, letter to DEA, Larry Petit indicated OTCB had not provided OTC with complete purchase records.

The Diversion Investigators attempted to conduct an audit of the company's List I chemical products. The audit covered the period July 30, 1999, to March 30, 2000. In addition to the incomplete receiving records, the Diversion Investigators found inconsistencies in the sales records. The Investigators went to some of OTC's suppliers in an attempt to determine exactly how much product was received by OTC during the audit period. They were not able to obtain all the information they needed. The audit disclosed shortages of several products including thousands of bottles of pseudoephedrine.

Diversion Investigators conducted another inspection on May 23, 2000. They inventoried approximately 1,500 bottles of List I chemical products on hand, a figure Larry Petit certified. Using Respondent's list of sales of the month of May 2000 and purchase and sales documents from OTC, and two of its suppliers for that month, DEA personnel determined that for the month of May 2000, OTC had additional shortages of 10,589 bottles of List I chemical products.

The Administrative Law Judge found that as a chemical registrant, OTC had an obligation to maintain records regarding List I chemical products and to keep purchasing records and sales records. Further, pursuant to paragraph 7 of the MOA, OTC was required to keep an inventory of all List I chemicals on a quarterly basis. Pursuant to the MOA, OTC was also required to keep sales invoices. The sales invoices DEA obtained March 30, 1999, were retained pursuant to that requirement, but those records were incomplete. More than half of the 179 invoices (98) did not denote the method of transfer, which should be recorded in accordance with DEA regulations. The MOA also required recordation of the method of payment, yet approximately 56 or 57 of the total invoices reviewed failed to note method of payment.

In the months following its pre-registration inspection, OTC provided DEA with sales records in accordance with the MOA, but not the required purchase records. The purchase records were, however, promptly produced in January or February 2000 after they were requested.

Between July 1999 and February 2000, Koehn Enterprises of Texarkana, Texas purchased 600 cases of pseudoephedrine product from OTC. On February 15, 2000, a DEA Diversion Investigator went to the location that OTC shipped to and found Koehn's registered location to be a day care center and that its List I chemical products were being stored at another unregistered address. Koehn also had been arrested on state charges for unlawful transfer of precursor chemicals. DEA was advised that Koehn made many shipments of List I chemicals to Las Vegas, Nevada to customers taken over from OTC. Koehn was unable to account for 97 cases of pseudoephedrine which it had received from OTC.

OTC was also receiving, processing and distributing orders containing List I chemical products at the AIT Freight facility. When an air shipment came into AIT, OTC's salesman would come to the facility and break down the shipment into orders. While some would be given to AIT for re-shipment, others would be given by OTC's salesman to customers who came to AIT's dock. On May 12, 2000, the salesman was seen supervising the loading of apparent pseudoephedrine product into a rental truck, which then left the area. Thus it appeared that OTC was shipping or distributing List I chemicals from an unregistered location.

From April to June 2000, Respondent kept an organized chart of pseudoephedrine product activity. This chart included: Detailed information as to customers' identity and addresses, DEA registration numbers, dates of request, invoice numbers, types of carrier used to deliver the product, quantities of product sold, any amounts returned, OTC purchase order numbers, the customers' purchase order numbers, specific product information and the payment numbers.

With regard to customer compliance, OTC sent a packet of information to its customers containing information about reporting suspicious orders, complying with DEA regulations and restricting terms of resale. It also sent a contract to retailers selling OTC products which required implementing and educating store employees on a "maximum purchase policy" and compliance with all DEA regulations. OTC also sent a conditions of sales contract to its distributor customers, explaining its requirements for resale of pseudoephedrine and ephedrine products. A suspicious orders guide sheet was also provided both retail and distributor customers, enumerating a list of suspicious factors found in the DEA's Chemical Handler's Manual. It also explained that distributors, who were most familiar with their customers and circumstances, must use their best judgment in identifying suspicious orders. Govt. Ex. 11 at 5. With regard to OTC's customer files, most contained photographs of their facilities and photocopies of their representative's driver's license.

OTC reported suspicious transactions to DEA by letter five times between November 18, 1999, and June 22, 2000. Its predecessor, L&M Vending, also reported suspicious transactions by letter on five occasions between March and July 1999.

DEA has implemented a system of documenting and informing a company that products it has manufactured or distributed have surfaced at a site associated with clandestine drug manufacturing. Fourteen DEA Warning Letters were addressed to Respondent between January 6, 1999, and October 18, 2000, enumerating over 20 different seizures of OTC's pseudoephedrine product at clandestine sites. These letters documented the seizure of 28,423 bottles of 60-count List I chemical product, 116 bottles of 100-count List I chemical product and 32,589 bottles of 120-count List I chemical products. During the period November 1999 to July 2000, OTC pseudoephedrine product was seized at clandestine laboratories in eight states, with over 2 million dosage units seized in Oklahoma alone.

OTC sold List I chemical products to Tobacco Wholesale. Sales increased from 110 cases in February 2000 to over 800 cases by May 2000. Larry Petit thought this was appropriate, as that firm would become OTC's regional distributor in Oklahoma. He also testified he had an agreement with another List I chemical wholesaler, Branex to be OTC's regional distributor in Florida. However, this was not a written agreement, but one orally negotiated by OTC's salesman. Petit was unaware if OTC had a special price agreement with Branex, whether he had assessed Branex's ability to compete in the Florida pseudoephedrine market or if Branex had been asked to provide OTC a list of its retail customers.

There were instances when Larry Petit also did not check on the trade references supplied by customers or know if anyone from OTC had checked on their downstream customers. Petit also admitted that he ignored references supplied by customers even though he referred to the reference as a "bad guy."

In the traditional market, Pfizer is the manufacturer and distributor of the Sudafed product line and one of the largest sellers of pseudoephedrine products in the United States. Pfizer's major customers include retail trade outlets such as drug and grocery store chains and mass merchandisers. From August 1999 to April 2000, OTC sold almost one-third the number of pseudoephedrine products sold by Pfizer nationwide. Pfizer's representative was not aware of OTC as a competitor and concluded OTC's brand was not sold in the same market as Sudafed.

The L. Perrigo Company is the largest manufacturer of over-the-counter pharmaceutical products for the "store brand" market, which are sold under various labels and compete with nationally advertised brands. From August 1999 until April 2000, OTC sold over one-third the number of tablets of pseudoephedrine product sold by Perrigo. Perrigo's representative had never seen or heard of the OTC's product and concluded it was neither a national brand nor a competitor of Perrigo's.

During the hearing and in post-hearing filings, the Government asserted that Respondent's registration should be revoked on public interest grounds. It argued that OTC failed to maintain effective controls against diversion, that the MOA bound OTC to additional requirements with which OTC failed to comply and that OTC failed to take corrective action after being notified of possible diversion of its product. The Government also contends OTC failed to comply with relevant Federal, State and local law by failing to report a regulated transaction which included a suspicious method of payment to DEA, failure to identify the other party to a regulated transaction, failure to keep and maintain records of regulated transactions and failure to keep and maintain accurate inventory records.

The Government contends OTC's principal manager was aware of DEA regulatory requirements and knew, through DEA Warning Letters, that its pseudoephedrine product was being diverted to the illicit production of methamphetamine. The Government further argues OTC was not providing listed chemical products for the traditional and recognized therapeutic market.

Respondent contends it substantially satisfied its regulatory obligations, entered into a voluntary agreement imposing additional responsibilities, substantially followed those obligations and attempted to consult with DEA to improve its operations. It further points to Larry Petit's extensive work with the DEA. While acknowledging violation of the record-reporting provision of the MOA when it failed to provide purchase orders to DEA, it argues this violation does not justify revocation, given OTC's remedial efforts to rectify that error.

Pursuant to 21 U.S.C. 823(h) and 824(a)(4), the Acting Deputy Administrator may revoke a DEA Certificate of Registration and deny any pending application for renewal for such registration, if she determines that registrant's continued registration would be inconsistent with the public interest. Section 823(h) requires that the following factors be considered in determining the public interest:

(1) Maintenance by the applicant of effective controls against diversion of listed chemicals into other than legitimate channels;

(2) Compliance by the applicant with applicable Federal, State and local law.

(3) Any prior conviction record of the applicant under Federal or State laws relating to controlled substances or to chemicals controlled under Federal or State law.

(4) Any past experience of the applicant in the manufacture and distribution of chemicals; and

(5) Such other factors as are relevant to and consistent with the public health and safety.

These factors are to be considered in the disjunctive; the Acting Deputy Administrator may rely on any one or a combination of factors and may give each factor the weight she deems appropriate in determining whether a registration should be revoked or an application for registration denied *See Henry J. Schwartz, Jr., M.D.*, 54 FR 16422 (1989).

As a preliminary matter, the Administrative Law Judge refused the Government's request to take official notice that "no business entity, intended to be a going concern, operates in such a fashion as OTC did." The Acting Deputy Administrator agrees that the broad assertion of OTC's illegitimacy as an on-going business entity embodied in this particular request is not appropriate for official notice. However, the Acting Deputy Administrator disagrees with the Administrative Law Judge's broad conclusion that DEA possesses "no specialized knowledge pertaining to general business practices of legitimate business entities" (ALJ Decision at 47). The DEA does possess special expertise in many areas of business operations, both legitimate and illegitimate, which relate to the manufacture and distribution of controlled substances and List I chemicals.

Nevertheless, deciding whether or not "any" business entity, intending to be an ongoing concern, would operate as OTC did, does require a qualitative analysis of the evidence in the particular record on a finding which could materially impact the outcome. The request also does not involve an "obvious and notorious" fact (*See* Attorney General's Manual at 79), is open to dispute and is not capable of ready and certain verification. Considering the foregoing and the scope of the request, the Acting Deputy Administrator will not take official notice of the specific fact which was requested.

Nevertheless, certain facts established in the record do indicate numerous deviations from what would be considered sound business practices of companies engaged in distributing regulated chemicals. As did the Administrative Law Judge, these facts will be considered by the Acting Deputy Administrator in determining the public interest in OTC's continued registration.

The Acting Deputy Administrator also agrees with the Administrative Law Judge that OTC Distribution Company's Certificate of Registration was not terminated as a matter of law when, after initiation of these proceedings, Tim Petit filed Articles of Incorporation with the State of Texas in the name of "OTC Distribution, Inc." Ambiguity as to the Respondent's intent to alter its status as a sole proprietorship to that of corporation and to use a renewed certificate to carry out its business, was generated by conflicting notations on the December 22, 2000, application for renewal of registration signed by Tim Petit.

However, no requests for a modification to change the registrant's name or transfer the certificate of registration to a new corporate entity were ever submitted. The Government also did not introduce evidence of conduct by OTC Distribution Co., consistent with a conclusion that OTC Distribution Co. had ceased existence or discontinued business. Neither was any Texas law offered to support the conclusion that, by operation of law, OTC Distribution Co. ceased legal existence or discontinued business, simply upon filing of the articles of incorporation. Accordingly, the Acting Deputy Administrator agrees with the Administrative Law Judge that OTC Distribution Company's DEA Certificate of Registration remains a viable, if temporarily suspended, registration whose fate cannot be decided by summary disposition.

With respect to factor one, maintenance of effective controls against diversion, the Acting Deputy Administrator agrees with the Administrative Law Judge that Respondent's physical storage facility met or exceeded minimum security requirements. However, while physical security is a focus of 21 CFR 1309.71 (2000), the Acting Deputy Administrator agrees with the Government's exception to the Opinion and Recommended Ruling, that the Administrative Law Judge's discussion on this factor was unnecessarily limited to the adequacy of storage and physical access to Respondent's List I chemical products.

Among the factors required to be considered by the Acting Deputy Administrator under the general security requirements of 21 CFR 1309.71, is "[t]he adequacy of the registrant's or applicant's systems for monitoring the receipt, distribution and disposition of List I chemicals in its operations." 21 CFR 1309.71(b)(8).

Further, prior agency rulings have applied a more expansive view of factor one than mere physical security. *See, e.g., Alfred Khalily, Inc.*, 64 FR 31,289, 31,292 (1999) and *NVE Pharmaceuticals, Inc.*, 64 FR 59,215, 59,217–18 (1999) (failure to identify a party to a transaction or engaging in transactions with non-registered entities fell under factor one); *State Petroleum, Inc.*, 67 FR 9,994, 9,994 (2002); *Hadid International, Inc.*, 67 FR 10,230, 10,231 (2002) and *Aqui Enterprises*, 67 FR 12,576, 12,578 (2002) (recordkeeping inadequate to track sales and customers within factor one).

Respondent's failure to maintain adequate administrative records and controls to permit a more precise audit of its List I chemical products, its inability or unwillingness to fully comply with its record keeping and report obligations under the MOA, its distribution of List I chemical products directly to customers from a freight facility loading dock and substantial seizures of OTC pseudoephedrine products from illicit sites, all weigh against Respondent as to factor one.

With regard to factor two, compliance with applicable law, the Acting Deputy Administrator agrees with the Administrative Law Judge that OTC was bound to comply with the provisions of the MOA, in addition to the recordkeeping, reporting and identification requirements in the Code of Federal Regulations. OTC then failed to provide the DEA with adequate inventory records, complete sales invoices or with any purchase records.

With regard to the accountability audits conducted by DEA Diversion Investigators which resulted in their finding of overages and shortages of listed chemicals, Respondent has filed exceptions to the Opinion and Recommended Ruling of the Administrative Law Judge. OTC argues the audits were not undertaken in a "manner that lends credibility to their results" and "were based on erroneous assumptions." Respondent's Exceptions at 4. However, the inability of DEA personnel to precisely account for the receipt and distribution of OTC's List I chemical products was principally attributable to Respondent's failure to maintain adequate records. The Acting Deputy Administrator is particularly troubled that Respondent was placed on notice by the terms of the MOA as to its need to maintain accountability for the List I chemicals it distributed—through its own records—and nevertheless failed to fully comply with those requirements either by intent, ignorance or neglect.

There was a substantial deviation between the results of two investigators as to the number of unaccounted for bottles from the audit. Nevertheless, using the smaller numbers, the Administrative Law Judge characterized OTC's unaccounted for product as being "unacceptably large." However, in its exceptions, Respondent points to the inability of OTC's supplier, OTCB, to provide exact figures as to the amount of product it shipped to OTC during the audit period, thus degrading the reliability of the figures the Diversion Investigator was required to use in making her calculations. The Administrative Law Judge adequately acknowledged the inherent difficulty in arriving at a bottom line using the records that were available. It also should be noted that OTC was required to maintain complete records of all listed chemicals it received. Nevertheless, given the large figures of unaccounted for product, it was reasonable to infer that even given the problems in accuracy noted in the record here, there were still unacceptably large quantities of unaccounted for List I chemical products in OTC's records. Further, the gravaman of the Administrative Law Judge's opinion in this section was OTC's internal failure to maintain adequate records. The Acting Deputy Administrator agrees and concludes that failure is significant and contributes to the risk to the public interest of OTC's chemical products being diverted to the illicit market. *See, e.g., In the Matter of David N. Pruitt*, 57 FR 11,339, 11,340 (1992).

Based on inclusion of the unregulated product Maxinol, in the computation chart prepared by one of the Diversion Investigators based on OTCB records (Govt. Ex. 95) and photographs of that product taken during the May 23, 2000, inspection, Respondent's exceptions further challenge the overall validity of the audits. However, it was jointly stipulated by the parties that Maxinol does not contain a List I chemical and the Administrative Law Judge's findings relating to that audit and her decision were not premised on the apparent 1296 unaccounted for bottles of Maxinol. Indeed, the six other products in the computation chart which did form the basis for the judge's findings regarding the audit, are all products containing List I chemicals and reflect large quantities of unaccounted pseudoephedrine product, including a shortage of 54,403 bottles of OTC's 120-count 60 mg. product. The Acting Deputy Administrator finds Respondent's exception to be without merit.

The Administrative Law Judge concluded Respondent engaged in suspicious regulated transactions involving uncommon methods of delivery and payment. Such transactions are required to be reported to the DEA pursuant to 21 CFR 1310.05(a)(1) (2000). With regard to delivery, OTC representatives received, processed and distributed orders containing List I chemical products directly from a freight facility, an unregistered location. These transactions would be regarded as suspicious transactions. However, the Acting Deputy Administrator agrees with the Administrative Law Judge that there was insufficient evidence showing Respondent shipped List I chemical products to an unregistered location in connection with sales to Worldwide Wholesale.

The Administrative Law Judge found OTC engaged in a suspicious, unreported transaction when it accepted $70,000.00 in cash from T.J. Wholesale as part of a transaction for products containing List I chemicals. Noting the finding that Larry Petit did not think the payment suspicious, Respondent has filed an exception asserting the Administrative Law Judge's decision in effect, improperly places the characterization as to what constitutes a "suspicious order in the hands of the Agency after the fact."

While the seizure of pseudoephedrine, sold by OTC to T.J. Wholesale and later discovered in illicit laboratories, had not yet been reported to OTC by a Warning Letter, the suspicious circumstances of the cash transaction were readily apparent to any reasonable person. Larry Petit's explanation, that he did not think it unusual for someone going to Las Vegas to have $70,000.00 cash, begs the relevant question. While perhaps a "big-time" gambler might carry cash for that purpose, that does not explain why a legitimate business enterprise would purchase a substantial amount of List I chemical products with cash, let alone $70,000.00 worth of pseudoephedrine.

In addition to the testimony of a Diversion Supervisor that payment in cash is suspicious, payment in cash and by cashier's check were identified as reasons to consider a particular transaction as being suspicious in the very materials OTC sent its own customers. OTC also included cash payments as suspicious in proposed conditions of sale contracts with its customers. (*See* Govt. Ex 11 at 4.) That Larry Petit recognized the unusual nature of the transaction was also indicated by his testimony that he told T.J. Wholesale's representative that he would take the cash "one time only" and "I don't operate my company that way." (Tr. at 1295.) Given the foregoing, the Acting Deputy Administrator concludes Larry Petit recognized the unusual nature of this transaction and it should have been reported to DEA at the time.

The Administrative Law Judge found OTC engaged in over-the-threshold regulated transactions of pseudoephedrine products with a non-registrant. (Finding of fact 47.) This involves sales to the Red Coleman Stores. Respondent filed exceptions to this finding, arguing Red Coleman is a retail distributor which did not have to be registered with DEA. The Acting Deputy Administrator agrees the evidence is ambiguous on this point and insufficient to show the Red Coleman Stores engaged in over-the-threshold retail transactions requiring that company's registration. Accordingly, the Administrative Law Judge's finding of sales to a non-registrant in violation of DEA regulations will not be adopted.

Regarding factor three, relevant conviction record, the Administrative Law Judge found that neither the Respondent nor its principal officers have any prior conviction record relevant to the handling of List I chemicals.

Regarding factor four, applicant's experience in distributing chemicals, the Administrative Law Judge found that the officers of OTC and Larry Petit in particular, had extensive experience with distributing List I chemicals, much of which stemmed from the operation of L&M Vending Company and Larry Petit's work with DEA.

With respect to factor five, such other factors relevant to and consistent with public health and safety, the Administrative Law Judge noted the serious impact upon the public interest of the diversion of List I chemical products into the illicit production of methamphetamine. Acknowledging the distinction between "Traditional" and "Non-Traditional" markets, the Administrative Law Judge concluded OTC engaged in unusual business practices, raising suspicions as to the exact source of OTC's customer base and intended purpose of its business operations.

Specifically, OTC was not listed in the Dallas area telephone directory, did not have a marketing plan during its formation and early days of operation, has no product catalog or price list, never engaged in promotions or advertising and had no employees. Additionally, Larry Petit did not know OTC's market share of List I chemical products. However, the evidence showed OTC sold over 92 million tablets of pseudoephedrine product

from August 1999 until April 2000. This is a sizable share compared to the sales of the two largest sellers of pharmaceutical pseudoephedrine products in the United States, Pfizer and Perrigo. Despite the "share" of the potential market that OTC's millions of tablets represented, neither the Pfizer or Perrigo representatives were even aware of OTC as a possible competitor.

Further, the government established that between January 6, 1999 and October 18, 2000, 14 Warning Letters enumerated over 20 different seizures of OTC's pseudoephedrine products from illicit sites, including 28,423 bottles of 60-count product, 116 bottles of 100-count product and 32,589 bottles of 120-count products. The Acting Deputy Administrator agrees with the Administrative Law Judge that these warning letters demonstrate the movement of OTC's List I chemical products into the illicit market, an additional factor that OTC's continued handling of these products creates a risk to the public health and safety by fueling the activities of that illicit market.

The Acting Deputy Administrator has considered the totality of the circumstances, including Respondent's favorable evidence. *Martha Hernandez, M.D.*, 62 FR 61,145, 61,147 (1997). In this regard, Larry Petit's relationship with DEA as a cooperating source; OTC's financial audit and efforts undertaken to improve the company's financial records and better monitor its billing and shipping records and invoices; OTC's willingness to take action in response to several DEA Warning Letters; its acceptable customer compliance files; and the filing of some suspicious transaction reports by OTC are all noted. The Acting Deputy Administrator has also taken into consideration OTC's prompt notification to the Dallas Field Division of its receipt of product that came into its possession inadvertently after the Order of Immediate Suspension had been served on it, a fact pointed out in Respondent's Exceptions to the Opinion and Recommended Ruling.

On the other hand, Larry Petit's experience as a cooperating source should have sensitized him to the threat of criminal activity posed by diversion of List I chemical products and the need for OTC's full compliance with both DEA regulations and the terms of its MOA. Further, while the financial audit was a positive business step, it did not focus on the more pressing need for regulatory compliance and strict record keeping actions necessary to ensure future accountability in the handling of listed chemical products.

The Acting Deputy Administrator concludes Respondent's registration with DEA would be inconsistent with the public interest. Although some positive efforts have been undertaken after initiation of these proceedings, OTC's track record has been one of non-compliance with recordkeeping requirements of List I chemical products and an inability to account for large quantities of List I chemical products. OTC further failed to fully comply with the terms of the MOA, failing to provide complete sales records, adequate inventory records or purchases records as required. Further, OTC's handling and delivery of List I chemical products at AIT's unregistered and insecure freight facility creates an unacceptable risk of diversion.

The Acting Deputy Administrator agrees with the Administrative Law Judge that DEA has insufficient assurances that Respondent, under the possible direction of Tim Petit, will be able to aggressively correct its List I chemical product handling practices and recordkeeping problems to a level that would justify its continued registration as being in the public interest. In the past, under the direction of Larry Petit, Respondent's disregard for the regulations and its obligations under the MOA make questionable its commitment and ability to comply with the DEA statutory and regulatory requirements designed to protect the public from the diversion of listed chemicals. *See, e.g., Seaside Pharmaceutical Co.*, 67 FR 12,580, 12,583 (2002); *Aseel, Incorporated, Wholesale Division*, 66 FR 35,459, 35,461 (2001).

Accordingly, the Acting Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in her by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b) and 0.104, hereby orders that DEA Certificate of Registration, 0044580RY, previously issued to OTC Distribution company, be, and it is, hereby revoked. The Acting Deputy Administrator further orders that any pending applications for renewal or modification of said registration be, and they hereby are, denied. This order is effective December 18, 2003.

Dated: November 26, 2003.

Michele M. Leonhart,

Acting Deputy Administrator.

[FR Doc. 03–31219 Filed 12–17–03; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

December 9, 2003.

The Department of Labor (DOL) has submitted the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). A copy of this ICR, with applicable supporting documentation, may be obtained by contacting the Department of Labor. To obtain documentation, contact Darrin King on 202–693–4129 (this is not a toll-free number) or E-Mail: *king-darrin@dol.gov*.

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the Office of Disability Employment Policy (ODEP), Office of Management and Budget, Room 10235, Washington, DC 20503 (202–395–7316/this is not a toll-free number), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Agency: Office of Disability Employment Policy.

Type of Review: New collection.

Title: National Survey of Sub-minimum Wage (14c) Certificate Recipients.

OMB Number: 1230–0NEW.

Affected Public: Not-for-profit institutions.

Type of Response: Reporting.

Frequency: One time.

Number of Respondents: 341.

Number of Annual Responses: 341.

Estimated Time Per Response: 30 minutes.

Total Burden Hours: 171.

Total Annualized Capital/Startup Costs: $0.

Total Annual costs (operating/maintaining systems or purchasing services): $0.

Description: The data collected from this survey will provide descriptive information on the current use of Fair Labor Standards Act (FLSA) section 14(c) Special Wage Certificates by Community Rehabilitation Programs in the United States. Specifically, the survey will look at perceived organizational barriers to achieving competitive employment outcomes for individuals with significant disabilities. This will include organizations' perceived training and resource needs related to moving their programs from FLSA section 14(c) to integrated employment outcomes. The information generated by the survey will be used by ODEP for policy analysis and subsequent policy development and recommendations. In addition, Training and Technical Assistance for Providers (T–TAP) will use the information to design and disseminate resources and training materials as well as provide technical assistance to Community Rehabilitation Programs (CRP). Part of disseminating this information will include writing journal articles, fact sheets, online seminars and web postings, conference presentations, or other literature that can be used by ODEP, T–TAP, CRPs, organizations, and others interested in facilitating competitive employment for individuals with disabilities.

Ira Mills,

Departmental Clearance Officer.

[FR Doc. 03–31199 Filed 12–17–03; 8:45 am]

BILLING CODE 4510–LX–M

DEPARTMENT OF LABOR

Office of the Secretary

Child Labor Education Initiative

AGENCY: Bureau of International Labor Affairs, Department of Labor.

ACTION: Notice of intent to solicit cooperative agreement applications.

SUMMARY: The U.S. Department of Labor (USDOL), Bureau of International Labor Affairs (ILAB), intends to award approximately U.S. $29 million to organizations to develop and implement formal, non-formal, and vocational education programs as a means to combat exploitative child labor in the following countries and regions: Central America (Costa Rica, El Salvador, Guatemala, Honduras, and Nicaragua), Ecuador, Indonesia, Southern Africa (Botswana, Lesotho, Namibia, South Africa, and Swaziland), and Turkey. ILAB intends to solicit cooperative agreement applications from qualified organizations (*i.e.*, any commercial, international, educational, or non-profit organization capable of successfully developing and implementing education programs) to implement programs that promote school attendance and provide educational opportunities for working children or children at risk of starting working. The programs should focus on innovative ways to address the many gaps and challenges to basic education found in the countries mentioned above. Please refer to *http://www.dol.gov/_sec/regs/fedreg/notices/2002012956.pdf* for an example of a previous notice of availability of funds and solicitation for cooperative agreement applications.

DATES: Specific solicitations for cooperative agreement applications are to be published in the **Federal Register** and remain open for at least 30 days from the date of publication. All cooperative agreements awarded will be made before September 30, 2004.

ADDRESSES: Once solicitations are published in the **Federal Register**, applications must be delivered to: U.S. Department of Labor, Procurement Services Center, 200 Constitution Avenue, NW., Room N–5416, Attention: Lisa Harvey, Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Lisa Harvey. E-mail address: *harvey-lisa@dol.gov*. All inquiries should make reference to the USDOL Child Labor Education Initiative—Solicitations for Cooperative Agreement Applications.

SUPPLEMENTARY INFORMATION: Since 1995, USDOL has supported a worldwide technical assistance program implemented by the International Labor Organization's International Program on the Elimination of Child Labor (ILO–IPEC). In that time, ILAB has provided over $270 million to ILO–IPEC and other organizations for international technical assistance to combat abusive child labor around the world.

In its FY 2003 appropriations, in addition to funds earmarked for ILO–IPEC, USDOL received $37 million in two-year funding for the Child Labor Education Initiative to support programs that improve access to basic education in international areas with a high rate of abusive and exploitative child labor. All such FY 2003 funds will be obligated prior to September 30, 2004.

USDOL's Child Labor Education Initiative nurtures the development, health, safety, and enhanced future employability of children around the world by increasing access to basic education for children removed from child labor or at risk of entering it. Eliminating child labor will depend in part on improving access to, quality of, and relevance of education. Without improving educational quality and relevance, children withdrawn from child labor may not have viable alternatives and may return to work or resort to other hazardous means of subsistence.

The Child Labor Education Initiative has the following four goals:

1. Raise awareness of the importance of education for all children and mobilize a wide array of actors to improve and expand education infrastructures;
2. Strengthen formal and transitional education systems that encourage working children and those at risk of working to attend school;
3. Strengthen national institutions and policies on education and child labor; and
4. Ensure the long-term sustainability of these efforts.

When working to increase access to quality basic education, USDOL strives to complement existing efforts to eradicate the worst forms of child labor, to build on the achievements of and lessons learned from these efforts, to expand impact and build synergies among actors, and to avoid duplication of resources and efforts.

Signed in Washington, DC this 11th day of December, 2003.

Lawrence J. Kuss,

Grant Officer.

[FR Doc. 03–31200 Filed 12–17–03; 8:45 am]

BILLING CODE 4510–28–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–261]

Carolina Power and Light Company, H. B. Robinson Steam Electric Plant, Unit 2; Notice of Availability of the Final Supplement 13 to the Generic Environmental Impact Statement for the License Renewal of H. B. Robinson Steam Electric Plant, Unit 2

Notice is hereby given that the U.S. Nuclear Regulatory Commission (the Commission) has published the final plant-specific supplement to the Generic Environmental Impact Statement (GEIS), NUREG–1437, regarding the renewal of operating

license DPR–23 for an additional 20 years of operation at H. B. Robinson Steam Electric Plant, Unit 2. H. B. Robinson Steam Electric Plant, Unit 2 is located in Darlington County, South Carolina. Possible alternatives to the proposed action (license renewal) include no action and reasonable alternative energy sources.

It is stated in Section 9.3 of the report:

Based on (1) the analysis and findings in the GEIS (NRC, 1996; 1999); (2) the ER (Environmental Report) submitted by CP&L (CP&L 2002); (3) consultation with Federal, State, and local agencies; (4) the staff's own independent review; and (5) the staff's consideration of public comments, the recommendation of the staff is that the Commission determine that the adverse environmental impacts of license renewal for H. B. Robinson Steam Electric Plant, Unit 2 are not so great that preserving the option of license renewal for energy-planning decision-makers would be unreasonable.

The final supplement 13 to the GEIS is available electronically for public inspection in the NRC's Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, or from the Publicly Available Records (PARS) component of NRC's Agencywide Documents Access and Management System (ADAMS). ADAMS is accessible from the NRC Web site at *http://www.nrc.gov/reading-rm.html* (the Public Electronic Reading Room). Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC's PDR Reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr@nrc.gov*.

FOR FURTHER INFORMATION CONTACT: Mr. Richard L. Emch, Jr., License Renewal and Environmental Impacts Program, Division of Regulatory Improvement Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Mr. Emch may be contacted at 301–415–1590 or *RLE@nrc.gov*.

Dated at Rockville, Maryland, this 12th day of December, 2003.

For the Nuclear Regulatory Commission.

Pao-Tsin Kuo,

Program Director, License Renewal and Environmental Impacts, Division of Regulatory Improvement Programs, Office of Nuclear Reactor Regulation.

[FR Doc. 03–31209 Filed 12–17–03; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Workshop on Options for Non-LWR Containment Functional Performance

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of public workshop.

SUMMARY: The Nuclear Regulatory Commission has requested the staff to develop options for containment functional performance requirements and criteria for future non-light water reactors, taking into account design features such as fuel, core, and cooling systems. The options selected will also be used for the development of the new regulatory framework for a risk-informed regulatory structure for advanced reactors.

DATES: January 14, 2004, 8:30 a.m.–5 p.m.

ADDRESSES: Doubletree Hotel; 1750 Rockville Pike; Rockville, MD 20852–1699

FOR FURTHER INFORMATION CONTACT: Shana Browde, Office of Nuclear Regulatory Research, Mail Stop: T–10 F13A, U.S. Nuclear Regulatory Commission, Washington DC 20555–0001, (301) 415–7652, e-mail: *srb1@nrc.gov*.

SUPPLEMENTARY INFORMATION: This notice serves as initial notification of a public workshop to provide for the exchange of information with all stakeholders regarding the staff's efforts to develop options for containment functional performance requirements and criteria for future non-light water reactors. The meeting will focus on the current work being performed by the NRC staff. A preliminary agenda is attached.

Workshop Meeting Information

The staff intends to conduct a workshop to provide for an exchange of information related to the staff's initial efforts to develop options for containment functional performance requirements and criteria for future non-light water reactors. Persons other than NRC staff and NRC contractors interested in making a presentation at the workshop should notify Shana Browde, Office of Nuclear Regulatory Research, Mail Stop: T–10 F13A, U.S. Nuclear Regulatory Commission, Washington DC 20555–0001, (301) 415–7652, e-mail: *srb1@nrc.gov*.

Registration

There is no registration fee for the workshop; however, so that adequate space, materials, etc., for the workshop can be arranged, please provide notification of attendance to Shana Browde, Office of Nuclear Regulatory Research, Mail Stop: T–10 F13A, U.S. Nuclear Regulatory Commission, Washington DC 20555–0001, (301) 415–7652, e-mail: *srb1@nrc.gov*.

Background

The possibility of using alternatives to the traditional "essentially leak-tight" containment structures for non-LWRs has been the subject of Commission policy review, beginning with SECY–93–092, "Issues Pertaining to the Advanced Reactor (PRISM, MHTGR, and PIUS) and CANDU 3 Designs and Their Relationship to Current Regulatory Requirements," dated April 8, 1993. More recently, in SECY–02–0139, "Plan for Resolving Policy Issues Related to Licensing Non-Light Water Reactor Designs," dated July 22, 2002 the staff informed the Commission of its plan to develop policy options for the design and safety performance of the containment structure and related systems for non-LWRs.

In SECY–03–0047, "Policy Issues Related to Licensing Non-Light-Water Reactor Designs," dated March 28, 2003, staff discussed the policy issue of the conditions, if any, that would be acceptable for licensing a plant without a pressure-retaining containment building. In SECY–03–0047, the staff recommended to the Commission that (1) Functional performance requirements be approved for use in establishing the acceptability of either a pressure retaining, low leakage containment or a non-pressure retaining building for future non-LWR reactor designs and, if approved, (2) the staff develop the functional performance requirements using the guidance contained in the July 30, 1993 Commission Staff Requirements Memorandum (SRM) for SECY–93–092 and the Commission's guidance on the other issues in SECY–03–0047. In the June 26, 2003 SRM for SECY–03–0047, the Commission requested the staff to submit options and recommendations to the Commission on functional performance requirements and criteria for the containment of non-LWRs.

Options for containment functional performance requirements and criteria for future non-LWRs are under development by the staff. The final options and recommendations are due in April 2004. To assist in developing and evaluating the options and in identifying the recommended options, the NRC staff is planning to hold a workshop and solicit feedback from the public. Key considerations for discussion include:

- Are the identified containment functions being considered appropriate?
- Are the options for containment performance criteria appropriate?
- Are there other or alternative containment functions and options which should be considered?
- What metrics should be considered in evaluating the options, including specific advantages and disadvantages for the identified options?

Preliminary Workshop Agenda

January 14, 2004

8:30–10:15—NRC Presentation and Discussion on Options for Non-LWR Containment Functional Performance Requirements and Criteria

10:15–10:30—BREAK

10:45–noon—NRC Presentation and Discussion on Options for Non-LWR Containment Functional Performance Requirements and Criteria (continued)

Noon–1—LUNCH

1–2:15—NRC Presentation and Discussion on Options for Non-LWR Containment Functional Performance requirements and Criteria

2:15–2:30—BREAK

2:30–5—General discussion and wrap-up

Dated at Rockville, Maryland, this 11th day of December, 2003.

For the Nuclear Regulatory Commission.

Farouk Eltawila,

Director, Division of Systems Analysis and Regulatory Effectiveness, Office of Nuclear Regulatory Research.

[FR Doc. 03–31210 Filed 12–17–03; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–26292; 812–12854]

Citicorp North America, Inc.; Notice of Application

December 12, 2003.

AGENCY: Securities and Exchange Commission ("Commission").

ACTION: Notice of application under section 6(c) of the Investment Company Act of 1940 (the "Act") for an exemption from section 18(f)(1) of the Act.

Applicant: Citicorp North America, Inc. ("CNAI").

SUMMARY: Applicant requests an order permitting registered open-end management investment companies to enter into secured loan transactions with commercial paper and medium-term note conduits administered by CNAI.

DATES: The application was filed on July 17, 2002, and amended on May 8, 2003, and August 26, 2003.

Hearing or Notification of Hearing: An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on January 5, 2004, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Applicant, c/o Marc B. Adelman, Director and Vice President, Citicorp North America, Inc., 388 Greenwich Street, New York, NY 10013.

FOR FURTHER INFORMATION CONTACT: Julia Kim Gilmer, Senior Counsel, at (202) 942–0528, or Janet M. Grossnickle, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Branch, 450 Fifth Street, NW., Washington, DC 20549–0102 (tel. 202–942–8090).

Applicant's Representations

1. CNAI is a wholly-owned subsidiary of Citicorp, a bank holding company, that is, in turn, wholly-owned by Citigroup Inc. ("Citigroup"), a global financial services organization. CNAI has extensive experience and expertise as an administrator of asset-backed commercial paper and medium-term note conduit programs, having managed such programs since 1983. CNAI administers approximately $43 billion in assets in such programs worldwide. Applicant states that several open-end investment companies have expressed interest in borrowing from the commercial paper and medium-term note conduit programs that CNAI administers.

2. Applicant requests relief to permit any registered open-end management investment company or series thereof to participate from time to time as borrowers ("Borrowing Funds") in loan facilities administered by CNAI ("Loan Facilities"). The entities proposed to be used in connection with a Loan Facility issue commercial paper and, in certain cases, medium-term notes (collectively, "Promissory Notes") and will use liquidity support provided by financial institutions that are "banks" within the meaning of section 2(a)(5) of the Act ("Liquidity Providers") in connection with the Loan Facility (each such CNAI-administered entity, a "Conduit"). The Conduits are limited liability companies organized under the laws of Delaware that issue Promissory Notes to fund loans secured by receivables or other financial assets of the borrowers.

3. The Promissory Notes issued by the Conduits generally are sold to institutional investors that are "accredited investors" as defined in rule 501(a) of Regulation D under the Securities Act of 1933 (the "Securities Act") or "qualified institutional buyers" as defined in rule 144A under the Securities Act. As administrator, CNAI negotiates business arrangements on behalf of a Conduit, including loan amounts, interest rates and fees. CNAI will act as agent for the Conduits and the related Liquidity Providers under the agreements entered into with each Borrowing Fund and in such capacity will exercise rights and enforce remedies on behalf of the Conduit and Liquidity Providers. Personnel employed by CNAI have substantially similar levels of experience and expertise as personnel that administer loans backed by financial assets made by Citibank, N.A., which may act as a Liquidity Provider.

4. As security for a loan, Borrowing Funds will pledge assets ("Pledged Assets") for the benefit of the Conduit and the Liquidity Providers. The Pledged Assets will meet eligibility criteria set by the Conduit and such criteria will be consistent with the Borrowing Fund's investment objectives and policies. For each loan transaction, CNAI will evaluate (a) the type and nature of a Borrowing Fund's Pledged Assets to determine whether they meet the Conduit's standards for collateral; (b) the operations and history of the Borrowing Fund; and (c) the financial position and operations of the Borrowing Fund's investment adviser.

5. Applicant states that a Conduit would make loans to a Borrowing Fund on an uncommitted basis and the related Liquidity Providers would, subject to the terms of the Loan Facility, be obligated to make loans to the Borrowing Fund in the event the Conduit was unable or unwilling to make such loans. The Conduit at any

time and for any reason may (a) sell an outstanding loan to a Liquidity Provider, or (b) require a Liquidity Provider to provide financing to a Borrowing Fund instead of the Conduit. CNAI states that these arrangements provide additional assurances to holders of Promissory Notes that the Promissory Notes will be paid at maturity.

6. A Conduit purchases receivables and other assets from, and makes secured loans to, a broad range of sellers and borrowers in a variety of industries. Aggregate loans made by a Conduit to Borrowing Funds are not expected to be more than 10%, and usually would be considerably less than 10%, of the Conduit's outstanding loans and other assets.

7. CNAI represents that the revolving credit and security agreement of a Loan Facility, which will be negotiated by the parties, will contain representations, warranties, covenants and events of default that are customary for secured loan transactions involving open-end investment companies as well as such other terms that are specific to a particular Borrowing Fund and the conduct of its business. A Borrowing Fund will have the right to prepay its loans and terminate its participation in a Loan Facility upon prior notice at any time. The Pledged Assets of a Borrowing Fund will be available solely to secure repayment of the loans and other outstanding obligations incurred by that Borrowing Fund under a Loan Facility. CNAI further states that a Borrowing Fund would have the same rights and remedies under state and federal law with respect to a loan from a Conduit that it would have with respect to a comparable loan from a bank. CNAI also states that the arrangements with the Liquidity Providers protect Borrowing Funds by providing an alternative source of financing in the event a Conduit is unable to continue lending funds.

8. No Borrowing Fund will participate in a Loan Facility unless it has represented, in writing, to CNAI, that (a) its policies permit borrowing and, if applicable, the use of leverage; (b) all borrowing transactions pursuant to the Loan Facility will be subject to the requirements of the Act, the rules and regulations thereunder, and any other applicable interpretations or guidance from the Commission or its staff; and (c) each borrowing transaction will be conducted in accordance with all applicable representations and conditions of the application. Before a Borrowing Fund may participate in a Loan Facility, the Borrowing Fund's Board of Directors or Trustees ("Board") including a majority of the directors or trustees that are not "interested persons" within the meaning of section 2(a)(19) of the Act ("Disinterested Directors") will determine that such participation is consistent with the Borrowing Fund's investment objectives and policies and in the best interests of the Borrowing Fund and its shareholders. Each Borrowing Fund's Board, including a majority of the Disinterested Directors, will also adopt procedures for evaluating and making certain determinations concerning the terms of each loan transaction between the Borrowing Fund and a Conduit.

9. CNAI states that the proposed Loan Facilities would enable Borrowing Funds to borrow money from the Conduits at lower cost than obtaining comparable loans from a bank. CNAI states that a Conduit's cost of funds is lower than that of banks, and this advantage will be passed on to the Borrowing Funds.[1]

Applicant's Legal Analysis

1. Section 18(f)(1) of the Act prohibits open-end investment companies from issuing any senior security except that a company is permitted to borrow from any bank, if immediately after the borrowing, there is an asset coverage of at least 300 per cent for all borrowings of the company.[2] Section 2(a)(5) defines "bank" as a depository institution, a branch or agency of a foreign bank, a member bank of the Federal Reserve System, a banking institution or other trust company that, as a substantial portion of its business, receives deposits or exercises fiduciary powers similar to those permitted to national banks, or a receiver, conservator or liquidating agent of any of the foregoing. Applicant states that while a Conduit engages in many of the same business activities as banks, it is not a "bank" under this definition.

2. Section 6(c) of the Act permits the Commission to exempt any person or transaction or any class or classes of persons or transactions from any provision or provisions of the Act, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. CNAI requests exemptive relief from section 18(f)(1) solely to the extent necessary to allow a Borrowing Fund to borrow from a Conduit that is not a bank. CNAI believes that permitting the Borrowing Funds to borrow from a Conduit is fully consistent with the purposes and policies of section 18(f)(1) and would not implicate the concerns underlying that provision.

3. CNAI states that section 18(f) of the Act reflects Congressional concern about excessive borrowing and the issuance of senior securities by open-end investment companies because these practices could unduly increase the speculative character and investment risk of junior securities. CNAI notes that Borrowing Funds would remain subject to the 300% asset coverage requirement in section 18(f)(1) of the Act for all borrowings, including those from a Conduit. CNAI further represents that Conduit loans will not impose any restrictions on a Borrowing Fund's shareholders that are different from those imposed by a collateralized bank loan. Finally, CNAI argues that permitting a Borrowing Fund to borrow from a Conduit rather than a bank is expected to reduce its costs of borrowing, which should decrease the risk that a Borrowing Fund's borrowing costs will exceed the return from securities purchased with borrowed money and lessen any related incentive to purchase more speculative portfolio securities to cover those costs.

4. CNAI states that section 18(f) of the Act also limited open-end investment companies to borrowing from traditional institutional lending sources out of a Congressional concern that public holders of senior securities might be unaware that they were much riskier instruments than senior securities issued by operating companies. Senior securities of investment companies typically were secured by assets that were subject to wide fluctuations in value. Further, common shareholders could redeem at any time, which also might affect an open-end investment company's ability to repay its outstanding debt.

5. CNAI argues that the Loan Facilities do not involve the type of senior security holder that section 18(f)(1) of the Act was designed to protect and that the structure of the Loan Facilities and related Conduits provide sufficient protection to the parties that face any risk of loss by lending to an open-end investment company. A Conduit is administered by CNAI, which has extensive expertise in administering loans collateralized by financial instruments that equals or exceeds the expertise of most banks. The Liquidity Providers are banks as defined by the Act and thus not the type of senior security holder that Congress believed needed protection. CNAI states that the Promissory Notes are general obligations of the Conduit and loans to Borrowing Funds are not expected to exceed 10% of a Conduit's assets. Any risk of loss on the Promissory Notes posed by loans to open-end investment companies is further reduced by CNAI's expertise, the Conduit's ability to sell the loans to the Liquidity Providers, and the Conduit-wide liquidity sources.

6. Applicant states that section 18(f) also reflects a concern that complex capital structures may permit insiders to manipulate the allocation of expenses and profits; facilitate control of the investment company by junior security shareholders with little investment; and make it difficult for investors in the investment company to understand what their stock is worth. CNAI states that borrowing from Conduits would not facilitate pyramiding of control or manipulative reallocation of expenses and profits. Further, CNAI believes that borrowings from a Conduit would not be any more difficult for shareholders of a Borrowing Fund to understand than bank borrowings.

7. Applicant also states that section 18(f) reflects a concern that existed when the Act was adopted that borrowings by open-end investment companies could be used to invest in securities without being subject to limitations of the Board of Governors of the Federal Reserve System ("FRB") on the amount of credit that could be used for these purposes ("margin requirements"). Under Regulations U and T under the Securities Exchange Act of 1934, in effect prior to enactment of the Act, only borrowings for such purposes made by a domestic bank or broker-dealer were subject to margin requirements. CNAI states that a Conduit would be subject to the same credit restrictions as a bank under Regulation U as currently in effect.

8. Finally, applicant believes the requested relief will benefit Borrowing Funds by providing them with an alternative, lower-cost source of financing. For all of these reasons and in light of the protections afforded by the conditions set forth below, CNAI believes that permitting Borrowing Funds to borrow from the Conduits would be in the best interests of the Borrowing Funds and their shareholders, appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Applicant's Conditions

Applicant agrees that any order granting the requested relief will be subject to the following conditions:

1. All Borrowing Funds will comply with the asset coverage requirements in section 18(f)(1) of the Act, including with respect to all borrowings from a Conduit.

2. A loan by a Conduit to a Borrowing Fund will be at an interest rate equal to the Conduit's cost of funds (*i.e.*, the weighted average Promissory Note rate plus dealer commissions).

3. Before a Borrowing Fund may participate in a Loan Facility, the Borrowing Fund's Board, including a majority of the Disinterested Directors, will determine that participation in the Loan Facility is consistent with the Borrowing Fund's investment objectives and policies and is in the best interests of the Borrowing Fund and its shareholders. In addition, a Borrowing Fund will disclose in its statement of additional information all material facts about its participation in the Loan Facility.

4. Before a Borrowing Fund may participate in a Loan Facility, its Board, including a majority of the Disinterested Directors, will adopt procedures governing the Borrowing Fund's participation in the Loan Facility ("Procedures"). In addition to any other provisions the Board may find necessary or appropriate to be included in the Procedures, the Procedures will require that, before a Borrowing Fund may enter into loan transactions with a Conduit, the Board, including a majority of the Disinterested Directors, will determine that:

(a) The borrowing is in the best interests of the Borrowing Fund and its shareholders;

(b) The borrowing and pledge of assets are consistent with the Borrowing Fund's investment objectives and policies;

(c) The interest rate on the loan does not exceed the rate on a comparable collateralized bank loan;

(d) The Borrowing Fund's asset eligibility criteria are consistent with its investment objectives and policies; and

(e) Each Borrowing Fund's investments, consistent with the asset eligibility criteria and any other requirements of participating in the Loan Facility, will be in the best interests of the Borrowing Fund and its shareholders.

5. If a Conduit determines (a) to require the Liquidity Providers to acquire from the Conduit outstanding loans made to a Borrowing Fund, or (b) not to extend additional loans to a Borrowing Fund, the Board of the Borrowing Fund, including a majority of the Disinterested Directors, will be notified promptly. As soon as practicable, the Board, including a majority of the Disinterested Directors, must determine whether it is in the best interests of the Borrowing Fund and its shareholders to continue to participate in the Loan Facility or to terminate the Borrowing Fund's participation in the Loan Facility in accordance with its terms.

6. At each regular quarterly meeting, the Board, including a majority of the Disinterested Directors, will (a) review a Borrowing Fund's loan transactions under a Loan Facility during the preceding quarter, including the terms of each transaction; and (b) determine whether the transactions were effected in compliance with the Procedures and the terms and conditions of the order. At least annually, the Board, including a majority of the Disinterested Directors, will (a) with respect to a Borrowing Fund's continued participation in a Loan Facility, make the determinations required in condition 3 above and (b) approve such changes to the Procedures as it deems necessary or appropriate.

7. A Borrowing Fund will maintain and preserve permanently in an easily accessible place a written copy of the Procedures and any modifications to the Procedures. The Borrowing Fund will maintain and preserve for a period of not less than six years from the end of the fiscal year in which any transaction with a Loan Facility occurred, the first two years in an easily accessible place, a written record of each transaction setting forth a description of the terms of the transaction, including the amount, the maturity, and the rate of interest on the loan and all information upon which the determinations required by these conditions were made.

8. The applicant will not enter into a Loan Facility with any Borrowing Fund if, at the time of such transaction, the applicant, Conduit or Liquidity Provider is an affiliated person of a Borrowing Fund, within the meaning of section 2(a)(3) of the Act, or an affiliated person of an affiliated person of a Borrowing Fund.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–31170 Filed 12–17–03; 8:45 am]

BILLING CODE 8010–01–P

[1] The rate at which a Liquidity Provider would make a loan to a Borrowing Fund would not be as favorable as that of the Conduit, but would be comparable to the rates on secured lines of credit from banks. CNAI anticipates that a Conduit, rather than a Liquidity Provider, will be the lender to the Borrowing Funds under a Loan Facility, absent extenuating circumstances.

[2] Under section 18(g) of the Act, the term "senior security" includes any bond, debenture, note, or similar obligation or instrument constituting a security and evidencing indebtedness.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48914; File No. SR–BSE–2003–22]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 by the Boston Stock Exchange, Inc. To Establish a General Revenue Sharing Program for Member Firms

December 12, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 9, 2003, the Boston Stock Exchange, Incorporated ("BSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. On December 10, 2003, the Exchange amended the proposed rule change.[3] The Exchange has designated this proposal as one establishing or changing a due, fee, or other charge imposed by the BSE under section 19(b)(3)(A)(ii) of the Act,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The BSE proposes to establish a general revenue sharing program for Member Firms. The text of the proposed rule change is available at the BSE and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to amend the Exchange's Transaction Fee Schedule to establish a new general revenue sharing program. In order to remain competitive with other market centers that trade Nasdaq National Market and Nasdaq SmallCap securities ("Nasdaq Securities"), including the Nasdaq Stock Market and National Stock Exchange (formerly the Cincinnati Stock Exchange), the BSE is implementing a general revenue sharing program based on National Stock Exchange's revenue sharing program, as adopted in 1999 and subsequently amended.[5]

The purpose of the proposed rule change is to provide general revenue sharing in certain securities on the BSE. To compete more effectively, the BSE proposes to provide incentive for Member Firms to execute trades on the BSE and recover costs by means of a quarterly revenue sharing program, without diminishing the quality of the market, including regulatory quality.[6]

The proposed rule change contemplates the Exchange sharing with Member Firms all or a portion of the BSE Member Firm's Operating Revenue ("MFOR") attributable to transactions in Nasdaq Securities after operating expenses and working capital needs have been met. MFOR is comprised of all operating revenue generated by trading activity on the Exchange and consists of transaction fees, technology fees, and market data revenue that is attributable to BSE Member Firm activity in Nasdaq Securities. All regulatory monies are excluded from MFOR.

Under the proposal, the Exchange's Board of Governors would have the authority to determine on an ongoing basis the appropriate amount of MFOR to be shared with Member Firms. In making this determination, the Board would be guided by the need to balance the objective of maintaining the BSE's financial integrity.[7] To simplify the administration of the revenue sharing program and smooth out monthly expense fluctuations, the program will operate on a quarterly basis. In addition, to the extent that Nasdaq market data revenue is subject to a year-end adjustment, revenues distributed to Member Firms are subject to adjustment accordingly, to ensure that Member receipts of market data revenue are consistent with the year-end true up procedures applied under the Nasdaq UTP Plan.

MFOR will be shared with Member Firms on a pro rata basis. After the BSE has accounted for operating expenses and working capital contributions, each Member Firm will receive a percentage of the MFOR to be shared that is equal to that firm's percentage contribution to the MFOR. In no event will the amount of revenue shared with Member Firms exceed MFOR.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with section 6(b) of the Act,[8] in general, and with section 6(b)(4) of the Act,[9] in particular, in that it provides for the equitable allocation of reasonable dues, fees, and other charges among its members.

In addition, the BSE believes that the proposed rule change is consistent with section 6(b)(5) of the Act,[10] in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect that mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The BSE believes that the proposed rule change will create incentives for Member Firms to actively quote and execute transactions on the Exchange, which will, in turn, enhance the National Market System.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* December 9, 2003 letter from John Boese, Vice President, Legal and Compliance, to Nancy Sanow, Assistant Director, Division of Market Regulation, Commission, and attachments ("Amendment No. 1") Amendment No. 1 completely replaces and supersedes the original filing. For purposes of calculating the 60-day abrogation period, the Commission considers the period to have commenced on December 10, 2003, the date the BSE filed Amendment No. 1.

[4] 15 U.S.C. 78s(b)(3)(A)(ii).

[5] Securities Exchange Act Release Nos. 41082 (February 22, 1999), 64 FR 10035 (March 1, 1999) (SR–CSE–99–02) (notice); 41286 (April 14, 1999), 64 FR 19843 (April 22, 1999) (SR–CSE–99–02) (approval order); 46688 (October 18, 2002), 67 FR 65816 (October 28, 2002) (SR–CSE–2002–14) (notice of filing and immediate effectiveness).

[6] *See infra* note 7.

[7] In particular, the BSE will not compromise its regulatory responsibilities by sharing revenue that would more appropriately be used to fund regulatory responsibilities. The Exchange will be mindful of its regulatory responsibilities when determining its working capital needs. *See* Securities Exchange Act Release No. 41286 (April 14, 1999), 64 FR 19843, 19844 (April 22, 1999) (SR–CSE–99–02).

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(4).

[10] 15 U.S.C. 78f(b)(5).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change has become effective pursuant to section 19(b)(3)(A)(ii) of the Act [11] and subparagraph (f)(2) of Rule 19b–4 thereunder,[12] because it involves a due, fee, or other charge. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Comments may also be submitted electronically at the following e-mail address: *rule-comments@sec.gov*. All comment letters should refer to File No. SR–BSE–2003–22. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, comments should be sent in hardcopy or by e-mail but not by both methods. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to file number SR–BSE–2003–22, and should be submitted by January 8, 2004.

[11] 15 U.S.C. 78s(b)(3)(A)(ii).

[12] 17 CFR 240.19b–4(f)(2).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–31168 Filed 12–17–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48913; File No. SR–CBOE–2003–37]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto by the Chicago Board Options Exchange, Inc. Relating to Appointment of the Members and Chairman of Its Governance Committee

December 11, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 5, 2003, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the CBOE. On November 6, 2003, the CBOE filed Amendment No. 1 to the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CBOE proposes to amend Exchange Rule 2.1 pertaining to the appointment of the members and Chairman of the Exchange's Governance Committee. Below is the text of the proposed rule change. Proposed new language is in italics; proposed deletions are in [brackets].

CHICAGO BOARD OPTIONS EXCHANGE, INCORPORATED

RULES

* * * * *

CHAPTER II—Organization and Administration

Part–A—Committees

Committees of the Exchange

Rule 2.1. Committees of the Exchange

(a) Establishment of Committees. In addition to committees specifically provided for in the Constitution, there shall be the following committees: Appeals, Arbitration, Business Conduct, appropriate Floor Procedure Committees, Floor Officials, appropriate Market Performance Committees, Membership, Product Development and such other committees as may be established in accordance with the Constitution. Except as may be otherwise provided in the Constitution or the Rules, the Vice Chairman of the Board, with the approval of the Board, shall appoint the chairmen and members of such committees to serve for terms expiring at the regular meeting of the Board following the next succeeding Annual Election Meeting or until successors are appointed. Consideration shall be given to continuity and to having, where appropriate, a cross section of the membership represented on each committee. Except as may be otherwise provided in the Constitution or the Rules, the Vice Chairman of the Board may, at any time, with or without cause, remove any member of such committees. Any vacancy occurring in one of these committees shall be filled by the Vice Chairman of the Board for the remainder of the term. Notwithstanding the foregoing, the Chairman of the Board, with the approval of the Board, shall appoint Directors to serve on the [Audit and Compensation Committees,] *Governance Committee*, whose members shall not be subject to removal except by the Board. *The Chairman of the Governance Committee shall be appointed by the Chairman of the Board.* Whenever the Vice Chairman of the Board is, or has reason to believe he may become, a party to any proceeding of an Exchange committee, he shall not exercise his power to appoint or remove members of that committee, and the Chairman of the Board shall have such power.

(b)–(d) No change.

* * * * *

[13] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Patrick Sexton, Assistant General Counsel, CBOE, to Gordon Fuller, Counsel to the Assistant Director, Division of Market Regulation, Commission, dated November 6, 2003 ("Amendment No. 1"). In Amendment No. 1, CBOE clarified the current procedure by which Governance Committee members are appointed, explained the reason for the proposed rule change, and revised a portion of the original proposed rule text. These changes are more fully described in Section II below.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the CBOE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The CBOE has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to amend Exchange Rule 2.1 to state that the Chairman of the Board shall have the authority to appoint the members of the Exchange's Governance Committee, and also to appoint the Chairman of the Governance Committee. The CBOE Governance Committee is a standing committee of the CBOE's Board of Directors. The CBOE believes that the proposed amendment to Rule 2.1 granting to the Chairman of the Board the authority to appoint the members and the Chairman of the Governance Committee is consistent with other provisions in CBOE's Constitution that grant the Chairman of the Board the authority to appoint the members and Chairman of other standing committees of the Board of Directors, such as the Audit and Compensation Committees.[4]

In addition to the foregoing proposed change to Rule 2.1, the Exchange proposes a "housekeeping" amendment to Rule 2.1—namely, to delete the reference to the Audit Committee and Compensation Committee in Rule 2.1 as these two committees are specifically codified in Sections 7.3 and 7.4, respectively, of the CBOE's Constitution.

In Amendment No. 1, the CBOE clarified that currently the Vice Chairman of the Exchange, with the approval of the Board of Directors, has the authority to appoint the Chairman and members of the Governance Committee. The CBOE explained that it believes it is appropriate that the Chairman have this authority, as the Governance Committee, which is a standing Board committee, reviews and evaluates the Exchange's governance structure and makes recommendations to the Board concerning the governance of the Exchange, and assures that as an on-going matter, questions pertaining to governance that may arise from time to time will be reviewed promptly and brought to the Board's attention. The Exchange further noted that its proposal is consistent with other provisions in CBOE's Constitution, which grant the Chairman the authority to appoint the members and the chairmen of other standing committees of the Board of Directors. Finally, the CBOE deleted a reference in the proposed rule's text to the term "members" in reference to the Governance Committee, and replaced it with the term "directors," which is the term used in the current rule. CBOE explained that the Governance Committee is comprised currently only of directors and will continue to be comprised only of directors in the future.

2. Statutory Basis

The Exchange believes that, by providing that the members of the Exchange's Governance Committee and the Chairman of the Governance Committee shall be appointed by the Chairman of the Board, the proposed rule change furthers the objectives of section 6(b)(5) of the Act[5] to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change, as amended.

I. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve the proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Comments may also be submitted electronically at the following e-mail address: *rule-comments@sec.gov*. All comment letters should refer to File No. SR–CBOE–2003–37. This file number should be included on the subject line if e-mail is used. To help the Commission process and review comments more efficiently, comments should be sent in hardcopy or by e-mail but not by both methods. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the CBOE. All submissions should refer to file number SR–CBOE–2003–37 and should be submitted by January 8, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–31167 Filed 12–17–03; 8:45 am]

BILLING CODE 8010–01–P

[4] *See* CBOE Constitution, Sections 7.3 and 7.4.

[5] 15 U.S.C. 78f(b)(5).

[6] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48896; File No. SR–NSCC–2003–18]

Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to an Enhancement to the Insurance Processing Service

December 9, 2003.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on September 22, 2003, the National Securities Clearing Corporation ("NSCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared primarily by NSCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change will modify NSCC's Rule 57, Section 1, to allow NSCC's members, insurance carrier members, and data services-only members to submit application information and to settle premium payments with respect to life insurance products by adding a new service called Portal.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NSCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NSCC has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.[2]

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to enhance NSCC's Insurance Processing Service ("IPS") by allowing NSCC's members, insurance carrier members, and data services only members to submit application information and to settle premium payments with respect to life insurance products.

Unlike other parts of the financial services industry, the life insurance and annuity industries rely heavily on manual processing and one-off communications to process the sale of their products. The lack of technology, absence of standards, and resulting lengthy delays in the sales process contribute to a typical lag of 30 to 90 days between the initial sale by the sales person or distributor and the issuance by the insurance carrier of a life insurance policy.

IPS currently offers many services that help automate and standardize certain aspects of the processing of annuities and life insurance. However, there are many aspects of this processing that fall outside of current IPS capabilities. For example, IPS currently allows its users to transmit information through IPS regarding annuities applications as part of the Initial Application Information ("APP") function, but the APP function does not accommodate life insurance applications. In addition, not all potential users of IPS have programmed their systems to allow full access to existing IPS services.

To remedy some of the problems outlined above, NSCC proposes to introduce a system called "Portal" that will handle annuities and life insurance applications through APP. Users will access Portal through a software package provided by NSCC that will allow users to more easily access certain IPS functions without undertaking all of the internal programming that they would otherwise have to do.

In addition, because there are other functions that distributors of life insurance and annuity products must perform between the sale of the product and its issuance, NSCC is contracting with third party service providers that offer these functions. These functions include producer education (*i.e.*, registered representatives who work for members or data services only members who help distributors and producers fulfill their educational requirements for offering products under state law); producer licensing (helps to streamline the licensing process for distributors to have their producers become licensed by states and facilitates the exchange of information relating to licensees); product profile repository (provides a database of generic details regarding individual life insurance and annuity products); electronic submission of new business (provides electronic application forms of various insurance carriers that can be filled out and transmitted electronically); call center (teleunderwriting that gathers data required for an annuity or life insurance application provided by applicants); requirements ordering (arranges with third parties for medical examinations, review of driving records, credit history check, etc.); and case management (manages the case, including obtaining all necessary information for the electronic application prior to the underwriting process, oversees the integration of information from the call center and requirements outsourcing processes, and performs quality assurance functions).

NSCC will charge Portal users through the NSCC settlement system.[3] The users will be subject to the service standards offered to NSCC by these service providers. Portal will be subject to the same liability standard as with other features of IPS.[4]

NSCC believes that the proposed rule change is consistent with the requirements of Section 17A of the Act and the rules and regulations thereunder since it will facilitate the prompt and accurate processing of transactions.

B. Self-Regulatory Organization's Statement on Burden on Competition

NSCC does not believe that the proposed rule change will have an impact on or impose a burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments relating to the proposed rule change have been solicited or received. NSCC will notify the Commission of any written comments received by NSCC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section

[1] 15 U.S.C. 78s(b)(1).

[2] The Commission has modified the text of the summaries prepared by NSCC.

[3] The proposed fee schedule for Portal users is being developed and will be filed with the Commission at a later date

[4] NSCC's Rule 57, Section 6 states: "[NSCC] will not be responsible for the completeness or accuracy of the IPS Data received from or transmitted to an Insurance Carrier Member, Member or Data Services Only Member through IPS nor for any errors, omissions or delays which may occur in the absence of gross negligence on [NSCC]'s part, in the transmission of such IPS Data to or from an Insurance Carrier Member, or Data Services Only Member."

19(b)(3)(A)(iii) of the Act[5] and Rule 19b–4(f)(6) thereunder[6] because it effects a change that does not significantly affect the protection of investors or the public interest, does not impose any significant burden on competition, and does not become operative for 30 days after the date of the filing. At any time within sixty days of the filing of such rule change, the Commission could have summarily abrogated such rule change if it appeared to the Commission that such action was necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 5th Street NW., Washington, DC 20549–0069. Comments may also be submitted electronically at the following e-mail address: *rule-comments@sec.gov*. All comment letters should refer to File No. SR–NSCC–2003–18. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, comments should be sent in hardcopy or by e-mail but not by both methods. Copies of the submission, all subsequent amendments, all written statements with respect to the rule filing that are filed with the Commission, and all written communications relating to the rule filing between the Commission and any person, other than those that may be withheld from the public in accordance with provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room in Washington, DC. Copies of such filing will also be available for inspection and copying at NSCC's principal office and on NSCC's Web site at *http://www.nscc.com/legal/*. All submissions should refer to File No. SR–NSCC–2003–18 and should be submitted by January 8, 2004.

[5] 15 U.S.C. 78s(b)(3)(A)(iii).

[6] 17 CFR 240.19b–4(f)(6).

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–31213 Filed 12–17–03; 8:45 am]

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DEPARTMENT OF STATE

Office of Oceans Affairs

[I.D. 120103G]

New Conservation Measures for Antarctic Fishing Under the Auspices of CCAMLR

AGENCY: Office of Oceans Affairs, Department of State.

ACTION: Notice.

SUMMARY: At its Twenty-Second Meeting in Hobart, Tasmania, from October 27 to November 7, 2003, the Commission for the Conservation of Antarctic Marine Living Resources (CCAMLR), of which the United States is a member, adopted conservation measures, pending countries' approval, pertaining to fishing in the CCAMLR Convention Area. All the measures were agreed upon in accordance with Article IX of the Convention for the Conservation of Antarctic Marine Living Resources. Measures adopted restrict overall catches of certain species of fish and crabs, restrict fishing in certain areas, specify implementation and inspection obligations supporting the Catch Documentation Scheme of Contracting Parties, and promote compliance with CCAMLR measures by non-Contracting Party vessels. This notice includes the full text of the conservation measures adopted at the Twenty-Second meeting of CCAMLR. For all of the conservation measures in force, see the CCAMLR Website at *http://www.ccamlr.org*. This notice, therefore, together with the U.S. regulations referenced under the **SUPPLEMENTARY INFORMATION** provides a comprehensive register of all current U.S. obligations under CCAMLR.

DATES: Persons wishing to comment on the measures or desiring more information should submit written comments by January 20, 2004.

FOR FURTHER INFORMATION CONTACT: Matthew V. Cassetta, Office of Oceans Affairs (OES/OA), Room 5805, Department of State, Washington, DC 20520; tel: 202–647–3947; fax: 202–647–9099; e-mail: *cassettamv@state.gov*.

SUPPLEMENTARY INFORMATION: Individuals interested in CCAMLR should also see 15 CFR Chapter III-International Fishing and Related Activities, Part 300–International Fishing Regulations, Subpart A-General; Subpart B-High Seas Fisheries; and Subpart G-Antarctic Marine Living Resources, for other regulatory measures related to conservation and management in the CCAMLR Convention area. Subpart B notes the requirements for high seas fishing vessel licensing. Subparts A and G describe the process for regulating U.S. fishing in the CCAMLR Conventional area and contain the text of CCAMLR Conservation Measures that are not expected to change from year to year. The regulations in Subparts A and G include sections on; Purpose and scope; Definitions; Relationship to other treaties, conventions, laws and regulations; Procedure for according protection to CCAMLR Ecosystem Monitoring Program Sites; Scientific Research; Initiating a new fisher; Exploratory fisheries; Reporting and record keeping requirements; Vessel and gear identification; Gear disposal; Mesh Size; Harvesting permits; Import permits; Appointment of a designated representative; Prohibitions; Facilitation of enforcement and inspection; and Penalties.

The Commission agreed that the following conservation measures will remain in force in 2003/04: compliance: 10–01 (1998), 10–02 (2001), 10–03 (2002), 10–04 (2002) and 10–06 (2002); general fishery matters: 21–01 (2002), 21–02 (2002), 22–01 (1986), 22–02 (1984), 22–03 (2002), 23–02 (1993), 23–03 (1991), 23–04 (2000), 23–05 (2000), 23–06 (2002), 25–01 (1996), 31–01 (1986), 32–01 (2001), 32–02 (1998), 32–03 (1998), 32–04 (1986), 32–05 (1986), 32–06 (1985), 32–07 (1999), 32–08 (1997), 32–10 (2002), 32–11 (2002), 32–12 (1998), 33–01 (1995), 41–03 (1999), 51–01 (2002), 51–02 (2002) and 51–03 (2002); protected areas: 91–01 (2002), 91–02 (2002) and 91–03 (2002).

At its twenty-second meeting in Hobart, Tasmania, the Commission agreed that the following resolutions will remain in force in 2003/04: Resolutions 7/IX, 10/XII, 14/XIX, 16/XIX, 17/XX, 18/XXI and 19/XXI. The Commission had also considered the implementation of a C-VMS. Although significant progress had been made, the Commission did not reach consensus at the most recent meeting. As a result, Conservation Measure 10–04 and Resolution 16/XIX remain in force.

New and Revised Conservation Measures. The Commission revised the following conservation measures at its twenty-second meeting: compliance: 10–05 (2002) and 10–07 (2002); general

[7] 17 CFR 200.30–3(a)(12).

fishery matters: 23–01 (2000), 24–01 (2002), 24–02 (2002), 25–02 (2002) and 25–03 (1999). In addition, thirty-four measures and two resolutions were adopted at the twenty-second meeting follow. For further information, see the CCAMLR web site at *http://www.ccamlr.org* under Publications for the Schedule of Conservation Measures in Force (2003/2004), or contact the Commission at the CCAMLR Secretariat, P.O. Box 213, North Hobart, Tasmania 7002, Australia. Tel: (61) 3–6234–9965.

CONSERVATION MEASURES AND RESOLUTIONS ADOPTED ATCCAMLR-XXII

CONSERVATION MEASURE 10–05 (2003)

Catch Documentation Scheme for *Dissostichus* spp.

[only paragraphs A5. and A9. of Annex 10–05/A of this measure were revised]

The Commission,

Concerned that illegal, unregulated and unreported (IUU) fishing for *Dissostichus* spp. in the Convention Area threatens serious depletion of populations of *Dissostichus* spp.,Aware that IUU fishing involves significant by-catch of some Antarctic species, including endangered albatross,

Noting that IUU fishing is inconsistent with the objective of the Convention and undermines the effectiveness of CCAMLR conservation measures,

Underlining the responsibilities of Flag States to ensure that their vessels conduct their fishing activities in a responsible manner,

Mindful of the rights and obligations of Port States to promote the effectiveness of regional fishery conservation measures,

Aware that IUU fishing reflects the high value of, and resulting expansion in markets for and international trade in, *Dissostichus* spp.,

Recalling that Contracting Parties have agreed to introduce classification codes for *Dissostichus* spp. at a national level,

Recognizing that the implementation of a Catch Documentation Scheme for *Dissostichus* spp. will provide the Commission with essential information necessary to provide the precautionary management objectives of the Convention,

Committed to take steps, consistent with international law, to identify the origins of *Dissostichus* spp. entering the markets of Contracting Parties and to determine whether *Dissostichus* spp. harvested in the Convention Area that is imported into their territories was caught in a manner consistent with CCAMLR conservation measures,

Wishing to reinforce the conservation measures already adopted by the Commission with respect to *Dissostichus* spp.,

Inviting non-Contracting Parties whose vessels fish for *Dissostichus* spp. to participate in the Catch Documentation Scheme for *Dissostichus* spp., hereby adopts the following conservation measure in accordance with Article IX of the Convention:

1. Each Contracting Party shall take steps to identify the origin of *Dissostichus* spp. imported into or exported from its territories and to determine whether *Dissostichus* spp. harvested in the Convention Area that is imported into or exported from its territories was caught in a manner consistent with CCAMLR conservation measures.

2. Each Contracting Party shall require that each master or authorized representative of its flag vessels authorized to engage in harvesting of *Dissostichus eleginoides* and/or *Dissostichus mawsoni* complete a *Dissostichus* catch document for the catch landed or transhipped on each occasion that it lands or tranships *Dissostichus* spp.

3. Each Contracting Party shall require that each landing of *Dissostichus* spp. at its ports and each transhipment of *Dissostichus* spp. to its vessels be accompanied by a completed *Dissostichus* catch document.

4. Each Contracting Party shall, in accordance with their laws and regulations, require that their flag vessels which intend to harvest *Dissostichus* spp., including on the high seas outside the Convention Area, are, provided with specific authorization to do so. Each Contracting Party shall provide *Dissostichus* catch document forms to each of its flagvessels authorized to harvest *Dissostichus* spp. and only to those vessels.

5. A non-Contracting Party seeking to cooperate with CCAMLR by participating in this scheme may issue *Dissostichus* catch document forms, in accordance with the procedures specified in paragraphs 6 and 7, to any of its flag vessels that intend to harvest *Dissostichus* spp.

6. The *Dissostichus* catch document shall include the following information:

(i) the name, address, telephone and fax numbers of the issuing authority;

(ii) the name, home port, national registry number, and call sign of the vessel and, if issued, its IMO/Lloyd's registration number;

(iii) the reference number of the license or permit, whichever is applicable, that is issued to the vessel;

(iv) the weight of each *Dissostichus* species landed or transhipped by product type, and

(a) by CCAMLR statistical subarea or division if caught in the Convention Area; and/or

(b) by FAO statistical area, subarea or division if caught outside the Convention Area;

(v) the dates within which the catch was taken;

(vi) the date and the port at which the catch was landed or the date and the vessel, its flag and national registry number, to which the catch was transhipped; and

(vii) the name, address, telephone and fax numbers of the recipient(s) of the catch and the amount of each species and product type received.

7. Procedures for completing *Dissostichus* catch documents in respect of vessels are set forth in paragraphs A1 to A10 of Annex 10–05/A to this measure. The standard catch document is attached to the annex.

8. Each Contracting Party shall require that each shipment of *Dissostichus* spp. imported into or exported from its territory be accompanied by the export-validated *Dissostichus* catch document(s) and, where appropriate, validated re-export document(s) that account for all the *Dissostichus* spp. contained in the shipment.

9. An export-validated *Dissostichus* catch document issued in respect of a vessel is one that:

(i) includes all relevant information and signatures provided in accordance with paragraphs A1 to A11 of Annex 10–05/A to this measure; and

(ii) includes a signed and stamped certification by a responsible official of the exporting State of the accuracy of the information contained in the document.

10. Each Contracting Party shall ensure that its customs authorities or other appropriate officials request and examine the documentation of each shipment of *Dissostichus* spp. imported into or exported from its territory to verify that it includes the export-validated *Dissostichus* catch document(s) and, where appropriate, validated re-export document(s) that account for all the *Dissostichus* spp. contained in the shipment. These officials may also examine the content of any shipment to verify the information contained in the catch document or documents.

11. If, as a result of an examination referred to in paragraph 10 above, a question arises regarding the

information contained in a *Dissostichus* catch document or a re-export document the exporting State whose national authority validated the document(s) and,

as appropriate, the Flag State whose vessel completed the document are called on to cooperate with the importing State with a view to resolving such question.

12. Each Contracting Party shall promptly provide by the most rapid electronic means copies to the CCAMLR Secretariat of all export-validated *Dissostichus* catch documents and, where relevant, validated re-export documents that it issued from and received into its territory and shall report annually to the Secretariat data, drawn from such documents, on the origin and amount of *Dissostichus* spp. exported from and imported into its territory.

13. Each Contracting Party, and any non-Contracting Party that issues *Dissostichus* catch documents in respect of its flag vessels in accordance with paragraph 5, shall inform the CCAMLR Secretariat of the national authority or authorities (including names, addresses, phone and fax numbers and email addresses) responsible for issuing and validating *Dissostichus* catch documents.

14. Notwithstanding the above, any Contracting Party, or any non-Contracting Party participating in the Catch Documentation Scheme, may require additional verification of catch documents by Flag States by using, inter alia, VMS, in respect of catches[1] taken on the high seas outside the Convention Area, when landed at, imported into or exported from its territory.

15. If a Contracting Party participating in the CDS has cause to sell or dispose of seized or confiscated *Dissostichus* spp., it may issue a Specially Validated *Dissostichus* Catch Document (SVDCD) specifying the reasons for that validation. The SVDCD shall include a statement describing the circumstances under which confiscated fish are moving in trade. To the extent practicable, Parties shall ensure that no financial benefit arising from the sale of seized or confiscated catch accrue to the perpetrators of IUU fishing. If a Contracting Party issues a SVDCD, it shall immediately report all such validations to the Secretariat for conveying to all Parties and, as appropriate, recording in trade statistics.

16. A Contracting Party may transfer all or part of the proceeds from the sale of seized or confiscated *Dissostichus* spp. into the CDS Fund created by the Commission or into a national fund which promotes achievement of the objectives of the Convention. A Contracting Party may, consistent with its domestic legislation, decline to provide a market for toothfish offered for sale with a SVDCD by another State. Provisions concerning the uses of the CDS Fund are found in Annex B.

ANNEX 10–05/A

A1. Each Flag State shall ensure that each *Dissostichus* catch document form that it issues includes a specific identification number consisting of:

(i) a four-digit number, consisting of the two-digit International Standards Organization (ISO) country code plus the last two digits of the year for which the form is issued; and

(ii) a three-digit sequence number (beginning with 001) to denote the order in which catch document forms are issued.

It shall also enter on each *Dissostichus* catch document form the number as appropriate of the license or permit issued to the vessel.

A2. The master of a vessel which has been issued a *Dissostichus* catch document form or forms shall adhere to the following procedures prior to each landing or transhipment of *Dissostichus* spp.:

(i) the master shall ensure that the information specified in paragraph 6 of this conservation measure is accurately recorded on the *Dissostichus* catch document form:

(ii) if a landing or transhipment includes catch of both *Dissostichus* spp., the master shall record on the *Dissostichus* catch document form the total amount of the catch landed or transhipped by weight of each species;

(iii) if a landing or transhipment includes catch of *Dissostichus* spp. taken from different statistical subareas and/or divisions, the master shall record on the *Dissostichus* catch document form the amount of the catch by weight of each species taken from each statistical subarea and/or division and indicating whether the catch was caught in an EEZ or on the high seas, as appropriate; and

(iv) the master shall convey to the Flag State of the vessel by the most rapid electronic means available, the *Dissostichus* catch document number, the dates within which the catch was taken, the species, processing type or types, the estimated weight to be landed and the area or areas of the catch, the date of landing or transhipment and the port and country of landing or vessel of transhipment and shall request from the Flag State, a Flag State confirmation number.

A3. If, for catches[2] taken in the Convention Area or on the high seas outside the Convention Area, the Flag State verifies, by the use of a VMS (as described in paragraphs 5 and 6 of Conservation Measure 10–04), the area fished and that the catch to be landed or transhipped as reported by its vessel is accurately recorded and taken in a manner consistent with its authorization to fish, it shall convey a unique Flag State confirmation number to the vessel's master by the most rapid electronic means available. The *Dissostichus* catch document will receive a confirmation number from the Flag State, only when it is convinced that the information submitted by the vessel fully satisfies the provisions of this conservation measure.

A4. The master shall enter the Flag State confirmation number on the *Dissostichus* catch document form.

A5. The master of a vessel that has been issued a *Dissostichus* catch document form or forms shall adhere to the following procedures immediately after each landing or transhipment of *Dissostichus* spp.:

(i) in the case of a transhipment, the master shall confirm the transhipment obtaining the signature on the *Dissostichus* catch document of the master of the vessel to which the catch is being transferred;

(ii) in the case of a landing, the master or authorized representative shall confirm the landing by obtaining a signed and stamped certification on the *Dissostichus* catch document by a responsible official of the Port State of landing or free trade zone who is acting under the direction of either the customs or fisheries authority of the Port State and is competent with regard to the validation of *Dissostichus* catch documents;

(iii) in the case of a landing, the master or authorized representative shall also obtain the signature on the *Dissostichus* catch document of the individual that receives the catch at the port of landing or free trade zone;

(iv) in the event that the catch is divided upon landing, the master or authorized representative shall present a copy of the *Dissostichus* catch document to each individual that receives a part of the catch at the port of landing or free trade zone, record on that copy of the catch document the amount and origin of the catch received by that individual and obtain the signature of that individual.

A6. In respect of each landing or transhipment, the master or authorized representative shall immediately sign and convey by the most rapid electronic means available a copy, or, if the catch landed was divided, copies, of the signed *Dissostichus* catch document to the Flag State of the vessel and shall provide a copy of the relevant document to each recipient of the catch.

A7. The Flag State of the vessel shall immediately convey by the most rapid electronic means available a copy or, if the catch was divided, copies, of the signed *Dissostichus* catch document to the CCAMLR Secretariat to be made available by the next working day to all Contracting Parties.

A8. The master or authorized representative shall retain the original copies of the signed *Dissostichus* catch document(s) and return them to the Flag State no later than one month after the end of the fishing season.

A9. The master of a vessel to which catch has been transhipped (receiving vessel) shall adhere to the following procedures immediately after each landing of such catch in order to complete each *Dissostichus* catch document received from transhipping vessels:

(i) the master of the receiving vessel shall confirm the landing by obtaining a signed and stamped certification on the *Dissostichus* catch document by a responsible official of the Port State of landing or free trade zone who is acting under the direction of either the customs or fisheries authority of the Port State and is competent with regard to the validation of *Dissostichus* catch documents;

(ii) the master of the receiving vessel shall also obtain the signature on the *Dissostichus* catch document of the individual that receives the catch at the port of landing or free trade;

(iii) in the event that the catch is divided upon landing, the master of the receiving vessel shall present a copy of the *Dissostichus* catch document to each individual that receives a part of the catch at the port of landing or free trade zone, record on that copy of the catch document the amount and origin of the catch received by that individual and obtain the signature of that individual.

A10. In respect of each landing of transhipped catch, the master or authorized representative of the receiving vessel shall immediately sign and convey by the most rapid electronic means available a copy of all the *Dissostichus* catch documents, or if the catch was divided, copies, of all the *Dissostichus* catch documents, to the Flag State(s) that issued the *Dissostichus* catch document, and shall provide a copy of the relevant document to each recipient of the catch. The Flag State of the receiving vessel shall immediately convey by the most rapid electronic means available a copy of the document to the CCAMLR Secretariat to be made available by the next working day to all Contracting Parties.

A11. For each shipment of *Dissostichus* spp. to be exported from the country of landing, the exporter shall adhere to the following procedures to obtain the necessary export validation of the *Dissostichus* catch document(s) that account for all the *Dissostichus* spp. contained in the shipment:

(i) the exporter shall enter on each *Dissostichus* catch document the amount of each *Dissostichus* spp. reported on the document that is contained in the shipment;

(ii) the exporter shall enter on each *Dissostichus* catch document the name and address of the importer of the shipment and the point of import;

(iii) the exporter shall enter on each *Dissostichus* catch document the exporter's name and address, and shall sign the document; and

(iv) the exporter shall obtain a signed and stamped validation of the *Dissostichus* catch document by a responsible official of the exporting State.

A12. In the case of re-export, the re-exporter shall adhere to the following procedures to obtain the necessary re-export validation of the *Dissostichus* catch document(s) that account for all the *Dissostichus* spp. contained in the shipment:

(i) the re-exporter shall supply details of the net weight of product of all species to be re-exported, together with the *Dissostichus* catch document number to which each species and product relates;

(ii) the re-exporter shall supply the name and address of the importer of the shipment, the point of import and the name and address of the exporter;

(iii) the re-exporter shall obtain a signed and stamped validation of the above details by the responsible official of the exporting State on the accuracy of information contained in the document(s); and

(iv) the responsible official of the exporting state shall immediately transmit by the most rapid electronic means a copy of the re-export document to the Secretariat to be made available next working day to all Contracting Parties.

ANNEX 10–05/B

THE USE OF THE CDS FUND

B1. The purpose of the CDS Fund ('the Fund') is to enhance the capacity of the Commission in improving the effectiveness of the CDS and by this, and other means, to prevent, deter and eliminate IUU fishing in the Convention Area.

B2. The Fund will be operated according to the following provisions:

(i) The Fund shall be used for special projects, or special needs of the Secretariat if the Commission so decides, aimed at assisting the development and improving the effectiveness of the CDS. The Fund may also be used for special projects and other activities contributing to the prevention, deterrence and elimination of IUU fishing in the Convention Area, and for other such purposes as the Commission may decide.

(ii) The Fund shall be used primarily for projects conducted by the Secretariat,although the participation of Members in these projects is not precluded. While individual Member projects may be considered, this shall not replace the normal responsibilities of Members of the Commission. The Fund shall not be used for outine Secretariat activities.

(iii) Proposals for special projects may be made by Members, by the Commission or the Scientific Committee and their subsidiary bodies, or by the Secretariat. Proposals shall be made to the Commission in writing and be accompanied by an explanation of the proposal and an itemized statement of estimated expenditure.

(iv) The Commission will, at each annual meeting, designate six Members to serve on a Review Panel to review proposals made intersessionally and to makerecommendations to the Commission on whether to fund special projects orspecial needs. The Review Panel will operate by email intersessionally and meet during the first week of the Commission's annual meeting.

(v) The Commission shall review all proposals and decide on appropriate projects and funding as a standing agenda item at its annual meeting.

(vi) The Fund may be used to assist Acceding States and non-Contracting Parties that wish to cooperate with CCAMLR and participate in the CDS, so long as this use is consistent with provisions (i) and (ii) above. Acceding States and non-Contracting Parties may submit proposals if the proposals are sponsored by, or in cooperation with, a Member.

[1] Excluding by-catches of *Dissostichus* spp. by trawlers fishing on the high seas outside the Convention Area. A by-catch shall be defined as no more than 5% of total catch of all species and no more than 50 tons for an entire fishing trip by a vessel.

[2] Excluding by-catches of *Dissostichus* spp. by trawlers fishing on the high seas outside the ConventionArea. A by-catch shall be defined as no more than 5% of total catch of all species and no more than 50 tons for an entire fishing trip by a vessel.

(vii) The Financial Regulations of the Commission shall apply to the Fund, except in so far as these provisions provide or the Commission decides otherwise.

(viii) The Secretariat shall report to the annual meeting of the Commission on the activities of the Fund, including its income and expenditure. Annexed to the report shall be reports on the progress of each project being funded by the Fund, including details of the expenditure on each project. The report will be circulated to Members in advance of the annual meeting.

(ix) Where an individual Member project is being funded according to provision (ii), that Member shall provide an annual report on the progress of the project, including details of the expenditure on the project. The report shall be submitted to the Secretariat in sufficient time to be circulated to Members in advance of the annual meeting. When the project is completed, that Member shall provide a final statement of account certified by an auditor acceptable to the Commission.

(x) The Commission shall review all ongoing projects at its annual meeting as a standing agenda item and reserves the right, after notice, to cancel a project at any time should it decide that it is necessary. Such a decision shall be exceptional, and shall take into account progress made to date and likely progress in the future, and shall in any case be preceded by an invitation from the Commission to the project coordinator to present a case for continuation of funding.

(xi) The Commission may modify these provisions at any time.

CONSERVATION MEASURE 10–07 (2003)

Scheme to Promote Compliance by Non-Contracting Party Vessels with CCAMLR Conservation Measures.

1. The Contracting Parties request non-Contracting Parties to cooperate fully with the Commission with a view to ensuring that the effectiveness of CCAMLR conservation measures is not undermined.

2. At each annual meeting the Commission shall identify those non-Contracting Parties whose vessels are engaged in illegal, unregulated and unreported (IUU) fishing activities in the Convention Area that threaten to undermine the effectiveness of CCAMLR conservation measures, and shall establish a list of such vessels (IUU Vessel List), in accordance with the procedures and criteria set out hereafter.

3. A non-Contracting Party vessel which has been sighted engaging in fishing activities in the Convention Area or which has been denied port access, landing or transhipment in accordance with Conservation Measure 10–03 is presumed to be undermining the effectiveness of CCAMLR conservation measures. In the case of any transhipment activities involving a sighted non-Contracting Party vessel inside or outside the Convention Area, the presumption of undermining the effectiveness of CCAMLR conservation measures applies to any other non-Contracting Party vessel which has engaged in such activities with that vessel.

4. When the non-Contracting Party vessel referred to in paragraph 3 enters a port of any Contracting Party, it shall be inspected by authorized Contracting Party officials in accordance with Conservation Measure 10–03 and shall not be allowed to land or tranship any fish species subject to CCAMLR conservation measures it might be holding on board unless the vessel establishes that the fish were caught in compliance with all relevant CCAMLR conservation measures and requirements under the Convention.

5. The Contracting Party which sights the non-Contracting Party vessel or denies it port access, landing or transhipment under paragraph 3 shall attempt to inform the vessel it is presumed to be undermining the objective of the Convention and that this information will be distributed to all Contracting Parties and to the Secretariat, and to the Flag State of the vessel.

6. Information regarding such sightings or denial of port access, landings or transhipments, and the results of all inspections conducted in the ports of Contracting Parties, and any subsequent action shall be transmitted immediately to the Commission in accordance with Article XXII of the Convention. The Secretariat shall transmit this information to all Contracting Parties, within one business day of receiving this information, and to the Flag State of the sighted vessel as soon as possible. At this time, the Secretariat shall, in consultation with the Chair of the Commission, request the Flag State concerned that, where appropriate, measures be taken in accordance with its applicable laws and regulations to ensure that the vessel or vessels in question desist from any activities that undermine the effectiveness of CCAMLR conservation measures, and that the Flag State report back to CCAMLR on the results of such enquiries and/or on the measures it has taken in respect of the vessel or vessels concerned.

7. Contracting Parties may at any time submit to the Executive Secretary any additional information, which might be relevant for the identification of non-Contracting Party vessels that might be carrying out IUU fishing activities in the Convention Area.

8. The Standing Committee on Implementation and Compliance (SCIC) shall review the information received pursuant to paragraphs 5,6 and 7and any other information provided during its annual deliberations which may be considered relevant to this review.

9. Following the review referred to in paragraph 8, SCIC shall submit to the Commission for approval, a proposed IUU Vessel List.

10. The Executive Secretary, SCIC and the Commission shall undertake each year the procedures set out in this conservation measure in respect of adding or removing vessels from the IUU Vessel List. In this regard, SCIC shall recommend that the Commission removes vessels from the list approved in a previous annual meeting if the relevant Flag State satisfies the Commission that:

(a) the vessel did not take part in IUU fishing activities described in paragraph 2; or

(b) it has taken effective action in response to the IUU fishing activities in question, including prosecution and imposition of sanctions of adequate severity; or

(c) the vessel has changed ownership and that the new owner can establish the previous owner no longer has any legal, financial, or real interests in the vessel, or exercises control over it and that the new owner has not participated in IUU fishing; or

(d) the Flag State has taken measures considered sufficient to ensure the granting of the right to the vessel to fly its flag will not result in IUU fishing.

11. Contracting Parties shall take all necessary measures, to the extent possible in accordance with their applicable legislation, in order that:

(a) the issuance of a licence to vessels included in the IUU Vessel List to fish in waters under their fisheries jurisdiction is prohibited;

(b) fishing vessels, support vessels, mother-ships and cargo vessels flying their flag do not participate in any transhipment or joint fishing operations with vessels registered in the IUU Vessel List;

(c) vessels appearing in the IUU Vessel List that enter ports are not authorized to land or tranship therein and are inspected in accordance with

Conservation Measure 10–03 on so entering;

(d) the chartering of vessels included in the IUU Vessel List is prohibited;

(e) granting of their flag to vessels appearing in the IUU Vessel List is refused;

(f) imports of *Dissostichus* spp. from vessels included in the IUU Vessel List are prohibited;

(g) 'Export or Re-export Government Authority Validation' is not verified when the shipment (of *Dissostichus* spp.) is declared to have been caught by any vessel included in the IUU Vessel List;

(h) importers, transporters and other sectors concerned, are encouraged to refrain from negotiating and from transhipping of fish caught by vessels appearing in the IUU Vessel List;

(i) any appropriate information is collected and exchanged with other Contracting Parties or cooperating non-Contracting Parties, entities or fishing entities with the aim of detecting, controlling and preventing the use of false import/export certificates regarding fish from vessels appearing in the IUU Vessel List.

12. The Executive Secretary shall place the IUU Vessel List on a secure section of the CCAMLR website.

13. The Commission shall request those non-Contracting Parties identified pursuant to paragraph 2, to immediately take steps to address the IUU fishing activities of the vessels flying their flag that have been included in the IUU Vessel List, including if necessary, the withdrawal of the registration or of the fishing licenses of these vessels, the nullification of the relevant catch documents and denial of further access to the Catch Documentation Scheme for *Dissostichus* spp. (CDS), and to inform the Commission of the measures taken in this respect.

14. Contracting Parties shall jointly and/or individually request non-Contracting Parties identified pursuant to paragraph 2, to cooperate fully with the Commission in order to avoid undermining the effectiveness of conservation measures adopted by the Commission.

15. The Commission shall review, at subsequent annual meetings as appropriate, actions taken by those non-Contracting Parties identified pursuant to paragraph 2 to which requests have been made pursuant to paragraphs 13 and 14, and identify those which have not rectified their fishing activities.

16. The Commission shall decide appropriate measures to be taken in respect to *Dissostichus* spp. so as to address these issues with those identified non-Contracting Parties. In this respect, non-Contracting Parties may cooperate to adopt appropriate multilaterally agreed trade-related measures, consistent with the World Trade Organization (WTO), that may be necessary to prevent, deter and eliminate the IUU fishing activities identified by the Commission. Multilateral trade-related measures may be used to support cooperative efforts to ensure that trade in *Dissostichus* spp. and its products does not in any way encourage IUU fishing or otherwise undermine the effectiveness of CCAMLR's conservation measures which are consistent with the United Nations Convention on the Law of the Sea 1982.

CONSERVATION MEASURE 23–01 (2003)

Five-day Catch and Effort Reporting System

This conservation measure is adopted in accordance with Conservation Measure 31–01 where appropriate:

1. For the purposes of this Catch and Effort Reporting System the calendar month shall be divided into six reporting periods, viz: day 1 to day 5, day 6 to day 10, day 11 to day 15, day 16 to day 20, day 21 to day 25 and day 26 to the last day of the month. These reporting periods are hereinafter referred to as periods A, B, C, D, E and F.

2. At the end of each reporting period, each Contracting Party shall obtain from each of its vessels its total catch and total days and hours fished for that period and shall, by cable, telex or facsimile, transmit the aggregated catch and days and hours fished for its vessels. The catch and effort data shall reach the Executive Secretary not later than five (5) days after the end of the reporting period, or in the case of exploratory fisheries, notlater than two (2) working days after the end of the reporting period. In the case of longline fisheries, the number of hooks shall also be reported.

3. A report must be submitted by every Contracting Party taking part in the fishery for each reporting period for the duration of the fishery even if no catches are taken.

4. The catch of all species, including by-catch species, must be reported.

5. Such reports shall specify the month and reporting period (A, B, C, D, E or F) to which each report refers.

6. Immediately after the deadline has passed for receipt of the reports for each period, the Executive Secretary shall notify all Contracting Parties engaged in fishing activities in the area, of the total catch taken during the reporting period, the total aggregate catch for the season to date together with an estimate of the date upon which the total allowable catch is likely to be reached for that season. In the case of exploratory fisheries, the Executive Secretary shall also notify total aggregate catch for the season todate in each small-scale research unit (SSRU) together with an estimate of the date upon which the total allowable catch is likely to be reached in each SSRU for that season. Estimates shall be based on a projection forward of the trend in daily catch rates,obtained using linear regression techniques from a number of the most recent catch reports.

7. At the end of every six reporting periods, the Executive Secretary shall inform all Contracting Parties of the total catch taken during the six most recent reporting periods, the total aggregate catch for the season to date together with an estimate of the date upon which the total allowable catch is likely to be reached for that season.

8. If the estimated date of completion of the total allowable catch, is within five days of the date on which the Secretariat received the report of the catches, the Executive Secretary shall inform all Contracting Parties that the fishery will close on that estimated day or on the day on which the report was received, whichever is the later. In the case of exploratory fisheries, if the estimated date of completion of the catch in any SSRU is within five days of the day on which the Secretariat received the report of catches, the Executive Secretary shall additionally inform all Contracting Parties thatfishing in that SSRU will be prohibited from that calculated day, or on the day on which the report was received, whichever is the later.

9. Should a Contracting Party fail to transmit a report to the Executive Secretary in the appropriate form by the deadline specified in paragraph 2, the Executive Secretary shall issue a reminder to the Contracting Party. If at the end of a further two five-day periods, or, in the case of exploratory fisheries, a further one five-day period, those data have still not been provided, the Executive Secretary shall notify all Contracting Partiesof the closure of the fishery to the vessel which has failed to supply the data as required and the Contracting Party concerned shall require the vessel to cease fishing. If the Executive Secretary is notified by the Contracting Party that the failure of the vessel to report is due to technical difficulties, the vessel may resume fishing once the report orexplanation concerning the failure has been submitted.

CONSERVATION MEASURE 24–01 (2003)[3,4]

The Application of Conservation Measures to Scientific Research[only Annex 24–01/B of this measure was revised]

This conservation measure governs the application of conservation measures to scientific research and is adopted in accordance with Article IX of the Convention.

1. General application:

(a) Catches taken by any vessel for research purposes will be considered as part of any catch limits in force for each species taken, and shall be reported to CCAMLR as part of the annual STATLANT returns.

(b) The CCAMLR within-season catch and effort reporting systems shall applywhenever the catch within a specified reporting period exceeds five tons, unless more specific regulations apply to the particular species.

2. Application to vessels taking less than 50 tons of finfish including no more than the amounts specified for finfish taxa in Annex 24–01/B and less than 0.1% of a given catch limit for non-finfish taxa indicated in Annex 24–01/B:

(a) Any Member planning to use a vessel for research purposes when the estimated catch is as above shall notify the Secretariat of the Commission which in turn will notify all Members immediately, according to the format provided in Annex 24–01/A. This notification shall be included in the Members' Activities Reports.

(b) Vessels to which the provisions of paragraph 2(a) above apply, shall be exempt from conservation measures relating to mesh size regulations, prohibition of types of gear, closed areas, fishing seasons and size limits, and reporting system requirements other than those specified in paragraphs 1(a) and (b) above.

3. Application to vessels taking more than 50 tons of finfish or more than the amounts specified for finfish taxa in Annex 24–01/B or more than 0.1% of a given catch limit for non-finfish taxa indicated in Annex 24–01/B:

(a) Any Member planning to use any type of vessel to conduct fishing for research purposes when the estimated catch is as above, shall notify the Commission and provide the opportunity for other Members to review and comment on its research plan. The plan shall be provided to the Secretariat for distribution to Members at least six months in advance of the planned starting date for the research. In the event of any request for a review of such plan being lodged within two months of its circulation, the Executive Secretary shall notify all Members and submit the plan to the Scientific Committee for review. Based on the submitted research plan and any advice provided by the appropriate working group, the Scientific Committee will provide advice to the Commission where the review process will be concluded. Until the review process is complete the planned fishing for research purposes shall not proceed.

(b) Research plans shall be reported in accordance with the standardized guidelines and formats adopted by the Scientific Committee, given in Annex 24–01/A.

(c) A summary of the results of any research subject to these provisions shall be provided to the Secretariat within 180 days of the completion of the research fishing. A full report shall be provided within 12 months.

(d) Catch and effort data resulting from research fishing in accordance with paragraph (a) above, should be reported to the Secretariat according to the haul-by-haul reporting format for research vessels (C4).

CONSERVATION MEASURE 24–02 (2003)

Experimental Line-weighting Trials

In respect of fisheries in Statistical Subareas 48.6, 88.1 and 88.2 and Divisions 58.4.1, 58.4.2, 58.4.3a, 58.4.3b and 58.5.2, paragraph 3 of Conservation Measure 25–02 shall not apply only where a vessel can demonstrate, prior to entry into force of the license for this fishery and prior to entering the Convention Area, its ability to fully comply with either of the following experimental protocols.

Protocol A:

A1. The vessel shall, under observation by a scientific observer:

(i) set a minimum of five longlines with a minimum of four Time Depth Recorders (TDR) on each line;

(ii) randomize TDR placement on the longline within and between sets;

(iii) calculate an individual sink rate for each TDR when returned to the vessel, where:

(a) the sink rate shall be measured as an average of the time taken to sink from the surface (0 m) to 15 m;

(b) this sink rate shall be at a minimum rate of 0.3 m/s;

(iv) if the minimum sink rate is not achieved at all 20 sample points, repeat the test until such time as a total of 20 tests with a minimum sink rate of 0.3 m/s are recorded;

(v) all equipment and fishing gear used in the tests is to be the same as that to be used in the Convention Area.

A2. During fishing, for a vessel to maintain the exemption to night-time setting requirements, continuous line sink monitoring shall be undertaken by the CCAMLR scientific observer. The vessel shall cooperate with the CCAMLR observer who shall:

(i) aim to place a TDR on every longline set during the observer's shift;

(ii) every seven days place all available TDRs on a single longline to determine any sink rate variation along the line:

(iii) randomize TDR placement on the longline within and between sets;

(iv) calculate an individual rate for each TDR when returned to the vessel;

(v) measure the sink rate as an average of the time taken to sink from the surface (0 m) to 15 m.

A3. The vessel shall:

(i) ensure the average sink rate is at a minimum of 0.3 m/s;

(ii) report daily to the fishery manager;

(iii) ensure that data collected from line sink trials is recorded in the approved format and submitted to the fishery manager at the conclusion of the season.

Protocol B:

B1. The vessel shall, under observation by a scientific observer:(i) set a minimum of five longlines of the maximum length to be used in theConvention Area with a minimum of four bottle tests (see paragraphs B5 to B9)on the middle one-third of the longline;

(ii) randomize bottle test placement on the longline within and between sets, noting that all tests should be applied halfway between weights;

(iii) calculate an individual sink rate for each bottle test, where the sink rate shall be measured as the time taken for the longline to sink from the surface (0 m) to 10 m;

(iv) this sink rate shall be at a minimum rate of 0.3 m/s;

(v) if the minimum sink rate is not achieved at all 20 sample points (four tests on five lines), continue testing until such time as a total of 20 tests with a minimum sink rate of 0.3 m/s are recorded;

(vi) all equipment and fishing gear used in the tests is to be to the same specifications as that to be used in the Convention Area.

B2. During fishing, for a vessel to maintain the exemption to paragraph 3 of Conservation Measure 25–02, regular line sink rate monitoring shall be undertaken by the CCAMLR scientific observer. The vessel shall cooperate with the CCAMLR observer who shall:

(i) aim to conduct a bottle test on every longline set during the observer's shift, noting that the test should be undertaken on the middle one-third of the line;

(ii) every seven days place at least four bottle tests on a single longline to determine any sink rate variation along the line;

(iii) randomize bottle test placement on the longline within and between sets, noting that all tests should be applied halfway between weights;

(iv) calculate an individual sink rate for each bottle test;

(v) measure the line sink rate as the time taken for the line to sink from the surface (0 m) to 10 m.

B3. The vessel shall whilst operating under this exemption:

(i) ensure that all longlines are weighted to achieve a minimum line sink rate of 0.3 m/s at all times;

(ii) report daily to its national agency on the achievement of this target;

(iii) ensure that data collected from line sink rate monitoring are recorded in the approved format and submitted to the relevant national agency at the conclusion of the season.

B4. A bottle test is to be conducted as described below.

Bottle Set Up

B5. 10 m of 2 mm multifilament nylon snood twine, or equivalent, is securely attached to the neck of a 750 ml plastic bottle[5] (buoyancy about 0.7 kg) with a longline clip attached to the other end. The length measurement is taken from the attachment point (terminal end of the clip) to the neck of the bottle, and should be checked by the observer every few days.

B6. Reflective tape should be wrapped around the bottle to allow it to be observed at night. A piece of waterproof paper with a unique identifying number large enough to be read from a few meters away should be placed inside the bottle.

Test

B7. The bottle is emptied of water, the stopper is left open and the twine is wrapped around the body of the bottle for setting. The bottle with the encircled twine is attached to the longline[6], midway between weights (the attachment point).

B8. The observer records the time at which the attachment point enters the water as t1 in seconds. The time at which the bottle is observed to be pulled completely under is recorded as t2 in seconds[7]. The result of the test is calculated as follows:

Line sink rate = 10 / (t2 - t1)

B9. The result should be equal to or greater than 0.3 m/s. These data are to be recorded in the space provided in the electronic observer logbook.

CONSERVATION MEASURE 24–03 (2003)

Experimental Integrated Line-Weighting Trials in Statistical Subareas 88.1 and 88.2 in the 2003/04 Season

The Commission,

Noting the advice of the Scientific Committee and the desire to resolve line weighting issues for autoline vessels in the Convention Area, and the proposal to undertake a comprehensive trial to further resolve this issue from Australia and New Zealand in Statistical Subareas 88.1 and 88.2,Accepting the need to have two specified vessels use longlines that will not meet the normal sink rate requirements during these trials,Agrees to adopt the following conservation measure to allow the trials to occur only on the specified agreed vessels pursuant to the experimental design put forward by the Scientific Committee. In respect of fishing in Statistical Subareas 88.1 and 88.2, paragraphs 1 and 2 of Conservation Measure 25–02, protocols A2, A3, B2, and B3 of Conservation Measure 24–02, paragraph 8 of Conservation Measure 41–09, and paragraph 7 of Conservation Measure 41–10 shall not apply to the FV *Janas*[8] and the FV *Avro Chieftain*[9] whilst these vessels comply with the following experimental protocol.

1. The CCAMLR Scientific Observer or the national observer shall observe all sets of longlines during the trial (100% coverage of sets).

2. Vessels shall deploy two streamer lines on all sets of longlines during the trial. Streamer lines shall be deployed on either side of the longline. The windward streamer will be of the same specification as that detailed in the Appendix to Conservation Measure 25–02. The leeward streamer must be as close as possible to that specification, recognising that modifications will be needed to prevent entanglement of the two streamer lines and the vessels in the trial shall have operational discretion to avoid this.

3. The CCAMLR Scientific Observer shall provide a detailed description of the leeward streamer line use and construction in their cruise report.

4. One of the observers shall determine during every trial set whether seabirds of any species enter the 'risk zone' near vessels. The risk zone is defined as:

(i) up to 100 m astern of the vessel;

(ii) up to 10 m either side of the setting direction of the longline;

(iii) up to 10 m above the longline.

5. Whenever a seabird is sighted in the risk zone during a set, the observer shall immediately inform the officer in charge of the setting operation who shall immediately begin firing a bird scaring gas cannon until such time that the seabird(s) leave the prescribed area. The gas cannon shall be fired on a randomized cycle with a firing frequency of at least two times every three minutes.

6. If, on firing the gas cannon three times, seabirds remain in the risk zone, the vessel shall:

(i) if the seabird(s) is/are an albatross (all species) or giant petrel (both species) the vessel shall immediately deploy external weights on unweighted longlines (but not on integrated weight longlines) at such a rate as to achieve a 0.3 m/s line sink rate (~5 kg per 50 m) until such time that the seabird(s) leaves the prescribed area; or, alternatively

(ii) if the seabird(s) is not a species of albatross or giant petrel, the vessel may continue the trial until such time as the seabird catch limits, for species other than in (i) above, prescribed in Annex 24–03/A are reached.

7. If either the second streamer line described in paragraph 2 above, or the gas cannon described in paragraph 6 above are not able to be operated, the trials shall cease immediately until such time as they are able to be deployed again.

8. If any one of the seabird by-catch limits in Annex 24–03/A is reached, the vessel shall revert to fishing under the requirements of Conservation Measure 41–09, Conservation Measure 41–10, Conservation Measure 25–02 and Conservation Measure 24–02.

The by-catch limits for seabirds caught[10] during these trials are:

[1] Except for waters adjacent to the Kerguelen and Crozet Islands

[4] Except for waters adjacent to the Prince Edward Islands

[5] A plastic water bottle that has a hard plastic screw-on 'stopper' is needed. The stopper of the bottle is left open so that the bottle will fill with water after being pulled under water. This allows the plastic bottle to be re-used rather than being crushed by water pressure.

[6] On autolines attach to the backbone; on the Spanish longline system attach to the hookline.

[7] Binoculars will make this process easier to view, especially in foul weather.

[8] Subject to a license being issued by the Flag StateANNEX 24–03/A

[9] Where the number of birds caught is defined in SC-CAMLR-XXII, Annex 5, paragraphs 6.214 to 6.217.

[10] Subject to a license being issued by the Flag StateANNEX 24–03/A

(i) 50 Antarctic petrels; and/or
(ii) 20 individuals of all other non-albatross or non-giant petrel species; and/or
(iii) any one of either of the giant petrel species or any one of any albatross species.

CONSERVATION MEASURE 25–02 (2003)[11,12]

Minimization of the Incidental Mortality of Seabirds in the Course of Longline Fishing or Longline Fishing Research in the Convention Area

The Commission,

Noting the need to reduce the incidental mortality of seabirds during longline fishing by minimizing their attraction to fishing vessels and by preventing them from attempting to seize baited hooks, particularly during the period when the lines are set, and Recognizing that in certain subareas and divisions of the Convention Area there is also a high risk that seabirds will be caught during line hauling,

Adopts the following measures to reduce the possibility of incidental mortality of seabirds during longline fishing.

1. Fishing operations shall be conducted in such a way that hooklines[13] sink beyond the reach of seabirds as soon as possible after they are put in the water.

2. Vessels using autoline systems should add weights to the hookline or use integrated weight hooklines while deploying longlines. Integrated weight (IW) longlines of a minimum of 50 g/m or attachment to non-IW longlines of 5 kg weights at 30 to 60 m intervals are recommended.

3. Vessels using the Spanish method of longline fishing should release weights before line tension occurs; weights of at least 8.5 kg mass shall be used, spaced at intervals of no more than 40 m, or weights of at least 6 kg mass shall be used, spaced at intervals of no more than 20 m.

4. Longlines shall be set at night only (i.e. during the hours of darkness between the times of nautical twilight[14,15]. During longline fishing at night, only the minimum ship's lights necessary for safety shall be used.

5. The dumping of offal is prohibited while longlines are being set. The dumping of offal during the haul shall be avoided. Any such discharge shall take place only on the opposite side of the vessel to that where longlines are hauled. For vessels or fisheries where there is not a requirement to retain offal on board the vessel, a system shall be implemented to remove fish hooks from offal and fish heads prior to discharge.

6. Vessels which are so configured that they lack on-board processing facilities or adequate capacity to retain offal on board, or the ability to discharge offal on the opposite side of the vessel to that where longlines are hauled, shall not be authorized to fish in the Convention Area.

7. A streamer line shall be deployed during longline setting to deter birds from approaching the hookline. Specifications of the streamer line and its method of deployment are given in the appendix to this measure.

8. A device designed to discourage birds from accessing baits during the haul of longlines shall be employed in those areas defined by CCAMLR as average-to-high or high (Level of Risk 4 or 5) in terms of risk of seabird by-catch. These areas are currently Subareas 48.3, 58.6 and 58.7 and Divisions 58.5.1 and 58.5.2.

9. Every effort should be made to ensure that birds captured alive during longlining are released alive and that wherever possible hooks are removed without jeopardizing the life of the bird concerned.

APPENDIX TO CONSERVATION MEASURE 25–02

1. The aerial extent of the streamer line, which is the part of the line supporting the streamers, is the effective seabird deterrent component of a streamer line. Vessels are encouraged to optimize the aerial extent and ensure that it protects the hookline as far eastern of the vessel as possible, even in crosswinds.

2. The streamer line shall be attached to the vessel such that it is suspended from a point a minimum of 7 m above the water at the stern on the windward side of the point where the hookline enters the water.

3. The streamer line shall be a minimum of 150 m in length and include an object towed at the seaward end to create tension to maximize aerial coverage. The object towed should be maintained directly behind the attachment point to the vessel such that in crosswinds the aerial extent of the streamer line is over the hookline.

4. Branched streamers, each comprising two strands of a minimum of 3 mm diameter brightly colored plastic tubing6 or cord, shall be attached no more than 5 m apart commencing 5 m from the point of attachment of the streamer line to the vessel and thereafter along the aerial extent of the line. Streamer length shall range between minimums of 6.5 m from the stern to 1 m for the seaward end. When a streamer line is fully deployed, the branched streamers should reach the sea surface in the absence of wind and swell. Swivels or a similar device should be placed in the streamer line insuch a way as to prevent streamers being twisted around the streamer line. Each branched streamer may also have a swivel or other device at its attachment point to the streamer line to prevent fouling of individual streamers.

5. Vessels are encouraged to deploy a second streamer line such that streamer lines are towed from the point of attachment each side of the hookline. The leeward streamer line should be of similar specifications (in order to avoid entanglement the leeward streamer line may need to be shorter) and deployed from the leeward side of the hookline.

CONSERVATION MEASURE 25–03 (2003)[16]

Minimization of the Incidental Mortality of Seabirds and Marine Mammals in the Course of Trawl Fishing in the Convention Area

The Commission,

Noting the need to reduce the incidental mortality of or injury to seabirds and marine mammals from fishing operations,

Adopts the following measures to reduce the incidental mortality of or injury to seabirds and marine mammals during trawl fishing.

1. The use of net monitor cables on vessels in the CCAMLR Convention Area is prohibited.

2. Vessels operating within the Convention Area should at all times arrange the location and level of lighting so as to minimize illumination directed out from the vessel, consistent with the safe operation of the vessel.

3. The discharge of offal shall be prohibited during the shooting and hauling of trawl gear.

4. Nets should be cleaned prior to shooting to remove items that might attract birds.

5. Vessels should adopt shooting and hauling procedures that minimize the time that the net is lying on the surface of the water with the meshes slack. Net maintenance should, to the extent possible, not be carried out with the net in the water.

6. Vessels should be encouraged to develop gear configurations that will minimize the chance of birds encountering the parts of the net to which they are most vulnerable. This could include increasing the weighting or decreasing the buoyancy of the net so that it sinks faster, or placing colored streamers or other devices over particular areas of the net where the mesh sizes create a particular danger to birds.

CONSERVATION MEASURE 32–09 (2003)

Prohibition of Directed Fishing for *Dissostichus* spp. Except in accordance with Specific Conservation Measures in the 2003/04 SeasonThe Commission hereby adopts the following conservation measure in accordance with Article IX of the Convention:

Directed fishing for *Dissostichus* spp. in Statistical Subarea 48.5 is prohibited from 1 December 2003 to 30 November 2004.

CONSERVATION MEASURE 32–13 (2003)

Prohibition of Directed Fishing for *Dissostichus* eleginoidesin Statistical Division 58.5.1 outside Areas of National JurisdictionTaking of *Dissostichus* eleginoides, other than for scientific research purposes in accordance with Conservation Measure 24–01, is prohibited in Statistical Division 58.5.1 outside areas of national jurisdiction from 1 December 2003. This prohibition shall apply until at least such time that a survey of the *Dissostichus* eleginoides stock in this division is carried out, its results reported to and analyzed by the Working Group on Fish Stock Assessment and a decision that the fishery be reopened is made by the Commission based on the advice of the Scientific Committee.

CONSERVATION MEASURE 32–14 (2003)

Prohibition of Directed Fishing for Dissostichus eleginoides in Statistical Division 58.5.2 East of 79°20'E and outside the EEZ to the West of 79°20'E

Taking of *Dissostichus eleginoides*, other than for scientific research purposes in accordance with Conservation Measure 24–01, is prohibited in Statistical Division 58.5.2 east of 79°20'E and outside the EEZ to the west of 79°20'E from 1 December 2003. This prohibition shall apply until at least such time that a survey of the *Dissostichus* eleginoides stock in this division is carried out, its results reported to and analyzed by the Working Group on Fish Stock Assessment and a decision that the fishery be reopened is made by the Commission based on the advice of the Scientific Committee.

CONSERVATION MEASURE 32–15 (2003)

Prohibition of Directed Fishing for Dissostichus spp. in Statistical Subarea 88.2 North of 65° South

Taking of *Dissostichus* spp., other than for scientific research purposes in accordance with Conservation Measure 24–01, is prohibited in Statistical Subarea 88.2 north of 65° South from 1 December 2003. This prohibition shall apply until at least such time that a survey of the *Dissostichus* spp. stock in this subarea is carried out, its results reported to and analyzed by the Working Group on Fish Stock Assessment (WG-FSA) and a decision that the fishery be reopened is made by the Commission based on the advice of the Scientific Committee.

CONSERVATION MEASURE 32–16 (2003)

Prohibition of Directed Fishing for Dissostichus spp. in Statistical Subarea 88.3

Taking of *Dissostichus* spp., other than for scientific research purposes in accordance with Conservation Measure 24–01, is prohibited in Statistical Subarea 88.3 from 1 December 2003. This prohibition shall apply until at least such time that a survey of the *Dissostichus* spp. stock in this subarea is carried out, its results reported to and analyzed by the Working Group on Fish Stock Assessment (WG-FSA) and a decision that the fishery be reopened is made by the Commission based on the advice of the Scientific Committee.

CONSERVATION MEASURE 32–17 (2003)

Prohibition of Directed Fishing for Electrona carlsbergi in Statistical Subarea 48.3

Taking of *Electrona carlsbergi*, other than for scientific research purposes in accordance with Conservation Measure 24–01, is prohibited in Statistical Subarea 48.3 from 1 December 2003. This prohibition shall apply until at least such time that a survey of the Electrona carlsbergi stock in this subarea is carried out, its results reported to and analyzed by the Working Group on Fish Stock Assessment (WG-FSA) and a decision that the fishery be reopened is made by the Commission based on the advice of the Scientific Committee; or a research plan for an exploratory fishery is submitted and approved by the Scientific Committee consistent with Conservation Measure 24–01.

CONSERVATION MEASURE 33–02 (2003)

Limitation of By-catch in Statistical Division 58.5.2 in the 2003/04 Season

1. There shall be no directed fishing for any species other than *Dissostichus eleginoides* and *Champsocephalus gunnari* in Statistical Division 58.5.2 in the 2003/04 fishing season.

2. In directed fisheries in Statistical Division 58.5.2 in the 2003/04 season, the by-catch of *Channichthys rhinoceratus* shall not exceed 150 tons, the by-catch of *Lepidonotothen squamifrons* shall not exceed 80 tons, the by-catch of *Macrourus* spp. shall not exceed 360 tons and the by-catch of skates and rays shall not exceed 120 tons. For the purposes of this measure, '*Macrourus* spp.' and 'skates and rays' should each be counted as a single species.

3. The by-catch of any fish species not mentioned in paragraph 2, and for which there is no other catch limit in force, shall not exceed 50 tons in Statistical Division 58.5.2.

4. If, in the course of a directed fishery, the by-catch in any one haul of *Channichthys rhinoceratus*, *Lepidonotothen squamifrons*, *Macrourus* spp. or skates and rays is equal to, or greater than 2 tons, then the fishing vessel shall not fish using that method of fishing at any point within 5 n miles[17] of the location where the by-catch exceeded 2 tons for a period of at least five days[18]. The location where the by-catch exceeded 2 tons is defined as the path followed by the fishing vessel from the point at which the fishing gear was first deployed from the fishing vessel to the point at which the fishing gear was retrieved by the fishing vessel.

5. If, in the course of a directed fishery, the by-catch in any one haul of any other by-catch species for which by-catch limitations apply under this conservation measure is equal to, or

[11] Except for waters adjacent to the Kerguelen and Crozet Islands

[12] Except for waters adjacent to the Prince Edward Islands

[13] Hookline is defined as the groundline or mainline to which the baited hooks are attached by snoods.

[14] The exact times of nautical twilight are set forth in the Nautical Almanac tables for the relevant latitude, local time and date. A copy of the algorithm for calculating these times is available from the Secretariat. All times, whether for ship operations or observer reporting, shall be referenced to GMT.

[15] Wherever possible, setting of lines should be completed at least three hours before sunrise (to reduce loss of bait to/catches of white-chinned petrels).

[16] Except for waters adjacent to the Kerguelen and Crozet Islands

[17] This provision concerning the minimum distance separating fishing locations is adopted pending the adoption of a more appropriate definition of a fishing location by the Commission.

[18] The specified period is adopted in accordance with the reporting period specified in Conservation Measure 23–01, pending the adoption of a more appropriate period by the Commission.

greater than 1 ton, then the fishing vessel shall not fish using that method of fishing at any point within 5 n miles[19] of the location where the by-catch exceeded 1 ton for a period of at least five days[20]. The location where the by-catch exceeded 1 ton is defined as the path followed by the fishing vessel from the point at which the fishing gear was first deployed from the fishing vessel to the point at which the fishing gear was retrieved by the fishing vessel.

CONSERVATION MEASURE 33–03 (2003)[21]

Limitation of By-catch in New and Exploratory Fisheries in the 2003/04 Season

1. This conservation measure applies to new and exploratory fisheries in all areas containing small-scale research units (SSRUs) in the 2003/04 season except where specific by-catch conservation measures apply.

2. The catch limits for all by-catch species are set out in Annex 33–03/A. Within these catch limits, the total catch of by-catch species in any SSRU shall not exceed the following limits:

•skates and rays 5% of the catch limit of *Dissostichus* spp. or 50 tons whichever is greater;

•*Macrourus* spp 16% of the catch limit for *Dissostichus* spp. or 20 tons, whichever is greater;

•all other species combined 20 tons.

3. For the purposes of this measure '*Macrourus* spp.' and 'skates and rays' should each be counted as a single species.

4. If the by-catch of any one species is equal to or greater than 1 ton in any one haul or set, then the fishing vessel shall move to another location at least 5 n miles[22] distant. The fishing vessel shall not return to any point within 5 n miles of the location where the by-catch exceeded 1 ton for a period of at least five days[23]. The location where the by-catch exceeded 1 ton is defined as the path followed by the fishing vessel from the point at which the fishing gear was first deployed from the fishing vessel to the point at which the fishing gear was retrieved by the fishing vessel.

CONSERVATION MEASURE 41–01 (2003)[24,25]

General Measures for Exploratory Fisheries for Dissostichus spp. in the Convention Area in the 2003/04 Season

The Commission hereby adopts the following conservation measure:

1. This conservation measure applies to exploratory fisheries using the trawl or longline methods except for such fisheries where the Commission has given specific exemptions to the extent of those exemptions. In trawl fisheries, a haul comprises a single deployment of the trawl net. In longline fisheries, a haul comprises the setting of one or more lines in a single location.

2. Fishing should take place over as large a geographical and bathymetric range as possible to obtain the information necessary to determine fishery potential and to avoid over-concentration of catch and effort. To this end, fishing in any small-scale research unit (SSRU) shall cease when the reported catch reaches the specified catch limit[26] and that SSRU shall be closed to fishing for the remainder of the season.

3. In order to give effect to paragraph 2 above:

(i) the precise geographic position of a haul in trawl fisheries will be determined by the mid-point of the path between the start-point and end-point of the haul for the purposes of catch and effort reporting;

(ii) the precise geographic position of a haul/set in longline fisheries will be determined by the center-point of the line or lines deployed for the purposes of catch and effort reporting;

(iii) the vessel will be deemed to be fishing in any SSRU from the beginning of the setting process until the completion of the hauling of all lines;

(iv) catch and effort information for each species by SSRU shall be reported to the Executive Secretary every five days using the Five-Day Catch and Effort Reporting System set out in Conservation Measure 23–01;

(v) the Secretariat shall notify Contracting Parties participating in these fisheries when the total catch for *Dissostichus* eleginoides and *Dissostichus* mawsoni combined in any SSRU is likely to reach the specified catch limit, and of the closure of that SSRU when that limit is reached. Upon such notification from the Secretariat, all fishing gear shall be hauled immediately. No part of a trawl path may lie within a closed SSRU and no part of a longline may be set within a closed SSRU.

4. The by-catch in each exploratory fishery shall be regulated as in Conservation Measure 33–03.

5. The total number and weight of *Dissostichus* eleginoides and *Dissostichus* mawsoni discarded, including those with the 'jellymeat' condition, shall be reported.

6. Each vessel participating in the exploratory fisheries for *Dissostichus* spp. during the 2003/04 season shall have one scientific observer appointed in accordance with the CCAMLR Scheme of International Scientific Observation, and where possible one additional scientific observer, on board throughout all fishing activities within the fishing season.

7. The Data Collection Plan (Annex 41–01/A), Research Plan (Annex 41–01/B) and Tagging Program (Annex 41–01/C) shall be implemented. Data collected pursuant to the Data Collection and Research Plans for the period up to 31 August 2004 shall be reported to CCAMLR by 30 September 2004 so that the data will be available to the meeting of the Working Group on Fish Stock Assessment (WG-FSA) in 2004. Such data taken after 31 August shall be reported to CCAMLR not later than three months after the closure of the fishery, but, where possible, submitted in time for theconsideration of WG-FSA.

8. Members who choose not to participate in the fishery prior to the commencement of the fishery shall inform the Secretariat of changes in their plans no later than one month before the start of the fishery. If, for whatever reason, Members are unable to participate in the fishery, they shall inform the Secretariat no later than one week after finding that they cannot participate. The Secretariat will inform all Contracting Parties immediately after such notification is received.

ANNEX 41–01/A

DATA COLLECTION PLAN FOR EXPLORATORY FISHERIES

1. All vessels will comply with the Five-day Catch and Effort Reporting System (Conservation Measure 23–01) and Monthly Fine-scale Catch, Effort and Biological Data Reporting Systems (Conservation Measures 23–04 and 23–05).

2. All data required by the CCAMLR *Scientific Observers Manual* for finfish fisheries will be collected. These include:

(i) position, date and depth at the start and end of every haul;

(ii) haul-by-haul catch and catch per effort by species;

(iii) haul-by-haul length frequency of common species;

(iv) sex and gonad state of common species;

(v) diet and stomach fullness;

(vi) scales and/or otoliths for age determination;

(vii) number and mass by species of by-catch of fish and other organisms;

(viii) observation on occurrence and incidental mortality of seabirds and mammals in relation to fishing operations.

3. Data specific to longline fisheries will be collected. These include:

(i) position and sea depth at each end of every line in a haul;

(ii) setting, soak, and hauling times;

(iii) number and species of fish lost at surface;

(iv) number of hooks set;

(v) bait type;

(vi) baiting success (%);

(vii) hook type;

(viii) sea and cloud conditions and phase of the moon at the time of setting the lines.

ANNEX 41–01/B

RESEARCH PLAN FOR EXPLORATORY FISHERIES

1. Activities under this research plan shall not be exempted from any conservation measure in force.

2. This plan applies to all small-scale research units (SSRUs) as defined in Table 1 and Figure 1.

3. Any vessel undertaking prospecting or commercial fishing in any SSRU must undertake the following research activities:

(i) On first entry into a SSRU, the first 10 hauls, designated 'first series', whether by trawl or longline, shall be designated 'research hauls' and must satisfy the criteria set out in paragraph 4.

(ii) The next 10 hauls, or 10 tons of catch for longlining, whichever trigger level is achieved first, or 10 tons of catch for trawling, are designated the 'second series'. Hauls in the second series can, at the discretion of the master, be fished as part of normal exploratory fishing. However, provided they satisfy the requirements of paragraph 4, these hauls can also be designated as research hauls.

(iii) On completion of the first and second series of hauls, if the master wishes to continue to fish within the SSRU, the vessel must undertake a 'third series' which will result in a total of 20 research hauls being made in all three series. The third series of hauls shall be completed during the same visit as the first and second series in a SSRU.

(iv) On completion of 20 research hauls the vessel may continue to fish within the SSRU.

(v) In SSRUs A, B, C, E, and G in Statistical Subarea 88.1 where fishable seabed area is less that 15 000km2, paragraphs 3(ii), 3(iii) and 3(iv) do not apply and on completion of 10 research hauls the vessel may continue to fish within the SSRU.

4. To be designated as a research haul:

(i) each research haul must be separated by not less than 5 n miles from any other research haul, distance to be measured from the geographical mid-point of each research haul;

(ii) each haul shall comprise: for longlines, at least 3 500 hooks and no more than 10 000 hooks; this may comprise a number of separate lines set in the same location; for trawls, at least 30 minutes effective fishing time as defined in the Draft Manual for Bottom Trawl Surveys in the Convention Area (SC-CAMLR-XI),

Annex 5, Appendix H, Attachment E, paragraph 4);

(iii) each haul of a longline shall have a soak time of not less than six hours, measured from the time of completion of the setting process to the beginning of the hauling process.

5. All data specified in the Data Collection Plan (Annex 41–01/A) of this conservation measure shall be collected for every research haul; in particular, all fish in a research haul up to 100 fish are to be measured and at least 30 fish sampled for biological studies (paragraphs 2(iv) to 2(vi) of Annex 41–01/A)). Where more than 100 fish are caught, amethod for randomly subsampling the fish should be applied.

ANNEX 41–01/C

TAGGING PROGRAM FOR EXPLORATORY FISHERIES

(i) Each longline vessel participating in exploratory fisheries for *Dissostichus* spp. shall tag and release[27] *Dissostichus* spp. at a rate of one toothfish per ton of green weight catch throughout the season. Vessels shall only discontinue tagging after they have tagged 500 toothfish, or leave the fishery having tagged one toothfish per ton of green weight caught.

(ii) The program should target small toothfish under 100 cm in total length, although larger toothfish should be tagged if necessary in order to meet the tagging requirement of one toothfish per ton of green weight catch. All released toothfish should be double-tagged and releases should cover as broad a geographical area as possible.

(iii) All tags shall be clearly imprinted with a unique serial number and a return address so that the origin of tags can be traced in the case of recapture of the tagged toothfish. All relevant tag data and any tag recaptures of toothfish in the fishery shall be reported electronically to the CCAMLR Data Manager within two months of the vessel departing these fisheries.

CONSERVATION MEASURE 41–02 (2003)

Limits on the Fishery for Dissostichus eleginoides in Statistical Subarea 48.3 in the 2003/04 Season

The Commission hereby adopts the following conservation measure in accordance with Conservation Measure 31–01:

Access 1. The fishery for *Dissostichus* eleginoides in Statistical Subarea 48.3 shall be conducted by vessels using longlines and pots only.Catch limit 2. The total catch of *Dissostichus* eleginoides in Statistical Subarea 48.3 in the 2003/04 season shall be limited to 4 420 tons.Season 3. For the purpose of the longline fishery for *Dissostichus* eleginoides in Statistical Subarea 48.3, the 2003/04 season is defined as the period from 1 May to 31 August 2004, or until the catch limit is reached, whichever is sooner. For the purpose of the pot fishery for *Dissostichus* eleginoides in Statistical Subarea 48.3, the 2003/04 season is defined as the period from 1 December 2003 to 30 November 2004, or until the catch limit is reached, whichever is sooner. The season for longline fishing operations may be extended to 14 September 2004 for any vessel which has demonstrated full compliance with Conservation Measure 25–02 in the 2002/03 season. This extension to the season will also be subject to a catch limit of three (3) seabirds per vessel. If three seabirds are caught during the season extension, fishing shall cease immediately for that vessel. By-catch 4. The by-catch of crab shall be counted against the catch limit in the crab fishery in Statistical Subarea 48.3.

5. The by-catch of finfish in the fishery for *Dissostichus* eleginoides in Statistical Subarea 48.3 in the 2003/04 season shall not exceed 221 tons for skates and rays and 221 tons for *Macrourus* spp. For the purpose of these

[19] Except for waters adjacent to the Kerguelen and Crozet Islands

[20] The specified period is adopted in accordance with the reporting period specified in Conservation Measure 23–01, pending the adoption of a more appropriate period by the Commission

[21] Except for waters adjacent to the Kerguelen and Crozet Islands

[22] This provision concerning the minimum distance separating fishing locations is adopted pending the adoption of a more appropriate definition of a fishing location by the Commission.

[23] The specified period is adopted in accordance with the reporting period specified in Conservation Measure 23–01, pending the adoption of a more appropriate period by the Commission.

[24] Except for waters adjacent to the Kerguelen and Crozet Islands

[25] Except for waters adjacent to the Prince Edward Islands

[26] Unless otherwise specified, the catch limit for *Dissostichus* spp. shall be 100 tons in any SSRU except in respect of Subarea 88.2.

[27] In accordance with the CCAMLR Tagging Protocol for exploratory fisheries which is available from theSecretariat.

by-catch limits, skates and rays shall be counted as a single species.

6. If the by-catch of any one species is equal to or greater than 1 ton in any one haul or set, then the fishing vessel shall move to another location at least 5 n miles1 distant. The fishing vessel shall not return to any point within 5 n miles of the location where the by-catch exceeded 1 ton for a period of at least five days2. The location where the by-catch exceeded 1 ton is defined as the path followed by the fishing vessel from the point at which the fishing gear was first deployed from the fishing vessel to the point at which the fishing gear was retrieved by the fishing vessel.Mitigation 7. The operation of this fishery shall be carried out in accordance with Conservation Measure 25–02 so as to minimize the incidental mortality of seabirds in the course of fishing. Observers 8. Each vessel participating in this fishery shall have at least one scientificobserver appointed in accordance with the CCAMLR Scheme of International Scientific Observation, and where possible one additional scientific observer, on board throughout all fishing activities within the fishing period.Data: catch/effort

9. For the purpose of implementing this conservation measure in the 2003/04 season, the following shall apply:

(i) the Five-day Catch and Effort Reporting System set out in Conservation Measure 23–01;

(ii) the Monthly Fine-scale Catch and Effort Reporting System set out in Conservation Measure 23–04. Fine-scale data shall be submitted on a haul-by-haul basis.

10. For the purpose of Conservation Measures 23–01 and 23–04, the target species is *Dissostichus* eleginoides and by-catch species are defined as any species other than *Dissostichus* eleginoides.

11. The total number and weight of *Dissostichus* eleginoides discarded, including those with the 'jellymeat' condition, shall be reported. These fish will count towards the total allowable catch.

Data:

biological

12. Fine-scale biological data, as required under Conservation Measure 23–05, shall be collected and recorded. Such data shall be reported in accordance with the Scheme of International Scientific Observation.

CONSERVATION MEASURE 41–04 (2003)

Limits on the Exploratory Fishery for Dissostichus spp. in Statistical Subarea 48.6 in the 2003/04 Season

The Commission hereby adopts the following conservation measure in accordance with Conservation Measure 21–02:

Access 1. Fishing for *Dissostichus* spp. in Statistical Subarea 48.6 shall be limited to the exploratory longline fishery by Argentina, Japan, Namibia, New Zealand, Spain and South Africa. The fishery shall be conducted by Argentine, Japanese, Namibian, New Zealand, Spanish and South African flagged vessels using longlines only. No more than one vessel per country shall fish at any one time.

Catch limit 2. The total catch of *Dissostichus* spp. in Statistical Subarea 48.6 in the 2003/04 season shall not exceed a precautionary catch limit of 455 tons north of 60°S and 455 tons south of 60°S.

Season 3. For the purpose of the exploratory longline fishery for *Dissostichus* spp. in Statistical Subarea 48.6, the 2003/04 season is defined as the period from 1 March to 31 August 2004 north of 60°S and the period from 15 February to 15 October 2004 south of 60°S. In the event that either limit is reached, the relevant fishery shall be closed.By-catch 4. The by-catch in this fishery shall be regulated as set out in Conservation Measure 33–03.

Mitigation 5. The exploratory longline fishery for *Dissostichus* spp. in Statistical Subarea 48.6 shall be carried out in accordance with the provisions of Conservation Measure 25–02, except paragraph 3 (night setting). Prior to entry into force of the license and prior to entering the Convention Area, each vessel shall demonstrate its capacity to comply with experimental line-weighting trials as approved by the Scientific Committee and described in Conservation Measure 24–02 and such data shall be reported to the Secretariat immediately.

6. Longlines may be set during daylight hours only if the vessels are demonstrating a consistent minimum line sink rate of 0.3 m/s. Any vessel catching a total of three (3) seabirds shall immediately revert to night setting in accordance with Conservation Measure 25–02.

7. There shall be no offal discharge in this fishery.Observers 8. Each vessel participating in the fishery shall have at least two scientific observers, one of whom shall be an observer appointed in accordance with the CCAMLR Scheme of International Scientific Observation, on board throughout all fishing activities within the fishing period.

Data:

catch/effort

9. For the purpose of implementing this conservation measure in the 2003/04

season, the following shall apply:

(i) the Five-day Catch and Effort Reporting System set out in Conservation Measure 23–01;

(ii) the Monthly Fine-scale Catch and Effort Reporting System set out in Conservation Measure 23–04. Fine-scale data shall be submitted on a haul-by-haul basis.

10. For the purpose of Conservation Measures 23–01 and 23–04, the target species is *Dissostichus* spp. and by-catch species are defined as any species other than *Dissostichus* spp.

Data:

biological

11. Fine-scale biological data, as required under Conservation Measure 23–05, shall be collected and recorded. Such data shall be reported in accordance with the Scheme of International Scientific Observation.

Research

12. Each vessel participating in this exploratory fishery shall conduct fishery-based research in accordance with the Research Plan and Tagging Program described in Conservation Measure 41–01, Annex B and Annex C respectively.

CONSERVATION MEASURE 41–05 (2003)

Limits on the Exploratory Fishery for Dissostichus spp. in Statistical Division 58.4.2 in the 2003/04 Season

The Commission hereby adopts the following conservation measure in accordance with Conservation Measure 21–02, and notes that this measure would be for one year and that data arising from these activities would be reviewed by the Scientific Committee in 2004:

Access 1. Fishing for *Dissostichus* spp. in Statistical Division 58.4.2 shall be limited to the exploratory longline fishery by Argentina, Australia, Ukraine, Russia and the USA. The fishery shall be conducted by Argentine, Australian, Ukrainian, Russian and US flagged vessels using longlines only.Catch limit 2. The total catch of *Dissostichus* spp. in Statistical Division 58.4.2 in the 2003/04 season shall not exceed a precautionary catch limit of 500 tons, of which no more 100 tons shall be taken in any one of the five small-scale research units (SSRUs) defined in Conservation Measure 41–01, Annex B for Division 58.4.2.

3. In order to distribute effort throughout the division, to ensure that sufficient data are collected from toothfish populations in various areas, and also to afford some protection to the benthic communities, either the eastern or western half (5° of longitude) of each SSRU in which fishing takes place will be defined as 'open' at the discretion of a 'designating vessel's' master according to the actions specified below. The other half of the SSRU shall remain closed to fishing.

4. On entry to an SSRU a vessel must:

(i) notify the Secretariat that is has entered that SSRU with an intention to fish before exiting;

(ii) seek notification from the Secretariat of which half of the SSRU is open or that the SSRU remains to be designated according to the steps below;

(iii) determine from the Secretariat whether it is the first vessel to enter that SSRU and therefore establishes a 'designating vessel right' to determine which half of the SSRU will be open;

(iv) should the vessel be the 'designating vessel' in that SSRU then

(a) it should choose which half is to be open;

(b) immediately notify the Secretariat of its choice prior to its first line being set;

(v) if a 'designating vessel' for an SSRU exits that SSRU without fishing then it should notify immediately the Secretariat and forfeit the right as a 'designating vessel' for that SSRU;

(vi) if the vessel is not the 'designating vessel' then it must not fish until the 'designating vessel' has selected the half of the SSRU to be opened. Season 5. For the purpose of the exploratory longline fishery for *Dissostichus* spp. in Statistical Division 58.4.2, the 2003/04 season is defined as the period from 1 December 2003 to 30 November 2004.

Fishing operations

6. The exploratory longline fishery for *Dissostichus* spp. in Division 58.4.2 shall be carried out in accordance with the provisions of Conservation Measure 41–01, except paragraph 6.

7. Fishing will be prohibited in depths less than 550 m in order to protect benthic communities. By-catch 8. The by-catch in this fishery shall be regulated as set out in Conservation Measure 33–03.

Mitigation 9. The exploratory longline fishery for *Dissostichus* spp. in Statistical Division 58.4.2 shall be carried out in accordance with the provisions of Conservation Measure 25–02, except paragraph 3 (night setting) shall not apply. Prior to entry into force of the license and prior to entering the Convention Area, each vessel shall demonstrate its capacity to comply with experimental line-weighting trials as approved by the Scientific Committee and described in Conservation Measure 24–02 and such data shall be reported to the Secretariat immediately.

10. In Statistical Division 58.4.2, longlines may be set during daylight hours only if the vessel demonstrates a consistent minimum line sink rate of 0.3 m/s in accordance with Conservation Measure 24–02. Should a total of three (3) seabirds be caught, the vessel shall immediately revert to night setting in accordance with Conservation Measure 25–02.

11. There shall be no offal discharge in this fishery.Observers 12. Each vessel participating in the fishery shall have at least two scientific observers, one of whom shall be an observer appointed in accordance with the CCAMLR Scheme of International Scientific Observation, on board throughout all fishing activities within the fishing period.Research 13. Each vessel participating in this exploratory fishery shall conduct fishery-based research in accordance with the Research Plan and Tagging Program described in Conservation Measure 41–01, Annex B and Annex C respectively.

Data:

catch/effort

14. For the purpose of implementing this conservation measure in the 2003/04 season, the following shall apply:

(i) the Five-day Catch and Effort Reporting System set out in Conservation Measure 23–01;

(ii) the Monthly Fine-scale Catch and Effort Reporting System set out in Conservation Measure 23–04. Fine-scale data shall be submitted on a haul-by-haul basis.,

15. For the purpose of Conservation Measures 23–01 and 23–04, the target species is *Dissostichus* spp. and by-catch species are defined as any species other than *Dissostichus* spp.

Data:

biological

16. Fine-scale biological data, as required under Conservation Measure 23–05, shall be collected and recorded. Such data shall be reported in accordance with the Scheme of International Scientific Observation.

CONSERVATION MEASURE 41–06 (2003)

Limits on the Exploratory Fishery for Dissostichus spp. on Elan Bank (Statistical Division 58.4.3a) outside Areas of National Jurisdiction in the 2003/04 Season

The Commission hereby adopts the following conservation measure in accordance with Conservation Measure 21–02:

Access 1. Fishing for *Dissostichus* spp. on Elan Bank (Statistical Division 58.4.3a) outside areas of national jurisdiction shall be limited to the exploratory fishery by Argentina, Australia, Ukraine, Russia and the USA. The fishery shall be conducted by Argentine, Australian, Ukrainian, Russian and US flagged vessels using longlines only and one Australian flagged vessel using trawl only. No more than one vessel per country shall fish at any one time.Catch limit 2. The total catch of *Dissostichus* spp. on Elan Bank (StatisticalDivision 58.4.3a) outside areas of national jurisdiction in the 2003/04 season shall not exceed a precautionary catch limit of 250 tons.

Season 3. For the purpose of the exploratory longline fishery for *Dissostichus* spp. on Elan Bank (Statistical Division 58.4.3a) outside areas of national jurisdiction, the 2003/04 season is defined as the period from 1 May to 31 August 2004, or until the catch limit is reached, whichever is sooner.

4. For the purpose of the trawl fishery for *Dissostichus* spp. on Elan Bank(Statistical Division 58.4.3a) outside areas of national jurisdiction, the 2003/04 season is defined as the period from 1 December 2003 to 30 November 2004, or until the catch limit is reached, whichever is sooner.By-catch 5. The by-catch in this fishery shall be regulated as set out in Conservation Measure 33–03.

Mitigation 6. The operation of this fishery shall be carried out in accordance with Conservation Measure 25–02 so as to minimize the incidental mortality of seabirds in the course of fishing.

7. The fishery on Elan Bank (Statistical Division 58.4.3a) outside areas ofnational jurisdiction, may take place outside the prescribed season (paragraph 3) provided that, prior to entry into force of the license and prior to entering the Convention Area, each vessel shall demonstrate its capacity to comply with experimental line-weighting trials as approved by the Scientific Committee and described in Conservation Measure 24–02 and such data shall be reported to the Secretariat immediately.

8. Should a total of three (3) seabirds be caught by a vessel outside the normal season (defined in paragraph 3), the vessel shall cease fishing immediately and shall not be permitted to fish outside the normal fishing season for the remainder of the 2003/04 fishing season.Observers 9. Each vessel participating in this fishery shall have at

least one scientific observer appointed in accordance with the CCAMLR Scheme of International Scientific Observation, and where possible one additional scientific observer, on board throughout all fishing activities within the fishing period.

Data:
catch/effort

10. For the purpose of implementing this conservation measure in the 2003/04 season, the following shall apply:

(i) the Five-day Catch and Effort Reporting System set out in Conservation Measure 23–01;

(ii) the Monthly Fine-scale Catch and Effort Reporting System set out in Conservation Measure 23–04. Fine-scale data shall be submitted on a haul-by-haul basis.

11. For the purpose of Conservation Measures 23–01 and 23–04, the target species is *Dissostichus* spp. and by-catch species are defined as any species other than *Dissostichus* spp.

Data:
biological

12. Fine-scale biological data, as required under Conservation Measure 23–05, shall be collected and recorded. Such data shall be reported in accordance with the Scheme of International Scientific Observation.

Research

13. Each vessel participating in this exploratory fishery shall conduct fishery based research in accordance with the Research Plan and Tagging Program described in Conservation Measure 41–01, Annex B and Annex C respectively.

CONSERVATION MEASURE 41–07 (2003)

Limits on the Exploratory Fishery for Dissostichus spp. On BANZARE Bank (Statistical Division 58.4.3b) outside Areas of National Jurisdiction in the 2003/04 Season

The Commission hereby adopts the following conservation measure in accordance with Conservation Measure 21–02:

Access 1. Fishing for *Dissostichus* spp. on BANZARE Bank (Statistical Division 58.4.3b) outside areas of national jurisdiction shall be limited to the exploratory fishery by Argentina, Australia, Ukraine, Russia and the USA. The fishery shall be conducted by Argentine, Australian, Ukrainian, Russian and US flagged vessels using longlines only and one Australian flagged vessel using trawl only. No more than one vessel per country shall fish at any one time.

Catch limit 2. The total catch of *Dissostichus* spp. on BANZARE Bank (Statistical Division 58.4.3b) outside areas of national jurisdiction in the 2003/04 season shall not exceed a precautionary catch limit of 300 tons.

Season 3. For the purpose of the exploratory longline fishery for *Dissostichus* spp. on BANZARE Bank (Statistical Division 58.4.3b) outside areas of national jurisdiction, the 2003/04 season is defined as the period from 1 May to 31 August 2004, or until the catch limit is reached, whichever is sooner.

4. For the purpose of the trawl fishery for *Dissostichus* spp. on BANZARE Bank (Statistical Division 58.4.3b) outside areas of national jurisdiction, the 2003/04 season is defined as the period from 1 December 2003 to 30 November 2004, or until the catch limit is reached, whichever is sooner.By-catch 5. The by-catch in this fishery shall be regulated as set out in Conservation Measure 33–03.

Mitigation 6. The operation of this fishery shall be carried out in accordance with Conservation Measure 25–02 so as to minimize the incidental mortality of seabirds in the course of fishing.

7. The fishery on BANZARE Bank (Statistical Division 58.4.3b) outside areas of national jurisdiction, may take place outside the prescribed season (paragraph 3) provided that, prior to entry into force of the license and prior to entering the Convention Area, each vessel shall demonstrate its capacity to comply with experimental line-weighting trials as approved by the Scientific Committee and described in Conservation Measure 24–02 and such data shall be reported to the Secretariat immediately.

8. Should a total of three (3) seabirds be caught by a vessel outside the normal season (defined in paragraph 3), the vessel shall cease fishing immediately and shall not be permitted to fish outside the normal fishing season for the remainder of the 2003/04 fishing season.

Observers 8. Each vessel participating in this fishery shall have at least one scientific observer appointed in accordance with the CCAMLR Scheme of International Scientific Observation, and where possible one additional scientific observer, on board throughout all fishing activities within the fishing period.

Data:
catch/effort

9. For the purpose of implementing this conservation measure in the 2003/04

season, the following shall apply:

(i) the Five-day Catch and Effort Reporting System set out in Conservation Measure 23–01;

(ii) the Monthly Fine-scale Catch and Effort Reporting System set out in Conservation Measure 23–04. Fine-scale data shall be submitted on a haul-by-haul basis.

10. For the purpose of Conservation Measures 23–01 and 23–04, the target species is *Dissostichus* spp. and by-catch species are defined as any species other than *Dissostichus* spp.

Data:
biological

11. Fine-scale biological data, as required under Conservation Measure 23–05, shall be collected and recorded. Such data shall be reported in accordance with the Scheme of International Scientific Observation.

Research 12. Each vessel participating in this exploratory fishery shall conduct fishery based research in accordance with the Research Plan and Tagging Program described in Conservation Measure 41–01, Annex B and Annex C respectively.

CONSERVATION MEASURE 41–08 (2003)

Limits on the fishery for Dissostichus eleginoides in Statistical Division 58.5.2 in the 2003/04 Season

Access 1. The fishery for *Dissostichus* eleginoides in Statistical Division 58.5.2 shall be conducted by vessels using trawls or longlines only.Catch limit 2. The total catch of *Dissostichus* eleginoides in Statistical Division 58.5.2 in the 2003/04 season shall be limited to 2 873 tons west of 79°20'E. Season 3. For the purpose of the trawl fishery for *Dissostichus* eleginoides in Statistical Division 58.5.2, the 2003/04 season is defined as the period from 1 December 2003 to 30 November 2004, or until the catch limit is reached, whichever is sooner. For the purpose of the longline fishery for *Dissostichus* eleginoides in Statistical Division 58.5.2, the 2003/04 season is defined as the period from 1 May to 31 August 2004, or until the catch limit is reached, whichever is sooner. The season for longline fishing operations may be extended to 14 September 2004 for any vessel which has demonstrated full compliance with Conservation Measure 25–02 in the 2002/03 season. This extension to the season will also be subject to a catch limit of three (3) seabirds per vessel. If three seabirds are caught during the season extension, fishing shall cease immediately for that vessel.By-catch 4. Fishing shall cease if the by-catch of any species reaches its by-catch limit as set out in Conservation Measure 33–02.

Mitigation 5. The operation of this fishery shall be carried out in accordance with Conservation Measures 25–02 and 25–03 so as to minimize the incidental mortality of seabirds in the course of fishing.

Observers 6. Each vessel participating in this fishery shall have at least one scientific observer, and may include one appointed in accordance with the CCAMLR Scheme of International Scientific Observation, on board throughout all fishing activities within the fishing period.

Data:
catch/effort

7. For the purpose of implementing this conservation measure in the 2003/04 season, the following shall apply:

(i) the Ten-day Catch and Effort Reporting System set out in Annex 41–08/A;

(ii) the Monthly Fine-scale Catch and Effort Reporting System set out in Annex 41–08/A. Fine-scale data shall be submitted on a haul-by-haul basis.

8. For the purpose of Annex 41–08/A, the target species is *Dissostichus* eleginoides and by-catch species are defined as any species other than *Dissostichus* eleginoides.

9. The total number and weight of *Dissostichus* eleginoides discarded, including those with the 'jellymeat' condition, shall be reported. These fish will count towards the total allowable catch.

Data:
biological

10. Fine-scale biological data, as required under Annex 41–08/A, shall be collected and recorded. Such data shall be reported in accordance with the Scheme of International Scientific Observation.

ANNEX 41–08/A

DATA REPORTING SYSTEM

A ten-day catch and effort reporting system shall be implemented:

(i) for the purpose of implementing this system, the calendar month shall be divided into three reporting periods, viz: day 1 to day 10, day 11 to day 20 and day 21 to the last day of the month. The reporting periods are hereafter referred to as periods A, B and C;

(ii) at the end of each reporting period, each Contracting Party participating in the fishery shall obtain from each of its vessels information on total catch and total days and hours fished for that period and shall, by cable, telex, facsimile or electronic transmission, transmit the aggregated catch and days and hours fished for its vessels so as to reach the Executive Secretary no later than the end of the next reporting period;

(iii) a report must be submitted by every Contracting Party taking part in the fishery for each reporting period for the duration of the fishery, even if no catches are taken;

(iv) the catch of *Dissostichus* eleginoides and of all by-catch species must be reported;

(v) such reports shall specify the month and reporting period (A, B and C) to which each report refers;

(vi) immediately after the deadline has passed for receipt of the reports for each period, the Executive Secretary shall notify all Contracting Parties engaged in fishing activities in the division of the total catch taken during the reporting period and the total aggregate catch for the season to date;

(vii) at the end of every three reporting periods, the Executive Secretary shall inform all Contracting Parties of the total catch taken during the three most recent reporting periods and the total aggregate catch for the season to date.

A fine-scale catch, effort and biological data reporting system shall be implemented:

(i) the scientific observer(s) aboard each vessel shall collect the data required to complete the CCAMLR fine-scale catch and effort data form C1, latest version. These data shall be submitted to the CCAMLR Secretariat not later than one month after the vessel returns to port;

(ii) the catch of *Dissostichus* eleginoides and of all by-catch species must be reported;

(iii) the numbers of seabirds and marine mammals of each species caught and released or killed must be reported;

(iv) the scientific observer(s) aboard each vessel shall collect data on the length composition from representative samples of *Dissostichus* eleginoides and by-catch species:

(a) length measurements shall be to the nearest centimeter below;

(b) representative samples of length composition shall be taken from each fine-scale grid rectangle (0.5° latitude by 1° longitude) fished in each calendar month;

(v) the above data shall be submitted to the CCAMLR Secretariat not later than one month after the vessel returns to port.

CONSERVATION MEASURE 41–09 (2003)

Limits on the Exploratory Fishery for Dissostichus spp. in Statistical Subarea 88.1 in the 2003/04 Season

The Commission hereby adopts the following conservation measure in accordance with Conservation Measure 21–02:

Access 1. Fishing for *Dissostichus* spp. in Statistical Subarea 88.1 shall be limited to the exploratory longline fishery by Argentina, Japan, Republic of Korea, New Zealand, Norway, Russia, South Africa, Spain, Ukraine, UK, USA and Uruguay. The fishery shall be conducted by a maximum in the season of two (2) Argentine, one (1) Japanese, two (2) Korean, six (6) New Zealand, one (1) Norwegian, two (2) Russian, two (2) South African, two (2) Spanish, three (3) Ukrainian, one (1) UK, two (2) US and two (2) Uruguayan flagged vessels using longlines only.

Catch limit 2. The total catch of *Dissostichus* spp. in Statistical Subarea 88.1 in the 2003/04 season shall not exceed a precautionary catch limit of 3 250 tons. Catch limits for each of the SSRUs, as defined in Conservation Measure 41–01, Annex B for Subarea 88.1, shall be as follows: A - 0 tons; B - 80 tons; C - 223 tons; D - 0 tons; E -57 tons; F - 0 tons; G - 83 tons; H - 786 tons; I - 776 tons; J - 316 tons; K - 749 tons; L - 180 tons.

Season 3. For the purpose of the exploratory longline fishery for *Dissostichus* spp.in Statistical Subarea 88.1, the 2003/04 season is defined as the period from 1 December 2003 to 31 August 2004.

Fishing operations

4. The exploratory longline fishery for *Dissostichus* spp. in Statistical Subarea 88.1 shall be carried out in accordance with the provisions of Conservation Measure 41–01, except paragraph 6.By-catch 5. The by-catch in this fishery shall be regulated as set out in Conservation Measure 33–03.

Mitigation 6. The exploratory longline fishery for *Dissostichus* spp. in Statistical Subarea 88.1 shall be carried out in accordance with the provisions of Conservation Measure 25–02, except paragraph 3 (night setting) shall not apply. Prior to entry into force of the license and prior to entering the Convention Area, each vessel shall demonstrate its capacity to comply with experimental line-weighting trials as approved by the Scientific Committee and described in Conservation Measure 24–02 and such data shall be reported to the Secretariat immediately.

7. In Statistical Subarea 88.1, longlines may be set during daylight hours only if the vessels are demonstrating a consistent minimum line sink rate of 0.3 m/s in accordance with Conservation Measure 24–02. Any vessel catching a total of three (3) seabirds shall immediately revert to night setting in accordance with Conservation Measure 25–02.

8. There shall be no offal discharge in this fishery.

Observers 9. Each vessel participating in the fishery shall have at least two scientific observers, one of whom shall be an observer appointed in accordance with the CCAMLR Scheme of International Scientific Observation, on board throughout all fishing activities within the fishing period.

VMS 10. Each vessel participating in this exploratory longline fishery shall be required to operate a VMS at all times, in accordance with Conservation Measure 10–04.

CDS 11. Each vessel participating in this exploratory longline fishery shall be required to participate in the Catch Documentation Scheme for *Dissostichus* spp., in accordance with Conservation Measure 10–05.

Research 12. Each vessel participating in this exploratory fishery shall conduct fishery-based research in accordance with the Research Plan and Tagging Program described in Conservation Measure 41–01, Annex B and Annex C respectively.

Data:
catch/effort

13. For the purpose of implementing this conservation measure in the 2003/04

season, the following shall apply:

(i) the Five-day Catch and Effort Reporting System set out in Conservation Measure 23–01;

(ii) the Monthly Fine-scale Catch and Effort Reporting System set out in Conservation Measure 23–04. Fine-scale data shall be submitted on a haul-by-haul basis.

14. For the purpose of Conservation Measures 23–01 and 23–04, the target species is *Dissostichus* spp. and by-catch species are defined as any species other than *Dissostichus* spp.

Data:
biological

15. Fine-scale biological data, as required under Conservation Measure 23–05, shall be collected and recorded. Such data shall be reported in accordance with the Scheme of International Scientific Observation[28].

Discharge 16. All vessels participating in this exploratory fishery shall be prohibited from discharging:

(i) oil or fuel products or oily residues into the sea, except as permitted in Annex I of MARPOL 73/78;

(ii) garbage;

(iii) food wastes not capable of passing through a screen with openings no greater than 25 mm;

(iv) poultry or parts (including egg shells); or

(v) sewage within 12 n miles of land or ice shelves, or sewage while the ship is traveling at a speed of less than 4 knots.

Additional elements

17. No live poultry or other living birds shall be brought into Statistical Subarea 88.1 and any dressed poultry not consumed shall be removed from Statistical Subarea 88.1.

18. Fishing for *Dissostichus* spp. in Statistical Subarea 88.1 shall be prohibited within 10 n miles of the coast of the Balleny Islands.

CONSERVATION MEASURE 41–10 (2003)

Limits on the Exploratory Fishery for Dissostichus spp. in Statistical Subarea 88.2 in the 2003/04 Season

The Commission hereby adopts the following conservation measure in accordance with Conservation Measure 21–02:

Access 1. Fishing for *Dissostichus* spp. in Statistical Subarea 88.2 shall be limited to the exploratory longline fishery by Argentina, Republic of Korea, New Zealand, Norway, Russia, South Africa and Ukraine. The fishery shall be conducted by a maximum in the season of two (2) Argentine, two (2) Korean, six (6) New Zealand, one (1) Norwegian, two (2) Russian, two (2) South African and three (3) Ukrainian flagged vessels using longlines only.Catch limit 2. The total catch of *Dissostichus* spp. in Statistical Subarea 88.2 south of 65°S in the 2003/04 season shall not exceed a precautionary catch limit of 375 tons.

Season 3. For the purpose of the exploratory longline fishery for *Dissostichus* spp. in Statistical Subarea 88.2, the 2003/04 season is defined as the period from 1 December 2003 to 31 August 2004.

4. The exploratory longline fishery for *Dissostichus* spp. in Statistical Subarea 88.2 shall be carried out in accordance with the provisions of Conservation Measure 41–01, except paragraph 6.By-catch 5. The by-catch in this fishery shall be regulated as set out in Conservation Measure 33–03.

Mitigation 6. The exploratory longline fishery for *Dissostichus* spp. in Statistical Subarea 88.2 shall be carried out in accordance with the provisions of Conservation Measure 25–02, except paragraph 3 (night setting) shall not apply. Prior to entry into force of the license and prior to entering the Convention Area, each vessel shall demonstrate its capacity to comply with experimental line-weighting trials as approved by the Scientific Committee and described in Conservation Measure 24–02, and such data shall be reported to the Secretariat immediately.

7. In Statistical Subarea 88.2, longlines may be set during daylight hours only if the vessels are demonstrating a consistent minimum line sink rate of 0.3 m/s in accordance with Conservation Measure 24–02. Any vessel catching a total of three (3) seabirds shall immediately revert to night setting in accordance with Conservation Measure 25–02.

8. There shall be no offal discharge in this fishery. Observers 9. Each vessel participating in the fishery shall have at least two scientific observers, one of whom shall be an observer appointed in accordance with the CCAMLR Scheme of International Scientific Observation, on board throughout all fishing activities within the fishing period.

VMS 10. Each vessel participating in this exploratory longline fishery shall be required to operate a VMS at all times, in accordance with Conservation Measure 10–04.

CDS 11. Each vessel participating in this exploratory longline fishery shall be required to participate in the Catch Documentation Scheme for *Dissostichus* spp., in accordance with Conservation Measure 10–05.

Research 12. Each vessel participating in this exploratory fishery shall conduct fishery-based research in accordance with the Research Plan and Tagging Program described in Conservation Measure 41–01, Annex B and Annex C respectively.

Data:
catch/effort

13. For the purpose of implementing this conservation measure in the 2003/04 season, the following shall apply:

(i) the Five-day Catch and Effort Reporting System set out in Conservation Measure 23–01;

(ii) the Monthly Fine-scale Catch and Effort Reporting System set out in Conservation Measure 23–04. Fine-scale data shall be submitted on a haul-by-haul basis.

14. For the purpose of Conservation Measures 23–01 and 23–04, the target species is *Dissostichus* spp. and by-catch species are defined as any species other than *Dissostichus* spp.

Data:
biological

15. Fine-scale biological data, as required under Conservation Measure 23–05, shall be collected and recorded. Such data shall be reported in accordance with the Scheme of International Scientific Observation.

Discharge
16. All vessels participating in this exploratory fishery shall be prohibited from discharging:

[28] As notified to the Secretariat in accordance with Conservation Measure 21–02, paragraph 2(iv).

(i) oil or fuel products or oily residues into the sea, except as permitted
in Annex I of MARPOL 73/78;

(ii) garbage;

(iii) food wastes not capable of passing through a screen with openings no greater than 25 mm;

(iv) poultry or parts (including egg shells); or

(v) sewage within 12 n miles of land or ice shelves, or sewage while the ship is traveling at a speed of less than 4 knots.

Additional elements

17. No live poultry or other living birds shall be brought into Statistical Subarea 88.2 and any dressed poultry not consumed shall be removed from Statistical Subarea 88.2.

CONSERVATION MEASURE 41–11 (2003)

Limits on the Exploratory Fishery for Dissostichus spp. in Statistical Division 58.4.1 in the 2003/04 Season

The Commission hereby adopts the following conservation measure in accordance with Conservation Measure 21–02, and notes that this measure would be for one year and that data arising from these activities would be reviewed by the Scientific Committee in 2004:

Access 1. Fishing for *Dissostichus* spp. in Statistical Division 58.4.1 shall be limited to the exploratory longline fishery by Argentina, Australia and the USA. The fishery shall be conducted by Argentine, Australian and US flagged vessels using longlines only.

Catch limit 2. The total catch of *Dissostichus* spp. in Statistical Division 58.4.1 in the 2003/04 season shall not exceed a precautionary catch limit of 800 tons, of which no more than 200 tons shall be taken in any one of the four small-scale research units (SSRUs) identified in paragraph 3.

3. Division 58.4.1 shall be divided into eight SSRUs as detailed in Annex B of Conservation Measure 41–01. Of these eight SSRUs, A, C, E and G shall have a catch limit of 200 tons of *Dissostichus* spp. SSRUs B, D, F and H shall have a catch limit of zero tons of *Dissostichus* spp. In addition, fishing will be prohibited in depths less than 550 m in all SSRUs in order to protect the benthic communities.

Season 4. For the purpose of the exploratory longline fishery for *Dissostichus* spp. in Statistical Division 58.4.1, the 2003/04 season is defined as the period from 1 December 2003 to 30 November 2004.

Fishing operations

5. The exploratory longline fishery for *Dissostichus* spp. in Division 58.4.1 shall be carried out in accordance with the provisions of Conservation Measure 41–01, except paragraph 6. By-catch 6. The by-catch in this fishery shall be regulated as set out in Conservation Measure 33–03.

Mitigation 7. The exploratory longline fishery for *Dissostichus* spp. in Statistical Division 58.4.1 shall be carried out in accordance with the provisions of Conservation Measure 25–02, except paragraph 2 (night setting) shall not apply. Prior to entry into force of the license and prior to entering the Convention Area, each vessel shall demonstrate its capacity to comply with experimental line-weighting trials as approved by the Scientific Committee and described in Conservation Measure 24–02 and such data shall be reported to the Secretariat immediately.

8. In Statistical Division 58.4.1, longlines may be set during daylight hours only if the vessel demonstrates a consistent minimum line sink rate of 0.3 m/s in accordance with Conservation Measure 24–02. Should a total of three (3) seabirds be caught, the vessel shall immediately revert to night setting in accordance with Conservation Measure 25–02.

9. There shall be no offal discharge in this fishery. Observers 10. Each vessel participating in the fishery shall have at least two scientific observers, one of whom shall be an observer appointed in accordance with the CCAMLR Scheme of International Scientific Observation, on board throughout all fishing activities within the fishing period.

Research 11. Each vessel participating in this exploratory fishery shall conduct fishery-based research in accordance with the Research Plan and Tagging Program described in Conservation Measure 41–01, Annex B and Annex C respectively.

Data:
catch/effort

12. For the purpose of implementing this conservation measure in the 2003/04 season, the following shall apply:

(i) the Five-day Catch and Effort Reporting System set out in Conservation Measure 23–01;

(ii) the Monthly Fine-scale Catch and Effort Reporting System set out

in Conservation Measure 23–04. Fine-scale data shall be submitted on a haul-by-haul basis.

13. For the purpose of Conservation Measures 23–01 and 23–04, the target species is *Dissostichus* spp. and by-catch species are defined as any species other than *Dissostichus* spp.

Data:
biological

14. Fine-scale biological data, as required under Conservation Measure 23–05, shall be collected and recorded. Such data shall be reported in accordance with the Scheme of International Scientific Observation.

CONSERVATION MEASURE 42–01 (2003)

Limits on the Fishery for Champsocephalus gunnari in Statistical Subarea 48.3 in the 2003/04 Season

The Commission hereby adopts the following conservation measure in accordance with Conservation Measure 31–01:

Access 1. The fishery for *Champsocephalus gunnari* in Statistical Subarea 48.3 shall be conducted by vessels using trawls only. The use of bottom trawls in the directed fishery for *Champsocephalus gunnari* in Statistical Subarea 48.3 is prohibited.

2. Fishing for *Champsocephalus gunnari* shall be prohibited within 12 n miles of the coast of South Georgia during the period 1 March to 31 May (spawning period).

Catch limit 3. The total catch of *Champsocephalus gunnari* in Statistical Subarea 48.3 in the 2003/04 season shall be limited to 2 887 tons. The total catch of *Champsocephalus gunnari* taken in the period 1 March to 31 May shall be limited to 722 tons.

4. Where any haul contains more than 100 kg of *Champsocephalus gunnari*, and more than 10% of the *Champsocephalus gunnari* by number are smaller than 240 mm total length, the fishing vessel shall move to another fishing location at least 5 n miles distant1. The fishing vessel shall not return to any point within 5 n miles of the location where the catch of small *Champsocephalus gunnari* exceeded 10%, for a period of at least five days[29]. The location where the catch of small *Champsocephalus gunnari* exceeded 10% is defined as the path followed by the fishing vessel from the point at which the fishing gear was first deployed from the fishing vessel to the point at which the fishing gear was retrieved by the fishing vessel.

Season 5. For the purpose of the trawl fishery for Champsocephalus gunnari in Statistical Subarea 48.3, the 2003/04 season is defined as the period from 1 December 2003 to 30 November 2004, or until the catch limit is reached, whichever is sooner.

[29] This provision concerning the minimum distance separating fishing locations is adopted pending the adoption of a more appropriate definition of a fishing location by the Commission.

By-catch 6. The by-catch in this fishery shall be regulated as set out in Conservation Measure 33–01. If, in the course of the directed fishery for *Champsocephalus gunnari*, the by-catch in any one haul of any of the species named in Conservation Measure 33–01.

•is greater than 100 kg and exceeds 5% of the total catch of all fish by weight, or

•is equal to or greater than 2 tons, then the fishing vessel shall move to another location at least 5 n miles distant1. The fishing vessel shall not return to any point within 5 n miles of the location where the by-catch of species named in Conservation Measure 33–01 exceeded 5% for a period of at least five days[10]. The location where the by-catch exceeded 5% is defined as the path followed by the fishing vessel from the point at which the fishing gear was first deployed from the fishing vessel to the point at which the fishing gear was retrieved by the fishing vessel.

Mitigation 7. The operation of this fishery shall be carried out in accordance with Conservation Measure 25–03 so as to minimize the incidental mortality of seabirds in the course of the fisherv.

8. Should any vessel catch a total of 20 seabirds, it shall cease fishing and shall be excluded from further participation in the fishery in the 2003/04 season.

Observers 9. Each vessel participating in this fishery shall have at least one scientific observer appointed in accordance with the CCAMLR Scheme of International Scientific Observation, and where possible one additional scientific observer, on board throughout all fishing activities within the fishing period.

Data:
catch/effort

10. For the purpose of implementing this conservation measure in the 2003/04 season, the following shall apply:

(i) the Five-day Catch and Effort Reporting System set out in Conservation Measure 23–01;

(ii) the Monthly Fine-scale Catch and Effort Reporting System set out in Conservation Measure 23–04. Fine-scale data shall be submitted on a haul-by-haul basis.

11. For the purpose of Conservation Measures 23–01 and 23–04, the target species is *Champsocephalus gunnari* and by-catch species are defined as any species other than *Champsocephalus gunnari*.

Data:
biological

12. Fine-scale biological data, as required under Conservation Measure 23–05, shall be collected and recorded. Such data shall be reported in accordance with the Scheme of International Scientific Observation.

Research 13. Each vessel operating in this fishery during the period 1 March to 31 May 2004 shall conduct twenty (20) research trawls in the manner described in Annex 42–01/A.

ANNEX 42–01/A

RESEARCH TRAWLS DURING SPAWNING SEASON

1. All fishing vessels taking part in the fishery for *Champsocephalus gunnari* in Statistical Subarea 48.3 between 1 March and 31 May shall be required to conduct a minimum of 20 research hauls, to be completed during that period. Twelve research hauls shall be carried out in the Shag Rocks-Black Rocks area. These shall be distributed between the four sectors illustrated in Figure 1: four each in the NW and SE sectors, and two each in the NE and SW sectors. A further eight research hauls shall be conducted on the northwestern shelf of South Georgia over water less than 300 m deep.

2. Each research haul must be at least 5 n miles distant from all others. The spacing of stations is intended to be such that both areas are adequately covered in order to provide information on the length, sex, maturity and weight composition of *Champsocephalus gunnari*.

3. If concentrations of fish are located en route to South Georgia, they should be fished in addition to the research hauls.

4. The duration of research hauls must be of a minimum of 30 minutes with the net at fishing depth. During the day, the net must be fished close to the bottom.

5. The catch of all research hauls shall be sampled by the international scientific observer on board. Samples should aim to comprise at least 100 fish, sampled using standard random sampling techniques. All fish in the sample should be at least examined for length, sex and maturity determination, and where possible weight. More fish should be examined if the catch is large and time permits.

CONSERVATION MEASURE 42–02 (2003)

Limits on the Fishery for Champsocephalus gunnari in Statistical Division 58.5.2 in the 2003/04 Season

Access 1. The fishery for *Champsocephalus gunnari* in Statistical Division 58.5.2 shall be conducted by vessels using trawls only.

2. For the purpose of this fishery for *Champsocephalus gunnari*, the area open to the fishery is defined as that portion of Statistical Division 58.5.2 that lies within the area enclosed by a line:

(i) starting at the point where the meridian of longitude 72°15'E intersects the Australia-France Maritime Delimitation Agreement Boundary then south along the meridian to its intersection with the parallel of latitude 53°25'S;

(ii) then east along that parallel to its intersection with the meridian of longitude 74°E;

(iii) then northeasterly along the geodesic to the intersection of the parallel of latitude 52°40'S and the meridian of longitude 76°E;

(iv) then north along the meridian to its intersection with the parallel of latitude 52°S;

(v) then northwesterly along the geodesic to the intersection of the parallel of latitude 51°S with the meridian of longitude 74°30'E;

(vi) then southwesterly along the geodesic to the point of commencement.

3. A chart illustrating the above definition is appended to this conservation measure (Annex 42–02/A). Areas in Statistical Division 58.5.2 outside that defined above shall be closed to directed fishing for *Champsocephalus gunnari*.

Catch limit 4. The total catch of *Champsocephalus gunnari* in Statistical Division 58.5.2 in the 2003/04 season shall be limited to 292 tons.

5. Where any haul contains more than 100 kg of *Champsocephalus gunnari*, and more than 10% of the *Champsocephalus gunnari* by number are smaller than the specified minimum legal total length, the fishing vessel shall move to another fishing location at least 5 n miles distant[31]. The fishing vessel shall not return to any point within 5 n miles of the location where the catch of small *Champsocephalus gunnari* exceeded 10% for a period of at least five days[32]. The location where the catch of small *Champsocephalus gunnari* exceeded 10% is defined as the path followed by the fishing vessel from the point at which the fishing gear was first deployed from the fishing vessel to the point at which the fishing gear was retrieved by the fishing vessel. From the 1 December 2003 to 30 April 2004 the minimum legal total length shall be 240 mm. From 1 May 2004 to 30 November 2004 the minimum legal length shall be 290 mm.

Season 6. For the purpose of the trawl fishery for *Champsocephalus gunnari* in Statistical Division 58.5.2, the 2003/04 season is defined as the period from 1 December 2003 to 30 November 2004, or until the catch limit is reached, whichever is sooner. By-catch 7. Fishing shall cease if the by-catch of any species reaches its by-catch limit as set out in Conservation Measure 33–02.

Mitigation 8. The operation of this fishery shall be carried out in accordance with Conservation Measure 25–03 so as to minimize the incidental mortality of seabirds in the course of fishing.Observers 9. Each vessel participating in this fishery shall have at least one scientific observer, and may include one appointed in accordance with the CCAMLR Scheme of International Scientific Observation, on board throughout all fishing activities within the fishing period.

Data:
catch/effort

10. For the purpose of implementing this conservation measure in the 2003/04 season, the following shall apply:

(i) the Ten-day Catch and Effort Reporting System set out in Annex 42–02/B;

(ii) the Monthly Fine-scale Catch and Effort Reporting System set out in Annex 42–02/B. Fine-scale data shall be submitted on a haul-by-haul basis.

11. For the purpose of Annex 42–02/B, the target species is *Champsocephalus gunnari* and by-catch species are defined as any species other than *Champsocephalus gunnari*.

Data:
biological

12. Fine-scale biological data, as required under Annex 42–02/B, shall be collected and recorded. Such data shall be reported in accordance with the Scheme of International Scientific Observation.

ANNEX 42–02/B

DATA REPORTING SYSTEM

A ten-day catch and effort reporting system shall be implemented:

(i) for the purpose of implementing this system, the calendar month shall be divided into three reporting periods, viz: day 1 to day 10, day 11 to day 20 and day 21 to the last day of the month. The reporting periods are hereafter referred to as periods A, B and C;

(ii) at the end of each reporting period, each Contracting Party participating in the fishery shall obtain from each of its vessels information on total catch and total days and hours fished for that period and shall, by cable, telex, facsimile or electronic transmission, transmit the aggregated catch and days and hours fished for its vessels so as to reach the Executive Secretary no later than the end of the next reporting period;

(iii) a report must be submitted by every Contracting Party taking part in the fishery for each reporting period for the duration of the fishery, even if no catches are taken;

(iv) the catch of *Champsocephalus gunnari* and of all by-catch species must be reported;

(v) such reports shall specify the month and reporting period (A, B and C) to which each report refers;

(vi) immediately after the deadline has passed for receipt of the reports for each period, the Executive Secretary shall notify all Contracting Parties engaged in fishing activities in the division of the total catch taken during the reporting period and the total aggregate catch for the season to date;

(vii) at the end of every three reporting periods, the Executive Secretary shall inform all Contracting Parties of the total catch taken during the three most recent reporting periods and the total aggregate catch for the season to date.

A fine-scale catch, effort and biological data reporting system shall be implemented:

(i) the scientific observer(s) aboard each vessel shall collect the data required to complete the CCAMLR fine-scale catch and effort data form C1, latest version.

These data shall be submitted to the CCAMLR Secretariat not later than onemonth after the vessel returns to port;

(ii) the catch of *Champsocephalus gunnari* and of all by-catch species must be reported;

(iii) the numbers of seabirds and marine mammals of each species caught and released or killed must be reported;

(iv) the scientific observer(s) aboard each vessel shall collect data on the length composition from representative samples of *Champsocephalus gunnari* and by-catch species:

(a) length measurements shall be to the nearest centimeter below;

(b) representative samples of length composition shall be taken from eachfine-scale grid rectangle (0.5° latitude by 1° longitude) fished in each calendar month;

(v) the above data shall be submitted to the CCAMLR Secretariat not later than one month after the vessel returns to port.

CONSERVATION MEASURE 43–02 (2003)

Limits on the Exploratory Fishery for Macrourus spp. on Elan Bank (Statistical Division 58.4.3a) outside Areas of National Jurisdiction in the 2003/04 Season

The Commission hereby adopts the following conservation measure in accordance with Conservation Measure 21–02:

Access 1. Fishing for *Macrourus* spp. on Elan Bank (Statistical Division 58.4.3a) outside areas of national jurisdiction shall be limited to the exploratory trawl fishery by Australia. The fishery shall be conducted by one Australian flagged vessel.

Catch limit 2. The total catch of *Macrourus* spp. on Elan Bank (Statistical Division 58.4.3a) outside areas of national jurisdiction in the 2003/04 season shall not exceed a precautionary catch limit of 26 tons.

Season 3. For the purpose of the exploratory trawl fishery for *Macrourus* spp. on Elan Bank (Statistical Division 58.4.3a) outside areas of national jurisdiction, the 2003/04 season is defined as the period from 1 December 2003 to 30 November 2004 , or until the catch limit is reached, whichever is sooner.

By-catch 4. The by-catch in this fishery shall be regulated as set out in Conservation Measure 33–03.

Mitigation 5. The operation of this fishery shall be carried out in accordance with Conservation Measure 25–03 so as to minimize the incidental mortality of seabirds in the course of fishing.

Observers 6. Each vessel participating in this fishery shall have at least one scientific observer appointed in accordance with the CCAMLR Scheme of International Scientific Observation, and where possible one additional scientific observer, on board throughout all fishing activities within the fishing period.

Data:
catch/effort

7. For the purpose of implementing this conservation measure in the 2003/04 season, the following shall apply:

(i) the Five-day Catch and Effort Reporting System set out in Conservation Measure 23–01;

(ii) the Monthly Fine-scale Catch and Effort Reporting System set out in

[10] The specified period is adopted in accordance with the reporting period specified in Conservation Measure 23–01, pending the adoption of a more appropriate period by the Commission.

[31] This provision concerning the minimum distance separating fishing locations is adopted pending the adoption of a more appropriate definition of a fishing location by the Commission.

[32] The specified period is adopted in accordance with the reporting period specified in Conservation Measure 23–01, pending the adoption of a more appropriate period by the Commission.

Conservation Measure 23–04. Fine-scale data shall be submitted on a haul-by-haul basis.

8. For the purpose of Conservation Measures 23–01 and 23–04, the target species is *Macrourus* spp. and by-catch species are defined as any species other than *Macrourus* spp. Any catch of *Dissostichus* spp. shall be subtracted from the catch limit for *Dissostichus* spp. specified in Conservation Measure 41–06.

Data:
biological

9. Fine-scale biological data, as required under Conservation Measure 23–05, shall be collected and recorded. Such data shall be reported in accordance with the Scheme of International Scientific Observation.

Research

10. Each vessel participating in this exploratory fishery shall conduct fishery based research in accordance with the research plan described in Conservation Measure 41–01, Annex B.

CONSERVATION MEASURE 43–03 (2003)

Limits on the Exploratory Fishery for Macrourus spp. On BANZARE Bank (Statistical Division 58.4.3b) outside Areas of National Jurisdiction in the 2003/04 Season

The Commission hereby adopts the following conservation measure in accordance with Conservation Measure 21–02:

Access 1. Fishing for *Macrourus* spp. on BANZARE Bank (Statistical Division 58.4.3b) outside areas of national jurisdiction shall be limited to the exploratory trawl fishery by Australia. The fishery shall be conducted by one Australian flagged vessel.

Catch limit 2. The total catch of *Macrourus* spp. on BANZARE Bank (Statistical Division 58.4.3b) outside areas of national jurisdiction in the 2003/04 season shall not exceed a precautionary catch limit of 159 tons.

Season 3. For the purpose of the exploratory trawl fishery for *Macrourus* spp. on BANZARE Bank (Statistical Division 58.4.3b) outside areas of national jurisdiction, the 2003/04 season is defined as the period from 1 December 2003 to 30 November 2004, or until the catch limit is reached, whichever is sooner.

By-catch 4. The by-catch in this fishery shall be regulated as set out in Conservation Measure 33–03.

Mitigation 5. The operation of this fishery shall be carried out in accordance with Conservation Measure 25–03 so as to minimize the incidental mortality of seabirds in the course of fishing.

Observers 6. Each vessel participating in this fishery shall have at least one scientific observer appointed in accordance with the CCAMLR Scheme of International Scientific Observation, and where possible one additional scientific observer, on board throughout all fishing activities within the fishing period.

Data:
catch/effort -

7. For the purpose of implementing this conservation measure in the 2003/04 season, the following shall apply:

(i) the Five-day Catch and Effort Reporting System set out in Conservation Measure 23–01;

(ii) the Monthly Fine-scale Catch and Effort Reporting System set out in Conservation Measure 23–04. Fine-scale data shall be submitted on a haul-by-haul basis.

8. For the purpose of Conservation Measures 23–01 and 23–04, the target species is *Macrourus* spp. and by-catch species are defined as any species other than *Macrourus* spp. Any catch of *Dissostichus* spp. shall be subtracted from the catch limit for *Dissostichus* spp. specified in Conservation Measure 41–07.

Data:
biological

9. Fine-scale biological data, as required under Conservation

Measure 23–05, shall be collected and recorded. Such data shall bereported in accordance with the Scheme of International Scientific Observation.

Research 10. Each vessel participating in this exploratory fishery shall conduct fishery-based research in accordance with the research plan described in Conservation Measure 41–01, Annex B.

Conservation Measure 43–04 (2003)

Limits on the Exploratory Fishery for Chaenodraco wilsoni, Lepidonotothen kempi, Trematomus eulepidotus and Pleuragramma antarcticum in Statistical Division 58.4.2 in the 2003/04 Season

The Commission hereby adopts the following conservation measure in accordance with Conservation Measure 21–02, and notes that this measure would be for one year and that data arising from these activities would be reviewed by the Scientific Committee in 2004:

Access 1. Fishing for *Chaenodraco wilsoni, Lepidonotothen kempi, Trematomus eulepidotus* and *Pleuragramma antarcticum* in Statistical Division 58.4.2 shall be limited to the exploratory trawl fishery by Russia.The fishery shall be conducted by one Russian-flagged vessel using trawls only.

Catch limit 2. The total catch of all species in the 2003/04 season shall not exceed a precautionary catch limit of 2 000 tons.

3. The catch of *Chaenodraco wilsoni* in the 2003/04 season shall be taken by the midwater trawl method only, except for the research program on shallow-water bottom trawling specified in paragraph 4 of Annex 43–04/A of this conservation measure, and shall not exceed 1 000 tons.

4. The catches of *Lepidonotothen kempi, Trematomus eulepidotus* and *Pleuragramma antarcticum* in the 2003/04 season shall be taken by the midwater trawl method only, except for the research program on shallow-water bottom trawling specified in paragraph 4 of Annex 43–04/A of this conservation measure, and shall not exceed 500 tons for any one species.

5. Any *Dissostichus* spp. or *Macrourus* spp. caught during the directed fishery for the above species shall be deducted from the catches of these species authorized in Conservation Measure 41–05.

Season 6. For the purpose of the exploratory trawl fishery for *Chaenodraco wilsoni, Lepidonotothen kempi, Trematomus eulepidotus* and *Pleuragramma antarcticum* in Statistical Division 58.4.2, the 2003/04 season is defined as the period from 1 December 2003 to 30 November 2004, or until the catch limit is reached, whichever is sooner.

By-catch 7. The by-catch in this fishery shall be regulated as set out in Conservation Measure 33–03.

Mitigation 8. The operation of this fishery shall be carried out in accordance with Conservation Measure 25–03 so as to minimize the incidental mortality of seabirds in the course of fishing.

Observers 9. The vessel participating in this fishery shall have at least one scientific observer appointed in accordance with the CCAMLR Scheme of International Scientific Observation, and where possible one additional scientific observer, on board throughout all fishing activities within the fishing period.

Data:
catch/effort

10. For the purpose of implementing this conservation measure in the 2003/04 season, the following shall apply:

(i) the Five-day Catch and Effort Reporting System set out in Conservation Measure 23–01;

(ii) the Monthly Fine-scale Catch and Effort Reporting System set out in Conservation Measures 23–03. Fine-scale data shall be submitted on a haul-by-haul basis.

11. For the purpose of Conservation Measures 23–01 and 23–03, the target species are *Chaenodraco wilsoni, Lepidonotothen kempi, Trematomus eulepidotus* and *Pleuragramma antarcticum* and by-catch species are defined as any species other than these species.

Data:
biological

12. Fine-scale biological data, as required under Conservation Measure 23–05 shall be collected and recorded. Such data shall be reported in accordance with the System of International Scientific Observation.

Research 13. The vessel participating in this exploratory fishery shall conduct fishery-based research in accordance with the Research and Data Collection Plans described in Annex 43–04/A. The results shall be reported to CCAMLR not later than three months after the closure of the fishery.

ANNEX 43–04/A

RESEARCH AND DATA COLLECTION PLANS

1. The small-scale research units (SSRUs) for this fishery will be those specified in Annex B of Conservation Measure 41–01.

2. The vessel undertaking prospecting or commercial fishing in any SSRU must undertake the following research activities once 10 tons of any one species have been caught, irrespective of the number of hauls required:

(i) a minimum of 20 hauls must be made within the SSRU and must collectively satisfy the criteria specified in subparagraphs (ii) to (iv);

(ii) each haul must be separated by not less than 5 n miles from any other haul, distance to be measured from the geographical mid-point of each haul;

(iii) each haul shall comprise at least 30 minutes effective fishing time as defined in the *Draft Manual for Bottom Trawl Surveys in the Convention Area*(SC-CAMLR-XI, Annex 5, Appendix H, Attachment E, paragraph 4);

(iv) all data specified in the paragraph 4 of this annex shall be collected for every research haul; in particular, all fish in a research haul up to 100 fish are to be measured and biological characteristics obtained from 30 fish, where more than 100 fish are caught, a method for randomly subsampling the fish should be applied.

3. The requirement to undertake the above research activities applies irrespective of the period over which the trigger levels of 10 tons of catch in any SSRU are achieved during the 2003/04 fishing season. The research activities must commence immediately the trigger levels have been reached and must be completed before the vessel leaves the SSRU.

4. In each SSRU and in locations where the bottom depth is 280 m or less:

(i) a maximum total of 20 commercial bottom trawls may be conducted in no more than 10 locations, but with no more than four bottom trawls in any one location;

(ii) each location must be at least 5 n miles distant from any other location;

(iii) at each location trawled, three separate samples will be taken with a beam trawl in the vicinity of the commercial trawl track to assess the benthos present and compare with the benthos brought up in the commercial trawl;

(iv) catches from this program will not count towards the value that triggers the 20 research shots in an SSRU as defined in paragraph 2 above.

5. The following data and material will be collected from research and commercial hauls, as required by the CCAMLR Scientific Observers Manual:

(i) position, date and depth at the start and end of every haul;

(ii) haul-by haul catch and catch per effort by species;

(iii) haul-by haul length frequency of common species;

(iv) sex and gonad state of common species;

(v) diet and stomach fullness;

(vi) scales and/or otoliths for age determination;

(vii) by-catch of fish and other organisms;

(viii) observations on the occurrence of seabirds and mammals in relation to fishing operations, and details of any incidental mortality of these animals.

CONSERVATION MEASURE 52–01 (2003)

Limits on the Fishery for Crab in Statistical Subarea 48.3 in the 2003/04 Season

The Commission hereby adopts the following conservation measure in accordance with Conservation Measure 31–01:

Access 1. The fishery for crab in Statistical Subarea 48.3 shall be conducted by vessels using pots only. The crab fishery is defined as any commercial harvest activity in which the target species is any member of the crab group (Order Decapoda, Suborder Reptantia).

2. The crab fishery shall be limited to one vessel per Member.

3. Each Member intending to participate in the crab fishery shall notify the CCAMLR Secretariat at least three months in advance of starting fishing of the name, type, size, registration number, radio call sign, and research and fishing operations plan of the vessel that the Member has authorized to participate in the crab fishery.

Catch limit 4. The total catch of crab in Statistical Subarea 48.3 in the 2003/04 season shall not exceed a precautionary catch limit of 1 600 tons.

5. The crab fishery shall be limited to sexually mature male crabs - all female and undersized male crabs caught shall be released unharmed. In the case of *Paralomis spinosissima* and *Paralomis formosa*, males with a minimum carapace width of 94 mm and 90 mm, respectively, may be retained in the catch.

Season 6. For the purpose of the pot fishery for crab in Statistical Subarea 48.3, the 2003/04 season is defined as the period from 1 December 2003 to 30 November 2004, or until the catch limit is reached, whichever is sooner.

By-catch 7. The by-catch of *Dissostichus* eleginoides shall be counted against the catch limit in the fishery for *Dissostichus* eleginoides in Statistical Subarea 48.3.

Observers 8. Each vessel participating in this fishery shall have at least one scientific observer appointed in accordance with the CCAMLR Scheme of International Scientific Observation, and where possible one additional scientific observer, on board throughout all fishing activities within the fishing period. Scientific observers shall be afforded unrestricted access to the catch for statistical random sampling prior to, as well as after, sorting by the crew.

Data:
catch/effort

9. For the purpose of implementing this conservation measure in the 2003/04 season, the following shall apply:

(i) the Ten-day Catch and Effort Reporting System set out in Conservation Measure 23–02;

(ii) the Monthly Fine-scale Catch and Effort Reporting System set out in Conservation Measure 23–04. Fine-scale data shall be submitted on a haul-by-haul basis.

10. For the purpose of Conservation Measures 23–02 and 23–04 the target species is crab and by-catch species are defined as any species other than crab.

Data:
biological

11. Fine-scale biological data, as required under Conservation Measure 23–05, shall be collected and recorded. Such data shall be reported in accordance with the Scheme of International Scientific Observation.

Research

12. Each vessel participating in this exploratory fishery shall conduct

fishery-based research in accordance with the data requirements described in Annex 52–01/A and the experimental harvest regime described in Conservation Measure 52–02. Data collected for the period up to 31 August 2004 shall be reported to CCAMLR by 30 September 2004 so that the data will be available to the meeting of the Working Group on Fish Stock Assessment in 2004. Such data collected after 31 August shall be reported to CCAMLR not later than three months after the closure of the fishery.

ANNEX 52–01/A

DATA REQUIREMENTS ON THE CRAB FISHERY IN STATISTICAL SUBAREA 48.3

Catch and Effort Data:

Cruise Descriptions

cruise code, vessel code, permit number, year.

Pot Descriptions

diagrams and other information, including pot shape, dimensions, mesh size, funnel

position, aperture and orientation, number of chambers, presence of an escape port.

Effort Descriptions

date, time, latitude and longitude of the start of the set, compass bearing of the set, total number of pots set, spacing of pots on the line, number of pots lost, depth, soak time, bait type.

Catch Descriptions

retained catch in numbers and weight, by-catch of all species (see Table 1), incremental record number for linking with sample information.

Biological Data:

For these data, crabs are to be sampled from the line hauled just prior to noon, by collecting the entire contents of a number of pots spaced at intervals along the line so that between 35 and 50 specimens are represented in the subsample.

Cruise Descriptions

cruise code, vessel code, permit number.

Sample Descriptions

date, position at start of the set, compass bearing of the set, line number.

Data

species, sex, length of at least 35 individuals, presence/absence of rhizocephalan parasites, record of the destination of the crab (kept, discarded, destroyed), record of the pot number from which the crab comes.

CONSERVATION MEASURE 52–02 (2003)

Experimental Harvest Regime for the Crab Fishery in Statistical Subarea 48.3 in the 2003/04 Season

The following measures apply to all crab fishing within Statistical Subarea 48.3 in the 2003/04 fishing season. Every vessel participating in the crab fishery in Statistical Subarea 48.3 shall conduct fishing operations in accordance with an experimental harvest regime as outlined below:

1. Vessels shall conduct the experimental harvest regime in the 2003/04 season at the start of their first season of participation in the crab fishery and the following conditions shall apply:

(i) every vessel when undertaking an experimental harvesting regime shall expend its first 200 000 pot hours of effort within a total area delineated by twelve blocks of 0.5° latitude by 1.0° longitude. For the purposes of this conservation measure, these blocks shall be numbered A to L. In Annex 52–02/A, the blocks are illustrated (Figure 1), and the geographic position is denoted by the coordinates of the northeast corner of the block. For each string, pot hours shall be calculated by taking the total number of pots on the string and multiplying that number by the soak time (in hours) for that string. Soak time shall be defined for each string asthe time between start of setting and start of hauling;

(ii) vessels shall not fish outside the area delineated by the 0.5° latitude by 1.0° longitude blocks prior to completing the experimental harvesting regime;

(iii) vessels shall not expend more than 30 000 pot hours in any single block of 0.5° latitude by 1.0° longitude;

(iv) if a vessel returns to port before it has expended 200 000 pot hours in the experimental harvesting regime the remaining pot hours shall be expended before it can be considered that the vessel has completed the experimental harvesting regime;

(v) after completing 200 000 pot hours of experimental fishing, it shall be considered that vessels have completed the experimental harvesting regime and they shall be permitted to commence fishing in a normal fashion.

2. Data collected during the experimental harvest regime up to 30 June 2004 shall be submitted to CCAMLR by 31 August 2004.

3. Normal fishing operations shall be conducted in accordance with the regulations set out in Conservation Measure 52–01.

4. For the purposes of implementing normal fishing operations after completion of the experimental harvest regime, the Ten-day Catch and Effort Reporting System set out in Conservation Measure 23–02 shall apply.

5. Vessels that complete experimental harvest regime shall not be required to conduct experimental fishing in future seasons. However, these vessels shall abide by the guidelines set forth in Conservation Measure 52–01.

6. Fishing vessels shall participate in the experimental harvest regime independently (i.e. vessels may not cooperate to complete phases of the experiment).

7. Crabs taken by any vessel for research purposes will be considered as part of any catch limits in force for each species taken, and shall be reported to CCAMLR as part of the annual STATLANT returns.

8. All vessels participating in the experimental harvest regime shall carry at least one scientific observer on board during all fishing activities.

CONSERVATION MEASURE 61–01 (2003)

Limits on the Exploratory Fishery for Martialia hyadesi in Statistical Subarea 48.3 in the 2003/04 Season

The Commission hereby adopts the following conservation measure in accordance with Conservation Measures 21–02 and 31–01:

Access 1. Fishing for *Martialia hyadesi* in Statistical Subarea 48.3 shall be limited to the exploratory jig fishery by notifying countries. The fishery shall be conducted by vessels using jigs only.

Catch limit 2. The total catch of *Martialia hyadesi* in Statistical Subarea 48.3 in the 2003/04 season shall not exceed a precautionary catch limit of 2 500 tons.

Season 3. For the purpose of the exploratory jig fishery for *Martialia hyadesi* in Statistical Subarea 48.3, the 2003/04 season is defined as the period from 1 December 2003 to 30 November 2004, or until the catch limit is reached, whichever is sooner.

Observers 4. Each vessel participating in this fishery shall have at least one scientific observer appointed in accordance with the CCAMLR Scheme of International Scientific Observation, and where possible one additional scientific observer, on board throughout all fishing activities within the fishing period.

Data:

catch/effort

5. For the purpose of implementing this conservation measure in the 2003/04 season, the following shall apply:

(i) the Ten-day Catch and Effort Reporting System set out in Conservation Measure 23–02;

(ii) the Monthly Fine-scale Catch and Effort Reporting System set out in Conservation Measure 23–04. Fine-scale data shall be submitted on a haul-by-haul basis.

6. For the purpose of Conservation Measures 23–02 and 23–04, the target species is *Martialia hyadesi* and by-catch species are defined as any species other than *Martialia hyadesi*.

Data:

biological

7. Fine-scale biological data, as required under Conservation Measure 23–05, shall be collected and recorded. Such data shall be reported in accordance with the Scheme of International Scientific Observation.

Research 8. Each vessel participating in this exploratory fishery shall collect data in accordance with the Data Collection Plan described in Annex 61–01/A.

Data collected pursuant to the plan for the period up to 31 August 2004 shall be reported to CCAMLR by 30 September 2004 so that the data will be available to the meeting of the Working Group on Fish Stock Assessment in 2004.

ANNEX 61–01/A

DATA COLLECTION PLAN FOR EXPLORATORY SQUID (MARTIALIA HYADESI) FISHERIES IN STATISTICAL SUBAREA 48.3

1. All vessels will comply with conditions set by CCAMLR. These include data required to complete the data form (Form TAC) for the Ten-day Catch and Effort Reporting System, as specified by Conservation Measure 23–02; and data required to complete the CCAMLR standard fine-scale catch and effort data form for a squid jig fishery (Form C3). This includes numbers of seabirds and marine mammals of each species caught and released or killed.

2. All data required by the CCAMLR Scientific Observers Manual for squid fisheries will be collected. These include:

(i) vessel and observer program details (Form S1);

(ii) catch information (Form S2);

(iii) biological data (Form S3).

RESOLUTION 15/XXII

Use of Ports not Implementing the Catch Documentation Scheme for Dissostichus spp.

The Commission,

Noting that a number of Acceding States and non-Contracting Parties not participating in the Catch Documentation Scheme for *Dissostichus* spp., as set out in Conservation Measure 10–05, continue to trade in *Dissostichus* spp.;

Recognizing that these Acceding States and non-Contracting Parties thus do not participate in the landing procedures for *Dissostichus* spp. accompanied by *Dissostichus* Catch Documents;

Urges Contracting Parties,

When licensing a vessel to fish for *Dissostichus* spp. either inside the Convention Area under Conservation Measure 10–02, or on the high seas, to require, as a condition of that license, that the vessel should land catches only in States that are fully implementing the CDS; and to attach to the license[33] a list of all Acceding States and non-Contracting Parties that are fully implementing the Catch Documentation Scheme.

RESOLUTION 20/XXII

Ice-Strengthening Standards in High-Latitude Fisheries[34]

The Commission

Recognizing the unique circumstances in high-latitude fisheries, especially the extensive ice coverage which can pose a risk to fishing vessels operating in those fisheries,

Recognizing also that the safety of fishing vessels, crew and CCAMLR scientific observers is a significant concern of all Members,

Further recognizing the difficulties of search and rescue response in high-latitude fisheries,

Concerned that collisions with ice could result in oil spills and other adverse consequences for Antarctic marine living resources and the pristine Antarctic environment,

Considering that vessels fishing in high-latitude fisheries should be suitable for ice conditions,

Urges Members to license to fish in high-latitude fisheries only those of their flag vessels with a minimum ice classification standard of ICE–1C[35] which will remain current for the duration of the planned fishing activity.

Dated: December 10, 2003.

Margaret F. Hayes,

Director, Office of Oceans Affairs, Bureau of Oceans, International Environmental and Scientific Affairs, Department of State.

[FR Doc. 03–31229 Filed 12–17–03; 8:45 am]

BILLING CODE 3510–22–S

[33] Includes permits and authorizations

[34] Subareas and divisions south of 60°S and adjacent to the Antarctic continent.

[35] As defined in the Det Norske Veritas (DNV) Rules for Classification of Ships or an equivalent standard of certification as defined by a recognized classification authority.

DEPARTMENT OF STATE

[Public Notice 4559]

Bureau of Educational and Cultural Affairs Request for Grant Proposals: Benjamin A. Gilman International Scholarship Program

SUMMARY: The Office of Global Educational Programs of the Bureau of Educational and Cultural Affairs announces an open competition to administer the Benjamin A. Gilman International Scholarship Program. Public and private non-profit organizations meeting the provisions described in Internal Revenue Code section 26 U.S.C. 501(c)(3) may submit proposals for the purpose of administering a scholarship program for academic study by Americans outside of the United States.

Important Note: This Request for Grant Proposals contains language in the "Shipment and Deadline for Proposals" section that is significantly different from that used in the past. Please pay special attention to procedural changes as outlined.

Program Information

This program provides grants to enable U.S. citizen undergraduate students of limited financial means to pursue academic studies abroad. Such foreign study is intended to expand understanding of other countries and cultures among U.S. students, expose citizens of other countries to Americans from diverse backgrounds, and better prepare U.S. students to assume significant roles in an increasingly global economy.

Overview

It is anticipated that, pending appropriation of funds, this grant will provide an assistance award of approximately $1,600,000 for the purpose of recruiting, selecting, and issuing grants of up to $5,000 to individuals who meet the eligibility requirements listed below toward the cost of up to one academic year of undergraduate study abroad. Subject to the availability of funding and to satisfactory performance of the organization selected, this assistance award may be renewable for two subsequent fiscal years.

The intent of the authorizing legislation for the Benjamin A. Gilman International Scholarship Program is to broaden the U.S. student population that participates in study abroad by focusing on those students who might not otherwise study outside the U.S. due to financial constraints.

The Bureau also seeks to encourage participating students and their

institutions to choose non-traditional study-abroad locations and to help under-represented U.S. institutions offer and promote study-abroad opportunities for their students. These objectives should also be addressed in grant proposals.

Guidelines

The administering organization should be prepared to announce the program and solicit applications as soon as possible upon receipt of grant notification and to award scholarships to U.S. students to enable them to begin overseas study in the fall semester of 2004.

Student Eligibility: To apply for a scholarship, an applicant must:

- Be a citizen of the United States. Permanent residents of the United States are not eligible.
- Be an undergraduate student in good standing at an institution of higher education in the United States (including both two-year and four-year institutions).
- Be a recipient of federal Pell Grant funding during the academic term of his/her application.
- Be applying to, or accepted for a program of study abroad eligible for credit from the student's home institution. Proof of program acceptance is required for final award disbursement.
- Not study in a country currently under a Travel Warning issued by the United States Department of State. Travel Warnings are issued when the State Department recommends that Americans avoid a certain country. To find a list of these countries, please see *http://travel.state.gov/warnings_list.html.*

Recruitment, Application and Selection:

(1) Outreach will be made by the grantee organization to accredited institutions of higher education in the United States for the purpose of publicizing the scholarship competition. This can be achieved through direct contacts with these institutions and through participation in major education conferences and events. Emphasis will be on reaching out to a diverse pool of institutions and programs within those institutions.

(2) The selection process shall be carried out through a committee which includes representatives of accredited institutions of higher education in the United States.

(3) In ranking eligible applicants for scholarships, consideration should be given to academic excellence, financial need, diversity of the applicant pool, fields of study, proposed destination, and type and location of home institution. Preference should be given to applicants with no previous study abroad experience.

Reporting:

The grantee organization will submit quarterly reports on the number of applicants, the number of participants selected, the names of the institutions of higher education in the United States that applicants and awardees were attending at the time of application, the names of institutions sponsoring the study programs abroad, the names and locations of the institutions of higher education outside the United States that participants attended during their study program abroad, the fields of study of participants, and attrition rates. Because diversity is an important program goal, the grantee should attempt to collect age, ethnic, gender, and disability data from applicants and from those selected for awards, in keeping with Federal guidelines on the solicitation of such information. Additionally, the Bureau of Educational and Cultural Affairs may request other periodic and ad hoc reports.

Budget Guidelines

Grants awarded to eligible organizations with less than four years of experience in conducting international exchange programs are limited by Bureau policy to $60,000. The Bureau intends to make one award not to exceed $1,600,000. Accordingly, institutions with less than four years experience are not encouraged to apply. The Bureau encourages applicants to provide maximum levels of cost-sharing and funding from private sources in support of its programs.

Applicants must submit a comprehensive budget for the entire program. Applicants should budget the maximum possible amount for scholarships and keep administrative and overhead costs to a minimum. There must be a summary budget as well as breakdowns reflecting both administrative and program budgets. Applicants may provide separate sub-budgets for each program component, phase, location, or activity to provide clarification.

Allowable costs for the program include the following:

(1) *Administrative:* Salaries and benefits and other direct administrative expenses such as postage, phone, printing and office supplies.

(2) *Program:* Participant expenses, which may include institutional fees, travel expenses, tuition; expenses related to review panels, including travel and per-diem.

Please refer to the Solicitation Package for complete budget guidelines and formatting instructions.

Announcement Title and Number

All correspondence with the Bureau concerning this RFGP should reference the above title and number *ECA/A/S/A–04–14.*

FOR FURTHER INFORMATION CONTACT: The Office of Global Educational Programs, Educational Information and Resources Branch (ECA/A/S/A), Room 349, U.S. Department of State, 301 4th Street, SW., Washington, DC 20547; telephone 202–619–5434; fax 202–401–1433; e-mail *advise@pd.state.gov* to request a Solicitation Package. The Solicitation Package contains detailed award criteria, required application forms, specific budget instructions, and standard guidelines for proposal preparation. Please specify Bureau Branch Chief Phillip Ives on all other inquiries and correspondence.

Please read the complete **Federal Register** announcement before sending inquiries or submitting proposals. Once the RFGP deadline has passed, Bureau staff may not discuss this competition with applicants until the proposal review process has been completed.

To Download a Solicitation Package via Internet

The entire Solicitation Package may be downloaded from the Bureau's Web site at *http://exchanges.state.gov/education/RFGPs.* Please read all information before downloading.

New OMB Requirement

An OMB policy directive published in the **Federal Register** on Friday, June 27, 2003, requires that all organizations applying for Federal grants or cooperative agreements must provide a Dun and Bradstreet (D&B) Data Universal Numbering System (DUNS) number when applying for all Federal grants or cooperative agreements on or after October 1, 2003. The complete OMB policy directive can be referenced at *http://www.whitehouse.gov/omb/fedreg/062703_grant_identifier.pdf.* Please also visit the ECA Web site at *http://exchanges.state.gov/education/rfgps/menu.htm* for additional information on how to comply with this new directive.

Shipment and Deadline for Proposals

Important Note: The deadline for this competition is Friday, February 6, 2004. In light of recent events and heightened security measures, proposal submissions must be sent via a nationally recognized overnight delivery service (*i.e.*, DHL, Federal Express, UPS, Airborne Express, or U.S. Postal Service Express Overnight Mail, etc.) and be shipped no later than the above deadline. The delivery services used by applicants must have in-place, centralized shipping identification and tracking systems that may be accessed via the Internet and delivery people who are identifiable by commonly recognized competition. Proposals shipped after the established deadlines are ineligible for consideration under this competition. It is each applicant's responsibility to ensure that each package is marked with a legible tracking number and to monitor/confirm delivery to ECA via the Internet. Delivery of proposal packages *may not* be made via local courier service or in person for this competition. Faxed documents will not be accepted at any time. Only proposals submitted as stated above will be considered.

Applicants must follow all instructions in the Solicitation Package. The original and 15 copies of the application should be sent to: U.S. Department of State, SA–44, Bureau of Educational and Cultural Affairs, Ref.: ECA/A/S/A–04–14, Program Management, ECA/EX/PM, Room 534, 301 4th Street, SW., Washington, DC 20547.

Diversity, Freedom and Democracy Guidelines

Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social, and cultural life. "Diversity" should be interpreted in the broadest sense and encompass differences including, but not limited to ethnicity, race, gender, religion, geographic location, socio-economic status, and physical challenges. Applicants are strongly encouraged to adhere to the advancement of this principle both in program administration and in program content. Please refer to the review criteria under the "Support for Diversity" section for specific suggestions on incorporating diversity into the total proposal. Public Law 104–319 provides that "in carrying out programs of educational and cultural exchange in countries whose people do not fully enjoy freedom and democracy," the Bureau "shall take appropriate steps to provide opportunities for participation in such programs to human rights and democracy leaders of such countries." Public Law 106–113 requires that the governments of the countries described above do not have inappropriate influence in the selection process. Proposals should reflect advancement of these goals in their program contents, to the full extent deemed feasible.

Adherence to All Regulations Governing the J Visa

Please note: The following is being communicated for informational purposes only and does not directly apply to this solicitation or program. The Bureau of Educational and Cultural Affairs is placing renewed emphasis on the secure and proper administration of Exchange Visitor (J visa) Programs and adherence by grantees and sponsors to all regulations governing the J visa. Therefore, proposals should demonstrate the applicant's capacity to meet all requirements governing the administration of Exchange Visitor Programs as set forth in 22 CFR 6Z, including the oversight of Responsible Officers and Alternate Responsible Officers, screening and selection of program participants, provision of pre-arrival information and orientation to participants, monitoring of participants, proper maintenance and security of forms, record-keeping, reporting and other requirements.

A copy of the complete regulations governing the administration of Exchange Visitor (J) programs is available at *http://exchanges.state.gov* or from: United States Department of State, Office of Exchange Coordination and Designation, ECA/EC/ECD—SA–44, Room 734, 301 4th Street, SW., Washington, DC 20547. Telephone: (202) 401–9810. FAX: (202) 401–9809.

Review Process

The Bureau will acknowledge receipt of all proposals and will review them for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines stated herein and in the Solicitation Package. All eligible proposals will be reviewed by the program office, as well as the Public Diplomacy section overseas, where appropriate. Eligible proposals will be subject to compliance with Federal and Bureau regulations and guidelines and forwarded to Bureau grant panels for advisory review. Proposals may also be reviewed by the Office of the Legal Adviser or by other Department elements. Final funding decisions are at the discretion of the Department of State's Assistant Secretary for Educational and Cultural Affairs. Final technical authority for assistance awards (grants or cooperative agreements) resides with the Bureau's Grants Officer.

Review Criteria

Technically eligible applications will be competitively reviewed according to the criteria stated below. These criteria are not rank ordered and all carry equal weight in the proposal evaluation:

1. *Quality of the program idea:* Proposals should exhibit originality, substance, precision, and relevance to the Bureau's mission.

2. *Program planning:* Detailed agenda and relevant work plan should demonstrate substantive undertakings and logistical capacity. Agenda and plan should adhere to the program overview and guidelines described above. The work plan should specify target dates for objectives such as application deadlines, notifications, and provision of funds to participants.

3. *Ability to achieve program objectives:* Objectives should be reasonable, feasible, and flexible. Proposals should clearly demonstrate how the institution will meet the program's objectives and plan.

4. *Multiplier effect/impact:* Proposed programs should strengthen long-term mutual understanding, including maximum sharing of information and establishment of long-term institutional and individual linkages.

5. *Support of Diversity:* Proposals should demonstrate substantive support of the Bureau's policy on diversity. Achievable and relevant features should be cited in both program administration and program content. Proposals should demonstrate the recipient's commitment to promoting the awareness and understanding of diversity, including, but not limited to diversity in applicant pool, type and location of home institution, study destinations, and fields of study.

6. *Institutional Capacity:* Proposed personnel and institutional resources should be adequate and appropriate to achieve the program or project's goals. Electronic databases should be compatible with the Bureau's systems.

7. *Institution's Record/Ability:* Proposals should demonstrate an institutional record of successful exchange programs, including responsible fiscal management and full compliance with all reporting requirements for past Bureau grants as determined by Bureau Grant Staff. The Bureau will consider the past performance of prior recipients and the demonstrated potential of new applicants.

8. *Follow-on Activities:* Proposals should provide a plan for continued follow-on activity such as alumni tracking and programming.

9. *Project Evaluation:* Proposals should include a plan to evaluate the activity's success, both as the activities unfold and at the end of the program. A draft survey questionnaire or other technique plus description of a methodology to use to link outcomes to original project objectives is recommended. Successful applicants will be expected to submit intermediate

reports after each project component is concluded or quarterly, whichever is less frequent.

10. *Cost-effectiveness:* The overhead and administrative components of the proposal, including salaries and honoraria, should be kept as low as possible. All other items should be necessary and appropriate.

11. *Cost-sharing:* Proposals should maximize cost-sharing through other private sector support as well as institutional direct funding contributions.

Authority

Overall grant making authority for this program is contained in the Mutual Educational and Cultural Exchange Act of 1961, Public Law 87–256, as amended, also known as the Fulbright-Hays Act. The purpose of the Act is "to enable the Government of the United States to increase mutual understanding between the people of the United States and the people of other countries * * *; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations * * * and thus to assist in the development of friendly, sympathetic and peaceful relations between the United States and the other countries of the world." The funding authority for the program above is provided through the International Academic Opportunity Act of 2000.

Notice

Funding for this program is subject to final Congressional action and the appropriation of FY–2004 funds. The actual level of funding for the Gilman Program was $1.5 million in FY–2002 and $1,575,000 in FY–2003. Awards made will be subject to periodic reporting and evaluation requirements. The terms and conditions published in this RFGP are binding and may not be modified by any Bureau representative. Explanatory information provided by the Bureau that contradicts published language will not be binding. Issuance of the RFGP does not constitute an award commitment on the part of the Government. The Bureau reserves the right to reduce, revise, or increase proposal budgets in accordance with the needs of the program and the availability of funds.

Notification

Final awards cannot be made until funds have been appropriated by Congress, allocated and committed through internal Bureau procedures.

Dated: December 10, 2003.

C. Miller Crouch,

Principal Deputy Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 03–31230 Filed 12–17–03; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice #4530]

Overseas Buildings Operations; Industry Advisory Panel: Meeting Notice

The Industry Advisory Panel of Overseas Buildings Operations will meet on Thursday, January 15, 2004 from 9:45 until 11:45 a.m. and 1 until 3:30 p.m. Eastern Standard Time. The meeting will be held in conference room 1105 at the Department of State, 2201 C Street, NW. (entrance on 23rd Street), Washington, DC. The purpose of the meeting is to discuss new technologies and successful management practices for design, construction, security, property management, emergency operations, the environment, and planning and development. An agenda will be available prior to the meeting.

The meeting will be open to the public, however, seating is limited. Prior notification and a valid photo ID are mandatory for entry into the building. Members of the public who plan to attend must notify Luigina Pinzino at (703) 875–7109 before Wednesday, January 7th, to provide date of birth, Social Security number, and telephone number.

FOR FURTHER INFORMATION CONTACT: Luigina Pinzino (703) 875–7109.

Dated: December 8, 2003.

Charles E. Williams,

Director/Chief Operating Officer, Overseas Buildings Operations, U.S. Department of State.

[FR Doc. 03–31231 Filed 12–17–03; 8:45 am]

BILLING CODE 4710–24–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

December 3, 2003.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000, 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before January 20, 2004 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–0240.
Form Number: IRS Form 6118.
Type of Review: Extension.
Title: Claim for Refund of Income Tax Return Preparer Penalties.
Description: Form 6118 is used by preparers to file for a refund of penalties incorrectly charged. The information enables the IRS to process the claim and have the refund issued to the tax return preparer.
Respondents: Individuals or households, Business or other for-profit.
Estimated Number of Respondents/ Recordkeeping: 10,000.
Estimated Burden Hours Respondent/ Recordkeeper:

Recordkeeping	13 min.
Learning about the law or the form.	17 min.
Preparing the form	11 min.
Copying, assembling, and sending the form to the IRS.	20 min.

Frequency of Response: On occasion.
Estimated Total Reporting/ Recordkeeping Burden: 10,400 hours.
OMB Number: 1545–0951.
Form Number: IRS Forms 5434 and 5434–A.
Type of Review: Extension.
Title: Form 5434: Application for Enrollment; and Form 5434–A: Application for Renewal of Enrollment.
Description: The information relates to the granting of enrollment status to actuaries admitted (licensed) by the Joint Board for the Enrollment of Actuaries to perform actuarial services under the Employee Retirement Income Security Act of 1974.
Respondents: Individuals or households.
Estimated Number of Respondents/ Recordkeepers: 6,000.
Estimated Burden Hours Respondent/ Recordkeeper: 27 minutes.
Frequency of Response: Other (once every 3 years).
Estimated Total Reporting/ Recordkeeping Burden: 3,800 hours.
OMB Number: 1545–1858.
Notice Number: Notice 2003–67.
Type of Review: Extension.
Title: Notice on Information Reporting for Payments in Lieu of Dividends.

Description: This notice provides guidance to brokers and individuals regarding provisions in the Jobs and Growth Tax Relief Reconciliation Act of 2003. The notice provides rules for brokers to use in determining honorable shares and rules for allocating transferred shares for purposes of determining payments in lieu of dividend reportable to individuals to individuals. These rules require brokers to comply with certain recordkeeping requirements to use the favorable rules for determining loanable shares and for allocating transferred shares that may give rise to payments in lieu of dividends.
Respondents: Business or other for-profit.
Estimated Number of Recordkeepers: 600.
Estimated Burden Hours Recordkeeper: 100 hours.
Estimated Total Recordkeeping Burden: 60,000 hours.
Clearance Officer: R. Joseph Durbala, (202) 622–3634, Internal Revenue Service, Room 6411, 1111 Constitution Avenue, NW., Washington, DC 20224.
OMB Reviewer: Joseph F. Lackey, Jr., (202) 395–7316, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Treasury PRA Clearance Officer.

[FR Doc. 03–31204 Filed 12–17–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

December 8, 2003.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000, 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before January 20, 2004 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–0236.
Form Number: IRS Form 11–C.
Type of Review: Extension.
Title: Occupational Tax and Registration Return for Wagering.
Description: Form 11–C is used to register persons accepting wagers (Internal Revenue Code section 4412). IRS uses this form to register the respondent, collect the annual stamp tax (Internal Revenue Code section 4411), and to verify that the tax on wagers is reported on Form 730.
Respondents: Business or other for-profit, individuals or households, farms.
Estimated Number of Respondents/ Recordkeeping: 11,500.
Estimated Burden Hours Respondent/ Recordkeeper:

Recordkeeping	8 hr., 35 min.
Learning about the law or the form	57 min.
Preparing the form	11 min. 2 hr., 4 min.
Copying, assembling, and sending the form to the IRS	16 min.

Frequency of Response: Annually.
Estimated Total Reporting/ Recordkeeping Burden: 126,175 hours.
OMB Number: 1545–1130.
Form Number: IRS Form 8816.
Type of Review: Revision.
Title: Special Loss Discount Account and Special Estimated Tax Payment for Insurance Companies.
Description: Form 8816 is used by insurance companies claiming an additional deduction under Internal Revenue Code (IRC) section 847 to reconcile their special loss discount and special estimated tax payments, and to determine their tax benefit associated with the deduction. The information is needed by the IRS to determine that the proper additional deduction was claimed and to insure the proper amount of special estimated tax was computed and deposited.
Respondents: Business or other for-profit.
Estimated Number of Respondents/ Recordkeepers: 3,000.
Estimated Burden Hours Respondent/ Recordkeeper:

Recordkeeping	4 hr., 18 min.
Learning about the law or the form	1 hr., 5 min.
Preparing, copying, assembling, and sending the form to the IRS	1 hr., 12 min.

Frequency of Response: Annually.
Estimated Total Reporting/ Recordkeeping Burden: 19,830 hours.
OMB Number: 1545–1151.
Form Number: IRS Form 8818.
Type of Review: Extension.
Title: Optional Form to Record Redemption of Series EE and I U.S. Savings Bonds Issued After 1989.
Description: Under Internal Revenue Code section 135, if an individual redeems U.S. Savings Bonds issued after 1989 and pays qualified higher education expenses during the year, the interest on the bonds is excludable from income. Form 8818 can be used to keep a record of the bonds cashed so that the taxpayer can claim the proper interest exclusion.
Respondents: Individuals or households.
Estimated Number of Respondents/ Recordkeepers: 25,000.
Estimated Burden Hours Respondent/ Recordkeeper:

Recordkeeping	13 min.
Learning about the law or the form	4 min.
Preparing the form	13 min.

Frequency of Response: On occasion.
Estimated Total Reporting/ Recordkeeping Burden: 32,000 hours.
Clearance Officer: R. Joseph Durbala, (202) 622–3634, Internal Revenue Service, Room 6411, 1111 Constitution Avenue, NW., Washington, DC 20224.
OMB Reviewer: Joseph F. Lackey, Jr., (202) 395–7316, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,
Treasury PRA Clearance Officer.
[FR Doc. 03–31205 Filed 12–17–03; 8:45 am]
BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

December 10, 2003.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000, 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before January 20, 2004, to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–0016.
Form Number: IRS Form 706–A.
Type of Review: Revision.
Title: United States Additional Estate Tax Return.
Description: Form 706–A is used by individuals to compute and pay the additional estate taxes due under Code section 2032A(c). IRS uses the information to determine that the taxes have been properly computed. The form is also used for the basis election of section 1016(c)(1).
Respondents: Individuals or households.
Estimated Number of Respondents/ Recordkeeping: 180.
Estimated Burden Hours Respondent/ Recordkeeper:
Recordkeeping—3 hr., 17 min.
Learning about the law or the form—2 hr., 11 min.
Preparing the form—1 hr., 39 min.
Copying, assembling, and sending the form to the IRS—1 hr., 3 min.
Frequency of Response: Annually.
Estimated Total Reporting/ Recordkeeping Burden: 1,475 hours.

OMB Number: 1545–1559.
Revenue Procedure Number: Revenue Procedures 98–46 and 97–44.
Type of Review: Extension.
Title: LIFO Conformity Requirement.
Description: Revenue Procedure 97–44 permits automobile dealers that comply with the terms of the revenue procedure to continue using LIFO inventory method despite previous violations of the LIFO conformity requirements of section 472(c) or (e)(2). Revenue Procedure 98–46 modifies Revenue Procedure 97–44 by allowing medium- and heavy-duty truck dealers to take advantage of the favorable relief provided in Revenue Procedure 97–44.
Respondents: Business or other for-profit.
Estimated Number of Respondents/ Recordkeepers: 5,000.
Estimated Burden Hours Respondent/ Recordkeeper: 20 hours.
Frequency of Response: Annually.
Estimated Total Reporting/ Recordkeeping Burden: 100,000 hours.

OMB Number: 1545–1719.
Regulation Project Number: REG–106446–98 Final.
Type of Review: Extension.
Title: Relief from Joint and Several Liability.
Description: The regulation under section 6015 provides guidance regarding relief from the joint and several liability imposed by section 6013(d)(3). The regulations provide specific guidance on the three relief provisions of section 6015 and on how taxpayers would file a claim for such relief. In addition, the regulations provide guidance regarding Tax Court review of certain types of claims for relief, as well as information regarding the rights of the non-requesting spouse. The regulations also clarify that, under section 6013, a return is not a joint return if one of the spouses signs the return under duress.
Respondents: Individuals or households.
Estimated Number of Respondents: 1.
Estimated Burden Hours Respondent: 1 hour.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 1 hour.

OMB Number: 1545–1724.
Regulation Project Number: REG–109481–99 Final.
Type of Review: Extension.
Title: Special Rules Under section 417(a)(7) for Written Explanations Provided by Qualified Retirement Plans after Annuity Starting Dates.
Description: The collection of information requirement in sections 1.417(e)–1(b)(3)(iv)(B) and 1.417(e)–1(3)(v)(A) is required to ensure that a participant and the participant's spouse consent to a form of distribution from a qualified plan that may result in reduced periodic payments.
Respondents: Individuals or households, Business or other for-profit, Not-for-profit institutions.
Estimated Number of Respondents: 50,000.
Estimated Burden Hours Respondent: 15 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 12,500 hours.

OMB Number: 1545–1726.
Regulation Project Number: REG–111835–99 NPRM.
Type of Review: Extension.
Title: Regulations Governing Practice before the Internal Revenue Service.
Description: These regulations affect individuals who are eligible to practice before the Internal Revenue Service. These regulations also authorize the Director of Practice to act upon applications for enrollment to practice before the Internal Revenue Service. The Director of Practice will use certain information to ensure that: (1) Enrolled agents properly complete continuing education requirements to obtain renewal; (2) practitioners properly obtain consent of taxpayers before representing conflicting interests; and (3) practitioners do not use e-commerce to make misleading solicitations.
Respondents: Business or other for-profit.
Estimated Number of Recordkeepers: 56,000.
Estimated Burden Hours Recordkeeper: 53 minutes.
Estimated Total Recordkeeping Burden: 50,000 hours.

OMB Number: 1545–1732.
Regulation Project Number: REG–105946–00 Final.
Type of Review: Extension.
Title: Mid-Contract Change in Taxpayer.
Description: The information is needed by taxpayers who assume the obligation to account for the income from long-term contracts as the result of certain nontaxable transactions.
Respondents: Business or other for-profit.
Estimated Number of Respondents: 5,000.
Estimated Burden Hours Respondent: 2 hours.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 10,000 hours.
Clearance Officer: R. Joseph Durbala, (202) 622–3634, Internal Revenue Service, Room 6411, 1111 Constitution Avenue, NW., Washington, DC 20224.
OMB Reviewer: Joseph F. Lackey, Jr., (202) 395–7316, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,
Treasury PRA Clearance Officer.
[FR Doc. 03–31206 Filed 12–17–03; 8:45 am]
BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Area 5 Taxpayer Advocacy Panel (Including the States of Iowa, Kansas, Minnesota, Missouri, Nebraska, North Dakota, Oklahoma, South Dakota, and Texas)

AGENCY: Internal Revenue Service (IRS), Treasury.
ACTION: Notice.

SUMMARY: An open meeting of the Area 5 Taxpayer Advocacy Panel will be conducted (via teleconference). The Taxpayer Advocacy Panel is soliciting public comment, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Monday, January 12, 2004, at 3 p.m., Central Time.

FOR FURTHER INFORMATION CONTACT: Audrey Jenkins at 1–888–912–1227, or (718) 488–2085.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Area 5 Taxpayer Advocacy Panel will be held Monday, January 12, 2004, from 3 to 4 p.m. Central time via a telephone conference call. You can submit written comments to the panel by faxing to (718) 488–2062, or by mail to Taxpayer Advocacy Panel, 10 Metro Tech Center, 625 West Fulton Street, Brooklyn, NY 11201. Public comments will also be welcome during the meeting. Please contact Audrey Jenkins at 1–888–912–1227 or (718) 488–2085 for more information.

The agenda will include the following: Various IRS issues.

Dated: December 11, 2003.

Bernard Coston,
Director, Taxpayer Advocacy Panel.
[FR Doc. 03–31240 Filed 12–17–03; 8:45 am]
BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS

Rehabilitation Research and Development Service Scientific Merit Review Board; Notice of Meeting

The Department of Veterans Affairs gives notice under Pub. L. 92–463 (Federal Advisory Committee Act) that a meeting of the Rehabilitation Research and Development Service Scientific Merit Review Board will be held on January 27–28, 2004, at the J.W. Marriott Hotel, 1331 Pennsylvania Avenue, NW., Washington, DC. The sessions are scheduled to begin at 8 a.m. and end at 5:30 p.m. each day.

The purpose of the Board is to review rehabilitation research and development applications for scientific and technical merit and to make recommendations to the Director, Rehabilitation Research and Development Service, regarding their funding.

The meeting will be open to the public for the January 27 session from 8 a.m. to 9 a.m. for the discussion of administrative matters, the general status of the program and the administrative details of the review process. On January 27, from 9 a.m. through January 28, the meeting will be closed for the Board's review of research and development applications.

This review involves oral comments, discussion of site visits, staff and consultant critiques of proposed research protocols, and similar analytical documents that necessitate the consideration of the peresonal qualifications, performance and competence of individual research investigators. Disclosure of such information would constitute a clearly unwarranted invasion of personal privacy. Disclosure would also reveal research proposals and research underway which could lead to the loss of these projects to third parties and thereby frustrate future agency research efforts.

Thus, the closing is in accordance with 5 U.S.C. 552b(c)(6), and (c)(9)(B) and the determination of the Secretary of the Department of Veterans Affairs under sections 10(d) of Pub. L. 92–463 as amended by section 5(c) of Pub. L. 94–409.

Those who plan to attend the open session should contact Ms. Victoria Mongiardo, Program Analyst, Rehabilitation Research and Development Service (122P), Department of Veterans Affairs, 810 Vermont Ave., NW., Washington, DC 20420, at (202) 254–0054.

Dated: December 11, 2003.

By Direction of the Secretary:

E. Philip Riggin,
Committee Management Officer.
[FR Doc. 03–31178 Filed 12–17–03; 8:45 am]
BILLING CODE 8320–01–M

Corrections

Federal Register
Vol. 68, No. 243
Thursday, December 18, 2003

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9094]

RIN 1545–BC01

Return of Partnership Income

Correction

In rule document 03–28190 beginning on page 63733 in the issue of Monday, November 10, 2003, make the following corrections:

§ 1.6031(a)–1 [Corrected]

1. On page 63734, in the first column, in § 1.6031(a)–1(f), in the fourth line, "that"' should read "that–".

§ 1.6031(a)–1T [Corrected]

2. On the same page, in the same column, in § 1.6031(a)–1T(a)(3)(ii), in the fourth line, "§ 601.601(d)(2)(ii)(b)" should read "§ 601.601(d)(2)(ii)(*b*)".

[FR Doc. C3–28190 Filed 12–17–03; 8:45 am]
BILLING CODE 1505–01–D

Federal Register

Thursday,
December 18, 2003

Part II

Department of Transportation

Federal Railroad Administration

49 CFR Parts 222 and 229
Use of Locomotive Horns at Highway-Rail Grade Crossings; Interim Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Parts 222 and 229

[Docket No. FRA–1999–6439, Notice No. 8]

RIN 2130–AA71

Use of Locomotive Horns at Highway-Rail Grade Crossings

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Interim final rule.

SUMMARY: FRA is issuing rules to require that a locomotive horn be sounded while a train is approaching and entering a public highway-rail crossing. The rules also provide for an exception to the above requirement in circumstances in which there is not a significant risk of loss of life or serious personal injury, use of the locomotive horn is impractical, or safety measures fully compensate for the absence of the warning provided by the horn. This rule is required by law.

DATES: The effective date is December 18, 2004.

Written Comments: Comments must be received by February 17, 2004. Comments received after that date will be considered to the extent possible without incurring additional expense or delay.

Public Hearing: FRA intends to hold a public hearing in Washington, DC to allow interested parties the opportunity for oral comment on issues addressed in the interim final rule. The date and specific location of the hearing will be set forth in a forthcoming notice that will be published in the **Federal Register** and posted on FRA's Web site (*http://www.fra.dot.gov*).

ADDRESSES: You may submit comments identified by DOT DMS Docket Number FRA–1999–6439 by any of the following methods:

- Web site: *http://dms.dot.gov*. Follow the instructions for submitting comments on the DOT electronic docket site.
- Fax: 1–202–493–2251.
- Mail: Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–001.
- Hand Delivery: Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, S.W., Washington, DC between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.
- Federal e-Rulemaking Portal: Go to *http://www.regulations.gov*. Follow the online instructions for submitting comments.

Instructions: All submissions must include the agency name and docket name and docket number or Regulatory Identification Number (RIN) for this rulemaking. For detailed instructions on submitting comments and additional information on the rulemaking process, see the Public Participation heading of the **SUPPLEMENTARY INFORMATION** section of this document. Note that all comments received will be posted without change to *http://dms.dot.gov*, including any personal information provided. Please see the Privacy Act heading under Regulatory Notices.

Docket: For access to the docket to read background documents or comments received, go to *http://dms.dot.gov* at any time or to Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Ron Ries, Office of Safety, FRA, 1120 Vermont Avenue, NW.,Washington, DC 20590 (telephone: 202–493–6299); or Kathryn Shelton or Mark Tessler, Office of Chief Counsel, FRA, 1120 Vermont Avenue, NW., Washington, DC 20590 (telephone: 202–493–6038).

SUPPLEMENTARY INFORMATION:

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1. Background

On January 13, 2000, FRA published a Notice of Proposed Rulemaking (NPRM) in the **Federal Register** (65 FR 2230) addressing the use of locomotive horns at public highway-rail grade crossings. This rulemaking was mandated by Public Law 103–440, which added section 20153 to title 49 of the United States Code. The statute requires the Secretary of Transportation (whose authority in this area has been delegated to the Federal Railroad Administrator (49 CFR 1.49), to issue regulations to require the use of locomotive horns at public grade crossings, but gives the agency the authority to make reasonable exceptions.

In accordance with the Administrative Procedure Act (5 U.S.C. 553), FRA solicited written comments from the public. By the close of the public comment period on May 26, 2000, almost 3,000 comments had been filed with the agency regarding this rule and its associated Draft Environmental Impact Statement. As is FRA's practice, FRA held the public docket open for late filed comments and considered them to the extent possible.

Because the NPRM was the subject of substantial and wide-ranging public interest, FRA took unprecedented steps to ensure that the views of the affected public would be heard and considered in development of this interim final rule. FRA conducted a series of public hearings throughout the United States in which local citizens, local and State officials, and members of the U.S. House of Representatives and Senate testified. Twelve hearings were held (Washington, DC; Fort Lauderdale, Florida; Pendleton, Oregon; San Bernadino, California; Chicago, Illinois (four hearings in the greater Chicago area); Berea, Ohio; South Bend, Indiana; Salem, Massachusetts; and Madison, Wisconsin) at which more than 350 people testified. The extent of public comment and testimony throughout the country is evidence of the wide-ranging public interest in this rulemaking.

Because the vast majority of people reading this document will not have the benefit of having the NPRM at hand, a portion of the "Background" section which appeared in the proposed rule is being repeated here (with updated data, where appropriate) in order to provide the necessary perspective in which to view Congress' mandate and the resulting rule.

Approximately 4,000 times per year, a train and a highway vehicle collide at one of this country's 251,000 public and private highway-rail grade crossings. Of those crossings, more than 153,000 are public at-grade crossings—those crossings in which a public road crosses railroad tracks at grade. During the years 1997 through 2001, there were 17,601 grade crossing collisions in the United States. These collisions are one of the greatest causes of death associated with railroading, resulting in more than 400 deaths each year. For example, in the 1997–2001 period, 2,140 people died in these collisions. Another 6,615 people were injured. Approximately 50 percent of collisions at highway-rail intersections occur at those intersections equipped with active warning devices such as bells, flashing lights, or gates (approximately 62,000 crossings).

Compared to a collision between two highway vehicles, a collision with a train is forty times more likely to result in a fatality. The average freight locomotive weighs between 140 and 200 tons, compared to the average car weight of one to two tons. Many freight trains weigh in excess of ten thousand tons. Any highway vehicle, even a large truck, would be crushed when struck by a moving train. The laws of physics compound the likelihood that a motor vehicle will be crushed in a collision with a moving train. The train's weight, when combined with the likelihood that the train will not be able to stop to avoid a collision, results in the potential for severe injury or death in virtually every collision (it takes a one-hundred car train traveling 30 miles per hour approximately half a mile to stop—at 50 miles an hour that train's stopping distance increases to one and a third miles).

FRA is responsible for ensuring that America's railroads are safe for both railroad employees and the public. FRA shares with the public the responsibility to confront the compelling facts surrounding grade crossing collisions.

In 1990, as part of FRA's crossing safety program, the agency studied the impact of train whistle bans (*i.e.*, State or local laws prohibiting the use of train horns or whistles at crossings) on safety in Florida. (In this document the terms "whistle" and "horn" are used interchangeably to refer to the air powered locomotive audible warning device required to be installed on locomotives by 49 CFR 229.129, and to steam whistles required to be installed on steam locomotives by 49 CFR 230.121. These terms do not refer to a locomotive bell, which has value as a warning to pedestrians but which is not designed to provide a warning over long distances.) FRA had previously recognized the locomotive horn's contribution to rail safety by requiring that lead locomotives be equipped with an audible warning device, 49 CFR 229.129, and exempting the use of whistles from Federal noise emission standards "when operated for the purpose of safety." 49 CFR 210.3(b)(3). The Florida study, which is discussed below (and which has been filed in the docket), documented how failing to use locomotive horns can significantly increase the number of collisions.

2. Who Is at Risk in a Grade Crossing Collision?

Many people, including a number of commenters to the NPRM, have expressed the view that highway drivers who disobey the law and try to beat a train through a crossing should not be protected at the expense of the peace and quiet of communities that parallel railroad tracks. FRA agrees that drivers who unlawfully enter grade crossings should be punished in accordance with appropriate traffic laws. However, strong public policy reasons argue in favor of reasonable measures to protect all who are put at risk at grade crossings, even drivers who disregard warning devices.

Overlooked in this debate are the many innocent victims of crossing collisions, including automobile and railroad passengers and railroad crews who, despite performing their duties correctly, are usually unable to avoid the collisions. Nationally, from 1994 to 1998, eight railroad crewmembers died in collisions at highway-rail crossings, and 570 crewmembers were injured. A number of locomotive engineers have commented that they or their colleagues have had to deal with the trauma associated with helplessly watching people being killed beneath their trains. Two hundred railroad passengers were also injured and two died. In Bourbonnais, Illinois, in 1999, eleven passengers died in their sleeper car following a collision with a truck at a highway-rail crossing. In addition, since approximately one-half of all collisions occur at grade crossings that are not fully equipped with warning devices, some of the drivers involved in these collisions may have been unaware of the approaching train.

Property owners living near railroad rights-of-way can also be at risk. For example, on December 1, 1992, in Hiebert, Alabama, a freight train collided with a lumber truck. Three locomotives and nine rail cars were derailed, releasing 10,000 gallons of sulfuric acid into a nearby water supply. Residents living near the derailment site had to be evacuated because of the chemical spill. Even where the locomotive consist is not derailed in the initial collision with the highway vehicle, application of the train's emergency brake can result in derailment and harm to persons and property along the right-of-way.

Law-abiding motorists can also be endangered in crossing collisions. On March 17, 1993, an Amtrak train collided with a tanker truck in Fort Lauderdale, Florida. Five people died when 8,500 gallons of burning fuel from the tanker truck engulfed cars waiting behind the crossing gates.

Highway passengers can also be victims. On December 14, 1995, in Ponchatoula, Louisiana, five people were killed when their truck was hit by an Amtrak train. Among the dead were three children who were passengers in the truck.

In making a decision on the use of locomotive horns, all of the competing interests must be reasonably considered. Those whose interests will be affected by this rule include those who may be disturbed by the sounding of locomotive horns and all of those who may suffer in the event of a collision: pedestrians using the crossing, the motor vehicle driver and passengers, those in adjacent vehicles, train crews, and those living or working nearby.

3. FRA's Study of the Florida Train Whistle Ban

Effective July 1, 1984, Florida authorized local governments to ban the nighttime use of whistles by intrastate trains approaching highway-rail grade crossings equipped with flashing lights, bells, crossing gates, and highway signs that warned motorists that train whistles would not be sounded at night. Fla. Stat. section 351.03(4)(a) (1984). After enactment of this Florida law, many local jurisdictions passed whistle ban ordinances.

In August 1990, FRA issued a study of the effect of the Florida train whistle ban up to the end of 1989. The study compared the number of collisions at crossings subject to bans with four control groups. FRA was trying to determine the impact of the whistle bans and to eliminate other possible causes for any increase or decrease in collisions.

Using the first control group, FRA compared collision records for time periods before and during the bans. FRA found there were almost three times more collisions after the whistle bans were established, a 195 percent increase. If collisions continued to occur at the same rate as before the bans began taking effect, it was estimated that 49 post-ban collisions would have been expected. However, 115 post-ban collisions occurred, leaving 66 crossing collisions statistically unexplained. Nineteen people died and 59 people were injured in the 115 crossing collisions. Proportionally, 11 of the fatalities and 34 of the injuries could be attributed to the 66 unexplained collisions.

In the second control group, FRA found that the *daytime* collision rates remained virtually unchanged for the same highway-rail crossings where the whistle bans were in effect during nighttime hours.

The third control group showed that nighttime collisions increased only 23 percent along the same rail line at crossings with no whistle ban.

Finally, FRA compared the 1984 through 1989 accident record of the Florida East Coast Railway Company (FEC), which, because it was considered an "intrastate" carrier under Florida law, was required to comply with local whistle bans, with that of the parallel rail line of interstate carrier, CSX Transportation Company (CSX), which was not subject to the whistle ban law. By December 31, 1989, 511 of the FEC's 600 gate-equipped crossings were affected by whistle bans. Collision data from the same period were available for 224 similarly equipped CSX crossings in the six counties in which both railroads operate. As noted above, FRA found that FEC's nighttime collision rate increased 195 percent after whistle bans were imposed. At similarly equipped CSX crossings, the number of collisions increased 67 percent.

On July 26, 1991, FRA issued an emergency order to end whistle bans in Florida. Notice of that emergency order (Emergency Order No. 15) was published in the **Federal Register** at 56 FR 36190. FRA is authorized to issue emergency orders where an unsafe condition or practice creates "an emergency situation involving a hazard of death or injury." 49 U.S.C. 20104. FRA acted after updating its study with 1990 and initial 1991 collision records and finding that another twelve people had died and thirteen were injured in nighttime collisions at whistle ban crossings. During this time, a smaller study, conducted by the Public Utility Commission of Oregon, corroborated FRA's findings and led to the cessation of State efforts to initiate a whistle ban in Oregon.

FRA's emergency order required that trains operated by the FEC sound their whistles when approaching public highway-rail grade crossings. This order preempted State and local laws that permitted the nighttime ban on the use of locomotive horns.

Twenty communities in Florida petitioned for a review of the emergency order. During this review, FRA studied other potential causes for the collision increase. FRA's closer look at the issue strengthened the conclusion that whistle bans were the likely cause of the increase.

For example, FRA subtracted collisions that whistles probably would not have prevented from the collision totals. Thirty-five collisions where the motor vehicle was stopped or stalled on the crossing were removed from the totals. Eighteen of these collisions occurred before and 17 were recorded during the bans. When these figures were excluded, the number of collisions in the pre-ban period changed from 39 to 21, and the number of collisions in the post-ban period decreased from 115 to 98. Collisions which whistles could have prevented, therefore, totaled 98 collisions as compared to 21 collisions in the pre-ban period; this represents a 367 percent increase, compared to the 195 percent increase initially calculated.

Similarly, if collisions where the motor vehicle hit the side of the train were also excluded (nine in the pre-ban period and 26 in the post-ban period) as being unlikely to have been prevented by train whistles, the pre-ban collision count became 12 versus 72 in the whistle ban period. The increase in collisions caused by the lack of whistles then became 500 percent.

FRA's data, however, showed that, before the ban, highway vehicles on average, struck the sides of trains at the 37th train car behind the locomotive. After the ban took effect, 26 vehicles struck trains, and on average, struck the twelfth train car behind the locomotive. This indicated that motor vehicles are more cautious at crossings if a locomotive horn is sounding nearby. Before the whistle bans, highway vehicles tended to hit the side of the train after the whistling locomotive had long passed through the crossing. After the ban took effect, highway traffic hit the train much closer to the now silent locomotive—at the 12th car. The number of motor vehicles hitting the sides of trains also increased nearly threefold after the ban was established.

FRA also considered collisions involving double-tracked grade crossings where two trains might approach at the same time. Since a driver's view of the second train might be blocked, hearing the second train's whistle could be the only warning available to an impatient driver. FRA's Florida study found the number of second train collisions for the pre-ban period was zero, while four were reported for the period the bans were in effect.

Several Florida communities asked whether train speed increased collisions. FRA research has well established, as discussed below, that train speed is not a factor in determining the likelihood of a traffic collision at highway-rail crossings equipped with active warning devices that include gates and flashing lights. Speed, however, is a factor in determining the severity of a collision.

FRA also considered population growth in Florida, but found it was not a factor. Daytime collision rates were not increasing at the very same crossings that had whistle bans at night. If population was a factor, then the daytime numbers should have increased dramatically as well. FRA also reviewed the number of fatal highway collisions, and registered drivers and motor vehicles and found no increases that either paralleled or explained the rise in nighttime crossing collisions.

In the first two years after July 1991, when FRA issued its emergency order prohibiting whistle bans in Florida, collision rates dropped dramatically to pre-ban levels. In the two years before the emergency order, there were 51 nighttime collisions. In the two years after, there were only 16. Daytime collisions dropped slightly from 34 collisions in the two years before the emergency order, to 31 in the following two years.

4. FRA's Nationwide Study of Train Whistle Bans

FRA's Florida study raised the concern that whistle bans could be increasing collisions in other locations. Given the wide difference between grade crossing conditions from one community to another, FRA did not assume that the Florida results would be true at every whistle ban crossing. FRA began a nationwide effort to locate grade crossings subject to whistle bans and study collision information for those crossings. The Association of American Railroads (AAR) joined the FRA in that effort.

The AAR surveyed the rail industry and found 2,122 public grade crossings subject to whistle bans for some period of time between January 1988 and June 30, 1994. This total did not include the 511 public crossings that were subject to whistle bans in Florida that FRA had already studied.[1] The study also did not include crossings on small, short line railroads, and certain regional railroads which did not report to the AAR. The nationwide survey found whistle bans in 27 States that affected 17 railroads. FRA studied collisions occurring between January 1988, and June 30, 1994.

Two thousand and four of the crossings were subject to 24-hour whistle bans. Another 118 grade crossings were subject to nighttime-only bans. The States with the largest number of whistle ban crossings were Illinois, Wisconsin, Kentucky, New York, and Minnesota. More than half of the crossings were on three railroads: CSX, Consolidated Rail Corporation (Conrail), and Soo Line. A report covering the nationwide study was issued in April 1995. FRA found that whistle ban crossings averaged 84 percent more collisions than similar crossings with no bans. There were 948 collisions at whistle ban crossings during the period studied. Sixty-two people died in those collisions and 308 were injured. Collisions occurred on every railroad with crossings subject to whistle bans, and in 25 of the 27 States where bans were in effect.

Since the 1995 study, FRA continued to analyze relevant data. Over the period of 1992–1996, there were 793 collisions at 2,366 crossings subject to whistle bans. These collisions resulted in the fatalities and injuries displayed in Table 1, as well as more than $2 million in motor vehicle damages.

[1] The FEC crossings comprised virtually all of the whistle ban crossings in Florida. For simplicity, FRA elected to remove all Florida crossings from the national study. Since it became apparent from this initial national review that the FEC experience represented the high end of ban impacts, and since those impacts had been mitigated by E.O. 15 with respect to the later study period, FRA continued to remove both Florida ban crossings and Florida train horn crossings from all subsequent studies. Florida public crossings represent 2.6 percent of public crossings, so this omission should not materially affect the national analysis.

TABLE 1.—COLLISION INJURIES AND FATALITIES BY TYPE OF PERSON INVOLVED

Type of person involved	Injuries	Fatalities
Motorist	258	56
Pedestrian	17	41
Railroad employee	56	0

The types of collisions which took place at whistle ban crossings and the resulting casualties are shown in Table 2 (casualty figures in this table exclude casualties to railroad employees). It is interesting to note that the mean train speed (train speed is positively correlated with fatalities) varies by type of collision. Of the injuries and fatalities shown in Table 2, 11 injuries and 5 deaths occurred when the vehicle was hit by a second train.

TABLE 2.—TYPE OF COLLISION

Type of collision	Injuries	Fatalities	Mean train speed
Motor vehicle struck train	51	5	15.5
Train struck motor vehicle	224	89	25.4

The driver was killed in the collision in 42 instances (5.3 percent of collisions), the remaining 55 fatalities were either passengers or pedestrians. The driver passed standing vehicles to go over the crossing in 37 of the collisions (4.7 percent). The driver was more likely to be killed when moving over the crossing at the time of the collision (35 of the driver fatalities), rather than when the vehicle was stopped or stalled at the crossing, and in most of the collisions (69.9 percent) at whistle-ban crossings the driver was moving over the crossing. Additionally, in almost every collision (97 percent), a warning device (either active or passive) was located on the vehicle's side of the crossing. This supports the theory that the warning given by the train horn could deter the motorist from entering the crossing.

Collisions which took place when the motorist was moving over the crossing were more likely to be fatal (72 percent of the fatalities). This type of collision was also more likely to result in injury with 209 of the 258 motorist injuries occurring under these circumstances. These are the types of collisions the proposed rule is designed to prevent. Motorists that fail to notice or heed the warning devices in place at a crossing may be deterred by the sound of a train horn. The motorist is also given information by the horn about the proximity, speed, and direction of the train.

FRA's study indicated that the installation of automatic traffic gates at crossings with whistle bans was more than twice the national average. Forty percent of the whistle ban crossings had gates compared to 17 percent nationally.

FRA found 831 crossings where whistle sounding had at one time been in effect, but where the practice had changed during the January 1988 through June 1994 study period. In 87 percent of the cases, bans were no longer in effect. A "before-and-after" analysis comparing collision rates showed an average of 38 percent fewer collisions when whistles were sounded indicating that resuming use of the whistles had a .38 effectiveness rate in reducing collisions. This finding paralleled the Florida experience.

FRA also rated whistle ban grade crossings according to an "Accident Prediction Formula." The formula predicts the statistical likelihood of having a collision at a given highway-rail grade crossing. The physical characteristics of each crossing were considered in the formula, including the number of tracks and highway lanes, types of warning devices, urban or rural location, and whether the roadway was paved. Also considered were operational aspects, such as, the number of highway vehicles, and the number, type, time of day, and maximum speed of trains using the crossing. The formula was developed using data from thousands of collisions spanning many years. FRA then ranked the 167,000 public crossings in the national inventory at that time in an identical manner. Both the whistle ban crossings and the national inventory crossings were then placed into one of ten groups ranging from low-risk to high-risk.

FRA compared the number of collisions occurring within each of the ten groups of crossings, over a five year period from 1989 through 1993, and found that for nine out of the ten risk groups, the whistle ban crossings had significantly higher collision rates than the crossings with no whistle bans. On average, the risk of a collision was found to be 84 percent greater at crossings where train horns were silenced. Another way to interpret this difference would be to say that locomotive horns had a .46 effectiveness rate in reducing the rate of collisions.

FRA was concerned about the higher risk disclosed by the nationwide study. From its vantage point, FRA was able to see the elevated risk associated with whistle bans, which might not be apparent to local communities. While

crossing collisions are infrequent events at individual crossings, the nationwide study, and the experience in Florida, showed they were much less infrequent when train horns were not sounded.

FRA conducted an outreach program in order to promptly share this information with all communities where bans were in effect. In addition to issuing press releases and sending informational letters to various parties, FRA met with community officials and participated in town meetings. Along with the study's findings, information about the upcoming rule requiring the sounding of train horns was presented, including provisions for Supplemental Safety Measures (SSMs) that could be implemented by communities to compensate for silenced train horns and allow bans to remain in effect.

From the outreach effort, FRA gained a clearer understanding of local concerns and issues. Many of those concerns were expressed in person and others were submitted in writing to FRA's train horn docket. Another result of the outreach effort was the identification by communities and State and local governmental agencies of 664 additional crossings that were purportedly subject to whistle bans, but not included in the nationwide study. About 95 percent of these were located in the city and suburbs of Chicago, Illinois. Many carry a high volume of commuter rail traffic.

Prior to issuing the NPRM, FRA updated its analysis of safety at whistle ban crossings, expanding it to include data for all the Chicago Region crossings as well as for a few other newly identified locations.

FRA also refined its procedure by conducting separate analyses for three different categories of warning devices in place at the crossings (*e.g.*, automatic gates with flashing lights; flashing lights or other active devices without gates; and passive devices only, such as "crossbucks" or other signs). By separating crossings according to the different categories of warning devices installed, FRA was better able to identify the level at which locomotive horns increase safety at crossings with different types of warning devices and thus the level at which substitutes for the horn must be effective in order to fully compensate for the lack of a horn at those crossings. In addition, FRA excluded from the analysis certain collisions where the sounding of the train horn would not have been a deterrent to the collisions. These included cases where there was no driver in the vehicle and collisions where the vehicle struck the side of the train beyond the fourth locomotive unit (or railcar). FRA also excluded events where pedestrians were struck. Pedestrians, compared to vehicle operators, have a greater opportunity to see and recognize an approaching train because they can look both ways from the edge of the crossing, closer than the motorist sitting at least a car hood length or more back from the edge. They can also stop or reverse their direction more quickly than a motorist if they have second thoughts about crossing safely.

Data for the five-year time period from 1992 through 1996 were used for the updated analysis in place of the older data of the 1995 Nationwide Study. For the updated analysis, the collision rate for whistle ban crossings in each device category was compared to similar crossings in the national inventory using the ten-range risk level method used in the original study.

The analysis showed that an average of 62 percent more collisions occurred at whistle ban crossings equipped with automatic gates and flashing lights than at similarly equipped crossings across the nation without bans. For purposes of the NPRM, FRA used this value as the increased risk associated with whistle bans instead of the 84 percent cited in the Nationwide Study of Train Whistle Bans released in April 1995. FRA determined that 62 percent was appropriate because it represents the elevated risk associated with crossings with automatic gates and flashing lights, which is the only category of crossings that will be eligible under this rule for new "quiet zones" (except for certain crossings where train speeds do not exceed 15 miles per hour).

The updated analysis also indicated that whistle ban crossings without gates, but equipped with flashing light signals and/or other types of active warning devices, on average, experienced 119 percent more collisions than similarly equipped crossings without whistle bans. This finding made clear that the train horn was highly effective in deterring collisions at non-gated crossings equipped only with flashing lights. The only exception to this finding was in the Chicago Region where collisions appeared from available data to be 16 percent less frequent. This will be discussed in greater detail below.

In comparing the collision differences at crossings with gates and those without gates, FRA found that about 55 percent of the collisions at crossings with gates occurred when motorists deliberately drove around lowered gates. These collisions occurred 128 percent more often at crossings with whistle bans than at other crossings. Another 18 percent of the collisions occurred while motorists were stopped on the crossings, probably waiting for vehicles ahead to move forward. There were smaller percentages of collisions involving stalled and abandoned vehicles. Suicides are not included in the collision counts. At crossings equipped with flashing signal lights and/or other active warning devices, but not gates, collisions occurred 119 percent more often at crossings subject to bans. A distinction should be made between the two circumstances. In the case of lowered gates, it is the motorist's decision to circumvent a physical barrier to take a clearly unsafe and unlawful action that can result in a collision. However, in the case of crossings with flashing light signals and/or other active devices, collisions may be more the result of a motorist's error in judgment rather than a deliberate violation of the State's motor vehicle laws. The ambiguity of flashing lights at crossings, which in other traffic control situations indicate that the motorist may proceed after stopping, when safe to do so, coupled with the difficulty of correctly judging the rate of approach of a large object such as a locomotive, may contribute to this phenomenon. FRA's collision data suggested that the added warning provided by the train horn is most critical at crossings without gates but which are equipped with other types of active warning devices.

By separating crossings according to the different categories of warning devices installed, FRA was better able to identify the level at which locomotive horns increase safety at gated crossings and thus the level at which substitutes for the horn must be effective in order to fully compensate for the lack of a horn at those crossings.

For crossings with passive signs as the only type of warning device, the updated study indicated an average of 27 percent more collisions for crossings subject to whistle bans. This is the smallest difference identified between crossings with and without whistle bans. These crossings account for about one fourth of the crossings with whistle bans. Typically, they are the crossings with the lowest aggregate risk of collision because the installation of active warning devices usually follows a sequence where the highest risk crossings are equipped first. Two determinants of crossing risk are the amount of train traffic and highway traffic at a crossing. Often, crossings with only passive warning devices are located on seldom used sidings and industrial tracks and/or on roadways with relatively low traffic levels. FRA believes this may be the reason that the difference in the numbers of collisions at whistle ban and non-ban crossings is so much less than for the other crossing categories. For crossings with passive warnings where trains do not exceed 15 miles per hour and where railroad personnel use flags to warn motorists of the approach of a train, whistle bans would entail a small risk of a collision resulting in an injury. However, at crossings with passive warnings and with higher train speeds, motorists would have no warning of the approach of a train if the train horn were banned. At such crossings, in order to ensure their safety, motorists must search for and recognize an approaching train, and then visually judge whether it is moving, and if so, estimate its arrival time at the crossing, all based only on visual information which may be impaired by hills, structures, vegetation, track curvature, and road curvature as well as by sun angle, weather conditions, or darkness. The driver's decision to stop must be made at a point sufficiently in advance of reaching the crossing to accommodate the vehicle's stopping distance. If other vehicles are following, a sudden decision to stop could result in a rear-end collision with the vehicle being pushed into the path of the train. While FRA's data indicated that the smallest increase in collision frequency is associated with whistle bans at passive crossings, logic suggested that the banning of train horns at passive crossings could entail a much more significant safety risk per unit of exposure (vehicle crossings per train movement). Without the audible train horn warning, motorists would have no indication of the imminent arrival of a train beyond what they could determine visually. For motorists unfamiliar with whistle bans who encounter passive crossings where horns are not sounded, there would be an even greater risk.

5. Statutory Mandate

After reviewing FRA's Florida study, Congress addressed the issue. On November 2, 1994, Congress passed Public Law 103–440 ("Act") which added § 20153 to title 49 of the United States Code. (Subsections (I) and (j) were added on October 9, 1996 when § 20153 was amended by Public Law 104–264.) The Act requires the use of locomotive horns at public grade crossings, but gives FRA the authority to make reasonable exceptions. Section 20153 of title 49 of the United States Code states as follows:

"Section 20153. Audible warning at highway-rail grade crossings.

"(a) Definitions.—As used in this section—

"(1) the term "highway-rail grade crossing" includes any street or highway crossing over a line of railroad at grade;

"(2) the term "locomotive horn" refers to a train-borne audible warning device meeting standards specified by the Secretary of Transportation; and

"(3) the term "supplementary safety measure" (SSM) refers to a safety system or procedure, provided by the appropriate traffic control authority or law enforcement authority responsible for safety at the highway-rail grade crossing, that is determined by the Secretary to be an effective substitute for the locomotive horn in the prevention of highway-rail casualties. A traffic control arrangement that prevents careless movement over the crossing (*e.g.*, as where adequate median barriers prevent movement around crossing gates extending over the full width of the lanes in the particular direction of travel), and that conforms to standards prescribed by the Secretary under this subsection, shall be deemed to constitute an SSM. The following do not, individually or in combination, constitute SSMs within the meaning of this subsection: standard traffic control devices or arrangements such as reflectorized crossbucks, stop signs, flashing lights, flashing lights with gates that do not completely block travel over the line of railroad, or traffic signals.

"(b) Requirement.—The Secretary of Transportation shall prescribe regulations requiring that a locomotive horn shall be sounded while each train is approaching and entering upon each public highway-rail grade crossing.

"(c) Exception.—(1) In issuing such regulations, the Secretary may except from the requirement to sound the locomotive horn any categories of rail operations or categories of highway-rail grade crossings (by train speed or other factors specified by regulation)—

"(A) that the Secretary determines not to present a significant risk with respect to loss of life or serious personal injury;

"(B) for which use of the locomotive horn as a warning measure is impractical; or

"(C) for which, in the judgment of the Secretary, SSMs fully compensate for the absence of the warning provided by the locomotive horn.

"(2) In order to provide for safety and the quiet of communities affected by train operations, the Secretary may specify in such regulations that any SSMs must be applied to all highway-rail grade crossings within a specified distance along the railroad in order to be excepted from the requirement of this section.

"(d) Application for Waiver or Exemption.—Notwithstanding any other provision of this subchapter, the Secretary may not entertain an application for waiver or exemption of the regulations issued under this section unless such application shall have been submitted jointly by the railroad carrier owning, or controlling operations over, the crossing and by the appropriate traffic control authority or law enforcement authority. The Secretary shall not grant any such application unless, in the judgment of the Secretary, the application demonstrates that the safety of highway users will not be diminished.

"(e) Development of Supplementary Safety Measures.—(1) In order to promote the quiet of communities affected by rail operations and the development of innovative safety measures at highway-rail grade crossings, the Secretary may, in connection with demonstration of proposed new SSMs, order railroad carriers operating over one or more crossings to cease temporarily the sounding of locomotive horns at such crossings. Any such measures shall have been subject to testing and evaluation and deemed necessary by the Secretary prior to actual use in lieu of the locomotive horn.

"(2) The Secretary may include in regulations issued under this subsection special procedures for approval of new SSMs meeting the requirements of subsection (c)(1) of this section following successful demonstration of those measures.

"(f) Specific Rules.—The Secretary may, by regulation, provide that the following crossings over railroad lines shall be subject, in whole or in part, to the regulations required under this section:

"(1) Private highway-rail grade crossings.

"(2) Pedestrian crossings.

"(3) Crossings utilized primarily by nonmotorized vehicles and other special vehicles.

"(g) Issuance.—The Secretary shall issue regulations required by this section pertaining to categories of highway-rail grade crossings that in the judgment of the Secretary pose the greatest safety hazard to rail and highway users not later than 24 months following the date of enactment of this section. The Secretary shall issue regulations pertaining to any other categories of crossings not later than 48 months following the date of enactment of this section.

"(h) Impact of Regulations.—The Secretary shall include in regulations prescribed under this section a concise statement of the impact of such regulations with respect to the operation of section 20106 of this title (national uniformity of regulation).

"(I) Regulations.—In issuing regulations under this section, the Secretary—

"(1) shall take into account the interest of communities that—

(A) have in effect restrictions on the sounding of a locomotive horn at highway-rail grade crossings; or

(B) have not been subject to the routine (as defined by the Secretary) sounding of a locomotive horn at highway-rail grade crossings;

"(2) shall work in partnership with affected communities to provide technical assistance and shall provide a reasonable amount of time for local communities to install SSMs, taking into account local safety initiatives (such as public awareness initiatives and highway-rail grade crossing traffic law enforcement programs) subject to such terms and conditions as the Secretary deems necessary, to protect public safety; and

"(3) may waive (in whole or in part) any requirement of this section (other than a requirement of this subsection or subsection (j)) that the Secretary determines is not likely to contribute significantly to public safety.

"(j) Effective Date of Regulations.—Any regulations under this section shall not take effect before the 365th day following the date of publication of the final rule."

6. Issuance of Interim Final Rule

FRA is issuing today's rule as an interim final rule, rather than as a final rule. An interim final rule has the same force and effect as a final rule, but differs from a final rule in one principal way—when an interim final rule is issued, comments are solicited and the agency reserves the right to make changes to the rule in response to the comments received. Because the rule issued today is a logical outgrowth of the NPRM, FRA could have issued it as a final rule. Both the NPRM and interim final rule issued today permit exceptions to the use of the locomotive horn, address the need to mitigate the risk associated with lack of the locomotive horn, provide for implementation of SSMs and ASMs, and address mitigation of risk on a corridor-wide, rather than individual grade crossing basis. Like one major provision of the NPRM, the interim final rule bases the determination of a corridor's risk mitigation goal on FRA's Accident Prediction Formula (APF). However, the interim final rule adds a level of further sophistication to the formula by considering collision severity and permitting quiet zones in part based on a corridor's relationship to a national crossing risk index derived from this severity-weighted APF. A large number of commenters complained that FRA did not sufficiently take into consideration safety history at the crossing. While the APF does take into consideration such past record, the interim final rule builds on the NPRM and resulting comments by placing more weight on the safety record at crossings within a corridor and permitting exceptions based on that safety record. The result—that some quiet zones may be established without the need to implement SSMs or ASMs if the corridor does not pose a significant risk based on a national standard—flows logically from the NPRM's use of the APF and the commenters' clear request to make the entire rule more risk based.

Even though this rule could be issued as a final rule, FRA has determined that the public should have an opportunity to comment on the rule as changed. Because the language in some sections has been revised, FRA, and the final rule, will benefit from the input of the public; FRA has found in the past that public comments often contain suggestions that can improve a regulatory document. Therefore, comments are being solicited on all aspects of this rule [see "Public Participation" section]. FRA will review the comments and reserves the right to make revisions when issuing a final rule.

7. Effective Date of This Rule

Because this interim final rule has all the legal attributes of a final rule, the effective date of this rule will be December 18, 2004. Congress specifically provided for this one year delay; subsection (j) of § 20153, which was added to the basic rulemaking mandate in 1996, provides that *any* regulations issued under that section shall not take effect before the 365th day following the date of publication of the final rule. Issuing this interim final rule rather than a final rule will not penalize those communities which have waited a number of years for issuance of a rule permitting the creation of quiet zones. They will still be able to establish quiet zones on the same schedule as if a final rule were issued today. Alternatively, issuance of this rule in the form of an interim final rule will not have a significant negative effect on those communities with present whistle bans. FRA has specifically included in the rule sufficient time for those communities to conform to any changes that may be made to the interim final rule in order to enable them to retain their whistle-free crossings.

However, we don't believe Congress intended that FRA delay administrative actions such as working with public authorities and reviewing applications for quiet zones in order to permit communities to institute quiet zones at the earliest possible date after the one year required delay has elapsed. Accordingly, FRA will accept quiet zone applications from public authorities during the one year delay period. While this interval should enable public authorities to begin planning, they should also be aware that the final rule may contain changes based on comments to this interim final rule. Because of this uncertainty, FRA will make every effort to issue a final rule expeditiously after the close of the comment period.

8. Rule Summary

The following very brief summary of this interim final rule is provided for the reader's convenience. Because this is merely a summary, it should not be relied on for definitive information regarding compliance with this rule.

- This rule applies to all railroads that operate on the general railroad system of transportation. The rule does not apply to freight railroads and tourist and scenic railroads which are not on the general railroad system. It does not apply to rapid transit systems in urban areas that are not connected to the general railroad system of transportation. Rapid transit operations sharing tracks with general system railroads at crossings, or sharing crossings with general system railroads are connected to the general system at the crossings and are thus subject to part 222; however, rapid transit operations are not subject to the horn volume requirements of part 229.
- Locomotive horns must be sounded while approaching and entering upon each public highway-rail grade crossing. The horn sound level must be a minimum of 96 dB(A) and no louder than 110 dB(A) measured 100 feet in front of the locomotive and 15 feet above the rail. All locomotives must sound the horn in the standard sequence of two longs, one short, and one long starting at least 15 seconds, but no more than 20 seconds before reaching the grade crossing, however, in no case may the horn be sounded more than ¼ mile before the crossing.
- A railroad may, with certain exceptions, decide to not sound the locomotive horn at a crossing if the locomotive speed is 15 miles per hour or less and train crew members or equipped flaggers flag the crossing to provide warning of the approaching train to motorists.
- A quiet zone is at least ½ mile in length, although Pre-Rule Quiet Zones may continue unchanged. Except for certain exceptions listed in the rule, each public crossing within a New Quiet Zone must at a minimum be equipped with flashing lights, gates, and signs warning of the absence of locomotive horns. Each public crossing within a Pre-Rule Quiet Zones may retain, but must not downgrade the warning systems in place.
- This rule does not cover horn use at private crossings outside of quiet zones. Their use will continue to be governed by State and local laws and private agreements. However, if a private crossing is within a quiet zone, horn use is restricted at that crossing.
- The rule provides for two types of quiet zones—Pre-Rule Quiet Zones (consecutive crossings where horns were silenced by State or local law or by formal or informal agreement, and which were in existence as of October 9, 1996 and on December 18, 2003, and New Quiet Zones (quiet zones established under the terms of this rule and which do not qualify as Pre-Rule Quiet Zones).
- A quiet zone may be established using SSMs, or in certain cases, ASMs, in two ways: (a) By designation by a public authority (which is the public entity responsible for safety and maintenance of the roadway crossing the railroad tracks at a public highway-rail grade crossing); or (b) by application to FRA.
- A quiet zone may be designated if (a) supplementary safety measures are applied to every public grade crossing within the quiet zone; (b) the Quiet Zone Risk Index is at, or below, the Nationwide Significant Risk Threshold; or (c) supplementary safety measurers are instituted which reduce the Quiet Zone Risk Index to a level at, or below, the Nationwide Significant Risk Threshold, or to the risk level which would exist if locomotive horns sounded at all crossings within the quiet zone. The public authority has discretion as to how the Quiet Zone Risk Index is reduced, and may choose the type of SSM to be applied and the crossings at which they are to be applied in complying with either (a), (b), or (c).
- If a public authority, for whatever reason, cannot comply with the requirements of quiet zone designation, it may apply to FRA for approval to establish a quiet zone using a combination of SSMs, or ASMs (which includes modified SSMs). As in quiet zone designation, the public authority has discretion as to which SSMs or ASMS to apply and where they are to be applied. However, in this case, the public authority's proposal is reviewed by FRA. If FRA determines that the safety improvements will compensate for the absence of the locomotive horn or that the safety improvements will reduce risk to a level at, or below the Nationwide Significant Risk Threshold, a quiet zone may be established.
- A Pre-Rule Quiet Zone will be considered approved and may remain in effect if the quiet zone could qualify for quiet zone designation if it were a New Quiet Zone based on having a Quiet Zone Risk Index at, or below, the Nationwide Significant Risk Threshold or if there haven't been any relevant collisions at the public crossings within the quiet zone for the past 5 years and the Quiet Zone Risk Index was less than twice the Nationwide Significant Risk Threshold.
- If a Pre-Rule Quiet Zone cannot comply with the requirements for a quiet zone designation as discussed above, the existing horn restrictions may continue on an interim basis. The restrictions may continue for five years if within, three years after publication of this rule, the public authority files with FRA a detailed plan for maintaining the Pre-Rule Quiet Zone (or establishing a New Quiet Zone). Horn restrictions may continue for an additional three years beyond the five-year period if the appropriate State agency provides FRA with a comprehensive statewide implementation plan and physical improvements are made within the quiet zone, or in a quiet zone elsewhere within the State, within three years and four years after publication respectively.
- FRA will annually review every quiet zone established by comparing the Quiet Zone Risk Index to the Nationwide Significant Risk Threshold. If the Quiet Zone Risk Index as last calculated by FRA is at, or above, twice the Nationwide Significant Risk Threshold, or if the Quiet Zone Risk Index is above the Nationwide Significant Risk Threshold, but is lower than twice the Nationwide Significant Risk Threshold *and* a relevant collision occurred at a crossing within the quiet zone within the preceding five calendar years, the quiet zone will terminate six months after the date of receipt of notification from FRA of the Nationwide Significant Risk Threshold level, unless the public authority files plans to implement SSMs or ASMs within six months and implements such SSMs or ASMs within three years.
- Wayside horns may be installed within a quiet zone if the public authority determines that it is appropriate to do so. Wayside horns may also be used outside of quiet zones in lieu of locomotive horns at crossings equipped with automatic flashing lights and gates. (Wayside horns have not yet been classified by FHWA as traffic control devices. If FHWA does classify them as traffic control devices, the wayside horn must also be approved in the Manual on Uniform Traffic Control Devices (MUTCD) or FHWA must approve experimentations pursuant to section 1A.10 of the MUTCD.)

9. Overview of the Interim Final Rule: Principles, Strategies, and Major Outcomes

A. Usefulness of the Train Horn

This rulemaking was mandated by law, but its impetus derives from a clearly defined safety need. A majority of the States and all railroads have mandated use of the train horn to provide an audible warning at highway-rail crossings. FRA research and analysis, both prior to institution of this rulemaking and during its pendency, has confirmed the beneficial safety impact of the train horn. The National Transportation Safety Board (NTSB) has also supported the need for this warning to motorists.

FRA understands the point made by commenters that the horn cannot be relied on to prevent every accident, and the data confirm that. Nevertheless, the horn is one cue that is often available to the motorist at the decision point; and it should not be withheld absent serious thought about the consequences. There are some circumstances (*e.g.*, restricted view) in which the train horn may be the best, and most convincing, warning to the motorist. Each year a good portion of the accidents at crossings occur when motorists are not convinced by even flashing warning lights and downed gates, and they drive around the gates and are struck by the train they neither saw nor heard. The train horn, which announces that there is, in fact, a train coming now (not switching cars down the track somewhere out of danger) may often be the most effective warning.

FRA understands the sense of frustration among law-abiding citizens who feel that they should not be burdened by train horn noise (or the cost of alternatives) because other citizens violate traffic laws at highway-rail crossings equipped with flashing lights and gates. FRA is a strong proponent of law enforcement at

highway-rail crossings. However, the statute clearly contemplates that motorists will be given the additional, often final warning that the train horn provides (or that other safety measures will be instituted), even where warning systems employing flashing lights and gates are present. Further, as a matter of policy, FRA believes that it is appropriate to protect even the unwise from the consequences of their misdeeds where those consequences are especially severe—and where society as a whole may bear the burden of those consequences.

As noted elsewhere in this preamble, victims of collisions at highway-rail crossings are not limited to reckless or intoxicated drivers. Indeed, in many cases victims are innocent passengers who have had no control whatsoever over the driver's behavior.

Even though collisions at highway-rail crossings are far more severe in their consequences than the average highway accident, most victims survive. Many incur substantial medical bills and require extended rehabilitation. Costs are borne by the general public through health and disability insurance arrangements, and through higher costs of goods and services provided by employers who must extend sick leave and other benefits. In this regard, many costs associated with casualties that occur in whistle ban jurisdictions are in effect hidden taxes on persons outside those communities over which these costs are spread. From an economic standpoint, the community enjoys its quiet and, unless measures have been taken to compensate for the silencing of the horn, someone else pays for most of it.

Finally, there can be victims on the trains and in the general community, as well. Collisions between trucks and heavy trains can cause the injury or even death of train crew members. Some collisions at crossings cause trains to derail (the risk is significant when a heavy truck is involved), and cars containing hazardous materials are found in a high percentage of trains. Release of hazardous materials in a community can result in evacuations, property damage and even injury or death. When the collision involves a passenger train, the potential exists for harm to passengers, as well as crew members. Commenters were correct in noting that such events are rare, but the potential for catastrophic event is real; and an important role for safety regulation is to anticipate and mitigate these sorts of risks.

In summary, we all have a stake in preventing collisions at highway-rail crossings; and there is no practical way to transfer all costs to the driver who fails to obey the law, even if that were a desirable thing.

In general, these principles appear to be accepted outside of whistle ban jurisdictions. Train horns continue to sound today at over 98 percent of public highway-rail crossings, and over 9 million Americans living and working along rail lines are incidentally exposed to the "noise" from this source. Most communities and residents appear to tolerate these interruptions reasonably well.

B. Incompatibility of Horn Noise With Community Needs

However, two general trends appear to have converged in a manner that is antithetical to community acceptance of train horn noise under certain conditions. First, as a Nation we are becoming more sensitive to disruptive sources of noise in our environment. This reflects success in building quieter communities and in engineering noise out of daily life (through zoning, building codes, better design of motor vehicles, etc.). Second, as a result of the consolidation of the national rail system since the 1970s, rail traffic has been concentrated on fewer lines, resulting in more train movements through those communities where main lines continue to be operated. Particularly when the train horn is sounded, the number of train movements is clearly a significant factor in the "noise load" imparted to the community.

For various reasons, there has been a growth in the number of ordinances and arrangements under which train horns are silenced ("whistle bans"). Further, in many communities where State law currently does not permit whistle bans, relief from the noise associated with train horns is being actively sought by residents and their elected representatives. Fear of losing existing bans, and the desire to silence train horns in some areas without existing bans, have combined to create significant public interest in this proceeding.

The situation of existing whistle ban communities is particularly vexing, because public and private planning decisions have been made with the assumption that horns will be banned. Commenters in the Chicago Region[2] also called attention to the conflict between sound urban planning, which promotes construction of high density housing near a commuter railroad stations, and very frequent use of the train horn on the extremely active rail lines in that region.

Unfortunately, there is no known strategy for providing audible warning to motorists without also spreading unwanted noise into communities. (The wayside horn can reduce the amount of unwanted noise, but not eliminate it entirely.) Future research may permit refinement of the multi-frequency pattern of contemporary train horns, but FRA has no present information that suggests a means of providing a clearly identifiable and urgent signal in a motor vehicle using a sound that is pleasing to nearby residents.

C. Crafting Exceptions to Use of the Train Horn

The statute provides direction for adjusting the competing interests of safety and community quiet. Although the statute says unequivocally, "The Secretary of Transportation shall prescribe regulations requiring that a locomotive horn shall be sounded while each train is approaching and entering upon each public highway-rail grade crossing," most of the language of the statute has the effect of explaining how exceptions might be crafted. The statute continues:

(1) In issuing such regulations, the Secretary may except from the requirement to sound the locomotive horn any categories of rail operations or categories of highway-rail grade crossings (by train speed or other factors specified by regulation)—

(A) that the Secretary determines not to present a significant risk with respect to loss of life or serious personal injury;

(B) for which use of the locomotive horn as a warning measure is impractical; or

(C) for which, in the judgment of the Secretary, SSMs fully compensate for the absence of the warning provided by the locomotive horn.

The last of these exceptions—substitution of supplementary (or alternative) safety measures—was at the heart of the NPRM and remains the best means of reconciling safety and community quiet. As explained below, this interim final rule seeks to make the list of other safety measures as flexible and cost effective as possible.

The second exception, which refers to a determination of impracticability, is a criterion of limited application. It is impractical to provide effective warning by sounding the horn if it is necessary to back a mile-long train over a crossing (so the crossing needs to be flagged), and it is impractical to provide a warning of suitable duration prior to the train's arrival in the case of a 110 mph passenger train (so active warning devices and a "sealed corridor" strategy are strongly recommended, whether or not the horn is used). But in most other scenarios, the train horn will serve its purpose if sounded. Some commenters invited FRA to consider the cost of SSMs as a test of impracticability, but that is really a policy or political objection, not one going to the practicability of sounding the train horn and thereby alerting the motorist. FRA believes that the suggested reading of "impractical" is not appropriate and would result in an enormous increase in safety risk by permitting train horns to be banned routinely without the need to take compensating measures.

The first exception, absence of "significant risk with respect to loss of life or serious personal injury," was relied upon in the NPRM only with respect to very limited circumstances (but comments were solicited regarding other options). As a result of testimony and written comments received from the public, including elected and appointed representatives of State and local governments, FRA has reviewed in some detail whether this criterion should be given greater effect in the final rule. The statute clearly does not require the exclusion of all risk, and FRA agrees that it is best to interpret and implement this exception, if possible, in a manner that is not in conflict with the general approach taken by the Congress and the Department of Transportation (DOT) with respect to other safety laws and regulations addressing public safety.

In general, DOT and other Executive Branch departments and agencies must consider costs and benefits before issuing regulations. This is true even where statutes have mandated that rules on particular topics be issued, because in most cases the Congress has left the means of implementation to the agencies. The present rulemaking involves a much more specific mandate than typically embodied in safety legislation. Nevertheless, FRA did consider costs and benefits in crafting the proposed rule (and found that, overall, investments in safety systems used as a substitute for the horn would be recovered). However, in the NPRM, FRA did not focus sharply on the costs and benefits for those communities where the underlying risk of a casualty-producing collision is comparatively low. Some commenters in areas with existing bans responded with the criticism to the effect that, while some other community might recover its costs, for the particular community the existing risk at crossings is very low and no expenditure is warranted.

In this interim final rule FRA has sought to afford greater recognition to situations where the risk of serious injury is low. In so doing, FRA has been conscious of the need to ensure public funds are expended on improvements that have significant value in holding down casualty risk. FRA has also been conscious of the fact that there may be, at least in the short term, an "opportunity cost" associated with the decision to spend scarce tax dollars on SSMs in order to maintain community quiet, rather than other uses. (In acknowledging this point, FRA notes that this is not a zero sum exercise because the avoidance of accident consequences is an economic benefit to the community.)

FRA recognizes that there is no way to achieve what would be perceived as perfect justice for communities in this proceeding, any more than it is possible to eliminate all risk to persons. However, FRA has concluded that the risk assessment method selected for this proceeding should—

- Permit exceptions to use of the train horn based on absence of significant risk, in most cases avoiding expenditures that would not be recovered through accident and casualty reduction;
- Require use of the train horn where risk is clearly significant, unless SSMs and ASMs are implemented to abate the excess risk associated with silencing the train horn; and
- Respond to changes in rail operations and communities as data becomes available to update the relevant computations.

The particular means chosen by FRA to identify significant risk is the creation of a risk index by which prospective quiet zones can be rated in relation to one another and in relation to selected criteria. The method (which is more fully explained below) is applicable to quiet zones created both where there are existing bans and elsewhere. In considering how to approach this problem, FRA elected to start with the current Accident Prediction Formula (APF), which uses data elements available from the national inventory of highway-rail crossings and the FRA Railroad Accident-Incident Reporting System. The APF was developed by the Volpe National Transportation Systems Center for FRA and the Federal Highway Administration, and it is maintained in current form to support initial identification of crossings that are candidates for safety improvements using Federal funds. Many States use this formula or similar formulas to rank crossings for this purpose.

The strength of the formula is in its ability to combine empirically-derived insights about risk, based on common characteristics of crossings and the accident history of the individual crossings under study. As such, it is reasonably successful in predicting where accidents will occur. As with any model of this type designed to study relatively rare events, the model is more successful in predicting results for a group of crossings with at least some similar characteristics (*e.g.*, several crossings in a proposed quiet zone) than for a single crossing.

Risk is defined as the product of probability (frequency) and severity (consequences), so the APF prediction of the likely number of accidents by itself is not enough. However, the suite of APF tools includes calculations that permit estimations of the likelihood that a predicted accident will result in injury or death to one or more persons. FRA has taken advantage of these tools to estimate the likely frequency of relevant (casualty-producing) collisions. To determine the likely number of injuries and fatalities in predicted accidents, FRA has employed the averages from historical accidents. In order to combine the consequences of non-fatal and fatal injury, FRA has used relational values derived from cost-benefit practice (in which the avoidance of a fatality is assigned a societal value based on established government guidelines, and both less serious and more serious non-fatal casualties are then assigned a value proportional to the value of avoiding a fatality). The result is a risk index value for each crossing.

From the inception of this rulemaking (indeed, beginning with the issuance of Emergency Order 15 in 1991), FRA has sought to address the issue of quiet zones (contiguous rail corridors of reasonable length having one or more crossings) rather than individual crossings. FRA has noted that a crossing-by-crossing approach would not serve community interests, given the distance over which the horn must be sounded and given the proximity of crossings in most communities. Corridor planning permits risk reduction to be taken at the lowest possible cost, and it encourages consolidation of crossings through closure of redundant or very hazardous crossings. Further, locomotive engineers have increasingly demanding jobs and should not be distracted by the task of picking out individual crossings along their route where the horn must or must not be used. There were no comments in this proceeding that effectively questioned this rationale, and there was substantial support for it.

[2] The Chicago area, or Chicago Region, is comprised of 6 counties: Cook, DuPage, Lake, Kane, McHenry, and Will.

As a result, FRA has adhered to the corridor approach in this interim final rule, so use of the risk index is specified to be at the corridor (quiet zone) level. The basic logic of the method is as follows:

- Estimate the probability of injuries or fatalities at each crossing using the APF formulas;
- Aggregate the risk from all crossings in the proposed quiet zone; and
- Divide the risk by the number of crossings,
- Yielding a risk estimate for the proposed quiet zone.

This approach must be adjusted if the proposed quiet zone was not subject to an historical whistle ban, since the effect of silencing the train horn would be to drive up risk. As more fully explained below, with limited exceptions the adjustments necessarily rely on national averages of train horn effectiveness.

This risk index approach permits an objective comparison of the situations in various communities, taking into account the actual accident experience to date. FRA is aware that there are limitations to the method. For instance, (i) the APF does not take into consideration every possible factor relevant to risk, (ii) data driving the predictions are largely from the great majority of crossings where the horn is used, (iii) a significant component of risk inherent in the formula outputs is not as relevant to evaluation of train horn risk (*i.e.*, pedestrian casualties), and (iv) adjustments to the index based on excess risk associated with silencing the horn will understate risk in some cases and overstate risk in other cases. However, FRA is not aware of a more useful methodology for evaluating comparative risks at grade crossings, and none of the limitations appears to substantially vitiate its value for this purpose.

In examining options for this interim final rule, FRA applied this methodology to known whistle ban crossings, grouping them by railroad and political jurisdiction pairs, with some segmentation to recognize that more than one rail line was present or that operational characteristics of the railroad changed markedly (*e.g.*, at a junction). As reported in more detail below, the results show that there are material differences in corridor risk among the existing "whistle ban jurisdictions" (on an average per-crossing basis).

FRA then performed the same calculation for all train horn crossings in the nation that are equipped with flashing lights and gates and derived an average for those crossings, which is referred to in this rule as the Nationwide Significant Risk Threshold. This measure provides a statistical tipping point by which crossings nationwide can be compared to determine the significance of the risk present. FRA's rationale for selecting this threshold as a basis of comparison was that if certain proposed quiet zones pose less risk (even when adjusted for the absence of the train horn) than the average corridor where the train horn is sounded, then the risk of not sounding the train horn in those locations might reasonably be characterized as insignificant.

During the public comment cycle, FRA also heard repeatedly from existing whistle ban communities where, it was reported, there had been no accidents for many years (or none likely attributable to the absence of an audible warning). FRA recognized that, since highway-rail crossing accidents are rare events, the absence of accidents within a period of a few years might say little about underlying risk. At the same time, FRA was aware that some communities have made a real effort to stress law enforcement and public awareness; and it seemed desirable to provide some additional flexibility to communities that have not experienced a recent accident of the kind relevant to the circumstances addressed in this rulemaking. So FRA posited that it should be reasonable to subject accident-free existing whistle ban jurisdictions to a test that might be a multiple of the Nationwide Significant Risk Threshold (NSRT). A multiple of two was selected for analysis.

In order to determine the implications of this methodology, including the two proposed thresholds, FRA applied the risk index method to existing whistle ban jurisdictions (WBJs) retrospectively. Employing accident data for 1990 through 1994 and grade crossing inventory information as of January 1, 1995, FRA categorized these WBJs by Crossing Corridor Risk Indices (CCRI) relative to the two thresholds: (1) CCRI less than NSRT, (2) CCRI greater than the NSRT with relevant collisions between 1990 and 1994, (3) CCRI between the product of one and two times the NSRT and no relevant collisions between 1990 and 1994, (4) CCRI greater than the product of two times the NSRT and no relevant collisions between 1990 and 1994. FRA posited that jurisdictions above the relevant thresholds (*i.e.*, those above the Nationwide Significant Risk Threshold with relevant collisions in the preceding five years, or with no relevant collisions but above twice the Nationwide Significant Risk Threshold) would be required to make investments to abate risk, while those below would not. To simulate the safety impacts of this approach, FRA analyzed the effect based on an artificial rule issuance date of January 1, 1995, with an effective date of January 1, 1996. FRA then analyzed actual collision history for the crossings in each category for the period 1996 through 2000.

The results (reported in detail below and on the FRA Web site) were then compared with the Nationwide Significant Risk Threshold and a value equal to two times the Nationwide Significant Risk Threshold (2xNSRT) (determined as of January 1, 1996) to evaluate the distribution of potential quiet zones derived from existing bans. FRA posited that jurisdictions above the relevant thresholds (*i.e.*, those above the Nationwide Significant Risk Threshold with relevant collisions in the preceding five years, or with no relevant collisions but above twice the Nationwide Significant Risk Threshold) would be required to make investments in SSMs or ASMs in order to abate excess risk, while those below the thresholds would not.

The analysis effectively validated the risk assessment method, demonstrating that for the subject period it would have focused public resources on whistle ban corridors where the investments would have been well spent (with resulting reductions in injuries and fatalities). It showed that in the five-year period that would have followed implementation of the rule, as of January 1, 1996, 69 percent of the casualties resulting from the relevant collisions that occurred at whistle ban crossings would have occurred in quiet zones that initially would have had to make safety improvements to retain the whistle bans (*see* table below). Those safety improvements would have substantially mitigated the casualties at those crossings.

By the end of the five-year period, the communities where 24 collisions resulting in 16 casualties occurred would have had to implement safety measures to reduce their corridor crossing risk indexes to permissible levels in order to retain their whistle bans. By the end of this five-year period, only 32 percent of the relevant collisions and 21 percent of the casualties would have occurred in communities that would not have had to implement safety measures.

Injuries resulting from collisions involving trains traveling at speeds of 25 mph or less are on average moderate compared to the critical nature of injuries that tend to result when train speeds are higher. By the end of the five-year period, only seven percent of the more severe casualties would have occurred in communities that would not have had to implement safety measures.

The following table presents the distribution of crossings, collisions, and resulting casualties. The first data column presents the number of crossings that would have fallen into each quiet zone category on January 1, 1995. The second data column presents the number of relevant collisions (those that FRA believes could have been prevented by sounding the train horn) that occurred in the five-year period that would have followed implementation of the rule. The next two columns present the resulting casualties (fatalities and injuries combined).

As is more fully developed below, the CCRI refers to the Crossing Corridor Risk Index (the average risk for crossings in a potential quiet zone) and the NSRT refers to the Nationwide Significant Risk Threshold (which is the average risk at gated train horn crossings).

	January 1995	January 1, 1996 through December 31, 2000		
	Crossings in WBJs	Relevant collisions	Casualties	Casualties excluding injuries where max train speed < 25 mph
CCRI > NSRT with relevant collisions	865 (36%)	208 (59%)	109 (64%)	94 (78%)
CCRI > 2 * NSRT (no collisions 2000–2005)	72 (3%)	10 (3%)	8 (5%)	8 (7%)
CCRI Between NSRT & 2 * NSRT (no collisions 2000–2005)	236 (10%)	24 (7%)	16 (9%)	10 (8%)
CCRI < NSRT	1,242 (51%)	113 (32%)	36 (21%)	9 (7%)
Total	2,415 (100%)	355 (100%)	169 (100%)	121 (100%)

Therefore, FRA concluded that use of a methodology that compares the known risk in a current or prospective quiet zone to the average risk level at crossings across the nation where train horns are sounded (the Nationwide Significant Risk Threshold) provides a very rational basis for determining where silencing the train horn presents a significant risk. Moreover, FRA concluded that considering an existing whistle ban's actual accident history in that methodology (by making greater allowances for accident-free jurisdictions) provides an even better approximation of risk than does simple reliance on comparing the quiet zone's projected risk level with the Nationwide Significant Risk Threshold.

Subsequent to completion of this validation effort, FRA determined that a number of the crossings previously identified as being in "no whistle" status in the Chicago Region should, in fact, be removed from that list based on elections (largely by freight railroads) to sound the horn. FRA has not repeated this analysis with the smaller data set because (1) its purpose was to determine the usefulness of the method to sort corridors with greater risk from those with lesser risk and (2) whether train horns are sounded at the crossings in question is not critical to the analysis (particularly since the counter measures involved are equally useful at both categories of crossings).

D. Alternatives Considered

FRA considered several other alternatives in determining how to craft exceptions to train horn use. In reviewing the comments on the NPRM and Draft Environmental Impact Statement, FRA identified five additional alternatives for determining where train horns must sound. All of these alternatives involve the same basic environmental effects and benefits of this interim final rule: wherever the train horn sounds, the noise impacts and safety benefits will be the same; wherever the train horn is silenced, the benefits in terms of noise reduction will be the same and the same safety risks will be presented unless compensated by the addition of gates and lights, SSMs, or ASMs. Upon examination, FRA concluded that these alternatives are not reasonable options given the agency's purpose and need for the action and dismissed them from further consideration. These alternatives are described below.

No Exceptions

This alternative would implement the non-discretionary command of the statute by requiring trains horns to be sounded at all public highway-rail grade crossings. This would be what the statute would require if FRA were unable to devise a workable means of providing for quiet zones that satisfies the statute. FRA would set a maximum sound level for locomotive horns. Changes from the NPRM provisions related to the actual sounding of the horn and maximum sound levels could be accommodated within this option.

Advantages: This option has the advantage of simplicity. It would result in a high level of safety at highway-rail crossings, and the costs of administration would be negligible.

Disadvantages: This approach is not responsive to the statutory command to consider the interests of communities with existing train horn bans because FRA can devise a regulatory regime permitting communities to reduce noise by substituting other safety measures for the sounding of train horns and this option fails to address the issue. Aside from the statutory command, providing a means for communities to quiet train horns has been urged on FRA by the great majority of commenters and their elected representatives (including many who supported the proposed rule as a good means of achieving community quiet and safety). It is simply untenable to say that the final rule should provide no alternative to a high noise load for communities on rail lines with high train counts. Taking this course would also create unnecessary conflict between commuter rail service and the communities served, potentially compromising this important element of a balanced transportation system in many major metropolitan areas.

Had this alternative not been eliminated on statutory grounds, the environmental effects of this alternative

would not require separate analysis. Analysis of the effects of the "no action" alternative shows the effect of sounding train horns at highway-rail grade crossings across the Nation and the effects of permitting the continuation of existing train horn bans. This alternative would differ only in the elimination of the existing train horn bans, resulting in the known effects of sounding the train horn in those locations as well, including the known safety benefits flowing from sounding the train horn.

Make the NPRM Final

The Notice of Proposed Rulemaking required trains horns to be sounded at all public grade crossings; set a maximum sound level for locomotive horns; and provided an opportunity for any community to establish a quiet zone where all public grade crossings are equipped with gates and lights and data and analysis show that implementation will reduce risk in the quiet zone to sufficiently compensate for the absence of the horn sounding: by implementing one or more Supplementary Safety Measures (SSM) at each crossing (does not require FRA approval); or by implementing a combination of SSMs or Alternative Safety Measures (ASM) at some or all crossings within a proposed quiet zone with FRA approval. Communities with present whistle bans would have up to three years in which to implement SSMs and ASMs. Crossings with track speeds of 15 mph or less at which people bearing flags warn motorists of the passage of a train would not need SSMs.

Advantages: Pursuing this option would serve the interest of safety and community quiet. It would be less complex than the option selected.

Disadvantages: FRA found this option to be unacceptable because it insufficiently tailored the rule's burdens according to risk and would be unresponsive to hundreds of commenters who strongly urged improvements in the rule before its adoption. Many of those commenters live in or represent communities where the train horn is not now sounded, so being unresponsive to them would arguably be unresponsive to the statutory direction to take into account the interest of those communities. FRA agrees with those commenters that the proposed rule offered insufficient time for implementation and would have made the situation particularly difficult for public authorities and railroads in regions where impacts would be most substantial. FRA agrees with the tenor of many comments that the proposed rule would have required compensation for loss of the train horn even where risk is very low (or would be projected to be low even after the horn was silenced). The result of maintaining that requirement would have been poor cost-benefit tradeoffs for many communities. Staying with the literal text of the NPRM would also have missed opportunities for refinement of SSMs/ASMs and would not have captured noise reductions associated with the shift from distance- to time-based horn use.

The environmental effects of the NPRM were analyzed thoroughly in the DEIS and taken into account by the FRA in framing the proposed action represented by the interim final rule, which is a logical outgrowth of the NPRM.

Grandfather All Whistle Bans Existing as of 10/9/96

This alternative would allow communities that had whistle bans in effect on October 9, 1996 to retain those bans as long as the level of risk does not increase. Risk would be calculated using the APF for the entire whistle ban corridor. FRA would essentially be accepting the level of risk the community itself has determined to be acceptable—and would hold the community to that same level of risk. If a whistle ban community exceeded its risk threshold, it would have three years to implement changes (*e.g.* install SSMs) sufficient to reduce risk to below its risk threshold. Changes related to use of train horns, including the maximum sound level, could be accommodated within this option.

Advantages: This approach would have avoided conflict with current whistle ban communities and, in theory, might have capped the negative safety impacts of bans. As under the proposed rule, New Quiet Zones would be instituted without any loss of safety.

Disadvantages: This option was rejected for the following reasons, any one of which is independently sufficient: It is unresponsive to the purpose of the statute to the extent excess risk associated with existing bans would be allowed to continue unabated; it does not directly take into account predicted accident severity, and therefore does not truly consider risk (frequency times severity); the Administrator could not have made the statutorily required determination that these exceptions would not "present a significant risk with respect to loss of life or serious personal injury;" it would not provide a uniform level of safety across the Nation; it did not afford New Quiet Zones the same exceptions allowed for Pre-Rule Quiet Zones, thus undermining uniformity of application and requiring local authorities to expend funds on improvements for which the safety pay-back could not be reasonably assured at the system level; it would permit communities with bans to transfer costs to the society at large through insurance, public health and welfare programs, and court judgments; and administration of the approach is not technically feasible. FRA noted that factors other than silencing the train horn would typically be responsible for the growth in calculated risk in the subject communities (*e.g.*, increase in motor vehicle traffic as a result of residential or commercial development in an adjoining jurisdiction; growth in rail traffic). It did not seem sensible to permit excess risk to continue, provided nothing changes in a community, while requiring new increments of risk in other communities to be addressed without regard to whether the current level of risk is excessive (*i.e.*, FRA realized that this option did not address the right question).

The environmental effects of this option were not analyzed further because this was not a reasonable option to pursue.

Grandfather All Whistle Bans Existing as of 10/9/96—Combine Collision-Free Exemption With Severity-Weighted Single Threshold

This very complex option was a precursor to the path taken in the interim final rule. It took a much different approach to Pre-Rule and New Quiet Zones. It would allow communities with whistle bans in effect on October 9, 1996 to retain those for the first 5 years following publication of the interim final rule. Thereafter such communities could retain bans as long as: there have been no collisions within the past 5 calendar years *or* risk has not increased above a pre-established threshold calculated using the APF for the past 5 years; and at least flashing lights and gates have been provided at all such crossings. The option included a severity element in the risk computation for the threshold. A corridor risk index and national threshold would be used, as in the interim final rule. The option provided further flexibility for retaining whistle bans during the transition period as follows: A State Department of Transportation (or other authorized state-level body) could request extended implementation beyond the 5-year period on the basis that the State is assisting local jurisdictions in implementing quiet zones and requires additional time due to funding and/or administrative constraints. The following would apply: Each project must be the subject of a filing with FRA (*i.e.*, the rule otherwise applies as revised); actual implementation of initial projects will begin not later than year four; consistent with efficient completion of required work and corridor-related safety considerations, improvements will be implemented at the most hazardous crossings first (where risk reduction opportunities are greatest) and then proceed to less hazardous crossings; no less than 25 percent of identified excess risk must be abated by the end of year five, 50 percent by the end of year six, 75 percent by the end of year seven, and 100 percent by the end of year eight; and this relief will expire eight years following publication of the interim final rule (seven years from the effective date). If a community exceeded the severity threshold in any annual review thereafter, actions would be taken as necessary to fall back below the threshold within a three-year period or the train horn would be required to sound; or actions sufficient to compensate for the loss of the train horn would have to be taken. Communities establishing New Quiet Zones would be required to follow the standards set forth in the NPRM (and would not be able to take advantage of low baseline risk, even after adjustment for loss of the train horn).

Advantages: This option would take into consideration the interests of communities with existing bans in a manner similar to interim final rule, except flashing lights and gates would be required where not present. It would set a requirement of flashing lights and gates for all crossings where the train horn is silenced, enhancing safety. It would also avoid any negative flow of safety benefits related to toleration of new unabated risk in New Quiet Zones.

Disadvantages: FRA rejected this option principally because it did not afford New Quiet Zones the same exceptions allowed for Pre-Rule Quiet Zones, thus undermining uniformity of application and requiring local authorities to expend funds on improvements for which the safety pay-back could not be reasonably assured at the system level. Further, FRA noted that the costs of flashing lights and gates in existing ban areas would be substantial, in some cases potentially resulting in loss of quiet zone status (with resulting disruption of settled expectations) due to financial inability of communities. Again, in many cases costs might not be fully recovered through safety benefits. FRA also discarded the rigid implementation schedule for Pre-Rule Quiet Zones on the ground it could not be effectively policed in an environment where local authorities would find it necessary to move to a large extent on their own schedules (albeit in some cases with State assistance). FRA also concluded that excepting Pre-Rule Quiet Zones from the requirement to make safety improvements solely on the basis of no accident history (with necessarily limited exposure) could not be supported as based on sound safety analysis (and opted, instead, for a limited exception based on both accident history and underlying estimated risk).

This option was rejected as unreasonable and its environmental effects would be very similar to the proposed action.

Require Horns or SSMs at Highest Risk Crossings Within Each State

This alternative would have required that train horns be sounded at all grade crossings except those where (1) maximum train speed is 15 mph or less and flaggers are provided or (2) a whistle ban permitted under the rule is in effect. Existing whistle bans could continue provided high risk crossings are addressed within three years. New whistle bans could be created only if crossings within them were equipped with gates and lights. No whistle ban could include a grade crossing categorized as high risk, except crossings within existing whistle bans that are remedied within three years. High risk crossings are those with an APF greater than or equal to .05 (*i.e.*, a five percent chance of an accident occurring at that crossing in the next 12 months). Where train horns are now sounded, the crossing's APF would be increased by 44 percent to account for the absence of the train horn. Within one year of the rule's issuance, any community with an existing whistle ban would have to certify that it has reviewed FRA data on effectiveness of horns, whistle ban effects, and relative merits of SSMs and consulted with affected railroads and state officials about possible safety improvements. Any community imposing a new whistle ban must first provide the same certification. Communities with existing whistle bans may continue to include crossings lacking gates and lights unless and until the crossing has an APF of .05 or more. Once a whistle ban is in effect, any crossing that reaches an APF of .05 must be remedied within two years.

Advantages: This option was viewed as attractive because it would have mandated safety improvements at very high risk crossings within a relatively short time and provided categorical relief for crossings deemed relatively low risk. It defined risk uniformly for all crossings and all jurisdictions. It is relatively simple. It defined significant risk very clearly: equal to or greater than one predicted collision every 20 years. It captured a high percentage of predicted casualties, *i.e.*, it would have addressed a high proportion of the risk presented by whistle bans.

Disadvantages: This option was rejected because: it does not directly take into account predicted accident severity, and therefore does not truly consider risk (frequency times severity); it does not permit sufficient flexibility to reduce risk within a quiet zone by dealing with crossings other than ones with the highest APF values and, therefore, does not adequately take into account the interest of communities with existing whistle bans; and it is not in harmony with the corridor improvement concept underlying the proposed rule. The statute addresses all crossings, not merely the most hazardous. The option focuses more on absolute risk rather than compensation for loss of the train horn (the focus of the law). A crossing-by-crossing approach to horn use would abandon the corridor approach to crossing safety improvements advocated by the U.S. DOT for many years (including eliminating the incentive for consolidation of redundant crossings), and it could result in very uneven results in terms of community quiet, depending on local implementation. The option could result in a patchwork of ban areas, adding to burden on locomotive engineers to pick out, crossing by crossing, where the horn must be sounded. This option could be more costly per unit of risk reduced because the community is required to take risk reduction at specified crossings rather than where means and need best correspond (*e.g.*, foreclosing the option of putting in medians at two moderate-risk crossings for a total cost of $40,000 rather than installing four-quadrant gates at one higher risk crossing for an incremental cost of $75,000–$150,000, even though the resulting risk reduction is the same).

This alternative was not considered reasonable. If the environmental effects of this option were to be considered, the noise impact of sounding a train horn at a crossing would be the same as it would be for the preferred option and the safety benefits of sounding the train horn or fully compensating for the absence of the train horn would be the same as for the preferred option.

After considering all of these alternatives, FRA settled on the risk-based methodology adopted in this interim final rule. FRA believes this

methodology best embodies Congress' intent, *i.e.*, to permit exceptions to the use of the train horn only where doing so demonstrably does not present a significant risk, or where the significant risk has been compensated for by other means.

E. Implementing the Interim Final Rule

FRA is aware that this interim final rule has the disadvantage of some degree of complexity. Designing corridor improvements that meet community needs and the criteria set forth in this rule will be hard work. In this case, FRA has sought to provide some relief from the burdens perceived in the NPRM by marrying a conceptually simple notion (the probability that a vehicle occupant will be injured or killed) with a risk assessment method that is fully accessible only to those with some statistical skills who work hard to understand it. Maintaining a current inventory of affected crossings will also require significant attention to detail.

In taking this course, however, FRA has also recognized its obligation to prepare user-friendly tools for use by local planners. These tools are now available for beta testing on FRA's Web site, and FRA has also provided the results of the preliminary calculations for communities with existing bans based on existing inventory data (as well as the assumption that the community will elect to include all crossings in a New Quiet Zone).

In FRA's experience, State and local government personnel such as city managers and county engineers are extremely capable professionals who are very unlikely to be daunted by the preparations required under this rule. Further, FRA crossing safety managers in each of FRA's eight regions will be available to work with communities and "walk them through" the necessary analysis, as well as participate in diagnostic teams established by State and local governments to evaluate options for safety improvements where they are required. No community will have to "go it alone," because FRA will provide technical assistance.

Finally, FRA has provided a substantial extension of time for communities with existing whistle bans to convert their corridors into quiet zones without intervening disruption caused by the train horn. In response to the statute's direction to "take into account the interest of communities" with existing bans, the proposed rule would have allowed a maximum of three years from issuance for implementation, with the third year available to communities that had implemented some form of education or enforcement program. This interim final rule, by contrast, allows five years from its publication (four years from the effective date of the requirement to use the train horn) for implementation by individual communities. Communities had complained that the requirements of State and local budget cycles required more time for planning and securing funding. Further, it was noted that engineering improvements may require substantial lead time and that railroads may have limited staffing in relation to a compressed schedule for installing new warning systems in a number of communities on their lines. FRA agrees that an extended schedule is warranted.

Further, FRA has recognized that some States (notably Illinois and Wisconsin) have large numbers of whistle bans and that some exist in communities of concern with respect to environmental justice. In situations such as this, it may be imperative for some Federal funds to be allocated by sources for which engineering improvements are eligible (*e.g.*, the Surface Transportation Program and the National Highway System program). These allocations would be made by the State departments of transportation based on plans developed through the metropolitan planning organizations, a process that can require several years. Because of competition for uses of these funds, a State may not be able to allocate Federal funds for these purposes in a single fiscal period. Similar considerations would presumably apply to distribution of any funds made available from State sources. Accordingly, in order to create an incentive for State participation in meeting these needs (through allocation of Federal or State funds), FRA has allowed a full eight years for communities with existing whistle bans to complete quiet zone improvements if (i) the State steps forward with a plan to provide assistance, and (ii) actual improvements in at least one community within the State are effected before the end of the fourth year.

FRA is acutely aware that this extended implementation cycle could be subject to abuse. Accordingly, FRA has included in the rule procedures to ensure that good faith progress is made toward completion of improvements that communities promise to undertake. Where that does not occur, FRA will notify the railroad to sound the train horn as the rule requires.

F. Existing Bans and New Quiet Zones

FRA has endeavored to fashion a final rule that establishes as much parity as possible between communities with existing whistle bans and those that wish to establish them in the future, while recognizing legitimate differences. The rule puts both types of communities on the same footing, as follows:

- The rule starts from the premise that after a certain time the train horn will sound unless an appropriate exception is satisfied, regardless of prior practice.
- Both the "haves" and the "have nots" may establish quiet zones by implementing SSMs and ASMs sufficient to compensate for loss of the train horn; and both may take their risk reduction at the corridor level, normally without making improvements at every crossing.
- The rule allows establishment of quiet zones even without SSMs and ASMs if—

(I) In the case of an existing whistle ban corridor, risk is shown to be at, or below the Nationwide Significant Risk Threshold or be below twice that level and the corridor has had no relevant collisions during the preceding five years; or

(ii) In the case of a New Quiet Zone, risk (after adjustment to account for silencing the train horn) is shown to be at or below the Nationwide Significant Risk Threshold.

- If a community avoids expenditures related to creation of a quiet zone because it falls below the Nationwide Significant Risk Threshold and risk increases to above the threshold, the community is required to compensate for that increase in risk within a period of three years, or the railroad will be required to sound the train horn.
- All communities are subject to the same filing and inventory maintenance requirements.

Some differences in approach to existing whistle ban jurisdictions and New Quiet Zones have been necessary, as well. We have already said that existing whistle ban jurisdictions are different, as a practical matter, because public and private planners (*e.g.*, zoning officials, citizens purchasing residences, businesses locating shops) have made choices in reliance on the belief that the train horns will not sound. The statute enjoins us to take their interests into consideration, and the grace periods provided under the rule (five and eight years) maintain community quiet well ahead of community actions that would otherwise warrant that result.

The fact that existing whistle ban jurisdictions have known accident records under circumstances where the horn is not sounded also permits some additional latitude. FRA has noted significant variation in the outcomes where whistle bans have been enacted or observed. Although some of this variation is the result of limited exposure to rare events, some of it likely reflects the existence of circumstances that are different in the communities (nighttime vs. 24-hour bans, strong or weak law enforcement, generally good sight lines or poor ones, etc.). Over time, the presence or absence of such factors will be revealed in the accident rate. An important feature of the interim final rule creates an exception for existing whistle ban communities with no recent horn-relevant accidents but with risk levels that are above the Nationwide Significant Risk Threshold but below a value equal to two times that threshold. This exception remains until the community experiences a horn-relevant accident, after which it is judged by the same standards as other communities (with a 3-year grace period if it elects to adopt SSMs or ASMs).

The issue of whether flashing lights and gates should be required as a baseline condition for a quiet zone has similar characteristics. In the NPRM, FRA specified that all crossings in any quiet zone should have flashing lights and gates based on the following practical considerations:

- At passively signed crossings, the motorist is expected to "yield" to oncoming trains. But the only warning of a train's approach is provided by the train itself, including the headlight and auxiliary alerting lights, and the train horn (if used).
- Because of obstacles in the "sight triangle," track curvature, angle of intersection, or adverse weather, there are some circumstances where only the horn may be effective in aiding the motorist's decision.
- It is unfair to place a burden on the motorist to yield without providing the best available information to inform the decision.
- Crossings equipped with flashing lights but no gates are similarly situated, except that the motorist is expected to stop but under most State laws may proceed if "safe" to do so. In many cases motorists are left with ambiguous information regarding the appropriate response.

Accordingly, FRA continues to be convinced that, with respect to quiet zones where the train horn is silenced for the first time, flashing lights and gates should be provided at all public crossings. Motorists using such crossings will for the first time be deprived of auditory warnings, which would place them at significant peril if no additional warnings are provided.

However, FRA recognizes that a significant number of whistle ban crossings exist today, particularly in the State of Wisconsin, where only passive signage or only flashing lights are provided. There is now risk data specific to those situations. Further, the statute asks us to give "special consideration to the needs" of communities where these crossings are located, and public and private planners have made decisions in reliance on the status quo. Finally, FRA will have achieved the principal safety objective of this rulemaking if significant risk to persons associated with the absence of the train horn has been abated.

Accordingly, FRA has determined that it is appropriate to allow conversion of existing whistle ban corridors into Pre-Rule Quiet Zones without requiring that flashing lights and gates be provided at all crossings. FRA has further provided that, where the proposed Pre-Rule Quiet Zone exceeds the relevant risk threshold (making it necessary to compensate for absence of the train horn), the community may credit the risk reduction associated with installation of flashing lights and gates toward the required effort. In many cases this will not result in all crossings being so equipped, but it will encourage use of the most important single safety improvement available in the highway-rail crossing toolbox.

G. Requirements for the Train Horn and Its Use

On the effective date of that portion of this rule which mandates use of the train horn, State laws concerning use of the train horn at highway-rail crossings will be preempted. This rule will also require the modification of railroad operating rules that are in conflict with it. FRA already has in place a rule that sets a minimum horn loudness of 96 dB(A) at 100 feet in front of the train. The method for conducting that test, a possible maximum level for the horn, and the manner in which the horn is sounded have been issues in this rulemaking. In approaching this complex of issues FRA has tried to balance several considerations, specifically—

- The need to make it possible for motorists to be warned within their vehicles, with windows closed, at a point on their approach to the crossing where the information is useful; and
- The need to limit dispersal of horn noise into the community (other than at the crossing and its approaches) to the extent feasible.

Although FRA can foresee the possibility of further refinements in these decisions over the next few years as information becomes available, the comments received in this rulemaking, coupled with further research conducted in response to those comments, have provided a good foundation for resolving these issues.

The first group of issues has to do with the horn itself. FRA had hoped to describe engineering characteristics of the horn that would mitigate the dispersal of noise into the community (in railroad parlance, "to the field"). This issue has been presented primarily due to the relocation of horns to the center of the locomotive roof, a choice made by railroads to reduce crew occupational noise exposure. At FRA's technical conference on acoustical issues, the major railroads arranged a presentation by a recognized expert who described a "shadow effect" produced by the locomotive profile that results in misleadingly low sound level readings at the location specified in FRA's current test procedure. The point of calling attention to this was to emphasize that in terms of actual dispersal of noise the noise levels to the field do not, in fact, exceed those to the front (as might be suggested by readings taken just 100 feet directly in front of the locomotive at only four feet above the track). The overall lesson FRA was asked to take from the presentation is that while center-mounted horns are not louder to the field than to the front, neither can they be made highly directional.

A secondary lesson from this presentation and a subsequent field study is that, by testing the horn at roof height (which under the noise models actually is more proportional to the noise received at the crossing), it may be possible to "turn down" some roof mounted horns. As a result, FRA adopts a new test procedure in this interim final rule that retains the 100 foot distance but places the sound level meter receptor at roof height (*i.e.*, out of the locomotive's "shadow").

Another objective of this rulemaking has been to set a maximum sound level for the horn. The NPRM proposed consideration of two values—104 dB(A) (which was seen as more appropriate for actively signed crossings) and 111 dB(A) (which was viewed as more appropriate for passively signed crossings). Although FRA's general rationale was reasonably well received by some commenters, many others appeared convinced that train horns are too loud and should be significantly reduced in volume. FRA has continued to evaluate the issues identified in research referred to in the NPRM, including refined analysis using signal detection theory, and is persuaded that a maximum value of 110 dB(A) should be sufficient to alert motorists in most situations,

including a small margin of error associated with test instrumentation and setup. Accordingly, the interim final rule requires that railroads progressively test their locomotives and reduce the air pressure (or alter the aperture) on all horns to produce a maximum volume of no more than 110 dB(A) as measured 100 feet in front of the locomotive at roof height. FRA expects that most freight railroads and Amtrak, whose locomotives operate over a variety of highway-rail crossings across the Nation, will set their horns near the maximum allowed to provide effective warning at passively signed crossings. FRA expects that commuter authorities which operate primarily over crossings with flashing lights and gates may set horns in the lower portion of the allowed range. This overall process, by enforcing a maximum below the known sound level of some center-mounted horns, may modestly reduce noise in some communities.

It should be noted that FRA did not find it possible to do as the NTSB suggested in its comments to the docket, which was to "select a sound level that will maximize safety at all highway-rail grade crossings." To reach every driver with the horn (including each driver with a stereo turned up to maximum volume under all conditions of traffic conditions, pavement surface, weather, etc.) would require a volume so great that the effects on communities and crew members would be clearly unacceptable. However, in selecting the maximum level FRA has taken into consideration the NTSB's findings from its study of passive crossings. Further, FRA has completed additional work on sound detectability that suggests more favorable results at actively signed crossings where the driver has a heightened awareness of the possible presence of a train and where a very high signal-to-noise value should not be required. Dissemination of NTSB and FRA studies should put railroads in a favorable posture to determine horn loudness appropriate to their operating conditions, achieving the lion's share of the potential risk reduction.[3] Further, our heightened understanding of the limitations of the train horn should help clarify the need to implement of active warning systems where they are not already provided as funding becomes available.

The final issue concerns the manner in which the horn is sounded. The actual pattern of "two long, a short and a long" is well established, and FRA finds no reason to alter it. It is necessary to sustain the warning provided by the horn through a period of 15 to 20 seconds prior to arrival of the train at the crossing in order to reach motorists situated at various points on the roadway under varying angles of intersection and differing vehicle and train speeds. It is not possible to just give a "toot," as suggested by some, and still provide the unmistakable and persuasive warning needed to deter risky motorist behavior.

FRA did note in the NPRM, however, that the traditional practice of requiring that the horn be sounded approximately one-quarter mile before the crossing is excessive when train speeds are well under about 45 miles per hour. Accordingly, FRA proposed that it might be possible to use a time-rather than distance-based criterion. Representatives of the Brotherhood of Locomotive Engineers (BLE) seized upon this suggestion in their testimony, affirming that this could be accomplished. Accordingly, the interim final rule requires that the horn must begin to be sounded between 15 and 20 seconds prior to the arrival of the train on the crossing and while the lead locomotive is moving over the crossing, but for a distance no greater than one-quarter mile (1,320 feet). This time-based approach should reduce unwanted noise without compromising the usefulness of the warning provided. Sounding the horn over a distance greater than one-quarter mile would add no value, since the loss of volume associated with the distance involved would almost certainly prevent any effective warning. FRA expects that railroads will leave existing whistle boards in place to assist engineers in estimating where to begin sounding the horn, given the speed of the train approaching the particular crossing.

H. Post-NPRM Ban Impact Studies

Following publication of the NPRM, various commenters indicated they had more accurate data and information regarding which crossings are subject to whistle bans. The Wisconsin Rail Commissioner, the Maine DOT, and the City of Chicago DOT provided a sufficient amount of new data with respect to affected crossings to warrant a revision to the FRA "Updated Analysis of Train Whistle Bans" (January 2000). Chicago area commenters (Hafeez and Laffey) also performed an independent study of the effects of whistle bans in the Chicago Region and concluded that whistle bans do not affect accident frequency in the Chicago Region. Commenters from Wisconsin indicated that there were a significant number of whistle ban crossings in Wisconsin that did not have active warning devices but had good safety records.

FRA therefore contracted with Westat, Inc., a nationally respected statistical research firm. The purpose of the Westat Inc., contract was to: (1) Revise the 2000 FRA analysis of whistle bans to reflect the more accurate data received post publication of the NPRM, (2) obtain independent, expert review regarding FRA's methodology, and if necessary, recommendations as to ways to improve it; and (3) evaluate the points raised by representatives from the Chicago Region and the State of Wisconsin by performing regional studies of the effects of whistle bans in the two areas.

Westat—2002

In the initial effort, Westat, Inc., utilized the same study period as FRA's update (1992–1996) (Zador, Paul L., April 1, 2002). The methodology employed was a refinement on FRA's stratified method comparing accident histories of crossings with similar predicted risk. Westat concluded that on a nationwide basis (excluding Florida), adverse whistle ban effects were statistically significant at levels well below the conventional significance level of 5 percent, regardless of warning device class. All three classifications of warning devices experienced a higher accident rate in whistle ban areas as follows (National data excluding Florida only and excluding Florida and the Chicago Region):

Warning device class	Percent difference	
	(with Chicago)	(excluding Chicago)
Passive	52.6	64.2
Flashing Lights	43.2	69.1
Gates	44.4	57.6

FRA had asked Westat to attempt regional analysis where the crossings appeared to be sufficiently numerous to permit at least some comparisons (*i.e.*, Wisconsin and the Chicago Region). Data for Wisconsin generally indicated an increase in accident risk for each type of warning device with bans in place, whether the Wisconsin whistle ban crossings were compared with other similar Wisconsin crossings or with similar crossings nationally. Westat found, that in Wisconsin, due to the relatively small sample sizes, estimates for ban effects were not statistically significant at the conventional 5 percent level, with one exception. The accident rate for passively marked whistle ban crossings in Wisconsin was 84 percent higher than for passively marked crossings nationwide (excluding Florida and the Chicago Region) where train horns were sounded. This result was statistically significant. However, model fit was determined to be poor.

In reviewing the data for the Chicago Region, Westat found several unexpected results. Comparisons of Chicago train horn and "whistle ban"[4] crossings within Chicago indicated higher accident rates at crossings where the train horn was used, but the data did not fit the model well (with the upper confidence limits for two of warning types well into the positive range).

When Chicago Region "whistle ban" crossings were compared with similar crossings in the Nation where train horns sound, results for passive and flashing lights categories again showed lower accident rates at ban crossings; however, estimates for the effects of no-whistle policies were not statistically significant at the conventional 5 percent level. The accident rate for gated whistle ban crossings in the Chicago Region was 34 percent higher than for gated crossings nationwide (excluding Florida and the Chicago Region) where train horns are sounded, and this result was statistically significant.

With respect to the gated crossing estimate for Chicago, Westat stated that the weight of this evidence was weakened by the fact that the model did not fit the data well. Specifically, in the Shapiro-Wilks test for normality of deviance residuals, the normal hypothesis was rejected for gates based on comparisons with the Continental U.S., Florida and Chicago Region Excluded.

Westat—2003 (Final Study)

FRA found the results of the 2002 Westat study appeared to reinforce inferences FRA was deriving from other information related to the Chicago picture that may explain the Chicago data. In particular, FRA had noted that significant "discretionary selection" had occurred in the Chicago Region with respect to the crossings at which "no whistle" policies would be implemented. That is, horns were being silenced primarily at crossings that were inherently safer than others. Further, FRA noted that a growing body of information supported the conclusion that several hundred crossings initially believed to be impacted by a no-whistle policy either had never been in that status or had not been for several years. (How this occurred is more fully discussed under "Chicago Region" below.) Accordingly, FRA commissioned Westat to do further work, resulting in the final study on the impact of train horn bans (Zador, Paul H., June 2003). The design for this study differed in three important respects from the earlier work:

1. The set of Chicago Region "no whistle" crossings was corrected to a much lower number based upon docket filings from the Illinois Commerce Commission, the AAR and Metra.

2. The study period was brought forward to address the most recent complete accident data contemporaneous with known crossing status (1997–2001).

3. Rather than simply employing the previous FRA method with refinements, Westat was asked to apply whatever statistical techniques it thought appropriate to derive the most valid results.

FRA received the Westat final report in May of 2003. In an attempt to determine the most meaningful explanation of the data, Westat applied four distinct statistical methods, with certain variations within the methods:

- The first method divided the crossings into two groups: one group with whistle bans and the other without. FRA's basic Accident Prediction Formula (APF) was applied to each crossing and then each group was sorted by the results of the APF. Then each group was stratified into ten categories with each stratum having the same accident count for the 1997–2001 study period. Finally, using both Poisson and Poisson-Normal regressions, the two groups were compared and the effect of the whistle ban was estimated.
- The second method is the same as the first except six strata were used instead of ten.
- The third method did not divide the data into two groups and stratify them. Instead, a Poisson regression analysis was applied to the entire data set. The regression included all the variables used by the APF plus others including a 1/10 flag for whistle bans. The regression coefficient for the whistle ban was used to estimate the effect.
- For the fourth method, a Poisson regression analysis was applied to the entire data set in a manner similar to the third method except the 1/10 flag for whistle bans was not included. This regression yielded a revised version of the APF. Then, the crossings were divided into two groups (with and without whistle bans), and each group was divided into ten strata using the revised version of the APF. Finally, using Poisson-Normal regressions, the two groups were compared and the effect of the whistle ban was estimated.

On a nation-wide basis, the third method produced the most precise estimates for the effect of the whistle ban, so FRA has selected this method as the basis for its evaluation.

Once again, all three classifications of warning devices experienced a higher accident rate in whistle ban areas as follows (National data excluding Florida only and excluding Florida and the Chicago Region):

Warning device class	Percent difference	
	(with Chicago)	(excluding Chicago)
Passive	71.6	74.9
Flashing Lights	21.7	30.9
Gates	43.4	66.8

The results for the Nation without Chicago provided the most reliable data. The results for passive and gated crossings were statistically significant well below the conventional 5 percent level. The model offered less confidence for crossings with flashing lights (Prob > |t| = 0.08), but the estimate is consistent with the results of FRA studies for the earlier period and represents the best information available regarding the effect of bans on the accident rate. Accordingly, FRA has employed the results for the Nation excluding Chicago as the national estimates of effectiveness for crafting this interim final rule.

The 2003 Westat report also attempted to derive results for the State of Wisconsin. Results differed substantially between intra-State and Wisconsin-to-national comparisons, even though all values showed a positive effect from the train horn and two of the three warning device categories had significant results in each of the analyses. FRA sees no basis for deviating from the national averages for the warning device categories without a better qualitative understanding of any underlying differences in risk profiles.

The Chicago Region results are briefly summarized here and then discussed in full context and at greater length below. The no-whistle crossing set provided to Westat included only 21 crossings with flashing lights and 21 passively signed crossings. As Westat noted, that is too few crossings from which to derive

[3] The NTSB's Passive Crossing Study has been construed by some as an attack on the safety value of the train horn because it cited examples of situations at passively signed crossings in which the horn's signal-to-noise ratio likely did not meet a pre-established criterion. Neither the NTSB's report nor its comments in this docket question whether the horn is effective in preventing some accidents. Rather, the NTSB has ventured the conclusion that certain accidents have occurred at passively signed crossings where the horn did not provide a sufficient warning given the background noise and other factors. FRA's position in this rulemaking is consistent with this conclusion.

[4] As noted below, this is really a misnomer. There are no train horn bans in the Chicago Region, only exemptions that railroads may utilize if they wish.

statistically meaningful results, and none were determined. FRA will apply the national estimates of ban-induced accident increases for passive crossings and flashers-only crossings to the Chicago Region.

Westat's calculations for the Chicago Region once again showed a negative effect from use of the train horn at gated crossings when only Chicago Region crossings were included in the analysis, but results were not statistically significant. For reasons more fully developed below, this result was expected, since railroads in the Chicago Region have been free to select which exemptions to observe and which to ignore.

However, Chicago gated no-whistle crossings experienced 17.3 percent more accidents when compared with the national gated crossings where the train horn sounded. This result was not statistically significant at the conventional 5 percent level, but it is more likely than not that the value is positive (P > |t| = 0.312). Comparing this result with the national data, Westat noted that "the ban effect in the Chicago Region is significantly different from the ban effect in the rest of the nation." Taking note of this finding and other information discussed below, FRA will apply a 17.3 percent estimate of ban-induced excess risk to gated crossings in Chicago Region Pre-Rule Quiet Zones. FRA will apply the national average for gated crossings (Chicago excluded) to New Quiet Zones in the Chicago Region. The rationale for this decision is more fully developed below.

BAN EFFECTS/TRAIN HORN EFFECTIVENESS

[Summary Table]

Warning type [1]	Effect of ban (includ. no-whistle policy) on accident frequency (percent increase) [2]	Reduction required from ban risk to retain Pre-Rule QZ (percent reduction and factor) [3]	Comment
Nation (Except Florida East Coast Ry./and Chicago Region)			
Passive	74.9	43 (.43)	
Flashers only	30.9	27 (.27)	
Flashers with gates	66.8	40 (.40)	
Chicago Region			
Passive	74.9	43 (.43)	From national avg.
Flashers only	30.9	27 (.27)	From national avg.
Flashers with gates	17.3	15 (.15)	Regional estimate.
Florida East Coast Railway (FEC) [4]			
Flashers with gates	To be determined	Not applicable	Regional estimate subject to review.

Table Notes:

[1] These are the primary warning device types. FRA is aware that a variety of arrangements are in place at individual crossings and will provide guidance for association of the various arrangements with these benchmark values.

[2] This is the amount by which accident frequency has been estimated to increase when the horn is silenced.

[3] This is the reduction in collision frequency that must be achieved in order to restore crossings impacted by a ban to the level they would experience if the horn sounded. To simplify, if 10 accidents of equal severity were expected in a ban area with gated crossings, a reduction of .40 would be required—to a level of 6 accidents—in order to retain the Pre-Rule Quiet Zone (unless a smaller reduction in accidents would place the Quiet Zone Risk Index below the NSRT). As a matter of technical practice, the factor is applied to the crossing's risk index.

[4] Crossings on the FEC are currently subject to Emergency Order No. 15. FRA had found an alarmingly large increase in the accident rate when nighttime bans were imposed at crossings with flashing lights and gates.

10. Funding

A number of commenters expressed concern that the NPRM was silent as to potential funding sources for implementation of the proposed rule. Generally, commenters indicated that without additional funding being made available, quiet zone implementation would be beyond the financial reach of many communities. Several commenters suggested that the Federal government should provide the funding necessary to implement quiet zones, while other commenters suggested that the operating railroads should provide the funding or that the costs should be shared among some or all interested parties (including Federal, State, and local governments, as well as railroads, shippers, and other users of the rail system).

Several individuals and local governments, citing local budget constraint concerns, suggested that if the Federal government is going to require additional safety measures at highway-rail crossings, then the Federal government should provide the funds for such measures. One individual representing a group of Massachusetts families suggested that the costs of safety at highway-rail crossings should not be the sole burden of communities abutting the railroad, because the general public uses highway-rail crossings. This individual suggested that the NPRM effectively proposes a tax on innocent citizens to protect those who willfully violate traffic laws by illegally proceeding around grade crossing safety devices in attempts to "beat the train." A few individuals suggested that the costs of implementing quiet zones should be shared among the Federal government, railroads and local communities. One of these commenters further recommended that because the rail system is a national resource, the resulting noise impacts are a national issue. Accordingly, this commenter suggested that communities disproportionately affected by railroad noise should not have to provide a disproportionate amount of funding to solve the problem of railroad noise. This commenter recommended the development of a formula to effectively normalize the amount of funding communities would be required to contribute to the implementation of quiet zones within their jurisdictions, based on norms present throughout the United States.

Other individuals commented that because the impact necessitating the proposed rule has resulted from railroad operations and the railroads are the parties that profit from rail operations, any mitigation measures should be the responsibility of the railroads themselves. In addition, one local Sacramento, California business suggested that implementation of quiet zones would result in lower insurance and litigation costs for railroads, and thus, railroads should share in the costs of implementation.

Although most local governments indicated that due to existing budget constraints, implementation of quiet zones would be very difficult without the allocation of additional Federal funds, some local governments did provide ideas for alternative sources of funding. For example, the City of Moorhead, Minnesota has set up a special downtown taxing district to fund the safety measures necessary to implement a quiet zone. The City of Miami Springs, Florida, proposed imposing a user fee, similar to that of airlines, for both passenger and freight rail traffic. Other local governments proposed imposing local property taxes on railroad right-of-ways to help fund safety improvements in order to implement quiet zones (a measure that would be prohibited by 49 U.S.C. 11501 which bans discriminatory taxation of railroads).

Two Colorado municipalities, the City of Brighton and the City of Fort Collins, requested confirmation that quiet zone crossing safety measures qualify for Federal Highway Administration ("FHWA") funding. Another Colorado municipality, the City of Winter Park, requested that either new Federal funding for implementation of quiet zones be made available or the current Federal crossing safety program be expanded to include crossing improvements necessary to implement quiet zones.

Although every commenting State also expressed concern regarding potential funding sources, citing a general lack of availability of State funds, some States specifically recommended against allocating Federal safety funds to finance the implementation of quiet zones under the proposed rule. Specifically, both the North Carolina Department of Transportation ("DOT") and the Ohio Public Utilities Commission ("OPUC") indicated that the proposed rule is directed at quality of life issues, not highway-rail grade crossing safety. Accordingly, each agency strongly recommended against the use of Federal safety funds to finance safety measures necessary to implement quiet zones. In its comments, OPUC specifically expressed the belief that funding for projects in connection with the establishment of quiet zones should not come at the expense of the State's ongoing grade crossing safety programs. OPUC stated that "[g]rade crossing safety must not be compromised at some crossings in exchange for relative peace and quiet at a handful" of other crossings. Thus, OPUC argued that funds already committed to traditional grade crossing safety programs should not be used to fund quiet zone projects. Likewise, the Illinois Commerce Commission stated that the proposed rule would distort the State's multi-year grade crossing safety enhancement planning process and force the State to redirect needed funding from important safety projects to what the agency described as "Federally mandated noise suppression projects."

In addition, explaining that the cost of SSMs will be prohibitive to many State DOTs and many communities, the North Dakota DOT suggested that the proposed rule would increase demand for already limited Federal safety funds if such funds are made available to finance the installation of safety measures under the proposed rule. Accordingly, the North Dakota DOT specifically recommended against the use of Federal safety funds to implement quiet zones. The New York DOT, on the other hand, requested that additional Federal safety funds be made available to implement projects under the proposed rule.

Railroad industry participants expressed the view that railroads should not be responsible for the costs of installing, maintaining, or repairing, the additional safety measures required to implement quiet zones under the proposed rule. These commenters suggested that funds be made available through the relevant highway authorities or the FHWA. One commenter, the American Public Transportation Association, specifically requested that FRA address this issue in a joint rulemaking with FHWA.

Despite the wishes of the commenters, Federal funds have neither been authorized nor appropriated specifically for implementing this rule. Indeed, 49 U.S.C. 20153(A)(3) specifically provides that SSMs are "provided by the appropriate traffic control authority responsible for safety at the highway-rail grade crossing * * *." While there are no dedicated funds set aside for the costs incurred in developing and implementing a quiet zone under this rule, there are several categories of transportation funding available that may be used by States and localities for this purpose. FRA wishes to emphasize that at the outset that it is unlikely that most improvements undertaken under this rule would withstand the priority ranking requirements for safety projects under Federal-aid highway programs, since the improvements may be approximately neutral with respect to safety (as compensation is made for the additional risk associated with silencing the train horn). However, those funds constitute only 10 percent of one of the two major programs. Further transfer between the two programs may be possible. Further detail on Federal-aid programs follows:

The Transportation Equity Act for the 21st Century (TEA–21) was enacted June 9, 1998 as Public Law 105–178. TEA–21 authorizes the Federal surface transportation programs for highways, highway safety, and transit for the 6-year period 1998–2003. TEA–21 is the current legislation that funds both the Surface Transportation Program and the National Highway System Program. The Surface Transportation Program consists of a 10 percent safety set-aside and the balance of the program, which is intended for general transportation improvements off the National Highway System.

The requirements for the Highway-Rail Grade Crossings and Hazard Elimination Programs are defined in sections 130 and 152, respectively, of Title 23, United States Code. Projects funded with "Section 130" funds (23 U.S.C. 130) are intended to reduce the number and severity of train collisions with vehicles and pedestrians at highway-rail grade crossings. Typical projects include active warning devices (*e.g.* flashing lights and gates), signing and pavement markings, illumination, crossing surface improvements, grade separations, sight distance improvements, geometric improvements to roadway approaches, and the closing and/or consolidation of crossings. All public grade crossing safety improvements are eligible for funding under this program, but obligation of funds is subject to strict requirements for ranking the priority of projects on a State-wide basis. Although use of section 130 funds for projects under this rule will be warranted only where those improvements exceed the minimum targets for risk reduction set by this rule and where the projects are legitimately ranked as top priorities within the State, it is important to remember that the bulk of the approximately $4.1 billion expended under the section 130 program since 1974 has been used to improve crossing safety on city and county roads across the Nation, including in whistle ban jurisdictions. Indeed, the automatic warning systems required by several States as a predicate

for whistle bans—and which are required in this rule for New Quiet Zones—were in most cases installed with primarily Federal funds. Thus prior Federal funding has already assisted local governments to some extent in preserving Pre-Rule Quiet Zones and creating New Quiet Zones.

"Section 152 funds" (23 U.S.C. 152 (Hazard Elimination Program) are intended to implement safety improvement projects to reduce the number and severity of crashes at hazardous highway locations, sections, and elements on any public road. Typical projects include intersection improvements (channelization, traffic signals, and sight distance); pavement and shoulder widening; guardrail and barrier improvements; installation of crash cushions; modification of roadway alignment; signing, pavement marking, and delineation; breakaway utility poles and sign supports; pavement grooving and skid resistant overlays; shoulder rumble strips; and minor structure replacements or modifications. It is important to note that grade crossing improvements can be funded under section 152 if they are identified in a State's hazardous location survey.

The difference between the sum of the funding levels for sections 130 and 152 and the overall 10 percent safety set-aside in STP is in a category called "Optional Safety Funds" and is eligible for use in either section 130 or section 152. In FY 2000, there was a total of $368 million available in Optional Safety Funds, but only $21 million (or 6 percent) was used on section 130 grade crossing safety enhancement. Clearly this is an area where States can be encouraged to change the mix of safety projects advanced using this funding to accommodate more grade crossing safety improvements.

It should be noted that 90 percent of the STP funds are available for general use. Local Metropolitan Planning Organizations, working with the State departments of transportation, help determine how those funds should be allocated. As FRA was advised by commenters in this proceeding, community transportation needs differ. Without question, engineering improvements under this rule would constitute eligible projects deserving of consideration for use of this 90 percent share.

Under section 1103(c) of TEA 21, an amount of $5,250,000 per year was set aside from STP funds, and this funding is to be used for projects on designated high speed passenger rail corridors. Should a quiet zone be desired on a portion of such a designated high speed corridor, such funds could be used as a part of the overall high speed corridor improvement project. Given the relatively small amount of funding available under section 1103(c), it is perhaps unlikely that any quiet zone improvements would rise to the top of the list on any such corridor. However, note that there is a strong compatibility between the kind of safety improvements desired for high-speed rail corridors ("sealed corridor" treatments) and the supplementary safety measures identified in this rule.

Transfers of funds from other categories into the STP are permitted, and any such transfers are not subject to STP set-asides or suballocations.

- Up to 50 percent of National Highway System (NHS) apportionments may be transferred to the STP; indeed, up to 100 percent of NHS funds may be transferred to STP if approved by the Secretary of Transportation, and if sufficient notice and opportunity for public comment is given.
- Up to 50 percent of Interstate Maintenance apportionments may be transferred to STP.
- Up to 50 percent of Bridge Replacement funds may be transferred to STP.
- Funds apportioned to the Congestion Mitigation and Air Quality (CMAQ) Program may also be transferred to STP, subject to the following conditions. Up to 50 percent of the amount by which the CMAQ apportionment for the fiscal year exceeds the amount that would have been apportioned to CMAQ for that fiscal year if the program had been funded at $1.35 billion annually may be transferred to STP. Transferred CMAQ funds may only be used in air quality non-attainment and maintenance areas.

Finally, please note that, with respect to roadways on the National Highway System, improvements would be eligible for funding out of the NHS.

The subject matter of this regulatory proceeding is the use of the train horn at highway-rail crossings, not the development of appropriations requests. Accordingly, FRA neither endorses nor argues against earmarked Federal funding for this purpose. FRA does note that, in general, State and local governments have argued against categorical transportation programs and in favor of broad block grants over which recipients could exercise full control. As reflected above, to a large extent that has become Federal policy. Whether any deviation from that policy is warranted by the fiscal impacts claimed to be associated with this rule is a matter for review in other forums. Accordingly, FRA's principal response to those arguing for Federal funding has been to ensure, to the extent practicable, that any expenses attributed to establishing Quiet Zones are no greater than necessary to maintain safety.

As this interim final rule was being drafted, the Congress and the Administration were preparing to address the reauthorization of surface transportation programs (extending or replacing TEA–21). That process was being complicated by reduced revenues, confirming FRA's conviction that this interim final rule should allow additional time for implementation of the rule. Although it is possible that the program structure outlined above may be reorganized significantly in new legislation, FRA does not expect any resulting reduction in the flexibility afforded to the States (working with local Metropolitan Planning Organizations) to affect the utilization of Federal transportation funds.

11. Liability

Several commenters noted that the NPRM was silent as to the issue of liability when an accident occurs at a highway-rail grade crossing within a quiet zone established in accordance with the rule. The New Jersey Department of Transportation ("DOT") explained that consideration should be given to how liability issues presented by the rulemaking will affect public safety. Several commenters suggested that legislation was necessary to prohibit lawsuits by anyone injured while circumventing highway-rail grade crossing safety devices within quiet zones. The Massachusetts town of Manchester-by-the-Sea commented that the NPRM appeared to be a paternalistic effort directed towards those who willfully violate traffic laws and illegally proceed around grade crossing safety devices. This commenter also expressed concern that railroads may be reluctant to agree to implementation of quiet zones under the rule for fear that it would increase their risk of liability if an accident did occur at a crossing within a quiet zone where the railroads did not routinely sound their locomotive horns. Manchester-by-the-Sea suggested that when there is willful conduct by a motorist or pedestrian that jeopardizes his life or those of others, *e.g.*, proceeding through activated gate crossing devices, railroads and local communities should not be subject to liability if an accident occurs. Accordingly, the Town recommended that FRA work with Congress to codify limits to the liability of railroads and communities when those who willfully violate traffic or trespassing laws are injured at rail crossings within a quiet zone. Similarly, a Wisconsin State legislative representative suggested that local communities should not be liable for accidents occurring at grade crossings within quiet zones established under the rule.

The North Carolina DOT suggested that communities pursuing quiet zones in their jurisdictions should enter into agreements with the relevant State and operating railroads agreeing to hold harmless the State and railroads for any accidents or injuries that occur as a direct result of these quiet zones. This same commenter emphasized that the communities implementing quiet zones should assume all of the risk associated with the quiet zones.

Commenters from the railroad industry strongly advocated that municipalities seeking the establishment of quiet zones under the rule should assume liability for all accidents that occur at crossings within the quiet zones. Citing the historical sounding of locomotive horns as a safety feature of railroads for the past century, the Florida East Coast Railway argued that if a community insists that it cease the sounding of the locomotive horns when traveling through its jurisdiction, then that community should be willing to accept the liability associated with the decision. The American Public Transportation Association projected that passage of a rule permitting quiet zones as proposed in the NPRM would probably lead to increased insurance premiums for railroads.

Another concern raised by several railroad industry participants, as well as an individual locomotive engineer, was the fact that State law often imposes liability on individual members of train crews and their employers when a train does not sound its horn at a highway-rail crossing and an accident occurs. These commenters contended that nothing in the NPRM would remove liability from individual train crew members or their employers for failure to sound the locomotive horn in the event of an accident in a quiet zone established pursuant to the rule. A representative of the Wisconsin Central System suggested that the rule should clearly state that failure to sound the locomotive horn in a FRA approved quiet zone could not serve as a basis for imposing civil liability on either the train crew or the employing railroad.

FRA appreciates the legitimate concern of the commenters regarding liability issues surrounding creation of quiet zones under this rule. We note that the proposed rule would have had the effect of relieving individual train crew members and their employers from liability for failure to sound the locomotive horn. The proposed rule clearly provides that establishment of a quiet zone created no legal duty to sound the horn in emergency situations. Because the rule clearly covered the subject matter of such a duty, it would have prevented State laws imposing such a duty. FRA does not expect that lawsuits will never arise over collisions which may occur at crossings within quiet zones, nor should FRA attempt to prohibit such suits since the cause of such collision may in fact be due to factors other than the lack of an audible warning. However, this rule is intended to remove failure to sound the horn as a cause of action in such lawsuits involving crossings within a quiet zone. We expect that the courts will determine liability issues based on the facts of each case and after reviewing the nature of this rule and its Federal requirements.

We expect that courts, following *Norfolk Southern* v. *Shanklin*, 529 U.S. 344 (2000) and *CSX* v. *Easterwood*, 507 U.S. 658 (1993), will conclude that this regulation substantially subsumes the subject matter of whether trains must sound warning devices at highway-rail grade crossings and, therefore, preempts state law on that subject.

FRA perceives no reason why establishment of quiet zones under this rule should result in higher insurance premium costs for railroads. In fact, a quiet zone under this rule should be evaluated as much less of an underwriting risk than a current whistle ban.

12. Wayside Horn

During FRA's initial outreach process prior to issuing the NPRM, several commenters asked whether placement of a wayside horn (a horn at the crossing and directed at oncoming motorists) might be entertained as a supplementary safety measure. FRA also received comments in the docket and at the public hearings on this subject. It is apparent that there is interest in using such a device as an alternative means of providing an audible warning to the motorist of an approaching train.

A wayside horn system would typically consist of horns mounted on poles that are placed at the crossing. A horn would be directed towards each direction of oncoming vehicular traffic. The system would be activated by the same track circuits used to detect the train's approach for purposes of other automated warning devices at the crossing (flashing lights and gates) and would produce a sound similar to the horn signal given by an approaching train.

At FRA's direction, the Volpe National Transportation Systems Center conducted an initial evaluation of two wayside horn installations at Gering, Nebraska in 1995 (*Field Evaluation of a Wayside Horn at a Highway-Railroad Grade Crossing*, Final Report, June 1998). This evaluation noted that use of the wayside horn in lieu of the train horn reduced net community noise impacts. The evaluation also showed a 52 percent reduction in the number of incidents in which motorists continued to drive over the crossing after the warning device's gate arms had started to descend as compared to the baseline data collected with the train horn sounding. There was no significant difference between train horns and wayside horns for motorists that drove around lowered gates. While the report indicated improved driver behavior with the wayside horn, the report also contains analysis that suggests questions regarding the effectiveness of that particular installation in alerting motorists that should be answered before implementing wayside horns as a substitute for train-borne horns. Further, this evaluation did not contain adequate data or analysis to permit a determination of whether a wayside horn could fully substitute for a train-borne audible warning and additional evaluations at other sites should be performed. The NPRM suggested three questions related to the effectiveness of the wayside horn:

1. Does the particular system provide the same quality of warning, determined by loudness at appropriate frequencies, within the motor vehicle while it is approaching the motorist's decision point?

2. As currently conceived, a single stationary horn cannot give the motorist a cue as to the direction of approach of the train or trains. To what extent does this lack of directionality detract from the effectiveness of the warning? Can wayside installation design be altered to compensate?

3. To what extent will the stationary horn suffer from the lack of credibility sometimes associated with automated warning devices, due to the fact that it is activated by the same means? Over what period of time may this problem arise, if at all?

Since the installation of the original wayside horn system in Gering, NE, several other communities have installed wayside horns. These sites include: Ames, Iowa, Parsons, Kansas, Wichita, Kansas and Richardson, Texas. Additionally, other communities have had temporary test installations of the wayside horns.

This topic generated a number of comments from various parties. Additionally, the departments of

transportation from Iowa, Nevada, Missouri and Florida all supported the inclusion of wayside horns as substitutes for train horns. The Brotherhood of Railway Signalmen (BRS) cited design flaws as an impediment to the effectiveness of wayside horns. The BRS also stated that if wayside horns were permitted by FRA, it would be imperative that the track circuits be used to detect the train's approach. The BLE stated that it felt that additional testing should be required before acceptance of the wayside horn.

Generally, commenters voiced strong support for the inclusion of wayside horns as a supplementary safety measure under the rule. States and local governments in particular, with the exception of the California Public Utilities Commission (CPUC), were in favor of including wayside horns as a supplementary safety measure. In support of their positions, these commenters cited the Volpe Center study and an Iowa Department of Transportation study, both of which have shown reductions in gate violation frequency with use of wayside horns. The cities of Gering, Ames, and Wichita all supported inclusion of wayside horns as a substitute for locomotive horns. They expressed the view that there was great community support for wayside horns and felt that safety was improved. Ames, Iowa wrote "* * * it [wayside horn] has tremendously improved the quality of life and safety for our residents." It is noted that Ames has installed wayside horn systems at three additional crossings. The city administrator for Gering, Nebraska also wrote that he had never received so many unsolicited "thank you" calls and letters from citizens as he had over the installation of wayside horns. These same commenters, along with at least one representative of the railroad industry, also indicated that they believed that wayside horns provide a more cost-effective alternative to train horns, than some of the other supplementary safety measures included in the NPRM. The Florida Department of Transportation ("DOT") suggested that wayside horns be used in instances where it is impossible or impractical to install the supplemental safety measures articulated in the NPRM. The Florida DOT, however, did not elaborate on the rationale for limiting the use of wayside horns to situations where the installation of the identified supplemental safety measures is impractical or impossible.

The AAR suggested that there is more certainty regarding the effectiveness of the wayside horn than there is for the non-engineering measures included in the NPRM as alternative safety measures. In support of its assertion, the AAR submitted a copy of its report entitled *Wayside Horn Sound Radiation and Motorist Audibility Evaluation* that found that the latest model of wayside horn was louder than previous versions and concluded that wayside horns are a viable alternative to locomotive horns for audible warnings at highway-rail grade crossings. However, recognizing FRA's misgivings about the wayside horn noted in the NPRM, the AAR suggested that if FRA could not definitively determine the effectiveness of the wayside horn prior to issuance of the final rule, FRA should permit use of the horns as supplementary safety measures at grade crossings subject to two conditions: (1) Concurrence of the railroads operating at the crossings, and (2) demonstration of the efficacy of the horns at each crossing at which they would be installed.

The CPUC, however, asserted that there is currently insufficient evidence that the wayside horn can provide protection comparable to locomotive horns and opposed the use of wayside horns as a supplementary safety measure until further data on the effectiveness of the horns is collected. Other commenters voicing opposition to the use of wayside horns for the same reason included the BLE and the BRS.

In response to FRA's first specific question posed in the NPRM—whether wayside horns provide the same quality of warning within the motor vehicle as a locomotive horn while a train is approaching the motorist's decision point—a few commenters suggested that the wayside horn gives equal or greater audible warning. For example, the City of Wichita, Kansas, suggested that a wayside horn provides a uniform quality of warning within a motor vehicle because while wind, neighboring buildings, houses, fences and trees all affect the quality of warning of the locomotive horn on a motorist at a crossing, only wind would have an effect on the quality and uniformity of the warning of a wayside horn. Other commenters suggested that wayside horns provide consistent decibel levels directed exactly where motorists are driving (*i.e.*, at the crossings, not down the tracks). The City of Roseville, California, cited a local wayside horn test that showed consistently higher audible warnings directed at the crossing, while reducing the noise impact to the surrounding communities.

In response to FRA's second question—whether the lack of directionality from a wayside horn detracts from the effectiveness of the warning—commenters supporting the use of wayside horns generally agreed that the apparent lack of directionality does not detract from the effectiveness of these audible warnings. Wichita pointed out that as motorists approach rail crossings they often hear train horns from nearby crossings on different rail lines so it is not clear from which direction the train is coming anyway. The Kansas DOT suggested that the issue of direction is moot since wayside horns are used in combination with other automated warning devices (*i.e.*, gates, flashing lights) and that when crossing gates are down, motorists are supposed to stop and wait for the train to pass, regardless of the direction in which the train is traveling. The Missouri Department of Economic Development suggested that wayside horns would encourage motorists' compliance because drivers cannot tell how far away from the crossing the train is by the sound of the wayside horn.

Only one commenter responded directly to FRA's third question—whether the wayside horn would suffer from the lack of credibility sometimes associated with automated warning devices due to false activations of the signal system. Wichita suggested that the annoyance associated with a wayside horn sounding in connection with an active warning system's false activation may cause earlier public reporting, and thus quicker railroad response to the problem location.

Several additional studies have been conducted on the wayside horn since the initial study in Gering, NE. Ames, Iowa. One study (*Evaluation of an Automated Horn Warning System at Three Highway-Railroad Grade Crossings in Ames, Iowa*, by Gent, Logan and Evans, 2003) documented the reduced noise impact to the community, public acceptance of the horn system through surveys of residents and motorist, and locomotive engineer opinions that the system was safe or safer than the locomotive horn (obtained through surveys). No data on actual driver behavior at the crossings were collected in this study. This study did not analytically address any of the three questions posed by the Volpe study.

The *Wayside Horn Sound Radiation and Approaching Motorists Audibility Evaluation* (Mike Fann and Associates, May 2000) examined the sound levels and frequencies emitted by the wayside horn. This research collected data that showed that system that was tested provided a sound level of 98 dB at 100 feet from the wayside horn. The sound level that was produced met FRA's regulation for a locomotive horn that requires a minimum sound level of 96 dB at 100 feet from the front of the locomotive. The study also measured the frequency content of the wayside horn and using signal detection theory indicated that 99 percent of drivers with only a partial anticipation of a train event should hear the warning. No data were collected on actual driver behavior. This study provides information towards answering the first question suggested by the Volpe study. The sound level measured for the wayside horn meets FRA sound level requirement. Signal detection theory and measurement of the frequencies contained in the wayside horn indicate that the driver should be able to hear the wayside horn. Neither the Ames nor Fann study addresses questions two and three concerning directionality and credibility of the warning.

Texas Transportation Institute of Texas A&M University, was engaged by a manufacturer of a wayside horn system to revisit one of the crossings in Gering, NE to assess the level of driver compliance with the warning system after approximately six years of operation. Video data of driver behavior at the crossing was collected for 16 days. Driver compliance with the warning devices was then analyzed in the same manner as the 1995 Volpe study. The study, entitled *A Safety Evaluation of the RCL Automated Horn System* (Roop, May 2000), showed that after six years of operation of the wayside horn that driver compliance with the automatic warning devices at the crossing (flashing lights with gates) was slightly better than the baseline driver behavior observed when the locomotive train horn was used. It should be noted that there was a noticeable decrease in driver compliance with the use of the wayside horn from 1995 to 2000. However, driver behavior in 2000 with the wayside horn was still slightly better than the 1995 driver behavior with train horns. This research goes towards answering question number three.

After review of the accumulated experience with the use of wayside horns, FRA has determined that the use of wayside horns at crossings equipped with automatic flashing lights and gates as a replacement for train horns has merit under certain well-defined conditions. It has been clearly shown that wayside horns significantly reduce the noise footprint that a community would experience when compared to the routine sounding of train horns. At locations where wayside horns have been installed, community acceptance has been great and city officials cite that there has been no decrease in safety at the crossings. TTI's study that revisited the original Gering, NE study after six years of wayside horn use indicates that the wayside horn at that location is still as effective as the locomotive horns used during the baseline period.

The Northwestern University Center for Public Safety evaluated the effectiveness of the wayside horn at three crossings in Mundelein, Illinois. The study, entitled, *Evaluation of the Automated Wayside Horn System in Mundelein, IL* (Raub, Lucke, January 2003), utilized video monitoring of driver behavior, sound level measurements and survey instruments to: (1) Assess the impact of wayside horns on the behavior of drivers; (2) measure loudness of train horns and the wayside horns in neighborhoods; (3) obtain the opinions of locomotive engineers on perceived changes in driver behavior; and (4) obtain the opinions of residents on the differences between locomotive horns and wayside horns. The Village of Mundelein, located 35 miles north of Chicago, has 40 to 50 trains per day passing through. A baseline of driver behavior was collected for three months during which there were 10,382 gate activations. There were 367 incidents of drivers disregarding the active warning devices (flashing lights and gates) during this period. Locomotive horn use was then discontinued, and the use of the wayside horns was instituted. Data was not collected until four months had passed to allow for the novelty effect of the wayside horns to pass. Video data was then collected for three months during which there were only 97 incidents observed during the 8,683 gate activations. The study results indicated a 70 percent decrease in the number of times drivers disregarded the warning devices. Additionally, noise levels in residential and business areas located near the tracks decreased by 80 percent. As in the Ames, Iowa study, there was acceptance of the system by both the public and locomotive engineers. Ten out of the 12 locomotive engineers surveyed felt that the wayside horn was as safe, or safer, than the use of the locomotive horn. This study contributes towards answering question 2 by providing additional data on the effectiveness of wayside horns in reducing incidents of driver disregard of the warning devices. While the study does not quantitatively study question 2, it can be inferred from the data that the lack of directionality does not contribute to an increase in incidents of driver disregard of the warning devices.

The interim final rule issued today provides that wayside horns may be used in lieu of locomotive horns at crossings equipped with automatic flashing lights and gates. *See* § 222.59. Although clearly a wayside horn produces sound, because of its lower noise impact on the surrounding community, it may be installed within a quiet zone if the public authority determines that it is appropriate to do so. If used within a quiet zone, the risk at a crossing equipped with wayside horns will not be included in calculating the Quiet Zone Risk Index or Crossing Corridor Risk Index. It also should be noted that wayside horns have not yet been classified by FHWA as traffic control devices. If FHWA does classify them as traffic control devices, the wayside horn must also be approved in the Manual on Uniform Traffic Control Devices (MUTCD) or FHWA must approve experimentations pursuant to section 1A.10 of the MUTCD.

13. Horn Sound Level and Directionality

Train horns are clearly a major source of unwanted noise in communities through which active railroad lines pass. FRA included in the NPRM provisions designed to limit the dispersal of horn noise into the community where the sound does not serve its warning purpose. These provisions were a maximum limit on horn sound output and a limit to sound emanating to the side of the locomotive. FRA has a long history of working with the railroad industry to improve locomotive cab working conditions and has been sensitive in this rulemaking to balance the need to reduce noise exposure to operating crews with community noise concerns. With the release of the NPRM and accompanying Draft Environmental Impact Statement, FRA gave needed consideration to the mitigation of locomotive horn noise on communities.

The NPRM proposed limiting the horn sound emanating to the side of the locomotive to no more than the sound measured to the front, and FRA had anticipated that this might cause railroads to modify their horns to reduce some of the unwanted noise. Many commenters supported these provisions and strongly favored reducing maximum horn sound output levels from the high levels in general use. The NPRM discussed a maximum sound level from horns of 104dB(A) for crossings with active warning devices and 111dB(A) for passively signed crossings. Communities generally commented in favor of using the lower sound level in all cases. On the other hand, the NTSB commented that there is a need for high sound levels to

overcome vehicle noise and to provide adequate warning at passive crossings where significant responsibility and discretion is left to the driver. The BLE preferred a variable horn that would allow the engineer to decide when the high horn level was needed.

Because this issue presented complex questions that were not likely to be emphasized in testimony on the extensive NPRM, and because FRA sought to put detailed questions to the railroad industry regarding the horn, FRA held a Technical Conference on Locomotive Horns during the comment period. The conference was attended by railroads, the AAR, locomotive builders General Electric and General Motors, and other industry representatives. In the conference, AAR made FRA aware that the testing procedures set forth in 49 CFR 229.129 were causing a misperception regarding center mounted horns. Because the existing § 229.129 requires measurement of horns 100 feet in front of the locomotive and 4 feet above the rail, it was claimed that an acoustical shadow is cast on the measurement device by the locomotive body when center mounted horns are sounded. This acoustical shadow dissipates quickly as one moves further away or to the side of the locomotive. It was suggested that the testing procedures were giving the impression that center mounted horns were louder to the side than to the front. Conference participants complained that the proposal limiting the horn sound emanating to the side of the locomotive would force them to relocate horns onto the cab from the center of the locomotive, and would increase crew noise exposure. The use of shrouds or shields had been tried by railroads in attendance, and they did not consider them practical. The technical conference also helped FRA understand the railroads' strong commitment to remain using compressed air warning device systems and the many difficulties involved in equipping and maintaining horn systems.

After reviewing the results of the technical conference and comments on the horn provisions, FRA decided to conduct further tests to quantify the effects of horn placement and the influence of variations in available air horn models. A series of stationary tests were performed by the Volpe National Transportation Systems Center (VNTSC) at the Transportation Test Center in Pueblo, Colorado from April 10 to 12, 2001. The results of these tests showed that the shadow effect is very pronounced at the measurement location specified in existing § 229.129. When the traditional cab roof horn location was compared in these tests with the center of the locomotive body horn location which is current practice, the difference in location produced no meaningful change in community noise exposure nor in the warning signal projected beyond the immediate shadow of the locomotive body. Horns located on the locomotive nose produced less objectionable community noise but also resulted in weaker warning signals and resulted in higher noise levels in the engineer's cab. FRA learned that Transport Canada recently sponsored moving tests of locomotive horns, which showed meaningful differences in the effectiveness of the warning signal provided by horns mounted on the cab roof versus those mounted on the center of the locomotive body. The research indicated that horns mounted at the front of the locomotive on the cab roof produced a more effective warning signal. Because the results of the stationary tests and the technical conference did not justify the provision for a maximum sound limit to the side of the locomotive, it has been eliminated from this interim final rule. However, because the Canadian research indicates that horn location may be a factor in the effectiveness of the warning signal, further research is needed before any regulatory changes are made.

FRA has determined that by changing the measurement procedures in § 229.129, the effect of the shadow can be removed from horn measurement. FRA believes that this simple change, with the additional requirement of remaining below a maximum sound level, will have the effect of normalizing the sound output of all horns. The interim final rule requires that horns be measured at the familiar location, 100 feet in front of the locomotive, however the sound level meter receptor is to be mounted at 15 feet above the rail (*i.e.* out of the locomotive's "shadow").

FRA also continued to review and refine the signal detection theory application previously developed by the FRA Office of Research and Development and reported by the Volpe Center (Railroad Horn Systems Research, USDOT FRA/VNTSC, January 1999) using newly gathered horn measurement data. While lower sound levels would reduce community noise impact, an understanding of the relationship between horn sound level and its detection by motorists is needed to preserve the safety function of the horn. The detectability model was applied to the most critical safety condition at passive crossings where no other audible or visual warning device is present and where vehicles typically are approaching the crossing at speed. In this case the model suggests that a high likelihood of detection will occur when the horn is producing 108dB(A) at the measurement location, 100 feet in front of the locomotive and at 15 feet in height. FRA added a margin to this level to account for variability in the sound level meters and other factors and set the maximum level at 110dB(A). Although FRA employed the best available tools and knowledge to arrive at this level, additional research may, over time, suggest a different maximum level.

This interim final rule requires railroads to comply with the maximum horn level of 110dB(A) using the new measurement procedures to certify their locomotives. Compliance with the provision is required for new locomotives upon the effective date of this rule which is one year after the date of publication of this rule. Additionally, each existing locomotive shall be tested within five years of this publication date and when rebuilt as determined pursuant to 49 CFR 232.5. FRA also anticipates that whenever repairs or modifications are performed to locomotives that affect the performance of the horn system, the railroad will re-certify the locomotive horn to comply with § 229.129.

With the establishment of the maximum sound level for locomotive horns, FRA has also eliminated a plus and minus tolerance in making compliance measurements of horns. FRA anticipates that railroads will set their horns to be somewhat louder than the minimum and quieter than the maximum to account for the minor inaccuracies of the Type II sound level meters currently available. While FRA currently uses Type II sound level meters to test for compliance with part 229.129, FRA may use Type I sound level meters in the future.

Considerable effort has been expended to establish and quantify both the significant risk reduction from regular use of locomotive horns and also the level of sound that needs to be delivered to be detectable. FRA continues to study these issues and may revise these requirements as new information becomes available.

FRA also gave serious consideration to the option of requiring a two-level horn selectable by the locomotive engineer. This approach might allow a lower sound level for actively signed crossings. Historically, horns had been fitted with modulating valves that did provide some latitude for adjustment of the sound level, and communities exposed to today's automatic sequencing horns have expressed concern at the results. However, there are a variety of practical considerations that FRA would need to consider that have not been fully developed in this proceeding before any mandatory standard could be issued (*e.g.*, the difficulties created by passively- and actively-signed crossings in close proximity to one another). FRA will continue a dialogue with railroads and communities on this issue. The rule does not foreclose this approach where it fits local conditions, and FRA will encourage railroads using locomotives that are dedicated to particular line segments to explore this option.

Steam Locomotives

FRA has elected not to address horn sound levels on steam locomotives in the rulemaking. Steam locomotives constitute a small fraction of the locomotive fleet and are mainly concentrated on tourist and scenic railroad operations with infrequent service in a largely rural area. Given the strained financial circumstances of many museum and tourist operations, and the limited noise impact the small number of steam locomotives have on local communities, FRA has not, at this time, elected to apply the maximum sound level limits to steam locomotives. It should be noted, however, that a railroad operating a steam locomotive within a quiet zone must silence its steam whistle in accordance with this rule.

14. Chicago Regional Issues

A. Introduction

The six-county Chicago Region is host to the largest rail terminal area in the Nation, and it accounts for the biggest concentration of "whistle bans" and associated casualties. Chicago communities and Chicago industries have grown up with and around the extensive rail complex, and the metropolitan area has benefitted greatly from an extensive commuter rail system established by the State and funded by the State and region with Federal assistance. Chicago's Union Station is also a major hub for Amtrak intercity service. The most voluminous and many of the most spirited comments we received came from Chicago Region organizations and residents who wished to maintain existing whistle bans. The train horn issue has a unique history in the region that has contributed to the need for different treatment with respect to the impact of no-whistle policies at gated crossings. For these reasons, we provide considerable detail on train horn issues in the Chicago Region.

This section of the preamble describes the regulation of horn use at the State level in Illinois, explores its implications for horn use and safety at the Chicago regional level, reports the comments from Chicago Region and State officials in this proceeding, discusses the difficulties in obtaining reliable and consistent data on where Chicago Region whistle bans were actually in effect at a given time and how FRA has attempted to resolve those difficulties and data anomalies, and explains the actions FRA has taken in the interim final rule to respond to Chicago-area concerns.

B. Legislative and Administrative Actions in Illinois

The recent history of train horn use in the Region has been reported to FRA as follows. Historically, the State of Illinois tolerated local ordinances banning whistles, and it appears railroads had observed them to a substantial extent. On July 29, 1988, Illinois Public Act 85–1144 (625 ILCS 5/18c–7402) became effective, requiring that the horn be sounded by registered rail carriers at all public highway-rail crossings.[5] Railroads complied, resulting in a substantial public outcry and court action.

The Illinois Commerce Commission (ICC) responded by excusing (exempting) all registered carriers from sounding horns at all highway-rail crossings which (i) were provided with automatic flashing light signals, or flashing light signals and gates, and (ii) had experienced less than three accidents involving a train and a vehicle within the prior 5 years.[6] In general, to qualify for being exempted, it appears that the crossing was required to have had the same type of warning system in place over the past 3 years. ICC Docket Nos. T88–0050 (orders of August 31, 1988; September 8, 1988; and October 12, 1988) and T88–0053 (orders of August 31, 1988; October 12, 1988; and January 25, 1989).

Notably, the Northeast Illinois Regional Commuter Railroad Corporation (Metra) was not a named party in the ICC proceedings. Metra is not regulated as a registered carrier due to its status as a public benefit corporation of the State of Illinois (and accordingly is also not required to sound the horn at crossings under State law).

By contrast, Metra service operated by freight railroads as contractors to Metra, and Metra service provided over lines controlled by freight operators, has been subject to the State law and the jurisdiction of the Commission. Under Docket No. T88–0050 the ICC addressed crossings on the lines of Metra's freight partners. The Commission initially found all crossings meeting the basic requirements (active warning and fewer than 3 accidents in 5 years) to be "reasonably and adequately protected" with the exception of two crossings.

The Commission further found 16 crossings "adequately protected" despite the occurrence of (in one case) up to 5 accidents in the previous 5 years, stating that "at least part of that finding is based on a commitment by or on behalf of the named governmental units to increase enforcement of State laws as they apply to motorists obeying automatic flashing light signals and gates. * * *" The Commission went on to require reports referencing enforcement and awareness programs at the 16 crossings, stating in effect that it expected to see an increase in safety enforcement activity (Interim Order of August 31, 1988 at 3). Notations attached to the copy of this order provided by the Commission indicated that, in addition to the said 16 crossings, 29 crossings were initially identified for exemption under this order. In a subsequent interim order of September 8, 1988, the Chicago and Northwestern was excused from sounding the horn at the Nagle Avenue crossing, again based on a commitment for law enforcement and education.

The final order in this docket provided by the Commission was dated October 12, 1988. In this order the Commission revised its express decisional criteria as to at least the Nagle Avenue crossing, stating that certain of the accidents at that crossing "were the result of persons deliberately ignoring the flashing lights and driving their automobiles around the gates."[7] The commission also provided relief for two named crossings where warning systems had been recently upgraded (notwithstanding the previous accident history). The net effect of these actions appeared to have left the majority of the roughly 565 crossings on the Metra system subject to the requirement that

[5] A copy of the Illinois code provision, and copies of major Commission orders, have been placed in the docket of this proceeding. This material was provided by the Commission at FRA request.

[6] Three accidents at a single crossing within 5 years in a very large multiple of the typical accident experience among public crossings. Most individual crossings will not experience a single accident over a 10-year or greater period.

[7] This constitutes the leading cause of collisions sought to be prevented by this rulemaking, although the horn also has value to the motorist who has misunderstood the message sought to be conveyed by the traffic control device, has stalled on the crossing and needs to vacate the vehicle, or who is faced with an activation failure.

the train horn sound (or left them unaddressed from the point of view of State law due to Metra's unique self-governing status). However, that may not have been the case, as FRA has not had the opportunity to review the entire file of the proceeding; and inquiries to the Commission to clarify this point were complicated by the passage of time and turnover of rail leadership. As noted below, if that was the case it was swiftly altered by proceedings in another docket.

Highway-rail crossings off the Metra system were subject to ICC Docket No. T–88–0053. The ICC initially entered an emergency order excusing the sounding of the horn under the basic criteria previously described (August 31, 1988). A total of 111 crossings with automated warning devices were identified for continued sounding of the horn based upon the occurrence of 3 or more accidents between June 1, 1983, and June 1, 1988. On October 12, 1988, the Commission entered an interim order carrying forth this pattern, but adding exemptions for crossings that had experienced recent safety improvements. It appears that the list of not excused crossings was reduced to 50, with another 9 crossings set for exemption upon completion of planned improvements.

The final order in ICC Docket No. T88–0053 was entered on January 25, 1989. It incorporated 2 crossings on a Soo Line Metra route (previously omitted from T88–0050) which were identified as not excused. The Commission order stated that Appendix 1 listed all crossings where sounding the horn was not excused under both dockets (T88–0050 and T88–0053). Appendix 1[6] was a list of 53 crossings said to be "not excused," 9 of which were to be excused upon completion of improvements and one of which is separately marked as not excused under docket T88–0050. Of the 53 crossings not excused, 23 were in the Chicago Region. Accordingly, by early 1989 the great majority of crossings in the Region were excused, but 23 with the highest number of recent accidents remained not excused.

After its initial actions in the 1988–1989 period, the Commission evidently adjusted the terms of the exemptions over time, but the basic practice remained in place. In 1994, the Commission conducted a review of the train horn issue under Docket No. T91–0082. The Commission's order of February 24, 1994, summarized its actions to that point as follows:

> After hearings and by orders in those dockets the Commission excused registered rail carriers from whistling at crossings under the terms and conditions as set forth hereinabove; at additional crossings where a review of the type of accident at a specific crossing indicated that whistling would not have prevented the accident and at other crossings where governmental authorities agreed to increase their enforcement activities of existing statutes governing rail crossings, increase safety programs/presentations to the public regarding same, and report to the Commission at six month intervals those enforcement/presentation activities for a period of two (2) years.

The Commission went on to indicate that the present order was intended to take into account the accident history since the initial orders, as well as changes in crossing status. In reporting the findings of hearings and letters in this docket, the Commission noted that a number of Chicago-area railroads, including Norfolk Southern, Illinois Central, CSX and Chicago Northwestern (for crossings outside its suburban commuter territory) indicated that they would sound horns at all crossings even if excused. Order at 3. Though most of the communities participating in the proceeding sought exemptions for crossings within their borders, the City of Chicago stated it had no objection to use of the horn.

The Commission consolidated the previous dockets under the new number, rescinded previous orders and entered findings that made adjustments based on experience, including excusing use of the whistle at additional crossings that were "reasonably and sufficiently protected." In one instance sounding the horn was excused at a crossing were "a driver ignored operating gates and was hit and citations for violating the gates were issued to that driver. * * *" *Id.* at 5. But the Commission indicated that carriers would be required to sound the horn at new highway-rail crossings that had not been in service for 5 years, even though equipped with automatic warning systems.

The Commission was explicit in stating that the statute "does not give the Commission any authority to prohibit the sounding of such whistle warnings. * * *" *Id.* at 5. The order notes that, in fact, if communities wanted carriers to sound the horn they could request that they do so despite exemptions; but there is no suggestion that local jurisdictions could require railroads to honor exemptions by running silent. Attachment 1 to this July 1994 order listed 53 crossings at which carriers were not excused under the new order (39 older crossings and 14 new crossings). There is little overlap between the crossings in this list and those specified as not excused in the commission order in the previous docket.

The Commission subsequently entered an amendatory order in Docket No. T91–0082 (dated July 20, 1994) making various adjustments to the prior order. The major effect was to cut back the list of new crossings with insufficient exposure to 4 from 14 (so that carriers were excused at another 10 crossings).

The Commission actions of 1994, which were based on accident data through June 1, 1991, apparently had the effect of excusing most of the Metra system crossings operated or dispatched by contract carriers, with the exception of 5 Soo Line crossings. However, 14 additional Chicago Region crossings without commuter trains were not excused.

In its 1994 orders, the Commission was silent with respect to the wisdom of continuing to excuse crossings with fewer than 3 accidents in a specified 5-year window in the past. The movement in the pattern of exemptions from 1988 to 1994 was significant. If the Commission considered the possibility that (i) sounding the train horns may have reduced the risk of collision in the period 1989–1991 for crossings that had previously experienced 3 or more collisions within the overlapping previous period and (ii) excusing compliance with the train horn at those crossings might drive the risk back up, the record available to FRA is silent with respect to such consideration.

C. Actual Practice Sounding Train Horns in the Chicago Region

It is clear that, particularly prior to 1994, ICC orders excusing the use of the locomotive horn contained significant exceptions, and certain exceptions (applicable to largely different crossings) apparently continue to date. While the ongoing rationale for Commission decisions is apparently not consonant with the principles later applied in Federal legislation leading to this rulemaking, Commission orders without question have tended to withhold relief from use of the horn for a significant number of crossings that are very high risk. In some cases, communities may have been stimulated to engage in enforcement or education efforts in order to support exemptions.

It is also apparent that freight railroads have taken disparate points of view with respect to exemptions, with some electing to blow the horn at all crossings and others taking a more selective approach.

Much of the highway-rail crossing safety exposure in the Chicago Region is found on the Metro commuter rail network, which includes the following:

- Lines over which Metra has operated service directly and subject to its own rules throughout the period 1988 to date (the Rock Island District, South Shore Line, Southwest Service, and the Electric District);
- Lines on which Metra operates in effect as a tenant, with the freight railroad imposing operating rules and providing dispatching (Milwaukee District West and North lines (Soo Line) and the Heritage Corridor (CN));
- New service established using Metra crews over Wisconsin Central in 1996 (North Central Service); and
- Freight lines over which the freight railroads provide Metra service as contract operators (UP North Line, UP Northwest Line, Wisconsin Central North Central Service, and BNSF Aurora line service).

Most of these lines carry significant freight volumes, as well as significant numbers of daily commuter trains.

Throughout the period Metra has enjoyed discretion with respect to whether to sound the locomotive horn at crossings where it provides service directly, and Metra's host railroads and contract freight operators have also enjoyed significant latitude as a result of the ICC exemption policy. Metra testimony and filings in this docket indicate that 69 percent of the 565 public grade crossings on the Metra route system were no-horn crossings as of spring 2000. It follows that Metra trains sounded horns at about 175 crossings and did not sound the horn at about 390 crossings during that time period, but the picture may have been somewhat different during earlier periods. FRA concludes that Metra and its contractor operators have exercised discretion in whether to sound horns, even where exemptions from the State mandate existed, based upon safety concerns and community quiet concerns. Given FRA's knowledge of safety programs, FRA believes that Metra has likely tended to emphasize safety where risk is known to be relatively high based on factors such as crossing characteristics (angle of intersection, complexity of the roadway geometry including nearby roadway intersections, history of accidents, crew reports of near hits, and other factors). According to the ICC, Metra has also utilized some time-of-day partial bans to address infrequent train movements during early morning hours. While freight railroads in the Chicago Region have apparently run silent as commuter operators over crossings where horn sounding was excused, they have been much more likely to use the horn when operating freight trains for their own accounts.

D. Current Chicago Region Whistle Ban Status

Quite obviously, the fact that the ICC excused use of the horn does not mean that trains are running silent over the crossing. The current total number of crossings in no-whistle status in the Chicago Region is apparently significantly smaller than the original 846 identified by the AAR and others in the early 1990's. As of August 3, 2000, the ICC was estimating only 23 no-whistle freight-only crossings, all on the Indiana Harbor Belt, and 320 crossings used by passenger and freight trains (Metra system), for a total of 343 no-whistle crossings. Of this number, 13 were affected by bans only during part of the day (*e.g.*, nighttime or off-peak), and the remainder were 24-hour bans.

Information provided by the AAR on October 24, 2000 indicated a total of 28 no-whistle freight-only crossings in the Chicago Region and 227 no-whistle crossings on the Metra route system for a total of 255. The AAR noted that "none of these railroads operates at public crossings in Chicago without sounding the whistle unless the crossings are equipped with gates or trains operate at speeds under 10 m.p.h." At approximately the same time Metra informed FRA that 130 crossings on their property were no-whistle crossings. Between the year 2000 and 2002 some of these crossings were reported in the inventory as being closed or no longer public. When combined and checked against year 2002 inventory records some 304 Chicago Region crossings were considered no-whistle based upon AAR and Metra sources.

In November of 2002, the ICC provided an updated listing of crossings in the State of Illinois indicating current whistle status (based on actual practice). It showed 278 no-whistle crossings in the Chicago Region and, of those, 226 corresponded with the 304 provided by AAR and Metra. FRA also learned of 29 additional quiet crossings in some other suburban Chicago communities for a total of 385.

To the extent that the ICC and AAR may not have queried all railroads, particularly smaller short line and regional railroads, a few crossings may have been omitted from these counts. The AAR and ICC filings are also notable in omitting lines directly operated by Metra, which is an AAR member. However, it is clear from the AAR's filing, as well as representations made by railroads to the Commission in 1994 and recent lists provided by the Commission, that the horn has been sounded at the vast preponderance of freight-only crossings in the Chicago Region since at least the 1994 time period.

The following table summarizes the available data for the mid-2000 period, including both partial and 24-hour bans for the Chicago Region:

	Total Crossings in Region (2002)	FRA Updated Nationwide Study (Jan. 2002)	No-whistle crossings per 8/23/2000 CATS estimates	No-whistle crossings per 10/24/2000 AAR letter	No-whistle crossings per ICC 11/19/2002	No-whistle crossings as of 2002 (FRA reconciliation)
Commuter			320	227		347
Other			23	28		38
Total	1,671*	846**	343	255	278	385

*Current total from FRA inventory with adjustments for known closures.
**Based on early AAR survey and crossings identified during outreach largely prior to the NPRM.

FRA's reconciliation in effect adds no-whistle crossings on Metra's home lines to the AAR estimates and the information from the ICC. AAR had included the no-whistle crossings on Union Pacific, BNSF, and Wisconsin Central property, but not on Metra owned and operated routes. Again, it is possible that these counts omit a few no-whistle crossings, possibly those on railroads not surveyed by the parties.

[6] The attachment FRA received from the Commission did not bear the docket caption, but the Manager of the Railroad Safety Section of the Commission confirmed that FRA had received the correct item and that the caption had been obscured during copying.

E. Community Reaction to the Proposed Rule

Testimony from public officials representing the Chicago Region was reasonably consistent in content. The major Chicago Region groups argued that the collision rate at grade crossings in the Chicago Region is lower than the nation—even with whistle bans. They argued that FRA's Inventory data were outdated, that the rule is too costly, and that it would take much longer to implement than FRA had proposed to allow. Chicago commenters also postulated that the Chicago area will be the most impacted by the rule. The general conclusion suggested by most of the commenters was that the Chicago Region (or Illinois as a whole) should be excluded from the final rule and left to implement its own programs, which are said to be better suited to local conditions. This testimony was supported by State-level officials.

FRA is familiar with the efforts of the Illinois Commerce Commission, the Illinois Department of Transportation, Metra, freight railroads, and many counties and cities to improve safety at highway-rail crossings in Illinois, and specifically in the Chicago Region. These efforts are presently well led and well coordinated, and the State contributes significant resources. Nevertheless, in the year prior to the testimony on the proposed rule, Illinois led the Nation in fatalities at highway-rail crossings. The State regularly places second or third in that category, even though collisions and casualties declined over the decade of the 1990s (as they did in the Nation).

This record is driven to a significant extent by the very heavy exposure in the Chicago Region, where every weekday over a thousand trains compete with millions of motor vehicles at almost 2,000 highway-rail crossings. Collisions on major Chicago-area lines are more likely to result in serious injuries or fatalities because of relatively high train speeds associated with commuter service. FRA calls attention to this issue not to be critical in any way, but rather to note the importance of sustained effort by all responsible parties to meet this continuing safety challenge.

FRA thoroughly reviewed all studies, testimony and comments submitted by Chicago-area commenters, including the Speaker of the House of Representatives, other Members of Congress, the Chicago Area Transportation Study (CATS), Northwest Municipal Council (NWMC), Dupage Mayors and Managers, and the City of Chicago, Department of Transportation, among others. FRA also took official notice of testimony before the Subcommittee on Ground Transportation of the Committee on Transportation and Infrastructure, U.S. House of Representatives, on July 18, 2000 ("Implementation of the Federal Railroad Administration Grade-Crossing Whistle Ban Law," No. 106–101), which focused heavily on the Chicago Region.

FRA endeavored to fairly evaluate the claim of special circumstances, as well as to take the specific points into account in relation to the National issue posed in this proceeding. What follows is a discussion of FRA's findings, comparing FRA's data and methodologies with those in submissions by Chicago-area groups. We also discuss further the statistical analysis reported above with respect to its significance for the final rule. We conclude that many comments from the Chicago Region have valid application when tempered by other available information, and we call attention to aspects of this rule that reduce the impact of the rule at no-whistle gated crossings in the region. As described above, FRA also developed a risk-based method for excepting many communities from the train horn requirement. Moreover, this interim final rule provides significantly more time for implementation than did the NPRM.

F. Methodology/Inventory Data

As noted above, Chicago Region commenters generally viewed the grade crossing safety record in the region as good. Many commenters suggested that the train horn could not be an effective warning device in the Chicago setting because of the number of train movements (motorists would become inured to the warning). Thus, it was felt that there was no difference in safety performance between crossings where the horn is sounded and those where it is not sounded. (By contrast, the ICC implicitly recognized the usefulness of the train horn but argued more widespread use of the train horn would not be accepted by the public and was not necessary given existing administrative standards.) FRA has responded to the comments by thoroughly reviewing the underlying data as well as conclusions derived from the data in the NPRM.

To understand the controversy over Chicago data it is necessary to recall several points regarding the Chicago Region at the outset. First, virtually all of the crossings identified during public contacts as of concern to Chicago residents with respect to termination of existing horn exemptions are equipped with flashing lights and gates ("gated crossings"). Second, as discussed above, the ICC required use of the train horn at some of most hazardous crossings during at least portions of the FRA study period; and, even when the Commission excused use of the train horn, Metra and freight railroads often elected to use the horn notwithstanding public opposition, if any.

It is also necessary to understand some basic information regarding the data that FRA has available to work with. Accident/incident data used in this rulemaking are reported to FRA by the railroads under regulations having the force and effect of Federal law (49 CFR Part 225). The data are available on FRA's public Web site at the individual crossing level, so local officials have the opportunity to call any problems to the agency's attention. In general, FRA has every reason to believe that these data are accurate, with the exception that a recently-added field to identify the presence of a whistle ban appears to be eliciting information of questionable quality (and FRA has not relied on that field in this proceeding).

The characteristics of crossings (number of tracks, trains, motor vehicle traffic, etc.) are determined by reference to the Department of Transportation's national Inventory of highway-rail crossings, which is maintained by FRA on behalf of all users. This is a voluntary data collection effort, and the degree of cooperation in maintaining its currency varies from year to year and among contributors. Substantially all highway-rail crossings have been assigned Inventory numbers. Both the State departments of transportation (for public crossings) and the railroads (for public and private crossings) are requested to contribute updates to the Inventory whenever circumstances change. Since State departments of transportation receive Federal-aid highway funds for crossing safety and other highway improvements, and since under the "section 130" program States are required to maintain a ranking of crossings by degree of hazard in order to plan allocation of funds reserved for crossing safety purposes, it is reasonable to ask the States to share data needed to analyze crossing risk at the National level. It is also reasonable to ask railroads to provide these data, since they have an interest in avoiding collisions at crossings, as well as liability associated with such collisions. FRA has actively promoted participation in maintaining the Inventory for the benefit of all users.[9]

[9] In 1999, and again in 2002, the Department of Transportation transmitted to the Congress draft legislation that would make submission of current data to the Inventory mandatory for both States and railroads.

Some States, and some railroads, are more aggressive than others in providing updated data for the Inventory. When FRA examined the Inventory in the summer of the year 2000, FRA found that the average age of the most recent Inventory updates for the State of Illinois was nine years. Except as noted below, FRA's attempts to elicit more recent information from State authorities during the pendency of this proceeding have been largely unsuccessful.

Until recently, the Inventory did not contain a field for the presence of a whistle ban, and FRA has not found notations in the current inventory to be sufficiently complete or reliable. The issue of which crossings have been subject to bans or exemptions during particular periods of time has been resolved through two means. First, in preparing the National Study relied upon in the NPRM, FRA relied to a significant extent upon a survey conducted by the AAR (survey information received in 1992) and on information received during outreach in anticipation of this rulemaking.

Second, FRA has asked commenters in this proceeding to provide the best information that they have available, including a direct request to AAR to update its earlier survey of crossings (response received in October of 2000).

Third, FRA has directly approached public authorities in the Chicago Region asking for information. Finally, in the case of some crossings for which the status was clearly questionable (both as to whistle ban status and other data elements), FRA has reviewed railroad documents and conducted site visits.

Given the discrepancies pointed out in the NPRM, FRA has sought to obtain updated Inventory and ban information from the City of Chicago, but that had not occurred more than two years after the requests were made and as this interim final rule was being completed. (Attempting to resolve this data problem has caused significant delay in this rulemaking, as FRA has endeavored to use the best available and most credible information in preparing this interim final rule. However, given the policy choices FRA has made in this interim final rule, a comprehensive resolution of the data problem has not proven necessary.)

Commenters on the NPRM questioned FRA's data, which FRA had characterized as finding a significant effect from silencing the train horn at gated crossings in the Chicago Region. Some of this criticism was direct (challenging the relevant FRA data on gated crossings), and other criticism was indirect (challenging data on passively signed and flashers-only crossings that FRA had published to complete the public record but had noted might be unreliable).

Most Chicago-area commenters were convinced that the whistle ban grade crossing collision rate in Chicago is lower than the rate throughout the rest of the nation, and many contended that the train horn is wholly ineffective. In short, they doubted the conclusion stated in FRA's *Updated Analysis of Train Whistle Bans* (January 2000) that, on average, gated whistle ban crossings in the Chicago Region experienced 58 percent more collisions than gated crossings with similar predicted risk of a collision at which train horns sounded. Two studies by associations of local governments, discussed below, seemed to indicate different results.

As noted above in the discussion of the Westat reports, FRA initially responded to the comments and analysis by contracting with that statistical firm to regenerate the national study, using the best available information for the study period 1992–1996, to maintain comparability with the earlier work and to avoid what might be temporary effects from the extensive publicity associated with this rulemaking. FRA provided the best available information regarding the status of crossings in Chicago during the study period, along with other necessary data. Westat reviewed the prior FRA method (which it found useful and appropriate), made some improvements in the method, and computed national results which are reported above. With respect to gated crossings in the Chicago Region, Westat found as follows:

> For grade crossings with gates, the estimated effect of a whistle ban depended on the comparison group in the Chicago area. * * * Using the Continental U.S., Florida and Chicago area excluded, as the comparison group, grade crossings with gates without a ban had a significantly lower accident rate than grade crossings with a ban, whereas using the Chicago area grade crossings with no ban for comparison, there was no statistically significant effect associated with a ban.
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> Zador, Paul L. at 6 (April 1, 2002).

Stated differently, during the study period Chicago Region gated whistle ban crossings experienced an average of 34 percent more accidents than similar crossings in the Nation where the train horn was sounded. The results were statistically significant but as noted above a further statistical test indicated poor model fit.

Accordingly, as FRA endeavored to bring together the various sources of information and analysis in preparation of this interim final rule, FRA made further inquiry into the distribution of "no whistle crossings" with the conclusions recited above. FRA then provided the corrected set to Westat for further analysis. Recognizing that the current no-whistle status could not be assumed to be valid for the earlier period, during which substantial ICC and railroad decision making had no doubt resulted in major changes in status, FRA also provided a more recent accident data set (1997–2001).

As noted above, the result was that, for gated crossings (by far the largest component of the Chicago Region issue), it was determined that no-whistle policies resulted in an increase of 17.3 percent in accidents. This value was not supported by a very high level of statistical confidence. Accordingly, FRA was left with three options:

1. Elect to determine that the Chicago analysis was inconclusive, that the statute requires FRA to find that the train horn has been fully compensated for, and that the logical alternative was to employ national averages (with or without inclusion of the Chicago data).

2. Take note of the negative impact results yielded by the comparison of Chicago train horn and Chicago no-whistle crossings, and determine the impact of no-whistle policies in the Chicago Region to be zero, at least for pre-rule no-whistle crossings; or

3. Note the Westat finding that the Chicago crossings are in fact different in their characteristics and accept the most recent Westat estimate (17.3 percent) of the effect of whistle bans on accident rates at gated Chicago Region crossings, either for all quiet zones, or for Pre-Rule Quiet Zones only.

The first option of using national averages for the entire Nation, including Chicago, would have been employed by FRA if the Chicago Regional data were not available or their use inappropriate. FRA could have rationally decided that the limited significance of the Chicago Region statistical conclusions did not require reliance on those conclusions. This would have resulted in a fully functional and appropriate interim final rule consistent with the Act; a rule FRA would not have hesitated issuing. However acceptable this option was, it would have necessitated according little weight to a sizable body of testimony from the Chicago Region together with statistical analysis and qualitative knowledge of the Chicago Region's unique characteristics (discussed further below).

The second option would require FRA to ignore the reality of discretionary selection and the strong evidence based on other national data (memorialized in the statute giving rise to this rulemaking

as well as the laws of most States, including Illinois), that the train horn can make a positive contribution at the margin. FRA believes this option would not have been a rational choice.

FRA has chosen the third option, and has further determined that the lower estimate of ban impacts should be applied only to crossings in Pre-Rule Quiet Zones. The need to determine the impact of no-whistle policies on accident rates derives from the statutory definition of supplementary safety measures. The statute permits certain crossings to be excepted from the requirement to sound the train horn, including crossings "for which, in the judgment of the Secretary, supplementary safety measures fully compensate for the absence of the warning provided by the locomotive horn [emphasis supplied]." As delegate of the Secretary, FRA makes this judgment in light of the following considerations:

- Utilizing an estimate of approximately 17 percent, despite the limited statistical significance of the estimate, takes advantage of the best and most current analysis available and fully recognizes the conclusion of the Westat report that the "ban effect for gated crossings was significantly different in the Chicago area. * * *"
- Not only was the input data set of no-whistle crossings for the final Westat study much improved from the prior work, but the time period of the study included the period when several Chicago-area jurisdictions were making special efforts to address crossing risk, particularly where no-whistle policies were in place. Reliance on the lower estimate has the practical effect of rewarding effort already expended, taking into account scores of comments by Chicago area officials and residents as well as the "interests" of communities wishing to retain existing no-whistle policies.
- The recent study takes into consideration other variables that may have closed the risk gap in the region, particularly completion of the retrofit of auxiliary alerting lights, as well as special efforts made in the region (*e.g.*, Metra's election to utilize both low-mounted "ditch lights" and oscillating lights, rather than just ditch lights).
- Use of the lower estimate is fully consistent with what FRA understands regarding the application of no-whistle policies, *i.e.*,
- Discretionary selection has almost certainly occurred in the region. Under current State law (which will be preempted by this interim final rule), railroads have the latitude to sound the horn or refrain from sounding the horn at individual crossings excepted from train horn sounding.
- Following their interest in safety and limitation of liability, overall railroads likely have elected to use the train horn where risk is higher or have exacted responsive action from communities to compensate for use of the train horn.
- The most extensive use of no-whistle policies has been made on commuter lines where many trains are scheduled, train counts are high, and motorists are thus more likely to expect a train. Although the absolute effect of silencing the horn at these crossings is still a matter of substantial concern given the high exposure at these crossings, the proportional effect of silencing the train horn is lower (again, because motorists are conditioned to believe the train will come, most trains are very conspicuous with two forms of alerting lights, and—on lines where commuter trains are predominant—motorist tolerance of delays is reduced by the expectation that the train will clear the crossing rapidly).

FRA believes that the combination of these various factors provides a fully rational basis for selecting this option over the equally rational first option and the unsupportable second option, described above. FRA notes that the application of this lower effectiveness rate for the train horn to pre-rule, no-whistle gated Chicago Region crossings does not mean that the acceptable risk at those crossings will be measured differently. To the contrary, those crossings will be subject to the same Nationwide Significant Risk Threshold as all other pre-rule, no-whistle crossings. The unique effectiveness rate, which applies only at Chicago Region gated crossings, determines only the amount of reduction that may be required to meet this national risk standard. FRA believes that a reduced estimate of ban-induced accidents at grade crossings is appropriate for existing (pre-rule) no-whistle crossings. However, a reduced estimate would not be appropriate for current crossings in the Chicago Region where the train horn presently sounds, should those communities desire New Quiet Zones. Even on the commuter rail network, the risk characteristics of those crossings may be substantially different (*e.g.*, more difficult geometry or sight distances, less local commitment to enforcement, etc.) Indeed, the comparisons between train horn and no-whistle crossings in the region confirm that a reduced estimate at the 17 percent level would not be appropriate for those crossings. Nor can FRA say that there is an intermediate level which is well supported empirically or judgmentally. Accordingly, FRA will apply the national estimate of ban impacts to New Quiet Zones in the Chicago Region.

FRA recognizes the potential down side of qualifying Pre-Rule Quiet Zones using a lower estimate of ban effects. It is possible that some or all of the difference in performance has to do with factors that are beyond the control of this interim final rule. For instance, the extensive coverage of this rulemaking by the Chicago media will end as the rule is implemented, and that may result in future motorist behavior that is less favorable than in the past. Changes in local risk to which railroads might previously have reacted by resuming use of the train horn may become a source of concern, given the mandate of the rule to run silent through Pre-Rule Quiet Zones that have been qualified under the new procedures. Accordingly, FRA will monitor results in the region and consider further action as indicated.

Note on Intra-Regional Comparisons

Commenters in the proceeding also asked FRA to compare Chicago ban crossings to Chicago crossings where the train horn sounds, and FRA charged Westat with including that element in its analysis. As noted above, Westat reported that no statistically significant effect from the train horn was found when Chicago Region gated crossings, where the train horn sounds, are compared with the Chicago Region whistle ban crossings. This is neither surprising nor in conflict with the hypothesis that the train horn is useful. No accident prediction formula can capture all factors present at individual crossings, and in Illinois railroads have the latitude under law to sound the horn at exempt crossings. It is logical to expect that railroads would as a matter of discretion elect to sound the horn at crossings with very high known accident potential (given factors such as roadway geometry, accident history and observed motorist behavior), at least in those cases where community objections to noise are not sufficiently strenuous to convince them otherwise. Further, in those cases where the railroads did not make this election and the accident counts rose significantly, the ICC could eventually be expected to intervene. Neither the railroads nor the ICC could be expected to go too far in the direction of discretionary use of the train horn, however, given vocal community objections.

The result has been, FRA believes, that the train horn is sounded as a matter of discretion at many (but by no means all) of the very riskiest crossings in the region that may technically have been considered whistle ban crossings due to an exemption from the State mandate to use the horn; and, even though the risk is reduced by the train horn, these crossings nevertheless remain among the riskiest in the region.[10] This discretionary selection has indeed had the effect of abating significant risk in the region, but it follows from this discussion that the resulting statistical pattern *within* the region does not in any way call into question the potential for risk reduction at the remaining crossings where the horn is silenced. To the contrary, FRA anticipates that requiring that the train horn be sounded at remaining whistle ban crossings in Chicago would reduce accident risk at those crossings, on average, about 15 percent.[11]

Studies Provided by Commenters

In response to the NPRM, CATS (Hafeez and Laffey) performed a separate study of the effects of whistle bans in the Chicago area and concluded that whistle bans have no effect on the collision frequency in the Chicago area. Following receipt of the CATS study, FRA asked Westat to review that report and provide an evaluation.

The CATS study used a statistical technique called Analysis of Variance (ANOVA) to determine if grade crossings that had a whistle ban experienced a higher collision rate in comparison to grade crossings where train horns are routinely sounded. This method tested the statistical significance of the effect of a whistle ban on collision frequency using the interaction between device type and whistle ban. Westat found that, besides warning device class, this method failed to account for any of the other factors that are known to affect collision rates, such as daily train and traffic frequencies, train speed, number of highway lanes, and number of tracks. Furthermore, grade crossing collisions are rare event that are not normally distributed, but rather follow a Poisson distribution. The CATS study applied a technique designed for use with normally distributed data that does not work well for data that are not normally distributed. The result of applying this model was residuals that were not normally distributed. According to Westat, the omissions of factors known to affect collision rates coupled with an improper technique rendered the model poor for the purpose of analyzing the effect of whistle bans on collision rates.

Disagreements about methods notwithstanding, Hafeez and Laffey come to essentially the same conclusion as the Westat analysis—*i.e.*, Chicago Region no-whistle crossings may be safer on average than Chicago Region train horn crossings, at least when only certain factors are controlled in the analysis. As we have explained above, this is not a surprising outcome when discretionary selection is considered.

Further, given the analytical methods used and the small data sets available for analysis, it would be as easy for confounding variables to mask any differences as it is alleged by commenters to be for such variables to generate specious differences. Consider, for instance, that most of the Chicago-area no-whistle crossings are on the commuter rail network, while most of the train horn crossings are on lines used exclusively or almost exclusively for freight. (Hafeez and Laffey also used the same, inflated data set of no-whistle crossings that FRA had used in its earlier analysis, which was the best available at the time. It contained large numbers of freight-only crossings where the train horn was likely sounded during much of the period.)

The Northwest Municipal Conference (NWMC) also filed comments in this docket and attempted a statistical re-analysis of accident risk within its territory using the FRA method as reported in the NPRM and Nationwide studies. This analysis also compared local area train horn crossings with exempt crossings where railroads have elected to run silent. It concluded that train horn crossings are no safer than no-whistle crossings, whether one compares all crossings or just gated crossings. FRA determined that NWMC's analysis did not follow the FRA procedure appropriately, particularly as to stratification of the sample. Nevertheless, as noted above, FRA has determined that comparisons, between Chicago train horn crossings and no-whistle crossings, cannot properly evaluate train horn usefulness within the context of the Chicago Region, since discretionary selection has likely shifted a disproportionate number of the most hazardous exempt crossings into the train horn category and other confounding variables may apply.

The NWMC analysis concludes the whistle ban is likely a spurious variable in the FRA analysis. It argues the factors used in the APF, such as train and automobile traffic, account for current accident levels rather than the whistle ban because the APF accounts for almost 80 percent of the variation in accidents. FRA's current approach adjusts for these effects. It is based on a Poisson regression that includes the factors used in the APF along with the whistle ban.

Implications of the Various Studies

This interim final rule endeavors to ensure that, to the extent practicable, these decisions are made based on safety rather than economic or political influence, with the important additional difference that communities have the option of insisting that the horn be silenced where supplementary or alternative safety measures are put in place (or where no "significant risk" is determined for the corridor).

Again, FRA is keenly aware of the hazard that a spurious variable can confound statistical analysis and designed the stratified/matched pair method used in the national studies specifically in an effort to avoid that effect. FRA has also performed longitudinal studies, as reflected in the Florida report and case studies embodied in the Nationwide report. In every case where FRA has had sufficient valid data points to draw meaningful conclusions, the effect of the train horn has been confirmed, lending empirical confirmation of the following: the judgment implicit in ICC exemption management (that restoring use of the train horn can lower risk); human factors research; State laws requiring use of the horn; the opinions of railroad professionals who are exposed to motorist behavior on a daily basis; and the assumptions Congress made in enacting the law that required FRA to issue this rule.

In any event, FRA strongly agrees with the NWMC comment that it is best to utilize a method that is responsive to demonstrable regional differences, where possible; and the interim final rule follows this pattern. The result is a significant reduction in effort that would need to be expended to institute quiet zones in the Chicago Region.

In conclusion, the comments related to safety at gated crossings, taken together with subsequent statistical analysis, support reconciliation of FRA safety concerns with the strenuously

[10] Many of these very high risk train horn crossings would also benefit substantially from safety improvements such as four-quadrant gates, traffic channelization, or photo enforcement; and public investments would be recovered through reduced loss of life and injuries avoided. FRA will continue to encourage use of these techniques wherever they may be useful. While that is not the subject of this proceeding, the pendency of this proceeding has the benefit of calling attention to these possibilities for risk reduction that cannot be achieved using "standard" crossing safety measures.

[11] A 17.3 percent increase to a base amount yields a value of 117.3 percent (risk after implementation of a no-whistle policy). Restoring use of the horn would reduce the risk to a level 100 percent of the prior level. Seventeen and three-tenths is 14.7 percent of 117, so restoring the inflated value to the base amount is a 15 percent reduction to the no-whistle state, after rounding.

argued representations of the State and local jurisdictions that they are actively promoting safety at highway-rail crossings. The bottom line is that Chicago-area railroads and the ICC have acted to employ the train horn at many of the most hazardous crossings, but it is very probable (in FRA's judgment) that excess risk continues to be unabated at many no-whistle crossings where the train horn is silenced. This interim final rule offers the region automatic approval of the demonstrably safest quiet zones and, for quiet zones exhibiting higher degrees of risk, a mechanism for implementing supplementary and alternative safety measures, over a longer period of time and at lower cost than originally proposed, with the result that existing quiet can be preserved and New Quiet Zones can be established with a reasonable degree of confidence.

G. "Chicago Anomaly"

In the NPRM at page 2234, FRA reported results of the *Updated Analysis of Train Whistle Bans*, January 2000, which examined data for the five year period from 1992 through 1996 (Updated Nationwide Study). The most widely cited passage in that analysis reads as follows:

> The updated analysis also indicated that whistle ban crossings without gates, but equipped with flashing light signals and/or other types of active warning devices, on average, experienced 119 percent more collisions than similarly equipped crossings without whistle bans. This finding made it clear that the train horn was highly effective in deterring collisions at non-gated crossings equipped only with flashing lights. The only exception to this finding was in the Chicago area where collisions were 16 percent less frequent. This is a puzzling anomaly. One possible explanation for this result is that more than 200 crossings (approximately one third of the crossings in Chicago) still included in the DOT/AAR National Inventory have in all likelihood been closed. They would continue to be included in the Inventory until reported closed by State or railroad officials. (At this time submission of grade crossing Inventory data to FRA is voluntary on the part of States and railroads.) FRA believes this could contribute to the low collision count for Chicago area crossings without gates. Collisions cannot occur at crossings that have been closed. The retention of closed crossings in the Inventory would, therefore, have the effect of incorrectly reducing the calculated collision rate for the Chicago area crossings.
>
> The Nationwide study showed a similar unexpected result for passively signed crossings in the Chicago Region.
>
> Over three years after this analysis was published, FRA still has not received a full update of the Inventory for the City of Chicago, despite frequent requests. FRA did, however, test its thesis that the data set is not suitable for analysis by checking crossing status directly with railroads and through site visits to a representative sample of crossings. The result is that, based on current conditions many of the crossings identified in the Inventory have long since been closed (over half of the passive crossings and almost a third of flashers-only crossings) or the type of warning device has changed. It is logical to assume that the remaining crossings have experienced other changes since the last inventory records that may have further confounded the analysis.
>
> More importantly, when post-NPRM filings from the ICC, AAR and Metra were examined and compared with declarations in the ICC proceeding during the period 1988–1994, it became evident that there likely were very few passively-signed and flashers-only crossings that were in no-whistle status during the most of the study period 1992–1996. Certainly there are very few today—too few to yield meaningful comparative data towards a regional estimate.
>
> As explained above, FRA finds no reason to apply estimates other than the national averages to these categories of crossings. Since the crossings equipped with flashing lights only or passive devices are generally low-train-speed and single-track crossings, FRA knows of no supportable reason why there should be a special effect in the Chicago Region at those crossings. Indeed, since the ICC did not excuse use of the train horn at passive crossings, it is likely that no bans have been observed at those crossings during the period or—as suggested by the AAR in its October 2000 filing—that this has occurred only at crossings where train speeds were less than 10 mph, which is typical only within yards and on track approaching industries. Accordingly, National averages are appropriate for use under this interim final rule for both passive crossings and flashers-only crossings.

H. Safety Trend Lines

Chicago-area and other Illinois respondents asked FRA to consider the improving safety record at grade crossings before imposing a train horn requirement. CATS noted that collisions at crossings in Northeast Illinois had declined 59 percent since 1988. FRA recognizes that the safety record at Chicago Region crossings has improved markedly during the last several decades, and this is also true for the State of Illinois and for the Nation as a whole. These gains have resulted from expenditure of Federal and State funds on improved warning systems, local and National public awareness efforts sponsored by a variety of parties (including U.S. DOT and the States through Operation Lifesaver, Inc.), improved engineering of highway-rail crossing and related traffic control systems, installation of alerting lights on locomotives and cab cars, general efforts devoted to improving highway safety (*e.g.*, seat belt campaigns, impaired driver campaigns, etc.), closure of redundant crossings, and targeted law enforcement in some local jurisdictions supported by a 1995 Illinois State law imposing a high monetary penalty for disregarding warning systems at crossings. It is also possible that freight railroads operating in Illinois have been more aggressive in sounding the horn since the publication of FRA's Florida and National studies (as they have been in other jurisdictions where permitted to do so by repeal of bans or as a result of favorable Federal court rulings).

As noted above, FRA has further updated its safety analysis to capture developments in the period 1997–2001. The result is a much lower estimate for current ban-induced risk at Chicago gated crossings—the great majority of no-whistle crossings in the regions.

I. Accident-Free and Low Risk Jurisdictions

Chicago-area commenters, including the Northwest Municipal Conference, were prominent among those arguing that extended periods of safe outcomes at local crossings should be recognized. As explained elsewhere in this preamble, the interim final rule provides a conditional exclusion for existing whistle bans where all crossings in the jurisdiction have been collision-free for the past 5 years, provided the projected risk is below the product of two times the Nationwide Significant Risk Threshold. The interim final rule employs a risk-based approach that credits good safety results. In fact, some existing whistle ban jurisdictions may be able to avoid additional costs indefinitely provided their safety record stays within the required parameters outlined in the interim final rule.

J. Impracticability

Many Chicago-area commenters were particularly strong in making the point that several of the identified supplementary and alternative safety measures would not work in their local communities. Although many of these comments are discussed in other portions of this preamble, it is appropriate to call attention to three safety alternatives to the horn which were cited as impractical due to local conditions in the Chicago area or in Illinois generally.

First, FRA was told that four-quadrant gate systems were not permitted by the Illinois Commerce Commission. Since that testimony, the MUTCD, which is issued by the Federal Highway Administration and supported by a national committee of traffic control experts, has been amended to specify criteria for four-quadrant gates as a standard warning system at highway-rail crossings. This action signals the acceptance of this safety system by professional traffic safety experts. Further, the Illinois Department of Transportation has funded installation of a large number of four-quadrant gates at crossings on the designated high-speed rail corridor between Chicago and St. Louis via Springfield, with ICC participation. The ICC has also stepped forward to demonstrate a low-cost vehicle presence detection system for use with four-quadrant gates. FRA believes that the Illinois Commerce Commission will continue to respond appropriately to identified needs for four-quadrant gate systems.

Second, FRA was told that photo enforcement is not authorized under Illinois law at highway-rail crossings. Photo enforcement for red-light running (and to a lesser extent for excessive speed) is becoming standard practice in a growing number of jurisdictions nationwide. After some initial difficulties related to program design and judicial acceptance, a photo enforcement project in the Chicago Region is continuing with the promise of positive results. There are currently four crossings in the Chicago Region that are equipped with photo enforcement (Downers Grove, Naperville, Wood Dale and Winfield each have one crossing so equipped). The Naperville installation has been in effect since July 2000. There has been an 87 percent reduction in violations of the warning devices at the crossings, and there has been a 98.5 percent conviction rate of the citations issued. The Wood Dale installation, which has been in service since December 1999, showed a 47 percent reduction in violations as reported in September 2000. Both the Downers Grove and Winfield systems are relatively recent but the initial reports are favorable. The timetable set forth in this rule allows ample time for results of the current demonstration to be communicated to the legislature and for the legislature to authorize photo enforcement.

Third, FRA heard from many jurisdictions in the Chicago Region that median barriers would not work in their settings because of major roadways that run parallel to rail lines, either on one side or on both sides of the rail line. FRA has noted these circumstances in visits to the communities, and FRA concurs that median barriers as specified for supplementary safety measures in the NPRM will not work at many locations. FRA has responded by making the requirements for channelization more explicitly flexible in the appendix language describing alternative safety measures. FRA has made it clear, for instance, that channelization on one side of the rail line—or for a shorter distance than the 60–100 feet nominally desired—could qualify for a risk reduction credit. FRA has also recognized that at many locations channelization is not feasible, and this has been taken into consideration as the costs and benefits of the interim final rule have been assessed.

Finally, FRA has taken seriously the concerns expressed with respect to the cost associated with verifying risk reduction following implementation of public education and enforcement programs. FRA has joined forces with the ICC and local communities to implement the Public Education and Enforcement Research Study (PEERS) program. This education and outreach effort will be evaluated for effectiveness at the community level and, if successful, could have potential for application across the region. Although FRA cannot state specifically how this approach might be integrated into this rule until results are known, it does offer an additional possibility for achieving the safety goals of the rulemaking at relatively low cost.

K. Costs

Chicago respondents testified that the cost of installing Supplemental Safety Measures (SSMs) or implementing Alternative Safety Measures (ASMs) that will permit the creation of quiet zones far exceeds cost estimates developed by FRA and represents an unfunded Federal mandate. The City of Chicago, Department of Transportation commented the rule would force the installation of four-quadrant gates at 237 crossings in the City. The Chicago Area Transportation Study estimated that the cost to implement quiet zones in the CATS region would be $200 million.

However, these arguments stem from the presumption that all crossings within a quiet zone will need to be equipped with four-quadrant gate systems. Other SSM's were dismissed by Chicago commenters as impractical for a variety of reasons. CATS Council of Mayors Executive Committee argued that the proposed safety measures are unworkable.

To test these criticisms, FRA conducted a preliminary cost analysis associated with implementation of quiet zones in several Chicago-area communities. The site-specific analysis was conducted at 12 highway-rail grade crossings in the communities of LaGrange, Western Springs and Hinsdale, and in each instance employed a corridor approach.

The analysis revealed that in some cases, public education efforts and increased enforcement of existing highway-rail crossing laws can be used in place of engineering solutions. At crossings where engineering improvements would be the most practical approach, the study found the costs of implementing a variety of SSM's would be significantly less than Chicago commenters estimated. Based upon the earlier estimates for effects of no-whistle policies in the Chicago Region, it was estimated that by utilizing the corridor risk reduction approach and utilizing engineering improvements at selected crossings that the total construction cost for these corridors would be $360,000 with an annual maintenance cost of $37,000. This is much less than estimates received from some commenters who erroneously assumed that four-quadrant gates would be required at each crossing. Actual costs under this rule should be even lower, since on many corridors, the required risk reduction of 15 percent can be taken at a single crossing.

In light of the greater flexibility of the interim final rule with respect to existing whistle bans, and the menu of engineering options, costs to convert existing whistle bans into quiet zones, or even create New Quiet Zones will be significantly less than most Chicago commenters estimated in responding to the NPRM. In instances where an existing quiet zone falls below the Nationwide Significant Risk Threshold, the only costs that would be incurred would be for maintenance of the Inventory data and posting of "No Train Horn" signs at crossings.

FRA understands the concern of commenters that paying for SSMs or ASMs where necessary to preserve or create a quiet zone may pose some fiscal hardships for some communities. Although this rule will not cost in excess of $100 million in any year, and thus is not subject to the assessment requirements of the Unfunded Mandates Reform Act of 1995, FRA has made every effort to limit the burdens that this rule imposes and to concentrate those

burdens where the safety rationale is most compelling.

L. Time for Implementation

Chicago respondents also argued that the time frame proposed for implementation of quiet zones was too short. The Illinois Commerce Commission projected that it would take ten years to implement the required safety measures. CATS Council of Mayors Executive Committee's estimate was as long as 15 years. They argued that the time it would take to do the work in more than 200 communities in the Chicago Region alone would overburden the railroad industry, tax Federal resources beyond their capacity to deliver, and be more of a burden than the railroad construction industry could handle within the required time frame. These arguments were generally based on the presumption that all crossings would need to be equipped with four-quadrant gate systems. Nevertheless, FRA gave careful consideration to this concern, and has provided significant additional time to implement quiet zones while also attempting to reduce the number of corridors for which supplementary or alternative safety measures will be required.

15. E.O. 15 Status

Emergency Order 15, issued in 1991, requires the FEC to sound locomotive horns at all public grade crossings. The Emergency Order preempted state and local laws that permitted nighttime bans on the use of locomotive horns. Amendments to the Order did, however, permit establishment of quiet zones if supplementary safety measures were implemented at every crossing within a proposed quiet zone. The supplementary safety measures specified in the Order, although similar, are not the same as those contained in this Interim Final Rule. The SSMs and the conditions on their implementation contained in this rule, provide communities substantially greater flexibility in creating quiet zones than those in the Order. So as not to adversely affect Florida communities along FEC tracks by imposing different standards for establishing quiet zones than along other Florida rail lines or elsewhere in the Nation, FRA will rescind E.O. on December 18, 2004, the effective date of this rule. At that time, the provisions of this rule will apply to all grade crossings within the State of Florida. Some communities along the FEC (communities subject to E.O. 15) may wish to establish New Quiet Zones following the effective date of this rule. FRA is not at this time calculating the effect of silencing the train horn along that corridor because information gathered in response to the NPRM was not sufficient to make such estimate and because the actual rate of increase experienced during the period studied prior to issuance of E.O. 15 requires re-examination to determine whether it remains valid in light of changed circumstances. FRA will determine whether to apply a regional estimate as to the effect of silencing the train horn at E.O. 15 crossings based on comments submitted in response to this interim final rule or through supplementary fact finding prior to the rescission of E.O. 15. FRA will issue the necessary finding well before the effective date of this interim final rule.

16. Section-by-Section Analysis

Section 222.1 What Is the Purpose of This Regulation?

This section describes the purpose of this regulation—to provide for safety at public highway rail grade crossings by regulating locomotive horn use at those crossings. In addition to regulating locomotive use at the crossings, the regulation provides an opportunity for the cessation of routine use of the locomotive horn at those crossings, while maintaining, at a minimum, the same level of safety as exists when horns are used.

Section 222.3 What Areas Does This Regulation Cover?

This section describes the areas, or scope, of the regulation. The regulation prescribes standards for sounding of locomotive horns when locomotives approach and pass through public highway-rail grade crossings. The regulation also addresses standards under which locomotive horns are not sounded when locomotives approach and cross public crossings. The regulation does not cover the use of horns at private crossings except when those private crossings are within a quiet zone. For a further discussion of private crossings, *see* § 222.25.

Section 222.5 What Railroads Does This Regulation Apply To?

This section describes the railroads to which this regulation applies. The regulation applies to every railroad with a number of listed exceptions. The regulation does not apply to (1) railroads exclusively operating freight trains only on track which is not part of the general railroad system of transportation; (2) passenger railroads that operate only on track which is not part of the general railroad system of transportation and which operate at a maximum speed of 15 miles per hour; and (3) rapid transit operations within an urban area that are not connected to the general railroad system of transportation.

In the NPRM, FRA proposed to not apply the rule to plant railroads and freight railroads which are not part of the general railroad system of transportation. FRA noted that these operations are typically low speed with small numbers of rail cars permitting relatively short stopping distances. Additionally, these operations typically involve roadway crossings with relatively low speed vehicular traffic. These reasons, together with FRA's historical basis for not making its regulations applicable to plant and non-general-system freight railroads led FRA to propose not to apply the rule to such operations. Since use of the locomotive horn is a matter within the scope of railroad operating rules (*see* 49 CFR Part 217), maintaining reasonably consistent policies of inclusion and exclusion appeared sensible. Omitting plant railroads from the scope of the section is intended to leave State authorities with continuing jurisdiction over the subject matter of the appropriate audible warnings to be used by such railroads.

In the NPRM, FRA also discussed its basis for proposing to make the rule applicable to "scenic" or "tourist" railroads which are not part of the general system of railroad transportation. FRA took the position that since the rule deals directly with public grade crossings, it should apply to all tourist and scenic railroads with public grade crossings irrespective of whether they are part of the general system of railroad transportation. FRA took a similar position in its rule on grade crossing signal system safety, which applies to tourist and excursion railroads outside of the general system if they have attributes that make them non-insular, such as public grade crossings. *See* 49 CFR 234.3(c). The Association of Railway Museums, in opposing the inclusion of tourist and scenic railroads in what it termed as "a general system rulemaking," stated that "[i]f the operating characteristics which FRA has ascribed to plant and private freight railroads are sufficient to justify different treatment under the rule, they are certainly sufficient to justify different treatment of tourist/historic railroads." The commenter pointed out that FRA is required by statute to consider differences between tourist railroads and general system railroads, whereas there is no similar statutory requirement applicable to plant and "private freight railroads."

FRA believes that there are significant differences between industrial railroads and tourist railroads that warrant exclusion of the former and inclusion of the latter in this rule. The primary and obvious difference, of course, is the presence of passengers in tourist operations, which increases the number of people at risk of injury in highway-rail accidents. The operating environments are also quite different, with tourist operations more likely to achieve higher speeds and encounter higher speed highway traffic than plant railroads. Moreover, FRA has historically not applied its rules to plant railroads (*see* the discussion of FRA's policy on the exercise of its jurisdiction in these circumstances, 49 CFR, part 209, appendix A) for reasons not applicable to tourist operations. However, as a result of the comments, FRA has reviewed this section and is persuaded that low speed passenger service (*i.e.*, at 15 miles per hour, or less) not on the general railroad system does not constitute a significant risk. Low speed service, together with relatively short trains, and comparatively light passenger cars permit significantly shorter stopping distances than fast, long, heavy freight trains. These conditions convinced FRA that such operations do not require the sounding of locomotive horns at this time. However, it should be noted that FRA may amend the rule in the future to include plant railroads or tourist railroads in the event that it determines that safety requires such action.

Paragraph (3) of this section addresses the extent to which rapid transit operations are governed by this part. Under the Federal railroad safety laws, FRA has jurisdiction over all railroads except "rapid transit operations in an urban area that are not connected to the general railroad system of transportation." 49 U.S.C. 20102. Like the proposed rule, the interim final rule tracks the statutory provision, excluding from the rule's reach only those rapid transit operations not subject to FRA's jurisdiction, *i.e.*, those not connected to the general system. However, shortly after issuance of the proposed rule, FRA issued an interpretive statement that explains what FRA believes "connected to the general railroad system" means. Statement of Agency Policy, 65 FR 42529 (2000); 49 CFR part 209, appendix A. FRA made clear that a passenger operation, even if rapid transit in nature, that shares the same track as a conventional railroad is subject to FRA jurisdiction on all shared track. FRA also made clear that highway-rail grade crossings traversed by a rapid transit operation and a conventional railroad that share a corridor but do not share track were sufficient connections to the general system to warrant FRA's exercise of jurisdiction over the rapid transit operation at the point of connection. 65 FR 42541. FRA pointed out that the rapid transit operation would be expected to observe FRA's rules concerning grade crossings that were then in effect, *i.e.*, the rules on grade crossing signals and ditch lights. *Id.* (FRA's proposed policy statement had made this same point; *see* 64 FR 59058 (1999).) FRA's policy statement explains the logic behind this determination:

> Certain types of connections the general railroad system will cause FRA to exercise jurisdiction over the rapid transit line *to the extent it is connected*. FRA will exercise jurisdiction over the portion of a rapid transit operation that is conducted as a part of or over the lines of the general system. * * * [W]here transit operations share highway-rail grade crossings with conventional railroads, FRA expects both systems to observe its signal rules. For example, FRA expects both railroads to observe the provision of its rule on grade crossing signals that requires prompt reports of warning system malfunctions. *See* 49 CFR part 234. FRA believes these connections present sufficient intermingling of the rapid transit and general system operations to pose significant hazards to one or both operations and, in the case of highway-rail grade crossings, to the motoring public. The safety of highway users of highway-rail grade crossings can best be protected if they get the same signals concerning the presence of any rail vehicles at the crossing and if they can react the same way to all rail vehicles (65 FR 42545; 49 CFR part 209, app. A).

This same logic clearly applies to audible warnings at highway-rail grade crossings: motorists are best protected if they receive the same warnings concerning the presence of rail vehicles at a crossing regardless of whether those vehicles are rapid transit or conventional rail. In light of FRA's July 2000 interpretive guidance that considers these crossings sufficient connections to warrant exercise of its jurisdiction, this interim final rule, which uses the same relevant language as the proposed rule, will apply to rapid transit operations that share grade crossings with conventional railroads in a common corridor, as well as to rapid transit operations that share track with conventional railroads.

However, applying this rule to rapid transit operations may pose certain problems. The horns in use on such rapid transit trains may not be able to meet the standards for audible warning devices in 49 CFR 229.129. Accordingly, new subsection (d) to § 222.129 excludes rapid transit operations from the "audible warning device" requirements of that section, which governs the sound levels of locomotive horns on general system railroads. FRA seeks comment on what standards may be appropriate for the audible warning devices used by rapid transit systems subject to part 222. Other impacts of applying the rule would include the need to involve yet another entity in the creation and enforcement of quiet zones. However, true quiet could not be achieved without the involvement of all entities that operate trains over those crossings.

Given the questions surrounding application of the rule in the shared corridor context, FRA solicits comments on this issue. Should FRA leave the applicability provisions of parts 222 and 229 as they are, *i.e.*, inclusive of rapid transit operations in shared corridors? Or, should FRA amend the applicability provisions of part 222 and 229 to exclude rapid transit operations that share highway-rail grade crossings with conventional operations but do not share trackage? If so, how can the rule's central purpose of achieving adequate train horn warnings at grade crossings be achieved, if those rapid transit operations would not be subject to the mandate to sound their horns? How would communities that have or wish to establish quiet zones achieve their goals if the rapid transit operations operating over shared corridors are not subject to the rule?

Section 222.7 What Is This Regulation's Effect on State and Local Laws and Ordinances?

This section informs the public as to FRA's intention regarding the preemptive effect of this interim final rule. While the presence or absence of such a section does not conclusively establish the preemptive effect of a final or interim final rule, it informs the public concerning the statutory provisions which govern the preemptive effect of the rule and FRA's intentions concerning preemption. Paragraph (a) points out the preemptive provision contained in 49 U.S.C. 20106, which provides that all regulations prescribed by the Secretary relating to railroad safety preempt any State law, regulation, or order covering the same subject matter, except a provision necessary to eliminate or reduce an essentially local safety hazard that is not incompatible with a Federal law, regulation or order and that does not unreasonably burden interstate commerce. With the exception of a provision directed at an essentially local safety hazard that is not inconsistent with a Federal law, regulation or order and that does not unreasonably burden interstate commerce, 49 U.S.C. 20106

will preempt any State statutory or common law, local ordinance or State or local regulatory agency rule covering the same subject matter as the regulations contained in this interim final rule. *See Norfolk Southern* v. *Shanklin*, 529 U.S. 344 (2000) and *CSX* v. *Easterwood*, 507 U.S. 658 (1993).

Paragraph (b) makes clear the intention of FRA that by including SSMs and ASMs in this regulation (or by approving additional SSMs or ASMs subsequent to issuance of this interim final rule), FRA does not intend to preempt State law regarding use of those measures for traffic control. Individual States may, consistent with Federal Highway Administration regulations and the MUTCD, continue to determine whether specific SSMs or ASMs are appropriate for traffic control. State law and local ordinances concerning sounding of train horns in relation to the use of conventional crossing safety systems, SSMs and ASMs are, however, preempted. Thus, if a specific engineering improvement is approved as an SSM for purposes of this rule, and consistent with FHWA regulations and the MUTCD, a State has the discretion whether to accept its use for traffic control purposes. If a State decides that such SSM cannot be used within the State, such decision is not meant to be preempted by this rule—this interim final rule would not force State acceptance of an SSM. However, any State law or regulation relating the use of train horns to the SSM would be preempted by this rule.

The interim final rule published today permits localities to establish quiet zones irrespective of any State law regarding sounding of train horns or establishment of whistle bans and quiet zones. This view differs from that which FRA stated in the preamble to the NPRM—that the proposed rule "does not confer authority on localities to establish quiet zones if state law does not otherwise permit such actions." Both the CPUC and the Florida Department of Transportation expressed the view that the rule should allow States to impose more stringent requirements for establishing quiet zones. Expressing an opposite view, the mayor of Middleburg Heights, Ohio is in favor of "empower[ing] the local elected officials to make the best decisions for their community. Local officials on the scene are more capable of judging any internal budgetary, safety or quality of life issues." The representative of the Metropolitan Council of Governments, representing two cities in Minnesota and two cities in North Dakota, points out that because North Dakota currently prohibits quiet zones, the Council of Governments wants the rule so as to be able to establish quiet zones. Counsel for the League of Wisconsin Municipalities, representing all of the cities and most of the villages in Wisconsin, stated that municipalities in Wisconsin are granted broad home rule powers and thus are concerned about the preemption of their authority to regulate the use of train horns within their communities. Wisconsin State Representative Miller expressed similar views. The County Commissioner of Olmstead County, Minnesota, testified to his opposition to additional preemption of State and local authority.

While the commenters representing local government may prefer to have no regulation of their ability to institute quiet zones, the decision as to the regulatory body has already been made by Congress. The issue raised in the NPRM, however, is whether, despite issuance of this rule, States may prohibit or permit localities to establish quiet zones. FRA is rejecting the view posited in the NPRM that the rule does not confer authority on localities to establish quiet zones if State law does not otherwise permit such actions. A close review of the statutory language leads to the conclusion that Congress intended that local communities be the primary parties in establishing quiet zones as long as this is done in accordance with Federal rules. Moreover, there can be no doubt that such State laws would clearly be within the subject matter covered by this rule, and would therefore be preempted.

Section 222.9 Definitions

This section defines various terms which are not widely understood or which, for purposes of this rule, have very specific definitions. This section defines the following terms:

"Administrator"

This definition makes clear that when the term "Administrator" is used in the rule, it refers to the Administrator of the Federal Railroad Administration. It also provides that the Administrator may delegate authority under this rule to other Federal Railroad Administration officials.

"Alternative safety measure"

This term was not included in the definition section of the NPRM. It is included in this section because of its unique meaning within this rule. The term "alternative safety measure" refers to a safety system or procedure established in accordance with this rule and which has been determined to be an effective substitute for the locomotive horn in the prevention of highway-rail casualties at specific highway-rail grade crossings. All ASMs and SSMs listed as approved in appendices A and B have been approved by the Administrator. Section 222.55 addresses how new SSMs and ASMs are approved. Such new SSMs and ASMs are approved by the Associate Administrator.

"Alternative safety measure" should be read in conjunction with the definition of an SSM. Both SSMs and ASMs are safety systems or procedures determined to be an effective substitute for the locomotive horn in the prevention of highway rail casualties at highway-rail grade crossings. SSMs have been determined by the Administrator in appendix A to be effective substitutes for the horn at any grade crossing to which they are applied. Thus, the Administrator has determined that if, for example, four-quadrant gates are appropriately installed at a grade crossing, the warning and protections provided will at least equal that provided by the locomotive horn. Because these safety measures will compensate for the lack of the locomotive horn wherever they are used, FRA has not required prior approval for their use at specific locations. ASMs differ from SSMs in that they are capable of being an effective substitute for the locomotive horn, but can only be determined to be effective on a crossing-by-crossing basis. Because of that limitation, use of such ASMs requires prior approval of the Associate Administrator.

Appendix B lists ASMs currently accepted for the Associate Administrator's review on an individual crossing-by-crossing basis.

"Associate Administrator" means the Associate Administrator for Safety of the Federal Railroad Administration. The term also includes the Associate Administrator's delegate.

"Channelization device" means one of a continuous series of highly visible vertical markers placed between opposing highway lanes designed to alert or guide traffic around an obstacle or to direct traffic in a particular direction. This term was defined in more detail in the NPRM—minimum height and distance requirements were listed. Rather than dictating such detail to the community installing the devices, the present definition states that design specifications are determined by the standard design specifications used by the governmental entity constructing the channelization device. However, any channelization device used shall comply with the MUTCD and should be in compliance with applicable guidelines of the American Association of State Highway and Transportation Officials. The definition thus makes explicit that "tubular markers" and "vertical panels" as described in sections 6F.57 and 6F.58, respectively, of the MUTCD, are acceptable channelization devices for purposes of this part. This change is consistent with a comment submitted by Winter Park, Colorado in which the community requested more flexibility in the definition/design of channelization devices.

"Crossing Corridor Risk Index" is a number reflecting the relative risk to motorists at grade crossings within a grade crossing corridor in which locomotive horns are routinely sounded. This number is derived by calculating the number of predicted collisions per year at each public grade crossing within a corridor of crossings. A risk index reflecting the predicted likelihood and severity of casualties resulting from those collisions for each crossing is then calculated. An average risk index for the entire group of crossings within the corridor is then calculated (by summing the risk index for each crossing and dividing the total by the number of crossings within the corridor). This average risk is the Crossing Corridor Risk Index. It reflects the present risk associated with a crossing corridor, before the level of risk changes due to silencing of locomotive horns or implementation of SSMs or ASMs. Details on determining the Crossing Corridor Risk Index are provided in Appendix D of this part.

"Diagnostic team" means a group of knowledgeable representatives of parties in interest in a highway-rail grade crossing, organized by the public authority responsible for, or funding improvements at, the crossing, who, using crossing safety management principles, evaluate conditions at a grade crossing to make determinations and recommendations for the public authority concerning safety needs at that crossing. A diagnostic team can consist of the local traffic or highway engineer, and representatives of various parties including the local public works department, the railroad whose tracks are crossed, the State department of transportation, local law enforcement, and emergency responders. The diagnostic team, ideally having representatives of major interested parties, can evaluate a crossing from many perspectives and can make recommendations as to the safety needs at the crossing.

"Effectiveness rate" is a number which indicates the effectiveness of a safety measure in reducing the probability of a collision at a public highway-rail grade crossing. Effectiveness rate is defined as a number between zero and one which represents the reduction of the probability of a collision at a public highway-rail grade crossing as a result of the installation of a safety measure when compared to the same crossing equipped only with conventional gates and lights. An effectiveness rate of zero indicates that the safety measure provides no reduction in the probability of collision. The safety measure is not effective at all. At the other extreme, a safety measure of one indicates that the safety measure is totally effective in reducing collisions. Grade separation would fall into the latter category—separating railroad tracks from the roadway is totally effective in reducing grade crossing collisions. Values between zero and one reflect the percentage by which the safety measure reduces the probability of a collision. For example, if a safety measure has an effectiveness rate of .75, it reduces the probability of a collision at the crossing by 75 percent. Conversely, if a safety measure has only an effectiveness rate of .05, it would reduce the probability of a collision by only 5 percent.

The few comments FRA received on this topic were negative. The Illinois Commerce Commission, while not objecting to the definition itself or concept, complained that the "ratios are arbitrary guesses which have little empirical value." The CPUC similarly felt that there are insufficient data to assign effectiveness rates. They stated that instead "[t]he effectiveness of an SSM * * * should be evaluated by the applicant, the railroad, and the regulating state agency for each individual crossing in a quiet zone."

FRA recognizes that, to the extent effectiveness estimates have been derived from limited data, they should not be treated as sacrosanct. Further, individual crossing characteristics may be more or less compatible with realizing the benefits of particular safety measures. Accordingly, the concept of alternative safety measures is incorporated into this rule with the expectation that diagnostic teams will be able to estimate effectiveness with a higher degree of refinement, working (as relevant) from the benchmark levels provided for supplementary safety measures. The expertise available at the State level will contribute to this process of refinement. On the other hand, FRA is not comfortable with the idea of proceeding without benchmark values. Far from being arbitrary guesses, the benchmark values take into consideration and reflect substantial information available at the national level, and they have been exposed to the scrutiny of public comments in this proceeding. Since they are conservative in nature, reliance upon them in the context of application of SSMs to all crossings in a quiet zone should be entirely appropriate in virtually every case. The individual judgments of local public authorities or State level officials cannot be assumed, *a priori*, to be superior to these benchmarks, particularly where the personnel involved have no experience in the use of particular safety measures (many of which are new to the realm of highway-rail crossing safety).[12] Balancing these concerns, FRA has attempted to craft a structure that fosters consistency while inviting attention to project-specific considerations and enabling the use of professional engineering judgment where warranted.

"FRA" means the Federal Railroad Administration.

"Grade Crossing Inventory Form" means the U.S. DOT National Highway-Rail Grade Crossing Inventory Form, FRA Form F6180.71. This form is available through the FRA's Office of Safety, or on FRA's Web site at *http://www.fra.dot.gov*.

"Locomotive" means a piece of on-track equipment other than hi-rail, specialized maintenance, or other similar equipment—(1) With one or more propelling motors designed from moving other equipment; (2) with one or more propelling motors designed to carry freight or passenger traffic or both; or (3) without propelling motors but with one or more control stands. This definition is being added as a result of a suggestion from the AAR.

"Locomotive horn" means a locomotive air horn, steam whistle, or similar audible warning device mounted on a locomotive or control cab car. The terms "locomotive horn", "train whistle", "locomotive whistle", and "train horn" are used interchangeably by many people to denote the audible warning device mounted on a locomotive or control cab car.

"Median" means the portion of a divided highway separating the travel ways for traffic in opposite directions.

"MUTCD" means the Manual on Uniform Traffic Control Devices issued by the Federal Highway Administration.

"Nationwide Significant Risk Threshold" means a number, calculated on a nationwide basis, which reflects the average level of risk at public

[12] See Report to Congress entitled *North Carolina "Sealed Corridor" Phase I U.S. DOT Assessment Report* (FRA Office of Railroad Development, September 2001), which describes most of the pioneering work undertaken by the State of North Carolina and the Norfolk Southern Railroad (with FRA funding assistance) in support of the State's high-speed rail program.

highway-rail grade crossings equipped with lights and gates and at which locomotive horns are sounded. For purposes of this rule, a risk level above the Nationwide Significant Risk Threshold represents a significant risk with respect to loss of life or serious personal injury. The Nationwide Significant Risk Threshold is calculated in accordance with the procedures in Appendix D of this part. In determining this risk threshold, FRA determines the average level of risk at public highway-rail grade crossings equipped with lights and gates and at which locomotive horns are sounded. This data pool in essence provides the starting point for communities in establishing quiet zones. Because every grade crossing in a New Quiet Zone must, at a minimum, be equipped with conventional lights and gates, a community will be able to determine the risk level associated with the crossings within the proposed quiet zone.

"New Quiet Zone" means a segment of rail line within which is situated one, or a number of consecutive public highway-rail crossings at which routine sounding of locomotive horns is restricted pursuant to this part and which does not qualify as a Pre-Rule Quiet Zone.

"Non-traversable curb" means a highway curb designed to discourage a motor vehicle from leaving the roadway. FRA is not specifying design details for such curbs beyond requiring, that they be at least six inches but not more than nine inches high. Such curbs are often combined with median islands at least two feet wide. If the curbs are not equipped with reboundable, reflectorized vertical markers, paint and reflective beads should be applied to the curb for night visibility. Additional design specifications are determined by the standard traffic design specifications used by the governmental agency constructing the curb. The term "non-traversable curb" is replacing the term "barrier curb" as proposed in the NPRM due to its greater acceptance in the highway community. FRA has also deleted from the rule the definition of "mountable curb" because that term is not being used in the rule.

"Power-out indicator" means a device which is capable of indicating to trains approaching a grade crossing equipped with an active warning system whether commercial electric power is activating the warning system at that crossing. This term includes remote health monitoring of grade crossing warning systems if such monitoring system is equipped to indicate power status.

"Pre-Rule Quiet Zone" means a segment of a rail line within which is situated one, or a number of consecutive public or private highway-rail crossings at which State statutes or local ordinances restricted the routine sounding of locomotive horns, or at which locomotive horns did not sound due to formal or informal agreements between the community and the railroad or railroads, and such statutes, ordinances or agreements were in place and enforced or observed as of October 9, 1996 and on December 18, 2003. As proposed, this definition includes quiet zones enforced or observed as of the date of passage of Public Law 104–264, which amended 49 U.S.C. 20153 to require the Secretary to take into account the interest of communities that "have in effect" restrictions on the sounding of a locomotive horn at highway-rail grade crossings or have not been subject to the routine sounding of a locomotive horn at highway-rail grade crossings. FRA reads the statute as requiring FRA to be particularly solicitous of communities that had restrictions in effect at the time of the 1996 enactment. FRA has added the requirement that the ordinance or agreement was observed or enforced as of the date of publication of this interim final rule because it would make little sense to reinstate a ban abandoned by the community (or determined to be inconsistent with State law) and because use of information from the more recent date will permit FRA to achieve greater certainty as to the status of bans and eligibility for Pre-Rule Quiet Zone status. In particular, FRA has noted some year-to-year variability in the no-whistle policies observed in Illinois during the 1990s; and achieving certainty as to the status of individual line segments has proven much more difficult than FRA anticipated in issuing the proposed rule.

"Private highway-rail grade crossing" means, for purposes of this part, a highway-rail at grade crossing which is not a public highway-rail grade crossing. When viewed in light of the definition of public highway-rail grade crossings, a private crossing is a crossing where a private roadway crosses one or more railroad tracks at grade, and at which a public authority does not maintain the roadway on either side of the crossing. References in this rule to "private grade crossing" or "private crossing" refer to a private highway-rail grade crossing.

"Public authority" means the public entity responsible for safety and maintenance of the roadway that crosses the railroad tracks at a public highway-rail grade crossing. This term includes the traffic control authority or law enforcement authority, or the governmental jurisdiction having responsibility for motor vehicle safety at the crossing.

"Public highway-rail grade crossing" means, for purposes of this part, a location where a public highway, road, or street, including associated sidewalks or pathways, crosses one or more railroad tracks at grade. In the event a public authority maintains the roadway on at least one side of the crossing, the crossing is considered a public crossing for purposes of this part. The second sentence of this definition is often included in a definition of public grade crossing, but was inadvertently omitted from the NPRM. References in this rule to "public grade crossing" or "public crossing" refer to a public highway-rail grade crossing.

"Quiet Zone" means a segment of a rail line, within which is situated one or a number of consecutive public or private highway-rail crossings at which locomotive horns are not routinely sounded. This definition has been modified slightly from that proposed in the NPRM. The phrase "locomotive horns may not be routinely sounded" has been changed to "locomotive horns are not routinely sounded" to more effectively indicate the non-permissive nature of the ban on routine sounding of horns within the quiet zone. Additionally, "private crossings" has been added to the definition in recognition that a quiet zone may have a combination of both public and private crossings at which routine horn use is prohibited.

"Quiet Zone Risk Index" means a measure of risk to the motoring public which reflects the Crossing Corridor Risk Index for a quiet zone, after adjustment to account for (1) increased risk due to lack of locomotive horn use at the crossings within the quiet zone (if horns are presently sounded at the crossings), and (2) reduced risk due to implementation, if any, of SSMs and ASMs within the quiet zone. The Quiet Zone Risk Index is calculated in accordance with the procedures in Appendix D of this part. The Quiet Zone Risk Index is thus a measure of risk at crossings within the quiet zone after all adjustments to risk have been made. This measure is necessary in comparing the risk level to the Nationwide Significant Risk Threshold.

"Railroad" means any form of non-highway ground transportation that runs on rails or electromagnetic guideways and any entity providing such transportation, including:

(1) Commuter or other short-haul railroad passenger service in a metropolitan or suburban area and commuter railroad service that was

operated by the Consolidated Rail Corporation on January 1, 1979; and

(2) High speed ground transportation systems that connect metropolitan areas, without regard to whether those systems use new technologies not associated with traditional railroads; but does not include rapid transit operations in an urban area that are not connected to the general railroad system of transportation.

"Relevant collision" means a collision at a highway-rail grade crossing between a train and a motor vehicle, excluding the following: a collision resulting from an activation failure of an active grade crossing warning system; a collision in which there is no driver in the motor vehicle; or a collision where the highway vehicle struck the side of the train beyond the fourth locomotive unit or rail car. The term "relevant collision" has been included in this rule to provide a basis for reviewing the safety history at a crossing while ensuring that collisions not relevant to the direct issue of motorist decision-making are omitted from the analysis.

"Supplementary safety measure" (SSM) means a safety system or procedure established in accordance with this part which is provided by the appropriate traffic control authority or law enforcement authority responsible for safety at the highway-rail grade crossing, that is determined by the Administrator to be an effective substitute for the locomotive horn in the prevention of highway-rail casualties. Appendix A to this part lists such supplementary safety measures.

"Waiver" means a temporary or permanent modification of some or all of the requirements of this part as they apply to a specific party under a specific set of facts. Waiver does not refer to the process of establishing quiet zones or approval of quiet zones in accordance with the provisions of this part.

"Wayside horn" means a stationary horn (or device designed to produce a sound resembling a horn) located at a highway rail grade crossing, designed to provide, upon the approach of a locomotive or train, audible warning to oncoming motorists of the approach of a train.

Section 222.11 What Are the Penalties for Failure To Comply With This Regulation?

This section, which has not changed from that proposed in the NPRM, identifies the civil penalties that FRA may impose upon any person, including a railroad that violates any requirement of this part. The penalty provision parallels penalty provisions included in many other safety regulations issued by FRA. Essentially, any person who violates any requirement of this part or causes the violation of any such requirement will be subject to a civil penalty of at least $500 and not more than $11,000 per violation. Civil penalties may be assessed against individuals only for willful violations, and where a grossly negligent violation or a pattern of repeated violations creates an imminent hazard of death or injury to persons, or causes death or injury, a penalty not to exceed $22,000 per violation may be assessed. In addition, each day a violation continues will constitute a separate offense. (Maximum penalties of $11,000 and $22,000 are required by the Federal Civil Penalties Inflation Adjustment Act of 1990 (Pub.L. 101–410) (28 U.S.C. 2461 *note*), as amended by the Debt Collection Improvement Act of 1996 (Pub.L. 104–134, 110 Stat. 1321–373) which requires each agency to regularly adjust certain civil monetary penalties in an effort to maintain their remedial impact and promote compliance with the law.) Furthermore, a person may be subject to criminal penalties under 49 U.S.C. 21311 for knowingly and willfully falsifying reports required by these regulations. FRA believes that the inclusion of penalty provisions for failure to comply with the regulations is important in ensuring that compliance is achieved. The interim final rule includes a schedule of civil penalties as Appendix G to this part. Because the penalty schedule is a statement of agency policy, notice and comment was not required prior to its issuance. *See* 5 U.S.C. 553(b)(3)(A).

New Jersey DOT requested that FRA clarify this section "to assure one that the application of a safety measure such as an audible warning device is not subject to civil or criminal penalties." While the meaning of this comment is not clear, FRA intends that the routine sounding of a locomotive horn in a quiet zone will subject the railroad to civil penalties, as would not sounding the horn at a public crossing outside of a quiet zone.

Section 222.13 Who Is Responsible for Compliance?

This section is intended to make clear that any person, including but not limited to a railroad, contractor for a railroad, or a local or State governmental entity that performs any function covered by this part, must perform that function in accordance with this part.

Section 222.15 How Does One Obtain a Waiver of a Provision of This Regulation?

This section governs the process for obtaining a waiver from a provision of this regulation. There was confusion on the part of some commenters regarding the meaning and purpose of waivers. Some commenters incorrectly considered waivers to be synonymous with exceptions from the requirement to sound the horn. In an effort to further clarify this section, FRA has added "waiver" to the list of defined terms in section 222.9. It is defined as "a temporary or permanent modification of some or all of the requirements of this part as they apply to a specific party under a specific set of facts. Waiver does not refer to the process of establishing quiet zones or approval of quiet zones in accordance with the provisions of this part."

FRA has historically entertained waiver petitions from parties subject to an FRA regulation. In many instances, a regulation, or specific section of a regulation, while appropriate for the general regulated community, may be inappropriate when applied to a specific entity. Circumstances may make application of the regulation to the entity counter-productive; an extension of time to comply with a regulatory provision may be needed; or technological advancements may result in a portion of a regulation being inappropriate in a certain situation. In such instances, FRA may grant a waiver from its regulations. The rules governing FRA's waiver process are found in 49 CFR part 211. In summary, after a petition for a waiver is received by FRA, a notice of the waiver request is published in the **Federal Register**, an opportunity for public comment is provided, and an opportunity for a hearing is afforded the petitioning or other interested party. FRA, after reviewing information from the petitioning party and others, will grant or deny the petition. In certain circumstances, conditions may be imposed on the grant of a waiver if FRA concludes that the conditions are necessary to assure safety or if they are in the public interest. Because this regulation's affected constituency is broader than most of FRA's rail safety regulations, the waiver process is proposed to be somewhat different. Paragraphs (a) and (b) address the aspects which are different than FRA's customary waiver process. However, as paragraph (c) makes clear, once an application is made pursuant to either paragraph (a) or (b), FRA's normal

waiver process, as specified in 49 CFR part 211, applies.

Paragraph (a) of this section addresses jointly submitted waiver petitions as specified by 49 U.S.C. 20153(d). Such a petition must be submitted by both any railroad whose tracks cross the highway and by the appropriate traffic control authority or law enforcement authority which has jurisdiction over the roadway crossing the railroad tracks. Although section 20153(d) requires that a joint application be made before a waiver of a provision of this regulation is granted, FRA, in paragraph (b), addresses the situation that may occur if the two parties can not reach agreement to file a joint petition. Section 20153(i)(3) gives the Secretary (and, by delegation, the Administrator) the authority to waive in whole or part any requirement of section 20153 (with certain limited exceptions) if it is determined not to contribute significantly to public safety. FRA thus has decided to accept individually filed waiver applications (under certain conditions) as well as jointly filed applications. In an effort to encourage the traffic control authority and the railroad to agree on the substance of the waiver request, FRA requires that the filing party specify the steps it has taken in an attempt to reach agreement with the other party. Additionally, the filing party must also provide the other party with a copy of the petition filed with the FRA.

It is clear that FRA prefers that petitions for waiver reflect the agreement of both entities controlling the two transportation modes at the crossing. If agreement is not possible, however, FRA will entertain a petition for waiver, but only after the two parties have attempted to reach an agreement on the petition.

Paragraph (c) provides that each petition for a waiver must be filed in the manner required by 49 CFR part 211.

Paragraph (d) provides that the Administrator may grant the waiver if the Administrator finds that it is in the public interest and that safety of highway and railroad users will not be diminished. The Administrator may grant the waiver subject to any necessary conditions required to maintain public safety.

Section 222.21 When Must a Locomotive Horn Be Used?

Paragraph (a) of this section addresses the duty to sound the locomotive horn when approaching and passing through a public highway-rail grade crossing. The locomotive horn shall be sounded when such locomotive or lead car is approaching and passes through each public highway-rail grade crossing. This paragraph also requires that sounding of the horn be in the pattern of two long, one short, and one long blast be initiated at the place specified in paragraph (b) of the section and that the pattern be repeated or prolonged until the locomotive or train occupies the crossing. This paragraph also states that the pattern may be varied as necessary where crossings are spaced closely together.

FRA proposed to adopt the industry standard pattern for sounding of horns at grade crossings. FRA received a number of requests that we define what "long" and "short" horn blasts are. The apparent intent of the commenters is to ensure that the locomotive horn not be sounded excessively when entering a grade crossing. It is clear that some engineers at some times "lean on the horn" for longer periods than is common in the industry. Despite this, the vast majority of engineers apply the locomotive horn appropriately. Imposing strict time requirements for the sound pattern would impose unrealistic limits on engineers and add to their already full workload. The Florida East Coast Railway recommended that the horn pattern be left up to the individual railroad. While some locomotive horns can be preprogrammed with specific horn sequences, FRA will not be requiring such horns, nor has a need for them yet been shown. FRA is thus retaining the proposed language of "long" and 'short" blasts. FRA is also leaving to the railroad or individual engineer the decision as to how to vary the horn pattern when crossings are spaced closely together. Such decisions have been made by these parties for many years, and there has been no showing that there is a need to alter those determinations.

Paragraph (b) of the NPRM addressed the location at which the locomotive horn needs to begin being sounded. The basic premise of this section as proposed in the NPRM was that the locomotive horn should be sounded no less than 20, nor more than 24 seconds in advance of a grade crossing, but in no event could the horn be sounded more than ¼ mile in advance of the crossing.

Research has shown that the effect of a locomotive horn sounded at a distance greater than ¼ mile from a crossing is attenuated to the extent that it does not provide warning to the motorist. The NPRM relied on the presence of whistle boards to notify the engineer when to sound the horn. Thus the proposal went into great detail regarding the present location of whistle boards and adjusting the location of whistle boards in the future. However, the BLE, representing the majority of railroad engineers in the country, testified that engineers did not need variably-placed whistle boards to indicate the proper location at which to sound horns. The BLE testified that engineers could provide a time-based warning if asked to do so. As a result, FRA has revised paragraph (b) to simply provide a range of time between which the locomotive horn must be sounded in advance of a grade crossing, while retaining the outside limit of ¼ mile.

As noted above, FRA proposed that the horn be sounded at least 20, but not more than 24 seconds, before the locomotive enters the crossing. This proposal generated a number of comments, the majority of which objected that the proposal required the horn to be sounded for an excessive period of time. Missouri's Division of Motor Carrier and Railroad Safety stated that the "range of 20 to 24 seconds will be difficult for engineers to determine when not traveling near maximum authorized speed." The agency recommended a minimum of 15 seconds, which provides, according to the agency, a 10 second margin. The Commissioner of the City of Aventura, Florida stated that 20 seconds may be acceptable during the day, but is unreasonable at night. The Commissioner suggested 10 seconds of warning during nighttime hours. The Florida East Railway said that it wasn't aware of technology to enable a train moving at less than maximum authorized speed to properly blow the horn within 20 to 24 seconds. The FEC recommended further thought on the subject. The FEC further stated that if FEC train speed is 60 miles per hour, the one-quarter mile limit only provides for 15 seconds warning rather than 20 to 24 seconds warning. The FEC is correct, and as noted below, that is the desired result.

As a result of comments received and the results of its research on this issue, FRA has revised the proposal to provide that the locomotive horn be sounded at least 15 seconds, but no more than 20 seconds, before the locomotive enters the crossing, but in no event shall a locomotive horn sounded in accordance with paragraph (a) be sounded more than one-quarter mile in advance of a public highway-rail grade crossing. This provision as revised recognizes that establishing only a set location at which horns must be sounded (as is the case under many present State laws), has the potential to disrupt local communities without affecting the warning provided to the motorist. Because a fixed location for sounding of a horn results in differing periods of warning depending on the speed of the train, FRA chose to eliminate the traditional fixed point at which the locomotive horn needs to be sounded. Rather, the length of time of the warning is the operative factor as to when to begin sounding the horn. FRA is providing the locomotive engineer a range of 15 to 20 seconds in advance of the crossing in which to sound the horn. This provision will prevent much unnecessary disruption to surrounding communities. Under present law in many States, a train traveling at 15 miles per hour would sound its horn for 60 seconds (over a full quarter mile) if required to initiate the sounding one-quarter mile in advance of the crossing. Under this rule, such a train traveling at 15 miles per hour would sound its horn for 15 to 20 seconds, but would only sound it over a distance of from 330 feet to 440 feet. Ample warning is provided the motorist while preventing unnecessary noise among the surrounding community. At the other end of the spectrum, a train traveling at 79 miles per hour travels more than four tenths of a mile in 20 seconds, and thus would only sound its horn for less than 12 seconds under this rule. It is clear that excessive horn noise would be generated if the horn were to be sounded for a full 20 seconds, since the horn sound is not effective as a warning beyond one-quarter mile. Thus, as proposed in the NPRM, FRA is limiting the sounding of the horn to a maximum of one-quarter mile in advance of a crossing, regardless of train speed. Sound diminishes at a rate of approximately 7.5 dB(A) for each doubling of distance. Thus, the sound from a locomotive horn registering 100dB(A) at 100 feet in front of the locomotive will have diminished to roughly 75 dB(A) at one-quarter mile in front of the locomotive. That distance is near the outer margin of utility in terms of alerting the motorist to oncoming trains at that crossing.

Section 222.23 How Does This Regulation Affect Sounding of a Horn During an Emergency or Other Situations?

Paragraph (a)(1) of this section is meant to make clear that a locomotive engineer may sound the locomotive horn in emergency situations. Notwithstanding any other provisions of the rule, a locomotive engineer may sound the locomotive horn to provide a warning to vehicle operators, pedestrians, trespassers or crews on other trains in an emergency situation if, in the engineer's sole judgment, such action is appropriate in order to prevent imminent injury, death or property damage. Thus, establishment of a quiet zone and the limits established on the length of time a horn may be sounded, are not intended to prevent the engineer from using his or her discretion in emergency situations. CPUC recommended that FRA add "or at the discretion of the locomotive engineer" at the end of this paragraph because it is claimed that the proposed language places a burden on the engineer to prove that an emergency situation existed which would have resulted in imminent injury, death or property damage. FRA agrees that the engineer should not have the burden to prove that an emergency existed. We believe the present language is sufficiently clear to relieve the engineer of that burden. The BLE expressed "complete agreement" with the proposed language, as does the Mayor of Boca Raton, Florida. With the exception of minor proposed language change, the AAR also agrees with the proposal.

The AAR suggested that the phrase "[N]othing in this part" be replaced with "A railroad shall not be prohibited or restricted from using" in paragraph (b). The AAR claims that "FRA does not go far enough in addressing the railroads' need to sound horns for purposes other than to warn the public of trains approaching grade crossings or to warn roadway workers. Locomotive engineers use horns in other circumstances, such as when approaching passenger stations and to alert railroad employees to the pending movement of a train. It would be unsafe to prohibit the use of locomotive horns for such purposes. Consequently, FRA should specifically prevent States and localities from restricting railroads from sounding the locomotive horn for railroad operating purposes." While the substance of AAR's proposal has merit, the scope of this rulemaking is limited to locomotive horn use at grade crossings. Extending the regulatory framework beyond this limited area would require further rulemaking. To avoid misunderstanding regarding the subject matter subsumed by the rule, however, FRA has added the words, "or where required for other purposes under the railroad operating rules" at the end of this section.

This paragraph has been further changed slightly from the NPRM. The phrase, "including establishment of quiet-zones, or limits on the length of time in which a horn may be sounded" has been added to this paragraph to make clear that nothing in the rule, including the creation of quiet zones, or rules setting limits on where and when horns are sounded, shall prevent an engineer from using the horn as a warning in an emergency situation.

Paragraph (a)(2) is intended to make clear that while the rule does not preclude the sounding of the locomotive horn in emergency situations, the rule also does not impose a legal duty to sound the locomotive horn in such situations. It is FRA's intent that this section, and the rule as a whole, subsume the subject matter of sounding the locomotive horn at public grade crossings, including the sounding of locomotive horns within quiet zones during emergency and non-emergency situations. Absent the paragraph, it is conceivable that a railroad or engineer or both, could be found liable for damages resulting from a collision with an automobile at a grade crossing under the theory that the horn should have been sounded even though the crossing is within a quiet zone. It is the intent of FRA, that once a public authority creates a quiet zone pursuant to this part, the railroad and locomotive crew are relieved from any legal duty to sound the locomotive horn in an emergency situation. The rule's dual purpose of ensuring safety and reducing train horn noise where safety can reasonably be assured without horn use would be defeated if railroads felt compelled to make liberal use of the train horn in quiet zones merely to avoid being sued for not using it. Moreover, railroads and their crews would be placed in an untenable legal position, being prohibited from routine sounding of the horn but possibly being held liable for not sounding the horn if a collision does occur in a quiet zone and a plaintiff argues that the horn should have been sounded. Of course, we are confident that railroads and their engineers, given their very strong interest in avoiding crossings accidents, will err on the side of caution in using their discretion to determine which situations are truly emergencies warranting use of the horn.

In paragraph (b), the NPRM provided that nothing in this part restricts the use of the locomotive horn to announce the approach of the train to roadway workers in accordance with a program adopted under part 214 of this Chapter or where active warning devices have malfunctioned and use of the horn is required by either 49 CFR 234.105 (activation failure), 234.106 (partial activation), or 234.107 (false activation). This makes clear that locomotive horns must still be sounded in accordance with the listed regulations irrespective or the existence of a quiet zone. Such provisions have been established to provide warning to railroad employees working on and along the track and to motorists when grade crossing warning

systems malfunction. The BRS expressed their support for this paragraph, stating that it is "imperative that this remain unchanged. An important element of safety for roadway workers is the warning conveyed by the engineer." With the exception of the additional language pertaining to railroad operating rules discussed above, the paragraph remains unchanged from the NPRM.

Section 222.25 How Does This Rule Affect Private Highway-Rail Grade Crossings?

This section clarifies the manner in which this rule affects private crossings. (Section (f) of the Act explicitly gives discretion to the Secretary as to the question of whether to subject private highway-rail grade crossings to the regulation.) FRA has determined that exercising its jurisdiction in a limited manner regarding these crossings is the appropriate course of action.

Although the subject of private crossings was discussed in the preamble to the NPRM, a specific regulatory section was not included, in an effort to clearly set out the manner in which the rule affects private crossings, this new § 222.25 is included in the rule.

Although only a relatively small number of commenters addressed the issue of the rule's applicability to private crossings, the majority of commenters suggested that the rule should apply to private crossings to some extent. For example, both the Missouri Department of Economic Development (MDED) and the CPUC recommended that the proposed rule apply to private crossings in the same manner as public crossings. The MDED explained that many private highway-rail grade crossings, especially those in rural areas where trains usually travel at speeds near the maximum authorized, have hardly any warnings indicating the presence of the crossings. The CPUC explained that some private crossings carry very high volumes of truck or employee automobile traffic at particular times. The CPUC also pointed out that California law on the use of locomotive horns at crossings applies to all crossings, both public and private, and that no empirical data exists that justifies reduced protection for private crossings in quiet zones. Accordingly, the CPUC also recommended that entities seeking to establish quiet zones should be required to provide notice of their intent to all owners of private property within the proposed zone.

Similarly, the New York Department of Transportation explained that almost half the grade crossings in New York are private, but many function essentially as public crossings, with free access by anyone at any time of the day. Accordingly, the New York DOT suggested that the proposed rule apply to high-risk private crossings, as well as public crossings. The agency suggested that the determination of whether a private crossing was a high risk crossing could be based on a calculation similar to the New Hampshire Index, an analysis of train and highway volume. Alternatively, the agency suggested that a more complex review considering additional factors such as highway and train speed, as well as the type of railroad operations involved (*e.g.*, intercity, commuter, freight, etc.) might be appropriate.

The UTU indicated it has "a problem with not requiring improved protection for private crossings in a quiet zone." The UTU expressed the view "that not to require a private crossing or crossings within the quiet zone to be similarly equipped as a public crossing will allow an unsafe condition to exist." Similarly, the CPUC is in favor of "applying the standards to all railroads, public, private, plant, because the motoring public cannot distinguish these categories."

Although not recommending that the proposed rule apply to private crossings in the same manner as public crossings, two local governments suggested that to ensure private crossings in quiet zones are safe, the rule should require advance warning signs advising users of the crossings that train horns will not be sounded. In addition, these commenters, the City of Moorhead, Minnesota, and the City of Fargo, North Dakota, suggested that the provision of the proposed rule addressing implementation of quiet zones, be revised to specifically indicate that railroad operations in established quiet zones should cease routine use of horns at private crossings, as well as public crossings.

FRA understands the concern expressed by those commenters recommending that private crossings be addressed in the same manner as public crossings. FRA remains unconvinced that private crossings at this time should be subject to Federally imposed mandatory sounding of horns. In expressing this view in the NPRM, FRA stated that "[A]lthough some private crossings experience heavy rail and motor vehicle use, we do not have sufficient information as to present practices, the number and type of such diverse crossings, and the impacts of locomotive horns at such crossings. Thus, FRA will not at this time require that the locomotive horn be sounded at private highway-rail crossings. Whether horns must be sounded at such crossings will remain subject to State law (if any) and agreements between the railroad and the holder of crossing rights." As noted by the CPUC, California State law requires use of horns at private crossings. We note that FRA, by not applying this rule to private crossings which are not in quiet zones, has left States free to require the sounding of locomotive horns if it is determined by the appropriate State authority that it is appropriate given the circumstances within that State. Similarly, to the extent they are not constrained by Federal law (within a quiet zone) or State law, railroads remain free to elect whether to sound the horn at private crossings.

An FRA requirement to sound the horn at all private crossings would in some respects have more impact than the requirement to sound the horn at public crossings. By requiring the latter, Congress merely Federalized what had been uniform practice throughout the United States. Horns have sounded at public crossings for many decades throughout the country, first by railroad rules, and later based on State law. Horn use at private crossings, has, however, generally not been regulated by the States (presumably because there was less need for such requirement at private crossings), and horn use has thus been left up to railroads. Thus, if FRA were to require horn use at each of the more than 98,000 private crossings throughout the nation, the environmental impact in terms of increased noise would be significant. It is unclear at this time, based on the data available, if there would be a corresponding increase in safety as a result. Therefore, other than its effect on private crossings within quiet zones, the rule is not meant to affect present State laws or orders, or private contractual or other arrangements regarding the routine sounding of locomotive horns at private highway-rail grade crossings. *See* § 222.7.

FRA does agree that evaluation of the use of the train horn at private crossings merits further study. Because private crossings are generally not controlled by State transportation or regulatory officials, the current national inventory does not provide details regarding key data elements required to evaluate safety at individual private crossings to the same extent possible at public crossings. Clearly, further information is needed concerning the potential utility of using train horns at private crossings and the collateral issues such a policy might entail (including the effects on crew noise dose). FRA will pursue these issues in the context of a forthcoming review of safety at private highway-rail crossings.

There was also general agreement among commenters of the need to consider safety at private crossings located within proposed quiet zones. We agree. Although many private crossings do not present high risk in comparison with active public crossings (*e.g.*, entrances to individual residences; lightly used agricultural crossings), other private crossings may present considerable risk. In some cases, railroads instruct crews to sound the horn at particular private crossings where risk is perceived to be high; in other cases train horns provide effective warning as an accident of geography (*i.e.*, where the private crossing is sandwiched between two nearby public crossings). Although, as noted, the statute does not mandate that FRA require use of the train horn at private crossings, it is imperative that actions to facilitate establishment of quiet zones not significantly increase risk at these crossings, and that their presence in the midst of public crossings not be allowed to defeat the purpose of a quiet zone.

This section specifically states that this rule does not require the routine sounding of locomotive horns at private highway-rail grade crossings. Although FRA has jurisdiction over locomotive horn use at private crossings based on both 49 U.S.C. 20153 and 49 U.S.C. 20103, it has not exercised that jurisdiction at this time except as to the use of horns at private crossings within quiet zones.

Paragraph (a) of this section provides that private highway-rail grade crossings may be included in a quiet zone. To do otherwise would defeat the purpose of such a quiet zone. Paragraph (b) provides that private grade crossings which allow access to the public, or which provide access to active industrial or commercial sites, may be included in a quiet zone only if a diagnostic team evaluates the crossing to determine whether the institution of the quiet zone will significantly increase risk at the private crossing. The crossing must then be equipped or treated in accord with the recommendations of such team. A diagnostic team is composed of a group of knowledgeable representatives of the parties of interest in a grade crossing. Typically, the team would be composed of railroad personnel, public safety or law enforcement representatives, and engineering personnel for the public authority. In appendix F, FRA has set forth crossing safety issues for the diagnostic team to consider. The diagnostic team, using crossing safety management principles, should evaluate conditions at the grade crossing to make determinations and recommendations concerning safety needs at that crossing. The diagnostic team can evaluate a crossing from many perspectives and can make recommendations as to what improvements might be needed to compensate for the lack of a train horn at the crossing. FRA will expect that the results of diagnostic review will be reflected in the filings submitted under § 222.39, so that FRA can determine the appropriateness of the proposed action.

The following options should be available if the diagnostic team determines that the private crossing could experience increased significant risk as a result of quiet zone implementation: (1) The public authority "adopts" the crossing by agreement with the holder or through condemnation and the crossing is then included in the corridor-based risk-reduction program; (2) the crossing is closed; or (3) safety improvements are implemented that address increased risk at that crossing, as evaluated by the diagnostic team.

FRA does not believe it is necessary to specify a means of resolving any differences within the diagnostic team. In the event of disagreement, the contrasting views can be documented and included in the public authority's submission to FRA. If necessary, FRA will undertake additional fact finding before accepting or rejecting the proposed course of action. FRA expects public authorities to make these determinations in the first instance; FRA's role is to determine whether these authorities have considered the grade crossing safety issues set forth in the appendix and have stated an accurate and reasonable basis for their determinations.

This rule does not specify the financial responsibility of parties for safety improvements at private crossings. Responsibility will be determined under normal principles of property law and based upon whatever contracts and cooperative agreements may be entered into by the parties. At private crossings, the holder of the right to cross has normal common law obligations regarding the safe passage of employees and guests; and the community as a whole has an interest in a quiet environment. It is expected that the private crossing holder and the public authority would cooperate to effect any necessary improvements, with the railroad assuming practical responsibility for maintenance of any automated warning systems at the crossing. (Allocation of expense between the railroad and the crossing holder might be further influenced by any existing contractual arrangements between them.) In the case of a failure of parties to agree on new arrangements, the public authority might elect to adopt the roadway (using condemnation authority as necessary), in which case the crossing would be treated as public in nature.

Paragraph (c) of this section establishes that the private crossings within a quiet zone must at a minimum be equipped with crossbucks and "STOP" signs conforming to MUTCD standards together with advance warning signs in compliance with § 222.35(c).

Section 222.33 Can Locomotive Horns Be Silenced at an Individual Public Highway-Rail Grade Crossing Which Is Not Within a Quiet Zone?

This section addresses the situation in which locomotive horns need not be sounded even though the crossing is not part of a quiet zone. A railroad operating over an individual public highway-rail grade crossing may, at its discretion, cease the sounding of locomotive horns under certain conditions. Locomotive horns need not be sounded when the locomotive speed is 15 miles per hour or less and train crewmembers or properly equipped flaggers (as defined by 49 CFR 234.5) provide warning to motorists. These limited types of rail operations do not present a significant risk of loss of life or serious personal injury and thus, under the Act, may be exempted from the requirement to sound the locomotive horn. Locomotive horns will still be required to be sounded if automatic warning systems have malfunctioned and the crossing is being flagged pursuant to 49 CFR 234.105, 234.106, or 234.107. Horns will still be required in these limited circumstances in order to offset the temporary loss of the active warning which motorists have presumably come to rely on.

This section is an exception to the requirement that silencing of locomotive horns must include all crossings within a designated quiet zone. This section permits a railroad, on its own initiative, to silence its horns at individual crossings under certain circumstances in which the safety risk is low. FRA anticipates that this section will be used primarily at crossings located in industrial areas where substantial switching occurs, and thus would avoid unnecessary noise impacts on those railroad personnel working on the ground in very close proximity to the locomotive horn. This section also has the potential to reduce noise impacting residences and businesses near crossings where railroad switching

occurs. This section recognizes that under the noted conditions, public and railroad safety do not require the sounding of locomotive horns—a railroad is thus free to eliminate them. Since the primary beneficiary of this section is not nearby residences, the reasoning for the establishment of quiet zones rather than individual quiet crossings would not be applicable here. There is no additional burden placed on an engineer in this situation since the flagger will generally be a member of the train crew itself, and the engineer will not be placed in the position of having to determine when horns must be silenced or sounded as would be the case if horns could be silenced on an individual crossing basis. Additionally, prevention of noise spill-over from a crossing would not be a consideration in these situations.

FRA received a number of comments on the equivalent section in the NPRM (§ 222.31). The representative of Miami Springs, Florida felt that if train speed is less than 15 miles per hour, local authorities can decide if an exemption for the horn is appropriate. The representative did not think flaggers are needed in this situation. The AAR recommended that the decision to flag be left to railroads. In addition, this AAR representative pointed out that proposed § 222.31 identified the threshold speed of 15 miles per hour as the maximum authorized operating speed established by the railroad, not the actual operating speed. This commenter suggested that the maximum authorized speed is not the critical factor and recommended that the maximum speed identified in § 222.31 be revised to refer to actual operating speed. FRA agrees with this suggestion and has changed this provision accordingly. However, FRA will retain the requirement to flag the crossing in the absence of the horn. To do otherwise would put the traveling public at risk, in that the motorist could not be certain of the warning to be provided at the crossing. If a train passes through at 20 miles an hour, a horn would sound, but at 15 miles per hour a horn would not sound. Only if actual warning is provided by the horn at train speeds greater than 15 miles per hour and by a flagger at speeds of 15 miles per hour or less would the motorist consistently receive warning of the train's approach. The BLE provided the general comment that the assumption on which proposed § 221.31 is based, that slow moving trains or less frequent train movements lead to a diminished safety risk, must be carefully evaluated and must be supported by substantial relevant data. We agree, however, that is a less significant an issue in this case because flagging is required to provide an alternative methods of warning. Further, careful review of accident data shows that, even if the flagger's warning is not heeded, the likely severity of a collision will be much lower than at higher speeds.

Another railroad industry commenter, the Florida East Coast Railway Company, stated that it interpreted proposed § 222.31 as leaving it to the discretion of railroads to decide whether to sound the locomotive horn or not when the specified conditions are present. The commenter is correct that if all the conditions are met under this section, the railroad may, but is not required to forgo sounding the horn. The reason for leaving significant discretion with the railroad in this instance is that in many cases highly restricted sight distances and complex traffic patterns may complicate the flagger's job and make use of the horn virtually mandatory.

Section 222.35 What Are the Minimum Requirements for Quiet Zones?

This section details the minimum requirements for quiet zones established in conformity with this part. It addresses the minimum length of a quiet zone, minimum level of active warning to be provided, and minimum type of signage required.

The requirements of this section appeared in the NPRM in proposed § 222.33, "Establishment of quiet zones." Because of the breadth of that proposed section, in this interim final rule, it has been broken down into smaller sections for ease of use and reference. Thus, this § 222.35 addresses minimum physical requirements, § 222.37 addresses who may establish a quiet zone, and § 222.39 addresses how a quiet zone is established.

In the NPRM, FRA discussed the rationale for requiring quiet zones rather than permitting a ban on locomotive horns on a crossing-by crossing basis. A quiet zone is defined in this rule as a segment of a rail line, within which is situated one or a number of consecutive public highway-rail crossings at which locomotive horns are not routinely sounded. FRA believes that if locomotive horns are to be prohibited along a segment of track, the underlying purpose of the prohibition will not be served unless the prohibition is effective on a corridor basis. Without a quiet zone, the sounding of horns may be prohibited at one crossing, required at the next few crossings and then prohibited at another crossing perhaps one-quarter mile down the tracks. Because locomotive horns must be sounded in advance of the crossing, the horn being sounded at one crossing will effectively negate a large measure of the benefit of the prohibition elsewhere along the rail line. Imposition of a horn prohibition on a corridor basis will eliminate excessive and unnecessary workload demands on the engineer, permitting greater attention to other locomotive operating requirements. Without a zone prohibition, the engineer will be faced with the need to constantly be aware of which crossings are, or are not, subject to a prohibition.

Paragraph (a) addresses the length of quiet zones. Unlike the NPRM, which required an across the board one-half mile length irrespective of when the quiet zone was established, this Interim Final Rule provides for a minimum length for New Quiet Zones and permits Pre-Rule Quiet Zones to retain their length under specified conditions.

Paragraph (a)(1) provides that the minimum length of a New Quiet Zone established under this part shall be one-half mile along the length of railroad right-of-way. This is consistent with the NPRM, which as stated, required that all quiet zones to be at least one-half mile long. This provision did not generate a large number of comments; however, the concept of a minimum length was generally supported. The communities of Moorhead, Minnesota, Fargo, North Dakota, and Rocky River, Ohio supported the one-half mile length. New Jersey Department of Transportation pointed out that the purpose of a quiet zone and the requirement for minimum length may not be met throughout the entire length of a quiet zone "because of stations, private grade crossings, curves and points where the locomotive horn would routinely be sounded regardless of its proximity to public grade crossings. * * * The definition and minimum length of a quiet zone * * * may need additional refinement regarding non-grade crossing safety points on the rail segment." While New Jersey DOT's points are well taken, it remains a local decision as to whether to implement a quiet zone. It is true that sounding of locomotive horns at stations and around curves would not be affected by this rule (although horn use at private crossings within quiet zones is regulated by this rule (*see* § 222.25)), but if a community determines that it wishes to reduce train noise even if it can not be totally eliminated, it may do so under this rule. The CPUC recommended that minimum length not be codified in the rule, but should be determined by the railroad and applicant and approved by the State agency. The Illinois Commerce

Commission agrees with the one-half mile length but argues that it should not be binding since shorter lengths may be appropriate. FRA believes that establishment of a minimum length of one-half mile is appropriate. It is, however, a local community decision as to whether to establish a quiet zone and it is the community which, after weighing the costs, can best determine where a quiet should be established. FRA understands that there may be situations in which a quiet zone must, for legitimate reasons, be shorter than one-half mile. In any such situation, the community may apply for a waiver from this requirement under the waiver provisions of § 222.15, showing special circumstances.

The Florida Department of Transportation recommended that FRA establish a minimum distance between quiet zones because without a specified distance between quiet zones, the actual separation may be as short as 50–100 feet. The agency claimed that the lack of a specified distance would violate the spirit of the one-half mile requirement. While a short distance between quiet zones may not be ideal in that the train horn may sound at a crossing within that distance, the horns will still be silenced within the minimum one-half mile length, which should provide relief to residents and businesses within that segment. FRA expects that there will indeed be situations in which a number of quiet zones are established in accordance with this section which will result in some crossings not included in quiet zones created on both sides of them. We anticipate that communities will calculate the Quiet Zone Risk Index for a number of different combinations of crossings in order to establish the right mix of crossings and anticipated costs. It is perfectly acceptable for a community to create two quiet zones (each at least one-half mile long) with a segment between them at which horns will sound. FRA believes that such a decision on the local level best reflects the needs and views of local residents and businesses. In such a situation FRA will not substitute its judgment for that of the local authorities.

Paragraph (a)(2) provides that the length of a Pre-Rule Quiet Zone may continue unchanged from that which existed as of October 9, 1996. FRA chose to exempt Pre-Rule Quiet Zones from the minimum one-half mile requirement in order to fairly take into consideration the interests of communities with existing whistle bans. While FRA does not believe there are many Pre-Rule Quiet Zones less than one-half mile in length, those that otherwise qualify to continue quiet zones under this rule may retain the original length of the quiet zone. This provision will prevent disruption in communities with established and effective whistle bans. FRA has determined that the addition of any crossing to a Pre-Rule Quiet Zone will end the grandfathered status of that quiet zone. Such additional crossing will change the status of a Pre-Rule Quiet Zone to a New Quiet Zone. To do otherwise would confer additional benefits to those communities with existing whistle bans not contemplated by the statutory directive to take into account *existing* restrictions on the sounding of the horn. Additionally, the Pre-Rule Quiet Zone has a safety record while horns did not sound, and presumably the ban had been continued because it met certain safety standards. There is no such safety record for the new crossing to be added to the quiet zone. Therefore, because new and additional risk is added by the new crossings added to the Pre-Rule Quiet Zone, risk needs to be calculated for the entire quiet zone. The resulting quiet zone must therefore comply with the requirements for New Quiet Zones and thus must be at least one-half mile in length.

Paragraph (a)(2) further states that the deletion of any crossing from a Pre-Rule Quiet Zone, with the exception of a grade separation or crossing closure, must result in a quiet zone of at least one-half mile in length in order to retain Pre-Rule Quiet Zone status. Of course, in addition to not qualifying for Pre-Rule Quiet Zone status, the resulting proposed quiet zone, if less than one-half mile, would also not qualify for New Quiet Zone status.

Paragraph (a)(3) makes clear that a quiet zone may extend beyond the boundaries of a political jurisdiction. This will permit the establishment of quiet zones reflective of the needs of the nearby residents and businesses rather than of artificial political boundaries. A quiet zone may thus extend for its full appropriate length, rather than being broken into two or three separate quiet zones. Of course, if more than one public authority is involved due to the fact that the quiet zone extends into more than one political jurisdiction, the different public authorities must agree to the establishment of the quiet zone, and must jointly, or by delegation provided to one of the authorities, take necessary actions under this rule. *See* § 222.34(a).

Paragraph (b) addresses the need for the presence of active grade crossing warning devices at crossings within quiet zones. Paragraph (b)(1) addresses active warning devices at crossings within New Quiet Zones. Each public highway-rail grade crossing in a New Quiet Zone must be equipped, no later than the implementation date of the New Quiet Zone, with active grade crossing warning devices comprising both flashing lights and gates which control traffic over the crossing. Such devices must conform to the standards contained in the MUTCD issued by the Federal Highway Administration. As noted in the general discussion above, flashing lights and gates alone provide an unambiguous warning to the motorist of the arrival of the train. Removing the active warning provided by the train horn without providing flashing lights and gates would put the motorist in the position of relying exclusively on visual sighting of the train to make a decision, which is impractical under many circumstances (*e.g.*, permanently or temporarily obscured sight lines, compromised night vision, adverse weather and other factors that create visual clutter).

Such warning devices shall be equipped with power-out indicators. A power-out indicator is a device which is capable of indicating to trains approaching a grade crossing equipped with an active warning system whether commercial electric power is activating the warning system at that crossing. Presence of such power-out indicator adds another level of protection at the crossing in that it helps the railroad know as soon as possible if electric power is out at the crossing. While all crossing warning systems are equipped with back-up battery power, it is essential that the railroad know as soon as possible if the system is operating on reserve battery power rather than commercial power in order to allow the railroad to take appropriate action before the battery fails. (Of course, because all grade crossing warning systems are designed on the "fail-safe" principle, if a warning system does lose all power, the gates will descend across the roadway. However, no additional visible warning is provided; and it is not uncommon for gates to be broken off by motor vehicles under such circumstances, leaving the crossing a potential trap for motorists subsequently seeking to cross.)

Paragraph (b)(2) addresses active warning devices at crossings within Pre-Rule Quiet Zones. Such quiet zones must retain the grade crossing safety warning devices which existed at the crossing as of the date of publication of this rule. Such warning systems may be upgraded, but in no event may the warning system be downgraded from that which was in existence as of this date. This provision is consistent with the statutory mandate that FRA take into

consideration the interest of communities which had existing horn restrictions in place. Permitting quiet zones with crossings not equipped with both flashing lights and gates, is appropriate since the safety history, and thus the risk level, is known at such crossings. For existing quiet zones, where the risk level without locomotive horns can be determined, the risk level, rather than the equipment level, will determine whether an existing quiet zone qualifies as a Pre-Rule Quiet Zone. While this approach may strike one as inconsistent with the approach of paragraph (b)(1), which requires both flashing lights and gates, the determining distinction is the lack of non-horn safety history at New Quiet Zones. In such circumstances, FRA is not willing to permit elimination of the train horn when active warning systems are absent. This distinction also further reflects the statutory mandate that this rule take into account the interest of communities with existing bans.

Paragraph (c) addresses the requirement for advance warning signs at crossings within a quiet zone. Paragraph (c)(1) requires that each highway approach to every public and private highway-rail grade crossing within a Pre-Rule Quiet Zone or New Quiet Zone shall be equipped with an advance warning sign which advises the motorist that train horns are not sounded at the crossing. Such sign shall conform to the standards contained in the MUTCD issued by the Federal Highway Administration. Paragraph (2) provides a period of three years from this date of publication for such signs to be installed at public and private crossings in a Pre-Rule Quiet Zone. This three-year interval tracks the period during which existing quiet zones may be continued without the necessity of a commitment by the public authority to continue the quiet zones as Pre-Rule Quiet Zones. Without this three-year exception, those communities with existing quiet zones with no advance warning signs would be forced to install such signs even if they were to discontinue the quiet zones within that three-year grace period. We note that, although we strongly encourage such signs wherever use of locomotive horns are prohibited, lack of signs is only being permitted for a short period of time, and only where they are not already in use.

Paragraph (d) requires that all private grade crossings within a quiet zone must be treated in accordance with this section and with § 222.25.

Section 222.37 Who May Establish a Quiet Zone?

This section addresses which entities may establish quiet zones. In the NPRM, FRA proposed that a local political jurisdiction, in addition to a State, have authority to establish a quiet zone. Additionally, in the preamble to the NPRM, FRA stated that "FRA does not intend that the proposed rule confer authority on localities to establish quiet zones if State law does not otherwise permit such actions. Local political jurisdictions are creations of their respective states and their powers are thus limited by their individual State law or constitution."

Understandably, this provision generated many comments from State and local governments. Of those States commenting, the consistent view was that States should have the primary role in establishing quiet zones and in administering a quiet zone program. Florida DOT strongly supported the view that a State agency should be the only governmental entity to designate or apply for quiet zone approval, comparing that process with the State agency's role in prioritizing grade crossing projects and administering Federal funds. Florida DOT suggested that there needs to be "uniformity within a given State for the treatment applied to the crossings to permit quiet zones' and thus the only way to achieve this is for a State agency to be the only party to designate or apply to the FRA for a quiet zone. New Jersey DOT similarly felt that all designations and applications should come from a State agency which would provide more consistent and systematic approach within each State. The State also felt that having a single contact per State would lessen the burden on FRA. Washington DOT also felt that it is simpler to have one contact per State rather than have each community deal with the issue individually. California DOT echoed these views and added the suggestion that States should be free to provide more stringent protections above the Federal floor. The State recommended that references in the rule to "state or local government" should be replaced with "State agency." Missouri's Division of Motor Carrier and Railroad Safety suggested that the State agency with regulatory authority over grade crossings should process quiet zone applications, thereby removing a burden on FRA. North Carolina Department of Transportation (NCDOT) suggested that each State DOT serve as a clearinghouse for quiet zone requests to FRA since these agencies have already been charged with evaluating public crossing safety and thus would be appropriately involved in safety evaluations for proposed quiet zones.

Comments from local governments tended to support the view that localities are in the best position to apply for quiet zones, however some communities favored State agency involvement. Brighton, Colorado expressed the view that local political subdivisions should establish quiet zones. Carrollton, Texas favors local government's role, as does Fort Collins, Colorado and Fargo, North Dakota. Chicago encourages "FRA to allow state and local governments to agree to the most appropriate procedure for managing quiet zone implementation and maintenance."

FRA notes that Congress, in mandating issuance of this rule, established the criteria and parameters under which the rule would be issued. Congress did not specifically provide a State role in managing the quiet zone program,[13] and FRA has not provided one either. Thus, despite suggestions to the contrary, FRA will not delegate to individual States any of its authority to manage this program. FRA did, however, solicit suggestions as to which is the appropriate party to establish quiet zones under the provisions of this rule. Commenters claiming that State oversight would provide consistency and only State agencies have the experience evaluating crossings from a safety standpoint are accurate to some extent. However, this rule has been crafted to provide a level of consistency while at the same time providing a range of options for quiet zone implementation. The "consistency" is found within the boundaries of this rule. Application of the same provisions throughout the State and nation will provide the needed level of consistency, without unduly preventing implementation of quiet zones under various situations. Similarly, reliance on a State agency's expertise in grade crossing safety will be helpful to public authorities in determining which among various alternatives should be followed, but this expertise should not determine which public body should make the ultimate decision. We encourage the use of diagnostic teams (such teams are required if specified categories of private crossings are proposed for inclusion in a quiet zone (*See* § 222.25)), but using diagnostic teams or others with safety expertise should not affect who the ultimate decision making authority should be. After reviewing public comments and testimony, and

[13] By contrast, see 49 U.S.C. 20105 and 49 CFR part 212 (State Safety Participation).

further review of § 20153, FRA has determined that the public entity with safety authority over the roadway that crosses the railroad is the appropriate public body to determine whether quiet zones should be established. As the authority over the roadway, that body is the logical entity to make such decisions. That authority, as the public entity responsible for safety and maintenance of the roadway (be it State, city, county or township), already has the legal authority over the roadway and therefore ostensibly has the necessary expertise or judgment to make decisions regarding that roadway. To the extent a State agency retains control over engineering decisions at highway-rail crossings, nothing in this rule should be read to compromise that authority. It is only the conditions under which the train horn will sound or be silenced that is reserved for resolution under this rule.

A review of section 20153 indicates a clear Congressional preference that decision-makers be the "traffic control authority or law enforcement authority responsible for safety at the highway-rail grade crossing." The statute refers to SSMs being provided by such body. Similarly, in the event a waiver from the regulation is desired, the statute requires that such application be from the traffic control authority or law enforcement authority responsible for safety at the highway-rail grade crossing. The statute also requires that FRA take into account the interest of "communities" and that FRA "work in partnership with affected communities to provide technical assistance and proved a reasonable amount of time for local communities to install SSMs." Nowhere does the statute refer to State agencies. The focus of the statute, and thus the focus of this rule is on the public bodies that are the "traffic control authority or law enforcement authority responsible for safety at the highway-rail grade crossing." Yet States do have an interest in this issue, and will of course play an important role as the discussion of paragraph (b) below details.

There are many different roadways crossing railroad tracks. Some are roads maintained by a small local jurisdiction, such as a town or village, and some are State highways maintained by the State. We do not expect, nor do we think it advisable, that a small political jurisdiction, such as a township desiring a quiet zone, have authority under this rule to determine what the State installs on its State highway within the borders of that town or village. Therefore, we have crafted this rule to provide that the political entity having safety jurisdiction over the highway have the authority to implement quiet zones involving those crossings.

FRA wishes to emphasize that it expects to participate in a broad cooperative effort involving States, local public authorities, and railroads that will identify the dimensions of potential quiet zones, staff diagnostic teams, identify funding sources, and help resolve any technical issues related to issues such as effectiveness rates for proposed ASMs. In this context, the strong participation of State departments of transportation and regulatory commissions will be crucial to project success, particularly since in many States the primary expertise for grade crossing safety issues resides at the State level.

FRA appreciates the offers made by several State-level departments and agencies to manage the implementation of this rule within their States. Although FRA does recognize that these agencies will need to play a strong role in implementation of the rule, FRA has not chosen to grant to State governments final approval functions for several reasons, any one of which is independently sufficient as a decisional criterion.

First, the obvious objective of the statute is to create a uniform and consistent pattern nationwide with respect to the conditions under which use of the train horn will and will not occur. It would be virtually impossible for FRA to ensure that a variety of State agencies were consistently applying the regulation; in fact, the burden of doing so could exceed the burden of administering the regulation directly. Congress did not direct that the States play any specific role in this regard.

Second, as a practical matter it is not clear that State agencies are authorized to take on this duty; and the delays inherently involved in obtaining this authority from legislatures could defeat the expectations of communities seeking to preserve or establish quiet zones.

Third, unlike many other situations where existing State programs are incorporated into a new Federal effort, this is not a field where State innovation has provided the model for Federal action. Although certain States have distinguished themselves in providing for safety at crossings by insisting on use of the train horn, and others have been responsive to local concerns by providing exceptions to its use, perhaps no more than one or two States has settled on an approach that appears to adequately balance the two interests and provide a foundation for a ready transition to functioning under this interim final rule.[14]

Paragraph (a) of this section provides that a public authority may establish quiet zones which are consistent with the provisions of this part. If a proposed quiet zone includes public grade crossings under the authority and control of more than one public authority (such as a county road and a State highway crossing the railroad tracks at different crossings), both public authorities must agree to establishment of the quiet zone, and must jointly, or by delegation provided to one of the authorities, take such actions as are required by this part. We anticipate that many quiet zones will encompass roadways under the control of more than one political jurisdiction, thereby requiring cooperation among the various jurisdictions in order to establish a quiet zone. We recognize that under this scenario one jurisdiction could prevent the establishment of a quiet zone, but the alternative of one jurisdiction imposing its will on another in such decisions is unacceptable. If a multi-jurisdictional quiet zone is established, the various jurisdictions are free to make whatever arrangements are administratively helpful to those entities. The entities may, by agreement, delegate all decision-making and administrative actions, such as notifications and official contact with FRA, to one body. On the other hand, the entities may decide to act as a group, with each entity being involved in each activity throughout the application and implementation process. Thus, how, and to what extent the entities organize, is left up to the individual jurisdictions within the proposed quiet zone.

Paragraph (b) of this section provides that a public authority may establish quiet zones irrespective of State laws covering the subject matter of sounding or silencing locomotive horns at public highway-rail grade crossings. It is unlikely that a State would attempt to restrict a community's freedom to create a quiet zone after issuance of this rule. However, were a State to impose such a restriction and be upheld in doing so, the other provisions of this rule would be left intact. This would mean that the mandate of § 222.21 would go into

[14] This is not a criticism, but merely an observation. Until the studies undertaken by FRA beginning in the 1990s, there was insufficient data available to anyone to fairly evaluate the actual impact of silencing the train horn. By the same token, supplementary and alternative safety measures emerged as a credible alternative to the train horn only as a result of innovation and research that flowered in the 1990s as a result of broad partnerships at the State and Federal levels, with strong participation by passenger and freight railroads.

effect, but the community's authority to create an exemption to that mandate would not. Nothing in this part, however, is meant to affect any other applicable role of State agencies or the Federal Highway Administration in decisions regarding funding or construction priorities for grade crossing safety projects, selection of traffic control devices, or engineering standards for roadways or traffic control devices.

This section (along with § 222.5 "Preemption") makes clear that State laws covering the subject of locomotive horn use at public highway-rail grade crossing are preempted by this rule and thus are of no effect. State laws which establish minimum distances in advance of a public crossing at which locomotive horns must be sounded are thus preempted. Also preempted by this rule are State laws which establish criteria for the prohibition of horn use at public crossings, as are State laws which prohibit the creation of whistle ban crossings or quiet zones. This paragraph also makes clear that the rule does not affect the traditional role of State agencies, or the Federal Highway Administration, in their role of funding and constructing grade crossing safety projects, the selection of traffic control devices, or engineering standards for roadways or traffic control devices.

Paragraph (c) of this section makes clear that State agencies may provide administrative and technical services to public authorities by advising them, acting on their behalf, or acting as a central contact point in dealing with FRA, however, any public authority eligible to establish a quiet zone under this part may do so.

Section 222.39 How Is a Quiet Zone Established?

This section addresses the manner in which a New Quiet Zone is established. FRA chose to use a quiet zone as a basis for this rule. While it would be possible to approve a locomotive horn ban on a crossing-by-crossing basis, the desired result of less disruption to the surrounding community by locomotive horn noise would be minimal. Because a locomotive horn must be sounded in advance of a grade crossing, the noise spill-over from a crossing not subject to a ban could still disrupt the residents and businesses near a crossing where horns are banned. As a result, the concept of a quiet zone was developed, which is meant to fulfill the following purposes: ensure that banning of locomotive horns would have the greatest impact in terms of noise reduction; ease the added burden on locomotive crews of the necessity of determining on a crossing-by-crossing basis whether or not to sound the horn; and enable grade crossing safety initiatives to be focused on specific areas within the quiet zone.

In the NPRM, FRA proposed two different methods of establishing quiet zones, depending on local circumstances. In one method (set forth in proposed § 222.33(a)), every public grade crossing within the proposed quiet zone would have an SSM applied to the crossing and the governmental entity establishing the quiet zone would only need to designate perimeters of the quiet zone, install the SSMs, and comply with various notice and information requirements set forth in the rule. The second proposed method (set forth in § 222.33(b)) would provide a governmental entity greater flexibility in using SSMs or ASMs to address problem crossings. The second method would allow FRA to consider a quiet zone that does not have a supplemental safety measure at every crossing as long as implementation of the proposed SSMs and ASMs in the quiet zone as a whole would cause a reduction in risk to compensate for the lack of locomotive horn. Because the success of ASMs in compensating for the lack of the locomotive horn is dependent on the level of time and effort expended by the governmental entity, and because estimates of effectiveness for ASMs will entail a degree of judgment, FRA retained a review and approval function where the governmental entity proposed less than using SSMs at every crossing.

Regardless of the method used, the proposed rule contemplated that both State and local governments would have authority to establish quiet zones. Some State commenters recommended that authority to establish quiet zones should be limited to State agencies, and thus recommended that FRA revise the language of § 222.33 to remove all references to local governments. The CPUC recommended that State agencies retain the primary authority for review and approval of quiet zones. The North Carolina Department of Transportation (NCDOT) similarly expressed the view that it is essential that State transportation agencies serve as clearinghouses for quiet zone designations and applications to FRA since these agencies are the administrators of the Section 130 Federal safety program. The NCDOT further recommended that the criteria for establishment of quiet zones should strongly encourage States to perform Traffic Separation Studies in order to identify additional safety devices that may be required at particular crossings. The NCDOT also recommended that FRA, along with registered Professional Engineers, review the underlying diagnostic process undertaken by the requesting agency when reviewing applications to establish quiet zones.

The Oregon DOT expressed the belief that the establishment of quiet zones should require more than just installing FRA pre-approved SSMs as articulated in § 222.33(a). The Oregon DOT suggested that some sort of safety review should be required before quiet zones are designated. The CPUC similarly agreed that States should review each crossing proposed for inclusion in a quiet zone under proposed § 222.33(a), even if FRA requires no further review. The New Jersey DOT suggested that any rule providing for quiet zones needs to address other non-highway-rail crossings in areas near railroad stations, curves, or at other points along rail lines where views may be obscured and the locomotive horn would normally be sounded. While FRA does not require a diagnostic team to review a proposed quiet zone (with the exception of reviewing improvements to private crossings), we anticipate that in most instances, such a team will be utilized. FRA is not requiring such a review because, in the case of SSMs, such measures have already been found to be effective in compensating for the lack of a horn. FRA believes that a public authority will use the best talent available to determine the appropriate manner of establishing a quiet zone.

Railroad industry commenters voiced strong disagreement with the proposed rule in that it does not provide for railroad participation in the process of establishing quiet zones. Specifically, the American Short Line and Regional Railroad Association (ASLRRA) and the Florida East Coast Railway Company (FEC) emphasized that including railroads in the process of establishing quiet zones is a logical and practical necessity. Both ASLRRA and FEC insisted that railroads must have the right to review and respond to any request for a quiet zone that may affect the railroads' operations. In support of its position, FEC cited its previous experience with whistle bans established in Florida that led to numerous lawsuits against the company. FRA notes that Florida's whistle ban law, which led to imposition of FRA Emergency Order No. 15, only required that crossings subject to the ban be equipped with gates and flashing lights—it did not provide for the extensive set of safeguards which are the subject of this rule. As discussed earlier, collisions increased dramatically during the whistle ban period, which naturally resulted in increased lawsuits.

This rule is crafted specifically to avoid such increased risk at subject crossings. One local government commenter, however, expressed concern over the potential inclusion of railroads in the process of establishing quiet zones. This commenter emphasized the necessity of communities being able to take unilateral action to implement quiet zones.

FRA appreciates the role that railroads must play in establishing quiet zones, from possible installation of four-quadrant gates to providing information for the National Grade Crossing Inventory. We also anticipate that, with or without use of diagnostic teams, railroads will play an integral role with public authorities in designing the most effective and most cost effective quiet zones. Despite the clear need for railroad involvement, FRA does not intend that railroads have a veto power over the establishment of quiet zones. The decision to establish such zones resides with the public authority. Once a public authority establishes a quiet zone under the terms of this rule, the railroad is legally prohibited from routinely sounding the locomotive horn at crossings within the quiet zone. As discussed earlier, such prohibition preempts local ordinances and State laws regarding sounding of locomotive horns at public crossings and private crossings within quiet zones. We expect court decisions will reflect that reality and will not hold the railroad liable based on a cause of action of failure to sound a locomotive horn. Please *see also* § 222.7 "What is this regulations's effect on State and local laws and ordinances?" and § 222.23 "How does this regulation affect sounding of a horn during any emergency or other situation?"

Other railroad industry commenters agreed with State commenters as to the necessity of either limiting the authority to establish quiet zones to State agencies, or at least mandating the inclusion of State agencies in the process. The AAR voiced support for the position of CPUC that only States should have the authority to establish quiet zones. The BLE, on the other hand, felt that the language of § 222.33 giving State and local governments the authority to establish quiet zones was appropriate, but that the relevant State governmental agency should always be included in the process in order to provide a consistent and efficient approach. FRA continues to believe the best approach, and the approach consistent with the statutory mandate, requires that public authorities with safety authority over the roads and highways within a quiet zone make the ultimate decision as to establishment of quiet zones. FRA anticipates that public authorities will work closely with State agencies with expertise in the area and with State funding agencies, but, as in a public authority's relationship with a railroad, the ultimate decision must be left to the public authority.

In additional comments from railroad industry participants, the BRS voiced general support for the two methods of establishing quiet zones in proposed § 222.33, but a representative of the Wisconsin Central System expressed concern about FRA's ability to analyze and process quiet zone petitions in a timely manner. In comments specifically relevant to passenger operations, the National Railroad Passenger Corporation (Amtrak) expressed concern about the exposure of train passengers to the dangers of accidents at highway-rail grade crossings. Amtrak suggested that communities seeking to establish quiet zones should be required to provide for the re-routing of heavy commercial motor vehicles away from crossings that appear to have dangerous characteristics or that have a history of violations or accidents. Amtrak also suggested that diagnostic teams reviewing crossings for potential inclusion in quiet zones should focus on heavy truck traffic because such vehicles pose the greatest risk of accidents. FRA appreciates Amtrak's concerns, however, quiet zones will only be established under this rule where there is compensation for the lack of a locomotive horn. Specifically, the requirement that flashing lights and gates be provided at each crossing in a New Quiet Zone, together with other requirements of the rule, should limit any possibility that this rule will adversely affect safety on Amtrak routes. (In fact, the exposure provided to innovative safety measures during this rulemaking and prior public outreach has already had a beneficial effect on emerging corridors.) However, FRA does recognize the possibility that passenger risk may be susceptible to special analysis as this rule is revised in future years based on the results of research.

In this rule, FRA has retained the basic framework as proposed in the NPRM, but has modified it in response to the many comments pertaining to the perceived inflexibility of the proposal. The NPRM was crafted in order to provide flexibility to the local communities. As stated in the NPRM at page 2246, "In this more flexible approach, risk will be viewed in terms of the quiet zone as a whole, rather than at each individual grade crossing. Thus, FRA would consider a quiet zone under this approach that does not have a supplemental safety measure at every crossing as long as implementation of the proposed SSMs and ASMs on [sic] the quiet zone as a whole will cause a reduction in risk to compensate for the lack of a locomotive horn. If the aggregate reduction in predicted collision risk for the quiet zone as a whole is sufficient to compensate fore the lack of a horn, a quiet zone may be established."

This interim final rule continues the concept of viewing risk on a corridor-wide basis, however the rule includes measurements of risk that reflect commenters' suggestions that FRA should give greater weight to the safety history and circumstances locally. Thus, FRA will permit quiet zones where risk has been addressed in one of three ways: one is the reduction of risk by compensating for the lack of the locomotive horn by implementation of SSMs at every crossing within a quiet zone; second, by reducing the risk level within the quiet zone to a level at least equal to the average risk level nationwide at crossings equipped with flashing lights and gates and at which horns are sounded; or third, by implementation of safety measures that will cause the risk level within the quiet zone to fall to or below the risk level which would exist if locomotive horns sounded at all crossings within the quiet zone.

Paragraph (a)—Public Authority Designation

Paragraph (a) of this section addresses the situations in which the public authority may designate a quiet zone without the need for formal application to, or approval by, FRA. Paragraph (a)(1), which is similar to proposed § 222.33(a), provides that a quiet zone may be established by implementing at every public highway-rail grade crossing within the quiet zone one or more SSMs identified in Appendix A. Because each of those SSMs have been determined to have an effectiveness rate which is at least equivalent to that of a locomotive horn, and there is an SSM at every public crossing, FRA can be assured that there is compensation for the lack of a locomotive horn in the quiet zone. FRA's role in this situation is thus minimal. The public authority would only need to designate the extent of the quiet zone and comply with the information and notice requirements of § 222.43.

Paragraph (a)(2) permits quiet zones if the risk level is, or can be made to be, no higher than a national standard of risk where train horns are used. The section compares the risk level at

crossings within the quite zone to the average risk level on a nationwide basis at crossings equipped with flashing lights and gates, and at which locomotive horns are sounded. Thus, if the Quiet Zone Risk Index is at, or below, the Nationwide Significant Risk Threshold, the risk at crossings within the quiet zone would be at least equal to the risk level at the average crossing where horns are sounded. Paragraph (a)(2)(i) provides that a quiet zone may be established if the Quiet Zone Risk Index is already at, or below, the Nationwide Significant Risk Threshold. If so, there is no need to implement SSMs.

Paragraph (a)(2)(ii) provides that a quiet zone can be established if SSMs are implemented which are sufficient to reduce the Quiet Zone Risk Index to a level at, or below, the Nationwide Significant Risk Threshold. Under this provision, there is no requirement to implement SSMs at every public crossing within the quiet zone. The public authority has discretion both as to which crossing or crossings will be equipped with an SSM and which type of SSM to use. FRA will provide the basic calculations to the public authority. Such information will be available on FRA's Web site at *http://www.fra.dot.gov*. Additionally, software and technical assistance will be available from FRA's Regional Grade Crossing Managers. The general idea behind paragraph (a)(2) and the Nationwide Significant Risk Threshold is that communities desiring quiet zones should not be required to achieve a higher degree of safety than the average level of risk at public crossings with lights and gates where the horn is sounded. This can relieve some communities of the need to make expensive improvements to eliminate risk below the significant level.

Paragraph (a)(3) provides an additional manner of establishing quiet zones by designation. A public authority may implement SSMs which reduce the Quiet Zone Risk Index to a level at or below the risk level which would exist if locomotives horns sounded at all public crossings within the quiet zone. This permits quiet zones to exist even if the level of risk will be above the national average for train horn crossings as long as measures are taken to ensure risk in the quiet zone does not increase when the horn is silenced. The quiet zone is viewed in the aggregate to determine if there has been compensation for the lack of the locomotive horn.

It is important to note that under any of the alternatives within this section any additional safety measures must be SSMs as listed in Appendix A. Because of this, FRA does not need to review the proposal. The safety measures have already been reviewed individually by FRA in determining their effectiveness rates and the risk levels have been also been determined in accord with the Appendix D, "Determining Risk Levels.".

Paragraph (b)—Public Authority Application to FRA

Paragraph (b) addresses the circumstances in which a quiet zone may be established after application to, and approval by, FRA. This paragraph is intended to provide greater flexibility to the public authority to use ASMs, ASMs and SSMs at different crossings, and variations of SSMs, such as a median shorter than is required when it is used as an SSM. (An "SSM" which does not fully comply with the requirements of Appendix A is considered to be an ASM.) This paragraph is based on proposed § 222.33(b). As in the proposal, not every public crossing within a quiet zone necessarily needs to be treated with an SSM or ASM. However, sufficient data must be submitted to the Associate Administrator to demonstrate that implementation of the measures will cause a reduction in the Quiet Zone Risk Index to, or below either the risk level which would exist if locomotive horns sounded at all crossings in the quiet zone or to a risk level at, or below the Nationwide Significant Risk Threshold.

Paragraph (b)(1) provides that a public authority may apply to the Associate Administrator for approval of a quiet zone that does not meet the standards for public authority designation under paragraph (a). The application must contain a proposal to implement one or more SSMs or ASMs and must contain sufficient detail concerning the present and proposed safety measures at the public and private crossings within the proposed quiet zone. The paragraph also requires that the membership and recommendations of a diagnostic team, if used, must be included in the application. FRA is requiring that a diagnostic team be used only when private grade crossings are to be included in a quiet zone, although their use elsewhere is highly recommended. The public authority must also commit to implement the proposed safety measures and demonstrate through data and analysis that implementation of these measures will reduce the Quite Zone Risk Index to, or below the risk level which would exist if locomotive horns sounded at all crossings in the quiet zone or to a risk level at, or below the Nationwide Significant Risk Threshold.

Paragraph (b)(2) addresses approval by the Associate Administrator. If, in the Associate Administrator's judgment, the public authority is in compliance with paragraph (b)(1) and has satisfactorily demonstrated that the SSMs and ASMs proposed by the public authority result in a Quiet Zone Risk Index which is at or below the risk level which would exist if locomotive horns sounded at all crossings in the quiet zone, or is at, or below, the Nationwide Significant Risk Threshold, the quiet zone will be approved. Because of the greater flexibility and the greater variation in possible risk reduction, FRA's role is much greater than when a public authority designates a quiet zone; thus, the Associate Administrator may include in any decision of approval such conditions as may be necessary to ensure that the proposed safety improvements are effective. The Associate Administrator may also not approve the quiet zone, in which case the reasoning behind the rejection will be provided to the public authority. § 222.57. A decision disapproving a request for approval may be challenged by filing a petition for reconsideration with the Associate Administrator. The petitioner will have the opportunity for an informal hearing.

Proposed § 222.33(c) and Proposed Appendix C—Quiet Zones in Which SSMs or ASMs Are Not Necessary

Proposed § 222.33(c) addressed the limited circumstances in which a quiet zone could be established without the need for SSMs or ASMs. The limited conditions under which such a quiet zone could be established were proposed in Appendix C of the NPRM. FRA proposed five criteria that must be met for a quiet zone to be established under § 222.339(c): (1) Train speed does not exceed 15 miles per hour; (2) trains travel between traffic lanes of a public street or on an essentially parallel course within 30 feet of the street; (3) signs are posted at every grade crossing indicating that locomotive horns do not sound; (4) unless the railroad is actually situated on the surface of the public street, traffic on all crossing streets is controlled by STOP signs or traffic lights which are interconnected with automatic crossing warning devices; and (5) the locomotive bell is rung when approaching and traveling through the crossing.

The Oregon Department of Transportation expressed strong disagreement with FRA's inclusion in proposed Appendix C of slow moving trains running within a street right-of-way. The Oregon DOT claimed that although crossings where slow moving trains run within a street right-of-way could qualify for a quiet zone, such situations should not be globally exempt from the requirement to sound the locomotive horn. The Town of Andover, Massachusetts, recommended that the Appendix C criteria be expanded to take into account the volume of traffic at a crossing and historical accident data and safety measures in place at the crossing. Recognizing that Appendix C as written would require that all five of the listed conditions be present in order to establish a quiet zone, another local government commenter, Jefferson Parish, Louisiana, suggested a more flexible approach to identifying situations which should qualify as quiet zones without any additional safety measures. Specifically, Jefferson Parish explained that many residential areas are located directly adjacent to railroad rights-of-way, with no intervening public streets. Thus, even if crossings in these areas meet all of the conditions listed in Appendix C except for close proximity to a public street, these areas would never be able to qualify as quiet zones. Jefferson Parish therefore suggested that either some flexibility be allowed on the criterion pertaining to the distance of the track from a parallel street, or to require that areas meet some percentage of the criteria (*e.g.*, four out of five) listed in Appendix C in order to be designated a quiet zone with no additional safety measures necessary.

The Northern Indiana Commuter Transportation District recommends a new categorical exclusion for an intersection of two streets, one of which has railroad tracks, a highway speed limit of 25 miles per hour and railroad speed limit of 15 with passive warnings. In support of this exclusion, the Transportation District cited 17 "non-serious" accidents at its crossings during a recent eight year period. Given the limited information regarding this type of operation, it would not be appropriate to provide a categorical exclusion.

One commenter testifying at the Salem, Massachusetts, public hearing, expressed the view that the Appendix should be eliminated in its entirety. This commenter, a locomotive engineer, explained that while some situations may exist which require no safety measures to offset the lack of use of the locomotive horn, such situations are rare and should be dealt with on an individual case-by-case basis after local public hearings. This commenter also expressed concern regarding the inclusion of crossings where the railroad and a highway run parallel to each other with only a small distance separating the two. This commenter explained that even if a train is operating at slow speed, it is very difficult for a motorist driving parallel and close to the track to see a train coming up from behind when the motorist is at an intersection and about to turn and cross the track.

Several commenters, unable to determine whether specific crossings in their communities would meet the requirements of Appendix C, requested clarification of the listed criteria. Specifically, some commenters were unclear as to whether all five of the conditions must be present together or if the requirements must only be met individually. In addition, one local government commenter specifically requested clarification of the requirement that trains be traveling between or parallel to traffic lanes of a public street, and what was meant by the phrase "railroad is actually situated on the surface of a public street."

One commenter, representing the City of Saint Paul, Minnesota, expressed support for the inclusion of train speed as a factor in Appendix C. The City of Saint Paul expressed the opinion that as compared to fast moving trains, slow moving trains greatly reduce the safety risk involved with train-auto collisions. However, this commenter also noted that because slow moving trains take a longer time to travel through the same amount of track as fast moving trains, slow moving trains lead to greater noise disturbances if required to sound their horns at every crossing.

Other commenters indicated that the NPRM's Appendix C required revision or that the Appendix should be eliminated altogether. One commenter speaking at the Salem, Massachusetts, public hearing suggested that the criteria listed in Appendix C do not address safety. Instead, this commenter suggested that the listed criteria address a certain pattern of railroad and roadway coexistence, which pattern is not exclusive of other safe conditions. This commenter suggested that in lieu of the proposed Appendix C, FRA should adopt performance based criteria which do not exempt single crossings, but instead exempt collections of crossings within an area that already have a demonstrated safety record. FRA notes that essentially performance based criteria have in fact been adopted in response to public comments.

The proposed language addressed a very specific, limited, situation which, in FRA's judgment, was of inherently low risk. It was FRA's judgment that such low risk crossings need not be required to have SSMs or ASMs in order to silence the horn. Providing this exception to the proposed rule was appropriate given the structure of the NPRM. However, because the actions required of public authorities in creating quiet zones under this interim final rule are based to a much greater extent on risk at those crossings, there is no longer a need to retain this proposed provision. Communities which would have likely qualified under the proposed section will likely qualify for a quiet zone pursuant to § 222.39(a) (public authority designation) by being below the NSRT and thus will not need to apply SSMs or ASMs to retain a quiet zone. If a quiet zone meeting the conditions of the proposed section does not qualify under § 222.39(a), it is likely that certain conditions are present which add to the risk level. In such unlikely circumstance, an SSM or ASM might be appropriate, or the public authority may wish to apply for a waiver.

Based on the above, and the comments calling into question its provisions, FRA is deleting proposed Appendix C and is not carrying forward to this interim final rule language of proposed § 222.33(c).

Section 222.41 How Does This Rule Affect Pre-Rule Quiet Zones?

This section addresses the effect of this rule on Pre-Rule Quiet Zones. A Pre-Rule Quiet Zone is a segment of a rail line within which is situated one, or a number of consecutive public highway-rail grade crossings at which State statutes or local ordinances restricted the routine sounding of locomotive horns, or at which locomotive horns did not sound due to formal or informal agreements between the community and the railroad or railroads, and such statutes, ordinances or agreements were in place and enforced or observed as of October 9, 1996 and on the date this rule was published.

In the NPRM, FRA proposed to provide communities with pre-existing whistle bans with a three-year grace period for compliance with the final rule. To take advantage of this three-year grace period, the NPRM would require that these communities initiate or increase highway-rail grade crossing safety public awareness initiatives and grade crossing traffic law enforcement programs within two years after the date of issuance of the final rule if no quiet zone was yet designated or accepted for its jurisdiction in accordance with the rule.

FRA received numerous comments regarding its proposal from State and local governments, as well as representatives of the railroad industry.

Most local governments commented that the three-year grace period was insufficient, citing lack of adequate funding and the costs involved with installing the approved SSMs. Most local governments felt that it would take 5–10 years to arrange funding and actually install the approved SSMs. One Illinois municipality suggested that even with adequate funding, bringing the State's quiet zones into compliance with the rule could take up to 15 years.

On the other hand, the Washington Department of Transportation suggested that a three-year grace period is too long and indicated that communities with existing quiet zones should be able to comply with the rule within one year of the issuance of the final rule. Several railroad industry commenters also suggested that the three-year grace period for communities with pre-existing whistle bans is excessive. The United Transportation Union suggested a six-month grace period, while the BRS recommended two years as an appropriate period.

Most State commenters emphasized the importance of grandfathering existing quiet zones where substantial investment has already been made by State transportation agencies, railroads, and affected communities. The Illinois Commerce Commission suggested that all crossings in communities with pre-existing whistle bans be grandfathered under the rule until the responsible State oversight agency establishes a recognized quiet zone for the area. Likewise, the Oregon DOT noted that requiring a community with a pre-existing whistle ban to initiate or increase both highway-rail grade crossing safety public awareness initiatives and crossing traffic law enforcement programs, if no quiet zone is designated or accepted under the final rule within two years, imposes a new financial burden on the community. In particular, the Oregon DOT questioned the efficacy of this requirement in situations where a community has had a whistle ban in place for several years with no reported accident history that would be impacted by the additional initiatives or enforcement.

In its comments, the BLE recognized the past efforts and investments of communities regarding the issue of locomotive horn noise. However, citing concerns that crossings in localities with pre-existing quiet zones which are grandfathered from the requirements of the final rule could continue to exist without appropriate safety measures, the BLE requested that the final rule explicitly state that the provisions for termination of quiet zones set forth in § 222.39(d) apply to crossings with pre-existing quiet zones.

The AAR was the only commenter to specifically oppose the blanket grandfathering of pre-existing quiet zones for any period of time. Specifically, the AAR recommended that FRA examine the crossings within these pre-existing quiet zones to ensure that additional safety measures are not needed. The AAR suggested a number of specific prerequisites to the granting of quiet-zone status to communities where locomotive horns have not historically been sounded. First, the AAR suggested that all public crossings within pre-existing quiet-zones be equipped with gates and lights, and signs warning of the existence of the quiet zone should be placed at the approach to each crossing. Second, the AAR recommended that notices of quiet zone implementation or termination be published in the **Federal Register**. Third, reasoning that the ability of a local community to institute a quiet zone has historically been dependent on approval of the State, the AAR recommended that only States be permitted to apply for quiet zone status. Next, the AAR recommended that States have the burden of demonstrating the safety of grade crossings, and diagnostic teams should be used to analyze crossing issues before any quiet zone is instituted. Finally, the AAR recommended that only crossings where locomotive horns have not sounded for the previous five years should be eligible for grandfathered status.

In comments specifically relevant to railroad operations and highway-rail grade crossings within the State of Florida, the Florida East Coast Railway Company ("FEC") noted that the NPRM does not address the pre-existing restrictions on the sounding of locomotive horns that were preempted by Emergency Order No. 15 in 1991 which required FEC to sound warning devices at grade crossings and required that FEC revoke operating rules and bulletins to the contrary. In its comments, FEC explained that it considers all local ordinances preempted by Emergency Order No. 15 null and void and understands that for purposes of the final rule, the subject crossings will not be viewed as being within pre-existing quiet zones. FEC, however, requested that FRA specifically address the status of the affected crossings in the final rule so as to avoid any confusion among affected jurisdictions. The status of such affected crossings is in fact addressed in this rule. Florida crossings subject to Emergency Order No. 15 do not fall within the definition of Pre-Rule Quiet Zones inasmuch as Florida State statutes and local ordinances permitting whistle bans were not enforced or observed as of October 9, 1996, having been preempted by the Emergency Order in 1991. Therefore, any quiet zones to be established in Florida would need to qualify as New Quiet Zones under this rule.

FRA recognizes the strong feelings associated with the issues raised by this provision. As noted, some commenters recommended a longer grandfathering period while others recommended substantially shorter periods. FRA, after considering the comments, and reviewing the statutory mandate that FRA take into account the interest of communities that have in effect restrictions on the sounding of a locomotive horn at highway-rail grade crossings, has determined that extension of the grandfathering period is appropriate. FRA has also considered that budgetary cycles and funding planning may require more time than was proposed in the NPRM. As discussed further below, the grandfathering period will extend from three to eight years from the publication date of this rule in the **Federal Register**. The determining factor as to how long within that period a community has will depend on the actions taken by that community and the appropriate State agency. FRA agrees with Oregon DOT and has crafted the rule in such a manner that the public authority does not need to expend construction or program funds (other than for planning and application purposes) until it has determined, and has had approved when necessary, the actions to be taken. FRA has also provided for State involvement to the extent that if a public authority wishes to take advantage of the entire eight-year grandfathered period, the plans of the public authority must be part of a State-wide implementation plan. Thus, the appropriate State agency will be involved in working with public authorities in resolving planning and funding issues.

Paragraph (a) of § 222.41 addresses Pre-Rule Quiet Zones which qualify for automatic approval. A Pre-Rule Quiet Zone will be considered to be automatically approved if (in addition to compliance with §§ 222.35 and 222.43) the quiet zone is in compliance with one of a number of conditions. The quiet zone may remain in effect if there are SSMs at every public highway-rail grade crossing within the quiet zone (paragraph (a)(1)). Similarly, the quiet zone may continue automatically if the Quiet Zone Risk Index as last published by FRA is at, or below, the Nationwide Significant Risk Threshold (paragraph (a)(2)). FRA has added this provision in recognition of the many comments that emphasized the need for FRA to look at the safety record at individual crossings and quiet zones rather than impose a standard that required SSMs regardless of an extremely good safety record. Comparing the Quiet Zone Risk Index to the Nationwide Significant Risk Threshold does in fact address safety history at crossings within the quiet zone because the accident history is one component of the Quiet Zone Risk Index. That is why this provision applies to both New Quiet Zones and Pre-Rule Quiet Zones.

While the preceding conditions permitting continuation of a quiet zone essentially track the provisions for automatic approval for New Quiet Zones, paragraph (a)(3) is unique to Pre-Rule Quiet Zones. A quiet zone may be continued automatically if the Quiet Zone Risk Index as last published by FRA is above the Nationwide Significant Risk Threshold but is less than twice the Nationwide Significant Risk Threshold *and* there have been no relevant collisions at any public grade crossing within the quiet zone for the five years preceding the date of publication of this rule.

This provision goes a step further in recognizing situations where train horn bans have been in place for a considerable period with no untoward effects. We accommodate such impressive facts by giving the accident history greater weight than that the overall risk index. In determining the risk level resulting from silencing horns in New Quiet Zones, FRA can only project the safety implications from silencing the horn—by definition there is no empirical evidence at those crossings of the safety implications of silencing the horn. On the other hand, Pre-Rule Quiet Zones present direct empirical evidence of the safety effect of silencing the horn at those crossings within the quiet zone. Thus, FRA includes paragraph (a)(3) in recognition that, although statistically the quiet zone may present a higher safety risk (Quiet Zone Risk Index is greater than the Nationwide Significant Risk Threshold) due to risk factors such as traffic volume, experience shows that, for whatever reason, the lack of a locomotive horn at those crossings has not resulted in appreciably unsafe conditions. (Of course, the occurrence of an accident will eliminate this special exception.) Paragraph (b) addresses those Pre-Rule Quiet Zones which do not qualify for automatic approval under paragraph (a). Paragraph (b)(1) provides that a public authority may decide to continue Pre-Rule Quiet Zones on an interim basis under the provisions of this paragraph. It is important, however, to note that this paragraph only provides interim authority to continue a quiet zone. Continuation of a quiet zone beyond the periods specified in this paragraph will require implementation of SSMs or ASMs as though the quiet zone is a New Quiet Zone (in accord with § 222.39 ("How is a quiet zone established?")).

Paragraph (b)(2) provides that a public authority may continue a quiet zone for five years from the date of publication of this rule. This period will ensure that the public authority has adequate time for planning and implementation of SSMs or ASMs. The five-year extension period is dependent on the public authority filing with the Associate Administrator a detailed plan for establishing a quiet zone under this part. If the quiet zone will require approval under § 222.39(b), the plan must include all the required elements of filings under that paragraph together with a timetable for implementation of safety improvements. The plan must be filed within three years of the date of publication of this rule. FRA understands that, in some cases, plans filed within this period will be contingent on funding arrangements that may not be complete as of that date (particularly where State-level participation has been requested). FRA is seeking a good faith filing, which normally would be tendered by the executive head of the relevant public authority or authorities involved.

Thus, the practical implication of this timetable is that a Pre-Rule Quiet Zone may continue for three years from the date of publication of this rule without any action taken by the public authority. However, at the expiration of that three-year period locomotive horns will resume sounding at all public crossings within the former quiet zone unless the public authority has filed a plan for completing the necessary improvements. Thereafter, if the public authority wishes to establish a quiet zone, it will need to comply with the requirements for New Quiet Zones contained in this rule.

Paragraph (b)(3) provides that if certain conditions are met, locomotive horn restrictions may continue for three years beyond the five-year period permitted in paragraph (b)(2). Before the expiration of three years after publication, the appropriate State agency must provide to the Associate Administrator a comprehensive State-wide implementation plan and funding commitment for implementing improvements at Pre-Rule Quiet Zones which do not qualify for automatic approval. The improvements must, when implemented, enable the Pre-Rule Quiet Zones to qualify for a quiet zone under this rule. Before the expiration of four years after publication, physical improvements must be initiated at least one of the crossings within the quiet zone, or the State agency must have participated in quiet zone improvements in one or more jurisdictions elsewhere in the State.

In summation, paragraph (b)(2) permits a quiet zone to be extended for three years without any action taken by the public authority. If, however, the public authority files a detailed plan for implementation of SSMs or ASMs within that three-year period, the quiet zone will be extended to five years to permit implementation of those plans. Paragraph (b)(3) permits a quiet zone to be extended for an additional three years (for a total of eight years) if the State files a comprehensive State-wide implementation plan and funding commitment within three years of publication of this rule, and if, within four years of publication, improvements are made to a crossing within the quiet zone, or to another crossing in another quiet zone elsewhere in the State.

Paragraph (4) merely recommends that if the improvements planned by the public authority require FRA approval under § 222.39(b), application for approval should be filed no later than thirty months after publication of this rule. This will provide sufficient time for FRA to review the proposal prior to the end of the three-year extension period.

Section 222.43 What Notices and Other Information Are Required To Establish a New Quiet Zone or To Continue a Pre-Rule Quiet Zone?

This section governs the type and timing of notification and information that must be provided to various parties. The intent of this section is to ensure that interested parties are made aware in a timely manner of the establishment or continuation of quiet zones and, if necessary, of their termination. This section also details the information that must be provided to FRA. FRA received a small number of comments regarding the notice and information requirements of the proposed rule. Although most commenters acknowledged the necessity of notification procedures ensuring that all interested parties are aware of the existence of quiet zones, a few commenters suggested that the specific notice and information requirements of the proposed rule would be administratively burdensome and impractical. First, the BLE

expressed the opinion that a 14-day period between designation or FRA approval of a quiet zone and actual implementation is insufficient. The BLE recommended that this provision be modified to provide that a railroad has an affirmative duty to notify each employee of the establishment of a quiet zone via the railroad's usual means of communication with its employees. FRA agrees with the BLE that 14 days may not be sufficient and has therefore lengthened the 14 day period to 21 days. However, despite the BLE's request for a regulatory requirement that railroads notify their employees of the establishment of a quiet zone, FRA is confident that railroads will indeed so notify their employees without the necessity of such a requirement, if for no other reason, than the railroad would be in violation of this regulation if horns were to routinely sound within quiet zone limits.

Other commenters explained that because FRA accepts updates to the AAR Inventory only from States and railroads, the requirement for designating entities to submit the Inventory Forms is impractical. The Oregon Department of Transportation ("DOT") explained that the State does not have the staff or resources to update the Inventory as the proposed rule would require. The Oregon DOT also questioned whether railroads would be willing to expend their resources to update the Inventory as proposed. The City of Fargo, North Dakota, and the City of Moorhead, Minnesota, echoed the Oregon DOT's concern in this regard and suggested three alternatives: (1) That communities be allowed to update the Inventory for crossings within quiet zones, (2) that railroads be required to update the Inventory when installing the safety measures necessary to implement the quiet zone, or (3) that FRA incorporate the information contained in the quiet zone notification into the Inventory. FRA is aware of the problem associated with updating the Inventory. However, an up-to-date Inventory is critical to the success of any quiet zone program. FRA needs accurate up-to-date data upon which to base its calculations of risk. FRA agrees in part with the Cities of Fargo and Moorhead that communities should be allowed to update the inventory and has addressed the issue in § 222.49, "Who may file Grade Crossing Inventory Forms?"

Paragraph (a)(1) of this section provides that information pertaining to the establishment or continuation of quiet zones must be provided to: all railroads operating over the public highway-rail grade crossings within the quiet zone; the highway or traffic control authority or law enforcement authority having control over vehicular traffic at crossings within the quiet zone; the landowner having control over any private crossings within the quiet zone; the State agency or agencies responsible for highway and railroad safety; and the Associate Administrator. While it is likely that most of these parties will be aware of the establishment of a quiet zone, this provision ensures complete and timely notification. In order to ensure that all parties have notice and sufficient time to prepare for the change at the crossings, all notices required under this section must be provided by certified mail, return receipt requested.

Paragraph (a)(2) requires that the notice shall specify the grade crossings within the quiet zone, identified by both the U.S. DOT National Highway-Rail Grade Crossing Inventory Number and street or highway and the specific date upon which routine locomotive horn use at grade crossings shall cease. With the exception of Pre-Rule Quiet Zones continuing under § 222.41, the cessation date shall not be earlier than 21 days after mailing of the notification. Paragraph (a)(3) details the requirement to reference the regulatory provision under which the quiet zone is being established or continued. In those instances in which the public authority is relying on risk calculations provided by FRA, this paragraph requires that a copy of the FRA web page containing the quiet zone data be included in the notice. In this way, all parties will understand the basis for establishment or continuation of the quiet zone.

Paragraph (b) addresses the requirement that Grade Crossing Inventory Forms be filed with the Associate Administrator for each public and private highway-rail grade crossing within the quiet zone. This paragraph requires two Grade Crossing Inventory Forms for each crossing. One must be dated within six months prior to designation or FRA approval of the quiet zone. This filing will permit FRA to calculate risk based on current grade crossing information, and thus the public authority will be able to make planning decisions based on accurate data. The second Grade Crossing Inventory Form must reflect the SSMs and ASMs in place upon establishment of the quiet zone. This paragraph also requires that the Associate Administrator be furnished the name, title, and contact information of the public official responsible for monitoring compliance with the requirements of the regulation.

Paragraph (b)(5) requires each chief executive officer of each public authority establishing or continuing a quiet zone under this part, to certify that responsible officials of the public authority have reviewed documentation prepared by or for FRA sufficient to make an informed decision regarding the advisability of establishing the quiet zone. This paragraph provides reference to the docket of this proceeding and to FRA's web page for documents which may be of interest to the chief executive or to the reviewing responsible officials. This provision is included in recognition of the differing views as to the efficacy of banning the routine use of locomotive horns at grade crossings and of the fact that establishment of quiet zones is not required by this rule, but is purely voluntary on the part of public authorities.

Section 222.45 When Is a Railroad Required To Cease Routine Use of Locomotive Horns at Crossings?

This section addresses the requirement imposed on a railroad to cease routine use of the locomotive horn upon receipt of notice of establishment of a quiet zone. After a railroad receives notification from a public authority that a quiet zone is being established, the railroad, upon the date specified by the public authority, shall cease routine use of the locomotive horn at all public and private highway-rail grade crossings identified by the public authority. After receipt of such a notice, a railroad is prohibited from routine use of the locomotive horn at the crossing after the date specified in the notice. While the most extensive use of the horn in railroad operations is to provide routine warning at highway-rail crossings, it has many other purposes as an audible signal. As stated in § 222.23(b), this prohibition does not prevent a railroad from use of the horn for other purposes, *e.g.*, to warn railroad employees working near the track of an approaching train, or to warn motorists of the approaching train in the event of a grade crossing safety system malfunction. This is not an all-inclusive list of the uses that this rule does not affect (*e.g.*, use of horn to signal during switching operations; use of horn to alert pedestrians entering stations or to communicate within crews while leaving stations, etc.) Nor does this section prohibit emergency use of the horn, which is expressly permitted by § 222.23, and which is, by definition, not routine.

The form of the notice which triggers the cessation of routine horn use is specified in § 222.43. Section 222.43 also requires that the notice be mailed, by certified mail, to every railroad operating over the grade crossing subject to the New Quiet Zone.

Section 222.47 What Periodic Updates Are Required?

This section details the periodic updates required of public authorities after a quiet zone is established. The NPRM, at proposed § 222.39(a), (b), and (c), contained provisions generally similar to those in this section. However, rather than divide the section based on SSMs and ASMs as was done in the NPRM, this section distinguishes among quiet zones with SSMs at each public crossing (§ 222.39(a)(1)), and those quiet zones which do not have SSMs at each public crossing (§§ 222.39(a)(2) and 222.39(b)).

There were few comments on proposed periodic updates. The City of Fargo, North Dakota commented that the periodic written affirmation requirements of § 222.39 are excessive. Fargo suggested that FRA's reservation in § 222.39(d) of the right to review at any time the status of any quiet zone is sufficient to assure that the SSM and ASM in place at crossings within the quiet zone fully compensate for the absence of the warning provided by the locomotive horn under the conditions then present at the crossings within the quiet zone. Likewise, to limit the reporting burden of the requirement for periodic quiet zone affirmations in the proposed rule, the City of Chicago, Illinois, recommended that State agencies responsible for railroad safety should be designated to monitor quiet zone grade crossing accidents under their existing procedures. FRA does not agree that an update every three or five years is burdensome. FRA needs to be informed of the current status of the quiet zone and when viewed in light of the safety interest and minimal inconvenience to the public authority, periodic updates on the schedule proposed is being retained.

Paragraph (a) of this section governs periodic information updates for quiet zones with SSMs at each public crossing (those quiet zones established pursuant to §§ 222.39(a)(1) and 222.41(a)(1)). This section requires the public authority to provide to FRA updated information every five years, with a six month window during which the information must be filed. Thus, the rule states that the required information must be filed between 4½ and 5 years after the initial implementation notice required by § 222.43 and every 4½ to 5 years thereafter. This section requires the public authority to affirm in writing to the Associate Administrator that the SSMs implemented within the quiet zone continue to conform to the requirements of Appendix A of this part. This requirement merely ensures that the original basis for establishment of the quiet zone continues to exist. Copies of the affirmation must be sent to the same parties which received the original notice of establishment of quiet zone (§ 222.43(a)): all railroads operating over the public highway-rail grade crossings within the quiet zone; the highway or traffic control authority or law enforcement authority having control over vehicular traffic at the crossings within the quiet zone; the landowner having control over any private crossings within the quiet zone; the State agency responsible for highway and road safety; and FRA. The affirmation and copies must be provided to the required parties by certified mail, return receipt requested. In addition, the public authority must file with the Associate Administrator an up-to-date, accurate, and complete Grade Crossing Inventory Form for each public and private highway-rail grade crossing within the quiet zone.

Paragraph (b) of this section governs periodic information updates for quiet zones which do not have an SSM at each public crossing (those quiet zones established pursuant to §§ 222.39(a)(2) and (a)(3), § 222.39(b) and §§ 222.41(a)(2) and (a)(3)). FRA is providing for a shorter period between affirmations because of the greater possibility that changed circumstances will affect either the level of risk within zones where no SSMs or ASMs were necessary due to low risk or the effectiveness of the safety measures put in place in the quiet zone. Because the safety measures instituted at crossings subject to the three-year affirmation cycle are dependent on local circumstances and local effort, review on a more frequent basis is appropriate. Thus, the period between updates for these quiet zones is three years, rather than the five years for quiet zones provided in paragraph (a). The required information must be filed with the Associate Administrator between 2½ and 3 years after the initial implementation notice required by § 222.43 and every 2½ to 3 years thereafter. This section requires the public authority to affirm in writing to the Associate Administrator that all SSMs and ASMs implemented within the quiet zone continue to conform to the requirements of Appendices A and B of this part, and the terms, if any, of FRA's quiet zone approval. The method of notice and the parties to which the copies of the affirmation must be sent mirror the requirements in paragraph (a) above. As in paragraph (a), an up-to-date, accurate, and complete Grade Crossing Inventory Form for each public and private highway-rail grade crossing within the quiet zone is required.

Section 222.49 Who May File Grade Crossing Inventory Forms?

This section addresses filing of Grade Crossing Inventory Forms. The U.S. DOT National Highway-Rail Grade Crossing Inventory provides the basic database by which FRA compiles information pertaining to characteristics of both public and private highway-rail grade crossings. The data collected includes information on the railroad operating over the crossing, such as: the name of the railroad; maximum authorized speed of trains which cross the roadway; type of warning system at the crossing; train traffic at the crossing; type of railroad signal system, if any, at the crossing; and the number of tracks crossing the roadway. Similarly, the inventory contains information about the roadway and motor vehicle traffic at the crossing, such as: the type of road surface; number of lanes; and speed limit.

It is essential that the inventory be up-to-date, accurate and complete in order that FRA's safety analyses are based on the best data. While filing of Inventory Forms has been voluntary, this Interim Final Rule requires the filing of such forms for each grade crossing within a quiet zone.

Paragraph (a) of this section provides that if the State or railroad do not file Grade Crossing Inventory Forms with the Associate Administrator, in accordance with §§ 222.43 and 222.47, the public authority may do so. Those sections require that forms be filed when a quiet zone is established (§ 222.43) and when periodic updates are filed with the Associate Administrator (§ 222.47). Providing the public authority with the authority to file Grade Crossing Inventory Forms prevents the public authority from being powerless if either the State or railroad fails to provide such needed information due, for instance, to the workload issues identified by commenters.

Paragraph (b) requires that, upon the request of the public authority, the railroad owning the line of railroad that includes public or private highway-rail grade crossings within the quiet zone, or within the proposed quiet zone, shall provide sufficient current information to the State and public authority regarding the grade crossing and its operations to enable the State and public authority to complete the Grade Crossing Inventory Form. FRA is requiring that railroads

provide such information because it is information that, in many cases, is known only by the railroad. For instance, maximum authorized speed, track class, and type of railroad signal system at the crossing is not public knowledge and is not information that would be readily available to the public authority. FRA is declining in this rule to require the State to provide such information, except to the extent the State is a cooperating public authority in a quiet zone project (*i.e.*, where a State highway is involved). While it is of course desirable that a State, and indeed, the railroad, cooperate in furnishing this important data, information that would be provided by a State, such as roadway type and traffic volume at the crossing, is readily available to the public authority.

Section 222.51 Under What Conditions Will FRA Review and Terminate Quiet Zone Status?

This provision is intended to ensure that quiet zones, while providing for quiet at grade crossings, also continue to provide the level of safety for motorists and rail employees and passengers that existed before the quiet zones were first established, or in the alternative, the level of safety reached by the average public grade crossing where locomotive horns sound. In order to ensure this level of safety, FRA will review safety data on at least an annual basis. Paragraph (a) addresses FRA's annual risk reviews of New Quiet Zones, while paragraph (b) addresses FRA's annual risk reviews of Pre-Rule Quiet Zones. Paragraph (c) provides for a review of quiet zone status at the initiative of FRA.

Paragraph (a)—New Quiet Zones

Paragraph (a) addresses annual reviews of risk levels at crossings within New Quiet Zones. This paragraph provides that FRA will annually calculate the Quiet Zone Risk Index for each New Quiet Zone established based on risk comparison with the Nationwide Significant Risk Threshold (§ 222.39(a)(2)) and quiet zones established based on application to, and approval of, FRA and that reduce risk to a level at, or below, the Nationwide Significant Risk Threshold (§ 222.39(b)(2)(ii)). Routine annual risk reviews will not be conducted for quiet zones established by having an SSM at every public crossing within the quiet zone (§ 222.39(a)(1)) and quiet zones established based on the risk level having been reduced to a level fully compensating for the absence of the train horn (§ 222.39(a)(3) and (b)(2)(i)). Annual risk reviews are not necessary for those quiet zones because the risk level has been reduced to a level which fully compensates for the absence of the horn. Any subsequent safety variations would be due to factors other than absence of the horn.

Paragraph (a)(1) of this § 222.51 provides that for those quiet zones which are subject to annual risk reviews (those quiet zones established pursuant to §§ 222.39(a)(2) and 222.39(b)(2)(ii)), FRA will notify each public authority of the Quiet Zone Risk Index for the preceding calendar year. A Quiet Zone Risk Index above the Nationwide Significant Risk Threshold signifies an unacceptable increase in risk at crossings within the quiet zone.

Paragraph (a)(2) addresses the actions that need to be taken by a public authority to retain a New Quiet Zone in the event the Quiet Zone Risk Index is above the Nationwide Significant Risk Threshold.

Paragraph (a)(2)(i) provides that unless the public authority takes certain specified actions to reduce the risk level, the quiet zone will terminate six months after the public authority receives notice that the Quiet Zone Risk Index is above the Nationwide Significant Risk Threshold. If the public authority wishes to retain the quiet zone, it must, within that six month period, provide to the Associate Administrator a written commitment to lower the potential risk to the traveling public at the crossings within the quiet zone, by reducing the risk level to a level at, or below, the Nationwide Significant Risk Threshold or to a level fully compensating for the absence of the train horn. As part of this commitment, the public authority must provide a discussion of the specific steps the authority plans to take to increase safety at the crossings within the quiet zone. Taking these actions will preserve the quiet zone for three years from the date of FRA notification—sufficient time for the public authority to implement safety measures at the quiet zone.

Paragraph (a)(2)(ii) provides that in addition to complying with paragraph (a)(2)(i) (commitment and discussion of steps to be taken), within three years after the public authority receives notification from FRA that the Quiet Zone Risk Index exceeds the Nationwide Significant Risk Threshold, the public authority must complete implementation of SSMs or ASMs sufficient to reduce the Quiet Zone Risk Index to a level at, or below, the Nationwide Significant Risk Threshold, or to a level that fully compensates for the absence of the train horn. The public authority must receive approval of the Associate Administrator for continuation of the quiet zone. Procedures for such approval process are those set forth in § 222.39(b). FRA is only requiring that the public authority reduce the risk index to either of the two risk levels (Nationwide Significant Risk Threshold or the risk level that fully compensates for the absence of the train horn). However, there are long term benefits in reducing the risk to the level that fully compensates for the absence of the train horn, rather than reducing the risk level to a level at, or below, the Nationwide Significant Risk Threshold. If the Quiet Zone Risk Index is reduced to a level that fully compensates for the absence of the train horn, the quiet zone will be considered to have been established pursuant to § 222.39(a)(3) and thus subsequent annual risk reviews will not be conducted for that quiet zone. Annual risk reviews are not necessary for those quiet zones because the risk level has been reduced to a level which fully compensates for the absence of the horn. Any subsequent safety variations would be due to factors other than absence of the horn.

Paragraph (a)(2)(iii) provides that failure of the public authority to comply with paragraph (a)(1) (commitment to lower the risk level) shall result in the termination of the quiet zone six months after the date of receipt of notification from FRA of the Quiet Zone Risk Index. This paragraph also provides that failure of the public authority to comply with paragraph (a)(2) (implementation of safety measures) shall result in the termination of the quiet zone three years after the date of receipt of notification from FRA of the Quiet Zone Risk Index.

Paragraph (b)—Pre-Rule Quiet Zones

Paragraph (b) of this section addresses annual reviews of risk levels at crossings within Pre-Rule Quiet Zones. Certain categories of Pre-Rule Quiet Zones are not subject to annual risk reviews, *i.e.*, those Pre-Rule Quiet Zones which met the requirements for public authority designation by implementing SSMs at each public grade crossing within the quiet zone (§ 222.41(a)(1)). Annual risk reviews are not necessary for those quiet zones because the risk level has been reduced to a level which fully compensates for the absence of the horn. Any subsequent safety variations would be due to factors other than absence of the horn.

Paragraph (b)(1) provides that FRA will annually calculate the Quiet Zone Risk Index for two types of Pre-Rule Quiet Zones: each Pre-Rule Quiet Zone that qualified for automatic approval pursuant to § 222.41(a)(2) (quiet zones with a Quiet Zone Risk Index below the Nationwide Significant Risk Threshold) and those that qualified for automatic approval pursuant to § 222.41(a)(3) (Pre-Rule Quiet Zones that originally qualified for automatic approval because the Quiet Zone Risk Index was above the Nationwide Significant Risk Threshold but was below twice the Nationwide Significant Risk Threshold and no relevant collisions had occurred within the five year qualifying period. Paragraph (b)(1) also provides that FRA will notify each public authority of the Quiet Zone Risk Index for the preceding calendar year for each such quiet zone in its jurisdiction. In addition, FRA will notify each public authority if a relevant collision occurred at a grade crossing within the quiet zone during the preceding calendar year.

Paragraph (b)(2) addresses how the Quiet Zone Risk Index affects Pre-Rule Quiet Zones which were approved under § 222.41(a)(2)—those quiet zones which qualified because their Quiet Zone Risk Index was at, or below, the Nationwide Significant Risk Threshold. Paragraph (b)(2)(i) provides that the quiet zone may continue if the Quiet Zone Risk Index, as last calculated by FRA, continues to be at, or below, the Nationwide Significant Risk Threshold.

Paragraph (b)(2)(ii) addresses the situation which occurs if the annual risk review indicates that the Quiet Zone Risk Index is above the Nationwide Significant Risk Threshold, but is less than twice the Nationwide Significant Risk Threshold. In this situation, the quiet zone may continue only if there have not been any relevant collisions at public grade crossings within the quiet zone for five years preceding the annual risk review. That is, a Pre-Rule Quiet Zone initially established on the basis that the Quiet Zone Risk Index fell below the NSRT may be continued without further action by the public authority only if it would have initially qualified based on the no relevant accident criterion and only if the quiet zone has been free of relevant collisions thereafter.

Paragraph (b)(2)(iii) addresses the situation in which the conditions for continuation of a quiet zone under (b)(2)(ii) do not apply, resulting in the quiet zone will terminating six months after receipt of notification from FRA of the Nationwide Significant Risk Threshold. Explained differently, if the Quiet Zone Risk Index is at, or above twice the Nationwide Significant Risk Threshold, the quiet zone will terminate six months after receipt of FRA's notification. Similarly, if the Quiet Zone Risk Index is above the Nationwide Significant Risk Threshold but is lower than twice the Nationwide Significant Risk Threshold *and* a relevant collision occurred at a crossing within the quiet zone during the five years preceding the annual risk review, the quiet zone will terminate six months after receipt of FRA's notification.

Subsequent annual reviews of such quiet zones will be subject to paragraph (3), *i.e.*, the quiet zones will be considered to have been established under § 222.41(a)(3), which permits quiet zones if the Quiet Zone Risk Index is above the Nationwide Significant Risk Threshold but less than twice the Nationwide Significant Risk Threshold and there have been no relevant collisions at any public grade crossing within the quiet zone for the last five years. Paragraph (a)(2)(ii) requires that the public authority must, within three years after FRA notification, complete implementation of SSMs or ASMs sufficient to reduce the Quite Zone Risk Index to a level at, or below, the Nationwide Significant Risk Threshold or to a level that fully compensates for the absence of the train horn. Of course, as in other provisions of this rule, safety measures other than implementation of SSMs at every public crossing require approval by the Associate Administrator.

Rather than reducing the Quiet Zone Risk Index to a level at, or below, the Nationwide Significant Risk Threshold, the public authority may decide that it is more effective to reduce the risk level to a level that fully compensates for the absence of the train horn. If this action is taken, the quiet zone will be considered to have been established pursuant to § 222(a)(3) and subsequent annual risk reviews will not be conducted, although the quiet zone, like all quiet zones, is subject to reviews at the initiative of FRA. If either of the actions specified by paragraph (b)(4) are not taken, the quiet zone will terminate six months after the date of notification from FRA.

Paragraph (b)(3) governs annual risk reviews of risk levels at crossings within quiet zones established under § 222.41(a)(3)—quiet zones which originally qualified for automatic approval because the Quiet Zone Risk Index was below twice the Nationwide Significant Risk Threshold and no relevant collisions had occurred within the five year qualifying period. Paragraph (b)(3)(i) provides that a quiet zone may continue unchanged if the Quiet Zone Risk Index as last calculated by FRA remains below twice the Nationwide Significant Risk Threshold and no relevant collisions occurred at a public grade crossing within the quiet zone during the preceding calendar year. Thus, the quiet zone may continue if the conditions which qualified the quiet zone in the first place have remained essentially unchanged. Paragraph (b)(3)(ii) addresses the situation in which conditions have changed. If the Quiet Zone Risk Index as last calculated by FRA is above twice the Nationwide Significant Risk Threshold, or if a relevant collision has occurred at a public grade crossing within the quiet zone during the previous calendar year, the quiet zone will terminate six months after the date of notification from FRA, unless the public authority takes the actions specified in paragraph (b)(4).

Paragraph (b)(4) addresses the actions that need to be taken by the public authority to retain a quiet zone. This paragraph, which governs Pre-Rule Quiet Zones, is similar to paragraph (a)(2) which governs such situations involving New Quiet Zones. Paragraph (b)(4)(i) provides that if the public authority wishes to retain the quiet zone, it must take certain actions during the six month period following notification by the FRA of the most recent Quiet Zone Risk Index. The public authority must provide to the Associate Administrator a written commitment to lower the potential risk to the traveling public at the crossings within the quiet zone, by reducing the risk level to a level below the Nationwide Significant Risk Threshold or to a level fully compensating for the absence of the train horn. As part of this commitment, the public authority must provide a discussion of the specific steps the authority plans to take to increase safety at the crossings within the quiet zone. Taking these actions will preserve the quiet zone for three years from the date of FRA notification—sufficient time for the public authority to implement safety measures at the quiet zone.

Paragraph (b)(4)(ii) requires that the public authority must, within three years after FRA notification, complete implementation of SSMs or ASMs sufficient to reduce the Quiet Zone Risk Index to a level below the Nationwide Significant Risk Threshold or to a level that fully compensates for the absence of the train horn. As in other provisions of this rule, safety measures other than implementation of SSMs at every public crossing require approval by the Associate Administrator.

Paragraph (b)(4)(iii) provides that failure of the public authority to comply with paragraph (a)(1) (commitment to lower the risk level) shall result in the termination of the quiet zone six months after the date of receipt of notification from FRA of the Quiet Zone Risk Index.

This paragraph also provides that failure of the public authority to comply with paragraph (a)(2) (implementation of safety measures) shall result in the termination of the quiet zone three years after the date of receipt of notification from FRA.

Paragraph (c)—Review at FRA Initiative

Paragraph (c) provides that the Associate Administrator may, at any time, review the status of any quiet zone. This section is included in the rule to enable the Associate Administrator to deal with unforeseen safety situations which may arise in the future. Under this provision, if the Associate Administrator makes a preliminary determination that safety systems and measures do not fully compensate for the absence of the locomotive horn, or that there is significant risk with respect to loss of life or serious personal injury, (*e.g.*, if the collision history in the quiet zone indicates that removal of the train horn has resulted in a dramatically higher than expected increase in risk similar to the FEC experience) he or she will provide a written notice of that determination to the public authority and other parties originally provided notice under § 222.43. FRA appreciates the comment of the MDEC which pointed out that the original language in proposed § 222.39(d) limited actual notice of such preliminary determination to the public authority. MDEC commented that limiting notice of FRA's preliminary determination to publication in the **Federal Register** is insufficient. Accordingly, FRA has modified the notification procedures to include notification of those parties originally receiving notification of the establishment of the quiet zone under § 222.43.

The Associate Administrator will also publish a notice in the **Federal Register**. The public authority and other interested parties will have the opportunity to provide comments to the Associate Administrator before any action is taken by the Associate Administrator. After the comment period, the Associate Administrator may require that additional safety measures be taken or that the quiet zone be terminated. If the public authority wishes the decision to be reconsidered, it may petition the Associate Administrator for reconsideration under the provisions of § 222.57(b). Upon the filing of such a petition, the Associate Administrator will give the petitioner an opportunity to submit additional materials and an opportunity for an informal hearing. Although very unlikely, conditions at any particular crossing or quiet zone could pose such an imminent hazard that such a protracted process may be contrary to public safety. Thus, paragraph (c) makes clear that the paragraph is not intended to limit the Administrator's emergency order authority under 49 U.S.C. 20104 and 49 CFR part 211. That statutory authority provides the Administrator authority to immediately issue emergency orders "when an unsafe condition or practice, or a combination of unsafe conditions and practices, causes an emergency situation involving a hazard of death or personal injury."

Paragraph (d)—Public Authority Responsibility

Paragraph (d) provides that if a quiet zone is terminated under a provision of this section, the public authority has the responsibility to notify all parties listed in § 222.43(a) of the termination. The manner of such notification shall be in accordance with § 222.43(a).

Paragraph (e)—Railroad Responsibility

Paragraph (e) provides that upon notification from either the public authority, or from FRA, that the quiet zone is being terminated, the railroads shall, within seven days, sound the locomotive horn when approaching and passing through all public highway-rail crossings within the former quiet zone.

Section 222.53 What Are the Requirements for Supplementary and Alternative Safety Measures?

This section, through reference to Appendices A and B, lists acceptable SSMs and ASMs. Paragraph (a) states that approved SSMs are listed in Appendix A, while paragraph (b) states that Appendix B lists those ASMs that may be included in a request for FRA approval of a quiet zone under § 222.39(b).

Paragraph (c) states that standard traffic control device arrangements such as reflectorized crossbucks, STOP signs, flashing lights, or flashing lights with gates that do not completely block travel over the line of railroad, or traffic signals are not considered SSMs or ASMs. This provision is consistent with the statutory definition of an SSM (49 U.S.C. 20153(a)(3)).

Section 222.55 How Are New Supplementary Safety Measures Approved?

This section addresses the manner in which new SSMs are demonstrated and approved for use. This section is similar to the NPRM's proposed § 222.43, with three exceptions. Paragraph (e) has been revised to provide that when the Associate Administrator approves the use of a new SSM, notice of that approval will be published in the **Federal Register**. Paragraph (d) has been revised to provide that the Associate Administrator may impose any conditions or limitation on use of the SSMs which the Associate Administrator deems necessary in order to provide the level of safety at least equivalent to that provided by the locomotive horn. The standard of a level of safety "at least equivalent to that provided by the locomotive horn" is more appropriate and consistent with the rest of the rule than the former standard of "the highest level of safety." Paragraph (d) has also been revised to provide that the Associate Administrator, rather than approving a proposed safety measure as an SSM, may approve it as an ASM.

Paragraph (b) provides that interested parties may demonstrate proposed new SSMs or ASMs to determine if they are an effective substitute for the locomotive horn in the prevention of highway-rail grade crossing casualties. Paragraph (c) provides that the Associate Administrator may order railroad carriers operating over a crossing or crossings to temporarily cease the sounding of locomotive horns at such crossings to demonstrate proposed new SSMs or ASMs. This paragraph reflects statutory language and requires that proposed new SSMs (and ASMs) have been subject to prior testing and evaluation before such an order is issued. The Administrator's order to the railroads to temporarily cease sounding of horns may contain any conditions or limitations deemed necessary in order to provide the highest level of safety. These provisions provide an opportunity for the testing and introduction of new grade crossing safety technology which would provide a sufficient level of safety to enable locomotive horns to be silenced.

Paragraph (d) provides that upon the successful completion of a demonstration of proposed SSMs or ASMs, interested parties may apply for their approval. This section requires certain information to be included in every application for approval.

Paragraphs (e) and (f) provide that if the Associate Administrator is satisfied that the proposed SSM fully compensates for the absence of the locomotive horn, its use as an SSM (with any conditions or limitations deemed necessary) will be approved and it will be added to Appendix A. Rather than approving the proposed safety measure as an SSM, the Associate Administrator may approve it as an ASM. The applicant is notified and a notice of such approval is published in the **Federal Register**.

Paragraph (g) provides an opportunity to appeal a decision of the Associate Administrator for Safety. The party applying for approval of an SSM or ASM may appeal to the Administrator a decision by the Associate Administrator rejecting a proposed SSM or ASM or the conditions or limitations imposed on its use.

Section 222.57 Can Parties Seek Review of the Associate Administrator's Actions?

This new section has been added to explicitly detail the right of parties to seek review of the Associate Administrator's actions. Paragraph (a) addresses decisions by the Associate Administrator granting or denying approval of a new SSM or ASM under § 222.55. A public authority or other interested party may petition the Administrator for review of a decision by the Associate Administrator approving or denying such an application. This paragraph requires that the petition be filed within 60 days of the decision to be reviewed. The petition must specify the grounds for the requested relief, and be served on all parties identified in § 222.43(a) (all railroads operating over the public highway-rail grade crossings within the quiet zone, the highway or traffic control authority or law enforcement authority having control over vehicular traffic at the crossings within the quiet zone, the landowner having control over any private crossings within the quiet zone, and the State agency responsible for highway and road safety). Filing of a petition under this paragraph does not stay the effectiveness of the action sought to be reviewed unless the Administrator specifically provides otherwise and either gives notice to the petitioner or publishes a notice in the **Federal Register** to that effect. The Administrator may reaffirm, modify, or revoke the decision of the Associate Administrator without further proceedings and shall notify the petitioner and other interested parties in writing or by publishing a notice in the **Federal Register**.

Paragraph (b) addresses reviews of decisions by the Associate Administrator: denying an application for approval of a quiet zone; requiring additional safety measures at crossings within a quiet zone; or terminating a quiet zone. This paragraph provides that a public authority may challenge a decision by the Associate Administrator in the above situations by filing a petition for reconsideration with the Associate Administrator. The petition must specify the grounds for the requested relief, be filed within 60 days of the decision to be reconsidered, and be served upon all parties identified in § 222.43 (a). The Associate Administrator will then provide the petitioner an opportunity to submit additional materials and an opportunity for an informal hearing. Upon review of the additional materials and completion of any hearing requested, the Associate Administrator will issue a decision on the petition. This decision will be administratively final.

Section 222.59 When May a Wayside Horn Be Used?

The effectiveness of wayside horns as compensating for the lack of a locomotive horn has been addressed earlier in this notice. This section addresses the circumstances in which wayside horns may be used in lieu of the locomotive horn.

Paragraph (a) provides that a wayside horn conforming to the requirements of Appendix E may be used in lieu of a locomotive horn at any highway-rail grade crossing equipped with an active warning system consisting of, at a minimum, flashing lights and gates. Thus, installation of wayside horns are not limited to quiet zones, but may be used at any grade crossing equipped with at least gates and lights.

Paragraph (b) addresses use of wayside horns within quiet zones. Wayside horns conforming to the requirements of Appendix E may be installed within a quiet zone. FRA is fully aware that in one sense, the purpose of a quiet zone may be considered to be defeated if horns still sound to indicate the approach of a train, irrespective of whether the horn is stationary or is located on a locomotive. However, the choice is left up to the public authority. That entity may find the wayside horn, with a horn sounding in a less obtrusive manner, to be preferable to installation of SSMs. The presence of a wayside horn will be considered to be the same as a crossing treated with an SSM in determining the length of a quiet zone. Thus, a crossing equipped with a wayside horn may be in the middle of a one-half mile long quiet zone without jeopardizing the establishment of the quiet zone. In those situations in which the Quiet Zone Risk Index must be calculated, any grade crossings equipped with a wayside horn shall not be included in such calculations. The risk level will thus be determined by the average risk level at the remaining crossings.

Appendices A and B

Appendix A lists those SSMs which FRA has determined effectively compensate for the lack of a locomotive horn. Because each SSM in this appendix fully compensates for the lack of a locomotive horn, a quiet zone may be established without specific FRA approval. Appendix B lists those ASMs which may compensate for the lack of a locomotive horn depending on the extent of implementation of the safety measure. Because of the many possible variations, FRA acceptance of the proposed implementation plan is required. The introduction to Appendix A discusses the issues and actions that State and local governments should be aware of in determining how to proceed in implementing quiet zones. It is meant to assist in the community's decision-making process in determining whether to designate a quiet zone under § 222.39(a) or to apply for approval of a quiet zone under § 222.39(b).

Appendix A

This Appendix lists those SSMs which FRA has determined effectively compensate for the lack of a locomotive horn. Included in the discussion of each SSM is an "effectiveness" figure for that measure. That figure indicates the effectiveness of the SSM in reducing the probability of a collision at a highway-rail grade crossing.

As discussed earlier, effectiveness rates are based on actual experience showing how much each SSM has reduced the probability of a collision. The issue of what should constitute an SSM or ASM generated a number of comments to the NPRM. Generally, communities expressed displeasure with the proposed list of SSMs. Railroads, however, expressed general satisfaction with the suggested SSMs.

The majority of public comments focused on communities' dissatisfaction with the proposed SSMs because they are thought to be: (1) Prohibitively expensive to implement; (2) impracticable, unfeasible or inapplicable to their particular community's street grid; and (3) incompatible with the three-year implementation period proposed in the NPRM. The cost of installation and maintenance is of particular concern to communities. State Senator Patrick J. O'Malley of Illinois predicted that the cost of installing SSMs will be "enormous." Selectman Attillio Paglia from the Town of Rawley, Massachusetts expressed displeasure that local funds would have to be spent implementing expensive SSMs instead of funding other local concerns such as

schools, libraries and police stations. The General Manager of Pioneer Valley Railroad in Westfield, Massachusetts noted that while the SSMs will be installed at the cost of the community, they will be maintained by the railroads. A representative of BLAST (Beverly [Massachusetts] Lobbying Against Sounding of Train Horns) recommends that any Federal or State funding for new or improved crossings have a stipulation requiring an SSM at each crossing.

Some communities were dissatisfied with the proposed list of SSMs because the available options are claimed to be too limited, since, it is argued, only one or two of the SSMs may be applicable to a particular community. For example, State Representative Michael Festa from the City of Melrose in Massachusetts noted that many of crossings in his district are very busy commuting streets that are perpendicular, which makes some SSMs unfeasible. Likewise, Councilman Doyle Slater of LaGrand, Oregon noted that photo enforcement, one way streets, nighttime closures and medians are not practical at many crossings. Moreover, communities in Illinois, as expressed by the Commissioner of Chicago's Department of Transportation, have fewer options to choose from because many of the prescribed SSMs are not feasible or legal in Illinois. Megan Swanson, a Planning Coordinator for the West Central Municipal Conference, stated that only one way streets or closures were applicable. An extreme case is that of the village of Hinsdale, Illinois, where the President of the village, opined that no SSM is possible within village limits. Illinois had particular problems with the proposed SSMs because, as noted by the Village of Winfield, the Illinois Commerce Commission (ICC) did not approve the use of four-quadrant gates or photo enforcement at crossings, thereby further limiting the options available to communities. See discussion under "Chicago Region" above for general responses to concerns related to Illinois practice.

In the NPRM, and to an even greater extent in this Interim Final Rule, FRA has provided flexibility to public authorities in the selection of SSMs to be used at crossings within a community. There are, of course, wide variations in costs between, for example, four quadrant gates and medians. Because of those variations, and variations in the ability of communities to pay for various improvements, and physical limitations at certain crossings limiting options, FRA crafted the NPRM and this Interim Final Rule to provide the greatest level of flexibility to the community. The public authority is best suited to determine which SSM is appropriate for a specific crossing. That body, will, in addition to considering cost, consider other factors as well: physical limitations at the crossing; aesthetics; maintenance costs; and acceptance of a specific safety measure by the State.

FRA believes that providing public authorities with the choice of implementing SSMs or alternative measures, the choice of which measures to implement within those categories, and in many circumstances, the choice of which crossing to improve in order to bring the quiet zone's risk level into the acceptable range, provides an almost unlimited range of choices and thus a vast range of potential costs. FRA notes that the estimates of the cost of SSMs in the Chicago Region made by various parties during the NPRM comment period were notably unrealistic and were based on the most expensive scenario of four-quadrant gates at every crossing and construction costs based on the invalid assumption that each crossing would be upgraded from no warning system to four-quadrant gates.

The AAR has emphatically stated its position that locomotive horns should only be banned at crossing that have sufficient safety devices to substitute for the audible warning. In the view of the AAR, "engineering" methods, such as four-quadrant gates and closures can be effective substitutes for the sounding of horns, while the use of "non-engineering" SSMs like photo enforcement, programmed enforcement, public awareness and education are not appropriate. The AAR submits that these non-engineering measures do not provide assurance that they sustain the same level of safety as a locomotive horn. In contrast to the AAR's stance, METRA's chairman suggested that non-engineering measures such as advanced train alert technology, grade separation projects, stricter enforcement penalties, and public awareness education projects are more effective and a less expensive way to improve crossing safety than engineering methods. FRA has considered AAR's view along with those comments supporting the use of such non-engineering safety measures. Such safety measures are only acceptable when they have resulted in documented reduction in traffic law violation rates at crossings. In such cases, their efficacy in reducing risk has been shown. Further monitoring of such reductions will help to ensure that they remain effective. However, FRA agrees that photo enforcement requires scrutiny on a location-specific basis and has therefore moved photo enforcement to the category of Alternative Safety Measures.

Several communities such as Arvada, Colorado; Brighton, Colorado; Fort Collins, Colorado; Wichita, Kansas; Manchester by the Sea, Massachusetts; Northfield, Minnesota; Roseville, California; and Madison, Wisconsin suggested adding the following to the list of SSMs in order to add flexibility and reduce installation costs: (1) Wayside horns, (2) longer gates that cover the entire road, (3) placing lighting on trains similar to that of emergency vehicles, and (4) articulated gates. As noted elsewhere in this rule, wayside horns are acceptable substitutes for the locomotive horn under the provisions of § 222.59. Long gates that cover the entire road are acceptable in one-way street situations. *See* Appendix A. FRA is not at this time aware of non-articulated gates that extend over two opposing lanes of traffic, and it would not appear prudent to use such an arrangement in most cases given the potential to entrap vehicles between the gates. FRA has explored the use of articulated gates that would descend from a single apparatus to block the approach to the crossing in the normal direction of travel and continue down to block the exit lanes from the crossing (on one or both sides). As stated in the NPRM, "such articulated gates appear to be particularly attractive for two-lane roads where the highway-rail crossing is at a sufficient distance from other intersections or obstructions that could cause traffic to back up on the crossing. In principle, such gates should have the same effectiveness as other four-quadrant gate arrangements." While use of such gates has been studied, it is apparent that they have not yet reached a stage of reliability such that they would be an acceptable SSM. FRA will continue to monitor their development for future acceptance as an SSM.

The use of longer gate arms has also been considered during the rulemaking. Longer gate arms extend beyond the centerline of the roadway and block a portion of the opposing lane of traffic. This application differs from the long gate arms previously discussed which extend completely across the roadway in that the longer gate arms do not completely block the lane of a vehicle exiting from the crossing. The opening that is left between the end of the gate arm and the curb would allow room for a vehicle to exit the crossing without becoming trapped on the crossing. The longer gate arms would make it more difficult for a motorist to drive around the lowered gate arms. At this time there have been few test installations of this technology, and FRA does not feel that there is enough experience with longer gate arms to include them as an SSM at this time. FRA will continue to monitor their development for future acceptance as an SSM. FRA is also aware of a manufacturer that has developed a gate arm that telescopically extends beyond the centerline and is equipped with a sensing mechanism which will stop the extension if it encounters an obstacle. This technology has potential to be considered as an SSM but has yet to be field tested. FRA will also monitor this technology.

California PUC's Rail Safety and Carrier Division advised that each crossing in a quiet zone should be equipped with "Remote Health Monitoring." Missouri's Division of Motor Carrier and Railroad Safety stated that each SSM should have constant warning time with redundancy. We note that the rule requires that all active grade crossing warning devices in New Quiet Zones be equipped with power-out indicators (defined to include remote health monitoring that includes reporting exceptions to primary power status) and (with limited exceptions) constant warning time devices. *See* § 222.35(b).

FRA received a large number of comments addressing specific SSMs. A brief summary of comments received follows.

Temporary Closure of a Public Highway-Rail Grade Crossing

Some communities expressed concern with the temporary closure. The communities of Orlando Park and Wilmette, both in Illinois, viewed closures as impractical or not feasible. Community representatives argued that most crossings are major thoroughfares, and thus closing a crossing would have a serious impact on traffic patterns. Jeffrey Smelty, chairman of the Executive Committee of the Chicago Area Transportation Studies Council of Mayors, stated that closures are a "viable option only in a few instances of low volume roads." The President of the Village of Northbrook claims that closing low volume crossings would have little effect on collisions since the low volume itself decreases the statistical risk of an accident. Two States, the Kansas DOT and Missouri Division of Motor Carrier and Railroad Safety commented that if a crossing can be temporarily closed part of the day, then it should be able to be closed permanently. They were also concerned with the potential for human error in closing and opening the roadway. In contrast, the North Carolina DOT stated that overnight closures should be given a preference in the rule because it would entirely eliminate the need for horns to sound.

The AAR expressed concern regarding the potential confusion that would occur if States and localities adopt different closure periods. Different closure times would mean that engineers would have to know each crossing's closing period, thus placing an extra burden on the engineer. Therefore, the AAR recommended that the FRA establish uniform closure periods for every day of the week. Additionally, the AAR recommended that the FRA require barriers that cannot be moved by the public and cannot be crossed by automobile or pedestrian traffic. A comment by Wichita, Kansas took into account the possible side effects of temporary closures. They noted that temporary closures may result in drivers speeding to beat the closure time. They were also concerned about the possibility of disrupting emergency vehicle service routes.

FRA does not view the temporary closure as a solution for every crossing in every situation. Commenters are indeed correct that in some situations temporary closures are impractical. However, temporary closures can in some circumstances provide a legitimate alternative to other SSMs. This alternative is but one among a number of choices available to public authorities in developing quiet zones. FRA believes that the MUTCD provides appropriate standards for barriers and that train crews can become familiar with quiet zone time periods.

Four-Quadrant Gate System

Comments on the four-quadrant gate system ("4Q system") centered on its cost, potential for failure, and dangerousness. The FRA did receive praise on this proposed SSM from some, including the Washington Department of Transportation, which stated that the proposal "indicated extensive thought and effort." Others had problems with the 4Q system. The State of Illinois was particularly concerned with the 4Q system because the ICC did not allow for their use at highway-rail grade crossings. The ICC had concerns about safety regarding trapped vehicles in the crossing. Also, the ICC believes that it will take more time than the FRA estimates for vendors and railroads to design, manufacture, and install the gates to meet all of the new demand.

Many comments provided suggestions for improving the design of the 4Q system to make its overall functioning safer. The Florida Department of Transportation recommended that median barriers of at least 100 feet be required at crossings in addition to the gates. This overall sentiment was echoed by the Missouri Division of Motor Carrier and Railroad Safety, which objected to the term "blocked crossing" being used to describe the 4Q system because the gates only "greatly deter" a driver and do not totally impede a vehicle or pedestrian from crossing the gated tracks. The New Jersey Department of Transportation suggested that all traffic signals within 200 feet be equipped with preemption circuitry.

Most States and communities, like Moorhead, Minnesota, were particularly concerned with the danger of a car getting trapped within the gates on the tracks. Robert Guttman, a top official on the MBTA Advisory Board believes that quadrant gates should be outfitted with a safety mechanism to prevent vehicles from being trapped. Another safety measure that communities would like to see is constant warning time circuitry. The AAR points out, however, that this system may be impractical at crossings with three or more tracks.

One of the most controversial issues centered on whether to have the four-quadrant gates programmed to stay up or down during a failure of the system. Concerned with safety, the North Carolina DOT clearly stated that gates should always fail in the down position. This position was supported by a study conducted in conjunction with Norfolk Southern titled "Exit Gate-Arm Fail-Safe Down Test." The data provided evidence that fewer vehicles traveled through a failed crossing when all the gates were in the down position than when one or more of the gates were in the upright position. Communities and their representatives disagree; for example, Illinois State Representative Eileen Myins stated, "What will they do when double gates malfunction, and there is no way around them?" Gate failure appears to be a "particularly bothersome" problem, as noted by Massachusetts State Representative Michael Cahill: "gates frequently malfunction in the down position, resulting in motorists who leave their car, get on the track, and wave motorists across the tracks because there is no train approaching." Mayor William Scanlon of the city of Beverly in Massachusetts also reports frequent incidents of failure where police have had to direct traffic around the gates. Therefore, these communities recommended that the gates fail in the upright position.

Another area of great concern with the four quadrant gate system was the cost, which Orlando Park, Illinois describes as "inordinately expensive." A representative of Chicago referred to a

study done by the General Accounting Office, which stated that a single system equipped with sensors to detect trapped cars could cost $1 million. The BRS disagrees, estimating that vehicle detection systems can be installed for around $175,000.

Vehicle detection systems are used for a variety of purposes in traffic control systems. They generally consist of inductive loops buried just beneath the surface of the roadway to detect a metal mass over the location. Their cost will vary depending upon the complexity of the application. In pilot studies and high-speed rail applications, costs of four-quadrant gate installations with complex vehicle presence detection systems have approached $1 million; however, it appears that much of this cost has resulted from attempts to make the circuitry fully fail-safe in nature. Neither the MUTCD nor FRA regulations require that vehicle presence detection function on a fail-safe or closed circuit principle. Rather, in the context of a four-quadrant gate system it appears that a reasonable design objective would be a high degree of reliability in detecting a motor vehicle. FRA believes that a typical installation should be feasible for costs in the range of $175,000 to $250,000.

FRA wishes to emphasize that use of vehicle presence detection makes sense only where there is reason to be concerned about storage on the crossing due to cued traffic (normally as a result of nearby intersections). For instance, the State of Florida has installed several four-quadrant gate systems without vehicle presence detection along the Tri-Rail commuter line in south Florida. Those installations have functioned well. By contrast, FRA agrees that, at many Chicago Region crossings with nearby traffic signals and heavy traffic volumes, use of vehicle presence detection to keep the exit gate arms up until all vehicles clear the track will be fully warranted. The question of whether the exit gates should fail up or down has been resolved by amendments to the MUTCD subsequent to the publication of the NPRM. These amendments permit failure down only in the presence of remote health monitoring.

The AAR objected to FRA's proposed requirement that gates must be activated by use of constant warning time devices. The AAR stated that "constant warning time devices are not always practical. For example, constant warning time devices may be impractical where three or more tracks are located close to each other. Thus, FRA should at most require constant warning time devices where practical." FRA acknowledges concerns about the use of constant warning time devices in electrified territory and AAR's concerns about three track crossings. Accordingly, FRA is requiring constant warning time devices where reasonably practical.

Gates With Medians or Channelization Devices

In the NPRM, FRA proposed to require that gates with medians or channelization devices be considered SSM if: opposing traffic lanes on both highway approaches to the crossing are separated either by medians bounded by barrier curbs or medians bounded by mountable curbs if equipped with channelization devices. FRA proposed that such medians must extend at least 100 feet from the gate, unless there is an intersection within that distance. If so, the median must extend at least 60 feet from the gate, with intersections with that 60 feet closed or moved.

The median barrier option was given positive comments by some, and constructive criticism by others. Communities commented that they can be impracticable, expensive, unsafe, and that the required median length is too long. Planning Coordinator of the West Central Municipal Conference, Megan Swanson and Mayor Jeffrey Smelty pointed out that median barriers are simply "aesthetically displeasing" or have "aesthetic problems." Orlando Park, Illinois submitted that the medians were "inordinately expensive."

Several commentaries focused on the possible safety hazards that may arise when median barriers are installed. Mayor William Scanlon of the City of Beverly noted that fire apparatus would be inhibited when trying to pass vehicles near the grade crossing medians. The New Jersey Department of Transportation offered a possible solution by suggesting that mountable medians be installed to allow for emergency vehicle access. The problem with mountable devices, as the Florida and North Carolina DOTs point out, is that they can be "high maintenance" items, and may encourage drivers to drive over the median. Others, such as LCI Energy of Ipswich, Massachusetts, were concerned about disabled vehicles and the driver's ability to escape from the vehicle. Jefferson Parish, Louisiana noted that medians may invite motorists to make additional U-turns that they would not have otherwise made but for their driveway being blocked. Another safety concern brought up by David Bier of LaGrange, Illinois, is that installing barriers may create a secondary problem of vehicles crashing into the medians.

The main body of commentary complained that median barriers are simply impracticable. Many submissions, such as those from the Kansas Department of Transportation; Chicago Department of Transportation; Ipswich, Massachusetts; Edward Sirovy of the Dupage Railroad Safety Council; Gene Shannon of the Metropolitan Council of Governments; Wilmette, Illinois; Mayor Jeffrey Smelty; Peter Wells, City Attorney of Pendleton, Oregon; and Joan Johnson of BLAST, noted that most of their crossings are adjacent to a parallel highway intersection, making barriers unusable, especially if the required distance remains 100 feet. These comments also noted that narrow roads would make installation of median barriers impossible. Gene Shannon was particularly concerned that motorists would be unable to access businesses if a median was installed. Communities located in the north said that medians were not an option because they would either prevent snow from being plowed off the road, or be inadvertently destroyed by the plow.

Another body of commentary focused on the required length of the proposed medians. Most communities requested that the FRA shorten the requirement so that the barriers could be installed at more locations. But the Florida Department of Transportation requested that the medians be mandated to be a fixed height of nine inches and a length of 200 feet, so that motorists would not drive around them. Of the commenters that believed medians should be shorter, there was disagreement as to whether the length should be set or decided on a crossing by crossing basis. The Kansas Department of Transportation stated, "We encourage that the determination of the length of median be made as a crossing specific engineering decision and that the 100-foot distance is only a recommended practice." The Missouri Division of Motor Carriers submitted that a shorter median may be just as effective as a longer one, and that a State level diagnostic team should assess the particular length of each median. In contrast, Illinois ICC recommended that FRA avoid arbitrary criteria for the length and material of medians.

FRA understands the point made by many commenters that median length may be substantially constrained by roadway geometry. However, safety at highway-rail crossings has already benefitted substantially from use of median arrangements at many crossings, and there is no reason not to fully exploit this technique in support of community quiet. Accordingly, FRA continues its approval of shorter channelization arrangements and, in the revised Appendix B, invites local

authorities to provide estimates of effectiveness that are reasonable considering the extent of deviation from the nominal requirements of Appendix A.

FRA agrees with the Florida DOT that use of 200 foot medians will often be recommended when practicable. However, FRA believes that the prescribed minimums of 100 and 60 feet are consistent with the designated effectiveness rate. A public authority that can show a higher effectiveness rate for longer medians may bring in that estimate for consideration under Appendix B.

FRA also understands the conflict to which traffic control authorities may be subject with respect to the appearance of channelization arrangements, but FRA does not believe that in the end aesthetics should be countenanced as a bar to saving lives and preventing serious personal injury. FRA believes that in many cases local public authorities will utilize options such as using native stone or decorative plantings to enhance the appearance of median arrangements, as they have done in other settings. To the extent that roadway width does not allow for these treatments, and to the extent channelization devices such as flexible delineators are viewed as unacceptable in a particular community, the incremental cost of alternative arrangements should be evaluated as a cost of community beautification rather than as a cost of this rule.

One Way Street With Gates

The use of one way streets with gates received sparse comments, mostly directed to their applicability. Illinois ICC pointed out that the one way street is rarely, if ever acceptable to local governments, because it would cause major disruptions in traffic flow. The Missouri Division of Motor Carrier and Railroad Safety and the Chicago Department of Transportation noted that there is limited applicability to most roads without violating traffic engineering practices. This option is considered safe, however, as noted by the BRS, who strongly support the option.

FRA notes that, despite the protestations of several commenters, use of one-way streets in American cities and towns is quite substantial and that, without further use of unidirectional traffic flows, attention to engineering of existing locations would permit credit to be taken for this SSM at very low cost. FRA further notes that new one-way traffic patterns, if applied to residential and industrial areas (not including retail commercial areas where economic effects may be unacceptable), could be useful in designing a quiet zone and might help to serve other public purposes, such as providing additional on-street parking where current roadway width is a constraint and addressing other local issues, such as addressing particularly hazardous intersections for left turns.

Photo Enforcement

The comments regarding photo enforcement were generally negative. Most commenters objected to this either because it is not permitted in their State or because it is viewed as ineffective. California, Kansas and New Jersey requested that the option be removed from the list because of its ineffectiveness. Additionally, there were complaints about the cost of photo enforcement.

A significant objection expressed by the Kansas DOT and the Massachusetts Executive Office of Transportation and Construction, is that photo enforcement simply does not provide a physical impediment to driving around gates and does nothing to replace the audible warning provided by a locomotive horn. While the deterrent effect is recognized, it is argued that it is minimal because, as Nevada states, "It does not provide a positive means of separating vehicles and pedestrians from trains, as do other SSMs." The AAR strongly opposes its use as an SSM, stating that "[t]he proposed non-engineering measures do not provide assurance that they can sustain the same level of safety as a locomotive horn." Using a speeding car metaphor, Mayor Alisi, trustee of Glencoe, pointed out that receiving a ticket is not a deterrent. Wichita, Kansas categorized photo enforcement as an "after the fact safety measure."

In contrast, the President of Traffipax, a supplier of photo enforcement equipment, submitted that photo enforcement is very effective, citing a 40 percent reduction in violation rates, even when dummy cameras are installed along with real cameras. Another benefit that he mentioned is that the photos provide a record of conditions and history of violations at a given crossing. Supporting this view is Dan Lauzon, first vice-chairman of the BLE Massachusetts Legislative Board, who noted that motorists are "angelic" when they know they are being watched by cameras.

Based on the comments and FRA's own review, photo enforcement has been redesignated as an ASM rather than an SSM. FRA has been persuaded that photo enforcement more appropriately belongs in the listing of ASMs. Its non-engineering nature and need for regular monitoring drives its inclusion as an ASM rather than the engineering solutions listed as SSMs.

Another concern expressed with photo enforcement (irrespective as to whether it is an ASM or ASM) is that it not currently accepted in every State. The Missouri Division of Motor Carrier and Railroad Safety noted that it is not permitted under present State law. The City Attorney of Pendleton, Oregon believes that the State constitution may have to be amended to permit photo enforcement. Although not every State currently permits automated photo enforcement, the trend is towards greater acceptance of such methods for other traffic enforcement purposes. There is every reason to believe it can work in the grade crossing law violation context, especially when supported by public awareness efforts. It is true that some States will have to change their laws in order to take advantage of this alternative. FRA believes sufficient time has been built into the rule for that to happen. It is important to note that use of photo enforcement, like every SSM and ASM, is voluntary. Thus, if a State chooses not to provide for its use within the State, other means for compensating for the lack of a locomotive horn are available under this rule.

It is clear that the SSMs proposed in the NPRM do not receive universal acceptance among the commenters. However, FRA remains convinced that the proposed SSMs are sound safety strategies and provide a range of realistic options from which communities can choose to meet their own needs. The ability to vary SSMs, through the ASMs allowed by Appendix B, provides additional flexibility for communities.

Effectiveness of Supplementary Safety Measures

The effectiveness (see definition of effectiveness rate in § 222.9) figures discussed for each SSM are based on available empirical data and experience with similar approaches. The effectiveness figures used in Appendix A are subject to adjustment as research and demonstration projects are completed and data is gathered and refined. FRA is using these estimates as benchmark values to determine the effectiveness of an individual SSM and the combined effectiveness of all SSMs along a proposed quiet zone.

FRA's final study of train horn effectiveness indicated that collision probabilities increase an average of 66.8 percent when horns are silenced at crossings with flashing lights and gates. As such, the SSM should have an effectiveness of at least .40 (reducing the

probability of a collision by at least 40 percent) in order to compensate for this 66.8 percent increase. For example, if a select group of 1,000 crossings is expected to have 100 collisions per year with train horns being sounded, this same group of crossings would be expected to have 167 collisions per year once the train horn is banned if no other safety measures are implemented and other factors remain unchanged. Conversely, if these same crossings were experiencing 167 collisions per year while the horn was banned, it would be expected that this number would reduce to 100 once use of the horn is re-instituted. This would equate to an effectiveness of 67/167, or .40.

FRA is aware this figure is an average, but it has the benefit of reflecting the broadest range of exposure available to the agency. FRA is willing to consider well founded arguments that train horn effectiveness is heightened or reduced under specific circumstances. However, any such argument would need to be grounded in sound data and analysis. This could potentially create significant difficulty in administration of the rule, since historic collision patterns over a small number of crossings are not, by themselves, meaningful predictors of future exposure.

Much of the data available today to evaluate the effectiveness of SSMs reflect the reduction in violation rates, not collision rates. (Collisions are rare, and determination of a collision rate reduction for any one SSM requires long term data collection.) Only one study (in Los Angeles) has contrasted collision rates with violation rates, and out of necessity (until additional data are available), this finding is used in these analyses. In the Los Angeles demonstration it was noted that a carefully administered and well publicized program of photo enforcement reduced violation rates by 92 percent, while collisions were reduced by only 72 percent. This ratio, 72:92 or .78, is being used to adjust violation rate reductions in order to estimate resultant reductions in collision rates for law enforcement, education/awareness and photo enforcement options described in Appendix B. Violations that result in collisions constitute a small subset of all violations. It is reasonable to infer that education and legal sanctions may lack effectiveness for several segments of the population, including those who do not become aware of the countermeasures (*e.g.*, because they are not residents of the area, do not follow public affairs in the media, or are difficult to reach because they are not fluent in English or other principal languages in which information is disseminated) and those who are particularly inclined to violation of traffic laws. As such, for law enforcement, education/awareness and photo enforcement options the rate of violations must be reduced 78 percent in order to determine the effectiveness value for the ASM.

In contrast, engineering improvements such as those described in Appendix A appear to work in synergy with existing warning systems to condition and modify motorist behavior, reducing both the number of violations and the number of very close calls (violations within a few seconds of the train's arrival). Four-quadrant gates installed to date, for instance, appear to have been almost completely successful in preventing collisions. Although we would not expect this extraordinarily high level of success to be sustained over a broader range of exposure, excellent results would be expected. Accordingly, for engineering improvements contained in Appendix A, this rule adopts estimates of success drawn from carefully monitored studies of individual crossings.

1. Temporary Closure of a Public Highway-Rail Grade Crossing

This SSM has the advantage of obvious safety and thus will more than compensate for the lack of a locomotive horn during the periods of crossing closure. The required conditions for closure are intended to ensure that vehicles are not able to enter the crossing. In order to avoid driver confusion and uncertainty, the crossing must be closed during the same hours every day and may only be closed during one period each 24 hours. FRA believes that such consistency will avoid unnecessary automobile-to-automobile collisions in addition to avoiding collisions with trains. Activation and deactivation of the system is the responsibility of the public authority responsible for maintenance of the street or highway crossing the railroad. Responsibility for activation and deactivation of the system may be contracted to another party, however, the appropriate public authority shall remain fully responsible for compliance with the requirements of this section. In addition, the system must be tamper and vandal resistant to the same extent as other traffic control devices.

Effectiveness: Because an effective closure system prevents vehicle entrance onto the crossing, the probability of a collision with a train at the crossing is zero during the period the crossing is closed. Effectiveness would equal 1. However, traffic would need to be redistributed among adjacent crossings or grade separations for the purpose of estimating risk following the silencing of train horns, unless the particular "closure" was accomplished by a grade separation.

2. Four-Quadrant Gate System

A four-quadrant gate system involves the installation of gates at a public highway-rail grade crossing to fully block highway traffic from entering the crossing when the gates are lowered. This system includes at least one gate for each direction of traffic on each approach. A four quadrant gate system is meant to prevent a motorist from entering the oncoming lane of traffic to avoid a fully lowered gate in the motorist's lane of traffic. Because an additional gate would also be fully lowered in the other lane of the road, the motorist would be fully blocked from entering the crossing.

FRA is requiring that all four-quadrant gate systems conform to the standards contained in Part 8, Section D.05 ("Four-Quadrant Gate Systems") of the MUTCD. These standards were added by FHWA to the MUTCD subsequent to publication of the NPRM. Because four quadrant gates would be used at crossing where horns are not sounded, FRA is requiring the following in addition to the MUTCD requirements.

a. When a train is approaching, all highway approach and exit lanes on both sides of the highway-rail crossing must be spanned by gates, thus denying to the highway user the option of circumventing the conventional approach lane gates by switching into the opposing (oncoming) traffic lane in order to enter the crossing and cross the tracks.

b. Crossing warning systems must be activated by use of constant warning time devices unless existing conditions at the crossing would prevent the proper operation of the constant warning time devices. FRA has been made aware that constant warning devices may not work properly under certain circumstance such as in electrified territory. If conditions exist that would not allow constant warning time systems to work as intended, other appropriate types of control circuitry may be used. Constant warning time devices are not required to be added to existing warning systems in Pre-Rule Quiet Zones. However, if warning systems in Pre-Rule Quiet Zones are upgraded, or new warning systems are installed, constant warning time devices are required.

c. Crossing warning systems must be equipped with power-out indicators. Power-out indicators are not required to be added to existing warning systems in Pre-Rule Quiet Zones. However, if warning systems in Pre-Rule Quiet Zones are upgraded, or new warning systems are installed, power-out indicators are required.

d. The gap between the ends of the entrance and exit gates (on the same side of the railroad tracks) when both are in the fully lowered, or down, position must be less than two feet if no median is present. If the highway approach is equipped with a median or a channelization device between the approach and exit lanes, the lowered gates must reach to within one foot of the median or channelization device, measured horizontally across the road from the end of the lowered gate to the median or channelization device or to a point over the edge of the median or channelization device. The gate and the median top or channelization device do not have to be at the same elevation.

e. "Break-away" channelization devices must be frequently monitored to replace broken elements.

Additionally, FRA is recommending that new installations conform to the following:

f. Gate timing should be established by a qualified traffic engineer based on site specific determinations. Such determination should consider the need for and timing of a delay in the descent of the exit gates (following descent of the conventional entrance gates). Factors to be considered may include available storage space between the gates that is outside the fouling limits of the track(s) and the possibility that traffic flows may be interrupted as a result of nearby intersections. It should be noted that the MUTCD recommends that exit gates should fail in the "up" position unless a traffic engineering study indicates otherwise.

g. A determination should be made as to whether it is necessary to provide vehicle presence detectors (VPDs) to open or keep open the exit gates until all vehicles are clear of the crossing. VPDs should be installed on one or both sides of the crossing and/or in the surface between the rails closest to the field. Among the factors that should be considered are the presence of intersecting roadways near the crossing, the priority that the traffic crossing the railroad is given at such intersections, the types of traffic control devices at those intersections, and the presence and timing of traffic signal preemption.

h. Highway approaches on one or both sides of the highway-rail crossing may be provided with medians or channelization devices between the opposing lanes. Medians should be defined by a non-traversable curb or traversable curb, or by reflectorized channelization devices, or by both. The installation of traffic channelization increases the effectiveness of the four quadrant gates and should be considered when looking at situations where it appears that motorists may be tempted to circumvent the warning devices.

i. Remote monitoring (in addition to power-out indicators, which are required) of the status of these crossing systems is preferable. This is especially important in those areas in which qualified railroad signal department personnel are not readily available.

Effectiveness:

FRA estimates effectiveness as follows:

Four-quadrant gates only, no presence detection: .82.

Four-quadrant gates only, with presence detection: .77.

Four-quadrant gates with medians of at least 60 feet (with or without presence detection): .92.

The estimate of .82 for free-standing four-quadrant gates (no medians and no presence detection) is a highly conservative figure involving a discount from documented experience. As noted above, four-quadrant gates installed in the United States thus far have been highly successful. North Carolina Department of Transportation (NCDOT) conducted a pilot study of a four quadrant gate system at the Sugar Creek Road crossing in Charlotte, NC. Following installation of the four quadrant gates, the number of violations fell by 86 percent. Traffic channelization was added later to the four quadrant gates, reducing violations to an even greater extent, by 97 percent. During the test, the train horn was also sounding. To account for any complementary effects of the train horn, FRA uses more conservative effectiveness rates of 82 percent and 92 percent for four quadrant gates without and with medians, respectively.

Four-quadrant gate installations undertaken thus far in the United States have generally not employed vehicle presence detection (VPD). However, some future installations will incorporate this feature to ensure coordination with other traffic signals and for other purposes. For instance, tight geometry may not allow for any storage space within the gates should queuing of traffic at a STOP sign on one side of the crossing prevent prompt clearance by a motor vehicle. In such cases, leaving the exit gates in the raised position may be elected. Installing VPD will cause exit gates to remain up indefinitely as one or more vehicles pass over the crossing. Although providing VPD avoids the scenario of "entrapment" (long feared by some in the railroad community as a liability risk), it also allows the possibility that some motorists will follow violators through the crossing in a steady stream, defeating the intended warning. Accordingly, where traffic channelization is not provided to prevent this pattern, we assume a lower effectiveness rate. FRA estimates that four-quadrant gates with presence detection, but without traffic channelization, would have an effectiveness rate of approximately .77.

By contrast, where four-quadrant gates are supplemented by lengthy traffic channelization to discourage the violation minded driver, the use of presence detection should make little or no difference in the safety effectiveness of the arrangement. The North Carolina demonstration showed that, when the four-quadrant gate installation was supplemented by medians (channelization devices) of at least 50 feet on each highway approach, the crossing experienced a 97 percent drop in violations. Again applying a discount to this illustration, FRA estimates an effectiveness rate of .92 for four-quadrant gates with traffic channelization of reasonable length.

It is important to re-emphasize that use of data regarding violations to estimate collision risk itself involves some hazard that effectiveness will be over- or under-estimated. FRA believes that the likelihood is that these estimates for four-quadrant gates are conservative, not only because of the excellent effectiveness of in-service four-quadrant installations, but also because of the North Carolina findings. In the North Carolina observations, as the number of violations decreased, the average number of seconds prior to arrival of the train also significantly increased (predicting that collisions might fall off at a faster rate than violations). The effectiveness of four-quadrant gates may thus be higher than the range stated above, both with and without medians and with presence detection.

It is also true that a variety of applications for these systems may result in a variety of effectiveness rates.

3. Gates With Medians or Channelization Devices

Keeping highway traffic on both highway approaches to a public highway-rail grade crossing in the proper lane denies the highway user the option of circumventing gates in the approach lanes by switching into the opposing (oncoming) traffic lane in order to drive around a lowered gate to cross the tracks.

FRA therefore is requiring that the following conditions be met.

a. Opposing traffic lanes on both highway approaches to the crossing must be separated by either: (1) Medians bounded by non-traversable curbs or (2) channelization devices.

b. Medians or channelization devices must extend at least 100 feet from the gate arm, or if there is an intersection within 100 feet of the gate, the median or channelization device must extend at least 60 feet from the gate arm. Driveways for private, residential properties (up to four units) are not considered intersections in calculating the required median length.

c. Intersections of two or more streets, or a street and an alley, that are within 60 feet of the gate arm must be closed or relocated. Driveways for private, residential properties (up to four units) within 60 feet of the gate arm are not considered to be intersections under this part and need not be closed. However, consideration should be given to taking steps to ensure that motorists exiting the driveways are not able to move against the flow of traffic to circumvent the purpose of the median and drive around lowered gates. This may be accomplished by the posting of "no left turn" signs or other means of notification. For the purpose of this part, driveways accessing commercial properties are considered to be intersections and are not allowed. It should be noted that if a public authority cannot comply with this 60 feet requirement, it may apply to FRA for a quiet zone under § 222.39(b), "Public authority application to FRA." During the comment period FRA was made aware of many circumstances in which roadways parallel to the tracks would not physically accommodate a 60 feet median. It was always FRA's intent to allow public authorities to apply to FRA for consideration of SSMs that do not fully comply with the provisions of Appendix A. There should be many circumstances in which medians or traffic channelization of less that 60 feet in length may sufficiently reduce risk in order to permit the creation of a quiet zone. FRA will review such applications and give them due consideration.

d. Crossing warning systems must be activated by use of constant warning time devices unless existing conditions at the crossing would prevent the proper operation of the constant warning time devices. FRA has been made aware that constant warning devices may not work properly under certain circumstances such as in electrified territory. If conditions exist that would not allow constant warning time systems to work as intended, other appropriate types of control circuitry may be used. Constant warning time devices are not required to be added to existing warning systems in Pre-Rule Quiet Zones. However, if warning systems in Pre-Rule Quiet Zones are upgraded, or new warning systems are installed, constant warning time devices are required.

e. Crossing warning systems must be equipped with power-out indicators. Power-out indicators are not required to be added to existing warning systems in Pre-Rule Quiet Zones. However, if warning systems in Pre-Rule Quiet Zones are upgraded, or new warning systems are installed, power-out indicators are required.

f. The gap between the lowered gate and the curb or channelization device must be one foot or less, measured horizontally across the road from the end of the lowered gate to the curb or channelization device or to a point over the curb edge or channelization device. The gate and the curb top or channelization device do not have to be at the same elevation.

g. "Break-away" channelization devices must be frequently monitored to replace broken elements.

Effectiveness:

FRA estimates that channelization devices have an effectiveness of .75 and medians with non-traversable curbs with or without channelization devices have an effectiveness of .80. The installation of traffic channelization devices as part of North Carolina's "Sealed Corridor" demonstration project provides empirical data upon which to base an effectiveness rate. Traffic channelization devices were installed at the Sugar Creek Road crossing in Charlotte, NC. Prior to the traffic channelization devices being installed, the Norfolk Southern Corporation and NCDOT counted the number of motorists going around the crossing gates for twenty weeks. This data established a baseline traffic violation rate. The number of violations were then counted after installation of the channelization devices. Comparing the number of violations before and after the grade crossing treatment showed that violations decreased by 77 percent. As in the NPRM, FRA discounts this rate slightly for the novelty effect that may occur immediately following installation of the treatment and to account for the added safety benefit of the horn which was sounding during the study. FRA therefore assigns an effectiveness rate of 75 percent for traffic channelization devices. FRA reasons that medians with non-traversable curbs present a greater deterrence, and estimates their effectiveness rate at 80 percent. This reasoning is supported by data collected in Spokane County, WA where non-traversable medians reduced violations at the University Road crossing by 92 percent. The unusual physical and operating characteristics of the crossing are sufficiently different from an average crossing that FRA believes that the effectiveness rate in this study should be discounted when determining an effectiveness rate for a national rule.

4. One Way Street With Gates

This installation consists of one way streets with gates installed so that all approaching highway lanes are completely blocked. FRA is requiring that the following conditions are met.

a. Gate arms on the approach side of the crossing should extend across the road to within one foot of the far edge of the pavement. If a gate is used on each side of the road, the gap between the ends of the gates when both are in the lowered, or down, position should be no more than two feet.

b. If only one gate is used, the edge of the road opposite the gate mechanism must be configured with a non-traversable curb extending at least 100 feet.

c. Crossing warning systems must be activated by use of constant warning time devices unless existing conditions at the crossing would prevent the proper operation of the constant warning time devices. FRA has been made aware that constant warning devices may not work properly under certain circumstance such as in electrified territory. If conditions exist that would not allow constant warning time systems to work as intended, other appropriate types of control circuitry may be used. Constant warning time devices are not required to be added to existing warning systems in Pre-Rule Quiet Zones. However, if warning systems in Pre-Rule Quiet Zones are upgraded, or new warning systems are installed, constant warning time devices are required.

d. Crossing warning systems must be equipped with power-out indicators. Constant warning time devices are not required to be added to existing warning systems in Pre-Rule Quiet Zones. However, if warning systems in Pre-Rule Quiet Zones are upgraded, or new warning systems are installed, constant warning time devices are required.

Effectiveness: FRA does not have an empirical data source for an effectiveness rate for one way streets with gates. FRA reasons that as this SSM will fully block approach lanes to the highway rail crossing, it's effectiveness should be similar to other measures that physically prevent a motorist from entering a crossing when the gates are activated. In this respect, one way streets with gates functions like four quadrant gates without medians, and FRA estimates an effectiveness rate of 82 percent.

Appendix B—Alternative Safety Measures

Introduction

Section 222.39(b) provides that a public authority may apply to FRA for approval of a quiet zone that does not meet the standards for public authority designation under § 222.39(a). Under § 222.39(b) a quiet zone application may be presented to FRA for consideration. Public authority application provides two unique benefits towards the creation of a quiet zone. The first benefit is the ability to use SSMs that may not conform to all of the requirements in Appendix A. FRA received many comments indicating that traffic channelization would not be practical due to parallel roadways that were closer than 60 feet. Under Appendix B, short traffic channelization devices may be considered. The second benefit is the ability to use programmed law enforcement, public education and awareness programs and photo enforcement to reduce risk and to compensate for the loss of the train horn. A public authority must receive written FRA approval of its quiet zone application prior to the silencing of train horns.

As with quiet zones created using the public authority designation method, credit will be given for closing of public highway-rail grade crossings. It will be necessary to adjust the baseline severity risk index at other crossings by increasing traffic counts at neighboring crossings as input data to the severity risk formula. If nearby grade separations are expected to carry some or all of the traffic, it will not be necessary. FRA Regional Managers for Grade Crossing Safety will be available to assist in performing the required analysis.

Appendix B addresses two types of ASMs-modified SSMs and non-engineering ASMs. Modified SSMs are SSMs that do no fully comply with the provisions listed in Appendix A. Depending on the resulting configuration, modified SSMs may still provide a substantial reduction in risk and can contribute to the creation of quiet zones. Non-engineering ASMs are programmed law enforcement, public education and awareness programs; and photo enforcement efforts that may be used to reduce risk in the creation of a quiet zone. It should be noted that if non-engineering ASMs are proposed, the application must demonstrate their effectiveness through the collection and analysis of data collected at the crossings. Periodic monitoring will be required throughout the existence of the quiet zone in order to show that the ASM is still effective. The public authority must receive written FRA approval of the quiet zone application prior to the silencing of train horns. The public authority is strongly encouraged to submit the application to FRA for review and comment before the Appendix B treatments are initiated to ensure that the proposed modified SSMs and/or non-engineering ASMs will meet with FRA's approval. If non-engineering ASMs are proposed, the public authority may wish to confirm with FRA that the sampling methods are appropriate. Submitting the application for review prior to implementation will enable FRA to provide comments to assist the public authority in developing a quiet zone plan that will be acceptable.

Modified SSMs

a. If there are unique circumstances pertaining to a specific crossing or number of crossings which prevent the SSMs from being fully compliant with all of the SSM requirements listed in Appendix A, those SSM requirements may be adjusted or revised. In that case, the SSM, as modified, will be treated as an ASM under this Appendix B, and not as a SSM under Appendix A, so that its safety effects may be evaluated. By using modified SSMs, a locality will be able to tailor the use and application of various SSM-types of applications to a specific set of circumstances (*e.g.* being able to use traffic channelization devices of less than 60 feet in length). Thus, a locality may propose a quiet zone that contains modified SSMs at a number of crossings, that due to specific circumstances, could not have been treated with an Appendix A SSM and would have to be omitted from the proposed quiet zone. FRA will review the proposed quiet zone, and will approve the proposal if it finds that the Quiet Zone Risk Index is reduced to the level that would be expected with sounding of the train horns or to the Nationwide Significant Risk Threshold.

b. Estimates of effectiveness may be proposed based upon adjustments from the effectiveness levels provided in Appendix A or from actual field data derived from the crossing sites. The application should provide an estimate for the effectiveness of the proposed ASM and the rationale for the estimate. For example, in Appendix A the effectiveness of a 60 foot traffic channelization device is .75. A public authority may propose for consideration that an effectiveness rate of .60 for a traffic channelization device that is 45 feet in length would be appropriate. The specific crossing and applied mitigation measure will be assessed to determine the effectiveness of the modified SSM. FRA will continue to develop and make available effectiveness estimates and data from actual experience under the rule.

c. The following engineering types of ASMs may be included in a proposal for approval by FRA for creation of a quiet zone. SSMs that are listed in Appendix A may be used for purposes of modified SSMs. If one or more of the requirements associated with an SSM as listed in Appendix A is revised or deleted, data or analysis supporting the revision or deletion must be provided to FRA for review. These SSMs include: (1) Temporary Closure of a Public Highway-Rail Grade Crossing, (2) Four-Quadrant Gate System, (3) Gates With Medians or Channelization Devices, and (4) One-Way Street With Gate(s). A discussion of these safety measures may be found in the discussion of Appendix A.

Non-Engineering ASMs

The following non-engineering ASMs may be used in the creation of a Quiet Zone. The method for determining the effectiveness of the non-engineering ASMs, the implementation of the quiet zone, subsequent monitoring requirements, and provision for dealing with an unacceptable effectiveness rate are provided in paragraph b.

1. *Programmed Enforcement:* Community and law enforcement officials commit to a systematic and measurable crossing monitoring and traffic law enforcement program at the public highway-rail grade crossing, alone or in combination with the Public Education and Awareness option.

Required:

a. Subject to audit, a statistically valid baseline violation rate must be established through automated or systematic manual monitoring or sampling at the subject crossing(s).

b. A law enforcement effort must be defined, established and continued along with continual or regular monitoring.

2. *Public Education and Awareness:* Conduct, alone or in combination with programmed law enforcement, a program of public education and awareness directed at motor vehicle drivers, pedestrians and residents near the railroad to emphasize the risks associated with public highway-rail grade crossings and applicable requirements of state and local traffic laws at those crossings.

Requirements:

a. Subject to audit, a statistically valid baseline violation rate must be established through automated or systematic manual monitoring or sampling at the subject crossing(s).

b. A sustainable public education and awareness program must be defined, established and continued concurrent with continued monitoring. This program shall be provided and supported primarily through local resources. It is critical that programs proposed under this appendix represent valid new increments of effort generated from the local level where quiet zone benefits will accrue.

3. Photo Enforcement: This alternative entails automated means of gathering valid photographic or video evidence of traffic law violations at a public highway-rail grade crossing together with follow-through by law enforcement and the judiciary.

Required:

a. State law authorizing use of photographic or video evidence both to bring charges and sustain the burden of proof that a violation of traffic laws concerning public highway-rail grade crossings has occurred, accompanied by commitment of administrative, law enforcement and judicial officers to enforce the law.

b. Sanction includes sufficient minimum fine (*e.g.*, $100 for a first offense, "points" toward license suspension or revocation) to deter violations.

c. Means to reliably detect violations (*e.g.*, loop detectors, video imaging technology).

d. Photographic or video equipment deployed to capture images sufficient to document the violation (including the face of the driver, if required to charge or convict under state law).

Note to d.: This does not require that each crossing be continually monitored. The objective of this option is deterrence, which may be accomplished by moving photo/video equipment among several crossing locations, as long as the motorist perceives the strong possibility that a violation will lead to sanctions. Each location must appear identical to the motorist, whether or not surveillance equipment is actually placed there at the particular time. Surveillance equipment should be in place and operating at each crossing at least 25 percent of each calendar quarter.

e. Appropriate integration, testing and maintenance of the system to provide evidence supporting enforcement.

f. Public awareness efforts designed to reinforce photo enforcement and alert motorists to the absence of train horns.

g. Subject to audit, a statistically valid baseline violation rate must be established through automated or systematic manual monitoring or sampling at the subject crossing(s).

h. A law enforcement effort must be defined, established and continued along with continual or regular monitoring.

The effectiveness of non-engineering ASMs will be determined as follows:

1. The first step in assessing the effectiveness of an ASM is to establish quarterly (3 months) baseline violation rates for each of the crossings. A violation in this context refers to a motorist not complying with the automatic warning devices at the crossing (not stopping for the flashing lights and driving over the crossing after the gate arms have started to descend, or driving around the lowered gate arms). A violation does not have to result in a traffic citation for the violation to be considered. Violation data may be obtained by any method that can be shown to provide a statistically valid sample. This may include the use of video cameras, other technologies (*e.g.* inductive loops), or manual observations that capture driver behavior when the automatic warning devices are operating. In the event that data is not collected continuously during the quarter, sufficient detail must be provided in the application in order to validate that the methodology used results in a statistically valid sample. FRA recommends that at least a minimum of 600 samples (one sample equals one gate activation) be collected during the baseline and subsequent quarterly sample periods. The sampling methodology must take measures to avoid biases in their sampling technique. Potential sampling biases could include: sampling on certain days of the week but not others, sampling during certain times of the day but not others, sampling immediately after implementation of an ASM while the public is still going through an adjustment period, or applying one sample method for the baseline rate and another for the new rate. One possible approach to avoid sampling bias would be to break a three-month observation period into many time slots and then randomly selecting these slots for sampling. The baseline violation rate should be expressed as the number of violations per gate activations in order to normalize for unequal gate activations during subsequent data collection periods. The application should include enough detail on the method used to collect and assess the data to insure that the results will provide a statistically valid result. While not it is not mandatory, public authorities are encouraged to provide FRA with its sampling methodology for comment prior to actually collecting the data. This will enable FRA to provide comments to ensure that the sampling methodology is adequate.

2. The ASM should then be initiated for each crossing in the proposed quiet zone that is to be treated with programmed enforcement or education. During this time frame, train horns are still being sounded. Train horns will not be silenced until the application has been formally approved by FRA.

3. In the calendar quarter following initiation, a new violation rate should be determined (using the same methodology as in paragraph a) and compared to the baseline violation rate for each crossing treated with an ASM. The violation rate reduction for each crossing should then be determined by the following formula:

Violation rate reduction = (new rate—baseline rate)/baseline rate

Example: The baseline rate for a crossing was 60 violations per 100 gate activations. After implementation of the ASM, the new violation rate for the next quarter was 20 violations per 100 gate activations. The violation rate reduction would be 66 percent (.66).

4. The effectiveness rate for each crossing is then determined by multiplying the violation rate reduction by .78. This converts the violation rate reduction to the collision reduction rate which is the effectiveness rate. The effectiveness rate of the ASM would then be used in the calculation of the Quiet Zone Risk Index.

Example: In the above example, the violation rate reduction of .66 would be multiplied by .78 which results in an effectiveness rate of .51.

5. Using the effectiveness rates for each crossing treated by an ASM, determine the Quiet Zone Risk Index. If and when the Quiet Zone Risk Index for the proposed the quiet zone has been reduced to either the risk level which would exist if locomotive horns sounded at all crossings in the quiet zone or to a risk level below the Nationwide Significant Risk Threshold, the public authority may apply to FRA for approval of the quiet zone. Upon receiving written approval of the quiet zone application, the public authority may then proceed with notifications and implementation of the quiet zone.

6. Violation rates must be monitored for the next two calendar quarters and every second quarter thereafter. If after five years from the implementation of the quiet zone, the violation rate for any quarter has never exceeded the violation rate used to determine the effectiveness rate that was approved by FRA, violation rates may be monitored for one quarter per year.

Example: Continuing with the above example, the periodic monitoring during the five years following implementation of the quiet zone showed that the violation rate never exceeded 20 violations per 100 gate activations. It then would only be necessary to monitor every fourth quarter thereafter.

7. In the event that the violation rate is ever greater than the violation rate used to determine the effectiveness rate that was approved by FRA, the public authority may continue the quiet zone for another quarter. If, in the second quarter the violation rate used to determine the effectiveness rate that was approved by FRA, a new effectiveness rate must be calculated using the new effectiveness rate. If the new Quiet Zone Risk Index indicates that the ASM no longer fully compensates for the lack of a train horn, or that the risk level is equal to, or exceeds the Nationwide Significant Risk Threshold, the procedures for dealing with unacceptable effectiveness after establishment of a quiet zone should be followed.

Example: Three years after initiating the quiet zone cited above, the violation rate was 30 violations per 100 gate activations. The quiet zone continues with monitoring. In the next quarter, the violation rate was still 30 violations per 100 gate activations. When compared to the original baseline violation rate, this represents a violation rate reduction of 50 percent. The new effectiveness rate is calculated by multiplying .50 by .78. The new effectiveness rate of .39 would then be used in the calculation of a new Quiet Zone Risk Index. If the new Quiet Zone Risk Index is no longer below the Nationwide Significant Risk Threshold or no longer fully compensates for the loss of the train horn; the provisions of 222.51 would then apply.

Section 229.129 Audible Warning Device

Paragraph (a) of this section requires that each lead locomotive be provided with an audible warning device that produces a minimum sound level of 96dB(A) and a maximum sound level of 110 dB(A) at 100 feet forward of the locomotive in its direction of travel. The device shall be arranged so that it can be conveniently operated from the engineer's usual position during operation of the locomotive. The phrase "usual position during operation of the locomotive" replaces "normal position in the cab." This change, which was not proposed in the NPRM, will bring this section into conformity with the first sentence of § 229.53 which refers to the location of the various brake gauges used by a locomotive engineer. FRA removed § 229.53's reference to "normal position in the cab" in the final rule revising the regulations governing braking systems and equipment used in freight and other non-passenger railroad train operations. See 66 FR 4104, January 17, 2001. FRA, in its response to petitions for reconsideration, stated that the phrase, "normal position in the cab" is unnecessary and antiquated. FRA stated that "FRA's intent when removing the language was to ensure that the gauges used by an engineer to aid in the control or braking of a train or locomotive were located so as to be read from the engineer's usual position when operating the locomotive, whether that be in the cab of the locomotive or elsewhere. FRA's intent when issuing the final rule was to accommodate and facilitate advanced technologies and designs." *See* 67 FR 17562, April 10, 2002. Because the rationale for the language change as it pertains to brake gauges applies equally well to the location of horn controls, FRA has modified § 229.129 to be consistent with § 229.53. Because this change was not proposed in the NPRM, interested parties are encouraged to provide comment on this aspect of the interim final rule. FRA will take into consideration comments when issuing the final rule.

Paragraph (b) addresses the schedule of testing to determine if locomotive horns are in compliance with this section. Locomotives built on or after December 18, 2004, must be tested and brought into compliance with this section prior to being placed in service. Locomotives built before December 18, 2004, have five years from the date of this notice in which to be tested. Thus they must be tested and brought into compliance with this section by December 18, 2008. Additionally, horns must be tested and brought into compliance with this section whenever a locomotive is rebuilt (as determined in accordance with 49 CFR 232.50).

Paragraph (c) specifies the testing requirements and measurement procedures. The paragraph also specifies that the railroad must maintain records sufficient to show the date, manner and result of locomotive horn testing conducted in compliance with this part.

Paragraph (d) provides that this section of part 229 addressing audible warning devices does not apply to rapid transit operations which are otherwise subject to part 229. Rapid transit operations which are subject to part 222 solely because they share track or rail corridors at public highway-rail crossings with general system railroads are thus not subject to this section. While such operations are subject to all provisions of part 222, including the requirement to sound the horn at public rail grade crossings which they share with general system railroads, and to silence the horn within quiet zones which include such shared crossings, they are not subject to § 229.129's requirements, including those regarding locomotive horn volume and testing.

17. Regulatory Impact

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

FRA has conducted a Regulatory Evaluation of this Interim Final Rule in accordance with Executive Order 12866. A copy of this document has been placed in the docket for this rulemaking. Following is a summary of the findings.

FRA identified 1,988 existing whistle ban or no-horn crossings that would qualify for inclusion in Pre-Rule Quiet Zones. FRA also identified 442 potential New Quiet Zone crossings. Using information available about the crossing characteristics and the number of persons that would be or currently are severely affected by the sounding of train horns, FRA estimated the costs and benefits of the actions that communities would take in response to this rule. FRA believes that many communities will take advantage of the many options available to establish quiet zones. FRA also estimated the costs associated with the maximum horn sound level requirements. Some existing whistle ban crossings may not be included in quiet zones.

The table below presents estimated twenty-year monetary costs associated with complying with the requirements contained in the Interim Final Rule using a 7 percent discount rate. Given the high prevalence of existing whistle ban crossings in the Chicago Region [15] and the significant level of interest commenters from this area have shown regarding this rulemaking, costs are presented separately from the rest of the nation where applicable.

[15] The Chicago area is comprised of the following six counties: Cook, Du Page, Kane, Lake, McHenry, and Will.

TOTAL TWENTY-YEAR COSTS (PV, 7%)

	Nationwide	Chicago	Rest of nation
Maximum Horn Sound Level	$2,902,478	(2)	(2)
Relocations Due to Horn Noise [1]	1,724,590	$47,927	$1,676,663
Establish/Maintain Pre-Rule Quiet Zones	15,275,946	4,008,013	11,267,933
Establish/Maintain New Quiet Zones	21,501,796	(2)	(2)
FRA Administrative Costs	25,426	(2)	(2)

[1] Due to resumption of horn sounding.
[2] Not applicable.

Total Twenty-Year Costs associated with implementation of this rule are estimated to be $41,430,236 (PV, 20 Years, 7%).

In general there has been a downward trend in collisions at grade crossings nationwide due to the implementation of various private and public safety initiatives such as Operation Lifesaver and other public education and awareness campaigns. Costs presented in this analysis may be overstated to the extent that such initiatives would lead to the eventual implementation of some of the same or equivalent safety measures that this rule requires for the establishment of quiet zones. In such cases, this rule may be merely accelerating implementation and the rate of expenditures.

The direct safety benefit of this interim final rule is the reduction in casualties that result from collisions between trains and highway users at public at-grade highway-rail crossings. Implementation of this rule will ensure that (1) locomotive horns are sounded to warn highway users of approaching trains; or (2) rail corridors where train horns do not sound will have a level of risk that is no higher than the average risk level at gated crossings nationwide where locomotive horns are sounded regularly; or (3) the effectiveness of horns is compensated for in rail corridors where train horns do not sound.

FRA has reviewed trends in collision rates for whistle ban crossings going back to 1980 and believes that collision rates over the twenty-years that this analysis covers will be no higher than 4 percent. The following table presents anticipated twenty-year safety benefits expressed in monetary terms assuming that collisions decline at an average rate of 4 percent annually and using a 7 percent discount rate.

TOTAL TWENTY-YEAR SAFETY BENEFITS MONETIZED (PV, 7%)

[Declining collision rate (4% annual decline)]

Casualties prevented	Nationwide	Chicago	Rest of nation
Cancellation of W-Bans	$6,102,371	$291,582	$5,810,789
Pre-Rule Quiet Zones:	48,794,232	22,371,706	26,422,526
New Quiet Zones	21,976,553	(1)	(1)
Total	76,873,156	(1)	(1)

[1] Not applicable.

In terms of collisions and casualties, over the next twenty years, FRA anticipates implementation of this rule will result in the prevention of 123 collisions, 13 fatalities, and 60 injuries.

In addition to the prevention of casualties, FRA estimates that, over the next twenty years, this collision prevention will result in a reduction of approximately $400,000 in highway vehicle, railroad equipment, and track damage.

This analysis covers the first twenty years of the rule and includes some compliance costs that will be incurred towards the end of the period. Unlike the benefits associated with costs incurred in the early years of the rule, much of the twenty-year stream of benefits associated with these costs is not captured in this analysis. Safety benefits are understated to the extent that many years of safety benefits resulting from safety measures implemented in out-years are not included.

Some of the unquantified benefits of this interim final rule include reductions in freight and passenger train delays, both of which can be very significant when grade crossing collisions occur, and collision investigation efforts. Although these benefits are not quantified in this analysis, their monetary value is significant.

Because such events are rare, FRA has not attempted to estimate the value of avoiding events in which a highway-rail collision results in a derailment, with harm to persons on the train or release of hazardous materials into the community.

Maximum horn sound level requirements will limit community disruption by not allowing horns to be sounded any louder than necessary to provide motorists with adequate warning of a train's approach. The benefit in noise reduction due to this change in maximum horn loudness is not readily quantifiable.

Another unquantified benefit of this rule is elimination of some locomotive horn noise disruption to some railroad employees and those who may reside near industrial areas served by railroads. Locomotive horns will no longer have to be sounded at individual highway-rail grade crossings at which the maximum authorized operating speed for that segment of track is 15 miles per hour or less and properly equipped flaggers (as defined in by 49 CFR 234.5, but who for purposes of this rule can also be crew members) provide warning to motorists. This rule will allow engineers, who were probably already exercising some level of discretion as to the duration and sound level of locomotive horn sounding, to stop sounding the horn under these circumstances at no additional cost.

This analysis does not quantify the benefit of eliminating community disruption caused by the sounding of train horns, nor does it quantify costs from increased noise at crossings where horns will sound where they were previously silent.

In an effort to determine the costs to a community associated with the locomotive horn, FRA examined the effects of sounding of locomotive horns on property values. This effort was based on the assumption that property values reflect concerns of property owners that are often subjective and otherwise difficult to quantify. For a full discussion of the effects of sounding locomotive horns on property values, see Appendix A to the Regulatory Evaluation.

Research shows that residential property markets are influenced by a variety of factors including structural features of the property, local fiscal conditions, and neighborhood characteristics. Hedonic housing price models treat a property as a bundle of characteristics, with each individual characteristic generating an influence on the price of the property. For example, additional structural characteristics such as bathrooms, bedrooms, interior or exterior square footage increase the value of residential properties. Likewise, neighborhood characteristics are expected to influence property prices. For example, homes that are in relatively close proximity to noxious activities such as hazardous waste sites, incinerators, etc. have been shown to have lower values, other things equal. Thus, a carefully designed hedonic model can be used to implicitly value locational attributes that have no explicit market price.

The effects of the sounding of locomotive horns on property values have been studied recently in response to the NPRM. While initial results are available, unfortunately they are not conclusive. David E. Clark performed one study for the FRA, and Schwieterman and Baden of the Chaddick Institute performed the other. According to Clark, the study performed for FRA was "just a first step in understanding how train whistles influence local property values." Schwieterman and Baden of the Chaddick Institute emphasize that their "report is a preliminary assessment of a complex issue. Some of our findings are speculative in nature." Those who have studied the issue agree that further study is needed to reach a better understanding of the true effects of locomotive horn sounding on property values. Clark concluded that there is little indication that the decision of a railroad to ignore whistle bans (and thus sound the locomotive horn) had any permanent and appreciable influence on the housing values in the three communities analyzed. Clark offers two explanations for the lack of effect on property values. First, those buying property within the audible range of a highway-rail grade crossing likely consider the possibility that train whistles may be sounded at the crossing in the future. Second, the railroad's action generated dynamic changes in the composition of residents that served to mitigate the initial impact of the action. Residents most sensitive to the sounding of locomotive horns moved away and were replaced with those less sensitive to such sounding.

The Chaddick Institute study evaluated the probable costs of the noise generated by locomotive horns at grade crossings in the Chicago area. The study concluded that the region would experience significant losses in property value from sounding of horns at crossings currently subject to whistle bans. The study also concluded that even if property values do not fall, homeowners that are forced to move away may incur other real economic costs. For the reasons discussed in Appendix A to the Regulatory Evaluation, FRA has concluded that it is not likely that the overall costs associated with sounding the horns where they are not currently sounded will be as high as the Chaddick Institute study concludes.

Although there are airport and highway hedonic property value studies, FRA has not applied them to grade crossings for a number of reasons. The types of noise experienced by residents near highways and airports can be different from that experienced by residents near highway-rail grade crossings. Highways and airports where noise is an issue have higher daily volumes of motor vehicle and aircraft traffic than grade crossings with whistle bans. The noise produced by locomotive horns at crossings is also generally more intermittent than that produced at airports and highways.

The effect of highways and airports on nearby property values can also be very different than that of highway-rail at-grade crossings on nearby property values. For instance, airports are a source of employment for residents in the community. Although airport employees may not desire to reside in properties immediately adjacent to airports, they probably want to reside relatively close by. Few highway users desire to reside in properties immediately adjacent to highways, however many probably want to reside close enough to have easy access to highways. Such situations may greatly influence the magnitude of difference between property values of residences immediately adjacent to highways and airports compared to property values of residences that are still very close to highways and airports yet not adjacent. Since there generally is no incentive to residing near highway-rail at-grade crossings (unless there happens to be a commuter rail station nearby) the difference in property values between residences immediately adjacent to grade crossings and those a little further away is probably not as great.

Studies of airport and highway noise compare property values of residences adjacent to the source of noise to property values of residences that are near but not adjacent to the source of noise. To isolate the effect of the noise itself and thereby make these studies more relevant to the highway-rail grade crossing context, the effect of the incentive for residing nearby, versus adjacent to, would have to be removed from the studies of airport and highway noise. Given the differences in (1) types of noise produced by highway vehicles and aircraft versus locomotive horns and (2) effects of highways and airports on nearby property values versus effects of grade crossings on property values, FRA believes that results from hedonic studies of airport and highway noises on property values are not directly transferable to locomotive horn noise effects on property values.

It is important to note that since this rule is permissive as to the establishment of quiet zones, communities will establish quiet zones to the extent that the perceived benefit of elimination of the train horn disruption coupled with the safety benefit of any safety enhancements exceeds the costs of compliance associated with the requirements for establishing New Quiet Zones.

FRA is confident that the benefits in terms of lives saved and injuries prevented will exceed the costs imposed on society by this rule.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) requires a review of final rules to assess their impact on small entities unless the Secretary certifies that a final rule will not have a significant economic impact on a substantial number of small entities. Data available to FRA indicates that this rule may have minimal economic impact on a substantial number of small entities (railroads) and possibly a significant economic impact on a few small entities (government jurisdictions and small businesses). However, there is no indication that this rule will have a significant economic impact on a substantial number of small entities. The Small Business Administration

(SBA) did not submit comments to the docket for this rulemaking in response to the Initial Regulatory Flexibility Assessment that accompanied the NPRM. FRA certifies that this rule will not have a significant economic impact on a substantial number of small entities.

FRA has performed a Regulatory Flexibility Assessment (RFA) on small entities that potentially can be affected by this interim final rule. The RFA is summarized in this preamble as required by the Regulatory Flexibility Act. The full RFA is included in the Regulatory Evaluation, which is available in the public docket of this proceeding.

This is essentially a safety rule that implements as well as minimizes the potential negative impacts of a Congressional mandate to blow train whistles and horns at all public crossings. Some communities believe that the sounding of train whistles at every crossing is excessive and an infringement on community quality of life, and therefore have enacted "whistle bans" that prevent the trains from sounding their whistles entirely, or during particular times (usually at night). Some communities would like to establish "quiet zones" where train horns would not be routinely sounded, but are awaiting issuance of this rule to do so. FRA is concerned that with the increased risk at grade crossings where train whistles are not sounded, or another means of warning utilized, collisions and casualties may increase significantly. The rule contains low risk based provisions for communities to establish quiet zones. Some crossing corridors may already be at risk levels that are permissible under this rule and would not need to reduce risk levels any further to establish quiet zones. Otherwise, communities establishing Pre-Rule Quiet Zones may implement sufficient safety measures along whistle-ban corridors to reduce risk to permissible levels. In addition to having permissible risk levels, all crossings in New Quiet Zones will have to be equipped with gates and flashing lights. If a community elects to simply follow the mandate, horn sounding will resume and there will be a noise impact on small businesses that exist along crossings where horns are not currently routinely sounded. If a community elects to implement sufficient safety measures to comply with the requirements for establishing a quiet zone, then the governmental jurisdiction will be impacted by the cost of such program or system. To the extent that potential quiet zone crossing corridors already have average risk levels permissible under this rule, and, in the case of New Quiet Zones, every crossing is equipped with gates and flashing lights, communities will only incur administrative costs associated with establishing and maintaining quiet zones.

The costs of implementing this interim final rule will predominately be on the governmental jurisdictions of communities some of which are "small governmental jurisdictions." As defined by the SBA this term means governments of cities, counties, towns, townships, villages, school districts, or special districts with a population of less than fifty thousand. The most significant impacts from this rule will be on about 260 governmental jurisdictions whose communities currently have either formal or informal whistle bans in place. FRA estimates that approximately 70 percent (*i.e.* 193 communities) of these governmental jurisdictions are considered to be small entities.

FRA has recently published final a policy which establishes "small entity" as being railroads which meet the line haulage revenue requirements of a Class III railroad. As defined by 49 CFR 1201.1–1, Class III railroads are those railroads who have annual operating revenues of $20 million per year or less. Hazardous material shippers or contractors that meet this income level will also be considered as small entities. FRA is using this definition of small entity for this rulemaking. The RFA believes that approximately 640 small railroads would be minimally impacted by train horn sound level testing requirements contained in this rule. In addition, some small businesses that operate along or nearby rail lines that currently have whistle bans in place that potentially may not after the implementation of this rule, could be moderately impacted.

Alternative options for complying with this rule include allowing the train whistle to be blown. This alternative has no direct costs associated with it for the governmental jurisdiction. Other alternatives include "gates with median barriers" which are estimated to cost $13,000 for a mountable curb with frangible delineators and "Photo enforcement" which is estimated to cost $28,000–$65,500 per crossing, and have annual maintenance costs of $6,600–$24,000 per crossing. Finally, FRA has not limited compliance to the lists provided in Appendix A or Appendix B of the rule. The rule provides for supplementary safety measures that might be unique or different. For such an alternative, an analysis would have to accompany the option that would demonstrate that the number of motorists that violate the crossing is equivalent of less than that of blowing the whistle. FRA intends to rely on the creativity of communities to formulate solutions which will work for that community.

FRA does not know how many small businesses are located within a distance of the affected highway-rail crossings where the noise from the whistle blowing could be considered to be nuisance and bad for business. Concerns have been advanced by owners and operators of hotels, motels and some other establishments as a result of numerous town meetings and other outreach sessions in which FRA has participated during development of this rule. If supplementary safety measures are implemented to create a quiet zone then such small entities should not be impacted. FRA held 12 public hearings nationwide following issuance of the NPRM and requested comments to the docket from small businesses that feel they will be adversely impacted by the requirements contained in the NPRM. FRA received no comments in response.

C. Paperwork Reduction Act

The information collection requirements in this interim final rule have been submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.* The sections that contain the new information collection requirements and the estimated time to fulfill each requirement are as follows:

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CFR Section	Respondent Universe	Total Annual Responses	Average Time per Response	Total Annual Burden Hours	Total Annual Burden Cost
222.11 - Penalties	400 communities	5 false reports/red	2 hours	10 hours	$340
222.15 - Petitions for Waivers	400 communities	10 petitions	4 hours	40 hours	$13,600
222.39 - Establishment of Quiet Zones					
- Public Authority Application to FRA	400 public authorities	400 Applications	80 hours	32,000 hours	$1,984,000
222.41 - Pre-Rule Quiet Zones Which Qualify For Automatic Approval	302 communities/Pub. Auth.	1,812 notifications	5 hours	9,060 hours	$561,720
- Public Authority Certification	302 communities/Pub. Auth.	302 Certifications	35 hours	10,570 hours	$655,340
- Grade Crossing Inventory Forms	302 communities/Pub. Auth.	1,026 Forms	1 hour	1,026 hours	$63,612
Pre-Rule Quiet Zones Which Do Not Qualify For Automatic Approval	103 communities	103 certifications	35 hours	3,605 hours	$223,510
- Updated Crossing Inventory Forms	103 communities	274 Forms	1 hour	274 hours	$16,988
- Detailed Plans By Public Authority	103 communities/Pub. Auth.	90 Plans	80 hours	7,200 hours	$446,400
- Implementation Plan By State Agencies	5 State Agencies	5 Plans	100 hours	500 hours	$31,000

CFR Section	Respondent Universe	Total Annual Responses	Average Time per Response	Total Annual Burden Hours	Total Annual Burden Cost
222.43 - Notice and Other Information Required to Establish a Quiet Zone	Covered Under Sec. 222.41	Covered Under Sec. 222.41	Covered Under Sec. 222.41	Covered Under Sec. 222.41	Covered Under Sec. 222.41
222.47 - Periodic Updates					
-Quiet Zones Which Do Not Have Supplementary Safety Measures at Each Public Crossing	400 Public Authorities	Affirmations + Copies	30 minutes + 2 min	245 hours	$15,190
- Updated Crossing Inventory Forms	400 Public Authorities	1,875 Forms	30 minutes	938 hours	$58,156
222.49 - New Quiet Zone - Annual Risk Review	9 Public Authorities	2 Commitments	5 hours	10 hours	$620
-Actions Taken By Authority to Retain Quiet Zone		100 Comments	30 minutes	50 hours	$3,100
-Pre-Rule Quiet Zone - Review at FRA's Initiative	5 Public Authorities	30 Notifications	30 minutes	15 hours	$930
- Notification or Termination	5 Public Authorities				

CFR Section	Respondent Universe	Total Annual Responses	Average Time per Response	Total Annual Burden Hours	Total Annual Burden Cost
222.55 - Approval of New SSMs or ASMs	400 Parties	1 Letter	30 minutes	1 hour	$62
- Opportunity to Comment	400 Parties	5 Comments	30 minutes	3 hours	$186
- Application For Approval of New SSMs or ASMs	400 Parties	1 Letter	30 minutes	1 hour	$62
222.57 - Review of Assoc. Administrator's Actions					
- Petitions For Reconsideration	400 Pub. Authorities/Parties	1 Petition	1 hour	1 hour	$62
- Additional Documents	400 Pub. Authorities/Parties	10 Documents	2 hours	20 hours	$1,240
- Requests For Informal Hearing	400 Pub. Authorities/Parties	5 Letters	30 minutes	3 hours	$186
229.129 - Audible Warning Devices					
- Locomotive Horn Testing - Records	685 Railroads	23,230 Records	1 hour	23,230 hours	$789,820
- Re-Tests	685 Railroads	650 Records	1 hour	650 hours	$22,100

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All estimates include the time for reviewing instructions; searching existing data sources; gathering or maintaining the needed data; and

reviewing the information. Pursuant to 44 U.S.C. 3506(c)(2)(B), FRA solicits comments concerning: whether these information collection requirements are necessary for the proper performance of the function of FRA, including whether the information has practical utility; the accuracy of FRA's estimates of the burden of the information collection requirements; the quality, utility, and clarity of the information to be collected; and whether the burden of collection of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology, may be minimized. For information or a copy of the paperwork package submitted to OMB, contact Robert Brogan at 202–493–6292.

FRA believes that soliciting public comment will promote its efforts to reduce the administrative and paperwork burdens associated with the collection of information mandated by Federal regulations. In summary, FRA reasons that comments received will advance three objectives: (i) Reduce reporting burdens; (ii) ensure that it organizes information collection requirements in a "user friendly" format to improve the use of such information; and (iii) accurately assess the resources expended to retrieve and produce information requested. *See* 44 U.S.C. 3501.

Comments must be received no later than [60 days after the date of publication]. Organizations and individuals desiring to submit comments on the collection of information requirements should direct them to Robert Brogan, Federal Railroad Administration, RRS–21, Mail Stop 17, 1120 Vermont Ave., NW., MS–17, Washington, DC 20590.

OMB is required to make a decision concerning the collection of information requirements contained in this interim final rule between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication. The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

FRA cannot impose a penalty on persons for violating information collection requirements which do not display a current OMB control number, if required. FRA intends to obtain current OMB control numbers for any new information collection requirements resulting from this rulemaking action prior to the effective date of a final rule. The OMB control number, when assigned, will be announced by separate notice in the **Federal Register**.

D. Environmental Impact

FRA has evaluated this interim final rule in accordance with its procedures for ensuring full consideration of the environmental impact of FRA actions, as required by the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*), other environmental statutes, Executive Orders, and DOT Order 5610.1c. FRA has prepared a final environmental impact statement (FEIS) analyzing the environmental impacts associated with this rule. The FEIS is being issued concurrently with this interim final rule. The principal environmental effect and potentially significant impact of the interim final rule is reduced horn noise in aggregate at approximately 150,000 public at-grade crossings and additional horn noise at some crossings where whistle bans currently exist.

The application of the requirement to provide an audible warning at existing whistle ban crossings has been substantially modified in the interim final rule. Provisions have been made that would qualify certain existing whistle bans for quiet zone status according to their risk levels. This is expected to result in the continued absence of train horns at many Pre-Rule Quiet Zones and would reduce the potential for additional horn noise impacts. Train horns will continue to be silenced at other Pre-Rule Quiet Zones through implementation of supplemental or alternative safety measures. Thus, additional horn noise impact is unlikely to approach the levels that would occur if horns were to sound where all whistle bans now exist.

This rule contains provisions that would reduce existing train horn noise exposure over time. The provision limiting the distance for regular horn sounding would reduce the total amount of horn noise generated. This provision would reduce existing horn noise impacts by approximately 27 percent. The provision for a maximum horn sound level would reduce horn noise for some particularly loud locomotives and would reduce existing horn noise impacts by approximately 14 percent. It is estimated that the combined effect of these two provisions would reduce horn noise impacts by approximately 38 percent.

Finally, the interim final rule contains provisions that would make it possible for the creation of quiet zones in many communities that are currently exposed to train horn noise. The potential benefit from these New Quiet Zones is indeterminate, as it is impossible to determine prospectively the number of New Quiet Zones and their establishment date; however, FRA's best estimate is that there will likely be approximately 107 New Quiet Zones.

Copies of the FEIS are being distributed to organizations and individuals who filed comments on the Draft environmental impact statement. The FEIS is also available on FRA's Web site (*www.fra.dot.gov*), or from the FRA at the following address: Office of Safety, FRA, 1120 Vermont Avenue, NW. (Mail Stop 25), Washington, DC 20590.

E. Federalism Implications

Executive Order 13132, entitled, "Federalism," issued on August 4, 1999, requires that each agency "in a separately identified portion of the preamble to the regulation as it is to be issued in the **Federal Register**, provides to the Director of the Office of Management and Budget a Federalism summary impact statement, which consists of a description of the extent of the agency's prior consultation with State and local officials, a summary of the nature of their concerns and the agency's position supporting the need to issue the regulation, and a statement of the extent to which the concerns of State and local officials have been met. * * *"

FRA has complied with E.O. 13132 in issuing this rule. FRA consulted extensively with State and local officials prior to issuance of the NPRM, and we have taken very seriously the concerns and views expressed by State and local officials as expressed in written comments and testimony at the various public hearings throughout the country. FRA staff provided briefings to many State and local officials and organizations during the comment period to encourage full public participation in this rulemaking. As discussed earlier in this preamble, because of the great interest in this subject throughout various areas of the country, FRA was involved in an extensive outreach program to inform communities which presently have whistle bans of the effect of the Act and the regulatory process. Since the passage of the Act, FRA headquarters and regional staff has met with a large number of local officials. FRA also held a number of public meetings to discuss the issues and to receive information from the public. In addition to local citizens, both local and State officials attended and participated in the public meetings. Additionally, FRA took the unusual step of establishing a public docket before formal initiation of rulemaking proceedings in order to

enable citizens and local officials to comment on how FRA might implement the Act and to provide insight to FRA. FRA received comments from representatives of Portland, Maine; Maine Department of Transportation; Acton, Massachusetts; Wisconsin's Office of the Commissioner of Railroads; a Wisconsin State representative; a Massachusetts State senator; the Town of Ashland, Massachusetts; Bellevue, Iowa; and the mayor of Batavia, Illinois.

Since passage of the Act in 1994, FRA has consulted and briefed representatives of the American Association of State Highway and Transportation Officials (AASHTO), the National League of Cities, National Association of Regulatory Utility Commissioners, National Conference of State Legislatures, and others. Additionally we have provided extensive written information to all United States Senators and a large number of Representatives with the expectation that the information would be shared with interested local officials and constituents.

Prior to issuance of the NPRM, FRA had been in close contact with, and has received many comments from Chicago area municipal groups representing suburban areas in which, for the most part, locomotive horns are not routinely sounded. The Chicago area Council of Mayors, which represents over 200 cities and villages with over 4 million residents outside of Chicago, provided valuable information to FRA as did the West Central Municipal Conference and the West Suburban Mass Transit District, both of suburban Chicago.

Another association of suburban Chicago local governments, the DuPage [County] Mayors and Managers Conference, provided comments and information. Additionally, FRA officials met with many Members of Congress, who have invited FRA to their districts and have provided citizens and local officials with the opportunity to express their views on this rulemaking process. These exchanges, and others conducted directly through FRA's regional crossing managers, have been very valuable in identifying the need for flexibility in preparing the proposed rule.

Under 49 U.S.C. 20106, issuance of this regulation preempts any State law, rule, regulation, order, or standard covering the same subject matter, except a provision necessary to eliminate or reduce an essentially local safety hazard, that is not incompatible with Federal law or regulation and does not unreasonably burden interstate commerce. For further discussion of the effect of this rule on State and local laws and ordinances, *see* § 222.7 and its accompanying discussion.

As noted, this rulemaking is required by 49 U.S.C. 20153. The statute both requires that the Department issue this rule and sets out clear guidance as to the structure of such rule. The statute clearly and unambiguously requires the Department to issue rules requiring locomotive horns to be sounded at every public grade crossing. The Department has no discretion in as to this aspect of the rule. The statute also makes clear that the Federal government must have a leading role in establishing the framework for providing exceptions to the requirement that horns sound at every public crossing. While some States and communities expressed opposition to Federal involvement in this area which historically has been subject to State regulation, the majority of State and local community commenters recognized and accepted the statutorily required Federal involvement. Of concern to many of these commenters, however, was the issue as to whether States or local communities should have primary responsibility for creation of quiet zones. As further discussed in the section-by-section analysis of § 222.37, "Who may establish a quiet zone?", States generally felt that they should have a primary role in establishing quiet zones and in administering a quiet zone. Comments from local governments tended to support the contrary view that local political subdivisions should establish quiet zones. A review of § 20153 indicates a clear Congressional preference that decision-makers be local authorities. This Interim Final Rule provides non-Federal parties extensive involvement in decision-making pertaining to the creation of quiet zones. However, given the nature of the competing interests of State and local governments in this area, FRA could not fully meet the concerns of both groups. For the reasons detailed in the above section-by-section analysis, the concerns of local communities have been substantially met.

F. Compliance With the Unfunded Mandates Reform Act of 1995

Pursuant to the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) each Federal agency "shall, unless otherwise prohibited by law, assess the effects of Federal Regulatory actions on State, local, and tribal governments, and the private sector (other than to the extent that such regulations incorporate requirements specifically set forth in law)." Sec. 201. Section 202 of the Act further requires that "before promulgating any general notice of proposed rulemaking that is likely to result in promulgation of any rule that includes any Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted annually for inflation) in any 1 year, and before promulgating any final rule for which a general notice of proposed rulemaking was published, the agency shall prepare a written statement * * *" detailing the effect on State, local and tribal governments and the private sector. The rule issued today will not result in the expenditure, in the aggregate, of $100,000,000 or more in any one year, and thus preparation of a statement is not required.

G. Energy Impact

Executive Order 13211 requires Federal agencies to prepare a Statement of Energy Effects for any "significant energy action." 66 FR 28355 (May 22, 2001). Under the Executive Order, a "significant energy action" is defined as any action by an agency (normally published in the **Federal Register**) that promulgates or is expected to lead to the promulgation of a final rule or regulation, including notices of inquiry, advance notices of proposed rulemaking, and notices of proposed rulemaking: (1)(i) That is a significant regulatory action under Executive Order 12866 or any successor order, and (ii) is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (2) that is designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. FRA has evaluated this Interim Final Rule in accordance with Executive Order 13211 and has determined that this Final Rule is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Consequently, FRA has determined that this regulatory action is not a "significant energy action" within the meaning of Executive Order 13211.

18. Privacy Act Statement

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment), if submitted on behalf of an association, business, labor union, *etc.*). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (volume 65, Number 70; Pages 19477–78) or you may visit *http://dms.dot.gov*.

List of Subjects

49 CFR Part 222

Administrative practice and procedure, Penalties, Railroad safety, Reporting and recordkeeping requirements.

49 CFR Part 229

Locomotives, Penalties, Railroad safety.

■ In consideration of the foregoing, FRA is amending chapter II, subtitle B of title 49, Code of Federal Regulations as follows:

■ 1. Part 222 is added to read as follows:

PART 222—USE OF LOCOMOTIVE HORNS AT PUBLIC HIGHWAY-RAIL GRADE CROSSINGS

Subpart A—General

Sec.
222.1 What is the purpose of this regulation?
222.3 What areas does this regulation cover?
222.5 What railroads does this regulation apply to?
222.7 What is this regulation's effect on State and local laws and ordinances?
222.9 Definitions.
222.11 What are the penalties for failure to comply with this regulation?
222.13 Who is responsible for compliance?
222.15 How does one request a waiver of a provision of this regulation?

Subpart B—Use of Locomotive Horns

222.21 When must a locomotive horn be used?
222.23 How does this regulation affect sounding of a horn during an emergency or other situations?
222.25 How does this rule affect private highway-rail grade crossings?

Subpart C—Exceptions to the Use of the Locomotive Horn

222.31 [Reserved]

Silenced Horns at Individual Crossings

222.33 Can locomotive horns be silenced at an individual public highway-rail grade crossing which is not within a quiet zone?

Silenced Horns at Groups of Crossings—Quiet Zones

222.35 What are minimum requirements for quiet zones?
222.37 Who may establish a quiet zone?
222.39 How is a quiet zone established?
222.41 How does this rule affect Pre-Rule Quiet Zones?
222.43 What notices and other information are required to establish a quiet zone?
222.45 When is a railroad required to cease routine use of locomotive horns at crossings?
222.47 What periodic updates are required?
222.49 Who may file Grade Crossing Inventory Forms?
222.51 Under what conditions will FRA review and terminate quiet zone status?
222.53 What are the requirements for supplementary and alternative safety measures?
222.55 How are new supplementary or alternative safety measures approved?
222.57 Can parties seek review of the Associate Administrator's actions?
222.59 When may a wayside horn be used?
Appendix A to Part 222—Approved Supplementary Safety Measures
Appendix B to Part 222—Alternative Safety Measures
Appendix C to Part 222—Guide to Establishing Quiet Zones
Appendix D to Part 222—Determining Risk Levels
Appendix E to Part 222—Requirements for Wayside Horns
Appendix F to Part 222—Diagnostic Team Considerations
Appendix G to Part 222—Schedule of Civil Penalties

Authority: 49 U.S.C. 20103, 20107, 20153, 21301, 21304; 49 CFR 1.49.

Subpart A—General

§ 222.1 What is the purpose of this regulation?

The purpose of this part is to provide for safety at public highway-rail grade crossings by requiring locomotive horn use at public highway-rail grade crossings except in quiet zones established and maintained in accordance with this part.

§ 222.3 What areas does this regulation cover?

This part prescribes standards for sounding locomotive horns when locomotives approach and pass through public highway-rail grade crossings. This part also provides standards for the creation and maintenance of quiet zones within which locomotive horns need not be sounded.

§ 222.5 What railroads does this regulation apply to?

This part applies to all railroads except:

(a) A railroad that exclusively operates freight trains only on track which is not part of the general railroad system of transportation;

(b) Passenger railroads that operate only on track which is not part of the general railroad system of transportation and which operate at a maximum speed of 15 miles per hour; and

(c) Rapid transit operations within an urban area that are not connected to the general railroad system of transportation. *See* 49 CFR part 209, appendix A for the definitive statement of the meaning of the preceding sentence.

§ 222.7 What is this regulation's effect on State and local laws and ordinances?

(a) Under 49 U.S.C. 20106, issuance of this part preempts any State law, rule, regulation, or order covering the same subject matter, except an additional or more stringent law, regulation, or order that is necessary to eliminate or reduce an essentially local safety hazard; is not incompatible with a law, regulation, or order of the United States government; and does not unreasonably burden interstate commerce. However, except as provided in § 222.25, this part does not cover the subject matter of the routine sounding of locomotive horns at private highway-rail grade crossings.

(b) Inclusion of SSMs and ASMs in this part or approved subsequent to issuance of this part does not constitute federal preemption of State law regarding whether those measures may be used for traffic control. Individual states may continue to determine whether specific Supplementary Safety Measures (SSMs) or Alternative Safety Measures (ASMs) are appropriate traffic control measures for that State, consistent with Federal Highway Administration regulations and the Manual on Uniform Traffic Control Devices (MUTCD). However, inclusion of SSMs and ASMs in this part does constitute federal preemption of State law concerning the sounding of train horns in relation to the use of those measures.

§ 222.9 Definitions.

As used in this part—

Administrator means the Administrator of the Federal Railroad Administration or the Administrator's delegate.

Alternative safety measures (ASM) means a safety system or procedure, other than an SSM, established in accordance with this part which is provided by the appropriate traffic control authority or law enforcement authority and which, after individual review and analysis by the Associate Administrator, is determined to be an effective substitute for the locomotive horn in the prevention of highway-rail casualties at specific highway-rail grade crossings. Appendix B to this part lists such measures.

Associate Administrator means the Associate Administrator for Safety of the Federal Railroad Administration or the Associate Administrator's delegate.

Channelization device means one of a series of highly visible vertical markers placed between opposing highway lanes designed to alert or guide traffic around an obstacle or to direct traffic in a particular direction. "Tubular markers" and "vertical panels" as described in sections 6F.57 and 6F.58, respectively, of the MUTCD, are acceptable channelization devices for purposes of this part. Additional design specifications are determined by the standard traffic design specifications used by the governmental entity constructing the channelization device.

Crossing Corridor Risk Index means a number reflecting a measure of risk to the motoring public at public grade crossings along a rail corridor, calculated in accordance with the procedures in appendix D of this part, representing the average risk at each public crossing within the corridor. This risk level is determined by averaging among all public crossings within the corridor, the product of the number of predicted collisions per year and the predicted likelihood and severity of casualties resulting from those collisions at each public crossing within the corridor.

Diagnostic team as used in this part, means a group of knowledgeable representatives of parties of interest in a highway-rail grade crossing, organized by the public authority responsible for that crossing, who, using crossing safety management principles, evaluate conditions at a grade crossing to make determinations or recommendations for the public authority concerning safety needs at that crossing.

Effectiveness rate means a number between zero and one which represents the reduction of the likelihood of a collision at a public highway-rail grade crossing as a result of the installation of an SSM or ASM when compared to the same crossing equipped with conventional active warning systems of flashing lights and gates. Zero effectiveness means that the SSM or ASM provides no reduction in the probability of a collision, while an effectiveness rating of one means that the SSM or ASM is totally effective in reducing collisions. Measurements between zero and one reflect the percentage by which the SSM or ASM reduces the probability of a collision.

FRA means the Federal Railroad Administration.

Grade Crossing Inventory Form means the U.S. DOT National Highway-Rail Grade Crossing Inventory Form, FRA Form F6180.71. This form is available through the FRA's Office of Safety, or on FRA's Web site at *http://www.fra.dot.gov*.

Locomotive means a piece of on-track equipment other than hi-rail, specialized maintenance, or other similar equipment—

(1) With one or more propelling motors designed for moving other equipment;

(2) With one or more propelling motors designed to carry freight or passenger traffic or both; or

(3) Without propelling motors but with one or more control stands.

Locomotive horn means a locomotive air horn, steam whistle, or similar audible warning device (see 49 CFR 229.129) mounted on a locomotive or control cab car. The terms "locomotive horn", "train whistle", "locomotive whistle", and "train horn" are used interchangeably in the railroad industry.

Median means the portion of a divided highway separating the travel ways for traffic in opposite directions.

MUTCD means the Manual on Traffic Control Devices published by the Federal Highway Administration.

Nationwide Significant Risk Threshold means a number reflecting a measure of risk, calculated on a nationwide basis, which reflects the average level of risk to the motoring public at public highway-rail grade crossings equipped with flashing lights and gates and at which locomotive horns are sounded. For purposes of this rule, a risk level above the Nationwide Significant Risk Threshold represents a significant risk with respect to loss of life or serious personal injury. The Nationwide Significant Risk Threshold is calculated in accordance with the procedures in Appendix D of this part. Unless otherwise indicated, references in this part to the Nationwide Significant Risk Threshold reflect its level as last published by FRA.

New Quiet Zone means a segment of a rail line within which is situated one or a number of consecutive public highway-rail crossings at which routine sounding of locomotive horns is restricted pursuant to this part and which does not qualify as a Pre-Rule Quiet Zone.

Non-traversable curb means a highway curb designed to discourage a motor vehicle from leaving the roadway. Such curb used where highway speeds do not exceed 40 miles per hour, is more than six inches but not more than nine inches high. If not equipped with reboundable, reflectorized vertical markers, paint and reflective beads should be applied to the curb for night visibility. Additional design specifications are determined by the standard traffic design specifications used by the governmental entity constructing the curb.

Power-out indicator means a device which is capable of indicating to trains approaching a grade crossing equipped with an active warning system whether commercial electric power is activating the warning system at that crossing. This term includes remote health monitoring of grade crossing warning systems if such monitoring system is equipped to indicate power status.

Pre-Rule Quiet Zone means a segment of a rail line within which is situated one or a number of consecutive public highway-rail crossings at which State statutes or local ordinances restricted the routine sounding of locomotive horns, or at which locomotive horns did not sound due to formal or informal agreements between the community and the railroad or railroads, and at which such statutes, ordinances or agreements were in place and enforced or observed as of October 9, 1996 and on December 18, 2003.

Private highway-rail crossing means, for purposes of this part, a highway-rail at grade crossing which is not a public highway-rail grade crossing.

Public authority means the public entity responsible for safety and maintenance of the roadway crossing the railroad tracks at a public highway-rail grade crossing. This term includes the traffic control authority or law enforcement authority, or the governmental jurisdiction having responsibility for motor vehicle safety at the crossing.

Public highway-rail grade crossing means, for purposes of this part, a location where a public highway, road, or street, including associated sidewalks or pathways, crosses one or more railroad tracks at grade. In the event a public authority maintains the roadway on at least one side of the crossing, the crossing is considered a public crossing for purposes of this part.

Quiet zone means a segment of a rail line, within which is situated one or a number of consecutive public highway-rail crossings at which locomotive horns are not routinely sounded.

Quiet Zone Risk Index means a measure of risk to the motoring public which reflects the Crossing Corridor Risk Index for a quiet zone, after adjustment to account for increased risk due to lack of locomotive horn use at the crossings within the quiet zone (if horns are presently sounded at the crossings), and reduced risk due to implementation, if any, of SSMs and ASMs within the quiet zone. The Quiet Zone Risk Index is calculated in accordance with the procedures in Appendix D of this part.

Railroad means any form of non-highway ground transportation that runs on rails or electromagnetic guideways and any entity providing such transportation, including:

(1) Commuter or other short-haul railroad passenger service in a metropolitan or suburban area and commuter railroad service that was operated by the Consolidated Rail Corporation on January 1, 1979; and

(2) High speed ground transportation systems that connect metropolitan areas, without regard to whether those systems use new technologies not associated with traditional railroads; but does not include rapid transit operations in an urban area that are not connected to the general railroad system of transportation.

Relevant collision means a collision at a highway-rail grade crossing between a train and a motor vehicle, excluding the following: a collision resulting from an activation failure of an active grade crossing warning system; a collision in which there is no driver in the motor vehicle; or a collision in which the highway vehicle struck the side of the train beyond the fourth locomotive unit or rail car.

Supplementary safety measure (SSM) means a safety system or procedure established in accordance with this part which is provided by the appropriate traffic control authority or law enforcement authority responsible for safety at the highway-rail grade crossing, that is determined by the Associate Administrator to be an effective substitute for the locomotive horn in the prevention of highway-rail casualties. Appendix A to this part lists such SSMs.

Waiver means a temporary or permanent modification of some or all of the requirements of this part as they apply to a specific party under a specific set of facts. Waiver does not refer to the process of establishing quiet zones or approval of quiet zones in accordance with the provisions of this part.

Wayside horn means a stationary horn located at a highway rail grade crossing, designed to provide, upon the approach of a locomotive or train, audible warning to oncoming motorists of the approach of a train.

§ 222.11 What are the penalties for failure to comply with this regulation?

Any person who violates any requirement of this part or causes the violation of any such requirement is subject to a civil penalty of least $500 and not more than $11,000 per violation, except that: penalties may be assessed against individuals only for willful violations, and, where a grossly negligent violation or a pattern of repeated violations has created an imminent hazard of death or injury to persons, or has caused death or injury, a penalty not to exceed $22,000 per violation may be assessed. Each day a violation continues shall constitute a separate offense. Any person who knowingly and willfully falsifies a record or report required by this part may be subject to criminal penalties under 49 U.S.C. 21311. Appendix G contains a schedule of civil penalty amounts used in connection with this part.

§ 222.13 Who is responsible for compliance?

Any person, including but not limited to a railroad, contractor for a railroad, or a local or State governmental entity that performs any function covered by this part, must perform that function in accordance with this part.

§ 222.15 How does one obtain a waiver of a provision of this regulation?

(a) Except as provided in paragraph (b), two parties must jointly file a petition (request) for a waiver. They are the railroad owning or controlling operations over the railroad tracks crossing the public highway-rail grade crossing and the public authority which has jurisdiction over the roadway crossing the railroad tracks.

(b) If the railroad and the public authority cannot reach agreement to file a joint petition, either party may file a request for a waiver; however, the filing party must specify in its petition the steps it has taken in an attempt to reach agreement with the other party. The filing party must also provide the other party with a copy of the petition filed with FRA.

(c) Each petition for waiver must be filed in accordance with 49 CFR part 211.

(d) If the Administrator finds that a waiver of compliance with a provision of this part is in the public interest and consistent with the safety of highway and railroad users, the Administrator may grant the waiver subject to any conditions the Administrator deems necessary.

Subpart B—Use of Locomotive Horns

§ 222.21 When must a locomotive horn be used?

(a) Except as provided in this part, the locomotive horn on the lead locomotive of a train, lite locomotive consist, individual locomotive, or lead cab car shall be sounded when such locomotive or lead car is approaching and passes through each public highway-rail grade crossing. Sounding of the locomotive horn with two long, one short, and one long blast shall be initiated at a location so as to be in accord with paragraph (b) of this section and shall be repeated or prolonged until the locomotive or train occupies the crossing. This pattern may be varied as necessary where crossings are spaced closely together.

(b) The locomotive horn shall begin to be sounded at least 15 seconds, but no more than 20 seconds, before the locomotive enters the crossing, but in no event shall a locomotive horn sounded in accordance with paragraph (a) of this section be sounded more than one-quarter mile (1,320 feet) in advance of the nearest public highway-rail grade crossing.

§ 222.23 How does this regulation affect sounding of a horn during an emergency or other situations?

(a)(1) Notwithstanding any other provision of this part, a locomotive engineer may sound the locomotive horn to provide a warning to vehicle operators, pedestrians, trespassers or crews on other trains in an emergency situation if, in the locomotive engineer's sole judgment, such action is appropriate in order to prevent imminent injury, death or property damage.

(2) Notwithstanding any other provision of this part, including provisions addressing the establishment of quiet zones, limits on the length of time in which a horn may be sounded, or installation of wayside horns within quiet zones, this part does not preclude the sounding of locomotive horns in emergency situations, nor does it impose a legal duty to sound the locomotive horn in such situations.

(b) Nothing in this part restricts the use of the locomotive horn where active warning devices have malfunctioned and use of the horn is required by one of the following sections of this Chapter: §§ 234.105; 234.106; or 234.107, or where warning systems are temporarily out of service during inspection, maintenance, or testing. Nothing in this part restricts the use of the locomotive horn for purposes other than highway-rail crossing safety (*e.g.*, to announce the approach of the train to roadway workers in accordance with a program adopted under part 214 of this Chapter, or where required for other purposes under the railroad's operating rules).

§ 222.25 How does this rule affect private highway-rail grade crossings?

This rule does not require the routine sounding of locomotive horns at private highway-rail grade crossings. Except as specified in this section, this part is not meant to address the subject of private grade crossings and is not intended to affect present State or local laws or orders, or private contractual or other arrangements regarding the routine sounding of locomotive horns at private highway-rail grade crossings.

(a) Private highway-rail grade crossings may be included in a quiet zone.

(b) Private highway-rail grade crossings which are located in New Quiet Zones and which allow access to the public, or which provide access to active industrial or commercial sites, may be included in a quiet zone only if a diagnostic team evaluates the crossing and the crossing is equipped or treated in accord with the recommendations of such diagnostic team.

(c)(1) At a minimum, every private highway-rail grade crossing within a New Quiet Zone shall be marked by a crossbuck and a "STOP" sign, each of which shall conform to the standards contained in the MUTCD, and shall be equipped with advance warning signs in compliance with § 222.35(c).

(2) At a minimum, every private highway-rail grade crossing within a Pre-Rule Quiet Zone shall, by December 18, 2006, be marked by a crossbuck and a "STOP" sign, each of which shall conform to the standards contained in the MUTCD, and shall be equipped with advance warning signs in compliance with § 222.35(c)

Subpart C—Exceptions to the Use of the Locomotive Horn

§ 222.31 [Reserved]

Silenced Horns at Individual Crossings

§ 222.33 Can locomotive horns be silenced at an individual public highway-rail grade crossing which is not within a quiet zone?

(a) A railroad operating over an individual public highway-rail crossing, may, at its discretion, cease the sounding of the locomotive horn if the locomotive speed is 15 miles per hour or less and train crew members, or appropriately equipped flaggers, as defined in 49 CFR 234.5, flag the crossing to provide warning of approaching trains to motorists.

(b) This section does not apply where active grade crossing warning devices have malfunctioned and use of the horn is required by 49 CFR 234.105, 234.106, or 234.107.

Silenced Horns at Groups of Crossings—Quiet Zones

§ 222.35 What are minimum requirements for quiet zones?

The following requirements apply to quiet zones established in conformity with this part.

(a) *Minimum length.* (1) The minimum length of a New Quiet Zone established under this part shall be one-half mile along the length of railroad right-of-way.

(2) The length of a Pre-Rule Quiet Zone may continue unchanged from that which existed as of October 9, 1996. Because the addition of any crossing to a Pre-Rule Quiet Zone ends the grandfathered status of that quiet zone, the New Quiet Zone resulting from the addition of one or more crossings to a Pre-Rule Quiet Zone shall be at least one-half mile in length and shall comply with all requirements applicable to New Quiet Zones. The deletion of any crossing from a Pre-Rule Quiet Zone, with the exception of a grade-separation or crossing closure, must result in a quiet zone of at least one-half mile in length in order to retain Pre-Rule Quiet Zone status.

(3) A quiet zone may include highway-rail grade crossings on a segment of rail line crossing more than one political jurisdiction.

(b) *Active grade crossing warning devices.* (1) Each public highway-rail grade crossing in a New Quiet Zone established under this subpart must be equipped, no later than the implementation date of the New Quiet Zone, with active grade crossing warning devices comprising both flashing lights and gates which control traffic over the crossing and that conform to the standards contained in the MUTCD. Such warning devices shall be equipped with constant warning time devices, if reasonably practical, and power-out indicators.

(2) Pre-Rule Quiet Zones must retain, and may upgrade the grade crossing safety warning system which existed as of December 18, 2003. Any such upgrade shall include constant warning time devices, where reasonably practical, and power-out indicators. In no event may the grade crossing safety warning system which existed as of December 18, 2003, be downgraded. Risk reduction resulting from upgrading to flashing lights or gates may be credited in calculating the quiet zone's Quiet Zone Risk Index.

(c) *Advance warning signs.* (1) Subject to paragraph (c)(2) of this section, each highway approach to every public and private highway-rail grade crossing within a Pre-Rule Quiet Zone or New Quiet Zone shall be equipped with an advance warning sign which advises the motorist that train horns are not sounded at the crossing. Such sign shall conform to the standards contained in the MUTCD issued by the Federal Highway Administration.

(2) Each highway approach to every public and private highway-rail grade crossing in a Pre-Rule Quiet Zone shall be equipped with such advance warning signs described in paragraph (c)(1) of this section by December 18, 2006.

(d) All private crossings within the quiet zone must be treated in accordance with this section and § 222.25.

(e) All public crossings within the quiet zone must be in compliance with requirements of the MUTCD.

§ 222.37 Who may establish a quiet zone?

(a) A public authority may establish quiet zones that are consistent with the provisions of this part. If a proposed quiet zone includes public grade crossings under the authority and control of more than one public authority (such as a county road and a State highway crossing the railroad tracks at different crossings), both public authorities must agree to establishment of the quiet zone, and must jointly, or by delegation provided to one of the authorities, take such actions as are required by this part.

(b) A public authority may establish quiet zones irrespective of State laws covering the subject matter of sounding or silencing locomotive horns at public highway-rail grade crossings. Nothing in this part, however, is meant to affect any other applicable role of State agencies or the Federal Highway Administration in decisions regarding funding or construction priorities for grade crossing safety projects, selection of traffic control devices, or engineering standards for roadways or traffic control devices.

(c) A State agency may provide administrative and technical services to public authorities by advising them, acting on their behalf, or acting as a central contact point in dealing with FRA; however, any public authority eligible to establish a quiet zone under this part may do so.

§ 222.39 How is a quiet zone established?

(a) *Public authority designation.* This paragraph (a) describes how a quiet zone may be designated by a public authority without the need for formal application to, and approval by FRA. If a public authority complies with either paragraph (a)(1), (2), or (3) of this section, and complies with the information and notification provisions of § 222.43, a public authority may designate a quiet zone without the necessity for FRA review and approval.

(1) A quiet zone may be established by implementing, at every public highway-rail grade crossing within the quiet zone, one or more SSMs identified in Appendix A of this part.

(2) A quiet zone may be established if the Quiet Zone Risk Index is at, or below, the Nationwide Significant Risk Threshold, as follows:

(i) If the Quiet Zone Risk Index is already at, or below, the Nationwide Significant Risk Threshold without being reduced by implementation of SSMs; or

(ii) If SSMs are implemented which are sufficient to reduce the Quiet Zone Risk Index to a level at, or below, the Nationwide Significant Risk Threshold.

(3) A quiet zone may be established if SSMs are implemented which are sufficient to reduce the Quiet Zone Risk Index to a level at or below the risk level which would exist if locomotive horns sounded at all public crossings in the quiet zone.

(b) *Public authority application to FRA.* (1) A public authority may apply to the Associate Administrator for approval of a quiet zone which does not meet the standards for public authority designation under paragraph (a) of this section, but in which it is proposed that one or more safety measures be implemented. Such proposed quiet zone may include only ASMs, or a combination of ASMs and SSMs at various crossings within the quiet zone. Note that an "SSM" which does not fully comply with the requirements for an SSM under Appendix A, is considered to be an ASM. The public authority's application must:

(i) Contain an accurate, complete and current Grade Crossing Inventory Form for each public and private highway-rail grade crossing within the proposed quiet zone;

(ii) Contain sufficient detail concerning the present safety measures at the public highway-rail grade crossings proposed to be included in the quiet zone to enable the Associate Administrator to evaluate their effectiveness;

(iii) Contain detailed information as to which SSMs or ASMs are proposed to be implemented and at which public or private highway-rail grade crossings within the proposed quiet zone, including membership and recommendations of the diagnostic team, if any, which reviewed the proposed quiet zone;

(iv) Contain a commitment to implement the proposed safety measures within the proposed quiet zone;

(v) Demonstrate through data and analysis that the proposed implementation of these measures will cause a reduction in the Quiet Zone Risk Index to, or below, either the risk level which would exist if locomotive horns sounded at all crossings in the quiet zone or to a risk level at, or below, the Nationwide Significant Risk Threshold; and

(vi) Be provided to the parties listed in § 222.43(a)(1) in the manner specified in that section.

(2)(i) The Associate Administrator will approve the quiet zone if, in the Associate Administrator's judgment, the public authority is in compliance with paragraph (b)(1) of this section and has satisfactorily demonstrated that the SSMs and ASMs proposed by the public authority result in a Quiet Zone Risk Index which is either:

(A) At or below the risk level which would exist if locomotive horns sounded at all crossings in the quiet zone or

(B) At, or below, the Nationwide Significant Risk Threshold.

(ii) The Associate Administrator may include in any decision of approval such conditions as may be necessary to ensure that the proposed safety improvements are effective. If the Associate Administrator does not approve the quiet zone, the Associate Administrator describes in the decision the basis upon which the decision was made. A decision denying approval may be reviewed as provided in § 222.57(b).

(c) Appendix C contains guidance on how to create a quiet zone.

§ 222.41 How does this rule affect Pre-Rule Quiet Zones?

(a) *Pre-Rule Quiet Zones which qualify for automatic approval.* A Pre-Rule Quiet Zone will be considered automatically approved and may remain in effect, subject to § 222.51, if the Pre-Rule Quiet Zone is in compliance with § 222.35 (minimum requirements for quiet zones) and § 222.43 (notice and information requirements, with the exception of providing advance notice) and the Pre-Rule Quiet Zone:

(1) Has at every public highway-rail grade crossing within the quiet zone, one or more SSMs identified in Appendix A of this part; or

(2) The Quiet Zone Risk Index as last published by FRA is at, or below, the Nationwide Significant Risk Threshold; or

(3) The Quiet Zone Risk Index as last published by FRA is above the Nationwide Significant Risk Threshold but less than twice the Nationwide Significant Risk Threshold and there have been no relevant collisions at any public grade crossing within the quiet zone for the five years preceding December 18, 2003.

(b) *Pre-Rule Quiet Zones which do not qualify for automatic approval.* (1) If a Pre-Rule Quiet Zone does not qualify for automatic approval under paragraph (a) of this section, existing restrictions may, at the public authority's discretion, remain in place on an interim basis under the provisions of this paragraph (b) and upon compliance with § 222.43 (notice and information requirements, with the exception of providing advance notice). Continuation of a quiet zone beyond the interim periods specified in this paragraph will require implementation of SSMs or ASMs in accord with § 222.39.

(2) In order to provide time for the public authority to plan for and implement quiet zones which are in compliance with the requirements of this part, a public authority may continue locomotive horn restrictions at Pre-Rule Quiet Zones which do not qualify for automatic approval for a period of five years from December 18, 2003, provided that, the public authority has, within three years of December 18, 2003, filed with the Associate Administrator a detailed plan for establishing a quiet zone under this part, including, in the case of a plan requiring approval under § 222.39(b), all of the required elements of filings under that paragraph together with a timetable for implementation of safety improvements.

(3) Locomotive horn restrictions may continue for an additional three years beyond the five year period permitted by paragraph (b)(2) of this section, if,

(i) Prior to December 18, 2006, the appropriate State agency provides to the Associate Administrator: a comprehensive State-wide implementation plan and funding commitment for implementing improvements at Pre-Rule Quiet Zones which do not qualify for automatic approval under paragraph (a) of this section, which, when implemented, would enable them to qualify for a quiet zone under this part; and

(ii) Prior to December 18, 2007, either physical improvements are initiated at a portion of the crossings within the quiet zone, or the appropriate State agency has participated in quiet zone improvements in one or more jurisdictions elsewhere within the State.

(4) In the event that the safety improvements planned for the quiet zone require approval of FRA under § 222.39(b), the public authority should apply for such approval prior to June 19, 2006, to assure that FRA has ample time in which to review such application prior to the end of the extension period.

§ 222.43 What notices and other information are required to establish a quiet zone?

(a) (1) Upon compliance with §§ 222.39(a) or 222.39(b) resulting in the establishment or approval of a quiet zone, or of its continuation under § 222.41, the public authority shall provide written notice, by certified mail, return receipt requested, of the quiet zone implementation to: all railroads operating over the public highway-rail grade crossings within the quiet zone; the highway or traffic control authority

or law enforcement authority having control over vehicular traffic at the crossings within the quiet zone; the landowner having control over any private crossings within the quiet zone; the State agency responsible for highway and road safety; and the Associate Administrator.

(2)(i) Notice of the establishment of a quiet zone established under the provisions of § 222.39 (New Quiet Zones) shall provide the date upon which routine locomotive horn use at grade crossings shall cease, but in no event shall the date be earlier than 21 days after the date of mailing of such written notification.

(ii) Notice of the continuation of a quiet zone under §§ 222.41(a) and (b) (Pre-Rule Quiet Zone) shall be served no later than December 18, 2004.

(3) The notice shall list the grade crossings within the quiet zone, identified by both U.S. DOT National Highway-Rail Grade Crossing Inventory Number and street or highway name. The notice shall also include specific reference to the regulatory provision which provides the basis for establishment or continuation of the quiet zone, citing as appropriate, either § 222.39(a)(1), 222.39(a)(2)(i), 222.39(a)(2)(ii), 222.39(a)(3), 222.39(b), or 222.41. Reference to §§ 222.39(a)(1), (2), or (3) shall include a copy of the FRA web page containing the quiet zone data upon which the public authority relies. Reference to § 222.39(b) shall include a copy of FRA's notification of approval. Reference to § 222.41 shall include a statement as to how the quiet zone is in compliance with the requirements of that section and, if appropriate, shall include a copy of the FRA web page containing the quiet zone data upon which the public authority relies. The notice shall be accompanied by a certificate of service showing to whom and by what means the notice was provided.

(b) The following must be submitted to the Associate Administrator together with the notification required in paragraph (a) of this section:

(1) An accurate and complete Grade Crossing Inventory Form for each public and private highway-rail grade crossing within the quiet zone, dated within six months prior to designation or FRA approval of the quiet zone;

(2) An accurate, complete and current Grade Crossing Inventory Form reflecting SSMs and ASMs in place upon establishment of the quiet zone. SSMs or ASMs that cannot be fully described on the Inventory Form shall be separately described;

(3) The name and title of the person responsible for monitoring compliance with the requirements of this part and the manner in which that person can be contacted;

(4) A list of all parties notified in accordance with paragraph (a) of this section, together with copies of the certificates of service showing to whom and by what means the notice was provided; and

(5) A statement signed by the chief executive officer of each public authority establishing or continuing a quiet zone under this part, in which the official shall certify that responsible officials of the public authority have reviewed documentation prepared by or for FRA, and filed in Docket No. FRA–1999–6439, sufficient to make an informed decision regarding the advisability of establishing the quiet zone. FRA documents which may be of interest are found on FRA's Web site at *http://www.fra.dot.gov.*

§ 222.45 When is a railroad required to cease routine use of locomotive horns at crossings?

After notification from a public authority, pursuant to § 222.43, that a quiet zone is being established, a railroad shall cease routine use of the locomotive horn at all public and private highway-rail grade crossings identified by the public authority upon the date set by the public authority.

§ 222.47 What periodic updates are required?

(a) *Quiet zones with SSMs at each public crossing.* This paragraph addresses quiet zones established pursuant to § 222.39(a)(1) and § 222.41(a)(1) (quiet zones with an SSM implemented at every public crossing within the quiet zone). Between 4½ and 5 years after the date of the original quiet zone implementation notice provided by the public authority to the FRA and relevant railroads under § 222.43(a), and between 4½ and 5 years after the last affirmation under this section, the public authority must:

(1) Affirm in writing to the Associate Administrator that the SSMs implemented within the quiet zone continue to conform to the requirements of Appendix A of this part. Copies of such affirmation must be provided to the parties identified in § 222.43(a) by certified mail; return receipt requested; and

(2) Provide to the Associate Administrator an up-to-date, accurate, and complete Grade Crossing Inventory Form for each public and private highway-rail grade crossing within the quiet zone.

(b) *Quiet zones which do not have a supplementary safety measure at each public crossing.* This paragraph addresses quiet zones established pursuant to §§ 222.39(a)(2) and (a)(3), § 222.39(b) and §§ 222.41(a)(2) and (a)(3) (quiet zones which do not have an SSM at every public crossing within the quiet zone). Between 2½ and 3 years after the date of the original quiet zone implementation notice provided by the public authority to the FRA and relevant railroads under § 222.43(a), and between 2½ and 3 years after the last affirmation under this section, the public authority must:

(1) Affirm in writing to the Associate Administrator that all SSMs and ASMs implemented within the quiet zone continue to conform to the requirements of Appendices A and B of this part or the terms of the Quiet Zone approval. Copies of such notification must be provided to the parties identified in § 222.43(a)(1) by certified mail, return receipt requested; and

(2) Must provide to the Associate Administrator an up-to-date, accurate, and complete Grade Crossing Inventory Form for each public and private highway-rail grade crossing within the quiet zone.

§ 222.49 Who may file Grade Crossing Inventory Forms?

(a) Grade Crossing Inventory Forms required to be filed with the Associate Administrator in accordance with §§ 222.43 and 222.47 may be filed by the public authority if, for any reason, such forms are not timely submitted by the State and railroad.

(b) Within 30 days after receipt of a written request of the public authority, the railroad owning the line of railroad that includes public or private highway rail grade crossings within the quiet zone or proposed quiet zone shall provide to the State and public authority sufficient current information regarding the grade crossing and the railroad's operations over the grade crossing to enable the State and public authority to complete the Grade Crossing Inventory Form.

§ 222.51 Under what conditions will FRA review and terminate quiet zone status?

(a) *New Quiet Zone—Annual risk review.* (1) FRA will annually calculate the Quiet Zone Risk Index for each quiet zone established pursuant to §§ 222.39(a)(2) (quiet zones established based on comparison with Nationwide Significant Risk Threshold), and 222.39(b)(2)(ii) (quiet zones established based on approval of FRA and that reduce risk to a level at, or below, the Nationwide Significant Risk Threshold). Annual risk reviews will not be conducted for quiet zones established

pursuant to §§ 222.39(a)(1) (quiet zones established by having an SSM at every public crossing within the quiet zone) and §§ 222.39(a)(3) and (b)(2)(i) (quiet zones established based on the risk level having been reduced to a level fully compensating for the absence of the train horn by use of SSMs). FRA will notify each public authority of the Quiet Zone Risk Index for the preceding calendar year for each such quiet zone in its jurisdiction.

(2) *Actions to be taken by public authority to retain quiet zone.* If the Quiet Zone Risk Index is above the Nationwide Significant Risk Threshold, the quiet zone will terminate six months from the date of receipt of notification from FRA that the Quiet Zone Risk Index exceeds the Nationwide Significant Risk Threshold, unless the public authority takes the following actions:

(i) Within six months after the date of receipt of notification from FRA that the Quiet Zone Risk Index exceeds the Nationwide Significant Risk Threshold, provide to the Associate Administrator a written commitment to lower the potential risk to the traveling public at the crossings within the quiet zone to a level at, or below, the Nationwide Significant Risk Threshold or to a level fully compensating for the absence of the train horn. Included in the commitment statement shall be a discussion of the specific steps to be taken by the public authority to increase safety at the crossings within the quiet zone; and

(ii) Within three years after the date of receipt of notification from FRA that the Quiet Zone Risk Index exceeds the Nationwide Significant Risk Threshold, complete implementation of SSMs or ASMs sufficient to reduce the Quiet Zone Risk Index to a level at, or below, the Nationwide Significant Risk Threshold, or to a level that fully compensates for the absence of the train horn, and receive approval from the Associate Administrator, under the procedures set forth in § 222.39(b), for continuation of the quiet zone. If the Quiet Zone Risk Index is reduced to a level that fully compensates for the absence of the train horn, the quiet zone will be considered to have been established pursuant to § 222.39(a)(3) and subsequent annual risk reviews will not be conducted for that quiet zone.

(iii) Failure to comply with paragraph (a)(2)(i) of this section shall result in the termination of the quiet zone six months after the date of receipt of notification from FRA that the Quiet Zone Risk Index exceeds the Nationwide Significant Risk Threshold. Failure to comply with paragraph (a)(2)(ii) of this section shall result in the termination of the quiet zone three years after the date of receipt of notification from FRA that the Quiet Zone Risk Index exceeds the Nationwide Significant Risk Threshold.

(b) *Pre-Rule Quiet Zone—Annual risk review.* (1) FRA will annually calculate the Quiet Zone Risk Index for each Pre-Rule Quiet Zone that qualified for automatic approval pursuant to §§ 222.41(a)(2) and (a)(3). FRA will notify each public authority of the Quiet Zone Risk Index for the preceding calendar year for each such quiet zone in its jurisdiction. FRA will also notify each public authority if a relevant collision occurred at a grade crossing within the quiet zone during the preceding calendar year.

(2) *Pre-Rule Quiet Zone authorized under § 222.41(a)(2).* (i) If a Pre-Rule Quiet Zone originally qualified for automatic approval because the Quiet Zone Risk Index was at, or below, the Nationwide Significant Risk Threshold (§ 222.41(a)(2)), the quiet zone may continue unchanged if the Quiet Zone Risk Index as last calculated by FRA remains at, or below, the Nationwide Significant Risk Threshold.

(ii) If the Quiet Zone Risk Index as last calculated by FRA is above the Nationwide Significant Risk Threshold, but is lower than twice the Nationwide Significant Risk Threshold and no relevant collisions have occurred at crossings within the quiet zone within the five years preceding the annual risk review, then the quiet zone may continue as though it originally received automatic approval pursuant to § 222.41(a)(3).

(iii) If the Quiet Zone Risk Index as last calculated by FRA is at, or above, twice the Nationwide Significant Risk Threshold, or if the Quiet Zone Risk Index is above the Nationwide Significant Risk Threshold, but is lower than twice the Nationwide Significant Risk Threshold *and* a relevant collision occurred at a crossing within the quiet zone within the preceding five calendar years, the quiet zone will terminate six months after the date of receipt of notification from FRA of the Nationwide Significant Risk Threshold level, unless the public authority takes the actions specified in paragraph (b)(4) of this section.

(3) *Pre-Rule Quiet Zone authorized under § 222.41(a)(3).* (i) If a Pre-Rule Quiet Zone originally qualified for automatic approval because the Quiet Zone Risk Index was above the Nationwide Significant Risk Threshold but was below twice the Nationwide Significant Risk Threshold and no relevant collisions had occurred within the five year qualifying period (§ 222.41(a)(3)), the quiet zone may continue unchanged if the Quiet Zone Risk Index as last calculated by FRA remains below twice the Nationwide Significant Risk Threshold and no relevant collisions occurred at a public grade crossing within the quiet zone during the preceding calendar year.

(ii) If the Quiet Zone Risk Index as last calculated by FRA is at, or above, twice the Nationwide Significant Risk Threshold, or if a relevant collision occurred at a public grade crossing within the quiet zone during the preceding calendar year, the quiet zone will terminate six months after the date of receipt of notification from FRA that the Quiet Zone Risk Index is at, or exceeds twice the Nationwide Significant Risk Threshold or that a relevant collision occurred at a crossing within the quiet zone, unless the public authority takes the actions specified in paragraph (b)(4) of this section.

(4) *Actions to be taken by the public authority to retain a quiet zone.* (i) Within six months after the date of FRA notification, the public authority shall provide to the Associate Administrator a written commitment to lower the potential risk to the traveling public at the crossings within the quiet zone by reducing the Quiet Zone Risk Index to a level at, or below, the Nationwide Significant Risk Threshold or to a level that fully compensates for the absence of the train horn. Included in the commitment statement shall be a discussion of the specific steps to be taken by the public authority to increase safety at the public crossings within the quiet zone; and

(ii) Within three years of the date of FRA notification, the public authority shall complete implementation of SSMs or ASMs sufficient to reduce the Quiet Zone Risk Index to a level at, or below, the Nationwide Significant Risk Threshold, or to a level that fully compensates for the absence of the train horn, and receive approval from the Associate Administrator, under the procedures set forth in § 222.39(b), for continuation of the quiet zone. If the Quiet Zone Risk Index is reduced to a level that fully compensates for the absence of the train horn, the quiet zone will be considered to have been established pursuant to § 222.39(a)(3) and subsequent annual risk reviews will not be conducted for that quiet zone.

(iii) Failure to comply with paragraph (b)(4)(i) of this section shall result in the termination of the quiet zone six months after the date of receipt of notification from FRA. Failure to comply with paragraph (b)(4)(ii) of this section shall result in the termination of the quiet

zone three years after the date of receipt of notification from FRA.

(c) *Review at FRA's initiative.* The Associate Administrator may, at any time, review the status of any quiet zone. If the Associate Administrator makes a preliminary determination that safety systems and measures do not fully compensate for the absence of the locomotive horn, or that there is a significant risk with respect to loss of life or serious personal injury, the Associate Administrator will provide written notice to the public authority and all parties listed in § 222.43(a) and will publish notice of the determination in the **Federal Register**. After providing an opportunity for comment, the Associate Administrator may require that additional safety measures be taken or that the quiet zone be terminated. The Associate Administrator's decision may be challenged in accordance with § 222.57(b). Nothing in this section is intended to limit the Administrator's emergency authority under 49 U.S.C. 20104 and 49 CFR part 211.

(d) *Notification of termination.* In the event that a quiet zone is terminated under the provisions of this section, it shall be the responsibility of the public authority to notify all parties listed in § 222.43(a) and in the manner specified in § 222.43(a), of such termination.

(e) *Requirement to sound the locomotive horn.* Upon receipt of notification pursuant to paragraph (d), or upon receipt of notification from FRA that the quiet zone is being terminated, railroads shall, within seven days, and in accordance with the provisions of this part, sound the locomotive horn when approaching and passing through every public highway-rail grade crossing within the former quiet zone.

§ 222.53 What are the requirements for supplementary and alternative safety measures?

(a) Approved SSMs are listed in appendix A of this part.

(b) Additional ASMs that may be included in a request for FRA approval of a quiet zone under § 222.39(b) are listed in appendix B of this part.

(c) The following do not, individually or in combination, constitute SSMs or ASMs: Standard traffic control device arrangements such as reflectorized crossbucks, STOP signs, flashing lights, or flashing lights with gates that do not completely block travel over the line of railroad, or traffic signals.

§ 222.55 How are new supplementary or alternative safety measures approved?

(a) The Associate Administrator may add new SSMs and standards to appendix A and new ASMs and standards to appendix B of this part when the Associate Administrator determines that such measures or standards are an effective substitute for the locomotive horn in the prevention of collisions and casualties at public highway-rail grade crossings.

(b) Interested parties may apply for approval from the Associate Administrator to demonstrate proposed new SSMs or ASMs to determine whether they are effective substitutes for the locomotive horn in the prevention of collisions and casualties at public highway-rail grade crossings.

(c) The Associate Administrator may, after notice and opportunity for comment, order railroad carriers operating over a public highway-rail grade crossing or crossings to temporarily cease the sounding of locomotive horns at such crossings to demonstrate proposed new SSMs or ASMs, provided that such proposed new SSMs or ASMs have been subject to prior testing and evaluation. In issuing such order, the Associate Administrator may impose any conditions or limitations on such use of the proposed new SSMs or ASMs which the Associate Administrator deems necessary in order to provide the level of safety at least equivalent to that provided by the locomotive horn.

(d) Upon completion of a demonstration of proposed new SSMs or ASMs, interested parties may apply to the Associate Administrator for their approval. Applications for approval shall be in writing and shall include the following:

(1) The name and address of the applicant;

(2) A description and design of the proposed new SSM or ASM;

(3) A description and results of the demonstration project in which the proposed SSMs or ASMs were tested;

(4) Estimated costs of the proposed new SSM or ASM; and

(5) Any other information deemed necessary.

(e) If the Associate Administrator is satisfied that the proposed safety measure fully compensates for the absence of the warning provided by the locomotive horn, the Associate Administrator will approve its use as an SSM to be used in the same manner as the measures listed in Appendix A of this part, or the Associate Administrator, may approve its use as an ASM to be used in the same manner as the measures listed in Appendix B of this part. The Associate Administrator may impose any conditions or limitations on use of the SSMs or ASMs which the Associate Administrator deems necessary in order to provide the level of safety at least equivalent to that provided by the locomotive horn.

(f) If the Associate Administrator approves a new SSM or ASM, the Associate Administrator will: notify the applicant, if any; publish notice of such action in the **Federal Register**; and add the measure to the list of approved SSMs or ASMs.

(g) A public authority or other interested party may appeal to the Administrator from a decision by the Associate Administrator granting or denying an application for approval of a proposed SSM or ASM or the conditions or limitations imposed on its use in accordance with § 222.57 .

§ 222.57 Can parties seek review of the Associate Administrator's actions?

(a) A public authority or other interested party may petition the Administrator for review of any decision by the Associate Administrator granting or denying an application for approval of a new SSM or ASM under § 222.55. The petition must be filed within 60 days of the decision to be reviewed, specify the grounds for the requested relief, and be served upon all parties identified in § 222.43(a). Unless the Administrator specifically provides otherwise, and gives notice to the petitioner or publishes a notice in the **Federal Register**, the filing of a petition under this paragraph does not stay the effectiveness of the action sought to be reviewed. The Administrator may reaffirm, modify, or revoke the decision of the Associate Administrator without further proceedings and shall notify the petitioner and other interested parties in writing or by publishing a notice in the **Federal Register**.

(b) A public authority may challenge a decision by the Associate Administrator to deny an application by that authority for approval of a quiet zone, or to require additional safety measures, or that a quiet zone be terminated, by filing a petition for reconsideration with the Associate Administrator. The petition must specify the grounds for the requested relief, be filed within 60 days of the decision to be reconsidered, and be served upon all parties identified in § 222.43(a). Upon receipt of a timely and proper petition, the Associate Administrator will provide the petitioner an opportunity to submit additional materials and for an informal hearing. Upon review of the additional materials and completion of any hearing requested, the Associate Administrator shall issue a decision on the petition that will be administratively final.

§ 222.59 When may a wayside horn be used?

(a) Notwithstanding any provisions in this part to the contrary:

(1) A wayside horn conforming to the requirements of Appendix E of this part may be used in lieu of a locomotive horn at any highway-rail grade crossing equipped with an active warning system consisting of, at a minimum, flashing lights and gates; and

(2) A wayside horn conforming to the requirements of Appendix E of this part may be installed within a quiet zone. For purposes of calculating the length of a quiet zone, the presence of a wayside horn at a highway-grade crossing within a quiet zone shall be considered in the same manner as a grade crossing treated with an SSM. A grade crossing equipped with a wayside horn shall not be considered in calculating the Quiet Zone Risk Index or Crossing Corridor Risk Index.

(b) A public authority installing a wayside horn at a grade crossing within a quiet zone shall identify by both the U.S. DOT National Highway-Rail Grade Crossing Inventory Number and street or highway name the grade crossing equipped with such wayside horn in its notice to railroads and other parties required by § 222.43.

(c) A public authority installing a wayside horn at a grade crossing outside a quiet zone shall provide written notice to the Associate Administrator and to each railroad operating over the grade crossing that a wayside horn is being installed and the date on which the wayside horn will be operational. The grade crossing shall be identified by both the U.S. DOT National Highway-Rail Grade Crossing Inventory Number and street or highway name. The public authority shall provide notification of the operational date at least 21 days in advance.

(d) A railroad operating over a grade crossing equipped with an operational wayside horn installed within a quiet zone pursuant to this section shall cease routine locomotive horn use at the grade crossing. A railroad operating over a grade crossing equipped with an operational wayside horn installed outside of a quiet zone may cease routine locomotive horn use by agreement with the public authority.

Appendix A to Part 222—Approved Supplementary Safety Measures

1. *Temporary Closure of a Public Highway-Rail Grade Crossing:* Close the crossing to highway traffic during designated quiet periods.

Effectiveness: 1.0.

Because an effective closure system prevents vehicle entrance onto the crossing, the probability of a collision with a train at the crossing is zero during the period the crossing is closed. Effectiveness would therefore equal 1. However, analysis should take into consideration that traffic would need to be redistributed among adjacent crossings or grade separations for the purpose of estimating risk following the silencing of train horns, unless the particular "closure" was accomplished by a grade separation.

Required:

a. The closure system must completely block highway traffic from entering the crossing.

b. The crossing must be closed during the same hours every day.

c. The crossing may only be closed during one period each 24-hours.

d. Barricades and signs used for closure of the roadway shall conform to the standards contained in the MUTCD.

e. Daily activation and deactivation of the system is the responsibility of the public authority responsible for maintenance of the street or highway crossing the railroad. The entity may provide for third party activation and deactivation; however, the public authority shall remain fully responsible for compliance with the requirements of this part.

f. The system must be tamper and vandal resistant to the same extent as other traffic control devices.

Recommended:

Signs for alternate highway traffic routes should be erected in accordance with MUTCD and State and local standards and should inform pedestrians and motorists that the streets are closed, the period for which they are closed, and that alternate routes must be used.

2. *Four-Quadrant Gate System:* Install gates at a crossing sufficient to fully block highway traffic from entering the crossing when the gates are lowered, including at least one gate for each direction of traffic on each approach.

Effectiveness:

Four-quadrant gates only, no presence detection: .82.

Four-quadrant gates only, with presence detection: .77.

Four-quadrant gates with traffic channelization of at least 60 feet (with or without presence detection): .92.

Required:

Four-quadrant gate systems shall conform to the standards for four-quadrant gates contained in the MUTCD, and shall in addition comply with the following:

a. When a train is approaching, all highway approach and exit lanes on both sides of the highway-rail crossing must be spanned by gates, thus denying to the highway user the option of circumventing the conventional approach lane gates by switching into the opposing (oncoming) traffic lane in order to enter the crossing and cross the tracks.

b. Crossing warning systems must be activated by use of constant warning time devices unless existing conditions at the crossing would prevent the proper operation of the constant warning time devices.

c. Crossing warning systems must be equipped with power-out indicators.

Note: Requirements b and c apply only to New Quiet Zones. Constant warning time devices and power-out indicators are not required to be added to existing warning systems in Pre-Rule Quiet Zones. However, if warning systems in Pre-Rule Quiet Zones are upgraded, or new warning systems are installed, constant warning time devices, if reasonably practical, and power-out indicators are required.

d. The gap between the ends of the entrance and exit gates (on the same side of the railroad tracks) when both are in the fully lowered, or down, position must be less than two feet if no median is present. If the highway approach is equipped with a median or a channelization device between the approach and exit lanes, the lowered gates must reach to within one foot of the median or channelization device, measured horizontally across the road from the end of the lowered gate to the median or channelization device or to a point over the edge of the median or channelization device. The gate and the median top or channelization device do not have to be at the same elevation.

e. "Break-away" channelization devices must be frequently monitored to replace broken elements.

Recommendations for new installations only:

f. Gate timing should be established by a qualified traffic engineer based on site specific determinations. Such determination should consider the need for and timing of a delay in the descent of the exit gates (following descent of the conventional entrance gates). Factors to be considered may include available storage space between the gates that is outside the fouling limits of the track(s) and the possibility that traffic flows may be interrupted as a result of nearby intersections.

g. A determination should be made as to whether it is necessary to provide vehicle presence detectors (VPDs) to open or keep open the exit gates until all vehicles are clear of the crossing. VPD should be installed on one or both sides of the crossing and/or in the surface between the rails closest to the field. Among the factors that should be considered are the presence of intersecting roadways near the crossing, the priority that the traffic crossing the railroad is given at such intersections, the types of traffic control devices at those intersections, and the presence and timing of traffic signal preemption.

h. Highway approaches on one or both sides of the highway-rail crossing may be provided with medians or channelization devices between the opposing lanes. Medians should be defined by a non-traversable curb or traversable curb, or by reflectorized channelization devices, or by both.

i. Remote monitoring (in addition to power-out indicators, which are required) of the status of these crossing systems is preferable. This is especially important in those areas in which qualified railroad signal department personnel are not readily available.

3. *Gates with Medians or Channelization Devices:* Install medians or channelization devices on both highway approaches to a public highway-rail grade crossing denying to the highway user the option of circumventing the approach lane gates by switching into the opposing (oncoming) traffic lane in order to drive around lowered gates to cross the tracks.

Effectiveness:

Channelization devices—.75

Non-traversable curbs with or without channelization devices—.80.

Required:

a. Opposing traffic lanes on both highway approaches to the crossing must be separated by either: (1) Medians bounded by non-traversable curbs or (2) channelization devices.

b. Medians or channelization devices must extend at least 100 feet from the gate arm, or if there is an intersection within 100 feet of the gate, the median or channelization device must extend at least 60 feet from the gate arm.

c. Intersections of two or more streets, or a street and an alley, that are within 60 feet of the gate arm must be closed or relocated. Driveways for private, residential properties (up to four units) within 60 feet of the gate arm are not considered to be intersections under this part and need not be closed. However, consideration should be given to taking steps to ensure that motorists exiting the driveways are not able to move against the flow of traffic to circumvent the purpose of the median and drive around lowered gates. This may be accomplished by the posting of "no left turn" signs or other means of notification. For the purpose of this part, driveways accessing commercial properties are considered to be intersections and are not allowed. It should be noted that if a public authority can not comply with the 60 feet or 100 feet requirement, it may apply to FRA for a quiet zone under § 222.39(b), "Public authority application to FRA." Such arrangement may qualify for a risk reduction credit in calculation of the Quiet Zone Risk Index. Similarly, if a public authority finds that it is feasible to only provide channelization on one approach to the crossing, it may also apply to FRA for approval under § 222.39(b). Such an arrangement may also qualify for a risk reduction credit in calculation of the Quiet Zone Risk Index.

d. Crossing warning systems must be activated by use of constant warning time devices unless existing conditions at the crossing would prevent the proper operation of the constant warning time devices.

e. Crossing warning systems must be equipped with power-out indicators. Note: Requirements b and c apply only to New Quiet Zones. Constant warning time devices and power-out indicators are not required to be added to existing warning systems in Pre-Rule Quiet Zones. However, if warning systems in Pre-Rule Quiet Zones are upgraded, or new warning systems are installed, constant warning time devices, if reasonably practical, and power-out indicators are required.

f. The gap between the lowered gate and the curb or channelization device must be one foot or less, measured horizontally across the road from the end of the lowered gate to the curb or channelization device or to a point over the curb edge or channelization device. The gate and the curb top or channelization device do not have to be at the same elevation.

g. "Break-away" channelization devices must be frequently monitored to replace broken elements

4. *One Way Street with Gate(s):* Gate(s) must be installed such that all approaching highway lanes to the public highway-rail grade crossing are completely blocked.

Effectiveness: .82.

Required:

a. Gate arms on the approach side of the crossing should extend across the road to within one foot of the far edge of the pavement. If a gate is used on each side of the road, the gap between the ends of the gates when both are in the lowered, or down, position must be no more than two feet.

b. If only one gate is used, the edge of the road opposite the gate mechanism must be configured with a non-traversable curb extending at least 100 feet.

c. Crossing warning systems must be activated by use of constant warning time devices unless existing conditions at the crossing would prevent the proper operation of the constant warning time devices.

d. Crossing warning systems must be equipped with power-out indicators. Note: Requirements c and d apply only to New Quiet Zones. Constant warning time devices and power-out indicators are not required to be added to existing warning systems in Pre-Rule Quiet Zones. However, if warning systems in Pre-Rule Quiet Zones are upgraded, or new warning systems are installed, constant warning time devices, if reasonably practical, and power-out indicators are required.

Appendix B to Part 222—Alternative Safety Measures

Introduction

A public authority seeking approval of a quiet zone under public authority application to FRA (§ 222.39(b)) may include in its proposal ASMs listed in this appendix. Credit will be given for closing of public highway-rail grade crossings provided the baseline severity risk index at other crossings is appropriately adjusted by increasing traffic counts at neighboring crossings as input data to the severity risk formula (except to the extent that nearby grade separations are expected to carry that traffic). FRA Regional Managers for Grade Crossing Safety can assist in performing the required analysis.

Appendix B addresses two types of ASMs: Modified SSMs and non-engineering ASMs. Modified SSMs are SSMs that do not fully comply with the provisions listed in appendix A. Depending on the resulting configuration, non-compliant SSMs may still provide a substantial reduction in risk and can contribute to the creation of quiet zones. Non-engineering ASMs are programmed enforcement, public education and awareness, and photo enforcement that may be used to reduce risk in the creation of a quiet zone. The public authority must receive written FRA approval of the quiet zone application prior to the silencing of train horns. The public authority is strongly encouraged to submit the application to FRA for review and comment *before* the appendix B treatments are initiated to ensure that the proposed modified SSMs and/or non-engineering ASMs will meet with FRA's approval. If non-engineering ASMs are proposed, the public authority may wish to confirm with FRA that the sampling methods are appropriate.

I. Modified SSMs

a. If there are unique circumstances pertaining to a specific crossing or number of crossings which prevent SSMs from being fully compliant with all of the SSM requirements listed in Appendix A, those SSM requirements may be adjusted or revised. In that case, the SSM, as modified by the pubic authority, will be treated as an ASM under this Appendix B, and not as an SSM under Appendix A. FRA will review the safety effects of the modified SSMs and the proposed quiet zone, and will approve the proposal if it finds that the Quiet Zone Risk Index is reduced to the level that would be expected with the sounding of the train horns or to a level at, or below the Nationwide Significant Risk Threshold, whichever is greater.

b. A public authority may provide estimates of effectiveness based upon adjustments from the effectiveness levels provided in Appendix A or from actual field data derived from the crossing sites. The specific crossing and applied mitigation measure will be assessed to determine the effectiveness of the modified SSM. FRA will continue to develop and make available effectiveness estimates and data from experience under the final rule.

c. If one or more of the requirements associated with an SSM as listed in Appendix A is revised or deleted, data or analysis supporting the revision or deletion must be provided to FRA for review. The following engineering types of ASMs may be included in a proposal for approval by FRA for creation of a quiet zone: (1) Temporary Closure of a Public Highway-Rail Grade Crossing, (2) Four-Quadrant Gate System, (3) Gates With Medians or Channelization Devices, and (4) One-Way Street With Gate(s).

II. Non-Engineering ASMs

A. The following non-engineering ASMs may be used in the creation of a Quiet Zone: (The method for determining the effectiveness of the non-engineering ASMs, the implementation of the quiet zone, subsequent monitoring requirements, and provision for dealing with an unacceptable effectiveness rate is provided in paragraph B.

1. *Programmed Enforcement:* Community and law enforcement officials commit to a systematic and measurable crossing monitoring and traffic law enforcement program at the public highway-rail grade crossing, alone or in combination with the Public Education and Awareness ASM.

Required:

a. Subject to audit, a statistically valid baseline violation rate must be established through automated or systematic manual monitoring or sampling at the subject crossing(s); and

b. A law enforcement effort must be defined, established and continued along with continual or regular monitoring that

provides a statistically valid violation rate that indicates the effectiveness of the law enforcement effort.

2. *Public Education and Awareness:* Conduct, alone or in combination with programmed law enforcement, a program of public education and awareness directed at motor vehicle drivers, pedestrians and residents near the railroad to emphasize the risks associated with public highway-rail grade crossings and applicable requirements of state and local traffic laws at those crossings.

Requirements:

a. Subject to audit, a statistically valid baseline violation rate must be established through automated or systematic manual monitoring or sampling at the subject crossing(s); and

b. A sustainable public education and awareness program must be defined, established and continued along with continual or regular monitoring that provides a statistically valid violation rate that indicates the effectiveness of the law enforcement effort. This program shall be provided and supported primarily through local resources.

3. *Photo Enforcement:* This ASM entails automated means of gathering valid photographic or video evidence of traffic law violations at a public highway-rail grade crossing together with follow-through by law enforcement and the judiciary.

Required:

a. State law authorizing use of photographic or video evidence both to bring charges and sustain the burden of proof that a violation of traffic laws concerning public highway-rail grade crossings has occurred, accompanied by commitment of administrative, law enforcement and judicial officers to enforce the law;

b. Sanction includes sufficient minimum fine (e.g., $100 for a first offense, "points" toward license suspension or revocation) to deter violations;

c. Means to reliably detect violations (e.g., loop detectors, video imaging technology);

d. Photographic or video equipment deployed to capture images sufficient to document the violation (including the face of the driver, if required to charge or convict under state law).

Note: This does not require that each crossing be continually monitored. The objective of this option is deterrence, which may be accomplished by moving photo/video equipment among several crossing locations, as long as the motorist perceives the strong possibility that a violation will lead to sanctions. Each location must appear identical to the motorist, whether or not surveillance equipment is actually placed there at the particular time. Surveillance equipment should be in place and operating at each crossing at least 25 percent of each calendar quarter.

e. Appropriate integration, testing and maintenance of the system to provide evidence supporting enforcement;

f. Public awareness efforts designed to reinforce photo enforcement and alert motorists to the absence of train horns;

g. Subject to audit, a statistically valid baseline violation rate must be established through automated or systematic manual monitoring or sampling at the subject crossing(s); and

h. A law enforcement effort must be defined, established and continued along with continual or regular monitoring.

B. The effectiveness of an ASM will be determined as follows:

1. Establish the quarterly (3 months) baseline violation rates for each crossing in the proposed quiet zone.

a. A violation in this context refers to a motorist not complying with the automatic warning devices at the crossing (not stopping for the flashing lights and driving over the crossing after the gate arms have started to descend, or driving around the lowered gate arms). A violation does not have to result in a traffic citation for the violation to be considered.

b. Violation data may be obtained by any method that can be shown to provide a statistically valid sample. This may include the use of video cameras, other technologies (e.g. inductive loops), or manual observations that capture driver behavior when the automatic warning devices are operating.

c. If data is not collected continuously during the quarter, sufficient detail must be provided in the application in order to validate that the methodology used results in a statistically valid sample. FRA recommends that at least a minimum of 600 samples (one sample equals one gate activation) be collected during the baseline and subsequent quarterly sample periods.

d. The sampling methodology must take measures to avoid biases in their sampling technique. Potential sampling biases could include: sampling on certain days of the week but not others; sampling during certain times of the day but not others; sampling immediately after implementation of an ASM while the public is still going through an adjustment period; or applying one sample method for the baseline rate and another for the new rate.

e. The baseline violation rate should be expressed as the number of violations per gate activations in order to normalize for unequal gate activations during subsequent data collection periods.

f. All subsequent quarterly violation rate calculations must use the same methodology as in this paragraph unless FRA authorizes another methodology.

2. The ASM should then be initiated for each crossing. Train horns are still being sounded during this time period.

3. In the calendar quarter following initiation of the ASM, determine a new quarterly violation rate using the same methodology as in paragraph (1) above.

4. Determine the violation rate reduction for each crossing by the following formula:

Violation rate reduction = (new rate − baseline rate)/baseline rate

5. Determined the effectiveness rate of the ASM for each crossing by multiplying the violation rate reduction by .78.

6. Using the effectiveness rates for each crossing treated by an ASM, determine the Quiet Zone Risk Index. If and when the Quiet Zone Risk Index for the proposed quiet zone has been reduced to either the risk level which would exist if locomotive horns sounded at all crossings in quiet zone or to a risk level below the Nationwide Significant Risk Threshold, the public authority may apply to FRA for approval of the quiet zone. Upon receiving written approval of the quiet zone application from FRA, the public authority may then proceed with notifications and implementation of the quiet zone.

7. Violation rates must be monitored for the next two calendar quarters and every second quarter thereafter. If after five years from the implementation of the quiet zone, the violation rate for any quarter has never exceeded the violation rate that was used to determine the effectiveness rate that was approved by FRA, violation rates may be monitored for one quarter per year.

8. In the event that the violation rate is ever greater than the violation rate used to determine the effectiveness rate that was approved by FRA, the public authority may continue the quiet zone for another quarter. If, in the second quarter the violation rate is still greater than the rate used to determine the effectiveness rate that was approved by FRA, a new effectiveness rate must be calculated and the Quiet Zone Risk Index re-calculated using the new effectiveness rate. If the new Quiet Zone Risk Index indicates that the ASM no longer fully compensates for the lack of a train horn, or that the risk level is equal to, or exceeds the Nationwide Significant Risk Threshold, the procedures for dealing with unacceptable effectiveness after establishment of a quiet zone should be followed.

Appendix C to Part 222—Guide to Establishing Quiet Zones

Introduction

This Guide to Establishing Quiet Zones (Guide) is divided into four sections in order to address the variety of methods and conditions that affect the establishment of quiet zones under this rule.

Section I of the Guide provides an overview of the different ways in which a quiet zone may be established under this rule. This includes a brief discussion on the safety thresholds that must be attained in order for train horns to be silenced and the relative merits of each. It also includes the two general methods that may be used to reduce risk in the proposed quiet zone, and the different impacts that the methods have on the quiet zone implementation process.

Section II of the Guide provides information on establishing New Quiet Zones. A New Quiet Zone is one at which train horns are currently being sounded at crossings. The Public Authority Designation and Public Authority Application to FRA methods will be discussed in depth.

Section III of the Guide provides information on establishing Pre-Rule Quiet Zones. A Pre-Rule Quiet Zone is one where train horns were not routinely sounded as of October 9, 1996 and December 18, 2003. The differences between New and Pre-Rule Quiet Zones will be explained. Public Authority Designation and Public Authority Application to FRA methods also apply to Pre-Rule Quiet Zones.

Section IV of the Guide deals with the required notifications that must be provided by public authorities when establishing both New and continuing Pre-Rule Quiet Zones.

Section V of the Guide provides examples of quiet zone implementation.

Section I—Overview

In order for a quiet zone to be qualified under this rule, it must be shown that the lack of the train horn does not present a significant risk with respect to loss of life or serious personal injury, or that the significant risk has been compensated for by other means. The rule provides four basic ways in which a quiet zone may be established. Creation of both New Quiet Zones and Pre-Rule Quiet Zones are based on the same general guidelines; however, there are a number of differences that will be noted in the discussion on Pre-Rule Quiet Zones.

A. Qualifying Conditions

One of the following four conditions or scenarios must be met in order to show that the lack of the train horn does not present a significant risk, or that the significant risk has been compensated for by other means:

1. One or more SSMs as identified in Appendix A are installed at *each* public crossing in the quiet zone; or

2. The Quiet Zone Risk Index is equal to, or less than, the Nationwide Significant Risk Threshold without implementation of additional safety measures at any crossings in the quiet zone; or

3. Additional safety measures are implemented at selected crossings resulting in the Quiet Zone Risk Index being reduced to a level equal to, or less than, the Nationwide Significant Risk Threshold; or

4. Additional safety measures are taken at selected crossings resulting in the Quiet Zone Risk Index being reduced to at least the level of risk that would exist if train horns were sounded at every public crossing in the quiet zone.

It is important to consider the implications of each approach before deciding which one to use. If a quiet zone is qualified based on reference to the Nationwide Significant Risk Threshold (*i.e.* the Quiet Zone Risk Index is equal to, or less than, the Nationwide Significant Risk Threshold—see the second and third scenarios above), then an annual review will be done by FRA to determine if the Quiet Zone Risk Index remains equal to, or less than, the Nationwide Significant Risk Threshold. Since the Nationwide Significant Risk Threshold and the Quiet Zone Risk Index may change from year to year, there is no guarantee that the quiet zone will remain qualified. The circumstances that cause the disqualification may not be subject to the control of the public authority. For example, an overall national improvement in safety at gated crossings may cause the Nationwide Significant Risk Threshold to fall. This may cause the Quiet Zone Risk Index to become greater than the Nationwide Significant Risk Threshold. If the quiet zone is no longer qualified, then the public authority will have to take additional measures, and may incur additional costs that might not have been budgeted, to once again lower the Quiet Zone Risk Index to at least the Nationwide Significant Risk Threshold in order to retain the quiet zone. Therefore, while the initial cost to implement a quiet zone under the second or third scenario may be lower than the other options, these scenarios also carry a degree of uncertainty about the quiet zone's continued existence.

The use of the first or fourth scenarios reduces the risk level to at least the level that would exist if train horns were sounding in the quiet zone. These methods may have higher initial costs because more safety measures may be necessary in order to achieve the needed risk reduction. Despite the possibility of greater initial costs, there are several benefits to these methods. The installation of SSMs at every crossing will provide the greatest safety benefit of any of the methods that may be used to initiate a quiet zone. With both of these methods (first and fourth scenarios), the public authority will never need to be concerned about the Nationwide Significant Risk Threshold, annual reviews of the Quiet Zone Risk Index, or failing to be qualified because the Quiet Zone Risk Index is higher than the Nationwide Significant Risk Threshold. Public authorities are strongly encouraged to carefully consider both the pros and cons of all of the methods and to choose the method that will best meet the needs of its citizens by providing a safer and quieter community.

For the purposes of this Guide, the term "Risk Index with Horns" is used to represent the level of risk that would exist if train horns were sounded at every public crossing in the proposed quiet zone. If a public authority decides that it would like to fully compensate for the lack of a train horn and not install SSMs at each public crossing in the quiet zone, it must reduce the Quiet Zone Risk Index to a level that is equal to, or less than, the Risk Index with Horns. The Risk Index with Horns is similar to the Nationwide Significant Risk Threshold in that both are targets that must be reached in order to establish a quiet zone under the rule. Quiet zones that are established by reducing the Quiet Zone Risk Index to at least the level of the Nationwide Significant Risk Threshold will be reviewed annually by FRA to determine if it still qualifies under the rule to retain the quiet zone. Quiet zones that are established by reducing the Quiet Zone Risk Index to at least the level of the Risk Index with Horns will not be subject to annual reviews.

The use of FRA's web-based Quiet Zone Calculator is recommended to aid in the decision making process (*http://www.fra.dot.gov/Content3.asp?P=1337*). The Quiet Zone Calculator will allow the public authority to consider a variety of options in determining which SSMs make the most sense. It will also perform the necessary calculations used to determine the existing risk level and whether enough risk has been mitigated in order to create a quiet zone under this rule.

B. Risk Reduction Methods

FRA has established two general methods to reduce risk in order to have a quiet zone qualify under this rule. The method chosen impacts the manner in which the quiet zone is implemented.

1. *Public Authority Designation (SSMs)*—The Public Authority Designation method (§ 222.39(a)) involves the use of SSMs (*see* appendix A) at some or all crossings within the quiet zone. The use of only SSMs to reduce risk will allow a public authority to designate a quiet zone without approval from FRA. If the public authority installs SSM's at every crossing within the quiet zone, it need not demonstrate that they will reduce the risk sufficiently in order to qualify under the rule since FRA has already assessed the ability of the SSMs to reduce risk. However, if only SSMs are installed within the quiet zone, but not at every crossing, the public authority must calculate that sufficient risk reduction will be accomplished by the SSMs. Once the improvements are made, the public authority must make the required notifications, and the quiet zone may be implemented. FRA does not need to approve the plan as it has already assessed the ability of the SSMs to reduce risk.

2. *Public Authority Application to FRA (ASMs)*—The Public Authority Application to FRA method (§ 222.39(b)) involves the use of ASMs (*see* appendix B). ASMs include both modified SSMs that do not fully comply with the provisions found in Appendix A (*e.g.* shorter than required traffic channelization devices), and non-engineering ASMs such as programmed law enforcement. If the use of ASMs (or a combination of ASMs, SSMs, and modified SSMs) is elected to reduce risk, then the public authority must apply to FRA for approval of the quiet zone. The application must contain sufficient data and analysis to confirm that the proposed ASMs do indeed provide the necessary risk reduction. FRA will review the application and will issue a formal approval if it determines that risk is reduced to a level that is necessary in order to comply with the rule. Once FRA approval has been received and the safety measures fully implemented, the public authority would then proceed to make the necessary notifications, and the quiet zone may be implemented. The use of non-engineering ASMs will require continued monitoring and analysis throughout the existence of the quiet zone to ensure that risk continues to be reduced.

3. *Calculating Risk Reduction*—The following should be noted when calculating risk reductions in association with the establishment of a quiet zone. This information pertains to both New Quiet Zones and Pre-Rule Quiet Zones and to the Public Authority Designation and Public Authority Application to FRA methods.

Crossing closures: If any public crossing within the quiet zone is proposed to be closed, include that crossing when calculating the Risk Index with Horns. Do *not* include the crossing to be closed when calculating the Quiet Zone Risk Index since the crossing will no longer exist. This will reflect the fact that the risk associated with the crossing has been eliminated entirely. However, be sure to increase the traffic counts at other crossings within the quiet zone and recalculate the risk indices for those crossings that will handle the traffic diverted from the closed crossing.

Example: A proposed New Quiet Zone contains four crossings: A, B, C and D streets. A, B and D streets are equipped with flashing lights and gates. C Street is a passive

crossbuck crossing with a traffic count of 400 vehicles per day. It is decided that C Street will be closed as part of the project. Compute the risk indices for all four streets. The calculation for C Street will utilize flashing lights and gates as the warning device. Calculate the Crossing Corridor Risk Index by averaging the risk indices for all four of the crossings. This value will also be the Risk Index with Horns since train horns are currently being sounded. To calculate the Quiet Zone Risk Index, first re-calculate the risk indices for B and D streets by increasing the traffic count for each crossing by 200. (Assume for this example that the public authority decided that the traffic from C Street would be equally divided between B and D streets.) Increase the risk indices for A, B and D streets by 66.8 percent and average the results. This is the initial Quiet Zone Risk Index and accounts for the risk reduction caused by closing C Street.

Grade Separation: Grade separated crossings that were in existence before the creation of a quiet zone are not included in any of the calculations. However, any public crossings within the quiet zone that are proposed to be treated by grade separation should be treated in the same manner as crossing closures as explained above. Highway traffic that may be diverted from other crossings within the quiet zone to the new grade separated crossing should be considered when computing the Quiet Zone Risk Index.

Example: A proposed New Quiet Zone contains four crossings: A, B, C and D streets. All streets are equipped with flashing lights and gates. C Street is a busy crossing with a traffic count of 23,000 vehicles per day. It is decided that C Street will be grade separated as part of the project. Compute the risk indices for all four streets. Calculate the Crossing Corridor Risk Index, which will also be the Risk Index with Horns, by averaging the risk indices for all four of the crossings. To calculate the Quiet Zone Risk Index, first re-calculate the risk indices for B and D streets by decreasing the traffic count for each crossing by 1,200. (The public authority decided that 2,400 motorists will decide to use the grade separation at C Street in order to avoid possible delays caused by passing trains.) Increase the risk indices for A, B and D streets by 66.8 percent and average the results. This is the initial Quiet Zone Risk Index and accounts for the risk reduction caused by the grade separation at C Street.

Wayside Horns: Crossings with wayside horn installations will be treated as a one for one substitute for the train horn and are not to be included when calculating the Crossing Corridor Risk Index, the Risk Index with Horns or the Quiet Zone Risk Index.

Example: A proposed New Quiet Zone contains four crossings: A, B, C and D streets. All streets are equipped with flashing lights and gates. It is decided that C Street will have a wayside horn installed. Compute the risk indices for A, B and D streets. Since C Street is being treated with a wayside horn, it is not included in the calculation of risk. Calculate the Crossing Corridor Risk Index by averaging the risk indices for A, B and D streets. This value is also the Risk Index with Horns. Increase the risk indices for A, B and D streets by 66.8 percent and average the results. This is the initial Quiet Zone Risk Index for the proposed quiet zone.

Section II—New Quiet Zones

FRA has established several approaches that may be taken in order to establish a New Quiet Zone under this rule. Please see the preceding discussions on "Qualifying Conditions" and "Risk Reduction Methods" to assist in the decision-making process on which approach to take. This following discussion provides the steps necessary to establish New Quiet Zones and includes both the Public Authority Designation and Public Authority Application to FRA methods. It must be remembered that in a New Quiet Zone all public crossings must be equipped with flashing lights and gates.

A. Requirements for Both Public Authority Designation and Public Authority Application

The following steps are necessary when establishing a New Quiet Zone. This information pertains to both the Public Authority Designation and Public Authority Application to FRA methods.

1. Determine all public and private at-grade crossings that will be included within the quiet zone. Also determine any existing grade-separated crossings that fall within the quiet zone. Each crossing must be identified by the US DOT Crossing Inventory number and street or highway name. If a crossing does not have a US DOT crossing number, then contact FRA's Office of Safety (202–493–6299) for assistance.

2. Ensure that the quiet zone will be at least one-half mile in length. (§ 222.35(a)(1))

3. A complete and accurate Grade Crossing Inventory Form must be on file with FRA for all crossings (public and private) within the quiet zone. These must be dated within six months prior to the designation of the quiet zone. An inspection of each crossing in the proposed quiet should be performed and the Grade Crossing Inventory Forms updated to reflect the current conditions at each crossing.

4. Every public crossing within the quiet zone must be equipped with active warning devices comprising both flashing lights and gates. The warning devices must be equipped with power out indicators. Constant warning time circuitry is also required unless existing conditions would prevent the proper operation of the constant warning time circuitry. The plans for the quiet zone may be made assuming that flashing lights and gates are at all public crossings; however the quiet zone may not be implemented until all public crossings are actually equipped with the flashing lights and gates. (§ 222.35(b)(1))

5. Private crossings must have cross-bucks and "STOP" signs on both approaches to the crossing. Private crossings with public access, industrial or commercial use must have a diagnostic team review and be treated according to the team's recommendations. (§§ 222.25(b) and (c))

6. Each highway approach to every public and private crossing must have an advanced warning sign (in accordance with the MUTCD) that advises motorists that train horns are not sounded at the crossing. (§ 222.35(c)(1) and 222.25(c)(2))

B. New Quiet Zones—Public Authority Designation

Once again it should be remembered that all public crossings must be equipped with automatic warning devices consisting of flashing lights and gates in accordance with § 222.35(b). In addition, one of the following conditions must be met in order for a public authority to designate a new quiet zone without FRA approval:

- One or more SSMs as identified in Appendix A are installed at *each* public crossing in the quiet zone (§ 222.39(a)(1)); or
- The Quiet Zone Risk Index is equal to, or less than, the Nationwide Significant Risk Threshold without SSMs installed at any crossings in the quiet zone (§ 222.39(a)(2)(i)); or
- SSMS's are installed at selected crossings resulting in the Quiet Zone Risk Index being reduced to a level equal to, or less than, the Nationwide Significant Risk Threshold (§ 222.39(a)(2)(ii)); or
- SSMS's are installed at selected crossings resulting in the Quiet Zone Risk Index being reduced to a level of risk that would exist if the horn were sounded at every crossing in the quiet zone (*i.e.* the Risk Index with Horns) (§ 222.39(a)(3)).

Steps necessary to establish a New Quiet Zone using the Public Authority Application to FRA method:

1. If one or more SSMs as identified in appendix A are installed at each public crossing in the quiet zone, the requirements for a public authority designation quiet zone have been met. It is not necessary for the same SSM to be used at each crossing. Once the necessary improvements have been installed, notifications may take place and the quiet zone implemented in accordance with the rule. If SSMs are not installed at each crossing, proceed on to Step 2 and use the risk reduction method.

2. To begin, calculate the risk index for each public crossing within the quiet zone (*See* appendix D. FRA's web-based Quiet Zone Calculator may be used to do this calculation). If flashing lights and gates have to be installed at any public crossings, calculate the risk indices for such crossings as if lights and gates were installed. (**Note:** Flashing lights and gates must be installed prior to initiation of the quiet zone.) If the Inventory record does not reflect the actual conditions at the crossing, be sure to use the conditions that currently exist when calculating the risk index. Note: Private crossings are not included when computing the risk for the proposed quiet zone.

3. The Crossing Corridor Risk Index is then calculated by averaging the risk index for each public crossing within the proposed quiet zone. Since train horns are routinely being sounded for crossings in the proposed quiet zone, this value is also the Risk Index with Horns.

4. In order to calculate the initial Quiet Zone Risk Index, first adjust the risk index at each public crossing to account for the increased risk due to the absence of the train horn. The absence of the horn is reflected by an increased risk index of 66.8 percent at

gated crossings. (New Quiet Zones within the Chicago Region will reflect an increased risk index of 17.3 percent.) The initial Quiet Zone Risk Index is then calculated by averaging the increased risk index for each public crossing within the proposed quiet zone. At this point the Quiet Zone Risk Index will equal the Risk Index with Horns multiplied by 1.668.

5. Compare the Quiet Zone Risk Index to the Nationwide Significant Risk Threshold. If the Quiet Zone Risk Index is equal to, or less than, the Nationwide Significant Risk Threshold, then the public authority may decide to designate a quiet zone and proceed with the notification process. With this approach, FRA will annually recalculate the Nationwide Significant Risk Threshold and the Quiet Zone Risk Index. If the Quiet Zone Risk Index for the quiet zone is above the Nationwide Significant Risk Threshold, FRA will notify the Public Authority so that appropriate measures can be taken. (*See* § 222.51(a).)

6. If the Quiet Zone Risk Index is greater than the Nationwide Significant Risk Threshold, then select an appropriate SSM for a crossing. Reduce the inflated risk index calculated in Step 4 for that crossing by the effectiveness rate of the chosen SSM. (*See* appendix A for the effectiveness rates for the various SSMs.) Recalculate the Quiet Zone Risk Index by averaging the revised inflated risk index with the inflated risk indices for the other public crossings. If this new Quiet Zone Risk Index is equal to, or less than, the Nationwide Significant Risk Threshold, the quiet zone would qualify for public authority designation. If the Quiet Zone Risk Index is still higher than the Nationwide Significant Risk Threshold, treat another public crossing with an appropriate SSM and repeat the process until the Quiet Zone Risk Index is equal to, or less than, the Nationwide Significant Risk Threshold. Once this is obtained the quiet zone has qualified for the public authority designation method, and notification may take place once all the necessary improvements have been installed. With this approach, FRA will annually recalculate the Nationwide Significant Risk Threshold and the Quiet Zone Risk Index. If the Quiet Zone Risk Index for the quiet zone is above the Nationwide Significant Risk Threshold, FRA will notify the public authority so that appropriate measures can be taken. (*See* § 222.51(a).)

7. If the public authority wishes to reduce the risk of the quiet zone to the level of risk that would exist if the horn were sounded at every crossing within the quiet zone, the public authority should calculate the initial Quiet Zone Risk Index as in Step 4. The objective is to now reduce the Quiet Zone Risk Index to the level of the Risk Index with Horns by adding SSMs at the crossings. The difference between the Quiet Zone Risk Index and the Risk Index with Horns is the amount of risk that will have to be reduced in order to fully compensate for lack of the train horn. The use of the Quiet Zone Calculator will aid in determining which SSMs may be used to reduce the risk sufficiently. Follow the procedure stated in Step 6, except that the Quiet Zone Risk Index must be equal to, or less than, the Risk Index with Horns instead of the Nationwide Significant Risk Threshold. Once this risk level is attained, the quiet zone has qualified for the public authority designation method, and notification may take place once all the necessary improvements have been installed. One important distinction with this option is that the public authority will never need to be concerned with the Nationwide Significant Risk Threshold or the Quiet Zone Risk Index. The rule's intent is to make the quiet zone as safe as if the train horns were sounding. If this is accomplished, the public authority may designate the crossings as a quiet zone and need not be concerned with possible fluctuations in the Nationwide Significant Risk Threshold or annual risk reviews.

C. New Quiet Zones—Public Authority Application to FRA

A public authority must apply to FRA for approval of a quiet zone under two conditions. First, if any of the SSMs selected for the quiet zone do not fully conform to the design standards set forth in appendix A. These are referred to as modified SSMs in appendix B. Second, when programmed law enforcement, public education and awareness programs, or photo enforcement is used to reduce risk in the quiet zone, these are referred to as non-engineering ASMs in appendix B. It should be remembered that non-engineering ASMs will require periodic monitoring as long as the quiet zone is in existence. Please *see* appendix B for detailed explanations of ASMs and the periodic monitoring of non-engineering ASMs.

The public authority is strongly encouraged to submit the application to FRA for review and comment *before* the appendix B treatments are initiated. This will enable FRA to provide comments on the proposed modified SSMs or non-engineering ASMs to help guide the application process. If non-engineering ASMs are proposed, the public authority also may wish to confirm with FRA that the methodology it plans to use to determine the effectiveness rates of the proposed ASMs is appropriate. A quiet zone that utilizes a combination of SSMs from appendix A and ASMs from appendix B must make a Public Authority Application to FRA. A complete and thoroughly documented application will help to expedite the approval process.

The following discussion is meant to provide guidance on the steps necessary to establish a new quiet zone using the Public Authority Application to FRA method. Once again it should be remembered that all public crossings must be equipped with automatic warning devices consisting of flashing lights and gates in accordance with § 222.35(b).

1. Gather the information previously mentioned in the section on "Requirements for both Public Authority Designation and Public Authority Application."

2. Calculate the risk index for each public crossing as directed in Step 2—Public Authority Designation.

3. Calculate the Crossing Corridor Risk Index, which is also the Risk Index with Horns, as directed in Step 3—Public Authority Designation.

4. Calculate the initial Quiet Zone Risk Index as directed in Step 4—Public Authority Designation.

5. Begin to reduce the Quiet Zone Risk Index through the use of ASMs and SSMs. Follow the procedure provided in Step 6—Public Authority Designation until the Quiet Zone Risk Index has been reduced to equal to, or less than, either the Nationwide Significant Risk Threshold or the Risk Index with Horns. (Remember that the public authority may choose which level of risk reduction is the most appropriate for its community.) Effectiveness rates for ASMs should be provided as follows:

a. Modified SSMs—Estimates of effectiveness for modified SSMs may be proposed based upon adjustments from the effectiveness rates provided in appendix A or from actual field data derived from the crossing sites. The application should provide an estimated effectiveness rate and the rationale for the estimate.

b. Non-engineering ASMs—Effectiveness rates are to be calculated in accordance with the provisions of appendix B, paragraph 2(b).

6. Once it has been determined through analysis that the Quiet Zone Risk Index has been reduced to equal to, or less than, either the Nationwide Significant Risk Threshold or the Risk Index with Horns, the public authority may make application to FRA for a quiet zone under § 222.39(b). FRA will review the application to determine the appropriateness of the proposed effectiveness rates, and whether or not the proposed application demonstrates that the quiet zone meets the requirements of the rule. When submitting the application to FRA for approval, the application must contain the following (§ 222.39(b)(1)):

- Sufficient detail concerning the present safety measures at the public crossings within the proposed quiet zone. This includes current and accurate crossing inventory forms.
- Detailed information on the SSMS's or ASM's that are proposed to be implemented and at which public crossings within the proposed quiet zone.
- Membership and recommendations of the diagnostic team (if any) that reviewed the proposed quiet zone.
- A commitment to implement the proposed safety measures.
- Demonstrate through data and analysis that the proposed measures will reduce the Quiet Zone Risk Index to equal, to or less than, either the Nationwide Significant Risk Threshold or the Risk Index with Horns.
- A copy of the application must be provided to the parties listed under Required Notifications.

7. Upon receiving written approval from FRA of the quiet zone application, the public authority may then proceed with notifications and implementation of the quiet zone. If the quiet zone is qualified by reducing the Quiet Zone Risk Index to at the least the level of the Nationwide Significant Risk Threshold, FRA will annually recalculate the Nationwide Significant Risk Threshold and the Quiet Zone Risk Index. If the Quiet Zone Risk Index for the quiet zone is above the Nationwide Significant Risk Threshold, FRA will notify the public

authority so that appropriate measures can be taken. (*See* § 222.51(a)).

Note: The provisions stated above for crossing closures, grade separations and wayside horns apply for Public Authority Application to FRA as well.

Section III—Pre-Rule Quiet Zones

Pre-Rule Quiet Zones are treated slightly differently from New Quiet Zones in the rule. This is a reflection of the statutory requirement to "take into account the interest of communities that have in effect restrictions on the sounding of a locomotive horn at highway-rail grade crossings * * *" It also recognizes the historical experience of train horns not being sounded at Pre-Rule Quiet Zones.

Overview

Pre-Rule Quiet Zones that do not meet the requirements for automatic approval (*see* discussion that follows) must meet the same requirements as New Quiet Zones as provided in § 222.39. In other words, risk must be reduced through the use of SSMs or ASMs so that the Quiet Zone Risk Index for the quiet zone has been reduced to either the risk level which would exist if locomotive horns sounded at all crossings in the quiet zone (*i.e.* the Risk Index with Horns) or to a risk level equal to, or less than, the Nationwide Significant Risk Threshold. Pre-Rule Quiet Zones must meet these requirements by December 18, 2008 (§ 222.41(b)(2)). There are four differences in the requirements between Pre-Rule Quiet Zones and New Quiet Zones that must be noted.

First, since train horns have not been routinely sounded in the Pre-Rule Quiet Zone, it is not necessary to increase the risk indices of the public crossings to reflect the additional risk caused by the lack of a train horn. Since the train horn has already been silenced, the added risk caused by the lack of a horn is reflected in the actual collision history at the crossings. Collision history is an important part in the calculation of the severity risk indices. In other words, the Quiet Zone Risk Index is calculated by averaging the existing risk index for each public crossing without the need to increase the risk index by 66.8 percent. For Pre-Rule Quiet Zones, the Crossing Corridor Risk Index and the initial Quiet Zone Risk Index have the same value.

Second, since train horns have been silenced at the crossings, it will be necessary to mathematically determine what the risk level would have been at the crossings if train horns had been routinely sounded. These revised risk levels then will be used to calculate the Risk Index with Horns. This calculation is necessary to determine how much risk must be eliminated in order to compensate for the lack of the train horn. This will allow the public authority to have the choice to reduce the risk to at least the level of the Nationwide Significant Risk Threshold or to fully compensate for the lack of the train horn.

To calculate the Risk Index with Horns, the first step is to divide the existing severity risk index for each crossing by the appropriate value as shown in Table 1. This process eliminates the risk that was caused by the absence of train horns. The table takes into account that the train horn has been found to produce different levels of effectiveness in preventing collisions depending on the type of warning device at the crossing. (**Note:** FRA's web based Quiet Zone Calculator will perform this computation automatically for pre-rule quiet zones.) The Risk Index with Horns is the average of the revised risk indices. The difference between the calculated Risk Index with Horns and the Quiet Zone Risk Index is the amount of risk that would have to be reduced in order to fully compensate for the lack of train horns.

TABLE 1.—RISK INDEX DIVISOR VALUES

	Passive	Flashing lights	Lights and gates
U.S. except Chicago	1.749	1.309	1.668
Chicago Region	N/A	N/A	1.173

Note: The Chicago Region includes the Illinois counties of: Cook, DuPage, Lake, Kane, McHenry and Will. Pre-Rule Quiet Zones in the Chicago Region are able to use a lower adjustment factor at crossings equipped with gates due to data that indicate that the collision rate for Pre-Rule Quiet Zone crossings that were equipped with flashing lights and gates in the Chicago Region had an increased collision rate of 17.3 percent when compared to similar gated crossings in the Nation where horns were sounded. Gated crossings in Pre-Rule Quiet Zones outside of the Chicago Region had an increased collision rate of 66.8 percent when compared to similar crossings in the Nation where horns were sounded. Passive and flashing lights crossings in the Chicago Region use the "U.S. except Chicago" values in Table 1.

The third difference is that credit is given for the risk reduction that is brought about through the upgrading of the warning devices at public crossings (§ 222.35(b)(2)). For New Quiet Zones, all crossings must be equipped with automatic warning devices consisting of flashing lights and gates. Crossings without gates must have gates installed. The severity risk index for that crossing is then calculated to establish the risk index that is used in the Risk Index with Horns. The Risk Index with Horns is then increased by 66.8 percent to adjust for the lack of the train horn. The adjusted figure is the initial Quiet Zone Risk Index. There is no credit received for the risk reduction that is attributable to warning device upgrades.

For Pre-Rule Quiet Zones, the Risk Index with Horns is calculated from the initial risk indices which use the warning devices that are currently installed. If a public authority elects to upgrade an existing warning device as part of its quiet zone plan, the accident prediction value for that crossing will be re-calculated based on the upgraded warning device. (Once again, FRA's web-based Quiet Zone Calculator can do the actual computation.) The new accident prediction value is then used in the severity risk index formula to determine the risk index for the crossing. This adjusted risk index is then used to compute the new Quiet Zone Risk Index. This computation allows the risk reduction attributed to the warning device upgrades to be used in establishing a quiet zone.

The fourth difference is that pre-rule quiet zones have different minimum requirements under § 222.35. A pre-rule quiet zone may be less than one-half mile in length if that was its length as of October 9, 1996. A pre-rule quiet zone does not have to have automatic warning devices consisting of flashing lights and gates at every public crossing (§ 222.32(b)(2)). The existing crossing safety warning systems in place as of December 18, 2003, may be retained but cannot be downgraded. It also is not necessary for the automatic warning devices to be equipped with constant warning time devices or power out indicators; however, when the warning devices are upgraded, constant warning time and power out indicators will be required if reasonably practical (§ 222.35(b)(2)). Advance warning signs that notify the motorist that train horns are not sounded and STOP signs and crossbucks at private crossings do not have to be installed until December 18, 2006, which allows three years to install the required signage.

A. Requirements for Both Public Authority Designation and Public Authority Application—Pre-Rule Quiet Zones

These following is necessary when establishing a Pre-Rule Quiet Zone. This information pertains to Automatic Approval, the Public Authority Designation and Public Authority Application to FRA methods.

1. Determine all public and private at-grade crossings that will be included within the quiet zone. Also determine any existing grade separated crossings that fall within the quiet zone. Each crossing must be identified by the U.S. DOT Crossing Inventory number and street name. If a crossing does not have a U.S. DOT crossing number then contact FRA for assistance.

2. Document the length of the quiet zone. It is not necessary that the quiet zone be at least one-half mile in length. Pre-Rule Quiet Zones may be shorter than one-half mile. However, the addition of a new crossing to a quiet zone nullifies its pre-rule status, and the resulting New Quiet Zone must be at least one-half mile. The deletion of a crossing from a Pre-Rule Quiet Zone (except through closure or grade separation) must result in a quiet zone that is a least one half mile in length.

3. A complete and accurate Grade Crossing Inventory Form must be on file with FRA for all crossings (public and private) within the quiet zone. These must be dated within six months prior to the designation of the quiet zone. An inspection of each crossing in the proposed quiet should be performed and the Grade Crossing Inventory Forms updated to reflect the current conditions at each crossing.

4. Pre-Rule Quiet Zones must retain, and may upgrade, the existing grade crossing safety warning systems. Unlike New Quiet Zones, it is not necessary that every public crossing within a Pre-Rule Quiet Zone be equipped with active warning devices comprising both flashing lights and gates. Existing warning devices need not be equipped with power out indicators and constant warning time circuitry. If warning devices are upgraded to flashing lights, or flashing lights and gates, the upgraded equipment must include, as is required for New Quiet Zones, power out indicators and constant warning time devices (if reasonably practical).

5. By December 18, 2006, private crossings must have cross-bucks and "STOP" signs on both approaches to the crossing. Private crossings with public access, industrial or commercial use must have a diagnostic team review and be treated according to the team's recommendations unless the quiet zone qualifies for automatic approval. A diagnostic team review of private crossings is not necessary for Pre-Rule Quiet Zones that qualify for Automatic Approval.

6. By December 18, 2006, each highway approach to every public and private crossing must have an advanced warning sign (in accordance with the MUTCD) that advises motorists that train horns are not sounded at the crossing.

B. Pre-Rule Quiet Zones—Automatic Approval

In order for a Pre-Rule Quiet Zone to be automatically approved as a quiet zone under this rule (§ 222.41(a)), one of the following conditions must be met:

- One or more SSMs as identified in appendix A are installed at *each* public crossing in the quiet zone; or
- The Quiet Zone Risk Index is equal, to or less, than the Nationwide Significant Risk Threshold; or
- The Quiet Zone Risk Index is above the Nationwide Significant Risk Threshold but less than twice the Nationwide Significant Risk Threshold and there have been no relevant collisions at any public grade crossing within the quiet zone for the preceding five years.

Additionally, it must be in compliance with the minimum requirements for quiet zones (§ 222.35) and the notification requirements in § 222.43.

The following discussion is meant to provide guidance on the steps necessary to determine if a Pre-Rule Quiet Zone qualifies for automatic approval.

1. All of the items listed in *Requirements for both Public Authority Designation and Public Authority Application—Pre-Rule Quiet Zones* previously mentioned are to be accomplished. Remember that a Pre-Rule Quiet Zone may be less than one-half mile in length if that was its length as of October 9, 1996. Also, a Pre-Rule Quiet Zone does not have to have automatic warning devices consisting of flashing lights and gates at every public crossing.

2. If one or more SSMs as identified in Appendix A are installed at each public crossing in the quiet zone, the quiet zone qualifies and notification should take place. If the Pre-Rule Quiet Zone does not qualify by this step, proceed on to the next step.

3. Calculate the risk index for each public crossing within the quiet zone (*See* appendix D). Be sure that the risk index is calculated using the formula appropriate for the type of warning device that is actually installed at the crossing. Unlike New Quiet Zones, it is not necessary to calculate the risk index using flashing lights and gates as the warning device. (FRA's web-based Quiet Zone Calculator may be used to simplify the calculation process). If the Inventory record does not reflect the actual conditions at the crossing, be sure to use the conditions that currently exist when calculating the risk index.

4. The Quiet Zone Risk Index is then calculated by averaging the risk index for each public crossing within the proposed quiet zone. (**Note:** The initial Quiet Zone Risk Index and the Crossing Corridor Risk Index are the same for Pre-Rule Quiet Zones.)

5. Compare the Quiet Zone Risk Index to the Nationwide Significant Risk Threshold. If the Quiet Zone Risk Index is equal to, or less than, the Nationwide Significant Risk Threshold, then the quiet zone qualifies for automatic approval, and the public authority may proceed with the notification process. With this approach, FRA will annually recalculate the Nationwide Significant Risk Threshold and the Quiet Zone Risk. If the Quiet Zone Risk Index for the quiet zone is above the Nationwide Significant Risk Threshold, FRA will notify the public authority so that appropriate measures can be taken (*See* § 222.51(b)(2)). If the pre-rule quiet zone does not qualify by this step, proceed on to the next step.

6. If the Quiet Zone Risk Index is above the Nationwide Significant Risk Threshold but less than twice the Nationwide Significant Risk Threshold and there have been no relevant collisions at any public grade crossing within the quiet zone for the preceding five years, then the quiet zone qualifies for automatic approval, and the public authority may proceed with the notification process. **Note:** A relevant collision means a collision at a highway-rail grade crossing between a train and a motor vehicle, excluding the following: a collision resulting from an activation failure of an active grade crossing warning system; a collision in which there is no driver in the motor vehicle; or a collision where the highway vehicle struck the side of the train beyond the fourth locomotive unit or rail car. With this approach, FRA will annually recalculate the Nationwide Significant Risk Threshold and the Quiet Zone Risk. If the Quiet Zone Risk Index for the quiet zone is above two times the Nationwide Significant Risk Threshold, or a relevant collision has occurred during the preceding year, FRA will notify the public authority so that appropriate measures can be taken (*See* § 222.51(b)(3)).

If the Pre-Rule Quiet Zone does not qualify for automatic approval, continuation of the quiet zone beyond the interim three year period will require implementation of SSMs or ASMs so that the Quiet Zone Risk Index for the quiet zone has been reduced to a risk level equal to, or below, either the risk level which would exist if locomotive horns sounded at all crossings in the quiet zone (*i.e.* the Risk Index with Horns) or the Nationwide Significant Risk Threshold. This is the same methodology used to create New Quiet Zones with the exception of the four differences previously noted. A review of the previous discussion on the two methods used to establish quiet zones may prove helpful in determining which would be the most beneficial to use for a particular Pre-Rule Quiet Zone.

C. Pre-Rule Quiet Zones—Public Authority Designation

The following discussion is meant to provide guidance on the steps necessary to establish a Pre-Rule Quiet Zone using the Public Authority Designation method.

1. All of the items listed in "Requirements for both Public Authority Designation and Public Authority Application—Pre-Rule Quiet Zones" previously mentioned are to be accomplished. Remember that a Pre-Rule Quiet Zone may be less than one-half mile in length if that was its length as of October 9, 1996. Also, a Pre-Rule Quiet Zone does not have to have automatic warning devices consisting of flashing lights and gates at every public crossing.

2. Calculate the risk index for each public crossing within the quiet zone as in Step 3—Pre-Rule Quiet Zones—Automatic Approval.

3. The Crossing Corridor Risk Index is then calculated by averaging the risk index for each public crossing within the proposed quiet zone. Since train horns are not being sounded for crossings, this value is actually the initial Quiet Zone Risk Index.

4. Calculate Risk Index with Horns by the following:

a. For each public crossing, divide the risk index that was calculated in Step 2 by the appropriate value in Table 1. This produces the risk index that would have existed had the train horn been sounded.

b. Average these reduced risk indices together. The resulting average is the Risk Index with Horns.

5. Begin to reduce the Quiet Zone Risk Index through the use of SSMs or by upgrading existing warning devices. Follow the procedure provided in Step 6—Public Authority Designation until the Quiet Zone Risk Index has been reduced to a level equal to, or less than, either the Nationwide Significant Risk Threshold or the Risk Index with Horns. A public authority may elect to upgrade an existing warning device as part of its Pre-Rule Quiet Zone plan. When upgrading a warning device, the accident

prediction value for that crossing must be re-calculated for the new warning device. Determine the new risk index for the upgraded crossing by using the new accident prediction value in the severity risk index formula. This new risk index is then used to compute the new Quiet Zone Risk Index. (Remember that FRA's web-based Quiet zone Calculator will be able to do the actual computations.) Once the Quiet Zone Risk Index has been reduced to equal to, or less than, either the Nationwide Significant Risk Threshold or the Risk Index with Horns, the quiet zone has qualified for the Public Authority Designation method, and notification may take place once all the necessary improvements have been installed. If quiet zone is established by reducing the Quiet Zone Risk Index to equal to, or less than, the Nationwide Significant Risk Threshold, FRA will annually recalculate the Nationwide Significant Risk Threshold and the Quiet Zone Risk Index. If the Quiet Zone Risk Index for the quiet zone is above the Nationwide Significant Risk Threshold, FRA will notify the public authority so that appropriate measures can be taken (*See* § 222.51(a)).

Note: The provisions stated above for crossing closures, grade separations, and wayside horns apply for Public Authority Designation.

D. Pre-Rule Quiet Zones—Public Authority Application to FRA

The following discussion is meant to provide guidance in the steps necessary to establish a Pre-Rule Quiet zone using the Public Authority Application to FRA method.

1. All of the items listed in "Requirements for both Public Authority Designation and Public Authority Application—Pre-Rule Quiet Zones" previously mentioned are to be accomplished. Remember that a Pre-Rule Quiet Zone may be less than one-half mile in length if that was its length as of October 9, 1996. Also, a Pre-Rule Quiet Zone does not have to have automatic warning devices consisting of flashing lights and gates at every public crossing.

2. Calculate the risk index for each public crossing within the quiet zone (See Appendix D. FRA's web-based Quiet Zone Calculator may be used to simplify the calculation process). If the inventory record does not reflect the actual conditions at the crossing, be sure to use the conditions that currently exist when calculating the risk index.

3. The Crossing Corridor Risk Index is then calculated by averaging the risk index for each public crossing within the proposed quiet zone. Since train horns are not being sounded for crossings, this value is actually the initial Quiet Zone Risk Index.

4. Calculate Risk Index with Horns by the following:

a. For each public crossing, divide its risk index that was calculated in Step 2 by the appropriate value in Table 1. This produces the risk index that would have existed had the train horn been sounded.

b. Average these reduced risk indices together. The resulting average is the Risk Index with Horns.

5. Begin to reduce the Quiet Zone Risk Index through the use of ASMs and/or SSMs. Follow the procedure the provided in Step 6—Public Authority Designation until the Quiet Zone Risk Index has been reduced to a level equal to, or less than, either the Nationwide Significant Risk Threshold or the Risk Index with Horns. A public authority may elect to upgrade an existing warning device as part of its Pre-Rule Quiet Zone plan. When upgrading a warning device, the accident prediction value for that crossing must be re-calculated for the new warning device. Determine the new risk index for the upgraded crossing by using the new accident prediction value in the severity risk index formula. (Remember that FRA's web-based quiet zone risk calculator will be able to do the actual computations.) This new risk index is then used to compute the new Quiet Zone Risk Index. Effectiveness rates for ASMs should be provided as follows:

a. Modified SSMs—Estimates of effectiveness for modified SSMs may be proposed based upon adjustments from the benchmark levels provided in Appendix A or from actual field data derived from the crossing sites. The application should provide an estimated effectiveness rate and the rationale for the estimate.

b. Non-engineering ASMs—Effectiveness rates are to be calculated in accordance with the provisions of appendix B, paragraph 2(b).

6. Once it has been determined through analysis that the Quiet Zone Risk Index has been reduced to a level equal to, or less than, either the Nationwide Significant Risk Threshold or the Risk Index with Horns, the public authority may make application to FRA for a quiet zone under § 222.39(b). FRA will review the application to determine the appropriateness of the proposed effectiveness rates, and whether or not the proposed application demonstrates that the quiet zone meets the requirements of the rule. When submitting the application to FRA for approval, it should be remembered that the application must contain the following (§ 222.39(b)(1)):

a. Sufficient detail concerning the present safety measures at the public crossings within the proposed quiet zone. This includes current and accurate crossing inventory forms.

b. Detailed information on the SSMS's, ASM's, or upgraded warning devices that are proposed to be implemented and at which public crossings within the proposed quiet zone.

c. Membership and recommendations of the diagnostic team (if any) that reviewed the proposed quiet zone.

d. A commitment to implement the proposed safety measures.

e. Demonstrate through data and analysis that the proposed measures will reduce the Quiet Zone Risk Index to, or below, either the Nationwide Significant Risk Threshold or the Risk Index with Horns.

f. A copy of the application must be provided to the parties listed under Required Notifications.

7. Upon receiving written approval from FRA of the quiet zone application, the public authority may then proceed with notifications and implementation of the quiet zone. If the quiet zone is established by reducing the Quiet Zone Risk Index to a level equal to, or less than, the Nationwide Significant Risk Threshold, FRA will annually recalculate the Nationwide Significant Risk Threshold and the Quiet Zone Risk. If the Quiet Zone Risk Index for the quiet zone is above the Nationwide Significant Risk Threshold, FRA will notify the public authority so that appropriate measures can be taken (*See* § 222.51(a)).

Note: The provisions stated above for crossing closures, grade separations, and wayside horns apply for Public Authority Application to FRA as well.

Section IV—Required Notifications

A. The public authority responsible for the creation of a New Quiet Zone or the continuation of a Pre-Rule Quiet Zone, is required to provide notification to parties that will be affected by the quiet zone. The notification process is to ensure that interested parties are made aware in a timely manner of the establishment or continuation of quiet zones. Specific information is to be provided so that the crossings in the quiet zone can be identified. The method used to qualify or continue the quiet zone is to be given. The notification process also includes additional information that must be provided to FRA. Once the rule becomes effective, railroads will be obligated to sound train horns when approaching all public crossings unless notified in accordance with the rule that a New Quiet Zone has been established or that a Pre-Rule Quiet Zone is being continued.

The time frames for the notification process is as follows:

- New Quiet Zones—Notification of the establishment of a New Quiet Zone under § 222.39 must be mailed at least 21 days before the routine sounding of train horns for public crossings is to cease (§ 222.43(a)(2)(i)). The routine use of train horns at public crossings will not cease unless the proper notification has been given.
- Pre-Rule Quiet Zones—Notification of the continuation of a Pre-Rule Quiet Zone under § 222.41 must be served no later than December 18, 2004 (§ 222.43(a)(2)(ii)). Failure to provide the required notice will result in the commencement of the sounding of train horns at public crossings on this date.

B. Parties To Be Notified

The public authority that is implementing a New Quiet Zone or is continuing a Pre-Rule Quiet Zone must provide notification of the quiet zone by certified mail, return receipt requested, to the following (*see* § 222.43(a)(1)):

- All railroads operating over the crossings within the quiet zone.
- The highway or traffic control authority, or law enforcement authority having control over vehicular traffic at crossings within the quiet zone.
- The State agency responsible for highway and road safety.
- All landowners owning a private crossing within the quiet zone.
- The Associate Administrator.

C. Required Information

The quiet zone implementation notification should contain the following information (§ 222.43(a)(3)):

1. A list all grade crossings within the quiet zone by both the U.S. DOT crossing number and the street or highway name. This includes public, private and grade separated crossings.

2. The specific date upon which routine use of the train horn will cease at crossings within the quiet zone. The date for New Quiet Zones shall be no earlier than 21 days after mailing of written notification.

3. The notice should state which section contained in the rule is used as the basis for establishment or continuation of the quiet zone.

4. Reference to § 222.39(a)(1), (2), or (3) shall include a copy of the FRA web page containing the quiet zone data upon which the public authority relies.

5. Reference to § 222.39(b) shall include a copy of FRA's notification of approval.

6. Reference to § 222.41 shall include a statement as to how the quiet zone is in compliance with that section. If appropriate, it shall include a copy of the FRA web page containing the quiet zone data upon which the public authority relies.

7. A certificate of service showing to whom and by what means the notice was provided.

D. In addition to the above required information, the notification to the Associate Administrator also must include the following (§ 222.43(b)):

1. An accurate and complete Grade Crossing Inventory Form for each public and private highway-rail grade crossing within the quiet zone, dated within six months prior to designation or approval by FRA of the quiet zone. Copies of the inventory forms may be obtain on FRA Web site (*www.fra.dot.gov*).

2. An accurate, complete and current Grade Crossing Inventory Form reflecting SSMs or ASMs in place upon establishment of the quiet zone. SSMs or ASMs that cannot be fully described on the Inventory form must be fully described in writing.

3. The name and title of the person responsible for monitoring compliance with the requirements of this part, and the manner in which that person can be contacted.

4. A list of all parties that received notification of the establishment or continuation of the quiet zone together with copies of the certificates of service showing to whom and by what means the notice was provided.

5. A statement signed by the CEO of each public authority establishing or continuing a quiet zone that certifies that responsible officials of the public authority have reviewed documentation provided by FRA sufficient to make an informed decision regarding the advisability of establishing the quiet zone.

Section V—Examples of Quiet Zone Implementations

Example 1—New Quiet Zone

A public authority wishes to create a New Quiet Zone over four public crossings. All of the crossings are equipped with flashing lights and gates, and the length of the quiet zone is 0.75 mile. There are no private crossings within the proposed zone.

The tables that follow show the street name in the first column, and the existing risk index for each crossing with the horn sounding ("Crossing Risk Index w/Horns") in the second. The third column, "Crossing Risk Index w/o Horns", is the risk index for each crossing after it has been inflated by 66.8% to account for the lack of train horns. The fourth column, "SSM Eff", is the effectiveness of the SSM at the crossing. A zero indicates that no SSM has been applied. The last column, "Crossing Risk Index w/o Horns Plus SSM", is the inflated risk index for the crossing after being reduced by the implementation of the SSM. At the bottom of the table are two values. The first is the Risk Index with Horns ("RIWH") which represents the average initial amount of risk in the proposed quiet zone with the train horn sounding. The second is the Quiet Zone Risk Index ("QZRI") and is the average risk in the proposed quiet zone taking into consideration the increased risk caused by the lack of train horns and reductions in risk attributable to the installation of SSMs. For this example it is assumed that the Nationwide Significant Risk Threshold is 15,424. In order for the proposed quiet zone to qualify under the rule, the Quiet Zone Risk Index must be reduced to at least either the Nationwide Significant Risk Threshold (15,424) or to the Risk Index with Horns.

Table 1 shows the existing conditions in the proposed quiet zone. SSMs have not yet been installed. The Risk Index with Horns for the proposed quiet zone is 11,250. The Quiet Zone Risk Index without any SSMs is 18,765

TABLE 1

Street	Crossing risk index w/horns	Crossing risk index w/o horns	SSM EFF	Crossing risk index w/o horns, plus SSM
A	12000	20016	0	20016
B	10000	16680	0	16680
C	8000	13344	0	13344
D	15000	25020	0	25020
	RIWH 11250			QZRI 18765

The public authority decides to install traffic channelization devices at D Street. Reducing the risk at the crossing that has the highest severity risk index will provide the greatest reduction in risk. The effectiveness of traffic channelization devices is 0.75. Table 2 shows the changes in the proposed quiet zone corridor that would occur when traffic channelization devices are installed at D Street. The Quiet Zone Risk Index has been reduced to 14,073.75. This reduction in risk would qualify the quiet zone as the risk has been reduced lower than the Nationwide Significant Risk Threshold which is 15,424.

TABLE 2

Street	Crossing risk index w/ horns	Crossing risk index w/o horns	SSM EFF	Crossing risk index w/o horns plus SSM
A	12000	20016	0	20016
B	10000	16680	0	16680
C	8000	13344	0	13344
D	15000	25020	0.75	6255
	RIWH 11250			QZRI 14073.75

The public authority realizes that authorizing the quiet zone by lowering the risk to below the Nationwide Significant Risk Threshold will result in an annual re-calculation of the Quiet Zone Risk Index and comparison to the Nationwide Significant Risk Threshold. As the Quiet Zone Risk Index is close to the Nationwide Significant Risk Threshold (14,074 to 15,424), there is a reasonable chance that the Quiet Zone Risk Index may some day exceed the Nationwide Significant Risk Threshold. This would result in the quiet zone no longer being qualified and additional steps would have to be taken to keep the quiet zone. Therefore, the public authority decides to reduce the risk further by the use of traffic channelization devices at A Street. Table 3 shows the results of this change. The Quiet Zone Risk Index is now 10,320.75 which is less than the Risk Index with Horns of 11,250. The quiet zone now qualifies by fully compensating for the loss of train horns and will not have to undergo annual reviews of the Quiet Zone Risk Index.

TABLE 3

Street	Crossing risk index w/horns	Crossing risk index w/o horns	SSM EFF	Crossing risk index w/o horns plus SSM
A	12000	20016	0.75	5004
B	10000	16680	0	16680
C	8000	13344	0	13344
D	15000	25020	0.75	6255
	RIWH 11250			QZRI 10320.75

Example 2—Pre-Rule Quiet Zone

A public authority wishes to qualify a Pre-Rule Quiet Zone which did not meet the requirements for Automatic Approval because the Quiet Zone Risk Index is greater than twice the Nationwide Significant Risk Threshold. There are four public crossings in the Pre-Rule Quiet Zone. Three of the crossings are equipped with flashing lights and gates, and the fourth (Z Street) is passively signed with a STOP sign. The length of the quiet zone is 0.6 mile, and there are no private crossings within the proposed zone.

The tables that follow are very similar to the tables in Example 1. The street name is shown in the first column, and the existing risk index for each crossing ("Crossing Risk Index w/o Horns") in the second. This is a change from the first example because the risk is calculated without train horns sounding because of the existing ban on whistles. The third column, "Crossing Risk Index w/ Horns", is the risk index for each crossing after it has been adjusted to reflect what the risk would have been had train horns been sounding. This is mathematically done by dividing the existing risk index for the three gated crossing by 1.668. The risk at the passive crossing at Z Street is divided by 1.749. (See the above discussion in "Pre-Rule Quiet Zones—Establishment Overview" for more information.) The fourth column, "SSM EFF", is the effectiveness of the SSM at the crossing. A zero indicates that no SSM has been applied. The last column, "Crossing Risk Index w/o Horns Plus SSM", is the risk index without horns for the crossing after being reduced for the implementation of the SSM. At the bottom of the table are two values. The first is the Risk Index with Horns (RIWH) which represents the average initial amount of risk in the proposed quiet zone with the train horn sounding. The second is the Quiet Zone Risk Index ("QZRI") and is the average risk in the proposed quiet zone taking into consideration the increased risk caused by the lack of train horns and reductions in risk attributable to the installation of SSMs. Once again it is assumed that the Nationwide Significant Risk Threshold is 15,424. The Quiet Zone Risk Index must be reduced to either the Nationwide Significant Risk Threshold (15,424) or to the Risk Index with Horns in order to qualify under the rule.

Table 4 shows the existing conditions in the proposed quiet zone. SSMs have not yet been installed. The Risk Index with Horns for the proposed quiet zone is 18,705.83. The Quiet Zone Risk Index without any SSMs is 31,375. Since the Nationwide Significant Risk Threshold is less than the calculated Risk Index with Horns, the public authority's goal will be to reduce the risk to at least value of the Risk Index with Horns. This will qualify the Pre-Rule Quiet Zone under the rule.

TABLE 4

Street	Crossing risk index w/o horns	Crossing risk index w/horns	SSM EFF	Crossing risk index w/o horns plus SSM
W	35000	20983.21	0	35000
X	42000	25179.86	0	42000
Y	33500	20083.93	0	33500
Z	15000	8576.33	0	15000
	RIWH 18705.83			QZRI 31375

The Z Street crossing is scheduled to have flashing lights and gates installed as part of the state's highway-rail grade crossing safety improvement plan (section 130). While this upgrade is not directly a part of the plan to authorize a quiet zone, the public authority may take credit for the risk reduction achieved by the improvement from a passive STOP sign crossing to a crossing equipped with flashing lights and gates. Unlike New Quiet Zones, upgrades to warning devices in Pre-Rule Quiet Zones do contribute to the risk reduction necessary to qualify under the rule. Table 5 shows the quiet zone corridor after including the warning device upgrade at Z Street. Note that the Risk Index with Horns and the Crossing Risk Index With Horns for Z Street do not change. The Quiet Zone Risk Index has been reduced to 29,500.

TABLE 5

Street	Crossing risk index w/o horns	Crossing risk index w/horns	SSM EFF	Crossing risk index w/o horns plus SSM
W	35000	20983.21	0	35000
X	42000	25179.86	0	42000
Y	33500	20083.93	0	33500
Z	7500	8576.33	0	7500
	RIWH 18705.83			QZRI 29500

The public authority elects to install four-quadrant gates without vehicle presence detection at X Street. As shown in Table 6, this reduces the Quiet Zone Risk Index to 20,890. This risk reduction is not sufficient to quality as quiet zone under the rule.

TABLE 6

Street	Crossing risk index w/o horns	Crossing risk index w/horns	SSM EFF	Crossing risk index w/o horns plus SSM
W	35000	20983.21	0	35000
X	42000	25179.86	0.82	7560
Y	33500	20083.93	0	33500
Z	7500	8576.33	0	7500
	RIWH 18705.83			QZRI 20890

The public authority next decides to use traffic channelization devices at W Street. Table 7 shows that the Quiet Zone Risk Index is now reduced to 14,327.5. This risk reduction fully compensates for the loss of the train horn as it is less than the Risk Index with Horns. The quiet zone is qualified under the rule.

TABLE 7

Street	Crossing risk index w/o horns	Crossing risk index w/horns	SSM EFF	Crossing risk index w/o horns plus SSM
W	35000	20983.21	0.75	8750
X	42000	25179.86	0.82	7560
Y	33500	20083.93	0	33500
Z	7500	8576.33	0	7500
	RIWH 18705.83			QZRI 14327.5

Appendix D to Part 222—Determining Risk Levels

Introduction

The Nationwide Significant Risk Threshold, the Crossing Corridor Risk Index, and the Quiet Zone Risk Index are all measures of collision risk at public highway-rail grade crossings that are weighted by the severity of the associated casualties. Each crossing can be assigned a risk index.

The Nationwide Significant Risk Threshold represents the average severity weighted collision risk for all public highway-rail grade crossings equipped with lights and gates nationwide where train horns are routinely sounded. FRA developed this index to serve as a threshold of permissible risk for quiet zones established under this rule.

The Crossing Corridor Risk Index represents the average severity weighted collision risk for all public highway-rail grade crossings along a defined rail corridor.

The Quiet Zone Risk Index represents the average severity weighted collision risk for all public highway-rail grade crossings that are part of a quiet zone.

The Prediction Formulas

The Prediction Formulas were developed by DOT as a guide for allocating scarce traffic safety budgets at the State level. They allow users to rank candidate crossings for safety improvements by collision probability. There are three formulas, one for each warning device category: (1) automatic gates with flashing lights, (2) flashing lights with no gates, and (3) passive warning devices.

The prediction formulas can be used to derive the following for each crossing:

1. PC which is the predicted collisions.
2. P(FC|C) which is the probability of a fatal collision given that a collision occurs.
3. P(CC|C) which is the probability of a casualty collision given that a collision occurs.

The following factors are the determinants of the number of predicted collisions per year:

- Average annual daily traffic;
- Total number of trains per day;
- Number of highway lanes;
- Number of main tracks;

- Maximum timetable train speed;
- Whether the highway is paved or not;
- Number of through trains per day during daylight hours.

The resulting basic prediction is improved in two ways. It is enriched by the particular crossing's collision history for the previous five years and it is calibrated by resetting normalizing constants. The normalizing constants are reset so that the sum of the predicted accidents in each warning device group (passive, flashing lights, gates) for the top twenty percent most hazardous crossings exactly equals the number of accidents which occurred in a recent period for the top twenty percent of that group. This adjustment factor allows the formulas to stay current with collision trends. The calibration also corrects for errors such as data entry errors. The final output is the predicted number of collisions (PC).

The severity formulas answer the question, "What is the chance that a fatality (or casualty) will happen, given that a collision has occurred?" The fatality formula calculates the probability of a fatal collision given that a collision occurs (*i.e.* the probability of a collision in which a fatality occurs) P(FC|C). Similarly, the casualty formula calculates the probability of a casualty collision given that a collision occurs P(CC|C). As casualties consist of both fatalities and injuries, the probability of a non-fatal injury collision is found by subtracting the probability of a fatal collision from the probability of a casualty collision. To convert the probability of a fatal or casualty collision to the number of expected fatal or casualty collisions, that probability is multiplied by the number of predicted collisions (PC).

For the prediction and severity index formulas, please see the following DOT publications: *Summary of the DOT Rail-Highway Crossings Resource Allocation Procedure—Revised*, June 1987, and the *Rail-Highway Crossing Resource Allocation Procedure: User's Guide, Third Edition*, August 1987. Both documents are in the docket for this rulemaking and also available through the National Technical Information Service located in Springfield, Virginia 22161.

Risk Index

The risk index is basically the predicted cost to society of the casualties that are expected to result from the predicted collisions at a crossing. It incorporates three outputs of the DOT prediction formulas. The two components of a risk index are:

1. Predicted Cost of Fatalities = PC × P(FC|C) × (Average Number of Fatalities Observed In Fatal Collisions) × $3 million
2. Predicted Cost of Injuries = PC × (P(CC|C) − P(FC|C)) × (Average Number of Injuries in Collisions Involving Injuries) × $1,167,000

PC, P(CC|C), and P(FC|C) are direct outputs of the DOT prediction formulas.

The average number of fatalities observed in fatal collisions and the average number of injuries in collisions involving injuries were calculated by FRA as follows.

The highway-rail incident files from 1997 through 2001 were matched against a data file containing the list of whistle ban crossings in existence from January 1, 1997 through December 31, 2001 to identify two types of collisions involving trains and motor vehicles (1) those that occurred at crossings where a whistle ban was in place during the period, and (2) those that occurred at crossings equipped with automatic gates where a whistle ban was not in place. Certain records were excluded. These were incidents where the driver was not in the motor vehicle, or the motor vehicle struck the train beyond the 4th locomotive or rail car that entered the crossing. FRA believes that sounding the train horn would not be very effective at preventing such incidents.[1]

Collisions in the group containing the gated crossings nationwide where horns are routinely sounded were then identified as either fatal, injury only, or no casualty. Collisions were identified as fatal if one or more deaths occurred, regardless of whether or not injuries were also sustained. Collisions were identified as injury only when injuries, but no fatalities resulted.

The collisions (incidents) selected were summarized by year from 1997 through 2001 (see table below). The fatality rate for each year was calculated by dividing the number of fatalities ("Deaths") by the number of fatal incidents ("Number"). The injury rates were calculated by dividing the number of injuries in injury only incidents ("Injured") by the number of injury only incidents ("Number").

The following table lists the results. Note that the number of injuries in the sixth-column includes only those injuries resulting from injury only incidents, it excludes any non-fatal injuries sustained in fatal incidents. Non-fatal injuries sustained in fatal incidents are not included in this table. The first line in the table presents information in summary form for the five-year period.

MOTOR VEHICLE INCIDENTS AT NON WB GATED CROSSINGS

	Total incidents	Fatal incidents			Injury incidents		
		Number	Deaths	Rate	Number	Injured	Rate
Total	2,028	255	311	**1.2196**	552	739	**1.3388**
2001	457	70	78	1.1143	119	156	1.3109
2000	430	48	56	1.1667	109	157	1.4404
1999	395	43	59	1.3721	109	144	1.3211
1998	353	46	57	1.2391	105	131	1.2476
1997	393	48	61	1.2708	110	151	1.3727

The fatality rate and the injury rate for the five-year period appear in bold in the first line.

Per guidance from DOT, $3 million is the value placed on preventing a fatality. The Abbreviated Injury Scale (AIS) developed by the Association for the Advancement of Automotive Medicine categorizes injuries into six levels of severity. Each AIS level is assigned a value of injury avoidance as a fraction of the value of avoiding a fatality. FRA rates collisions that occur at train speeds in excess of 25 mph as an AIS level 5 ($2,287,500) and injuries that result from collisions involving trains traveling under 25 mph as an AIS level 2 ($46,500). About half of grade crossing collisions occur at speeds greater than 25 mph. Therefore, FRA estimates that the value of preventing the average injury resulting from a grade crossing collision is $1,167,000 (the average of an AIS–5 injury and an AIS–2 injury.)

Notice that the quantity [PC*P(FC|C)] represents the expected number of fatal collisions. Similarly, {PC*[P(CC|C)–P(FC|C)]} represents the expected number of injury collisions. These are then multiplied by their respective average number of fatalities and injuries (from the table above) to develop the number of expected casualties. The final parts of the expressions attach the dollar values for these casualties.

The Risk Index for a Crossing is the integer sum of the Predicted Cost of Fatalities and the Predicted Cost of Injuries.

Nationwide Significant Risk Threshold

The Nationwide Significant Risk Threshold is simply an average of the risk indexes for all of the gated crossings nationwide where train horns are routinely sounded. FRA identified 33,879 gated non-whistle ban crossings for input to the Nationwide Significant Risk Threshold.

The Nationwide Significant Risk Threshold rounds to 15,424. This value is recalculated annually.

Crossing Corridor Risk Index

The Crossing Corridor Risk Index is the average of the risk indexes of all the crossings in a defined rail corridor. Communities seeking to establish 'Quiet Zones' should initially calculate this average for potential corridors.

Quiet Zone Risk Index

The Quiet Zone Risk Index is the average of the risk indexes of all the public crossings in a Quiet Zone. It takes into consideration the absence of the horn sound and any safety measures that may have been installed.

Appendix E to Part 222—Requirements for Wayside Horns

Minimum requirements for wayside horn use at highway-rail grade crossings:

1. Highway-rail crossing must be equipped with constant warning time device, if reasonably practical, and power-out indicator;
2. Horn system must be equipped with an indicator or other system to notify the locomotive engineer as to whether the wayside horn is operating as intended in sufficient time to enable the locomotive engineer to sound the locomotive horn for at least 15 seconds prior to arrival at the crossing in the event the wayside horn is not operating as intended;
3. The railroad must adopt an operating rule, bulletin or special instruction requiring that the train horn be sounded if the wayside horn indicator is not visible approaching the crossing, or if this, or an equivalent system, does not indicate that the system is operating as intended;
4. Horn system must provide a minimum of 96 and a maximum of 110 dB(A) when measured 100 feet from the horn in the direction it is installed;
5. Horn system must sound at a minimum of 15 seconds prior to the train's arrival at the crossing and while the lead locomotive is traveling across the crossing. It is permissible for the horn system to begin to sound simultaneously with activation of the flashing lights or descent of the crossing arm; and
6. Horn shall be directed toward approaching traffic.

Appendix F to Part 222—Diagnostic Team Considerations

For purposes of this part, a diagnostic team is a group of knowledgeable representatives of parties of interest in a highway-rail grade crossing, organized by the public authority responsible for that crossing, who, using crossing safety management principles, evaluate conditions at a grade crossing to make determinations or recommendations for the public authority concerning safety needs at that crossing. Crossings proposed for inclusion in a quiet zone should be reviewed in the field by such a diagnostic team composed of railroad personnel, public safety or law enforcement, engineering personnel from the public agency with responsibility for the roadway that crosses the railroad, and other concerned parties.

This diagnostic team, using crossing safety management principles, should evaluate conditions at a grade crossing to make determinations and recommendations concerning safety needs at that crossing. The diagnostic team can evaluate a crossing from many perspectives and can make recommendations as to what safety measures authorized by this part might be utilized to compensate for the silencing of the train horns within the proposed quiet zone.

All Crossings Within a Proposed Quiet Zone

The diagnostic team should obtain and review the following information about each crossing within the proposed quiet zone:

1. Current highway traffic volumes and percent of trucks;
2. Posted speed limits on all highway approaches;
3. Maximum allowable train speeds, both passenger and freight;
4. Accident history for each crossing under consideration;
5. School bus or transit bus use at the crossing; and
6. Presence of U.S. DOT grade crossing inventory numbers clearly posted at each of the crossings in question.

The diagnostic team should obtain all inventory information for each crossing, and should check while in the field to see that inventory information is up-to-date and accurate. Outdated inventory information should be updated as part of the quiet zone development process.

When in the field, the diagnostic team should take note of the physical characteristics of each crossing, including the following items:

- Can any of the crossings within the proposed quiet zone be closed, or consolidated with another adjacent crossing? Crossing elimination should always be the preferred alternative, and it should be explored for crossings within the proposed quiet zone.
- What is the number of lanes on each highway approach? Note the pavement condition on each approach, as well as the condition of the crossing itself.
- Is the grade crossing surface smooth, well graded and free draining?
- Does the alignment of the railroad tracks at the crossing create any problems for road users on the crossing? Are the tracks in superelevation (are they banked on a curve?) and does this create a conflict with the vertical alignment of the crossing roadway?
- Note the distance to the nearest intersection or traffic signal on each approach (if within 500 feet or so of the crossing, or if the signal or intersection is determined to have a potential impact on highway traffic at the crossing because of queuing or other special problems).
- If there is a roadway that runs parallel to the railroad tracks, and it is within 100 feet of the railroad tracks when it crosses an intersecting road that crosses the tracks, the appropriate advance warning signs should be posted as shown in the MUTCD.
- Is the posted highway speed (on each approach to the crossing) appropriate for the alignment of the roadway, and the configuration of the crossing?
- Does the vertical alignment of the crossing create the potential for a "hump crossing" where long, low-clearance vehicles might get stuck on the crossing?
- What are the grade crossing warning devices in place at each crossing? Flashing lights and gates are required for each public crossing in a New Quiet Zone. Are all required warning devices, signals, pavement markings and advance signing in place, visible and in good condition for both day and night time visibility?
- What kind of train detection is in place at each crossing? Are these systems old or outmoded; are they in need of replacement, upgrading, or refurbishment?
- Are there sidings or other tracks adjacent to the crossing that are often used to store railroad cars, locomotives, or other equipment that could obscure the vision of road users as they approach the crossings in the quiet zone? Clear visibility may help to reduce violation of automatic devices.
- Are motorists currently violating the warning devices at any of the crossings at an excessive rate?
- Do accident statistics for the corridor indicate any potential problems at any of the crossings?

[1] The data used to make these exclusions is contained in blocks 18—Position of Car Unit in Train; 19—Circumstance: Rail Equipment Struck/Struck By Highway User; 28—Number of Locomotive Units; and 29—Number of Cars of the current FRA Form 6180–57 Highway-Rail Grade Crossing Accident/Incident Report.

- If school buses or transit buses use crossings within the proposed quiet zone corridor, can they be rerouted to a use single crossing within or outside of the quiet zone?

Private Crossings Within a Proposed Quiet Zone

In addition to the items discussed above, a diagnostic team should examine the following for any private crossings within a proposed quiet zone:

- How often is the private crossing used?
- What kind of signing or pavement markings are in place at the private crossing?
- What types of vehicles use the private crossing?

School buses
Large trucks
Hazmat carriers
Farm equipment

- What is the volume, speed and type of train traffic over the crossing?
- Do passenger trains use the crossing?
- Do approaching trains sound the horn at private crossings?

State or local law forbids or requires it?
Railroad safety rule requires it?

- Are there any nearby crossings where train horns sound that might also provide some warning at the private crossing where no horns sound?
- What are the approach (corner) sight distances?
- What is the clearing sight distance for all approaches?
- What are the private roadway approach grades?
- What are the private roadway pavement surfaces?

Appendix G to Part 222—Schedule of Civil Penalties [1]

Section	Violation	Willful violation
Subpart B—Use of Locomotive Horns		
§ 222.21 Use of locomotive horn:		
(a) Failure to sound horn at grade crossing	$5,000	$7,500
Failure to sound horn in proper pattern	1,000	3,000
(b) Failure to sound horn at least 15 and no more than 20 seconds before crossing	5,000	7,500
Sounding horn more than ¼ mile in advance of crossing	1,000	4,000
§ 222.33 Failure to sound horn when conditions of § 222.33 are not met	5,000	7,500
§ 222.45 Sounding locomotive horn at a grade crossing within a quiet zone	1,500	5,000
§ 222.49 (b) Failure to provide Grade Crossing Inventory Form information	2,500	5,000
§ 222.59 (c) Routine sounding locomotive horn at a grade crossing equipped with wayside horn	5,000	7,500

[1] A penalty may be assessed against an individual only for a willful violation. The Administrator reserves the right to assess a penalty of up to $20,000 for any violation where circumstances warrant. *See* 49 CFR part 209, appendix A.

PART 229—[AMENDED]

■ 2. The authority citation for part 229 continues to read as follows:

Authority: 49 U.S.C. 20102–20103, 20107, 20133, 20137–20138, 20143, 20701–20703, 21301–20302, 21304; 49 CFR 149(c), (m).

■ 3. Section 229.129 is revised to read as follows:

§ 229.129 Audible warning device.

(a) Each lead locomotive shall be provided with an audible warning device that produces a minimum sound level of 96dB(A) and a maximum sound level of 110 dB(A) at 100 feet forward of the locomotive in its direction of travel. The device shall be arranged so that it can be conveniently operated from the engineer's usual position during operation of the locomotive.

(b)(1) Each locomotive built on or after December 18, 2004, shall be tested in accordance with this section to ensure that the horn installed on such locomotive is in compliance with paragraph (a) of this section.

(2) Each locomotive built before December 18, 2004, shall be tested in accordance with this section before December 18, 2008, to ensure that the horn installed on such locomotive is in compliance with paragraph (a) of this section.

(3) Each locomotive when rebuilt, as determined pursuant to 49 CFR 232.5, shall be tested in accordance with this section to ensure that the horn installed on such locomotive is in compliance with paragraph (a).

(c) Testing of horn locomotive horn sound level shall be in accord with the following requirements:

(1) A properly calibrated sound level meter shall be used that, at a minimum, complies with the requirements of International Electrotechnical Commission (IEC) Standard 61672–1 (2002–05) for a Class 2 instrument.

(2) An acoustic calibrator shall be used that, at a minimum, complies with the requirements of IEC Standard 60942 (1997–11) for a Class 2 instrument.

(3) The manufacturer's instructions pertaining to mounting and orienting the microphone; positioning of the observer; and periodic factory recalibration shall be followed.

(4) A microphone windscreen shall be used and tripods or similar microphone mountings shall be used that minimize interference with the sound being measured.

(5) The test site shall be free of large reflective structures, such as barriers, hills, billboards, tractor trailers or other large vehicles, locomotives or rail cars on adjacent tracks, bridges or buildings, within 400 feet in front of the locomotive and within 200 feet to the sides of the locomotive and microphone. The locomotive shall be positioned on straight, level track.

(6) Measurements shall be taken only when ambient air temperature is between 36 degrees and 95 degrees Fahrenheit inclusively; relative humidity is between 20 percent and 95 percent inclusively; wind velocity is not more than 12 mile per hour and there is no precipitation.

(7) The microphone shall be located 100 feet forward of the front knuckle of the locomotive, 15 feet above the top of rail, at the center line of the track, and oriented with respect to the sound source according to the manufacturer's recommendations. The observer shall not stand between the microphone and the horn.

(8) Background noise shall be minimal: the sound level at the test site immediately before and after each horn sounding event shall be at least 10 dB(A) below the level measured during the horn sounding.

(9) *Measurement procedures.* The sound level meter shall be set for A-weighting with slow exponential response and shall be calibrated with the acoustic calibrator immediately before and after compliance tests. Any change in the before and after calibration levels shall be less than 0.5 dB. After the output from the locomotive horn system has reached a stable level, the A-weighted equivalent sound level (slow response) for a 20 second duration (LAeq,20s) shall be obtained either directly using an integrating-averaging sound level meter, or recorded once per second and calculated indirectly . The arithmetic-average of a series of at least six such readings shall be used to determine compliance. The standard deviation of the readings shall be less than 1.5 dB.

(10) The railroad shall maintain, at a location of its choice, records sufficient to show the date, manner and result of locomotive horn testing conducted in compliance with this part.

(d) This section does not apply to locomotives of rapid transit operations which are otherwise subject to this part.

Appendix B to Part 229—[Amended]

■ 4. The entry for § 229.129 "Audible warning devices" in appendix B to part 229 is revised to read as follows:

Section	Violation	Willful Violation
229.129 Audible warning device:		
(a) Prescribed sound levels	$2,500	$5,000
Arrangement of device	2,500	5,000
(b) (1), (ii) Testing	2,500	5,000
(c) Test procedures	2,500	5,000
(c)(10) Records of tests	2,500	5,000

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Allan Rutter,

Administrator.

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H.R. 1437/P.L. 108–178
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H.R. 1813/P.L. 108–179
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H.R. 3287/P.L. 108–180
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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 966

[Docket No. FV03–966–4 FR]

Tomatoes Grown in Florida; Increased Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule increases the assessment rate established for the Florida Tomato Committee (Committee) for the 2003–04 and subsequent fiscal periods from $.02 to $.025 per 25-pound container or equivalent of tomatoes handled. The Committee locally administers the marketing order which regulates the handling of tomatoes grown in Florida. Authorization to assess tomato handlers enables the Committee to incur expenses that are reasonable and necessary to administer the program. The fiscal period began August 1 and ends July 31. The assessment rate will remain in effect indefinitely unless modified, suspended, or terminated.

EFFECTIVE DATE: December 22, 2003.

FOR FURTHER INFORMATION CONTACT: Doris Jamieson, Southeast Marketing Field Office, Fruit and Vegetable Programs, AMS, USDA; 799 Overlook Drive, Suite A, Winter Haven, FL 33884–1671; telephone: (863) 324–3375, Fax: (863) 325–8793; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, Fax: (202) 720–8938.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, Fax: (202) 720–8938, or E-mail: *Jay.Guerber@usda.gov*.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement No. 125 and Order No. 966, both as amended (7 CFR part 966), regulating the handling of tomatoes grown in Florida, hereinafter referred to as the "order." The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order now in effect, Florida tomato handlers are subject to assessments. Funds to administer the order are derived from such assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable tomatoes beginning August 1, 2003, and continue until amended, suspended, or terminated. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule increases the assessment rate established for the Committee for the 2003–04 and subsequent fiscal periods from $.02 to $.025 per 25-pound container or equivalent of tomatoes.

The Florida tomato marketing order provides authority for the Committee, with the approval of USDA, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The members of the Committee are producers of Florida tomatoes. They are familiar with the Committee's needs and with the costs for goods and services in their local area and are thus in a position to formulate an appropriate budget and assessment rate. The assessment rate is formulated and discussed in a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

For the 2001–02 and subsequent fiscal periods, the Committee recommended, and USDA approved, an assessment rate that would continue in effect from fiscal period to fiscal period unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the Committee or other information available to USDA (68 FR 15338, March 31, 2003; 66 FR 56599, November 9, 2001).

The Committee met on September 4, 2003, and unanimously recommended 2003–04 expenditures of $1,773,100 and an assessment rate of $0.025 per 25-pound container of tomatoes. In comparison, last year's budgeted expenditures were $1,910,840. The assessment rate of $0.025 is $.005 higher than the rate currently in effect. The number of assessable containers during 2003–04 is estimated to be 50 million and the recommended assessment rate would generate $1,250,000 in income. The Committee s financial reserve is now estimated to be $1,767,427 and is available to cover the deficit in assessment income. The increased assessment rate allows the Committee to maintain its financial reserve at a level it deems appropriate.

The major expenditures recommended by the Committee for the 2003–04 fiscal period include $700,000 for education and promotion, $405,000 for salaries, $320,000 for research, $49,000 for employee health insurance, and $61,000 for employee retirement. Budgeted expenses for these items in 2002–03 were $900,000 for education and promotion, $370,730 for salaries, $320,000 for research, $38,250 for employee health insurance, and $54,860 for employee retirement, respectively.

The assessment rate recommended by the Committee was derived by examining anticipated expenses and expected shipments of Florida tomatoes and considering available reserves. As mentioned earlier, tomato shipments for the year are estimated at 50 million 25-pound containers or equivalents which should provide $1,250,000 in assessment income. Income derived from handler assessments, along with interest income and funds from the Committee s authorized reserve, should be adequate to cover budgeted expenses. Funds in the reserve currently total $1,767,427 and are within the maximum permitted by the order of not to exceed one fiscal period s expenses as stated in § 966.44.

The assessment rate established in this rule will continue in effect indefinitely unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the Committee or other available information.

Although this assessment rate will be in effect for an indefinite period, the Committee will continue to meet prior to or during each fiscal period to recommend a budget of expenses and consider recommendations for modification of the assessment rate. The dates and times of Committee meetings are available from the Committee or USDA. Committee meetings are open to the public and interested persons may express their views at these meetings. USDA will evaluate Committee recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking will be undertaken as necessary. The Committee's 2003–04 budget and those for subsequent fiscal periods would be reviewed and, as appropriate, approved by USDA.

Final Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities. Accordingly, AMS has prepared this final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 100 producers of tomatoes in the production area and approximately 80 handlers subject to regulation under the marketing order. Small agricultural producers are defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts less than $750,000, and small agricultural service firms are defined as those whose annual receipts are less than $5,000,000.

Based on industry and Committee data, the average annual price for fresh Florida tomatoes during the 2002–03 season was approximately $9.59 per 25-pound container or equivalent, and total fresh shipments for the 2002–03 season were 50,974,342 25-pound equivalent cartons of tomatoes. Committee data indicates that approximately 25 percent of the handlers handle 94 percent of the total volume shipped outside the regulated area. Based on the average annual price of $9.59 per 25-pound container, about 75 percent of handlers could be considered small businesses under SBA s definition. Therefore, the majority of handlers of Florida tomato handlers may be classified as small entities. It also is believed that the majority of Florida tomato producers may be classified as small entities.

This rule increases the assessment rate established for the Committee and collected from handlers for the 2003–04 and subsequent fiscal periods from $0.02 to $0.025 per 25-pound container of tomatoes. The Committee unanimously recommended 2003–04 expenditures of $1,773,100 and an assessment rate of $0.025 per 25-pound container or equivalent. The assessment rate of $0.025 is $0.005 higher than the 2002–03 rate. The quantity of assessable tomatoes for the 2003–04 season is estimated at 50 million 25-pound cartons or equivalents. Thus, the $0.025 rate should provide $1,250,000 in assessment income. Income derived from handler assessments, along with interest income and funds from the Committee s authorized reserve, should be adequate to cover budgeted expenses.

The major expenditures recommended by the Committee for the 2003–04 fiscal period include $700,000 for education and promotion, $405,000 for salaries, $320,000 for research, $49,000 for employee health insurance, and $61,000 for employee retirement. Budgeted expenses for these items in 2002–03 were $900,000 for education and promotion, $370,730 for salaries, $320,000 for research, $38,250 for employee health insurance, and $54,860 for employee retirement, respectively.

As previously mentioned, the number of assessable containers during 2003–04 is estimated to be 50 million and the recommended assessment rate would generate $1,250,000 in income. The Committee s financial reserve is now estimated to be $1,767,427 and is available to cover the deficit in assessment income. The increased assessment rate will allow the Committee to maintain its financial reserve at a level it deems appropriate.

The Committee reviewed and unanimously recommended 2003–04 expenditures of $1,773,100 which included increases in administrative and office salaries, research, and education and promotion programs. Prior to arriving at this budget, the Committee considered information from various sources, such as the Committee's Executive Subcommittee, Finance Subcommittee, Research Subcommittee, and Education and Promotion Subcommittee. Alternative expenditure levels were discussed by these groups, based upon the relative value of various research projects to the tomato industry. The assessment rate of $0.025 per 25-pound container or equivalent of tomatoes was then determined by examining the anticipated expenses and expected shipments and considering available reserves. The recommended assessment rate should generate $1,250,000 in income. This is approximately $523,100 below the anticipated expenses, which the Committee determined to be acceptable.

A review of historical information and preliminary information pertaining to the upcoming season indicates that the grower price for the 2003–04 season could range between $6.45 and $10.37 per 25-pound container of tomatoes. Therefore, the estimated assessment revenue for the 2003–04 season as a percentage of total grower revenue could range between .4 and .2 percent, respectively.

This action increases the assessment obligation imposed on handlers. While assessments impose some additional costs on handlers, the costs are minimal and uniform on all handlers. Some of the additional costs may be passed on to producers. However, these costs are offset by the benefits derived by the operation of the marketing order. In addition, the Committee's meeting was widely publicized throughout the Florida tomato industry and all interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the September 4, 2003, meeting was a public meeting and all entities, both large and small, were able to express views on this issue.

This rule imposes no additional reporting or recordkeeping requirements on either small or large Florida tomato handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

A proposed rule concerning this action was published in the **Federal Register** on October 27, 2003 (68 FR 61146). Copies of the proposed rule were also mailed or sent via facsimile to all tomato handlers. Finally, the proposal was made available through the Internet by the Office of the Federal Register and USDA. A 30-day comment period ending November 26, 2003, was provided for interested persons to respond to the proposal. No comments were received.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: *http://www.ams.usda.gov/fv/moab.html*. Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant material presented, including the information and recommendation submitted by the Committee and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it also found and determined that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because handlers are already receiving 2003–04 crop tomatoes from growers. The 2003–04 fiscal period began on August 1, 2003, and the marketing order requires that the rate of assessment for each fiscal period apply to all assessable tomatoes handled during such fiscal period. Further, handlers are aware of this rule which was recommended at a public meeting. Also, a 30-day comment period was provided for in the proposed rule and no comments were received.

List of Subjects in 7 CFR Part 966

Marketing agreements, Reporting and recordkeeping requirements, Tomatoes.

■ For the reasons set forth in the preamble, 7 CFR part 966 is amended as follows:

PART 966—TOMATOES GROWN IN FLORIDA

■ 1. The authority citation for 7 CFR part 966 continues to read as follows:

Authority: 7 U.S.C. 601–674.

■ 2. Section 966.234 is revised to read as follows:

§ 966.234 Assessment rate.

On and after August 1, 2003, an assessment rate of $0.025 per 25-pound container or equivalent is established for Florida tomatoes.

Dated: December 15, 2003.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 03–31265 Filed 12–18–03; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Parts 5 and 28

[Docket No. 03–26]

RIN 1557–AC04

Rules, Policies, and Procedures for Corporate Activities; International Banking Activities

AGENCY: Office of the Comptroller of the Currency, Treasury.

ACTION: Final rule.

SUMMARY: The Office of the Comptroller of the Currency (OCC) is finalizing the proposed rule published on April 23, 2003 amending our regulations pertaining to the foreign operations of national banks, and Federal branches and agencies of foreign banks operating in the United States. The final rule generally makes regulatory requirements more streamlined and risk-focused. It clarifies certain regulatory definitions and simplifies approval procedures for foreign banks seeking to establish Federal branches and agencies in the United States. These changes will further conform the treatment of Federal branches and agencies of foreign banks to that of their domestic national bank counterparts consistent with the national treatment principles of the International Banking Act of 1978.

EFFECTIVE DATE: This rule is effective on January 20, 2004.

FOR FURTHER INFORMATION CONTACT: Lee Walzer, Counsel, Legislative & Regulatory Activities Division, (202) 874–5090; Carlos Hernandez, Senior International Advisor, International Banking & Finance, (202) 874–4730; or Crystal Maddox, Senior Licensing Analyst, Licensing Policy & Systems, (202) 874–5060.

SUPPLEMENTARY INFORMATION:

I. Introduction and Overview of Comments Received

As part of our ongoing effort to streamline regulatory requirements to reduce unnecessary regulatory burdens, the OCC published a notice of proposed rulemaking (NPRM) to amend 12 CFR parts 5 and 28 in the **Federal Register** on April 23, 2003 (68 FR 19949). In the NPRM, we proposed streamlining certain application processes for Federal branches and agencies and updating the types of activities in which they may engage in light of developments in Federal banking law and in furtherance of the principle of national treatment. The proposal was also designed to reduce regulatory burden on national banks conducting foreign activities and on Federal branches and agencies supervised by the OCC by eliminating outdated requirements and replacing them with more streamlined procedures.

The OCC received eight comments on the NPRM. The commenters included several Members of Congress, Federal and state banking agencies, a bank trade association, and an association of state banking officials. Four of the commenters generally supported the OCC's efforts to streamline our regulatory processes and reduce regulatory burden, but offered suggestions to modify various portions of the proposal. Two commenters did not favor the proposal, asserting that the NPRM exceeds the OCC's statutory authority and is inconsistent with congressional intent. These commenters requested that the OCC withdraw the proposal until Congress provides the necessary authority. One of the commenters focused exclusively on a narrow legal question involving interstate branching. Another commenter focused only on the impact on pending legislation if the OCC were to apply certain definitions used in the NPRM to define those same terms in pending legislation if it were to be enacted by the U.S. Congress.

As we explain in the discussion that follows, the OCC has concluded that there is ample authority supporting the revisions to our regulations that we proposed. We also explain why the concerns raised by certain commenters are not, in fact, raised by this proposal. Accordingly, we decline to withdraw the proposal. However, the final rule includes modifications to the proposal intended to address certain of the

suggestions made by the commenters and clarify points about which there may have been misunderstandings. The following discussion highlights those modifications.

II. Discussion

A. Changes to 12 CFR Part 5

1. Definitions (Revised § 5.3)

The proposal revised § 5.3 to update references to the OCC units that should receive certain applications. The OCC received no comments on this technical amendment and adopts it as proposed.

2. Permissible Non-Controlling Equity Investments (Revised § 5.36)

The proposal stated that a well-capitalized, well-managed Federal branch may make non-controlling investments and use the after-the-fact notice procedure set forth in 12 CFR 5.36 in the same manner as a national bank.

Three commenters addressed this amendment. One commenter supported the proposed change, stating that it is consistent with national treatment principles. The second was also supportive, indicating that it would have no objection to the proposed regulatory change as long as any investment made by the branch is a permissible investment under the Bank Holding Company Act and the foreign bank obtains any necessary authorizations from the Board of Governors of the Federal Reserve System (FRB). The commenter requested that OCC clarify that these conditions apply to these investments. As discussed below, to address this point, we are adding language to the final regulation in 12 CFR 28.10(c) clarifying that nothing in the OCC's rules relieves a foreign bank from complying with requirements imposed by the FRB in accordance with applicable law.

A third commenter opposed allowing Federal branches to make non-controlling equity investments, stating that there is "no statutory authorization [in the International Banking Act of 1978] for the investments referred to [in] the new proposed section, which relies solely on the principle of national treatment." This commenter disagreed with the OCC's interpretation of national treatment under the International Banking Act of 1978 (IBA), asserting that the IBA's national treatment scheme does not treat Federal branches as national banks but rather treats Federal branches as *branches* of national banks.

The OCC disagrees. The commenter's interpretation is not supported by the plain language of the statute or its legislative history, court cases that have interpreted the statute, or the Congressional intent of the IBA.

The plain language of section 4(b) of the IBA [1] states:

> Except as otherwise specifically provided in this Act or in rules, regulations, or orders adopted by the Comptroller under this section, operations of a foreign bank at a Federal branch or agency shall be conducted with the same rights and privileges as a *national bank* at the same location and shall be subject to all the same duties, restrictions, penalties, liabilities, conditions, and limitations that would apply under the National Bank Act to a *national bank* doing business at the same location. * * * (emphasis added).

After carefully examining legislative history and Congressional intent, a U.S. Court of Appeals interpreted the national treatment language in the IBA and concluded that the IBA is intended to "treat federally-chartered foreign and *domestic banks* as similarly as possible under the [IBA] (emphasis added)." [2] The court expressly addressed the issue of whether establishing a Federally chartered office of a foreign bank parallels the opening of a national bank's principal office or the opening of a branch of a national bank. The court addressed this issue in the context of upholding the OCC's authority to license a foreign bank's Federal interstate branch or agency in a state that permits foreign banks to establish state-chartered interstate branches or agencies. The court concluded that, subject to the requirements of the IBA, Congress intended that the opening of a foreign bank's initial Federal home-state office is analogous to the opening of a domestic national bank's principal office, and the opening of additional intrastate and interstate Federal offices by the foreign bank under the IBA would be comparable to the opening of branches of a national bank.[3] Thus, the court found that a Federal branch can be treated as a national bank *or* branch thereof depending on the context. The OCC's regulations and this final rule are consistent with this interpretation.

The legislative history of the IBA indicates that the national treatment language in the IBA was not intended to be an inflexible standard for applying national bank laws to Federal branches and agencies. Congress recognized that, because Federal branches and agencies are offices of foreign banks and not separately incorporated entities, certain adjustments in the strict application of the national bank laws may be necessary in order to observe this legal and operational reality. Congress charged the OCC with the primary responsibility to administer this comprehensive framework for Federal offices of foreign banks.[4]

The commenter further argues that the IBA does not give Federal branches and agencies the authority to engage in activities permitted for national banks under the National Bank Act (NBA) unless the authority is also found in the IBA. This interpretation also is not consistent with the plain language of the statute or its legislative history.

The legislative history of the IBA describes the language in section 4(b) quoted above to provide that, "[w]ith certain exceptions, statutory or regulatory, the *activities* of a Federal branch or agency shall be conducted in the same manner as a *national bank* (emphasis added)." [5] Moreover, a court found that, in light of the overriding national treatment objective of the IBA, the IBA should be construed in such a way as to minimize the extent to which a Federal branch or agency is treated differently from a national bank.[6] As a result, a Federal branch operating in a state has the same rights and privileges as, and is subject to the same restrictions, penalties, and conditions that apply to, a national bank operating in that same state unless the IBA or the Comptroller provides otherwise. While the IBa does not specifically mention the NBA as the source of authority for a Federal branch's "rights and privileges" to engage in activities, it incorporates all of the laws that provide authority to national banks, including the NBA, subject to any applicable statutory or regulatory exceptions.

For all of these reasons, the OCC adopts § 5.36 as proposed.

3. Federal Branches and Agencies (Revised § 5.70)

The proposal amended § 5.70, which describes filing requirements for corporate activities and transactions involving Federal branches and agencies, to ensure consistency with proposed changes to 12 CFR part 28 described elsewhere in this proposal. The proposal deleted the definition of "change the status of an office" while the definition of "establish" a Federal branch or agency was revised to comport with other proposed changes to those definitions in part 28. No comments were received on this provision and, thus, the OCC is adopting it as proposed with only a minor, technical change.

B. Changes to 12 CFR Part 28: Foreign Operations of a National Bank

1. Filing Requirements for Foreign Operations of a National Bank (Revised § 28.3)

The proposed rule amended § 28.3 to provide that no notice to the OCC is required if a national bank closes or relocates a foreign branch. No comments were received on this proposed change and we are adopting it as proposed.

2. Filing of Notice (Revised § 28.5)

The proposed rule made a technical change to § 28.5 with respect to identifying the appropriate OCC office to receive certain notices. We did not receive any comments on this change and we, thus, are adopting it as proposed.

C. Changes in 12 CFR Part 28: Operations of Federal Branches and Agencies of Foreign Banks

1. Authority, Purpose, and Scope (Revised § 28.10(b) and New § 28.10(c))

The proposal did not include revisions to § 28.10, which sets out the authority, purpose, and scope for subpart B of part 28, which pertains to Federal branches and agencies of foreign banks. One commenter thought that we should clarify that other legal requirements, in addition to those contained in the OCC's rules, may apply to certain transactions involving Federal branches and agencies. This clarification is simply an express statement of current law and 12 CFR 28.12(i) already has a limited statement of this principle with respect to the approval requirements for a Federal branch or agency.[7] However, we agree that it is helpful to include a broader statement in the regulatory text. Accordingly, we have added a sentence, at § 28.10(c), saying that nothing in any of the OCC's rules relieves a foreign bank of requirements that may be imposed under other provisions of applicable law. We also made a conforming technical amendment to the heading in § 28.10(b) and deleted current § 28.12(i).

These changes clarify that none of the revisions adopted in the final rule supersedes any legal requirements that are imposed by the FRB in the FRB's Regulation K [8] or are imposed under any other applicable law. For example, Federal law provides that, subject to certain exceptions, the operations of a Federal branch or agency are subject to the "same duties, restrictions, penalties, liabilities, conditions, and limitations that would apply if the Federal branch or agency were a national bank operating at the same location." 12 CFR 28.13(a)(1). Accordingly, U.S. domestic laws also may apply to a Federal branch or agency to the same extent that they would apply to a national bank operating at the same location.

2. Definitions (Revised § 28.11)

The IBA, which governs the operations of foreign banks in the United States through branches and agencies and other offices, sets standards for establishing the offices of foreign banks and requires the OCC to approve the "establishment" of Federal branches and agencies of foreign banks. Part 28 currently defines the term "establish" to mean initial entry of a foreign bank into the United States via a Federal branch or agency; the opening of additional branches and agencies, whether through intrastate or interstate branching; mergers and other consolidations; and "changes in status." The term "changes in status" means both expansions (*e.g.*, from a Federal agency to a Federal branch) and contractions in activities (*e.g.* from a Federal branch into a Federal agency).

The NPRM deleted the separate definition of "changes in status" from part 28 and incorporated certain elements of that definition in a revised definition of the term "establish a Federal branch or agency". These amendments result in contractions in activities, *e.g.*, conversion from a Federal branch to a Federal agency, being deleted from the type of transactions that would require a filing with the OCC. Most commenters generally supported the OCC's efforts to reduce regulatory burden such as this change to § 28.11 and one commenter specifically supported eliminating the requirement that a foreign bank must give prior notice to the OCC when contracting the level of its U.S. activities by converting from a Federal branch to a Federal agency. Accordingly, we are adopting this amendment as proposed.

In addition, we are making one clarifying and technical change to the definitions in § 28.11 that was not proposed in the NPRM. The definition of "manual" in § 28.11(u) (as redesignated herein) means the Comptroller's Corporate Manual as defined in 12 CFR 5.2(c). In an interim rule effective April 14, 2003 (68 FR 17890), the OCC amended § 5.2(c) to reflect that the Comptroller's Corporate Manual has been replaced with the Comptroller's Licensing Manual. We are, thus, making a conforming change to § 28.11(u) to clarify that the term "manual" has the same meaning as in § 5.2(c).

3. Approval and Licensing Requirements for a Federal Branch or Agency (Revised § 28.12(a))

The proposed rule provided that, consistent with national treatment, and analogous to the national bank chartering process, the OCC would *license* a foreign bank's initial Federal branch or agency. However, while subsequent offices would require regulatory *approval* in accordance with applicable law, no additional license would be required for those subsequent establishments unless the additional office constitutes an expansion of activities in the U.S. (*e.g.*, the foreign bank's license is for a limited Federal branch or an agency and the additional office would be a full-service branch).

One commenter praised this provision in the NPRM because it would reduce the burdens associated with the licensing process when a foreign bank is establishing additional Federal branches and agencies. Another commenter, however, thought that "[i]t may be possible to issue a single license to a foreign bank with branches and agencies in multiple states" but opposed the change on the basis of the same national treatment arguments as presented in connection with the change to 12 CFR 5.36. The commenter also was concerned about the OCC using the single licensing procedure to change substantive legal requirements.

We disagree with the national treatment arguments raised for the same reasons that we explained above when discussing the comments on our proposed change to 12 CFR 5.36.

Most important, however, is that the substantive legal requirements applicable to Federal branches and agencies are unaffected by permitting those entities to operate under a single license. As explained in the NPRM, "[t]his change in licensing procedures would not affect the substance of the OCC's regulatory and supervisory responsibilities. The OCC would

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[1] 12 U.S.C. 3102(b).

[2] *CSBS* v. *Conover*, 715 F.2d 604, 616 (D.C. Cir. 1983), *cert denied*, 466 U.S. 927 (1984).

[3] *Id.* at 616–617. *See also* 12 U.S.C. 3103(a) (providing that a foreign bank may establish an Federal branch or agency outside of its home state if such establishment would be permitted for a national bank establishing an interstate branch office and subject to certain other criteria (enacted in 1994 in the Riegle-Neal Interstate Banking and Branching Efficiency Act)).

[4] *See* S. Rep. No. 95–1073, 95th Cong., 2d Sess. 7 (1978), *reprinted in* 1978 U.S.C.C.A.N. at 1427.

[5] *Id.* at 21, *reprinted in* 1978 U.S.C.C.A.N. at 1441.

[6] *See CSBS* v. *Conover*, 715 F.2d at 617.

[7] Prior to the changes made by this final rule, 12 CFR 28.12(i) provided that nothing in § 28.12 relieved a foreign bank from the requirement to obtain any approval that may be necessary under the FRB's Regulation K, 12 CFR part 211.

[8] 12 CFR part 211.

continue to review and approve applications for additional offices in accordance with applicable law * * * and would continue to supervise these additional offices in the same manner as it [currently] does. * * *" 68 FR 19950 (April 23, 2003).

Therefore, the single licensing proposal is adopted without substantive modification but with one technical change. The final rule clarifies that the single license will be the method of licensing Federal branches and agencies after the effective date of the final rule. Foreign banks already operating in the United States with multiple Federal branches or agencies will have the option of converting to a single license or continuing to maintain multiple licenses for their offices, however.

4. CCS Requirements (Revised § 28.12(b)(5))

The proposal provided that the OCC generally would consider whether a foreign bank applicant is subject to comprehensive supervision on a consolidated basis by its home country supervisor (CCS) only in certain cases and *may*, in its discretion, consider it in other cases as deemed appropriate. Under the proposal, as required by statute, the OCC would apply the standards of CCS when acting on applications for interstate establishments. *See* 12 U.S.C. 3103(a)(3)(A). In connection with other applications to establish a Federal branch or agency, the OCC *may* consider CCS if necessary based on the circumstances of a particular case. This change in the OCC's rule would have no effect on the statutory requirement that the FRB make a CCS determination in connection with any application by a foreign bank to establish a U.S. office, as that requirement is interpreted by the FRB.

One commenter specifically supported this amendment to streamline the OCC's application procedures. No commenter opposed the change. Thus, the OCC is adopting this amendment as proposed.

5. Expedited Approval Procedures (New § 28.12(e)(2) and (e)(3), Revised § 28.12(e)(4), and New § 28.12(i))

The proposal provided for expedited review of additional types of applications to establish a Federal branch or agency. Under proposed new § 28.12(e)(2), a foreign bank could establish a new intrastate Federal branch or agency after providing written notice to the OCC 45 days in advance of the proposed establishment. The OCC may waive the 45-day period in certain circumstances, as well as suspend the notice period or require an application if the notice raises significant policy or supervisory issues.

In addition, under proposed new § 28.12(e)(3), an eligible foreign bank's[9] application to establish a Federal branch or agency interstate would be conditionally approved as of the 45th day after the OCC receives the completed application, unless the OCC notified the bank that the filing was not eligible for expedited review. The proposal also revised § 28.12(e)(4) to provide for expedited approval of certain other applications submitted by an eligible foreign bank. In addition, because a contraction in U.S. activities (*i.e.*, converting an existing Federal branch into a limited Federal branch or into a Federal agency) will no longer be considered as an establishment, proposed new § 28.12(i) would provide that such contractions in operations would require only a written notice to the OCC within 10 days after the conversion.

One commenter supported the proposed streamlined approval procedures and urged the OCC to shorten the period for processing notices for intrastate expansions and *de novo* interstate branching applications submitted by eligible foreign banks. Shortening the time period to 30 days, the commenter said, would enable such notices to be processed in the same timeframe as applications by foreign banks to convert state offices to Federal offices. When processing applications for such conversions, the OCC may have no prior experience with the foreign bank parent. Thus, according to the commenter, the processing period should not be longer for notices for intrastate and interstate expansions than for state-to-Federal conversions because, in the case of the expansions, the OCC already is familiar with the foreign bank since it has an existing federally licensed office.

The OCC agrees with this commenter and has changed the final rule to reduce the prior approval period from 45 days to 30 days in the case of intrastate expansions by foreign banks and interstate expansions by eligible foreign banks. The OCC believes that 30 days is sufficient time for the OCC to review the notice or application and advise the foreign bank that the proposed expansion is disapproved, or that additional time is needed to evaluate the notice or application.

Another commenter argued that the OCC's proposed notice and application procedures for certain foreign banks to expand through intrastate and interstate offices does not satisfy the IBA's prior approval requirements.

The OCC disagrees. It is crucial to recognize that the proposal did not alter the statutory prior approval requirements. The proposal established streamlined procedures permitting certain foreign banks to seek approval through a notice or application procedure to be filed prior to establishing an additional intrastate branch or agency or an interstate branch or agency, respectively. In particular, under the proposal, the OCC is deemed to have given its prior approval under these streamlined procedures if we do not advise the foreign bank that the proposed expansion is disapproved within a specified time period. Our regulations contain similar procedures to provide for streamlined and expedited review for qualifying national banks in other situations where OCC approval is required by law. *See, e.g.*, 12 CFR 5.39(i) (approval to acquire or commence activities in a financial subsidiary), 12 CFR 5.30(f)(5) (approval for establishment or relocation of a branch).

Five commenters argued that the OCC's interstate branching procedures for eligible foreign banks may be interpreted as providing substantive authority for foreign banks to branch interstate in violation of law. Two comment letters sought clarification in the final rule regarding whether a foreign bank may establish a *de novo* branch within a state that does not permit *de novo* branching, contending that the NPRM left the matter ambiguous. The commenter said that section 102 of the Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994, Pub. L. No. 103–328,[10] authorizes interstate branching for foreign banks with Federal branches and agencies to the same extent as national banks. However, section 103 of that Act[11] requires that, in the case of an application by a national bank to establish a *de novo* branch in a state that is not the bank's home state, the Comptroller may approve an application if the host state has in effect a non-discriminatory law that expressly permits all out-of-state banks to establish *de novo* branches in the state. The commenters in those letters said that Florida has not passed such authorizing legislation and has, in fact, passed a statute prohibiting interstate *de novo* branching. The commenters concluded by requesting that the OCC clarify in the final rule that foreign banks will not be able to branch interstate in a manner prohibited to domestic national banks.

The procedural changes we proposed do not permit this result. As we said in the NPRM, none of the proposed changes affects any legal requirements that are otherwise applicable under law with respect to a national bank's foreign activities *"or the operations of foreign banks in the United States."* As a commenter pointed out, the IBA contains provisions that expressly apply to branching by Federal branches and agencies. *See* 12 U.S.C. 3102(h)(A), 3103. Section 3103(a)(1) generally references domestic national banking law to determine the interstate branching authority of Federal branches and agencies. It permits a foreign bank to establish a Federal branch or agency outside of its home state "to the extent that the establishment and operation of such branch would be permitted under section 5155(g) of the Revised Statutes (12 U.S.C. 36(g)) or section 44 of the Federal Deposit Insurance Act (12 U.S.C. 1831u) if the foreign bank were a national bank whose home State is the same State as the home State of the foreign bank." 12 U.S.C. 3103(a)(1). Moreover, the statute directs the OCC to apply not only the requirements of the IBA with respect to the establishment of a Federal branch or agency but also capital and merger requirements under domestic banking law. 12 U.S.C. 3103(a)(3). The legislative history likewise states that "a foreign bank would be permitted to establish or acquire [F]ederal branches in states other than its home state to the same extent that a national bank from the foreign bank's home state may engage in interstate branching." H. Rep. 103–448, 103d Cong., 2d Sess., 18 (1994).

The IBA, however, also authorizes branches and agencies of foreign banks to branch interstate and to upgrade interstate offices under circumstances that may be different from those permitted for domestic banks. *See* 12 U.S.C. 3103(a)(7). Notwithstanding the domestic bank parity provisions, a foreign bank may establish a branch or agency in a state other than its home state if the host state permits the establishment and operation of the branch or agency and any such branch accepts only deposits permissible for Edge Act corporations.[12] Also, notwithstanding the domestic bank parity provisions, foreign banks may upgrade interstate offices subject to certain conditions.

We proposed to establish expedited procedures for eligible foreign banks to obtain OCC approval of applications to open a Federal branch or agency on an interstate basis. The proposal did not provide a new source of authority for a foreign bank to establish such an interstate office. Nor did it make any substantive changes in the legal requirements for interstate branching under the IBA.

For these reasons, we have not changed the final rule in the manner suggested by these commenters. In addition, we do not believe that it is appropriate to include a provision in the regulation clarifying that the OCC will not approve an application of a foreign bank to establish a *de novo* branch in a state in which *de novo* banking is not permitted for domestic institutions. As explained above, the statement is unnecessary. The regulation provides only for expedited approval procedures for such applications and does not address any of the substantive legal requirements for interstate branching.

Thus, the changes discussed above to shorten the period for processing notices for intrastate expansions by foreign banks and *de novo* interstate branching applications submitted by eligible foreign banks are the only changes that are made in the final rule that apply to the expedited approval procedures proposed in the NPRM.

6. Eligible Foreign Bank (Revised § 28.12(f))

Under current part 28, foreign banks with Federal branches and agencies that all are rated "1" or "2" under the applicable interagency rating system are eligible for expedited processing of certain applications and other filings. 12 CFR 28.12(e) and (f). The proposed rule would revise § 28.12(f) to provide that a foreign bank that has no Federal branches or agencies also is "eligible" if it is engaging in a state-to-Federal conversion and its state offices satisfy the eligibility criteria. This change would simply codify procedures that we have already adopted in our Manual.

No comments were received on this proposal and the OCC is adopting it as proposed.

7. After-the-Fact Notice for Certain Acquisitions (New § 28.12(h))

Under current part 28, if foreign bank A, which has a Federal branch, merges with foreign bank B, which does not have a Federal branch or agency, an application to establish the Federal branch would have to be submitted to the OCC if B were the surviving institution. Under current § 28.12(g), the two foreign banks may proceed with their merger without approval of B's establishment of the branch if B provides reasonable advance notice of the transaction to the OCC. Prior to the merger, B must also apply to the OCC or commit to abide by the OCC's decision on the application.

Proposed new § 28.12(h) provided an expedited procedure for foreign bank B if B already has banking offices in the United States. However, we would retain the discretion to require prior approval to establish the Federal branch or agency if necessary for prudential reasons.

One commenter supported streamlining this procedure in the manner proposed by the OCC. The OCC is, thus, adopting this provision without change.

8. Exceptions to Usual Filing Procedures (Revised § 28.12(j))

This technical change revised § 28.12(j) (as redesignated in this proposal) to clarify that the OCC also reserves the right to adopt different procedures with respect to a part 28 filing or class of filings.

No comments were received on this provision and we are adopting it without change.

9. Other Applications Accepted (New § 28.12(k) (Designated as § 28.12(l) in the NPRM))

This technical amendment added § 28.12(k) to codify the current OCC practice of accepting applications or notices filed with other Federal agencies that contain the necessary information required by the OCC to approve an application or act on a particular request. Under the proposal, we retained the discretion to request additional information from an applicant as deemed necessary. This amendment is adopted without change.

10. Capital Equivalency Deposits (Revised § 28.15(a)(1) and New § 28.15(a)(3))

The IBA requires Federal branches and agencies to establish and maintain a CED. 12 U.S.C. 3102(g). In 2002, the OCC issued a final rule revising certain requirements regarding CED deposit arrangements based on a supervisory

[9] The term "eligible foreign bank" is defined in § 28.12(f) and generally includes a foreign bank that (1) has Federal branches and agencies that have a composite rating of "1" or "2" under the interagency rating system for U.S. branches and agencies of foreign banks, (2) is not subject to an enforcement action (but, if subject to such an action, the OCC can waive this requirement), and, (3) if applicable, has an "outstanding" or "satisfactory" rating under the Community Reinvestment Act. The NPRM amends this definition in § 28.12(f) to permit foreign banks that have no Federal branches or agencies to be considered "eligible foreign banks" when engaging in certain transactions. As described herein, the OCC is adopting this amendment to § 28.12(f) as proposed.

[10] 12 U.S.C. 1831u.

[11] 12 U.S.C. 36(g).

[12] *See* 12 CFR 211.6.

assessment of the risks presented by the particular institutions.[13] The additional changes proposed in the NPRM further reduce unnecessary burden and simplify compliance with the CED requirements.

The proposal amended § 28.15(a)(1) to clarify the types of assets eligible to be deposited in a CED. Currently, a CED must consist of bank-eligible securities, dollar deposits payable in the United States, certificates of deposit payable in the United States, and other assets permitted by the OCC. The proposal included dollar deposits payable in any Group of Ten (G–10) country and added repurchase agreements to the list of permissible CED assets. The proposal also clarified that the OCC's authority to permit other assets to qualify for the CED is limited to other assets that are "similar" to those expressly included in the statute.

In addition, the proposal clarified the OCC's current policy to exclude liabilities of an international banking facility to third parties, and of a Federal branch to an international banking facility, when calculating the required amount of a CED. Also, the proposed rule permitted the OCC, like some other regulators, to exclude liabilities from repurchase agreements on a case-by-case basis.

One commenter generally supported the OCC's efforts to alleviate burden associated with the CED requirements and specifically supported these changes to part 28. Consequently, the OCC is adopting this amendment as proposed.

11. Capital Equivalency Deposits (Revised § 28.15(e))

In the NPRM, we proposed to clarify the meaning of the term "located" in the context of the location of a depository bank that holds a CED deposit, relative to a Federal branch or agency subject to the CED requirement. Under the IBA, for purposes of the CED requirement, a *depository bank* must be *located* in the state where the branch or agency is *located*. 12 U.S.C. 3102(g)(1). The proposal provided that a depository bank is "located" in the state where it has its main office or a branch and a Federal branch or agency is "located" in the state in which it is licensed or in the state that is its parent foreign bank's home state. The proposal further clarified that a foreign bank with interstate offices has the discretion to consolidate all or some of its CEDs into one depository bank. We specifically requested comments on whether such a consolidated account should provide for segregated assets for specific offices or whether it would be sufficient for the account to contain a consolidated amount large enough to cover the CEDs of all of the individual offices.

One commenter supported the proposed changes in the NPRM with respect to CEDs, particularly the proposal to allow multiple Federal branches and agencies to maintain a single consolidated CED at a U.S. depository bank. The commenter expressed its view that it would not be necessary for the consolidated CED account to contain segregated assets to cover specific offices; instead, the commenter said that maintaining a consolidated account large enough to cover the operations of all of the individual offices would be sufficient.

Another commenter opposed the proposed changes, contending first that the NPRM should have stated that a Federal branch or agency is located in each state in which it maintains an office under the plain meaning of the term "located." Second, the commenter stated that the legislative history of the CED requirement "demonstrates Congressional concern that assets be available to local creditors in the event that a foreign bank becomes insolvent." The commenter added that segregated accounts promote efficient liquidations by minimizing the need for local creditors to pursue remedies in other states. Segregated accounts, according to the commenter, would better protect local creditors in situations where the foreign bank operated both Federal and state branches or agencies.[14]

The OCC agrees that in order to be eligible to hold a foreign bank's CED for its Federal branches and agencies, a depository bank's main office or a branch must be located in the state in which the Federal branch or agency's foreign bank parent has its home office or in any state in which a Federal branch or agency office is maintained. In the latter case, the state may not necessarily be the state in which the Federal branch or agency is licensed under the single-licensing approach described above but may be any state in which the foreign bank has a Federal branch or agency office.

This interpretation of the term "located" is reasonable and consistent with national treatment and the intent of the IBA. As one commenter agrees, the CED statute does not define the term "located." Thus, by analogy to national banking law,[15] the OCC has determined that a U.S. depository bank holding a foreign bank's CED is located in the state in which the depository bank has its main office or a branch and the final rule clarifies this interpretation.

Under the IBA, the OCC has the authority to establish limitations and conditions for the CED and its administration. 12 U.S.C. 3102(g)(1). Section 3102(g)(3) further extends this authority, stating that "[t]he deposit shall be maintained with any such member bank pursuant to a deposit agreement in such form and containing such limitations and conditions as the Comptroller may provide." This very specific authority is enhanced by the IBA's general grant of authority to the OCC to issue rules, regulations, and orders pertaining to the establishment and administration of Federal branches. 12 U.S.C. 3102(b). Moreover, the legislative history of the IBA recognized that, while the objective of Federal regulation under the IBA is to achieve equal treatment between foreign and domestic banks, some discretion was necessary to develop a regulatory framework that is appropriate to the actual operations of foreign banking institutions.[16]

With regard to requiring foreign banks to segregate assets in a consolidated CED account, we have considered the comments received and have decided that foreign banks with multiple branches and/or agencies that consolidate their CED deposits should maintain book entry segregation of assets for each office. We are clarifying new § 28.18(c)(3) to add such a requirement. This will help to promote orderly liquidations and will help to ensure that local creditors of each office of a foreign bank are protected. In addition, we are revising new § 28.15(e) to clarify that the total amount of the CED will continue to be calculated on an office-by-office basis to ensure that there are sufficient assets available for each individual office.

[13] 67 FR 41619 (June 19, 2002)

[14] Three commenters criticized the proposed definition of where a Federal branch or agency is "located" on the basis that the proposed definition would be inconsistent with Congressional intent and would "administratively overturn" language included in pending legislation in the House of Representatives in the 108th Congress—section 107 of H.R. 1375, the proposed "Financial Services Regulatory Relief Act of 2003."

As explained above, our proposed definition of "located" is an interpretation of current law *for purposes of determining which depository banks are eligible to hold a foreign bank's CED deposit for its Federal branch or agency*. It does not affect the *amount* of the CED that is required, or the determination of where a branch or agency is located, for purposes of any future standard that keys a CED requirement to the requirements of the state in which a branch or agency is "located."

[15] *See* 12 U.S.C. 81.

[16] *See supra* note 4 (and accompanying text).

12. Deposit-Taking by an Uninsured Federal Branch (Revised § 28.16(b)(8))

As proposed, the final rule makes a technical correction to § 28.16(b)(8) to correct the citation to the FRB's Regulation K (12 CFR 211.6).

13. Maintenance of Accounts, Books, and Records (New § 28.18(c)(3))

Proposed new § 28.18(c)(3) required a foreign bank that has interstate Federal branches or agencies and combines its CEDs into one account to designate one of its Federal offices to maintain consolidated information about the Federal branches and agencies covered by the CEDs. The final rule includes this provision without change. In addition, the final rule includes the provision described above that will require consolidated CED deposits to reflect book entry segregation of assets for each Federal branch or agency office.

14. Maintenance of Assets (Revised § 28.20(a)(2))

Under current law, we may impose asset maintenance requirements on a foreign bank to hold certain assets in the state in which its Federal branch or agency is located if necessary for prudential, supervisory, or enforcement reasons. 12 CFR 28.20(a)(1). These requirements are in addition to the CED requirements but, in determining compliance with any asset maintenance requirements imposed by the OCC, we must give credit to the amount of assets held in the CED and other reserves or assets required under the IBA. 12 U.S.C. 3102(g)(4).

The proposal revised § 28.20(a)(2) to delete the requirement that the amount of assets held by the foreign bank cannot be less than 105% of the aggregate amount of liabilities of the Federal branch or agency, payable at or through the Federal branch or agency. Under the proposal, we would prescribe the amount of assets on a case-by-case basis and there would be no set minimum. This change is adopted in the final rule.

15. Voluntary Liquidation (Revised § 28.22(a) and (b))

The proposal made certain changes in the voluntary liquidation procedures for Federal branches and agencies. We received no comments on this provision and we are adopting it as proposed.

16. Procedures for Closing Some (But Not All) of a Foreign Bank's Federal Branches and/or Agencies (New § 28.23)

To be consistent with the IBA's national treatment standard, the proposal treated a foreign bank that is closing some but not all of its Federal branches and/or agencies like a national bank that is closing a branch office. We received no comments on this change and we are adopting it as proposed.

17. After-the-Fact Notice of Change in Control (New § 28.25)

The proposal added a new section to part 28 to require a foreign bank to submit a written notice to the OCC when there is a change in control of the foreign bank. The notice would be submitted within 14 days after the foreign bank became aware of the change if no other filing is required under part 28. A foreign bank could provide its supervisory office with the copy of a notice submitted to another Federal regulator to satisfy the requirements of this section. *See* 12 CFR 28.12(k).

No comments were received on this provision and it is adopted as proposed.

18. Loan Production Offices (New § 28.26)

In the NPRM, the OCC provided that a Federal branch may operate a loan production office (LPO), an administrative office, or a regional administrative office that conducts other types of representational activities, as part of a branch license. The OCC noted that, since national banks may operate such offices, allowing Federal branches to do so is consistent with national treatment.

Two commenters addressed this proposal. One noted that it would view loan production offices as representative offices and their activities would be limited as such and noted that such offices would need to be approved by the FRB in accordance with applicable law. The commenter requested that the final rule refer to these requirements.

The second commenter stated that the IBA does not permit the establishment of such offices and that, if Congress wished to authorize them, it would have expressly done so. This commenter added that offices that are not branches or agencies are treated under Regulation K as representative offices. Since there is no basis for chartering federal representative offices, the IBA does not permit the establishment of loan production offices and other types of non-branch offices, according to the commenter.

With respect to the first comment, as discussed above, we are adding a statement to § 28.10(c) to clarify that nothing in our regulations relieves a foreign bank of any requirement that is imposed by the FRB under applicable law.

We believe that the second commenter is wrong as a matter of law. The fact that certain non-branch offices may be subject to other regulatory requirements does not diminish the ability of the OCC to permit Federal branches to establish such offices. The OCC's authority to allow a Federal branch to establish LPOs or other administrative offices or regional administrative offices as part of its Federal branch license is derived from separate authority. *See* 12 U.S.C. 3102. In addition, as discussed above, the OCC disagrees that the IBA does not provide the authority for a Federal branch to engage in the same activities as a national bank subject to certain statutory and regulatory exemptions.

For these reasons, we have adopted § 28.26 substantially as proposed.

Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act (RFA), 5 U.S.C. 605(b), the regulatory flexibility analysis otherwise required under section 604 of the RFA is not required if the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities and publishes its certification and a short, explanatory statement in the **Federal Register** along with its rule.

Pursuant to section 605(b) of the RFA, the OCC hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities. Specifically the proposed rule will reduce burden by: (1) Streamlining procedures for national banks' foreign operations through branches; (2) eliminating the requirement to file an application with the OCC in certain circumstances when a foreign bank downgrades its U.S. operations; (3) requiring approval, but not a new license, for additional Federal branches or agencies opened after the establishment of the initial branch office; and (4) clarifying that a foreign bank with Federal branches and agencies in more than one state may consolidate its capital equivalency deposits in one deposit account in a depository bank that satisfies certain criteria. These revisions will result in cost reductions for national banks and for the U.S. operations of Federal branches and agencies of foreign banks. Accordingly, a regulatory flexibility analysis is not needed.

Executive Order 12866

The OCC has determined that this final rule is not a significant regulatory action under Executive Order 12866.

Unfunded Mandates Reform Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995, Pub. L.

104–4 (2 U.S.C. 1532) (Unfunded Mandates Act), requires that an agency prepare a budgetary impact statement before promulgating any rule likely to result in a Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector of $100 million or more in any one year. If a budgetary impact statement is required, section 205 of the Unfunded Mandates Act also requires an agency to identify and consider a reasonable number of regulatory alternatives before promulgating a rule. The OCC has determined that the final rule will not result in expenditures by State, local, and tribal governments, or by the private sector, of $100 million or more in any one year. Accordingly, this rulemaking is not subject to section 202 of the Unfunded Mandates Act.

Paperwork Reduction Act

In accordance with the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the OCC may not conduct or sponsor, and a respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB)) control number.

The information collection requirements contained in the NPRM have been reviewed and approved by OMB in accordance with the Paperwork Reduction Act of 1995 under OMB control number 1557–0102.

However, the paperwork burden for these requirements likely will be transferred to OMB control number 1557–0014. OMB control number 1557–0014 covers the Comptroller's Licensing Manual (Manual). The Manual explains the OCC's policies and procedures for the formation of a new national bank, entry into the national banking system by other institutions, and corporate expansion and structural changes by existing national banks. The Manual includes sample documents to assist the respondent in understanding the types of information the OCC needs to process a filing. The documents are samples only. An applicant may use any format that provides sufficient information for the OCC to act on a particular filing.

The NPRM and this final rule generally eased regulatory requirements and reduced paperwork burden somewhat. The OMB approved burden attributable to the NPRM and this final rule is as follows:

The burden for 12 CFR part 5 is as follows:

12 CFR 5.36:

17 respondents × 1 response per year = 17 responses

17 responses × 1 hour per response = 17 burden hours

The burden for 12 CFR part 28 is as follows:

12 CFR 28.3(a):

45 respondents × 1 response = 45 responses

45 responses × .5 hour per response = 23 burden hours

12 CFR 28.12(a):

4 respondents × 1 response per year = 4 responses

4 responses × 41 hours per response = 164 burden hours

12 CFR 28.12(e)(2):

1 respondent × 1 response per year = 1 response

1 response × 1 hour per response = 1 burden hour

12 CFR 28.12(h):

2 respondents × 1 response per year = 2 responses

2 responses x 1 hour per response = 2 burden hours.

12 CFR 28.12(i):

1 respondent × 1 response per year = 1 response

1 response × 1 hour per response = 1 burden hour.

Executive Order 13132

The Comptroller of the Currency has determined that this final rule does not have any Federalism implications, as required by Executive Order 13132.

List of Subjects

12 CFR Part 5

Administrative practice and procedure, National banks, Reporting and recordkeeping requirements, Securities.

12 CFR Part 28

Foreign banking, National banks, Reporting and recordkeeping requirements.

Authority and Issuance

■ For the reasons set forth in the preamble, parts 5 and 28 of chapter I of title 12 of the Code of Federal Regulations are revised to read as follows:

PART 5—RULES, POLICIES, AND PROCEDURES FOR CORPORATE ACTIVITIES

■ 1. The authority citation for part 5 continues to read as follows:

Authority: 12 U.S.C. 1 *et seq.*, 24a, 24(Seventh), 93a, and 3101 *et seq.*

■ 2. In § 5.3, revise paragraphs (c)(1) and (c)(4) to read as follows:

§ 5.3 Definitions.

* * * * *

(c) * * *

(1) The Licensing Department for all national bank subsidiaries of those holding companies assigned to the Washington, DC, licensing unit;

* * * * *

(4) The licensing unit in the Northeastern District Office for Federal branches and agencies of foreign banks.

* * * * *

■ 3. In § 5.36, redesignate paragraph (f) as paragraph (g) and add a new paragraph (f) to read as follows:

§ 5.36 Other equity investments.

* * * * *

(f) *Non-controlling investments by Federal branches.* A Federal branch that satisfies the well capitalized and well managed standards in 12 CFR 4.7(b)(1)(iii) and § 5.34(d)(3)(ii) may make a non-controlling investment in accordance with paragraph (e) of this section in the same manner and subject to the same conditions and requirements as a national bank, and subject to any additional requirements that may apply under 12 CFR 28.10(c).

* * * * *

■ 4. In § 5.70:

■ a. remove paragraph (c)(1);

■ b. redesignate paragraphs (c)(2)(i) through (v) as paragraphs (c)(1)(i) through (v);

■ c. revise newly redesignated paragraphs (c)(1)(i), (iv), and (v);

■ d. add a new paragraph (c)(1)(vi);

■ e. add a new paragraph (c)(2); and

■ f. revise paragraph (d)(2)(i) to read as follows:

§ 5.70 Federal branches and agencies.

* * * * *

(c) * * *

(1) * * *

(i) Open and conduct business through an initial or additional Federal branch or agency;

* * * * *

(iv) Convert a state branch or state agency operated by a foreign bank, or a commercial lending company controlled by a foreign bank, into a Federal branch or agency;

(v) Relocate a Federal branch or agency within a state or from one state to another; or

(vi) Convert a Federal agency or a limited Federal branch into a Federal branch.

(2) *Federal branch* includes a limited Federal branch unless otherwise provided.

(d) * * *

* * * * *

(2) * * *

(i) Establishes a Federal branch or agency; or

* * * * *

PART 28—INTERNATIONAL BANKING ACTIVITIES

■ 5. The authority citation for part 28 continues to read as follows:

Authority: 12 U.S.C. 1 *et seq.*, 24(Seventh), 93a, 161, 602, 1818, 3101 *et seq.*, and 3901 *et seq.*

■ 6. In § 28.3, revise paragraphs (a)(1)(i) and (a)(2) to read as follows:

§ 28.3 Filing requirements for foreign operations of a national bank:

(a) * * *

(1) * * *

(i) Establish or open a foreign branch;

* * * * *

(2) Opens a foreign branch, and no application or notice is required by the FRB for such transaction.

* * * * *

■ 7. In § 28.5, revise paragraphs (a) and (b) to read as follows:

§ 28.5 Filing of notice.

(a) *Where to file.* A national bank shall file any notice or submission required under this subpart with the appropriate supervisory office of the OCC.

(b) *Availability of forms.* Individual forms and instructions for filings are available from the appropriate supervisory office of the OCC.

■ 8. In § 28.10:

■ a. revise the heading in paragraph (b); and

■ b. add a new paragraph (c) to read as follows:

§ 28.10 Authority, purpose, and scope.

* * * * *

(b) Purpose. * * *

(c) *Scope.* This subpart applies to all Federal branches and agencies of foreign banks. Nothing in the OCC's rules relieves a Federal branch or agency from complying with requirements that are imposed by the FRB under Regulation K (12 CFR part 211) or otherwise imposed in accordance with applicable law.

■ 9. In § 28.11:

■ a. remove paragraph (d);

■ b. redesignate paragraphs (e) through (z) as paragraphs (d) through (y);

■ c. revise newly redesignated paragraphs (f)(1), (4), and (5);

■ d. add a new paragraph (f)(6);

■ e. add a new sentence to the end of newly redesignated paragraph (h); and

■ f. revise newly redesignated paragraph (u) to read as follows:

§ 28.11 Definitions.

* * * * *

(f) *Establish a Federal branch or agency* means to:

(1) Open and conduct business through an initial or additional Federal branch or agency;

* * * * *

(4) Convert a state branch or agency operated by a foreign bank, or a commercial lending company controlled by a foreign bank, into a Federal branch or agency;

(5) Relocate a Federal branch or agency within a state or from one state to another; or

(6) Convert a Federal agency or a limited Federal branch into a Federal branch.

* * * * *

(h) *** Unless otherwise provided, the references in this subpart B of part 28 to a Federal branch include a limited Federal branch.

* * * * *

(u) *Manual* has the same meaning as in 12 CFR 5.2(c).

* * * * *

■ 10. In § 28.12:

■ a. revise paragraphs (a) and (b)(5);

■ b. redesignate paragraphs (e)(2) through (4) as paragraphs (e)(4) through (6);

■ c. add new paragraphs (e)(2) and (3);

■ d. revise newly redesignated paragraph (e)(4);

■ e. revise paragraph (f) in the introductory text;

■ f. redesignate paragraph (h) as paragraph (j);

■ g. add a new paragraph (h);

■ h. revise paragraph (i);

■ i. revise newly redesignated paragraph (j); and

■ j. add a new paragraph (k) to read as follows:

§ 28.12 Approval of a Federal branch or agency.

(a) *Approval and licensing requirements*—(1) *General.* Except as otherwise provided in this section, a foreign bank shall submit an application to, and obtain prior approval from, the OCC before it:

(i) Establishes a Federal branch or agency; or

(ii) Exercises fiduciary powers at a Federal branch.

(2) *Licensing.* A foreign bank must receive a license from the OCC to open and operate its initial Federal branch or agency in the United States. A foreign bank that has a license to operate and is operating a full-service Federal branch need not obtain a new license for any additional Federal branches or agencies, or to upgrade or downgrade its operations in an existing Federal branch or agency. A foreign bank that only has a license to operate and is operating a limited Federal branch or Federal agency need not obtain a new license for any additional limited Federal branches or Federal agencies, or to convert a limited Federal branch into a Federal agency or a Federal agency into a limited Federal branch.

(b) * * *

* * * * *

(5) With respect to an application to establish a Federal branch or agency outside of the foreign bank's home state, whether the foreign bank is subject to comprehensive supervision or regulation on a consolidated basis by its home country supervisor. The OCC, in its discretion, also may consider whether the foreign bank is subject to comprehensive supervision or regulation on a consolidated basis by its home country supervisor when reviewing any other type of application to establish a Federal branch or agency; and

* * * * *

(e) * * *

* * * * *

(2) *Written notice for an additional intrastate Federal branch or agency.* (i) In a case where a foreign bank seeks to establish intrastate an additional Federal branch or agency, the foreign bank shall provide written notice 30 days in advance of the establishment of the intrastate Federal branch or agency.

(ii) The OCC may waive the 30-day period required under paragraph (e)(2)(i) of this section if immediate action is required. The OCC also may suspend the notice period or require an application if the notification raises significant policy or supervisory concerns.

(3) *Expedited approval procedures for an interstate Federal branch or agency.* An application submitted by an eligible foreign bank to establish and operate a de novo Federal branch or agency in any state outside the home state of the foreign bank is deemed conditionally approved by the OCC as of the 30th day after the OCC receives the filing, unless the OCC notifies the foreign bank prior to that date that the filing is not eligible for expedited review. In the event that the FRB has approved the application prior to the expiration of the period, then the OCC's approval shall be deemed a final approval.

(4) *Conversions.* An application submitted by an eligible foreign bank to establish a Federal branch or agency as defined in 12 CFR 28.11(f)(4) or (f)(6) is deemed approved by the OCC as of the 30th day after the OCC receives the filing, unless the OCC notifies the foreign bank prior to that date that the

filing is not eligible for expedited review.

* * * * *

(f) *Eligible foreign bank.* For purposes of this section, a foreign bank is an eligible foreign bank if each Federal branch and agency of the foreign bank or, if the foreign bank has no Federal branches or agencies and is engaging in an establishment of a Federal branch or agency as defined in 12 CFR 28.11(f)(4), each state branch and agency:

* * * * *

(h) *After-the-fact notice for an eligible foreign bank.* Unless otherwise provided by the OCC, a foreign bank proposing to establish a Federal branch or agency through the acquisition of, or merger or consolidation with, a foreign bank that has an existing U.S. bank subsidiary or a Federal or state branch or agency may proceed with the transaction and provide after-the-fact notice to the OCC within 14 days of the transaction, if:

(1) The resulting bank is an "eligible foreign bank" under paragraph (f) of this section; and

(2) No Federal branch established by the transaction accepts deposits that are insured by the FDIC pursuant to the Federal Deposit Insurance Act (12 U.S.C. 1811 *et seq.*).

(i) *Contraction of operations.* A foreign bank shall provide written notice to the OCC within 10 days after converting a Federal branch into a limited Federal branch or Federal agency.

(j) *Procedures for approval.* A foreign bank shall file an application for approval pursuant to this section in accordance with 12 CFR part 5 and the Manual. The OCC reserves the right to adopt materially different procedures for a particular filing, or class of filings, pursuant to 12 CFR 5.2(b).

(k) *Other applications accepted.* As provided in 12 CFR 5.4(c), the OCC may accept an application or other filing submitted to another U.S. Government agency that covers the proposed activity or transaction and contains substantially the same information as required by the OCC.

■ 11. In § 28.15:

■ a. revise paragraph (a)(1)(ii);

■ b. redesignate paragraph (a)(1)(iv) as (a)(1)(v);

■ c. revise paragraph (a)(1)(iii) by removing the word "or" at the end;

■ d. add a new paragraph (a)(1)(iv);

■ e. revise newly redesignated paragraph (a)(1)(v);

■ f. add a new paragraph (a)(3);

■ g. redesignate paragraph (e) as (f); and

■ h. add a new paragraph (e) to read as follows:

§ 28.15 Capital equivalency deposits.

(a) * * *

(1) * * *

(i) * * *

(ii) United States dollar deposits payable in the United States or payable in any other Group of Ten country;

(iii) Certificates of deposit, payable in the United States, and banker's acceptances, provided that, in either case, the issuer or the instrument is rated investment grade by an internationally recognized rating organization, and neither the issuer nor the instrument is rated lower than investment grade by any such rating organization that has rated the issuer or the instrument;

(iv) Repurchase agreements; or

(v) Other similar assets permitted by the OCC to qualify to be included in the CED.

* * * * *

(3) *Exceptions.* In determining the amount of the CED, the OCC excludes liabilities of an international banking facility (IBF) to third parties and of a Federal branch of a foreign bank to an IBF. The OCC may exclude liabilities from repurchase agreements on a case-by-case basis.

* * * * *

(e)(1) *Deposit and Consolidation.* As provided in 12 U.S.C. 3102(g), a foreign bank with a Federal branch or agency shall deposit its CED into an account in a bank that is located in the state in which the Federal branch or agency is located. For this purpose, such depository bank is considered to be located in those states in which it has its main office or a branch. A foreign bank with Federal branches or agencies in more than one state may consolidate some or all of its CEDs into one such account.

(2) *Calculation.* The total amount of the consolidated CED shall continue to be calculated on an office-by-office basis.

* * * * *

■ 12. In § 28.16, revise paragraph (b)(8) to read as follows:

§ 28.16 Deposit-taking by an uninsured Federal branch.

* * * * *

(b) * * *

(8) Persons who may deposit funds with an Edge corporation as provided in the FRB's Regulation K, 12 CFR 211.6, including persons engaged in certain international business activities; and

* * * * *

■ 13. In § 28.18, add a new paragraph (c)(3) to read as follows:

28.18 Recordkeeping and reporting.

* * * * *

(c) * * *

* * * * *

(3) A foreign bank with a Federal branch or agency in more than one state that consolidates its CEDs into one account in accordance with § 28.15(e) shall designate a participating Federal branch or agency to maintain consolidated asset, liability, and capital equivalency account information for all Federal branches and agencies covered by the consolidated deposit. A foreign bank with a consolidated CED shall maintain a book entry accounting of assets designated under the consolidated CED for each office of that foreign bank.

■ 14. In § 28.20, revise the first sentence of paragraph (a)(2) to read as follows:

§ 28.20 Maintenance of assets.

(a) * * *

* * * * *

(2) If the OCC requires asset maintenance, the amount of assets held by a foreign bank shall be prescribed by the OCC after consideration of the aggregate amount of liabilities of the Federal branch or agency, payable at or through the Federal branch or agency.

* * *

* * * * *

■ 15. In § 28.22, revise paragraphs (a) and (b) to read as follows:

§ 28.22 Voluntary liquidation.

(a) *Procedures to close all Federal branches and agencies.* Unless otherwise provided, in cases in which a foreign bank proposes to close all of its Federal branches or agencies, the foreign bank shall comply with applicable requirements in 12 CFR 5.48 and the Manual, including requirements that apply to an expedited liquidation of an insured Federal branch.

(b) *Notice to customers and creditors.* A foreign bank shall publish notice of the impending closure of each Federal branch or agency for a period of two months in every issue of a local newspaper where the Federal branch or agency is located. If only weekly publication is available, the notice must be published for nine consecutive weeks.

* * * * *

■ 16. Redesignate § 28.23 as § 28.24.

■ 17. Add a new § 28.23 to read as follows:

§ 28.23 Procedures for closing of some of a foreign bank's Federal branches and/or agencies.

In cases where § 28.22 does not apply, and a foreign bank is closing one or more, but not all, of its Federal branches and/or agencies, it shall follow the procedures set forth in 12 U.S.C. 1831r–1(a) and (b) (branch closings).

■ 18. Add new § 28.25 to read as follows:

§ 28.25 Change in control.

(a) *After-the-fact notice.* In cases in which no other filing is required under subpart B of this part, a foreign bank that operates a Federal branch or agency shall inform the OCC in writing of the direct or indirect acquisition of control of the foreign bank by any person or entity, or group of persons or entities acting in concert, within 14 calendar days after the foreign bank becomes aware of a change in control.

(b) *Additional information.* The foreign bank shall furnish the OCC with any additional information the OCC may require in connection with the acquisition of control.

■ 19. Add a new § 28.26 to read as follows:

§ 28.26 Loan production offices.

A Federal branch may establish lending offices, make credit decisions, and engage in other representational activities at a site other than a Federal branch office, subject to the same rights, privileges, requirements and limitations that apply to national banks under 12 CFR 7.1003, 7.1004, and 7.1005.

Dated: December 15, 2003.

John D. Hawke, Jr.,

Comptroller of the Currency.

[FR Doc. 03–31342 Filed 12–18–03; 8:45 am]

BILLING CODE 4810–33–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 522

Implantation or Injectable Dosage Form New Animal Drugs; Flunixin Meglumine Solution

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of an abbreviated new animal drug application (ANADA) filed by Norbrook Laboratories, Ltd. The ANADA provides for the veterinary prescription use of flunixin meglumine injectable solution for the control of inflammation in horses, beef cattle, and nonlactating dairy cattle.

DATES: This rule is effective December 19, 2003.

FOR FURTHER INFORMATION CONTACT: Lonnie W. Luther, Center for Veterinary Medicine (HFV 104), Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855, 301–827–8549, e-mail: *lluther@cvm.fda.gov.*

SUPPLEMENTARY INFORMATION: Norbrook Laboratories, Ltd., Station Works, Newry BT35 6JP, Northern Ireland, filed ANADA 200–308 for the use of Flunixin Injection by veterinary prescription for the control of inflammation in horses, beef cattle, and nonlactating dairy cattle. Norbrook Laboratories' Flunixin Injection is approved as a generic copy of Schering-Plough Animal Health's BANAMINE (flunixin) Solution, approved under NADA 101–479. The ANADA is approved as of November 17, 2003, and the regulations in § 522.970 (21 CFR 522.970) are amended to reflect the approval. The basis of approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of 21 CFR part 20 and 21 CFR 514.11(e)(2)(ii), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, between 9 a.m. and 4 p.m., Monday through Friday.

The agency has determined under 21 CFR 25.33(a)(1) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

This rule does not meet the definition of "rule" in 5 U.S.C. 804(3)(A) because it is a rule of "particular applicability." Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801–808.

List of Subject in 21 CFR Part 522

Animal drugs.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 522 is amended as follows:

PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS

■ 1. The authority citation for 21 CFR part 522 continues to read as follows:

Authority: 21 U.S.C. 360b.

§ 522.970 [Amended]

■ 2. Section 522.970 *Flunixin meglumine solution* is amended in paragraph (b)(1) by removing "000061 and 059130" and by adding in its place "000061, 055529, and 059130".

Dated: December 9, 2003.

Linda Tollefson,

Acting Director, Center for Veterinary Medicine.

[FR Doc. 03–31294 Filed 12–18–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1, 301 and 602

[TD 9100]

RIN 1545–BC62

Guidance Necessary To Facilitate Business Electronic Filing

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final and temporary regulations.

SUMMARY: This document contains regulations designed to eliminate regulatory impediments to the electronic filing of certain income tax returns and other forms. These regulations affect business taxpayers who file income tax returns electronically. The text of the temporary regulations also serves as the text of the proposed regulations set forth in the Proposed Rules section in this issue of the **Federal Register**.

DATES: *Effective Date:* These regulations are effective December 19, 2003.

Applicability Date: These regulations apply with respect to taxable years beginning after December 31, 2002. The applicability of §§ 1.170A–11T, 1.556–2T, 1.565–1T, 1.936–7T, 1.1017–1T, 1.1368–1T, 1.1377–1T, 1.1502–21T, 1.1502–75T, 1.1503–2T, 1.6038B–1T, and 301.7701–3T will expire on or before December 18, 2006.

FOR FURTHER INFORMATION CONTACT: Nathan Rosen, (202) 622–4910 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

These regulations are being issued without prior notice and public procedure pursuant to the Administrative Procedure Act (5 U.S.C. 553). For this reason, the collection of information contained in these regulations has been reviewed and pending receipt and evaluation of

public comments, approved by the Office of Management and Budget under control number 1545–1868. Responses to this collection of information are mandatory.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number.

For further information concerning this collection of information, and where to submit comments on the collection of information and the accuracy of the estimated burden, and suggestions for reducing this burden, please refer to the preamble to the cross-referencing notice of proposed rulemaking published in the Proposed Rules section of this issue of the **Federal Register**.

Books and records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Background

This document contains amendments to the Income Tax Regulations (26 CFR part 1) and the Procedure and Administration Regulations (26 CFR part 301) designed to eliminate regulatory impediments to the electronic submission of tax returns and other forms filed by corporations, partnerships and other businesses.

In 1998, Congress enacted the Internal Revenue Service Restructuring and Reform Act of 1998 (RRA 1998), Public Law 105–206 (112 Stat. 685) (1998). In relevant part, RRA 1998 states that the policy of Congress is to promote the paperless filing of Federal tax returns. Section 2001(a) of RRA 1998 sets a long-range goal for the IRS to have at least 80 percent of all Federal tax returns filed electronically by 2007. Section 2001(b) of RRA 1998 requires the IRS to establish a 10-year strategic plan to eliminate barriers to electronic filing. On January 30, 2003, the IRS published final regulations (TD 9040) eliminating a number of regulatory impediments to the electronic filing of Form 1040, "U.S. Individual Income Tax Return."

The IRS has identified a number of regulatory provisions that impede the ability of business entities to file returns electronically. Some of these regulations, for example, impede electronic filing by requiring taxpayers to include third-party signatures on their tax returns or by requiring taxpayers to attach documents or statements generated by a third party. Others require a taxpayer to sign an IRS form and file it as an attachment to the taxpayer's income tax return. These regulations eliminate the impediments for taxable years beginning after December 31, 2002. The regulations generally affect taxpayers who must file any of the following forms: Form 926, "Return by a U.S. Transferor of Property to a Foreign Corporation"; Form 972, "Consent of Shareholder To Include Specific Amount in Gross Income"; Form 973, "Corporation Claim for Deduction for Consent Dividends"; Form 982, "Reduction of Tax Attributes Due to Discharge of Indebtedness (and Section 1082 Basis Adjustment)"; Form 1120, "U.S. Corporation Income Tax Return"; Form 1120S, "U.S. Income Tax Return for an S Corporation"; Form 1122, "Authorization and Consent of Subsidiary Corporation To Be Included in a Consolidated Income Tax Return"; Form 5471, "Information Return of U.S. Persons With Respect To Certain Foreign Corporations"; Form 5712–A, "Election and Verification of the Cost Sharing or Profit Split Method Under Section 936(h)(5)"; and Form 8832, "Entity Classification Election."

Explanation of Provisions

1. Form 926: Return by a U.S. Transferor of Property to a Foreign Corporation

Section 6038B provides that transferors of property to foreign corporations must, in certain circumstances, file information returns with the Secretary regarding such transactions. Section 1.6038B–1(b)(1)(i) requires the transferor to file the return on Form 926 as an attachment to its income tax return. Under § 1.6038B–1(b)(1)(i) and (ii), filers of Form 926 must sign the form and attachments to the form are subject to the declaration under penalties of perjury that the information submitted is true, correct, and complete. The signature requirement impedes electronic filing of the transferor's income tax return because Form 926 cannot yet be signed electronically. These regulations eliminate the obligation to sign Form 926 and provide, instead, that Form 926 and any attachments to the form are verified by signing the income tax return with which the form and attachments are filed.

2. Form 972: Consent of Shareholder To Include Specific Amount in Gross Income

Section 565 allows a corporation and its shareholders to treat certain hypothetical corporate distributions as actual dividends. Section 1.565–1(b)(1) requires shareholders to use Form 972 to elect such treatment and requires each consenting shareholder (or an authorized agent) to sign the form. Section 1.565–1(b)(3) requires the corporation to attach the signed Form 972 to its income tax return for the taxable year in which it claims the dividends paid deduction for the hypothetical dividends. Requiring corporations to attach a signed Form 972 impedes electronic filing of their income tax returns because third-party signatures cannot be incorporated into an electronic return. These regulations provide that an unsigned copy of Form 972 may be submitted with the corporation's income tax return if the corporation retains the signed original in its records.

3. Form 973: Corporation Claim for Deduction for Consent Dividends

A corporation uses Form 973 to claim the dividend treatment permitted by section 565. Section 1.565–1(b)(3) requires the corporation to sign Form 973 under penalties of perjury and submit the form with its tax return. This signature requirement impedes electronic filing of a corporation's income tax return because Form 973 cannot yet be signed electronically. These regulations eliminate the obligation to sign Form 973 and provide, instead, that Form 973 is verified by signing the income tax return with which the form is filed.

4. Form 982: Reduction of Tax Attributes Due to Discharge of Indebtedness (and Section 1082 Basis Adjustment)

Section 1017 provides for basis reductions when income from discharge of indebtedness is excluded from gross income. If a partnership has income from discharge of indebtedness, § 1.1017(g) permits its partners to request that the partnership reduce the basis of partnership depreciable property with respect to the partners. Section 1.1017–1(g)(2)(iii)(A) requires a partnership that consents to this basis reduction to prepare a statement describing, among other things, the amount of the reduction. Section 1.1017–1(g)(2)(iii)(B) requires the affected partners to attach a copy of that statement to their income tax returns.

Requiring partners to attach the partnership consent statement impedes the electronic filing of their income tax returns because the partnership statement cannot yet be incorporated into all electronic returns. To remedy this impediment, these regulations eliminate the obligation to attach the partnership consent statement and provide, instead, that taxpayers must retain the consent statement in their records.

5. Form 1120: U.S. Corporation Income Tax Return

Section 1503 prescribes certain rules for computing tax for corporations filing consolidated returns. Section 1.1503–2(g) permits dual consolidated losses of dual resident corporations to offset the income of domestic affiliates under specified circumstances, including entry into an agreement described in § 1.1503–2(g)(2)(i). The corporation entering into the agreement must attach the agreement to its timely filed U.S. income tax return for the taxable year in which the loss is incurred. The agreement must be signed under penalties of perjury by the person who signs the income tax return. Section 1.1503–2(g)(2)(iv)(B)(3)(iii) also requires a successor corporation to file an agreement described in § 1.1503–2(g)(2)(i) to prevent recapture of the dual consolidated loss in certain circumstances. The new agreement must be signed under penalties of perjury by the person who signs the income tax return. Section 1.1503–2(g)(2)(vi)(B) requires corporations to file annual certifications with respect to dual consolidated losses. The annual certification must be signed under penalties of perjury by the person who signs the corporation's income tax return. The signature requirements in § 1.1503–2(g)(2)(i), (g)(2)(iv)(B)(3)(iii), and (g)(2)(vi)(B) impede electronic filing of the corporation's income tax return because neither the agreement nor the annual certification can be signed electronically. These regulations eliminate the obligations under § 1.1503–2(g)(2)(i) and (iv)(B)(3)(iii) to attach a signed agreement and provide, instead, that an unsigned copy of the agreement may be submitted with the corporation's income tax return if the corporation retains the signed original in its records. These regulations also eliminate the obligation under § 1.1503–2(g)(2) (vi)(B) to sign the annual certification and provide, instead, that the annual certification is verified by signing the income tax return with which the certification is filed.

Section 170 addresses the tax deductibility of charitable contributions and gifts. Section 1.170A–11(b)(1) provides that, under certain conditions, corporations may treat a charitable contribution as paid during a taxable year even if the contribution occurs in the following taxable year. A corporation claiming a charitable deduction for a taxable year under this provision must attach a copy of the resolution of the board of directors authorizing the contribution to its return for the year. In addition, the corporation must attach a declaration, signed under penalties of perjury, that the resolution was adopted during the taxable year. *See* § 1.170A–11(b)(2). Requiring taxpayers to attach a signed declaration impedes electronic filing of Form 1120 because the declaration cannot be signed electronically. The regulations eliminate the requirement of a signed declaration and provide, instead, that the declaration is verified by signing the return. The regulations also slightly expand the content of the declaration by requiring that it state the date on which the board of directors authorized the contribution. Requiring taxpayers to attach a copy of the resolution authorizing the contribution may also impede electronic filing of Form 1120 because including the resolution increases the size of the electronic return file in a potentially burdensome manner. The regulations eliminate this requirement and provide, instead, that the resolution must be retained in the taxpayer's records.

Section 1.1502–21(b)(3)(i) provides that a consolidated group of corporations may elect to relinquish carryback treatment with respect to a consolidated net operating loss for any consolidated return year. The consolidated group elects this treatment by attaching a statement to the group's income tax return for the relevant year. The regulations require the statement to be signed by the common parent. This signature requirement impedes electronic filing of Form 1120 because the statement cannot be signed electronically. These regulations eliminate the signature requirement and permit the election to be made in an unsigned statement.

Section 1.1502–21(b)(3)(ii)(B) provides that a group of corporations acquiring a new member may elect to relinquish part of the carryback period with respect to certain net operating losses of the new member. The election is made in a statement attached to the group's income tax return. The statement must be signed by the common parent, the new member, and any other corporation joining the group with the new member. This signature requirement impedes electronic filing of Form 1120 because third-party signatures cannot be incorporated into an electronic return. These regulations eliminate the signature requirement and permit the election to be made in an unsigned statement.

6. Form 1120S: U.S. Income Tax Return for an S Corporation

Section 1377 provides that under certain circumstances an S Corporation may elect to treat a taxable year as if it consisted of two separate taxable years. Section 1.1377–1(b)(5) provides that an S Corporation elects this treatment by attaching a signed statement to its income tax return. This signature requirement impedes electronic filing of Form 1120S because the statement described in § 1.1377–1(b)(5) cannot be signed electronically. These regulations eliminate the signature requirement and permit the election to be made in an unsigned statement that is verified by signing the return.

Section 1.1368–1(g)(2)(i) provides a similar election for purposes of determining the treatment of distributions by an S Corporation in the event of certain ownership changes. Section 1.1368–1(g)(2)(iii) provides that an S Corporation makes this election by attaching a statement, signed by an officer of the corporation, to its income tax return for the relevant taxable year. This signature requirement impedes electronic filing of Form 1120S because the statement described in § 1.1368–1(g)(2)(iii) cannot be signed electronically. These regulations eliminate the signature requirement and permit the election to be made in an unsigned statement that is verified by signing the return.

Section 1.1368–1(f) allows an S corporation to make certain elections relating to the source of its distributions. Section 1.1368–1(f)(5)(iii) provides that an S corporation makes these elections by attaching a statement containing specified information to its income tax return. An officer of the corporation must sign the statement under penalties of perjury. This signature requirement impedes electronic filing of Form 1120S because the statement described in § 1.1368–1(f)(5)(iii) cannot be signed electronically. These regulations eliminate the signature requirement and permit the election to be made in an unsigned statement that is verified by signing the return.

7. Form 1122: Authorization and Consent of Subsidiary Corporation To Be Included in a Consolidated Income Tax Return

Section 1.1502–75(h)(2) provides that, when an affiliated group of corporations files a consolidated return for the first time, each subsidiary must consent to the filing by signing Form 1122 and the signed consent forms must be attached to the consolidated return. Requiring the group to file signed consent forms

impedes electronic filing of consolidated returns because Form 1122 cannot yet be signed electronically. These regulations retain the requirement that each subsidiary consent to filing a consolidated return but eliminate the impediment to electronic filing by permitting the group to submit unsigned copies of the consents with its return if it retains the signed originals in its records.

8. Form 5471: Information Return of U.S. Persons With Respect to Certain Foreign Corporations

Section 1.556–2(e)(2) provides that certain U.S. shareholders of a foreign personal holding company must attach a number of items to their income tax returns relating to property the company owns or operates. In particular, § 1.556–2(e)(2)(vii) requires certain shareholders to attach a copy of the contract, lease or rental agreement covering the property. A shareholder attaches these items to Form 5471, and in turn attaches that form to its return. Requiring shareholders to attach a copy of these documents to an income tax return impedes electronic filing because the documents cannot yet be incorporated into all electronic returns. These regulations eliminate this requirement and provide, instead, that a copy of the contract, lease or rental agreement must be retained in the shareholder's records.

9. Form 5712–A: Election and Verification of the Cost Sharing or Profit Split Method Under Section 936(h)(5)

Section 1.936–7(a), Q&A 1 provides that a possessions corporation makes the election under section 936(h)(5) to use the cost sharing or profit split method by filing a signed Form 5712–A that includes a declaration that all affiliated group members have consented to the election. The electing corporation attaches the Form 5712–A to Form 5735, "Possessions Corporation Tax Credit," which in turn must be attached to the corporation's income tax return. Requiring taxpayers to sign Form 5712–A impedes electronic filing of corporate income tax returns because Form 5712–A cannot yet be signed electronically. These regulations eliminate the signature requirement and permit the election to be made using an unsigned Form 5712–A that is verified by signing the return.

10. Form 8832: Entity Classification Election

An eligible business entity may file Form 8832 to specify the way in which it is to be classified for federal tax purposes. The form must be signed under penalties of perjury. Section 301.7701–3(c)(1)(ii) provides that in certain circumstances the entity must attach a copy of Form 8832 to its tax or information returns. The requirement to attach a copy of Form 8832 impedes electronic filing of tax and information returns because a copy of the signed form cannot yet be incorporated into all electronic returns. These regulations provide that the requirement to attach a copy of Form 8832 to a return may be satisfied with an unsigned copy.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. For the applicability of the Regulatory Flexibility Act (5 U.S.C. chapter 6), refer to the Special Analyses section of the preamble to the cross-reference notice of proposed rulemaking published in the Proposed Rules section in this issue of the **Federal Register**. Pursuant to section 7805(f) of the Code, these temporary and final regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Drafting Information

The principal author of these regulations is Nathan Rosen, Office of Associate Chief Counsel (Procedure and Administration), Administrative Provisions and Judicial Practice Division.

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 301

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

26 CFR Part 602

Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

■ Accordingly, 26 CFR parts 1, 301 and 602 are amended as follows:

PART 1—INCOME TAXES

■ **Paragraph 1.** The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

■ **Par. 2.** Section 1.170A–11 is amended by revising paragraph (b)(2) to read as follows:

§ 1.170A–11 Limitation on, and carryover of, contributions by corporations.

* * * * *

(b) * * *

(2) [Reserved]. For further guidance *see* § 1.170A–11T(b)(2).

* * * * *

■ **Par. 3.** Section 1.170A–11T is added to read as follows:

§ 1.170A–11T Limitation on, and carryover of, contributions by corporations (temporary).

(a) [Reserved]. For further guidance, *see* § 1.170A–11(a).

(b) Election by corporations on an accrual method—(1) [Reserved]. For further guidance, *see* § 1.170A–11(b)(1).

(2) The election must be made at the time the return for the taxable year is filed, by reporting the contribution on the return. There shall be attached to the return when filed a written declaration stating that the resolution authorizing the contribution was adopted by the board of directors during the taxable year. For taxable years beginning before January 1, 2003, the declaration shall be verified by a statement signed by an officer authorized to sign the return that it is made under penalties of perjury, and there shall also be attached to the return when filed a copy of the resolution of the board of directors authorizing the contribution. For taxable years beginning after December 31, 2002, the declaration must also include the date of the resolution, the declaration shall be verified by signing the return, and a copy of the resolution of the board of directors authorizing the contribution is a record that the taxpayer must retain and keep available for inspection in the manner required by § 1.6001–1(e).

(c) through (d) [Reserved]. For further guidance, *see* § 1.170A–11(c) through (d).

■ **Par. 4.** Section 1.556–2 is amended by revising paragraph (e)(2)(vii) and adding paragraph (e)(3) to read as follows:

§ 1.556–2 Adjustments to taxable income.

* * * * *

(e) * * *

(2) * * *

(vii) [Reserved]. For further guidance, *see* § 1.556–2T(e)(2)(vii) and (3).

* * * * *

(3) [Reserved]. For further guidance, *see* § 1.556–2T(e)(3).

* * * * *

■ **Par. 5.** Section 1.556–2T is added to read as follows:

§ 1.556–2T Adjustments to taxable income (temporary).

(a) through (e)(2)(vi) [Reserved]. For further guidance, *see* § 1.556–2(a) through (e)(2)(vi).

(e)(2)(vii) In the case of a return for a taxable year beginning before January 1, 2003, a copy of the contract, lease, or rental agreement;

(e)(2)(viii) through (xi) [Reserved]. For further guidance *see* § 1.556–2(e)(2)(viii) through (xi).

(3) If the statement described in § 1.556–2(e)(2) is attached to a taxpayer's income tax return for a taxable year beginning after December 31, 2002, a copy of the applicable contract, lease or rental agreement is not required to be submitted with the return, but must be retained by the taxpayer and kept available for inspection in the manner required by § 1.6001–1(e).

(f) [Reserved]. For further guidance, *see* § 1.556–2(f).

■ **Par. 6.** Section 1.565–1 is amended by revising paragraph (b)(3) to read as follows:

§ 1.565–1 General rule.

* * * * *

(b) * * *

(3) [Reserved]. For further guidance, *see* § 1.565–1T(b)(3).

* * * * *

■ **Par. 7.** Section 1.565–1T is added to read as follows:

§ 1.565–1T General rule (temporary).

(a) through (b)(2) [Reserved]. For further guidance, *see* § 1.565–1(a) through (b)(2).

(b)(3) A consent may be filed at any time not later than the due date of the corporation's income tax return for the taxable year for which the dividends paid deduction is claimed. With such return, and not later than the due date thereof, the corporation must file Forms 972 for each consenting shareholder, and a return on Form 973 showing by classes the stock outstanding on the first and last days of the taxable year, the dividend rights of such stock, distributions made during the taxable year to shareholders, and giving all the other information required by the form. For taxable years beginning before January 1, 2003, the Form 973 filed with the corporation's income tax return shall contain or be verified by a written declaration that is made under the penalties of perjury and the Forms 972 filed with the return must be duly executed by the consenting shareholders. For taxable years beginning after December 31, 2002, the Form 973 filed with the corporation's income tax return shall be verified by signing the return and the Forms 972 filed with the return must be duly executed by the consenting shareholders or, if unsigned, must contain the same information as the duly executed originals. If the corporation submits unsigned Forms 972 with its return for a taxable year beginning after December 31, 2002, the duly executed originals are records that the corporation must retain and keep available for inspection in the manner required by § 1.6001–1(e).

(c) [Reserved]. For further guidance, *see* § 1.565–1(c).

■ **Par. 8.** Section 1.936–7 is amended by:

■ 1. Designating the undesignated introductory text as paragraph (a).

■ 2. Redesignating paragraphs (a) through (c) as paragraphs (b) through (d), respectively.

■ 3. Revising newly designated paragraph (b), Q. & A.1.

■ The revision reads as follows:

§ 1.936–7 Manner of making election under section 936(h)(5); special election for export sales; revocation of election under section 936(a).

* * * * *

(b) * * *

Q. 1. [Reserved]. For further guidance, *see* § 1.936–7T(b) Q. 1.

A. 1. [Reserved]. For further guidance, *see* § 1.936–7T(b) A. 1.

* * * * *

■ **Par. 9.** Section 1.936–7T is added to read as follows:

§ 1.936–7T Manner of making election under section 936(h)(5); special election for export sales; revocation of election under section 936(a) (temporary).

(a) [Reserved]. For further guidance, *see* § 1.936–7 (a).

(b) *Manner of making election.*

Q. 1: How does a possessions corporation make an election to use the cost sharing method or profit split method?

A.1: A possessions corporation makes an election to use the cost sharing or profit split method by filing Form 5712–A ("Election and Verification of the Cost Sharing or Profit Split Method Under Section 936(h)(5)") and attaching it to its tax return. Form 5712–A must be filed on or before the due date (including extensions) of the tax return of the possessions corporation for its first taxable year beginning after December 31, 1982. The electing corporation must set forth on the form the name and the taxpayer identification number or address of all members of the affiliated group (including foreign affiliates not required to file a U.S. tax return). All members of the affiliated group must consent to the election. For elections filed with respect to taxable years beginning before January 1, 2003, an authorized officer of the electing corporation must sign the statement of election and must declare that he has received a signed statement of consent from an authorized officer, director, or other appropriate official of each member of the affiliated group. Elections filed for taxable years beginning after December 31, 2002, will incorporate a declaration by the electing corporation that it has received a signed consent from an authorized officer, director, or other appropriate official of each member of the affiliated group and will be verified by signing the return. The election is not valid for a taxable year unless all affiliates consent. A failure to obtain an affiliate's written consent will not invalidate the election out if the possessions corporation made a good faith effort to obtain all the necessary consents or the failure to obtain the missing consent was inadvertent. Subsequently created or acquired affiliates are bound by the election. If an election out is revoked under section 936(h)(5)(F)(iii), a new election out with respect to that product area cannot be made without the consent of the Commissioner. The possessions corporation shall file an amended Form 5712–A with its timely filed income tax return to reflect any changes in the names or number of the members of the affiliated group for any taxable year after the first taxable year to which the election out applies. By consenting to the election out, all affiliates agree to provide information necessary to compute the cost sharing payment under the cost sharing method or combined taxable income under the profit split method, and failure to provide such information shall be treated as a request to revoke the election out under section 936(h)(5)(F)(iii).

Q. & A. 2 through 8 [Reserved]. For further guidance, *see* § 1.936–7(b), Q. & A. 2 through 8.

(c) and (d) [Reserved]. For further guidance, *see* § 1.936–7(c) and (d).

■ **Par. 10.** Section 1.1017–1 is amended by revising paragraph (g)(2)(iii)(B) to read as follows:

§ 1.1017–1 Basis reductions following a discharge of indebtedness.

* * * * *

(g) * * *

(2) * * *

(iii) * * *

(B) [Reserved] For further guidance, *see* § 1.1017–1T(g)(2)(iii)(B).

* * * * *

■ **Par. 11.** Section 1.1017–1T is amended by revising paragraphs (c) through (i) to read as follows:

§ 1.1017–1T Basis reductions following a discharge of indebtedness (temporary).

* * * * *

(c) through (g)(2)(iii)(A) [Reserved]. For further guidance, see § 1.1017–1(c) through (g)(2)(iii)(A).

(g)(2)(iii)(B) *Taxpayer's requirement.* For taxable years beginning before January 1, 2003, statements described in § 1.1017–1(g)(2)(iii)(A) must be attached to a taxpayer's timely filed (including extensions) Federal income tax return for the taxable year in which the taxpayer has COD income that is excluded from gross income under section 108(a). For taxable years beginning after December 31, 2002, taxpayers must retain the statements and keep them available for inspection in the manner required by § 1.6001–1(e), but are not required to attach the statements to their returns.

(g)(2)(iv) through (i) [Reserved]. For further guidance, *see* § 1.1017–1(g)(2)(iv) through (i).

■ **Par. 12.** Section 1.1368–1 is amended by revising paragraphs (f)(5)(iii) and (g)(2)(iii) to read as follows:

§ 1.1368–1 Distributions by S corporations.

* * * * *

(f) * * *

(5) * * *

(iii) [Reserved]. For further guidance, *see* § 1.1368–1T(f)(5)(iii).

* * * * *

(g) * * *

(2) * * *

(iii) [Reserved]. For further guidance, *see* § 1.1368–1T(g)(2)(iii).

* * * * *

■ **Par. 13.** Section 1.1368–1T is added to read as follows:

§ 1.1368–1T Distributions by S corporations (temporary).

(a) through (f)(5)(ii) [Reserved]. For further guidance, *see* § 1.1368–1(a) through (f)(5)(ii).

(f)(5)(iii) *Corporate statement regarding elections.* A corporation makes an election for a taxable year under § 1.1368–1(f) by attaching a statement to a timely filed original or amended return required to be filed under section 6037 for that taxable year. In the statement, the corporation must identify the election it is making under § 1.1368–1(f) and must state that each shareholder consents to the election. In the case of elections for taxable years beginning before January 1, 2003, an officer of the corporation must sign under penalties of perjury the statement on behalf of the corporation. In the case of elections for taxable years beginning after December 31, 2002, the statement described in this paragraph (f)(5)(iii) shall be verified by signing the return. A statement of election to make a deemed dividend under § 1.1368–1(f) must include the amount of the deemed dividend that is distributed to each shareholder.

(f)(5)(iv) through (g)(2)(ii) [Reserved]. For further guidance, *see* § 1.1368–1(f)(5)(iv) through (g)(2)(ii).

(g)(2)(iii) *Time and manner of making election.* A corporation makes an election under § 1.1368–1(g)(2)(i) for a taxable year by attaching a statement to a timely filed original or amended return required to be filed under section 6037 for a taxable year (without regard to the election under § 1.1368–1(g)(2)(i)). In the statement, the corporation must state that it is electing for the taxable year under § 1.1368–1(g)(2)(i) to treat the taxable year as if it consisted of separate taxable years. The corporation also must set forth facts in the statement relating to the qualifying disposition (*e.g.*, sale, gift, stock issuance, or redemption), and state that each shareholder who held stock in the corporation during the taxable year (without regard to the election under § 1.1368–1(g)(2)(i)) consents to this election. For purposes of this election, a shareholder of the corporation for the taxable year is a shareholder as described in section 1362(a)(2). A single election statement may be filed for all elections made under § 1.1368–1(g)(2)(i) for the taxable year. An election made under § 1.1368–1(g)(2)(i) of this section is irrevocable. In the case of elections for taxable years beginning before January 1, 2003, the statement through which a corporation makes an election under § 1.1368–1(g)(2)(i) must be signed by an officer of the corporation under penalties of perjury. In the case of elections for taxable years beginning after December 31, 2002, the statement described in the preceding sentence shall be verified by signing the return.

(g)(2)(iv) [Reserved]. For further guidance, *see* § 1.1368–1(g)(2)(iv).

■ **Par. 14.** Section 1.1377–1 is amended by revising paragraph (b)(5)(i)(C) to read as follows:

§ 1.1377–1 Pro rata share.

* * * * *

(b) * * *

(5) * * *

(i) * * *

(C) [Reserved]. For further guidance, *see* § 1.1377–1T(b)(5)(i)(C).

* * * * *

■ **Par. 15.** Section 1.1377–1T is added to read as follows:

§ 1.1377–1T Pro rata share (temporary).

(a) through (b)(5)(i)(B) [Reserved]. For further guidance, *see* § 1.1377–1(a) through (b)(5)(i)(B).

(b)(5)(i)(C) The signature on behalf of the S corporation of an authorized officer of the corporation under penalties of perjury, except that for taxable years beginning after December 31, 2002, the election statement described in § 1.1377–1(b)(5)(i) shall be verified, and the requirement of this paragraph (b)(5)(i)(C) is satisfied, by the signature on the Form 1120S filed by the S corporation.

(b)(5)(i)(D) through (c) [Reserved]. For further guidance, *see* § 1.1377–1 (b)(5)(i)(D) through (c).

■ **Par. 16.** Section 1.1502–21 is amended by revising paragraphs (b)(2)(iii), (b)(3)(i) and (b)(3)(ii)(B) to read as follows:

§ 1.1502–21 Net operating losses.

* * * * *

(b) * * *

(2) * * *

(iii) [Reserved]. For further guidance, *see* § 1.1502–21T(b)(2)(iii).

* * * * *

(3) * * * (i) [Reserved]. For further guidance, *see* § 1.1502–21T(b)(3)(i).

(ii) * * * (A) * * *

(b)(3)(ii)(B) [Reserved]. For further guidance, *see* § 1.1502–21T(b)(3)(ii)(B).

* * * * *

■ **Par. 17.** Section 1.1502–21T is amended by revising paragraphs (b)(2)(iii) and (b)(3) through (b)(3)(ii)(B) to read as follows:

§ 1.1502–21T Net operating losses (temporary).

* * * * *

(b)(2)(iii) [Reserved]. For further guidance, *see* § 1.1502–21(b)(2)(iii).

* * * * *

(b)(3) *Special rules*—(i) *Election to relinquish carryback.* A group may make an irrevocable election under section 172(b)(3) to relinquish the entire carryback period with respect to a CNOL for any consolidated return year. Except as provided in paragraph (b)(3)(ii)(B) of this section, the election may not be made separately for any member (whether or not it remains a member), and must be made in a separate statement entitled "THIS IS AN ELECTION UNDER § 1.1502–21(b)(3)(i) TO WAIVE THE ENTIRE CARRYBACK PERIOD PURSUANT TO SECTION 172(b)(3) FOR THE [insert consolidated return year] CNOLs OF THE CONSOLIDATED GROUP OF WHICH [insert name and employer identification number of common parent] IS THE COMMON PARENT". The statement must be filed with the group's income tax return for the consolidated return year in which the loss arises. If the consolidated return year in which the loss arises begins before January 1, 2003, the statement making the election must be signed by the common parent. If the consolidated return year in which the loss arises begins after December 31, 2002, the election may be made in an unsigned statement.

(b)(3)(ii) through (b)(3)(ii)(A) [Reserved]. For further guidance, *see* § 1.1502–21 (b)(3)(ii) through (b)(3)(ii)(A).

(B) *Acquisition of member from another consolidated group.* If one or more members of a consolidated group becomes a member of another consolidated group, the acquiring group may make an irrevocable election to relinquish, with respect to all consolidated net operating losses attributable to the member, the portion of the carryback period for which the corporation was a member of another group, provided that any other corporation joining the acquiring group that was affiliated with the member immediately before it joined the acquiring group is also included in the waiver. This election is not a yearly election and applies to all losses that would otherwise be subject to a carryback to a former group under section 172. The election must be made in a separate statement entitled "THIS IS AN ELECTION UNDER § 1.1502–21(b)(3)(ii)(B)(2) TO WAIVE THE PRE-[insert first taxable year for which the member (or members) was not a member of another group] CARRYBACK PERIOD FOR THE CNOLs attributable to [insert names and employer identification number of members]." The statement must be filed with the acquiring consolidated group's original income tax return for the year the corporation (or corporations) became a member. If the year in which the corporation (or corporations) became a member begins before January 1, 2003, the statement must be signed by the common parent and each of the members to which it applies. If the year in which the corporation (or corporations) became a member begins after December 31, 2002, the election may be made in an unsigned statement.

* * * * *

■ **Par. 18.** Section 1.1502–75 is amended by revising paragraph (h)(2) to read as follows:

§ 1.1502–75 Filing of consolidated returns.

* * * * *

(h) * * *

(2) [Reserved]. For further guidance, *see* § 1.1502–75T(h)(2).

* * * * *

■ **Par. 19.** Section 1.1502–75T is added to read as follows:

§ 1.1502–75T Filing of consolidated returns (temporary).

(a) through (h)(1) [Reserved]. For further guidance, *see* § 1.1502–75(a) through (h)(1).

(2) *Filing of Form 1122 for first year.* If, under the provisions of § 1.1502–75 (a)(1) , a group wishes to file a consolidated return for a taxable year, then a Form 1122 ("Authorization and Consent of Subsidiary Corporation To Be Included in a Consolidated Income Tax Return") must be executed by each subsidiary. For taxable years beginning before January 1, 2003, the executed Forms 1122 must be attached to the consolidated return for the taxable year. For taxable years beginning after December 31, 2002, the group must attach either executed Forms 1122 or unsigned copies of the completed Forms 1122 to the consolidated return. If the group submits unsigned Forms 1122 with its return, it must retain the signed originals in its records in the manner required by § 1.6001–1(e). Form 1122 is not required for a taxable year if a consolidated return was filed (or was required to be filed) by the group for the immediately preceding taxable year.

(h)(3) through (k) [Reserved]. For further guidance, *see* § 1.1502–75(h)(3) through (k).

■ **Par. 20.** Section 1.1503–2 is amended by revising paragraphs (g)(2)(i), (g)(2)(iv)(B)(3)(iii) and (g)(2)(vi)(B) to read as follows:

§ 1.1503–2 Dual consolidated loss.

* * * * *

(g) * * *

(2) * * *

(i) [Reserved]. For further guidance, *see* § 1.1503–2T(g)(2)(i).

* * * * *

(iv) * * *

(B) * * *

(3) * * *

(iii) [Reserved]. For further guidance, *see* § 1.1503–2T(g)(2)(iv)(B)(*3*)(*iii*)

* * * * *

(vi) * * *

(B) [Reserved]. For further guidance, *see* § 1.1503–2T(g)(2)(vi)(B).

* * * * *

■ **Par. 21.** Section 1.1503–2T is added to read as follows:

§ 1.1503–2T Dual consolidated loss (temporary).

(a) through (g)(1) [Reserved]. For further guidance, *see* § 1.1503–2(a) through (g)(1).

(2) *Elective relief provision*—(i) *In general.* Paragraph (b) of this section shall not apply to a dual consolidated loss if the consolidated group, unaffiliated dual resident corporation, or unaffiliated domestic owner elects to be bound by the provisions of § 1.1503–2(g)(2) and this paragraph (g)(2). In order to elect relief under § 1.1503–2(g)(2) and this paragraph (g)(2), the consolidated group, unaffiliated dual resident corporation, or unaffiliated domestic owner must attach to its timely filed U.S. income tax return for the taxable year in which the dual consolidated loss is incurred an agreement described in paragraph (g)(2)(i)(A) of this section. The agreement must be signed under penalties of perjury by the person who signs the return. For taxable years beginning after December 31, 2002, the agreement attached to the income tax return of the consolidated group, unaffiliated dual resident corporation or unaffiliated domestic owner pursuant to the preceding sentence may be an unsigned copy. If an unsigned copy is attached to the return, the consolidated group, unaffiliated dual resident corporation, or unaffiliated domestic owner must retain the original in its records in the manner specified by § 1.6001–1(e). The agreement must include the following items, in paragraphs labeled to correspond with the items set forth in paragraphs (g)(2)(i)(A) through (F) of this section:

(A) A statement that the document submitted is an election and an agreement under the provisions of § 1.1503–2(g)(2) of the Income Tax Regulations.

(B) The name, address, identifying number, and place and date of incorporation of the dual resident corporation, and the country or countries that tax the dual resident corporation on its worldwide income or on a residence basis, or, in the case of a separate unit, identification of the separate unit, including the name under which it conducts business, its principal activity, and the country in which its principal place of business is located.

(C) An agreement by the consolidated group, unaffiliated dual resident

corporation, or unaffiliated domestic owner to comply with all of the provisions of paragraphs (g)(2)(iii) through (vii) of § 1.1503–2 and this section.

(D) A statement of the amount of the dual consolidated loss covered by the agreement.

(E) A certification that no portion of the dual resident corporation's or separate unit's losses, expenses, or deductions taken into account in computing the dual consolidated loss has been, or will be, used to offset the income of any other person under the income tax laws of a foreign country.

(F) A certification that arrangements have been made to ensure that no portion of the dual consolidated loss will be used to offset the income of another person under the laws of a foreign country and that the consolidated group, unaffiliated dual resident corporation, or unaffiliated domestic owner will be informed of any such foreign use of any portion of the dual consolidated loss.

(g)(2)(ii) through (iv)(B)(*3*)(*ii*) [Reserved] For further guidance, *see* § 1.1503–2(g)(2)(ii) through (iv)(B)(3)(ii).

(g)(2)(iv)(B)(*3*)(*iii*) The unaffiliated domestic corporation or new consolidated group must file, with its timely filed income tax return for the taxable year in which the event described in § 1.1503–2(g)(2)(iv)(B)(*1*) or (*2*) occurs, an agreement described in paragraph (g)(2)(i) of this section (new (g)(2)(i) agreement), whereby it assumes the same obligations with respect to the dual consolidated loss as the corporation or consolidated group that filed the original (g)(2)(i) agreement with respect to that loss. The new (g)(2)(i) agreement must be signed under penalties of perjury by the person who signs the return and must include a reference to § 1.1503–2(g)(2)(iv)(B)(*3*)(*iii*) or this paragraph (g)(2)(iv)(B)(*3*)(*iii*). For taxable years beginning after December 31, 2002, the agreement attached to the return pursuant to the preceding sentence may be an unsigned copy. If an unsigned copy is attached to the return, the corporation or consolidated group must retain the original in its records in the manner specified by § 1.6001–1(e).

(g)(2)(iv)(C) through (vi)(A) [Reserved]. For further guidance, *see* § 1.1503–2(g)(2)(iv)(C) through (vi)(A).

(B) *Annual certification.* Except as provided in § 1.1503–2(g)(2)(vi)(C), until and unless Form 1120 or the Schedules thereto contain questions pertaining to dual consolidated losses, the consolidated group, unaffiliated dual resident corporation, or unaffiliated domestic owner must file with its income tax return for each of the 15 taxable years following the taxable year in which the dual consolidated loss is incurred a certification that the losses, expenses, or deductions that make up the dual consolidated loss have not been used to offset the income of another person under the tax laws of a foreign country. For taxable years beginning before January 1, 2003, the annual certification must be signed under penalties of perjury by a person authorized to sign the agreement described in paragraph (g)(2)(i) of this section. For taxable years beginning after December 31, 2002, the certification is verified by signing the return with which the certification is filed. The certification for a taxable year must identify the dual consolidated loss to which it pertains by setting forth the taxpayer's year in which the loss was incurred and the amount of such loss. In addition, the certification must warrant that arrangements have been made to ensure that the loss will not be used to offset the income of another person under the laws of a foreign country and that the taxpayer will be informed of any such foreign use of any portion of the loss. If dual consolidated losses of more than one taxable year are subject to the rules of this paragraph (g)(2)(vi)(B), the certifications for those years may be combined in a single document but each dual consolidated loss must be separately identified.

(g)(2)(vii) through (h) [Reserved]. For further guidance, *see* § 1.1503–2(g)(2)(vi) through (h).

■ **Par. 22.** Section 1.6038B–1 is amended by revising paragraphs (b)(1)(i) and (b)(1)(ii) to read as follows:

§ 1.6038B–1 Reporting of certain transfers to foreign corporations.

* * * * *

(b)(1)(i) and (ii) [Reserved]. For further guidance, *see* § 1.6038B–1T(b)(1)(i) and (ii).

* * * * *

■ **Par. 23.** Section 1.6038B–1T is amended by revising paragraphs (a) through (b)(3) to read as follows:

§ 1.6038B–1T Reporting of certain transactions to foreign corporations (temporary).

(a) [Reserved]. For further guidance, *see* § 1.6038B–1(a).

(b) *Time and manner of reporting*—(1) *In general*—(i) *Reporting procedure.* Except for stock or securities qualifying under the special reporting rule of § 1.6038B–1(b)(2) , and certain exchanges described in section 354 (listed below), any U.S. person that makes a transfer described in section 6038B(a)(1)(A), 367(d) or (e), is required to report pursuant to section 6038B and the rules of § 1.6038B–1 and this section and must attach the required information to Form 926, "Return by Transferor of Property to a Foreign Corporation." For special rules regarding cash transfers made in tax years beginning after February 5, 1999, see § 1.6038B–1(b)(3) and (g) . For purposes of determining a U.S. transferor that is subject to section 6038B, the rules of § 1.367(a)–1T(c) and § 1.367(a)–3(d) shall apply with respect to a transfer described in section 367(a), and the rules of § 1.367(a)–1T(c) shall apply with respect to a transfer described in section 367(d). Additionally, if in an exchange described in section 354, a U.S. person exchanges stock of a foreign corporation in a reorganization described in section 368(a)(1)(E), or a U.S. person exchanges stock of a domestic or foreign corporation for stock of a foreign corporation pursuant to an asset reorganization described in section 368(a)(1)(C), (D), or (F), that is not treated as an indirect stock transfer under section 367(a), then the U.S. person exchanging stock is not required to report under section 6038B. Notwithstanding any statement to the contrary on Form 926, the form and attachments must be attached to, and filed by the due date (including extensions) of the transferor's income tax return for the taxable year that includes the date of the transfer (as defined in § 1.6038B–1T(b)(4)). For taxable years beginning before January 1, 2003, any attachment to Form 926 required under the rules of this section is filed subject to the transferor's declaration under penalties of perjury on Form 926 that the information submitted is true, correct and complete to the best of the transferor's knowledge and belief. For taxable years beginning after December 31, 2002, Form 926 and any attachments shall be verified by signing the income tax return with which the form and attachments are filed.

(ii) *Reporting by corporate transferor.* For transfers by corporations in taxable years beginning before January 1, 2003, Form 926 must be signed by an authorized officer of the corporation if the transferor is not a member of an affiliated group under section 1504(a)(1) that files a consolidated Federal income tax return and by an authorized officer of the common parent corporation if the transferor is a member of such an affiliated group. For transfers by corporations in taxable years beginning after December 31, 2002, Form 926 shall be verified by signing the income tax return to which the form is attached.

(b)(2) through (b)(3) [Reserved]. For further guidance, *see* § 1.6038B–1(b)(2) through (b)(3).

* * * * *

PART 301—PROCEDURE AND ADMINISTRATION

■ **Par. 24.** The authority citation for part 301 continues to read as follows:

Authority: 26 U.S.C. 7805.

■ **Par. 25.** Section 301.7701–3 is amended by revising paragraph (c)(1)(ii) to read as follows:

§ 301.7701–3 Classification of certain business entities.

* * * * *

(c) * * * (1) * * *

(ii) [Reserved]. For further guidance, *see* § 301.7701–3T(c)(1)(ii).

* * * * *

■ **Par. 26.** Section 301.7701–3T is added to read as follows:

§ 301.7701–3T Classification of certain business entities (temporary).

(a) through (c)(1)(i) [Reserved]. For further guidance, *see* § 301.7701–3(a) through (c)(1)(i).

(ii) *Further notification of elections.* An eligible entity required to file a federal tax or information return for the taxable year for which an election is made under § 301.7701–3(c)(1)(i) must attach a copy of its Form 8832 to its federal tax or information return for that year. If the entity is not required to file a return for that year, a copy of its Form 8832 ("Entity Classification Election") must be attached to the federal income tax or information return of any direct or indirect owner of the entity for the taxable year of the owner that includes the date on which the election was effective. An indirect owner of the entity does not have to attach a copy of the Form 8832 to its return if an entity in which it has an interest is already filing a copy of the Form 8832 with its return. If an entity, or one of its direct or indirect owners, fails to attach a copy of a Form 8832 to its return as directed in this section, an otherwise valid election under § 301.7701–3(c)(1)(i) will not be invalidated, but the non-filing party may be subject to penalties, including any applicable penalties if the federal tax or information returns are inconsistent with the entity's election under § 301.7701–3(c)(1)(i). In the case of returns for taxable years beginning after December 31, 2002, the copy of Form 8832 attached to a return pursuant to this paragraph (c)(1)(ii) is not required to be a signed copy.

(c)(1)(iii) through (h) [Reserved]. For further guidance, *see* § 301.7701–3(c)(1)(iii) through (h).

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

■ **Par. 27.** The authority citation for part 602 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

■ **Par. 28.** In § 602.101, paragraph (b) is amended by adding the following entry in numerical order to the table to read as follows:

§ 602.101 OMB Control numbers.

* * * * *

(b) * * *

CFR part or section where identified and described	Current OMB control No.
. . . . .	
1.170A–11T	1545–1868
. . . . .	

Robert E. Wenzel,

Deputy Commission for Services and Enforcement.

Approved: December 2, 2003.

Gregory Jenner,

Deputy Assistant Secretary of the Treasury (Tax Policy).

[FR Doc. 03–31238 Filed 12–18–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF JUSTICE

Parole Commission

28 CFR Part 2

Paroling, Recommitting, and Supervising Federal Prisoners: Prisoners Serving Sentences Under the United States and District of Columbia Codes

AGENCY: United States Parole Commission, Justice.

ACTION: Interim rule with request for comments.

SUMMARY: This interim rule is designed to provide a fair and expeditious means of handling the case of an accused parole violator who is found to be mentally incompetent to proceed with a scheduled parole revocation hearing. Under the Commission's present rule, such a parolee is sent to the Bureau of Prisons for a mental health examination, with a report every six months, until the parolee regains sufficient competence to participate in a revocation hearing. This rule can result in the indefinite detention of the mentally incompetent parolee, without any provision for bringing the revocation matter to resolution. The interim rule authorizes the Commission to conduct a revocation hearing notwithstanding the parolee's lack of mental competency, so long as the Commission obtains a current mental health report, ensures that the parolee has counsel to present a defense, and takes the parolee's mental condition into account in its determination.

DATES: *Effective date:* January 20, 2004. Comments must be received by February 17, 2004.

ADDRESSES: Send comments to Office of General Counsel, U.S. Parole Commission, 5550 Friendship Blvd., Chevy Chase, Maryland 20815.

FOR FURTHER INFORMATION CONTACT: Office of General Counsel, U.S. Parole Commission, 5550 Friendship Blvd., Chevy Chase, Maryland 20815, telephone (301) 492–5959. Questions about this publication are welcome, but inquiries concerning individual cases cannot be answered over the telephone.

SUPPLEMENTARY INFORMATION: A recent case in the District of Columbia has illustrated the problems that can arise when the Commission finds that a parolee who is charged with parole violations is not mentally competent to participate a revocation hearing, and successive efforts to hold a revocation hearing are frustrated by the parolee's inability to regain competency. Other pending revocation cases potentially raise similar difficulties. Under the Commission's present regulation, 28 CFR 2.8, such a parolee must be kept in prison with a report as to his mental competency submitted every six months. A revocation hearing is attempted only when the mental health report indicates that the parolee may be competent to proceed. The regulation can result in indefinite delays in holding the revocation hearing, because the rule lacks any provision for resolving the parolee's situation.

The rule at § 2.8 is grounded, in part, on the policy judgment that the Commission cannot responsibly return accused parole violators to parole supervision solely by reason of their mental incompetency. This result would be incompatible with a primary purpose of parole, *i.e.*, to promote the reintegration of criminal offenders into society as law-abiding citizens through closely supervising their activities in the community and facilitating their rehabilitation. Effective supervision can only be carried out when parolees

maintain sufficient mental capacity to report as directed to their supervision officers, to follow instructions, to comply with the conditions of parole, and to avoid committing new crimes. Given the overriding public interest in preventing new crimes by released offenders, the Commission may justifiably require any parolee who lacks the mental capacity to function successfully on parole to complete his sentence in prison.

The mental incompetency of a defendant facing a criminal prosecution has a far different consequence. A defendant who is found unable to regain competence to stand trial in the foreseeable future cannot be incarcerated indefinitely and must be released, as mandated by *Jackson* v. *Indiana*, 406 U.S. 715 (1972). But this requirement does not apply to an accused parole violator, who is a convicted felon whose imprisonment will terminate with the expiration date of his sentence. Moreover, a parolee's mental condition is not a defense to revocation, though the parolee's condition is a factor for the decision-maker to consider in the disposition of the case. *E.g., United States* v. *Brown*, 899 F.2d 189 (2d Cir. 1990); *Steinberg* v. *Police Court of Albany, New York*, 610 F. 2d 449 (6th Cir. 1979). A parolee cannot, therefore, gain immunity from revocation of parole, and force the government to resort to civil commitment procedures, merely by reason of mental incompetency.

On the other hand, maintaining an accused parole violator on a potentially indefinite six-month reporting cycle without a revocation hearing, as permitted by the present rule, fails to serve the interest of both society and the parolee in seeing that parole violation charges are resolved in a reasonable time. Conducting a revocation hearing notwithstanding the parolee's mental incompetency is the appropriate solution because, in the final analysis, revocation of parole is remedial in nature. *E.g., United States* v. *Pinjuv*, 218 F.3d 1125, 1131 (9th Cir. 2000), *citing, Standlee* v. *Rhay*, 557 F.2d 1303, 1306 (9th Cir. 1977). Although it is obviously important for an accused parole violator to be able to participate meaningfully in the revocation process, the overriding consideration is that the Commission should avoid excessive delay in determining whether revocation is appropriate. A prolonged delay in holding the revocation hearing may result in the loss of witnesses, or the ability of witnesses to recall the events underlying a charged violation, which would impede the Commission's ability to make an accurate evaluation of the parolee's conduct and needs, and make an informed predictive judgment of the parolee's ability to live a law-abiding life. *Morrissey* v. *Brewer*, 408 U.S. 471, 480 (1972). It can also keep the parolee in custody unjustly where the violation charges would otherwise be dismissed.

If revocation is ordered, depending on the seriousness of the violations committed and the risk of new criminal behavior, the Commission can take such measures as are best suited to protect the public, which may include a reparole under conditions of supervision adequate to support the parolee's mental health needs. If the charges are dismissed, or revocation is otherwise not found appropriate, the Commission can return the parolee to the community with a better understanding of the needs that must be addressed to improve the parolee's chances for success.

Consequently, the Commission's revised regulation requires that, whenever a parolee appears to be incompetent to go forward with a revocation hearing, the hearing examiner must temporarily postpone the hearing to obtain a report concerning the parolee's competency from mental health professionals. If the incompetency appears at the probable cause hearing stage, the examiner (or Commission) will make a finding as to probable cause and, if probable cause is found, will schedule a revocation hearing to be held with such a report.

At the postponed revocation hearing, the hearing examiner will make a preliminary determination as to the parolee's competency before proceeding with the revocation hearing. But the hearing examiner will proceed with the revocation hearing even if the examiner determines that the parolee is mentally incompetent to participate in the hearing. Under the interim rule, a finding of incompetency is not a reason for ordering further postponements or for canceling the hearing. In such a case, the purpose of the mental competency determination is to inform the examiner of the parolee's condition, so that the examiner can ensure that both a fair revocation hearing and a reasonable decision results.

In drafting this revised regulation, the Commission has taken account of the possibility that holding a revocation hearing in the case of an incompetent parolee could result in an increased risk of erroneous fact-finding. This risk will be controlled by the provision that any mentally incompetent parolee must be afforded representation by counsel at the revocation hearing. Counsel will be expected to investigate the charges by speaking to witnesses, family members, and others with relevant information. Counsel will be permitted to present any substantial defense to the charges which the circumstances suggest, even if the parolee is not able to testify or give counsel meaningful assistance. This is not an unfair expectation because counsel is not tasked with preparing a defense in a criminal trial under the standard of "beyond a reasonable doubt." Counsel is only tasked with preparing a defense in an informal administrative hearing, under the lesser standard of the "preponderance of the evidence," whereby counsel need only provide the Commission with the explanation of the facts which "best accords with reason and probability." *See* 28 CFR 2.19(c). As the Supreme Court stated in *Morrissey* v. *Brewer, supra*, 408 U.S. at 489, a parole revocation hearing is not a criminal trial "in any sense."

Therefore, the absence of any readily evident defenses to the alleged parole violations will, in most cases, result in counsel emphasizing factors in mitigation. Even though a case may occur in which a parolee cannot communicate to counsel some defense that is known only to the parolee, it is still preferable for the Commission to hold a hearing and make the best decision it can, as opposed to postponing the hearing until such time as the parolee is able to regain his competence.

In sum, the only requirement of due process in such a case is that the Commission must take the parolee's mental condition fully into account in conducting the revocation hearing and making its decision. *Pierce* v. *State Department of Social and Health Services*, 646 P. 2d 1382 (S. Ct. Wash. 1982) (*en banc*). Before making a finding as to whether the parolee violated parole as charged, the Commission will consider the parolee's difficulty in communicating his version of the facts, and weigh that factor in the balance in assessing the probabilities under 28 CFR 2.19(c). If the Commission finds that violations have occurred, the Commission will consider the parolee's inability to provide a coherent explanation of the reasons for his misconduct in determining whether revocation is the appropriate remedy.

Because this is a rule of procedure only, and implementation of the rule at the earliest opportunity is necessary for the Commission to be able to resolve any potential delays in its revocation caseload, this rule will go into effect as an interim rule with request for comments, in contrast to proposals for rulemaking on substantive matters such as paroling policy.

Implementation

The amended rule will take effect January 20, 2004, and will apply to all cases, federal and District of Columbia, including District of Columbia offenders on supervised release.

Executive Order 12866

The U.S. Parole Commission has determined that this interim rule does not constitute a significant rule within the meaning of Executive Order 12866.

Executive Order 13132

This regulation will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Under Executive Order 13132, this rule does not have sufficient federalism implications requiring a Federalism Assessment.

Regulatory Flexibility Act

The interim rule will not have a significant economic impact upon a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 605 (b), and is deemed by the Commission to be a rule of agency practice that does not substantially affect the rights or obligations of non-agency parties pursuant to section 804 (3) (c) of the Congressional Review Act.

Unfunded Mandates Reform Act of 1995

This rule will not cause State, local, or tribal governments, or the private sector, to spend $100,000,000 or more in any one year, and it will not significantly or uniquely affect small governments. No action under the Unfunded Mandates Reform Act of 1995 is necessary.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This rule will not result in an annual effect on the economy of $100,000,000 or more; a major increase in costs or prices; or significant adverse effects on the ability of United States-based companies to compete with foreign-based companies.

List of Subjects in 28 CFR Part 2

Administrative practice and procedure, Prisoners, Probation and parole.

The Interim Rule

■ Accordingly, the U.S. Parole Commission is adopting the following amendment to 28 CFR Part 2.

PART 2—[AMENDED]

■ 1. The authority citation for 28 CFR Part 2 continues to read as follows:

Authority: 18 U.S.C. 4203 (a) (1) and 4204 (a) (6).

■ 2. Amend § 2.8 by revising paragraph (c) and adding paragraph (e). The revised and added texts read as follows:

§ 2.8 Mental competency proceedings.

* * * * *

(c) Whenever the hearing examiner(s) or designated official determine that a prisoner is mentally incompetent and postpone the previously scheduled hearing, they shall forward the record of the preliminary hearing with their findings to the Regional Commissioner for review.

(1) In the case of a prisoner, if the Regional Commissioner concurs with their findings, the Commissioner shall order the temporarily postponed hearing to be postponed indefinitely until such time as it is determined that the prisoner has recovered sufficiently to understand the proceedings. The Regional Commissioner shall require a progress report on the mental health of the prisoner at least every six months. When the Regional Commissioner determines that the prisoner has recovered sufficiently, the Commissioner shall reschedule the hearing for the earliest feasible date.

(2) In the case of a parolee in a revocation proceeding, the Regional Commissioner shall postpone the revocation hearing and order that the parolee be given a mental health examination in a suitable facility of the Bureau of Prisons or the District of Columbia. The postponed revocation hearing shall be held within 60 days, or as soon as a satisfactory mental health report is submitted. The Regional Commissioner shall order that appointment of counsel be sought in any case where the parolee does not have counsel for the revocation hearing. If the parolee's mental incompetency is raised at a preliminary interview or probable cause hearing, the Commission (or hearing official) will make a determination of probable cause and, if probable cause is found, schedule a revocation hearing as provided in this paragraph.

* * * * *

(e) At a postponed revocation hearing under this section, the hearing examiner shall make a preliminary determination as to the parolee's mental competency, taking into account all available mental health reports, any evidence submitted on the parolee's behalf, any report from counsel as to counsel's ability to communicate with the parolee, and the parolee's own responses to the examiner's questioning.

(1) If the hearing examiner determines the parolee to be mentally competent, the examiner shall conduct the revocation hearing. If counsel has previously asserted the parolee's incompetence, the examiner shall offer counsel a brief recess to consult with the parolee before proceeding.

(2) If the hearing examiner determines the parolee to be mentally incompetent, the examiner shall conduct the revocation hearing, and shall take into full account the parolee's mental condition in determining the facts and recommending a decision as to revocation and reparole.

(3) If the Commission revokes parole, the Commission may grant reparole conditioned on the parolee's acceptance into a particular type of mental health program prior to release from prison, or may grant reparole with a special condition of supervision that requires appropriate mental health treatment, including medication. In cases where no other option appears appropriate, the Commission may grant reparole conditioned upon the parolee's voluntary self-commitment to a mental health institution until such time as the parolee has sufficiently recovered for the Commission to permit the parolee's return to supervision.

(4) If the Commission finds that the parolee did not commit the charged violations of parole, but also finds that the parolee is unable to fulfill the normal obligations of a parolee by reason of his mental condition, the Commission may reinstate the parolee to parole with any appropriate special condition, including the special condition, if necessary, that the parolee voluntarily commit himself to a mental institution until such time as the parolee has sufficiently recovered for the Commission to permit a return to supervision.

Dated: December 12, 2003.

Edward F. Reilly, Jr.,

Chairman, U.S. Parole Commission.

[FR Doc. 03–31293 Filed 12–18–03; 8:45 am]

BILLING CODE 4410–31–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[CGD07–03–172]

Drawbridge Operation Regulations; Loxahatchee River, Palm Beach County, FL

AGENCY: U.S. Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, Seventh Coast Guard District, has approved a temporary deviation from the regulations governing the operation of the Florida East Coast Railway bridge across the Loxahatchee River, mile 1.2, Jupiter, Florida. This deviation allows the bridge to remain in the closed position from 7 p.m. to 7 a.m. each day from December 10, 2003 until December 19, 2003 for repairs.

DATES: This deviation is effective from 7 p.m. on December 10 until 7 a.m. on December 19, 2003.

ADDRESSES: Material received from the public, as well as documents indicated in this preamble as being available in the docket [CGD07–03–172] will become part of this docket and will be available for inspection or copying at Commander (obr), Seventh Coast Guard District, 909 S.E. 1st Avenue, Miami, Florida 33131–3050 between 7:30 a.m. and 4 p.m., Monday through Friday, except Federal Holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Michael Lieberum, Project Officer, Seventh Coast Guard District, Bridge Branch at (305) 415–6744.

SUPPLEMENTARY INFORMATION: The Florida East Coast Railway bridge across the Loxahatchee River, Jupiter, Florida, is a single leaf bascule bridge with a vertical clearance of 4 feet above mean high water (MHW) measured at the fenders in the closed position with a horizontal clearance of 40 feet. The current operating regulation in 33 CFR 117.300 requires that the bridge is not constantly tended. The draw is normally in the fully open position, displaying flashing green lights to indicate that vessels may pass. When a train approaches, the lights go to flashing red and a horn starts four blasts, pauses, and then continues four blasts. After an eight minute delay, the draw lowers and locks, providing the scanning equipment reveals nothing under the draw. The draw remains down for a period of eight minutes or while the approach track circuit is occupied. After the train has cleared, the draw opens and the lights return to flashing green.

On October 30, 2003, the bridge owner, Florida East Coast Railroad, requested a deviation from the current operating regulations to allow the owner and operator to keep this bridge in the closed position during certain times each day to facilitate repairs. The Commander, Seventh Coast Guard District has granted a temporary deviation from the operating requirements listed in 33 CFR 117.300 to complete repairs to the bridge. Under this deviation the Florida East Coast Railway bridge, across the Loxahatchee River, mile 1.2, Jupiter, Florida, need not open from 7 p.m. to 7 a.m., each day, from December 10, 2003 until December 19, 2003.

Dated: December 10, 2003.

Greg Shapley,

Chief, Bridge Branch, Seventh Coast Guard District.

[FR Doc. 03–31243 Filed 12–18–03; 8:45 am]

BILLING CODE 4910–15–U

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 242

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 100

Subsistence Management Regulations for Public Lands in Alaska, Subpart D; Seasonal Adjustment—Unit 22(A)

AGENCIES: Forest Service, USDA; Fish and Wildlife Service, Interior.

ACTION: Seasonal adjustment.

SUMMARY: This provides notice of the Federal Subsistence Board's management action to protect a declining moose population in Unit 22(A). This action provides an exception to the Subsistence Management Regulations for Public Lands in Alaska, published in the **Federal Register** on June 27, 2003. Those regulations established seasons, harvest limits, methods, and means relating to the taking of wildlife for subsistence uses during the 2003 regulatory year.

DATES: This action is effective December 4, 2003, through January 31, 2004.

FOR FURTHER INFORMATION CONTACT: Thomas H. Boyd, Office of Subsistence Management, U.S. Fish and Wildlife Service, telephone (907) 786–3888. For questions specific to National Forest System lands, contact Steve Kessler, Subsistence Program Leader, USDA—Forest Service, Alaska Region, telephone (907) 786–3592.

SUPPLEMENTARY INFORMATION:

Background

Title VIII of the Alaska National Interest Lands Conservation Act (ANILCA) (16 U.S.C. 3111–3126) requires that the Secretary of the Interior and the Secretary of Agriculture (Secretaries) implement a joint program to grant a preference for subsistence uses of fish and wildlife resources on public lands in Alaska, unless the State of Alaska enacts and implements laws of general applicability that are consistent with ANILCA and that provide for the subsistence definition, preference, and participation specified in Sections 803, 804, and 805 of ANILCA. In December 1989, the Alaska Supreme Court ruled that the rural preference in the State subsistence statute violated the Alaska Constitution and, therefore, negated State compliance with ANILCA.

The Department of the Interior and the Department of Agriculture (Departments) assumed, on July 1, 1990, responsibility for implementation of Title VIII of ANILCA on public lands. The Departments administer Title VIII through regulations at Title 50, Part 100 and Title 36, Part 242 of the Code of Federal Regulations (CFR). Consistent with Subparts A, B, and C of these regulations, as revised January 8, 1999, (64 FR 1276), the Departments established a Federal Subsistence Board to administer the Federal Subsistence Management Program. The Board's composition includes a Chair appointed by the Secretary of the Interior with concurrence of the Secretary of Agriculture; the Alaska Regional Director, U.S. Fish and Wildlife Service; the Alaska Regional Director, National Park Service; the Alaska State Director, Bureau of Land Management; the Alaska Regional Director, Bureau of Indian Affairs; and the Alaska Regional Forester, USDA Forest Service. Through the Board, these agencies participate in the development of regulations for Subparts A, B, and C, which establish the program structure and determine which Alaska residents are eligible to take specific species for subsistence uses, and the annual Subpart D regulations, which establish seasons, harvest limits, and methods and means for subsistence take of species in specific areas. Subpart D regulations for the 2003 hunting seasons, harvest limits, and methods and means were published on June 27, 2003, (68 FR 38464). Because this rule relates to public lands managed by an agency or agencies in both the Departments of Agriculture and the Interior, identical closures and adjustments would apply to 36 CFR part 242 and 50 CFR part 100.

The Alaska Department of Fish and Game (ADF&G), under the direction of the Alaska Board of Game (BOG) and the Board of Fisheries (BOF), manages sport, commercial, personal use, and State subsistence harvest on all lands and waters throughout Alaska. However, on Federal lands and waters, the Federal Subsistence Board implements a subsistence priority for rural residents as provided by Title VIII of ANILCA. In providing this priority, the Federal Board may, when necessary, preempt State harvest regulations for fish or wildlife on Federal lands and waters.

This adjustment is necessary because of the need to protect a declining moose population in a portion of Unit 22. This action is authorized and in accordance with 50 CFR 100.19(d-e) and 36 CFR 242.19(d-e).

Unit 22(A)—Moose

In 2003 recruitment surveys were completed by ADF&G and BLM in the Golsovia River drainage and on the main stems of the Unalakleet, Shaktoolik and Ungalik river drainages for comparison to similar Unit 22(A) surveys completed in 2000. In all drainages surveyed, except the Golsovia, considerably fewer moose were seen in 2003 than in 2000. This information points to a substantial decline in moose numbers in Unit 22(A) especially the population north of the Golsovia River. Current Federal regulations provide opportunity to harvest bull moose in the affected area December 1 through January 31. This Board action closes the moose season in a portion of Unit 22(A) north of the Golsovia River drainage, closes the winter season in the remainder of Unit 22(A) at the end of December, and changes the harvest limit in remainder of Unit 22(A) to antlered bulls only. ADF&G has executed an Emergency Order for a similar adjustment of the State moose season on private lands in response to the ongoing population declines.

The Board finds that additional public notice and comment requirements under the Administrative Procedure Act (APA) for this adjustment is impracticable, unnecessary, and contrary to the public interest. Lack of appropriate and immediate measures could seriously affect the continued viability of wildlife populations, adversely impact subsistence opportunities for rural Alaskans, and would generally fail to serve the overall public interest. Therefore, the Board finds good cause pursuant to 5 U.S.C. 553(b)(3)(B) to waive additional public notice and comment procedures prior to implementation of this action and pursuant to 5 U.S.C. 553(d)(3) to make this rule effective as indicated in the **DATES** section.

Conformance with Statutory and Regulatory Authorities

National Environmental Policy Act Compliance

A Final Environmental Impact Statement (FEIS) was published on February 28, 1992, and a Record of Decision on Subsistence Management for Federal Public Lands in Alaska (ROD) was signed April 6, 1992. The final rule for Subsistence Management Regulations for Public Lands in Alaska, Subparts A, B, and C (57 FR 22940–22964, published May 29, 1992) implemented the Federal Subsistence Management Program and included a framework for an annual cycle for subsistence hunting and fishing regulations. A final rule that redefined the jurisdiction of the Federal Subsistence Management Program to include waters subject to the subsistence priority was published on January 8, 1999, (64 FR 1276.)

Compliance with Section 810 of ANILCA

The intent of all Federal subsistence regulations is to accord subsistence uses of fish and wildlife on public lands a priority over the taking of fish and wildlife on such lands for other purposes, unless restriction is necessary to conserve healthy fish and wildlife populations. A Section 810 analysis was completed as part of the FEIS process. The final Section 810 analysis determination appeared in the April 6, 1992, ROD which concluded that the Federal Subsistence Management Program, under Alternative IV with an annual process for setting hunting and fishing regulations, may have some local impacts on subsistence uses, but the program is not likely to significantly restrict subsistence uses.

Paperwork Reduction Act

The adjustment and emergency closure do not contain information collection requirements subject to Office of Management and Budget (OMB) approval under the Paperwork Reduction Act of 1995.

Other Requirements

The adjustments have been exempted from OMB review under Executive Order 12866.

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) requires preparation of flexibility analyses for rules that will have a significant effect on a substantial number of small entities, which include small businesses, organizations, or governmental jurisdictions. The exact number of businesses and the amount of trade that will result from this Federal land-related activity is unknown. The aggregate effect is an insignificant economic effect (both positive and negative) on a small number of small entities supporting subsistence activities, such as firearm, ammunition, and gasoline dealers. The number of small entities affected is unknown; but, the effects will be seasonally and geographically-limited in nature and will likely not be significant. The Departments certify that the adjustments will not have a significant economic effect on a substantial number of small entities within the meaning of the Regulatory Flexibility Act. Under the Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 801 *et seq.*), this rule is not a major rule. It does not have an effect on the economy of $100 million or more, will not cause a major increase in costs or prices for consumers, and does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

Title VIII of ANILCA requires the Secretaries to administer a subsistence preference on public lands. The scope of this program is limited by definition to certain public lands. Likewise, the adjustments have no potential takings of private property implications as defined by Executive Order 12630.

The Service has determined and certifies pursuant to the Unfunded Mandates Reform Act, 2 U.S.C. 1502 *et seq.*, that the adjustments will not impose a cost of $100 million or more in any given year on local or State governments or private entities. The implementation is by Federal agencies, and no cost is involved to any State or local entities or Tribal governments.

The Service has determined that the adjustments meet the applicable standards provided in Sections 3(a) and 3(b)(2) of Executive Order 12988, regarding civil justice reform.

In accordance with Executive Order 13132, the adjustments do not have sufficient federalism implications to

warrant the preparation of a Federalism Assessment. Title VIII of ANILCA precludes the State from exercising subsistence management authority over fish and wildlife resources on Federal lands.

In accordance with the President's memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments" (59 FR 22951), Executive Order 13175, and 512 DM 2, we have evaluated possible effects on Federally recognized Indian tribes and have determined that there are no effects. The Bureau of Indian Affairs is a participating agency in this rulemaking.

On May 18, 2001, the President issued Executive Order 13211 on regulations that significantly affect energy supply, distribution, or use. This Executive Order requires agencies to prepare Statements of Energy Effects when undertaking certain actions. As these actions are not expected to significantly affect energy supply, distribution, or use, they are not significant energy actions and no Statement of Energy Effects is required.

Drafting Information

William Knauer drafted this document under the guidance of Thomas H. Boyd, of the Office of Subsistence Management, Alaska Regional Office, U.S. Fish and Wildlife Service, Anchorage, Alaska. Taylor Brelsford, Alaska State Office, Bureau of Land Management; Greg Bos, Alaska Regional Office, U.S. Fish and Wildlife Service; Sandy Rabinowitch, Alaska Regional Office, National Park Service; Warren Eastland, Alaska Regional Office, Bureau of Indian Affairs; and Steve Kessler, USDA-Forest Service, provided additional guidance.

Authority: 16 U.S.C. 3, 472, 551, 668dd, 3101–3126; 18 U.S.C. 3551–3586; 43 U.S.C. 1733.

Dated: December 3, 2003.

Thomas H. Boyd,

Acting Chair, Federal Subsistence Board.

Dated: December 3, 2003.

Steve Kessler,

Subsistence Program Leader, USDA-Forest Service.

[FR Doc. 03–31290 Filed 12–18–03; 8:45 am]

BILLING CODE 3410–11–P; 4310–55–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 17

RIN 2900–AL06

Reasonable Charges for Medical Care or Services; 2003 Methodology Changes

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: This document amends the Department of Veterans Affairs (VA) medical regulations concerning "reasonable charges" for medical care or services provided or furnished by VA to a veteran:

- For a nonservice-connected disability for which the veteran is entitled to care (or the payment of expenses of care) under a health plan contract;
- For a nonservice-connected disability incurred incident to the veteran's employment and covered under a worker's compensation law or plan that provides reimbursement or indemnification for such care and services; or
- For a nonservice-connected disability incurred as a result of a motor vehicle accident in a State that requires automobile accident reparations insurance.

The regulations contain methodologies designed to establish VA charges that replicate, insofar as possible, the 80th percentile of community charges, adjusted to the market areas in which VA facilities are located, and trended forward to the time period during which the charges will be used. This document amends the regulations regarding VA's reasonable charges methodologies for the following purposes: To establish charges for medical care, procedures, services, durable medical equipment (DME), drugs, injectables, medical items, and supplies for which we previously did not have charges; to replace certain charges previously based on VA costs with charges based on community charges; to establish separate charges for medical care, procedures, services, DME, drugs, injectables, medical items, and supplies whose charges were previously combined with other charges; to bring our charge structures and associated billing practices closer to industry standard charge structures and billing practices; and to provide certain clarifications.

DATES: This final rule is effective December 19, 2003.

FOR FURTHER INFORMATION CONTACT: Stephanie Mardon, Chief Business Office (168), Veterans Health Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 254–0362. (This is not a toll free number.)

SUPPLEMENTARY INFORMATION: In a proposed rule published in the **Federal Register** on October 2, 2003 (68 FR 56876), we proposed to amend VA's medical regulations as summarized in this document and discussed in full in the proposed rule. We provided a comment period that ended on November 3, 2003. We received one comment to the proposed rule, which we are now adopting as a final rule with minor revisions based on the public comment, plus clarifications and minor technical changes.

The comment focused on the use of the term "medically directed" as it applies to VA charges for anesthesia services. The commenter pointed out that under the Medicare program, the term "medically directed" has specific meaning having to do with Medicare payments to anesthesiologists for providing certain services. The commenter also pointed out that Medicare does not require that Certified Registered Nurse Anesthetists (CRNAs) be medically directed by anesthesiologists while providing anesthesia services. The commenter stated that Medicare and other primary insurers recognize the terms "personally performed" and "non-medically directed," and recommended that these terms be used in the VA regulation. We appreciate this information, and we have revised paragraph (g) of the regulation to incorporate the recommended language.

The commenter also recommended that VA establish an "Anesthesia Reimbursement Working Group" to advise VA regarding methodology for determining professional charges and values for anesthesia services. Our response to this recommendation is that we believe our current methodology for determining professional charges and values for anesthesia services is appropriate, and that establishing the indicated working group is not necessary at this time.

In the proposed rule, we identified the Internet site of the Veterans Health Administration Chief Business Office as *http://www.va.gov/revenue*. In connection with ongoing improvements to this Internet site, the address has been changed to *http://www.va.gov/cbo*. We have made this change in the two places in the regulation in which it occurs, in paragraphs (a)(2) and (a)(3), indicating that this is the current address of this Internet site.

In the proposed rule, we defined "geographic area" to mean "a three-digit ZIP Code area." We are now adding a clarification to that definition to indicate that the three-digit ZIP Codes referred to are the first three digits of standard U.S. Postal Service ZIP Codes.

Based on the rationale set forth in the proposed rule and in this document, we now adopt the proposed rule as a final rule with the minor revisions, clarifications, and minor technical changes indicated.

Previous Interim Final Rule

This document supercedes our previous interim final rule with comment period, "Reasonable Charges for Medical Care or Services; 2003 Update," published in the **Federal Register** on April 29, 2003 (68 FR 22966, RIN 2900–AL57). The comment period ended on June 30, 2003. We did not receive any comments in response to the April 29, 2003, interim final rule.

Unfunded Mandates

The Unfunded Mandates Reform Act requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before developing any rule that may result in an expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million or more in any given year. This rule will have no such effect on State, local, or tribal governments, or the private sector.

Paperwork Reduction Act

This document contains provisions at 38 CFR 17.101(a)(4) constituting a collection of information under the Paperwork Reduction Act (44 U.S.C. 3501–3521). The Office of Management and Budget (OMB) has approved the information collection requirements for § 17.101(a)(4) under OMB control number 2900–0606.

Regulatory Flexibility Act

The Secretary hereby certifies that this rule does not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. This rule affects mainly large insurance companies, and where small entities are involved, they are not impacted significantly since most of their business is not with VA. Accordingly, pursuant to 5 U.S.C. 605(b), this rule is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

Catalog of Federal Domestic Assistance Numbers

The Catalog of Federal Domestic Assistance numbers for the programs affected by this rule are 64.005, 64.007, 64.008, 64.009, 64.010, 64.011, 64.012, 64.013, 64.014, 64.015, 64.016, 64.018, 64.019, 64.022, and 64.025.

List of Subjects in 38 CFR Part 17

Administrative practice and procedure, Alcohol abuse, Alcoholism, Claims, Day care, Dental health, Drug abuse, Foreign relations, Government contracts, Grant programs-health, Grant programs-veterans, Health care, Health facilities, Health professions, Health records, Homeless, Medical and dental schools, Medical devices, Medical research, Mental health programs, Nursing homes, Philippines, Reporting and recordkeeping requirements, Scholarships and fellowships, Travel and transportation expenses, Veterans.

Approved: December 10, 2003.

Anthony J. Principi,

Secretary of Veterans Affairs.

■ For the reasons set out in the preamble, 38 CFR part 17 is amended as set forth below:

PART 17—MEDICAL

■ 1. The authority citation for part 17 continues to read as follows:

Authority: 38 U.S.C. 501, 1721, unless otherwise noted.

■ 2. Section 17.101 is revised to read as follows:

§ 17.101 Collection or recovery by VA for medical care or services provided or furnished to a veteran for a nonservice-connected disability.

(a)(1) *General.* This section covers collection or recovery by VA, under 38 U.S.C. 1729, for medical care or services provided or furnished to a veteran:

(i) For a nonservice-connected disability for which the veteran is entitled to care (or the payment of expenses of care) under a health plan contract;

(ii) For a nonservice-connected disability incurred incident to the veteran's employment and covered under a worker's compensation law or plan that provides reimbursement or indemnification for such care and services; or

(iii) For a nonservice-connected disability incurred as a result of a motor vehicle accident in a State that requires automobile accident reparations insurance.

(2) *Methodologies.* Based on the methodologies set forth in this section, the charges billed will include the following types of charges, as appropriate: Acute inpatient facility charges; skilled nursing facility/sub-acute inpatient facility charges; partial hospitalization facility charges; outpatient facility charges; physician and other professional charges, including professional charges for anesthesia services and dental services; pathology and laboratory charges; observation care facility charges; ambulance and other emergency transportation charges; and charges for durable medical equipment, drugs, injectables, and other medical services, items, and supplies identified by HCPCS Level II codes. In addition, the charges billed for prescription drugs not administered during treatment will be based on VA costs in accordance with the methodology set forth in § 17.102. Data for calculating actual charge amounts based on the methodologies set forth in this section will either be published in a notice in the **Federal Register** or will be posted on the Internet site of the Veterans Health Administration Chief Business Office, currently at *http://www.va.gov/cbo*, under "Charge Data." For care for which VA has established a charge, VA will bill using its most recent published or posted charge. For care for which VA has not established a charge, VA will bill according to the methodology set forth in paragraph (a)(8) of this section.

(3) *Data sources.* In this section, data sources are identified by name. The specific editions of these data sources used to calculate actual charge amounts, and information on where these data sources may be obtained, will be presented along with the data for calculating actual charge amounts, either in notices in the **Federal Register** or on the Internet site of the Veterans Health Administration Chief Business Office, currently at *http://www.va.gov/cbo*, under "Charge Data."

(4) *Amount of recovery or collection—third party liability.* A third-party payer liable under a health plan contract has the option of paying either the billed charges described in this section or the amount the health plan demonstrates is the amount it would pay for care or services furnished by providers other than entities of the United States for the same care or services in the same geographic area. If the amount submitted by the health plan for payment is less than the amount billed, VA will accept the submission as payment, subject to verification at VA's discretion in accordance with this section. A VA employee having responsibility for collection of such charges may request that the third party health plan submit evidence or

information to substantiate the appropriateness of the payment amount (*e.g.*, health plan or insurance policies, provider agreements, medical evidence, proof of payment to other providers in the same geographic area for the same care and services VA provided).

(5) *Definitions.* For purposes of this section:

APC means Medicare Ambulatory Payment Classification.

CMS means the Centers for Medicare and Medicaid Services.

CPI–U means Consumer Price Index—All Urban Consumers.

CPT code and *CPT procedure code* mean Current Procedural Terminology code, a five-digit identifier defined by the American Medical Association for a specified physician service or procedure.

DME means Durable Medical Equipment.

DRG means Diagnosis Related Group.

Geographic area means a three-digit ZIP Code area, where three-digit ZIP Codes are the first three digits of standard U.S. Postal Service ZIP Codes.

HCPCS code means a Healthcare Common Procedure Coding System Level II identifier, consisting of a letter followed by four digits, defined by CMS for a specified physician service, procedure, test, supply, or other medical service.

ICU means Intensive Care Unit, including coronary care units.

MDR means Medical Data Research, a medical charge database published by Ingenix, Inc.

MedPAR means the Medicare Provider Analysis and Review file.

Non-provider-based means a VA health care entity (such as a small VA community-based outpatient clinic) that functions as the equivalent of a doctor's office or for other reasons does not meet CMS provider-based criteria, and, therefore, is not entitled to bill outpatient facility charges.

Provider-based means the outpatient department of a VA hospital or any other VA health care entity that meets CMS provider-based criteria. Provider-based entities are entitled to bill outpatient facility charges.

RBRVS means Resource-Based Relative Value Scale.

RVU means Relative Value Unit.

Unlisted procedures mean procedures, services, items, and supplies that have not been defined or specified by the American Medical Association or CMS, and the CPT and HCPCS codes used to report such procedures, services, items, and supplies.

(6) *Provider-based and non-provider-based entities and charges.* Each VA health care entity (medical center, hospital, community-based outpatient clinic, independent outpatient clinic, etc.) is designated as either provider-based or non-provider-based. Provider-based entities are entitled to bill outpatient facility charges; non-provider-based entities are not. The charges for physician and other professional services provided at non-provider-based entities will be billed as professional charges only. Professional charges for both provider-based entities and non-provider-based entities are produced by the methodologies set forth in this section, with professional charges for provider-based entities based on facility practice expense RVUs, and professional charges for non-provider-based entities based on non-facility practice expense RVUs.

(7) *Charges for medical care or services provided by non-VA providers at VA expense.* When medical care or services are furnished at the expense of the VA by non-VA providers, the charges billed for such care or services will be the higher of the charges determined according to this section, or the amount VA paid to the non-VA provider.

(8) *Charges for medical care or services for which VA does not have an established charge.* When medical care or services are provided or furnished at VA expense by either VA or non-VA providers, and VA does not have an established charge for such care or services, then the charges billed for such care or services will be according to the first of the following subparagraphs that applies:

(i) In the event that a new identifier (DRG, CPT code, or HCPCS code) is assigned to a particular type or item of medical care or service, then until such time as VA establishes a charge for the new identifier, VA's charge for such care or service will be VA's most recent established charge for the identifier previously assigned to that type or item of medical care or service; otherwise,

(ii) In the event that the medical care or service is provided or furnished at VA expense by a non-VA provider, then VA's charge for such care or service will be the amount VA paid to the non-VA provider; otherwise,

(iii) VA's charges for prosthetic devices and durable medical equipment will be VA's actual cost; otherwise,

(iv) If a Medicare allowed charge amount can be determined for the care or service, then VA's charge will be the Medicare participating provider allowed charge amount geographically adjusted using the applicable geographic area adjustment factors determined pursuant to this section; otherwise,

(v) If a charge cannot be established under paragraphs (a)(8)(i) through (iv) of this section, then VA will not charge for the care or service under this section.

(b) *Acute inpatient facility charges.* When VA provides or furnishes acute inpatient services within the scope of care referred to in paragraph (a)(1) of this section, acute inpatient facility charges billed for such services will be determined in accordance with the provisions of this paragraph. Acute inpatient facility charges consist of per diem charges for room and board and for ancillary services that vary by geographic area and by DRG. These charges are calculated as follows:

(1) *Formula.* For each acute inpatient stay, or portion thereof, for which a particular DRG assignment applies, the total acute inpatient facility charge is the sum of the applicable charges determined pursuant to paragraphs (b)(1)(i), (ii), and (iii) of this section. For purposes of this section, standard room and board days and ICU room and board days are mutually exclusive: VA will bill either a standard room and board per diem charge or an ICU room and board per diem charge, as applicable, for each day of a given acute inpatient stay.

(i) *Standard room and board charges.* Multiply the nationwide standard room and board per diem charge determined pursuant to paragraph (b)(2) of this section by the appropriate geographic area adjustment factor determined pursuant to paragraph (b)(3) of this section. The result constitutes the area-specific standard room and board per diem charge. Multiply this amount by the number of days for which standard room and board charges apply to obtain the total acute inpatient facility standard room and board charge.

(ii) *ICU room and board charges.* Multiply the nationwide ICU room and board per diem charge determined pursuant to paragraph (b)(2) of this section by the appropriate geographic area adjustment factor determined pursuant to paragraph (b)(3) of this section. The result constitutes the area-specific ICU room and board per diem charge. Multiply this amount by the number of days for which ICU room and board per diem charges apply to obtain the total acute inpatient facility ICU room and board charge.

(iii) *Ancillary charges.* Multiply the nationwide ancillary per diem charge determined pursuant to paragraph (b)(2) of this section by the appropriate geographic area adjustment factor determined pursuant to paragraph (b)(3) of this section. The result constitutes the area-specific ancillary per diem charge. Multiply this amount by the number of days of acute inpatient care to obtain the total acute inpatient facility ancillary charge.

Note to paragraph (b)(1): If there is a change in a patient's condition and/or treatment during a single acute inpatient stay such that the DRG assignment changes (for example, a psychiatric patient who develops a medical or surgical problem), then calculations of acute inpatient facility charges will be made separately for each DRG, according to the number of days of care applicable for each DRG, and the total acute inpatient facility charge will be the sum of the total acute inpatient facility charges for the different DRGs.

(2) *Per diem charges.* To establish a baseline, two nationwide average per diem amounts for each DRG are calculated, one from the MedPAR file and one from the MedStat claims database, a database of nationwide commercial insurance claims. Average per diem charges are calculated based on all available charges, except for care reported for emergency room, ambulance, professional, and observation care. These two data sources may report charges for two differing periods of time; when this occurs, the data source charges with the earlier center date are trended forward to the center date of the other data source, based on changes to the inpatient hospital services component of the CPI–U. Results obtained from these two data sources are then combined into a single weighted average per diem charge for each DRG. The resulting charge for each DRG is then separated into its two components, a room and board component and an ancillary component, with the per diem charge for each component calculated by multiplying the weighted average per diem charge by the corresponding percentage determined pursuant to paragraph (b)(2)(i) of this section. The room and board per diem charge is further differentiated into a standard room and board per diem charge and an ICU room and board per diem charge by multiplying the average room and board charge by the corresponding DRG-specific ratios determined pursuant to paragraph (b)(2)(ii) of this section. The resulting per diem charges for standard room and board, ICU room and board, and ancillary services for each DRG are then each multiplied by the final ratio determined pursuant to paragraph (b)(2)(iii) of this section to reflect the nationwide 80th percentile charges. Finally, the resulting amounts are each trended forward from the center date of the trended data sources to the effective time period for the charges, as set forth in paragraph (b)(2)(iv) of this section. The results constitute the nationwide 80th percentile standard room and board, ICU room and board, and ancillary per diem charges.

(i) *Room and board charge and ancillary charge component percentages.* Using only those cases from the MedPAR file for which a distinction between room and board charges and ancillary charges can be determined, the percentage of the total charges for room and board compared to the combined total charges for room and board and ancillary services, and the percentage of the total charges for ancillary services compared to the combined total charges for room and board and ancillary services, are calculated by DRG.

(ii) *Standard room and board per diem charge and ICU room and board per diem charge ratios.* Using only those cases from the MedPAR file for which a distinction between room and board and ancillary charges can be determined, overall average per diem room and board charges are calculated by DRG. Then, using the same cases, an average standard room and board per diem charge is calculated by dividing total non-ICU room and board charges by total non-ICU room and board days. Similarly, an average ICU room and board per diem charge is calculated by dividing total ICU room and board charges by total ICU room and board days. Finally, ratios of standard room and board per diem charges *to* average overall room and board per diem charges are calculated by DRG, as are ratios of ICU room and board per diem charges *to* average overall room and board per diem charges.

(iii) *80th percentile.* Using cases from the MedPAR file with separately identifiable semi-private room rates, the ratio of the day-weighted 80th percentile semi-private room and board per diem charge *to* the average semi-private room and board per diem charge is obtained for each geographic area. The geographic area-based ratios are averaged to obtain a final 80th percentile ratio.

(iv) *Trending forward.* 80th percentile charges for each DRG, obtained as described in paragraph (b)(2) of this section, are trended forward based on changes to the inpatient hospital services component of the CPI–U. Actual CPI–U changes are used from the center date of the trended data sources through the latest available month as of the time the calculations are performed. The three-month average annual trend rate as of the latest available month is then held constant to the midpoint of the calendar year in which the charges are primarily expected to be used. The projected total CPI–U change so obtained is then applied to the 80th percentile charges.

(3) *Geographic area adjustment factors.* For each geographic area, the average per diem room and board charges and ancillary charges from the MedPAR file are calculated for each DRG. The DRGs are separated into two groups, surgical and non-surgical. For each of these groups of DRGs, for each geographic area, average room and board per diem charges and ancillary per diem charges are calculated, weighted by nationwide VA discharges and by average lengths of stay from the combined MedPAR file and MedStat claims database. This results in four average per diem charges for each geographic area: room and board for surgical DRGs, ancillary for surgical DRGs, room and board for non-surgical DRGs, and ancillary for non-surgical DRGs. Four corresponding national average per diem charges are obtained from the MedPAR file, weighted by nationwide VA discharges and by average lengths of stay from the combined MedPAR file and MedStat claims database. Four geographic area adjustment factors are then calculated for each geographic area by dividing each geographic area average per diem charge by the corresponding national average per diem charge.

(c) *Skilled nursing facility/sub-acute inpatient facility charges.* When VA provides or furnishes skilled nursing/sub-acute inpatient services within the scope of care referred to in paragraph (a)(1) of this section, skilled nursing facility/sub-acute inpatient facility charges billed for such services will be determined in accordance with the provisions of this paragraph. The skilled nursing facility/sub-acute inpatient facility charges are per diem charges that vary by geographic area. The facility charges cover care, including room and board, nursing care, pharmaceuticals, supplies, and skilled rehabilitation services (*e.g.*, physical therapy, inhalation therapy, occupational therapy, and speech-language pathology), that is provided in a nursing home or hospital inpatient setting, is provided under a physician's orders, and is performed by or under the general supervision of professional personnel such as registered nurses, licensed practical nurses, physical therapists, occupational therapists, speech-language pathologists, and audiologists. These charges are calculated as follows:

(1) *Formula.* For each stay, multiply the nationwide per diem charge determined pursuant to paragraph (c)(2) of this section by the appropriate geographic area adjustment factor

determined pursuant to paragraph (c)(3) of this section. The result constitutes the area-specific per diem charge. Finally, multiply the area-specific per diem charge by the number of days of care to obtain the total skilled nursing facility/sub-acute inpatient facility charge.

(2) *Per diem charge.* To establish a baseline, a nationwide average per diem billed charge is calculated based on charges reported in the MedPAR skilled nursing facility file. For this purpose, the following MedPAR charge categories are included: room and board (private, semi-private, and ward), physical therapy, occupational therapy, inhalation therapy, speech-language pathology, pharmacy, medical/surgical supplies, and "other" services. The following MedPAR charge categories are excluded from the calculation of the per diem charge and will be billed separately, using the charges determined as set forth in other applicable paragraphs of this section, when these services are provided to skilled nursing patients or sub-acute inpatients: ICU and CCU room and board, laboratory, radiology, cardiology, dialysis, operating room, blood and blood administration, ambulance, MRI, anesthesia, durable medical equipment, emergency room, clinic, outpatient, professional, lithotripsy, and organ acquisition services. The resulting average per diem billed charge is then multiplied by the 80th percentile adjustment factor determined pursuant to paragraph (c)(2)(i) of this section to obtain a nationwide 80th percentile charge level. Finally, the resulting amount is trended forward to the effective time period for the charges, as set forth in paragraph (c)(2)(ii) of this section.

(i) *80th percentile adjustment factor.* Using the MedPAR skilled nursing facility file, the ratio of the day-weighted 80th percentile room and board per diem charge to the day-weighted average room and board per diem charge is obtained for each geographic area. The geographic area-based ratios are averaged to obtain the 80th percentile adjustment factor.

(ii) *Trending forward.* The 80th percentile charge is trended forward based on changes to the inpatient hospital services component of the CPI–U. Actual CPI–U changes are used from the time period of the source data through the latest available month as of the time the calculations are performed. The three-month average annual trend rate as of the latest available month is then held constant to the midpoint of the calendar year in which the charges are primarily expected to be used. The projected total CPI–U change so obtained is then applied to the 80th percentile charge.

(3) *Geographic area adjustment factors.* The average billed per diem charge for each geographic area is calculated from the MedPAR skilled nursing facility file. This amount is divided by the nationwide average billed charge calculated in paragraph (c)(2) of this section. The geographic area adjustment factor for charges for each VA facility is the ratio for the geographic area in which the facility is located.

(d) *Partial hospitalization facility charges.* When VA provides or furnishes partial hospitalization services that are within the scope of care referred to in paragraph (a)(1) of this section, the facility charges billed for such services will be determined in accordance with the provisions of this paragraph. Partial hospitalization facility charges are per diem charges that vary by geographic area. These charges are calculated as follows:

(1) *Formula.* For each partial hospitalization stay, multiply the nationwide per diem charge determined pursuant to paragraph (d)(2) of this section by the appropriate geographic area adjustment factor determined pursuant to paragraph (d)(3) of this section. The result constitutes the area-specific per diem charge. Finally, multiply the area-specific per diem charge by the number of days of care to obtain the total partial hospitalization facility charge.

(2) *Per diem charge.* To establish a baseline, a nationwide median per diem billed charge is calculated based on charges associated with partial hospitalization from the outpatient facility component of the Medicare Standard Analytical File 5 percent Sample. That median per diem billed charge is then multiplied by the 80th percentile adjustment factor determined pursuant to paragraph (d)(2)(i) of this section to obtain a nationwide 80th percentile charge level. Finally, the resulting amount is trended forward to the effective time period for the charges, as set forth in paragraph (d)(2)(ii) of this section.

(i) *80th percentile adjustment factor.* The 80th percentile adjustment factor for partial hospitalization facility charges is the same as that computed for skilled nursing facility/sub-acute inpatient facility charges under paragraph (c)(2)(i) of this section.

(ii) *Trending forward.* The 80th percentile charge is trended forward based on changes to the outpatient hospital services component of the CPI–U. Actual CPI–U changes are used from the time period of the source data through the latest available month as of the time the calculations are performed. The three-month average annual trend rate as of the latest available month is then held constant to the midpoint of the calendar year in which the charges are primarily expected to be used. The projected total CPI–U change so obtained is then applied to the 80th percentile charges, as described in paragraph (d)(2) of this section.

(3) *Geographic area adjustment factors.* The geographic area adjustment factors for partial hospitalization facility charges are the same as those computed for outpatient facility charges under paragraph (e)(4) of this section.

(e) *Outpatient facility charges.* When VA provides or furnishes outpatient facility services that are within the scope of care referred to in paragraph (a)(1) of this section, the charges billed for such services will be determined in accordance with the provisions of this paragraph. Charges for outpatient facility services vary by geographic area and by CPT/HCPCS code. These charges apply in the situations set forth in paragraph (e)(1) of this section and are calculated as set forth in paragraph (e)(2) of this section.

(1) *Settings and circumstances in which outpatient facility charges apply.* Outpatient facility charges consist of facility charges for procedures, diagnostic tests, evaluation and management services, and other medical services, items, and supplies provided in the following settings and circumstances:

(i) Outpatient departments and clinics at VA medical centers;

(ii) Other VA provider-based entities; and

(iii) VA non-provider-based entities, for procedures and tests for which no corresponding professional charge is established under the provisions of paragraph (f) of this section.

(2) *Formula.* For each outpatient facility charge CPT/HCPCS code, multiply the nationwide 80th percentile charge determined pursuant to paragraph (e)(3) of this section by the appropriate geographic area adjustment factor determined pursuant to paragraph (e)(4) of this section. The result constitutes the area-specific outpatient facility charge. When multiple surgical procedures are performed during the same outpatient encounter by a provider or provider team, the outpatient facility charges for such procedures will be reduced as set forth in paragraph (e)(5) of this section.

(3) *Nationwide 80th percentile charges by CPT/HCPCS code.* For each CPT/HCPCS code for which outpatient facility charges apply, the nationwide 80th percentile charge is calculated as set forth in either paragraph (e)(3)(i) or (e)(3)(ii) of this section. The resulting amount is trended forward to the effective time period for the charges, as set forth in paragraph (e)(3)(iii) of this section. The results constitute the nationwide 80th percentile outpatient facility charges by CPT/HCPCS code.

(i) *Nationwide 80th percentile charges for CPT/HCPCS codes which have APC assignments.* Using the outpatient facility charges reported in the outpatient facility component of the Medicare Standard Analytical File 5 percent Sample, claim records are selected for which all charges can be assigned to an APC. Using this subset of the 5 percent Sample data, nationwide median charge *to* Medicare APC payment amount ratios, by APC, and nationwide 80th percentile *to* median charge ratios, by APC, are computed according to the methodology set forth in paragraphs (e)(3)(i)(A) and (e)(3)(i)(B) of this section, respectively. The product of these two ratios by APC is then computed, resulting in a composite nationwide 80th percentile charge *to* Medicare APC payment amount ratio. This ratio is then compared to the alternate nationwide 80th percentile charge *to* Medicare APC payment amount ratio computed in paragraph (e)(3)(i)(C) of this section, and the lesser amount is selected and multiplied by the current Medicare APC payment amount. The resulting product is the APC-specific nationwide 80th percentile charge amount for each applicable CPT/HCPCS code.

(A) *Nationwide median charge to Medicare APC payment amount ratios.* For each CPT/HCPCS code, the ratio of median billed charge *to* Medicare APC payment amount is determined. The weighted average of these ratios for each APC is then obtained, using the reported 5 percent Sample frequencies as weights. In addition, corresponding ratios are calculated for each of the APC categories set forth in paragraph (e)(3)(i)(D) of this section, again using the reported 5 percent Sample frequencies as weights. For APCs where the 5 percent Sample frequencies provide a statistically credible result, the APC-specific weighted average nationwide median charge *to* Medicare APC payment amount ratio so obtained is accepted without further adjustment. However, if the 5 percent Sample data do not produce statistically credible results for any specific APC, then the APC category-specific ratio is applied for that APC.

(B) *Nationwide 80th percentile to median charge ratios.* For each CPT/HCPCS code, a geographically normalized nationwide 80th percentile billed charge amount is divided by a similarly normalized nationwide median billed charge amount. The weighted average of these ratios for each APC is then obtained, using the reported 5 percent Sample frequencies as weights. In addition, corresponding ratios are calculated for each of the APC categories set forth in paragraph (e)(3)(i)(D) of this section, again using the reported 5 percent Sample frequencies as weights. For APCs where the 5 percent Sample frequencies provide a statistically credible result, the APC-specific weighted average nationwide 80th percentile *to* median charge ratio so obtained is accepted without further adjustment. However, if the 5 percent Sample data do not produce statistically credible results for any specific APC, then the APC category-specific ratio is applied for that APC.

(C) *Alternate nationwide 80th percentile charge to Medicare APC payment amount ratios.* A minimum 80th percentile charge *to* Medicare APC payment amount ratio is set at 2.0 for APCs with Medicare APC payment amounts of $25 or less. A maximum 80th percentile charge *to* Medicare APC payment amount ratio is set at 6.5 for APCs with Medicare APC payment amounts of $10,000 or more. Using linear interpolation with these endpoints, the alternate APC-specific nationwide 80th percentile charge *to* Medicare APC payment amount ratio is then computed, based on the Medicare APC payment amount.

(D) *APC categories for the purpose of establishing 80th percentile to median factors.* For the purpose of the statistical methodology set forth in paragraph (e)(3)(i) of this section, APCs are assigned to the following APC categories:

(*1*) Radiology.

(*2*) Drugs.

(*3*) Office, Home, and Urgent Care Visits.

(*4*) Cardiovascular.

(*5*) Emergency Room Visits.

(*6*) Outpatient Psychiatry, Alcohol and Drug Abuse.

(*7*) Pathology.

(*8*) Surgery.

(*9*) Allergy Immunotherapy, Allergy Testing, Immunizations, and Therapeutic Injections.

(*10*) All APCs not assigned to any of the above groups.

(ii) *Nationwide 80th percentile charges for CPT/HCPCS codes which do not have APC assignments.* Nationwide 80th percentile billed charge levels by CPT/HCPCS code are computed from the outpatient facility component of the MDR database, from the MedStat claims database, and from the outpatient facility component of the Medicare Standard Analytical File 5 percent Sample. If the MDR database contains sufficient data to provide a statistically credible 80th percentile charge, then that result is retained for this purpose. If the MDR database does not provide a statistically credible 80th percentile charge, then the result from the MedStat database is retained for this purpose, provided it is statistically credible. If neither the MDR nor the MedStat databases provide statistically credible results, then the nationwide 80th percentile billed charge computed from the 5 percent Sample data is retained for this purpose. The nationwide 80th percentile charges retained from each of these data sources are trended forward to the effective time period for the charges, as set forth in paragraph (e)(3)(iii) of this section.

(iii) *Trending forward.* The charges for each CPT/HCPCS code, obtained as described in paragraph (e)(3) of this section, are trended forward based on changes to the outpatient hospital services component of the CPI–U. Actual CPI–U changes are used from the time period of the source data through the latest available month as of the time the calculations are performed. The three-month average annual trend rate as of the latest available month is then held constant to the midpoint of the calendar year in which the charges are primarily expected to be used. The projected total CPI–U change so obtained is then applied to the 80th percentile charges, as described in paragraph (e)(3) of this section.

(4) *Geographic area adjustment factors.* For each geographic area, a single adjustment factor is calculated as the arithmetic average of the outpatient geographic area adjustment factor published in the Milliman USA, Inc., Health Cost Guidelines (this factor constitutes the ratio of the level of charges for each geographic area *to* the nationwide level of charges), and a geographic area adjustment factor developed from the MDR database (*see* paragraph (a)(3) of this section for Data Sources). The MDR-based geographic area adjustment factors are calculated as the ratio of the CPT/HCPCS code weighted average charge level for each geographic area *to* the nationwide CPT/HCPCS code weighted average charge level.

(5) *Multiple surgical procedures.* When multiple surgical procedures are performed during the same outpatient encounter by a provider or provider team as indicated by multiple surgical CPT/HCPCS procedure codes, then the

CPT/HCPCS procedure code with the highest facility charge will be billed at 100 percent of the charges established under this section; the CPT/HCPCS procedure code with the second highest facility charge will be billed at 25 percent of the charges established under this section; the CPT/HCPCS procedure code with the third highest facility charge will be billed at 15 percent of the charges established under this section; and no outpatient facility charges will be billed for any additional surgical procedures.

(f) *Physician and other professional charges except for anesthesia services and certain dental services.* When VA provides or furnishes physician and other professional services, other than professional anesthesia services and certain professional dental services, within the scope of care referred to in paragraph (a)(1) of this section, physician and other professional charges billed for such services will be determined in accordance with the provisions of this paragraph. Charges for professional dental services identified by CPT code are determined in accordance with the provisions of this paragraph; charges for professional dental services identified by HCPCS Level II code are determined in accordance with the provisions of paragraph (h) of this section. Physician and other professional charges consist of charges for professional services that vary by geographic area, by CPT/HCPCS code, by site of service, and by modifier, where applicable. These charges are calculated as follows:

(1) *Formula.* For each CPT/HCPCS code or, where applicable, each CPT/HCPCS code and modifier combination, multiply the total geographically-adjusted RVUs determined pursuant to paragraph (f)(2) of this section by the applicable geographically-adjusted conversion factor (a monetary amount) determined pursuant to paragraph (f)(3) of this section to obtain the physician charge for each CPT/HCPCS code in a particular geographic area. Then, multiply this charge by the appropriate factors for any charge-significant modifiers, determined pursuant to paragraph (f)(4) of this section.

(2)(i) *Total geographically-adjusted RVUs for physician services that have Medicare RVUs.* The work expense and practice expense RVUs for CPT/HCPCS codes, other than the codes described in paragraphs (f)(2)(ii) and (f)(2)(iii) of this section, are compiled using Medicare Physician Fee Schedule RVUs. The sum of the geographically-adjusted work expense RVUs determined pursuant to paragraph (f)(2)(i)(A) of this section and the geographically-adjusted practice expense RVUs determined pursuant to paragraph (f)(2)(i)(B) of this section, equals the total geographically-adjusted RVUs.

(A) *Geographically-adjusted work expense RVUs.* For each CPT/HCPCS code for each geographic area, the Medicare Physician Fee Schedule work expense RVUs are multiplied by the work expense Medicare Geographic Practice Cost Index. The result constitutes the geographically-adjusted work expense RVUs.

(B) *Geographically-adjusted practice expense RVUs.* For each CPT/HCPCS code for each geographic area, the Medicare Physician Fee Schedule practice expense RVUs are multiplied by the practice expense Medicare Geographic Practice Cost Index. The result constitutes the geographically-adjusted practice expense RVUs. In these calculations, facility practice expense RVUs are used to obtain geographically-adjusted practice expense RVUs for use by provider-based entities, and non-facility practice expense RVUs are used to obtain geographically-adjusted practice expense RVUs for use by non-provider-based entities.

(ii) *RVUs for CPT/HCPCS codes that do not have Medicare RVUs and are not designated as unlisted procedures.* For CPT/HCPCS codes that are not assigned RVUs in paragraphs (f)(2)(i) or (f)(2)(iii) of this section, total RVUs are developed based on various charge data sources. For these CPT/HCPCS codes, the nationwide 80th percentile billed charges are obtained, where statistically credible, from the MDR database. For any remaining CPT/HCPCS codes, the nationwide 80th percentile billed charges are obtained, where statistically credible, from the Part B component of the Medicare Standard Analytical File 5 percent Sample. For any remaining CPT/HCPCS codes, the nationwide 80th percentile billed charges are obtained, where statistically credible, from the Prevailing Healthcare Charges System nationwide commercial insurance database. For each of these CPT/HCPCS codes, nationwide total RVUs are obtained by taking the nationwide 80th percentile billed charges obtained using the preceding three databases and dividing by the untrended nationwide conversion factor for the corresponding CPT/HCPCS code group determined pursuant to paragraphs (f)(3) and (f)(3)(i) of this section. For any remaining CPT/HCPCS codes that have not been assigned RVUs using the preceding data sources, the nationwide total RVUs are calculated by summing the work expense and non-facility practice expense RVUs found in Ingenix/St. Anthony's RBRVS. The resulting nationwide total RVUs obtained using these four data sources are multiplied by the geographic area adjustment factors determined pursuant to paragraph (f)(2)(iv) of this section to obtain the area-specific total RVUs.

(iii) *RVUs for CPT/HCPCS codes designated as unlisted procedures.* For CPT/HCPCS codes designated as unlisted procedures, total RVUs are developed based on the weighted median of the total RVUs of CPT/HCPCS codes within the series in which the unlisted procedure code occurs. A nationwide VA distribution of procedures and services is used for the purpose of computing the weighted median. The resulting nationwide total RVUs are multiplied by the geographic area adjustment factors determined pursuant to paragraph (f)(2)(iv) of this section to obtain the area-specific total RVUs.

(iv) *RVU geographic area adjustment factors for CPT/HCPCS codes that do not have Medicare RVUs, including codes that are designated as unlisted procedures.* The adjustment factor for each geographic area consists of the weighted average of the work expense and practice expense Medicare Geographic Practice Cost Indices for each geographic area using charge data for representative CPT/HCPCS codes statistically selected and weighted for work expense and practice expense.

(3) *Geographically-adjusted 80th percentile conversion factors.* CPT/HCPCS codes are separated into the following 23 CPT/HCPCS code groups: allergy immunotherapy, allergy testing, cardiovascular, chiropractor, consults, emergency room visits and observation care, hearing/speech exams, immunizations, inpatient visits, maternity/cesarean deliveries, maternity/non-deliveries, maternity/normal deliveries, miscellaneous medical, office/home/urgent care visits, outpatient psychiatry/alcohol and drug abuse, pathology, physical exams, physical medicine, radiology, surgery, therapeutic injections, vision exams, and well baby exams. For each of the 23 CPT/HCPCS code groups, representative CPT/HCPCS codes are statistically selected and weighted so as to give a weighted average RVU comparable to the weighted average RVU of the entire CPT/HCPCS code group (the selected CPT/HCPCS codes are set forth in the Milliman USA, Inc., Health Cost Guidelines fee survey); see paragraph (a)(3) of this section for Data Sources. The 80th percentile charge for each selected CPT/HCPCS code is obtained from the MDR database. A nationwide conversion factor (a monetary amount) is calculated for each CPT/HCPCS code group as set forth in paragraph (f)(3)(i) of this section. The nationwide conversion factors for each of the 23 CPT/HCPCS code groups are trended forward to the effective time period for the charges, as set forth in paragraph (f)(3)(ii) of this section. The resulting amounts for each of the 23 groups are multiplied by geographic area adjustment factors determined pursuant to paragraph (f)(3)(iii) of this section, resulting in geographically-adjusted 80th percentile conversion factors for each geographic area for the 23 CPT/HCPCS code groups for the effective charge period.

(i) *Nationwide conversion factors.* Using the nationwide 80th percentile charges for the selected CPT/HCPCS codes from paragraph (f)(3) of this section, a nationwide conversion factor is calculated for each of the 23 CPT/HCPCS code groups by dividing the weighted average charge by the weighted average RVU.

(ii) *Trending forward.* The nationwide conversion factors for each of the 23 CPT/HCPCS code groups, obtained as described in paragraph (f)(3)(i) of this section, are trended forward based on changes to the physicians' services component of the CPI–U. Actual CPI–U changes are used from the time period of the source data through the latest available month as of the time the calculations are performed. The three-month average annual trend rate as of the latest available month is then held constant to the midpoint of the calendar year in which the charges are primarily expected to be used. The projected total CPI–U change so obtained is then applied to the 23 conversion factors.

(iii) *Geographic area adjustment factors.* Using the 80th percentile charges for the selected CPT/HCPCS codes from paragraph (f)(3) of this section for each geographic area, a geographic area-specific conversion factor is calculated for each of the 23 CPT/HCPCS code groups by dividing the weighted average charge by the weighted average geographically-adjusted RVU. The resulting conversion factor for each geographic area for each of the 23 CPT/HCPCS code groups is divided by the corresponding nationwide conversion factor determined pursuant to paragraph (f)(3)(i) of this section. The resulting ratios are the geographic area adjustment factors for the conversion factors for each of the 23 CPT/HCPCS code groups for each geographic area.

(4) *Charge adjustment factors for specified CPT/HCPCS code modifiers.* Surcharges or charge discounts are calculated in the following manner:

from the Part B component of the Medicare Standard Analytical File 5 percent Sample, the ratio of weighted average billed charges for CPT/HCPCS codes with the specified modifier to the weighted average billed charge for CPT/HCPCS codes with no charge modifier is calculated, using the frequency of procedure codes with the modifier as weights in both weighted average calculations. The resulting ratios constitute the surcharge or discount factors for specified charge-significant CPT/HCPCS code modifiers.

(5) *Certain charges for providers other than physicians.* When services for which charges are established according to the preceding provisions of this paragraph (f) are performed by providers other than physicians, the charges for those services will be as determined by the preceding provisions of this paragraph, except as follows:

(i) *Outpatient facility charges.* When the services of providers other than physicians are furnished in outpatient facility settings or in other facilities designated as provider-based, and outpatient facility charges for those services have been established under paragraph (e) of this section, then the outpatient facility charges established under paragraph (e) will apply instead of the charges established under this paragraph (f).

(ii) *Discounted charges.* Charges for the professional services of the following providers will be the indicated percentages of the amount that would be charged if the care had been provided by a physician:

(A) Nurse practitioner: 85 percent.

(B) Clinical nurse specialist: 85 percent.

(C) Physician Assistant: 85 percent.

(D) Clinical psychologist: 80 percent.

(E) Clinical social worker: 75 percent.

(F) Dietitian: 75 percent.

(G) Clinical pharmacist: 80 percent.

(g) *Professional charges for anesthesia services.* When VA provides or furnishes professional anesthesia services within the scope of care referred to in paragraph (a)(1) of this section, professional anesthesia charges billed for such services will be determined in accordance with the provisions of this paragraph. Charges for professional anesthesia services personally performed by anesthesiologists will be 100 percent of the charges determined as set forth in this paragraph. Charges for professional anesthesia services provided by non-medically directed certified registered nurse anesthetists will also be 100 percent of the charges determined as set forth in this paragraph. Charges for professional anesthesia services provided by medically directed certified registered nurse anesthetists will be 50 percent of the charges otherwise determined as set forth in this paragraph. Professional anesthesia charges consist of charges for professional services that vary by geographic area, by CPT/HCPCS code base units, and by number of time units. These charges are calculated as follows:

(1) *Formula.* For each anesthesia CPT/HCPCS code, multiply the total anesthesia RVUs determined pursuant to paragraph (g)(2) of this section by the applicable geographically-adjusted conversion factor (a monetary amount) determined pursuant to paragraph (g)(3) of this section to obtain the professional anesthesia charge for each CPT/HCPCS code in a particular geographic area.

(2) *Total RVUs for professional anesthesia services.* The total anesthesia RVUs for each anesthesia CPT/HCPCS code are the sum of the base units (as compiled by CMS) for that CPT/HCPCS code and the number of time units reported for the anesthesia service, where one time unit equals 15 minutes. For anesthesia CPT/HCPCS codes designated as unlisted procedures, base units are developed based on the weighted median base units for anesthesia CPT/HCPCS codes within the series in which the unlisted procedure code occurs. A nationwide VA distribution of procedures and services is used for the purpose of computing the weighted median base units.

(3) *Geographically-adjusted 80th percentile conversion factors.* A nationwide 80th percentile conversion factor is calculated according to the methodology set forth in paragraph (g)(3)(i) of this section. The nationwide conversion factor is then trended forward to the effective time period for the charges, as set forth in paragraph (g)(3)(ii) of this section. The resulting amount is multiplied by geographic area adjustment factors determined pursuant to paragraph (g)(3)(iii) of this section, resulting in geographically-adjusted 80th percentile conversion factors for each geographic area for the effective charge period.

(i) *Nationwide conversion factor.* Preliminary 80th percentile conversion factors for each area are compiled from the MDR database. Then, a preliminary nationwide weighted-average 80th percentile conversion factor is calculated, using as weights the population (census) frequencies for each geographic area as presented in the Milliman USA, Inc., Health Cost Guidelines (*see* paragraph (a)(3) of this section for Data Sources). A nationwide 80th percentile fee by CPT/HCPCS code is then computed by multiplying this

conversion factor by the MDR base units for each CPT/HCPCS code. An adjusted 80th percentile conversion factor by CPT/HCPCS code is then calculated by dividing the nationwide 80th percentile fee for each procedure code by the anesthesia base units (as compiled by CMS) for that CPT/HCPCS code. Finally, a nationwide weighted average 80th percentile conversion factor is calculated using combined frequencies for billed base units and time units from the part B component of the Medicare Standard Analytical File 5 percent Sample as weights.

(ii) *Trending forward.* The nationwide conversion factor, obtained as described in paragraph (g)(3)(i) of this section, is trended forward based on changes to the physicians' services component of the CPI–U. Actual CPI–U changes are used from the time period of the source data through the latest available month as of the time the calculations are performed. The three-month average annual trend rate as of the latest available month is then held constant to the midpoint of the calendar year in which the charges are primarily expected to be used. The projected total CPI–U change so obtained is then applied to the conversion factor.

(iii) *Geographic area adjustment factors.* The preliminary 80th percentile conversion factors for each geographic area described in paragraph (g)(3)(i) of this section are divided by the corresponding preliminary nationwide 80th percentile conversion factor also described in paragraph (g)(3)(i). The resulting ratios are the adjustment factors for each geographic area.

(h) *Professional charges for dental services identified by HCPCS Level II codes.* When VA provides or furnishes outpatient dental professional services within the scope of care referred to in paragraph (a)(1) of this section, and such services are identified by HCPCS code rather than CPT code, the charges billed for such services will be determined in accordance with the provisions of this paragraph. The charges for dental services vary by geographic area and by HCPCS code. These charges are calculated as follows:

(1) *Formula.* For each HCPCS dental code, multiply the nationwide 80th percentile charge determined pursuant to paragraph (h)(2) of this section by the appropriate geographic area adjustment factor determined pursuant to paragraph (h)(3) of this section. The result constitutes the area-specific dental charge.

(2) *Nationwide 80th percentile charges by HCPCS code.* For each HCPCS dental code, 80th percentile charges are extracted from three independent data sources: Prevailing Healthcare Charges System database; National Dental Advisory Service nationwide pricing index; and the Dental UCR Module of the Comprehensive Healthcare Payment System, a release from Ingenix from a nationwide database of dental charges (*see* paragraph (a)(3) of this section for Data Sources). Charges for each database are then trended forward to a common date, based on actual changes to the dental services component of the CPI–U. Charges for each HCPCS dental code from each data source are combined into an average 80th percentile charge by means of the methodology set forth in paragraph (h)(2)(i) of this section. HCPCS dental codes designated as unlisted are assigned 80th percentile charges by means of the methodology set forth in paragraph (h)(2)(ii) of this section. Finally, the resulting amounts are each trended forward to the effective time period for the charges, as set forth in paragraph (h)(2)(iii) of this section. The results constitute the nationwide 80th percentile charge for each HCPCS dental code.

(i) *Averaging methodology.* The average charge for any particular HCPCS dental code is calculated by first computing a preliminary mean average of the three charges for each code. Statistical outliers are identified and removed by testing whether any charge differs from the preliminary mean charge by more than 50 percent of the preliminary mean charge. In such cases, the charge most distant from the preliminary mean is removed as an outlier, and the average charge is calculated as a mean of the two remaining charges. In cases where none of the charges differ from the preliminary mean charge by more than 50 percent of the preliminary mean charge, the average charge is calculated as a mean of all three reported charges.

(ii) *Nationwide 80th percentile charges for HCPCS dental codes designated as unlisted procedures.* For HCPCS dental codes designated as unlisted procedures, 80th percentile charges are developed based on the weighted median 80th percentile charge of HCPCS dental codes within the series in which the unlisted procedure code occurs. The distribution of procedures and services from the Prevailing Healthcare Charges System nationwide commercial insurance database is used for the purpose of computing the weighted median.

(iii) *Trending forward.* 80th percentile charges for each dental procedure code, obtained as described in paragraph (h)(2) of this section, are trended forward based on the dental services component of the CPI–U. Actual CPI–U changes are used from the time period of the source data through the latest available month as of the time the calculations are performed. The three-month average annual trend rate as of the latest available month is then held constant to the midpoint of the calendar year in which the charges are primarily expected to be used. The projected total CPI–U change so obtained is then applied to the 80th percentile charges.

(3) *Geographic area adjustment factors.* A geographic adjustment factor (consisting of the ratio of the level of charges in a given geographic area *to* the nationwide level of charges) for each geographic area and dental class of service is obtained from Milliman USA, Inc., Dental Health Cost Guidelines, a database of nationwide commercial insurance charges and relative costs; and a normalized geographic adjustment factor computed from the Dental UCR Module of the Comprehensive Healthcare Payment System compiled by Ingenix, as follows: Using local and nationwide average charges reported in the Ingenix data, a local weighted average charge for each dental class of procedure codes is calculated using utilization frequencies from the Milliman USA, Inc., Dental Health Cost Guidelines as weights (*see* paragraph (a)(3) of this section for Data Sources). Similarly, using nationwide average charge levels, a nationwide average charge by dental class of procedure codes is calculated. The normalized geographic adjustment factor for each dental class of procedure codes and for each geographic area is the ratio of the local average charge divided by the corresponding nationwide average charge. Finally, the geographic area adjustment factor is the arithmetic average of the corresponding factors from the data sources mentioned in the first sentence of this paragraph (h)(3).

(i) *Pathology and laboratory charges.* When VA provides or furnishes pathology and laboratory services within the scope of care referred to in paragraph (a)(1) of this section, charges billed for such services will be determined in accordance with the provisions of this paragraph. Pathology and laboratory charges consist of charges for services that vary by geographic area and by CPT/HCPCS code. These charges are calculated as follows:

(1) *Formula.* For each CPT/HCPCS code, multiply the total geographically-adjusted RVUs determined pursuant to paragraph (i)(2) of this section by the applicable geographically-adjusted conversion factor (a monetary amount) determined pursuant to paragraph (i)(3) of this section to obtain the pathology/laboratory charge for each CPT/HCPCS code in a particular geographic area.

(2)(i) *Total geographically-adjusted RVUs for pathology and laboratory services that have Medicare-based RVUs.* Total RVUs are developed based on the Medicare Clinical Diagnostic Laboratory Fee Schedule (CLAB). The CLAB payment amounts are upwardly adjusted such that the adjusted payment amounts are, on average, equivalent to Medicare Physician Fee Schedule payment levels, using statistical comparisons to the 80th percentile derived from the MDR database. These adjusted payment amounts are then divided by the corresponding Medicare conversion factor to derive RVUs for each CPT/HCPCS code. The resulting nationwide total RVUs are multiplied by the geographic adjustment factors determined pursuant to paragraph (i)(2)(iv) of this section to obtain the area-specific total RVUs.

(ii) *RVUs for CPT/HCPCS codes that do not have Medicare-based RVUs and are not designated as unlisted procedures.* For CPT/HCPCS codes that are not assigned RVUs in paragraphs (i)(2)(i) or (i)(2)(iii) of this section, total RVUs are developed based on various charge data sources. For these CPT/HCPCS codes, the nationwide 80th percentile billed charges are obtained, where statistically credible, from the MDR database. For any remaining CPT/HCPCS codes, the nationwide 80th percentile billed charges are obtained, where statistically credible, from the Part B component of the Medicare Standard Analytical File 5 percent Sample. For any remaining CPT/HCPCS codes, the nationwide 80th percentile billed charges are obtained, where statistically credible, from the Prevailing Healthcare Charges System nationwide commercial insurance database. For each of these CPT/HCPCS codes, nationwide total RVUs are obtained by taking the nationwide 80th percentile billed charges obtained using the preceding three databases and dividing by the untrended nationwide conversion factor determined pursuant to paragraphs (i)(3) and (i)(3)(i) of this section. For any remaining CPT/HCPCS codes that have not been assigned RVUs using the preceding data sources, the nationwide total RVUs are calculated by summing the work expense and non-facility practice expense RVUs found in Ingenix/St. Anthony's RBRVS. The resulting nationwide total RVUs obtained using these four data sources are multiplied by the geographic area adjustment factors determined pursuant to paragraph (i)(2)(iv) of this section to obtain the area-specific total RVUs.

(iii) *RVUs for CPT/HCPCS codes designated as unlisted procedures.* For CPT/HCPCS codes designated as unlisted procedures, total RVUs are developed based on the weighted median of the total RVUs of CPT/HCPCS codes within the series in which the unlisted procedure code occurs. A nationwide VA distribution of procedures and services is used for the purpose of computing the weighted median. The resulting nationwide total RVUs are multiplied by the geographic area adjustment factors determined pursuant to paragraph (i)(2)(iv) of this section to obtain the area-specific total RVUs.

(iv) *RVU geographic area adjustment factors for CPT/HCPCS codes that do not have Medicare RVUs, including codes that are designated as unlisted procedures.* The adjustment factor for each geographic area consists of the weighted average of the work expense and practice expense Medicare Geographic Practice Cost Indices for each geographic area using charge data for representative CPT/HCPCS codes statistically selected and weighted for work expense and practice expense.

(3) *Geographically-adjusted 80th percentile conversion factors.* Representative CPT/HCPCS codes are statistically selected and weighted so as to give a weighted average RVU comparable to the weighted average RVU of the entire pathology/laboratory CPT/HCPCS code group (the selected CPT/HCPCS codes are set forth in the Milliman USA, Inc., Health Cost Guidelines fee survey). The 80th percentile charge for each selected CPT/HCPCS code is obtained from the MDR database. A nationwide conversion factor (a monetary amount) is calculated as set forth in paragraph (i)(3)(i) of this section. The nationwide conversion factor is trended forward to the effective time period for the charges, as set forth in paragraph (i)(3)(ii) of this section. The resulting amount is multiplied by a geographic area adjustment factor determined pursuant to paragraph (i)(3)(iv) of this section, resulting in the geographically-adjusted 80th percentile conversion factor for the effective charge period.

(i) *Nationwide conversion factors.* Using the nationwide 80th percentile charges for the selected CPT/HCPCS codes from paragraph (i)(3) of this section, a nationwide conversion factor is calculated by dividing the weighted average charge by the weighted average RVU.

(ii) *Trending forward.* The nationwide conversion factor, obtained as described in paragraph (i)(3) of this section, is trended forward based on changes to the physicians' services component of the CPI–U. Actual CPI–U changes are used from the time period of the source data through the latest available month as of the time the calculations are performed. The three-month average annual trend rate as of the latest available month is then held constant to the midpoint of the calendar year in which the charges are primarily expected to be used. The projected total CPI–U change so obtained is then applied to the pathology/laboratory conversion factor.

(iii) *Geographic area adjustment factor.* Using the 80th percentile charges for the selected CPT/HCPCS codes from paragraph (i)(3) of this section for each geographic area, a geographic area-specific conversion factor is calculated by dividing the weighted average charge by the weighted average geographically-adjusted RVU. The resulting geographic area conversion factor is divided by the corresponding nationwide conversion factor determined pursuant to paragraph (i)(3)(i) of this section. The resulting ratios are the geographic area adjustment factors for pathology and laboratory services for each geographic area.

(j) *Observation care facility charges.* When VA provides observation care within the scope of care referred to in paragraph (a)(1) of this section, the facility charges billed for such care will be determined in accordance with the provisions of this paragraph. The charges for this care vary by geographic area and number of hours of care. These charges are calculated as follows:

(1) *Formula.* For each occurrence of observation care, add the nationwide base charge determined pursuant to paragraph (j)(2) of this section to the product of the number of hours in observation care and the hourly charge also determined pursuant to paragraph (j)(2) of this section. Then multiply this amount by the appropriate geographic area adjustment factor determined pursuant to paragraph (j)(3) of this section. The result constitutes the area-specific observation care facility charge.

(2)(i) *Nationwide 80th percentile observation care facility charges.* To calculate nationwide base and hourly facility charges, all claims with observation care line items are selected from the outpatient facility component of the Medicare Standard Analytical File 5 percent Sample. Then, using the 80th percentile observation line item charges for each unique hourly length of stay, a standard linear regression technique is used to calculate the nationwide 80th percentile base charge and 80th percentile hourly charge. Finally, the resulting amounts are each trended forward to the effective time

period for the charges, as set forth in paragraph (j)(2)(ii) of this section. The results constitute the nationwide 80th percentile base and hourly facility charges for observation care.

(ii) *Trending forward.* The nationwide 80th percentile base and hourly facility charges for observation care, obtained as described in paragraph (j)(2)(i) of this section, are trended forward based on changes to the outpatient hospital services component of the CPI–U. Actual CPI–U changes are used from the time period of the source data through the latest available month as of the time the calculations are performed. The three-month average annual trend rate as of the latest available month is then held constant to the midpoint of the calendar year in which the charges are primarily expected to be used. The projected total CPI–U change so obtained is then applied to the 80th percentile charges.

(3) *Geographic area adjustment factors.* The geographic area adjustment factors for observation care facility charges are the same as those computed for outpatient facility charges under paragraph (e)(4) of this section.

(k) *Ambulance and other emergency transportation charges.* When VA provides ambulance and other emergency transportation services that are within the scope of care referred to in paragraph (a)(1) of this section, the charges billed for such services will be determined in accordance with the provisions of this paragraph. The charges for these services vary by HCPCS code, length of trip, and geographic area. These charges are calculated as follows:

(1) *Formula.* For each occasion of ambulance or other emergency transportation service, add the nationwide base charge for the appropriate HCPCS code determined pursuant to paragraph (k)(2)(i) of this section to the product of the number of miles traveled and the appropriate HCPCS code mileage charge determined pursuant to paragraph (k)(2)(ii) of this section. Then multiply this amount by the appropriate geographic area adjustment factor determined pursuant to paragraph (k)(3) of this section. The result constitutes the area-specific ambulance or other emergency transportation service charge.

(2)(i) *Nationwide 80th percentile all-inclusive base charge.* To calculate a nationwide all-inclusive base charge, all ambulance and other emergency transportation claims are selected from the outpatient facility component of the Medicare Standard Analytical File 5 percent Sample. Excluding professional and mileage charges, as well as all-inclusive charges which are reported on such claims, the total charge per claim, including incidental supplies, is computed. Then, the 80th percentile amount for each HCPCS code is computed. Finally, the resulting amounts are each trended forward to the effective time period for the charges, as set forth in paragraph (k)(2)(iii) of this section. The results constitute the nationwide 80th percentile all-inclusive base charge for each HCPCS base charge code.

(ii) *Nationwide 80th percentile mileage charge.* To calculate a nationwide mileage charge, all ambulance and other emergency transportation claims are selected from the outpatient facility component of the Medicare Standard Analytical File 5 percent Sample. Excluding professional, incidental, and base charges, as well as claims with all-inclusive charges, the total mileage charge per claim is computed. This amount is divided by the number of miles reported on the claim. Then, the 80th percentile amount for each HCPCS code, using miles as weights, is computed. Finally, the resulting amounts are each trended forward to the effective time period for the charges, as set forth in paragraph (k)(2)(iii) of this section. The results constitute the nationwide 80th percentile mileage charge for each HCPCS mileage code.

(iii) *Trending forward.* The nationwide 80th percentile charge for each HCPCS code, obtained as described in paragraphs (k)(2)(i) and (k)(2)(ii) of this section, is trended forward based on changes to the outpatient hospital services component of the CPI–U. Actual CPI–U changes are used from the time period of the source data through the latest available month as of the time the calculations are performed. The three-month average annual trend rate as of the latest available month is then held constant to the midpoint of the calendar year in which the charges are primarily expected to be used. The projected total CPI–U change so obtained is then applied to the 80th percentile charges.

(3) *Geographic area adjustment factors.* The geographic area adjustment factors for ambulance and other emergency transportation charges are the same as those computed for outpatient facility charges under paragraph (e)(4) of this section.

(l) *Charges for durable medical equipment, drugs, injectables, and other medical services, items, and supplies identified by HCPCS Level II codes.* When VA provides DME, drugs, injectables, or other medical services, items, or supplies that are identified by HCPCS Level II codes and that are within the scope of care referred to in paragraph (a)(1) of this section, the charges billed for such services, items, and supplies will be determined in accordance with the provisions of this paragraph. The charges for these services, items, and supplies vary by geographic area, by HCPCS code, and by modifier, when applicable. These charges are calculated as follows:

(1) *Formula.* For each HCPCS code, multiply the nationwide charge determined pursuant to paragraphs (l)(2), (l)(3), and (l)(4) of this section by the appropriate geographic area adjustment factor determined pursuant to paragraph (l)(5) of this section. The result constitutes the area-specific charge.

(2) *Nationwide 80th percentile charges for HCPCS codes with RVUs.* For each applicable HCPCS code, RVUs are compiled from the data sources set forth in paragraph (l)(2)(i) of this section. The RVUs are multiplied by the charge amount for each incremental RVU determined pursuant to paragraph (l)(2)(ii) of this section, and this amount is added to the fixed charge amount also determined pursuant to paragraph (l)(2)(ii) of this section. Then, for each HCPCS code, this charge is multiplied by the appropriate 80th percentile to median charge ratio determined pursuant to paragraph (l)(2)(iii) of this section. Finally, the resulting amount is trended forward to the effective time period for the charges, as set forth in paragraph (l)(2)(iv) of this section to obtain the nationwide 80th percentile charge.

(i) *RVUs for DME, drugs, injectables, and other medical services, items, and supplies.* For the purpose of the statistical methodology set forth in paragraph (l)(2)(ii) of this section, HCPCS codes are assigned to the following HCPCS code groups. For the HCPCS codes in each group, the RVUs or amounts indicated constitute the RVUs:

(A) Chemotherapy Drugs: Ingenix/St. Anthony's RBRVS Practice Expense RVUs.

(B) Other Drugs: Ingenix/St. Anthony's RBRVS Practice Expense RVUs.

(C) DME—Hospital Beds: Medicare DME Fee Schedule amounts.

(D) DME—Medical/Surgical Supplies: Medicare DME Fee Schedule amounts.

(E) DME—Orthotic Devices: Medicare DME Fee Schedule amounts.

(F) DME—Oxygen and Supplies: Medicare DME Fee Schedule amounts.

(G) DME—Wheelchairs: Medicare DME Fee Schedule amounts.

(H) Other DME: Medicare DME Fee Schedule amounts.

(I) Enteral/Parenteral Supplies: Medicare Parenteral and Enteral Nutrition Fee Schedule amounts.

(J) Surgical Dressings and Supplies: Medicare DME Fee Schedule amounts.

(K) Vision Items—Other Than Lenses: Medicare DME Fee Schedule amounts.

(L) Vision Items—Lenses: Medicare DME Fee Schedule amounts.

(M) Hearing Items: Ingenix/St. Anthony's RBRVS Practice Expense RVUs.

(ii) *Charge amounts.* Using combined Part B and DME components of the Medicare Standard Analytical File 5% Sample, the median billed charge is calculated for each HCPCS code. A mathematical approximation methodology based on least squares techniques is applied to the RVUs specified for each of the groups set forth in paragraph (l)(2)(i) of this section, yielding two charge amounts for each HCPCS code group: a charge amount per incremental RVU, and a fixed charge amount.

(iii) *80th Percentile to median charge ratios.* Two ratios are obtained for each HCPCS code group set forth in paragraph (l)(2)(i) of this section by dividing the weighted average 80th percentile charge by the weighted average median charge derived from two data sources: Medicare data, as represented by the combined Part B and DME components of the Medicare Standard Analytical File 5% Sample; and the MDR database. Charge frequencies from the Medicare data are used as weights when calculating all weighted averages. For each HCPCS code group, the smaller of the two ratios is selected as the adjustment from median to 80th percentile charges.

(iv) *Trending forward.* The charges for each HCPCS code, obtained as described in paragraph (l)(2)(iii) of this section, are trended forward based on changes to the medical care commodities component of the CPI–U. Actual CPI–U changes are used from the time period of the source data through the latest available month as of the time the calculations are performed. The three-month average annual trend rate as of the latest available month is then held constant to the midpoint of the calendar year in which the charges are primarily expected to be used. The projected total CPI–U change so obtained is then applied to the 80th percentile charges, as described in paragraph (l)(2)(iii) of this section.

(3) *Nationwide 80th percentile charges for HCPCS codes without RVUs.* For each applicable HCPCS code, 80th percentile charges are extracted from three independent data sources: the MDR database; Medicare, as represented by the combined Part B and DME components of the Medicare Standard Analytical File 5 percent Sample; and Milliman USA, Inc., Optimized HMO (Health Maintenance Organization) Data Sets (*see* paragraph (a)(3) of this section for Data Sources). Charges from each database are then trended forward to the effective time period for the charges, as set forth in paragraph (l)(3)(i) of this section. Charges for each HCPCS code from each data source are combined into an average 80th percentile charge by means of the methodology set forth in paragraph (l)(3)(ii) of this section. The results constitute the nationwide 80th percentile charge for each applicable HCPCS code.

(i) *Trending forward.* The charges from each database for each HCPCS code, obtained as described in paragraph (l)(3) of this section, are trended forward based on changes to the medical care commodities component of the CPI–U. Actual CPI–U changes are used from the time period of each source database through the latest available month as of the time the calculations are performed. The three-month average annual trend rate as of the latest available month is then held constant to the midpoint of the calendar year in which the charges are primarily expected to be used. The projected total CPI–U change so obtained is then applied to the 80th percentile charges, as described in paragraph (l)(3) of this section.

(ii) *Averaging methodology.* The average 80th percentile trended charge for any particular HCPCS code is calculated by first computing a preliminary mean average of the three charges for each HCPCS code. Statistical outliers are identified and removed by testing whether any charge differs from the preliminary mean charge by more than 5 times the preliminary mean charge, or by less than 0.2 times the preliminary mean charge. In such cases, the charge most distant from the preliminary mean is removed as an outlier, and the average charge is calculated as a mean of the two remaining charges. In cases where none of the charges differ from the preliminary mean charge by more than 5 times the preliminary mean charge, or less than 0.2 times the preliminary mean charge, the average charge is calculated as a mean of all three reported charges.

(4) *Nationwide 80th percentile charges for HCPCS codes designated as unlisted or unspecified.* For HCPCS codes designated as unlisted or unspecified procedures, services, items, or supplies, 80th percentile charges are developed based on the weighted median 80th percentile charges of HCPCS codes within the series in which the unlisted or unspecified code occurs. A nationwide VA distribution of procedures, services, items, and supplies is used for the purpose of computing the weighted median.

(5) *Geographic area adjustment factors.* For the purpose of geographic adjustment, HCPCS codes are combined into two groups: drugs and DME/supplies, as set forth in paragraph (l)(5)(i) of this section. The geographic area adjustment factor for each of these groups is calculated as the ratio of the area-specific weighted average charge determined pursuant to paragraph (l)(5)(ii) of this section divided by the nationwide weighted average charge determined pursuant to paragraph (l)(5)(iii) of this section.

(i) *Combined HCPCS code groups for geographic area adjustment factors for DME, drugs, injectables, and other medical services, items, and supplies.* For the purpose of the statistical methodology set forth in paragraph (l)(5) of this section, each of the HCPCS code groups set forth in paragraph (l)(2)(i) of this section is assigned to one of two combined HCPCS code groups, as follows:

(A) Chemotherapy Drugs: Drugs.

(B) Other Drugs: Drugs.

(C) DME—Hospital Beds: DME/supplies.

(D) DME—Medical/Surgical Supplies: DME/supplies.

(E) DME—Orthotic Devices: DME/supplies.

(F) DME—Oxygen and Supplies: DME/supplies.

(G) DME—Wheelchairs: DME/supplies.

(H) Other DME: DME/supplies.

(I) Enteral/Parenteral Supplies: DME/supplies.

(J) Surgical Dressings and Supplies: DME/supplies.

(K) Vision Items—Other Than Lenses: DME/supplies.

(L) Vision Items—Lenses: DME/supplies.

(M) Hearing Items: DME/supplies.

(ii) *Area-specific weighted average charges.* Using the median charges by HCPCS code from the MDR database for each geographic area and utilization frequencies by HCPCS code from the combined Part B and DME components of the Medicare Standard Analytical File 5 percent Sample, an area-specific weighted average charge is calculated for each combined HCPCS code group.

(iii) *Nationwide weighted average charges.* Using the area-specific weighted average charges determined

pursuant to paragraph (l)(5)(ii) of this section, a nationwide weighted average charge is calculated for each combined HCPCS code group, using as weights the population (census) frequencies for each geographic area as presented in the Milliman USA, Inc., Health Cost Guidelines (see paragraph (a)(3) of this section for Data Sources).

(m) *Charges for prescription drugs not administered during treatment.* Notwithstanding other provisions of this section, when VA provides or furnishes prescription drugs not administered during treatment, within the scope of care referred to in paragraph (a)(1) of this section, charges billed separately for such prescription drugs will be based on VA costs in accordance with the methodology set forth in § 17.102 of this part.

(The Office of Management and Budget has approved the information collection requirements in this section under control number 2900–0606.)

(Authority: 38 U.S.C. 101, 501, 1701, 1705, 1710, 1721, 1722, 1729.)

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[CARB–106–DEL; FRL–7600–5]

Delegation of National Emission Standards for Hazardous Air Pollutants for Source Categories; State of California

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is amending certain regulations to reflect the current delegation status of national emission standards for hazardous air pollutants in California. Several local air pollution control agencies in California have requested delegation of these Federal standards as they apply to non-major sources. The purpose of this action is to approve those delegation requests and update the listing in the Code of Federal Regulations.

DATES: This rule is effective on February 17, 2004, without further notice, unless EPA receives relevant adverse comments by January 20, 2004. If EPA receives such comments, then it will publish a timely withdrawal in the **Federal Register** informing the public that this rule will not take effect.

ADDRESSES: Send comments to Andrew Steckel, Rulemaking Office Chief (AIR–4), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901, or e-mail to *steckel.andrew@epa.gov*, or submit comments at *http://www.regulations.gov*. Copies of the requests for delegation and other supporting documentation are available for public inspection (docket number A–96–25) at the Region IX office during normal business hours by appointment. Copies are also available at: Air and Radiation Docket and Information Center (6102), U.S. Environmental Protection Agency, Ariel Rios Building, 1200 Pennsylvania Ave, NW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Mae Wang, Rulemaking Office (AIR–4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, California 94105–3901, (415) 947–4124, *wang.mae@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

A. Delegation of NESHAPs

Section 112(l) of the Clean Air Act, as amended in 1990 (CAA), authorizes EPA to delegate to State or local air pollution control agencies the authority to implement and enforce the standards set out in title 40 of the Code of Federal Regulations (40 CFR), part 63, National Emission Standards for Hazardous Air Pollutants for Source Categories. On November 26, 1993, EPA promulgated regulations, codified at 40 CFR part 63, subpart E (hereinafter referred to as "subpart E"), establishing procedures for EPA's approval of State rules or programs under section 112(l) (*see* 58 FR 62262). Subpart E was later amended on September 14, 2000 (*see* 65 FR 55810).

Any request for approval under CAA section 112(l) must meet the approval criteria in 112(l)(5) and subpart E. To streamline the approval process for future applications, a State or local agency may submit a one-time demonstration that it has adequate authorities and resources to implement and enforce any CAA section 112 standards. If such demonstration is approved, then the State or local agency would no longer need to resubmit a demonstration of these same authorities and resources for every subsequent request for delegation of CAA section 112 standards. However, EPA maintains the authority to withdraw its approval if the State does not adequately implement or enforce an approved rule or program. On July 6, 1995, the California Air Resources Board (CARB) submitted a demonstration that California has adequate authorities and resources to implement and enforce Clean Air Act section 112 programs and rules. This demonstration was approved on May 21, 1996 (61 FR 25397).

B. California Delegations

While each local air pollution control agency in California (district) has an approved program for receiving delegation of any CAA section 112 standards as promulgated, California districts currently have delegation only for standards that apply to major sources. As part of EPA's approval of each district's Title V operating permits program, districts received delegation of unchanged federal section 112 standards for Title V sources. This delegation did not extend to sources not covered by the California Title V program submittals. Therefore, California needed to make a separate voluntary request for delegation of any section 112 standards that apply to sources not covered by district Title V programs (area sources).

C. Area Source Delegation Requests

On October 6, 2003, CARB submitted on behalf of nine California districts a request for delegation of all Federal section 112 standards that apply to area sources, with the exception of the dry cleaning and chromium electroplating standards for which State or local rules have already been approved (*see* 61 FR 25397 and 64 FR 12762). Upon the effective date of this delegation, these districts will have authority to implement and enforce existing area source standards unchanged as promulgated by EPA. Additionally, each of these nine districts will receive delegation of any future area source standards or revisions 90 days after promulgation of these standards or revisions, unless the district chooses to decline delegation of a particular future standard by notifying the EPA Region IX office in writing. If no such notification is received, the delegation will go into effect 90 days after promulgation of the standard or revision, without any additional action from the district or EPA.

CARB's October 6, 2003, request was submitted on behalf of the following nine districts in California: Antelope Valley Air Quality Management District, Butte County Air Quality Management District, Kern County Air Pollution Control District, Mendocino County Air Quality Management District, Mojave Desert Air Quality Management District, Monterey Bay Unified Air Pollution Control District, San Luis Obispo County Air Pollution Control District, Ventura County Air Pollution Control District, and Yolo-Solano Air Quality Management District. Each of these districts asked CARB to make a delegation request on their behalf for CAA section 112 area source standards. The dates of each district's letter to CARB are listed in the table below:

Local agency	Date of letter to CARB
Antelope Valley AQMD	Dec. 5, 2002.
Butte County AQMD	July 7, 2003.
Kern County APCD	July 7, 2003.
Mendocino County AQMD	July 14, 2003.
Mojave Desert AQMD	Dec. 5, 2002.
Monterey Bay Unified APCD.	July 30, 2002.
San Luis Obispo County APCD.	Nov. 22, 2002.
Ventura County APCD	July 7, 2003.
Yolo-Solano AQMD	Aug. 11, 2003.

In the future, other districts may choose to make similar delegation requests through CARB. EPA Region IX may grant approvals of such requests by means of a letter. These delegation approvals would then be effective upon the date of the approval letter and EPA Region IX would later publish a **Federal Register** action to update the CFR.

II. EPA Action

With the exception of the dry cleaning and chromium electroplating standards, EPA is hereby granting delegation of unchanged Federal section 112 area source standards to the following districts in California: Antelope Valley Air Quality Management District, Butte County Air Quality Management District, Kern County Air Pollution Control District, Mendocino County Air Quality Management District, Mojave Desert Air Quality Management District, Monterey Bay Unified Air Pollution Control District, San Luis Obispo County Air Pollution Control District, Ventura County Air Pollution Control District, and Yolo-Solano Air Quality Management District. Upon the effective date of this action, these nine districts will have authority to implement and enforce existing area source standards unchanged as promulgated by EPA. Each of these districts will also receive delegation of any future area source standards or revisions 90 days after promulgation of these standards or revisions, unless the district chooses to decline delegation of a particular future standard by notifying the EPA Region IX office in writing.

Today's action also serves to notify the public that future requests for delegation of CAA section 112 area source standards from other California districts may be approved by letter, and these delegations will be later codified into the CFR.

III. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). Delegations of authority to implement and enforce unchanged Federal standards under section 112(l) of the Clean Air Act do not create any new requirements but simply allow the State to administer requirements that have been or will be separately promulgated. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule does not impose any additional enforceable duty, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). The State voluntarily requested this delegation under section 112(l) for the purpose of implementing and enforcing the air toxics program with respect to sources not covered by district Title V operating permit programs. The delegation imposes no new Federal requirements. Since the State was not required by law to seek delegation, this Federal action does not impose a mandate on the State.

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045, "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing State delegation submissions, our role is to approve State choices, provided that they meet the criteria of the CAA. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), we have no authority to disapprove State submissions for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews State submissions, to use VCS in place of State submissions that otherwise satisfy the provisions of the CAA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. We will submit a report containing this rule and other required information to the United States Senate, the United States House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by February 17, 2004. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements (*see* section 307(b)(2)).

List of Subjects in 40 CFR Part 63

Environmental protection, Administrative practice and procedure, Air pollution control, Hazardous substances, Intergovernmental relations,

Reporting and recordkeeping requirements.

Authority: This action is issued under the authority of section 112 of the Clean Air Act, as amended, 42 U.S.C. 7412.

Dated: December 2, 2003.

Matt Haber,

Acting Director, Air Division, Region IX.

■ Title 40, chapter I, part 63 of the Code of Federal Regulations is amended as follows:

PART 63—[AMENDED]

■ 1. The authority citation for part 63 continues to read as follows:

Authority: 42 U.S.C. 7401, *et seq.*

Subpart E—Approval of State Programs and Delegation of Federal Authorities

■ 2. Section 63.99 is amended by adding paragraph (a)(5)(i) and revising paragraph (a)(5)(ii) introductory text to read as follows:

§ 63.99 Delegated Federal authorities.

(a) * * *

(5) * * *

(i)(A) California major sources. Except as described in paragraph (ii) below, each local air pollution control agency in California has delegation for national emission standards promulgated in this part as they apply to major sources.

(B) California area sources. Except as described in paragraph (ii), the local agencies listed below also have delegation for national emission standards promulgated in this part as they apply to area sources:

(*1*) Antelope Valley Air Quality Management District
(*2*) Butte County Air Quality Management District
(*3*) Kern County Air Pollution Control District
(*4*) Mendocino County Air Quality Management District
(*5*) Mojave Desert Air Quality Management District
(*6*) Monterey Bay Unified Air Pollution Control District
(*7*) San Luis Obispo County Air Pollution Control District
(*8*) Ventura County Air Pollution Control District
(*9*) Yolo-Solano Air Quality Management District

(ii) California approvals other than straight delegation.

Affected sources must comply with the *California Regulatory Requirements Applicable to the Air Toxics Program*, January 5, 1999 (incorporated by reference as specified in § 63.14), as described as follows:

* * * * *

[FR Doc. 03–31348 Filed 12–18–03; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 03–3871, MB Docket No. 03–132, RM–10709]

Radio Broadcasting Services; Oak Grove, KY, Springfield, TN, and Trenton, KY

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Audio Division, at the request of Saga Communications of Tuckessee, LLC, licensee of Station WJOI–FM, reallots Channel 232A from Springfield, Tennessee to Oak Grove, Kentucky, as the community's first local aural transmission service, and modifies Station WJOI–FM license accordingly. Channel 232A can be allotted to Oak Grove, in compliance with the minimum distance separation requirement of the Commission's rules, provided there is a site restriction 9.3 kilometers (5.8 miles) east of the community. The reference coordinates for Channel 232A at Oak Grove are 36–38–23 NL and 87–20–39 WL. This document also dismisses a counterproposal filed by Saga Communications of Tuckessee, LLC that requested the reallotment of Station WJOI–FM, Channel 232A from Springfield, Tennessee to Trenton, Kentucky in lieu of Oak Grove, Kentucky.

DATES: Effective January 23, 2004.

ADDRESSES: Federal Communications Commission, 445 Twelfth Street, SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Rolanda F. Smith, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Report and Order*, MB Docket No. 03–132 adopted December 3, 2003, and released December 8, 2003. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center 445 Twelfth Street, SW., Washington, DC 20554. The complete text of this decision may also be purchased from the Commission's duplicating contractor, Qualex International Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com*.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

PART 73—RADIO BROADCAST SERVICES

■ 1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

■ 2. Section 73.202(b), the Table of FM Allotments under Kentucky, is amended by adding Oak Grove, Channel 232A.

■ 3.Section 73.202(b), the Table of FM Allotments under Tennessee, is amended by removing Springfield, Channel 232A.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 03–31259 Filed 12–18–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 03–3554; MM Docket No. 02–49, RM–10220]

Radio Broadcasting Services; Westborough and Worcester, MA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Entercom Boston License, L.L.C., reallots Channel 297B from Worcester to Westborough, Massachusetts, as the community's first local aural transmission service and modifies Station WAAF(FM)'s license accordingly. *See* 67 FR 14664, March 27, 2002. Although Station WAAF(FM) is a pre-1964 and pre-1989 grandfathered short-spaced station, it may change its community of license at its current license site because no new short-spacings would be created. The coordinates for Channel 297B at Westborough at Station WAAF(FM)'s current license site are 42–18–11 North Latitude and 71–53–52 West Longitude. While Station WAAF(FM) has an outstanding construction permit at Worcester, this change of community proposal must be implemented at its current license site. Although Westborough is located within 320 kilometers of the U.S.-Canadian border, concurrence of the Canadian government is not required because there is no change in class or coordinates.

DATES: Effective January 23, 2004.

ADDRESSES: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Sharon P. McDonald, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 02–49, adopted November 12, 2003, and released November 14, 2003. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Information Center (Room CY–A257), 445 12th Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20054.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a notice of proposed rule making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. *See* 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, *see* 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

■ Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—RADIO BROADCAST SERVICES

■ 1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 54, 303, 334 and 336.

§ 73.202 [Amended]

■ 2. Section 73.202(b), the Table of FM Allotments under Massachusetts, is amended by removing Channel 297B at Worcester and by adding Westborough, Channel 297B.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 03–31260 Filed 12–18–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 03–3875; MB Docket No. 03–22, RM–10597]

Radio Broadcasting Services; Racine, OH, and Ravenswood, WV

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In response to a *Notice of Proposed Rulemaking*, 68 FR 7964 (February 19, 2003), this document grants a petition for rulemaking filed by Legend Communications of West Virginia, LLC, licensee of Station WLWF(FM), proposing to reallot Channel 226A from Ravenswood, West Virginia, to Racine, Ohio, as the community's first local aural transmission service, and modify the license for Station WLWF(FM)'s license to reflect the change of community. Channel 226A is reallotted to Racine, at Station WLWF(FM)'s existing transmitter site 14.4 kilometers (9 miles) southeast of the community at coordinates 38–53–36 NL and 81–46–52 WL . Since this proposal is within 320 kilometers (200 miles) of the U.S.-Canada border, concurrence of the government of Canada to the proposed allotment has been requested but not received. Operation with the facilities specified for Racine is subject to modification, suspension, or termination without right to hearing, if found by the Commission to be necessary in order to conform to the Canada-United States FM Broadcast Agreement or if specifically objected to by Industry Canada.

DATES: Effective January 23, 2004.

FOR FURTHER INFORMATION CONTACT: Victoria M. McCauley, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MB Docket No. 03–22, adopted December 3, 2003, and released December 8, 2003. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room-239), 445 12th Street, SW., Washington, DC. This document may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC, 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com*.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

■ Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—RADIO BROADCAST SERVICES

■ 1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, and 336.

■ 2. Section 73.202(b), the Table of FM Allotments under Ohio, is amended by adding Racine, Channel 226A.

■ 3. Section 73.202(b), the Table of FM Allotments under West Virginia, is amended by removing Ravenswood, Channel 226A.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 03–31261 Filed 12–18–03; 8:45 am]

BILLING CODE 6712–01–P

Proposed Rules

Federal Register
Vol. 68, No. 244
Friday, December 19, 2003

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Office of Energy Policy and New Uses

7 CFR Part 2902

RIN 0503–AA26

Guidelines for Designating Biobased Products for Federal Procurement

AGENCY: Office of Energy Policy and New Uses, USDA.

ACTION: Notice of proposed rulemaking.

SUMMARY: The U.S. Department of Agriculture (USDA) is proposing to establish guidelines for designating items made from biobased products that would be afforded Federal procurement preference, as required under Section 9002 of the Farm Security and Rural Investment Act of 2002 (FSRIA).

DATES: Submit comments on or before February 17, 2004.

ADDRESSES: You may submit comments by postal mail/commercial delivery or by e-mail. If you use postal mail/commercial delivery, please send your comments to: Marvin Duncan, USDA, Office of the Chief Economist, Office of Energy Policy and New Uses, Room 361, 300 Seventh Street SW., Washington, DC 20024. If you wish to use e-mail, go to the Web site *http://www.biobased.oce.usda.gov* for e-mail instructions or use the e-mail address *fb4p@oce.usda.gov*. Please include your name and address in your message and "Proposed Guidelines" on the subject line. Persons with disabilities who require alternative means for communication for regulatory information (braille, large print, audiotape, etc.) should contact USDA's TARGET Center at (202) 720–2600 (voice) and (202) 401–4133 (TDD).

FOR FURTHER INFORMATION CONTACT: Marvin Duncan by e-mail at *mduncan@oce.usda.gov* or by phone at (202) 401–0582.

SUPPLEMENTARY INFORMATION:

I. Authority

These guidelines are proposed under the authority of section 9002 of the Farm Security and Rural Investment Act of 2002 (FSRIA), 7 U.S.C. 8102 (referred to in this document as "section 9002").

II. Overview of Section 9002

Section 9002 provides for preferred procurement of biobased products by Federal agencies. Federal agencies are required to purchase biobased products, as defined in regulations to implement the statute, for all items costing over $10,000 or when the quantities of functionally equivalent items purchased over the preceding fiscal year equaled $10,000 or more. Procurements by a Federal agency subject to section 6002 of the Solid Waste Disposal Act (42 U.S.C. 6962) are not subject to the requirements under section 9002 to the extent that the requirements of the two programs are inconsistent. Federal agencies must procure biobased products unless the items are not reasonably available, fail to meet applicable performance standards, or are available only at an unreasonable price.

The Office of Federal Procurement Policy (OFPP) and the USDA will work in cooperation to implement the requirements of section 9002. In this document, we are proposing to establish guidelines for Federal agencies to follow in the procurement of items designated for preferred procurement. These guidelines also address the statutory requirement that Federal agencies have in place, within 1 year of the publication of final guidelines, a procurement program that assures items composed of biobased products will be purchased to the maximum extent practical. Those procurement programs would have to contain a biobased products preference program, an agency promotion program, and provisions for the annual review and monitoring of an agency's procurement program. USDA consulted with the Environmental Protection Agency (EPA), the General Services Administration (GSA), and the Department of Commerce National Institute of Standards and Technology (NIST) in preparing these proposed guidelines.

In designating items (generic groupings of specific products such as crankcase oils or synthetic fibers), the Secretary will consider the availability of such items and the economic and technological feasibility of using such items, including life cycle costs. Federal agencies would be required to purchase products contained within an item only after that item has been designated for preferred procurement. In addition, the Secretary would provide information to Federal agencies on the availability, relative price, performance, and environmental and public health benefits of such items and, where appropriate, would recommend the level of biobased content to be contained in the procured product. Manufacturers and vendors would be able to offer their products to Federal agencies for preferred procurement under the proposed program when their commercial products fell within the definition of an item that had been designated for preferred procurement and the biobased content of the products met the standards set forth in the guidelines.

Paragraph (h) of section 9002 provides that the Secretary, in consultation with the Administrator of the Environmental Protection Agency (EPA), shall establish a voluntary program authorizing producers of biobased products to use a "U.S.D.A. Certified Biobased Product" label. In a subsequent rulemaking, we intend to establish that voluntary program and provide eligibility criteria and guidelines for the use of the "U.S.D.A. Certified Biobased Product" label.

Paragraph (j) of section 9002 provides funds to the Secretary to support the testing of biobased products to carry out the provisions of the section.

The legislative history of Title IX of FSRIA suggests that Congress had in mind three primary objectives that would apply to section 9002. The first objective is to improve demand for biobased products. This would have a number of salutary effects, one of which would be to increase domestic demand for many agricultural commodities that can serve as feedstocks for production of biobased products. Another important effect would be the substitution of products with a more benign or beneficial environmental impact, as compared to the use of fossil energy based products.

As a second objective, Congress wants to spur the development of value-added agricultural processing and manufacturing in rural communities. Since biobased feedstocks are largely produced in rural settings and, because of their bulk, require pre-processing or manufacturing close to where they are grown, increased dependence on biobased products appears likely to increase the amount of pre-processing and manufacturing of biobased products in rural regions of the Nation. This trend would help to create new investment, job formation, and income generation in these rural regions.

The third objective is to enhance the Nation's energy security by substituting domestically produced biobased products for fossil energy-based products derived from imported oil and natural gas. The growing dependence of the Nation on imported oil and natural gas, along with heightened concerns about political instability in some of the oil rich regions in the world, have led the Congress to place a higher priority on domestically produced energy and biobased products.

III. Background

In 1999, as required by section 504 of Executive Order 13101, "Greening the Government through Waste Prevention, Recycling, and Federal Acquisition," the U.S. Department of Agriculture (USDA) Biobased Products Coordination Council (now called the Biobased Products and Bioenergy Coordination Council) published a notice in the **Federal Register** (64 FR 44185, Aug. 13, 1999) to solicit public comments on a process for considering items for inclusion on a USDA Biobased Products List and suggested criteria for including biobased items on that list. The Council was established by the Secretary of Agriculture and is comprised of USDA representatives with commercialization, legislative, marketing, procurement, rural development, research, and other technical expertise. Others consulted regarding the listing procedures described in the August 1999 notice included the Office of the Federal Environmental Executive, NIST, EPA, the Federal Trade Commission (FTC), environmental organizations, and agricultural organizations. Also advising USDA were Federal members of the Executive Order 13101 Inter-Agency Advisory Group.

The requirements of section 9002 differ from those of Executive Order 13101. For example, the Executive Order and section 9002 use slightly different definitions of the term "biobased product." Another distinction is that the Executive Order encourages, but does not require, procurement of biobased products. Section 9002 establishes a mandatory procurement preference, with limited exceptions, for designated items. The Executive Order envisions a list of specific products to be promulgated, whereas section 9002 requires guidelines designating "items which are or can be produced with biobased products" and recommended procurement practices for both biobased products and items containing biobased products.

Under section 9002, the term "biobased products" refers to "a product determined by the Secretary to be a commercial or industrial product (other than food or feed) that is composed, in whole or in significant part, of biological products or renewable domestic agricultural materials (including plant, animal, and marine materials) or forestry materials." The term "item" refers to a subcategory or grouping of similar products containing biobased content. An item is populated by commercial and industrial products available for purchase by Federal agencies. An example of an item (or subcategory) under the "Lubricants and functional fluids category" discussed later in this document is hydraulic, power steering, and transmission fluids. Under Executive Order 13101, the term "biobased product" was used to mean what the term "item" means under section 9002.

USDA no longer intends to promulgate a list of biobased products as envisioned in Executive Order 13101. Rather, USDA will designate items that qualify for preferred procurement as required by section 9002.

The statutorily required elements of the section 9002 guidelines further distinguish the guidelines from the Executive Order list. Despite these differences, comments received in response to the 1999 proposed procedures to implement the biobased products list were taken into consideration when preparing proposed product categories and selection criteria for these proposed guidelines.

For purposes of identifying a Federal agency in implementing section 9002, we have chosen to use the definition of "Federal agency" found in the Federal Acquisition Regulation (48 CFR 2.101), *i.e.*, "any executive agency or any independent establishment in the legislative or judicial branch of Government (except the Senate, the House of Representatives, the Architect of the Capitol, and any activities under the Architect's direction)."

Once USDA designates an item, responsibility for complying with section 9002 rests with Federal agencies. Responsibilities and implementation strategies of USDA, Federal agencies, the Office of Federal Procurement Policy, and manufacturers and vendors, respectively, are outlined briefly below in section IV.

This program is modeled on the EPA *Comprehensive Procurement Guideline for Products Containing Recovered Materials*, known as the Comprehensive Procurement Guideline (CPG), 40 CFR part 247, which designates items that are or can be made with recovered materials. The CPG implements section 6002 of the Solid Waste Disposal Act (42 U.S.C. 6962), as amended by the Resource Conservation and Recovery Act of 1976 (RCRA), as amended. Executive Order 13101 also facilitated RCRA implementation. RCRA requires EPA to designate items that are or can be produced with recovered materials and to recommend practices for the procurement of designated items by procuring agencies. Executive Order 13101 directs EPA to designate the products in the CPG and to provide purchasing recommendations in Recovered Materials Advisory Notices (RMANs). Information on the CPG and the RMANs can be found on the Internet at *http://www.epa.gov/cpg*.

The legislative history of section 9002 suggests that Congress intended to use this program to speed the development of new markets for biobased products, rather than to support mature markets for products. Hence, USDA has crafted this program to focus on new market development. It is USDA's intention to exclude from this program biobased products it concludes have mature markets. USDA proposes to use a number of filters or tests to exclude products in what it defines as mature markets. If a product falls within an excluded group of products in any one filter, it is excluded from consideration under the program to implement section 9002. To be eligible for preferred procurement under section 9002, a product must be found eligible under each of these filters or tests. In the first test, silk, cotton and wool garments, household items, and industrial or commercial products are excluded, unless made with a substantial amount of a biobased plastic product. Also excluded are wood products made from traditionally harvested forest materials.

Biobased products marketed only in regional or in single specialized markets, rather than national markets, are not considered to be in mature markets for purposes of this program. Finally, products developed, or that have made significant market penetration, more recently than 1972 also are not considered to be in mature markets for purposes of this program. The first of several oil supply and price shocks, which occurred in the United States beginning at about 1972, was an

important impetus for beginning sustained serious new development of biobased alternatives for fossil based energy and other products in the United States. Hence, USDA has chosen to use 1972 as a dividing point between mature and emerging markets for this program.

IV. Responsibilities and Implementation Strategies under Section 9002

A. USDA's Responsibilities and Implementation Strategies

To carry out the requirements of section 9002, USDA will:

- Propose guidelines, after consultation with the EPA, GSA, and NIST, for the use of Federal agencies that indicate which items are or can be produced with biobased products and whose procurement by procuring agencies would carry out the objectives of this program;
- Determine in the guidelines, as appropriate, the minimum level of biobased material to be contained in a designated item;
- Propose items to be available for designation under the guidelines and explain the factors to be considered in their designation (availability, economic and technological feasibility, and life cycle costs);
- Identify in the guidelines the information about availability, relative price, performance, and environmental and public health benefits that will be provided to Federal agencies on items designated for preferred procurement; and
- Set forth recommended practices for the procurement of biobased products and designated items.

B. Federal Agencies' Responsibilities and Implementation Strategies

Following the issuance of final guidelines and the designation of items, Federal agencies would:

- Give a procurement preference, with certain exceptions, to designated items with the highest percentage of biobased products practicable, consistent with the guidelines and with maintaining sufficient competition;
- Incorporate in procurement specifications biobased item preferences consistent with the guidelines and the requirements of section 9002; and
- Establish an agency affirmative procurement program that includes a biobased products preference program, an agency promotion program to promote the preference program, and an annual review to monitor the effectiveness of the agency's procurement program.

C. Office of Federal Procurement Policy Responsibilities and Implementation Strategies

Following the issuance of final guidelines and subsequent regulatory action to designate items eligible for preferred procurement, the OFPP would:

- Work in cooperation with USDA to implement the biobased product procurement preference program;
- Coordinate the biobased products procurement policy with other Federal procurement policies; and
- Report to Congress every 2 years on the actions taken by Federal agencies in the implementation of the biobased product procurement program.

D. Manufacturers' and Vendors' Responsibilities and Implementation Strategies

Following the issuance of final guidelines and designation of items eligible for preferred procurement, firms desiring to participate in the program would:

- Determine whether products they intend to offer for Federal agency procurement qualify under the guidelines and fall within items designated by USDA for preferred procurement;
- Certify the percentage of biobased content in the commercial or industrial products that fall within designated items and are proposed by the manufacturer or vendor to be used in the performance of a contract; and
- When offering biobased products from an item that has been designated by the Secretary for preferred procurement by Federal agencies, certify that the biobased products to be used in the performance of the contract will comply with the applicable specifications or other contractual requirements.

V. Proposed Guidelines

The proposed guidelines would be contained in a new 7 CFR part 2902, "Guidelines for Designating Biobased Products for Federal Procurement." The new part would be divided into two subparts, "Subpart A—General," and "Subpart B—Biobased Product Eligibility for Federal Preference." Subpart A would address the purpose and scope of the guidelines and their applicability, provide guidance on product availability and procurement, define terms used in the part, and address affirmative procurement programs and USDA funding for testing. Subpart B would address communicating information on qualifying biobased products and characteristics required for obtaining designated item status, and would set out the initial categories of designated items and minimum content. The proposed guidelines are discussed in detail below.

Proposed § 2902.1: Purpose and Scope

This section would introduce the guidelines by explaining that their purpose is to assist Federal agencies in complying with the requirements of section 9002 as they apply to the procurement of designated items. This section would also note that items designated in the guidelines are those items that are or can be produced with biobased products and whose procurement by Federal agencies will carry out the objectives of section 9002.

Proposed § 2902.2: Applicability to Federal Agencies and Exceptions to Procurement of Biobased Items

The procurement preference applies to all Federal agencies (as defined in this document) with respect to all procurement actions where the purchase price of the item exceeds $10,000 or where the quantity of such items (or of functionally equivalent items) purchased during the preceding fiscal year cost a total of $10,000 or more. Unlike the EPA program for procurement of items with recovered materials, section 9002 affords a procurement preference for biobased products only for procurement by Federal agencies. Thus, unlike RCRA (42 U.S.C. 6903(17)), the guidelines do not apply to State and local agencies using appropriated Federal funds to procure qualifying biobased items, and persons contracting with such agencies with respect to work performed under such contracts. USDA proposes to apply the $10,000 threshold as applicable to Federal agencies as a whole, rather than to agency subgroups such as regional offices or subagencies of a larger department or agency.

As noted previously, the proposed guidelines would not apply to any procurement by any Federal agency that is subject to the regulations issued by the EPA under section 6002 of the Solid Waste Disposal Act (40 CFR part 247), to the extent that the requirements of the guidelines are inconsistent with those regulations. Further, as provided by paragraph (i) of section 9002, these guidelines do not apply to the procurement of motor vehicle fuels or electricity.

Section 9002 requires Federal agencies to purchase designated biobased items unless the agency determines the items to be procured are not readily available within a reasonable

period of time, fail to meet the performance standards set out in applicable specifications or fail to meet reasonable performance standards of procuring agencies, or are available only at an unreasonable price.

Proposed § 2902.3: USDA Guidance on Item Availability and Procurement

The proposed guidelines would provide that, prior to designating items for preferred procurement under the section 9002 program, USDA would consider a number of factors. These factors are availability of the items and the economic feasibility and technological feasibility of using such items, including life cycle costs. Moreover, when designating items for preferred procurement under the program, USDA would provide the following information to Federal agencies on the items designated: availability, relative price, performance, and environmental and public health benefits of using the designated items.

In order to accomplish these requirements, USDA plans to initially rely, in part, on the information developed in a study by Concurrent Technologies Corporation (CTC) to address the statutory requirement for information on item availability. This study was conducted by CTC under a contract with the USDA Agricultural Research Service (ARS) as one of the activities undertaken by ARS in order to fulfill Executive Order 13101's requirement for the development of information on the market availability of biobased items. The CTC study can be viewed on the Web site *http://www.biobased.oce.usda.gov*.

Information on economic and technological feasibility of using biobased items and life cycle costs will be sought from industry. Because of the heterogeneity among commercial products with biobased content within any grouping of biobased items, and the heterogeneity of characteristics across item groupings, information will be sought on individual commercial products included within each type of item. Once this information is available on a sufficient number of such products within an item, the information will be evaluated and extrapolated to the generic item level and, if determined to be adequate to meet the requirements of section 9002, the item will be designated for preferred procurement.

Information on relative price, performance, and environmental and public health benefits that the Secretary is required to provide to Federal agencies will be gathered from manufacturers and vendors at the individual product level. This information, to be of maximum value to Federal agencies in making procurement decisions, must be considered at an individual product level.

USDA proposes to gather the above discussed information from industry using an Internet Web site to which manufacturers and vendors will be invited to voluntarily provide information, including availability on the commercial products with biobased content that they offer to Federal agencies. That Web site will provide business contact information, selected test information, and the information about the offered commercial products noted in this discussion. It will also group such information by item and indicate whether the item has been designated for preferred procurement under the section 9002 program. No items will be designated for preferred procurement until adequate information has been obtained from manufacturers and vendors to enable the Secretary to both designate the item and provide Federal agencies the required information about the item. USDA also believes that making the above noted information available on an individual commercial product basis on USDA's informational Web site will provide the greatest help to Federal agencies in making decisions on the purchase of biobased products.

USDA envisions the voluntary, web-based information system as the principal clearinghouse of information on manufacturer and vendor contact information, currently available products, and relevant product characteristics.

A standardized format with interactive capabilities will permit manufacturers and vendors to enter information into the Web site. The information is not expected to be either confidential or proprietary, but will instead be information a business firm would provide prospective purchasers. Data placed on the Web site will be password protected and can only be changed by the submitting manufacturer or vendor or by USDA. Moreover, password protection can extend, if necessary, to making individual product information accessible only to Federal agencies, USDA, and to the firm providing the information. USDA will ask manufacturers and vendors to annually review data provided on the Web site and to purge inaccurate or out-of-date information. In addition, USDA will periodically audit the information displayed and, where questions arise, contact the manufacturer or vendor to verify, correct, or remove incorrect or out-of-date information.

Federal agency procurement officials are encouraged to access the website to gather information on commercially available products within the scope of designated items, as a means of facilitating the acquisition of designated items, in furtherance of the requirements of section 9002.

After discussions with the Office of Management and Budget (OMB), USDA also has agreed to develop a model procurement policy and program for designated items to support its own procurement practices. USDA intends to work with OFPP to develop outreach and education programs, based on the USDA model procurement policy, to assist other Federal agencies in complying with the requirements of this program.

USDA seeks comments on the kinds of contact and product information that should be made available on its web-based information system, as well as comments on the appropriate components of a model procurement program for biobased items.

Proposed § 2902.4: Definitions

Section 2902.4 would define the terms used in the proposed guidelines. The definition of *biobased product* restates the statutory definition for that term in section 9001 of FSRIA. The section also defines several basic operational terms such as *Secretary, BEES, ASTM International, diluent, filler,* and *FSRIA*. The basis for many operative definitions is self-evident. The operative technical definitions reflect common industry usage. USDA is exercising its discretion in defining the remaining operational terms, most significantly *biological products, Federal agency, agricultural materials, biobased content, forestry materials,* and *small and emerging private business enterprises.*

Proposed § 2902.5: Preferred Procurement Program

Section 2902.5 sets out the procurement requirements or expectations that would apply to Federal agencies. In most respects, the information in this section reflects the responsibilities and implementation strategies discussed previously in this document (*see* section IV above). Section 2902.5(a) addresses procurement specifications and maximizing biobased content when procuring designated items. Section 2902.5(b) implements the requirement for Federal agencies to develop affirmative procurement programs. Section 2902.5(c) addresses the preference program component of the affirmative procurement programs.

Biobased content on items procured should be maximized subject to additional considerations. Section 9002(c) requires, with certain exceptions discussed above, that Federal agencies, when making procurement decisions on items designated in the guidelines, give preference to items composed of the highest percentage of biobased products practicable, consistent with maintaining a satisfactory level of competition. These guidelines propose minimum content levels of biobased products in designated items. It is recognized that the highest percentage of biobased content may not always result in the best item for Federal agencies, since other characteristics, such as performance, may not, in all cases, be positively correlated with higher content. Therefore, Federal agencies should interpret the requirement to mean procuring items with the highest biobased content consistent with other desired attributes such as availability, price, and performance.

Performance of designated items is important. USDA believes that evidence of performance by a qualifying biobased item in its intended use will be a very important factor in Federal agencies' decisions to procure that item. In most circumstances, biobased items can be manufactured with a blend of components that enable them to meet required performance standards. In some circumstances, prior experience with product performance or observation of its widespread use elsewhere will be sufficient evidence of performance to cause Federal agencies to procure the qualifying biobased item. In most other cases, especially for new items in the marketplace or for certain users of high performance items in Federal agencies, more formal evidence of performance may be required. When Federal agencies require more formal performance related information for their procurement decision, USDA encourages these agencies to request this information from manufacturers or vendors of designated items, focusing on performance against ASTM, ISO, Federal or military specifications, or other industry performance standards.

It is also important to set minimum requirements for biobased content of items at levels which are low enough to allow items produced with biobased products to compete with fossil energy based products in performance and economics, using current technology. While the statute requires Federal agencies, when purchasing designated items, to give preference to those that have the highest percentage of biobased content, that requirement must be considered in the context of whether the product meets required performance standards for the application in which it will be used.

USDA has statutory requirements to meet in designating items for preferred procurement. Section 9002 requires USDA to designate items that are or can be made with biobased products. In making the designation, the Secretary is required to consider, at a minimum, the availability of such items and the economic and technological feasibility of using such items, including life cycle costs. In addition, section 9002 requires the Secretary to provide information on availability, relative price, performance, and environmental and public health benefits to Federal agencies. No designation of items will be made until the above noted requirements are met. Only upon publication of a final rule in the **Federal Register** of designation of an item for preferred procurement will manufacturers and vendors of commercial products with biobased content that fall within the item definition be able to assert preferred procurement status for those products to Federal agencies.

USDA also will utilize the data entered by manufacturers and vendors on its Web site, on individual commercial products with biobased content, to develop information on availability, relative price, performance, and environmental and public health benefits that can be extrapolated to the generic item, the scope of which embraces those individual commercial products, prior to designating that item. This information will be made available to Federal agencies to satisfy the additional statutory information requirements (section 9002(e)(1)(C)) the Secretary is required to provide Federal agencies on designated items. Because the primary value of this information to Federal agencies is at the specific product level and in the ability to compare data across products within a designated item, USDA will encourage manufacturers and vendors to voluntarily post this product specific information on those products they are offering for preferred procurement.

USDA plans to rely on information from the previously discussed CTC study to determine the availability of items. USDA will evaluate information on relative price and performance of individual commercial products with biobased content, from the voluntary Web site, to develop the information on items and products the Secretary must consider in designating items and must make available to Federal agencies.

Information on environmental and public health benefits will be developed from voluntary information manufacturers and vendors provide on individual products. When voluntarily providing such information to USDA, this information must be based on a National Institute of Standards and Technology BEES (Building for Environmental and Economic Sustainability) analytical tool analysis of the product.

No designation of an item will be made by USDA until USDA has sufficient information to reasonably meet the information requirements the Secretary must address, as specified in the statute, and to provide the required information to Federal agencies about items designated in subsequent regulations. Based on the information considered, USDA will publish regulations in the **Federal Register** designating an item(s) under these guidelines. USDA will work to first designate items in categories having greatest likelihood of sale to Federal agencies.

Proposed § 2902.6: Funding for Testing

As explained above, section 9002 requires the Secretary to consider specific types of information in determining whether to designate an item under these guidelines. Also as explained above, section 9002 requires that the Secretary provide specific types of information to Federal agencies regarding designated items. As a means of obtaining some of the required information, section 9002(j) provides to the Secretary $1 million per year for each of the fiscal years 2002 through 2007 to support the testing of biobased products to carry out the provisions of the section. Section 9002(j) further provides that the Secretary, at her discretion, may "give priority to the testing of products for which private sector firms provide cost sharing for the testing." 7 U.S.C. 8102(j)(2)(C).

For the first few years of this program, the Secretary is exercising her discretion to test products based on the USDA assessment of the best use of these funds to designate items most expeditiously under this program. USDA will work first to designate items in categories having the greatest likelihood of sale to Federal agencies. Additionally, should USDA obtain sufficient data from manufacturers' voluntary submissions or from other sources that very limited informational gaps exist to delay designation, USDA may target the use of these funds to fill in the limited data gaps to expedite designation of that item. USDA will enter into arrangements with entities capable of conducting tests to conduct tests of biobased content and BEES Analyses on products identified by USDA as part of the process of gathering such information on a sufficient number of products to enable USDA to extrapolate such information to the item level. During this period, entities are welcome to propose cost-sharing for the testing of such items. However, USDA will not consider cost-sharing in deciding what products to test. Cost-sharing will be accepted to the extent consistent with USDA product testing decisions.

Once the program has achieved a critical mass of designated items, anticipated to occur within the next three years, USDA will exercise its discretion to make cost-sharing a more determinative factor in the selection of some products for testing. USDA will make some of the section 9002(j) funds available for testing of competitively-selected products for which private sector firms have offered cost sharing. USDA will make a public announcement to that effect at the time and solicit cost-sharing proposals. Paragraph 2902.7(b) sets forth how USDA proposes to exercise this discretion. USDA will consider cost-sharing proposals only for the BEES Analysis and performance testing of products. USDA does not intend to consider cost-sharing for testing to determine biobased content.

Cost sharing will be considered first for products of "small and emerging private business enterprises." If funds remain to support further testing, a second tranche of applicants could be drawn from all other producers of biobased items. Proposals will be evaluated and assigned a priority rating. Priority ratings will be based on the following criteria:

- A maximum of 25 points will be awarded a proposal based on the market readiness.
- A maximum of 20 points will be awarded a proposal based on the potential size of the market for that product in Federal agencies.
- A maximum of 25 points will be awarded based on the financial need, for testing assistance, of the manufacturer or vendor.
- A maximum of 20 points will be awarded a proposal based on the product's prospective competitiveness in the market place.
- A maximum of 10 points will be awarded a proposal based on its likely benefit to the environment.

Projects will be funded in order of declining priority ratings (from highest to lowest) until available funds are committed. USDA could provide up to 50 percent of the cost of determining the life cycle costs and environmental and health effects using the NIST's BEES Analysis, up to a maximum of $5,000 of assistance per product. USDA could provide up to 50 percent of cost for performance testing, up to $100,000 of assistance per product for up to two performance tests (measures of performance) per product.

Pursuant to section 9002(j)(2)(B), USDA will enter into agreements with and provide the funds to entities that have the experience and special skills to conduct the testing. These entities will use the USDA and any private sector cost sharing funds to test the items. Products submitted in one year, but not funded for testing in that year, could be resubmitted to be considered for cost-sharing in the next year. USDA does not intend to provide financial assistance for testing to determine biobased content.

USDA seeks comments on possible methods of providing financial assistance for manufacturers and vendors for testing of individual commercial products with biobased content that are intended to qualify for preferred procurement by Federal agencies under this program.

Proposed § 2902.10: Communicating Information on Qualifying Biobased Products

Section 2902.10 of the proposed guidelines would provide general information applicable to the exchange of information regarding biobased products. In paragraph (a), we would reiterate that manufacturers and vendors of designated items have the responsibility to inform Federal procurement officials of items that comply with the guidelines, including the biobased content of the product, and recommend that Federal agencies, for their part, affirmatively seek this information. This paragraph would also point out the informational Web site referred to in § 2902.3 as a resource that can be utilized by both Federal agencies and manufacturers and vendors.

Manufacturers and vendors of biobased products that fall within an item (generic grouping) that has been designated by regulation for preferred procurement under the program are free to market those products to Federal agencies while claiming the preferred procurement status for the products under the program. Manufacturers and vendors must be able to certify to Federal agencies that their products are consistent with the definition of biobased product in section 2902.4. In addition manufacturers and vendors must be able to present third party test results that indicate the biobased products have at least the threshold amount of biobased feedstock content specified in the designating regulations for the item under which the biobased products fit.

Manufacturers and vendors must use the BEES analytical tool to provide information on life cycle costs and environmental and health benefits when asked for such information by Federal Agencies. In the case of products which are essentially the same formulation, but marketed under a variety of brand names, the manufacturers and vendors can simply refer to the underlying BEES Analysis data as the basis to demonstrate the life cycle costs, rather than conducting a BEES Analysis on each branded item. USDA is adopting the BEES Analysis method in order to establish a uniform methodology and platform for analysis of environmental and health effects and life cycle costs; doing so will enable Federal agencies to evaluate BEES results (scores) and life cycle costs across biobased products within a designated item.

When asked for performance data by Federal agencies, manufacturers and vendors are required to use test results obtained, for the individual products they offer for preferred procurement, from testing against industry accepted performance standards, which may include a Federal or Military Specification (ASTM, ISO, Military Specifications, *etc.*) for the product, in the use for which it is intended. The test must be conducted by a third party in an ASTM/ISO compliant test facility.

In paragraph (d), we would remind manufacturers and vendors that any claims regarding health and environmental benefits of their products should conform to the Federal Trade Commission (FTC) Guides for the Use of Environmental Marketing Claims, 16 CFR part 260. A copy can be obtained through FTC's Web site: *http//www.ftc.gov/ftc/legal/htm*. As explained in 16 CFR 260.5, any party making a claim concerning a product's environmental attribute "must, at the time the claim is made, possess and rely upon a reasonable basis substantiating the claim."

Proposed § 2902.11: Characteristics Required for Obtaining Designated Item Status

Section 9002 envisions giving preference to items composed of the highest percentage of biobased products practicable. Hence, to further the purposes of section 9002, USDA believes it is important to guard against designating items for preferred procurement which contain only token amounts of biobased materials. However, for some uses of biobased products in the production of a

designated item, such as in the case of biobased adhesives used in the manufacture of furniture, it is recognized that the biobased content in the finished item may be relatively small, measured on a content basis. In these guidelines, USDA proposes that all qualifying items under this program must have at least 5 percent of its total manufactured value (measured after manufacture at the location of manufacture) made up of biobased product(s). USDA proposes that manufacturers and vendors self certify to Federal agencies that designated items meet this requirement. Moreover, manufacturers and vendors must be able to verify that certification from a third party test if asked to do so by Federal agencies or by USDA.

ASTM International is in the process of finalizing and adopting a method for determining biobased content. USDA anticipates that ASTM International will adopt a standard prior to USDA publishing its final rule. The method under consideration by ASTM International is a Radioisotope Standard Method to discriminate between "old carbon" from fossil resources and "new carbon" from renewable resources. A measurement of a product's contemporary $^{14}C/^{12}C$ content is determined relative to a standard reference material. Thus, in paragraph (c) of proposed § 2902.11, we would identify that ASTM method as the standard to be used by manufacturers and vendors in certifying biobased content.

Further, USDA proposes that manufacturers and vendors must utilize third party ASTM/ISO compliant test facilities using that testing standard method to determine the biobased content of their products offered for preferred procurement. Federal agencies and USDA may request verification of biobased content from manufacturers and vendors for products certified to qualify for preferred procurement.

In the case of products which are essentially the same formulation, but marketed under a variety of brand names, the manufacturers and vendors can simply refer to the underlying biobased content test data as the basis to demonstrate the biobased content, rather than conducting a biobased content test on each branded item.

USDA is proposing that biobased content be determined based on the weight of the biobased material (exclusive of water and other non-active ingredients, fillers, and diluents) divided by the total weight of the product and expressed as a percentage by weight.

Minimum biobased content requirements used in the proposed guidelines refer to the biobased portion of the product itself. For example, in a carpet using a biobased material as a carpet backing, the minimum biobased content indicated for the carpet refers only to the biobased backing. It is understood that the completed carpet, made up of several different materials, would have a lower biobased content than is specified in these guidelines for the biobased product (the carpet backing) itself. Minimum percentages used for various products in these guidelines refer to the biobased content of the product (such as carpet backing) itself, not to a finished product (the carpet) that might be fabricated using both a biobased product and other inputs, unless that is otherwise specified.

Section 2902.11 also would incorporate the filters discussed earlier in this preamble to exclude from this program those products having mature markets.

Proposed § 2902.12: Items and Minimum Biobased Content

The biobased products listed in the proposed guidelines would be grouped according to category, with each category consisting of one or more items; an item developed by a particular manufacturer is referred to as a product. That is, an item is made up of individual products and a category consists of items. For instance, "Lubricants and Functional Fluids" is a category. Hydraulic fluids is an item within that category, and "ABC Hydraulic Fluid" made by the ABC Company is a product.

As noted previously, the items and the indicated biobased content of items contained within the categories discussed in this preamble are based on the study conducted in 2002 for the USDA Agricultural Research Service by CTC. The final report of the study can be viewed at the Office of Energy Policy and New Uses, Reporters Building, Room 361, 300 7th Street, SW., Washington, DC 20024. To arrange for viewing, contact Marvin Duncan at 202–401–0532. USDA also has posted the study on its informational Web site, *http://www.biobased.oce.usda.gov*.

The items discussed below are intended to be the items that will be proposed for designation for preferred procurement by Federal agencies after the Secretary has sufficient information on availability of the items and the economic and technological feasibility of using such items, including life cycle costs. The information on availability of the items is determined from the CTC study from which the categories, items, and proposed minimum biobased content data were developed. However, items will not be designated for preferred procurement until the additional information required by section 9002 is considered by the Secretary. As items are designated for procurement preference, they would be added to § 2902.12 of the guidelines.

Comments proposing a new item should include information similar to that found in USDA's initial survey of the industry, including biobased products from which the items are derived, item characteristics, likely uses of the item, and percentage of biobased content of the items. In addition to new items proposed for inclusion in the guidelines, USDA is seeking comment on procedural issues, such as a process for proposing additional items, the review of such proposals, and what market information should be necessary to support the addition or deletion of an item. USDA particularly seeks public comment on the proposed categories and items, and the reasonableness of the biobased content percentages, discussed below.

Proposed § 2902.12 would contain items, grouped according to category, that are or can be produced with biobased products and provide the minimum biobased content for each listed item. It is anticipated that as the biobased product industry develops, new products will enter the market. As necessary, new items will be designated. USDA intends to periodically survey the industry to learn of new products entering the marketplace and to determine new items for designation. While § 2902.12 in these proposed guidelines contains no categories or items, given that none have yet been designated for procurement preference, the following paragraphs contain a discussion of future proposed categories and minimum content levels thus far identified. USDA seeks comments on the following categories, items (subcategories), minimum content levels based on manufactured value, and the minimum biobased content levels.

Adhesives Category

Biobased adhesives are chemical products used to join or bond two or more other materials together. A wide range of agricultural materials can be used to make biobased adhesives, including but not limited to starch from corn, potatoes, wheat, tapioca, and other plants; casein from skimmed milk; soy protein; soybean oil; vegetable gums; gelatin; livestock derivatives; tannins from woody biomass; and marine animal derivatives.

USDA proposes to include in this category both biobased adhesives and items embodying those adhesives. Items using such adhesives include book bindings, envelopes, stamps, medical application such as tapes and alternatives to sutures, doors, windows, paper bonds, corrugated paper boxes, lumber, furniture, and more. Biobased pressure sensitive adhesives have been developed for clear tape, duct tape, masking tape, labels, and a variety of disposable items. Another example of biobased adhesives is soy-based products used to glue wood to form finger-jointed lumber, glulam beams, I-joists, and other engineered wood products.

Proposed Minimum Content—Adhesives Category

Adhesive products are to have a minimum biobased content of 70 percent by weight of the adhesive. Biobased adhesive additives may also be used to reduce the total amount of phenol-formaldehyde and isocyanate-containing adhesives used to bond plywood and other wood panels. These products and wood products made with these products are proposed to qualify when the additive is used to reduce total adhesive content of the finished product by at least 25 percent and when the minimum content of the additive is at least 70 percent biobased material. Finished products in which 90 percent of all of the adhesives used in production are biobased would be designated as biobased products.

Construction Materials and Composites Category

The Construction Material Subcategory (or item) includes product applications containing biobased adhesives, such as plywood and finger jointed lumber; oriented strand board, medium density fiberboard, and hardboard; engineered wood building components, *e.g.*, laminated beams, trusses, finger jointed lumber, oriented strand lumber; moldings and trim; and decorative composites. Construction products include round wood; lumber; composites; and plastic-wood composite lumber and panels such as plywood, oriented strand board, medium density fiberboard, and hardboard that contains agricultural or wood-based materials.

The Composite Panels Subcategory (or item) is composed of nonstructural composite materials such as highly engineered blends of recycled paper products or agricultural wastes, biobased resins, and color additives can combine to provide a composite and composite panels. Product applications include furniture, tabletops, trim, store fixtures, awards, plaques, trophies, indoor signs, and other interior or nonstructural uses. Composite panel products include panels made from straw or other agricultural residues.

Molded Reinforced Composites subcategory (or item) products, such as decorative trim, shingles, or siding, may be made from bioplastic resins used to bind inorganic fibers such as fiber glass or agricultural fibers such as kenaf. These resins may be made from a combination of biobased materials and may be reacted with petro-based chemicals to achieve functional properties.

The Insulating Foams and Films Subcategory (or item) includes biobased polyurethane made from a soybean oil polyol, poly-lactides made from cornstarch, polyesters made from vegetable oils, and other bioplastic materials. Hundreds of products can employ these materials ranging from carpet backing to foam cushions; pads for furniture; automotive seats and dashboards; molded cases and covers for appliances; telephones; computers; and rigid insulating foams used to insulate refrigerators, freezers, coolers, and appliances. Each use may have different biobased content requirements.

This item also includes bioplastic rigid and soft foam, used to produce such products as fiber and foam insulation. Starch mixtures such as aqua gels or vegetable compounds can be added to concrete mixture during setting to reduce the density of concrete, and concrete mold release agents from vegetable oils are available products.

The Mixed System Products Subcategory (or item) is composed of products where specific component parts are designated as biobased (such as carpets and carpet squares with backing, attached pad, or face material that is biobased) but other components of the products may be from another product subcategory (item) or be non-biobased. The minimum content requirement may be applied to the biobased component rather than the complete product. An example would be the replacement of a portion of petroleum-based urethane for carpet backing with a percentage of soybean oil-based urethane.

In use, these items may include a large percentage of inert fillers and extenders which are not counted in computing total product weight. When determining the percent biobased content, calculations should be made on the weight of the component less excluded materials, and not on the weight of the total product.

Proposed Minimum Content—Construction Materials and Composites Category

The minimum biobased content requirement may be based on the weight of the biobased component rather than the complete material. USDA is providing guidance on the more prevalent products. As subsequent regulations to designate items for preferred procurement continue to evolve, more content information will be forthcoming. USDA particularly welcomes comments on adding additional subcategories to this section to more clearly define content requirements. The minimum biobased content of each item in this category must be:

Items	Minimum biobased content (%)
Construction material	85
Composite panels	70
Molded reinforced composites	10
Insulating foams and films	15
Components of mixed system products	20

Fibers, Paper, and Packaging Category

There is a broad range of agricultural crops, forest biomass, and livestock that contributes materials to this category including non-tree sources such as bamboo, corn stover, low-grade cotton, flax, kenaf, cereal and grain straws, sugar cane bagasse, switch grass, leaves, and poultry feathers; and wood from forest thinnings, saw dust, flour, shavings, chips, grindings, and curls from trees.

Fibers from biobased sources can be used in the manufacture of product containers such as boxes, drums, and pails for the storage or shipment of food or manufactured products. Biobased fibers can also be used as bulk packaging materials for filler and protection of stored or transported goods. Natural biobased fibers are very ductile and typically do not splinter. Their properties have been compared to carbon and glass fibers for use in fiberglass composites.

Fiber composites are created when biobased fibers are blended with molten plastic in ratios of up to 70 percent fiber by weight to make furniture, toys, and other molded items.

Composite packaging materials use an emerging technology that relies on a mix of organic and inorganic materials, such as starch and limestone, and sometimes include fibers and coating materials that are also biodegradable. These materials often use starch from potatoes, corn, or

other crops, and can sometimes be derived from reclaimed waste streams. Recent developments have also allowed for the development of non-rigid wrap materials and other food packaging innovations in addition to the sandwich "clamshells" made from starch and agricultural fibers.

Woven fiber products represent important uses of biobased fibers. A variety of biobased fibers can be spun or woven into items such as ropes, textiles, and yarns. For example, flax is a traditional textile fiber used to make linen, while other fibers, such as jute, are woven to make burlap for bags and coverings.

Packaging materials can be made from waste fibers described above that, if not used in the paper making process, might be sent to a landfill.

Paperboard and packaging products, strong lightweight honeycomb panels made from recycled and agricultural fibers, illustrate another use of biobased fibers. Panel items can also be made almost entirely from cereal straw residue and used in nonstructural applications such as furniture, cabinets, store displays, door panels, moldings, and other fixtures.

Items such as pillows and comforters are made from milkweed fibers mixed with goose down to create bedding materials.

Proposed Minimum Content—Fibers, Paper, and Packaging Category

Like the construction category above, this item application is very large and each application may have separate content requirements. The category may require additional subcategories, or the creation of new categories; for instance tree-free paper versus tree-derived paper. In this guideline, USDA has listed a few of the more common uses and encourages comment on content requirements for a wide range of uses. To be included in the biobased fiber, paper, and packaging category, the minimum biobased content of each item must be:

Items	Minimum biobased content (%)
Fibers	90
Fibers composites	30
Composite packaging materials	30
Woven fiber products	75
Packaging materials	80
Uncoated printing and writing papers	20
Coated printing and writing papers	20
Bristols	50
Newsprint	20
Sanitary tissues	30
Paperboard and packaging products	30
Other paper products	50

Fuel Additives Category

A variety of fuel additives can be made from agricultural and forest materials and can be used to help power vehicles, heat buildings, provide heat for steam for industrial process, and other applications. Fuel additives can be mixed or diluted with other materials or used as an additive to enhance certain properties of a fuel.

Raw material sources for these biobased liquid fuel additive items include processed products from agricultural crops such as corn; soy bean; rapeseed; canola; animal fat; wood; and crop and processing residues such as stalks, manure, used cooking oils, used wood, nonrecyclable paper and paper sludge, and hulls.

Raw material sources for solid fuel additive items include agricultural and forest materials such as wood and wood processing residues, formed wood residue; nonrecyclable papers, paper sludge, and other paper processing residues; grains, grain processing byproducts and residues; byproducts or residues from soy, cotton, and sugar processing; pelletized residues from livestock production and processing, including manures.

Ethanol is the most widely used biobased fuel additive. It is typically made by fermentation of an agricultural product or residue and can be used as an oxygenated additive and a source of octane in a formulation with other fuels. Another liquid biobased fuel additive is biodiesel. Biodiesel is defined as a mono-alkyl ester of vegetable oils or animal fats and can be use as a lubricity agent with low-sulfur conventional diesel fuel.

Biobased items that are solid fuels are typically "formed" for ease of handling into a wide variety of shapes and sizes including pellets, rolls, briquettes, and other forms. Combustible binders, which may both act as fuels or be blended with other primary fuels, allow the fuel to be formed into various shapes and sizes. Biobased and other binders, such as resins and propellants, are also used to facilitate ignition and combustion. Formed coal fines are one example of a solid fuel. Recovered coal fines can be formed into a variety of shapes and sizes, *e.g.*, pellets and briquettes, by using a biobased binder such as proteins or sugars derived from soy or milk, or a combination binder composed of biobased materials and other chemicals. Biobased binders typically comprise only a small part of the total solid fuel and can be derived from dairy byproducts and other agricultural sources. The binder would be considered a biobased fuel additive.

As noted previously, section 9002 and these guidelines do not apply to the procurement of motor vehicle fuels or electricity.

Proposed Minimum Content—Fuel Additives Category

To be included in this fuel additives category, the minimum biobased content of each item must be:

Items	Minimum biobased content (%)
Solid fuels	5
Liquid fuel additives	80

Landscaping Materials, Compost, and Fertilizer Category

This category includes materials and items associated with landscaping materials and compost. Many biobased items, such as construction materials, coatings, paper, fibers, and sorbents are compostable and reusable as landscaping materials.

Various agricultural crops and residues, including straws and short-rotation woody crops, are the sources of landscaping materials. For the purposes of this category, woody materials are those obtained from activities such as forest thinning, fuel reduction in plantation stands, regenerated forest stands, intensively cultivated short rotation woody stands (*i.e.*, less than 10 years old), or from wood residue or recovered wood products.

Compost is derived from a managed process that decomposes and transforms organic material into a soil-like item called humus. Food scraps, leaves, paper, wood, livestock manures, and agricultural residues are organic materials that can be composted. Composting reduces the amount of waste that may go to a landfill and it produces a soil amendment that can improve the texture and fertility of the soil. Mulches and composted materials can be used to control moisture and nutrients in soils and reduce the potential for erosion. Other materials, such as agricultural and animal wastes, serve as fertilizers.

Items include landscaping materials such as bark, chips, mulch, and pine needles. Composted materials provide fertilizer and ground cover. These materials may also be coated with biobased materials to provide color, retard biodegradation, or reduce loss from wind or water erosion.

Agricultural and animal wastes are fertilizers and may be in composted form or, in the case of manures, may be applied as fertilizers without further composting or processing.

Proposed Minimum Content—Landscaping Materials, Compost, and Fertilizer Category

To be included in the landscaping materials and compost category, the minimum biobased content of each item must be:

Items	Minimum biobased content (%)
Landscaping materials	100
Compost	100
Fertilizer	80

Lubricants and Functional Fluids Category

Biobased lubricants and functional fluids are important materials used to reduce friction between moving surfaces or between moving and stationary surfaces in engines and other machinery, to reduce wear and dissipate heat on those surfaces, and to provide other benefits such as corrosion protection. Items like 2-cycle engine oils can be formulated from biobased sources. These formulated lubricants are added to fuels used in 2-cycle engines found in lawnmowers, chainsaws, string trimmers, and other small machinery.

Biobased functional fluids are used as items that transfer heat and/or pressure to or from surfaces, reduce friction in machining operations, provide electrical insulation, and for many other purposes. There is a broad range of biobased lubricant and functional fluid items, each carefully designed to meet particular performance needs and applications. These materials often need to be replaced on a routine schedule to maintain their expected performance.

Biobased lubricants and functional fluids are typically made from multiple components, including one or more base stocks plus additives that enhance performance or extend the life of the item. A variety of agricultural-based oils can be used as biobased lubricants and functional fluids, including but not limited to canola, corn, rapeseed, soybean, sunflower, other plant materials, and animal fats. The base oil used must have sufficient natural or enhanced stability to be used as base stock for biobased lubricants. Biobased items in this category can be base stock (the starting material into which additives and other materials are blended to make the final formulated product), lubricant or functional fluid additive (materials that are used for specific performance benefits such as lower pour point, increased flash point, greater extreme pressure properties, a desired viscosity, or reduced foam), or formulated lubricant or functional fluid (the final product including base stock and all additives).

Vehicles, heavy machinery, and mobile equipment use lubricant items such as crankcase oils and greases, and functional fluids such as transmission fluids, coolants, power steering fluids, brake fluids, and others. Industrial equipment uses for lubricants include metal working fluids (cutting and drilling oils/lubricants, stamping and forming lubricants), hydraulic fluids, and process fluids (heat transfer and dielectric fluids). Total loss lubricants are released directly into the environment in such applications as rail and flange, wire rope, and chain saw lubricants; concrete and asphalt form release fluids; and 2-cycle engine oils.

Biobased lubricants can include bar, chain, and sprocket oils or general purpose lubricants used for general cleaning, lubrication, and corrosion prevention of metal parts including wheels, bearings, gears, rollers, chains, hinges, hand tools, guns, and sporting equipment.

Biobased hydraulic fluid items can be used in construction equipment, industrial pumps, and other equipment, as well as in specialty uses where incidental food contact may occur. These specialty fluids can also be used in transmission systems of vehicles and other transportation equipment.

Biobased functional fluid items include the fluids used to lubricate and cool equipment/metals and nonmetal parts during cutting and parts fabrication, as well as drilling and machining operations.

Biobased functional fluids can be used for specialty purposes items such as mold release agents that are applied to wood, metal, or plastic forms prior to pouring concrete to facilitate the removal of forms after concrete has cured, or to foundry molds prior to pouring the foundry metal to facilitate the removal of metal parts from the molds. These biobased items can also be used as dielectric fluids that are used in electric transformers to provide insulation and to dissipate heat generated by the transmission of electric current.

Proposed Minimum Content—Lubricants and Functional Fluids Category

To be included in this lubricants and functional fluids category, the minimum biobased content of each item must be:

Items	Minimum biobased content (%)
Crankcase oils (water cooled engines)	10
Crankcase oils (air cooled engines)	50
2-cycle engine oils	50
Fifth-wheel grease	40
Automotive and other metal complex grease	25
Total loss lubricants (wire rope, bar-chain, etc.)	50
Turbine and other industrial lubricants	50
Penetrating oils	50
General purpose and other	90
Hydraulic, power steering, transmission fluids	50
Brake fluids	20
Cutting, drilling, and tapping oils (neat use)	50
Metal working concentrates (for dilution)	30
Forming pastes and extreme pressure stamping	30
Concrete and asphalt release	70
Metal foundry and mold release	50
Transformer oil and dielectric fluids	70

Plastics Category

Most plastics are made from petroleum-based monomers and polymers. Biobased plastics from renewable resources are sometimes biodegradable and have positive life-cycle benefits. Biobased plastics can be derived from a wide variety of agricultural and forest materials in the form of starch, cellulose, and other polymers or synthesized from plant oil and process byproduct monomers.

Biobased plastic polymers include cellulose, the most plentiful carbohydrate since 40 percent of all organic matter in the world is cellulose; starch, found in corn, potatoes, wheat, tapioca, and other plants can be used for such nonfood items as paper, cardboard, textile sizing, and adhesives; collagen, the most abundant protein found in mammals, including gelatin used to make sausage casings, capsules for drugs and vitamin preparations, and other miscellaneous industrial applications, including photography; and casein, a commercial product derived mainly from milk, used in adhesives, binders, protective coatings, and other biobased items. Corn, soy, and wheat proteins are abundant and can be

used to make adhesives and coatings for paper and cardboard. Polyesters are produced by bacteria through fermentation processes and are used in biomedical applications.

The plastic materials made with biobased monomers, such as plant oils, propane diol, and lactic acid, can be made to closely resemble the molecular structures of petroleum-based plastics and provide particular performance and application benefits, *e.g.*, thermoplastic or thermoset characteristics, pressure sensitivity, elastomeric, or other characteristics. When used for disposable items such as food packaging, the biobased plastic packaging can be fully compostable.

Used in durable goods for insulation and cushioning, biobased plastics may be rigid for panels in appliances, flexible in cushions, or molded for automotive dashboards, for example. Examples of biodegradable plastic films are biofilms, plastic films made biodegradable by formulation with starch. Examples of durable films and coatings are components in durable goods such as automotive and construction equipment, tools, electrical equipment, and appliances. Water-soluble polymers are biobased items used in wastewater facilities and can help mining and heavy industry clean heavy metals from their wastewater. Examples of biodegradable/compostable molded plastic items are table flat ware, knives, forks, and spoons. Examples of durable molded plastic items and composites using biobased resins are thermoset automotive parts and equipment hoods and doors and access panels for farm and industrial equipment. Examples of molded composite items using biobased fibers are automotive parts combining petroleum-based resins with natural fibers, such as interior door panels and trunk liners. Examples of synthetic fibers from biobased raw materials are synthetic fibers, similar in function to nylon, woven into various textiles such as carpeting.

Proposed Minimum Content—Plastics Category

To be included in this bioplastics and biopolymers category, the minimum biobased content of each item must be:

Items	Minimum biobased content (%)
Biodegradable foams	50
Durable foams	15
Biodegradable films	25
Durable films and coatings	20
Water soluble polymers	50
Compostable molded products	75
Molded plastics and composites/biobased resins	10
Molded composites/biobased fibers	20
Synthetic fibers	50

Paints and Coatings Category

Paints and other types of coatings such as stains, varnishes, and sealants can be derived from agricultural materials. These coatings enhance the appearance and protect the materials onto which they are applied. The protective function includes reducing corrosion, water infiltration, weathering from sun and wind exposure, and other damage. Biobased paints and coatings are important alternatives to traditional paints and coatings that are derived from petroleum-based chemicals and metal pigments.

A wide variety of agricultural materials can be used to produce items for biobased paint and coatings applications, including: xanthan gum to help thicken latex paints and coatings, and to uniformly suspend zinc, copper, and other metal additives in corrosion control coatings; cellulose esters and ethers can be used to make lacquers and paints; guayule derived epoxy-amine can be used to make coatings for metal panels that help protect the metal from corrosion during exposure to fog and salt; corn, soy, wheat, and other proteins are used to make coatings for paper and cardboard; and epoxidized linseed oil and soybean oil can be used as plasticizers, as well as intermediate chemicals in the manufacture of paints.

Biobased paints and coatings have a wide range of item uses that include protection of seeds to enhance germination, marine coatings, concrete and wood sealers, stains, corrosion inhibitors, and polishes. Architectural coatings made from soybean and linseed oils constitute a significant portion of the coatings market. Industrial coatings made from vegetable oils have been the mainstay in architectural and industrial paints for corrosion prevention, weatherability, and ease of application.

Proposed Minimum Content—Paints and Coatings Category

To be included in the paints and coatings category, the minimum biobased content of each item must be:

Items	Minimum biobased content (%)
Formulated product	20

Solvents and Cleaners Category

Biobased solvents and cleaners are widely used as cleaners and de-greasers in manufacturing and other processes and as ingredients in adhesives, paints, and coatings. Solvent and cleaner applications are broad and include alternatives to petroleum chemicals such as mineral spirits, ketones, acetone, trichloroethylene, xylene, toluene, and methylene chloride. As a cleaning item, uses include fabric and textile cleaning; fruit and vegetable cleaning; removal of grease, tar, oil, stains, paints from concrete and metal surfaces; paint stripper from metals and wood; carpet and upholstery cleaner; solvent for inks, paints; agricultural chemicals such as fertilizers, herbicides and pesticides; graffiti remover; and industrial parts cleaning. Some biobased solvents may also be used as carrier solvents for paints, inks, lotions, insect repellents, polishes, and other uses.

Biobased solvents and cleaners are made from renewable agricultural materials including crops and livestock.

Diluent items made from soybean oil, linseed oil, and tung oil can reduce the viscosity of a paint or coating. These diluents can act as both a solvent and a resin, thus eliminating the need for volatile organic compounds (VOCs). These solvents can be used in a variety of specialty applications such as metal finishing and ink formulation.

Parts cleaning compounds can contain one or more biobased solvents that are formulated with other performance additives such as surfactants, biocides, and rheology agents. These items are used in manufacturing and fabrication operations for cleaning parts prior to assembly, or in repair operations such as automotive shops or jet aircraft engine repair. Printing ink removers can be formulated items used for the removal of ink from printing presses and other printing equipment, such as press and blanket washes and screen cleaners. Adhesive/mastic removers are generally formulated items designed to remove adhesives or mastics from machinery used in gluing applications or from surfaces where an adhesive or mastic has been applied, such as with tile removal. Paint strippers are generally formulated items designed to remove paints from wood or metal surfaces. Asphalt removal and release materials are formulated or neat solvent items used to remove built up asphalt from machinery, or they can be used as a pre-spray for dump trucks to prevent sticking of asphalt to truck beds.

Hard surface cleaners include general purpose formulated items for the removal of greases and other dirt from metal, tile, glass, plastics, and hard surfaces. Glass cleaners are generally formulated items for the removal of dirt from glass surfaces with minimal or no film residues. Food machinery cleaners are formulated items used to remove accumulated greases and soils from metal and non-metal parts of food machinery (meat saws and slicers, vent fans, ovens, cooking vats, etc.), and should be approved for incidental food contact or certified by the manufacturer as safe. Textile cleaners are formulated items for the removal of heavy stains from textiles prior to institutional cleaning (dry cleaning or laundry). Graffiti removers are formulated items for the removal of graffiti (spray paint, markers, crayons, etc.) from metal and or wood surfaces. Concrete, stone, and masonry cleaners are formulated items that remove oil, grease, soot, and other soils from concrete driveways/sidewalks, stone, and masonry.

Hand cleaners and soaps are formulated items for the removal of heavy greases and dirt from skin. Laundry aids include stain removers and pre-washes for the treatment of stains on fabrics. Wood cleaners and polishes are formulated items for cleaning and polishing of wood surfaces and furniture.

Some biobased solvents are used as carrier solvents for paints, inks, lotions, insect repellents, polishes, and other uses.

Proposed Minimum Content—Solvents and Cleaners Category

To be included in this solvents and cleaners category, the minimum biobased content of each item must be:

Items	Minimum biobased content (%)
Formulated product	50
Neat product (concentrate)	100

Sorbents Category

Biobased sorbents are materials that are used to take up and hold liquids. A wide range of agricultural and forest materials can be used as biobased sorbents, including but not limited to wool, cotton and cotton linters, vegetable starch, kenaf, and agricultural residues such as corn stover and peanut hulls. The range of items produced includes products to collect oil and other environmental spills, collect blood and other fluids in medicinal and surgical applications, collect urine in diapers and incontinence products, and for animal bedding (including wood chips).

Sorbents can be placed in items such as containers, packages, gauzes, or other carriers to create a sorbent system. This aids in handling of the sorbent and application of the sorbent at a location to achieve greatest benefit. The sorbent carrier may be of a material other than a biobased item. For the purposes of this category, the biobased material is the "active" part of the sorbent system. Biobased items in this category must address the function of the entire product, *e.g.*, the sorbent itself as well as the casing or framework holding or enclosing the sorbent.

Plant starch contained within a cotton bag is an illustration of a sorbent system. While the plant starch is not the end product, it is the "active" ingredient in these sorbent systems. The USDA Agricultural Research Service developed a patented sorbent gel that would be a sorbent system. The gel is capable of absorbing hundreds of times its own weight in water and has been used in such items as seed coatings, wound dressings, automobile fuel filters, plastic barriers used at construction sites, and, most notably, in disposable diapers.

Proposed Minimum Content—Sorbents Category

The biobased sorbents product category is organized as two broad groups of items: sorbents and sorbent systems. A sorbent system involves the use of a sorbent (active ingredient) in combination with a non-active carrier or an active carrier. For example a disposable diaper is a carrier for a specialized absorbent material, which is the sorbent. To be included in the sorbents category, the minimum biobased content of each item must be:

Items	Minimum biobased content (%)
Sorbents	90
Sorbent systems	75

Plant and Vegetable Inks Category

Here the category and the item are one and the same. Plant and vegetable oils can be used to make a wide variety of biobased inks. Over 90 percent of all U.S. daily newspapers use at least some soy ink, made by blending soybean oil with pigments, resins, and waxes to make either black or color ink. Unlike petroleum inks, soy ink does not release VOCs into the atmosphere upon drying. Newspapers printed with soy ink are easier to recycle.

In 1994, the U.S. Congress enacted the "Vegetable Ink Printing Act of 1994," Public Law 103–348, mandating that, when technologically feasible and price-competitive, Federal lithographic printing be performed using ink containing minimum percentages of plant and vegetable oil. Plant and vegetable inks are not considered to be in mature markets because plant and vegetable inks did not have significant national market penetration prior to 1972.

Biobased inks can be provided in black and a variety of colors. These inks can be used to print a broad range of documents, including newspapers, magazines, brochures, business cards, and reports. The inks can also be used with a variety of specialty applications including stencils, textiles, labeling, as well as pens and other writing instruments.

Proposed Minimum Content—Plant and Vegetable Inks Category

To be included in the inks category, the minimum biobased content of each item must be:

Items by application	Minimum biobased content (%)
News inks—black	40
News inks—color	30
Sheet-fed inks	20
Forms inks	20
Heat-set inks	10
Specialty inks	20

VI. Plan for Future Development of Voluntary Labeling Program

Section 9002(h) directs USDA to establish a voluntary labeling program for biobased items. USDA will address requirements for the labeling program in a future rulemaking. However, in order to signal USDA thinking in this regard, the potential parameters of the labeling program are described here.

It is anticipated the labeling program will build on the requirements to qualify for preferred procurement of biobased items discussed in this current proposed regulation. Biobased products that qualify for preferred procurement would be eligible to qualify for use of the "U.S.D.A. Certified Biobased Product" label. Two additional criteria would determine eligibility to use the label. First, an analysis of life cycle costs and health benefits of the product would be required using NIST's BEES

(Building for Environmental and Economic Sustainability) analytical tool. This analysis would be conducted by NIST or by a third party authorized by NIST to conduct the BEES Analysis. Second, the product would have passed one or more tests against applicable ASTM, International Organization for Standardization (an international standards setting organization identified by the acronym ISO), Federal or military specifications, or industry performance standards by a third party ASTM/ISO compliant testing facility, and results of those tests would be available to Federal procurement officials.

USDA seeks comments on the potential direction of future regulation regarding a voluntary program for use of the label by manufacturers and vendors of biobased products and on the possibility of assessing a user fee to support the labeling program.

VII. Regulatory Information

A. Executive Order 12866, Regulatory Planning and Review

It is estimated the proposed rule, when finalized, will not have an annual effect on the economy of $100 million or more. This program will have only a relatively small effect on the economy for the foreseeable future. This rule does not propose to designate any items. Successive items will be designated for preferred procurement through subsequent rulemakings over a period of at least several years. The industry, itself, is still very small. Although this program is intended to spur development of the industry, that is likely to occur only over many years. Each time an item is proposed for designation, USDA will evaluate the economic effect of that designation, as well as the cumulative effect of that and previous item designations.

For the above reasons, this rule has been determined to be not significant for purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

B. Regulatory Flexibility Act

When an agency issues a rulemaking proposal, the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612, requires the agency to "prepare and make available for public comment an initial regulatory flexibility analysis" which will "describe the impact of the proposed rule on small entities." 5 U.S.C. 603(a). Section 605 of the RFA allows an agency to certify a rule, in lieu of preparing an analysis, if the proposed rulemaking is not expected to have a significant economic impact on a substantial number of small entities.

Although this program ultimately may have a direct impact on a substantial number of small entities, USDA has determined that this proposed rule will not have a direct significant economic impact on a substantial number of small entities. This rule will affect directly primarily Federal agencies. Private sector manufacturers and vendors of biobased products voluntarily may provide information to USDA through the means set forth in this proposed rule. However, the proposed rule imposes no requirement on manufacturers and vendors to do so, and does not differentiate between manufacturers and vendors based on size. USDA does not know how many small manufacturers and vendors may opt to participate at this stage of the program.

As explained above, when USDA issues a proposed rulemaking to designate items for preferred procurement under this program, USDA will assess the anticipated impact of such designations, including the impact on small entities. USDA anticipates that this program will impact small entities which manufacture or sell biobased products. For example, once items are designated, this program will provide additional opportunities for small businesses to manufacture and sell biobased products to Federal agencies. This program also will impact indirectly small entities that supply biobased materials to manufacturers. Additionally, this program may decrease opportunities for small businesses that manufacture or sell nonbiobased products or provide components for the manufacturing of such products. Again, USDA cannot assess these anticipated impacts on small entities until USDA proposes items for designation. This rule does not propose to designate any items.

The proposed rule will directly impact small entities by implementing a cost-sharing program which gives first consideration to proposals for products of "small and emerging business enterprises." Submission of a proposal is voluntary and not limited to small entities. The direct impact would be beneficial for those entities whose products are selected for cost-sharing. Because of the limited amount of funds available for cost-sharing, the proposed ceilings on cost-sharing, and the anticipated breadth of any competition (not limited to a particular manufacturing sector and open to other than small entities), USDA does not anticipate that this cost-sharing competition would have a significant economic impact on a substantial number of small entities.

Accordingly, USDA hereby certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities. USDA invites comments from members of the public who believe that the proposed rule will have a significant economic impact on a substantial number of small entities.

C. Executive Order 12630

This rule has been reviewed in accordance with Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights, and does not contain policies that would have implications for these rights.

D. Executive Order 12988

This proposed rule has been reviewed in accordance with Executive Order 12988, Civil Justice Reform. This proposed rule does not preempt State or local laws, is not intended to have retroactive effect, and does not involve administrative appeals.

E. Executive Order 13132

This proposed rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. Provisions of this proposed rule will not have a substantial direct effect on States or their political subdivisions or on the distribution of power and responsibilities among the various government levels.

F. Unfunded Mandates Reform Act of 1995

This proposed rule contains no Federal mandates under the regulatory provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1531–1538, for State, local, and tribal governments, or the private sector. Therefore, a statement under section 202 of UMRA is not required.

G. Executive Order 12372

For the reasons set forth in the Final Rule Related Notice for 7 CFR part 3015, subpart V (48 FR 29115, June 24, 1983), this program is excluded from the scope of the Executive Order 12372 which requires intergovernmental consultation with State and local officials. This program does not directly affect State and local governments.

H. Executive Order 13175

The policies contained in this rulemaking do not have tribal implications and thus no further action is required under Executive Order 13175.

I. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995, 44 U.S.C. chapter 35, and the implementing Office of Management and Budget (OMB) regulations in 5 CFR part 1320, USDA has submitted the information collections contained in this proposed rule to the OMB for review under section 3507(d) of the Act. Comments addressing the proposed information collections should be submitted to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for Agriculture, Margaret Malanoski, 725 17th Street, NW., Room 10202, Washington, DC 20503.

Title: Guidelines for Designating Biobased Products for Federal Procurement

Abstract: USDA will collect information from biobased product manufacturers and vendors on a voluntary basis to support a website maintained by USDA for the use of those parties, as well as the use of Federal agencies and the public. Information to be requested will include identification of products offered for preferred procurement within a designated item, contact information for the manufacturer or vendor, and demographic information about the manufacturer or vendor that will assist Federal agencies in reporting on the performance of the preferred procurement program. In addition, information will be sought regarding availability of products within an item considered for designation; relative prices of the products; performance of the products against industry standards such as ASTM, ISO, Federal or military specifications, or other standards; and environmental and public health benefits using NIST's BEES analytical tool.

This information may be included on the website or a hotlink may be established to manufacturers' or vendors' websites to access the information. The information sought for this voluntary website is envisioned to be non-proprietary. Should proprietary information be provided, the website will be password protected making that accessible only to USDA, Federal agencies, and to the manufacturer or vendor that provided the information.

Estimate of respondent burden: Public reporting burden for the collection of information is estimated to average 50 hours per product. Reporting is voluntary on the part of manufacturers/vendors of biobased products.

Respondents: Biobased product manufacturers and vendors.

Estimated annual number of respondents: 200.

Estimated number of responses per respondent: 1.

Estimated total annual burden hours on respondents: 10,000.

USDA invites written comments on:

(a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(b) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(d) Minimizing the burden of the collection of the information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

List of Subjects in 7 CFR Part 2902

Biobased products, Procurement.

For the reasons stated in the preamble, the Department of Agriculture proposes to amend 7 CFR chapter XXIX as follows:

CHAPTER XXIX—OFFICE OF ENERGY POLICY AND NEW USES, DEPARTMENT OF AGRICULTURE

1. The chapter heading of chapter XXIX is revised to read as set forth above.

2. A new part 2902 is added to chapter XXIX to read as follows:

PART 2902—GUIDELINES FOR DESIGNATING BIOBASED PRODUCTS FOR FEDERAL PROCUREMENT

Subpart A—General

Sec.

2902.1 Purpose and scope.
2902.2 Applicability.
2902.3 USDA guidance on item availability and procurement.
2902.4 Definitions.
2902.5 Preferred procurement program.
2902.6 Funding for testing.

Subpart B—Biobased Product Eligibility for Federal Preference

2902.10 Communicating information on qualifying biobased products.
2902.11 Characteristics required for obtaining designated item status.
2902.12 Items and minimum biobased content.

Authority: 7 U.S.C. 8102.

Subpart A—General

§ 2902.1 Purpose and scope.

(a) The purpose of the guidelines in this part is to assist Federal agencies in complying with the requirements of section 9002 of FSRIA, 7 U.S.C. 8102, as they apply to the procurement of the items designated in subpart B of this part.

(b) The guidelines in this part designate items that are or can be produced with biobased products and whose procurement by Federal agencies will carry out the objectives of section 9002 of FSRIA.

§ 2902.2 Applicability.

(a) The guidelines in this part apply to all procurement actions by Federal agencies involving items designated by USDA in this part, where the Federal agency purchases $10,000 or more worth of one of these items during the course of a fiscal year, or where the quantity of such items or of functionally equivalent items purchased during the preceding fiscal year was $10,000 or more. The $10,000 threshold applies to procuring agencies as a whole rather than to agency subgroups such as regional offices or subagencies of a larger department or agency.

(b) The guidelines in this part do not apply to:

(1) Any procurement by any Federal agency that is subject to regulations of the Administrator of the Environmental Protection Agency under section 6002 of the Solid Waste Disposal Act (40 CFR part 247), to the extent that the requirements of this part are inconsistent with such regulations; or

(2) The procurement of motor vehicle fuels or electricity.

(c) FSRIA section 9002(c)(1) requires Federal agencies to procure designated items composed of the highest percentage of biobased products practicable, consistent with maintaining a satisfactory level of competition, considering such guidelines. Federal agencies may decide not to procure such items if they are not reasonably priced or readily available or do not meet specified or reasonable performance standards.

§ 2902.3 USDA guidance on item availability and procurement.

An informational USDA website implementing section 9002 can be found at: *http://www.biobased.oce.usda.gov.* USDA will maintain a voluntary web-based information site for manufacturers and vendors of designated items produced with biobased products and Federal agencies. Through this website, USDA

intends to provide information as to the availability, relative price, performance and environmental and public health benefits of the designated items. USDA encourages manufacturers and vendors to provide product, business contacts, and product information for designated items. USDA also encourages Federal agencies to utilize this website to obtain current information on designated items, contact information on manufacturers and vendors, and access to information on product characteristics relevant to procurement decisions.

§ 2902.4 Definitions.

These definitions apply to this part:

Agricultural materials. Agricultural-based, including plant, animal, and marine materials, raw materials or residues used in the manufacture of commercial or industrial, nonfood/nonfeed products.

ASTM International. ASTM International, a nonprofit organization organized in 1898, is one of the largest voluntary standards development organizations in the world with about 30,000 members in over 100 different countries. ASTM provides a forum for the development and publication of voluntary consensus standards for materials, products, systems, and services.

BEES. An acronym for "Building for Environmental and Economic Sustainability," an analytic tool used to determine the environmental and health benefits and life cycle costs of items, developed by the U.S. Department of Commerce's National Institute of Standards and Technology, with support from the U.S. Environmental Protection Agency, Office of Pollution Prevention and Toxics (*BEES 3.0, Building for Environmental and Economic Sustainability Technical Manual and User Guide*, NISTIR 6916, National Institute of Standards and Technology, U.S. Department of Commerce, October 2002). Also, see *http://www.bfrl.nist.gov/oae/software/bees_USDA.html* for a discussion of how biobased feedstocks are addressed in the BEES Analysis.

Biobased components. Any intermediary materials or parts that, in combination with other components, are functional parts of the biobased product.

Biobased content. The weight (or volume, where appropriate) of the biobased material in the product divided by the total weight (or volume, where appropriate) of the product, times 100 to yield the percent of biobased content. Total product weight may be calculated exclusive of water or other inactive ingredients, fillers and diluents.

Biobased product. A product determined by the Secretary to be a commercial or industrial product (other than food or feed) that is composed, in whole or in significant part, of biological products or renewable domestic agricultural materials (including plant, animal, and marine materials) or forestry and materials.

Biological products. Products derived from living materials other than agricultural or forestry materials.

Designated item. A category of products identified in § 2902.12 that is eligible for the procurement preference established under section 9002 of FSRIA.

Diluent. A substance used to diminish the strength, scent, or other basic property of a substance.

Engineered wood products. Products produced with a combination of wood, food fibers and adhesives.

Federal agency. Any executive agency or independent establishment in the legislative or judicial branch of the Government (except the Senate, the House of Representatives, the Architect of the Capitol, and any activities under the Architect's direction).

Filler. A substance added to a product to increase the bulk, weight, viscosity, strength, or other property.

Forest thinnings. The removal of trees from a dense forest, primarily to improve growth, enhance forest health, or recover potential mortality. To recover potential mortality means to remove trees that are going to die in the near future.

Forestry materials. Materials derived from the practice of planting and caring for forests and the management of growing timber. Such materials must come from short rotation woody crops (less than 10 years old), sustainably managed forests, wood residues, or forest thinnings.

Formulated product. A product that is prepared or mixed with other ingredients, according to a specified formula and includes more than one ingredient.

FSRIA. The Farm Security and Rural Investment Act of 2002, Pub. Law 107–171.

Ingredient. A component; part of a compound or mixture; may be active or inactive.

ISO. The International Organization for Standardization, a network of national standards institutes from 145 countries working in partnership with international organizations, governments, industries, business, and consumer representatives.

Neat product. A product that is made of only one ingredient and is not diluted or mixed with other substances.

Relative price. The price of a product as compared to the price of other products on the market that have similar performance characteristics.

Residues. That which remains after a part is taken, separated, removed, or designated; a remnant; a remainder; and, for this purpose, is from agricultural materials, biological products, or forestry materials.

Secretary. The Secretary of the United States Department of Agriculture.

Small and emerging private business enterprise. Any private business that employs 50 or fewer employees and has less than $1 million in projected annual gross revenues.

Sustainably managed forests. Practice of a land stewardship ethic that integrates the reforestation, management, growing, nurturing, and harvesting of trees for useful products while conserving soil and improving air and water quality, wildlife, fish habitat, and aesthetics.

§ 2902.5 Preferred procurement program.

(a) Within 1 year after the publication date of each designated item, Federal agencies that have the responsibility for drafting or reviewing specifications for items procured by Federal agencies shall ensure that their specifications require the use of designated items composed of biobased products, consistent with the guidelines in this part. The biobased content of a designated item may vary considerably from product to product based on the mix of ingredients used in its manufacture. In procuring designated items, the percentage of biobased content should be maximized, consistent with achieving the desired performance for the product.

(b) Within 1 year after the publication date of the guidelines in this part, each Federal agency shall develop a procurement program which will assure that items composed of biobased products will be purchased to the maximum extent practicable and which is consistent with applicable provisions of Federal procurement laws. Each procurement program shall contain:

(1) A preference program for purchasing designated items, (2) A promotion program to promote the preference program; and

(3) Provisions for the annual review and monitoring of the effectiveness of the procurement program.

(c) In developing the preference program, Federal agencies shall adopt one of the following options, or a substantially equivalent alternative, as part of the procurement program:

(1) A policy of awarding contracts to the vendor offering a designated item composed of the highest percentage of biobased product practicable except when such items:

(i) Are not available within a reasonable time;

(ii) Fail to meet performance standards set forth in the applicable specifications, or the reasonable performance standards of the Federal agency; or

(iii) Are available only at an unreasonable price.

(2) A policy of setting minimum biobased products content specifications in such a way as to assure that the biobased products content required is consistent with section 9002 of FSRIA and the requirements of the guidelines in this part except when such items:

(i) Are not available within a reasonable time;

(ii) Fail to meet performance standards for the use to which they will be put, or the reasonable performance standards of the Federal agency; or

(iii) Are available only at an unreasonable price.

§ 2902.6 Funding for testing.

(a) USDA will use funds to support testing for biobased content and conduct of the BEES Analysis for products within items USDA has selected to designate for preferred procurement through early regulatory action. USDA initially will focus on gathering the necessary test information on a sufficient number of products within an item (generic grouping of products) to support regulations to be promulgated to designate an item or items for preferred procurement under this program. USDA may accept cost sharing for such testing to the extent consistent with USDA product testing decisions. During this period USDA will not consider cost sharing in deciding what products to test. When USDA has concluded that a critical mass of items have been designated, USDA will exercise its discretion, in accordance with the competitive procedures outlined in paragraph (b) of this section, to allocate a portion of the available USDA testing funds to give priority to testing of products for which private sector firms provide cost sharing for the testing.

(b)(1) Subject to the availability of funds and paragraph (a) of this section, USDA will announce annually the solicitation of proposals for cost-sharing for the testing of biobased products to carry out this program. Information regarding the submission of proposals for cost sharing also will be posted on the USDA informational Web site, *http://www.biobased.oce.usda.gov*.

(2) Cost-sharing proposals will be considered first for products of small and emerging private business enterprises. If funds remain to support further testing, a second tranche of applicants may be drawn from all other producers of biobased items. Proposals will be evaluated and assigned a priority rating. Priority ratings will be based on the following criteria:

(i) A maximum of 25 points will be awarded a proposal based on the market readiness;

(ii) A maximum of 20 points will be awarded a proposal based on the potential size of the market for that product in Federal agencies;

(iii) A maximum of 25 points will be awarded based on the financial need for assistance of the manufacturer or vendor;

(iv) A maximum of 20 points will be awarded a proposal based on the product's prospective competitiveness in the market place;

(v) A maximum of 10 points will be awarded a proposal based on its likely benefit to the environment.

(3) Proposals will be selected in order of declining priority ratings (from highest to lowest) until available funds for the fiscal year are committed.

(4)(i) For products selected for BEES Analysis testing under this paragraph, USDA could provide up to 50 percent of the cost of determining the life cycle costs and environmental and health effects using the NIST's BEES Analysis, up to a maximum of $5,000 of assistance per product.

(ii) For products selected for performance testing under this paragraph, USDA could provide up to 50 percent of cost for performance testing, up to $100,000 of assistance per product for up to two performance tests (measures of performance) per product.

(5) For selected proposals, USDA will enter into agreements with and provide the funds directly to the testing entities.

(6) Proposals submitted in one fiscal year, but not selected for cost-sharing of testing in that year, may be resubmitted to be considered for cost-sharing in the following year.

Subpart B—Biobased Product Eligibility for Federal Preference

§ 2902.10 Communicating information on qualifying biobased products.

(a) Manufacturers and vendors are expected to provide relevant information to Federal agencies, upon request, with respect to product characteristics. USDA recommends that Federal agencies affirmatively seek this information. Manufacturers must be able to verify the biobased content in their products. The level of biobased content in the product is to be determined using the ASTM International standard that is a Radioisotope Standard Method to distinguish between carbon from fossil resources and that from renewable sources.

(b) Manufacturers and vendors must use the National Institute of Standards and Technology BEES (Building for Environmental and Economic Sustainability) analytical tool to provide information on life cycle costs and environmental and health benefits to Federal agencies, when asked.

(c) In assessing performance of qualifying biobased products, USDA requires that Federal agencies rely on results of performance tests using applicable ASTM International, International Organization for Standardization (ISO), Federal or military specifications, or other similarly authoritative industry test standards. Such testing must be conducted by a third party ASTM/ISO compliant laboratory.

(d) Manufacturers and vendors are reminded that their advertising, labeling, and other marketing claims, including claims regarding health and environmental benefits of the product, must conform to the Federal Trade Commission Guides for the Use of Environmental Marketing Claims, 16 CFR part 260.

§ 2902.11 Characteristics required for obtaining designated item status.

(a) All qualifying items under this program must have at least 5 percent of their total manufactured value (measured after manufacture at the location of manufacture) made up of biobased product(s).

(b) Minimum biobased content requirements in § 2902.12 refer to the biobased portion of the product, and not the entire item. These requirements are in addition to the 5 percent total manufactured value requirement in paragraph (a) of this section.

(c) Manufacturers and vendors must utilize third party ASTM/ISO compliant test facilities using the ASTM International Radioisotope Standard Method to determine and certify the biobased content of their products offered for preferred procurement. Federal agencies and USDA may request verification of biobased content from manufacturers and vendors for products certified to qualify for preferred procurement.

(d)(1) Biobased content shall be determined based on the weight of the biobased material (exclusive of water and other non-active ingredients, fillers,

and diluents) divided by the total weight of the product and expressed as a percentage by weight.

(2) In the case of products that are essentially the same formulation, but marketed under a variety of brand names, the manufacturer or vendor may refer to the underlying biobased content test data as the basis to demonstrate the biobased content, rather than conducting a biobased content test on each branded product.

(e) Products having mature markets are excluded from this program. For purposes of this program, a product has a mature market if the product falls within any of the following groups:

(1) Silk, cotton and wool garments, household items, and industrial or commercial products unless made with a substantial amount of biobased plastic product.

(2) Wood products made from traditionally-harvested forest materials.

(3) Products having significant national market penetration prior to 1972.

§ 2902.12 Items and minimum biobased content.

USDA shall designate items that meet the criteria set forth in this part as eligible for the procurement preference. In designating items, USDA will group items by category and will identify the minimum biobased content for each listed item. As items are designated for procurement preference, they will be added to this section.

Dated: December 16, 2003.

Keith Collins,

Chief Economist, Department of Agriculture.

[FR Doc. 03–31247 Filed 12–18–03; 8:45 am]

BILLING CODE 3410–GL–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2003–15979; Airspace Docket No. 03–AEA–10]

Establishment of Class E Airspace; Lawrenceville, VA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish Class E airspace at Lawrenceville, VA. The development of Standard Instrument Approach Procedures (SIAP) based on the Global Positioning System (GPS) to serve flights operating into Lawrenceville/Brunswick Municipal Airport (LVL) under Instrument Flight Rules (IFR) makes this action necessary. Controlled airspace extending upward from 700 feet Above Ground Level (AGL) is needed to contain aircraft executing the approach. The area would be depicted on aeronautical charts for pilot reference.

DATES: Comments must be received on or before January 20, 2004.

ADDRESSES: Send comments on this proposal to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2003–15979/ Airspace Docket No. 03–AEA–10 at the beginning of your comments. You may also submit comments on the Internet at *http:dms.dot.gov*. You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division, Federal Aviation Administration, Eastern Region, 1 Aviation Plaza, Jamaica, NY, 11434–4809.

FOR FURTHER INFORMATION CONTACT: Mr. Francis T. Jordan, Jr., Airspace Specialist, Airspace Branch, AEA–520, Eastern Region, 1 Aviation Plaza, Jamaica, NY 11434–4809, telephone: (718) 553–4521.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. FAA–2003–15979/Airspace Docket No. 03–AEA–10". The postcard will be date/time stamped and returned to the commenter.

Availability of NPRMs

An electronic copy of this document may be downloaded through the Internet at *http://dms.dot.gov*. Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov* or the Superintendent of Documents Web page at *http://www.access.gpo.gov/nara*. Additionally, any person may obtain a copy of this notice by submitting a request to the Federal Aviation Administration, Office of Air Traffic Airspace Management, ATA–400, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–8783. Communications must identify both docket numbers for this notice. Persons interested in being placed on a mailing list for future NPRMs should contact the FAA's Office of Rulemaking, (202) 267–9677, to request a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish Class E airspace area at Lawrenceville, VA. The development of SIAPs to serve flights operating IFR into Lawrenceville/Brunswick Municipal Airport makes this action necessary. Controlled airspace extending upward from 700 feet AGL is needed to accommodate the SIAPs. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface are published in Paragraph 6005 of FAA Order 700.9L, dated September 2, 2003, and effective September 16, 2003, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that would only affect air traffic procedures and air navigation, it is certified that this proposed rule would not have significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR Part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR Part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; EO 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9L dated September 2, 2003 and effective September 16, 2003, is proposed to be amended as follows:

Paragraph 6005 Class E Airspace Areas Extending Upward From 700 Feet or More Above the Surface of the Earth

* * * * *

AEA VA E5, Lawrenceville, VA [NEW]

Lawrenceville/Brunswick Municipal Airport (Lat. 36°46′21″ N., long. 77°47′41″ W.)

That airspace extending upward from 700 feet above the surface within a 6-mile radius of Lawrenceville/Brunswick Municipal Airport.

* * * * *

Issued in Jamaica, New York on December 4, 2003.

John G. McCartney,

Assistant Manager, Air Traffic Division, Eastern Region.

[FR Doc. 03–31246 Filed 12–18–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 301

[REG–116664–01]

RIN 1545–BC15

Guidance Necessary to Facilitate Business Electronic Filing

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations.

SUMMARY: In the Rules and Regulations section of this issue of the **Federal Register**, the IRS is issuing temporary regulations designed to eliminate regulatory impediments to the electronic filing of certain business income tax returns and other forms. Those regulations affect business taxpayers who file income tax returns electronically. The text of those regulations also serves as the text of these proposed regulations.

DATES: Written or electronic comments and requests for a public hearing must be received by March 18, 2004.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG–116641–01), room 5203, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to: CC:PA:LPD:PR (REG–116641–01), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC. Alternatively, taxpayers may submit electronic comments directly to the IRS Internet site at *http://www.irs.gov/regs*.

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, Nathan Rosen (202) 622–4910; concerning submissions of comments and/or requests for a hearing, Robin Jones (202) 622–3521 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in this notice of proposed rulemaking has been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). Comments on the collection of information should be sent to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, SE:W:CAR:MP:T:T:SP, Washington, DC 20224. Comments on the collection of information should be received by February 17, 2004. Comments are specifically requested concerning:

Whether the proposed collection of information is necessary for the proper performance of the functions of the Internal Revenue Service, including whether the information will have practical utility; The accuracy of the estimated burden associated with the proposed collection of information (*see* below);

How the quality, utility, and clarity of the information to be collected may be enhanced;

How the burden of complying with the proposed collection of information may be minimized, including through the application of automated collection techniques or other forms of information technology; and

Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of service to provide information.

The collection of information in this proposed regulation is in § 1.170A–11T. Section 170 of the Code permits tax deductions, within limits, for charitable contributions by individuals and corporations. Section 170(a)(2) provides that under certain conditions, corporations may treat a charitable contribution as paid during the taxable year even if the contribution occurs in the following taxable year. Existing regulations provide that to invoke this provision, a corporation must submit with its income tax return a supporting statement and a copy of the board of directors' resolution authorizing the contribution. The proposed regulation eliminates the need to submit the resolution with the return, but provides that the supporting statement must identify the date of the resolution. This information regarding the timing of board action is required to be reported to help ensure that taxpayers properly document their entitlement to deductions for charitable contributions. The IRS cannot ascertain this information from the board resolution itself since, as noted above, taxpayers will no longer have to submit that document with their returns. The collection of information is mandatory. The likely respondents are for-profit corporations.

Estimated total annual reporting burden: 250,000 hours.

Estimated average annual burden hours per respondent: .25 hours.

Estimated number of respondents: 1,000,000

Estimated annual frequency of responses: annually

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by the Office of Management and Budget.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally,

tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Background and Explanation of Provisions

Temporary regulations in the Rules and Regulations section of this issue of the **Federal Register** contain amendments to the Income Tax Regulations (26 CFR part 1) and the Procedure and Administration Regulations (26 CFR part 301) designed to eliminate regulatory impediments to the electronic filing of certain income tax returns and other forms. The text of those regulations also serves as the text of these proposed regulations. The preamble to the temporary regulations explains the temporary regulations and these proposed regulations. The regulations generally affect taxpayers who must file any of the following forms: Form 926, "Return by a U.S. Transferor of Property to a Foreign Corporation"; Form 972, "Consent of Shareholder To Include Specific Amount in Gross Income"; Form 973, "Corporation Claim for Deduction for Consent Dividends"; Form 982, "Reduction of Tax Attributes Due to Discharge of Indebtedness (and Section 1082 Basis Adjustment)"; Form 1120, "U.S. Corporation Income Tax Return"; Form 1120S, "U.S. Income Tax Return for an S Corporation"; Form 1122, "Authorization and Consent of Subsidiary Corporation To Be Included in a Consolidated Income Tax Return"; Form 5471, "Information Return of U.S. Persons With Respect To Certain Foreign Corporations"; Form 5712–A, "Election and Verification of the Cost Sharing or Profit Split Method Under Section 936(h)(5)"; and Form 8832, "Entity Classification Election."

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. It is hereby certified that the collection of information in these regulations will not have a significant economic impact on a substantial number of small entities. This certification is based on the fact that the collection of information described above under the heading "Paperwork Reduction Act" does not affect corporations that elect to be taxed under Subtitle A, Chapter 1, Subchapter S of the Code. Moreover, requiring a corporation to report the information described above concerning board of directors' approval of certain charitable contributions imposes virtually no incremental burden in time or expense. Therefore, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. Chapter 6) is not required. Pursuant to section 7805(f) of the Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written (a signed original and eight (8) copies) or electronic comments that are submitted timely to the IRS. The IRS and the Treasury Department specifically request comments on the clarity of the proposed regulations and how they can be made easier to understand. All comments will be available for public inspection and copying. A public hearing may be scheduled if requested by any person who timely submits comments. If a public hearing is scheduled, notice of the date, time and place for the hearing will be published in the **Federal Register**.

Drafting Information

The principal author of these regulations is Nathan Rosen, Office of Associate Chief Counsel (Procedure and Administration), Administrative Provisions and Judicial Practice Division.

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 301

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR parts 1 and 301 are proposed to be amended as follows:

PART 1—INCOME TAXES

Par. 1. The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805. * * *

Par. 2. Section 1.170A–11 is amended by revising paragraph (b)(2) to read as follows:

§ 1.170A–11 Limitation on, and carryover of, contributions by corporations.

* * * * *

(b) * * *

(2) [The text of the proposed amendment to § 1.170A–11(b)(2) is the same as the text of § 1.170A–11T(b)(2) published elsewhere in this issue of the **Federal Register**].

* * * * *

Par. 3. Section 1.556–2 is amended by:

1. Revising paragraph (e)(2)(vii).
2. Adding paragraph (e)(3).

The revision and addition read as follows:

§ 1.556–2 Adjustments to taxable income.

* * * * *

(e) * * *

(2) * * *

(vii) [The text of the proposed amendment to § 1.556–2(e)(2)(vii) is the same as the text of § 1.556–2T(e)(2)(vii) published elsewhere in this issue of the **Federal Register**.

* * * * *

(3) [The text of the proposed amendment to § 1.556–2(e)(3) is the same as the text of § 1.556–2T(e)(3) published elsewhere in this issue of the **Federal Register**].

* * * * *

Par. 4. Section 1.565–1 is amended by revising paragraph (b)(3) to read as follows:

§ 1.565–1 General rule.

* * * * *

(b) * * *

(3) [The text of the proposed amendment to § 1.565–1(b)(3) is the same as the text of § 1.565–1T(b)(3) published elsewhere in this issue of the **Federal Register**].

* * * * *

Par. 5. Section 1.936–7 is amended by revising paragraph (b), Q.&A. 1 to read as follows:

§ 1.936–7 Manner of making elections under section 936(h)(5); special election for export sales; revocation of election under section 936(a).

* * * * *

(b) * * *

Q.& A. 1 [The text of the proposed amendment to § 1.936–7(b), Q.& A. 1 is the same as the text of § 1.936–7T(b), Q.& A. 1, published elsewhere in the issue of the **Federal Register**].

* * * * *

Par. 6. Section 1.1017–1 is amended by revising paragraph (g)(2)(iii)(B) to read as follows:

§ 1.1017–1 Basis reductions following a discharge of indebtedness.

* * * * *

(g) * * *

(2) * * *

(iii) * * *

(B) [The text of the proposed amendment to § 1.1017–1(g)(2)(iii)(B) is the same as the text of § 1.1017–1T(g)(2)(iii)(B) published elsewhere in this issue of the **Federal Register**].

* * * * *

Par. 7. Section 1.1368–1 is amended by revising paragraphs (f)(5)(iii) and (g)(2)(iii) to read as follows:

§ 1.1368–1 Distributions by S corporations.

* * * * *

(f) * * *

(5) * * *

(iii) [The text of the proposed amendment to § 1.1368–1(f)(5)(iii) is the same as the text of § 1.1368–1T(f)(5)(iii) published elsewhere in this issue of the **Federal Register**].

* * * * *

(g) * * *

(2) * * *

(iii) [The text of the proposed amendment to § 1.1368–1(g)(2)(iii) is the same as the text of § 1.1368–1T(g)(2)(iii) published elsewhere in this issue of the **Federal Register**].

* * * * *

Par. 8. Section 1.1377–1 is amended by revising paragraph (b)(5)(i)(C) to read as follows:

§ 1.1377–1 Pro rata share.

* * * * *

(b) * * *

(5) * * *

(i) * * *

(C) [The text of the proposed amendment to § 1.1377–1(b)(5)(i)(C) is the same as the text of § 1.1377–1T(b)(5)(i)(C) published elsewhere in this issue of the **Federal Register**].

* * * * *

Par. 9. Section 1.1502–21 is amended by revising paragraphs (b)(2)(iii), (b)(3)(i) and (b)(3)(ii)(B) to read as follows:

§ 1.1502–21 Net operating losses.

* * * * *

(b)(2)(iii) [The text of the proposed amendment to § 1.1502–21(b)(2)(iii) is the same as the text of § 1.1502–21T(b)(2)(iii) published elsewhere in this issue of the **Federal Register**].

* * * * *

(3) * * * (i) [The text of the proposed amendment to § 1.1502–21(b)(3)(i) is the same as the text of § 1.1502–21T(b)(3)(i) published elsewhere in this issue of the **Federal Register**].

(ii) * * *

(B) [The text of the proposed amendment to § 1.1502–21(b)(3)(ii)(B) is the same as the text of§ 1.1502–21T(b)(3)(ii)(B) published elsewhere in this issue of the **Federal Register**.

* * * * *

Par. 10. Section 1.1502–75 is amended by revising paragraph (h)(2) to read as follows:

§ 1.1502–75 Filing of consolidated returns.

* * * * *

(h) * * *

(2) [The text of the proposed amendment to § 1.1502–75(h)(2) is the same as the text of § 1.1502–75T(h)(2) published elsewhere in the issue of the **Federal Register**].

* * * * *

Par. 11. Section 1.1503–2 is amended by revising paragraphs (g)(2)(i), (g)(2)(iv)(B)(*3*)(*iii*) and (g)(2)(vi)(B) to read as follows:

§ 1.1503–2 Dual consolidated loss.

* * * * *

(g) * * *

(2) * * * (i) [The text of the proposed amendment to § 1.1503–2(g)(2)(i) is the same as the text of § 1.1503–2T(g)(2)(i) published elsewhere in this issue of the **Federal Register**].

* * * * *

(iv) * * *

(B) * * *

(*3*) * * *

(*iii*) [The text of the proposed amendment to § 1.1503–2(g)(2)(iv)(B)(*3*)(*iii*) is the same as the text of § 1.1503–2T(g)(2)(iv)(B)(*3*)(*iii*) published elsewhere in this issue of the **Federal Register**].

* * * * *

(vi) * * *

(B) [The text of the proposed amendment to § 1.1503–2(g)(2)(vi)(B) is the same as the text of § 1.1503–2T(g)(2)(vi)(B) published elsewhere in this issue of the **Federal Register**].

* * * * *

Par. 12. Section 1.6038B–1 is amended by revising paragraphs (b)(1)(i) and (b)(1)(ii) to read as follows:

§ 1.6038B–1 Reporting of certain transfers to foreign corporations.

* * * * *

(b) * * * (1) * * * (i) [The text of the proposed amendments to § 1.6038B–1(b)(1)(i) is the same as the text of § 1.6038B–1T(b)(1)(i) published elsewhere in this issue of the **Federal Register**].

(ii) [The text of the proposed amendment to § 1.6038B–1(b)(1)(ii) is the same as the text of § 1.6038B–1T(b)(1)(ii) published elsewhere in this issue of the **Federal Register**].

* * * * *

PART 301—PROCEDURE AND ADMINISTRATION

Par. 13. The authority citation for part 301 continues to read as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 14. Section 301.7701–3 is amended by revising paragraph (c)(1)(ii) to read as follows:

§ 301.7701–3 Classification of certain business entities.

* * * * *

(c) * * * (1) * * *

(ii) [The text of the proposed amendment to § 301.7701–3 (c)(1)(ii) is the same as the text of § 301.7701–3T(c)(1)(ii) published elsewhere in this issue of the **Federal Register**].

* * * * *

Robert E. Wenzel,

Deputy Commissioner for Services and Enforcement.

[FR Doc. 03–31239 Filed 12–18–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 931

[SATS No. NM–043–FOR]

New Mexico Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Proposed rule; public comment period and opportunity for public hearing on proposed amendment.

SUMMARY: We are announcing receipt of a proposed amendment to the New Mexico regulatory program (hereinafter, the "New Mexico program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). New Mexico proposes revisions to and additions of rules about definitions of permit modification, permit revision, and temporary cessation of operations; permit fees; administrative review of decisions; review of permits; requirements for permit modifications; public hearings for permit modifications; and additional requirements for temporary cessation of operations. New Mexico intends to revise its program to clarify ambiguities, provide additional safeguards, and improve operational efficiency.

This document gives the times and locations that the New Mexico program and proposed amendment to that program are available for your inspection, the comment period during

which you may submit written comments on the amendment, and the procedures that we will follow for the public hearing, if one is requested.

DATES: We will accept written comments on this amendment until 4 p.m., m.d.t. January 20, 2004. If requested, we will hold a public hearing on the amendment on January 13, 2004. We will accept requests to speak until 4 p.m., m.d.t. on January 5, 2004.

ADDRESSES: You should mail or hand deliver written comments and requests to speak at the hearing to Willis Gainier at the address listed below.

You may review copies of the New Mexico program, this amendment, a listing of any scheduled public hearings, and all written comments received in response to this document at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. You may receive one free copy of the amendment by contacting Office of Surface Mining Reclamation and Enforcement (OSM's) Albuquerque Field Office.

Willis Gainer, Chief, Albuquerque Field Office, Office of Surface Mining Reclamation and Enforcement, 505 Marquette Ave., NW., Suite 1200, Albuquerque, NM 87102, Telephone: (505) 248–5096, Internet address: *wgainer@osmre.gov*.

Bill Brancard, Director, Mining and Minerals Division, Energy, Minerals and Natural Resources Department, 1220 South St. Francis Drive, Santa Fe, NM 87505, Telephone: (505) 476–3400.

FOR FURTHER INFORMATION CONTACT: Willis L. Gainer Telephone: 505–248–5096. Internet address: *wgainer@osmre.gov*.

SUPPLEMENTARY INFORMATION:

I. Background on the New Mexico Program
II. Description of the Proposed Amendment
III. Public Comment Procedures
IV. Procedural Determinations

I. Background on the New Mexico Program

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its State program includes, among other things, "a State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of this Act . . .; and rules and regulations consistent with regulations issued by the Secretary pursuant to this Act." See 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the New Mexico program on December 31, 1980. You can find background information on the New Mexico program, including the Secretary's findings, the disposition of comments, and the conditions of approval of the New Mexico program in the December 31, 1980, **Federal Register** (45 FR 86459). You can also find later actions concerning New Mexico's program and program amendments at 30 CFR 931.11, 931.15 and 931.30.

II. Description of the Proposed Amendment

By letter dated October 27, 2003, New Mexico sent us a proposed amendment to its program (administrative record No. 869) under SMCRA (30 U.S.C. 1201 *et seq.*). New Mexico sent the amendment to include the changes made at its own initiative. The full text of the program amendment is available for you to read at the locations listed above under **ADDRESSES.**

New Mexico proposes non-substantive editorial revisions at 19.8.13.1301.A(4) and E(1) New Mexico Annotated Code (NMAC) concerning permit revisions and hearing and notice requirements. New Mexico also proposes the following substantive revisions at:

19.8.1.7.P NMAC by adding definitions at, respectively, 19.8.1.7.P(8) and (9) NMAC, of "permit modification" to mean an alteration of the terms or requirements of a permit, which alteration is not a permit revision, and "permit revision" to mean a significant alteration of the terms or requirements of a permit, as identified in 19.8.13.1301.A NMAC;

19.8.1.7.T NMAC by adding a definition of "temporary cessation of operations" at 19.8.1.7.T(2) NMAC to mean the cessation of mining or reclamation operations for more than thirty days and where a reasonable expectation of the continuation of mining can be demonstrated by the permittee;

19.8.5.506.A, B, D, E, F, and G NMAC, concerning permit and exploration fees, to, respectively, (1) increase the original permit filing fee to $2,500 plus $25 per acre for estimated area to be disturbed during the first year of mining, (2) commencing the second year to increase the annual permit fee to $2,500 with an acreage fee of $25 per acre of disturbed permit area for which the bond has not been released, provided that $15,000 per year acreage fee is the maximum charge per year for all disturbance and cap the maximum annual fee at $17,500 and require that the annual fee be submitted with the annual report; (3) increase the fee for transferring a permit to $1000; (4) increase the fee for a revision that expands the size of the permit to $4000 plus $25 per acre for the estimated area to be disturbed during the first year of mining in the expansion area and to require a fee for all other permit revisions of $4000; (5) increase the fee for filing a notice of intention to explore to $100; and (6) increase the fee for filing an application for exploration of greater than 250 tons of coal;

19.8.12.1200.A NMAC, concerning administrative review of permit and exploration decisions, to (1) provide the permittee or any person with an interest which is or may be adversely affected by the decision regarding a permit modification an opportunity to request a hearing on the reasons for the final decision and (2) require that any request for a hearing on any permit and exploration decision be made in writing and state with reasonable specificity the reasons for the request and objection to the decision;

19.8.13.1300.B NMAC to clarify that, at any time, the Director of the New Mexico program may, by order, require reasonable revisions or modification of the approved permit;

19.8.13.1301.B, C, and E(2) NMAC to (1) clarify that the existing language at 19.8.13.1301.A NMAC defines when a permit revision is required and to require that a permit modification be obtained for all other changes to a permit not classified as a permit revision; (2) to state that the operator may not implement any permit revision or permit modification before obtaining the Director's written approval; and (3) state that (a) within 10 days after the filing of a complete application for a permit modification, the Director shall issue a decision approving or denying the application in whole or in part and promptly provide a written copy of the decision to the permittee and other interested parties and (b) within 30 days after the decision notification, the permittee or any person may request a formal hearing in regard to the Director's decision, in accordance with 19.8.12.1200 NMAC; and

19.8.20.2073 NMAC, concerning temporary cessation of operations, by adding new C, D, E, and F, to state (1) at the Director's discretion, the permittee may be directed to take other reasonable actions consistent with 19.8 NMAC to ensure the protection of public safety and the environment while the operation is under temporary cessation; (2) that no temporary cessation of mining and reclamation operations shall extend beyond the current permit term, unless the Director approves an extension of the temporary cessation during the permit renewal process conducted in accordance with 19.8.13 NMAC; (3) that to continue under a temporary cessation beyond an existing permit term, the permittee must demonstrate that the mining operation has a reasonable expectation of continuing operations; and (4) that a temporary cessation may not be used to justify a lengthy delay to final reclamation or to preserve facilities beyond what may be considered appropriate for their use in association with an existing permit.

III. Public Comment Procedures

Under the provisions of 30 CFR 732.17(h), we are seeking your comments on whether the amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If we approve the amendment, it will become part of the New Mexico program.

Written Comments

Send your written or electronic comments to OSM at the address given above. Your comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of your recommendations. We will not consider or respond to your comments when developing the final rule if they are received after the close of the comment period (see **DATES**). We will make every attempt to log all comments into the administrative record, but comments delivered to an address other than the Albuquerque Field Office may not be logged in.

Electronic Comments

Please submit Internet comments as an ASCII file avoiding the use of special characters and any form of encryption. Please also include "Attn: SATS No. NM–043–FOR," and your name and return address in your Internet message. If you do not receive a confirmation that we have received your Internet message, contact the Albuquerque Field Office at (505) 248–5091.

Availability of Comments

We will make comments, including names and addresses of respondents, available for public review during normal business hours. We will not consider anonymous comments. If individual respondents request confidentiality, we will honor their request to the extent allowable by law. Individual respondents who wish to withhold their name or address from public review, except for the city or town, must state this prominently at the beginning of their comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public review in their entirety.

Public Hearing

If you wish to speak at the public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4 p.m., m.s.t., on January 5, 2004. If you are disabled and need special accommodations to attend a public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT.** We will arrange the location and time of the hearing with those persons requesting the hearing. If no one requests an opportunity to speak, we will not hold the hearing.

To assist the transcriber and ensure an accurate record, we request, if possible, that each person who speaks at a public hearing provide us with a written copy of his or her comments. The public hearing will continue on the specified date until everyone scheduled to speak has been given an opportunity to be heard. If you are in the audience and have not been scheduled to speak and wish to do so, you will be allowed to speak after those who have been scheduled. We will end the hearing after everyone scheduled to speak and others present in the audience who wish to speak, have been heard.

Public Meeting

If only one person requests an opportunity to speak, we may hold a public meeting rather than a public hearing. If you wish to meet with us to discuss the amendment, please request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT.** All such meetings are open to the public and, if possible, we will post notices of meetings at the locations listed under **ADDRESSES.** We will make a written summary of each meeting a part of the administrative record.

IV. Procedural Determinations

Executive Order 12630—Takings

This rule does not have takings implications. This determination is based on the analysis performed for the counterpart federal regulation.

Executive Order 12866—Regulatory Planning and Review

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866.

Executive Order 12988—Civil Justice Reform

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments because each program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR parts 730, 731, and 732 have been met.

Executive Order 13132—Federalism

This rule does not have federalism implications. SMCRA delineates the roles of the Federal and State governments with regard to the regulation of surface coal mining and reclamation operations. One of the purposes of SMCRA is to "establish a nationwide program to protect society and the environment from the adverse effects of surface coal mining operations." Section 503(a)(1) of SMCRA requires that State laws regulating surface coal mining and reclamation operations be "in accordance with" the requirements of SMCRA, Section 503(a)(7) requires that state programs contain rules and regulations "consistent with" regulations issued by the Secretary pursuant to SMCRA.

Executive Order 13175—Consultation and Coordination With Indian Tribal Governments

In accordance with Executive Order 13175, we have evaluated the potential effects of this rule on Federally recognized Indian Tribes and have determined that the rule does not have substantial direct effects on one or more Indian Tribes, on the relationship between the Federal government and Indian Tribes, or on the distribution of power and responsibilities between the Federal government and Indian Tribes. The rule does not involve or affect Indian Tribes in any way.

Executive Order 13211—Regulations That Significantly Affect the Supply, Distribution, or Use of Energy

On May 18, 2001, the President issued Executive Order 13211 which requires agencies to prepare a Statement of Energy Effects for a rule that is (1)

considered significant under Executive Order 12866, and (2) likely to have a significant adverse effect on the supply, distribution, or use of energy. Because this rule is exempt from review under Executive Order 12866 and is not expected to have a significant adverse effect on the supply, distribution, or use of energy, a Statement of Energy Effects is not required.

National Environmental Policy Act

This rule does not require an environmental impact statement because section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule: (a) does not have an annual effect on the economy of $100 million; (b) will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and (c) does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. This determination is based upon the fact that the State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation was not considered a major rule.

Unfunded Mandates

This rule will not impose an unfunded mandate on State, local, or tribal governments or the private sector of $100 million or more in any given year. This determination is based upon the fact that the State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the federal regulation did not impose an unfunded mandate.

List of Subjects in 30 CFR Part 931

Intergovernmental relations, Surface mining, Underground mining.

Dated: November 21, 2003.

Allen D. Klein,

Regional Director, Western Regional Coordinating Center.

[FR Doc. 03–31343 Filed 12–18–03; 8:45 am]

BILLING CODE 4310–05–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[CARB–106–DELb; FRL–7600–6]

Delegation of National Emission Standards for Hazardous Air Pollutants for Source Categories; State of California

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to delegate to several California air pollution control agencies the authority to implement and enforce national emision standards for hazardous air pollutants as they apply to non-major sources.

DATES: Any comments on this proposal must arrive by January 20, 2004.

ADDRESSES: Send comments to Andrew Steckel, Rulemaking Office Chief (AIR–4), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901, or e-mail to *steckel.andrew@epa.gov*, or submit comments at *http://www.regulations.gov*. Copies of the requests for delegation and other supporting documentation are available for public inspection (docket number A–96–25) at the Region IX office during normal business hours by appointment. Copies are also available at: Air and Radiation Docket and Information Center (6102), U.S. Environmental Protection Agency, Ariel Rios Bldg, 1200 Pennsylvania Ave, NW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Mae Wang, EPA Region IX, (415) 947–4124, *wang.mae@epa.gov*.

SUPPLEMENTARY INFORMATION: Pursuant to section 112(l) of the 1990 Clean Air Act, EPA is proposing to delegate national emission standards for hazardous air pollutants as they apply to non-major sources to the following local air pollution control agencies in California: Antelope Valley Air Quality Management District, Butte County Air Quality Management District, Kern County Air Pollution Control District, Mendocino County Air Quality Management District, Mojave Desert Air Quality Management District, Monterey Bay Unified Air Pollution Control District, San Luis Obispo County Air Pollution Control District, Ventura County Air Pollution Control District, and Yolo-Solano Air Quality Management District. In the Rules and Regulations section of this **Federal Register**, we are approving these delegations in a direct final action without prior proposal because we believe these delegations are not controversial. If we receive adverse comments, however, we will publish a timely withdrawal of the direct final rule and address the comments in a subsequent action based on this proposed rule. Please note that if we receive adverse comments on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, we may adopt as final those provisions of the rule that are not the subject of an adverse comment.

We do not plan to open a second comment period, so anyone interested in commenting should do so at this time. If we do not receive adverse comments, no further activity is planned. For further information, please see the direct final action.

Dated: December 2, 2003.

Matt Haber,

Acting Director, Air Division, Region IX.

[FR Doc. 03–31349 Filed 12–18–03; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 03–3879; MB Docket No. 03–247, RM–10831]

Radio Broadcasting Services; Bald Knob and Greenbrier, AR

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document sets forth a proposal to amend the FM Table of Allotments, Section 73.202(b) of the Commission's rules, 47 CFR 73.202(b). The Commission requests comment on a petition filed by Caldwell Broadcasting, LLC, licensee of Station KKSY(FM), Channel 296C3, Bald Knob, Arkansas. Petitioner proposes to delete Channel 296C3 at Bald Knob, to allot Channel 296C3 at Greenbrier, Arkansas, and to modify the license of Station KKSY(FM) accordingly. Channel 296C3 can be allotted to Greenbrier in compliance with the Commission's minimum distance separation requirements with a site restriction of 8.8 km (5.5 miles) northeast of Greenbrier. The coordinates for Channel 296C3 at Greenbrier are 35–17–28 North Latitude and 92–19–14 West Longitude. *See* **SUPPLEMENTARY INFORMATION** *infra*.

DATES: Comments must be filed on or before January 30, 2004, and reply comments on or before February 17, 2004.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner as follows: Larry Crain, Managing Member, Caldwell Broadcasting, LLC, 425 West Capitol Avenue, Suite 1584, Little Rock, Arkansas 72201.

FOR FURTHER INFORMATION CONTACT: Deborah A. Dupont, Media Bureau (202) 418–7072.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MB Docket No. 03–247, adopted December 3, 2003 and released December 8, 2003. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Information Center (Room CY–A257), 445 12th Street, SW., Washington, DC The complete text of this decision may also be purchased from the Commission's copy contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, D.C. 20554, telephone (202)863–2893.

The Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding. Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. *See* 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, *see* 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR Part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Arkansas, is amended by removing Bald Knob, Channel 296C3, and by adding Greenbrier, Channel 296C3.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 03–31258 Filed 12–18–03; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 021212307–3037–02; I.D. 120303A]

Fisheries of the Exclusive Economic Zone off Alaska; Groundfish of the Bering Sea and Aleutian Islands Area

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Apportionment of reserve; request for comments.

SUMMARY: NMFS proposes to apportion amounts of the reserve to certain target species in the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to account for previous harvest of the total allowable catch (TAC). It is intended to promote the goals and objectives of the fishery management plan for the BSAI.

DATES: Comments must be received at the following address no later than 4:30 p.m., Alaska local time, January 2, 2004.

ADDRESSES: Comments must be mailed to Sue Salveson, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802–1668, Attn: Lori Durall. Comments also may be sent via facsimile (fax) to 907 586 7557. Comments will not be accepted if submitted via e-mail or Internet. Courier or hand delivery of comments may be made to NMFS in the Federal Building, Room 453, Juneau, AK 99801.

FOR FURTHER INFORMATION CONTACT: Josh Keaton, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the BSAI according to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The Administrator, Alaska Region, NMFS, has determined that the initial TACs specified in the final 2003 harvest specifications (68 FR 9907, March 3, 2003) for Greenland turbot in the Bering Sea subarea and arrowtooth flounder, yellowfin sole and Alaska plaice in the BSAI need to be supplemented from the non-specified reserve in order to continue operations and account for prior harvest.

Therefore, in accordance with § 679.20(b)(3), NMFS proposes to apportion from the reserve to the TACs for the following species: Bering Sea subarea - 100 metric tons (mt) to Greenland turbot; BSAI - 3,000 mt to Arrowtooth flounder, 3,500 mt to yellowfin sole, Alaska plaice - 750 mt. These proposed apportionments are consistent with § 679.20(b)(1)(ii) and do not result in overfishing of a target species because the revised TAC's are equal to or less than specifications of acceptable biological catch (68 FR 9907, March 3, 2003).

Classification

This action responds to the best available information recently obtained

from the fishery. The Assistant Administrator for Fisheries, NOAA, (AA) finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) and 679.20 (b)(3)(iii)(A) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent the agency from responding to the most recent fisheries data in a timely fashion and would delay the apportionment of the reserves to the affected, ongoing fisheries, thus preventing full utilization of the TAC and reducing the public's ability to use and enjoy the fishery resource. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of November 13, 2003.

The AA also finds good cause to waive the 30–day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment. Under § 679.20(b)(3)(iii), interested persons are invited to submit written comments on this action to the above address until January 2, 2004.

This action is required by 50 CFR 679.20 and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801, *et seq.*

Dated: December 12, 2003.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 03–31340 Filed 12–18–03; 8:45 am]

BILLING CODE 3510–22–S

Notices

Federal Register

Vol. 68, No. 244

Friday, December 19, 2003

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 03–110–1]

Saltcedar; Availability of an Environmental Assessment

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of availability and request for comments.

SUMMARY: We are advising the public that the Animal and Plant Health Inspection Service has prepared a draft environmental assessment relative to the control of saltcedar (*Tamarix* spp.). The draft environmental assessment considers the effects of, and alternatives to, the release of a nonindigenous leaf beetle, *Diorhabda elongata*, into the environment to reduce the severity of saltcedar infestations in 14 western States. We are making the draft environmental assessment available to the public for review and comment.

DATES: We will consider all comments that we receive on or before January 20, 2004.

ADDRESSES: You may submit comments by postal mail/commercial delivery or by e-mail. If you use postal mail/commercial delivery, please send four copies of your comment (an original and three copies) to: Docket No. 03–110–1, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 03–110–1. If you use e-mail, address your comment to *regulations@aphis.usda.gov*. Your comment must be contained in the body of your message; do not send attached files. Please include your name and address in your message and "Docket No. 03–110–1" on the subject line.

You may read any comments that we receive on the environmental assessment in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS dockets, are available on the Internet at *http://www.aphis.usda.gov/ppd/rad/webrepor.html*.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Richard, Western Region Program Manager, PPQ, APHIS, 2150 Centre Avenue Building B, Fort Collins, CO 80526–8117; (970) 494–7565.

SUPPLEMENTARY INFORMATION:

Background

Saltcedar (*Tamarix* spp.), also known as tamarisk, is a dense, deciduous shrub or small tree, indigenous to Asia, with the potential to significantly affect native vegetation throughout much of the United States. Saltcedars have long tap roots that allow them to access deep water tables and interfere with natural aquatic systems. The saltcedar is an aggressive colonizer, disrupting native plant communities and degrading native wildlife habitat by replacing native plant species, monopolizing limited water sources, and increasing the frequency, intensity and effect of fires and floods.

A single mature saltcedar may produce hundreds of thousands of seeds between April and October. The seeds are then dispersed by wind and water throughout the growing season, germinating within 24 hours of moistening. Seedlings are tolerant of water, saline soils, and drought and may grow by as much as a foot a month.

Saltcedar was first introduced into the United States from Asia in the early 1800s. The plant has been used for windbreaks, as ornamentals, and for erosion control. By 1850, saltcedar had infested river systems and drainages in the southwest. By 1938, infestations were found from Florida to California and as far north as Idaho. Saltcedar continues to spread rapidly and currently infests water drainages and areas throughout the United States, including the following western States: Colorado, North Dakota, South Dakota, Iowa, Nebraska, Nevada, Kansas, Missouri, Montana, Idaho, Oregon, Washington, Utah, and Wyoming.

As a result of rising infestation levels, the Animal and Plant Health Inspection Service has prepared a draft environmental assessment (EA) relative to the environmental release of the nonindigenous saltcedar leaf beetle (*Diorhabda elongata*) into the 14 western States listed above in order to reduce the severity and extent of saltcedar infestation in those areas.

The saltcedar leaf beetle is native to the Mediterranean region and central and middle Asia. All stages of saltcedar leaf beetle larvae feed on saltcedar foliage. As adults, the beetles continue to feed on saltcedar foliage. Saltcedar leaf beetles have been known to completely defoliate large areas of saltcedar. Release of this insect into the environment is expected to produce a gradual reduction in the size of saltcedar plants and in foliage cover and density of saltcedar stands.

APHIS' review and analysis of the proposed action and its alternatives are documented in detail in a draft EA entitled, "Proposed Program for Control of Saltcedar (*Tamarix* spp.) in Fourteen States" (November 2003). We are making the draft EA available to the public for review and comment. We will consider all comments that we receive on or before the date listed under the heading **DATES** at the beginning of this notice.

The draft EA may be viewed on the Internet at *http://www.aphis.usda.gov/ppd/es/ppqdocs.html*. You may request paper copies of the draft EA by calling or writing to the person listed under **FOR FURTHER INFORMATION CONTACT**. Please refer to the title of the draft EA when requesting copies. The draft EA is also available for review in our reading room (information on the location and hours of the reading room is listed under the heading **ADDRESSES** at the beginning of this notice).

The draft EA has been prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*), (2) regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508), (3)

USDA regulations implementing NEPA (7 CFR part 1), and (4) APHIS" NEPA Implementing Procedures (7 CFR part 372).

Done in Washington, DC, this 15th day of December 2003.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 03–31311 Filed 12–18–03; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Forest Service

Availability of Appealable Decisions

AGENCY: Forest Service, USDA.

ACTION: Notice—Availability of appealable decisions; legal notice for availability for comment of decisions that may be appealable under 36 CFR part 215.

SUMMARY: Responsible Officials in the Southwestern Region will publish notices of availability for comment and notices of decisions that may be subject to administrative appeal under 36 CFR part 215. These notices will be published in the legal notice section of the newspapers listed in the Supplementary Information section of this notice. As provided in 36 CFR 215.5, 215.6, and 215.7, such notice shall constitute legal evidence that the agency has given timely and constructive notice for comment and notice of decisions that may be subject to administrative appeal. Newspaper publication of notices of decisions is in addition to direct notice to those who have requested notice in writing and to those known to be interested in or affected by a specific decision.

DATES: Use of these newspapers for the purpose of publishing legal notices for comment and decisions that may be subject to appeal under 36 CFR part 215 shall begin December 19, 2003 and continue until further notice.

ADDRESSES: Southwestern Region, ATTN: Regional Appeals Coordinator, 333 Broadway SE, Albuquerque, NM 87102–3498.

FOR FURTHER INFORMATION CONTACT: Christina Gonzalez, 505–842–3219.

SUPPLEMENTARY INFORMATION: Responsible Officials in the Southwestern Region will give legal notice of decisions that may be subject to appeal under 36 CFR part 215 in the following newspapers which are listed by Forest Service administrative unit. Where more than one newspaper is listed for any unit, the first newspaper listed is the primary newspaper which shall be used to constitute legal evidence that the agency has given timely and constructive notice for comment and for decisions that may be subject to administrative appeal. As provided in 36 CFR 215.15, the time frame for appeal shall be based on the date of publication of a notice for decision in the primary newspaper.

Notice by Regional Forester of Availability for Comment and Decisions affecting New Mexico Forests: "Albuquerque Journal", published daily in Albuquerque, Bernalillo County, New Mexico, for comment and decisions affecting National Forest System Lands in the State of New Mexico and for any decisions of Region-wide impact.

Notice by Regional Forester of Availability for Comment and Decisions affecting Arizona Forests: "The Arizona Republic" published daily in Phoenix, Maricopa County, Arizona, for comment and decisions affecting National Forest System lands in the State of Arizona and for any decisions of Region-wide impact.

Notice by Regional Forester of Availability for Comment and Decisions affecting National Grasslands in New Mexico, Oklahoma, and Texas: Kiowa National Grassland in Colfax, Harding, Mora and Union Counties, New Mexico: "Union County Leader", published weekly on Wednesday in Clayton, Union County, New Mexico. Rita Blanca National Grassland in Cimarron County, Oklahoma: "Boise City News", published weekly on Wednesday in Boise City, Cimarron County, Oklahoma. Rita Blanca National Grassland in Dallam County, Texas: "The Dalhart Texan", published on Tuesday and Saturday in Dalhart, Dallam County, Texas. Black Kettle National Grassland in Roger Mills County, Oklahoma: "Cheyenne Star", published weekly on Thursday in Cheyenne, Roger Mills County, Oklahoma. Black Kettle National Grassland in Hemphill County, Texas: "The Canadian Record", published weekly on Thursday in Canadian, Hemphill County, Texas. McClellan Creek National Grassland in Gray County, Texas: "The Pampa News", published daily in Pampa, Gray County, Texas.

Arizona National Forests

Apache-Sitgreaves National Forests

Notice by Forest Supervisor of Availability for Comment and Decisions: "The White Mountain Independent", published Tuesday and Friday in Show Low and Navajo County, Arizona.

Notice by District Ranger of Availability for Comment and Decisions: Alpine District: "The White Mountain Independent", published Tuesday and Friday in Show Low and Navajo County, Arizona. Black Mesa District: "The White Mountain Independent", published Tuesday and Friday in Show Low and Navajo County, Arizona. Clifton District: "Copper Era", published weekly on Wednesday in Clifton, Greenlee County, Arizona. Lakeside District: "The White Mountain Independent", published Tuesday and Friday in Show Low and Navajo County, Arizona. Springerville District: "The White Mountain Independent", published Tuesday and Friday in Show Low and Navajo County, Arizona.

Coconino National Forest

Notice by Forest Supervisor of Availability for Comment and Decisions: "Arizona Daily Sun", published daily, in Flagstaff, Coconino County, Arizona.

Notice by District Ranger of Availability for Comment and Decisions: Mogollon District: "Arizona Daily Sun", published daily, in Flagstaff, Coconino County, Arizona. Peaks District: "Arizona Daily Sun", published daily in Flagstaff, Coconino County, Arizona. Red Rock District: "Red Rock News", published Wednesday and Friday in Sedona, Coconino County, Arizona.

Coronado National Forest

Notice by Forest Supervisor of Availability for Comment and Decisions: "The Arizona Daily Star", published daily, in Tucson, Pima County, Arizona.

Notice by District Ranger of Availability for Comment and Decisions: Douglas District: "Daily Dispatch", published Tuesday–Saturday, and Sunday in Douglas, Cochise County, Arizona. Nogales District: "Nogales International", published on Tuesday and Friday in Nogales, Santa Cruz County, Arizona. Sierra Vista District: "Sierra Vista Herald", published Sunday–Friday, in Sierra Vista, Cochise County, Arizona. Safford District: "Eastern Arizona Courier", published weekly on Wednesday, in Safford, Graham County, Arizona. Santa Catalina District: "The Arizona Daily Star", published daily, in Tucson, Pima County, Arizona.

Kaibab National Forest

Notice by Forest Supervisor of Availability for Comment and Decisions: "Arizona Daily Sun", published daily, in Flagstaff, Coconino County, Arizona.

Notice by District Ranger of availability for Comment and Decisions: North Kaibab District: "Arizona Daily Sun", published daily, in Flagstaff, Coconino County, Arizona. Tusayan District: "Arizona Daily Sun" published daily, in Flagstaff, Coconino County, Arizona. Williams District: "Arizona Daily Sun", published daily, in Flagstaff, Coconino County, Arizona

Prescott National Forest

Notice by Forest Supervisor of Availability for Comment and Decisions: "Prescott Courier", published daily in Prescott, Yavapai County, Arizona.

Notice by Forest Supervisor of Availability for Comment and Decisions: Bradshaw District "Prescott Courier", published daily in Prescott Yavapai County, Arizona. Chino Valley District: "Prescott Courier" published daily in Prescott, Yavapai County, Arizona. Chino Valley District: "Prescott Courier", published daily in Prescott, Yavapai County, Arizona. Verde District: "Prescott Courier", published daily in Prescott, Yavapai County, Arizona:

Tonto National Forest

Notice by Forest Supervisor of Availability for Comment and Decisions: "East Valley Tribune" and "Scottsdale Tribune", published daily in Mesa, Maricopa County, Arizona.

Notice by District Ranger of Availability for Comment and Decisions: Cave Creek District: "Scottsdale Tribune", published daily in Mesa, Maricopa County, Arizona. Globe District: "Arizona Silver Belt", published weekly on Wednesday in Globe, Gila County, Arizona. Mesa District: "East Valley Tribune", published daily in Mesa, Maricopa County, Arizona. Payson District: "Payson Roundup", published biweekly on Tuesday and Friday in Payson, Gila County, Arizona. Pleasant Valley District: "Payson Roundup", published biweekly on Tuesday and Friday in Payson, Gila County, Arizona. Tonto Basin District: "Payson Roundup", published biweekly on Tuesday and Friday in Payson, Gila County, Arizona.

New Mexico National Forests

Carson National Forest

Notice by Forest Supervisor of Availability for Comment and Decisions: "The Taos News", published weekly on Thursday in Taos, Taos County, New Mexico.

Notice by District Ranger of Availability for Comment and Decisions: Canjilon District: "Rio Grande Sun", published Wednesday in Espanola, Rio Arriba County, New Mexico. El Rito District: "Rio Grande Sun", published Wednesday in Espanola, Rio Arriba County, New Mexico, Jicarilla District: "Farmington Daily Times", published daily in Farmington, San Juan County, New Mexico. Camino Real District: "The Taos News", published weekly on Thursday in Taos, Taos County, New Mexico. Tres Piedras District: "The Taos News", published weekly on Thursday in Taos, Taos County, New Mexico. Questa District: "The Taos News", published weekly on Thursday in Taos, Taos County, New Mexico.

Cibola National Forest

Notice by Forest Supervisor of Availability for Comment and Decisions affecting lands in New Mexico, except the National Grasslands: "Albuquerque Journal", published daily in Albuquerque, Bernalillo County, New Mexico.

Notice by Forest Supervisor of Availability for Comment and Decisions affecting National Grasslands in New Mexico, Oklahoma and Texas: Kiowa National Grassland in Colfax, Harding, Mora and Union Counties, New Mexico: "Union County Leader", published weekly on Wednesday in Clayton, Union County, New Mexico. Rita Blanca National Grassland in Cimarron County, Oklahoma: "Boise City News", published weekly on Wednesday in Boise City, Cimarron County, Oklahoma. Rita Blanca National Grassland in Dallam County, Texas: "The Dalhart Texan", published on Tuesday and Saturday in Dalhart, Dallam County, Texas. Black Kettle National Grassland, in Roger Mills County, Oklahoma: "Cheyenne Star", published weekly on Thursday in Cheyenne, Roger Mills County, Oklahoma. Black Kettle National Grassland, in Hemphill County, Texas: "The Canadian Record", published weekly on Thursday in Canadian, Hemphill County, Texas. McClellan Creek National Grassland, in Gray County, Texas: "The Pampa News", published daily in Pampa, Gray County, Texas.

Notice by District Ranger of Availability for Comment and Decisions: Mt. Taylor District: "Cibola County Beacon", published on Tuesday and Friday in Grants, Cibola County, New Mexico. Magdalena District: "Defensor-Chieftain", published Wednesday and Saturday in Socorro, Socorro County, New Mexico. Mountainair District: "Mountainview Telegraph", published weekly on Thursday in Tijeras, Bernalillo County, New Mexico. Sandia District: "Albuquerque Journal", published daily in Albuquerque, Bernalillo County, New Mexico. Kiowa National Grassland: "Union County Leader", published weekly on Wednesday in Clayton, Union County, New Mexico. Rita Blanca National Grassland: "Boise City News", published weekly on Wednesday in Boise City, Cimarron County, Oklahoma. Rita Blanca National Grassland in Dallam County, Texas: "Dalhart Texan", published on Tuesday and Saturday in Dalhart, Dallam County, Texas. Black Kettle National Grassland: "Cheyenne Star", published weekly on Thursday in Cheyenne, Roger Mills County, Oklahoma. Black Kettle National Grassland: "The Canadian Record", published weekly on Thursday in Canadian, Hemphill County, Texas. McClellan Creek National Grassland: "The Pampa News", published daily in Pampa Gray County, Texas.

Gila National Forest

Notice by Forest Supervisor of Availability for Comment and Decisions: "Silver City Daily Press", published Monday–Saturday in Silver City, Grant County, New Mexico.

Notice by District Ranger of Availability for Comment and Decision: Black Range District: "The Herald", published on Tuesday, in Truth or Consequences, Sierra County, New Mexico. Quemado District: "Silver City Daily Press", published Monday–Saturday in Silver City, Grant County, New Mexico. Reserve District: "Silver City Daily Press", published Monday-Saturday in Silver City, Grant County, New Mexico. Glenwood District: "Silver City Daily Press", published Monday-Saturday in Silver City, Grant County, New Mexico. Silver City District: "Silver City Daily Press", published Monday-Saturday in Silver City, Grant County, New Mexico. Wilderness District: "Silver City Daily Press", published Monday-Saturday in Silver City, Grant County, New Mexico.

Lincoln National Forest

Notice by Forest Supervisor of Availability for Comment and Decisions: "Alamogordo Daily News", published daily in Alamogordo, Otero County, New Mexico.

Notice by District Ranger of Availability for Comment and Decisions: Sacramento District: "Alamogordo Daily News", published daily in Alamogordo, Otero County, New Mexico. Guadalupe District: "Carlsbad Current Argus", published daily except Saturday, in Carlsbad, Eddy County, New Mexico. Smokey

Bear District: "Ruidoso News", published Wednesday and Friday in Ruidoso, Lincoln County, New Mexico.

Santa Fe National Forest

Notice by Forest Supervisor of Availability Comment and Decisions: "Albuquerque Journal", published daily in Albuquerque, Bernalillo County, New Mexico.

Notice by District Ranger of Availability for Comment and Decisions: Coyote District: "Albuquerque Journal", published daily in Albuquerque, Bernalillo County, New Mexico. Cuba District: "Albuquerque Journal", published daily in Albuquerque, Bernalillo County, New Mexico. Espanola District: "Albuquerque Journal", published daily in Albuquerque, Bernalillo County, New Mexico. Jemez District: "Albuquerque Journal", published daily in Albuquerque, Bernalillo County, New Mexico. Pecos-Las Vegas District: "Albuquerque Journal", published daily in Albuquerque, Bernalillo County, New Mexico.

Dated: December 8, 2003.

Abel Camarena,

Deputy Regional Forester, Southwestern Region.

[FR Doc. 03–31356 Filed 12–18–03; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

National Urban and Community Forestry Advisory Council

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The National Urban and Community Forestry Advisory Council will meet in Washington, DC, February 26–28, 2004. The purpose of the meeting is to discuss emerging issues in urban and community forestry.

DATES: The meeting will be held February 26–28, 2004.

ADDRESSES: The meeting will be held at the Hotel Monaco, 700 F Street, NW, Washington, DC. Individuals who wish to speak at the meeting or to propose agenda items must send their names and proposals to Suzanne M. del Villar, Executive Assistant, National Urban and Community Forestry Advisory Council, P.O. Box 1003, Sugarloaf, CA 92386–1003. Individuals may fax their names and proposed agenda items to (909) 585–9527.

FOR FURTHER INFORMATION CONTACT: Suzanne M. del Villar, Urban and Community Forestry Staff, (909) 585–9268.

SUPPLEMENTARY INFORMATION: The meeting is open to the public. Council discussion is limited to Forest Service staff and Council members; however, persons who wish to bring urban and community forestry matters to the attention of the Council may file written statements with the Council staff before or after the meeting. Public input sessions will be provided.

Dated: December 15, 2003.

Joel D. Holtrop,

Deputy Chief, State and Private Forestry.

[FR Doc. 03–31316 Filed 12–18–03; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

Shasta County Resource Advisory Committee (RAC)

AGENCY: USDA Forest Service.

ACTION: Notice of meeting.

SUMMARY: The Shasta County Resource Advisory Committee (RAC) will meet on the following dates in Redding, California. The purpose of the meeting will be to discuss committee actions and to review projects to nominate for approval consideration.

DATES: The meeting will be from 8 a.m. to noon on:

- January 7, 2004
- February 4, 2004
- March 3, 2004
- April 7, 2004
- May 5, 2004
- June 2, 2004
- July 7, 2004
- August 4, 2004
- September 1, 2004
- October 6, 2004
- November 3, 2004
- December 1, 2004

ADDRESSES: The meeting will be held at USDA Service Center, 3644 Avtech Parkway.

FOR FURTHER INFORMATION CONTACT: Kevin McIver, coordinator, USDA Forest Service, (530) 226–2595 or (530) 226–2500. E-mail: *kmciver@fs.fed.us.*

SUPPLEMENTARY INFORMATION: The meeting is open to the public. Discussion is limited to Forest Service staff and committee members. However, time may be provided for public input, giving individuals the opportunity to address the committee.

Dated: December 8, 2003.

J. Sharon Heywood,

Forest Supervisor.

[FR Doc. 03–31274 Filed 12–18–03; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Del Norte County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Del Norte County Resource Advisory Committee (RAC) will meet on January 6, 2004, in Crescent City, California. The purpose of the meeting is to discuss the selection of title II projects under Pub. L. 106–393, H.R. 2389, the Secure Rural Schools and Community Self-Determination Act of 2000, also called the "Payments to States" Act.

DATES: The meeting will be held on January 6, 2004, from 6 to 8:30 p.m.

ADDRESSES: The meeting will be held at the Del Norte County Unified School District Board Room, 301 West Washington Boulevard, Crescent City, California.

FOR FURTHER INFORMATION CONTACT: Laura Chapman, Committee Coordinator, USDA, Six Rivers National Forest, 1330 Bayshore Way, Eureka, CA 95501. Phone: (707) 441–3549. E-mail: *lchapman@fs.fed.us.*

SUPPLEMENTARY INFORMATION: The committee will hear the status of Title II projects funded over the last two years. The meeting is open to the public. Public input opportunity will be provided and individuals will have the opportunity to address the committee at that time.

Dated: December 12, 2003.

William D. Metz,

Acting Forest Supervisor.

[FR Doc. 03–31275 Filed 12–18–03; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Revision of Timber Sale Contract Forms FS–2400–6 and FS–2400–6T

AGENCY: Forest Service, USDA.

ACTION: Notice; request for comment.

SUMMARY: The Forest Service is proposing to revise its timber sale contracts, Form FS–2400–6 for scaled sale procedures and Form FS–2400–6T for tree measurement timber sale procedures. These proposed revisions will be the first substantive changes in the standard timber sale contract provisions in over 30 years. Contract provisions to implement laws and policies, formerly included as special provisions, are proposed to be consolidated into the standard provisions. A side-by-side comparison of the proposed revised contracts and the existing contracts is available as provided in the **ADDRESSES** section of this notice. Comments received will be considered when the Forest Service prepares the final timber sale contracts.

DATES: Comments must be received in writing on or before February 17, 2004.

ADDRESSES: Send written comments by mail to the Director of Forest and Rangeland Management, MAIL STOP 1105, Forest Service, USDA, 1400 Independence Avenue, SW., Washington, DC 20250–1105; via e-mail to *timbercontracts@fs.fed.us;* or via facsimile to (202) 205–1045. These proposed timber sale contract forms are available for public review on the Forest Service World Wide Web/Internet site at *http://www.fs.fed.us/forestmanagement/infocenter/newcontracts/index.shtml.* Alternatively, the contracts can be reviewed in the office of the Director of Forest and Rangeland Management, Third Floor, Northwest Wing, Yates Building, 201 14th Street, SW., Washington, DC. All comments received in response to this notice, including names and addresses when provided, will become a matter of public record and are available for public inspection and copying. The public may inspect comments received at the same address where copies of the contracts can be reviewed. Visitors are encouraged to call ahead to (202) 205–0893 to facilitate entry into the building.

FOR FURTHER INFORMATION CONTACT: Rex Baumback, Forest and Rangeland Management Staff, (202) 205–0855.

SUPPLEMENTARY INFORMATION:

Background

Timber sale contract Forms FS–2400–6 and FS–2400–6T are used by the Forest Service for the sale of all large, complex timber sales. Timber sale contract Form FS–2400–6 is used when timber is measured for payment after it is harvested, and timber sale contract Form FS–2400–6T is used when the basis for payment is measurement prior to sale. These contracts were originally brought into use in July 1970 and January 1972, respectively, and were the result of extended discussions between the Federal Timber Purchasers Committee and the Forest Service. After 2 years, these contracts were revised in September 1973 and October 1973, respectively, to incorporate modifications based upon experience gained and policy changes since their inception.

From 1973 until July 2001, the requirements of new legislation and Forest Service policy were implemented in the contracts by issuing special provisions that replaced or added to the standard contract provisions. In July 2001, new versions of timber sale contract Forms FS–2400–6 and FS–2400–6T were issued. The July 2001 versions incorporated the special provisions that had been brought into use since 1973, but did not make any other changes that affect the rights and obligations of the Forest Service and timber sale purchasers.

Proposed Contract Revisions

The Forest Service is proposing to revise timber sale contract Forms FS–2400–6 and FS–2400–6T to:

1. Clarify the remedies available when contracts are suspended, modified, or terminated for environmental reasons.

2. Incorporate special provisions that are applicable to all timber sales into the standard contract provisions.

3. Correct inconsistencies and clarify ambiguous language that has accumulated by the addition of 30 years of special provisions to the timber sale contracts.

4. Make organizational and editorial changes intended to eliminate duplicative and unnecessary provisions.

5. Decrease the need in the existing contracts to make certain standard provisions inapplicable by replacing those provisions with the appropriate former special provisions.

6. Provide for liquidated damages when the Forest Service unilaterally terminates or partially terminates a timber sale contract.

7. Provide for a rate redetermination after a specified time when the Forest Service orders the delay or interruption of operations for specific reasons.

A side-by-side comparison of the specific differences between the existing contracts and the proposed revised contracts is available electronically and in paper copy as provided in the **ADDRESSES** section of this notice. Comments received will be considered when the Forest Service prepares the final timber sale contracts. When the timber sale contracts are finalized, a subsequent notice will be published in the **Federal Register**.

Dated: December 10, 2003.

Tom L. Thompson,

Acting Chief.

[FR Doc. 03–31315 Filed 12–18–03; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Rural Business-Cooperative Service

Notice of Request for Extension of a Currently Approved Information Collection

AGENCY: Rural Business-Cooperative Service, USDA.

ACTION: Proposed collection; comments requested.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Rural Business-Cooperative Service's intention to request an extension for a currently approved information collection in support of the program for 7 CFR part 4284, subpart G.

DATES: Comments on this notice must be received by February 17, 2004 to be assured of consideration.

FOR FURTHER INFORMATION CONTACT: Diane M. Berger, Loan Specialist, Rural Business-Cooperative Service, USDA, STOP 3225, 1400 Independence Ave., SW., Washington, DC 20250–3225, Telephone: (202) 720–2383.

SUPPLEMENTARY INFORMATION:

Title: Rural Business Opportunity Grants.

OMB Number: 0570–0024.

Expiration Date of Approval: June 30, 2004.

Type of Request: Extension of a currently approved information collection.

Abstract: The objective of the Rural Business Opportunity Grant (RBOG) program is to promote sustainable economic development in rural areas. This purpose is achieved through grants made by the Rural Business-Cooperative Service (RBS) to public and private non-profit organizations and cooperatives to pay costs of economic development planning and technical assistance for rural businesses. The regulations contain various requirements for information from the grant applicants and recipients. The information requested is necessary for RBS to be able to process applications in a responsible manner, make prudent program decisions, and effectively monitor the grantees' activities to ensure that funds obtained from the Government are used appropriately. Objectives include gathering information to identify the applicant, describe the applicant's

experience and expertise, describe the project and how the applicant will operate it, and other material necessary for prudent Agency decisions and reasonable program monitoring.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 5.97 hours per response.

Respondents: Non-profit corporations, public agencies, and cooperatives.

Estimated Number of Respondents: 210.

Estimated Number of Responses per Respondent: 13.8.

Estimated Number of Responses: 2895.

Estimated Total Annual Burden on Respondents: 17,290.

Copies of this information collection can be obtained from Cheryl Thompson, Regulations and Paperwork Management Branch, Support Services Division at (202) 692–0043.

Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of Rural Business-Cooperative Service, including whether the information will have practical utility; (b) the accuracy of Rural Business-Cooperative Service's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to Cheryl Thompson, Regulations and Paperwork Management Branch, Support Services Division, U.S. Department of Agriculture, STOP 0742, 1400 Independence Ave. SW., Washington, DC 20250–0742. All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Dated: December 10, 2003.

John Rosso,

Administrator, Rural Business-Cooperative Service.

[FR Doc. 03–31341 Filed 12–18–03; 8:45 am]

BILLING CODE 3410–XY–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Additions

AGENCY: Committee for Purchase from People Who Are Blind or Severely Disabled.

ACTION: Proposed Additions to Procurement List.

SUMMARY: The Committee is proposing to add to the Procurement List products and a service to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

Comments Must Be Received on or Before: January 18, 2004.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia, 22202–3259.

FOR FURTHER INFORMATION CONTACT: Sheryl D. Kennerly, (703) 603–7740.

SUPPLEMENTARY INFORMATION:

This notice is published pursuant to 41 U.S.C 47(a) (2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the proposed actions. If the Committee approves the proposed additions, the entities of the Federal Government identified in the notice for each product or service will be required to procure the products and service listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. If approved, the action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the products and service to the Government.

2. If approved, the action will result in authorizing small entities to furnish the products and service to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the products and service proposed for addition to the Procurement List. Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

End of Certification

The following products and service are proposed for addition to Procurement List for production by the nonprofit agencies listed:

Products:

Product/NSN: 1 1/2' Round Ring Vinyl Clad Binder
7510–00–NIB–0130—White
7510–00–NIB–0145—Blue
7510–00–NIB–0146—Red
7510–00–NIB–0147—Gray
7510–00–NIB–0148—Cinnamon
7510–00–NIB–0149—Brown
7510–00–NIB–0150—Green
7510–00–NIB–0151—Jade
NPA: South Texas Lighthouse for the Blind, Corpus Christi, Texas.
Contract Activity: Office Supplies & Paper Products Acquisition Center, New York, New York.
Product/NSN: Double Pocket Presentation Folder
7530–00–NIB–0698—Black
NPA: L.C. Industries For The Blind, Inc., Durham, North Carolina.
Contract Activity: Office Supplies & Paper Products Acquisition Center, New York, New York.
Product/NSN: Four Month Planner
7520–00–NIB–1689
NPA: The Lighthouse for the Blind, Inc. (Seattle Lighthouse), Seattle, Washington.
Contract Activity: Office Supplies & Paper Products Acquisition Center, New York, New York.
Product/NSN: Ranger Load Carrying System (RLCS)
8470–00–NSH–0018—Chest Harness Adapter (Individual Component)
8415–00–NSH–1129—Ranger Load Carrying System
8415–00–NSH–1130—Individual RLCS Kit
8415–00–NSH–1131—Rifle Squad RLCS Kit
8415–00–NSH–1132—Weapons Squad RLCS Kit
8415–00–NSH–1133—Sniper RLCS Kit
8415–00–NSH–1134—Medic RLCS Kit
8415–00–NSH–1135—Regimental Recon Detachment RLCS Kit
8415–00–NSH–1136—Radio Pocket (Individual Component)
8415–00–NSH–1137—War Belt Suspender (Individual Component)
8415–00–NSH–1138—Horizontal Pouch Adapter (Individual Component)
8415–00–NSH–1139—Squad Casualty Bag (Individual Component)
8415–00–NSH–1140—RLCS Kit Bag (Individual Component)
8415–00–NSH–1141—Sub Belt Holster Adapter (Individual Component)
NPA: Chautauqua County Chapter, NYSARC, Jamestown, New York.
Contract Activity: U.S. Army Robert Morris Acquisition Center, Natick, Massachusetts.

Services:

Service Type/Location: Grounds Maintenance Navy & Marine Corps Reserve Center 3144 Clement Avenue, Alameda, California.
NPA: Rubicon Programs, Inc., Richmond, California.
Contract Activity: Naval Facilities Engineering Command, Alameda, California.

Sheryl D. Kennerly,

Director, Information Management.

[FR Doc. 03–31382 Filed 12–18–03; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List Additions

AGENCY: Committee for Purchase from People Who Are Blind or Severely Disabled.

ACTION: Additions to Procurement List.

SUMMARY: This action adds to the Procurement List services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

EFFECTIVE DATE: January 18, 2004.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia, 22202–3259.

FOR FURTHER INFORMATION CONTACT: Sheryl D. Kennerly, (703) 603–7740.

SUPPLEMENTARY INFORMATION:

On October 24, 2003, the Committee for Purchase From People Who Are Blind or Severely Disabled published notice (68 FR 60908) of proposed additions to the Procurement List. After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the services and impact of the additions on the current or most recent contractors, the Committee has determined that the services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the services to the Government.

2. The action will result in authorizing small entities to furnish the services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the services proposed for addition to the Procurement List.

End of Certification

Accordingly, the following services are added to the Procurement List:

Services

Service Type/Location: Custodial Services, Marine Corps Air Station, Camp Lejeune, North Carolina.
NPA: Coastal Enterprises of Jacksonville, Inc., Jacksonville, North Carolina.
Contract Activity: Naval Facilities Engineering Command, Camp Lejeune, North Carolina.
Service Type/Location: Mail and Messenger Service, Tobyhanna Army Depot, Tobyhanna, Pennsylvania.
NPA: The Burnley Workshop of the Poconos, Inc., Stroudsburg, Pennsylvania.
Contract Activity: Tobyhanna Army Depot, Tobyhanna, Pennsylvania.

This action does not affect current contracts awarded prior to the effective date of this addition or options that may be exercised under those contracts.

Sheryl D. Kennerly,

Director, Information Management.

[FR Doc. 03–31383 Filed 12–18–03; 8:45 am]

BILLING CODE 6353–01–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A-570–892, A-533–838]

Notice of Initiation of Antidumping Duty Investigations: Carbazole Violet Pigment 23 from India and the People's Republic of China

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Initiation of Antidumping Duty Investigations.

EFFECTIVE DATE: December 19, 2003.

FOR FURTHER INFORMATION CONTACT: David Layton at (202) 482–0371 or Chris Welty at (202) 482–0186, AD/CVD Enforcement Office 5, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

INITIATION OF INVESTIGATIONS:

The Petition

On November 21, 2003, the U.S. Department of Commerce (the Department) received a petition filed in proper form by Sun Chemical Corporation (Sun) and Nation Ford Chemical Company (collectively, the petitioners). The Department received supplemental information from the petitioners on December 4, 2003.

In accordance with section 732(b)(1) of the Tariff Act of 1930, as amended (the Act), the petitioners allege that imports of carbazole violet pigment 23 (CVP-23) from India and the People's Republic of China (PRC) are, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Act, and that imports from India and the PRC are materially injuring, or are threatening to materially injure, an industry in the United States.

The Department finds that the petitioners filed the petition on behalf of the domestic industry because they are interested parties as defined in section 771(9)(C) of the Act and they have demonstrated sufficient industry support with respect to each of the antidumping investigations that they are requesting the Department to initiate. *See infra*, "Determination of Industry Support for the Petition."

Periods of Investigation

The anticipated period of investigation (POI) for India is October 1, 2002, through September 30, 2003, and for the PRC it is April 1, 2003, through September 30, 2003. *See* section 351.204(b)(1) of the Department's regulations (*Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296, 27385 (May 19, 1997)).

Scope of Investigations

The merchandise covered by these investigations is carbazole violet 23 identified as Color Index No. 51319 and Chemical Abstract No. 6358–30–1, with the chemical name of *diindolo [3,2-b:3',2'-m]triphenodioxazine, 8,18-*

dichloro-5. 15 5,15-diethy-5,15-dihydro-, and molecular formula of $C_{34}H_{22}Cl_2N_4O_2$.[1] The subject merchandise includes the crude pigment in any form (*e.g.*, dry powder, paste, wet cake) and finished pigment in the form of presscake and dry color. Pigment dispersions in any form (*e.g.* pigments dispersed in oleoresins, flammable solvents, water) are not included within the scope of the investigations.

The merchandise subject to these investigations is classifiable under subheading 3204.17.9040 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise under investigation is dispositive.

During our review of the petition, we discussed the scope with the petitioners to ensure that it is an accurate reflection of the products for which the domestic industry is seeking relief. As discussed in the preamble to the Department's regulations (*Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296, 27323 (May 19, 1997)), we are setting aside a period for parties to raise issues regarding product coverage. The Department encourages all parties to submit such comments within 20 calendar days of publication of this notice. Comments should be addressed to Import Administration's Central Records Unit, Room 1870, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230. The period of scope consultations is intended to provide the Department with ample opportunity to consider all comments and consult with parties prior to the issuance of the preliminary determinations.

Determination of Industry Support for the Petition

Section 732(b)(1) of the Act requires that a petition be filed on behalf of the domestic industry. Section 732(c)(4)(A) of the Act provides that the Department's industry support determination, which is to be made before the initiation of the investigation, be based on whether a minimum percentage of the relevant industry supports the petition. A petition satisfies this requirement if the domestic producers or workers who support the petition account for: (1) At least 25 percent of the total production of the domestic like product; and (2) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition. Moreover, section 732(c)(4)(D) of the Act provides that, if the petition does not establish support of domestic producers or workers accounting for more than 50 percent of the total production of the domestic like product, the Department shall either poll the industry or rely on other information in order to determine if there is support for the petition.

Section 771(4)(A) of the Act defines the "industry" as the producers of a domestic like product. Thus, to determine whether a petition has the requisite industry support, the statute directs the Department to look to producers and workers who produce the domestic like product. The U.S. International Trade Commission (ITC), which is responsible for determining whether "the domestic industry" has been injured, must also determine what constitutes a domestic like product in order to define the industry. While both the Department and the ITC must apply the same statutory definition regarding the domestic like product (section 771(10) of the Act), they do so for different purposes and pursuant to separate and distinct authority. In addition, the Department's determination is subject to limitations of time and information. Although this may result in different definitions of the like product, such differences do not render the decision of either agency contrary to the law.[2]

Section 771(10) of the Act defines the domestic like product as "a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this title." Thus, the reference point from which the domestic like product analysis begins is "the article subject to an investigation," *i.e.*, the class or kind of merchandise to be investigated, which normally will be the scope as defined in the petition.

In this case, the petition covers a single class or kind of merchandise, CVP-23, as defined in the "Scope of Investigations" section, above. The petitioners do not offer a definition of domestic like product distinct from the scope of the investigations. Further, based on our analysis of the information presented to the Department by the petitioners, we have determined that there is a single domestic like product which is consistent with the definition of the "Scope of the Investigation" section above and have analyzed industry support in terms of this domestic like product.

The Department has determined that the petitioners have established industry support representing over 50 percent of total production of the domestic like product, requiring no further action by the Department pursuant to section 732(c)(4)(D) of the Act. In addition, the Department received no opposition to the petition from domestic producers of the like product. Therefore, the domestic producers or workers who support the petition account for at least 25 percent of the total production of the domestic like product, and the requirements of section 732(c)(4)(A)(i) of the Act are met. Furthermore, the domestic producers or workers who support the petition account for more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for or opposition to the petition. Thus, the requirements of section 732(c)(4)(A)(ii) of the Act also are met.

Accordingly, we determine that the petition is filed on behalf of the domestic industry within the meaning of section 732(b)(1) of the Act. *See* Office 5 AD/CVD Enforcement, Initiation Checklist: Carbazole Violet Pigment 23 (CVP-23) from India and the People's Republic of China (December 11, 2003) (Initiation Checklist) at Attachment II, on file in the Central Records Unit, Room B-099 of the Department of Commerce.

Export Price and Normal Value

The following are descriptions of the allegations of sales at less than fair value upon which the Department based its decision to initiate these investigations. The sources of data for the deductions and adjustments relating to U.S. and home market prices and factors of production are discussed in greater detail in the Initiation Checklist. Should the need arise to use any of this information as facts available under section 776 of the Act in our preliminary or final determinations, we may re-examine the information and revise the margin calculations, if appropriate.

[1] Please note that the bracketed section of the product description, *[3,2-b:3',2'-m]*, is not business proprietary information. In this case, the brackets are simply part of the chemical nomenclature. *See* December 4, 2003, amendment to petition at 8.

[2] *See USEC, Inc., v. United States*, 132 F. Supp. 2d 1,8 (CIT 2001), citing *Algoma Steel Corp. Ltd., v. United States*, 688 F. Supp. 639, 642-44 (CIT 1988). *See also High Information Content Flat Panel Displays and Display Glass from Japan: Final Determination; Rescission of Investigation and Partial Dismissal of Petition*, 56 FR 32376, 32380-81 (July 16, 1991).

India

Export Price

The petitioners based export price (EP) on average unit values of CVP-23 imports from India for the POI. The petitioners derived such values from import statistics under the HTSUS subheading 3204.17.9040.

Normal Value

With respect to normal value (NV), the petitioners provided a home market price for CVP-23 based on a price list obtained during the POI. The price was quoted in Indian rupees per kilogram on an ex-warehouse basis with the Central Excise and Sales Tax included. The petitioners adjusted this price by deducting the Central Excise and Sales Tax and converting the Indian value to U.S. dollars per pound using the exchange rates from the Department's website.

The estimated dumping margin for subject merchandise from India, based on a comparison of EP and NV based on a home market price quote, is 147.59 percent.

PRC

Export Price

The petitioner based EP on average unit values of CVP-23 imports from the PRC during the POI. The petitioner derived such values from import statistics under the HTSUS subheading 3204.17.9040.

Normal Value

The petitioner alleges that the PRC is a NME country, and notes that in all previous investigations the Department has determined that the PRC is a NME. *See, e.g., Notice of Final Determination in the Less Than Fair Value Investigation of Barium Carbonate From the People's Republic of China*, 68 FR 46577, 46577–46578 (August 6, 2003). In accordance with section 771(18)(C) of the Act, any determination that a foreign country has at one time been considered a NME shall remain in effect until revoked. Therefore, the PRC will continue to be treated as a NME country unless and until its NME status is revoked. Pursuant to section 771(18)(C)(i) of the Act, because the PRC's status as a NME remains in effect, the petitioner determined the dumping margin using a NME analysis.

The petitioners assert that India is the most appropriate surrogate country for the PRC, claiming that India is: (1) A market economy; (2) at a level of economic development comparable to the PRC in terms of per-capita gross national income; and (3) a commercial producer of the subject merchandise. Based on the information provided by the petitioners, we believe that the petitioners' use of India as a surrogate country is appropriate for purposes of initiation of this investigation.

With respect to NV, the petitioners calculated a NV based on the constructed values for crude and finished CVP-23, which were then weight-averaged based on the relative quantity of crude and finished color pigment imported during the POI. The petitioners provided constructed values based on Indian surrogate values and factors of production from the production processes of Indian and U.S. producers of CVP-23. Most of the Indian material inputs for the production of CVP-23 are taken from a schedule published by the Government of India and used to calculate import-credits in a program called the Duty Entitlement Passbook Scheme. The import credits are based on the quantity of physical inputs used to produce crude CVP-23 and other products covered by the program. For those inputs not reported by the Indian government, the petitioners relied on their own experience in producing crude and finished CVP-23, and they adjusted for any known differences between their production process, the Indian production process, and the Chinese CVP-23 production process. Petitioners were unable to obtain publicly available prices for two material inputs, chloranil and para toluene sulphonyl chloride, in India or any other surrogate country and, therefore, submitted price quotes from Indian suppliers. We determined these prices were sufficient for initiation purposes.

Where applicable, the petitioners adjusted values to be exclusive of excise and sales taxes. Indian values were converted to U.S. dollars using the exchange rates from the Department's website. Where surrogate values were not contemporaneous with the POI, the petitioners adjusted such values using wholesale price indices for all commodities from India.

For selling, general and administrative expenses, profit and packaging, the petitioners relied upon amounts reported in the 2001–2002 financial reports of Pidilite Industries Ltd., which according to its website is the largest producer of CVP-23 in India.

The estimated dumping margin for the PRC, based on a comparison of EP and NV based on a weight-averaged constructed value, is 370.06 percent.

Fair Value Comparisons

Based on the data provided by the petitioners, there is reason to believe that imports of CVP-23 from India and the PRC are being, or are likely to be, sold at less than fair value.

Allegations and Evidence of Material Injury and Causation

The petitioners allege that the U.S. industry producing the domestic like product is being materially injured, or is threatened with material injury, by reason of the cumulated imports from India and the PRC of the subject merchandise sold at less than NV.

The petitioners contend that the industry's injured condition is evident in the declining trends in net operating profits, net sales volumes, domestic prices, revenue, profit-to-sales ratios, production employment, capacity utilization, and domestic market share. The allegations of injury and causation are supported by relevant evidence including U.S. import data, lost sales, and pricing information.

The Department has assessed the allegations and supporting evidence regarding material injury and causation and determined that these allegations are properly supported by adequate evidence and meet the statutory requirements for initiation. *See* the Initiation Checklist.

Initiation of Antidumping Investigations

Based upon our examination of the petition, we have found that it meets the requirements of section 732 of the Act. *See* the Initiation Checklist. Therefore, we are initiating antidumping duty investigations to determine whether imports of CVP-23 from India and the PRC are being, or are likely to be, sold in the United States at less than fair value. Unless this deadline is extended, we will make our preliminary determinations no later than 140 days after the date of these initiations.

Distribution of Copies of the Petition

In accordance with section 732(b)(3)(A) of the Act, a copy of the public version of the petition has been provided to the representatives of the governments of India and the PRC. We will attempt to provide a copy of the public version of the petition to each exporter named in the petition, as provided for under 19 CFR 351.203(c)(2).

ITC Notification

We have notified the ITC of our initiations as required by section 732(d) of the Act.

Preliminary Determinations by the ITC

The ITC will determine no later than January 5, 2004, whether there is a reasonable indication that imports of

CVP-23 from India and the PRC are causing material injury, or threatening to cause material injury, to a U.S. industry. A negative ITC determination for any country will result in the investigation being terminated with respect to that country; otherwise, these investigations will proceed according to statutory and regulatory time limits. This notice is issued and published pursuant to section 777(i) of the Act.

Dated: December 11, 2003.

James Jochum,

Assistant Secretary for Import Administration.

[FR Doc. E3–00596 Filed 12–18–03; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade ADministration

[A-122–822]

Corrosion-Resistant Carbon Steel Flat Products From Canada: Rescission, in Part, of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On September 30, 2003, the Department published the initiation of administrative review of the antidumping duty order on corrosion-resistant carbon steel flat products from Canada, covering the period August 1, 2002, through July 31, 2003. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews, Request for Revocation and Deferral of Administrative Reviews* (68 FR 56262) (*"Initiation"*). This administrative review was initiated on the following exporters: Continuous Color Coat, Ltd. ("CCC"), Dofasco Inc. ("Dofasco"), Ideal Roofing Company, Ltd. ("Ideal Roofing"), Impact Steel Canada, Ltd. ("Impact Steel"), Russel Metals Export ("Russel Metals"), Sorevco and Company, Ltd. ("Sorevco"), and Stelco Inc. ("Stelco"). For the reasons discussed below, we are rescinding the administrative reviews of CCC, Impact Steel, and Ideal Roofing.

EFFECTIVE DATE: December 19, 2003.

FOR FURTHER INFORMATION CONTACT: Scott Lindsay or Dana Mermelstein at (202) 482–0780 and (202) 482–1391, respectively; Office of AD/CVD Enforcement VII, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

On September 30, 2003, the Department published the initiation of administrative review of CCC, Dofasco, Ideal Roofing, Impact Steel, Russel Metals, Sorevco, and Stelco, covering the period August 1, 2002, through July 31, 2003. *See Initiation.* On October 10, 2003, the International Steel Group ("ISG") withdrew its request for an administrative review of CCC. On October 29, 2003, Impact Steel withdrew its own request for an administrative review. Each request was the only request for review of these two companies. On October 10, 2003, Ideal Roofing withdrew its request for an administrative review. On November 18, 2003, United States Steel Corporation ("USSC") also withdrew its request for an administrative review of Ideal Roofing. These were the only requests for review of Ideal Roofing.

Rescission, in Part, of the Administrative Review

Pursuant to the Department's regulations, the Department will rescind an administrative review "if a party that requested the review withdraws the request within 90 days of the date of publication of notice of initiation of the requested review." *See* 19 CFR 351.213(d)(1). Since both ISG and Impact Steel submitted timely withdrawals of their requests for review of CCC and Impact Steel, respectively, and since they were the only requesters, the Department is rescinding its antidumping administrative review of these companies, in accordance with 19 CFR 351.213(d)(1). Since Ideal Roofing and USSC timely withdrew their request for review, and they were the only requesters for Ideal Roofing, we are rescinding our review of Ideal Roofing. Based on these rescissions, the administrative review of the antidumping duty order on corrosion-resistant carbon steel flat products from Canada covering the period August 1, 2002, through July 31, 2003, now covers the following companies: Dofasco, Russel Metals, Sorevco, and Stelco.

We are issuing and publishing this determination and notice in accordance with section 777(i) of the Act and 19 CFR 351.213(d)(4) of the regulations.

Dated: December 9, 2003.

James J. Jochum,

Assistant Secretary for Import Administration.

[FR Doc. E3–00595 Filed 12–18–03; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A-570–831]

Fresh Garlic From the People's Republic of China: Notice of Extension of Time Limit for the Preliminary Results of New Shipper Reviews

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of extension of time limit for the preliminary results of new shipper reviews.

SUMMARY: The Department of Commerce is extending the time limit for the preliminary results of new shipper reviews of the antidumping duty order on fresh garlic from the People's Republic of China until April 25, 2004. This extension applies to the new shipper reviews of the following seven exporters: Linyi Sanshan Import & Export Trading Co., Ltd., Sunny Import & Export Limited, Linshu Dading Private Agricultural Products Co., Ltd., Tancheng County Dexing Foods Co., Ltd., Jinxiang Dong Yun Freezing Storage Co., Ltd., Shanghai Ever Rich Trade Company, and Taian Ziyang Food Co., Ltd. The period of review is November 1, 2002, through April 30, 2003.

EFFECTIVE DATE: December 19, 2003.

FOR FURTHER INFORMATION CONTACT: Brian Ellman or Minoo Hatten, AD/CVD Enforcement 3, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–4852 and (202) 482–1690, respectively.

SUPPLEMENTARY INFORMATION:

Background

On July 7, 2003, the Department of Commerce (the Department) announced the initiation of the new shipper reviews for seven companies. *See Notice of Initiation of New Shipper Antidumping Duty Reviews: Fresh Garlic from the People's Republic of China*, 68 FR 40242.

The Tariff Act of 1930, as amended (the Act), at section 751(a)(2)(B)(iv) provides that the Department will issue the preliminary results of a new shipper review of an antidumping duty order within 180 days after the date on which the new shipper review was initiated. The Act also provides that the Department may extend that 180-day period to 300 days if it concludes that the new shipper review is extraordinarily complicated. *See also* 19 CFR 351.214(i).

The Department has determined that the new shipper reviews are extraordinarily complicated and that it is not practicable to complete the preliminary results by the current deadline of December 27, 2003. There are a number of complex factual and legal questions related to the calculation of the antidumping margins in the new shipper reviews, in particular the analysis of the *bona fides* of the sales at issue and the valuation of the factors of production. We require additional time to issue supplemental questionnaires addressing these matters, review the responses, and verify certain information. Therefore, in accordance with 19 CFR 351.214(i)(2), the Department is extending the time limit for the preliminary results by 120 days to April 25, 2004.

We are issuing and publishing this notice in accordance with sections 751(a)(2)(B) and 777(i) of the Act and 19 CFR 351.214(i).

Dated: December 15, 2003.

Jeffrey May,

Deputy Assistant Secretary for AD/CVD Enforcement I.

[FR Doc. E3–00594 Filed 12–18–03; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–533–808]

Stainless Steel Wire Rods from India: Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review.

SUMMARY: The Department of Commerce ("the Department") is conducting an administrative review of the antidumping duty order on stainless steel wire rods ("SSWR") from India in response to a request by Panchmahal Steel Limited ("Panchmahal"), Mukand Limited ("Mukand"), the Viraj Group ("Viraj"), and by petitioner,[1] who requested a review of Isibars Limited ("Isibars"), Mukand, and Viraj. The period of review ("POR") is December 1, 2001, through November 30, 2002.

We have preliminarily determined that Mukand and Viraj have sold subject merchandise at less than normal value ("NV") during the POR. In addition, we have determined to rescind the review with respect to Panchmahal based on the timely withdrawal of the only request for review of the company. Lastly, we have preliminarily determined to apply an adverse facts available rate to all sales and entries of Isibars' subject merchandise during the POR. If these preliminary results are adopted in our final results of this administrative review, we will instruct U.S. Customs and Border Protection ("CBP") to assess antidumping duties on entries of subject merchandise during the POR for which the importer-specific assessment rates are above *de minimis*.

We invite interested parties to comment on these preliminary results. Parties who submit arguments in this segment of the proceeding are requested to submit with the argument: (1) A statement of the issue, and (2) a brief summary of the argument.

EFFECTIVE DATE: January 20, 2004.

FOR FURTHER INFORMATION CONTACT: For Isibars contact Eugene Degnan at (202) 482–0414, for Mukand contact Jonathan Herzog at (202) 482–4271, for Panchmahal contact Jonathan Freed at (202) 482–3818, and for Viraj contact Kit Rudd at (202) 482–1385, or Robert Bolling at (202) 482–3434. AD/CVD Enforcement Group III, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

On October 20, 1993, the Department published the final determination in the **Federal Register** that resulted in the antidumping duty order on certain stainless steel wire rods from India. *See Final Determination of Sales at Less Than Fair Value: Certain Stainless Steel Wire Rods From India*, 58 FR 54110 (October 20, 1993) (*"Antidumping Duty Order"*). On December 2, 2002, the Department published in the **Federal Register** a notice of opportunity to request an administrative review of this antidumping duty order. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation: Opportunity To Request Administrative Review*, 67 FR 71533 (December 2, 2002) (*"Opportunity to Request Administrative Review"*).

On December 31, 2002, Mukand, Panchmahal, and Viraj requested an administrative review of the antidumping duty order on certain stainless steel wire rods from India. *See* Letter to Assistant Secretary for Import Administration from Mukand, Panchmahal, and Viraj, dated December 31, 2002. Also, on December 31, 2002, petitioner requested an administrative review of the antidumping duty order on certain stainless steel wire rods from India for Isibars, Mukand, and Viraj. *See* Letter to the Honorable Donald L. Evan from petitioner, dated December 31, 2002. In accordance with 19 CFR 351.221(b), we published a notice of initiation of the review of Isibars, Mukand, Panchmahal, and Viraj on January 22, 2003. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 68 FR 3009 (January 22, 2003). On January 23, 2003, petitioner filed a request that the Department verify Isibars, Mukand, Panchmahal, and Viraj.

On February 11, 2003, the Department issued Sections A–E questionnaires to Isibars, Mukand, Panchmahal, and Viraj. Additionally, the Department initiated a sales below cost of production inquiry and requested that Mukand and Viraj respond to Section D of the questionnaire in addition to Sections A, B, and C.[2]

Panchmahal

On March 4, 2003, the Department received a letter from Panchmahal withdrawing its request for an administrative review. *See* Letter from Panchmahal, dated March 4, 2003.

Isibars

On March 11, 2003, Isibars submitted its Section A response to the Department and supplemented it with additional exhibits on April 11, 2003. On April 14, 2003, Isibars submitted its Sections B and C response. Additionally, on April 14, 2003, the Department issued its first supplemental Section A questionnaire to Isibars, to which Isibars responded on May 28, 2003. However, due to improper filing by Isibars, the Department initially rejected this submission.

On April 23, 2003, petitioner submitted an allegation that Isibars was selling subject merchandise below their

[1] Carpenter Technology Corporation.

[2] Because the Department disregarded certain Mukand and Viraj sales made in the home market that failed the cost test in the most recently completed segment of this proceeding and excluded such sales from NV, the Department determined that there are reasonable grounds to believe or suspect that Mukand and Viraj made sales in the home market at prices below the cost of producing the merchandise in this review. *See Stainless Steel Wire Rods from India: Final Results of Antidumping Duty Administrative Review and Partial Rescission of Antidumping Duty Administrative Review*, 68 FR 26288 (May 15, 2003) (*"Final Results"*); section 773(b)(2)(A)(ii) of the Tariff Act of 1930, as amended, ("the Act").

cost of production. *See* Petitioner's Cost Allegation, dated April 23, 2003. On April 25, 2003, the petitioner supplemented their cost of production allegation. *See* Stainless Steel Wire Rod from India: Isibars' Sales Deficiencies and Supplement to Isibars Allegation of Sales Below Cost (April 25, 2003). On June 3, 2003, the Department initiated a cost of production inquiry and requested that Isibars submit its Section D response.

On May 29, 2003, the Department issued a Sections B and C supplemental questionnaire to Isibars, to which Isibars responded on June 20, 2003. On July 8, 2003, the Department received Isibars' Section D response. Also on July 8, 2003, Isibars properly refiled its first Section A supplemental questionnaire of May 28, 2003.

On August 20, 2003, the Department issued a second Sections A, B, and C supplemental questionnaire and a first Section D supplemental questionnaire. The Department received Isibars' response to the second Sections A, B, and C supplemental questionnaire on September 29, 2003 and to the first Section D supplemental questionnaire on October 14, 2003. On September 12, 2003, the Department issued a third Section A supplemental questionnaire to Isibars, to which Isibars responded on October 14, 2003. On September 24, 2003, the Department issued a second Section D supplemental questionnaire to Isibars, to which Isibars responded on October 14, 2003.

On October 6, 2003, the Department issued a fourth Section A supplemental questionnaire, a third Sections B and C supplemental questionnaire, and a third Section D supplemental questionnaire to Isibars, to which Isibars responded on October 20, 2003. On October 21, 2003, the Department issued a fifth Section A supplemental questionnaire and a fourth Section D questionnaire, to which Isibars responded on November 5, 2003.

Mukand

On March 11, 2003, Mukand submitted its Section A response. On March 14, 2003, Mukand supplemented its Section A response with several exhibits. On April 7, 2003, Mukand submitted its Sections B and C questionnaire response.

On May 14, 2003, the Department requested pursuant to its *Final Results*, that Mukand submit its Section D response. *See Letter to Mukand from Mr. Robert Bolling*, dated May 14, 2003. On May 29, 2003, the Department issued its first Sections A, B, and C supplemental questionnaire to Mukand, to which Mukand responded on June 27, 2003. On June 11, 2003, Mukand submitted its Section D response. On July 11, 2003, Mukand supplemented its June 27, 2003, response with a Section C response concerning its constructed export price ("CEP") sales.

On July 28, 2003, the Department issued a Section D supplemental questionnaire to Mukand, to which Mukand responded on August 29, 2003. On August 12, 2003, the Department issued a Sections A, B, and C supplemental questionnaire to Mukand. Mukand responded to the Department's Sections A, B, and C supplemental questionnaire on September 8, 2003. Also on August 12, 2003, the Department issued a Section C supplemental questionnaire to Mukand regarding its CEP sales, to which Mukand submitted a letter, dated September 15, 2003, informing the Department that it would not submit a response to this questionnaire. On September 23, 2003, the Department issued a Sections A, B, C, and D supplemental questionnaire to Mukand, to which Mukand responded on October 17, 2003. On October 29, 2003, the Department issued a second Sections A, B, C, and D supplemental questionnaire to which Mukand responded on November 17, 2003.

Viraj

Viraj submitted its Section A response on March 18, 2003 and its Sections B, C, and D responses on April 4, 2003. The Department issued its first Section A supplemental questionnaire to Viraj on April 9, 2003, to which Viraj responded on May 19, 2003. The Department issued its first Sections B, C, and D supplemental questionnaire to Viraj on June 20, 2003, to which Viraj responded on July 5, 2003. The Department issued a second Section A supplemental questionnaire to Viraj on September 3, 2003, to which Viraj responded on September 20, 2003. The Department issued a third Section A supplemental questionnaire to Viraj on September 11, 2003, to which Viraj responded on September 15, 2003. The Department issued a fourth supplemental questionnaire for Section A and a second Sections B, C and D supplemental questionnaire on October 7, 2003, to which Viraj responded on October 13, 2003. The Department issued a fifth Section A supplemental questionnaire to Viraj on October 13, 2003. Viraj responded to this questionnaire on October 20, 2003. The Department issued a third Sections C and D supplemental questionnaire to Viraj on October 20, 2003, to which Viraj responded on October 23, 2003. The Department issued a fourth Section D supplemental questionnaire to Viraj on October 27, 2003, to which Viraj responded on October 30, 2003. The Department issued a fifth Sections C and D supplemental questionnaire to Viraj on October 29, 2003, and received Viraj's response on October 30, 2003.

On August 5, 2003, the Department extended the due date for the preliminary results. *See Stainless Steel Wire Rods from India: Extension of Time Limit for the Preliminary Results of the Antidumping Duty Administrative Review*, 68 FR 46164, (August 5, 2003)("*August 5th extension*"). In accordance with Section 751(a)(3)(A) of the Act, the Department extended the deadline date for the notice of preliminary results 90 days, from the original date of September 2, 2003, to December 1, 2003. *See August 5th extension.*

Additionally, on November 21, 2003, in accordance with Section 751(a)(3)(A) of the Act, the Department again extended the due date for the notice of preliminary results an additional 11 days from the revised due date of December 1, 2003, to December 12, 2003. *See Stainless Steel Wire Rods from India: Extension of Time Limit for the Preliminary Results of the Antidumping Duty Administrative Review*, 68 FR 65680 (November 21, 2003).

Period of Review

The period of review ("POR") is December 1, 2001, through November 30, 2002.

Scope of the Review

The merchandise under review is certain SSWR, which are hot-rolled or hot-rolled annealed and/or pickled rounds, squares, octagons, hexagons or other shapes, in coils. SSWR are made of alloy steels containing, by weight, 1.2 percent or less of carbon and 10.5 percent or more of chromium, with or without other elements. These products are only manufactured by hot-rolling and are normally sold in coiled form, and are of solid cross Section. The majority of SSWR sold in the United States are round in cross-section shape, annealed and pickled. The most common size is 5.5 millimeters in diameter.

The SSWR subject to this review are currently classifiable under subheadings 7221.00.0005, 7221.00.0015, 7221.00.0030, 7221.00.0045, and 7221.00.0075 of the *Harmonized Tariff Schedule of the United States* (HTSUS). Although the HTSUS subheadings are provided for convenience and purposes of the U.S. Bureau of Customs and Border Protection, the written description of the merchandise under review is dispositive of whether or not the merchandise is covered by the review.

Verification

As provided in section 782(i)(3) of the Act, we verified sales and cost information provided by Viraj from November 3, 2003, through November 8, 2003, using standard verification procedures, including an examination of relevant sales, cost, financial records, and selection of original documentation containing relevant information. Our verification results are outlined in the public version of the verification report and are on file in the Department's Central Records Unit located in Room B–099 of the main Department of Commerce Building, 14th Street and Constitution Avenue, NW., Washington, DC.

Partial Rescission of Review

Section 351.213(d)(1) of the Department's regulations provides that a party which requests an administrative review may withdraw the request within 90 days after the date of publication of the notice of initiation of the requested administrative review. The Department may extend this deadline if it is reasonable to do so. On December 31, 2003, Panchmahal requested that the Department review its sales for the POR. On March 4, 2003, which is within the 90 day period, Panchmahal withdrew its request for an administrative review. Thus, Panchmahal's request was timely and no other interested party requested a review of Panchmahal's sales to the United States during the POR. Therefore, in accordance with 19 CFR 351.213(d)(1), the Department is rescinding the review, in part, with respect to Panchmahal for the period of December 1, 2001, through November 3, 2002.

Facts Available

In the instant review, despite numerous requests and clarifications from the Department, Isibars failed to adequately provide the information requested by the Department. As explained in detail below, because the Department received deficient and incomplete responses to the questionnaire and multiple supplemental questionnaires from Isibars, the Department was unable to verify the incomplete information that Isibars did provide, which is necessary for the margin analysis.

Section 776(a)(2) of the Act provides that, if an interested party: (A) Withholds information that has been requested by the Department; (B) fails to provide such information in a timely manner or in the form or manner requested subject to sections 782 (c) and (e) of the Act; (C) significantly impedes a proceeding under this title; or (D) provides such information but the information cannot be verified as provided in section 782(i) of the Act, the Department shall, subject to Section 782(d) of the Act, use the facts otherwise available in reaching the applicable determination.

Section 782(c)(1) of the Act provides that, if an interested party promptly notifies the Department that it is unable to submit the information requested in the requested form and manner, together with a full explanation and suggested alternative forms in which such party is able to submit the information, the Department shall take into consideration the ability of the party to submit the information in the requested form and manner, and may modify such requirements to the extent necessary to avoid imposing an unreasonable burden on that party. Section 782(c)(2) of the Act similarly provides that the Department shall consider the ability of the party submitting the information and shall provide such interested party assistance that is practicable.

Section 782(d) of the Act provides that, if the Department determines that a response to a request for information does not comply with the request, the Department will inform the person submitting the response of the nature of the deficiency and shall, to the extent practicable, provide that person the opportunity to remedy or explain the deficiency. If the person submits further information that continues to be unsatisfactory, or this information is not submitted within the applicable time limits, the Department may, subject to section 782(e) of the Act, disregard all or part of the original and subsequent responses, as appropriate.

Pursuant to section 782(e) of the Act, notwithstanding the Department's determination that the submitted information is "deficient" under section 782(d) of the Act, the Department shall not decline to consider such information if all of the following requirements are satisfied: (1) The information is submitted by the established deadline; (2) the information can be verified; (3) the information is not so incomplete that it cannot serve as a reliable basis for reaching the applicable determination; (4) the interested party has demonstrated that it acted to the best of its ability; and (5) the information can be used without undue difficulties.

In this review, Isibars repeatedly failed to supply the Department with information regarding home market and U.S. market sales reconciliations, major inputs from affiliates, control number ("CONNUM") specific weight-averaged cost data, operable home market and U.S. market sales data, and they failed to serve petitioner in this review. These deficiencies effectively prevented the Department from conducting a meaningful verification. Despite the numerous requests by the Department in supplemental questionnaires, telephone calls, and e-mails, Isibars has failed to rectify the above mentioned factual deficiencies to the record, and to properly serve petitioner in this review. Additionally, the Department offered extra assistance and aid to Isibars in getting the required information on the record. *See* Memo to the File—e-mail correspondence with Isibars, dated October 8, 2003; Memo to the File—e-mail correspondence with Isibars, dated October 21, 2003; Memo to the File—e-mail correspondence with Isibars, dated October 24, 2003. Finally, although Isibars is appearing in this review *pro se*, the Department recognized that Isibars has extensive experience with Departmental procedures, having participated in numerous stainless steel bar reviews. *See Stainless Steel Bar From India; Final Results of Antidumping Duty Administrative Review*, 68 FR 47543 (August 11, 2003); *Stainless Steel Bar From India: Final Results of Antidumping Duty Administrative Review and New Shipper Review and Partial Rescission of Administrative Review*, 65 FR 48965 (August 10, 2000).

The Department delayed its departure for verification in order to allow Isibars time to provide the necessary information requested by the Department. *See* Memo to the File, e-mail correspondence with Isibars, dated November 5, 2003. Furthermore, the Department informed Isibars of the consequences of Isibars' continue failure to provide the materials requested by the Department. *See October 21st letter; October 29th letter*; all Department supplemental questionnaires. Nonetheless, the Department ultimately cancelled Isibars' verification because Isibars failed to provide the Department the requested information (*i.e.*, sales reconciliations, major inputs data from its affiliates, CONNUM specific weighted-average cost data, operable home market and U.S. market sales data), and failed to serve the petitioner in this review.

Accordingly, and as discussed in more detail below, the Department determined to apply facts available for

the requested information withheld by Isibars, in accordance with section 776(a)(2) of the Act. Further, as discussed below, the Department finds that in not providing the requested information, and not serving petitioners, Isibars failed to cooperate to the best of its ability in this review, and therefore determines that an adverse inference is warranted for all Isibars' sales.

A. Failure to Submit a Sales Reconciliation

The reconciliation is required of respondents to determine if all appropriate sales of the subject merchandise have been reported. A reconciliation serves as a "starting point" for the Department at verification. *See Certain Cut-to-Length Carbon Steel Plate from Mexico: Final Results of Antidumping Duty Administrative Review*, 64 FR 77, 78 (January 4, 1999). Among other things, the goal of verification is to confirm the accuracy and completeness of the data provided in a company's questionnaire responses and this data serves as a basis for the Department to ascertain if sales were accurately reported. *See* 19 C.F.R. 351.307(d).

Isibars' failure to provide or withholding of the requested reconciliation is an incomplete questionnaire response that significantly impeded this proceeding. *See Notice of Final Results and Partial Rescission of Antidumping Duty Administrative Review; Heavy Forged Hand Tools from the People's Republic of China* 65 FR 43290 (July 13, 2000) *and accompanying Issues and Decisions Memorandum* at Comment 1 (The Department used total facts available because the respondent failed to provide the essential reconciliation chart requested by the Department necessary to test the completeness of questionnaire response, and thus failed verification). Indeed, without the requested sales reconciliation information, the Department is unable to verify the information Isibars submitted. It is important to note that the Department has cancelled verification in several other cases because of incomplete questionnaire responses, and specifically because the respondents failed to provide requested reconciliations. *See Gourmet Equipment Corp. v. United States*, 24 C.I.T. 572 (CIT July 6, 2000), *regarding Chrome-Plated Lug Nuts from Taiwan*, 64 FR 17314 (1999)(The Court affirmed the Department's refusal to conduct verification because the respondent's submissions were not reconcilable to its financial statements, meaning the information submitted was unverifiable; as a result, the Department applied adverse facts available); *Notice of Final Determination of Sales at Less Than Fair Value: Certain Hot-rolled Carbon Steel Flat Products from Taiwan: Final Determination of Antidumping Duty Order*, 66 FR 49618, 49620–21 (Sept. 28, 2001)(The Department canceled both sales and cost verification because respondents failed to provide explanation and documentation for all its expenses and sales, and provided incomplete, deficient, and inconsistent affiliated-party sales information); *Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon-Quality Steel Plate Products from Indonesia*, 64 FR 73164, 73165–66 (Dec. 29, 1999)("*CTL Plate from Indonesia*") (the Department canceled verification and applied adverse facts available because the respondent did not adequately address the sales-related and cost-related questions).

Section 776(a)(2)(A) of the Act authorizes the Department, subject to section 782(d) of the Act, to use facts otherwise available when a respondent withholds information that has been requested by the Department. The Department has requested sales reconciliations from Isibars three times: in the original questionnaire, sent on February 11, 2003; in a supplemental questionnaire, issued on October 21, 2003; and in a letter to Isibars, sent on October 29, 2003. *See* Cancellation of Verification Memorandum, dated November 26, 2003 ("*Cancellation of Verification Memorandum*") at 2–3. However, Isibars failed to supply a sales reconciliation throughout this review.

Section 782(d) requires that, in the case of a deficient response by the respondent, the Department inform the respondent of the deficiency, and give the respondent an opportunity to remedy or explain the deficiency. In addition to the original questionnaire, and two supplemental questionnaires requesting a sales reconciliation, the Department, in an October 29, 2003, letter, alerted Isibars that failure to supply this information would lead to the cancellation of verification, and may result in the Department basing its determination on facts available. *See Cancellation of Verification Memorandum* at 2.

Because Isibars failed to supply the Department with the requested sales reconciliation that the Department needed to conduct a meaningful verification, and gave no explanation why it has failed to do so, despite numerous opportunities afforded by the Department, the Department cannot consider Isibars to have acted to the best of its ability in this review. Therefore, the application of adverse facts available in determining the preliminary margin, in accordance with section 776(b) of the Act, is warranted. *See Certain Hot-rolled Carbon Steel Flat Products from Taiwan: Final Determination of Antidumping Duty Order*, 66 FR 49618, 49620–21 (Sept. 28, 2001).

B. Major Inputs

Section 773(f)(2) of the Act allows the Department to test whether transactions between affiliated parties involving any element of value (*i.e.*, major or minor inputs) are at prices that "fairly reflect the market under consideration." Section 773(f)(3) of the Act allows the Department to test whether, for transactions between affiliated parties involving a major input, the value of the major input is not less than the affiliated supplier's COP, where there is reasonable cause to believe or suspect the price is below COP. The Department considers the initiation of a sales-below-cost investigation reasonable grounds to believe or suspect that major inputs to the foreign like product may also have been sold at prices below the COP, within the meaning of section 773(f)(3) of the Act. *See Silicomanganese from Brazil; Final Results of Antidumping Administrative Review*, 62 FR 37869, 37871 (July 15, 1997). Therefore, because a sales-below-investigation has been initiated, the Department requires major input data from Isibars.

Section 776(a)(2)(A) of the Act authorizes the Department, subject to section 782(d) of the Act, to use facts otherwise available when a respondent withholds information that has been requested by the Department. Isibars has repeatedly failed to provide information regarding its affiliate's cost of production and market price for major inputs supplied by its affiliates. The Department has requested this information three times in questionnaires and supplemental questionnaires: the original Section D questionnaire, issued June 3, 2003; and two supplemental questionnaires, issued on September 24, 2003, and October 21, 2003. Because Isibars has withheld this information, the Department is authorized, subject to section 782(d) of the Act, to use facts otherwise available.

Section 776(a)(2)(D) of the Act authorizes the Department, subject to section 782(d) of the Act, to use facts otherwise available when a respondent provides information, but the information cannot be verified. Because Isibars provided only the transfer price of major inputs, and not the market price and the affiliate's cost of production, the Department is unable to properly value major inputs, pursuant to section 773(f)(3), and therefore cannot meaningfully verify Isibars' COP.

Section 782(d) requires that, in the case of a deficient response by the respondent, the Department inform the respondent of the deficiency, and give the respondent an opportunity to remedy or explain the deficiency. In addition to the two supplemental questionnaires that were issued requesting that Isibars supply major input information, the Department also notified Isibars of the importance of supplying this information to the Department in two letters sent to Isibars, on October 21, 2003, and on October 29, 2003. *See Cancellation of Verification Memorandum* at 3.

Because Isibars has not provided the requested information necessary to value major inputs despite numerous opportunities and requests by the Department, and because Isibars has offered no explanation why they have not supplied this information, we determine, pursuant to section 776(b) of the Act, that Isibars has not acted to the best of its ability to comply with the Department's requests for information. Therefore, the application of adverse facts available in determining the preliminary margin, in accordance with section 776(b) of the Act, is warranted. *See CTL Plate from Indonesia* at 73174–75.

C. Section D Cost Data not CONNUM Specific

Despite the repeated requests by the Department to correct its data, Isibars' reported labor and variable overhead costs remain virtually the same for each CONNUM in its reported cost of production ("COP") data, and literally the same for each CONNUM in its reported constructed value ("CV") data. Without accurate data for these items, the Department cannot perform an accurate cost test, cannot make appropriate selections for price-to-price comparisons, and cannot determine accurate constructed values for use as normal value. Therefore, Isibars' Section D response is unusable for this preliminary determination. *See Determination of Sales at Less Than Fair Value; Certain Cold-Rolled Flat-Rolled Carbon-Quality Steel Products from Turkey*, 65 FR 1127, 1131 (January 7, 2000).

Section 776(a)(2)(A) of the Act authorizes the Department, subject to section 782(d) of the Act, to use facts otherwise available when a respondent withholds information that has been requested by the Department. The Department has requested that Isibars report its Section D COP and CV data as CONNUM specific weighted-average data six times: in the original Section D questionnaire, in three supplemental questionnaires, issued on August 20, 2003; on October 6, 2003; and on October 21, 2003; and in a letter and an e-mail sent to Isibars on October 29, 2003. Isibars has never complied with these numerous requests.

Section 776(a)(2)(B) of the Act authorizes the Department, subject to section 782(d) of the Act, to use facts otherwise available when a respondent fails to provide requested information in the form or manner requested by the Department, subject to sections (c)(1) and (e) of section 782. Although Isibars supplied some cost data, as explained immediately below, it repeatedly failed to conform its cost data to the form requested by the Department. Isibars never, pursuant to section 782(c)(1), notified the Department that it could not submit this data in the form requested. Furthermore, the data, as provided by Isibars, is unusable by the Department in determining Isibars' COP. *See* section 782(e).

Section 776(a)(2)(D) of the Act authorizes the Department, subject to section 782(d) of the Act, to use facts otherwise available when a respondent provides information, but the information cannot be verified. Because Isibars' Section D cost data is not provided as CONNUM specific weighted-averaged data, the Department cannot verify the COP for each unique product of subject merchandise.

Section 782(d) requires that, in the case of a deficient response by the respondent, the Department inform the respondent of the deficiency, and give the respondent an opportunity to remedy or explain the deficiency. In the original Section D questionnaire, the Department provided a general explanation to Isibars of how to report its COP data. This general explanation instructed Isibars that the COP is the weighted-average CONNUM specific cost of the product sold. *See* original questionnaire, at D–1. A footnote on page D–1 further explains that there should be a "single weighted-average cost for each CONNUM." *See* original questionnaire, at D–1. Furthermore, the Section D questionnaire specifically instructed Isibars to report each COP variable as CONNUM specific per-unit costs. *See* original questionnaire, at D–15—D–17. Despite these instructions, Isibars failed to report CONNUM specific per-unit costs in its Section D database.

In the first Section D supplemental questionnaire, issued on August 20, 2003, the Department explained to Isibars that it must account for time in its allocations for labor and variable production overhead, and requested Isibars submit worksheets showing how it calculated these costs. Isibars never responded to these requests. In the October 21, 2003, supplemental questionnaire, the Department requested this again, and Isibars did respond, in its November 5, 2003, response, but did not account for time in its allocation. The Department also stressed to Isibars in the Department's October 6, 2003, supplemental questionnaire that Isibars must report weighted average costs specific to each unique CONNUM. However, to date Isibars has never adjusted its reported CONNUM data to reflect CONNUM specific, weighted-average data. Finally, in light of the fact that Isibars appears in this review *pro se*, the Department once again, in a letter sent on October 29, 2003, stressed to Isibars that its cost data must be reported as CONNUM specific weighted averages, and emphasized that failure to do so would result in cancellation of the verification of Isibars.

Because Isibars failed to supply the Department with the requested data that the Department needed to conduct a meaningful verification, and gave no explanation why it has failed to do so, despite numerous opportunities afforded by the Department, the Department cannot consider Isibars to have acted to the best of its ability in this review. Therefore, the application of adverse facts available in determining the preliminary margin, in accordance with section 776(b) of the Act, is warranted. *See Notice of Final Determination of Sales at Less Than Fair Value; Certain Cut-to-Length Carbon-Quality Steel Plate Products from Indonesia*, 64 FR 73164, 73174–75 (December 29, 1999).

D. Computer Data Files Submitted November 5, 2003, for Sections B & C Were Inoperable

The final computer data file received by the Department from Isibars on November 5, 2003, contained data files for Sections B & C that were inoperable and could not be accessed.

Section 776(a)(2)(A) of the Act authorizes the Department, subject to section 782(d) of the Act, to use facts otherwise available when a respondent withholds information that has been requested by the Department. Isibars failed to provide final data sets of home market and U.S. sales, immediately before the planned verification.

Section 782(d) requires that, in the case of a deficient response by the respondent, the Department inform the respondent of the deficiency, and give

the respondent an opportunity to remedy or explain the deficiency. Isibars was cautioned in an October 21, 2003, letter, attached to the Department's October 21, 2003, fifth Section A, fourth Section D supplemental questionnaire, that the Department required working computer data files from Isibars in order to proceed to verification. *See* October 29, 2003, letter from the Department. Isibars was again cautioned by the Department, in an October 29, 2003, letter from the Department, that failure by Isibars to submit complete and accurate data would result in the cancellation of verification. *See October 29, 2003, letter.*

Because Isibars failed to supply the Department with the necessary sales data that the Department needed to conduct a meaningful verification, and gave no explanation why it has failed to do so, despite numerous opportunities afforded by the Department, the Department cannot consider Isibars to have acted to the best of its ability in this review. Therefore, the application of adverse facts available in determining the preliminary margin, in accordance with section 776(b) of the Act, is warranted. *See Preliminary Results of Antidumping Duty Administrative Review: Porcelain on Steel Cookware from Mexico*, 68 FR 63562, 63564 (October 24, 2000) (stating that the use of adverse facts available was appropriate because respondent did not provide home market sales data in a timely manner).

E. Failure To Serve Petitioner in This Review

Isibars' non-service of petitioners, in conjunction with numerous late filings, improper filings, and incomplete responses by Isibars, has possibly impaired petitioners ability to participate in this review. *See* Petitioner's letter Stainless Steel Wire Rod from India—Isibars' Supplemental Sales Deficiencies and Cost Deficiencies, dated October 20, 2003.

Section 776(a)(2)(B) of the Act authorizes the Department, subject to section 782(d) of the Act, to use facts otherwise available when a respondent fails to provide information by the deadline for submission, or in the form or manner requested. Isibars has failed to serve the petitioner in this review numerous times, as requested by section 351.303(f)(1) of the Department's regulations, which directs all persons filing a document with the Department to simultaneously serve a copy of that document to all persons on the service list. To date, petitioner has not received: Isibars' September 29, 2003, Sections B & C supplemental questionnaire response; Isibars' October 14, 2003, Section A supplemental questionnaire response; Isibars' October 14, 2003, first Section D supplemental questionnaire response; Isibars' October 14, 2003, Section D second supplemental questionnaire response; nor Isibars' October 20, 2003, Sections A, B and D supplemental questionnaire response.

Section 782(d) requires that, in the case of a deficient response by the respondent, the Department inform the respondent of the deficiency, and give the respondent an opportunity to remedy or explain the deficiency. Despite numerous admonitions by the Department (*i.e.*, an October 15, 2003, telephone call; an October 15, 2003, e-mail; and an October 29, 2003, letter), Isibars, to date, has never served to petitioner the above mentioned responses.

Because Isibars failed to serve petitioner, and gave no explanation why it has failed to do so, despite admonitions by the Department, the Department cannot consider Isibars to have acted to the best of its ability in this review. Therefore, the application of adverse facts available in determining the preliminary margin, in accordance with section 776(b) of the Act, is warranted.

Isibars' failure to provide the information requested by the Department has resulted in an inadequate response that has prevented the Department from conducting verification and using its data in the preliminary results. *See* Cancellation of Verification Memorandum to the File from Eugene Degnan to Edward Yang, dated November 26, 2003 ("*Cancellation of Verification Memorandum*"). Furthermore, Isibars' failure to provide the requested data and to serve petitioners has significantly impeded this review, as defined by section 776(a)(2)(C) of the Act. Thus, pursuant to sections 776(a)(2)(A), (B), (C) and (D) of the Act, and having satisfied sections 782(c)(2), (d), and (e) of the Act, the Department has determined to apply facts otherwise available in this proceeding with respect to Isibars.

In selecting from among the facts otherwise available, section 776(b) of the Act provides that adverse inferences may be used in selecting from the facts available if a party has failed to cooperate by not acting to the best of its ability to comply with a request for information. Adverse inferences are appropriate "to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully." *See* Statement of Administrative Action ("SAA") accompanying the Uruguay Round Agreements Act ("URAA"), H.R. Doc. No. 103–316, Citation No. (1994), at 870. Furthermore, "an affirmative finding of bad faith on the part of the respondent is not required before the Department may make an adverse inference." *See Antidumping Duties, Countervailing Duties; Final Rule*, 62 FR 27340 (May 17, 1997).

In this case, Isibars has failed to cooperate by not acting to the best of its ability to comply with the requests for information. As discussed above, despite the numerous requests by the Department, Isibars failed to provide or withheld requested information from the Department (*i.e.*, a sales reconciliation, information concerning the valuation of major inputs, weighted-average CONNUM specific cost data, service of the petitioner, and a working Sections B and C database). Additionally, Isibars was provided numerous offers of assistance by the Department and opportunities and supplemental questionnaires to fully respond to the Department's requests, in accordance with section 782(d) of the Act. *See Cancellation of Verification Memorandum*. However, despite the assistance offered and provided by the Department's staff, Isibars failed to rectify its many record deficiencies. *See Cancellation of Verification Memorandum*.

Due to Isibars' failure to provide the requested information that the Department identified as necessary for the verification, the Department was precluded from conducting verification by the inadequacy of information on the record. Moreover, Isibars failed to provide a reasonable explanation for its failure to comply with these standard requests for information. Accordingly, the Department finds that Isibars did not act to the best of its ability to provide the information requested, despite the assistance offered by the Department. As facts become available, we have preliminarily assigned Isibars the all others rate of 48.80 percent. As discussed below, we have corroborated this rate pursuant to 19 CFR 351.308(d) of the Department's regulations.

Corroboration of Secondary Information Used as Adverse Facts Available

Section 776(c) of the Act provides that when the Department relies on the facts otherwise available and relies on "secondary information," the Department shall to the extent practicable, corroborate that information from independent sources reasonably at the Department's disposal. The *SAA*, clarifies that the petition is secondary information, and states that corroborate means to determine that the information used has probative value. *See SAA* at 870; *See also* 19 CFR 351.308(d). To corroborate secondary information, the Department will, to the extent practicable, examine the reliability and relevance of the information to be used. We have previously examined the reliability of the 48.80 rate and found it to be reliable, and placed it on the record of this review. *See* Corroboration Memorandum for Panchmahal Steel Limited for the final results of the 2000–2001 Administrative Review of Stainless Steel Wire Rods from India, dated May 8. We have no information in this administrative review which would indicate a change in the reliability of this rate.

With respect to the relevance aspect of the corroboration, the Department has considered information reasonably at its disposal to determine whether a margin continues to have relevance. Where circumstance indicate that the selected margin is not appropriate as AFA, the Department will disregard the margin and determine an appropriate margin. For example, in *Fresh Cut Flowers from Mexico; Final Results of Antidumping Administrative Review*, 61 FR 6812 (February 22, 1996), the Department disregarded the highest margin in that case as best information available (predecessor to facts available) because the margin was based on another company's uncharacteristic business expense resulting in an unusually high margin. Similarly, the Department does not apply a margin that has been discredited. *See D&L Supply Co.* v. *United States*, 113 F.3d 1220, 1221 (Fed. Cir. 1997)(the Department will not use a margin that has been judicially invalidated). None of these circumstances are present here. Moreover, the rate selected is the rate currently applicable to an exporter, and there is no information on the record of this review that demonstrates that this rate is not relevant for use as AFA during this administrative review.

Accordingly, we determine that the highest rate from any previous segment of this administrative proceeding (*i.e.*, the rate of 48.80 percent from the petition) is in accord with section 776(c)'s requirement that secondary information be corroborated (*i.e.*, that it have probative value).

Affiliation/Collapsing

In the previous administrative review, the Department collapsed Viraj Forgings Limited ("VFL"), Viraj Alloys Limited ("VAL") and Viraj Impoexpo Limited ("VIL") because the companies were found capable, through their sales and production operations, of manipulating prices or affecting production decisions. *See Final Results*. In the current review, Viraj reported that there were operational and legal changes to Viraj affiliated companies during this POR. *See* Antidumping Duty Administrative Review of Stainless Steel Wire Rods from India: Collapsing of Viraj Alloys, Ltd. And VSL Wires, Ltd., dated December 12, 2003 ("*Viraj Collapsing Memorandum*"). In the current review, VAL and VSL Wires, Limited ("VSL") reported they produced subject merchandise during the POR. As discussed below, the Department has preliminarily determined that VAL and VSL are affiliated companies, and that VAL and VSL should be collapsed and considered one entity pursuant to section 771(33) of the Act and 19 CFR 351.401(f). *See Viraj Collapsing Memorandum*.

Section 771 (33) of the Act, states that the Department considers the following parties as affiliated:

(A) Members of a family, including brothers and sisters (whether by the whole or half blood), spouse, ancestors, and lineal descendants;

(B) Any officer or director of an organization and such organization;

(C) Partners;

(D) Employer and employee;

(E) Any person directly or indirectly owning, controlling, or holding with power to vote, 5 percent or more of the outstanding voting stock or shares of any organization and such organization;

(F) Two or more persons directly or indirectly controlling, controlled by, or under common control with, any person; and

(G) Any person who controls any other person and such other person.

For the purpose of this statute, a person is deemed to control another person if the person is legally or operationally in a position to exercise restraint or direction over the other person. *See* section 771(33) of the Act. Furthermore, 19 CFR 351.401(f) states that the Department will treat two or more affiliated producers as a single entity where: (1) Those producers have production facilities for similar or identical products that would not require substantial retooling of either facility in order to restructure manufacturing priorities; and (2) where there is a significant potential for the manipulation of price or production. In identifying whether a significant potential for the manipulation of price or production exists, 19 CFR 351.401(f)(2) states that the Department may consider: (i) The level of common ownership; (ii) the extent which managerial employees or board members of one firm sit on the board of directors of an affiliated firm; and (3) whether operations are intertwined, such as through the sharing of sales information, involvement in production and pricing decisions, the sharing of facilities or employees, or significant transactions between the affiliated producers.

The Department has analyzed the information regarding affiliation on the record in this administrative review, and preliminarily determines that VAL and VSL should be considered affiliated under sections 771(33)(A) and (F) by virtue of common control by several family members involved in ownership and management of VAL and VSL. *See Viraj Collapsing Memorandum* at 3. First, the record evidence shows that a husband and wife serve as the chairperson of VAL and VSL, respectively, while two brothers serve as directors of VAL and VSL, respectively. *See Viraj Collapsing Memorandum* at 3.

Moreover, the aforementioned chairperson and directors of VAL and VSL control significant shares of stocks in both companies, and the chairperson of VAL is also the managing director of VAL. *See Viraj Collapsing Memorandum* at 3. Thus, due to their significant shareholdings and positions within the companies, the chairpersons and directors are in a position to exercise legal and operational control over both VAL and VSL. *See Viraj Collapsing Memorandum* at 3. Therefore, the Department preliminarily determines that VAL and VSL are affiliated in accordance with sections 771(33)(A) and (F) of the Act by virtue of the fact that immediate members of the family are also the chairperson and directors of VAL and VSL and directly and indirectly control both of these entities.

Further, the Department preliminarily determines that VAL and VSL should be collapsed in accordance with 19 CFR 351.401(f), because both VAL and VSL have production facilities to produce similar or identical merchandise without substantial retooling and there is a significant potential for the manipulation of price or production.

During the POR, for sales to the home market, VAL produced and retained title to stainless steel billets which are rolled by an unaffiliated subcontractor into stainless steel wire rod, via tolling arrangement. The subcontractor returns the non-annealed and non-pickled finished wire rod ("unfinished wire rod") to VAL, who transfers it to VSL, who sells the subject merchandise in the home market. For sales to the U.S. market, VAL produced and retained title

to stainless steel billets which are rolled by the same unaffiliated sub-contractor via a tolling arrangement into unfinished stainless steel wire rod. The subcontractor returns the unfinished wire rod to VAL, who transfers the title to VSL. VSL then pickles and anneals the unfinished wire rod, packages for export and ships the subject merchandise to the United States. *See Viraj Collapsing Memorandum* at 5. All sales of stainless steel wire rods in the Indian market and U.S. market are made by VSL. *See Viraj Collapsing Memorandum* at 5; Verification Report at 6.

According to 19 CFR 351.401(h), the Department does not consider a subcontractor or toller as the producer of subject merchandise where that subcontractor or toller does not acquire ownership or sell the relevant merchandise. Thus, via its tolling arrangement with the unaffiliated subcontractor, VAL is considered a producer of SSWR, because the unaffiliated subcontractor does not acquire ownership of VAL's stainless steel billets/SSWR, nor does it control the sale of the SSWR, once it has been rolled. *See* 19 C.F.R. 351.401(h); *Polyvinyl Alcohol from Taiwan: Final Results of Antidumping Administrative Review*, 63 FR 32810, 32816 (June 16, 1998).

Further, the Department also considers VSL a producer of SSWR. By virtue of the fact that VSL obtains title to VAL's unfinished SSWR and then finishes the production (*i.e.*, anneals and pickles) of VAL's unfinished SSWR, VSL is a producer of SSWR. Thus, in accordance with 19 CFR 351.401(f)(1), VAL and VSL have production facilities for production of similar or identical products (*i.e.*, unfinished SSWR and annealed and pickled SSWR), and substantial retooling of either facility to restructure manufacturing priorities would not be required. *See Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Wire Rod from Korea*, 63 FR 40404, 40410 (July 29, 1998) (The Department collapsed POSCO/Changwon, producers of subject merchandise with Dongbang, another producer of subject merchandise, despite the fact that the Dongbang only had the ability to anneal and pickle the subject merchandise).

Additionally, the Department also finds that in accordance with 19 CFR 351.401(f)(1), VAL has the capability to add finishing equipment (*i.e.*, annealing and pickling equipment) to its production facilities without requiring substantial retooling. Specifically, the Department examined VAL and VSL's 2001–2002 financial statements and determined that VSL's plant and machinery gross fixed assets account for only a small percentage of VAL's plant and machinery gross fixed assets. *See Viraj Collapsing Memorandum* at 6; *May 19, 2003 SQR* at SQR–A–062 and SQR–A–025. Further, the Department also examined the total gross fixed assets of VAL and VSL and found that VSL's total gross fixed assets account for only a small percentage of VAL's total gross fixed assets. *See Viraj Collapsing Memorandum* at 6; *May 19, 2003 SQR* at SQR–A–062 and SQR–A–025. Thus, VAL could add VSL's annealing and pickling operations to its production process for SSWR for a small portion of its total plant and machinery value or its overall corporate value, either through an outright purchase of VSL or by purchasing annealing and pickling equipment of its own. Therefore, the Department believes that VAL and VSL would not need to engage in major retooling to shift production of SSWR from one company to the other.

Finally, the Department preliminarily determines that VAL and VSL have enough common ownership and have intertwined their operations significantly enough to justify the conclusion that a significant potential for manipulation of price and production exists. Thus, the Department preliminarily determines that VAL and VSL should be collapsed. Specifically, (1) VAL and VSL share common shareholders, including the chairpersons and directors of VAL and VSL; (2) VAL acts as the sole supplier to VSL of unfinished wire rods; and (3) VSL makes all sales of SSWR in the home market and U.S. market. *See Viraj Collapsing Memorandum* at 7. Thus, both VAL and VSL are capable, through their sales and production operations, of manipulating prices or affecting production decisions. Therefore, in accordance with 19 CFR 351.401(f), the Department preliminarily determines to collapse VAL and VSL as Viraj for the purposes of this review.

Normal Value Comparisons

To determine whether sales of subject merchandise from India to the United States by Mukand and Viraj were made at less than NV, we compared the export price ("EP") and CEP, as appropriate, to the NV, as described in the "Export Price/Constructed Export Price" and "NV" sections of this notice, below. In accordance with section 777A(d)(2) of the Act, we calculated monthly weighted-average prices for NV and compared these to individual EP and CEP transactions.

Product Comparisons

In accordance with section 771(16) of the Act, we considered all products covered by the *Scope of the Review* section above, which were produced and sold by Mukand and Viraj in the home market during the POR, to be foreign like products for purposes of determining appropriate comparisons to U.S. sales. Where there were no sales of identical merchandise in the home market to compare to U.S. sales, we compared U.S. sales to the next most similar foreign like product on the basis of the characteristics and reporting instructions listed in the Department's questionnaire.

Mukand

Mukand submitted information on the record which claimed that all of its reported grades should be treated as distinct grades for calculation purposes. *See* Mukand's Sections B and C response dated April 7, 2003, at 7 & 41. For the purpose of accurately comparing subject merchandise, the Department requested that Mukand provide a chemical breakdown of each of its grades. After analyzing the data presented by Mukand, the Department has determined that there is insufficient record evidence to support Mukand's position that grade 304LN is a distinct grade from 304L. Therefore, the Department has preliminarily determined to combine the above grades; specifically, the Department has determined that grade 304LN should be treated as grade 304L.

The grade chemistries provided on the record by Mukand indicate that the chemistry ranges reported by Mukand for grades 304L and 304LN are of a similar chemistry and composition; thus, Mukand's grades 304LN and 304L have been treated by the Department as one grade for purposes of the home market and U.S. sales programs.

It is the Department's practice not to create additional categories unless the physical characteristics are significantly different from an existing known category. *See Certain Cold-Rolled Carbon Steel Flat Products From Korea: Final Results of Antidumping Duty Administrative Review*, 63 FR 781 (January 7, 1998). Therefore, for the purposes of these preliminary results, the Department has determined to treat Mukand's grade 304LN as grade 304L.

Export Price and Constructed Export Price

In accordance with section 772(a) of the Act, EP is the price at which the subject merchandise is first sold (or agreed to be sold) before the date of importation by the producer or exporter of the subject merchandise outside of the United States to an unaffiliated purchaser in the United States or to an unaffiliated purchaser for exportation to the United States. In accordance with section 772(b) of the Act, CEP is the price at which the subject merchandise is first sold (or agreed to be sold) in the United States before or after the date of importation by or for the account of the producer or exporter of such merchandise or by a seller affiliated with the producer or exporter, to a purchaser not affiliated with the producer or exporter, as adjusted under subsections (c) and (d).

For purposes of this review, Mukand has classified certain sales as EP sales and certain sales as CEP sales. Based on the information on the record, we are using both EP and CEP as defined in section 772(a) and (b) of the Act.

For purposes of this review, Viraj has classified all sales as CEP sales. Based on the information on the record, we are using CEP as defined in section 772(b) of the Act.

Mukand

The Department has determined that Mukand's EP sales are properly reported sales, because those sales were made in accordance with the definition of an EP sale. Mukand has classified those sales made by its wholly-owned affiliate, Mukand International Limited ("MIL"), which was based in the United Arab Emirates during the POR, as EP sales. For the reported EP sales, MIL sold directly to a U.S. customer, prior to importation. Based on the evidence on the record, the Department preliminarily determines that MIL's EP sales were made within the meaning of section 772(a) of the Act, and thus have been appropriately classified by Mukand as EP transactions.

The Department based EP on packed prices to unaffiliated purchasers in the United States. The Department made deductions for inland freight, international freight, marine insurance, brokerage and handling, and U.S. Customs duties in accordance with section 772(c)(2) of the Act.

In addition, Mukand classified certain sales made in the United States after importation, in accordance with an agreement signed by MIL and its customer Precision Metals Services ("PMS") ("the Agreement"), as CEP sales. Due to the proprietary nature of this agreement, please refer to Antidumping Duty Administrative Review of Stainless Steel Wire Rods from India: Agency Sales Analysis, dated December 12, 2003 (*"Agency Sales Memorandum"*), for a detailed explanation. According to Mukand, the agreement was signed, prior to the POR, after several shipments of subject merchandise were rejected by PMS after the subject merchandise had been imported into the United States and stored at PMS' warehouse in the United States. During the POR, several downstream sales of the subject merchandise were made to unaffiliated U.S. customers by PMS in accordance with the terms of the Agreement. Based on the evidence on the record, the Department preliminarily determines that MIL's CEP sales were made within the meaning of section 772(b) of the Act, and thus have been appropriately classified by Mukand as CEP transactions.

Additionally, based on the evidence on the record, the Department has preliminarily determined that given the unique terms and circumstances of these sales, those sales classified by Mukand as CEP sales should also be treated as sales made through an agent, with PMS as the agent. *See Agency Sales Memorandum*.

Citing the *Final Results*, the Department issued a supplemental questionnaire on May 29, 2003, requesting that Mukand report the sales prices and expenses incurred on the reported agency sales to which Mukand provided the Department with a Section C questionnaire response on July 11, 2003. However, after a thorough examination of this response and the accompanying sales database, the Department identified several deficiencies in the response and sales database, requiring the Department to issue an 18 page supplemental questionnaire on August 12, 2003. Despite providing Mukand a chance to correct the deficiencies in the response, Mukand informed the Department that PMS would not submit a response to the Department's supplemental questionnaire. *See* Letter from Mukand, dated September 15, 2003; *Agency Sales Memorandum*.

By not providing the agency sales information requested by the Department, in a database format that provides specific prices and expenses for these agency sales, Mukand has prevented the Department from calculating an accurate dumping margin. Further, in the *Final Results*, the Department made it clear to Mukand that the Department would further examine these sales in subsequent reviews. *See Final Results* at Comment 2. Moreover, the Department applied facts available to Mukand's CEP/agency sales in the last review, noting that it had requested the downstream sales data from Mukand late in the review process. *See Final Results* at Comment 2. Thus, Mukand had notice that the Department would further examine any reported CEP/agency sales in this review and the possible consequences of not supplying the Department with the requested information.

However, despite this knowledge, Mukand and PMS failed to respond to the Department's request to remedy the deficiencies in their response to the Department's request for the downstream sales prices and expenses for the CEP/agency sales. Thus, because Mukand was aware of the fact that the Department would examine its reported CEP/agency sales and the potential consequences of not responding to the Department's request, and because, unlike in the last review, the Department made this request several months before the preliminary determination, the Department has preliminarily determined to apply facts available to these sales (*i.e.*, Mukand's CEP/agency sales), because Mukand and PMS have withheld certain information requested by the Department and did not act to the best of its ability to comply with the Department's request. *See* sections 776(a)(2)(A) and 776(b) of the Act.

Consistent with sections 776(a)(2)(A) and 776(b) of the Act, Mukand and PMS withheld information that had been requested by the Department and did not act to the best of its ability to comply with the Department's request for information, justifying the use of adverse facts available in reaching the applicable determination. Therefore, the Department has preliminarily determined that the use of adverse facts available for the prices and expenses incurred for Mukand's agency sales in the U.S. market, in accordance with section 776(b) of the Act. Facts available, the Department has applied the corroborated "all others" rate of 48.8% to Mukand's reported CEP sales.

Viraj

For purposes of this review, Viraj has classified all of its sales as CEP sales. Based on the information on the record, we are using CEP as defined in section 772(b) of the Act.

Viraj has classified those sales made by VSL through Viraj USA Inc. ("VUI"), an affiliated reseller in the United States that is 100% owned by VFL, as CEP sales. VSL makes the shipment from India on an Ex-Dock Duty Paid ("EDDP") basis to VUI. VUI clears the goods through U.S. customs and oversees customer delivery. Then VUI sells the goods to the unaffiliated U.S. customer, who makes payment to VUI.

Based on the record evidence, the Department preliminarily determines that VSL's U.S. sales through VUI were made "in the United States" within the meaning of section 772(b) of the Act, and thus have been appropriately classified by Viraj as CEP transactions.

The Department calculated CEP, in accordance with section 772(b) of the Act, based on the packed EDDP prices to the first unaffiliated customer in the United States. The Department made deductions for movement expenses in accordance with section 772(c)(2)(A) of the Act; these included, where appropriate, brokerage and handling, inland freight, international freight, U.S. customs duties, marine insurance, and customs clearance and delivery arrangements. In accordance with section 772(d)(1) of the Act, we deducted those selling expense associated with economic activities occurring in the United States, including direct selling expenses (bank charges and credit expenses) and indirect selling expenses.

We recalculated Viraj's U.S. credit expenses to reflect U.S. Federal Reserve short-term rates in accordance with the Department's policy, because Viraj did not incur any short-term loans denominated in U.S. dollars, and the rate reported by Viraj was based on a rate quote that could not be substantiated. *See* Policy Bulletin 1998.2, *Imputed Credit Expenses and Interest Rates*, (February 23, 1998); Sales and Cost Verification of Viraj Alloys Limited ("VAL") and VSL Wires, Limited ("VSL") in the Antidumping Administrative Review of Stainless Steel Wire Rods from India, dated December 10, 2003 ("*Verification Report*") at 14; Analysis Memorandum for Viraj Alloys Limited and VSL Wires Limited for the Preliminary Results of the Administrative Review Stainless Steel Wire Rods from India for the Period December 1, 2001 through November 30, 2002 ("*Analysis Memorandum*") at 3. Additionally, the Department has denied Viraj's reported brokerage and handling expenses, because Viraj could not provide documentation substantiating its reported brokerage and handling expenses. *See Verification Report* at 13; *Analysis Memorandum* at 2; *Notice of Final Determination of Sales at Less Than Fair Value: Structural Steel Beams From Germany*, 67 FR 35497 (May 20, 2002). Finally, as explained in the "Duty Drawback" section below, we are not making any adjustment for duty drawback.

We deducted the profit allocated to expenses deducted under sections 772(d)(1) and (d)(2) in accordance with sections 772(d)(3) and 772(f) of the Act. In accordance with section 772(f) of the Act, we computed profit based on total revenues realized on sales in both the U.S. and home markets, less all expenses associated with those sales. We then allocated profit to expenses incurred with respect to U.S. economic activity, based on the ratio of total U.S. expenses to total expenses for both the U.S. and home market.

Duty Drawback

Viraj

In the previous two administrative reviews, the Department denied Viraj's request for an upward adjustment to the U.S. starting price based on duty drawback pursuant to section 772(c)(1)(B) of the Act. *See Stainless Steel Wire Rods from India: Final Results of Antidumping Duty Administrative Review*, 67 FR 37391 (May 29, 2002); *Final Results* at 26290. The Department denied the duty drawback adjustment because the reported duty drawback was not directly linked to the amount of duty paid on imports used in the production of merchandise for export as required by the Department's two-part test, which states there must be: (1) A sufficient link between the import duty and the rebate, and (2) a sufficient amount of raw materials imported and used in the production of the final exported product. *See Rajinder Pipes Ltd.* v. *United States*, 70 F. Supp. 2d 1350, 1358 (CIT Sept. 17, 1999). The Court of International Trade has upheld the Department's past decisions to deny respondent an adjustment for duty drawback because there was not substantial evidence on the record to establish that part one of the Department's test had been met. *See Viraj Group, Ltd.* v. *United States*, 162 F.Supp. 2d 656 (CIT August 15, 2001).

Similarly, in the current review, the Department finds that Viraj has not provided substantial evidence on the record to establish the necessary link between the import duty and the reported rebate for duty drawback. Viraj has reported that it received duty drawback in the form of duty entitlement certificates which are issued by the Government of India to neutralize the incidence of basic custom duty on the import of raw materials used in the production of subject merchandise, but has failed to establish the necessary link between the import duty paid and the rebate given by the Government of India. *See* Viraj's April 4, 2003 response at C–19. As in the previous review, Viraj was not able to demonstrate that the import duty paid and the duty drawback rebate were directly linked. Therefore, the Department is denying a duty drawback credit for the preliminary results of this review.

Normal Value

After testing home market viability, we calculated NV as noted in the "Price-to-CV Comparisons" and "Price-to-Price Comparisons" sections of this notice.

1. Home Market Viability

In accordance with section 773(a)(1)(C) of the Act, to determine whether there was a sufficient volume of sales in the home market to serve as a viable basis for calculating NV (*i.e.*, the aggregate volume of home market sales of the foreign like product is greater than or equal to five percent of the aggregate volume of U.S. sales), we compared the volume of home market sales of the foreign like product by Mukand and Viraj to the volume of each of their U.S. sales of subject merchandise. Pursuant to sections 773(a)(1)(B) and (C) of the Act, because the aggregate volume of home market sales of the foreign like product by Mukand and Viraj were each greater than five percent of the aggregate volume of U.S. sales for the subject merchandise, we determined that sales in the home market provide a viable basis for calculating NV. We therefore based NV on home market sales to unaffiliated purchasers made in the usual commercial quantities and in the ordinary course of trade.

For NV, we used the prices at which the foreign like product was first sold for consumption in India, in the usual commercial quantities, in the ordinary course of trade, and, to the extent possible, at the same level of trade ("LOT") as the EP or CEP as appropriate. After testing home market viability and whether home market sales were at below-cost prices, we calculated NV as noted in the "Price-to-Price Comparisons" and "Price-to-Constructed Value ("CV") Price Comparisons" sections of this notice.

Additionally, Viraj reported the home market sales of VSL. Since we have preliminarily determined to collapse the companies of Viraj, we included the home market sales of VSL as the basis of NV for Viraj.

2. Cost of Production Analysis

Mukand

Because the Department disregarded certain Mukand sales made in the home market at prices below the cost of producing the subject merchandise in the most recently completed segment of this proceeding and excluded such sales from NV, the Department determined that there are reasonable grounds to believe or suspect that Mukand made sales in the home market at prices below the cost of producing the merchandise in this review. *See Final Results*, 68 FR 26290; Department's letter to Mukand, dated May 14, 2003; section 773(b)(2)(A)(ii) of the Act. As a result, the Department requested that Mukand report its cost of production on May 14, 2003, to determine whether Mukand made home market sales during the POR at prices below their respective COPs within the meaning of section 773(b) of the Act. *See* Department's letter to Mukand, dated May 14, 2003.

Viraj

Because the Department disregarded certain Viraj Group sales made in the home market at prices below the cost of producing the subject merchandise in the most recently completed segment of this proceeding and excluded such sales from NV, the Department determined that there are reasonable grounds to believe or suspect that Viraj made sales in the home market at prices below the cost of producing the merchandise in this review. *See Final Results;* section 773(b)(2)(A)(ii) of the Act. As a result, Viraj submitted its Section D questionnaire response to the Department on April 4, 2003.

3. Calculation of COP

In accordance with section 773(b)(3) of the Act, we calculated cost of production ("COP") based on the sum of Mukand and Viraj's costs of materials and fabrication for the foreign like product, plus amounts for home market selling, general and administrative expenses ("SG&A"), including interest expenses, and packing costs. The Department relied on the COP data submitted by Mukand and Viraj in their original and supplemental cost questionnaire responses for this calculation.

Viraj

For the preliminary results, the Department denied Viraj's claimed interest offset because we have determined that Viraj's claimed interest offsets that were not of a short-term nature. *See Verification Report* at 22. Thus, the Department has recalculated Viraj's interest expense. *See Analysis Memorandum* at 4.

4. Test of Home Market Prices

We compared the weighted-average COP for Mukand and Viraj's home market sales of the foreign like product as required under section 773(b) of the Act, in order to determine whether these sales had been made at prices below the COP. In determining whether to disregard home market sales made at prices less than the COP, we examined whether such sales were made: (1) In substantial quantities within an extended period of time; and (2) at prices which permitted the recovery of all cost with all costs within a reasonable period of time, in accordance with sections 773(b)(1)(A) and (B) of the Act. We compared the COP to home market prices, less any applicable billing adjustments, movement charges, discounts, and indirect selling expenses.

5. Results of the COP Test

Pursuant to section 773(b)(2)(C) of the Act, where less than 20 percent of the sales made by Mukand and Viraj of a given product were, within an extended period of time, at prices less than the COP, we did not disregard any below-cost sales of that product because we determined that the below-cost sales were not made in "substantial quantities." Where 20 percent or more of the sales made by Mukand and Viraj of a given product were at prices less than the COP, we determined such sales to have been made in "substantial quantities" within an extended period of time, in accordance with sections 773(b)(2)(B) of the Act and 19 C.F.R. 351.406(b). In such cases, because we used POR average costs, we also determined that such sales were not made at prices which would permit recovery of all costs within a reasonable period of time, in accordance with section 773(b)(2)(D) of the Act. We compared the COP for subject merchandise to the reported home market prices less any applicable movement charges. Based on this test, we disregarded below-cost sales. Where all sales of a specific product were at prices below the cost of production, we disregarded all sales of that product.

Price-to-CV Comparisons

In accordance with section 773(a)(4) of the Act, we based NV on CV if we were unable to find a home market match of identical or similar merchandise. We calculated CV based on the sum of the cost of materials, fabrication employed by Mukand and Viraj in producing the subject merchandise, and SG&A, including interest expenses and profit. We calculated the COPs included in the calculation of CV as noted above in the "Calculation of COP" section of this notice. In accordance with section 773(e)(2)(A) of the Act, we based SG&A expense and profit on the amounts incurred and realized by the respondent in connection with the production and sale of the foreign like product in the ordinary course of trade for consumption in India. For selling expenses, we used the actual weighted-average home market direct and indirect selling expenses. For CV, we made the same adjustments described in the COP section above.

Price-to-Price Comparisons

Mukand

For those products comparisons for which there were sales at prices at or above the COP, we based NV on the home market prices to the home market customers. We made adjustments, where applicable, for inland freight from plant to distribution warehouse, and warehousing in accordance with section 773(a)(6)(B)(i) and (ii) of the Act. We made circumstance-of-sale adjustments for commissions, credit and interest revenue, where appropriate, in accordance with section 773(a)(6)(C) of the Act. We also made commission-offset adjustments, where applicable, for indirect selling expenses, including inventory carrying costs in accordance with section 773(a)(6)(C) of the Act.

We made adjustments, where appropriate, for physical differences in the merchandise in accordance with section 773(a)(6)(C)(ii) of the Act. Additionally, in accordance with section 773(a)(6)(A), we added U.S. packing costs. In accordance with the Department's practice, where all contemporaneous matches to a U.S. sale observation resulted in difference-in-merchandise adjustments exceeding 20 percent of the cost of manufacturing ("COM") of the U.S. product, we based NV on CV. Finally, in accordance with section 773(a)(4) of the Act, where the Department was unable to determine NV on the basis of contemporaneous matches in accordance with section 773(a)(1)(B)(i) of the Act, we based NV on CV.

Viraj

For those products comparisons for which there were sales at prices at or above the COP, we based NV on the home market prices to the home market customers. We made circumstance-of-sale adjustments for commissions and credit, where appropriate in accordance with section 773(a)(6)(C) of the Act. We also made adjustments, where applicable, for other discounts and indirect selling expenses in accordance with section 773(a)(6)(B)(ii) of the Act.

We made adjustments, where appropriate, for physical differences in the merchandise in accordance with section 773(a)(6)(C)(ii) of the Act. Additionally, in accordance with

section 773(a)(6)(A), we added U.S. packing costs. In accordance with the Department's practice, where all contemporaneous matches to a U.S. sale observation resulted in difference-in-merchandise adjustments exceeding 20 percent of the cost of manufacturing ("COM") of the U.S. product, we based NV on CV. Finally, in accordance with section 773(a)(4) of the Act, where the Department was unable to determine NV on the basis of contemporaneous matches in accordance with section 773(a)(1)(B)(i) of the Act, we based NV on CV.

Level of Trade

In accordance with section 773(a)(1)(B) of the Act, to the extent practicable, we determine NV based on sales in the comparison market at the same level of trade ("LOT") as the EP or CEP transaction. *See also* 19 CFR 351.412. The NV LOT is that of the starting-price sales in the comparison market or, when NV is based on CV, that of the sales from which we derive SG&A expenses and profit. *See* 19 CFR 351.412(2)(iii). For EP, the LOT is also the level of the starting-price sale, which is usually from the exporter to the importer. *See* 19 CFR 351.412(c)(i). For CEP, it is the level of the constructed sale from the exporter to the affiliated importer. *See* 19 CFR 351.412(c)(ii).

To determine the LOT of a sale, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. Substantial differences in selling activities are a necessary, but not sufficient condition for determining that there is a difference in the stage of marketing. *See* 19 CFR 351.412(C)(2). If the comparison market sales are at a different LOT, and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison-market sales at the LOT of the export transaction, we make a LOT adjustment under section 773(a)(7)(A) of the Act. Finally, for CEP sales, if the NV level is more remote from the factory than the CEP level and there is no basis for determining whether the differences in the levels between NV and CEP sales affect price comparability, we adjust NV under section 773(A)(7)(B) of the Act (the CEP offset provision). *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from South Africa*, 62 FR 61731 (November 19, 1997).

In implementing these principles in this review, we obtained information from Mukand and Viraj about the marketing stages involved in their respective U.S. and home market sales, including a description of the selling activities performed by Mukand and Viraj for each channel of distribution. In identifying levels of trade for CEP, we considered only the selling activities reflected in the price after the deduction of expenses and profit under section 772(d) of the Act. *See Micron Technology, Inc.* v. *United States*, 243 F.3d 1301, 1314–1315 (Fed. Cir. 2001). Generally, if the reported levels of trade are the same in the home and U.S. markets, the functions and activities of the seller should be similar. Conversely, if a party reports levels of trade that are different categories of sales, the functions and activities should be dissimilar.

In the present review, while Mukand requested an LOT adjustment, Viraj did not; the Department nonetheless considered LOT adjustments for both Mukand and Viraj. To determine whether an adjustment was necessary for either company, in accordance with the principles discussed above, we examined information regarding the distribution systems in both the United States and home markets, including the selling functions, classes of customer, and selling expenses.

Mukand

In the home market ("HM"), Mukand reported three levels of trade. *See* Mukand's Sections B and C questionnaire response, dated April 7, 2003 ("*Mukand's Sections B & C response*") at 18. Mukand sold through four channels of distribution in the HM. *See Mukand's Sections B & C response*, at 10. The Department has preliminarily determined that in each of these four channels of distribution, only minor differences in selling functions existed during the POR. *See* Antidumping Duty Administrative Review of Stainless Steel Wire Rods from India: Level of Trade Analysis, dated December 12, 2003 ("*LOT Memorandum*"). Because the Department has preliminarily determined that only minor differences exist between selling functions in each of the four HM channels of distribution, we preliminarily determine that there is one LOT in the HM.

For the U.S. market, Mukand reported one level of trade. *See Mukand's Sections B & C response* at 52. For its U.S. sales, Mukand reported two channels of distribution: EP sales made to order to an unaffiliated customer before importation; and CEP sales sold after importation. For details of these sales, *see Agency Sales Memorandum*. For its EP sales, Mukand's sales were made by its wholly-owned subsidiary, MIL, which was based in the United Arab Emirates during the POR, directly to an unaffiliated U.S. customer. For its CEP sales, PMS sold Mukand's subject merchandise after importation on an agency basis to unaffiliated customers in the United States. *See Agency Sales Memorandum*. We examined the claimed selling functions performed by MIL for all U.S. sales and have determined that MIL provided the same level of services for both its EP and CEP sales to the United States. *See LOT Memorandum* at 6.

For EP sales in the U.S. market, Mukand provided the same level of services for both EP and NV sales with only minor differences. *See LOT Memorandum* at 6. After analyzing the selling functions performed for sales in the HM and EP sales in the U.S. market, we preliminarily determine that there is not a significant difference in the selling functions performed in the home market and U.S. market, and that these sales are made at the same LOT. *See LOT Memorandum* at 6.

In order to determine whether NV was established at a different LOT than CEP, we examined stages in the marketing process and selling functions between Mukand and its home market customers. We compared the selling functions performed for home market sales with those performed with respect to the CEP transactions, after deductions for economic activities occurring in the United States, pursuant to section 772(d) of the Act, to determine if the home market level of trade constituted a different level of trade than the CEP level of trade. After analyzing the selling functions performed for sales in the HM and CEP sales in the U.S. market, we preliminarily determine that there is no significant difference in the selling functions performed in the home market and U.S. market, and that these sales are made at the same LOT. *See LOT Memorandum* at 6.

Mukand did not request a CEP offset. Nonetheless, in accordance with the principles discussed above, we examined information regarding the distribution systems in both the United States and the Indian markets, including the selling functions, classes of customer, and selling expenses to determine whether a CEP offset was necessary. In identifying levels of trade for CEP, we considered only the selling activities reflected in the price after the deduction of expenses and profit under section 772(d) of the Act. *See LOT Memorandum*. Based on our analysis of the channels of distribution and selling functions performed for sales in the home market and CEP sales in the U.S. market, we preliminarily find that there is no significant difference in the selling functions performed in the home market and the U.S. market for CEP sales. *See LOT Memorandum* at 6. Thus, we find that Mukand's NV and CEP sales were made at the same LOT, and no LOT adjustment or CEP offset need be granted.

Viraj

In accordance with the principles discussed above, we examined information regarding Viraj's distribution systems in both the United States and Indian markets, including selling functions, classes of customer, and selling expenses for Viraj.

Viraj claimed three levels of trade in the home market. *See* Viraj Section B and C Questionnaire Response, dated April 4, 2003 ("*Viraj Section B and C Response*") at B–13. Additionally, Viraj reported that it sold through one channel of distribution in the home market: directly to unaffiliated customers ("actual user", "trading company", and "distributors"). *See Viraj Section B and C Response* at B–6. For sales in the home market, Viraj reported that all of its sales are sold ex-works. *See Viraj Section B and C Response* at B–9. Viraj reported that it performs the following selling functions in the home market: price negotiations, order processing, and customer communication. *See* Viraj Section A Questionnaire Response, dated March 18, 2003, at A–12. Because there is only one channel of distribution in the home market and identical selling functions are performed for all home market sales, we preliminarily determine that there is one LOT in the home market.

Viraj claimed three levels of trade in the U.S. market. *See Viraj Section B and C Response* at C–13. Viraj reported that it sold through one channel of distribution in the U.S. market, directly from its mill to its U.S. affiliate (*i.e.*, VUI). *See Viraj Section B and C Response* at C–6. The Department examined the selling functions and services performed by Viraj to its U.S. affiliate, VUI. We found that the selling functions (*i.e.*, price negotiations, order processing, and customer communication) Viraj performs after the section 772(d) adjustment are the same for all of its U.S. sales. *See* Viraj Section A Questionnaire Response March 18, 2003 ("*Viraj March 18, 2003 Response*") at A–14. Therefore, we preliminarily determine that Viraj has one LOT in the U.S. market based on its selling functions to the United States.

In order to determine whether NV was established at a different LOT than CEP sales, we examined stages in the marketing process and selling functions along the chains of distribution between (1) Viraj and its home market customers and (2) Viraj and its affiliated U.S. reseller, VUI, after deductions for expenses and profits. Specifically, we compared the selling functions performed for home market sales with those performed with respect to the CEP transaction, after deductions for economic activities occurring in the United States, pursuant to section 772(d) of the Act, to determine if the home market level of trade constituted a different level of trade than the CEP level of trade.

Viraj did not request a CEP offset. Nonetheless, in accordance with the principles discussed above, we examined information regarding the distribution systems in both the United States and Indian markets, including the selling functions, classes of customer, and selling expenses to determine whether a CEP offset was necessary. For CEP sales, we found that Viraj provided many of the same selling functions and expenses for its sale to its affiliated U.S. reseller VUI as it provided for its home market sales, including price negotiation, order processing, and customer communication. Based on our analysis of the channels of distribution and selling functions performed for sales in the home market and CEP sales in the U.S. market, we preliminarily find that there is no significant difference in the selling functions performed in the home market and the U.S. market for CEP sales. Thus, we find that Viraj's NV and CEP sales were made at the some LOT, and no LOT adjustment or CEP offset need be granted.

Currency Conversion

We made currency conversions into U.S. dollars based on the exchange rates in effect on the dates of the U.S. sales, as certified by the Federal Reserve Bank, in accordance with section 773A(a) of the Act.

Preliminary Results of Review

As a result of our review, we preliminarily determine that the following weighted-average dumping margin exists for Isibars, Mukand, and Viraj for the period December 1, 2001 through November 30, 2002:

Producer/Manufacturer/Exporter	Weighted-average margin (percent)
Isibars Steel	48.80
Mukand Limited	18.67
Viraj Group	17.16

The Department will disclose calculations performed for these preliminary results within five days of the date of publication of this notice to the parties of this proceeding in accordance with 19 CFR 351.224(b). Any interested party may request a hearing within 30 days of publication of these preliminary results. *See* 19 CFR 351.310(c). Any hearing, if requested, will be held 37 days after the date of publication, or the first working day thereafter. *See* 19 CFR 351.310(d). Interested parties may submit case briefs no later than 30 days after the date of publication of these preliminary results of review. *See* 19 CFR 351.309(c)(ii). Rebuttal briefs, limited to issues raised in such briefs or comments, may be filed no later than 35 days after the date of publication. *See* 19 CFR 351.309(d). Further, we would appreciate it if parties submitting written comments also provide the Department with an additional copy of those comments on diskette. The Department will issue the final results of this administrative review, which will include the results of its analysis of issues raised in any such comments, within 120 days of publication of these preliminary results, pursuant to section 751(a)(3)(A) of the Act.

Assessment

Upon issuance of the final results of this review, the Department shall determine, and the CBP shall assess, antidumping duties on all appropriate entries. Pursuant to 19 CFR 351.212(b), the Department has calculated an assessment rate applicable to all appropriate entries. We calculated importer-specific duty assessment rates on the basis of the ratio of the total amount of antidumping duties calculated for the examined sales to the total entered value, or entered quantity, as appropriate, of the examined sales for that importer. Upon completion of this review, where the assessment rate is above de minimis, we will instruct BCBP to assess duties on all entries of subject merchandise by that importer.

Cash Deposit

The following cash deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(1) of the Act: (1) The cash deposit rate for each of the reviewed companies will be the rate listed in the final results of review (except that if the

rate for a particular company is de minimis, *i.e.*, less than 0.5 percent, no cash deposit will be required for that company); (2) for previously investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be the "all others" rate of 48.80 percent, which is the all others rate established in the LTFV investigation. These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

Notification to Interested Parties

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of the antidumping duties occurred and the subsequent assessment of double antidumping duties.

This determination is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: December 12, 2003.

James J. Jochum,

Assistant Secretary for Import Administration.

[FR Doc. 03–31354 Filed 12–18–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C-533–839]

Notice of Initiation of Countervailing Duty Investigation: Carbazole Violet Pigment 23 From India

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: December 19, 2003.

FOR FURTHER INFORMATION CONTACT: Sean Carey at (202) 482–3964, Office of AD/CVD Enforcement Office 7, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Initiation of Investigation

The Petition

On November 21, 2003, the U.S. Department of Commerce (the Department) received a petition filed in proper form by Sun Chemical Corporation and Nation Ford Chemical Company (collectively, the petitioners). The Department received supplemental information to the petition from the petitioners on December 5, 2003.

In accordance with section 702(b)(1) of the Act, petitioners allege that producers or exporters of carbazole violet pigment 23 (CVP-23) in India receive countervailable subsidies within the meaning of section 701 of the Act, and that imports from India are materially injuring, or are threatening material injury, to an industry in the United States.

The Department finds that the petitioners filed the petition on behalf of the domestic industry because they are interested parties as defined in section 771(9)(C) of the Act and they have demonstrated sufficient industry support with respect to the countervailing duty investigation that they are requesting the Department to initiate. *See infra*, "Determination of Industry Support for the Petition."

Period of Investigation

The anticipated period of investigation (POI) is January 1, 2002 through December 31, 2002.

Scope of Investigation

The merchandise covered by this investigation is carbazole violet 23 identified as Color Index No. 51319 and Chemical Abstract No. 6358–30–1, with the chemical name of *diindolo [3,2-b:3',2'-m]triphenodioxazine, 8,18-dichloro-5, 15 5,15-diethy-5,15-dihydro-*, and molecular formula of $C_{34}H_{22}Cl_2N_4O_2$.[1] The subject merchandise includes the crude pigment in any form (*e.g.*, dry powder, paste, wet cake) and finished pigment in the form of presscake and dry color. Pigment dispersions in any form (*e.g.* pigments dispersed in oleoresins, flammable solvents, water) are not included within the scope of the investigation.

[1] Please note that the bracketed section of the product description, [3,2-b:3',2'-m], is not business proprietary information. In this case, the brackets are simply part of the chemical nomenclature. *See* December 4, 2003, amendment to petition (supplemental petition) at 8.

The merchandise subject to this investigation is classifiable under subheading 3204.17.9040 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheading is provided for convenience and customs purposes, the written description of the merchandise under investigation is dispositive.

During our review of the petition, we discussed the scope with the petitioners to ensure that it is an accurate reflection of the products for which the domestic industry is seeking relief. As discussed in the preamble to the Department's regulations (*Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296, 27323 (May 19, 1997)), we are setting aside a period for parties to raise issues regarding product coverage. The Department encourages all parties to submit such comments within 20 calendar days of publication of this notice. Comments should be addressed to Import Administration's Central Records Unit, Room 1870, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230. The period of scope consultations is intended to provide the Department with ample opportunity to consider all comments and consult with parties prior to the issuance of the preliminary determination.

Consultations

In accordance with Article 13.1 of the Agreement on Subsidies and Countervailing Measures and section 702(b)(4)(A)(ii) of the Tariff Act of 1930, we held consultations with the Government of India ("GOI") regarding this petition on December 9, 2003. *See Memorandum to the File from Sean Carey: Consultations with the Government of India Regarding the Countervailing Duty Petition on Carbazole Violet Pigment 23*, dated December 10, 2003.

Determination of Industry Support for the Petition

Section 702(b)(1) of the Act requires that a petition be filed on behalf of the domestic industry. Section 702(c)(4)(A) of the Act provides that the Department's industry support determination, which is to be made before the initiation of the investigation, be based on whether a minimum percentage of the relevant industry supports the petition. A petition satisfies this requirement if the domestic producers or workers who support the petition account for: (1) at least 25 percent of the total production of the domestic like product; and (2) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition. Moreover, section 702(c)(4)(D) of the Act provides that, if the petition does not establish support of domestic producers or workers accounting for more than 50 percent of the total production of the domestic like product, the Department shall either poll the industry or rely on other information in order to determine if there is support for the petition.

Section 771(4)(A) of the Act defines the "industry" as the producers of a domestic like product. Thus, to determine whether a petition has the requisite industry support, the statute directs the Department to look to producers and workers who produce the domestic like product. The U.S. International Trade Commission (ITC), which is responsible for determining whether "the domestic industry" has been injured, must also determine what constitutes a domestic like product in order to define the industry. While both the Department and the ITC must apply the same statutory definition regarding the domestic like product (section 771(10) of the Act), they do so for different purposes and pursuant to separate and distinct authority. In addition, the Department's determination is subject to limitations of time and information. Although this may result in different definitions of the like product, such differences do not render the decision of either agency contrary to the law.[2]

Section 771(10) of the Act defines the domestic like product as "a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this title." Thus, the reference point from which the domestic like product analysis begins is "the article subject to an investigation," *i.e.*, the class or kind of merchandise to be investigated, which normally will be the scope as defined in the petition.

In this case, the petition covers a single class or kind of merchandise, CVP-23, as defined in the "Scope of Investigation" section, above. The petitioners do not offer a definition of domestic like product distinct from the scope of the investigation. Further, based on our analysis of the information presented to the Department by the petitioners, we have determined that there is a single domestic like product which is consistent with the definition of the "Scope of the Investigation" section above and have analyzed industry support in terms of this domestic like product.

The Department has determined that the petitioners have established industry support representing over 50 percent of total production of the domestic like product, requiring no further action by the Department pursuant to section 702(c)(4)(D) of the Act. In addition, the Department received no opposition to the petitions from domestic producers of the like product. Therefore, the domestic producers or workers who support the petitions account for at least 25 percent of the total production of the domestic like product, and the requirements of section 702(c)(4)(A)(i) of the Act are met. Furthermore, the domestic producers or workers who support the petitions account for more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for or opposition to the petitions. Thus, the requirements of section 702(c)(4)(A)(ii) of the Act also are met.

Accordingly, we determine that the petition is filed on behalf of the domestic industry within the meaning of section 702(b)(1) of the Act. *See Countervailing Duty Investigation Initiation Checklist: Carbazole Violet Pigment 23 (CVP-23) in the Forms of Crude Pigment, Presscake and Dry Color Pigment from India* (December 11, 2003) (Initiation Checklist) at Attachment II, on file in the Central Records Unit, Room B-099 of the Department of Commerce.

Injury Test

Because India is a "Subsidies Agreement Country" within the meaning of section 701(b) of the Act, section 701(a)(2) applies to this investigation. Accordingly, the ITC must determine whether imports of the subject merchandise from India are materially injuring, or are threatening material injury to, an industry in the United States.

Allegations of Subsidies

Section 702(b) of the Act requires the Department to initiate a countervailing duty proceeding whenever an interested party files a petition, on behalf of an industry, that; (1) alleges the elements necessary for an imposition of a duty under section 701(a), and (2) is accompanied by information reasonably available to petitioners supporting the allegations.

We are initiating an investigation of the following programs alleged in the petition to have provided countervailable subsidies to manufacturers, producers and exporters of the subject merchandise in India (a full description of each program is provided in the *CVD Initiation Checklist*):

1. The Duty Entitlement Passbook Scheme (DEPS)/ Post-Export Credits
2. Export Promotion Capital Goods Scheme (EPCGS)
3. Export Processing Zones (EPZ)/ Export-Oriented Units (EOU) Programs
4. Income Tax Exemption Scheme (Sections 10A, 10B, and 80 HHC)
5. Pre-Shipment Export Financing
6. Exemption of Export Credit from Interest Taxes
7. Market Development Assistance (MDA)
8. Special Imprest Licenses
9. Central Value Added Tax (CENVAT) Scheme

Allegations and Evidence of Material Injury and Causation

The petitioners allege that the U.S. industry producing the domestic like product is being materially injured, or is threatened with material injury, by reason of subsidized imports from India of the subject merchandise.

The petitioners contend that the industry's injured condition is evident in the declining trends in net operating profits, net sales volumes, domestic prices, revenue, profit-to-sales ratios, production employment, capacity utilization, and domestic market share. The allegations of injury and causation are supported by relevant evidence including U.S. import data, lost sales, and pricing information.

The Department has assessed the allegations and supporting evidence regarding material injury and causation and determined that these allegations are properly supported by adequate evidence and meet the statutory requirements for initiation. *See Initiation Checklist.*

Initiation of Countervailing Duty Investigation

Based on our examination of the petition on CVP-23, and petitioners' responses to our requests for supplemental information clarifying the petition, we have found that the petition meets the requirements of section 702(b) of the Act. Therefore, in accordance with section 702(b) of the Act, we are initiating a countervailing duty investigation to determine whether

[2] *See USEC, Inc., v. United States*, 132 F. Supp. 2d 1,8 (CIT 2001), citing *Algoma Steel Corp. Ltd., v. United States*, 688 F. Supp. 639, 642-44 (CIT 1988). *See also High Information Content Flat Panel Displays and Display Glass from Japan: Final Determination; Rescission of Investigation and Partial Dismissal of Petition*, 56 FR 32376, 32380-81 (July 16, 1991).

manufacturers, producers, or exporters of CVP-23 from India receive countervailable subsidies. Unless the deadline is extended, we will make our preliminary determination no later than 65 days after the date of this initiation.

Distribution of Copies of the Petition

In accordance with section 702(b)(3)(A) of the Act, a copy of the public version of the petition has been provided to the representatives of the government of India. We will attempt to provide a copy of the public version of the petition to each exporter named in the petition, as provided for under 19 CFR 351.203(c)(2).

ITC Notification

We have notified the ITC of our initiation as required by section 702(d) of the Act.

Preliminary Determination by the ITC

The ITC will determine no later than January 5, 2004, whether there is a reasonable indication that imports of CVP-23 from India are materially injuring, or threatening material injury to, a U.S. industry. A negative ITC determination will result in the investigation being terminated; otherwise, this investigation will proceed according to statutory and regulatory time limits.This notice is issued and published pursuant to section 777(i) of the Act.

Dated: December 11, 2003.

James Jochum,

Assistant Secretary for Import Administration.

[FR Doc. E3–00597 Filed 12–19–03; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Science Advisory Board

AGENCY: Office of Oceanic and Atmospheric Research, NOAA, DOC.

ACTION: Notice of open meeting.

SUMMARY: The Science Advisory Board (SAB) was established by a Decision Memorandum dated September 25, 1997, and is the only Federal Advisory Committee with responsibility to advise the Under Secretary of Commerce for Oceans and Atmosphere on long- and short-range strategies for research, education, and application of science to resource management. SAB activities and advice provide necessary input to ensure that National Oceanic and Atmospheric Administration (NOAA) science programs are of the highest quality and provide optimal support to resource management.

Time and Date: The meeting will be held Tuesday, January 6, 2004, from 1 p.m. to 5 p.m. These times and the agenda topic described below may be subject to change. Refer to the web page listed below for the most up-to-date meeting agenda.

Place: The meeting will be held at the Marriott DC at Metro Center, 775 12th Street NW., Washington, DC.

Status: The meeting will be open to public participation with a 60-minute time period set aside for verbal statements or questions from the public. The SAB expects that public statements presented at its meetings will not be repetitive of previously submitted verbal or written statements. In general, each individual or group making a verbal statement will be limited to a total time of five (5) minutes. Written statements (at least 35 copies) should be received in the SAB Executive Director's Office by December 31, 2003, to provide sufficient time for SAB review. Written statements received by the SAB Executive Director after December 31, 2003, will be distributed to the SAB, but may not be reviewed prior to the meeting date. Approximately thirty (30) seats will be available for the public including five (5) seats reserved for the media. Seats will be available on a first-come, first-served basis.

Matters To Be Considered: The only topic on the meeting agenda is the report of the NOAA Research Review Team.

FOR FURTHER INFORMATION CONTACT: Dr. Michael Uhart, Executive Director, Science Advisory Board, NOAA, Rm. 11142, 1315 East-West Highway, Silver Spring, Maryland 20910. (Phone: 301–713–9121, Fax: 301–713–3515, E-mail: *Michael.Uhart@noaa.gov*); or visit the NOAA SAB Web site at *http://www.sab.noaa.gov*.

Dated: December 15, 2003.

Louisa Koch,

Deputy Assistant Administrator, OAR.

[FR Doc. 03–31254 Filed 12–18–03; 8:45 am]

BILLING CODE 3510–KD–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Submission for OMB Review; Comment Request

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

DATES: Consideration will be given to all comments received by January 20, 2004.

Title, Form, and OMB Number: TRICARE Prime Enrollment/ Disenrollment Applications; OMB Number 0720–0008.

Type of Request: Reinstatement.

Number of Respondents: 20,689.

Responses Per Respondent: 1.

Annual Responses: 20,689.

Average Burden Per Response: 7 minutes.

Annual Burden Hours: 2,150.

Needs and Uses: These collection instruments serve as applications for the enrollment, disenrollment, and Primary Care Manager (PCM) Change for the Department of Defense's TRICARE Prime program established in accordance with Title 10, U.S.C., Section 1099, which calls for a healthcare enrollment system. Monthly payment options for retiree enrollment fees for TRICARE Prime are established in accordance with Title 10 U.S.C., section 1097a(c). The information collected on the TRICARE Prime Enrollment Application/PCM Change Form provides the necessary data to determine beneficiary eligibility, to identify the selection of a health care option, and to change the designated PCM when the beneficiary is relocating or merely requests a local PCM change, in accordance with the National Defense Authorization Act for Fiscal Year 2001, Pub. L. 106–398, section 723(b)(E). The TRICARE Prime Disenrollment Application serves to disenroll an enrollee from TRICARE Prime on a voluntary basis.

Affected Public: Individuals or households.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: Ms. Jacqueline Zeiher—Written comments and recommendations on the proposed information collection should be sent to Ms. Zeiher at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

DoD Clearance Officer: Ms. Jacqueline Davis—Written requests for copies of the information collection proposal should be sent to Ms. Davis, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302.

Dated: November 26, 2003.

Patricia L. Toppings,

Alternate OSD Federal Register, Liaison Officer, Department of Defense.

[FR Doc. 03–31279 Filed 12–18–03; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Submission for OMB Review; Comment Request

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

DATES: Consideration will be given to all comments received by January 20, 2004.

Title, Form, and OMB Number: Family Support Center Individual/ Family Data Card; OMB Number 0701–0070.

Type of Request: Extension of a Currently Approved Collection.

Number of Respondents: 10,000.

Responses Per Respondent: 3.

Annual Responses: 30,000.

Average Burden Per Response: 16 minutes.

Annual Burden Hours: 2,600.

Needs and Uses: This information collection is necessary to obtain demographic data about individuals and family members who utilize the services of the United States Air Force Family Support Center. It is also a mechanism for tracking the services provided in order to determine program usage and trends as well as for the purpose of program evaluation, service targeting, and future budgeting. It also provides demographic data on volunteers and tracks volunteer service.

Affected Public: Individuals or Households.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Ms. Jacqueline Zeiher—Written comments and recommendations on the proposed information collection should be sent to Ms. Zeiher at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

DoD Clearance Officer: Ms. Jacqueline Davis—Written requests for copies of the information collection proposal should be sent to Ms. Davis, WHS/ DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302.

Dated: November 26, 2003.

Patricia L. Toppings,

Alternate OSD Federal Register, Liaison Officer, Department of Defense.

[FR Doc. 03–31280 Filed 12–18–03; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Submission for OMB Review; Comment Request

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

DATES: Consideration will be given to all comments received by January 20, 2004.

Title, Form, and OMB Number: Non-Prior Service and Prior Service Accessions; AETC Forms 1319, 1325, and 1419; OMB Number 0701–0079.

Type of Request: Extension of a Currently Approved Collection.

Number of Respondents: 110,231.

Responses Per Respondent: 1.

Annual Responses: 110,231.

Average Burden Per Response: 38 minutes average.

Annual Burden Hours: 69,105.

Needs and Uses: This information collection is necessary for recruiters to determine applicant qualifications when conducting an interview. Information from the interview will determine if additional documents on law violations, citizenship verification, and education are needed. Applicants who have reached a certain age, marital status, or classification are required to submit financial information. Additionally, the AETC 1419 is used to collect police reports, law violation disposition reports, and court documents used to determine an applicant's moral qualification.

Affected Public: Individuals or households.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: Mr. William Nickerson—Written comments and recommendations on the proposed information collection should be sent to Mr. Nickerson at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Ms. Jacqueline Davis—Written requests for copies of the information collection proposal should be sent to Ms. Davis, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302.

Dated: November 26, 2003.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 03–31281 Filed 12–18–03; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Submission for OMB Review; Comment Request

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

DATES: Consideration will be given to all comments received by January 20, 2004.

Title, Form, and OMB Number: Air Force Academy Candidate Activities Record; OMB Number 0701–0063.

Type of Request: Extension of a currently approved collection.

Number of Respondents: 8,510.

Responses Per Respondent: 1.

Annual Responses: 8,510.

Average Burden Per Response: 45 minutes.

Annual Burden Hours: 6,383.

Needs and Uses: This information collection is necessary to obtain data on candidate's background and aptitude in determining eligibility and selection to the Air Force Academy.

Affected Public: Individuals or households.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: Mr. William Nickerson—Written comments and recommendations on the proposed information collection should be sent to Mr. Nickerson at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Ms. Jacqueline Davis—Written requests for copies of the information collection proposal should be sent to Ms. Davis, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302.

Dated: November 26, 2003.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 03–31282 Filed 12–18–03; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Submission for OMB Review; Comment Request

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

DATES: Consideration will be given to all comments received by January 20, 2004.

Title, Form, and OMB Number: Air Force Academy Candidate Personal Data Record; OMB Number 0701–0064.

Type of Request: Extension of a currently approved collection.

Number of Respondents: 8,500.

Responses Per Respondent: 1.

Annual Responses: 8,500.

Average Burden Per Response: 30 minutes.

Annual Burden Hours: 4,250.

Needs and Uses: This information collection is necessary to obtain data on candidate's background and aptitude in determining eligibility and selection to the Air Force Academy.

Affected Public: Individuals or households.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: Mr. William Nickerson—Written comments and recommendations on the proposed information collection should be sent to Mr. Nickerson at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Ms. Jacqueline Davis—Written requests for copies of the information collection proposal should be sent to Ms. Davis, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302.

Dated: November 26, 2003.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 03–31283 Filed 12–18–03; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0005]

Federal Acquisition Regulation; Submission for OMB Review; Standard Form 255, Architect-Engineer and Related Services Questionnaire for Specific Project

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for public comments regarding an extension to an existing OMB clearance (9000–0005).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning architect-engineer and related services questionnaire for specific project (SF 255). A request for public comments was published at 68 FR 60093, October 21, 2003. No comments were received.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

DATES: Submit comments on or before January 20, 2004.

ADDRESSES: Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to the General Services Administration, FAR Secretariat (MVA), 1800 F Street, NW., Room 4035, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Cecelia Davis, Acquisition Policy Division, GSA (202) 219–0202.

SUPPLEMENTARY INFORMATION:

A. Purpose

Standard Form (SF) 255, Architect-Engineer and Related Services Questionnaire for Specific Projects is used by all Executive agencies to obtain information from architect-engineer (A-E) firms interested in a particular project. The information on the form is reviewed by a selection panel composed of professional people and assists the panel in selecting the most qualified A-E firm to perform the specific project. The form is designed to provide a uniform method for A-E firms to submit information on experience, personnel, capabilities of the A-E firm to perform, along with information on the consultants they expect to collaborate with on the specific project.

The SF 330, Architect-Engineer Qualifications will replace SF 255, Architect-Engineer and Related Services Questionnaire for Specific Projects. The SF 330 reflects current architect-engineer practices in a streamlined and updated format, and is organized into data blocks that readily support automation. The final version of the SF 330 has been published in the **Federal Register** and mandatory use is set for June 8, 2004. Therefore, it is necessary to extend this SF 255 for six months to cover this period of time.

B. Annual Reporting Burden

Respondents: 5,000.

Responses Per Respondent: 4.

Annual Responses: 20,000.

Hours Per Response: 1.2.

Total Burden Hours: 24,000.

Obtaining Copies of Proposals

Requesters may obtain a copy of the information collection documents from the General Services Administration, FAR Secretariat (MVA), Room 4035, 1800 F Street, NW., Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0005, Architect-Engineer and Related Services Questionnaire for Specific Project (SF 255), in all correspondence.

Dated: December 15, 2003.

Laura Auletta,

Director, Acquisition Policy Division.

[FR Doc. 03–31344 Filed 12–18–03; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0004]

Federal Acquisition Regulation; Submission for OMB Review; Architect-Engineer and Related Services Questionnaire (SF 254)

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for public comments regarding an extension to an existing OMB clearance (9000–0004).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning architect-engineer and related services questionnaire (SF 254). A request for public comments was published at 68 FR 60093, October 21, 2003. No comments were received.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

DATES: Submit comments on or before January 20, 2004.

ADDRESSES: Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to the General Services Administration, FAR Secretariat (MVA), 1800 F Street, NW., Room 4035, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Cecelia Davis, Acquisition Policy Division, GSA (202) 219–0202.

SUPPLEMENTARY INFORMATION:

A. Purpose

Standard Form (SF) 254, Architect-Engineer and Related Services Questionnaire is used by all Executive agencies to obtain uniform information about a firm's experience in architect-engineering (A-E) projects. The form is submitted annually as required by 40 U.S.C. 541—544 by firms wishing to be considered for government A-E contracts. The information obtained on this form is used to determine if a firm should be solicited for A-E projects.

The SF 330, Architect-Engineer Qualifications will replace SF 254, Architect-Engineer and Related Services Questionnaire. The SF 330 reflects current architect-engineer practices in a streamlined and updated format, and is organized into data blocks that readily support automation. The final version of the SF 330 has been published in the **Federal Register** and mandatory use is set for June 8, 2004. Therefore, it is necessary to extend this SF 254 for six months to cover this period of time.

B. Annual Reporting Burden

Respondents: 5,000.
Responses Per Respondent: 7.
Total Responses: 35,000.
Hours Per Response: 1.
Total Burden Hours: 35,000.

Obtaining Copies of Proposals

Requesters may obtain a copy of the information collection documents from the General Services Administration, FAR Secretariat (MVA), Room 4035, 1800 F Street, NW., Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0004, Architect-Engineer and Related Services Questionnaire (SF 254), in all correspondence.

Dated: December 15, 2003.

Laura Auletta,

Director, Acquisition Policy Division.

[FR Doc. 03–31345 Filed 12–18–03; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board; Advisory Committee Meeting

AGENCY: Department of Defense.

ACTION: Notice of Advisory Committee Meeting.

SUMMARY: The Defense Science Board Task Force on Identification Technologies will meet in closed session on February 18–19, 2004, at Strategic Analysis Inc., 3601 Wilson Boulevard, Arlington, VA. The Task Force will assess current technologies and operational concepts to identify and track individuals and materiel.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition, Technology & Logistics on scientific and technical matters as they affect the perceived needs of the Department of Defense. In this assessment, the task force's investigation will encompass defense, intelligence, and commercial systems, including compartmented technology in development and promising technologies in the lab that are not yet deployed. Technologies will include passive/active, line of sight/non-line of sight and cooperative/non-cooperative. Potential mechanisms include predictive behavior modeling based on threat characteristics (attack modality, ideological makeup, social, ethnic, religious and political tendencies, *etc.*), identification technologies such as biometrics (iris scans, facial features, voice prints, *etc.*), DNA matching, and advanced non-identification technologies such as EO, RF, hyperspectral, and fluid surface assembly (FSA) sensors.

In accordance with section 10(d) of the Federal Advisory Committee Act, Public Law 92–463, as amended (5 U.S.C. App. II), it has been determined that this Defense Science Board Task Force meeting concerns matters listed in 5 U.S.C. 552b(c)(1) and that, accordingly, the meeting will be closed to the public.

Dated: December 12, 2003.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 03–31277 Filed 12–18–03; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board; Advisory Committee Meeting

AGENCY: Department of Defense.

ACTION: Notice of Advisory Committee Meeting.

SUMMARY: The Defense Science Board Task Force on Identification Technologies will meet in closed session on January 22–23, 2004, at Strategic Analysis Inc., 3601 Wilson Boulevard, Arlington, VA. The Task Force will assess current technologies and operational concepts to identify and track individuals and materiel.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition, Technology & Logistics on scientific and technical matters as they affect the perceived needs of the Department of Defense. In this assessment, the task force's investigation will encompass defense, intelligence, and commercial systems, including compartmented technology in development and promising technologies in the lab that are not yet deployed. Technologies will include passive/active, line of sight/non-line of sight, and cooperative/non-cooperative. Potential mechanisms include predictive behavior modeling based on threat characteristics (attack modality, ideological makeup, social, ethnic, religious and political tendencies, *etc.*), identification technologies such as biometrics (iris scans, facial features, voice prints, *etc.*), DNA matching, and advanced non-identification technologies such as EO, RF, hyperspectral, and fluid surface assembly (FSA) sensors.

In accordance with section 10(d) of the Federal Advisory Committee Act, Public Law 92–463, as amended (5 U.S.C. App. II), it has been determined that this Defense Science Board Task Force meeting concerns matters listed in 5 U.S.C. 552b(c)(1) and that, accordingly, the meeting will be closed to the public.

Dated: December 12, 2003.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 03–31278 Filed 12–18–03; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Department of the Army

Notice of Availability of a Novel Propellant Technology for Exclusive, Partially Exclusive or Non-exclusive Licenses

AGENCY: Department of the Army, DoD.

ACTION: Notice of availability.

SUMMARY: The Department of the Army announces the general availability of exclusive, partially exclusive or non-exclusive licenses relative to novel propellant formulation as described in U.S. Patent application Amine Azide Propellant (U.S. Patent Application No. 10/398885). Any license shall comply with 35 U.S.C. 209 and 37 CFR 404.

FOR FURTHER INFORMATION CONTACT: Michael D. Rausa, U.S. Army Research Laboratory, Office of Research and Technology Applications, Attn: AMSRL–DP–T/Bldg. 459, Aberdeen Proving Ground, MD 21005–5425, Telephone: (410) 278–5028.

Luz D. Ortiz,

Army Federal Register Liaison Officer.

[FR Doc. 03–31335 Filed 12–18–03; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Notice of Availability of a Novel Conformal and Flexible Imaging Technology for Exclusive, Partially Exclusive or Non-Exclusive Licenses

AGENCY: Department of the Army, DoD.

ACTION: Notice of availability.

SUMMARY: The Department of the Army announces the general availability of exclusive, partially exclusive or non-exclusive licenses relative to a novel conformal and flexible imaging technology as described in U.S. Patent No. 6,580,413; entitled "Method and Apparatus for the Low Cost Formation and Control of Images on Conformal Materials" issued June 17, 2003. Any license shall comply with 35 U.S.C. 209 and 37 CFR 404.

FOR FURTHER INFORMATION CONTACT: Michael D. Rausa, U.S. Army Research Laboratory, Office of Research and Technology Applications, Attn: AMSRL–DP–T/Bldg. 459, Aberdeen Proving Ground, MD 21005–5425, Telephone: (410) 278–5028.

Luz D. Ortiz,

Army Federal Register Liaison Officer.

[FR Doc. 03–31336 Filed 12–18–03; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Notice of Availability of a Novel Shaped Charge Technology for Exclusive, Partially Exclusive or Non-Exclusive Licenses

AGENCY: Department of the Army, DoD.

ACTION: Notice of availability.

SUMMARY: The Department of the Army announces the general availability of exclusive, partially exclusive or non-exclusive licenses relative to novel shaped charge technology as described in U.S. Patent Application "Shaped Charge Explosive Device and Method of Making Same" (U.S. Patent Application No. 10/421899. Any license shall comply with 35 U.S.C. 209 and 37 CFR 404.

FOR FURTHER INFORMATION CONTACT: Michael D. Rausa, U.S. Army Research Laboratory, Office of Research and Technology Applications, ATTN: AMSRL–DP–T/Bldg. 459, Aberdeen Proving Ground, Maryland 21005–5425, Telephone: (410) 278–5028.

Luz D. Ortiz,

Army Federal Register Liaison Officer.

[FR Doc. 03–31337 Filed 12–18–03; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Intent To Prepare a Regional Comprehensive Draft Environmental Impact Statement for the Indian River County Beach Restoration Project, Indian River County, FL

AGENCY: Department of the Army, U.S. Army Corps of Engineers, DoD.

ACTION: Notice of intent.

SUMMARY: The Jacksonville District, U.S. Army Corps of Engineers (Corps), intends to prepare a Draft Environmental Impact Statement (DEIS) to address the potential impacts associated with the implementation of beach restoration measures in Indian River County, Florida. The Corps will be evaluating a permit application for the work under the authority of section 10 of the Rivers and Harbors Act and section 404 of the Clean Water Act. The DEIS will be used as a basis for the permit decision and to ensure compliance with the National Environmental Policy Act (NEPA). Interested parties are invited to submit comments on or before February 9, 2004 to assure full consideration during the scoping process.

FOR FURTHER INFORMATION CONTACT: Questions or comment submissions should be addressed to Ms. Irene Sadowski, Jacksonville District at U.S. Army Corps of Engineers, 2460 N. Courtney Parkway, Suite 204, Merritt Island, FL 32953, phone: (321) 453–7655, Ext. 12 or e-mail: *Irene.sadowski@usace.army.mil.*

SUPPLEMENTARY INFORMATION:

Purpose of the Proposed Project. The applicant proposes to place approximately 459,700 cubic yards of beach-quality material along 1.35 miles of shoreline to restore erosion-damaged beaches and enhance existing dunes within Sector 7 in accordance with the County's comprehensive shore protection program. The Florida Department of Environmental Protection has identified 4,000 feet of the project area as an area of Critical Erosion. The project is being proposed to: mitigate the historical erosion loss; protect upland properties and infrastructure; establish a viable beach and dune system for sea turtles; and enhance the recreational use of the County's eroded beaches.

Within Sector 7, continued erosion has limited the availability of quality beaches and has increased the cost of protecting the shoreline. To protect shorefront properties within the area, extensive seawall construction has taken place within recent years. Without adequate large-scale measures to counteract erosion rates within this area, more shoreline armoring to protect property is likely to occur.

Beach restoration was recommended for this shoreline based on erosion rates, proximity of major structures to mean high water line, beach width, available sand resources and coastal dynamics. The goals of the beach restoration and dune enhancement are to optimize the performance and cost of the project while providing storm protection for the upland properties, limiting direct and indirect coverage of nearshore hardbottom habitats, creating additional nesting habitat for marine turtles, and providing greater recreational area along the County's beaches.

Indian River County recently completed a beach restoration project in Sectors 1 and 2 at the northern end of the County (Ambersand Beach Restoration Project), under the authority of the Department of the Army Permit Number 200001872 (IP–IS) and the Florida Department of Environmental Protection Permit Number 0166929–001–JC. This project involved the development of an Environmental Assessment and Regional Cumulative Impact Assessment. This regional assessment of the cumulative impacts associated with beach nourishment activities will be updated with this project and included in the DEIS as an appendix.

The DEIS intends to focus on Sector 7 and incorporate the effects of all future beach nourishment projects in less detail. Future projects within Indian River County with be added as supplements to the EIS when these projects come on line.

Alternatives. For the Sector 7 beach restoration project, the applicant has provided analysis of a number of alternatives, including the No Action Alternative, in addition to the proposed alternative. Alternatives to be evaluated in the DEIS include the use of sand retention structures and decreased fill volume. Other alternatives with the potential to further minimize environmental impacts may be included in the DEIS.

Issues. Issues related with this beach restoration project include impacts to nearshore hardbottom resources, impacts to Essential Fish Habitat, impacts to marine turtles including foraging habitat and nesting beaches, and beach access concerns.

Scoping and Public Involvement. The scoping process will involve Federal, State, County, and municipal agencies and other interested persons and organizations. A workshop was held at the Indian River County Commission Chambers, 1840 25th Street, Vero Beach, FL, by Indian River County on July 23, 2003, to solicit comments from interested organizations and individuals on the scope of the DEIS. Comments received included the use of public monies for the work, the need for the work, impacts to nearshore hardbottom reefs, alternative designs, and the need for public access. Issues brought forth may be considered during the EIS process.

Coordination. The proposed action is being coordinated with the U.S. Fish and Wildlife Service (FWS), and the National Marine Fisheries Service under section 7 of the Endangered Species Act and the Magnuson-Stevens Fishery Conservation and Management Act.

DEIS Preparation. It is estimated that the DEIS will be available to the public by June 2004.

Luz D. Ortiz,

Army Federal Register Liaison Officer.

[FR Doc. 03–31334 Filed 12–18–03; 8:45 am]

BILLING CODE 3710–AJ–M

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Intent To Cease Preparation of a Draft Environmental Impact Statement/ Subsequent Environmental Impact Report for a Permit Application for the Proposed West Basin Marine Terminal Improvement Projects in the Port of Los Angeles, Los Angeles County, CA

AGENCY: Department of the Army, U.S. Army Corps of Engineers, DOD.

ACTION: Cease preparation of Draft EIS/R.

SUMMARY: The U.S. Army Corps of Engineers (Corps) Los Angeles District is no longer preparing a Draft Environmental Impact Statement/ Subsequent Environmental Impact Report (EIS/SEIR) covering the overall proposed West Basin improvement projects in the Port of Los Angeles. The Corps and the Los Angeles Harbor Department (LAHD) had previously circulated a Notice of Intent to prepare a Draft EIS/SEIR (**Federal Register**, July 5, 2002, Volume 67, Number 129) covering several terminal improvement projects in the geographic portion of the Port of Los Angeles known as the West Basin. This Draft EIS/SEIR is no longer being pursued. The Corps and the LAHD are in the process of preparing project specific Draft EIS/EIRs for both the China Shipping Terminal Improvements project at Berths 97–109, and the TraPac Terminal Improvements project at Berths 136–147. Both of these terminal projects were formerly elements of the larger West basin document. This notice does not indicate any change of status for these project specific proposals.

FOR FURTHER INFORMATION CONTACT: Phone messages or questions can be directed to Joshua Burnam, Project Manager, Regulatory Branch, Los Angeles District at: (213) 452–3294 or by e-mail at *Joshua.L.Burnam@usace.army.mil.*

Richard G. Thompson,

Colonel, US Army, District Engineer.

[FR Doc. 03–31266 Filed 12–18–03; 8:45 am]

BILLING CODE 3710–92–P

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Intent To Prepare a Draft Environmental Impact Statement for the West Onslow Beach and New River Inlet (Topsail Beach) Shore Protection Project, Pender County, NC

AGENCY: Department of the Army, U.S. Army Corps of Engineers, DoD.

ACTION: Notice of intent.

SUMMARY: The Town of Topsail Beach is located on Topsail Island, a barrier island on North Carolina's central coast. The town has experienced severe erosion of the ocean shoreline, high vulnerability to storm overwash, and damage to numerous structures due to erosion and storms. The Water Resources Development Act (WRDA) of 1992 authorized a Federal Shore Protection Project to address these problems, but the project has not been constructed. The authorized project and the remaining ocean shoreline at Topsail Beach are now undergoing reevaluation studies to provide a basis for a decision regarding continuation of

Federal participation for the design and construction of the project. These studies will be documented in a General Reevaluation Report (GRR) accompanied by an Environmental Impact Statement (EIS).

FOR FURTHER INFORMATION CONTACT: Questions about the proposed action and Draft Environmental Impact Statement (DEIS) can be answered by Ms. Jenny Owens; Environmental Resources Section; U.S. Army Engineer District, Wilmington; Post Office Box 1890; Wilmington, NC 28402–1890; telephone: (910) 251–4757.

SUPPLEMENTARY INFORMATION: WRDA of 1992 authorized the implementation of the West Onslow Beach and New River Inlet (Topsail Beach) Shore Protection Project, as described in the report of the Chief of Engineers dated November 19, 1991. However, the plan recommended for construction was not the National Economic Development (NED) plan, which would have provided a storm dune and beach, a rock terminal groin, and periodic beach nourishment. The rock groin was unacceptable to the State of North Carolina due to its inconsistency with hard structure rules of the Coastal Management Program. Therefore, the recommended plan did not include a groin and, instead, provided for more frequent beach nourishment to offset the sand retention that would have been provided by a groin. The recommended plan extended over a distance of approximately 3.6 miles along the oceanfront at the southern end of Topsail Beach and included a dune with a crest elevation of 13 feet above mean sea level (msl) fronted by a storm berm at elevation 9 feet msl and a beach berm at elevation 7 feet msl.

Reevaluation studies will address the currently authorized project and the remaining shoreline at Topsail Beach. The principal purpose of a Federal project would be the reduction of damages associated with hurricane and storm events and beach erosion. Potential benefits from the project would include protection of the town's structures and related infrastructure (*i.e.*, roads, utility lines, *etc.*), as well as improvements in aesthetic qualities and recreational opportunities at the beach.

The GRR studies will evaluate several alternatives to address shore protection and related issues at Topsail Beach. These alternatives may include: (1) Construction of berms and dunes along all or portions of the oceanfront within the study area; (2) Removal and/or relocation of structures; and (3) No Federal action. The maximum potential project length is approximately 4.6 miles (*i.e.*, from the Topsail Beach-Surf City town limits to New Topsail Inlet). The selection of final project features and reaches for inclusion in a recommended plan will be based on a maximization of new benefits.

During the GRR, potential estuarine, inlet, offshore, and upland sources of borrow material will be investigated, and quantities of sand required for berm and dune construction will be determined. Estimated sand volumes and placement frequency for project maintenance will also be developed.

Alternative methods of beach nourishment and dredging of offshore borrow areas will also be evaluated, including the use of an ocean-certified hydraulic pipeline or hopper dredge.

All private parties and Federal, State, and local agencies having an interest in the study are hereby notified of the study and are invited to comment at this time. A scoping letter requesting input to the study was sent to all known interested parties on February 14, 2001.

A formal scoping meeting is not planned at this time but may be held if it is determined that new information could be obtained that would not otherwise be available. All comments received as a result of this notice of intent and the previous scoping letter will be considered in the preparation of the DEIS.

Significant environmental resources to be addressed during project studies and in the DEIS include: (1) Endangered and threatened species; (2) Marine and estuarine resources; (3) Fish and wildlife and their habitats, including essential fish habitat; (4) Water quality; (5) Socioeconomic resources; and (6) Cultural resources. Efforts will be made to enhance resource conditions and minimize adverse impacts.

The lead agency for this project is the U.S. Army Corps of Engineers District, Wilmington. Cooperating agency status has not been assigned to any other agency. The DEIS is being prepared in accordance with the requirements of the National Environmental Policy Act of 1969, as amended, and will address the relationship of the proposed action to all other applicable Federal and State Laws and Executive Orders. The DEIS is currently scheduled for distribution to the public in the summer of 2004.

Dated: December 2, 2003.

W. Eugene Tickner, P.E.,

Deputy District Engineer, Programs and Project Management.

[FR Doc. 03–31339 Filed 12–18–03; 8:45 am]

BILLING CODE 3710–CE–M

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Intent To Prepare a Draft Environmental Impact Statement for the Surf City and North Topsail Beach, NC, Shore Protection Project

AGENCY: Department of the Army, U.S. Army Corps of Engineers, DoD.

ACTION: Notice of intent.

SUMMARY: Surf City and North Topsail Beach are located on Topsail Island, a barrier island on North Carolina's central coast. Storm activity has resulted in severe erosion of the protective berm and dune along the ocean shoreline of the area, as well as damage to numerous structures and their contents. Studies conducted to address these problems were included in House Document 393, 102nd Congress, "West Onslow Beach and New River Inlet, North Carolina," which was approved by Congress in 1992. This report recommended a hurricane protection and beach erosion control project for approximately 3.6 miles of oceanfront at Topsail beach, but determined that such improvements were economically infeasible for the northernmost portion of the island, including Surf City and North Topsail Beach. However, the six hurricanes that passed through the area during 1996–1999 inflicted heavy damages to these towns and, as a result, Congress directed that a review be made of the 1992 report to determine the advisability of modifying its recommendations with regard to shore protection for Surf City and North Topsail beach.

The potential for shoreline protection was subsequently reexamined in the "Surf City and North Topsail Beach, North Carolina, Reconnaissance Report" of May 2001, which recommended continued Federal participation a feasibility study. The feasibility study was initiated in 2002 and is ongoing.

FOR FURTHER INFORMATION CONTACT: Questions about the proposed action and Draft Environmental Impact Statement (DEIS) can be answered by Ms. Jenny Owens; Environmental Resources Section; U.S. Army Engineer District, Wilmington; Post Office Box 1890; Wilmington, NC 28402–1890; telephone: (910) 251–4757.

SUPPLEMENTARY INFORMATION: Feasibility studies will investigate the entire oceanfront along Surf City and North Topsail Beach, except for portions of North Topsail Beach located within the Coastal Barrier Resources System (CBRS). The Coastal Barrier Resources Act of 1982 renders units of the CBRS ineligible for Federal funding that could encourage their development. The principal purpose of a Federal project would be the reduction of damages associated with hurricane and storm events and beach erosion. Potential benefits from the project would include protection of the towns' structures and related infrastructure (*i.e.*, roads, utility lines, *etc.*), as well as improvements in aesthetic qualities and recreational opportunities at the beaches.

The feasibility studies will evaluate several alternatives to address shore protection and related issues. These alternatives may include: (1) Construction of berms and dunes along all or portions of the oceanfront within the study area; (2) Removal and/or relocation of threatened structures; and (3) No Federal action. The maximum potential project length is approximately 10 miles (the 17 miles from New River Inlet south to the Surf City-Topsail Beach town limits exclusive of approximately 7 miles within the CBRS). The selection of final project features and reaches for inclusion in a recommended plan will be based on a maximization of net benefits.

During the feasibility studies, potential estuarine, inlet, offshore, and upland sources of borrow material will be investigated, and quantities of sand required for berm and dune construction will be determined. Estimated sand volumes and placement frequency for project maintenance will also be developed.

Alternative methods of beach nourishment and dredging of offshore borrow areas will be evaluated, including the use of ocean-certified hydraulic pipeline and/or hopper dredges.

All private parties and Federal, State, and local agencies having an interest in the study are hereby notified of the study and are invited to comment at this time. A scoping letter requesting input to the study was sent to all known interested parties on February 14, 2001.

A formal scoping meeting is not planned at this time but may be held if it is determined that new information may be obtained that would not otherwise be available. All comments received as a result of this notice of intent and the previous scoping letter will be considered in the preparation of the DEIS.

Significant environmental resources to be addressed during project studies and in the DEIS include: (1) Endangered and threatened species; (2) Fish and wildlife and their habitats, including essential fish habitat; (3) Water quality; (4) Socioeconomic resources; and (5) Cultural resources. Efforts will be made to enhance resource conditions and minimize adverse impacts.

The lead agency for this project is the U.S. Army Corps of Engineers District, Wilmington. Cooperating agency status has not been assigned to any other agency. The DEIS is being prepared in accordance with the requirements of the National Environmental Policy Act of 1969, as amended, and will address the relationship of the proposed action to all other applicable Federal and State Laws and Executive Orders. The DEIS is currently scheduled for distribution to the public in the winter of 2005.

Dated: December 2, 2003.

W. Eugene Tickner, P.E.,

Deputy District Engineer, Programs and Project Management.

[FR Doc. 03–31338 Filed 12–18–03; 8:45 am]

BILLING CODE 3710–CE–M

DEPARTMENT OF EDUCATION

Office of Postsecondary Education

Developing Hispanic-Serving Institution (HSI) Program

ACTION: Correction; notice reopening application deadline for certain applicants.

SUMMARY: We correct the postmark date listed in the *Transmittal of Applications* section of the notice published on December 16, 2003 (68 FR 70008).

SUPPLEMENTARY INFORMATION: On December 16, 2003, we published a notice in the **Federal Register** reopening the application deadline for certain applicants under the HSI Program. The postmark date listed in the *Transmittal of Applications* section of the notice published was incorrect. The last sentence under *Transmittal of Applications* should read, "Your submittals must be postmarked no later than December 29, 2003."

FOR FURTHER INFORMATION CONTACT: Ms. Darlene B. Collins, U.S. Department of Education, 1990 K Street, NW., 6th Floor, Washington, DC 20006–8513. Telephone: (202) 502–7576 or via Internet: *Darlene.Collins@ed.gov.*

If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format, (*e.g.* Braille, large print, audiotape, or computer diskette) on request to the contact person listed under **FOR FURTHER INFORMATION CONTACT.**

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Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.access.gpo.gov/nara/index.html.*

Program Authority: 20 U.S.C. 1001–1101d, 1103–1103g.

Dated: December 17, 2003.

Sally L. Stroup,

Assistant Secretary, Office of Postsecondary Education.

[FR Doc. 03–31405 Filed 12–17–03; 1:28 pm]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Office of Science; Biological and Environmental Research Advisory Committee Renewal

AGENCY: Department of Energy.

ACTION: Notice of renewal.

SUMMARY: Pursuant to section 14(a)(2)(A) of the Federal Advisory Committee Act, and in accordance with section 102–3.60, title 41 of the Code of Federal Regulations, and following consultation with the Committee Management Secretariat, General Services Administration, notice is hereby given that the Biological and Environmental Research Advisory Committee has been renewed for a two-year-period beginning in December 2003. The Committee will provide advice to the Director, Office of Science, on the Biological and Environmental Research Program managed by the Office of Biological and Environmental Research.

The renewal of the Biological and Environmental Research Advisory Committee has been determined to be essential to the conduct of the Department of Energy business and to be in the public interest in connection with the performance of duties imposed upon the Department of Energy by law. The Committee will operate in

accordance with the provisions of the Federal Advisory Committee Act, the Department of Energy Organization Act (Pub. L. 95–91), and rules and regulations issued in implementation of those Acts.

Further information regarding this Advisory Committee can be obtained from Mrs. Rachel M. Samuel at (202) 586–3279.

Issued in Washington, DC on December 11, 2003.

James N. Solit,

Advisory Committee Management Officer.

[FR Doc. 03–31332 Filed 12–18–03; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Science Financial Assistance Program Notice DE–FG01–04ER04–06: Natural and Accelerated Bioremediation Research Program

AGENCY: U.S. Department of Energy.

ACTION: Notice inviting grant applications.

SUMMARY: The Office of Biological and Environmental Research (OBER) of the Office of Science (SC), U.S. Department of Energy (DOE), hereby announces its interest in receiving applications for research grants in the Natural and Accelerated Bioremediation Research (NABIR) Program. The goal of the NABIR program is to provide the fundamental science that will serve as the basis for development of cost-effective bioremediation and long-term stewardship of radionuclides and metals in the subsurface at DOE sites. The focus of the program is on understanding the role of microorganisms in long-term immobilization of contaminants in place, and the potential for their remobilization. Contaminants of interest are uranium, technetium, plutonium, chromium or mercury. NABIR is focused on subsurface sediments below the zone of root influence and includes both the vadose (unsaturated) zone and the saturated zone (groundwater and sediments). Applications should describe research projects in one or more of the following program categories: (1) Biogeochemistry, Biotransformation, Community Dynamics and Microbial Ecology, or Assessment; (2) Interdisciplinary studies that integrate research from more than one NABIR element; or (3) Projects to be performed at the NABIR Field Research Center (FRC) addressing field scale processes that immobilize uranium and/or technetium; field teams must include, at a minimum, expertise in microbiology, geochemistry and hydrology.

DATES: Researchers are strongly encouraged to submit a preapplication for programmatic review. Preapplications should be submitted on or before February 6, 2004, for review for programmatic relevance.

The deadline for receipt of formal applications is 4:30 p.m., E.S.T., March 9, 2004, to be accepted for merit review and to permit timely consideration for awards late in Fiscal Year 2004 or in early Fiscal Year 2005.

ADDRESSES: Preapplications referencing Program Notice DE–FG01–04ER04–06, should be sent by E-mail to: *paul.bayer@science.doe.gov.*

Formal applications referencing Program Notice DE-FG01–04ER04–06, must be sent electronically by an authorized institutional business official through DOE's Industry Interactive Procurement System (IIPS) at: *http://www.e-center.doe.gov/.* IIPS provides for the posting of solicitations and receipt of applications in a paperless environment via the Internet. In order to submit applications through IIPS, your business official will need to register at the IIPS Web site. IIPS offers the option of using multiple files, please limit submissions to one volume and one file if possible, with a maximum of no more than four PDF files. The Office of Science will include attachments as part of this notice that provide the appropriate forms in PDF fillable format that are to be submitted through IIPS. Color images should be submitted in IIPS as a separate file in PDF format and identified as such. These images should be kept to a minimum due to the limitations of reproducing them. They should be numbered and referred to in the body of the technical scientific grant application as Color image 1, Color image 2, etc. Questions regarding the operation of IIPS may be e-mailed to the IIPS Help Desk at: *HelpDesk@pr.doe.gov,* or you may call the help desk at: (800) 683–0751. Further information on the use of IIPS by the Office of Science is available at: *http://www.sc.doe.gov/production/grants/grants.html.*

If you are unable to submit an application through IIPS, please contact the Grants and Contracts Division, Office of Science at: (301) 903–5212 or (301) 903–3604, in order to gain assistance for submission through IIPS or to receive special approval and instructions on how to submit printed applications.

FOR FURTHER INFORMATION CONTACT: Mr. Paul Bayer, Environmental Remediation Sciences Division, SC–75/Germantown Building, Office of Biological and Environmental Research, Office of Science, U.S. Department of Energy, 1000 Independence Ave., SW., Washington, DC 20585–1290, telephone: (301) 903–5324, e-mail: *paul.bayer@science.doe.gov,* fax: (301) 903–8519. The full text of Program Notice DE–FG01–04ER04–06, is available via the Internet using the following Web site address: *http://www.science.doe.gov/production/grants/grants.html.*

SUPPLEMENTARY INFORMATION:

Background

For more than 50 years, the U.S. created a vast network of more than 113 facilities for research, development, testing and production of nuclear weapons. As a result of these activities, subsurface contamination has been identified at over 7,000 discrete sites across the U.S. Department of Energy complex. With the end of the Cold War threat, the DOE has shifted its emphasis to remediation, decommissioning, and decontamination of contaminated groundwater, sediments, and structures at its sites. DOE is currently responsible for remediating 1.7 trillion gallons of contaminated groundwater and 40 million cubic meters of contaminated soil. It is estimated that more than 60 percent of DOE facilities have groundwater contaminated with metals or radionuclides. More than 50 percent of all DOE facilities have soils or sediments contaminated with radionuclides and metals. While virtually all of the contaminants found at industrial sites nationwide can also be found at DOE sites, many of the metals and most of the radionuclides are unique to DOE sites. The NABIR program aims: (1) To provide the fundamental knowledge that may lead to new remediation technologies or strategies for radionuclides and metals; and (2) to advance the understanding of the key microbiological and geochemical processes that control the effectiveness of *in situ* immobilization as a means of long term stewardship, and how these processes impact contaminant transport.

While bioremediation of organic contaminants involves their biotransformation to benign products, such as carbon dioxide, bioremediation of radionuclides and metals involves their removal from the aqueous phase to reduce risk to humans and the environment. Microorganisms can directly affect the solubility of radionuclides and metals by changing their oxidation state to a reduced form that leads to *in situ* immobilization. Or, microorganisms can indirectly immobilize radionuclides and metals through the reduction of inorganic ions that can, in turn, chemically reduce contaminants to less mobile forms. The long term stability of these reduced contaminants is as yet unknown.

NABIR Program

The goal of the NABIR program is to provide the fundamental science that will serve as the basis for development of cost-effective bioremediation and long-term stewardship of radionuclides and metals in the subsurface at DOE sites. An important aspect to the NABIR program is to assess factors controlling the long-term stability of the immobilized contaminants and to devise approaches (biological/chemical) to maintain their immobilization through the stewardship phase. Naturally-occurring subsurface microbes may be involved in intrinsic bioremediation of radionuclides and metals by reduction and immobilization, either directly or indirectly. However, these natural processes (known as natural attenuation) typically occur at fairly slow rates, and there may be a need to use biostimulation to enhance the rates. The primary focus of the NABIR program is on biostimulation strategies, due to the ubiquity of metal-reducers in nature. Immobilized radionuclides and metals are not removed from the subsurface as may occur with excavation, pump and treat, or biodegradation of organic contaminants. Thus, understanding the potential for remobilization of contaminants is of special interest.

The focus of the NABIR program is on radionuclides and metals that: (1) Pose the greatest potential risk to humans and the environment at DOE sites; and (2) are amenable to immobilization by means of bioremediation. Thus, research is focused on the radionuclides uranium, technetium and plutonium and the metals chromium and mercury. Radioactive contaminants such as tritium and cobalt are not a focus because of their relatively short half lives, and strontium and cesium are not addressed because they are not readily amenable to biotransformation. Research is focused on subsurface sediments below the zone of root influence and includes both the vadose (unsaturated) zone and the saturated zone (both groundwater and sediments). Research on phytoremediation will not be supported by this solicitation.

NABIR is oriented toward areas that have low levels of widespread contamination; it is too costly to clean up those situations with existing technologies. Uranium, technetium, and chromium can be especially mobile in the subsurface under certain conditions; they are risk-driving contaminants at some DOE sites. The effects of co-contaminants, such as nitrate, complexing agents, (such as EDTA) and chlorinated solvents, (such as trichloroethylene and carbon tetrachloride) on the behavior of radionuclides and metals in the subsurface is also of interest to the NABIR program. The NABIR Program supports hypothesis-driven, basic research that is more fundamental in nature than demonstration projects.

The NABIR program consists of four interrelated Science Elements (Biogeochemistry, Biotransformation, Community Dynamics and Microbial Ecology, and Biomolecular Science and Engineering). Innovative method development for the Science Elements is supported under the Assessment Element. The program also includes an element addressing ethical, legal and societal issues called Bioremediation and its Societal Implications and Concerns (BASIC). The NABIR program strongly encourages researchers to integrate laboratory and field research at DOE or DOE-relevant sites. More information on the NABIR program may be found at: *http://www.lbl.gov/NABIR/.*

The NABIR Field Research Center (FRC) and Other Field Research Sites

To encourage hypothesis-based field research and process-level understanding, the NABIR program established the Field Research Center (FRC) for long-term field studies. The FRC provides a site for investigators to conduct field-scale research and to obtain DOE-relevant subsurface samples for laboratory-based studies of bioremediation, and it is located on the U.S. Department of Energy Oak Ridge Reservation in Oak Ridge, Tennessee. The FRC is operated by the Environmental Sciences Division of the Oak Ridge National Laboratory, and it includes a contaminated and a background (uncontaminated control) area for in situ studies. Both areas are located in Bear Creek Valley (BCV) within the Y–12 Plant area.

The contaminated research site at the FRC is a 98-hectare plot containing uranium, nitrate, technetium-99, strontium, and cadmium in groundwater, soils, and sediments. To a lesser extent, metals such as mercury, copper, zinc, and lead, and organics, such as acetone, methylene chloride, tetrachloroethylene, and toluene are also present. The contaminated area includes the groundwater plume that originated from the S–3 Waste Disposal Ponds.

The background area is approximately 163 hectares and is located in West Bear Creek Valley, about 2 km from the contaminated area. The area lies directly along the geologic strike of the contaminated area and is, therefore, underlain by nearly identical geology, mineralogy, and structure. No known contaminants have been disposed at this location throughout the history of DOE operations. The majority of the area is heavily wooded, with the exception of the Bear Creek floodplain.

Both the background and contaminated areas are well-characterized and well-instrumented, and should be available for five to ten years. The water table resides between 0 and 3 meters below the surface and is readily accessible through multilevel groundwater monitoring wells.

The FRC is responsible for general site characterization activities and provides a rich database for use by NABIR researchers. The FRC is responsible for data management, systems integration, and fundamental hydrological and geochemical modeling of the contaminated and background sites. The FRC makes these data and models accessible to all researchers. *See: http://www.esd.ornl.gov/nabirfrc* for more detailed information on the NABIR FRC.

While the FRC provides a major focus for the NABIR program, it is recognized that other sites that represent the different hydrogeological regimes found at DOE sites will also be valuable to researchers. A large fraction of the national inventory of DOE wastes resides in unconsolidated, porous media in relatively thick, vadose zones and in groundwaters low in soluble organic carbon. For this reason, NABIR investigators are encouraged to take advantage of opportunities to collect and analyze samples from arid western environments that typify the Hanford Reservation and Uranium Mill Tailings Remedial Action (UMTRA) sites. For further information on NABIR Field Research, please contact Mr. Paul Bayer (*paul.bayer@science.doe.gov*), the NABIR Field Activities Manager.

Resources at DOE User Facilities

Applicants are encouraged to propose making use of the capabilities provided by DOE's National Scientific User Facilities. The instrumentation and experimental facilities at these user facilities are available free of charge to users who agree to publish their findings in the peer reviewed literature. Applicants may be interested in one or

more of the following DOE user facilities:

Applicants may be interested in the capabilities offered at the Environmental Molecular Sciences Laboratory (EMSL), which is located at the Pacific Northwest National Laboratory in Richland, WA. EMSL provides users with unique and leading edge instrumentation for molecular-level studies, including a wide variety of capabilities in spectroscopy and microscopy, particle characterization and imaging, and meter-scale reactive transport. These experimental capabilities are located within EMSL's high field magnetic resonance, high performance mass spectrometry, interfacial and nanoscale science and optical imaging and spectroscopy facilities. In addition, the high-performance molecular science computing facility within the EMSL includes an 11.8 TeraFlop supercomputer for use in reactive transport and flow modeling. *See http://www.emsl.pnl.gov* for further information.

Applicants may also be interested in the molecular-level capabilities for studying the speciation, properties or behavior of contaminants that are available through DOE's synchrotron radiation facilities. Information concerning the types of analytical techniques available at specific synchrotron facilities is available through EnviroSync, a national organization that represents molecular environmental science at the synchrotrons. *See http://www.cems.stonybrook.edu/envirosync/* for further information.

Current Request for Applications

Research projects should address the scientific aims of: (1) Individual NABIR elements including Biogeochemistry, Biotransformation, Community Dynamics and Assessment; (2) Integrative, interdisciplinary studies that involve research from more than one element; or (3) Field research projects to be performed at the NABIR FRC in Oak Ridge, Tennessee. The focus is on field research, or laboratory studies that can be scaled to the field, to provide supporting information for current or future field research. The NABIR FRC provides an opportunity for researchers to work at a DOE site in collaboration with scientists from different research elements. Studies at the NABIR FRC show that microbial reduction of radionuclides and metals is affected by the presence of nitrate and low pH. Thus, research into microbial mechanisms involved in the reduction of radionuclides and metals in this type of subsurface environment is of special interest.

Biogeochemistry: The goal of this element is to understand the fundamental biogeochemical reactions that would lead to long-term immobilization of metal and radionuclide contaminants in the subsurface, and the potential for remobilization. The focus is on reactions that govern the concentration, chemical speciation, and distribution of metals and radionuclides between the aqueous and solid phases. Biogeochemical reactions in subsurface environments are influenced by a wide variety of factors, including the availability of electron donors and acceptors, the nature of the microbial community, the chemical species or form of contaminant, the hydrogeology of the site, and the nature of the environmental matrix. Often several competing redox reactions make the prediction of the substrates, products, and kinetics difficult. The biogeochemical reactions are further complicated by the sorption of contaminants and reaction products to mineral surfaces, and the presence of natural organic matter and co-contaminants. The research challenge is to identify and prioritize the key biogeochemical reactions that are needed to predict the rate and extent of reactions that result in the immobilization of radionuclides and metals. New and creative scientific approaches are sought that address the following fundamental research questions:

- To increase immobilization of radionuclides and metals, what are the principal biogeochemical reactions that govern the concentration, chemical speciation, and distribution of metals and radionuclides between the aqueous and solid phases (with an emphasis on natural geological matrices)? What are the thermodynamic and kinetic controls on these reactions? How do factors, such as co-contaminants, sorption processes, and terminal electron acceptors (*e.g.*, nitrate, iron, sulfate), influence these reactions?
- Under what conditions would the contaminants remobilize, and what alterations to the environment would increase the long term stability of metals and radionuclides in the subsurface?
- What influence do hydrological processes such as reactive transport, advective/dispersive transport and colloidal transport have on the biological availability, biotransformation, and movement of radionuclides and metals?

Biotransformation: The goal of this element is to understand the mechanisms of microbially mediated transformation of metals and radionuclides in subsurface environments leading to *in situ* immobilization and long term stability. Physiological studies of the biotransformation of metals and radionuclides by subsurface microorganisms will provide the knowledge base needed to understand intrinsic bioremediation and to stimulate biotransformation *in situ*. DOE subsurface sites encompass a range of redox environments where contaminants, such as uranium are present. One challenge is to understand the impact of these environments on microbial physiological processes involved in the biotransformation of radionuclides and metals to an immobilized form. Knowledge of the metabolic pathways for biotransformation of these contaminants by naturally occurring microbial communities in vadose zones, saturated zones and the waste plume is needed. A second challenge is to accelerate the rates of these physiological processes *in situ*, in complex subsurface environments. Biotransformation of metals and radionuclides in the subsurface is poorly understood, and predictive models based on laboratory studies have not always accurately simulated the observed fate of metals and radionuclides in the field. It is important to understand the kinetics of desirable metal and radionuclide biotransformations and the physicochemical factors affecting those kinetics in the field. Research is needed to address questions, such as:

- What are the primary metabolic pathways for biotransformation of radionuclides and/or metals by subsurface microorganisms at DOE sites, such as the FRC? Physiological processes studied at the laboratory scale will need to demonstrate how results will be scaled to the field.
- How can metal reduction be harnessed or accelerated to immobilize radionuclides and/or metals in the subsurface? Can *in situ* production of organic acids, chelators, or extracellular polymers affect contaminant mobility?
- What environmental controls affect microbial physiological processes involved in radionuclide and metal biotransformations leading to immobilization in vadose and saturated zones? What factors inhibit these biotransformations *in situ*?
- How can we quantify *in situ* biotransformation kinetics so that these parameters can be applied to numerical models of field scale bioremediation?

Community Dynamics and Microbial Ecology: The goal of this element is to determine the potential for natural microbial communities to immobilize radionuclides and metals. In particular, research focuses on: (1) Understanding the structure and function of microbial communities in the subsurface at DOE sites contaminated with metals and radionuclides; and (2) identifying and optimizing the *in situ* growth of microorganisms that transform radionuclides and metals. This research will enhance our ability to predict the effectiveness of intrinsic bioremediation and to optimize microbial community composition for *in situ* immobilization of these contaminants. Diverse microbial communities can be found in subsurface environments. These communities represent an untapped catalytic potential for biotransformation of radionuclides and metals. Most of these microbes, however, are as yet uncultured using current methods. One challenge is to determine if sufficient genotypic-and/or phenotypic potential exists to support natural and/or accelerated (biostimulated) bioremediation. Knowledge of microbial community structure and function may ultimately provide the ability to control or stimulate subsurface communities capable of biotransformation of radionuclides and metals. A second challenge is to optimize the community structure and activity for immobilization and metals, and to determine the long term stability of bioremediative communities. Research is needed to address questions, such as:

- Is there sufficient biological activity and diversity in subsurface environments to support natural and/or accelerated bioremediation of metals and radionuclides?
- What are the effects of metal and radionuclide contamination on microbial community structure and function, particularly on populations that transform radionuclides and metals? What are the effects of key physical, chemical and hydrological factors on community structure and function, as it relates to immobilization of metals and radionuclides?
- What is the role of consortial interactions in subsurface environments contaminated with radionuclides and metals? Such interactions might include competition for electron donors and acceptors, or consortial interactions in the biotransformation of metals and radionuclides.
- What is the potential importance of gene transfer in natural microbial communities at subsurface sites contaminated with radionuclides or metals?

Those studies that link structure to function of microbial communities that immobilize metals and/or radionuclides at DOE sites are especially encouraged.

Assessment: Assessment is a cross-cutting element with a goal to develop innovative methods to assess processes and endpoints in support of the NABIR Science Elements. Thus, assessment projects are being sought that support the Science Elements of Biogeochemistry, Biotransformation, and Community Dynamics/Microbial Ecology. Methods may range from molecular to field scale, but they should improve the understanding of *in situ* bioremediation processes in subsurface environments contaminated with radionuclides and metals. Priority will be given to research applications that could lead to fieldable, cost-effective, real time assessment techniques and/or instrumentation. NABIR will not fund projects that examine endpoints relating to human health risks. Research should address the development of innovative and effective methods for assessing or quantifying:

- Biogeochemical or biotransformation processes and rates, and microbial community structure and function relative to bioremediation of metals and radionuclides.
- Bioremediation end points, in particular, the concentration, speciation and stability of radionuclide and metal contaminants.

Techniques must enable NABIR science and address specific science needs of the program. The applicant should explain the potential impact and contribution to the NABIR program, as well as the relevance and potential usefulness of the innovation.

Integrative Studies: This solicitation especially encourages those studies that integrate research from more than one NABIR research element through laboratory and/or field research. This interdisciplinary research should focus on achieving the primary goals of the NABIR program through collaborative studies in which the experimental design integrates two or more NABIR elements. Interdisciplinary teams should include participation from two or more research areas such as microbiology, geochemistry, hydrology, environmental engineering, numerical modeling or other disciplines. Partnering with specific field experiments may provide information for hypothesis testing. Such integrative studies might include, for example:

- Employing numerical modeling to integrate information from more than one element, such as Biogeochemistry, Biotransformation, and Community Dynamics and Microbial Ecology, to better predict *in situ* immobilization of metals and radionuclides.
- Studies of the effects of key physical, geochemical and hydrological parameters on the structure and function of subsurface microbial communities engaged in metal/radionuclide biotransformation and immobilization.
- Integration of new methods in the Assessment element with actual application to studies of biotransformation or biogeochemistry of radionuclide/metal reduction and precipitation.
- Linking chemical speciation of radionuclides and metals in subsurface environments to the bioavailability of those contaminants to microorganisms.
- Studies on the changes of subsurface microbial community structure and function, and the effect on net rates of biotransformation during biostimulation experiments.

Field Scale Bioremediation Experiments

Although bioremediation of radionuclides and metals has been studied in the laboratory, and bioremediation technologies have been demonstrated in the field, there are few examples of carefully controlled, hypothesis-driven, in situ bioremediation research at the field-scale. The FRC provides opportunities for such field-scale experiments.

The S–3 Ponds were the primary source of contamination detected in the contaminated zone of the FRC. The S–3 Ponds consisted of four unlined ponds constructed in 1951 on the west end of the Y–12 Plant at Oak Ridge. Liquid wastes, composed primarily of nitric acid plating wastes containing nitrate and various radionuclides and metals (*e.g.*, uranium and technetium), were disposed in the ponds until 1983. Waste disposal activities at the Y–12 Plant created a mixed waste plume of contamination in the underlying unconsolidated residuum (primarily saprolite and fill) and shale bedrock. The ponds were neutralized and denitrified in 1984, and capped in 1988, and the area is now a parking lot.

Three areas in the contaminated zone are currently identified as the primary targets for in situ studies. Areas 1 and 3 are located adjacent and directly south and west, respectively, of the S–3 Ponds parking lot and Area 2 is located several hundred feet to the southwest of the parking lot. Applicants may choose to propose research for Area 1 (a high nitrate, low pH site), Area 2 (a low nitrate, circumneutral site) or Area 3 (a very high contaminant concentration, very low pH site). More detailed information on Areas 1, 2 and 3 can be found on the NABIR FRC Web site

(*http://public.ornl.gov/nabirfrc/area123.cfm*).

The initial focus of in situ research conducted at the FRC has been on biostimulation experiments to understand or promote the immobilization of uranium and technetium by microbial processes. Understanding natural and stimulated uranium biotransformation in the presence of high nitrate and low pH in unconsolidated residuum and fractured rock is one of the biggest challenges at the FRC at Oak Ridge, and at other DOE sites. The NABIR program is currently funding the following three in situ projects within the contaminated area of the FRC: (1) A stimulated biocurtain for uranium biotransformation combined with denitification; (2) push-pull tests to determine the kinetics of electron-acceptor and electron-donor use for microbially-mediated uranium and technetium reduction and reoxidation; and (3) stimulation of microbial uranium reduction in hydrologically-accessible fractured zones to precipitate uranium oxide and isolate the uranium in low-permeability porous regions. Applicants should attempt to complement existing projects; additional information can be found at *http://public.ornl.gov/nabirfrc/awards.cfm*.

For this solicitation, the NABIR program is seeking applications that focus on in situ studies that are aligned with the short- and mid-term scientific tasks outlined in the recently completed strategic plan for the FRC (*http://public.ornl.gov/nabirfrc/FRCStrategicPlan070103.pdf*). Applications should therefore focus on field conditions or processes that affect microbial oxidation/reduction and contaminant transport at the meter or tens of meters scale. The results of in situ research should lead to improved parameters for modeling the fate and transport of uranium, technetium or other contaminants. For example, research could be undertaken on microbial metal reduction in the presence of preferential contaminant flow pathways in the saprolite or in reworked fill, during storm events, in the vadose zone, at increasing distance from the source, or at the seasonally variable capillary fringe. Research findings are expected to be useful for incorporation into a site-wide FRC model for reactive transport and groundwater flow.

Applicants must propose a testable hypothesis that is based on microbially-mediated mechanisms of immobilization for in situ field research, and they should describe a detailed technical approach that should include: (1) Establishing a defined (surface area and depth) experimental and control plot within the proposed contaminated field site; and (2) manipulating the experimental plot by amendments of nutrients or other chemicals that might stimulate microbial communities to immobilize uranium or technetium. The technical approach must be described in phases such that completion of each phase could result in publishable results. A statistically robust sampling regimen to determine the efficacy of the manipulation should also be described. Moreover, the applicant must explain the technical feasibility of performing the proposed field research. Technology demonstration projects will not be funded by this solicitation.

The applicants must propose research to be performed as an interdisciplinary team including, at a minimum, expertise in microbiology, geochemistry, and hydrology. The Principal Investigator for the team must have prior experience in relevant field research, and the activities of each team member must be clearly defined. Multi-institutional partnerships are strongly encouraged; for example, applicants may draw expertise from National Laboratories, academia, and other institutions engaged in basic research. The successful team must be willing to partner with other funded NABIR investigators who may wish to obtain samples in conjunction with the proposed field studies.

Although compliance with National Environmental Policy Act (NEPA) is the responsibility of DOE, successful applicants who propose to conduct field research are expected to provide information necessary for the DOE to complete the NEPA review and documentation. Successful applicants will also be expected to brief and to obtain approval of their written work plan from the Field Research Review Panel (FRRP) prior to beginning their field work. For this solicitation, applicants should describe how they would communicate their proposed experimental design and their results to stakeholders, regulators, and community groups. Applicants may wish to review the FRC Communication Plan, which can be found on the FRC web site. All applicants should discuss other relevant societal issues, where appropriate, which may include intellectual property protection, and communication with and outreach to affected communities (including members of affected minority communities where appropriate) to explain the proposed research. For further information on NABIR Field Research, please contact Mr. Paul Bayer (*Paul.Bayer@science.doe.gov*), the NABIR Field Activities Manager.

Additional Information for Applications

Long Term Environmental Remediation Goals

The following indicators establish specific long term goals in Scientific Advancement that the BER program is committed to, and against which progress can be measured.

Environmental Remediation: Develop science-based solutions for cleanup and long-term monitoring of DOE contaminated sites. By 2013, a significant fraction of DOE's long-term stewardship sites will employ advanced biology-based clean up solutions and science-based monitors.

All grant proposals should address one or more of these measures and/or explain how the proposed research supports the broad scientific objectives outlined above. More information on the program and the scientific research it supports can be found at our Web site: *http://www.sc.doe.gov/ober/*.

Preapplications

A brief preapplication should be submitted. The preapplication should identify, on the cover sheet, the institution, Principal Investigator name, address, telephone, fax and E-mail address, and title of the project. The preapplication should consist of one or two pages of narrative describing the research objectives and methods. These will be reviewed for responsiveness to the scope and research needs described in this notice. Please note that notification of a successful preapplication is not an indication that an award will be made in response to the formal application.

Program Funding

It is anticipated that up to $3 million will be available for multiple awards to be made in late Fiscal Year 2004, and early Fiscal Year 2005, in the categories described above, contingent on availability of appropriated funds. An additional sum, up to $3 million, will be available for competition by DOE National Laboratories under a separate solicitation (LAB 04–06). Applications may request project support up to three years, with out-year support contingent on availability of funds, progress of the research and programmatic needs. Annual budgets for Biogeochemistry, Biotransformation or Community Dynamic projects are expected to range from $100,000 to $300,000 total costs. Annual budgets for integrative studies involving participants representing more than one research element may range up to $450,000. Annual budgets for interdisciplinary field research projects at the FRC are expected to range from $800,000 to $1,000,000 for total costs. Costs for drilling at the FRC should not be included in the applicant's budget. All applications should include letters of agreement to collaborate from potential collaborators; these letters should specify the contributions the collaborators intend to make if the application is accepted and funded. DOE may encourage collaboration among prospective investigators to promote joint applications or joint research projects by using information obtained through the preliminary applications or through other forms of communication. DOE is under no obligation to pay for any costs associated with the preparation or submission of applications if an award is not made.

Merit Review

Applications will be subjected to formal merit review (peer review) and will be evaluated against the following evaluation criteria which are listed in descending order of importance codified at 10 CFR 605.10(d):

1. Scientific and/or Technical Merit of the Project;

2. Appropriateness of the Proposed Method or Approach;

3. Competency of Applicant's Personnel and Adequacy of Proposed Resources;

4. Reasonableness and Appropriateness of the Proposed Budget.

For renewals, progress on previous NABIR funded research will be an important criterion for evaluation. As part of the evaluation, program policy factors also become a selection priority. Note, external peer reviewers are selected with regard to both their scientific expertise and the absence of conflict-of-interest issues. Federal and non-federal reviewers will be used, and submission of an application constitutes agreement that this is acceptable to the investigator(s) and the submitting institution.

Submission Information

Information about the development, submission of applications, eligibility, limitations, evaluation, the selection process, and other policies and procedures may be found in 10 CFR part 605, and in the Application Guide for the Office of Science Financial Assistance Program. Electronic access to SC's Financial Assistance Application Guide is possible via the World Wide Web at: *http://www.sc.doe.gov/production/grants/grants.html*.

In addition, for this notice, the research description must be 20 pages or less, exclusive of attachments, and must contain an abstract or summary of the proposed research (to include the hypotheses being tested, the proposed experimental design, and the names of all investigators and their affiliations). *Applicants who have had prior NABIR support must include a Progress Section with a brief description of results and a list of publications derived from that funding.* Attachments should include short (2 pages) curriculum vitae, a listing of all current and pending federal support and letters of intent when collaborations are part of the proposed research. Curriculum vitae should be submitted in a form similar to that of the National Institutes of Health (NIH) or the National Science Foundation (NSF) (two to three pages).

The Office of Science, as part of its grant regulations, requires at 10 CFR 605.11(b) that a recipient receiving a grant and performing research involving recombinant DNA molecules and/or organisms and viruses containing recombinant DNA molecules shall comply with the NIH "Guidelines for Research Involving Recombinant DNA Molecules," which is available via the World Wide Web at: *http://www.niehs.nih.gov/odhsb/biosafe/nih/rdna-apr98.pdf*, (59 FR 34496, July 5, 1994), or such later revision of those guidelines as may be published in the **Federal Register**.

Grantees must also comply with other federal and state laws and regulations as appropriate; for example, the Toxic Substances Control Act (TSCA) as it applies to genetically modified organisms. Although compliance with NEPA is the responsibility of DOE, grantees proposing to conduct field research are expected to provide information necessary for the DOE to complete the NEPA review and documentation.

Additional information on the NABIR program is available at the following Web site: *http://www.lbl.gov/NABIR/*. For researchers who do not have access to the World Wide Web, please contact Karen Carlson; Environmental Sciences Division; SC–74, Germantown Building; U.S. Department of Energy; 1000 Independence Avenue, SW.; Washington, DC 20585–1290; phone: (301) 903–3338; fax: (301) 903–8519; E-mail: *karen.carlson@science.doe.gov;* for hard copies of background material mentioned in this solicitation.

The Catalog of Federal Domestic Assistance number for this program is 81.049, and the solicitation control number is ERFAP 10 CFR part 605.

Issued in Washington, DC on December 12, 2003.

John Rodney Clark,

Associate Director of Science for Resource Management.

[FR Doc. 03–31331 Filed 12–18–03; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Paducah

AGENCY: Department of Energy (DOE).

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Paducah. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Thursday, January 15, 2004; 5:30 p.m.–9:30 p.m.

ADDRESSES: 111 Memorial Drive, Barkley Centre, Paducah, Kentucky.

FOR FURTHER INFORMATION CONTACT: William E. Murphie, Deputy Designated Federal Officer (DDFO), Department of Energy Paducah Site Office, Post Office Box 1410, MS–103, Paducah, Kentucky 42001, (270) 210–2215.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration and waste management activities.

Tentative Agenda:

5:30 p.m. Informal Discussion
6:00 p.m. Call to Order; Introductions; Approve November Minutes; Review Agenda
6:05 p.m. DDFO's Comments
6:25 p.m. Ex-officio Comments
6:35 p.m. Federal Coordinator Comments
6:45 p.m. Public Comments and Questions
6:55 p.m. Break
7:05 p.m. Task Forces/Presentations
- Waste Operations Task Force
- Water Task Force
—C–400 Proposed Plan (discussion only)
- Long Range Strategy/Stewardship
—DUF_6

8:05 p.m. Public Comments and Questions
8:15 p.m. Administrative Issues
- Review of Work Plan
- Review of Next Agenda

8:35 p.m. Review of Action Items
8:50 p.m. Task Force and Subcommittee Reports
- Community Concerns
- Public Involvement/Membership
- Executive Committee

9:15 p.m. Final Comments
9:30 p.m. Adjourn

Copies of the final agenda will be available at the meeting.

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact David Dollins at the address listed below or by telephone at (270) 441–6819. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comments will be provided a maximum of five minutes to present their comments as the first item of the meeting agenda.

Minutes: The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585 between 9 a.m. and 4 p.m., Monday–Friday, except Federal holidays. Minutes will also be available at the Department of Energy's Environmental Information Center and Reading Room at 115 Memorial Drive, Barkley Centre, Paducah, Kentucky between 8 a.m. and 5 p.m. on Monday thru Friday or by writing to David Dollins, Department of Energy Paducah Site Office, Post Office Box 1410, MS–103, Paducah, Kentucky 42001 or by calling him at (270) 441–6819.

Issued at Washington, DC on December 15, 2003.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 03–31333 Filed 12–18–03; 8:45 am]

BILLING CODE 6450–01–P

Environmental Protection Agency

[ER–FRL–6646–7]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 564–7167.

Draft EISs

ERP No. D–AFS–J65392–MT Rating EC2, Helena National Forest Noxious Weed Treatment Project, Implementation, Lewis and Clark, Powell, Jefferson, Broadwater and Meagher Counties, MT.

Summary: EPA supports integrated weed management to control noxious weeds. However, EPA expressed environmental concerns regarding adequate protection measures to reduce herbicide transport to surface and ground water and to protect public health. The final EIS should address those issues and include monitoring in selected watersheds.

ERP No. D–AFS–J65394–MT Rating EC2, Basin Creek and Blacktail Hazardous Watershed Fuels Reduction Project, Implementation, Highland Mountains, Butte Ranger District, Beaverhead-Deerlodge National Forest, Butte-Silver Bow County, MT.

Summary: EPA supports the need to reduce hazardous fuels and firerisk and protect the Basin Creek Municipal watershed for the City of Butte. However, EPA expressed environmental concerns with potential adverse impacts to threatened lynx.

ERP No. D–AFS–L65433–OR Rating EC2, North Fork Burnt River Mining Project, Proposal for Mineral Plans of Operation, Implementation, Wallowa-Whitman National Forest, Unity Ranger District, Whitman Unit, Blue Mountains, Town of Unity, Baker County, OR.

Summary: EPA expressed environmental concerns regarding impacts from the proposed action on water quality. Mining activities may contribute to increased temperature and sediment on 303(d) listed streams and may result in additional impaired water bodies. EPA recommends that the EIS explain how water quality will be protected and improved. Also, the Plan of Operation should be amended to include any future Total Maximum Daily Load requirements if applicable.

ERP No. D–AFS–L65439–OR Rating EC2, Monument Fire Recovery Project, Whitman Unit—Wallowa—Whitman National Forest (WWNF) Timber Harvest of Fire Killed/Dying Trees, Reforestation, Recovery of Herbaceous, Native Vegetation and Maintenance or Improvement of Water Quality, Implementation, Baker County, OR.

Summary: EPA expressed environmental concerns with potential adverse impacts to water quality and suggests the Final EIS include mitigation measures and identify water quality limited waterbodies in the project area. EPA also expressed concerns with adverse impacts to habitat for primary cavity excavator bird species from harvest activities.

ERP No. D–BLM–L65422–00 Rating EO2, Upper Klamath River Management Plan, Resource Management Plan Amendments, Implementation, Upper Klamath River stretch between Lake Ewauna, OR, south to Irongate Dam in CA.

Summary: EPA expressed environmental objections with alternatives that will not meet water quality standards, and may adversely impact threatened and endangered species. The final EIS should fully disclose impacts to wetlands, provide additional information on consultation with Native American tribes and fully assess potential environmental justice impacts. EPA requested that the final evaluate an alternative that meets water quality standards.

ERP No. D–FHW–F40417–WI Rating EC2, WI–83 Highway Improvements, County NN in Mukwonago to WI–16 in Hartland, Funding and U.S. Army COE Section 404 Permit Issuance, Waukesha County, WI.

Summary: EPA has identified environmental concerns with the proposed project relating to impacts on trout habitat, Scuppernong Creek, Blanding's Turtle and air quality. EPA is also concerned about the adequacy of the information in the DEIS regarding wetlands.

ERP No. D–NOA–E91014–00 Rating EC2, Generic Essential Fish Habitat Amendment to the Fishery Management Plans of the Gulf of Mexico (GOM) for Shrimp, Red Drum, Reef Fish, Stone Crab, Coral and Coral Reef, Spiny Lobster Fisheries of the GOM and South Atlantic Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic.

Summary: EPA expressed environmental concern that the preferred alternative did not protect regions which comprise the bulk of the EFH habitats within the 100 fathom isobath. EPA believes that the proposed action would be substantially improved if marine protected areas, habitat/reef creation and rotational strategies were considered as EFH management measures.

ERP No. D–USN–K11112–CA Rating EC2, Tertiary Treatment Plant and Associated Facilities Construction and Operation, Implementation, Marine Corps Base Camp Pendleton, San Diego County, CA.

Summary: EPA raised environmental concerns that the Proposed Action did not incorporate ground water recharge or reuse/treatment wetland components, which could benefit the Santa Margarita River and its riparian ecosystem. EPA raised concerns that potentially feasible mitigation may not be presented because impacts are not significant, and that no mitigation is proposed for solid waste generated by the project, including demolition waste. EPA requested a discussion of whether polychlorinated biphenyls (PCBs) are present in materials at sewage treatment plants proposed for demolition.

ERP No. DB–NOA–B91021–00 Rating EC1, Northeast Multispecies Fishery Management Plan, Amendment 13, New Information concerning Management Alternatives and Impact Analysis, Adoption, Approval and Implementation, New England Management Council, ME, HH, VT, MA, RI, CT, NY, NJ, DE, MD, VA and NC.

Summary: EPA had environmental concerns that the document lacks information regarding alternatives selection and recommended additional information on possible essential fish habitat area closures.

ERP No. DF–NOA–L64015–AK Rating EC1, Programmatic EIS—Alaska Groundfish Fisheries, New Information concerning the Ecosystem and a Preferred Alternative, Fishery Management Plans for the Groundfish Fishery of the Gulf of Alaska and the Groundfish of the Bering Sea and Aleutian Islands Area, North Pacific Fishery Management Council, AK.

Summary: EPA expressed concerns regarding impacts to essential fish habitat and Steller sea lions and the need for clarification on the relationship between Magnuson-Stevens Act, the Fisheries Council and NEPA.

ERP No. D1–AFS–E65031–KY Rating EC1, Gray Mountain Coal Lease Land Use Analysis, Application for Leasing Tracts 3094Bb, 3049Be and 3049Az, Daniel Boone National Forest, Leslie County, KY.

Summary: EPA has environmental concerns with potential adverse impacts to water quality from the proposed coal lease, and other connected actions related to mining activities such as subsidence, erosion and sedimentation.

Final EISs

ERP No. F–AFS–K65255–CA Spalding Land Exchange Project, Proposed Land Exchange between Spalding Community Service District (SCSD) and Lassen National Forest (LNF), Special Use Permit, Lassen County, CA.

Summary: No formal comment letter was sent to the preparing agency.

ERP No. F–NOA–E91009–00 Dolphin and Wahoo Fishery Management Plan, Establishing Fishery Management Units, Stock Status Determination and Harvesting Restrictions, Initial Regulatory Flexibility Analysis, South Atlantic, Caribbean, and Gulf of Mexico.

Summary: While EPA has no objection to this proposed action, EPA believes the future NOAA EISs should further streamline the NEPA process in areas such as alternatives and the referencing of modifications to the draft EIS.

Dated: December 16, 2003.

Joseph C. Montgomery,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 03–31352 Filed 12–18–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6646–6]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–7167 or *http://www.epa.gov/compliance/nepa/*. Weekly receipt of Environmental Impact Statements filed December 8, 2003, through December 12, 2003, pursuant to 40 CFR 1506.9.

EIS No. 030554, Final EIS, AFS, CA, Interface Recreation Trails Project, recreation route system development, implementation, Stanislaus National Forest, Calaveras Ranger District, Calaveras County, CA, due: January 20, 2004, contact: Robert W. Griffith (209) 795–1381.

EIS No. 030555, Final EIS, NPS, MA, Boston Harbor Islands National Recreation Area, implementation, general management plan, Boston, MA, due: January 20, 2004, contact: George E. Price, Jr. (617) 223–8666. This document is available on the Internet at: *http://www.nps.gov/boha/pphtml/documents.html.*

EIS No. 030556, Draft EIS, USN, WA, Fox Island Laboratory Stabilization of In-Water Facilities, Naval Surface Warfare Center, Carderock Division, Pierce County, WA, due: February 2, 2004, contact: Kimberly Kler (360) 396–0927.

EIS No. 030557, Final EIS, FHW, TX, TX–45 Highway Southeast Study, I–35 south at Farm-to-Market Road-1327 to TX–130/US 183, local regional enhancements to the national transportation systems, funding and right-of-way permit issuance, Travis County, TX, due: January 20, 2004, contact: Salvador Decampo (512) 536–5950.

EIS No. 030558, Draft EIS, FHW, MN, MN–371 North Improvement Project, reconstruction from intersection of Crow Wing County Road 18 in Nisswa to the intersection of Cass County Road 42 in Pine River, NPDES Permit and U.S. Army COE Section 404 Permit, Crow Wing and Cass Counties, MN, due: February 9, 2004, contact: Cheryl Martin (651) 291–6120.

EIS No. 030559, Draft EIS, COE, AZ, El Rio Antiguo Feasibility Study, Ecosystem Restoration along the Rillito River, Pima County, AZ, due: February 2, 2004, contact: John Moeur (213) 452–4219.

EIS No. 030560, Draft Supplement, COE, FL, Central and Southern Florida Project, Indian River Lagoon—south feasibility study, to address the requirement of section 601 of the Water Resources Development Act 2000 and three additional alternatives, Martin, St. Lucie and Okeechobee Counties, FL, due: February 2, 2004, contact: Mike Rogalski (904) 232–1460.

EIS No. 030561, Draft EIS, AFS, OR, Eyerly Fire Salvage Project, burned and damage trees salvage, reforestation and fuels treatment, Implementation, Deschutes National Forest, Sisters Ranger District, Jefferson County, OR, Due: February 2, 2004, contact: Dave Owens (541) 416–6425. This document is available on the Internet at: *http://www.fs.fed.us/r6/centraloregon/projects/units/sisters//eyerly-eis.shtml.*

EIS No. 030562, Draft EIS, AFS, UT, Bear Hodges II Timber Sale Management Plan, selective timber harvest of spruce stands with or without road construction, implementation, Wasatch National Forest (WCNF), Logan Ranger District, Cache and Rich Counties, UT, due: February 2, 2004, contact: Thomas Tidwell (801) 524–3900.

EIS No. 030563, Draft EIS, NPS, SC, FL, NC, GA, Low Country Gullah Culture Special Resource Study, Gullah culture preservation and protection analysis to consider the suitability and feasibility for inclusion in the National Park Service System, SC, NC, GA and FL, due: February 2, 2004, contact: John Barrett (Ext. 637) (404) 512–3124.

EIS No. 030564, Draft EIS, FHW, TX, Kelly Parkway Project, construction from U.S. 90 to TX–16, to improvement transportation mobility, facilitate economic development, and

enhance safety, funding and U.S. Army COE Section 404 Permit, San Antonio, Bexar County, TX, due: February 2, 2004, contact: Salvador Deocampo (512) 536–5950.

EIS No. 030565, Final EIS, NOA, WA, CA, OR, Pacific Coast Groundfish Fishery Management Plan (FMP) Amendment 16–2, rebuilding plans for: darkblotched rockfish, Pacific Ocean perch, canary rockfish, and lingcod, maximum sustainable yield (MSY) Magnuson-Stevens Fishery Conservation and Management Act, WA, OR, CA and Boundary of U.S. EEZ, due: January 20, 2004, contact: Robert Lohn (206) 516–6150.

EIS No. 030566, Final Supplement, NRC, SC, Generic EIS—license renewal of nuclear plants, supplement 13 regarding H.B. Robinson Steam Electric Plant, Unit No. 2, operating license renewal for 20 years, site specific, on the shore of Lake Robinson, Darlington and Chesterfield Counties, SC, due: January 20, 2004, contact: Richard L. Emch, Jr. (301) 415–1590.

Amended Notices

EIS No. 030514, Draft EIS, FHW, IL, Macomb Area Study, construction from U.S. Route 67 (FAP–310) and Illinois Route 336 (FAP–315), City of Macomb, McDonough County, IL, due: January 13, 2004, contact: Norman R. Stoner (217) 492–4640. Revision of **Federal Register** notice published on 11/14/2003: correction to comment period from 12–29–2003 to 01–13–2004.

EIS No. 030525, Draft EIS, AFS, OR, Biscuit Fire Recovery Project, improve firefighter safety, reduce the risk of high-intensity, stand replace fire public and private managed lands, Siskiyou National Forest, Rogue River, Josephine and Curry Counties, OR, due: January 20, 2004, contact: Tom Link (541) 471–6500.

Revision of **Federal Register** notice published on 11/21/03: CEQ comment period ending 01/05/2004 has been extended to 01/20/2004.

EIS No. 030537, Final EIS, BLM, AK, Northwest National Petroleum Reserve-Alaska (NPR–A) integrated plan, multiple-use management of 8.8 million acres, lands within the North Slope Borough, AK, due: January 20, 2004, contact: Curtis Wilson (907) 271–5546. Revision of **Federal Register** notice published on 11/28/2003: CEQ wait period ending on 12/29/2003 has been extended to 1/20/2004.

EIS No. 030546, Draft EIS, AFS, PA, Sugar Run Project Area (SRPA), to achieve and maintain the desired conditions as stated in forest plan, Allgeheny National Forest, Bradford Ranger District, McKean County, PA, due: January 26, 2004, contact: Heather Whittier (814) 362–4613 Ext. 142.

Revision of **Federal Register** notice published on 12/12/2003: correction to telephone number.

Dated: December 16, 2003.

Joseph C. Montgomery,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 03–31353 Filed 12–18–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7600–3]

Preliminary National Enforcement and Compliance Assurance Priorities for Fiscal Years 2005, 2006 and 2007; Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; correction.

SUMMARY: The U.S. Environmental Protection Agency published a notice in the **Federal Register** on December 10, 2003, concerning a request for comments on Preliminary National Enforcement and Compliance Assurance Priorities for Fiscal Years 2005, 2006 and 2007. The notice contained an incorrect phone number.

FOR FURTHER INFORMATION CONTACT: Robert Tolpa, (202) 564–2337.

Correction:

In the **Federal Register** of December 10, 2003, in FR Doc. OECA–2003–0154, on page 68896, in the last paragraph of the notice, correct the "Phone number" caption to read:

Review Information: Persons interested in obtaining further background information regarding current or proposed FY 2005–2007 national enforcement and compliance assurance priorities may submit a request for hard copy or electronic version of information to: *docket.oeca@epa.gov*, or contact the docket clerk at 202–566–1752. Please reference Docket Number OECA–2003–0154 in the request. A reasonable fee may be charged by EPA for copying docket materials. Dated: December 4, 2003.

Dated: December 11, 2003.

Lisa C. Lund,

Acting Director, Office of Compliance, Office of Enforcement and Compliance Assurance.

[FR Doc. 03–31350 Filed 12–18–03; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Technological Advisory Council

AGENCY: Federal Communications Commission.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, this notice advises interested persons of the fourth meeting of the Technological Advisory Council ("Council") under its charter renewed as of November 25, 2002. The meeting will be held at the Federal Communications Commission in Washington, DC.

DATES: January 23, 2004 beginning at 10 a.m. and concluding at 3 p.m.

ADDRESSES: Federal Communications Commission, 445 12th St., SW., Room TW–C305, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Jeffery Goldthorp, (202) 418–1096.

SUPPLEMENTARY INFORMATION: Continuously accelerating technological changes in telecommunications design, manufacturing, and deployment require that the Commission be promptly informed of those changes to fulfill its statutory mandate effectively. The Council was established by the Federal Communications Commission to provide a means by which a diverse array of recognized technical experts from different areas such as manufacturing, academia, communications services providers, the research community, etc., can provide advice to the FCC on innovation in the communications industry.

Purpose: The purpose of the Technological Advisory Council is to provide technical advice and to make recommendations on the current issues and questions presented to it by the FCC.

Agenda: Technological Advisory Council (TAC) III—Fourth Meeting:

9 a.m.—Informal meet-and-greet for members

10 a.m.—Public Meeting:

3 pm—Wrap Up—Meeting Adjourned.

Closer to the meeting date, a more detailed agenda will be available on the Federal Communications Commission's Web page at *http://www.fcc.gov*.

Members of the public may attend the meeting. The Federal Communications Commission will attempt to accommodate as many persons as possible. Admittance, however, will be limited to the seating available. Unless so requested by the Council's Chair, there will be no public oral participation, but the public may submit written comments to Jeffery Goldthorp, the Federal Communications Commission's Designated Federal Officer for the Technological Advisory Council, before the meeting. Mr. Goldthorp's e-mail address is *Jeffery.Goldthorp@fcc.gov*. Mail delivery address is: Federal Communications Commission, 445 12th Street, SW., Room 7–A325, Washington, DC 20554.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 03–31257 Filed 12–18–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than January 2, 2004.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166-2034:

1. Don Crader Revocable Trust, and Don Crader as trustee, both of Marble Hill, Missouri; to acquire additional voting shares of First Southeast Missouri Bancorporation, Inc., Scott City, Missouri, and thereby indirectlty acquire additional shares of Security Bank and Trust Company, Scott City, Missouri.

B. Federal Reserve Bank of Kansas City (James Hunter, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. Joseph L. and Loraine P. Durler, both of Syracuse, Kansas; to acquire additional voting shares of Valley Bancorp, Inc., Syracuse, Kansas, and thereby indirectly acquire additional voting shares of The Valley State Bank, Syracuse, Kansas.

2. Landon N. and Georgia K. Westbrook, both of Purcell, Oklahoma; to acquire additional voting shares of Exchange Bancshares of Moore, Inc., Moore, Oklahoma, and thereby indirectly acquire additional voting shares of Exchange National Bank of Moore, Moore, Oklahoma.

Board of Governors of the Federal Reserve System, December 15, 2003.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E3–00593 Filed 12–18–03; 8:45 am]

BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration on Aging

Agency Information Collection Activities; Proposed Collection; Comment Request; AoA Uniform Project Description

AGENCY: Administration on Aging, HHS.

ACTION: Notice.

SUMMARY: The Administration on Aging (AoA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on the information collection requirements relating to the AoA Uniform Project Description.

DATES: Submit written or electronic comments on the collection of information by February 17, 2004.

ADDRESSES: Submit electronic comments on the collection of information to: *Melanie.Starns@AoA.gov*. Submit written comments on the collection of information to Center for Planning and Policy Development, Administration on Aging, Attention: UPD Comments, Washington, DC 20201.

FOR FURTHER INFORMATION CONTACT: Melanie K. Starns at (202) 357–3464.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. "Collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency request or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, AoA is publishing notice of the proposed collection of information set forth in this document. With respect to the following collection of information, AoA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of AoA's functions, including whether the information will have practical utility; (2) the accuracy of AoA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques when appropriate, and other forms of information technology. The collection of applicants' project description and budget justification information is necessary to issue AoA discretionary grants. The information is used to evaluate if applications are eligible for funding, and further used during the grant review process. The respondents are organizations that choose to apply for an AoA discretionary grant. AoA estimates the burden of this collection of information as follows: 500 responses/year; 5,000 hours/year.

Dated: December 15, 2003.

Josefina G. Carbonell,

Assistant Secretary for Aging.

[FR Doc. 03–31269 Filed 12–18–03; 8:45 am]

BILLING CODE 4154–01–U

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–14–04]

Proposed Data Collections Submitted for Public Comment and Recommendations

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 498–1210. Send written comments to CDC, Desk Officer, Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 or by fax to (202) 395–6974. Written comments should be received within 30 days of this notice.

Proposed Project: Workplace Exacerbation of Asthma (OMB No. 0920–0495)—Extension—National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control and Prevention (CDC).

Work-related asthma is the most common lung disease seen in occupational health clinics in the United States based on data from the Association of Occupational and Environmental Clinics for 1991–1996. Work-related asthma includes both new onset asthma initiated by workplace exposures and pre-existing asthma exacerbated by workplace environments, in both types of cases repeated exposure to asthmatic agents can lead to chronic pulmonary impairment. The 1985 American Thoracic Society statement "What Constitutes an Adverse Health Effect of Air Pollution" identified exacerbation of asthma as one of the serious effects of environmental air pollution. While anecdotal evidence suggests that as many as one-half of work-related asthma patients treated in occupational medicine clinics had pre-existing asthma that was exacerbated by workplace conditions, there are few data from studies in the United States to support this claim.

Three years ago, NIOSH requested approval from OMB to conduct a three phase study. In Phase 1 (Baseline Study), a telephone interview was conducted to address three specific aims: (1) To determine the frequency of workplace exacerbation of asthma (WEA); (2) to determine the circumstances at work associated with exacerbation of asthma; and (3) to determine the social and economic costs associated with workplace exacerbation of asthma. To date, the Baseline Study telephone interviews have been completed for a total of 615 participants. Also, patient care records have been obtained in order to ascertain cost of care for asthma for each participant (Specific Aim 3).

Phase 2 (Validation Phase) is being conducted with a subset of respondents from the Baseline Study. Employed respondents with and without workplace exacerbation are being asked to conduct serial spirometry with a portable device. These findings will serve as the "gold standard" to determine the sensitivity and specificity of a self-report of workplace exacerbation of asthma (Specific Aim #4). As part of the serial testing, respondents complete a diary and final brief telephone interview at the end of the serial testing. Data collection for Phase 2 continues. The Paperwork Reduction Act does not apply to Phase 2 of the study.

In Phase 3 (Follow-up Study), all respondents from the Baseline Study will be asked to complete a follow-up telephone interview approximately two years later to investigate whether workplace exacerbation at baseline predicts an increase in asthma severity (Specific Aim #5). We anticipate that interviewing for Phase 3 will continue through August, 2004.

The data collected in this study will be used to further understand the frequency of workplace-exacerbated asthma, the social and economic impacts of this problem, and the implication of self-reporting WEA for subsequent asthma severity. This information can be used to prioritize resources for addressing this problem. The data collected in this study will also identify which jobs and exposures are likely to exacerbate existing asthma, thus providing guidance on where to focus preventive efforts. Collected data on the validity of self-reporting WEA will be useful to both clinicians and researchers who attempt to treat or study individuals with this problem. The annualized burden for this data collection is 214 hours.

Respondents	Number of respondents	Number of responses per respondent	Average Burden per Response (in hours)
Validation Study [1]	(200)	(1)	(7.5)
Follow-up Study: Attempt to conduct an interview	465	1	5/60
Follow-up Study: Completed interviews	349	1	30/60

[1] The Paperwork Reduction Act does not apply to the Validation Study.

Dated: December 11, 2003.

Alvin Hall,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 03–31306 Filed 12–18–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–11–04]

Proposed Data Collections Submitted for Public Comment and Recommendations

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 498–1210. Send written comments to CDC, Desk Officer, Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 or by fax to (202) 395–6974. Written comments should be received within 30 days of this notice.

Proposed Project: Families, Communities, and Diabetes Management Project—New—National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP), Centers for Disease Control and Prevention (CDC).

Diabetes Mellitus Type 2 is a chronic metabolic disease that has the potential for serious health consequences which include both psychological and physical conditions. Effective management of this disease is important to prevent the development of these problems. No previous studies have systematically examined the ways in which psychological functioning, patient-provider relationships, family and social support, health insurance availability and utilization, lifestyle practices, and community support influence diabetes self-management among African American patients. Most diabetes management information is based on research conducted primarily with Caucasian patients. The Division of Diabetes Translation within the National Center for Chronic Disease Prevention and Health Promotion of the Centers for Disease Control and Prevention plans to conduct a pilot study of a longitudinal, family-centered research project to determine optimal ways of teaching African American patients and their families how to work together to manage diabetes successfully.

The research will involve samples of 40-to 64-year-old African American men and women with Type 2 diabetes and their close family members. Participating families will be divided into two groups, an intervention group that will receive the intervention at the beginning of the study, and a comparison group that will receive a modified version at the end. Measurements of self-care adherence and diabetes control will include both self-reports and objective measures such as blood glucose levels obtained through clinical lab work. Other data will include diabetes knowledge, community characteristics, social support, community support, psychological functioning, patient-provider relationships, and health care coverage. Participant involvement will occur over a 13 month period.

CDC is requesting a three year approval for this data collection. The estimated annualized burden is 1,433 hours. The total burden over the course of this data collection is 4,300 hours.

Respondents	Number of respondents	Number of responses per respondent	Average burden per response (in hours)
Adults with Diabetes:			
Questionnaires	400	3	1
Clinical Lab Work	400	3	1
Glucose Test Meter Training	400	1	1
Family Members: Questionnaires	400	3	45/60
Teenagers: Questionnaires	400	3	30/60

Dated: December 9, 2003.

Alvin Hall,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 03–31307 Filed 12–18–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–12–04]

Proposed Data Collections Submitted for Public Comment and Recommendations

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 498–1210. Send written comments to CDC, Desk Officer, Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 or by fax to (202) 395–6974. Written comments should be received within 30 days of this notice.

Proposed Project: "Physical Activity: The Arthritis Pain Reliever" Campaign Evaluation—New—National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP), Centers for Disease Control and Prevention (CDC).

Arthritis affects nearly 43 million Americans, or about one in every six people, and is the leading cause of disability among adults in the United States. Because of the broad public health impact of this disease, the Centers for Disease Control and Prevention (CDC) developed the National Arthritis Action Plan in 1998 as a comprehensive approach to reducing the burden of arthritis on the United States. As part of its efforts to implement the National Arthritis Action Plan, CDC, National Center for Chronic Disease Prevention and Health Promotion developed a physical activity campaign, People with Arthritis (PWA). PWA targets African American and Caucasian men and women aged 45–64, high school education or less, with an annual income less than $35,000 per year. Campaign materials include print ads, 15-, 30- and 60-second radio public service announcements, and desktop displays with brochures for pharmacies, doctors' offices, and community centers. The campaign objectives are to increase target audience members' (1) beliefs about physical activity as an arthritis management strategy (there are "things they can do" to make arthritis better, and physical activity is an important part of arthritis management); (2) knowledge of the benefits of physical activity and appropriate physical activity for people with arthritis; (3) confidence in their ability to be physically active, and (4) trial of physical activity behaviors.

During 2002, the health communications campaign, "Physical Activity: The Arthritis Pain Reliever" was pilot-tested by 6 CDC-funded states. CDC plans to disseminate the health communications arthritis campaign to 38 CDC-funded states. The preliminary pilot tests focused on reach and exposure. The purpose of this evaluation is to determine if core campaign messages are reaching the target audience; and if so, how they are affecting knowledge, beliefs, confidence and behaviors of people with arthritis. CDC will use the data from this evaluation to make recommendations to state health departments and their partners on the use of this media campaign.

In this data collection, CDC proposes to conduct an evaluation using

convenience samples in three markets, including two test markets and one comparison market using a quasi-experimental design. The primary method for data collection will be a 15-minute tracking survey administered via telephone. The survey will be conducted before and after the campaign. Six months after the post campaign data collection, CDC will conduct a follow-up survey on approximately one-third of the respondents who participated in the post campaign data collection. The annualized burden for this data collection is 555 hours.

Respondents	Number of respondents	Responses per respondent	Average hours per response (in hours)
Pre-campaign	960	1	15/60
Post-campaign	960	1	15/60
Follow-up	300	1	15/60

Dated: December 11, 2003

Alvin Hall,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 03–31308 Filed 12–18–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare and Medicaid Services

[Document Identifier: CMS–437, 437A, 437B; CMS–255; CMS–R–199; CMS–10086]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Agency: Centers for Medicare and Medicaid Services.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare and Medicaid Services (CMS) (formerly known as the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

1. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Psychiatric Unit Criteria Worksheet, Rehabilitation Unit Criteria Worksheet, and Rehabilitation Hospital Criteria Worksheet, and Supporting Regulations at 42 CFR 488.26; *Form No.:* CMS–437, 437A, and 437B (OMB# 0938–0358); *Use:* The rehabilitation hospital/unit and psychiatric unit criteria worksheets are necessary to verify and reverify that these facilities/units comply and remain in compliance with the exclusion criteria for the Medicare prospective payment system; *Frequency:* Annually; *Affected Public:* Business or other-for-profit, not-for-profit institutions; *Number of Respondents:* 2,610; *Total Annual Responses:* 2,610; *Total Annual Hours:* 653.

2. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Municipal Health Services Cost Report Form and supporting Regulations 42 CFR 405.2470; *Form No.:* CMS–255 (OMB# 0938–0155); *Use:* The Municipal Health Services Program Cost Report (CMS 255) is used by the participating clinics to report costs for health care services rendered to Medicare beneficiaries. It is also used to gather data to properly evaluate the demonstration; *Frequency:* Annually; *Affected Public:* Not-for-profit institutions; *Number of Respondents:* 14; *Total Annual Responses:* 14; *Total Annual Hours:* 476.

3. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Medicaid Report on Payables and Receivables; *Form No.:* CMS–R–199 (OMB# 0938–0697); *Use:* The Chief Financial Officers Act of 1990 requires government agencies to produce auditable financial statements. This form will collect accounting data from the States on Payables and Receivables; *Frequency:* Annually; *Affected Public:* State, local or tribal government; Number of *Respondents:* 57; *Total Annual Responses:* 57; *Total Annual Hours:* 342.

4. *Type of Information Request:* Extension of a currently approved collection; *Type of Information Collection:* Medicaid Program: Real Choice Systems Change Grants for Community Living; *CMS Form Number:* CMS–10086 (OMB# 0938–0901); *Use:* Executive Order 13217, "Community-Based Alternatives for Individuals with Disabilities" called upon the Federal government to assist States and localities to swiftly implement the decision of the United States Supreme Court in *Olmstead* v. *L.C.*, stating: "The United States is committed to community-based alternatives for individuals with disabilities and recognizes that such services advance the best interests of the United States." State agencies and community groups will be applying for these grants; *Frequency:* On occasion; *Affected Public:* State, local, or tribal government; not-for-profit institutions; *Number of Respondents:* 75; *Total Annual Responses:* 150; *Total Annual Burden Hours:* 1500.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS Web site address at *http://cms.hhs.gov/regulations/pra/default.asp*, or E-mail your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@hcfa.gov*, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 30 days of this notice directly to the OMB desk officer: OMB Human Resources and Housing Branch, Attention: Brenda Aguilar, New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: December 12, 2003.

Julie Brown,

Acting, Paperwork Reduction Act Team Leader, CMS Reports Clearance Officer, Office of Strategic Operations and Strategic Affairs, Division of Regulations Development and Issuances.

[FR Doc. 03–31357 Filed 12–18–03; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare and Medicaid Services

[Document Identifier: CMS–R–234, CMS–250–254]

Agency Information Collection Activities: Proposed Collection; Comment Request

Agency: Centers for Medicare and Medicaid Services, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare and Medicaid Services (CMS) (formerly known as the Health Care Financing Administration (HCFA)), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

1. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Subpart D—Private Contracts and Supporting Regulations in 42 CFR 405.410, 405.430, 405.435, 405.440, 405.445, 405.455, 410.61, 415.110, and 424.24; *Form No.:* CMS–R–234 (OMB# 0938–0730); *Use:* Section 4507 of the BBA of 1997 amended section 1802 of the Social Security Act to permit certain physicians and practitioners to opt-out of Medicare and to provide through private contracts services that would otherwise be covered by Medicare. Under such contracts the mandatory claims submission and limiting charge rules of section 1848(g) of the Act would not apply. Subpart D and the Supporting Regulations contained in 42 CFR 405.410, 405.430, 405.435, 405.440, 405.445, and 405.455, counters the effect of certain provisions of Medicare law that, absent section 4507 of BBA 1997, preclude physicians and practitioners from contracting privately with Medicare beneficiaries to pay without regard to Medicare limits; *Frequency:* Biennially; *Affected Public:* Business or other for-profit; *Number of Respondents:* 26,820; *Total Annual Responses:* 26,820; *Total Annual Hours:* 7,197.

2. *Type of Information Request:* Revision of a currently approved collection; *Title of Information Collection:* Medicare Secondary Payer Information Collection and Supporting Regulations in 42 CFR 411.25, 489.2, and 489.20; *Form Number:* CMS–250 through CMS–254 (OMB# 0938–0214); *Use:* Medicare Secondary Payer (MSP) is essentially the same concept known in the private insurance industry as coordination of benefits and refers to those situations where Medicare does not have primary responsibility for paying the medical expenses of a Medicare beneficiary. CMS contracts with health insuring organizations, herein referred to as intermediaries and carriers, to process Medicare claims. CMS charges its Medicare intermediaries and carriers with various tasks to detect MSP cases; develops and disseminates tools to enable them to better perform their tasks; and monitors their performance in achievement of their assigned MSP functions. Because intermediaries and carriers are also marketing health insurance products that may have liability when Medicare is secondary, the MSP provisions create the potential for conflict of interest. Recognizing this inherent conflict, CMS has taken steps to ensure that its intermediaries and carriers process claims in accordance with the MSP provisions, regardless of what other insurer is primary. These information collection requirements describe the MSP requirements and consist of the following:

1. Initial enrollment questionnaire.

2. MSP claims investigation, which consists of first claim development, trauma code development, self-reporting MSP liability development, notice to responsible third party development (411.25 notice), secondary claims development, and "08" development (involving claims where information cannot be obtained from the beneficiary).

3. Provider MSP development, which requires the provider to request information from the beneficiary or representative during admission and other encounters; *Frequency:* On occasion; *Affected Public:* Individuals or households, Business or other for-profit, and Not-for-profit institutions; *Number of Respondents:* 134,553,682; *Total Annual Responses:* 134,553,682; *Total Annual Hours Requested:* 1,518,616.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS's Web site address at *http://cms.hhs.gov/regulations/pra/default.asp*, or E-mail your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@hcfa.gov*, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 60 days of this notice directly to the CMS Paperwork Clearance Officer designated at the following address: CMS, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development and Issuances, Attention: Melissa Musotto, Room C5–14–03, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: December 12, 2003.

Julie Brown,

Acting, Paperwork Reduction Act Team Leader, Office of Strategic Operations and Strategic Affairs, Division of Regulations Development and Issuances.

[FR Doc. 03–31358 Filed 12–18–03; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Office of Child Support Enforcement

Funding Opportunity Title: Office of Child Support Enforcement's Special Improvement Project (SIP) Grants.

Announcement Type: Initial.

Funding Opportunity Number: HHS–2004–ACF–OCSE–SIP–0001.

CFDA Number: 93.601.

Due Date for Applications: March 3, 2004.

SUMMARY: The Administration for Children and Families (ACF), Office of Child Support Enforcement (OCSE) invites eligible applicants to submit competitive grant applications for special improvement projects which further the national child support mission, vision, and goals which are: All children to have parentage

established; all children in IV–D cases to have financial and medical orders; and all children in IV—D cases to receive financial and medical support. For FY 2004, we are looking for projects in which a variety of partners, which may include community and faith-based organizations, collaborate as appropriate. Applications will be screened and evaluated as indicated in this program announcement. Awards will be contingent on the outcomes of the competition and the availability of funds. For FY 2004, approximately $1.5 million is available for all priority areas. A non-Federal match is not required. The anticipated start date for the new awards is May 1, 2004; projects may go through September 30, 2005, for a period of up to 17 months.

I. Funding Opportunity Description

Legislative Authority. Section 452(j) of the Social Security Act, 42 U.S.C. 652(j), provides Federal funds for information dissemination and technical assistance to States, and training of Federal and State staff to improve child support programs and research and demonstration programs and special projects of regional or national significance relating to the operation of State child support enforcement programs.

Program Purpose and Objectives. To fund a number of special improvement projects which further the national child support mission to ensure that all children receive financial and medical support from their parents and which strengthens the ability of the nation's child support program to collect support on behalf of children and families. For FY 2004, we are looking for innovative projects to improve child support program performance and in which new partners collaborate so we can produce greater impacts on child support outcomes (*e.g.*, increasing the establishment of child support orders and child support collections). We invite partnerships, such as courts/tribunals and community- and faith-based organizations, that can address the needs of harder-to-serve populations, such as low-income non-custodial fathers and culturally diverse populations to apply for these projects.

Applicants should understand that OCSE will not award grants for special improvement projects which (a) Duplicate automated data processing and information retrieval system requirements/enhancements and associated tasks which are specified in the Social Security Act; or (b) which cover costs for routine activities which would normally be reimbursed under the Child Support Program (*e.g.* adding staff positions to perform routine CSE tasks), or by other Federal funding sources. Proposals and their accompanying budgets will be reviewed from this perspective.

Priority Areas:

Priority Area 1: Improving the Judicial/Administrative Processing of Child Support Enforcement Case Activities

OCSE is looking for projects that would expedite and facilitate courts'/tribunals' processing of child support case actions. In many states, courts/tribunals play a key role in establishing, modifying, or enforcing child support orders. In these jurisdictions, courts/tribunals may find that current rules, practices, or procedures create obstacles to more timely and equitable processing of child support cases. For example, courts/tribunals may require the physical presence of the parents at hearings; may accept only an official employer/corporate verification of earnings statements as evidence of income; or require a formal hearing or otherwise impose procedural obstacles to allowing deviations from guidelines to determine support orders. Under this solicitation, we are looking for projects that would address at least one of the following design elements:

- Design and implement new practices or procedures that enable courts/tribunals to remove barriers to participation in Title IV–D child support proceedings such as requiring the physical presence of the parents at hearings and other legal proceedings. Projects would demonstrate the effectiveness of using more flexible approaches, such as allowing telephone or videoconference hearings when it is difficult for a parent to personally attend a hearing due to distance, health, or other reasons. Projects might show how courts/tribunals can overcome legal and other obstacles to holding telephone hearings, using facsimile machines to transmit evidence, *etc.*, and how other jurisdictions can adapt similar procedures. Possible outcomes include improved customer service; timelier case processing; reduction in continuances, default orders, and use of imputed income; increased collections; and reduction in arrears, especially in interstate cases.
- Develop and implement procedures that could demonstrate the effectiveness of courts' use of Federal or State-certified information from the Federal or State Parent Locator Services (FPLS/SPLS) in Title IV–D cases, including New Hire information, to establish or modify child support orders. These projects would show how courts/tribunals that allow use of SPLS/FPLS data certified by a child support agency, rather than by an employer, overcome evidentiary or other obstacles to the use of such data. The projects should be designed to assist courts/tribunals or other relevant decision makers to develop and/or implement changes necessary to promote the effective and efficient use of FPLS/SPLS information in the establishment or modification of orders. The projects should show how removing obstacles, such as the requirement of employer/corporate verification of earnings, would lead to improved program performance or customer service, including expedited establishment/modification of child support orders; increased number of orders established; reduced use of imputed income; decreased accrual of arrears; increased collections; and/or increased cost-effectiveness.
- Develop and implement revised criteria, as established by the State, and guidance allowing judicial or administrative personnel greater authority to deviate from State child support order guidelines without a hearing. Projects would demonstrate the benefits of having greater discretionary guidance in this area. For example, such discretion may be warranted when application of the guidelines is considered unjust or inappropriate, such as in cases involving excessive health care costs, child care or education costs or multiple non-custodial parent families. These projects should be designed to assist other jurisdictions to adapt similar discretionary guidance and categories and to show that providing this type of discretion would improve program performance or customer service, including expedited case processing, increased collections, reduction of arrears and/or increased cost-effectiveness. Proposals must be consistent with section 467 of the Social Security Act which governs the application of State child support guidelines.

Funding: A total $200,000 is anticipated to be available for projects in this priority area and OCSE anticipates funding two grants of approximately $100,000 each.

Budget Period: For Priority Area 1, the budget period will be up to 17 months.

Priority Area 2: Educating Public on Parental Responsibilities and Promoting Healthy Marriage

The purpose of this solicitation is to educate the public about child support enforcement tools and parental obligations with the aim of increasing paternity establishment, child support payment, or healthy marriages for unwed parents, reducing out-of wedlock births for older teens and young adults who are not parents. We are looking for projects which educate the public on their parental responsibilities and about strictly enforced child support enforcement policies if they have a child outside of marriage or if they separate or divorce. Since many States have already developed outreach videos or materials, we are not looking for projects to develop these tools. Projects would use child support workers to educate low-income, unwed parents, or older teens and young adults who are not parents, about child support enforcement policies and parental financial responsibilities when a child is born outside of marriage or a marriage breaks up. Research also generally suggests that strong child support enforcement encourages families to form, stay together, or avoid conceiving a child out of wedlock. In addition, many unwed parents, especially at the time of their child's birth may be thinking about the possibility of marriage. However, they may lack knowledge about and understanding of the importance of child support, family stability, and healthy marriage in the lives of their children. OCSE envisions that child support workers would provide information to unwed couples at pre-natal clinics, hospitals, faith-based and community-based organizations, etc. Projects might also coordinate with schools, community-based and faith-based organizations where older teens and young adults congregate in the community. The presentations would cover current automated enforcement tools such as automated wage withholding, tax offset, and driver's license suspension, to enhance the public's understanding of current child support enforcement mechanisms as well as the financial and emotional impact of having children outside of marriage. We expect that people hearing about the child support enforcement program from the workers who have first-hand knowledge of parents' child support concerns should help reinforce for parents who may be considering marriage, the benefits of healthy marriage, or help persuade others not to conceive children outside of marriage.

Funding: A total $200,000 is anticipated to be available for projects in this priority area and OCSE anticipates funding two grants of approximately $100,000 each.

Budget Period: For Priority Area 2, the budget period will be up to 17 months.

Priority Area 3: Encouraging More Timely and Appropriate Order Modifications

Projects would develop guidelines/procedures for modifying child support orders in a more timely and efficient manner. Under section 467 of the Social Security Act, states must review orders every three years at the request of either parent, or at the request of the state child support agency. In addition to using cost-of-living adjustments (COLA) that alter orders periodically without reviews, States can also use automated methods to identify orders eligible for review and to apply the appropriate adjustments to the orders.

In 1997, OCSE funded a research and demonstration grant to the State of Alaska Department of Revenue Child Support Enforcement Division (CSED) to develop and test a more efficient method of reviewing and adjusting child support award amounts. The project, "Alaska: Review and Adjustment of Child Support Order Amounts: Evaluation of Electronic Modification (ELMO)," used income information from automated sources, such as the National Directory of New Hires (NDNH), linked electronically to its child support system to review child support orders annually. Promising results from this project include an increased number of reviews, more timely reviews, and modifications which more accurately reflect the noncustodial parents' ability to pay.

Under this solicitation, OCSE is looking for additional demonstration projects which States can conduct under current State law. These projects would demonstrate the feasibility of automating the review and adjustment process, using a variety of data sources including FPLS/New Hire earnings data, to better reflect current noncustodial/custodial parent income and assets (*i.e.*, at the time when noncustodial/custodial parent gets a raise or has increased assets and, alternatively, when noncustodial/custodial parent loses a job, has reduced salary, has an excessive default order, *etc.*) Projects would assess outcomes or effects such as the increase in both upward and downward adjustments; payment frequency by noncustodial parent; reduction in arrearage growth created by default orders; systems enhancements and other resources needed; guideline changes; and overall cost-effectiveness of automated review and adjustment.

Funding: A total $200,000 is anticipated to be available for projects in this priority area and OCSE anticipates funding two grants of approximately $100,000 each.

Budget Period: For Priority Area 3, the budget period will be up to 17 months.

Priority Area 4: Expanding Customer Service Through Agency-Initiated Contact

Under this solicitation, OCSE is looking for child support agencies to initiate customer contact to alert customers of upcoming appointments or missed appointments, and potential problems, such as missed payments, in order to improve customer satisfaction or resolve issues before they become problematic. Generally, State/local child support agencies use a responsive approach to customers; *i.e.*, using call centers, Web sites, or individual staff to respond to customer inquiries. The Australian child support enforcement system uses an agency-initiated customer service approach in which caseworkers notify clients, rather than waiting for clients to contact the agency, regarding payments and other case matters. This approach has been successful in Australia.

We are looking for child support agency approaches designed to alert customers to important case activities such as scheduled appointments or hearings, payment changes/delays, and to obtain case information. These projects would demonstrate the effectiveness of initiating contact to notify customers of important case activities or the need for information to complete case actions in order to improve child support outcomes such as increased collections, cost-effectiveness, customer service satisfaction, reduction in arrears, missed appointments, *etc.* Agency-initiated customer contact strategies could include automated notification systems and/or personal staff customer contact. A concern of many child support agencies in initiating client contact is the difficulty in reaching noncustodial and custodial parents by phone, since some do not have stable addresses or phone access. These projects would help determine the feasibility of an agency-initiated approach. Also, we prefer projects that compare different strategies (*automation vs. personal contact*) to ascertain which is more feasible and cost-effective; and/or projects that could assess the pros and cons of using agency-initiated approaches in different localities such as urban *vs.* rural localities, or large *vs.* small offices.

Funding: A total $200,000 is anticipated to be available for projects in this priority area and OCSE anticipates funding two grants of approximately $100,000 each.

Budget Period: For Priority Area 4, the budget period will be up to 17 months.

Priority Area 5: Helping Noncustodial Parents (NCPs) Meet Their Child Support and Family Responsibilities

Projects would demonstrate effective child support strategies to help low-income NCPs meet their child support and family responsibilities. There is a very high rate of default cases where the noncustodial parent is either not appropriately served or simply does not show up for either paternity or child support hearings. As a result, orders are not always appropriate for the NCP's financial situation, or are not based on the NCP's actual income. Further, many low-income NCPs fall behind in their payment of child support due to unemployment or underemployment. This solicitation would address at least one of the following design elements:

- Develop, implement and determine the effectiveness of alternative measures for avoiding default cases, and/or using imputed income/minimum order amounts in establishing child support orders which can create excessive payment levels for low-income NCPs. These alternatives could include adopting more customer-friendly approaches in establishing orders for low-income fathers to avoid a high level of default orders (such as using alternative service of process methods to ensure NCPs get served and understand the notice to avoid defaults); and/or securing and using more complete income information, *e.g.* using New Hire data for the NCP and custodial parent in default situations or where incomplete income information is given. Order amounts should be reasonable for low-income NCPs, taking into account their ability to pay when confronted with intermittent unemployment. Applicants must provide assurance that, under State guidelines, orders can be established based upon the NCP's ability to pay. We are looking for outcome measures which would demonstrate that effective alternatives for establishing child support orders in low-income cases result in increased payment rates for low-income NCPs.
- Develop and implement strategies to provide employment services to low-income fathers who are unemployed or under-employed and cannot meet their child support obligations. Projects should include voluntary and/or mandatory referral, as appropriate, of NCPs for employment and training services by child support agencies or courts/tribunals, to local workforce development agencies or other public employment agencies and local organizations, including community-based and faith-based organizations. For example, projects could include collaboration with TANF agencies to use TANF funds to support employment and training services for NCPs in public assistance cases to demonstrate whether custodial parents left TANF more quickly because of child support receipt. Incentive to NCPs could be reduction/compromise of arrears. Or, projects could develop partnerships with workforce development boards and courts/tribunals to demonstrate the impact on child support outcomes if unemployed or under-employed NCPs, who had past due child support obligations, were required to participate in a job training/placement program or be sentenced to a period in jail. Outcome measures would include increased payment rates on orders, as well as increases in employment, job retention rates and wages.

Funding: A total $400,000 is anticipated to be available for projects in this priority area and OCSE anticipates funding two grants of approximately $200,000 each.

Budget Period: For Priority Area 5, the budget period will be up to 17 months.

Priority Area 6: Improving Child Support Services for Ethnic and Culturally Diverse Populations

Under this solicitation, projects would target underserved ethnic and culturally diverse populations, including, but not limited to, the Hispanic/Latino community, the Asian-American and Pacific Islander community, the African-American community, and Native Americans, American Indians, and Alaskan Natives so that they may receive more effective child support enforcement services. OCSE has funded several small-scale community projects which developed outreach media campaigns and language-appropriate materials and/or used community and volunteer resources to help these groups better understand the child support program. Under this solicitation, we are looking for projects which are either statewide or serve multiple counties or a large county. We are interested in collaborations between State/local governments and courts/tribunals with community-based and faith-based organizations to offer model service approaches (not outreach campaigns) that will result in large-scale, systematic, institutionalized approaches to service delivery to underserved populations. Projects should identify nature/causes of barriers to effective child support enforcement service delivery for customers with language and diversity barriers and develop/implement approaches to reduce or eliminate them. Such approaches could include providing bilingual staff, resources, training, etc. to judges/attorneys to address the needs of these customers and assure judicial fairness and/or development of new delivery strategies within the community to increase child support outcomes, such as an increase in numbers of orders established and collections. This solicitation is not designed to provide funding for the development and implementation of Tribal child support enforcement programs since these provisions are being addressed through Federal regulation.

Funding: A total $200,000 is anticipated to be available for projects in this priority area and OCSE anticipates funding two grants of approximately $100,000 each.

Budget Period: For Priority Area 6, the budget period will be up to 17 months.

Priority Area 7: Furthering the Child Support Mission to Ensure All Children Receive Financial and Medical Support From Their Parents

Under this announcement, OCSE is looking for projects that are not covered by any of the above priority areas. OCSE is looking for projects that will test new interventions and approaches to increase paternity and support order establishments and collections. Applicants would propose new ways of doing business, within Federal law and regulations, and put them into effect. We encourage collaborations among entities which may include State/local governments, non-profit organizations, faith-based and community-based organizations, and tribal governments and universities (including historically black colleges and universities).

Funding: A total of $100,000 is anticipated to be available for one grant in this priority area.

Budget Period: For Priority Area 7, the budget period will be up to 17 months.

II. Award Information

Availability of Funds. Approximately $1.5 million is available for all priority areas. OCSE expects to award a total of approximately 13 grants, approximately two grants per priority area, ranging from $100,000 to $200,000, as specified under each priority area.

Over the past five years, OCSE has awarded an average of 9 grants per year, totaling approximately $1.3 million per year. All grant awards are subject to the availability of appropriated funds. A non-Federal match is not required. The anticipated start date for the new awards is May 1, 2004; projects may go through September 2005, for a period of up to 17 months.

III. Eligibility Information

1. *Eligible Applicants.* Eligible applicants for these special improvement project grants are State (including District of Columbia, Guam, Puerto Rico, and the Virgin Islands) Human Services Umbrella agencies, other State agencies (including State IV–D agencies), tribes and tribal organizations, local public agencies (including IV–D agencies), nonprofit organizations (including faith-based and community-based organizations and universities such as historically black colleges and universities) and consortia of State and/or local public agencies. Any non-profit organization submitting an application must submit proof of its non-profit status in its application at the time of submission. The non-profit agency can accomplish this by providing a reference to the applicant organization's listing in the Internal Revenue Service's (IRS) most recent list of tax-exempt organizations described in the IRS Code; a copy of a currently valid IRS tax exemption certificate; a statement from a State taxing body, State attorney general, or other appropriate State official certifying that the applicant organization has a non-profit status and that none of the net earnings accrue to any private shareholders or individuals; a certified copy of the organization's certificate of incorporation or similar document that clearly establishes non-profit status; or any of the items referenced above for a State or national parent organization and a statement signed by the parent organization that the applicant organization is a local non-profit affiliate.

The Federal OCSE will provide the State CSE agency the opportunity to comment on the merits of local CSE agency applications before final award. Given that the purpose of these projects is to improve child support enforcement programs, it is critical that applicants have the cooperation of IV–D agencies to operate these projects. Preference will be given to applicants representing CSE agencies and applicant organizations which have letters of commitment or cooperative agreements with CSE agencies. All applications developed jointly by more than one agency/organization must identify a single lead organization as the official applicant. The lead organization will be the recipient of the grant award. Participating agencies and organizations can be included as co-participants, subgrantees, or subcontractors with their written authorization.

Private non-profit organizations are encouraged to submit with their applications the survey located under "Grant Related Documents and Forms" titled "Survey for Private, Non-Profit Grant Applicants" at *www.acf.hhs.gov/programs/ofs/forms.htm.*

2. *Cost Sharing or Matching.* Applicants are not required to match Federal grant funds under this solicitation.

3. *Other.* None.

IV. Application and Submission Information

1. *Address to Request Application Package.* Application kits (Forms 424, 424A–B and Certifications) to apply for a grant under this program announcement are available from the Administration for Children and Families, Office of Child Support Enforcement, Division of State, Tribal and Local Assistance, 370 L'Enfant Promenade, SW., 4th Floor, East Wing, Washington, DC 20447 (this is not the mailing address for submission of applications, *see* Part IV. 3.); or at OCSE's Web site (*www.acf.hhs.gov/programs/cse/*) under new announcements; or from Jean Robinson, Program Analyst, phone (202) 401–5330, Fax (202) 205–4315; e-mail, *jrobinson@acf.hhs.gov.*

For specific questions regarding the application or program concerns regarding the announcement, contact: Susan A. Greenblatt, Deputy Director, Division of State, Tribal and Local Assistance, Office of Child Support Enforcement, 370 L'Enfant Promenade, SW., 4th Floor, East Wing, Washington, DC 20447 (this is not the mailing address for submission of applications, *see* Part IV. 3.); phone (202) 401–4849, e-mail, *sgreenblatt@acf.hhs.gov.*

2. *Content and Form of Application Submission.* The applicant should clearly indicate in its application(s) for which specific priority area it is applying. Applicants may submit different applications covering different priority areas or they may submit different applications for different projects under one priority area; however, **they may not submit one application for the same project covering multi-priority areas.** The length of the application, excluding the application forms, certifications, and resumes, should be about 20 pages, double-spaced format preferred. A page is a single-side of an 8½″ × 11″ sheet of plain white paper. (Applicants are requested not to send pamphlets, maps, brochures or other printed material along with their application as these are difficult to photocopy. These materials, if submitted, will not be included in the review process.) Each page of the application will be counted (excluding required forms, certifications and resumes) to determine the total length. **The project description should include all the information requirements described in the specific evaluation criteria outlined in the program announcement under Part V.**

In addition to the project description, the applicant needs to complete all the standard forms required for making applications for awards under this announcement. Applicants requesting financial assistance for non-construction projects must file the Standard Form 424B, "Assurances: Non-Construction Programs." Applicants must sign and return the Standard Form 424B with their applications.

Applicants must provide a certification regarding lobbying when applying for an award in excess of $100,000. Applicants must sign and return the certification with their applications.

Applicants must disclose lobbying activities on the Standard Form LLL when applying for an award in excess of $100,000. Applicants who have used non-Federal funds for lobbying activities in connection with receiving assistance under this announcement shall complete a disclosure form, if applicable, with their applications.

Applicants must make the appropriate certification of their compliance with the Drug-Free Workplace Act of 1988. By signing and submitting the application, the applicant is providing the certification and need not mail back the certification with the application.

Applicants must make the appropriate certification that they are not presently debarred, suspended or otherwise ineligible for an award. By signing and submitting the application, the applicant is providing the certification and need not mail back the certification with the application.

The forms (Forms 424, 424A–B; and Certifications including Certification Regarding Lobbying; Debarment, Suspension, *etc.*; Drug Free Workplace and Environmental Tobacco Smoke) may be found at: *www.acf.hhs.gov/programs/cse/* under new announcements.

Private non-profit organizations are encouraged to submit with their applications the survey located under "Grant Related Documents and Forms" titled "Survey for Private, Non-Profit Grant Applicants" at *www.acf.hhs.gov/programs/ofs/forms.htm.*

On June 27, 2003, the Office of Management and Budget published in the **Federal Register** a new Federal policy applicable to all Federal grant applicants. The policy requires all Federal grant applicants to provide a

Dun and Bradstreet Data Universal Numbering System (DUNS) number when applying for Federal grants or cooperative agreements on or after October 1, 2003. The DUNS number will be required whether an applicant is submitting a paper application or using the government-wide electronic portal (*www.Grants.gov*). A DUNS number will be required for every application for a new award or renewal/continuation of an award, including applications or plans under formula, entitlement and block grant programs, submitted on or after October 1, 2003.

Please ensure that your organization has a DUNS number. You may require a DUNS number at no cost by calling the dedicated toll-free DUNS number request line on 1–866–705–5711 or you may request a number on-line at *http://www.dnb.com.*

The Paperwork Reduction Act of 1995 (Pub. L. 104–13): All information collections within this program announcement are approved under the following currently valid OMB control number: OMB control number 0970–0139 which expires on 12/31/2003. Public reporting burden for this collection of information is estimated to average 20 hours per response, including the time for reviewing instructions, gathering and maintaining the data needed, and reviewing the collection of information. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

3. *Submission Dates and Times.* Due date: March 3, 2004. *See* section IV.6 for more detailed information on submission requirements.

What to submit	Required content	Required form or format	When to submit
Table of Contents	As described above	Consistent with guidance in "Application Format" section of this announcement.	By application due date.
Abstract of Proposed Project	Brief abstract that identifies the type of project, the target population and the major elements of the proposed project.	Consistent with guidance in "Application Format" section of this announcement.	By application due date.
Completed Standard Form 424	As described above and per required form.	May be found on *http://www.acf.hhs.gov/programs/ofs/forms.htm.*	By application due date.
Completed Standard Form 424A.	As described above and per required form.	May be found on *http://www.acf.hhs.gov/programs/ofs/forms.htm.*	By application due date.
Narrative Budget Justification	As described above	Consistent with guidance in "Application Format" section of this announcement.	By application due date.
Project Narrative	A narrative that addresses issues described in the "Application Review Information" and the "Review and Selection Criteria" sections of this announcement.	Consistent with guidance in "Application Format" section of this announcement.	By application due date.
Certification regarding lobbying	As described above and per required form.	May be found on *http://www.acf.hhs.gov/programs/ofs/forms.htm.*	By application due date.
Certification regarding drug-free workplace.	As described above and per required form.	May be found on *http://www.acf.hhs.gov/programs/ofs/forms.htm.*	By application due date.
Certification regarding environmental tobacco smoke.	As described above and per required form.	May be found on *http://www.acf.hhs.gov/programs/ofs/forms.htm.*	By application due date.
Certification regarding debarment, suspension or ineligibility.	As described above and per required form.	May be found on *http://www.acf.hhs.gov/programs/ofs/forms.htm.*	By application due date.
Certification regarding non-construction programs.	As described above and per required form.	May be found on *http://www.acf.hhs.gov/programs/ofs/forms.htm.*	By application due date.

4. *Intergovernmental Review.* This program is covered under Executive Order 12372, "Intergovernmental Review of Federal Programs," and 45 CFR part 100, "Intergovernmental Review of Department of Health and Human Services Programs and Activities." Under the Order, States may design their own processes for reviewing and commenting on proposed Federal assistance under covered programs.

All States and Territories except Alabama, Alaska, Arizona, Colorado, Connecticut, Hawaii, Idaho, Indiana, Kansas, Louisiana, Massachusetts, Minnesota, Montana, Nebraska, New Jersey, New York, Ohio, Oklahoma, Oregon, Pennsylvania, South Dakota, Tennessee, Vermont, Virginia, Washington, Wyoming, American Samoa and Palau have elected to participate in the Executive Order process and have established Single Points of Contact (SPOCs). Applicants from these 28 jurisdictions need take no action regarding E.O. 12372. Applicants for projects to be administered by federally-recognized Indian tribes are also exempt from the requirements of E.O. 12372. Otherwise, applicants should contact their SPOCs as soon as possible to alert them of the prospective applications and receive any necessary instructions. Applicants must submit any required material to the SPOCs as soon as possible so that the program office can obtain and review SPOC comments as part of the award process. It is imperative that the applicant submit all required materials, if any, to the SPOC and indicate the date of this submittal (or indicate "not applicable" if no submittal is required) on the Standard Form 424, item 16a.

Under 45 CFR 100.8(a)(2), a SPOC has 60 days from the application deadline to comment on proposed new or competing continuation awards.

SPOCSs are encouraged to eliminate the submission of routine endorsements as official recommendations.

Additionally, SPOCs are requested to clearly differentiate between mere advisory comments and those official State process recommendations which may trigger the "accommodate or explain" rule.

When comments are submitted directly to ACF, they should be addressed to the U.S. Department of Health and Human Services, Administration for Children and Families, Office of Grants Management, Division of Discretionary Grants, 370 L'Enfant Promenade, SW., 4th floor, Washington, DC 20447.

A list of the Single Points of Contact for each participating State and Territory can be found on the Web at: *http://www.whitehouse.gov/omb/grants/spoc.html.*

5. *Funding Restrictions.* Construction is not an allowable activity or expenditure under this solicitation. Grant awards will not allow reimbursement of pre-award costs.

6. *Other Submission Requirements.* Applicants may choose to mail applications or have them hand-delivered. **The closing time and date for the receipt of applications is 4:30 p.m. (eastern time zone), March 3, 2004. Mailed or hand-delivered applications received after 4:30 p.m. on the closing date will be classified as late.**

Deadline: Mailed applications shall be considered as meeting an announced deadline if they are received on or before the deadline time and date at the U.S. Department of Health and Human Services, Administration for Children and Families, Office of Grants Management, Division of Discretionary Grants, 370 L'Enfant Promenade, SW., Washington, DC 20447, between Monday and Friday (excluding Federal holidays). This address must appear on the envelop/package containing the application with the note "Attention: Barbara Ziegler Johnson." Applicants are cautioned that express/overnight mail services do not always deliver as agreed.

Applicants are responsible for mailing applications well in advance to ensure that the application is received on or before the deadline date and time. Applicants should submit a signed original and two copies of the complete application package and submit it as follows:

Mail applications to: Administration for Children and Families, Office of Grants Management, Division of Discretionary Grants, 370 L'Enfant Promenade, SW., 4th Floor West, Washington, DC 20447. Attn: Barbara Ziegler Johnson, SIP Application.

Hand-delivered applications to: Applications should be hand delivered, between the hours of 8 a.m. and 4:30 p.m., e.s.t., addressed to the U.S. Department of Health and Human Services, Administration for Children and Families, Office of Grants Management, Division of Discretionary Grants, Attention: Barbara Ziegler Johnson, SIP Application, and delivered at ACF Mailroom, 2nd Floor (near loading dock), Aerospace Building, 901 D Street, SW., Washington, DC 20024, between Monday and Friday (excluding Federal holidays). This address must appear on the envelope/package containing the application. ACF will not send applicants an acknowledgement of receipt for applications received during the application period.

Questions may be directed to: Barbara Ziegler Johnson, Office of Grants Management, Division of Discretionary Grants, Administration for Children and Families, 370 L'Enfant Promenade, SW., 4th Floor West, Washington, DC 20447; (202) 401–4646, *bziegler-johns1@acf.hhs.gov.*

Late applications: Applications that do not meet the criteria above are considered late applications. ACF shall notify each late applicant that its application will not be considered in the current competition.

Any application received after 4:30 p.m. on the deadline date will not be considered for competition. Applicants using express/overnight mail services should allow two working days prior to the deadline date for receipt of applications. (Applicants are cautioned that express/overnight mail services do not always deliver as agreed.)

Extension of deadlines: ACF may extend an application deadline when circumstances such as acts of God (floods, hurricanes, *etc.*) occur, or when there are widespread disruptions of the mail service, or in other rare cases. A determination to extend or waive deadline requirements rests with ACF's Chief Grants Management Officer.

ACF cannot accommodate transmission of applications by fax. Therefore, applications transmitted to ACF by fax will not be accepted regardless of date or time of submission and time of receipt.

You may submit your application to us in either electronic or paper format. To submit an application electronically, please use the *www.Grants.gov* apply site. If you use Grants.gov, you will be able to download a copy of the application package, complete it off-line, and then upload and submit the application via the Grants.gov site. You may not e-mail an electronic copy of a grant application to us.

Please note the following if you plan to submit your application electronically via Grants.gov:

- Electronic submission is voluntary.
- When you enter the Grants.gov site, you will find information about submitting an application electronically through the site, as well as the hours of operation. We strongly recommend that you do not wait until the application deadline date to begin the application process through Grants.gov.
- To use Grants.gov, you, as the applicant, must have a DUNS Number and register in the Central Contractor Registry (CCR). You should allow a minimum of five days to complete the CCR registration.
- You will not receive additional point value because you submit a grant application in electronic format, nor will we penalize you if you submit an application in paper format.
- You may submit all documents electronically, including all information typically included on the SF 424 and all necessary assurances and certifications.
- Your application must comply with any page limitation requirements described in this program announcement.
- After you electronically submit your application, you will receive an automatic acknowledgement from Grants.gov that contains a Grants.gov tracking number. The Administration for Children and Families will retrieve your application from Grants.gov
- We may request that you provide original signatures on forms at a later date.
- You may access the electronic application for this program on *www.Grants.gov*
- You must search for the downloadable application package by the CFDA number.

V. Application Review Information

Instruction: The project description is approved under OMB control number 0970–0139 which expires 12/31/2003. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. Uniform Project Description (UPD) elements to be included in the project description are:

Purpose

The project description provides a major means by which an application is evaluated and ranked to compete with other applications for available assistance. The project description should be concise and complete and should address the activity for which Federal funds are being requested. Supporting documents should be included where they can present information clearly and succinctly. In preparing your project description, all information requested through each specific evaluation criterion should be provided. Awarding offices use this and other information in making their funding recommendations. It is important, therefore, that this information be included in the application.

Introduction

Applicants are required to submit a full project description and shall prepare the project description statement in accordance with the instructions and the specified evaluation criteria in the sections below. The instructions give a broad overview of what your project description should include while the evaluation criteria expand and clarify more program-specific information that is needed.

Project Summary Abstract

Provide a summary of the project description (a page or less) with reference to the funding request.

Objectives and Need for Assistance

Clearly identify the physical, economic, social, financial, institutional, and/or other problem(s) requiring a solution. The need for assistance must be demonstrated and the principal and subordinate objectives of the project must be clearly stated; supporting documentation, such as letters of support and testimonials from concerned interests other than the applicant, may be included. Any relevant data based on planning studies should be included or referred to in the endnotes/footnotes. Incorporate demographic data and participant/beneficiary information, as needed. In developing the project description, the applicant may volunteer or be requested to provide information on the total range of projects currently being conducted and supported (or to be initiated), some of which may be outside the scope of the program announcement.

Approach

Outline a plan of action which describes the scope and detail of how the proposed work will be accomplished. Account for all functions or activities identified in the application. Cite factors which might accelerate or decelerate the work and state your reason for taking the proposed approach rather than others. Describe any unusual features of the project such as design or technological innovations, reductions in cost or time, or extraordinary social and community involvement.

Provide quantitative monthly or quarterly projections of the accomplishments to be achieved for each function or activity in such terms as the number of people to be served and the number of activities accomplished. For example, increased use of an interstate child support enforcement remedy (such as income withholding, tax refund offset) is projected to have quarterly results of a 5% increase in income withholding collections and a 5% increase in automated enforcement collections. When accomplishments cannot be quantified by activity or function, list them in chronological order to show the schedule of accomplishments and their target dates.

If any data is to be collected, maintained, and/or disseminated, clearance may be required from the U.S. Office of Management and Budget (OMB). This clearance pertains to any "collection of information that is conducted or sponsored by ACF." List organizations, cooperating entities, consultants, or other key individuals who will work on the project along with a short description of the nature of their effort or contribution.

Staff and Position Data

Provide a biographical sketch for each key person appointed and a job description for each vacant key position. A biographical sketch will also be required for new key staff as appointed.

Evaluation

Provide a narrative addressing how the results of the project and the conduct of the project will be evaluated. In addressing the evaluation of results, state how you will determine the extent to which the project has achieved its stated objectives and the extent to which the accomplishment of objectives can be attributed to the project. Discuss the criteria to be used to evaluate results, and explain the methodology that will be used to determine if the needs identified and discussed are being met and if the project results and benefits are being achieved. With respect to the conduct of the project, define the procedures to be employed to determine whether the project is being conducted in a manner consistent with the work plan presented and discuss the impact of the project's various activities on the project's effectiveness.

Budget and Budget Justification

Provide line item detail and detailed calculations for each budget object class identified on the Budget Information Form. Detailed calculations must include estimation methods, quantities, unit costs, and other similar quantitative detail sufficient for the calculation to be duplicated. Provide a narrative budget justification that describes how the categorical costs are derived. Discuss the necessity, reasonableness and allocability of the proposed costs.

Travel

Description: Costs of project-related travel by employees of the applicant organization (does not include costs of consultant travel).

Justification: For each trip, show the total number of traveler(s), travel destination, duration of trip, per diem, mileage allowances, if privately owned vehicles will be used, and other transportation costs and subsistence allowances. Travel costs for key staff to attend ACF-sponsored workshops should be detailed in the budget.

Personnel

Description: Costs of employee salaries and wages.

Justification: Identify the project director or principal investigator, if known. For each staff person, provide the title, time commitment to the project (in months), time commitment to the project (as a percentage or full-time equivalent), annual salary, grant salary, wage rates, *etc.* Do not include the costs of consultants or personnel costs of delegate agencies or of specific project(s) or business to be financed by the applicant.

1. *Evaluation Criteria.* Proposed projects will be reviewed using the following evaluation criteria:

Criterion I: Objectives and Need for Assistance (Maximum 30 points)

The application should demonstrate a thorough understanding and analysis of the problem(s) being addressed in the project, the need for assistance and the importance of addressing these problems in improving the effectiveness of the child support program. The applicant should describe how the project will address this problem(s) through implementation of changes, enhancements and innovative efforts and specifically, how this project will improve program results. The applicant should address one or more of the activities listed under the "Design Elements in the Application" described above for the specific priority area they are applying for (refer to Part I. Priority Areas). The applicant should identify the key goals and objectives of the project; describe the conceptual framework of its approach to resolve the identified problem(s); and provide a rationale for taking this approach as opposed to others.

Criterion II: Approach (Maximum: 30 points)

A well thought-out and practical management and staffing plan is mandatory. The application should include a detailed management plan that includes time-lines and detailed budgetary information. The main concern in this criterion is that the applicant should demonstrate a clear idea of the project's goals, objectives, and tasks to be accomplished. The plan to accomplish the goals and tasks should be set forth in a logical framework. The plan should identify what tasks are required of any contractors and specify their relevant qualifications to perform these tasks. Staff to be committed to the project (including supervisory and management staff) at the state and/or local levels must be identified by their role in the project along with their qualifications and areas of particular expertise. In addition, for any technical expertise obtained through a contract or subgrant, the desired technical expertise and skills of proposed positions should be specified in detail. The applicant should demonstrate that the skills needed to operate the project are either on board or can be obtained in a reasonable time.

Criterion III: Evaluation (Maximum 25 points)

The application describes how the success of this project can be measured and how the success of this project has broader application in contributing to child support enforcement policies, practices, and/or providing solutions that could be adapted by other states/jurisdictions. The application describes the specific results/products that will be achieved; as appropriate, identifies the kinds of data to be collected and maintained; describes procedures for informed consent of participants, where applicable, and discusses the criteria to be used to evaluate the results of the project. The application describes the evaluation methodology to be used to determine if the process proposed was implemented and if the project goals/objectives were achieved. Sound evaluations to determine whether or not project goals have been realized are of importance to child support enforcement policy makers and administrators. Thus, the proposal should include a process evaluation component and comparison of before/and after the project site(s)' experience, as appropriate, to demonstrate the results achieved.

Criterion IV: Budget and Budget Justification (Maximum 10 points)

The project costs need to be reasonable in relation to the identified tasks, including the evaluation component. A detailed budget (*e.g.*, the staff required, equipment and facilities that would be leased or purchased) should be provided identifying all agency and other resources (*i.e.*, State, community, or other programs such as TANF or Head Start) that will be committed to the project. Grant funds cannot be used for capital improvements or the purchase of land or buildings. Explain why this project's resource requirements cannot be met by the State/local agency's regular program operating budget.

Criterion V: Preferences (Maximum 5 points)

Preference will be given to those grant applicants representing IV–D agencies and applicant organizations who have documented IV–D agency commitment to the project, either through a cooperative agreement or letter of commitment, which needs to be signed and attached to the application.

2. *Review and Selection Process.* Each application submitted under this program announcement will undergo a pre-review to determine that (1) The application was received by the closing date and submitted in accordance with the instructions in this announcement and (2) the applicant is eligible for funding. It is necessary that applicants state specifically which priority area they are applying for. Applications will be screened for priority area appropriateness. If applications are found to be inappropriate for the priority area in which they are submitted, applicants will be contacted for verbal approval of redirection to a more appropriate priority area.

Applications which pass the initial ACF screening will be evaluated and rated by an independent review panel on the basis of specific evaluation criteria. The results of these reviews will assist the Commissioner and OCSE program staff in considering competing applications. Reviewers' scores will weigh heavily in funding decisions but will not be the only factors considered. Applications generally will be considered in order of the average scores assigned by reviewers. However, highly ranked applications are not guaranteed funding because other factors are taken into consideration. These include, but are not limited to, the number of similar types of existing grants or projects funded with OCSE funds in the last five years; comments of reviewers and government officials; staff evaluation and input; geographic distribution; previous program performance of applicants; compliance with grant terms under previous DHHS grants; audit reports; investigative reports; an applicant's progress in resolving any final audit disallowance on previous OCSE or other Federal agency grants. OCSE will consider the geographic distribution of funds among States and the relative proportion of funding among rural and urban areas. The evaluation criteria were designed to assess the quality of a proposed project, and to determine the likelihood of its success. The evaluation criteria are closely related and are considered as a whole in judging the overall quality of an application. Points are awarded only to applications which are responsive to the evaluation criteria within the context of this program announcement.

Federal reviewers will be used for the review process.

3. *Anticipated Announcement and Award Dates.* OCSE anticipates that successful and unsuccessful applicants will be notified of the results of this grant competition within 90 days of the application deadline date identified in the "Overview Information" section under Dates.

VI. Award Administration Information

1. *Award Notices.* Successful applicants will receive, by postal mail, a cover letter signed by the Commissioner, OCSE, attaching the official notice of award, the Financial Assistance Award (FAA) notice, which is signed by the grants management officer. As indicated in Part V.3. above, OCSE anticipates that successful and unsuccessful applicants will be notified of the results of this grant competition within 90 days of the application deadline.

2. *Administrative and National Policy Requirements.* 45 CFR part 74 and 45 CFR part 92.

3. *Reporting.* All grantees are required to submit quarterly program reports; grantees are also required to submit semi-annual expenditure reports using the required financial standard form (SF–269) which is located on the Internet at: *http://forms.psc.gov/forms/sf/SF–269.pdf.* A suggested format for the program report will be sent to all grantees after the awards are made.

VII. Agency Contacts

For copies of forms and the announcement, contact: Jean Robinson, Program Analyst, at (202) 401–5330, Fax (202) 205–4315; email, *jrobinson@acf.dhhs.gov.*

For questions regarding application development, forms, or program concerns regarding the announcement contact: Susan A. Greenblatt, Deputy Director, Division of State, Tribal and Local Assistance, at (202) 401–4849; e-mail, *sgreenblatt@acf.dhhs.gov.*

For questions regarding application submittal, or other grants management concerns, contact Barbara Ziegler Johnson at (202) 401–4646; e-mail, *bziegler-johns1@acf.hhs.gov.*

VIII. Other Information

Funding Reconsideration. After Federal funds are exhausted for this grant competition, applications which have been independently reviewed and ranked but have no final disposition (neither approved nor disapproved for funding) may again be considered for funding. Reconsideration may occur at any time funds become available within twelve (12) months following ranking. ACF does not select from multiple ranking lists for a program. Therefore, should a new competition be scheduled and applications remain ranked without final disposition, applicants are informed of their opportunity to reapply for the new competition, to the extent practical.

Sherri Z. Heller,

Commissioner, Office of Child Support Enforcement.

[FR Doc. 03–31375 Filed 12–18–03; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: Annual Survey of Refugees.

OMB No.: 0970–0033.

Description: The Annual Survey of Refugees collects information on the economic circumstances of a random sample of refugees, Amerasians, and entrants who arrived in the United States during the previous five years. The survey focuses on their training, labor force participation, and welfare utilization rates. Data are segmented by region of origin, state of resettlement, and number of months since arrival. From their responses, the Office of Refugee Resettlement reports on the economic adjustment of refugees to the American economy. These data are used by Congress in its annual deliberations of refugee admissions and funding and by program managers in formulating policies for the future direction of the Refugee Resettlement Program.

Respondents: Refugees.

Annual Burden Estimates:

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
ORR–9	2,000	1	.6666	1,333

Estimated Total Annual Burden Hours:

Additional Information: Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Administration, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. E-mail address: *rsargis@acf.hhs.gov.*

OMB Comment: OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, 725 17th Street, NW., Washington, DC 20503, Attn: Desk Officer for ACF, *E-mail address: Lauren_wittenberg@omb.eop.gov.*

Dated: December 10, 2003.

Robert Sargis,

Reports Clearance Officer

[FR Doc. 03–31377 Filed 12–18–03; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Proposed Projects:

Title: National Medical Support Notice (NMSN).

OMB No.: 0970–0222.

Description: The information collected by state IV–D child support enforcement agencies is used to complete the National Medical Support Notice (NMSN) that is sent to employers of employee/obligors and used as a means of enforcing the health care coverage provision in a child support order. Primarily, the information the state child support enforcement agencies use to complete the NMSN is information that is necessary for the enrollment of the child in employment-related health care coverage, such as the employee/obligor's name, address, and social security number; the employer's name and address; the name and address of the alternate recipient (child); and the custodial parent's name and address. The employer forwards the second part of the NMSN which contains the same individual identifying information to the group health plan administrator. The plan administrator requires this information to determine whether to enroll the alternate recipient in the group health plan. If necessary, the employer also initiates withholding from the employee's wages for the purpose of paying premiums to the group health plan for enrollment of the child.

Respondents: State and local title IV–D child support enforcement agencies initiate the process of enforcing medical health care coverage for the child by completing and sending the notice to known employers of the noncustodial parents (employee/obligor). Employers and plan administrators are on the receiving end of the notice.

Annual Burden Estimates:

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
NMSN	54	13,454	.17	123,507

Estimated Total Annual Burden Hours: 123,507.

In compliance with the requirements of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Administration, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. All requests should be identified by the title of the information collection.

The Department specifically requests comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Dated: December 10, 2003.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 03–31378 Filed 12–18–03; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Proposed Projects:

Title: National Directory of New Hires.

OMB No.: 0970–0166.

Description: Public Law 104–193, the "Personal Responsibility and Work Opportunity Reconciliation Act of 1996," requires the Office of Child Support Enforcement (OCSE) to operate a National Directory of New Hires (NDNH) to improve the ability of state child support enforcement agencies to locate noncustodial parents and collect child support across state lines. The law requires employers to report newly hired employees to states. States are then required to periodically transmit new hire data received from employers to the NDNH, and to transmit wage and unemployment compensation claims data to the NDNH on a quarterly basis. Federal agencies are required to report new hires and quarterly wage data directly to the NDNH. All data is transmitted to the NDNH electronically.

Respondents: Employers, State Child Support Enforcement Agencies, State Employment Security Agencies, Federal Agencies.

Annual Burden Estimates:

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
New Hire: Employers Reporting Manually	5,166,000	3.484	.0417 hours (2.5 minutes)	750,531
New Hire: Employers Reporting Electronically	1,134,000	37.037	.00028 hours (1 second)	11,760
New Hire: States	54	83.333	266.668 hours	1,200,001
Quarterly Wage and Unemployment Compensation	54	8	.033 hours (2 minutes)	14
Multistate Employers' Notification Form	2508	1	.050 hours (3 minutes)	125

Estimated Total Annual Burden Hours: 1,962,431 hours.

In compliance with the requirements of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Administration, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. E-mail address: *rsargis@acf.hhs.gov.* All requests should be identified by the title of the information collection.

The Department specifically requests comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Dated: December 10, 2003.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 03–31379 Filed 12–18–03; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Proposed Projects:

Title: Provision of Services in Interstate Child Support Enforcement: Standard Forms.

OMB No.: 0970–0085.

Description: Public Law 104–193, the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, amended 42 U.S.C. 666 to require state child support enforcement (CSE) agencies to enact the Uniform Interstate Family Support Act (UIFSA) into state law by January 1, 1998. Section 311(b) of UNIFSA requires the states to use standard interstate forms, as mandated by Federal law. 45 CFR 303.7 also

requires CSE programs to transmit child support case information on standard interstate forms when referring cases to other states for processing. The forms are expiring and we are taking the opportunity to make small revisions that have been requested by states.

Respondents: State agencies administering the child support enforcement program under title IV–D of the Social Security Act.

Annual Burden Estimates:

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Transmittal 1	54	19,278	.25	260,253
Transmittal 2	54	14,458	.08	62,459
Transmittal 3	54	964	.08	4,164
Uniform Petition	54	9,639	.08	41,640
General Testimony	54	11,567	.33	206,124
Affidavit—Paternity	54	4,819	.17	44,238
Locate Data Sheet	54	375	.08	1,620
Notice of Controlling Order	54	964	.08	4,164
Registration Statement	54	8,675	.08	37,476

Estimated Total Annual Burden Hours: 662,131

It compliance with the requirements of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Administration, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. E-Mail address: *rsargis@acf.hhs.gov*. All requests should be identified by the title of the information collection.

The Department specifically requests comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Dated: December 10, 2003

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 03–31380 Filed 12–18–03; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Proposed Projects:

Title: Administration for Native Americans Consultant and Evaluator Qualifications Form.

OMB No. New Collection.

Description: The Administration for Native Americans (ANA) Consultant and Evaluator Qualifications Form is used to collect information from prospective panel reviewers in compliance with 42 USC Section 2991d–1. The form will allow the Commissioner of ANA to select qualified people to review grant applications for: Social and Economic Development Strategies (SEDS), Language Preservation and Environmental Mitigation. The panel review process is a legislative mandate in the ANA grant funding process.

Respondents are drawn from the public with a legislatively required preference being given to those who are Native American, Native Alaskan, Native Hawaiian and other Pacific Islanders. These project evaluation panels review and rank applications.

Respondents: Tribal members, the public.

Annual Burden Estimates:

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Consultant and Evaluator Qualifications Form	300	1	28	8,400

Estimated Total Annual Burden Hours: 8,400

In compliance with the requirements of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Administration, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. E-mail address: *rsargis@acf.hhs.gov*. All requests should be identified by the title of the information collection.

The Department specifically requests comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Dated: December 15, 2003.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 03–31381 Filed 12–18–03; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2000N–1449]

Agency Information Collection Activities; Comment Request; Guidance for Industry—Changes to an Approved New Drug Application or Abbreviated New Drug Application

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on the collection of information contained in a guidance for industry entitled "Changes to an Approved NDA or ANDA."

DATES: Submit written or electronic comments on the collection of information by February 17, 2004.

ADDRESSES: Submit electronic comments on the collection of information to: *http://www.accessdata.fda.gov/scripts/oc/dockets/edockethome.cfm.* Submit written comments on the collection of information to the Division of Dockets Management, (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Karen Nelson, Office of Management Programs (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1482.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. "Collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Guidance for Industry—Changes to an Approved NDA or ANDA (OMB Control Number 0910–0431)—Extension

On November 21, 1997, the President signed the Food and Drug Administration Modernization Act (the Modernization Act) (Pubic Law 105–115) into law. Section 116 of the Modernization Act amended the Federal Food, Drug, and Cosmetic Act (the act) by adding section 506A (21 U.S.C. 356a), which describes requirements and procedures for making and reporting manufacturing changes to approved new drug applications (NDAs) and abbreviated new drug applications (ANDAs), to new and abbreviated animal drug applications, and to license applications for biological products.

The guidance is intended to assist applicants in determining how they should report changes to an approved NDA or ANDA under section 116 of the Modernization Act, which provides requirements for making and reporting manufacturing changes to an approved application and for distributing a drug product made with such changes.

The guidance provides recommendations to holders of approved NDAs and ANDAs who intend to make postapproval changes in accordance with section 506A of the act. The guidance covers recommended reporting categories for postapproval changes for drugs, other than specified biotechnology and specified synthetic biological products. Recommendations are provided for postapproval changes in the following areas: (1) Components and composition, (2) sites, (3) manufacturing process, (4) specification(s), (5) package, (6) labeling, and (7) miscellaneous changes.

Some of the basic elements of section 506A of the act are as follows:

A drug made with a manufacturing change, whether a major manufacturing change or otherwise, may be distributed only after the applicant validates the effects of the change on the identity, strength, quality, purity, and potency of the drug as these factors may relate to the safety or effectiveness of the drug (sections 506A(a)(1) and (b) of the act). This section recognizes that additional testing, beyond testing to ensure that an approved specification is met, is required to ensure unchanged identity, strength, quality, purity, or potency as these factors may relate to the safety or effectiveness of the drug.

A drug made with a major manufacturing change may be distributed only after the applicant submits a supplemental application to FDA and the supplemental application is approved by the agency. The application is required to contain information determined to be appropriate by FDA and include the information developed by the applicant when "validating the effects of the change" (section 506A(c)(1) of the act).

A major manufacturing change is a manufacturing change determined by FDA to have substantial potential to adversely affect the identity, strength, quality, purity, or potency of the drug as these factors may relate to the safety or effectiveness of the drug. Such changes include the following possibilities: (1) A change made in the qualitative or quantitative formulation of the drug involved or in the specifications in the approved application or license unless exempted by FDA by regulation or guidance; (2) a change determined by FDA by regulation or guidance to require completion of an appropriate clinical study demonstrating equivalence of the drug to the drug manufactured without the change; and (3) other changes determined by FDA by regulation or guidance to have a

substantial potential to adversely affect the safety or effectiveness of the drug (section 506A(c)(2) of the act).

FDA may require submission of a supplemental application for drugs made with manufacturing changes that are not major (section 506A(d)(1)(B) of the act) and establish categories of manufacturing changes for which a supplemental application is required (section 506A(d)(1)(C) of the act). In such a case the applicant may begin distribution of the drug 30 days after FDA receives a supplemental application unless the agency notifies the applicant within the 30 day period that prior approval of the application is required (section 506A(d)(3)(B)(i) of the act). FDA may also designate a category of manufacturing changes that permit the applicant to begin distributing a drug made with such changes upon receipt by the agency of a supplemental application for the change (section 506A(d)(3)(B)(ii) of the act). If FDA disapproves a supplemental application, the agency may order the manufacturer to cease the distribution of drugs that have been made with the disapproved change (section 506A(d)(3)(B)(iii) of the act).

FDA may authorize applicants to distribute drugs without submitting a supplemental application (section 506A(d)(1)(A) of the act) and may establish categories of manufacturing changes that may be made without submitting a supplemental application (section 506A(d)(1)(C) of the act). The applicant is required to submit a report to FDA on such a change and the report is required to contain information the agency deems to be appropriate and information developed by the applicant when validating the effects of the change. FDA may also specify the date on which the report is to be submitted (section 506A(d)(2)(A) of the act). If during a single year an applicant makes more than one manufacturing change subject to an annual reporting requirement, FDA may authorize the applicant to submit a single report containing the required information for all the changes made during the year (annual report) (section 506A(d)(2)(B) of the act).

Section 506A of the act provides FDA with considerable flexibility to determine the information and filing mechanism required for the agency to assess the effect of manufacturing changes in the safety and effectiveness of the product. There is a corresponding need to retain such flexibility in the guidance on section 506A of the act to ensure that the least burdensome means for reporting changes are available. FDA believes that such flexibility will allow it to be responsive to increasing knowledge of and experience with certain types of changes and help ensure the efficacy and safety of the products involved. For example, a change that may currently be considered to have a substantial potential to have an adverse effect on the safety or effectiveness of the product may, at a later date, based on new information or advances in technology, be determined to have a lesser potential to have such an adverse effect. Conversely, a change originally considered to have a minimal or moderate potential to have an adverse effect on the safety or effectiveness of the product may later, as a result of new information, be found to have an increased, substantial potential to adversely affect the product. The guidance enables the agency to respond more readily to knowledge gained from manufacturing experience, further research and data collection, and advances in technology. The guidance describes the agency's current interpretation of specific changes falling into the four filing categories. Section 506A of the act explicitly provides FDA the authority to use guidance documents to determine the type of changes that do or do not have a substantial potential to adversely affect the safety or effectiveness of the drug product. The use of guidance documents allows FDA to more easily and quickly modify and update important information.

As explained in the next paragraph, FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN

Federal Food, Drug, and Cosmetic Act Section	Number of Respondents	Number of Responses Per Respondent	Total Annual Responses	Hours Per Response	Total Hours
506A(c)(1) and (c)(2) Prior Approval Supplement	263	5.8	1,517	150	227,550
506A(d)(1)(B), (d)(1)(C), and (d)(3)(B)(i) Changes being effected (CBE) in 30-days Supplement	274	8.5	2,322	95	220,590
506A(d)(1)(B), (d)(1)(C), and (d)(3)(B)(ii) CBE Supplement	202	9.7	1,959	95	186,105
506A(d)(1)(A), (d)(1)(C), (d)(2)(A), and (d)(2)(B) Annual Report	580	13.2	7,639	35	267,365
Total					901,610

There are no capital costs or operating and maintenance costs associated with this collection of information.

Section 506A(a)(1) and (b) of the act requires the holder of an approved application to validate the effects of a manufacturing change on the identity, strength, quality, purity, or potency of the drug as these factors may relate to the safety or effectiveness of the drug before distributing a drug made with the change. Under section 506A(d)(3)(A) of the act, information developed by the applicant to validate the effects of the change regarding identity, strength, quality, purity, and potency is required to be submitted to FDA as part of the supplement or annual report. Thus, no separate estimates are provided for these sections in table 1 of this document; estimates for validation requirements are included in the estimates for supplements and annual reports. The guidance does not provide recommendations on the specific information that should be developed by the applicant to validate the effect of the change on the identity, strength (e.g., assay, content uniformity); quality (e.g., physical, chemical, and biological properties); purity (e.g., impurities and degradation products); or potency (e.g., biological activity, bioavailability, and bioequivalence) of a product as they may relate to the safety or effectiveness of the product.

Section 506A(c)(1) and (c)(2) of the act sets forth requirements for changes requiring supplement submission and approval prior to distribution of the product made using the change (major changes). Under these sections of the act, a supplement must be submitted for any change in the product, production process, quality controls, equipment, or facilities that has a substantial potential to have an adverse effect on the identity, strength, quality, purity, or potency of the product as these factors may relate to the safety or effectiveness of the product. The applicant must obtain approval of a supplement from FDA prior to distribution of a product made using the change.

Based on data concerning the number of supplements received by the agency, FDA estimates that approximately 1,517 supplements will be submitted annually under section 506A(c)(1) and (c)(2) of the act. FDA estimates that approximately 263 applicants will submit such supplements, and that it will take approximately 150 hours to prepare and submit to FDA each supplement.

Section 506A(d)(1)(B), (d)(1)(C), and (d)(3)(B)(i) sets forth requirements for changes requiring supplement submission at least 30 days prior to distribution of the product made using the change (moderate changes). Under these sections, a supplement must be submitted for any change in the product, production process, quality controls, equipment, or facilities that has a moderate potential to have an adverse effect on the identity, strength, quality, purity, or potency of the product as these factors may relate to the safety or effectiveness of the product. Distribution of the product made using the change may begin not less than 30 days after receipt of the supplement by FDA.

Based on data concerning the number of supplements received by the agency, FDA estimates that approximately 2,322 supplements will be submitted annually under section 506A(d)(1)(B), (d)(1)(C), and (d)(3)(B)(i) of the act. FDA estimates that approximately 274 applicants will submit such supplements, and that it will take approximately 95 hours to prepare and submit to FDA each supplement.

Under section 506A(d)(3)(B)(ii) of the act, FDA may designate a category of changes for the purpose of providing that, in the case of a change in such category, the holder of an approved application may commence distribution of the drug upon receipt by the agency of a supplement for the change. Based on data concerning the number of supplements received by the agency, FDA estimates that approximately 1959 supplements will be submitted annually under section 506A(d)(3)(B)(ii) of the act. FDA estimates that approximately 202 applicants will submit such supplements, and that it will take approximately 95 hours to prepare and submit to FDA each supplement.

Section 506A(d)(1)(A), (d)(1)(C), (d)(2)(A), and (d)(2)(B) of the act sets forth requirements for changes to be described in an annual report (minor changes). Under these sections, changes in the product, production process, quality controls, equipment, or facilities that have a minimal potential to have an adverse effect on the identity, strength, quality, purity, or potency of the product as these factors may relate to the safety or effectiveness of the product must be documented by the applicant in the next annual report.

Based on data concerning the number of supplements and annual reports received by the agency, FDA estimates that approximately 7,639 annual reports will include documentation of certain manufacturing changes as required under section 506A(d)(1)(A), (d)(1)(C), (d)(2)(A), and (d)(2)(B). FDA estimates that approximately 580 applicants will submit such information and that it will take approximately 35 hours to prepare and submit to FDA the information for each annual report.

Dated: December 16, 2003.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 03–31412 Filed 12–17–03; 1:28 pm]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Joint Meeting of the Drug Safety and Risk Management Advisory Committee and the Dermatologic and Ophthalmic Drugs Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committees: Drug Safety and Risk Management Advisory Committee and the Dermatologic and Ophthalmic Drugs Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on February 26 and 27, 2004, from 8 a.m. to 5 p.m.

Location: Hilton, The Ballrooms, 620 Perry Pkwy., Gaithersburg, MD.

Contact Person: Shalini Jain, Center for Drug Evaluation and Research (HFD–21), Food and Drug Administration, 5600 Fishers Lane (for express delivery, 5630 Fishers Lane, rm. 1093) Rockville, MD 20857, 301–827–7001, e-mail: *jains@cder.fda.gov*, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), codes 3014512535 or 3014512534. Please call the Information Line for up-to-date information on this meeting.

The background materials for this meeting will become available no later than 1 business day before the meeting and will be posted at: *www.fda.gov/ohrms/dockets/ac/acmenu.htm*. (Click on the year 2003 and scroll down to either the Drug Safety and Risk Management Advisory Committee or the Dermatologic and Ophthalmic Drugs Advisory Committee meetings.)

Agenda: The committee will discuss the following topics: (1) The effectiveness of the isotretinoin risk management program for the prevention of fetal exposure to ACCUTANE and its generic equivalents, and (2) consider whether changes to this isotretinoin risk management program would be appropriate.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by February 16, 2004. Oral presentations from the public will be scheduled between approximately 11 a.m. and 12 noon on February 26, 2004, and between approximately 8:30 a.m. and 9:30 a.m. on February 27, 2004. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before February 16, 2004, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Persons attending FDA's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Shalini Jain at least 7 days in advance of the meeting.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: December 15, 2003.

William K. Hubbard,

Associate Commissioner for Policy and Planning.

[FR Doc. 03–31385 Filed 12–18–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Advisory Committee on Special Studies Relating to the Possible Long-Term Health Effects of Phenoxy Herbicides and Contaminants (Ranch Hand Advisory Committee); Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Advisory Committee on Special Studies Relating to the Possible Long-Term Health Effects of Phenoxy Herbicides and Contaminants (Ranch Hand Advisory Committee).

General Function of the Committee: To advise the Secretary and the Assistant Secretary for Health concerning its oversight of the conduct of the Ranch Hand Study by the U.S. Air Force and provide scientific oversight of the Department of Veterans Affairs Army Chemical Corps Vietnam Veterans Health Study, and other studies in which the Secretary or the Assistant Secretary for Health believes involvement by the committee is desirable.

Date and Time: The meeting will be held on January 21, 2004, 8 a.m. to 3:30 p.m.

Location: Food and Drug Administration, 5630 Fishers Lane, rm. 1066, Rockville, MD 20857.

Contact Person: Leonard Schechtman, National Center for Toxicological Research (HFT–10), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–6696, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 3014512560. Please call the Information Line for up-to-date information on this meeting.

Agenda: The U.S. Air Force will provide a program management update and present information on the following topics: Syndrome X; cancer and hepatitis in the comparison group vs. years in Southeast Asia; prostate cancer; adipose tissue study results; and memory loss and end of study transition.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by January 9, 2004. Oral presentations from the public will be scheduled between approximately 1:30 p.m. to 2:30 p.m. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before January 6, 2004, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Persons attending FDA's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Leonard Schechtman at least 7 days in advance of the meeting.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: December 15, 2003.

William K. Hubbard,

Associate Commissioner for Policy and Planning.

[FR Doc. 03–31386 Filed 12–18–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2002D–0525]

Guidance for Industry and FDA Staff; Premarket Notification Submissions for Chemical Indicators; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of the guidance entitled "Premarket Notification [510(k)] Submissions for Chemical Indicators." The document provides guidance for industry and other interested parties regarding the submission of chemical indicators such as process indicators, chemical integrators, and air removal indicators used in test packs.

DATES: Submit written or electronic comments on agency guidances at any time.

ADDRESSES: Submit written requests for single copies on a 3.5″ diskette of the guidance document entitled "Premarket Notification [510(k)] Submissions for Chemical Indicators" to the Division of Small Manufacturers, International, and Consumer Assistance (HFZ–220), Center for Devices and Radiological Health, Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850. Send two self-addressed adhesive labels to assist that office in processing your request, or fax your request to 301–443–8818. See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the guidance.

Submit written comments concerning this guidance to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.fda.gov/dockets/ecomments*. Identify comments with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Chiu Lin, Center for Devices and Radiological Health (HFZ–480), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–443–8913, ext. 143.

SUPPLEMENTARY INFORMATION:

I. Background

This guidance is for chemical indicators intended for use in health care facilities. Chemical indicators are Class II devices identified in 21 CFR 880.2800. The chemical indicators discussed in the guidance document include process indicators, chemical integrators, and air removal indicators used in test packs such as the Bowie Dick Test Pack.

In the **Federal Register** of January 27, 2003 (68 FR 3887), FDA invited interested persons to comment by April 28, 2003, on the draft guidance entitled "Chemical Indicators Premarket Notification [510(k)] Submissions; Draft Guidance for Industry and FDA." FDA received one comment. FDA considered the comment and revised the guidance document for clarity.

II. Significance of Guidance

This guidance is being issued consistent with FDA's good guidance practices (GGPs) regulation (21 CFR 10.115). The guidance represents the agency's current thinking on chemical indicators used in health care facilities. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statute and regulations.

III. Paperwork Reduction Act of 1995

This guidance contains information collection provisions that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (the PRA) (44 USC 3501–3520). The collections of information addressed in the guidance document have been approved by OMB in accordance with the PRA under the regulations governing premarket notification submissions (21 CFR part 807, subpart E, OMB control number 0910–0120). The labeling provisions addressed in the guidance have been approved by OMB under OMB control number 0910–0485.

IV. Electronic Access

To receive a copy of "Premarket Notification [510(k)] Submissions for Chemical Indicators" by fax machine, call the Center for Devices and Radiological Health (CDRH) Facts-On-Demand system at 800–899–0381 or 301–827–0111 from a touch-tone telephone. Press 1 to enter the system. At the second voice prompt, press 1 to order a document. Enter the document number (1420) followed by the pound sign (#). Follow the remaining voice prompts to complete your request.

Persons interested in obtaining a copy of the guidance may also do so by using the Internet. CDRH maintains an entry on the Internet for easy access to information including text, graphics, and files that may be downloaded to a personal computer with Internet access. Updated on a regular basis, the CDRH home page includes device safety alerts, **Federal Register** reprints, information on premarket submissions (including lists of approved applications and manufacturers' addresses), small manufacturer's assistance, information on video conferencing and electronic submissions, Mammography Matters, and other device-oriented information. The CDRH Web site may be accessed at *http://www.fda.gov/cdrh*. A search capability for all CDRH guidance documents is available at *http://www.fda.gov/cdrh/guidance.html*. Guidance documents are also available on the Division of Dockets Management Internet site at *http://www.fda.gov/ohrms/dockets*.

V. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**), written or electronic comments regarding the guidance at any time. Submit a single copy of electronic comments to *http://www.fda.gov/dockets/ecomments*, or submit two paper copies of any mailed comments, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Dated: December 4, 2003.

Linda S. Kahan,

Deputy Director, Center for Devices and Radiological Health.

[FR Doc. 03–31384 Filed 12–18–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2003D–0562]

Compliance Policy Guide Sec.110.300—"Registration of Food Facilities Under the Public Health Security and Bioterrorism Preparedness and Response Act of 2002;" Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a compliance policy guide (CPG) Sec. 110.300 entitled "Registration of Food Facilities Under the Public Health Security and Bioterrorism Preparedness and Response Act of 2002." The CPG provides written guidance to FDA's staff on enforcement of section 305 of the Public Health Security and Bioterrorism Preparedness and Response Act of 2002 (the Bioterrorism Act) and the agency's implementing regulation, which require, beginning on December 12, 2003, registration with FDA for all domestic and foreign facilities that manufacture/process, pack, or hold food for human or animal consumption in the United States.

DATES: This guidance is final upon the date of publication. However, you may submit written or electronic comments at any time.

ADDRESSES: Submit written requests for single copies of the guidance to the Division of Compliance Policy (HFC–230), Office of Enforcement, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857. Send one self-addressed adhesive label to assist that office in processing your request or include a fax number to which the guidance may be sent.

Submit written comments on the guidance to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.fda.gov/dockets/ecomments*. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

FOR FURTHER INFORMATION CONTACT:

Food for human consumption: Judith Gushee, Division of Enforcement, Office of Compliance, Center for Food Safety and Applied Nutrition, Food and Drug Administration, 301–436–2417.

Food for animal consumption: Isabel Pocurull, Division of Animal Feeds, Office of Surveillance and Compliance, Center for Veterinary Medicine, Food and Drug Administration, 301–827–0175.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of CPG Sec.110.300 entitled "Registration of Food Facilities Under the Public Health Security and Bioterrorism Preparedness and Response Act of 2002." This guidance outlines for FDA staff the agency's policy on enforcement of section 305 of the Bioterrorism Act and its implementing regulation (68 FR 58894, October 10, 2003; to be codified at 21 CFR part 1, subpart H). The Bioterrorism Act and subpart H require that, beginning on December 12, 2003, all domestic and foreign facilities that manufacture, process, pack, or hold food for human or animal consumption in the United States be registered with FDA.

FDA is issuing this document as level 1 guidance consistent with FDA's good guidance practices regulation § 10.115 (21 CFR 10.115). The CPG Sec. 110.300 is being implemented immediately without prior public comment, under § 10.115(g)(2), because the agency has determined that prior public participation is not feasible. As noted, under section 305 of the Bioterrorism Act, the requirement that food facilities be registered is effective December 12, 2003, making it urgent that the agency explain how it intends to enforce this requirement.

II. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments on the guidance document. Submit a single copy of electronic comments or two paper copies of any mailed comments, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The guidance and received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

III. Electronic Access

An electronic version of this guidance is available on the Internet at *http://www.fda.gov/ora* under "Compliance References."

Dated: December 16, 2003.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 03–31376 Filed 12–17–03; 9:09 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Health Resources and Services Administration (HRSA) publishes abstracts of information collection requests under review by the Office of Management and Budget, in compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). To request a copy of the clearance requests submitted to OMB for review, call the HRSA Reports Clearance Office on (301)–443–1129.

Proposed Project: Health Center Expansion and Recruitment Survey—New

HRSA's Office of Rural Health Policy (ORHP) currently funds a number of Rural Health Research Centers in the United States, allocating funding through cooperative agreements. Authorized by Section 301 of the Public Health Service Act (42 U.S.C. 241), ORHP conducts research and investigations to render assistance to appropriate public authorities in the areas of the health and well-being of rural populations in the United States. A major current initiative of HRSA is the expansion of Health Centers (HCs) receiving funding under section 330 of the PHS Act, which provides medical care to lower income Americans regardless of the ability to pay in rural and urban areas.

HCs are a key element of the nation's medical care safety net, and are scheduled to expand the scope of their operations in the near future. One of the issues affecting HC expansion is their ability to recruit adequate numbers of medical and administrative personnel to accomplish their mission, particularly in rural areas, where there have been persistent problems recruiting and retaining health care personnel. HRSA's Office of Rural Health Policy (ORHP) has funded a study in collaborative oversight with the Bureau of Primary Health Care (BPHC) and the Bureau of Health Professions (BHPr), to collect information from HCs on issues concerning the recruitment of various types of health professionals and administrative personnel.

This data collection effort is designed to assess the problems encountered by rural and remote HCs in their efforts to recruit needed personnel as well as the types of programs employed in recruitment efforts, and to compare these patterns with prevailing programs in urban HCs. This one-time survey will collect information on all HCs receiving section 330 grant funding in the United States. The survey includes 13 separate response items, and will collect information from HC administrators on health care professional staffing, recruitment trends and issues and needs among HCs throughout the nation. The data collected will improve HRSA's abilities in forecasting needs for personnel as HCs expand, planning recruitment programs and strategies, and implementing of local and national policy initiatives to meet the personnel demands of HCs so that access to health care is maximized.

The burden estimates are as follows:

Health center expansion and recruitment survey	Number of respondents	Number of responses per respondent	Total number of responses	Avg. burden/hours per response	Total burden hours
Survey instruments	845	1	845	.25	211

Written comments and recommendations concerning the proposed information collection should be sent within 30 days of this notice to: John Morrall, Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: December 11, 2003.

Tina M. Cheatham,

Acting Director, Division of Policy Review and Coordination.

[FR Doc. 03–31250 Filed 12–18–03; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Health Resources and Services Administration (HRSA) publishes abstracts of information collection requests under review by the Office of Management and Budget, in compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). To request a copy of the clearance requests submitted to OMB for review, call the HRSA Reports Clearance Office on (301) 443–1129.

The following request has been submitted to the Office of Management and Budget for review under the Paperwork Reduction Act of 1995:

Proposed Project: The Health Education Assistance Loan (HEAL) Program Regulations (OMB No. 0915–0108)—Revision

This clearance request is for a revision to the approval of the notification, reporting and recordkeeping requirements in the HEAL program to insure that the lenders, holders and schools participating in the HEAL program follow sound management procedures in the administration of federally-insured student loans. While the regulatory requirements are approved under this OMB number, much of the burden associated with the regulations is cleared under the OMB numbers for the HEAL forms and electronic submissions used to report required information (listed below). The table listed at the end of this notice contains the estimate of burden for the remaining regulations.

Annual Response Burden for the following regulations is cleared by OMB when the reporting forms are cleared:

OMB Approval No. 0915–0034, Lender's Contract Application and Borrower Deferment Forms, and Borrower Loan Status and Loan Transfers/Purchases and Consolidation Tape Specification and Submission

Reporting

42 CFR 60.31(a), Lender annual application

42 CFR 60.38(a), Loan Reassignment

Notification

42 CFR 60.12(c)(1), Borrower deferment

OMB Approval No. 0915–0036, Lender's Application for Insurance Claim

Reporting

42 CFR 60.35(a)(1), Lender due-diligence activities

42 CFR 60.35(a)(2), Lender skip-tracing activities

42 CFR 60.40(a), Lender documentation to litigate a default

42 CFR 60.40(c)(i), (ii), and (iii), Lender default claim

42 CFR 60.40(c)(2), Lender death claim

42 CFR 60.40(c)(3), Lender disability claim

42 CFR 60.40(c)(4), Lender report of student bankruptcy

OMB Approval No. 0915–0043, Promissory Note, Repayment Schedule, Call Report

Notification

42 CFR 60.11(e), Establishment of repayment terms-borrower

42 CFR 60.11(f)(5), Borrower notice of supplemental repayment agreement

42 CFR 60.33(e), Executed note to borrower

42 CFR 60.34(b)(1), Establishment of repayment terms-lender

42 CFR 60.42(b), Lender Quarterly Report on HEAL Loans Outstanding (Call Report)

OMB Approval No. 0915–0204, Physicians Certification of Permanent and Total Disability

Reporting

42 CFR 60.39(b)(2), Holder request to Secretary to determine borrower disability

OMB Approval No. 0915–0227, Federal Health Education Assistance Loan Refinancing Application/Promissory Note

Reporting

42 CFR 60.7, Application for loan

42 CFR 60.18 Consolidation of a HEAL loan

The estimate of burden for the regulatory requirements of this clearance are as follows:

TABLE OF REGULATORY SECTIONS AND RESPONDENT BURDEN

	Number of respondents	Number of transactions per respond	Total transactions	Time per response (in hours)	Total burden hours
Reporting Requirements					
28 Lenders	3	86	.55	47	
190 Schools	.4	78	.17	13	
Total Reporting				60	
Notification Requirements					
28 Lenders	6,855	191,961	.16	30,687	
190 Schools	2.15	409	.47	194	
7,930 Borrowers	1	7,930	.17	1,322	
Total Notification				32,203	
Recordkeeping Requirements					
28 Lenders	3,184	89,165	.22	19,974	
190 Schools	476	90,453	.25	22,681	
Total Recordkeeping				42,655	

Total Annual Burden: 74,918 hrs.

Written comments and recommendations concerning the proposed information collection should be sent within 30 days of this notice to: John Morrall, Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: December 15, 2003.

Tina M. Cheatham,

Acting Director, Division of Policy Review and Coordination.

[FR Doc. 03–31295 Filed 12–18–03; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

National Advisory Council on Migrant Health; Notice of Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given of the following meeting:

Name: National Advisory Council on Migrant Health.

Dates and Times: January 14, 2004, 9 a.m. to 5 p.m., January 15, 2004, 9 a.m. to 5 p.m.

Place: Hyatt Regency Bethesda, One Metro Center, Bethesda, Maryland 20814, Phone: (301) 657–1234; Fax: (301) 657–6453.

Status: The meeting will be open to the public.

Agenda: The agenda includes an overview of general Council business activities and priorities. Topics to be addressed will include orientation of new Council members and restructuring subcommittees. In addition, the Council will continue working on the Year 2004 recommendations to the Secretary. Finally, the Council will hear presentations from experts on farmworker issues, including Farmworker Health Services on farmworker health outreach and enabling services, and prevention strategies.

Agenda items are subject to change as priorities indicate.

For Further Information Contact: Anyone requiring information regarding the Council should contact Gladys Cate, Office of Minority and Special Populations, staff support to the National Advisory Council on Migrant Health, Bureau of Primary Health Care, Health Resources and Services Administration, 4350 East-West Highway, Bethesda, Maryland 20814, Telephone (301) 594–0367.

Dated: December 11, 2003.

Tina M. Cheatham,

Acting Director, Division of Policy Review and Coordination.

[FR Doc. 03–31249 Filed 12–18–03; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Proposed Collection; Comment Request; The National Epidemiologic Survey on Alcohol and Related Conditions

SUMMARY: Under the provisions of Section 3507(a)(1)(D) of the Paperwork Reduction Act of 1995, the National Institute on Alcohol Abuse and Alcoholism (NIAAA), the National Institutes of Health (NIH) has submitted to the Office of Management and Budget (OMB) a request for review and approval of the information collection listed below. This proposed information collection was previously published in the **Federal Register** on September 25, 2003, page 55396 and allowed 60 days for public comment. No public comments were received. The purpose of this notice is to allow an additional 30 days for public comment. The National Institutes of Health may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

Proposed Collection

Title: The National Epidemiologic Survey on Alcohol and Related Conditions. *Type of Information Collection Request:* REVISION, OMB No. 0925–0484, expiration date, 3/31/2004. *Need and Use of Information Collection:* This study will determine the incidence of alcohol use disorders in a representative sample of the United States population with the primary purpose of estimating the extent and distribution of alcohol consumption, alcohol use disorders and their associated psychological and medical disabilities across major sociodemographic subgroups. The primary objectives of this second wave of this longitudinal study is to understand the relationships between alcohol consumption, alcohol use disorders and their related disabilities with a view towards designing more effective treatment and intervention programs. The findings will provide valuable information concerning: (1) The relationship between alcohol use disorders use disorders and their related disabilities in subgroups of the population of special concern; (2) identification of subgroups at high risk for alcohol use disorders that may be complicated by associated psychological and medical disabilities; (3) incidence of alcohol use disorders and their associated disabilities with a view toward understanding their natural history; (4) treatment utilization of alochol use disorders in order to determine unmet treatment need and linguistic, social, economic and cultural barriers to treatment; (5) the college-aged segment of the population at high risk for binge drinking and its adverse consequences; and (6) the identification of safe and hazardous levels of drinking as they relate to the development of alcohol use disorders and their associated disabilities. *Frequency of Response:* On occasion. *Affected Public:* Individuals. *Type of Respondents:* Adults. The annual reporting burden is as follows: *Estimated Number of Respondents:* 43,093. *Estimated Number of Responses per Respondent:* 1; *Average Burden Hours Per Response:* 1.00; and *Estimated Total Annual Burden Hours Requested:* 43,093. The annualized cost to respondents is estimated at: $776,000.00. There are no Capital Costs to report. There are no Operating or Maintenance Costs to report.

Request for Comments

Written comments and/or suggestions from the public and affected agencies are invited on one or more of the following points: (1) Whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methdology and assumptions used; (3) Ways to enhance the quality, utility, and clarity of the information to be collected; and (4) Ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

FOR FURTHER INFORMATION CONTACT: Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the: Office of Management and Budget, Office of Regulatory Affairs, New Executive Office Building, Room 10235, Washington, DC 20503, Attention: Desk Officer for NIH. To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact Dr. Bridget Grant, Chief, Laboratory of Biometry and Epidemiology, Division of Intramural Clinical and Biological Research, NIAAA, NIH, Willco Building, Suite 514, 6000 Executive Boulevard, Bethesda, Maryland 20892–7003, or call non-toll-free number (301) 443–7370 or E-mail your request, including your address to: *Bgrant@willco.niaaa.nih.gov.*

Comments Due Date

Comments regarding this information collection are best assured of having their full effect if received within 30 days of the date of this publication.

Dated: December 15, 2003.

Stephen Long,

Executive Officer, NIAAA.

[FR Doc. 03–31321 Filed 12–18–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Warren Grant Magnuson Clinical Center; Proposed Collection; Comment Request; Customer and Other Partners Satisfaction Surveys

Summary: In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for the opportunity for pubic comment on the proposed data collection projects, the Warren Grant Magnuson Clinical Center (CC), the National Institutes of Health, (NIH) will publish periodic summaries of proposed projects to be submitted to the Office of Management and Budget (OMB) for review and approval.

Proposed Collection

Title: Customer and Other Partners Satisfaction Surveys. *Type of Information Collection Request:* New request/waiver. *Need and Use of Information Collection:* The information collected in these surveys will be used by Clinical Center personnel: (1) To evaluate the satisfaction of various Clinical Center customers and other partners with Clinical Center services; (2) to assist with the design of modifications of these services, based on customer input; (3) to develop new services, based on customer need; and (4) to evaluate the satisfaction of various Clinical Center customers and other partners with implemented service modifications. These surveys will almost certainly lead to quality improvement activities that will enhance and/or streamline the Clinical Center's operations. The major mechanisms by which the Clinical Center will request customer input is through surveys and focus groups. The surveys will be tailored specifically to each class of customer and to that class of customer's needs. Surveys will either be collected as written documents, as faxed documents, mailed electronically or collected by telephone from customers. Information gathered from these surveys of Clinical Center customers and other partners will be presented to, and used directly by, Clinical Center management to enhance the services and operations of our organization. *Frequency of Response:* The participants will respond yearly. *Affected public:* Individuals and households; businesses and other for profit, small businesses and organizations. *Types of respondents:* These surveys are designed to assess the satisfaction of the Clinical Center's major internal and external customers with the services provided. These customers include, but are not limited to, the following groups of individuals: Clinical Center patients, family members of Clinical Center patients, visitors to the Clinical Center, National Institutes of Health investigators, NIH intramural collaborators, private physicians or organizations who refer patients to the Clinical Center, volunteers, vendors and collaborating commercial enterprises, small businesses, regulators, and other organizations. The annual reporting burden is as follows:

Customer	Type of survey	Estimated number to be surveyed	Expected response rate (percent)	Time to complete survey (minutes)	Estimated burden hours
FY 2004					
Clinical Center Patients	Questionnaire	5000	50	30	1250
Family Members of Patients	Questionnaire	3000	50	30	750
Visitors to the Clinical Center	Questionnaire	1500	15	10	37.5
Clinical Center Employees	Questionnaire/Electronic	2500	60	20	501
NIH Investigators	Questionnaire/Electronic	2400	25	30	300
NIH Intramural Collaborators	Questionnaire/Electronic	1500	30	15	112.5
Vendors and Collaborating Commercial Enterprises.	Questionnaire	2000	20	15	100
Professionals and Organizations Referring Patients.	Questionnaire/Electronic	1000	30	20	100.2
Regulators	Questionnaire/Electronic	30	85	20	8.5
Volunteers	Questionnaire	275	60	20	55.11
Total		19,205			3215.01
FY 2005					
Clinical Center Patients	Questionnaire/Electronic	5000	50	30	1250
Family Members of Patients	Questionnaire/Electronic	2000	50	30	500
Visitors to the Clinical Center	Questionnaire/Electronic	1000	15	10	25
Clinical Center Employees	Questionnaire/Electronic	2500	60	20	501
NIH Investigators	Questionnaire/Electronic	2500	25	20	208.75
NIH Intramural Collaborators	Questionnaire/Electronic	1000	30	10	50.1
Vendors and Collaborating Commercial Enterprises.	Questionnaire/Electronic	2500	20	15	125
Professionals and Organizations Referring Patients.	Questionnaire/Electronic	3000	30	20	300.6
Regulators	Questionnaire/Electronic	25	80	15	5
Volunteers	Questionnaire/Electronic	300	50	15	37.5
Total		19,825			3002.95
FY 2006					
Clinical Center Patients	Questionnaire/Electronic	5000	60	30	1500
Family Members of Patients	Questionnaire/Electronic	2000	40	30	400
Visitors to the Clinical Center	Questionnaire/Electronic	1000	15	10	25.05
Clinical Center Employees	Questionnaire/Electronic	2500	60	15	375

Customer	Type of survey	Estimated number to be surveyed	Expected response rate (percent)	Time to complete survey (minutes)	Estimated burden hours
NIH Investigators	Questionnaire/Electronic	2000	25	15	125
NIH Intramural Collaborators	Questionnaire/Electronic	2000	30	10	100.2
Vendors and Collaborating Commercial Enterprises.	Questionnaire/Electronic	2500	15	20	125.25
Professionals and Organizations Referring Patients.	Questionnaire/Electronic	2000	30	20	200.4
Regulators	Questionnaire/Electronic	30	85	205	8.5
Volunteers	Questionnaire/Electronic	275	60	30	82.5
Total		19,305			2,941.9

Estimated costs to the respondents consists of their time: time is estimated using a rate of $10.00 per hour for patients and the public; $30.00 for vendors, regulators, organizations and $55.00 for health care professionals. The estimated annual costs to respondents for each year for which the generic clearance is requested is $27,187.10 for 2004, $31,043 for 2005, and $24,693.70 for 2006. Estimated Capital Costs are $7,000. Estimated Operating and Maintenance costs are $73,000.

Requests for Comments

Written comments and/or suggestions from the public and affected agencies are invited on one or more of the following points: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the Clinical Center and the agency, including whether the information shall have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project, or to obtain a copy of the data collection plans and instruments, contact: Dr. David K. Henderson, Deputy Director for Clinical Care, Warren G. Magnuson Clinical Center, National Institutes of Health, Building 10, Room 2C 146, 9000 Rockville Pike, Bethesda, Maryland 20892, or call non-toll free: 301–496–3515, or e-mail your request or comments, including your address to: *dkh@nih.gov*.

Comments Due Date

Comments regarding this information collection are best assured of having their full effect if received within 60 days of the date of this publication.

Dated: December 11, 2003.

David K. Henderson,

Deputy Director for Clinical Care, CC, National Institutes of Health.

[FR Doc. 03–31322 Filed 12–18–03; 8:45 am]

BILLING CODE 4140–10–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Notice.

SUMMARY: The invention listed below is owned by an agency of the U.S. Government and is available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

ADDRESSES: Licensing information and copies of any U.S. patent applications listed below may be obtained by writing to the indicated licensing contact at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: 301/496–7057; fax: 301/402–0220. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

Phenylthiocarbamide (PTC) Taste Receptor

Dennis Drayna, Un-Kyung Kim, Mark Leppart (NIDCD)

U.S. Provisional Application No. 60/306,991 filed 20 Jul 2001 (DHHS Reference No. E–169–2001/0–US–01); International Publication No. W0 03/008627 (DHHS Reference No. E–169–2001/0–PCT–02)

Licensing Contact: Susan Carson; 301/435–5020; *carsonsu@mail.nih.gov*

Bitter taste has evolved in mammals as a central warning signal against ingestion of poisonous or toxic compounds. However, many beneficial compounds are also bitter and taste masking of bitter tasting pharmaceutical compounds is a billion dollar industry. The diversity of compounds that elicit bitter-taste sensations is vast and more than two dozen members of the TAS2R bitter taste receptor gene family have been identified. How individuals are genetically predisposed to respond or not to respond to the bitter taste of substances like nicotine and certain foods like broccoli may have broad implications for nutritional status and tobacco use. Large individual differences in the taste perception of bitter compounds have been well documented, and phenylthiocarbamide (PTC), the subject of this invention by scientists at the NIH and the University of Utah, has been widely used for genetic and anthropological studies.

The PTC receptor encodes a novel member of the G protein-coupled TAS2R bitter taste receptor family (Science (2003) 299, 1221–1225). Three coding SNPs in this gene were identified as giving rise to five haplotypes which accounted for the bimodal distribution of PTC taste sensitivity worldwide. Distinct phenotypes are associated with distinct genotypes and SNPs such as these identifying variations in the PTC receptor would allow taste masking of bitter tasting compounds tailored to the population genetics profile of different groups and populations.

The invention available for licensing includes composition of matter claims for a bitter taste receptor for PTC, antibodies to the receptor and methods of detecting nucleic acid and amino acid sequences as well as modulators of such PTC taste receptors. The ability to taste PTC has been shown to be correlated with the ability to taste other bitter substances, many of which are toxic. Thus variation in PTC perception and knowledge of the genetic basis of these variants can be used to aid the development of a variety of taste improvements in foods and orally administered medications.

Dated: December 10, 2003.

Steven M. Ferguson,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 03–31327 Filed 12–18–03; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, Public Health Service, HHS.

ACTION: Notice.

SUMMARY: The inventions listed below are owned by an agency of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

ADDRESSES: Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to the indicated licensing contact at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: 301/496–7057; fax: 301/402–0220. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

Thalidomide Analogs

Nigel Greig (NIA),

U.S. Provisional Patent Application filed 17 Sep 2003 (DHHS Reference No. E–189–2003/0–US–01),

Licensing Contact: Matthew Kiser; 301/435–5236; *kiserm@mail.nih.gov*.

Inflammatory processes associated with the over-production of cytokines, particularly of tumor necrosis factor-alpha (TNF-a), accompany numerous neurodegenerative diseases, such as Alzheimer's disease and ALS, in addition to numerous common systemic conditions, such as rheumatoid arthritis, septic shock, graft-versus-host disease, Crohn's disease and erythema nodosum leprosum (ENL). TNF-a has been validated as a drug target with the development of the inhibitors Enbril (Amgen, Thousand Oaks, CA/Wyeth, Princeton, NJ) and Remicade (Centocor, Malvern, PA/Schering-Plough, Orange, NJ) as prescription medications for rheumatoid arthritis. Both, however, are large macromolecules and hence are expensive to produce, require direct intravenous or subcutaneous injection, and have negligible brain access. The classical orally active drug, thalidomide (N-a-phthalimidoglutarimide), a glutamic acid derivative, is being increasingly used in the clinical management of a wide spectrum of immunologically-mediated and infectious diseases, and cancers. Its clinical value in treating ENL derives from its TNF-a inhibitory activity. Specifically, it inhibits TNF-a protein expression at the post-transcriptional level by facilitating turnover of the mRNA (Sampaio *et al.*, 1991 & 1993; Moreira *et al.*, 1993). More recent research has shown similar inhibitory action of COX2 protein expression (Fujita *et al.*, 2001). These actions are mediated post-transcriptionally via AU-rich elements found in the 3' untranslated regions (3'–UTRs) of each mRNA (Kruys *et al.*, 1994; Chen *et al.*, 1995). Thalidomide's anti-angiogenesis activity derives from its inhibitory actions on basic fibroblast growth factor (bFGF) and vascular endothelial growth factor (VEGF) (D'Amato *et al.*, 1994; Figg *et al.*, 2002). The agent, additionally, acts as an inhibitor of the transcription factor, NFkB and a co-stimulator of both CD8+ and CD4+ T cells (Haslett *et al.*, 1998). However, the action of thalidomide to lower TNF-a levels and inhibit angiogenesis is not particularly potent and it therefore represents an interesting lead compound for medicinal chemistry.

Novel structural modification of thalidomide was achieved towards the discovery of original and potent isosteric analogues. The present invention relates to thalidomide analogues and, in particular, thiothalidomides (sulfur-containing thalidomide analogues), methods of synthesizing the analogues, and methods for using the analogues to modulate TNF-α and angiogenesis activities in a subject. Disclosed analogues potently inhibited TNF-α secretion, compared to thalidomide, via post-transcriptional mechanisms that decreased TNF-α mRNA stability via its 3'–UTR (Zhu *et al.*, 2003). Actions to inhibit angiogenesis were determined in widely accepted ex vivo assays.

Methods and Compositions for Treating Diseases and Disorders Associated With Natural Killer T-Cells

John R. Ortaldo, Robert H. Wiltrout (NCI)

U.S. Provisional Application No. 60/488,339 filed 17 Jul 2003 (DHHS Reference No. E–282–2002/0–US–01)

Licensing Contact: Catherine Joyce; 301/435–5031; *joycec@mail.nih.gov*.

The invention relates to the discovery that C12 beta-D-galactosyl ceramide may be used to deplete or inactivate NKT cell populations. These findings suggest methods for using C12 beta-D-galactosyl ceramide to treat-conditions that would benefit from depletion of NKT cells, such as certain auto-immune diseases (*e.g.* lupus, MS) and AIDs.

The presence of NKT cells can be associated with either beneficial effects or pathology. Deficiencies in NKT cells are associated with at least some types of autoimmune disease, including type 1 diabetes and autoimmune gastritis in mice. In contrast, NKT cells augment autoantibody secretion and lupus development in lupus-prone mouse models and therefore lupus patients may benefit from the depletion of NKT cells. The remission state of multiple sclerosis (MS) is also associated with decreased levels of NKT cells, suggesting NKT cell depletion as a method of treatment for MS.

The above-mentioned invention is available for licensing on an exclusive or a non-exclusive basis.

Leu574 of HIF–1alpha as a Molecular Basis for Therapeutic Application

L. E. Huang (NCI)

U.S. Provisional Application No. 60/465,565 filed 25 Apr 2003 (DHHS Reference No. E–281–2002/0–US–01)

Licensing Contact: Catherine Joyce; 301/435–5031; *joycec@mail.nih.gov*.

The hypoxia-inducible factor 1 (HIF–1) is a transcription factor that plays a pivotal role in cellular adaptation to oxygen availability. HIF–1alpha protein is a subunit of HIF–1. Although the gene for HIF–1alpha is constitutively expressed, it is an extremely short-lived protein under normoxic conditions and is targeted for destruction via the proteosome pathway by an E3 ubiquitin ligase (the VHL protein).

The invention relates to the discovery that mutations or deletions of Leu574 result in a more stable form of HIF–1alpha. Therefore, the invention relates

to methods and compositions for modulating oxygen homeostasis for therapeutic application. In one aspect, the inventors contemplate the use of a more stable form of HIF–1alpha protein for therapeutic angiogenesis purposes such as may be useful in ischemic vascular disease. In another aspect, the inventors contemplate the use of this particular site in a screen for targeted drugs that modulates HIF–1alpha activity. The inventors also suggest that Leu574 could be used for developing drugs targeted to HIF hydroxylase binding, thereby altering HIF–1alpha stability.

This technology is available for licensing on an exclusive or a non-exclusive basis.

Vasostatin as Marrow Protectant

Giovanna Tosato *et al.* (NCI)
U.S. Patent No. 6,596,690 B2 issued 22 Jul 2003 (DHHS Reference No. E–230–2000/0–US–01); U.S. Patent Application No. 10/405,588 filed 01 Apr 2003 (DHHS Reference No. E–230–2000/0–US–02)
Licensing Contact: Matthew Kiser; 301/435–5236; *kiserm@mail.nih.gov*.

This patent relates to the stimulation of hematopoiesis, more specifically to the protection of hematopoietic stem cells from toxic agents, including chemotherapeutic agents and/or irradiation. The subject patent discloses specific fragments of vasostatin, and their application as stimulants of hematopoiesis in vitro and in vivo. Also disclosed is a method for stimulating the proliferation/survival of hematopoietic cells exposed to a chemotherapeutic agent or irradiation using these fragments. In one embodiment, a method is disclosed for stimulating the growth or survival of hematopoietic stem cells with a fragment of vasostatin, in the presence of a growth factor.

Dated: December 11, 2003.

Steven M. Ferguson,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 03–31328 Filed 12–18–03; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, Public Health Service, HHS.

ACTION: Notice.

SUMMARY: The inventions listed below are owned by an agency of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

ADDRESSES: Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to the indicated licensing contact at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: 301/496–7057; fax: 301/402–0220. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

A Microfluidic Flow-Through Immunoassay for a Simultaneous Detection of Multiple Proteins in a Sub-Microliter Biological Sample

Nicole Y. Morgan *et al.* (NIH/NIST)
DHHS Reference No. E–024–2004/0–US–01 filed 30 Oct 2003
Licensing Contact: Michael Ambrose; 301/594–6565; *ambrosem@mail.nih.gov*.

This invention presents a high throughput, multi-analyte microfluidic chip device. This device can be used for the detection and characterization of proteins, immuno-affinity assays as well as analyte detection in biological samples or other media. The sub-microliter volumes for use make this device applicable where biological samples are rare and difficult to obtain.

The device consists of a series of channels that are connected via communication ports for sample flow. The channels can be individually loaded with detection reagents via portals at their ends. As such, the assay channels can be run in series using a single sample source or individually via the loading ports, thus increasing the utility of the microchip device. Each channel can then be detected via colorimetric, fluorimetric or other detection method as desired. The chip can be integrated into multiple detection devices or other analytical equipment.

The chip as designed, is manufactured using photolithographic etching, thus the number and size of the individual reaction channels can be modified to increase the number of channels or the volume the channels can hold. The chip should also be reusable, thus further increasing the utility of the device.

Method for Analysis of Biomarkers Concentrated With Biomarker Attractants

Arpita Mehta *et al.* (NCI)
DHHS Reference No. E–167–2003/0–US–01 filed 08 Oct 2003
Licensing Contact: Fatima Sayyid; 301/435–4521; *sayyidf@mail.nih.gov*.

Biological fluids are the repositories of vast number of molecules that are excreted or otherwise shed by cells. These molecules present in biological fluids reflect the physiological and pathological states of the cells that are in contact by the fluids or the cells from which these molecules are derived. A major goal of clinical diagnostics is to correlate the particular molecules (biomarkers) present in biological fluids with particular disease states.

The present invention relates to analysis of molecules present in biological fluids. Specifically, it discloses a diagnostic method for isolating/analyzing biomarker attractant molecules for the presence of bound fragments of cellular proteins that are known to correlate with particular biological states in specific anatomic or physiologic locations.

Regulation of RNA Stability

Wi Lai *et al.* (NIEHS)
U.S. Provisional Application No. 60/451,976 filed 06 Mar 2003 (DHHS Reference No. E–314–2002/0–US–01)
Licensing Contact: Jesse S. Kindra; 301/435–5559; *kindraj@mail.nih.gov*.

This invention relates to the discovery that tristetraprolin (TTP) can promote the poly(A)RNase (PARN) mediated deadenylation of polyadenylated substrates containing AU-rich elements (AREs). As one aspect of the invention, the inventors have developed a cell free system that may be used for the purposes of assessing the effects of the various system components or their derivatives (*i.e.* AREs, PARN, or TTP) on the deadenylation process or the effects of various test agents on the deadenylation process. Aspects of this work have been published as follows: Lai *et al.*, 2003, Tristetraprolin and Its Family Members Can Promote the Cell-Free Deadenylation of AU-Rich Element-Containing mRNAs by Poly(A) Ribonuclease, MCB 23(11):3798–3812.

This technology is available for licensing on an exclusive or a non-exclusive basis.

Methods for Assessing the Ability of HIV Patients To Restrict HIV Replication

Mark Connors, Stephen Migueles (NIAID)
U.S. Provisional Application No. 60/412,020 filed 20 Sep 2002 (DHHS Reference No. E–260–2002/0–US–01); PCT Application No. PCT/US03/29549 filed 22 Sep 2003 (DHHS Reference No. E–260–2002/0–PCT–02)
Licensing Contact: Susan Ano; 301/435–5515; *anos@mail.nih.gov*.

One of the current obstacles for the design and testing of effective vaccines and immunotherapies of HIV is the lack of in vitro correlates that will predict the ability to restrict virus replication. This invention relates to methods for evaluating the effectiveness of HIV therapies and vaccines and methods for assessing the ability of HIV patients to restrict virus replication. Upon restimulation of CD8+ T cells, the expression of perforin in these cells, and the cell cycle stage of these cells may be measured and used as in vitro markers for monitoring the patient's ability to restrict HIV replication and the effectiveness of the therapies and vaccines applied. Significant proliferation of CD8+ T cells, the presence of perforin in these cells, and the ability of these cells to progress beyond the G1 stage signify the patient's ability to restrict HIV replication and a favorable effect of the therapies or vaccines. These methods may be advantageously applied in conjunction with other measurements of HIV specific immune response such as HLA tetramers.

gp64 Pseudotyped Vectors and Uses Thereof

Mukesh Kumar, Joshua Zimmerberg (NICHD,
U.S. Provisional Application No. 60/425,853 filed 12 Nov 2002 (DHHS Reference No. E–191–2001/0–US–01); PCT Application filed 10 Nov 2003 (DHHS Reference No. E–191–2001/0–PCT–02)
Licensing Contact: Susan Ano; 301/435–5515; *anos@mail.nih.gov*.

This invention relates to a general gene therapy technology which uses an HIV–1 based vector containing a baculovirus gp64 protein. HIV–1 based gene therapy vectors hold great promise due to their ability to deliver genes to non-dividing cells including hematopoietic stem cells. However native HIV only binds to cells with a CD4 receptor, while gene therapy vectors would need to be delivered to a variety of cells. Various different envelope proteins have been tried to replace the native envelope protein of HIV with a new envelope protein whose origin is another enveloped virus (pseudotyping) that has more general binding capabilities. However, to date, no one has been successful for practical purposes, due to either low titers or cytotoxic effects of the expressed proteins. The inventors have developed a family of nontoxic vectors using baculovirus gp64 protein (which binds to a variety of cells) and HIV proteins that efficiently deliver genes of interest to target cells. Furthermore, since gp64 expression in producer cells is not accompanied by cytotoxic side effects, this protein is an ideal candidate for the development of cell lines for constitutive expression of gp64 for the process of construction of the hybrid HIV (packaging cell lines).

Dated: December 11, 2003.

Steven M. Ferguson,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 03–31329 Filed 12–18–03; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel, Prospective Investigation of Pulmonary Embolism Diagnosis III.

Date: February 11, 2004.

Time: 8 a.m. to 12 p.m.

Agenda: To review and evaluate cooperative agreement applications.

Place: Double Tree Rockville, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Arthur N. Freed, PhD, Review Branch, Room 7186, Division of Extramural Affairs, National Heart, Lung, and Blood Institute, National Institutes of Health, 6701 Rockledge Drive, MSC 7924, Bethesda, MD 20892. (301) 435–0280.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS.)

Dated: December 12, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–31318 Filed 12–18–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel, Aldosterone Antagonists for the Treatment of Heart Failure with Preserved Sytolic Function.

Date: January 28, 2004.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Double Tree Rockville, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Patricia A Haggerty, PhD, Scientific Review Administrator, Review Branch, Division of Extramural Affairs, National Heart, Lung, and Blood Institute, National Institutes of Health, 6701 Rockledge Drive, Room 7188, MSC 7924, Bethesda, MD 20892. 301/435–0280.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS.)

Dated: December 12, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–31319 Filed 12–18–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Human Genome Research Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Inherited Disease Research) Access Committee.

Date: January 8, 2004.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites, Washington, DC 20015.

Contact Person: Jerry Roberts, PhD, Scientific Review Administrator, Office of Scientific Review, National Institutes of Health, Building 38A, Bethesda, MD 20892, 301 402–0838.

(Catalogue of Federal Domestic Assistance Program Nos. 93.172, Human Genome Research, National Institutes of Health, HHS)

Dated: December 12, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–31320 Filed 12–18–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the National Advisory Council on Aging.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Council on Aging.

Date: February 3–4, 2004.

Closed: February 3, 2004, 3 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications and/or proposals.

Place: National Institutes of Health, Building 31, 31 Center Drive, Conference Room 6, Bethesda, MD 20892.

Open: February 4, 2004, 8 a.m. to 2 p.m.

Agenda: To present the Director's Report and other scientific presentations.

Place: National Institutes of Health, Building 31, 31 Center Drive, Conference Room 6, Bethesda, MD 20892.

Closed: February 4, 2004, 2 p.m. to 2:30 p.m.

Agenda: To review and evaluate program documents.

Place: National Institutes of Health, Building 31, 31 Center Drive, Conference Room 6, Bethesda, MD 20892.

Contact Person: Miriam F. Kelty, PhD, Director, Office of Extramural Affairs, National Institute on Aging, National Institutes of Health, 7201 Wisconsin Avenue, Suite 2C218, Bethesda, MD 20892, 301–496–9322.

In the interest of security, NIH has instituted stringent procedures for entrance into the building by non-government employees. Persons without a government I.D. will need to show a photo I.D. and sign-in at the security desk upon entering the building.

Information is also available on the Institute's/Center's Home page: *http://www.nih.gov/nia/naca/*, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS.)

Dated: December 12, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–31317 Filed 12–18–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Prospective Grant of Exclusive License: Zenapax (Humanized Antibody Against the IL–2 Receptor Alpha Chain) as a Novel Treatment for Multiple Sclerosis

AGENCY: National Institutes of Health, Public Health Services, DHHS.

ACTION: Notice.

SUMMARY: This is notice, in accordance with 35 U.S.C. 209(c)(1) and 37 CFR 404.7(a)(1)(i), that the National Institutes of Health, Department of Health and Human Services, is contemplating the grant of an exclusive license to practice the inventions embodied in U.S. provisional patent application 60/393,021 (DHHS ref. no. E–143–2002/0–US–01) filed June 28, 2002, international PCT application PCT/US02/38290 (DHHS ref. no. E–143–2002/0–PCT–02), international PCT application PCT/US03/20428 (DHHS ref. no. E–143–2002/0–PCT–04), and United States Patent Application Serial No. 10/607,598 (DHHS ref. no. E–143–2002/0–US–03), all entitled, "Zenapax (Humanized Antibody Against the IL–2 Receptor Alpha Chain) As A Novel Treatment for Multiple Sclerosis," and all corresponding foreign patent applications to Protein Design Laboratories, of Fremont, California. The patent rights in these inventions have been assigned to the United States of America.

The prospective exclusive license territory will be worldwide. The field of use may be limited to the treatment of multiple sclerosis using monoclonal antibodies against the interleukin-2 receptor.

DATES: Only written comments and/or license applications which are received by the National Institutes of Health on or before February 17, 2004 will be considered.

ADDRESSES: Requests for copies of the patent(s)/patent application(s), inquiries, comments and other materials relating to the contemplated exclusive license should be directed to: Catherine M. Joyce, Intellectual Property Management Specialist, Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, MD 20852–3804; Telephone: 301–435–5031; Facsimile 301–402–0220; email *joycec@mail.nih.gov*.

Technology Brief: The above-referenced patent(s)/patent application(s) relate to the discovery that a humanized antibody to the interleukin-2 receptor alpha chain (IL–2Rα) (humanized anti-Tac antibody), dacluzimab, is effective in treating multiple sclerosis (MS). In particular, it has been discovered that patients who failed to respond to therapy with interferon-beta showed dramatic improvement when treated with dacluzimab, with patients showing both a reduction in the total number of lesions and cessation of appearance of new lesions during the treatment period.

SUPPLEMENTARY INFORMATION: The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless within sixty (60) days from the date of this published notice, the NIH receives written evidence and argument that establish that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7

Applications for a license in the field of use filed in response to this notice will be treated as objections to the grant of the contemplated exclusive license. Comments and objections submitted to this notice will not be made available for public inspection and, to the extent permitted by law, will not be released under the Freedom of Information Act, 5 U.S.C. 552.

Dated: December 10, 2003.

Steven M. Ferguson,

Director, Division of Technology Development and Transfer, Office of Technology Transfer.

[FR Doc. 03–31326 Filed 12–18–03; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Prospective Grant of Exclusive License: "Methods of Making, Using and Pharmaceutical Formulations Comprising 7α, 11β-dimethyl-17β-hydroxyestra-4,14-dien-3-one and 17 Esters Thereof and 17 Esters of 7α-methyl-17β-hydroxylestra-4,14-dien-3-one"

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Notice.

SUMMARY: This is notice, in accordance with 35 U.S.C. 209(c)(1) and 37 CFR 404.7(a)(1)(i), that the National Institutes of Health (NIH), Department of Health and Human Services, is contemplating the grant of an exclusive license worldwide to practice the invention embodied in: USSN 60/193,530 and USSN 60/194,440, converted into combined PCT Application, PCT/US01/10293, and national stage filed in the U.S., Canada, Australia, Europe and Japan. A PCT–CIP was also filed and given a PCT Application Number of PCT/US02/09886, followed by national stage filings in the U.S., Canada, Australia, Europe, and Japan. The potential licensee is Torotech, LLC, having a place of business in the State of Maryland. The field of use may be limited to the therapeutic treatment of hypogonadism and human reproduction therapy. The United States of America is the assignee of the patent rights in this invention. This announcement is the first notice to grant an exclusive license to this technology.

DATES: Only written comments and/or application for a license which are received by the NIH Office of Technology Transfer on or before February 17, 2004 will be considered.

ADDRESSES: Requests for a copy of the patent applications, inquiries, comments and other materials relating to the contemplated license should be directed to: Marlene Shinn-Astor, Technology Licensing Specialist, Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, MD 20852–3804; Telephone: (301) 435–4426; Facsimile: (301) 402–0220; e-mail: *MS482M@NIH.GOV*.

SUPPLEMENTARY INFORMATION: This technology relates to compounds that possess potent androgenic activity. These compounds offer a potential therapeutic benefit in the treatment of hypogonadism, regardless of cause, as an adjuvant in hormone replacement therapy for both men and women and for androgen stimulation of anabolism in a broad spectrum of disease entities involving debilitation.

These compounds are far more active and retain their potency after oral administration more than that achieved with the current oral androgen standard, methyltestosterone. An additional expected benefit is that liver toxicity, if any, should be minimal because 7α, 11β-dimethyl-17β-hydroxy-4-estren-3-one bucyclate is not alkylated at the C17 position.

The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless, within 60 days from the date of this published Notice, NIH receives written evidence and argument that establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

Properly filed competing applications for a license filed in response to this notice will be treated as objections to the contemplated license. Comments and objections submitted in response to this notice will not be made available for public inspection, and, to the extent permitted by law, will not be released under the Freedom of Information Act, 5 U.S.C. 552.

Dated: December 12, 2003.

Steven M. Ferguson,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 03–31325 Filed 12–18–03; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Prospective Grant of Exclusive License: Postnatal Stem Cells and Uses Thereof

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Notice.

SUMMARY: This is notice, in accordance with 35 U.S.C. 209(c)(1) and 37 CFR 404.7(a)(1)(i), that the National Institutes of Health (NIH), Department of Health and Human Services, is contemplating the grant of an exclusive license worldwide to practice the invention embodied in: PCT application number PCT/US03/12276 filed April 19, 2003 entitled, "Postnatal Stem Cells and Uses Thereof" to Dentigenix, having a place of business in the State of Washington. The field of use may be limited to the treatment of dental regeneration. The United States of America is the assignee of the patent rights in this invention. This announcement is the first notice to grant an exclusive license to this technology.

DATES: Only written comments and/or application for a license which are received by the NIH Office of Technology Transfer on or before February 17, 2004 will be considered.

ADDRESSES: Requests for a copy of the patent applications, inquiries,

comments and other materials relating to the contemplated license should be directed to: Marlene Shinn-Astor, Technology Licensing Specialist, Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, MD 20852–3804; Telephone: (301) 435–4426; Facsimile: (301) 402–0220; e-mail: *MS482M@NIH.GOV*.

SUPPLEMENTARY INFORMATION: This technology encompasses human postnatal deciduous dental pulp stem cells commonly known as "baby teeth", that are used to create dentin and have been shown to differentiate into cells of specialized function such as neural cells, adipocytes, and odontoblasts. It is believed that these cells could be manipulated to repair damaged teeth, induce the regeneration of bone, and treat neural injury or disease.

The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless, within 60 days from the date of this published Notice, NIH receives written evidence and argument that establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

Properly filed competing applications for a license filed in response to this notice will be treated as objections to the contemplated license. Comments and objections submitted in response to this notice will not be made available for public inspection, and, to the extent permitted by law, will not be released under the Freedom of Information Act, 5 U.S.C. 552.

Dated: December 12, 2003.

Steven M. Ferguson,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 03–31324 Filed 12–18–03; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Submission for OMB Emergency Review; Reinstatement With Change for Previously Approved Information Collection Request (Product and Service Information Site)

AGENCY: Office of the Under Secretary for Management, Department of Homeland Security.

ACTION: Notice.

SUMMARY: The Department of Homeland Security (DHS), has resubmitted OMB 1600–0001 information collection request (ICR) (Product and Service Information Site) for reinstatement with change for a previously approved collection, utilizing emergency review procedures, to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35) as amended by the Clinger-Cohen Act (Pub. L. 104–106). OMB approval has been requested by December 22, 2003.

ADDRESSES: Comments and questions about the ICR listed below should be forwarded to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for Homeland Security, Office of Management and Budget, Room 10235, Washington, DC 20503; telephone (202) 395–7316. The Office of Management and Budget is particularly interested in comments which:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

FOR FURTHER INFORMATION CONTACT: A copy of this ICR, with applicable supporting documentation, may be obtained by calling Yvonne Pollard, Program Analyst and Paperwork Reduction Act Contact, Office of the Chief Information Officer, Department of Homeland Security, Washington, DC 20528; telephone (202) 692–4221.

SUPPLEMENTARY INFORMATION:

Analysis

Agency: Department of Homeland Security, Under Secretary of Management, Office of the Chief Information Officer.

Title: Product and Service Information Site.

OMB Number: 1600–0001.

Frequency: On occasion.

Affected Public: Individuals or households; businesses or other for-profit; not-for-profit institutions; farms, State, local or tribal government.

Estimated Number of Respondents: 20,000.

Estimated Time Per Respondent: 30 minutes for startup; 30 minutes for maintaining.

Total Burden Hours: 20,000.

Total Burden Cost: (capital/startup): $25.00 per respondent; $500,000 annually.

Total Burden Cost: (operating/maintaining): $25.00 per respondent, $500,000 annually.

Description: The Product and Service Information site is a supplement of the Central Contractor Registration database that will provide a uniform voluntary way for companies to provide descriptions of their product-and-service ideas to DHS for enhancing homeland security.

Dated: December 16, 2003.

Steve Cooper,

Chief Information Officer.

[FR Doc. 03–31438 Filed 12–17–03; 1:28 pm]

BILLING CODE 4410–10–P

DEPARTMENT OF HOMELAND SECURITY

Citizenship and Immigration Services

Agency Information Collection Activities: Proposed Collection; Comment Request

Action: 30-day notice of information collection under review: Petition for Nonimmigrant Worker; Form I–129.

The Department of Homeland Security, U.S. Citizenship and Immigration Services (CIS), has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection was previously published in the **Federal Register** on July 22, 2003 at 68 FR 43364, allowing for emergency OMB review and a 60-day public comment period. No comments were received by the CIS on this proposed information collection.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until January 20, 2004. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Department of Homeland Security Desk Officer, Room 10235, Washington, DC 20530.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Extension of currently approved collection.

(2) *Title of the Form/Collection:* Petition for Nonimmigrant Worker.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form I–129, U.S. Citizenship and Immigration Services.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Business or other for-profit. This form is used to petition for temporary workers and for the admission of treaty traders and investors. It is also used in the process of an extension of stay or for a change of nonimmigrant status.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 368,948 responses at 2 hours 45 minutes (2.75) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 1,014,607 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan, 202–514–3291, Director, Regulations and Forms Services Division, Department of Homeland Security, Room 4304, 425 I Street, NW., Washington, DC 20536. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

If additional information is required contact: Mr. Steve Cooper, PRA Clearance Officer, Department of Homeland Security, Office of Chief Information Officer, Regional Office Building 3, 7th and D Streets, SW., Suite 4636–26, Washington, DC 20202.

Dated: December 12, 2003.

Richard A. Sloan,

Department Clearance Officer, Department of Homeland Security, U.S. Citizenship and Immigration Services.

[FR Doc. 03–31285 Filed 12–18–03; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF HOMELAND SECURITY

Citizenship and Immigration Services

Agency Information Collection Activities: Proposed Collection; Comment Request

Action: 30-day notice of information collection under review: Health and Human Services Statistical Data for Refugee Asylee Adjusting Status; Form I–643.

The Department of Homeland Security, U.S. Citizenship and Immigration Services (CIS), has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection was previously published in the **Federal Register** on September 25, 2003 at 68 FR 55404, allowing for a 60-day public comment period. No comment was received by the CIS on this proposed information collection.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until January 20, 2004. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Department of Homeland Security Desk Officer, 725–17th Street, NW., Room 10235, Washington, DC 20530.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Extension without change of a currently approved information collection.

(2) *Title of the Form/Collection:* Health and Human Services Statistical Data for Refugee Asylee Adjusting Status.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form I–643, U.S. Citizenship and Immigration Services.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or Households. This form is necessary for the CIS to comply with Section 412(a)(8) of the INA which requires the Office of Refugee Resettlement Report to compile a summary and evaluation of the collection information. The CIS is required to report on the status of refugees at the time of adjustment to lawful permanent resident.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 195,000 responses at 10 minutes (.166 hours) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 32,370 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or

additional information, please contact Richard A. Sloan 202–514–3291, Director, Regulations and Forms Services Division, Department of Homeland Security, Room 4304, 425 I Street, NW., Washington, DC 20536. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

If additional information is required contact: Mr. Steve Cooper, PRA Clearance Officer, Department of Homeland Security, Office of Chief Information Officer, Regional Office Building 3, 7th and D Streets, SW., Suite 4636–26, Washington, DC 20202.

Dated: December 12, 2003.

Richard A. Sloan,

Department Clearance Officer, Department of Homeland Security, U.S. Citizenship and Immigration Services.

[FR Doc. 03–31287 Filed 12–18–03; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF HOMELAND SECURITY

Customs and Border Protection

Agency Information Collection Activities: Proposed Collection; Comment Request

Action: 30-day notice of information collection under review: Application—Checkpoint Pre-enrolled Access Lane; Form I–866.

The Department of Homeland Security (DHS), U.S. Customs and Border Protection (CBP), has submitted the following information collection request in the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection was previously published in the **Federal Register** on September 25, 2003 at 68 FR 55407. The notice allowed for a 60-day public comment period. The DHS has received no public comment on this proposed information collection.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until January 20, 2004. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget (OMB), Office of Information and Regulatory Affairs, Attention: Department of Homeland Security Desk Officer, Room 10235, 725–17th Street, NW., Washington, DC 20530. You may fax comments to the OMB at 202–395–5806.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Application-Checkpoint Pre-enrolled Access Lane.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form I–866. U.S. Customs and Border Protection.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary individual or households. The information collected on this form will be used by the DHS to determine eligibility for participation in the Checkpoint Pre-enrolled Access Lane (PAL) program for persons and vehicles at immigration checkpoints within the United States.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 12,500 responses at 32 minutes (53 hours) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 6,625 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan 202–514–3291, Director, Regulations and Forms Services Division, Department of Homeland Security, Room 4304, 425 I Street, NW., Washington, DC 20536. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

If additional information is required contact: Mr. Steve Cooper, PRA Clearance Officer, Department of Homeland Security, Office of the Chief Information Officer, Regional Office Building 3, 7th and D Streets, SW., Suite 4636–26, Washington, DC 20202.

Dated: December 12, 2003.

Richard A. Sloan,

Department Clearance Officer, Department of Homeland Security, U.S. Immigration and Custom Enforcement.

[FR Doc. 03–31286 Filed 12–18–03; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4809–N–51]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

EFFECTIVE DATE: December 19, 2003.

FOR FURTHER INFORMATION CONTACT: Mark Johnston, Department of Housing and Urban Development, Room 7262, 451 Seventh Street SW., Washington, DC 20410; telephone (202) 708–1234; TTY number for the hearing- and speech-impaired (202) 708–2565, (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with the December 12, 1988 court order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88–2503–OG (D.D.C.), HUD publishes a Notice, on a weekly basis, identifying unutilized, underutilized, excess and surplus Federal buildings and real property that HUD has reviewed for suitability for use to assist the homeless.

Today's Notice is for the purpose of announcing that no additional properties have been determined suitable or unsuitable this week.

Dated: December 11, 2003.

John D. Garrity,

Director, Office of Special Needs Assistance Programs.

[FR Doc. 03–31040 Filed 12–18–03; 8:45 am]

BILLING CODE 4210–29–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4456–N–29]

Privacy Act of 1974; Establishment of a New System of Records

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notification of the establishment of a new system of records.

SUMMARY: Pursuant to the provision of the Privacy Act of 1974 (5 U.S.C. 552a), HUD is giving notice that it proposes to establish a new system of records entitled the "Single Family Neighborhood Watch Early Warning System" (NW). HUD staff and lenders use NW to monitor default and claim rates on FHA insured loans for FHA-approved lenders and FHA programs. The system includes records from individuals who have obtained a mortgage insured under HUD/FHA's single-family mortgage insurance programs. It also includes records from individuals involved in the HUD/FHA single-family loan origination process. Specifically, records contained in the system include borrowers' name, property address, Social Security Number or other identifying numbers. NW is a Web-based query tool that displays summary and loan level origination, default and claim information by originating, sponsoring, principal, and agent lenders for two-year periods by beginning amortization date for FHA insured loans, etc.

DATES: *Effective Date:* This proposal shall become effective without further notice on January 20, 2004, unless comments are received on or before that date which would result in a contrary determination.

Comments Due Date: January 20, 2004.

ADDRESSES: Interested persons are invited to submit comments regarding this notice to the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410–0050. Communications should refer to the above docket number and title. Comments submitted by facsimile (Fax) will not be accepted. A copy of each communication submitted will be available for public inspection and copying between 7:30 a.m. and 5:30 p.m. weekdays at the above address.

FOR FURTHER INFORMATION CONTACT: For Privacy Act Information: Jeanette Smith, Departmental Privacy Act Officer, Telephone Number (202) 708–2374. For Housing, Single Family Neighborhood Watch Early Warning System information, Phillip Murray, Director, Office of Lender Activities and Program Compliance, Office of Housing, Department of Housing and Urban Development, 451 7th Street, SW., Room B–133, Washington, DC 20410–8000; telephone (202) 708–1515 (this is not a toll-free number). Persons with hearing- or speech-impairments may access this number via TTY by calling the toll-free Federal Information Relay Services at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: HUD's Office of Lender Activities and Program Compliance (LAPC) is responsible for monitoring FHA approved lenders to ensure that they follow HUD guidelines when they originate, sponsor, and/or service FHA insured loans. In addition, LAPC is responsible for implementing HUD's Credit Watch Termination initiative that allows HUD to terminate the origination approval agreement of lender branches whose default and claim rate exceeds the field offices default and claim rate by 200% or more. HUD staff use NW to target FHA approved lenders for on-site monitoring reviews and to evaluate lender performance relative to HUD's Credit Watch Termination initiative. HUD also uses the Appraiser performance information that is currently only available to HUD staff, to evaluate Appraiser performance.

Authority: 5 U.S.C. 552a; 88 Stat. 1896; 42 U.S.C. 3535(d).

Dated: December 4, 2003.

Gloria R. Parker,

Chief Technology Officer.

HUD/HS–16

SYSTEM NAME:

Single Family Neighborhood Watch Early Warning System (NW).

SYSTEM LOCATION:

The system's databases and coldfusion code are located in Lanham, MD.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who have obtained a mortgage insured under HUD/FHA's single-family mortgage insurance programs. Additionally, individuals involved in the HUD/FHA single-family loan origination process.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records consist of the borrower's name, property address, Social Security Number or other identification number (ID). Also included in the records is originating, sponsoring, holder and servicer lender ID and name, mortgage amount, interest rate, front and back ratios, FHA ADP code, loan purpose, gift source and amount, loan closing and endorsement dates, default status, default reason, default date, post endorsement technical review ratings, underwriter ID and name, appraiser ID and name, HUD indemnification information, and other data fields associated with an FHA Case Number.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Section 203, National Housing Act, Pub. L. 73–479.

PURPOSE(S):

NW enables HUD staff and lenders to monitor the default and claim rates on FHA insured loans for FHA-approved lenders and FHA programs. NW is designed to highlight exceptions—lenders, programs, loan characteristics and geographic areas with unusual originations or high defaults and claims on FHA insured loans. The loan level information is password protected and can only be viewed by HUD staff with a need to know and lenders who were the originator, sponsor, holder, or servicer on the loan.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act other routine uses include:

(a) To FHA approved mortgage institutions to monitor the default and claim rates on FHA insured loans. Mortgage institutions can only view the loan level information where they were the originator, sponsor, holder, or servicer on the loan.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

The NW records are stored on a Sybase 12.5 server HLANUDP001 in the database sfapps and on Sybase IQ server HUDDW database sfdw.

RETRIEVABILITY:

Records are retrieved by a manual or computer search on the number of originations, default, and defaults and claims from the Early Warnings menu option, by computer search on the counts in the Loss Mitigation—Current Defaults Reported display from the Servicing menu option, and by accessing the Late Endorsement, Pipeline/Uninsured, the Default Report by Servicer queries. Entering an FHA Case Number from the Case Status Query feature also retrieves case level detail.

SAFEGUARDS:

Automated records are maintained in secured areas. Access is limited to authorized personnel.

RETENTION AND DISPOSAL:

Neighborhood Watch retains up to 13 quarter end dates of two years of summary originations data, and three quarter end dates of loan level data.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Quality Assurance Division, HULQ, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410.

NOTIFICATION PROCEDURES:

For information, assistance, or inquiry about the existence of records, contact the Privacy Act Officer at the Department of Housing and Urban Development, 451 7th Street SW., Washington, DC. Written requests must include the full name, Social Security Number, date of birth, current address, and telephone number of the individual making the request.

CONTESTING RECORD PROCEDURES:

The Department's rules for contesting the contents of records and appealing initial denials, by the individual concerned, appear in 24 CFR part 16. If additional information or assistance is needed, it may be obtained by contacting: (i) in relation to contesting contents of records, the Privacy Act Officer at the appropriate location. A list of all locations is given in appendix A; (ii) in relation to appeals of initial denials, the HUYD Department Privacy Appeals Officer, Office of General Counsel Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410.

RECORD SOURCE CATEGORIES:

Information may be collected from HUD, program participants, and subject individuals.

EXEMPTIONS FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 03–31276 Filed 12–18–03; 8:45 am]

BILLING CODE 4210–72–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–660–1430–ER–CACA–44491]

Notice of Availability of the Draft Environmental Impact Statement/ Environmental Impact Report (EIS/EIR) for the Imperial Irrigation District's Desert Southwest Transmission Line Project, California

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability.

SUMMARY: In compliance with the National Environmental Policy Act of 1969, as amended, 42 U.S.C 4321–4347, and title 40 CFR part 1500, the Bureau of Land Management (BLM) hereby gives notice that the draft Environmental Impact Statement/ Environmental Impact Report (EIS/EIR) for the Imperial Irrigation District's (IID) Desert Southwest Transmission Line Project is available for public review and comment. This project may involve an amendment to the applicable BLM land use plan: The California Desert Conservation Area (CDCA) Plan of 1980, as amended.

DATES: Comments will be accepted until 90 days have elapsed after publication of a notice of availability of this document, in the **Federal Register**, by the Environmental Protection Agency (EPA).

ADDRESSES: If you wish to comment, you may submit your comments by any of several methods. You may mail comments to: James G. Kenna, Field Manager; Bureau of Land Management, Palm Springs—South Coast Field Office, P.O. Box 581260, North Palm Springs, CA 92258.

You may also comment via the Internet to *dgomez@ca.blm.gov*. Please include in the subject line: "Draft EIS/ EIR, Desert Southwest Transmission Line Project" and your name and return address in your Internet message. If you do not receive a confirmation that we have received your Internet message, contact Diane Gomez at (760) 251–4852. You may also hand-deliver comments to: Bureau of Land Management, Palm Springs-South Coast Field Office, 690 W. Garnet Avenue, North Palm Springs, CA 92258.

Oral comments will be accepted at any of three public meetings to be held during the month of November 2003. These meetings will be held in El Centro, Blythe, and North Palm Springs, California. Notices published in local media will be provided at least 15 days prior to the scheduled public meetings.

Individuals may request confidentiality with respect to their name, address, and phone number. If you wish to have your name or street address withheld from public review, or from disclosure under the Freedom of Information Act, the first line of the comment should start with the words 'CONFIDENTIALITY REQUESTED' in uppercase letters in order for BLM to comply with your request. Such request will be honored to the extent allowed by law. Comment contents will not be kept confidential. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be available for public inspection in their entirety.

FOR FURTHER INFORMATION CONTACT: Diane Gomez at (760) 251–4852 or e-mail: *dgomez@ca.blm.gov*.

SUPPLEMENTARY INFORMATION: A copy of the draft Environmental Impact Statement/Environmental Impact Report (EIS/EIR) for the Imperial Irrigation District's Proposed Desert Southwest Transmission Line Project is available for review via the Internet at *http://www.ca.blm.gov/palmsprings*. Electronic (on CD–ROM) and paper copies may also be obtained by contacting Diane Gomez at the aforementioned addresses and phone number.

The IID is proposing to construct a 230 or 500 kilovolt (kV) electrical transmission line located parallel and adjacent to Interstate Highway 10 between North Palm Springs and Blythe, California, a distance of approximately 118 miles. Four alternatives to the proposed project are being considered in this EIS/EIR. These alternatives are consistent with the California Desert Conservation Area (CDCA) Plan of 1980, as amended, with the exception of Alternative B. This alternative is located partially outside of designated utility corridors under the CDCA Plan and would; if selected, require an amendment to this land use plan.

The BLM, together with the IID, have jointly prepared this draft EIS/EIR. The BLM is the lead Federal agency for the preparation of this EIS/EIR in compliance with the requirements of the National Environmental Policy Act (NEPA). The IID is the lead State of California agency for the preparation of this EIS/EIR in compliance with the requirements of the California Environmental Quality Act (CEQA).

Dated: September 29, 2003.

John R. Kalish,

Acting Field Manager.

[FR Doc. 03–31101 Filed 12–18–03; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT–070–1610–DO–030E]

Notice of Intent To Prepare a Resource Management Plan for the Butte Field Office and Associated Environmental Impact Statement

AGENCY: Butte Field Office, Bureau of Land Management, Interior.

ACTION: Notice of Intent to prepare a Resource Management Plan (RMP) for the Butte Field Office and associated Environmental Impact Statement (EIS).

SUMMARY: This document provides notice that the Bureau of Land Management (BLM) intends to prepare an RMP with an associated EIS for the Butte Field Office. The planning area is located in Beaverhead, Broadwater, Deer Lodge, Gallatin, Jefferson, Lewis and Clark, Park, and Silver Bow Counties, Montana. The plan will fulfill the needs and obligations set forth by the National Environmental Policy Act (NEPA), the Federal Land Policy and Management Act (FLPMA), and BLM management policies. The BLM will work collaboratively with interested parties to identify the management decisions that are best suited to local, regional, and national needs and concerns. The public scoping process will identify planning issues and develop planning criteria, including an evaluation of the existing RMP in the context of the needs and interests of the public.

DATES: This notice initiates the public scoping process. Formal scoping will end February 17, 2004; however, collaboration with the public will continue throughout the process. Comments on issues and planning criteria can be submitted in writing to the address listed below. All public meetings will be announced through the local news media, newsletters, and the BLM Web site (*http://www.mt.blm.gov/bdo*) at least 15 days prior to the event. The minutes and list of attendees for each meeting will be available to the public and open for 30 days to any participant who wishes to clarify the views they expressed.

Public Participation: Public meetings will be held throughout the plan scoping and preparation period. In order to ensure local community participation and input, public meeting locations will be rotated among the towns of Boulder, Bozeman, Butte, Helena, Townsend, and Wise River. Early participation is encouraged and will help determine the future management of the Butte Field Office public lands. In addition to the ongoing public participation process, formal opportunities for public participation will be provided upon publication of the BLM Draft RMP/EIS.

ADDRESSES: Written comments should be sent to Bureau of Land Management, Ruth Miller, RMP Project Manager, Butte Field Office, 106 North Parkmont, Butte, MT, 59701; Fax;—(406) 533–7660. Documents pertinent to this proposal may be examined at the Butte Field Office. Comments, including names and street addresses of respondents, will be available for public review at the Butte Field Office during regular business hours 7:45 a.m. to 4:30 p.m., Monday through Friday, except holidays, and may be published as part of the EIS. Individual respondents may request confidentiality. If you wish to withhold your name or street address from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your written comments. Such requests will be honored to the extent allowed by law. All submissions from organizations and businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be available for public inspection in their entirety.

FOR FURTHER INFORMATION CONTACT: Ruth Miller, on (406) 533–7645, Bureau of Land Management, RMP Project Manager, Butte Field Office, 106 North Parkmont, Butte, MT, 59701.

SUPPLEMENTARY INFORMATION: The lands within the Butte Field Office are currently being managed according to the 1984 Headwaters RMP. In 1983, while the Headwaters RMP was being developed, the Butte and Lewistown Districts (now called Field Offices) adjusted their jurisdictional boundaries (as well as the Dillon Resource Area and Headwaters Resource Area within the Butte District). This resulted in lands covered by the Headwaters RMP being managed by both Districts.

The BLM lands in the following areas are now being managed by the Lewistown Field Office and will not be covered in the Butte RMP process: Pondera, Teton, Cascade, Meagher, and the north half of Lewis and Clark County. Also, the BLM lands within Silver Bow and Deerlodge Counties (and a small portion of Beaverhead County along the Big Hole River) were included in the Dillon Resource Area Management Framework Plan (MFP) of 1979 and will now be covered in this Butte RMP revision.

Because this RMP will follow the existing Butte Field Office boundary, the name of the RMP will be the Butte RMP. This will help separate the new document from the existing Headwaters RMP, and from the Lewistown portion that will still be managed under the Headwaters RMP until its revision.

The RMP revision to be prepared for the public lands administered by the Butte Field Office will identify goals, objectives, standards and guidelines for management of a variety of resources and values. The plan will specify actions, constraints, and general management practices necessary to achieve desired conditions. The plan will also identify any areas requiring special management such as ACECs. The scope of the RMP will be comprehensive. Certain existing standards and guidelines and other BLM plans will be incorporated into the RMP.

The changing needs and interests of the public necessitate a revision to the Butte Field Office RMP. Preliminary issues and management concerns have been identified by BLM personnel, other agencies, and in meetings with individuals and user groups. They represent the BLM's knowledge to date on the existing issues and concerns with current management. The major issue themes that will be addressed in the RMP effort include: (1) Management of vegetation; (2) conservation and recovery of special status species; (3) water quality, quantity, and aquatic species; (4) travel management and access to public lands; (5) management of areas with special values; (6) availability and management of public lands for commercial uses; and (7) land tenure adjustments.

After gathering public comments on what issues the plan should address, the suggested issues will be placed in one of three categories:

1. Issues to be resolved in the plan;
2. Issues resolved through policy or administrative action; or
3. Issues beyond the scope of this plan.

Rationale will be provided for each issue placed in categories two or three. In addition to these major issues, a number of management questions and concerns will be addressed in the plan.

The public is encouraged to help identify these questions and concerns during the scoping phase.

An interdisciplinary approach will be used to develop the plan in order to consider the variety of resource issues and concerns identified. Disciplines involved in the planning process will include specialists with expertise in minerals and geology, forestry, range, fire and fuels, outdoor recreation, archaeology, paleontology, wildlife and fisheries, lands and realty, hydrology, soils, sociology and economics.

The following planning criteria have been proposed to guide development of the plan, avoid unnecessary data collection and analyses, and to ensure the plan is tailored to the issues. Other criteria may be identified during the public scoping process. After gathering comments on planning criteria, the BLM will finalize the criteria and provide feedback to the public on the criteria to be used throughout the planning process.

- The plan will be completed in compliance with FLPMA and all other applicable laws.
- The planning process will include an EIS that will comply with NEPA standards.
- The plan will establish new guidance and identify existing guidance upon which the BLM will rely in managing public lands within the Butte Field Office.
- The RMP/EIS will incorporate by reference the *Standards for Rangeland Health and Guidelines for Livestock Grazing Management*, the *Off-Highway Vehicle EIS and Plan Amendment for Montana, North Dakota, and Portions of South Dakota*, and, when signed, the *Montana/Dakotas Statewide Fire Management Plan*.
- The RMP/EIS will incorporate by reference all prior Wilderness designations and Wilderness Study Area findings that affect public lands in the planning area.
- The plan will result in determinations as required by special program and resource specific guidance detailed in Appendix C of the BLM's Planning Handbook.
- The plan will recognize the State's responsibility to manage wildlife populations, including uses such as hunting and fishing, within the planning area.
- Decisions in the plan will strive to be compatible with the existing plans and policies of adjacent local, State, tribal, and Federal agencies as long as the decisions are in conformance with legal mandates on management of public lands.
- The scope of analysis will be consistent with the level of analysis in approved plans and in accordance with Bureau-wide standards and program guidance.
- Resource allocations must be reasonable and achievable within available technological and budgetary constraints.
- The lifestyles and concerns of area residents will be recognized in the plan.

The BLM is also requesting public input for nominations considered worthy of ACEC designation. To be considered as a potential ACEC, an area must meet the criteria of relevance and importance as established and defined in 43 CFR 1610.7–2. Nominations must include descriptive materials, detailed maps, and evidence supporting the "relevance" and "importance" of the resource or area. There is currently one ACEC within the Butte FO boundary; the Sleeping Giant ACEC in Lewis and Clark County was designated by the Headwaters RMP in 1984. All ACEC nominations within the planning area will be evaluated during development of the RMP.

Dated: September 12, 2003.

Richard M. Hotaling,

Field Office Manager.

[FR Doc. 03–28963 Filed 12–18–03; 8:45 am]

BILLING CODE 4310–$$–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[UT080–1310–00]

Notice of Intent To Prepare an Environmental Impact Statement (EIS) on the Greater Deadman Bench Oil and Gas Producing Region Field Development Project, Uintah County, UT

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, the Bureau of Land Management (BLM), Vernal Field Office, Vernal, Utah, will prepare an Environmental Impact Statement (EIS). The EIS will focus on Questar Exploration and Production Company's (QEP) proposed gas and oil development on about 99,000 acres in the Greater Deadman Bench oil and gas production region.

DATES: Public scoping comments will be accepted on or before February 4, 2004. A public scoping open house and information meeting will be held on January 14, 2004 from 7–9 p.m., at the Uintah County Commission Chambers, 147 E Main Street, Vernal, Utah. If you have any information, data, concerns, or suggestions related to the potential impacts of the proposed action, including the issues identified above, please submit them to the address listed below.

SUPPLEMENTARY INFORMATION: The project area, located about 20 miles south of Vernal, Utah, involves about 85% BLM-administered lands (83,864 acres); 12% (11,448 acres) State of Utah-administered lands; and, 3% (3,473 acres) patented land. Currently 278 oil and water-injection wells and about 300 gas wells with their attendant service roads exist within the project area. The proponent anticipates the drilling of up to 1239 new wells over a period of 10 years, or until the resource base is fully developed. Of these new wells, 826 would be new locations and 470 would be twins drilled from existing locations (representing 38% of the total new wells that would be drilled). Required infrastructure includes electric power lines, roads, oil and gas flow lines and pipelines, well pads (with pumping units for oil wells), central facilities, water injection facilities, gas treatment and compression facilities. Gas would be transported via pipeline to centralized compression and treatment facilities. Produced water would be trucked or piped to one of several existing QEP water injection plants where it would be re-injected into the oil reservoir or disposal zone via an injection well system.

Major issues at this time include potential impacts on desert and semi-desert ecosystems and their dependent wildlife species (including antelope, sage grouse, white-tailed prairie dog colonies and their associated species), vegetation (including noxious weeds and reclamation), riparian habitat associated with the Green River corridor. Alternatives identified at this time include the proposed action and the no action alternatives.

FOR FURTHER INFORMATION CONTACT: Jean Nitschke-Sinclear, (435) 781–4437 or e-mail: *jean_nitschke-sinclear@blm.*

ADDRESSES: Written scoping comments should be sent to: Field Manager, Bureau of Land Management, Vernal Field Office, 170 South 500 East, Vernal, Utah 84078, Attn: QEP Field Development Project.

Comments, including names and street addresses of respondents will be available for public review at the BLM Vernal Field Office and will be subject to disclosure under the Freedom of Information Act (FOIA). They may be published as part of the EIS and other related documents. Individual respondents may request confidentiality. If you wish to withhold your name or street address from public review and disclosure under the FOIA, you must state this prominently at the beginning of your written comment. Such requests will be honored to the extent allowed by law. All submissions from organizations or businesses will be made available for public inspection in their entirety.

Dated: October 9, 2003.

Gene Terland,

Associate State Director.

[FR Doc. 03–31123 Filed 12–18–03; 8:45 am]

BILLING CODE 4310–$$–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NM–910–04–1020–PH]

New Mexico Resource Advisory Council, Notice of Call for Nominations

AGENCY: Bureau of Land Management, Department of the Interior.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act and the Federal Advisory Committee Act of 1972, the U.S. Department of the Interior, Bureau of Land Management, New Mexico Resource Advisory Council (RAC) will meet as indicated below.

DATES: The meeting dates are February 26–27, 2004, at Marbob Energy, 2208 West Main, Artesia, New Mexico, beginning at 8 a.m. both days. The meeting will adjourn at approximately 5 p.m. on Thursday and 11:30 a.m. on Friday. The three established RAC working groups may have a late afternoon or an evening meeting on Thursday, February 26, 2004

An optional field trip is planned for Wednesday, February 25, 2004. The public comment period is scheduled for Wednesday, February 25, from 6–8 p.m. at Marbob Energy, 2208 West Main, Artesia, New Mexico. The public may present written comments to the RAC.

Depending on the number of individuals wishing to comment and time available, oral comments may be limited.

SUPPLEMENTARY INFORMATION: The 15-member RAC advises the Secretary of the Interior, through the Bureau of Land Management, on a variety of planning and management issues associated with public land management in New Mexico. All meetings are open to the public. At this meeting, topics for discussion include: Otero Mesa Unitization working Group results, rehabilitation of the oil and gas legacy wells, oil and gas and cultural management in the Carlsbad Area, the Preferred Upstream Management Practices (PUMP) III Project (a cultural resources Geographic Information System database focused on oil and gas fields), update on noxious weeds program, access follow-up, and proposed RAC initiatives.

FOR FURTHER INFORMATION CONTACT: Theresa Herrera, New Mexico State Office, Office of External Affairs, Bureau of Land Management, P.O. Box 27115, Santa Fe, New Mexico 87502–0115, (505) 438–7515.

Dated: December 15, 2003.

Linda S.C. Rundell,

State Director.

[FR Doc. 03–31284 Filed 12–18–03; 8:45 am]

BILLING CODE 4310–FB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–130–1020–PH; GP4–0048]

Notice of Public Meeting, Eastern Washington Resource Advisory Council Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act (FLPMA) and the Federal Advisory Committee Act of 1972 (FACA), the U.S. Department of the Interior, Bureau of Land Management (BLM) Eastern Washington Resource Advisory Council (RAC), will meet as indicated below.

DATES: The Eastern Washington Resource Advisory Council (EWRAC) will meet on January 23, 2004, at the Spokane District Office, Bureau of Land Management, 1103 North Fancher Road, Spokane, Washington, 99212–1275.

SUPPLEMENTARY INFORMATION: The meeting will start at 9 a.m. and adjourn about 4 p.m. Topics on the meeting agenda include:

- Proposed Rule to Amend BLMs Livestock Grazing Regulations
- Fiscal Year 2004 Resource Advisory Council Work Plan
- Land Exchange Update

The RAC meeting is open to the public, and there will be an opportunity for public comments at 10:30 a.m.. Information to be distributed to Council members for their review is requested in written format 10 days prior to the Council meeting date.

FOR FURTHER INFORMATION CONTACT: Sandra Gourdin or Kathy Helm, Bureau of Land Management, Spokane District Office, 1103 N. Fancher Road, Spokane, Washington, 99212, or call (509) 536–1200.

Dated: December 15, 2003.

Joseph K. Buesing,

District Manager.

[FR Doc. 03–31292 Filed 12–18–03; 8:45 am]

BILLING CODE 1550–13–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Lake Berryessa Visitor Services Plan, Napa County, CA

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice for additional open house meeting on the Draft Environmental Impact Statement (DEIS).

SUMMARY: The Bureau of Reclamation will hold an additional open house on the DEIS for the Lake Berryessa Visitor Services Plan (VSP). The first open house was held on November 22, 2003. The public hearings will be held as originally planned on January 21, 2004. The notice of availability of the DEIS and notice of public workshop and notice of public hearings was published in the **Federal Register** on October 31, 2003 (68 FR 62097).

DATES: The additional open house will be held on Saturday, January 10, 2004 from 10 a.m. to 4 p.m. in Napa, CA.

The public hearings will be held on Wednesday, January 21, 2004 from 1 to 4 p.m. and 7 to 10 p.m.

ADDRESSES: The additional open house will be held at the Napa Valley Expo at the Reisling Hall, 575 3rd Street, Napa, CA.

The hearings will be held at the Solano County Fairgrounds, Exposition Hall, 900 Fairgrounds Drive, Vallejo, CA.

FOR FURTHER INFORMATION CONTACT: Mr. Stephen Rodgers at 707–966–2111 x106, fax 707–966–0409, or e-mail: *srodgers@mp.usbr.gov.*

Dated: December 12, 2003.

Frank Michny,

Regional Environmental Officer, Mid-Pacific Region.

[FR Doc. 03–31291 Filed 12–18–03; 8:45 am]

BILLING CODE 4310–MN–P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–501]

In the Matter of Certain Encapsulated Integrated Circuit Devices and Products Containing Same; Notice of Investigation

AGENCY: International Trade Commission.

ACTION: Institution of investigation pursuant to 19 U.S.C. 1337.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on November 17, 2003, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of Amkor Technology, Inc. of West Chester, Pennsylvania. Letters supplementing the complaint were filed on December 2 and 9, 2003. The complaint as supplemented alleges violations of section 337 in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain encapsulated integrated circuit devices and products containing same by reason of infringement of claims 1–4, 7, 17, 18, and 20–23 of U.S. Patent No. 6,433,277; claims 1–4, 7 and 8 of U.S. Patent No. 6,630,728; and claims 1, 2, 13 and 14 of U.S. Patent No. 6,455,356. The complaint further alleges that an industry in the United States exists as required by subsection (a)(2) of section 337.

The complainant requests that the Commission institute an investigation and, after the investigation, issue an exclusion order and a cease and desist order.

ADDRESSES: The complaint and supplements, except for any confidential information contained therein, are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Room 112, Washington, DC 20436, telephone 202–205–2000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov*.

FOR FURTHER INFORMATION CONTACT: David O. Lloyd, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, telephone 202–205–2582.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR 210.10 (2003).

Scope of Investigation

Having considered the complaint, the U.S. International Trade Commission, on December 12, 2003, *Ordered that*—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain encapsulated integrated circuit devices or products containing same by reason of infringement of one or more of claims 1–4, 7, 17, 18, and 20–23 of U.S. Patent No. 6,433,277; claims 1–4, 7 and 8 of U.S. Patent No. 6,630,728; and claims 1, 2, 13 and 14 of U.S. Patent No. 6,455,356; and whether an industry in the United States exists as required by subsection (a)(2) of section 337.

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is—

Amkor Technology, Inc., 1345 West Enterprise Drive, West Chester, Pennsylvania 19380.

(b) The respondents are the following companies alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

Carsem (M) Sdn Bhd, No. 2 Jalan Lapangan Terbang, 31350 Ipoh, Perak, Malaysia.

Carsem Semiconductor Sdn Bhd, Lot 52986, Taman Meru Industrial Estate, 30020 Jelapang, Ipoh, Perak, Malaysia.

Carsem, Inc., 17890 Castleton Street, Suite 245, City of Industry, California 91748.

(c) David O. Lloyd, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street, SW., Suite 401, Washington, DC 20436, who shall be the Commission investigative attorney, party to this investigation; and

(3) For the investigation so instituted, the Honorable Charles E. Bullock is designated as the presiding administrative law judge.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with § 210.13 of the Commission's rules of practice and procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(d) and 210.13(a), such responses will be considered by the Commission if received no later than 20 days after the date of service by the Commission of the complaint and the notice of investigation. Extensions of time for submitting responses to the complaint will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and to authorize the administrative law judge and the Commission, without further notice to that respondent, to find the facts to be as alleged in the complaint and this notice and to enter both an initial determination and a final determination containing such findings, and may result in the issuance of a limited exclusion order or a cease and desist order or both directed against that respondent.

Issued: December 15, 2003.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 03–31252 Filed 12–18–03; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–1057 (Preliminary)]

Certain Processed Hazelnuts From Turkey

Determination

On the basis of the record [1] developed in the subject investigation, the United States International Trade Commission (Commission) determines, pursuant to section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673(a)) (the Act), that there is a reasonable indication that an industry in the United States is materially injured by reason of imports from Turkey of certain processed hazelnuts, provided for in subheadings 0802.22.00 and 2008.19.20 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value (LTFV).

[1] The record is defined in § 207.2(f) of the Commission's rules of practice and procedure (19 CFR 207.2(f)).

Commencement of Final Phase Investigation

Pursuant to § 207.18 of the Commission's rules, the Commission also gives notice of the commencement of the final phase of its investigation. The Commission will issue a final phase notice of scheduling, which will be published in the **Federal Register** as provided in § 207.21 of the Commission's rules, upon notice from the Department of Commerce (Commerce) of an affirmative preliminary determination in the investigation under section 733(b) of the Act, or, if the preliminary determination is negative, upon notice of an affirmative final determination in that investigation under section 735(a) of the Act. Parties that filed entries of appearance in the preliminary phase of the investigation need not enter a separate appearance for the final phase of the investigation. Industrial users, and, if the merchandise under investigation is sold at the retail level, representative consumer organizations have the right to appear as parties in Commission antidumping and countervailing duty investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigation.

Background

On October 21, 2003, a petition was filed with the Commission and Commerce on behalf of Westnut LLC, Dundee, OR; Northwest Hazelnut Co., Hubbard, OR; Hazelnut Growers of Oregon, Cornelius, OR; Willamette Filbert Growers, Newberg, OR; Evergreen Orchards, McMinnville, OR; and Evonuk Orchards, Eugene, OR, alleging that an industry in the United States is materially injured and threatened with material injury by reason of LTFV imports of certain processed hazelnuts from Turkey. Accordingly, effective October 21, 2003, the Commission instituted antidumping duty investigation No. 731–TA–1057 (Preliminary).

Notice of the institution of the Commission's investigation and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of October 28, 2003 (68 FR 61465). The conference was held in Washington, DC, on November 12, 2003, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in this investigation to the Secretary of Commerce on December 12, 2003. The views of the Commission are contained in USITC Publication 3656 (December 2003), entitled *Certain Processed Hazelnuts from Turkey: Investigation No. 731–TA–1057 (Preliminary).*

By order of the Commission.

Issued: December 15, 2003.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 03–31253 Filed 12–18–03; 8:45 am]

BILLING CODE 7020–02–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–52,525]

Alcatel Internetworking (PE), Spokane, WA; Notice of Affirmative Determination Regarding Application for Reconsideration

By letter of September 30, 2003, a petitioner requested administrative reconsideration of the Department of Labor's Notice of Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance, applicable to workers of the subject firm. The Department's determination notice was signed on August 29, 2003. The notice was published in the **Federal Register** on September 17, 2003 (68 FR 54497).

The Department reviewed the request for reconsideration and has determined that the petitioner has provided additional information. Therefore, the Department will conduct further investigation to determine if the workers meet the eligibility requirements of the Trade Act of 1974.

Conclusion

After careful review of the application, I conclude that the claim is of sufficient weight to justify reconsideration of the Department of Labor's prior decision. The application is, therefore, grated.

Signed in Washington, DC this 14th day of November, 2003.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–31297 Filed 12–18–03; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–52,751]

Cliffs Mining Services Company, Ishpeming, MI; Notice of Affirmative Determination Regarding Application for Reconsideration

By letter of November 10, 2003, a petitioner requested administrative reconsideration of the Department of Labor's Notice of Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance, applicable to workers of the subject firm. The Department's determination notice was signed on October 10, 2003. The notice was published in the **Federal Register** on November 6, 2003 (68 FR 62832).

The Department reviewed the request for reconsideration and has determined that the petitioner has provided additional information. Therefore, the Department will conduct further investigation to determine if the workers meet the eligibility requirements of the Trade Act of 1974.

Conclusion

After careful review of the application, I conclude that the claim is of sufficient weight to justify reconsideration of the Department of Labor's prior decision. The application is, therefore, granted.

Signed at Washington, DC this 21st day of November, 2003.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–31304 Filed 12–18–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–52,538]

Custom Tool and Design, Inc., Erie, PA; Notice of Affirmative Determination Regarding Application for Reconsideration

By letter of October 10, 2003, a petitioner requested administrative reconsideration of the Department of Labor's Notice of Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance, applicable to workers of the subject firm. The denial notice was signed on September 23 2003, and will

soon be published in the **Federal Register**.

The Department reviewed the request for reconsideration and has determined that sales and production did decline in the relevant period, and therefore, a survey of subject firm customers is merited to establish whether imports contributed to layoffs in the petitioning worker group.

Conclusion

After careful review of the application, I conclude that the claim is of sufficient weight to justify reconsideration of the Department of Labor's prior decision. The application is, therefore, granted.

Signed at Washington, DC this 21st day of November, 2003.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–31303 Filed 12–18–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–52,474]

Kulicke and Soffa Industries, Austin, TX; Notice of Affirmative Determination Regarding Application for Reconsideration

By letter of October 16, 2003, a petitioner requested administrative reconsideration of the Department of Labor's Notice of Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance, applicable to workers of the subject firm. The Department's determination notice was signed on September 24, 2003 and published in the **Federal Register** on November 6, 2003 (68 FR 62832).

The Department has reviewed the request for reconsideration and has determined that the petitioner has provided additional information. Therefore, the Department will conduct further investigation to determine if the workers meet the eligibility requirements of the Trade Act of 1974.

Conclusion

After careful review of the application, I conclude that the claim is of sufficient weight to justify reconsideration of the Department of Labor's prior decision. The application is, therefore, granted.

Signed at Washington, DC this 18th day of November, 2003.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–31302 Filed 12–18–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–52,847]

Medsource Technologies, Newton, MA; Notice of Affirmative Determination Regarding Application for Reconsideration

By letter of November 17, 2003, a petitioner requested administrative reconsideration of the Department of Labor's Notice of Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance, applicable to workers of the subject firm. The Department's determination notice was signed on October 21, 2003 and published in the **Federal Register** on November 6, 2003 (68 FR 62833).

The Department reviewed the request for reconsideration and has determined that the petitioner has provided additional information regarding an alleged shift of production to Mexico. Therefore, the Department will conduct further investigation to determine if the workers meet the eligibility requirements of the Trade Act of 1974.

Conclusion

After careful review of the application, I conclude that the claim is of sufficient weight to justify reconsideration of the Department of Labor's prior decision. The application is, therefore, granted.

Signed at Washington, DC this 2nd day of December, 2003.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–31305 Filed 12–18–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–51,242]

Polyone Corporation, O'Sullivan Plastic Division, Yerington, NV; Notice of Affirmative Determination Regarding Application for Reconsideration

By letter of June 27, 2003, a company official requested administrative reconsideration of the Department of Labor's Notice of Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance, applicable to workers of the subject firm. The denial notice was signed on May 5, 2003, and published in the **Federal Register** on May 19, 2003 (68 FR 27106).

The Department reviewed the request for reconsideration and has determined that the Department will conduct further surveys of customers provided by the company that were not indicated in the initial investigation.

Conclusion

After careful review of the application, I conclude that the claim is of sufficient weight to justify reconsideration of the Department of Labor's prior decision. The application is, therefore, granted.

Signed at Washington, DC this 21st day of November, 2003.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–31300 Filed 12–18–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–51,655]

Timeplex, LLC, a Division of Platinum Equity Holdings, Hackensack, New Jersey; Notice of Affirmative Determination Regarding Application for Reconsideration

By letter of July 3, 2003, a petitioner requested administrative reconsideration of the Department of Labor's Notice of Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance, applicable to workers of the subject firm. The denial notice was signed on June 10, 2003, and published in the **Federal Register** on June 19, 2003 (68 FR 36846).

The Department reviewed the request for reconsideration and has determined that a survey of subject firm customers is merited to establish whether imports contributed to layoffs in the petitioning worker group.

Conclusion

After careful review of the application, I conclude that the claim is of sufficient weight to justify reconsideration of the Department of Labor's prior decision. The application is, therefore, granted.

Signed at Washington, DC this 21st day of November, 2003.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–31301 Filed 12–18–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment Standards Administration

Proposed Collection; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) (44 U.S.C. 3506(c)(2)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment Standards Administration is soliciting comments concerning the proposed collection: Maintenance of Receipts for Benefits Paid by a Coal Mine Operator (CM–200). A copy of the proposed information collection request can be obtained by contacting the office listed below in the addresses section of this notice.

DATES: Written comments must be submitted to the office listed in the addresses section below on or before February 17, 2004.

ADDRESSES: Ms. Hazel M. Bell, U.S. Department of Labor, 200 Constitution Ave., NW., Room S–3201, Washington, DC 20210, telephone (202) 693–0418, fax (202) 693–1451, Email *bell.hazel@dol.gov*. Please use only one method of transmission for comments (mail, fax, or Email).

SUPPLEMENTARY INFORMATION:

I. Background

The Office of Workers' Compensation Programs (OWCP) administers the Federal Black Lung Benefits Act (FBLBA). Under 20 CFR 725.531, self-insured coal mine operators or insurance carriers must maintain receipts for black lung benefit payments made for five years after the date on which the receipt was executed. This requirement is designated as CM–200, Maintenance of Receipts for Benefits Paid by a Coal Mine Operator. There is no form or format for the receipts; a cancelled check will satisfy the requirement. This information collection is currently approved for use through June 30, 2004.

II. Review Focus

The Department of Labor is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

III. Current Actions

The Department of Labor seeks approval for the extension of this information collection in order that coal mine operators and insurers can provide evidence, as necessary, that payment to claimants has been made and received.

Type of Review: Extension.
Agency: Employment Standards Administration.
Title: Maintenance of Receipts for Benefits Paid by a Coal Mine Operator.
OMB Number: 1215–0124.
Agency Number: CM–200.
Affected Public: Business or other for profit and State, local or tribal government.
Recordkeeping: On occasion.
Total Respondents: 140.
Total Responses: 140.
Estimated Total Burden Hours: 1.
Total Burden Cost (capital/startup): $0.
Total Burden Cost (operating/maintenance): $0.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: December 15, 2003.

Bruce Bohanon,

Chief, Branch of Management Review and Internal Control, Division of Financial Management, Office of Management, Administration and Planning, Employment Standards Administration.

[FR Doc. 03–31296 Filed 12–18–03; 8:45 am]

BILLING CODE 4510–CR–P

DEPARTMENT OF LABOR

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and

federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to the impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedes decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department.

Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., Room S–3014, Washington, DC 20210.

Modification to General Wage Determination Decisions

The number of the decisions listed to the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume and State. Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

New Jersey
NJ030002 (Jun. 13, 2003)
NJ030003 (Jun. 13, 2003)
NJ030004 (Jun. 13, 2003)
NJ030005 (Jun. 13, 2003)
NJ030007 (Jun. 13, 2003)
NJ030009 (Jun. 13, 2003)

Volume II

Pennsylvania
PA030004 (Jun. 13, 2003)
PA030005 (Jun. 13, 2003)
PA030006 (Jun. 13, 2003)
PA030008 (Jun. 13, 2003)
PA030009 (Jun. 13, 2003)
PA030010 (Jun. 13, 2003)
PA030016 (Jun. 13, 2003)
PA030017 (Jun. 13, 2003)
PA030019 (Jun. 13, 2003)
PA030020 (Jun. 13, 2003)
PA030026 (Jun. 13, 2003)
PA030027 (Jun. 13, 2003)
PA030030 (Jun. 13, 2003)
PA030031 (Jun. 13, 2003)
PA030035 (Jun. 13, 2003)
PA030040 (Jun. 13, 2003)
PA030042 (Jun. 13, 2003)
PA030054 (Jun. 13, 2003)
PA030059 (Jun. 13, 2003)
West Virginia
WV030001 (Jun. 13, 2003)
WV030002 (Jun. 13, 2003)
WV030003 (Jun. 13, 2003)
WV030010 (Jun. 13, 2003)

Volume III

Kentucky
KY030003 (Jun. 13, 2003)
KY030029 (Jun. 13, 2003)

Volume IV

None

Volume V

New Mexico
NM030001 (Jun. 13, 2003)
NM030011 (Jun. 13, 2003)

Volume VI

None

Volume VII

Nevada
NV030003 (Jun. 13, 2003)
NV030005 (Jun. 13, 2003)

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts." This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country.

General wage determinations issued under the Davis-Bacon and related Acts are available electronically at no cost on the Government Printing Office site at *www.access.gpo.gov/davisbacon*. They are also available electronically by subscription to the Davis-Bacon Online Service (*http://davisbacon.fedworld.gov*) of the National Technical Information Service (NTIS) of the U.S. Department of Commerce at 1–800–363–2068. This subscription offers value-added features such as electronic delivery of modified wage decisions directly to the user's desktop, the ability to access prior wage decisions issued during the year, extensive Help desk Support, *etc.*

Hard-copy subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 512–1800.

When ordering hard-copy subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the six separate Volumes, arranged by State. Subscriptions include an annual edition (issued in January or February) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC this 11th day of December 2003.

Carl J. Poleskey,

Chief, Branch of Construction Wage Determinations.

[FR Doc. 03–31039 Filed 12–18–03; 8:45 am]

BILLING CODE 4510–27–M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. ICR–1218–0065(2004)]

Standard on Access to Employee Exposure and Medical Records (29 CFR 1910.1020), Extension of the Office of Management and Budget's (OMB) Approval of Information Collection (Paperwork) Requirements

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Request for comment.

SUMMARY: OSHA solicits comments concerning its proposal to decrease the existing burden-hour estimates, and to extend OMB approval of the information collection requirements of the regulation titled Access to Employee Exposure and Medical Records (29 CFR 1910.1020).

DATES: Comments must be submitted by the following dates:

Hard Copy: Your comments must be submitted (postmarked or sent) by February 17, 2004.

Facsimile and electronic transmission: Your comments must be sent by February 17, 2004.

I. Submission of Comments

Regular mail, express delivery, hand-delivery, and messenger service: Submit your comments and attachments to the OSHA Docket Office, Docket No. ICR 1218–0065(2004), Room N–2625, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. OSHA Docket Office and Department of Labor hours of operation are 8:15 a.m. to 4:45 p.m., e.s.t.

Facsimile: If your comments, including any attachments, are 10 pages or fewer, you may fax them to the OSHA Docket Office at (202) 693–1648. You must include the docket number of this document, Docket No. ICR 1218–0065(2004), in your comments.

Electronic: You may submit comments, but not attachments, throughout the Internet at *http://ecomments.osha.gov/*.

II. Obtaining Copies of Supporting Statement for the Information Collection

The Supporting Statement for the information Collection is available for downloading from OSHA's Web site at *http://www.osha.gov*. The supporting statement is available for inspection and copying in the OSHA Docket Office, at the address listed above. A printed copy of the supporting statement can be obtained by contacting Todd Owen at (202) 693–2222

FOR FURTHER INFORMATION CONTACT: Todd Owen, Directorate of Standards and Guidance, OSHA, U.S. Department of Labor, Room N–3609, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693–2222.

SUPPLEMENTARY INFORMATION:

I. Submission of Comments on This Notice and Internet Access to Comments and Submissions

You may submit comments in response to this document by (1) hard copy, (2) fax transmission (facsimile), or (3) electronically through the OSHA Web page. Please note you cannot attach materials such as studies or journal articles to electronic comments. If you have additional materials, you must submit three copies of them to the OSHA Docket Office at the address above. The additional materials must clearly identify your electronic comments by name, date, subject and docket number so we can attach them to your comments. Because of security-related problems there may be a significant delay in the receipt of comments by regular mail. Please contact the OSHA Docket Office at (202) 693–2350 for information about security procedures concerning the delivery of materials by express delivery, hand delivery and messenger service.

II. Background

The Department of Labor, as part of its continuing effort to reduce paperwork and respondent (*i.e.*, employer) burden, conducts a preclearance consultation program to provide the public with an opportunity to comment on proposed and continuing information collection requirements in accordance with the Paperwork Reduction Act of 1995 (PRA–95) (44 U.S.C. 3506(c)(2)(A)). This program ensures that information is in the desired format, reporting burden (time and costs) is minimal, collection instruments are clearly understood, and OSHA's estimate of the information collection burden is correct. The Occupational Safety and Health Act of 1970 (the Act) authorizes information collection by employers as necessary or appropriate for enforcement of the Act or for developing information regarding the causes and prevention of occupational injuries, illnesses, and accidents (29 U.S.C. 657). Under the authority granted by the OSH Act, OSHA published a health regulation governing access to employee exposure-monitoring data and medical records. This regulation does not require employers to collect any information or to establish any new systems of records. Rather, it requires that employers provide employees, their designated representatives, and OSHA with access to employee exposure-monitoring and medical records, and any analyses resulting from these records, whether or not the records are mandated by specific occupational safety and health standards. In this regard, the regulation specifies requirements for record access, record retention, employee information, trade-secret management, and record transfer. Accordingly, the Agency attributes the burden hours and costs associated with exposure monitoring and measurement, medical surveillance, and the other activities required to generate the data governed by the regulation to the health standards that specify these activities, therefore, OSHA did not include these burden hours and costs in this ICR.

Access to exposure and medical information enables employees and their designated representatives to become directly involved in identifying and controlling occupational health hazards, as well as managing and preventing occupationally-related health impairment and disease. Providing the Agency with access to the records permits it to ascertain whether or not employers are complying with the regulation, as well as the recordkeeping requirements of its other health standards; therefore, OSHA access provides additional assurance that employees and their designated representatives are able to obtain the data they need to conduct their analyses.

III. Special Issues for Comment

OSHA has a particular interest in comments on the following issues:

- Whether the proposed information collection requirements are necessary for the proper performance of the Agency's functions to protect workers, including whether the information is useful;
- The accuracy of OSHA's estimate of the burden (time and costs) of the information collection requirements, including the validity of the methodology and assumptions used;
- The quality, utility, and clarity of the information collected; and
- Ways to minimize the burden on employers who must comply; for example, by using automated or other technological information collection and transmission techniques.

IV. Proposed Actions

OSHA proposes to decrease the existing burden-hour estimates, and to extend OMB approval of the information collection requirements of the Access to Employee Exposure and Medical Records Standard (29 CFR 1910.1020). The reduction is mainly a result of a reduction in the estimated number of establishments affected by this regulation.

OSHA will summarize the comments submitted in response to this notice, and will include this summary in the request to OMB to extend the approval of the information collection requirements contained in the Access to Employee Exposure and Medical Records Standard (29 CFR 1910.1020).

Type of Review: Extension of a currently-approved information collection requirement.

Title: Access to Employee Exposure and Medical Records (29 CFR 1910.1020).

OMB Number: 1218–0065.

Affected Public: Business or other for-profit organizations; Federal government; State, local, or tribal governments.

Number of Respondents: 717,268.

Frequency: On occasion.

Total Responses: 4,577,613.

Average Time per Response: Varies from 5 minutes (.08 hour) to 10 minutes (.17 hour).

Estimated Total Burden Hours: 561,308.

Estimated Cost (Operation and Maintenance): $0.

III. Authority and Signature

John L. Henshaw, Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice. The authority for this notice is the Paperwork Reduction Act of 1995 (44 U.S.C. 3506), and Secretary of Labor's Order No. 5–2002 (67 FR 65008).

Signed in Washington, DC on December 15, 2003.

John L. Henshaw,

Assistant Secretary of Labor.

[FR Doc. 03–31288 Filed 12–18–03; 8:45 am]

BILLING CODE 4510–26–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Meetings of Humanities Panel

AGENCY: The National Endowment for the Humanities.

ACTION: Notice of meetings.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, as amended), notice is hereby given that the following meetings of the Humanities Panel will be held at the Old Post Office, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: Heather Gottry, Acting Advisory Committee Management Officer, National Endowment for the Humanities, Washington, DC 20506; telephone (202) 606–8322. Hearing-impaired individuals are advised that information on this matter may be obtained by contacting the Endowment's TDD terminal on (202) 606–8282.

SUPPLEMENTARY INFORMATION: The proposed meetings are for the purpose of panel review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by the grant applicants. Because the proposed meetings will consider information that is likely to disclose trade secrets and commercial or financial information obtained from a person and privileged or confidential and/or information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, pursuant to authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee meetings, dated July 19, 1993, I have determined that these meetings will be closed to the public pursuant to subsections (c) (4), and (6) of section 552b of Title 5, United States Code.

1. *Date:* January 6, 2004.
Time: 8:30 a.m. to 5 p.m.
Room: 415.
Program: This meeting will review applications for Humanities Projects in Media, submitted to the Division of Public Programs the November 3, 2003 deadline.

2. *Date:* January 9, 2004.
Time: 8:30 a.m. to 5 p.m.
Room: 426.
Program: This meeting will review applications for Humanities Projects in Media, submitted to the Division of Public Programs at the November 3, 2003 deadline.

3. *Date:* January 13, 2004.
Time: 8:30 a.m. to 5 p.m.
Room: 426.
Program: This meeting will review applications for Humanities Projects in Media, submitted to the Division of Public Programs at the November 3, 2003 deadline.

4. *Date:* January 16, 2004.
Time: 8:30 a.m. to 5 p.m.
Room: 730.
Program: This meeting will review applications for Humanities Projects in Media, submitted to the Division of Public Programs at the November 3, 2003 deadline.

5. *Date:* January 23, 2004.
Time: 8:30 a.m. to 5 p.m.
Room: 730.
Program: This meeting will review applications for Humanities Projects in Media, submitted to the Division of Public Programs at the November 3, 2003 deadline.

6. *Date:* January 26, 2004.
Time: 8:30 a.m. to 5 p.m.
Room: 315.
Program: This meeting will review applications for Scholarly Editions in American History, submitted to the Division of Research Programs at the November 3, 2003 deadline.

7. *Date:* January 27, 2004.
Time: 8:30 a.m. to 5 p.m.
Room: 315.
Program: This meeting will review applications for Collaborative Research in Archaeology, submitted to the Division of Research Programs at the November 3, 2003 deadline.

8. *Date:* January 27, 2004.
Time: 8:30 a.m. to 5 p.m.
Room: 730.
Program: This meeting will review applications for Humanities Projects in Media, submitted to the Division of Public Programs at the November 3, 2003 deadline.

9. *Date:* January 27, 2004.
Time: 8:30 a.m. to 5:30 p.m.
Room: 415.
Program: This meeting will review applications for Historical Societies, History Museums & Art Museums, submitted to the Office of Challenge grants at the November 3, 2003 deadline.

10. *Date:* January 28, 2004.
Time: 8:30 a.m. to 5 p.m.
Room: 315.
Program: This meeting will review applications for Collaborative Research in The Americas, submitted to the Division of Research Programs at the November 3, 2003 deadline.

11. *Date:* January 29, 2004.
Time: 9 a.m. to 5 p.m.
Room: 315.
Program: This meeting will review applications for Collaborative Research in American Culture, submitted to the Division of Research Programs at the November 3, 2003 deadline.

12. *Date:* January 29, 2004.
Time: 8:30 a.m. to 5:30 p.m.
Room: 415.
Program: This meeting will review applications for Colleges and Universities, submitted to the Office of Challenge Grants at the November 3, 2003 deadline.

13. *Date:* January 30, 2004.
Time: 8:30 a.m. to 5 p.m.
Room: 730.
Program: This meeting will review applications for Humanities Projects in Media, submitted to the Division of Public Programs at the November 3, 2003 deadline.

14. *Date:* January 30, 2004.
Time: 8:30 a.m. to 5 p.m.
Room: 315.
Program: This meeting will review applications for Scholarly Editions II in American Studies, American Literature, and Philosophy, submitted to the Division of Research Programs at the November 3, 2003 deadline.

Heather Gottry,

Acting Advisory Committee Management Officer.

[FR Doc. 03–31289 Filed 12–18–03; 8:45 am]

BILLING CODE 7536–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–254 and 50–265]

Exelon Generation Company, LLC and Midamerican Energy Company; Quad Cities Nuclear Power Station, Units 1 and 2; Environmental Assessment and Finding of No Significant Impact

The Nuclear Regulatory Commission (NRC) is considering issuance of an exemption from 10 CFR 50.75(h)(2) for Facility Operating License Nos. DPR–29 and DPR–30, issued to Exelon Generation Company, LLC (Exelon) and MidAmerican Energy Company (MEC) (the licensee), for operation of the Quad Cities Nuclear Power Station, Units 1 and 2, located in Rock Island County, Illinois. Therefore, as required by 10 CFR 51.21, the NRC is issuing this environmental assessment and finding of no significant impact.

Environmental Assessment

Identification of the Proposed

The proposed is an exemption to the requirements of 10 CFR 50.75(h)(2), as requested by MEC by letter dated November 21, 2003. The proposed action would exempt MEC from compliance with requirements of the new regulation until MEC's amended nuclear decommissioning trusts are approved by the Illinois Commerce Commission.

The Need for the Proposed

The proposed exemption from 10 CFR 50.75(h)(2) is needed because MEC may not obtain approval of the amended nuclear decommissioning trusts from the Illinois Commerce Commission prior to December 24, 2003.

Environmental Impacts of the Proposed

The NRC has completed its safety evaluation of the proposed action and concludes that the proposed exemption will not present an undue risk to the public health and safety. The details of the staff's safety evaluation will be provided in the exemption that will be issued as part of the letter to the MEC approving the exemption to the regulation.

The proposed action will not significantly increase the probability or consequences of accidents. No changes are being made in the types of effluents that may be released offsite. There is no significant increase in the amount of any effluent released offsite. There is no significant increase in occupational or public radiation exposure. Therefore, there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential non-radiological impacts, the proposed action does not have a potential to affect any historic sites. It does not affect non-radiological plant effluents and has no other environmental impact. Therefore, there are no significant non-radiological environmental impacts associated with the proposed action.

Accordingly, the NRC concludes that there are no significant environmental impacts associated with the proposed action.

Environmental Impacts of the Alternatives to the Proposed Action

As an alternative to the proposed action, the staff considered denial of the proposed action (*i.e.*, the "no-action" alternative). Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

The action does not involve the use of any different resources than those previously considered in the Final Environmental Statement for the Quad Cities Power Station, Units 1 and 2 dated September 1972 and the Draft Supplemental Environmental Impact Statement (NUREG–1437 Supplement 16) dated November 2003.

Agencies and Persons Consulted

On December 10, 2003, the staff consulted with the Illinois State official, Frank Niziiolek, of the Illinois Emergency Management Agency, regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

On the basis of the environmental assessment, the NRC concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the NRC has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated November 21, 2003. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management System (ADAMS) Public Electronic Reading Room on the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html.* Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS should contact the NRC PDR Reference staff at 1–800–397–4209, or 301–415–4737, or send an e-mail to *pdr@nrc.gov.*

Dated at Rockville, Maryland, this 15th day of December 2003.

For the Nuclear Regulation Commission.

Lawrence W. Rossbach,

Project Manager, Project Directorate III, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 03–31312 Filed 12–18–03; 8:45 am]

BILLING CODE 7590–01–U

NUCLEAR REGULATORY COMMISSION

Leakage from Reactor Pressure Vessel Lower Head Penetrations and Reactor Coolant Pressure Boundary Integrity

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of issuance.

SUMMARY: The Nuclear Regulatory Commission (NRC) has issued NRC Bulletin 2003–02 to all holders of operating licenses for pressurized-water nuclear power reactors (PWRs) with penetrations in the lower head of the reactor pressure vessel, (RPV) except those who have permanently ceased operations and have certified that fuel has been permanently removed from the RPV. The NRC issued this bulletin to (1) advise PWR addressees that current methods of inspecting the RPV lower heads may need to be supplemented with additional measures (*e.g.*, bare-metal visual inspections) in order to detect reactor coolant pressure boundary (RCPB) leakage, (2) request PWR addressees to provide the NRC with information related to inspections that have been or will be performed to verify the integrity of the RPV lower head penetrations, and (3) require PWR addressees to provide a written response to the NRC in accordance with the provisions of Section 50.54(f) of Title 10 of the Code of Federal Regulations (10 CFR 50.54(f)).

DATES: The bulletin was issued on August 21, 2003.

ADDRESSEES: Not applicable.

FOR FURTHER INFORMATION CONTACT: Edmund Sullivan at 301–415–2796, e-mail *ejs@nrc.gov* or Stephen Monarque at 415–1544, e-mail: *srm2@nrc.gov.*

SUPPLEMENTARY INFORMATION: NRC Bulletin 2003–02 may be examined and/or copied for a fee at the NRC's Public

Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, and is accessible electronically from the Agencywide Documents Access and Management Systems (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html*. The ADAMS Accession No. for the bulletin is ML032320153.

If you do not have access to ADAMS or if there are problems in accessing documents located in ADAMS, contact the NRC Public Document Room (PDR) Reference staff at 301–415–4737 or 1–800–397–4209, or by e-mail to *pdr@nrc.gov*.

Dated at Rockville, Maryland, this 11th day of December 2003.

For the Nuclear Regulatory Commission.

William Beckner,

Chief, Reactor Operations Branch, Division of Inspection Program Management, Office of Nuclear Reactor Regulation.

[FR Doc. 03–31313 Filed 12–18–03; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–26294; File No. 812–13031]

AEGON/Transamerica Series Fund, Inc., et al.; Notice of Application

December 15, 2003.

AGENCY: Securities and Exchange Commission ("SEC" or "Commission").

ACTION: Notice of Application for an Order of Exemption under Section 6(c) of the Investment Company Act of 1940 ("1940 Act") for an exemption from the provisions of Sections 9(a), 13(a), 15(a), and 15(b) of the 1940 Act and Rules 6e–2(b)(15) and 6e–3(T)(b)(15) thereunder.

APPLICANTS: AEGON/Transamerica Series Fund, Inc. ("ATSF") and AEGON/Transamerica Fund Advisers, Inc. ("ATFA") (collectively, "Applicants").

SUMMARY OF APPLICATION: Applicants seek an order to permit shares of ATSF and shares of any other existing or future investment company that is designed to fund insurance products and for which ATFA, or any of its affiliates, may serve as investment manager, investment adviser, subadviser, administrator, manager, principal underwriter or sponsor (ATSF and such other investment companies being hereinafter referred to, collectively, as "Insurance Investment Companies"), or permit shares of any current or future series of any Insurance Investment Company ("Insurance Fund"), to be sold to and held by: (1) Separate accounts funding variable annuity and variable life insurance contracts issued by both affiliated and unaffiliated life insurance companies; (2) qualified pension and retirement plans outside of the separate account context ("Qualified Plans" or "Plans"); (3) any investment manager to an Insurance Fund and affiliates thereof that is permitted to hold shares of an Insurance Fund consistent with the requirements of Treasury Regulation 1.817–5 (collectively, the "Manager"); and (4) any insurance company that is permitted to hold shares of an Insurance Fund consistent with the requirements of Treasury Regulation 1.817–5.

FILING DATE: The Application was filed on October 16, 2003.

HEARING OR NOTIFICATION OF HEARING: An order granting the Application will be issued unless the Commission orders a hearing. Interested persons may request a hearing on the Application by writing to the Secretary of the SEC and serving Applicants with a copy of the request, personally or by mail. Hearing requests must be received by the SEC by 5:30 p.m. on January 9, 2004 and should be accompanied by proof of service on the Applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of writer's interest, the reason for the request, and the issues contested. Persons may request notification of the date of the hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549–0690. Applicants, c/o John K. Carter, Esq., Senior Vice President and General Counsel, AEGON/Transamerica Fund Advisers, Inc., 570 Carillon Parkway, St. Petersburg, Florida 33716.

FOR FURTHER INFORMATION CONTACT: Curtis A. Young, Senior Counsel or Lorna J. MacLeod, Branch Chief, Office of Insurance Products, Division of Investment Management at 202–942–0670.

SUPPLEMENTARY INFORMATION: The following is a summary of the Application. The complete Application is available for a fee from the SEC's Public Reference Branch, 450 Fifth Street, NW., Washington, DC 20549–0102 (202–942–8090).

Applicants' Representations

1. ATSF is a Maryland corporation organized on August 21, 1985 and is registered as an open-end management investment company under the 1940 Act. ATSF is a series company currently comprising fifty-one (51) series (the "Insurance Funds"). Additional series of ATSF and classes of the Funds and additional Insurance Funds may be established in the future.

2. ATFA has served as ATSF's investment adviser since 1997. ATFA is directly owned by Western Reserve Life Assurance Co. of Ohio (78 percent) and AUSA Holding Company (22%), both of which are indirect wholly-owned subsidiaries of AEGON N.V., a Netherlands corporation which is a publicly traded international insurance group. Pursuant to investment subadvisory agreements, ATFA retains a subadviser for many Insurance Funds. Each subadviser is registered as an investment adviser with the Commission under the Investment Advisers Act of 1940.

3. ATSF currently offers shares of the Insurance Funds only to separate accounts of affiliated insurance companies in order to fund benefits under flexible premium variable annuity contracts and variable life insurance policies. In the future, the Insurance Investment Companies intend to offer shares of the Insurance Funds (a) separate accounts of affiliated and unaffiliated insurance companies in order to fund variable annuity contracts and variable life insurance contracts (collectively, "Separate Accounts"); (b) Qualified Plans; (c) any investment manager to an Insurance Fund and affiliates thereof that is permitted to hold shares of an Insurance Fund consistent with the requirements of Treasury Regulation 1.817–5 (collectively, the "Manager"); and (d) any insurance company that is permitted to hold shares of an Insurance Fund consistent with the requirements of Treasury Regulation 1.817–5 ("General Accounts").

4. Insurance companies whose Separate Account(s) may now or in the future own shares of the Insurance Funds are referred to herein as "Participating Insurance Companies." The Participating Insurance Companies have established or will establish their own separate accounts and design their own variable contracts. Each Participating Insurance Company has or will have the legal obligation to satisfy all applicable requirements under both State and Federal law. Participating Insurance Companies may rely on Rules 6e–2 and 6e–3(T), although some Participating Insurance Companies, in connection with variable life insurance contracts, may rely on individual exemptive orders as well.

5. The Insurance Investment Companies intend to offer shares of the Insurance Funds directly to Qualified Plans outside of the separate account context. Qualified Plans may choose any of the Insurance Funds that are offered as the sole investment under the Plan or as one of several investments. Plan participants may or may not be given an investment choice depending on the terms of the Plan itself. Shares of any of the Insurance Funds sold to such Qualified Plans would be held or deemed to be held by the trustee(s) of said Plans. Certain Qualified Plans, including section 403(b)(7) Plans and section 408(a) Plans, may vest voting rights in Plan participants instead of Plan trustees. Exercise of voting rights by participants in any such Qualified Plans, as opposed to the trustees of such Plans, cannot be mandated by the Applicants. Each Plan must be administered in accordance with the terms of the Plan and as determined by its trustee or trustees.

6. Shares of each Insurance Fund also may be offered to the Manager or to General Accounts, in reliance on regulations issued by the Treasury Department (Treas. Reg. 1.817–5) that established diversification requirements for variable annuity and variable life insurance contracts ("Treasury Regulations"). Treasury Regulation 1.817–5(f)(3)(ii) permits such sales as long as the return on shares held by the Manager or General Accounts is computed in the same manner as for shares held by the Separate Accounts, and the Manager or the General Accounts do not intend to sell to the public shares of the Insurance Investment Company that they hold. An additional restriction is imposed by the Treasury Regulations on sales to the Manager, who may hold shares only in connection with the creation or management of the Insurance Investment Company. Applicants anticipate that sales in reliance on these provisions of the Treasury Regulations generally will be made to the Manager for the purpose of providing necessary capital required by section 14(a) of the 1940 Act.

Applicants' Legal Analysis

1. Applicants seek exemptive relief from the provisions of sections 9(a), 13(a), 15(a), and 15(b) of the 1940 Act and rules 6e–2(b)(15) and 6e–3(T)(b)(15) thereunder (including any comparable provisions of a permanent rule that replaces Rule 6e–3(T)), to the extent necessary to permit shares of each Insurance Investment Company to be offered and sold to, and held by: (i) Separate Accounts funding variable annuity contracts and scheduled premium and flexible premium variable life insurance contracts issued by both affiliated and unaffiliated life insurance companies; (ii) Qualified Plans outside of the separate account context; (iii) any Manager to an Insurance Fund; and (iv) General Accounts.

2. Section 6(c) authorizes the Commission to exempt any person, security, or transaction or any class or classes of persons, securities, or transactions from any provision or provisions of the 1940 Act and/or of any rule thereunder if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

3. In connection with the funding of scheduled premium variable life insurance contracts issued through a separate account organized as a unit investment trust ("Trust Account"), Rule 6e–2(b)(15) provides partial exemptions from Sections 9(a), 13(a), 15(a), and 15(b) of the 1940 Act. The exemptions granted to an insurance company by Rule 6e–2(b)(15) are available only where each registered management investment company underlying the Trust Account ("underlying fund") offers its shares "*exclusively* to variable life insurance separate accounts of the life insurer or of any affiliated life insurance company * * *." (emphasis added). Therefore, the relief granted by rule 6e–2(b)(15) is not available with respect to a scheduled premium variable life insurance separate account that owns shares of an underlying fund that also offers its shares to a variable annuity separate account of the same company or of any affiliated life insurance company. The use of a common underlying fund as the underlying investment medium for both variable annuity and variable life insurance separate accounts of the same life insurance company or of any affiliated life insurance company is referred to herein as "mixed funding." In addition, the relief granted by rule 6e–2(b)(15) is not available with respect to a scheduled premium variable life insurance separate account that owns shares of an underlying fund that also offers its shares to separate accounts funding variable contracts of one or more unaffiliated life insurance companies. The use of a common underlying fund as the underlying investment medium for variable life insurance separate accounts of one insurance company and separate accounts funding variable contracts of one or more unaffiliated life insurance companies is referred to herein as "shared funding." Moreover, because the relief under rule 6e–2(b)(15) is available only where shares are offered *exclusively* to variable life insurance separate accounts, additional exemptive relief may be necessary if the shares of the Insurance Investment Companies are also to be sold to General Accounts, Qualified Plans or the Manager.

4. In connection with the funding of flexible premium variable life insurance contracts issued through a Trust Account, rule 6e–3(T)(b)(15) provides partial exemptions from sections 9(a), 13(a), 15(a) and 15(b) of the 1940 Act to the extent that those sections have been deemed by the Commission to require "pass-through" voting with respect to an underlying fund's shares. The exemptions granted to a separate account by rule 6e–3(T)(b)(15) are available only where all of the assets of the separate account consist of the shares of one or more underlying funds which offer their shares "exclusively to separate accounts of the life insurer, or of any affiliated life insurance company, offering either scheduled contracts or flexible contracts, or both; or which also offer their shares to variable annuity separate accounts of the life insurer or of an affiliated life insurance company" (emphasis added). Therefore, rule 6e–3(T) permits mixed funding with respect to a flexible premium variable life insurance separate account, subject to certain conditions. However, rule 6e–3(T) does not permit shared funding because the relief granted by rule 6e–3(T)(b)(15) is not available with respect to a flexible premium variable life insurance separate account that owns shares of an underlying fund that also offers its shares to separate accounts (including variable annuity and flexible premium and scheduled premium variable life insurance separate accounts) of unaffiliated life insurance companies. The relief provided by rule 6e–3(T) is not relevant to the purchase of shares of the Insurance Investment Companies by Qualified Plans, the Manager or General Accounts. However, because the relief granted by rule 6e–3(T)(b)(15) is available only where shares of the underlying fund are offered exclusively to separate accounts, or to life insurers in connection with the operation of a separate account, additional exemptive relief may be necessary if the shares of the Insurance Investment Companies are also to be sold to Qualified Plans, the Manager or General Accounts.

5. The relief provided by rule 6e–3(T) is not relevant to the purchase of shares of the Insurance Investment Companies by Qualified Plans, the Manager or General Accounts. However, because the relief granted by rule 6e–3(T)(b)(15) is available only where shares of the

underlying fund are offered exclusively to separate accounts, or to life insurers in connection with the operation of a separate account, additional exemptive relief may be necessary if the shares of the Insurance Investment Companies are also to be sold to Qualified Plans, the Manager or General Accounts. None of the relief provided for in rules 6e–2(b)(15) and 6e–3(T)(b)(15) relates to Qualified Plans, the Manager or General Accounts, or to an underlying fund's ability to sell its shares to such purchasers. It is only because some of the Separate Accounts that may invest in the Insurance Investment Companies may themselves be investment companies that rely upon rules 6e–2 and 6e–3(T) and wish to continue to rely upon the relief provided in those Rules, that the Applicants are applying for the requested relief. If and when a material irreconcilable conflict arises in the context of the Application between the Separate Accounts or between Separate Accounts on the one hand and Qualified Plans, the Manager or General Accounts on the other hand, the Participating Insurance Companies, Qualified Plans, the Manager and the General Accounts must take whatever steps are necessary to remedy or eliminate the conflict, including eliminating the Insurance Funds as eligible investment options. Applicants have concluded that investment by the Manager or the inclusion of Qualified Plans and General Accounts as eligible shareholders should not increase the risk of material irreconcilable conflicts among shareholders. However, Applicants further assert that even if a material irreconcilable conflict involving the Qualified Plans, Manager or General Accounts arose, the Qualified Plans, Manager or General Accounts, unlike the Separate Accounts, can simply redeem their shares and make alternative investments. By contrast, insurance companies cannot simply redeem their separate accounts out of one fund and invest in another. Time consuming, complex transactions must be undertaken to accomplish such redemptions and transfers. Applicants thus argue that allowing the Manager, General Accounts or Qualified Plans to invest directly in the Insurance Investment Companies should not increase the opportunity for conflicts of interest.

6. Applicants assert that the Treasury Regulations made it possible for shares of an investment company to be held by a Qualified Plan, the investment company's investment manager or its affiliates or General Accounts without adversely affecting the ability of shares in the same investment company to also be held by separate accounts of insurance companies in connection with their variable life insurance contracts. Section 817(h) of the Internal Revenue Code of 1986, as amended ("Code"), imposes certain diversification standards on the underlying assets of separate accounts funding variable annuity contracts and variable life contracts. In particular, the Code provides that such contracts shall not be treated as an annuity contract or life insurance contract for any period (and any subsequent period) for which the separate account investments are not, in accordance with regulations prescribed by the Treasury Department, adequately diversified. The Treasury Regulations provide that, in order to meet the diversification requirements, all of the beneficial interests in the investment company must be held by the segregated asset accounts of one or more insurance companies. However, the Treasury Regulations also contain certain exceptions to this requirement, one of which allows shares of an investment company to be held by the trustee of a qualified pension or retirement plan without adversely affecting the ability of shares in the same investment company to also be held by the separate accounts of insurance companies in connection with their variable annuity and variable life contracts (Treas. Reg. § 1.817–5(f)(3)(iii)).

7. Applicants also assert that the Treasury Regulations contain another exception that permits the Insurance Funds to sell shares to General Accounts or the Manager subject to certain conditions (Treas. Reg. § 1.817–5(f)(3)(i), (ii)).

8. The promulgation of rules 6e–2(b)(15) and 6e–3(T)(b)(15) preceded the issuance of the Treasury Regulations which made it possible for shares of an investment company to be held by a Qualified Plan, the investment company's investment manager or its affiliates or General Accounts without adversely affecting the ability of shares in the same investment company to also be held by the separate accounts of insurance companies in connection with their variable life insurance contracts. Thus, the sale of shares of the same investment company to separate accounts through which variable life insurance contracts are issued, to Qualified Plans, to the investment company's investment manager and its affiliates or General Accounts (collectively, "eligible shareholders") could not have been envisioned at the time of the adoption of rules 6e–2(b)(15) and 6e–3(T)(b)(15), given the then-current tax law.

9. Paragraph (3) of section 9(a) provides, among other things, that it is unlawful for any company to serve as investment adviser to or principal underwriter for any registered open-end investment company if an affiliated person of that company is subject to a disqualification enumerated in sections 9(a)(1) or (a)(2). rule 6e–2(b)(15)(i) and (ii) and rule 6e–3(T)(b)(15)(i) and (ii) provide exemptions from section 9(a) under certain circumstances, subject to the limitations discussed above on mixed and shared funding. These exemptions limit the application of the eligibility restrictions to affiliated individuals or companies that directly participate in the management or administration of the underlying management investment company. The relief provided by rules 6e–2(b)(15)(i) and 6e–3(T)(b)(15)(i) permits a person disqualified under section 9(a) to serve as an officer, director, or employee of the life insurer, or any of its affiliates, so long as that person does not participate directly in the management or administration of the underlying fund. The relief provided by rules 6e–2(b)(15)(ii) and 6e–3(T)(b)(15)(ii) permits the life insurer to serve as the underlying fund's investment manager or principal underwriter, provided that none of the insurer's personnel who are ineligible pursuant to section 9(a) are participating in the management or administration of the fund. The partial relief granted in rules 6e–2(b)(15) and 6e–3(T)(b)(15) from the requirements of section 9 limits, in effect, the amount of monitoring of an insurer's personnel that would otherwise be necessary to ensure compliance with section 9 to that which is appropriate in light of the policy and purposes of section 9. Those rules recognize that it is not necessary for the protection of investors or the purposes fairly intended by the policy and provisions of the 1940 Act to apply the provisions of section 9(a) to the many individuals in an insurance company complex, most of whom typically will have no involvement in matters pertaining to investment companies in that organization. Applicants assert that it is also unnecessary to apply section 9(a) of the 1940 Act to the many individuals in various unaffiliated insurance companies (or affiliated companies of Participating Insurance Companies) that may utilize the Insurance Funds as the funding medium for variable contracts. There is no regulatory purpose in extending the monitoring requirements to embrace a full application of section 9(a)'s eligibility restrictions because of mixed funding or shared funding and sales to Qualified Plans, the Manager or General Accounts. Those Participating Insurance Companies are not expected to play any role in the management or administration of the Insurance Funds. Those individuals who participate in the management or administration of the Insurance Funds will remain the same regardless of which separate accounts, insurance companies, Qualified Plans or General Accounts use the Insurance Funds. Therefore, applying the monitoring requirements of section 9(a) because of investment by separate accounts of other Participating Insurance Companies would not serve any regulatory purpose. Furthermore, the increased monitoring costs would reduce the net rates of return realized by contract owners and Plan participants. Moreover, the relief requested should not be affected by the sale of shares of the Insurance Investment Companies to Qualified Plans, the Manager or General Accounts. The insulation of the Insurance Investment Companies from those individuals who are disqualified under the 1940 Act remains in place. Because Qualified Plans, the Manager and General Accounts are not investment companies and will not be deemed affiliates solely by virtue of their shareholdings, no additional relief is necessary.

10. Sections 13(a), 15(a), and 15(b) of the 1940 Act have been deemed by the Commission to require "pass-through" voting with respect to underlying fund shares held by a separate account. Rules 6e–2(b)(15)(iii) and 6e–3(T)(b)(15)(iii) under the 1940 Act provide partial exemptions from those sections to permit the insurance company to disregard the voting instructions of its contract owners in certain limited circumstances. Rules 6e–2(b)(15)(iii)(A) and 6e–3(T)(b)(15)(iii)(A)(1) under the 1940 Act provide that the insurance company may disregard the voting instructions of its contract owners in connection with the voting of shares of an underlying fund if such instructions would require such shares to be voted to cause such underlying funds to make (or refrain from making) certain investments that would result in changes in the subclassification or investment objectives of such underlying funds or to approve or disapprove any contract between an underlying fund and its investment manager, when required to do so by an insurance regulatory authority (subject to the provisions of paragraphs (b)(5)(i) and (b)(7)(ii)(A) of such rules). Rules 6e–2(b)(15)(iii)(B) and 6e–3(T)(b)(15)(iii)(A)(2) under the 1940 Act provide that the insurance company may disregard contract owners' voting instructions if the contract owners initiate any change in such underlying fund's investment policies, principal underwriter, or any investment manager (provided that disregarding such voting instructions is reasonable and subject to the other provisions of paragraphs (b)(5)(ii) and (b)(7)(ii)(B) and (C) of rules 6e–2 and 6e–3(T)).

11. Rule 6e–2 recognizes that a variable life insurance contract is an insurance contract; it has important elements unique to insurance contracts; and it is subject to extensive state regulation of insurance. In adopting rule 6e–2(b)(15)(iii), the Commission expressly recognized that state insurance regulators have authority, pursuant to state insurance laws or regulations, to disapprove or require changes in investment policies, investment advisers, or principal underwriters. The Commission also expressly recognized that state insurance regulators have authority to require an insurer to draw from its general account to cover costs imposed upon the insurer by a change approved by contract owners over the insurer's objection. The Commission therefore deemed such exemptions necessary "to assure the solvency of the life insurer and performance of its contractual obligations by enabling an insurance regulatory authority or the life insurer to act when certain proposals reasonably could be expected to increase the risks undertaken by the life insurer." In this respect, flexible premium variable life insurance contracts are identical to scheduled premium variable life insurance contracts; therefore, rule 6e–3(T)'s corresponding provisions presumably were adopted in recognition of the same factors. State insurance regulators have much the same authority with respect to variable annuity separate accounts as they have with respect to variable life insurance separate accounts. Insurers generally assume both mortality and expense risks under variable annuity contracts. Therefore, variable annuity contracts pose some of the same kinds of risks to insurers as variable life insurance contracts. The Commission staff has not addressed the general issue of state insurance regulators' authority in the context of variable annuity contracts, and has not developed a single comprehensive exemptive rule for variable annuity contracts.

12. The Insurance Investment Companies' sale of shares to Qualified Plans, the Manager or General Accounts will not have any impact on the relief requested herein in this regard. Shares of the Insurance Funds sold to Qualified Plans would be held by the trustees of such Plans. The exercise of voting rights by Qualified Plans, whether by the trustees, by participants, by beneficiaries, or by investment managers engaged by the Plans, does not present the type of issues respecting the disregard of voting rights that are presented by variable life separate accounts. With respect to the Qualified Plans, which are not registered as investment companies under the 1940 Act, there is no requirement to pass through voting rights to Plan participants. Similarly, the Manager and General Accounts are not subject to any pass-through voting requirements. Accordingly, unlike the case with insurance company separate accounts, the issue of the resolution of material irreconcilable conflicts with respect to voting is not present with Qualified Plans, the Manager or General Accounts.

13. Applicants assert that shared funding by unaffiliated insurance companies does not present any issues that do not already exist where a single insurance company is licensed to do business in several or all states. A particular state insurance regulatory body could require action that is inconsistent with the requirements of other states in which the insurance company offers its policies. The fact that different Participating Insurance Companies may be domiciled in different states does not create a significantly different or enlarged problem.

14. Applicants further assert that shared funding by unaffiliated Participating Insurance Companies is, in this respect, no different than the use of the same investment company as the funding vehicle for affiliated Participating Insurance Companies, which rules 6e–2(b)(15) and 6e–3(T)(b)(15) permit under various circumstances. Affiliated Participating Insurance Companies may be domiciled in different states and be subject to differing state law requirements. Affiliation does not reduce the potential, if any exists, for differences in state regulatory requirements. In any event, the conditions discussed below are designed to safeguard against and provide procedures for resolving any adverse effects that differences among state regulatory requirements may produce.

15. Applicants assert that the right under rules 6e–2(b)(15) and 6e–3(T)(b)(15) of an insurance company to disregard contract owners' voting instructions does not raise any issues different from those raised by the

authority of State insurance administrators over separate accounts. Under rules 6e–2(b)(15) and 6e–3(T)(b)(15), an insurer can disregard contract owner voting instructions only with respect to certain specified items and under certain specified conditions. Affiliation does not eliminate the potential, if any exists, for divergent judgments as to the advisability or legality of a change in investment policies, principal underwriter, or investment adviser initiated by contract owners. The potential for disagreement is limited by the requirements in rules 6e–2 and 6e–3(T) that the insurance company's disregard of voting instructions be reasonable and based on specific good faith determinations. However, a particular Participating Insurance Company's disregard of voting instructions nevertheless could conflict with the majority of contract owner voting instructions. The Participating Insurance Company's action could arguably be different than the determination of all or some of the other Participating Insurance Companies (including affiliated insurers) that the contract owners' voting instructions should prevail, and could either preclude a majority vote approving the change or could represent a minority view. If the Participating Insurance Company's judgment represents a minority position or would preclude a majority vote, the Participating Insurance Company may be required, at an Insurance Investment Company's election, to withdraw its separate account's investment in that Insurance Investment Company, and no charge or penalty would be imposed as a result of such withdrawal.

16. With respect to voting rights, it is possible to provide an equitable means of giving such voting rights to contract owners and to Qualified Plans, the Manager or General Accounts. The transfer agent(s) for the Insurance Investment Companies will inform each shareholder, including each separate account, each Qualified Plan, the Manager and each General Account, of its share ownership, in an Insurance Investment Company. Each Participating Insurance Company will then solicit voting instructions in accordance with the "pass-through" voting requirement. Investment by Qualified Plans or General Accounts in any Insurance Investment Company will similarly present no conflict. The likelihood that voting instructions of insurance company contract owners will ever be disregarded or the possible withdrawal referred to immediately above is extremely remote and this possibility will be known, through prospectus disclosure, to any Qualified Plan or General Account choosing to invest in an Insurance Fund. Moreover, even if a material irreconcilable conflict involving Qualified Plans or General Accounts arises, the Qualified Plans or General Accounts may simply redeem their shares and make alternative investments. Votes cast by the Qualified Plans or General Accounts, of course, cannot be disregarded but must be counted and given effect.

17. Applicants assert that there is no reason why the investment policies of an Insurance Fund would or should be materially different from what they would or should be if such Insurance Fund funded only variable annuity contracts or variable life insurance policies, whether flexible premium or scheduled premium policies. Each type of insurance product is designed as a long-term investment program. Similarly, the investment strategy of Qualified Plans and General Accounts (*i.e.*, long-term investment) coincides with that of variable contracts and should not increase the potential for conflicts. Each of the Insurance Funds will be managed to attempt to achieve its investment objective, and not to favor or disfavor any particular Participating Insurance Company or type of insurance product or other investor. There is no reason to believe that different features of various types of contracts will lead to different investment policies for different types of variable contracts. The sale and ultimate success of all variable insurance products depends, at least in part, on satisfactory investment performance, which provides an incentive for the Participating Insurance Company to seek optimal investment performance.

18. Furthermore, Applicants assert that no one investment strategy can be identified as appropriate to a particular insurance product. Each pool of variable annuity and variable life insurance contract owners is composed of individuals of diverse financial status, age, insurance and investment goals. A fund supporting even one type of insurance product must accommodate these diverse factors in order to attract and retain purchasers. Permitting mixed and shared funding will provide economic justification for the growth of the Insurance Investment Company. In addition, permitting mixed and shared funding will facilitate the establishment of additional series serving diverse goals. The broader base of contract owners and shareholders can also be expected to provide economic justification for the creation of additional series of each Insurance Investment Company with a greater variety of investment objectives and policies.

19. Applicants note that section 817(h) of the Code is the only section in the Code where separate accounts are discussed. Section 817(h) imposes certain diversification standards on the underlying assets of variable annuity contracts and variable life contracts held in the portfolios of management investment companies. Treasury Regulation 1.817–5, which established diversification requirements for such portfolios, specifically permits, in paragraph (f)(3), among other things, "qualified pension or retirement plans," "the general account of a life insurance company," "the manager * * * of an investment company" and separate accounts to share the same underlying management investment company. Therefore, neither the Code nor the Treasury Regulations nor Revenue Rulings thereunder present any inherent conflicts of interest if Qualified Plans, Separate Accounts, the Manager and General Accounts all invest in the same underlying fund.

20. Applicants assert that the ability of the Insurance Investment Companies to sell their respective shares directly to Qualified Plans, the Manager or General Accounts does not create a "senior security," as such term is defined under section 18(g) of the 1940 Act, with respect to any variable contract, Qualified Plan, Manager or General Accounts. As noted above, regardless of the rights and benefits of contract owners or Plan participants, the Separate Accounts, Qualified Plans, the Manager and the General Accounts have rights only with respect to their respective shares of the Insurance Investment Companies. They can only redeem such shares at net asset value. No shareholder of any of the Insurance Investment Companies has any preference over any other shareholder with respect to distribution of assets or payment of dividends.

21. Applicants assert that permitting an Insurance Investment Company to sell its shares to the Manager in compliance with Treas. Reg. 1.817–5 will enhance Insurance Investment Company management without raising significant concerns regarding material irreconcilable conflicts. Applicants assert that the Insurance Investment Companies may be deemed to lack an insurance company "promoter" for purposes of rule 14a–2 under the Act. Accordingly, Applicants assert that such Insurance Investment Companies will be subject to the requirements of section 14(a) of the 1940 Act, which generally requires that an investment company have a net worth of $100,000 upon making a public offering of its shares.

22. Applicants assert that given the conditions of Treas. Reg. 1.817–5(i)(3) and the harmony of interest between an Insurance Investment Company, on the one hand, and its Manager or a Participating Insurance Company, on the other, little incentive for overreaching exists. Applicants assert that such investments should not implicate the concerns discussed above regarding the creation of material irreconcilable conflicts. Instead, Applicants assert that permitting investment by the Manager will permit the orderly and efficient creation and operation of Insurance Investment Companies, and reduce the expense and uncertainty of using outside parties at the early stages of Insurance Investment Company operations.

23. Applicants assert that various factors have limited the number of insurance companies that offer variable contracts. These factors include the costs of organizing and operating a funding medium, the lack of expertise with respect to investment management (principally with respect to stock and money market investments) and the lack of name recognition by the public of certain Participating Insurance Companies as investment experts. In particular, some smaller life insurance companies may not find it economically feasible, or within their investment or administrative expertise, to enter the variable contract business on their own. Use of the Insurance Investment Companies as a common investment medium for variable contracts, Qualified Plans and General Accounts would help alleviate these concerns, because Participating Insurance Companies, Qualified Plans and General Accounts will benefit not only from the investment and administrative expertise of ATFA, or any other investment manager to an Insurance Fund, but also from the cost efficiencies and investment flexibility afforded by a large pool of funds. Therefore, making the Insurance Investment Companies available for mixed and shared funding and permitting the purchase of Insurance Investment Company shares by Qualified Plans and General Accounts may encourage more insurance companies to offer variable contracts, and this should result in increased competition with respect to both variable contract design and pricing, which can be expected to result in more product variation. Mixed and shared funding also may benefit variable contract owners by eliminating a significant portion of the costs of establishing and administering separate funds. Furthermore, granting the requested relief should result in an increased amount of assets available for investment by the Insurance Investment Companies. This may benefit variable contract owners by promoting economies of scale, by reducing risk through greater diversification due to increased money in the Insurance Investment Companies, or by making the addition of new Insurance Funds more feasible.

Applicants' Conditions

Applicants agree that the order granting the requested relief shall be subject to the following conditions:

1. A majority of the Board of Trustees or Board of Directors ("Board") of each Insurance Investment Company shall consist of persons who are not "interested persons" of the Insurance Investment Company, as defined by section 2(a)(19) of the 1940 Act and the rules thereunder and as modified by any applicable orders of the Commission ("Independent Board Members"), except that if this condition is not met by reason of the death, disqualification, or bona fide resignation of any trustee or director, then the operation of this condition shall be suspended: (i) For a period of 90 days if the vacancy or vacancies may be filled by the Board; (ii) for a period of 150 days if a vote of shareholders is required to fill the vacancy or vacancies; or (iii) for such longer period as the Commission may prescribe by order upon application or by future rule.

2. Each Board will monitor the respective Insurance Investment Company for the existence of any material irreconcilable conflict among and between the interests of the contract owners of all Separate Accounts, participants of Qualified Plans, the Manager or General Accounts investing in that Insurance Investment Company, and determine what action, if any, should be taken in response to such conflicts. A material irreconcilable conflict may arise for a variety of reasons, including: (i) An action by any state insurance regulatory authority; (ii) a change in applicable Federal or State insurance, tax, or securities laws or regulations, or a public ruling, private letter ruling, no-action or interpretative letter, or any similar action by insurance, tax, or securities regulatory authorities; (iii) an administrative or judicial decision in any relevant proceeding; (iv) the manner in which the investments of any Insurance Fund are being managed; (v) a difference in voting instructions given by variable annuity contract owners, variable life insurance contract owners, Plan trustees, or Plan participants; (vi) a decision by a Participating Insurance Company to disregard the voting instructions of contract owners; or (vii) if applicable, a decision by a Qualified Plan to disregard the voting instructions of Plan participants.

3. Any Qualified Plan that executes a fund participation agreement upon becoming an owner of 10 percent or more of the assets of an Insurance Investment Company ("Participating Qualified Plan"), any Participating Insurance Company (on their own behalf, as well as by virtue of any investment of general account assets in all Insurance Investment Companies), and the Manager (collectively, "Participants") will report any potential or existing conflicts to the Board. Each of the Participants will be responsible for assisting the Board in carrying out the Board's responsibilities under these conditions by providing the Board with all information reasonably necessary for the Board to consider any issues raised. This includes, but is not limited to, an obligation by each Participating Insurance Company to inform the Board whenever contract owner voting instructions are disregarded and, if pass-through voting is applicable, an obligation by each Qualified Plan that is a Participant to inform the Board whenever it has determined to disregard Plan participant voting instructions. The responsibility to report such information and conflicts and to assist the Board will be a contractual obligation of all Participating Insurance Companies and Qualified Plans investing in an Insurance Investment Company under their agreements governing participation in the Insurance Investment Company, and such agreements shall provide that such responsibilities will be carried out with a view only to the interests of the contract owners or, if applicable, Plan participants.

4. If it is determined by a majority of the Board of an Insurance Investment Company, or a majority of its Independent Board Members, that a material irreconcilable conflict exists, the relevant Participating Insurance Companies and Participating Qualified Plans shall, at their expense or, at the discretion of a Manager to an Insurance Investment Company, at that Manager's expense, and to the extent reasonably practicable (as determined by a majority of the Independent Board Members), take whatever steps are necessary to remedy or eliminate the material irreconcilable conflict, up to and including: (i) Withdrawing the assets allocable to some or all of the Separate

Accounts from the relevant Insurance Investment Company or any series therein and reinvesting such assets in a different investment medium (including another Insurance Fund, if any); (ii) in the case of Participating Insurance Companies, submitting the question of whether such segregation should be implemented to a vote of all affected contract owners and, as appropriate, segregating the assets of any appropriate group (*i.e.*, variable annuity contract owners or variable life insurance contract owners of one or more Participating Insurance Companies) that votes in favor of such segregation, or offering to the affected contract owners the option of making such a change; (iii) withdrawing the assets allocable to some or all of the Qualified Plans from the affected Insurance Investment Company or any Insurance Fund and reinvesting those assets in a different investment medium; and (iv) establishing a new registered management investment company or managed separate account. If a material irreconcilable conflict arises because of a Participating Insurance Company's decision to disregard contract owner voting instructions and that decision represents a minority position or would preclude a majority vote, the Participating Insurance Company may be required, at the Insurance Investment Company's election, to withdraw its Separate Account's investment in the Insurance Investment Company, and no charge or penalty will be imposed as a result of such withdrawal. If a material irreconcilable conflict arises because of a Qualified Plan's decision to disregard Plan participant voting instructions, if applicable, and that decision represents a minority position or would preclude a majority vote, the Qualified Plan may be required, at the election of the Insurance Investment Company, to withdraw its investment in the Insurance Investment Company, and no charge or penalty will be imposed as a result of such withdrawal. The responsibility to take remedial action in the event of a Board determination of a material irreconcilable conflict and to bear the cost of such remedial action shall be a contractual obligation of all Participating Insurance Companies and Qualified Plans under their agreements governing participation in the Insurance Investment Company, and these responsibilities will be carried out with a view only to the interests of the contract owners or, as applicable, Plan participants.

For the purposes of this Condition (4), a majority of the Independent Board Members shall determine whether or not any proposed action adequately remedies any material irreconcilable conflict, but in no event will the Insurance Investment Company or its Manager be required to establish a new funding medium for any variable contract. No Participating Insurance Company shall be required by this Condition (4) to establish a new funding medium for any variable contract if an offer to do so has been declined by vote of a majority of contract owners materially adversely affected by the material irreconcilable conflict. No Qualified Plan shall be required by this Condition (4) to establish a new funding medium for such Qualified Plan if (i) a majority of Plan participants materially and adversely affected by the material irreconcilable conflict vote to decline such offer or (ii) pursuant to governing Plan documents and applicable law, the Plan makes such decision without Plan participant vote.

5. The Board's determination of the existence of a material irreconcilable conflict and its implications shall be made known promptly in writing to all Participants.

6. Participating Insurance Companies will provide pass-through voting privileges to all variable contract owners whose contracts are funded through a registered Separate Account for so long as the Commission continues to interpret the 1940 Act as requiring pass-through voting privileges for variable contract owners. Accordingly, such Participating Insurance Companies will vote shares of each Insurance Fund held in their registered Separate Accounts in a manner consistent with voting instructions timely received from such contract owners. Each Participating Insurance Company will vote shares of each Insurance Fund held in its registered Separate Accounts for which no timely voting instructions are received, as well as shares held by its General Accounts, in the same proportion as those shares for which voting instructions are received. Participating Insurance Companies shall be responsible for assuring that each of their registered Separate Accounts investing in an Insurance Investment Company calculates voting privileges in a manner consistent with all other Participating Insurance Companies. The obligation to vote an Insurance Investment Company's shares and to calculate voting privileges in a manner consistent with all other registered Separate Accounts investing in an Insurance Investment Company shall be a contractual obligation of all Participating Insurance Companies under their agreements governing participation in the Insurance Investment Company. Each Plan will vote as required by applicable law and governing Plan documents.

7. An Insurance Investment Company will notify all Participating Insurance Companies and Qualified Plans that disclosure regarding potential risks of mixed and shared funding may be appropriate in prospectuses for any of the Separate Accounts and in Plan documents. Each Insurance Investment Company will disclose in its prospectus that: (i) Shares of the Insurance Investment Company are offered to insurance company Separate Accounts that fund both variable annuity and variable life insurance contracts, and to Qualified Plans and General Accounts; (ii) due to differences of tax treatment or other considerations, the interests of various contract owners participating in the Insurance Investment Company and the interests of Qualified Plans or General Accounts investing in the Insurance Investment Company might at some time be in conflict; and (iii) the Board will monitor the Insurance Investment Company for any material conflicts and determine what action, if any, should be taken.

8. All reports received by the Board of potential or existing conflicts, and all Board action with regard to determining the existence of a conflict, notifying Participants of a conflict, and determining whether any proposed action adequately remedies a conflict, will be properly recorded in the minutes of the Board or other appropriate records, and such minutes or other records shall be made available to the Commission upon request.

9. If and to the extent rule 6e–2 and rule 6e–3(T) under the 1940 Act are amended, or proposed rule 6e–3 is adopted under the 1940 Act, to provide exemptive relief from any provision of the 1940 Act or the rules thereunder with respect to mixed or shared funding on terms and conditions materially different from any exemptions granted in the order requested in this Application, then each Insurance Investment Company and/or the Participating Insurance Companies, as appropriate, shall take such steps as may be necessary to comply with rule 6e–2 and rule 6e–3(T), as amended, and rule 6e–3, as adopted, to the extent such rules are applicable.

10. Each Insurance Investment Company will comply with all provisions of the 1940 Act requiring voting by shareholders (which, for these purposes, shall be the persons having a voting interest in the shares of that Insurance Investment Company), and in particular each Insurance Investment Company will either provide for annual meetings (except insofar as the Commission may interpret section 16 of the 1940 Act not to require such meetings) or comply with section 16(c) of the 1940 Act (although ATSF is not one of the trusts described in section 16(c) of the 1940 Act) as well as with section 16(a) of the 1940 Act and, if and when applicable, section 16(b) of the 1940 Act. Further, each Insurance Investment Company will act in accordance with the Commission's interpretation of the requirements of section 16(a) of the 1940 Act with respect to periodic elections of directors (or trustees) and with whatever rules the Commission may promulgate with respect thereto.

11. As long as the Commission continues to interpret the 1940 Act as requiring pass-through voting privileges for variable contract owners, the Managers will vote their shares in the same proportion as all contract owners having voting rights with respect to the relevant Insurance Investment Company; provided, however, that the Manager or any General Account shall vote their shares in such other manner as may be required by the Commission or its staff.

12. The Participants shall at least annually submit to the Board of an Insurance Investment Company such reports, materials or data as the Board may reasonably request so that it may fully carry out the obligations imposed upon it by the conditions contained in this Application and said reports, materials and data shall be submitted more frequently, if deemed appropriate, by the Board. The obligations of Participating Insurance Companies and Participating Qualified Plans to provide these reports, materials and data to the Board of the Insurance Investment Company when it so reasonably requests, shall be a contractual obligation of the Participating Insurance Companies and Participating Qualified Plans under their agreements governing participation in each Insurance Investment Company.

13. If a Qualified Plan should become an owner of 10 percent or more of the assets of an Insurance Investment Company, the Insurance Investment Company shall require such Plan to execute a participation agreement with such Insurance Investment Company which includes the conditions set forth herein to the extent applicable. A Qualified Plan will execute an application containing an acknowledgment of this condition upon such Plan's initial purchase of the shares of any Insurance Investment Company.

Conclusion

For the reasons and upon the facts summarized above, Applicants assert that the requested exemptions are appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48918; File No. SR–NYSE–2003–40]

Self-Regulatory Organizations; Notice of Filing of a Proposed Rule Change by the New York Stock Exchange, Inc. Relating to the Listing of Certain 7¾% PEPS℠ Units Under Section 703.19

December 12, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on November 26, 2003, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NYSE.

The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The NYSE proposes to list and trade 7¼% Premium Equity Participating Security Units (PEPS℠ Units), Series B ("Units"), each of which consists of a purchase contract issued by PPL Corporation ("PPL"), and a 2.5% undivided beneficial ownership interest in a $1,000 principal amount note due 2006 issued by PPL Capital Funding, Inc. ("PPL Capital") and guaranteed by PPL.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NYSE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NYSE has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Under Section 703.19 of the Listed Company Manual ("Manual"), the Exchange may approve for listing and trading securities not otherwise covered by the criteria of Sections 1 and 7 of the Manual, provided the issue is suited for auction market trading. The Exchange proposes to list and trade, under Section 703.19 of the Manual, the Units, each of which consists of (1) a purchase contract ("Purchase Contract") issued by PPL and (2) a 2.5% undivided beneficial ownership interest in a $1,000 principal amount note ("Note") due May 2006 issued by PPL Capital and guaranteed by PPL.[4]

The Units are being offered pursuant to an exchange offer, the full terms of which are set out in the Registration Statement.[5] Specifically, PPL offers to exchange the Units and a cash payment of $0.375 for each validly tendered and accepted 7 ¼% Premium Equity Participating Security Unit (collectively referred to as the "Old Units"), subject to, among other things, the minimum condition that there are validly tendered at the expiration of the exchange offer at least 35% of the Old Units, and the condition that the Old Units remain listed on the Exchange.

Each Purchase Contract obligates the holder of a Unit to purchase from PPL, no later than May 18, 2004 (the

[1] *See* Securities Exchange Release No. 28217 (July 18, 1990), 55 FR 30056–01 (July 24, 1990).

[4] PPL and PPL Capital filed Amendment No. 1 to Form S–4 relating to the Units (the "Registration Statement") on October 20, 2003. *See* Registration No. 333–108450. The information provided in this Rule 19b–4 filing relating to the Units is based entirely on information included in the Registration Statement.

In particular, the Registration Statement provides a detailed discussion and comparison of the Old Units and the Units so that holders can evaluate whether it is in their best interests to participate in the exchange offer.

"Contract Settlement Date"), for a price of $25, the following number of shares of PPL common stock, $0.01 par value: (a) If the average of the closing prices of PPL's common stock over the 20-trading day period ending on the third trading day prior to the Contract Settlement Date multiplied by 1.017 is equal to or greater than $65.03, 0.3910 shares; (b) if the average of the closing prices of PPL's common stock over the same period multiplied by 1.017 is less than $65.03 but greater than $53.30, a number of shares, between 0.3910 and 0.4770 shares, having a value, based on the 20-trading day average of the closing prices, equal to $25; and (c) if the average of the closing prices of PPL's common stock over the same period multiplied by 1.017 is less than or equal to $53.30, 0.4770 shares. PPL will also pay Unit holders a quarterly fixed amount in cash, called a contract adjustment payment, at a rate of 0.46% per year of the stated amount of $25 per Unit, or $0.1150 per year.

From the date of issuance until the Contract Settlement Date, the Notes will constitute subordinated obligations of PPL Capital and will be guaranteed on a subordinated basis by PPL. On or after Contract Settlement Date, the Notes will constitute senior obligations of PPL Capital and will be guaranteed on a senior basis by PPL. Prior to the Contract Settlement Date, the ownership interest in the Notes will be pledged to secure the Unit holders' obligation to purchase PPL's common stock under the purchase contract. PPL has appointed a remarketing agent to remarket, or sell on behalf of Unit holders, the Notes to third party investors on a date (the "Remarketing Date") just prior to the Contract Settlement Date. Unit holders may choose to opt out of the remarketing of the Notes to third party investors to satisfy their payment obligations on the Contract Settlement Date. A Unit holder who opts out of the remarketing of the Notes would be required to settle each Purchase Contract for $25.00 in cash.

PPL Capital will also pay Unit holders interest at a rate of 7.29% per year on the principal amount of the Note. If there is a successful remarketing of the Notes, the interest rate will be reset and may be greater or less than 7.29% per year. PPL unconditionally guarantees the payment of principal and interest on the Notes of PPL Capital.

The Units represent both an equity and fixed income investment in PPL. The equity investment is in the form of the Purchase Contract, which, unless earlier terminated, requires a Unit holder to purchase a variable number of shares of PPL common stock. The fixed income investment is in the form of a trust preferred security that represents an undivided beneficial interest in the subordinated Notes of PPL Capital which are guaranteed on a subordinated basis by PPL.

The Units will conform to the issuer listing criteria under Section 703.19 of the Manual and be subject to the relevant continuing listing criteria under Section 801 and 802 of the Manual.[6] The Exchange will impose the issuer listing requirements of Section 703.19 of the Manual on PPL. Under Section 703.19(1) of the Manual, among other things, if the issuer is an affiliate of an NYSE-listed company, the NYSE-listed company must be a company in good standing.[7] The Exchange represents that PPL is an NYSE-listed company in good standing. The Units will also meet the listing standards found in Section 703.19(2) of the Manual, except that the Units will not have the minimum life of one year required for listings.[8] However, the Exchange does not believe that the Units will raise any significant new regulatory issues. Because the Units will meet or exceed the other requirements under Section 703.19 of the Manual, the Exchange believes that the Units will have sufficient liquidity and depth of market, even if listed for a period shorter than one year. The Exchange also notes that the underlying PPL common stock from which the value of the Unit is in part derived will remain outstanding and listed on the Exchange following maturity of the Units.

The Exchange's existing equity trading rules apply to trading of the Units. The Exchange will also have in place certain other requirements to provide additional investor protection. First, pursuant to Exchange Rule 405, the Exchange will impose a duty of due diligence on its members and member firms to learn the essential facts relating to every customer prior to trading the Units.[9] Second, the Units will be subject to the equity margin rules of the Exchange.[10] Third, the Exchange will, prior to trading the Units, distribute a circular to the membership providing guidance with regard to member firm compliance responsibilities (including suitability recommendations) when handling transactions in the Units and highlighting the special risks and characteristics of the Units. With respect to suitability recommendations and risks, the Exchange will require members, member organizations and employees thereof recommending a transaction in the Units: (1) To determine that such transaction is suitable for the customer, and (2) to have a reasonable basis for believing that the customer can evaluate the special characteristics of, and is able to bear the financial risks of, such transaction.

The Exchange represents that its surveillance procedures are adequate to properly monitor the trading of the Units. Specifically, the Exchange will rely on its existing surveillance procedures governing equity, which have been deemed adequate under the Act.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act,[11] in general, and furthers the objectives of section 6(b)(5) of the Act,[12] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transaction in securities, and, in general to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition.

[6] Section 801.00 of the Manual provides, in relevant part, that when an issuer that has fallen below any of the continued listing criteria has more than one class of securities listed, the Exchange will give consideration to delisting all such classes. Section 802.01D of the Manual states, in relevant part, that delisting of specialized securities will be considered when the number of publicly-held shares is less than 100,000; the number of holders is less than 100; and aggregate market value of shares outstanding is less than $1 million. The Exchange also notes that it may, at any time, suspend a security if it believes that continued dealings in the security on the Exchange are not advisable.

[7] The issuer listing standards require: (1) If the issuer is a NYSE-listed company, the issuer must be a company in good standing; (2) if the issuer is an affiliate of an NYSE-listed company, the NYSE-listed company must be a company in good standing; and (3) if not listed, the issuer must meet NYSE original listing standards as set forth in Sections 102.01–102.03 and 103.01–05 of the Manual.

[8] The equity listing standards require: (1) At least 1 million securities outstanding; (2) at least 400 holders; (3) minimum life of one year; and (4) at least $4 million market value. The Units will not have a minimum life of one year because the Contract Settlement Date is May 18, 2004.

[9] NYSE Rule 405 requires that every member, member firm or member corporation use due diligence to learn the essential facts relative to every customer and to every order or account accepted.

[10] *See* NYSE Rule 431.

[11] 15 U.S.C. 78f(b).

[12] 15 U.S.C. 78f(b)(5).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

NYSE requested that the Commission find good cause for approving the proposal to accommodate the listing of the Units by December 18, 2003, the expiration date of the exchange offer pursuant to which the Units are being offered. The Commission, however, does not find good cause to accelerate approval of this proposal.

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549–0609. Comments may also be submitted electronically at the following e-mail address: *rule-comments@sec.gov*. All comment letters should refer to File No. SR–NYSE–2003–40. The file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, comments should be sent in hardcopy or by e-mail but not by both methods. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to the File No. SR–NYSE–2003–40 and should be submitted by January 9, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–31262 Filed 12–18–03; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48919; File No. SR–NYSE–2003–38]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the New York Stock Exchange, Inc. To Extend for an Additional Six Months Its Pilot Program Permitting a Floor Broker To Use an Exchange Authorized and Provided Portable Telephone on the Exchange Floor

December 12, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on November 24, 2003, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons,

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to extend its pilot program that amends NYSE Rule 36 (Communication Between Exchange and Members' Offices) to allow a Floor broker's use of an Exchange authorized and provided portable telephone on the Exchange Floor upon approval by the Exchange ("Pilot") for an additional six months to expire on June 16, 2004. The Pilot is currently in effect on a six-month pilot basis and set to expire on December 16, 2003.[3] The text of the proposed rule change is available at the Office of the Secretary, the Exchange, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

In the Original Order,[4] the Commission approved the Pilot to be implemented as a six-month pilot beginning on or about May 1, 2003. On June 5, 2003, the Exchange extended the implementation date for the Pilot to begin no later than June 23, 2003, instead of on or about May 1, 2003, as originally adopted in the Original Order.[5] In a memorandum to all non-specialist members and member organizations, the Exchange stated that the Pilot was implemented on June 16, 2003, and thus would expire on December 16, 2003. The Exchange represents that no regulatory actions, or administrative or technical problems, other than routine telephone maintenance issues, have resulted from the Pilot over the past few months. Therefore, the Exchange seeks to extend the Pilot for an additional six months.

NYSE Rule 36 (Communications Between Exchange and Members' Offices) governs the establishment of telephone or electronic communications between the Exchange's Trading Floor and any other location. Prior to the Pilot, NYSE Rule 36.20 prohibited the use of portable telephone communications between the Trading Floor and any off-Floor location, and the only way that voice communication could be conducted by Floor brokers

[13] 17 CFR.200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 47671 (April 11, 2003), 68 FR 19048 (April 17, 2003) (SR–NYSE–2002–11) ("Original Order").

[4] See Original Order, *supra* note 3.

[5] *See* Securities Exchange Act Release No. 47992 (June 5, 2003), 68 FR 35047 (June 11, 2003) (SR–NYSE–2003–19).

between the Trading Floor and an off-Floor location was by means of a telephone located at a broker's booth. These communications often involved a customer calling a broker at the booth for "market look" information. Prior to the Pilot, a broker could not use a portable phone in a trading crowd at the point of sale to speak with a person located off the Floor.

The Exchange is proposing to extend the Pilot for an additional six months, expiring on June 16, 2004. The Pilot would amend NYSE Rule 36 to permit a Floor broker to use an Exchange authorized and issued portable telephone on the Floor. Thus, with the approval of the Exchange, a Floor broker would be permitted to engage in direct voice communication from the point of sale to an off-Floor location, such as a member firm's trading desk or the office of one of the broker's customers. Such communications would permit the broker to accept orders consistent with Exchange rules, provide status and oral execution reports as to orders previously received, as well as "market look" observations as have historically been routinely transmitted from a broker's booth location. Use of a portable telephone on the Exchange Floor other than one authorized and issued by the Exchange would continue to be prohibited.

Furthermore, both incoming and outgoing calls would continue to be allowed, provided the requirements of all other Exchange rules have been met. A broker would not be permitted to represent and execute any order received as a result of such voice communication unless the order was first properly recorded by the member and entered into the Exchange's Front End Systemic Capture ("FESC") electronic database.[5] In addition, Exchange rules require that any Floor broker receiving orders from the public over portable phones must be properly qualified to do direct access business under Exchange Rules 342 and 345, among others.[6] Furthermore, since the Exchange currently permits portable communications at the point of sale for orders in Investment Company Units (as defined in Section 703.16 of the Listed Company Manual), also known as Exchange-Traded Funds ("ETFs"),[8] and the Pilot would allow for the use of portable phones for orders in ETFs, orders in ETFs would also be subject to the same FESC requirements as orders in any other security listed on the Exchange.

As noted above, under the policy prior to the Pilot, an off-Floor customer could communicate with a broker in a trading crowd only in an indirect way by calling a broker's booth and using the booth clerk as an intermediary. The Exchange believes that the extension of the Pilot would enable the Exchange to provide more direct, efficient access to its trading crowds and customers, increase the speed of transmittal of orders and the execution of trades, and provide an enhanced level of service to customers in an increasingly competitive environment.[9] By enabling customers to speak directly to a Floor broker in a trading crowd on an Exchange authorized and issued portable telephone, the Exchange believes that the proposed rule change would expedite and make more direct the free flow of information, which, prior to the Pilot, had to be transmitted somewhat more circuitously via the broker's booth.

The Exchange also notes that specialists are subject to separate restrictions in NYSE Rule 36 on their ability to engage in voice communications from the specialist post to an off-Floor location.[10] The amendment to NYSE Rule 36 would not apply to specialists, who would continue to be prohibited from speaking from the post to upstairs trading desks or customers.

Pilot Program Results

Since the Pilot's inception, the Exchange represents that there have been approximately 800 portable phone subscribers. In addition, with regard to portable phone usage, for a sample week of July 28, 2003 through August 1, 2003, an average of 19,611 calls per day were originated from portable phones, and an average of 3218 calls per day were received on portable phones. Of the calls originated from portable phones, an average of 18,116 calls per day were internal calls to the booth, and 1495 calls per day were external calls. Thus, over 90% of the calls that originated from portable phones were internal calls to the booth. With regard to received calls, of the 3218 average calls per day received, an average of 1351 calls per day were external calls, and an average of 1867 calls per day were internal calls received from the booth. Thus, approximately 58% of all received calls were internally generated, and 42% were calls from the outside.

Therefore, the Exchange believes that the Pilot appears to be successful in that there is a reasonable degree of usage of portable phones, but as noted above, there have been no regulatory, administrative, or other technical problems associated with their usage. The Exchange believes that the Pilot appears to facilitate communication on the Floor without any corresponding drawbacks. Accordingly, the Exchange believes it is appropriate to extend the Pilot for an additional six months, expiring on June 16, 2004.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act [11] in general, and furthers the objectives of section 6(b)(5) of the Act [12] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Exchange believes that the amendment to NYSE Rule 36 would support the mechanism of free and open markets by providing for increased means by which communications to and from the Floor of the Exchange may take place.

[5] *See* Securities Exchange Act Release No. 43689 (December 7, 2000), 65 FR 79145 (December 18, 2000) (SR–NYSE–98–25). *See also* Securities Exchange Act Release No. 44943 (October 16, 2001), 66 FR 53820 (October 24, 2001) (SR–NYSE–2001–39) (discussing certain exceptions to FESC, such as orders to offset an error, or a bona fide arbitrage, which may be entered within 60 seconds after a trade is executed).

[6] For more information regarding Exchange requirements for conducting a public business on the Exchange Floor, *see* Information Memos 01–41 (November 21, 2001), 01–18 (July 11, 2001) (available on *www.nyse.com/regulation/regulation.html*) and 91–25 (July 8, 1991).

[8] Previously, under an exception to NYSE Rule 123(e), orders in ETFs could first be executed and then entered into FESC. However, in SR–NYSE–2003–09, the Exchange eliminated the exception to NYSE Rule 123(e) for ETFs, and, as part of its proposal in SR–NYSE–2002–11, allowed the use of portable phones for orders in ETFs. *See* Securities Exchange Act Release No. 47667 (April 11, 2003), 68 FR 19063 (April 17, 2003). NYSE Rule 123(e) provides that all orders in any security traded on the Exchange be entered into FESC before they can be represented in the Exchange's auction market.

[9] *See, e.g.*, Securities Exchange Act Release No. 43493 (October 30, 2000), 65 FR 67022 (November 8, 2000) (SR–CBOE–00–04) (expanding the Chicago Board Options Exchange, Inc.'s existing policy and rules governing the use of telephones at equity option trading posts by allowing for the receipt of orders over outside telephone lines, from any source, directly at equity trading posts), and Securities Exchange Act Release No. 43836 (January 11, 2001), 66 FR 6727 (January 22, 2001) (SR–PCX–00–33) (discussing and approving the Pacific Exchange, Inc.'s proposal to remove current prohibitions against Floor Brokers' use of cellular or cordless phones to make calls to persons located off the trading floor).

[10] *See* Securities Exchange Act Release No. 46560 (September 26, 2002), 67 FR 62088 (October 3, 2002) (SR–NYSE–00–31) (discussing restrictions on specialists' communications from the post).

[11] 15 U.S.C. 78f(b).

[12] 15 U.S.C. 78f(b)(5).

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the proposed rule change (1) does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative for 30 days from the date of filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, and the Exchange provided the Commission with written notice of its intent to file the proposed rule change at least five days prior to the filing date, the proposed rule change has become effective pursuant to section 19(b)(3)(A) of the Act,[13] and subparagraph (f)(6) of Rule 19b–4 thereunder.[14] At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

The Exchange requests that the Commission waive the 30-day delayed operative date of Rule 19b–4(f)(6)(iii).[15] The Exchange believes that waiver of this period will allow the current Pilot to operate for an additional six months and avoid inconvenience and interruption to the public. The Commission believes that it is consistent with the protection of investors and the public interest to waive the 30-day operative delay and make this proposed rule change immediately effective.[16] The Commission believes that the waiver of the 30-day operative delay will allow the Exchange to continue, without interruption, the existing operation of its Pilot for an additional six months, expiring on June 16, 2004.

The Commission believes that the use of Exchange authorized and issued portable telephones would allow the Exchange to have access to all phone records. This ability to track phone calls, along with the data captured in FESC, should aid the Exchange in surveilling for compliance with Exchange rules. In this regard, the Commission notes that proper surveillance is an essential component of any telephone access policy to an Exchange Trading Floor. Surveillance procedures should help to ensure that Floor brokers who are interacting with the public on portable phones are authorized to do so, as NYSE Rule 36 will require,[17] and that orders are being handled in compliance with NYSE rules. The Commission expects that the Exchange actively review these procedures and address any potential concerns that have arisen during the extension of the Pilot. The Commission also requests that the Exchange report any problems, surveillance or enforcement matters associated with the Floor brokers' use of an Exchange authorized and provided portable telephone on the Floor. As stated in the Original Order, the NYSE should also address whether additional surveillance would be needed because of the derivative nature of the ETFs. Furthermore, if the NYSE decides to request permanent approval or another extension of the Pilot, we would expect that the NYSE submit information documenting the usage of the phones, any problems that have occurred, including, among other things, any regulatory actions or concerns, and any advantages or disadvantages that have resulted.[18]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Comments may also be submitted electronically at the following e-mail address: *rule-comments@sec.gov*. All comment letters should refer to File No. SR–NYSE–2003–38. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, comments should be sent in hardcopy or by e-mail but not by both methods. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to File No. SR–NYSE–2003–38 and should be submitted by January 9, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[19]

Margaret H. McFarland,

Deputy Secretary.

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BILLING CODE 8010–01–P

[13] 15 U.S.C. 78s(b)(3)(A).

[14] 17 CFR 240.19b–4(f)(6).

[15] 17 CFR 240.19b–4(f)(6)(iii).

[16] For purposes of only accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

[17] *See* note 7 and accompanying text for other NYSE requirement that Floor brokers be properly qualified before doing a public customer business.

[18] This information along with any proposal to extend, or permanently approve, the pilot should be submitted at least two to three months prior to the expiration of the six-month pilot.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48925; File No. SR–Phlx–2003–78]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to Fees for Remote Specialists

December 15, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on November 21, 2003, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Phlx. The Commission is publishing this notice to

[19] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Phlx proposes to amend its schedule of dues, fees and charges to provide that fees, dues, discounts, credits and charges that apply to Phlx remote competing specialists will also be applicable to Phlx remote primary specialists.[3] The text of the proposed rule change is available at the Office of the Secretary, the Phlx, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Phlx included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Phlx has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On August 6, 2002, in connection with the planned commencement of the Exchange's remote competing specialist program, the Exchange amended its fee schedule to specify fees, dues, discounts, credits and charges applicable to Phlx remote competing specialists.[4] Because at that time the Exchange's remote specialist program was to be limited to remote competing (as opposed to primary) specialists, that proposed rule change applied only to remote competing specialists.[5]

The Commission recently approved a proposed rule change to expand Phlx's remote specialist program to include remote primary specialists in addition to remote competing specialists.[6] The purpose of this proposed rule change is to extend the same fees, dues, discounts, credits and charges applicable to remote competing specialists to remote primary specialists.[7] According to the Exchange, the revenue generated by these fees will enhance the Exchange's ability to provide a marketplace for its remote primary and competing specialists and other members. Accordingly, the text of Appendix A of the Exchange's fee schedule is amended by the deletion of the word "competing" in footnote 22. Also, the term "RS" (for "Remote Specialist") is substituted for the term "RCS" (for "Remote Competing Specialist") in the reference to the "Regular ETP RCS Fee."[8] All existing references to "Remote Specialists" on Appendix A will now be construed to include both remote primary specialists and remote competing specialists.

2. Statutory Basis

The Exchange believes that its proposal to amend its schedule of dues, fees and charges is consistent with section 6(b) of the Act[9] in general, and furthers the objectives of section 6(b)(4) of the Act[10] in particular, in that it is an equitable allocation of reasonable dues, fees, and other charges among Exchange members. The Exchange represents that the proposal is designed to enable it to provide a competitive marketplace for its members.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing proposed rule change has been designated as a fee change pursuant to section 19(b)(3)(A)(ii) of the Act[11] and Rule 19b–4(f)(2)[12] thereunder. Accordingly, the proposal will take effect upon filing with the Commission. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Comments may also be submitted electronically at the following e-mail address: *rule-comments@sec.gov*. All comment letters should refer to File No. SR–Phlx–2003–78. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, comments should be sent in hardcopy or by e-mail but not by both methods. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Phlx. All submissions should refer to File No. SR–Phlx–2003–78 and should be submitted by January 9, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Margaret H. McFarland,

Deputy Secretary.

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BILLING CODE 8010–01–P

[1] Subsection (b)(6) of Phlx Rule 229A, Operation of PACE System when Competing Specialists are Trading, provides in part that "Primary Specialist" shall mean the primary specialist identified as such by the Equity Allocation, Evaluation and Securities Committee. Subsection (b)(6) of Phlx Rule 229A provides in part that "Competing Specialist" shall mean any competing specialist identified as such by the Equity Allocation, Evaluation and Securities Committee pursuant to Phlx Rule 460. Phlx Rule 460, Procedures for Competing Specialists, sets forth procedures for applying to become a competing specialist as well as competing specialists' obligations.

[4] *See* Securities Exchange Act Release No. 46392 (August 21, 2002), 67 FR 55294 (August 28, 2002) (File No. SR–Phlx–2002–45) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Regarding Fees for Remote Competing Specialists). In that filing, the Exchange adopted a number of new fees applicable to members and member organizations in connection with their remote competing specialist operations, and amended the existing exemption of certain member organizations operating on the Exchange's trading floor from the Exchange's Examinations Fee in light of the commencement of the remote competing specialist program. The Exchange noted in that filing that certain of its current dues, fees and charges are assessed for privileges the Exchange extends with respect to, and services it provides on, the physical equity trading floor. These fees include the Trading Post/Booth Fee; Trading Post with Kiosk Fee; the Kiosk Construction Fee; the Controller Space Fee; the Floor Facility Fees; the Direct Wire to the Floor Fee; the Telephone System Line Extensions Fee; the Quotron Equipment Fee; the Instinet, Reuters Equipment Fee; the Trading Floor Personnel Registration Fee; the Computer Equipment Services, Repairs or Replacements Fee and the Computer Relocation Requests Fee. The Exchange represents that it does not charge these fees to remote specialists.

[5] *See* Phlx Rule 461, PACE Remote Specialist, and Securities Exchange Act Release No. 45184 (December 21, 2001), 67 FR 622 (January 4, 2002) (order approving File No. SR–Phlx–2001–98).

[6] *See* Securities Exchange Act Release No. 48816 (November 20, 2003), 68 FR 66912 (November 28, 2003) (order approving File No. SR–Phlx–2003–10). In SR–Phlx–2003–10, the Exchange proposed to amend its rules to permit "primary specialists" to trade away from the Phlx floor, on a remote basis, in limited circumstances. That filing was approved by the Commission on November 20, 2003.

[7] A related proposed rule change has been filed by Stock Clearing Corporation of Philadelphia with the Commission to amend its schedule of dues, fees and charges as it relates to remote specialists. *See* File No. SR–SCCP–2003–06.

[8] Currently, the Regular ETP RCS Fee of $1,000.00 per month is charged in lieu of the Regular ETP Fee for equity trading permit holders whose Exchange business is limited to operating as a remote competing specialist. The Exchange now proposes to charge that fee in lieu of the Regular ETP Fee for equity trading permit holders whose Exchange business is limited to operating as a remote competing or remote primary specialist or both, and to change the name of the fee accordingly to the "Regular ETP RS Fee."

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(4).

[11] 15 U.S.C. 78(s)(b)(3)(A)(ii).

[12] 17 CFR 240.19b–4(f)(2).

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48923; File No. SR–OC–2003–09]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by OneChicago, LLC To Adopt OneChicago Rule 616 Relating to "Chinese Walls"

December 12, 2003.

Pursuant to section 19(b)(7) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–7 under the Act,[2] notice is hereby given that on December 8, 2003, OneChicago, LLC ("OneChicago" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule changes described in Items I, II, and III below, which Items have been prepared by OneChicago. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

OneChicago also has filed the proposed rule change with the Commodity Futures Trading Commission ("CFTC"). OneChicago filed a written certification with the CFTC under section 5c(c) of the Commodity Exchange Act[3] on December 5, 2003, which stated that the effective date of the proposed rule change is December 8, 2003.

I. Self-Regulatory Organization's Description of the Proposed Rule Change

OneChicago proposes to add new OneChicago Rule 616, attached hereto as Exhibit 4, to create a safe harbor for OneChicago market makers so that they may engage in Other Business Activities described below which may result in inadvertent cross trades without violating OneChicago Rule 604, provided that OneChicago confirms that each such market maker has implemented and maintains "Chinese Wall" procedures in conformance with the Rule. The text of the proposed rule change appears below. New text is in *italics*. Deleted text is in [brackets].

* * * * *

Rule 616. Safe Harbor for Inadvertent Cross Trades

(a) An Entity acting as a market maker for any Exchange product (an "Exchange Market Maker") may engage in Other Business Activities, or it may be affiliated with a broker-dealer that engages in Other Business Activities, and shall not be in violation of Exchange Rule 604 due to inadvertent cross trades with respect to any trades that are matched by the OneChicago System against trades entered for or on behalf of the Other Business Activities, provided that the Exchange Market Maker implements and maintains a Chinese Wall between its market-making operations and such Other Business Activities that meets the requirements below.

(b) Definitions: For purposes of this rule, (1) "Other Business Activities" means:

(A) conducting an investment or banking or public securities business;

(B) making markets in the securities underlying the security futures or options on the securities or indexes underlying the security futures in which it makes markets; or

(C) entering agency orders or proprietary orders (other than market making transactions for Exchange products) into the OneChicago System.

(2)"Chinese Wall" means an organizational structure that satisfies each of the following conditions:

(A) The market-making activities are conducted in a location physically separated from the locations in which the Other Business Activities are conducted in a manner that effectively impedes communications between persons conducting the market-making function and persons conducting the Other Business Activities.

(B) Procedures are implemented and maintained to prevent persons in possession of material, non-public corporate or market information on one side of the Chinese Wall from divulging such information to persons on the other side of the Chinese Wall.

(C) Persons on one side of the Chinese Wall may not exercise influence or control over persons on the other side of the Chinese Wall, except that:

(i) the market-making operations and the Other Business Activities may be under common management provided such managerial oversight (a) does not conflict with or compromise the Entity's responsibilities under the Rules of the Exchange and (b) persons occupying managerial positions do not divulge information or allow information to be divulged pertaining to market maker positions and trading activities to any other person so that any person on one side of the Chinese Wall becomes aware of pending or anticipated quotes or unfilled orders on the other side of the Chinese Wall; and

(ii) the common supervisor or any individual responsible for monitoring the overall risk exposure of the Entity (the "Risk Exposure Supervisor") may establish general trading parameters with respect to both market-making and other proprietary trading other than on an order specific basis, provided that the Risk Exposure Supervisor does not:

(a) enter orders into the OneChicago System or make trading decisions for either the Entity's market-making account or proprietary account;

(b) provide to any person performing the Other Business Activities described in paragraph (b)(1)(c) of this Rule any information relating to market-making activity; nor

(c) provide a person performing the market-making function with information regarding the firm's pending transactions or order flow arising out of its activities described in paragraph (b)(1)(c) of this Rule.

(3) An "Entity" means an inanimate business organization, including a corporation, a partnership or other legal business organization. It does not include animate beings.

(c) An Entity implementing a Chinese Wall pursuant to this Rule shall submit to the Exchange a written statement setting forth:

(1) The manner in which it intends to satisfy the conditions in paragraph (b)

[1] 15 U.S.C. 78s(b)(7).

[2] 17 CFR 240.19b–7.

[3] 7 U.S.C. 7a–2(c).

of this Rule and the compliance and audit procedures it proposes to implement to ensure that the Chinese Wall is maintained:

(2) The names and titles of the person or persons responsible for maintenance and surveillance of the procedures;

(3) A commitment to provide the Exchange with such information and reports as the Exchange may request relating to the transactions of the Entity and its affiliates;

(4) A commitment to take appropriate disciplinary action against any person violating this Rule or the Entity's internal compliance and audit procedures adopted pursuant to subparagraph (c)(1) of this Rule, and an acknowledgement that the Exchange may take appropriate disciplinary action, including (without limitation) reallocation of any or all Contracts in which it serves as a market maker, in the event of such a violation;

(5) Whether the Entity or an affiliate of the Entity intends to clear the Entity's proprietary trades and, if so, the procedures established to ensure that information with respect to such clearing activities will not be used in a way that would compromise the Entity's Chinese Wall, which procedures, at a minimum, must be the same as those used by the Entity or the affiliate to clear for unaffiliated third parties; and

(6) An acknowledgement that any trading by a person while in possession of material, non-public information received as a result of the breach of the internal controls required under this Rule may be a violation of the CEA, the Commission's Regulations, the Exchange Act, the rules thereunder or the Rules of the Exchange.

(d) An Exchange Market Maker cannot avail itself of this Rule until it has received written confirmation from the Exchange that the organizational structure and the compliance and audit procedures described in the statement submitted by such Exchange Market Maker in accordance with paragraph (c) above comply with this Rule.

(e) Subparagraph (c)(5) permits an Entity or an affiliate of the Entity to clear the Entity's market maker transactions if it establishes procedures to ensure that information with respect to such clearing activities will not be used to compromise the Chinese Wall. Such procedures must provide that any information pertaining to market maker positions and trading activities, and information derived from any clearing and margin financing arrangements, may be made available only to those employees (other than employees actually performing clearing and margin functions) specifically authorized under this Rule to have access to such information or to other employees in senior management positions, including common management as described in clause (b)(2)(C)(i) of this Rule, who are involved in exercising managerial oversight with respect to the market making activity.

(f) Notwithstanding paragraph (a) of this Rule, an Entity shall not be required to maintain a Chinese Wall to obtain safe harbor from violating Rule 604 due to inadvertent cross trades under the following conditions:

(1) the Entity functions as a non-market market Exchange Member in the OneChicago System solely in Contracts in which the Entity is not appointed as a market market pursuant to Rule 515(n); and

(2) the Entity enters orders into the OneChicago System as a non-market marker Exchange Member only for (i) the proprietary account of such Entity or (ii) the account of entities that are affiliated with such Entity.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

OneChicago has prepared statements concerning the purpose of, and basis for, the proposed rule change, burdens on competition, and comments received from members, participants, and others. The text of these statements may be examined in the places specified in Item IV below. These statements are set forth in Sections A, B, and C below.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

OneChicago proposes to add new OneChicago Rule 616 to provide a safe harbor to market makers for inadvertent cross trades that may occur between their market-making operations in OneChicago's products and their "Other Business Activities" (as defined below) on the condition that OneChicago confirms that each such market maker has implemented and maintains "Chinese Wall" procedures in conformance with OneChicago Rule 616. For purposes of this Rule, "Other Business Activities" means (1) conducting an investment or banking or public securities business; (2) making markets in the securities underlying the security futures or options on the securities or indexes underlying the security futures in which the market maker makes markets; or (3) entering agency orders or proprietary orders (other than market-making transactions for OneChicago products) into the OneChicago system. OneChicago Rule 616 would also permit members to conduct proprietary trading in the same physical space as their market-making activities, but only in security futures products that are not within their market-making assignments.[4]

To qualify for the protection afforded by the OneChicago Rule 616 safe harbor, a OneChicago market maker must meet the following conditions: Have an organizational structure that has physical separation between the persons engaged in its market making activities on the Exchange and the persons conducting its "Other Business Activities"; implement "Chinese Wall" procedures to prevent the use of material non-public, corporate or market information in possession of persons on one side of the wall from divulging such information to persons on the other side of the wall; and restrict, with some exceptions,[5] persons from one side of the wall from exercising influence or control over persons on the other side of the wall. As a precondition to relying on proposed OneChicago Rule 616 as a safe harbor for inadvertent cross trades, an Exchange market maker would be required to submit to the Exchange a written statement that sets forth the manner in which it intends to satisfy the conditions described above; the names and titles of the person or persons responsible for maintenance and surveillance of the Chinese Wall procedures; a commitment to provide the Exchange with such information and reports as the Exchange may request; a commitment to take appropriate

[4] The Commission approved a similar provision in International Securities Exchange, Inc. Rule 810 in December 2000. *See* Securities Exchange Act Release No. 43729 (December 15, 2000), 65 FR 81551 (December 26, 2000).

[5] OneChicago proposes two exceptions to OneChicago's Rule 616 Chinese Wall requirement that persons on one side of the wall may not exercise influence or control over persons on the other side of the wall. The first exception permits the market making function and Other Business Activities to be under common management as long as any management oversight does not conflict with or compromise the market maker's responsibilities under OneChicago Rules. The second exception permits the same person or persons to supervise the market-making functions and Other Business Activities to monitor the overall risk exposure of the firm or affiliated firms. This exception does not, however, permit such supervisor to enter orders in the OneChicago System or make trading decisions for either the market-making account or any other proprietary account; provide information to any person performing Other Business Activities with information relating to market-making activity; or provide a person performing the market maker function with information regarding the firm's pending transactions or order flow arising out of its Other Business Activities.

disciplinary action against any person violating proposed OneChicago Rule 616 or the member's internal compliance and audit procedures adopted pursuant to proposed OneChicago Rule 616; the procedures established to ensure that information with respect to clearing activities will not be used to compromise the entity's Chinese Wall; and an acknowledgement that any trading by a person while in possession of material non-public information received as a result of the breach of the internal controls required under proposed OneChicago Rule 616 may be a violation of the Act, the rules and regulations thereunder, the CEA, the CFTC Regulations, or the Rules of the Exchange.

Under paragraph (f) of proposed OneChicago Rule 616, an OneChicago market maker would not be in violation of OneChicago Rules 604, if the Exchange market maker functions as a non-market maker Exchange member exclusively in contracts in which such member is not appointed as a market maker pursuant to OneChicago Rule 515(n) and such member enters orders only for its proprietary account or the accounts of its affiliated entities.

2. Statutory Basis

OneChicago believes that the proposed rule change is consistent with section 6(b)(5) of the Act[6] because it promotes just and equitable principles of trade and is designed to prevent fraudulent and manipulative practices.

B. Self-Regulatory Organization's Statement on Burden on Competition

OneChicago believes that the proposed new rule will promote competition by offering a safe harbor for market makers executing inadvertent cross trades on the Exchange and thereby removing a significant deterrent to potential market makers for the Exchange's products.

C. Self-Regulatory Organization's Statement of Comments on the Proposed Rule Change Received From Members, Participants, or Others

Comments on the proposed rule change have not been solicited and none have been received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change has become effective on December 8, 2003. Within 60 days of the date of effectiveness of the proposed rule change, the Commission, after consultation with the CFTC, may summarily abrogate the proposed rule change and require that the proposed rule change be refiled in accordance with the provisions of section 19(b)(1) of the Act.[7]

[6] 15 U.S.C. 78f(b)(5).

[7] 15 U.S.C. 78s(b)(1).

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change conflicts with the Act. Persons making written submissions should file nine copies of the submission with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Comments also may be submitted electronically to the following e-mail address: *rule-comments@sec.gov*. All comment letters should refer to File No. SR–NASD–2003–174. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, comments should be sent in hard copy or by e-mail but not by both methods. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of these filings also will be available for inspection and copying at the principal office of OneChicago. All submissions should refer to File No. SR–OC–2003–09 and should be submitted by January 9, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–31264 Filed 12–18–03; 8:45 am]

BILLING CODE 8010–01–P

[8] 17 CFR 200.30–3(a)(75).

DEPARTMENT OF STATE

[Public Notice 4531]

U.S. Advisory Commission on Public Diplomacy; Notice of Meeting

A meeting of the U.S. Advisory Commission on Public Diplomacy will be held at the American Embassy in London, England on January 9, 2004. The Commission will examine and approve public diplomacy subjects for exploration in Fiscal Year 2004.

The Commission was reauthorized pursuant to Pub. L. 106–113 (H.R. 3194, Consolidated Appropriations Act, 2000).

The U.S. Advisory Commission on Public Diplomacy is a bipartisan Presidentially appointed panel created by Congress in 1948 to provide oversight of U.S. Government activities intended to understand, inform and influence foreign publics. The Commission reports its findings and recommendations to the President, the Congress and the Secretary of State and the American people. Current Commission members include Barbara M. Barrett of Arizona, who is the Chairman; Harold C. Pachios of Maine; Ambassador Penne Percy Korth of Washington, DC; Ambassador Elizabeth F. Bagley of Washington, DC; Charles "Tre" Evers III of Florida; Jay T. Snyder of New York; and Maria Sophia Aguirre of Washington, DC.

For more information, please contact Matt J. Lauer at (202) 203–7880.

Dated: December 15, 2003.

Matthew Lauer,

Executive Director, U.S. Advisory Commission on Public Diplomacy, Department of State.

[FR Doc. 03–31355 Filed 12–18–03; 8:45 am]

BILLING CODE 4710–11–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Determination Regarding Waiver of Discriminatory Purchasing Requirements With Respect to Goods and Services Covered by Chapter 9 of the U.S.-Chile Free Trade Agreement

AGENCY: Office of the United States Trade Representative.

ACTION: Determination under Trade Agreements Act of 1979.

EFFECTIVE DATE: January 1, 2004.

FOR FURTHER INFORMATION CONTACT: Jean Heilman Grier, Senior Procurement Negotiator, Office of the United States Trade Representative, (202) 395–9476, or Theodore R. Posner, Assistant General Counsel, Office of the United States Trade Representative, (202) 395–9512.

On June 6, 2003, the United State and Chile entered into the United States-Chile Free Trade Agreement ("the USCFTA"). Chapter 9 of the USCFTA sets forth certain obligations with respect to government procurement of goods and services, as specified in Annex 9.1 of the USCFTA.

On September 3, 2003, the President signed into law the United States-Chile Free Trade Agreement Implementation Act ("the USCFTA Act") (Pub. L. No. 108–77, 117 Stat. 909) (19 U.S.C. 3805 note). In section 101(a) of the USCFTA Act, the Congress approved the USCFTA and the statement of administrative action proposed to implement the USCFTA that the President submitted to the Congress.

Section 1–201 of Executive Order 12260 of December 31, 1980 (46 FR 1653) delegated the functions of the President under sections 301 and 302 of the Trade Agreements Act of 1979 ("the Trade Agreements Act") (19 U.S.C. 2511, 2512) to the United States Trade Representative.

Now, therefore, I, Robert B. Zoellick, United States Trade Representative, in conformity with the provisions of sections 301 and 302 of the Trade Agreements Act, and Executive Order 12260, and in order to carry out U.S. obligations under Chapter 9 of the USCFTA, do hereby determine effective on January 1, 2004, that:

1. Chile is a country, other than a major industrial country, which, pursuant to the USCFTA, will provide appropriate reciprocal competitive government procurement opportunities to United States products and suppliers of such products. In accordance with section 301(b)(3) of the Trade Agreements Act, Chile is so designated for purposes of section 301(a) of the Trade Agreements Act.

2. With respect to eligible products of Chile (*i.e.*, goods and services covered by the Schedules of the United States in Annex 9.1 of the USCFTA) and suppliers of such products, the application of any law, regulation, procedure, or practice regarding government procurement that would, if applied to such products and suppliers, result in treatment less favorable than that accorded—

(A) To United States products and suppliers of such products; or

(B) To eligible products of another foreign country or instrumentality which is party to the Agreement on Government Procurement referred to in section 101(3)(17) of the Uruguay Round Agreements Act (19 U.S.C. 3511(d)(17)) and suppliers of such products, shall be waived.

This waiver shall be applied by all entities listed in the Schedule of the United States to Section A of Annex 9.1 of the USCFTA, and in list A of the Schedule of the United States to Section C of Annex 9.1 of the USCFTA.

3. The designation in paragraph 1 and the waiver in paragraph 2 are subject to modification or withdrawal by the United States Trade Representative.

Dated: December 16, 2003.

Robert B. Zoellick,

United States Trade Representative.

[FR Doc. 03–31372 Filed 12–18–03; 8:45 am]

BILLING CODE 3190–W3–M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Determination Regarding Waiver of Discriminatory Purchasing Requirement With Respect to Goods and Services Covered by Chapter 13 of the U.S.-Singapore Free Trade Agreement

AGENCY: Office of the United States Trade Representative.

ACTION: Determination under Trade Agreements Act of 1979.

EFFECTIVE DATE: January 1, 2004.

FOR FURTHER INFORMATION CONTACT: Jean Heilman Grier, Senior Procurement Negotiator, Office of the United States Trade Representative, (202) 395–9476, or Theodore R. Posner, Assistant General Counsel, Office of the United States Trade Representative, (202) 395–9512.

On May 6, 2003, the United States and Singapore entered into the United States-Singapore Free Trade Agreement ("USSFTA"). Chapter 13 of the USSFTA sets forth certain obligations with respect to government procurement of goods and services, as specified in Annex 13A of the USSFTA.

On September 3, 2003, the President signed into law the United States-Singapore Free Trade Agreement Implementation Act ("the USSFTA ACT") (Pub. L. No. 108–78, 117 Stat. 948) (19 U.S.C. 3805 note). In section 101(a) of the USSFTA Act, the Congress approved the USSFTA and the statement of administrative action proposed to implement the USSFTA that the President submitted to the Congress.

Section 1–201 of Executive Order 12260 of December 31, 1980 (46 FR 1653) delegates the functions of the President under Sections 301 and 302 of the Trade Agreements Act of 1979 ("the Trade Agreements Act") (19 U.S.C. 2511, 2512) to the United States Trade Representative.

On January 1, 1981, acting pursuant to Executive Order 12260, the Acting United States Trade Representative designated Singapore for purposes of section 301(a) of the Trade Agreements Act, on the basis of Singapore's status as a party to the predecessor to the World Trade Organization Agreement on Government Procurement. Singapore is a party to World Trade Organization Agreement on Government Procurement ("the GPA") and continues to be designated for purposes of section 301(a) of the Trade Agreements Act.

Under the USSFTA, Singapore will provide reciprocal competitive government procurement opportunities to United States products and suppliers of such products, which are greater than the reciprocal competitive government procurement opportunities Singapore provides to United States products and suppliers of such products under the GPA. Singapore's commitment to provide such reciprocal competitive procurement opportunities constitutes an independent basis for its designation for purposes of section 301(a) of the Trade Agreements Act.

Now, therefore, I, Robert B. Zoellick, United States Trade Representative, in conformity with the provisions of sections 301 and 302 of the Trade Agreements Act, and Executive Order 12260, and in order to carry out U.S. obligations under Chapter 13 of the USSFTA, do hereby determine, effective on January 1, 2004, that:

1. Singapore is a country, other than a major industrial country, which, pursuant to the USSFTA, will provide appropriate reciprocal competitive government procurement opportunities to United States products and suppliers of such products. In accordance with section 301(b)(3) of the Trade Agreements Act, Singapore is so designated for purposes of section 301(a) of the Trade Agreements Act.

2. With respect to eligible products of Singapore (*i.e.*, goods and services covered by the Schedules of the United States in Annex 13A of the USSFTA) and suppliers of such products, the application of any law, regulation, procedure, or practice regarding government procurement that would, if applied to such products and suppliers, result in treatment less favorable than that accorded—

(A) To United States products and suppliers of such products; or

(B) To eligible products of another foreign country or instrumentality which is a party to the GPA and suppliers of such products, shall be waived.

This waiver shall be applied by all entities referred to in Schedules 1.A and 1.C of the United States Annex 13A of the USSFTA.

3. The designation in paragraph 1 and the waiver in paragraph 2 are subject to modification or withdrawal by the United States Trade Representative.

Dated: December 16, 2003.

Robert B. Zoellick,

United States Trade Representative.

[FR Doc. 03–31371 Filed 12–18–03; 8:45 am]

BILLING CODE 3190–W3–M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Procurement Thresholds for Implementation of the Trade Agreements Act of 1979

AGENCY: Office of the United States Trade Representative.

ACTION: Determination of procurement thresholds under the WTO Government Procurement Agreement and Chapter 10 of the North American Free Trade Agreement.

EFFECTIVE DATE: January 1, 2004.

FOR FURTHER INFORMATION CONTACT: Jean Heilman Grier, Senior Procurement Negotiator, Office of the United States Trade Representative, (202) 395–9476.

SUMMARY: Executive Order 12260 requires the United States Trade Representative to set the U.S. dollar thresholds for application of Title III of the Trade Agreements Act of 1979, as amended (19 U.S.C. 2511 *et seq.*), which implements U.S. trade agreement obligations, including those under the World Trade Organization (WTO) Government Procurement Agreement and Chapter 10 of the North American Free Trade Agreement (NAFTA). These obligations apply to covered procurements valued at or above specified U.S. dollar thresholds.

Now, therefore, I, Robert B. Zoellick, United States Trade Representative, in conformity with the provisions of Executive Order 12260, and in order to carry out U.S. trade agreement obligations under the WTO Government Procurement Agreement and Chapter 10 of NAFTA, do hereby determine, effective on January 1, 2004:

For the calendar years 2004–2005, the thresholds are as follows:

I. WTO Government Procurement Agreement

A. Central Government Entities listed in U.S. Annex 1:

(1) Procurement of goods and services—$175,000; and

(2) Procurement of construction services—$6,725,000.

B. Sub-Central Government Entities listed in U.S. Annex 2;

(1) Procurement of goods and services—$477,000; and

(2) Procurement of construction services—$6,725,000.

C. Other Entities listed in U.S. Annex 3:

(1) Procurement of goods and services—$538,000; and

(2) Procurement of construction services—$6,725,000.

II. Chapter 10 of the NAFTA

A. Federal Government Entities listed in the U.S. Schedule to Annex 1001.1a–1:

(1) Procurement of goods and services—$58,550; and

(2) Procurement of construction services—$7,611,532.

B. Government Enterprises listed in the U.S. Schedule to Annex 1001.1a–2:

(1) Procurement of goods and services—$292,751; and

(2) Procurement of construction services—$9,368,478.

Dated: December 16, 2003.

Robert B. Zoellick,

United States Trade Representative.

[FR Doc. 03–31373 Filed 12–18–03; 8:45 am]

BILLING CODE 3190–W3–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Request Renewal From the Office of Management and Budget (OMB) of Three Current Public Collections of Information

AGENCY: Federal Aviation Administration (FAA) DOT.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 33501 *et seq.*), the FAA invites public comment on two currently approved public information collections which will be submitted to OMB for renewal.

DATES: Comments must be received on or before February 17, 2004.

ADDRESSES: Comments may be mailed or delivered to the FAA at the following address: Ms. Judy Street, Room 613, Federal Aviation Administration, Standards and Information Division, AFP–100, 800 Independence Ave., SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: Ms. Judy Street at the above address or on (202) 267–9895.

SUPPLEMENTARY INFORMATION: In accordance with the Paperwork Reduction Act of 1995, an agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. Therefore, the FAA solicits comments on the following current collections of information in order to evaluate the necessity of the collection, the accuracy of the agency's estimate of the burden, the quality, utility, and clarity of the information to be collected, and possible ways to minimize the burden of the collection in preparation for submission to renew the clearances of the following information collections.

1. 2120–0001: Notice of Proposed Construction or Alteration, Notice of Actual Construction or Alteration, and Project Status Report. Federal regulations require that all persons report proposed or actual construction and alteration of structures affecting air safety. The reporting requirements as prescribed in 14 CFR part 77 affect any persons or businesses planning to construct or alter a structure that might affect air safety. The current estimated annual reporting burden is 15,500 hours.

2. 2120–0568: Flight Standards Customer Satisfaction Survey. The Flight Standards Service conducts surveys requiring that every element have contact with their customers to assure that their needs are being met and that service is improved. The respondents are air operators, air agencies, and airmen. The current estimated annual reporting burden is 6,667 hours.

Issued in Washington, DC on December 12, 2003.

Judith D. Street,

FAA Information Collection Clearance Officer, AFP–100.

[FR Doc. 03–31247 Filed 12–18–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Agency Information Collection Activity Under OMB Review

AGENCY: Federal Aviation Administration (FAA), DoT.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for extension of the currently approved collection. The ICR describes the nature of the information collection and the expected burden. The Federal Register Notice with a 60-day comment period soliciting comments on the following collection of information was published

on April 17, 2003 on page 19066. This information collection activity was originally submitted to OMB for review on 11/12/03. The FAA withdrew the package and resubmitted it to reflect a new estimate. This is a request for renewal of the current collection requirements. The burden hours were reduced because the information is collected every 18 months instead of annually and most covered airports have already submitted their initial plans.

DATES: Comments must be submitted on or before January 20, 2004. A comment to OMB is most effective if OMB receives it within 30 days of publication.

FOR FURTHER INFORMATION CONTACT: Judy Street on (202) 267–9895.

SUPPLEMENTARY INFORMATION:

Federal Aviation Administration (FAA)

Title: Competition Plans, Passenger Facility Charges.

Type of Request: Extension of a currently approved collection.

OMB Control Number: 2120–0661.

Form(s): NA.

Affected Public: A total of 40 public agencies controlling medium or large hub airports.

Abstract: This information is needed to meet the requirements of Title 49, Section 40117(k), Competition Plans, and to carry out a passenger facility charge application. No Passenger Facility Charge (PFC) may be approved for a covered airport and no Airport Improvement Program (AIP) grant may be made for a covered airport unless the airport has submitted a written competition plan in accordance with the statute. The affected public includes public agencies controlling medium or large hub airports.

Estimated Annual Burden Hours: An estimated 4050 hours annually.

ADDRESSES: Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, Attention: FAA Desk Officer. Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimates of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Issued in Washington, DC on December 12, 2003.

Judith D. Street,

FAA Information Collection Clearance Officer, Standards and Information Division, APF–100.

[FR Doc. 03–31248 Filed 12–18–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2003–75]

Petitions for Exemption; Disposition of Petition Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of disposition of prior petition.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption part 11 of Title 14, Code of Federal Regulations (14 CFR), this notice contains the disposition of a certain petition previously received. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

FOR FURTHER INFORMATION CONTACT: John F. Linsenmeyer, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591. Tel. (202) 267–5174.

This notice is published pursuant to 14 CFR 11.85 and 11.91.

Issued in Washington, DC on December 15, 2003.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Dispositions of Petitions

Docket No.: FAA–2001–9982.

Petitioner: Cessna Aircraft Company.

Section of 14 CFR Affected: 14 CFR 25.785(b).

Description of Relief Sought/ Disposition: To amend a previously granted exemption regarding occupant protection requirements for persons occupying multiple-place side-facing seats during takeoff and landing on Cessna Model 680 airplanes manufactured before January 1, 2004. The amendment would remove the limitation that restricts its applicability to airplanes manufactured before January 1, 2004.

Grant of Exemption, 11/24/2003, Exemption No. 7625A.

[FR Doc. 03–31244 Filed 12–18–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Informal Airspace Workshop; Proposed Instrument Procedures to Runway 24, Ted Stevens Anchorage International Airport, Anchorage, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of public workshop.

SUMMARY: The FAA intends to hold two informal airspace workshops to solicit comments regarding operational and environmental concerns from airspace users and others concerning traffic flows for aircraft operating to Runway 24R and Runway 24L at Ted Stevens Anchorage International Airport (ANC). The workshops will be presented on January 20 and January 22, 2004. The purpose of these workshops is to provide interested parties an opportunity to comment on the proposed conversion of a random flight track into a published Charted Visual Flight Procedure (CVFP) to Runway 24R and Runway 24L.

Date/Time: The first workshop will be from 6 p.m. to 9 p.m., Tuesday, January 20, 2004.

Place: Multi-Purpose Room, Spenard Community Recreation Center, 2020 West 48th Avenue, Anchorage, Alaska; telephone: (907) 343–4160.

Date/Time: The second workshop will be from 7 p.m. to 9 p.m., Thursday, January 22, 2004.

Place: Auditorium room 127, University of Alaska Anchorage, Aviation Technology Division, 2811 Merrill Field Drive, Anchorage, Alaska; telephone: (907) 264–7400.

Public Comments: The FAA actively solicits public comments. Comments may be presented at the workshop or submitted afterwards via letter, fax, or email. Comments should be received on or before February 23, 2004, to be included as part of the workshop.

FOR FURTHER INFORMATION CONTACT: Robert van Haastert, Operations Branch, AAL–535, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587; telephone number (907) 271–5863; fax: (907) 271–2850; email: *robert.van-haastert@faa.gov.*

SUPPLEMENTARY INFORMATION:

History and Background

Due to mountainous terrain within ten miles east of the ANC, there are no instrument approaches to Runways 24R or 24L. When wind conditions dictate the use of these runways, the only option available for Instrument Flight Rules (IFR) arrivals is a visual approach. Since aircraft on a visual approach are not restricted to a specific route and since high minimum vectoring altitudes prohibit giving subsequent aircraft an extended downwind leg, excessive spacing must be used to ensure aircraft separation.

The establishment of the CVFPs to Runways 24R and 24L would keep aircraft as close to ANC as possible and within Class C airspace to avoid the Seward Highway Segment by heavily used Visual Flight Rules (VFR) aircraft.

The fleet mix and number of aircraft into ANC would not change. The percentage of time Runway 24 would be utilized would also not change. Additionally, the CVFPs would result in a slight average increase in aircraft altitudes over the proposed flight track.

Workshop Agenda

This workshop is intended to involve the community in our decision making process. The workshop will be set up in an open house fashion with stations attended by FAA representatives. These stations are intended to provide information and collect comments on the development of new Charted Visual Flight Procedures for Runway 24R and Runway 24L.

Workshop Procedures

(a) The workshop will be informal in nature and will be conducted by representatives of the FAA Alaskan Region.

(b) The workshop will be open to all persons on a space-available basis. Every effort was made to provide a workshop site with sufficient capacity for expected participation. There will be no admission fee nor other charges to attend and participate.

(c) Representatives of Ted Stevens Anchorage International Airport Traffic Control Tower and Anchorage Terminal Radar Approach Control will be present to discuss procedural concepts. FAA Air Traffic Division representatives will be present to discuss environmental concerns.

(d) Any person who wishes to submit a position paper to FAA representatives pertinent to the establishment of Charted Visual Flight Procedures may do so.

(e) The workshop will not be formally recorded. However, informal tape recordings may be made to ensure that each respondent's comments are noted accurately.

(f) An official verbatim transcript or minutes of the informal airspace workshop will not be made. However, a list of the attendees, written statements received from attendees during and after the workshop and a digest of discussions during the workshop will be included in the administrative record for the project.

(g) Every reasonable effort will be made to hear the concerns of interested persons consistent with a reasonable closing time for the workshop.

Issued in Anchorage, AK, on December 12, 2003.

Trent S. Cummings,

Manager, Air Traffic Division, Alaskan Region.

[FR Doc. 03–31245 Filed 12–18–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34442]

Maritime Rail, LLC—Lease and Operation Exemption—Meadows Industrial Tracks

Maritime Rail, LLC (Maritime Rail), a noncarrier, has filed a verified notice of exemption under 49 CFR 1150.31 to lease and operate certain railroad properties totaling about 3,500 track feet in length. The tracks, which extend beyond a point of connection with a Consolidated Rail Corporation branch line known as Meadows Industrial Track No. 1, are identified on the Exhibit A–1 map attached to the notice of exemption as: (1) An existing lead track that terminates in a track identified on the A–1 map as the "car loading track"; (2) an existing track identified on the A–1 map as the "10-car storage track"; (3) an existing track identified on the A–1 map as the "10-car capacity track for holding empties while loads are pulled"; and (4) a track identified on the A–1 map as the "10-car capacity loading track," which does not now exist but which will be constructed at a later date (this track existed in the past, but it is now paved over). Maritime Rail certifies that its projected annual revenues will not exceed $5 million and that Maritime Rail will be a Class III rail carrier.

Maritime Rail states that it intends to commence operations sometime during the year 2004, specifically 6 to 8 months after the Army Corps of Engineers and the State of New Jersey award a joint contract for a demonstration project involving the dredging of the Passaic River and the treatment of the dredged material. By decision served December 8, 2003, the effective date of Maritime Rail's exemption was postponed to January 8, 2004. Therefore, the earliest the transaction can be consummated is January 8, 2004.

If the notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34442, must be filed with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001. In addition, one copy of each pleading must be served on John D. Heffner, Esq., 1920 N Street, NW., Suite 800, Washington, DC 20036.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*

Decided: December 12, 2003.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 03–31221 Filed 12–18–03; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 976

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 976, Claim for Deficiency Dividends Deductions by a Personal Holding Company, Regulated Investment Company, or Real Estate Investment Trust.

DATES: Written comments should be received on or before February 17, 2004 to be assured of consideration.

ADDRESSES: Direct all written comments to Robert Coar, Internal Revenue Service, room 6411, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Allan Hopkins, at (202) 622–6665, or at Internal Revenue Service, room 6407, 1111 Constitution Avenue, NW., Washington, DC 20224. Or through the internet, at *Allan.M.Hopkins@irs.gov*.

SUPPLEMENTARY INFORMATION:

Title: Claim for Deficiency Dividends Deductions by a Personal Holding Company, Regulated Investment Company, or Real Estate Investment Trust.

OMB Number: 1545–0045.

Form Number: Form 976.

Abstract: Form 976 is filed by corporations that wish to claim a deficiency dividend deduction. The deduction allows the corporation to use the payment of dividends to reduce taxes imposed after the tax return is filed. The IRS uses Form 976 to determine if shareholders have included the dividend amounts in gross income.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 500.

Estimated Time Per Respondent: 7 hrs., 40 min.

Estimated Total Annual Burden Hours: 3,830.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: December 15, 2003.

Robert Coar,

IRS Reports Clearance Officer.

[FR Doc. 03–31363 Filed 12–18–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 973

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 973, Corporation Claim for Deduction for Consent Dividends.

DATES: Written comments should be received on or before February 17, 2004, to be assured of consideration.

ADDRESSES: Direct all written comments to Robert Coar, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Allan Hopkins, at (202) 622–6665, or at Internal Revenue Service, room 6407, 1111 Constitution Avenue, NW., Washington, DC 20224, or through the Internet, at *Allan.M.Hopkins@irs.gov*.

SUPPLEMENTARY INFORMATION:

Title: Corporation Claim for Deduction for Consent Dividends.

OMB Number: 1545–0044.

Form Number: Form 973.

Abstract: Corporations file Form 973 to claim a deduction for dividends paid. If shareholders consent and the IRS approves, the corporation may claim a deduction for dividends paid, which reduces the corporation's tax liability. IRS uses Form 973 to determine if shareholders have included the dividend in gross income.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 500

Estimated Time Per Respondent: 4 hrs., 25 mins.

Estimated Total Annual Burden Hours: 2,210.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: December 15, 2003.

Robert Coar,

IRS Reports Clearance Officer.

[FR Doc. 03–31364 Filed 12–18–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 1310

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13(44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 1310, Statement of Person Claiming Refund Due A Deceased Taxpayer.

DATES: Written comments should be received on or before February 17, 2004, to be assured of consideration.

ADDRESSES: Direct all written comments to Robert Coar, Internal Revenue Service, room 6411, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Allan Hopkins, at (202) 622–6665, or at Internal Revenue Service, room 6407, 1111 Constitution Avenue, NW., Washington, DC 20224, or through the Internet, at *Allan.M.Hopkins@irs.gov*.

SUPPLEMENTARY INFORMATION:

Title: Statement of Person Claiming Refund Due a Deceased Taxpayer.

OMB Number: 1545–0073.

Form Number: Form 1310.

Abstract: Form 1310 is used by a claimant to secure payment of a refund on behalf of a deceased taxpayer. The information requested on the form enables the IRS to send the refund to the correct person.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households.

Estimated Number of Respondents: 7,500.

Estimated Time Per Respondent: 42 min.

Estimated Total Annual Burden Hours: 5,250.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: December 15, 2003.

Robert Coar,

IRS Reports Clearance Officer.

[FR Doc. 03–31365 Filed 12–18–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[LR–100–78]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, LR–100–78 (T.D. 7918), Creditability of Foreign Taxes (§§ 1.901–2 and 1.901–2A).

DATES: Written comments should be received on or before February 17, 2004, to be assured of consideration.

ADDRESSES: Direct all written comments to Robert Coar, Internal Revenue Service, room 6411, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be directed to Allan Hopkins, at (202) 622–6665, or at Internal Revenue Service, room 6407, 1111 Constitution Avenue, NW., Washington, DC 20224, or through the Internet, at *Allan.M.Hopkins@irs.gov*.

SUPPLEMENTARY INFORMATION:

Title: Creditability of Foreign Taxes.

OMB Number: 1545–0746.

Regulation Project Number: LR–100–78.

Abstract: Section 1.901–2A of the regulation contains special rules that apply to taxpayers engaging in business transactions with a foreign government that is also taxing them. In general, such taxpayers must establish what portion of a payment made pursuant to a foreign levy is actually tax and not compensation for an economic benefit received from the foreign government. One way a taxpayer can do this is by electing to apply the safe harbor formula of section 1.901–2A by filing a statement with the IRS.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households, and business or other for-profit organizations.

Estimated Number of Respondents: 110.

Estimated Time Per Respondent: 20 minutes.

Estimated Total Annual Burden Hours: 37.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will

be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: December 15, 2003.

Robert Coar,

IRS Reports Clearance Officer.

[FR Doc. 03–31366 Filed 12–18–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[PS–80–93]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, PS–80–93 (TD 8645), Rules for Certain Rental Real Estate Activities (Section 1.469–9).

DATES: Written comments should be received on or before February 17, 2004 to be assured of consideration.

ADDRESSES: Direct all written comments to Robert Coar, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of this regulation should be directed to Allan Hopkins, at (202) 622–6665, or at Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224, or through the Internet, at *Allan.M.Hopkins@irs.gov*.

SUPPLEMENTARY INFORMATION:

Title: Rules for Certain Rental Real Estate Activities.

OMB Number: 1545–1455.

Regulation Project Number: PS–80–93.

Abstract: This regulation provides rules relating to the treatment of rental real estate activities of certain taxpayers under the passive activity loss and credit limitations of Internal Revenue Code section 469.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households, and business or other for-profit organizations.

Estimated Number of Respondents: 20,100.

Estimated Time Per Respondent: 9 minutes.

Estimated Total Annual Burden Hours: 3,015 hours.

The following paragraph applies to all of the collections of information covered by this notice.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: December 15, 2003.

Robert Coar,

IRS Reports Clearance Officer.

[FR Doc. 03–31367 Filed 12–18–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel (TAP) Multilingual Initiative Issue (MLI) Committee Will Be Conducted (via Teleconference)

AGENCY: Internal Revenue Service (IRS) Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel (TAP) Multilingual Initiative Issue (MLI) Committee will be conducted (via teleconference). The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Friday, January 16, 2004 from 1 p.m. e.s.t. to 2 p.m. e.s.t.

FOR FURTHER INFORMATION CONTACT: Inez E. De Jesus at 1–888–912–1227, or 954–423–7977.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Taxpayer Advocacy Panel Multilingual Initiative Issue Committee will be held Friday, January 16, 2004 from 1 p.m. e.s.t. to 2 p.m. e.s.t. via a telephone conference call. Individual comments will be limited to 5 minutes. If you would like to have the TAP consider a written statement, please call 1–888–912–1227 or 954–423–7977, or write Inez E. De Jesus, TAP Office, 1000 South Pine Island Rd., Suite 340, Plantation, FL 33324. Due to limited conference lines, notification of intent to participate in the telephone conference call meeting must be made with Inez E. De Jesus. Ms. De Jesus can be reached at 1–888–912–1227 or 954–423–7977.

The agenda will include the following: Various IRS issues.

Dated: December 15, 2003.

Bernard Coston,

Director, Taxpayer Advocacy Panel.

[FR Doc. 03–31368 Filed 12–18–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Area 3 Taxpayer Advocacy Panel (Including the States of Florida, Georgia, Alabama, Mississippi, Louisiana, Arkansas and Tennessee)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Area 3 Taxpayer Advocacy Panel will be conducted (via teleconference). The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Friday, January 16, 2004 from 11 a.m. e.d.t to 12:30 p.m. e.d.t.

FOR FURTHER INFORMATION CONTACT: Sallie Chavez at 1–888–912–1227, or 954–423–7979.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Area 3 Taxpayer Advocacy Panel will be held Friday, January 16, 2004, from 11 a.m. e.s.t. to 12:30 p.m. e.s.t. via a telephone conference call. Individual comments will be limited to 5 minutes. If you would like to have the TAP consider a written statement, please call 1–888–912–1227 or 954–423–7979, or write Sallie Chavez, TAP Office, 1000 South Pine Island Rd., Suite 340, Plantation, FL 33324. Due to limited conference lines, notification of intent to participate in the telephone conference call meeting must be made with Sallie Chavez. Ms. Chavez can be reached at 1–888–912–1227 or 954–423–7979.

The agenda will include various IRS issues.

Dated: December 15, 2003.

Bernard Coston,

Director, Taxpayer Advocacy Panel.

[FR Doc. 03–31369 Filed 12–18–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel, E-Filing Issue Committee

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Cancellation notice.

SUMMARY: The open meeting of the E-Filing Issue Committee has been cancelled.

DATES: The meeting was scheduled for Thursday, January 8, 2004, from 3 to 4 p.m., Eastern Time.

FOR FURTHER INFORMATION CONTACT: Mary Ann Delzer at 1–888–912–1227, or (414) 297–1604.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that the meeting of the Taxpayer Advocacy Panel, E-Filing Issue Committee scheduled for Thursday, January 8, 2004, from 3 to 4 p.m., Eastern standard time via a telephone conference call has been cancelled. You can submit written comments to the panel by faxing to (414) 297–1623, or by mail to Taxpayer Advocacy Panel, Stop 1006MIL, 310 West Wisconsin Avenue, Milwaukee, WI 53203–2221.

Dated: December 15, 2003.

Bernard Coston,

Director, Taxpayer Advocacy Panel.

[FR Doc. 03–31370 Filed 12–18–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

United States Mint

Citizens Coinage Advisory Committee Meeting

ACTION: Notification of CCAC 2004 public meetings.

SUMMARY: Pursuant to Public Law 108–15, Sec. 103, enacted on April 23, 2003, the Citizens Coinage Advisory Committee (CCAC) announces its meetings for the calendar year 2004. These meetings are open to the public. The purpose of the CCAC is to advise the Secretary of the Treasury on designs pertaining to the coinage of the United States and for other purposes.

February 18, 2004—Philadelphia, PA
April 20, 2004—Washington, DC
May 18, 2004—Washington, DC
June 22, 2004—Washington, DC
August 19, 2004—Pittsburgh, PA
September 21, 2004—Washington, DC
October 19, 2004—Washington, DC
November 16, 2004—Washington, DC

Confirmation of the meetings, as well as meeting times and specific locations, will be announced at least two weeks prior to each meeting. *Interested persons should call 202–354–7502 for the latest update on meeting time and location.*

Public Law 108–15 established the CCAC to:

- Advise the Secretary of the Treasury on any theme or design proposals relating to circulating coinage, bullion coinage, Congressional gold medals, and national and other medals produced by the United States Mint;
- Advise the Secretary of the Treasury with regard to the events, persons, or places to be honored by the issuance of commemorative coins in each of the five calendar years succeeding the year in which a commemorative coin designation is made; and
- Make recommendations with respect to the mintage level for any commemorative coin recommended.

FOR FURTHER INFORMATION CONTACT: Melody Grimm; United States Mint Liaison to the CCAC; 801 Ninth Street, NW; Washington, DC 20220, or call 202–354–7606.

Any member of the public interested in submitting matters for the CCAC's consideration is invited to submit them by fax to 202–756–6424.

Authority: Pub. L. 108–15 (April 23, 2003).

Dated: December 15, 2003.

Henrietta Holsman Fore,

Director, United States Mint.

[FR Doc. 03–31251 Filed 12–18–03; 8:45 am]

BILLING CODE 4810–37–P

DEPARTMENT OF VETERANS AFFAIRS

Reasonable Charges for Medical Care or Services; 2003 Methodology Changes

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In a companion document published as a final rule in this issue of the **Federal Register**, we are amending the Department of Veterans Affairs (VA) medical regulations concerning "reasonable charges" for medical care or services provided or furnished by VA to a veteran:

—For a nonservice-connected disability for which the veteran is entitled to care (or the payment of expenses of care) under a health plan contract;
—For a nonservice-connected disability incurred incident to the veteran's employment and covered under a worker's compensation law or plan that provides reimbursement or indemnification for such care and services; or
—For a nonservice-connected disability incurred as a result of a motor vehicle accident in a State that requires automobile accident reparations insurance.

The final rule includes methodologies for establishing charges for VA medical care and services. Information for calculating actual charge amounts at individual VA facilities using these methodologies is set forth in a notice published in the **Federal Register** on October 2, 2003 (68 FR 56892) as a companion document to the proposed rule containing such methodologies published in the same issue of the **Federal Register**. These charges, with changes explained below, are effective December 19, 2003. Accordingly, interested parties may wish to retain the notice document of October 2 and this notice document for future reference.

When charges for medical care or services provided or furnished at VA expense by either VA or non-VA providers have not been established under other provisions of the final rule, then the alternate methods for determining VA's charges as set forth in the regulations at 38 CFR 17.101(a)(8) will apply.

FOR FURTHER INFORMATION CONTACT: Stephanie Mardon, Chief Business Office (168), Veterans Health Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 254–0362. (This is not a toll free number.)

SUPPLEMENTARY INFORMATION: The companion document published as a final rule in this issue of the **Federal Register** includes the methodologies for developing acute inpatient facility charges; skilled nursing facility/sub-acute inpatient facility charges; partial hospitalization facility charges; outpatient facility charges; physician and other professional charges, including professional charges for anesthesia services and dental services; pathology and laboratory charges; observation care facility charges; ambulance and other emergency transportation charges; and charges for durable medical equipment, drugs, injectables, and other medical services, items, and supplies identified by HCPCS Level II codes. Information for calculating actual charge amounts at individual VA facilities using these methodologies is set forth in a notice published in the **Federal Register** on October 2, 2003 (68 FR 56892) as a companion document to the proposed rule containing such methodologies published in the same issue of the **Federal Register**. The October 2 notice document also provided information on the editions of the data sources used to establish the charges, where the various data sources could be obtained, and a list of VA facilities that linked them to their three-digit ZIP Codes. This document makes changes to the October 2 notice document consistent with the provisions of the final rule.

Acute Inpatient Facility Charges

Acute inpatient facility charges by diagnosis related group (DRG) are set forth in Table A in the October 2 notice document. Those charges were based on 2003 DRGs. Table A in the October 2 notice document is being replaced by Table A in this notice, which provides updated charges based on 2004 DRGs.

Physician and Other Professional Charges

Relative value units (RVUs) and other information for physician and other professional services are set forth in Table G in the October 2 notice document. In Table G, the absence of a modifier indicates that the code is a global service, the presence of modifier –26 indicates a professional component, and the presence of modifier –TC indicates a technical component. Upon further review, we have determined that several codes presented with –26 and –TC modifiers should instead be presented as global services. Table G in this notice lists the changes that we are making to Table G in the October 2 notice document.

Charges for Durable Medical Equipment, Drugs, Injectables, and Other Medical Services, Items, and Supplies Identified by HCPCS Level II Codes

Charges for durable medical equipment, drugs, injectables, and other medical services, items and supplies identified by HCPCS Level II Codes are set forth in Table K in the October 2 notice document. Table K contained 28 HCPCS Codes for which we listed the code but did not provide a charge. We are changing Table K to delete those codes that have no charge.

Table K in the October 2 notice document included 71 HCPCS codes for which we listed four versions of each code: new (modifier NU), rental (modifier RR), used (modifier UE), and global (no modifier). We are changing Table K to delete the non-modified versions of these codes and their associated charges.

Table K in the October 2 notice document included 21 HCPCS codes that included only new (modifier NU) and global (no modifier) versions. We are changing Table K to delete the NU-modified versions of these codes and their associated charges.

Table K in the October 2 notice document included 8 HCPCS codes associated with facial prostheses that included new impression (modifier KM), previous impression (modifier KN), and non-modified versions. We are changing Table K to delete the non-modified versions of these codes and their associated charges.

Table K in the October 2 notice document contained five ambiguous HCPCS code-modifier pairs that were presented with a rental (RR) modifier and also with no modifier. For these five codes (E0749, E0784, E1510, K0012, and K0195), we have assigned the non-modified version to be new, and have appended the NU modifier accordingly.

Table K in the October 2 notice document included only one entry for HCPCS code E0780, modified with NU. For purposes of clarity, we have changed this code to be non-modified.

Table K in the October 2 notice document included two charges for HCPCS code B9002, one for a new item (modifier NU) and one for rental of this equipment (modifier RR). We inadvertently omitted the charge for B9002–UE, for used equipment, and are now adding that code-modifier combination and its associated charge.

Table K in this notice lists the codes that we are adding, changing, and deleting versus Table K in the October 2 notice document.

Data Sources

The editions of the data sources used to establish the charges are set forth in Supplementary Table 1 in the October 2 notice document. We used updated data sources to establish the updated acute inpatient facility charges set forth in Table A in this notice. Accordingly, Supplementary Table 1 in this notice lists the updated data sources that we used to update our acute inpatient facility charges.

List of VA Medical Facility Locations

In Supplementary Table 3 in the October 2 notice document, we set forth the list of VA medical facility locations and their three-digit ZIP Codes. One of the provisions of the final rule is to designate each VA facility as either provider-based or non-provider-based. Accordingly, Supplementary Table 3 in the October 2 notice document is being replaced by Supplementary Table 3 in this notice, which is updated to add the current provider-based/non-provider-based designation of each VA facility, and to make additions, changes, and deletions to the list of VA facilities. Consistent with the final rule, subsequent updates to Supplementary Table 3 will be posted on the Internet site of the Veterans Health Administration Chief Business Office, currently at *http://www.va.gov/cbo,* under "Charge Data."

Approved: December 10, 2003.

Anthony J. Principi,

Secretary of Veterans Affairs.

BILLING CODE 8320–01–P

Replacement TABLE A. — ACUTE INPATIENT FACILITY NATIONWIDE PER DIEM CHARGES BY DRG (DIAGNOSIS RELATED GROUP)

PAGE 1 OF 8

DRG	Description	Surgical/ Non-Surgical Indicator	Per Diem Charge		
			Standard Room and Board	ICU Room and Board	Ancillary
001	CRANIOTOMY AGE >17 W CC	S	$1,225.90	$2,604.29	$4,960.23
002	CRANIOTOMY AGE >17 W/O CC	S	$1,207.83	$2,719.97	$6,650.26
003	CRANIOTOMY AGE 0-17	S	$1,330.34	$2,857.53	$5,768.09
004	NO LONGER VALID	S	$0.00	$0.00	$0.00
005	NO LONGER VALID	S	$0.00	$0.00	$0.00
006	CARPAL TUNNEL RELEASE	S	$1,055.04	$2,061.69	$3,934.06
007	PERIPH & CRANIAL NERVE & OTHER NERV SYST PROC W CC	S	$1,176.41	$2,163.97	$3,512.72
008	PERIPH & CRANIAL NERVE & OTHER NERV SYST PROC W/O CC	S	$982.13	$1,989.27	$7,846.54
009	SPINAL DISORDERS & INJURIES	N	$954.38	$2,266.79	$1,529.94
010	NERVOUS SYSTEM NEOPLASMS W CC	N	$1,164.41	$2,202.16	$2,118.17
011	NERVOUS SYSTEM NEOPLASMS W/O CC	N	$917.47	$1,649.77	$1,714.21
012	DEGENERATIVE NERVOUS SYSTEM DISORDERS	N	$959.85	$1,608.78	$849.87
013	MULTIPLE SCLEROSIS & CEREBELLAR ATAXIA	N	$738.56	$1,502.49	$1,099.38
014	INTRACRANIAL HEMORRHAGE & STROKE W INFARCT	N	$957.30	$1,914.58	$2,043.69
015	NONSPECIFIC CVA & PRECEREBRAL OCCLUSION W/O INFARCT	N	$800.26	$1,606.59	$1,758.22
016	NONSPECIFIC CEREBROVASCULAR DISORDERS W CC	N	$1,083.52	$1,980.08	$2,315.47
017	NONSPECIFIC CEREBROVASCULAR DISORDERS W/O CC	N	$833.81	$1,559.91	$1,740.99
018	CRANIAL & PERIPHERAL NERVE DISORDERS W CC	N	$927.37	$1,688.72	$1,837.33
019	CRANIAL & PERIPHERAL NERVE DISORDERS W/O CC	N	$995.65	$1,696.61	$2,059.36
020	NERVOUS SYSTEM INFECTION EXCEPT VIRAL MENINGITIS	N	$1,024.84	$2,054.97	$2,877.11
021	VIRAL MENINGITIS	N	$1,080.72	$2,107.94	$2,845.63
022	HYPERTENSIVE ENCEPHALOPATHY	N	$907.09	$1,927.63	$2,168.10
023	NONTRAUMATIC STUPOR & COMA	N	$1,081.22	$2,036.11	$2,076.25
024	SEIZURE & HEADACHE AGE >17 W CC	N	$1,028.33	$1,866.69	$2,094.08
025	SEIZURE & HEADACHE AGE >17 W/O CC	N	$1,052.06	$1,872.13	$1,906.94
026	SEIZURE & HEADACHE AGE 0-17	N	$1,806.89	$3,262.71	$3,581.62
027	TRAUMATIC STUPOR & COMA, COMA >1 HR	N	$1,161.48	$2,620.57	$2,714.13
028	TRAUMATIC STUPOR & COMA, COMA <1 HR AGE >17 W CC	N	$1,036.98	$2,234.45	$2,021.54
029	TRAUMATIC STUPOR & COMA, COMA <1 HR AGE >17 W/O CC	N	$1,000.33	$2,253.33	$1,623.05
030	TRAUMATIC STUPOR & COMA, COMA <1 HR AGE 0-17	N	$865.02	$1,884.13	$1,630.53
031	CONCUSSION AGE >17 W CC	N	$1,460.60	$2,910.93	$3,025.93
032	CONCUSSION AGE >17 W/O CC	N	$1,183.77	$2,238.65	$2,491.54
033	CONCUSSION AGE 0-17	N	$1,333.85	$2,640.72	$2,774.68
034	OTHER DISORDERS OF NERVOUS SYSTEM W CC	N	$883.58	$1,825.73	$1,647.13
035	OTHER DISORDERS OF NERVOUS SYSTEM W/O CC	N	$815.36	$1,532.54	$1,374.95
036	RETINAL PROCEDURES	S	$1,225.91	$2,150.97	$7,437.87
037	ORBITAL PROCEDURES	S	$1,195.24	$2,556.77	$4,300.20
038	PRIMARY IRIS PROCEDURES	S	$1,288.06	$1,611.17	$2,266.77
039	LENS PROCEDURES WITH OR WITHOUT VITRECTOMY	S	$1,311.11	$1,975.62	$4,501.63
040	EXTRAOCULAR PROCEDURES EXCEPT ORBIT AGE >17	S	$1,120.83	$2,095.33	$3,340.39
041	EXTRAOCULAR PROCEDURES EXCEPT ORBIT AGE 0-17	S	$1,120.83	$2,095.33	$3,340.39
042	INTRAOCULAR PROCEDURES EXCEPT RETINA, IRIS & LENS	S	$1,285.90	$2,514.95	$3,976.71
043	HYPHEMA	N	$1,303.57	$2,255.87	$1,470.25
044	ACUTE MAJOR EYE INFECTIONS	N	$1,125.80	$1,538.66	$1,343.48
045	NEUROLOGICAL EYE DISORDERS	N	$995.77	$1,807.40	$2,451.85
046	OTHER DISORDERS OF THE EYE AGE >17 W CC	N	$1,160.75	$1,964.43	$1,944.55
047	OTHER DISORDERS OF THE EYE AGE >17 W/O CC	N	$998.82	$1,532.14	$1,414.41
048	OTHER DISORDERS OF THE EYE AGE 0-17	N	$1,050.32	$1,744.68	$1,694.71
049	MAJOR HEAD & NECK PROCEDURES	S	$1,048.25	$2,190.32	$5,900.62
050	SIALOADENECTOMY	S	$1,150.02	$2,536.85	$7,278.28
051	SALIVARY GLAND PROCEDURES EXCEPT SIALOADENECTOMY	S	$1,244.70	$2,290.39	$4,897.78
052	CLEFT LIP & PALATE REPAIR	S	$1,190.10	$1,849.10	$6,067.64
053	SINUS & MASTOID PROCEDURES AGE >17	S	$982.55	$2,129.71	$4,694.53
054	SINUS & MASTOID PROCEDURES AGE 0-17	S	$982.55	$2,129.71	$4,694.53
055	MISCELLANEOUS EAR, NOSE, MOUTH & THROAT PROCEDURES	S	$1,103.42	$2,177.86	$4,262.52
056	RHINOPLASTY	S	$1,518.39	$3,142.43	$5,959.10
057	T&A PROC, EXCEPT TONSILLECTOMY &/OR ADENOIDECTOMY ONLY, AGE >17	S	$1,068.53	$2,273.69	$3,773.26
058	T&A PROC, EXCEPT TONSILLECTOMY &/OR ADENOIDECTOMY ONLY, AGE 0-17	S	$1,068.53	$2,273.69	$3,773.26
059	TONSILLECTOMY &/OR ADENOIDECTOMY ONLY, AGE >17	S	$937.28	$3,380.96	$5,292.28
060	TONSILLECTOMY &/OR ADENOIDECTOMY ONLY, AGE 0-17	S	$937.28	$3,380.96	$5,292.28
061	MYRINGOTOMY W TUBE INSERTION AGE >17	S	$1,212.84	$2,203.93	$3,466.17
062	MYRINGOTOMY W TUBE INSERTION AGE 0-17	S	$1,212.84	$2,203.93	$3,466.17
063	OTHER EAR, NOSE, MOUTH & THROAT O.R. PROCEDURES	S	$1,266.16	$2,535.88	$5,004.26
064	EAR, NOSE, MOUTH & THROAT MALIGNANCY	N	$1,203.56	$2,153.91	$2,222.19
065	DYSEQUILIBRIUM	N	$1,071.13	$1,866.85	$2,141.09
066	EPISTAXIS	N	$1,106.90	$2,186.66	$1,971.62
067	EPIGLOTTITIS	N	$1,038.42	$2,260.84	$2,154.92
068	OTITIS MEDIA & URI AGE >17 W CC	N	$898.63	$1,718.27	$1,842.83
069	OTITIS MEDIA & URI AGE >17 W/O CC	N	$831.58	$1,449.57	$1,604.83
070	OTITIS MEDIA & URI AGE 0-17	N	$949.06	$1,788.99	$1,922.90
071	LARYNGOTRACHEITIS	N	$1,167.78	$1,140.38	$1,727.27
072	NASAL TRAUMA & DEFORMITY	N	$1,554.65	$3,099.84	$2,945.93

Replacement TABLE A. — ACUTE INPATIENT FACILITY NATIONWIDE PER DIEM CHARGES BY DRG (DIAGNOSIS RELATED GROUP)

PAGE 2 OF 8

DRG	Description	Surgical/ Non-Surgical Indicator	Per Diem Charge		
			Standard Room and Board	ICU Room and Board	Ancillary
073	OTHER EAR, NOSE, MOUTH & THROAT DIAGNOSES AGE >17	N	$1,096.70	$2,142.28	$2,104.03
074	OTHER EAR, NOSE, MOUTH & THROAT DIAGNOSES AGE 0-17	N	$1,437.98	$2,808.93	$2,758.78
075	MAJOR CHEST PROCEDURES	S	$1,117.69	$2,087.99	$4,085.43
076	OTHER RESP SYSTEM O.R. PROCEDURES W CC	S	$1,193.18	$2,205.90	$3,379.79
077	OTHER RESP SYSTEM O.R. PROCEDURES W/O CC	S	$1,097.16	$1,943.78	$3,295.13
078	PULMONARY EMBOLISM	N	$925.51	$1,681.04	$2,099.07
079	RESPIRATORY INFECTIONS & INFLAMMATIONS AGE >17 W CC	N	$1,034.59	$1,866.08	$2,224.57
080	RESPIRATORY INFECTIONS & INFLAMMATIONS AGE >17 W/O CC	N	$999.53	$1,771.90	$1,750.12
081	RESPIRATORY INFECTIONS & INFLAMMATIONS AGE 0-17	N	$1,022.48	$1,847.69	$2,186.88
082	RESPIRATORY NEOPLASMS	N	$975.05	$1,669.98	$2,108.57
083	MAJOR CHEST TRAUMA W CC	N	$988.60	$1,876.92	$1,828.61
084	MAJOR CHEST TRAUMA W/O CC	N	$1,093.34	$2,116.04	$1,665.64
085	PLEURAL EFFUSION W CC	N	$1,016.92	$1,725.69	$2,218.91
086	PLEURAL EFFUSION W/O CC	N	$1,093.24	$1,717.15	$2,205.68
087	PULMONARY EDEMA & RESPIRATORY FAILURE	N	$1,027.85	$1,992.13	$2,617.41
088	CHRONIC OBSTRUCTIVE PULMONARY DISEASE	N	$887.72	$1,628.38	$1,826.12
089	SIMPLE PNEUMONIA & PLEURISY AGE >17 W CC	N	$956.47	$1,748.54	$1,931.04
090	SIMPLE PNEUMONIA & PLEURISY AGE >17 W/O CC	N	$878.50	$1,505.92	$1,515.40
091	SIMPLE PNEUMONIA & PLEURISY AGE 0-17	N	$1,087.02	$1,989.44	$2,176.47
092	INTERSTITIAL LUNG DISEASE W CC	N	$976.55	$1,753.69	$2,099.04
093	INTERSTITIAL LUNG DISEASE W/O CC	N	$987.94	$1,751.91	$2,034.31
094	PNEUMOTHORAX W CC	N	$878.99	$1,696.28	$1,864.89
095	PNEUMOTHORAX W/O CC	N	$880.93	$1,557.28	$1,464.43
096	BRONCHITIS & ASTHMA AGE >17 W CC	N	$854.02	$1,596.28	$1,716.65
097	BRONCHITIS & ASTHMA AGE >17 W/O CC	N	$862.51	$1,582.74	$1,567.10
098	BRONCHITIS & ASTHMA AGE 0-17	N	$1,141.19	$2,120.42	$2,230.15
099	RESPIRATORY SIGNS & SYMPTOMS W CC	N	$1,003.11	$1,697.72	$2,593.57
100	RESPIRATORY SIGNS & SYMPTOMS W/O CC	N	$883.26	$1,445.67	$2,469.83
101	OTHER RESPIRATORY SYSTEM DIAGNOSES W CC	N	$1,078.11	$1,960.42	$2,383.83
102	OTHER RESPIRATORY SYSTEM DIAGNOSES W/O CC	N	$1,094.63	$1,926.26	$2,467.38
103	HEART TRANSPLANT	S	$981.47	$2,568.71	$7,907.17
104	CARDIAC VALVE & OTH MAJOR CARDIOTHORACIC PROC W CARD CATH	S	$1,428.04	$2,518.56	$8,794.04
105	CARDIAC VALVE & OTH MAJOR CARDIOTHORACIC PROC W/O CARD CATH	S	$1,325.02	$2,370.34	$9,089.62
106	CORONARY BYPASS W PTCA	S	$1,108.92	$2,203.91	$10,336.45
107	CORONARY BYPASS W CARDIAC CATH	S	$1,108.11	$2,012.86	$7,577.71
108	OTHER CARDIOTHORACIC PROCEDURES	S	$1,302.77	$2,485.63	$8,864.05
109	CORONARY BYPASS W/O PTCA OR CARDIAC CATH	S	$1,196.37	$2,096.76	$7,742.83
110	MAJOR CARDIOVASCULAR PROCEDURES W CC	S	$1,079.74	$2,107.46	$6,369.19
111	MAJOR CARDIOVASCULAR PROCEDURES W/O CC	S	$922.46	$1,770.68	$8,117.30
112	NO LONGER VALID	S	$0.00	$0.00	$0.00
113	AMPUTATION FOR CIRC SYSTEM DISORDERS EXCEPT UPPER LIMB & TOE	S	$1,095.92	$2,110.66	$2,872.41
114	UPPER LIMB & TOE AMPUTATION FOR CIRC SYSTEM DISORDERS	S	$1,011.93	$1,795.64	$2,146.89
115	PRM CARD PACEM IMPL W AMI/HR/SHOCK OR AICD LEAD OR GNRTR	S	$1,386.02	$2,264.42	$7,928.48
116	OTHER PERMANENT CARDIAC PACEMAKER IMPLANT	S	$1,176.30	$1,889.15	$8,062.30
117	CARDIAC PACEMAKER REVISION EXCEPT DEVICE REPLACEMENT	S	$1,325.11	$2,182.33	$5,057.37
118	CARDIAC PACEMAKER DEVICE REPLACEMENT	S	$1,456.60	$2,166.43	$9,761.32
119	VEIN LIGATION & STRIPPING	S	$1,280.63	$2,180.51	$3,550.17
120	OTHER CIRCULATORY SYSTEM O.R. PROCEDURES	S	$1,197.71	$2,142.97	$3,309.41
121	CIRCULATORY DISORDERS W AMI & MAJOR COMP, DISCHARGED ALIVE	N	$1,292.81	$2,306.87	$3,127.21
122	CIRCULATORY DISORDERS W AMI W/O MAJOR COMP, DISCHARGED ALIVE	N	$1,394.89	$2,540.26	$4,222.53
123	CIRCULATORY DISORDERS W AMI, EXPIRED	N	$1,133.28	$2,165.64	$3,840.15
124	CIRCULATORY DISORDERS EXCEPT AMI, W CARD CATH & COMPLEX DIAG	N	$1,282.43	$2,107.79	$4,926.10
125	CIRCULATORY DISORDERS EXCEPT AMI, W CARD CATH W/O COMPLEX DIAG	N	$1,178.49	$1,932.36	$6,218.40
126	ACUTE & SUBACUTE ENDOCARDITIS	N	$1,390.93	$2,324.50	$2,796.00
127	HEART FAILURE & SHOCK	N	$967.08	$1,737.12	$1,887.83
128	DEEP VEIN THROMBOPHLEBITIS	N	$983.79	$1,698.99	$1,287.18
129	CARDIAC ARREST, UNEXPLAINED	N	$607.43	$1,415.76	$2,911.39
130	PERIPHERAL VASCULAR DISORDERS W CC	N	$968.95	$1,824.99	$1,637.44
131	PERIPHERAL VASCULAR DISORDERS W/O CC	N	$986.71	$1,843.70	$1,383.21
132	ATHEROSCLEROSIS W CC	N	$1,479.55	$2,642.60	$3,164.97
133	ATHEROSCLEROSIS W/O CC	N	$1,805.35	$3,595.08	$3,561.18
134	HYPERTENSION	N	$961.04	$1,602.41	$1,820.69
135	CARDIAC CONGENITAL & VALVULAR DISORDERS AGE >17 W CC	N	$1,047.48	$1,939.85	$1,940.14
136	CARDIAC CONGENITAL & VALVULAR DISORDERS AGE >17 W/O CC	N	$1,045.13	$1,967.49	$1,621.94
137	CARDIAC CONGENITAL & VALVULAR DISORDERS AGE 0-17	N	$1,043.37	$1,929.79	$1,896.36
138	CARDIAC ARRHYTHMIA & CONDUCTION DISORDERS W CC	N	$1,127.10	$1,852.32	$2,243.64
139	CARDIAC ARRHYTHMIA & CONDUCTION DISORDERS W/O CC	N	$1,128.53	$1,817.82	$2,202.42
140	ANGINA PECTORIS	N	$1,007.16	$1,847.04	$2,429.99
141	SYNCOPE & COLLAPSE W CC	N	$1,224.94	$1,980.70	$2,297.34
142	SYNCOPE & COLLAPSE W/O CC	N	$1,098.79	$1,739.12	$2,164.88
143	CHEST PAIN	N	$1,107.94	$1,790.53	$3,104.87
144	OTHER CIRCULATORY SYSTEM DIAGNOSES W CC	N	$1,090.68	$1,990.12	$2,696.55

Replacement TABLE A. — ACUTE INPATIENT FACILITY NATIONWIDE PER DIEM CHARGES BY DRG (DIAGNOSIS RELATED GROUP)

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DRG	Description	Surgical/ Non-Surgical Indicator	Per Diem Charge		
			Standard Room and Board	ICU Room and Board	Ancillary
145	OTHER CIRCULATORY SYSTEM DIAGNOSES W/O CC	M	$1,168 84	$2,025 20	$2,630 79
146	RECTAL RESECTION W CC	S	$1,177 23	$2,370 27	$3,908 58
147	RECTAL RESECTION W/O CC	S	$1,100 60	$2,388 71	$3,347 31
148	MAJOR SMALL & LARGE BOWEL PROCEDURES W CC	S	$975 17	$2,022 42	$3,516 97
149	MAJOR SMALL & LARGE BOWEL PROCEDURES W/O CC	S	$1,007 66	$2,060 66	$3,200 75
150	PERITONEAL ADHESIOLYSIS W CC	S	$957 31	$1,966 93	$3,147 06
151	PERITONEAL ADHESIOLYSIS W/O CC	S	$890 68	$1,757 18	$2,830 66
152	MINOR SMALL & LARGE BOWEL PROCEDURES W CC	S	$921 05	$1,812 92	$3,098 41
153	MINOR SMALL & LARGE BOWEL PROCEDURES W/O CC	S	$1 013 67	$1,862 92	$2,949 44
154	STOMACH, ESOPHAGEAL & DUODENAL PROCEDURES AGE >17 W CC	S	$1,139 14	$2,396 31	$4,388 11
155	STOMACH, ESOPHAGEAL & DUODENAL PROCEDURES AGE >17 W/O CC	S	$1,096 90	$2,459 62	$5,297 36
156	STOMACH, ESOPHAGEAL & DUODENAL PROCEDURES AGE 0-17	S	$923 60	$1,955 52	$3,621 58
157	ANAL & STOMAL PROCEDURES W CC	S	$1,207 63	$2,420 76	$3,488 01
158	ANAL & STOMAL PROCEDURES W/O CC	S	$958 50	$1,548 91	$3,428 73
159	HERNIA PROCEDURES EXCEPT INGUINAL & FEMORAL AGE >17 W CC	S	$970 96	$1,894 39	$3,612 98
160	HERNIA PROCEDURES EXCEPT INGUINAL & FEMORAL AGE >17 W/O CC	S	$941 30	$1,883 15	$4,306 17
161	INGUINAL & FEMORAL HERNIA PROCEDURES AGE >17 W CC	S	$1,271 82	$2,401 70	$4,106 83
162	INGUINAL & FEMORAL HERNIA PROCEDURES AGE >17 W/O CC	S	$1,075 69	$1,832 14	$4,776 99
163	HERNIA PROCEDURES AGE 0-17	S	$1,060 16	$2,053 66	$4,013 43
164	APPENDECTOMY W COMPLICATED PRINCIPAL DIAG W CC	S	$964 92	$1,930 35	$3,570 98
165	APPENDECTOMY W COMPLICATED PRINCIPAL DIAG W/O CC	S	$935 43	$1,700 31	$3 583 22
166	APPENDECTOMY W/O COMPLICATED PRINCIPAL DIAG W CC	S	$1,000 02	$2,203 23	$4,073 25
167	APPENDECTOMY W/O COMPLICATED PRINCIPAL DIAG W/O CC	S	$983 82	$1,598 11	$5,153 06
168	MOUTH PROCEDURES W CC	S	$1,218 54	$2,856 00	$4,205 77
169	MOUTH PROCEDURES W/O CC	S	$1,086 44	$2,125 73	$4,904 77
170	OTHER DIGESTIVE SYSTEM O R PROCEDURES W CC	S	$1,151 81	$2,226 94	$3,510 03
171	OTHER DIGESTIVE SYSTEM O R PROCEDURES W/O CC	S	$967 12	$1,904 46	$3,992 30
172	DIGESTIVE MALIGNANCY W CC	M	$1,130 90	$2,088 32	$2,222 82
173	DIGESTIVE MALIGNANCY W/O CC	M	$968 76	$1,851 07	$1,669 03
174	G I HEMORRHAGE W CC	M	$1,056 84	$2,042 24	$2,413 15
175	G I HEMORRHAGE W/O CC	M	$1,000 78	$1,926 53	$2,002 58
176	COMPLICATED PEPTIC ULCER	M	$982 73	$1,827 65	$2,386 67
177	UNCOMPLICATED PEPTIC ULCER W CC	M	$970 01	$1,681 81	$2,368 37
178	UNCOMPLICATED PEPTIC ULCER W/O CC	M	$936 58	$1,786 89	$2,461 18
179	INFLAMMATORY BOWEL DISEASE	M	$1,059 70	$1,869 29	$2,057 71
180	G I OBSTRUCTION W CC	M	$993 78	$1,835 40	$1,945 71
181	G I OBSTRUCTION W/O CC	M	$1,021 02	$1,754 54	$1,662 98
182	ESOPHAGITIS, GASTROENT & MISC DIGEST DISORDERS AGE >17 W CC	M	$989 10	$1,766 09	$2,078 50
183	ESOPHAGITIS, GASTROENT & MISC DIGEST DISORDERS AGE >17 W/O CC	M	$965 26	$1,593 39	$2,180 00
184	ESOPHAGITIS, GASTROENT & MISC DIGEST DISORDERS AGE 0-17	M	$951 37	$1,678 04	$2,026 19
185	DENTAL & ORAL DIS EXCEPT EXTRACTIONS & RESTORATIONS, AGE >17	M	$1,037 09	$2,056 52	$2,119 14
186	DENTAL & ORAL DIS EXCEPT EXTRACTIONS & RESTORATIONS, AGE 0-17	M	$1,037 09	$2,056 52	$2,119 14
187	DENTAL EXTRACTIONS & RESTORATIONS	M	$1,193 80	$1,929 48	$3,046 93
188	OTHER DIGESTIVE SYSTEM DIAGNOSES AGE >17 W CC	M	$1,038 34	$1,905 75	$2,202 05
189	OTHER DIGESTIVE SYSTEM DIAGNOSES AGE >17 W/O CC	M	$1,209 85	$2,391 83	$2,309 12
190	OTHER DIGESTIVE SYSTEM DIAGNOSES AGE 0-17	M	$1,178 53	$2 166 93	$2,478 01
191	PANCREAS, LIVER & SHUNT PROCEDURES W CC	S	$1,287 69	$2,747 86	$5,109 09
192	PANCREAS, LIVER & SHUNT PROCEDURES W/O CC	S	$1,063 86	$2,352 79	$4,099 25
193	BILIARY TRACT PROC EXCEPT ONLY CHOLECYST W OR W/O C.D.E. W CC	S	$1,227 71	$2,602 03	$4,023 08
194	BILIARY TRACT PROC EXCEPT ONLY CHOLECYST W OR W/O C.D.E. W/O CC	S	$984 39	$2,036 64	$3,267 24
195	CHOLECYSTECTOMY W C.D.E. W CC	S	$1,066 64	$2,221 16	$4,025 77
196	CHOLECYSTECTOMY W C.D.E. W/O CC	S	$1,077 00	$1,841 52	$4,184 58
197	CHOLECYSTECTOMY EXCEPT BY LAPAROSCOPE W/O C.D.E. W CC	S	$1,048 02	$2,128 71	$3,748 03
198	CHOLECYSTECTOMY EXCEPT BY LAPAROSCOPE W/O C.D.E. W/O CC	S	$919 58	$1,720 02	$3,599 46
199	HEPATOBILIARY DIAGNOSTIC PROCEDURE FOR MALIGNANCY	S	$1,081 39	$2,543 99	$3,562 51
200	HEPATOBILIARY DIAGNOSTIC PROCEDURE FOR NON-MALIGNANCY	S	$1,158 28	$2,325 50	$4,130 05
201	OTHER HEPATOBILIARY OR PANCREAS O.R. PROCEDURES	S	$1,230 04	$2,438 62	$3,595 39
202	CIRRHOSIS & ALCOHOLIC HEPATITIS	M	$1,056 57	$2,149 69	$2,423 18
203	MALIGNANCY OF HEPATOBILIARY SYSTEM OR PANCREAS	M	$1,070 97	$1,970 95	$2,293 66
204	DISORDERS OF PANCREAS EXCEPT MALIGNANCY	M	$943 00	$1,788 11	$2,304 77
205	DISORDERS OF LIVER EXCEPT MALIG,CIRR,ALC HEPA W CC	M	$1,175 45	$2,338 02	$2,557 12
206	DISORDERS OF LIVER EXCEPT MALIG,CIRR,ALC HEPA W/O CC	M	$960 71	$1,909 75	$1,960 88
207	DISORDERS OF THE BILIARY TRACT W CC	M	$1,119 77	$2,035 92	$2,810 75
208	DISORDERS OF THE BILIARY TRACT W/O CC	M	$1,169 03	$1,828 16	$2,989 22
209	MAJOR JOINT & LIMB REATTACHMENT PROCEDURES OF LOWER EXTREMITY	S	$1,013 47	$2,045 29	$6,540 49
210	HIP & FEMUR PROCEDURES EXCEPT MAJOR JOINT AGE >17 W CC	S	$1,044 90	$2,024 92	$3,560 59
211	HIP & FEMUR PROCEDURES EXCEPT MAJOR JOINT AGE >17 W/O CC	S	$1,193 11	$2,199 62	$4,010 88
212	HIP & FEMUR PROCEDURES EXCEPT MAJOR JOINT AGE 0-17	E	$1,021 38	$1,974 74	$3,473 29
213	AMPUTATION FOR MUSCULOSKELETAL SYSTEM & CONN TISSUE DISORDERS	S	$1,104 02	$2,268 72	$2,897 62
214	NO LONGER VALID	S	$0 00	$0 00	$0.00
215	NO LONGER VALID	E	$0 00	$0 00	$0.00
216	BIOPSIES OF MUSCULOSKELETAL SYSTEM & CONNECTIVE TISSUE	S	$1,035 24	$2,066 58	$3,425.03

Replacement TABLE A. — ACUTE INPATIENT FACILITY NATIONWIDE PER DIEM CHARGES BY DRG (DIAGNOSIS RELATED GROUP)

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DRG	Description	Surgical/ Non-Surgical Indicator	Per Diem Charge		
			Standard Room and Board	ICU Room and Board	Ancillary
217	WND DEBRID & SKN GRFT EXCEPT HAND,FOR MUSCSKELET & CONN TISS DIS	E	$1,398 34	$2 765 71	$3,523 62
218	LOWER EXTREM & HUMER PROC EXCEPT HIP,FOOT,FEMUR AGE >17 W CC	S	$1 015.54	$2,092 74	$3 891 35
219	LOWER EXTREM & HUMER PROC EXCEPT HIP,FOOT,FEMUR AGE >17 W/O CC	E	$1 045 98	$2 002 65	$4,849 86
220	LOWER EXTREM & HUMER PROC EXCEPT HIP,FOOT,FEMUR AGE 0-17	E	$1,221 73	$2 527 45	$4,997 57
221	NO LONGER VALID	E	$0.00	$0 00	$0 00
222	NO LONGER VALID	E	$0.00	$0 00	$0 00
223	MAJOR SHOULDER/ELBOW PROC, OR OTHER UPPER EXTREMITY PROC W CC	S	$1,100 40	$2,146 44	$5,511 94
224	SHOULDER,ELBOW OR FOREARM PROC,EXC MAJOR JOINT PROC, W/O CC	E	$1,005 15	$1,976 67	$6,395 16
225	FOOT PROCEDURES	E	$1,277 77	$2,461 34	$3,524 58
226	SOFT TISSUE PROCEDURES W CC	E	$1,038 59	$1,965 70	$2,977 99
227	SOFT TISSUE PROCEDURES W/O CC	S	$1,058.17	$2,021 13	$4,578 39
228	MAJOR THUMB OR JOINT PROC,OR OTH HAND OR WRIST PROC W CC	S	$1,098 48	$2,784 97	$4,145 14
229	HAND OR WRIST PROC, EXCEPT MAJOR JOINT PROC, W/O CC	S	$1,136 39	$1,733 34	$4,776 83
230	LOCAL EXCISION & REMOVAL OF INT FIX DEVICES OF HIP & FEMUR	S	$1,006.00	$1,692 59	$3,454 89
231	NO LONGER VALID	S	$0 00	$0 00	$0 00
232	ARTHROSCOPY	S	$1,129 93	$1,464 06	$5,878 52
233	OTHER MUSCULOSKELET SYS & CONN TISS O.R. PROC W CC	S	$1,081 53	$2,358 75	$4,063 28
234	OTHER MUSCULOSKELET SYS & CONN TISS O.R. PROC W/O CC	S	$943 38	$1,872 88	$5,915 08
235	FRACTURES OF FEMUR	M	$826 86	$1,700 47	$1,129 14
236	FRACTURES OF HIP & PELVIS	M	$734 58	$1,705 94	$959 08
237	SPRAINS, STRAINS, & DISLOCATIONS OF HIP, PELVIS & THIGH	M	$1,097 86	$2,377 63	$1,653 71
238	OSTEOMYELITIS	M	$965 13	$1,703 08	$1,444 64
239	PATHOLOGICAL FRACTURES & MUSCULOSKELETAL & CONN TISS MALIGNANCY	M	$1,119 92	$2,067 86	$1,756 69
240	CONNECTIVE TISSUE DISORDERS W CC	M	$1,051 03	$2 007 90	$2,242 98
241	CONNECTIVE TISSUE DISORDERS W/O CC	M	$1,111 44	$2,152 32	$1,749 56
242	SEPTIC ARTHRITIS	M	$1,033 54	$1,806 01	$1,633 96
243	MEDICAL BACK PROBLEMS	M	$1,003 69	$2,008 03	$1,582 96
244	BONE DISEASES & SPECIFIC ARTHROPATHIES W CC	M	$851 24	$1,985 68	$1,114 56
245	BONE DISEASES & SPECIFIC ARTHROPATHIES W/O CC	M	$997 60	$2,223 20	$1,073 84
246	NON-SPECIFIC ARTHROPATHIES	M	$888 07	$1,969 65	$1,043.21
247	SIGNS & SYMPTOMS OF MUSCULOSKELETAL SYSTEM & CONN TISSUE	M	$993 64	$1,767 13	$1,563 33
248	TENDONITIS, MYOSITIS & BURSITIS	M	$1,057 46	$2,079 87	$1,660 26
249	AFTERCARE, MUSCULOSKELETAL SYSTEM & CONNECTIVE TISSUE	M	$1,148 89	$2,332 04	$1,822 37
250	FX, SPRN, STRN & DISL OF FOREARM, HAND, FOOT AGE >17 W CC	M	$998 99	$1 959 41	$1,496 18
251	FX, SPRN, STRN & DISL OF FOREARM, HAND, FOOT AGE >17 W/O CC	M	$1,020 03	$2,171 61	$1,426 82
252	FX, SPRN, STRN & DISL OF FOREARM, HAND, FOOT AGE 0-17	M	$1,001 75	$2,017 02	$1,470 03
253	FX, SPRN, STRN & DISL OF UPARM,LOWLEG EX FOOT AGE >17 W CC	M	$922 66	$1,807 48	$1,345 03
254	FX, SPRN, STRN & DISL OF UPARM,LOWLEG EX FOOT AGE >17 W/O CC	M	$1,085 08	$1 952 05	$1,219 59
255	FX, SPRN, STRN & DISL OF UPARM,LOWLEG EX FOOT AGE 0-17	M	$964 60	$1,890 74	$1,315 89
256	OTHER MUSCULOSKELETAL SYSTEM & CONNECTIVE TISSUE DIAGNOSES	M	$866 11	$1,641 61	$1,224 97
257	TOTAL MASTECTOMY FOR MALIGNANCY W CC	S	$1,060 43	$1 989 11	$5,128 68
258	TOTAL MASTECTOMY FOR MALIGNANCY W/O CC	S	$968 61	$1,800 55	$5,919 68
259	SUBTOTAL MASTECTOMY FOR MALIGNANCY W CC	S	$1,201 06	$2,046 61	$5,111 37
260	SUBTOTAL MASTECTOMY FOR MALIGNANCY W/O CC	S	$1,099 94	$2,147 64	$7,803 05
261	BREAST PROC FOR NON-MALIGNANCY EXCEPT BIOPSY & LOCAL EXCISION	S	$1,023 85	$1,541 82	$6,807 31
262	BREAST BIOPSY & LOCAL EXCISION FOR NON-MALIGNANCY	S	$1,004 43	$1 893 95	$2,899 47
263	SKIN GRAFT &/OR DEBRID FOR SKN ULCER OR CELLULITIS W CC	S	$954 43	$1,747 96	$1,848 66
264	SKIN GRAFT &/OR DEBRID FOR SKN ULCER OR CELLULITIS W/O CC	S	$955 65	$1 377 03	$1,709 45
265	SKIN GRAFT &/OR DEBRID EXCEPT FOR SKIN ULCER OR CELLULITIS W CC	S	$1 456 55	$3,354 45	$4 365 76
266	SKIN GRAFT &/OR DEBRID EXCEPT FOR SKIN ULCER OR CELLULITIS W/O CC	E	$1,203 79	$2,326 64	$4,353 69
267	PERIANAL & PILONIDAL PROCEDURES	S	$982 57	$1,732 44	$3,146 81
268	SKIN, SUBCUTANEOUS TISSUE & BREAST PLASTIC PROCEDURES	S	$1,139 50	$2 387 05	$5,403 97
269	OTHER SKIN, SUBCUT TISS & BREAST PROC W CC	S	$1,003 99	$1,983 68	$2,465 84
270	OTHER SKIN, SUBCUT TISS & BREAST PROC W/O CC	S	$1,006 38	$1 893 02	$2,826 84
271	SKIN ULCERS	M	$857 08	$1,428 11	$1,267 45
272	MAJOR SKIN DISORDERS W CC	M	$1,118 70	$2 361 38	$1,907 25
273	MAJOR SKIN DISORDERS W/O CC	M	$962 82	$1 848 73	$1,597 84
274	MALIGNANT BREAST DISORDERS W CC	M	$1,206 92	$2 018 76	$1 854 99
275	MALIGNANT BREAST DISORDERS W/O CC	M	$1,227 62	$1,664 64	$1,124 34
276	NON-MALIGANT BREAST DISORDERS	M	$1,247 63	$2,138 96	$1,790 74
277	CELLULITIS AGE >17 W CC	M	$1,030 66	$1,805 23	$1,475 98
278	CELLULITIS AGE >17 W/O CC	M	$962 95	$1 592 51	$1,115 72
279	CELLULITIS AGE 0-17	M	$1,126 59	$1,979 51	$1,555 89
280	TRAUMA TO THE SKIN, SUBCUT TISS & BREAST AGE >17 W CC	M	$1,063 86	$2,038 89	$1,736 23
281	TRAUMA TO THE SKIN, SUBCUT TISS & BREAST AGE >17 W/O CC	M	$1,049 78	$2,098 07	$1,536 29
282	TRAUMA TO THE SKIN, SUBCUT TISS & BREAST AGE 0-17	M	$1,055 96	$2,044 96	$1,680 44
283	MINOR SKIN DISORDERS W CC	M	$1,033 31	$1,698 11	$1,595 20
284	MINOR SKIN DISORDERS W/O CC	M	$1,003 45	$2,062 73	$1,225 75
285	AMPUTAT OF LOWER LIMB FOR ENDOCRINE,NUTRIT,& METABOL DISORDERS	S	$1,049 56	$1,795 20	$2,314 98
286	ADRENAL & PITUITARY PROCEDURES	S	$1,022 24	$2,234 56	$5,000 94
287	SKIN GRAFTS & WOUND DEBRID FOR ENDOC, NUTRIT & METAB DISORDERS	S	$1,284 64	$2,389 60	$2,185 73
288	O.R. PROCEDURES FOR OBESITY	S	$985 63	$2,293 09	$6,886 22

Replacement TABLE A. — ACUTE INPATIENT FACILITY NATIONWIDE PER DIEM CHARGES
BY DRG (DIAGNOSIS RELATED GROUP)

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DRG	Description	Surgical/ Non-Surgical Indicator	Per Diem Charge		
			Standard Room and Board	ICU Room and Board	Ancillary
289	PARATHYROID PROCEDURES	S	$1,017 56	$2,111 47	$5,291 48
290	THYROID PROCEDURES	S	$1,068 03	$2,394 03	$6,191 23
291	THYROGLOSSAL PROCEDURES	S	$1,137 05	$1,137 28	$6,495 94
292	OTHER ENDOCRINE, NUTRIT & METAB O R PROC W CC	S	$1,214 38	$2,198 51	$3,341 08
293	OTHER ENDOCRINE, NUTRIT & METAB O R PROC W/O CC	S	$1,149 36	$3,297 12	$4,483 80
294	DIABETES AGE >35	N	$1,010 62	$1,850 39	$1,585 78
295	DIABETES AGE 0-35	N	$925 05	$1,831 16	$2,076 08
296	NUTRITIONAL & MISC METABOLIC DISORDERS AGE >17 W CC	N	$1,010 99	$1,799 12	$1,746 62
297	NUTRITIONAL & MISC METABOLIC DISORDERS AGE >17 W/O CC	N	$956 23	$1,665 50	$1,392 69
298	NUTRITIONAL & MISC METABOLIC DISORDERS AGE 0-17	N	$996 15	$1,771 11	$1,693 08
299	INBORN ERRORS OF METABOLISM	N	$1,028 31	$2,059 68	$2,201 73
300	ENDOCRINE DISORDERS W CC	N	$1,125 68	$1,994 57	$1,980 72
301	ENDOCRINE DISORDERS W/O CC	N	$1,067 82	$1,852 66	$1,660 88
302	KIDNEY TRANSPLANT	S	$1,383 94	$2,775 28	$11,908 68
303	KIDNEY,URETER & MAJOR BLADDER PROCEDURES FOR NEOPLASM	S	$1,081 42	$2,225 20	$4,128 93
304	KIDNEY,URETER & MAJOR BLADDER PROC FOR NON-NEOPL W CC	S	$1,286 68	$2,521 81	$4,157 43
305	KIDNEY,URETER & MAJOR BLADDER PROC FOR NON-NEOPL W/O CC	S	$1,031 03	$2,388 73	$5,148 86
306	PROSTATECTOMY W CC	S	$1,088 55	$1,969 44	$2,974 34
307	PROSTATECTOMY W/O CC	S	$850 39	$1,971 38	$3,741 42
308	MINOR BLADDER PROCEDURES W CC	S	$1,083 74	$2,122 27	$3,381 72
309	MINOR BLADDER PROCEDURES W/O CC	S	$824 78	$1,557 71	$5,667 51
310	TRANSURETHRAL PROCEDURES W CC	S	$1,196 54	$2,118 11	$3,625 85
311	TRANSURETHRAL PROCEDURES W/O CC	S	$1,079 84	$2,147 30	$4,951 44
312	URETHRAL PROCEDURES, AGE >17 W CC	S	$1,089 69	$1,855 01	$3,242 05
313	URETHRAL PROCEDURES, AGE >17 W/O CC	S	$1,122 79	$2,277 86	$4,756 71
314	URETHRAL PROCEDURES, AGE 0-17	S	$1,184 98	$2,037 39	$3,756 95
315	OTHER KIDNEY & URINARY TRACT O.R PROCEDURES	S	$1,160 70	$2,043 47	$4,028 38
316	RENAL FAILURE	M	$936 43	$1,732 83	$1,956 45
317	ADMIT FOR RENAL DIALYSIS	N	$1,035 18	$1,654 36	$3,180 96
318	KIDNEY & URINARY TRACT NEOPLASMS W CC	N	$1,143 46	$2,139 98	$2,278 70
319	KIDNEY & URINARY TRACT NEOPLASMS W/O CC	N	$797 97	$1,315 22	$1,424 37
320	KIDNEY & URINARY TRACT INFECTIONS AGE >17 W CC	M	$962 51	$1,742 13	$1,639 84
321	KIDNEY & URINARY TRACT INFECTIONS AGE >17 W/O CC	M	$958 73	$1,668 59	$1,469 13
322	KIDNEY & URINARY TRACT INFECTIONS AGE 0-17	N	$1,126 94	$2,041 23	$1,900 12
323	URINARY STONES W CC, &/OR ESW LITHOTRIPSY	N	$1,044 92	$1,867 98	$3,312 97
324	URINARY STONES W/O CC	N	$913 22	$1,389 48	$2,972 08
325	KIDNEY & URINARY TRACT SIGNS & SYMPTOMS AGE >17 W CC	N	$1,178 27	$2,118 36	$1,812 40
326	KIDNEY & URINARY TRACT SIGNS & SYMPTOMS AGE >17 W/O CC	N	$958 98	$1,405 21	$1,459 66
327	KIDNEY & URINARY TRACT SIGNS & SYMPTOMS AGE 0-17	N	$1,114 84	$1,981 44	$1,712 50
328	URETHRAL STRICTURE AGE >17 W CC	N	$1,287 38	$2,713 97	$2,652 60
329	URETHRAL STRICTURE AGE >17 W/O CC	M	$1,233 23	$1,300 86	$3,415 35
330	URETHRAL STRICTURE AGE 0-17	N	$1,317 12	$2,760 56	$2,780 02
331	OTHER KIDNEY & URINARY TRACT DIAGNOSES AGE >17 W CC	N	$1,062 53	$1,897 76	$2,246 81
332	OTHER KIDNEY & URINARY TRACT DIAGNOSES AGE >17 W/O CC	N	$907 36	$1,518 60	$1,816 66
333	OTHER KIDNEY & URINARY TRACT DIAGNOSES AGE 0-17	N	$1,225 86	$2,183 81	$2,583 92
334	MAJOR MALE PELVIC PROCEDURES W CC	S	$982 01	$2,052 50	$4,598 97
335	MAJOR MALE PELVIC PROCEDURES W/O CC	S	$925 22	$1,989 12	$5,302 80
336	TRANSURETHRAL PROSTATECTOMY W CC	S	$983 12	$1,883 11	$3,351 16
337	TRANSURETHRAL PROSTATECTOMY W/O CC	S	$928 89	$1,740 78	$4,113 66
338	TESTES PROCEDURES, FOR MALIGNANCY	S	$962 83	$1,711 37	$3,345 14
339	TESTES PROCEDURES, NON-MALIGNANCY AGE >17	S	$970 74	$2,046 11	$2,936 25
340	TESTES PROCEDURES, NON-MALIGNANCY AGE 0-17	S	$970 74	$2,046 11	$2,936 25
341	PENIS PROCEDURES	S	$1,123 13	$2,229 03	$6,926 67
342	CIRCUMCISION AGE >17	S	$839 26	$1,565 74	$3,318 33
343	CIRCUMCISION AGE 0-17	S	$839 26	$1,565 74	$3,318 33
344	OTHER MALE REPRODUCTIVE SYSTEM O R PROCEDURES FOR MALIGNANCY	S	$1,144 88	$1,819 21	$7,690 71
345	OTHER MALE REPRODUCTIVE SYSTEM O R PROC EXCEPT FOR MALIGNANCY	S	$1,241 92	$2,101 79	$3,184 57
346	MALIGNANCY, MALE REPRODUCTIVE SYSTEM, W CC	N	$1,080 55	$2,075 15	$1,906 71
347	MALIGNANCY, MALE REPRODUCTIVE SYSTEM, W/O CC	N	$837 44	$1,101 13	$1,123 61
348	BENIGN PROSTATIC HYPERTROPHY W CC	N	$1,211 86	$2,209 27	$2,027 03
349	BENIGN PROSTATIC HYPERTROPHY W/O CC	N	$1,410 02	$1,649 80	$2,112 78
350	INFLAMMATION OF THE MALE REPRODUCTIVE SYSTEM	N	$1,016 46	$1,756 18	$1,786 71
351	STERILIZATION, MALE	N	$851 92	$1,651 12	$2,341 02
352	OTHER MALE REPRODUCTIVE SYSTEM DIAGNOSES	N	$1,128 87	$2,307 50	$2,106 20
353	PELVIC EVISCERATION, RADICAL HYSTERECTOMY & RADICAL VULVECTOMY	S	$1,359 78	$2,848 69	$5,158 90
354	UTERINE,ADNEXA PROC FOR NON-OVARIAN/ADNEXAL MALIG W CC	S	$1,106 73	$2,324 61	$3,720 92
355	UTERINE,ADNEXA PROC FOR NON-OVARIAN/ADNEXAL MALIG W/O CC	S	$1,079 02	$2,623 92	$4,200 67
356	FEMALE REPRODUCTIVE SYSTEM RECONSTRUCTIVE PROCEDURES	S	$823 33	$1,696 42	$5,171 91
357	UTERINE & ADNEXA PROC FOR OVARIAN OR ADNEXAL MALIGNANCY	S	$1,185 70	$2,502 20	$4,211 79
358	UTERINE & ADNEXA PROC FOR NON-MALIGNANCY W CC	S	$951 41	$1,904 90	$4,025 83
359	UTERINE & ADNEXA PROC FOR NON-MALIGNANCY W/O CC	S	$886 20	$1,715 36	$4,487 56
360	VAGINA, CERVIX & VULVA PROCEDURES	S	$923 47	$2,018 45	$4,568 93

Replacement TABLE A. — ACUTE INPATIENT FACILITY NATIONWIDE PER DIEM CHARGES
BY DRG (DIAGNOSIS RELATED GROUP)

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DRG	Description	Surgical/ Non-Surgical Indicator	Per Diem Charge		
			Standard Room and Board	ICU Room and Board	Ancillary
361	LAPAROSCOPY & INCISIONAL TUBAL INTERRUPTION	S	$813 97	$1,388 64	$4,308 59
362	ENDOSCOPIC TUBAL INTERRUPTION	S	$841 80	$1,703 01	$4,058 23
363	D&C, CONIZATION & RADIO-IMPLANT, FOR MALIGNANCY	S	$1,249 55	$2,460 28	$3,730 02
364	D&C, CONIZATION EXCEPT FOR MALIGNANCY	S	$1,402 34	$2,103 00	$3,219 80
365	OTHER FEMALE REPRODUCTIVE SYSTEM O.R. PROCEDURES	S	$1,094 15	$2,298 36	$3,645 43
366	MALIGNANCY, FEMALE REPRODUCTIVE SYSTEM W CC	N	$985 32	$2,095 00	$1,828 74
367	MALIGNANCY, FEMALE REPRODUCTIVE SYSTEM W/O CC	N	$1,037 94	$3,386 64	$1,618 01
368	INFECTIONS, FEMALE REPRODUCTIVE SYSTEM	N	$986 28	$1,923 00	$1,827 91
369	MENSTRUAL & OTHER FEMALE REPRODUCTIVE SYSTEM DISORDERS	N	$1,483 04	$2,668 18	$2,595 67
370	CESAREAN SECTION W CC	S	$990 71	$2,306 15	$2,339 91
371	CESAREAN SECTION W/O CC	S	$982 16	$1,747 09	$2,435 23
372	VAGINAL DELIVERY W COMPLICATING DIAGNOSES	N	$1,032 43	$2,212 04	$2,229 88
373	VAGINAL DELIVERY W/O COMPLICATING DIAGNOSES	N	$990 65	$2,544 56	$2,161 97
374	VAGINAL DELIVERY W STERILIZATION &/OR D&C	S	$1,158 08	$1,913 03	$3,615 41
375	VAGINAL DELIVERY W O.R. PROC EXCEPT STERIL &/OR D&C	S	$466 37	$943 50	$2,248 34
376	POSTPARTUM & POST ABORTION DIAGNOSES W/O O.R. PROCEDURE	N	$948 45	$2,240 01	$2,046 65
377	POSTPARTUM & POST ABORTION DIAGNOSES W O.R. PROCEDURE	S	$1,057 07	$1,362 29	$3,432 99
378	ECTOPIC PREGNANCY	N	$928 87	$1,441 22	$4,437 02
379	THREATENED ABORTION	N	$1,028 03	$1,428 31	$1,437 67
380	ABORTION W/O D&C	N	$1,206 70	$1,530 28	$2,901 18
381	ABORTION W D&C, ASPIRATION CURETTAGE OR HYSTEROTOMY	S	$1,091 46	$2,356 37	$4,137 57
382	FALSE LABOR	N	$1,024 67	$7,295 33	$1,491 10
383	OTHER ANTEPARTUM DIAGNOSES W MEDICAL COMPLICATIONS	N	$1,045 36	$1,975 62	$1,342 24
384	OTHER ANTEPARTUM DIAGNOSES W/O MEDICAL COMPLICATIONS	N	$956 51	$2,424 69	$1,693 41
385	NEONATES, DIED OR TRANSFERRED TO ANOTHER ACUTE CARE FACILITY	N	$1,643 79	$3,020 69	$3,004 36
386	EXTREME IMMATURITY OR RESPIRATORY DISTRESS SYNDROME, NEONATE	N	$1,469 28	$2,699 98	$2,685 38
387	PREMATURITY W MAJOR PROBLEMS	N	$1,305 74	$2,399 47	$2,386 50
388	PREMATURITY W/O MAJOR PROBLEMS	N	$832 39	$1,529 62	$1,521 36
389	FULL TERM NEONATE W MAJOR PROBLEMS	N	$757 89	$1,392 71	$1,385 18
390	NEONATE W OTHER SIGNIFICANT PROBLEMS	N	$757 89	$1,392 71	$1,385 18
391	NORMAL NEWBORN	N	$281 95	$518 13	$515 32
392	SPLENECTOMY AGE >17	S	$878 46	$1,896 45	$4,507 27
393	SPLENECTOMY AGE 0-17	S	$878 46	$1,896 45	$4,507 27
394	OTHER O.R. PROCEDURES OF THE BLOOD AND BLOOD FORMING ORGANS	S	$1,207 65	$2,043 05	$3,689 19
395	RED BLOOD CELL DISORDERS AGE >17	N	$1,020 80	$1,838 30	$2,224 49
396	RED BLOOD CELL DISORDERS AGE 0-17	N	$1,179 39	$2,123 91	$2,570 09
397	COAGULATION DISORDERS	M	$1,109 56	$2,051 16	$3,493 22
398	RETICULOENDOTHELIAL & IMMUNITY DISORDERS W CC	N	$1,089 10	$2,044 45	$2,798 19
399	RETICULOENDOTHELIAL & IMMUNITY DISORDERS W/O CC	N	$1,094 51	$1,833 59	$2,249 43
400	NO LONGER VALID	S	$0 00	$0 00	$0 00
401	LYMPHOMA & NON-ACUTE LEUKEMIA W OTHER O.R. PROC W CC	S	$1,182 89	$2,201 61	$3,421 01
402	LYMPHOMA & NON-ACUTE LEUKEMIA W OTHER O.R. PROC W/O CC	S	$1,012 98	$2,148 72	$3,914 55
403	LYMPHOMA & NON-ACUTE LEUKEMIA W CC	N	$1,238 86	$2,214 04	$3,069 76
404	LYMPHOMA & NON-ACUTE LEUKEMIA W/O CC	N	$1,172 41	$1,944 67	$2,685 54
405	ACUTE LEUKEMIA W/O MAJOR O.R. PROCEDURE AGE 0-17	N	$1,173 30	$2,333 83	$3,836 22
406	MYELOPROLIF DISORD OR POORLY DIFF NEOPL W MAJ O.R.PROC W CC	S	$1,366 27	$2,734 50	$4,789 63
407	MYELOPROLIF DISORD OR POORLY DIFF NEOPL W MAJ O.R.PROC W/O CC	S	$1,003 21	$2,327 72	$4,481 08
408	MYELOPROLIF DISORD OR POORLY DIFF NEOPL W OTHER O.R.PROC	S	$1,554 48	$3,227 91	$5,148 16
409	RADIOTHERAPY	N	$1,323 20	$2,170 18	$2,433 12
410	CHEMOTHERAPY W/O ACUTE LEUKEMIA AS SECONDARY DIAGNOSIS	N	$1,203 52	$1,978 00	$3,838 56
411	HISTORY OF MALIGNANCY W/O ENDOSCOPY	N	$1,003 56	$1,003 56	$2,568 36
412	HISTORY OF MALIGNANCY W ENDOSCOPY	M	$931 14	$931 14	$2,184 34
413	OTHER MYELOPROLIF DIS OR POORLY DIFF NEOPL DIAG W CC	M	$1,102 94	$2,185 16	$2,255 56
414	OTHER MYELOPROLIF DIS OR POORLY DIFF NEOPL DIAG W/O CC	N	$989 76	$1,856 93	$1,647 43
415	O.R. PROCEDURE FOR INFECTIOUS & PARASITIC DISEASES	S	$1,234 10	$2,314 58	$3,405 63
416	SEPTICEMIA AGE >17	M	$1,081 32	$2,032 86	$2,310 97
417	SEPTICEMIA AGE 0-17	N	$1,228 39	$2,309 35	$2,625 28
418	POSTOPERATIVE & POST-TRAUMATIC INFECTIONS	N	$1,037 84	$1,959 95	$1,837 02
419	FEVER OF UNKNOWN ORIGIN AGE >17 W CC	N	$1,070 25	$1,772 76	$2,196 12
420	FEVER OF UNKNOWN ORIGIN AGE >17 W/O CC	N	$971 11	$1,768 67	$1,860 05
421	VIRAL ILLNESS AGE >17	M	$1,012 02	$1,761 87	$2,056 37
422	VIRAL ILLNESS & FEVER OF UNKNOWN ORIGIN AGE 0-17	N	$978 03	$1,660 11	$1,988 81
423	OTHER INFECTIOUS & PARASITIC DISEASES DIAGNOSES	N	$1,006 20	$2,056 84	$2,611 40
424	O.R. PROCEDURE W PRINCIPAL DIAGNOSES OF MENTAL ILLNESS	S	$1,085 95	$1,556 00	$1,310 90
425	ACUTE ADJUSTMENT REACTION & PSYCHOSOCIAL DYSFUNCTION	N	$1,095 07	$1,793 63	$1,277 38
426	DEPRESSIVE NEUROSES	N	$1,073 05	$1,265 66	$433 65
427	NEUROSES EXCEPT DEPRESSIVE	N	$926 09	$1,236 92	$353 04
428	DISORDERS OF PERSONALITY & IMPULSE CONTROL	N	$1,071 16	$1,674 11	$343 90
429	ORGANIC DISTURBANCES & MENTAL RETARDATION	N	$1,284 72	$1,757 55	$682 38
430	PSYCHOSES	N	$1,101 06	$1,320 52	$359 12
431	CHILDHOOD MENTAL DISORDERS	N	$953 72	$1,261 80	$302 71
432	OTHER MENTAL DISORDER DIAGNOSES	N	$925 48	$1,272 18	$378 15

Replacement TABLE A. — ACUTE INPATIENT FACILITY NATIONWIDE PER DIEM CHARGES BY DRG (DIAGNOSIS RELATED GROUP)

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DRG	Description	Surgical/ Non-Surgical Indicator	Per Diem Charge		
			Standard Room and Board	ICU Room and Board	Ancillary
433	ALCOHOL/DRUG ABUSE OR DEPENDENCE, LEFT AMA	N	$1,241.35	$2,174.55	$591.01
434	NO LONGER VALID	S	$0.00	$0.00	$0.00
435	NO LONGER VALID	S	$0.00	$0.00	$0.00
436	NO LONGER VALID	S	$0.00	$0.00	$0.00
437	NO LONGER VALID	S	$0.00	$0.00	$0.00
438	NO LONGER VALID	S	$0.00	$0.00	$0.00
439	SKIN GRAFTS FOR INJURIES	S	$963.14	$1,948.70	$2,726.48
440	WOUND DEBRIDEMENTS FOR INJURIES	S	$1,040.83	$2,043.44	$2,666.29
441	HAND PROCEDURES FOR INJURIES	S	$883.21	$2,050.31	$4,175.06
442	OTHER O.R. PROCEDURES FOR INJURIES W CC	S	$1,013.26	$2,085.23	$3,800.75
443	OTHER O.R. PROCEDURES FOR INJURIES W/O CC	S	$1,018.47	$2,148.15	$4,292.22
444	TRAUMATIC INJURY AGE >17 W CC	N	$891.44	$1,875.51	$1,516.13
445	TRAUMATIC INJURY AGE >17 W/O CC	N	$1,059.05	$2,232.53	$1,586.81
446	TRAUMATIC INJURY AGE 0-17	N	$940.41	$1,994.25	$1,547.11
447	ALLERGIC REACTIONS AGE >17	N	$1,020.50	$2,009.29	$2,024.12
448	ALLERGIC REACTIONS AGE 0-17	N	$1,020.50	$2,009.29	$2,024.12
449	POISONING & TOXIC EFFECTS OF DRUGS AGE >17 W CC	N	$1,156.54	$2,220.14	$2,530.41
450	POISONING & TOXIC EFFECTS OF DRUGS AGE >17 W/O CC	N	$1,026.86	$1,838.01	$1,904.31
451	POISONING & TOXIC EFFECTS OF DRUGS AGE 0-17	N	$709.15	$1,351.26	$1,526.09
452	COMPLICATIONS OF TREATMENT W CC	N	$989.64	$1,907.83	$2,310.39
453	COMPLICATIONS OF TREATMENT W/O CC	N	$1,006.63	$1,971.56	$1,959.96
454	OTHER INJURY, POISONING & TOXIC EFFECT DIAG W CC	N	$1,742.78	$3,435.16	$3,359.50
455	OTHER INJURY, POISONING & TOXIC EFFECT DIAG W/O CC	N	$1,111.37	$1,865.92	$1,897.25
456	NO LONGER VALID	S	$0.00	$0.00	$0.00
457	NO LONGER VALID	S	$0.00	$0.00	$0.00
458	NO LONGER VALID	S	$0.00	$0.00	$0.00
459	NO LONGER VALID	S	$0.00	$0.00	$0.00
460	NO LONGER VALID	S	$0.00	$0.00	$0.00
461	O.R. PROC W DIAGNOSES OF OTHER CONTACT W HEALTH SERVICES	S	$1,171.90	$2,328.52	$2,763.55
462	REHABILITATION	N	$977.88	$1,193.34	$1,188.63
463	SIGNS & SYMPTOMS W CC	N	$897.19	$1,622.02	$1,455.69
464	SIGNS & SYMPTOMS W/O CC	N	$735.38	$1,291.14	$974.70
465	AFTERCARE W HISTORY OF MALIGNANCY AS SECONDARY DIAGNOSIS	N	$1,022.47	$1,694.54	$1,171.53
466	AFTERCARE W/O HISTORY OF MALIGNANCY AS SECONDARY DIAGNOSIS	N	$1,072.68	$2,038.00	$1,297.44
467	OTHER FACTORS INFLUENCING HEALTH STATUS	N	$769.45	$1,646.48	$923.21
468	EXTENSIVE O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS	S	$1,146.09	$2,158.07	$3,956.62
469	PRINCIPAL DIAGNOSIS INVALID AS DISCHARGE DIAGNOSIS	S	$346.95	$672.42	$954.45
470	UNGROUPABLE	S	$553.13	$1,072.01	$1,521.63
471	BILATERAL OR MULTIPLE MAJOR JOINT PROCS OF LOWER EXTREMITY	S	$927.18	$1,750.31	$7,766.82
472	NO LONGER VALID	S	$0.00	$0.00	$0.00
473	ACUTE LEUKEMIA W/O MAJOR O.R. PROCEDURE AGE >17	N	$1,173.30	$2,333.83	$3,836.22
474	NO LONGER VALID	S	$0.00	$0.00	$0.00
475	RESPIRATORY SYSTEM DIAGNOSIS WITH VENTILATOR SUPPORT	N	$1,130.35	$2,170.50	$3,679.85
476	PROSTATIC O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS	S	$1,257.12	$2,120.68	$2,517.52
477	NON-EXTENSIVE O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS	S	$1,187.42	$2,089.12	$2,986.95
478	OTHER VASCULAR PROCEDURES W CC	S	$1,183.50	$2,131.45	$4,653.87
479	OTHER VASCULAR PROCEDURES W/O CC	S	$1,051.42	$1,887.57	$6,778.56
480	LIVER TRANSPLANT	S	$1,425.65	$2,850.63	$10,628.81
481	BONE MARROW TRANSPLANT	S	$1,828.81	$2,436.82	$4,641.83
482	TRACHEOSTOMY FOR FACE,MOUTH & NECK DIAGNOSES	S	$1,134.93	$2,288.51	$3,722.07
483	TRAC W MECH VENT 96+HRS OR PDX EXCEPT FACE,MOUTH & NECK DX OSES	S	$1,677.61	$2,602.44	$5,399.11
484	CRANIOTOMY FOR MULTIPLE SIGNIFICANT TRAUMA	S	$1,218.49	$2,823.89	$6,037.16
485	LIMB REATTACHMENT, HIP AND FEMUR PROC FOR MULTIPLE SIGNIFICANT TRA	S	$1,098.06	$2,532.34	$4,834.12
486	OTHER O.R. PROCEDURES FOR MULTIPLE SIGNIFICANT TRAUMA	S	$1,119.32	$2,621.73	$5,843.85
487	OTHER MULTIPLE SIGNIFICANT TRAUMA	N	$966.54	$2,479.21	$2,731.69
488	HIV W EXTENSIVE O.R. PROCEDURE	S	$1,766.56	$3,077.84	$4,541.28
489	HIV W MAJOR RELATED CONDITION	N	$1,365.99	$2,476.50	$2,617.61
490	HIV W OR W/O OTHER RELATED CONDITION	N	$1,036.56	$1,791.08	$1,824.31
491	MAJOR JOINT & LIMB REATTACHMENT PROCEDURES OF UPPER EXTREMITY	S	$995.05	$2,052.65	$8,012.03
492	CHEMOTHERAPY W ACUTE LEUKEMIA OR W USE OF HI DOSE CHEMOAGENT	N	$1,114.91	$1,948.04	$3,666.76
493	LAPAROSCOPIC CHOLECYSTECTOMY W/O C.D.E. W CC	S	$1,017.53	$1,943.26	$4,450.30
494	LAPAROSCOPIC CHOLECYSTECTOMY W/O C.D.E. W/O CC	S	$967.56	$1,669.94	$5,760.14
495	LUNG TRANSPLANT	S	$1,681.28	$3,171.05	$13,421.22
496	COMBINED ANTERIOR/POSTERIOR SPINAL FUSION	S	$1,175.68	$2,496.51	$9,777.98
497	SPINAL FUSION EXCEPT CERVICAL W CC	S	$1,002.60	$2,231.37	$8,847.40
498	SPINAL FUSION EXCEPT CERVICAL W/O CC	S	$941.25	$2,003.02	$10,189.93
499	BACK & NECK PROCEDURES EXCEPT SPINAL FUSION W CC	S	$1,067.53	$2,269.61	$4,794.93
500	BACK & NECK PROCEDURES EXCEPT SPINAL FUSION W/O CC	S	$972.77	$2,166.79	$6,101.49
501	KNEE PROCEDURES W PDX OF INFECTION W CC	S	$1,159.77	$2,225.62	$3,553.48
502	KNEE PROCEDURES W PDX OF INFECTION W/O CC	S	$1,020.96	$1,467.93	$3,154.44
503	KNEE PROCEDURES W/O PDX OF INFECTION	S	$1,181.16	$2,380.59	$5,377.48
504	EXTENSIVE 3RD DEGREE BURNS W SKIN GRAFT	S	$2,926.52	$4,017.20	$8,162.33

Replacement TABLE A. — ACUTE INPATIENT FACILITY NATIONWIDE PER DIEM CHARGES BY DRG (DIAGNOSIS RELATED GROUP)

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DRG	Description	Surgical/ Non-Surgical Indicator	Per Diem Charge		
			Standard Room and Board	ICU Room and Board	Ancillary
505	EXTENSIVE 3RD DEGREE BURNS W/O SKIN GRAFT	N	$747.96	$2,371.68	$4,473.93
506	FULL THICKNESS BURN W SKIN GRAFT OR INHAL INJ W CC OR SIG TRAUMA	S	$1,741.96	$4,349.11	$4,310.81
507	FULL THICKNESS BURN W SKIN GRFT OR INHAL INJ W/O CC OR SIG TRAUMA	S	$1,865.85	$3,706.52	$2,881.55
508	FULL THICKNESS BURN W/O SKIN GRFT OR INHAL INJ W CC OR SIG TRAUMA	N	$1,011.86	$3,150.79	$1,780.25
509	FULL THICKNESS BURN W/O SKIN GRFT OR INH INJ W/O CC OR SIG TRAUMA	N	$975.01	$2,921.89	$1,389.13
510	NON-EXTENSIVE BURNS W CC OR SIGNIFICANT TRAUMA	N	$1,037.56	$3,561.94	$2,170.14
511	NON-EXTENSIVE BURNS W/O CC OR SIGNIFICANT TRAUMA	N	$752.60	$2,820.57	$1,156.65
512	SIMULTANEOUS PANCREAS/KIDNEY TRANSPLANT	S	$1,277.12	$3,124.84	$14,895.66
513	PANCREAS TRANSPLANT	S	$1,556.78	$3,940.74	$12,965.65
514	NO LONGER VALID	S	$0.00	$0.00	$0.00
515	CARDIAC DEFIBRILLATOR IMPLANT W/O CARDIAC CATH	S	$1,076.76	$1,870.32	$16,335.19
516	PERCUTANEOUS CARDIOVASC PROC W AMI	S	$1,231.66	$2,103.39	$9,131.74
517	PERC CARDIO PROC W NON-DRUG ELUTING STENT W/O AMI	S	$1,158.16	$1,969.24	$14,074.08
518	PERC CARDIO PROC W/O CORONARY ARTERY STENT OR AMI	S	$1,376.34	$2,161.68	$9,303.01
519	CERVICAL SPINAL FUSION W CC	S	$1,119.11	$2,448.17	$7,749.91
520	CERVICAL SPINAL FUSION W/O CC	S	$914.69	$2,159.92	$11,871.32
521	ALCOHOL/DRUG ABUSE OR DEPENDENCE W CC	N	$1,018.96	$1,873.44	$973.14
522	ALC/DRUG ABUSE OR DEPEND W REHABILITATION THERAPY W/O CC	N	$875.05	$1,391.18	$239.01
523	ALC/DRUG ABUSE OR DEPEND W/O REHABILITATION THERAPY W/O CC	N	$903.71	$1,247.20	$314.80
524	TRANSIENT ISCHEMIA	N	$1,000.10	$1,737.91	$2,274.68
525	HEART ASSIST SYSTEM IMPLANT	S	$1,498.88	$2,689.55	$11,513.30
526	PERCUTNEOUS CARDIOVASULAR PROC W DRUG ELUTING STENT W AMI	S	$1,376.34	$2,161.68	$9,303.01
527	PERCUTNEOUS CARDIOVASULAR PROC W DRUG ELUTING STENT W/O AMI	S	$1,376.34	$2,161.68	$9,303.01
528	INTRACRANIAL VASCULAR PROC W PDX HEMORRHAGE	S	$1,277.15	$2,973.10	$6,470.61
529	VENTRICULAR SHUNT PROCEDURES W CC	S	$1,257.83	$2,790.78	$4,302.46
530	VENTRICULAR SHUNT PROCEDURES W/O CC	S	$1,236.11	$2,619.39	$5,130.90
531	SPINAL PROCEDURES W CC	S	$1,112.25	$2,413.00	$4,585.99
532	SPINAL PROCEDURES W/O CC	S	$1,075.84	$2,287.28	$5,664.53
533	EXTRACRANIAL PROCEDURES W CC	S	$1,001.15	$1,918.94	$5,426.61
534	EXTRACRANIAL PROCEDURES W/O CC	S	$948.56	$1,911.76	$7,538.38
535	CARDIAC DEFIB IMPLANT W CARDIAC CATH W AMI/HF/SHOCK	S	$1,361.86	$2,302.70	$11,814.77
536	CARDIAC DEFIB IMPLANT W CARDIAC CATH W/O AMI/HF/SHOCK	S	$1,244.71	$2,017.75	$17,976.36
537	LOCAL EXCIS & REMOV OF INT FIX DEV EXCEPT HIP & FEMUR W CC	S	$1,190.77	$2,289.96	$3,940.63
538	LOCAL EXCIS & REMOV OF INT FIX DEV EXCEPT HIP & FEMUR W/O CC	S	$1,072.13	$2,428.30	$5,534.90
539	LYMPHOMA & LEUKEMIA W MAJOR OR PROCEDURE W CC	S	$1,143.54	$2,313.73	$4,238.87
540	LYMPHOMA & LEUKEMIA W MAJOR OR PROCEDURE W/O CC	B	$1,069.17	$2,144.61	$4,812.12

Changes to TABLE G. — PHYSICIAN AND OTHER PROFESSIONAL SERVICES RELATIVE VALUE UNITS (RVUS) BY CPT/HCPCS CODE

PAGE 1 OF 1

Change Action	CPT/ HCPCS Code	Modifier	CPT/HCPCS Code Description	Conversion Factor/GAAF Category	Status/ Usage Indicator	Work Expense RVUs	Facility Practice Expense RVUs	Non-Facility Practice Expense RVUs	Total Expense RVUs	Charge Methodology
				Surgery	a				0.48	SA
Deleted	51798	26	Us urine capacity measure							
Deleted	51798	TC		Cardiovascular	a				6.37	SA
Added	51798									
Deleted	92961	26	Cardioversion, electric, int	Cardiovascular	a				9.72	SA
Deleted	92961	TC								
Added	92961			Cardiovascular		0.17	0.76	0.76		
Deleted	93613	26	Electrophys map 3d, add-on							
Deleted	93613	TC		Miscellaneous Medical	a				0.64	SA
Added	93613									
Deleted	93720	26	Total body plethysmography	Miscellaneous Medical	a				1.77	SA
Deleted	93720	TC								
Added	93720									
Deleted	99185	26	Regional hypothermia							
Deleted	99185	TC								
Added	99185									
Deleted	99186	26	Total body hypothermia							
Deleted	99186	TC								
Added	99186									

Key to Status/Usage Indicators:
a Cannot be billed by VA Hospital Outpatients and Provider-Based Clinics (because the service is separately priced as outpatient facility charges — see Table F).
b Cannot be billed by VA Hospital Outpatients and Provider-Based Clinics (because a different code is used for facility billing).
No entry: Can be billed at all VA locations.

Charge Methodology:
Misc: RVUs obtained using the methodology for unlisted procedures.
No entry: RVUs obtained from the Medicare Physician Fee Schedule
All other entries: See Supplementary Table 1, Reasonable Charges Data Sources - V2.0

NOTE: CPT Codes and descriptions only copyright 2002 American Medical Association All rights reserved Applicable FARS/DFARS appy

Changes to TABLE K. — DURABLE MEDICAL EQUIPMENT, SUPPLIES, VISION AND HEARING HARDWARE NATIONWIDE CHARGES BY HCPCS CODE

PAGE 1 OF 3

Change Action	HCPCS Code	Modifier	HCPCS Code Description	Status/ Usage Indicator	Charge	GAAF Cateogory
Deleted	A4253	NU				
Deleted	A4254					
Deleted	A4421					
Deleted	A4611					
Deleted	A4612					
Deleted	A4618					
Deleted	A4624	NU				
Deleted	A4628	NU				
Deleted	A4630	NU				
Deleted	A4631					
Deleted	A4635					
Deleted	A4636					
Deleted	A4637					
Deleted	A4640					
Deleted	A4649					
Deleted	A4913					
Deleted	A7000	NU				
Deleted	A7001	NU				
Deleted	A7002	NU				
Deleted	A7003	NU				
Deleted	A7004	NU				
Deleted	A7005	NU				
Deleted	A7006	NU				
Deleted	A7007	NU				
Deleted	A7008	NU				
Deleted	A7009	NU				
Deleted	A7010	NU				
Deleted	A7012	NU				
Deleted	A7013	NU				
Deleted	A7014	NU				
Deleted	A7015	NU				
Deleted	A7016	NU				
Deleted	A9150					
Deleted	A9270					
Deleted	A9300					
Added	B9002	UE	Enteral infusion pump w/ ala		$1,732.13	Non-Drug
Deleted	B9998					
Deleted	B9999					
Deleted	E0159					
Deleted	E0188					
Deleted	E0218					
Deleted	E0273					
Deleted	E0274					
Deleted	E0555					
Deleted	E0602					
Deleted	E0607					
Deleted	E0749					
Added	E0749	NU	Elec osteogen stim implanted		$5,661.75	Non-Drug
Deleted	E0780	NU				
Added	E0780		Mech amb infusion pump <8hrs		$18.35	Non-Drug
Deleted	E0782					
Deleted	E0784					
Added	E0784	NU	Ext amb infusn pump insulin		$5,014.13	Non-Drug
Deleted	E0950					
Deleted	E0953					
Deleted	E0954					
Deleted	E0959					
Deleted	E0961					
Deleted	E0966					
Deleted	E0970					
Deleted	E0972					
Deleted	E0973					
Deleted	E0974					
Deleted	E0975					
Deleted	E0976					
Deleted	E0978					
Deleted	E0979					
Deleted	E0990					
Deleted	E0991					
Deleted	E0992					
Deleted	E0993					

See end of table for note regarding Status/Usage Indicators.

Changes to TABLE K. — DURABLE MEDICAL EQUIPMENT, SUPPLIES, VISION AND HEARING HARDWARE NATIONWIDE CHARGES BY HCPCS CODE

PAGE 2 OF 3

Change Action	HCPCS Code	Modifier	HCPCS Code Description	Status/ Usage Indicator	Charge	GAAF Cateogory
Deleted	E0995					
Deleted	E0996					
Deleted	E1000					
Deleted	E1066					
Deleted	E1069					
Deleted	E1085					
Deleted	E1086					
Deleted	E1089					
Deleted	E1090					
Deleted	E1130					
Deleted	E1140					
Deleted	E1212					
Deleted	E1213					
Deleted	E1226					
Deleted	E1250					
Deleted	E1260					
Deleted	E1285					
Deleted	E1290					
Deleted	E1300	NU				
Deleted	E1353					
Deleted	E1510					
Added	E1510	NU	Kidney dialysate delivry sys		$1,403.10	Non-Drug
Deleted	J3490					
Deleted	J3590					
Deleted	J7599					
Deleted	J7699					
Deleted	J7799					
Deleted	J8499					
Deleted	J8999					
Deleted	J9999					
Deleted	K0012					
Added	K0012	NU	Ltwt portbl power whlchr		$3,760.35	Non-Drug
Deleted	K0030					
Deleted	K0082					
Deleted	K0083					
Deleted	K0084					
Deleted	K0085					
Deleted	K0086					
Deleted	K0087					
Deleted	K0088					
Deleted	K0195					
Added	K0195	NU	Elevating whlchair leg rests		$143.35	Non-Drug
Deleted	K0415					
Deleted	K0416					
Deleted	L0999					
Deleted	L2999					
Deleted	L3649					
Deleted	L3964					
Deleted	L3965					
Deleted	L3966					
Deleted	L3968					
Deleted	L3969					
Deleted	L3970					
Deleted	L3972					
Deleted	L3974					
Deleted	L5999					
Deleted	L8040					
Deleted	L8041					
Deleted	L8042					
Deleted	L8043					
Deleted	L8044					
Deleted	L8045					
Deleted	L8046					
Deleted	L8047					
Deleted	L8239					
Deleted	L8499					
Deleted	L8699					
Deleted	Q4050					
Deleted	S5199					
Deleted	V2799					

See end of table for note regarding Status/Usage Indicators.

Changes to TABLE K. — DURABLE MEDICAL EQUIPMENT, SUPPLIES, VISION AND HEARING HARDWARE NATIONWIDE CHARGES BY HCPCS CODE

PAGE 3 OF 3

Change Action	HCPCS Code	Modifier	HCPCS Code Description	Status/ Usage Indicator	Charge	GAAF Cateogory

Key to Status/Usage Indicators:

a Cannot be billed by VA Hospital Outpatients and Provider-Based Clinics (because the service is separately priced as outpatient facility charges — see Table F).

No entry: Can be billed at all VA locations

Changes to Supplementary Table 1
Reasonable Charges Data Sources - V2.0

V2p0 FR Data Sources xls - By Charge Type

Page 1 of 1

Charge Type	Paragraph	Subject	Data Source	Edition
Inpt	(b)(2)	per diem charges	CPI-U, inpatient hospital services component, seasonally adjusted	Sept 2003, as of Oct 2003
Inpt	(b)(2)	per diem charges	MedPAR file	FY 2002
Inpt	(b)(2)(i)	charge component percentages: R&B, ancillary	MedPAR file	FY 2002
Inpt	(b)(2)(ii)	charge ratios: standard R&B, ICU R&B	MedPAR file	FY 2002
Inpt	(b)(2)(iii)	80th percentile	MedPAR file	FY 2002
Inpt	(b)(2)(iv)	trending forward	CPI-U, inpatient hospital services component, seasonally adjusted	Sept 2003, as of Oct 2003

Other Abbreviations
CPI-U = Consumer Price Index - All Urban Consumers
FY = Fiscal Year (October - September)
ICU = Intensive Care Unit
MedPAR = Medicare Provider Analysis and Review
R&B = Room and Board

Charge Type Abbreviations
Inpt = Acute inpatient facility charges

Supplementary Table 3
VA Medical Facility Locations, Three-Digit ZIP Codes,
and Provider-Based/Non-Provider-Based Designations
As of December 5, 2003

RC V2p0 Facility List 2003-12-05 FR.xls

Page 1 of 16

Sta #	VA Facility Location	ST	ZIP 3	VN	Type	PII
402	TOGUS, ME	ME	043	1	VAMC	PBH
402GA	CARIBOU, ME	ME	047	1	CBOC	NPB
402GB	CALAIS, ME	ME	046	1	CBOC	NPB
402GC	RUMFORD, ME	ME	042	1	CBOC	NPB
402GD	SACO, ME	ME	040	1	CBOC	NPB
402HB	BANGOR, ME	ME	044	1	CBOC	NPB
402HC	PORTLAND, ME	ME	041	1	CBOC	NPB
405	WHITE RIVER JCT, VT	VT	050	1	VAMC	PBH
405GA	BENNINGTON, VT	VT	052	1	CBOC	NPB
405HA	BURLINGTON, VT	VT	054	1	CBOC	NPB
405HC	SAINT JOHNSBURY, VT	VT	058	1	CBOC	NPB
405HD	NEWPORT, VT	VT	058	1	CBOC	NPB
405HF	RUTLAND, VT	VT	057	1	CBOC	NPB
405HG	WILDER, VT	VT	050	1	CBOC	NPB
436	FORT HARRISON, MT	MT	596	19	VAMC	PBH
436GA	ANACONDA, MT	MT	597	19	CBOC	NPB
436GB	GREAT FALLS, MT	MT	594	19	CBOC	NPB
436GC	MISSOULA, MT	MT	598	19	CBOC	NPB
436GD	BOZEMAN, MT	MT	597	19	CBOC	NPB
436GF	KALISPELL, MT	MT	599	19	CBOC	NPB
436GH	BILLINGS, MT	MT	591	19	CBOC	NPB
436GI	GLASGOW, MT	MT	592	19	CBOC	NPB
436GJ	MILES CITY, MT	MT	593	19	CBOC	NPB
436GK	SIDNEY, MT	MT	592	19	CBOC	NPB
437	FARGO, ND	ND	581	23	VAMC	PBH
437GA	GRAFTON, ND	ND	582	23	CBOC	NPB
437GB	BISMARCK, ND	ND	585	23	CBOC	NPB
437GC	FERGUS FALLS, MN	MN	565	23	CBOC	NPB
437GD	MINOT, ND	ND	587	23	CBOC	NPB
438	SIOUX FALLS, SD	SD	571	23	VAMC	PBH
438GC	SIOUX CITY, IA	IA	511	23	CBOC	NPB
438GD	ABERDEEN, SD	SD	574	23	CBOC	NPB
442	CHEYENNE, WY	WY	820	19	VAMC	PBH
442GB	SIDNEY, NE	NE	691	19	CBOC	NPB
442GC	FORT COLLINS, CO	CO	805	19	CBOC	NPB
442GD	GREELEY, CO	CO	806	19	CBOC	NPB
459	HONOLULU, HI	HI	968	21	VAMC	PBH
459GA	KAHULUI, HI	HI	967	21	CBOC	NPB
459GB	HILO, HI	HI	967	21	CBOC	NPB
459GC	KAILUA KONA, HI	HI	967	21	CBOC	NPB
459GD	LIHUE, HI	HI	967	21	CBOC	NPB
459GE	GUAM, GU	GU	969	21	CBOC	NPB
460	WILMINGTON, DE	DE	198	4	VAMC	PBH
460GA	MILLSBORO, DE	DE	199	4	CBOC	NPB
460HE	VENTNOR CITY, NJ	NJ	084	4	CBOC	NPB
460HG	VINELAND, NJ	NJ	083	4	CBOC	NPB
463	ANCHORAGE, AK	AK	995	20	IOC	PBO
463GA	FAIRBANKS, AK	AK	997	20	CBOC	NPB
463GB	KENAI, AK	AK	996	20	CBOC	NPB
501	ALBUQUERQUE, NM	NM	871	18	VAMC	PBH
501G2	LAS VEGAS, NM	NM	875	18	CBOC	PBO
501GA	ARTESIA, NM	NM	882	18	CBOC	NPB
501GB	FARMINGTON, NM	NM	874	18	CBOC	NPB

Supplementary Table 3
VA Medical Facility Locations, Three-Digit ZIP Codes,
and Provider-Based/Non-Provider-Based Designations
As of December 5, 2003

RC V2p0 Facility List 2003-12-05 FR.xls

Sta #	VA Facility Location	ST	ZIP 3	VN	Type	PB
501GC	SILVER CITY, NM	NM	880	18	CBOC	NPB
501GD	GALLUP, NM	NM	873	18	CBOC	NPB
501GE	ESPANOLA, NM	NM	884	18	CBOC	NPB
501GH	TRUTH OR CONSEQUENCES, NM	NM	879	18	CBOC	NPB
501GI	ALAMOGORDO, NM	NM	883	18	CBOC	NPB
501GJ	DURANGO, CO	CO	813	18	CBOC	NPB
501GK	SANTA FE, NM	NM	875	18	CBOC	NPB
501HB	RATON, NM	NM	877	18	CBOC	NPB
502	ALEXANDRIA, LA	LA	713	16	VAMC	PBH
502GA	JENNINGS, LA	LA	705	16	CBOC	NPB
502GB	LAFAYETTE, LA	LA	705	16	CBOC	NPB
503	ALTOONA, PA	PA	166	4	VAMC	PBH
503GA	JOHNSTOWN, PA	PA	159	4	CBOC	NPB
503GB	DU BOIS, PA	PA	158	4	CBOC	NPB
503GC	STATE COLLEGE, PA	PA	168	4	CBOC	NPB
504	AMARILLO, TX	TX	791	18	VAMC	PBH
504BY	LUBBOCK, TX	TX	794	18	CBOC	NPB
504BZ	CLOVIS, NM	NM	881	18	CBOC	NPB
504GA	CHILDRESS, TX	TX	792	18	CBOC	NPB
504GB	LIBERAL, KS	KS	679	18	CBOC	NPB
504HB	STRATFORD, TX	TX	790	18	CBOC	NPB
506	ANN ARBOR, MI	MI	481	11	VAMC	PBH
506GA	TOLEDO, OH	OH	436	11	CBOC	NPB
506GB	FLINT, MI	MI	485	11	CBOC	NPB
506GC	JACKSON, MI	MI	492	11	CBOC	NPB
508	ATLANTA/DECATUR, GA	GA	300	7	VAMC	PBH
508GA	ATLANTA/MIDTOWN, GA	GA	303	7	CBOC	PBO
508GE	OAKWOOD/NE CORRIDOR, GA	GA	305	7	CBOC	PBO
508GF	SMYRNA, GA	GA	300	7	CBOC	NPB
508GH	LAWRENCEVILLE, GA	GA	300	7	CBOC	NPB
509	AUGUSTA DOWNTOWN, GA	GA	309	7	VAMC	PBH
509A0	AUGUSTA UPTOWN, GA	GA	309	7	VAMC	PBH
512	BALTIMORE, MD	MD	212	5	VAMC	PBH
512A5	PERRY POINT, MD	MD	219	5	VAMC	PBH
512GA	CAMBRIDGE, MD	MD	216	5	CBOC	NPB
512GC	GLEN BURNIE, MD	MD	210	5	CBOC	NPB
512GD	BALTIMORE/LOCH RAVEN, MD	MD	212	5	CBOC	PBO
512GE	POCOMOKE CITY, MD	MD	218	5	CBOC	NPB
512GF	FORT HOWARD CBOC, MD	MD	210	5	CBOC	PBO
515	BATTLE CREEK, MI	MI	490	11	VAMC	PBH
515BY	GRAND RAPIDS, MI	MI	495	11	CBOC	NPB
515GA	MUSKEGON, MI	MI	494	11	CBOC	NPB
515GB	LANSING, MI	MI	489	11	CBOC	NPB
515GC	BENTON HARBOR, MI	MI	490	11	CBOC	NPB
516	BAY PINES, FL	FL	337	8	VAMC	PBH
516BZ	FORT MYERS, FL	FL	339	8	CBOC	NPB
516GA	SARASOTA, FL	FL	342	8	CBOC	NPB
516GB	SAINT PETERSBURG, FL	FL	337	8	CBOC	NPB
516GC	CLEARWATER, FL	FL	346	8	CBOC	NPB
516GD	ELLENTON, FL	FL	342	8	CBOC	NPB
516GE	PORT CHARLOTTE, FL	FL	339	8	CBOC	NPB
516GF	NAPLES, FL	FL	341	8	CBOC	NPB
516GH	AVON PARK, FL	FL	338	8	CBOC	NPB

Supplementary Table 3
VA Medical Facility Locations, Three-Digit ZIP Codes,
and Provider-Based/Non-Provider-Based Designations
As of December 5, 2003

RC V2p0 Facility List 2003-12-05 FR.xls

Sta #	VA Facility Location	ST	ZIP 3	VN	Type	PB
517	BECKLEY, WV	WV	258	6	VAMC	PBH
517GA	GASSAWAY, WV	WV	266	6	CBOC	NPB
518	BEDFORD, MA	MA	017	1	VAMC	PBH
518GA	LYNN, MA	MA	019	1	CBOC	NPB
518GB	HAVERHILL, MA	MA	018	1	CBOC	NPB
518GC	WINCHINDON, MA	MA	014	1	CBOC	NPB
518GD	LOWELL, MA	MA	018	1	CBOC	NPB
518GE	GLOUCESTER, MA	MA	019	1	CBOC	NPB
518GG	FITCHBURG, MA	MA	014	1	CBOC	NPB
519	BIG SPRING, TX	TX	797	18	VAMC	PBH
519GA	ODESSA, TX	TX	797	18	CBOC	NPB
519GB	HOBBS, NM	NM	882	18	CBOC	NPB
519GD	FORT STOCKTON, TX	TX	797	18	CBOC	NPB
519HC	ABILENE, TX	TX	796	18	CBOC	NPB
519HD	STAMFORD, TX	TX	795	18	CBOC	NPB
519HF	SAN ANGELO, TX	TX	769	18	CBOC	NPB
520	BILOXI, MS	MS	395	16	VAMC	PBH
520A0	GULFPORT, MS	MS	395	16	VAMC	PBH
520BZ	PENSACOLA, FL	FL	325	16	CBOC	NPB
520GA	MOBILE, AL	AL	366	16	CBOC	NPB
520GB	PANAMA CITY, FL	FL	324	16	CBOC	NPB
521	BIRMINGHAM, AL	AL	352	7	VAMC	PBH
521GA	HUNTSVILLE, AL	AL	358	7	CBOC	NPB
521GB	DECATUR, AL	AL	356	7	CBOC	NPB
521GC	FLORENCE, AL	AL	356	7	CBOC	NPB
521GD	RAINBOW CITY, AL	AL	359	7	CBOC	NPB
521GE	ANNISTON, AL	AL	362	7	CBOC	NPB
521GF	JASPER, AL	AL	355	7	CBOC	NPB
523	BOSTON, MA	MA	021	1	VAMC	PBH
523A4	WEST ROXBURY, MA	MA	021	1	VAMC	PBH
523A5	BROCKTON, MA	MA	024	1	VAMC	PBH
523BZ	BOSTON CBOC, MA	MA	021	1	CBOC	PBO
523GA	FRAMINGHAM, MA	MA	017	1	CBOC	NPB
523GB	WORCESTER, MA	MA	016	1	CBOC	NPB
523GC	QUINCY, MA	MA	021	1	CBOC	NPB
523GD	PLYMOUTH, MA	MA	023	1	CBOC	NPB
523GE	DORCHESTER, MA	MA	021	1	CBOC	NPB
526	BRONX, NY	NY	104	3	VAMC	PBH
526GA	WHITE PLAINS/BRONX, NY	NY	106	3	CBOC	PBO
526GB	YONKERS, NY	NY	107	3	CBOC	PBO
526GC	SOUTH BRONX, NY	NY	104	3	CBOC	PBO
526GD	QUEENS, NY	NY	111	3	CBOC	PBO
528	BUFFALO, NY	NY	142	2	VAMC	PBH
528A4	BATAVIA, NY	NY	140	2	VAMC	PBH
528A5	CANANDAIGUA, NY	NY	144	2	VAMC	PBH
528A6	BATH, NY	NY	148	2	VAMC	PBH
528A7	SYRACUSE, NY	NY	132	2	VAMC	PBH
528A8	ALBANY, NY	NY	122	2	VAMC	PBH
528G1	MALONE, NY	NY	129	2	CBOC	NPB
528G2	ELIZABETHTOWN, NY	NY	129	2	CBOC	NPB
528G3	BAINBRIDGE, NY	NY	137	2	CBOC	NPB
528G4	ELMIRA, NY	NY	149	2	CBOC	NPB
528G5	AUBURN, NY	NY	130	2	CBOC	NPB

Supplementary Table 3
VA Medical Facility Locations, Three-Digit ZIP Codes,
and Provider-Based/Non-Provider-Based Designations
As of December 5, 2003

RC V2p0 Facility List 2003-12-05 FR.xls

Sta #	VA Facility Location	ST	ZIP 3	VN	Type	PB
528G6	FONDA, NY	NY	120	2	CBOC	NPB
528G7	CATSKILL, NY	NY	124	2	CBOC	NPB
528G8	WELLSVILLE, NY	NY	148	2	CBOC	NPB
528G9	CORTLAND, NY	NY	130	2	CBOC	NPB
528GB	JAMESTOWN, NY	NY	147	2	CBOC	NPB
528GC	DUNKIRK, NY	NY	140	2	CBOC	NPB
528GD	NIAGARA FALLS, NY	NY	143	2	CBOC	NPB
528GE	ROCHESTER, NY	NY	146	2	CBOC	PBO
528GK	LOCKPORT, NY	NY	140	2	CBOC	NPB
528GL	MASSENA, NY	NY	136	2	CBOC	NPB
528GM	ROME, NY	NY	134	2	CBOC	NPB
528GN	BINGHAMTON, NY	NY	139	2	CBOC	NPB
528GO	WATERTOWN/FORT DRUM, NY	NY	136	2	CBOC	NPB
528GP	OSWEGO, NY	NY	131	2	CBOC	NPB
528GQ	LACKAWANNA, NY	NY	142	2	CBOC	NPB
528GR	OLEAN, NY	NY	147	2	CBOC	NPB
528GT	GLENS FALLS, NY	NY	128	2	CBOC	NPB
528GV	PLATTSBURGH, NY	NY	129	2	CBOC	NPB
528GW	SCHENECTADY, NY	NY	123	2	CBOC	NPB
528GX	TROY, NY	NY	121	2	CBOC	PBO
528GY	CLIFTON PARK, NY	NY	120	2	CBOC	NPB
528GZ	KINGSTON, NY	NY	124	2	CBOC	NPB
529	BUTLER, PA	PA	160	4	VAMC	PBH
529GA	MERCER, PA	PA	161	4	CBOC	NPB
529GB	NEW CASTLE, PA	PA	161	4	CBOC	NPB
529GC	KITTANNING, PA	PA	162	4	CBOC	NPB
529GD	KNOX, PA	PA	162	4	CBOC	NPB
531	BOISE, ID	ID	837	20	VAMC	PBH
531GD	ONTARIO, OR	OR	979	20	CBOC	NPB
531GE	TWIN FALLS, ID	ID	833	20	CBOC	NPB
534	CHARLESTON, SC	SC	294	7	VAMC	PBH
534BY	SAVANNAH, GA	GA	314	7	CBOC	NPB
534GB	MYRTLE BEACH, SC	SC	295	7	CBOC	NPB
534GC	BEAUFORT, SC	SC	299	7	CBOC	NPB
537	CHICAGO WEST SIDE, IL	IL	606	12	VAMC	PBH
537A4	CHICAGO LAKESIDE, IL	IL	606	12	VAMC	PBH
537BY	CROWN POINT, IN	IN	463	12	CBOC	NPB
537GA	CHICAGO HEIGHTS, IL	IL	604	12	CBOC	PBO
537HA	CHICAGO/WOODLAWN, IL	IL	606	12	CBOC	PBO
538	CHILLICOTHE, OH	OH	456	10	VAMC	PBH
538GA	ATHENS, OH	OH	457	10	CBOC	NPB
538GB	PORTSMOUTH, OH	OH	456	10	CBOC	NPB
538GC	MARIETTA, OH	OH	457	10	CBOC	NPB
538GD	LANCASTER, OH	OH	431	10	CBOC	NPB
539	CINCINNATI, OH	OH	452	10	VAMC	PBH
539GA	BELLEVUE, KY	KY	410	10	CBOC	NPB
539GB	CINCINNATI CBOC, OH	OH	452	10	CBOC	PBO
539GC	LAWRENCEBURG, IN	IN	470	10	CBOC	NPB
540	CLARKSBURG, WV	WV	263	4	VAMC	PBH
540GA	PARSONS, WV	WV	262	4	CBOC	NPB
540GB	PARKERSBURG, WV	WV	261	4	CBOC	NPB
540GC	GASSAWAY, WV	WV	266	4	CBOC	NPB
541	CLEVELAND WADE PARK, OH	OH	441	10	VAMC	PBH

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Sta #	VA Facility Location	ST	ZIP 3	VN	Type	PB
541A0	CLEVELAND BRECKSVILLE, OH	OH	441	10	VAMC	PBH
541BY	CANTON, OH	OH	447	10	CBOC	NPB
541BZ	YOUNGSTOWN, OH	OH	445	10	CBOC	NPB
541GB	LORAIN, OH	OH	440	10	CBOC	NPB
541GC	SANDUSKY, OH	OH	448	10	CBOC	NPB
541GD	MANSFIELD, OH	OH	449	10	CBOC	NPB
541GE	CLEVELAND CBOC, OH	OH	441	10	CBOC	PBO
541GF	PAINESVILLE, OH	OH	440	10	CBOC	NPB
541GG	AKRON, OH	OH	443	10	CBOC	NPB
541GH	EAST LIVERPOOL, OH	OH	439	10	CBOC	NPB
541GI	WARREN, OH	OH	444	10	CBOC	NPB
542	COATESVILLE, PA	PA	193	4	VAMC	PBH
542GA	SPRINGFIELD, PA	PA	190	4	CBOC	NPB
542GB	PHILADELPHIA CBOC, PA	PA	191	4	CBOC	PBO
542GC	READING, PA	PA	196	4	CBOC	NPB
542GD	LANCASTER, PA	PA	176	4	CBOC	NPB
542GE	SPRING CITY, PA	PA	194	4	CBOC	NPB
542GF	VINELAND, NJ	NJ	083	4	CBOC	NPB
542GG	COATESVILLE MSCEC, PA	PA	193	4	CBOC	PBO
542GH	COATESVILLE CBOC, PA	PA	193	4	CBOC	PBO
542GI	VENTNOR CITY, NJ	NJ	084	4	CBOC	NPB
544	COLUMBIA, SC	SC	292	7	VAMC	PBH
544BZ	GREENVILLE, SC	SC	296	7	CBOC	NPB
544GB	FLORENCE, SC	SC	295	7	CBOC	NPB
544GC	ROCK HILL, SC	SC	297	7	CBOC	NPB
544GD	ANDERSON, SC	SC	296	7	CBOC	NPB
544GE	ORANGEBURG, SC	SC	291	7	CBOC	NPB
544GF	SUMTER, SC	SC	291	7	CBOC	NPB
546	MIAMI, FL	FL	331	8	VAMC	PBH
546BZ	OAKLAND PARK, FL	FL	333	8	CBOC	NPB
546GA	MIAMI CBOC, FL	FL	331	8	CBOC	PBO
546GB	KEY WEST, FL	FL	330	8	CBOC	NPB
546GC	HOMESTEAD, FL	FL	330	8	CBOC	NPB
546GD	PEMBROKE PINES, FL	FL	330	8	CBOC	NPB
546GE	KEY LARGO, FL	FL	330	8	CBOC	NPB
546GF	HALLANDALE, FL	FL	330	8	CBOC	NPB
546GG	CORAL SPRINGS, FL	FL	330	8	CBOC	NPB
546GH	DEERFIELD BEACH, FL	FL	334	8	CBOC	NPB
548	WEST PALM BEACH, FL	FL	334	8	VAMC	PBH
548GA	FORT PIERCE, FL	FL	349	8	CBOC	NPB
548GB	DELRAY BEACH, FL	FL	334	8	CBOC	NPB
548GC	STUART, FL	FL	349	8	CBOC	NPB
548GD	BOCA RATON, FL	FL	334	8	CBOC	NPB
548GE	VERO BEACH, FL	FL	329	8	CBOC	NPB
548GF	OKEECHOBEE, FL	FL	349	8	CBOC	NPB
549	DALLAS, TX	TX	752	17	VAMC	PBH
549A4	BONHAM, TX	TX	754	17	VAMC	PBH
549BY	FORT WORTH SOC, TX	TX	761	17	CBOC	PBO
549GA	TYLER, TX	TX	757	17	CBOC	NPB
549GC	BONHAM CBOC, TX	TX	754	17	CBOC	PBO
549GD	DENTON, TX	TX	762	17	CBOC	NPB
549GE	DECATUR, TX	TX	762	17	CBOC	NPB
549GF	EASTLAND, TX	TX	764	17	CBOC	NPB

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549GH	GREENVILLE, TX	TX	754	17	CBOC	NPB
549GI	CLEBURNE, TX	TX	760	17	CBOC	NPB
550	DANVILLE, IL	IL	618	11	VAMC	PBH
550BY	PEORIA, IL	IL	616	11	CBOC	NPB
550GA	DECATUR, IL	IL	625	11	CBOC	NPB
550GC	LAFAYETTE, IN	IN	479	11	CBOC	NPB
550GD	SPRINGFIELD, IL	IL	627	11	CBOC	NPB
550GE	EFFINGHAM, IL	IL	624	11	CBOC	NPB
552	DAYTON, OH	OH	454	10	VAMC	PBH
552GA	MIDDLETOWN, OH	OH	450	10	CBOC	NPB
552GB	LIMA, OH	OH	458	10	CBOC	NPB
552GC	RICHMOND, IN	IN	473	10	CBOC	NPB
552GD	SPRINGFIELD, OH	OH	455	10	CBOC	NPB
553	DETROIT, MI	MI	482	11	VAMC	PBH
553GA	YALE, MI	MI	480	11	CBOC	NPB
553GB	PONTIAC, MI	MI	483	11	CBOC	NPB
554	DENVER, CO	CO	802	19	VAMC	PBH
554GB	AURORA, CO	CO	800	19	CBOC	NPB
554GC	LAKEWOOD, CO	CO	802	19	CBOC	NPB
554GD	PUEBLO, CO	CO	810	19	CBOC	NPB
554GE	COLORADO SPRINGS, CO	CO	809	19	CBOC	NPB
554GF	ALAMOSA, CO	CO	811	19	CBOC	NPB
554GG	LA JUNTA, CO	CO	810	19	CBOC	NPB
554GH	LAMAR, CO	CO	810	19	CBOC	NPB
554HB	FORT MORGAN, CO	CO	807	19	CBOC	NPB
556	NORTH CHICAGO, IL	IL	600	12	VAMC	PBH
556GA	EVANSTON, IL	IL	602	12	CBOC	NPB
556GC	MCHENRY, IL	IL	600	12	CBOC	NPB
556GD	KENOSHA, WI	WI	531	12	CBOC	NPB
557	DUBLIN, GA	GA	310	7	VAMC	PBH
557GA	MACON, GA	GA	312	7	CBOC	NPB
557GB	ALBANY, GA	GA	317	7	CBOC	NPB
558	DURHAM, NC	NC	277	6	VAMC	PBH
558GA	GREENVILLE, NC	NC	278	6	CBOC	NPB
558GB	RALEIGH, NC	NC	276	6	CBOC	NPB
561	EAST ORANGE, NJ	NJ	070	3	VAMC	PBH
561A4	LYONS, NJ	NJ	079	3	VAMC	PBH
561BY	NEWARK SAC, NJ	NJ	071	3	CBOC	NPB
561BZ	BRICK, NJ	NJ	087	3	CBOC	NPB
561GA	TRENTON, NJ	NJ	086	3	CBOC	NPB
561GB	ELIZABETH, NJ	NJ	072	3	CBOC	NPB
561GD	HACKENSACK, NJ	NJ	076	3	CBOC	NPB
561GE	JERSEY CITY, NJ	NJ	073	3	CBOC	NPB
561GF	NEW BRUNSWICK, NJ	NJ	089	3	CBOC	NPB
561GG	NEWARK CBOC, NJ	NJ	071	3	CBOC	NPB
561GH	MORRISTOWN, NJ	NJ	079	3	CBOC	NPB
561GI	FORT MONMOUTH, NJ	NJ	077	3	CBOC	NPB
561HB	JAMESBURG, NJ	NJ	088	3	CBOC	NPB
562	ERIE, PA	PA	165	4	VAMC	PBH
562GA	MEADVILLE, PA	PA	163	4	CBOC	NPB
562GB	ASHTABULA, OH	OH	440	4	CBOC	NPB
562GC	SMETHPORT, PA	PA	167	4	CBOC	NPB
564	FAYETTEVILLE, AR	AR	727	16	VAMC	PBH

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564BY	MOUNT VERNON, MO	MO	657	16	CBOC	NPB
564GA	HARRISON, AR	AR	726	16	CBOC	NPB
564GB	FORT SMITH, AR	AR	729	16	CBOC	NPB
565	FAYETTEVILLE, NC	NC	283	6	VAMC	PBH
565GA	JACKSONVILLE UCJ, NC	NC	285	6	CBOC	NPB
565GC	WILMINGTON, NC	NC	284	6	CBOC	NPB
568	FORT MEADE, SD	SD	577	23	VAMC	PBH
568A4	HOT SPRINGS, SD	SD	577	23	VAMC	PBH
568GA	RAPID CITY, SD	SD	577	23	CBOC	NPB
568GB	PIERRE, SD	SD	575	23	CBOC	NPB
568HA	NEWCASTLE, WY	WY	827	23	CBOC	NPB
568HB	RUSHVILLE, NE	NE	693	23	CBOC	NPB
568HC	ALLIANCE, NE	NE	693	23	CBOC	NPB
568HH	GERING, NE	NE	693	23	CBOC	NPB
568HJ	ROSEBUD, SD	SD	575	23	CBOC	NPB
568HK	MCLAUGHLIN, SD	SD	576	23	CBOC	NPB
568HM	EAGLE BUTTE, SD	SD	576	23	CBOC	NPB
568HN	LAME DEER, MT	MT	590	23	CBOC	NPB
568HP	WINNER, SD	SD	575	23	CBOC	NPB
570	FRESNO, CA	CA	937	21	VAMC	PBH
570GA	ATWATER, CA	CA	953	21	CBOC	NPB
570GB	TULARE, CA	CA	932	21	CBOC	NPB
573	GAINESVILLE, FL	FL	326	8	VAMC	PBH
573A4	LAKE CITY, FL	FL	320	8	VAMC	PBH
573BY	JACKSONVILLE, FL	FL	322	8	CBOC	PBO
573BZ	DAYTONA BEACH, FL	FL	321	8	CBOC	NPB
573GA	VALDOSTA, GA	GA	316	8	CBOC	NPB
573GD	OCALA, FL	FL	344	8	CBOC	NPB
573GE	SAINT AUGUSTINE, FL	FL	320	8	CBOC	NPB
573GF	TALLAHASSEE, FL	FL	323	8	CBOC	NPB
573GG	INVERNESS, FL	FL	344	8	CBOC	NPB
573GH	LEESBURG, FL	FL	347	8	CBOC	NPB
575	GRAND JUNCTION, CO	CO	815	19	VAMC	PBH
575GA	MONTROSE, CO	CO	814	19	CBOC	NPB
578	HINES, IL	IL	601	12	VAMC	PBH
578GA	JOLIET, IL	IL	604	12	CBOC	NPB
578GB	OAK PARK, IL	IL	603	12	CBOC	NPB
578GC	MANTENO, IL	IL	609	12	CBOC	NPB
578GD	AURORA, IL	IL	605	12	CBOC	NPB
578GE	ELGIN, IL	IL	601	12	CBOC	NPB
578GF	LA SALLE, IL	IL	613	12	CBOC	NPB
578GG	OAK LAWN, IL	IL	604	12	CBOC	NPB
580	HOUSTON, TX	TX	770	16	VAMC	PBH
580BY	BEAUMONT, TX	TX	777	16	CBOC	NPB
580BZ	LUFKIN, TX	TX	759	16	CBOC	NPB
581	HUNTINGTON, WV	WV	257	9	VAMC	PBH
581GA	PRESTONSBURG, KY	KY	416	9	CBOC	NPB
581GB	CHARLESTON, WV	WV	253	9	CBOC	NPB
581GD	WILLIAMSON, WV	WV	256	9	CBOC	NPB
583	INDIANAPOLIS, IN	IN	462	11	VAMC	PBH
583GA	TERRE HAUTE, IN	IN	478	11	CBOC	NPB
583GB	BLOOMINGTON, IN	IN	474	11	CBOC	NPB
585	IRON MOUNTAIN, MI	MI	498	12	VAMC	PBH

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585GA	HANCOCK/PORTAGE, MI	MI	499	12	CBOC	NPB
585GB	RHINELANDER, WI	WI	545	12	CBOC	NPB
585GC	MENOMINEE, MI	MI	498	12	CBOC	NPB
585GD	IRONWOOD, MI	MI	499	12	CBOC	NPB
585HA	MARQUETTE, MI	MI	498	12	CBOC	NPB
585HB	SAULT SAINTE MARIE, MI	MI	497	12	CBOC	NPB
586	JACKSON, MS	MS	392	16	VAMC	PBH
586GA	KOSCIUSKO, MS	MS	390	16	CBOC	NPB
586GB	MERIDIAN, MS	MS	393	16	CBOC	NPB
586GC	GREENVILLE, MS	MS	387	16	CBOC	NPB
586GD	HATTIESBURG, MS	MS	394	16	CBOC	NPB
586GE	NATCHEZ, MS	MS	391	16	CBOC	NPB
589	KANSAS CITY, MO	MO	641	15	VAMC	PBH
589A4	COLUMBIA, MO	MO	652	15	VAMC	PBH
589A5	TOPEKA, KS	KS	666	15	VAMC	PBH
589A6	LEAVENWORTH, KS	KS	660	15	VAMC	PBH
589A7	WICHITA, KS	KS	672	15	VAMC	PBH
589G1	WARRENSBURG, MO	MO	640	15	CBOC	NPB
589G2	DODGE CITY, KS	KS	678	15	CBOC	NPB
589G3	LIBERAL, KS	KS	679	15	CBOC	NPB
589G4	HAYS, KS	KS	676	15	CBOC	NPB
589G5	PARSONS, KS	KS	673	15	CBOC	NPB
589G6	SALINA, KS	KS	674	15	CBOC	NPB
589GB	BELTON, MO	MO	640	15	CBOC	NPB
589GC	PAOLA, KS	KS	660	15	CBOC	NPB
589GD	NEVADA, MO	MO	647	15	CBOC	NPB
589GE	KIRKSVILLE, MO	MO	635	15	CBOC	NPB
589GF	FORT LEONARD WOOD, MO	MO	654	15	CBOC	NPB
589GH	CAMDENTON, MO	MO	650	15	CBOC	NPB
589GI	SAINT JOSEPH, MO	MO	645	15	CBOC	NPB
589GJ	KANSAS CITY/WYANDOTTE, KS	KS	661	15	CBOC	NPB
589GK	ABILENE, KS	KS	674	15	CBOC	NPB
589GM	CHANUTE, KS	KS	667	15	CBOC	NPB
589GN	EMPORIA, KS	KS	668	15	CBOC	NPB
589GO	FORT RILEY, KS	KS	664	15	CBOC	NPB
589GP	GARNETT, KS	KS	660	15	CBOC	NPB
589GQ	HOLTON, KS	KS	664	15	CBOC	NPB
589GR	JUNCTION CITY, KS	KS	664	15	CBOC	NPB
589GS	RUSSELL, KS	KS	676	15	CBOC	NPB
589GT	SENECA, KS	KS	665	15	CBOC	NPB
589GU	LAWRENCE, KS	KS	660	15	CBOC	NPB
589GV	FORT SCOTT, KS	KS	667	15	CBOC	NPB
589GW	SALINA, KS	KS	674	15	CBOC	NPB
589GX	MEXICO, MO	MO	652	15	CBOC	NPB
589GY	SAINT JAMES, MO	MO	655	15	CBOC	NPB
589GZ	CAMERON, MO	MO	644	15	CBOC	NPB
590	HAMPTON, VA	VA	236	6	VAMC	PBH
590GA	NORFOLK, VA	VA	235	6	CBOC	NPB
593	LAS VEGAS, NV	NV	891	22	VAMC	PBH
593GA	LAS VEGAS CBOC, NV	NV	891	22	CBOC	PBO
593GB	HENDERSON, NV	NV	890	22	CBOC	PBO
593GC	PAHRUMP, NV	NV	890	22	CBOC	PBO
595	LEBANON, PA	PA	170	4	VAMC	PBH

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595GA	CAMP HILL, PA	PA	170	4	CBOC	NPB
595GB	POTTSVILLE/SCHUYLKILL/SHENANDOAH, PA	PA	179	4	CBOC	PBO
595GC	LANCASTER, PA	PA	176	4	CBOC	NPB
595GD	READING, PA	PA	196	4	CBOC	NPB
595GE	YORK, PA	PA	174	4	CBOC	NPB
596	LEXINGTON LEESTOWN, KY	KY	405	9	VAMC	PBH
596A0	LEXINGTON COOPER DRIVE, KY	KY	405	9	VAMC	PBH
596GA	SOMERSET, KY	KY	425	9	CBOC	NPB
596HA	LEXINGTON MSORC, KY	KY	405	9	CBOC	PBO
598	LITTLE ROCK, AR	AR	722	16	VAMC	PBH
598A0	NORTH LITTLE ROCK, AR	AR	721	16	VAMC	PBH
598GA	MOUNTAIN HOME, AR	AR	726	16	CBOC	NPB
598GB	EL DORADO, AR	AR	717	16	CBOC	NPB
598GC	HOT SPRINGS, AR	AR	719	16	CBOC	NPB
600	LONG BEACH, CA	CA	908	22	VAMC	PBH
600GA	ANAHEIM, CA	CA	928	22	CBOC	NPB
600GB	SANTA ANA, CA	CA	927	22	CBOC	NPB
600GC	LONG BEACH CBOC, CA	CA	908	22	CBOC	PBO
600GD	SANTA FE SPRINGS, CA	CA	906	22	CBOC	NPB
603	LOUISVILLE, KY	KY	402	9	VAMC	PBH
603GA	FORT KNOX, KY	KY	401	9	CBOC	NPB
603GB	NEW ALBANY, IN	IN	471	9	CBOC	NPB
603GC	LOUISVILLE CBOC, KY	KY	402	9	CBOC	PBO
605	LOMA LINDA, CA	CA	923	22	VAMC	PBH
605GA	VICTORVILLE, CA	CA	923	22	CBOC	NPB
605GB	SUN CITY, CA	CA	923	22	CBOC	NPB
605GC	PALM DESERT, CA	CA	922	22	CBOC	NPB
605GD	CORONA, CA	CA	928	22	CBOC	NPB
605GE	UPLAND, CA	CA	917	22	CBOC	NPB
607	MADISON, WI	WI	537	12	VAMC	PBH
607GC	JANESVILLE, WI	WI	535	12	CBOC	NPB
607GD	BARABOO, WI	WI	539	12	CBOC	NPB
607GE	BEAVER DAM, WI	WI	539	12	CBOC	NPB
607HA	ROCKFORD, IL	IL	611	12	CBOC	NPB
608	MANCHESTER, NH	NH	031	1	VAMC	PBH
608GA	PORTSMOUTH, NH	NH	038	1	CBOC	NPB
608GC	WOLFEBORO, NH	NH	038	1	CBOC	NPB
608GD	CONWAY, NH	NH	038	1	CBOC	NPB
608HA	TILTON, NH	NH	032	1	CBOC	NPB
610	MARION, IN	IN	469	11	VAMC	PBH
610A4	FORT WAYNE, IN	IN	468	11	VAMC	PBH
610GA	SOUTH BEND, IN	IN	466	11	CBOC	NPB
610GB	MUNCIE, IN	IN	473	11	CBOC	NPB
612	MARTINEZ, CA	CA	945	21	VAMC	PBH
612A4	SACRAMENTO/MATHER AFB, CA	CA	958	21	VAMC	PBH
612B4	REDDING, CA	CA	960	21	CBOC	NPB
612BY	OAKLAND, CA	CA	946	21	CBOC	PBO
612CZ	TRAVIS AFB, CA	CA	945	21	CBOC	NPB
612GD	FAIRFIELD, CA	CA	945	21	CBOC	NPB
612GE	MARE ISLAND, CA	CA	945	21	CBOC	NPB
612GF	MARTINEZ CBOC, CA	CA	945	21	CBOC	NPB
612GG	CHICO, CA	CA	959	21	CBOC	NPB
612GH	MCCLELLAN AFB, CA	CA	956	21	CBOC	PBO

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613	MARTINSBURG, WV	WV	254	5	VAMC	PBH
613GA	CUMBERLAND, MD	MD	215	5	CBOC	NPB
613GB	HAGERSTOWN, MD	MD	217	5	CBOC	NPB
613GC	STEPHENS CITY, VA	VA	226	5	CBOC	NPB
613GD	FRANKLIN, WV	WV	268	5	CBOC	NPB
613GE	PETERSBURG, WV	WV	268	5	CBOC	NPB
613GF	HARRISONBURG, VA	VA	228	5	CBOC	NPB
614	MEMPHIS, TN	TN	381	9	VAMC	PBH
614GA	SMITHVILLE, MS	MS	388	9	CBOC	NPB
614GB	JONESBORO, AR	AR	724	9	CBOC	NPB
614GC	BYHALIA, MS	MS	386	9	CBOC	NPB
614GD	SAVANNAH, TN	TN	383	9	CBOC	NPB
618	MINNEAPOLIS, MN	MN	554	23	VAMC	PBH
618BY	SUPERIOR, WI	WI	548	23	CBOC	NPB
618GA	MANKATO, MN	MN	560	23	CBOC	NPB
618GB	HIBBING, MN	MN	557	23	CBOC	NPB
618GD	SAINT PAUL, MN	MN	551	23	CBOC	PBO
618GE	CHIPPEWA FALLS, WI	WI	547	23	CBOC	NPB
618GG	ROCHESTER, MN	MN	559	23	CBOC	NPB
619	MONTGOMERY, AL	AL	361	7	VAMC	PBH
619A4	TUSKEGEE, AL	AL	360	7	VAMC	PBH
619GA	COLUMBUS, GA	GA	319	7	CBOC	NPB
619GB	DOTHAN, AL	AL	363	7	CBOC	NPB
620	MONTROSE, NY	NY	105	3	VAMC	PBH
620A4	CASTLE POINT, NY	NY	125	3	VAMC	PBH
620GA	NEW CITY, NY	NY	109	3	CBOC	NPB
620GB	CARMEL, NY	NY	105	3	CBOC	NPB
620GD	WALLKILL, NY	NY	125	3	CBOC	NPB
620GE	PORT JERVIS, NY	NY	127	3	CBOC	NPB
620GF	HARRIS, NY	NY	127	3	CBOC	NPB
620GG	POUGHKEEPSIE, NY	NY	126	3	CBOC	NPB
621	MOUNTAIN HOME, TN	TN	376	9	VAMC	PBH
621GA	ROGERSVILLE, TN	TN	378	9	CBOC	NPB
621GB	MOUNTAIN CITY, TN	TN	376	9	CBOC	NPB
621GC	NORTON, VA	VA	242	9	CBOC	NPB
621GD	SAINT CHARLES, VA	VA	242	9	CBOC	NPB
623	MUSKOGEE, OK	OK	744	16	VAMC	PBH
623BY	TULSA, OK	OK	741	16	CBOC	NPB
623GA	MCALESTER, OK	OK	745	16	CBOC	NPB
626	NASHVILLE, TN	TN	372	9	VAMC	PBH
626A4	MURFREESBORO, TN	TN	371	9	VAMC	PBH
626BY	KNOXVILLE, TN	TN	379	9	CBOC	PBO
626GA	DOVER, TN	TN	370	9	CBOC	NPB
626GC	BOWLING GREEN, KY	KY	421	9	CBOC	NPB
626GD	HOPKINSVILLE, KY	KY	422	9	CBOC	NPB
626GE	CLARKSVILLE, TN	TN	370	9	CBOC	NPB
626GF	CHATTANOOGA, TN	TN	374	9	CBOC	NPB
626GG	TULLAHOMA/ARNOLD AFB, TN	TN	373	9	CBOC	NPB
626GH	COOKEVILLE, TN	TN	385	9	CBOC	NPB
629	NEW ORLEANS, LA	LA	701	16	VAMC	PBH
629BY	BATON ROUGE, LA	LA	708	16	CBOC	PBO
630	NEW YORK, NY	NY	100	3	VAMC	PBH
630A4	BROOKLYN, NY	NY	112	3	VAMC	PBH

Supplementary Table 3
VA Medical Facility Locations, Three-Digit ZIP Codes,
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As of December 5, 2003

RC V2p0 Facility List 2003-12-05 FR.xls

Sta #	VA Facility Location	ST	ZIP 3	VN	Type	PB
630A5	SAINT ALBANS, NY	NY	114	3	VAMC	PBH
630B2	NEW YORK SOHO C&P UNIT, NY	NY	100	3	CBOC	PBO
630BZ	NEW YORK METHADONE, NY	NY	100	3	CBOC	PBO
630GA	HARLEM, NY	NY	100	3	CBOC	PBO
630GB	STATEN ISLAND, NY	NY	103	3	CBOC	PBO
630GC	BROOKLYN CHAPEL STREET, NY	NY	112	3	CBOC	PBO
630GD	BROOKLYN BEDFORD-STUYVESANT, NY	NY	112	3	CBOC	PBO
631	NORTHAMPTON, MA	MA	010	1	VAMC	PBH
631BY	SPRINGFIELD SOC, MA	MA	011	1	CBOC	PBO
631GA	NORTHAMPTON CBOC, MA	MA	010	1	CBOC	PBO
631GB	SPRINGFIELD CBOC, MA	MA	011	1	CBOC	NPB
631GC	PITTSFIELD, MA	MA	012	1	CBOC	NPB
631GD	GREENFIELD, MA	MA	013	1	CBOC	NPB
632	NORTHPORT/LONG ISLAND, NY	NY	117	3	VAMC	PBH
632GA	PLAINVIEW, NY	NY	118	3	CBOC	NPB
632HA	LYNBROOK, NY	NY	115	3	CBOC	NPB
632HB	RIVERHEAD, NY	NY	119	3	CBOC	NPB
632HC	ISLIP, NY	NY	117	3	CBOC	NPB
632HD	PATCHOGUE, NY	NY	117	3	CBOC	NPB
632HE	MOUNT SINAI, NY	NY	117	3	CBOC	NPB
632HF	LINDENHURST, NY	NY	117	3	CBOC	NPB
635	OKLAHOMA CITY, OK	OK	731	16	VAMC	PBH
635GA	LAWTON/FORT SILL, OK	OK	735	16	CBOC	NPB
635GB	WICHITA FALLS, TX	TX	763	16	CBOC	NPB
635GC	PONCA CITY, OK	OK	746	16	CBOC	NPB
635GD	KONAWA, OK	OK	748	16	CBOC	NPB
636	OMAHA, NE	NE	681	23	VAMC	PBH
636A4	GRAND ISLAND, NE	NE	688	23	VAMC	PBH
636A5	LINCOLN, NE	NE	685	23	VAMC	PBH
636A6	DES MOINES, IA	IA	503	23	VAMC	PBH
636A7	KNOXVILLE, IA	IA	501	23	VAMC	PBH
636A8	IOWA CITY, IA	IA	522	23	VAMC	PBH
636GA	NORFOLK, NE	NE	687	23	CBOC	NPB
636GB	NORTH PLATTE, NE	NE	691	23	CBOC	NPB
636GC	MASON CITY, IA	IA	504	23	CBOC	NPB
636GF	BETTENDORF, IA	IA	527	23	CBOC	NPB
636GG	QUINCY, IL	IL	623	23	CBOC	NPB
636GH	WATERLOO, IA	IA	507	23	CBOC	NPB
636GI	GALESBURG, IL	IL	614	23	CBOC	NPB
636GJ	DUBUQUE, IA	IA	520	23	CBOC	NPB
636GK	FORT DODGE, IA	IA	505	23	CBOC	NPB
637	ASHEVILLE, NC	NC	288	6	VAMC	PBH
640	PALO ALTO, CA	CA	943	21	VAMC	PBH
640A0	MENLO PARK, CA	CA	940	21	VAMC	PBH
640A4	LIVERMORE, CA	CA	945	21	VAMC	PBH
640BY	SAN JOSE, CA	CA	951	21	CBOC	NPB
640GA	CAPITOLA, CA	CA	950	21	CBOC	NPB
640GB	SONORA, CA	CA	953	21	CBOC	NPB
640HA	STOCKTON, CA	CA	952	21	CBOC	NPB
640HB	MODESTO, CA	CA	953	21	CBOC	NPB
640HC	MONTEREY/FORT ORD, CA	CA	939	21	CBOC	NPB
642	PHILADELPHIA, PA	PA	191	4	VAMC	PBH
642GA	FORT DIX, NJ	NJ	086	4	CBOC	NPB

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Sta #	VA Facility Location	ST	ZIP 3	VN	Type	PB
642GB	CAPE MAY, NJ	NJ	082	4	CBOC	NPB
642GC	WILLOW GROVE, PA	PA	190	4	CBOC	NPB
644	PHOENIX, AZ	AZ	850	18	VAMC	PBH
644BY	MESA/WILLIAMS AFB, AZ	AZ	852	18	CBOC	NPB
644GA	SUN CITY, AZ	AZ	853	18	CBOC	NPB
644GB	SHOW LOW, AZ	AZ	859	18	CBOC	NPB
644GC	BUCKEYE, AZ	AZ	853	18	CBOC	NPB
644GD	PAYSON, AZ	AZ	855	18	CBOC	NPB
646	PITTSBURGH UNIV DR, PA	PA	152	4	VAMC	PBH
646A4	PITTSBURGH ASPINWALL, PA	PA	152	4	VAMC	PBH
646A5	PITTSBURGH HIGHLAND DR, PA	PA	152	4	VAMC	PBH
646GA	SAINT CLAIRSVILLE, OH	OH	439	4	CBOC	NPB
646GB	GREENSBURG, PA	PA	156	4	CBOC	NPB
646GC	ALIQUIPPA, PA	PA	150	4	CBOC	NPB
646GD	WASHINGTON, PA	PA	153	4	CBOC	NPB
648	PORTLAND, OR	OR	972	20	VAMC	PBH
648A4	VANCOUVER, WA	WA	986	20	VAMC	PBH
648GA	BEND, OR	OR	977	20	CBOC	NPB
648GB	SALEM, OR	OR	973	20	CBOC	NPB
648GC	LONGVIEW, WA	WA	986	20	CBOC	NPB
648GD	NORTH COAST, OR	OR	971	20	CBOC	NPB
649	PRESCOTT, AZ	AZ	863	18	VAMC	PBH
649GA	KINGMAN, AZ	AZ	864	18	CBOC	NPB
649GB	BELLEMONT, AZ	AZ	860	18	CBOC	NPB
649GC	LAKE HAVASU CITY, AZ	AZ	864	18	CBOC	NPB
649GD	BLACK CANYON CITY, AZ	AZ	853	18	CBOC	NPB
649GE	COTTONWOOD, AZ	AZ	863	18	CBOC	NPB
650	PROVIDENCE, RI	RI	029	1	VAMC	PBH
650GA	NEW BEDFORD, MA	MA	027	1	CBOC	NPB
650GB	HYANNIS, MA	MA	026	1	CBOC	NPB
650GC	OAK BLUFFS, MA	MA	025	1	CBOC	NPB
650GD	MIDDLETOWN, RI	RI	028	1	CBOC	NPB
650GE	NANTUCKET, MA	MA	025	1	CBOC	NPB
652	RICHMOND, VA	VA	232	6	VAMC	PBH
652GA	FREDERICKSBURG, VA	VA	224	6	CBOC	NPB
653	ROSEBURG, OR	OR	974	20	VAMC	PBH
653BY	EUGENE, OR	OR	974	20	CBOC	NPB
653GA	BANDON, OR	OR	974	20	CBOC	NPB
653GB	BROOKINGS, OR	OR	974	20	CBOC	NPB
654	RENO, NV	NV	895	21	VAMC	PBH
654GA	AUBURN, CA	CA	956	21	CBOC	NPB
654GB	MINDEN, NV	NV	894	21	CBOC	NPB
655	SAGINAW, MI	MI	486	11	VAMC	PBH
655GA	GAYLORD, MI	MI	497	11	CBOC	NPB
655GB	TRAVERSE CITY, MI	MI	496	11	CBOC	NPB
655GC	OSCODA, MI	MI	487	11	CBOC	NPB
656	SAINT CLOUD, MN	MN	563	23	VAMC	PBH
656GA	BRAINERD, MN	MN	564	23	CBOC	NPB
656GB	MONTEVIDEO, MN	MN	562	23	CBOC	NPB
657	SAINT LOUIS JOHN COCHRAN, MO	MO	631	15	VAMC	PBH
657A0	SAINT LOUIS JEFF BARRACKS, MO	MO	631	15	VAMC	PBH
657A4	POPLAR BLUFF, MO	MO	639	15	VAMC	PBH
657A5	MARION, IL	IL	629	15	VAMC	PBH

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657GA	BELLEVILLE, IL	IL	622	15	CBOC	NPB
657GB	SAINT LOUIS CBOC, MO	MO	631	15	CBOC	PBO
657GC	EFFINGHAM, IL	IL	624	15	CBOC	NPB
657GD	SAINT CHARLES, MO	MO	633	15	CBOC	NPB
657GE	SPRINGFIELD, IL	IL	627	15	CBOC	NPB
657GF	WEST PLAINS, MO	MO	657	15	CBOC	NPB
657GG	PARAGOULD, AR	AR	724	15	CBOC	NPB
657GH	CAPE GIRARDEAU, MO	MO	637	15	CBOC	NPB
657GI	FARMINGTON, MO	MO	636	15	CBOC	NPB
657GJ	EVANSVILLE, IN	IN	477	15	CBOC	NPB
657GK	MOUNT VERNON, IL	IL	628	15	CBOC	NPB
657GL	PADUCAH, KY	KY	420	15	CBOC	NPB
657GM	EFFINGHAM, IL	IL	624	15	CBOC	NPB
657HK	SALEM, MO	MO	655	15	CBOC	NPB
658	SALEM, VA	VA	241	6	VAMC	PBH
658GA	TAZEWELL, VA	VA	246	6	CBOC	NPB
658GB	DANVILLE, VA	VA	245	6	CBOC	NPB
658HA	STUARTS DRAFT, VA	VA	244	6	CBOC	NPB
658HB	PULASKI, VA	VA	243	6	CBOC	NPB
658HC	LYNCHBURG, VA	VA	245	6	CBOC	NPB
658HD	HILLSVILLE, VA	VA	243	6	CBOC	NPB
658HE	MARTINSVILLE, VA	VA	241	6	CBOC	NPB
658HG	COVINGTON, VA	VA	244	6	CBOC	NPB
658HH	MARION, VA	VA	243	6	CBOC	NPB
659	SALISBURY, NC	NC	281	6	VAMC	PBH
659BY	WINSTON-SALEM, NC	NC	271	6	CBOC	NPB
659GA	CHARLOTTE, NC	NC	282	6	CBOC	NPB
660	SALT LAKE CITY, UT	UT	841	19	VAMC	PBH
660GA	POCATELLO, ID	ID	832	19	CBOC	NPB
660GB	OGDEN, UT	UT	844	19	CBOC	NPB
660GC	ELY, NV	NV	893	19	CBOC	NPB
660GD	ROOSEVELT, UT	UT	840	19	CBOC	NPB
660GE	OREM, UT	UT	840	19	CBOC	NPB
660GF	GREEN RIVER, WY	WY	829	19	CBOC	NPB
660GG	SAINT GEORGE, UT	UT	847	19	CBOC	NPB
660GI	NEPHI, UT	UT	846	19	CBOC	NPB
662	SAN FRANCISCO, CA	CA	941	21	VAMC	PBH
662BU	SAN FRANCISCO HOMELESS CTR, CA	CA	941	21	CBOC	NPB
662GA	SANTA ROSA, CA	CA	954	21	CBOC	NPB
662GC	EUREKA, CA	CA	955	21	CBOC	NPB
662GD	UKIAH, CA	CA	954	21	CBOC	NPB
663	SEATTLE, WA	WA	981	20	VAMC	PBH
663A4	AMERICAN LAKE/TACOMA, WA	WA	984	20	VAMC	PBH
663GA	LYNNWOOD/NORTHGATE, WA	WA	980	20	CBOC	NPB
663GB	BREMERTON, WA	WA	983	20	CBOC	NPB
664	SAN DIEGO, CA	CA	921	22	VAMC	PBH
664BY	SAN DIEGO CBOC, CA	CA	921	22	CBOC	PBO
664GA	EL CENTRO, CA	CA	922	22	CBOC	NPB
664GB	VISTA, CA	CA	920	22	CBOC	NPB
664GC	CHULA VISTA, CA	CA	919	22	CBOC	NPB
664GD	ESCONDIDO, CA	CA	920	22	CBOC	NPB
666	SHERIDAN, WY	WY	828	19	VAMC	PBH
666GB	CASPER, WY	WY	826	19	CBOC	NPB

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Sta #	VA Facility Location	ST	ZIP 3	VN	Type	PB
666GC	RIVERTON, WY	WY	825	19	CBOC	NPB
666GD	POWELL, WY	WY	824	19	CBOC	NPB
666GE	GILLETTE, WY	WY	827	19	CBOC	NPB
667	SHREVEPORT, LA	LA	711	16	VAMC	PBH
667GA	TEXARKANA, TX	TX	755	16	CBOC	NPB
667GB	MONROE, LA	LA	712	16	CBOC	NPB
667GC	LONGVIEW, TX	TX	756	16	CBOC	NPB
668	SPOKANE, WA	WA	992	20	VAMC	PBH
668HK	SPOKANE MOC, WA	WA	992	20	CBOC	PBO
671	SAN ANTONIO, TX	TX	782	17	VAMC	PBH
671A4	KERRVILLE, TX	TX	780	17	VAMC	PBH
671B0	MCALLEN, TX	TX	785	17	CBOC	NPB
671BY	SAN ANTONIO CBOC, TX	TX	782	17	CBOC	PBO
671BZ	CORPUS CHRISTI, TX	TX	784	17	CBOC	NPB
671GA	BROWNSVILLE, TX	TX	785	17	CBOC	NPB
671GB	VICTORIA, TX	TX	779	17	CBOC	NPB
671GE	LAREDO, TX	TX	780	17	CBOC	NPB
671GF	SOUTH BEXAR COUNTY, TX	TX	782	17	CBOC	NPB
671GG	ALICE, TX	TX	783	17	CBOC	NPB
671GH	BEEVILLE, TX	TX	781	17	CBOC	NPB
671GI	KINGSVILLE, TX	TX	783	17	CBOC	NPB
671GJ	UVALDE, TX	TX	788	17	CBOC	NPB
671GK	SAN ANTONIO CBOC, TX	TX	782	17	CBOC	PBO
671GL	NEW BRAUNFELS, TX	TX	781	17	CBOC	NPB
672	SAN JUAN, PR	PR	009	8	VAMC	PBH
672B0	PONCE, PR	PR	007	8	CBOC	NPB
672BZ	MAYAGUEZ, PR	PR	006	8	CBOC	NPB
672GA	SAINT CROIX, VI	VI	008	8	CBOC	NPB
672GB	SAINT THOMAS, VI	VI	008	8	CBOC	NPB
672GC	ARECIBO, PR	PR	006	8	CBOC	NPB
672GD	KINGSHILL, VI	VI	008	8	CBOC	NPB
672GE	GUAYAMA, PR	PR	007	8	CBOC	NPB
673	TAMPA, FL	FL	336	8	VAMC	PBH
673BY	ORLANDO, FL	FL	328	8	CBOC	PBO
673BZ	PORT RICHEY, FL	FL	346	8	CBOC	NPB
673GA	VIERA/MELBOURNE, FL	FL	329	8	CBOC	NPB
673GB	LAKELAND, FL	FL	338	8	CBOC	NPB
673GC	BROOKSVILLE, FL	FL	346	8	CBOC	NPB
673GD	SANFORD, FL	FL	327	8	CBOC	NPB
673GE	KISSIMMEE, FL	FL	347	8	CBOC	NPB
673GF	ZEPHYRHILLS, FL	FL	335	8	CBOC	NPB
674	TEMPLE, TX	TX	765	17	VAMC	PBH
674A4	WACO, TX	TX	767	17	VAMC	PBH
674A5	MARLIN, TX	TX	766	17	VAMC	PBH
674BY	AUSTIN, TX	TX	787	17	CBOC	NPB
674GA	PALESTINE, TX	TX	758	17	CBOC	NPB
674GB	BROWNWOOD, TX	TX	768	17	CBOC	NPB
674GC	BRYAN/COLLEGE STATION, TX	TX	778	17	CBOC	NPB
674GD	CEDAR PARK, TX	TX	786	17	CBOC	NPB
676	TOMAH, WI	WI	546	12	VAMC	PBH
676GA	WAUSAU, WI	WI	544	12	CBOC	NPB
676GC	LA CROSSE, WI	WI	546	12	CBOC	NPB
676GD	WISCONSIN RAPIDS, WI	WI	544	12	CBOC	NPB

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676GE	LOYAL, WI	WI	544	12	CBOC	NPB
676HB	WAUTOMA, WI	WI	549	12	CBOC	NPB
678	TUCSON, AZ	AZ	857	18	VAMC	PBH
678GA	SIERRA VISTA, AZ	AZ	856	18	CBOC	NPB
678GB	YUMA, AZ	AZ	853	18	CBOC	NPB
678GC	CASA GRANDE, AZ	AZ	852	18	CBOC	NPB
678GD	SAFFORD, AZ	AZ	855	18	CBOC	NPB
678GE	GREEN VALLEY, AZ	AZ	856	18	CBOC	NPB
679	TUSCALOOSA, AL	AL	354	7	VAMC	PBH
687	WALLA WALLA, WA	WA	993	20	VAMC	PBH
687GA	RICHLAND, WA	WA	993	20	CBOC	NPB
687GB	LEWISTON, ID	ID	835	20	CBOC	NPB
687HA	YAKIMA, WA	WA	989	20	CBOC	NPB
688	WASHINGTON, DC	DC	204	5	VAMC	PBH
688GA	ALEXANDRIA, VA	VA	223	5	CBOC	PBO
688GB	WASHINGTON SE, DC	DC	200	5	CBOC	PBO
688GC	LANDOVER, MD	MD	207	5	CBOC	NPB
688GD	CHARLOTTE HALL, MD	MD	206	5	CBOC	NPB
689	WEST HAVEN, CT	CT	065	1	VAMC	PBH
689A4	NEWINGTON, CT	CT	061	1	CBOC	NPB
689GA	WATERBURY, CT	CT	067	1	CBOC	NPB
689GB	STAMFORD, CT	CT	069	1	CBOC	NPB
689GC	WINDHAM, CT	CT	062	1	CBOC	NPB
689GD	WINSTED, CT	CT	060	1	CBOC	NPB
689GE	DANBURY, CT	CT	068	1	CBOC	NPB
689HA	WILLIMANTIC, CT	CT	062	1	CBOC	NPB
689HB	NORWICH, CT	CT	063	1	CBOC	NPB
689HC	NEW LONDON, CT	CT	063	1	CBOC	NPB
691	WEST LOS ANGELES, CA	CA	900	22	VAMC	PBH
691A4	SEPULVEDA, CA	CA	913	22	CBOC	PBO
691GA	WEST LOS ANGELES CBOC, CA	CA	900	22	CBOC	PBO
691GB	SANTA BARBARA, CA	CA	931	22	CBOC	NPB
691GC	GARDENA, CA	CA	902	22	CBOC	NPB
691GD	BAKERSFIELD, CA	CA	933	22	CBOC	NPB
691GE	LOS ANGELES CBOC, CA	CA	900	22	CBOC	PBO
691GF	EAST LOS ANGELES, CA	CA	900	22	CBOC	PBO
691GG	LANCASTER/ANTELOPE VALLEY, CA	CA	935	22	CBOC	NPB
691GK	SAN LUIS OBISPO, CA	CA	934	22	CBOC	NPB
691GL	LOMPOC, CA	CA	934	22	CBOC	NPB
691GM	PORT HUENEME/OXNARD, CA	CA	930	22	CBOC	NPB
691GN	LYNWOOD, CA	CA	902	22	CBOC	NPB
691GO	PASADENA, CA	CA	911	22	CBOC	PBO
692	WHITE CITY, OR	OR	975	20	DOM	PBO
692GA	KLAMATH FALLS, OR	OR	976	20	CBOC	NPB
693	WILKES-BARRE, PA	PA	187	4	VAMC	PBH
693B4	ALLENTOWN, PA	PA	181	4	CBOC	NPB
693GA	SAYRE, PA	PA	188	4	CBOC	NPB
693GB	WILLIAMSPORT, PA	PA	177	4	CBOC	NPB
693GC	TOBYHANNA, PA	PA	184	4	CBOC	NPB
693GD	SCRANTON, PA	PA	185	4	CBOC	NPB
693GE	POTTSVILLE/SCHUYLKILL/SHENANDOAH, PA	PA	179	4	CBOC	PBO
693GF	BERWICK, PA	PA	186	4	CBOC	NPB
693HK	WILKES-BARRE MOC, PA	PA	187	4	CBOC	PBO

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695	MILWAUKEE, WI	WI	532	12	VAMC	PBH
695BY	APPLETON, WI	WI	549	12	CBOC	NPB
695GA	UNION GROVE, WI	WI	531	12	CBOC	NPB
695GC	CLEVELAND, WI	WI	530	12	CBOC	NPB
695HK	MILWAUKEE MOC, WI	WI	532	12	CBOC	NPB
756	EL PASO, TX	TX	799	18	IOC	PBO
756GA	LAS CRUCES, NM	NM	880	18	CBOC	NPB
757	COLUMBUS, OH	OH	432	10	IOC	PBO
757GA	ZANESVILLE, OH	OH	437	10	CBOC	NPB
757GB	GROVE CITY, OH	OH	431	10	CBOC	NPB

Abbreviations
ST = State
ZIP 3 = First three digits of ZIP Code
VN = Veterans Integrated Service Network
VAMC = VA Medical Center
CBOC = Community-Based Outpatient Clinic
PB = Provider-Based/Non-Provider-Based Designation
PBH = Provider-Based - Hospital
PBO = Provider-Based - Outpatient
NPB = Non-Provider-Based

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BILLING CODE 8320–01–C

DEPARTMENT OF VETERANS AFFAIRS

Disciplinary Appeals Board Procedures; VA Directive and Handbook 5021

AGENCY: Department of Veterans Affairs.

ACTION: Notice with request for comments.

SUMMARY: The Department of Veterans Affairs (VA) is revising VA Directive and Handbook 5021, Employee/Management Relations, dated April 15, 2002, to include the delegation from the Under Secretary for Health to the Deputy Under Secretary for Health the authority to accept, reject, or remand findings and decisions of Disciplinary Appeals Boards (DABs) involving major adverse actions taken against title 38 employees who have completed the probationary period and the delegation from the Under Secretary for Health to the Deputy Under Secretary for Health for Operations and Management the authority to make the final decision regarding the timeliness of appeals to a DAB. This notice announces that the revisions to the amended regulations are available for review and comment.

DATES: Comments must be received on or before December 19, 2003. The proposed effective date of these amendments is 30 days after publication of this notice.

ADDRESSES: Send written comments to: Director, Regulations Management (00REG1), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420.

FOR FURTHER INFORMATION CONTACT: Robert MacDonald, Employee Relations Team Leader, Department of Veterans Affairs, Office of Human Resources Management (051E), 810 Vermont Avenue, NW., Washington, DC 20420. Mr. MacDonald may be reached at (202) 273–9707.

SUPPLEMENTARY INFORMATION: The Under Secretary for Health has delegated to the Deputy Under Secretary for Health the authority to accept, reject, or remand findings and decisions of Disciplinary Appeals Boards (DAB) in connection with non-probationary title 38 employees' appeals of major adverse actions. The Under Secretary for Health has also delegated authority to the Deputy Under Secretary for Health for Operations and Management the authority to make the final decision regarding the timeliness of appeals to a DAB. These delegations will alleviate the need to convene a DAB to determine timeliness and provide more timely decisions of DAB findings.

Dated: November 20, 2003.

Anthony J. Principi,

Secretary of Veterans Affair.

March 24, 2003.

Appendix A—Section C. Appeals to the Disciplinary Appeals Board

1. *Scope, Authority and Definitions.* This section governs appeals of major adverse actions which arise out of, or which include, a question of professional conduct or competence in the Department of Veterans Affairs (VA). Major adverse actions are suspensions (including indefinite suspensions), transfers, reductions in grade, reductions in basic pay, and discharges. A question of professional conduct or competence involves direct patient care and/or clinical competence. The term clinical competence include issues of professional judgment. This section applies to VA employees holding a full-time, permanent appointment under 38 U.S.C. 7401(l) who have satisfactorily completed the probationary period required by 38 U.S.C. 7403(b). Included in this category are: physicians, dentists, podiatrists, optometrists, nurses, nurse anesthetists, physician assistants and expanded-function dental auxiliaries. The (preceding) categories of individuals are included in the term "employee(s)" as used in this section unless otherwise specified.

(Authority: 38 U.S.C. 501(a), 7401, 7403(b), 7421, 38 U.S.C. 7461–7464.)

2. *References.* a. Section 203 of the Department of Veterans Affairs Health-Care Personnel Act of 1991 (Pub. L. 102–40).

b. 38 U.S.C. 501(a), 7421, 7461, 7462, 7464.

3. *Filing An Appeal to the Disciplinary Appeals Board.* a. *Initiating an Appeal.* An employee subjected to a major adverse action which is based in whole or in part on a question of professional conduct or competence, may file a written notice of appeal to the Disciplinary Appeals Board under the provisions of this section. The employee may request a hearing before the Board. Any such request must be submitted in writing and accompany the employee's notice of appeal. The appeal must contain (1) the appellant's name, address, telephone number, designation of representative (if any), (2) a copy of the notice of action proposed and decision letter, (3) a statement as to whether the employee is requesting a hearing before the Board, (4) why the appellant believes the major adverse action taken was in error or should not have been taken, and (5) a statement describing the expected relief. The original appeal and the request for hearing, if any, must be submitted to the Under Secretary for Health or designee so as to be received within 30 days after the date of service of the written decision on the employee. Submission of the appeal must be by personal service, facsimile, or certified mail—return receipt requested. A copy of the appeal must be served on the decision official who took the action being appealed and any management representative of record.

b. *Establishing Timeliness of an Appeal.* For purposes of computing the 30-day period for filing an appeal, the date of service of the written decision on the employee will be determined by the date of receipt by the employee of the personal delivery, the signed receipt of certified mail, or presumed to be 5 days after depositing the decision in the U.S. mail if no acknowledged receipt is available. The Deputy Under Secretary for Health for Operations and Management will make a final decision regarding the determination that an appeal is filed untimely. The employee will be notified in writing, by letter, of this final determination. There are no further administrative appeal rights regarding the issue of timeliness.

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8. Formal Hearing.

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b. *Exclusion of Individuals During Proceeding.* Prior to testifying or, if subject to recall, no witness will be permitted to hear the testimony being given by another witness unless the witness is the appellant, or is assisting in the representation of either party. In any event, the Chairman of the Board will make the final determination on exclusion of individuals during any phase of the proceeding.

c. *Oaths.* The Chairman and Secretary of the Board shall have the authority to administer oaths or affirmations which will be made by all individuals giving testimony.

d. *Verbatim Record.* A verbatim record shall be maintained of Board hearings (*see* subparagraph g below for further details).

e. *Witnesses.* Both the appellant and management will have the right to call witnesses. The Chairman will, on his/her own initiative, call such witnesses on behalf of the Board as the Chairman deems necessary. The Chairman has the final authority to determine the acceptability of any witness.

f. *Scheduling of Hearing.* The hearing will be conducted on official Government time, and normally, without charge to leave of the employee(s) concerned.

g. *Record of Hearing.* (1) A verbatim record of the hearing proceedings will be prepared.

(2) The employee and/or his/her representative shall be provided a copy of the transcript of the formal hearing after authentication.

(Authority: 38 U.S.C. 501(a), 7421, 38 U.S.C. 7461–7464)

9. *Disciplinary Appeals Board Decisions.* a. *Findings.* The Board shall, with respect to each charge appealed, sustain the charge, dismiss the charge, or sustain the charge in part and dismiss the charge in part.

b. *Decision.* The Board has full authority to render a decision on an appeal. The Board shall reach a decision within 45 calendar days of completion of the hearing, if a hearing is convened. In any event, a decision will be made by the Board no later than 120 calendar days after the appeal is received by the Under Secretary for Health or designee.

(1) If any charge is sustained in whole or in part, the Board shall approve the action as imposed; approve the action with modification, reduction, or exception; or reverse the action.

(2) If none of the charges are sustained in whole or in part, the Board will reverse the decision.

c. *Action by the Deputy Under Secretary for Health.* The Under Secretary for Health has delegated the authority to execute decisions made by Disciplinary Appeals Boards to the Deputy Under Secretary for Health. The Deputy Under Secretary for Health shall execute the Board's decision in a timely manner, but in no case later than 90 calendar days after the Board's decision is received by the Deputy Under Secretary for Health. Pursuant to the Board's decision, the Deputy Under Secretary for Health may order reinstatement, award back pay in accordance with the Back Pay Act, and provide such other remedies as the Board found appropriate relating directly to the proposed action, including expungement of records relating to the action.

(1) However, if the Deputy Under Secretary for Health finds a decision of the Board to be clearly contrary to the evidence or unlawful the Deputy Under Secretary for Health may:

(a) Reverse the decision of the Board; or

(b) Vacate the decision of the Board and remand the matter to the Board for further consideration.

(2) If the decision, while not clearly contrary to the evidence or unlawful, is found to be not justified by the gravity of the charges, the Deputy Under Secretary for Health may mitigate the adverse action imposed.

(3) The Deputy Under Secretary for Health's execution of a Board's decision, or the mitigated action if appropriate, shall be the final administrative action in the case.

d. *Case Record.* The case record will consist of the notice of proposed adverse action, appellant's reply, if any, all evidence (documents or testimony) relied upon by the Board in reaching its decision, notice of decision to appellant, appellant's request for a hearing, Deputy Under Secretary for Health's or designee's appointment of Board, Board communications and notices related to the hearing, any Board rulings or submissions of the parties, verbatim record of any formal hearing, Board Action (VA Form 10–2543), Deputy Under Secretary for Health's execution of the Board's recommendation, and any Notification of Personnel Action (SF–50B).

(Authority: 38 U.S.C. 501(a), 7421, 38 U.S.C. 7461–7464)

10. *Review of Records.* The Chairman of a Board may review records or information covered by 38 U.S.C. 5701 and 1332 in accordance with 7464(c)(1) of title 38.

(Authority: 38 U.S.C. 501(a), 7421, 38 U.S.C. 7461–7464.)

VA Handbook 5021/Part V, Chapter 1

Part V. Title 38 Appeals to the Disciplinary Appeals Board, Chapter 1. General

1. *Scope, Authority and Definitions.* This chapter applies to Department of Veterans Affairs (VA) employees holding a full-time, permanent appointment under 38 U.S.C. 7401(l) who have satisfactorily completed the probationary period required by 38 U.S.C. 7403(b). Included in this category are: physicians, dentists, podiatrists, optometrists, nurses, nurse anesthetists, physician assistants and expanded-function dental auxiliaries. These categories of individuals are included in the term "employee(s)" as used in this chapter unless otherwise specified. This chapter governs appeals of major adverse actions which arise out of, or which include, a question of professional conduct or competence in VA. Major adverse actions are suspensions (including indefinite suspensions), transfers, reductions in grade, reductions in basic pay, and discharges. A question of professional conduct or competence involves direct patient care and/or clinical competence. The term clinical competence includes issues of professional judgment.

2. *Representation.* An employee of the Department may be designated by the decision official to represent management in any case before a Disciplinary Appeals Board. The decision official should direct requests for legal representation to the General Counsel or Regional Counsel, as appropriate.

3. *Filing an Appeal to the Disciplinary Appeals Board.* a. *Initiating an Appeal.* An employee subjected to a major adverse action, which is based in whole or in part on a question of professional conduct or competence, may file a written notice of appeal to the Disciplinary Appeals Board under the provisions of this part. The employee may request a hearing before the Board. Any such request must be submitted in writing and accompany the employee's notice of appeal. The appeal must contain (1) the appellant's name, address, telephone number, designation of representative (if any), (2) a copy of the notice of action proposed and decision letter, (3) a statement as to whether the employee is requesting a hearing before the Board, (4) why the appellant believes the major adverse action taken was in error or should not have been taken, and (5) a statement describing the expected relief. The original appeal and the request for hearing, if any, must be submitted to the Under Secretary for Health or designee, through the Office of Human Resources Management (051), so as to be received within 30 days after the date of service of the written decision on the employee. Submission of the appeal must be by personal service, facsimile, or certified mail return receipt requested. A copy of the appeal must be served on the decision official who took the action being appealed and any management representative of record at the time of filing.

b. *Establishing Timeliness of an Appeal.* For purposes of computing the 30-day period for filing an appeal, the date of service of the written decision on the employee will be determined by the date of receipt by the employee of the personal delivery, the signed receipt of certified mail, or presumed to be 5 days after depositing the decision in the U.S. mail if no acknowledged receipt is available. The Deputy Under Secretary for Health for Operations and Management will make a final decision regarding the determination that an appeal is filed untimely. The employee will be notified in writing, by letter, of this final determination. There are no further administrative appeal rights regarding the issue of timeliness.

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6. *Powers of the Chairperson of the Disciplinary Appeals Board.*

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a. Taking proper steps to expedite the hearing of evidence, and speaking and acting for the Board;

b. Ruling on all questions arising during the proceedings, such as admissibility of evidence offered during the hearing, calling of witnesses, order of introduction of witnesses, etc.;

c. Obtaining further evidence concerning any issue under consideration by the Board at any stage of the proceedings;

d. Acting as the presiding officer, directing the regular and proper conduct of the proceedings, and authenticating, by his or her signature, instructions and proceedings of the Board;

e. Ruling on questions of disqualification of any member of the Board. In cases where the Chairperson is the challenged member, the question shall be resolved in accordance with paragraph 7e of this chapter;

f. Scheduling the specific hour and dates of hearings;

g. Closing the record;

h. Administering oaths or affirmations made by individuals giving testimony;

i. Ruling on motions from the parties; and

j. Calling witnesses on behalf of the Board.

7. *Procedure.* a. *Determining Jurisdiction.* When a Board is convened to consider an appeal, the Board shall first determine whether the case is properly before it prior to considering the merits of the appeal. The Board shall determine whether the matter appealed is a major adverse action as defined in part II of this handbook, and whether it arises out of or includes a question of professional conduct or competence. The determination of jurisdiction will be made as soon as practicable. The Board will make a record of its determination.

(1) The record of decision in any mixed case shall include a statement by the Board of its exclusive jurisdiction, citing 38 U.S.C. 7462(a) as the authority and the basis for such exclusive jurisdiction. A mixed case is one that includes both (a) a major adverse action arising out of, or including, a question of professional conduct or competence, and (b) a major adverse action which does not arise out of a question of professional conduct or competence or a disciplinary action.

(2) If necessary, the Board may develop the record to establish jurisdiction.

(3) If the Board determines that the appeal is not properly before it, e.g., that it lacks jurisdiction, the Board shall fully set forth its reasons, including a statement of the appropriate appeal procedure. The Deputy Under Secretary for Health will take appropriate action on the decision of the Board as described in paragraph 9e of this chapter.

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8. *Formal Hearings.*

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(e) Technical advisors are not members of the Board and, therefore, do not possess any voting power.

9. *Disciplinary Appeals Board Decisions.*

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c. *Decision.* The Board has full authority to render a decision on an appeal. The Board shall reach a decision within 45 calendar days of completion of the hearing, if a hearing is convened. In any event, a decision will be made by the Board no later than 120 calendar days after the appeal is received by the Under Secretary for Health or designee.

(1) If any charge is sustained in whole or in part, the Board shall approve the action as imposed; approve the action with modification, reduction, or exception; or reverse the action.

(2) If none of the charges are sustained in whole or in part, the Board will reverse the action.

d. *Preparation of VA Form 10–2543.* Following deliberation and voting on the findings and any penalty, VA Form 10–2543 will be prepared by the Disciplinary Appeals Board considering the case. The Chairperson of the Board will forward the complete record, including its findings and decision, signed and dated by all members of the Board and the technical advisor, through the Office of Human Resources Management (051) to the [Deputy] Under Secretary for Health for appropriate action. VA Form 10–2543 will contain supporting rationale for each of the findings.

e. *Action by the Under Secretary for Health.* The Under Secretary for Health has delegated the authority to execute decisions made by Disciplinary Appeals Boards to the Deputy Under Secretary for Health. The Deputy Under Secretary for Health shall execute the Board's decision in a timely manner, but in no case later than 90 calendar days after the Board's decision is received by the Deputy Under Secretary for Health. Pursuant to the Board's decision, the Deputy Under Secretary for Health may order reinstatement, award back pay in accordance with the Back Pay Act, and provide such other remedies as the Board found appropriate relating directly to the proposed action, including expungement of records relating to the action.

(1) However, if the Deputy Under Secretary for Health finds a decision of the Board to be clearly contrary to the evidence or unlawful, the Deputy Under Secretary for Health may:

(a) Reverse the decision of the Board; or

(b) Vacate the decision of the Board and remand the matter to the Board for further consideration.

(2) If the decision, while not clearly contrary to the evidence or unlawful, is found to be not justified by the gravity of the charges, the Deputy Under Secretary for Health may mitigate the adverse action imposed.

(3) The Deputy Under Secretary for Health's execution of a Board's decision, or the mitigated action, if appropriate, shall be the final administrative action in the case.

f. *Remands.* In circumstances where the Deputy Under Secretary for Health vacates the Board's decision and remands the matter for further consideration, the Board shall normally render its subsequent decision within 45 calendar days of the completion of the hearing, if a hearing was convened after the remand.

(1) In any event, the Board's decision will be made no later than 90 calendar days after the remand is received by the Board Chairperson.

(2) If the remand is related solely to jurisdictional issues, then the Deputy Under Secretary for Health may establish a shorter resolution period.

g. *Case Record.* (1) The case record will consist of the notice of proposed adverse action, appellant's reply, if any, all evidence (documents or testimony) relied upon by the Board in reaching its decision, notice of decision to appellant, appellant's request for a hearing, Deputy Under Secretary for Health's or designee's appointment of Board, Board communications and notices related to the hearing, any Board rulings or submissions of the parties, verbatim record of any formal hearing, Board Action (VA Form 10–2543), Deputy Under Secretary for Health's execution of the Board's recommendation, and any Notification of Personnel Action (SF–50B).

(2) Major adverse action files, which have been involved with an appeal to the Disciplinary Appeals Board will be maintained by the Office of Human Resources Management, Human Resources Management Programs and Policies Service (051). Records are maintained and disposed of in accordance with the records disposition authorities found in General Records Schedule 1 and VA Records Control Schedule 10–1, except where otherwise required to be retained for a longer period of time.

(3) One copy of notice of decision will be provided to the employee, the employee's representative, and the official who decided the adverse action. Any SF–50B, Notification of Personnel Action, will be filed in the employee's personnel folder.

10. *Review of Records.* a. The Board Chairperson, upon request of an appellant (or the appellant's designated representative), may, in connection with the considerations of the Board, review confidential records or information covered by 38 U.S.C. 5701 and 7332 in accordance with 38 U.S.C. 7464(c)(1).

(1) The Board Chairperson may authorize the disclosure of such records or information to that employee (or representative) to the extent the Board considers appropriate for purposes of the proceedings of the Board.

(2) Decisions on requests to disclose records or information will be in writing.

b. In any such case, the Chairperson may direct that measures be taken to protect the personal privacy of individuals whose records are involved. * * *

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[FR Doc. 03–30876 Filed 12–18–03; 8:45 am]

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Federal Register

Friday,
December 19, 2003

Part II

Environmental Protection Agency

40 CFR Part 63
National Emission Standards for Hazardous Air Pollutants: Mercury Emissions from Mercury Cell Chlor-Alkali Plants; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[OAR–2002–0017; FRL–7551–5]

RIN 2060–AE85

National Emission Standards for Hazardous Air Pollutants: Mercury Emissions From Mercury Cell Chlor-Alkali Plants

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This action promulgates national emission standards for hazardous air pollutants (NESHAP), specifically mercury emissions, from mercury cell chlor-alkali plants. The final rule will limit mercury air emissions from these plants. The final rule will implement section 112(d) of the Clean Air Act (CAA) which requires all categories and subcategories of major sources and area sources listed under section 112(c) to meet hazardous air pollutant emission standards reflecting the application of the maximum achievable control technology (MACT). Mercury cell chlor-alkali plants are a subcategory of the chlorine production source category listed under the authority of section 112(c)(1) of the CAA. The chlorine production source category was also identified as a source of mercury under section 112(c)(6) that must be subjected to standards. In addition, mercury cell chlor-alkali plants were listed as an area source category under section 112(c)(3) and (k)(3)(B) of the CAA. The final rule, which will satisfy our requirement to issue 112(d) regulations under each of these listings (for mercury), will reduce mercury emissions by about 3,068 kilograms per year from the levels allowed by the existing Mercury NESHAP.

Mercury is a neurotoxicant that accumulates, primarily in the especially potent form of methylmercury, in aquatic food chains. The highest levels are reached in predator fish species. Mercury emitted to the air from various types of sources (usually in the elemental or inorganic forms) transports through the atmosphere and eventually deposits onto land or water bodies. When mercury is deposited to surface waters, natural processes (bacterial) can transform some of the mercury into methylmercury that accumulates in fish. Ingestion is the primary exposure route of interest for methylmercury. The health effect of greatest concern due to methylmercury is neurotoxicity, particularly with respect to fetuses and young children.

In addition, in this final action, we are utilizing our authority under section 112(d)(4) of the CAA not to regulation chlorine and hydrochloric acid (HCl) emissions from the mercury cell chlor-alkali plant subcategory.

EFFECTIVE DATE: December 19, 2003.

ADDRESSES: *Docket.* We have established an official public docket for this action under Docket ID No. OAR–2002–0017, A–2000–32, A–2002–09, , and OAR–2002–0016 available for public viewing at the Office of Air and Radiation Docket and Information Center (Air Docket) in the EPA Docket Center, (EPA/DC) EPA West, Room B102, 1301 Constitution Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: For information concerning applicability and rule determinations, contact your State or local regulatory agency representative or the appropriate EPA Regional Office representative. For information concerning analyses performed in developing the final rule, contact Mr. Iliam Rosario, Metals Group, Emission Standards Division (C439–02), U.S. EPA, Research Triangle Park, North Carolina 27711; telephone number (919) 541–5308; fax number (919) 541–5600; electronic mail address: *rosario.iliam@epa.gov*.

SUPPLEMENTARY INFORMATION: *Docket.* The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information or other information whose disclosure is restricted by statute.

The official public docket is the collection of materials that is available for public viewing. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Air Docket is (202) 566–1742.

Electronic Docket Access. You may access the final rule electronically through the EPA Internet under the **Federal Register** listings at *http://www.epa.gov/fedrgstr/*.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility in the above paragraph entitled "Docket." Once in the system, select "search," then key in the appropriate docket identification number.

Judicial Review. Under CAA section 307(b), judicial review of the final NESHAP is available only by filing a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit on or before February 17, 2004. Only those objections to the NESHAP which were raised with reasonable specificity during the period for public comment may be raised during judicial review. Under section 307(b)(2)of the CAA, the requirements established by today's final action may not be challenged separately in any civil or criminal proceeding we bring to enforce these requirements.

Regulated Entities. Categories and entities potentially regulated by this action include:

Category	SIC [1]	NAICS [2]	Regulated entities
Industry	2812	325181	Alkalies and Chlorine Manufacturing.

[1] Standard Industrial Classification.
[2] North American Information Classification System.

This list is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. To determine whether your facility is regulated by this action, you should examine the applicability criteria in § 63.8182 of the final rule. If you have questions regarding the applicability of this action to a particular entity, consult your State or local agency (or EPA Regional Office) described in the preceding **FOR FURTHER INFORMATION CONTACT** section.

Worldwide Web (WWW). In addition to being available in the docket, an electronic copy of the final rule will also be available on the WWW through the Technology Transfer Network (TTN). Following signature, a copy of the final rule will be posted on the TTN's policy and guidance page for newly proposed or promulgated rules *http://www.epa.gov/ttn/oarpg*.

Outline. The information in this preamble is organized as follows:

I. Introduction and Background
  A. What Is the Source of Authority for Development of NESHAP?
  B. What Is the Source Category?
  C. What Criteria Are Used in the Development of NESHAP?
  D. What Actions Were Proposed for This Source Category?
  E. How Did the Public Participate in Developing the Rulemaking?
  F. What Is a Mercury Cell Chlor-alkali Plant?
  G. How Does This Action Relate to the 40 CFR Part 61 Mercury NESHAP?
II. Summary of Changes Since Proposal
III. Summary of the Final Rule
  A. What Is the Source Category?
  B. What Are the Affected Sources and Emission Points To Be Regulated?
  C. What Are the Emissions Limitations?
  D. What Are the Work Practice Standards?
  E. What Are the Operation and Maintenance Requirements?
  F. What Are the General Compliance Requirements?
  G. What Are the Initial Compliance Requirements?
  H. What Are the Continuous Compliance Requirements?
  I. How Are Initial and Continuous Compliance With the Work Practice Standards To Be Demonstrated?
  J. What Are the Notification and Reporting Requirements?
  K. What Are the Recordkeeping Requirements?
IV. Summary of Major Comments and Responses
  A. What Issues Were Raised Regarding the Sources That Are Subject to the Rule as Proposed?
  B. What Issues Were Raised Regarding the HAP Addressed by the Rule as Proposed?
  C. What Issues Were Raised Regarding the Compliance Date?
  D. What Issues Were Raised Regarding the Emission Limitations?
  E. What Issues Were Raised Regarding the Work Practices?
  F. What Issues Were Raised Regarding the Monitoring and Continuous Compliance Requirements?
V. What Are the Environmental, Cost, and Economic Impacts of the Final Rule?
  A. What Are the Air Emission Impacts?
  B. What Are the Non-air Health, Environmental, and Energy Impacts?
  C. What Are the Cost and Economic Impacts?
VI. Statutory and Executive Order Reviews
  A. Executive Order 12866—Regulatory Planning and Review
  B. Paperwork Reduction Act
  C. Regulatory Flexibility Act
  D. Unfunded Mandates Reform Act of 1995
  E. Executive Order 13132—Federalism
  F. Executive Order 13175—Consultation and Coordination With Indian Tribal Governments
  G. Executive Order 13045—Protection of Children From Environmental Health Risks and Safety Risks
  H. Executive Order 13211—Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use
  I. National Technology Transfer and Advancement Act of 1995
  J. Congressional Review Act

I. Introduction and Background

A. What Is the Source of Authority for Development of NESHAP?

Section 112 of the CAA contains our authorities for reducing emissions of hazardous air pollutants (HAP). Section 112(c)(1) of the CAA requires us to list categories and subcategories of major sources and area sources of HAP and to establish NESHAP for the listed source categories and subcategories. Section 112(c)(6) requires us to list source categories and subcategories assuring that sources accounting for not less than 90 percent of the aggregate emissions of each of seven specific pollutants (including mercury) are subject to standards under section 112(d) of the CAA. Finally, section 112(c)(3) and (k)(3)(B) require that we list source categories to ensure that area sources representing 90 percent of the area source emissions of the 30 urban HAP are subject to regulation under section 112(d).

B. What Is the Source Category?

The chlorine production source category was initially listed as a category of major sources of HAP pursuant to section 112(c)(1) of the CAA on July 16, 1992 (57 FR 31576). At the time of the initial listing, we defined the chlorine production source category as follows:

> The Chlorine Production Source Category includes any facility engaged in the production of chlorine. The category includes, but is not limited to, facilities producing chlorine by the following production methods: diaphragm cell, mercury cell, membrane cell, hybrid fuel cell, Downs cell, potash manufacture, hydrochloric acid decomposition, nitrosyl chloride process, nitric acid/salt process, Kel-Chlor process, and sodium chloride/sulfuric acid process.

In our subsequent analysis of the chlorine production source category, we did not identify any facilities that produce chlorine using hybrid fuel cells, the nitrosyl chloride process, the Kel-Chlor process, the sodium chloride/sulfuric acid process, or as a by-product from potash manufacturing. The majority of the source category is made up of chlor-alkali plants that produce chlorine and caustic (sodium hydroxide) using mercury cells, diaphragm cells, or membrane cells. We also identified operating plants that produce chlorine as a by-product: one from the production of sodium metal in Down cells, another from the production of potassium nitrate fertilizer that uses the nitric acid/salt process, and a third that produces chlorine as a by-product from primary magnesium refining (magnesium refining is a separately listed source category and will be addressed on its own in a separate rulemaking). In addition, at a site where a membrane cell process is located, we have also identified a process that produces chlorine through the decomposition of HCl. Our analysis shows that the only HAP emitted from sources within this chlorine production source category are chlorine, HCl, and mercury; and mercury is only emitted from mercury cell chlor-alkali plants.

In addition to the listing pursuant to section 112(c)(1), chlor-alkali production was among the categories of sources identified pursuant to section 112(c)(6) to achieve the 90 percent goal for mercury. While this category was titled "chlor-alkali production," the only sources of mercury emissions are mercury cell chlor-alkali plants. However, the mercury cell chlor-alkali subcategory was not officially "listed" under section 112(c)(6) because the chlorine production source category was already listed under section 112(c)(1), and sources of mercury emissions at mercury cell chlor-alkali plants would be subject to section 112(d)(2) standards via that chlorine production source category listing.

Finally, on July 19, 1999 (64 FR 38706), we listed Mercury Cell Chlor-Alkali Plants as an area source category. In this listing, Mercury Cell Chlor-Alkali Plants were identified as one of the area source categories that contribute at least 15 percent of the total area source mercury emissions.

Because of the differences in the production methods and the HAP emitted, we decided to divide the chlorine production category into two subcategories: (1) Mercury cell chlor-alkali plants, and (2) chlorine production plants that do not rely upon mercury cells for chlorine production (diaphragm cell chlor-alkali plants, membrane cell chlor-alkali plants, *etc.*). Thus, on July 3, 2002, we issued separate proposals to address the emissions of mercury from the mercury cell chlor-alkali plant subcategory

sources (67 FR 44672) and the emissions of chlorine and HCl from both non-mercury cell chlorine production subcategory sources and mercury chlor-alkali plant subcategory sources (67 FR 44713).

C. What Criteria Are Used in the Development of NESHAP?

Section 112(d)(2) of the CAA specifies that NESHAP for new and existing sources must reflect the maximum degree of reduction in HAP emissions that is achievable, taking into consideration the cost of achieving the emissions reductions, any non-air quality health and environmental benefits, and energy requirements. This level of control is commonly referred to as MACT.

Section 112(d)(3) defines the minimum level of control or floor allowed for NESHAP. In essence, the MACT floor ensures that the standards are set at a level that assures that all affected sources achieve the level of control at least as stringent as that already achieved by the better-controlled and lower-emitting sources in each source category or subcategory. For new sources, the MACT floor cannot be less stringent than the emission control that is achieved in practice by the best-controlled similar source. The MACT standards for existing sources cannot be less stringent than the average emission limitation achieved by the best-performing 12 percent of existing sources in the category or subcategory (or the best-performing five sources for categories or subcategories with fewer than 30 sources).

In developing MACT, we also consider control options that are more stringent than the floor. We may establish standards more stringent than the floor based on the consideration of cost of achieving the emissions reductions, any non-air quality health and environmental impacts, and energy impacts.

The CAA includes exceptions to the general statutory requirement to establish emission standards based on MACT. For pollutants for which a threshold has been established, section 112(d)(4) allows us "to consider such threshold level, with an ample margin of safety, when establishing emissions standards. * * *."

D. What Actions Were Proposed for This Source Category?

As discussed above, we divided the chlorine production source category into mercury cell chlor-alkali plants, and chlorine production plants that do not rely upon mercury cells for chlorine production (non-mercury cell chlorine production). On July 3, 2002, we proposed one action to address mercury emissions from the mercury cell chlor-alkali plant subcategory, and a separate action to address chlorine and HCl emissions from both subcategories.

For mercury emissions from mercury cell chlor-alkali plant subcategory sources, we issued a proposed rule based on MACT (67 FR 44672). Comments were received on the proposed rule and today's action issues the final rule for the mercury emissions from the mercury cell chlor-alkali plant subcategory.

We also proposed not to regulate chlorine and HCl emissions from both the mercury cell chlor-alkali plant and non-mercury cell chlorine production subcategories under our authority in section 112(d)(4) of the CAA (67 FR 44713). We based this decision on our determination that no further control is necessary because chlorine and HCl are "health threshold pollutants," and chlorine and HCl levels emitted from chlorine production processes are below their threshold values within an ample margin of safety. The basis for the determination was a series of site-specific risk assessments for every chlorine production facility in the United States that was located at a major source plant site. In addition, we concluded, using a qualitative evaluation, that chlorine and HCl emissions from these chlorine production facilities did not result in adverse environmental effects. Background for this action is contained in Docket OAR–2002–0016 or Docket A–2002–09. Public comments on the proposed action were received, and we are finalizing actions addressing chlorine and HCl emissions in today's **Federal Register**. In today's final action, we are utilizing our authority under section 112(d)(4) not to regulate chlorine and HCl emissions from the mercury cell chlor-alkali plant subcategory. Final action addressing the emissions of chlorine and HCl from the non-mercury cell chlorine production subcategory is contained elsewhere in today's **Federal Register**.

E. How Did the Public Participate in Developing the Rulemaking?

Prior to proposal, we met with industry representatives and State regulatory authorities several times to discuss the data and information used to develop the proposed standards. In addition, these and other potential stakeholders, including equipment vendors and environmental groups, had opportunity to comment on the proposed standards.

The proposed rule was published in the **Federal Register** on July 3, 2002 (67 FR 44672). The preamble to the proposed rule discussed the availability of technical support documents, which described in detail the information gathered during the standards development process. Public comments were solicited at proposal.

We received nine public comment letters on the proposed rule (two of which were received well after the close of the comment period). The commenters represent the following affiliations: Mercury cell chlor-alkali companies, industrial trade associations, environmental/conservation organizations, and a women's advocacy organization. In the post-proposal period, we talked with commenters and other stakeholders to clarify comments and to assist in our analysis of the comments. Records of these contacts are found in Docket OAR–2002–0017 or Docket A–2000–32. All of the comments have been carefully considered, and, where appropriate, the final rule has been written to so reflect.

The proposed action not to regulate chlorine and HCl emissions was published in the **Federal Register** on July 3, 2002 (67 FR 44713). The preamble to the proposed action discussed the availability of technical support documents, which described in detail the information gathered during the standards development process. Public comments were solicited at proposal.

We received eight public comment letters on the proposed action. The commenters represent the following affiliations: Industry representatives, governmental entities, and environmental groups. In the post-proposal period, we talked with commenters and other stakeholders to clarify comments and to assist in our analysis of the comments. Records of these contacts are found in Docket OAR–2002–0016 or Docket A–2002–09. All of the comments have been carefully considered.

F. What Is a Mercury Cell Chlor-alkali Plant?

Today's NESHAP apply to mercury emissions from mercury cell chlor-alkali plants. Mercury cells are considerably larger than other types of chlor-alkali cells. A mercury cell plant typically has scores of individual cells (around 60 feet long and 9 feet wide) housed in one or more cell buildings. Mercury cells are electrically connected together in series with circuits of 30 or more cells.

In the mercury cell process, each cell actually involves two distinct operations. The electrolytic cell produces chlorine gas, and a separate decomposer produces hydrogen gas and caustic solution. There is one decomposer associated with each cell, located directly underneath the cell. The cell and the decomposer are linked at the two ends by an inlet end box and an outlet end box.

A stream of liquid mercury flows in a continuous loop between the electrolytic cell and the decomposer. The mercury enters the cell at the inlet end box and flows down a slight grade to the outlet end box. At the outlet end box, the mercury flows out of the cell and falls down to the decomposer. After being processed in the decomposer, the mercury is pumped back up to the inlet end box of the electrolytic cell.

Saturated salt brine (using either sodium chloride or potassium chloride) is fed to the electrolytic cell at the inlet end box and flows toward the outlet end box on top of the mercury stream. The brine and mercury flow under a dimensionally stable metal anode made of a titanium substrate with a metal catalyst. The mercury forms the cathode of the cell.

An electric current is applied between the anode and the mercury cathode. The electric current causes a reaction producing chlorine gas at the anode and a mercury:sodium (HgNa) or mercury:potassium (HgK) amalgam at the cathode. Chlorine is collected at the top of the cell. The amalgam ultimately exits at the outlet end box, falling into the decomposer. Depleted brine also exits the cell at the outlet end box. This brine is generally piped to a tank for resaturation and reuse.

The decomposer is a packed bed reactor where the mercury amalgam is contacted with deionized water in the presence of a catalyst. The amalgam reacts with the water, regenerating elemental mercury and producing caustic (NaOH or KOH) and hydrogen. The caustic and mercury are separated in a trap at the end of the decomposer. The caustic and hydrogen are transferred to auxiliary processes for purification, and the mercury is recycled back to the cell.

Chlorine is collected from the tops of the mercury cells by a common header system which runs through the cell building. Hydrogen is collected from the amalgam decomposers in a common header system. The hydrogen stream contains a small amount of mercury vapor from the liquid mercury processed in the decomposer. To remove the mercury vapor, the hydrogen stream is typically cooled, passed through a mist eliminator, and usually sent to a finishing device such as a carbon adsorber. The hydrogen may then be discharged to the atmosphere, used on-site, or sold for use off-site.

In a mercury cell process, a 50 percent caustic solution is obtained directly from the amalgam decomposers. Thus, the mercury cell caustic requires little further processing to yield a commercial product.

Contaminated mercury and mercury-containing wastes are generated from a number of sources at a mercury cell plant. These include the hydrogen treatment operation, the brine and caustic treatment operations, and mercury leaks or spills. Many plants recover mercury from these wastes on-site in a mercury retort, or mercury thermal recovery unit.

Mercury is emitted from two point sources associated with the production of chlorine—the end box ventilation system and by-product hydrogen system. Mercury is also emitted from mercury thermal recovery units, which is also a point source. In addition, there are mercury fugitive emissions from the cell rooms and from the waste recovery areas.

In addition to mercury, chlorine and HCl are emitted from mercury cell plants. Chlorine can be emitted from the tail gas stream from the final liquefier, the cell room, and equipment in chlorine service. Hydrochloric acid is used to pretreat feed brine prior to entering a chlor-alkali cell, and at other locations throughout the process to adjust pH. It can also be emitted from storage tanks and equipment in HCl service.

G. How Does This Action Relate to the 40 CFR Part 61 Mercury NESHAP?

We promulgated the National Emission Standard for Mercury on April 6, 1973 (40 CFR part 61, subpart E).[1] Those standards (hereafter referred to as the Mercury NESHAP) limit mercury emissions from mercury cell chlor-alkali plants as well as mercury ore processing facilities and sludge incineration and drying plants. Specifically, the Mercury NESHAP limit mercury emissions from mercury cell chlor-alkali plants to 2.3 kilogram (kg) (5.1 pound (lb)) of mercury per 24-hour period and requires that mercury emissions be measured (in a one-time test) from hydrogen streams, end box ventilation systems, and the cell room ventilation system. As an alternative to measuring ventilation emissions from the cell room to demonstrate compliance, the Mercury NESHAP allow an owner or operator to assume a cell room ventilation emission value of 1.3 kg (2.9 lb) per day of mercury providing the owner/operator adheres to a suite of approved design, maintenance and housekeeping practices. Every mercury cell chlor-alkali plant currently in operation in the United States complies with the cell room ventilation provisions by carrying out these practices rather than by measuring mercury emissions discharged from the cell room. Since every plant uses the 1.3 kg per day assumed value for its cell room ventilation emissions, subtracting the 1.3 kg per day cell room value from the 2.3 kg per 24-hour period plantwide standard effectively creates an emission limit for the combined emissions from hydrogen streams and end box ventilation systems of 1.0 kg per day (1,000 grams per day).

The requirements in today's final standards are more stringent than the requirements in the Mercury NESHAP. Using the 1,000 grams per day value as the baseline, we estimate that mercury emissions will be reduced to less than 60 grams per day (on average) by the final rule. This represents about 94 percent reduction from the Mercury NESHAP baseline for vents. In addition, the work practice standards in today's final rule represent the most explicit compilation of practices currently employed by the industry, along with detailed recordkeeping and reporting requirements. While we cannot quantify the mercury emissions reductions that would be achieved by the final work practice standards, we are confident that their implementation would result in additional reductions in mercury emissions beyond that currently achieved by the existing Mercury NESHAP.

Every aspect of the Mercury NESHAP that applies to mercury cell chlor-alkali plants is addressed in today's final rule (40 CFR part 63, subpart IIIII). In fact, as discussed above, the requirements are more stringent than the respective requirements in the Mercury NESHAP. Consequently, when mercury cell chlor-alkali plants are required to comply with the final rule, the requirements of the Mercury NESHAP that apply to them will no longer be relevant or applicable. Therefore, upon the compliance date as indicated in § 63.8186 of the final rule, mercury cell chlor-alkali plants will no longer have any obligation to comply with the Mercury NESHAP, nor will they be allowed to comply with the Mercury NESHAP instead of the applicable provisions in 40 CFR part 63, subpart IIIII. Specifically, affected sources

[1] This regulatory program was originally set forth at 38 FR 8826; April 6, 1973; and amended at 40 FR 48302, October 14, 1975; 47 FR 24704, June 8, 1982; 49 FR 35770, September 12, 1984; 50 FR 46294, November 7, 1985; 52 FR 8726, March 19, 1987; and 53 FR 36972, September 23, 1988

subject to the final rule would no longer be subject to §§ 61.52(a), 61.53(b) and (c), and 61.55(b), (c) and (d) of 40 CFR part 61, subpart E, after the compliance date, which is December 19, 2006.

II. Summary of Changes Since Proposal

The proposed rule contained a compliance date 2 years from the date that the final rule would appear in the **Federal Register**. In the final rule, the compliance date has been changed to 3 years from December 19, 2006. However, unlike the proposed rule, which would have required that performance tests be conducted within 180 days after the compliance date, the final rule requires that all performance tests be conducted on or before the compliance date.

For mercury cell chlor-alkali production facilities affected sources, the proposed rule included a single emission limitation that covered all mercury emissions from the two point sources associated with chlorine production in mercury cells: the by-product hydrogen stream and the end box ventilation system vent. The format of this limitation was total grams of mercury per Megagram of chlorine production (g Hg/Mg Cl_2). For the initial compliance determination, the aggregate mercury emissions from all hydrogen by-product streams and all end box ventilation system vents were divided by the chlorine production for the same period and compared with the applicable emission limitation. Continuous compliance would have then been demonstrated by continuously monitoring the mercury concentration in each stream and comparing the daily average mercury concentration against a level determined during the initial compliance test. Commenters objected to this daily averaging period for compliance purposes when the emission limitations were based on annual average emissions and chlorine production. In response to these comments, we have written the averaging time for continuous compliance as a 52-week period. Further, as discussed more below, rather than establishing surrogate mercury concentration operating limits for each vent, continuous compliance is determined by a direct comparison of the emissions per unit of chlorine production (g Hg/Mg Cl_2) for each 52-week compliance period and the emission limitation. This is a rolling average compliance period that is determined each week. That means a compliance determination is required each week for the previous 52-week period.

In addition to the averaging time for the by-product hydrogen/end box ventilation system vent, we changed the value of the emission limitation for plants with end box ventilation systems from the proposed limit of 0.067 g Hg/Mg Cl_2 to 0.076 g Hg/Mg Cl_2. The proposed limit of 0.033 g Hg/Mg Cl_2 for plants without end box ventilation systems is retained in the final rule.

In the final rule, we have written the method for determining continuous compliance for the point sources of emissions in both types of affected sources covered by the rule (by-product hydrogen streams and end box ventilation system vents at mercury cell chlor-alkali production facilities and mercury thermal recovery unit vents at mercury recovery facilities). In the proposed rule, performance tests would have been required to determine initial compliance with the applicable emission limitation. The proposed rule also would have required that the mercury concentration of each vent be monitored during these performance tests, and that a mercury concentration operating limit be established for each vent based on the monitoring results obtained during the test. Compliance with the emission limitation would have then been determined by comparing the results of the continuous monitoring of mercury concentration against the established operating limits. There were several comments received on this approach.

In response to these comments, continuous compliance in the final rule is determined via a direct comparison of emissions to the emission limitation rather than using mercury concentration operating limits as a surrogate. For by-product hydrogen streams and end box ventilation system vents, the aggregate mercury emissions will be determined, divided by the corresponding chlorine production, and compared with the emission limitation for each 52-week compliance period (as discussed above). For mercury thermal recovery unit vents, the measured mercury concentration will be directly compared against the emission limitations (which are in units of milligrams of mercury per dry standard cubic meter, or mg/dscm). Also, the final rule contains two options for measuring the mercury emissions for continuous compliance: Continuous mercury emission monitoring systems, and periodic sampling using EPA reference methods or approved alternative methods.

The proposed work practice provisions included a cell room monitoring program, which would have required that the mercury concentration be monitored in the cell room and corrective action taken when a plant-specific action level was exceeded. The final rule retains the cell room monitoring program, but it is as an alternative to the work practices. The optional cell room monitoring provisions in the final rule are more detailed and prescriptive than the requirements in the proposed rule, and the final rule requires the preparation and submittal of site-specific cell room monitoring plans. Since the cell room monitoring program was made optional, the final rule requires (if optional cell room monitoring is not chosen) the owner or operator to institute a floor-level mercury vapor measurement program. This program is designed to limit the amount of mercury vapor in the cell room environment through periodic measurement of mercury vapor levels.

The final rule also requires that the owner of each mercury cell chlor-alkali plant report the mass of virgin mercury added to the cells. Initial compliance with this requirement is demonstrated by reporting the mass of mercury added to cells for the 5 years preceding the compliance date. This is a requirement requested by commenters.

III. Summary of the Final Rule

A. What Is the Source Category?

The chlorine production source category contains the mercury cell chlor-alkali plant subcategory and includes all plants engaged in the manufacture of chlorine and caustic in mercury cells. Other non-mercury cell chlorine production plants used to produce chlorine and caustic, such as diaphragm cell and membrane cell technologies, are not covered by the final rule.

B. What Are the Affected Sources and Emission Points To Be Regulated?

The final rule defines two affected sources: Mercury cell chlor-alkali production facilities, and mercury recovery facilities. The former includes all cell rooms and ancillary operations used in the manufacture of chlorine, caustic, and by-product hydrogen at a plant site. The latter includes all processes and associated operations needed for mercury recovery from wastes.

Emission points addressed within mercury cell chlor-alkali production facilities include each mercury cell by-product hydrogen stream, each mercury cell end box ventilation system vent, and fugitive emission sources throughout each cell room and various areas. Emission points addressed within mercury recovery facilities include each mercury thermal recovery unit vent and fugitive emission sources associated with storage areas for mercury-containing wastes.

C. What Are the Emission Limitations?

For new or reconstructed mercury cell chlor-alkali production facilities, the final rule prohibits mercury emissions.

For existing mercury cell chlor-alkali production facilities with end box ventilation systems, the final rule requires that aggregate mercury emissions from all by-product hydrogen streams and end box ventilation system vents not exceed 0.076 g Hg/Mg Cl_2 for any consecutive 52-week period. For existing mercury cell chlor-alkali production facilities without end box ventilation systems, the final rule requires that mercury emissions from all by-product hydrogen streams not exceed 0.033 g Hg/Mg Cl_2 for any consecutive 52-week period.

For new, reconstructed, or existing mercury recovery facilities with oven type mercury thermal recovery units, the final rule requires that total mercury emissions not exceed 23 mg/dscm from each oven type unit vent. For new, reconstructed, or existing mercury recovery facilities with non-oven type mercury thermal recovery units, the limit in the final rule is 4 mg/dscm.

D. What Are the Work Practice Standards?

The final rule contains a set of work practice standards to address and mitigate fugitive mercury releases at mercury cell chlor-alkali plants. These provisions include specific equipment standards such as the requirement that end boxes either be closed (that is, equipped with fixed covers), or that end box headspaces be routed to a ventilation system. Other examples include requirements that piping in liquid mercury service have smooth interiors, that cell room floors be free of cracks and spalling (*i.e.*, fragmentation by chipping) and coated with a material that resists mercury absorption, and that containers used to store liquid mercury have tight-fitting lids. The work practice standards also include operational requirements. Examples of these include requirements to allow electrolyzers and decomposers to cool before opening, to keep liquid mercury in end boxes and mercury pumps covered by an aqueous liquid at a temperature below its boiling point at all times, to maintain end box access port stoppers in good sealing condition, and to rinse all parts removed from the decomposer for maintenance prior to transport to another work area.

A cornerstone of the work practice standards is the inspection program for equipment problems, leaking equipment, liquid mercury accumulations and spills, and cracks or spalling in floors and pillars and beams. Specifically, the final rule requires that visual inspections be conducted twice each day to detect equipment problems, such as end box access port stoppers not securely in place, liquid mercury in open containers not covered by an aqueous liquid, or leaking vent hoses. If a problem is found during an inspection, the owner or operator will need to take immediate action to correct the problem. Monthly inspections for cracking or spalling in cell room floors are also required as well as semiannual inspections for cracks and spalling on pillars and beams. Any cracks or spalling found will need to be corrected within 1 month.

Visual inspections for liquid mercury spills or accumulations are also required twice per day. If a liquid mercury spill or accumulation is identified during an inspection, the owner or operator will need to initiate cleanup of the liquid mercury within 1 hour of its detection. Acceptable cleanup methods include wet vacuum cleaning or a suitable alternative method approved upon petition.

In addition to cleanup, the final rule requires that an inspection of equipment in the area of the spill or accumulation be conducted to identify the source of the liquid mercury. If the source is found, the owner or operator is required to repair the leaking equipment as discussed below. If the source is not found, the owner or operator will be required to reinspect the area every 6 hours until the source is identified or until no additional liquid mercury is found at that location.

Inspections of specific equipment for liquid mercury leaks are required once per day. If leaking equipment is identified, the final rule requires that any dripping mercury be contained and covered by an aqueous liquid, and that a first attempt to repair leaking equipment be made within 1 hour of the time it is identified. The final rule requires that leaking equipment be repaired within 4 hours of the time it is identified, although there are provisions for delaying repair of leaking equipment for up to 48 hours.

Inspections for hydrogen gas leaks are required twice per day. For a hydrogen leak at any location upstream of a hydrogen header, a first attempt at repair is required within 1 hour of detection of the leaking equipment, and the leaking equipment is required to be repaired within 4 hours (with provisions for delay of repair if the leaking equipment is isolated). For a hydrogen leak downstream of the hydrogen header but upstream of the final control device, a first attempt at repair is required within 4 hours, and complete repair required within 24 hours (with delay provisions if the header is isolated).

The work practice standards in the final rule require you to institute a floor-level mercury vapor measurement program. Under this program, mercury vapor levels are periodically measured and compared to an action level of 0.05 mg/m^3. The final rule specifies the actions to be taken when the action level is exceeded. If the action level is exceeded during any floor-level mercury vapor measurement evaluation, you are required to take specific actions to identify and correct the problem.

As an alternative to the full set of work practice standards (including the floor-level monitoring program), the final rule also includes an optional requirement to institute a cell room monitoring program whereby owners and operators continuously monitor mercury concentrations in the upper portion of each cell room and take corrective actions as soon as practicable when elevated mercury vapor levels are detected.

The program is not designed to be a continuous monitoring system inasmuch as the results would be used only to determine relative changes in mercury vapor levels rather than compliance with a cell room emission or operating limit. The owner or operator is required to establish an action level for each cell room based on preliminary monitoring to determine normal baseline conditions. The action level, or levels if appropriate, will then be established as a yet-to-be-determined multiple of the baseline values. Once the action level(s) is established, continuous monitoring must be conducted. If an action level is exceeded, actions to correct the situation are required to be initiated as soon as possible. If the elevated mercury vapor level is due to a maintenance activity, the owner or operator must ensure that all work practices related to that maintenance activity are followed. If a maintenance activity is not the cause, inspections and other actions will be needed to identify and correct the cause of the elevated mercury vapor level. Owners and operators utilizing this cell room monitoring program option are required to develop site-specific cell room monitoring plans describing their monitoring system and quality assurance/quality control

procedures that will be used, along with their action level.

The final rule establishes the duty for owners and operators to routinely wash surfaces throughout the plant where liquid mercury could accumulate. Owners and operators are required to prepare and follow a written washdown plan detailing how and how often specific areas specified in the final rule are to be washed down to remove any accumulations of liquid mercury.

Finally, the final rule requires owners or operators to record and report the mass of virgin mercury added to cells. Virgin mercury is defined as mercury that has not been processed in an onsite mercury thermal recovery unit or otherwise recovered from mercury-containing wastes onsite. In order to establish a baseline of mercury being added to the cells, the final rule requires owners or operators to submit the mass of virgin mercury added to cells for the 5 years preceding the compliance date.

E. What Are the Operation and Maintenance Requirements?

The final rule requires that each owner and operator always operate and maintain each affected source, including air pollution control and monitoring equipment, in a manner consistent with good air pollution control practices for minimizing air emissions, as required under 40 CFR 63.6(e)(1)(i) of the NESHAP General Provisions. The final rule requires each owner and operator to prepare and implement a written startup, shutdown, and malfunction plan according to the operation and maintenance requirements in § 63.6(e)(3) of the NESHAP General Provisions.

F. What Are the General Compliance Requirements?

The final rule requires compliance with the emission limitations and applicable work practice requirements at all times, except during periods or startup, shutdown, and malfunction as defined in 40 CFR 63.2. The owner or operator must develop and implement a written startup, shutdown, and malfunction plan according to the requirements in 40 CFR 63.6(e)(3).

G. What Are the Initial Compliance Requirements?

The final rule requires compliance with emission limitations and work practices by December 19, 2006.

To demonstrate initial compliance with the emission limits for by-product hydrogen streams and end box ventilation system vents, the final rule requires each owner or operator to conduct performance tests using 40 CFR part 61, appendix A, Method 102 for by-product hydrogen streams, and 40 CFR part 61, appendix A, Method 101 or 101A for end box ventilation system vents. In addition, the final rule also includes procedures for reducing the mercury emissions data collected during the performance test to units of the standard (*i.e.*, g Hg/Mg Cl_2). Each performance test is required to consist of a minimum of three 2-hour runs with a minimum sample volume of 1.7 dscm and must be conducted in accordance with a site-specific test plan prepared according to the performance test quality assurance program requirements in § 63.7(c)(2) of the NESHAP General Provisions.

Concurrent with each test run, each owner or operator is required to determine the quantity of chlorine produced using an equation contained in the final rule which calculates chlorine production based on cell line electric current load.

Initial compliance is demonstrated by showing that the total mercury emission rate from all by-product hydrogen streams and all end box ventilation system vents for the test are less than 0.076 g Hg/Mg Cl_2 for plants with end box ventilation systems, or 0.033 g Hg/Mg Cl_2 for plants without end box ventilation systems.

In addition, if the final control device is not a nonregenerable carbon adsorber and continuous compliance will be demonstrated using the periodic monitoring option, the owner or operator is required to monitor the following parameters during the performance test to establish either a maximum or minimum monitoring value, as applicable for the control device:

- Exit gas temperature from uncontrolled streams;
- Outlet temperature of the gas stream for the final cooling system when no control devices other than coolers or demisters are used;
- The outlet temperature of the gas stream from the final cooling system when the cooling system is followed by a molecular sieve or regenerative carbon adsorber;
- Outlet concentration of available chlorine, pH, liquid flow rate, and inlet gas temperature of chlorinated brine scrubbers and hypochlorite scrubbers;
- The liquid flow rate and exit gas temperature for water scrubbers;
- The inlet gas temperature of regenerative carbon adsorption systems; or
- The temperature during the heating phase of the regeneration cycle for regenerative carbon adsorbers or molecular sieves.

As part of the initial compliance demonstration, the owner or operator must determine the maximum or minimum monitoring value by calculating the average of the data collected during the performance test. The exception to this is when the final control device is a regenerative carbon adsorber. In this case, the highest temperature reading during the performance test must be used.

To demonstrate initial compliance with the mercury thermal recovery unit emission limits, the final rule requires that owners or operators conduct a performance test for each vent using 40 CFR part 61, appendix A, Method 101 or 101A. The owner or operator is required to develop and follow a site-specific test plan according to § 63.7(c)(2) of the NESHAP General Provisions. Three test runs would need to be conducted at a point after the last control device for each vent.

Initial compliance is achieved if the average vent mercury concentration is less than 23 mg/dscm for each oven type vent or 4 mg/dscm for each non-oven type vent. In addition, if the final control device is not a nonregenerable carbon adsorber and continuous compliance will be demonstrated using the periodic monitoring option, the owner or operator is required to monitor the same parameters as required for by-product hydrogen streams and end box ventilation system vents and to establish the appropriate minimum or maximum monitoring value for the control device.

H. What Are the Continuous Compliance Requirements?

The final rule contains two options for continuous compliance with the emission limit for by-product hydrogen streams and end box ventilation system vents and the emission limit for mercury thermal recovery unit vents: Continuous monitoring using mercury continuous emissions monitors, or periodic monitoring using testing. Both of these options will produce results in the units of the standard, so continuous compliance will be demonstrated through a direct comparison of monitoring system results.

If mercury continuous emission monitors are used to comply with the final rule, a site-specific monitoring plan must be developed to ensure proper control device evaluation, and a performance evaluation is required according to the monitoring plan. For each monitor, the final rule requires the site-specific monitoring plan to address installation and siting, monitor performance specifications, performance evaluation procedures and calibration criteria, ongoing operation and maintenance procedures, ongoing data assurance procedures, and ongoing recordkeeping and reporting procedures. It must also address how other parameters (*e.g.*, flow rate) needed to calculate the mass of mercury emissions from each emission point are to be monitored. If periodic weekly monitoring is the selected compliance method, the owner or operator is required to conduct tests on a weekly basis using either an EPA Reference Method (101, 101A, or 102) or an alternative method that has been validated using Method 301, 40 CFR part 63, appendix A. If the final control device is not a nonregenerable carbon adsorber, in addition to periodic testing, the final rule contains requirements for the continuous monitoring of control device-specific parameters.

To demonstrate continuous compliance, the final rule requires the owner or operator to reduce mercury emissions to 52-week averages and to maintain the 52-week average below 0.076 g Hg/Mg Cl_2 for plants with end box ventilation systems, or 0.033 g Hg/Mg Cl_2 for plants without end box ventilation systems. For mercury thermal recovery units, the owner or operator is required to determine daily average mercury emissions and maintain the daily average below 23 mg/dscm for each oven type vent or 4 mg/dscm for each non-oven type vent. The final rule requires the owner or operator to collect emissions data using either a continuous mercury emissions monitor, or by collecting weekly samples using periodic monitoring. If the periodic monitoring option is used and the final control device is not a nonregenerable carbon adsorber, the owner or operator is required to also monitor specific control device parameters and compare to the maximum or minimum monitoring values developed during the performance test. Continuous compliance is achieved if the monitoring values remain either below the maximum monitoring value, or above the minimum monitoring value, as appropriate.

I. How Are Initial and Continuous Compliance With the Work Practice Standards To Be Demonstrated?

The final rule requires compliance with the work practice standards within 3 years from December 19, 2003.

The final rule contains specific recordkeeping requirements related to the work practice standards. These include records of when inspections were conducted, problems identified, and actions taken to correct problems. Continuous compliance with work practice standards will be demonstrated by maintaining these required records.

Initial compliance with the washdown plan will be demonstrated by submission of the plan by the owner or operator and certification that they operate according to, or will operate according to, the plan. Continuous compliance with the plan will be demonstrated by maintaining related records. Records will also be required to demonstrate compliance with the cell room monitoring program.

J. What Are the Notification and Reporting Requirements?

The final rule requires that owners or operators submit Initial Notifications, Notifications of Intent to conduct a performance test, Notification of Compliance Status (NOCS), and compliance reports.

For the Initial Notification, we are requiring that each owner or operator notify us that their plant is subject to the NESHAP for mercury cell chlor-alkali plants, and that they provide other basic information about the plant. For existing sources, this notification would need to be submitted no later than April 19, 2004.

For the Notification of Intent report, we are requiring that each owner or operator notify us in writing of the intent to conduct a performance test at least 60 days before the performance test is scheduled to begin.

The NOCS for the work practice standards will be due 30 days after the compliance date for existing sources. In this notification, the owner or operator will need to certify that the work practice standards are being or will be met. Furthermore, we are requiring that the washdown plan be submitted as part of this notification, and that the owner or operator certify that they operate or will operate according to the plan.

For the emission limits where a performance test is required to demonstrate initial compliance (that is, the emission limits for by-product hydrogen streams and end box ventilation system vents and the mercury thermal recovery unit vent limits), the tests will have to be conducted no later than the compliance date, and the NOCS will be due 60 days after the completion of the performance test. The site-specific monitoring plan addressing the use of mercury continuous emission monitors for vents must be submitted as part of this notification.

Compliance reporting is required semiannually, with the first report due within the first 6 months after initial compliance.

K. What Are the Recordkeeping Requirements?

Records required by the final rule related to by-product hydrogen streams, end box ventilation system vents, and mercury thermal recovery unit vents include the following: Performance test results, records showing the establishment of the applicable mercury concentration operating limits (including records of the mercury concentration monitoring conducted during the performance tests), records of the continuous mercury concentration monitoring data, records of the daily average elemental mercury concentration values, and records associated with site-specific monitoring plans.

With regard to the work practice standards, the final rule requires that records be maintained to document when each required inspection was conducted and the results of each inspection. Records noting equipment problems (such as end box cover stoppers not securely in place or mercury in an open container not covered by an aqueous liquid) identified during a required inspection, and the corrective action taken would also be required. If equipment that is leaking mercury liquid or hydrogen/mercury vapor is identified during a required inspection or at any other time, the final rule requires records of when the leak was identified and when it was repaired. Similarly, if a mercury spill or accumulation is identified at any time, the final rule requires records of when the spill or accumulation was found and when it was cleaned up.

A copy of the current version of the washdown plan would need to be kept on-site and be available for inspection. Records of when washdowns were conducted would be required.

The final rule requires that copies of each notification and report that is submitted to comply with the final rule be kept and maintained for 5 years, the first 2 of which must be on-site.

IV. Summary of Major Comments and Responses

This section includes discussion of significant comments on the proposed rule. For a complete summary of all the comments received on the proposed rule and our responses to them, refer to the "Background Information Document for Promulgation of National Emissions Standards for Hazardous Air Pollutant (NESHAP): Mercury Emissions From Mercury Cell Chlor-Alkali Plants" EPA–453/R–03–012 (hereafter called the "response to comments document") in Docket OAR–2002–0017 or A–2000–32.

The docket also contains the actual comment letters and supporting documentation developed for the final rule.

A. What Issues Were Raised Regarding the Sources That Are Subject to the Rule as Proposed?

There were no issues raised by commenters regarding the sources subject to the proposed rule and the affected source, as a mercury cell chlor-alkali plant is a distinct and easily identifiable entity. There were, however, issues raised regarding the proposed requirement for all affected sources to obtain a title V permit and regarding the specific emission points that were addressed in the proposed rule.

Comment: Three commenters disagreed with the proposed requirements for all mercury cell chlor-alkali plants to obtain a title V permit, including area sources. The commenters requested that this provision be deleted from the final rule. The commenters stated that the facilities affected by the proposal are minor sources of HAP emissions. All three commenters maintained that requiring minor source facilities to obtain title V permits would be burdensome, *e.g.*, due to duplicative recordkeeping and reporting provisions, for the area sources; one commenter further stated that this burden would not yield any environmental benefit. Additionally, according to this commenter, dropping the title V permit requirement for area sources would not lessen any substantive requirements for monitoring, recordkeeping, or operation of any and all air pollution control devices. Commenters noted that the CAA allows EPA to exempt certain sources from obtaining a title V permit "* * * if the Administrator finds that compliance with such requirements is impracticable, infeasible, or unnecessarily burdensome * * *".

One commenter noted that in previously promulgated area source MACT standards (*e.g.*, Dry Cleaning MACT and Halogenated Solvent Cleaning MACT), EPA identified area sources as being subject to title V permitting. However, EPA allowed the permitting authorities to defer area sources from title V permitting requirements until December 9, 2004.

In contrast, another commenter supported the proposed requirement to require all affected sources to obtain title V permits. The commenter argued that title V permits are needed because they consolidate sources' applicable requirements in a single place. The commenter further noted that "* * * given the detailed work practice requirements, it is reasonable to expect significant source-specific tailoring of the standard for each plant's individual configuration." See, *e.g.*, 67 FR 44706–07. The commenter also stated that requiring title V permits of area sources of mercury is especially appropriate because a small quantity of mercury is as toxic as far greater amounts of other HAP.

Response: Section 502(a) of the CAA requires any source, including an area source, subject to standards or regulations under section 111 or 112 of the CAA to operate in compliance with a title V permit after the effective date of any title V permits program. The Administrator may not exempt any major source from the requirements of title V.

In order to exempt area sources under the final rule from title V requirements, the test in section 502(a) of the CAA must be met. Specifically, the Administrator must make a finding that title V requirements are impracticable, infeasible, or unnecessarily burdensome for the source category or categories in question. Commenters may provide data which would help the Administrator make such a finding, but the commenters who were opposed to area sources being permitted under the final rule did not provide any such data. Commenters providing supporting data for their arguments is consistent with what the Agency stated in its final rule for the Municipal Solid Waste Landfills NESHAP in reference to the test in section 502(a) of the CAA (68 FR 2227, 2234, January 16, 2003).

In terms of the commenters' concern about title V adding duplicative recordkeeping and reporting requirements, the only potential duplicative requirement that we are aware of is in relation to deviation reporting under the semiannual compliance report required by § 63.8254 of the final rule and the semiannual monitoring report required by 40 CFR 70.6(a)(3)(iii)(A) or 40 CFR 71.6(a)(3)(iii)(A). However, this potential duplication was addressed by § 63.8254(d) in the proposed rule and this has been clarified in the final rule.

As to the deferral for area sources subject to the Dry Cleaning MACT and the Halogenated Solvent Cleaning MACT, the area sources subject to these MACT standards were deferred from title V permitting until December 9, 2004. See final deferral rulemaking (64 FR 69637, December 14, 1999). This deferral was granted in part because of the concern that area sources would not be able to obtain the technical and procedural assistance from permitting authorities needed to file timely and complete title V applications given that permitting authorities would be focused on the permitting of major sources. However, as the title V program is no longer in its initial stages and the initial permitting of existing major sources is nearing completion, we would not be justified in granting a deferral to area sources under the final rule for the same reason.

In terms of the commenter who supported the permitting of affected sources under the final rule, we agree that the consolidation of requirements in a title V permit is one of the ways that title V helps assure compliance with all applicable requirements. As this commenter also pointed out, title V permits clarify which requirements in standards apply to a source where requirements may vary due to various factors, *e.g.*, design of the facility. Additionally, the title V regulations at 40 CFR part 70 and 40 CFR part 71 help a source assure compliance with its applicable requirements by requiring that a source self-certify to compliance initially and annually, by requiring that a source promptly report deviations from its permit requirements, and by requiring that a permit contain monitoring requirements. It is also important to note that the title V permitting process provides an opportunity for the public to comment on whether a source is complying with its applicable requirements. In short, title V permits can enhance the effectiveness of rules such as the final rule, and EPA, therefore, disagrees that there are no environmental benefits to requiring title V permits for area sources.

In conclusion, as the test in section 502(a) of the CAA has not been met, EPA has retained the requirement in the final rule that affected sources subject to the final rule must obtain title V permits. Therefore, whether an affected source under the final rule is a part of a major or area source, the major/area source is required to obtain a title V permit.

Comment: One commenter believed that the proposed rule violated the CAA because the Agency did not establish standards for some parts of chlor-alkali plants that emit mercury. The commenter noted that under the proposed rule, EPA defined two affected sources: Mercury cell chlor-alkali production facilities and mercury recovery facilities. The commenter did not agree with EPA's determination that within mercury cell chlor-alkali production facilities, chlorine purification, brine preparation and wastewater treatment operations should not be subject to emission standards because they have low mercury air emissions. Similarly, the commenter did not agree with EPA's decision not to regulate chemical mercury recovery and recovery in batch purification stills at mercury recovery facilities. According to the commenter, the CAA does not allow the Agency to exempt certain classes, types and sizes of sources from emission standards, unless EPA finds no potential for emissions. Therefore, the commenter stated that EPA had a legal obligation to establish standards that cover all mercury-emitting parts of chlor-alkali facilities, and the Agency must re-visit and set emission standards for the parts of the production and recovery facilities with low mercury emissions.

Response: During development of the proposed rule, we did not receive any data to indicate that mercury was emitted from chlorine purification, brine preparation, or wastewater treatment operations, and our knowledge of the process indicated that any potential emissions would be very limited (67 FR 44674). Furthermore, we did not receive any data indicating that control measures designed to reduce HAP were in use at existing facilities that had these units. The same holds true for chemical mercury recovery and recovery in batch purification stills at mercury recovery facilities. Therefore, with no reported emissions and process evidence that any emissions would be very limited, we concluded that there was no potential for emissions. Adding to this the existence of a MACT floor of no control (because none are controlled), we did not regulate these processes.

The commenter did not provide emissions data that would indicate that these sources emit significant amounts of mercury, or emit mercury at all. Therefore, the final rule does not contain standards for mercury emissions from chlorine purification, brine preparation, wastewater treatment operations, chemical mercury recovery and recovery in batch purification stills.

We point out that the final rule does contain very stringent emission limitations for all point sources that have been demonstrated to be sources of mercury emissions. Further, the work practice requirements in the final rule address fugitive mercury emissions in all areas of the facility, including the chlorine purification, brine preparation, wastewater treatment areas, as well as areas where chemical mercury recovery processes and batch purification stills are located.

B. What Issues Were Raised Regarding the HAP Addressed by the Rule as Proposed?

As noted earlier, we divided the chlorine production category into two subcategories: Mercury cell chlor-alkali plants and chlorine production plants that do not rely upon mercury cells for chlorine production (diaphragm cell chlor-alkali plants, membrane cell chlor-alkali plants, etc.). On July 3, 2002, we issued separate proposals to address the emissions of mercury from the mercury cell chlor-alkali plant subcategory sources (67 FR 44672) and the emissions of chlorine and HCl from both the non-mercury cell chlorine production subcategory sources and the mercury cell chlor-alkali subcategory sources (67 FR 44713). Specifically, we proposed a rule for mercury emissions from mercury cell chlor-alkali plants, and we proposed not to regulate chlorine and HCl emissions from mercury cell chlor-alkali plants and non-mercury cell chlorine production plants under our authority in section 112(d)(4) of the CAA.

Comments were received regarding the proposed action not to regulate chlorine and HCl emissions (*see* Air Docket OAR–2002–0016 or Air Docket A–2002–09). The aspects of these comments related to the mercury cell chlor-alkali plant subcategory can be generally classified into two basic categories: Our statutory authority under section 112(d)(4); and the site-specific risk assessments that formed the basis for our decision.

Comments Related to the Section 112(d)(4) Authority

Comment: Several comments were received related to our decision not to regulate chlorine and HCl emissions from chlorine production under the authority of section 112(d)(4). Some commenters supported this decision and stated the interpretation of our authority under section 112(d)(4) was appropriate and supported by the legislative history. In contrast, other commenters disagreed with EPA's interpretation of section 112(d)(4). Finally, some of the commenters stated that EPA should use its authority under section 112(c)(9)(B)(ii).

One commenter stated that EPA conducted an appropriate analysis to determine that human exposures from ambient concentrations are well below threshold values with an ample margin of safety. According to another commenter, any further regulation of chlorine and HCl emissions from the chlorine production industry would have no environmental benefits, but would result in costs for monitoring, recordkeeping, and reporting efforts to certify compliance with any requirements. The commenter was concerned that a regulation would also stretch EPA's limited resources in monitoring for compliance. Three commenters stated that EPA's interpretation of their authority under section 112(d)(4) was supported by the legislative history, which emphasizes that Congress included section 112(d)(4) in the CAA to prevent unnecessary regulation of source categories. The commenter agreed that under section 112(d)(4), once EPA establishes that a pollutant has a health threshold and that exposure to that pollutant's emissions are below the health threshold, EPA should refrain from setting MACT standards for that pollutant. The commenter further suggested that EPA should use section 112(d)(4) whenever setting emission standards under section 112(d).

Three commenters disagreed with EPA's interpretation of section 112(d)(4). They did not believe that section 112(d)(4) could be used as an alternative to setting MACT standards under section 112(d)(3). One commenter noted that the phrase "in lieu of" was not included in the section 112(d)(4) provisions and that its absence was intentional. In support of their claim, the commenter pointed to section 112(d)(5), which does contain the phrase "in lieu of." The commenter interpreted section 112(d)(4) to mean that health-based thresholds can be considered when establishing the degree of MACT requirements, but not in place of the requirement to establish a MACT floor pursuant to section 112(d)(3).

The commenter also pointed to the provisions of section 112(c)(2) which require the Administrator to establish NESHAP for listed source categories and subcategories. The commenter was concerned that EPA evaluated emissions from chlorine production plants and concluded that since they do not pose a threat to human health and the environment, the Administrator is relieved of her responsibilities to establish a MACT standard. The commenter maintained that this position is not supported by section 112(c)(2).

The commenter also referred to section 112(d)(1), stating that EPA did not have the authority to "make a determination of no regulation for a listed source category or pollutant."

Finally, the commenter referred to section 112(d)(3), which contains the MACT floor provisions. According to the commenter, the intent of the NESHAP program is to develop a MACT

floor, and EPA is not fulfilling the requirements of the CAA by not performing such an analysis. The commenter stated that a majority of facilities identified in the analysis have adequate controls due to State regulations and these controls should be incorporated into the MACT floor evaluation. The commenter was particularly concerned that by not developing a MACT floor, no new-source MACT standards were created. The commenter requested that EPA perform a MACT floor analysis and develop a NESHAP for new sources.

Two of the commenters stated that EPA should support its decision not to regulate the chlorine production source category by citing the provisions of section 112(c)(9)(B)(ii) in addition to the provisions of section 112(d)(4). The commenters stated that the evaluation performed by EPA would also be sufficient for deleting sources under section 112(c)(9)(B)(ii) and that EPA's proposal to not regulate chlorine production is similar to deleting a subcategory of the Chlorine Production source category. Therefore, in addition to using the authority under section 112(d)(4), the commenters suggested that EPA delete the subcategory using the authority under section 112(c)(9)(B)(ii) to avoid any uncertainty over the use of its authority under section 112(d)(4).

Response: The EPA has the authority under CAA section 112(d)(4) to decide not to establish a NESHAP for chlorine and HCl emissions from certain chlorine production facilities. We have decided to limit our use of section 112(d)(4) to the emissions of chlorine and HCl from sources within the mercury cell chlor-alkali subcategory. While we have decided to establish no standards for the emissions of these two HAP from sources in the mercury cell chlor-alkali plant subcategory, we are establishing standards for the mercury emissions from the sources within that subcategory. As explained elsewhere in today's **Federal Register**, we have decided to delete the non-mercury cell chlorine production plants subcategory under CAA section 112(c)(9)(B)(ii). The only HAP emitted by the non-mercury cell chlorine production sources are chlorine and HCl.

Contrary to other commenters claims that our use of section 112(d)(4) is inappropriate, both the statutory language and the legislative history of the provision support our decision not to set limitations for chlorine and HCl emissions from sources in the mercury cell chlor-alkali plant subcategory. The language of section 112(d)(4) provides the Agency with ample discretion to utilize a risk-based approach in determining whether to establish emission standards for those HAP where we determine that the HAP are "threshold pollutants" and that the standard (or no standard) will achieve an "ample margin of safety."

The statutory language in section 112(d)(4) is ambiguous. Thus, under the Supreme Court's decision in *Chevron* v. *NRDC*, 467 U.S. 837 (1984), the Agency has the discretion to interpret the language to allow us to establish NESHAP that do set limitations on certain HAP emitted from sources ("when establishing standards") but to also decide not to set limitations on other HAP emitted from these same sources if the other HAP are threshold pollutants and the risk from the emissions are so low that no standard for that second set of HAP is necessary to protect the public and the environment with "an ample margin of safety."

This approach is consistent with prior decisions EPA has made in the context of two other NESHAP. First, in the NESHAP for combustion sources at pulp mills (40 CFR part 63, subpart MM), we chose not to set a standard for HCl emissions from recovery furnaces, while we did set standards for other HAP emitted from the same sources within the category. We explained this decision in the preamble to the proposed MACT standard and received no adverse comment on the approach (63 FR 18754, 18765–68, April 15, 1998). Second, we proposed to set no standard under section 112(d)(4) for HCl emitted from lime kilns, while we also proposed to set standards for other HAP emitted by these same sources (67 FR 78046 December 20, 2002). We also received no adverse comment on that proposed decision. While we originally proposed to utilize section 112(d)(4) to set no standard for chlorine and HCl from chlorine production sources in a separate notice of the **Federal Register** (67 FR 44713, July 3, 2002), we made it clear that the proposed use of section 112(d)(4) would apply to emissions of these two HAP from mercury cell chlor-alkali sources (as well as the emissions of chlorine and HCl from other chlorine production sources).

We do not agree that Congress' use of the phrase "in lieu of" in CAA section 112(d)(5) so clearly restricts any possible interpretation of CAA section 112(d)(4) such that some form of a MACT standard must always be set even when the criteria of section 112(d)(4) are met. Instead, we interpret that Congress enacted section 112(d)(4) to provide EPA with the discretion to take risk into account and decide that standards need not be set when the HAP are threshold pollutants and levels being emitted are below the threshold value with an ample margin of safety. Moreover, in each case where we have exercised authority under section 112(d)(4), we have established standards in each category (or subcategory, as here) for those pollutants that do not satisfy the threshold pollutant and ample margin of safety statutory criteria.

We also disagree with the commenter who argued that the provision in section 112(c)(2), which requires the Administrator to establish emission standards for listed categories and subcategories, has much bearing on our use of section 112(d)(4) in this circumstance. By setting a standard for the emission of mercury from the mercury cell chlor-alkali plant subcategory, we are fulfilling our obligations under section 112(c)(2). As stated earlier, we have utilized the same approach in our other uses of section 112(d)(4), *e.g.*, HCl emissions from combustion sources at pulp mills and lime production sources.

The statutory language in section 112(d)(1) and (3) does not prevent us from deciding that no emission standard is necessary for a particular threshold pollutant which is being emitted at levels well below the ample margin of safety when we are also establishing standards for HAP emitted from sources in that same category or subcategory. This approach to our use of section 112(d)(4) is consistent with the statutory language of section 112(d)(1) and (3). We are establishing emission standards for the listed category or subcategory, but are deciding that no MACT floor need be established and no emission standard set for those HAP that meet the criteria of "threshold pollutant" and "ample margin of safety."

With regard to the concerns the commenter raised about the failure to set a standard for new sources, our review of the mercury cell subcategory indicates that no new mercury cell chlor-alkali plants will be constructed. Given that our emission standard for new sources in the mercury cell chlor-alkali subcategory prohibits the emission of mercury, we do not believe any new sources using mercury cells for chlorine production will ever be constructed (or reconstructed). Therefore, this no-mercury emissions requirement in the final rule will, in effect, also ensure that there are no chlorine or HCl emissions from new mercury cell facilities.

In response to other commenters' suggestion that we utilize the authority of section 112(c)(9)(B)(ii) to delete the chlorine production category, we have decided to exercise our authority under that statutory provision for the non-mercury cell chlorine production subcategory. That decision is discussed in a separate notice in today's **Federal Register**. However, we are not deleting the mercury cell chlor-alkali plant subcategory because the sources within the category also emit mercury, and we are establishing emissions standards for mercury emissions in today's final rule.

Comment: Some commenters concluded that we did not establish either cancer or noncancer thresholds for HCl and chlorine and, therefore, it is illegal for EPA to attempt to use section 112(d)(4) to set standards.

Response: The "threshold level" in section 112(d)(4) refers to the level of concentration of a chemical under which no health effects are expected from exposure, although this term is not defined in section 112. Further, section 112 does not address the process that must be followed to "establish" a threshold level.

The reference concentration (RfC) is a "long-term" threshold, defined as an estimate of a daily inhalation exposure that, over a lifetime, would not likely result in the occurrence of noncancer health effects in humans. We have determined that the RfC for HCl of 20 micrograms per cubic meter ($\mu g/m^3$) is an appropriate threshold value for assessing risk to humans associated with exposure to HCl through inhalation *http://www.epa.gov/iris/subst/0396.htm*.

In cases where we have not studied a chemical itself, we rely on the studies of other governmental agencies, such as the Agency for Toxic Substances and Disease Registry (ATSDR) or the Office of Health Hazard Assessment of California's Environmental Protection Agency (CAL EPA), for RfC values. The CAL EPA developed an RfC value of 0.2 $\mu g/m^3$ for chlorine based on a large inhalation study with rats.

Acute exposure guideline level (AEGL) toxicity values are estimates of adverse health effects due to a single exposure lasting 8 hours or less. The confidence in the AEGL (a qualitative rating of either low, medium, or high) is based on the number of studies available and the quality of the data. Consensus toxicity values for effects of acute exposures have been developed by several different organizations, and we are beginning to develop such values. A national advisory committee organized by EPA has developed AEGL's for priority chemicals for 30-minute, 1-hour, 4-hour, and 8-hour airborne exposures. They have also determined the levels of these chemicals at each exposure duration that will protect against discomfort (AEGL1), serious effects (AEGL2), and life-threatening effects or death (AEGL3). Hydrogen chloride has been assigned AEGL values (65 FR 39264, June 23, 2000), including the 1-hour, AEGL1 of 2,700 $\mu g/m^3$ used in our revised analysis. Chlorine has also been assigned AEGL values (62 FR 58840), including the 1-hour AEGL1 of 1,500 $\mu g/m^3$ used in our revised analysis.

We maintain that the listing of health thresholds by EPA and other organizations in the public domain as discussed above has "established" health thresholds for HCl and chlorine. Further, the recognition of these levels by EPA, ASTDR, and CAL EPA indicates that chlorine and HCl are threshold pollutants.

Moreover, we provided the public an opportunity to comment on the thresholds for chlorine and HCl that we used in our original analysis for the proposed action (67 FR 44716). We used the same threshold level for HCl for both the proposed and final NESHAP for the pulp and paper mill category. We have also used the same threshold for HCl in the proposed and final NESHAP for lime production (67 FR 78046; final action is anticipated in August 2003). There is no requirement in section 112(d)(4) that EPA develop or finalize a threshold for a particular HAP in a certain manner. The thresholds we have used for both HCl and chlorine are consistent with the statutory language in section 112(d)(4).

Comments Related to the Risk Assessment

Comment: In the analysis for the proposed action (67 FR 44713), we used the HCl RfC to determine the long-term health effects of chlorine emissions, since chlorine photolyzes very quickly to HCl in sunlight. Two comments supported this methodology and stated that our decision was based on sound scientific knowledge of the pollutants of concern.

In contrast, two other commenters did not agree with our use of the HCl RfC as a threshold level for chlorine. The commenters stated that not all of the annual chlorine emissions can be considered as HCl and, therefore, the chlorine exposure was underestimated. The commenters argued that chlorine emissions will not undergo photolysis to convert to HCl when there is not bright sunshine (*i.e.*, at night or on cloudy days).

Response: The widely accepted fact that chlorine is photolyzed in sunlight formed the basis for the assumption in the original risk assessment that chronic exposure to chlorine would not occur. As a result of this comment, we re-examined the literature on the atmospheric fate of chlorine to validate our original assumption.

The additional information obtained from the literature confirmed our earlier information. There are several different pathways that molecular chlorine can take, including photolysis (reaction with light), reactions with hydroxyl radicals, reactions with oxygen atoms, and reactions with water vapor. Each pathway results in different amounts of Cl_2 being removed from the troposphere, and different pathways are predominant at different times of the day. However, photolysis is the primary pathway.

Therefore, this information did not fundamentally change the assumption made in the original risk assessment, which was that on a long-term basis, individuals will be exposed more to HCl formed from the photolysis of chlorine than to chlorine. However, the commenters are correct that there will be situations where individuals will be exposed to chlorine. Therefore, in addition to the assessment where we considered only acute exposure to chlorine, we concluded that it was appropriate to consider the effects of chronic exposure to chlorine emissions from chlor-alkali plants. In order to provide an upper bound estimate of the chronic risks to compare with the lower bound estimates assuming that all chlorine was converted to HCl, we conducted modeling assuming that no chlorine is photolyzed.

In general, we consider an exposure concentration which is below the RfC concentration (what we call a hazard quotient of less than 1) to be "safe." This is based on the definition of RfC. The RfC is a peer reviewed value defined as an estimate (with uncertainty spanning perhaps an order of magnitude) of a daily inhalation exposure to the human population (including sensitive subgroups) that is likely to be without appreciable risk of deleterious noncancer effects during a lifetime (*i.e.*, 70 years).

As discussed above, we conducted additional modeling for major source facilities within the subcategory using the same model used for the proposed action (ISCST3) to estimate chronic chlorine exposure using the assumption that no chlorine is photolyzed to HCl. The hazard quotients resulting from this additional modeling defined the upper bound of our risk assessment. The highest upper-bound hazard quotient estimated by the model is just over 0.3. (For more details regarding this revised risk assessment, refer to table 2 of the responses to comment document, available in the docket.) Given the health protective assumptions used in

this analysis, the value of 0.3 represents a hypothetical exposure that is well above what we would expect actual exposures to be. This is because chlorine is converted to HCl in the presence of sunlight within a few minutes. In addition, the hazard quotient of 0.3, which results from this exposure scenario is well below the safe value of 1. Thus, we have concluded that, even assuming that some chronic exposure to chlorine may occur, that none of the major sources included in this subcategory will have emissions of chlorine or HCl that exceed a level of exposure which is adequate to protect public health and the environment with an ample margin of safety.

Comment: Two commenters did not support EPA's use of the AEGL2 for use as a short-term exposure limit for chlorine and HCl. One commenter stated that the AEGL2 values would not sufficiently protect public health because they would allow emissions at levels that cause "discomfort," and according to the commenter, discomfort is an adverse health effect. The commenter also complained that EPA did not explain why it chose to use AEGL2 rather than AEGL1 or AEGL3. The commenter explained that although emissions from chlorine plants did not exceed AEGL2 values, the emissions may exceed AEGL1 values, and if they did, the proposed action would not meet the statutory requirements. Another commenter stated that AEGL limits are not appropriate for assessing daily human exposure scenarios because they were developed for emergency planning. The commenter recommended that EPA use the American Conference of Governmental Industrial Hygienists (ACGIH), which has a 1-hour Short Term Exposure Limit (STEL) similar to the AEGL1 value of 1 part per million (ppm) for chlorine and is used to protect against eye and mucous membrane irritation. The commenter stressed that EPA must use conservative benchmarks before concluding that an ample margin of safety exists.

Response: The AEGL values represent short-term threshold or ceiling exposure values intended for the protection of the general public, including susceptible or sensitive individuals, but not hypersusceptible or hypersensitive individuals. The AEGL values represent biological reference values for this defined human population and consist of three biological endpoints for each of four different exposure periods of 30 minutes, 1 hour, 4 hours, and 8 hrs.

As utilized in the proposed action, the AEGL2 1-hour concentrations for chlorine and HCl are 5,800 $\mu g/m^3$ and 33,000 $\mu g/m^3$, respectively.

The 1-hour AEGL1 concentration for chlorine is 2,900 $\mu g/m^3$ and the corresponding value for HCl is 2,700 $\mu g/m^3$. The ACGIH short term exposure limit (STEL) for chlorine, which is 1 ppm is approximately equal to the AEGL1 value of 2,900 $\mu g/m^3$.

Although we stand by our original analysis, which used the AEGL2 level, we have incorporated the commentor's suggested use of the AEGL1 values (possibly with a safety factor) for determining whether an ample margin of safety has been obtained. Therefore, we simply compared the short term (1-hour average) modeling results from the original acute risk assessment to the AEGL1 values. These results were obtained by modeling the maximum allowable hourly emissions reported in the section 114 responses for each of the sources. For plants that did not report fugitive emissions, fugitive emissions were estimated using worst-case emission factors.

The maximum-modeled 1-hour chlorine concentration for two of the three plants with the mercury cell chlor-alkali process is less than 5 percent of the AEGL1 (and ACGIH) value for chlorine. Further, the highest modeled concentration for any plant, 155 $\mu g/m^3$, is less than 6 percent of the AEGL1 values. The highest modeled 1-hour HCl concentration for any plant, 32 $\mu g/m^3$, is less than 2 percent of the AEGL1 value for HCl. Furthermore, all of the mercury cell chlor-alkali facilities also produce chlorine using a non-mercury chlorine production process (*i.e.*, diaphragm cells). The modeled emissions represent chlorine and HCl emissions from both processes. Therefore, the chlorine and HCl emissions from the mercury cell chlor-alkali process would be even lower.

Based on this comparison, we conclude that the chlorine and HCl emissions from mercury cell chlor-alkali production plants do not represent an unsafe level of acute exposure. We further maintain that, along with the chlorine exposure assessment, this proves that an ample margin of safety is provided with no additional control.

Comment: Two commenters supported EPA's method of selecting a risk assessment approach to meet the unique needs of the chlorine production industry. The commenters agreed that the risk assessment methodology should not be interpreted as a standardized approach that would set a precedent for how EPA will apply CAA section 112(d)(4) in future cases. Furthermore, the commenters stated that the degree of conservatism built into all aspects of the risk assessment conducted for the chlorine production source category could vary greatly in future risk assessments for other source categories. The commenters stressed that the conservative assumptions made in the health effects assessment, emissions estimates, and exposure assessment were appropriate for the proposed action.

In contrast, one commenter stated that the risk assessment fell short of the Agency's prior practice. According to the commenter, whenever EPA has made determinations to regulate a specific pollutant based on health considerations (*e.g.*, national ambient air quality standards (NAAQS) for ozone and PM), the Agency evaluated health effects and exposure in great detail. The commenter contended that in this case, EPA appears to be content with "the bare and unsupported assumptions about what health levels are safe." The commenter argued that it was not appropriate for EPA to use a rigorous approach when setting standards and a more cursory approach when making a decision not to regulate.

Response: We disagree with the one commenter's characterization of the assessment that forms the basis for this decision, and we strongly dispute the characterization of the assessment as "bare and unsupported." As discussed elsewhere in this preamble, we maintain that the RfC and AEGL values used as benchmarks for this assessment are scientifically sound and appropriate. The emissions data and other inputs used for this analysis, which were provided by the industry and checked by our staff, are representative of the industry.

In this assessment, the predicted health effects estimated, using very conservative inputs and assumptions, were well below the recognized health thresholds. While our approach in this particular action may not be the same as an approach for a NAAQS, we believe that it has been certainly more than "cursory." We have looked at emissions and exposure data for each of the major sources in the subcategory. We have established hazard indices for chlorine and HCl for each major source in the subcategory. We performed a qualitative ecological assessment. Moreover, in response to comment received, we have revised our analyses and taken into account comments that we have received when performing these reassessments. We will base each risk assessment for this and future regulatory action on sound scientific principles.

Comment: In the proposed action, the risk assessment modeling was conducted by placing receptors at the geographic center of census blocks within 2 kilometers of the site and in the population-weighted centers of census block groups or census tracks out to 50 kilometers. Two commenters did not agree with this methodology for determining receptor location for threshold pollutants. One commenter stated that EPA's methodology would be more appropriate for cancer causing agent, where the risk is based on probabilities of health effects. The commenter argued that for noncancer (*i.e.*, threshold pollutants) compounds, placing the receptors at the center of census tracks would not properly identify the highest impacts close to the facility. They felt that it was more appropriate to measure the exposure of the most exposed individual (*e.g.*, someone living at the fence line of a facility or directly downwind).

Response: We certainly agree with the commenters that the greatest impacts will likely occur near the facility for this source subcategory. However, we do not agree with the commenters that our approach fails to meet statutory requirements. We do not feel that considering an "ample margin of safety" means that we must demonstrate no risk or adverse health effects for a theoretical person living at the fence line. Rather, it is appropriate to assess the risks at locations where people most likely reside. A census block is the smallest geographic unit for which the Census Bureau tabulates 100 percent data. While census blocks in rural areas may be larger, many blocks correspond to individual city blocks in more populated areas. The commenter is correct in that an individual could live closer to the plant than the center of the census block and our approach would have slightly underestimated risk. It is just as likely, however, that the closest individual could live farther from the plant than the center of the census block causing our risk estimates to be slightly overestimated. By placing receptors at the center of populated census blocks on all sides of a facility, we have evaluated people living "downwind." In conclusion, we continue to feel that placing a receptor in the geographic center of populated census blocks near a facility is a well established approach to exposure modeling which results in a reasonable approximation of estimating the risks where people actually live, and we maintain that this methodology is appropriate for actions taken under the authority of section 112(d)(4).

Comment: One commenter stated that all chlorine emissions from chlorine production facilities that are collocated with other source categories need to be reviewed as a whole when evaluating public health risk, adverse environmental effects, and possible control strategies. The commenter stressed that other sources of chlorine and HCl should be included in the risk assessment under section 112(d)(4). The commenter was concerned that not accounting for all chlorine and HCl emissions from a facility would provide the community with a false sense of assurance of protection and is not consistent with the legislative intent of the CAA to consider cumulative HAP exposure issues through an integrated approach under section 112(d), 112(f), and 112(k). Therefore, the commenter requested that EPA evaluate the potential for adverse health and environmental impacts using conservative risk assessment methodology that incorporates all known chlorine and HCl emissions from a contiguous facility.

Response: Section 112 of the CAA requires us to list categories and subcategories of major sources and area sources of HAP and to establish NESHAP for the listed source categories and subcategories. In directing us how to establish MACT emission limits, section 112(d)(3) of the CAA requires us to set the emission limitation at a level that assures that all major sources achieve the level of control at least as stringent as that already achieved by the better-controlled and lower-emitting sources in each source category or subcategory. Therefore, the entire MACT program is structured on a source category-specific basis. All MACT standards developed to date have addressed emissions from specific source categories.

There are instances where mercury cell chlor-alkali facilities are collocated with other source categories. However, based on the risk assessment for chlorine and HCl emissions from mercury cell chlor-alkali plants, the predicted impacts from chlorine and HCl at these plants are extremely low. We believe that the human health and environmental impacts from all sources in the subcategory even when collocated with other chlorine and HCl emissions will still be within an ample margin of safety to protect the public health, and will not cause adverse environmental effects. Moreover, as indicated in the preamble to the proposed action, most major processes at the sites where mercury cell chlor-alkali facilities are located are subject to, or will be subject to, NESHAP to reduce HAP emissions (67 FR 44714, July 3, 2002). Therefore, it would be inappropriate to include emissions from those sources in an assessment for the mercury cell chlor-alkali subcategory conducted under the authority of section 112(d)(4).

Comment: Two commenters stated that the environmental effects analysis was not adequate. One commenter stated that potential ecological effects of HCl emissions have not been properly referenced. One commenter stated that EPA's proposed action falls short of its obligation to protect against environmental effects. According to the commenter, EPA has understated its statutory obligation in the proposed action. The commenter referred to the legislative history, which indicates that CAA section 112(d)(4) requires standards that "would not result in adverse environmental effects which would otherwise be reduced or eliminated." The commenter listed the several shortcomings in the EPA's environmental assessment.

The commenter concluded that although EPA acknowledged that it had an obligation to ensure that any standards set under section 112(d)(4) did not have any adverse environmental effects, the Agency did not properly consider the issue. Therefore, the commenter stated that EPA could not promulgate standards under section 112(d)(4) without contravening the CAA.

Response: While CAA section 112(d)(4) makes no mention of environmental effects, we took the potential of such adverse effects into account when we issued our proposed action. The level of our analysis at proposal was adequate to satisfy the requirements of section 112(d)(4). The commenters did not suggest that they believed there was the potential for adverse environmental effects from HCl or chlorine emissions from mercury cell chlor-alkali plants. Were there any evidence that such adverse effects were likely, or even possible, we would have conducted a more intensive ecological risk assessment.

The commenters are correct, however, that we did not discuss the ecological effects of chlorine. This was because, as was stated in the proposal preamble, we did not perform a separate evaluation of chronic chlorine exposure because chlorine is converted to HCl in the atmosphere so rapidly.

Atmospheric exposure is the primary pathway for environmental effects from chlorine emissions. However, since most chlorine is converted to HCl, studies have focused on the effects of HCl on vegetation. Although plant exposures to elevated levels of chlorine can cause plant injury, it tends to be converted to other, less toxic forms rather rapidly in plants and may not result in the direct accumulation of

toxic pollutant residuals important in the food chain.

Plant studies have found foliar damage due to chlorine emissions, decreased levels of chlorphyll a and b, decreased leaf areas, obvious chlorosis, and a decline in fruit production due to chlorine emissions.

There is evidence of effects to animals due to accidental and/or catastophic exposures, but the chlorine concentrations of these exposures are unknown. However, there are no data on exposure to historic or atmospheric concentrations.

More information is available on the effects of chlorine from aquatic exposures. However, there is no evidence that suggests that emissions of chlorine from industrial sources in the air contribute significantly to aquatic concentrations of chlorine.

One study reported a significant decrease in phytoplankton activity following exposure to 0.1 ppm chlorine in cooling tower water. Additional laboratory studies showed that continuous exposure to 0.002 milligrams per liter (mg/L) total residual chlorine (TRC) resulted in depressed algal biomass in naturally-derived microcosms.

When exposed continuously for 96 hours to 0.05 mg/L TRC, the Eurasian water milfoil showed a significant reduction in shoot and dry weights, shoot length, and chlorophyll content.

Aquatic invertebrates are very sensitive to chlorine and reaction products of chlorine, with early life stages showing the most sensitivity. For example, free chlorine, monochloramine, and dichloroamine have been shown to reduce the rate of oyster larvae survival. Many studies have been performed, and the results are highly variable depending on the chlorine species, the lifestage of the invertebrate, and other factors such as salinity. The most sensitive aquatic species appears to be molluscan larvae, with lethal concentration 50% (LC_{50}) of 0.005 mg/L. Sublethal effects have also been studied, including reduced growth, reduced motility, and reproductive failure.

The effects on fish also vary depending on the life stage and fish species and environmental factors, such as the pH, temperature, and type of chlorine species. Larval stages are more susceptible to effects, and freshwater species are more sensitive than marine species. Free chlorine is generally more toxic than residual chlorine; where the form of chlorine is dependent on the pH of the water. Sublethal effects such as avoidance, reduction of diversity in chlorinated effluents, reduction or elimination of spawning, abnormal larvae, reduced oxygen consumption, and gill damage have been noted. Many LC_{50} values were reported, ranging from 0.08 mg/L after 24 hours of exposure to TRC to 2.4 mg/L after 0.5 hours of exposure to TRC.

Acute and chronic exposures to predicted chlorine and HCl concentrations around the sources are not expected to result in adverse toxicity effects. These pollutants are not persistent in the environment. The chlorine and HCl emitted should not significantly contribute to aquatic chlorine concentrations and are not likely to accumulate in the soil. Chlorine rapidly converts to HCl in the atmosphere, and chlorine and HCl are not believed to result in biomagnification or bioaccumulation in the environment. Therefore, we do not feel there will be adverse ecological effects due to chlorine and HCl emissions from mercury cell chlor-alkali plants.

C. What Issues Were Raised Regarding the Compliance Date?

Comment: Commenters requested an extension of the compliance date, which was proposed to be 2 years from the effective date of the final rule. The commenters recommended that the compliance date should be changed to 3 years after promulgation. The commenters stated that affected facilities are being required to install costly, complex control and monitoring equipment, as well as establish additional operating and maintenance procedures at their facilities in order to ensure compliance with the emission limitations and work practice requirements of the proposed rule. The commenters believed that 2 years was not a sufficient period of time to complete such tasks, specifically the continuous monitoring requirements.

Response: We agree that since the existing sources are required to install complex monitoring equipment and to establish additional operating and maintenance procedures, it is reasonable to allow more time than the proposed 2-year compliance period. Section 63.6(c)(1) of the NESHAP General Provisions states that "* * * in no case will the compliance date * * * exceed 3 years after the effective date of * * *." Therefore, the final rule specifies that the compliance date for existing sources is 3 years after the effective date of the final rule.

D. What Issues Were Raised Regarding the Emission Limitations?

Comment: One commenter, which submitted comments after the close of the comment period, recommended that EPA re-define MACT to ban the use of mercury cell technology. The commenter explained that this would be easily achievable because the majority of the chlorine production industry already uses other, superior technologies such as membrane cells and diaphragm cells. The commenter claimed that EPA abused its authority to establish subcategories of emission sources by creating a subcategory of "mercury cell chlor-alkali plants" within the chlorine production source category which limits the pool of facilities upon which the MACT floor is based to those who create dangerous pollution, as opposed to those industry leaders that use non-polluting and readily available equipment.

The commenter further listed a lack of confidence that the mercury cell process could be adequately controlled. The commenter explained that the work practice requirements which are proposed to address fugitive emissions, the largest source of emissions from this process, are too weak.

Finally, the commenter stated that converting all mercury cell plants to membrane cells would still be cost-effective, and that their estimate of the cost to convert all mercury cell plants to other technologies ($920 million) was justifiable given the significant threat to public health and the environment posed by mercury.

Response: We disagree with the commenter that we abused our authority to create subcategories by subcategorizing the chlorine production industry and only including mercury cell plants in the MACT floor analysis. It is our general policy to subcategorize when there are technical distinctions among classes, types, or sizes of sources, and manufacturing processes of sources, that would impact setting an appropriate emission limit even when creating the subcategories leads to some with a small number of sources. This policy is supported by the broad discretion provided to the Agency to establish subcategories under CAA section 112(c), the legislative history, and EPA's prior rulemakings.

In general, EPA has previously taken the position that subcategorization is appropriate where types of emissions and/or types of operation make use of the same air pollution control technology infeasible. The EPA's rulemakings reflect this general understanding and provide criteria for subcategorization that focus on the appropriateness of applying similar technology-based requirements at different sources.

The EPA feels that the subcategorization scheme it has used for this category of sources (as described above and in the proposed rule) is consistent with the statute, the legislative history, and EPA's past implementation of section 112(c) and the MACT program. The HAP emitted by the two subcategories (mercury cell chlor-alkali plants and non-mercury cell chlorine production) plants are different—while plants in both categories emit chlorine and HCl, only plants in the mercury cell subcategory emit mercury. The processes used to produce chlorine that the plants in the two subcategories used are generally different (because of the use of the mercury cells). Thus, no change was made in response to this comment and the final rule does not ban mercury cells (except the final rule does prohibit the emission of mercury from new or reconstructed chlor-alkali production facility sources).

With regard to the cost effectiveness of a ban of mercury cell chlor-alkali facilities, the commenter did not provide any basis for their estimate so we could not verify these costs. Further, we do not feel that "conversion" accurately describes the replacement of a mercury cell plant to another technology. There is little salvageable from a mercury cell plant that can be used in the construction of a membrane cell plant, so the demolition of the mercury cell plant followed by the construction of a membrane cell plant is a more accurate characterization.

Therefore, we did not promulgate a final rule that requires non-mercury technology for chlorine production.

Comment: Two commenters did not agree with the proposed "beyond-the-floor" emission limitations. They stated that there is no justification for EPA to set emission limits beyond the floor, as proposed. The commenters stressed that EPA is required to assess the cost-benefit relationship when considering "beyond the MACT floor" limitations. According to the commenters, the Agency did not set forth an accurate basis for costs associated with meeting the MACT floor or cost/benefits associated with meeting the "beyond the MACT floor" emission limitations.

These commenters were also concerned that the very low emission limits required by EPA's beyond-the-floor determination cannot be obtained by the industry as a whole. Specifically, the commenters stated that the Agency lacks high quality point source emission data upon which to base their "beyond-the-floor" limits. The commenters pointed out that the mercury emission limitations for hydrogen vent gas streams are based on limited data provided by a single facility in Maine that has been closed for nearly 2 years. The commenters maintained that for all of the eleven plants combined (ten affected plants plus the closed Maine plant), there was very little high quality point source emission data. Due to the significant chance that the data used to develop the standard are biased and quantitatively non-representative, the commenters stated that the Agency was not justified in moving beyond the floor to the most stringent value ever obtained by the industry.

The commenters further argued that EPA's conclusion that the "beyond-the-floor" emission limitations can be met with existing, commercially available control equipment is not supported and thereby seriously flawed. The commenters pointed out that EPA presented no data in the preamble or elsewhere in support of their decision that the proposed standards could be met with commercially available control systems.

Response: First, we disagree with the commenters' assertions that we did not have justification for going beyond the floor, and that we did not have an accurate basis for costs associated with meeting the MACT floor or meeting beyond-the-floor emission limitations. We conducted a very detailed plant-specific cost impacts analysis which is available in the docket. The commenters did not provide any specific comments on this detailed analysis or any specific data or rationale to refute our cost analysis. Therefore, we stand by our original analysis and have not made any changes to the cost impacts approach. Based on our analysis, we concluded that the costs/benefits of going beyond the floor are warranted. Given the persistent nature of mercury in the environment and its associated health and welfare impacts, we continue to feel that the additional emission reductions that will be achieved by the beyond-the-floor option are warranted considering the associated costs.

However, in the proposal preamble (67 FR 44682), we acknowledged that there was uncertainty associated with the level of control associated with the beyond-the-floor option proposed because the molecular sieve adsorption control technology is no longer commercially available, and because the plant representing this level of control is no longer operating. We did not receive any comments indicating that the molecular sieve control technology is commercially available. Further, since the plant has closed, we were unable to obtain additional information to further scrutinize the data to ensure that they were not biased and quantitatively non-representative. Therefore, we have concluded that we cannot fully demonstrate that the proposed beyond-the-floor standard is achievable using commercially available technology.

In the proposal preamble, however, we also stated that we were retaining the option of setting the standard at the next lowest normalized emission value of 0.076g Hg/Mg Cl_2 for plants with end box ventilation systems. The plant with this emissions level controls its by-product hydrogen system with a series of iodine and potassium iodide impregnated carbon adsorbers, and their end box ventilation system vent with a condenser and demister, which are commercially available technologies. Further, in the documentation for the proposed standard, we determined on a plant-specific basis which commercially available technologies could be made to comply with the proposed standard. The commenters provided no comment on why the application of the very specific application of these technologies could not achieve the emission limitations.

The emissions estimates for the facility with normalized emissions of 0.076 g Hg/Mg Cl_2 are based on weekly testing using methods that are modifications of EPA Methods 101A and 102. The primary difference between the methods used by the facility and the EPA Reference Methods is that the sampling is not isokinetic. We discussed our opinion that data obtained using this type of modified method were acceptable to use in MACT standards in the proposal BID. Therefore, it can be considered that the emission estimates used to establish the level of 0.076 grams Hg/Mg Cl_2 are based on weekly performance tests. We do not consider such data to be of low quality. Therefore for the final rule, we have selected the 0.076 grams Hg/Mg Cl_2 beyond-the-floor option as MACT for plants with end box ventilation systems.

For the by-product hydrogen stream for plants without end box ventilation systems and mercury thermal recovery unit vents, there were no questions raised regarding the availability of the control techniques used at the lowest emitting plants that formed the basis for the proposed emission limitations. Further, at proposal, we examined the data used to establish the emission limitations and determined that they were of adequate quality to be used to establish standards. Therefore, the final rule retains the proposed emission limitations for these emission sources.

Comment: Commenters were concerned that the proposed mercury

emission limitation for by-product hydrogen had a daily averaging period for continuous compliance. According to the commenters, the Agency developed the proposed standard using annual average emissions and actual annual production and then interpolated to a daily limit without regard to statistical error. Therefore, the commenters requested either an annual average emission rate limit or that the daily limit be set at not less than two times the annual limit divided by 365 (days).

Response: The commenters are correct in that the normalized mercury emissions used to establish the standards were based on annual average emissions and annual actual chlorine production. Therefore, the commenters' concerns about the variability of the control systems over a year and the ability to comply on a daily basis with this limit have merit. We considered the two options offered by the commenters (a 365-day compliance period and adjustments to account for daily variations).

We do not feel that it would be appropriate to apply a generic multiplier to the limit for mercury cell chlor-alkali plants to account for short-term variation. In addition, mercury cell emissions data were not available to assess the variability in emissions from these emission points. Therefore, we concluded that the emission limitation should reflect an annual average. This would be consistent with the data used to create the emission limitation and would allow for short-term variations in operations and control device performance.

The final rule is allowing weekly monitoring/testing as an alternative method to determine continuous compliance with the emission limitations. In order to be consistent with the continuous compliance approach, we concluded that the by-product hydrogen/end box ventilation emission limitation in the final rule should be annualized on a 52-week rolling basis. Specifically, the final rule requires that mercury emissions from all by-product hydrogen streams and end box ventilation system vents not exceed 0.076 grams $Hg/Mg\ Cl_2$ for any consecutive 52-week period.

E. What Issues Were Raised Regarding the Work Practices?

Comment: One commenter recommended that EPA establish numerical standards for fugitive emissions. The commenter maintained that, absent published information on good mass balance analyses performed at chlor-alkali facilities, one can only assume that significant mercury losses are occurring through fugitive emissions. Accordingly, the commenter felt it is crucial that the EPA step up efforts to address all potential release routes from such facilities, including fugitive emissions.

Another commenter, which submitted comments after the close of the comment period, expressed the view that the mercury consumed cannot be accounted for in material balances. This commenter asserted that the proposed rule failed to address the majority of the true annual mercury emissions from the mercury cell chlor-alkali industry. The commenter explained that the mercury used in this industry is not incorporated into final products or consumed in the process, so all mercury purchased is used to replenish mercury that has been lost from the manufacturing process. The commenter compared the amount of mercury purchased by the industry in 1994 (136 tons) to EPA's estimate of annual emissions (22,200 pounds or 11.1 tons) and concluded that the proposed rule fails to account for nearly 90 percent of the true mercury emissions from this industry. The commenter drew this conclusion based on the assumption that most of the mercury would be released to the air rather than transferred off-site as solid waste or accumulated in on-site tanks and ponds. The commenter noted that EPA's estimate of annual emissions was based on outdated and inadequate estimates of fugitive emissions which were based on short-term measurements taken when fugitive emissions were non-representatively low.

One of these commenters, who submitted comments after the comment period, recommended that EPA require both monitoring of fugitive emissions from cell rooms and waste storage areas and establish a reduction goal for such emissions. According to the commenter, technologies are available to quantify airborne mercury concentrations continuously, and in combination with estimates of air flow rates, estimates of fugitive loss rates under selected conditions could be made and could serve as the basis for reduction targets.

Response: The issue of unaccounted for mercury has been the subject of intense scrutiny from other groups within EPA and the industry. As part of the Great Lakes Binational Toxics Strategy, mercury cell chlorine producers annually report the total mercury consumption for the industry. From the baseline consumption of 160 tons per year (tpy) for the years 1990–1995, the industry reported an 81 percent reduction of mercury consumed in 2001 (30 tpy). One of the commenters characterized the 2001 consumption as an outlier, but the 79 tpy consumed in 2000 still represents a significant decrease from the baseline level.

Even with this decrease in consumption, significant mercury remains unaccounted for by the industry. The mercury releases reported to the air, water, and solid wastes in the 2000 Toxics Release Inventory (TRI) totaled around 14 tons. This leaves around 65 tons of consumed mercury that is not accounted for in the year 2000.

While it may appear to the commenters that the discrepancy in the mercury material balance is the result of fugitive emissions, there is little empirical evidence to support this conclusion. The commenters did not provide any emissions data to support their assertion. Furthermore, industry personnel claim that mercury which condenses and accumulates in pipes, tanks, and other plant equipment makes up a large component of the unaccounted for mercury. While the commenters completely discount this claim by the industry, it is relevant to consider the very high density of mercury. For instance, the 65 tons of unaccounted for mercury in 2000 averages just over 7 tons per plant. One gallon of mercury weighs around 113 pounds, meaning that around 124 gallons of mercury would be unaccounted for per plant. This is a very small percentage (less than 2 percent) of the amount of mercury typically on site at most facilities. However, the industry is also unable to fully substantiate their theory. Therefore, the fate of all the mercury consumed at mercury cell chlor-alkali plants remains somewhat of an enigma.

We agree that work practice standards should only be set when it is not feasible to prescribe or enforce an emission standard. Indeed, our reasons for establishing work practices instead of numerical limits are based on factors associated with the practicality and feasibility of setting a realistic limit against which compliance can be measured and enforced.

First, data are not available to establish a numerical emission standard for fugitive emissions. As stated in the proposal preamble (67 FR 44680), emissions data for fugitives from cell rooms and waste storage areas are very limited. Second, we do not agree with the commenter's implication that available measurement technologies could support enforcing a numerical emission standard for the following reasons:

- Mercury emission monitors have not been used to monitor fugitive emissions at mercury chlor-alkali facilities for compliance demonstrations;
- The variability in the number of and location of exhaust vents at each facility affects the amount of air moved through the cell rooms and thus affects the mass emission rate of the fugitives; and
- The variability of the cell room roof configuration affects the feasibility of using the continuous emissions monitors at each facility.

Therefore, the establishment of numerical emission limitations for fugitive emissions from the cell room and other areas is "not feasible," as defined in CAA section 112(h)(2)(B). Thus, the final rule retains the work practice elements of the proposed rule.

However, in response to the concerns about unaccounted for mercury, we did add a provision in the final rule that requires each facility to record and report the mercury consumed each year. While there are no mercury consumption reduction targets in the final rule, we believe that reporting mercury consumption on a plant-specific basis will encourage additional action to identify unaccounted for mercury and reduce mercury consumption.

Comment: A commenter that submitted comments well after the close of the comment period expressed the opinion that there was a fundamental flaw in the proposed rule because the proposal will weaken existing sources' obligations to limit mercury emissions from the cell room. They cited 42 U.S.C. § 7412(d)(7), which prohibits emission standards from weakening existing standards. This commenter summarized the 40 CFR part 61 mercury NESHAP, which requires mercury cell chlor-alkali plants to not emit more than 2,300 grams per day of mercury from the entire facility, including the cell room, the by-product hydrogen streams, the end box ventilation system vents, and other sources of mercury. The commenter stated that even if emissions from all other points were zero, emission from the cell room cannot exceed 2,300 grams per day. The commenter acknowledged that an owner or operator may forego cell room emission testing and assume that cell room emissions are 1,300 grams/day, but pointed out that complying with these work practices does not absolve the owner or operator of the obligation to meet the applicable numeric emission standard.

The commenter contrasted this with the proposed rule, which established numerical emission standards for by-product hydrogen streams, end box ventilation systems, and mercury thermal recovery unit vents, but not for cell room fugitive emissions. The commenter claimed that emissions from the cell room will be able to exceed 2,300 grams/day so long as the work practices are followed, when the rule as proposed prohibits such a result.

The commenter concluded that it is not sufficient to say that the work practices that have been proposed are more stringent than the existing requirements, because neither the existing nor proposed work practices by themselves require any given numeric level to be achieved. They argued that the existing numeric limit provides EPA and the public with an enforceable limit of performance to which owners and operators can be held. The commenter went on to indicate that such a numerical standard is particularly necessary, as plants are currently emitting far more than 2,300 grams per day of mercury. To support this assertion, the commenter provided information indicating that mercury cell plants add much more mercury to their cells than 2,300 grams per day, and they concluded that cell room emissions is a very likely way that mercury is lost. In conclusion, the commenter stated that it would be inappropriate for EPA to rely entirely on a work practice standard and eliminate stricter provisions that would enable the Agency to insist that facilities keep their emissions below a set level.

Response: The 40 CFR part 61, Mercury NESHAP, § 61.53(c)(1), contains requirements for stack sampling to determine emission levels for cell room ventilation systems at mercury chlor-alkali plants. If an owner or operator meets the prescribed work practice standards, they can assume a mercury emission rate from the cell room of 1,300 grams per day.

While the final rule does not retain the numerical emission limitation from the 40 CFR part 61 Mercury NESHAP, the requirements in the final rule for fugitive mercury emissions from the cell room are far more stringent than the design, maintenance, and housekeeping practices allowed by the Mercury NESHAP in lieu of meeting the numerical limit. In addition, the Mercury NESHAP contained only 18 work practice requirements as compared to the more than 80 design, operation, maintenance, inspection, and required actions for repair contained in tables 1 through 4 to the final rule. The work practice standards specify the equipment and areas to be inspected along with the frequency of the inspections and conditions that trigger corrective action. Response time intervals for when the corrective actions must occur are also specified. Furthermore, some types of inspections are required at more frequent intervals than required by the Mercury NESHAP (*e.g.*, inspecting decomposers for hydrogen leaks twice per day rather than once each day). In addition, the detailed recordkeeping procedures and reporting provisions are more fully developed than those in the Mercury NESHAP, as well as requirements for storage of mercury-containing wastes.

Finally, the work practice standards contain a requirement for owners and operators to develop and implement a plan for the routine washdown of accessible surfaces in the cell room and other areas. The standards establish the duty for owners or operators to prepare and implement a written plan for washdowns and specify elements to be addressed in the plan. A requirement for washdowns is an important part of an overall approach to reducing cell room fugitive emissions.

Along with a floor-level periodic mercury monitoring program (discussed later), not only will the work practice standards in the final rule result in reduced mercury fugitive emissions (and, therefore, mercury consumption), but provide much more enforceable provisions so that an inspector can verify that they are being met.

In addition, we have calculated emission reductions for the final rule. Assuming that every facility is complying with the 1,000 grams per day limit from point sources (this value assumes that 1,300 grams per day of the 2,300 grams per day facility limit are being used for fugitive emissions), we estimate that baseline emissions from all nine existing facilities (relative to the Mercury NESHAP) are 3,285 kg/yr. We estimate that annual emissions after the application of MACT to be 217 kg/yr. Therefore, the final rule will result in emission reductions of 3,068 kg/yr, or approximately 93 percent from the existing Mercury NESHAP. This supports our position that we are not setting a standard that allows backsliding. Therefore, once the final rule compliance date ensues, sources subject to the provisions of the final rule will no longer be subject to the Mercury NESHAP.

Comment: Commenters disagreed with EPA's proposal to institute a continuous mercury monitoring program whereby owners and operators would be required to continuously monitor mercury concentration in the upper portion of each cell room and take corrective actions when elevated mercury vapor levels are detected. The commenters stated that the proposed

monitoring program was seriously flawed and should be deleted from the final rule. The commenters noted that periodic monitoring done in various areas of the cell room (as currently practiced to ensure compliance with Occupational Health & Safety Administration (OSHA) permissible exposure limits) was an appropriate substitute. Several commenters stated that they would not be opposed to the continuous mercury monitoring program if the technology were field demonstrated.

In contrast, one commenter, which submitted comments after the close of the comment period, "enthusiastically" supported the proposed cell room monitoring program. Nonetheless, the commenter felt that it was unwise for the EPA to allow each owner/operator to set his/her own cell room action level.

Some commenters stated that cell room monitoring is redundant to the housekeeping requirements, and that the work practices required in Tables 1–5 to the proposed rule allow for sufficient opportunity to quickly detect abnormal sources of mercury emissions. Another commenter stated that the final rule should either require continuous monitoring or detailed work practice standards but not both. The commenter argued that cell room designs vary greatly. Given this variability, the commenter urged EPA to enable facilities to select the appropriate compliance strategy for individual circumstances.

Response: With regard to technical feasibility, a cell room mercury monitoring system was tested in 2000 at a mercury cell facility in Augusta, Georgia, that demonstrated that the monitoring technology can be effectively installed and operated in mercury cell chlor-alkali plant cell rooms, and this technology, along with other measures, can be an effective mechanism to identify leaking equipment and other problems that result in fugitive mercury emissions from the cell room.

We acknowledge that this success, which occurred in a limited and very controlled situation for a short time period, does not necessarily prove that similar monitoring at every mercury cell room would prove to be an effective long-term method to reduce mercury fugitive emissions. In fact, the design and operation of the Augusta facility probably represented the optimum circumstances for a mercury cell room monitoring program to be successful. We are aware that cell room designs vary greatly and recognize that the design affects the location and number of monitors necessary to accurately monitor each individual cell room. In addition, depending on the design of the roof, it may be possible that installation of monitors that adequately monitor mercury concentration would not even be possible.

Even with these limitations, a well designed and implemented cell room monitoring program can effectively reduce mercury fugitive emissions on a long-term basis. Therefore, we included this concept in the final rule.

However, we do agree with the commenters that a comprehensive continuous cell room monitoring program should be sufficient to reduce fugitive mercury emissions from the cell room without imposing the overlapping requirements of the detailed work practices. Therefore, we have concluded that it is appropriate to allow facilities to implement the continuous cell room monitoring program as an alternative to, and not in addition to, the work practice requirements. In the final rule, facilities are given the option to implement the cell room continuous monitoring program in lieu of the work practice requirements. We do, however, feel there is a need to outline more specifically the elements that must be included in the cell room monitoring program to ensure that it provides at least the same level of control as the work practices and cell room monitoring program would have provided together. Therefore, there are more prescriptive requirements in the final rule for the cell room monitoring plan option. The final rule dictates how the action level is to be established, what measures must be followed when the action level is exceeded, and what records must be kept.

Although the continuous cell room monitoring provisions are optional, some mercury monitoring to detect elevated mercury levels in the cell room is appropriate. Therefore, we have included a periodic monitoring program to be performed throughout the cell room as a substitute for continuous monitoring. The final rule contains a floor-level periodic monitoring program as part of the work practice standards.

F. What Issues Were Raised Regarding the Monitoring and Continuous Compliance Requirements?

Comment: Three commenters questioned EPA's intent in establishing emission limitations based on the initial performance test. These commenters felt that the proposed standards amounted to changing the emission limit based on the emissions observed during the performance test which amounted to ignoring the emission limit established through the rulemaking process. Two of the commenters stated that the amount of mercury emissions measured during the initial compliance performance test should be used only to verify compliance with the MACT standards, and not to establish new emission limits. The commenters were concerned that the emission limits would become floating limits based on the most recent performance test, as opposed to being MACT standards.

The commenters indicated that variations around the concentrations, above and below, measured during the performance test can be expected. Treatment systems employed to obtain compliance (*e.g.*, carbon) would be expected to show some slight deterioration after a period of operation. Therefore, a performance test conducted just after a carbon change would result in an unrealistically low operating limit. Finally, the commenters were concerned that different facilities would have different operating limits, depending on variables like the type of control equipment installed, the operating conditions on the day of the emission test (*i.e.*, mercury volatility changes significantly with temperature), and other factors. One commenter was concerned that, given the wide variability in emission constituents, operators would not be able to assure that their facilities will consistently emit within the limits established during an ideally controlled initial performance test.

Two of the commenters acknowledged that other MACT standards require the gathering of data for surrogate parameters (*e.g.*, scrubber liquor pH, scrubber liquor flow) when direct measurement of a control parameter is not required or feasible. These surrogate parameters are used to establish performance requirements for the control device. The commenters went on to say that in cases where performance requirements based on surrogate parameters were established during the performance test, the emission limitation was not modified to reflect the actual emissions experience during the test. However, the commenters stated that they felt that this is exactly what is required under the proposed rule.

One of the commenters argued that EPA's required installation of instruments directly in the vent stream to continuously monitor actual concentration of mercury and, therefore, actual mercury emissions, means that there is no need to rely on operating parameters which have been calculated for only one set of conditions.

One commenter was concerned about the cost-benefits of continuous monitoring systems (CMS) in the by-product hydrogen, end box ventilation system, and mercury thermal recovery unit vent streams. According to the commenter, the types of control devices likely to be used for controlling mercury emissions from these streams (*i.e.*, carbon or molecular sieve units) have very good performance characteristics and are not likely to incur short-term upsets. The commenter noted that performance is subject to normal variations, and the ability of these systems to absorb mercury does degrade over time. The commenter stated that before emissions reach the permit limits due to reduced performance, the beds must be replaced. The commenter requested that in lieu of CMS, facilities should be allowed to rely on the known capability of the systems to operate reliably. The commenter stated that the Agency could delete the requirement for CMS without any real harm to the environment.

Response: In general, we disagree with the premise of the commenters' argument. The proposed rule would have required that continuous compliance for each vent be determined by monitoring mercury concentration as an operating limit. The measured concentrations would not have been used to compare directly with the emission limitations. Rather, they would have provided an indication that the control device was performing in a manner consistent with the operation during the initial performance test. Therefore, the proposed requirements to establish operating limits would have established emission limitations, or resulted in changing emission limits, based on the initial performance test.

However, we do acknowledge that there is a difference in a mercury concentration operating limit and an operating limit based on surrogate parameters because the mercury concentration is obviously a direct measure of mercury emissions. In fact, we agree with the point made by the one commenter that there is no need to rely on operating parameters when a direct measurement of emissions is being required.

As discussed at length in the proposal preamble (67 FR 44690), we considered requiring mercury continuous emission monitors (CEM) that would directly measure in units of the standard. Although monitoring that directly measures compliance is preferred, we decided to propose mercury concentration operating limits based on the uncertainties associated with the cost and reliability of the mercury monitoring devices. Commenters did not provide any information to alleviate these concerns. In fact, they shared our basic concerns even if the monitoring devices were only used for operating limits.

We weighed the comments related to the mercury concentration operating limits against the concerns associated with using mercury concentration monitors as CEM. Our preference continues to be to require mercury CEM. With sufficient evaluation, analysis, and refinement, the industry will find these devices acceptable. However, we could not require these devices in the final rule without a fallback alternative if sources found that these monitoring devices were not acceptable for use within the industry.

During the development of the proposed standards, we learned that many mercury cell chlor-alkali facilities conducted periodic (*e.g.*, weekly, monthly) tests to determine the mercury content in vent streams. This is done to assess control device performance or, for the by-product hydrogen stream, to ensure product quality. These tests are not typically conducted using EPA-approved test methods, but are usually conducted using modified methods. Since this periodic testing is already being conducted at many mercury cell plants, we evaluated whether a continuous compliance option could be included in the final rule based on such periodic testing. Since such testing directly measures mercury emissions, we concluded that it would be an acceptable alternative to mercury CEM. The only question was how often such testing would be needed to ensure continuous compliance with the emission limitations. Daily testing would certainly be adequate, but we were concerned about the costs and burden associated with 365 tests each year for each process vent.

The most common final control device is (or will be) nonregenerative carbon adsorption. These fixed bed carbon devices can operate for long periods of time before a carbon change is needed. The carbon replacement frequency is often more than a year. Weekly testing would be more than sufficient to represent the emissions for the entire week and to indicate when breakthrough (*i.e.*, the point at which the carbon has become saturated with mercury emissions) is approaching. Because breakthrough does not occur instantaneously, but is slowly approached over time, weekly testing is sufficient to detect the point at which breakthrough is approaching.

However, there is the possibility that non-carbon devices such as condensers, absorbers, or regenerative molecular sieves could be used as the final control device to comply with the emission limits in the final rule. Since improper operation of these devices could result in higher emissions for short periods, we had concerns about utilizing weekly testing for these devices. However, we concluded that if parametric monitoring of surrogate parameters (*e.g.*, condenser temperature) were conducted to ensure consistent and proper operation of these devices, weekly testing would be acceptable.

Therefore, the final rule includes two options for continuous compliance for the by-product hydrogen stream, the end box ventilation system vent, and the mercury thermal recovery unit vent. The first option is continuous emissions monitoring using a mercury continuous emissions monitoring system. The second is periodic testing using Method 101, 101A, or 102 or an approved alternative method. Specifically, this second option requires that at least three acceptable test runs be conducted each week. As part of the periodic testing option, if the final control device is not a nonregenerative carbon adsorber, surrogate parameter monitoring is required.

V. What Are the Environmental, Cost, and Economic Impacts of the Final Rule?

A. What Are the Air Emission Impacts?

The level of mercury emissions allowed by the Mercury NESHAP is 2,300 grams per day. If one assumes that all nine plants in the source category emit mercury at this level, and that each operates 365 days a year, total annual potential-to-emit baseline emissions would be 7,556 kg/yr (16,658 lb/yr). Annual potential-to-emit baseline emissions for fugitive emission sources would be 4,271 kg/yr (9,416 lb/yr), based on 1,300 grams per day assumed for each plant's cell room ventilation system when the 18 design, maintenance, and housekeeping practices referenced in the Mercury NESHAP are followed. Annual potential-to-emit baseline emissions for by-product hydrogen streams, end box ventilation system vents, and mercury thermal recovery unit vents would be 3,285 kg/yr (7,242 lb/yr), based on the remaining 1,000 grams per day allowed. We estimate that the final rule will reduce industrywide mercury emissions for by-product hydrogen streams, end box ventilation system vents, and mercury thermal recovery unit vents from this annual potential-to-emit baseline to around 217 kg/yr (478 lb/yr), which is equivalent to about 93 percent reduction.

While the level of mercury emissions allowed by the Mercury NESHAP defines the potential-to-emit baseline, the sum of annual mercury emission releases from by-product hydrogen streams, end box ventilation system vents, and mercury thermal recovery vents, as estimated by mercury cell chlor-alkali plants, defines an annual actual baseline for vents of about 800 kg/yr (1,764 lb/yr). We estimate that the final rule will reduce industrywide mercury emissions for vents from this annual actual baseline to around 217 kg/yr (478 lb/yr), which is equivalent to about 73 percent reduction.

We estimate that secondary air pollution emissions will result from the production of electricity required to operate new control devices and new monitoring equipment assumed for plant vents. Assuming electricity production as based entirely on coal combustion for a worst-case scenario, we estimated plant-specific impacts for sulfur dioxide, nitrogen oxides, particulate matter, and carbon monoxide emissions. The total estimated secondary air impacts of the final requirements for point sources at the nine mercury cell chlor-alkali plants is around 2.12 mg/yr (4.67 tpy) for all pollutants combined.

We are unable to quantify the primary air emission impacts associated with the final work practice standards, so no mercury emission reduction is assumed for fugitive emission sources. However, we feel strongly that the new and more explicit requirements contained in the final standards will in fact result in mercury emission reductions beyond baseline levels. Relative to secondary impacts, we expect that secondary air pollution emissions will result from the production of electricity required to operate new monitoring equipment assumed for plant cell rooms. We estimate the secondary air impacts of the final rule for fugitive emission sources to be 0.112 mg/yr (0.124 tpy).

B. What Are the Non-Air Health, Environmental, and Energy Impacts?

We do not expect that there will be any significant adverse non-air health impacts associated with the final standards for mercury-cell chlor-alkali plants.

We estimate that an increase in the amount of mercury-containing waters will result from the heightened use of packed tower scrubbing assumed for several plant vents. The total estimated water pollution impact of the final rule for point sources is about 1.5 million liters (404 thousand gallons) of additional wastewater per year. We estimate that an increase in the amount of mercury-containing solid wastes will result with the heightened use of carbon adsorption assumed for several plant vents. The total estimated solid waste impact of the final rule for point sources is about 8.8 mg/yr (9.7 tpy) of additional mercury-containing spent carbon.

We are unable to quantify non-air environmental impacts associated with the final work practice standards, so no wastewater and solid waste impacts are assumed for fugitive emission sources.

We estimate that the final requirements for point sources will result in increased energy consumption, specifically additional fan power in conveying gas streams through new carbon adsorbers and new packed scrubbers assumed for certain plant vents and additional power consumed by new vent monitoring equipment. The total estimated energy impacts of the final requirements for point sources is about 772 thousand kW-hr/yr.

We estimate that the final requirements for fugitive emission sources will result in increased energy consumption required to operate new monitoring equipment assumed for plant cell rooms. The total estimated energy impacts of the final requirements for fugitive emission sources is about 39 thousand kW-hr/yr.

C. What Are the Cost and Economic Impacts?

For projecting cost impacts of the final rule on the mercury cell chlor-alkali industry, we estimate that all nine plants will incur costs to meet the final work practice standards and the final monitoring, recordkeeping, and reporting requirements. We estimate that seven plants will incur costs to meet the final emission limits for by-product hydrogen streams and end box ventilation system vents, and two plants will incur costs to meet the final emission limits for mercury thermal recovery units. The total estimated capital cost of the final rule for the nine mercury cell chlor-alkali plants is around $1.6 million, and the total estimated annual cost is about $1.4 million per year. Plant-specific annual costs in our estimate range from about $130,000 for the least-impacted plant to about $260,000 for the worst-impacted plant.

The purpose of the economic impact analysis is to estimate the market response of chlor-alkali production facilities to the final standards and to determine the economic effects that may result due to the final NESHAP. Chlor-alkali production jointly creates both chlorine and caustic, usually sodium hydroxide, in fixed proportions. Being joint commodities, the economic analysis considers the impacts of the final NESHAP on both the chlorine and sodium hydroxide markets.

The chlor-alkali production source category contains 43 facilities, but only nine facilities using mercury cells are directly affected by the final standards. These nine facilities are located at nine plants that are owned by seven companies.

Chlor-alkali production in mercury cells leads to potential mercury emissions from hydrogen streams, end box ventilation system vents, mercury thermal recovery units, and fugitive emission sources. The compliance costs for the final standards, therefore, relate to the purchase, installation, operation, and maintenance of pollution control equipment at the point sources, as well as the labor costs and overheads associated with observing work practices addressing fugitive emissions. The estimated total annual costs for the final NESHAP are $1.8 million. This cost estimate represents about 0.30 percent of the 1997 chlorine sales revenue for the mercury cell chlor-alkali production facilities. Furthermore, the total annual costs represent less than 0.01 percent of the revenues of owning the directly affected mercury cell chlor-alkali plants.

The economic analysis predicts minimal changes in industry outputs and the market prices of chlorine and sodium hydroxide as a result of the estimated control costs. The new market equilibrium quantities of chlorine and sodium hydroxide decrease by less than 0.1 percent. Equilibrium prices of chlorine and sodium hydroxide both rise by less than 0.1 percent due to the final standards. Based on these estimates, we conclude that the final standards are not likely to have a significant economic impact on the chlorine production industry as a whole or on secondary markets such as the labor market and foreign trade.

We performed an economic analysis to determine facility- and company-specific impacts. These economic impacts are measured by calculating the ratio of the estimated annualized compliance costs of emissions control for each entity to its revenues (*i.e.*, cost-to-sales ratio). After the cost-to-sales ratio is calculated for each entity, it is then multiplied by 100 to convert the ratio into percentages. Actual revenues at the facility level are not available, therefore, estimated facility revenues received from the sale of chlorine are used. Some of these facilities also produce caustic as potassium hydroxide, but the revenues from the sale of this product are not estimated. The nine mercury cell chlor-alkali plants have positive cost-to-sales ratios. The ratio of costs to estimated chlorine sales revenue for these facilities range from a low of 0.16 percent to a high of 1.00 percent. The average cost-to-sales ratio for the nine mercury process chlorine production facilities is 0.46 percent. More detailed economic analysis predicted minimal changes in chlorine production at each facility. Thus, overall, the economic impact of the final standards is minimal for the facilities producing chlorine.

The share of compliance costs to company sales are calculated to determine company level impacts. Since seven companies own the nine affected facilities, all seven firms face positive compliance costs from the final NESHAP. The ratio of costs to estimated revenues range from a low of less than 0.01 percent to a high of 0.22 percent, and the average ratio of costs to company revenues is 0.06 percent. Again, more detailed economic analysis at the company level predicts little change in company output or revenues. So, at the company level, the final standards are not anticipated to have a significant economic impact on companies that own and operate the chlorine production facilities.

No facility or company is expected to close as a result of the final standards, and the economic impacts to consumers are anticipated to be minimal. The generally small scale of the impacts suggests that there will also be no significant impacts on markets for the products made using chlorine or sodium hydroxide. For more information, consult the economic impact analysis report entitled "Economic Impact Analysis for the Final Mercury Cell Chlor-Alkali Production NESHAP," which is available in the docket for this rulemaking.

VI. Statutory and Executive Order Reviews

A. Executive Order 12866—Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether the regulatory action is "significant" and therefore subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Executive Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligation of recipients thereof; or

(4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

It has been determined that the final rule is not a "significant regulatory action" under the terms of Executive Order 12866 and is, therefore, not subject to OMB review.

B. Paperwork Reduction Act

The information collection requirements in the final rule have been submitted for approval to OMB under the requirements of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* The information requirements are not enforceable until OMB approves them.

The information requirements are based on notifications, records, and reports required by the General Provisions (40 CFR part 63, subpart A), which are mandatory for all operators subject to national emission standards. These recordkeeping and reporting requirements are specifically authorized under section 114 of the CAA (42 U.S.C. 7414). All information submitted to the EPA pursuant to the recordkeeping and reporting requirements for which a claim of confidentiality is made will be safeguarded according to Agency policies in 40 CFR part 2, subpart B, Confidentiality of Business Information.

According to the ICR, the total 3-year monitoring, reporting, and recordkeeping burden for this collection is 6,692 labor hours, and the annual average burden is 2,231 labor hours. The total annualized cost of monitoring, reporting, and recordkeeping is approximately $628,212. The labor cost over the 3-year period is $295,928 or $98,643 per year. The annualized capital cost for monitoring equipment is $262,458. Annual operation and maintenance costs are $365,754 over 3 years, averaging $121,918 per year. This estimate includes a one-time plan for demonstrating compliance, annual compliance certificate reports, notifications, and recordkeeping.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purpose of collecting, validating, and verifying information; process and maintain information and disclose and provide information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to respond to a collection of information; search existing data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15. The OMB control number(s) for the information collection requirements in the final rule will be listed in an amendment to 40 CFR part 9 or 48 CFR chapter 15 in a subsequent **Federal Register** document after OMB approves the ICR.

C. Regulatory Flexibility Act

The EPA has determined that it is not necessary to prepare a regulatory flexibility analysis in connection with the final rule. The EPA has also determined that the final rule will not have a significant economic impact on a substantial number of small entities. For purposes of assessing the impacts of today's final rule on small entities, small entity is defined as: (1) A small business according to the Small Business Administration (SBA) size standards by NAICS code, a maximum of 1,000 employees for the alkalies and chlorine manufacturing industry; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's final rule on small entities, EPA has concluded that this action will not have a significant economic impact on a substantial number of small entities. We have determined that two of the seven companies that own mercury chlor-alkali plants are small entities. Although small businesses represent 30 percent of the companies within the source category, they are expected to incur 18 percent of the total industry annual compliance costs. There are no companies with compliance costs equal to or greater than 1 percent of their sales. No firms are expected to close rather than incur the costs of compliance with the final rule.

Furthermore, firms are not projected to close their facilities due to the final rule.

Although the final rule will not have significant economic impact on a substantial number of small entities, we have nonetheless worked aggressively to minimize the impact of the final rule on small entities, consistent with our obligation under the CAA. The two companies have been active participants in the rulemaking process through their association with the industry trade organization, the Chlorine Institute. Therefore, we met with representatives of these small entities on numerous occasions. In addition, we conducted an extended visit to a mercury cell chlor-alkali plant owned by one of these companies to understand their process and emission control techniques, along with any unique impacts that might occur due to the fact that their company was a small entity. In general, the provisions of the rule were deigned to achieve the maximum emission reduction while also incorporating as many of the existing practices currently being employed by the industry. The input received from these small entities was duly considered in this evaluation.

D. Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, we generally must prepare a written statement, including cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and Tribal governments, in the aggregate, or to the private sector, of $100 million or more in any 1 year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires us to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows us to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if we publish with the final rule an explanation why that alternative was not adopted.

Before we establish any regulatory requirements that may significantly or uniquely affect small governments, including Tribal governments, we must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of our regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

We have determined that the final rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, or tribal governments, in the aggregate, or the private sector in any 1 year. The total annualized cost of the final rule has been estimated to be $1,390,000. Thus, today's final rule is not subject to the requirements of sections 202 and 205 of the UMRA. In addition, we have determined that the final rule contains no regulatory requirements that might significantly or uniquely affect small governments because it contains no regulatory requirements that apply to such governments or impose obligations upon them. Therefore, the final rule is not subject to the requirements of section 203 of the UMRA.

E. Executive Order 13132—Federalism

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" are defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of Government."

The final rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of Government, as specified in Executive Order 13132. The standards apply only to mercury cell chlor-alkali plants and do not pre-exempt States from adopting more stringent standards or otherwise regulate State or local governments. Thus, Executive Order 13132 does not apply to the final rule.

Although section 6 of Executive Order 13132 does not apply to the final rule, EPA did consult with State and local officials in developing the final rule. No concerns were raised by these officials during this consultation.

F. Executive Order 13175—Consultation and Coordination With Indian Tribal Governments

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 6, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." "Policies that have tribal implications" are defined in the Executive Order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes."

The final rule does not have tribal implications. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. This is because no tribal governments own or operate a mercury cell chlor-alkali plant. Thus, Executive Order 13175 does not apply to the final rule.

G. Executive Order 13045—Protection of Children From Environmental Health Risks and Safety Risks

Executive Order 13045, "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997) applies to any rule that (1) is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children and explain why the planned rule is preferable to other potentially effective and reasonably feasible alternatives that we considered.

The final rule is not subject to Executive Order 13045 because it is not an economically significant regulatory action as defined by Executive Order 12866. In addition, EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health and safety risks, such that the analysis required under section

5–501 of the Executive Order has the potential to influence the regulation.

As with most rulemakings developed under section 112(d) of the CAA, the final rule is based on MACT. Risks to public health and impacts on the environment are not typically considered in the development of emissions standards under section 112(d). Rather, these risks and impacts are considered later (within 8 years after promulgation of the MACT rule) under the residual risk program as required by section 112(f) of the CAA. While we do not believe the final rule to be "economically significant," as defined under Executive Order 12866, we do believe that it addresses environmental health or safety risks that may have a disproportionate effect on children.

Mercury has been identified as a priority pollutant under EPA's National Agenda to Protect Children's Health from Environmental Threats and by the Federal Children's Health Protection Advisory Committee (CHPAC). The CHPAC was formed to advise, consult with, and make recommendations to EPA on issues associated with the development of regulations to address the prevention of adverse health effects to children. One of the CHPAC's primary missions was to identify five existing EPA regulations, which if reevaluated, could lead to better protection for children. The CHPAC recommended the Mercury NESHAP for chlor-alkali plants as one of the regulations to be reevaluated considering impacts on children. We adopted the CHPAC recommendation. Therefore, we considered the impacts on children in the development of the final rule. A qualitative assessment of the potential impacts on children's health due to mercury emissions from chlor-alkali plants was presented in the preamble to the proposed rule (67 FR 44693).

Because the final rule does not meet both criteria for applicability, it is not subject to Executive Order 13045. However, based on our assessment, the final rule will help reduce the mercury exposures to humans, including children.

H. Executive Order 13211—Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

The final rule is not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act of 1995

Section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) of 1995 (Public Law No. 104–113; 15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in their regulatory and procurement activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, business practices) developed or adopted by one or more voluntary consensus bodies. The NTTAA directs EPA to provide Congress, through annual reports to the OMB, with explanations when an agency does not use available and applicable voluntary consensus standards.

The final rule involves technical standards. The EPA cites in the final rule EPA Methods 1, 1A, 2, 2A, 2C, 2D, 3, 3A, 3B, 4, 5, 101, 101A, 102, and any method to measure mercury (validated with EPA Method 301). Consistent with the NTTAA, EPA conducted searches to identify voluntary consensus standards in addition to these EPA methods. No applicable voluntary consensus standards were identified for EPA Methods 1A, 2A, 2D, and 102. The search and review results have been documented and are placed in the docket (OAR–2002–0017 or A–2000–32) for the final rule.

This search for emissions monitoring procedures identified 14 voluntary consensus standards and five draft standards. The EPA determined that the 14 standards were impractical alternatives to EPA test methods for the purposes of this rulemaking. Therefore, EPA will not adopt these standards today. The reasons for this determination for these 14 standards are in the docket.

The 14 voluntary consensus standards are as follows: ASME C00031 or PTC 19–10–1981, "Part 10 Flue and Exhaust Gas Analyses," for EPA Method 3; ASME PTC–38–80 R85 or C00049, "Determination of the Concentration of Particulate Matter in Gas Streams," for EPA Method 5; ASTM D3154–91 (1995), "Standard Method for Average Velocity in a Duct (Pitot Tube Method)," for EPA Methods 1, 2, 2C, 3, 3B, and 4; ASTM D3464–96, "Standard Test Method Average Velocity in a Duct Using a Thermal Anemometer," for EPA Method 2; ASTM D3685/D3685M–98, "Test Methods for Sampling and Determination of Particulate Matter in Stack Gases," for EPA Method 5; ASTM D3796–90 (1998), "Standard Practice for Calibration of Type S Pitot Tubes," for EPA Method 2; ASTM D5835–95, "Standard Practice for Sampling Stationary Source Emissions for Automated Determination of Gas Concentration," for EPA Methods 3A; ASTM E337–84 (Reapproved 1996), "Standard Test Method for Measuring Humidity with a Psychrometer (the Measurement of Wet- and Dry-Bulb Temperatures)," for EPA Method 4; CAN/CSA Z223.1–M1977, "Method for the Determination of Particulate Mass Flows in Enclosed Gas Streams," for EPA Method 5; CAN/CSA Z223.2–M86 (1986), "Method for the Continuous Measurement of Oxygen, Carbon Dioxide, Carbon Monoxide, Sulphur Dioxide, and Oxides of Nitrogen in Enclosed Combustion Flue Gas Streams," for EPA Methods 3A; CAN/CSA Z223.26–M1987, "Measurement of Total Mercury in Air Cold Vapour Atomic Absorption Spectrophotometeric Method," for EPA Methods 101 and 101A; ISO 9096:1992 (in review 2000), "Determination of Concentration and Mass Flow Rate of Particulate Matter in Gas Carrying Ducts—Manual Gravimetric Method," for EPA Method 5; ISO 10396:1993, "Stationary Source Emissions: Sampling for the Automated Determination of Gas Concentrations," for EPA Method 3A; ISO 10780:1994, "Stationary Source Emissions—Measurement of Velocity and Volume Flowrate of Gas Streams in Ducts," for EPA Method 2.

The following five standards identified in this search were not available at the time the review was conducted for the purposes of this rulemaking because they are under development by a voluntary consensus body: ASME/BSR MFC 12M, "Flow in Closed Conduits Using Multiport Averaging Pitot Primary Flowmeters," for EPA Method 2; ASME/BSR MFC 13M, "Flow Measurement by Velocity Traverse," for EPA Method 2 (and possibly 1); ISO/DIS 12039, "Stationary Source Emissions—Determination of Carbon Monoxide, Carbon Dioxide, and Oxygen—Automated Methods," for EPA Method 3A; PREN 13211 (1998), "Air Quality—Stationary Source Emissions—Determination of the Concentration of Total Mercury," for EPA Methods 101, 101A (and mercury portion of EPA Method 29); and ASTM Z6590Z, "Manual Method for Both Speciated and Elemental Mercury" is a potential alternative for portions of EPA Methods 101A and Method 29 (mercury portion only).

Section 63.8232 of the final rule lists the EPA testing methods included in the final rule. Under 40 CFR 63.7(f) and 63.8(f), a source may apply to EPA for

permission to use alternative test methods or alternative monitoring requirements in place of any of the EPA testing methods, performance specifications, or procedures.

J. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2). The final rule will be effective on December 19, 2003.

List of Subjects in 40 CFR Part 63

Environmental protection, Administrative practice and procedure, Air pollution control, Hazardous substances, Intergovernmental relations, Recordkeeping and reporting requirements.

Dated: August 25, 2003.

Marianne Lamont Horinko,

Acting Administrator.

■ For the reasons stated in the preamble, title 40, chapter I, part 63 of the Code of Federal Regulations is amended as follows:

PART 63—[AMENDED]

■ 1. The authority citation for part 63 continues to read as follows:

Authority: 42 U.S.C. 7401, *et seq.*

■ 2. Part 63 is amended by adding subpart IIIII to read as follows:

Subpart IIIII—National Emission Standards for Hazardous Air Pollutants: Mercury Emissions From Mercury Cell Chlor-Alkali Plants

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What This Subpart Covers

§ 63.8180 What is the purpose of this subpart?

This subpart establishes national emission standards for hazardous air pollutants (NESHAP) for affected sources of mercury emissions at mercury cell chlor-alkali plants. This subpart also establishes requirements to demonstrate initial and continuous compliance with all applicable emission limitations and work practice standards in this subpart.

§ 63.8182 Am I subject to this subpart?

(a) You are subject to this subpart if you own or operate a mercury cell chlor-alkali plant.

(b) You are required to obtain a title V permit, whether your affected source is a part of a major source of hazardous air pollutant (HAP) emissions or a part of an area source of HAP emissions. A major source of HAP is a source that emits or has the potential to emit any single HAP at a rate of 10 tons or more per year or any combination of HAP at a rate of 25 tons or more per year. An area source of HAP is a source that has the potential to emit HAP but is not a major source. Nothing in this subpart revises how affected sources are aggregated for purposes of determining whether an affected source is a part of an area, nonmajor, or major source under any provisions of the Clean Air Act (CAA) or EPA's regulations. For information on aggregating affected sources to determine what is a source under title V, see the definition of major source in 40 CFR 70.2, 71.2 and 63.2.

(c) Beginning on December 19, 2006, the provisions of subpart E of 40 CFR part 61 that apply to mercury chlor-alkali plants, which are listed in paragraphs (c)(1) through (3) of this section, are no longer applicable.

(1) § 61.52(a);

(2) § 61.53(b) and (c); and

(3) § 61.55(b), (c) and (d).

§ 63.8184 What parts of my plant does this subpart cover?

(a) This subpart applies to each affected source at a plant site where chlorine and caustic are produced in mercury cells. This subpart applies to two types of affected sources: the mercury cell chlor-alkali production facility, as defined in paragraph (a)(1) of this section; and the mercury recovery facility, as defined in paragraph (a)(2) of this section.

(1) The mercury cell chlor-alkali production facility designates an affected source consisting of all cell rooms and ancillary operations used in the manufacture of product chlorine, product caustic, and by-product hydrogen at a plant site. This subpart covers mercury emissions from by-product hydrogen streams, end box ventilation system vents, and fugitive emission sources associated with cell rooms, hydrogen systems, caustic systems, and storage areas for mercury-containing wastes.

(2) The mercury recovery facility designates an affected source consisting of all processes and associated operations needed for mercury recovery from wastes at a plant site. This subpart covers mercury emissions from mercury thermal recovery unit vents and fugitive emission sources associated with storage areas for mercury-containing wastes.

(b) An affected source at your mercury cell chlor-alkali plant is existing if you commenced construction of the affected source before July 3, 2002.

(c) A mercury recovery facility is a new affected source if you commence construction or reconstruction of the affected source after July 3, 2002. An affected source is reconstructed if it meets the definition of "reconstruction" in § 63.2.

§ 63.8186 When do I have to comply with this subpart?

(a) If you have an existing affected source, you must comply with each emission limitation, work practice standard, and recordkeeping and reporting requirement in this subpart that applies to you no later than December 19, 2006.

(b) If you have a new or reconstructed mercury recovery facility and its initial startup date is on or before December 19, 2003, you must comply with each emission limitation, work practice standard, and recordkeeping and reporting requirement in this subpart that applies to you by December 19, 2003.

(c) If you have a new or reconstructed mercury recovery facility and its initial startup date is after December 19, 2003, you must comply with each emission limitation, work practice standard, and recordkeeping and reporting requirement in this subpart that applies to you upon initial startup.

(d) You must meet the notification and schedule requirements in § 63.8252. Several of these notifications must be submitted before the compliance date for your affected source(s).

Emission Limitations and Work Practice Standards

§ 63.8190 What emission limitations must I meet?

(a) *Emission limits.* You must meet each emission limit in paragraphs (a)(1) through (3) of this section that applies to you.

(1) New or reconstructed mercury cell chlor-alkali production facility. Emissions of mercury are prohibited from a new or reconstructed mercury cell chlor-alkali production facility.

(2) Existing mercury cell chlor-alkali production facility. During any consecutive 52-week period, you must not discharge to the atmosphere total mercury emissions in excess of the applicable limit in paragraph (a)(2)(i) or (ii) of this section calculated using the procedures in § 63.8243(a).

(i) 0.076 grams of mercury per megagram of chlorine produced (1.5×10^{-4} pounds of mercury per ton of chlorine produced) from all by-product hydrogen streams and all end box ventilation system vents when both types of emission points are present.

(ii) 0.033 grams of mercury per megagram of chlorine produced (6.59×10^{-5} pounds of mercury per ton of chlorine produced) from all by-product hydrogen streams when end box ventilation systems are not present.

(3) New, reconstructed, or existing mercury recovery facility. You must not discharge to the atmosphere mercury emissions in excess of the applicable limit in paragraph (a)(3)(i) or (ii) of this section.

(i) 23 milligrams per dry standard cubic meter from each oven type mercury thermal recovery unit vent.

(ii) 4 milligrams per dry standard cubic meter from each non-oven type mercury thermal recovery unit vent.

(b) [Reserved]

§ 63.8192 What work practice standards must I meet?

You must meet the work practice requirements specified in paragraphs (a) through (f) of this section. As an alternative to the requirements specified in paragraphs (a) through (d) of this section, you may choose to comply with paragraph (g) of this section.

(a) You must meet the work practice standards in Tables 1 through 4 to this subpart, except as specified in paragraph (g) of this section.

(b) You must adhere to the response intervals specified in Tables 1 through 4 to this subpart at all times. Nonadherence to the intervals in Tables 1 through 4 to this subpart constitutes a deviation and must be documented and reported in the compliance report, as required by § 63.8254(b), with the date and time of the deviation, cause of the deviation, a description of the conditions, and time actual compliance was achieved.

(c) As provided in § 63.6(g), you may request to use an alternative to the work practice standards in Tables 1 through 4 to this subpart.

(d) You must institute a floor-level mercury vapor measurement program to limit the amount of mercury vapor in the cell room environment through periodic measurement of mercury vapor levels and actions to be taken when a floor-level mercury concentration action level is exceeded. The program must meet the requirements listed in paragraphs (d)(1) through (4) of this section. As specified in § 63.8252(e)(1)(i) to implement this program, you must prepare and submit to the Administrator a floor-level mercury vapor measurement plan which must contain the elements listed in Table 5 to this subpart.

(1) You must utilize a mercury measurement device described in of Table 6 to this subpart to measure the level of mercury vapor in the cell room at floor-level.

(2) You must conduct at least one floor-level mercury vapor measurement evaluation each half day. This evaluation must include three measurements of the mercury concentration at locations representative of the entire cell room floor area. The average of these measurements must be recorded as specified in § 63.8156(c)(1). At a minimum, you must measure the level of mercury vapor above mercury-containing cell room equipment, as well as areas around the cells, decomposers, or other mercury-containing equipment.

(3) You must establish a floor-level mercury concentration action level that is no higher than 0.05 milligrams per cubic meter (mg/m^3).

(4) If a mercury concentration greater than the action level is measured during any floor-level mercury vapor measurement evaluation, you must meet the requirements in either paragraph (d)(4)(i) or (ii) of this section.

(i) If you determine that the cause of the elevated mercury concentration is an open electrolyzer, decomposer, or

other maintenance activity, you must record the information specified in paragraphs (d)(4)(i)(A) through (C) of this section.

(A) A description of the maintenance activity resulting in elevated mercury concentration;

(B) The time the maintenance activity was initiated and completed; and

(C) A detailed explanation how all the applicable requirements of Table 1 to this subpart were met during the maintenance activity.

(ii) If you determine that the cause of the elevated mercury concentration is not an open electrolyzer, decomposer, or other maintenance activity, you must follow the procedures specified in paragraphs (d)(4)(ii)(A) and (B) of this section until the floor-level mercury concentration falls below the floor-level mercury concentration action level. You must also keep all the associated records for these procedures as specified in Table 9 to this subpart.

(A) Within 1 hour of the time the floor-level mercury concentration action level was exceeded, you must conduct each inspection specified in Table 2 to this subpart in the area where the concentration higher than the floor-level mercury concentration action level was measured, with the exception of the cell room floor and the pillars and beam inspections. (B) You must also inspect all decomposers, hydrogen system piping up to the hydrogen header, and other potential locations of mercury vapor leaks in the area using a technique specified in Table 6 to this subpart. You must correct any problem identified during these inspections according to the requirements in Tables 2 and 3 to this subpart.

(e) You must prepare, submit, and operate according to a written washdown plan designed to minimize fugitive mercury emissions through routine washing of surfaces where liquid mercury could accumulate. The written plan must address the elements contained in Table 7 to this subpart.

(f) You must keep records of the mass of all virgin mercury added to cells on an annual basis.

(g) As an alternative to the work practice standards in paragraphs (a) through (d) of this section, you may institute a cell room monitoring program to continuously monitor the mercury vapor concentration in the upper portion of each cell room and to take corrective actions as quickly as possible when elevated mercury vapor levels are detected. As specified in § 63.8252(e)(1)(iv), if you choose this option, you must prepare and submit to the Administrator, a cell room monitoring plan containing the elements listed in Table 5 to this subpart and meet the requirements in paragraphs (g)(1) through (4) of this section.

(1) You must utilize mercury monitoring systems that meet the requirements of Table 8 to this subpart.

(2) You must establish an action level according to the requirements in paragraphs (g)(2)(i) through (iii) of this section.

(i) Beginning on the compliance date specified for your affected source in § 63.8186, measure and record the mercury concentration for at least 30 days using a system that meets the requirements of paragraph (g)(1) of this section.

(ii) Using the monitoring data collected according to paragraph (g)(1)(i) of this section, establish your action level at the 75th percentile of the data set.

(iii) Submit your action level as part of your Notification of Compliance Status report according to § 63.8252(e)(1).

(3) Beginning on the compliance date specified for your affected source in § 63.8186, you must continuously monitor the mercury concentration in the cell room. Failure to monitor and record the data according to § 63.8256(c)(4)(ii) for 75 percent of the time in any 6-month period constitutes a deviation.

(4) If the average mercury concentration for any 1-hour period exceeds the action level established according to paragraph (g)(2) of this section, you must meet the requirements in either paragraph (g)(4)(i) or (ii) of this section.

(i) If you determine that the cause of the elevated mercury concentration is an open electrolyzer, decomposer, or other maintenance activity, you must record the information specified in paragraphs (g)(4)(i)(A) through (C) of this section.

(A) A description of the maintenance activity resulting in elevated mercury concentration;

(B) The time the maintenance activity was initiated and completed; and

(C) A detailed explanation how all the applicable requirements of Table 1 to this subpart were met during the maintenance activity.

(ii) If you determine that the cause of the elevated mercury concentration is not an open electrolyzer, decomposer, or other maintenance activity, you must follow the procedures specified in paragraphs (g)(4)(ii)(A) and (B) of this section until the mercury concentration falls below the action level. You must also keep all the associated records for these procedures as specified in Table 9 to this subpart.

(A) Within 1 hour of the time the action level was exceeded, you must conduct each inspection specified in Table 2 to this subpart, with the exception of the cell room floor and the pillars and beam inspections. You must correct any problem identified during these inspections in accordance with the requirements in Table 2 and 3 to this subpart.

(B) If the Table 2 inspections and subsequent corrective actions do not reduce the mercury concentration below the action level, you must inspect all decomposers, hydrogen system piping up to the hydrogen header, and other potential locations of mercury vapor leaks using a technique specified in Table 6 to this subpart. If a mercury vapor leak is identified, you must take the appropriate action specified in Table 3 to this subpart.

Operation and Maintenance Requirements

§ 63.8222 What are my operation and maintenance requirements?

As required by § 63.6(e)(1)(i), you must always operate and maintain your affected source(s), including air pollution control and monitoring equipment, in a manner consistent with safety and good air pollution control practices for minimizing emissions.

General Compliance Requirements

§ 63.8226 What are my general requirements for complying with this subpart?

(a) You must be in compliance with the applicable emission limitations for by-product hydrogen streams, end box ventilation system vents, and mercury thermal recovery unit vents in § 63.8190 at all times, except during periods of startup, shutdown, and malfunction. You must be in compliance with the applicable work practice standards in § 63.8192 at all times, except during periods of startup, shutdown, and malfunction.

(b) You must develop and implement a written startup, shutdown, and malfunction plan (SSMP) according to the provisions in § 63.6(e)(3).

Initial Compliance Requirements

§ 63.8230 By what date must I conduct performance tests or other initial compliance demonstrations?

(a) You must conduct a performance test no later than the compliance date that is specified in § 63.8186 for your affected source to demonstrate initial compliance with the applicable emission limit in § 63.8190(a)(2) for by-product hydrogen streams and end box ventilation system vents and the applicable emission limit in § 63.8190(a)(3) for mercury thermal recovery unit vents.

(b) For the applicable work practice standards in § 63.8192, you must demonstrate initial compliance within 30 calendar days after the compliance date that is specified for your affected source in § 63.8186.

§ 63.8232 What test methods and other procedures must I use to demonstrate initial compliance with the emission limits?

You must conduct a performance test for each by-product hydrogen stream, end box ventilation system vent, and mercury thermal recovery unit vent according to the requirements in § 63.7(e)(1) and the conditions detailed in paragraphs (a) through (d) of this section.

(a) You may not conduct performance tests during periods of startup, shutdown, or malfunction, as specified in § 63.7(e)(1).

(b) For each performance test, you must develop a site-specific test plan in accordance with § 63.7(c)(2).

(c) You must conduct at least three test runs to comprise a performance test, as specified in § 63.7(e)(3) and in either paragraph (c)(1) or (2) of this section.

(1) The sampling time and sampling volume for each run must be at least 2 hours and 1.70 dry standard cubic meters (dscm). Mercury results below the analytical laboratory's detection limit must be reported using the reported analytical detection limit to calculate the sample concentration value and, in turn, the emission rate in the units of the standard; or

(2) The sampling time for each test run must be at least 2 hours and the mercury concentration in each field sample analyzed must be at least two times the reported analytical detection limit.

(d) You must use the test methods specified in paragraphs (d)(1) through (4) of this section and the applicable test methods in paragraphs (d)(5) through (7) of this section.

(1) Method 1 or 1A in appendix A of 40 CFR part 60 to determine the sampling port locations and the location and required number of sampling traverse points.

(2) Method 2, 2A, 2C, or 2D in appendix A of 40 CFR part 60 to determine the stack gas velocity and volumetric flow rate.

(3) Method 3, 3A, or 3B in appendix A of 40 CFR part 60 to determine the stack gas molecular weight.

(4) Method 4 in appendix A of 40 CFR part 60 to determine the stack gas moisture content.

(5) For each by-product hydrogen stream, Method 102 in appendix A of 40 CFR part 61 to measure the mercury emission rate after the last control device.

(6) For each end box ventilation system vent, Method 101 or 101A in appendix A of 40 CFR part 61 to measure the mercury emission rate after the last control device.

(7) For each mercury thermal recovery unit vent, Method 101 or 101A in appendix A of 40 CFR part 61 to measure the mercury emission rate after the last control device.

(e) During each test run for a by-product hydrogen stream and each test run for an end box ventilation system vent, you must continuously measure the electric current through the operating mercury cells and record a measurement at least once every 15 minutes.

(f) If the final control device is not a nonregenerable carbon adsorber and if you are demonstrating compliance using periodic monitoring under § 63.8240(b), you must continuously monitor the parameters listed in paragraph (f)(1) of this section and establish your maximum or minimum monitoring value (as appropriate for your control device) using the requirements in paragraph (f)(2) of this section.

(1) During the performance test specified in paragraphs (a) through (d) of this section, you must continuously monitor the control device parameters in paragraphs (f)(1)(i) through (vii) of this section and record a measurement at least once every 15 minutes.

(i) The exit gas temperature from uncontrolled streams;

(ii) The outlet temperature of the gas stream for the final (*i.e.*, the farthest downstream) cooling system when no control devices other than coolers or demisters are used;

(iii) The outlet temperature of the gas stream from the final cooling system when the cooling system is followed by a molecular sieve or regenerative carbon adsorber;

(iv) Outlet concentration of available chlorine, pH, liquid flow rate, and inlet gas temperature of chlorinated brine scrubbers and hypochlorite scrubbers;

(v) The liquid flow rate and exit gas temperature for water scrubbers;

(vi) The inlet gas temperature of regenerative carbon adsorption systems; and

(vii) The temperature during the heating phase of the regeneration cycle for carbon adsorbers or molecular sieves.

(2) To establish a maximum monitoring value or minimum monitoring value, as appropriate for your final control device, you must average the recorded parameters in paragraphs (f)(1)(i) through (vi) of this section over the test period. If your final control device is a regenerative carbon adsorber, you must use the highest temperature reading measured in paragraph (f)(1)(vii) as the reference temperature in § 63.8244(b)(2)(v).

§ 63.8234 What equations and procedures must I use for the initial compliance demonstration?

(a) *By-product hydrogen streams and end box ventilation system vents.* You must determine the total grams of mercury per Megagram of chlorine production (g Hg/Mg Cl_2) of chlorine produced from all by-product hydrogen streams and all end box ventilation system vents, if applicable, at a mercury cell chlor-alkali production facility, and you must follow the procedures in paragraphs (a)(1) through (6) of this section.

(1) Determine the mercury emission rate for each test run in grams per day for each by-product hydrogen stream and for each end box ventilation system vent, if applicable, from Method 101, 101A, or 102 (40 CFR part 61, appendix A).

(2) Calculate the average measured electric current through the operating mercury cells during each test run for each by-product hydrogen stream and for each end box ventilation system vent, if applicable, using Equation 1 of this section as follows:

$$CL_{avg,\ run} = \frac{\sum_{i=1}^{n} CL_{i,\ run}}{n} \qquad \text{(Eq. 1)}$$

Where:

$CL_{avg,\ run}$ = Average measured cell line current load during the test run, amperes;

$CL_{i,\ run}$ = Individual cell line current load measurement (*i.e.*, 15 minute reading) during the test run, amperes; and

n = Number of cell line current load measurements taken over the duration of the test run.

(3) Calculate the amount of chlorine produced during each test run for each by-product hydrogen stream and for each end box ventilation system vent, if applicable, using Equation 2 of this section as follows:

$$P_{Cl_2,\,run} = (1.3\times10^{-6})(CL_{avg,\,run})(n_{cells,\,run})(t_{run}) \quad \text{(Eq. 2)}$$

-Where:
$P_{Cl_2,run}$ = Amount of chlorine produced during the test run, megagrams chlorine ($Mg\ Cl_2$);
1.3×10^{-6} = Theoretical chlorine production rate factor, $Mg\ Cl_2$ per hour per ampere per cell;
$CL_{avg,run}$ = Average measured cell line current load during test run, amperes, calculated using Equation 1 of this section;
$n_{cell,run}$ = Number of cells on-line during the test run; and
t_{run} = Duration of test run, hours.

(4) Calculate the mercury emission rate in grams of mercury per megagram of chlorine produced for each test run for each by-product hydrogen stream and for each end box ventilation system vent, if applicable, using Equation 3 of this section as follows:

$$E_{Hg,\,run} = \left[\frac{(R_{run})(t_{run})}{(24)(P_{Cl_2,\,run})}\right] \quad \text{(Eq. 3)}$$

Where:
$E_{Hg,run}$ = Mercury emission rate for the test run, g $Hg/Mg\ Cl_2$;
R_{run} = Measured mercury emission rate for the test run from paragraph (a)(1) of this section, grams Hg per day;
t_{run} = Duration of test run, hours;
24 = Conversion factor, hours per day; and
$P_{Cl_2,run}$ = Amount of chlorine produced during the test run, calculated using Equation 2 of this section, $Mg\ Cl_2$.

(5) Calculate the average mercury emission rate for each by-product hydrogen stream and for each end box ventilation system vent, if applicable, using Equation 4 of this section as follows:

$$E_{Hg,\,avg} = \frac{\sum_{i=1}^{n} E_{Hg,\,run}}{n} \quad \text{(Eq. 4)}$$

Where:
$E_{Hg,avg}$ = Average mercury emission rate for the by-product hydrogen stream or the end box ventilation system vent, if applicable, g $Hg/Mg\ Cl_2$;
$E_{Hg,run}$ = Mercury emission rate for each test run for the by-product hydrogen stream or the end box ventilation system vent, if applicable, g $Hg/Mg\ Cl_2$, calculated using Equation 3 of this section; and
n = Number of test runs conducted for the by-product hydrogen stream or the end box ventilation system vent, if applicable.

(6) Calculate the total mercury emission rate from all by-product hydrogen streams and all end box ventilation system vents, if applicable, at the mercury cell chlor-alkali production facility using Equation 5 of this section as follows:

$$E_{Hg,\,H_2EB} = \sum_{i=1}^{n} E_{Hg,\,avg} \quad \text{(Eq. 5)}$$

Where:
E_{Hg,H_2EB} = Total mercury emission rate from all by-product hydrogen streams and all end box ventilation system vents, if applicable, at the affected source, g $Hg/Mg\ Cl_2$;
$E_{Hg,avg}$ = Average mercury emission rate for each by-product hydrogen stream and each end box ventilation system vent, if applicable, g $Hg/Mg\ Cl_2$, determined using Equation 4 of this section; and
n = Total number of by-product hydrogen streams and end box ventilation system vents at the affected source.

(b) *Mercury thermal recovery vents.* You must determine the milligrams of mercury per dscm exhaust discharged from mercury thermal recovery unit vents, using the procedures in paragraphs (b)(1) and (2) of this section.

(1) Calculate the concentration of mercury in milligrams of mercury per dscm of exhaust for each test run for each mercury thermal recovery unit vent using Equation 6 of this section as follows:

$$C_{Hg,\,run} = \left[\frac{(m_{Hg})(10^{-3})}{(V_{m_{(std)}})}\right] \quad \text{(Eq. 6)}$$

Where:
$C_{Hg,run}$ = Mercury concentration for the test run, milligrams of mercury per dry standard cubic meter of exhaust;
m_{Hg} = Mass of mercury in test run sample, from Method 101, 101A, or 102, micrograms;
10-3 = Conversion factor, milligrams per microgram; and
$V_{m(std)}$ = Dry gas sample volume at standard conditions, from Method 101, 101A, or 102, dry standard cubic meters.

(2) Calculate the average concentration of mercury in each mercury thermal recovery unit vent exhaust using Equation 7 of this section as follows:

$$C_{Hg,\,avg} = \frac{\sum_{i=1}^{n} C_{Hg,\,run}}{n} \quad \text{(Eq. 7)}$$

Where:
$C_{Hg,avg}$ = Average mercury concentration for the mercury thermal recovery unit vent, milligrams of mercury per dry standard cubic meter exhaust;
$C_{Hg,run}$ = Mercury concentration for each test run, milligrams of mercury per dry standard cubic meter of exhaust, calculated using Equation 6 of this section; and
n = Number of test runs conducted for the mercury thermal recovery unit vent.

§ 63.8236 How do I demonstrate initial compliance with the emission limitations and work practice standards?

(a) For each mercury cell chlor-alkali production facility, you have demonstrated initial compliance with the applicable emission limit for by-product hydrogen streams and end box ventilation system vents in § 63.8190(a)(2) if you comply with paragraphs (a)(1) and (2) of this section:

(1) Total mercury emission rate from all by-product hydrogen streams and all end box ventilation system vents, if applicable, at the affected source, determined according to §§ 63.8232 and 63.8234(a), did not exceed the applicable emission limit in § 63.8190(a)(2)(i) or (ii); and

(2) If you have chosen the periodic monitoring option specified in § 63.8240(b) and your final control device is not a nonregenerable carbon adsorber, you have established a parameter value according to § 63.8232(f)(2).

(b) For each mercury recovery facility, you have demonstrated initial compliance with the applicable emission limit for mercury thermal recovery unit vents in § 63.8190(a)(3) if you comply with paragraphs (b)(1) and (2) of this section.

(1) Mercury concentration in each mercury thermal recovery unit vent exhaust, determined according to §§ 63.8232 and 63.8234(b), did not exceed the applicable emission limit in § 63.8190(a)(3)(i) or (ii); and

(2) If you have chosen the periodic monitoring option in § 63.8240(b) and have a final control device that is not a nonregenerable carbon adsorber, you have established a maximum or minimum monitoring value, as appropriate for your control device according to § 63.8232(f)(2).

(c) For each affected source, you have demonstrated initial compliance with the applicable work practice standards in § 63.8192 if you comply with paragraphs (c)(1) through (7) of this section.

(1) You certify in your Notification of Compliance Status that you are operating according to the work practice standards in § 63.8192(a) through (d).

(2) You choose the continuous cell room monitoring program option, you certify in your Notification of Compliance Status that you are operating according to the continuous cell room monitoring program under § 63.8192(g) and you have established your action level according to § 63.8192(g)(2).

(3) You certify in your Notification of Compliance Status that you are operating according to your washdown plan.

(4) You have submitted your washdown plan as part of your Notification of Compliance Status.

(5) You have submitted your continuous cell room monitoring plan, if applicable, as part of your Notification of Compliance Status.

(6) You have submitted your floor-level cell room monitoring plan, if applicable, as part of your Notification of Compliance Status.

(7) You have submitted records of the mass of virgin mercury added to cells for the 5 years preceding the applicable compliance date for your affected source as a part of the Notification of Compliance Status.

(d) You must submit the Notification of Compliance Status containing the results of the initial compliance demonstration according to the requirements in § 63.8252(e).

Continuous Compliance Requirements

§ 63.8240 What are my monitoring requirements?

For each by-product hydrogen stream, each end box ventilation system vent, and each mercury thermal recovery unit vent, you must monitor the mercury emissions using the procedures in paragraph (a) or (b) of this section.

(a) You must continuously monitor the mercury concentration using a mercury continuous emissions monitor according to the requirements in §§ 63.8242(a) and 63.8244(a); or

(b) You must periodically monitor the mercury emissions according to the requirements in §§ 63.8242(b) and 63.8244(b).

§ 63.8242 What are the installation, operation, and maintenance requirements for my continuous monitoring systems?

(a) If you choose the continuous mercury monitoring option under § 63.8240(a), you must install, operate, and maintain each mercury continuous emissions monitor according to paragraphs (a)(1) through (5) of this section.

(1) Each mercury continuous emissions monitor must sample, analyze, and record the concentration of mercury at least once every 15 minutes.

(2) Each mercury continuous emissions monitor analyzer must have a detector with the capability to detect a mercury concentration at or below 0.5 times the mercury concentration level measured during the performance test conducted according to § 63.8232.

(3) In lieu of a promulgated performance specification as required in § 63.8(a)(2), you must develop a site-specific monitoring plan that addresses the elements in paragraphs (a)(3)(i) through (vi) of this section.

(i) Installation and measurement location downstream of the final control device for each by-product hydrogen stream, end box ventilation system vent, and mercury thermal recovery unit vent.

(ii) Performance and equipment specifications for the sample interface, the pollutant concentration analyzer, and the data collection and reduction system.

(iii) Performance evaluation procedures and acceptance criteria (*i.e.*, calibrations).

(iv) Ongoing operation and maintenance procedures according to the requirements of § 63.8(c)(1), (3), and (4)(ii).

(v) Ongoing data quality assurance procedures according to the requirements of § 63.8(d).

(vi) Ongoing recordkeeping and reporting procedures in accordance with the general requirements of § 63.10(c), (e)(1), and (e)(2)(i).

(4) You must conduct a performance evaluation of each mercury continuous emissions monitor according to your site-specific monitoring plan.

(5) You must operate and maintain each mercury continuous emissions monitor in continuous operation according to the site-specific monitoring plan.

(b) If you choose the periodic monitoring option and your final control device is not a nonregenerable carbon adsorber, you must install, operate, and maintain a continuous parameter monitoring system (CPMS) for each parameter specified in § 63.8232(f)(1), according to § 63.8(c).

§ 63.8243 What equations and procedures must I use to demonstrate continuous compliance?

(a) *By-product hydrogen streams and end box ventilation system vents.* For each consecutive 52-week period, you must determine the g $Hg/Mg\ Cl_2$ produced from all by-product hydrogen streams and all end box ventilation system vents, if applicable, at a mercury cell chlor-alkali production facility using the procedures in paragraphs (a)(1) through (3) of this section. You must begin collecting data on the compliance date that is specified in § 63.8186 for your affected source and calculate your first 52-week average mercury emission rate at the end of the 52nd week after the compliance date.

(1) Each week, you must determine the weekly mercury emission rate in grams per week for each by-product hydrogen stream and for each end box ventilation system vent, if applicable, using one of the monitoring options in paragraph (a)(1)(i) or (ii) of this section.

(i) Continuous mercury monitoring according to §§ 63.8242 and 63.8244(a).

(ii) Periodic monitoring according to § 63.8244(b).

(2) Each week, you must determine the chlorine production and keep records of the production rate as required under § 63.8256(b)(6).

(3) Beginning 52 weeks after the compliance date specified in § 63.8186 for your affected source, you must calculate the 52-week average mercury emission rate from all by-product hydrogen steam and all end box ventilation system vents, if applicable, using Equation 1 of this section as follows:

$$E_{Hg} = \sum_{i=1}^{52}\left[\frac{(R_{week_i})}{(P_{Cl_2,week_i})}\right] \quad \text{(Eq. 1)}$$

Where:
E_{Hg} = 52-week average mercury emission rate for $week_i$, g $Hg/Mg\ Cl_2$;
$R_{week,\,i}$ = Mercury emission rate for $week_i$ from paragraph (a)(1) of this section, g Hg per week;
$P_{Cl2,\,week_i}$ = Amount of chlorine produced during $week_i$, from paragraph (a)(2) of this section, $Mg\ Cl_2$ per week.

(b) *Mercury thermal recovery units.* If you choose the continuous monitoring option in § 63.8240(a), you must demonstrate continuous compliance using paragraph (b)(1) of this section. If you choose the periodic monitoring option in § 63.8240(b), you must demonstrate continuous compliance using paragraph (b)(2) of this section.

(1) You must calculate the daily average mercury concentration using Equation 2 of this section as follows:

$$C_{Hg,dailyavg} = \frac{\left(\sum_{i=1}^{n} C_{Hg,i}\right)}{n} \quad \text{(Eq. 2)}$$

Where:

$C_{Hg,dailyavg}$ = Average mercury concentration for the operating day, milligrams per dry standard cubic meter;

$C_{Hg,i}$ = Concentration of mercury measured at the interval *i* (*i.e.*, 15 minute reading) using a mercury continuous emission monitor, milligrams per dry standard cubic meter; and

n = Number of concentration measurements taken during the operating day.

(2) You must calculate the daily average mercury concentration using the procedures in § 63.8234(b).

§ 63.8244 How do I monitor and collect data to demonstrate continuous compliance?

(a) *Continuous monitoring option.* You must monitor mercury concentration according to § 63.8242(a) at all times that the affected source is operating with the exception of paragraphs (a)(1) and (2) of this section.

(1) Except for monitor malfunctions, associated repairs, and required quality assurance or control activities (including, as applicable, calibration checks and required zero and span adjustments), you must monitor mercury emissions continuously (or collect data at all required intervals) at all times that the affected source is operating. A monitoring malfunction is any sudden, infrequent, not reasonably preventable failure of the monitoring to provide valid data. Monitoring failures that are caused in part by poor maintenance or careless operation are not malfunctions.

(2) You may not use data recorded during monitoring malfunctions, associated repairs, and required quality assurance or control activities in data averages and calculations used to report emission or operating levels or to fulfill a minimum data availability requirement, if applicable. You must use all the data collected during all other periods in assessing compliance.

(b) *Periodic monitoring option.* If you choose the periodic monitoring option under § 63.8240(b), you must monitor according to the procedures in paragraph (b)(1) or (2) of this section.

(1) If your final control device is a nonregenerable carbon adsorber, then you must conduct at least three test runs per week meeting the criteria specified in § 63.8232(c)(1) and (2) to measure mercury emissions using the test methods specified in § 63.8232(d). Alternatively, you may use any other method that has been validated using the applicable procedures in Method 301, 40 CFR part 63, appendix A.

(2) If your final control device is anything other than a nonregenerable carbon adsorber, you must monitor according to the requirements of paragraphs (b)(2)(i) through (v) of this section.

(i) You must conduct at least three test runs per week meeting the criteria specified in § 63.8232(c)(1) and (2) to measure mercury emissions using the test methods specified in § 63.8232(d). Alternatively, you may use any other method that has been validated using the applicable procedures in Method 301, 40 CFR part 63, appendix A.

(ii) Except as specified in paragraph (b)(2)(iii) of this section, you must continuously collect data at least once every 15 minutes using a CPMS installed and operated according to § 63.8242(b) and record each 1-hour average from all measured data values during each 1-hour period for the applicable parameter identified in § 63.8232(f)(1) using the methods specified in § 63.8244(a).

(iii) As appropriate, you must continuously monitor the temperature specified in § 63.8232(f)(1)(vii) during each heating phase of the regeneration cycle of your carbon adsorber.

(iv) If the hourly average monitoring value of any applicable parameter recorded under paragraph (b)(2)(ii) of this section is below the minimum monitoring value or above the maximum monitoring value of that same parameter established under § 63.8232(f)(2) for 24 consecutive hours, your monitoring value is out of range and you must take corrective action as soon as practicable. The hourly average monitoring value must be above the minimum monitoring value or below the maximum monitoring value as appropriate for that parameter, within 48 hours of the period that the monitoring value is out of range.

(v) If your final control device is a regenerative carbon adsorber, when the maximum hourly value of the temperature measured according to paragraph (b)(2)(iii) of this section is below the reference temperature determined according to § 63.8232(f)(2) for three consecutive regeneration cycles, your monitoring value is out of range and you must take corrective action as soon as practicable. During the first regeneration cycle following the period that your monitoring value is out of range, the maximum hourly value must be above the reference temperature recorded according to § 63.8232(f)(2).

§ 63.8246 How do I demonstrate continuous compliance with the emission limitations and work practice standards?

(a) *By-product hydrogen streams and end box ventilation system vents.* (1) For all by-product hydrogen streams and all end box ventilation system vents, if applicable, you must demonstrate continuous compliance with the applicable mercury emission limit by reducing the mercury emissions data to 52-week averages using Equation 1 of § 63.8243 and maintaining the 52-week average mercury emissions no higher than the applicable mercury emissions limit in § 63.8190(a)(2). To obtain the data to calculate these 52-week averages, you must monitor in accordance with paragraph (a)(1)(i) or (ii) of this section.

(i) *Continuous monitoring option.* You must collect mercury emissions data according to § 63.8244(a), representing at least 75 percent of the 15-minute periods in each operating day of the 52-week compliance period (with data recorded during monitoring malfunctions, associated repairs, and required quality assurance or control activities not counting toward the 75 percent requirement);

(ii) *Periodic monitoring option.* You must conduct at least three test runs per week to collect mercury emissions samples according to § 63.8244(b)(1) and (2)(i) and, if your final control device is not a nonregenerable carbon adsorber, you must collect data for monitoring values according to § 63.8244(b)(2)(ii) through (v).

(2) You must maintain records of mercury emissions and 52-week average values, as required in § 63.8256(b)(3) and (4). If your final control device is not a nonregenerable carbon adsorber, you must maintain records according to § 63.8256(d).

(b) *Mercury thermal recovery unit vents.* (1) For each mercury thermal recovery unit vent, you must demonstrate continuous compliance with the applicable emission limit specified in § 63.8190(a)(3) by maintaining the outlet mercury hourly-average concentration no higher than the applicable limit. To determine the outlet mercury concentration, you must monitor according to paragraph (b)(1)(i) or (ii) of this section.

(i) *Continuous monitoring option.* You must collect mercury concentration data according to § 63.8244(a), representing at least 75 percent of the 15-minute periods in the operating day (with data recorded during monitoring malfunctions, associated repairs, and required quality assurance or control activities not counting toward the 75 percent requirement).

(ii) *Periodic monitoring option.* You must conduct at least three test runs per week to collect mercury emissions samples according to § 63.8244(b)(1) and (2)(i) and, if your final control device is not a nonregenerable carbon adsorber, you must collect data for monitoring values according to § 63.8244(b)(2)(ii) through (v).

(2) You must maintain records of mercury emissions and daily average values as required in § 63.8256(b)(3). If your final control device is not a nonregenerable carbon adsorber, you must maintain records according to § 63.8256(d).

(c) You must demonstrate continuous compliance with the applicable work practice standards in § 63.8192 by maintaining records in accordance with § 63.8256(c).

§ 63.8248 What other requirements must I meet?

(a) *Deviations.* The instances specified in paragraphs (a)(1) through (4) of this section are deviations and must be reported according to the requirements in § 63.8254.

(1) You must report each instance in which you did not meet each emission limitation in § 63.8190 that applies to you. This includes periods of startup, shutdown, and malfunction.

(2) You must report each instance in which you did not meet each work practice standard in § 63.8192 that applies to you. This includes periods of startup, shutdown, and malfunction.

(3) You must report each instance in which the corrective actions taken according to § 63.8244(b)(2)(iv) did not result in average monitoring values being within range within 48 hours of the period that the monitoring value is out of range.

(4) You must report each instance in which the corrective action taken according to § 63.8244(b)(2)(v) did not result in the maximum hourly temperature being above the reference temperature during the first regeneration cycle following the period that the monitoring value was out of range.

(b) *Startups, shutdowns, and malfunctions.* During periods of startup, shutdown, and malfunction, you must operate in accordance with your startup, shutdown, and malfunction plan that satisfies the requirements in § 63.6(e) and as required in § 63.8226(b).

(1) Consistent with §§ 63.6(e) and 63.7(e)(1), deviations that occur during a period of startup, shutdown, or malfunction are not violations if you demonstrate to the Administrator's satisfaction that you have an adequate startup, shutdown, or malfunction plan that satisfies the requirements of § 63.6(e), and you have complied with the startup, shutdown, and malfunction plan.

(2) The Administrator will determine whether deviations that occur during a period of startup, shutdown, or malfunction are violations, according to the provisions in § 63.6(e).

(3) By-passing the control device for maintenance activities is not considered a startup, shutdown, or malfunction event.

Notification, Reports, and Records

§ 63.8252 What notifications must I submit and when?

(a) You must submit all of the notifications in §§ 63.7(b) and (c), 63.8(e) and (f) and 63.9(b) through (h) that apply to you by the dates specified.

(b) As specified in § 63.9(b)(2), if you start up your affected source before December 19, 2003, you must submit your initial notification not later than April 19, 2004.

(c) As specified in § 63.9(b)(3), if you start up your new or reconstructed mercury recovery facility on or after December 19, 2003, you must submit your initial notification not later than 120 days after you become subject to this subpart.

(d) For each performance test that you are required to conduct for by-product hydrogen streams and end box ventilation system vents and for mercury thermal recovery unit vents, you must submit a notification of intent to conduct a performance test at least 60 calendar days before the performance test is scheduled to begin as required in § 7(b)(1).

(e) You must submit a Notification of Compliance Status according to paragraphs (e)(1) and (2) of this section.

(1) For each initial compliance demonstration that does not include a performance test, you must submit the Notification of Compliance Status before the close of business on the 30th calendar day following the completion of the initial compliance demonstration. The Notification of Compliance Status must contain the items in paragraphs (e)(1)(i) through (iv) of this section:

(i) If you choose not to implement a cell room monitoring program according to § 63.8192(g), a certification that you are operating according to the applicable work practice standards in § 63.8192(a) through (d) and your floor-level mercury vapor measurement plan required by § 63.8192(d).

(ii) The washdown plan, and you must certify that you are operating according to the washdown plan specified in § 63.8192(f).

(iii) The mass of virgin mercury added to cells for the 5 years preceding the compliance date.

(iv) If you choose to implement a cell room monitoring program according to § 63.8192(g), your cell room monitoring plan.

(2) For each initial compliance demonstration that does include a performance test, you must submit the Notification of Compliance Status, including the performance test results, before the close of business on the 60th calendar day following the completion of the performance test according to § 63.10(d)(2). The Notification of Compliance Status must contain the information in § 63.9(h)(2)(ii)(A) through (G). The site-specific monitoring plan required in § 63.8242(a)(3) must also be submitted.

§ 63.8254 What reports must I submit and when?

(a) *Compliance report due dates.* You must submit a semiannual compliance report to your permitting authority according to the requirements in paragraphs (a)(1) through (4) of this section.

(1) The first compliance report must cover the period beginning on the compliance date that is specified for your affected source in § 63.8186 and ending on June 30 or December 31, whichever date comes first after the compliance date that is specified for your affected source in § 63.8186.

(2) The first compliance report must be postmarked or delivered no later than July 31 or January 31, whichever date comes first after your first compliance reporting period.

(3) Each subsequent compliance report must cover the semiannual reporting period from January 1 through June 30 or the semiannual reporting period from July 1 through December 31.

(4) Each subsequent compliance report must be postmarked or delivered no later than July 31 or January 31, whichever date comes first after the end of the semiannual reporting period.

(b) *Compliance report contents.* Each compliance report must contain the information in paragraphs (b)(1) through (3) of this section, and as applicable, paragraphs (b)(4) through (12) of this section.

(1) Company name and address.

(2) Statement by a responsible official, with that official's name, title, and signature, certifying the truth, accuracy, and completeness of the report.

(3) Date of report and beginning and ending dates of the reporting period.

(4) If you had a startup, shutdown or malfunction during the reporting period and you took actions consistent with your startup, shutdown, and malfunction plan, the compliance report must include the information in § 63.10(d)(5)(i).

(5) If there were no deviations from the continuous compliance requirements in § 63.8246 that apply to you, a statement that there were no deviations from the emission limitations, work practice standards, and operation and maintenance standards during the reporting period.

(6) If there were no periods during which the mercury continuous emission monitor or CPMS (if applicable) were out-of-control as specified in § 63.8(c)(7), a statement that there were no periods during the which the mercury continuous emissions monitor or CPMS (if applicable) were out-of-control during the reporting period.

(7) For each deviation from the requirements for work practice standards in Tables 1 through 4 to this subpart that occurs at an affected source (including deviations where the response intervals were not adhered to as described in § 63.8192(b)), the compliance report must contain the information in paragraphs (b)(1) through (4) of this section and the information in paragraphs (b)(7)(i) and (ii) of this section. This includes periods of startup, shutdown, and malfunction.

(i) The total operating time of each affected source during the reporting period.

(ii) Information on the number, duration, and cause of deviations (including unknown cause, if applicable), as applicable, and the corrective action taken.

(8) For each deviation from an emission limitation occurring at an affected source where you are using a mercury continuous emission monitor, according to the site-specific monitoring plan required in § 63.8242(a)(3), to comply with the emission limitation in this subpart, you must include the information in paragraphs (b)(1) through (4) of this section and the information in paragraphs (b)(8)(i) through (xii) of this section. This includes periods of startup, shutdown, and malfunction.

(i) The date and time that each malfunction started and stopped.

(ii) The date and time of each instance in which a continuous monitoring system was inoperative, except for zero (low-level) and high-level checks.

(iii) The date, time, and duration of each instance in which a continuous monitoring system was out-of-control, including the information in § 63.8(c)(8).

(iv) The date and time that each deviation started and stopped, and whether each deviation occurred during a period of startup, shutdown, or malfunction or during another period.

(v) A summary of the total duration of the deviation during the reporting period and the total duration as a percent of the total source operating time during that reporting period.

(vi) A breakdown of the total duration of the deviations during the reporting period including those that are due to startup, shutdown, control equipment problems, process problems, other known causes, and other unknown causes.

(vii) A summary of the total duration of continuous monitoring system downtime during the reporting period and the total duration of monitoring system downtime as a percent of the total source operating time during the reporting period.

(viii) An identification of each hazardous air pollutant that was monitored at the affected source.

(ix) A brief description of the process units.

(x) A brief description of the continuous monitoring system.

(xi) The date of the latest continuous monitoring system certification or audit.

(xii) A description of any changes in monitoring system, processes, or controls since the last reporting period.

(9) For each deviation from an operation and maintenance standard occurring at an affected source where you are using the periodic monitoring option specified in § 63.8240(b) and your final control device is not a nonregenerable carbon adsorber, the compliance report must include the information in paragraphs (b)(1) through (4) of this section and the information in paragraphs (b)(9)(i) through (x) of this section. This includes periods of startups, shutdowns and malfunctions.

(i) The total operating time of each affected source during the reporting period.

(ii) Information on the number, duration, and cause of deviations (including unknown cause, if applicable), as applicable, whether the deviation occurred during a period of startup, shutdown, or malfunction, or other period, and the corrective action taken.

(iii) The date and time of each instance in which a CPMS was inoperative, except for zero (low-level) and high-level checks.

(iv) The date, time, and duration of each instance in which a CPMS was out-of-control, including the information specified in § 63.8(c)(8).

(v) A summary of the total duration of the deviation during the reporting period and the total duration as a percent of the total source operating time during that reporting period.

(vi) A breakdown of the total duration of the deviations during the reporting period including those that are due to startup, shutdown, control equipment problems, process problems, other known causes, and other unknown causes.

(vii) A summary of the total duration of continuous monitoring system downtime during the reporting period and the total duration of monitoring system downtime as a percent of the total source operating time during the reporting period.

(viii) A brief description of the CPMS.

(ix) The date of the latest CPMS certification or audit.

(x) A description of any changes in monitoring system, processes, or controls since the last reporting period.

(10) The compliance report must contain the mass of virgin mercury added to cells for the reporting period.

(11) The compliance report must contain each instance in which corrective actions taken under § 63.8244(b)(2)(iv) did not result in average monitoring values being within range within 48 hours of the period that the monitoring value is out of range.

(12) The compliance report must contain each instance in which corrective action taken according to § 63.8244(b)(2)(v) did not result in the maximum hourly temperature being above the reference temperature during the first regeneration cycle following the period that the monitoring value was out of range.

(c) *Immediate startup, shutdown, and malfunction report.* If you took an action during a startup, shutdown, or malfunction during the semiannual reporting period that was not consistent with your startup, shutdown, and malfunction plan required in § 63.8226(b), and the source exceeded any applicable emission limitation in this subpart, you must submit an immediate startup, shutdown, and malfunction report according to the requirements in § 63.10(d)(5)(ii).

(d) *Title V monitoring report.* After your affected source has been issued a title V operating permit pursuant to 40 CFR part 70 or 40 CFR part 71, you must report all deviations from permit requirements and provide reports of any required monitoring in your semiannual monitoring report as required by 40 CFR 70.6(a)(3)(iii)(A) or 40 CFR 71.6(a)(3)(iii)(A). If you submit a semiannual compliance report for an affected source as required by this subpart as part of the semiannual monitoring report required by 40 CFR 70.6(a)(3)(iii)(A) or 40 CFR 71.6(a)(3)(iii)(A), and the semiannual compliance report includes all information required by the 40 CFR part 70 or 40 CFR part 71 semiannual monitoring report for the deviations that are reported in the semiannual compliance report, submission of the semiannual compliance report satisfies your obligation to report the same deviation information in the semiannual monitoring report. However, in such situations, the semiannual monitoring report must cross-reference the semiannual compliance report, and submission of a semiannual compliance report does not otherwise affect any obligation you may have to report deviations from permit requirements for an affected source to your permitting authority under 40 CFR part 70 or 40 CFR part 71.

§ 63.8256 What records must I keep?

(a) *General records.* You must keep the records in paragraphs (a)(1) and (2) of this section.

(1) A copy of each notification and report that you submitted to comply with this subpart, including all documentation supporting any initial notification or Notification of Compliance Status that you submitted, according to the requirements in § 63.10(b)(2)(xiv).

(2) The records in § 63.6(e)(3)(iii) through (v) related to startup, shutdown, and malfunction.

(b) Records associated with the by-product hydrogen stream and end box ventilation system vent emission limitations and the mercury thermal recovery unit vent emission limitations. You must keep the records in paragraphs (b)(1) through (5) of this section related to the emission limitations in § 63.8190(a)(2) through (3) and (b).

(1) Records of performance tests as required in § 63.10(b)(2)(viii).

(2) Records of the mercury emissions monitoring conducted during the performance tests.

(3) Records of the continuous or periodic mercury emissions monitoring data.

(4) Records of the 52-week rolling average mercury emissions.

(5) Records associated with your site-specific monitoring plan required in § 63.8242(a)(3) (*i.e.*, results of inspections, calibrations, and validation checks of each mercury concentration continuous monitoring system (CMS)).

(6) Records of chlorine production on a weekly basis.

(c) Records associated with the work practice standards.

(1) If you choose not to institute a cell room monitoring program according to § 63.8192(g) you must keep the records specified in paragraphs (c)(1)(i) through (v) of this section.

(i) Records specified in Table 9 to this subpart related to the work practice standards in Tables 1 through 4 of this subpart.

(ii) Your current floor-level mercury vapor measurement plan.

(iii) Records of the average value calculated from at least three measurements taken according to your floor-level mercury vapor measurement plan.

(iv) Records indicated in § 63.8192(d)(4)(i) for maintenance activities that cause the floor-level mercury concentration to exceed the action level.

(v) Records of all inspections and corrective actions taken in response to a non-maintenance related situation in which the mercury vapor concentration exceeds the floor-level mercury concentration action level.

(2) You must maintain a copy of your current washdown plan and records of when each washdown occurs.

(3) You must maintain records of the mass of virgin mercury added to cells for each reporting period.

(4) If you choose to institute a cell room monitoring program according to § 63.8192(g) of this subpart, you must keep your current cell room monitoring plan and the records specified in paragraphs (c)(4)(i) through (v) of this section.

(i) Records of the monitoring conducted in accordance with § 63.8192(g)(2)(i) to establish your action level, and records demonstrating the development of this action level.

(ii) Records of the cell room mercury concentration monitoring data collected.

(iii) Instances when the action level is exceeded.

(iv) Records specified in § 63.8192(g)(4)(i) for maintenance activities that cause the mercury vapor concentration to exceed the action level.

(v) Records of all inspections and corrective actions taken in response to a non-maintenance related situation in which the mercury vapor concentration exceeds the action level.

(d) Records associated with the periodic monitoring option if your final control device is not a nonregenerable carbon adsorber. You must keep the records in paragraph (d)(1) through (3) of this section.

(1) Records of the CPMS data collected during the performance test as specified in § 63.8232(f)(1).

(2) Records documenting the development of the maximum monitoring value or minimum monitoring value, as appropriate, according to § 63.8232(f)(2).

(3) Records of hourly average values of applicable parameters monitored as specified in § 63.8244(b)(2)(ii) or (iii).

§ 63.8258 In what form and how long must I keep my records?

(a) Your records must be in a form suitable and readily available for expeditious inspection and review, according to § 63.10(b)(1).

(b) As specified in § 63.10(b)(1), you must keep each record for 5 years following the date of each occurrence, measurement, maintenance, corrective action, report, or record.

(c) You must keep each record on site for at least 2 years after the date of each occurrence, measurement, maintenance, corrective action, report, or record, according to § 63.10(b)(1). You can keep the records offsite for the remaining 3 years.

Other Requirements and Information

§ 63.8262 What parts of the General Provisions apply to me?

Table 10 to this subpart shows which parts of the General Provisions in §§ 63.1 through 63.13 apply to you.

§ 63.8264 Who implements and enforces this subpart?

(a) This subpart can be implemented and enforced by us, the United States Environmental Protection Agency (U.S. EPA), or a delegated authority such as your State, local, or tribal agency. If the EPA Administrator has delegated authority to your State, local, or tribal agency, then that agency has the authority to implement and enforce this subpart. You should contact your EPA Regional Office to find out if this subpart is delegated to your State, local, or tribal agency.

(b) In delegating implementation and enforcement authority of this subpart to a State, local, or tribal agency under subpart E of this part, the authorities contained in paragraph (c) of this section are retained by the EPA Administrator and are not transferred to the State, local, or tribal agency.

(c) The authorities in paragraphs (c)(1) through (4) of this section will not be delegated to State, local, or tribal agencies.

(1) Approval of alternatives under § 63.6(g) to the non-opacity emission limitations in § 63.8190 and work practice standards in § 63.8192.

(2) Approval of major alternatives to test methods under § 63.7(e)(2)(ii) and (f) and as defined in § 63.90.

(3) Approval of major alternatives to monitoring under § 63.8(f) and as defined in § 63.90.

(4) Approval of major alternatives to recordkeeping and reporting under § 63.10(f) and as defined in § 63.90.

§ 63.8266 What definitions apply to this subpart?

Terms used in this subpart are defined in the CAA, in § 63.2, and in this section as follows:

Aqueous liquid means a liquid mixture in which water is the predominant component.

Brine means an aqueous solution of alkali metal chloride, as sodium chloride salt solution or potassium chloride salt solution, that is used in the electrolyzer as a raw material.

By-product hydrogen stream means the hydrogen gas from each decomposer that passes through the hydrogen system and is burned as fuel, transferred to another process as raw material, or discharged directly to the atmosphere.

Caustic means an aqueous solution of alkali metal hydroxide, as sodium hydroxide or potassium hydroxide, that is produced in the decomposer.

Caustic basket means a fixture adjacent to the decomposer that contains a serrated funnel over which the caustic from the decomposer passes, breaking into droplets such that electric current is interrupted.

Caustic system means all vessels, piping, and equipment that convey caustic and remove mercury from the caustic stream. The caustic system begins at the decomposer and ends after the primary filters.

Cell room means a building or other structure in which one or more mercury cells are located.

Continuous parameter monitoring system, or CPMS, means the total equipment that may be required to meet the data acquisition and availability requirements of this subpart, used to sample, condition (if applicable), analyze, and provide a record of process of control system parameters.

Control device means a piece of equipment (such as condensers, coolers, chillers, heat exchangers, mist eliminators, absorption units, and adsorption units) that removes mercury from gaseous streams.

Decomposer means the component of a mercury cell in which mercury amalgam and water react in bed of graphite packing (within a cylindrical vessel), producing caustic and hydrogen gas and returning mercury to its elemental form for re-use in the process.

Deviation means any instance in which an affected source subject to this subpart, or an owner or operator of such a source:

(1) Fails to meet any requirement or obligation established by this subpart including, but not limited to, any emission limitation (including any operating limit) or work practice standard;

(2) Fails to meet any term or condition that is adopted to implement an applicable requirement in this subpart and that is included in the title V operating permit for any affected source required to obtain such a permit;

(3) Fails to meet any emission limitation (including any operating limit) or work practice standard in this subpart during startup, shutdown, or malfunction, regardless of whether or not such failure is allowed by this subpart; or

(4) Fails to take corrective actions within 48 hours that result in parameter monitoring values being within range.

Electrolyzer means the main component of the mercury cell that consists of an elongated, shallow steel trough that holds a layer of mercury as a flowing cathode. The electrolyzer is enclosed by side panels and a top that suspends metal anodes. In the electrolyzer, brine is fed between a flowing mercury cathode and metal anodes in the presence of electricity to produce chlorine gas and an alkali metal-mercury amalgam (mercury amalgam).

Emission limitation means any emission limit or operating limit.

End box means a component of a mercury cell for transferring materials between the electrolyzer and the decomposer. The inlet end box collects and combines raw materials at the inlet end of the cell, and the outlet end box separates and directs various materials either into the decomposer or out of the cell.

End box ventilation system means all vessels, piping, and equipment that evacuate the head space of each mercury cell end box (and possibly other vessels and equipment) to the atmosphere. The end box ventilation system begins at the end box (and other vessel or equipment which is being evacuated) and terminates at the end box ventilation system vent. The end box ventilation system includes all control devices.

End box ventilation system vent means the discharge point of the end box ventilation system to the atmosphere after all control devices.

Hydrogen leak means hydrogen gas (containing mercury vapor) that is escaping from the decomposer or hydrogen system.

Hydrogen system means all vessels, piping, and equipment that convey a by-product hydrogen stream. The hydrogen system begins at the decomposer and ends at the point just downstream of the last control device. The hydrogen system includes all control devices.

In liquid mercury service means containing or coming in contact with liquid mercury.

Liquid mercury accumulation means one or more liquid mercury droplets, or a pool of liquid mercury, present on the floor or other surface exposed to the atmosphere.

Liquid mercury leak means the liquid mercury that is dripping or otherwise escaping from process equipment.

Liquid mercury spill means a liquid mercury accumulation resulting from a liquid mercury that leaked from process equipment or that dripped during maintenance or handling.

Mercury cell means a device consisting of an electrolyzer and decomposer, with one or more end boxes, a mercury pump, and other components linking the electrolyzer and decomposer.

Mercury cell amalgam seal pot means a compartment through which mercury amalgam passes from an outlet end box to a decomposer.

Mercury cell chlor-alkali plant means all contiguous or adjoining property that is under common control, where mercury cells are used to manufacture product chlorine, product caustic, and by-product hydrogen and where mercury may be recovered from wastes.

Mercury cell chlor-alkali production facility means an affected source consisting of all cell rooms and ancillary operations used in the manufacture of product chlorine, product caustic, and by-product hydrogen at a mercury cell chlor-alkali plant.

Mercury concentration CMS, or mercury concentration continuous monitoring system, means a CMS, as defined in § 63.2, that continuously measures the concentration of mercury.

Mercury-containing wastes means waste materials containing mercury, which are typically classified under Resource Conservation and Recovery Act (RCRA) solid waste designations. K071 wastes are sludges from the brine system. K106 are wastewater treatment sludges. D009 wastes are non-specific mercury-containing wastes, further classified as either debris or nondebris (*i.e.*, cell room sludges and carbon from decomposes).

Mercury pump means a component of a mercury cell for conveying elemental mercury re-created in the decomposer to the beginning of the mercury cell. A mercury pump is typically found either as an in-line mercury pump (near a mercury suction pot or mercury seal pot) or submerged mercury pump (within a mercury pump tank or mercury pump seal).

Mercury recovery facility means an affected source consisting of all processes and associated operations needed for mercury recovery from wastes at a mercury cell chlor-alkali plant.

Mercury thermal recovery unit means the retort(s) where mercury-containing wastes are heated to volatilize mercury and the mercury recovery/control system (control devices and other equipment) where the retort off-gas is cooled, causing mercury to condense and liquid mercury to be recovered.

Mercury thermal recovery unit vent means the discharge point of the mercury thermal recovery unit to the atmosphere after all recovery/control devices. This term encompasses both oven type vents and non-oven type vents.

Mercury vacuum cleaner means a cleanup device used to draw a liquid mercury spill or accumulation (via suction pressure) into a closed compartment.

Non-oven type mercury thermal recovery unit vent means the discharge point to the atmosphere after all recovery/control devices of a mercury thermal recovery unit in which the retort is either a rotary kiln or single hearth retort.

Open-top container means any container that does not have a tight-fitting cover that keeps its contents from being exposed to the atmosphere.

Oven type mercury thermal recovery unit vent means the discharge point to the atmosphere after all recovery/control devices of a mercury thermal recovery unit in which each retort is a batch oven retort.

Responsible official means responsible official as defined in 40 CFR 70.2.

Retort means a furnace where mercury-containing wastes are heated to drive mercury into the gas phase. The types of retorts used as part of mercury thermal recovery units at mercury cell chlor-alkali plants include batch oven retorts, rotary kilns, and single hearth retorts.

Spalling means fragmentation by chipping.

Sump means a large reservoir or pit for wastewaters (primarily washdown waters).

Trench means a narrow channel or depression built into the length of a cell room floor that leads washdown materials to a drain.

Vent hose means a connection for transporting gases from the mercury cell.

Virgin mercury means mercury that has not been processed in an onsite mercury thermal recovery unit or otherwise recovered from mercury-containing wastes onsite.

Washdown means the act of rinsing a floor or surface with a stream of aqueous liquid to cleanse it of a liquid mercury spill or accumulation, generally by driving it into a trench.

Week means any consecutive seven-day period.

Work practice standard means any design, equipment, work practice, or operational standard, or combination thereof, that is promulgated pursuant to section 112(h) of the CAA.

Tables to Subpart IIIII of Part 63

TABLE 1 TO SUBPART IIIII OF PART 63.—WORK PRACTICE STANDARDS—DESIGN, OPERATION, AND MAINTENANCE REQUIREMENTS

[As stated in § 63.8192, you must meet the work practice standards in the following table]

For * * *	You must * * *
1. Cell rooms	a. For new or modified cell rooms, construct each cell room interior using materials that are resistant to absorption of mercury, resistant to corrosion, facilitate the detection of liquid mercury spills or accumulations, and are easy to clean.
	b. Limit access around and beneath mercury cells in each cell room to prevent liquid mercury from being tracked into other areas.
	c. Provide adequate lighting in each cell room to facilitate the detection of liquid mercury spills or accumulations.
	d. Minimize the number of items stored around and beneath cells in each cell room.
2. Mercury cells and electrolyzers	a. Operate and maintain each electrolyzer, decomposer, end box, and mercury pump to minimize leakage of mercury.
	b. Prior to opening an electrolyzer for maintenance, do the following: (1) Complete work that can be done before opening the electrolyzer in order to minimize the time required to complete maintenance when the electrolyzer is open; (2) fill the electrolyzer with an aqueous liquid, when possible; (3) allow the electrolyzer to cool before opening; and (4) schedule and staff maintenance of the electrolyzer to minimize the time the electrolyzer is open.
	c. When the electrolyzer top is raised and before moving the top and anodes, thoroughly flush all visible mercury from the top and the anodes with an aqueous liquid, when possible.
	d. While an electrolyzer is open, keep the bottom covered with an aqueous liquid or maintain a continuous flow of aqueous liquid, when possible.
	e. During an electrolyzer side panel change, take measures to ensure an aqueous liquid covers or flows over the bottom, when possible.
	f. Each time an electrolyzer is opened, inspect and replace components, as appropriate.
	g. If you step into an electrolyzer bottom, either remove all visible mercury from your footwear or replace them immediately after stepping out of the electrolyzer.
	h. If an electrolyzer is disassembled for overhaul maintenance or for any other reason, chemically clean the bed plate or thoroughly flush it with an aqueous liquid.
	i. Before transporting each electrolyzer part to another work area, remove all visible mercury from the part or contain the part to prevent mercury from dripping during transport.
	j. After completing maintenance on an electrolyzer, check any mercury piping flanges that were opened for liquid mercury leaks.
	k. If a liquid mercury spill occurs during any maintenance activity on an electrolyzer, clean it up in accordance with the requirements in Table 3 to this subpart.

TABLE 1 TO SUBPART IIIII OF PART 63.—WORK PRACTICE STANDARDS—DESIGN, OPERATION, AND MAINTENANCE REQUIREMENTS—Continued

[As stated in §63.8192, you must meet the work practice standards in the following table]

For * * *	You must * * *
3. Vessels in liquid mercury service	If you replace a vessel containing mercury that is intended to trap and collect mercury after December 19, 2003, replace it with a vessel that has a cone shaped bottom with a drain valve or other design that readily facilitates mercury collection.
4. Piping and process lines in liquid mercury service.	a. To prevent mercury buildup after December 19, 2003, equip each new process line and piping system with smooth interiors and adequate low point drains or mercury knock-out pots to avoid liquid mercury buildup within the pipe and to facilitate mercury collection and recovery.
5. Cell room floors	a. Maintain a coating on cell room floors that is resistant to absorption of mercury and that facilitates the detection of liquid mercury spills or accumulations. b. Maintain cell room floors such that they are smooth and free of cracking and spalling. c. Maintain the cell room floor to prevent mercury accumulation in the corners. d. Maintain a layer of aqueous liquid on liquid mercury contained in trenches or drains and replenish the aqueous layer at least once per day. e. Keep the cell room floor clean and free of debris. f. If you step into a liquid mercury spill or accumulation, either remove all visible mercury from your footwear or replace your footwear immediately.
6. End boxes	a. Either equip each end box with a fixed cover that is leak tight, or route the end box head space to an end box ventilation system. b. For each end box ventilation system: maintain a flowof aqueous liquid over the liquid mercury in the end box and maintain the temperature of the aqueous liquid below its boiling point, maintain a negative pressure in the end box ventilation system, and maintain the end box ventilation system in good condition. c. Maintain each end box cover in good condition and keep the end box closed when the cell is in service and when liquid mercury is flowing down the cell, except when operation or maintenance activities require short-term access. d. Keep all bolts and C-clamps used to hold the covers in place when the cell is in service and when liquid mercury is flowing down the cell. e. Maintain each access port stopper in an end box cover in good sealing condition and keep each end box access port closed when the cell is in service and when liquid mercury is flowing down the cell.
7. Decomposers	a. Maintain each decomposer cover in good condition and keep each decomposer closed and sealed, except when maintenance activities require the cover to be removed. b. Maintain connections between the decomposer and the corresponding cell components, hydrogen system piping, and caustic system piping in good condition and keep the connections closed/tight, except when maintenance activities require opening/loosening these connections. c. Keep each mercury cell amalgam seal pot closed and sealed, except when operation or maintenance activities require short-term access. d. Prior to opening a decomposer, do the following: fill the decomposer with an aqueous liquid or drain the decomposer liquid mercury into a container that meets requirements in Table 1, Item 9 or 10, allow the decomposer to cool before opening, and complete work that can be done before opening the decomposer. e. Take precautions to avoid mercury spills when changing graphite grids or balls in horizontal decomposers or graphite packing in vertical decomposers. If a spill occurs, you must clean it up in accordance with the requirements in Table 3 to this subpart. f. After each maintenance activity, use an appropriate technique (Table 6 to this subpart) to check for hydrogen leaks. g. Before transporting any internal part from the decomposer (such as the graphite basket) to another work area, remove all visible mercury from the part or contain the part to prevent mercury from dripping during transport. h. Store carbon from decomposers in accordance with the requirements in 40 CFR part 265, subparts I and CC, until the carbon is treated or is disposed.
8. Submerged mercury pumps	a. Provide a vapor outlet connection from each submerged pump to an end box ventilation system. The connection must be maintained under negative pressure. b. Keep each mercury pump tank closed, except when maintenance or operation activities require the cover to be removed. c. Maintain a flow of aqueous liquid over the liquid mercury in each mercury pump tank and maintain the aqueous liquid at a temperature below its boiling point.
9. Open-top containers holding liquid mercury.	Maintain a layer of aqueous liquid over liquid mercury in each open-top container. Replenish the aqueous layer at least once per day and, when necessitated by operating procedures or observation, collect the liquid mercury from the container in accordance with the requirements in Table 4 to this subpart.
10. Closed containers used to store liquid mercury.	a. Store liquid mercury in containers with tight fitting covers. b. Maintain the seals on the covers in good condition. c. Keep each container securely closed when mercury is not being added to, or removed from, the container.
11. Caustic systems	a. Maintain the seal between each caustic basket cover and caustic basket by using gaskets and other appropriate material. b. Do not allow solids and liquids collected from back-flushing primary caustic filters to contact floors or run into open trenches. c. Collect solids and liquids from back-flushing each primary caustic filter and collect these mercury-containing wastes in process vessels or in accordance with the requirements in 40 CFR part 265, subparts I and CC.

TABLE 1 TO SUBPART IIIII OF PART 63.—WORK PRACTICE STANDARDS—DESIGN, OPERATION, AND MAINTENANCE REQUIREMENTS—Continued

[As stated in §63.8192, you must meet the work practice standards in the following table]

For * * *	You must * * *
12. Hydrogen systems	d. Keep each caustic basket closed and sealed, except when operation or maintenance activities require short term access. a. Collect drips from each hydrogen seal pot and compressor seal in containers meeting the requirements in this table for open containers. These drips should not be allowed to run on the floor or in open trenches. b. Minimize purging of hydrogen from a decomposer into the cell room by either sweeping the decomposer with an inert gas or by routing the hydrogen to the hydrogen system. c. Maintain hydrogen piping gaskets in good condition. d. After any maintenance activities, use an appropriatetechnique (Table 6 to this subpart) to check all hydrogen piping flanges that were opened for hydrogen leaks.

TABLE 2 TO SUBPART IIIII OF PART 63.—WORK PRACTICE STANDARDS—REQUIRED INSPECTIONS

[As stated in §63.8192, you must meet the work practice standards in the following table]

You must inspect * * *	At least once each * * *	And if you find * * *	You must * * *
1. Each vent hose on each mercury cell	Half day	A leaking vent hose	Take action immediately to correct the leak.
2. Each open-top container holding liquid mercury.	Half day	Liquid mercury that is not covered by an aqueous liquid.	Take action immediately to cover the liquid mercury with an aqueous liquid.
3. Each end box	Half day	a. An end box cover not securely in place.	Take action immediately to put the end box cover securely in place.
		b. An end box stopper not securely in place.	Take action immediately to put the end box stopper securely in place.
		c. Liquid mercury in an end box that is not covered by an aqueous liquid at a temperature below boiling.	Take action immediately to cover the liquid mercury with an aqueous liquid.
4. Each mercury amalgam seal pot	Half day	A seal pot cover that is not securely in place.	Take action immediately to put the seal pot cover securely in place.
5. Each mercury seal pot	Half day	A mercury seal pot stopper not securely in place.	Take action immediately to put the mercury seal pot stopper securely in place.
6. Cell room floors	Month	Cracks, spalling, or other deficiencies that could cause liquid mercury to become trapped.	Repair the crack, spalling, or other deficiency within 1 month from the time you identify the deficiency.
7. Pillars and beams	6 months	Cracks, spalling, or other deficiencies that could cause liquid mercury to become trapped.	Repair the crack, spalling, or other deficiency within 1 month from the time you identify the deficiency.
8. Each caustic basket	Half day	A caustic basket cover that is not securely in place.	Take action immediately to put the caustic basket cover securely in place.
9. All equipment and piping in the caustic system.	Day	Equipment that is leaking caustic	Initiate repair of the leaking equipment within 72 hours from the time that you identify the caustic leak.
10. All floors and other surfaces where liquid mercury could accumulate in cell rooms and other production facilities and in mercury recovery facilities.	Half day	A liquid mercury spill or accumulation	Take the required action specified in Table 3 to this subpart.
11. Each electrolyzer bottom, electrolyzer side panel, end box, mercury amalgam seal pot, decomposer, mercury pump, and hydrogen cooler, and all other vessels, piping, and equipment in liquid mercury service in the cell room.	Day	Equipment that is leaking liquid mercury	Take the required action specified in Table 3 to this subpart.
12. Each decomposer and all hydrogen piping up to the hydrogen header.	Half day	Equipment that is leaking hydrogen and/or mercury vapor.	Take the required action specified in Table 3 to this subpart.
13. All equipment in the hydrogen system from the start of the header to the last control device.	3 months	Equipment that is leaking hydrogen and/or mercury vapor.	Take the required action specified in Table 3 to this subpart.

TABLE 3 TO SUBPART IIIII OF PART 63.—WORK PRACTICE STANDARDS—REQUIRED ACTIONS FOR LIQUID MERCURY SPILLS AND ACCUMULATIONS AND HYDROGEN AND MERCURY VAPOR LEAKS

[As stated in §63.8192, you must meet the work practice standards in the following table]

During a required inspection or at any other time, if you find * * *	You must * * *
1. A liquid mercury spill or accumulation	a. Initiate clean up of the liquid mercury spill or accumulation as soon as possible, but no later than 1 hour from the time you detect it. b. Clean up liquid mercury using a mercury vacuum cleaner or by using an alternative method. If you use an alternative method to clean up liquid mercury, you must submit a description of the method to the Administrator in your Notification of Compliance Status report. c. If you use a mercury vacuum cleaner, the vacuum cleaner must be designed to prevent generation of airborne mercury; you must cap the ends of hoses after each use; and after vacuuming, you must wash down the area. d. Inspect all equipment in liquid mercury service in the surrounding area to identify the source of the liquid mercury within 1 hour from the time you detect the liquid mercury spill or accumulation. e. If you identify leaking equipment as the source of the spill or accumulation, contain the dripping mercury, stop the leak, and repair the leaking equipment as specified below. f. If you cannot identify the source of the liquid mercury spill or accumulation, re-inspect the area within 6 hours of the time you detected the liquid mercury spill or accumulation, or within 6 hours of the last inspection of the area.
2. Equipment that is leaking liquid mercury	a. Contain the liquid mercury dripping from the leaking equipment by placing a container under the leak within 30 minutes from the time you identify the liquid mercury leak. b. The container must meet the requirement for open-top containers in Table 1 to this subpart. c. Make a first attempt at stopping the leak within 1 hour from the time you identify the liquid mercury leak. d. Stop the leak and repair the leaking equipment within 4 hours from the time you identify the liquid mercury leak. e. You can delay repair of equipment leaking liquid mercury if you either isolate the leaking equipment from the process so that it does not remain in mercury service; or determine that you cannot repair the leaking equipment without taking the cell off line, provided that you contain the dripping mercury at all times as described above, and take the cell off line as soon as practicable, but no later than 48 hours from the time you identify the leaking equipment. You cannot place the cell back into service until the leaking equipment is repaired.
3. A decomposer or hydrogen system piping up to the hydrogen header that is leaking hydrogen and/or mercury vapor.	a. Make a first attempt at stopping the leak within 1 hour from the time you identify the hydrogen and/or mercury vapor leak. b. Stop the leak and repair the leaking equipment within 4 hours from the time you identify the hydrogen and/or mercury vapor leak. c. You can delay repair of a equipment leaking hydrogen and/or mercury vapor if you isolate the leaking equipment or take the cell off line until you repair the leaking equipment.
4. Equipment in the hydrogen system, from the start of the hydrogen header to the last control device, that is leaking hydrogen and/or mercury vapor.	a. Make a first attempt at stopping the leak within 4 hours from the time you identify the hydrogen and/or mercury vapor leak. b. Stop the leak and repair the header within 24 hours from the time you identify the hydrogen and/or mercury vapor leak. c. You can delay repair of equipment leaking hydrogen and/or mercury vapor if you isolate the leaking equipment.

TABLE 4 TO SUBPART IIIII OF PART 63.—WORK PRACTICE STANDARDS—REQUIREMENTS FOR MERCURY LIQUID COLLECTION

[As stated in §63.8192, you must meet the work practice standards in the following table]

You must collect liquid mercury from * * *	At the following intervals	When collecting the mercury, you must meet these requirements		
1. Open-top containers	a. At least once each 72 hours.	i. If you spill liquid mercury during collection or transport, you must take the action specified in Table 3 to this subpart for liquid mercury spills and accumulations.	ii. From the time that you collect liquid mercury into a temporary container until the time that you store the liquid mercury, you must keep it covered by an aqueous liquid.	iii. Within 4 hours from the time you collect the liquid mercury, you must transfer it from each temporary container to a storage container that meets the specifications in Table 1 to this subpart.
2. Vessels, low point drains, mercury knock-out pots, and other closed mercury collection points.	a. At least once each week.	See 1.a.i through iii above.		

TABLE 4 TO SUBPART IIIII OF PART 63.—WORK PRACTICE STANDARDS—REQUIREMENTS FOR MERCURY LIQUID COLLECTION—Continued

[As stated in §63.8192, you must meet the work practice standards in the following table]

3. All other equipment	a. Whenever maintenance activities require the opening of the equipment.	See 1.a.i. through iii above.

TABLE 5 TO SUBPART IIIII.—REQUIRED ELEMENTS OF FLOOR-LEVEL MERCURY VAPOR MEASUREMENT AND CELL ROOM MONITORING PLANS

[Your Floor-Level Mercury Vapor Measurement Plan required by §63.8192(d) and Cell Room Monitoring Plan required by §63.8192(g) must contain the elements listed in the following table]

You must specify in your plan * * *	Additional requirements
Floor-Level Mercury Vapor Measurement Plan	
1. Locations in the cell room where you will measure the level of mercury vapor.	The locations must be representative of the entire cell room floor area. At a minimum you must measure the level of mercury vapor above mercury-containing cell room equipment, as well as areas around the cells, decomposes, or other mercury-containing equipment.
2. Equipment or sampling and analytical methods that you will use to measure the level of mercury vapor.	If an instrument or other equipment is used, the plan must include manufacturer specifications and calibration procedures. The plan must also include a description of how you will ensure that the instrument will be calibrated and maintained according to manufacturer specifications.
3. Measurement frequency	Measurements must take place at least once each half day.
4. Number of measurements	At least three readings must be taken at each sample location and the average of these readings must be recorded.
5. A floor-level mercury concentration action level	The action level may not be higher than 0.05 mg/m^3.
Cell Room Monitoring Plan	
1. Details of your mercury monitoring system.	
2. How representative sampling will be conducted	Include some pre-plan measurements to demonstrate the profile of mercury concentration in the cell room and how the selected sampling locations ensure conducted representativeness.
3. Quality assurance/quality control procedures for your mercury monitoring system.	Include a description of how you will keep records or other means to demonstrate that the system is operating properly.
4. Your action level	Include the background data used to establish your level.

TABLE 6 TO SUBPART IIIII OF PART 63.—EXAMPLES OF TECHNIQUES FOR EQUIPMENT PROBLEM IDENTIFICATION, LEAK DETECTION AND MERCURY VAPOR MEASUREMENTS

[As stated in Tables 1 and 2 of Subpart IIIII, examples of techniques for equipment problem identification, leak detection and mercury vapor measurements can be found in the following table]

To detect * * *	You could use * * *	Principle of detection * * *
1. Leaking vent hoses; liquid mercury that is not covered by an aqueous liquid in open-top containers or end boxes; end box covers or stoppers, amalgam seal pot stoppers, or caustic basket covers not securely in place; cracks or spalling in cell room floors, pillars, or beams; caustic leaks; liquid mercury accumulations or spills; and equipment that is leaking liquid mercury.	Visual inspections	
2. Equipment that is leaking hydrogen and/or mercury vapor during inspections required by Table 2 to this subpart.	a. Auditory and visual inspections	
	b. Portable mercury vapor analyzer—ultraviolet light absorption detector.	A sample of gas is drawn through a detection cell where ultraviolet light at 253.7 nanometers (nm) is directed perpendicularly through the sample toward a photodetector. Elemental mercury absorbs the incident light in proportion to its concentration in the air stream.
	c. Portable mercury-vapor analyzer—gold film amalgamation detector.	A sample of gas is drawn through a detection cell containing a gold film detector. Elemental mercury amalgamates with the gold film, changing the resistance of the detector in proportion to the mercury concentration in the air sample.

TABLE 6 TO SUBPART IIIII OF PART 63.—EXAMPLES OF TECHNIQUES FOR EQUIPMENT PROBLEM IDENTIFICATION, LEAK DETECTION AND MERCURY VAPOR MEASUREMENTS—Continued

[As stated in Tables 1 and 2 of Subpart IIIII, examples of techniques for equipment problem identification, leak detection and mercury vapor measurements can be found in the following table]

To detect * * *	You could use * * *	Principle of detection * * *
	d. Portable short-wave ultraviolet light, fluorescent background—visual indication.	Ultraviolet light is directed toward a fluorescent background positioned behind a suspected source of mercury emissions. Elemental mercury vapor absorbs the ultraviolet light, projecting a dark shadow image on the fluorescent background.
	e. Portable combustible gas meter.	
3. Level of mercury vapor in the cell room and other areas.	a. Portable mercury vapor analyzer—ultraviolet light absorption detector.	See Item 2.b.
	b. Portable mercury vapor analyzer—gold film amalgamation detector.	See Item 2.c.
	c. Permanganate impingement	A known volume of gas sample is absorbed in potassium permanganate solution. Elemental mercury in the solution is determined using a cold vapor adsorption analyzer, and the concentration of mercury in the gas sample is calculated.

TABLE 7 TO SUBPART IIIII OF PART 63.—REQUIRED ELEMENTS OF WASHDOWN PLANS

[As stated in § 63.8192, your written washdown plan must address the elements contained in the following table]

For each of the following areas * * *	You must establish the following as part of your plan * * *
1. Center aisles of cell rooms	A description of the manner of washdown of the area, and the washdown frequency for the area.
2. Electrolyzers	
3. End boxes and areas under end boxes	
4. Decomposers and areas under decomposers	
5. Caustic baskets and areas around caustic baskets	
6. Hydrogen system piping	
7. Basement floor of cell rooms	
8. Tanks	
9. Pillars and beams in cell rooms	
10. Mercury cell repair areas	
11. Maintenance shop areas	
12. Work tables	
13. Mercury thermal recovery units	
14. Storage areas for mercury-containing wastes	

TABLE 8 TO SUBPART IIIII OF PART 63.—REQUIREMENTS FOR CELL ROOM MONITORING PROGRAM

[As stated in § 63.8192(g)(1), your mercury monitoring system must meet the requirements contained in the following table]

If you utilize an * * *	Your * * *	Must * * *
1. Extractive cold vapor spectroscopy system	a. Mercury vapor analyzer	Be capable of continuously monitoring the elemental mercury concentration with a detection level at least two times lower than the baseline mercury concentration in the cell room.
	b. Sampling system	Obtain measurements at three or more locations along the center aisle of the cell room at a height sufficient to ensure that sample is representative of the entire cell room. One sampling location must be above the midpoint of the center aisle, and the other two an equidistance between the midpoint and the end of the cells.
2. Open path differential optical absorption spectroscopy system.	a. Mercury vapor analyzer	Be capable of continuously monitoring the elemental mercury concentration with a detection level at least two times lower than the baseline mercury concentration in the cell room.
	b. Path	Be directed along the center aisle at a height sufficient to ensure that the sample is representative of the entire cell room.

TABLE 9 TO SUBPART IIIII OF PART 63.—REQUIRED RECORDS FOR WORK PRACTICE STANDARDS

[As stated in § 63.8256(c), you must keep the records (related to the work practice standards) specified in the following table]

For each * * *	You must record the following information * * *
1. Inspection required by Table 2 to this subpart	Date and time the inspection was conducted.
2. Situation found during an inspection required by Table 2 to this subpart: leaking vent hose; open-top container where liquid mercury is not covered by an aqueous liquid; end box cover that is not securely in place; end box stopper that is not securely in place; end box where liquid mercury is not covered by an aqueous liquid at a temperature below boiling; seal pot cover that is not securely in place; open or mercury seal pot stopper that is not securely in place; crack, spalling, or other deficiency in a cell room floor, pillar, or beam that could cause liquid mercury to become trapped; or caustic basket that is not securely in place.	a. Description of the condition. b. Location of the condition. c. Date and time you identify the condition. d. Description of the corrective action taken. e. Date and time you successfully complete the corrective action.
3. Caustic leak during an inspection required by Table 2 to this subpart	a. Location of the leak. b. Date and time you identify the leak. c. Date and time you successfully stop the leak and repair the leaking equipment.
4. Liquid mercury spill or accumulation identified during an inspection required by Table 2 to this subpart or at any other time.	a. Location of the liquid mercury spill or accumulation. b. Estimate of the weight of liquid mercury. c. Date and time you detect the liquid mercury spill or accumulation. d. Method you use to clean up the liquid mercury spill or accumulation. e. Date and time when you clean up the liquid mercury spill or accumulation. f. Source of the liquid mercury spill or accumulation. g. If the source of the liquid mercury spill or accumulation is not identified, the time when you reinspect the area.
5. Liquid mercury leak or hydrogen leak identified during an inspection required by Table 2 to this subpart or at any other time.	a. Location of the leak. b. Date and time you identify the leak. c. If the leak is a liquid mercury leak, the date and time that you successfully contain the dripping liquid mercury. d. Date and time you first attempt to stop the leak. e. Date and time you successfully stop the leak and repair the leaking equipment. f. If you take a cell off line or isolate the leaking equipment, the date and time you take the cell off line or isolate the leaking equipment, and the date and time you put the cell or isolated equipment back into service.
6. Occasion for which it is not possible to perform the design, operation and maintenance procedures required by Item 2 of Table 1 to this subpart.	a. Reason for not being able to perform each procedure determined to be not possible. b. Actions taken to reduce or prevent mercury emissions, in lieu of the requirements in Table 1 to this subpart.

TABLE 10 TO SUBPART IIIII OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART IIIII

[As stated in § 63.8262, you must comply with the applicable General Provisions requirements according to the following table]

Citation	Subject	Applies to Subpart IIIII	Explanation
§ 63.1	Applicability	Yes.	
§ 63.2	Definitions	Yes.	
§ 63.3	Units and Abbreviations	Yes.	
§ 63.4	Prohibited Activities	Yes.	
§ 63.5	Construction/Reconstruction	Yes.	
§ 63.6(a)–(g), (i), (j)	Compliance with Standards and Maintenance Requirements.	Yes.	
§ 63.6(h)	Compliance with Opacity and Visible Emission Standards.	No	Subpart IIIII does not have opacity and visible emission standards.
§ 63.7(a)(1), (b)–(h)	Performance Testing Requirements.	Yes	Subpart IIIII specifies additional requirements related to site-specific test plans and the conduct of performance tests.
§ 63.7(a)(2)	Applicability and Performance Test Dates.	No	Subpart IIIII requires the performance test to be performed on the compliance date.
§ 63.8(a)(1), (a)(3); (b); (c)(1)–(4), (6)–(8); (d); (e); and (f)(1)–(5).	Monitoring Requirements	Yes.	
§ 63.8(a)(2)	Continuous Monitoring System (CMS) Requirements.	No	Subpart IIIII requires a site-specific monitoring plan in lieu of a promulgated performance specification for a mercury concentration CMS.

TABLE 10 TO SUBPART IIIII OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART IIIII—Continued

[As stated in § 63.8262, you must comply with the applicable General Provisions requirements according to the following table]

Citation	Subject	Applies to Subpart IIIII	Explanation
§ 63.8(a)(4)	Additional Monitoring Requirements for Control Devices in § 63.11.	No	Subpart IIIII does not require flares.
§ 63.8(c)(5)	COMS Minimum Procedures	No	Subpart IIIII does not have opacity and visible emission standards.
§ 63.8(f)(6)	Alternative to Relative Accuracy Test.	No	Subpart IIIII does not require CEMS.
§ 63.8(g)	Data Reduction	No	Subpart IIIII specifies mercury concentration CMS data reduction requirements.
§ 63.9(a)–(e), (g)–(j)	Notification Requirements	Yes.	
§ 63.9(f)	Notification of VE/Opacity Test	No	Subpart IIIII does not have opacity and visible emission standards.
§ 63.10(a); (b)(1); (b)(2)(i)–(xii), (xiv); (b)(3); (c);(d)(1)–(2), (4)–(5); (e); (f).	Recordkeeping/Reporting	Yes.	
§ 63.10(b)(2)(xiii)	CMS Records for RATA Alternative.	No	Subpart IIIII does not require CEMS.
§ 63.10(d)(3)	Reporting Opacity or VE Observations.	No	Subpart IIIII does not have opacity and visible emission standards.
§ 63.11	Flares	No	Subpart IIIII does not require flares.
§ 63.12	Delegation	Yes.	
§ 63.13	Addresses	Yes.	
§ 63.14	Incorporation by Reference	Yes.	
§ 63.15	Availability of Information	Yes.	

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Federal Register

Friday,
December 19, 2003

Part III

Environmental Protection Agency

40 CFR Part 63

National Emission Standards for Hazardous Air Pollutants: Chlorine and Hydrochioric Acid Emissions from Chlorine Production; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[OAR–2002–0016, FRL–7554–6]

RIN 2060–AK38

National Emission Standards for Hazardous Air Pollutants: Chlorine and Hydrochloric Acid Emissions From Chlorine Production

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final decision to delete subcategory.

SUMMARY: This final action deletes the subcategory of sources that do not utilize mercury cells to produce chlorine and caustic. We have determined that this non-mercury cell chlorine production subcategory should be deleted because chlorine and hydrochloric acid (HCl), the only hazardous air pollutants (HAP) emitted, are not carcinogenic, have well-defined health thresholds, and chlorine and HCl air emissions from each non-mercury cell chlorine subcategory source do not exceed a level which is adequate to protect public health with an ample margin of safety. In addition, the emissions of chlorine and HCl will not result in any adverse environmental effects. This final action does not address chlorine and HCl emissions from mercury cell chlor-alkali plants. The final rulemaking for the mercury cell chlor-alkali plant subcategory is contained elsewhere in this issue of the **Federal Register**.

EFFECTIVE DATE: December 19, 2003.

ADDRESSES: *Docket.* We have established an official public docket for this action under Docket ID No. OAR–2002–0016, A–2002–09, A–2000–32, and OAR–2002–0017 available for public viewing at the Office of Air and Radiation Docket and Information Center (Air Docket) in the EPA Docket Center, (EPA/DC) EPA West, Room B102, 1301 Constitution Avenue, NW, Washington, DC. Docket No. A–2002–09 or OAR–2002–0016 contains supporting information used in developing the proposed and final action for the non-mercury cell subcategory of the chlorine production source category addressed in this action. The docket is available for public viewing at the Office of Air and Radiation Docket and Information Center (Air Docket) in the EPA Docket Center, (EPA/DC) EPA West, Room B102, 1301 Constitution Avenue, NW, Washington, DC and may be inspected from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Iliam Rosario, Metals Group, Emission Standards Division (C439–02), U.S. EPA, Research Triangle Park, North Carolina 27711, telephone number: (919) 541–5308, facsimile: (919) 541–5600, electronic mail address: rosario.iliam@epa.gov.

SUPPLEMENTARY INFORMATION:

Docket. The official public docket consists of the documents specifically referenced in this final action, any public comments received, and other information related to this final action. Although a part of the official docket, the public docket does not include Confidential Business Information or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Air Docket is (202) 566–1742.

Electronic Docket Access. You may access this final action electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr/*.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility in the above paragraph entitled "Docket." Once in the system, select "search," then key in the appropriate docket identification number.

Judicial Review. Under CAA section 307(b), judicial review of the final action is available only by filing a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit on or before February 17, 2004. Only those objections to the final action which were raised with reasonable specificity during the period for public comment may be raised during judicial review.

Affected entities. Entities potentially affected by this action include facilities engaged in the production of chlorine using non-mercury cells, for example, diaphragm cells and membrane cells. Affected categories and entities include those sources listed in the primary Standard Industrial Classification code 2812 or North American Information Classification System code 325181.

This description is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this final action. If you have questions regarding the applicability of this final action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

World Wide Web Information. In addition to being available in the docket, an electronic copy of today's final action will also be available through EPA's World Wide Web site. Following signature, a copy of this final action will be posted on our policy and guidance page for newly proposed or promulgated rules: *http://www.epa.gov/ttn/oarpg*. The web site provides information and technology exchange in various areas of air pollution control. If more information regarding the web site is needed, call our web site help line at (919) 541–5384.

Outline. The information presented in this preamble is organized as follows:

I. Background
A. What Is the Source of Authority for This Final Action?
B. What Is the Source Category?
C. How Did the Public Participate in Developing This Final Action?
II. Summary of Final Action
III. Summary of Major Comments
A. What Issues Were Raised Regarding the Statutory Authority for This Final Action?
B. What Issues Were Raised Related to the Potential Overlap With the HCl Production NESHAP?
C. What Issues Were Raised Regarding the Risk Assessment That Forms the Technical Basis for This Final Action?
IV. Statutory and Executive Order Reviews
A. Executive Order 12866: Regulatory Planning and Review
B. Paperwork Reduction Act
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D. Unfunded Mandates Reform Act
E. Executive Order 13132: Federalism
F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments
G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks
H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use
I. National Technology Transfer Advancement Act
J. Congressional Review Act

I. Background

A. What Are the Sources of Authority for This Final Action?

Section 112 of the Clean Air Act (CAA) contains our authorities for reducing emissions of HAP. Section 112(c)(1) of the CAA requires us to list categories and subcategories of major sources and area sources of HAP and to establish national emission standards for hazardous air pollutants (NESHAP) for the listed source categories and subcategories. Section 112(c)(9) of the CAA contains provisions that allow the deletion of source categories listed under CAA section 112(c)(1) provided that certain conditions are met. For chemicals that may result in cancer in humans, the condition is that no source in the category emit HAP in quantities that result in a lifetime cancer risk of greater than one in a million to the individual in the population who is most exposed. For chemicals that result in adverse health effects other than cancer or adverse environmental effects, the conditions are that no source in the category emit HAP that exceed a level "adequate to protect public health with an ample margin of safety" and that no source emit HAP in quantities to cause adverse environmental effects.

Section 112(d) of the CAA requires us to promulgate regulations establishing emission standards for each category or subcategory of major sources and area sources of HAP listed pursuant to CAA section 112(c). Section 112(d)(2) of the CAA specifies that emission standards promulgated under the section shall require the maximum degree of reductions in emissions of the HAP subject to CAA section 112 that are deemed achievable considering cost and any non-air quality health and environmental impacts and energy requirements.

Each of the NESHAP established reflects the maximum degree of reduction in emissions of HAP that is achievable. This level of control is commonly referred to as maximum achievable control technology (MACT).

The CAA includes exceptions to the general statutory requirement to establish emission standards based on MACT. For pollutants for which a threshold has been established, CAA section 112(d)(4) allows us ". . . to consider such threshold level, with an ample margin of safety, when establishing emissions standards. . . ."

B. What Is the Source Category?

The chlorine production source category was initially listed as a category of major sources of HAP pursuant to section 112(c)(1) of the CAA on July 16, 1992 (57 FR 31576). At the time of the initial listing, we defined the chlorine production source category as follows: "The Chlorine Production Source Category includes any facility engaged in the production of chlorine. The category includes, but is not limited to, facilities producing chlorine by the following production methods: diaphragm cell, mercury cell, membrane cell, hybrid fuel cell, Downs cell, potash manufacture, hydrochloric acid decomposition, nitrosyl chloride process, nitric acid/salt process, Kel-Chlor process, and sodium chloride/sulfuric acid process."

In our subsequent analysis of the chlorine production source category, we did not identify any facilities that produce chlorine using hybrid fuel cells, the nitrosyl chloride process, the Kel-Chlor process, the sodium chloride/sulfuric acid process, or as a by-product from potash manufacturing. The majority of the source category is made up of chlor-alkali plants that produce chlorine and caustic (sodium hydroxide) using mercury cells, diaphragm cells, or membrane cells. We also identified operating plants that produce chlorine as a by-product: one from the production of sodium metal in Down cells, another from the production of potassium nitrate fertilizer that uses the nitric acid/salt process, and a third that produces chlorine as a by-product from primary magnesium refining (magnesium refining is a separately listed source category, and is being addressed on its own in a separate rulemaking). In addition, at a site where a membrane cell process is located, we have identified a process that produces chlorine through the decomposition of HCl. Our analysis shows that the only HAP emitted from sources within the chlorine production source category are chlorine, HCl, and mercury, and mercury is only emitted from mercury cell chlor-alkali plants.

Because of the differences in the production methods and the HAP emitted, we decided to divide the chlorine production category into two subcategories: (1) Mercury cell chlor-alkali plants, and (2) chlorine production plants that do not rely upon mercury cells for chlorine production (diaphragm cell chlor-alkali plants, membrane cell chlor-alkali plants, etc). Thus, on July 3, 2002, we issued different proposals to address the emissions of mercury from the mercury cell chlorine production subcategory sources (67 FR 44672) and the emissions of chlorine and HCl from both the non-mercury cell chlorine production subcategory and the mercury cell chlorine production subcategory sources (67 FR 44713). This final action deletes the non-mercury cell chlorine production subcategory. Elsewhere in today's **Federal Register**, we are issuing a final rulemaking to regulate mercury emissions for mercury cell chlorine production subcategory sources to regulate mercury emissions, and we are utilizing our authority under CAA section 112(d)(4) not to regulate chlorine and HCl emissions from the mercury cell chlorine production source category.

In the non-mercury cell chlorine production subcategory, we identified 20 major source plant sites where diaphragm or membrane cell chlor-alkali chlorine production plants are located. None of the non-mercury cell chlorine production processes at these sites emit HAP greater than 10 tons per year (tpy) of one HAP or 25 tpy of all HAP (that is, they would not be major source if they were not collocated with other HAP emission sources), but the total emissions from the entire contiguous plant site make each a major source.

C. How Did the Public Participate in Developing This Final Action?

Prior to proposal, we met with industry representatives to discuss the data and information used to develop the proposed action. In addition, these and other potential stakeholders, including equipment vendors and environmental groups, had opportunity to comment on the proposed action.

The proposed action was published in the **Federal Register** on July 3, 2002 (67 FR 44713). The preamble to the proposed action discussed the availability of technical support documents, which described in detail the information gathered during the standards development process. Public comments were solicited at proposal.

We received eight public comment letters on the proposed action. The commenters represent the following affiliations: industry representatives, governmental entities, and environmental groups during the public comment. In the post-proposal period, we had discussions with commenters and other stakeholders to clarify comments and to assist in our analysis of the comments. Records of these contacts are found in Docket No. A–2002–09 or OAR–2002–0016.

II. Summary of Final Action

This final action deletes the subcategory of the Chlorine Production Source Category for facilities that do not utilize mercury cells to produce chlorine and caustic. This action is

being made under our authority in CAA section 112(c)(9)(B)(ii). This final action does not impact the other subcategory of the Chlorine Production Source Category: Mercury Cell Chlor-Alkali Plants. A final rulemaking addressing the Mercury Cell Chlor-alkali Plant subcategory is contained in a separate section of today's **Federal Register**.

III. Summary of Major Comments

On July 3, 2002 (67 FR 44713), we proposed not to regulate chlorine and HCl emissions from all chlorine production processes (mercury and non-mercury cell) under the authority of CAA section 112(d)(4). We based that decision on our determination that no further control is necessary because chlorine and HCl are health threshold pollutants, and chlorine and HCl levels emitted from chlorine production processes are below their threshold values within an ample margin of safety, and they do not result in adverse environmental effects.

For a complete summary of all the comments received on the proposed rule and our responses to them, refer to the "National Standards for Hazardous Air Pollutants: Chlorine and Hydrochloric Acid Emissions from Chlorine Production: Summary of Public Comments and Responses" in Docket No. A–2002–09 or OAR–2002–0016.

A. What Issues Were Raised Regarding the Statutory Authority for This Final Action?

Comment: Several comments were received related to our decision not to regulate chlorine and HCl emissions from chlorine production under the authority of CAA section 112(d)(4). Some commenters supported that decision and believed the interpretation of our authority under CAA section 112(d)(4) was appropriate. In contrast, other commenters disagreed with EPA's interpretation of CAA section 112(d)(4). Some of the commenters believed that EPA should use its authority under CAA section 112(c)(9)(B)(ii).

Several commenters supported the decision not to regulate chlorine and HCl emissions from chlorine production plants under the authority of CAA section 112(d)(4). One commenter stated that EPA conducted an appropriate analysis to determine that human exposures from ambient concentrations are well below threshold values with an ample margin of safety. According to another commenter, any further regulation of chlorine and HCl emissions from the chlorine production industry would have no environmental benefits, but would result in costs for monitoring, recordkeeping, and reporting efforts to certify compliance with any requirements. The commenter was concerned that a rulemaking would also stretch EPA's limited resources in monitoring for compliance. Three commenters stated that EPA's interpretation of their authority under CAA section 112(d)(4) was supported by the legislative history, which emphasizes that Congress included section 112(d)(4) in the CAA to prevent unnecessary regulation of source categories. The commenter agreed that under CAA section 112(d)(4), once EPA establishes that a pollutant has a health threshold and that exposure to that pollutant's emissions are below the health threshold, EPA should refrain from setting MACT standards for that pollutant. The commenter further suggested that EPA should use CAA section 112(d)(4) whenever setting emission standards under CAA section 112(d).

Three commenters disagreed with EPA's interpretation of CAA section 112(d)(4). They did not believe that CAA section 112(d)(4) could be used as an alternative to setting MACT standards under CAA section 112(d)(3). One commenter noted that the phrase "in lieu of" was not included in the CAA section 112(d)(4) provisions, and that its absence was intentional. In support of their claim, the commenter pointed to CAA section 112(d)(5), which does contain the phrase "in lieu of." The commenter interpreted CAA section 112(d)(4) to mean that health based thresholds can be considered when establishing the degree of MACT requirements, but not in place of the requirement to establish a MACT floor pursuant to CAA section 112(d)(3).

The commenter also pointed to the provisions of CAA section 112(c)(2) which require the Administrator to establish NESHAP for listed source categories and subcategories. The commenter was concerned that EPA evaluated emissions from chlorine production plants and concluded that since they do not pose a threat to human health and the environment, the Administrator is relieved of her responsibilities to establish a MACT standard. The commenter maintained that this position is not supported by CAA section 112(c)(2).

The commenter also referred to CAA section 112(d)(1) which states ". . . the Administrator shall promulgate regulations establishing emission standards for each category or subcategory of major sources and area sources of hazardous air pollutants listed for regulation pursuant to subsection (c) of this section. . . ." Thus, the commenter stated that EPA did not have the authority to "make a determination of no regulation for a listed source category or pollutant."

Finally, the commenter referred to CAA section 112(d)(3), which contains the MACT floor provisions. According to the commenter, the intent of the NESHAP program is to develop a MACT floor, and EPA is not fulfilling the requirements of the CAA by not performing such an analysis. The commenter stated that a majority of facilities identified in the analysis have adequate controls due to State regulations and these controls should be incorporated into the MACT floor evaluation. The commenter was particularly concerned that by not developing a MACT floor, no new source MACT standards were created. The commenter requested that EPA perform a MACT floor analysis, and develop a NESHAP for new sources.

Two commenters that stated that they believe that EPA should support their decision not to regulate the chlorine production source category by citing the provisions of CAA section 112(c)(9)(B)(ii) in addition to the provisions of CAA section 112(d)(4). The commenters stated that the evaluation performed by EPA would also be sufficient for deleting sources under CAA section 112(c)(9)(B)(ii), and that EPA's proposal to not regulate chlorine production is similar to deleting a subcategory of the chlorine production source category (*i.e.*, all chlorine production sources other than those using the mercury-cell chlor-alkali production process). Therefore, in addition to using the authority under CAA section 112(d)(4), the commenters suggested that EPA delete the subcategory using the authority under CAA section 112(c)(9)(B)(ii) to avoid any uncertainty over the use of its authority under CAA section 112(d)(4).

Response: The chlorine production source category was initially listed as a category of major sources of HAP pursuant to section 112(c)(1) of the CAA on July 16, 1992 (57 FR 31576). Our analysis shows that the only HAP emitted in significant quantities from sources within the chlorine production source category are chlorine, HCl, and mercury, and mercury is only emitted from mercury cell chlor-alkali plants. Because of the differences in the production methods and the HAP emitted, we decided to divide the chlorine production category into two subcategories: (1) mercury cell chlor-alkali plants, and (2) chlorine production plants that do not rely upon mercury cells for chlorine production (diaphragm cell chlor-alkali plants, membrane cell chlor-alkali plants, etc). Thus, on July 3, 2002, we issued different proposals to address the emissions of mercury from the mercury cell chlorine production subcategory sources (67 FR 44672) and the emissions of chlorine and HCl from both the non-mercury cell chlorine production subcategory and the mercury cell chlorine production subcategory sources (67 FR 44713). While we are finalizing the NESHAP for the mercury cell chlor-alkali subcategory in a separate action in today's **Federal Register**, with certain modifications from the proposal (including our decision not to regulate chlorine and HCl emissions under the authority of CAA section 112(d)(4)), we have decided to delete the non-mercury cell chlorine production subcategory in accordance with CAA section 112(c)(9)(B)(ii).

We agree with those two commenters who suggested that exercising our authority under CAA section 112(c)(9)(B)(ii) is appropriate for this subcategory for a number of reasons. First, CAA section 112(c)(9)(B)(ii) permits the deletion of subcategories, and that is what is at issue here. We are not deleting the entire chlorine production category; neither are we deleting the mercury cell subcategory, the emissions from which and production methodology are different from those facilities that produce chlorine using diaphragm cells, membrane cells, and the various processes that produce chlorine as a by-product. Second, the only HAP emitted in significant quantities from the facilities in this subcategory are chlorine and HCl. Chlorine and HCl are not carcinogens (*http://www.epa.gov/iris/*). Third, as indicated in the proposal, both of these HAP are threshold pollutants. For the proposed action, we obtained chlorine and HCl emission estimates from every known major source facility in the non-mercury cell chlorine production subcategory using our authority under section 114 of the CAA and conducted risk assessments for each facility. We updated these assessments based on comments received. Our analysis showed both at the time of proposal and shows now that emissions of these HAP from every source in the non-mercury cell chlorine production subcategory do not exceed a level which is "adequate to protect public health with an ample margin of safety." Finally, our evaluation of environmental effects indicates that no adverse impacts will result from emissions from any source within the subcategory. Therefore, we agree with the commenters that our evaluation is sufficient for delisting the subcategory under CAA section 112(c)(9)(B)(ii), and that such action is justified as a logical outgrowth of public comments received on our proposed action.

We have reviewed in some detail the comments which have questioned our proposed use of CAA section 112(d)(4) to not establish NESHAP for chlorine and HCl emissions from facilities within the non-mercury cell chlorine production subcategory. We do not agree with these comments, and we are exercising our authority under CAA section 112(d)(4) to not regulate chlorine and HCl emissions from the mercury cell chlorine production source category. The NESHAP for the mercury cell chlorine subcategory is being promulgated in a separate action listed elsewhere in today's **Federal Register**. We have decided to delete the non-mercury cell chlorine production subcategory under CAA section 112(c)(9)(B)(ii) for the reasons stated above. We do not feel that we are obligated to exercise our authority under both CAA section 112(d)4) and CAA section 112(c)(9)(B)(ii) as suggested by the commenter. Therefore, today's final action is to delete the non-mercury cell chlorine production subcategory under CAA section 112(C)(9)(B)(ii).

Comment: Some commenters concluded that we did not establish either cancer or non-cancer thresholds for HCl and chlorine and, therefore, it is illegal for EPA to attempt to use CAA section 112(d)(4) to set standards.

Response: Section 112(d)(4) of the CAA states that, "With respect to pollutants for which a health threshold has been established, the Administrator may consider such threshold level, with an ample margin of safety, when establishing emission standards under this subsection." The threshold level refers to the level of concentration of a chemical under which no health effects are expected from exposure, although this term is not defined in CAA section 112. Further, CAA section 112 does not address the process that must be followed to establish a threshold level.

The Reference Concentration (RfC) is a long-term threshold, defined as an estimate of a daily inhalation exposure that, over a lifetime, would not likely result in the occurrence of noncancer health effects in humans. We have determined that the RfC for HCl of 20 microgram per cubic meter ($\mu g/m^3$) is an appropriate threshold value for assessing risk to humans associated with exposure to HCl through inhalation *http://www.epa.gov/iris/subst/0396.htm*).

In cases where we have not studied a chemical itself, we rely on the studies of other governmental agencies, such as the Agency for Toxic Substances and Disease Registry (ATSDR) or the Office of Health Hazard Assessment of California's Environmental Protection Agency (CAL EPA), for RfC values. The CAL EPA developed an RfC value of 0.2 $\mu g/m^3$ for chlorine based on a large inhalation study with rats.

Acute exposure guideline level (AEGL) toxicity values are estimates of adverse health effects due to a single exposure lasting eight hours or less. The confidence in the AEGL (a qualitative rating or either low, medium, or high) is based on the number of studies available and the quality of the data. Consensus toxicity values for effects of acute exposures have been developed by several different organizations, and we are beginning to develop such values. A national advisory committee organized by EPA has developed AEGL's for priority chemicals for 30-minute, 1-hour, 4-hour, and 8-hour airborne exposures. They have also determined the levels of these chemicals at each exposure duration that will protect against discomfort (AEGL1), serious effects (AEGL2), and life-threatening effects or death (AEGL3). Hydrogen chloride has been assigned AEGL values (65 FR 39264, June 23, 2000), including the 1-hour, AEGL1 of 2,700 $\mu g/m^3$ used in our revised analysis. Chlorine has also been assigned AEGL values (62 FR 58840), including the 1 hour AEGL1 of 1,500 $\mu g/m^3$ used in our revised analysis.

We maintain that the listing of health thresholds by EPA and other organizations in the public domain as discussed above has established health thresholds for HCl and chlorine. Further, we believe that the recognition of these levels by EPA, ATSDR, and CAL EPA indicates that chlorine and HCl are threshold pollutants.

Moreover, we provided the public an opportunity to comment on the thresholds for chlorine and HCl that we used in our original analysis for the proposed action. We used the same threshold level for HCl for both the proposed and final NESHAP for the pulp and paper mill category. (Although there is no mention of the HCl threshold in the final rule preamble for the pulp and paper mill NESHAP, we received no comment on the use of the threshold and used it in deciding not to set a limitation for HCl in the final NESHAP). We have also used the same threshold for HCl in the proposed NESHAP for lime production (67 FR 78046). There is no requirement in either CAA section 112(d)(4) or CAA section 112(c)(9)(B)(ii)

that EPA develop or finalize a threshold for a particular HAP in a certain manner. In fact, CAA section 112(c)(9)(B)(ii), the authority we are utilizing here, does not mention the term threshold (although the term is implied by the use of the phrase "a level which is adequate to protect public health with an ample margin of safety." The thresholds we have used for both HCl and chlorine are consistent with the statutory language in CAA section 112(c)(9)(B)(ii).

B. What Issues Were Raised Related to the Potential Overlap With the HCl Production NESHAP?

Comment: Four commenters supported EPA's decision to include direct synthesis HCl as a part of the non-mercury cell chlorine production process. However, a commenter requested that we clarify that chlorine and HCl emissions from the absorber vents and associated storage vessels and transfer racks of the direct synthesis HCl production units were included in the risk analyses. To clarify applicability to the HCl Production NESHAP (subpart NNNNN of 40 CFR part 63), a commenter suggested that EPA modify the applicability provisions of subpart NNNNN.

Two commenters requested that we reevaluate collocated chlorine and HCl production sources and provide guidance so that the facilities can easily determine to which source category they belong. According to the commenters, collocated chlorine and HCl production sources may share transfer operations and storage tanks, and where appropriate, we should remove all facilities from the HCl acid production source category that meet the logical test outlined in the proposed action. The commenters stated that they believe the collocated integrated chlorine and HCl acid production facilities should be placed in the non-mercury cell chlorine production source category and removed from the HCl production source category.

Response: The final rule for subpart NNNNN of 40 CFR part 63 (68 FR 19076, April 17, 2003) states, in § 63.8985(d), that an "HCl production facility is not subject to this subpart if it produces HCl through the direct synthesis of hydrogen and chlorine and is part of a chlor-alkali facility." The definition of "HCl production facility" in subpart NNNNN includes "all HCl storage tanks that contain liquid HCl product that is produced in the HCl production unit" (*e.g.*, direct synthesis unit) as well as "all HCl transfer operations that load HCl product produced in the HCl production unit into a tank truck, rail car, ship, or barge, along with the piping and other equipment in HCl service used to transfer liquid HCl product from the HCl production unit to the HCl storage tanks and/or HCl transfer operations." Therefore, we have clarified that chlorine and HCl emissions from the absorber vents of direct synthesis HCl production units at chlor-alkali facilities, as well as the associated storage tanks and transfer operations specified above, are included in the non-mercury cell chlorine production subcategory and are not regulated under subpart NNNNN.

The clarifications we made in subpart NNNNN provide guidance for sources to determine to which source category their operations belong. As stated above, all HCl production facilities at chlor-alkali plants that produce HCl through direct synthesis are part of the non-mercury cell chlorine production subcategory. All other HCl production facilities (*e.g.*, those that produce HCl as a co-product of a chlorinated organic compound) at sites where chlor-alkali plants are located are part of the HCl Production source category and subject to subpart NNNNN. In the case of shared storage tanks and transfer operations, any storage tank that stores, and any transfer operation that loads, liquid HCl product which was produced in an HCl production facility that is subject to subpart NNNNN is subject to the provisions of that subpart.

C. What Issues Were Raised Regarding the Risk Assessment That Forms the Technical Basis for This Final Action?

Comment: In the analysis for the proposed action, we used the HCl RfC to determine the long-term health effects of chlorine emissions, since chlorine photolyzes very quickly to HCl in sunlight. Two comments supported that methodology and stated that our decision was based on sound scientific knowledge of the pollutants of concern.

In contrast, two other commenters did not agree with our use of the HCl RfC as a threshold level for chlorine. The commenters stated that not all of the annual chlorine emissions can be considered as HCl and, therefore, the chlorine exposure was underestimated. The commenters argued that chlorine emissions will not undergo photolysis to convert to HCl when there is not bright sunshine (*i.e.*, at night or on cloudy days).

Response: The widely accepted fact that chlorine is photolyzed in sunlight formed the basis for the assumption in the original risk assessment that chronic exposure to chlorine would not occur. As a result of the comment, we re-examined the literature on the atmospheric fate of chlorine in the atmosphere to validate our original assumption.

The additional information obtained from the literature confirmed our earlier information. There are several different pathways that molecular chlorine can take, including photolysis (reaction with light), reactions with hydroxyl radicals (OH), reactions with oxygen atoms (O), and reactions with water vapor (H_2O). Each pathway results in different amounts of Cl_2 being removed from the troposphere, and different pathways are predominant at different times of the day. However, photolysis is the primary pathway.

Therefore, this information did not fundamentally change the assumption made in the original risk assessment, which was that on a long-term basis, individuals will be exposed more to hydrochloric acid formed from the photolysis of chlorine than to chlorine. However, the commenters are correct that there will be situations where individuals will be exposed to chlorine. Therefore, in addition to the assessment where we considered only acute exposure to chlorine, we concluded that it was appropriate to consider the effects of chronic exposure to chlorine emissions from chlor-alkali plants. In order to provide an upper bound estimate of the chronic risks to compare with the lower bound estimates assuming that all chlorine was converted to HCl, we conducted modeling assuming that no chlorine is photolyzed.

In general, we consider an exposure concentration which is below the RfC concentration (what we call a hazard quotient of less than 1) to be safe. This is based on the definition of RfC. The RfC is a peer reviewed value defined as an estimate (with uncertainty spanning perhaps an order of magnitude) of a daily inhalation exposure to the human population (including sensitive subgroups) that is likely to be without appreciable risk of deleterious noncancer effects during a life time (i.e., 70 years).

We conducted additional modeling for all facilities within the subcategory using the same model used for the proposed action (ISCST3) to estimate chronic chlorine exposure using the assumption that no chlorine is photolyzed to HCl. The hazard quotients resulting from this additional modeling defined the upper bound of our risk assessment. The highest upper-bound hazard quotient estimated by the model is just over 0.3. (For more details regarding this revised risk assessment, refer to table 2 of the responses to comment document, available in the docket.) Given the health protective assumptions used in this analysis, the value of 0.3 represents a hypothetical exposure that is well above what we would expect actual exposures to be. This is because chlorine is converted to HCl in the presence of sunlight within a few minutes. In addition, the hazard quotient of 0.3, which results from this exposure scenario is well below the safe value of 1. Thus, we have concluded that, even assuming that some chronic exposure to chlorine may occur, none of the sources included in this subcategory will have emissions of chlorine or HCl that exceed a level of exposure which is adequate to protect public health and the environment with an ample margin of safety.

Comment: Two commenters did not support EPA's use of the AEGL2 for use as a short-term exposure limit for chlorine and HCl. One commenter stated that the AEGL2 values would not sufficiently protect public health because they would allow emissions at levels that cause discomfort, and according to the commenter, discomfort is an adverse health effect. The commenter also complained that EPA did not explain why it chose to use AEGL2 rather than AEGL1 or AEGL3. The commenter explained that although emissions from chlorine plants did not exceed AEGL2 values, the emissions may exceed AEGL1 values, and if they did, the proposed action would not meet the statutory requirements. Another commenter stated that AEGL limits are not appropriate for assessing daily human exposure scenarios because they were developed for emergency planning. The commenter recommended that EPA should use the American Conference of Governmental Industrial Hygienists (ACGIH), which has a 1-hour Short Term Exposure Limit (STEL) similar to the AEGL1 value of 1 parts per million (ppm) (for chlorine) and is used to protect against eye and mucous membrane irritation. The commenter's policy as a State agency is to add an additional safety factor of ten to ACGIH STEL values to protect for sensitive individuals, since ACGIH values were established for healthy workers. The commenter stressed that EPA must use conservative benchmarks before concluding that an ample margin of safety exists.

Response: The AEGL values represent short-term threshold or ceiling exposure values intended for the protection of the general public, including susceptible or sensitive individuals, but not hypersusceptible or hypersensitive individuals. The AEGL values represent biological reference values for this defined human population and consist of three biological endpoints for each of four different exposure periods of 30 minutes, 1 hour, 4 hours, and 8 hours.

The AEGL2 level is defined as follows: AEGL2 is the airborne concentration of a substance at or above which it is predicted that the general population, including susceptible, but excluding hypersusceptible individuals, could experience irreversible or other serious, long-lasting effects or impaired ability to escape. Airborne concentrations below the AEGL2, but at or above AEGL1 represent exposure levels that may cause notable discomfort.

As utilized in the proposed action, the AEGL2 1-hour concentrations for chlorine and HCl are 5,800 $\mu g/m^3$ and 33,000 $\mu g/m^3$, respectively.

The AEGL1 level is defined as follows: AEGL–1 is the airborne concentration of a substance at or above which it is predicted that the general population, including "susceptible" but excluding "hypersusceptible" individuals, could experience notable discomfort. Airborne concentrations below AEGL–1 represent exposure levels that could produce mild odor, taste, or other sensory irritations.

The 1-hour AEGL1 concentration for chlorine is 2,900 $\mu g/m^3$ and the corresponding value for HCl is 2,700 $\mu g/m^3$. The ACGIH short term exposure limit for chlorine, which is 1 ppm is approximately equal to the AEGL1 value of 2,900 $\mu g/m^3$.

Although we stand by our original analysis, which used the AEGL2 level, we have referenced the commenter's suggested use of the AEGL1 values (possibly with a safety factor) for determining whether an ample margin of safety has been obtained. Therefore, we simply compared the short-term (1-hour average) modeling results from the original acute risk assessment to the AEGL1 values. These results were obtained by modeling the maximum allowable hourly emissions reported in the CAA section 114 responses for each of the sources. For plants that did not report fugitive emissions, fugitive emissions were estimated using worst-case emission factors.

The maximum modeled 1-hour chlorine concentration for 16 of the 20 plants is less than 5 percent of the AEGL–1 (and ACGIH) value for chlorine. Further, the highest modeled concentration for any plant, 346 $\mu g/m^3$, is less than 12 percent of the AEGL1 values. The highest modeled 1-hour HCl concentration for any plant, 120 $\mu g/m^3$, is less than 5 percent of the AEGL1 value for HCl.

Based on that comparison, we conclude that the chlorine and HCl emissions from non-mercury cell chlorine production plants do not represent an unsafe level of acute exposure. Further, we maintain, along with the chlorine exposure assessment, that proves that an ample margin of safety is provided with no additional control.

Comment: Two commenters supported EPA's method of selecting a risk assessment approach to meet the unique needs of the chlorine production industry. The commenters agreed that the risk assessment methodology should not be interpreted as a standardized approach that would set a precedent for how EPA will apply CAA section 112(d)(4) in future cases. Furthermore, the commenters stated that degree of conservatism built into all aspects of the risk assessment conducted for the chlorine production source category could vary greatly in future risk assessments for other source categories. The commenters stressed that they believe that the conservative assumptions made in the health effects assessment, emissions estimates, and exposure assessment were appropriate for the proposed action.

In contrast, one commenter stated that the risk assessment fell short of the Agency's prior practice. According to the commenter, whenever EPA has made determinations to regulate a specific pollutant based on health considerations (*e.g.*, national ambient air quality standards (NAAQS) for ozone and particulate matter (PM), the Agency evaluated health effects and exposure in great detail. The commenter contended that in that case, EPA appears to be content with "the bare and unsupported assumptions about what health levels are safe." The commenter argued that it was not appropriate for EPA to use a rigorous approach when setting standards and a more cursory approach when making a decision not to regulate.

Response: We disagree with the one commenter's characterization of the assessment that forms the basis for this decision, and we strongly dispute the characterization of the assessment as "bare and unsupported." We maintain that the RfC and AEGL values used as benchmarks for the assessment are scientifically sound and appropriate. The emissions data and other inputs used for this analysis, which were provided by the industry and checked by our staff, are representative of the industry.

In this assessment, the predicted health effects estimated, using very conservative inputs and assumptions, were well below the recognized health

thresholds. While our approach in this particular action may not be the same as an approach for a NAAQS, it has been certainly more than cursory. We have looked at emissions and exposure data for each of the sources in the subcategory. We have established hazard indices for chlorine and HCl for each source in the subcategory. We performed a qualitative ecological assessment. Moreover, in response to comment received, we have adjusted our analyses and taken into account comments that we have received when performing these re-assessments. We will base each risk assessment for this and future regulatory action on sound scientific principles.

Comment: In the proposed action, the risk assessment modeling was conducted by placing receptors at the geographic center of census blocks within 2 kilometers of the site and in the population-weighted centers of census block groups or census tracks out to 50 kilometers. Two commenters did not agree with that methodology for determining receptor location for threshold pollutants. One commenter stated that EPA's methodology would be more appropriate for cancer causing agent, where the risk is based on probabilities of health effects. The commenter argued that for non-cancer (*i.e.*, threshold pollutants) compounds, placing the receptors at the center of census tracks would not properly identify the highest impacts close to the facility. They felt that it was more appropriate to measure the exposure of the most exposed individual (*e.g.*, someone living at the fence line of a facility or directly downwind).

Response: We agree with the commenters that the greatest impacts will likely occur near the facility for this source category. However, we do not agree with the commenters that our approach fails to meet statutory requirements. We do not feel that considering an "ample margin of safety" means that we must demonstrate no risk or adverse health effects for a theoretical person living at the fence line. Rather, we feel it is appropriate to assess the risks at locations where people most likely reside. A census block is the smallest geographic unit for which the Census Bureau tabulates 100-percent data. While census blocks in rural areas may be larger, many blocks correspond to individual city blocks in more populated areas. The commenter is correct in that an individual could live closer to the plant than the center of the census block, and our approach would have slightly underestimated risk. It is just as likely, however, that the closest individual could live farther from the plant than the center of the census block causing our risk estimates to be slightly overestimated. By placing receptors at the center of populated census blocks on all sides of a facility, we have evaluated people living downwind. In conclusion, we continue to feel that placing a receptor in the geographic center of populated census blocks near a facility is a well established approach to exposure modeling which results in a reasonable approximation of estimating the risks where people actually live, and we maintain that this methodology is appropriate for actions taken under the authority of either CAA section 112(d)(4) or CAA section 112(c)(9)(B)(ii).

Comment: One commenter stated that the total chlorine and HCl emissions from some of the facilities included in the risk assessment were grossly underestimated. In support of their argument, the commenter pointed out potential inconsistencies in the background emissions data contained in the docket. Specifically, the total chlorine emissions from the Dow Chemicals, Freeport, Texas facility were reported in the risk assessment document to be 22 pounds per year (lb/yr), but in the 1996 Chlorine Production Summary Report, chlorine emissions from only one production process located at the Dow Chemicals facility (the diaphragm cell process) were reported to be 9,800 lb/yr. The commenter stated that since emissions from other processes at the Dow facility were not included in the summary report, the emissions were likely to be much higher. The commenter also noted that the Dow facility had the lowest emissions (22 lb/yr) of facilities reported in the risk assessment document and the highest chlorine production volume (1.8 million lb Cl_2/yr), which also indicates that the emissions from the Dow facility were underestimated.

According to the commenter, the inconsistencies between the reports undermine the credibility of the risk assessment to support a decision to not regulate this source category. Furthermore, the commenter stated that they believe that the emission inventory information provides justification for a need to establish a MACT floor. The commenter concluded that the risk assessment was flawed because the potential impacts on health and the environment were underestimated.

Response: The primary sources of the emission estimates used in the risk assessment for this source category were responses submitted directly by the facilities in response to a request for information under our authority in section 114 of the Clean Air Act. A review of the data was conducted as they were received, and follow-up questions asked of the industry representatives to clarify the information submitted. After the analysis, we were satisfied with the quality of the data, with one exception. Only one-half of the facilities submitted chlorine emission estimates from fugitive sources. One of the areas of focus in the follow-up questions was to verify the fugitive emission estimates for those facilities that did submit such estimates. Our conclusion was that fugitive emissions are to be expected from every non-mercury cell chlorine production plant, so we estimated fugitive emissions for those that did not submit estimates. That was done using the highest emission factor calculated from the plants that did report fugitives. The use of the "worst-case" factor was appropriately conservative for this assessment.

The commenter compared the emissions used in the assessment to 1991/1992 base year emissions in an earlier report on this industry, the 1996 Chlorine Production Summary Report, and correctly noted that there is a large discrepancy between the emissions levels for Dow Chemical's plant in Freeport, Texas. As a result of that comment, we made a comparison of the emissions from all plants between these two sources of information.

The comparison revealed that the Dow Freeport facility is only one of only two plants whose emissions used in the risk assessment were lower than the 1991/1992 base year emissions in the 1996 summary report. In fact, the 2000/2001 emissions used in the risk assessment for the other facilities with reported emissions in both documents averaged five times HIGHER than those reported in the 1996 summary document. Clearly, the comparison does not lead to the conclusion that the risk assessment was based on grossly underestimated emissions. A review of the data submitted by the two facilities whose 2000/2001 emissions were substantially lower than their 1991/1992 emissions did not result in any obvious errors or questionable assumptions that could be disputed with the available information. Furthermore, according to the facility, the chlorine and HCl emissions reported in the 1996 summary document included emissions from processes within the plant not related to chlorine production. That was corrected for the 2000/2001 emissions data submittal. Therefore, no changes were made as a result of the review of the reported emissions data.

The comparison did result in the concern that the emissions, particularly the fugitive emissions estimated using the worst-case factor, had been overestimated. As a point of comparison, we obtained the 2001 chlorine releases from the Toxic Release Inventory (TRI) for all ten sites for which fugitive emissions were estimated using the worst-case factor. We found that nine of the ten plants had total chlorine fugitive releases reported in TRI that were less than the those used in the risk assessment. For instance, the PPG facility in Lake Charles, Louisiana, reported 8,000 lb/yr of fugitive chlorine releases for the entire site (a very large chemical complex). We estimated 31,178 lb/yr using the worst-case emission factor. We concluded that it was overly conservative to use these estimates in light of the TRI information and in fact, we likely overestimated the fugitive emissions for these plants. Therefore, in the revised modeling for this final action for chronic chlorine exposures, we used the total chlorine fugitive releases from TRI in the revised assessment for eight plants. That is still conservative as these TRI values represent chlorine fugitive releases from all processes at the site, not just the non-mercury cell chlorine production processes. For two plants, company representatives provided a breakdown of the portion of the TRI emissions that were from the non-mercury cell chlorine production processes, and those values were used in the re-assessment.

Comment: One commenter stated that all chlorine emissions from non-mercury chlorine production facilities that are collocated with other source categories need to be reviewed as a whole when evaluating public health risk, adverse environmental effects, and possible control strategies. The commenter stressed that other sources of chlorine and HCl should be included in the risk assessment under CAA section 112(d)(4). The commenter was concerned that not accounting for all chlorine and HCl emissions from a facility would provide the community with a false sense of assurance of protection, and is not consistent with the legislative intent of the CAA to consider cumulative HAP exposure issues through an integrated approach under CAA sections 112(d), 112(f), and 112(k). Therefore, the commenter requested that EPA evaluate the potential for adverse health and environmental impacts using conservative risk assessment methodology that incorporates all known chlorine and HCl emissions from a contiguous facility.

Response: Section 112 of the CAA requires us to list categories and subcategories of major sources and area sources of HAP, and to establish NESHAP for the listed source categories and subcategories. In directing us how to establish MACT emission limits, section 112(d)(3) of the CAA requires us to set the emission limitation at a level that assures that all major sources achieve the level of control at least as stringent as that already achieved by the better-controlled and lower-emitting sources in each source category or subcategory. Therefore, the entire MACT program is structured on a source category-specific basis. All MACT standards developed to date have addressed emissions from specific source categories.

There are instances where non-mercury chlorine production facilities are collocated with other source categories. However, based on the risk assessment for chlorine and HCl emissions from chlor-alkali plants, the predicted impacts from chlorine and HCl at these chlor-alkali plants are extremely low. We believe that the human health and environmental impacts from all sources in the category even when collocated with other chlorine and HCl emissions will still be within an ample margin of safety to protect the public health, and will not cause adverse environmental effects. Moreover, as indicated in the preamble to the proposed rule, most major processes at the sites where non-mercury cell chlorine production facilities are located are subject to, or will be subject to, NESHAP to reduce HAP emissions (67 FR 44714, July 3, 2002). Therefore, it would not be appropriate to include emissions from those sources in an assessment for the non-mercury cell chlorine production source category conducted under the authority of CAA section 112(d)(4).

Comment: Two commenters stated that the environmental effects analysis was not adequate. One commenter stated that potential ecological effects of HCl emissions have not been properly referenced. One commenter stated that EPA's proposed action falls short of its obligation to protect against environmental effects. According to the commenter, EPA has understated its statutory obligation in the proposed action. The commenter referred to the legislative history, which indicates that CAA section 112(d)(4) requires standards that "would not result in adverse environmental effects which would otherwise be reduced or eliminated." The commenter listed the several shortcomings in the EPA's environmental assessment.

The commenter concluded that although EPA acknowledged that it had an obligation to ensure that any standards set under CAA section 112(d)(4) did not have any adverse environmental effects, the Agency did not properly consider the issue. Therefore, commenter stated that they believed that EPA could not promulgate standards under CAA section 112(d)(4) without contravening the CAA.

Response: While CAA section 112(d)(4) makes no mention of environmental effects, we took the potential of such adverse effects into account when we issued our proposed action. In addition, CAA section 112(c)(9)(B)(ii), which is the authority we are citing in today's final action to delete this subcategory, does require that we show there are no adverse environmental effects from emissions from the subcategory.

The level of our analysis at proposal was adequate to satisfy the requirements of CAA section 112(c)(9)(B)(ii). The commenters did not suggest that they believed there was the potential for adverse environmental effects from HCl or chlorine emissions from non-mercury cell chlorine production plants. Were there any evidence that such adverse effects were likely, or even possible, we would have conducted a more intensive ecological risk assessment.

The commenters are correct, however, that we did not discuss the ecological effects of chlorine. That was because, as was stated in the proposal preamble, we did not perform a separate evaluation of chronic chlorine exposure because chlorine is converted to HCl in the atmosphere so rapidly. Following is a brief summary of the environmental effect of chlorine.

Atmospheric exposure is the primary pathway for environmental effects from chlorine emissions. However, since most chlorine is converted to HCl, studies have focused on the effects of HCl on vegetation. Although plant exposures to elevated levels of chlorine can cause plant injury, it tends to be converted to other, less toxic forms rather rapidly in plants, and may not result in the direct accumulation of toxic pollutant residuals important in the food chain.

Plant studies have found foliar damage due to chlorine emissions and foliar damage, decreased levels of chlorophyl a and b, decreased leaf areas, obvious chlorosis, and a decline in fruit production due to chlorine emissions.

There is evidence of effects to animals due to accidental and/or catastrophic exposures, but the chlorine concentrations of these exposures are unknown. However, there is no data on exposure to historic or atmospheric concentrations.

More information is available on the effects of chlorine from aquatic exposures. However, there is no evidence that suggests that emissions of chlorine from industrial sources in the air contribute significantly to aquatic concentrations of chlorine.

One study reported a significant decrease in phytoplankton activity following exposure to 0.1 ppm chlorine in cooling tower water. Additional laboratory studies showed that continuous exposure to 0.002 milligram per liter (mg/L) total residual chlorine (TRC) resulted in depressed algal biomass in naturally-derived microcosms.

When exposed continuously for 96 hours to 0.05 mg/L TRC, the Eurasian water milfoil showed a significant reduction in shoot and dry weights, shoot length, and chlorophyll content.

Aquatic invertebrates are very sensitive to chlorine and reaction products of chlorine, with early life stages showing the most sensitivity. For example, free chlorine, monochloramine, and dichloroamine have been shown to reduce the rate of oyster larvae survival. Many studies have been performed, and the results are highly variable depending on the chlorine species, the lifestage of the invertebrate, and other factors such as salinity. The most sensitive aquatic species appears to be molluscan larvae, with LC_{50} concentrations of 0.005 mg/L. Sublethal effects have also been studied, including reduced growth, reduced motility, and reproductive failure.

The effects on fish also vary depending on the life stage and fish species, and environmental factors, such as the pH, temperature, and type of chlorine species. Larval stages are more susceptible to effects, and freshwater species are more sensitive than marine species. Free chlorine is generally more toxic than residual chlorine; where the form of chlorine is dependent on the pH of the water. Sublethal effects such as avoidance, reduction of diversity in chlorinated effluents, reduction or elimination of spawning, abnormal larvae, reduced oxygen consumption, and gill damage have been noted. Many LC_{50} values were reported, ranging from 0.08 mg/L after 24 hours of exposure to TRC to 2.4 mg/L after 0.5 hours of exposure to TRC.

Acute and chronic exposures to predicted chlorine and HCl concentrations around the sources are not expected to result in adverse toxicity effects. These pollutants are not persistent in the environment. The chlorine and HCl emitted should not significantly contribute to aquatic chlorine concentrations, and are not likely to accumulate in the soil. Chlorine rapidly converts to HCl in the atmosphere, and chlorine and HCl are not believed to result in biomagnification or bioaccumulation in the environment. Therefore, we do not believe there will be adverse ecological effects due to chlorine and HCl emissions from non-mercury cell chlorine production plants.

IV. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993) the Agency must determine whether the regulatory action is "significant" and, therefore, subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Executive Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities;

(2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

It has been determined that this final action is not a "significant regulatory action" under the terms of Executive Order 12866 and is, therefore, not subject to OMB review.

B. Paperwork Reduction Act

Since there is no rule associated with this final action, there are no information collection requirements.

C. Regulatory Flexibility Act

The RFA generally requires that an agency conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's rule on small entities, small entity is defined as: (1) A small business as defined by the Small Business Administrations' regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's final rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. This final action deletes the subcategory of sources that do not utilize mercury cells to produce chlorine and caustic. We conclude that no further control or regulation is necessary.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and Tribal governments and the private sector. Under section 202 of the UMRA, the EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures by State, local, and Tribal governments, in aggregate, or to the private sector, of $100 million or more in any 1 year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires us to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows us to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if we publish with the final rule an explanation as to why that alternative was not adopted.

Before we establish any regulatory requirements that may significantly or uniquely affect small governments, including Tribal governments, we must have developed under section 203 of the UMRA, a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of our regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

We have determined that this final action does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and Tribal governments, in the aggregate, or the private sector in any 1 year. Thus, today's final action is not subject to the requirements of sections 202 and 205 of the UMRA. In addition, this final action contains no regulatory requirements. Therefore, the final action is not subject to the requirements of section 203 of the UMRA.

E. Executive Order 13132: Federalism

Executive Order 13132 (64 FR 43255, August 10, 1999) requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of Government."

The final action does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of Government, as specified in Executive Order 13132, Thus, Executive Order 13132 does not apply to the final action.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Executive Order 13175 (65 FR 67249, November 6, 2000) requires EPA to develop an accountable process to ensure "meaningful and timely input by Tribal officials in the development of regulatory policies that have tribal implications." "Policies that have Tribal implications" is defined in the Executive Order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes."

The final action does not have Tribal implications. It will not have substantial direct effects on Tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to the final action.

G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks

The Executive Order 13045 applies to any rule (1) that OMB determines is "economically significant," as defined under Executive Order 12866, and (2) the EPA determines that the environmental health or safety risk addressed by the rule has a disproportionate effect on children. If the regulatory action meets both criteria, the EPA must evaluate the environmental, health, or safety aspects relevant to children and explain why the rule is preferable to other potentially effective and reasonably feasible alternatives considered by the EPA. Since there is no rule associated with this final action, Executive Order 13045 does not apply.

H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

The final action is not subject to Executive Order 13211 (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer Advancement Act

Section 12(d) of the National Technology Transfer Advancement Act (NTTAA) of 1995 (Public Law 104–113; 15 U.S.C. 272 note) directs EPA to use voluntary consensus standads in their regulatory and procurement activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, business practices) developed or adopted by one or more voluntary consensus bodies. The NTTAA directs EPA to provide Congress, through annual reports to the Office of Management and Budget (OMB), with explanations when an agency does not use available and applicable voluntary consensus standards.

The final action does not involve technical standards, therefore, the NTTAA does not apply.

J. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Today's final action is not a rule, therefore, the Congressional Review Act does not apply.

List of Subjects in 40 CFR Part 63

Environmental protection, Air emissions control, Hazardous air pollutants.

Dated: August 29, 2003.

Marianne L. Horinko,

Acting Administrator.

[FR Doc. 03–22929 Filed 12–18–03; 8:45 am]

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December 19, 2003

Part IV

Environmental Protection Agency

40 CFR Parts 60 and 63
Standards of Performance for Bulk Gasoline Terminals and National Emission Standards for Gasoline Distribution Facilities (Bulk Gasoline Terminals and Pipeline Breakout Stations); Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 60 and 63

[OAR–2002–0029, FRL–7599–9]

RIN 2060–AJ42

Standards of Performance for Bulk Gasoline Terminals and National Emission Standards for Gasoline Distribution Facilities (Bulk Gasoline Terminals and Pipeline Breakout Stations)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; amendments.

SUMMARY: On August 18, 1983, we promulgated Standards of Performance for Bulk Gasoline Terminals (48 FR 37590). The 1983 standards of performance limit and control emissions of volatile organic compounds (VOC) that react with other pollutants to form ozone (or smog) which has been linked to respiratory impairment and eye irritation, and negatively affects vegetation and ecosystems. On December 14, 1994, we promulgated National Emission Standards for Gasoline Distribution Facilities (Bulk Gasoline Terminals and Pipeline Breakout Stations) (59 FR 64318). The 1994 national emission standards limit and control hazardous air pollutants (HAP) that are known or suspected to cause cancer or have other serious health or environmental effects.

On September 20, 2002, we proposed amendments to the 1983 standards of performance and 1994 national emission standards to provide for the use of alternative leak test procedures for railcars under the 1994 national emission standards, a clarification on monitoring flares and thermal oxidation systems used to comply with the 1994 national emission standards, alternative recordkeeping requirements for tank trucks and railcars under the 1983 standards of performance and 1994 national emission standards, and the use of flare design specifications under the 1983 standards of performance by incorporating the allowance in the text of that final rule. This document takes final action on those proposed amendments. The amendments do not change the level of control or compromise the environmental protection achieved by the 1983 standards of performance and 1994 national emission standards, but provide clarification and alternatives that enhance the flexibility of the recordkeeping and testing requirements of the two final rules.

DATES: This rule is effective December 19, 2003. The incorporation by reference of certain publications listed in today's final amendments is approved by the Director of the Federal Register as of December 19, 2003.

ADDRESSES: Docket Nos. OAR–2002–0029 and A–92–38 contain supporting information used in developing the standards. The docket is located at the EPA Docket Center (Air Docket), Public Reading Room, Room B102, EPA West Building, 1301 Constitution Avenue, NW., Washington, DC, and may be inspected from 8:30 a.m. to 4:30 p.m., Monday through Friday, except for legal holidays.

FOR FURTHER INFORMATION CONTACT: For further information concerning applicability to a facility, contact the appropriate State or local agency representative. If no State or local agency representative is available, contact the appropriate EPA Regional Office Director listed in 40 CFR 63.13. For further information on compliance issues, contact Ms. Julie Tankersley, U.S. EPA, Office of Enforcement and Compliance Assurance, 2223A, Ariel Rios Building, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, telephone (202) 564–7002, electronic mail (e-mail) address: *tankersley.julie@epa.gov*. For further information concerning analyses performed in the development of the final amendments, contact Mr. Stephen Shedd, U.S. EPA, OAQPS, Emission Standards Division, Waste and Chemical Processes Group (C439–03), Research Triangle Park, North Carolina 27711, telephone (919) 541–5397, facsimile number (919) 685–3195, electronic mail (e-mail) address: *shedd.steve@epa.gov*.

SUPPLEMENTARY INFORMATION:

Regulated entities. The regulated categories and entities affected by this action include:

Category	NAICS[a]	(SIC[b])	Examples of regulated entities
Industry	324110 493190 486910 422710	(2911) (4226) (4613) (5171)	Operations at major sources that transfer and store gasoline, including petroleum refineries, pipeline breakout stations, and bulk terminals.
Federal/State/local/tribal governments.			

[a] North American Industry Classification System.
[b] Standard Industrial Classification.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. To determine whether your facility would be regulated by this action, you should examine the applicability criteria in 40 CFR 60.500 and 40 CFR 63.420. If you have any questions regarding the applicability of this action to a particular entity, consult either the air permit authority for the entity or the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

Docket. We have established an official public docket for this action under Docket ID Nos. A–92–38 and OAR–2002–0029. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. All items may not be listed under both docket numbers, so interested parties should inspect both docket numbers to ensure that they have received all materials relevant to the final amendments. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Office of Air and Radiation Docket and Information Center (Air Docket) in the EPA Docket Center, (EPA/DC) EPA West, Room B102, 1301 Constitution Avenue NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744. The telephone number for the Air Docket is (202) 566–1742. A reasonable fee may be charged for copying docket materials.

Electronic Access. An electronic version of the public docket (Docket ID No. OAR–2002–0029) is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the appropriate docket identification number (OAR–2002–0029). Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in the above paragraph entitled "Docket."

Worldwide Web (WWW). In addition to being available in the docket, an electronic copy of today's final amendments will also be available on the WWW through the Technology Transfer Network (TTN). Following signature, a copy of the final amendments will be posted on the TTN's policy and guidance page for newly proposed or promulgated rules at the following address: *http://www.epa.gov/ttn/oarpg/*. The TTN provides information and technology exchange in various areas of air pollution control. If more information regarding the TTN is needed, call the TTN HELP line at (919) 541–5384.

Judicial Review. Under section 307(b)(1) of the Clean Air Act (CAA), judicial review of the final amendments is available by filing a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit by February 17, 2004. Only those objections to the final amendments which were raised with reasonable specificity during the period for public comment may be raised during judicial review. Under section 307(b)(2) of the CAA, the requirements that are the subject of today's final amendments may not be challenged later in civil or criminal proceedings brought by EPA to enforce these requirements.

Outline. The information presented in this preamble is organized as follows:

I. Introduction
II. Summary of Comments and Responses
III. Statutory and Executive Order Reviews
A. Executive Order 12866: Regulatory Planning and Review
B. Paperwork Reduction Act
C. Regulatory Flexibility Analysis
D. Unfunded Mandates Reform Act
E. Executive Order 13132: Federalism
F. Executive Order 13175: Consultation and Coordination with Indian Tribal Governments
G. Executive Order 13045: Protection of Children from Environmental Health & Safety Risks
H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use
I. National Technology Transfer Advancement Act
J. Congressional Review Act

I. Introduction

We received eight public comment letters on the September 20, 2002 proposed amendments. Six of the comment letters were from industry representatives, one was from a control device manufacturer, and one was from a State air pollution control agency. The commenters addressed the alternative leak test procedures for railcars, the definitions and monitoring requirements for flares and thermal oxidation systems, and the alternative recordkeeping requirements for tank trucks. The commenters expressed support for certain provisions of the amendments, disagreed with one provision, and requested an additional alternative to one that was proposed. This preamble summarizes the comments, presents our responses to the comments, and identifies changes made to the amendments as proposed.

II. Summary of Comments and Responses

Comment: Several commenters (two trade organizations, three oil companies, and one control device manufacturer) objected to the proposed amendments concerning thermal oxidation systems, stating that the current national emission standards allow three monitoring options for devices they referred to as "enclosed flares," which are flare-like burner systems enclosed by a stack or other enclosure. They stated that the proposed amendments amounted to an unnecessary and inappropriate narrowing of the monitoring alternatives for enclosed flares. They stated that monitoring of the pilot flame provides adequate assurance that the enclosed flare is operating in compliance with the emission standard, and that the temperature monitoring alternative should be applied only to enclosed flares that are not meeting the design specification requirements of 40 CFR 63.11(b), operated similarly to thermal incinerators, or operated by a facility that prefers to use this monitoring method.

The commenters offered several reasons why continuous temperature monitoring would not be appropriate for enclosed flares. They claimed that vapor oxidation efficiency does not directly correlate with combustion zone temperature in these systems. They said that temperature monitoring is most appropriate for thermal incinerators where relatively constant flow rates and compositions and, thus, a constant temperature, are maintained. They explained that most enclosed flares operate on a cyclic, on-off basis and, when designed and operated properly, provide for energy conservation and maximum emissions reductions. The commenters noted that enclosed flares are designed and operated just like other flares, using the same technology and installed in the same applications.

Additionally, the commenters pointed out that enclosed flares may have to use additional supplemental fuel to achieve and maintain a specific temperature, which would lead to increased emissions of VOC, carbon monoxide, nitrogen oxides, and carbon dioxide. The amendments as proposed also could inadvertently promote the use of less desirable and less efficient open flame flares at facilities wishing to avoid the increased testing and monitoring requirements associated with the thermal oxidation definition. One commenter recommended that the parametric continuous monitoring requirements not be limited exclusively to firebox or stack temperature, and that no parametric monitoring methods be prohibited on a general basis as long as the parameter can be demonstrated to be reliable. Other commenters also requested that facilities continue to have the option of applying for an alternative operating parameter as provided in 40 CFR 63.427(a)(5).

Response: As discussed in the proposal preamble, the design and operating specifications for flares in the General Provisions of 40 CFR part 60 and 40 CFR part 63 were developed out of necessity, due to the fact that flares cannot be reasonably tested using the prescribed EPA source test methods. Further, it is not feasible to continuously monitor either emissions or an operating parameter of this type of control system. However, the thermal oxidation systems described by the commenters (enclosed flares) do contain an enclosed exhaust space (firebox, ductwork, stack, etc.) in which performance testing and continuous monitoring can be performed. We would have preferred to require continuous emission monitoring systems (CEMS) on all control devices since they directly monitor emissions to the atmosphere. Because viable CEMS were not identified (except for carbon adsorption systems), our intention has always been to apply, wherever possible, requirements for testing and for continuous monitoring of a direct indicator of compliance. Combustion temperature is a good indicator of

performance for combustion devices. Since open flares could not be directly measured for emissions or firebox temperature, we felt the next best indicator of continuing compliance was to require flares to meet minimum design specifications and to monitor for the presence of a flame. Studies conducted by EPA indicate that open flares meeting the design and monitoring requirements perform at a very high level of efficiency. However, the flare design requirements and the requirement to monitor for the presence of a flame were not intended for other thermal oxidation systems since there are more direct means of monitoring proper operation and maintenance.

While it may be possible that the types of devices described by the commenters are capable of operating as efficiently as open flares, the commenters did not provide any data or other information to demonstrate that a presence-of-flame indicator installed in a thermal oxidation system would ensure compliance with emission standards. They also did not describe alternate ways of ensuring that these systems are designed and operated properly if they were allowed to use presence-of-flame indicators. For compliance to be assured, the system needs to be properly designed, source tested initially to demonstrate compliance and to establish operating parameter values, and continuously monitored to ensure proper operation and continued compliance with the emission standards. We do not, however, mandate that the owner or operator adhere to a specific set of operating parameters to ensure continuing compliance. In fact, § 63.427(a)(5) of the final rule allows the owner or operator the flexibility of monitoring any parameters that can be demonstrated to ensure compliance with the emission standards. Commenters have stated that alternative parameters (other than temperature) for enclosed flares have already been approved by States and EPA. Those alternatives are acceptable under the national emission standards, as long as they have been properly demonstrated and approved as provided under § 63.427(a)(5).

As to the impacts of maintaining a specific temperature, we do not specify any certain temperature, averaging time, or monitoring frequency. Thus, if the owner or operator chooses to monitor temperature, they would develop and demonstrate (while considering the impacts on energy and other operating costs) the most appropriate maximum and minimum temperature values, averaging times, and monitoring frequency to indicate that the device is continuously achieving the emission standards.

Due to these considerations, we have retained the proposed definitions for "flare" and "thermal oxidation system". Further, § 63.427(a)(5) of the final rule still allows the monitoring of alternative operating parameters for thermal oxidation systems, flares, or any other type of control device upon demonstration that the parameter demonstrates continuous compliance with the standards of performance or national emission standards.

Comment: Two trade organizations commented that some of their member companies have agreements with local control agencies to maintain cargo tank vapor tightness documentation off-site but not necessarily have copies instantly available at the site. These facilities utilize a centralized computer system to maintain the records for each vehicle that would load at the terminal. Prior to allowing the vehicle operator to begin loading, the system automatically compares the vehicle identification number to the test records to ensure that the cargo tank has passed its test and that the test results have not expired. The facility maintaining the vapor tightness test results is able to provide a paper version to the terminal within a matter of minutes to hours (via facsimile), depending on the volume of records requested at any given time. The commenters said that the proposed requirement for facilities to provide the records "instantly" may prohibit these companies from continuing to operate using their current systems. They provided suggested rule language for incorporation into the 1983 standards of performance and 1994 national emission standards that would account for the recordkeeping procedure used by these companies. Their suggested provision would allow owners and operators using an automated vehicle lock-out system to maintain a record system in which a copy of the test documentation could be made available to inspectors either during a visit by EPA or at some other mutually agreeable time.

Response: The intent of the requirement for affected facilities to maintain vapor tightness test records is to provide a means of ensuring that noncertified gasoline cargo tanks do not load (or at least are not reloaded) at the facility. The computerized automation systems in use at many facilities could provide this assurance when they have the capability of automatically locking noncertified tanks out of the loading process, and when records are properly maintained and entered into the computerized system. Therefore, we have agreed to add this option in addition to what was proposed.

Comment: Commenters agreed with all of the proposed changes for railcar testing. However, two of the commenters clarified a statement in the preamble (67 FR 59437, September 20, 2002) that, "according to owners of railcars, (railcar) leases usually run from 3 to 5 years and require leak testing at the start or renewal of the lease." They agreed that most leases range from 3 to 5 years, but pointed out that the lessee determines when the leak test will be run according to the lessee's pre-loading procedures and/or Department of Transportation (DOT) requirements. The commenters stated that "although determined by the lessee, it is normal practice for a leak test to be performed when a lessor starts a new lease, but a leak test is traditionally not performed when a lease is renewed by the same company until it is time to conduct the test during scheduled maintenance."

Response: After consideration of the information provided by the commenters, we have decided not to make any changes to the amendments as proposed. As discussed more fully at proposal, there are several factors involved in our decision to consider the DOT leak testing procedures as an acceptable alternative to Method 27. The DOT test procedures allow for no leaks during the test while Method 27 does allow some leakage. The DOT procedures require pre- and post-test inspections of the structural integrity of the cargo tank and also require a qualifying program for testing personnel. The EPA leak testing procedures do not require either of these items. Our procedures do, however, require an annual test while the DOT only requires testing once every 10 years or whenever the service equipment is reassembled on the tank. The difference in testing frequency is not a significant issue because the other factors balance the difference. Therefore, while we would prefer the lease to require that leak tests be performed and that the condition of the cargo tank be checked at the renewal of a lease as well as at the start of a new lease, DOT requirements control vapor leakage to levels equivalent to those required by the 1994 national emission standards.

III. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), EPA must determine whether a regulation is "significant" and, therefore, subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Executive Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more, or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal government communities;

(2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or

(4) raise novel or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Today's final amendments to the 1983 standards of performance and 1994 national emission standards will reduce the recordkeeping and testing burden for some terminals, but we do not have an estimate of the number of terminals affected. Therefore, the cost impacts of the subject standards are less than previously estimated, but our estimates have not been revised. The OMB evaluated the action and determined it to be nonsignificant; therefore, the action did not require OMB review.

B. Paperwork Reduction Act

The information collection requirements in the subject standards have been previously submitted to OMB under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, and were approved by OMB under the promulgated 1983 standards of performance (OMB control number 2060–0006–ICR 0665.06) and 1994 national emission standards (OMB control number 2060–0325–ICR 1659.04). A copy of the Information Collection Request (ICR) documents may be obtained from Susan Auby by mail at the Office of Environmental Information, Collection Strategies Division (2822T), U.S. EPA, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, by e-mail at *Auby.Susan@epa.gov*, or by calling (202) 566–1672.

Today's final amendments will reduce the recordkeeping and testing burden for some terminals. We do not have an estimate of the number of terminals affected by today's final amendments. Therefore, the ICR burden is less than previously estimated but the ICR has not been revised.

C. Regulatory Flexibility Analysis

The EPA has determined that it is not necessary to prepare a regulatory flexibility analysis in connection with the final amendments. The EPA has also determined that the final amendments will not have a significant economic impact on a substantial number of small entities.

For purposes of assessing the impacts of today's final amendments on small entities, small entity is defined as: (1) A small business whose parent company has fewer than 100 or 1,500 employees, or a maximum of $5 million to $18.5 million in revenues, depending on the size definition for the affected North American Industry Classification System (NAICS) code; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field. It should be noted that the small business definition applied to each industry by NAICS code is that listed in the Small Business Administration (SBA) size standards (13 CFR 121). For more information on size standards for particular industries, please refer to the economic impact analysis in the docket.

When EPA promulgated the 1994 national emission standards, it analyzed the potential impacts on small businesses, discussed the results of the analysis in the **Federal Register**, and concluded that the promulgated rule would not result in financial impacts that significantly or differentially stress affected small companies. The 1983 standards of performance were analyzed for potential impacts on small businesses under the Regulatory Flexibility Act (RFA) of 1980, and it was determined that the RFA did not apply. We analyzed and considered the impacts, and no significant impacts were expected.

After considering the economic impacts of today's final amendments on small entities, EPA has concluded that this action will not have a significant economic impact on a substantial number of small entities. Today's final amendments will minimize the impact on small entities by adding two alternatives to provide facilities with the flexibility to comply in the least costly manner while maintaining a workable and enforceable rule. Both alternatives were requested by impacted bulk terminal and railcar owners and operators, and we worked with them to develop the alternatives.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures by State, local, and tribal governments, in aggregate, or by the private sector, of $100 million or more in any 1 year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the Administrator publishes with the final rule an explanation of why that alternative was not adopted.

Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

The EPA has determined that today's final amendments do not contain a Federal mandate that may result in expenditures of $100 million or more to State, local, and tribal governments in the aggregate, or to the private sector in any 1 year. Thus, today's final action is not subject to the requirements of sections 202 and 205 of the UMRA.

E. Executive Order 13132: Federalism

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism

implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

Today's final amendments do not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. Thus, the requirements of section 6 of the Executive Order do not apply to today's amendments.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 6, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." "Policies that have tribal implications" is defined in the Executive Order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes."

Today's final amendments do not have tribal implications. They will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to today's final amendments.

G. Executive Order 13045: Protection of Children From Environmental Health & Safety Risks

Executive Order 13045 (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, EPA must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by EPA.

We interpret Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Executive Order has the potential to influence the regulation. Today's final amendments are not subject to Executive Order 13045 because they are based on technology performance and not on health and safety risks.

H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

Today's final amendments are not subject to Executive Order 13211 (66 FR 28355, May 22, 2001) because they are not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer Advancement Act

Under section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, all Federal agencies are required to use voluntary consensus standards (VCS) in their regulatory and procurement activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, business practices) developed or adopted by one or more voluntary consensus bodies. The NTTAA requires Federal agencies to provide Congress, through annual reports to OMB, with explanations when the agency does not use available and applicable VCS.

The final amendments involve technical standards. The EPA cites DOT railcar procedures that reference the AAR Tank Car Manual bubble test. Consistent with the NTTAA, EPA conducted searches to identify VCS in addition to that method. The search and review results have been documented and are placed in the docket for the final amendments, Docket Nos. A–92–38 and OAR–2002–0029.

Two VCS are cited in the final amendments as alternatives to DOT's bubble test. The two standards are British Standard (BS) EN–1593:1999, "Non-destructive Testing: Leak Testing-Bubble Emission Techniques," and ASTM E515–95 (Reapproved 2000), "Standard Test Method for Leaks Using Bubble Emission Techniques." These two standards are discussed below.

The VCS BS EN–1593 cited in the final amendments is a detailed method that contains procedures that are either equivalent to those of DOT bubble test specifications or that provide additional quality control, including: certification of personnel, creating a pressure differential, type of liquids to be used, preparation of the surface, dwell time appropriate for the establishment of bubble emissions, required surface temperature range, and specifications for direct and indirect visual examination procedures.

The VCS ASTM E515 cited in the final amendments is also an acceptable method that contains procedures that are either equivalent to those of DOT bubble test specifications or provide additional quality control, including: the type of liquids to be used; application of fluid; creating a pressure differential; applying pressure before liquid is applied; and accuracy, repeatability, and reproducibility of locating leaks of 0.0001 standard cubic centimeters per second or greater.

The methods that are included in the final amendments are listed in 40 CFR 63.425(i)(2). Under 40 CFR 63.7(f) of subpart A (General Provisions), a source may apply to EPA for permission to use alternative test methods in place of any EPA testing methods.

J. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing these final amendments and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the amendments in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2). The final amendments become effective on December 19, 2003.

List of Subjects

40 CFR Part 60

Environmental protection, Administrative practice and procedures, Air pollution control, Intergovernmental relations, Reporting and recordkeeping requirements.

40 CFR Part 63

Environmental protection, Administrative practice and procedures, Air pollution control, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: December 12, 2003.

Michael O. Leavitt,

Administrator.

■ For the reasons set out in the preamble, title 40, chapter I, parts 60 and 63 of the Code of Federal Regulations are amended as follows:

PART 60—[AMENDED]

■ 1. The authority citation for part 60 continues to read as follows:

Authority: 42 U.S.C. 7401, *et seq.*

Subpart XX—[Amended]

■ 2. Section 60.501 is amended by adding in alphabetical order definitions for "flare" and "thermal oxidation system" to read as follows:

§ 60.501 Definitions.

* * * * *

Flare means a thermal oxidation system using an open (without enclosure) flame.

* * * * *

Thermal oxidation system means a combustion device used to mix and ignite fuel, air pollutants, and air to provide a flame to heat and oxidize hazardous air pollutants. Auxiliary fuel may be used to heat air pollutants to combustion temperatures.

* * * * *

■ 3. Section 60.503 is amended by adding paragraphs (e) and (f) to read as follows:

§ 60.503 Test methods and procedures.

* * * * *

(e) The performance test requirements of paragraph (c) of this section do not apply to flares defined in § 60.501 and meeting the requirements in § 60.18(b) through (f). The owner or operator shall demonstrate that the flare and associated vapor collection system is in compliance with the requirements in §§ 60.18(b) through (f) and 60.503(a), (b), and (d).

(f) The owner or operator shall use alternative test methods and procedures in accordance with the alternative test method provisions in § 60.8(b) for flares that do not meet the requirements in § 60.18(b).

■ 4. Section 60.505 is amended by adding paragraph (e) to read as follows:

§ 60.505 Reporting and recordkeeping.

* * * * *

(e) As an alternative to keeping records at the terminal of each gasoline cargo tank test result as required in paragraphs (a), (c), and (d) of this section, an owner or operator may comply with the requirements in either paragraph (e)(1) or (2) of this section.

(1) An electronic copy of each record is instantly available at the terminal.

(i) The copy of each record in paragraph (e)(1) of this section is an exact duplicate image of the original paper record with certifying signatures.

(ii) The permitting authority is notified in writing that each terminal using this alternative is in compliance with paragraph (e)(1) of this section.

(2) For facilities that utilize a terminal automation system to prevent gasoline cargo tanks that do not have valid cargo tank vapor tightness documentation from loading (*e.g.*, via a card lock-out system), a copy of the documentation is made available (*e.g.*, via facsimile) for inspection by permitting authority representatives during the course of a site visit, or within a mutually agreeable time frame.

(i) The copy of each record in paragraph (e)(2) of this section is an exact duplicate image of the original paper record with certifying signatures.

(ii) The permitting authority is notified in writing that each terminal using this alternative is in compliance with paragraph (e)(2) of this section.

* * * * *

PART 63—[AMENDED]

■ 5. The authority citation for part 63 continues to read as follows:

Authority: 42 U.S.C. 7401, *et seq.*

■ 6. Section 63.14 is amended by adding new paragraphs (b)(30) and (j) to read as follows:

§ 63.14 Incorporation by reference.

* * * * *

(b) * * *

(30) ASTM E 515–95 (Reapproved 2000), Standard Test Method for Leaks Using Bubble Emission Techniques, IBR approved for § 63.425(i)(2).

* * * * *

(j) The following material is available for purchase from: British Standards Institute, 389 Chiswick High Road, London W4 4AL, United Kingdom.

(1) BS EN 1593:1999, Non-destructive Testing: Leak Testing—Bubble Emission Techniques, IBR approved for § 63.425(i)(2).

(2) [Reserved]

* * * * *

Subpart R—[AMENDED]

■ 7. Section 63.421 is amended by inserting the following definitions in alphabetical order as follows:

§ 63.421 Definitions.

* * * * *

Flare means a thermal oxidation system using an open (without enclosure) flame.

* * * * *

Thermal oxidation system means a combustion device used to mix and ignite fuel, air pollutants, and air to provide a flame to heat and oxidize hazardous air pollutants. Auxiliary fuel may be used to heat air pollutants to combustion temperatures.

* * * * *

■ 8. Section 63.422 is amended by revising paragraph (c)(2)(i) and adding paragraph (e) to read as follows:

§ 63.422 Standards: Loading racks.

* * * * *

(c) * * *

(2) * * *

(i) The tank truck or railcar gasoline cargo tank meets the test requirements in § 63.425(e), or the railcar gasoline cargo tank meets applicable test requirements in § 63.425(i);

* * * * *

(e) As an alternative to 40 CFR 60.502(h) and (i) as specified in paragraph (a) of this section, the owner or operator may comply with paragraphs (e)(1) and (2) of this section.

(1) The owner or operator shall design and operate the vapor processing system, vapor collection system, and liquid loading equipment to prevent gauge pressure in the railcar gasoline cargo tank from exceeding the applicable test limits in § 63.425(e) and (i) during product loading. This level is not to be exceeded when measured by the procedures specified in 40 CFR 60.503(d) of this chapter.

(2) No pressure-vacuum vent in the bulk gasoline terminal's vapor processing system or vapor collection system may begin to open at a system pressure less than the applicable test limits in § 63.425(e) or (i).

■ 9. Section 63.425 is amended by revising paragraph (a) and adding paragraph (i) to read as follows:

§ 63.425 Test methods and procedures.

(a) Each owner or operator subject to the emission standard in § 63.422(b) or 40 CFR 60.112b(a)(3)(ii) shall comply with the requirements in paragraphs (a)(1) and (2) of this section.

(1) Conduct a performance test on the vapor processing and collection systems according to either paragraph (a)(1)(i) or (ii) of this section.

(i) Use the test methods and procedures in 40 CFR 60.503 of this chapter, except a reading of 500 ppm shall be used to determine the level of

leaks to be repaired under 40 CFR 60.503(b), or

(ii) Use alternative test methods and procedures in accordance with the alternative test method requirements in § 63.7(f).

(2) The performance test requirements of 40 CFR 60.503(c) do not apply to flares defined in § 63.421 and meeting the flare requirements in § 63.11(b). The owner or operator shall demonstrate that the flare and associated vapor collection system is in compliance with the requirements in § 63.11(b) and 40 CFR 60.503(a), (b), and (d), respectively.

* * * * *

(i) *Railcar bubble leak test procedures.* As an alternative to paragraph (e) of this section for annual certification leakage testing of gasoline cargo tanks, the owner or operator may comply with paragraphs (i)(1) and (2) of this section for railcar gasoline cargo tanks, provided the railcar tank meets the requirement in paragraph (i)(3) of this section.

(1) Comply with the requirements of 49 CFR 173.31(d), 179.7, 180.509, and 180.511 for the testing of railcar gasoline cargo tanks.

(2) The leakage pressure test procedure required under 49 CFR 180.509(j) and used to show no indication of leakage under 49 CFR 180.511(f) shall be ASTM E 515–95 (incorporated by reference, *see* § 63.14), BS EN 1593:1999 (incorporated by reference, *see* § 63.14), or another bubble leak test procedure meeting the requirements in 49 CFR 179.7, 180.505, and 180.509.

(3) The alternative requirements in this paragraph (i) may not be used for any railcar gasoline cargo tank that collects gasoline vapors from a vapor balance system permitted under or required by a Federal, State, local, or tribal agency. A vapor balance system is a piping and collection system designed to collect gasoline vapors displaced from a storage vessel, barge, or other container being loaded, and routes the displaced gasoline vapors into the railcar gasoline cargo tank from which liquid gasoline is being unloaded.

10. Section 63.427 is amended by revising paragraphs (a)(3) and (4) to read as follows:

§ 63.427 Continuous monitoring.

(a) * * *

(3) Where a thermal oxidation system other than a flare is used, a CPMS capable of measuring temperature must be installed in the firebox or in the ductwork immediately downstream from the firebox in a position before any substantial heat exchange occurs.

(4) Where a flare meeting the requirements in § 63.11(b) is used, a heat-sensing device, such as an ultraviolet beam sensor or a thermocouple, must be installed in proximity to the pilot light to indicate the presence of a flame.

* * * * * *

■ 11. Section 63.428 is amended by revising paragraphs (b)(1), (b)(3)(i), and (b)(3)(viii), and by adding paragraph (k) to read as follows:

§ 63.428 Reporting and recordkeeping.

* * * * * *

(b) * * *

(1) Annual certification testing performed under § 63.425(e) and railcar bubble leak testing performed under § 63.425(k); and

* * * * * *

(3) * * *

(i) Name of test: Annual Certification Test—Method 27 (§ 63.425(e)(1)); Annual Certification Test—Internal Vapor Valve (§ 63.425(e)(2)); Leak Detection Test (§ 63.425(f)); Nitrogen Pressure Decay Field Test (§ 63.425(g)); Continuous Performance Pressure Decay Test (§ 63.425(h)); or Railcar Bubble Leak Test Procedure (§ 63.425(i)).

* * * * *

(viii) Test results: test pressure; pressure or vacuum change, mm of water; time period of test; number of leaks found with instrument; and leak definition.

* * * * *

(k) As an alternative to keeping records at the terminal of each gasoline cargo tank test result as required in paragraph (b) of this section, an owner or operator may comply with the requirements in either paragraph (k)(1) or (2) of this section.

(1) An electronic copy of each record is instantly available at the terminal.

(i) The copy of each record in paragraph (k)(1) of this section is an exact duplicate image of the original paper record with certifying signatures.

(ii) The permitting authority is notified in writing that each terminal using this alternative is in compliance with paragraph (k)(1) of this section.

(2) For facilities that utilize a terminal automation system to prevent gasoline cargo tanks that do not have valid cargo tank vapor tightness documentation from loading (*e.g.*, via a card lock-out system), a copy of the documentation is made available (*e.g.*, via facsimile) for inspection by permitting authority representatives during the course of a site visit, or within a mutually agreeable time frame.

(i) The copy of each record in paragraph (k)(2) of this section is an exact duplicate image of the original paper record with certifying signatures.

(ii) The permitting authority is notified in writing that each terminal using this alternative is in compliance with paragraph (k)(2) of this section.

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Part V

Department of Housing and Urban Development

Notice of Guidance to Federal Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4878–N–01]

Notice of Guidance to Federal Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons

AGENCY: Office of the Assistant Secretary for Fair Housing and Equal Opportunity, HUD.

ACTION: Notice.

SUMMARY: HUD is publishing proposed "Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons" (Guidance) as required by Executive Order 13166, which addresses assistance to recipients of federal financial assistance who have limited English proficiency.

DATES: *Comment Due Date:* January 20, 2004.

ADDRESSES: Interested persons are invited to submit comments regarding this notice to the Regulations Division, Office of the General Counsel, Department of Housing and Urban Development, Room 10276, 451 Seventh Street, SW., Washington, DC 20410–0500. Communications should refer to the above docket number and title. Facsimile (FAX) comments are not acceptable. A copy of each communication submitted will be available for public inspection and copying between 8 a.m. and 5 p.m. weekdays at the above address.

FOR FURTHER INFORMATION CONTACT: Pamela D. Walsh, Director, Program Standards Division, Office of Fair Housing and Equal Opportunity, Department of Housing and Urban Development, Room 5226, 451 Seventh Street SW., Washington, DC 20410–2000, telephone (202) 708–2904 (this is not a toll-free number). Hearing- or speech-impaired individuals may access the telephone number listed in this section through TTY by calling the toll-free Federal Information Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION: Under Title VI of the Civil Rights Act of 1964 (Title VI) and implementing regulations, recipients of federal financial assistance have a responsibility to ensure meaningful access to their programs and activities by persons with limited English proficiency (LEP). Executive Order 13166, reprinted at 65 FR 50121 (August 16, 2000), directs each federal agency that extends assistance subject to the requirements of Title VI to publish guidance for its respective recipients clarifying that obligation. Because this guidance (42 U.S.C. 2000d) (Title VI) must adhere to the federal-wide compliance standards and framework detailed in the model LEP Guidance of the Department of Justice (DOJ) issued on June 18, 2002, HUD specifically solicits comments on the nature, scope, and appropriateness of the HUD-specific examples set out in this guidance explaining and/or highlighting how those consistent federal-wide compliance standards are applicable to recipients of federal financial assistance through HUD.

I. Introduction

Most individuals living in the United States read, write, speak, and understand English. There are many individuals, however, for whom English is not their primary language. For instance, based on the 2000 census, over 26 million individuals speak Spanish and almost seven million individuals speak an Asian or Pacific Island language at home. If these individuals have a limited ability to read, write, speak, or understand English, they are limited English proficient, or "LEP." While detailed data from the 2000 census has not yet been released, 26 percent of all Spanish speakers, 29.9 percent of all Chinese speakers, and 28.2 percent of all Vietnamese speakers reported that they spoke English "not well" or "not at all" in response to the 1990 census.

Language for LEP persons can be a barrier to accessing important benefits or services, understanding and exercising important rights, complying with applicable responsibilities, or understanding other information provided by federally-funded programs and activities. The federal government funds an array of programs, services, and activities that can be made accessible to otherwise eligible LEP persons. The federal government is committed to improving the accessibility of these programs and activities to eligible LEP persons, a goal that reinforces its equally important commitment to promoting programs and activities designed to help individuals learn English. Recipients should not overlook the long-term positive impacts of incorporating or offering English as a Second Language (ESL) programs in parallel with language assistance services. ESL courses can serve as an important adjunct to a proper LEP plan. However, the fact that ESL classes are made available does not obviate the statutory and regulatory requirement to provide meaningful access for those who are not yet English proficient. Recipients of federal financial assistance have an obligation to reduce language barriers that can preclude meaningful access by LEP persons to important government programs, services, and activities. HUD recognizes that many recipients had language assistance programs in place prior to the issuance of Executive Order 13166. This Guidance provides a uniform framework for a recipient to integrate, formalize, and assess the continued vitality of these existing and possibly additional reasonable efforts based on the nature of its program or activity, the current needs of the LEP populations it encounters, and its prior experience in providing language services in the community it serves.

In certain circumstances, failure to ensure that LEP persons can effectively participate in or benefit from federally-assisted programs and activities may violate the prohibition under Title VI and Title VI regulations against national origin discrimination. The purpose of this policy guidance is to assist recipients in fulfilling their responsibilities to provide meaningful access to LEP persons under existing law. This guidance clarifies existing legal requirements for LEP persons by providing a description of the factors recipients should consider in fulfilling their responsibilities to LEP persons. The policy guidance is not a regulation but rather a guide. Title VI and its implementing regulations require that recipients take responsible steps to ensure meaningful access by LEP persons. This guidance provides an analytical framework that recipients may use to determine how best to comply with statutory and regulatory obligations to provide meaningful access to the benefits, services, information, and other important portions of their programs and activities for LEP individuals. These are the same criteria HUD will use in evaluating whether recipients are in compliance with Title VI and Title VI regulations.

As with most government initiatives, guidance on LEP requires balancing several principles. While this Guidance discusses that balance in some detail, it is important to note the basic principles behind that balance. First, HUD must ensure that federally-assisted programs aimed at the American public do not leave some behind simply because they face challenges communicating in English. This is of particular importance because, in many cases, LEP individuals form a substantial portion of those encountered in federally-assisted programs. Second, HUD must achieve this goal while finding constructive methods to reduce the costs of LEP

requirements on small businesses, small local governments, or small nonprofits that receive federal financial assistance.

There are many productive steps that the federal government, either collectively or as individual grant agencies, can take to help recipients reduce the costs of language services without sacrificing meaningful access for LEP persons. Without these steps, certain smaller grantees may well choose not to participate in federally-assisted programs, threatening the critical functions that the programs strive to provide. To that end, HUD plans to continue to provide assistance and guidance in this important area. In addition, HUD plans to work with representatives of state and local governments, public housing agencies, assisted housing providers, fair housing assistance programs, and other HUD recipients, and LEP persons to identify and share model plans, examples of best practices, and cost-saving approaches. Moreover, HUD intends to explore how language assistance measures, resources, and cost-containment approaches developed with respect to its own federally-conducted programs and activities can be effectively shared or otherwise made available to recipients, particularly small businesses, small local governments, and small nonprofits. An interagency working group on LEP has developed a Web site, *http://www.lep.gov*, to assist in disseminating this information to recipients, federal agencies, and the communities being served.

Many persons who commented on the DOJ's proposed LEP guidance which was published January 16, 2001 (66 FR 3834), later published for additional public comment on January 18, 2002 (67 FR 2671), and published in final form on June 18, 2002 (67 FR 41455), have noted that some in the public have interpreted the case of *Alexander* v. *Sandoval*, 532 U.S. 275 (2001), as implicitly striking down the regulations promulgated under Title VI that form the basis for the part of Executive Order 13166 that applies to federally-assisted programs and activities. DOJ and HUD have taken the position that this is not the case, for the reasons explained below. Accordingly, HUD will strive to ensure that federally-assisted programs and activities work in a way that is effective for all eligible beneficiaries, including those with LEP.

II. Legal Authority

Section 601 of Title VI provides that no person shall "on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance." Section 602 authorizes and directs federal agencies that are empowered to extend federal financial assistance to any program or activity "to effectuate the provisions of [section 601] * * * by issuing rules, regulations, or orders of general applicability" (42 U.S.C. 2000d–1).

HUD regulations promulgated pursuant to section 602 forbid recipients from "utiliz[ing] criteria or methods of administration which have the effect of subjecting individuals to discrimination because of their race, color, or national origin, or have the effect of defeating or substantially impairing accomplishment of the objectives of the program as respects individuals of a particular race, color, or national origin" (24 CFR 1.4).

The U.S. Supreme Court, in *Lau* v. *Nichols*, 414 U.S. 563 (1974), interpreted regulations promulgated by the former Department of Health, Education, and Welfare, including a regulation similar to that of HUD, 24 CFR 1.4, to hold that Title VI prohibits conduct that has a disproportionate effect on LEP persons because such conduct constitutes national-origin discrimination. In *Lau*, a San Francisco school district that had a significant number of non-English speaking students of Chinese origin was required to take reasonable steps to provide them with a meaningful opportunity to participate in federally-funded educational programs.

On August 11, 2000, Executive Order 13166, "Improving Access to Services for Persons with Limited English Proficiency," was issued and published on August 16, 2000, at 65 FR 50121. Under that order, every federal agency that provides financial assistance to non-federal entities must publish guidance on how their recipients can provide meaningful access to LEP persons and thus comply with Title VI regulations forbidding funding recipients from "restrict[ing] an individual in any way in the enjoyment of any advantage or privilege enjoyed by others receiving any service, financial aid, or other benefit under the program" or from "utiliz[ing] criteria or methods of administration which have the effect of subjecting individuals to discrimination because of their race, color, or national origin, or have the effect of defeating or substantially impairing accomplishment of the objectives of the program as respects individuals of a particular race, color, or national origin."

On that same day, DOJ issued a general guidance document addressed to "Executive Agency Civil Rights Officers" setting forth general principles for agencies to apply in developing guidance documents for recipients pursuant to the Order. The DOJ document is titled, "Enforcement of Title VI of the Civil Rights Act of 1964 National Origin Discrimination Against Persons With Limited English Proficiency," (DOJ LEP Guidance) published on August 16, 2000, at 65 FR 50123.

Subsequently, federal agencies raised questions regarding the requirements of the Order, especially in light of the U.S. Supreme Court's decision in *Alexander* v. *Sandoval*, 532 U.S. 275 (2001). On October 26, 2001, the Assistant Attorney General for the Civil Rights Division, issued a memorandum for "Heads of Departments and Agencies, General Counsels and Civil Rights Directors," that clarified and reaffirmed the DOJ LEP Guidance in light of *Sandoval*. This Guidance noted that some have interpreted *Sandoval* as implicitly striking down the disparate-impact regulations promulgated under Title VI that form the basis for the part of Executive Order 13166 that applies to federally-assisted programs and activities. *See, e.g., Sandoval*, 532 U.S. at 286, 286 n.6 ("[W]e assume for purposes of this decision that section 602 confers the authority to promulgate disparate-impact regulations; * * * We cannot help observing, however, how strange it is to say that disparate-impact regulations are 'inspired by, at the service of, and inseparably intertwined with' Sec. 601 * * * when Sec. 601 permits the very behavior that the regulations forbid."). This Guidance, however, makes clear that the DOJ disagreed with this interpretation. *Sandoval* holds principally that there is no private right of action to enforce Title VI disparate-impact regulations. It did not address the validity of those regulations or Executive Order 13166 or otherwise limit the authority and responsibility of federal grant agencies to enforce their own implementing regulations. The Assistant Attorney General stated that because *Sandoval* did not invalidate any Title VI regulations that proscribe conduct that has a disparate impact on covered groups—the types of regulations that form the legal basis for the part of Executive Order 13166 that applies to federally-assisted programs and activities—the Executive Order remains in force.

This HUD policy is published pursuant to Title VI, Title VI regulations, and Executive Order 13166. It is consistent with the DOJ's, "Policy Guidance Document on Enforcement of National Origin Discrimination Against

Persons with Limited English Proficiency," published on August 16, 2000, at 65 FR 50123, and the DOJ LEP Guidance issued on June 18, 2002, and published on June 18, 2002, at 67 FR 41457.

III. Who Is Covered?

HUD's regulation, 24 CFR part 1, "Nondiscrimination in Federally Assisted Programs of the Department of Housing and Urban Development—Effectuation of Title VI of the Civil Rights Act of 1964," requires all recipients of federal financial assistance from HUD to provide meaningful access to LEP persons. Pursuant to Executive Order 13166, the meaningful access requirement of the Title VI regulations and the four-factor analysis set forth in this LEP Guidance are to additionally apply to the programs and activities of federal agencies, including HUD. Federal financial assistance includes grants, training, use of equipment, donations of surplus property, and other assistance. Recipients of HUD assistance include, for example:

- State and local governments;
- Public housing authorities;
- Assisted housing providers;
- Profit and nonprofit organizations; and
- Other entities receiving funds directly or indirectly from HUD.

Subrecipients likewise are covered when federal funds are passed through from one recipient to a subrecipient (*e.g.*, Entitlement Community Development Block Grant, State Block Grant, State Community Development Block Grant, and HOME Recipients' subrecipients are covered).

Coverage extends to a recipient's entire program or activity, (*i.e.*, to all parts of a recipient's operations). This is true even if only one part of the recipient receives the federal assistance.

Example: HUD provides assistance to a state government's Department of Community Development to improve a particular public facility. All of the operations of the entire state Department of Community Development—not just the particular facility—are covered. However, if a federal agency were to decide to terminate federal funds based on noncompliance with Title VI or its regulations, only funds directed to the particular program or activity that is out of compliance would be terminated (42 U.S.C. 2000d–1). Finally, some recipients operate in jurisdictions in which English has been declared the official language. Nonetheless, these recipients continue to be subject to federal non-discrimination requirements, including those applicable to the provision of federally-assisted services to LEP persons.

IV. Who Is a Limited English Proficient Individual?

Persons who do not speak English as their primary language and who have a limited ability to read, write, speak, or understand English can be LEP, entitled to language assistance with respect to a particular type of service, benefit, or encounter. Examples of populations likely to include LEP persons who are encountered and/or served by HUD recipients and should be considered when planning language services include, but are not limited to:

- Persons who are seeking housing assistance from a public housing agency or assisted housing provider or are current tenants in such housing;
- Persons seeking assistance from a state or local government for a rehabilitation grant for their home;
- Persons who are attempting to file a housing discrimination complaint with a local Fair Housing Assistance Program grantee;
- Persons who are seeking supportive services to become first-time homebuyers;
- Persons seeking housing related social services, training, or any other assistance from HUD recipients; and
- Parents and family members of the above.

V. How Does a Recipient Determine the Extent of Its Obligation To Provide LEP Services?

Recipients are required to take reasonable steps to ensure meaningful access to their programs and activities by LEP persons. While designed to be a flexible and fact-dependent standard, the starting point is an individualized assessment that balances the following four factors: (1) The number or proportion of LEP persons eligible to be served or likely to be encountered by the program or grantee; (2) the frequency with which LEP persons come into contact with the program; (3) the nature and importance of the program, activity, or service provided by the program to people's lives; and (4) the resources available to the grantee/recipient and costs. As indicated above, the intent of this Guidance is to suggest a balance that ensures meaningful access by LEP persons to critical services while not imposing undue burdens on small business, small local governments, or small nonprofits.

After applying the four-factor analysis, a recipient may conclude that different language assistance measures are sufficient for the different types of programs or activities in which it engages. For instance, some of a recipient's activities will be more important than others and/or have greater impact on or contact with LEP persons, and thus may require more in the way of language assistance. The flexibility that recipients have in addressing the needs of the LEP populations they serve does not diminish, and should not be used to minimize, the obligation that those needs be addressed. HUD recipients should apply the following four factors to the various kinds of contacts that they have with the public to assess language needs and decide what reasonable steps they should take to ensure meaningful access for LEP persons.

A. The Number or Proportion of LEP Persons Served or Encountered in the Eligible Service Population

One factor in determining what language services recipients should provide is the number or proportion of LEP persons from a particular language group served or encountered in the eligible service population. The greater the number or proportion of these LEP persons, the more likely language services are needed. Ordinarily, persons "eligible to be served, or likely to be directly affected, by" a recipient's program or activity are those who are served or encountered in the eligible service population. This population will be program-specific, and includes persons who are in the geographic area that has been approved by HUD as the recipient's jurisdiction or service area. However, where, for instance, a public housing project serves a large LEP population, the appropriate service area for LEP services is most likely the public housing project neighborhood, and not the entire population served by the public housing agency. Where no service area has previously been approved, the relevant service area may be that which is approved by state or local authorities or designated by the recipient itself, provided that these designations do not themselves discriminatorily exclude certain populations. Appendix A provides examples to assist in determining the relevant service area. When considering the number or proportion of LEP persons in a service area, recipients should consider LEP parent(s) when their English-proficient or LEP minor children and dependents encounter the recipient.

Recipients should first examine their prior experiences with LEP encounters and determine the breadth and scope of language services that were needed. In conducting this analysis, it is important to include language minority populations that are eligible for their programs or activities but may be underserved because of existing language barriers. Other data should be consulted to refine or validate a recipient's prior experience, including the latest census data for the area served, data from school systems and from community organizations, and data from State and local governments. The focus of the analysis is on lack of English proficiency, not the ability to speak more than one language. Note that demographic data may indicate the most frequently spoken languages other than English and the percentage of people who speak that language who speak or understand English less than well. Some of the most commonly spoken languages other than English may be spoken by people who are also overwhelmingly proficient in English. Thus, they may not be the languages spoken most frequently by LEP persons. When using demographic data, it is important to focus in on the languages spoken by those who are not proficient in English. Community agencies, school systems, grassroots and faith-based organizations, legal aid entities, and others can often assist in identifying populations for whom outreach is needed and who would benefit from the recipients' programs and activities were language services provided.

B. The Frequency With Which LEP Individuals Come Into Contact With the Program

Recipients should assess, as accurately as possible, the frequency with which they have or should have contact with an LEP individual from different language groups seeking assistance. The more frequent the contact with a particular language group, the more likely that enhanced language services in that language are needed. The steps that are reasonable for a recipient that serves an LEP person on a one-time basis will be very different than those expected from a recipient that serves LEP persons daily. It is also advisable to consider the frequency of different types of language contacts. For example, frequent contacts with Spanish-speaking people who are LEP may require certain assistance in Spanish. Less frequent contact with different language groups may suggest a different and less intensified solution. If an LEP individual accesses a program or service on a daily basis, a recipient has greater duties than if the same individual's program or activity contact is unpredictable or infrequent. But even recipients that serve LEP persons on an unpredictable or infrequent basis should use this balancing analysis to determine what to do if an LEP individual seeks services under the program in question. This plan need not be intricate. It may be as simple as being prepared to use one of the commercially available telephonic interpretation services to obtain immediate interpreter services. In applying this standard, recipients should take care to consider whether appropriate outreach to LEP persons could increase the frequency of contact with LEP language groups.

C. The Nature and Importance of the Program, Activity, or Service Provided by the Program

The more important the activity, information, service, or program, or the greater the possible consequences of the contact to the LEP persons, the more likely language services are needed. The obligations to communicate rights to a person who is being evicted differ, for example, from those to provide recreational programming. A recipient needs to determine whether denial or delay of access to services or information could have serious or even life-threatening implications for the LEP individual. Decisions by HUD, another federal, state, or local entity, or the recipient to make a specific activity compulsory in order to participate in the program, such as filling out particular forms, participating in administrative hearings, or other activities, can serve as strong evidence of the program's importance.

D. The Resources Available to the Recipient and Costs

A recipient's level of resources and the costs that would be imposed on it may have an impact on the nature of the steps it should take. Smaller recipients with more limited budgets are not expected to provide the same level of language services as larger recipients with larger budgets. In addition, "reasonable steps" may cease to be reasonable where the costs imposed substantially exceed the benefits.

Resource and cost issues, however, can often be reduced by technological advances; the sharing of language assistance materials and services among and between recipients, advocacy groups, and federal grant agencies; and reasonable business practices. Where appropriate, training bilingual staff to act as interpreters and translators, information sharing through industry groups, telephonic and video conferencing interpretation services, pooling resources and standardizing documents to reduce translation needs, using qualified translators and interpreters to ensure that documents need not be "fixed" later and that inaccurate interpretations do not cause delay or other costs, centralizing interpreter and translator services to achieve economies of scale, or the formalized use of qualified community volunteers, for example, may help reduce costs. Recipients should carefully explore the most cost-effective means of delivering competent and accurate language services before limiting services due to resource concerns. Small recipients with limited resources may find that entering into a bulk telephonic interpretation service contract will prove cost effective. Large entities and those entities serving a significant number or proportion of LEP persons should ensure that their resource limitations are well-substantiated before using this factor as a reason to limit language assistance. Such recipients may find it useful to be able to articulate, through documentation or in some other reasonable manner, their process for determining that language services would be limited based on resources or costs.

This four-factor analysis necessarily implicates the "mix" of LEP services required. Recipients have two main ways to provide language services: oral interpretation either in person or via telephone interpretation service (hereinafter "interpretation"); and written translation (hereinafter "translation"). Oral interpretation can range from on-site interpreters for critical services provided to a high volume of LEP persons to access through commercially available telephonic interpretation services. Written translation, likewise, can range from translation of an entire document to translation of a short description of the document. In some cases, language services should be made available on an expedited basis while in others the LEP individual may be referred to another office of the recipient for language assistance.

The correct mix should be based on what is both necessary and reasonable in light of the four-factor analysis. For instance, a public housing provider in a largely Hispanic neighborhood may need immediate oral interpreters available and should give serious consideration to hiring some bilingual staff. (Of course, many have already made such arrangements.) In contrast, there may be circumstances where the importance and nature of the activity and number or proportion and frequency of contact with LEP persons may be low and the costs and resources needed to provide language services may be high—such as in the case of a voluntary public tour of a recreational

facility—in which pre-arranged language services for the particular service may not be necessary. Regardless of the type of language service provided, quality and accuracy of those services can be critical in order to avoid serious consequences to the LEP person and to the recipient. Recipients have substantial flexibility in determining the appropriate mix.

VI. Selecting Language Assistance Services

Recipients have two main ways to provide language services: oral, and written language services. Quality and accuracy of the language service is critical in order to avoid serious consequences to the LEP person and to the recipient.

A. Oral Language Services (Interpretation)

Interpretation is the act of listening to something in one language (source language) and orally translating it into another language (target language). Where interpretation is needed and is reasonable, recipients should consider some or all of the following options for providing competent interpreters in a timely manner.

1. Competence of Interpreters

When providing oral assistance, recipients should ensure competency of the language service provider, no matter which of the strategies outlined below are used. Competency requires more than self-identification as bilingual. Some bilingual staff and community volunteers, for instance, may be able to communicate effectively in a different language when communicating information directly in that language, but not be competent to interpret in and out of English. Likewise, they may not be able to do written translations.

Competency to interpret, however, does not necessarily mean formal certification as an interpreter, although certification is helpful. When using interpreters, recipients should ensure that they:

- Demonstrate proficiency in and ability to communicate information accurately in both English and in the other language and identify and employ the appropriate mode of interpreting (*e.g.*, consecutive, simultaneous, summarization, or sight translation);
- Have knowledge in both languages of any specialized terms or concepts peculiar to the entity's program or activity and of any particularized vocabulary and phraseology used by the LEP person and understand and follow confidentiality and impartiality rules to the same extent the recipient employee for whom they are interpreting or to the extent their position requires or both. Many languages have "regionalisms," or differences in usage. For instance, a word that may be understood to mean something in Spanish for someone from Cuba may not be so understood by someone from Mexico. In addition, because there may be languages which do not have an appropriate direct interpretation of some courtroom or legal terms and the interpreter should be so aware and be able to provide the most appropriate interpretation. The interpreter should likely make the recipient aware of the issue and the interpreter and recipient can then work to develop a consistent and appropriate set of descriptions of these terms in that language that can be used again, when appropriate; and
- Understand and adhere to their role as interpreters without deviating into a role as counselor, legal advisor, or other roles (particularly in court, administrative hearings, or law enforcement contexts).

Some recipients may have additional self-imposed requirements for interpreters. Where individual rights depend on precise, complete, and accurate interpretation or translations, the use of certified interpreters is strongly encouraged. For those languages in which no formal accreditation or certification currently exists, recipients should consider a formal process for establishing the credentials of the interpreter. Where such proceedings are lengthy, the interpreter will likely need breaks and team interpreting may be appropriate to ensure accuracy and to prevent errors caused by mental fatigue of interpreters.

While quality and accuracy of language services is critical, the quality and accuracy of language services is nonetheless part of the appropriate mix of LEP services required. The quality and accuracy of language services in an abused woman's shelter, for example, must be extraordinarily high, while the quality and accuracy of language services in a recreational program need not meet the same exacting standards.

Finally, when interpretation is needed and is reasonable, it should be provided in a timely manner. To be meaningfully effective, language assistance should be timely. While there is no single definition for "timely" applicable to all types of interactions at all times by all types of recipients, one clear guide is that the language assistance should be provided at a time and place that avoids the effective denial of the service, benefit, or right at issue or the imposition of an undue burden on or delay in important rights, benefits, or services to the LEP person. For example, when the timeliness of services is important, such as with certain activities of HUD recipients providing housing, health, and safety services, and when important legal rights are at issue, a recipient would likely not be providing meaningful access if it had one bilingual staff person available one day a week to provide the service. Such conduct would likely result in delays for LEP persons that would be significantly greater than those for English proficient persons. Conversely, where access to or exercise of a service, benefit, or right is not effectively precluded by a reasonable delay, language assistance can likely be delayed for a reasonable period.

2. Hiring Bilingual Staff

When particular languages are encountered often, hiring bilingual staff offers one of the best, and often most economical, options. Recipients can, for example, fill public contact positions, such as persons who take public housing or Section 8 applications, with staff who are bilingual and competent to communicate directly with LEP persons in their own language. If bilingual staff is also used to interpret between English speakers and LEP persons, or to orally interpret written documents from English into another language, they should be competent in the skill of interpreting. Being bilingual does not necessarily mean that a person has the ability to interpret. In addition, there may be times when the role of the bilingual employee may conflict with the role of an interpreter (for instance, a bilingual intake specialist would probably not be able to perform effectively the role of an administrative hearing interpreter and intake specialist at the same time, even if the intake specialist were a qualified interpreter). Effective management strategies, including any appropriate adjustments in assignments and protocols for using bilingual staff, can ensure that bilingual staff is fully and appropriately utilized. When bilingual staff cannot meet all of the language service obligations of the recipient, the recipient should turn to other options.

3. Hiring Staff Interpreters

Hiring interpreters may be most helpful where there is a frequent need for interpreting services in one or more languages. Depending on the facts, sometimes it may be necessary and reasonable to provide on-site interpreters to provide accurate and meaningful communication with an LEP person.

4. Contracting for Interpreters

Contract interpreters may be a cost-effective option when there is no regular need for a particular language skill. In addition to commercial and other private providers, many community-based organizations and mutual assistance associations provide interpretation services for particular languages. Contracting with and providing training regarding the recipient's programs and processes to these organizations can be a cost-effective option for providing language services to LEP persons from those language groups.

5. Using Telephone Interpreter Services

Telephone interpreter service lines often offer speedy interpreting assistance in many different languages. They may be particularly appropriate where the mode of communicating with an English proficient person would also be over the phone. Although telephonic interpretation services are useful in many situations, it is important to ensure that, when using such services, the interpreters used are competent to interpret any technical or legal terms specific to a particular program that may be important parts of the conversation. Nuances in language and non-verbal communication can often assist an interpreter and cannot be recognized over the phone. Video teleconferencing may sometimes help to resolve this issue where necessary. In addition, where documents are being discussed, it is important to give telephonic interpreters adequate opportunity to review the document prior to the discussion and any logistical problems should be addressed.

6. Using Community Volunteers

In addition to consideration of bilingual staff, staff interpreters, or contract interpreters (either in-person or by telephone) as options to ensure meaningful access by LEP persons, use of recipient-coordinated community volunteers, working with, for instance, community-based organizations may provide a cost-effective supplemental language assistance strategy under appropriate circumstances. They may be particularly useful in providing language access for a recipient's less critical programs and activities. To the extent the recipient relies on community volunteers, it is often best to use volunteers who are trained in the information or services of the program and can communicate directly with LEP persons in their language. Just as with all interpreters, community volunteers used to interpret between English speakers and LEP persons, or to orally translate documents, should be competent in the skill of interpreting and knowledgeable about applicable confidentiality and impartiality rules. Recipients should consider formal arrangements with community-based organizations that provide volunteers to address these concerns and to help ensure that services are available more regularly.

7. Use of Family Members or Friends as Interpreters

Although recipients should not plan to rely on an LEP person's family members, friends, or other informal interpreters to provide meaningful access to important programs and activities, where LEP persons so desire, they should be permitted to use, at their own expense, an interpreter of their own choosing (whether a professional interpreter, family member, or friend) in place of or as a supplement to the free language services expressly offered by the recipient. LEP persons may feel more comfortable when a trusted family member or friend acts as an interpreter. In addition, in exigent circumstances that are not reasonably foreseeable, temporary use of interpreters not provided by the recipient may be necessary. However, with proper planning and implementation, recipients should be able to avoid most such situations.

Recipients, however, should take special care to ensure that family, legal guardians, caretakers, and other informal interpreters are appropriate in light of the circumstances and subject matter of the program, service or activity, including protection of the recipient's own administrative or enforcement interest in accurate interpretation. In many circumstances, family members (especially children) or friends are not competent to provide quality and accurate interpretations. Issues of confidentiality, privacy, or conflict of interest may also arise. LEP persons may feel uncomfortable revealing or describing sensitive, confidential, or potentially embarrassing medical, law enforcement (*e.g.*, sexual or violent assaults), family, or financial information to a family member, friend, or member of the local community. For example, special circumstances may raise additional serious concerns regarding the voluntary nature, conflicts of interest, and privacy issues surrounding the use of family members and friends as interpreters, particularly where an important right, benefit, service, disciplinary concern, or access to personal or law enforcement information is at stake. In addition to ensuring competency and accuracy of the interpretation, recipients should take these special circumstances into account when determining whether a beneficiary makes a knowing and voluntary choice to use another family member or friend as an interpreter. Furthermore, such informal interpreters may have a personal connection to the LEP person or an undisclosed conflict of interest, such as the desire to protect themselves or another perpetrator in a domestic violence or other criminal matter. For these reasons, when oral language services are necessary, recipients should generally offer competent interpreter services free of cost to the LEP person. For HUD recipient programs and activities, this is particularly true in a courtroom, an administrative hearing, or situations in which health, safety, or access to important housing benefits and services are at stake, or when credibility and accuracy are important to protect an individual's rights and access to important services.

An example of such a case is when a property manager/or housing authority security or local police respond to a domestic disturbance. In such a case, use of family members or neighbors to interpret for the alleged victim, perpetrator, or witnesses may raise serious issues of competency, confidentiality, and conflict of interest and is thus inappropriate. While issues of competency, confidentiality, and conflict of interest in the use of family members (especially children) or friends often make their use inappropriate, the use of these individuals as interpreters may be an appropriate option where proper application of the four factors would lead to a conclusion that recipient-provided services are not necessary. An example of this is a voluntary tour of a community recreational facility built with Community Development Block Grant (CDBG) funds offered to the public. There, the importance and nature of the activity may be relatively low and unlikely to implicate issues of confidentiality, conflict of interest, or the need for accuracy. In addition, the resources needed and costs of providing language services may be high. In such a setting, an LEP person's use of family, friends, or others may be appropriate.

If the LEP person voluntarily chooses to provide his/her own interpreter, a recipient should consider whether a record of that choice and of the recipient's offer of assistance is appropriate. Where precise, complete, and accurate interpretations or translations of information and/or testimony are critical for legal reasons,

or where the competency of the LEP person's interpreter is not established, a recipient might decide to provide its own, independent interpreter, even if an LEP person wants to use his or her own interpreter as well. Extra caution should be exercised when the LEP person chooses to use a minor as the interpreter. While the LEP person's decision should be respected, there may be additional issues of competency, confidentiality, or conflict of interest when the choice involves using children as interpreters. The recipient should take care to ensure that the LEP person's choice is voluntary, that the LEP person is aware of the possible problems if the preferred interpreter is a minor child, and that the LEP person knows that a competent interpreter could be provided by the recipient at no cost.

B. Written Language Services (Translation)

Translation is the replacement of a written text from one language (source language) into an equivalent written text in another language (target language). It should be kept in mind that many LEP persons may not be able to read their native languages and back-up availability of oral interpretation is always advantageous.

1. What Documents Should Be Translated?

After applying the four-factor analysis, a recipient may determine that an effective LEP plan for its particular program or activity includes the translation of vital written materials into the language of each frequently encountered LEP group eligible to be served and/or likely to be affected by the recipient's program.

Such written materials could include, for example:

- Consent and complaint forms;
- Intake forms with the potential for important consequences;
- Written notices of rights, denial, loss, or decreases in benefits or services, and other hearings;
- Notices of eviction;
- Notices advising LEP persons of free language assistance;
- Leases and tenant rules; and/or
- Applications to participate in a recipient's program or activity or to receive recipient benefits or services.

Whether or not a document (or the information it solicits) is "vital" may depend upon the importance of the program, information, encounter, or service involved, and the consequence to the LEP person if the information in question is not provided accurately or in a timely manner. For instance, applications for certain recreational activities should not generally be considered vital documents, whereas applications for housing could be considered vital. Where appropriate, recipients are encouraged to create a plan for consistently determining, over time and across its various activities, what documents are "vital" to the meaningful access of the LEP populations they serve.

Classifying a document as vital or non-vital is sometimes difficult, especially in the case of outreach materials like brochures or other information on rights and services. Awareness of rights or services is an important part of "meaningful access." Lack of awareness that a particular program, right, or service exists may effectively deny LEP persons meaningful access. Thus, where a recipient is engaged in community outreach activities in furtherance of its activities, it should regularly assess the needs of the populations frequently encountered or affected by the program or activity to determine whether certain critical outreach materials should be translated. Community organizations may be helpful in determining what outreach materials may be most helpful to translate. In addition, the recipient should consider whether translations of outreach material may be made more effective when done in tandem with other outreach methods, including utilizing the ethnic media, schools, grassroots and faith-based organizations, and community organizations to spread a message.

Sometimes a document includes both vital and non-vital information. This may be the case when the document is very large. It may also be the case when the title and a phone number for obtaining more information on the contents of the document in frequently encountered languages other than English is critical, but the document is sent out to the general public and cannot reasonably be translated into many languages. Thus, vital information may include, for instance, the provision of information in appropriate languages other than English regarding where a LEP person might obtain an interpretation or translation of the document.

2. Into What Languages Should Documents Be Translated?

The languages spoken by the LEP persons with whom the recipient has contact determine the languages into which vital documents should be translated. A distinction should be made, however, between languages that are frequently encountered by a recipient and less commonly encountered languages. Many recipients serve communities in large cities or across the country. They regularly serve LEP persons who speak dozens and sometimes over 100 different languages. To translate all written materials into all of those languages is unrealistic. Although recent technological advances have made it easier for recipients to store and share translated documents, such an undertaking would incur substantial costs and require substantial resources. Nevertheless, well-substantiated claims of lack of resources to translate all vital documents into dozens of languages do not necessarily relieve the recipient of the obligation to translate those documents into at least several of the more frequently-encountered languages and to set benchmarks for continued translations into the remaining languages over time. As a result, the extent of the recipient's obligation to provide written translations of documents should be determined by the recipient on a case-by-case basis, looking at the totality of the circumstances in light of the four-factor analysis. Because translation is a one-time expense, consideration should be given to whether the upfront cost of translating a document (as opposed to oral interpretation) should be amortized over the likely lifespan of the document when applying this four-factor analysis.

3. Safe Harbor

Many recipients would like to ensure with greater certainty that they comply with their obligations to provide written translations in languages other than English. Paragraphs (a) and (b) outline the circumstances that can provide a "safe harbor" for recipients regarding the requirements for translation of written materials. A "safe harbor" means that if a recipient provides written translations under these circumstances, such action will be considered strong evidence of compliance with the recipient's written-translation obligations. The failure to provide written translations under the circumstances outlined in paragraphs (a) and (b) does not mean there is non-compliance. Rather, they provide a common starting point for recipients to consider: whether and at what point the importance of the service, benefit, or activity involved; the nature of the information sought; and the number or proportion of LEP persons served call for written translations of commonly-used forms into frequently-encountered languages other than English. Therefore, these paragraphs merely provide a guide for recipients that would like greater certainty of compliance than can be provided by a fact-intensive, four-factor analysis.

Example: Even if the safe harbors are not used, if written translation of a certain document(s) would be so burdensome as to defeat the legitimate objectives of its program, the translation of the written materials is not necessary. Other ways of providing meaningful access, such as effective oral interpretation of certain vital documents, might be acceptable under such circumstances.

The following actions will be considered strong evidence of compliance with the recipient's written-translation obligations:

(a) The HUD recipient provides written translations of vital documents for each eligible LEP language group that constitutes 5 percent or 1,000 persons, whichever is less, of the population of persons eligible to be served or likely to be affected or encountered. Translation of other documents, if needed, can be provided orally; or

(b) If there are fewer than 50 persons in a language group that reaches the 5 percent trigger in (a), the recipient does not translate vital written materials, but provides written notice in the primary language of the LEP language group of the right to receive competent oral interpretation of those written materials, free of cost.

These safe harbor provisions apply to the translation of written documents only. They do not affect the requirement to provide meaningful access to LEP persons through competent oral interpreters where oral language services are needed and are reasonable. For example, housing facilities should, where appropriate, ensure that leases have been explained to LEP residents, at intake meetings, for instance, prior to taking adverse action against them.

4. Competence of Translators

As with oral interpreters, translators of written documents should be competent. Many of the same considerations apply. However, the skill of translating is very different from the skill of interpreting, and a person who is a competent interpreter may or may not be competent to translate.

Particularly where legal or other vital documents are being translated, competence can often be achieved by use of certified translators. Certification or accreditation may not always be possible or necessary. For those languages in which no formal accreditation currently exists, a particular level of membership in a professional translation association can provide some indicator of professionalism. Competence can often be ensured by having a second, independent translator "check" the work of the primary translator. Alternatively, one translator can translate the document, and a second, independent translator could translate it back into English to check that the appropriate meaning has been conveyed. This is called "back translation."

Translators should understand the expected reading level of the audience and, where appropriate, have fundamental knowledge about the target language group's vocabulary and phraseology. Sometimes direct translation of materials results in a translation that is written at a much more difficult level than the English language version or has no relevant equivalent meaning. For instance, there may be languages that do not have an appropriate direct translation of some English language terms and the translator should be able to provide an appropriate translation. The translator should likely also make the recipient aware of this. Recipients can then work with translators to develop a consistent and appropriate set of descriptions of these terms in that language that can be used again, when appropriate. Recipients will find it more effective and less costly if they try to maintain consistency in the words and phrases used to translate terms of art and legal or other technical concepts. Creating or using already-created glossaries of commonly used terms may be useful for LEP persons and translators and cost-effective for the recipient. Providing translators with examples of previous translations of similar material by the recipient, other recipients, or federal agencies may be helpful. Community organizations may be able to help consider whether a document is written at a good level for the audience. Likewise, consistency in the words and phrases used to translate terms of art, legal, or other technical concepts helps avoid confusion by LEP persons and may reduce costs.

While quality and accuracy of translation services is critical, the quality and accuracy of translation services is nonetheless part of the appropriate mix of LEP services required. For instance, documents that are simple and have no legal or other consequence for LEP persons who rely on them may require translators that are less skilled than important documents with legal or other information upon which reliance has important consequences (including, *e.g.*, information or documents of HUD recipients regarding certain safety issues and certain legal rights or programmatic or other obligations). The permanent nature of written translations, however, imposes additional responsibility on the recipient to ensure that the quality and accuracy permit meaningful access by LEP persons.

VII. Elements of Effective Plan on Language Assistance for LEP Persons

After completing the four-factor analysis and deciding what language assistance services are appropriate, a recipient should develop an implementation plan to address the identified needs of the LEP populations they serve. Recipients have considerable flexibility in developing this plan. The development and maintenance of a periodically-updated written plan on language assistance for LEP persons ("LEP plan") for use by recipient employees serving the public will likely be the most appropriate and cost-effective means of documenting compliance and providing a framework for the provision of timely and reasonable language assistance. Moreover, such written plans would likely provide additional benefits to a recipient's managers in the areas of training, administration, planning, and budgeting. These benefits should lead most recipients to document in a written LEP plan their language assistance services, and how staff and LEP persons can access those services. Despite these benefits, certain HUD recipients, such as recipients serving very few LEP persons and recipients with very limited resources, may choose not to develop a written LEP plan. However, the absence of a written LEP plan does not obviate the underlying obligation to ensure meaningful access by LEP persons to a recipient's program or activities. Accordingly, in the event that a recipient elects not to develop a written plan, it should consider alternative ways to articulate in some other reasonable manner a plan for providing meaningful access. Entities having significant contact with LEP persons, such as schools, grassroots and faith-based organizations, community groups, and groups working with new immigrants can be very helpful in providing important input into this planning process from the beginning.

The following five steps may be helpful in designing an LEP plan and are typically part of effective implementation plans.

(1) Identifying LEP Individuals Who Need Language Assistance

The first two factors in the four-factor analysis require an assessment of the number or proportion of LEP

individuals eligible to be served or encountered and the frequency of encounters. This requires recipients to identify LEP persons with whom they have contact. One way to determine the language of communication is to use language identification cards (or "I speak" cards), which invite LEP persons to identify their language needs to staff. Such cards, for instance, might say, "I speak Spanish" in both Spanish and English, "I speak Vietnamese" in both Vietnamese and English, etc. To reduce costs of compliance, the federal government has made a set of these cards available on the Internet. The Census Bureau "I speak" card can be found and downloaded at *http://www.usdoj.gov/crt/cor/13166.htm*. When records are normally kept of past interactions with members of the public, the language of the LEP person can be included as part of the record. In addition to helping employees identify the language of LEP persons they encounter, this process will help in future applications of the first two factors of the four-factor analysis. In addition, posting notices in commonly encountered languages notifying LEP persons of language assistance will encourage them to self-identify.

(2) Language Assistance Measures

An effective LEP plan would likely include information about the ways in which language assistance will be provided. For instance, recipients may want to include information on at least the following:

- Types of language services available;
- How staff can obtain those services;
- How to respond to LEP callers;
- How to respond to written communications from LEP persons;
- How to respond to LEP persons who have in-person contact with recipient staff; and
- How to ensure competency of interpreters and translation services.

(3) Training Staff

Staff should know their obligations to provide meaningful access to information and services for LEP persons. An effective LEP plan would likely include training to ensure that:

- Staff know about LEP policies and procedures; and
- Staff having contact with the public is trained to work effectively with in-person and telephone interpreters.

Recipients may want to include this training as part of their orientation for new employees. It is important to ensure that all employees in public contact positions (or having contact with those in a recipient's custody) are properly trained. Recipients have flexibility in deciding the manner in which the training is provided. The more frequent the contact with LEP persons, the greater the need will be for in-depth training. Staff with little or no contact with LEP persons may only have to be aware of an LEP plan. However, management staff, even if they do not interact regularly with LEP persons, should be fully aware of and understand the plan so they can reinforce its importance and ensure its implementation by staff.

(4) Providing Notice to LEP Persons

Once an agency has decided, based on the four factors, that it will provide language services, it is important for the recipient to let LEP persons know that those services are available and that they are free of charge. Recipients should provide this notice in a language that LEP persons will understand. Examples of notification that recipients should consider include:

- Posting signs in common areas, offices, and anywhere applications are taken. When language assistance is needed to ensure meaningful access to information and services, it is important to provide notice in appropriate languages in initial points of contact so that LEP persons can learn how to access those language services. This is particularly true in geographic areas with high volumes of LEP persons seeking access to the recipient's major programs and activities. For instance, signs in offices where applications are taken could state that free language assistance is available. The signs should be translated into the most common languages encountered. The signs should explain how to receive language assistance. The Social Security Administration has made such signs available at *http://www.ssa.gov/multilanguage/langlist1.htm*. These signs could, for example, be modified for recipient use;
- Stating in outreach documents that language services are available from the agency. Announcements could be in, for instance, brochures, booklets, and in outreach and recruitment information. These statements should be translated into the most common languages and could be "tagged" onto the front of common documents;
- Working with grassroots and faith-based community organizations and other stakeholders to inform LEP individuals of the recipients' services, including the availability of language assistance services;
- Using a telephone voice mail menu. The menu could be in the most common languages encountered. It should provide information about available language assistance services and how to get them;
- Including notices in local newspapers in languages other than English;
- Providing notices on non-English-language radio and television stations about the available language assistance services and how to get them; and
- Presentations and/or notices at schools and grassroots and faith-based organizations.

(5) Monitoring and Updating the LEP Plan

Recipients should, where appropriate, have a process for determining, on an ongoing basis, whether new documents, programs, services, and activities need to be made accessible for LEP persons, and they may want to provide notice of any changes in services to the LEP public and to employees. In addition, recipients should consider whether changes in demographics, types of services, or other needs require annual reevaluation of their LEP plan. Less frequent reevaluation may be more appropriate where demographics, services, and needs are more static. One good way to evaluate the LEP plan is to seek feedback from the community that the plan serves.

In their reviews, recipients may want to consider assessing changes in:

- Current LEP populations in the housing jurisdiction geographic area or population affected or encountered;
- Frequency of encounters with LEP language groups;
- Nature and importance of activities to LEP persons;
- Availability of resources, including technological advances and sources of additional resources, and the costs imposed;
- Whether existing assistance is meeting the needs of LEP persons;
- Whether staff knows and understands the LEP plan and how to implement it; and
- Whether identified sources for assistance are still available and viable.

In addition to these five elements, effective plans set clear goals, management accountability, and opportunities for community input and planning throughout the process.

VIII. Voluntary Compliance Effort

The goal for Title VI and Title VI regulatory enforcement is to achieve voluntary compliance. The requirement to provide meaningful access to LEP persons is enforced and implemented by HUD through the procedures identified in the Title VI regulations. These procedures include complaint investigations, compliance reviews, efforts to secure voluntary compliance, and technical assistance.

The Title VI regulations provide that HUD will investigate whenever it receives a complaint, report, or other information that alleges or indicates possible noncompliance with Title VI or its regulations. The Office of Fair Housing and Equal Opportunity is responsible for conducting the investigation to ensure that recipients are in compliance with civil rights related programs requirements. If the investigation results in a finding of compliance, HUD will inform the recipient in writing of this determination, including the basis for the determination. HUD uses voluntary methods to resolve most complaints. However, if a case is fully investigated and results in a finding of noncompliance, HUD must inform the recipient of the noncompliance through a "Letter of Findings" that sets out the areas of noncompliance and the steps that must be taken to correct the noncompliance. It must attempt to secure voluntary compliance through informal means. If the matter cannot be resolved informally, HUD must secure compliance through the termination of federal assistance after the HUD recipient has been given an opportunity for an administrative hearing and/or by referring the matter to a DOJ litigation section to seek injunctive relief or pursue other enforcement proceedings. HUD engages in voluntary compliance efforts and provides technical assistance to recipients at all stages of an investigation. During these efforts, HUD proposes reasonable timetables for achieving compliance and consults with and assists recipients in exploring cost-effective ways of coming into compliance. In determining a recipient's compliance with the Title VI regulations, HUD's primary concern is to ensure that the recipient's policies and procedures provide meaningful access for LEP persons to the recipient's programs and activities.

While all recipients must work toward building systems that will ensure access for LEP persons, HUD acknowledges that the implementation of a comprehensive system to serve LEP persons is a process and that a system will evolve over time as it is implemented and periodically reevaluated. As recipients take reasonable steps to provide meaningful access to federally-assisted programs and activities for LEP persons, HUD will look favorably on intermediate steps recipients take that are consistent with this Guidance, and that, as part of a broader implementation plan or schedule, move their service delivery system toward providing full access to LEP persons. This does not excuse noncompliance but instead recognizes that full compliance in all areas of a recipient's activities and for all potential language minority groups may reasonably require a series of implementing actions over a period of time. However, in developing any phased implementation schedule, HUD recipients should ensure that the provision of appropriate assistance for significant LEP populations or with respect to activities having a significant impact on the housing, health, safety, legal rights, or livelihood of beneficiaries is addressed first. Recipients are encouraged to document their efforts to provide LEP persons with meaningful access to federally-assisted programs and activities.

IX. Application to Specific Types of Recipients

Appendix A of this Guidance provides examples of how the meaningful access requirement of the Title VI regulations applies to HUD-funded recipients. It further explains how recipients can apply the four factors to a range of situations to determine their responsibility for providing language services in each of these situations. This Guidance helps recipients identify the population they should consider when determining the extent and types of services to provide. For instance, it gives examples on how to apply this guidance in situations like:

- Holding public meetings on the Consolidated Plans for Community Planning and Development Programs (CDBG, HOME, Housing Opportunity for Persons With AIDS (HOPWA), and Emergency Shelter Grants (ESG));
- Interviewing victims of housing discrimination;
- Helping applicants to apply for public housing units;
- Explaining lease provisions; and
- Providing affirmative marketing housing counseling services.

Dated: November 10, 2003.

Carolyn Peoples,

Assistant Secretary for Fair Housing and Equal Opportunity.

Appendix A: Application of Limited English Proficiency (LEP) Guidance for HUD Recipients

Introduction

A wide range of entities receives federal financial assistance through HUD. HUD provides assistance to the following types of recipients, among others: assisted housing providers; public housing agencies; state and local governments; nonprofit organizations, including housing counseling agencies and grassroots community-based and faith-based organizations; state and local fair housing agencies; and providers of a variety of services. All HUD-funded recipients are required to certify to nondiscrimination and affirmatively furthering fair housing, either through the Office of Community Planning and Development's (CPD's) Consolidated Plan, (24 CFR 91.225 (a)(1) and (b)(6), 91.325(a)(1), 91.425(a)(i)); the public housing agency plans processes (24 CFR 903.7(o)); or the certifications required in the competitive programs funded through the Super Notice of Funding Availability (SuperNOFA). [Note: HUD publishes the SuperNOFA on an annual basis. The non-discrimination and the affirmative furthering fair housing requirements are found in the General Section of the SuperNOFA]. The website for the SuperNOFA is: *http://www.hud.gov/library/bookshelf18/supernofa/index.cfm*. This LEP Guidance does not change current civil rights related program requirements contained in HUD regulations.

This Appendix provides examples of how HUD recipients might apply the four-factor analysis described in the general guidance. The Guidance and examples in this Appendix are not meant to be exhaustive and may not apply in some situations. CPD's citizen participation plan requirement, in particular, specifically instructs jurisdictions that receive funds through the Consolidated Plan process to take appropriate actions to encourage the participation of "* * * non-English speaking persons * * *" (24 CFR 91.105(a)(2)(ii), 91.115(a)(2)). Such recipients may, therefore, have processes in place to address the needs of their LEP beneficiaries that already take into consideration the four-factor analysis and meet the Title VI and regulatory requirements described in this Guidance.

This Guidance does not supplant any constitutional, statutory, or regulatory provisions that may require LEP services. Rather, this Guidance clarifies the Title VI and regulatory obligation to address, in appropriate circumstances and in a reasonable manner, the language assistance needs of LEP persons beyond those required by the Constitution or by statutes and regulations other than Title VI and the Title VI regulations.

Tribes and tribally-designated housing entities (TDHEs) are authorized to use federal housing assistance made available under the Native American Housing Assistance and Self-Determination Act of 1996 (NAHASDA, 25 U.S.C. 4101–4212) for low-income housing programs or activities for the specific benefit of tribal members or other Native Americans. Programs or activities funded in whole or in part with federal assistance made available under NAHASDA are exempt from Title VI and Title VIII of the Civil Rights Act of 1968. Although Title VI may not apply to housing programs undertaken by these entities under NAHASDA, this Guidance may be a helpful technical assistance tool in determining whether and to what degree language assistance may be appropriate to ensure meaningful access by otherwise eligible low-income Native Americans.

For many members of the public, exposure to housing and social service programs

begins and ends with their interactions with HUD recipients that are responding to a request for services or assistance or are conducting education and community outreach activities. The common thread running through interactions between the public and HUD recipients is the exchange of information. Recipients of HUD assistance, dependant on circumstances, have an obligation to provide appropriate types and levels of language services to LEP persons to ensure that they have meaningful access to, and choice of, housing and other HUD-funded programs. Language barriers can, for example, prevent persons from learning of housing opportunities or applying for and receiving such opportunities, learning of environmental or safety problems in their communities and of the means available for dealing with such problems, or effectively reporting housing discrimination to the local fair housing agency or HUD, thus hindering investigation of these allegations.

Many recipients already provide language services in a wide variety of circumstances to obtain information effectively and help applicants obtain suitable housing or support services. For example, public housing agencies may have leases available in languages other than English as well as interpreters available to inform LEP persons of their rights and responsibilities. In areas where significant LEP populations reside, agencies may have forms and notices in languages other than English or they may employ bilingual intake personnel, housing counselors, and support staff. Such recipients may therefore have processes in place to address the needs of their LEP beneficiaries that meet the Title VI and regulatory requirements described in this Guidance. Such existing processes and their observed results can form a strong basis for applying the four-factor analysis and complying with the Title VI regulations.

General Principles

The touchstone of the four-factor analysis is reasonableness based upon: (a) The specific needs and capabilities of the LEP population among the beneficiaries of HUD programs (tenants, applicants, community residents, complainants, *etc.*); (b) the program purposes and capabilities of the HUD-funded recipients providing the services to the LEP population; and (c) local housing, demographic, and other community conditions and needs. Accordingly, the analysis cannot provide a single uniform answer on how service to LEP persons must be provided in all programs or activities in all situations or whether such service need be provided at all. Each HUD recipient's evaluation of the need and level of LEP services for each process in its services must be highly individualized.

Before giving specific program examples, several general points should assist the wide variety of HUD recipients in applying this analysis.

Factors (1) and (2): Target Audiences

In evaluating the target audience, the recipient should take into account the number and proportion of LEP persons served or to be served in the target population as well as the frequency with which this target audience will or should be served.

Factor (1): For most recipients, the target audience is defined in geographic rather than programmatic terms. In many cases, even if the overall number or proportion of LEP persons in the local area is low, the actual number of LEP persons served by the program may be high.

HUD recipients are required to reach out to, educate, and affirmatively market their services to potential beneficiaries in the geographic area who are least likely to apply for or receive the benefits of the program without such affirmative marketing (24 CFR 200.625, 24 CFR 92.351, 24 CFR 903. 2(d)(1) and (2)). In many cases, those least likely to apply for a benefit are LEP persons. In addition, in some cases where there are few LEP persons in the immediate geographic area, affirmative marketing may require marketing to residents of adjoining areas, communities, or neighborhoods (24 CFR 200.625, 24 CFR 92.351, 903.2(d)(1) and (2)).

The programs of many recipients require public meetings and input (24 CFR 91, subpart B; 24 CFR 903.13 (a); 24 CFR, part 964). Even within the large geographic area covered by a city government, certain target areas may have concentrations of LEP persons. These persons may be those who might be most affected by the issue being discussed.

In addition, some programs are specifically targeted to reach a particular audience (*e.g.*, persons with HIV, the elderly, residents of high crime areas, persons with disabilities, and minority communities). In some communities, these populations may disproportionately be LEP persons.

Factor (2): Frequency of contact should be considered in light of the specific program or the geographic area being served. Some education programs or complaint processing may only require a single or limited interaction with each LEP individual served. Housing, counseling, and supportive services programs require on-going communication. In the former case, the type and extent of LEP services may be of shorter duration, even for a greater number of LEP persons, than in the latter case and decisions must be made accordingly.

Factor (3): Importance of Service/Information/Program/Activity

Given the critical role housing plays in maintaining quality of life, housing and complementary housing services rank high on the critical/non-critical continuum. However, this does not mean that all services and activities provided by HUD recipients must be equally accessible in languages other than English. For example, while clearly important to the quality of life in the community, certain recreational programs provided by a HUD recipient may not require the same level of interpretive services as does the recipient's underlying housing service. Nevertheless, the need for language services with respect to these programs should be considered in applying the four-factor analysis.

Factor (4): Costs vs. Resources and Benefits

The final factor that must be taken into account is the cost of providing various services as opposed to the resources available to the HUD recipient providing the service.

Type of Program: There are some programs for which translation and interpretation are an integral part of the funded program such that services should be provided in some way to any client that requires them. In important programs or activities (*i.e.*, tenant selection and assignment, homeownership counseling, fair housing complaint intake, conflict resolution between tenant and landlords, *etc.*) that require one-on-one contact with clients, written translation and verbal interpretation services should be provided consistent with the four-factor analysis used earlier. Recipients could have competent bilingual or multilingual employees or community translators or interpreters to communicate with LEP persons in languages prevalent in the community. In some instances, a recipient may have to contract or negotiate with other agencies for services for LEP persons.

Outreach: Affirmative marketing activities, as described above, require, at a minimum, written materials in other languages (24 CFR 200.625, 24 CFR 92.351, 24 CFR 903.2 (d)(1) and (2)). As with counseling, affirmative marketing in large LEP communities could be fruitless without translation of outreach materials. Preferably, outreach workers would speak the language of the people to whom they are marketing.

Size of Program: A major issue for deciding on the extent of translation/interpretation services is the size of the program. A large public housing agency (PHA) may be expected to have multilingual employees representing the LEP persons who may reside in the communities they serve. These employees may be involved in all activities: affirmative marketing, taking and verifying applications, counseling, explaining leases, holding tenant meetings, and on-going tenant contact, as well as translating documents into applicable languages. Similarly, a funded recipient receiving millions of dollars in CDBG Program money may be expected to provide translation/interpretation services in major local languages and have bilingual staff in those languages. Recipients with limited resources (*i.e.*, PHAs with a small number of units, or small nonprofit organizations) should not be expected to provide the same level and comprehensiveness of services to the LEP population, but should consider reasonable steps, under the four-factor analysis, they can take in order to provide meaningful access.

Relevance of Activity to the Program: A program with monthly information sessions in a community with many LEP persons speaking the same language should consider employing a bilingual employee who can hold these sessions in the LEP language. Alternatively, if a community's major LEP language does not have many applicants for the program, having an interpreter at sessions only when needed may be sufficient. (For example, the program could announce in major languages in any public notice of the meeting that anyone in need of an interpreter should call a certain number before the meeting to request one—and ensure that someone at that number can communicate with the person.)

Availability/Costs of Services: In a community with very few LEP persons speaking a particular language, interpretation/translation into a specific language and a HUD recipient with very few resources, the provision of service should be targeted at the most important activities. Recipients may decide, as appropriate, to provide those services through agreements with competent translators and interpreters in community-based organizations or through telephonic interpretation services.

Services Provided: HUD recipients have a variety of options for providing language services. Under certain circumstances, when interpreters are required and recipients should provide competent interpreter services free of cost to the LEP person, LEP persons should be advised that they may choose either to use a competent interpreter provided free by the recipient or, at their own expense, secure the assistance of an interpreter of their own choosing. If the LEP person decides to provide his or her own interpreter, the provision of this choice to the LEP person and the LEP person's election should be documented in any written record generated with respect to the LEP person. Although LEP persons may sometimes look to bilingual family members or friends or other persons with whom they are comfortable for language assistance, there are many situations where an LEP person might want to rely upon recipient-supplied interpretative services. Family and friends may not be available when and where they are needed, or they may not have the ability to interpret program-specific technical information. Alternatively, an individual may feel uncomfortable revealing or describing sensitive, confidential, or potentially embarrassing medical, family, or financial information to a family member, friend, or member of the local community.

Similarly, there may be situations where a HUD recipient's own interests justify program provision of an interpreter regardless of whether the LEP individual also provides his or her own interpreter. For example, where precise, complete, and accurate interpretation of information is critical for lease enforcement, or at group meetings dealing with vital issues, such as pending displacement, a recipient might provide its own, independent interpreters, regardless of what recipients choose. This should ensure that information has been interpreted completely and is legally accurate.

In emergency situations that are not reasonably foreseeable, the recipient may have to rely temporarily on non-professional language services. However, reliance on children is especially discouraged unless there is an extreme emergency and no language proficient adults are available.

While all language services need to be competent, the greater the potential consequences, the greater the need to monitor interpretation services for quality. For example, it is important that interpreters of legal concepts be highly competent to translate legal and lease enforcement concepts as well as be extremely accurate in their interpretation when discussing relocation and displacement issues. It may be sufficient, however, for a desk clerk who is fully bilingual, but not skilled at interpreting, to help an LEP person complete an application in the language the LEP person and bilingual person have in common.

Applying the Four-Factor Analysis

While all beneficiaries are important, the four-factor analysis requires prioritizing so that language services are targeted where most needed because of the nature and importance of the particular activity involved in relation to the costs of providing the service.

This section provides examples of promising practices in which recipients may engage. Grantees or funded recipients are responsible for ensuring meaningful access to all portions of their program or activity, not just the portions to which HUD funds are targeted. So long as the language services are accurate, timely, and appropriate in the manner outlined in this guidance, the types of promising practices summarized below can assist recipients in meeting the meaningful access requirements of Title VI and the Title VI regulations.

Office of Fair Housing and Equal Opportunity

The Fair Housing Assistance Program (FHAP): FHAP provides funds to state and local agencies that administer fair housing laws that are substantially equivalent to the federal Fair Housing Act.

A local FHAP serves a small metropolitan area that has a population that is 3 percent Korean speaking, 25 percent Spanish-speaking, and 72 percent English speaking. One of the FHAP agency's primary responsibilities is to process fair housing discrimination complaints. The FHAP office has many Hispanic complainants who are LEP and Spanish-speaking; therefore, it has hired a Hispanic intake clerk who is bilingual in Spanish and English. The Fair Housing Poster and the complaint form have been translated into Spanish. The office has a contract with a nonprofit Hispanic organization for interpreters on an as-needed basis its education and outreach activities to the Hispanic community. FHAP organizations are small and have limited resources. In competing for the available resources, the FHAP chose not to translate the material into the language of the Korean population this year. However, it has plans to translate material into the Korean language in coming years to address the accessibility needs of the LEP population.

The Fair Housing Initiatives Program (FHIP): FHIP assists fair housing activities that increase compliance with the Fair Housing Act and with the substantially equivalent fair housing laws administered by state and local government agencies under the Fair Housing Assistance Program (FHAP). FHIP awards funds competitively, and these funds enable the recipients to carry out activities to educate and inform the public and housing providers of their fair housing rights and responsibilities.

A community organization in a large metropolitan area had received FHIP funds to develop an education curriculum to assist newly arrived immigrants. Data showed that non-English speaking persons were having difficulty in applying and securing housing in the area. The organization had identified a large Hispanic clientele in the area that needed this service. It had a well-developed program for this LEP population. However, the community's population was changing. The recipient found that there was also a large community of recent immigrants from Cambodia who were also in need of language services. To address this need, the FHIP partnered with Asian Action Network, a community-based social service agency, to translate materials and to present free seminars at the local public library. In addition, if needed, the Asian Action Network had on its staff a Cambodian-speaking counselor who was able to provide interpretation services.

Office of Public and Indian Housing

HOPE VI: The HOPE VI Revitalization of Distressed Public Housing Program provides revitalization and demolition-only grants on a competitive basis for eligible PHAs that operate public housing units. During the HOPE VI lifecycle, PHAs are required to communicate with all tenants, including LEP tenants, through informational meetings that describe both the proposed project and the rights of the tenants during every stage of the application and implementation process. All residents need to be educated about both the HOPE VI project, and their right to be relocated into decent, safe and sanitary housing, and how they can return to the new project once it is completed.

A PHA is planning to demolish a 400-unit public housing project and construct a 375-unit HOPE VI mixed-finance development and other amenities on the site. The 400-unit building is still occupied by a tenant population of which 55 percent are Spanish-speaking families. For a number of years, the PHA had in place bilingual employees in its occupancy office, as well as leases and other written documents translated into Spanish. Under the new requirements, the PHA now needs to translate public notices and other documents into Spanish, since many of the families are newly arrived immigrants from Latin America.

Public Housing: There are approximately 3,400 PHAs in the United States that provide a majority of the housing to low and very low-income families. For example, a PHA in a large metropolitan area has Hispanic, Chinese, and Vietnamese tenants. All tenants sign a lease before they can live in public housing. The lease details the rules and requirements that the PHA and tenants must follow and ensures that the PHA and tenants are provided all the protections to which they are entitled. Additionally, the written lease ensures that all tenants are treated fairly. The PHA makes every effort to ensure that tenants understand the rules and requirements. The PHA has its lease and rental notices translated into Spanish, Chinese, and Vietnamese and it has a procedure to access interpreters for these languages if oral discussions of the lease are necessary.

Housing Choice Voucher Program: The Housing Choice Voucher Program is the

federal government's major program for assisting very low-income families, the elderly, and the disabled to afford decent, safe, and sanitary housing in the private market.

For example, a PHA administers a Housing Choice Voucher Program and has recently received an additional 100 vouchers. The PHA affirmatively markets the availability of the housing choice vouchers to all families living in its jurisdiction. It places a public service announcement in English, Spanish, Chinese, or Vietnamese in the local general circulation, Spanish, Chinese, or Vietnamese newspapers and radio and TV stations, as applicable.

Office of Community Planning and Development

Consolidated Plan: Consolidated Planning is a strategy for holistic community planning. Each community's Consolidated Plan is built upon public participation and input. When planning the required public hearings, jurisdictions must also identify how the needs of LEP residents will be met in the case of public hearings where a significant number of LEP residents can be reasonably expected to participate (24 CFR 91, Subpart B, "Citizen Participation and Consultation"). Other activities surrounding public hearings should also be made available to persons with LEP, such as (a) publication of translated notification of the public hearings, and (b) translation of draft and final action and consolidated plans and dissemination of these documents to persons and appropriate organizations in the LEP community.

The State Community Development Block Grant (CDBG) program is designed to assist small communities and rural areas in funding a wide variety of activities intended to promote community economic development. In the State CDBG program, HUD makes grants to states, which then distribute funds to units of general local government.

All eligible activities in the State CDBG program must meet one of three statutory objectives specified in the CDBG authorizing legislation: principally benefit low- and moderate-income persons, aid in the prevention of elimination of slums or blight, or meet other community development needs having a particular urgency.

State CDBG grant recipients are encouraged to reach out to LEP persons through local alternative language newspapers. In addition, expenses associated with providing interpretive services to LEP persons may be considered program delivery or administration costs and, therefore, may be paid with CDBG funds. For instance, one state CDBG grant recipient chooses to provide case management services to homeless families and individuals, and allocates part of these funds to provide advocacy and interpretative services for LEP persons.

Housing Opportunities for Persons With AIDS (HOPWA) HOPWA is a tenant-based rental voucher program specifically designed for persons who are HIV positive or who have AIDS. A major city has been operating services affecting persons with AIDS and such services have been an integral part of its Consolidated Plan. However, it recently learned from a national study that 20 percent of its 2,000 HIV-infected persons are LEP persons. The city previously had not contacted these people about their needs. In formulating its Consolidated Plan, the city's Community Development Department contacted both the Department of Health and the city's leading AIDS-related service provider for assistance in reaching out to this population. The city offered to allocate additional sums from its HOPWA formula grant to fund bilingual interpreters and health outreach workers who would contact the LEP persons living with HIV and minister to their housing-related needs. Also, as part of its citizen participation plan, the city offered to conduct a multilingual meeting at which institutions involved in AIDS-related housing and services would participate.

HOME Investment Partnership Program: In general, under the HOME Investment Partnerships Program, HUD allocates funds by formula among eligible state and local governments to strengthen public-private partnerships and to expand the supply of decent, safe, sanitary, and affordable housing. Families, including LEP families, may obtain homeownership and rental housing opportunities from participating jurisdictions (PJs). Under the program requirements, PJs are required to implement affirmative marketing strategies, under which they identify groups within the eligible population that are least likely to apply and conduct special outreach efforts through advertising in local media, including media targeted at LEP citizens (24 CFR 92.351).

A small HOME participating jurisdiction is using its HOME funds to implement a tenant-based rental assistance (TBRA) program. Under TBRA, the assisted tenant may move from a dwelling unit, but retains the right to continued assistance. The TBRA assistance also includes the security deposit. The HOME PJ, as part of its affirmative marketing strategy, has submitted advertising to the local Spanish language newspapers and radio station that serve the community's small but growing Hispanic population. Since the costs of implementing the affirmative marketing strategy are eligible costs under the program regulations, the PJ is increasing its budget to train occupancy staff to address issues faced by LEP applicants and to hire a bilingual staff member.

Office of Housing

Single-Family Housing Counseling Program: HUD provides funds to housing counseling agencies that assist persons and families in specific geographic areas to enable them to buy homes and to keep homes they already have purchased. This requires one-on-one and group counseling on home-selection skills, understanding mortgages, understanding legal ramifications of various documents, establishing a budget, housekeeping and maintenance skills, understanding fair housing rights, *etc.*

In a majority-Hispanic community, *La Casa* has been the only HUD-funded counseling agency, providing these services for many years. It has bilingual staff to serve the largely Hispanic population. Frequently clients from a neighboring low-income community, which is primarily African-American, also uses its services, since the agency is well-known in the area. However, over the past few years, many low-income Iranians have been moving into the neighboring community. A housing counseling agency is required to provide one-on-one counseling services as the nature of its program. It is also required to outreach to those potential beneficiaries who are least likely to apply for its services. As a relatively small agency, *La Casa* should employ at least one person or have regular access to a person who can interpret between English and Farsi. This person should be visiting the Iranian communities, and contacting and working through the local agencies to affirmatively market La Casa's program. This person should also arrange to get key materials translated and provide counseling and interpretation services, as needed.

Supportive Housing for the Elderly: The Section 202 Supportive Housing for the Elderly Program funds the construction of multifamily projects that serve elderly persons. Project sponsors are required to affirmatively market their services and housing opportunities to those segments of the elderly population that are identified as least likely to apply for the housing without special outreach. Even more importantly, many LEP elderly may require care from bilingual medical or support services staff, and recipients may devote considerable financial and other resources to provide such assistance.

The sponsor of a Section 202 Supportive Housing for the Elderly project identifies in its Affirmative Fair Housing Marketing Plan the city's large numbers of East and South Asian immigrants as least likely to apply for the new housing without special outreach. After examining census and other data and consulting with the city's Office of Immigrant Affairs, the sponsor learns that the 1,000 of the 5,000 South and East Asian families have at least one elderly relative that may be eligible for the new units. The sponsor hires translators fluent in Hindi, Urdu, Dari, Vietnamese, and Chinese to translate written materials and advertising for the local press in those languages. The recipient also partners with community-based organizations that serve the city's East and South Asian immigrants to arrange for interpreters at meetings.

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Part VI

Department of Housing and Urban Development

Statutorily Mandated Designation of Difficult Development Areas and Qualified Census Tracts for Section 42 of the Internal Revenue Code of 1986; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4889–N–01]

Statutorily Mandated Designation of Difficult Development Areas and Qualified Census Tracts for Section 42 of the Internal Revenue Code of 1986

AGENCY: Office of the Secretary, HUD.

ACTION: Notice.

SUMMARY: This document designates "Difficult Development Areas" and "Qualified Census Tracts" for purposes of the Low-Income Housing Tax Credit (LIHTC) under section 42 of the Internal Revenue Code of 1986 (the Code). The United States Department of Housing and Urban Development (HUD) makes new Difficult Development Area designations annually and makes Qualified Census Tract Designations at this time due to the recent release of relevant data from the 2000 Census.

FOR FURTHER INFORMATION CONTACT: For questions on how areas are designated and on geographic definitions: Kurt G. Usowski, Associate Deputy Assistant Secretary for Economic Affairs, Office of Policy Development and Research, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–6000, telephone (202) 708–2770, e-mail *Kurt_G._Usowski@hud.gov*. For specific legal questions pertaining to section 42: Office of the Associate Chief Counsel, Passthroughs & Special Industries, Internal Revenue Service, 1111 Constitution Avenue, NW.; Washington, DC 20224, telephone (202) 622–3040, fax (202) 622–4753. For questions about the "HUBZones" program: Michael P. McHale, Assistant Administrator for Procurement Policy, Office of Government Contracting, Suite 8800, Small Business Administration, 409 Third Street, SW., Washington, DC 20416, telephone (202) 205–8885, fax (202) 205–7167, e-mail *hubzone@sba.gov*. A text telephone is available for persons with hearing or speech impairments at (202) 708–9300. (These are not toll-free telephone numbers.) Additional copies of this notice are available through HUD User at (800) 245–2691 for a small fee to cover duplication and mailing costs.

Copies Available Electronically: This notice and additional information about Difficult Development Areas and Qualified Census Tracts are available electronically on the Internet (World Wide Web) at *http://www.huduser.org/datasets/qct.html*.

SUPPLEMENTARY INFORMATION:

This Document

The designations of Difficult Development Areas in this notice are based on fiscal year (FY) 2003 Fair Market Rents (FMRs), FY 2003 income limits, and 2000 Census population counts as explained below. This notice designates Difficult Development Areas for each of the 50 states, the District of Columbia, Puerto Rico, American Samoa, Guam, the Northern Mariana Islands, and the Virgin Islands. The designations of Qualified Census Tracts in this notice are based on 2000 Census data. This notice designates Qualified Census Tracts for American Samoa, Guam, and the Northern Mariana Islands. The 2003 Qualified Census Tracts designated for the 50 states, the District of Columbia, Puerto Rico, and the Virgin Islands published December 12, 2002, at 67 FR 76452 are unchanged by this notice.

2000 Census

Data from the 2000 Census on total population of metropolitan areas and nonmetropolitan counties are used in the designation of Difficult Development Areas. The Census Bureau has recently released the data needed to update Qualified Census Tract designations for American Samoa, Guam, and the Northern Mariana Islands, so this notice makes new qualified Census Tract designations in these areas based on 2000 Census data. The Office of Management and Budget (OMB) published new metropolitan area definitions incorporating 2000 Census data in OMB Bulletin No. 03–04 on June 6, 2003. The Census Bureau has not yet released official data on 1999 median incomes in the newly defined metropolitan areas and nonmetropolitan areas of states. Also, the FY 2003 FMRs and 2003 income limits used to designate Difficult Development Areas are based on the Metropolitan Statistical Areas (MSA) and Primary Metropolitan Statistical Areas (PMSA) definitions established by OMB in OMB Bulletin No. 99–04 on June 30, 1999. Therefore, for the purposes of designating Difficult Development Areas and Qualified Census Tracts "metropolitan areas" will continue to be defined according to the MSA/PMSA definitions established by the OMB in OMB Bulletin No. 99–04 on June 30, 1999, until further notice.

Background

The U.S. Treasury Department and the Internal Revenue Service thereof are authorized to interpret and enforce the provisions of the Code, including the LIHTC found at section 42 of the Code (26 U.S.C. 42). The Secretary of HUD is required to designate Difficult Development Areas and Qualified Census Tracts by section 42(d)(5)(C) of the Code.

In order to assist in understanding HUD's mandated designation of Difficult Development Areas and Qualified Census Tracts for use in administering section 42 of the Code, a summary of section 42 is provided. The following summary does not purport to bind the Treasury or the IRS in any way, nor does it purport to bind HUD, as HUD has no authority to interpret or administer the Code, except in those instances where it has a specific delegation.

Summary of Low Income Housing Tax Credit

The LIHTC is a tax incentive intended to increase the availability of low-income housing. Section 42 provides an income tax credit to owners of newly constructed or substantially rehabilitated low-income rental housing projects. The dollar amount of the LIHTC available for allocation by each state (credit ceiling) is limited by population. Each state is allocated credit based on a statutory formula indicated at section 42(h)(3). States may carry forward unallocated credit derived from the credit ceiling for one year; if a certain portion of this unallocated credit is not used by then, this portion goes into a national pool to be allocated to states as additional credit. State and local housing agencies allocate the state's credit ceiling among low-income housing buildings whose owners have applied for the credit. Besides section 42 credits derived from the credit ceiling, states may also provide section 42 credits to owners of buildings based upon the percentage of certain building costs financed by tax-exempt bond proceeds. Credits provided under the tax-exempt bond "volume cap" do not reduce the credit available from the credit ceiling.

The credit allocated to a building is based on the cost of units placed in service as low-income units under certain minimum occupancy and maximum rent criteria. In general, a building must meet one of two thresholds to be eligible for the LIHTC: either 20 percent of units must be rent-restricted and occupied by tenants with incomes no higher than 50 percent of the area median gross income (AMGI), or 40 percent of units must be rent restricted and occupied by tenants with incomes no higher than 60 percent of AMGI. The term "rent-restricted" means that gross rent, including an allowance for utilities, cannot exceed 30 percent of the tenant's imputed income limitation (*i.e.*, 50 percent or 60 percent of AMGI). The rent and occupancy thresholds remain in effect for at least 15 years, and building owners are required to enter into agreements to maintain the low-income character of the building for at least an additional 15 years.

The LIHTC reduces income tax liability dollar for dollar. It is taken annually for a term of ten years and is intended to yield a present value of either (1) 70 percent of the "qualified basis" for new construction or substantial rehabilitation expenditures that are not federally subsidized (*i.e.*, financed with tax-exempt bonds or below-market federal loans), or (2) 30 percent of the qualified basis for the cost of acquiring certain existing projects or projects that are federally subsidized. The actual credit rates are adjusted monthly for projects placed in service after 1987 under procedures specified in section 42. Individuals can use the credit up to a deduction equivalent of $25,000 (the actual maximum amount of credit that an individual can claim depends upon the individual's marginal tax rate). Individuals cannot use the credit against the alternative minimum tax. Corporations, other than S or personal service corporations, can use the credit against ordinary income tax. They cannot use the credit against the alternative minimum tax. These corporations can also deduct losses from the project.

The qualified basis represents the product of the "applicable fraction" of the building and the "eligible basis" of the building. The applicable fraction is based on the number of low-income units in the building as a percentage of the total number of units, or based on the floor space of low income-units as a percentage of the total floor space of residential units in the building. The eligible basis is the adjusted basis attributable to acquisition, rehabilitation, or new construction costs (depending on the type of LIHTC involved). These costs include amounts chargeable to capital account incurred prior to the end of the first taxable year in which the qualified low-income building is placed in service or, at the election of the taxpayer, the end of the succeeding taxable year. In the case of buildings located in designated Qualified Census Tracts or designated Difficult Development Areas, eligible basis can be increased up to 130 percent of what it would otherwise be. This means that the available credit also can be increased by up to 30 percent. For example, if a 70 percent credit is available, it effectively could be increased up to 91 percent.

Section 42 of the Code defines a Difficult Development Area as any area designated by the Secretary of HUD as an area that has high construction, land, and utility costs relative to the AMGI. All designated Difficult Development Areas in MSAs/PMSAs may not contain more than 20 percent of the aggregate population of all MSAs/PMSAs, and all designated areas not in metropolitan areas may not contain more than 20 percent of the aggregate population of all nonmetropolitan counties.

Under section 42(d)(5)(C) of the Code, a Qualified Census Tract is any census tract (or equivalent geographic area defined by the Bureau of the Census) in which at least 50 percent of households have an income less than 60 percent of the AMGI or in which the poverty rate is at least 25 percent. There is a limit on the number of Qualified Census Tracts in any MSA or PMSA that may be designated to receive an increase in eligible basis: all of the designated census tracts within a given MSA/PMSA may not together contain more than 20 percent of the total population of the MSA/PMSA. For purposes of HUD designations of Qualified Census Tracts, all nonmetropolitan areas in a state are treated as if they constituted a single metropolitan area.

Explanation of HUD Designation Methodology

A. Qualified Census Tracts

In developing this list of LIHTC Qualified Census Tracts, HUD used 2000 Census data and the MSA/PMSA definitions established by the Office of Management and Budget in OMB Bulletin No. 99–04 on June 30, 1999. The LIHTC Qualified Census Tracts were determined as follows:

1. A census tract must have 50 percent of its households with incomes below 60 percent of the AMGI or have a poverty rate of 25 percent or more to be "eligible." In metropolitan areas, HUD calculates 60 percent of AMGI by multiplying the MSA/PMSA median family income for 1999, as reported by the 2000 Census, by a factor of 0.6. Outside of metropolitan areas, HUD calculates 60 percent of AMGI by multiplying the state-specific, nonmetropolitan balance median family income by a factor of 0.6.

2. For each census tract, the percentage of households below the 60 percent income standard (the income criterion) was determined by (a) calculating the average household size of the census tract, (b) applying the income standard after adjusting it to match the average household size, and (c) calculating the number of households with incomes below the income standard.

3. For each census tract, the poverty rate was determined by dividing the population with incomes below poverty by the population for whom poverty status has been determined.

4. Qualified Census Tracts are those in which 50 percent or more of the households meet the income criterion or 25 percent or more of the population is in poverty, such that the population of all census tracts that satisfy either one or both of these criteria does not exceed 20 percent of the total population of the respective area.

5. In areas where more than 20 percent of the population resides in eligible census tracts, census tracts are designated as QCTs in accordance with the following procedure:

a. Eligible tracts are placed in one of two groups. The first group includes tracts that satisfy both the income and poverty criteria. The second group includes tracts that satisfy either the income criterion or the poverty criterion, but not both.

b. Tracts in the first group are ranked from lowest to highest on the income criterion. Then tracts in the first group are ranked from lowest to highest on the poverty criterion. The two ranks are averaged to yield a combined rank. The tracts are then sorted on the combined rank, with the census tract with the highest combined rank being placed at the top of the sorted list. In cases of tied combined ranks, more populous tracts are ranked above less populous ones.

c. Tracts in the second group are ranked from lowest to highest on the income criterion. Then tracts in the second group are ranked from lowest to highest on the poverty criterion. The two ranks are then averaged to yield a combined rank. The tracts are then sorted on the combined rank, with the census tract with the highest combined rank being placed at the top of the sorted list. In cases of tied combined ranks, more populous tracts are ranked above less populous ones.

d. The ranked first group is stacked on top of the ranked second group to yield a single, concatenated, ranked list of eligible census tracts.

e. Working down the single, concatenated, ranked list of eligible tracts, census tracts are designated until the designation of an additional tract would cause the 20 percent limit to be exceeded. If a census tract is not designated because doing so would raise the percentage above 20 percent, then subsequent census tracts are considered to determine if one or more census tract(s) with smaller population(s) could

be designated without exceeding the 20 percent limit.

B. Difficult Development Areas

In developing the list of Difficult Development Areas, HUD compared incomes with housing costs. HUD used 2000 Census population data and the MSA/PMSA definitions as published by the Office of Management and Budget in OMB Bulletin No. 99–04 on June 30, 1999, with the exceptions described in section D., below. The basis for these comparisons was the FY 2003 HUD income limits for Very Low-Income households and FMRs used for the section 8 Housing Assistance Payments program. The procedure used in making the Difficult Development Area calculations follows:

1. For each MSA/PMSA and each nonmetropolitan county, a ratio was calculated. This calculation used the FY 2003 two-bedroom FMR and the FY 2003 four-person VLIL.

a. The numerator of the ratio was the area's FY 2003 FMR. In general the FMR is based on the 40th percentile rent paid by recent movers for a two-bedroom apartment. In metropolitan areas granted a FMR based on the 50th percentile rent for purposes of improving the administration of HUD's Housing Choice Voucher program (see 66 FR 162) the 40th percentile rent is used for nationwide consistency of comparisons.

b. The denominator of the ratio was the monthly LIHTC income-based rent limit calculated as 1/12 of 30 percent of 120 percent of the area's VLIL (where 120 percent of the VLIL was rounded to the nearest $50 and not allowed to exceed 80 percent of the AMGI in areas where the VLIL is adjusted upward from its 50 percent of AMGI base).

2. The ratios of the FMR to the LIHTC income-based rent limit were arrayed in descending order, separately, for MSAs/PMSAs and for nonmetropolitan counties.

3. The Difficult Development Areas are those with the highest ratios cumulative to 20 percent of the 2000 population of all metropolitan areas and of all nonmetropolitan counties.

C. Application of Population Caps to Difficult Development Area Determinations

In identifying Difficult Development Areas and Qualified Census Tracts, HUD applied various caps, or limitations, as noted above. The cumulative population of metropolitan Difficult Development Areas cannot exceed 20 percent of the cumulative population of all metropolitan areas and the cumulative population of nonmetropolitan Difficult Development Areas cannot exceed 20 percent of the cumulative population of all nonmetropolitan counties.

In applying these caps, HUD established procedures to deal with how to treat small overruns of the caps. The remainder of this section explains the procedure. In general, HUD stops selecting areas when it is impossible to choose another area without exceeding the applicable cap. The only exceptions to this policy are when the next eligible excluded area contains either a large absolute population or a large percentage of the total population, or the next excluded area's ranking ratio as described above was identical (to four decimal places) to the last area selected, and its inclusion resulted in only a minor overrun of the cap. Thus for both the designated metropolitan and nonmetropolitan Difficult Development Areas there may be a minimal overrun of the cap. HUD believes the designation of these additional areas is consistent with the intent of the legislation. Some latitude is justifiable because it is impossible to determine whether the 20 percent cap has been exceeded, as long as the apparent excess is small, due to measurement error. Despite the care and effort involved in a decennial census, it is recognized by the Census Bureau, and all users of the data, that the population counts for a given area and for the entire country are not precise. The extent of the measurement error is unknown. Thus, there can be errors in both the numerator and denominator of the ratio of populations used in applying a 20 percent cap. In circumstances where a strict application of a 20 percent cap results in an anomalous situation, recognition of the unavoidable imprecision in the census data justifies accepting *small* variances above the 20 percent limit.

D. Exceptions to OMB Definitions of MSAs/PMSAs and Other Geographic Matters

As stated in OMB Bulletin 99–04 defining metropolitan areas:

"OMB establishes and maintains the definitions of the [Metropolitan Areas] solely for statistical purposes * * * OMB does not take into account or attempt to anticipate any nonstatistical uses that may be made of the definitions * * *. We recognize that some legislation specifies the use of metropolitan areas for programmatic purposes, including allocating federal funds."

HUD makes exceptions to OMB definitions in calculating FMRs by deleting counties from metropolitan areas whose OMB definitions are determined by HUD to be larger than their housing market areas.

The following counties are assigned their own FMRs and VLILs and evaluated as if they were separate metropolitan areas for purposes of designating Difficult Development Areas.

Metropolitan Area and Counties Deleted

Chicago, IL: DeKalb, Grundy, and Kendall Counties.
Cincinnati-Hamilton, OH–KY–IN: Brown County, Ohio; Gallatin, Grant, and Pendleton Counties, Kentucky; and Ohio County, Indiana.
Dallas, TX: Henderson County.
Flagstaff, AZ–UT: Kane County, Utah.
New Orleans, LA: St. James Parish.
Washington, DC–MD–VA–WV: Clarke, Culpeper, King George, and Warren Counties, Virginia; and Berkely and Jefferson Counties, West Virginia.

Affected MSAs/PMSAs are assigned the indicator "(part)" in the list of Metropolitan Difficult Development Areas. Any of the excluded counties designated as difficult development areas separately from their metropolitan areas are designated by the county name.

In the New England states (Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont) OMB defines MSAs/PMSAs according to county subdivisions or Minor Civil Divisions (MCDs) rather than county boundaries. Thus, when a New England county is designated as a Nonmetropolitan Difficult Development Area, only that part of the county (the group of MCDs) not included in any MSA/PMSA is the Nonmetropolitan Difficult Development Area. Affected counties are assigned the indicator "(part)" in the list of Nonmetropolitan Difficult Development Areas. Also in the New England states, census tracts may be cut by MSA/PMSA boundaries. Only those LIHTC projects located in the part of the tract in the listed MSA/PMSA or nonmetropolitan area may be allowed the increase in basis. Affected tracts are marked with an asterisk (*) in the list of Qualified Census Tracts.

For the convenience of readers of this notice, the geographic definitions of designated Metropolitan Difficult Development Areas and the MCDs included in Nonmetropolitan Difficult Development Areas in the New England states are included in the list of Difficult Development Areas.

Certain nonmetropolitan county equivalent areas in Alaska for which FMRs and VLILs are calculated and thus form the basis of Difficult Development Area designations are no longer recognized as geographic entities by the Census Bureau. Therefore, no 2000 Census population counts are produced for these areas. HUD estimates the 2000 population of these areas as follows:

1. The 2000 Population of Denali Borough (1,893) was allocated entirely to the Yukon-Koyukuk Census Area. The part of Denali Borough created from the Southeast Fairbanks Census Area was deemed uninhabited after examination of Census Block data for, and maps of, the area of Denali Borough formerly in the Southeast Fairbanks Census Area.

2. The population of Yakutat City and Borough (808) was allocated to the former Skagway-Yakutat-Angoon Census Area (680) and the Valdez-Cordova Census Area (128). The populations of Yakutat City and Borough Census Blocks located east of 141° longitude were allocated to the Skagway-Yakutat-Angoon Census Area. The populations of Yakutat City and Borough Census Blocks located west of 141° longitude were allocated to the Valdez-Cordova Census Area.

Future Designations

Difficult Development Areas are designated annually as updated income and FMR data become available. Qualified Census Tracts are updated periodically to reflect changes in OMB's designations of metropolitan areas. Qualified Census Tracts are not being updated at this time to reflect the recent change in metropolitan area definitions (OMB Bulletin N0. 03–04, June 6, 2003) because the Census Bureau has not yet released official data on median incomes in the newly defined metropolitan areas and nonmetropolitan parts of states. This notice designates Qualified Census Tracts for American Samoa, Guam, and the Northern Mariana Islands based on 2000 Census data. The 2003 Qualified Census Tracts designated for the 50 states, the District of Columbia, Puerto Rico, and the Virgin Islands published December 12, 2002, at 67 FR 76452 are unchanged by this notice.

Effective Date

The lists of Difficult Development Areas and the list of Qualified Census Tracts are effective for allocations of credit made after December 31, 2003. In the case of a building described in section 42(h)(4)(B) of the Code, the lists are effective if the bonds are issued and the building is placed in service after December 31, 2003.

Interpretive Examples for Effective Date

For the convenience of readers of this notice, interpretive examples are provided below to illustrate the consequences of the effective date in areas that gain or lose Difficult Development Area status with respect to projects described in section 42(h)(4)(B) of the Code. The examples are equally applicable to Qualified Census Tract designations.

(Case A) Project "A" is located in a newly designated 2004 Difficult Development Area. Bonds are issued for Project "A" on November 1, 2003, and Project "A" is placed in service March 1, 2004. Project "A" IS NOT eligible for the increase in basis otherwise accorded a project in this location because the bonds were issued BEFORE January 1, 2004.

(Case B) Project "B" is located in a newly designated 2004 Difficult Development Area. Project "B" is placed in service November 15, 2003. The bonds that will support the permanent financing of Project "B" are issued January 15, 2004. Project "B" IS NOT eligible for the increase in basis otherwise accorded a project in this location because the project was placed in service BEFORE January 1, 2004.

(Case C) Project "C" is located in an area that is a Difficult Development Area in 2003, but IS NOT a Difficult Development Area in 2004. Bonds are issued for Project "C" on October 30, 2003, but Project "C" is not placed in service until March 30, 2004. Project "C" is eligible for the increase in basis available to projects located in 2003 Difficult Development Areas because the first of the two events necessary for triggering the effective date for buildings described in section 42(h)(4)(B) of the Code (the two events being bonds issued and buildings placed in service) took place on October 30, 2003, a time when project "C" was located in a Difficult Development Area.

Other Matters

Environmental Impact

In accordance with 40 CFR 1508.4 of the CEQ regulations and 24 CFR 50.19(c)(6) of the HUD regulations, the policies and procedures contained in this notice provide for the establishment of fiscal requirements or procedures which do not constitute a development decision that affects the physical condition of specific project areas or building sites and therefore, are categorically excluded from the requirements of the National Environmental Policy Act, except for extraordinary circumstances, and no FONSI is required.

Impact on Small Entities

The Secretary, in accordance with 5 U.S.C. section 605(b) (the Regulatory Flexibility Act), has reviewed and approved this notice, and in so doing certifies that this notice does not have a significant economic impact on a substantial number of small entities. The notice involves the designation of "Difficult Development Areas" and "Qualified Census Tracts" as required by section 42 of the Code, as amended, for use by political subdivisions of the states in allocating the Low-Income Housing Tax Credit. This notice places no new requirements on the states, their political subdivisions, or the applicants for the credit. This notice also details the technical methodology used in making such designations.

Federalism Impact

Executive Order 13132 (entitled "Federalism") prohibits an agency from publishing any rule that has federalism implications if the notice either imposes substantial direct compliance costs on state and local governments and is not required by statute, or the rule preempts state law, unless the agency meets the consultation and funding requirements of section 6 of the Executive Order. As a result, the notice is not subject to review under the order. The notice merely designates "Difficult Development Areas" and "Qualified Census Tracts" as required under section 42 of the Internal Revenue Code, as amended, for the use by political subdivisions of the states in allocating the Low-Income Housing Tax Credit. The notice also details the technical methodology used in making such designations.

Dated: December 11, 2003.

Mel Martinez,

Secretary.

BILLING CODE 4210–62–P

2004 IRS SECTION 42(d)(5)(C) QUALIFIED CENSUS TRACTS (2000 DATA, MSA/PMSA DEFINITIONS JUNE 30, 1999)

NONMETROPOLITAN PART OF: American Samoa

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Eastern District	9501.00	9504.00										
Manu'a District	9517.00	9518.00										
Swains Island	9520.00											
Western District	9510.00	9515.00										

NONMETROPOLITAN PART OF: Guam

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Guam	9508.00	9513.00	9515.00	9518.00	9522.00	9524.00	9526.00	9528.00	9530.00	9533.00	9534.00	9544.00
	9548.00	9554.00										

NONMETROPOLITAN PART OF: Northern Mariana Islands

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Northern Islands Municipality	9501.00											
Saipan Municipality	9507.00	9509.00	9510.00	9511.00	9512.00	9513.02						

2004 IRC Section 42(d)(5)(C) Metropolitan Difficult Development Areas

State	Metropolitan Area Name	Metropolitan Area Components			
AZ	Flagstaff, AZ-UT MSA (part)	Coconino County			
	Yuma, AZ MSA	Yuma County			
CA	Los Angeles-Long Beach, CA PMSA	Los Angeles County			
	Oakland, CA PMSA	Alameda County	Contra Costa County		
	Sacramento, CA PMSA	El Dorado County	Placer County	Sacramento County	
	Salinas, CA MSA	Monterey County			
	San Diego, CA MSA	San Diego County			
	San Francisco, CA PMSA	Marin County	San Francisco County	San Mateo County	
	San Jose, CA PMSA	Santa Clara County			
	San Luis Obispo-Atascadero-Paso Robles, CA MSA	San Luis Obispo County			
	Santa Barbara-Santa Maria-Lompoc, CA MSA	Santa Barbara County			
	Santa Cruz-Watsonville, CA PMSA	Santa Cruz County			
	Santa Rosa, CA PMSA	Sonoma County			
	Vallejo-Fairfield-Napa, CA PMSA	Napa County	Solano County		
FL	Miami, FL PMSA	Miami-Dade County			
	Orlando, FL MSA	Lake County	Orange County	Osceola County	Seminole County
MA	Barnstable-Yarmouth, MA MSA	BARNSTABLE COUNTY towns of	Barnstable city	Brewster town	Chatham town
		Dennis town	Eastham town	Harwich town	Mashpee town
		Orleans town	Sandwich town	Yarmouth town	

2004 IRC Section 42(d)(5)(C) Metropolitan Difficult Development Areas

State	Metropolitan Area Name	Metropolitan Area Components			
MA (cont.)	Boston, MA-NH PMSA	BRISTOL COUNTY towns of	Berkley town	Dighton town	Mansfield town
		Norton town	Taunton city		
		ESSEX COUNTY towns of	Amesbury town	Beverly city	Danvers town
		Essex town	Gloucester city	Hamilton town	Ipswich town
		Lynn city	Lynnfield town	Manchester-by-the-Sea town	Marblehead town
		Middleton town	Nahant town	Newbury town	Newburyport city
		Peabody city	Rockport town	Rowley town	Salem city
		Salisbury town	Saugus town	Swampscott town	Topsfield town
		Wenham town			
		MIDDLESEX COUNTY towns of	Acton town	Arlington town	Ashland town
		Ayer town	Bedford town	Belmont town	Boxborough town
		Burlington town	Cambridge city	Carlisle town	Concord town
		Everett city	Framingham town	Holliston town	Hopkinton town
		Hudson town	Lexington town	Lincoln town	Littleton town
		Malden city	Marlborough city	Maynard town	Medford city
		Melrose city	Natick town	Newton city	North Reading town
		Reading town	Sherborn town	Shirley town	Somerville city
		Stoneham town	Stow town	Sudbury town	Townsend town
		Wakefield town	Waltham city	Watertown city	Wayland town
		Weston town	Wilmington town	Winchester town	Woburn city
		NORFOLK COUNTY towns of	Bellingham town	Braintree town	Brookline town
		Canton town	Cohasset town	Dedham town	Dover town
		Foxborough town	Franklin city	Holbrook town	Medfield town
		Medway town	Millis town	Milton town	Needham town
		Norfolk town	Norwood town	Plainville town	Quincy city
		Randolph town	Sharon town	Stoughton town	Walpole town
		Wellesley town	Westwood town	Weymouth town	Wrentham town
		PLYMOUTH COUNTY towns of	Carver town	Duxbury town	Hanover town
		Hingham town	Hull town	Kingston town	Marshfield town
		Norwell town	Pembroke town	Plymouth town	Rockland town
		Scituate town	Wareham town		
		SUFFOLK COUNTY towns of	Boston city	Chelsea city	Revere city
		Winthrop town			
		WORCESTER COUNTY towns of	Berlin town	Blackstone town	Bolton town
		Harvard town	Hopedale town	Lancaster town	Mendon town
		Milford town	Millville town	Southborough town	Upton town
NH	Boston, MA-NH PMSA	ROCKINGHAM COUNTY towns of	Seabrook town	South Hampton town	

2004 IRC Section 42(d)(5)(C) Metropolitan Difficult Development Areas

State	Metropolitan Area Name	Metropolitan Area Components			
NJ	Atlantic-Cape May, NJ PMSA	Atlantic County	Cape May County		
	Jersey City, NJ PMSA	Hudson County			
	Vineland-Millville-Bridgeton, NJ PMSA	Cumberland County			
NY	Dutchess County, NY PMSA	Dutchess County			
	Nassau-Suffolk, NY PMSA	Nassau County	Suffolk County		
	New York, NY PMSA	Bronx County	Kings County	New York County	Putnam County
		Queens County	Richmond County	Rockland County	Westchester County
PR	Aguadilla, PR MSA	Aguada Municipio	Aguadilla Municipio	Moca Municipio	
	Caguas, PR PMSA	Caguas Municipio	Cayey Municipio	Cidra Municipio	Gurabo Municipio
		San Lorenzo Municipio			
	Mayaguez, PR MSA	Anasco Municipio	Cabo Rojo Municipio	Hormigueros Municipio	Mayaguez Municipio
		Sabana Grande Municipio	San German Municipio		
	San Juan-Bayamon, PR PMSA	Aguas Buenas Municipio	Barceloneta Municipio	Bayamon Municipio	Canovanas Municipio
		Carolina Municipio	Catano Municipio	Ceiba Municipio	Comerio Municipio
		Corozal Municipio	Dorado Municipio	Fajardo Municipio	Florida Municipio
		Guaynabo Municipio	Humacao Municipio	Juncos Municipio	Las Piedras Municipio
		Loiza Municipio	Luquillo Municipio	Manati Municipio	Morovis Municipio
		Naguabo Municipio	Naranjito Municipio	Rio Grande Municipio	San Juan Municipio
		Toa Alta Municipio	Toa Baja Municipio	Trujillo Alto Municipio	Vega Alta Municipio
		Vega Baja Municipio	Yabucoa Municipio		

2004 IRC Section 42(d)(5)(C) Nonmetropolitan Difficult Development Areas

State	Nonmetropolitan Counties or County Equivalents			
AK	Bethel Census Area	Dillingham Census Area	Fairbanks North Star Borough	Haines Borough
	Juneau Borough	Ketchikan Gateway Borough	Kodiak Island Borough	Lake and Peninsula Borough
	Matanuska-Susitna Borough	Nome Census Area	North Slope Borough	Northwest Arctic Borough
	Sitka Borough	Valdez-Cordova Census Area	Wrangell-Petersburg Census Area	
AZ	Apache County	Cochise County	Gila County	Graham County
	La Paz County	Navajo County	Santa Cruz County	Yavapai County
AR	Baxter County			
CA	Amador County	Calaveras County	Colusa County	Del Norte County
	Glenn County	Humboldt County	Imperial County	Inyo County
	Kings County	Lake County	Lassen County	Mariposa County
	Mendocino County	Modoc County	Mono County	Nevada County
	San Benito County	Sierra County	Siskiyou County	Tehama County
	Trinity County	Tuolumne County		
CO	Archuleta County	Garfield County	La Plata County	Pitkin County
	San Miguel County	Summit County		
CT	LITCHFIELD COUNTY (part) towns of	Canaan town	Colebrook town	Cornwall town
	Goshen town	Kent town	Litchfield town	Morris town
	Norfolk town	North Canaan town	Salisbury town	Sharon town
	Thomaston town	Torrington town	Warren town	
	MIDDLESEX COUNTY (part) towns of	Chester town	Deep River town	Essex town
	Westbrook town			
DE	Sussex County			
FL	Calhoun County	Citrus County	Columbia County	DeSoto County
	Dixie County	Franklin County	Gilchrist County	Glades County
	Gulf County	Hamilton County	Hardee County	Hendry County
	Highlands County	Holmes County	Indian River County	Jackson County
	Jefferson County	Lafayette County	Levy County	Liberty County
	Madison County	Monroe County	Okeechobee County	Putnam County
	Sumter County	Suwannee County	Taylor County	Union County
	Walton County	Washington County		
HI	Hawaii County	Kauai County	Maui County	
ID	Bonner County	Kootenai County		
KY	Harlan County	Knox County	Laurel County	

2004 IRC Section 42(d)(5)(C) Nonmetropolitan Difficult Development Areas

State	Nonmetropolitan Counties or County Equivalents			
ME	ANDROSCOGGIN COUNTY (part) towns of	Durham town	Leeds town	Livermore Falls town
	Livermore town	Minot town		
	Aroostook County			
	CUMBERLAND COUNTY (part) towns of	Baldwin town	Bridgton town	Brunswick town
	Harpswell town	Harrison town	Naples town	New Gloucester town
	Pownal town	Sebago town		
	Franklin County	Hancock County	Kennebec County	
	Knox County	Lincoln County	Oxford County	
	PENOBSCOT COUNTY (part) towns of	Alton town	Argyle unorg.	Bradford town
	Bradley town	Burlington town	Carmel town	Carroll plantation
	Charleston town	Chester town	Clifton town	Corinna town
	Corinth town	Dexter town	Dixmont town	Drew plantation
	East Central Penobscot unorg.	East Millinocket town	Edinburg town	Enfield town
	Etna town	Exeter town	Garland town	Greenbush town
	Greenfield town	Howland town	Hudson town	Kingman unorg.
	Lagrange town	Lakeville town	Lee town	Levant town
	Lincoln town	Lowell town	Mattawamkeag town	Maxfield town
	Medway town	Millinocket town	Mount Chase town	Newburgh town
	Newport town	North Penobscot unorg.	Passadumkeag town	Patten town
	Plymouth town	Prentiss plantation	Seboeis plantation	Springfield town
	Stacyville town	Stetson town	Twombly unorg.	Webster plantation
	Whitney unorg.	Winn town	Woodville town	
	Piscataquis County	Sagadahoc County	Somerset County	
	WALDO COUNTY (part) towns of	Belfast city	Belmont town	Brooks town
	Burnham town	Frankfort town	Freedom town	Islesboro town
	Jackson town	Knox town	Liberty town	Lincolnville town
	Monroe town	Montville town	Morrill town	Northport town
	Palermo town	Prospect town	Searsmont town	Searsport town
	Stockton Springs town	Swanville town	Thorndike town	Troy town
	Unity town	Waldo town		
	Washington County			
	YORK COUNTY (part) towns of	Acton town	Alfred town	Arundel town
	Biddeford city	Cornish town	Dayton town	Kennebunk town
	Kennebunkport town	Lebanon town	Limerick town	Lyman town
	Newfield town	North Berwick town	Ogunquit town	Parsonsfield town
	Saco city	Sanford town	Shapleigh town	Waterboro town
	Wells town			

2004 IRC Section 42(d)(5)(C) Nonmetropolitan Difficult Development Areas

State	Nonmetropolitan Counties or County Equivalents			
MA	BARNSTABLE COUNTY (part) towns of	Bourne town	Falmouth town	Provincetown town
	Truro town	Wellfleet town		
	Dukes County			
	FRANKLIN COUNTY (part) towns of	Ashfield town	Bernardston town	Buckland town
	Charlemont town	Colrain town	Conway town	Deerfield town
	Erving town	Gill town	Greenfield town	Hawley town
	Heath town	Leverett town	Leyden town	Monroe town
	Montague town	New Salem town	Northfield town	Orange town
	Rowe town	Shelburne town	Shutesbury town	Warwick town
	Wendell town	Whately town		
	HAMPDEN COUNTY (part) towns of	Blandford town	Brimfield town	Chester town
	Granville town	Tolland town	Wales town	
	HAMPSHIRE COUNTY (part) towns of	Chesterfield town	Cummington town	Goshen town
	Middlefield town	Pelham town	Plainfield town	Westhampton town
	Worthington town			
	Nantucket County			
	WORCESTER COUNTY (part) towns of	Athol town	Hardwick town	Hubbardston town
	New Braintree town	Petersham town	Phillipston town	Royalston town
	Warren town			
MN	Kanabec County			
MS	Bolivar County	Coahoma County	Issaquena County	Washington County
MT	Beaverhead County	Big Horn County	Blaine County	Broadwater County
	Carbon County	Carter County	Chouteau County	Custer County
	Daniels County	Dawson County	Deer Lodge County	Fallon County
	Fergus County	Flathead County	Gallatin County	Garfield County
	Glacier County	Golden Valley County	Granite County	Judith Basin County
	Lake County	Liberty County	Lincoln County	McCone County
	Madison County	Meagher County	Mineral County	Musselshell County
	Park County	Petroleum County	Phillips County	Pondera County
	Powder River County	Powell County	Prairie County	Ravalli County
	Richland County	Roosevelt County	Sanders County	Sheridan County
	Silver Bow County	Sweet Grass County	Teton County	Toole County
	Treasure County	Valley County	Wheatland County	Wibaux County
NV	Churchill County	Douglas County	Esmeralda County	Humboldt County
	Lincoln County	Lyon County	Mineral County	Pershing County
	White Pine County	Carson County		

2004 IRC Section 42(d)(5)(C) Nonmetropolitan Difficult Development Areas

State	Nonmetropolitan Counties or County Equivalents			
NH	Belknap County	Carroll County	Cheshire County	Grafton County
	HILLSBOROUGH COUNTY (part) towns of	Antrim town	Bennington town	Deering town
	Francestown town	Greenfield town	Hancock town	Hillsborough town
	Lyndeborough town	New Boston town	Peterborough town	Sharon town
	Temple town	Windsor town		
	MERRIMACK COUNTY (part) towns of	Andover town	Boscawen town	Bow town
	Bradford town	Canterbury town	Chichester town	Concord city
	Danbury town	Dunbarton town	Epsom town	Franklin city
	Henniker town	Hill town	Hopkinton town	Loudon town
	New London town	Newbury town	Northfield town	Pembroke town
	Pittsfield town	Salisbury town	Sutton town	Warner town
	Webster town	Wilmot town		
	ROCKINGHAM COUNTY (part) towns of	Deerfield town	Northwood town	Nottingham town
	STRAFFORD COUNTY (part) towns of	Middleton town	New Durham town	Strafford town
NM	Catron County	Chaves County	Cibola County	Curry County
	DeBaca County	Grant County	Guadalupe County	Harding County
	Luna County	McKinley County	Mora County	Otero County
	Quay County	Rio Arriba County	Roosevelt County	San Miguel County
	Sierra County	Socorro County	Taos County	
NY	Clinton County	Columbia County	Cortland County	Essex County
	Greene County	Jefferson County	Sullivan County	Tompkins County
	Ulster County			
NC	Cleveland County	Jackson County	Pender County	Polk County
	Rutherford County	Watauga County		
OK	Payne County			
OR	Baker County	Clatsop County	Coos County	Crook County
	Curry County	Deschutes County	Douglas County	Grant County
	Harney County	Hood River County	Jefferson County	Josephine County
	Klamath County	Lake County	Lincoln County	Linn County
	Malheur County	Morrow County	Tillamook County	Union County
	Wallowa County	Wasco County	Wheeler County	
PA	Monroe County	Union County	Wayne County	
RI	NEWPORT COUNTY (part) towns of	Middletown town	Newport city	Portsmouth town
	WASHINGTON COUNTY (part) towns of	New Shoreham town		
SD	Butte County	Lawrence County	Meade County	
TX	Aransas County	Camp County	Kleberg County	Nacogdoches County
	Reagan County	Val Verde County	Yoakum County	
UT	Cache County	Daggett County	Iron County	Tooele County
	Washington County			

2004 IRC Section 42(d)(5)(C) Nonmetropolitan Difficult Development Areas

State	Nonmetropolitan Counties or County Equivalents		
VT	Addison County	Caledonia County	
	FRANKLIN COUNTY (part) towns of	Bennington County	
	Fairfield town	Bakersfield town	Enosburg town
	Montgomery town	Fletcher town	Highgate town
	GRAND ISLE COUNTY (part) towns of	Richford town	Sheldon town
	Lamoille County	Alburg town	Isle La Motte town
	Washington County	Orange County	Rutland County
		Windham County	Windsor County
VA	Caroline County	Orange County	Westmoreland County
WA	Clallam County	Mason County	San Juan County
			Skagit County
PI	Pacific Islands		
PR	All Nonmetropolitan Puerto Rico		
VI	St. Croix	St. Johns/St. Thomas	

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Making further continuing appropriations for the fiscal year 2004, and for other purposes. (Dec. 16, 2003; 117 Stat. 2684)

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To support certain housing proposals in the fiscal year 2003 budget for the Federal Government, including the downpayment assistance initiative under the HOME Investment Partnership Act, and for other purposes. (Dec. 16, 2003; 117 Stat. 2685)

S. 877/P.L. 108–187

Controlling the Assault of Non-Solicited Pornography and Marketing Act of 2003 (Dec. 16, 2003; 117 Stat. 2699)

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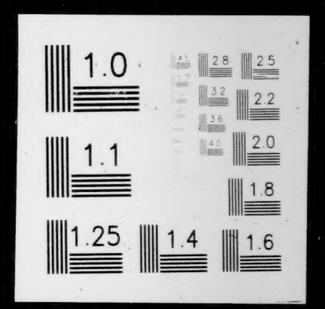
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